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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: This final rule revises certain official U.S. regulations and standards for carcass beef and the related standards for grades of slaughter cattle. The changes provide for the renaming of the U.S. Good grades of carcass beef and slaughter cattle as U.S. Select. The changes will provide the industry with an opportunity, through the use of a more positive grade name, for improved marketing of beef with less marbling than Prime or Choice. The changes should also provide consumers who desire beef having the atrributes of Select with an officially graded product as an alternative to the Prime and Choice grades. The changes should improve the effectiveness of the standards in meeting the needs of users of the system. These revisions are the same as those proposed in the March 4, 1987, **Federal Register** (52 FR 6577).

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, 14th and Independence Avenues SW., Washington, DC 20250, 202–447–4486.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule which revises the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and was thereby classified as a non-major rule pursuant to sections 1(b) (1), (2), and (3) of that order because (1) it would not have an annual effect on the economy of $100 million or more, (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA because the revisions only change the nomenclature of the Good grade name to Select. Further, the beef grades are applied equally to all size entities covered by these regulations, and the use of grades is voluntary.

Background

The Federal grading of meat is a voluntary service, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), which is designed to facilitate the marketing of livestock and meat. In order to facilitate marketing, grades divide the population of cattle or beef into uniform groups (of similar quality, yield, value, etc.). Grades provide a simple, effective means of describing product that is easily understood by both buyers and sellers. By identifying different segments of the commodity, grades enable buyers and consumers to obtain that particular portion of the entire range that best meets their individual needs. At the same time, grades are also important in transmitting information on the desires of consumers to cattlemen so that better informed production decisions can be made. Market preference for a particular grade or grades is communicated to cattle producers, so they can adjust production toward that particular demand.

Public Voice Petition

Public Voice for Food and Health Policy, a non-profit consumer, research, education, and advocacy organization, petitioned the Department of Agriculture (USDA) in June 1986 to amend the beef grade standards. Stating that the "Good" beef grade is leaner than "Prime" or "Choice" and "may not be less desirable, as the current name suggests, to persons who put a premium on nutrition," the petition asked USDA to change the name of the "Good" beef grade to "Select." The Public Voice petition suggested that consumers who would like to purchase leaner beef are being hurt by the disincentive of the "Good" name.

The petition further stated that because many people do not realize that Federal quality grades refer only to taste and not nutritional value, the petition declared that grades strongly imply that beef with a "Choice" label is preferable to the leaner grade of beef, whether that beef is ungraded or labeled "Good." In addition, the petition asserted that store "lean" brands cannot substitute for a Federal grade ensuring leanness because they do not come with the imprimatur of impartial, accurate Federal grades. The Public Voice petition also indicated that since supermarket grades have no relationship to official Federal classifications, such grades are not dependably consistent among different supermarket chains.

The petition concluded that the discrimination against leaner beef inherent in the nomenclature of the Federal grading system should be eliminated. Therefore, Public Voice proposed that the strong confidence consumers have in the Federal beef grades should be maximized for the benefit of the public's health with a name change to indicate that the "Good" grade is no less desirable than "Prime" or "Choice." This organization suggested the name "Select" because it conveys appeal and desirability and is an appropriately positive name for a grade that can be promoted for its leaner quality.

A group of twelve health/consumer ogranizations indicated support for the Public Voice petition. They echoed the

Public Voice statement that the strong confidence consumers have in the Federal beef grades should be maximized for the benefit of the public's health.

Proposed Standards

Consideration of all the available data and information and an evaluation of the alternatives available indicated that renaming the Good grade to Select would present the industry with an opportunity to use a "new" official grade to identify an alternative to the Choice grade for market segments desiring such beef. This beef has been found to be generally acceptable in palatability, and many consumers in the 1985 National Consumer Retail Beef Study gave this beef a high rating because of its perceived leanness. Since there would appear to be marketing opportunities for this type of beef and it would appear to be in the public interest to identify a larger segment of the fed-beef supply for its positive attributes of leanness, and also because consumers would benefit from the opportunity of using an official USDA grade to identify a particular kind of beef with specific qualities different from the Prime or Choice grade, it was proposed in the March 4, 1987, **Federal Register** that the "Good" quality grade be renamed "Select."

Comments

A 60-day comment period, which closed on May 4, 1987, was provided for submission of comments. The official number of comments that were submitted prior to the close of the comment period was 170. The comments were divided into several sectors representing segments of the production and consumption chain with similar interests. The comments were also classified as individual or organization. The distribution of comments by these categories is shown in Table 1.

TABLE 1.—DISTRIBUTION OF COMMENTS

Sector	Classification		
	Individual [1]	Organization [2]	Total
Livestock Production	3	6	9
Packing and Processing	9	3	12
Purveyor and HRI User	2	1	3
Consumer	123	4	127
Academia, Government, and Health	3	2	5
Total	152	18	170

[1] Includes comments of individuals, comments with multiple signers, and businesses.
[2] Includes comments of state, regional, and national organizations and government agencies.

The percentage support/non-support for the proposed grade name change by sector and classification (i.e., individual or organization) is shown in Table 2. While an overall majority of the comments did not support the proposed change, most of these were received from 3 sources. These were individual consumers and individuals and organizations representing purveyors and HRI (hotel, restaurant, and institutional) users. A majority of comments from all other respondent groups, including organization comments from 4 of the 5 sectors, supported the concept of renaming the Good grade.

TABLE 2.—PERCENT SUPPORT/NON-SUPPORT

Sector	Classification			
	Individual [1]		Organization [2]	
	Support (percent)	Nonsupport (percent)	Support (percent)	Nonsupport (percent)
Livestock Production	75.0	25.0	83.3	17.7
Packing and Processing	75.0	25.0	75.0	25.0
Purveyor and HRI User	0.0	100.0	0.0	100.0
Consumer	12.8	87.2	100.0	0.0
Academia, Government, and Health	85.7	14.3	100.0	0.0
Total	22.4	77.6	83.3	16.7

[1] Includes comments of individuals, comments with multiple signers, and businesses.
[2] Includes comments of state, regional, and national organizations and government agencies.

The comments supporting the concept of renaming the Good grade generally supported the proposed changes as a means of improving the image of this type of beef and thus, improving its marketing. Some industry comments also indicated the name change would improve the available market information. This should allow producers to be compensated more fully for value produced and to adjust production more quickly in response to consumer desires. Consumer and health organizations that submitted official comments all supported the proposed change as a means of improving information for consumers in order that they may make better purchasing

decisions regarding the quality and/or nutritional characteristics of beef of various grades. A number of these comments indicated that the stigma associated with the current Good grade name prevented consumers from considering this type of beef because they perceive it to be inferior when in fact if they place a premium on nutrition, it has advantages over Prime or Choice beef. Almost all organizations viewed the name change as a potential means to improve the marketing of beef for the industry while providing a greater amount of beneficial information to consumers in order that more informed purchasing decisions may be made.

Quality/Price Relationships

Individual consumer comments generally expressed opposition to the proposed renaming of the Good grade. The comments opposed to the change generally expressed concern regarding the price or quality of beef. Many viewed the renaming as "another" (in reference to previous quality grade changes) lowering of the quality of beef. Others were concerned that the change would raise the price of this beef.

The Department has carefully considered these price and quality concerns and does not believe that changing the name of the Good grade will adversely impact consumers. Rather, the changes in grade terminology for the Good grade should provide consumers with greater information to make informed purchasing decisions regarding the quality, leanness, and price levels of beef. From a quality standpoint, the renaming does not alter the quality grade criteria for any grade. It does provide an improved name which should encourage a greater portion of the beef supply to be graded. This should benefit those consumers concerned about quality by providing official grades to use in making purchase decisions. For those consumers concerned primarily about quality, the Prime and/or Choice grades would provide the greatest assurance of obtaining the quality level they desire. For consumers preferring beef with less fat (marbling), the Select grade would provide an officially graded alternative.

Several commenters stated the cost of beef would rise due to the additional cost of having it graded. From a cost perspective, there would most likely be no increased costs associated with increased levels of grading due to the name change. Currently, the industry has the option to decide which grades they want to officially identify. Although not all beef is graded, practically all steer and heifer beef is "looked at" by graders, and even if a higher percentage of beef is graded, it is anticipated that it could be done with the current workforce at about the same cost to the industry. In fact, if more beef were officially graded, the cost of grading on a per pound basis would be expected to actually decrease.

The Department has concluded that there should be no significant change in the overall price of beef due to the name change. However, there will probably be some shifting in value of the beef in the current "no-roll" (ungraded) supply if a significant portion of this beef is graded as Select. Select is a more uniform, valuable product than some of the beef that is currently marketed as no-roll beef. The price for Select may increase may increase over that of the average for no-roll beef today, but there should also be a corresponding decrease in the price for the less desirable no-roll beef. It would be expected that the discounts for the less desirable beef would offset, or even exceed, any increase in the price for Select beef. Therefore, any shifts in pricing should have no or only minimal overall effects on retail prices.

Educational Program

Concern was also expressed by some individual consumers and a national trade organization that the change would be costly because all current literature concerning grades would have to be redone, and it would be costly to educate and inform consumers of the change. It is anticipated that there will be some costs associated with changing literature and other materials that reference the grade names. However, the extent of any such changes is extremely difficult to postulate. Most changes could be done as simple editorial changes at the time of reprinting of such materials because the changes affect only the grade terminology. However, some educational materials will have to be developed to provide consumers with information regarding the attributes of the Select grade. In fact, a number of comments supporting the grade name change indicated that an extensive educational program should be undertaken.

The development and dissemination of such educational information will require a cooperative effort, and USDA does intend to cooperate with educators, industry, and interested consumer groups in order to provide accurate information to consumers and users of the beef grades. Costs for such a program will depend greatly on the extent of the program, but it is anticipated that much of the information could be disseminated through the media, newsletters, etc., which would lessen considerably any associated costs. Also, it would be anticipated that businesses desiring to merchandise product with the new name would prepare materials that would provide consumers with information regarding the attributes of the grade. By utilizing these and other similar means to disseminate information, there is no indication that any significant costs should have to be borne by any industry, consumer, or government segment. Furthermore, because the change involves only a change in terminology and not grade requirements, persons familiar with the grades will only need to be informed of the name change.

Name Concerns

A few respondents suggested that another grade term instead of Select be considered, although few of these comments suggested any alternative terms. The Department was amiable to changing the name of the U.S. Good grade to another appropriate grade name. However, other terms for this grade of beef were considered at the time of the proposal but were rejected for various reasons. Such terms as Premium, Fancy, Deluxe, etc., which are acceptable as grade terminology in general, either connote a higher level of quality than appropriate for this grade of beef, or they also are already widely in use for labeling meat by individual companies, or both. The few comments that did suggest alternative grade terms, generally proposed the terms "Lean" and "Lite." However, these names are not acceptable since they would convey an attribute to the beef which would not be supported by the grading system.

The quality grades are indications of taste or palatability and are not intended to indicate composition or nutritional value. It is true that, on the average, the lean portion of Good grade beef is lower in marbling and fat content than Prime and Choice grade beef. However, there is considerable variation in external fat and yield grade within each quality grade. Yield Grade 4 and 5 beef is not uncommon in the Good grade. Overall, not all beef found in this grade could be considered to be "lean." Also, Food Safety and Inspection Service (FSIS) labeling regulations control the use of these terms and limit their use to specific meanings in regard to the fat content of meat. Most untrimmed cuts of beef from the Good grade would not meet these limitations.

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Labeling Concerns

A concern regarding previous industry use of the term Select was raised by some industry respondents. These comments indicated a number of meat packers and processors were already using and intend to continue using the term "Select" in the marketing of a wide variety of fresh and processed beef and other meat items of widely varying quality. These respondents indicated their support for the proposal was conditioned on allowing companies which were already using the Select name to continue to do so. One trade organization suggested that companies be allowed to use the term "Select" on processed products while reserving its use on fresh meats for USDA. However, a comment from another trade organization predicated their support of the change on a requirement that the use of the term Select be limited to only officially graded product of that grade.

FSIS is responsible for the review and approval of labeling used on meat and poultry products. FSIS has historically restricted the use on labeling of meat grading terms (e.g., Prime, Choice) to meat or poultry products which have been officially graded, or to products which are at least equivalent to the grade in question (i.e., use of "Prime" or "Choice" on U.S. Grade A poultry).

Since the term "Select" has not been a meat or poultry grading term, it has been permitted to be used on meat and poultry items without regard to the grading of the item. Although the number of approved labeling which include the term "Select" is not known, the term has been used on some labeling as part of the product name.

At the time of the original proposal, the Department was aware of previous use of the term "Select" by several companies for both fresh meats and processed products. However, considerable support had been indicated for the Public Voice petition from the industry, and the Department was not aware of the extent to which the companies already using the term "Select" were committed to its continued use. Such use would be in conflict with the Department's policy of not allowing the use of grade terminology on meat products which have not been officially graded. However, denying those companies presently using "Select" the use of the term would, as pointed out in the comments, deny them a valuable asset which they had worked to obtain. Such denial of use could also place unwarranted economic burdens on these companies by not only causing them to lose their previous investments in advertising, marketing, and informational materials, but also by causing them to have to reinvest in new campaigns and materials in order to promote the new terms that they would have to use.

Suggestions to allow those companies already using the term "Select" to continue using it (grandfathering) were made by several respondents. The Department does recognize that there is some potential for confusion, particularly for fresh beef cuts, under this alternative. However, it has been determined that the benefits of providing the industry and consumers the improved grade term "Select" which meets the criteria for a proper term for this beef while still allowing those companies presently using the term in approved labeling programs to continue their use of the term, outweigh any potential problems, especially since much of the present use of the term Select is for processed meat items.

Therefore, it has been determined that meat grading terms, including now the term "USDA Select," will continue to be restricted to those meat products which have been officially graded. However, FSIS will take no action to rescind currently approved labeling which contains the term "Select."

Labeling for new or reformulated products or new product lines will be approved in accordance with the general policy with respect to grading terms, as described above.

Regulatory Concerns

A comment from a trade organization also suggested that as a further requirement, all Prime, Choice, and Select grade beef be subject to mandatory grading in order that consumers would be better able to identify the level of quality they desire. As mentioned previously, the grading of beef is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). A mandatory requirement for grading all beef of certain grades is beyond the authority under which the beef grading program is provided.

A comment from another trade organization took issue with the determination that this action would not have a significant economic impact on a substantial number of small entities. This commenter urged USDA to initiate an economic impact study on the effects of the change that would examine the costs associated with an educational program, costs of retail product, costs to control abuse in advertising, and USDA administrative costs. The commenter also proposed that a pilot project be implemented to test the proposal.

AMS had previously determined that the change would not have a significant economic impact on a substantial number of small enfities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* This determination was based on the fact that the change involves only a change in the nomenclature of the Good grade name, the use of grades is voluntary, and the grades are applied equally to all size entities covered by the regulations. The Department recognizes, as discussed previously, there will be some costs associated with preparing new literature, some shifts in value of beef but with no anticipated change in overall costs to consumers, and no increased USDA administrative costs due to increased use of grading services, unionization of grading personnel, or increased supervisory personnel. However, any overall increased costs will be minimal, and there is no indication nor was any quantitative data supplied by the commenter that would alter the prior determination that the change would not have a significant economic impact on a substantial number of small entities.

In consideration of the public comments submitted in response to the proposed rule of March 4, 1987 (52 FR 6577), and all other available information, USDA adopts the proposed regulation with respect to renaming the U.S.D.A. Good beef grade to U.S.D.A. Select.

The standards for grades of slaughter cattle (7 CFR 53.203, 53.204, 53.205, and 53.206), which are based on the beef carcass grade standards, are revised to reflect the revisions of the beef carcass grade standards so that the grade name terminology used will be consistent with that used for the carcass standards, where appropriate. Grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce.

In consideration of the foregoing, certain sections of the regulations and standards appearing at 7 CFR Part 53 as they relate to livestock and certain sections of the regulations and standards appearing at 7 CFR Part 54 as they relate to meats, prepared meats, and meat products are amended as set forth below.

List of Subjects

7 CFR Part 53

Livestock, Cattle, Grading and certification, Standards.

7 CFR Part 54

Beef carcasses, Meat and meat products, Grading and certification, Standards.

PARTS 53 AND 54—[AMENDED]

1. The authority citation for Parts 53 and 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

2. In 7 CFR Part 53 and 54, remove the word "Good" and replace it with the word "Select" in the following places:

(a) § 53.203(a), sentences 5 and 7;
(b) § 53.203(b)(3), sentence 1;
(c) § 53.204(c), heading;
(d) § 53.204(c)(1), sentence 1;
(e) § 53.204(c)(2), sentences 1, 2, and 7;
(f) § 53.205(c), heading;
(g) § 53.205(c)(1), sentence 1;
(h) § 53.205(c)(2), sentences 1, 2, and 4;
(i) § 53.206(a)(4), sentence 2;
(j) § 53.206(b)(4), sentence 3;
(k) § 53.206(c)(4), sentence 3;
(l) § 53.206(d)(4), sentence 3;
(m) § 54.104(b), sentences 3 and 5;
(n) § 54.104(n), sentence 1;
(o) § 54.104(o), sentence 3 (twice) and Figure 1;
(p) § 54.104(q), sentence 7;
(q) § 54.106(c), heading;
(r) § 54.106(c)(1), sentences 1 and 2;
(s) § 54.106(c)(3), sentence 1; and
(t) § 54.107(c), heading and sentence 1.

§ 54.11 [Amended]

3. In § 54.11(a)(1)(vii) insert "Select" following "Choice" in sentence 1.

§ 54.17 [Amended]

4. In § 54.17(b) insert "Select" following "Choice" in sentence 1.

Done at Washington, DC on September 18, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-21925 Filed 9-22-87; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 221

[Docket No. R-0608]

Regulation U; Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation U to exempt banks, when making loans of $100,000 or less, from the requirement that Federal Reserve Form U-1 be executed. Regulation U presently imposes a paperwork burden in connection with every bank loan secured by margin stock, no matter how small. By eliminating the necessity for the execution of a Federal Reserve Form U-1 for loans of $100,000 or less, the Board will substantially reduce the regulatory paperwork burden without any great loss in compliance benefit.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781; or for any user of a Telecommunication Device for the Deaf (TDD) *only*, Ernestine Hill or Dorothea Thompson, (202) 452-3244.

SUPPLEMENTARY INFORMATION: Over 100 comments were received on this proposal which was published in the **Federal Register** on August 11, 1987 (52 FR 29701). With the exception of one money-center bank, they all supported the proposal as a useful way to reduce paperwork burden. The exception suggested two further deregulatory revisions in this area. These suggestions will be addressed next year when the form is scheduled for System review.

Final Regulatory Flexibility Analysis

The Board's Initial Regulatory Flexibility Analysis indicated that this proposed amendment, if adopted, is expected to substantially reduce paperwork burden on small banks and, therefore, will have no adverse economic impact on small entities. Comments were invited on the statement; no comments to the contrary were received. The Board, therefore, certifies for the purposes of 5 U.S.C. 605(b) that the amendment is not expected to have any adverse impact on a substantial number of small entities. The amendment imposes no additional information collection requirements.

The requirement of 5 U.S.C. 553(d) with respect to deferred effective date is not being followed in connection with this amendment because the amendment relieves a restriction previously imposed.

List of Subjects in 12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Investments, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 g and w), the Board amends Title 12, Part 221 of the Code of Federal Regulations as follows:

PART 221—[AMENDED]

1. The authority citation for Part 221 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h and 78w.

2. Section 221.3 is amended by revising paragraph (b), redesignating (c) (i) and (ii) as (c)(1) and (2), and revising (c) (1) as follows:

§ 221.3 General requirements.

* * * * * *

(b) *Purpose statement.* Except for credit extended under paragraph (c) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock, in an amount exceeding $100,000, the bank shall require its customer to execute Form FR U-1 (OMB No. 7100-0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(c) *Purpose statement for revolving-credit or multiple-draw agreements.* (1) If a bank extends credit, secured directly or indirectly by any margin stock, in an amount exceeding $100,000, under a revolving-credit or other multiple-draw agreement, Form FR U-1 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

* * * * * *

By order of the Board of Governors of the Federal Reserve System, September 16, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-21870 Filed 9-22-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-23-AD, Amdt. 39-5728]

Airworthiness Directives; Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), that supersedes AD 86-21-07 applicable to certain Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. AD 86-21-07 restricts the maneuvering, the maximum

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structural cruise and never exceed speeds to preclude operation of the airplane where airloads may be developed that could result in structural failure of the V-tail. It also prohibits airplanes certified in the utility category from being operated other than in the normal category. As a result of subsequent testing, this superseding AD adds provisions for removing those limitations by incorporation of Beech defined modifications. To preclude possible overload conditions resulting from deteriorated handling qualities when operating out of the aft CG limit, the AD also requires that the accuracy of the airplane weight and CG be assessed and if necessary require an actual weighing of the airplane, and require that certain precautionary instructions be placed in the airplane and in the Pilot's Operating Handbook and FAA approved Airplane Flight Manual. This superseding action will minimize the possibility for in-flight failures due to inadequate strength of the V-tail, and/or possible wing overload due to adverse flight characteristics resulting from operation outside the aft limit of the center of gravity envelope.

DATES: *Effective Date:* October 21, 1987. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Beech Mandatory Service Bulletin (SB) 2188 dated May 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; telephone 316–681–7279. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Yanez, FAA, Wichita Aircraft Certification Office, ACE–120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone 316–946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that supersedes AD 86–21–07 was published in the Federal Register on June 22, 1987 (52 FR 23461). The proposed AD was applicable to all Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes except those modified per Supplemental Type Certificate (STC) SA2149CE (straight tail conversion). This proposed AD incorporated the airspeed limitations required by AD 86–21–07 and in-turn added provisions for removing these limitations with the incorporation of modifications identified in Beech Mandatory Service Bulletin (SB) 2188. A check of the accuracy of weight and balance data for all airplanes and of the ruddervator static balance for the Models C35 thru V35B was also proposed.

The proposal resulted from a program that was initiated by a request from the American Bonanza Society to the FAA to investigate the airworthiness of the Model 35 Series V-tail Bonanza. The follow-on study contract with the Transportation Systems Center (TSC), and its subsequent recommendation that limited tests be conducted to determine tail failure mechanisms and actual structural margins of the airplane, resulted in Beech Aircraft Corporation responding with an extensive test program to address the TSC concerns. The initial results of the Beech tests indicated that the strength of the empennage may be marginal when the airplane is operated in certain extreme flight conditions within the approved flight envelope. Consequently, AD 86–21–07 (51 FR 43337; December 2, 1986) was issued to limit the maneuver, maximum structural cruise and never exceed speeds of all Model 35 Series V-tail airplanes. In addition, airplanes certificated in utility category were limited to normal category operation. These actions were considered necessary interim measures until the total investigation was completed and a modification could be accomplished.

The now completed testing and analysis produced a new set of empennage aerodynamic loads which are significantly higher than those used in the original certification of the airplane and supports the initial finding that the V-tail empennage of certain models is structurally inadequate to sustain certain of these loads within the design flight envelope. In addition, the test results indicate handling and stability characteristics of the airplane deteriorate when operated aft of the approved aft CG limits. In addition to degrading ground handling qualities, operation outside the CG limit results in a reduction in stick force per "g" and increases the possibility for pilot induced structural overload.

Beech has issued SB 2188 dated May, 1987, applicable to the Models C35 thru V35B airplanes, referencing Beech Kits 35–4016–3S, –5S, –7S, –9S. These kits provide instructions and material for strengthening the tail, instructions to inspect the aft fuselage and empennage, instructions to check the ruddervator system travel, cable tension, and rigging, procedures to reduce nose down trim limits, instructions to change ruddervator trim cables on some airplanes, and provide appropriate Pilot's Operating Handbook and FAA approved Airplane Flight Manual revisions addressing the weight and balance issue.

In addition to superseding AD 86–21–07 with the reissuance of the limitations contained in AD 86–21–07, the proposed AD specified compliance with SB 2188 as a means to remove the limitations and also specified a check of the accuracy of the airplane weight and balance (and reweigh if necessary), and a check of the ruddervator static balance on all Model C35 thru V35 airplanes.

In the development of the NPRM the FAA recognized that several STCs had been issued prior to the initiation of this latest test program that effect a reduction in deflections of the stabilizer leading edge. By observation, it appeared that these modifications are equivalent to the above referenced kits. However, since they were approved based on loads criteria used in the original certification and had not been subjected to the higher test loads to which the Beech kit is designed, they could not be identified as equivalent to the Beech modification. Therefore, the proposed AD stated that all external modifications incorporated by STC must be removed, or trimmed as appropriate, to permit installation of the Beech kit. The proposal further stated that the external angles of STC SA1649CE on airplane Models H35 thru V35 could be retained but would require trimming of the forward section to permit installation of the Beech kit. In addition, since those angles installed per STC SA1650CE interfere with the external doubler required on Models C35 thru G35, the NPRM would require the removal of these angles.

Interested persons have been afforded an opportunity to comment on the proposal. There were 29 written comments submitted to the Rules Docket. In addition, verbal comments pertaining to the proposed rule were received during the FAA Listening Session at the American Bonanza Society Meeting in Wichita, Kansas July 17, 1987. Comments from the 17 individuals who spoke at the meeting are included in the minutes filed in the Rules Docket. All of these comments, written and verbal, are summarized and discussed below: (Several commenters addressed more than one issue, thus the total comments exceed the number of respondents.)

Eight verbal and five written comments were received regarding the proposed verification of airplane weight

and balance. Six commenters thought the airplane should not be weighed if airplane records contained current weight and balance data. The FAA agrees, as this provision was originally included in the AD as method 1, paragraph (c)(1). Two commenters, including the manufacturer, did not believe sufficient justification was given for requiring a weight and balance check and the requirements should therefore be deleted. Two others asked why a check was necessary for Bonanzas only. The FAA has determined, as stated in the discussions in the NPRM, that the handling and stability characteristics of these airplanes deteriorate when operated aft of the approved aft CG limit. Since these airplanes are easily loaded beyond the aft limit, it is imperative that accurate basic empty weight data be used to preclude inadvertently loading the airplane to an unsafe condition wherein stick force per "g" reductions increase the possibility for pilot induced structural overload. This is considered to be a contributing factor in some of the more than 100 in-flight wing failures. One commenter stated that a check of the complete weight and balance is already required in annual inspections and should not be imposed in the AD. The FAA does not agree. A check of the complete weight is not listed in the annual or 100 hour inspection requirements of FAR 43, appendix D; therefore, including this in the AD is not redundant. Two commenters believe the pilot should be permitted to approve the weight and balance requirements of the AD. The FAA disagrees. The determination of the airplane empty weight and balance is considered to be a maintenance function. Therefore, the airplane log book entry must be accomplished by authorized maintenance personnel.

Seven verbal and six written comments were received concerning ruddervator static balance. One commenter suggested Beech develop a method to check the ruddervator static balance with the control surface on the airplane. The FAA is not aware of any such method being used or under development. Since an acceptable procedure already exists, this corrective action should not await development of a new method. If a new method is developed, it may be considered under the equivalent method of compliance paragraph of the AD. Six commenters believe that the ruddervator static balance is adequate if the airplane records indicate the balance status to be current. The FAA concurs and has accordingly amended paragraph (b)(3) of the AD. One individual thought the pilot should be authorized to determine the adequacy of the balance. The FAA does not agree. This is a maintenance function similar to the airplane weight and balance assessment and, as previously stated, must be an airplane log book entry made by an authorized maintenance inspector. Three commenters, including the manufacturer, thought the requirements for rechecking the ruddervator static balance was inadequately justified and should be deleted since airworthiness requirements already exist to accomplish this task. Furthermore, two others questioned the need to take corrective action against flutter if no flutter problem is known to exist. The FAA agrees that maintenance manuals specify that the static balance should be checked after repairs to or repainting of the surface. However, verbal comments received from the field, including repair stations, indicate this is not being accomplished and surfaces checked are not within factory tolerances. Although none of the more than 200 in-flight structural failures have been attributed to flutter, the FAA has determined that if the structural integrity of the Bonanza tail is to be affirmed, considerations for possible flutter onset due to inadequate control balance must be addressed along with static strength. An inspection for proper control balance is equally as important as the inspection performed in accordance with the Beech Service Instructions to assure the structure conforms to type design.

Four verbal and twenty eight commenters thought the modifications incorporated by STC should be considered equivalent to the Beech modifications. These commenters expressed belief that previously installed STC approved leading edge stiffeners, namely the Knots 2–U and Mike Smith Aero Stub Spar/Tail Safe kits, were obviously as good as or better than the Beech modification and should be approved as a means of compliance with the AD. The FAA's position regarding the acceptability of these modifications is clearly stated in the Supplementary Information of the NPRM. To reiterate, these modifications were designed to reduce the deflections of the stabilizer leading edge. At the time they were approved, it had not been established by the FAA that such a modification was required for an airplane to be airworthy. Consequently, approval was based on load criteria used in the original certification of the airplane. Therefore, the STC modified tails have not been subjected to the higher test load envelope to which the Beech modification has been demonstrated and cannot be approved as equivalent to the Beech kit without additional substantiating data.

Two individuals suggested previously installed modifications should be allowed to remain installed if they do not interfere with the modification required of the AD and any special instructions should be included in the AD. The FAA has determined that these issues have been adequately covered in the proposed rule and the Supplementary Information of the NPRM. Two individuals expressed concern that removing installed STC kits would create extra fastener holes that could reduce the strength of the tail. While FAA agrees that some residual rivet holes may result from the removal of the leading edge cuff on some airplanes, the reduction in local tail strength will be minimal.

Six comments were received addressing the inadequacy of the Beech Service Bulletin inspections. Two believed there were no inspections to detect bent stabilizers. The FAA does not agree. Any significant permanent set that would affect structural integrity will be detected by the specified inspection of the supporting fuselage bulkhead and stabilizer root rib. One commenter stated no guidance is given for checking the airworthiness of the stabilizers, including inspections for corrosion of magnesium parts. The FAA disagrees. The instructions provided in the Beech Service Kits are sufficiently comprehensive for FAA approved maintenance personnel to follow. One commenter noted ruddervator push-pull tubes have been found full of water, corroded and bent. These should be rebuilt or strengthened and the upper rod end sealed. The FAA has determined that the instructions identified in the Beech Service Kits specifying compliance with Beech Service Instruction 0989, "Inspection of Ruddervator Control Push Rods," adequately address this concern.

After installation of the Beech kit, one individual found his airplane was out of rig in yaw. He believes each airplane should be flight tested after modification prior to delivery to the owner. The FAA does not agree that flight testing is required if procedures for maintaining yaw trim as defined in SB 2188, are followed. These procedures are to be followed when re-rigging the empennage controls required by paragraph (b)(a)(B) of this AD. The maintenance and shop manuals, referenced by SB 2188, also address adjusting the airplane for yaw.

Another commenter thought airplane nose down trim limits are being improperly adjusted. Normal dive speed

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cannot be reached without applying forward pressure on the control column. It is the FAA's intent to limit the nose down trim so that inadvertent excursions above dive speed would be more difficult to achieve. Therefore, additional pilot effort to reach dive speed with the re-set trim travel is expected.

Seven verbal and five written comments were received concerning miscellaneous issues. Three commenters, including the manufacturer, thought the pilot should be able to sign off the completion of the AD and restore the original operating speeds. The FAA does not agree. A pilot may not be knowledgeable of all maintenance aspects of the AD, therefore, only FAA certificated maintenance personnel may complete a FAA Form 337, "Major Repair and Alteration," and make the appropriate airplane log book entries.

Four commenters were opposed to the omnibus aspects of the AD. They believe different AD's should be issued, if required, to address separately the modifications, weight and balance, ruddervator static balance, and elevator trim change. The FAA disagrees. All of these aspects are pertinent to the re-establishment of the integrity of the airplane and removal of current speed limitations.

One comment was received to remove the nose down trim limitation from the AD. The commenter, having already complied with SB 2188, asserts there is inadequate nose down trim authority to maintain level flight at full aft CG with the trim limit set at −4.5 degrees for the later Model 35 series airplanes. Subsequent analyses by Beech has verified a need to change this limit to −5.5 degrees for the N35 thru V35B Models. Beech has changed the service kit required by the service bulletin to reflect this change.

One commenter thought the AD should address removal of placards. The FAA agrees and this is addressed in paragraph (d) of the AD.

Two comments were received regarding cost. One stated cost to owners would be escalated because mechanics would replace parts unnecessarily to protect themselves. Another stated that Beech is paying less to non-Beech facilities than their own facility to accomplish the SB tasks. The FAA does not have any control over either of these aspects. However, since most of the work will be performed by Beech facilities, the cost estimates quoted in this AD are appropriate.

The following concerns were provided by Beech Aircraft Company:

(1) The models of the affected airplanes should also include the Super-V airplanes. The FAA does not agree. The Super-V, a conversion of the single engine Beech 35, 35A or 35B to twin engines, is not identified as a Beech Model 35 Series airplane. The gross weight and CG and airspeed limits are all considerably different than the Beech airplanes from which they were derived. The tails of the airplanes are of the early 35 Series configurations that do not require modifications. Since there are no data available, or service history, to dictate that speed limitations, modifications or evaluations of airplane weight and balance are necessary, there is no basis for including these airplanes in the AD.

(2) The Summary of the Notice states the proposed superseding action will "prevent" possible in-flight failures. Such action can only minimize circumstances to the maximum extent, not "prevent." The FAA agrees that the word "prevent," although conventionally used, is perhaps too presumptive and has changed the phrase to "minimize the possibility of in-flight failures . . ."

(3) The telephone number listed for Beech Aircraft Corporation should be 316–681–7279. The FAA has corrected the number accordingly.

(4) The use of the word "common" in the second paragraph of the Discussion section misrepresents actual operating circumstances. The phrase "in a few cases" should replace the word "common" to more accurately describe the matter. The FAA acknowledges the manufacturers concern that the use of the word "common" may not be totally proper. The intent of this paragraph was to emphasize the ease with which the 35 Series, specifically the S35 and later model airplanes, may be loaded outside their approved envelope even with modest payload. The recommended wording, however, is considered to understate the potential frequency of the condition. Since further use of this term is avoided, the issue becomes moot.

(5) Substitute "certain extreme flight conditions" for "certain flight conditions" in paragraph 3 of the Discussion to more accurately define the issue. The FAA agrees that insertion of the word "extreme" is appropriate.

(6) Insert the word "cable" in front of "tension" when referring to ruddervator system checks to better define the required action. The FAA agrees and has incorporated the change herein.

(7) To improve accuracy, delete the phrase ". . . or develop in other airplanes of the same type design . . ." in paragraph 5 of the Discussion. The need for this change should be obvious. The FAA does not agree. This is a regulatory phrase and cannot be deleted.

(8) The external reinforcement angles referenced in paragraph (b)(2) of the proposed rule cannot be retained and trimmed on Model C35 thru G35. The FAA does not agree that the above statement is made or implied. The AD states that the angles installed per STC SA1649CE may be retained if trimmed. STC SA1649CE does not apply to Model C35 thru G35 airplanes.

(9) Beech SB 2188 does not cover ruddervator static balance checking (reference paragraph (b)(3) of the AD). It does refer to maintenance documentation, however. This should be clarified. The FAA agrees that the present wording may be interpreted to imply that SB 2188 requires static balance checking. The phrase "as referenced in SB 2188" has been deleted and a new sentence added which reads: "These Manuals are referenced in SB 2188."

(10) Paragraph (b)(4) of the AD should be more specific regarding replacement of ruddervator tab cables. The FAA agrees and has revised the last phrase to read ". . . and for Models C35, D35, E35, F35 and G35 replace ruddervator tab control cables with larger diameter cables in accordance with SB 2188."

(11) The unusable and undrainable fuel values, for airplanes equipped with wing tip tanks, have not been taken into account (reference AD paragraph (c)(2)(B)(8)). The FAA, prior to issuing the Notice of Proposed Rule Making, reviewed the effects of unusable and undrainable fuel on airplane CG. The results of that review indicated the effects to be negligible.

(12) Recognizing the effect of propulsive thrust on aerodynamic loads as evidenced in their test program, Beech expressed concern regarding the integrity of those airplanes modified by STC wherein horsepower capability and the resultant thrust is increased. Since the available margins of safety may decrease significantly due to these power increases, Beech suggested the FAA carefully evaluate the continued validity of these STC approvals, including those that change the propeller. The FAA is aware of the influence of power on Bonanza tail loads, specifically that maximum horsepower as opposed to zero horsepower or thrust, is the design condition. Only a small amount of data is available from the Beech test/analysis program to determine the effect of incremental changes in horsepower above the baseline maximum power. Based on the data available, it is evident that margins will be reduced for power

increases of 100 HP or more, but will remain well within the 1.5 margin of safety. However, without more conclusive data, the FAA does not have a basis for separate action for these airplanes. Additionally, it must be assumed in the original supplemental type certification of the powerplant modification that the effect of thrust on the structure was adequately considered, and with this AD the airplane is simply being restored to its originally intended integrity.

The FAA has determined that this AD involves approximately 7200 airplanes. The cost of the modifications and inspections as defined in SB 2188 are $1,460 per airplane for the Models C35 through G35, $775 per airplane for the Models H35 through M35, and $850 per airplane for the Models N35 through V35B. There are approximately 1600 Models C35 through G35, 1300 Models H35 through M35, and 3100 Models N35 through V35B airplanes; resulting in estimated costs of $2,336,000.00, $1,007,500.00 and $2,635,000.00 respectively. When all airplanes are modified, the estimated total cost of $5,978,500.00 will be absorbed by Beech Aircraft Corporation warranty provisions as specified in SB 2188.

In addition to the requirements of SB 2188 on Models C35 thru V35B airplanes, the AD requires ruddervator rebalancing, removal of any previously installed external stiffeners (other than previously described) and for all Model 35 airplanes, determination of the accuracy of the airplane CG data including an actual airplane weighing if required. The cost of these additional requirements is estimated to be $1,155,000. This yields an estimated total cost to the private sector of $7,134,000 which is less than the threshold for a significant economic impact. Further, few, if any, small entities are expected to own a sufficient number of airplanes to exceed the threshold for the Regulatory Flexibility Act.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to all Model 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B (all serial numbers) airplanes certificated in any category except to those Models S35, V35, V35A and V35B airplanes modified per Supplemental Type Certificate (STC) SA2149CE (straight tail conversion).

Compliance: Required as indicated, unless already accomplished.

To minimize the possibility for in-flight failures due to inadequate strength of the V-tail, and/or adverse flight characteristics resulting from operation outside the aft limit of the center of gravity envelope, accomplish the following:

(a) Prior to further flight after the effective date of this AD, unless accomplished per AD 86-21-07:

(1) For Models 35, 35R, A35, B35, C35, D35, E35, F35 or G35:

(A) Fabricate and install on the instrument panel as near as possible to the airspeed indicator and in clear view of the pilot the following placard using letters of 0.10 inch minimum height. "Never exceed speed, V_{ne}, 144 MPH (125 knots) IAS; Maximum structural cruising speed, V_{no}, 135 MPH (117 knots) IAS; Maneuvering speed, V_A, 127 MPH (110 knots) IAS."

(B) Mark the outside surface of the airspeed indicator with lines of approximately 1/16 inch by 3/16 inch as follows:

(i) Red line at 144 MPH (125 Knots), and

(ii) Yellow line at 135 MPH (117 knots), and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(C) Place a copy of this AD in the Pilot's Operating Handbook and FAA approved Airplane Flight Manual (POH/AFM) and observe the specified limits.

(D) Operate the airplane in accordance with these speed limitations.

(2) For Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B:

(A) Fabricate and install on the instrument panel as near as possible to the airspeed indicator and in clear view of the pilot the following placard using letters of 0.10 inch minimum height. "Never exceed speed, V_{ne}, 197 MPH (171 knots) IAS; Maximum structural cruising speed, V_{no}, 177 MPH (154 knots) IAS; Maneuvering speed, V_A, 132 MPH (115 knots) IAS."

(B) Mark the outside surface of the airspeed indicator with lines of approximately 1/16 inch by 3/16 inch as follows:

(i) Red line at 197 MPH (171 knots), and

(ii) Yellow line at 177 MPH (154 knots), and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(C) Place a copy of this AD in the POH/AFM and observe the specified limits.

(D) Operate the airplane in accordance with these speed limitations.

(3) For all applicable models, fabricate and install on the instrument panel, over the existing "Utility Category" placard the following placard using letters of 0.10 inch minimum height: "Normal Category Operation Only" and operate the airplane accordingly.

(4) The requirements of paragraph (a) may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him which is not used under Part 121 or 135. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed in FAR 43.9.

(b) Within the next 12 calender months after the effective date of this AD, for Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes accomplish the following:

(1) Visually inspect the empennage, aft fuselage and ruddervator control system in accordance with the appropriate kit instructions specified in Beech Service Bulletin (SB) 2188. Perform the following corrective actions as defined by these instructions:

(A) Replace or repair structural components as required.

(B) Set the elevator, rudder and tab system travels, cable tensions and rigging as specified in the appropriate airplane maintenance or shop manual as referenced in SB 2188.

(2) Remove all external stabilizer reinforcements incorporated per STC SA845GL, SA846GL, SA1650CE, SA2286NM or SA2287NM. Seal or fill any residual holes with appropriate size rivets. The internal stub spar incorporated by SA1649CE and SA1650CE may be retained. The external angles installed per STC SA1649CE may also be retained by properly trimming the leading edge section to permit installation of the stabilizer reinforcement per paragraph (b)(4) of this AD. If any other modification has been incorporated on the stabilizer, notify the Wichita Aircraft Certification Office, telephone 316-946-4409 prior to accomplishing paragraph (b)(4) of this AD.

(3) Determine the accuracy of the static balance of the ruddervator by reviewing the airplane records. If any repainting, modification, repair to the ruddervators has been made since the last balance, check the static balance of the ruddervator and balance as necessary using the methods and criteria

specified in the appropriate Airplane Maintenance or Shop Manual. These manuals are referenced in SB 2188.

(4) Following completion of paragraphs (b)(1), (b)(2), and (b)(3) of this AD, install stabilizer reinforcements, install warning placards and set elevator nose down trim in accordance with Beech SB 2188 and for Models C35, D35, E35, F35 and G35 replace ruddervator tab control cables with larger diameter cables in accordance with SB 2188.

(5) Place the revision/supplement to the POH/AFM specified in SB 2188 in the airplane. Assure that the correct POH/AFM, as listed in the latest revision to the appropriate Type Certificate Data Sheet (TCDS), is installed in the airplane.

(c) Upon completion of the requirements of paragraph (b) of this AD, within the next 12 calender months after the effective date of this AD, for all 35 Series airplanes determine the accuracy of airplane basic empty weight and balance information using one of the following three methods:

(1) *Method Number 1:*

(A) Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA approved weighing, or from factory delivery, to date of compliance with this AD.

(B) Inspect the airplane and compare the actual configuration of the airplane to the configuration described in the weight and balance documentation, and

(C) If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g. paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data by using either method number 2 shown in paragraph (c)(2) of this AD or weigh the airplane as specified in paragraph (c)(3) of this AD.

(2) *Method Number 2:*

(A) Assemble the following equipment:

(1) One certified platform scale having a range of 750 to 1000 pounds capable of supporting the nose wheel without contacting the rest of the airplane.

(2) One scale ramp of sufficient incline to allow rolling the nose wheel onto the scale.

(3) One gear strut inflation system capable of inflating the gear struts to full extension.

(B) Procedure:

(1) Prepare the airplane for weighing, utilizing steps 2, 3 and 4 of the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Ensure that the scale and airplane are on a level hangar floor and the aircraft is shielded from any wind.

(2) Inflate the main gear struts to maximum extension and completely deflate the nose strut. Inflate tires to the correct tire pressures as listed in appropriate Maintenance or Shop Manual. CAUTION: When deflating the nose strut, the aircraft may drop suddenly.

(3) Adjust the height of the scale platform to 12 inches above the hangar floor.

(4) Position the nose wheel onto the scale ensuring that the remainder of the airplane does not contact the scale and verify the proper wheel height. Set the parking brake and/or chock the main wheels.

(5) Record the net weight from the scale.

(6) Remove the nose wheel from the scale.

(7) Adjust the gear struts, per the appropriate Maintenance or Shop Manual, to the proper extension lengths.

(8) Subtract the following unusable, less undrainable, fuel from the current airplane Basic Empty Weight, CG and Moment:

	Weight (lbs)	Arm (in)	Moment (in-lbs)
For all airplanes, and	34.5	79.1	2,730
In addition, for airplanes with 10 gallon wing auxiliary tanks, or	5.0	94.0	470
In addition, for airplanes with 20 gallon auxiliary fuselage tanks	3.0	133.0	399

(9) Multiply the net weight obtained in paragraph (5) by 83.25 to obtain moment.

(10) Divide the weight obtained in paragraph (8) into the moment obtained in paragraph (9) to determine a value for X.

(11) Calculate a value of CG from: $CG = 92.50 - 1.01X$.

(12) Subtract the CG obtained in paragraph (11) from the CG obtained in paragraph (8).

(13) If the results of paragraph (12) indicate the difference in CG to be less than 0.5 inch, continue to use the basic empty airplane weight and CG data listed in the existing airplane records as the basis for computing the weight and CG for the loaded airplane using the criteria specified in the POH/AFM, Weight and Balance Section.

(14) If the results of paragraph (12) indicate the difference in CG to be more than 0.5 inch, determine the basic empty weight and CG of the airplane using Method Number 3.

Note: Sample Calculation

Basic Empty Weight (BEW)—2,064.5 lbs.
Arm—78.3 in.
Moment—161,650 in-lbs.
Paragraph (5): Nose Wheel Weight—341 lbs.

Weight (lbs)	Arm (in)	Moment (in-lbs)
Paragraph (8):		
2,064.5	78.3	161,650
−34.5	79.1	−2,730
2,030.0	*	158,920

$$*\text{Arm} = \frac{(158{,}920)}{(2{,}030.0)} = 78.29$$

Paragraph (9): Moment = (341 lbs) × (83.25 in) = 28,388 in-lbs.

Paragraph (10):

$$X = \frac{(28{,}388\ \text{in-lbs})}{(2{,}030.0\ \text{lb})} = 13.98\ \text{in.}$$

Paragraph (11): CG = 92.50 in. − (1.01) × (13.98 in) = 78.38 in.

Paragraph (12): Difference = (78.29 in) − (78.38 in) = −0.09 in.

Airplane is within ±0.5 in tolerance, therefore paragraph (13) applies.

(3) *Method Number 3:*

(1) Determine the basic empty weight and CG of the empty airplane using the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the POH/AFM, Weight and Balance Section.

(d) Upon completion of the requirements of paragraphs (b) and (c), as applicable, remove the following that were installed in accordance with AD 86-21-07, Amendment 39-5474, or in accordance with paragraph (a) of this AD.

(1) The airspeed placards and airspeed indicator markings, and resume operations observing the original limits.

(2) The copy of AD 86-21-07 or the copy of this AD from the POH/AFM.

(3) The "Normal Category Operations Only" placard.

(e) Special Flight Permit may be issued in accordance with FAR 21.197 to operate airplanes to a base in order to comply with the requirements of paragraphs (b) through (d) of this AD.

(f) An equivalent method of compliance with this AD may be used when approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085 or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This action supersedes AD 86-21-07, Amendment 39-5474.

This amendment becomes effective on October 21, 1987.

Issued in Kansas City, Missouri, on September 4, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-21856 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-71-AD; Amdt. 39-5729]

Airworthiness Directives; Cessna 150, A150, F150, FA150, FRA150, 152, F152, FA152, A152, 170, 172, F172, FR172, P172, R172, 175, 177, F177, 180, 182, F182, FR182, R182, TR182, 185, A185, 188, A188, T188, 190, 195, 205, 206, P206, U206, TU206, TP206, 207, T207, 210, P210, T210, 336, 337, F337, FP337, P337, T337, and T303 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna single and twin engine airplanes, which requires inspections, maintenance, and possible parts replacement of seat rails and seat assemblies. The FAA has received reports of cracking and wear in the seat rails which could prevent positive engagement of the seat locking pins. The actions of this AD will preclude seat slippage and possible loss of the airplane.

DATES: *Effective Date:* October 23, 1987. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Cessna Single Engine Service Information Bulletin SE83-6 dated March 11, 1983, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, ACE-120W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspections, maintenance, and possible parts replacement of seat rails and seat assemblies on certain Cessna single engine and twin engine airplanes was published in the **Federal Register** on January 7, 1987 (52 FR 554).

Prior to the NPRM issued January 7, 1987, an NPRM was issued on January 31, 1986 (51 FR 3985). This earlier action was proposed because, during the past five years, there have been 12 accidents/incidents in which slippage of the pilot's seat was considered contributory. The models involved were the Cessna 150K, 150L, 152, 170A, 172F, 172M, 175, 180, 180A, 182H, 185E, and A185F Series airplanes. In addition, during this same period there were 21 malfunction or defect reports, involving 14 airplanes, describing cracked and worn seat rails which could possibly lead to failures and seat slippage. These occurrences have been on Cessna 150, 152, 172, 175, 180, 182, 185, and 210 Series airplanes. Defective seat rails, whether cracked or worn, could possibly result in a seat locking pin slipping out of place.

The initial proposed AD issued on January 31, 1986, would have required relocation of seat stops on certain models, installation of a warning placard concerning proper locking of the seats on all models, and inspection of the seat rails and locking mechanism for all models. This action was proposed to prevent seat slippage and possible loss of the airplane. Based on public comment and re-evaluation of the FAA position, this proposal was withdrawn in the **Federal Register** on November 13, 1986 (51 FR 41112), for the following reasons: (1) An unsafe condition may be created for some pilots if the seat stops are relocated; (2) the information on the proposed placard is already a preflight checklist item; and (3) the crack inspection criteria called out was not adequate to prevent seat slippage.

Following the withdrawal of the January 31, 1986 NPRM, the FAA continued to be concerned about seat slippage, and three additional incidents of the problem were reported on single engine Cessna airplanes, from January to October, 1986. Also, the agency became aware of additional information, with regard to wear tolerance criteria for the seat pin engagement holes in the seat rails adequate to prevent seat slippage. After further reevaluation, the FAA developed a new proposed AD action using this information. The new NPRM, issued January 7, 1987, also eliminated the relocation of the seat stop and the placard, which were included in the original January 31, 1986 NPRM, and set forth inspections for wear of the seat rail and several components of the seat used to attach the seat to the seat rails.

Interested persons have been afforded an opportunity to comment on the proposal. Twenty-four (24) commenters responded. This included two user groups, the manufacturer and one modifier. The manufacturer stated in his comments that he is in the process of developing secondary seat latch mechanisms for all affected airplanes and plans to announce their availability sometime in the future. The FAA will evaluate this system when the manufacturer's data becomes available.

One user group felt the proposed rule adequately addressed the seat slippage, but recommended that 25 hours time-in-service (TIS) be allowed on airplanes with out-of-tolerance seat rail holes. This suggestion was to prevent possible grounding of airplanes for parts. The FAA understands the concerns of the commenter relative to grounding airplanes, and has worked with the manufacturer to ease the repetitive inspection tolerances for worn seat rail holes as more fully discussed hereafter.

The second user group raised five relevant issues which will be addressed individually. (1) Objection was raised to the proposed rule on the grounds that it is maintenance oriented, which is a violation to the intended purpose for issuance of an AD. The FAA disagrees since FAR 39 applies to any unsafe condition however and wherever found. (2) The commenter noted the uniqueness and questioned the legality of quoting cost estimates on an annual basis rather than a lifetime basis. The FAA disagrees. Pursuant to Executive Order 12291, a major rule means any regulation that is likely to result in an annual effect on the economy of $100,000,000 or more. As stated in the NPRM, the annual cost of complying with the inspections required herein is $13,050,000 to the private sector, well below the Executive Order's annual ceiling. In addition, the cost of $90 per airplane for annual compliance of an AD does not exceed the threshold limitations for small entities and, as a result, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. (3) This commenter, plus four others, recommended that the initial inspections be accomplished on the next annual or 100 hour inspection, as appropriate, after the accumulation of 1,000 hours TIS. The FAA agrees with this recommendation and has incorporated this change into the compliance statement of the AD. (4) This commenter, and one other, stated that certain requirements of the proposed rule require corrective action prior to further flight and that, due to possible parts shortages, airplanes could be grounded. The commenter recommended that, when an airplane does not meet the proposed inspection criteria, it should be allowed to be flown for a minimum of 50 hours while parts are on order, with certain inspections required during this interval. As previously stated, the FAA has worked with the manufacturer to establish the technical criteria for repetitive inspection of the seat rail holes. The repetitive inspections will allow time for

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scheduling parts replacement. In addition, the AD provides two options which can be used for interim repair if parts are not available. (5) This commenter, plus three others, objected to the proposed rule on the grounds that the number of accidents do not justify the action of this AD. The FAA does not agree. AD's are not necessarily issued on the grounds that a certain number of accidents have occurred. The criteria used is whether an unsafe condition exists in a product and whether that condition is likely to exist or develop in products of similar type design.

One commenter stated that he had a Supplemental Type Certificate (STC) to install an adjustable belt to restrain aft movement of the seat. This commenter did not request his STC be an alternate means of compliance to the proposed rule, but merely noted its availability. Another commenter supported the AD, but proposed that his STC for additional seat restraint be made mandatory. Upon reevaluation, the FAA has concluded that these STC's as well as others can be used as appropriate interim repair if parts are not readily available.

Nineteen commenters opposed the proposed rule. Of the objectors, 12 cited cost as the reason to reject the proposed rule. The FAA maintains cost, in itself, cannot be the basis for being for or against an AD. Safety is the dictating factor. Two objectors favored better education of pilots and two felt current inspections were adequate. The FAA considers the issues addressed in this AD to be the result of unsafe conditions which are likely to develop in other airplanes of the same type design. One commenter recommended a redesign of the seat system. The FAA has determined that the proposed AD action, when adopted, will adequately prevent the unsafe condition.

Since the publication of the NPRM, the manufacturer has redefined the seat track hole wear criteria. The new criteria allows repetitive inspections and increases the wear limits from those proposed in the NPRM. Since this action is relieving, the new criteria is incorporated within the provisions of the AD without a further comment period. In addition, the manufacturer also conducted studies to estimate spare part requirements to support this AD. Their conclusion was that they could not meet anticipated requirements without the grounding of airplanes. They therefore proposed the installation of bolts in the seat track to restrict aft movement of the seat to six inches in the event of slippage. The manufacturer recommended this bolt installation be considered as an additional method for compliance with this AD. The FAA concludes that some relief is necessary to prevent grounding of airplanes, but cannot condone a condition wherein seat slippage would be considered a continuing acceptable operating condition; accordingly, interim repair will be permitted providing parts are on order. Since this action is relieving, it is being incorporated within the provisions of this AD without a further comment period. In addition, as previously addressed, STCs which provide seat restraint will also be included as interim repairs.

Accordingly, an AD is being issued in conformance with the NPRM except for the changes noted previously. The FAA has determined that this regulation involves 145,000 airplanes at an approximate annual cost of $90 for each airplane, or a total annual fleet cost of $13,050,000.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to the following airplanes, certificated in any category:

Models	Serial numbers
150A,150B, 150C, 150D, 150E, 150F, 150G,150H, 150J, 150K, 150L, 150M.	15059019 thru 15079405.
A150K, A150L, A150M	A1500001 thru A1500734.
152, A152	All.
170, 170A, 170B	18000 thru 27169.
172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q.	All.
P172	P17257120 thru P17257188.
R172, R172E, R172F, R172G, R172H, R172J.	All.
R172K	R1722000 thru R1723454.
175, 175A	55001 thru 56777.
175B, 175C	17556778 thru 17557119.
177, 177A, 177B, 177RG	All.
180, 180A	30000 thru 32999.
180A, 180B, 180C	50000 thru 50911.
180D, 180E, 180F, 180G, 180H, 180J, 180K.	18050912 thru 18053203.
182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, T182, R182, TR182.	All.
185, 185A, 185B, 185C, 185D, 185E, A185E, A185F.	All.
188, A188, A188A, 188B, A188B, T188C.	All.
190, 195, 195A, 195B	7001 thru 7999; 16000 thru 16183.
205, 205A	205-0001 thru 205-0577.
206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G.	All.
P206, P206A, P206B, P206C, P206D, TP206A, TP206B, TP206C, TP206D.	P206-0001 thru P206-0603.
P206E, TP206E	P20600604 thru P20600647.
207, T207, 207A, T207A	All.
210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, P210N, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210R, T210R, P210R.	All.
336	336-0001 thru 336-0195.
337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, T337C, T337D, T337E, T337F, T337G, T337H, P337H, T337H-SP.	All.

Models	Serial numbers
T303	All.
F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M.	All.
FA152, F152	All.
FP172	FP172-0001 thru FP172-0003.
F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K.	All.
F177RG	All.
F182P, F182Q	All.
FR182G	All.
F337E, F337F, F337G, F337H.	All.
FP337	All.

Compliance: Required as follows, unless already accomplished:

I. For airplanes operating for compensation or hire:

(A) For airplanes having less than 1,000 hours time-in-service (TIS) on the effective date of this AD, accomplish the AD requirements prior to the accumulation of 1,100 hours TIS;

(B) For airplanes having 1,000 or more hours TIS on the effective date of this AD, accomplish the AD requirements within the next 100 hours TIS;

(C) Following the actions of (1) or (2) above, repeat the AD requirements of at each 100 hours TIS thereafter.

II. For airplanes operating under FAR Part 91:

(A) For airplanes having less than 1,000 hours TIS on the effective date of this AD, accomplish the AD requirements at the next annual inspection after the accumulation of 1,000 hours TIS;

(B) For airplanes having 1,000 or more hours TIS on the effective date of this AD, accomplish the AD requirements at the next annual inspection;

(C) Following the actions of (1) or (2) above, repeat the AD requirements at each annual inspection thereafter.

To assure proper engagement of the seat locking mechanism and to preclude inadvertent seat slippage, accomplish the following on each pilot and copilot seat and all associated seat rails:

(a) In accordance with the appropriate compliance time requirement above, accomplish the following:

(1) Measure each hole in the seat track(s) for excessive wear.

(i) If the wear dimension across any hole exceeds 0.36 inches but does not exceed 0.42 inches (see Figure 1), continue to measure each hole every 100 hours time-in-service for excessive wear.

(ii) If the wear dimension across any hole exceeds 0.42 inches, prior to further flight, replace the seat track.

(2) Visually inspect the seat rail holes for dirt and any debris which may preclude engagement of the seat pin(s). Prior to further flight, remove any such material.

(3) Lift up on the forward edge of each seat to eliminate all vertical play. In this position, measure the depth of engagement of each seat pin. If the engagement of any pin is less than 0.15 inches (see Figure 1b), prior to further flight, replace or repair necessary components to achieve a seat pin engagement of 0.15 inches or greater.

(4) Visually inspect seat rollers for flat spots. Assure all rollers and washers turn freely on their axle bolts (or bushings if installed) and move freely on the seat rails. Prior to further flight, replace rollers having flat spots and any worn washers. If there is any binding between the bores of the rollers, washers, and axle bolts (or bushings if installed), prior to further flight, remove, clean, and reinstall these parts.

Note: Do not lubricate rollers, washers, axle bolts or bushings as the lubrication will attract dust and other particles which can cause binding.

(5) Measure the wall thicknesses of the roller housing and the tang (see Figure 1b). If the tang thickness has worn to less than ½ the housing thickness, prior to further flight, replace the roller housing.

(6) Check the spring(s) that keep the lock pin(s) in position in the track holes for positive engagement action. Prior to further flight, replace any spring which does not provide positive engagement.

(7) Visually inspect the seat tracks for cracks in accordance with Cessna Single Engine Service Information Letter SE83-6, dated March 11, 1983. Prior to further flight, replace any seat rail exceeding the crack criteria as specified in SE83-6 with an airworthy rail.

(b) In the event replacement parts are not available but have been ordered, to permit the airplane to be flown until required parts are installed, accomplish one of the following options. However, by no later than October 1, 1988, accomplish the compliance to paragraph (a).

Option 1

(1) On eligible airplanes install one of the following STCs: SA2960NM, SA1209GL, SA1210GL, SA1211GL, SA1212GL, or SA3643SW.

Note: The STC provisions may be removed after compliance with paragraph (a) of this AD.

(2) Install a placard with a minimum letter size of ⅛ inch on the instrument panel in clear view of the pilot which states:

PARTS TO COMPLY WITH PARA (a) OF AD 87-(Insert the appropriate identification numbers of this AD.)—(Insert the appropriate identification numbers of this AD.) ARE ON ORDER. STC SA (Insert the appropriate identification numbers and letters being installed.) HAS BEEN INSTALLED.

(3) Remove the placard when airworthy seat rail parts are installed.

Option 2

(1) Determine which of the three configurations of seat track (0.50 inches high standard configuration, 0.69 inches high standard configuration, or 0.50 inches high with carpet retainers) is appropriate. These dimensions are measured from floor to top of rail.

(2) For airplanes incorporating the standard cross section rail .50 inches high, position the seat with the latching pin in the most forward locking position. Locate an AN3 bolt with a standard lock nut horizontally under the rail cap through one of the seat positioning holes to allow a maximum of 6 inches of travel on the seat.

(3) For airplanes incorporating the standard cross section rail .69 inches high, position the seat with the latching pin in the most forward locking position. Locate an AN4 bolt with a standard lock nut horizontally under the rail cap through one of the seat positioning holes that will provide a maximum of 6 inches of travel on the seat.

Note: It may be necessary to slightly clean out the hole with a ¼ inch drill.

(4) On those airplanes incorporating the carpet retainer feature with a rail height of .50 inches, locate the seat with the latching pin in the most forward locking position. Identify the seat retaining pin hole in the seat rail that provides a stop at the position that limits the seat roller housing travel to a maximum of 6 inches. Using a rotary file or other similar device, to provide clearance, remove the carpet retaining flanges local to the hole and insert an AN3 bolt horizontally through the rail under the rail cap and retain with a standard locking nut.

(5) On those forward roller housings made of aluminum accomplish the following:

(i) Remove the roller attach bolts and install two AN970-3 washers on the outside of each side of each forward roller housing.

(ii) Install an AN3 bolt of proper length and secure with a standard lock nut.

(6) Install a placard with a minimum letter size of ⅛ inch on the instrument panel in clear view of the pilot which states:

PARTS TO COMPLY WITH PARA (a) OF AD 87-(Insert the appropriate identification numbers of this AD.)—(Insert the appropriate identification numbers of this AD.) ARE ON ORDER. SEAT RAILS HAVE BEEN MODIFIED PER OPTION 2 OF AD 87-(Insert the appropriate identification numbers of this AD.)—(Insert the appropriate identification numbers of this AD.).

(7) Remove the placard when airworthy seat rail parts are installed.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

BILLING CODE 4910-13-M

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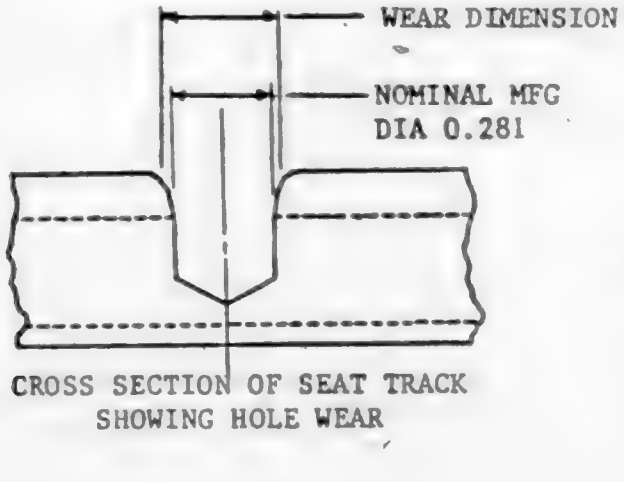

FIGURE 1a

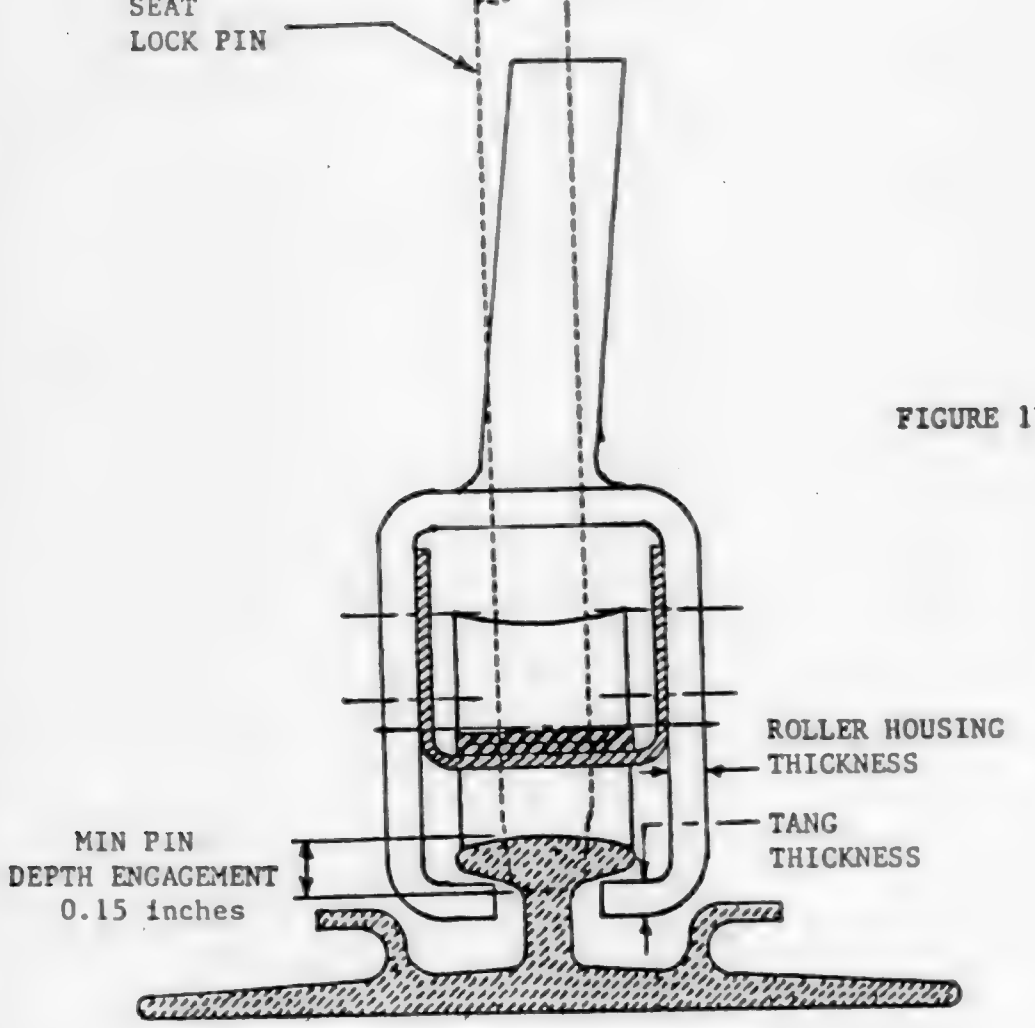

FIGURE 1b

FIGURE 1

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All persons affected by this directive may obtain copies of the documents referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine the documents referred to herein at the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on October 23, 1987.

Issued in Kansas City, Missouri, on September 8, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-21858 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-2]

Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of only one of eight jet routes located in the vicinity of New York that was published in the notice. This route is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. However, due to numerous technical and administrative problems only J-36 will be implemented at this time. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-6, J-8, J-14, J-22, J-24, J-30, J-34 and J-36 located in the vicinity of New York (52 FR 25244). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, due to numerous technical and administrative problems, the FAA has determined that only J-36 should be implemented at this time. The other seven jet routes will be delayed until a later date. Except for editorial changes and the omission of seven jet routes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the description of only one of eight jet routes located in the vicinity of New York that was published in the notice. This route is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-36 [Amended]

By removing the words "to Huguenot, NY," and substituting the words "Lake Henry, PA; to Sparta, NJ."

Issued in Washington, DC, on September 11, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-21852 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-4]

Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of four of seven jet routes located in the vicinity of New York that were published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. However, due to numerous technical and administrative problems, only J-68, J-75, J-95 and J-106 will be implemented at this time. This amendment is part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami,

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FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–68, J–75, J–79, J–94, J–95, J–106 and J–109 located in the vicinity of New York (52 FR 25241). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, due to numerous technical and administrative problems, the FAA has determined that only J–68, J–75, J–95 and J–106 should be implemented at this time. The other three jet routes will be delayed until a later date. Except for editorial changes, minor changes to J–68 and J–75 and the omission of three jet routes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of four of seven jet routes located in the vicinity of New York that was published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–68 [Amended]

By removing the words "; Hancock, NY;" and substituting the words ". From Hancock, NY:"

J–75 [Amended]

By removing the words "INT Carmel 044°" and substituting the words "INT Carmel 045°"

J–95 [Amended]

By removing the words "From Kennedy, NY, via Huguenot, NY," and substituting the words "From Deer Park, NY; INT Deer Park 308° and Binghamton, NY, 119° radials; Binghamton;"

J–106 [Amended]

By removing the words "Sparta, NJ; to Kennedy, NY," and substituting the words "Wilkes-Barre, PA; Stillwater, NJ; to LaGuardia, NY."

Issued in Washington, DC, on September 11, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–21851 Filed 9–22–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 87–AWA–5]

Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of one of eight jet routes located in the vicinity of New York that were published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. However, due to numerous technical and administrative problems, only J–152 will be implemented at this time. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–110, J–121, J–134, J–147, J–149, J–150, J–152 and J–162, located in the vicinity of New York (52 FR 25608). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, due to numerous technical and administrative problems, the FAA has determined that only J–152 should be implemented at this time. The other seven jet routes will be delayed until a later date. Except for editorial changes, and the omission of seven jet routes, this amendment is the

same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the description of only one of eight jet routes located in the vicinity of New York that was published in the notice. This route is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-152 [Amended]

By removing the words "Harrisburg, PA; to INT Harrisburg 099° and Westminster, MD, 058° radials." and substituting the words "to Harrisburg, PA."

Issued in Washington, DC, on September 11, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-21850 Filed 9-22-87; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM86-6-004, RM86-6-005, and RM86-6-006; Order No. 474-A]

Construction Work in Progress; Anticompetitive Implications; Rate Schedule Filing

Issued September 17, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order granting in part and denying in part requests for rehearing and clarifying prior order.

SUMMARY: On June 18, 1987, the Federal Energy Regulatory Commission issued a final rule (Order No. 474) to revise regulations concerning filings to include costs associated with construction work in progress (CWIP) in the rate base of public utilities, under Part II of the Federal Power Act, pursuant to a remand of the Commission's prior CWIP rule (Order No. 298) by the United States Court of Appeals for the District of Columbia Circuit. The court affirmed in part, but vacated in part, Order No. 298, while expressing concerns about the anticompetitive implications of CWIP in rate base. *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (1985).

In this order, the Commission grants in part and denies in part requests for rehearing and clarifies parts of Order No. 474.

EFFECTIVE DATE: October 23, 1987.

FOR FURTHER INFORMATION CONTACT:

Legal Information

Andre Goodson, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8467.

Technical Information

Eliot Wessler, Federal Energy Regulatory Commission, Office of Economic Policy, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8286.

SUPPLEMENTARY INFORMATION:

United States of America Federal Energy Regulatory Commission

Electric Rates: Construction Work in Progress; Rehearing; Clarification; Price Squeeze; Double Whammy; Order Granting in Part and Denying in Part Requests for Rehearing, and Clarifying Prior Order

I. Introduction

The Commission grants in part requests for rehearing of its final rule concerning construction work in progress (CWIP) in rate base. The order on rehearing adopts two revisions to the final CWIP rule. First, the definition of CWIP at § 35.26(b)(1) of the regulations is modified to make it clear that "CWIP" refers to expenditures that would otherwise be eligible for allowance for funds used during construction (AFUDC) treatment. Second, § 35.26(g)(2) of the regulations is revised by adding that whether or not preliminary relief is granted at the suspension stage of a rate proceeding will not preclude consideration of further remedies later in the proceeding, if warranted. The order on rehearing also clarifies parts of Order No. 474 and denies rehearing on the remaining issues.

II. Background

On June 18, 1987, the Commission issued a final rule adopting revised regulations concerning filings to include costs associated with CWIP in rate base.[1] The final rule was issued pursuant to a remand of the Commission's prior CWIP rule [2] from the United States Court of Appeals for the District of Columbia Circuit in *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (1985) *(Mid-Tex I)*. The *Mid-Tex I* remand required the Commission to address the court's concerns about the anti-competitive implications of allowing up to 50% of non-pollution control/fuel conversion CWIP in rate base.[3] Order No. 474

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[1] Order No. 474, 52 FR 23948 (June 26, 1987), III FERC Statutes and Regulations ¶ 30,751 (1987).

[2] Order No. 298, 48 FR 24323, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,455 (1983), *order on reh.*, Order No. 298-A, 48 FR 46012, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,500 (1983), *clarified*, Order No. 298-B, 48 FR 55281, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,524 (1983).

[3] Subsequent to the *Mid-Tex I* remand, the Commission adopted procedures to address

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continued the Commission's policy of allowing utilities to request up to 50% of non-pollution control/fuel conversion CWIP in rate base. However, pursuant to the *Mid-Tex I* remand, Order No. 474 additionally provided for filing requirements and procedures designed to address, mitigate, remedy and/or prevent non-pollution control/fuel conversion CWIP-related price squeeze and double whammy.

Under Order No. 474, the Commission required for each CWIP project for which rate base treatment is requested, the application of forward-looking allocation ratios reflecting the customers' anticipated annual use of the utility system over the service life of the CWIP project in order to properly recognize and account for the customers' plans for alternative power supplies. The Commission took this action to prevent double whammy and to improve the measurement and non-pollution control/fuel conversion CWIP-induced price squeeze.

The Commission also required the utility seeking to include non-pollution control/fuel conversion CWIP in rate base to submit with its rate application a comparison of the percentages of non-pollution control/fuel conversion CWIP allowed by the relevant retail jurisdiction with that requested by the applicant in its rate application before the Commission. Where the CWIP percentage requested before the Commission exceeds that incorporated in the competing retail rate, an earned rate of return comparison is additionally required in order to assist the Commission in determining the existence and extent of potential non-pollution control/fuel conversion CWIP-incuded price squeeze at the suspension stage. For any such CWIP-induced regulatory price squeeze, the Commission stated that it will, on a case-by-case basis, balance the benefit to the public interest of remedying the price squeeze against the benefit to the public interest of applying the CWIP rule without any modification to remedy such price squeeze.

On July 20, 1987, timely requests for rehearing Order No. 474 were filed by New England Power Company (NEP), Public Systems, and National Rural Electric Cooperative Association, *et al.* (NRECA).[4] An order granting rehearing for the purpose of further consideration was issued on August 12, 1987.

III. Discussion

A. Issues Previously Fully Addressed

Several rehearing issues raised by NRECA and Public Systems have been fully addressed in prior CWIP orders. Accordingly, the Commission denies the requests for rehearing of the following issues.

1. Allowances of Up to 50% Non-Pollution Control/Fuel Conversion CWIP in Rate Base

Public Systems and NRECA assert that the Commission failed to reconsider its fundamental policy of allowing up to 50% of non-pollution control/fuel conversion CWIP in rate base as allegedly required by the *Mid-Tex I* remand. The *Mid-Tex I* court required the Commission to reconsider its fundamental policy of allowing up to 50% non-pollution control/fuel conversion CWIP in rate base unless the Commission reasonably determined that the CWIP rule would have no significant anticompetitive effects, *or* unless it convincingly explained why it can consider those effects on a case-by-case basis.[5] In response, the final rule explained why and how the Commission would address CWIP-related price squeeze on a case-by-case basis,[6] and it provided a generic means for preventing double whammy.[7]

2. Examination of the Bulk Power Market

Public Systems also contend that the Commission did not respond to their suggestion that a utility filing for CWIP be required to demonstrate that its customers have adequate access to power pools and alternative capacity sources. Public Systems assert that CWIP is anticompetitive where this kind of flexibility does not exist. They reassert their criticism that the Commission has failed to examine the competitive forces at work in the bulk power market.

The *Mid-Tex I* court criticized the Commission for not considering double whammy as an objection to its CWIP policy or evaluating the scope of the double whammy problem. It was in that context that the court required the Commission to explain why an assessment of prevailing market conditions was infeasible or unnecessary.[8] In Order No. 474, the Commission concluded that the requirement to file life-cycle forward looking allocation ratios with all CWIP rate applications will prevent double whammy situations regardless of the number of wholesale customers engaged in the pursuit of alternative supply options. Thus, the Commission concluded that no examination of the bulk power market was necessary.[9]

3. Joint Ventures

With respect to joint ventures, Public Systems state that they cannot accept the Commission's statement that it has no preference for joint venture financing over CWIP financing. They allege that the failure to address the issue in Order No. 474 directly contradicts the *Mid-Tex I* mandate. NRECA also repeats its request tht offers to customers of participation in joint ventures be made a condition precedent to a utility being allowed to collect CWIP.

The Commission believes that Order No. 474 satisfies *Mid-Tex I* by addressing the issue of the effect of the rule on wholesale customers' ability to enter into joint ventures. As the Commission stated in Order No. 474, the Commission considers the final rule to be neutral in its effect on wholesale customers' ability to enter into joint ventures with utilities.[10] Under the final rule, customers engaged in joint ventures will not be penalized, *i.e.*, they will not have to pay CWIP-based rates that reflect the use of facilities that those customers are not projected to use. *Mid-Tex I* did not mandate that the Commission go further and adopt a rule that encourages joint ventures over CWIP.[11]

4. CWIP Is Not A Subsidy To Utilities

Public Systems contend that the final rule does not address their argument that CWIP gives utilities an improper advantage over all potentially competing power suppliers via subsidized financing.

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anticompetitive implications of CWIP on an interim basis and invited comments to assist in its consideration of a final rule. Order No. 448, 51 FR 7774, III FERC Statutes and Regulations ¶ 30,689 (1986), *reh. denied*, 35 FERC ¶61,328 (1986), *affirmed*, Mid-Tex Electric Cooperative, Inc. v. FERC, 822 F.2d 1123 (D.C. Cir. 1987) *(Mid-Tex II)*.

[4] National Rural Electric Cooperative Association, American Public Power Association, Golden Spread Electric Cooperative, Inc., the members of Golden Spread Electric Cooperative, Inc., the full requirements customers of Southwestern Public Service Company, Mid-Tex Electric Cooperative, Inc., and Magic Valley Electric Cooperative, Inc., jointly filed a request for rehearing.

[5] 773 F.2d at 362.

[6] 52 F.R. 23952–57, III FERC Statutes and Regulations ¶ 30,751 at 30,707–14.

[7] 52 F.R. 23958–60, III FERC Statutes and Regulations ¶ 30,751 at 30,714–18.

[8] 773 F.2d at 358–59.

[9] 52 F.R. 23960, III FERC Statutes and Regulations ¶ 30,751 at 30,718.

[10] 52 F.R. 23961, III FERC Statutes and Regulations ¶ 30,751 at 30,720.

[11] With respect to requiring offers of joint ventures, NRECA repeats an argument made on appeal of Order No. 298. That argument was rejected in *Mid-Tex I* where the court acknowledged that the Commission probably lacks authority to compel utilities to enter into joint ventures. 773 F.2d at 361.

The basis for Public Systems' argument appears to be that a utility receives a subsidy—and, thus, an advantage over wholesale customers—if the utility's wholesale rates reflect its CWIP projects while the wholesale customers' rates do not reflect customer-sponsored CWIP projects.[12] However, recovery of CWIP dollars (as opposed to AFUDC) involves the timing of the recovery of revenues. It does not result in greater recovery of revenues. Therefore, CWIP does not represent a subsidy to the utility, because the utility is collecting revenues that it is entitled to, only sooner than under AFUDC. Further, with CWIP in rate base, a utility's financing costs may be reduced, thus reducing the cost of its CWIP project. Such a result mitigates the bias against construction of new generating facilities (one of the CWIP rule's public interest objectives) [13] rather than subsidizes utilities.

Moreover, there is no subsidy to wholesale customers under Order No. 474, since adoption of forward looking allocation ratios is designed to prevent cross-subsidization of some wholesale customers by other wholesale customers by allocating CWIP based on projected use of CWIP projects.

5. Investment Risk

Public Systems reiterate their argument that CWIP improperly masks from utility management information about investment risk. They argue that CWIP creates a bias in favor of overbuilding. Public Systems' argument was a fundamental policy objection to one of the CWIP rule's public interest objectives, *i.e.*, mitigating any bias against the construction of new generating facilities. However, the Commission was not revisiting this issue in the interim CWIP rule (Order No. 448). Indeed, Public Systems' argument was made in response to a question concerning whether modification of the 50 percent cap might be an appropriate remedy if the interim rule would cause price squeeze or double whammy.[14] Further, the *Mid-Tex I* court affirmed the Commission's underlying policy objective of mitigating investment bias. *See* 773 F.2d at 344.

6. Addressing Anticompetitive Effects at the Rulemaking Stage

Generally, NRECA criticized the Commission for not addressing the anticompetitive implications of CWIP at the rulemaking stage rather than in individual cases.

NRECA is wrong when it argues that Order No. 474 did not address anticompetitive effects generically. Order No. 474 rule expressly considered anticompetitive concerns generally with regard to double whammy.[15] With respect to price squeeze, Order No. 474 requires all CWIP applicants to file data enabling all parties and the Commission to evaluate at the suspension stage of a proceeding the possibility of CWIP-related regulatory price squeeze resulting from different state/Federal ratemaking policies regarding CWIP applicants' rates.[16]

7. Burden of Proof Regarding Price Squeeze

Public Systems argue that Order No. 474 did not adequately explain why the Commission rejected their proposal that utilities requesting CWIP be required to prove that the rates filed for will not result in a price squeeze. In Order No. 474, the Commission determined that, based on its experience with filings made under Order No. 298 (the 1983 CWIP rule) and Order No. 448 (the interim CWIP rule), it was not possible to say that the CWIP rule would have a generic price squeeze effect. Thus, the Commission was justified in its decision not to require a detailed, comprehensive price squeeze analysis with every CWIP filing because that would presume a generic price squeeze effect.[17] Further, the final rule provides for the submission of sufficient data in every CWIP filing to enable the parties and the Commission to evaluate at the suspension stage of a proceeding the *potential* for price squeeze related to non-pollution control/fuel conversion CWIP. (*See* 18 CFR 35.26(g)(1) (1987).)

8. Interim Relief

Public Systems insist that the Commission must define the circumstances under which it will provide interim price squeeze relief,[18] and then promulgate filing regulations that ensure the availability of information sufficient to permit customers to make the required showing. The Commission rejected this argument in Order No. 474, stating that it was allowing for considerable flexibility regarding what a customer may show in support of an allegation of imminent, irreparable harm and that such flexibility was consistent with the case-by-case approach to addressing the price squeeze implications of CWIP.[19]

B. Price Squeeze

1. Scope of Price Squeeze Issue

Public Systems and NRECA request that the final rule address the issue of price squeeze generally, *i.e.*, whether or nor CWIP is involved, rather than limit itself to purely regulatory price squeeze. The Commission indicated in Order No. 474 that it was considering general price squeeze in *Southern California Edison Company*, Docket Nos. ER76–205–003 (Price Squeeze Phase) and ER79–150–000 (Phase II, Price Squeeze) and confined itself in the final rule to dealing with non-pollution control/fuel conversion CWIP-related regulatory price squeeze.[20] The Commission plans to issue an opinion in Docket No. ER76–205–003 in the near future.

2. Price Squeeze Relief

NRECA asserts that it appears that the Commission does not intend to address potential price squeeze, but rather will consider relief only after an actual price squeeze has been proven. NRECA submits that it would be contrary to *Mid-Tex I* to limit consideration of price squeeze relief to such an indeterminate time in the future.

NRECA's assertion that the Commission will consider CWIP-related price squeeze relief only after an actual price squeeze has been proven is erroneous. The final rule retains the interim rule's provision that the Commission *will* consider preliminary (*i.e.*, prior to the establishment of effective dates for the CWIP-based rates as well as before actual price squeeze has been proven) relief at the suspension stage of a proceeding

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[12] Public Systems cite no statistics concerning how many wholesale customers reflect CWIP in their retail rates. However, in approximately 40 states, state regulatory commissions have little or no jurisdiction over retail rates set by municipal utilities. Therefore, those municipal utilities are free to reflect CWIP in their rates. Similarly, in approximately half of all states, state regulatory commissions have little or no jurisdiction over retail rates set by cooperatively-owned utilities. *See* 1984 Annual Report on Utility and Carrier Regulation, National Association of Regulatory Utility Commissioners, Table 3, p. 421.

[13] *See* 52 F.R. 23950, III FERC Statutes and Regulations ¶ 30,751 at 30,703 *See also* Order No. 298, 48 F.R. 24,329, FERC Statutes and Regulations (Regulations Preambles 1982–1985) ¶ 30,455 at 30,497 (1983) and *Mid-Tex I*, 773 F.2d at 345.

[14] *See* Order No. 448 51 F.R. 7778–79, III FERC Statutes and Regulations ¶ 30,689 at 30,144.

[15] 52 F.R. 23960, III FERC statutes and Regulations ¶ 30,751 at 30,718.

[16] *See* § 35.26(g)(1), 18 CFR 35.26(g)(1) (1987).

[17] *See* 52 FR. 23954, 23962, III FERC Statutes and Regulations ¶ 30,751 at 30,709, 30,722.

[18] Section 35.26(g)(2) of the regulations, 18 CFR 35.26(g)(2) (1987), adopted by the final rule, provides that the Commission will consider preliminary relief at the suspension stage of a proceeding upon a showing of imminent, irreparable harm to the wholesale customer if the requested CWIP is allowed.

[19] 52 FR 23962, III FERC Statutes and Regulations ¶ 30,751 at 30,722.

[20] 52 FR. 23963, III FERC Statutes and Regulations ¶ 30,751 at 30,722.

involving non-pollution control/fuel conversion CWIP-based rates. Thus, a wholesale customer could, upon a proper showing of imminent, irreparable harm, avoid paying all, or some portion, of the proposed rate level reflecting non-pollution control/fuel conversion CWIP during the length of the rate proceeding even if the price squeeze is never ultimately proven. Further, as discussed below, the Commisssion will consider interim relief later in the proceeding, if warranted. However, consideration of ultimate price squeeze relief must necessarily follow a determination of actual overall price squeeze, which itself will typically come after the establishment of a preliminary just and reasonable (but for price squeeze) rate.[21] NRECA cites no language in *Mid-Tex I* requiring a final price squeeze determination before the determination of preliminary just and reasonable rates has been made.

3. Imminent, Irreparable Harm Standard for Interim Relief

NRECA also contends that the standard for relief—imminent, irreparable harm—is too stringent. Further, NRECA suggests that allegations of imminent, irreparable harm should not be restricted to being made in the customer's initial pleading. NRECA argues that a customer should be allowed to request interim relief anytime during a proceeding.

With respect to the imminent, irreparable harm standard, NRECA suggests that a wholesale customer may not be able to make a concrete, substantive showing that irreparable harm is imminent unless the customer is "on the verge of competitive disaster—often past the point where the situation can be turned around." NRECA further contends that the nature of the anticompetitive injury, *i.e.*, the loss of existing or potential new customers or the takeover of the wholesale customer, is such that the harm cannot be remedied once concrete evidence of its imminent occurrence is available.

The Commission disagrees with this statement. The final rule provides for the consideration of preliminary relief at the suspension stage of a proceeding—*before* the CWIP-based rate at issue has been collected. Thus, if the wholesale customer is already on the verge of competitive disaster at the time a utility seeks CWIP-based rates, the CWIP requested could not have been the cause of the customer's situation. However, a showing that the customer is on the verge of "competitive disaster" would be taken into account by the Commission in determining whether allowing CWIP to be collected would bring about further imminent, irreparable harm. The Commission further notes that the CWIP rule does not limit interim relief to such circumstances. The provision for interim CWIP relief was not intended to improve the existing competitive position of a wholesale costomer which came to be in such a position due to factors other than the rate applicant's proposed CWIP. Instead, interim relief is a preventive measure designed to mitigate the potential anticompetitive effects, if any, of proposed CWIP.

4. Rationale for the Imminent, Irreparable Harm Standard

NRECA also disputes the bases cited in Order No. 474 for the imminent, irreparable harm standard,[22] arguing that: (1) There can be no permanent loss of revenues to the utility, because disallowed CWIP would be rebooked as AFUDC, and recovery of revenues would be deferred, not forsaken; and (2) the number of settled CWIP cases is not necessarily indicative that most CWIP allegations are unfounded. Thus, NRECA argues that the standard for interim relief is unsupported.

On the first point, NRECA's argument does not account for the fact that under § 35.26(g)(4)(i), 18 CFR 35.26(g)(4)(i) (1987), one form of iterim relief at the Commission's disposal is suspension of the entire rate increase for up to five months. Such action regarding the portion of the rate increase not based on CWIP would constitute a permanent loss of revenues to the utility. Thus, the final rule's statement is supported. However, to the extent that collection of the CWIP-based portion of the proposed rate alone is deferred,[23] the corresponding return component of the CWIP disallowance would be booked as AFUDC. This is discussed in more detail below in the discussion of CWIP filing requirements. On the second point, NRECA raises no issues which were not thoroughly addressed in the final rule. Thus, the Commission finds no basis for granting rehearing of this issue.

Concerning NRECA's argument that a customer should be permitted to request interim relief anytime during a proceeding, the Commission clarifies the final rule by stating, as the interim rule stated,[24] that whether or not relief is granted at the suspension stage will not preclude the possibility of interim relief sometime later in the proceeding, if warranted. A new sentence to this effect is added to § 35.26(g)(2).

5. Data for Price Squeeze Analysis

NRECA argues that pollution control and fuel conversion CWIP should be included in the CWIP rate applicant's price squeeze analysis, adding that most states do not systematically distinguish pollution control/fuel conversion CWIP allowances in retail rate base from non-pollution control/fuel conversion CWIP allowances in retail rate base. NRECA also contends that, in order to permit a meaningful comparison between wholesale and retail rates, the retail CWIP identified must be functionalized, *i.e.*, grouped according to the specified function of such facilities. It states that some state commissions limit CWIP to short term projects. Typically, short term CWIP projects would be distribution or general plant facilities, to which the wholesale customers have little or no cost responsibility, according to NRECA.

At issue in *Mid-Tex I* was the change from the financial distress test for allowing non-pollution control/fuel conversion CWIP under the Commission's CWIP policy under Order No. 555[25] to a policy of allowing up to 50 percent non-pollution control/fuel conversion CWIP in rate base. The *Mid-Tex I* decision did not hold that there were anticompetitive implications involved with pollution control or fuel conversion CWIP. The *Mid-Tex I* remand only required the Commission to consider the anticompetitive implications of non-pollution control/fuel conversion CWIP. Further, if pollution control/fuel conversion CWIP is alleged to contribute to price squeeze in a given case, such an allegation could be properly considered pursuant to the Commission's general price squeeze policy.

Regarding the alleged failure of most states to segregate allowed retail CWIP into pollution control/fuel conversion CWIP and non-pollution control/fuel conversion CWIP, the Commission

[21] The Commission's policy and practice of phasing the price squeeze issue was established in Arkansas Power and Light Company, 8 FERC ¶ 61,131 (1979).

[22] *See* 52 FR 23962, III FERC Statutes and Regulations ¶ 30,751 at 30,722, where the Commission cited potential lost revenues and the number of cases in which CWIP-related price squeeze was alleged in initial pleadings, but the cases later settled, in support of adopting a high standard for interim relief.

[23] *See* § 35.26(g)(4) (i) and (ii) of the Commission's regulations, 18 CFR 35.26(g)(4) (i) and (ii) (1987). The regulatory text also appears at 52 FR 23966, I FERC Statutes and Regulations ¶ 13,976 at 11,350.

[24] 51 FR 7778, III FERC Statutes and Regulations ¶ 30,689 at 30,144.

[25] 41 FR 51392, 56 FPC 2,939 (1976), *order on reh.*, 42 FR 3022, 57 FPC 6 (1977), *aff'd sub nom. without opinion*, Ogelthorpe Electric Membership Corp. v. FERC, 574 F.2d 63 (D.C. Cir. 1978).

believes that the utility should be able to do so itself for the purpose of preparing a proper wholesale/retail CWIP percentage comparison. It must do so because of the requirement to accurately track the amounts of investment in each CWIP project receiving rate base treatment, due to the accounting prohibitions on the capitalization of AFUDC on that CWIP, and accounting regulations regarding the determination of the original cost of the project which is eventually recorded as plant-in-service, and included in rate base. NRECA also appears to suggest that by properly functionalizing retail CWIP, this will lead to lower indicated retail CWIP percentage allowances, and thus a utility may be entitled to less wholesale CWIP in rate base. However, under the CWIP rule, after proper functionalization to determine the relative CWIP allowances, it is the overall retail and wholesale CWIP percentages that are compared.

6. Whether the CWIP Rule Has a Generic Price Squeeze Effect

NRECA repeats its request that a CWIP applicant be required to submit a comprehensive price squeeze analysis in order to provide sufficient data for customers to establish price squeeze, and the injury resulting therefrom, in their initial pleadings. NRECA also takes exception to the Commission's argument that most states allow some CWIP in the rate base of utilities. NRECA contends that, based upon an evaluation of a Salomon Brothers Inc. report, no state allows CWIP in rate base on a basis remotely similar to that of the Commission. NRECA also claims the fact that most rate proceedings involving a request for CWIP are settled does not constitute evidence of the absence of price squeeze at the outset of those cases.

The Commission disagrees with these arguments. In Order No. 474, the Commission concluded that, based on its experience with CWIP filings under Order Nos. 298 and 448, it was not possible to say that the CWIP rule will have a generic price squeeze effect, especially in view of the fact that most states allow at least some CWIP.[26] The Commission's statement was based in part upon an examination of information contained in the September 2, 1986, Salomon Brothers Inc. Electric Utility Regulation—Semiannual Review.[27] A review of the more recent February 2, 1987 Salomon Brothers report indicates no change in this CWIP status.

Regarding the settlement of rate applications which include requests for CWIP, if the CWIP-related price squeeze issue is routinely settled before it reaches the Commission for final determination, there is no basis for the Commission to conclude, based on its experience, that CWIP generically induces price squeeze. In any event, most wholesale rate applications do not reflect non-pollution control/fuel conversion CWIP in rate base. For those rate applications that do, the final rule generically requires the filing of data which would indicate the potential for non-pollution control/fuel conversion CWIP-related regulatory price squeeze, and the rule provides for the consideration of remedies where such CWIP-related regulatory price squeeze is present.

There is other evidence that the CWIP rule does not lead to generic price squeeze. To the extent there has always been a return on wholesale CWIP, there is a corresponding reduction in the AFUDC that otherwise eventually finds its way into wholesale rate base. In addition, many return classes tend to have a high concentration of distribution facilities while wholesale classes do not. Consequently, even if states limit non-pollution control/fuel conversion CWIP to lower percentages than the Commission allows, the impact of the distribution portion of that CWIP in rate base may be higher on retail rates for lower voltage customers. This is because wholesale customers typically provide their own distribution facilities. Therefore, there may not necessarily be a price squeeze where there is a difference in CWIP percentages. Further, the Commission's policy concerning non-pollution control/fuel conversion CWIP does not mandate CWIP. Rather, it permits utilities to request and support amounts *up to* 50 percent of allocable non-pollution control/fuel conversion CWIP which amounts may or may not exceed the percentage allowed by the relevant state commission for the CWIP applicant's retail rates. Thus, there are several indicators that the Commission's CWIP rule does not tend to generically result in price squeeze, either at the outset or the conclusion of rate applications.[28] And, in those cases where a request for non-pollution control/fuel conversion CWIP results in a price squeeze, the procedures specified in the final rule are, in the Commission's opinion, adequate to mitigate any anticompetitive effects of the CWIP request.

C. Filing Requirements

1. The Prospective Effect of Order No. 474

NRECA asserts that the Commission should order refunds of CWIP dollars collected pursuant to Order Nos. 298 and 448, because Order No. 298 was remanded and Order No. 448 is, in NRECA's view, defective.[29]

Public Systems request that all pending CWIP cases be made subject to the standards of Order No. 474, *i.e.*, that utilities now collecting CWIP-based rates, subject to refund, be directed to refile rates reflecting the new allocation procedures. In support of their position, they contend that *Mid-Tex II* permitted rate cases under the vacated Order No. 298 CWIP regulations to go forward under the standards set forth in the interim rate (Order No. 448).

In view of the fact that neither *Mid-Tex I* nor *Mid-Tex II* mandated refunds of CWIP dollars pending consideration of the anticompetitive implications of CWIP, NRECA's argument is unsupported. Concerning Public Systems' argument, the interim CWIP procedures were designed to allow non-pollution control/fuel conversion CWIP applications to continue to be filed and provide procedures for anticompetitive issues to be addressed in those prospective CWIP cases while the Commission reviewed comments to the interim rule and considered a final rule. The interim rule had no retroactive effect on Order No. 298 cases. Although the final rule was designed to address the anticompetitive concerns identified by the *Mid-Tex I*, court, the final rule, like the interim rule, has no retroactive effect. If any pending cases under Order Nos. 298 and 448 reach the Commmssion for a final determination, Order No. 474 will serve as a guide to resolution of

[26] 52 F.R. 23954, III FERC Statutes and Regulations ¶ 30,751 at 30,709.

[27] This report indicated that 31 state commissions allowed at least some CWIP including: Two which limited it to pollution control amounts; one which permitted "short term" projects; one which allowed projects completed when rates are effective; one which allowed projects commenced and completed within one year; one which allowed projects 75 percent complete; one which permitted CWIP for financial integrity; one which permitted projects in service at the time of hearing; and one which allowed 70 percent CWIP. One other state commission allowed CWIP for "emergencies."

[28] The Commission believes that it was unnecessary to perform an update of the simulation study which was filed in support of the 1983 CWIP rule (Order No. 298) in order to support this conclusion. Rather, the evidence cited above tended to support the final rule's conclusion.

[29] NRECA acknowledges that *Mid-Tex II* affirmed Order No. 448. NRECA states that it is restating its argument against Order No. 448 in this rehearing in order to preserve its rights in the event that *Mid-Tex II* is modified.

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anticompetitive issues.[30] Accordingly, the Commission denies the requests for rehearing.

2. CWIP Accounting Issues

NRECA requests that the final rule be clarified to state that AFUDC offsets should be tied to the amount of CWIP in rate base in order to prevent double recovery, and to prevent any recovery on ineligible CWIP items. NRECA contends that either CWIP in rate base should: (1) Be defined (a) to exclude contract retentions (payments held back pending satisfactory completion) and work orders closed but not cleared (amounts recorded in Account 107, Construction work in progress, but not yet recorded Account 106, Completed construction not classified—Electric), or (b) as items upon which AFUDC may otherwise be accrued; or (2) the Commission should reduce AFUDC corresponding to amounts of CWIP granted rate base treatment.

The request for clarification is granted as follows. In Order No. 298 (the 1983 CWIP rule), the Commission explained its positions regarding the use of monthly average CWIP balances, its assumption of the amount of CWIP in rate base for settlement purposes in the absense of any specific reference to the amount of CWIP in rate base, and AFUDC calculations.[31] The Commission adopts and incorporates by reference those positions on those accounting issuess for purposes of the final rule. Concerning AFUDC specifically, under the final rule, utilities must provide accounting procedures to ensure that wholesale customers will not be charged for both capitalized AFUDC and corresponding amounts of return on CWIP proposed to be included in rate base.

With respect to alleged ineligible CWIP items, the Commission notes that short-term CWIP (projects lasting 30 days or less) would be eligible for AFUDC capitalization in the absence of rate base treatment. Thus, as CWIP items, they are also eligible for rate base treatment to the extent the average monthly rate base gives them some small effect as CWIP. For CWIP items closed but not cleared, to the extent a utility fails to clear these items out of Account 107, Construction Work In Progress into Account 106, Completed Construction Not Classfied-Electric, the utility is merely forestalling full rate base treatment on these to its own disadvantage.

For the contract retention problem, to ensure that return on CWIP in rate base and AFUDC on CWIP do not produce a double recovery, the Commission believes that the best approach is to define CWIP in terms of amounts that are otherwise eligible for AFUDC treatment. Accordingly, the definition of CWIP in the final rule is modified to conform the amounts eligible for inclusion in rate base consistent with the base upon which AFUDC would have been calculated had the CWIP amounts not received rate base treatment.

D. Double Whammy

1. Obligation to Serve

NEP and NRECA raise several issues with respect to a utility's obligation to serve wholesale customers.

a. *Notice of Termination.* While NEP does not seek rehearing or any changes in the substance of the final CWIP rule,[32] it requests rehearing and clarification of some aspects of the final rule's discussion of a utility's obligation to serve wholesale customers.[33] Where the final rule states that an existing customer may avoid CWIP payments where it has made "good faith representations" of its intent to take power entirely or in part from other sources, NEP requests clarification whether the Commission views such representations as the same as formal notices of termination under the applicable wholesale tariffs. NEP submits that formal notices of termination should be required.

The Commission disagrees with NEP. The Commission does not believe that, where the contract between the parties does not so provide, the wholesale customer should, as a general proposition, be required to formally agree to termination of service in order to avoid CWIP payments.[34] However, the Commission recognized in Order No. 474 that a customer who has represented that it will take power from another source and thus avoids paying CWIP has agreed to give up its traditional service and is willing to accept continued service only on a best efforts basis. The utility may incur extra costs in continuing to serve the customer whose alternative supply plans fall through and who changes it mind about leaving before the specified date and such costs should be properly recovered from the customer. 52 F.R. 23961, III FERC Statutes and Regulations ¶ 30,751 at 30,719.

b. *The "Prodigal" Customer.* With respect to the "prodigal customer" who leaves the system in whole or in part and later wishes to resume service from its former supplier or increase service from its then current partial requirements supplier, NEP says it presumes that, since the final rule found no obligation to begin serving a customer, a utility does not have the obligation to resume service in such a situation. NEP requests clarification of this aspect of the final rule.

The Commission wants to make clear that the final rule referred to two types of prodigal customers: (1) One which went off-system completely and later wants to resume service for all or part of its load; and (2) one which went off-system to meet part of its load and later wants to increase its remaining service

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[30] The Commission notes that there are only eight proceedings pending which concern CWIP applications made under Order Nos. 298 and 448 (Southwestern Electric Power Company, Docket No. ER87-542-000; NEP, Docket No. ER86-687-000; Virginia Electric Power Company, Docket No. ER86-372-000; Southwestern Public Service Company, Docket No. ER84-604-000; Southwestern Electric Power Company, Docket Nos. ER85-468-000 and ER86-506-001 [procedural schedule suspended pending settlement negotiations]; Southern California Edison Company, Docket No. ER84-75-000; and Utah Power & Light Company, Docket No. ER84-571-000).

[31] *See* 48 FR 24352-53, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,455 at 30,541-42, footnotes 104, 105, 108, and 109.

[32] NEP informed the Commission of a minor error with respect to a reference to NEP in the Background section in Order No. 474. At page 30,705 of the final rule (52 FR 23951), the order indicated that NEP only made wholesale sales to affiliates. NEP informed the Commission that it makes sales to affiliate and non-affiliate customers under the same wholesale tariff. Also, at page 30727, footnote 28, of the final rule (52 F.R. 23951), the final rule stated that NEP had withdrawn its phase II rates which included CWIP for Seabrook I in rate base. Although NEP has withdrawn its phase II Rate W-8(b), that rate actually included Seabrook I entirely in rate base as an in-service plant. NEP's currently effective phase I Rate W-8(a) includes Seabrook I CWIP in rate base and has not been withdrawn.

[33] *See* 52 F.R. 23960-61, III FERC Statutes and Regulations ¶ 30,751 at 30,718-20 in which the Commission stated that, unlike state statutes granting utilities their franchises, there is no express obligation to serve wholesale customers under the Federal Power Act.

[34] This is not to suggest that it may not be appropriate for utilities whose customers have represented their intent to purchase power from other sources to request a Commission order permitting the termination in advance of a date near the time service to the customer is planned to be terminated (*see* 18 CFR 35.4 and 35.11 (1987)). For example, a customer may provide its supplier with a good faith representation that it will take service from an alternative supplier in 10 years. Absent waiver of the notice requirements, the utility could not seek Commission approval to terminate its service responsibilities to the customer until, at the earliest, 120 days prior to the date the customer is projected to begin taking service from the alternative supplier. However, the utility may need certainty at an earlier date that the capacity it expects to have in 10 years (which is currently used to serve the terminating customer) is available in order, for example, to market that capacity to potential new customers. Under those circumstances, it would appear to be appropriate for the utility to file a request for a Commission order permitting the termination of service.

(*i.e.*, incremental load growth above and beyond normal load growth).

In the first case, the Commission believes that there is no obligation to resume service to the prodigal customer once the Commission has permitted the service to be terminated, just as there is no obligation to begin serving a completely new customer, absent a showing under section 202(b) of the Federal Power Act.

In the second case, NEP has not cited any case in which a utility has refused to serve an existing customer's incremental load simply because another source existed. Further, this issue transcends the CWIP issue. Consequently, rather than speculate on appropriate action without a given set of facts, the Commission believes that it would be more appropriate to resolve the issue in the factual context of the case in which it may arise, regardless of whether CWIP is involved, rather than within the narrower confines of the CWIP rule. However, the Commission sees no basis, at this time, for distinguishing between the obligation, if any, to serve the incremental load growth, as defined above, of the remaining load of a customer that goes off-system in part and that of a customer that has left the system and desires to return.

NEP further requests that the Commission expressly limit the obligation to continue serving a customer to those instances where the customer has no other source of service. NEP contends that the obligation should not apply merely because the current supplier's rates may be lower than other alternatives available to the customer. NEP argues that, without such a limitation, a wholesale customer is virtually guaranteed costs which are less than or equal to those of the utility's other customers. Thus, NEP argues that the customer is given a riskless option to shop around, for alternative supply options, leaving the utility and its other customers with all the risk of the customer's failure to arrange a better deal. NEP asserts that the wholesale customer would have a tremendous and unfair competitive advantage in such a situation. If a customer wishes to leave the system, it should be required to bear the associated risks, according to NEP.

NRECA argued against allowing a utility to terminate service just because an alternative source is available. NRECA suggested that a utility might set up a subsidiary, provide the subsidiary with expensive or inefficient sources of power, and then justify termination of service to its wholesale customer on the grounds that the subsidiary constituted an alternative source.

The Commission agrees with NEP that if a customer wishes to leave the system, it should bear the associated risks. However, the Commission disagrees with NEP's assertion that the wholesale customer will be virtually guaranteed costs which are less than or equal to those of the utility's other customers and that the wholesale customer would be given a tremendous and unfair competitive advantage. In Order No. 474, the Commission stated that, if technically feasible, the customer may seek to regain its prior status by paying the unpaid CWIP with interest, plus reimbursement of any system costs due to inefficiencies caused by the utility not having been able to plan to provide the customer with service or that the customer could forego the utility's planning responsibilities and take "best efforts" service by simply reimbursing the utility for the additional costs, if any, of the utility's best efforts to provide service.[35] The Commission does not believe that its statements in Order No. 474 support NEP's assertion that the customer will be given any unfair competitive advantage. To the contrary, the Commission stated that the customer would be required to live with the consequences of its choice to voluntarily leave the security of the utility's service and noted that the consequences may involve rates far higher than the average system cost-based rates charged to the utility's customers who have paid for CWIP.[36]

The final rule discussed the source and extent of the obligation to serve under existing law. As the rule stated, "[i]t is the absence of alternatives that *affects* the public interest."[37] If there are sufficient alternative sources, the Commission is unlikely to order containued service. However, the Commission does not believe that, based on the presence of one alternative, regardless of the quality, reliability, or cost of that alternative, the Commission can automatically conclude that termination of service to a given customer will always be in the public interest. The Commission believes that such determinations must be made on a case-specific basis. However, no party requesting rehearing has cited any cases in which a utility sought to terminate service to a customer, based on the sole ground that there were alternative sources. Further, since this issue could arise even where no CWIP has been allocated, the potential for this issue to have arisen existed long before CWIP was permitted.[38]

c. *The Final Rule Does Not Set Specific Rates For Prodigal Customers.* NEP contends that it is neither necessary nor appropriate for the Commission to generically address in the final rule the appropriate rate for the utility to charge in such situations. It argues that the circumstances surrounding these types of situations will differ by utility and customer. NEP asserts that such situations should be handled on a case-by-case basis. In stating that the prodigal customer would be treated as any other new customer, the Commission did not intend to preclude utilities from seeking to charge prodigal customers rates which reflect the costs to service them. Rather, the intention was to prevent a utility from penalizing a prodigal customer vis-a-vis other new customers for having left the system in whole or in part. As with any new customer, or current customer seeking to increase its incremental load above normal load growth, the utility has the obligation to justify the justness and reasonableness of its rate filing. Further, the utility cannot unduly discriminate against the prodigal customer simply because that customer is a former customer.

2. Forward Looking Allocation Ratios

Concerning the remedy for double whammy, NRECA supports the decision to use a forward looking life cycle allocation method but contends that the remedy requires modification. NRECA states that it is unclear whether the forward looking ratios will be predicated upon simple class averages or individual customer usage calculations. NRECA favors the latter approach. NRECA further contends that the final rule does not address: (a) The possibility that the utility will estimate that wholesale load will grow faster than retail load; and (b) wholesale load growth related to new wholesale customers as opposed to increased purchases by existing wholesale

[35] 52 FR 23961, III FERC Statutes and Regulations ¶ 30,751 at 30,719.

[36] *Id.*

[37] 52 FR 23960, III FERC Statutes and Regulations ¶ 30,751 at 30,719 (emphasis added).

[38] With respect to NRECA's assertion that a utility might set up a subsidiary, provide the subsidiary with expensive or inefficient sources of power, and then justify termination of service on the grounds that the subsidiary constituted an alternative source of supply to the customer, the Commission notes three points. First, in the situation described by NRECA, the utility's ability to terminate service would be triggered by the customer seeking to avoid CWIP based on the customer's choice to leave the system. Second, regulatory approval might be required depending on the facilities which would be transferred. Third, the Commission, under section 205 of the Federal Power Act, would insure that any rates charged by the subsidiary would be just and reasonable and not unduly discriminatory or preferential.

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customers. NRECA asserts that it would be inappropriate to increase the CWIP allocation of the current wholesale class based upon claims by the supplier that it will be attracting new wholesale customers. NRECA requests the Commission to make clear that foward looking allocation ratios will serve only to *reduce* wholesale CWIP responsibility that otherwise would attach from utilizing test year allocation factors. With respect to the final rule's discussion of obligation to serve, NRECA claims that the record does not support treating prodigal customers and new customers differently. Further, it argues that there are serious questions about extending the benefits of CWIP payments made by current wholesale customers to new customers. It suggests that a solution may be to have CWIP tracked on a customer basis.

In Order No. 474, the Commission adopted the forward looking allocation ratio approach to prevent cross-subsidization of customers. This means that there may be times when individual wholesale customers or even the entire wholesale group will properly require an allocation of CWIP through forward looking allocation ratios that exceeds that which would be produced using test period ratios, *i.e.*, to track load growth conditions where there is more rapid wholesale growth than retail growth. This would not be the case however, where the entirety of the greater wholesale growth is the product of the new prospective wholesale customer. In these circumstances, the new load would be excluded from the numerator of the forward looking allocation ratio representing the projected wholesale load of the current customers, but it would be included in the denominator representing the estimated system territorial load. The ultimate effect would be to not allocate the CWIP attributable to the new customer to the current wholesale customers.

NRECA is correct in pointing out that there may be instances when the only proper way to treat the power supply independence plans of a wholesale customer will be to require consideration of individual customer usage rather than class usage in the determination of appropriate forward looking ratios. However, the final rule specifically provides for this at § 35.26(c)(4) by requiring supporting documentation to permit examination and verification of the forward looking allocation ratio's recognition of each wholesale customer's plans, if any, for future alternative or supplementary power supplies. For purposes of preventing anticompetitive effects, including CWIP-induced price squeeze and double whammy, § 35.26(a)(4) also provides that sufficient recognition of such plans may require separate customer groups or provide for a rate design incorporating selected CWIP project credits. This acknowledges that all wholesale customers may not pursue power supply independence. Separate rate treatment for those wholesale customers anticipating alternative power supplies may be necessary to give these customers a full accounting of this.

Concerning NRECA's argument that there is no bases for treating prodigal customers and new wholesale customers differently regarding provision of service, the final rule expressly states that they are to be treated the same.[39]

IV. Effective Date

The change to the Commission's regulations in this order is effective October 23, 1987.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

V. The Commission Orders

In light of the foregoing, the Commission grants rehearing in part, denies rehearing in part, clarifies Order No. 474, and amends Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Stalon concurred with a separate statement to be issued later.

Kenneth F. Plumb

Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1992); Exec. Order No. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. In § 35.26, paragraphs (b)(1) and (g)(2) are revised to read as follows:

§ 35.26 Constuction work in progress.

* * * * *

(b) *Definitions.* For purposes of this section:

(1) "Constuction work in progress" or "CWIP" means any expenditure for public utility plant in process of construction that is properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment, and fabrication) of Part 101 of this chapter, the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Major and Nonmajor), that would otherwise be eligible for allowance for funds used during construction (AFUDC) treatment.

* * * * *

(g) * * *

(2) *Preliminary relief.* If an intervenor in its initial pleading alleges that a prices squeeze will occur as a direct result of the public utility's request for CWIP pursuant to § 35.26(c)(3) of this part and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission will consider preliminary relief at the suspension stage of the case pursuant to paragraph (g)(4) of this section. Whether or not preliminary relief is granted at the suspension stage will not preclude consideration of further remedies later in the proceedings, if warranted.

* * * * *

3. In § 35.26(c)(4), the citation to "§§ 35.26 (1), (2), and (3) of this part" is revised to read "§§ 35.26(c) (1), (2), and (3) of this part".

[FR Doc. 87-21888 Filed 9-22-87; 8:45 am]

BILLING CODE 6717-01-M

[39] 52 FR 23,981, III FERC Statutes and Regulations ¶ 30,751 at 30,720.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts

September 18, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; deferred of effective date.

SUMMARY: A final rulemaking document was published in the **Federal Register** on August 24, 1987 at 52 FR 31916. The effective date of the document was listed as September 23, 1987. The Bureau of Indian Affairs has decided it would be in the public interest to defer, by this notice, the effective date for an additional 30 days to allow the public sufficient time to review the final

rulemaking document prior to its becoming effective.

Interested persons wishing to provide additional comments on the final rulemaking document may do so in writing to the individual identified in the **"FOR FURTHER INFORMATION CONTACT"** section.

EFFECTIVE DATE: The final rulemaking document for 25 CFR Parts 211, 212, and 225 is effective October 24, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph Johnston, Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, Room 340–SIB, 1951 Constitution Avenue NW., Washington, DC 20245; telephone (202) 343–3722.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 87–21875 Filed 9–22–87; 8:45 am]

BILLING CODE 4310–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–3266–1; FL–020]

Approval and Promulgation of Implementation Plans; Florida; Smart-Pak Industries Consent Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves the revision to the Florida State Implementation Plan (SIP) to include the Smart-Pak Industries Consent Order. This Consent Order was negotiated with Smart-Pak Industries by the Florida Department of Environmental Regulation (DER) and EPA Region IV. The intent of the Consent Order is to ensure federal enforceability of negotiated permit conditions which limit the volatile organic compound (VOC) emissions from the facility to less than 100 tons per year (TPY). The State has certified that, based on the available evidence, implementation of the Consent Order will not jeopardize the attainment and maintenance of ambient air quality standards.

DATE: This action is effective November 23, 1987 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Jill Perry, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On November 21, 1983, the Florida DER issued an operating permit, No AO 13–68559, to the Smart-Pak Industries facility in Dade County. The Smart-Pak facility includes five graphic arts rotogravure presses which have the potential to emit more than 100 TPY of VOC emissions. These presses are subject to the emission limiting standards in the reasonably available control technology (RACT) regulation for graphic arts, Rule 17–2.650(1)(f)16, and to the compliance schedules required by Rule 17–2.650(1)(b)e. Smart-Pak did not apply for a construction permit by January 1, 1981, date specified in Rule 17–2.650(1)(b)e; final compliance with the applicable emission limiting standards would have been required by September 1, 1982. Instead, Smart-Pak elected to reduce VOC emissions by instituting internal management and housekeeping procedures between September 30, 1980, and September 30, 1983. These actions reduced the actual VOC emissions from over 200 TPY to less than 100 TPY. However, EPA determined that the specific conditions of the operation permit were not federally enforceable. Therefore, the Florida DER commenced negotiations for a Consent Order with Smart-Pak Industries.

The Consent Order establishes: (1) Requirements which will limit VOC emissions from the facility to less than 100 TPY; (2) measures to ensure that Smart-Pak Industries will continously comply with the applicable emission limiting standard; (3) penalties for failure to comply with the applicable provisions of the Consent Order; and (4) penalties for failure to comply with the applicable compliance schedule in the Florida Administrative Code Chapter 17–2. The provisions of the Consent Order are consistent with the requirements of the Florida Administrative Code Chapter 17–2 which requires the application of RACT level controls to VOC sources in ozone nonattainment areas. On March 21, 1986, the Consent Order was signed, and on June 17, 1986, it was adopted as a revision to the Florida SIP to ensure federal enforceability. On August 14, 1986, the Florida DER submitted the Consent Order to EPA for Approval.

For more detailed information, please refer to the Technical Support Document. This document is available for inspection at the EPA Region IV office.

Final Action

The Consent Order meets EPA requirements. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. Therefore, EPA is today approving the revision to the Florida SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air Pollution Control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: The Director of the Federal Register approved the incorporation by reference of the Florida SIP on July 1, 1982.

Date: September 17, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

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PART 52—[AMENDED]

Subpart K—Florida

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.520 is amended by adding paragraph (c)(62) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(62) Consent Order was submitted by EPA on August 14, 1986, by the Florida Department of Environmental Regulation.

(i) Incorporation by reference.

(A) A Consent Order for Smart-Pak Industries was adopted by the Florida Department of Environmental Regulation on June 17, 1986.

(ii) Additional material—none.

[FR Doc. 87-21937 Filed 9-22-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[(A-4-FRL-3266-2) MS-005]

Approval and Promulgation of Implementation Plans; Mississippi Stack Height Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the Mississippi state implementation plan (SIP) submission to EPA on April 1, 1986. Mississippi has revised its SIP to include regulations for good engineering practice stack height. These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations.

DATES: This action will be effective on November 23, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the materials submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Mississippi Department of Natural Resources, Bureau of Pollution Control, 2380 Highway 80 West, Jackson, Mississippi 39209

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV, Air Programs Branch at above listed address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determined whether these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

On April 1, 1986, the Mississippi Department of Natural Resources, Bureau of Pollution Control submitted SIP revisions for good engineering practice stack height. Since the State formally revised its SIP, a public hearing on these stack height reviews was held on March 10, 1986.

Mississippi's regulations limit the amount of stack height or dispersion credit (dispersion techniques) a source can claim in the process of establishing its emission limitation. Dispersion techniques include the use of stack heights greater than GEP and use of other techniques to increase the dispersion of emissions rather than continuously reducing emissions from a source. These regulations do not limit the physical stack height of any source, or the actual use of dispersion techniques at a source, nor do they require any specific stack height for any source. Instead, they set limits on the maximum credit for stack height and other dispersion techniques to be used in ambient air modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. Sources are modeled at their actual physical stack height unless that height exceeds their GEP stack height. The regulations apply to all stacks not in existence on December 31, 1970, and all dispersion techniques implemented since December 31, 1970. The regulation applies to both new and existing sources, thereby satisfying requirements for state new source review regulations at 40 CFR 51.164.

Mississippi has adopted definitions corresponding to EPA's GEP regulations. The State's regulations define a number of specific terms, including "excessive concentration," "dispersion techniques" and "nearby." Mississippi's revisions bring their existing regulations into conformance with the federal stack height rule. They found no emission limitations affected by stack height credits above GEP or any prohibited dispersion technique.

Final Action

EPA has reviewed the submittal and found it to be in conformance with EPA's stack height requirements. Therefore, EPA is today approving Mississippi's regulations on stack height.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial issue and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 23, 1987.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by November 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note: Incorporation by reference of the Mississippi State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 17, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart Z—Mississippi

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1270 is amended by adding paragraph (c)(19) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(19) Stack height regulations were submitted to EPA on April 1, 1986 by the Mississippi Department of Natural Resources.

(i) Incorporation by reference.

(A) Mississippi Department of Natural Resources, Bureau of Pollution Control, Appendix C–5, Air Emission Regulations, Regulation APC–S–1, Section 9, which was adopted on March 26, 1986.

(B) Letter of April 1, 1986 from Mississippi Department of National Resources.

(ii) Additional material.

None.

[FR Doc. 87–21938 Filed 9–22–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 6F3311/R906; FRL–3264–8]

Pesticide Tolerance for Bromoxynil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide bromoxynil resulting from application of its octanoic acid ester and/or butyric acid ester in or on the raw agricultural commodity (RAC) alfalfa seedling at 0.10 part per million (ppm). This regulation was requested by Union Carbide Agricultural Products Co. and establishes the maximum permissible level for residues of the herbicide in or on this RAC.

EFFECTIVE DATE: September 23, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 412, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 26, 1985 (50 FR 52851), which announced that Union Carbide Agricultural Products Co. had submitted a pesticide petition, PP 6F3311, to EPA proposing to amend 40 CFR 180.324 by establishing a tolerance for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic acid ester and/or butyric acid ester in or on the commodity alfalfa seedling at 0.10 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered in this petition include several acute studies, a 13-week feeding study in dogs with a no-observable-effect level (NOEL) of 5 milligrams/kilogram/day (mg/kg/day); a 13-week feeding study in rats with a NOEL of 15.6 mg/kg/day; a three-generation reproduction study with rats fed 0, 1.5, 5, and 15 mg/kg/day, with a reproductive NOEL of 15 mg/kg/day; a teratology study in rabbits administered 0, 15, 30, or 60 mg/kg/day with a teratogenic, embryo-, and fetotoxic NOEL of 30 mg/kg/day; a teratology study in rats fed dosages of 0, 5, 15, or 35 mg/kg/day with a fetotoxic and maternal toxic NOEL of 15 mg/kg/day and no teratogenic effects occurring at 35 mg/kg/day (HDT) and mixed positive and negative results in a battery of mutagenic assays which includes the Ames *Salmonella typhimurium*, unscheduled DNA synthesis (UDS), DNA repair, sister-chromatid exchange (SCE), mouse lymphoma, and *in vitro* chromosome aberration assay in CHO cells.

The provisional acceptable daily intake (PADI) based on a 2-year rat chronic feeding study (NOEL of 5 mg/kg/day) and using a thousand-fold safety factor is calculated to be 0.005 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.352 mg/kg/day (1.5 kg). The current action will not increase the TMRC or PADI utilized. Published tolerances utilize 11.74 percent of the PADI. In the mouse oncogenicity study, bromoxynil was associated with an increase in liver tumors in males. This finding will be evaluated in the Toxicology Branch Peer Review Committee meeting.

Data lacking are chronic toxicity studies in a rodent and nonrodent and an acceptable oncogenicity study in rats. The company has been notified of these deficiencies and has agreed to perform the studies. Because alfalfa is not a human food item and does not increase the TMRC or PADI, this action is toxicologically supported.

The pesticide is useful for the purpose of this tolerance rule. The nature of the residue is adequately understood for the purposes of establishing the tolerance. Adequate analytical methodology (gas chromatography using a ^{63}Ni electron capture detector) is available. This method is listed in the Pesticide Analytical Manual II. There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs as a result of use on alfalfa.

Based on the above information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health, and the tolerance is therefore set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the

Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 9, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.324(a) by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.324 Bromoxynil; tolerance for residues.

(a) * * *

Commodity	Part per million
Alfalfa, seeding	0.10
. . . . .	

[FR Doc. 87-21720 Filed 9-22-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42028D; FRL-3265-9]

Propylene Oxide; Final Test Standards and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), this final rule specifies test standards and reporting requirements to be used for the testing required of manufacturers and processors of propylene oxide (CAS No. 75-56-9). The Agency has adopted industry-submitted study plans, as modified by EPA (EPA-approved study plans) as test standards for conducting the inhalation developmental toxicity testing for propylene oxide under 40 CFR 799.3450.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ("daylight" or "standard" as appropriate) time on October 7, 1987. This rule shall become effective on November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is promulgating a final rule under section 4(a) of TSCA specifying the test standards and reporting requirements for inhalation developmental toxicity testing of propylene oxide.

I. Background

In the **Federal Register** of November 27, 1985 (50 FR 48762), EPA issued a final Phase I rule pursuant to TSCA section 4 that establishes testing requirements for manufacturers and processors of propylene oxide. This Phase I rule requires inhalation developmental toxicity testing for propylene oxide.

At the same time, EPA proposed a relevant TSCA test guideline as the test standard (50 FR 48803; November 27, 1985). In addition, EPA proposed that the data from the required study be submitted within a certain time period, the time period serving as the data submission deadline required by TSCA section 4(b)(1). The reasons for this change in the test rule development process for propylene oxide are discussed in Unit II of the preamble to the proposed test standards (50 FR 48803).

As discussed in the preamble to the interim final Test Rule Development and Exemption Procedures, 40 CFR Part 790 (50 FR 20652; May 17, 1985), industry and other commenters may suggest an alternative methodology or modifications to the OTS test guideline, i.e., the proposed test standard, during the public comment period. The final test standard would be either the OTS test guideline or other suitable guideline, a modified version of this guideline, the alternative methodology submitted by commenters, or a modified version of the alternative methodology.

On February 6, 1986, ARCO Chemical Company (ARCO) notified EPA of its intent to conduct the testing required in the Phase I test rule for propylene oxide (Ref. 1). Exemption applications were received from Dow Chemical Company (Dow) (Ref. 2) and two processors, Exxon Chemical Americans (Ref. 3) and Aldrich Chemical Co. (Ref. 4). On June 26, 1986, ARCO submitted two draft study plans containing two protocols (Ref. 5) to EPA for review and approval. EPA determined that these protocols generally conform to the Health Effects Test Guideline set forth in 40 CFR 798.4350. EPA notified ARCO on August 1, 1986 (Ref. 6) that, with certain specified clarifications, the Agency found the protocols to be appropriate and acceptable for inhalation developmental toxicity testing for propylene oxide. ARCO submitted two final study plans containing two protocols to EPA on October 28, 1986 (Ref. 7).

EPA has found the industry-submitted final study plans (Ref. 7) as modified by EPA (Ref. 6) to be acceptable for assessing the developmental toxicity of propylene oxide (Ref. 8). As a result, EPA is promulgating them, along with reporting requirements, as Phase II test standards for the testing of propylene oxide under 40 CFR 799.3450.

II. Proposed Phase II Test Rule

A. Test Standards

The Phase I rule specifies that propylene oxide be tested for inhalation developmental toxicity. The Agency's proposed Phase II rule specified that testing of propylene oxide be conducted using as the test standard the TSCA guideline for inhalation developmental toxicity testing, 40 CFR 798.4350.

B. Reporting Requirements

As specified in 40 CFR 799.10, all data developed under this rule would be reported in accordance with its TSCA Good Laboratory Practice (GLP)

Standards which appear at 40 CFR Part 792.

EPA is required by section 4(b)(1)(C) of TSCA to specify the time period during which persons subject to a test rule must submit test data. The Agency proposed that: (1) The inhalation developmental toxicity test be completed and the final results submitted to the Agency within 12 months of the effective date of the final test rule, and (2) the interim progress reports be provided quarterly.

III. Response To Public Comments

The Agency received comments from ARCO and Dow (Refs. 5 and 9). A public meeting was not requested. The major issues identified for the proposed test standard and reporting requirements are discussed in Units III.A. and B.

A. Developmental Toxicity Testing

Dow (Ref. 9) commented that, while the Phase II proposed rule specified that the rat be used as the mammalian test species, the preamble to the final Phase I rule suggested that a rat strain other than Sprague-Dawley be selected for the conduct of the study (see 50 FR 48764; November 27, 1985). Dow does not believe that compelling evidence exists to require the selection of an alternate strain, and therefore suggests that selection of an appropriate rat strain be done by the laboratory conducting the test. Dow also commented that EPA had not adequately considered the availability of facilities and personnel to perform the inhalation developmental toxicity testing required under the Phase I rule.

EPA believes that this is no longer a concern because ARCO has agreed to sponsor the developmental toxicity study and has informed EPA that the study can be conducted at the International Research and Development Corporation using the Fisher 344 rat. EPA finds this acceptable.

ARCO did not submit comments on the proposed test standards to EPA during the comment period. Subsequent to the comment period, however, ARCO submitted two draft study plans containing two protocols to EPA for review and approval on June 20, 1986 (Ref. 5). EPA notified ARCO on August 1, 1986, that with certain specified clarifications (Ref. 6), the Agency found the protocols to be appropriate and acceptable for developmental toxicity testing of propylene oxide. ARCO submitted copies of the final study plans containing two protocols on October 28, 1986 (Ref. 7). The final study plans (Ref. 7) along with the EPA clarifications sent to ARCO (Ref. 6) are the EPA-approved study plans for propylene oxide (Ref. 8) and are promulgated in this final rule as the test standards for the testing of propylene oxide.

B. Reporting Requirements

Dow (Ref. 9) commented that while a 12-month period is sufficient to complete a teratology study, the requirement to submit the final report within 12 months of the effective date of the final Phase II rule is not justified. Instead Dow suggested that the data submission deadline be extended to 18 months from the effective date of the final rule.

EPA now generally requires that a final report be submitted within 15 months of the effective date of a final rule requiring inhalation developmental toxicity testing. However, because ARCO has already begun the required testing, EPA does not believe that it is unreasonable to require the submission of the final report no later than 12 months from the effective date of this final Phase II rule, as originally proposed.

Dow questioned the utility of the proposed requirement that progress reports be provided to EPA on a quarterly basis (Ref. 9). Dow maintains that such a reporting schedule unduly burdens those doing the study.

EPA believes that progress reports are necessary to keep EPA informed of the status of required tesing and any difficulties that the testing facility may encounter during the course of testing. EPA has decided, however, that one interim progress report, submitted 6 months after this final Phase II rule is effective, will be sufficient to keep EPA apprised of such information.

IV. Final Phase II Test Rule

A. Test Standards

The protocols contained in the EPA-approved study plans specify test methods and conditions for conducting both probe and definitive inhalation developmental toxocity studies in rats under this final Phase II rule. The Agency believes that the conduct of the required studies in accordance with these test standards will ensure that the resulting data are reliable and adequate. There are essentially no differences in the EPA-approved study plans and the Health Effects Test Guideline set forth in 40 CFR 798.4350.

Under the final test standards, exposure levels of 0, 300, 500, and 750 parts per million (ppm) of propylene oxide for 6 hours/day will be used for the Fisher 344 rat (days 6 through 15 of gestation) probe studies, with exposure levels for the full inhalation developmental toxocity studies based on results of the probe studies. The EPA-approved study plans (Ref. 8) are available in the public docket for this action. The EPA-approved study plans conform to the TSCA Health Effects Test Guidelines for Inhalation Toxicity Testing, 40 CFR 798.4350.

B. Reporting Requirements

The Agency requires that all data developed under this rule be reported in accordance with the TSCA GLP Standards (40 CFR Part 792).

The Agency is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data.

Testing was initiated by ARCO on October 27, 1986, and all results must be reported to EPA within 12 months of the effective date of the final Phase II rule. In addition, a progress report must be submitted to the Agency 6 months after the effective date of this Phase II final rule.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

C. Exemptions

Requests for exemptions from the testing requirements contained in the final TSCA section 4(a) Phase I test rule for propylene oxide (CAS No. 75–56–9) were received from a manufacturer, Dow (Ref. 2), and two processors, Exxon Chemical Americas and Aldrich Chemical Company (Refs. 3 and 4), and have been conditionally approved by the Agency. As described in the final rule for test rule development and exemption procedures (40 CFR Part 790), exemption applications are evaluated prior to the promulgation of the final Phase II test rule. Exemptions to these testing requirements are being granted to Dow and all processors on the condition that the test sponsor will successfully complete the required testing according to the test standards and data submission deadlines in this final Phase II test rule for propylene oxide. If the Agency finds it necessary to terminate conditional exemptions from the testing requirement for propylene oxide, it will notify the exemption holders to that effect and explain the reasons for the Agency's decision.

A letter of intent to test has been received for the requirements contained in the final Phase I test rule for propylene oxide from ARCO (Ref. 1). As described in EPA's final rule on data

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reimbursement (40 CFR Part 791), when the Agency promulgates a final test rule, all of the manufacturers, importers, and processors of the chemical substance or mixture subject to the rule are expected to bear jointly the cost of testing. Because the Agency has granted conditional approval of these exemption requests, persons who have been granted exemptions should contact ARCO to arrange appropriate reimbursement for a share of the cost of this testing. If a company believes that confidentiality so requires, such contact may be made through a third party.

D. Judicial Review

The promulgation date for the propylene oxide Phase I final rule was established as 1 p.m. eastern standard time on December 11, 1985 (50 FR 48762; November 27, 1985). To EPA's knowledge, EPA received no petitions for judicial review of that Phase I final rule. Accordingly, any petition for judicial review of this final Phase II rule will be limited to a review of the test standards and reporting requirements for propylene oxide established in this final Phase II rule.

E. Other Provisions

TSCA section 4 findings, required testing test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I rule for propylene oxide.

V. Rulemaking Record

EPA has established a record for this rulemaking. [Docket Number OPTS–42028D]. This record includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

The supporting documentation for this rulemaking consists of the proposed and final Phase I test rules for propylene oxide (49 FR 430, January 4, 1984; 50 FR 48762, November 27, 1985) and the proposed Phase II test standards (50 FR 48803; November 27, 1985) rule and the following:

(1) **Federal Register** notices pertaining to this final rule consisting of:

(a) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(b) Judicial Review under EPA-Administered Statutes (50 FR 7270; February 21, 1985).

(c) Notice of proposed rule on revisions of TSCA guidelines (51 FR 1522; January 14, 1986).

(2) Communications consisting of:

(a) Written public comments.

(b) Summaries of phone conversations.

(3) Chemical Testing Industry: Profile of Toxicological Testing, prepared by Development Planning and Research Associates, Inc. and ICF Incorporated for U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, Washington, DC 20460 (October 1981).

B. References

(1) ARCO Chemical Company. Letter to TSCA Public Information Office, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, DC, from Joan L. McCuen, ARCO Chemical Company, Newton Square, PA. Notice of intent to test propylene oxide (February 6, 1986).

(2) Dow Chemical Company. Letter to TSCA Public Information Office, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, from R.A. Gerardo, Dow Chemical Company, Midland, Michigan. Application for exemption from conducting testing of propylene oxide (February 7, 1986).

(3) Exxon Chemical Americas. Letter to Document Control Officer, U.S. Environmental Protection Agency, Washington, DC, from Harry L. Hunter, Jr., Exxon Chemical Americas, Houston, TX. Application for exemption from conducting testing of propylene oxide (February 14, 1986).

(4) Aldrich Chemical Company, Inc. Letter to Document Control Officer, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, from Alfonse W. Runquist, Ph.D., Aldrich Chemical Company, Inc., Milwaukee, Wisconsin. Application for exemption from conducting testing of propylene oxide (January 6, 1986).

(5) ARCO Chemical Company. Letter, containing two draft study plans for testing propylene oxide, to Ralph Northrop, Test Rules Development Branch, Office of Pesticides and Toxic Substances, Environmental Protection Agency, from Joan L. McCuen, ARCO Chemical Company, Newtown Square, PA (June 26, 1986).

(6) USEPA. Letter, notifying ARCO Chemical Company that their protocols are acceptable, to Joan McCuen, ARCO Chemical Company, Newtown Square, PA, from Gary E. Timm, Test Rules Development Branch, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC (August 1, 1986).

(7) ARCO Chemical Company. Letter, containing final study plans for testing propylene oxide, to Ralph Northrop, Test Rules Development Branch, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, from Joan McCuen, ARCO Chemical Company, Newtown Square, PA (October 28, 1986).

(8) U.S. Environmental Protection Agency. Study Plans for Propylene Oxide (EPA-approved study plans, July 22, 1987).

(9) Dow Chemical Company. Letter, comments on proposed test standards and reporting requirements of propylene oxide, to Document Control Officer, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, from Carlos M. Bowman, Ph.D., Dow Chemical Company, Midland, Michigan (January 8, 1986).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Room NE–G004, 401 M St., SW., Washington, DC. 20460.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of propylene oxide is discussed in the Phase I test rule (50 FR 48762; November 27, 1985).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments are included in the public record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are no small manufacturers of this chemical substance.

(2) Small processors are not expected to perform testing themselves, or participate in the organization of the testing effort.

(3) Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the final Phase II rule under the provisions of the Paperwork Reduction Act of 1980,

44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. No public comments on these requirements were submitted to the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: September 12, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By amending § 799.3450 by adding paragraphs (c)(1)(ii) and (iii) and (d), to read as follows:

§ 799.3450 Propylene oxide.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standards.* The inhalation developmental toxicity testing shall be conducted in accordance with the EPA-approved study plans (July 22, 1987): "Range-finding Inhalation Developmental Toxicity Study in Rats" and "Inhalation Developmental Toxicity Study in Rats". Copies of these EPA-approved study plans are located in the rulemaking record for this rule (docket no. OPTS–42028D) and are available for inspection in EPA's OPTS Reading Room, NE–G004, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(iii) *Reporting requirements.* (A) The developmental toxicity tests shall be completed and the final reports submitted to EPA within 12 months of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(d) *Effective date.* The effective date of the final Phase II rule requiring inhalation developmental toxicity testing of propylene oxide is November 6, 1987.

[FR Doc. 87–21939 Filed 9–22–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–03; Notice 2]

Federal Motor Vehicle Safety Standards; Headlamp Concealment Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Motor Vehicle Safety Standard No. 112, in response to Chrysler Corporation's petition for rulemaking. The amendment deletes the requirement that during the opening of a concealed headlamp the headlamp beam may not project to the left of or above the position of the beam when the concealed headlamp device is fully open.

EFFECTIVE DATE: October 23, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA, Washington, DC (202–366–5280).

SUPPLEMENTARY INFORMATION:

Paragraph S4.5 of Safety Standard No. 112, *Headlamp Concealment Devices* states that "After December 31, 1969, the headlamp beam of headlamps that illuminate during opening and closing of the headlamp concealment device may not project to the left of or above the position of the beam when the device is fully opened." In the view of Chrysler Corporation, this requirement imposes a design restriction on those types of rotating headlamp systems "which, although they project a beam of light very slightly to the left during opening and closing do so at a point in their travel that does not produce glare in the eyes of oncoming drivers."

Chrysler specifically references its 1987 Dodge Daytona model which is equipped with a retracting headlamp system. In order to adapt the system to the car's front end sheet metal, it was necessary to design the system so that in opening and closing it moves through "a laterally outboard 7 mm truncated arc." As a result, the right headlamp momentarily projects a beam of light to the left of center, which, however, is not above the position of the beam when the device is fully opened. Chrysler can meet the requirement through "incorporating a complex and costly electronic switching system to illuminate the headlamps only when they are fully opened and to turn out the light during opening and closing." Because it does not believe that the low candela of the lamp during its arc are sufficient to cause glare, Chrysler petitioned for rulemaking to amend paragraph S4.5 to establish an exception to the prohibition of beam projection to the left. The exception would be "when the maximum allowable photometric values at the points at or above V=0.5 (glare test points) are not exceeded during any portion of the headlamp's travel." That exception, if adopted, would allow light intensities permitted by Standard No. 108, rather than limit the glare intensity to that achieved by the specific lamp under present positional constraints.

In the agency's opinion, however, Chrysler's proposed amendment is problematic. Regardless of the motion of the beam during movement to the final position of the lamp, headlamp beams do not uniformly decrease in intensity from their hot spots (i.e., brightest part of beam) radially outward. Because small higher intensity areas can randomly occur in larger areas of lower intensity, any concealed headlamp could produce higher intensities at various test points during its travel than when fully open. Therefore, even concealed headlamps whose motion complies with Standard No. 112 could become noncompliant with a procedure that uses performance relative to the photometry in Standard No. 108 as the criterion.

The safety problem that paragraph S4.5 is intended to address is the effect of transitory glare upon drivers of other motor vehicles. The agency believes that such effects are minimal in comparison with the incidence of transitory glare that motorists already experience, such as created by oncoming upper beams, or by lower beams during changes in vehicle position (rounding corners) or attitude (coming over the brow of a hill). Although undue glare in any form is undesirable, and manufacturers should design their headlighting systems so that glare in any form is reduced, the agency has concluded that S4.5 represents a design restriction that is not required to serve the interests of motor vehicle safety.

Therefore, on February 27, 1987, the agency proposed the deletion of S4.5, and proposed that S4.6 be renumbered, and that reference to its effective date ("after December 31, 1969") be removed. (52 FR 5975)

Nine comments were received on the proposal. Seven of the commenters supported it. The States of California and Minnesota did not support deletion of the requirement but favored retaining it in a more performance oriented form.

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In Minnesota's opinion, even though the transient effect may be minimal, there was nothing to prevent the beam from remaining in a left and up position should there be a malfunction of the concealment device during the transition from closed to open, or vice versa. Such a failure could cause significant glare to other drivers until the malfunction was corrected. The agency considered Minnesota's argument a plausible one. However, NHTSA's Office of Defects Investigation reported that its files from June 1981 to date contained no complaints about a malfunction in which a device failed in a semi-open position. Of the 15 complaints received, 8 reported failure to open, and 4 a failure to close from the fully open position. Therefore the problem presented by the Minnesota comment appeared theoretical rather than actual, and NHTSA is amending Standard No. 112 as proposed.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact statement nor a regulatory evaluation is required. Since use of concealed headlamp systems is optional and because the amendment would relieve a restriction, the rule will not impose additional requirements or costs but will permit manufacturers greater flexibility in the design of headlamp systems.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will have no effect upon the human environment since there will be no change in the weight and quantity of materials used in the manufacture of headlamp concealment devices.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles will be minimally impacted.

Because of the necessity for the petitioner and other vehicle manufacturers to plan production on an orderly basis, it is found that an effective date earlier than 180 days after issuance of the final rule is in the public interest.

The engineer and lawyer primarily responsible for this rule are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 and 571.112, Motor Vehicle Safety Standard No. 112, *Headlamp Concealment Devices*, are amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.112 [Amended]

2. Paragraph S4.5 of § 571.112 is removed.

3. Paragraph S4.6 of § 571.112 is redesignated S4.5 and the phrase "after December 31, 1989" is removed.

Issued on: September 17, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-21887 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Access, Use and Recreation; Back Bay National Wildlife Refuge, VA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is revising special regulations concerning public access, use, and recreation on the Back Bay National Wildlife Refuge (NWR), which were published in the **Federal Register** on May 28, 1980 (45 FR 35823), January 13, 1983 (48 FR 1501), September 1, 1983 (48 FR 39661), and February 19, 1987 (52 FR 5159). This final rule relaxes certain limitations and clarifies eligibility criteria on vehicular access through the Back Bay NWR by revising 50 CFR 26.34. It also incorporates the provisions of Pub. L. 96-315, approved on July 25, 1980, and Pub. L. 98-146, approved on November 4, 1983. Pub. L. 98-146 amended Pub. L. 96-315 to allow access for "up to 15 additional" permittees who met specific conditions for access. A notice concerning this revision appeared in the **Federal Register** (48 FR 46862) on October 14, 1983.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Anthony D. Leger, Refuge Manager, Back Bay NWR, 4005 Sandpiper Road, P.O. Box 6286, Virginia Beach, Virginia 23456; Telephone 804-721-2412.

SUPPLEMENTARY INFORMATION: On February 19, 1987, there appeared in the **Federal Register** (52 FR 5159) a proposed rule on Special Regulations Concerning Public Access, Use and Recreation on the Back Bay NWR. Interested persons were allowed 60 days in which to submit written comments, suggestions, or objections, with respect to the proposed rule. Several written comments were received. After consideration of all comments, suggestions and objections, several suggested changes from the proposed rule were adopted.

Background

For many years, Back Bay NWR was open to the public for a number of purposes, and free access to the beach by vehicles was permitted. In 1961, less than 10,000 persons used the refuge for various purposes. During the late 1960's, the development of lands south of the refuge for recreational/residential purposes and the increase in availability and popularity of off-road recreational vehicles, resulted in sharply accelerated use. By 1970, the number of persons using the refuge had increased to 235,000 and in 1971, to 348,000. All but a small fraction of this increase involved off-road vehicular use across the beach portion of the refuge. By 1969, it became evident that total public use had resulted in environmental degradation to the extent that a serious conflict existed with respect to the administration of the entire refuge for its intended purposes. Following careful analysis it was determined that certain controls of vehicular uses of the beach were requried to reverse the trend of refuge habitat destruction.

On January 12, 1972, the Service provided notice in the **Federal Register** (37 FR 447) that the Back Bay NWR would be closed to use by unauthorized vehicles. An Environmental Impact Statement (EIS) assessing the impacts of this restriction was prepared (FES 72-33, 1973). A final rule was published on February 28, 1973, that required authorized users to obtain permits for access. Recreational vehicle traffic was prohibited. Permits were issued to property owners in the proposed False Cape State Park area, permanent full-

time residents of the Outer Banks in North Carolina and their visitors, commercial fishermen, emergency service vehicles and schools buses. Implementation of the rule was followed by legal action in a suit against the Service in the District Court for the Eastern District of Virginia (*Coupland, et al.* v. *Morton, et al.*). A final decision was handed down by Judge John MacKenzie on February 26, 1975 (Civil Action No. 145–73–N), fully upholding the authority of the Secretary of the Interior to control vehicular access across the Back Bay NWR. This order was ultimately upheld by the Fourth Circuit Court of Appeals in a decision issued on July 7, 1975.

The matter of regulating beach use at Back Bay NWR continued to be the subject of considerable discussion by the many persons denied vehicular access to recreational properties in North Carolina. On July 29, 1976, following the preparation of an Environmental Assessment (EA), a liberalized rule (41 FR 31537) was issued which provided limited access eligibility not just to permanent residents of the area as the previous rule had provided, but to all persons who, as of October 6, 1975, owned improved property on the Outer Banks of Currituck County, North Carolina, from the Virginia State line south to and including the village of Corolla, North Carolina.

In order to mitigate the impact on the beach by these additional permittees, it was necessary to place more restrictions on, and limit the number of round trips per day for, permanent full-time residents living between the south boundary of the refuge and the village of Corolla, North Carolina. Based on the restricted access imposed on the permanent full-time residents by the 1976 regulations (41 FR 22361) and the permit program management experience gained from the 1976 and 1977 (42 FR 23151) regulations, the 1978 rule (43 FR 28314) continued to provide access to qualified permanent full-time and part-time residents. These special regulations also provided notice that the refuge beach would be closed to vehicular traffic after December 31, 1979. Subsequently, in an effort to avoid undue hardship on permanent residents who had established residency prior to December 31, 1976, an interim rule was published on December 13, 1979 (44 FR 72161), which provided for access for those permanent residents only. Public comments on this interim rule were invited. All comments submitted by January 31, 1980, were given consideration.

The final rule on Back Bay NWR access, as published on May 28, 1980 (45 FR 35823), provided access for those permanent full-time residents who could provide adequate proof of continuous residency commencing prior to December 31, 1976, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina. The south boundary of the area for access was defined as, "A straight east-west line extending from Currituck Sound to the Atlantic Ocean and passing through a point 1,600 feet due south of the Currituck Lighthouse." The May 28, 1980, rule also denied a petition for rulemaking received from the Outer Banks Civic League and Pacific Legal Foundation to allow access through Back Bay NWR for part-time residents of the Outer Banks and False Cape State Park.

On July 25, 1980, President Carter signed Pub. L. 96–315 which provided that any time regulations limiting access to the refuge are issued, the Secretary of the Interior shall issue to any "eligible applicant" a permit to enable the applicant to commute across the refuge. The term "eligible applicant" was defined to include: "All full-time residents who can furnish adequate proof of residency commencing prior to December 31, 1979, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain full-time residents." The south boundary was defined as a "straight east-west line extending from Currituck Sound to the Atlantic Ocean and passing through a point 1,600 feet due south of the Currituck Lighthouse." On August 7, 1980 (45 FR 52391), the Back Bay access regulations were modified to reflect the legislation.

On September 18, 1981, the Assistant Secretary for Fish and Wildlife and Parks published in the **Federal Register** (46 FR 46358) a Notice of a Petition for Rulemaking submitted by the Virginia Wildlife Federation and the Pacific Legal Foundation seeking the extension of access privileges through the refuge to part-time residents of the Outer Banks. On January 13, 1983, the Service published in the **Federal Register** (48 FR 1501), an extension of the May 28, 1980, regulations (including the August 7, 1980, modification) governing access. The extension was necessary, until revised rules could be issued, so that orderly management of the Back Bay NWR would not be compromised.

On September 1, 1983, the Assistant Secretary published in the **Federal Register** (48 FR 39661), a proposed rule and denial of petition. The proposed rule included the same changes contained in the **Federal Register** notice of October 14, 1983, outlined below, with the exception of the provision dealing with access essential to maintaining a livelihood. As a result of the passage of Pub. L. 98–107 and the associated **Federal Register** notice (48 FR 46862), finalization of this proposed rule was unnecessary. On November 4, 1983, Pub. L. 98–107 was replaced by Pub. L. 98–146. The provisions of both laws as they relate to access through the Back Bay NWR are identical.

On October 14, 1983, the acting Director published in the **Federal Register** (48 FR 46862) a Notice of Rulemaking. This notice incorporated the provisions of Pub. L. 98–107 into the Back Bay NWR access regulations. Pub. L. 98–107, an amendment to Pub. L. 96–315, stipulates that additional access permits may be issued as follows: "Up to 15 additional permits shall be granted to those persons meeting any one of the following conditions:" (1) A resident as of July 1, 1982, who held a valid Service access permit for improved property owners at any time during the period from July 29, 1976, through December 31, 1979. (2) Anyone in continuous residency since 1976 residing in the area bounded on the north by the refuge boundary and on the south by a straight line passing through a point on the east-west prolongation of the centerline of Albacore Street, Whaleshead Club Subdivision, Currituck County, North Carolina. (3) Any permanent, full-time resident as of April 1, 1983, not otherwise eligible who can substantiate to the Secretary of the Interior that access is essential to their maintaining a livelihood."

In December 1986, the U.S. General Accounting Office (GAO) issued a final report making several recommendations to the Service concerning vehicular access permits. This final rule implements the recommendations contained in the final report. This rulemaking incorporates several minor changes to the existing regulations which further clarify eligibility, provide for the needed regulation of access permits and relax certain limitations on access. This final rule supplements the general regulations that govern access and recreation on wildlife refuges as set forth in Title 50 of the Code of Federal Regulations. The Back Bay NWR, comprising approximately 4,600 acres, is delineated on a map available from the refuge manager or the Regional Director. The policy of the Department of the Interior, whenever practical, is to afford the public an opportunity to participate in the rulemaking process. Public

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comments on the proposed rulemaking were invited. All comments submitted by April 20, 1987, were given consideration.

Analysis and Discussion of Public Comments

In summary, of the 44 comments received, 6 supported the adoption of the proposed regulations or more liberal regulations, and 38 opposed the proposed regulations or favored making them more restrictive. Comments on the proposed rule were significant and indicated that further revisions of the proposed rule were necessary.

Issue: Additional vehicular traffic contradicts the original intent of the permit access system.

Response: Thirteen respondents opposed the regulations because they felt that the rule provided for additional permits or a significant increase in beach travel. The 15 additional permits referred to in the rule relate to the number authorized by Pub. L. 98–146 which was passed in 1983. With the exception of medical access waivers, no additional permits beyond this congressionally-mandated number are authorized for issuance. Additional trips will be made under the provisions relating to commercial service vehicles. These trips will be minimized, however, due to the emergency-only nature of the trips. The original intent of the access permit system was to provide access only to qualified individuals (later defined as permanent residents) who met specific criteria. This is still the intent of the Service. The additional traffic allowed under this final rule is expected to be extremely minimal. The restrictions retained in the rule ensure that access will remain compatible with the purposes for which the refuge was established.

Issue: Fragile ecosystems and wildlife should not be compromised for the convenience of individuals who moved to North Carolina knowing that they did not qualify for access.

Response: Thirteen respondents made this point. The Service agrees that individuals who moved to the Outer Banks after well-defined and widely publicized cut-off dates should not be provided access. With the exception of medical access waiver permits, additional permits will not be issued to residents of the Outer Banks who established permanent residency after the congressionally mandated cut-off dates.

Issue: The Service should implement the December 1986 GAO report which recommends that permit holders who are granted vehicular access be required to provide sufficient evidence of eligibility or have their permits revoked.

Response: Three respondents expressed this viewpoint. The timing of the GAO report and the subsequent publication of proposed regulations was such that the two formerly independent actions have now been combined. The publication of this final rule is the first step towards conducting a more effective and efficient access permit program. Shortly after the finalization date of this rule, the Service; through the refuge manager, Back Bay NWR, will implement the recommendations of the GAO report. At that time the Service will require those permittees who lack adequate documentation of their access eligibility to provide this information and will ensure that permits are issued only to those who legally qualify for them.

Issue: There should be year-round, 24-hour access through the refuge for permittees.

Response: Three respondents expressed this opinion, while four stated the opposite viewpoint (opposed even a seasonal relaxation of the midnight cut-off time). Since the early 1970's the hours of access have been relaxed several times. In practice, the refuge manager regularly makes exceptions to the 12 midnight cut-off for permittees who work late, attend meetings, etc. A limited amount of travel occurs after midnight and a significant increase is not expected as a result of this change.

The revised rule would relieve the access permittees of the burden of receiving advance approval from the refuge manager for those occasional situations when late night travel is required. No additional trips through the refuge would occur as a result of this rule change. Nesting sea turtles and other wildlife would continue to be protected during the critical summer periods when the restriction on travel from midnight to 5 a.m. would be in effect. Furthermore, one respondent felt that the regulation would be unenforceable without increased regulatory expense and that the increased cost would be diverted from wildlife-related projects. In early 1987, the refuge staffing pattern was reorganized to place appropriate emphasis on wildlife, interpretation, education and law enforcement activities. Within this current staffing arrangement, adequate patrols will be made to guarantee compliance with all refuge special regulations. In addition, the installation of the computer-operated gate in 1985 provides the refuge with data on beach access 24 hours per day. Finally, special "Resource Problem" funding is received at the refuge level to properly administer the motor vehicle access program without detriment to wildlife related projects.

Issue: The medical access waiver provision is too vague. The Service should provide clear guidelines regarding the necessary documentation required to establish eligibility. Second or third medical opinions should be required. Part-time residents should not qualify for medical access over permanent residents who missed the cut-off dates. Emergency medical access is already allowed, thus there is no necessity to grant additional access permits for medical convenience.

Response: The Service began issuing "medical access waivers" in the early 1980's out of a desire to administer the access program in a humanitarian manner. The primary criterion for a medical access waiver was: "that life-threatening situations may result from more arduous travel conditions." To date six such permits have been issued. Of these six, five are not residents of North Carolina. The Service agrees that providing access to other than permanent residents is not in keeping with the stated intent of the access program. Furthermore despite Service efforts to be sensitive to the needs of individuals whose health has deteriorated, the medical access waiver provision gives the appearance that the Service is providing access to non-residents to the exclusion of residents of North Carolina. This very fact was pointed out by two permanent residents in their written comments on the proposed rule. It was also an area of significant concern in the GAO report. With the explosion in the number of vacation and retirement homes on the North Carolina Outer Banks since the 1970's, and the aging of the population as a whole, the Service agrees that this special access privilege has the potential to become a major program in itself.

In recent years the Service has taken a very liberal approach regarding access for medical purposes for permittees and non-permittees alike. The Service would not deny access off the Outer Banks to any resident of North Carolina who requires emergency medical attention in the Norfolk, Virginia, area. In addition, the Sandbridge, Virginia, rescue squad and the Corova and Corolla, North Carolina, rescue squads have been issued gate cards so that they have unimpeded use of the beach in an emergency. The refuge monitors the radio communications of these rescue squads and strives to assist with access where possible. The Service believes that it is preferable to have trained

emergency medical personnel transport persons involved in a medical emergency off the beach, rather than to have such transport accomplished by individuals without the training or experience to do so.

Therefore, the Service has amended the rulemaking to show that no additional medical access waiver permits will be issued after December 31, 1987. Those who currently hold these permits will continue to be granted access. However, additional medical access waiver permits will be issued only to permanent full-time residents of North Carolina. Medical access waiver permits will be subject to review prior to the issuance or reissuance of an access permit and at three (3) year intervals thereafter. A provision for a second medical opinion has been added to the regulations. This second opinion will be provided for at Service expense by a government designated physician.

Issue: Commercial business employees should provide documentation verifying their employment.

Response: This concern was also raised in the GAO report. The present system allows the employer to notify the refuge manager anytime a change occurs in his employees. In addition to written notification, a W–4 form is sometimes submitted. For commercial fishing crew members who work on a "share of the catch" basis, a statement indicating their "share" of the catch is considered sufficient proof of employment. The Service has been criticized for failing to require substantiating documentation for these employees. The final rule has been modified to address this area of concern. All commercial permit holders will be required to present adequate employment documentation (i.e., signed W–4 forms, W–2 forms, 1099 forms, earnings statements or paycheck stubs, employee income tax withholding submissions to State and Federal tax offices (IRS form W–3 with W–2s attached)), or other acceptable proof of actual employment for all designated employees. No determination of employment legitimacy and therefore access eligibility is possible without this documentation.

It must be recognized that this is an extremely difficult area for the Service since some individuals are very reluctant to divulge employment information; however, it is impossible to verify employment status without it. In those cases where documentation is not presented, employee access will not be granted.

Issue: Permittees should be able to transport in their vehicles whomever they want.

Response: It has always been the intent of the Service to minimize, to the greatest extent possible, the inconvenience to bona fide permittees who utilize the refuge beach as an access route. Passengers in permittee operated vehicles are adequately covered under section (a)(5) of the final rule. The Service, through rulemakings dating back to 1972, has notified the public of its intent to provide access only to those who meet specific criteria. Access is provided to minimize the inconvenience (to certain qualified individuals) of the Service's decision to limit beach travel for the protection of the resource. Access is not granted to permittees for the purpose of transporting those who do not meet the well-defined criteria. Section (a)(5) clarifies the regulations so that there is no misunderstanding of the Service position in this matter.

Issue: The Service's restriction on dike road traffic is inconsistent with policies at other refuges where dike traffic is allowed.

Response: The decision on whether to allow vehicles on Service roadways and dikes is made on a refuge by refuge basis. These decisions are based on a number of criteria including: Condition of the dike (road) surface and substrate, amounts of expected traffic, degree of disturbance to wildlife, wilderness designation, management capability, etc. At Back Bay, the dike roads were not designed for daily vehicular traffic. Furthermore, environmental reviews have consistently evaluated travel on the refuge beach, which is the historic route of travel. The Service considered allowing access on a road behind the dunes in an EIS issued in 1972, but rejected the use of such a road by automobiles.

Issue: Motor vehicle access permittees depend on the Virginia Beach area for services and therefore require more than emergency access for commercial service vehicles.

Response: Three respondents supported the contention that "emergency" commercial service access was inadequate to meet the needs of North Carolina residents who have access permits. Four others felt the proposed action was vague, or would lead to a significant increase in travel.

It is the intent of the Service to provide access for essential commercial service vehicles only when no reasonable alternative access exists, or in emergency situations. Section (h)(1) has been revised to clarify this point. Since access across State lands is necesary, the permittee is responsible for securing concurrence from the Superintendent of False Cape State Park.

In the May 6, 1977, final rule (42 FR 23151) the Service addressed the issue of commercial service vehicle access during hours other than 8 a.m. to 5 p.m., Monday thru Friday. The refuge manager, upon reasonable notification, will be able to authorize trips outside the prescribed time periods for emergency repair situations should they arise.

Issue: State park concerns have not been taken into account by the Service in formulating the proposed rule.

Response: The Director of the Virginia Department of Conservation and Historic Resources responded on behalf of False Cape State Park (FCSP). The local U.S. Congressman wrote in support of the State's position. In summary, the State was concerned with the following: (1) Additional access permits through the refuge must receive concurrence from FCSP, (2) 24 hour access will greatly increase the workload for FCSP staff, (3) access for commercial vehicles must be approved by the FCSP Superintendent, (4) criteria must be given for medical access waivers, (5) the manager has too much authority under the provisions for suspension or waiver of rules, (6) access to the FCSP for Environmental Education related purposes could be restricted, and (7) FCSP staff need additional trips (beyond two per day).

The Service does not dispute the authority of the State to administer access through the FCSP. In the past, the State has chosen to concur in most access decisions made by the Service. Recently, the State has taken a more active role in administration of its permit system and the management of FCSP. Nothing in this final rulemaking should be construed as binding the FCSP to allow any specific type of access. The State has the authority to permit or deny access through its lands subject to the provisions of State law.

The issues of 24 hour travel, commercial service vehicles, and medical access waivers have been addressed above. It is not appropriate for the Service to address State workforce constraints.

The refuge manager has authority to suspend or waiver the access rules under section (k) of this final rulemaking. This authority is similar to that which is exercised by all refuge managers as outlined in various sections of 50 CFR Parts 25, 26, and 27. These provisions are expanded upon here, due to the unique nature of the motor vehicle access situation. In the past, FCSP activities have been covered in a

Special Use Permit which was issued by the refuge manager. Due to an oversight, no permit was issued in 1986. The refuge manager will issue an annual Special Use Permit to the FCSP to clarify access through the refuge to FCSP. On May 28, 1980, the Service issued a final rule governing motor vehicle access across Back Bay NWR. In this rule, access for FCSP employees was addressed for the first time. A statement under section (g) of the rule stated that FCSP employees would be granted access. In the discussion of major comments on this rulemaking, the Service rejected access for vistors of FCSP employees since, "* * * No other class of permittees is authorized visitor access * * *." It was clearly the intent of the Service that these employees were bound by the regulations imposed on all other permittees. In the September 1983 proposed rule, the Service clarified this issue by stating that FCSP employees would be considered as permanent full-time residents with access privileges identical to those of other permittees. This language is retained in this final rule. Despite the State's concerns on this issue, it would be inconsistent for the Service to allow additional trips for State employees due to the nature of their employment, or their status as Virginia residents. To the maximum extent possible the Service strives to treat all permittees equally. To do otherwise would undermine the credibility of the access program.

Differences Between the Proposed Rule and the Final Rule

As a result of public comments, several changes were incorporated into this final rule. Minor wording changes are incorporated in various sections of the final rule.

Section (a)—All eligibility criteria contained in Pub. L. 96–315, enacted in 1980 and Pub. L. 98–146, enacted in 1983 have been cited in this section. In section (a)(5)—the following statement was added "Permits are not transferable by sale or devise."

Section (f) on Military, fire, or emergency vehicles was modified by adding the following: "Continuous or recurring use of the beach for other than emergency purposes shall require the issuance of a permit from the refuge manager."

Section (g) concerning public utility vehicles was amended to include provisions for the issuance of an access permit.

A minor wording change was made in section (h), Essential commercial service vehicles, to clarify that access for this purpose will only be allowed if no reasonable alternative to the access exists as determined by the refuge manager.

Section (j)(1) was amended to specify that commercial fishing businesses must have "continuously" operated since 1972. In addition, the following statement was added: "Commercial permits are not transferable by sale or devise. The level of commercial permittee travel across the refuge shall not increase above the average yearly levels maintained in the 1985 to 1987 period." Section (j)(2) was amended to apply the standards outlined for commercial fishermen to other businesses. Language was added to section (j)(4) specifying the types of "appropriate documentation" for commercial business employees.

In section (k)(4)(i) improved property owners were dropped from eligibility for medical access waivers. New sections (k)(4) (ii) and (iii) were added to provide for periodic reviews of medical access waiver permits and Service designated and funded second medical opinions respectively. Section (k)(4)(iv) was added to include a cut-off date beyond which no medical waiver permits would be issued and (k)(4)(v) was included to grandfather current non-resident medical access permit holders.

Section (m)(1) underwent a minor wording change. Section (m)(2) was modified to include a prohibition on towing, transporting, or operating vehicles owned by non-permit holders. This change is consistent with the intent of the regulations issued since 1980 which provided access for qualified permanent residents only and supports the language in section (a)(5) of the rule. Section (m)(5) was modified to include a prohibition against access "for any other purposes not covered in this rule."

Section (o), Beach-oriented uses, was amended to incorporate a change in refuge management activities which occurred during 1987 under the manager's authority to close any portion of the refuge "to protect the resources of the area." This authority is codified in 50 CFR 25.21, 25.31, and 29.3.

Section (r) was modified to specify the months in which pets are permitted. Section (s)(2) was added to require a permit for groups exceeding 10 individuals.

Since these regulations relieve restrictions to allow the issuance of medical access waiver permits, the Service has determined under the provisions of 5 U.S.C. 553(d) that good cause exists to make these regulations effective upon publication in the **Federal Register**.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended, (16 U.S.C. 668dd), authorizes the Secretary of the Interior to permit the use of any area of the Refuge System for any purpose, including access whenever he determines that such uses are compatible with the major purposes for which the area was established. The Back Bay NWR was established by Executive Order 7907, June 6, 1938, "as a refuge and breeding ground for migratory birds and other wildlife."

The limited use permitted by these regulations is compatible with the major purposes for which the Back Bay NWR was established. This determination is based upon consideration of, among other things, the initial EIS on Motor Vehicle Access (FES 72–33, 1973), the EA completed December 12, 1975, the Service's final EIS on the proposed State-Federal land exchange involving portions of False Cape State Park and Back Bay NWR, and the EA prepared on the proposed rulemaking September 1, 1983.

Paperwork Reduction Act

Information collection is required for obtaining a vehicular access permit. The information is necessary to determine eligibility of applicants, and failure to respond may result in permit denial. This information collection has been approved by the Office of Management and Budget (OMB) under number 1018–0014. This rule will not modify the information collection requirements authorized by OMB.

Environmental Considerations

EAs have been prepared on previous rules and are available for public inspection at: Back Bay NWR, 4005 Sandpiper Road, P.O. Box 6286, Virginia Beach, Virginia 23456; and Virginia Beach Public Library, Operations Building; Room 300, Courthouse Complex, Virginia Beach, Virginia 23456.

Copies of EAs can also be obtained by addressing Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

Economic Effects

This rule involves local, private residents only. Small entities will not be significantly affected. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 (February 19, 1981, 46 FR 13193) and will not have a significant economic effect on a substantial number

of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), nor does this rulemaking require preparation of a regulatory analysis. This conclusion is based on the finding that no substantial costs, if any, should result for any small entity.

Drafting Information

The following individuals participated in the writing of these regulations: Anthony Leger, Edward Moses and Patricia Martinkovic.

List of Subjects in 50 CFR Part 26

National Wildlife Refuge System, Recreation, Wildlife refuges.

Accordingly, Part 26 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 26—[AMENDED]

1. The authority citation for Part 26 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

2. The special regulations governing public access, use and recreation on Back Bay NWR in § 26.34 are revised to read as follows:

§ 26.34 Special regulations concerning public access, use and recreation for individual national wildlife refuges.

Virginia

Back Bay National Wildlife Refuge

Access

(a) *Access qualifications and specifications.* (1) As provided for in Pub. L. 96–315, permanent, full-time residents who can furnish to the refuge manager, Back Bay NWR, adequate proof of continuous and continuing residency, commencing prior to December 31, 1979, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain permanent, full-time residents. The south boundary of the area for access consideration is defined as a straight east-west line extending from Currituck Sound to the Atlantic Ocean and passing through a point 1,600 feet due south of the Currituck lighthouse. "Residence" means a place of general abode; "Place of general abode" means a person's principal, actual dwelling place in fact, without regard to intent. A "dwelling" means a residential structure occupied on a year-round basis by the permit applicant and shall not include seasonal or part-time dwelling units such as beach houses, vacation cabins, or structures which are intermittently occupied.

(2) As provided for in Pub. L. 98–146, "Up to 15 additional permits shall be granted to those persons meeting any one of the following conditions:"

(i) A resident as of July 1, 1982, who held a valid Service access permit for improved property owners at any time during the period from July 29, 1976, through December 31, 1979.

(ii) Anyone in continuous residency since 1976, in the area bounded on the north by the refuge boundary, and on the south by a straight line passing through a point in the east-west prolongation of the centerline of Albacore Street, Whaleshead Club Subdivision, Currituck County, North Carolina.

(iii) Any permanent, full time resident as of April 1, 1983, residing in the area outlined in paragraph (a)(2)(ii) of this section and not otherwise eligible, who can substantiate to the Secretary of the Interior that access is essential to their maintaining a livelihood; so long as they maintain full-time continuous employment in the Norfolk, Virginia, area may qualify for access.

(3) The burden of proving that the prospective permittee meets these criteria shall be on the applicant by presentation of adequate documentation to the refuge manager. Permittees may be required to submit additional documentation of their eligibility to the refuge manager in order to maintain access. Permits will be issued only to those who legally qualify for them.

(4) Only one permit will be issued per family. All permits issued will be terminated in the event that alternate access becomes available during the permit period.

(5) Permits are issued for the purpose of providing ingress and egress across the refuge beach to the permittee's residence. Personal access is limited to permittees, their families, relatives, and guests while being transported in the permittee's vehicle. "Personal access" means private, non-commercial use. Permits are not transferable by sale or devise.

(6) All vehicle occupants must provide positive identification upon the request of any refuge official.

(b) *Routes of travel.* Access to, and travel along, the refuge beach by motorized vehicles may be allowed between the dune crossing at the key card operated gate near the refuge headquarters, and the south boundary of the refuge only after a permit has been issued or authorization provided by the refuge manager. Travel along the refuge beach by motorized vehicle shall be below the high tide line, within the intertidal zone, to the maximum extent practicable. This may require permittees to adjust their travel times to avoid high tides which would require the use of the emergency storm access/evacuation route over the east dike.

(c) *Number of trips allowed.* Permittees and members of their immediate families residing with them are limited to a total of two round trips per day per household.

(d) *Hours of travel.* Travel along the designated route is permitted 24 hours per day from October 1 through April 30. Travel is restricted to the hours of 5:00 a.m. to 12:00 midnight from May 1 through September 30.

(e) *Medical emergencies.* Private vehicles used in a medical emergency will be granted access. A "medical emergency" means any condition that threatens human life or limb unless medical treatment is immediately obtained.

The vehicle operator is required to provide the refuge manager with a doctor's statement confirming the emergency within 36 hours after the access has occurred.

(f) *Military, fire or emergency vehicles.* Military, fire, emergency or law enforcement vehicles used for emergency purposes may be granted access. Vehicles used by an employee/agent of the Federal, State or local government, in the course of official duty other than for emergency purposes, may be granted access upon advance request to the refuge manager. Continuous or recurring use of the refuge beach for other than emergency purposes shall require the issuance of a permit from the refuge manager.

(g) *Public utility vehicles.* Public utility vehicles used on official business will be granted access. A permit specifying the times and types of access will be issued by the refuge manager. A "public utility vehicle" means any vehicle owned or operated by a public utility company enfranchised to supply Outer Banks residents with electricity or telephone service.

(h) *Essential commercial service vehicles.* (1) Essential commercial service vehicles on business calls during the hours of 8 a.m.–5 p.m. Monday through Friday will be granted access, only upon prior approval of the refuge manager when responding to a request from a permittee. Such requests may be verbal or in writing. Access by essential commercial service vehicles will be granted only after all other reasonable alternatives to access through the refuge have been exhausted as determined by the refuge manager.

(2) "Commercial service vehicle" means any vehicle owned or operated by or on behalf of an individual,

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partnership, or corporation that is properly licensed to engage entirely in the business of furnishing emergency repair services, including but not limited to plumbing, electrical, and repairs to household appliances.

(3) Emergency situations. The refuge manager, upon reasonable notification, will be able to authorize essential service/emergency repair access, outside the prescribed time periods, for emergency situations should they arise.

(i) *False Cape State Park employees.* False Cape State Park and Virginia Game Commission employees who are residents in the park will be considered as permanent, full-time residents as defined in § 26.34(a) with access privileges identical to those of other permittees with beach access privileges.

(j) *Commercial fishermen, businesses and their employees.* (1) Commercial fishermen who have verified that their fishing operations on the Outer Banks of Virginia Beach, Virginia, or Currituck County, North Carolina, have been dependent since 1972 on ingres and egress to or across the refuge are granted permits for access. Travel through the refuge by commercial fishermen from Currituck County, North Carolina, will be permitted only when directly associated with commercial fishing operations. Drivers and passengers on trips through the refuge are limited to commercial fishing crew members. A "commercial fisherman" means one who harvests finfish by gill net or haul seine in the Atlantic Ocean, and who has owned and operated a commercial fishing businesses continuously since 1972. Commercial permits are not transferable by sale or devise. The level of commercial permittee travel across the refuge shall not increase above the average yearly levels maintained in the 1985–1987 period.

(2) Other businesses who have verified that their business operations on the Outer Banks of Currituck County, North Carolina, have been dependent since 1972 on ingress and egress to or across the refuge will be granted permits for access in accordance with the limitations outlined in paragraph (j)(1) of this section.

(3) Each commercial fisherman or other business may be granted a maximum of five designated employees to travel the refuge beach for commercial fishing or other business-related purposes only. Commercial fishing employees may carry only other commercial fishing employees as passengers. Other business employees may carry only other employees of that business. The hauling of trailers associated with the conduct of commercial fishing or other business activities is authorized.

(4) Employees of commercial fishermen and/or other businesses who apply for access permits shall have the burden of proving, by the presentation of appropriate documentation to the refuge manager, that they are an "employee" for purposes of this section of the regulations. Appropriate documentation is defined as the submission of standardized and verifiable employment forms including: Signed W–2 and W–4 forms, IRS form #1099, official earnings statements for specified periods, employee income tax withholding submissions to State and Federal tax offices (e.g., IRS form W–3 with W–2s attached). State unemployment tax information or other proof of actual employment. Documentation for each employee must be submitted in advance of access being granted, or, for new employees, within 30 days of their starting date. Failure to provide verification of employment for new employees within 30 days will result in termination of access privileges.

(k) *Suspension or waiver of rules.* (1) In an emergency, the refuge manager may suspend any or all of the foregoing restrictions on vehicular travel and announce each suspension by whatever means are available. In the event of adverse weather conditions, the refuge manager may close all or any portion of the refuge to vehicular traffic for such periods as deemed advisable in the interest of public safety.

(2) The refuge manager may make exceptions to access restrictions, if they are compatible with refuge purposes, for qualified permittees who have demonstrated to the refuge manager a need for additional access relating to health or livelihood.

(3) The refuge manager may grant one-time use authorization for vehicular access through the refuge to individuals, not otherwise qualified above, who have demonstrated to the refuge manager that there is no feasible alternative to the access requested. Authorization for access under this provision will not be based on convenience to the applicant.

(4) Medical access waiver permits may be issued under the following conditions:

(i) The Regional Director may grant access to non-eligible permanent residents who can show proof that their physical health is such that life-threatening situations may result from more arduous travel conditions. The submission of substantiating medical records is required to be considered for a medical access waiver.

(ii) All medical access waiver permittees will be required to prove that their medical condition is or continues to be such that a life-threatening situation would result from more arduous travel conditions. Such proof shall be required prior to the issuance of an access permit, and at 3-year intervals thereafter.

(iii) A second medical opinion will be required by the Regional Director prior to the issuance or re-issuance of any such permit. This second opinion will be provided for at Service expense, by a government designated physician.

(iv) No additional medical access waiver permits will be issued after December 31, 1987.

(v) Previous holders of medical access waiver permits will retain access subject to paragraph (k)(4) (ii) and (iii) of this section.

(l) *Violation of rules.* Violators of these special regulations pertaining to Back Bay NWR are subject to legal action as prescribed by 50 CFR 25.43 and Part 28, including suspension or revocation of all permits issued to the violator or responsible permittee. The refuge manager may deny access permits to applicants who, during the 2 years immediately preceding the date of application, have formally been charged and successfully prosecuted for three or more violations of these or other regulations in effect at Back Bay NWR. Individuals whose vehicle access privileges are suspended, revoked, or denied may, within 30 days, file a written appeal of the action to the Assistant Regional Director-Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, in accordance with 50 CFR 25.45(c).

(m) *Other access rules.* (1) No permit will remain in effect beyond December 31 of the year in which it was issued. Permits may be renewed upon the submission of appropriate updated information relating to the permit, and a signed statement that the conditions under which the previous permit was issued have not changed. In the event of any changes of conditions under which the permit is granted, the permittee shall notify the refuge manager in writing within 30 days. Failure to report changes may result in suspension/revocation of the permit.

(2) Vehicles shall be operated on the refuge beach only by the permittee or other authorized drivers. Permit holders shall not tow, transport or operate vehicles owned by non-permit holders through the refuge. Non-commercial permit holders may tow utility and boat trailers when being used for their

personal use only. Any towed vehicle shall have advance approval from the refuge manager prior to being brought through the refuge. This access privilege is not to be used for any commercial purpose.

(3) The refuge manager may prescribe restrictions as to the types of vehicles to be permitted to ensure public safety and adherence to all applicable rules and regulations.

(4) A magnetic card will be issued to each authorized driver only for his or her operation of the computer controlled gate. No more than two cards will be issued per family. Only one vehicle will be permitted to pass for each gate opening. Unauthorized use of the magnetic card may result in suspension of the permit. A fee will be charged to replace lost or misplaced cards. Malfunctioning cards will be replaced at no charge.

(5) Access is granted for the purpose of travel to and from the permittee's residence and/or place of business. Access is not authorized for the purpose of transporting individuals for hire, or for the transport of prospective real estate clients to or from the Outer Banks of North Carolina, or for any other purpose not covered in this rule.

General Rules

(n) *Entry on foot, bicycle or motor vehicle.* Entry on foot, bicycle, or by motor vehicle on designated routes is permitted one-half hour before sunrise to one-half hour after sunset for the purposes of nature observation and study, photography, hiking, surf fishing, and bicycling.

(o) *Beach-oriented uses.* Designated areas of the refuge beach are open to wildlife/wildlands-oriented recreation only as outlined in paragraph (n) of this section. Entry to the beach is via designated access points only.

(p) *Parking.* Limited parking at the refuge office/visitor contact station is permitted only in designated spaces. Parking is available on a first-come, first-serve basis for persons engaged in wildlife/wildlands-oriented recreation only as outlined in paragraph (n) of this section.

(q) *Fires.* All fires are prohibited.

(r) *Pets.* Dogs and other pets, on a hand-held leash not exceeding 10 feet in length, are permitted from October 1 through March 31.

(s) *Other general rules.* (1) Pedestrians and vehicular traffic in the sand dunes are prohibited.

(2) Use by all groups exceeding 10 individuals will require a Special use Permit, issued by the refuge manager.

(3) Registered motor vehicles and motorized bicycles (mopeds) are permitted on the paved refuge access road and parking lot at refuge headquarters. All other motorized vehicular use is prohibited, except as specifically authorized pursuant to this rule.

(4) The information collection requirement contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and has been assigned the number 1018–0014. The information being collected is used to determine eligibility for issuing a vehicular access permit and a response is required to obtain a benefit.

Date: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–21894 Filed 9–22–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 604 and 641

[Docket No. 50828–7106]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the mandatory reporting requirements prescribed in the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The recordkeeping and reporting requirements were initially reserved in the final rule implementing the FMP. This rule provides for the timely collection of catch, effort, and landings data from persons using fish traps, commercial vessel and headboat owners and operators, and seafood dealers and processors.

EFFECTIVE DATE: October 23, 1987, except for § 641.5(g). This rule is being issued prior to approval by the Office of Management and Budget of the information collection requirements of § 641.5(g). When OMB approval is received, a notice will be published in the **Federal Register** making this section effective.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813–893–3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), and is implemented by regulations appearing at 50 CFR Part 641. The FMP contained a provision for mandatory reporting of catch and landings information necessary for management of the reef fish fishery. However, because the data collection system had not been developed at that time, § 641.5 was reserved. A proposed rule to implement the mandatory reporting requirements was published in the **Federal Register** on October 2, 1985 (50 FR 40206).

The proposed statistical reporting system, designed by NMFS and approved by the Council, makes mandatory the voluntary reporting program for commercial fishermen and dealers that has been utilized since 1956 and initiates a new mandatory program for persons using fish traps. All persons fishing reef fish traps will be required to maintain logbooks providing data on catch, effort, fishing depth and location, and other types of gear fished. Selected commercial dealers and processors will continue to report the weight and value of reef fish handled each month. Provisions for collecting information from charter vessel owners and operators remain reserved pending the outcome of a comparative study of the logbook survey and the Marine Recreational Fisheries Statistical Survey (MRFSS). An information collection requirement in § 641.5(g) for the headboat sector of the fishery was revised and resubmitted to the Office of Management and Budget for approval in February 1987. When OMB approval is received, a notice will be published in the **Federal Register** making this section effective. The resubmission does not alter the data collection elements from those presented in the proposed rule, but merely separates headboats from the charter vessel survey so that approval can be secured for the headboat data collection while the comparative study between charter vessels and the MRFSS continues. Commercial vessels, charter vessels, and headboats will be inventoried by the Center Director or his designee on an annual basis. Background information describing in detail the need for additional data was presented in the proposed rule and is not repeated here.

Comments and Responses

The Texas Parks and Wildlife Department (TPWD) provided the only comments received on the proposed rule. They indicated that the requirements (for commercial fishermen, dealers, and processors) are duplicative of State law and will result in an unnecessary burden on dealers.

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The proposed statistical reporting system makes mandatory under Federal law the current voluntary reporting program for commercial fishermen and dealers that has been utilized in the fishery since 1956. Since Texas has a mandatory reporting requirement for wholesale fish dealers which provides the name and address of each dealer, total weight by species, and average price, NMFS does not plan to require duplicative or additional reporting. The intent of the regulation is to make the existing reporting system by State of landing a requirement under Federal law.

The TPWD also indicated that mandatory reporting by fishermen, dealers, and processors will result in double or triple reporting; thereby reducing the value (utility) of the landings data.

The value of landings data for management purposes will not necessarily be reduced if data are collected from different sources. The purposes of collecting data from fishermen, dealers, and processors is not to duplicate the data, but rather to include different kinds of data from these various sources, to collect more timely data on a specific entity, and to provide for verification of data for enforcement purposes. For example, data on fishing effort may be available only from fishermen; data on total weekly or monthly production may be collected more efficiently or quickly from dealers. Texas is party to a State/Federal Cooperative Statistics Agreement with NMFS that provides for the exchange of information between State and Federal agencies. This cooperative program reduces reporting requirements on the public, duplication of State and Federal data collection activities, and overall costs.

These cooperative State/Federal programs are designed to provide complementary data from various sources that meet the timeliness, detail, and enforcement requirements of reef fish management. The result is a comprehensive, consistent, and validated set of data for the managed species throughout their range.

Changes From the Proposed Rule

The final rule differs from the proposed rule for the reasons discussed.

Section 641.2.

Section 641.2 adds a definition for "Charter vessel" and revises the definition for "Headboat" to distinguish between the two types of vessels, which are treated separately in the final rule.

Section 641.5.

A new § 641.5(a) is added to emphasize that data submitted to a State is not also to be submitted to NMFS.

Former paragraph (a) is redesignated (b) and specifies a time limit for fish trap fishermen to submit the required information on each fishing trip.

Former paragraph (b) is redesignated (c) and in subparagraph (c)(1) requires selected commercial vessel owners and operators to report both the name *and* official number of the vessel instead of the name *or* official number. Vessel names, alone, are inadequate for proper vessel identification.

In redesignated paragraphs (b) and (c), the requirements for persons fishing fish traps and for other commercial vessel owners and operators to report the number of fish caught by species are removed. Reports by weight are required. The requirements to report by number were included in the proposed rule in error.

Former paragraphs (c) and (d) are redesignated (d) and (e).

Former paragraph (e) is now divided into paragraphs (f) and (g) to distinguish the charter vessel and headboat components of the fishery. Paragraph (f), "Charter vessel owners and operators", is held in reserve for the reasons discussed earlier. The frequency of reporting information by headboat owners and operators is changed from a monthly submission to a quarterly one, which eases the reporting burden on fishermen yet meets management's need for information on the fishery.

Former paragraphs (f) and (g) are redesignated (h) and (i) and are revised to include headboats. The commercial vessel, charter vessel, and headboat annual inventory report is revised to exclude owners and operators who are selected to report on a monthly basis.

Figures 2 and 3 have been redesignated 3 and 4 to accommodate a new Figure 2, Statistical Grids for Reporting Harvest of Reef Fish. Sections 641.22 and 641.24 have been amended accordingly.

Classification

The Assistant Administrator for Fisheries, NOAA, has previously determined that the FMP, the final portion of which is implemented, in part, by this rule, is consistent with the national standards and other provisions of the Magnuson Act and other applicable law (49 FR 39553, October 9, 1984). He has also determined, based on the supplemental regulatory impact review (SRIR), that this rule is not major under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule does not have a significant economic impact on a substantial number of small entities because the rule primarily makes mandatory already existing data collection systems and only limited additional economic impacts will be experienced. The impacts, which will be in the form of burden hours in responding to reporting questions or forms to NMFS statistical agents, are summarized in the SRIR.

This rule contains several collection of information requirements subject to the Paperwork Reduction Act. The collection of this information, except for the items held in reserve and the headboat reporting requirements of § 641.5(g), has been approved by OMB under control numbers 0648–0013 and 0648–0016. When mandatory reporting under the reserved data collection elements is required, additional requests will be submitted to OMB. When the requirements of § 641.5(g) are approved, a notice will be published in the **Federal Register** making this section effective.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects

50 CFR Part 604

Reporting and recordkeeping requirements.

50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 16, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 604 and 641 are amended as follows:

PART 604—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 604 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. The table in paragraph (b) of § 604.1 is amended by adding the following entries in numerical order by section number:

§ 604.1 OMB control numbers assigned under the Paperwork Reduction Act.

* * * * *

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin 0648–)
* * * * *	
§ 641.5(b)	0016
§ 641.5 (c) and (d)	0013
§ 641.5(g)	
§ 641.5(h)	0013
* * * * *	

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

3. The authority citation for Part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 641.2, the definition for *Headboat* is revised and new definitions for *Center Director, Charter vessel,* and *Statistical area* are added in alphabetical order to read as follows:

§ 641.2 Definitions.

* * * * *

Center Director means the Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–4200, or his designee. The Center Director may designate a State official or agency to collect fishery data.

Charter vessel means any fishing vessel that carries six or fewer passengers that fishes for a fee.

* * * * *

Headboat means any fishing vessel that carries seven or more passengers that fishes for a fee.

* * * * *

Statistical area means one or more of the 21 statistical grids depicted in Figure 2.

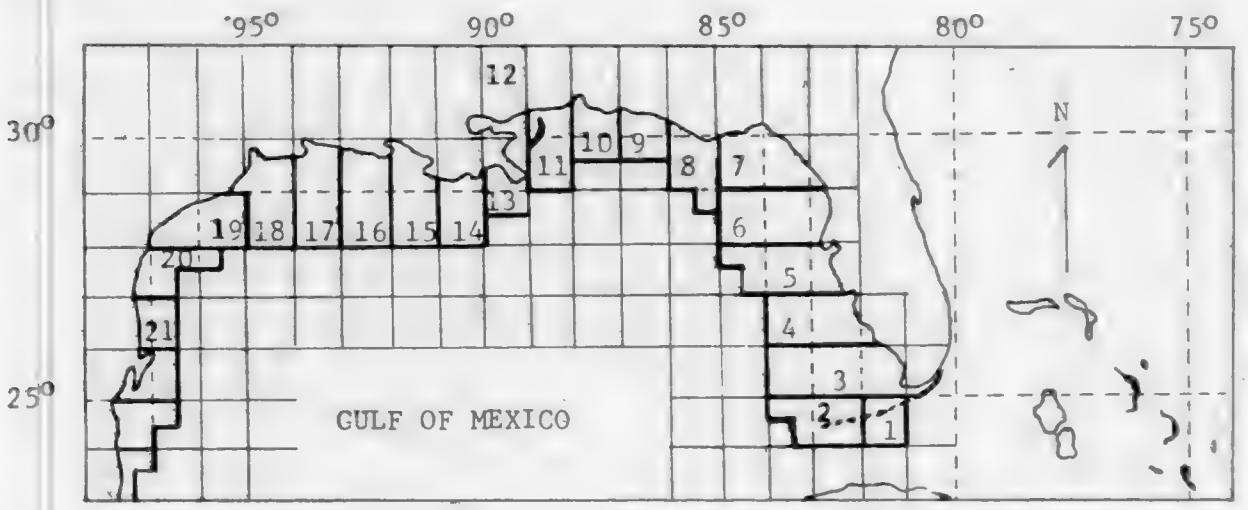

Figure 2. Statistical Grids for Reporting Harvest of Reef Fish.

* * * * *

5. Section 641.5 is amended by revising the heading and adding text to read as follows:

§ 641.5 Reporting requirements.

(a) A person specified in paragraphs (b) through (i) of this section must submit the information required by those paragraphs to the Center Director except for data elements reported to a State agency acting as the Center Director's designee. Failure to comply with the reporting requirements of the State of landing is a Federal violation.

(b) *Persons fishing fish traps.* The owner or operator of a fishing vessel or any other person permitted under § 641.4 who fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and has used fish traps to harvest such reef fish, must provide the following information regarding all fishing trips to the Center Director or his designee. This information must be submitted within 7 days of completion of each trip:

(1) Permit number as provided for in § 641.4;

(2) Pounds of catch of reef fish by species;

(3) Date of trip, depth fished, and fishing location by statistical area;

(4) Number of trap hauls resulting in the catch;

(5) Duration (days and hours) traps were fished before each haul;

(6) Mesh size of traps;

(7) Other gear fished on trip; and

(8) Total catch in pounds by other gear.

(c) *Commercial vessel owners and operators not fishing fish traps.* Any person who owns or operates a fishing vessel that fishes for or lands any reef fish or parts thereof taken in the Gulf of Mexico EEZ or in adjoining State waters by any gear (other than fish traps) for sale, trade, or barter, and who is selected to report, must provide the following information regarding any fishing trip to the Center Director or his designee, on forms provided:

(1) Name and official number of vessel;

(2) Date(s) of trip and fishing location(s) by statistical area(s);

(3) Pounds of catch of any reef fish by species;

(4) Type and quantity of gear fished;

(5) Duration (days and hours) of vessel fishing effort; and

(6) Duration (hours) gear was fished before each haul.

(d) *Dealers and processors.* Any person who receives reef fish or parts

thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof, from the Gulf of Mexico EEZ or from adjoining State waters, and who is selected to report, must provide the following information to the Center Director or his designee at monthly intervals, or more frequently if requested, on forms provided:

(1) Name and address;

(2) Total poundage of each species received during that month, or other requested interval;

(3) Average monthly price paid for each species by market size; and

(4) Proportion of total poundage landed by each gear type.

(e) *Recreational fishermen interviews.* [Reserved]

(f) *Charter vessel owners and operators.* [Reserved]

(g) *Headboat owners and operators.* Any person who owns or operates a headboat that fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a fishing record for each trip, or a portion of such trips as specified by the Center Director, on forms provided by the Center Director or his designee and must report the following information at least quarterly. If convenient, individuals can report more frequently.

(1) Name and official number of vessel;

(2) Date(s) and location of each trip and duration of fishing (hours).

(3) Number of fishermen on each trip;

(4) Number of fish caught and approximate weight by species; and

(5) Any other fishery management data requested by the Center Director.

(h) *Commercial vessel, charter vessel and headboat inventory.* Any person described under paragraphs (e), (f), and (g) of this section, and who was not selected to report on a monthly basis, must provide the following information when interviewed annually by the Center Director or his designee:

(1) Name and official number of vessel;

(2) Length and tonnage;

(3) Current home port;

(4) Fishing areas by statistical area;

(5) Ports where fish were landed during the last year;

(6) Type and quantity of gear; and

(7) Number of full- and part-time fishermen or crew members.

(i) Any owner or operator of a commercial or charter vessel or headboat, and any dealer or processor may be required upon request to make reef fish or parts thereof available for inspection by the Center Director or his designee for the collection of additional information or for inspection by an authorized officer.

8. In § 641.7, Paragraphs (a) through (q) are redesignated as (a)(1) through (a)(17); the introductory text to the section is designated as paragraph (a) and revised; in newly redesignated paragraph (a)(14) the reference to "(m)" is removed and "(a)(13)" is added in its place; a new paragraph (a)(18) is added; and paragraph (r) is redesignated as paragraph (b) and revised to read as follows:

§ 641.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

* * * * *

(18) Falsify or fail to report or provide information required to be submitted or reported or fail to make fish available for inspection, as required by § 641.5.

(b) It is unlawful to violate any other provisions of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 641.22 [Amended]

7. In § 641.22, the reference to "Figure 2" is removed and "Figure 3" is added in its place.

8. Figure 2 is redesignated as Figure 3.

§ 641.24 [Amended]

9. In § 641.24(b)(4)(iv), the reference to "Figure 3" is removed and "Figure 4" is added in its place.

10. Figure 3 is redesignated as Figure 4.

[FR Doc. 87-21745 Filed 9-22-87; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 70605-7141]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of bag limit reduction.

SUMMARY: The Secretary of Commerce (Secretary) issues this notice to reduce the bag limit to zero for the recreational fishery for Spanish mackerel from the Atlantic migratory group in the Exclusive Economic Zone (EEZ). Based upon current catch statistics, the Acting Regional Director, Southeast Region, NMFS, has determined that the recreational allocation of 0.74 million pounds has been reached. This action is necessary to protect the Spanish mackerel resource and reduce fishing mortality in the EEZ for the remainder of the fishing year.

EFFECTIVE DATE: Closure is effective at 0001 hours local time September 19, 1987, through 2400 hours local time March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Resources of the Gulf of Mexico and the South Atlantic (FMP) was developed by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and was implemented by regulations appearing at 50 CFR Part 642. Amendment 2 to the FMP which established separate allocations for the Gulf and Atlantic migratory groups of Spanish mackerel, went into effect on June 30, 1987 (52 FR 23836, June 25, 1987).

By notice action, the Councils set the catch limit for the Atlantic migratory group of Spanish mackerel for the current fishing year (April 1, 1987 through March 31, 1988) at 3.1 million pounds; 0.74 million pounds for the recreational sector and 2.36 million pounds for the commercial sector (52 FR 21977 June 10, 1987). The management area for the Atlantic migratory group extends from the Virginia/North Carolina border southward to the Dade/Monroe County, Florida boundary (25°25.4'N. Latitude) to the outer limits of the EEZ.

The management area is further divided into northern and southern areas with bag limits of 10 fish per person per trip for the northern area and four fish per person per trip for the southern area for persons fishing from charterboats and private recreational boats. The dividing line for northern and southern areas extends eastward from the Georgia/Florida boundary (30°42'45.6"N. Latitude).

The Acting Regional Director has determined, based on current catch statistics, that the recreational allocation of the Atlantic migratory group of Spanish mackerel has been reached. The Secretary is required under § 642.22(b) to reduce the bag limit to zero for the recreational fishery for Spanish mackerel when its annual allocation or quota has been taken, by publishing a notice in the **Federal Register**. Hence, the recreational bag limit for Spanish mackerel from the Atlantic migratory group is reduced to zero at 0001 hours local time September 19, 1987. This action will be effective through March 31, 1988, the end of the

current fishing year for the Atlantic migratory group of Spanish mackerel.

Classification

The continued health of stocks of Spanish mackerel could be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under 50 CFR 642.22, and complies with the procedures of Executive Order 12291.

Authority: 16 U.S.C. 1801 et seq.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: September 18, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-21921 Filed 9-18-87; 3:34 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 61220-7033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the shares of the sablefish target quotas (TQs) allocated to hook-and-line gear in the Southeast Outside/East Yakutat and West Yakutat Districts in the Eastern Regulatory Area of the Gulf of Alaska have not yet been harvested. The Secretary of Commerce (Secretary), therefore, is modifying the prior closure notices, reference below, by promulgating reopenings and new closure dates for the two districts. This action is necessary to fully harvest the shares of sablefish allocated to hook-and-line gear in these two districts. It is intended as a management response that makes best use of fishery resources in the Gulf of Alaska.

DATES: This notice is effective from 12:00 noon September 21, 1987, Alaska Daylight Time (ADT), until 12:00 noon September 23, 1987 for the Southeast Outside/East Yakutat District and until 12:00 noon September 25, 1987, for the West Yakutat District.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The hook-and-line fishing season for sablefish in the Southeast Outside/East Yakutat and West Yakutat Districts of the Gulf of Alaska started on April 1, 1987. NMFS closed these districts on April 9 (52 FR 11991, April 14, 1987) and April 15 (52 FR 12916, April 20, 1987), respectively, based on inseason predictions that the TQs had been harvested.

The Alaska Department of Fish and Game (ADF&G) has completed its editing of fish tickets received from the fishery. Upon reviewing the ADF&G results, the Regional Director concluded that 791 mt of sablefish in the Southeast Outside/East Yakutat District and 1,090 mt of sablefish in the West Yakutat District remain unharvested from shares of the TQs allocated to hook-and-line gear in these two respective districts. The North Pacific Fishery Management Council (Council) reviewed the results of the 1987 Gulf of Alaska sablefish hook-and-line fishery during a September 1-2, 1987, meeting. It confirmed its policy that the shares of the sablefish TQs allocated to hook-and-line gear in each district and regulatory area should be fully harvested by that gear type. Therefore, the Council recommended, that the Secretary modify his closure notice for these two districts to allow full harvest of the TQ share allocated to hook-and-line gear.

The Secretary has reviewed the results of the fishery and concurs with the Council's recommendation. Based on estimates of fishing effort expected during the openings and catches per unit of effort, 791 mt will be harvested in two days in the Southeast Outside/East Yakutat District, and 1,090 mt will be harvested in four days in the West Yakutat District. Therefore, under § 672.22(b)(4)(ii), the Secretary is modifying the original closure notices by changing the closure date in the Southeast Outside/East Yakutat District from April 9, 1987 to September 23, 1987, and by changing the closure date in the West Yakutat District from April 15, 1987 to September 25, 1987. This notice will be effective at 12:00 noon (Alaska Daylight Time) on September 21, 1987. Thus, the Southeast/East Yakutat District will be open for forty-eight hours (two days), starting at 12:00 noon, September 21 and closing at 12:00 noon, September 23, 1987. The West Yakutat District will be open for 96 hours (four days), starting at 12:00 noon, September 21 and closing at 12:00 noon, September 25, 1987.

Classification

This action is taken under § 672.22 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: September 17, 1987.

James E. Douglas, Jr.

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-21920 Filed 9-18-87; 3:35 pm]

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Proposed Rules

Federal Register
Vol. 52, No. 184
Wednesday, September 23, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1260 and 1261

Freedom of Information Reform Act of 1986; Implementation of Uniform Fee Schedule

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Proposed rules.

SUMMARY: The Office of the Special Counsel proposes these rules under the authority of sections 1803 and 1804(b)(1) of Pub. L. 99–570, 100 Stat. 5101, 5102, 5103 (October 27, 1986), to implement the fee schedule provisions of the Freedom of Information Reform Act of 1986, consistent with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (March 27, 1987). In addition, the Office of the Special Counsel proposes to amend its Freedom of Information Act and Privacy Act regulations to reflect a zip code change.

DATE: Written comments on these proposed rules may be submitted by any person. Comments received by October 20, 1987 will be considered.

ADDRESS: Comments should be directed to Henry Darnell Lewis, Office of the Special Counsel, Merit Systems Protection Board, 1120 Vermont Avenue NW., Suite 1100, Washington, DC 20005. Comments received will be available for public inspection at the above address between the hours 9:00 a.m. and 4:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, (202) or FTS 653–8982.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Federal Regulation

The Special Counsel has determined that these are not major rules as defined in section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the Office of the Special Counsel is not required to prepare an initial or final regulatory analysis of these regulations pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603–604, because these regulations will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects

5 CFR Part 1260

Freedom of Information.

5 CFR Part 1261

Privacy Act.

Mary F. Wieseman,
Special Counsel.

It is proposed to amend 5 CFR Parts 1260 and 1261, as follows:

PART 1260—[AMENDED]

1. The authority citation for Part 1260 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1260.1 is revised to read as follows:

§ 1260.1 Public list.

A public list of certain noncriminal whistleblower allegations and Special Counsel findings of violations of law, rule, or regulation, together with reports and certifications by heads of agencies, pursuant to 5 U.S.C. 1206(b)(3) and (c), is available to the public between 8:30 a.m. and 5:00 p.m. weekdays (except legal holidays) in the Office of the Special Counsel, 1120 Vermont Avenue, NW., Washington, DC 20005.

3. Section 1260.4 is revised to read as follows:

§ 1260.4 Service charge for information.

(a) *Categories of requesters.* There are four categories of requesters:

(1) Commercial use requesters. These requesters seek information for themselves or on behalf of someone else for a use or purpose that furthers commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. A requester will not be presumed to be a "commercial use requester" merely by submitting a request on corporate letter head without further explanation of the use to which he plans to put the requested information. Similarly, a request submitted on the letterhead of a nonprofit organization without further explanation will not be presumed to be for a noncommercial purpose. The Office of the Special Counsel will seek clarification from the requester where there is a reasonable doubt as to the intended use of the information.

(2) Educational and noncommercial scientific institution requesters.

(i) An "educational institution" requester is associated with a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of vocational or professional education, that operates a program or programs of scholarly research, and seeks the information for a scholarly or scientific research goal of the institution, rather than for an individual goal.

(ii) A "noncommercial scientific institution" requester is associated with an institution that is not operated on a "commercial" basis (as that term is defined by paragraph (a)(1) of this section), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(3) News media requesters. These requesters actively gather news for entities that are organized and operated to publish or broadcast news to the public. Freelance journalists may be news media requesters if they can demonstrate a solid basis for expecting publication through a news organization (such as by producing a publication contract or citing their past publication records), even though not actually employed by it. "News" means information about current events or information that would be of current interest to the public. News media "entities" include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

(4) All other requesters.

(b) *Free search time and partially free copying.* Educational and noncommercial scientific institution requesters and news media requesters who are requesting records for

noncommercial use are entitled to free search time and free copying for the first 100 pages.

(c) *Partially free search time and partially free copying.* Requesters who are not commercial use requesters, educational or noncommercial scientific institution requesters, or news media requesters are "all other requester", and are entitled to two hours of free search time and free copying for the first 100 pages. Requests from record subjects for records about themselves filed in a system of records will continue to be treated under the fee provisions of the Privacy Act, which permits the assessment of fees only for copying.

(d) *Waiver or reduction of fees.* (1) The Associate Special Counsel for Investigation, the Assistant Special Counsel for Prosecution, the Associate Special Counsel for Prosecution, the Deputy Special Counsel, and the Special Counsel may authorize waiver or reduction of fees that could otherwise be assessed if disclosure of the information requested:

(i) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and

(ii) Is not primarily in the commercial interest of the requester.

(2) Satisfaction of paragraph (d)(1)(i) of this section will be determined by all of the following:

(i) Whether the subject of the requested records concerns "the operations or activities of the Government." The requested records concern identifiable operations or activities of the Government, and the connection between the records and the operations or activities is direct and clear, not remote or attenuated;

(ii) Whether disclosure is "likely to contribute" to an understanding of Government operations or activities. An analysis of the substantive content of the releasable portions of the requested records reveals meaningfully informative information on the operations or activities of the Government that is not already in the public domain in duplicative or substantially identical form;

(iii) Whether disclosure will contribute to "public understanding." Considering the identify of the requester and his qualifications to make use of the information, disclosure will contribute to the understanding of the public at large, and not to the individual understanding of the requester or a narrow segment of interested persons; and

(iv) Whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. By an objective standard, the disclosure is likely to enhance the general public's understanding of the subject matter in question more than minimally.

(3) Satisfaction of paragraph (d)(1)(ii) of this section will be determined by both of the following:

(i) Whether the requester has a commercial interest to be furthered by the disclosure. The requester does not seek to further a commercial, trade, or profit interest, as those terms are commonly understood; and

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, compared to the public interest in disclosure, that disclosure is "a primarily in the commercial interest of the requester." If the requester has a commercial interest, that interest is not greater than the public interest to be served by disclosure of the requested records.

(e) *Fees to be charged.* (1) Requests for records are subject to the following fees:

(i) Commercial use requesters. For search, review, and copying: Photocopies per page, $0.25. Manual record search, $2.50 per quarter hour if conducted by a clerical employee; $5.00 per quarter hour if conducted by a professional or managerial employee. Search fees may be assessed even if the records in question are not located or if the records located are determined to be exempt from disclosure.

(ii) Educational and noncommercial scientific institution requesters, news media requesters. For copying only: Photocopies per page, $0.25, excluding the first 100 pages.

(iii) All other requesters. For search and copying only: Photocopies per page (excluding the first 100 pages), $0.25. Manual record search (excluding the first two hours), $2.50 per quarter hour if conducted by a clerical employee; $5.00 per quarter hour if conducted by a professional or managerial employee.

(2) Method of search.

(i) Any "search", which includes all time spent looking for material that is responsive to a request, will be done in the most efficient and least expensive manner in order to minimize costs for both the agency and the requester.

(ii) For searches made by computer, costs will be assessed when the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent equals the equivalent dollar amount of two hours of salary of the person performing the search.

(3) Review charges. Only commercial use requesters will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. These charges will be assessed only for initial review (i.e., the review undertaken when first analyzing the applicability of a specific exemption to a particular record or portion of record), and not for review at the administrative appeal level of an exemption already applied. However, charges will be assessed for a second review of records or portions of records withheld in full under an exemption which is subsequently determined not to apply in order to determine the applicability of other exemptions not previously considered. Review charges shall not include costs incurred in resolving issues of law or policy that may be raised in the course of processing a request.

(4) Copying. A "page" of copying refers to a paper copy of standard size, normally 8½" x 11" or 11" x 14". However, copies may also take the form of microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(5) Nonassessment of fees. No fees will be assessed to any requester, including commercial use requesters, if the cost of routine collection and processing of the fee would be equal to or greater than the fee itself. To make this determination, the Office will consider the administrative costs of receiving and recording a requester's remittance and processing the fee for deposit.

(f) *Other charges.* Complying with requests for special services, such as certification of records as true copies and sending records by special methods (e.g., express mail) is entirely at the discretion of the Office. Since neither the Freedom of Information Act nor its fee structure covers these kinds of services, the Office will assess fees to recover the full costs of providing these services should the Office elect to provide them.

(g) *Aggregating requests.* If the Office of Special Counsel reasonably believes that a requester or a group of requesters acting in concert is filing a series of requests for the purpose of evading the assessment of fees, the Office may aggregate the requests and assess fees accordingly. One element to be considered in determining reasonable belief is the time period within which the requests are filed. Multiple requests of this type filed within a 30 day period may be presumed to have bee made to avoid fees. In no case will the Office aggregate requests on unrelated subjects from one requester.

(h) *Advance notice of fees.* If it is likely that fees will exceed $25, the requester will first be notified of the

estimated amount, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The notice will offer the requester the opportunity to confer with personnel of the Office of the Special Counsel with the object of reformulating the request to meet his or her needs at a lower cost.

(i) *Payments.* Payment of fees shall be made by check or money order payable to the United States Treasury.

(j) *Advance payments.* A requester is not required to make an advance payment unless:

(1) The Office estimates or determines that the requester may be required to pay fees in excess of $250, in which case the requester will be notified of the estimated cost. The requester must then furnish satisfactory assurance of full payment if the requester has a history of prompt payment of Freedom of Information Act fees. If the requester has no history of payment, then the requester may be required to furnish an advance payment up to the full estimated cost; or

(2) The requester has previously failed to pay a fee assessed in a timely fashion (i.e. within 30 days of the date of billing), in which case the requester may be required to—

(i) Pay the full amount owed plus any applicable interest as provided in paragraph (l) of this section, or prove payment of the alleged amount in arrears, and

(ii) Make an advance payment of the full amount of the estimated cost before a new or pending request will be processed.

(k) *Effect of nonpayment.* When the Office acts under either paragraph (j)(2)(i) or (j)(2)(ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act will begin only after the fee payments described above have been received.

(l) *Interest charges.* Interest may be charged to any requester who fails to pay fees assessed within 30 days of the date of billing. Interest will be assessed on the 31st day following the day on which the bill for fees was sent, and will be calculated at the rate prescribed in 31 U.S.C. 3717. Receipt of fees, even if not processed, will stay the accrual of interest.

(m) *Collections.* If the Office deems it appropriate in order to encourage repayment of fees assessed in accordance with these regulations, the Office will use the procedures authorized by the Debt Collection Act of 1982 (Pub. L. No. 97–365), including disclosure to consumer reporting agencies and use of collection agencies.

4. Section 1260.5 is revised to read as follows:

§ 1260.5 Appeals.

Any denial, in whole or in part, of a request for records of the Office of the Special Counsel shall advise the requester of his right to appeal the denial to the Special Counsel or his designee. The requester shall submit his appeal in writing within 30 days of the denial. The appeal shall be addressed to the Special Counsel at 1120 Vermont Avenue NW., Washington, DC 20005. Except in unusual circumstances the Special Counsel or his designee shall make a determination on the appeal within 20 working days after it is received. When a request is denied on appeal, the requester shall be advised of his right to seek judicial review.

PART 1261—[AMENDED]

5. The authority citation for Part 1261 continues to read as follows:

Authority: 5 U.S.C. 552a.

6. Paragraph (a) of § 1261.2 is revised to read as follows:

§ 1261.2 Access to records and identification.

(a) Individuals may request access to records pertaining to them that are maintained as described in § 1261.1 by addressing an inquiry to the Office of the Special Counsel either by mail or by appearing in person at the offices of the Special Counsel at 1120 Vermont Avenue NW., Washington, DC 20005, during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Privacy Act Request". Requests for copies of records shall be subject to duplication fees set forth in § 1260.4 of this subchapter.

* * * * *

[FR Doc. 87–21601 Filed 9–22–87; 8:45 am]
BILLING CODE 7400–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Extension of deadline for consideration, adoption, and publication of final rule.

SUMMARY: This notice serves to extend the period of time which the FDIC may use under its internal policy statement for the consideration, adoption, and publication of the FDIC's final rule on participation by insured banks in real estate development and insurance underwriting activities.

DATE: The deadline for final agency action on the proposed rule is extended to October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898–3730, Ken A. Quincy, Chief, Applications Section, Division of Bank Supervision, (202) 898–6753, or Daniel M. Gautsch, Examination Specialist, Planning and Program Development Branch, Division of Bank Supervision, (202) 898–6912, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC's Statement of Policy on Development and Review of Rules and Regulations (44 FR 31007 (1979)) states that it is the intention of the FDIC formally to withdraw any proposed regulation on which final action by the Board of Directors has not been taken within nine months from the date the regulation was last published for comment. The FDIC published on June 7, 1985, a proposed amendment to Part 332 of FDIC's regulations governing "Powers Inconsistent with the Purposes of Federal Deposit Insurance Law." (50 FR 23964 (June 7, 1985)). The proposed amendment would, among other things, prohibit insured banks, subject to certain exceptions, from directly engaging in real estate development and insurance underwriting activities and establish certain restrictions on the indirect conduct of such activities.

Pursuant to the FDIC's policy, final action on this proposed regulation should have been taken on March 7, 1986, in order to avoid withdrawal of the proposed rule. Inasmuch as FDIC staff was actively reviewing the June 7, 1985, proposal in the spring of 1986 and due to the then-recent appointments of two members of the FDIC's three member Board of Directors, the Board of Directors determined that additional time was necessary for the staff to complete its review and for the Board of Directors to familiarize itself with the subject matter dealt with by the proposal. As withdrawing the proposal and initiating the rulemaking process anew would have caused unnecessary delay, the Board of Directors determined to extend the deadline for final agency action on the proposed regulation to September 8, 1986. (51 FR 7077 (Feb. 28, 1986)). The Board extended the due date a second time to March 15, 1987 (51 FR 32336 (September 11, 1986)) in order for the FDIC and the Board of Governors of

the Federal Reserve System to attempt to coordinate the final action taken in this rulemaking with any final action taken by the Board of Governors in connection with its solicitation of public comment on real estate activities of bank holding companies and their subsidiaries. (*See* 50 FR 4519 (1985) (solicitation of public comments)). Since that time, the Board of Governors, published a proposed rule on the "Permissibility of Real Estate Investment Activities for Bank Holding Companies and Their Direct and Indirect Subsidiaries" with a public comment due date of February 23, 1987. (52 FR 543 (Jan. 7, 1987)). That comment date was subsequently extended to March 25, 1987. (52 FR 4629 (Feb. 13, 1987)). As additional time was required for FDIC staff to study the Federal Reserve Board's proposal, the comments received in response thereto, and the direction taken by the Board of Governors in response to those comments and the efforts at coordinating final action between the two agencies were still continuing, the Board of Directors determined to extend the deadline for final action on the proposed regulation until September 15, 1987. (52 FR 7442 (March 11, 1987)). As staff efforts to coordinate final action had not produced a uniform regulation by September 15, and the Board of Directors continues to be interested in coming to an agreement with the Federal Reserve Board with respect to this issue, the Board of Directors has determined to extend the deadline for final action until October 30, 1987.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of September, 1987.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-21948 Filed 9-22-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-112-AD]

Airworthiness Directives; British Aerospace Model H.S. 748

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain British Aerospace Model H.S. 748 airplanes, which would require initial and repetitive inspections for fatigue cracks of the hydraulic accumulators and for proper function. This proposal is prompted by reports of hydraulic accumulators cracking in service. This condition, if not corrected, could lead to structural damage to the airplane.

DATES: Comments must be received no later than October 23, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Docket No. 87-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98618. The applicable service information may be obtained from British Aerospace Group, Weybridge Division Greengate, Middleton, Manchester M24 1SA, England; and Dunlop Limited, Aviation Division, Dunlop House, Ryder Street, St. James', London, SW1Y.6PX, England. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Weston Slifer, Systems and Equipment Branch, ANM-130S, telephone (206) 431-1945. Mailing address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model H.S. 748 series airplanes.

There have been reports of the hydraulic accumulator failing due to fatigue cracking in several locations of the accumulator body. This condition, if not corrected, could lead to structural damage to the aircraft.

British Aerospace has issued H.S. 748 Service Bulletin No. 29/42, dated February 10, 1986, which describes inspections of the hydraulic accumulators in accordance with Dunlop Service Bulletin 29/175, dated February 4, 1986. The CAA has classified the British Aerospace service bulletin as mandatory.

The British Aerospace service bulletin also introduces maintenance schedule inspections that are necessary to ensure the continued integrity of the accumulator. This maintenance schedule calls for inspections of the hydraulic accumulators at intervals not to exceed 1,000 flight hours or 12 months, whichever occurs first. The inspection consists of a visual examination as well as a check of the system pressure in accordance with the maintenance manual. If, during the system pressure check, the accumulator pressure is less than 200 p.s.i., the accumulator must be inspected in accordance with the Dunlop service bulletin.

The Dunlop service bulletin specifies an initial and repetitive inspection within a certain time period, depending upon previous history. The repetitive inspections occur every 2,500 flight hours or two years, whichever occurs first, after the initial inspection. The inspection involves a non-destructive test (NDT) inspection of the accumulator bodies.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this same type design registered in the United States, an AD is proposed which would require initial and repetitive inspections, and repair, if necessary, in accordance with the service bulletins previously mentioned.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.25 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $100 a year. This figure applies to the visual and NDT inspections only.

For these reasons, the FAA has determined that this document: (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model H.S. 748 airplanes are operated by small entities and because of the minimal cost of compliance per airplane ($50). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and, 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace (BAe): Applies to all Model H.S. 748 series airplanes, premodification 7205, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage to the aircraft due to fatigue cracking of the hydraulic accumulators, accomplish the following:

A. Within 300 hours time in service after the effective date of this AD, conduct the inspections of the hydraulic brake accumulator, as specified in Paragraph 2.B(1) of BAe H.S. 748 Service Bulletin 29/42, dated February 10, 1986. Any discrepancies detected must be corrected prior to further flight.

B. Within 1,000 hours time in service or one year after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 1,000 hours time in service or one year, whichever occurs first, conduct the inspections of the hydraulic brake accumulator as specified in Paragraph 2.B(2) of BAe H.S. 748 Service Bulletin 29/42, dated February 10, 1986. Any system defects found must be corrected prior to further flight.

C. Within 2,500 hours time in service, or two years after the effective date of this AD, whichever comes first, and thereafter at intervals not to exceed 2,500 hours time in service or two years, whichever occurs first, conduct the inspections of the hydraulic accumulator as specified in Dunlop Service Bulletin 29/175, dated February 4, 1986. Any units that do not meet the limits specified in the service bulletin must be replaced prior to further flight.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace Group, Weybridge Division Greengate, Middleton, Manchester M24 ISA, England; and Dunlop Limited, Aviation Division, Dunlop House, Ryder Street, St. James's, London SWIY.6PX, England. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way, Seattle, Washington.

Issued in Seattle, Washington, on September 8, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–21853 Filed 9–22–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–116–AD]

Airworthiness Directives; Short Brothers LTD Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to the Shôrt Brothers Model SD3–60 series airplanes, which currently requires an increase of the threshold temperatures from 4 °C to 10 °C for activation of the ice and rain protection systems. That action was prompted by reports of engine flameouts or uncommanded power reduction occurring in icing conditions. Since then, the manufacturer has determined that the incidents were caused by excessive water in the fuel, due to the configuration of the fuel low pressure (LP) booster pumps in the forward and aft fuel collector tanks. A modification has been developed which will improve the system's ability to continuously purge water from the collector tanks without degradation of engine performance. This action proposes to require installation of the modification and to eliminate the requirement for the higher threshold temperature for activation of the ice and rain protection system.

DATES: Comments must be received no later than October 23, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–116–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The applicable service information may be obtained from Short Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket 87-NM-116-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On January 29, 1985, Amendment 39-4992, AD 84-24-52, was published in the **Federal Register** (5O FR 3885) to make effective to all persons the requirements of telegraphic AD T84-24-52, issued to all known U.S. operators and owners of Short Brothers Model SD3-60 airplanes on December 7, 1984. The AD requires higher threshold temperatures for the use of ice protection systems due to reports of engine flameout or uncommanded power reductions on the Model SD3-60 airplanes. At that time, the cause of the incidents had not been identified.

The manufacturer has subsequently determined that the incidents were caused by water in the fuel, and has issued Service Bulletin SD360-28-17, dated November 1985, to provide instructions for modification to the fuel LP booster pump in the forward and aft fuel collector tanks. The modification consists of inverting the LP pump in the collector tank, which improves the system s ability to tolerate water ingested in the fuel by continuously purging water from the collector tanks without degradation to engine performance. The service bulletin also provides for daily fuel drain checks until the modifications to the fuel LP boost pumps are accomplished. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the fuel LP booster pumps in accordance with the service bulletin previously mentioned. Although the service bulletin calls for daily fuel drain checks until the modifications to the fuel LP boost pumps are accomplished, this notice does not propose to require the daily fuel drain check. Service experience indicates the higher threshold temperature for use of the ice protection systems has been a satisfactory action and periodic fuel drain checks are now included in the recommended maintenance program for the airplane.

It is estimated that 55 airplanes of U.S. registry would be affected by this AD, that it would take approximately 21 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $46,200.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($840). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 84-24-52, Amendment 39-4992 (50 FR 3885; January 29, 1985), to add a new paragraph C., as follows:

C. Within one year after the effective date of this amendment, modify the fuel low pressure (LP) booster pumps in accordance with Parts B and C of Short Brothers Service Bulletin SD350-28-17, dated November 1985. Accomplishment of these modifications constitute terminating action for the increased temperature threshold required by paragraph A., above.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Aircraft, 1725 Jefferson Davis Highway, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 8, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-21854 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-CE-27-AD]

Airworthiness Directives; SOCATA Models TB 20 and TB 21 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice propose to adopt a new Airworthiness Directive (AD), applicable to certain SOCATA Models TB 20 and TB 21 airplanes, which would require inspection of the main landing gear (MGL) hinge ball joints to detect looseness or interference of the MLG hinge strut with the landing gear box stiffener, and subsequent modification of the main landing gear boxes to prevent the landing gear from binding and being unable to extend. This action is the result of FAA evaluation of the manufacturer's service information and

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an airworthiness directive issued by the responsible foreign certification airworthiness authority. The proposed actions will preclude a single gear up landing, and resulting damage to the airplane and hazard to the occupants.

DATES: Comments must be received on or before December 22, 1987.

ADDRESSES: SOCATA TB Aircraft Service Bulletin (S/B) No. 30, dated December 1986, applicable to this AD, may be obtained from SOCATA Groupe AEROSPATIALE, B.P. 38, 65001 Tarbes, France; Telephone 62.51.73.00 or 62.93.99.45 (for recorder); or Mr. Bernard H. Veyssiere, Deputy Project Support Manager, U.S., Aerospatiale, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641–3614. This information may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87–CE–27–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, ACE–109, Aircraft Certification Division, 601 East 12th Street, Kansas City, Missouri 64106a; Telephone (816) 374–6932; or Mr. Roger Anderson, Aerospace Engineer, AEU–100, Aircraft Certification Office, Europe, Africa, and Middle East Office, c/o American Embassy, B–100, Brussels, Belgium; Telephone 513.38.30.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87–CE–27–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The manufacturer, SOCATA Groupe Aerospatiale, has reported the possibility of the landing gear on certain SOCATA Models TB 20 and 21 airplanes being unable to extend due to interference and binding of the mechanism. This condition, if not detected and corrected could result in a gear up landing with damage to the airplane and hazard to the occupants. As a result, SOCATA issued S/B No. 30, dated December 1986, which specifies inspection and modification of the main landing gear boxes. The Director General of Civil Aviation (DGAC), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in France, has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under French registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of S/B No. 30 dated December 1986, and the mandatory classification of this Service Bulletin by the DGAC, and the subsequent issuance of French AD 87–030(A), dated February 18, 1987. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 30 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require inspection of the main landing gear hinge ball joints for play and interference between the articulated strut and the main landing gear boxes, and modification of the landing gear as described in SOCATA TB S/B No. 30, dated December 1986.

The FAA has determined there are approximately 120 airplanes affected by the proposed AD. The cost of inspecting and modifying the landing gear and surrounding structure per the proposed AD is estimated to be $80 per airplane. Thge total cost is estimated to be $9,600 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Socata: Applies to Models TB 20 and TB 21 (serial numbers 275 through 709) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect interference between the movable portions of the landing gear structure that may prevent extension of the landing gear, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) visually and tactilely inspect the main landing gear hinge ball joints for play or interference marks between the articulated strut and the main landing gear box stiffeners as described in SOCATA TB Aircraft Service Bulletin (S/B) No. 30, dated, December 1986.

(1) If detectable play is observed in the hinge ball joints or interference marks are found on the articulated strut or landing gear stiffener box, before further flight modify the airplane as prescribed in SOCATA TB Aircraft S/B No. 30, dated December 1986.

(2) If no looseness or interference is found, within 100 hours TIS after the effective date of this AD, modify the airplane as prescribed in SOCATA TB Aircraft S/B No. 30, dated December 1986.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium; Telephone 513.38.30.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to SOCATA Groupe AEROSPATIALE, B.P. 38, 65001 Tarbes, France; Telephone 62.51.73.00 or 62.93.99.45 (for recorder); or Mr. Bernard H. Veyssiere, Deputy Product Support Manager, U.S., Aerospatiale, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; or may examine the documents) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas, City, Missouri 64106.

Issued in Kanasas City, Missouri, on September 8, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-21857 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 81-ASW-32]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Models SA 360C and SA 365 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires repetitive inspections of the tail rotor hub and fairings of Aerospatiale Models SA 360C and SA 365 series helicopters. Since the AD was issued, service bulletins have been revised to include a 150-hour interval dye penetrant inspection. Also, design changes have been approved that make further AD inspections unnecessary for those helicopters which incorporate the changes. This proposed amendment would add a dye penetrant inspection requirement, identify the approved changes or modifications for earlier aircraft, and omit further mandatory inspections of aircraft which incorporate the changes or modifications.

DATES: Comments must be received on or before October 24, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Department of Transportation, Federal Aviation Administration, Office of the Regional Counsel, Fort Worth, Texas 76193-0007, or delivered in duplicate to Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

Comments delivered must be marked: Docket No. 81-ASW-32.

Comments may be inspected at Room 158, Building 3B, between the hours of 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. These documents may be examined at the Office of the Regional Counsel, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO New York 09667, or James H. Major, Rotorcraft Standards Staff, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone number (817) 624-5117.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 81-ASW-32." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-4190 (46 FR 42254; August 20, 1981), AD 81-14-51, which currently requires daily visual checks and a 50-hour repetitive visual inspection of the tail rotor fairings and hub on Aerospatiale Models SA 360C and SA 365 series helicopters. After the issuance of AD 81-14-51, Aerospatiale Service Bulletin No. 05.03 was issued to include a dye penetrant inspection of the SA 365N tail rotor at intervals of 150 hours' time in service rather than a visual inspection at intervals of 50 hours' time in service. Service Bulletin No. 05.05, Revision 1, was also issued to add additional rotating fairings and a dye penetrant inspection of the tail rotor at intervals of 150 hours' time in service for Models SA 360C and SA 365C series helicopters.

Subsequently, tail rotor design changes have been approved which eliminate the necessity for further AD inspections whenever the tail rotor head with the dual hub body is installed. Models SA 360C and SA 365C Service Bulletin No. 65.17 and Model SA 365N Service Bulletin No. 64.04 concern installation procedures for the tail rotor head with the dual hub body and elimination of further mandatory repetitive inspections. Therefore, this notice proposes to revise AD 81-14-51 to coincide with those service bulletins. The proposed AD applicability statement would refer to the Models SA 360C, SA 365C, and SA 365N helicopters rather than SA 360C and SA 365 series helicopters. Proposed revisions to paragraphs (a) and (b) concerning the 50-hour repetitive inspection would exclude the Model SA 365N helicopters. A proposed new paragraph (h) would be added to require a dye penetrant inspection within 50 hours and thereafter at 150-hour intervals after the effective date of the amendment for the affected aircraft. A proposed new paragraph (i) would be added to identify the service bulletins and approved procedures and modifications for the tail rotor head with the dual hub body and exclude further AD inspections whenever the helicopter incorporates this tail rotor design. Listing the helicopter serial numbers in the AD

applicability statement or in this new paragraph would not be appropriate since the applicability statements in paragraph 1.D of both Service Bulletin Nos. 64.04 and 65.17 are not exclusive.

The FAA has determined that this proposed regulation involves 3 helicopter models of which approximately 25 are registered in the United States, and it adds repetitive inspection but allows use of modifications to relieve further inspections for these models. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39–4190 (46 FR 42254; August 20, 1981), AD 81–14–51, as follows:

A. By revising the applicability statement to read as follows:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to Models SA 360C, SA 365C, and SA 365N helicopters certificated in any category (Airworthiness Docket No. 81–ASW–32);

B. By revising paragraph (a) by inserting the words "Models SA 360C and SA 365C" between "for" and "helicopters";

C. By revising paragraph (b) by inserting the words "Model SA 360C and SA 365C" between "those" and "helicopters"; and

D. By adding new paragraphs (h) and (i) to read as follows:

* * * * *

(h) Within 50 hours' time in service after the effective date of this amendment and thereafter at intervals not to exceed 150 hours' time in service, inspect for cracks at the mating surfaces of the rotor hub and the external or outer fairing, after removing the fairing from the hub. Use a dye penetrant or equivalent inspection method.

(i) This AD does not apply to Model SA 365N helicopters that comply with Section 2, Accomplishment Instructions, Service Bulletin 64.04, approved November 28, 1985, and to Models SA 360C and SA 365C helicopters that comply with Section 2, Accomplishment Instructions, Service Bulletin 65.17, dated December 17, 1985, which concerns the tail rotor head with dual hub body.

Note: Models SA 365N, S/N 6215 and onward, may have the tail rotor head with dual hub body installed at the factory.

* * * * *

Issued in Fort Worth, Texas, on August 28, 1987.

L.B. Andriesen,

Acting Director, Southwest Region.

[FR Doc. 87–21855 Filed 9–22–87; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 7E3495/P428; FRL–3264–7]

Pesticide Tolerances for Methomyl

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide methomyl in or on the processed commodity dried hops. The proposed regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by E.I. du Pont de Nemours and Co.

DATE: Comments, identified by the document control number [FAP 7E3495/P428], must be received on or before October 23, 1987.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2386.

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Wilmington, DE 19898, has submitted food additive petition (FAP) 7E3495 to EPA proposing to amend 21 CFR Part 193 by establishing a tolerance for residues of the insecticide methomyl (*S*-methyl-*N*-[(methylcarbamoyl)oxy]thioacetimidate) in or on the processed commodity dried hops at 7.0 parts per million (ppm). This regulation would expire 26 months after the date of publication of the final rule in the **Federal Register** unless residue data for the use of methomyl on hops are submitted by March 23, 1989. The residue data must be reflective of the actual use of this chemical on hops. A processing study must be submitted which includes analysis of the raw agricultural commodity hops and its processed commodity dried hops.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year rat chronic feeding/oncogenicity study with a no-observed-effect level (NOEL) of 100 ppm; a 2-year mouse chronic feeding/oncogenicity study with a NOEL of 50 ppm (both the rat and mouse studies are negative for oncogenic effects); a 2-year dog feeding study with a NOEL of 100 ppm; a three-generation rat reproduction study with a reproductive NOEL of 100 ppm; a 90-day dog feeding study with a NOEL of 400 ppm; a rat teratology study with no teratogenic potential noted at 400 ppm (highest dose tested); a rabbit teratology study with no teratogenic potential at 16 mg/kg/day (highest dose tested); and a hen neurotoxicity study which was negative for neurotoxic effects at 28 mg/kg.

The acceptable daily intake (ADI) based on the 2-year dog feeding study (NOEL of 2.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60–KG human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0138 mg/day; the current action will increase the TMRC by .000053 mg/day (0.38 percent). Published tolerances utilize 55.34 percent of the ADI; the current action will utilize an additional 0.21 percent.

Methomyl is structurally similar to thiodicarb. Thiodicarb has been shown to have a minor animal metabolite, acetamide, which has been demonstrated to induce cancer in rats. When tolerances were granted for thiodicarb for cottonseed and soybeans, the Agency presented a detailed rationale in the **Federal Register** of July 3, 1985 (50 FR 27452), for issuance of these tolerances under the so-called "Sensitivity of Method" analysis because acetamide residues could be present in milk, meat, or eggs from animals or poultry that had consumed thiodicarb-treated feed, thus possibly implicating the "Delaney clause" in section 409(c)(3) of the Federal Food, Drug, and Cosmetic Act despite the low risk involved. The proposed food additive regulation for methomyl on dried hops does not raise issues under the Delaney clause because there is no reason to believe that the tolerance will result in the presence of acetamide in any human food or animal feed.

A final registration standard and tolerance assessment (FRSTR) on methomyl is scheduled for completion in 1988.

The only sufficient residue data concerns use on hops grown in Germany. These data are insufficient to characterize the levels of methomyl residues that would result from methomyl's use on domestically grown hops. To support such a use, additional residue data are needed on hops grown in the U.S. Until these requirements have been met, the Agency is not in a position to approve applications for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for methomyl's use on hops grown in the U.S.

The nature of the residues in plants is adequately understood. The residue of concern for the proposed use on hops is the parent compund, methomyl per se, and its oxime metabolit *S*-methyl-*N*-hydroxy thioacetimidate. A metabolism study in animals is currently underway, and the results will be addressed in the final registration standard scheduled for completion in 1988. An adequate analytical method, gas chromatography using a sulfur-sensitive photometric detector, is available for enforcement purposes. The enforcement methodology is available in the Food and Drug Administration (FDA) Pesticide Analytical Manual, Volume II.

Based on the above information, the Agency has concluded that the tolerance would protect the public health and that the use of methomyl on hops would be safe. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [FAP 7E3495/P428]. All written comments filed in response to this petition will be available in the Information Services Section at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 21 CFR Part 193

Administrative practice procedure,
Agricultural commodities,
Pesticides and pests,
Recording and recordkeeping requirements.

Dated: September 8, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore it is proposed that 21 CFR Part 193 be amended as follows:

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. By adding new § 193.475, to read as follows:

§ 193.475 Methomyl; tolerance with expiration date

A food additive tolerance of 7 parts per million is established until [date 26 months after date of publication of the final rule in the **Federal Register** for residues of the insecticide methomyl (*S*-methyl-*N*[(methylcarbomyl)oxy]thioacetimidate)in or on the processed commodity dried hops as a result of application to the growing hops.

[FR Doc. 87–21722 Filed 9–22–87; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

[Docket No. H–004I]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of change of dates for informal public hearing and close of comment period; classification of scope of rulemaking.

SUMMARY: On August 3, 1987 (52 FR 28727), the Occupational Safety and Health Administration (OSHA) published a notice inviting public comment and setting the date for an informal public hearing on the feasibility of meeting the permissible exposure limit (PEL) specified in the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work-practice controls in nine specified industry sectors. On August 27, 1987 (52 FR 32312), OSHA published a notice deferring the hearing from September 15, 1987 to September 29, and the close of the written comment period from September 2, 1987 to September 16, 1987. This notice further defers the hearing to November 3, 1987. It also defers the close of the written comment period to October 16, 1987. In

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addition, this notice clarifies that all industrial activities characteristic of the nine specified industry sectors are included in the scope of this rulemaking.

DATES: Written comments must be received by October 16, 1987. An informal public hearing will begin November 3, 1987. All notices of intention to appear at the public hearing and all written testimony and documentary evidence to be introduced into the hearing record must be received by October 16, 1987.

ADDRESSES: The hearing will start at 9 a.m., November 3, 1987 in the Auditorium, Frances Perkins Building, Department of Labor, Third and Constitution Avenue NW., Washington, DC. On subsequent days the hearing also will begin at 9 a.m. in the Auditorium of the Frances Perkins Building.

Comments, in quadruplicate, should be mailed or delivered to the Docket Office, Occupational Safety and Health Administration, Docket No. H–004I, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–7894.

Notices of Intention to Appear, in quadruplicate, should be mailed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8615.

All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION: On August 3, 1987 (52 FR 28727), the Occupational Safety and Health Administration (OSHA) gave notice of a limited reopening of the rulemaking record for the OSHA lead standard to receive specific information relating to the feasibility of meeting the permissible exposure limit (PEL) of the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work practice controls in the following nine industry sectors: Lead chromate pigments (SIC 2816), lead chemicals (SIC 2816/2819), nonferrous foundries (SIC 3362/3369), brass and bronze ingot production (SIC 3341/3362), secondary copper smelting (SIC 3341), battery breaking, when not part of secondary lead smelting (SIC 5093), leaded steel (SIC 3312/3313), shipbuilding and ship repair (SIC 3731) and stevedoring (SIC 4463). The August 3, 1987 notice set September 15, 1987 as the date to begin an informal public hearing on this issue and September 2, 1987 as the deadline for receipt of written comments and notices of intention to appear at the hearing.

OSHA's action was taken in accordance with a March 31, 1987 order by the U.S. Court of Appeals for the District of Columbia Circuit, granting the Agency's earlier request that the record be remanded to OSHA for further administrative proceedings to determine the feasibility of implementing paragraph (e)(1) of the lead standard in the nine industry sectors listed above. In that order, the court mandated that OSHA return the record to the court on or before October 1, 1987.

One June 17, 1987, OSHA filed with the court a motion requesting a 90-day extension of time, from October 1, 1987 to January 1, 1988, in which to return to the court the record of the nine remand industry sectors. That motion was granted by the court on July 31, 1987.

On August 18, 1987, OSHA received a request from the Oxide and Chemicals Committee of the Lead Industries Association, the main trade association for the lead industries, that the public hearing and deadline for receipt of written comments be deferred for at least 30 days, or in the alternative, that the deadline for receipt of written comments be extended beyond September 2, 1987.

In light of the July 31, 1987 court order granting OSHA additional time to make feasibility determinations concerning the nine industry sectors and to return the record to the court, OSHA decided to defer the public hearing and the deadline for receipt of written comments for two weeks (52 FR 32312; August 27, 1987).

Thereafter, on September 8, 1987, the American Cast Metals Association (ACMA) requested a further deferral of the hearing. According to ACMA, the additional time was needed because some important information upon which OSHA's contractor, Meridian Research, Inc., based its feasibility report was not available in the public docket soon enough for ACMA to evaluate it and to submit meaningful comments by the deadline. ACMA sought a further deferral of the hearing and the close of comments for approximately one or two months. ACMA's request for additional time was immediately supported by similar requests from the American Foundrymen's Society, the Association of Brass and Bronze Ingot Manufacturers, the American Iron and Steel Institute, and the Plumbing Manufacturers Institute.

Although OSHA remains under a court order to complete its feasibility determinations and to report its findings to the court by January 1, 1988, OSHA agrees that some further deferral of the hearing is justified in order to assure full and meaningful participation. Consequently, the public hearing is now scheduled to begin at 9 a.m., Tuesday, November 3, 1987 in the Auditorium of the Frances Perkins Building, U.S. Department of Labor. On subsequent days the hearing will be held at the same time and place. Written comments and notices of intention to appear at the hearing must be received by October 16, 1987. All other aspects of the rulemaking remain as indicated in OSHA's notice of August 3, 1987.

The scope of this rulemaking is defined by the nine designated industry sectors included in the March 31, 1987 court order remanding the record to OSHA for feasibility determinations. The SIC (Standard Industrial Classification) codes cited in the August 3, 1987 **Federal Register** notice (52 FR 28727) and thereafter for the nine industries are provided exclusively for general reference. The code(s) cited in connection with each industry sector may be broader (e.g., SIC 3341 includes not only secondary copper smelting but secondary lead smelting as well) or narrower (e.g., SIC 3362 and 3369 do not cover all nonferrous foundaries) than the scope of the industry sector for the purpose of this rulemaking. Thus, for example, the nonferrous foundries operated by manufacturers of plumbing products are within the scope of the nonferrous foundry industry and therefore with the scope of this rulemaking regardless of whether the manufacturers report under the cited SIC codes. It is the type of industrial activity performed at the establishment, not the employer's SIC code, that determines whether the establishment is covered by this rulemaking.

Authority: This document was prepared under the direction of John A. Pendergrass, Assistance Secretary of Labor for Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C 941).

Signed at Washington, DC, this 17th day of September 1987.

John A. Pendergrass,

Assistance Secretary of Labor

[FR Doc. 87-21961 Filed 9-22-87; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana; Proposed Regulatory Program Amendment; Coal Preparation Plants

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment package submitted by Indiana as a modification to the State's permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed changes to the Indiana Surface Mining Rules provisions to revise the sections pertaining to coal preparation plants so that they are no less effective than the Federal rules.

This notice sets forth the times and location that the Indiana program proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on October 23, 1987; if requested, a public hearing on the proposed amendments is scheduled for 1:00 p.m. on October 19, 1987; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. October 8, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; Telephone: (317) 269-2609. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendments, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, PA 15220.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204.

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, (317) 269-2609; (FTS) 331-2609.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of Interior.

Information pertinent to the general background, revisions, modifications, and amendments to the Indiana program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated August 13, 1987 (Administrative Record No. IND-0502), the Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12-1-3; 310 IAC 12-3-104; 310 IAC 12-3-104.1; 310 IAC 12-5-155; and 310 IAC 12-5-156. The proposed changes are briefly summarized below:

Amendment to 310 IAC Section 12-1-3 provides for: insertion and definition of the term "Coal preparation"; changing "Coal processing plant" to "Coal preparation plant" and modifying its definition; modifying the definition of "Surface coal mining operations"; an less significant typographical and style changes to other definitions.

Amendment to 310 IAC 12-3-104 modifies the rule so that it applies to coal preparation plants.

Amendment to 310 IAC 12-3-104.1 adds the requirement that existing coal preparation plants located outside the permit area of a specific mine shall not operate for more than 240 days beyond the effective date of the rule unless the operator applies for a permit within 60 days of the effective date of the rule.

Amendment to 310 IAC 12-5-155 changes "coal processing" to "coal preparation" and makes less significant style changes to the rule.

Amendment to 310 IAC 12-5-156 changes "coal processing" to "coal preparation"; deletes the signs and markers requirement reference to "coal processing waste disposal area and water treatment facilities"; adds references to other rules; and makes less significant style changes to the rule.

The full text of the proposed program amendments submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are no less effective that the Federal regulations. If approved, the amendments will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by IDNR satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on October 8, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 14, 1987.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87-21922 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Indiana; Proposed Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment package submitted by Indiana as a modification to the State's permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed changes to the Indiana Surface Mining Law provisions to require: (1) That the surety of a mine operator be recognized by the Treasurer of State as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on Federal bonds; (2) copies of records, reports, inspection materials, or other information obtained pursuant to the Division's inspection and enforcement responsibilities under Indiana Code 13-4.1-11 be made available to the public at a public library in the county in which the mining operation is located rather than at the county recorder's office; and (3) notices of violation are effective when served upon the permittee.

This notice sets forth the times and location that the Indiana program proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on October 23, 1987; if requested, a public hearing on the proposed amendments is scheduled for 1:00 p.m. on October 19, 1987; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. October 8, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capthart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; Telephone: (317) 269-2609. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendments, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5131 1100 "L" Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, PA 15220.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204.

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, (317) 269-2609; (FTS) 331-2609.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of Interior. Information pertinent to the general background, revisions, modifications, and amendments to the Indiana program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated August 13, 1987 (Administrative Record No. IND-0501), the Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at Indiana Code (IC) 13-4.1-6-4; 13-4.1-11-

3; and 13-4.1-11-4. The proposed changes are briefly summarized below:

Amendment to Indiana Code Section 13-4.1-6-4 requires that the surety of a mine operator be recognized by the Treasurer of State as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on Federal Bonds.

Amendment to Indiana Code Section 13-4.1-11-3 requires copies of any record, report, inspection material or other information obtained pursuant to the Division's inspection and enforcement responsibilities under Indiana Code 13-4.1-11 be made available at a public library in the county in which the mining operation is located rather than at the county recorder's office.

Amendment to Indiana Code Section 13-4.1-11-4 requires that notices of violation are effective when served upon the permittee, subject to an application for temporary relief.

The full text of the proposed program amendments submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17 OSMRE is now seeking comment on whether the amendments proposed by IDNR satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on October 8, 1987. If no one requests an opportunity to comment as a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE and exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 4, 1987.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87-21923 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 934

Reopening of Public Comment Period; Proposed Amendment VII; North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSMRE is reopening the period for review and public comment on an amendment submitted by the State of North Dakota to modify its permanent regulatory program. On April 14, 1987 (52 FR 12002), OSMRE announced a public comment period and procedures for requesting a public hearing on the proposed amendment to the North Dakota permanent program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consisted of modifications to North Dakota Administrative Code (NDAC) Article 69-05.2 on performance bonds and liability insurance, postmining land use, and signs and markers.

OSMRE is reopening the comment period to allow the public an opportunity to comment on additional material relating to the proposed amendment submitted August 24, 1987 by North Dakota in response to an issue letter from OSMRE July 27, 1987.

This notice sets forth the times and locations that the proposed amendment as modified is available for public inspection, the comment period during which interested perions may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information not received on or before 4:00 p.m. on October 8, 1987 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building,

100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

The public hearing, if requested, will be held at the North Dakota Capitol Building, Bismarck, North Dakota 58505.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776. Copies of the North Dakota program amendment, the North Dakota program, and the administrative record on the North Dakota program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 L Street NW., Room 5124, Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Dismarck, North Dakota 58505.

SUPPLEMENTARY INFORMATION:

I. Background

Information concerning the general background on the permanent program, general background on the State program approval process, general background on the North Dakota program submission, Secretary's findings, disposition of public comments and Secretary's decision of conditional approval can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 934.12 and 934.15.

II. Proposed Amendment

On February 17, 1987, the State of North Dakota submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consisted of revisions to the approved North Dakota regulations. The amended section of the regulations and brief description of the amended subject area is as follows: Section 69–05.2–12 performance bonds—liability insurance; section 69–05.2–13–04 performance standards—general requirements—signs and markers; and section 69–05.2–23 performance standards—postmining land use.

OSMRE is seeking comment on whether North Dakota's proposed revisions to its regulations are in accordance with SMCRA and no less effective than the requirements of the revised Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program and modifications submitted by North Dakota for OSMRE's consideration are available for public review at the addresses listed.

During review of this amendment, OSMRE identified several concerns. OSMRE notified North Dakota of these concerns by letter dated July 27, 1987.

By letter received August 24, 1987 North Dakota outlined its proposed remedies to meet OSMRE's concerns. The full text of this letter is available for review at the locations listed above under "**ADDRESSES.**" OSMRE is now seeking comment on the August 24, 1987 response from North Dakota.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 11, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–21924 Filed 9–22–87; 8.45 am]

BILLING CODE 4310–05–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–21, 201–23, 201–38, 201–39, and 201–41

The Use of Telecommunications by the Federal Government

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed final rule amends the Federal Information Resources Management Regulation (FIRMR) regarding the management and use of Government telecommunications systems and services by Government agencies. It revises telecommunications major change descriptions and agency information submission requirements to GSA. It identifies information that an agency must submit to GSA to obtain major telecommunications facilities or services. This proposed rule increases agency authority for the use of GSA's multiyear contracting authority for small telecommunications systems. Deregulation of the telecommunications industry and rapidly changing technology in the marketplace necessitate revision of GSA's policies and guidance. The intent of this regulation is to assist agencies in defining telecommunications requirements; to clarify GSA's responsibilities in meeting these requirements, including national security and emergency preparedness; and to provide, when appropriate for GSA to do so, common use telecommunications systems and services that meet Federal agency needs at the lowest overall cost to the Government.

DATE: Comments are due November 23, 1987.

ADDRESS: Comments should be submitted to the General Services Administration (KMP), Project 87–15, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John F. Stewart, Policy Branch, (KMPP), Information Resources Management Service, (202) 566–0834, or FTS 566–0834. The full text of the Project 87–15 proposed rule is available upon request, by telephoning (202) 566–0194 or FTS 566–0194.

SUPPLEMENTARY INFORMATION: (1) This proposed regulation will substantially change GSA's role in the management, review, and provision of telecommunications within the Federal Government. The changes reflect the current marketplace and the rapid change in the technology of telecommunications applications. In addition, the boundaries between local and intercity telecommunications service with distinctions between data and voice are fading. This regulation will make significant changes to FIRMR Parts 201–21, 201–23, 201–38, 201–39, and 201–41.

Part 201–21 will provide an overview of telecommunications policy and direction within the Government.

Part 201–23 will provide an expanded regulatory delegation of multiyear contracting authority for agency-managed small telecommunications systems.

Part 201–38 will serve as the primary FIRMR part covering policies for the management of agency telecommunications resources including required pre-procurement analyses. It will also cover telecommunications major changes requiring GSA approval and prescribe the information and procedures for submissions to GSA to obtain approval for agency systems and services.

Part 201–39 will be reserved for future use in an effort to improve the structure of the FIRMR.

Part 201–41 will be retitled to focus on FTS Governmentwide telecommunications systems and services. How to use GSA common use systems and how to request service directly from the GSA office providing the needed service is also covered.

(2) The General Services Administration (GSA) has determined that the proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Parts 201–21, 201–23, 201–38, 201–39, and 201–41

Government property management, Government procurement, Telecommunications, Information resource activities, Federal Telecommunications System.

Dated: May 8, 1987.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 87–21882 Filed 9–22–87; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 87–314; FCC 87–265]

Practice and Procedure, and Radio (and Television) Broadcast Services; Amendment of the Commission's Rules To Prevent Certain Abuses of the Commission's Processes

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Communications Act of 1934, as amended, Title 47 of the U.S. Code, and the Commission's Rules, Title 47 of the Code of Federal Regulations, establish various processes and procedures which are designed to enable public participation in the Commission's proceedings or to broaden the pool of applicants or options for the various services which the Commission authorizes. Two such processes are the petition to deny process in broadcast application proceedings, 47 CFR 73.3584, and the comment and counterproposal process in broadcast channel allocation proceedings, 47 CFR 1.420. Some individuals and groups are abusing these processes by using them not for the purposes for which they are intended, but instead to extract payments from parties who are participating in the Commission's proceedings in good faith. In order to prevent this abuse of process, the Commission proposes to amend these two rules so as to prohibit any agreement under the terms of which a petitioner to deny in an application proceeding (or a cross-filer in an allocation proceeding) would withdraw its petition (or counterproposal) in exchange for any consideration in excess of its actual expenditures legitimately and prudently made in the preparation and prosecution of its pleading. In addition, in connection with its consideration of abuses of the petition to deny process, the Commission proposes to review its policy of scrutinizing programming provisions in citizens agreements which are submitted as amendments to pending applications. Citizens agreements are not abusive in principle. The necessity for this review is created by a number of recent changes in the Commission's regulatory policy concerning broadcast programming oversight.

DATES: Comments must be filed on or before October 26, 1987, and reply comments on or before November 10, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark L. Solberg, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in MM Docket No. 87–314, adopted August 4, 1987, and released September 3, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The collection of information requirement contained in this proposed rule has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Summary of Notice of Proposed Rule Making

1. The petition to deny process described in section 309(d) of the Communications Act, as amended, 47 U.S.C. 309(d), and detailed in § 73.3584 of the Commission's Rules, 47 CFR 73.3584, is designed specifically for the purpose of enabling interested parties to provide factual information to the Commission concerning the fitness of applicants to be Commission licensees. Petitions to deny serve a vital purpose, because the Commission's duties and jurisdiction are so vast that it cannot monitor or oversee the qualifications or performance of every one of thousands of applicants and licensees. The potential for abuse of the petition to deny process arises out of its central importance in the Commission's licensing scheme and the inherent uncertainty of the application process. A petition to deny a license renewal application threatens the loss of most or all of the licensee's substantial investment. A related abuse involves petitions filed against assignment and transfer applications, where even brief delays may doom such transactions. In either situation, even if the petition to deny is ultimately rejected by the Commission, the applicant is subjected to considerable expense, effort and uncertainty in defending against it. Thus, some individuals or groups may not file petitions to deny for the proper purpose of bringing relevant information to the Commission's attention, but instead file to extract some financial or other improper consideration from the applicant. In many cases an applicant might find it simpler and less expensive to accede to a frivolous petitioner's demand for payment than to oppose the petition to deny.

2. In formulating a remedy for this abuse of the petition to deny process it is essential to bear in mind that the Commission encourages the resolution of disputes at the local level. Accordingly, any remedy intended to prevent abusive petitions must be fashioned so as to avoid deterring

legitimate petitioners from resolving their disputes with applicants at the local level and reaching agreements in good faith to withdraw their petitions. The Commission believes that this abuse of the petition to deny process would be deterred or prevented (without casting a chilling effect on the filing or withdrawal of legitimate, good faith petitions) by the rule proposed in this Notice of Proposed Rule Making (Notice), which would prohibit any petitioner and the applicant against whom the petitioner has filed from entering into any agreement under the terms of which the petitioner would withdraw its petition in exchange for any payment in excess of its actual expenditures legitimately and prudently made in the preparation and prosecution of the petition. The Commission notes that some withdrawal agreements have included provisions for future payments of "contributions" or "service payments" to the petitioner, or the establishment of "consulting contracts" under which substantial sums of money would be paid to the petitioner. Such payments obviously do not constitute reimbursement of actual expenditures legitimately and prudently made in the preparation or prosecution of a petition to deny, and the Notice states that such payments would be prohibited under the proposed rule.

3. The Commission is also concerned that some individuals or groups may use the *threat* of filing a petition to deny in order to extract financial consideration from an applicant. Such action should also be deemed an abuse of the Commission's processes. Accordingly, the Commission proposes to adopt a rule which would prohibit any individual or group from threatening to file a petition to deny unless given money or other consideration, or offering to refrain from filing a petition to deny in exchange for the payment of money by the applicant. Reimbursement of reasonable and prudent expenses incurred by an individual or group in the course of legitimate consultation or negotiation with the licensee or applicant would not be considered to be payment for refraining from filing a petition to deny within the meaning of the proposed rule.

4. A citizens agreement is a formal, written agreement between a citizens' group and a broadcast licensee or applicant, sometimes in the form of a contract, which addresses some aspect of station operations. Such agreements may be made in consideration for the withdrawal of petitions to deny, or may be reached during the license term. Citizens agreements are not abusive in principle. Subject to the nondelegable responsibilities imposed by the Communications Act, under which licensees must retain ultimate control over and responsibility for the operation of the station, licensees are free to enter into agreements or contracts that they wish. The Commission currently scrutinizes citizens agreements only when they are submitted to the Commission as amendments to pending applications or when specifically requested to do so, and then only to ensure that the licensee retains its nondelegable control and responsibility. The Commission rejects agreements which provide for excessive or improper delegation of control or authority. Provisions which do not involve excessive or improper delegations of control or authority are considered by the Commission to be representations to be evaluated and enforced as are other representations contained in applications. Thus, programming provisions in citizens agreements have been evaluated in accordance with the "promise versus performance" test which the Commission formerly applied to all programming representations contained in applications.

5. However, the Commission has gradually reduced the scope and detail of broadcast programming oversight. Detailed programming proposals are no longer required in construction permit, renewal or transfer applications, and the "promise versus performance" test used to determine whether such proposals had been fulfilled is no longer relevant. Since the Commission no longer deems it appropriate to enforce specific programming commitments through the initial license or renewal process through the "promise versus performance" test, it questions and seeks comment on whether it should continue to bind applicants to such agreements by applying that test. Further, the Commission believes that its general policies proscribing improper delegations of control over programming are sufficient to prevent licensee abdication through agreements with outside groups, and sees no need to maintain a separate but duplicative policy concerning programming provisions in citizens agreements.

6. With regard to the Commission's rule making proceeding initiated to allocate available broadcast channels to the various communities throughout the United States, any interested person may seek to have the FM Table of Allotments, § 73.202 of the Commission's Rules, or the TV Table of Allotments, § 73.606 of the Rules, amended by filing a petition for rule making in accordance with § 1.401 and 1.420 of the Rules. Section 1.420(d) of the Rules provides for the filing of counterproposals. A party filing a counterproposal is referred to as a "cross-filer." The potential for abuse in this area arises out of the fact that the Commission has established priorities to be utilized in making the choice between proposals and counter proposals in allocation rule making proceedings. Wherever present, these priorities will dictate the selection between proposals. Thus, a cross-filer may fashion its counterproposal so as to have an insurmountable advantage over the initial proposal. For instance, if a petition for rule making seeks to allocate a second full-time service to a particular community, a counterproposal to allocate a *first* full-time local service to a nearby community would automatically prevail. Since there is no limit to the nature or amount of payment that a cross-filer may receive in exchange for agreeing to withdraw its counterproposal, the cross-filer may file not because it actually seeks the allocation, but because the inital petitioner may be willing to pay a premium to have the counterproposal withdrawn.

7. Initially, the Commission observes that petitioners and cross-filers in allocation rule making proceedings are currently required to include in their pleadings an expression of willingness and intention to apply for the facility if the allocation is granted, and that a petitioner or cross-filer which has no real interest in constructing a station would seem to be misrepresenting a material fact. The Commission therefore requests comments on whether abuses of the allocation counterproposal process could be sanctioned under, and thereby deterred by, 73.1015 of the Commission's Rules, 47 CFR 73.1015, which prohibits applicants, permittees or licensees from making misrepresentations or willful material omissions in their submissions to the Commission.

8. The Commission also seeks comments on whether this abuse of the counterproposal process would be more effectively deterred or prevented by a rule similar to that proposed for petitions to deny. The proposed rule would prohibit the parties to an allocation rule making proceeding from entering into an agreement under the terms of which the cross-filer would withdraw its counterproposal in exchange for payment in excess of the cross-filer's actual expenses legitimately and prudently made in the preparation and prosecution of the petition to deny.

9. In determining whether this proposed rule should be adopted, it is essential to remember that the good faith withdrawal of initially legitimate counterproposals serves the public interest and, accordingly, any remedy intended to prevent abusive counterproposals must be fashioned so as to avoid deterring a legitimate cross-filer from reaching a good-faith agreement with the initial petitioner to withdraw the counterproposal. In this regard, the Commission must take into consideration one significant difference between the petition to deny situation and the allocation rule making situation. The *only* legitimate purpose of a petition to deny is to bring information to the Commission's attention concerning the qualifications of applicants to be Commission licensees. A petitioner to deny has no legitimate expectation of making a profit as a result of its participation in the Commission's proceedings. Thus, a prohibition against making such a profit would not deter the filing or the withdrawal of a legitimate, good faith petition to deny. In contrast, parties in allocation rule making proceedings participate with the legitimate and explicit expectation of making a profit from the operation of the station, should they prevail in the rule making proceeding and ultimately be awarded the license in an application proceeding. If, upon withdrawal, a legitimate cross-filer could do no more than recoup its expenses, the cross-filer might prefer to continue participation in the allocation proceeding on the chance that it could subsequently be awarded a potentially valuable broadcast license. Thus, a rule prohibiting withdrawal of counterproposals in exchange for payment in excess of expenses might deter the good faith withdrawal of initially legitimate counterproposals. Interested persons are specifically requested to comment on this possible effect of the proposed rule, and to suggest alternatives.

10. Generally, comments are sought on the experiences of applicants and licensees who have been importuned to make financial concessions under the circumstances described in the Notice; on the types of payments which should be considered to be legitimate and prudent in connection with a petition to deny or a counterproposal; and on possible alternatives to the proposed rules.

11. This is a nonrestricted notice and comment rule making proceeding. *See* § 1.231 of the Commission's Rules, 47 CFR 1.231, for rules governing permissible *ex parte* contacts.

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission observes that adoption of the proposed rules would result in a reduction in the number of frivolous petitions to deny in application proceedings and counterproposals in allocation rule making proceedings, and would eliminate the possibility that frivoulous or coercive parties may reap windfall profits from the filing of such pleadings. Consequently, the integrity of the Commission's processes would be preserved without affecting the ability of legitimate parties to participate in the Commission's proceedings. Further, the costs to legitimate, good faith parties of opposing or settling such frivolous pleadings would be eliminated. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision. The Secretary shall cause a copy of this Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

13. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain a new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirement, but will not significantly increase burden hours imposed on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

14. Accordingly, the Commission adopts this Notice of Proposed Rule Making pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r).

15. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 26, 1987 and reply comments on or before November 10, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting.

47 CFR Parts 1 and 73 are proposed to be amended as follows:

1. The authority citation for Parts 1 and 73 continues to read as follows:

Authority. 47 U.S.C. 154 and 303.

PART 1—[AMENDED]

2. It is proposed that § 1.420 be amended by adding new paragraph (i) to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, Television or Air-Ground Table of Assignments.

* * * * *

(i)(1) When comments containing a counterproposal have been filed against a petition for rule making in the broadcast services, the petitioner and the cross-filer are prohibited from entering into an agreement to withdraw the counterproposal if the provisions of the agreement or understanding between the parties provide for, or permit, payment to the cross-filer or its employees, representatives, agents or designees, of a sum in excess of the aggregate amount clearly shown to have been legitimately and prudently expended by the cross-filer in the preparation and prosecution of the counterproposal.

(2) When a petitioner and a cross-filer reach an agreement on the withdrawal of a counterproposal, the parties shall submit a Joint Request for Withdrawal of Counterproposal which shall be accompanied by a copy of the agreement and declarations by both the petitioner and the cross-filer that, except as clearly disclosed in the Joint Request and any attachments thereto, there are no agreements, understandings or contracts for reimbursement of the cross-filer's expenses or other payments to the cross-filer.

(3) When the cross-filer is to receive reimbursement of its expenses, the Joint Request for Withdrawal of Counterproposal shall include an itemized accounting of such expenses together with such factual information as the parties rely on for the requisite showing that those expenses represent legitimate and prudent outlays made solely for the purposes allowable under paragraph (i)(1) of this section.

PART 73—[AMENDED]

3. It is proposed that § 73.3584 be amended by adding new paragraphs (e) and (f) to read as follows:

§ 73.3584 Petitions to deny.

* * * * *

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(e)(1) When a petition to deny has been filed against an application, the applicant and the petitioner are prohibited from entering into an agreement to withdraw the petition if the provisioins of the agreement or understanding between the parties provide for, or permit, payment to the petitioner or its employees, representatives, agents or designees, of a sum in excess of the aggregate amount clearly shown to have been legitimately and prudently expended by the petitioner in the preparation and prosecution of the petition to deny.

(2) When an applicant and a petitioner reach an agreement on the withdrawal of a petition to deny, the parties shall submit a Joint Request for Withdrawal of Petition to Deny which shall be accompanied by a copy of the agreement and declarations by both the applicant and the petitioner that, except as clearly disclosed in the Joint Request and any attachments thereto, there are no agreements, understandings or contracts for reimbursement of the petitioner's expenses or other payments to the petitioner.

(3) When the petitioner is to receive reimbursement of its expenses, the Joint Request for Withdrawal of Petition to Deny shall include an itemized accounting of such expenses together with such factual information as the parties rely on for the requisite showing that those expenses represent legitimate and prudent outlays made solely for the purposes allowable under paragraph (e)(1) of this section.

(f) No party within the meaning of section 309(d) of the Communications Act, as amended, and paragraph (a) of this section shall (1) threaten to file a petition to deny an application unless payment is received from the applicant; or (2) offer to refrain from filing a petition to deny in exchange for payment from the applicant. Reimbursement by an applicant of reasonable, necessary and prudent expenses incurred by the individual or group in the course of consultation and negotiation with the applicant concerning its qualifications to be or its performance as a Commission licensee will not be considered to be payment for refraining from filing a petition to deny for the purposes of this section.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-21865 Filed 9-22-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-12; Notice 1]

Federal Motor Vehicle Safety Standards; New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments; Grant of petition for rulemaking.

SUMMARY: General Motors Corporation (GM) submitted a petition for rulemaking to amend FMVSS No. 109, *New Pneumatic Tires,* to establish new performance requirements and test conditions for non-pneumatic spare tire assemblies. This notice grants GM's petition and requests comments on a number of issues concerning possible requirements for non-pneumatic tire assemblies.

DATES: Comment closing date: December 22, 1987.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket Room hours 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4803.

SUPPLEMENTARY INFORMATION: General Motors Corporation (GM) submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires,* to establish performance requirements and test conditions for non-pneumatic spare tire assemblies. According to the petitioner, amending the standard would allow use of a new spare tire concept, developed by the Uniroyal Goodrich Company, having the potential for reducing weight and space requirements and a positive effect on fuel economy. The non-pneumatic spare tire concept would be an alternative to current pneumatic compact spare assemblies. NHTSA has concluded that GM's petition raises a number of issues which should be addressed in rulemaking, and the petition is hereby granted.

In order to obtain assistance in analyzing the safety issues related to non-pneumatic tires, NHTSA requests public comments. The agency is particularly interested in comments concerning whether non-pneumatic tires should be permitted, as spares, or otherwise. If so, the public is asked to comment on whether the performance requirements currently specified in Standard No. 109 are sufficiently comprehensive and performance-oriented to address all characteristics that may affect the safety of non-pneumatic tires, or whether additional and/or different types of requirements are needed to ensure the same level of safety as pneumatic tires. Among the areas of concern are the ability of the tires to withstand road hazards and exposure to moisture and varying temperature; the adequacy of bonding of tread to tire and tire to rim; and potential impacts of the tires on vehicle handling, cornering, traction, and braking, including off-road recovery.

In order to ensure that possible requirements for non-pneumatic tires would be appropriate for all such tires, NHTSA requests detailed information from tire manufacturers concerning all potential designs for such tires. The agency also requests available test information on prototype non-pneumatic tires, including but not limited to test procedures, test data and evaluations of test results, related to Standard No. 109 and other safety issues.

The granting of this petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issued on September 17, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-21885 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition by John Fiske Brown Associates requesting that NHTSA issue a rule requiring vehicles to be equipped with an ignition kill switch integrated with the accelerator control. The petitioner asserted that such a switch would prevent accidents where drivers mistakenly place their foot on the accelerator rather than the brake pedal. NHTSA is denying the petition because it believes that an ignition kill switch could itself be a safety hazard, since drivers could lose power in critical situations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC (202-366-5267).

SUPPLEMENTARY INFORMATION: John Fiske Brown Associates (Brown Associates), Forensic Engineers, submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.* The petitioner stated that in recent years there have been numerous major investigations precipitated by vehicles that accelerated suddenly and without warning. According to the petitioner, in the majority of these individual cases, the drivers insist that they have their foot firmly planted on the brake pedal and that the car accelerates out of control. The petitioner stated that the manufacturers, however, have alleged that the drivers were confused and their foot was placed upon the accelerator rather than the brake pedal.

Brown Associates requested that NHTSA require all new vehicles, and in particular those equipped with automatic transmissions, to have an ignition kill switch integrated with the accelerator control. The switch would be coupled to the accelerator linkage so that, if a driver pressed the accelerator completely to the end of its travel while also applying additional force, the switch would interrupt the ignition circuit so that the vehicle would not continue to accelerate under power. According to the petitioner, such a modification would eliminate those "sudden acceleration" accidents that are caused by driver error.

NHTSA believes that an ignition kill switch, as described by the petitioner, could itself be a safety hazard. In a variety of situations, drivers may depress the accelerator hard in order to obtain maximum acceleration. For example, drivers trying to pass another vehicle or trying to merge onto a high speed highway occasionally misjudge the distance between their vehicle and the oncoming traffic. When a driver has less time to complete the maneuver than anticipated, he or she might accelerate hard to reduce the time needed to complete the maneuver. Engine cutoff in these situations could result in serious accidents. For these reasons, NHTSA denies Brown Associates' petition for rulemaking.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issued on September 17, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-21886 Filed 9-22-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Addition of Species by Government of Honduras to Appendix III; Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain species of animals and plants. Appendices I, II, and III to the Convention list those species for which trade is controlled. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade.

The Convention Secretariat has notified the Parties to the Convention that the Government of Honduras has requested the addition to Appendix III of six species of mammals, seven species of birds, and nine species of reptiles, all of which are native in Honduras. These requested additions are not subject to a vote of the Parties, but any Party may enter a reservation at any time to any of these species listings.

The purpose of this document is to alert the public to the addition of these species to Appendix III and to request comments as to whether the United States should enter a reservation on any of these species. The U.S. Fish and Wildlife Service (Service) proposes to add these species to the list in the Code of Federal Regulations.

DATES: The Appendix III amendment entered into effect on April 13, 1987, for all Parties except any entering reservations. Nations that are Parties to the Convention may enter reservations at any time. The Service will consider comments received by October 19, 1987, in determining whether the United States should enter a reservation. The intention is to publish the final rule on these species in the same document that presents the final changes to the Appendices resulting from actions at the Sixth Meeting of the Conference of the Parties held in Ottawa, Canada, July 12-24, 1987.

ADDRESSES: Please send correspondence concerning this notice to the Chief, Office of Scientific Authority; Mail Stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service; Department of the Interior, Washington, DC 20240. Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above, or telephone (202) 653-5948.

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SUPPLEMENTARY INFORMATION:

Background

The Convention Secretariat circulated a notification to all Party nations on January 13, 1987, to inform them of the present amendment. After belatedly learning of this notification, the Service requested a retransmission which was received in April. In accordance with the provisions of paragraph 1 of Article XVI of the Convention, the Government of Honduras has submitted to the Secretariat the following species for inclusion in Appendix III:

Class: Mammalia

Order: Rodentia

Family: Erethizontidae

Sphiggurus mexicanus (=Coendou mexicanus)
(Middle American prehensile-tailed porcupine, coendou)

Family: Agoutidae

Agouti (=Cuniculus) paca
(greater paca, spotted cavy)

Family: Dasyproctidae

Dasyprocta punctata
(common agouti)

Order: Carnivora

Family: Procyonidae

Nasua nasua (=N. narica)
(common coati, coatimundi)
Potos flavus
(kinkajou)

Family: Mustelidae

Eira barbara
(tayra)

Class: Aves

Order: Anseriformes

Family: Anatidae

Cairina moschata
(Muscovy duck)
Dendrocygna autumnalis
(black-bellied whistling duck or tree duck)
Dendrocygna bicolor (=D. fulva)
(fulvous whistling duck or tree duck)

Order: Falconiformes

Family: Cathartidae

Sarcoramphus papa
(king vulture)

Order: Galliformes

Family: Cracidae

Crax rubra
(great curassow)
Ortalis vetula
(plain chachalaca)
Penelope purpurascens
(northern crested guan)

Class: Reptilia

Order: Serpentes

Family: Elapidae

Micrurus diastema
(Atlanta coral snake)
Micrurus nigrocinctus
(black-banded coral snake)

Family: Viperidae

Agkistrodon bilineatus
(cantil)
Bothrops asper
(terciopelo)
Bothrops nasutus
(rainforest hognosed pit-viper)
Bothrops nummifer
(jumping pit-viper)
Bothrops ophryomegas
(slender hognosed pit-viper)
Bothrops schlegelii
(eyelash palm pit-viper)
Crotalus durissus
(tropical rattlesnake, cascabel)

In accordance with the provisions of the Convention in Article XVI, paragraph 2, inclusion of those species in Appendix III took effect 90 days after the date of the notification, i.e., on April 13, 1987, for all Parties except any entering reservations (August 14, 1987, **Federal Register;** 52 FR 30456).

Under the Convention, trade in specimens of species included in Appendix III requires the issuance of either an export permit, a re-export certificate or a certificate of origin. Export permits are required if the shipment originates from the nation that has included the species in Appendix III. The export of specimens of these from other nations requires the presentation of "certificates of origin," or in the case of re-export, "certificates from the nation of re-export," which are required to show that the specimen was processed in that nation and/or is being re-exported. Trade in any specimen of these species, whether alive or dead, will be covered by the provisions of the Convention, as will trade in any readily recognizable part or derivative.

As a Party to the Convention, the United States has an opportunity to reserve on amendments to the appendices. Article XVI of the Convention enables any Party to exempt itself from implementing the Convention for a particular species if it enters a reservation with respect to that species. In the case of a nation that is a Party at the time an amendment to Appendix III is requested, a reservation may be entered at any time after the Secretariat notifies the Parties of the amendment placing the species in Appendix III.

The Service requests comments on whether the United States should enter a reservation on this recent amendment. At this time, the Service does not propose to recommend a reservation and would consider doing do only if valid and compelling reasons are presented to show that implementation of the amendment would be contrary to the interests or laws of the United States.

This rule implements changes in the listings in Appendix III of the Convention that were requested by the Government of Honduras and that the United States is bound to accept, unless it enters a reservation. Even if the United States were to enter a reservation, under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) Convention export permits, certificates of orgin, or certificates of re-export, as appropriate, may be required from other Parties that do not enter reservations, and other Parties should require similar certificates for exports from the United States. An extended discussion on reservations was presented in the November 22, 1985, **Federal Register;** 50 FR 48213).

Note.—The Department has determined that amendments to the Convention appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601). This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

This document was prepared by Arthur M. Greenhall, Staff Zoologist, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture, Treaties.

Proposed Regulation Promulgation

For reasons set out in the preamble of this document, it is hereby proposed to amend Part 23 of Title 50, Code of Federal Regulations, by adding the species named above for Honduras to the list of species included in Appendix III.

Dated: September 16, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-21908 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 23

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to the Convention.

This document announces decisions by the Conference of Parties to CITES on amendments to Appendices I and II, and invites comments on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from implementing the Convention for a particular species. However, even if a reservation were taken some importing countries would require comparable documents, and many importers to the United States would be required, under the Lacey Act Amendments of 1981, to obtain permits issued by foreign countries. The amendments described in this document will enter into effect on October 22, 1987.

DATE: The Service will consider all comments received by October 16, 1987 in determining whether the United States should enter any reservations.

ADDRESS: Please send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653-5948.

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the Convention's Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

Recent Decisions

The Sixth Meeting of the Conference of the Parties to CITES was held on July 12-24, 1987, in Ottawa, Canada. At the meeting, the Parties considered 115 proposals to amend the Appendices. These were listed in the **Federal Register** on July 10, 1987, for U.S. proposals (52 FR 26049) and for proposals by the other Parties (52 FR 26043). Results of voting by the Conference of the Parties are given in the following table.

Species	Proposed amendment	Proponent	Final decision of the parties
MAMMALS			
Order Marsupialia:			
Burramys parvus (Mountain pygmy possum).	Remove from II	Switzerland	Withdrawn.
Myrmecobius fasciatus (Marsupial anteater).	Add to I	Australia	Do.
Phalanger lullulae (Woodlark Island cuscus).	...do	Papua New Guinea	Do.
Order Insectivora:			
Erinaceus frontalis (African hedgehog)	Remove from II	Switzerland	Approved.
Order Chiroptera:			
Pteropus insularis, P. macrotis, P. mariannus, P. molossinus, P. phaeocephalus, P. pilosus, P. samoensis, P. tokudae and P. tonganus.	Add to II [1]	United States	Do.
Order Lagomorpha:			
Nesolagus netscheri (Sumatran short-eared rabbit).	Remove from II	Switzerland	Do.
Order Rodentia:			
Dipodomys phillipsii phillipsii (Phillips' kangaroo rat).	...do	Do.	Do
Lariscus hosei (Four-striped or Bornean black-striped ground squirrel).	...do	...do	Do.
Notomys spp. (Hopping mouse)	...do	Australia	Do.
Pseudomys fumeus (Smokey mouse)	Remove from I	...do	Do.

Species	Proposed amendment	Proponent	Final decision of the parties
Pseudomys shortridgei (Heath rat, Shortridge's native mouse).	Remove from II	do	Do.
Order Carnivora:			
Cynogale bennettii (Otter civet)	do	Switzerland	Withdrawn.
Dusicyon gymnocercus (Pampas fox)	Add to II	Uruguay	Approved.
Eupleres goudotii (Malagasy mongoose)	Remove from II	Switzerland	Rejected.
Felis yagouaroundi (Jaguarundi)	Inclusion in I (inclusion of the populations of Central and North America in I in lieu of *Felis yagouaroundi cacomitli, F. y. fossata, F. y. panamensis,* and *F. y. tolteca*).	do	Approved.
Panthera tigris altaica (Siberian tiger)	Transfer from II to I	do	Do.
Order Pinnipedia:			
Odobenus rosmarus (Walrus)	Add to II	Netherlands	Withdrawn.
Order Sirenia:			
Trichecus senegalensis (West African manatee).	Remove from II or transfer from II to I	Switzerland, Switzerland	Withdrawn, Withdrawn.
Order Artiodactyla:			
Catagonus wagneri (Chacoan or giant peccary).	Add to I	Paraguay	Approved.
Pudu mephistophiles (Northern pudu)	Remove from II	Switzerland	Withdrawn.
Tayassu spp. (Peccary)	Add to II (except populations in the United States).	Peru	Approved.
Vicugna vicugna (Vicuna)	Transfer of part of the population of Parinacota Province, Ia. Region of Tarapaca from I to II (under special conditions including export of cloth only).	Chile	Do.
Vicugna vicugna (Vicuna)	Transfer of the populations of Pampa Galeras National Reserve and Nuclear Zone, Pedregal, Oscconta and Sawacocha (Province of Lucanas), Sais Picotani (Province of Azangaro), Sais Tupac Amaru (Province of Junin), and of Salinas Aguada Blanca National Reserve (provinces of Arequipa and Cailloma) from I to II (under specific conditions including export of cloth only).	Peru	Do.
BIRDS			
Order Ciconiiformes:			
Balaeniceps rex (Whale-headed stork)	Add to II	Netherlands	Do.
Eudocimus ruber (Scarlet ibis)	Add to I	France	Merged with Suriname proposal for App. II.
Eudocimus ruber (Scarlet ibis)	Add to II.	Suriname	Approved.
Mycteria cinerea (Milky wood stork)	Add to I	Malaysia	Do.
Order Anseriformes:			
Anas bernieri (Madagascan teal)	Remove from II	Switzerland	Withdrawn.
Order Galliformes:			
Francolinus ochropectus (Djibouti francolin).	do	do	Do.
Francolinus swierstrai (Swierstra's francolin).	do	do	Do.
Megapodius freycinet abbotti (Abbott's megapode).	do	do	Approved.
Megapodius freycinet nicobariensis (Nicobar megapode).	do	do	Do.
Tetrao mlokosiewiczi (Caucasian black grouse).	do	do	Do.
Rheinartia ocellata (Crested argus pheasant).	Add to I	Malaysia	Do.
Order Gruiformes:			
Otididae spp. (Bustards)	Add to II (all species not already on appendices).	United Kingdom	Do.
Pedionomus torquatus (Plains wanderer)	Remove from II	Switzerland	Withdrawn.
Order Charadriformes:			
Larus brunnicephalus (Brown-headed gull)	do	do	Approved.
Numenius minutus (Little whimbre)	do	do	Do.
Order Psittaciformes:			
Anodorhynchus hyacinthinus (Hyacinth macaw).	Transfer from II to I	Brazil	Do.
Ara militaris (Military macaw)	do	Argentina	Do.
Probosciger aterrimus (Palm cockatoo)	do	Papua New Guinea	Do.

Species	Proposed amendment	Proponent	Final decision of the parties
Order Apodiformes:			
Trochilidae spp. (Hummingbirds)	Add to II	Ecuador	Do.
Order Piciformes:			
Picus squamatus flavirostris (Common scaly-bellied woodpecker).	Remove from II	Switzerland	Do.
Order Passeriformes:			
Meliphaga cassidix (=Lichenostomus melanops cassidix) (Helmeted honeyeater).	Remove from I	Australia	Withdrawn.
Psophodes nigrogularis (Western whipbird)	Remove from II	Australia, Switzerland	Approved.
Pitta brachyura numpha (Fairy pitta)	....do	Switzerland	Rejected.
Pseudochelidon sirintarae (White-eyed river martin).	....do	....do	Withdrawn.
Niltave ruecki (Rueck's blue flycatcher)	....do	....do	Do.
Carduelis yarrelli (Yarrell's siskin)	....do	....do	Do.
Emblema oculata (Red-eared firetail finch)	....do	....do	Approved.
Gubernatrix cristata (Yellow cardinal)	Add to II	Argentina	Do.
Paroaria capitata (Yellow-billed cardinal)	....do	....do	Do.
Paroaria coronata (Red-Crested Cardinal)	....do	....do	Do.
REPTILIA			
Order Crocodylia:			
Crocodylus cataphractus (African slender-snouted crocodile).	Transfer of the Congolese population from I to II, subject to an annual export quota [2].	Republic of Congo	Approved.[2]
Crocodylus niloticus (Nile crocodile)	Maintenance of the population of Botswana in II, subject to an annual export quota [3].	Botswana	Approved.[3]
	Maintenance of the Cameroonian population in II, subject to an annual export quota [3].	Cameroon	Approved.[3]
	Maintenance of the Congolese population in II, subject to an annual export quota [3].	Republic of Congo	Approved.[3]
	Maintenance of the Kenyan population in II, subject to an annual export quota [3].	Kenya	Approved.[3]
	Maintenance of the Malagasy population in II, subject to an annual export quota [3].	Madagascar	Approved.[3]
	Maintenance of the Malawian population in II, subject to an annual export quota [4].	Malawi	Approved.[4]
	Maintenance of the population of Mozambique in II, subject to an annual export quota [4].	Mozambique	Approved.[4]
	Maintenance of the Sudanese population in II, subject to an annual export quota [3].	Sudan	Approved.[3]
	Maintenance of the Tanzanian population in II, subject to an annual export quota [3].	Tanzania	Approved.[3]
	Maintenance of the Zambian population in II, subject to an annual export of quota [4].	Zambia	Approved.[4]
Crocodylus niloticus (Nile crocodile)	Transfer of the populations of Botswana, Cameroon, Congo, Kenya, Madagascar, Malawi, Mozambique, Sudan, United Republic of Tanzania and Zambia from II to I.	Switzerland	Withdrawn.
Crocodylus porosus (Saltwater crocodile)	Retention of the Indonesian population in II subject to an annual export quota [5].	Indonesia	Approved.[5]
	Transfer of the population of Indonesia from II to I.	Switzerland	Withdrawn.
Osteolaemus tetraspis (Dwarf crocodile)	Transfer of the Congolese population from I to II, subject to an annual export quota [2].	Republic of Congo	Approved.[2]
Order Testudinata:			
Chelonia mydas (Green sea turtle)	Transfer of the populations of Europa and Tromelin Islands from I to II (ranching proposal).	France	Rejected.
Chelonia mydas (Green sea turtle)	Transfer of the Indonesian population from I to II.	Indonesia	Withdrawn.
Eretmochelys imbricata (Hawksbill sea turtle).	Transfer of the Indonesian population from I to II.	Indonesia	Do.
Clemmys muhlengergii (Bog turtle)	Remove from II	Switzerland	Do.
Order Squamata:			
Boa constrictor occidentalis (Argentine boa constrictor).	Transfer from II to I	Uruguay	Approved.
Gallotia aff. simonyi (Hierro giant lizard)	Add to I	Spain	Do.
Paradelma orientalis (Flap-footed legless lizard).	Remove from II	Australia, Switzerland	Do.
Phrynosoma coronatum blainvillei (San Diego horned lizard).	Remove from II	Switzerland	Withdrawn.
Podarcis lilfordi (Lilford's wall lizard)	Add to II	Spain	Approved.
Podarcis pityusensis (Ibiza wall lizard)	....do	....do	Do.
Thamnophis couchi hammondi (Two-striped garter snake).	Remove from II	Switzerland	Do.

Species	Proposed amendment	Proponent	Final decision of the parties
Vipera ursinii (Orsini's viper)	Add to I (except populations in the U.S.S.R.)	France, Italy	Do.
AMPHIBIANS			
Order Caudata:			
Ambystoma lermaense (Lake Lerma salamander).	Remove from II	Switzerland	Do.
Order Anura:			
Dendrobates altobueyensis (Golden poison-arrow frog).	Add to I	Netherlands	Rejected.
Dendrobates spp. (Poison-dart frogs)	Add to II	Suriname	Approved.
Dyscophus antongili (Tomato frog)	Add to I	Netherlands	Do.
Mantella aurantiaca (Golden frog)	...do	...do	Rejected.
Phyllobates spp. (Poison-arrow frogs)	Add to II	...do	Approved.
FISH			
Order Osteoglossiformes:			
Scleropages formosus (Asian bonytongue)	Transfer of the Indonesian population from I to II.	Indonesia	Withdrawn.
Order Coelacanthiformes:			
Latimeria chalumnae (Coelacanth)	Remove from II	Switzerland	Do.
Order Salmoniformes:			
Salmo chrysogaster (Mexican golden trout)	...do	...do	Approved.
Stenodus leucichtys leucichthys (White salmon).	...do	...do	Do.
Order Cypriniformes:			
Caecobarbus geertsi (African blind barb fish).	...do	...do	Not considered.
Plagopterus argentissimus (Woundfin)	...do	...do	Approved.
Ptychocheilus lucius (Colorado River squawfish).	...do	...do	Do.
Order Atheriniformes:			
Cynolebias constanciae (Pearl fishes)	...do	...do	Withdrawn.
Cynolebias marmoratus (Pearl fishes)	...do	...do	Do.
Cynolebias minimus (Pearl fishes)	...do	...do	Do.
Cynolebias opalescens (Pearl fishes)	...do	...do	Do.
Cynolebias splendens (Pearl fishes)	...do	...do	Do.
Xiphophorus couchianus (Monterrey platyfish).	...do	...do	Approved.
MOLLUSCS			
Class Pelecypoda (=Bivalvia)			
Choromytilus (=Mytilus chorus) Choro)	...do	...do	Do.
Cyprogenia aberti (Pearly mussels)	...do	...do	Withdrawn.
Epioblasma torulosa rangiana (Pearly mussels).	...do	...do	Do.
Fusconaia subrotunda (Pearly mussels)	...do	...do	Do.
Lampsilis brevicula (Pearly mussels)	...do	...do	Do.
Lexingtonia dolabelloides (Pearly mussels)	...do	...do	Do.
Pleurobema clava (Pearly mussels)	...do	...do	Do
Class Gastropoda:			
Achatinella spp. (Oahu tree snails)	Add to I	Netherlands	Approved.
Paryphanta spp.	Remove from II	Switzerland	Withdrawn.
Coahuilix hubbsii (Cuatro Cienegas snails)	...do	...do	Approved.
Cochiliopina milleri (Cuatro Cienegas snails).	...do	...do	Do.
Durangonella coahuilae (Cuatro Cienegas snails).	...do	...do	Do.
Mexipyrgus carranzae (Cuatro Cienegas snails).	...do	...do	Do.
Mexipyrgus churinceanus (Cuatro Cienegas snails).	...do	...do	Do.
Mexipyrgus escobedae (Cuatro Cienegas snails).	...do	...do	Do.
Mexipyrgus lugoi (Cuatro Cienegas snails)	...do	...do	Do.
Mexipyrgus mojarralis (Cuatro Cienegas snails).	...do	...do	Do.
Mexipyrgus multilineatus (Cuatro Cienegas snails).	...do	...do	Do.
Mexithauma quadripaludium (Cuatro Cienegas snails).	...do	...do	Do.
Nymphophilus minckleyi (Cuatro Cienegas snails).	...do	...do	Do.
Paludiscala caramba (Cuatro Cienegas snails).	...do	...do	Do.

Species	Proposed amendment	Proponent	Final decision of the parties
INSECTS			
Class Insecta:			
Bhutanitis spp. (Bhutan Glory swallowtails)	Add to II	United Kingdom	Do.
Ornithoptera alexandrae (Queen Alexandra's birdwing butterfly).	Transfer from II to I	do	Do.
Papilio chikae (Luzon peacock swallowtail)	Add to I	do	Do.
Papilio homerus (Homerus swallowtail)	do	do	Do.
Papilio hospiton (Corsican swallowtail)	do	do	Do.
Teinopalpus spp. (Kaiser-I-Hind butterflies)	Add to II	do	Do.
FLAT WORMS			
Order Hirudinea:			
Hirundo medicinalis (Medicinal leech)	do	do	Do.
CORALS			
Class Anthozoa:			
Corallium rubrum (Precious red coral)	do	Spain	Rejected.
PLANTS			
Family Cactaceae:			
Astrophytum (=Echinocactus) asterias (Sea urchin or star cactus).	Transfer from II to I	United Kingdom	Approved.
Family Compositae (=Asteraceae)			
Saussurea lappa (Costus or Kuth root)	Transfer from I to II	Pakistan	Rejected.
Family Cupressaceae:			
Fitz-Roya cupressoides (Alerce or Fitzroya).	Transfer of the coastal population of Chile from II to I.	Argentina	Approved.
Family Cycadaceae:			
Cycas beddomei (Beddome cycad)	Transfer from II to I	India	Do.
Family Liliaceae:			
Iphigenia stellata (Starry iphigenia)	Add to II	do	Withdrawn.
Family Nepenthaceae:			
Nepenthes khasiana (Indian tropical pitcher plant).	Add to I	do	Approved.
Nepenthes spp. (Tropical pitcher plants)	Add to II (all species not already on an appendix).	Malaysia	Do.
Family Orchidaceae:			
Dendrobium pauciflorum (Few-flowered dendrobium).	Transfer from II to I	India	Withdrawn.
Paphiopedilum druryi (Drury tropical lady's slipper).	do	do	Approved.
Family Palmae (=Arecaceae):			
Chrysalidocarpus lutescens (Areca palm)	Remove from Ii	Netherlands	Do.
Family Sarraceniaceae:			
Sarracenia spp. and natural hybrids (all species and natural hybrids in the genus except those in App. I).	Add to II	United States	Do.

[1] Export permit would be required only for dead specimens inasmuch as the trade in live specimens involves several other unlisted species, is limited, and not viewed as a threat to the survival of the Pacific Island populations.

[2] Export quotas of 600 and 500 for *Crocodylus cataphractus* and *Osteloaemus tetrospis*, respectively, were approved for populations in the Congo for 1987 to 1989.

[3] Export quotas for 1987 to 1989 were approved for *Crocodlylus niloticus* populations in the following countries (with annual quota shown in parenthesis): Botswana (2,000), Cameroon (100), Congo (150), Kenya (5,000 of which only 1,000 will be removed directly from the wild), Madagascar (1,000), Sudan (5,000), Tanzania (2,000).

[4] Export quotas as shown in parentheses, were approved for *Crocodylus niloticus* populations in the following countries (with the quotas for the year 1987, 1988, and 1989, respectively given in parentheses): Malawi (900, 1,000 and 1,300), Mozambique (1,000, 1,000 and 4,000), and Zambia (3,350, 5,600, and 8,200 of which only 2,000 will be removed directly from the wild each year).

[5] Export quota of 4,000 was approved for the population of *Crocodylus porosus* in Indonesia.

All proposals in the preceding table that were approved by the Conference of the Parties will enter into effect 90 days after the meeting (i.e., on October 22, 1987).

Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species if it enters a reservation with respect to that species. In the case of of a nation that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the Parties voted to place the species in Appendix I or II.

Reserving may do little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted the Convention as part of its positive law, and that nation has not taken a reservation with regard to the species, part, or derivative, the United States would continue to require Convention documents as a condition of import. A reservation by the United States also might provide exporters in this country with little relief from the need for U.S. export documents. Receiving countries that are party to the Convention will generally require Convention-equivalent documentation from the United States if it enters a reservation, because the Parties have

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agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all of the information required in Convention permits or certificates. In addition, reservations on species listed on Appendix I should be treated by the reserving Party as on Appendix II according to Conference resolution 4.25, thereby requiring Convention documents for export of these species to Parties and non-Parties alike.

The Service requests comments on whether it should recommend that the United States enter a reservation on any of the recent amendments. At present, the Service proposes not to recommend any reservations. It would do so only if evidence is presented to show that implementation of the amendment would be contrary to the interests or law of the United States.

Note: The Department has determined that amendments to CITES Appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environment Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321 through 4347), 516 DM 2, Appendix I, section 1.10. The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291, and that the Regulatory Flexibility Act (5 U.S.C. 601) does not apply to this listing process. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884, as amended). It was prepared by Drs. Charles W. Dane and Bruce MacBryde, Office of Scientific Authority.

Proposed Regulations Promulgation

The Service proposes to amend the list of species contained in § 23.23 of Title 50 of the Code of Federal Regulations by incorporating all changes in CITES Appendices I and II that were approved by the Conference of the Parties, as set forth in the supporting statement of the present notice.

Dated: September 16, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-21849 Filed 9-22-87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 184
Wednesday, September 23, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 18, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20205, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Agricultural Cooperative Service
  Marketing Operations of Dairy Cooperatives
  On occasion
  Businesses or other for-profit; Small businesses or organizations; 380 responses; 340 hours; not applicable under 3504(h)
  James B. Roof, (202) 653–6620

Revision

- Agricultural Stabilization and Conservation Service
  7 CFR Parts 724, 725, and 726
  MQ–79 and MQ–79 (Supplemental)
  Weekly
  Businesses or other for-profit; 10,000 responses; 2,500 hours; not applicable under 3504(h)
  Sarah J. Matthews, (202) 475–5012
- Food and Nutrition Service
  Civil Rights Title VI Collection Reports
  FNS 191 and 101
  Annually
  State or local governments; 4,711 responses; 13,709 hours; not applicable under 3504(h)
  Maxine McMillian, (703) 756–3710

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 87–21935 Filed 9–22–87; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: October 15, 1987.

Place: Capitol Holiday Inn, 500 C Street, SW., Washington, DC 20024.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Sorghum Subcommittee report; (2) financial matters; (3) Insect Interagency Task Force report; (4) deceptive practices; (5) foreign complaints; and (6) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0219.

Dated: September 18, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87–21936 Filed 9–22–87; 8:45 am]

BILLING CODE 3410–EN–M

Soil Conservation Service

Critical Area Treatment RC&D Measure; West Montgomery County, TX

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the West Montgomery County Critical Area Treatment RC&D Measure, Montgomery County, Texas.

FOR FURTHER INFORMATION CONTACT: Coy A. Garrett, State Conservationist, Soil Conservation Service, W.R. Poage Federal Building, 101 South Main, Temple, Texas, 76501, Telephone 817–774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment on seven eroded areas in western Montgomery County. Planned treatment consists of installing

grade stabilization structures on seven of the sites. These will be installed on private property. These areas will be established to permanent vegetative cover when completed. The areas will be fenced where necessary to protect and manage the vegetation. This will be fenced where necessary to protect and manage the vegetation. This will involve 100 acres of gullied pastureland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

O. Dale Fischgrabe,

Deputy State Conservationist.

Date: September 4, 1987.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

[FR Doc. 87-21895 Filed 9-22-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-607]

Antidumping Duty Order; Amorphous Silica Filament Fabric From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In the investigation concerning amorphous silica filament fabric from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that amorphous silica filament fabric from Japan is being sold at less than fair value and that sales of amorphous silica filament fabric from Japan are materially injuring a United States industry. The ITC ruled that critical circumstances do not exist.

Therefore, based on these findings, we will discontinue suspension of liquidation of all entries 90 days prior to our preliminary determination. Suspension of liquidation will begin for all unliquidated entries, or warehouse withdrawals, for consumption of amorphous silica filament fabric from Japan made on or after May 13, 1987, the date on which the Department published its preliminary determination notice in the **Federal Register**. These entries will be liable for the assessment of antidumping duties. Furthermore, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, (202) 377-5288 or Nancy Saeed, (202) 377-1777, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The product covered by this investigation is certain commercial grade woven fabric of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, as currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 338.25 and 338.27.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on May 6, 1987, the Department made its preliminary determination that there was reason to believe or suspect that amorphous silica filament fabric from Japan was being sold at less than fair value (52 FR 17997, May 13, 1987). On July 20, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 28033, July 27, 1987) and that critical circumstances did exist.

On September 9, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry and that critical circumstances do not exist.

Therefore, in accordance with sections 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of amorphous silica filament fabric from Japan. These antidumping duties will be assessed on all unliquidated entries of amorphous silica filament fabric entered, or withdrawn from warehouse, for consumption on or after May 13, 1987, the date on which the Department published its preliminary determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 193.94 percent.

This determination constitutes an antidumping duty order with respect to amorphous silica filament fabric from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48.

We have deleted Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect, from the Commerce Regulations. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 16, 1987.

[FR Doc. 87-21943 Filed 9-22-87; 8:45 am]

BILLING CODE 3510-DS-M

[A 428-602]

Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order; Brass Sheet and Strip From the Federal Republic of Germany

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: As a result of correction of clerical errors, the Department of Commerce (the Department) is amending its final determination in this investigation and its antidumping order and is directing the U.S. Customs Service to adjust the cash deposit rates as follows:

Manufacturer/producer exporter	Weighted-average margin percentage	
	Final	Amended final
Wieland-Werke AG	5.31	3.81
Langenberg Kupfer-und Messingwerke Gmbh	15.94	16.18
All others	8.87	7.30

These corrections are made pursuant to remand orders from the Court of International Trade (CIT), dated August 5 and 8, 1987, in the cases challenging the final determination on brass sheet and strip from the Federal Republic of Germany, *Weiland-Werke AG v United States*, Court No. 87–04–00575 and *American Brass v United States*, Court No. 87–04–00589.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, (202–377–3965), Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1987, in accordance with section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d), the Department made its final determination that imports of brass sheet and strip from the Federal Republic of Germany were being sold at less than fair value (52 FR 822, January 9, 1987).

On February 19, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department of its determination that an industry in the United States is materially injured by imports of brass sheet and strip from the Federal Republic of Germany. On March 6, 1987, pursuant to section 736 of the Act (19 U.S.C. 1673e), the Department published an antidumping duty order on brass sheet and strip from the Federal Republic of Germany (52 FR 6997, March 6, 1987).

The results of the Department's final determination were challenged in the CIT by the petitioner, American Brass, et al., and the respondents, Wieland-Werke AG, et al. Pursuant to a motion by the Department for a remand to correct certain clerical errors in its final determination, the CIT, on August 5, 1987, in *Wieland-Werke AG v United States*, and on August 8, 1987 in *American Brass v United States*, remanded the investigation to the Department for correction of these clerical errors.

Remand Results

Pursuant to the remand, the Department corrected the clerical errors listed in the Department's remand request. The clerical errors and corrections made are as follows:

(1) The home market, purchase price, and exporter's sales price data bases for Metallwerke Schwarzwald, a wholly-owned subsidiary of Wieland Werke AG (Wieland), were inadvertently excluded from Wieland's data bases. The two data bases have been merged in the revised final determination.

(2) A typographical error in the instruction in line 144 for calculating foreign market value for Wieland caused a price-based quantity discount rather than a cost-based quantity discount to be deducted. We have corrected the error and have made the cost-based quantity discount intended in the final determination.

(3) Adjustments for certain physical differences were not deducted in Wieland's pruchase price and exporter's sales price programs. The physical difference in merchandise adjustments have been made in both programs.

(4) Line 109 of Wieland's exporter's sales price program reflects an error in the calculation of packing costs. This error has been corrected.

(5) An improper exchange rate was used to convert foreign market value into U.S. dollars on a number of sales comparisons during the fourth quarter of 1985 for both Wieland and Langenberg Kupfer-und Messingwerke Gmbh (Langenberg). The exchange rate used in the program for this period has been corrected to reflect the appropriate Federal Reserve exchange rate.

(6) Line 229 of the computer program for Langenberg contains a command regarding a special credit for after-sale financing. Originally we thought that a typographical error had caused miscalculation of the adjustment. Upon further review, we determined that the original command was correct and that the adjustment was not miscalculated; consequently, we have made no correction.

(7) Line 167 of the computer program for Langenberg contains a transmission error causing all sales to be deleted from the home market data base for which the date of conversion pricing and the date of metal pricing both fall within the period of investigation. We have corrected the computer program to include such sales in the home market data base.

Suspension of Liquidation

Pursuant to the remand order, the final determination and antidumping duty order on brass sheet and strip from the Federal Republic of Germany are amended to incorporate the changes in the calculations as set forth above. Accordingly, the Department will advise the U.S. Customs Service to adjust the cash deposit rates, on or after the date of the publication of this notice in the Federal Register as follows:

Manufacturer/producer exporter	Weighted-average margin percentage	
	Final	Amended final
Wieland-Werke AG	5.31	3.81
Langenberg Kupfer-und Messingwerke Gmbh	15.94	16.18
All others	8.87	7.30

Gilbery B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 18, 1987.

[FR Doc. 87–21944 Filed 9–22–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–604]

Amendment to Final Determination and Antidumping Duty Order; Certain Forged Steel Crankshafts From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning certain forged steel crankshafts (CFSC) from the Federal Republic of Germany (FRG), the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) determined that CFSC from the FRG are being sold at less than fair value and that imports of CFSC from the FRG are materially injuring a U.S. industry. One manufacturer, Gerlach-Werke GmbH, exported its CFSC to the United States at prices which were determined to be not at less than fair value. The antidumping duties required by this order will not be imposed on that company.

Therefore, based on these findings, all unliquidated entries of CFSC from the FRG, except for CFSC manufactured by Gerlach-Werke GmbH, which were entered, or withdrawn from warehouse, for consumption on or after May 13, 1987, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

In addition, because of a clerical error, we are amending our final determination in this investigation and

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directing the U.S. Customs Service to adjust the cash deposit rates as follows:

Manufacturer, producer, exporter	From	To
Thyssen Umformtechnik	2.02	1.90
All others	2.02	1.90

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, or William Matthews, Office of Compliance, 377–0189 or 377–3601, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on May 7, 1987, the Department made its preliminary determination that there was reason to believe or suspect that CFSC from the FRG were being sold at less than fair value, except for CFSC manufactured by Gerlache-Werke GmbH, (52 FR 18002, May 13, 1987). On July 21, 1987, the Department made its final determination that these imports are being sold at less than fair value, except for CFSC manufactured by Gerlach-Werke GmbH (52 FR 28170, July 28, 1987).

On September 9, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports are materially injuring a U.S. industry.

In addition, subsequent to the publication of the final determination, respondent Thyssen Umformtechnik identified a clerical error in our calculations. We have correcterd this error and are consequently amending our final determination by changing the weighted-average margins.

Accordingly, the cash deposit rates in the "Suspension of Liquidation" section of the final determination are amended to read as follows:

Manufacturer, producer, exporter	From	To
Thyssen Umformtechnik	2.02	1.90
All others	2.02	1.90

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CFSC from the FRG, except for CFSC manufactured by Gerlach-Werke GmbH. These antidumping duties will be assessed on all unliquidated entries of CFSC from the FRG, except for CFSC manufactured by Gerlach-Werke GmbH, entered, or withdrawn from warehouse, for consumption on or after May 13, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a chase deposit of 1.90 percent, equal to the estimated weighted-average antidumping duty margin, except for CFSC manufactured by Gerlach-Werke GmbH.

This determination constitutes an amendment to the final determination and an antidumping duty order with respect to CFSC from the FRG, pursuant to section 735 and 736 of the Act (19 U.S.C. 1673d and 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR part 353, which listed antidumping duty findings and orders currently in effect.

Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact William Matthews at (202) 377–3601.

This notice is published in accordance with section 735(d) 736 of the Act (19 U.S.C. 1673(d) and 1673(e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 16, 1987.

[FR Doc. 87–21945 Filed 9–22–87; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate

of Review, application number 87–00013" A summary of the application follows.

Co-applicants: Southeastern Fisheries Association, Inc.; Southeastern Fisheries Association, Inc., Export Trade Section, 312 East Georgia Street, Tallahassee, Florida 32301. Contact: Robert P. Jones, Exec. Dir., Telephone: (904) 224–0612.

Application #87–00013.

Date Deemed Submitted: September 8, 1987.

Members (in addition to co-applicants): Aylesworth Seafood Company, Inc.; Bayside Shellfish, Inc.; Clark Seafood Co., Inc.; J.O. Guthrie Fish Co., Inc.; and Raffield Fisheries, Inc.

Summary of the Application

A. Export Trade

Products

Fish and fish products, including, but not limited to, mullet, mullet roe, blue runners, thread herring, skipjack, menhaden, keoghfish, sardines, bonitas, black drum, shad, spots, and shrimp by-catch (i.e. fish caught incidental to shrimping).

Services

The co-applicants will provide or arrange for the provision of the following services to facilitate the export of Products: Consulting; international market research; advertising; marketing; insurance; product research and design, exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; financing; foreign exchange; warehousing, including a central storage freezer; quality control inspection; and taking title to the Products for export.

B. Export Markets

Worldwide.

C. Export Trade Activities and Methods of Operation

The co-applicants, Southeastern Fisheries Association, Inc. ("SFA"), its Export Trade Section ("ETS"), and the Members seek certification for the following activities:

1. The ETS and the Members may meet under the auspices of SFA to:

a. Establish export prices for individual Products on a geographical basis in the Export Markets;

b. Discuss the quality and quantity of Products that the Members are able to produce, including, but not limited to, levels of inventory available for export by the Members and geographic availability of fish to fill any actual or potential order;

c. Discuss export sales, marketing efforts, and any sales opportunities in the Export Markets for Products, including, but not limited to, export prices, selling strategies, sales, projected demand, standard terms of sale, financing, insurance, transportation, foreign competition, identification of potential customers, and customers' specifications; and

d. Discuss U.S. and Foreign legislation, regulations, and policies affecting export sales.

2. SFA may compile for, collect from, and disseminate to the Members for discussion as a group the export related information set forth in paragraph 1.

3. SFA may respond to export trade inquiries, invitations to bid, and other export sales opportunities on behalf of the ETS and the Members.

4. SFA may contact separately suppliers of Products that operate outside the ETS membership, and distribute to such suppliers separately information about the sales opportunities in the Export Markets, including, for example, bid requirements, bidding dates, and other pertinent information, in order that the individual suppliers can provide separately export quotations to SFA so that SFA may coordinate an SFA/ETS response to sales opportunities.

5. SFA may discuss with each supplier individually the price ETS will charge in the export markets for the supplier's Products.

6. ETS and the Members may combine Products for inspection under SFA's quality control program and store such Products for export in a central freezer.

7. SFA, ETS, and/or the Members may enter into exclusive and non-exclusive agreements with export intermediaries for sales in the export markets.

8. The management of the ETS will be under the overall direction of SFA'S Executive Director.

9. Membership in SFA's ETS shall be open to any member of SFA having an interest in the Export Trade that is legally eligible for such membership and that pays an assessment to join the Export Trade Section of Southeastern Fisheries Association in an amount of not less than $500 nor more than $5000 annually. Any Member of the ETS can withdraw its membership at any time by notifying the Chairman of the Board of Directors of the ETS in writing.

10. The Members will individually procure Products for export and sell such Products through the ETS on a voluntary basis.

Date: September 17, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–21905 Filed 9–22–87; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC-State Cooperation; Meeting

This is give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC, headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, October 8, 1987, beginning at 9:00 a.m. and lasting until 4:00 p.m. The agenda will consist of:

Agenda

1. Opening Remarks—Kalo A. Hineman, Acting Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;

2. Report by representatives of the American Newspaper Publishers Association Credit Bureau, Inc. on the status of the Bureau's efforts to disseminate educational material on commodity fraud to its subscribers;

3. Discussion of bank-financed precious metals programs;

4. Status report and discussion regarding the adoption of the NASAA Model State Commodity Code by the states and related issues;

5. Report on the National Futures Association's progress on the leverage survey mandated by the Futures Trading Act of 1986;

6. Report by the National Futures Association on its arbitration survey and other current arbitration issues;

7. Report on the activities of the San Diego Boiler Room Task Force; and

8. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objective of the Advisory Committee are more fully set

forth in the April 11, 1986 Fifth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Meeting of the public who wish to make oral statements should also inform Commissioner West in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on September 18, 1987.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 87-21931 Filed 9-22-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Privacy Act of 1974; Revision of a Record System Notice

AGENCY: Inspector General, Defense Department.

ACTION: Notice of an amended system of records for public comment.

SUMMARY: The Office of the Inspector General, Department of Defense, is publishing for any public comment a revision of an existing system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice October 23, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. J. Mauri Hamilton, Privacy Act Officer, Office of the Inspector General, PPRM (MPEA), Suite 1016, 400 Army Navy Drive, Arlington, VA 22202-2803. Telephone: 202-697-5479, Autovon: 227-5479.

SUPPLEMENTARY INFORMATION: The Inspector General systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows: FR Doc. 85-10237, 50 FR 22279, May 29, 1985 (Compilation) FR Doc. 87-16034, 52 FR 26547, July 15, 1987.

This revised record system (CIG-07) was formerly published at 50 FR 22285, May 29, 1987. The revision consists of amending the name from "Case Control System—Audit, Audit Follow-up, & Audit Policy and Oversight" to "Decision Support System (DSS)—OAIG-AUD." This title change and revision of the safeguards and storage captions are the major amendments along with other minor editorial changes to update the system notice.

This proposed revision is not with the purview of 5 U.S.C. 552a Section (o) of the Privacy Act of 1974 which requires an agency to submit a new or altered system report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 18, 1987.

CIG-07

SYSTEM NAME:

Decision Support System (DSS)—OAIG-AUD.

SYSTEM LOCATION:

Office of the Assistant Inspector General for Auditing (OAIG-AUD); Planning, Resources, and Reports Division, Room 801, 400 Army Navy Drive, Arlington, VA 22202-2884. Audit is a component of the Office of the Inspector General (OIG), Department of Defense (DoD). Portions of the system may be maintained by other components of OIG.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

All active personnel employed by the OIG Audit activities to include retired and separated employees. Records on former employees are maintained for two years after termination, reassignment or retirement.

CATEGORIES OR RECORDS IN THE SYSTEM:

Data on individual's current employment status, training experiences, audit and training venues and the following personal data: Name, home address and telephone number, date of birth, race and sex, veterans preference code, handicap code, pay grade and step, federal pay plan, duty address and telephone number, security clearance, computer access code, entered on duty date, service computation date, date of last promotion, date of next evaluation, date of last evaluation, position title, education, number of training days, date of release, hourly rate, career status code, and employee status code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the authority contained in the Inspector General Act of 1978, (Pub. L. 95-452), as amended, and DoD Directive 5106.1, (32 CFR Part 376) implementing the law, the Inspector General, DoD, is authorized to organize, direct, and manage the Office of the Inspector General, to include the creation and the maintenance of any necessary records. E.O. 9397 (SSN)

PURPOSE(S):

Information is used for:

(1) Personnel and Billet reporting; used by the Staff Manager and all levels of management in the monitoring of personnel actions in regard to promotion eligibility, filling of vacancies, and tracking of personnel transfers and reassignments within the OAIG-AUD. Security clearance notification is provided to all audited activities in advance of visits by audit personnel.

(2) Audit project management and auditor assignment control and reporting; used by managers to maximize manpower resources and to provide audit cost summary data. Resource information includes audit number, milestone dates, projected travel costs, and projected staffing costs.

(3) Staff Utilization reports; used by managers primarily to track manhours allocated towards audit preparation and active audit projects, to allow for more effective scheduling of unassigned personnel, and to categorize indirect time expended for end-of-year reporting.

(4) Travel reporting; tracking temporary duty (TDY) travel frequency and duration. Utilized by managers for workload planning, travel scheduling, and to control travel costs on assigned audit projects.

(5) Time and Attendance (T&A) reporting; provided by all audit activities, to include regional offices in the United States and Overseas. Used by T&A Coordinators to assist in providing time and attendance to the centralized payroll system.

(6) Training reporting; used primarily by the Training Officer and by all levels of management in determining future training needs, to schedule in-house training, and for the monitoring and administering of training for individual development.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from the system may be provided to other Federal, State and Local Agencies when it is necessary to coordinate responses or denials. The

Blanket Routine Uses set forth at the beginning of the OIG listing of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The DSS system of records is currently stored on direct access disk and magnetic tape backup at the Washington Computer Center (WCC), United States Department of Agriculture, Washington, DC 20250.

RETRIEVABILITY:

Records can be retrieved by SSN. A specified data element or a combination thereof contained in this system of records can be used for accessing information.

SAFEGUARDS:

Computer systems in which records reside are located in secured rooms accessible only to authorized personnel. Access to the DSS is protected through the use of assigned user/ID's and passwords for entry to the different subsystem applications. Once entry is acknowledged by the system; individual(s) are only allowed to perform predefined transactions/ processes on files according to their access levels and functionality.

RETENTION AND DISPOSAL:

Active records for individuals are maintained continuously or as needed. Deletion of records from the system for inactive individuals are performed two years from the employee's date of retirement, separation or transfer to another organization. Machine records are destroyed by erasure or overprinting. Paper records are destroyed as if classified waste.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Auditing, OIG, DoD, Room 1010, 400 Army Navy Drive, Arlington, VA 22202–2884. Telephone: (202) 697–9108.

NOTIFICATION PROCEDURE:

Written requests for access should be addressed to the System Manager. Individuals requesting information should provide proper identification and the location where the individual's record resides; written request must be signed by the individual making the request.

RECORD ACCESS PROCEDURES:

Active, retired, separated, or transferred individuals may request access to their records through a formal written request to the System Manager.

CONTESTING RECORDS PROCEDURES:

Agency rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager and are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b) and IG DoD Policies and Procedures Manual, Chapter 33.

RECORD SOURCE CATEGORIES:

Official Personnel Folder and other personnel input documents, activity supervisors, applications and other official OAIG–AUD forms completed by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 87–21956 Filed 9–22–87; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Changes in Meeting of the Defense Science Board Task Force on B–1B Defensive Avionics

ACTION: Change in date/location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on B–1B Defensive Avionics scheduled for September 16–18, 1987 as published in the **Federal Register** (Vol. 52, No. 169, Page 32960, Tuesday, September 1, 1987, FR Doc. 87–20063) will be held on September 24–25, 1987.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
September 18, 1987.

[FR Doc. 87–21958 Filed 9–22–87; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on October 27–28, December 8–9, 1987, January 13–14, and February 10–11, 1988 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982); and the accordingly these meetings will be closed to the public.

Patrica H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
September 18, 1987.

[FR Doc. 87–21957 Filed 9–22–87; 8:45 am]
BILLING CODE 3810-01-M

Defense Mapping Agency

Establishment and Availability; Negative Declaration Regarding Defense Agency Reston Center

AGENCY: Defense Mapping Agency, DOD.

ACTION: Notice of the establishment and availability of the negative declaration regarding the Defense Agency Reston Center.

SUMMARY: On 4 September 1987, Rear Admiral O. E. Osborn, U.S. Navy, Acting Director, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305–3000, announced his decision to establish the Defense Mapping Agency Reston Center (DMARC), effective 1 October 1987. The DMA Reston Center will be located at 12310 Sunrise Valley Drive, Reston, VA 22091.

Notice is hereby given, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500) and Department of Defense Regulation "Environmental Considerations in Department of Defense Actions" (32 CFR Part 214) that an Environmental Impact Statement has not been prepared for the establishment of the DMARC. The Environmental Assessment of this action indicates that staffing and equipping this new Center will not create any significant adverse impacts on the physical environment and that no significant controversy related to the natural environment is associated with this action. As a result of these findings, the Acting Director, DMA, has determined that the preparation of an Environmental Impact Statement is not required in this case.

The Environmental Assessment upon which this management decision is

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based is a classified document and is not releasable to the public. The Finding of No Significant Impact is on file and may be reviewed by interested parties.

DATE: Administrative action on implementation of the decision will begin immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. Obloy, General Counsel, Headquarters, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305–3000, phone number (202) 653–1406.

Patricia R. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 18, 1987.

[FR Doc. 87–21955 Filed 9–22–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.116A]

Notice Inviting Preapplications and Applications for New Awards Under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1988

Purpose: Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities.

Priorities: The Secretary supports a broad range of programs that seek to improve postsecondary education. In accordance with 34 CFR 75.105(c)(1), the following guidelines suggest areas in which proposals would be especially welcome. However, the list is not meant to be exhaustive. Projects that do not fit any of these guidelines are also eligible for support if they address other significant problems in postsecondary education. Proposals are solicited that seek to—(1) Ensure that undergraduate curricula provide the knowledge and skills which an educated citizen needs, including knowledge of our intellectual and cultural heritage; (2) ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards; (3) improve the quality of undergraduate education by raising academic standards for the bachelors degree, strengthening the liberal arts component of undergraduate professional programs, developing means of assessing and comparing programs and institutions, and recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies; (4) reform the education of school teachers by making it easier for able people to qualify as teachers who have earned degrees in fields other than education and who currently lack pedagogical training, increasing current and prospective teachers' mastery of the subjects they teach, ensuring that prospective teachers have a solid grounding in the liberal arts, and attracting more people of commitment and high intellectual ability to the teaching profession; (5) reform graduate education by fostering the teaching skills of Ph.D. candidates bound for careers in teaching, and broadening the social and ethical perspectives of students in professional graduate programs generally; (6) strengthen post-secondary educational institutions and organizations by providing incentives to develop the abilities of their leaders, administrators, faculty, and staff; (7) provide education for a changing economy by offering educational programs and services for workers, unemployed individuals, businesses, and communities; or (8) develop educational uses of technology, including computers, television, and other electronic media.

Deadline for Transmittal of Preapplications: November 16, 1987.

Deadline for Transmittal of Applications: March 7, 1988.

Applications Available: October 1, 1987.

Available Funds.

The Administration's budget request for fiscal year 1988 includes $7,500,000 for FIPSE. The Congress has not yet completed action on the 1988 appropriation. The estimates below are based upon the FY 1987 appropriation.

Estimated Size of Awards: $5,000 to $200,000 per year.

Estimated Number of Awards: 70.

Project Period: 12 to 36 months.

Applicable Regulations. (a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (b) the regulations in 34 CFR Part 630, with the exceptions noted in 34 CFR 630.4.

For Applications and Information Contact: The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., Room 3100, ROB–3, Washington, DC 20202. Telephone (202) 245–8091/8100.

Program Authority: 20 U.S.C. 1135.

Dated: September 18, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–21947 Filed 9–22–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement The International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on October 1, 1987, a the offices of Chevron Corporation, 575 Market Street, 40th Floor, San Francisco, California, beginning at 9:30 a.m.

The agenda for the meeting is as follows:

1. Opening remarks
2. Approval of the Record Note of the Industry Advisory Board Meeting of June 9, 1987
3. Correspondence and Communications with IEA and Reporting Companies
4. IEA Test Issues
—Test Guide for Coordinated Emergency Response Measures
—Status of Preparations for Data Test and the Sixth Allocation Systems Test
5. Emergency Stocks
—Revision of Minimum Operating Requirements—Progress Report
—Mandatory Stocks of IEA Member Countries
—Questionnaire on "Compensation" for Early Coordinated Emergency Response Measures
6. Other Emergency Preparedness Issues
—U.S. Plan of Action
—Middle East Oil Supply Flows
—New Forms of Oil Trading—The Futures Market. Possible Implications for the IEA Oil Emergency Sharing System
7. IAB Organization, Leadership, and Succession
8. Date and Time of Next Meeting

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meeting is open only to representatives of members of the IAB, their counsel, representatives of the Department of Energy, Justice, State, the Federal Trade Commission, and General Accounting Office, representatives of Congress, representatives of the IEA, representatives of the Commission of

the European Communities, and invitees of the IAB or the IEA.

Issued in Washington, DC. September 18, 1987

Eric J. Fygi

Acting General Counsel

[FR Doc. 87-21754 Filed 9-22-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. CAC-003]

Energy Conservation Program For Consumer Products; Decision and Order Granting Waiver From Test Procedures for Central Air Conditioners From the Trane Co.

AGENCY: Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. CAC-003) granting the Trane Company a waiver for its TWS variable-speed model series central air conditioner and heat pump from existing DOE test procedures for determining the unit's Heating Seasonal Performance Factor (HSPF).

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(1), notice is hereby given of the issuance of the Decision and Order as set out below. The Trane Company has been granted a waiver for its TWS model, series variable-speed central air conditioner (heat pump) permitting the company to use an alternate test method in determining the Heating Seasonal Performance Factors (HSPF).

Issued in Washington, DC., September 11, 1987.

John R. Berg,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

Decision and Order of The Department of Energy, Office of Conservation and Renewable Energy

In the matter of: The Trane Co.

[Case No. CAC-003]

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, and the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100-12, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the test procedure regulations by adding § 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data.

The Trane Company (Trane) filed a "Petition for Waiver" dated March 10, 1987, in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** Trane's petition and solicited comments, data, and information respecting the petition. 52 FR 17315, May 7, 1987. Trane subsequently filed an "Application for Interim Waiver" under § 430.27(g) and DOE granted the Trane Company an interim waiver to central air conditioner test procedures. (Case No. CAC-003I). 52 FR 17798, May 12, 1987.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE notified Trane by letter dated June 15, 1987, that no rebuttal was required. DOE consulted with the National Bureau of Standards (NBS) by phone and meeting, on June 22 and 29, 1987, respectively, and the Federal Trade Commission (FTC) by phone on July 23, 1987, concerning the Trane petition. The NBS responded to our request for an evaluation of the waiver test procedure in a letter report dated July 9, 1987. The FTC voiced no opposition to the issuance of the waiver to Trane.

Assertions and Determinations

Trane's petition seeks a waiver from the DOE test provisions that require testing at a single compressor speed. Trane was granted a waiver from the DOE test provisions that require testing its TWS variable-speed model series heat pump in the cooling mode at a single compressor speed on April 13, 1987. 57 FR 11855. (Hereafter referred to as the April Decision and Order.) Trane requests allowance to use DOE's proposed variable-speed test procedure, 51 FR 35736, October 7, 1986, including parts of Appendix B of the Air Conditioning and Refrigeration Institute (ARI) Standard 210/240-84 with certain modifications to determine the unit's HSPF. Trane's petition requests that steady-state test points be at maximum, minimum, and "nominal capacity" speeds in order to accurately reflect the system's HSPF rating. One of the changes requested by Trane is that the frost/defrost test run for HSPF, be run at the intermediate speed specified in the April Decision and Order for the cooling test with a tolerance of ± 5 percent. Trane further requests to use DOE's proposed procedure for cyclic testing with both capacity and fan power integrated to the time determined by the units automatic controls. Trane also requests to use the ARI Standard 210/240-84 method of determining the heating part load factor instead of the DOE proposed procedure.

Trane identified its TWS variable-speed model series heat pump as using variable-speed motors to drive the compressor, indoor blower, and outdoor fan. The compressor is controlled over a wide range of speeds. Modulation of all three motors allows the system to meet specific building load requirements. The system operates at variable-speed using a microprocessor in conjunction with a special thermostat. It was established in previous waiver evaluations concerning variable-speed heat pumps that the existing test and calculation method of Appendix M to Supart B of 10 CFR Part 430 were inappropriate. The waiver granted to Carrier specified a test procedure that was based on Appendix B of ARI Standard 210/240-84. (Case

CAC–001) 51 FR 35403, October 3, 1986. The commenters on the Carrier wavier agreed that the use of Appendix B of ARI Standard 210/240 was appropriate for variable-speed systems.

NBS conducted a review of the procedure as outlined by Trane, and summarized its comments in a letter report dated July 9, 1987. The aim of the review by NBS was to verify that Trane's waiver test procedure is consistent with the existing test procedure for single speed and two speed systems, and with the waiver granted to Carrier for its variable speed central air conditioner. Current DOE procedures evaluate the HSPF for various building loads based on various design heating requirements. The HSPF value determined for minimum design heating requirement (DHR_{min})for Region IV [1] is used as a basis for informing the consumer of the unit's efficiency. NBS agreed that the test procedure proposed by Trane determines the Region IV value of HSPF in an accurate manner. The Trane method was analyzed to determine if it provided an unfair advantage when used for other building loads and was found to be reasonable.

The cyclic test as proposed by Trane establishes requirements for compressor "on" time and "off" time. Trane requested the compressor "on" time be 6 minutes or the minimum time allowed by the controls, whichever was greater. This ability to modulate the compressor "on" time is not available in any other test method and was therefore viewed by NBS as inappropriate. However, NBS suggested three alternatives for compressor "on" time. DOE, in reviewing comments by NBS, has determined that in order to be consistent with previous waivers granted and provide a fair approach to Trane, a 12 minute compressor "on" time should be granted.

It is DOE's position that an absence of comments from concerned parties represents a general agreement with the Trane proposed waiver. The comments and concerns expressed by NBS have provided the theoretical evaluation of the procedure requested by the Trane Company, and its suitability as an alternative to the existing procedure. The modifications requested by Trane concerned the compressor "on" time; the degradation coefficient C_D; and the intermediate speed test.

Based on the information provided by the petitioner, NBS report and DOE's internal review, DOE is granting Trane's request for the use of Appendix B of ARI Standard 210/240–84 for determining the heating seasonal performance factor of variable-speed central air conditioners and heat pumps (heating mode) with the modifications discussed above.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by The Trane Company (CAC–003) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Notwithstanding any contrary provisions of Appendix M of 10 CFR Part 430 Subpart B, the Trane Company shall be permitted to test its TWS variable-speed model air conditioners and heat pumps on the basis specified in 10 CFR Part 430, with the modifications set forth below:

(i) Test Procedure

The test procedures shall be as specified in section 5.0 of ARI Standard 210/240–84 and in section 8.0 of ANSI/ASHRAE Standard 116–1983, with the inclusion of the following conditions:

Heating cyclic tests shall be conducted by cycling the compressor "on" for 12 minutes and "off" for 48 minutes. The method of test shall be the damper method, which is described in Appendix M to Subpart B of 10 CFR Part 430.

The indoor air moving equipment shall cycle "off" as governed by any automatic controls normally installed with the unit. Both net capacity and power shall be integrated. This applies to units having an indoor fan time delay. Units not supplied with an indoor fan time delay shall have the indoor air moving equipment cycle "on" and "off" as the compressor cycles "on" and "off."

In lieu of conducting heating cyclic tests, an assigned value of 0.25 shall be used for the degradation coefficient (C_D).

(ii) Test Procedures; Intermediate Speed

The frost accumulation test shall be conducted at the temperature conditions in Appendix B of ARI Standard 210/240–84.

The unit shall be operated at a constant, intermediate compressor speed (K=Vn). The intermediate compressor speed shall be within 5 percent of the intermediate speed measured during the intermediate speed test in the cooling mode.

(iii) Heating Seasonal Performance Factor

The heating seasonal performance factor (HSPF) shall be expressed in Btu per watt-hour. For each of the six regions specified in Table 4 of this waiver, a separate HSPF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's in Appendix M between the maximum and minimum values.

HSPF shall be defined as the heating seasonal performance factor as specified in 2.2 of Appendix B of ARI Standard 210/240–84 multiplied by 3.413 Btu/hr in which the number of hours in the J_{th} temperature bin (n_j) is defined in Table 2 of this waiver and in which the part-load factor (PLF) in the equation for power input ($E(t_j)$) is defined in section 2.2 of Appendix B of ARI Standard 210/240–84.

The HSPF shall be determined by the method for two speed or two compressor units, as specified in ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84, and in accordance with the following changes. The DHR shall be determined by heating capacity at 70–47/43, nominal compressor speed, using Table 6.2.6 in ARI Standard 240–81 as defined in ARI Standards 210/240–84 Appendix A. "Nominal" shall be defined as the lesser of the heating capacity at the maximum compressor speed allowed by the controls in the cooling mode or the maximum speed allowed by the controls in the heating mode.

The capacity for the unit modulating at the intermediate compressor speed (k=v) at any temperature (t_j) is determined by:

[1] There are six regions for HSPF; ARI and other industry representatives have agreed that Region IV is representative of average usage. NAECA established levels for central air conditioners based on Region IV.

$$q^{k=v}(t_j) = q^{k=v}(35) + M_q\,(t_j - 35)$$

where: $q^{k=v}(35)$ = the capacity of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

M_q = slope of the capacity curve for the intermediate compressor speed (k=v)

$$M_q = \frac{Q_{ss}^{k=1}(62) - Q_{ss}^{k=1}(47)}{62 - 47} * (1 - N_q) + N_q \frac{Q_{ss}^{k=2}(47) - Q_{ss}^{k=2}(17)}{47 - 17}$$

$$N_q = \frac{Q_{ss}^{k=v}(35) - Q_{ss}^{k=1}(35)}{Q_{ss}^{k=2}(35) - Q_{ss}^{k=1}(35)}$$

Once the equation for $q^{k=v}(t_j)$ has been determined, the temperature where $q^{k=v}(t_j) = BL(t_j)$ can be found. This temperature is designated as t_{VH}. A separate t_{VH} shall be determined for each design heating requirement.

The electrical power for the unit operating at the intermediate compressor speed (k=v) and at the temperature (t_{VH}) is determined by:

$$E_{ss}^{k=v}\ (t_{VH}) = E_{ss}^{k=v}\ (35) + M_E(t_{VH} - 35)$$

where: $E_{ss}^{k=v}\ (35)$ = the electrical power input of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

M_E = slope of the electrical power input curve for the intermediate compressor speed (k=v)

$$M_E = \frac{E_{ss}^{k=1}\ (62) - E_{ss}^{k=1}\ (47)}{62 - 47} * (1 - N_E)$$

$$+ N_E \frac{E_{ss}^{k=2}\ (47) - E_{ss}^{k=2}\ (17)}{47 - 17}$$

$$N_E = \frac{E_{ss}^{k=v}\ (35) - E_{ss}^{k=1}\ (35)}{E_{ss}^{k=2}\ (35) - E_{ss}^{k=1}\ (35)}$$

The following section replaces Case II in section 2.2 of ARI Standard 210/240-84.

Case II. When the compressor speed varies between the maximum speed (k=2) and minimum speed (k=1) such that k=v to satisfy the building load at temperature t_j evaluate the following equations:

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$$q_{ss}^{k=v}(t_j) = BL\ (t_j)$$

where: $q_{ss}^{k=v}(t_j)$ = steady-state capacity delivered by the unit at any speed between the minimum and maximum compressor speeds at temperature t_j

when $t_j \geq t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=1}(t_3) - E_{ss}^{k=v}(t_{VH})}{t_3 - t_{VH}} * (t_j - t_{VH})$$

where: $E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature t_j and at a variable compressor speed between the minimum and maximum compressor speeds

$E_{ss}^{k=v}(t_{VH})$ = the electrical power input required by the unit at temperature t_{VH} and at the intermediate compressor speed (k=v), as determined above

$E_{ss}^{k=1}(t_3)$ = the electrical power input required by the unit at temperature t_3 and at the minimum compressor speed

t_3 = temperature at which $q_{ss}^{k=1}(t_j) = BL(t_j)$

when $t_j < t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=2}(t_4) - E_{ss}^{k=v}(t_{VH})}{t_{VH} - t_4} * (t_{VH} - t_j)$$

where: $E_{ss}^{k=2}(t_4)$ = the electrical power input required by the unit at temperature t_4 and at the maximum compressor speed

t_4 = temperature at which $q_{ss}^{k=2}(t_j) = BL(t_j)$

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(iv) Demand Defrost Credit

For air-source units that are equipped with "demand defrost control systems", the value for HSPF, as determined above shall be multiplied by an enhancement factor, F_{def} to compensate for improved performance not measured in the Frost Accumulation Test. The factor, F_{def} depends on the number of defrost cycles in a 12-hour period (n) and shall be calculated as follows:

$F_{def} = 1.03 + 0.03\ (90\text{-}t)/630$ for $t > 90$ minutes

$F_{def} = 1.03$ for $t < 90$ minutes

where t = length of the defrost accumulation period in minutes.

(v) Annual Performance Factor

The annual performance factor (APF) shall be expressed in Btu per watt-hour. For each of the six regions in Table 2, a separate APF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's (See Table 6.2.6 in Appendix M to Subpart B of 10 CFR Part 430) between the maximum and minimum values, APF shall be defined as:

$$APF = \frac{[CLH * Q_{ss}(95)] + [HLH * DHR * C]}{\frac{CLH * Q_{ss}(95)}{SEER} + \frac{HLH * DHR * C}{HSPF}}$$

Where:

CLH = cooling load hours for regions in Table 4

Q_{ss} (95) = steady-state capacity as measured in Test A

HLH = heating load hours for a region as in Table 4

DHR = standardized design heating requirement

C = adjustment factor which serves to adjust the calculated design heating load hours experienced by a heating system and is 0.77

SEER = seasonal energy efficiency ratio as determined by 4.1 of Appendix M1 in DOE proposed test procedure, 51 FR 35736, October 7, 1986.

HSPF = heating seasonal performance factor as determined by 4.2 of Appendix M1, DOE proposed test procedure, 51 FR 35736, October 7, 1986.

TABLE 2.—DISTRIBUTION OF TEMPERATURE BIN HOURS FOR HEATING

Bin No. (j)	Representative bin temperature (Tj)	Temperature Bin hours for each region					
		I	II	III	IV	V	VI
1	62	218	268	268	297	291	311
2	57	179	236	248	250	253	[illegible]
3	52	145	204	241	232	236	591
4	47	97	179	240	[illegible]	[illegible]	561
5	42	61	140	236	225	214	388
6	37	31	110	206	245	239	209
7	32	14	70	161	283	280	94
8	27	4	30	82	196	258	22
9	22	1	10	37	124	204	[illegible]
10	17	[illegible]	[illegible]	16	81	151	0
11	12	[illegible]	0	[illegible]	[illegible]	129	[illegible]
12	7	0	0	4	29	105	[illegible]
13	2	0	0	2	14	80	[illegible]
14	−3	[illegible]	0	0	5	50	[illegible]
15	−8	0	[illegible]	0	2	28	[illegible]
16	−13	0	0	[illegible]	0	14	0
17	−18	[illegible]	0	[illegible]	0	6	0
18	−23	0	[illegible]	[illegible]	[illegible]	3	0

TABLE 4.—REGIONAL COOLING LOAD HOURS (CLH) HEATING LOAD HOURS (HLH), OUTDOOR DESIGN TEMPERATURE (T_{OD}) AND MEAN GROUND-WATER TEMPERATURE (T_w)

Region	CLH	HLH	T_{OD}	T_w
I	2400	750	37	72
II	1800	1250	27	[illegible]
III	1200	1750	17	62
IV	[illegible]	2250	5	53
V	400	2750	−10	45
VI	200	2750	[illegible]	55

(3) The waivers shall remain in effect from the date of issuance of this Order until the Department of Energy prescribes final test procedures appropriate to variable-speed central air conditioners and heat pumps.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicants and commenters. These waivers may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

(5) Effective October 23, 1987, this waiver supersedes the Interim Waiver granted Trane on April 24, 1987. 51 FR 17798, May 12, 1987. (Case No. CAC–003I).

[FR Doc. 87–21952 Filed 9–22–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order with Carlson Companies, Inc. and Ferrell Companies, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Carlson Companies, Inc., (Carlson) and Ferrell Companies, Inc., (Ferrell), for $1,500,000.00.

DATE: Comments by October 23, 1987.

ADDRESS: Send comments to Carlson and Ferrell Comments, Office of the Solicitor, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Martin F. Katz, Office of Solicitor (RG–43), Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office at (202) 586–4235.

SUPPLEMENTARY INFORMATION: On August 14, 1987, the ERA executed a proposed Consent Order with Carlson and Ferrell. Under 10 CFR 205 through 199J(b), a proposed Consent Order which involves the sum of $500,000.00 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant comments, as well as any other considerations that were relevant to the decision.

I. Background

The stipulated facts upon which this Consent Order is based are as follows:

During the initial portion of the period covered by the Consent Order, Indian Wells Operating Company operated a gas processing plant located in Crockett County, Texas. After the dissolution of Indian Wells Operating Company, the Crockett Plant was acquired by Indian Wells Oil Company, ("Indian Wells"), which also continued to operate the plant. Indian Wells was equally owned by Carlson and Ferrell. Indian Wells was a "refiner" as defined in 6 CFR 150.352 and 10 CFR 212.31 and "natural gas processor" as defined in 10 CFR 212.162 and was subject to the jurisdiction of DOE. During the period covered by this Consent Order, Indian Wells engaged in the extraction, fractionation and sale of natural gas liquids and natural gas liquid products and was subject to the pricing provisions of 10 CFR 212.1, *et seq.* and its antecedent regulations.

The DOE audited Indian Wells and its predecessor corporations. As part of its audit, DOE examined Indian Wells' books and records relating to its compliance with the federal petroleum price and allocation regulations. As a result of this audit, the DOE issued a Remedial Order on December 3, 1986 which found that Indian Wells had overcharged in its sales of natural gas liquids and natural gas liquids products during the period of September 1, 1973 through January 31, 1976, in the amount of $1,300,471.47 plus interest of $2,575,392.92 (15 DOE ¶ 83,010).

The DOE regulations define a "firm" as a parent and the consolidated and unconsolidated entities it directly or indirectly controls. Pursuant to this definition, Carlson and Ferrell are liable for the overcharges at issue in the Remedial Order.

Carlson and Ferrell maintain that Indian Wells calculated its costs, determined its prices, sold its natural gas liquids and liquid products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. Carlson and Ferrell deny the findings set forth in the Remedial Order and are presently appealing it before the Federal Energy Regulatory Commission.

Based on an analysis of Carlson and Ferrell's arguments, the entire record in this proceeding, and in light of the expense to the government associated with any additional litigation, ERA believes that a total payment of $1,500,000.00 is a satisfactory compromise of the issues raised in the audit.

II. The Consent Order

The proposed Consent Order has been entered into by DOE and Carlson and Ferrell in order to resolve all civil and administrative disputes, claims, and causes of action by DOE against Carlson and Ferrell relating to Indian Wells' compliance with the Federal petroleum price and allocation regulations during the period August 1, 1973 through January 27, 1981. Although Carlson and Ferrell contend that in all respects Indian Wells correctly construed and complied with applicable regulations, they have entered into this proposed Consent Order to avoid possible further expenses and disruption of business. DOE believes the proposed Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by the audit.

III. Refunds

Under the terms of the Consent Order, Carlson and Ferrell are required to pay the sum of $1,500,000.00 within thirty (30) days of the effective date of the Consent Order. DOE will petition the Office of Hearings and Appeals for distribution of the settlement amount pursuant to the special refund procedures of 10 CFR Part 205, Subpart V.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC on this 17th day of September, 1987.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87–21951 Filed 9–22–87; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the

collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before October 23, 1987. Last notice issued Thursday, August 13, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible.

The energy information collection submitted to OMB for review were:

1. Energy Information Administration.
2. EIA–28.
3. 1905–0149.
4. Financial Reporting System.
5. Revision.
6. Annually.
7. Mandatory.
8. Business or other for profit.
9. 22 respondents.
10. 22 responses.
11. 23,232 hours.
12. The Form EIA–28 provides data to evaluate the energy industry competitive environment and to analyze energy industry resource development, supply, distribution, and profitability issues. Survey results from 22 major energy producers are published annually for both private and public sector use.

1. Federal Energy Regulatory Commission.
2. FERC–569.
3. 1902–0111.
4. Refund Obligations (Producer).
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 3,900 respondents.
10. 3,900 responses.
11. 3,900 hours.
12. FERC–569, Refund Obligations (Producer) is an information collection which is mandatory pursuant to sections 503(e) and 504(a) of the NGPA for interim collection of wellhead prices subject to refund.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, September 16, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–21953 Filed 9–22–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP87–98–000]

Proposed Changes in FERC Gas Tariff; Canyon Creek Compression Co.

September 17, 1987.

Take notice that on August 31, 1987, Canyon Creek Compression Company (Canyon) tendered for filing Fifth Revised Sheet No. 4 and Original Sheet Nos. 130 and 131 to be a part of its FERC Gas Tariff, Original Volume No. 1.

Canyon states that the above-mentioned tariff sheets were submitted in compliance with Commission Order No. 472, issued May 29, 1987. The proposed tariff provides a mechanism for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations.

A copy of this filing was mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21876 Filed 9–22–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–133–000]

Tariff Filing and Rate Changes; East Tennessee Natural Gas Co.

September 17, 1987.

Take notice that on September 1, 1987, East Tennessee Natural Gas Company, (East Tennessee), tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff, to be effective October 1, 1987.

Original Volume No. 1

Substitute Thirtieth Revised Sheet No. 4
First Revised Sheet No. 142

East Tennessee states that it is filing these tariff sheets in response to and in compliance with Order No. 472. East Tennessee states that its filing includes a new section 28, which provides for customer funding of annual charges assessed East Tennessee by the Federal Energy Regulatory Commission pursuant to Order No. 472.

East Tennessee states that copies of the filing have been mailed to all its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21880 Filed 9–22–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87-7-51-000]

Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions; Great Lakes Gas Transmission Co.

September 17, 1987.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on September 11, 1987, tendered for filing Eighth Revised Sheet Nos. 57(i) and 57(ii), First Revised Volume No. 1 to its FERC Gas Tariff to be effective September 1, 1987.

These tariff sheets reflect changes in Great Lakes' purchased gas cost applicable to gas sold by Great Lakes to Michigan Consolidated Gas Company ("MichCon"), Northern Minnesota Utilities ("NMU") and Peoples Natural Gas Company ("Peoples").

Great Lakes states that the changes in the MichCon prices are in accordance with the price adjustment provisions that were negotiated in October 1986 between MichCon and TransCanada, the sole supplier of gas to Great Lakes. These price provisions were made a part of the Gas Purchase Contracts between TransCanada and Great Lakes [1] and were filed with the Commission in Great Lakes' prior PGA filings. Great Lakes states that in accordance with the methodology described in the price adjustment provisions, the monthly demand charges related to the gas cost component will change from $12.48 per Mcf to $12.81 per Mcf. This change relates to a change in TransCanada's monthly demand toll as set by the National Energy Board of Canada. Great Lakes also states that in accordance with the contract, the commodity charge is also changed from $1.9633 to $1.9525 per MMBtu for purchases up to 62.5% of daily contract quantity ("DCQ") and from $1.82420 to $1.8134 per MMBtu for purchases in excess of 62.5% of DCQ up to 100% of DCQ. The net effect of these changes is that the 100% load factor rate will stay the same.

The changes in the gas purchase prices applicable to NMU reflect a price decrease in the purchased gas component of the commodity charge for deliveries within contract demand from $1.60 to $1.40 per MMBtu and a reduction in the purchased gas component of the overrun charge from $1.56 to $1.363 per MMBtu. These pricing changes are effective for the month of September, 1987. Great Lakes states that these gas purchase price reductions result from recent negotiations between TransCanada and NMU, which Great Lakes is hereby implementing.

The gas purchase price applicable to Peoples has changed from $2.39780 per MMBtu to $2.52870 per MMBtu pursuant to a pricing index previously approved by the Commission.

Great Lakes is requesting an effective date of September 1, 1987 for Eighth Revised Sheet Nos. 57(i) and 57(ii). Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing changes in purchased gas cost as soon as possible.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21881 Filed 9-22-87; 8:45 am]

BILLING CODE 6717-01-M

[1] Application for "unbundling" the Gas Purchase Contract to allow MichCon to directly purchase gas from TransCanada is presently pending with the FERC in Docket No. CP86-696-000.

[Docket No. RP87-135-000]

Proposed Changes in FERC Gas Tariff; High Island Offshore System

September 17, 1987.

Take notice that on September 1, 1987 High Island Offshore System ("HIOS") tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighteenth Revised Sheet No. 4
First Revised Sheet No. 5
Original Sheet No. 5-A

HIOS states that the filing reflects an annual charge unit rate adjustment which is designed to permit HIOS to recoup the annual charges assessed it by the Commission for the fiscal year ending September 30, 1987 in accordance with the Omnibus Budget Reconciliation Act of 1986. HIOS proposes an October 1, 1987 effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21877 Filed 9-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-100-000]

Tariff Filing; Mountain Fuel Resources, Inc.

September 17, 1987.

Take notice that on August 31, 1987, Mountain Fuel Resources, Inc. (MFR), pursuant to 18 CFR 154.38(d)(6) and Part 382 of the Commission's regulations, tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff as follows:

First Revised Volume No. 1

Second Revised Sheet No. 1
Ninth Revised Sheet No. 12
Original Sheet No. 70-A

Original Volume No. 1-A

Second Revised Sheet No. 5
First Revised Sheet Nos. 20, 43, 67, 79, and 111
Second Revised Sheet Nos. 117 and 132

Original Volume No. 3

Fifth Revised Sheet No. 8

MFR states that the purpose of this filing is to add language to its FERC Gas Tariff to provide for an Annual Charge Adjustment (ACA) clause, and to implement the annual charge unit rate of $0.00196/Dth in each of its rate schedules applicable to sales and transportation. MFR requests an effective date of October 1, 1987, for all tendered tariff sheets.

Copies of the filing were served upon MFR's jurisdictional customers and the Public Service Commissions of Utah and Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21884 Filed 9-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-141-000]

Proposed Changes in FERC Gas Tariff; Natural Gas Pipeline Co. of America

September 17, 1987.

Take notice that on September 15, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing the below listed tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1:

Thirty-fifth Revised Sheet No. 5A
Seventh Revised Sheet No. 8
Fourth Revised Sheet No. 13
First Revised Sheet No. 127
Original Sheet Nos. 157 through 165
Twenty-fifth Revised Sheet No. 301
Twenty-third Revised Sheet Nos. 302 and 305
Twenty-fourth Revised Sheet Nos. 303 and 304
Tenth Revised Sheet Nos. 306 and 309
Eleventh Revised Sheet Nos. 307 and 308

Natural states that the purpose of these sheets is to: (1) Institute an Inventory Holding Charge provision (Section 31) in Natural's Tariff, and (2) change the effective date for volumes nominated pursuant to Section 22 of the General Terms and Conditions. The Inventory Holding Charge provision when accepted and permitted to become effective will apply to Natural's customers purchasing gas under Rate Schedules DMQ-1 and G-1. It will provide a mechanism whereby Natural can recover the costs of maintaining a gas supply inventory to meet peak day, monthly and annual service levels nominated by its Rate Schedules DMQ-1 and G-1 customers. The provision also includes an Exit Fee applicable to a customer leaving the system or reducing its nominations. Natural further states that the proposed Inventory Holding Charge mechanism submitted adheres to the four (4) principles which the Commission outlined in Order No. 500 to be used as a guide in structuring an Inventory Holding Charge.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective November 1, 1987.

A copy of this filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before September 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21878 Filed 9-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-99-000]

Change in Rates and Tariff Revisions; Northern Natural Gas Co., Division of Enron Corp.

September 17, 1987.

Take notice that on August 31, 1987, Northern National Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective October 1, 1987 the following tariff sheets to be included in Northern's FERC Gas Tariff:

Third Revised Volume No. 1

Forty-Seventh Revised Sheet No. 4b
Fifteenth Revised Sheet No. 4b.1
Second Revised Sheet No. 4g
Third Revised Sheet No. 4g.1
Second Revised Sheet No. 4g.2
First Revised Sheet No. 52c.5
First Revised Sheet No. 52f.6
Fourth Revised Sheet No. 72

Original Volume No. 2

Fifty-Fourth Revised Sheet No. 1c
Second Revised Sheet No. 1k

Northern states that the purpose of the revised tariff sheets is to adjust its jurisdictional natural gas sales and transportation rates to reflect the annual charge adjustment (ACA) unit charge, as authorized by the Commission for the fiscal year beginning October 1, 1987. An ACA unit charge of $0.0021 per Mcf will be added to each of Northern's rate schedules applicable to sales or transportation deliveries.

Copies of the filing were served on all of Northern's jurisdictional customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21883 Filed 9-22-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36146; FRL-3263-4]

Publication of Addenda on Data Reporting to Pesticide Assessment Guidelines; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Addenda to the Pesticide Assessment Guidelines for certain studies have been finalized and are now available to the public from the National Technical Information Service (NTIS). The studies involved are: nature of the residue: Plants, terrestrial field dissipation, and aquatic testing for marine/estuarine and freshwater fish and invertebrates. The addenda supersede paragraphs in the Guidelines on data reporting and provide a format for the preparation of study reports by those submitting data to EPA. While these Guidelines are not mandatory at this time, data submitters are encouraged to follow the format so that reports will be consistent, thereby increasing the efficiency of pesticide registration and other regulatory activities.

ADDRESS: Guidelines can be ordered from: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

FOR FURTHER INFORMATION CONTACT:
Elizabeth M.K. Leovey, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Room 703B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2162).

SUPPLEMENTARY INFORMATION: The specific addenda, with NTIS order number and price, currently available from NTIS are as follows.

Document title	NTIS document No.	EPA document No.	Price
Pesticide Assessment Guidelines Subdivision E Hazard Evaluation: Wildlife and Aquatic Organisms Aquatic Testing for Marine/ Estuarine and Freshwater Fish and Invertebrates Addendum 2 on Data Reporting.	PB87-207700	540/09–87–198	$13.95
Pesticide Assessment Guidelines Subdivision N Chemistry: Environmental Fate Terrestrial Field Dissipation Studies Addendum 2 on Data Reporting	PB87-208393	540/09–87–200	[illegible]
Pesticide Assessment Guidelines Subdivision O Hazard Evaluation: Residue Chemistry Nature of the Residue: Plants Addendum 3 on Data Reporting	PB87-208641	540/09–87–199	9.95

This is the second set of Data Reporting Guidelines published by the Agency. Publication of the previous set was announced in the **Federal Register** of November 26, 1986 (51 FR 42931). These documents were reviewed by the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA. They were discussed by the FIFRA Science Advisory Panel in a public meeting on May 22, 1986, and underwent public comment announced in the **Federal Register** of May 21, 1986 (51 FR 18660). The documents were revised to reflect consideration of these comments and the public comments are addressed in the documents.

Orders may be placed by mail or telephone. All orders should specify whether the document is requested in hard copy or microfiche form since prices vary for hard copy but are a consistent $6.50 for the microfiche. There is an additional $3.00 handling charge for each order. Payment may be made by charging against an NTIS deposit account; charging to VISA, MasterCard, or American Express; or by check or money order. In all orders, the document title, NTIS order number of the document, desired form of the document (microfiche or hard copy), and the price must be stated.

Data Reporting Guidelines for the remaining major studies in the Pesticide Assessment Guidelines will also be published. Publication will be announced in the **Federal Register**.

Dated: September 8, 1987.

Stephen L. Johnson,

Acting Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 87–21606 Filed 9–22–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3265–7]

State Capacity Assurance Project

EPA has issued a grant for $1.2 million to the National Governors Association to help implement Section 104(k) of the Superfund Amendments and Reauthorization Act. This provision requires states to provide assurances to EPA by October 1989 that they have sufficient capacity to destroy, treat, or dispose of hazardous waste reasonably expected to be generated within their borders for the next 20 years. Superfund remedial action funding may be withheld from states that do not provide such assurances.

The NGA will convene four workgroups to address requirements for: (1) Data on waste generation and capacity, (2) waste minimization programs and their effects on waste generation, (3) interstate shipments of wastes and interstate planning, and (4) long-term facility planning. The workgroups will be composed of representatives from states, industry, environmental groups, and local government organizations. The NGA will develop state-recommended guidance by November 1988. EPA will use the NGA recommendations in developing guidance for states to follow when providing their section 104(k) assurances.

For further information on the "State Capacity Assurance Project" contact Malcolm Bliss at EPA (202/382–4677).

Thomas W. Devine,

Director, Office of Program Management and Technology, OSWER.

[FR Doc. 87–21942 Filed 9–22–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

September 15, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0029
Title: Application for New Broadcast Station License
Form No.: FCC 302
Action: Revision
Respondents: Business, Small Business, Non-profit Institutions
Frequency of Response: On occasion
Estimated Annual Burden: 1,110 Responses; 298,525 Hours.
Needs and Uses: Filing is required to apply for an AM, FM or TV broadcast station license. The data is used to confirm that the station has been built to terms specified in the outstanding construction permit, and is included in the license to operate the station.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–21867 Filed 9–22–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–010137–012.
Title: Barber Blue Sea Agreement.
Parties:

Ocean Transport and Trading PLC
Rederiaktiebolaget Transatlantic
Wilh. Wilhelmsen Limited A/S
Scanbarber A/S

Synopsis: The proposed amendment would permit the parties to receive or pay contributions to cover the profits and losses of the joint service's administrator or its subsidiaries for its operations generally or with respect to any agency functions.

Agreement No.: 203–011075–004.
Title: Central America Discussion Agreement.
Parties:

United States/Central America Liner Association
Marine Bulk Carriers, Inc.
Nordana Line, Inc.
Concorde Shipping Inc.
Nexos Line
Thompson Shipping Co., Ltd.

Synopsis The proposed amendment would add Maritima Juno, S.A. as a party to the agreement and would restate the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,
Assistant Secretary.

Dated: September 18, 1987.

[FR Doc. 87–21904 Filed 9–22–87; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed; Tropical Shipping and Construction, Ltd.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200033
Title: Virgin Islands Port Authority Terminal Agreement
Parties: Virgin Islands Port Authority
Tropical Shipping and Construction, Ltd., (Tropical)
Synopsis: The proposed agreement would lease two lots in the Third Port area of the St. Croix marine facilities to Tropical for office trailers used by personnel engaged in Tropical trucking and shipping operations at the Port.

By Order of the Federal Maritime Commission.

Dated: September 18, 1987.

Tony P. Kominoth,
Assistant Secretary.

[FR Doc. 87–21928 Filed 9–22–87; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance EX-IM; Business Services Corp.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/Address	Date reissued
2793–R	EX-IM Business Services Corporation, Ste 320 1st Ave. Bld., 411 First Avenue SE., Cedar Rapids, IA 52401.	July 13, 1987.

Robert G. Drew,
Director, Bureau of Domestic Regulation.

[FR Doc. 87–21929 Filed 9–22–87; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations; Matsukawa and Associates, et al

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (49 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1336
Name: Matsukawa & Associates
Address: 311 S. Spring Street, Suite 602, Los Angeles, CA 90013
Date Revoked: June 12, 1987
Reason: Business had closed

License Number: 2968
Name: A&B Transportation Services, Inc. dba, Gateway International
Address: 80 Yesler Way, Seattle, WA 98104
Date Revoked: June 25, 1987
Reason: Surrendered license voluntarily

License Number: 227
Name: H.L. Ziegler, Inc.
Address: 10777 NW Freeway, Suite 500, P.O. Box 53180, Houston, TX 77052
Date Revoked: June 30, 1987
Reason: Surrendered license voluntarily

License Number: 1064
Name: E.L. Mobley, Inc.
Address: P.O. Box 1686, 21 East Bay Street, Savannah, GA 31402
Date Revoked: July 9, 1987
Reason: Surrendered license voluntarily

License Number: 2184
Name: Kronos International Shippers, Inc.
Address: 775 West Jackson Blvd., Chicago, IL 60606
Date Revoked: August 6, 1987
Reason: Failed to maintain a valid surety bond

License Number: 853
Name: S.A. McClennan Co.
Address: 306 Board of Trade Bldg., DuLuth, MN 55802
Date Revoked: August 14, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1566
Name: Nationwide International Forwarders & Brokers, Inc.
Address: 4795 NW. 72nd Ave., Miami, FL 33166
Date Revoked: September 3, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2125
Name: Cargo Transport Corp.
Address: 959 Pleasantville Dr., Houston, TX 77029
Date Revoked: September 4, 1987
Reason: Surrendered license voluntarily

License Number: 2678
Name: Sauter Corp.
Address: 633 Matzinger Road, Toledo, OH 46312
Date Revoked: September 7, 1987
Reason: Failed to maintain a valid surety bond

License Number: 966
Name: Abarim Freight Service, Inc.
Address: 120 Kero Road, Carlstadt, NJ 07072
Date Revoked: September 4, 1987
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 87-21930 Filed 9-22-87; 11:21 am]

BILLING CODE 8730-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-020-07-4212-24; N-45098]

Airport Lease Application; Double Four Corp., Nevada

ACTION: Notice of Airport Lease Application N-54098; Amendment to Legal Description.

DATE: September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 East Fourth Street, Winnemucca, NV 89445, (702) 623-3676.

SUMMARY: Notice is hereby given that the Notice that appeared in the **Federal Register**, Vol. 52, No. 10, Thursday, January 15, 1987, is hereby amended to add the following:

Mount Diablo Meridian, Nevada

T. 47 N., R. 30 E., Section 9, W½SW¼SW¼NE¼, W½NW¼SE¼, W½SW¼SE¼, W½SE¼SW¼SE¼.
Section 17, S½S½SE¼NE¼, N½N½ NE¼SE¼.

The area described (including original notice) contains 302.5 acres and is located in Humbolt County, Nevada.

SUPPLEMENTARY INFORMATION: Segregation of public lands.

The application was filed on October 15, 1986, and on that date the above described land was segregated from all other forms of appropriation under the public land laws.

Dated: September 15, 1987.

Frank C. Shields,

District Manager, Winnemucca.

[FR Doc. 87-21871 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-HC-M

[AK-968-4213-15; AA-11153-29]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Cook Inlet Region, Inc. for approximately 6,855 acres. The lands involved are in Tps. 1 and 2 N., R. 11 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, of regional corporation, shall have until October 23, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date or receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Olivia Short,

Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 87-21863 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-JA-M

[NV-060-4132-02]

Battle Mountain District Advisory Council Meeting; Battle Mountain, NV

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday, October 27, 1987. The meeting will convene at 9:00 a.m. in the Shoshone-Eureka Conference Room at the Battle Mountain District Office in Battle Mountain, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Riparian Management
   a. Strategy
   b. Current situation and policy
   c. Misconceptions
2. Rangeland monitoring proposal for Carico Lake Allotment
3. Tour of Battle Mountain Gold

The meeting is open to the public. Interested persons may make oral statements between 1:00 and 1:30 p.m. on October 27, 1987. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m., October 23, 1987.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635-5181.

Date Signed: September 15, 1987.

Terry L. Plummer,

Battle Mountain, Nevada.

[FR Doc. 87-21890 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-HC-M

[U-41186]

Proposed Reinstatement of Terminated Oil and Gas Lease; Utah

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-41186 for lands in Summit County, Utah, was timely filed and required rentals and royalties accruing from June 1, 1987, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-41186 as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

W.R. Papworth,

Deputy State Director, Operations.

[FR Doc. 87-21862 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council; Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

DATES: The meeting begins on Tuesday, October 27, 1987, at 1:00 p.m. and reconvenes on Wednesday, October 28, 1987.

ADDRESS: The meeting will be held at the Ramada Inn Foothills, 6944 East Tanque Verde Road, Tucson, Arizona 85715.

FOR FURTHER INFORMATION CONTACT: Mr. Al R. Jonez, Chief, Colorado River Quality Office, Bureau of Reclamation, D–1000, Engineering and Research Center, P.O. Box 25007, Denver, Colorado 80225.

SUPPLEMENTARY INFORMATION: Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, Department of Agriculture, and Environmental Protection Agency will each present a progress report and schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and content of their annual report.

Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: September 16, 1987.

J. Austin Burke,

Commissioner.

[FR Doc. 87–21812 Filed 9–22–87; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–383 (Preliminary)]

Import Investigation; Bimetallic Cylinders From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of certain bimetallic cylinders,[3] provided for in item 678.35 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 4, 1987, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Xaloy, Inc., Pulaski, VA, and Bimex Corp., Wales, WI, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain bimetallic cylinders from Japan. Accordingly, effective August 4, 1987, the Commission instituted preliminary antidumping investigation No. 731–TA–383 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 12, 1987 (52 FR 29900). The conference was held in Washington, DC, on August 28, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 18, 1987. The views of the Commission are contained in USITC Publication 2017 (September 1987), entitled "Certain Bimetallic Cylinders from Japan: Determination of the Commission in Investigation No. 731–TA–383 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: September 18, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–21962 Filed 9–22–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 377–TA–260]

Import Investigation; Commission Determination Not To Review Initial Determination Finding Certain Respondents In Default; Certain Feathered Fur Coats and Pelts, and Process For the Manufacture Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination (ID) finding certain respondents in default and imposing procedural sanctions.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) ID finding respondents Asia Fur Co. (Asia Fur), Peking Fur Store, Ltd. (Peking Fur), Excelsior Fur Co., Ltd. (Excelsior), China National Produce and Animal By-Products Export and Import Corp. (China National), Sunry Import Export Corp. (Sunry), and E. Vassou Brothers, Inc. (Vassou) in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–525–0261.

SUPPLEMENTARY INFORMATION: On July 31, 1987, the ALJ issued an order (Order No. 25) ordering the above-named respondents to show cause why they should not be held in default. Only Asia Fur and Peking Fur filed responses to Order No. 25. The ALJ found their responses did not show the good cause necessary to support a finding that these respondents should not be found in default. On August 14, 1987, the ALJ issued an ID (Order No. 26) finding respondents Asia Fur, Peking Fur, Excelsior, China National, Sunry, and Vassou in default pursuant to Commission rule 210.25 (19 CFR 210.25) and that these six respondents have waived: (1) Their right to appear; (2) their right to be served with documents; and (3) their right to contest the allegations at issue in the investigation. No petitions for review or comments from Government agencies concerning the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53–210.55 (19 CFR 210.53–210.55).

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler dissenting.

[3] Such items consist of an outer shell of steel and an inner lining of an alloy which are metallurgically bonded, and are, if imported, reported under items 678.3570 and 678.3575 of the Tariff Schedules of the United States Annotated.

Issued: September 14, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-21963 Filed 9-22-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-288 and 289 (Preliminary) and 731-TA-381 and 382 (Preliminary)]

Certain Granite From Italy and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [2] by reason of imports from Italy and Spain of certain granite,[3] provided for in item 513.74 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Governments of Italy and Spain.

Further, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [2] by reason of imports from Italy and Spain of certain granite,[3] provided for in item 513.74 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value.

Background

On July 28, 1987, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Granite Trade Group, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of certain granite from Italy and Spain, and by imports of certain granite from Italy and Spain which are being sold in the United States at less than fair value. Accordingly, effective July 28, 1987, the Commission instituted preliminary countervailing duty investigations Nos. 701-TA-288 and 289 (Preliminary) and antidumping investigations Nos. 731-TA-381 and 382 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 5, 1987 (52 FR 29080). The conference was held in Washington, DC, on August 18, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 11, 1987. The views of the Commission are contained in USITC Publication 2016 (September 1987), entitled "Certain Granite from Italy and Spain: Determinations of the Commission in Investigations Nos. 701-TA-288 and 289 (Preliminary) and Investigations Nos. 731-TA-381 and 382 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: September 11, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-21964 Filed 9-22-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-258]

Commission Decision Not to Review an Initial Determination Terminating Investigation and Deferral of Decision on Recommendations; Certain Moldable/Extrudable Polyetheresteramide Copolymers

AGENCY: U.S. International Trade Commission.

ACTION: Commission decision not to review an initial determination terminating the investigation and to defer a decision on certain recommendations.

SUMMARY: Notice is hereby given that the Commission has determined not to review the initial determiantion (ID) (Order No. 8) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting a joint motion to withdraw the complainant and dismissing the complaint (and thus the investigation) with prejudice. The Commission has also decided to defer a decision on whether to take any action on the three recommedations made by the ALJ in the ID. The dismissal with prejudice does not constitute a determination on the merits of whether there is a violation of section 337. In particular, it does not constitute a determination of validity or infringement with respect to the patent in controversy.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-3395.

SUPPLEMENTARY INFORMATION: On July 15, 1987, the presiding ALJ issued an ID (Order No. 8) which granted a joint motion to withdraw the complaint in the investigation and dismissed the complaint with prejudice. The effect of this ID would be to terminate the investigation. The ID also recommended that the Commission investigate certain matters with respect to the complaint and a previously denied motion to terminate the investigation on the basis of a settlement agreement. Both complainant and respondents filed requests for reconsideration of the ID. Complainant also filed a petition for review of the ID. The Commission delayed action on the ID and petition for review until 30 days after the ALJ ruled on the requests for reconsideration. On August 17, 1987, the ALJ denied the requests for reconsideration.

This action is taken under authority of section 337 of the Tariff Act of 1930 and § 210.53(h) of the Commission's Rules of Practice and Procedure (19 U.S.C. 1337; 19 CFR 210.53(h)).

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: September 15, 1987.

Kenneth M. Mason,

Secretary.

[FR Doc. 87-21965 Filed 9-22-87; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Lodwick determines than there is a reasonable indication of threat of material injury by reason of the subject imports.

[3] For purposes of these investigations, the term "certain granite" refers to products ⅜ inch to 2½ inches in thickness and includes rough-sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, titles, and crypt fronts; the term excludes monument stone, crushed granite, and curbing.

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[Investigation No. 731-TA-374 (Final)]

Import Investigation; Potassium Chloride From Canada

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–523–1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION: On August 25, 1987, the Commission instituted the subject investigation and established a schedule for its conduct (52 FR 34326, September 10, 1987). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from November 3, 1987 to January 8, 1988 (52 FR 33857, September 8, 1987). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than January 5, 1988; the prehearing conference will be held in Room 117 of the U.S. International Trade Commission Building on January 11, 1988; the public version of the prehearing staff report will be placed on the public record on December 22, 1987; the deadline for filing prehearing briefs is January 13, 1988; the hearing will be held in Room 331 of the U.S. International Trade Commission Building on January 19, 1988; and the deadline for filing all other written submissions, including posthearing briefs, is January 26, 1988.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

By order of the Commission.

Issued: September 18, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–21966 Filed 9–22–87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub–292X)]

Burlington Northern Railroad Co.; Exemption; Abandonment in Hardeman and Cottle Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by The Burlington Northern Railroad Company of approximately 37.40 miles of track in Hardeman and Cottle Counties, TX, subject to standard labor protective conditions..

DATES: This exemption will be effective on October 23, 1987. Petitions to stay must be filed by October 8, 1987, and petitions for reconsideration must be filed by October 19, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 292X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative; Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: September 16, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2194 Filed 9–22–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7029 et al.]

Proposed Exemptions; Consolidated Electrical Distributors, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains noitices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No.4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Employees Retirement Plan of Consolidated Electrical Distributors' Inc. (the Plan) Located in Westlake, Village, CA 91362

[Application No. D–7029]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The proposed cash purchase of certain improved real property by the Plan from Consolidated Electrical Distribution, Inc. (the Plan Sponsor), a party in interest with respect to the Plan and (2) the proposed lease of the property by the Plan to the Plan Sponsor, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable from an unrelated party.

Summary of Facts and Representations

1. The Plan is a non-contributory defined benefit pension plan which was established on January 1, 1969. The Plan has approximately 2025 participants and net assets of $51,027,929 as of December 31, 1985. The Plan's trustee is Trust Services of America, Inc. (the Trustee), Los Angeles, California. The Plan Sponsor is a Delaware Corporation, engaged primarily in the wholesale distribution of electrical parts.

2. The applicant represents that the Plan currently has a substantial portion of its current assets available for reinvestment. The Plan proposes to use a portion of these assets to purchase a parcel of improved real property located on Highway 90 East, Sulphur, Louisiana (the Property) from the Plan Sponsor for $192,000 in cash. The Property consists of a 10,800 square foot metal building situated on 53,281 square feet of land. The Property was recently acquired by the Plan Sponsor pursuant to approval by the United States Bankruptcy Court, Southern District of Texas, in the matter of Gulf Consolidated Services, Inc. for $192,000. The Property was appraised by M. Holley Heard (Mr. Heard), a real estate appraiser with the firm of Holley Heard Agency, Lake Charles, Louisiana, as having a fair market value of $192,000 as of October 15, 1986.

3. The Plan also proposes to lease the Property (the Lease) to the Plan Sponsor for a 15 year period. The Lease will be a triple net lease in favor of the Plan and will provide for monthly rental payments of $1600. The initial lease rental was based on Mr. Heard's determination of the appropriate rental as of December 30, 1986. Every 5 years the Lease rental will be adjusted by the Trustee to reflect the current fair market rental value.

4. The Trustee provides administrative and investment management services to employee benefit plans. The Trustee represents that it is an independent fiduciary and that it holds no financial position or other business relationship with the Plan Sponsor. The Trustee has reviewed all aspects of the proposed transactions including the Lease, a copy of Mr. Heard's appraisal of the Plan's investment portfolio. The Trustee has made the following determinations:

(a) The purchase price for the Property, which is based on an independent appraisal is fair and reasonable;

(b) The rent to be paid to the Plan is the appropriate fair market rental for the area;

(c) The Plan's portfolio is well diversified and the Plan's total interest in real property investments after purchasing the Property would still be under 1% of Plan assets;

(d) The Plan Sponsor is a substantial organization that will be able to meet its obligations under the Lease; and

(e) The terms of the transactions equal or exceed those obtainable from an unrelated party and will be in the best interests of, and protective of, the Plan and its participants and beneficiaries.

The Trustee has further stated that it will monitor the transaction and ensure that the Plan Sponsor complies with all terms and conditions of the transactions and will take, if necessary, appropriate steps to enforce the rights of the Plan.

5. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan will pay the appraised fair market value for the Property;

(b) The Plan Sponsor will pay fair market rental to the Plan under the Lease;

(c) The Trustee has reviewed the proposed transactions and has concluded that they are in the interests and protective of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

McNichols Company Profit Sharing Plan and Trusts (the Plan) Located in Cleveland, Ohio

[Application No. D–7159]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The proposed loan of up to $800,000 by the Plan to Rockwall Properties (Rockwall); and (2) the guarantee of the loan by McNichols Company (the Employer), provided that the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party on the date the loan is consummated.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 105 participants and net assets of approximately $4,809,771 as of March 31, 1987. The Plan's trustee is the National City Bank of Cleveland, Ohio. The Employer is an Ohio Corporation doing business in the states of Florida, Ohio, Illinois, Texas, Georgia and New Jersey. The principal business of the Employer is the distribution of specialty steel products.

2. Rockwall, an irrevocable trust established by the late Robert L. McNichols for the benefit of his grandchildren, currently owns and

leases to the Employer certain improved real property located in Atlanta, Georgia, Dallas, Texas and Tampa, Florida. The trustee of Rockwall, Mr. McNichols, is a principal shareholder as well as an officer of the Employer.

3. The Employer plans to relocate its headquarters within the Tampa, Florida area. It is proposed that Rockwall acquire property adjacent to the current Tampa property it leases to the Employer. The property to be acquired is located at 5505 Gray Street, Tampa, Florida (the Property). The Property, which contains approximately 38,000 square feet, is improved by a two-story masonry building. The Property was appraised by Mr. Ronald G. Taylor, MAI, an appraiser with the firm of Taylor Appraisal Services, Tampa, Florida, as having a fair market value of $1,325,000 as of April 10, 1987.

4. It is proposed that Rockwall borrow approximately $800,000 (New Loan) from the Plan to be used to acquire the Property. On January 23, 1985, the Department approved a loan between the Plan and Rockwall (Prior Loan) for the lesser of $660,000 or 24% of the Plan's assets (See PTE 85–16, 50 FR 3045). The applicant represents that the total combined proceeds of the New and Prior Loans will not exceed 25% of the Plan's assets or the amount of the New Loan will be reduced accordingly (balance of Prior Loan as of April 6, 1987 was approximately $616,508).

5. The new Loan will be repayable over a 15 year period, with equal monthly payments of principal and interest. The interest rate on the New Loan will be four percentage points above the one year Treasury Bill rate at the time the loan is made, but not less than 11% per annum. The interest rate will be adjusted pursuant to the same formula every three years during the term of the loan. The New Loan will be secured by a first mortgage on the Property. In addition, the repayment of the loan will be guaranteed by the Employer who has a net worth in excess of $4 million.

6. The Property is currently appraised at in excess of 160% of the amount of the New Loan. If the value of the Property declines during the term of the New Loan to an amount which is less than 150% of the then outstanding loan balance, Rockwall or the Employer will pledge additional collateral to bring the total collateral value to 150% of the New Loan balance. As additional security for the New Loan, Rockwall will conditionally assign its lease on the Property to the Plan. Casualty insurance will be maintained by Rockwall on the Property with the Plan named as loss payee.

7. The Huntington National Bank of Columbus, Ohio will serve as the independent Fiduciary (the Fiduciary) for the New Loan. The Fiduciary has no affiliation or relationship with the Employer, its principals, or Rockwall other than having been the Fiduciary for the Prior Loan. The Fiduciary will have full power to cause the New Loan to be made and to enforce all its terms and conditions.

The Fiduciary has reviewed the prohibited transaction application filed by the applicant, financial statements of Rockwall and the Employer, the Plan's investment portfolio and other investment opportunities available to the Plan. The Fiduciary found that the Plan currently has minimal annual cash outflow and no substantial increase is anticipated. While the total combined proceeds of the New and Prior Loans will initially constitute approximately 25% of the Plan's assets, that percentage will drop as the New and Prior Loans are amortized and as future Employer contributions and earnings are received. In addition, the real estate action as collateral for the loans is located in three different states, the quality of the tenants are excellent and the multi-purpose character of the properties would make it easy to locate new tenants in the event of default. Also, the New Loan is secured by a first mortgage on the Property and by a conditional assignment of Employer lease rental payments.

The Fiduciary has concluded that the 11% interest rate on the New Loan compares favorably with other market investments in the Plan's portfolio and with other investment opportunities currently available to the Plan in the marketplace with the same level of risk. Further, the interest rate will be always equal to at least 11% per annum, and will be adjusted every three years to reflect changes in market conditions.

Based on the above analysis, the Fiduciary finds that the New Loan is in the best interests of the Plan and its participants and beneficiaries. The Fiduciary will make the same type of review immediately prior to making the New Loan and will proceed with the New Loan only if it is able to conclude that the transaction is still in the best interests of the Plan.

8. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The New Loan will be approved and monitored by the Fiduciary;

(b) The New Loan will be secured by collateral having a value of at least 150% of the amount of the loan;

(c) The Employer has guaranteed repayment of the New Loan;

(d) The total amount of the New and Prior Loans to Rockwall will represent less than 25% of Plan assets; and

(e) The Fiduciary has determined that the New Loan is in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Alan Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The C.W. Houle, Inc. Profit Sharing Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D–7176]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to C.W. Houle, Inc. (the Employer), the sponsor of the Plan, of a certain parcel of improved real property (the Property), which is currently being leased to the Employer, provided that the sales price is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with six participants and total assets of $760,615.59 as of March 31, 1987. The current trustee of the Plan, and the decision-maker with respect to plan investments, is Marquette Bank, Minneapolis (the Bank).

2. The Employer is a closely-held Minneapolis corporation engaged in the landscaping business. Clement W. Houle (Mr. Houle) and Ione K. Houle (together, the Houles) own 100% of the voting stock of the Employer in joint tenancy. The Houles are both employees of the Employer. Mr. Houle is an officer and director of the Employer. The Houles were the trustees of the Plan from December 1, 1964, the date that the Plan became effective, until July 22, 1986, the date the Bank was named trustee of the Plan.

3. The Property is a lot of approximately 9.43 acres located at 1300 West County Road I, Shoreview, Minnesota. The Property has certain

improvements, including a concrete block building with a large garage and shop area and can attached office portion (the Building). The Property was purchased by the Houles on April 29, 1971 from Kenneth E. Flick, an unrelated party, for $15,000. Funds belonging to the Plan were used to reimburse the Houles for the amount of purchase. Plan funds were also used to construct the Building during the summer and fall of 1971 at a cost of $52,668.14.

The Employer moved its landscaping business into the Building upon its completion and began paying rent to the Plan in the amount of $1,100 per month. The Plan paid all real estate taxes assessed on the Property. The Employer assumed financial responsibility for utilities, maintenance and additional improvements to the Property. The rent was increased in March, 1980, to $1,200 per month.

4. The Employer represents that the leasing of the Property from the Plan satisfied the requirements of section 414(c)(2) of the Act through June 30, 1984.[1] The Employer has continued to lease the Property beyond June 30, 1984. The rent for the Property was increased in December, 1985, to $1,560 per month. The Employer states that the necessary excise tax forms will be prepared and filed to report as a prohibited transaction the lease of the Property to the Employer, and that all appropriate taxes for the leasing transaction will be paid for the period from June 30, 1984 to the date of the proposed sale within 60 days of the date of a grant of this proposed exemption.

5. The Property was appraised on February 9, 1987 by Gerald A. McKinzie, A.S.A., M.G.A. (Mr. McKinzie), an independent real estate appraiser in White Bear Lake, Minnesota, as having a fair market value of $171,500. By letter dated July 22, 1987, Mr. McKinzie states that his valuation of the Property was based on an unencumbered fee simply interest and did not consider the lease of the Property to the Employer.

6. The Bank proposes to have the Plan sell the Property to the Employer for $171,500 in cash, in accordance with Mr. McKinzie's appraisal. The Plan will not pay any commissions or other expenses in connection with the sale. The Employer has agreed to finance the purchase from its own funds. However, the Employer represents that if additional funds are necessary to cover the purchase price, the Employer will not seek financing from the Bank.

[1] The Department expresses no opinion regarding the applicability of section 414(c)(2) of the Act to this lease arrangement.

The Bank states that the transaction is in the best interests of the Plan and its participants and beneficiaries. The Bank's conclusion is based on the Property's relatively poor performance as an investment and the Plan's current liquidity needs. The Bank states that the transaction will allow the Plan to reinvest the sale proceeds in investments which may be readily liquidated and which will yield a higher rate of return.

7. The Bank will monitor the transaction and will take whatever actions are necessary to protect the Plan's interests. In addition, the Bank will ensure that the Plan is made "whole" with respect to the past leasing of the Property to the Employer. The Employer will pay the difference between the actual amount of rent paid on the Property from July 1, 1984 to the date of the proposed sale and the fair market rental value for that same period of time, as determined by an independent appraiser's valuation of the Property. The Employer will pay interest on the deficiency at an appropriate market rate of interest. The Bank will determine the interest rate and will collect the rental differential plus interest from the Employer.

8. The applicant represents that the Bank is not related to, and shares no common interests with, the Employer. None of the owners or managers of the Employer serve on the Bank's Board of Directors. Loans outstanding to the Employer, as of June 26, 1987, represented only .14% of the Bank's total loan portfolio. Total deposits of approximately $166,000 for the Employer represent only .014% of the total amount of money currently on deposit with the Bank.

9. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) The Plan will receive an amount equal to the fair market value of the Property as determined by an independent appraiser; (c) the Plan will not incur any expenses with respect to the sale; and (d) Bank, as an independent trustee, believes that the sale of the Property to the Employer is in the best interest of the Plan since it will allow the Plan to divest itself of the Property and reinvest the proceeds in investments yielding a higher rate of return.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Minor Agency Retirement Plan (the Plan) Located in Charlotte, North Carolina

[Application No. D–7212]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).[2] If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply, effective August 24, 1987, to the sale for cash by the Plan of a 44.8% interest (the Interest) in a limited real estate partnership of which all the other partners are disqualified persons with respect to the Plan to the sole shareholder of the Plan sponsor, provided that the price paid be the fair market value of the Interest on the date of sale or the price originally paid by the Plan for the Interest, whichever is greater.

EFFECTIVE DATE: August 24, 1987.

Summary of Facts and Representations

1. The Plan is a defined contribution H.R. 10 (Keogh) plan of which Mr. Minor and his wife are the sole participants. The Plan's sponsor is The Minor Agency, engaged primarily in life and health insurance and investment sales, doing business in Charlotte, North Carolina. Mr. Minor is the trustee of the Plan. As of July 1, 1987 Plan assets totaled approximately $43,000.

2. On June 19, 1987 the Plan purchased for $28,000 in cash (65% of the Plan's assets) a 44.8% interest in Minorwood, Ltd. (Minorwood), a real estate partnership. The other partners in Minorwood are Mr. Minor as custodian of his four children's accounts and Kelly A. Minor (Mrs. Minor), Mr. Minor's wife. Mrs. Minor also serves as general partner of Minorwood.

3. Minorwood's entire assets are invested in an office condominium (the Condominium) located at 310 East Boulevard in Charlotte, North Carolina. Minorwood has leased the Condomium to the Plan sponsor.

4. The applicant recognizes that he has engaged in a prohibited transaction under section 406 of the Act.

[2] The applicant represents that W. Thomas Minor, III (Mr. Minor), is the sole shareholder of The Minor Agency, the Plan sponsor, and that Mr. Minor and his wife are the Plan's sole participants. Hence, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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Accordingly, Mr. Minor proposes to purchase for cash the Plan's interest in Minorwood, and has agreed to file Form 5330 and to pay all applicable excise tax due in connection with the Plan's interest in Minorwood within sixty days of the publication in the **Federal Register** of an exemption for the sale of the Plan's interest in Minorwood. In order to expedite the transaction, the applicant has requested an effective date of August 24, 1987.

5. On July 14, 1987, Fitzhugh L. Stout, MAI, of Stout-Beck & Associaties, Inc., real estate appraisers and consultants in Charlotte, North Carolina, gave his opinion that the fair market value of the Condominium as of July 13, 1987 was $65,000.

6. Accordingly, the applicant agrees to pay in cash to the Plan an amount equal to 44.8% of the fair market value of the Condominium on the date of sale or the price originally paid for the Plan's interest in Minorwood, whichever is greater. The Plan shall suffer no loss in connection with its acquisition and holding of its interest in Minorwood, nor shall it pay any fees, taxes, Commissions, or other expenses in connection with the proposed sale.

7. In summary, the applicant represents that the proposed transactions meets the criteria of section 408(a) of the Act because: (a) The sale is a one-time transaction for cash, and no fees, taxes, or commissions will be paid on the sale; (b) the sale enables the Plan to end an ongoing relationship violative of the provisions of section 406 of the Act; (c) the Plan will suffer no loss in connection with the proposed transaction; and (d) the proposed transaction is in the interest and protective of the Plan and its participants.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of theAct and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(40 The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-21891 Filed 9-22-87; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 87-87; Exemption Application No. D-6735 et al.]

Grant of Individual Exemptions; William L. Streitz, M.D., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

William L. Streitz, MD., P.C. Profit Sharing and Retirement Plan (the Plan) Located in Roseburg, Oregon

[Prohibited Transaction Exemption 87-87; Exemption Application No. D-6735]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property by the Plan to William L. Streitz, M.D., a party in interest with respect to the Plan, provided the terms of the transaction are as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction with an unrelated

party on the date the transaction is consumed.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1987 at 52 FR 25324.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

MacIntyre, Fay & Thayer Insurance Agency Profit Sharing Plan (the Plan) Located in Newton, Massachusetts

[Prohibited Transaction Exemption 87–88; Exemption Application No. D–6887]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of 1,251 shares of Class A common stock of ADAPT, Inc. (the Stock) to seven stockholders and employees of MacIntyre, Fay & Thayer Insurance Agency, Inc., who are parties in interest with respect to the Plan, provided that the sales price is not less than the greater of the fair market value of the Stock as of the date of the Sale or the total expenses to the Plan in its acquiring, holding, and selling the Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 24, 1987 at 52 FR 27886.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sechrist-Hall Company Profit Sharing Plan (the Plan) Located in Corpus Christi, TX

[Prohibited Transaction Exemption 87–89; Exemption Application No. D–7052]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Real Property) to Sechrist-Hall Company, provided the price paid for the Real Property is not less than the greater of its fair market value on the date of sale or the total acquisition and holding costs incurred by the Plan.

For a more complete statment of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 31, 1987 at 52 FR 28618.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Plumbers, Pipe Fitters and Apprentices Local No. 112 Educational and Apprenticeship Fund (the Plan) Located in Binghamton, New York

[Prohibited Transaction Exemption 87–90; Exemption Application No. D–7071]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the proposed sales by the Plan to J & K Plumbing and Heating Co., Inc., a party in interest with respect to the Plan, or (1) an option to purchase certain real estate (the Land) owned by the Plan and (2) the Land itself, provided the sales prices are not less than the fair market values of the option and the Land on the dates of the sales of each and provided further that the other terms of the transactions are at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1987 at 52 FR 27086.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Bozell, Jacobs, Kenyon & Eckhardt, Inc. Profit Sharing and Savings Plan (the Plan) Located in Omaha, Nebraska

[Prohibited Transaction Exemption 87–91; Exemption Application No. D–7073]

Exemption

The restrictions of section 406(a)(1), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase by the Plan of a certain partnership interest from First National Leasing, Inc.; provided that such transaction is on terms at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 24, 1987 at 52 FR 27887.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

G. Snidow, Inc. Restated Employee Pension Benefit Plan (the Plan) Located in Ruidoso, New Mexico

[Prohibited Transaction Exemption 87–92; Exemption Application No. D–7087]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a purchase of unimproved real property by the Plan from g. Snidow, Inc. (the employer), a disqualified person with respect to the Plan, provided the Plan pays no more than fair market value for the property and the transaction represents no more than 25 percent of the assets of the Plan at the time of purchase.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 31, 1987 at 52 FR 28619.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Wabash-Lagrange Steel Company Plan and Trust (the Contribution Plan) Located in Toledo, Ohio

[Prohibited Transaction Exemption 87–93; Exemption Application No. D–7095]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Contribution Plan of real estate trust shares (the Shares) in Landsing Institutional Properties Trust V to Wabash-Lagrange Steel Company, the sponsor of the Contribution Plan, for a sale price of $25,000; provided that such sales price is no less than the fair market value of the asked price for the Shares on the over-the-counter NASDAQ market, as published in the *Wall Street Journal* on the date of sale.

[1] Because Gordon Snidow is the sole owner of the Employer and he and his wife are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 31, 1987 at 52 FR 28620.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Naegele Outdoor Advertising Company of Louisville, Inc. Employee's Group Pension Plan (The Plan) Located in Louisville, Kentucky

[Prohibited Transaction Exemption 87–94; Exemption Application No. D–7104]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan to Naegele Company, Inc. (Naegele), and/or to Naegele's parent corporations, of the right to receive future payments under a group annuity contract for cash, provided the amount received by the Plan is not less the fair market value of such payments on the dale of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1987 at 52 FR 27089.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Marcia Freed, M.D., Keogh Plan and Trust (the Keogh Plan) Located in Portland, OR

[Prohibited Transaction Exemption 87–95; Exemption Application No. D–7117]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale of twenty (20) Canadian Maple Leaf gold coins (the Coins) and five (5) silver bars (the Bars) by the Keogh Plan to Marcia Freed, M.D. (Dr. Freed), a disqualified person with respect to the Keogh Plan; provided that the purchase price of the Coins and the Bars is the fair market retail value on the date of sale.[2]

[2] Because Dr. Freed is the only participant in the Keogh Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Friday, July 17, 1987, at 52 FR 27090.

FOR FURTHER INFORMATION CONTACT: Angelena Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Gary J. Guttmann, D.D.S., Inc. Profit Sharing Plan and Trust, and the Gary J. Guttmann, D.D.S., Inc. Pension Plan and Trust (collectively, the Plans) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 87–96; Exemption Application Nos. D–7164 & D–7165]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain parcels of undeveloped real estate (the Property) by the individually directed accounts of Gary J. Guttmann, D.D.S. (Dr. Guttmann), in the Plans to Dr. Guttmann, a party in interest with respect to the Plans, provided that the sales price for the Property is no less than the fair market value of the Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 31, 1987 at 52 FR 28621.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of September, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–21892 Filed 9–22–87; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given of a public meeting and executive session (pursuant to V Section 974 (A)(1), Pub. L. 97–300) of the National Commission for Employment Policy at the IBM Management Development Center, Old Orchard Road, Armonk, NY.

DATE: Thursday, October 8, 1987, 9:00 a.m. to 5:00 p.m..

Status: The meeting is open to the public with the exception of the executive session

Matters to be discussed: Commission members will discuss progress on the research agenda, budget and administrative matters, and legislative and governmental affairs.

FOR FURTHER INFORMATION CONTACT: Mr. Scott W. Gordon, Director, National Commission for Employment Policy, 1522 K Street NW. Suite 300, Washington, DC 20005, 202–724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accomodations can be made. Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed this 17th day of September, 1987.

Scott W. Gordon,

Director.

[FR Doc. 87–21864 Filed 9–22–87; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Undergraduate Faculty Enhancement; Program Announcement and Guidelines

Please note.—Appendixes are not published in this document. The page and appendix references in this document refer to, and are included in, the UFE Program Announcement and Guidelines.

Inquiries

Questions not addressed in this publication may be directed to the NSF staff by contacting: Undergraduate Faculty Enhancement Program, Office of Undergraduate Science, Engineering and Mathematics Education, Directorate for Science and Engineering Education, Room 639, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–7051, Electronic Mail: Bitnet: Undergrad@NSF, Arpanet, CSnet: Undergrad@note.NSF. gov.

The Faculty Enhancement Program is an integral part of NSF's overall plan to strengthen undergraduate science, engineering and mathematics education throughout the United States. This NSF plan also includes support for undergraduate laboratory development, curriculum development in mathematics and engineering, Research Experiences for Undergraduates (REU), Research Opportunity Awards (ROA), and the Research in Undergraduate Institutions activity (RUI) for FY 1988.

UNDERGRADUATE FACULTY ENHANCEMENT PROGRAM

Undergraduate Faculty Seminars and Conferences

I. Introduction

The teaching faculty are a key element in undergraduate education. It is important that they be intellectually vigorous and excited about their disciplines, that their knowledge of recent developments in their fields be up-to-date, and that they regard the teaching of undergraduates as an important and rewarding activity. To these ends, the National Science Foundation (NSF) provides leadership and financial assistance to encourage colleges and universities to take a systematic interest in the currency and vitality of the faculty who are primarily involved in undergraduate teaching and to assist them in enhancing their disciplinary capabilities and teaching skills.

This announcement describes the *Undergraduate Faculty Enhancement Program*, which makes grants for Undergraduate Faculty Seminars and Conferences. These provide opportunities for groups of faculty to learn about new techniques and new developments in their fields.

In addition, faculty may submit their own research proposals to the appropriate research programs at NSF, either as regular research proposals or through the *Research in Undergraduate Institutions* (RUI) activity (refer to the RUI announcement, NSF 85–59). They may also associate with an existing or proposed NSF-supported research program through the *Research Opportunity Awards* (ROA) activity (refer also to NSF 85–59).

II. Program Description

A. Purpose and Scope

The Undergraduate Faculty Seminars and Conferences activity makes grants to conduct regional or national seminars, short courses, workshops, or similar activities for groups of faculty members. Grants will be made for the development and implementation of ways to assist large numbers of faculty to learn new ideas and techniques in their fields, and to use the knowledge and experience to improve their undergraduate teaching abilities.

The purpose of the program is to meet the needs of faculty who teach primarily undergraduate students. These faculty need to be familiar with new experimental techniques and ways of incorporating them into undergraduate laboratories. They need to have experience with new instrumentation and to have the opportunity to evaluate its suitability for use at their home institutions. They need to be familiar with recent theoretical developments in their fields which bear on their undergraduate teaching. They need opportunities to synthesize knowledge which cuts across their own and other disciplines. Finally, they need opportunities to interact intensively with experts in the field and with colleagues who are active scientists and teachers, both during the course of a project and in a continuing way after the end of a project.

Projects must be regional or national in scope, and may include seminars, short courses, workshops, and conferences, or a series of such activities, but are not limited to these. Actual sessions may vary considerably in length, normally from a few days to a few weeks.

The kinds of activities which are encouraged include projects which

- Allow participants to gain experience with recent developments in the field;
- Enable participants to work with innovative technologies relevant to their academic responsibilities and which allow them to evaluate the technology;
- Permit participants to work with experts who have had a part in originating the ideas which are the subject of the project or who have worked extensively with the ideas or techniques;
- Allow participants to work with industrial scientists, mathematicians, and engineers and to learn new industrial applications in the field;
- Permit participants to obtain personal experience working with new ideas and techniques, rather than just hearing about them;
- Encourage participants to develop instructional materials that include new ideas and techniques;
- Explore new methods of delivery of information, such as the use of computers or teleconferencing, either in work with other participants during the project or in participants' activities after the project;
- Encourage sustained interaction among the participants following the project and continued opportunities for learning about the topics of the project;
- Encourage the increased participation of underrepresented groups in science, mathematics, and engineering.

Although the kinds of projects and activities described here are expected to include the majority of those supported through the Undergraduate Faculty Enhancement Program, proposals envisioning additional mechanisms for enhancing the vitality of the undergraduate faculty will be considered by NSF.

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B. Eligibility Criteria and Limitations

1. Eligible Activities

The aim of the program is to improve the technical capability of experienced faculty members in ways which will enhance their ability to teach up-to-date undergraduate courses and laboratories. Thus activities proposed must be justified explicitly by their capacity to enhance participants' teaching activities for undergraduate students at one or more levels. It is not appropriate to propose activities which will primarily benefit a faculty member's research abilities. On the other hand, projects of a purely pedagogical nature which do not serve to enhance the faculty member's technical capability are not appropriate, either. Activities should be especially designed for experienced teachers and ordinarily should not duplicate parts of courses normally given by graduate departments.

The emphasis of the proposed project must be on the active involvement of the participants in working with the topic of the project and in interaction with scientists, engineers, and mathematicians experienced in the topic and with fellow participants. Thus, for example, in laboratory projects, participants must have access to equipment and facilities and have sufficient time to become familiar with experimental techniques and the experiments which may be done. In theoretical projects, participants must have sufficient opportunity to learn the theory and explore its implications. In all projects, participants must actually work extensively with the substance of the topic and interact with experts. Projects which are primarily lecture courses are therefore not appropriate in most cases.

The Foundation is concerned about the underrepresentation of women, minorities, and disabled persons in careers in science, mathematics, and engineering. Projects involving members of these groups as part of the staff or as target audiences are especially encouraged.

2. Eligible Organizations and Fields

The program will accept proposals from scientists, engineers, and mathematicians representing appropriate organizations, including colleges and universities, national laboratories, professional societies, other non-profit organizations, for-profit industries with the scientific expertise and facilities, and other organizations which can conduct the described activities.

The project should have one director, who is responsible for its operation as well as for its planning and administration. Normally the director will be an authority in the topic of the project and will devote full time to it during its operation. Other senior personnel may be involved if appropriate, but in all cases it is desirable that there be sustained interaction between the project personnel and participants.

Proposals may be submitted for support in the fields of science, engineering, and mathematics ordinarily supported by the Foundation, including the physical and biological sciences, social sciences, mathematics, computer and information sciences, and engineering, or for interdisciplinary projects which deal primarily with these fields. Specifically excluded from support are activities which are addressed to clinical fields associated with the sciences, such as medicine, nursing, clinical psychology, and physical education, as well as activities which primarily involve social work, home economics, business, the arts, and the humanities.

3. Types of Support Available and Cost Sharing

The Foundation will provide support for reasonable direct costs of operating the project, including salaries of senior personnel, clerical support, supplies, the cost of publications, postage and telephone charges, and computer services. The grantee institution is expected to provide facilities and equipment necessary to operate the project, and therefore no permanent equipment or facilities will ordinarily be supported. Indirect costs will be allowed.

Participant costs should be shared between the grant and the participating faculty member's home institution. It is expected that the home institution will bear travel costs; the cost of lodging and meals for participants may be requested from the grant. If there are other participant costs the proposal should describe them and request funds for them. No tuition or other fees may be charged to the participants. Participants may receive a stipend of up to $250 per week of the project.

Projects may be operated in one or more continuous sessions. Although summer may be most convenient for many directors and particpants, it may be appropriate to operate some projects during the academic year. Ordinarily, awards will be made for one year, although proposals with sufficient justification for projects which continue over a longer period will be considered.

4. Selection of Participants

After awards have been made by NSF, directors should publicize their project's availability widely to the intended audience. Faculty members who wish to participate in a particular project will apply directly to the project director. Directors, acting in consultation with a selection committee if desired, and within the guidelines established by NSF in this announcement, will be responsible for selecting participants for the project and making arrangements for its operation.

The program is intended for those whose primary duties lie in undergraduate teaching. Participants should ordinarily have a minimum of three years of undergraduate teaching experience by the beginning of the project. The participants must be drawn from a regional or national audience; where some participants come from the host institution, the grant will not pay participant support costs (see budget line F, described on page 00) for local participants.

The number of participants in a project will depend on the facilities and equipment available and on the topic of the activity. A project should accommodate enough participants to enable it to have an impact on the teaching of a subject and to allow for diversity in the group of participants; a minimum of 10 participants is suggested. On the other hand, projects should be planned so that the number of participants is not so large that access to equipment and project personnel is unduly restricted.

III. Preparation of Proposals

This announcement sets forth basic information needed for proposal preparation. Proposers must also consult the publication Grants for Research and Education in Science and Engineering (GRESE) (NSF 83–57 rev. 1/87) for additional guidance. This publication is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Proposers should use the forms contained in this announcement (pp. 00–00), not those in GRESE.

Except as modified by the guidelines set forth in this announcement, standard NSF guideliens on proposal preparation, submission, evaluation, NSF awards (general information and highlights), declinations and withdrawals contained in GRESE are applicable.

More comprehensive information is contained in the NSF Grant Policy Manual, Revised, (NSF 77–47) available

for purchase at $12.00 from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Grant Policy Manual ordinarily is not needed in the process of preparing a proposal.

In the event that the submitting organization has never been the recipient of an NSF award, however, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF Grant Policy Manual, Revised, which are applicable to most NSF awards. (If a proposal from such an institution is recommended for an award, the NSF Division of Grants and Contracts will request certain organization, management, and financial information. These requirements are contained in Chapter III of the Manual.)

A proposal consists of the following parts:

1. Cover Sheet
2. Project Summary Form
3. Table of Contents
4. Narrative
5. Budget
6. Curriculum Vitae
7. Statement of Current and Pending Support
8. Summary of Results of Prior NSF Support
9. Appendices (optional)

1. *Cover Sheet.* The first page of the proposal will be the cover sheet prepared in the form found on page 00. This cover sheet form should be duplicated and completed. The cover sheet must bear the signatures of the proposed principal investigator and of an administrative official who is empowered to commit the proposing organization to the conduct and prudent management of the project if NSF agrees to support it.

2. *Project Summary Form.* The second page of the proposal will be the project summary form (page 00). The information provided on this form is used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers. Name of institution and project title must be written exactly as given on the cover sheet. Please enter the data requested in the boxes according to the instructions on the back of the form. The information is requested in the indicated format to facilitate its input into the NSF data collection system.

The Summary of Proposed Work should be a concise description of the proposed activity suitable for publication by the Foundation to inform the general public about its awards. The text should not exceed 200 words in length. The summary should be a self-contained description of the activity which would result if the proposal is funded by NSF, not an abstract of the proposal. The summary should include a statement of the objectives of the project, a short description of its operation, and a statement of its significance to undergraduate teachers and their students. It should be written so that a technically literate reader can understand the use of Federal funds in support of the proejct.

3. *Table of Contents.* The proposal should be paginated continuously, and the beginning of each section noted in the table of contents.

4. *Narrative.* The narrative provides a detailed description of the proposed project, and it contains most of the information used to judge the suitability of the project for funding. Although no particular form is required, the description should cover the following points.

- What scientific, engineering, or mathematical topics will be covered during the project, and in what way? What is the significance of these topics in the field? To what extent will the coverage be experimental or theoretical?
- What are the qualifications of the staff, particularly the director, which make them especially qualified to conduct the project? What is the relationship between the topics and the director's professional activities? If other people are to take part in the operation of the project, what repsonsibilities will each take, and how do they fit into the overall project?
- What experience does the director or other staff or the organization have with instruction of faculty from other institutions? What provisions does the host institution plan to make that will maintain an intellectual setting that is conducive to learning by a group of mature professionals?
- How will the project be operated? What will be the structure of the project, and what will be required of participants during the projejct? One of the features to be addressed here will be the arrangements for sustained interaction of the participants with experts and among themselves during the course of the project and after its completion.
- In what ways are the topics particularly suitable for faculty who teach undergraduates? Projects should be designed to appeal to a large number of teachers of undergraduates, either within a single discipline or across several disciplies.
- What is the intended audience for the project? Although projects should not require higly specialized training from the participants, it is reasonable to require some background related to the topics covered. What prerequisites will there be?
- What information will be requested from applicants? How will participants be selected? Who will be involved in making the selection? What efforts will be made to recruit participants?
- What facilities and equipment are available for the project? This includes meeting rooms, scientific equipment, laboratories, and computers, and also the planned provision for partícipant housing, meals, and recreation.
- How will the project be evaluated?

Other information needed to provide a complete description of the project may be included. The narrative section should be printed in a way which is easy to read and should not exceed 15 single-spaced or 30 double-spaced pages.

Potential proposers are encouraged to discuss their ideas with the Program Director in advance of submitting a formal proposal. The telephone number is 202–357–7051.

5. *Budget.* The budget should be presented in the standard NSF form reproduced on Page 00. The discussion in *GRESE*, pp. 5–7, applies in general. The following considerations apply specifically to this program:

A. *Senior Personnel.* There must be a single project director who will be primarily responsible for administration and operation of the project. Other senior personnel may be listed if appropriate, but proposers should keep in mind the desirability of sustained interaction with an expert or experts in the topic to be covered.

B. *Other Personnel.* Project directors will need secretarial help in handling applications for the project and assistance in arranging for the project's operation.

C. *Fringe Benefits.* Allowable according to institutional policy.

D. *Equipment.* Ordinarily not allowed.

E. *Travel.* Allowed if necessary for the operation of the project, but not for participant travel to and from the project.

F. *Participant Support Costs.* Reasonable costs for subsistence for participants are allowed. Include here also a stipend of up to $250 per week paid to each participant, pro rata for periods not an integral number of weeks.

G. *Other Direct Costs.* Include here costs of supplies, publications, postage and telephone charges, and computer services as necessary. Include also estimated costs of publicizing the availability of the project to the intended audience.

H. *Indirect Costs.* Calculated according to the standard procedure outlined in GRESE, p. 7.

6. *Curriculum Vitae.* A curriculum vitae should include a record of the director's education and professional experience, honors, and a list of revelant publications, particularly in the previous 5 years. Also include here vitae for other senior personnel who will have a substantial responsibility for the operation of the project.

7. *Statement of Current and Pending Support.* All current and pending externally-funded support to the director and other senior personnel must be listed on the form found on page 00.

8. *Results of Prior NSF Support.* If the project director has received support from NSF in the past 5 years, the proposal must include a section summarizing the results of that support. It must include

- The NSF award number, amount, period of support, and project title.
- A summary of the results of completed work. (To facilitate review this summary should not exceed three pages.)
- A list of publications and formal presentations acknowledging the award. (Copies of publications should *not* be submitted with the proposal.)

9. *Appendices.* Material supplemental to the rest of the proposal may be included as appendices. Appendices should be printed on colored paper to distinguish them from the text. It is important that appendices, if included, be brief and easy to read.

Form 1225, Information about Principal Investigators, which provides data on sex, ethnic origin, and handicap, if found on page 00. Only one copy of this form is to be submitted. It should be attached to the signature copy of the proposal cover sheet. While providing the requested data is voluntary, SUBMITTING *THIS FORM* IS REQUIRED BY NSF. OMISSION OF THIS FORM WILL CAUSE CONSIDERABLE DELAY IN PROCESSING THE PROPOSAL. Any individual not wishing to submit the information should check the box provided for this purpose. Data will be treated as confidential, and will be maintained in secure data files in accordance with the Privacy Act of 1974. The information contained in this form will be available only to the NSF staff and will not be used in the external peer review process. All analyses conducted on the data will report aggregate statistical findings only and will not identify individuals.

IV. Review Criteria

NSF evaluates proposals on the basis of four general criteria:

1. *Performance competence.* This criterion relates to the capability of the investigator(s), the technical soundness of the proposed approach, the adequacy of the institutional resources available, and the proposer's recent science, engineering, or mathematics research and education performance.

2. *Intrinsic merit.* This criterion is used to assess the quality, currency, and significance of the scientific and technical content and related instructional activity of the project within the context of undergraduate science, engineering, and mathematics education.

3. *Utility or relevance of the project.* This criterion is used to assess the impact the project will have on the faculty participants and their undergraduate students.

4. *Effect on the infrastructure of science, mathematics and/or engineering.* This criterion relates to the potential of the proposed project to contribute to better understanding or to improvement of the quality, distribution, or effectiveness of the Nation's scientific/engineering/mathematics research, education, and human resources base.

See page 9 of GRESE for an additional discussion of these criteria.

Grants are awarded on a competitive basis. In selecting proposals to be supported, the Foundation is assisted by peer reviewers, who are scientists, engineers, or mathematicians drawn primarily from the academic community and also from research organizations and professional associations.

V. Proposal Submission

Proposals for projects which are planned to begin during the summer of 1988 should be received in the Foundation no later than *11 December 1987* in order to allow time for review and evaluation. Proposals for projects to begin after the summer of 1988 which are to be funded in fiscal year 1988 should be received in the foundation by *4 March 1988.* Proposals received in March 1988 may be for projects which begin during the academic year 1988–89 or during the summer of 1989; submission at this time may allow greater opportunity for planning after the announcement of an award. Proposals received after these target dates will be reviewed, but decisions may be delayed by their late arrival.

Materials required:

One copy of Information about Principal Investigators, Form 1225
Fifteen copies of the complete proposals;
Three extra copies of the Cover Sheet;
Two extra copies of the Budget;
Two extra copies of the Project Summary Form.

These materials should be submitted to: Proposal Processing Unit for Undergraduate Faculty Enhancement Program, National Science Foundation, Room 223, 1800 G Street NW., Washington, DC 20550.

VI. Inquiries

Inquiries about matters not addressed in this publication may be directed to the program staff by contacting: Undergraduate Faculty Enhancement Program, Office of Undergraduate Science, Engineering, and Mathematics Education, Directorate for Science and Engineering Education, National Science Foundation, Washington, DC 20550, 202–357–7051.

Other Programs

NSF Guide to Programs (NSF 86–40) briefly describes all Foundation programs. It is available at most institutions or may be obtained at no cost by contacting the Forms and Publications Unit, Room 232, NSF, Washington, DC 20550 (202/357–7861). Some programs of special interest to undergraduate faculty are described below.

- The goal of the Instrumentation and Laboratory Improvement Program is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory and/or field courses in science, mathematics or engineering. For additional information request the program announcement and guidelines, NSF 87–74 or contact the Office of Undergraduate Science, Engineering and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).
- Research Experiences for Undergraduates (REU) provides an opportunity for college students to gain hands-on experience in science, mathematics or engineering research programs or equivalent projects conducted with the needs of undergraduates in mind. REU provides funds to operate REU Research Participation Sites. Each such site usually will involve several college students. REU also will supplement ongoing NSF research awards to enable them to provide research training experience for one or two undergraduates. More information is available through the REU Brochure, NSF 87–63 (copies of which may be obtained from the Forms and

Publications Unit, NSF, Washington, DC 20550), or from the Divisional REU Coordinator, (Name of Discipline), NSF, Washington, DC 20550. Telephone numbers of the REU Coordinators for the various disciplines are listed in the REU brochure.

• The Research in Undergraduate Institutions (RUI) activity is part of the Foundation's effort to broaden the participation of faculty in undergraduate institutions in NSF-supported science and engineering research and to enhance the scientific and technical training of students. The objectives of the RUI activity are to provide faculty support to carry out research leading to new knowledge and techniques in their fields, to strengthen the research environments in academic departments that are oriented primarily to teaching undergraduates in science and engineering, and to promote the coupling of research and education at predominantly undergraduate institutions. RUI provides support for research and research equipment for investigators in non-doctoral departments in predominantly undergraduate institutions. RUI proposals are evaluated and funded on a competitive basis by NSF's research programs. For further information contact the Division of Research Initiation and Improvement, Room 1225, NSF, Washington, DC 20550 (202/357–7456), or the appropriate NSF disciplinary program officer.

• The Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled is an undergraduate program that supplements efforts at the pre-college level to address the underrepresentation of women, minorities and the disabled in the Nation's ranks of science and engineering professionals. There are two activities:

—Comprehensive Projects for Minorities supports the establishment of regional centers designed to increase the minority presence in science and engineering and to strengthen such efforts in institutions with significant minority enrollments, and

—Prototype and Model Projects for Women, Minorities and the Disabled encourages institutions to create special outreach programs for these target audiences.

For additional information contact the Office of Undergraduate Science, Engineering and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

• Research Opportunities for Women (ROW) provides funding opportunities for women scientists and engineers to begin their independent research careers, resume research, or advance their careers by increasing their research productivity. Additional information may be obtained by requesting NSF publication 86–61, by contacting the appropriate NSF disciplinary program officer, or by contacting the ROW Coordinator, NSF, Washington, DC 20550 (202/357–7734).

• The Visiting Professorships for Women Program (VPW) enables experienced women scientists and engineers to undertake advanced research at a host institution—a university or 4-year college which has the necessary facilities. In addition to her research responsibilities, the visiting professor undertakes lecturing, counseling and other activities to increase the visibility of women scientists in the academic environment of the host institution, and to provide encouragement for other women to pursue science, mathematics or engineering careers. Additional information may be obtained by contacting the VPW Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7734).

• The Minority Research Initiation Program (MRI) supports research by minority scientists and engineers who hold full-time faculty or research-related positions, who (1) are members of ethnic minority groups that are significantly underrepresented in the science and engineering career pool; (2) have not previously received Federal research support as faculty members; and (3) wish to initiate research efforts, thereby increasing their ability to compete successfully for other research support. Information about programs for minority scientists and engineers may be obtained from the MRI Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7350).

• NSF's Facilitation Awards for Handicapped Scientists and Engineers (FAH) activity enhances opportunities for disabled individuals to participate in research. Funds are provided to purchase special equipment, modify equipment, or provide other services required specifically for the work undertaken on an NSF-supported project (see NSF 84–62, Rev 5–87). Funds from regular program budgets are provided for handicapped senior personnel, other professionals, and students, as a supplement to an existing award or as part of a new award. General inquiries may be made to the Coordinator, Facilitation Awards for Handicapped Scientists and Engineers, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• The Undergraduate Curriculum Development Program includes two components: Engineering Curriculum Development and Calculus Curriculum Development.

—The Undergraduate Engineering Curriculum Development Program is designed to revise and improve undergraduate engineering education. There is a pressing need to revise the curricula of undergraduate engineering education with a view toward more emphasis on the laboratory experience and on technology-driven fields such as design, manufacturing, and computer-integrated engineering. There is also a need to explore the use of new technologies to improve the quality and productivity of the undergraduate engineering education system. Additional information about this program may be obtained from the Undergraduate Engineering Curriculum Development Program, Room 1238, NSF, Washington, DC 20550 (202/357–5102).

—The Division for Mathematical Sciences Undergraduate Curriculum Program supports proposals that will have significant impact on the nature of calculus instruction in this Nation through the development of model curricula and prototypical instructional materials. For additional information contact the Division of Mathematical Sciences, Room 339, NSF, Washington, DC 20550 (202/357–9669).

• Research Opportunity Awards permit faculty at institutions with limited research opportunities to work with investigators who already hold or are applying for an NSF research grant. For information on ROA, contact the Division of Research Initiation and Improvement, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• The NSF has several programs directed toward improving precollege science, mathematics and technology education. In most cases, college and university faculty write proposals and direct the projects supported by these programs. For information on Applications of Advanced Technologies, Informal Science Education, Instructional Materials Development, or Research in Teaching and Learning, contact the Division of Materials Development, Research and Informal Science Education, NSF, Washington, DC 20550 (202/357–7452). For information on Science and Mathematics Education Networks, Teacher Preparation, Teacher Enhancement, or Presidential Awards for Excellence in Science and Mathematics Teaching, contact the Division of Teacher Preparation and Enhancement, NSF, Washington, DC 20550 (202/357–7073).

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• Information on Graduate Research Fellowships and Minority Graduate Research Fellowships may be obtained by contacting the National Research Council, 2101 Constitution Avenue, Washington, DC 20418.

• MOSIS (Metal-Oxide-Semiconductor Implementation Service) is a joint NSF/DARPA (Defense Advanced Research Projects Agency) program that allows qualifying universities to use the DARPA fast turnaround VLSI implementation facility as part of university based research and educational programs. Students taking undergraduate VLSI design courses can have digital systems that they design fabricated and packaged and returned to them for testing and experimentation. For more information, contact the Division of Microelectronic Information Processing Systems, Room 504, NSF, Washington, DC 20550 (202/357–7853).

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities, and the disabled to compete fully in any of the programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

Catalog of Federal Domestic Assistance Numbers:

47.041 Engineering
47.049 Mathematical and Physical Sciences
47.050 Geosciences
47.051 Biological, Behavioral and Social Sciences
47.053 Scientific, Technological and International Affairs
47.070 Computer and Information Sciences and Engineering
47.071 Undergraduate Science, Engineering, and Mathematics Education

Special Requirements for Use of Animals, Human Subjects, Recombinant DNA

If any activity in the proposed work is likely to involve using non-human vertebrate animals, human subjects, or recombinant DNA techniques, additional information must be supplied. Please see Grants for Research and Education in Science and Engineering, NSF 83–57, rev 1/87, page 16 or contact NSF for details.

Robert F. Watson,

Acting Head, Office Undergraduate Science, Engineering and Mathematics Education.

September 18, 1987.

[FR Doc. 87–21906 Filed 9–22–87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all notices of amendments issued, or proposed to be issued from August 31, 1987 through September 11, 1987. The last bi-weekly notice was published on September 9, 1987 (52 FR 33997).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 23, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set

forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket No. STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Unit 3, Maricopa County, Arizona

Date of amendment request: July 23, 1987

Description of amendment request: The proposed amendment would allow sale and leaseback transactions by El Paso Electric Company (EL Paso) relating to their ownership interest in Palo Verde Unit 3. Specifically the application requests authorization by one of the co-owners to transfer all or a portion of their fee interest to equity investors and the simultaneous transfer by the equity investors back to this co-owner of a long term (approximately 29½ years) possessory leasehold interest of these shares under the terms described in the application and other identified documents. It is contemplated that the equity investors may be third parties affiliated with El Paso. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust considerations may be present. Under the proposed transaction, it is represented that El Paso will remain in possession of their present partial interest in Palo Verde Unit 3 under leasehold rather than by virtue of ownership. Arizona Public Service Company would continue to be the sole licensed operator of the facility.

The proposed amendment is similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by Public Service Company of New Mexico (PNM) of a portion of PNM's ownership interests in PVNGS Unit 1. See 50 FR 45955. By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's Order. See 51 FR 1883. Additional similar sale and leaseback transactions have been approved by the NRC staff for Units 1 and 2.

Basis for No Proposed Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards

considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved in any aspect of plant design, criteria or operation of the unit. The proposed amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2 - Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not affect any aspect of plant design, criteria or operation and does not affect any condition or parameter of the unit. For this reason, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change any aspect of plant design, criteria or operation of the unit. For this reason, the NRC staff has determined that the proposed change does not involve a significant reduction in any margins of safety.

The proposed amendment would maintain co-owner EL Paso in possession of their present interest in Unit 3 as lessee and El Paso would continue to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors do not have any rights of possession in, absent further license amendment, or control over PVNGS. Arizona Public Service Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 24, 1984, as supplemented February 27, 1985, July 8, 1985, and March 17, 1987.

Description of amendment request: This proposed revision to the Technical Specifications (TS) of Brunswick Steam Electric Plant, Units 1 and 2, was noticed on March 27, 1985 (50 FR 12139), and renoticed August 28, 1985 (50 FR 34934). However, on March 17, 1987, additional information was provided by the licensee. As previously proposed, the amendments would change the Limiting Condition for Operation (LCO), the Surveillance Requirements, and the associated bases for TS 3/4.6.1.3, Primary Containment Air Locks, to address the air lock door interlocks specifically. Additionally, the TS will be reformatted to follow more closely the guidance of the NUREG-0123, Standard Technical Specifications.

In the licensee's March 17, 1987 submittal, the request was modified to include a revision to TS 4.6.1.3 that would require the determination of the seal leakage rate of the containment air lock doors after their use, even though no maintenance has been performed. In addition, changes were made in TS 4.6.1.3.c to require verification of air lock interlock operability.

The current TS does not specifically address an inoperable door interlock in the LCO. As such, it could be interpreted that an inoperable door interlock falls outside the air lock "degraded mode" permitted by Action statement 3.6.1.3.a and b. Were that to be the interpretation, this interlock would fall under Action statement 3.6.1.3.c, for an inoperable primary containment air lock, which directs the plant to be in hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours if the air lock is declared inoperable. CP&L has concluded that this was not the intent of the TS, since an inoperative door interlock is clearly of a similar nature as the "degraded mode" permitted by Action statement 3.6.1.3.a and b.

The current TS requires that the operation of the air lock door interlock be verified every six months. This verification presents the following problems:

(1) The interlock surveillance is performed independently of the air lock operability requirements.

(2) The interlock surveillance cannot be performed when the unit is at power with the drywell inerted, as the drywell is inaccessible.

(3) A low power drywell entry, just to perform the interlock surveillance, would present an unnecessary safety hazard and increase radiation exposure to personnel performing the test.

The proposed revisions to TS 3/4.6.1.3 will present the following resolutions:

(1) Action statement 3.6.1.3.b will be revised to provide the specific action to be taken in the event of an inoperable air lock door interlock. In the event of an inoperable air lock door interlock, the inner air lock door will be maintained locked closed and verified locked at least once per 31 days, until the interlock is restored to operable status.

(2) The proposed revision of Surveillance Requirement 4.6.1.3.a includes a requirement to determine the seal leakage rate of the primary containment air lock doors after their use when no maintenance has been performed, and after a seal replacement.

(3) Surveillance Requirement 4.6.1.3.c has been revised to require verification of air lock interlock operability: (a) prior to establishing primary containment integrity when the air lock has been used; (b) prior to and following a drywell entry when primary containment integrity is required; and (c) following the performance of maintenance affecting the air lock interlock.

Item (a) ensures the interlock is operable prior to entering an operating mode requiring primary containment integrity. Item (b) ensures the operability of the interlock during during periods when containment integrity is required and the air lock is being used for primary containment access. Item (c) ensures post-maintenance testing of the interlock. This test frequency is consistent with the intent of, and more restrictive than the guidance of NUREG-0123, the Standard Technical Specifications (STS) for General Electric Boiling Water Reactors. Additionally, the TS is being reformatted to be consistent with the STS. The STS requires verification of the air lock interlock operability at least once per six months, except that the inner door need not be opened to verify interlock operability when the primary containment is inerted.

Basis for proposed no significant hazard consideration determination:

The Commission has provided standards in 10 CFR 50.92(c) for determining whether or not a no significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The pending amendment request was prenoticed on March 27, 1985 (50 FR 12139), and again on August 28, 1985, (50 FR 32934). The licensee has provided the following analysis of the additional changes:

1. The proposed additional changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The requirement to verify the seal leakage rate of the primary containment air lock doors after their use when no maintenance has been performed constitutes an additional control not presently included in the Brunswick TSs. This provides added assurance of air lock operability. The proposed revision to the air lock interlock testing frequency provides additional assurance of interlock operability when primary containment integrity is required. The surveillance schedule is expanded to verify interlock operability prior to establishing containment integrity and prior to and following drywell entry, when containment integrity is required. This schedule for testing interlock operability prior to and following a challenge of the system, rather than on an arbitrary six-month frequency, will not increase the probability of an air lock or air lock interlock failure when called upon to perform their safety functions. Changes in surveillance requirements do not affect the consequences of air lock or air lock interlock failure.

2. The proposed additional changes do not create the possibility of a new or different kind of accident than previously evaluated because revision of the surveillance requirements associated with the air locks and air lock interlocks does not affect the method in which the air locks perform their intended safety function. Assurance of the ability to maintain containment integrity is enhanced through the revised surveillance requirements. Additionally, the air locks and air lock interlocks are designed to maintain containment integrity whenever it is required and, thereby, mitigate the consequences of an accident.

3. The proposed additional changes do not involve a significant reduction in a margin of safety. The expanded surveillance requirements for air lock seal and air lock interlock verification provide additional assurance of air lock operability and would not involve a reduction in the margin of safety.

Based on the above reasoning, the Commission has determined that the additional changes to the pending request do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of Application for amendments: June 12, 1987, as supplemented September 10 and 11, 1987

Description of amendment requests: The proposed amendments would change the Technical Specifications (TS) for Brunswick Steam Electric Plant (BSEP), Units 1 and 2, relative to the description of the fuel used in the core in TS Section 5.3.1 and the fuel storage parameters in TS Sections 5.6.1.1 and 5.6.1.2.

Currently, TS 5.3.1 delineates the fuel types existing in the reactor core and provides maximum average enrichments for the initial core loading and reload fuel assemblies. The proposed amendment would add General Electric fuel 8 x 8 EB (GE8) to the list of fuels in the core and would remove the limitations on the maximum fuel enrichments. The new extended burnup fuel (GE8) will be used with various fuel enrichments. The acceptability of the GE8 fuel for operation in the core will be ensured by the performance of a cycle-specific safety analysis. The revised TS Sections 5.6.1.1 and 5.6.1.2 impose infinite lattice multiplication factor (k-infinity) limitations, which ensure the fuel can be safely handled and stored.

TS Section 5.6.1.1 requires that the new fuel storage racks be maintained so there is sufficient center-to-center distance between stored fuel assemblies to ensure a k_{eff} equivalent to less than 0.90 when dry and less than 0.95 when flooded with unborated water. The proposed change specifies that this requirement is met by limiting the k-infinity of new fuel assemblies to less than or equal to 1.31 in an infinite core geometry lattice. The new fuel storage racks at both BSEP-1 and BSEP-2 are General Electric, low-density, new fuel storage racks. New fuel assemblies with an initial k-infinity limit of 1.31 will be subcritical in the new fuel storage racks without concern for their initial U-235 enrichment. This limit has been approved by the NRC and is documented in Section 3.3.2.1.4 of GESTAR II, NEDE-24011-P-A-8.

The final change involves TS Section 5.6.1.2. Currently, TS Section 5.6.1.2 requires that the spent fuel storage racks be maintained so there is sufficient center-to-center distance between stored fuel assemblies to ensure a k_{eff} equivalent to less than 0.95 with the storage pool filled with unborated water. The current specification also limits the maximum enrichment of fuel contained in the spent fuel pool to 3.2 weight percent U-235 for PWR fuel assemblies and 3.0 weight percent U-235 for BWR fuel assemblies and the U-235 per axial centimeter to 41 gm/cm for PWR assemblies and 15.6 gm/cm for BWR assemblies. The proposed revision restricts the k-infinity of the fuel rather than the U-235 enrichment and axial weight distribution.

The BSEP-1 and BSEP-2 spent fuel pools contain three types of spent fuel storage racks: high-density, poisoned General Electric designed BWR fuel storage racks; high-density, unpoisoned BWR fuel storage racks; and high-density, unpoisoned PWR fuel storage racks. The NRC has approved a generic limit for the k-infinity of fuels stored in the General Electric supplied fuel racks. This limit is documented in Section 3.3.2.1.4 of GESTAR II, NEDE-24011-P-A-8. The limiting k-infinity is 1.33; associated with the General Electric high-density, poisoned rack design.

The criticality analysis for the remaining two rack designs employed at the Brunswick Plant was approved by the NRC upon issuance of Amendments 8 and 30 to the Facility Operating Licenses for Brunswick Steam Electric Plant, Units 1 and 2, on August 26, 1977. This criticality analysis assumed spent fuel stored in the high-density, unpoisoned PWR and BWR racks had a maximum assembly average loading of 3.2 weight percent U-235 for PWR fuel assemblies and 3.0 weight percent U-235 for BWR fuel assemblies. General Electric Company has performed an

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analysis and determined the 3.2 weight percent U-235 PWR fuel has a corresponding k-infinity of 1.416 ± 0.005 and 3.0 weight percent U-235 BWR fuel assemblies have a corresponding k-infinity of 1.344 ± 0.005. The revised k-infinity limits of TS Section 5.6.1.2.a and 5.6.1.2.b are conservatively established at 1.41 and 1.33, respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR Part 50.92 and has determined the following:

1. Specification 5.3.1 was revised to allow for the use of GE 8 x 8EB fuel (GE8). The NRC has separately approved GE's high exposure fuel design via a letter from H. N. Berkow (NRC) to J. S. Charnley (GE) entitled "Acceptance for Approval of Fuel Designs Described in Licensing Topical Report NEDE-24011-P-A-8, Amendment 10 for Extended Burnup Operation," dated December 3, 1985. Permission to reference this topical report was given in a letter from C. O. Thomas (NRC) to J. S. Charnley dated August 13, 1985 entitled "Acceptance for Referencing of Licensing Topical Report NEDE-22148-P, 'Extended Burnup Evaluation Methodology.'" The impact of high exposure fuel on fuel handling accident evaluations was considered by the NRC as part of these reviews

Examination of fission yield curves for Pu-239 and U-235 indicates no significant differences in yields of iodine and xenon isotopes, however, U-235 yields are slightly larger for major xenon and iodine isotopes. Examination of Pu-239 fission yields indicates no other volatile radioactive isotope not currently considered would be produced in significant quantities. Therefore, the contribution of fission product gases from Pu-239 at higher burnup will not significantly change the total inventory of fission product gases generated.

Fuel rod design feature improvements have been introduced as part of the GE8 high burnup fuel design. These design feature improvements increase the fuel pellet thermal conductivity as well as the thermal conductance between the fuel pellet and cladding, thereby significantly reducing operating fuel temper atures and attendant fission gas release. These features of the GE8 design have been reviewed and accepted by the NRC via a letter from H. N. Berkow (NRC) to J. S. Charnley (GE) entitled "Acceptance for Approval of Fuel Designs Described in Licensing Topical Report NEDE-24011-P-A-8, Amendment 10 for Extended Burnup Operation," dated December 3, 1985.

The overall result of these design improvements is a reduction in the inventory of gaseous fission products released from the fuel pellet to the fuel rod void volume for the GE8 fuel design at its design exposure as compared to the P8 x 8R fuel design at its design exposure. Therefore the consequences of a fuel handling accident involving GE8 fuel are not increased and are bounded by the existing analysis.

The revisions to Specifications 5.6.1.1 and 5.6.1.2 impose criticality limitations which ensure that fuel can be safely handled and stored. Basing these limitations on k-infinity rather than the maximum U-235 enrichment and axial gm/cm prevents inadvertent criticality while allowing the handling and storage of higher enrichment GE8 fuel assemblies. Use of such high burnup fuel assemblies will also reduce the probability of a fuel handling accident because, over the life of the plant, fewer assemblies will be discharged from the core. The proposed changes to Specifications 5.6.1.1 and 5.6.1.2 are more restrictive than the existing Technical Specifications. The revision to Specification 5.6.1.1 provides a k-infinity limit to ensure the k_{eff} limits are met. The k-infinity limit established in Specification 5.6.1.2.a is 1.41, slightly less than the k-infinity determined by General Electric at the lower 2(sigma) tolerance for the PWR fuel assembly analyzed. The k-infinity limit established in Specification 5.6.1.2.b for BWR fuel is 1.33, the more restrictive k-infinity limit for General Electric designed, high-density, poisoned BWR storage racks.

Thus, for the reasons described above, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. As stated in response to Item 1 above, the proposed revisions allow the use of GE8 fuel assemblies which have been approved by the NRC. In addition, the revised Specifications 5.6.1.1 and 5.6.12 are more restrictive than those currently existing in the TS. The new fuel design is not significantly different than any previously used.

The proposed amendment does not affect the method in which any safety-related equipment achieves its safety function. The equipment, methods, and procedures for handling fuel assemblies are not affected by the proposed changes.

Thus, for the reasons described above, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed k-infinity limitations provide margin which is equivalent to the enrichment limitation which currently exists for the PWR fuel and more restrictive than the enrichment limitations which currently exist for the BWR fuel.

As stated in response to Items 1 and 2 above, the impact of high exposure fuel was considered by the NRC as part of the review of GE's high exposure fuel design. It was concluded that the radiological consequences of a fuel handling accident involving GE8 fuel would be the same as for existing fuel and would be well within the guidelines established in 10 CFR Part 100. In addition, pool cleanup and ventilation, as well as heat load, will not be significantly affected by the change. Progressively higher burnup fuel has been off-loaded each cycle at BSEP and some charge burnup has increased from approximately 12,000 MWD/MT to approximately 29,000 MWD/MT at BSEP-1 and from approximately 9,000 MWD/MT to approximately 25,000 MWD/MT at BSEP-2. Batch average discharge burnup at each of the plants would be expected to increase incrementally to reach approximately 36,000 MWD/MT over the next five cycles. Experience in the BSEP spent fuel pools indicates no long term trends of substantially increasing activity or heat load as a result of increasing burnup as discharged fuel burnup has increased (other than that attributable to and spent fuel capacity and loading expansion). As there is no major change in the GE8 fuel design or manufacturing processes from those currently in use, this prior experience is concluded to be applicable. Previously implemented fuel design improvements to improve fuel performance and failure resistance are not expected to be compromised by higher burnup applications.

The primary change to heat load results from the number of fuel assemblies discharged from the core. For a given cycle length, fewer assemblies would be discharged in a high burnup fuel cycle than normally

discharged, thereby reducing the probability of a fuel handling accident and potentially increasing the margin of safety. Evaluations indicate that for the highest discharge batch size anticipated in a high burnup scenario in which the entire spent fuel pool is assumed to be filled with high burnup fuel, spent fuel pool heat load is bounded by previously submitted and NRC approved analysis.

Thus, for the reasons stated above, the proposed amendment does not involve a significant reduction in the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 16, 1987.

Description of amendment request: The proposed amendment would revise the following:

Change 1. Technical Specifications (TS) sections 3.11 Basis, and section 4.11.1.4, to delete unnecessary reference to the total number of flux thimbles available for movable incore flux instrumentation for the H. B. Robinson Steam Electric Plant, Unit No. 2.

Change 2. TS Table 3.5-6, item 2a and Table 4.19-1, to correct for plant modification (addition) required by Regulatory Guide 1.97.

Change 3. TS Table 4.1-1, Item 10, to correct an inadvertent omission of Remark 2 to Item 10 of the Table. This error occurred in Amendment 97 due to a retyped version of the page containing the omission.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a signifcant reduction in a margin of safety.

Carolina Power and Light Company has reviewed their proposed change in accordance with 10 CFR 50.92(c) and has made determinations identified with each change as follows:

Change 1.

a. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of consequences of an accident previously analyzed, because the amendment simply eliminates an informational statement. All functional requirements of flux thimble availability for recalibration of the excore symmetrical-offset detection system and for flux mapping remain intact.

b. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated, because the amendment simply eliminates an informational statement. All functional requirements of flux thimble availability for recalibration of the excore symmetrical-offset detection system and for flux mapping remain intact.

c. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety, because the amendment simply eliminates an informational statement. All functional requirements of flux thimble availability for recalibration of the excore symmetrical-offset detection system and for flux mapping remain intact.

Change 2.

a. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of consequences of an accident previously analyzed, because the new configuration will improve monitoring sensitivity by reducing dilution and provide additional information as to which steam generator is the source of the primary coolant leakage.

b. Operation of the facility in accordance with the proposed amendment would not create the possibility at a new or different kind of accident from any previously evaluated, because the new configuration will improve monitoring sensitivity by reducing dilution and provide additional information as to which steam generator is the source of the primary coolant leakage.

c. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety, because the new configuration will improve monitoring sensitivity by reducing dilution and provide additional information as to which steam generator is the source of the primary coolant leakage.

Change 3.

a. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of consequences of an accident previously analyzed, because this is an administrative change simply correcting a typographical error. It has no functional impact upon the operation of the facility, except to reinstate a notation on the TS Table which was not intended to have been removed.

b. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated, because this is an administrative change simply correcting a typographical error. It has no functional impact upon the operation of the facility, except to reinstate a notation on the TS Table which was not intended to have been removed.

c. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety, because this is an administrative change simply correcting a typographical error. It has no functional impact upon the operation of the facility, except to reinstate a notation on the TS Table which was not intended to have been removed.

The NRC staff has reviewed the licensee's determination and agrees with their evaluation in this regard and, therefore, proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of amendment request: August 18, 1987

Description of amendment request: The licensee proposes that License No. DPR-45 for the permanently shutdown and defueled LaCrosse Boiling Water Reactor (LACBWR) be amended to revise the Technical Specifications (TS) to reduce the required size of the fire brigade from five persons to three persons with offsite fire protection resources remaining the same.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation and/or maintenance of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes in accordance with the standards of 10 CFR 50.92(c) and determined that the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. LACBWR has been permanently shutdown and defueled. Reducing the size of the fire brigade and reorganizing the staff are administrative changes. These administrative changes at a plant which is shutdown do not involve a significant increase in the probability or consequences of any accident previously analyzed.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes to fire brigade composition and staff organization and responsibilities are strictly administrative type changes. They do not affect any mode of operation with the plant permanently shutdown and so cannot create the possibility of a new or different kind of accident from any previously evaluated.

(3) involve a significant reduction in a margin safety. The proposed changes to fire brigade composition and staff organization and responsibilities are administrative in nature. Therefore, they do not affect any margin of reactor safety. Since the plant has been permanently shutdown, the potential consequences to plant safety of a fire are greatly reduced and so decreasing the fire brigade size will not reduce plant safety below that which existed during plant operation.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Attorney for licensee: Kevin Gallen, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein

Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of amendment request: August 21, 1987 as revised August 28, 1987

Description of amendment request: The licensee proposes that License No. DPR-45 for the permanently shutdown and defueled LaCrosse Boiling Water Reactor (LACBWR) be amended to revise the Technical Specifications (TS) to delete the Type A containment building integrated leak rate tests.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation and/or maintenance of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes in accordance with the standards of 10 CFR 50.92(c) and determined that the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. Elimination of Type A testing cannot cause an increase in the probability of an accident. Since LACBWR has been permanently shutdown and defueled, the Containment Building is not needed to protect the public against the design basis accident of a pipe break. Neither the fuel handling accident, nor the cask drop accident, as previously analyzed, assumes any credit for containment integrity. Therefore, elimination of Type A testing of the containment will not involve a significant increase in the consequences of an accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. Elimination of Type A testing only serves to remove the assurance that the containment pressure boundary will limit leakage during a postulated accident. Deletion of the testing requirement cannot create the possibility of any new or different kind of accident from any previously evaluated since the spent fuel accident analysis does not take any credit for containment integrity.

(3) involve a significant reduction in a margin of safety. Since the plant has been permanently shutdown and defueled, the only remaining postulated fuel damage accidents are those involving fuel handling or a cask drop. Since the analyses for both these events did not assume any containment, elimination of Type A testing will not involve a significant reduction in the margin of safety.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Attorney for licensee: Kevin Gallen, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 12, 1987, as supplemented July 9, 1987

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 3.3-12 "Radioactive Liquid Effluent Monitoring Instrumentation," Table 4.3-8 "Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirements," and Table 4.11-1 "Radioactive Liquid Waste Sampling and Analysis Program" to add operability and surveillance requirements for radioactive liquid effluent monitoring instrumentation for water from the turbine building sump after treatment by an alternate demineralizer system. The proposed amendments would provide program requirements for the sampling and analysis of the demineralized sump water and its surveillance by radiation monitor EMF-31 before discharge into the Low Pressure Service Water System.

The Radwaste Treatment System (capacity 16,000 to 18,000 gallons per day) will remain the primary treatment system for processing highly contaminated wastes. The licensee proposes to install portable equipment to demineralize the larger volumes of slightly radioactive wastewater, 72,000 gallons per day or more, which can result from primary-to-secondary leaks in the steam generators. The turbine building sump also receives waste water with very low levels of radioactivity from other sources such as floor drains and the auxiliary building drain sump. The treated waste water would be discharged through radiation monitor EMF-31 into the effluent from the Low Pressure Service Water System.

The radioactive release rates would meet 10 CFR Part 20 Appendix B limits. The NRC dose limit imposed by the Technical Specifications and 10 CFR Part 50 would also be met. The discharges would also be sampled and monitored in compliance with the NPDES permit. Turbine sump water meeting these requirements without treatment could be discharged directly through radiation monitor EMF-31 to the Conventional Wastewater Treatment System.

Table 4.11-1 specifies the supplemental wastewater sampling and analysis requirements when the EMF-31 monitoring channel is operable. In the event that the EMF-31 monitor is not operable, the more frequent sampling and analysis schedule is specified in Table 3.3-12, Action 42.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase Sholly in the probability or consequences of an accident previously evaluated because the addition of wastewater demineralizing equipment would not affect the probability of previously evaluated accidents and would mitigate their offsite dose consequences. The TS requirements for the operability and surveillance of the liquid effluent monitoring instrumentation would ensure that no unacceptable concentrations of radioactive effluents would be released offsite and that there would be no increased risk to public health and safety.

Also, the proposed amendments would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the changes do not affect the design or operation of any safety-related systems. Furthermore, by providing additional equipment for decontaminating wastewater, the likelihood of offsite dose consequences to the public is decreased. For the reasons stated in item (2) above, the proposed changes would not (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Kahtan N. Jabbour, Acting Director

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 31, 1987

Description of amendment request: The proposed amendments would revise the limiting condition for operation (LCO) action statements of Technical Specification (TS) 3.5.1.1 to increase the time allowance for restoration of boron concentration in a cold leg injection accumulator that is out of specifications. The TSs associated with the accumulators are intended to ensure that a sufficient volume of borated water will be immediately forced into the core in the event the reactor coolant system pressure falls below the pressure of the accumulators. The proposed amendments to the LCO action statements would continue to ensure that, in the event of a loss-of-coolant accident (LOCA), a sufficient amount of borated water will be injected into the core to maintain adequate cooling. The time extension is dependent upon the weighted average of the boron concentration in the three limiting accumulators. Associated TS bases 3/4.5.1 "Accumulators" would also be revised to reflect the proposed changes to TS 3.5.1.1. These changes are intended to reduce the number of unnecessary plant mode changes and provide the operator more time in which to diagnose and correct low boron concentration while maintaining plant conditions which satisfy safety analyses assumptions.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the increase in probability of a LOCA when an accumulator is declared inoperable for the proposed extended time limit is negligible. The increase in consequences is also negligible because the volume weighted boron concentration average of 1500 ppm in the three limiting accumulators would provide adequate reactor shutdown capability without control rod availability. Also, the proposed amendments would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the changes do not significantly increase the probability of a LOCA, and no hardware changes are made to create a new failure or accident sequence. Similarly, the proposed amendments would not (3) involve a significant reduction in a margin of safety because the volume of borated water to be delivered to the core is unaffected, and

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the boron concentration would not fall below 1500 ppm.

Accordingly, the Commission proposes to determine that this request does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Kahtan N. Jabbour, Acting Director

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1987 as supplemented August 24, 1987.

Description of amendment request: The proposed amendment would revise License Condition 2.C(14), Emergency Response Capabilities, Attachment 5, Item 2. Item 2. of Attachment 5 to the license, requires that prior to the startup from the first refueling outage, the licensee shall implement modifications (installation or upgrade), for items 2.(a) through 2.(h), consistent with the guidance of Regulatory Guide 1.97, Revision 2. The proposed amendment would change the required implementation date for item 2.(a) of Attachment 5, neutron flux, from prior to the startup from the first refueling outage until prior to the startup from the second refueling outage. The remaining items 2.(b) through 2.(h) would continue to be required to be implemented prior to the startup from the first refueling outage. The proposed changes to Attachment 5 are to delete the current item 2.(a), neutron flux; add a new item 3. that requires the neutron flux instrumentation to be installed prior to the startup from the second refueling outage; and redesignate current items 2.b through 2.h to be items 2.a through 2.g.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

There is no change in system design or operation. The license condition currently requires upgrade of neutron monitoring system (NMS) during the first refueling outage. This change will extend the modifications to the second refueling outage (RF2). This license condition proposed change will allow operation with the currently installed system which has previously been accepted for interim operation. This system is required to provide neutron flux indication and is not postulated to initiate any accidents. Therefore, delay in upgrade in Regulatory Guide (RG) 1.97 requirements will not significantly increase the probability of an accident. The neutron monitoring system is used to verify reactor shutdown as part of the Emergency Operating Procedures (EOPs). The use of neutron monitoring in the EOPs is conservative in that, if it is not available, actions are specified which will lead to safe shutdown without the system. The requirements of RG 1.97 concerning neutron monitoring are an enhancement to the existing system which would lead to the system being operable during accident scenarios for which it is not currently designed. However, delay in RG 1.97 modifications will not lead to an increase in the consequences of an accident as defined in the safety analysis due to the conservative EOP actions.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The current system has been evaluated and is currently accepted for interim operation. This change does not involve any changes to design or operation. In addition, the neutron monitoring system is not postulated as the initiator of any accidents. Therefore, no new or different accidents are created.

3. This change would involve a significant reduction in the margin of safety because:

Design, function, and operation of the existing neutron monitoring system remain the same. There is no specified "margin of safety" associated with this system as used in RG 1.97 other than to assure reactor shutdown following a transient or accident. EOP actions are conservative with respect to the use of neutron monitoring for verification that the rector is shutdown. When not available during an accident or transient scenario, actions are specified which will lead to reactor shutdown. Because these actions lead to a safe plant condition (reactor shutdown), the margin of safety is not reduced. In addition, this request does not result in a reduction to the margin of safety as defined in the bases of the River Bend Station (RBS) Technical Specifications.

The staff has reviewed the license's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 24, 1987.

Description of amendment request: The proposed amendment would revise Section 4.1.5, Standby Liquid Control System Surveillance Requirements of the Technical Specifications (TSs); delete Figures 3.1.5-1 and 3.1.5-2; modify the Bases B 3/4.1.5, Standby Liquid Control System; and change the TS Index to reflect the deletion of the two figures. These changes are being proposed because of proposed system modifications that are required to meet 10 CFR 50.62, Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants. The licensee submitted a report by letter dated July 31, 1987, that addresses compliance with this rule. The proposed amendment would modify the TSs as follows:

(1) TS 4.1.5 would be modified to delete the reference to the temperature limits of Figure 3.1.5-1 and substitute a temperature limit of greater than or equal to 45°F; delete the reference to the limits for available volume of sodium pentaborate solution of Figure 3.1.5-2 and instead reference the minimum volume which is to be determined by calculation; change the determination of available mass of sodium pentaborate to available mass of Boron-10 and limiting the sodium pentaborate concentration in solution to 9.5 weight percent; add requirements to determine the Boron-10 enrichment of the solution and to verify that the sodium pentaborate

concentration and Boron-10 enrichment meet the specified criterion; delete surveillance requirements related to precipitation of sodium pentaborate including heat tracing and tank heaters surveillance requirements; and add surveillance requirements to verify that the available weight of Boron-10, concentration of sodium pentaborate, and the solution volume are acceptable and to require the Boron-10 enrichment of the solution to be determined any time boron is added to the solution;

(2) Delete Figures 3.1.5-1 and 3.1.5-2;

(3) Modify the Bases B 3/4.1.5 to reflect the bases for the proposed TSs.

(4) Modify the TS Index to reflect the deletion of Tables 3.1.5-1 and 3.1.5-2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The increase in Standby Liquid Control (SLC) system control capacity via Boron-10 enrichment effectively increasing the Boron-10 injection rate does not alter the function of the system, method of operation, redundancy or system configuration. The system response time to an ATWS event has been reduced as the increased Boron-10 enrichment of the solution provides faster negative reactivity insertion thus reducing the consequences of the ATWS event.

The revised technical specifications ensure a level of system reliability comparable or superior to that of existing requirements as described in the following paragraphs.

Neutron absorber quantities are stated in terms of Boron-10 which is a consistent standard that will not vary regardless of degree of sodium pentaborate enrichment. The stated Boron-10 quantities are greater than or equal to the quantity of Boron-10 contained in the currently stated boron and sodium pentaborate quantities.

A minimum required net tank volume is determined for the actual analyzed enrichment and concentration of the solution which results in a single value for daily volume surveillance comparison. The single value is less subject to misinterpretation than obtaining the value from a graph as currently determined.

A single minimum solution temperature is specified which is based on the maximum solution saturation temperature with greater than a 5°F margin. This stated value is of equal conservatism to the current temperature versus concentration curve at the maximum allowable concentration and of greater conservatism at lower solution concentrations.

The neutron absorber remains in solution without solution heating or heat tracing by reducing the maximum precipitation temperature to 39°F which corresponds to the maximum allowable solution concentration. The current solution has a 21°F margin above precipitation temperature with heating. The enriched solution will have a 31°F margin without heating at the minimum observed containment temperature.

Compliance with 10 CFR 50.62 is demonstrated by calculation, using analyzed concentration and enrichment values and by enrichment determination at the frequency for that parameter to change which is any time boron, in any form, is added to the solution.

As the revised technical specifications ensure comparable or superior system reliability, the consequences of previously evaluated accidents are not affected. The SLC system is also not postulated to initiate any accident scenarios; therefore, this change does not effect the probability of previously evaluated accidents.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

No new plant configuration for operations result from this change. System redundancy has been maintained without requiring any system hardware modifications. Operation of the SLC system in accordance with the revised technical specifications does not adversely impact any previous accident analysis. Other safety related systems and the primary coolant system boundary are not adversely affected by Boron-10 enrichment of the sodium pentaborate solution or technical specification revision to reflect its use. Neither the SLC system nor this modification are postulated to initiate any accidents, as the system is used to mitigate the consequences of an accident by adding negative reactivity required to shutdown the reactor. The surveillance requirements ensure that the volume of sodium pentaborate solution available for injection and the concentration of sodium pentaborate in the solution would bring the reactor to cold, xenon-free shutdown plus additional margin for leakage and mixing following injection. The surveillance requirements also ensure high system reliability via equipment testing and solution temperature maintenance above the saturation level as stated in the specification bases. Thus, no new or different unevaluated accident is created.

3. This change would not involve a significant reduction in the margin of safety because:

The SLC system continues to provide backup capability to bring the reactor from full power to cold shutdown by the injection of Boron-10 in the form of a sodium pentaborate solution. The revised technical specification puts the cold shutdown requirements in terms of Boron-10, which is a constant value regardless of sodium pentaborate Boron-10 enrichment. The stated Boron-10 values are greater than or equal to the quantity of Boron-10 contained in the currently stated Boron and sodium pentaborate quantities. The use of enriched sodium pentaborate allows a decrease in solution concentration while maintaining the quantity of Boron-10 available for injection into the vessel. The concentration decrease reduces the saturation temperature such that the temperature margin at normal ambient containment temperatures is greater than the current margin with the solution heated to 80°F. The revised surveillance requirements demonstrate system operability by ensuring the solution contains the required quantity of Boron-10 in the deliverable volume of solution and by ensuring the mechanical components to deliver the solution to the vessel operate in a highly reliable manner. This ensures the SLC system will perform its function with the same level of reliability using the Boron-10 enriched sodium pentaborate solution. The plant's capability of responding to an ATWS events is also enhanced as the negative reactivity insertion rate is significantly increased resulting in a reduction of time required for reactor shutdown. Therefore, the proposed change is determined not to involve a reduction in the margin of safety as defined in the technical specification bases.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: July 22, 1987

Description of amendments request: The proposed amendments would change the Technical Specifications for functional tests of snubbers by allowing an extension in test frequency from 18 to 24 months with a corresponding increase in the test sample from 10 to 14% of the snubbers. The proposed amendments also correct an editorial oversight on visual inspections to include percent signs on the frequency span.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The proposal by the licensee to increase the frequency and the number of snubbers to be tested from 18 months and 10% of the snubbers to 24 months and 14% of the snubbers is based on calculations to ensure that the confidence in snubber operability is maintained. If the confidence in operability remains unchanged, there should be no significant increase in the probabilities or consequences of any accident previously analyzed. Since there is no change to operations or modifications to the plant involved in the proposed change, there is no possibility of a new or different kind of accident from any previously evaluated. The confidence in operability does not change, therefore there is no significant reduction in a margin of safety.

The Commission has provided guidance concerning the determination of significant hazards by providing certain examples (51 FR 7751) of amendments considered not likely to involve a significant hazards determination. The first example, (i), is a purely administrative change to technical specifications. The editorial change to replace percent signs is directly related to this example.

Based on the above considerations, the staff proposes to determine that the licensee's request involves no significant hazards considerations.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 24, 1987.

Description of amendment request: Waterford 3 License Condition 2.C.14 requires testing to confirm the presence of Boraflex in the spent fuel storage racks and places limitations on fuel assembly locations in the fuel handling building (FHB). The proposed change will eliminate the Boraflex testing requirement and expand the approved fuel assembly locations in the FHB.

The requirement to confirm the presence of Boraflex in the spent fuel storage racks was a one-time-only requirement to be completed prior to startup following the first refueling outage for Waterford 3. The confirmatory testing was conducted during March 1985 and the results were provided to the NRC via W3P86-1495, dated June 6, 1986. By letter dated June 23, 1986 the NRC indicated that the Boraflex testing requirements had been satisfactorily completed in compliance with the License Condition. The proposed change, therefore, deletes the portion of the License Condition associated with Boraflex testing and retitles the License Condition, consistent with its new purpose.

With regard to fuel assembly movement, License Condition 2.C.14 states:

> No more than one fuel assembly shall be outside an approved shipping container, storage rack or fuel transfer tube in the fuel handling building at any time.

This portion of the License Condition was intended to support the exemption to 10 CFR 70.24 granted to Waterford 3 which, absent the exemption, would have required criticality monitors in the FHB. By placing restrictions on the location of fuel assemblies and the number of fuel assemblies that may be moved at any one time, the License Condition effectively minimizes the potential for two or more assemblies to come to rest, outside of analyzed locations, sufficiently close to each other to raise criticality concerns. The proposed change will revise the License Condition to take credit for additional approved fuel assembly locations and clarify the applicability of the License Condition during refueling operations, while continuing to minimize the potential for a critical configuration.

Refueling Operations: During refueling, spent fuel is transferred from the reactor containment building (RCB) to the FHB through the fuel transfer tube. The spent fuel handling machine (SFHM) receives the spent fuel from the upender at the north end of the fuel transfer tube. The spent fuel is then carried by the SFHM through the refueling transfer canal and the spent fuel cask storage area to its location in the spent fuel pool. Fresh fuel, stored in the spent fuel pool, follows the opposite path to the fuel transfer machine upender for transport to the RCB.

Although not the present practice, fresh fuel may be stored in the new fuel vault. In this case, refueling would involve the FHB crane lifting an assembly from the new fuel vault and placing it in the fuel elevator at the north end of the refueling transfer canal, to be picked up by the SFHM and transferred to the upender.

Technical Specification 3.9.1, Refueling Operations - Boron Concentration, requires that the reactor coolant system and refueling canal (and, therefore, the spent fuel pool and connected water areas) be borated sufficiently to ensure k_{eff} less than or equal to 0.95 or a boron concentration greater than or equal to 1720 ppm, whichever is the more restrictive reactivity condition. Fuel assembly movements during refueling are carried out entirely underwater in water systems covered by Technical Specification 3.9.1, with the exception of transferring fresh fuel from the new fuel vault to the fuel elevator. The boration requirements of Technical Specification 3.9.1, therefore, ensure that no criticality concerns will arise during underwater operations in refueling.

Similarly, the potential for criticality during the movement of fresh fuel from

the new fuel vault to the fuel elevator is negligible. In order to approach a critical configuration, two or more fresh fuel assemblies must be removed from the new fresh vault, placed in close proximity to each other and be submerged under unborated water. The only available location to place fresh fuel assemblies in close proximity in the FHB is the deck area surrounding the water pools. Although such an occurrence is highly improbable, an unborated water source is still necessary for criticality. In the FHB, unborated water is available from four sources - three 1½ inch fire hose lines and one 1 inch eyewash supply line. The FHB deck consists of a number of hatch covers, none of which are water-tight, over an open area below. The vertical distance from the floor below to the FHB deck is approximately 81 feet. A water source with a flow rate and capacity clearly in excess of that available in the FHB would be necessary to raise the FHB water level above the FHB deck. As a result, a critical configuration due to removing fresh fuel from the new fuel vault during refueling is not a credible event.

Based on the above, sufficient means exist to safeguard against critical configurations in the FHB during refueling. Additional limitations on fuel movement, in the form of a License Condition, do not provide additional criticality protection nor will the lack of such additional limitations invalidate the basis for the existing exemption to 10 CFR 70.24 during refueling.

Non-Refueling Operations: Fuel movement in the FHB outside of Mode 6 largely involves the storage of fresh fuel during new fuel receipt. During new fuel receipt the hatch covers in the north central portion of the FHB deck are removed. The FHB crane is used to lift the fuel assembly shipping container from the truck bed below, through the hatch area. The shipping containers are placed on the FHB deck either to the west (preferred) or east of the hatch. In these areas the fuel assemblies are inspected and transferred, by the FHB crane, to the fuel elevator at the north end of the refueling transfer canal. The SFHM retrieves the assembly from the fuel elevator and, passing through the refueling transfer canal and the spent fuel cask storage area, places the new fuel assembly in the spent fuel storage racks. In the future, the new fuel assemblies may be transferred to the new fuel vault by the FHB crane, however, the present practice is to store new fuel in the spent fuel storage pool due to the number of new assemblies required each reload.

Outside of Mode 6, Technical Specification 3.9.1 does not require boration of the spent fuel storage pool. Although it is Waterford 3's practice to continue to meet the same boration levels in Modes 1-5, with weekly surveillance, the following discussion does not credit that boration.

In order to preserve the exemption to 10 CFR 70.24, while providing additional operational flexibility, the proposed change to License Condition 2.C.14 places physical restrictions on the location of fuel assemblies. These restrictions provide the same level of protection against a critical configuration as is provided under the existing License Condition.

The proposed change designates certain locations/equipment as acceptable for residence of a fuel assembly, including an approved shipping container, an approved storage rack, the fuel transfer tube (including upender), the fuel elevator and the SFHM. In addition, a single fuel assembly is allowed outside of these locations/equipment. (In practice, the single fuel assembly will, most often, be suspended from the FHB crane while in transit to a new location.)

Of the approved locations/equipment, all are fixed and widely separated with the exception of the SFHM. It is clear that no critical configuration could occur due to assemblies at the fixed locations.

In order to maintain the safety margin to criticality which exists under the present License Condition, it is necessary to examine the locations where the fuel assembly transport equipment (FHB crane and SFHM) could place assemblies in close proximity to those assemblies in approved locations. From this viewpoint, two locations of concern can be identified: (1) the north end of the refueling transfer canal where the FHB crane and SFHM (both carrying a fuel assembly) could converge on the fuel elevator, which could also contain a fuel assembly; and (2) the spent fuel storage pool where the FHB crane, carrying a fuel assembly from the east new fuel laydown area, could approach the SFHM, also carrying an assembly, in the spent fuel pool. In both cases, it would be necessary to postulate the drop of at least one fuel assembly to approach a critical configuration.

For the first case, at the fuel elevator, the combination of a mechanical restriction on the lifting height of the FHB crane and a criticality analysis ensure that no critical configuration may occur. In order to approach a critical configuration of two fuel assemblies carried by the FHB crane and SFHM, it is necessary for the FHB crane to drop an assembly from directly above the FHM in such a way as to strike and dislodge the assembly carried by the SFHM. Both assemblies must then come to rest in length-wise contact. The FHB crane hook maximum high point, however, is such that, when carrying a fuel assembly, the lower end of the fuel assembly is only approximately three feet above the FHB deck. This is not sufficient height to clear the bridge of the SFHM. The FHB crane, therefore, could not maneuver a fuel assembly directly over the SFHM. With this physical restriction, however, the FHB crane or SFHM may still approach the fuel transfer canal with an assembly while an assembly rests in the fuel elevator. For this case, Waterford 3 has performed a criticality analysis postulating that the assembly in transit drops in such a way as to rest vertically at the closest point of approach to the assembly in the fuel elevator. This analysis is similar to those conducted for other assembly drops as discussed in the FSAR. Due to the cage structure around the fuel elevator assembly and the associated angle iron offsets, the limiting configuration of the two assemblies results in a k_{eff} no greater than 0.95.

For the second case of concern - the approach of the FHB crane and the SFHM in the vicinity of the spent fuel pool - the same physical restriction as in the first case would prevent the FHB crane from lifting an assembly sufficiently high to clear the bridge of the SFHM. Additional restrictions also apply in this case. Presently, a railing runs the length of the spent fuel pool northern edge for a step-off pad where personnel access is administratively controlled. As with the SFHM bridge, the FHB crane is not capable of clearing the railing while carrying a fuel assembly. In addition, the current practice of Waterford 3 is to store spent fuel in the rack locations along the northern portion of the spent fuel pool, and to store new fuel in the racks along the southern edge. When the SFHM is carrying a fuel assembly in the northern half of the spent fuel pool (i.e. closer to the FHB crane path) it is likely to be a spent fuel assembly to be placed in the racks during refueling, and thus the spent fuel pool is subject to the boration requirements of Technical Specification 3.9.1. Outside of Mode 6, the SFHM will be moving new fuel into the south end of the spent fuel pool, i.e. widely separated from the FHB crane.

Finally, for both cases, it is the practice of Waterford 3 to assign at least one person to walk with new fuel assemblies as they are being

transported by the FHB crane from their laydown/inspection area to the fuel elevator. In the unlikely case that the FHB crane operator should approach either the SFHM or the northern edge of the spent fuel pool, the individual accompanying the fuel assembly will provide adequate warning to the crane operator.

During non-refueling operations, therefore, the proposed License Condition will provide the same level of protection against criticality events as the existing License Condition, while affording Waterford 3 increased flexibility in fuel movement. In addition, the proposed License Condition will preserve the assumptions underlying the exemption to 10 CFR 70.24.

Fuel Inspection/Reconstitution: To this point, Waterford 3 has not conducted spent fuel inspection or reconstitution. It is anticipated that any needed inspection/reconstitution activities would be largely conducted at approved storage rack locations. However, based on industry experience, it may be necessary to utilize temporary inspection/reconstitution locations and equipment. The proposed License Condition addresses this possibility by ensuring that the inspection/reconstitution area is borated to at least 1720 ppm, equivalent to the criticality protection afforded during Mode 6.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) As discussed above, the proposed change will maintain the same level of protection against criticality events as that afforded under the existing License Condition. For refueling or inspection/reconstitution operations, this protection is ensured through the boration requirements of Technical Specification 3.9.1 or its equivalent. During non-refueling operations separation of approved locations combined with physical restrictions on fuel movement and analysis results ensure that fuel assemblies may not be placed in a critical configuration. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

(2) The safety approach taken by the current License condition and Technical Specification 3.9.1 is to provide sufficient physical and other controls on fuel handling to ensure that a critical configuration cannot occur. The proposed License Condition preserves the same concepts of physical separation and boration while increasing the number of approved fuel assembly locations. The possibility of a criticality event has, therefore, not been increased by the proposed License Condition nor has the possibility of another unevaluated event been raised.

(3) The proposed change maintains the margin of safety afforded by the existing License Condition by utilizing boration requirements, physical limitations and analysis to ensure that the potential for critical configurations is minimized. Therefore, operation of the facility in accordance with the proposed change will not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 17, 1986 and August 6, 1987

Description of amendment request: The October 17, 1986 application for license amendment requested four changes to the Technical Specifications (TSs). Three of the changes were made in Amendment 29 to the operating license, issued March 31, 1987. The fourth requested change, the addition of TSs for smoke detectors in the control rod drive repair room, is addressed in this notice together with the proposed addition of TSs for smoke detectors in other areas requested in the August 6, 1987 application.

This amendment would change the TSs (Appendix A to the operating license) in eight areas: (1) a clarification to the definition of secondary containment integrity; (2) a change in the name of a supporting organization represented on the Safety Review Committee; (3) a nomenclature change for a secondary containment isolation valve; (4) deletion of the manual initiation handswitch calibration requirement for ECCS pumps; (5) deletion of expired footnotes; (6) a change to reflect new upper containment pool gates; (7) a change to add certain smoke detectors; and (8) a modification to the setpoint for residual heat removal (RHR)/reactor core isolation cooling (RCIC) steam line high flow.

The amendment would also change the Environmental Protection Plan (Appendix B to the operating license) by increasing from 2 years to 5 years the time for keeping records of erosion problems and the corrective measures taken.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, System Energy Resources, Inc. (SERI), has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment involves no significant hazards considerations because it meets the three standards in 10 CFR 50.92.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These examples were published in the **Federal Register** on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration, example (i), involves a purely administrative change: for example, a change to achieve

consistency, correction of an error, or a change in nomenclature. Proposed TSs changes (1) through (5), as discussed above, and the change to the Environmental Protection Plan (EPP) are similar to example (i). Change (1) would change the phrase "operable pursuant to Specification 3.6.6.3" in the definition of secondary containment integrity to "in compliance with the requirements of specification 3.6.6.3." The change would eliminate the interpretation that both standby gas treatment subsystems specified in TS 3.6.6.3 must be operable for secondary containment integrity to exist and allows use of the action statements in TS 3.6.6.3 if one or both subsystems are inoperable. This change would make the definition of secondary containment integrity consistent with other definitions in the TSs. Change (2) would change the name of the organizational affiliation of a member of the Safety Review Committee in TS 6.5.2.2 from Middle South Services, Inc. to the new name, MSU System Services, Inc. Change (3) would correct an error in the listing of TS Table 3.6.6.2-1, wherein a secondary containment isolation valve in the makeup water treatment system is designated as having only one solenoid-operated pilot valve, instead of two as actually installed. Change (4) would correct an error in TS Table 4.3.3.1-1, Items A.1.d and B.1.d, wherein quarterly calibration of manual initiation handswitches is required. Since these handswitches do not have components that can be calibrated, the notation under channel calibration would be changed from "Q" (quarterly) to "NA" (not applicable). This change would achieve consistency with other manual initiation handswitches in the TSs. Change (5) would delete temporary TS footnotes which were effective from October 3, 1986 through October 10, 1986 in order to enhance the readability of the TSs for the operators. The change to the Environmental Protection Plan (EPP), which would increase the time from 2 years to 5 years for keeping records of erosion problems and the corrective actions taken, achieves consistency within the EPP.

The licensee's analysis of the remaining three proposed changes is reproduced below.

[Change 6 Wier Wall Gates in the Upper Containment Pool]

The proposed technical specification change is the result of a design change to increase the height of the upper containment pool weir wall 18 inches across the full width of the pool. This weir wall separates the reactor cavity and the moisture separator storage area. The modification which is scheduled to be performed is an ALARA radiation enhancement to provide complete submergence of the separator when in its stored position in the pool with the reactor cavity drained. The new weir wall will include two removable gates that are required to be in a stored position or otherwise removed from the upper containment pools during Operational Conditions 1, 2, [and] 3 to ensure that the suppression pool makeup capability is not affected.

Current Technical Specifications 3/4.5.2, 3/4.5.3, and 3/4.6.3.4 specify the required positions of existing upper containment pool gates and the spent fuel pool gate. With the addition of the two new weir wall gates[,] the subject technical specifications should be revised to clarify the distinctions of the new and existing gates and their proper positions. Technical Specifications 3/4.5.2 and 3/4.5.3 require revision to indicate that the upper containment fuel pool gates currently referenced in the footnote are actually the reactor cavity gate and the transfer canal gate. Technical Specification 3/4.6.3.4 will require revision to indicate that all the upper containment pool gates, including the two weir wall gates, be in their stored position or removed from the upper containment pool during Operational Conditions 1, 2, and 3 to ensure that suppression pool make up capability is not affected. In addition, the requirement in the footnote of Technical Specification 3/4.5.2 to have the spent fuel pool gate removed is being deleted because the spent fuel pool and upper containment pool do not need to be in communication when declaring the ECCS inoperable.

SERI has evaluated the proposed changes and considers them not to involve a significant hazards consideration for the following reasons:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes will indicate the proper positions of the reactor cavity and transfer canal gates while in refueling with the ECCS or Suppression Pool inoperable and of all upper containment pool gates during Operational Conditions 1, 2 and 3. The changes will provide for the needed additional water coverage of the moisture separator during storage while continuing to ensure adequate suppression pool makeup capability during normal operation. Also, the installation of the added weir wall gates during refueling with the upper containment pool water level at a minimum of 22 feet 8 inches above the reactor vessel flange will still provide adequate heat removal capability with ECCS and Suppression Pool systems out of service. The requirement for the spent fuel gate to be removed prior to declaring ECCS inoperable has been deleted based on a review performed by General Electric. The volume of water in the upper containment pool is not required to be in communication with the spent fuel pool when declaring ECCS inoperable. This position is consistent with the Technical Specifications of three other domestic BWR/6 MARK III plants surveyed by General Electric.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes will provide clarification to the ECCS operability footnote of Technical Specification 3.5.2 and the Suppression Pool operability footnote of 3.5.3 without affecting the design bases and will identify the proper positions of all upper containment pool gates in Technical Specification Surveillance Requirement 4.6.3.4.b in order to ensure the operability of the suppression pool makeup system.

(3) The proposed changes do not involve a significant reduction in [a] margin of safety because the changes will properly indicate the positions of the reactor cavity, transfer canal, and weir wall gates during refueling and normal operation.

[Change (7) Heat and Smoke Detectors] he proposed changes to [Technical Specification Table 3.3.7.9-1, "Fire Detection Instrumentation"] involve the addition of Function A (early warning fire detection and notification only) smoke detectors and Function B (actuate fire suppression systems and provide early warning and notification) heat detectors in order to enhance the existing fire detection capabilities of the fire detection system. The actual changes to the system by fire zone are as follows:

Fire Zone	Description	Heat Detectors Added	Smoke Detectors Added
OC202	Fire Area 31 - Control Building Division I Switchgear Area, Elevation 111' - 0".	7	[redacted]
OC215	Fire Area 38 - Control Building Division II Switchgear Area, Elevation 111' - 0".	0	3
OC402	Fire Area 42 - Control Building Lower Cable Spreading Room, Elevation 148' - 0"	2	0
1A101	Fire Area 1 - Auxiliary Building Passage, Elevation 93' - 0" and 103' - 0".	[redacted]	1
1A117	Fire Area 1 - Auxiliary Building Corridor and Miscellaneous Equipment Area, Elevation 93' - 0" 103' - 0"	[redacted]	1
1A222	Fire Area 6 - Auxiliary Building Motor Control Center Area, Elevation 119' - 0".	0	5
1A301	Fire Area 11 - Auxiliary Building Corridor, Elevation 139' - 0"	[redacted]	1
1A321	Fire Area 11 - Auxiliary Building Motor Control Center, Elevation 139' - 0"	[redacted]	1
1A322	Fire Area 11 - Auxiliary Building Centrifugal Chiller Area, Elevation 139' - 0"	[redacted]	1
1A401	Fire Area 19 - Auxiliary Building Passage, Elevation 166' - 0"	[redacted]	1
1A417	Fire Area 19 - Auxiliary Building Miscellaneous Equipment Area, Elevation 166' - 0"	0	1
1A428	Fire Area 19 - Auxiliary Building Passage, Elevation 166' - 0"	0	4
[1A430	Fire Area 19 - Control Rod Drive Repair Room, Elevation 166' - 0".]	[redacted]	3*

*Requested in the October 17, 1986 application

The 1984 Triennial Fire Protection Audit of Grand Gulf Nuclear Station, Unit 1 identified a finding related to the location of ionization[-]type smoke detectors and thermal heat detectors and the adherence to the requirements of NFPA 72D-1975. NFPA 72D-1975 states that automatic fire detectors shall be located in accordance with NFPA 72E. Specifically identified was that fire detection equipment in some areas was not mounted on the ceiling and not spaced adequately in beam pockets. As a result of this finding, SERI conducted a detailed fire protection evaluation to determine the adequacy of the existing configuration and if found necessary determine where relocation and/or addition of detectors are required to meet SERI's commitment to meet the functional requirements of NFPA 72D-1975. UFSAR Table 9.5-11, Section E.1.a describes SERI's commitment to meet the functional requirements of NFPA 72D. SERI defines the functional requirements to be those requirements delineated in NFPA 72D pertaining to the performance of initiating device circuits, signaling line circuits and indicating device circuits as well as power supply sources, overcurrent protection, audible signal appliances, signal capacity of circuits and electrical supervision.

The evaluation was conducted by qualified fire protection engineers and was based on the license commitments described in the Updated Final Safety Analysis Report, the requirements of NFPA 72E (1978), the manufacturer's installation instructions, the fire hazards analysis and the GGNS combustible heat load calculation. In all cases, the as-installed configuration, although not necessarily in strict conformance with the installation requirements of NFPA 72E, was determined to meet the license commitments as required by Operating License Condition 2.C(23).

The primary function of the fire detection systems is to provide early warning of a fire and/or to actuate the appropriate suppression system such that safe shutdown of the plant is not inhibited. In some cases, improvements in the existing configuration were recommended in order to enhance the early warning capability of the fire detection system. The recommended improvements were in zones which contained redundant safe shutdown equipment separated by less than 50 feet horizontally and not separated by 3-hour fire barriers. The detection systems located in those zones are to be enhanced as necessary to meet the strict location requirements of NFPA 72E (referenced by NFPA 72D). The proposed enhancements will include relocation of some detectors within their respective zones but changes to the technical specification are not required for those zones.

The proposed enhancements described above will assure that the detectors installed in those zones will be in compliance with the location requirements of NFPA 72E (1978). Detectors installed in the remaining zones have been determined through the fire protection evaluation to be adequate to perform their required function and no changes are proposed for those zones.

SERI has evaluated the proposed changes [in the August 6, 1987 application] and considers them not to involve a significant hazards consideration for the following reasons:

(1) The proposed changes will not significantly increase the probability or consequences of an accident previously evaluated, because the changes are enhancements to the fire detection capability of the fire protection system described in the fire hazards analysis. The proposed changes will not increase the probability of a fire but will help to mitigate the consequences of a fire by enhancing the early warning capability of the fire detection system. Specific areas of improvement are in pockets around structural beams.

(2) The proposed changes will not create the possibility of a new or different accident from any accident previously evaluated because the system design bases and function are not being changed. Fire detection systems are not the precursors for any analyzed accident and do not created the possibility of a new or different accident. The proposed changes represent improvements to the operation or design for the presently installed fire detection systems.

(3) The proposed change will not involve a significant reduction in [a] margin of safety. The proposed changes will increase the sensitivity of the existing fire detection system and as such will increase the ability to detect and/or suppress fires in the zones affected. The proposed change does not delete fire detection from any fire zone

nor will it affect any other safety[-related systems or equipment in the plant.

[For similar reasons, SERI considers the addition of smoke detectors as proposed in its October 17, 1986 application not to involve a significant hazards consideration.]

[Change (8) Setpoint for RHR/RCIC Steam Line High Flow (TS Table 3.3.2-2 Item 5k)]

The Residual Heat Removal (RHR)/Reactor Core Isolation Cooling (RCIC) steam line high flow trip setpoint and allowable value are changed to be less than or equal to 37 inches H_2O and 43 inches H_2O, respectively.

Upon review of the RHR/RCIC steam line high flow setpoint, due to a concern at another BWR/6 plant, it was determined that a correction must be made to the originally specified setpoint and allowable value. The affected instruments sense the differential pressure across two separate elbows in the common RHR/RCIC steam supply line that branches off of main steam line A. This RHR/RCIC line is used to supply steam to the RCIC turbine and can also supply steam to the RHR heat exchangers when the plant is in the RHR steam condensing mode (currently prohibited by a license commitment). The instruments provide isolation signals to the RHR/RCIC steam supply and RCIC pump suction isolation valves (valve group 4) when a leak or break in the steam supply line is sensed as indicated by abnormally high steam flow.

The present Technical Specification setpoint is nonconservative for two reasons. The first reason is the use of the incorrect flow for the RHR system in the steam condensing mode. The second reason is the incorrect use of a formula for finding the differential pressure in an elbow tap which is empirically derived for use only in RCIC turbine steam flow applications. The combination of these two errors results in the current trip setpoint being too high.

The proposed trip setpoint and allowable value are based on an analytic limit of 125% of rated (100%) flow to RHR loops A and B in the steam condensing mode (207.8×10^3 lb/hr) and to the RCIC turbine (38.85×10^3 lb/hr). By applying the correct RHR flow and the appropriate formula for differential pressure in an elbow tap, the new trip setpoint and allowable value are less than or equal to 37 inches H_2O and 43 inches H_2O, respectively.

[SERI has evaluated proposed change (8) and considers it not to involve a significant hazards consideration for the following reasons:]

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not alter the precursors of any previously evaluated accident and therefore no increase in the probability of a previously evaluated accident is involved. The consequences of previously evaluated accidents do not increase since the proposed change is in the conservative direction and will provide earlier steam line isolation if a break or leak were to occur.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed. The revised setpoint enhances the mitigative measures used to isolate the RCIC/RHR steam line if a break were to occur and lowers an already existing instrument setpoint. Lowering this setpoint will cause an isolation signal to be generated sooner if a leak or break is detected. Therefore, there is no possibility of a new or different kind of accident from any previously analyzed.

(3) The proposed change does not involve a significant reduction in a margin of safety. The existing margin of safety to detect a leak is not reduced by the proposed reduction of the current instrument setpoint in the conservative direction since the system will now isolate at a lower flow. The proposed change reflects a revision in the setpoint computational model to correctly reflect the design information for the as-built plant. Based on the above, the proposed change results in the margin of safety being increased.

The NRC staff has made a preliminary review of the licensee's analyses of proposed changes (6), (7) and (8) and agrees with the licensee's conclusions that the three standards in 10 CFR 50.92 are met for these proposed changes.

Based on the similarity of the proposed TSs changes (1) through (5) and the proposed EPP change to example (i) in 51 FR 7744, and the staff's preliminary review of the licensee's analyses of the proposed TSs changes (6), (7) and (8), the Commission proposes to determine that the requested operating license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

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NRC Project Director: Herbert N. Berkow

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: February 17, 1987

Description of amendment request: The proposed amendment would revise the Unit 1 Technical Specifications in several related areas.

Section 3.6.2a(8) (page 190), Table 3.6.2h (page 224), and Table 4.6.2h (page 225) would be revised to omit reference to Off-gas Isolation. Off-gas monitor surveillance would be covered under Section 3.6.14b and Table 4.6.14-2. The reference to Specification 3.6.1 would be removed because it provides no further action.

Note (h) of Table 3.6.14-1 (page 241mm) would be removed because it does not apply to Radioactive Liquid Effluent Monitoring Instrumentation.

Table 3.6.14-2 (page 241qq) would be revised to more closely resemble Standard Radiological Effluent Technical Specifications. The footnotes * and ** would be corrected to reflect gaseous rather than liquid applicability limits.

A recent NRC inspection (Inspection Report Number 50-220/86-03) revealed a concern in regard to Technical Specification LCO 3.6.14b and Table 3.6.14-2. Technical Specification LCO 3.6.14.b, Gaseous Process and Effluent, requires, in part, that a minimum of one operable channel is required to monitor the release of iodine and particulates via the Radioactive Gaseous Process (stack gas) system. With less than the minimum number of operable monitoring channels, Technical Specification Table 3.6.14-2 allows continued stack gas release of iodine and particulates provided that samples are continuously collected with auxiliary equipment. While the Technical Specifications require the operation of auxiliary equipment, they do not allow adequate time for the system to be placed into operation.

A change to Technical Specification Table 3.6.14-2 (pages 241qq and 241rr) is required to clarify this issue. The proposed change recognizes the necessary delay in connecting the auxiliary equipment, is primarily an administrative change, and is consistent with the interval provided in the Technical Specifications for Nine Mile Point Unit 2. Although the stack gas monitoring system isolates the containment vent and purge valves, it is a non-safety-related isolation signal. The containment vent and purge valves are normally closed during operation and are opened only for inerting and de-inerting and for short intervals to adjust containment pressure due to changes in atmospheric pressure. These valves receive safety-related containment isolation signals of low low water level and high containment pressure which would automatically close them.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

1. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the editorial changes proposed affects the probability or consequences of an accident. There is no reduction in surveillance requirements. The proposed changes merely provide clarification. Allowing the normal stack gas monitoring system to be inoperable will not increase the probability or consequences of an accident. The stack gas monitor provides information to the operators regarding radioactive releases, but does not affect the consequences or the probability of an accident. Although the containment vent and purge valves would not isolate on high radiation while the stack gas monitors are out of service, this would not increase the consequences or probability of an accident since the containment vent and purge valves would automatically isolate upon receipt of a containment isolation signal. Therefore, the proposed changes will not increase the probability or the consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment makes administrative changes and does not involve the modification of existing equipment or addition of new equipment. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial in nature and, therefore, do not affect any margin of safety. In addition, allowing the stack gas monitoring system to be out of service for eight hours before placing auxiliary equipment in operation is consistent with the Technical Specifications for Nine Mile Point Unit 2. It is justified based on the existence of other indicators to alert the operators to adverse conditions, such as the ejector off-gas monitor, reactor building ventilation monitor, main steam line radiation monitors and containment atmosphere monitoring systems. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Acting Director

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 14, 1987 (partial response) and September 4, 1987

Description of amendment request: By application for license amendment dated July 14, 1987 and September 4, 1987, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2 as follows: (1) TS 4.4.5.1.4, "Acceptance Criteria", would be modified to address the wall thinning criteria for steam generator sleeves and to remove a footnote and (2) TS 3.4.6.2, "Reactor Coolant System Leakage", would be changed to decrease the allowable primary-to-secondary leakage (through any one steam generator) from 0.5 to 0.15 gpm.

Basis for proposed no significant hazards consideration determination: On December 30, 1983, the NRC staff issued Amendment 89 to the Millstone Unit 2 Operating License, DPR-65. Amendment 89 permitted the licensee to repair degraded steam generator tubes by inserting thin wall tubes (sleeves) in the existing steam generator tubes. In the safety evaluation for Amendment 89, the NRC staff expressed the need for the licensee to develop criteria to address potential degradation of sleeved steam generator tubes. This need was subsequently reflected in a footnote to TS 4.4.5.1.4 as follows: "The plugging limit for sleeves will be determined prior to next refueling outage." Subsequently, on May 25, 1984, the licensee submitted a letter which proposed that sleeved steam generator tubes, degraded forty percent (40%) through wall, should be plugged. By letter dated January 28, 1985, the NRC responded by approving the licensee's plugging criteria for sleeved steam generator tubes. The proposed changes to TS 4.4.5.1.4 would delete the existing footnote and incorporate the plugging criteria for sleeved steam generator tubes in the TS by changing the definitions of imperfection, degradation, degraded

tube, % degradation, and plugging limit, as they appear in TS 4.4.5.1.4.

The second proposed change to the TS involves the limit for primary-to-secondary leakage through a single steam generator. At the present time, TS 3.4.6.2 limits the primary-to-secondary leakage, in a single steam generator, to 0.5 gpm. The proposed change to TS 3.4.6.2, which would decrease the allowed leakage from 0.5 to 0.15 gpm, resulted from the licensee's January 1987 shutdown of Millstone Unit 2 for high primary-to-secondary leakage. Following the plant shutdown, the licensee identified a steam generator tube with a circumferential crack which was through-wall over at least a portion of the 220° circumferential extent.

Assessments of the safety significance of the leaking tube were performed and concluded that operation of the steam generator continued to be safe provided that structural limits could be met for a circumferentially oriented crack. Based on calculations which concluded that a circumferential crack of the size which would allow 0.15 gpm primary-to-secondary leakage was structurally acceptable, an administrative reduction of the allowable leakage from 0.5 gpm to 0.15 gpm per steam generator was adopted for subsequent reactor operation. The proposed change to TS 3.4.6.2 incorporates this limit in the TS.

On March 6, 1986, the NRC provided guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (ii) which involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed change to TS 4.4.5.1.4 incorporates limits on sleeved tube wall thinning, not previously in the TS while the change to TS 3.4.6.2 decreases the existing primary-to-secondary leakage limit from 0.5 to 0.15 gpm. Both of the above changes to the TS are judged to be within the scope of example (ii), above. Accordingly, the Commission proposes to determine that the proposed change to the TS involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 28, 1987

Description of amendment request: By application for license amendment dated August 28, 1987, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specification (TS) for Millstone Unit 2 as follows:

(1) the maximum linear heat rate shown in TS Figure 3.2.1 would be reduced from 15.6 to 14.0 Kw/ft, and a factor of 1.115 would be applied to the planar peaking for reactor operation during Cycle 8 beyond a core average burnup of 9500 MWD/MTU, and

(2) the equations on TS Figure 3.2-3b would be deleted.

Basis for proposed no significant hazards consideration determination: On December 8, 1986 the NRC issued License Amendment No. 113 for Millstone Unit 2 to allow operation during Cycle 8. In our safety evaluation issued in support of License Amendment No. 113, we noted that the licensee had also provided analyses for operation of Millstone Unit 2 beyond the projected end-of-Cycle 8 (EOC-8) with the exception of the LOCA analyses. We further stated that, should the licensee wish to operate beyond EOC-8 (Cycle 8 Coastdown) a revised LOCA analyses would be required. The August 28, 1987 application provides proposed TS changes that address the LOCA analysis for Cycle 8 Coastdown.

Westinghouse has evaluated the Millstone Unit 2 LOCA analysis and found that Cycle 8 coastdown operation is acceptable as long as:

(1) The maximum linear heat rate is reduced from 15.6 Kw/ft to 14.0 Kw/ft.

(2) An additional multiplier of 1.115 (equal to 15.6/14.0, the ratio of the maximum linear heat rates) is included in the total planar radial peaking factor.

These additional restrictions apply only for operation past a core average burnup of 9,500 MWD/MTU, the predicted full power end of life for Cycle 8. The restriction on maximum linear heat rate would be incorporated in proposed TS Figure 3.2-3b while planar radial peaking factor would be incorporated into proposed TS 3/4.2.2.

Based upon the August 28, 1987 application, we conclude that the proposed amendment does not increase the probability or consequences of an accident previously evaluated. The proposed changes to the TS assure that the consequences of the design basis (LOCA) accident are not more severe than previously calculated. The proposed amendment also does not increase the probability of a LOCA, create the possibility of a new or different type of accident or a decrease in safety margin since no changes to plant equipment or new operating modes are involved. In this regard the use of plant coastdown, a decrease in power and/or average coolant temperature to extend the fuel cycle, is a routine end-of-cycle mode for Millstone Unit 2. Based upon the above, we propose to determine that the proposed changes to TS Figure 3.2.1 and TS 3/4.2.2 involve no significant hazards considerations.

The final change to the TS addressed herein involves the proposed deletion of the equations for total planer and integrated radial peaking factors from TS Figure 3.2-3b; these equations already appear in TS 3.2.2.1 and 3.2.3, respectively. The proposed deletion of the subject equation would have no effect on the TS other than to delete an unnecessary repetition of the equations.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example provide in 51 FR 7751 of amendments not likely to involve significant hazards considerations is example (i) which involves "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The proposed deletion of the equations from TS Figure 3.2-3b is within the example (i) noted above. Accordingly, the Commission proposes to determine that the proposed change to the TS involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 10, 1987

Description of amendment request: The amendment would revise Millstone

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Unit No. 3 Technical Specification Section 4.3.4.2a to increase the main turbine control valve testing interval from weekly to monthly.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has concluded that the proposed change does not involve a significant hazards consideration because the three criteria of 10 CFR 50.92(c) are not compromised. The licensee states that the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. With an increase in the control valve test interval from weekly to monthly, there will be a negligible increase in the probability of significant plant damage, from 1.9×10^{-10}/year to 6.3×10^{-10}/year, caused by a turbine missile. The new probability value is more than the two orders of magnitude lower than the acceptance probability of significant damage as specified in Regulatory Guide 1.115 (i.e., less than 1×10^{-7} per year). In addition, the proposed change will minimize the likelihood of a plant trip due to load reductions for control valve testing since the tests will be done once per month instead of the current four per month. Therefore, the proposed change does not impact the consequences of an accident caused by a turbine missile.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed change produces a negligible effect on control valve reliability while reducing the likelihood of plant trip as the result of valve testing. Therefore, it does not create the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report. No design changes have been made to the turbine system; therefore, no new failure modes are introduced.

3. Involve a significant reduction in a margin of safety. The proposed change only modifies the testing interval for the turbine control valve and has no impact on the basis of the technical specification. Therefore, the proposed change will not reduce the margin of safety as specified in the basis of any technical specification.

The staff has reviewed the licensee's submittal and agrees with its no significant hazards determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 27, 1987, and September 3, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow operation of Cycle 13 by (1) deleting references to those Minimum Critical Power Ratio (MCPR) limits that are allowed to vary as a function of scram time; (2) adding a new fuel type in Cycle 13 - GE-8 fuel designated "BD319B" and adding Maximum Average Planar Linear Heat Generation Rates (MAPLHGR's) for this fuel type as well as other associated changes; (3) deleting MAPLHGR's for those fuel types that will not be used in the future; and (4) adding a new column of MAPLHGR's to provide a conservative projection of MALPHGR's for future GE 8 fuel. The TS would also be revised by making an administrative change to Figure 3.5-1 to assist the operator by labeling the allowed and prohibited areas of single loop operation, and by revising TS Section 5.2.B to allow the use of replacement control rod designs approved for BWR use by the NRC staff without the need for a license amendment each time a new design is approved.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specification have been evaluated by the licensee to determine whether they constitute a significant hazards consideration as required by 10 CFR Part 50 Section 50.91 using the standards provided in Section 50.92. The licensee's evaluation is provided below:

The proposed changes would allow the operation of Cycle 13 in the Monticello Nuclear Generating Plant. The methods used are General Electric's advanced reload licensing methods known as GEMINI. This methodology has been reviewed and found acceptable by the NRC staff. The results of the analysis meet all acceptance criteria and, therefore, will not involve a significant increase in the probability or consequences of accidents previously analyzed.

Since the fuel used in Cycle 13 is very similar to that used in past cycles and the core will be operated in a similar manner, this proposed amendment will not create the possibility of a new or different kind of accident.

Since the safety analyses of Cycle 13 meet all acceptance criteria, this change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's evaluation related to the Cycle 13 changes and concurs with their conclusions.

In addition, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751).

The changes proposed herein relating to Cycle 13 operation are representative of example (iii). The change is associated with a reloading, where no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at Monticello are used, no significant changes have been made to the acceptance criteria for the Technical Specifications, and the methods used, although changed from the previous cycle, have previously been found to be acceptable by the NRC staff.

The other two changes are representative of example (i), which is "a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature."

The staff has reviewed and agrees with the licensee's evaluation. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: June 10, 1987 as revised by a letter dated September 1, 1987

Description of amendment request: The licensee's request, dated June 10, 1987, for the proposed amendments to revise the Technical Specifications (TSs) for Susquehanna Steam Electric Station (SSES), Units 1 and 2 was published in a

bi-weekly **Federal Register** notice dated July 15, 1987 (52 FR 26595). Based on certain additional analyses, the licensee has discovered that the required loads will be higher than those considered in its June 10, 1987 submittal. The licensee has, therefore, revised the June 10, 1987 request to include two new batteries (1D632 and 1D642) of larger capacity to be installed during Unit 1 September 1987 refueling outage. The new battery designs will be such that they will be able to handle the increased loads associated with the Alternate Rod Injection solenoid valves (an ATWS installation) and additional loads associated with emergency lighting, without any decrease in the battery capacity margin.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's revised request and concurs with the following basis and conclusion provided by the licensee in its September 1, 1987 submittal.

The proposed change does not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated. FSAR Section 8.3.2.1.1.4 states the station batteries have sufficient capacity without the charger, to independently supply required loads for four hours. The Technical Specifications require the batteries be surveilled to dummy loads which are greater than the design loads. A calculation has been performed by our engineering department which verifies the new batteries have adequate capacity to power the actual loads on the 125V DC system. The new load profile contained in the technical specifications envelopes the actual loads.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. As stated in Part (1), the batteries have sufficient capacity to power the actual battery loads thus enabling them to perform their intended function. Any postulated accident resulting from this change is bound(ed) by the previous analysis.

(3) Involve a reduction in the margin of safety. In accordance with IEEE 485, the rated battery capacity is 25% greater than required.

This margin allows replacement of the battery when its capacity decreased to 80% of its rated capacity (100% design load). This margin is maintained and was factored into the calculation referred to in Part (1). The proposed increase in technical specification surveillance load profiles maintains or increases the margin between these calculated loads and the tested loads.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: September 24, 1986

Description of amendment request: The requested amendment would revise Technical Specification (TS) 4.17, "Steam Generators," to allow internal sleeving as an acceptable method for repairing tube leaks in the once through steam generators (OTSG) at Rancho Seco. Related changes would also be made to the applicable bases for this specification. The sleeving method proposed for use at Rancho Seco has been developed and qualified by Babcock and Wilcox and has previously been approved by the NRC staff for use at other facilities using OTSG.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to a facility operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed method of sleeving defective OTSG tubes and has provided the following discussion to support the conclusion that the use of this alternative to tube plugging would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The USAR conservatively evaluated a double-ended rupture of a steam generator tube. A severed tube with a mechanical sleeve installed in it has been shown by tests to have mechanical strength at least as great as that of a new tube. Thus, a sleeved tube is no more likely to rupture than any other tube in the generator.

A sleeved tube is functionally equivalent to an unsleeved tube except for less effective heat transfer due to the air gap and slight pressure drop due to the primary flow constriction. Analysis has shown that if 500 sleeves were installed in each generator the steam superheat temperature would be reduced by 7.7°F at full power and primary flow would be reduced by less than 1%. These differences have been compared to the existing plant safety analysis basis and the results are acceptable.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The only equipment affected by sleeving is the steam generator. The most severe malfunction of a steam generator is a tube rupture, and the consequences of a ruptured sleeve are no worse than the consequences of a ruptured tube. Sleeving does not increase the probability of steam generator failure because the sleeved tube has been shown to be mechanically stronger than an unsleeved tube. Thus a steam generator with sleeved tubes would perform in the same manner as one without sleeved tubes, and there is no risk of a new or different accident.

3. involve a significant reduction in a margin of safety.

The integrity of steam generator tubes is enhanced by the installation of sleeves due to the increased vibration stability margin and the ability to bridge over imperfections and degradations. Thus the margin of safety is not reduced.

On the basis of the above, the licensee concludes that the proposed changes to the TS to allow use of internal sleeving for repairing future OTSG tube leaks does not constitute a significant hazard, and in no way endangers the health and safety of the public.

The Commission has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: December 5, 1986, March 26, 1987, and July 31, 1987.

Description of amendment request: The proposed Technical Specification amendment would incorporate the specifications associated with the Emergency Feedwater Initiation and Control (EFIC) System. The EFIC system was added to the Rancho Seco Nuclear Generating Station after an overcooling transient on December 26, 1985, demonstrated that the existing controls of the auxiliary feedwater system were inadequate during certain transients.

The EFIC is a four channel, safety grade, seismic Class 1 auxiliary feedwater initiation and control system. EFIC installation interfaces with the Main Steam System, Feedwater System, Auxiliary Feedwater System, Reactor Protection System, Safety Features Actuation System, Control Room Panels, Safe Shutdown Panel, Integrated Control System, Interim Data Acquisition and Display System, and Safety Parameter Display System. It is a logic, control, and electrical switching system which provides an independent safety grade system to control auxiliary feedwater.

The additional specifications requested to be incorporated with this proposed amendment include limiting conditions for operation, surveillance requirements, and related bases associated with the EFIC/Auxiliary Feedwater Systems. The addition of the EFIC related specifications will necessitate some redefining of terms and some modification of existing specifications. These proposed changes to the existing specifications are administrative in nature and serve to provide a smooth interface between the existing specifications and the new requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). The examples of actions involving no significant hazards considerations include: (i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature, and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The changes included in the proposed amendment fall into the two categories referenced above. The majority of the proposed changes add new specifications, which provide the limitations, restrictions, and surveillances associated with the EFIC/Auxiliary Feedwater Systems (example (ii)). The remaining changes involve changes to achieve consistency between the added EFIC sections and the existing sections of the specifications (example (i)).

On these bases, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Sacramento Muncipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 23, 1987

Description of amendment request: The proposed amendment would make the following two changes to the Technical Specifications:

(1) Subsections would be added to the Technical Specifications which address Low Temperature Overpressure Protection (LTOP) Systems and the associated bases. Specification 3.2.2 (LTOP Systems) would be modified to permit filling and venting High Pressure Injection System piping, surveillance testing, and maintenance of the Core Flood System. The added subsections would provide more detail about valve positioning requirements (a) when LTOP is enabled, (b) when venting the Makeup and Purification System, and (c) when performing surveillance of core flood tanks.

(2) A minimum flow rate acceptance criterion for surveillance testing of the Nuclear Services Electrical Building (NSEB) air handling unit is proposed to be included in Technical Specification 4.31. This new specification would provide surveillance standards for NSEB heating ventilation and air conditioning equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The propose changes to the Technical Specifications are addressed below relative to each of the three criteria.

Criterion 1

While the changes to Technical Specification 3.2.2 relax previous restrictions on Emergency Core Cooling System (ECCS) operation, they do not affect LTOP system operability nor change restrictions on operation of ECCS pumps. For this reason the changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

The incorporation of a specific acceptance criterion for flow rate in Technical Specification 4.31 does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is a change which constitutes a more stringent surveillance requirement not presently included in the Technical Specifications.

Criterion 2

Neither the relaxation of restriction of ECCS valve position during low temperature operation nor the incorporation of a specific acceptance criteria for testing of the NSEB air handling unit creates the possibility of a new or different kind of accident from any accident previously evaluated because they do not represent changes in plant design.

Criterion 3

While the proposed changes to Technical Specification 3.2.2 relax previous restrictions on ECCS motor operated valve positions during low temperature operation, they do not affect LTOP system operability nor change restrictions on operation of ECCS pumps. For this reason the proposed changes do not involve a significant reduction in a margin of safety.

The incorporation of a specific acceptance criterion for flow rate in Technical Specification 4.31 does not involve a significant reduction in a margin of safety because it is a change which constitutes a more stringent surveillance requirement not presently included in the Technical Specifications.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 C Street, P. O. Box 15830, Sacramento, California 98513

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment request: July 17, 1987 (Reference PCN-235)

Description of Amendment Request: The proposed change will revise Technical Specification (TS) 3/4.1.1.1, "Boration Control - Shutdown Margin Tavg greater than 200°F," TS 3/4/.1.1.2, "Shutdown Margin - Tavg less than or equal to 200°F," TS 3/4.1.2.7, "Borated Water Source - Shutdown," TS 3/4.1.2.8, "Borated Water Sources - Operating," TS 3/4.5.1, "Safety Injection Tanks," TS 3/4.5.4, "Refueling Water Storage Tank," TS 3/4.6.2.2, "Recirculation Flow pH Control," TS 3/4.9.1, "Refueling Operations - Boron Concentration," TS 3/4.10.1, "Special Test Exceptions - Shutdown Margin," and associated Bases.

These specifications define the limiting conditions for operation (LCO), volumes and concentrations of borated water to be maintained in the refueling water storage tank (RWST), the boric acid makeup (BAMU) tanks and safety injection tanks (SIT), the minimum boron concentration to be maintained in the refueling mode as well as the amount of trisodium phosphate (TSP) to be stored inside containment. These specifications also require the periodic performance of specified surveillance tests and inspections to verify that the LCO's are met, and identify compensatory actions to be taken in the event that LCO's are not met.

In normal plant operation, borated water is used to maintain reactivity control and makeup for coolant contraction during plant cooldown. During postulated accidents, borated water would be injected into the reactor coolant system (RCS) to maintain RCS inventory and ensure the reactor is subcritical. In a postulated loss of coolant accident (LOCA) the reactor core is reflooded by borated water injected by the SIT's, the safety injection pumps taking suction from the RWST, and the charging pumps taking suction from the BAMU tanks. The RWST also provides a source of borated water for the containment spray system which suppresses containment pressure during postulated LOCA's and steamline break accidents. During a LOCA, borated water spilled from the RCS accumulates along with containment spray water in the containment sump. After the RWST inventory is exhausted, the emergency core cooling and containment spray systems continue recirculating borated water from the containment sump.

Trisodium phosphate stored in baskets in the containment sump dissolves in the accumulated water, raising its pH. This minimizes stress corrosion cracking of metals inside containment.

The proposed change will revise borated water source concentration and volume requirements consistent with the assumptions and results of analysis supporting extended fuel cycles. The licensee has found that extended fuel cycles have necessitated an increase in the refueling boric acid concentration. The proposed change would also make a corresponding increase in TSP requirements to ensure its ability to neutralize the increased amount of boric acid.

The proposed change consists of seven separate items: (1) the minimum refueling concentration and RWST lower limit on boron concentration would be increased from 1720 to 2350 ppm; (2) the RWST and SIT upper limits on concentration would be increased from 2500 to 2800 ppm; (3) Figure 3.1-1, which specifies the concentration and volume of boric acid to be maintained in the BAMU tanks during operation based on RWST concentration, would be revised to reflect the revised RWST concentration ranges; (4) the volume of borated water required in either the BAMU tanks or RWST when the plant is in cold shutdown or refueling would be decreased from 5150 to 4150 gallons; (5) the lower limit on SIT concentration would be increased from 1720 to 1850 ppm; (6) the amount of TSP required in containment would be increased from 15,400 lbs to 17,461 lbs.; and (7) an erroneous reference to NaOH is removed from the TS bases. A more detailed description of each of these items is given below.

(1) Increase in minimum refueling mode and RWST boron concentration.

The proposed change would increase the minimum refueling mode and RWST boron concentration from 1720 to 2350 ppm. The proposed 2350 ppm lower limit is based on the refueling concentration assumed as an initial condition for the Mode 6 (Refueling) boron dilution event analysis. An assumed initial refueling boron concentration of 2300 ppm will preserve a minimum of 60 minutes to criticality in Mode 6 with the RCS at mid-loop and three charging pumps running. A 50 ppm uncertainty allowance is added to the assumed value to arrive at the proposed 2350 ppm refueling concentration. The proposed change would also revise to "2350 ppm" all references to "1720 ppm" in TS 3/4.1.1.1, "Boration Control - Shutdown Margin - Tavg greater than 200°F"; TS 3/4.1.1.2, "Shutdown Margin - Tavg less than or equal to 200°F"; TS 3/4.1.2.7, "Borated Water Source - Shutdown"; TS 3/4.1.2.8, "Borated Water Source - Operating"; TS 3/4.5.4, "Refueling Water Storage Tank"; TS 3/4.9.1, "Refueling Operations - Boron Concentration," and TS 3/4.10.1, "Special Test Exceptions - Shutdown Margin." Similar references in the associated bases sections are also revised.

(2) Increase in RWST and SIT boron concentration upper limit.

The proposed change would increase the upper limit on boron concentration from 2500 ppm to 2800 ppm boron. The licensee stated that this increase is required to preserve an adequate operating range of concentrations with the increase in lower limits described above. An upper limit on concentration is specified in ensure that there will not be an unacceptably high concentration of boric acid in the core resulting in precipitation in the long term cooling phase following a LOCA. Although the proposed change would result in a higher post-LOCA boric acid concentration (a maximum of 2812 ppm boron), the licensee stated that the concentration would remain less than the solubility limit for post-LOCA conditions. Accordingly, the proposed change would revise references to 2500 ppm upper limits to 2800 ppm in TS 3/4.1.2.8, "Borated Water Sources - Operating," TS 3/4.5.1, "Safety Injection Tanks," TS 3/4.5.4, "Refueling Water Storage Tank." The proposed change

would also revise Surveillance Requirement 4.6.2.2.b of TS 3/4.6.2.2, "Recirculation Flow pH Control" which uses an aggregate post LOCA concentration to test trisodium phosphate stored in containment. The proposed change would increase this concentration from 2482 to 2812 ppm boron.

(3) Revisions to Figure 3.1-1.

Figure 3.1-1 defines the volumes and concentrations of boric acid to be maintained in the BAMU tanks corresponding to various RWST concentrations. Currently Figure 3.1-1 incorporates four curves which represent the minimum boric acid volume as a function of concentration required from BAMU tanks for RWST concentrations of 1720, 2000, 2300, and 2500 ppm. The proposed change would revise Figure 3.1-1 to include four curves for RWST concentrations of 2350, 2500, 2650 and 2800 ppm, the new range of RWST concentrations described above. According to the licensee, the new curves were generated using the same methodology as was used for the existing curves which is documented in CEN-316, "Boric Acid Makeup Tank Concentration Reduction Effort." This methodology was previously reviewed and approved for San Onofre Nuclear Generating Station, Units 2 and 3, in conjunction with the issuance of Amendments 43 and 32 respectively. The licensee stated that the proposed figure will ensure that sufficient inventory is maintained in the BAMU tanks to support a natural circulation cooldown while maintaining 5.15% shutdown margin, so that the cool down can continue to cold shutdown with inventory and boron addition from the RWST, assuming a loss of offsite power, a limiting single failure and that the letdown line is unavailable. Moreover, the licensee stated that the minimum BAMU tank inventory specified in Figure 3.1-1, 4151 gallons, is sufficient to support credit taken for charging pump operation in a postulated small break LOCA.

(4) Decrease in cold shutdown BAMU tank/RWST inventory requirement.

The proposed change would reduce the BAMU tank or RWST inventory requirements specified in TS 3/4.3.1.2.7, "Borated Water Source - Shutdown" from 5150 to 4150 gallons. The licensee stated that the volume and concentration specified is based on maintaining a minimum of 3.0% shutdown margin after xenon decay during cooldown from 200°F to 140°F. 4150 gallons are required to makeup for coolant contraction during the cooldown. With the proposed increase in minimum boron concentration from 1720 to 2350 ppm, the licensee stated that this volume would also contain in excess of the boron required to maintain a 3.0% shutdown margin.

(5) Increase in SIT lower concentration limit.

TS 3/4.5.1, "Safety Injection Tanks," specifies a minimum SIT concentration of 1720 ppm boron. The proposed change would increase this to 1850 ppm. The licensee stated that the lower limit on SIT concentration will ensure that the reactor will be at least 1% subcritical following a large break LOCA taking no credit for Control Element Assembly (CEA) insertion.

(6) Increase in TSP requirements.

TS 3/4.6.2.2, "Recirculation Flow pH Control," requires a minimum of 15,400 lbs (256 cubic feet) TSP to be available in storage racks in the containment. The required amount of TSP is sufficient to neutralize the maximum amount of boric acid postulated to be inside containment following a LOCA. With an increase in maximum RWST concentration to 2800 ppm, an increase in TSP to 17,461 lbs (291 cubic feet) is required. The proposed change would correspondingly increase the amount of TSP specified in surveillance requirement 4.6.2.2.b from 3.00 grams to 3.43 grams.

(7) Removal sodium hydroxide from the Bases.

The proposed change would also remove from Bases Sections 3/4.1.2, "Boration Systems" and 3/4.5.4, "Refueling Water Storage Tank" references to sodium hydroxide (NaOH) for pH control. These changes to the bases were inadvertently overlooked in conjunction with Amendments 51 and 40 for Units 2 and 3, respectively, which approved deletion of the NaOH iodine removal system.

Basis for Proposed No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards considerations exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (iii) relates to a change for a nuclear power reactor resulting from a core reloading if no fuel assemblies are significantly different from those found previously acceptable to the NRC. This assumes that no significant changes are made to the acceptance criteria for the Technical Specification and that the analytical methods used to demonstrate conformance with Technical Specifications and regulations are not significantly changed and that the NRC has previously found such methods acceptable.

The proposed changes would revise borated water source and trisodium phosphate requirements as a result of increases in critical boron concentration related to extended fuel cycles. The proposed changes to specified values are either bounded by analyses presented in the FSAR or were generated using previously reviewed and approved methodology.

Specifically, the proposed increase in minimum RWST and refueling boron concentration (Item 1 above) preserves a minimum of 60 minutes to criticality for the refueling mode boron dilution event analysis, using the previously reviewed and approved analytical methodology presented in the FSAR. The proposed upper limits on concentration for the RWST and SIT (Item 2 above) continue to ensure the boric acid does not precipitate in the core during the long term cooling phase following a LOCA. The proposed revision to BAMU tank inventory requirements (Item 3 above) was generated using the same analytical methodology as the existing requirements which were approved by Amendment 43 and Amendment 32 for Units 2 and 3, respectively.

The proposed reduction in BAMU tank or RWST inventory from 5150 to 4150 gallons with the plant in cold shutdown or refueling (Item 4 above) uses the same methodology as was used for the current value, taking into account the higher proposed minimum boron concentration. The proposed value would maintain in excess of 3.0% shutdown margin during a cooldown from 200°F to 140°F.

The proposed change described in Item 5 above would increase the minimum SIT boron concentration from 1720 to 1850 ppm. SRP Section 4.3, "Nuclear Design," requires reactivity control systems to have a combined capability in conjunction with poison addition from the ECCS to reliably control reactivity changes under postulated accident conditions with a margin for stuck control rods. In the large break LOCA analysis, conservatively, no credit is taken for control rod insertion. The proposed change would ensure that the reactor would be maintained subcritical during a LOCA and therefore would continue to meet this acceptance criteria.

The proposed increase in trisodium phosphate from 15,400 to 17,461 lbs (Item 6 above) compensates for the increase in RWST and SIT maximum boric acid concentration. SRP Section 6.1.1, "Engineered Safety Feature Materials," requires that the composition of containment spray and core cooling water be controlled to ensure a

minimum pH of 7.0 following a LOCA to inhibit initiation of stress corrosion cracking. The proposed increase in TSP requirements continues to meet this SRP criterion.

The proposed changes are related to a core reloading for extended fuel cycles, are generated by previously approved analytical methodology or are bounded by previously reviewed analysis, and preserve existing acceptance criteria. Therefore, the proposed changes in Items 1-6 are similar to Example (iii) of the Commission's guidance. On this basis the NRC staff proposes to determine that they do not involve a significant hazards consideration.

The proposed changes described in Item 7 above are administrative in nature since they would remove certain references to sodium hydroxide in the Bases section that were inadvertently not removed when Amendments 51 and 40 were issued on August 11, 1986. These amendments require the use of trisodium phosphate rather than sodium hydroxide. Example (i) of the Commission's guidance on amendments that are not likely to involve a significant hazards consideration relates to a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Thus the proposed change in Item 7 is similar to Example (i) of the Commission's guidance and on this basis the NRC staff proposes to determines that it does not involve a significant hazards consideration.

Local Public Document Room location: General Library, University of California, P. O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: George W. Knighton

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 5, 1987 (Reference PCN-237)

Description of amendment request: The proposed change will revise Technical Specification (TS) 3/4.2.7, "Axial Shape Index" and its associated basis. Technical Specification 3.2.7 is provided to ensure that the actual value of the axial shape index (ASI) is maintained within the range assumed as an initial condition in the safety analyses. The safety analyses assume that ASI is between -0.3 and +0.3. ASI is the power generated in the lower half of the core less the power generated in the upper half of the core divided by the sum of these powers. The ASI can be calculated utilizing either the Core Operating Limit Supervisory System (COLSS) or any operable Core Protection Calculator (CPC) channel. The real time monitoring capability and accuracy of COLSS allows COLSS to monitor power limit margins closely (using incore, self-powered, rhodium detectors).

The proposed change to this specification is required to support Cycle 4 operation (24 month cycle versus the current 18 month cycle). Analysis of COLSS uncertainties has shown that the axial shape uncertainty for Cycle 4 increases from $\pm$ 0.02 $\pm$ 0.03. This is due primarily to the effect of increased cycle length on the measurement uncertainties associated with the incore detectors.

Technical Specification 3.2.7 currently requires that the ASI be maintained within the COLSS Operable limits (ASI between -0.28 and +0.28) or the COLSS Out of Service (CPC) limits (ASI between -0.20 and +0.20). The current COLSS Operable limits for the ASI are based on the value assumed in the safety analyses (ASI between -0.30 and +0.30) taking into account the axial shape uncertainty ($\pm$0.02). For Cycle 4 operation, the axial shape uncertainty increases to $\pm$0.03. Therefore, the COLSS ASI alarm limit will be changed from ASI between -0.28 and +0.28 to ASI between -0.27 and +0.27. To allow this, the proposed change would replace the numerical values associated with the COLSS Operable limit with a requirement to maintain the COLSS calculated ASI within the "COLSS ASI alarm limits." This term will be defined in the revised bases for TS 3.2.7 and will be equal to the ASI range assumed in the safety analyses less the ASI uncertainty that is applicable to the current operating cycle.

Surveillance Requirement 4.2.7 will also be revised. Currently, Section 4.2.7 only requires that ASI be determined to be within its limits once per 12 hours when COLSS is in service or out of service. The proposed change will take advantage of the fact that colss continuously monitors ASI when it is in service. Specifically, ASI will be required to be continuously monitored and determined to be within its limit with COLSS in service. With COLSS out of service, the surveillance requirement will be unchanged. That is, ASI will be required to be verified to be within its limit at least once every 12 hours using any operable CPC channel.

The basis for this specification will be expanded to include discussions of the 20% minimum power limitation in Mode 1, what ASI is and the two methods by which this parameter is calculated. The basis currently states that this specification ensures that the actual value of the ASI is maintained within the range of values used in the safety analyses.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following is a discussion of these three criteria and how the proposed change meets each criterion.

1. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated for the reasons given below. Replacing the numerical limiting values of the ASI range with a word definition will not change the value that will be used as a limiting condition of operation, but will permit a change in the ASI limit range if cycle-dependent uncertainties change. For Cycle 4 as compared to Cycle 3, the range will decrease from $\pm$0.28 to $\pm$0.27, due to an increase in uncertainty factor from $\pm$.02 to $\pm$.03. Thus, the proposed change still requires that ASI be maintained within the ASI range assumed in the safety analyses, $\pm$0.30. Further, the proposed change requires continuous monitoring of ASI when colss is in service. This is more restrictive than the current TS which requires monitoring once every 12 hours. In summary, the proposed change will result in the ASI safety setting being selected so that: (1) no safety limit will be exceeded as a result of an anticipated operational occurrence and (2) the consequences of a design basis accident will be acceptable. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment would not change the configuration of the plant, or its manner of operation. ASI is specified as an initial condition in the safety analyses. This parameter will not be changed nor will it be exceeded. The LCO will be changed from a numerical limit to a requirement to maintain the COLSS-calculated ASI within the COLSS ASI alarm limits. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. The proposed change will replace the numerical limit associated with the ASI with a requirement to maintain ASI within the COLSS ASI alarm limit when COLSS is in service. The COLSS ASI alarm limit is set below the value assumed in the safety analyses, accounting for COLSS uncertainties. The proposed change will ensure that this requirement is met. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P. O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket No. 50-327 Sequoyah Nuclear Plant, Unit 1 Hamilton County, Tennessee

Date of amendment request: May 15, 1987 (TSC 87-23)

Description of amendment request: Tennessee Valley Authority (TVA) proposes an amendment to the Sequoyah Nuclear Plant (SQN) Unit 1 Technical Specifications (TS) to delete the requirements of Section 2.c.10, "Water Chemistry Control Program," of the SQN Unit 1 Facility Operating License.

Basis for proposed no significant hazards consideration determination: SQN license condition 2.c.10 requires that certain provisions be incorporated into the water chemistry program. These were accomplished as outlined by letter from L. M. Mills to A. Schwencer dated August 13, 1980. However, SQN no longer follows action levels identical to those outlined in that letter. The Secondary Water Chemistry Program at SQN presently uses the guidelines established in the Steam Generator Owners' Group (SGOG) Special Report EPRI-NP-2704, "PWR Secondary Water Chemistry Guidelines." These guidelines were recommended in NRC Generic Letter 85-02 and referenced in Section 2.5 of NUREG-0844. These recommendations are in conflict with license condition 2.c.10. TVA is committed to maintain steam generator tube integrity by Amendment 3 to the Final Safety Analysis Report (FSAR). Specific water chemistry limits and associated action levels are based on the SGOG guidelines and are incorporated into plant procedures. In addition, TS 6.8.5.c requires a program for monitoring secondary water chemistry to inhibit steam generator tube degradation.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. The staff has reviewed the proposed amendment and concluded that the amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. License condition 2.c.10 was included as a measure to ensure that steam generator tubing would not be subjected to conditions that would cause degradation of integrity. The SGOG guidelines are more sensitive to critical water chemistry to minimize steam generator tube degradation than the license condition and therefore do not increase the probability or consequences of an accident previously evaluated;

(2) create the possibility of a new or different kind of accident from any previously evaluated because the proposed change to delete license condition 2.c.10 will not present new or different safety concerns. This change will still require the licensee to monitor critical parameters of secondary water chemistry necessary to control corrosive conditions in the steam generator and maintain tube integrity; or

(3) involve a significant reduction in a margin of safety. The improved Secondary Water Chemistry Program will provide better control of corrosive conditions that contribute to steam generator tube degradation and therefore, the margin of safety is not significantly reduced.

Therefore, the staff proposes to determine that the application for amendments involves no significant hazards.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 28, 1987

Description of amendment request: The amendment would revise the Technical Specifications to reflect administrative changes to Section 6 of the Technical Specifications. More specifically these changes would include:

1. Reorganization of the current Chemistry and Health Physics Department into two separate departments and a change to the Plant Operations Review Committee (PORC) membership to reflect the two supervisors in this area.

2. An administrative correction to include a change previously granted in Amendment 79, but inadvertently deleted in Amendment 87.

3. Elimination of a reference to a non-existent group designation and clear definition of authority for designating PORC alternates.

4. A revision of the authority regarding review and approval of procedures.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3)

involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

The organizational changes described in Section 6 (Administrative Controls) do not involve a significant increase in the probability or consequences of an accident previously evaluated because they are strictly organizational changes which will enhance station management and PORC review over plant activities associated with safe and effective operations. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they likewise enhance organizational and station management review over plant activities related to safe effective operations. The changes do not involve a significant reduction in a margin of safety because they are intended to enhance management and PORC attention related to safe and effective operations, as well as clarify the Technical Specifications regarding certain management authority by removing a reference to a no longer functioning plant group, and additionally eliminating a redundant step in the review and approval of plant procedures with no adverse impact in plant safety or safety margins. Therefore, Vermont Yankee has determined that these changes have no safety significance and that the proposed amendment will not alter any of the accident analyses.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples. The examples of actions involving no significant hazards include a purely administrative change to Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

Based on the above, we have concluded that this change does not constitute a significant hazards consideration, as defined in 50.92(c), since the proposed changes to Section 6 (Administrative Controls) will have little or no impact on public health and safety and are strictly administrative in nature.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston Massachusetts 02110.

NRC Project Director: Victor Nerses, Acting Director

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: April 1, 1987

Description of amendment requests: The proposed amendments would revise Figures 3.12-1A and 3.12-1B of the Surry Technical Specifications (TS) which govern the control rod insertion limits. These figures are currently presented in terms of fraction inserted as a function of power fraction and are based on a fully withdrawn position of 228 steps. The insertion limit curves will be changed to rod group position in steps as a function of power and the fully withdrawn position will be defined as 225 steps. Aside from changing the fully withdrawn position, the bank overlap and the insertion limits in terms of steps will not change. These changes will allow greater operational flexibility with respect to control rod bank positioning as a means of minimizing localized rod cluster control assembly wear.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the changes against the standards provided above and has determined that the changes would involve no significant hazards consideration because:

(1) The proposed changes involve a revision to certain operational constraints. The accident probabilities will not significantly change because no equipment modifications or design changes are involved. The extremely small impact on power distributions and core physics key analysis parameters resulting from the change in the fully withdrawn control rod position can easily be accommodated within the existing Surry core design limits and none of the parameter changes exceed the available margin to the key parameter safety analysis limits. Therefore, the current safety analyses remain bounding. Thus, the probabilities or consequences of an accident previously evaluated will not significantly increase.

(2) The proposed changes do not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. However, the proposed changes will alter the fully withdrawn control rod position as a means of minimizing localized control rod cluster control assembly wear. Thus, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As stated above, the parameter changes do not exceed the available margin of the key parameter safety analysis limits. Therefore, the current Updated Final Safety Analysis Report analyses remain bounding and there is no reduction in a margin of safety as defined in the basis for any technical specification. Therefore, the appropriate safety margins are maintained. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The staff agrees with the licensee's analysis of the three standards and proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: April 23, 1987

Description of amendment request: The proposed amendments would include the core exit thermocouple (CET) system in the accident monitoring instrumentation listed in Tables 3.7-6 and 4.1-2 of the Surry Technical Specifications. The proposed change addresses the CET requirements of

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NUREG-0737, Item II.F.2, "Instrumentation for Detection of Inadequate Core Cooling." In addition, minor editorial changes would be made in both of the above tables to reflect the consolidation of the CET system along with the already existing subcooling margin monitor (SMM) and the reactor vessel level indicating system (RVLIS) into one system called inadequate core cooling monitor.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes against the standards provided above and has determined that the changes would involve no significant hazards consideration because:

1. The operability requirements and surveillance requirements have not been decreased by these changes and the current safety analysis remains bounding. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The current Updated Final Safety Analysis Report analyses remain bounding; therefore there is no reduction in a margin of safety.

In addition, on March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (ii), which involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed TS include additional requirements on core exit thermocouples. Therefore, it is similar to example (ii) as noted above.

Another example in 51 FR 7751 of amendments that are not likely to involve a significant hazards consideration is example (i), which involves "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed editorial changes to TS Tables 3.7-6 and 4.1-2 provide clarity and, thus, are similar to example (i) noted above.

Therefore, the staff agrees with the licensee's analysis and proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: May 22, 1987, superseding requests dated April 12, 1985, September 9, 1985, October 31, 1985 and September 25, 1986

Description of amendment requests: The amendments propose changes to Section 3.7, Instrumentation Systems, and Section 4.1, Operational Safety Review, of the Technical Specifications (TS) for Surry Units 1 and 2. Portions of the proposed changes are part of the licensee's response to Generic Letter 83-28, Item 4.5.3, and address the surveillance intervals for on-line functional testing of the reactor trip system instrumentation. Virginia Electric and Power Company (the licensee) stated that these changes are consistent with WCAP-10271, "Evaluation of Surveillance Frequencies and Out-of-Service Times for Reactor Protection Instrumentation System" and the associated NRC Safety Evaluations dated February 21, 1985, and July 24, 1985. These documents concluded that the estimated change in reactor protection system unavailability is very small as is the estimated reduction in core damage frequency coming from inadvertent trips and that the change in core damage frequency and risk is insignificant. Other proposed changes will provide greater consistency with the Westinghouse Standard Technical Specifications (STS).

This amendment request also incorporates changes for the reactor trip system proposed in previous amendment requests dated April 12, 1985 and September 9, 1985, noticed on May 21, 1985 (50 FR 20995), and December 18, 1985 (50 FR 51634), respectively. Both of these submittals are superseded by this request.

A description of the changes to each section is provided below:

Section 3.7

Specification 3.7.B will be divided into 3.7.B.1 and 3.7.B.2 with 3.7.B.1 covering reactor trip system instrumentation channels (TS Table 3.7-1) and 3.7.B.2 covering engineered safeguards action instrumentation (TS Table 3.7-2) and the instrument operating conditions for isolation functions (TS Table 3.7-3). This change is necessary because TS Table 3.7-1 will be revised and reformatted, and Specification 3.7.B will no longer be applicable to TS Table 3.7-1. Similarly, Specification 3.7.C will be changed to be consistent with the changes proposed to Specification 3.7.B.

The number of minimum operable channels for 1 of 2 logic Reactor Protection System (RPS) channels will be changed from one (1) to two (2). The affected channels include manual reactor trip, nuclear flux intermediate and source ranges, and low steam generator water level coincident with steam/feedwater flow mismatch. These changes are proposed in order to be consistent with the design philosophy presented in the Surry Power Station Updated Final Safety Analysis Report (UFSAR). These changes represent more stringent operability requirements for these instrumentation channels.

On page 3.7-10, in Functional Unit 4, notes will be added for the nuclear flux source range reactor trip in order to clarify the operability requirement for that instrumentation channel. The notes are consistent with the guidance provided in Section 3/4.3.1 of NUREG-0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors" (W-STS) for the nuclear flux source range reactor trip.

On page 3.7-11, the minimum operable channel requirement for the low flow reactor trip and low-low steam generator water level reactor trip will be modified in order to clarify the requirement in accordance with the guidance provided in Section 3/4.3.1 of W-STS for the low flow reactor trip and

low-low steam generator water level reactor trip.

The turbine trip function will be subdivided into its component parts. This proposed change will provide clarification for the turbine trip/RPS interface and would be made in accordance with the guidance provided in the model Technical Specifications enclosed with the letter from Mr. H. R. Denton (NRC) to Mr. L. D. Butterfield (Westinghouse Owners Group) dated July 24, 1985, for the turbine trip. It should be noted that the entry under "Operator Action" for "Stop Valve Closure" should be "12" in lieu of "11." This is a typographical error.

The safety injection function will be changed from referencing the initiating signals for safety injection to specifying the logic that makes up the safety injection/RPS interface. This proposed change will provide clarification of the actual interface between the safety injection actuation system and the RPS and would be made in accordance with the guidance provided in Section 3/4.3.1 of W-STS for the safety injection input from the ESF reactor trip.

A limiting condition of operation for the reactor coolant pump breaker position will be added to TS Table 3.7-1. The position of the reactor coolant pump breaker is an input into the RPS as described in Section 7.2 of the UFSAR and should be included with the other reactor trip instruments. The operability requirements for this trip channel have been established in accordance with the guidance provided in Section 3/4.3.1 of W-STS for the reactor coolant pump breaker position trip.

The control rod misalignment monitor will be deleted from TS Table 3.7-1 because it is not part of the reactor trip instrumentation and does not provide a reactor trip signal. The TS have requirements on flux tilt and rod misalignment, and the control rod misalignment monitor is not assumed to operate in order to mitigate the consequences of any accident.

TS Table 3.7-1, Reactor Trip Instrument Operating Conditions, would be reformatted to be consistent with the format used in Section 3/4.3.1 of W-STS. More specifically, for each functional unit column entries would be added for the "Total Number of Channels," "Channels to Trip," and specific "Operator Action." The column for "Degree of Redundancy" will be deleted from the table. The times for testing and maintenance that are in the action statements have been established in accordance with the guidance provided in WCAP-10271, "Evaluation of Surveillance Frequencies and Out-of-Service Times for the Reactor Protection Instrumentation System," including Supplement 1, portions of which have been approved in NRC's Safety Evaluation issued by a letter from Mr. C. O. Thomas (NRC) to Mr. J. J. Sheppard (Westinghouse Owners Group) dated February 21, 1985.

The changes to the operability requirements for the reactor trip breakers, the reactor trip bypass breakers and the automatic trip logic provide clarification for operation and testing of the reactor trip breakers, reactor trip bypass breakers and automatic trip logic. More specific guidance will be provided in the action statements for these items that address the time allowed for testing and maintenance. Currently, there are no restrictions on time for maintenance and testing of reactor trip breakers, reactor bypass breakers and the automatic trip logic included in the Surry TS. Therefore, the proposed limiting conditions for operation and action statements are more conservative than existing TS requirements. These changes are modeled after the NRC staff guidance provided in Generic Letter 85-09, "Technical Specification for Generic Letter 83-28, Item 4.3," and Westinghouse WCAP-10271.

Section 4.1

Specification 4.1.A.2 would be added which defines the surveillance requirements for the logic for the reactor trip system interlocks and the interlock function. A page number would also be changed to correct a typographical error. Additionally, TS Table 4.1-A will be added to this section of the TS. This table describes the reactor trip system interlocks and is based on information contained in Section 7.2 of the UFSAR.

The surveillance requirements listed in TS Table 4.1-1, Minimum Frequencies for Check, Calibrations, and Test of Instrument Channels, for the nuclear power range, nuclear intermediate range, nuclear source range, 4 KV voltage and frequency, reactor coolant temperature and turbine trip will be modified in accordance with the guidance provided in Section 3/4.3.1 of Mr. Denton's letter dated July 24, 1985, for these instrument channels. This includes the addition of a note which allows exclusion of the neutron detectors from channel calibration of the nuclear power, intermediate and source ranges.

Surveillance requirements have been added to TS Table 4.1-1 for the following channels: safety injection input from ESF, reactor coolant pump breaker position trip, and steam/feedwater flow mismatch coincident with low steam generator water level. The surveillance requirements for these channels have been established based on the guidance provided in Section 3/4.3.1 of W-STS.

The surveillance requirements for the reactor trip breaker, the manual reactor trip, and the reactor bypass breaker are modeled after Generic Letter 85-09 and provide for independent testing of the shunt and undervoltage trip devices. In addition, a limiting condition for operation will be added to allow reactor operation for up to 48 hours with either the undervoltage or shunt trip device of the reactor trip breaker inoperable.

Functional Unit 16 was deleted from Table 4.1-1 by Amendment 103. As a result, functional units following old Functional Unit 16 in Table 4.1-1 would be renumbered to reflect this deletion.

The entries for "weekly," "semiannually," "every two weeks," and "after each startup" will be deleted from the listing of defined abbreviations in TS Table 4.1-1 because they are no longer used in the table.

The pages for TS Table 4.1-1(a), Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirements, and TS Table 4.1-1(b), Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements, will be renumbered so that the page numbering in this section will run consecutively.

Page TS 4.1-9 will be deleted, because all of the information on that page duplicates information that is contained in other portions of TS Table 4.1-1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes by the licensee can be divided in three broad categories: (1) editorial changes, (2) changes which provide added conservatism, and (3) changes based on WCAP-10271 which have been reviewed and approved by the staff.

(1) The nature of the changes covered by first two categories does not significantly increase probability of occurrence or consequences of an accident previously evaluated. The changes involved in third category have

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been evaluated in WCAP-10271 and the NRC's Safety Evaluations dated February 21, 1985 and July 24, 1985. The changes involving the reactor trip system affect the probability or consequences of a wide range of accidents which require the actuation of the reactor trip signal. WCAP-10271 and the staff's review of WCAP-10271 have verified that the effect of the proposed changes would not be significant. In the staff's Safety Evaluation dated February 21, 1985, the staff evaluated the changes affecting Reactor Trip Systems' (RTS) analog channels and concluded that the estimated change in reactor trip system unavailability from the proposed changes was very small, and the resulting changes in core damage frequency and risk were quite small compared to the error in the probabilistic estimate. Based on the above evaluation, by letter dated July 24, 1985, the staff provided a marked-up copy of the affected technical specifications as guidelines for licensees to prepare plant-specific proposals for technical specification changes. Thus, these changes are approved and recommended by the staff for implementation. The proposed changes do not alter the manner in which protection is afforded. Thus, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes only affect previously analyzed accidents and do not involve any physical plant alterations which would introduce any new or unique operational modes or accident precursors. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As discussed earlier, the changes do not significantly affect a margin of safety. The changes affecting the reactor protection system outage time have been evaluated by the staff in a Safety Evaluation dated February 21, 1985, which concluded that the changes in estimated core damage frequency and risk are insignificant. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

In addition, the Commission has provided examples of changes that constitute no significant hazards consideration in the **Federal Register**, Volume 51, page 7751. Example (i) is a purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Example (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement.

The proposed changes that reformat TS Table 3.7-1 and renumber the pages that contain TS Table 4.1-1(a) and TS Table 4.1-1(b) are similar to example (i) in that they do not modify any technical requirement and will foster document consistency.

The proposed changes to the operability requirements for the manual reactor trip, the nuclear flux intermediate range reactor trip, the nuclear source range reactor trip, the low steam generator water level with steam/feedwater flow mismatch reactor trip, the reactor trip breakers, the reactor trip bypass breaker, the automatic trip logic, and the addition of the requirements for the reactor coolant pump breaker position trip in TS Table 3.7-1 are similar to example (ii) in that they constitute either new or additional requirements. The proposed changes that address the surveillance requirements for the manual reactor trip, the reactor trip bypass breakers, the safety injection input from ESF, the reactor coolant pump breaker position trip, and the low steam generator water level with steam/feedwater flow mismatch reactor trip in TS Table 4.1-1 are similar to example (ii) in that they constitute additional requirements.

Therefore, based on the above discussion, the staff proposes to determine that the proposed changes involve no significant hazards considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: May 29, 1987

Description of amendment request: The proposed amendments would revise Table 3.21-1 of the Surry Technical Specifications, Fire Detection Instruments, by adding two additional smoke detectors to the listing for the auxiliary building general area. The total number shown would increase from 12 to 14. These smoke detectors were added to satisfy the requirements of 10 CFR Part 50, Appendix R, to provide fire detection capabilities in the auxiliary building in the vicinity of the charging pump cooling water pumps.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the change against the standards provided above and has determined that the change would involve no significant hazards consideration because:

1. The change enhances the ability to detect fires in the auxiliary building and limit their consequences. Thus, the proposed change does not increase the probability or consequences of any accident previously evaluated.

2. The change does not modify plant design or system operation that could create a different type of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident than previously evaluated.

3. The addition of two smoke detectors would increase safety by providing additional detection capability. Thus, it would not reduce a margin of safety.

The staff agrees with the licensee's analysis of the three standards and proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: June 12, 1987

Brief description of amendment request: The amendment would allow the licensee to increase the spent fuel pool storage capacity from 728 to 1706 fuel assemblies for St. Lucie Unit No. 1.

Date of publication of individual notice in the **Federal Register:** August 31, 1987 (52 FR 32852)

Expiration date of individual notice: September 30, 1987

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Arizona Public Service Company, et al, Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, Arizona

Date of application for amendments: June 24, 1987.

Brief description of amendments: The amendments revised the technical specifications by changing the level required for the Condensate Storage Tank from 23 feet to an indicated level of 25 feet.

Date of issuance: September 4, 1987

Effective date: September 4, 1987

Amendment Nos.: 20 and 11

Facility Operating License Nos. NPF-41 and NPF-51: Amendments change technical specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 8371). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al, Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of applications for amendment: May 11 and 28, 1987.

Brief description of amendment: The amendment revised the technical specifications relating to (1) the applicable modes for allowing changes to the trip setpoints for low pressure in the steam generator and pressurizer, (2) the definition of an operable incore detection system, and (3) the required boration flow rate.

Date of issuance: September 4, 1987

Effective date: September 4, 1987

Amendment No.: 21

Facility Operating License No. NPF-41: Amendment changes technical specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26583) and July 29, 1987 (52 FR 28370). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 22, 1987, as supplemented on July 22, 1987.

Brief description of amendment: The amendment revises the Technical Specifications for Cycle 8 operation of the nuclear reactor following core reload 7. For the first time, only retrofit fuel will be loaded into the core. All non-retrofit fuel will be discharged to the spent fuel pool. The proposed Technical Specification changes are: (1) removing reference to the non-retrofit 8x8 fuel; (2) revising the description of low and low-low reactor water level setpoints to reflect the change in height of the top of the active fuel length; (3) slightly reducing the operating limit minimum critical power ratio to permit operational flexibility; and (4) several editorial changes to correct the spelling of "MFLPD"; identify the unit of measure as megawatt days per standard ton, and include a reference which had been inadvertently deleted.

Date of issuance: August 31, 1987

Effective date: August 31, 1987

Amendment No.: 105

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26583) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1987.

No signifigant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 20, 1987.

Brief Description of amendment: Change the Technical Specifications to add a timer to the automatic depressurization system (ADS).

Date of issuance: September 4, 1987

Effective date: 30 days from date of issuance

Amendment No.: 106

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (51 FR 28371). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 29, 1987

Brief description of amendment: The amendment revises the Technical Specifications to permit a one-time extension of the surveillance interval limits for various systems and components. Specifically the Technical Specifications are modified to extend the 3.25 total time interval limit over three consecutive surveillance intervals to allow testing to be performed during the scheduled 1987 refueling/maintenance outage rather than requiring a special plant shutdown solely to perform these tests.

Date of issuance: September 1, 1987

Effective date: September 1, 1987

Amendment No.: 122

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28374) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consolidated Edison Company of New York, Docket Nos. 50-03 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendment: November 26, 1986

Brief description of amendment: The amendments revise the Technical Specifications for Indian Point Unit Nos. 1 and 2 to incorporate changes to the Facility Organization. The amendments revise the organizational figures contained in the Technical Specifications and revise the affected titles of the members of the Station Nuclear Safety Committee.

Date of issuance: September 2, 1987

Effective date: September 2, 1987

Amendment Nos.: 36, 123.

Facility Operating License Nos. DPR-5 and 26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4407) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 28, 1984, as supplemented June 5, 1987

Brief description of amendment: This amendment changes the Technical Specification requirement for steam generator inspection interval by allowing an extension from the limit of 24 months to 30 months provided that the mean degradation increase for the previous steam generator inspection interval was less than one percent.

Date of issuance: August 26, 1987

Effective date: August 26, 1987

Amendment No. 106

Provisional Operating License No. DPR-20. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (50 FR 20975) and July 1, 1987 (52 FR 24546). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 7, 1985, as supplemented March 16 and April 1, 1987

Brief description of amendments: The amendments change the Technical Specifications to add requirements for testing of the undervoltage and shunt trip attachments of reactor trip breakers and testing of reactor trip bypass breakers.

Date of issuance: September 2, 1987

Effective date: September 2, 1987

Amendment Nos.: 74 and 55

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Dates of initial notices in **Federal Register:** June 18, 1986 (51 FR 22234) and April 22, 1987 (52 FR 13336) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC) Station, North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 2, 1987 as supplemented August 26, 1987

Brief description of amendments: The amendments modified the Technical Specifications to incorporate the ventilation system of the Equipment Staging Building as a new gaseous effluent release point, to specify the limiting conditions for operation and surveillance requirements for this ventilation system and its monitoring instrumentation, and to add associated requirements to the gaseous waste sampling and analysis program.

Date of issuance: September 9, 1987

Effective date: September 9, 1987

Amendment Nos.: 75 and 56

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1986 (52 FR 28624) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: January 16, 1986, as supplemented April 18, June 27, and September 15, 1986, and April 3, 1987

Brief description of amendments: The amendments modify the Technical Specifications to allow repairing of steam generator tubes by sleeving.

Date of Issuance: September 1, 1987

Effective date: September 1, 1987

Amendment Nos.: 161, 161, and 158

Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12227) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 1, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: October 29, 1986 and supplemented by letter dated June 2, 1987

Brief description of amendment: The amendment changed the Technical Specifications for Beaver Valley Unit No. 1 to specify actions to be taken if a pressurizer safety valve discharged liquid water due to an overpressure event, and to specify new surveillance requirements of these valves.

Date of issuance: September 8, 1987

Effective date: September 8, 1987

Amendment No. 115

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45199) and July 29, 1987 (52 FR 28376) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: September 27, 1982, as supplemented December 7, 1983, May 4, 1984, December 18, 1985, April 4, 1986, and January 5, 1987.

Brief description of amendment: The amendment revised the Technical Specifications to delete Section 3.7.8 related to settlement of Class I structures.

Date of issuance: August 31, 1987

Effective date: August 31, 1987

Amendment No.: 84

Facility Operating License No. NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983 (48 FR 52812) and July 29, 1987 (52 FR 28376) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: May 11, 1987 as supplemented July 27, 1987.

Brief description of amendment: This amendment authorizes a one-time extension to the surveillance interval for the penetration valve leakage control system until the first refueling outage scheduled to begin September 15, 1987.

Date of issuance: August 31, 1987.

Effective date: August 31, 1987.

Amendment No. 10

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1985 (52 FR 24552) The licensee's July 27, 1987 submittal provided editorial changes to the May 11, 1987 submittal and did not alter the NRC staff's determination of no significant hazards as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: June 18, 1987

Brief description of amendment: Changed the administrative section of the Technical Specifications to realign functional responsibilities in the GPU Nuclear corporate organization.

Date of Issuance: September 1, 1987

Effective date: September 1, 1987

Amendment No.: 132

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28377) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 1, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17126

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 24, 1986, as modified by letter dated August 13, 1987.

Brief description of amendment: The amendment clarifies Appendix A Technical Specifications relating to reactor water chemistry requirements and retention of training records for plant staff members. It also corrected an error made in Amendment No. 62.

Date of issuance: August 31, 1987.

Effective date: August 31, 1987.

Amendment No.: 109

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4412). The August 13, 1987 submittal provided additional clarifying information and did not change the finding of the initial notice. The Commission's related

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evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: February 20, 1987

Brief description of amendment: The amendment modifies Technical Specification (TS) Figure 6.2-2 to make the organization chart more consistent with that for Nine Mile Point Nuclear Station Unit 2, and Section 6.3 to include the qualifications requirements for the new position of Radiation Protection Manager.

Date of issuance: August 27, 1987

Effective date: August 27, 1987

Amendment No.: 93

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11367) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: May 12, 1987

Brief description of amendment: Revision of pressure-temperature limits in Technical Specification Section 3.6 to reflect the results of testing the materials in surveillance capsule 2. The revised limits meet the requirements of Appendix G to 10 CFR Part 50 and are valid until 16 effective full power years of operation.

Date of issuance: August 20, 1987

Effective date: August 20, 1987

Amendment No. 9.

Facility Operating License No. DPR-21. This amendment revised the technical specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20803). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: June 25, 1987 (partial response)

Brief description of amendment: The change modified the Technical Specifications (TS) as follows: (1) the TS Table that explicitly lists the snubbers that are required to be operable and undergo surveillance is eliminated and (2) the TS numbering system for TS 3/4.7.8.1 is changed. The third proposed change to the snubber TS, which would allow the licensee to perform an engineering evaluation to determine a snubber supported system/component to be operable with an inoperable snubber, will be addressed in future correspondence.

Date of issuance: September 1, 1987

Effective date: September 1, 1987

Amendment No.: 118

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26591) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 5, 1986, as supplemented on November 24, 1986, April 15, June 22 and July 1, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by adding Inadequate Core Cooling Instrumentation which is required by Item II.F.2 of NUREG-0737.

Date of issuance: August 31, 1987.

Effective date: 60 days from the date of issuance.

Amendment No.: 110

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32278). Since the date of the initial notice, the licensee submitted clarifying information dated November 24, 1986, April 15, June 22 and July 1, 1987. This information was substantial enough to warrant renoticing of the requested amendment on July 29, 1987 (52 FR 28382). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 29, 1986

Brief description of amendments: The amendments change the reporting requirements for iodine spiking events and delete the requirement to shut down the reactor after accumulating 800 hours of out-of-specification dose equivalent I-131 activity, both in response to NRC Generic Letter No. 85-19, dated September 27, 1985.

Date of Issuance: August 31, 1987

Effective date: August 31, 1987

Amendment Nos: 18 and 17

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28383) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 5, 1986

Brief description of amendments: The amendments delete the detailed list of containment penetration conductor overcurrent protective devices that are required to be operable. The list will be added to the updated FSAR at the next regular update. The amendment does not alter the requirement that these devices be operable and that they be periodically tested.

Date of Issuance: September 3, 1987

Effective date: September 3, 1987

Amendment Nos: 19 and 18
Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28383) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1987
No significant hazards consideration comments received: No
Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: August 14, 1986
Brief description of amendments: The amendments revise the reporting official for the Security Supervisor to the Assistant Plant Manager, Support Services; change the title of the person to whom the Vice President, Nuclear Power Generation reports to President; and require that minutes of the General Office Nuclear Plant Review and Audit Committee meetings be forwarded to the President within 14 working days.
Date of Issuance: September 3, 1987
Effective date: September 3, 1987
Amendment Nos: 20 and 19
Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13343) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: February 11, 1987
Brief description of amendment: The amendment (1) revises TS Sections 3/4.4.2, TS 3/4.4.3 and TS 3/4.7.1 by increasing the setpoint tolerance for the pressurizer and main steam safety valves from ±1 percent to ±2 percent, and (2) changes the Bases for TS 3/4.7.1 to correct the value for the main steam system design pressure.
Date of issuance: September 1, 1987
Effective date: September 1, 1987
Amendment No.: 134
Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18986) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1987
No significant hazards consideration comments received: No.
Local Public Document Room location: Branford Price Millar Library, Portland State University, 731 S. W. Harrison St., Portland Oregon 97207

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 1, 1987
Brief description of amendment: The amendment revised the numbering of certain Technical Specification sections.
Date of issuance: September 1, 1987
Effective date: September 1, 1987
Amendment No. 10
Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24557) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California,

Date of application for amendment: August 1, 1985, as supplemented November 25, 1985, February 20, 1986 and December 24, 1986. The December 24, 1986 supplement was only for clarification and does not alter staff position.
Brief description of amendment: The amendment revises the technical specifications to add fire protection components in the auxiliary building, Turbine Building and Nuclear Service Electrical Building and clarifies requirements on fire barriers.
Date of Issuance: August 27, 1987
Effective date: August 27, 1987
Amendment No: 85
Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33958) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1987
No significant hazards consideration comments received: No
Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: December 23, 1986 (TS 223)
Brief description of amendments: The amendments revise the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, technical specifications to clarify the surveillance requirements for the Standby Liquid Control System (SLC). The amendments specify the use of demineralized water for testing the minimum pump flow rate and require visual verification of flow when pumping boron solution through the recirculation path.
Specifically, Section 4.4.A.2.b of Units 1, 2, and 3, technical specifications are changed to add two phrases to the current requirement. The first phrase requires the licensee to visually verify flow when pumping boron solution through the recirculation path. The second phrase specifies pumping demineralized water through the SLC test tank instead of borated water through the storage tank to verify flow rate. The requirement to visually verify flow is accomplished by observing turbulence through a sample opening in the top of the SLC solution tank. The change to allow pumping demineralized water from the SLC test tank to verify flow rate is satisfied by observing the rate of level change in the test tank to calculate the minimum pump flow rate.
Date of issuance: August 21, 1987
Effective date: August 21, 1987, and shall be implemented within 60 days.
Amendments Nos.: 136, 132, 107
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2892). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1987.
No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 14, 1987, clarified July 8, 1987 and July 27, 1987 (TS 87-02).

Brief description of amendments: The amendments modify the surveillance requirements for the radiation monitors in the steam generator blowdown and condensate demineralizer lines.

Date of issuance: September 9, 1987

Effective date: September 9, 1987

Amendment Nos.: 57 and 49

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24560) The licensee's July 8 and 27, 1987 letters provided clarifying information which did not change the initial application or the initial no significant hazards consideration determination. Therefore, renoticing was not warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 18, 1987

Brief description of amendment: This amendment added to the Technical Specifications (TSs) additional Limiting Conditions for Operation and Surveillance Requirements for the Motor Driven Feedwater Pump System (TS Sections 3.7.1.7 and 4.7.1.7). In addition, a new Section 3/4.7.1.7 was added to the Bases explaining the need for the Motor Driven Feed Pump.

Date of issuance: September 2, 1987

Effective date: September 2, 1987

Amendment No. 103

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18988) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 17, 1987

Brief description of amendment: This amendment revises TS Sections 3/4.4.8 and 6.9.1.5 to: (1) change the reporting requirements for primary coolant iodine spikes from a short-term report to an item to be included in the Annual Operating Report, and (2) delete the requirement to shut down the reactor if coolant iodine activity limits are exceeded more than 10 percent of the unit operating time annually. This amendment also makes appropriate changes to Basis Section 3/4.4.8.

Date of issuance: September 8, 1987

Effective date: September 8, 1987

Amendment No. 104

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18988) The Commission's related evaluation of the amendment is contained in a letter to the Toledo Edison Company dated September 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 23, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: March 9, 1987

Brief description of amendment: The amendment changed the Technical Specifications for Beaver Valley Unit 1 to permit the storage of fuel assemblies of enrichment up to 4.5 weight percent U-235 in the fresh fuel racks and the spent fuel storage pool.

Date of issuance: September 4, 1987

Effective date: September 4, 1987

Amendment No. 114

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, Published in the **Federal Register** August 12, 1987 (52 FR 29914) and August 19, 1987 (52 FR 31101).

No significant hazards consideration comments received: No The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 4, 1987.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: August 18, 1987, as supplemented August 19, 1987.

Brief description of amendment: The amendment revises Note (1) of Table 3.7-1 on TS page 208 to permit plant operation for the duration of Cycle 8 with an MSIV closure time of greater than or equal to 2 seconds and less than or equal to 5 seconds for one of the four main steam lines. The existing TS require that all four lines have a closure time of within 3 to 5 seconds. These changes were authorized verbally on August 20, 1987 and verified by our letter of the same date. This amendment is the followup documentation of the authorization.

Date of issuance: September 1, 1987
Effective date: August 20, 1987
Amendment No.: 112
Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, consultation with the State, final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 1, 1987.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Acting Director

Dated at Bethesda, Maryland this 17th day of September, 1987.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation

[FR Doc. 87-21821 Filed 9-22-87; 8:45 am]

BILLING CODE 7590-01-D

[Byproduct Material License No. 34-19089-01, Docket No. 30-16055-OM, ASLBP No. 87-555-01-OM]

Designation of Presiding Officer; Advanced Medical Systems, Inc.

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding:

Advanced Medical Systems, Inc.

Byproduct Material License No. 34-19089-01
E.A. 87-139

The presiding officer is being designated pursuant to a request for a hearing regarding an Order issued by the Deputy Executive Director for Regional Operations, dated July 23, 1987, entitled "Order Modifying License, Effective Immediately, and Demand for Information."

The presiding officer in this proceeding is The Honorable Ivan W. Smith, Administrative Law Judge.

All correspondence, documents and other materials shall be filed with Judge Smith in accordance with CFR § 2.701. His address is: Administrative Law Judge Ivan W. Smith, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 15th day of September 1987.

B. Paul Cotter, Jr.,

Atomic Safety and Licensing Board Panel.

[FR Doc. 87-21932 Filed 9-22-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320-OLA; ASLBP No. 87-554-04-OLA]

Establishment of Atomic Safety and Licensing Board; General Public Utilities Nuclear Corp. et al.

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

General Public Utilities Nuclear Corporation, et al.

Three Mile Island Nuclear Station, Unit 2
Facility Operating License No. DPR-73

This Board is being established pursuant to a notice published by the Commission on July 31, 1987 in the **Federal Register** (52 FR 28626-27) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing." The proposed amendment would delete the current prohibition on disposal of accident-generated water imposed by Technical Specifications 1.17, 3.9.13 and 3/4.9.13.

The Board is composed of the following administrative judges:

Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 15th day of September 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-21933 Filed 9-22-87; 8:45 am]

BILLING CODE 7590-01-M

[Seabrook Station, Units 1 and 2 (Offsite Emergency Planning), Docket Nos. 50-443-OL and 50-444-OL; ASLBP No. 82-471-02 OL]

Reconstitution of Board; Public Service Co. of New Hampshire et al.

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2) (Offsite Emergency Planning, Docket Nos. 50-443-OL and 50-444-OL, is hereby reconstituted by appointing Administrative Law Judge Ivan W. Smith as Chairman in place of Administrative Judge Helen F. Hoyt, who is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Jerry Harbour

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board is: Administrative Law Judge Ivan W. Smith, Chairman, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 15th day of September 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 21934 Filed 9-22-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24920; File No. SR-CBOE-87-41]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change

On September 11, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to add December and March 230 calls and puts in the options on the Standard and Poor's ("S&P") 500 stock index ("SPX" and "NSX") during the week of September 14, 1987.

Calls and puts in SPX/NSX at the 230 strike price were available for the expiration cycle of September 1987.[3] The proposed rule change will allow the Exchange to continue making available calls and puts in SPX at the 230 strike price for the expiration cycles of December 1987 and March 1988. This will allow market participants who hold existing positions in the September 230 options to roll out of these positions into December 1987 230 options or March 1988 230 options before the September 230 options expire on September 19, 1987. Because the addition of this strike price will make available put options that are extremely far out of the money, the Exchange will caution its member firms that this proposal is intended to allow sophisticated market participants a greater range of hedging possibilities and is not intended for the use of normal retail customers.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchange, and, in particular, the requirements of section 6,[5] and the rules and regulations thereunder. The Commission believes that the addition of this strike price will increase market liquidity by providng sophisticated market participants with the opportunity to roll their hedge positions into forward months without affecting their stock positions. The S&P stock index has risen over the past year so that, under current CBOE rules, the September 1988 strike prices to be added would be much higher than 230. To roll to a higher strike price would cost the market participants an initial cash debit, which could be quite large for a substantial position. It is reasonable for the CBOE to help customers avoid this circumstance by adding a deep-in-the-money strike price. At the same time, the Exchange will caution its members that deep-in-the-money or out-of-the-money strikes may not be appropriate for normal retail customers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** because it is critical that the interim relief be made available prior to the expiration of the September 230 SPX options on September 19, 1987. Otherwise, an institution that had hedged its position with SPX/NSX September 230 calls will be forced into an economically disadvantageous position because it could not roll into the same strike price. Further, a companion proposed rule change (File No. SRCBOE-87-42) that is being submitted to the Commission to extend the Exchange's ability to open for trading comparable strike prices will be exposed for a full public comment period.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

Dated: September 15, 1987.

[FR Doc. 87-21902 Filed 9-22-87; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] Both SPX and NSX options have European exercise provisions. An option with a European exercise provision restricts the option holder's ability to exercise the option prior to expiration. The option holder is free to trade out of his position at any time prior to expiration; he just cannot exercise the option prior to expiration. As a result, a writer of an SPX/NSX option does not face the possibility of early exercise.

[4] Institutional investors hedge long positions in a basket of stocks that closely tracks the S&P index with SPX and NSX options. An institutional investor with a short position in an expiring September 230 call will be able to roll that position forward to December or March at a lower cost and will not be forced to sell stock in the process. To roll this position forward, the institution would buy back the September 230 call and sell an equivalent number of December 230 calls. The premium generated by the sale of the December 230 calls would reduce the cost of buying back the September 230 calls and would permit the institution to retain fully its hedged position.

[5] 15 U.S.C. 78f (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1986).

[Release No. 34-24919; File No. SR-NYSE-87-25]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Implementation of a Two-Year Pilot Program To Test Revisions to NYSE Rule 103A, the Exchange's Specialist Performance Evaluation and Improvement Process

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1987, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The intent of the Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Revised Rule 103A [1] codifies the authority granted to the Exchange Market Performance Committee ("MPC") to develop and administer systems and procedures, (including the determination of appropriate standards and measurements of performance), designed to measure specialist performance and market quality on a periodic basis to determine whether particular specialist units need to take steps to improve their performance. Based on such determinations, the MPC is authorized to take action to encourage performance improvement and to improve or sustain market quality in appropriate cases.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries (to which the Commission has made some

[1] In its filing the NYSE included copies of revised Rule 103A and other supporting documents.

modifications), set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule change is to implement a two-year pilot program to test revisions to NYSE Rule 103A.

As described in more detail in File No. SR–NYSE–84–12,[2] the MPC's Subcommittee on Performance Measures and Procedures (the "Subcommittee") has been reviewing the Exchange's specialist performance evaluation and improvement procedures for the purpose of codifying them in a revised version of Rule 103A, and to request the Rule be approved by the Commission as a permanent rule of the Exchange. The current Rule 103A has a "sunset" date of July 31, 1987. In a companion filing to this one, the Exchange is proposing to extend current Rule 103A to September 30, 1987[3] so that the Rule may remain in effect while the Commission considers the proposed rule changes being submitted herein.

Overview of the Revised Rule

The Subcommittee's review of the Rule 103A lead to a thorough restructuring of the current rule's measures of specialist performance and the Exchange's performance improvement process, representing the culmination of over two years of effort. Briefly, the revised Rule would:

Codify the authority granted to the Market Performance Committee (in its charter and in the current Rule 103A) to develop and administer appropriate measures and standards of specialist performance;

Define specific performance measures where below standard performance would trigger a Performance Improvement Action (provided below standard performance was not affected by unusual or extenuating circumstances beyond a specialist unit's control);

Codify, and provide structure to, the Exchange's Performance Improvement Action process to address cases of substandard specialist performance;

Add structure to the reallocation process in those cases where a unit fails to achieve measurable performance improvement goals;

Provide a streamlined means of addressing instances of particularly egregious specialist performance in a timely manner; and

Minimize the possible perception of a conflict of interest in the reallocation of stocks resulting from a Performance Improvement Action under the Rule.

In developing measures of specialist performance, the Subcommittee analyzed the current trading environment seeking to identify the needs of today's markets with the objective of enhancing specialist performance and market quality to meet those needs. Both the Subcommittee and the MPC view this process as ongoing and dynamic in that the performance measures recommended today should be re-evaluated and adjusted, or, if appropriate, some measures deleted and new ones added from time to time in response to changing market conditions. However, any such modification, deletion or addition would be communicated to the membership at least one quarter before it is implemented, and would be formally reflected in the text of the Rule.[4]

The revised Rule would incorporate several existing and newly developed measures and standards of specialist performance where below standard performance on any one measure, independently, would result in a Performance Improvement Action. They are:

SPEQ—For the new Specialist Performance Evaluation Questionnaire of "SPEQ" implemented in 1986 (described in more detail in File No. SR–NYSE–85–14),[5] the standard would be set at the "Adequate" level both in terms of overall performance (or a numerical overall median score at or above 117 of 225 points possible), and in each of the five functions (or a functional median score at or above 24 of 45 points possible) measured by the Questionnaire—the dealer function, agency function, and auction market maintenance, communication and administrative functions. A unit would be below the standard if it failed to achieve an overall "Adequate" score in any one quarter or, it failed to achieve an "Adequate" score in the same or any two functions for two consecutive quarters. Based on past experience, the Exchange believes the SPEQ has proven to be an effective means of encouraging high quality specialist performance both overall and by individual units.

Openings—Both regular and delayed. As to regular openings, the timeliness of a unit's common and non-convertible preferred stocks' openings relative to the Exchange's 9:30 a.m. opening time, would be measured. Below standard performance would be any case where, for two consecutive quarters, a specialist unit has not opened, at least 90% of the time, one or more of its common or non-convertible preferred stocks, by means of an opening trade or a quotation, by 9:45 a.m. In calculating a unit's performance in this area, regulatory delayed openings, and post-9:45 a.m. late openings certified by a Floor Official as being justified by market conditions related to particular stocks, would be excluded. The Exchange views timely openings as facilitating transactions in securities, and, in general, contributing to the maintenance of fair and orderly markets which is in the public interest.

The revised Rule also provides a means of measuring the timeliness of requests for non-regulatory delayed openings, as evaluated by Floor Officials and noted on a "Delayed Opening/Halt in Trading" Form. Substandard performance would be defined as any case where a specialist unit receives unfavorable Floor Official evaluations equal to 15% of its registered common stocks, or a minimum of seven, whichever is greater, as to the timeliness of the unit's request for a non-regulatory delayed opening, in any quarter.[6] The Exchange believes that the timely request for the assistance of a Floor Official in arranging an opening may, in some instances, obviate the need for a delayed opening thereby contributing to the proper functioning and overall orderliness of Exchange markets.

OARS (or the Opening Automated Report Service features of the Exchange's SuperDOT system designed to accept member firm's pre-opening market orders)—The timeliness of a unit's inputting of OARS price cards relative to each eligible security's opening time would be measured. Substandard performance would be any case where, for any two quarters during a "rolling" four quarter period, a specialist unit fails to input 90% of its OARS price period, a specialist unit fails

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[2] *See*, Securities Exchange Act Rel. No. 20851 (April 11, 1984), 47 FR 15300.

[3] *See*, Securities Exchange Act Rel. No. 24836, August 21, 1987, 52 FR 32860.

[4] Any changes to the performance measures would have to be approved by the Commission pursuant to section 19(b) of the Act.

[5] *See*, Securities Exchange Act Rel. No. 22036 (May 14, 1985) 50 FR 21007.

[6] For example, a unit with 100 registered common stocks would be deemed to have performed unsatisfactorily and hence, subject to a Performance Improvement Action, if it received 15 unfavorable Floor Official evaluations concerning openings in any one quarter. Similarly, a unit with only 5 registered common stocks would have to receive 7 unfavorable Floor Official evaluations concerning its openings in any one quarter to be subject to a Performance Improvement Action.

to input 90% of its OARS price cards within 10 minutes of the respective openings of each eligible security.

DOT—The DOT turnaround performance, concerns a unit's ability to execute and report post-opening market orders up to 2,099 shares through the SuperDOT system on a timely basis. The current standard that 90% of a unit's post-opening market orders be turned around in two minutes or less would be adopted in the revised Rule. A unit would be subject to a Performance Improvement Action if it fell below this standard in any two quarters in a "rolling" four quarter period.

Status Requests—The timeliness of a response, in relation to the time a member firm inquiry as to the status of an order is received by a specialist unit through the SuperDOT system would be measured. A unit would be deemed to be below standard if it does not respond to 75% of its status requests in 30 minutes, during any two quarters in a "rolling" four quarter period.

The performance measures related to the timeliness of the in-putting of OARS price cards, timely DOT turnaround performance and the timeliness of a unit's responses to status requests are designed to promote the efficiency of the processing of information with respect to securities transactions which are in the interest of both the membership of the Exchange and public investors.

Marketshare—The revised Rule would state that where market share in any issue has declined significantly within two is attributable to factors within the control of the unit, and, if so, a Performance Improvement Action would be initiated.

To assist the MPC, the Subcommittee identified a number of factors affecting marketshare performance which they believe are, generally, within the control of specialist units. They are a unit's commission rates, whether a unit takes advantage of available automated systems, whether a unit is overly aggressive in break-ups of block crosses and specialist performance in general. The Subcommittee also noted several factors which they believe are not generally within the control of specialist units, such as the proprietary interests of some member firm order suppliers with market-making operations at other market centers. The MPC intends to consider these, and possibly other factors in determining whether below standard marketshare performance is attributable to those within the control of specialist units.

The marketshare measure is intended to contribute to the Exchange's efforts to maintain and improve its competitive position, and, generally, to stimulate competition among exchange markets that is consistent with section 11A of the Act, and is in the public interest and appropriate for the protection of investors.

The Performance Improvement Action Process

Once a unit falls below any specific performance standard set forth in revised Rule 103A, a Performance Improvement Action would be triggered. In such a proceeding all notifications to a specialist unit would be in writing, and a written record of the MPC's deliberations would be maintained.

In the event of such an action, the MPC would identify one or more specific, measurable performance goals the unit would be expected to achieve. The specific goal(s) would be related to the area of performance where the unit's performance was below standard. For example, should a unit fall below the DOT standard as described above, the MPC may identify as a performance improvement goal that the unit improve its DOT turnaround performance to a level at or above the minimum acceptable performance standard. In addition, the MPC may also identify as a performance improvement goal that the unit maintain a level of DOT turnaround performance at or above standard for a specific time period as evidence of sustained performance improvement. However, the identification of specific, measurable performance goals a unit would be expected to achieve may vary from case-to-case based on the nature of the performance problem.

The MPC would designate an appropriate Performance Improvement Period, within which the unit is to achieve its performance goals (no specific time period would be prescribed in the Rule). The MPC would determine an appropriate time period in each case based on the nature of the problem, and the steps the unit plans to take to achieve its goals.[7] In order to provide the MPC with another viewpoint of the unit's progress and performance improvement, the MPC would select a four-person Monitoring Team (composed of non-Market Performance MPC members and consisting of two specialists and two non-specialists) who would render a report on the unit's results to the MPC at the end of the Performance Improvement Period. The Monitoring Team would be randomly selected as needed from a pool of qualified individuals nominated by the various Exchange constituent groups and previously approved by the MPC.[8] At the end of the time period allotted, the MPC would review the Monitoring Team's report [9] and related performance data. The unit would then be judged solely on the basis of whether or not it achieved the improvement goals set by the MPC. At any time throughout the process an allocation "freeze" may be imposed if the MPC believes such action would encourage the unit to achieve its performance goals.

Should the unit achieve its goals, the Performance Improvement Action would be concluded. However, should the unit fail to do so, the MPC would initiate a Reallocation Proceeding. In such a proceeding, the MPC would determine one or more of the unit's stocks to be reallocated. In selecting stocks for reallocation the MPC would consider specific data indicating particular stocks where performance may have been deficient. In this regard, some of the objective measures developed, such as OARS and DOT, may be helpful to the MPC in making its determination. In addition, a question on the new SPEQ elicits the evaluator's "specific, professional comments relative to the unit's handling of a particular stock, type of stock or market situation and the performance of any individual specialist within the unit." Responses to this question may also be useful to the MPC in selecting stocks for reallocation.

Due Process Safeguard

The procedural safeguards incorporated in both the Performance Improvement Action and Reallocation Proceedings are designed to balance the need for the Exchange to maintain an effective performance improvement process with the due process rights of specialists registered in Exchange listed securities. For example, all notifications to a specialist unit would be in writing and would specify the reasons that have lead the MPC to make a particular determination. A specialist unit would

[7] Each unit must develop a performance improvement plan whereby it identifies strategies it intends to employ to meet the MPC's performance goals. The unit may devise its own strategies or use the assistance of the monitoring team. The MPC reviews the unit's plan and either approves the plan or modifies it.

[8] In this regard, we note that the Exchange currently selects members of its allocation panel in a similar fashion.

[9] The rule also permits the Monitoring Team, at its discretion, to submit interim reports to the MPC notifying the MPC of the unit's progress in meeting its performance improvement goals. In the interim report, the Monitoring Team may recommend that the performance improvement action be concluded if the unit's performance so warrants; recommend that the performance improvmeent plan be altered including extending the performance improvement period; and, recommend the imposition of an allocation freeze to stimulate improved specialist performance.

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also be given the opportunity to appear before the MPC and present its case and a written record of the MPC's deliberations would be maintained. Further, a unit may appeal any adverse decision of the MPC to the Exchange's Board of Directors pursuant to the provisions of Article IV, Section 14 of the Exchange's Constitution.

Other Features of the Revised Rule

Three additional features of the revised Rule would also deal with:

First, egregious situations. In cases of specialist performance so egregiously deficient as to call into question the integrity and reputation of Exchange markets, the MPC would be able to by-pass the Performance Improvement Action process and move directly to a reallocation proceeding. In effect, it provides the MPC with a means of dealing with the worst cases in a timely fashion.

In an egregious situation, as in all actions under Rule 103A, the specialist unit would have the right to appear before the MPC and present its case. The unit would also have the right, as provided in the Exchange's Constitution, to seek review by the Exchange's Board of Directors of any adverse decision.

Second, in order to minimize the possible perception of a conflict of interest in the event of a reallocation under the Rule, the member organizations of individuals serving on the MPC, and the organizations of the particular Monitoring Team members assigned to monitor and assist a unit, would be barred from applying for any stock to be reallocated.

Third, the MPC may review performance related data pertaining to any unit relative to the unit's peers. Where appropriate, the MPC may engage in educational counseling to improve a unit's performance.

The Exchange intends that the two-year pilot period would commence upon actual implementation of the new program by the Exchange. Following any Commission approval, the Exchange intends to give its membership one quarter's advance notice before actually implementing the program. The pilot program is intended to permit the Exchange to monitor the operation of the revised Rule and its associated processes under actual conditions and to make such modifications to the proposed revised Rule as may be deemed appropriate. After an appropriate evaluation period, the Exchange expects to codify the revisions with the Commission and to request permanent approval of Rule 103A.

2. *Basis Under the Act for Proposed Rule Change.* The statutory basis for the proposed rule change is section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designd to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove inpediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by October 14, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 15, 1987.

[FR Doc. 87-21901 Filed 9-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24926; File No. SR-NYSE-87-32]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc.; Auxiliary Closing Procedures for Orders Relating to Expiring Stock Index Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 15, 1987, the New York Stock Exchange, Inc. ("NYSE"or Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, for which Items I and II have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds auxiliary closing procedures for assisting in handling the order flow associated with the concurrent expiration of stock index futures, stock index options and options on stock index futures on September 18, 1987. It requires the use of procedures substantively identical to those used on June 19, 1987 and on several earlier Expiration Fridays. Only the list of the pilot stocks affected by the rule change has been altered, due to one name change and the substitution of four stocks, as a consequence of changes in trading activity.

Specifically, the auxiliary procedures provide that market-at-the-close stock orders in pilot stocks relating to index arbitrage positions must be received by the Exchange by 3:30 p.m. on September

18. The Exchange will promptly disseminate the size of substantial market other imbalances (50,000 shares of more as of 3:30 p.m.) in 50 pilot stocks. The procedures also ban entry of market-at-the-close orders after 3:30 p.m. unless the orders: (1) Offset the imbalances, and (2) are not for the purpose of liquidating an index arbitrage position.

The Exchange characterizes the proposed rule change as a Rule of the Board of Directors of the Exchange. The proposed rule change supercedes all other Exchange rules and policies inconsistent with it.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose.* The purpose of the proposed rule change is to comply with the request of the Commission that the Exchange repeat the June 19 closing procedures on September 18, 1987. The proposed rule change will make the procedures a rule of the Exchange.

2. *Statutory.* The basis under the 1934 Act for the proposed rule change in section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The market-on-close procedures described here have been utilized on the prior four Expiration Fridays (the quarterly expiration when stock index futures, stock index options and options on stock index futures have simultaneous expirations). These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility that has been associated with certain index arbitrage trading strategies on Expiration Fridays. By requiring submission of market-at-close orders early and disseminating imbalances, the NYSE could attract contra-side interest to alleviate imbalances caused by the closing of index arbitrage positions. The procedures have proven to be operational successes, and have significantly contributed to the smooth handling of the increased order flow associated with these expirations.

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Commission finds good cause for approving this rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Commission desires to notify market participants as soon as possible of the Exchange's intention to repeat these procedures on the upcoming September 18, 1987 expiration. Moreover, the procedures contain no substantive changes from the procedures utilized by the NYSE on June 19, 1987 and several earlier Expiration Fridays.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to the file number in the caption above and should be submitted by October 14, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 17, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21896 Filed 9-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15988; 812-6831]

Application; Charter National Life Insurance Co.

September 17, 1987.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Charter National Life Insurance Company ("Charter"), Charter National Variable Annuity Account (the "Variable Account") and CNL, Inc. ("CNL") (collectively referred to as "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue variable annuity contracts which provide for the deduction of mortality and expense risk charges from the assets of the Variable Account.

Filing Date: August 13, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to

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the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, Charter National Life Insurance Company, 8301 Maryland Ave., St. Louis, Missouri 63105.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel, (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Charter, a stock life insurance company incorporated under Missouri law on December 7, 1955, is a wholly-owned subsidiary of Leucadia National Corporation, a New York corporation ("Leucadia"). Leucadia is a diversified holding company, the common stock of which is listed on the New York Stock Exchange and the Pacific Stock Exchange.

2. The Variable Account was established under Missouri law on May 15, 1987, and is registered as a unit investment trust under the Act. The Variable Account was established by Charter in connection with the proposed issuance of certain variable annuity contracts (the "Contracts").

3. The Contracts are single premium variable deferred annuities which, subject to certain conditions and limitations, allow contract owners to make additional payments of premiums. The Contracts may be purchased with a minimum initial premium of $15,000.

4. If the annuitant dies prior to the date annuity payments are scheduled to begin (the "Maturity Date") and the Contract is in force, a death benefit will be paid to the designated beneficiary under the Contract.

5. CNL, a wholly-owned subsidiary of Charter and a broker-dealer registered with the SEC under the Securities Exchange Act of 1934, will serve as the principal underwriter for the Contracts.

6. The Variable Account will invest exclusively in the Scudder Variable Life Investment Fund (the "Fund"). The Variable Account currently has five subaccounts (the "Subaccounts"), each of which invests solely in a specific corresponding portfolio of the Fund (the "Portfolios"). The Fund is a diversified, open-end management investment company and was organized as a Massachusetts Business Trust on March 15, 1985. Premiums paid under a Contract will be allocated, as directed by the contract owner, to one or more of the Subaccounts and/or to Charter's general account (the "General Account").

7. A charge is made against the value of net assets in each Subaccount to reimburse Charter for certain mortality and expense risks assumed under the Contracts and for the costs of administering the Contracts and the Variable Account. The mortality risk borne by Charter under the Contracts is to pay death benefits prior to the Maturity Date and to make periodic annuity payments regardless of how long all annuitants may live. The expense risk undertaken by Charter is that the actual expenses involved in administering the Contracts may exceed the amount recovered from the contract administration charge and the records maintenance charge.

8. The mortality and expense risk charge will be deducted from the value of net assets in each Subaccount on a daily basis in an amount equal to an effective annual rate of .90%. Of that amount, approximately .70% is charged to cover the mortality risk and approximately .20% is charged to cover the expense risk. The rate of this charge is guaranteed not to increase over the life of the Contracts.

9. A daily charge is deducted from the value of net assets in each Subaccount to cover the cost of administering the Contract and the Variable Account in an amount equal to an effective annual rate of .40%. Administrative expenses related to the Contracts include, among other things, (i) processing Contract applications, Contract changes, cash surrenders, death claims and premiums; (ii) record keeping and reporting; an (iii) overhead costs. In addition, if a Contract has an Accumulated Value of less than $50,000 on a Contract Anniversary, a records maintenance charge of $30 will be deducted from the Accumulated Value on that date. The administration charge and the records maintenance charge represent reimbursement only for the administrative costs expected to be incurred over the life of the contract. Charter does not expect or intend to make a profit from these charges. The rates of these charges are guaranteed not to increase over the life of the Contracts.

10. Charter does not impose a sales charge at the time a premium is paid under the Contract. However, a contingent deferred sales charge ("Surrender Charge") is imposed on certain partial and full surrenders to cover certain expenses relating to the sale of the Contracts.

11. The Surrender Charge for withdrawal of a permium in the contract year a premium is paid is 6% of such premium. The Surrender Charge decreases by 1% for each additional contract year the preimum remains on deposit under the Contract before withdrawal. The amount of any applicable Surrender Charge is calculated on the premiums not previously withdrawn without regard to any increase or decrease in the Accumulated Value. The amount of the Surrender Charge will be calculated as a percentage of each premium paid under the Contract. The applicable Surrender Charge will be determined based upon the date the written request for surrender is received by Charter and will be calculated with respect to premiums paid under the Contract on a first-in, first-out basis.

12. The Surrender Charge may be insufficient to cover all distribution expenses. However, any deficiency will be met from Charter's general corporate funds, which may include amounts derived from the mortality and expense risk charge.

13. Applicants submit that the mortality and expense risk charge is a reasonable charge to compensate Charter for the risk that (i) annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts, (ii) the mortality rate of annuitants prior to the Maturity Date will be greater than anticipated in establishing the death benefit payable under the Contract, and (iii) administrative expenses will be greater than the amounts derived from the contract administration charges, including the records maintenance charge.

14. Charter represents that the charge of .90% for mortality and expense risks assumed by Charter is within the range of industry practice with respect to comparable annuity products. This representation is based upon Charter's analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, and guaranteed annuity rates of such contracts. Charter represents that, as a further condition for this relief, it will maintain at its administrative offices, and make available to the SEC, a memorandum setting forth in detail the products analyzed in the course of, and

the methodology and results of, its comparative survey made to support this representation.

15. Charter also represents that it has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and contract owners. As a further condition for relief, Applicants represent that a memorandum, setting forth the basis for this representation, will be maintained by Charter at its administrative offices and will be available to the SEC.

16. Applicatns also represent as a condition of this relief, that the Variable Account will invest only in management investment companies which undertake, in the event that it should adopt any plan to finance distribution expenses under Rule 12b–1 under the Act, to have a board of directors, a majority of whom are not interested persons of the company, formulated and approve any such distribution plan pursuant to the provisions of Rule 12b–1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–21897 Filed 9–22–87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–15979; 812–6767]

Application; GMO Core Trust

September 15, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order amending an existing order of exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: GMO Core Trust, a Massachusetts business trust (the "Applicant" or the "Trust").

Relevant 1940 Act Sections: Exemption requested under section 6(c) and 17(b) from section 17(a).

Summary of Application: Applicant seeks an amendment to an order dated November 14, 1986 (Investment Company Act Release No. 15415) exempting Applicant from section 17(a) of the Act to the extent necessary to permit stockholders of Applicant's Domestic Equity Series ("Domestic Equity Fund") to purchase and redeem shares of that series in-kind. The amendment would permit shareholder's owning more than 5% of the outstanding shares of the Trust or of the Applicant's Domestic Equity (South Africa Free) Series ("South Africa Free Fund"), the International Series ("International Fund") or any subsequently created series to purchase and redeem shares of the relevant series in-kind.

Filing Date: The application was filed on June 23, 1987.

Hearing or Notificqtion of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 125 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel, (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, diversified management investment company registered under the 1940 Act and currently has three portfolios (each a "Fund" and together with any subsequently created series, the "Funds") represented by shares of the Domestic Equity Fund, South Africa Free Fund and International Fund, respectively. Each Fund is advised and managed by Grantham, Mayo, Van Otterloo & Co. ("Manager").

2. Shares of each Fund are sold to investors by the Applicant. The minimum initial investment for the Domestic Equity Fund, the South Africa Free Fund and the International Fund (collectively, the "Extant Funds") is $2,500,000 and the minimum subsequent investment in the Extant Funds is $250,000 minimum. The initial investment for any Fund other than an Extant Fund will be at least $2,000,000 and the minimum subsequent investment for any such Fund will be at least $100,000. Related investors in a Fund may aggregate investments for the purposes of these minimum investment requirements in accordance with policies approved by the Applicant's board of trustees from time to time. The Applicant's prospectus and statement of additional information (together, the "Prospectus") provide that an investor may purchase shares of any Fund either in cash or in exchange for shares of common stock owned by the investor ("in-kind investments") or a combination thereof. The purchase price of shares is the net asset value of the shares determined after the purchase order is received plus a premium established from time to time by the Applicant. The premium on in-kind investments in the Domestic Equity and South Africa Free Funds is .10% of the net asset value of the shares. For the International Fund, there is currently no premium on in-kind investments. The premiums are paid to and retained by the relevant Fund.

3. An investor may make an in-kind investment in a Fund only if (1) the Manager, in its sole discretion, believes the investor's securities are appropriate investments for the Fund, (2) the investor represents and agrees that all securities offered to the Fund are not subject to restriction upon their sale by the Fund under the Securities Act of 1933, or otherwise, and (3) the securities may be acquired under the investment restrictions applicable to the relevant Fund. The Prospectus currently prohibits in-kind investments in the South Africa Free or International Funds by any investor who owns greater than 5% of the shares of the relevant Fund.

4. Shares of each Fund are redeemed at the net asset value per share of the relevant Fund next determined after receipt of the redemption request, less the applicable redemption fee. In the case of the Domestic Equity and South Africa Free Funds, the redemption fee for in-kind redemptions will be .10%. For the International Funds, there is no redemption fee on redemptions in-kind. Redemption fees will be retained by the relevant fund and are intended to cover brokerage and other expenses of the Fund arising out of redemptions.

5. The Applicant seeks an exemption to permit shareholders owning more than 5% of the outstanding shares of the Trust or of the South Africa Free Fund. the International Fund or any subsequently created Fund (such shareholders not otherwise "affiliated persons" of the Trust within the meaning of section 2(a)(3) of the 1940 Act being referred to as "Affiliated Sharedholders" of the Trust or a Fund) to make in-kind investments in the relevant Fund and to permit the

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Applicant to redeem shares of Affiliated Shareholders in -kind. The Applicant received an order dated November 14, 1986 (Investment Company Act of 1940 Release No. 15415) exempting it from section 17(a) of the Act to the extent necessary to permit shareholders who own more than 5% of the shares of the Domestic Equity Fund to purchase and redeem shares of the Domestic Equity Find in-kind.

Applicant's Conditions

This Application is subject to the following conditions:

1. The securities acquired by each Fund in an in-kind investment or distributed to an Affiliated Shareholder pursuant to a redemption in-kind (the "Securities") will be limited to securities which are listed on a securities exchange or for which quoted bid prices are available.

2. The Securities will be valued, in the case of Securities listed on a securities exchange for which market quotations are available, at their last quoted sales price, or, if there is no such reported sale, at the most recent quoted bid price and, in the case of unlisted equity Securities, at the most recent quoted bid price.

3. The Applicant's board of trustees, including a majority of the trustees who are not interested persons (as defined in the 1940 Act) of the Applicant (the "Independent Trustees") will determine no less frequently than annually: (a) Whether the Securities have been valued in accordance with Condition 1, (b) whether the acquisition or distribution of any such Securities is consistent with the policies of the relevant Fund as reflected in the Prospectus, and (c) whether the procedures for valuation and review described in Condition 2 and this Condition 3 continue to be appropriate.

4. The Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any in-kind investment by, or redemption in-kind to, an Affiliated Shareholder occurred, the first two years in an easily accessible place, a written record of each such investment or redemption setting forth a description of each Security distributed, the identity of the Affiliated Shareholder, the terms of the acquisition or distribution and the information or materials upon which the valuation described in Condition 2 were made.

Applicant's Legal Conclusions

The proposed transactions, including the consideration to be paid and received, are fair and reasonable, do not involve overreaching by either the Applicant or an Affiliated Shareholder, are consistent with the investment policies of the Funds, are necessary or appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21898 Filed 9-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15982; File No. 812-6744]

Application; The Mutual Life Insurance Company of New York, et al.

September 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Mutual Life Insurance Company of New York ("MONY"), MONY Life Insurance Company of America ("MONY America"), MONY Legacy Life Insurance Company ("MONY Legacy") (together, "Companies"), MONY America Variable Account A, and MONY Legacy Variable Account A ("Account(s)").

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants request exemption to deduct a daily mortality and expense risk charge equal to an effective annual rate of 1.25%, with .80% for mortality and .45% for expense risk assumptions, in connection with certain variable annuity contracts ("contracts").

Filing Date: The application was filed on June 3, 1987, and amended on August 26, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken, (202) 272-2058 or Special Counsel Lewis B. Reich, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copies (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Companies are stock life insurance companies. MONY America is organized under the laws of Arizona; MONY Legacy, under the laws of New York. The Accounts are (will be) registered under the 1940 Act as a unit investment trust. MONY, a registered broker-dealer, is the principal underwriter for the contracts.

2. During the period prior to the annuity commencement date, the contractholder may allocate purchase payment(s) among six subaccounts of the Accounts, and each subaccount will invest only in a corresponding portfolio of MONY Series Fund, Inc. ("Fund"). A transfer charge of $15 (which may be raised to an amount not exceeding $25) will be imposed for each transfer instructed by the contractholder in excess of four transfers in a contract year. A contingent deferred sales charge ("Surrender Charge") will be deducted, when applicable, in the event of a surrender. In no event will the aggregate Surrender Charge exceed 5 percent of the total purchase payments made in the contract year of the surrender and during the five preceding contract years.

3. An annual contract charge is deducted from cash value on each contract anniversary prior to the annuity commencement date, on the annuity commencement date, and on full surrender of the contract. This charge is currently $30, and will never exceed $50.

4. A daily charge equivalent to an annual rate of 1.25%, with .80% for mortality and .45% for expense risk assumptions, will be deducted from the values of the net assets of the Accounts to compensate for mortality and expense risks assumed in connection with the contracts. The mortality risk assumed is that annuitants may live for a longer time than projected, and that an aggregate amount of annuity benefits greater than that projected will accordingly be payable. The expense

risk assumed is that expenses incurred in issuing and administering the contracts will exceed the administrative charges provided in the contracts.

5. Exemption from the provisions of section 26(a)(2)(C) and 27(c)(2) is requested to the extent necessary to permit the deduction of a mortality and expense risk charge. Applicants represent that:

(a) The mortality and expense risk charge has been designed to reasonably compensate the Companies for the assumption of mortality and administrative and sales expense risks.

(b) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts based on the Companies' analyses of publicly available information, taking into account current charge levels, the manner in which charges are imposed, guarantees of charge levels or annuity rates, and the markets in which the contracts will be offered. The Companies have incorporated the identity of the products analyzed and their analyses, including their methodology and results, into memoranda which they will maintain as long as there are contracts outstanding, and will make available to the SEC or its staff upon request.

(c) The sales charge may be insufficient to cover all costs relating to the distribution of the contracts. Applicants have concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Accounts and contractholders, and Applicants will maintain and make available to the SEC or its staff a memorandum setting forth the basis for this representation; and

(d) The Accounts will invest only in management investment companies which undertake, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1, to have such a plan formulated and approved by a board of directors or trustees, the majority of whom are not "interested persons" of the management company.

6. The exemption requested to permit the deduction of the mortality and expense risk charge is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–21899 Filed 9–22–87: 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24462]

Applications; Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 17, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 13, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Middle South Utilities (70–6985)

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its electric generating subsidiary, System Energy Resources, Inc. ("SERI"), (formerly, Middle South Energy, Inc.), P.O. Box 23070, Jackson, Mississippi 39225 and MSU's operating electric utility subsidiaries, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174 and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, have filed a post-effective amendment to a declaration pursuant to sections 6(a) and 7 of the Act.

By supplemental order dated August 2, 1985 (HCAR No. 23782), the Commission authorized certain amendments to a Foreign Bank Loan Agreement among SERI, Credit Suisse First Boston Limited, as agent, and the banks listed therein ("Foreign Banks") and to a Domestic Bank Loan Agreement among SERI, Manufacturers Hanover Trust Company and Citibank, N.A., as agents ("Domestic Agents") and the banks listed therein ("U.S. Banks"). The Foreign and U.S. Banks have consented to the deferral by SERI of payment of installments under the loan agreements ("Deferred Installments"), one in the amount of $125 million due September 1, 1987 under the Domestic Bank Loan Agreement, and another in the amount of $47,250,000 due August 5, 1987 under the Foreign Bank Loan Agreement. Payment of the Deferred Installments is to take place, at the earliest, within specified periods of time following certain possible events. The latest date on which such payment could be made is December 15, 1987.

In connection with these deferrals, SERI seeks approval for amendments to the bank loan agreements concerning (i) fees, (ii) additional interest, (iii) the allocation of proceeds from new issuance of SERI debt and equity securities to the Deferred Installments, (iv) certain restrictions on the declaration or payment by SERI of dividends on its capital stock (excluding dividends on its preferred stock, its preference stock and its common shares, so long as there is no event of default under the bank loan agreements), (v) certain restrictions on the redemption or purchase by SERI of its first mortgage bonds, and (vi) approval by the Domestic Agents of a trust company or bank in Mississippi into which SERI may deposit on a monthly basis an amount equal to revenues collected by MP&L from its customers for its share of the costs of the Grand Gulf nuclear unit after June 1, 1987, as authorized in connection with certain guarantees by SERI and MSU bonding arrangements by order of the Commission dated September 10, 1987 (HCAR No. 24458).

Energy Credit Insurance Limited, et al. (70–7388)

Energy Credit Insurance Limited

("ECIL"), P.O. Box 1262, Hamilton 5, Bermuda, New England Power Company ("NEPCO"), 25 Research Drive, Westborough, Massachusetts 01581, an electric utility company subsidiary of New England Electric System ("NEES"), a registered holding company, The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, two electric utility company subsidiaries of Northeast Utilities ("Northeast"), a registered holding company, Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts, an electric utility company subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, and EUA Power Corporation ("EUA Power"), Utility Park, P.O. Box 719, 111 Amherst Street, Manchester, New Hampshire 03105, a subsidiary of EUA organized to hold ownership interest in several nuclear electric generating facilities, have filed an application pursuant to sections 2(a)(8), 9(a), and 10 of the Act.

ECIL is a Bermuda corporation organized initially to provide decommissioning fund insurance coverage to four New England nuclear electric generating facilities owned or sponsored in part by NEPCO, CL&P, Montaup, WMECO and EUA Power. ECIL proposes to insure Yankee Atomic Power Company, Vermont Yankee Atomic Power Corporation, Maine Yankee Atomic Power Company, and Connecticut Yankee Atomic Power Company (collectively, "the Yankee plants") against the risk of their sponsors becoming insolvent and failing to provide for their proportionate share of decommissioning cost obligations. The record also states that ECIL may consider offering comparable insurance in connection with other utility joint-ventures where credit risks of individual participants are a concern.

NEPCO, WMECO, CL&P and Montaup propose to acquire 100 shares each of ECIL's Class A voting stock $1 par value. Based upon their percentage ownership interests in the Yankee plants, NEPCO, CL&P, WMECO and Montaup propose to acquire ECIL's Class B non-voting stock $1 par value in respective amounts of 52,507, 13,933, 57,710 and 11,159 shares. ECIL's proposed capital structure is 10,000 shares of authorized Class A voting stock $1.00 par value and 500,000 shares of authorized Class B non-voting stock $1.00 par value.

Stock subscription in ECIL will initially be limited to 13 subscribers. The applicants state that Class A voting stock will be equally divided among the 13 subscribers and that NEPCO, CL&P, WMECO and Montaup each will hold a 7.7% voting stock interest in ECIL.

Premiums would be paid by the Yankee plants. The proposed aggregate initial premium contribution is $1,103,000, based upon the applicants' best estimate of decommissioning costs. It is stated that such costs are ultimately unknown. Funds in the corporation will be invested according to standards mutually developed between the subscribers of the corporation and will be subject to Bermuda regulatory jurisdiction.

As Class A voting shareholders, NEPCO, CL&P, WMECO and Montaup each may appoint a representative to ECIL's board of directors. Each representative will be issued one share of Class A voting stock as required by Bermuda law; NEPCO, CL&P, WMECO, Montaup, and perhaps EUA Power propose to acquire the beneficial interest of the shares issued to their directors.

The applicants may in the future also insure the Seabrook and Millstone II nuclear generating facilities as well as the Yankee plants. In that event, EUA Power Corporation would acquire all of Montaup's Class A voting and Class B non-voting stock, and additional Class B non-voting stock for a total of 100 shares of Class A voting and 32,236 shares of Class B non-voting stock.

Northeast, will become an indirect holder of 15.4% of ECIL's Class A voting stock through the proposed acquisitions of its subsidiaries, CL&P and WMECO. The applicants request an order under section 2(a)(8) of the Act declaring that ECIL is not a subsidiary of Northeast, because, among other reasons: (i) Northeast would only appoint 2 out of 13 directors on ECIL's board, (ii) Northeast could vote only 15.4% of ECIL's closely held stock, the remaining voting stock being equally held and voted by 11 parties; and (iii) ECIL's management and policy decisions are assertedly subject to alternative regulation by state and foreign governments and by the Federal Energy Regulatory Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21900 Filed 9-22-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1115]

Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 20, 1987 in the First Floor Theater of the COMSAT Building, 950 L'Enfant Plaza SW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 5 deals with propagation of radio waves (including radio noise) at the surface of the earth, through the non-ionized regions of the earth's atmosphere, and in space where the effect of ionization is negligible. The purpose of the meeting is to receive and approve documents in preparation for the international meeting of Study Group 5 in 1988.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

Date: September 10, 1987.

[FR Doc. 87-21889 Filed 9-22-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Order 87-9-41; Dockets 45028, 45067, and 45070]

London-Frankfurt Exemption Proceeding; Statement of Tentative Findings and Conclusions; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Tentative decision and order to show cause (Order 87-9-41)—Dockets 45028, 45067, and 45070.

SUMMARY: The Department has tentatively selected Trans World Airlines, Inc. (TWA), to be granted an exemption under section 416(b) of the Federal Aviation Act to carry local traffic between London and Frankfurt during the next two off-peak travel seasons (October 29–May 14). Because only one additional carrier may be

selected now, the competing application of Northwest Airlines would be denied.

DATES: Objections/answers to the show cause order, Order 87–9–41, are due September 28, 1987; and replies will be due October 5, 1987.

ADDRESS: Objections, answers, and replies shall be filed in Docket 45028, addressed to the Documentary Services Division (C–55), U.S. Department of Transportation, 400 Seventh Street, SW, Room 4107, Washington, DC 20590, and shall be served on all parties in Docket 45028.

Dated: September 17, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–21989 Filed 9–22–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Flight Service Station at La Junta, CO; Closing

Notice is hereby given that on or about September 24, 1987, the La Junta, Colorado Flight Service Station will be closed. Services to the aviation public formerly provided by this facility will be provided by the Automated Flight Service Station in Denver, Colorado. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Section 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Timothy Pile,

Acting Director, Northwest Mountain Region.

Issued in Seattle, Washington, on September 11, 1987.

[FR Doc. 87–21859 Filed 9–22–87; 8:45 am]

BILLING CODE 4910–13–M

Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment, TCAS I

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standand order (TSO) and request for comments.

SUMMARY: The proposed TSO–C118 prescribes the mininum performance standands that a traffic alert and collision avoidance system (TCAS) airborne equipment, TCAS I, must meet to be identified with the marking "TSO–C118."

DATE: Comments must identify the TSO file number and be received on or before December 31, 1987.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C118, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO–C118 may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" TSO–C118 references RICA/DO–197, dated March 20, 1987, for minimum performance standards, RTCA/DO–178A for the computer software requirements, and RTCA/DO–160B for the environnental standards. RTCA/DO–197, DO–178A, and DO–160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

Issued in Washington, DC, on September 15, 1987.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–21860 Filed 9–22–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 16, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0074.
Form Number: 1040.
Type of Review: Resubmission.
Title: U.S. Individual Income Tax Return.
Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households.
Estimated Burden: 305,441,661 hours.

OMB Number: 1545–0121.
Form Number: 1116.
Type of Review: Resubmission.
Title: Computation of Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien Individual.
Description: Form 1116 is used by individuals (including nonresident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit.
Respondents: Individuals or households.
Estimated Burden: 637,769 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–21868 Filed 9–22–87; 8:45 am]

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Public Information Collection Requirements Submitted to OMB for Review

Date: September 17, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0130.
Form Number: 1120S.
Type of Review: Resubmission.
Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses, and Shareholder's Share of Income, Credits, Deductions, etc.—1987.
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S Corporation to figure its tax liability and income and other tax-related information to pass through to its shareholders. Schedule K–1 is given to shareholders to assist them in preparing their separate income tax returns. IRS uses the information to determine the correct tax for the S Corporation and its shareholders.
Respondents: Farms, Businesses or other for profit, Small businesses or organizations.
Estimated Burden: 10,223,535 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87–21869 Filed 9–22–87; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Burkina Faso: State and Local Government Project

The Office of Private Sector Programs will assist in supporting a seventeen-day study tour that will bring approximately seven officials from Burkina Faso's Ministry of State and Territorial Administration to the US to gain a better understanding of American state and local government. The Burkinabe participants will be selected by USIA representatives abroad. The project, slated for late fall or winter 1987, will emphasize the interrelationship between state and local government while familiarizing the participants with a number of civic institutions. The project will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of intergovernmental affairs. The project design should also address issues in decentralized planning in the fields of education and rural transportation.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: August 18, 1987.
Robert Francis Smith,
Director, Office of Private Sector Programs.
[FR Doc. 87–21877 File 9–22–87; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

Topic and Rules of the National Peace Essay Contest 1987–88

ACTION: Notice.

SUMMARY: The United States Institute of Peace is a national, independent, nonprofit corporation, established by Title XVII of the Defense Authorization Act of 1985, Pub. L. 98–525 (Oct. 19, 1984), codified at 22 U.S.C. 4609(a). With this notice, the Institute announces the formal launching, on October 1, 1987, of its annual essay contest at the high school level. In September, materials on the contest will be mailed to all public and private high schools throughout the United States and to Overseas Dependent Schools. This year's contest topic concerns the relationship between human rights and international peace. Essays are limited to 1,500 words and, to be eligible, must be published in an official high school publication between October 15, 1987 and March 1, 1988. Winners will be selected at state and equivalent-unit levels and at the national level and will receive college scholarships; their sponsoring publications will receive special award certificates.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth M. Jensen, National Peace Essay Contest, United States Institute of Peace, P.O. Box 27720 Central Station, Washington, DC 20038–7720, telephone (202) 789–5700.

Topic and Rules

Following are the topic and rules for the National Peace Essay Contest 1987–88. The Institute welcomes public comment.

National Peace Essay Contest 1987–88 Official Topic

In preparing to write your essay, consider the meaning and significance of this statement:

The participating States recognize the unusual significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States. . . . The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-

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determination of peoples for the development of friendly relations among themselves as among all States.

This statement comes from the Final Declaration of the 1975 Conference on Security and Co-Operation in Europe. We know the document produced by this conference by another name: the Helsinki Accords. Principles 7 and 8 of these now famous Accords (from which the quotation above is taken) pledge their signatories to observe universal standards of human rights, fundamental freedoms, and self-determination. Thirty-five nations, including the United States and the Soviet Union, signed the Helsinki Accords.

In an essay that does not exceed 1,500 words in length, examine the relationship between (a) peace and (b) human rights, fundamental freedoms, and self-determination of peoples as affirmed in the Helsinki Final Act quoted above.

Official Contest Rules

The National Peace Essay Contest is governed by the following rules:

Rule 1: The Topic

All essays submitted for judging must address the contest topic as presented in the official National Peace Essay Contest brochure. Essays on other topics will not be accepted.

Rule 2: Eligibility of Student Essays

The National Peace Essay Contest is open to student contributors to U.S. public and private high school newspapers, literary magazines, and similar publications that are officially recognized by their school as school-sponsored or otherwise officially recognized school activities. Such publications must have an officially designated faculty adviser, and that adviser must be responsible for assuring that submissions from his or her publication are the fruit of the student writer's own thought and writing. Special publications may be created for the purpose of publishing contest essays. However, such publications must obtain official recognition from their schools and have an officially designated faculty adviser. High school publications that serve more than one school or serve a school district or number of school districts are also eligible sponsors of National Peace Essay Contest entries. A high school is defined as an accredited public or private school that gives instruction in grades 9, 10, 11, and 12 in any combination. Only essays published in official United States high school student publications between October 15, 1987, and March 1, 1988, will be accepted.

Rule 3: Further Eligibility Requirements

All contributors deemed eligible under Rule 1 above must, in addition, be students duly enrolled during academic 1987–1988 in the public or private high school (or school district or districts) at which the student publication in which their essays appear is an officially recognized activity. Contributors need not be United States citizens; however, they must attend public or private high schools in the United States, the District of Columbia, the combined territories of the United States, or Overseas Dependent Schools. No child or other relative of a member of the Board or Staff of the United States Institute of Peace will be eligible for a contest prize, nor will any child or relative of any official or employee of any organization that may assist the Institute in the prosecution of the contest be eligible for a contest prize.

Rule 4: Number of Submissions

Each individual contestant may submit only one essay for judging. There will be no limit on the number of submissions that may come from any one publication or high school, provided that those submissions have been published between October 15, 1987, and March 1, 1988.

Rule 5: Registration of Student Publications

Any student publication wishing to sponsor the essay submissions of student authors must register its intent to take part in the National Peace Essay Contest by filling out an official Contest Registration Form for High School Publications no later than February 15, 1988. Registration will not commit such student publication to present essays; however, no essay will be accepted if the publication in which it appears has not filled out a Contest Registration Form.

Rule 6: Length and Character of Submission

Each submission shall be an original essay of no more than 1,500 words in length. An essay is defined as an analytical literary composition dealing with its subject from a personal point of view (Webster's Ninth New Collegiate Dictionary). Stories, poetry, or other litrary forms will not be accepted.

Rule 7: Authenticity, Attribution, and Plagiarism

Each submission shall be a piece of original thinking, research, composition, and writing on the relationship between human rights, fundamental freedoms, and the self-determination of peoples, and international peace. Each student contributor certified by his own attestation and that of the supervising or advising faculty member assigned to the publication in which the contribution appears shall be deemed to have done all work on the manuscript version of his or her essay, including typing or handwriting.

Customary proprieties regarding attribution of quotations and the arguments and ideas of others shall be scrupulously observed. Plagiarism and other evidence that an entry is not entirely the work of its author will result in the disqualification of the entrant. Plagiarism is defined as the act of presenting the statements and ideas of another as one's own.

Rule 8: Forms of Submission and the Contestant Information and Certification Form

Each contestant essay shall be submitted in two forms:

A. A double-spaced, typed—or neatly handwritten in ink—manuscript copy on 8½ by 11 inch paper. This manuscript must be the original version of the essay as submitted to the publication in which it has appeared. This is the version of the essay that will be judged.

B. A photocopy of the essay as it appears in the official high school publication. This version of the essay may be edited by others to meet the standards of the publication in which it is published. The published version of the essay will not be judged.

Each essay submitted shall be accompanied by a completed Contestant Information and Certification Form, a copy of which is included in the official National Peace Essay Contest brochure. Using this form, entrants and faculty advisers must provide certification of truthful statements and of originality and authenticity. The form also contains a release agreement that must be signed both by the contestant and faculty adviser or supervisor of the publication from which the submission comes permitting the Institute to publish, disseminate, and otherwise use winning essays at its own discretion.

Rule 9: To Whom to Mail and Submission Deadline

Essay submissions in both manuscript and published form, as described above and with attached Contestant Information and Certification Form, shall be submitted by first-class mail to the National Peace Essay Contest, United States Institute of Peace, P.O. Box 27720 Central Station, Washington,

DC 20038–7720, and postmarked no later than March 15, 1988. Submissions become the property of the United States Institute of Peace and cannot be returned.

Rule 10: Judging Criteria

The contest judges will read and evaluate only the manuscript versions of the essays submitted. However, no essay will be passed along to the judges unless a photocopy of the published version is provided as evidence of publication.

Essays will be judged for their knowledgeability and depth of understanding, originality, intellectual and analytical quality, and style. No political or ideological test shall be part of the criteria for making awards.

Rule 11: Judging and Awards

Official contest judging shall be done on the state (or equivalent unit) and national levels only. School publications, schools, and school districts are welcome to judge essays and make awards; however, such judging will not prejudice judging at the state (or equivalent unit) and national levels. Such judging shall not be used to restrict the number of submissions from a given publication, school or school district, and will not be part of the official contest. No student who wishes to make a submission of his or her published essay to the National Peace Essay Contest shall be denied that right by dint of failing to win, or of winning, a local publication, school or school district prize.

All judging on the state (or equivalent unit) and national levels of the competition will be done under the direction and supervision of the Board of Directors of the United States Institute of Peace. All decisions of the judges will be final. The United States Institute of Peace reserves the right to present no award or to limit the number of awards for any given state (or equivalent unit) in the event it deems that an unsufficient number of meritorious entries has been received.

All submissions postmarked on or before March 15, 1988, will be separated into lots by state or equivalent unit and forwarded to the contest judges. The judges will evaluate each lot of state (or equivalent unit) essays and choose first-, second-, and third-place state (or equivalent unit) winners. The first-place essay from each state will be automatically entered in the national competition and will be eligible for first-, second-, and third-place national awards.

State (or equivalent unit) first-, second-, and third-place individual winners will receive college scholarships of $250, $150, and $100, respectively. State first-place winners will also receive an all-expense-paid round trip to Washington, DC for the weekend of June 18–19, 1988. National first-, second-, and third-place individual winners will receive college scholarships of $5,000, $2,500, and $1,000, respectively. State and national individual winners will receive special award certificates suitable for framing. Publications sponsoring winning state (or equivalent unit) first-, second-, and third-place entries will receive special award certificates from the United States Institute of Peace. Publications sponsoring winning national first-, second-, and third-place entries will receive additional special award certificates.

State (or equivalent unit) first-, second-, and third-place winners and their sponsoring high school publications will be notified by mail or telephone on or about May 15, 1988. Prizes will be awarded to state (or equivalent unit) first-place and national individual winners in Washington, DC, on June 18–19, 1988. In the event that a prize winner is unable to travel to Washington, his or her prize will be awarded by mail. Certificates for student publications in which winning state (or equivalent unit) and national essays have appeared will be awarded through their schools by mail on or about July 1, 1988. All contestants and sponsoring high school publications will receive certificates of participation on or about August 1, 1988.

Dated: September 3, 1987.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 87–21879 Filed 9–22–87; 8:45 am]

BILLING CODE 21879

Sunshine Act Meetings

Federal Register
Vol. 52, No. 184
Wednesday, September 23, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, September 25, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Fire Safety Report [1]

Philip Schaenman of Tri Data Corporation will brief the Commission on a report entitled, "Overcoming Barriers to Public Fire Safety Education."

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

September 21, 1987.

[FR Doc. 87–22045 Filed 9–21–87; 1:14 pm]

BILLING CODE 6355–01–M

[1] The Commission voted to waive its policy concerning participation by outside parties in Commission meetings for this matter.

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 29, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first five items will be open to the public. The last two items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Hazardous Materials Accident Investigation Report—Hazardous Materials Release, Baltimore and Ohio Railroad Company Train No. SLFR, Miamisburg, Ohio, July 8, 1986.
2. Marine Accident Report—Explosion and fire Aboard the U.S. Tank Barge STC 410 at the Steuart Petroleum Company Facility, Piney Point, Maryland, December 20, 1986.
3. Safety Study—Emergency Medical Service Helicopter Operations.
4. Recommendations to FAA re Flight Restrictions over Hazardous Materials Spills and Other Disasters (Calendared by Members Nall and Kolstad.)
5. Recommendation to FAA re Requirement for Test of Takeoff Warning System Before Every Flight on all Air Carrier Airplanes Equipped with Takeoff Warning Systems. (Calendared by Chairman.)
6. Opinion and Order: Administrator v. Winslow, Docket SE–7527; disposition of the appeals of both parties. (Calendared by Vice Chairman.)
7. Opinion and Order: Administrator v. Hunt, Docket SE–7350; disposition of the appeals of both parties. (Calendared by Chairman.)

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

September 18, 1987.

[FR Doc. 87–22027 Filed 9–21–87; 11:21 am]

BILLING CODE 7533–01–M

POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (139 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, October 6, 1987, in Room 1516–A, 90 Church Street Station, New York, New York. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, October 5, 1987, but it will consist entirely of briefings and is not open to the public.

Tuesday Session

October 6, 1987—8:00 a.m.

1. Minutes of the Previous Meeting, August 31–September 1, 1987.
2. Remarks of the Postmaster General.
3. Office of the Governors' Operating Budget.
4. Status of CSRS/FERS Retirement Programs.
5. Review of Capital Investment Program.
6. FY 1988 Borrowing.
7. Consideration of Filing with Postal Rate Commission for Classification Changes to Limit Money Order Sales.
8. Consideration of Request to Implement Temporary Classification Changes Expanding Merchandise Return Service.
9. Report on Facilities and Supply Group Programs.
10. Review of Legislative Matters and Government Relations.
11. Consideration of 1988 Schedule of Board of Governors' Meetings.
12. Tentative Agenda for November 2–3, 1987, Meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 87–22059 Filed 9–21–87; 2:41 pm]

BILLING CODE 7710–12–M

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Corrections

Federal Register
Vol. 52, No. 184
Wednesday, September 23, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30220C/30226B; FRL-2349-7]

Approval of Pesticide Product Registrations; Ciba-Geigy Corp.

Correction

In notice document 87-18946 appearing on page 31084 in the issue of Wednesday, August 19, 1987, make the following corrections:

1. In the second column, in the **SUPPLEMENTARY INFORMATION**, in the 10th line, "Insecticide" was misspelled; in the 12th line, "isazophos" was misspelled.

2. In the same column, in the second paragraph of the **SUPPLEMENTARY INFORMATION**, in the fifth line, "if" should read "is".

3. In the third column, in the 10th line, "us" should read "use".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87-3212; File Nos. BPCT-870304KF et al.]

Applications for Consolidated Hearing; Mack D. Blair

Correction

In notice document 87-20793 beginning on page 34295 in the issue of Thursday, September 10, 1987, make the following correction:

On page 34295, in the third column, in the table of applications, under "MM Docket No.", the first entry should read "87-342".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87-344; File Nos. BP-860402AF et al.]

Applications for Consolidated Hearing; John A. McAulay

Correction

In notice document 87-20794 appearing on page 34296 in the issue of Thursday, September 10, 1987, the docket number should read as it appears in the heading above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Residence and Citizenship

Correction

In rule document 87-21167 beginning on page 34772 in the issue of Tuesday, September 15, 1987, make the following corrections:

1. On page 34773, in the first column, in amendatory instruction 2, in the first line, "2942" should read "21942".

§ 416.1618 [Corrected]

2. On the same page, in the same column, in § 416.1618(b), in the 12th line, "allow" should read "allows"; and in the last line "provide" should read "provides".

BILLING CODE 1505-01-D

federal register

Wednesday
September 23, 1987

Part II

Environmental Protection Agency

40 CFR Parts 124, 264, and 270

Permit Modifications for Hazardous Waste Management Facilities; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 264, and 270

[FRL-3220-2]

Permit Modfications for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today proposes to amend its regulations under the Resource Conservation and Recovery Act (RCRA) governing modifications of hazardous waste management permits. This proposed rule would establish new procedures that apply to the various types of changes that facility owners and operators may want to make at their facilities. Today's proposal is based on a negotiated agreement between EPA, members of the regulated community, and representatives of State agencies and public interest groups. EPA is proposing to categorize all permit modifications into three classes and establish administrative procedures for approving modifications in each of these classes. The purpose of these proposed amendments is to provide both owners and operators and EPA more flexibility to change specified permit conditions, to expand public notification and participation opportunities, and to allow for expedited approval if no public concern exists for a proposed permit modification.

DATE: Comments must be received on or before November 23, 1987.

ADDRESSES: The public must submit an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street, SW., Washington, DC 20460.

Place "Docket number F-87-PMHP-FFFFF" on your comments. The OSW docket for this proposed rulemaking is located in the sub-basement at the above address, and is open from 9 00 a.m. to 4 00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment by calling (202) 475-9327 to review docket materials. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424-9346 (in Washington, DC call 382-3000) or Frank McAlister, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-2223.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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II. Background
A. Current Permit Modification Requirements
B. Need for Revisions to Modification Process
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D. Regulatory Negotiation
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VIII. Regulatory Analysis
A. Regulatory Impact Analysis
B. Regulatory Flexibility Act

I. Authority

These regulations are proposed under the authority of section 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Background

Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a "cradle-to-grave" management system designed to ensure that hazardous waste is identified and properly transported, stored, treated, and disposed of. Subtitle C requires EPA to identify hazardous waste and promulgate standards for generators and transporters of such wastes. Under section 3004 of RCRA, owners and operators of treatment, storage, and disposal facilities are required to comply with standards "necessary to protect human health and the environment." These standards are generally implemented initially through interim status standards and later through permits issued under authorized State programs or by EPA.

Under section 3005(a) of RCRA, all treatment, storage, and disposal of hazardous waste is prohibited except in accordance with a permit that implements the section 3004 standards. However, recognizing that the issuance of permits can be time-consuming, Congress created "interim status" for facilities in existence on the effective date of EPA's permitting regulations (November 19, 1980) or on the effective date of statutory or regulatory changes that subject a facility to the RCRA permit requirement. Under section 3005(e), owners and operators of hazardous waste treatment, storage, and disposal facilities in existence on the applicable date who submitted a Part A permit application and complied with section 3010 notification requirements are treated as having been issued permits until an authorized State or EPA takes final administrative action on their permit applications.

A facility with a permit or interim status may change its waste management operations only under certain conditions, specified in EPA's regulations on permit modifications (40 CFR 270.41 and 270.42) and changes in interim status (40 CFR 270.72). Today's proposal revises the regulations governing permit modifications by providing both owners and operators and EPA more flexibility to change specified permit conditions, while at the same time expanding public notification and participation opportunities.

A. Current Permit Modification Requirements

The hazardous waste management regulatory system established by EPA on May 19, 1980, recognized that permits issued to treatment, storage, or disposal facilities would need to be modified for various reasons during the life of the permit (normally ten years). Accordingly' the Agency established two different processes for modifying permits: major and minor modifications. The majority of permit changes follow the major modification procedures, including development of a draft permit, public notice, and opportunity for a public hearing as required under 40 CFR Part 124. (*See* § 270.41.) These

procedures are the same as for initial permit issuance. However, for permit modifications, the scope of the public review is limited to the specific permit conditions being modified.

The current minor modification regulations are set forth in § 270.42. They allow EPA or authorized States to make a limited set of minor changes in RCRA permits with the consent of the permit holder, but without following the procedures of 40 CFR Part 124. A minor modification may only:

- Correct typographical errors.
- Require more frequent monitoring by the permittee.
- Change an interim compliance date in a compliance schedule, as long as the new date is not more than 120 days after the date in the existing permit.
- Allow for a change in ownership or operational control of a facility.
- Change the lists of facility emergency coordinators or equipment in the permit's contingency plan.
- Change the estimate of maximum inventory of hazardous wastes in treatment or storage.
- Change the estimates of expected year of closure or schedules for final closure in the closure plan.
- Approve a longer period for closure activities, if specified criteria are met.
- Make minor changes in permit operating requirements to reflect the results of a trial burn.
- Make minor changes in permit operating requirements for conducting a trial burn.
- Grant one extension in the time period for determining operational readiness after completion of construction.
- Make minor changes in the treatment program requirements for land treatment units to improve treatment of hazardous constituents.
- Make minor changes in conditions specified for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration.
- Allow a second treatment demonstration for land treatment, under specified circumstances, provided that the conditions for a second demonstration are substantially the same as those for the first demonstration.
- Allow treatment of a hazardous waste not previously specified in the permit if the waste has been prohibited from land disposal and if certain conditions regarding the management of the waste are met.
- Allow changes at a facility to treat or store restricted wastes in tank and container units not previously specified in the permit, pending subsequent approval as a major modification.

Any permit modifications not included on this list are major modifications.

This list of minor modifications is the result of several separate rulemakings. The May 19, 1980 regulations included the first five minor modifications listed above (45 FR 33430). Subsequent minor modifications were added as follows: (1) January 12, 1981, three minor modifications were identified regarding closure activities (46 FR 2889); (2) June 24, 1982, three minor modifications were added for incinerator permits (47 FR 27520); (3) July 26, 1982, three minor modifications were listed for land treatment permits (47 FR 32369); (4) November 7, 1986, a minor modification was specified to allow the addition of land disposal restricted wastes to the permit for purposes of treatment in permitted units (51 FR 40653); and (5) July 8, 1987, a minor modification was established to allow the addition of tanks and containers for treatment and storage of land disposal restricted wastes, pending subsequent approval as a major modification (52 FR 25760).

B. Need for Revisions to Modification Process

In the preamble to the May 19, 1980 regulations that established the current permit modification requirements, the Agency acknowledged that there may be cases where additional facility changes should be treated as minor modifications. However, at that time the Agency concluded:

> Because there is no experience with the RCRA permit program yet, EPA lacks the information necessary to determine which changes in methods or hazardous wastes would really be minor and which would not be minor. (*See* 45 FR 33317.)

After several years of experience with permitted facilities, EPA and authorized States have found that in many cases the current permit modification regulations are unnecessarily restrictive and seriously hamper the implementation of the permitting program. EPA has found that the modification procedures are time-consuming and resource-intensive, even for routine and administrative tasks. Simple permit modifications, such as a change in the name of the emergency coordinator, require significant paperwork on the part of EPA and in some cases entail a delay in implementation, because of low Agency priority. In addition, "major" modifications, some of which are trivial, require the full permit issuance procedures, including preparation of a draft permit modification, public notification, a 45-day comment period, and the opportunity for a hearing. Major modifications, which can range from building a roof over a storage area to adding a new incinerator to a facility permit, can take six months to a year for approval. The result of this situation has been to delay or discourage facility changes, many of which would lead to improved management of wastes.

The Agency believes that permits must be viewed as living documents that can be modified to allow facilities to make technological improvements, comply with new environmental standards, respond to changing waste streams, and generally improve waste management practices. Since permits are usually written to encompass a ten-year period of operation, the facility or the permit writer cannot anticipate all or even most of the administrative, technical, or operational changes that will be required over the permit term for the facility to maintain an up-to-date operation. Therefore, permit modifications are inevitable. In fact, EPA estimates that a typical permit may have to be modified two or three times a year.

In the past several years, EPA, States, permittees, and members of the public have recognized that current procedures must be revised to allow greater flexibility in modifying permits. The need for greater flexibility is becoming increasingly important as more permits are issued (particularly in response to the permitting deadlines specified in the Hazardous and Solid Waste Amendments (HSWA) of 1984), leading to a corresponding increase in demand for permit modifications. In addition, regulatory developments will increase the demand for permit modifications. For example, recent and upcoming land disposal restrictions on untreated wastes will force hazardous waste facilities to move away from disposal practices to hazardous waste treatment. If permitted facilities are not able to make these changes readily, EPA could be forced to delay the effective date of some aspects of the land disposal restrictions program because of the lack of national capacity. As another example, in response to HSWA and other initiatives, EPA is in the process of identifying and listing new hazardous wastes. Permitted facilities will require permit modifications to handle these new wastes—even if they were already handling the wastes at the time of listing. If permit modifications cannot be readily made, the operation of these facilities will be severely disrupted.

For these reasons, the demand for permit modifications will increase substantially over the next few years.

Unless EPA improves the permit modification procedures, significant EPA (and permit holder) resources will be spent on making trivial or environmentally irrelevant changes to permits, and will be diverted from more important tasks. More important, perhaps, improvements in the handling and treatment of hazardous waste will be delayed, and the regulated community will find itself frozen by rigid permit conditions. The net result of this situation will be an increased threat to human health and the environment and an increased shortfall in hazardous waste treatment, storage, and disposal capacity.

C. Recent Proposed Changes

Amendments to the permit modification regulations were proposed by EPA in 1984, 1986, and 1987.

In 1980, industry and environmental groups challenged the RCRA permitting rules, as well as other hazardous waste regulations (*NRDC et al.* v. *U.S. EPA*, No. 80–1607 and consolidated cases (D.C. Circuit)). Industry groups argued, among other points, that the range of causes for minor modifications was too narrow and would significantly complicate and delay trivial facility changes. As part of a broader settlement between EPA and the industry and environmental groups, EPA agreed to propose an expanded list of minor modifications. The expanded list, which was proposed on March 15, 1984 (49 FR 9850), defined three additional areas in which minor permit modifications could be made: (1) Modifications to various plans contained in the permit; (2) the addition of new wastes at the facility under certain circumstances; and (3) the use of new treatment techniques in certain units.

The rule did not provide a definition of "minor" in each of these areas. Instead, EPA or the authorized State would have discretion in determining whether a given modification was major or minor. The preamble, however, provided extensive guidance on the kinds of modifications in each of the areas that would be considered minor or major. Furthermore, as a broad policy, the preamble stated that EPA would consider a modification "minor" if it reflected a routine technical or administrative change that would have negligible impact on human health or the environment.

Response to the proposal was varied. In general, industry and State governments supported the flexibility of the proposed approach, although industry commenters suggested ways to broaden it. A coalition of environmental groups, however, strongly opposed the proposal, stating that it reflected a departure from existing public participation policy and gave too much discretion to regulating officials. Environmental commenters supported a list of minor modifications that was more narrow in scope and more specific in detail.

Because of the importance of the issue and the diverse nature of public comments, EPA decided not to issue the March 1984 proposal as a final rule, but instead identified RCRA permit modifications as a project for regulatory negotiation. Negotiations on this issue are discussed in section II.D of this preamble.

Two other recent EPA rulemakings addressed permit modifications. The December 1, 1986 land disposal restriction rule (51 FR 44740) proposed to allow, as a minor modification, changes at a facility to treat or store restricted wastes in tanks and containers. This proposal was issued in final form on July 8, 1987 (52 FR 25760). In addition, on August 14, 1987 (52 FR 30570), the Agency proposed that permitted facilities may receive a minor modification to allow continued management of newly identified or listed hazardous wastes. This proposal would require the owner and operator subsequently to obtain approval of the change as a major modification, thereby invoking the public participation procedures of Part 124.

It should be noted that the amendment proposed on August 14, along with the other current minor modification provisions, will be replaced by today's proposed modification scheme if it is adopted as proposed. Nevertheless, the Agency will proceed with the August 14 proposal independent of today's proposal because of the need for expeditious permit changes for newly identified or listed hazardous wastes. The Agency recognizes that any final action taken on the August 14 proposal will most likely have only a short-term effect, pending the outcome of today's proposal.

D. Regulatory Negotiation

Today's proposed rule was developed through the process of regulatory negotiation. This process is an alternative means for developing regulations in which individuals and groups with negotiable interests directly affected by the rule work cooperatively with EPA to develop a standard by committee agreement.

In mid-1986, EPA communicated with various parties interested in developing a new approach to permit modifications, including hazardous waste generators and representatives from the waste management industry, State governments, and environmental and citizen groups. Once the appropriate affected interests had been identified, EPA established a committee under the Federal Advisory Committee Act to negotiate the provisions of the standard. The formation of the Permit Modification Negotiating Committee was announced in the **Federal Register** on July 16, 1986 (51 FR 25739).

Between September 10, 1986 and February 24, 1987, the Committee met six times to discuss a variety of technical and policy issues associated with developing a new permit modification scheme. At the final meeting on February 24, the Committee members, with one exception, reached agreement on the major provisions of the permit modification approach presented in today's proposal. One Committee member did not sign the final agreement because the member could not concur on one critical provision. That provision and the Committee members' comments on it are discussed in section IV.B.2 of this preamble.

The 18 parties who signed the agreement concurred with the new permit modification system as a whole. Inevitably, as in any negotiation, some parties may have made concessions in one area in exchange for concessions from other parties in other areas. As a result, changes in particular parts of the proposed rule could significantly affect one or more of the Committee members' support for the proposal. For this reason, the Agency has tried carefully to translate the agreement in principle into specific regulatory language. A few items that are a part of today's proposal were not addressed or resolved by the Committee. The Agency included them because it believes they are necessary to support the proposed rule. Any provision that EPA has added has been clearly identified in this preamble.

The signed Committee statement has been included in the public docket for this rule. It is available at the address listed at the beginning of this notice.

Members of the negotiating Committee and their affiliation are as follows:

Negotiators/Affiliation

1. Johan Bayer, Chemical Waste Management, Inc.
2. John Campion, Pharmaceutical Manufacturers Association
3. Lecil Colburn, American Coke and Coal Chemical Institute
4. Frank Coolick, New Jersey Bureau of Hazardous Waste Engineering
5. Gary Dietrich, ICF Corporation/ ENSCO, Inc.

6. Larry Eastep, Illinois EPA
7. Bonnie Exner, Citizen Intelligence Network
8. Richard Fortuna, Hazardous Waste Treatment Council
9. Arthur Gillen, BASF Corporation, Synthetic Organic Chemical Manufacturers Association
10. Khris Hall, IBM Corporation
11. William Hamner, North Carolina Division of Health Services
12. Minor Hibbs, Texas Water Commission
13. Gretchen Monti, League of Women Voters
14. Philip Palmer, Dupont Corporation and Chemical Manufacturers Association
15. Suellen Pirages, National Solid Waste Management Association
16. Ann Powers, Chesapeake Bay Foundation
17. Suzi Ruhl, Legal Environmental Assistance Foundation
18. Marcia Williams, U.S. EPA
19. Eleanor Winsor, Pennsylvania Environmental Council

Facilitators

John A.S. McGlennon and Peter Schneider, ERM–McGlennon Associates, Executive Secretary, Chris Kirtz, U.S. EPA.

III. Summary of Proposed Approach

The Agency is proposing to revise the regulations governing permit modifications (40 CFR 270.41 and 270.42) to introduce a permit modification process that recognizes different types or classes of modifications and assigns regulatory requirements according to type of modification. The revisions provide both owners and operators and EPA more flexibility to change specified permit conditions, expand public notification and participation opportunities, and allow for expedited approval if no public concern exists regarding a proposed change.

The Agency's proposal mainly addresses modifications requested by a permittee. It restructures §§ 270.41 and 270.42, which currently specify major and minor modification procedures, respectively, for modifications instigated by either the permittee or the Agency. The proposal would alter § 270.41 to include only modifications initiated by the authorized Agency; the current major modification procedures for these changes remain in effect. The proposal alters § 270.42 to refer only to modifications requested by the permittee.

The proposed permit modification process recognizes three classes of modifications requested by the permittee. Class 1 and 2 modifications do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health and the environment. Class 1 covers routine changes, such as typographical errors or new telephone numbers. Class 2 modifications address common or frequently occurring changes needed to maintain a facility's capability to manage wastes safely or to conform with new regulatory requirements. Class 3 modifications cover major changes that substantially alter the facility or its operations.

Class 1 changes are generally allowed without prior Agency approval. Owners and operators must, however, notify the public and the authorized Agency once they have made these changes. In some cases, which are indicated in Appendix I to 40 CFR Part 270, prior Agency approval is required. The Agency may reject any Class 1 modification, with cause.

Class 2 modifications begin with a modification request to the authorized Agency, public notice by the facility owner of a modification request, an early comment period, and an informational meeting with the public. Within 90 days of submission of a request for a Class 2 modification request, the Agency must approve or deny the request extend the review period 30 days; or approve a temporary authorization for up to 180 days. If the Agency does not take action by the end of the 30-day extension, the changes specified in the modification request are automatically authorized for a period of 180 days. If the Agency has not acted by the end of the 180-day period, the changes are authorized for the duration of the permit. This "default provision," which will ensure prompt action on Class 2 modification requests, is necessary to allow facilities to respond promptly to changing conditions and to give them flexibility to address new regulatory requirements, such as the land disposal restrictions. The proposal also removes the current prohibition on preconstruction for Class 2 modifications.

Class 3 modifications are subject to the same initial public notice and meeting requirements as Class 2 modifications. However, the "default" provision of Class 2 does not apply. Furthermore, an EPA decision to grant the modification request is subject to the permit issuance procedures of 40 CFR Part 124. The Agency must prepare a draft permit modification, notify the public of the draft modification, hold a public hearing on the modification if requested, and grant or deny the request.

The Agency also proposes to change the current permit modification requirement for facilities that are handling a waste when that waste becomes newly listed or is identified as hazardous. For Class 1 modifications, facilities may make the change immediately, as long as they notify EPA and the public of the changes. For Class 2 or Class 3 modifications, the owner or operator may make the change without prior approval; however, he must submit a complete permit modification request within 180 days of the Federal Register publication designating the waste as hazardous.

The proposal also gives EPA the authority to grant temporary authorization, without prior public notice and comment, for activities that are necessary for facility owners and operators to respond promptly to changing conditions. Temporary authorizations, for terms ranging from 90 to 180 days, may be granted to Class 2 or Class 3 modifications that meet criteria specified in proposed § 270.42(e) Owners and operators who are granted a temporary authorization are required to notify the public. Temporary authorizations that involve "permanent" activities (i.e., activities that extend beyond 180 days) must also undergo Class 2 or Class 3 public participation procedures for permit modifications.

Specific modifications are assigned to Class 1, 2, or 3 in Appendix I to 40 CFR Part 270. If a single modification will require two or more changes in the permit, then the modification request carries the highest classification assigned to any of the changes. Permit modifications not listed in Class 1, 2, or 3 may be submitted under Class 3. Alternatively, the permittee may request a Class 1 or 2 determination from the Agency.

EPA or an authorized State must maintain a listing of all approved permit modifications and periodically publish a notice that the list is available for review.

IV. Discussion of Proposed Rule Language

A. Modification, Revocation, and Reissuance of Permits

Under current regulations, EPA may modify RCRA permits either at the request of the permittee, or, if certain criteria are met, without the permittee's approval. The negotiating Committee focused primarily on changes requested by the permittee; EPA's authority to reopen and modify permits—for example, in response to new information or new regulations—lay beyond the

scope of the Committee's attention. In revising the permit modification provisions of §§ 270.41 and 270.42, therefore, EPA has left the Agency's authority to reopen permits unchanged.

The Agency, however, is proposing to substantially restructure §§ 270.41 and 270.42 to reflect the Committee's agreement. Under this restructuring, § 270.41 would refer to permit modifications initiated by the Agency, and the current major modification procedures would remain in effect for these changes. Section 270.42 would refer to changes requested by the permittee; in this case, the permit modification classifications and procedures agreed upon by the Committee would apply.

Section 270.41, as proposed today, would identify three causes for which EPA might require a permit modification: Alterations or additions to the permitted facility or activity; new information received by the Agency; or new standards, regulations, or judicial decisions affecting the basis of permit requirements. The first two of these causes remain unchanged from the current regulatory language. The third cause—new regulations—has been revised so that it is consistent with the language EPA proposed on March 28, 1986 (51 FR 10706), which allows the Agency to reopen RCRA permits when necessary to ensure compliance with new regulatory standards. EPA intends to promulgate the 1986 proposal in the near future in a separate rulemaking.

EPA is also proposing to delete those portions of § 270.41(a)(3) that would allow permittees to request major modifications for changes made in response to new regulations or judicial decisions. These, presumably, would generally be changes in cases where EPA standards were relaxed, and the permittee wished to relax permit conditions correspondingly. Under today's proposal, permittees could still request such changes; however, they would do so in accordance with the procedures for Class 1, 2, or 3 modifications in proposed § 270.42. The effect of this proposed amendment will be to eliminate the deadlines in the current § 270.41(a)(3) by which permittees must request permit modifications in the case of new regulations or judicial decisions. Under § 270.41(a)(3), permittees must now request such modifications within 90 days after the **Federal Register** notice announcing the regulatory change or within 90 days of a judicial remand of the regulations. EPA, however, now believes that facilities should have the opportunity to make such changes at any time, as long as they are approved according to the appropriate permit modification procedures. Therefore, it is proposing to eliminate the deadlines on submission of the modification request. The Agency requests comment on this amendment, and on other alternative procedures for this category of permit modification.

Finally, EPA is proposing today to remove from § 270.41 those modifications that would be made at the request of the permittee. These include changes in compliance schedules (§ 270.41(a)(4)) and changes required by regulation, such as modification of a closure plan in accordance with § 264.112(b) or § 264.118(b) (§ 270.41(a)(5)(i)) or extension of the closure period (§ 270.41(a)(5)(ii)). These modifications are being addressed instead in proposed § 270.42, where they are categorized as Class 2 or 3 changes.

Under today's proposal, changes authorized by § 270.41 would be subject to the current major modification procedures—that is, the current procedures for permit issuance. The Agency considered adopting Class 2 or 3 procedures for these changes, but believes that such an approach would not be appropriate. The procedures developed by the Negotiating Committee are designed primarily for situations where a facility desires a change. The Agency believes that, where EPA is imposing a change on a permitted facility, the facility owner or operator should not be required by regulation to notify or meet with the public; this should be the Agency's responsibility. In addition, the default provision of Class 2 modifications makes no sense where the Agency is requiring permit modifications that the facility may be less than enthusiastic about adopting. In these cases, the Agency believes that the current major modification procedures provide an appropriate level of protection for the permittee, and reasonable opportunity for public comment. Therefore, the Agency has not amended the procedures by which it may modify a permit in the case of facility alterations, new information, or new regulations. As discussed, the Negotiating Committee did not specifically address changes of this type. The Agency solicits comment on the approach it is taking.

The Agency would like to point out that today's proposal primarily addresses the procedures for approving facility changes and for public notification and participation regarding these changes. The substantive standards that apply to the design and operation of the new activities at a facility are not affected by today's proposal. Therefore, any permit modification, whether a Class 1, 2, or 3 change, will impose the appropriate Part 264 requirements, including any new standards that are applicable to the activity (e.g., air emission standards of part 269 pursuant to section 3004(n), when promulgated).

B. Procedures for Class 1, 2, and 3 Modifications

1. Class 1 Modifications

Class 1 modifications cover changes that are necessary to correct typographical errors in the permit or routine changes to the facility or its operation. They do not substantially alter the permit conditions or reduce the facility's capacity to protect human health and the environment. Generally, these modifications include correction of typographical errors; necessary updating of names, addresses, or phone numbers identified in the permit or its supporting documents; upgrading, replacement, or relocation of emergency equipment; improvements of monitoring, inspection, recordkeeping, or reporting procedures; updating of sampling and analytical methods to conform with revised Agency guidance or regulations; updating of certain types of schedules identified in the permit; replacement of equipment with functionally equivalent equipment; and replacement of damaged ground-water monitoring wells. The specific modifications that fall into Class 1 are enumerated in Appendix I to 40 CFR Part 270. This Appendix is discussed more fully in section IV.C of this preamble.

Because Class 1 modifications do not substantially alter the permit or reduce the human health and environmental protection it provides, the Committee agreed that they do not need to be reviewed and approved in the same manner as permit applications and requests for major permit modifications. The Committee concluded that, in most cases, the permittee should be allowed to put Class 1 modifications into effect without prior approval, and should be required simply to notify EPA and the public of the changes. In other cases, the Committee agreed that prior Agency approval should be required. The modifications that would require prior Agency approval are identified with an asterisk in Appendix I.

Proposed § 270.42(a) specifies in detail the approval procedures agreed upon by the Committee for Class 1 modifications. Under these procedures, the permittee could, at any time, put into effect a Class 1 modification (except those

requiring prior Agency approval) However, the permittee would be required to notify the Agency by certified mail or by any other means that establish proof of delivery within seven calendar days of making the change. The notice would have to specify the change being made to the permit conditions or documents referenced in the permit and explain briefly why it was necessary.

In addition, the Committee agreed that within 14 days of putting the change into effect, the permittee would be required to notify by mail all persons on the facility mailing list concerning the change. EPA or an authorized State is currently required under 40 CFR 124.10(c)(1)(viii) to compile and maintain such a list for each RCRA permitted facility. The list must include all persons who have asked in writing to be on the list (for example, in response to public solicitations from the Agency). Also, it generally would include both local residents in the vicinity of the facility and statewide organizations that have expressed interest in receiving such information on permit modifications.

Because the facility mailing list is maintained by the Agency or the authorized State, rather than the facility, EPA recognizes that facilities may not in all cases have the most recent facility mailing lists. The Committee did not specifically address this issue. EPA, however, believes that the facility has the responsibility initially to obtain from EPA or the authorized State a complete facility mailing list and to update it by contacting the Agency periodically. However, EPA believes it should be the Agency's responsibility to inform the facility of new additions to the list, and the facility should not be held responsible for failure to notify persons recently added to the EPA list when it has made a reasonable effort to keep its list current.

Under the current requirements of 40 CFR 124.10(c)(1)(ix) (A) and (B), notice of permit applications and major permit modification requests must also be sent to units of local and State governments having jurisdiction over the facility. The Committee did not address the question of whether notices of Class 1, 2, or 3 permit modifications should be sent to these authorities as well as to persons on the public mailing list. However, the Agency recognizes that it may be appropriate to require notification of local and state authorities and solicits comment on this issue.

Although the permittee may make most Class 1 modifications without EPA approval or prior public notice, proposed § 270.42(a)(iii) provides that the public may ask EPA to review any Class 1 modification, and that the Agency may for cause reject a Class 1 modification—either in response to public comments or at its own discretion. The Committee did not specify procedures for denying Class 1 modifications. To clarify this authority, EPA is proposing that, if the Agency denies a Class 1 modification request, it would be required to notify the permittee in writing of this ruling, and the permittee would be required to comply with the original permit conditions. The Committee recognized that it would be extremely unlikely that the Agency would ever have to exercise this authority given the trivial nature of Class 1 modifications; however, the Committee believed that EPA should have the final authority to accept or reject a modification, and it therefore explicitly incorporated this authority into its agreement.

As discussed above, the Committee agreed that certain Class 1 modifications—such as changes in interim dates in schedules of compliance or minor changes in incinerator trial burns—should be allowed only after Agency approval. This provision has been adopted in proposed § 270.42(a)(2), which requires the permittee to secure written Agency approval before putting into effect Class 1 modifications identified in Appendix I with an asterisk. In this case, the approval procedure would be analogous to the current minor modification procedures, except that the permittee would still be required to notify persons on the facility mailing list of the change within 14 days of putting it into effect. (EPA believes that the permittee's request for approval of the modification would satisfy the requirement under proposed § 270.42(a)(1) of notifying EPA within 7 days of putting a Class 1 modification into effect; therefore, the permittee would not be required to notify EPA a second time after the change was effected.)

2. Class 2 Modifications.

Class 2 modifications cover changes that are necessary to enable a permittee to respond, in a timely manner, to (i) common variations in the types and quantities of the wastes managed by the facility, (ii) technological advancements, and (iii) many of the expected regulatory changes, including new land disposal restrictions and listings or identifications of new hazardous wastes,[1] where such changes can be implemented without substantially changing the design specifications or management practices prescribed by the permit. Generally, these changes cover increases of 25 percent or less in a facility's non-land-based treatment or storage capacity, authorizations to treat or store new wastes that do not require different unit design or management practices, and modifications to improve the design of hazardous waste management units or improve management practices. The specific modifications that fall in Class 2 are identified in Appendix I to 40 CFR Part 270. This Appendix is discussed more fully in section IV.C of this preamble.

In the Committee's formulation, Class 2 modifications do not substantially alter the conditions of the permit or reduce protection of human health or the environment. In general, they address common and frequently occurring changes needed to maintain the facility's capability to manage wastes. The Committee, therefore, agreed that these modifications require timely review, justifying different processing and public participation procedures from those currently required for major permit modifications. EPA is proposing the procedures agreed upon by the Committee in § 270.42(b) of this rule.

Under proposed § 270.42(b)(1), a permittee wishing to make a Class 2 modification would be required to submit to EPA a modification request describing the exact change to be made to the permit conditions and supporting documents, identifying the modification as a Class 2 modification,[2] explaining why the modification is needed, and providing the applicable information required by 40 CFR 270.13 through 270.21 and 270.62. The Committee also recommended that permittees discuss proposed modifications with the Agency and the community before submitting the modification request. EPA strongly seconds this recommendation; the Class 2 process will only be effective and provide substantial benefit to the regulated community if modification requests are clear and complete. Early contact with the Agency should eliminate unnecessary delays and denials of the modification requests.

Based on the Committee's agreement, § 270.42(b) also requires the permittee to notify persons on the Agency's facility mailing list about the modification request and to publish a notice of the request in a local newspaper. (The

[1] The Committee agreed that changes necessary to manage newly listed or identified wastes required special procedures. The procedures are proposed in § 270.42(g) of this rule, and described in section IV.B.7 of this preamble.

[2] The Agency has added this requirement. The Committee did not explicitly identify it.

facility mailing list is defined in proposed § 270.2 and is discussed in section IV.B.1 of this preamble.) Under the Committee agreement, the notice would have to be mailed to persons on the facility list and published on the date of submission of the request to the Agency. Although the Agency is proposing this requirement as agreed upon by the Committee, EPA requests comment on whether the permittee should be provided more flexibility in the timing of the notice mailing and publication. The Agency believes it may at times be logistically difficult for the facility to ensure that the submission to EPA, the facility list mailing, and the newspaper publication all occur on the same day. As one alternative, the rule might require that the notice be mailed to persons on the facility list no later than the date of submission of the request to the Agency, and no earlier than seven days before that date. A second alternative would be to require the permittee to submit his request to the Agency no fewer than 7 days and not more than 21 days before mailing and publishing the notice.

Proposed § 270.42(b)(2) specifies the information that would be required in the notice: (i) Announcement of a 60-day comment period, during which interested persons may submit written comments to the Agency; (ii) the announcement of the date, time, and place for a public meeting; (iii) the name and telephone number of the permittee's contact person, whom the public can contact for information on the request; (iv) the name and telephone number of an Agency contact person whom the public could contact for information about the permit, the modification request, applicable regulatory requirements, permit modification procedures, and the permittee's compliance history; (v) information on where the public can view copies of the modification request and any supporting documents; and (vi) a statement that the permittee's compliance history during the life of the permit is available from the Agency's contact person. As the Committee agreed, proposed § 270.42(b)(2) would require the permittee to submit to the Agency evidence that this notice was published in a local newspaper and mailed to persons on the facility mailing list. Finally, the permittee would be required to place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility. This location might be, for example, a public library, a local government agency, or a location under the control of the owner.

EPA believes that several issues raised by the information requirements in this notice deserve further explanation. First, as proposed in § 270.42(b)(4), the 60-day comment period would begin on the date the modification request was mailed to EPA; the notice mailed to the public and published in a local newspaper should indicate the final date of the comment period. Second, EPA or the authorized State Agency would have the responsibility of providing the permittee with the name, address, and telephone number of the Agency contact person, who would be specified in the notice. Finally, the "permittee's compliance history," referred to in proposed § 270.42(b)(2)(vi), might constitute a summary list of violations during the life of the permit or other reasonable summary statements. It would not include confidential inspection reports or other items not in the public record. The Agency would maintain this summary and make it available to the public on request.

The Committee also agreed that the permittee should be required to hold an informational meeting, open to all interested members of the public, no fewer than 15 days after publishing the notice and no fewer than 15 days before the end of the comment period. The purpose of the meeting would be to enable the permittee and the public to exchange views and, to the extent possible, resolve any issues raised by the modification request. (Where issues were not resolved at the meeting, interested parties might meet in smaller subsequent meetings to resolve them.) The meeting would have no official status—that is, an official transcript of record of the statements made at the meeting would not be required and the Agency would not be obligated to attend the meeting or to consider comments made at the meeting. However, the Committee expects that the meeting would lead to more informed written comments to the Agency and, to the extent that issues were resolved, written comments from the permittee revising the modification request.

The Committee agreed on specific procedures for Agency review and approval or denial of Class 2 modification requests, which are proposed at § 270.42(b)(6). Under proposed § 270.42(b)(6)(i), the Agency must make one of the following four decisions within 90 days of receiving the modification request (i) Approve the request with or without changes; (ii) deny the request; (iii) notify the permittee that it will make a decision on the request within 30 days; or (iv) approve the request, with or without changes, as a temporary authorization having a term of up to 180 days. If EPA notifies the permittee of a 30-day extension for a decision, it must, by the 120th day after receiving the modification request, make one of the following decisions: (i) Approve the request, with or without changes; (ii) deny the request; or (iii) approve the request as a temporary authorization for up to 180 days.

It should be noted that the Committee agreement specified that the Agency would have to make its decision within 90 (or 120) days of *submission* of the Class 2 modification request. EPA believes that this date may at times be difficult to ascertain, and therefore has modified the requirement so that it applies 90 (or 120) days after receipt of the modification request. The Agency solicits comments on this change.

If the Agency fails to make one of the three decisions listed above by the 120th day, the activities described in the modification request, as submitted, are authorized for a period of 180 days as an automatic temporary authorization without Agency action. At any time during the term of the automatic temporary authorization, however, the Agency may approve or deny the permit modification request. If the Agency does so, this action will terminate the temporary authorization. If the Agency has not acted on the modification request within 250 days of receipt of the modification request, the permittee must under proposed § 270.42(b)(6)(iv) notify persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments, that the temporary authorization will become permanent unless EPA acts to approve or deny it. If the Agency fails to approve or deny the modification request during the term of the automatic temporary authorization, the activities described in the modification request become authorized without Agency action on the day after the end of the term of the automatic temporary authorization. This authorization would last for the life of the permit unless modified later by the permittee (under § 270.42) or the Agency (under § 270.41).

During the term of any automatic authorization, whether it was a temporary authorization occurring at day 120 or a final authorization at day 300, the newly authorized activities would be limited to those described in the modification request. Furthermore, the permittee would be required to

comply with all applicable Part 265 standards and, to the extent practicable, with the standards of Part 264. These standards would be enforceable by EPA or an authorized State, and any deviation from them—even if the deviation was explicitly described in the modification request—would constitute a violation of Part 264 or Part 265.

As proposed today, an automatic temporary authorization can only occur in the absence of an Agency decision by the 120th day after a Class 2 modification request (or by an alternative date established by § 270.42(b)(6)(vii) or § 270.42(e)(4)(ii), discussed later in this preamble). In contrast, if the Agency takes action on the modification request by *issuing* a temporary authorization by the prescribed deadline, then an automatic authorization cannot subsequently occur on the modification request. In this case, if the Agency has not approved the modification by the date that the temporary authorization expires, then the facility's activities under the authorization would have to cease. The facility would then have to await Agency action or resubmit the permit modification request. Although this approach is consistent with the Committee Agreement, the Committee did not specifically address the operation of automatic authorizations after Agency-issued temporary authorizations. An alternative to today's proposed approach would be to make the automatic authorization provision also apply to these Agency-issued temporary authorizations, including the notification on the 250th day as described above. This alternative would assure the permittee that a final action on his or her modification request would occur on a certain schedule. The Agency solicits comments on these and other alternatives in the Class 2 modification process.

It should be noted that the Committee agreement specified that during the term of an automatic authorization, facilities should be required to comply with Part 264 standards. However, the Agency is concerned that in some cases the Part 264 standards are not self-implementing—they require the permit writer to determine the appropriate permit condition based on the requirements of Part 264 and the operation at the specific facility. The non-self-implementing nature of some of these standards, may cause enforcement problems for the Agency and may not provide practical performance standards for a facility. For these reasons, EPA has modified the Committee Agreement on this point to require compliance with Part 265—which is designed to be self-implementing—at a minimum, and with Part 264 where the standards are clearly established for the activity subject to the automatic authorization. The Agency solicits comments on this proposed approach.

The automatic authorization of Class 2 modifications if EPA or a State failed to approve or deny a modification request expeditiously proved to be a controversial element of the negotiated agreement. One Committee member declined to sign the final agreement because of this provision (which became known as the "default provision"). She stated concerns in a letter to EPA, which is included in the record for this rulemaking. The rest of the Committee members, however, accepted the default provision as necessary to ensure that the regulated community received some assurance that Class 2 modifications—which are relatively straightforward in nature—can be made on a predetermined schedule.

EPA believes that the default provision is an important feature of the negotiated agreement, and disagrees with the concerns expressed by the dissenting Committee member. Class 2 modifications represent a restricted category of changes, such as increases in tank or storage capacity up to 25 percent, addition of new wastes that do not require new management practices, and changes in vegetative requirements for closure. They are the kinds of changes that can be readily reviewed, because they do not represent major deviations from the facility's permitted activities, and the risks they might entail are limited. In fact, these modifications will frequently improve operations at the facility, leading to more efficient handling and treatment of the nation's hazardous waste. Requests for these kinds of changes can and should be acted upon promptly by the Agency. Where the modification fails to comply with Part 264 standards, or where information in the request is insufficient to determine compliance, EPA will deny the request. However, where the request is justified, it should be granted expeditiously. The "default provision" will both ensure prompt Agency attention and assure the facility owners that the review of their requests will not drag on indefinitely.

EPA believes that the "default provision" will only rarely be exercised. However, it should be emphasized that, even in the case of a decision by default, the proposal provides ample protection to human health and the environment. In the first place, as described above, the kinds of activities that could take place under an automatic authorization are limited. In the second place, Part 265 standards, and to the extent practicable Part 264 standards, would apply to all activities conducted under an automatic authorization, ensuring that the changes must comply with enforceable standards. Therefore, EPA disagrees with the comment that this approach would be unenforceable or would not provide reasonable protection to human health and the environment.

For these reasons, EPA supports the "default provision" in today's proposal. The concept of automatic approvals has worked well in other programs, such as EPA's review program for new chemicals under the Toxic Substances Control Act, and it is equally applicable here. Particularly because it is balanced by significantly strengthened procedures for public participation, EPA believes that the "default provision" for limited classes of modifications would contribute to a more effective and streamlined permitting program.

One final issue related to Class 2 modifications deserves discussion. The Committee agreed that the facility owner/operator should be allowed to perform any construction necessary to implement a Class 2 change before the modification request is granted. The permit modification regulations currently prohibit "preconstruction" for permit modifications, just as the statute prohibits preconstruction of hazardous Waste management facilities before a permit is issued. The Committee agreed that, because of the limited nature of Class 2 modifications and the need for flexibility in maintaining permits, preconstruction should be allowed for this category of modification. The Agency believes that it has the authority under RCRA to allow "preconstruction" of these Class 2 changes. The facility owner/operator, however, would assume the risk that EPA might deny the permit modification request, and the construction already undertaken would become unusable, at least for managing hazardous waste. The preconstruction provision for Class 2 modifications is proposed under § 270.42(b)(8).

3. Class 3 Modifications

Class 3 modifications cover changes that substantially alter the facility or its operations. Generally, they include any increases in the facility's land-based treatment, storage, or disposal capacity; increases of more than 25 percent in the facility's non-land-based treatment or storage capacity; authorization to treat, store, or dispose of wastes not listed in the permit that require changes in unit design or management practices;

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substantial changes to landfill, surface impoundment, and waste pile liner and leachate collection/detection systems; and substantial changes to the ground-water monitoring systems or incinerator operating conditions. The specific modifications that fall into Class 3 are identified in Appendix I to 40 CFR Part 270 and discussed more fully in section IV.C of this preamble.

The Committee agreed that, because Class 3 modifications involve substantial changes to facility operating conditions or waste management practices, they should be subjected to the same review and public participation procedures as permit applications. In addition, the Committee agreed that the public should have the opportunity to meet with the facility owner/operator and comment on the modification request before the Agency developed a draft permit. The specific procedures agreed upon by the Committee for Class 3 modifications have been proposed at 40 CFR 270.42(c).

The first steps in the application procedures for Class 3 modifications are similar to the procedures for Class 2. Under proposed § 270.42(c)(1), the permittee must submit a modification request to EPA indicating the exact change to be made to the permit; identifying the change as a Class 3 modification; explaining why the modification is needed; and providing applicable information required by 40 CFR 270.13 through 270.21 and 270.62. As with Class 2 modifications, the permittee is encouraged to consult with EPA before submitting the modification request.

As agreed upon by the Committee, the permittee would also be subject to essentially the same public notice and meeting requirements for Class 3 as for Class 2 modifications. Proposed § 270.42(c)(2) would require the permittee to notify persons on the facility mailing list concerning the modification request. This notice would have to occur on the date of submission of the request to the Agency, and would have to contain the same information as the Class 2 notification, except that it would include an announcement that a second public meeting might be held if a written request were made. Proposed § 270.42(c)(4)(i) would require the permittee to hold an informational public meeting, just as in Class 2. However, proposed § 270.42(c)(4)(ii) adds a provision that the permittee may hold a second meeting at his or her own discretion, or if requested in writing by a member of the public.

The Committee agreed that if the permittee chose to conduct a second public meeting, he or she would be required to notify the public in accordance with proposed § 270.42(c)(4)(ii)(A)–(E). The purpose of the meeting would be to allow the permittee and the public to further discuss issues raised in the first meeting and, if possible, to resolve them. In many cases, the Committee believed, this second meeting might lead to a revision to the permittee's modification request. The meeting would have to be held no fewer than 15 days after the notice and no fewer than 15 days before the end of the comment period. If it were not possible to hold the meeting at least 15 days before the end of the comment period, the permittee would be required to extend the comment period. The Committee also agreed that, to facilitate the resolution of issues, the permittee might employ a neutral facilitator to chair the meeting. In this case, the permittee and the Agency would have to agree on the selection of the facilitator. Like the first meeting, the second meeting would not have any official status.

Finally, the Committee agreed that the Agency would use the permit issuance procedures of 40 CFR Part 124 for Class 3 modifications after the conclusion of the 60-day (or extended) comment period. Thus, the Agency would have to prepare a draft permit modification, publish a notice, allow an additional 45-day public comment period on the draft permit modification, hold a public hearing on the modification if requested, and issue or deny the permit modification. In addition, the Agency would be required to consider all written comments received by the Agency during the public comment period announced by the permittee at the time of the modification request.

4. *Temporary Authorizations* The Committee also agreed that EPA should have the authority to grant a permittee temporary authorization, without prior public notice and comment, to conduct activities necessary to respond promptly to changing conditions. In granting a temporary authorization, under the Committee agreement, the Agency would have to find that the modification was necessary to: (i) Facilitate timely implementation of closure or corrective action activities; (ii) facilitate timely management of a newly regulated waste at the permittee's facility; (iii) avoid disrupting ongoing waste management activities at the permittee's facility; (iv) enable the permittee to respond to sudden changes in the types or quantities of wastes being managed at the facility or (v) carry out other changes to protect human health and the environment. Temporary authorizations could be granted for any Class 2 modifications that met these criteria, or for a Class 3 modification that met the criteria and that was necessary to: (i) Implement corrective action or facility closure activities, (ii) manage a newly regulated waste, or (iii) provide improved management or treatment of a waste already listed in the permit.

EPA has proposed these criteria for temporary authorization in § 270.42(e). However, the Agency believes that it may be appropriate to drop item (ii), the management of newly regulated waste, from the list. Elsewhere in the negotiated agreement, the Committee agreed on a special modification procedure for facilities handling newly listed or identified wastes. This procedure would allow the owner/operator to handle the newly regulated waste as a Class 1 modification, pending the review of a Class 2 or 3 modification request. The Agency has proposed this procedure in § 270.42(g) (see section IV.B.7 of this preamble). The Agency, therefore, is proposing a dual approach: A facility owner/operator would have the option of seeking a modification to handle a newly listed waste either as a temporary authorization or under the special procedures of § 270.42(g). Although the Committee agreed on including both approaches during its negotiations, EPA believes that the special procedures of § 270.42(g) are generally more appropriate for newly listed wastes. (This point is explained more fully in section IV.C.7 of the preamble.) Therefore, the Agency specifically solicits comments on whether it should retain changes necessary to handle newly listed wastes as a criterion for temporary authorizations.

In addition, EPA believes that other criteria not addressed by the Committee may be appropriate justifications for temporary authorizations. For example, EPA solicits comment on whether temporary authorizations should explicitly be allowed for storage or treatment of hazardous wastes subject to land disposal restrictions under 40 CFR Part 268. These restrictions are likely to lead to severe short-term dislocation of waste management systems and a shortfall in capacity. The regulated industry will require flexibility to handle and treat restricted wastes under these circumstances. For these reasons, the Agency recently promulgated a regulation classifying changes to facility permits for storage or treatment of restricted wastes as minor permit modifications, pending review of the changes as major modifications. (*See* § 270.42(p), as amended on July 8, 1987, 52 FR 25760.) If today's proposal

becomes final, the minor modification provision will be eliminated. EPA believes that it may be appropriate to retain the flexibility provided by this rule by allowing non-land-based management of restricted wastes (at least for Class 2 modifications) under temporary authorizations. The Agency solicits comments on this question.

Proposed § 270.42(e) (2)–(4) details the procedures agreed upon by the Committee for granting temporary authorizations. Under these procedures, the permittee must submit to the Agency a request for a temporary authorization describing the activities to be conducted; explaining why the temporary authorization was necessary; and providing sufficient information to ensure compliance with Part 264 standards. In addition, the permittee would be required to notify all persons on the facility mailing list about the temporary authorization request within seven days of the request. For temporary authorizations, however, the Committee agreed that there would be no automatic requirement for public comment or hearings. Instead, only temporary authorizations that were "not of short duration (i.e., permanent) would need to go through either the Class 2 or Class 3 approval procedures." (This issue is discussed later in this section of the preamble.)

Proposed § 270.42(e)(3) would require the Agency to approve the temporary authorization as quickly as practical. In granting the authorization, EPA (or the authorized State) would be required to find that the modification met the criteria for a temporary authorization. The Committee agreed that denial of a temporary authorization request would not prejudice action on the modification request. The denial would not necessarily mean that the activities contemplated by the permittee did not meet appropriate permitting standards; it might only mean that the criteria for a temporary authorization were not met.

Proposed § 270.42(e)(i) specifies that a temporary authorization must be issued for a term of no fewer than 90 and no more than 180 days, and that the authorization could be extended for another 180 days. Although the Committee Agreement specified this requirement, at least one member of the Committee raised the question of whether temporary authorizations should be allowed for a term of fewer than 90 days. EPA emphasizes that the term of the temporary authorization would begin at the time of its approval by the Agency, or at some specified effective date shortly after the time of approval. There would be no requirement, of course, that the authorized activities run at least 90 days, only that they be completed by the end of the authorization. Therefore, the Agency believes that there is no need specifically to allow temporary authorizations to be granted for fewer than 90 days. However, the Agency solicits comments on this issue; specifically, should the Agency have the ability to issue a temporary authorization with a duration of less than 90 days?

As the Committee agreed, the permittee would be required under proposed § 270.42(e)(4) to submit a complete modification request within 60 days of submitting the temporary authorization request. The initial request for a temporary authorization, of course, would have to be substantially complete, and, as required in proposed § 270.42(e)(2), would have to include sufficient information for EPA to determine that the activities would be in compliance with Part 264 standards. However, because of the need for timely action, the facility owner might not have time to provide all material required under Part 270—for example, changes that would be required in supporting documents such as personnel training plans or closure plans. This information would have to be provided as part of a complete modification request within 60 days. As required under proposed § 270.42(e)(4), if EPA did not determine the request to be complete after 60 days, the temporary authorization would be terminated.

The Committee agreed that, if the Agency issued a temporary authorization, it would be required to review the subsequent modification request in the same manner that it would in the absence of a request for a temporary authorization. However, in the case of a Class 2 modification, the Agency would not be required to act on the request until the date the temporary authorization (or the extended temporary authorization) expired. At that time, the Agency would be required to make one of the decisions otherwise required on day 120 for Class 2 modifications. If the Agency failed to make one of those decisions, the activities described in the modification would be temporarily authorized without action by the Agency.

It should be noted that this scenario could allow a significant amount of time to pass before the Agency is required to make a final decision on the permit modification request. For example, at the end of the extended temporary authorization, the Agency may grant another temporary authorization, or an automatic 180-day temporary authorization may occur in the absence of a decision. In either case, the final Agency action on the request could be delayed for this additional period of time. EPA believes that it is in the interest of the permittee, the public, and the permitting agency to render timely final decisions on these Class 2 permit modification requests. The Agency invites comment on the decision timeframes that would be established by this approach. Specifically, should the Agency be required to make its decision by the end of the initial temporary authorization, or should there be a fixed time period (e.g., 180 days) for the Agency to make its decision?

As stated earlier, the Committee agreed that Class 2 and 3 public participation procedures would be required only for "permanent" activities conducted under a temporary authorization. The Committee did not provide EPA specific guidance on how to interpret this directive. The Agency, however, believes that any activity that continues beyond 180 days (the maximum term of an initial temporary authorization) should be considered "permanent" and should require the full public participation requirements of Class 2 or 3 modifications, as appropriate. This approach is proposed in § 270.42(e)(3)(iii).

Under this proposal a permittee could operate under a temporary authorization for up to 180 days without providing a formal opportunity for public comment and without holding the informational meeting required for Class 2 and 3 modifications. These steps would be required before the activities continued beyond the 180-day term of the authorization. It should be emphasized, however, that even short-term activities could not be conducted under this authority without public knowledge. As explained above, in the case of all temporary authorization requests, the permittee would be required to notify the public within seven days of the request. Therefore, the public would have an opportunity to raise any issues or concerns it had with the permittee or the Agency, and it could appeal any Agency decision to grant a temporary authorization.

In summary, temporary authorizations may occur in the following situations

1. The permittee requests and the Agency approves a temporary authorization for short-term activities. This temporary authorization is renewable only if the permittee has complied with the notification procedures of the appropriate Class 2 or 3 modification process.

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2. The permittee requests and the Agency approves a temporary authorization while the Agency and the public are reviewing the Class 2 or 3 modification. This temporary authorization is renewable once, for up to 180 days.

3. The Agency approves a temporary authorization after public review of a Class 2 modification request but before the Agency issues the final permit modification. This temporary authorization is not renewable.

4. An automatic temporary authorization is granted where the Agency fails to make a decision on a Class 2 modification request within prescribed deadlines.

EPA believes this approach provides a reasonable balance between the public's right to know of and comment on activities at permitted hazardous waste facilities and the facility owner/operators' need to implement certain changes rapidly. The Agency also believes that this approach allows a reasonable implementation of the Committee's agreement that full public participation was not necessary for short-term activities conducted under temporary authorizations at hazardous waste facilities.

More generally, the Agency believes that the temporary authorization procedure approved by the Negotiating Committee will provide important flexibility to permitted hazardous waste facilities, without sacrifice to public health or the environment. In fact, because temporary authorizations are designed specifically for activities necessary to improve management of hazardous waste, or to conduct timely closures and corrective actions, this authority should reduce actual risk and promote safe handling of wastes. For this reason, the Agency believes that the temporary authorization procedure will greatly benefit the regulated industry, regulating agencies, and the public.

5. Other Modifications

As explained later in this preamble, the Agency has chosen to codify the list of permit modifications developed by the Negotiating Committee. This approach leaves open the question of how to handle modifications that have not been listed in one of the three categories.

While the Committee did not specifically address this question, the Agency is proposing an approach in § 270.42(f). Under this proposal, a facility owner/operator wishing to make a permit modification not included on Appendix I could submit a Class 3 modification request, or alternatively ask the Agency for a determination that Class 1 or 2 modification procedures should apply. In making the determination, the Agency would consider the similarity of the modification to modifications listed in Appendix I, and would apply the general definitions of Class 1, 2, and 3 modifications developed by the Negotiating Committee. Furthermore, the Agency would notify persons on the facility mailing list of its decision to classify the modification as Class 1, 2, or 3, and the public and the permittee would have the right to appeal the classification, as well as EPA's decision to grant or deny the request itself. Finally, EPA intends to monitor decisions by permitting authorities (both the EPA Regional offices and authorized states) on modification request classifications and will periodically amend Appendix I of this regulation to include these classifications.

As an alternative, the Agency considered requiring the Class 3 process for any modification that did not appear in Appendix I, and periodically amending the regulations to add new modifications. EPA, however, has rejected this approach as unwieldy and as significantly undermining the flexibility provided by this proposal. The Negotiating Committee and the Agency have made a concerted effort to develop a comprehensive list of permit modifications in Appendix I. However, experience has shown that a complete list is not possible, and that there will inevitably be many requests for modifications not found in the Appendix. Thus, unless a simple and flexible process is developed for addressing unclassified modifications, today's proposal will provide only limited relief. The Agency believes that proposed § 270.42(f) provides such an approach.

6. Permit Modification Appeals

The Committee agreed that members of the public and the permittee should have the same rights to appeal Agency decisions on permit modifications as they have to appeal permits. The proposal would require EPA to notify the public of its decisions on permit modification requests, including the automatic authorization of permit modifications through the default provision. It would also explicitly allow the public to appeal these decisions under the procedures of 40 CFR Part 124. These requirements are proposed in § 270.42(d).

7. Newly Listed or Identified Wastes

Under current regulations, facility owner/operators must secure a major permit modification before handling hazardous wastes not listed in the facility permits. This requirement applies not only to hazardous wastes new to a facility, but also to wastes that a facility is already handling that are newly listed or identified by EPA as hazardous. Thus, if a permitted facility is handling a solid waste that EPA lists as hazardous under section 3001(b) of RCRA or that possesses characteristics that EPA identifies as hazardous under sections 3001 (g) and (h), the facility's permit must undergo a major modification to allow it to continue to handle the waste. This modification might simply entail adding the new waste to the permit, because the facility had been handling the waste in an already permitted unit. Alternatively, it might entail adding to the permit storage or treatment tanks, surface impoundments or landfills, incinerators, or other units, because the waste had been handled in an unpermitted unit.

The Committee agreed that permit modifications necessary to handle newly listed or identified wastes present a special case and do not fit readily into the established procedure. In particular, the Committee recognized the severe disruption that a lengthy permit modification process might cause a facility already handling a newly regulated waste—especially if the facility had to go through a Class 3 modification to continue to handle the waste. The Committee also acknowledged a potential inequity between permitted and interim status or unpermitted facilities handling newly regulated wastes. Under RCRA, previously unregulated facilities can gain interim status, allowing them to continue to handle the waste, simply by submitting a Part A application and complying with 3010 notification requirements. Interim status facilities would be able to continue to handle newly listed or identified wastes through a change in interim status without a detailed permitting review by the Agency. Permitted facilities, however, would require a major permit modification. As a result, permitted facilities would be penalized when it came to handling newly listed or identified wastes.

For this reason, the Committee agreed that special procedures should be developed for modifications involving newly listed or identified wastes, and it provided general guidance to EPA on developing an approach to this class of modifications

- The permittee would submit a Class 1 modification request at the time the waste became subject to the new requirements.

- The permittee would comply, to the extent practicable, with Part 264 requirements, and where this was not practicable with Part 265 requirements.
- In the case of Class 2 and 3 modifications, the permittee would submit the appropriate modification request within a specified time period.

The Committee also agreed that, where new wastes or units are added to a facility's permit under this approach, they would not count against the 25 percent expansion limit for Class 2 modifications.

EPA is today proposing this approach in § 270.42(g). EPA's proposal would allow permitted facilities to continue to handle newly listed or identified wastes—either in permitted or unpermitted units—if they were handling them at the time of publication of the final rule listing or identifying the new waste. Furthermore, as the Committee agreed, the permittee would be required to submit a Class 1 modification at the time the waste became subject to the new listing or identification (that is, on the effective date of the rule); the permittee would have to comply with Part 265 standards and to the extent practicable with Part 264; and for Class 2 or 3 modifications he or she would have to submit a complete permit modification request within 180 days of the effective date.

The Agency considered limiting these special modification procedures to facilities that were handling wastes on the effective date of the final rule (which under RCRA would be six months after publication), rather than the date of publication. EPA has tentatively rejected this approach, because it would provide an opportunity for permitted facilities to introduce new wastes after the exact scope of the listing was known but before the rule became effective. In this way, facilities could circumvent full permit modification procedures. However, EPA acknowledges that its proposed approach does raise equity questions, because interim status and unpermitted facilities under current regulations and statutory requirements would be free to expand capacity up until the effective date of a listing or identification rule.

The Negotiating Committee did not provide specific guidance to EPA on the amount of time that the permittee should be given to submit a complete application. However, the Agency believes a period of 180 days is appropriate because it is consistent with the call-in period for Part B permit applications for interim status facilities. EPA believes that less time may be inadequate in many cases, particularly where a new unit, such as an incinerator or a surface impoundment, is involved. In the case of a surface impoundment, for example, the permittee might in some cases be required to install monitoring wells and take other steps to provide a complete application. For this reason, EPA believes that 180 days is an appropriate period.

As discussed earlier, EPA recently proposed a rule that would allow the handling of newly listed or identified wastes as a minor modification, pending action on a major modification (52 FR 30570, August 14, 1987). The Agency intends to promulgate that rule, regardless of today's proposal, to provide earlier relief to the regulated industry. However, when today's proposal is issued as final, it will supersede that rule.

One major difference between the August 14 proposal and today's proposal should be noted. The August 14 proposal would allow facilities to handle newly regulated wastes through minor permit modification procedures, which require prior EPA approval, while today's proposal would not require prior EPA approval. The permittee would simply have to notify EPA and the public under the Class 1 procedures to put into effect a modification involving a newly listed or regulated waste. The August 14 proposal did not contemplate an approach like the one presented in today's proposal since the intent of the earlier proposal was to adhere to the framework of the current minor modification regulations, which does not provide for modifications without prior Agency approval. EPA believes that the approach in today's proposal is more equitable, because unpermitted facilities and, for the most part, interim status facilities would not require prior Agency approval before continuing to handle a newly listed or identified waste. Furthermore, today's approach is consistent with the Negotiated Committee's agreement.

8. Publication of Permit Modification List

The Committee also agreed that EPA or an authorized State would maintain a list of approved permit modifications and periodically publish a notice that the list is available for review. The Committee did not specify how often such a notice would have to be published; however, EPA believes that the notice should be published once a year. The Agency considered a shorter interval, but believes more frequent publication to be unnecessary and unwieldy. The public notice will only serve as a reminder to the public—or as a notice to new residents—that an updated list is available for review. The Agency believes that annual publication of this notice would provide the public adequate opportunity for oversight of how the Agency was running the permit modification program. Members of the public interested in a closer review could follow the Agency's actions on a site-specific basis.

C. Classification of Permit Modifications

The Committee decided that it was important to identify in the regulation what types of facility changes constitute Class 1, 2, and 3 modifications. Therefore, the Committee developed an extensive classification of possible changes that would necessitate permit modifications. This classification is presented in Appendix I of Part 270.

The Appendix I classification list generally follows the organization of the facility standards in Part 264. The list is designed to be self-explanatory, and, with a few exceptions noted in the preamble discussion below, represents Committee agreement. Therefore, the following preamble discussion will only address items where some background may be useful, suggestions that did not receive Committee consensus, or substantive additions that EPA is proposing.

In adopting the Committee's permit modification classification list for inclusion in Part 270, the Agency needed to make some minor changes to the list. However, the Agency believes that these changes are only minor structural reorganizations or, in some cases, minor editorial changes to make the wording more precise. EPA has also added a few substantive items to the list that the Committee did not address or resolve. All of EPA's substantive additions are identified and discussed in the preamble.

The Agency specifically requests comments on the proposed classification of Class 1, 2, and 3 modifications. Commenters should address the questions of whether the specific modifications listed in Appendix I are clearly described, whether specific modifications are appropriately classified, and whether other modifications should be listed.

1. General Permit Provisions

The items identified under "General Permit Provisions" in Appendix I are primarily derived from the conditions that are applicable to all permits as specified in §§ 270.30–270.33. Other general changes are also included in this section that are administrative in nature, or that recur throughout the Part 264

regulations but would more simply be addressed in one place (e.g., frequency of reporting).

The Committee agreed that administrative and informational changes and correction of typographical errors are of little concern, and are primarily necessary to maintain a current permit document. One Committee member suggested that correction of minor factual errors should also be included as a Class 1 change, but the Committee did not have time to address this suggestion. The Agency requests public comment on whether correction of minor factual errors should be added to this list as a Class 1 change, and if so, how "minor factual errors" should be defined.

The Committee also agreed that it is important that the permittee be able to make routine equipment replacements that are necessary for the continued operation of the facility. Equipment that frequently needs replacement includes pumps, pipes, valves, incinerator fire-brick, instrument readout devices. In most cases, such replacements should not even require a permit modification since the permit should acknowledge them as ongoing maintenance activities. However, some Committee members offered examples where permits specified a particular piece of equipment, including the manufacturer's name and the model number of the item. Such an item may not be available at a later date when it needs replacement. (Some permit conditions may inadvertently create such restrictions by incorporating the Part B permit application by reference.) The Committee decided that when a permit modification for such a change is needed, it would be a Class 1 change. The Committee further agreed that the facility should be able to upgrade these kinds of ancillary equipment without prior approval to take advantage of better designs or more suitable products, so long as the new equipment is "functionally equivalent" to the equipment it replaces. (The definition of "functionally equivalent" is discussed later in the preamble.) These would also be Class 1 changes.

The proposal would also allow changes in interim compliance dates in schedules of compliance with Director approval. Where such changes would be likely to delay the final date of compliance, it would not qualify as a Class 1 change.

2. General Facility Standards

The "General Facility Standards" portion of Appendix I encompasses changes that affect the general standards and requirements that apply to all hazardous waste facilities (Subparts B–E of Part 264). These changes primarily involve the various plans that must be maintained by the facility (e.g., contingency plan, training plan) and are self-explanatory.

3. Ground-Water Protection

Subpart F of Part 264 specifies the RCRA system for protecting ground-water. Permitted facilities subject to ground-water monitoring requirements have very detailed permit conditions regarding the hazardous constituents to be monitored; concentration limits of hazardous constituents that trigger subsequent actions; and the number, location, depth, and design specifications of monitoring wells. The Committee agreed to a classification of typical changes, incorporated into Appendix I, that may be needed in the ground-water monitoring program at a facility.

The classification of changes in ground-water monitoring in Appendix I represents a compromise reached by the Committee. EPA wishes to emphasize, however, that it considers ground-water monitoring to be a critical element of permits for land-based units, and that ground-water monitoring systems require close attention by the Agency. Many of the specific changes categorized as Class 2 in this section might under some circumstances constitute significant changes in the ground-water monitoring system—such as change in point of compliance; change in the number, location, or depth of wells; and reduction in the number of hazardous constituents analyzed for the assessment program. Permittees should understand that, if a permit modification request did not provide documentation that the modification would fully comply with Part 264 standards and would not reduce the effectiveness of the ground-water monitoring system, EPA or an authorized State would be obliged to deny the permit modification request. (Alternatively, the Agency could extend the review period, with the approval of the permittee.) Therefore, EPA expects that the permittee will consult closely with the regulating agency before requesting such modifications, except in the most straightforward of cases.

EPA believes that Class 2 is an appropriate category for these types of changes regarding ground-water monitoring, because of the requirement that Class 2 modification requests indicate compliance with Part 264 requirements and because—once ground-water monitoring systems have been established and approved as part of the original permit—changes in the systems will generally be minor and technical. In fact, EPA believes that most changes will be made to "improve" permitted systems, because of new information, technology, or other considerations. Therefore, the Agency believes that public health and the environment will be best served by an expedited approval procedure for these kinds of changes.

The Agency, however, specifically solicits comments on the Committee's categorization of these permit modifications as Class 2. The Agency also solicits comments on whether certain modifications related to ground-water monitoring should be categorized as Class 1. For example, several of the modifications appear to be technical in nature, easily reversible, and generally of limited interest to the public—for example, changes in sampling or analysis procedures or changes in statistical procedures. The Agency solicits comments on whether such changes should be allowed as a Class 1 with prior Agency approval.

EPA has introduced several changes to the Committee's ground-water protection list. First, § 264.98(h)(4) requires the facility to request a permit modification within 90 days when it must establish a compliance monitoring program. The Committee agreed that this should be a Class 2 permit modification. However, the Committee did not address permit modifications similarly required by § 264.99(k) for changes to an established compliance monitoring program when the program no longer satisfies the specified requirements. The Agency is proposing also to classify these changes as Class 2 modifications. We believe that changes to a compliance monitoring program should be subject to the same level of Agency review and public participation required for the establishment of the compliance monitoring program. (*See* item C(9) in Appendix I.) The Agency requests comments on this addition to the Committee agreement.

Second, the Committee inadvertently failed to address the pre-HSWA corrective action activities at regulated units that are currently identified as major modifications. (HSWA corrective action is discussed in section IV.C.8 of the preamble.) Therefore, the Agency is proposing to add a new item C(10) to Appendix I to address the addition of a corrective action program when required by § 264.99(i)(2) or changes to such a program as required by § 264.100(h). Part 264 requires facilities to submit a permit modification request in both of these cases. The Agency believes that these particular corrective action activities are of major concern

since they are not called for unless there is evidence that the ground-water protection standard is being exceeded. Therefore, the Agency is proposing to categorize them as Class 3 permit modifications. This classification is consistent with earlier Committee deliberations on corrective action and ground-water monitoring. We invite comment on including this additional item in Appendix I.

4. New Wastes in a Unit

The use of the term "new wastes" in the Appendix I list refers to changes involving the introduction of hazardous wastes to units that are not permitted to handle these wastes. In other words, the facility may be seeking to accept wastes that were not previously identified in the permit, or it may already be managing the waste but would prefer to shift it to a different treatment, storage, or disposal process. Permit modifications for "newly regulated wastes"—those wastes that are newly listed or identified—are treated somewhat differently, as described in section IV.B.7 of this preamble.

The Committee agreed that permit modifications to allow new wastes at a permitted unit should be classified into two general categories. The first situation would involve new wastes that are sufficiently similar to wastes currently authorized at the unit so that no additional or different management practices, design, or process is required. As an example, a unit may be permitted only to treat specific solvent wastes, but may be equally capable of treating other solvent wastes that exhibit similar physical and chemical properties within the same management conditions of the permit. In these cases, the Committee specified that the permit modification should follow the Class 2 process.

The second situation would be where the introduction of a new waste at a unit would require different or additional management practices, design, or process in order to properly manage the waste—for instance, if the new waste was reactive or ignitable and the permit conditions did not anticipate that such wastes would be managed in the unit. The Committee agreed that these circumstances would require a Class 3 permit modification.

For each type of unit in Appendix I, the Committee defined general criteria as discussed above to determine whether permit modifications involving the management of new wastes represent a Class 2 or a Class 3 change. Although these criteria are general in nature, the Agency believes that they would be useful and appropriate in delineating between Class 2 and Class 3 modifications.

5. General Approach to Defining Unit-Specific Changes

This section of the preamble describes the Committee's classification of permit modifications involving the various types of hazardous waste management units at a facility. In general, the Committee addressed for each type of unit: (1) Changes to or addition of units that affect the facility's capacity, (2) changes to units that do not affect facility capacity, (3) replacement of units, (4) introduction of new wastes into a unit, and (5) changes to the waste management practices involving the unit. Also, the Committee identified additional changes that were appropriate for specific units.

i. *Tanks and containers.* The permitting standards for containers and tanks are found in Part 264 Subparts I and J. Because of the similarities of the classifications that the Committee developed for these units, they are discussed together. Furthermore, EPA made a structural change to the Committee's classification list in that it combined the "tank storage" and "tank treatment" sections into a single section that encompasses all of the activities identified by the Committee. The Agency believes that this arrangement is preferable because it eliminates possible confusion created by duplicative language and because the Part 264 standards do not differentiate between tanks used for treatment and tanks used for storage. This format change does not affect the substance of the Committee's classifications.

The Committee decided that tank system and container changes or additions resulting in a capacity increase of 25 percent or less should qualify as a Class 2 modification. This arrangement would allow modest capacity growth at a facility without the procedures currently associated with major modifications, but with an appropriate level of public notice and participation. Any change leading to an increase of more than 25 percent would require a Class 3 modification (except for certain specific unit operations described later in this section).

The 25 percent limit is based on the initial permitted capacity for tank systems or containers. As an example, a facility that has a permit for both tank systems and containers may bring on additional tank systems as Class 2 modifications until the cumulative increase in tank capacity equals 25 percent of the tank capacity specified in the permit. Similar changes may be made involving container units, based on the initial container capacity. Once the 25 percent limit is reached, all subsequent modifications involving capacity increase for the specific type of unit would follow the Class 3 process.

Another example that illustrates the limited nature of this Class 2 provision would be where a facility's permit specifies extensive container storage, but there is no provision for tank storage. In this case, the container storage operation may be expanded as a Class 2 change subject to the 25 percent limit, but addition of tanks would be a Class 3 modification since there was no permitted tank capacity.

The Committee also discussed the addition of certain tanks that perform particular treatment activities—neutralization, dewatering, phase separation, or component separation—that are fairly elementary physical processes. These unit operations are relatively simple in design and are well suited to use as mobile treatment units (MTUs). Furthermore, it was recognized that there is growing interest in the waste management field for using such MTUs since they provide industry significant flexibility in selecting among treatment technologies, in pretreating wastes before final treatment, and in reducing waste volume before shipping. (Note that EPA recently proposed amendments to the RCRA permitting program to remove regulatory impediments to using MTUs in treating hazardous wastes. 52 FR 20914, June 3, 1987.)

For these reasons, the Committee decided that the temporary (i.e., up to 90 days) addition of tanks to perform neutralization, dewatering, phase separation, or component separation operations may merit a separate classification from tanks intended for other uses. However, the Committee could not reach consensus on the appropriate modification class for these units. Initial discussions of the issue centered on treating these changes as Class 1 modifications, and some members of the Committee preferred this approach. Most Committee members believed that temporary use of these particular tanks should be assigned to Class 1 but should require Agency approval prior to operation. However, there were a few members who believed that there may be circumstances where the addition of such units would merit a Class 2 ranking. Therefore, the Committee decided that EPA should solicit public comments on these various approaches and consider the comments when developing the final rule.

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In today's proposal, the Agency is indicating that the addition of "new treatment tanks to be used for up to 90 days for neutralization, dewatering, phase separation, or component separation" is a Class 1 modification but requires prior Agency approval. (*See* item G(1)(d).) While the temporary use of these units does not appear to warrant imposing the Class 2 process, EPA does believe that Agency review of the proposed use of these tanks is important. Agency approval will ensure that the new units will be governed by the applicable Part 264 standards (and the Part 269 air emissions standards, when promulgated). EPA reiterates that the Committee did not agree on this classification; however, we believe that the public will benefit from seeing specific proposed language in Appendix I. EPA particularly invites comments on these issues to assist in its final decision.

As indicated in item G(1)(c), the addition of units conducting these four specific treatment operations for more than 90 days is a Class 2 modification, without limitation to the resulting capacity increase. This will allow facilities to institute these simple operations even if their current permitted treatment capacity is limited.

Tank replacements were designated by the Committee as Class 1 changes. (*See* item G(3).) Committee members acknowledged it may not always be possible to replace a tank with another tank of exactly the same capacity. Therefore, the Committee agreed that the tank replacement provision should allow a 10 percent variation in the size of the replacement tank, but it would not authorize the use of any additional capacity gained in this fashion. As discussed above, increases in the permitted tank capacity would require a Class 2 modification (if limited to 25 percent or less). (For example, if a 5,000-gallon tank is replaced by a 5,500-gallon tank, the replacement would be a Class 1 modification if the tank will be used to treat or store only 5,000-gallons or less. The facility could use the entire 5,500-gallons after a Class 2 modification.) The 10 percent variation would further be limited to a maximum of 1,500 gallons since tanks of 15,000 gallons and more are usually made to order and therefore would not have to deviate from the original tank size.

The Agency has proposed this modification as agreed upon by the Committee. However, it questions whether it is necessary to prohibit the owner/operator's use of the extra 10% capacity in replacement tanks under Class 1 modifications. It believes this provision may be difficult to enforce and will provide limited if any additional protection to human health and the environment. The Agency specifically solicits comments on this issue.

ii. *Surface impoundments.* The surface impoundment permitting standards of Part 264 Subpart K are designed to prevent any migration of wastes out of the impoundment to adjacent soil, ground-water, or surface water. The Committee decided to allow Class 2 permit modifications only under the following circumstances involving surface impoundments: (1) Changes to an impoundment that do not increase the unit's capacity and that do not modify the liner or leak detection system, (2) changes to management practices at the impoundment, and (3) the addition of new wastes under certain circumstances (as discussed in section IV.C.4 of the preamble). Class 3 permit modifications would be required for other changes, such as increased capacity or replacement of an impoundment.

iii. *Waste piles.* The Committee developed separate permit modification categories for two general types of waste piles. The first type of waste pile is one that is not inside or under a cover providing protection from precipitation, or that otherwise does not qualify for the exemptions provided in § 264.250(c). Such units are referred to as "unenclosed waste piles," and are treated in the same manner as landfills for purposes of permit modifications in today's proposal. Since unenclosed waste piles are subject to essentially the same design, operating, monitoring, and inspection requirements as landfills, the Committee decided that the permit modification requirements for these waste pile units should also be similar. The specific landfill permit modification requirements are discussed in the following section.

The second type of waste pile unit is the "enclosed waste pile"—i.e., waste piles that comply with § 264.250(c). Such waste piles are exempt from the ground-water monitoring requirements of Subpart F and from the § 264.251 requirements for liners, leachate collection systems, run-on and run-off control, and wind dispersal control. Section I of the Appendix lists the modifications that the Committee designated for enclosed waste piles.

Note that item I(1)(b) provides for unit changes or additions resulting in a capacity increase of 25 percent or less as a Class 2 modification. This is the same modification as allowed for tank and container units. Further discussion of the operation and limitations of this Class 2 change can be found in section IV.C.5.i above.

iv. *Landfills.* The permitting standards for landfills are found in Part 264, Subpart N. The Committee's list of permit modifications that are appropriate for landfills are presented in section J of Appendix I. (As discussed above, these modifications would also apply to unenclosed waste piles.)

The Committee specified most changes at landfill facilities as Class 3 modifications. Class 2 changes are indicated only for: (1) Limited unit modifications that would not affect a liner, leachate collection or detection system, run-off control or final cover system, (2) changes to management practices at the landfill, and (3) the addition of new wastes under certain circumstances (see section IV.C.4 of the preamble).

v. *Land treatment.* The list of modifications to land treatment facilities presented in section K of Appendix I is fairly extensive, reflecting the detailed regulatory provisions governing these facilities in Part 264, Subpart M. The modifications identified relate primarily to changes in land treatment operating practices, monitoring of the unsaturated zone, and the treatment demonstration. The items listed are quite specific and self-explanatory.

Currently, three types of permit changes for land treatment facilities are minor modifications. First, § 270.42(l) allows a minor modification for minor changes to the treatment program requirements for the purpose of improving treatment of hazardous constituents. Since the elements of the treatment program (identified in § 264.271) cover a wide range of possible permit conditions, this minor modification raises the question of what constitutes a "minor change" that "improves treatment of hazardous constituents." Today's proposal does not contain a provision similar to § 270.42(l), but instead identifies many potential changes to elements of the treatment program and classifies each one separately. However, the Committee agreement assigned either a Class 2 or 3 modification level to all such changes, thereby requiring a more extensive approval process than in the current system, if the modification were to qualify as minor under this provision. The Agency believes that the Committee may have inadvertently eliminated some land treatment changes that are currently allowed as minor modifications and for which a Class 1 modification with prior Director approval would be appropriate. Therefore, EPA is particularly interested

in comments on the relation of this new classification to the current provision of § 270.42(l).

The second land treatment minor modification is for a minor change to a permit condition to reflect the results of a treatment demonstration (§ 270.42(m)). This provision is retained in today's proposal, but it is a Class 2 modification and includes the additional condition that the performance standards must still be met (item K(15)). Therefore, such changes may require more time for approval under today's proposed system. The Agency welcomes comment on this new classification.

Finally, a third minor modification category allows a second treatment demonstration when the results of the first demonstration are not conclusive (§ 270.42(n)). This provision is essentially unchanged since it is identified as a Class I change that requires prior director approval (item K(16)).

The Agency is also proposing conforming changes to the land treatment demonstration permitting provisions of § 270.63. Section 270.63(d) currently specifies procedures for modifying the second phase of a land treatment permit based on results of field tests or laboratory analyses; however, these procedures are designed, in part, to provide an opportunity to appeal the Director's decision on a minor modification to the second phase permit. Since today's proposed modification approach provides for the appeal of any permit modification (*see* discussion at IV.B.6 above), there is no need to specify special appeals procedures. Therefore, an amendment to § 270.63(d)(2) is proposed that would remove the inappropriate reference to minor modifications. In addition, minor conforming changes are included by deleting the reference to minor modification in section (d)(1), and combining existing section (d)(3) with (d)(1) for simplicity.

vi. *Incinerators.* Permits for incineration facilities specify operating requirements that are established on a case-by-case basis to ensure that the incinerator will comply with the performance standards of Part 264, Subpart O. Usually the operating requirements are defined after a trial burn is performed in accordance with § 270.62. In considering the various changes that may be needed at incineration facilities, the Committee also had to determine when changes in trial burn plans may be necessary. Section L of Appendix I contains the result of the Committee's deliberations on incinerators.

Items L(1) (a) and (b) address modifications to incinerator units that result in capacity increases. Measures of incinerator capacity commonly used in permits are (1) Thermal feed rate, (2) waste feed rate, or (3) organic chlorine feed rate. A Class 2 permit modification may be obtained for capacity increases up to 25 percent; beyond that a Class 3 is required. Item L(1)(c) specifies particular unit modifications that the Committee believed should be treated as Class 3; even if these changes result in less than a 25 percent capacity increase, they would still require the Class 3 approval process. Furthermore, all of the changes identified in item L(1) would require trial burns unless the Director decided that the information that would be gained through the trial burn could be reasonably developed through other means.

The Agency would like to point out that the trial burn requirements specified by the Committee for item L(1) have been slightly altered in today's proposal. The Committee agreement required trial burns for the item L(1) changes just discussed, but it did not allow the Director to waive this requirement if the permittee could make an acceptable demonstration that the performance standards would be met. Current EPA requirements pertaining to trial burns allow substitute demonstrations in lieu of trial burns under certain circumstances—normally where data are available from operational or trial burns at similar units. (See §§ 270.19(c), 270.62(b)(5), and 264.244(c).) The Agency does not believe that the Committee intended to foreclose this alternate demonstration, so the language has been changed to be consistent with existing incinerator regulations. EPA similarly adjusted other items where the Committee language appears (e.g., items L(4)(a) and L(5)(a)).

Item L(2) addresses changes to incinerator operating or monitoring requirements that would not be likely to affect compliance with the performance standards. Examples of these Class 2 changes include modification of the waste feed systems, quench systems, kiln refractory, or control instrumentation. The Director may require a trial burn if he or she believes there is a possibility that the modification could affect the capability of the incinerator to meet performance standards or could significantly change the operating conditions.

Changes to operating requirements are identified in item L(4). The Committee designated as Class 3 modifications those alterations of operating requirements that relate to the unit's capability to meet the performance standards. Changes to other operating requirements could be made under the Class 2 process. Trial burns may be required for the changes listed in item L(4)(a).

Due to the nature of the trial burn and shakedown periods for new incinerators, changes often need to be made in the trial burn plan or in the interim permit conditions that apply to the incinerator before and immediately after the trial burn is conducted. Such changes are outlined in item L(6). Note that items L(6) (b), (c), and (d) are essentially unchanged from the current minor modifications in 270.42 (k), (j), and (i), respectively.

The Agency added item L(7) to the list of incinerator changes developed by the Committee. Where incinerator fuels are specifically identified in the permit, EPA believes that facilities should have the flexibility to use an alternate fuel based on availability and market prices. (For example, substitution of propane for natural gas.) Such changes are considered insignificant and are proposed to be Class 1 modifications.

6. Closure

The closure activities identified in section D of Appendix I stem from Part 264, Subpart G. Since § 264.112(a) specifies that the approved closure plan becomes incorporated as a condition of the permit, any changes to the plan must be made through the permit modification process. The Committee agreed to the classification of specific closure plan changes as presented in Appendix I, item D(1).

The Committee also addressed the possible need to add units to perform closure activities. If the addition of units is already specified in sufficient detail in the approved closure plan, then a permit modification should not be necessary. However, the creation of units not anticipated in the closure plan will require a permit modification to amend the plan (*see* § 264.112(c)). It also raises the issue of the facility undertaking activities that were not initially identified in the permit. In practice, it is not always possible for the permittee or the Agency, at the time of permit issuance, to anticipate the specific methods that will be best suited to close a facility ten or more years in the future. Therefore, the Agency expects that facility owners will frequently introduce units during closure that were not included in the original closure plan.

The Committee decided that adding units to perform closure should carry the same classification as adding the same

types of units for other reasons (discussed in preceding sections of the preamble). However, the Committee did not believe it was necessary to require a Class 3 modification for adding tanks, containers, or enclosed waste piles for closure that result in a capacity increase of more than 25 percent. It was recognized that closure activities are generally of relatively short duration, and therefore capacity increases resulting from the addition of these units to perform closure would be temporary. Items D (2) and (3) in the Appendix I list contain the classification of these closure activities.

The Committee also considered the special case of tanks that perform neutralization, dewatering, phase separation, and component separation. (*See* the earlier discussion on tanks in section IV.C.5.i of this preamble.) As described earlier, the Agency expects these four treatment operations to become increasingly available through the use of MTUs. MTUs are particularly well adapted to cleanup activities and closure of hazardous waste facilities. However, as was the case with the deliberations on the use of these particular tank units for non-closure activities, the Committee could not reach consensus on the appropriate classification for these units when used to perform closure. Therefore, in today's proposal the Agency has indicated that the temporary addition of these specific tank units would be a Class 1 modification but would require Agency approval. (*See* item D(3)(f)). This is consistent with the proposed classification for these same units if used for fewer than 90 days to perform non-closure activities. Again, EPA particularly invites public comments on this approach to assist its final decision.

7. Post-Closure

Permitted fadilities that must conduct post-closure activities must have a post-closure plan in their permits. Once approved, this plan becomes a condition of the RCRA permit (*see* § 264.118(a)).

The Committee agreement identified two types of changes to the post-closure plan, items E (1) and (2) of Appendix I. EPA is proposing to add three additional items to this list that are logical outgrowths of the Committee agreement. The first is the case where a facility requests a reduction to the post-closure care period (item E(3)). The Agency believes that this type of modification could substantially alter the post-closure program, and therefore warrants designation as a Class 3 change.

The two other additions to the Committee list are: (1) Changes in the expected year of final closure (Class 1), and (2) changes in the post-closure plan that need to be made as a result of events occurring at the facility during the active life of the facility, including closure (Class 2). These two types of permit modifications are specifically called for in § 264.118(d)(2). The Committee addressed similar issues regarding the closure plan, so the Agency has merely adopted parallel classifications for these post-closure plan changes (items E (4) and (5)).

8. HSWA Corrective Action

The Committee spent some time considering facility changes that may be needed to implement the corrective action requirements of HSWA. It was agreed that most corrective action activities would fall into the categories of changes already developed by the Committee (Appendix I). Further speculation as to other permit modifications necessary to comply with HSWA corrective action would be premature since a full regulatory program is still being developed. Therefore, the Committee resolved that EPA should develop specific classifications as needed for corrective action when the Agency develops proposed and final rules on the subject.

D. Conforming Changes to Permitting Regulations

Today's proposed changes to §§ 270.41 and 270.42 are based on the Negotiating Committee's agreement and would significantly alter the procedures for facilities to obtain permit modifications. However, the Committee recognized that it could not identify all of the related regulatory changes that would be needed to support the agreement. Therefore, the Committee requested that EPA perform an exhaustive review of the relevant RCRA regulations and propose the necessary conforming changes in this rulemaking. The Agency has identified several other areas in the current RCRA permitting regulations—in addition to §§ 270.41 and 270.42—that it believes would need to be amended to be consistent with the Committee's agreement and the regulatory language in today's proposal. The following discussion briefly explains the additional minor changes to Parts 124, 264 and 270 that are being proposed today.

Section 124.5 generally identifies which permit modifications must follow the full Part 124 permitting procedures. In § 124.5(c) we are proposing to add a reference to § 270.42(c)—procedures for Class 3 permit modifications—to indicate that Class 3 changes must comply with the Part 124 procedures. Section 124.5(c)(3) is modified in today's proposal to remove the reference to RCRA "minor modifications" and replace it with "Class 1 and 2 modifications", indicating that they are not subject to the full permitting requirements.

Part 264 specifies that the permittee must request a permit modification to amend an approved closure plan (§ 264.112(c)) or post-closure plan (§ 264.118(d)). The request must include a copy of the amended plan for approval by the Agency. However, since today's proposal would allow certain changes to closure or post-closure plans as a Class 1 modification, in such cases the permittee would not "request" a modification or seek "approval" of the amended plan. Instead, the permittee would notify the Agency of the Class 1 change, and the Agency may review (and possibly reject) the modification (*See* section IV.B.1 for detailed discussion.) There is no approval action necessary by the Agency for the Class 1 changes to these plans. Therefore, the Agency is proposing minor changes to §§ 264.112(c) and 264.118(d) to allow "written notification" and Agency "review" of Class 1 modifications. Also in Part 264, the comment at § 264.54 is deleted since it describes minor modifications to contingency plans which would be inconsistent with the proposed modification classification.

Several conforming changes are identified for Part 270. First, three definitions are proposed to be added to § 270.2. "Facility mailing list" is defined as meaning the list maintained by the Agency in accordance with § 124.10(c)(1)(viii); this list will be used to notify interested parties of permit modifications (as discussed in section IV.B of this preamble). "Component" and "functionally equivalent component" are included in the definition section to more clearly specify the types of equipment changes that are allowed as Class 1 modifications in accordance with Item A(3) of Appendix I (discussed in section IV.C.1 above).

In a second change to Part 270, the Agency is proposing to add a provision to § 270.4(a) stating "the permit may be modified upon the request of the permittee as set forth in § 270.42." This change is necessary to coincide with the restructuring of § 270.42 to address only permittee-initiated modifications.

Another change is needed in § 270.30(k)(2) since this provision does not allow the permittee to use the modified portion of the facility until a certification is submitted to the Agency indicating the modification is in accordance with the permit and the Agency has had an opportunity to

inspect the modification. Under today's proposed modification scheme, the requirements of § 270.30(k)(2) are not appropriate in many cases, particularly for Class 1 modifications and temporary authorizations. Therefore, the proposed amendment to this provision would allow the use of the modified portion of the facility as long as such use is in conformance with § 270.42.

Finally, the Agency proposes to delete the reference to "minor modification" in § 270.40 (transfer of permits by modification) and § 270.62 (incinerator permits). These provisions continue to reference the permittee-initiated modifications that are available under proposed § 270.42.

V. Other Issues

A. Permit Modification Form

Currently, there is no prescribed format for submitting permit modification requests. The RCRA regulations provide that in the case of a permit modification, the Director may require the submission of an updated application. (*See* § 124.5(C).) Today's proposal would amend § 270.42 to provide a more specific indication of the information that the permittee would have to submit. However, even with these proposed changes, each permittee seeking a permit modification will have to decide the most appropriate way to assemble his or her submission.

Certain members of the Committee suggested that changes at interim status facilities occur routinely, and that correspondence to the Agency is simplified by the use of the Part A permit application form. Of course, as discussed elsewhere in this preamble, the procedures for making changes at interim status facilities are simpler than those for making changes at permitted facilities. However, Committee members still credited the use of the Part A form as contributing to a more efficient process for gaining approval of facility changes. They suggested that a form for requesting permit modifications might serve a comparable function.

The Committee therefore examined the use of a standard form for permit modification requests. Although the final Committee agreement did not prescribe the use of such a form, there was general support for the idea. Members believed that a standard form would accomplish the following objectives:

- Guide the applicant in preparing the modification request;
- Facilitate Agency and public review of the request;
- Serve as the primary vehicle for notification to all persons on the facility mailing list;
- Assist the applicant in assuring that all appropriate parts of the permit have been changed;
- Help the applicant and the Agency to determine the proper modification classification; and
- Identify other permitting requirements that are also affected (e.g., permits for other media, such as air or water).

Information that might be included on a permit modification form would include (1) Facility name, address, EPA ID number, contact person, and phone number; (2) dates of initial permit and subsequent modifications; (3) a brief description of the requested modification; (4) a list of other environmental permits affected (if any); (5) a summary of voluntary public participation activities related to the modification (if any); (6) proposed classification of the modification request; and (7) components of the permit to be modified. The form could provide a list of typical permit components (e.g., contingency plan, ground-water system, closure plan) so that the applicant would merely check a box as to whether or not that item were changed. The Committee believed that the form should not exceed one or two pages. However, explanatory material would have to be attached to the form in most cases.

The Agency solicits comments on the desirability, contents, and format of such a form. In particular, the Agency is interested in whether such a form would be useful; whether it should be optional or required; whether it should be referenced in the regulations (like the Part A form) or presented as guidance; and what information would be useful for the permitting agency, the applicant, and the public. EPA will consider public comments on this issue when deciding whether or not to pursue the development of a permit modification form.

B. Technical Review and Public Education Fund

Several Committee members suggested that a fund should be established to support site-specific citizen education regarding proposed permit modifications. It was recognized that citizens often do not have the technical background to make judgments on the merits of many hazardous waste facility changes. Indeed, the design of these facilities can involve scientific and engineering skills in several disciplines. Consequently, Committee members thought that a general fund would be useful in providing technical support to the public commenting on permit modification requests or, more broadly, on permit applications.

Individual members of the Committee volunteered to serve on an informal working group to address the need for and feasibility of allocating funds for local technical review of permit modification requests and for public education on hazardous waste issues. One of the alternatives that will be investigated is the establishment of a special fund to enable citizens to obtain independent qualified technical experts to evaluate proposed facility changes. EPA believes that this type of evaluation would enable the local citizens to make constructive technical suggestions for improvements or to confirm that the permittee's proposed changes are technically sound and protective of human health and the environment.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (*See* 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA

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applies in authorized States in the interim.

B. Effect on State Authorizations

Today's proposal would be imposed pursuant to pre-HSWA authority. Therefore, those standards would not be effective in authorized States, but would be applicable in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than or in addition to those in the Federal program. The amendments proposed in today's rule are considered to be less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent to the provisions contained in today's proposal.

VII. Effective Date

This rule, if promulgated, would be effective 30 days after final promulgation. Section 3010(b) of RCRA provides that regulations concerning permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) provides for a shorter period if the Agency finds that the regulated community does not need six months to comply with the new regulation.

Since the proposed rule is designed to expedite permit modifications requested by the regulated community, the Agency believes that the regulated community will not need six months to come into compliance. Therefore, these amendments, when final, will be effective 30 days after promulgation, as provided under the Administrative Procedures Act.

VIII. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether EPA must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's proposal is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Agency does not believe a Regulatory Impact Analysis is required for today's rule. The proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., at the time an agency publishes any proposed or final rule, it must prepare a regulatory flexibility analysis that describes the impact of the rule on small entities unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendmehts proposed today provide additional flexibility for hazardous waste treatment, storage, and disposal facilities to undertake changes and overall do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Hazardous waste, Waste treatment and disposal.

40 CFR Part 264

Corrective action, Hazardous waste, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Lee M. Thomas,

Administrator.

Date: September 13, 1987.

Therefore, it is proposed that Subchapter I of Title 40 be amended as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; Clean Water Act, 33 U.S.C. 1251 et seq.; and Clean Air Act, 42 U.S.C. 1857 et seq.

2. Section 124.5 is amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 124.5 Modification revocation and reissuance, or termination of permits.

* * * * *

(c) *(Applicable to State programs, see §§ 123.25 (NPDES, 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 122.62 (NPDES), 144.39 (UIC), 233.14 (404), 270.41 or 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

* * * * *

(3) "Minor modifications" as defined in §§ 122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and "Class 1 and 2 modifications" as defined in § 270.42 (a) and (b) (RCRA) are not subject to the requirements of this section.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C 6905, 6912(a), 6924, and 6925).

§ 264.54 [Amended]

4. Section 264.54 is amended by removing the comment.

5. In § 264.112, paragraphs (c) introductory text, (c)(1), and (c)(2) introductory text are revised to read as follows

§ 264.112 Closure plan; amendment of plan.

* * * * *

(c) *Amendment of plan.* The owner or operator must submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in Parts 124 and 270. The written notification or request must include a copy of the amended closure plan for review or approval by the Regional Administrator.

(1) The owner or operator may submit a written notification or request to the Regional Administrator for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved closure plan whenever:

* * * * *

6. In § 264.118, paragraphs (d) introductory text, (d)(1), and (d)(2) introductory text are revised to read as follows:

§ 264.118 Post-closure plan; amendment of plan.

* * * * *

(d) *Amendment of plan.* The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements in Parts 124 and 270. The written notification or request must include a copy of the amended post-closure plan for review or approval by the Regional Administrator.

(1) The owner or operator may submit a written notification or request to the Regional Administrator for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

7. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

8. Section 270.2 is amended by adding the following definitions in alphabetical order:

§ 270.2 Definitions.

* * * * *

Component means any constituent part of a unit or group of unit constituent parts which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple, entire kiln, tank farm scrubber).

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(viii).

* * * * *

Functionally equivalent component means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

* * * * *

9. In § 270.4, the last sentence of paragraph (a) is revised to read as follows:

§ 270.4 Effect of a permit.

(a) * * *

However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

* * * * *

10. In § 270.30, paragraph (k)(2) introductory text is revised to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(k) * * *

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in § 270.42, until:

* * * * *

11. Section 270.40 is revised to read as follows:

§ 270.40 Transfer of permits.

Transfers by modification. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 270.41(b)(2) or § 270.42) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

12. Section 270.41 is amended by removing paragraph (a)(5), redesignating existing paragraph (a)(6) as (a)(5), and revising the introductory paragraph and paragraph (a)(3) introductory text to read as follows:

§ 270.41 Modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 270.30), receives a request for revocation and reissuance under § 124.5 or conducts a review of the permit file) he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See 40 CFR 124.5(c)(2).) If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of 40 CFR 270.42. Otherwise, a draft permit must be prepared and other procedures in Part 124 (or procedures of an approved State program) followed.

* * * * *

(a) * * *

(3) *New statutory requirements or regulations.* The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

* * * * *

13. Section 270.42 is revised to read as follows:

§ 270.42 Permit modification at the request of the permittee.

(a) *Class 1 modifications.* (1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions:

(i) The permittee must notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the

changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary.

(ii) The permittee must notify by mail all persons on the facility mailing list, maintained by the Director in accordance with 40 CFR 124.10(c)(viii), about the modification. This notification must be made within 14 calendar days after the change is put into effect.

(iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Permit modifications identified in Appendix I by an asterisk may be made only with the prior written approval of the Director.

(b) *Class 2 modifications.* (1) For Class 2 modifications, listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 2 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by 40 CFR 270.13 through 270.21 and 270.62.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Agency and must publish this notice in a local newspaper. This notice must be mailed and published on the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, in accordance with § 270.42(b)(5), and the name and address of an Agency contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with § 270.42(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of an Agency contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no fewer than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no fewer than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period will begin on the date the permittee submits the modification request to the Agency. Comments should be submitted to the Agency contact identified in the public notice.

(6)(i) No later than 90 days after receipt of the notification request, the Director must:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Notify the permittee that he or she will decide on the request within the next 30 days; or

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(ii) If the Director notifies the permittee of a 30-day extension for a decision, he or she must, no later than 120 days after receipt of the notification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(iii) If the Director fails to make one of the decisions specified in paragraph (b)(6)(ii) of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal Agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 CFR Part 265 and, to the extent practicable, with those of 40 CFR Part 264. If the Director approves, with or without changes, or denies the modification request during the term of the temporary authorization provided for in paragraphs (b)(6)(i), (b)(6)(ii), or (b)(6)(iii) of this section, such action cancels the temporary authorization.

(iv) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, if the Director has not made a final approval or denial of the modification request within 250 days after receipt of the request, the permittee must at or about that time notify persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) The permittee has been authorized temporarily to conduct the activities described in the permit modification request, and

(B) Unless the Director acts to give final approval or denial of the request by the end of the 180-day period of the temporary authorization, the permittee will receive authorization to conduct such activities for the life of the permit.

(v) If the Director does not approve or deny a modification request before the end of the 180-day automatic authorization period, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under § 270.41 or § 270.42. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 CFR Part 265 and, to the extent practicable, with those of 40 CFR Part 264.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization, the Director must consider all written comments submitted to the Agency during the public comment period and must respond in writing to these comments in his or her decision.

(vii) With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request.

(7) The Director may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6)(i), (b)(6)(ii) and (b)(6)(iii) of this section for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of 40 CFR Part 264 or other applicable requirements; or

(iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request after the submission of the request.

(c) *Class 3 modifications.* (1) For Class 3 modifications listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by 40 CFR 270.13 through 270.21 and 270.62.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Agency and must publish this notice in the local newspaper. This notice must be mailed and published on the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, and a name and address of an Agency contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with § 270.42(c)(4)(i);

(iii) Announcement that a second public meeting may be held if a written request is made to permittee's contact person within a specified period (of at least 15 days) after the announced public meeting;

(iv) Name and telephone number of the permittee's contact person;

(v) Name and telephone number of an Agency contact person;

(vi) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vii) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) (i) The permittee must hold a public meeting no sooner than 15 days after the publication of the notice required in paragraph (c)(2) of this section and no fewer than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility, and the time and place of the meeting must be announced in the public notice.

(ii) The permittee may hold a second public meeting at its own discretion or if requested by a member of the public. If the permittee chooses to hold a meeting, the permittee must notify persons on the facility mailing list maintained by the Agency and must publish this notice in a local newspaper. This notice must include:

(A) Announcement of the extension of the public comment period if the second meeting cannot be scheduled 15 days before the close of the initial comment period;

(B) Announcement of the date, time, and place of the meeting; the meeting must be scheduled no fewer than 15 days after publication of the notice and no fewer than 15 days before the end of the initial or extended public comment period;

(C) Name and telephone number of the permittee's contact person;

(D) Name and telephone number of an Agency contact person; and

(E) Location where copies of the modification request and any supporting documents can be viewed and copied. The permittee must provide evidence to the Agency that the above-described notice was published in the local newspaper and mailed to persons on the facility mailing list.

(iii) The permittee may employ a neutral facilitator to chair the second meeting. In this case, the Director and the permittee must agree on the selection of the facilitator.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the modification request is submitted to the Agency. Comments should be submitted to the Agency contact identified in the notice.

(6) After the conclusion of the 60-day (or extended) comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of 40 CFR Part 124. In addition, the Director must consider and respond to all written comments received during the initial 60-day or extended comment period.

(d) *Public notice and appeals of permit modification decisions.* (1) The Director shall notify persons on the facility mailing list within 10 days of any decision under this section to grant or deny a permit modification request; to grant a temporary authorization; or to classify a modification not listed in Appendix I. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification that goes into effect under § 270.42(b)(6) (iii) or (v).

(2) The Director's decision to grant or deny a permit modification request or temporary authorization under this section; the granting of an automatic authorization under § 270.42(b)(6) (iii) or (v); and the classification of a permit modification request under § 270.42(f), may be appealed under the permit appeal procedures of 40 CFR 124.19.

(e) *Temporary authorizations.* (1) Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of no fewer than 90 days and not more than 180 days. They may be reissued for an additional term of up to 180 days.

(2)(i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in paragraph (3)(ii) of this section, and

(B) Any Class 3 modification that meets the criteria in paragraphs (3)(ii) (A) or (B) of this section; or that meets the criteria in paragraphs (3)(ii) (C) through (E) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request must include:

(A) A description of the activities to be conducted under the temporary authorization;

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with 40 CFR Part 264 standards.

(iii) The permittee must notify by mail all persons on the facility mailing list, maintained by the Director in accordance with 40 CFR 124.10(c)(viii), about the temporary authorization request. This notification must be made within 7 days of the authorization request.

(3) The Director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Director must find:

(i) The authorized activities are in compliance with the standards of 40 CFR Part 264.

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is

likely to be taken on a modification request

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To facilitate timely management of a newly regulated waste at the facility;

(C) To avoid disrupting ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes being managed at the facility; or

(E) To facilitate other changes to protect human health and the environment.

(4)(i) Within 60 days of a temporary authorization, the permittee must submit a complete modification request. If the Director determines that the request is not complete, he or she shall terminate the temporary authorization.

(ii) The Director shall review and act on the complete modification request submitted under paragraph (4)(i) of this section according to the procedures for Class 2 and 3 modifications specified in paragraphs (a) and (b) of this section. However, the time period specified in paragraph (b)(6)(ii) of this section for Class 2 modifications would end on the date the temporary authorization (or the extended temporary authorization) expired, rather than 120 days after receipt of the modification request.

(iii) If the permittee wishes to continue the activities conducted under the temporary authorization after the expiration of the term of the initial authorization (which cannot exceed 180 days), the permittee must comply with the public notification procedures for Class 2 or 3 modifications, as appropriate (paragraph (b)(2) and (b)(3) or (c)(2) and (c)(3) of this section, as appropriate). In addition, the public shall be provided an opportunity to comment on the modification request, in accordance with paragraph (b)(4) or (c)(4) of this section.

(f) *Other modifications.* (1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit a Class 3 modification request to the Agency, or he or she may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, he or she must provide the Agency with the necessary information to support the requested classification.

(2) The Director shall make the determination described in paragraph (f)(1) of this section as promptly as practicable. In ~~determining~~ the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:

(i) Class 1 modifications apply to changes that correct typographical errors in the permit and keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to (A) common variations in the types and quantities of the wastes managed by the facility, (B) technological advancements, and (C) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(3) The Director shall notify persons on the facility mailing list in writing of any determination made under § 270.42(f). This notice must be mailed within 10 days of the determination. Any person may appeal the Director's determination, as specified in § 270.42(d).

(g) *Newly listed or identified wastes.* (1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261 if he or she:

(i) Was managing the waste at the time the final rule listing or identifying the waste was published in the **Federal Register**;

(ii) Submits a Class 1 modification request at the time the waste becomes subject to the new requirements;

(iii) Is in compliance with the standards of 40 CFR Part 265 and, to the extent practicable, with those of 40 CFR Part 264; and

(iv) In the case of Class 2 and 3 modifications, submits a permit modification request within 180 days.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h) *Permit modification list.* The Director must maintain a list of all approved permit modifications and must publish a notice once a year in a State-wide newspaper that an updated list is available for review.

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATIONS

Modifications	Class
A. General permit provisions:	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, or maintenance	1
b. Other changes	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the Director	[1] 1
b. Extension of final compliance date	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Director [3]	[1] 1
B. General facility standards:	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations	1
b. Other changes	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations	1
b. Other changes	2
3. Changes in procedures for maintaining the operating record	1
4. Changes in frequency or content of inspection schedules	2
5. Changes in the training plan:	
a. That affect the type and amount of training given to employees	2
b. Other changes	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures)	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	1
c. Removal of equipment from emergency equipment list	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan	1
C. Ground-water protection:	
1. Changes in hazardous constituents for which the ground-water protection standard applies	3
2. Changes in concentration limit (including ACL)	3
3. Changes in point of compliance (e.g., due to inclusion of other units in waste management area)	2
4. Changes to wells:	
a. Changes in the number, location, or depth of upgradient or downgradient wells of permitted ground-water monitoring system	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well	1
c. Replacement of existing wells resulting in a change to location, design, or depth of the well	2
5. Changes in ground-water sampling or analysis procedures or monitoring schedule	2
6. Changes in established background ground-water quality concentration levels	2
7. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred	2
8. Changes in parameters or constituents that the permit requires to be monitored	2
9. Addition of a compliance monitoring program as required by § 264.98(h)(4) and § 264.99 or changes to a compliance monitoring program as required by § 264.99(k) [2]	2
10. Addition of a corrective action program as required by § 264.99(i)(2) and § 264.100 or changes to a corrective action program as required by § 264.100(h) [2]	3
11. Reduction in number of hazardous constituents analyzed for assessment program based on no evidence of wastes in the unit	2

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATIONS—Continued

Modifications	Class
D. Closure:	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations during the active life of the facility	2
b. Changes in estimate of maximum inventory of wastes on-site at any time during the active life of the facility	1
c. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of closure period	2
d. Changes in the expected year of final closure, where other permit conditions are not changed	1
e. Changes in procedures for decontamination of facility equipment or structures	2
f. Changes in the approved closure plan resulting from unexpected events occurring during partial or final closure	3
2. Creation of a new landfill unit as part of closure	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments	3
b. Incinerators	3
c. Waste piles that do not comply with § 264.250(c)	3
d. Waste piles that comply with § 264.250(c)	2
e. Tanks or containers (other than specified below)	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior Director's approval	[1]1
E. Post-closure plan:	
1. Changes in name, address, or phone number of contact in post-closure plan	1
2. Extension of post-closure care period	2
3. Reduction in the post-closure care period [2]	3
4. Changes to the expected year of final closure, where other permit conditions are not changed [2]	1
5. Events occurring during the active life of the facility, including partial and final closure, which necessitate changes to the approved post-closure plan [2]	2
F. Containers:	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity	3
b. Resulting in up to 25% increase in the facility's container storage capacity	2
2. Modification of a container unit without increasing the capacity of the unit	2
3. Storage of new wastes in containers:	
a. That require additional or different management practices from those authorized in the permit	3
b. That do not require additional or different management practices from those authorized in the permit	2
4. Other changes in container management practices (e.g., aisle space; types of containers; segregation)	2
G. Tanks.	
1.:	
a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c) below	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) below	2
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies neutralization, dewatering, phase separation, or component separation	2
d. After prior approval of the Director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	[1]1
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/− 10% of the replaced tank provided:	1
—the capacity difference is no more than 1500 gallons,	
—the facility's permitted tank capacity is not increased, and	
—the replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice	2
5. Management of new wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit	2
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit	2
H. Surface impoundments:	
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity	3
2. Replacement of a surface impoundment unit	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity or without adding or modifying the unit's liner or leak detection system	2
4. Modification of a surface impoundment management practice	2
5. Storage or treatment of new wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	2
I. Enclosed waste piles:	
For all waste piles except those complying with § 265.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with § 265.250(c).	
1. Modification or addition of waste pile units	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity	2
2. Modification of a waste pile unit without increasing the capacity of the unit	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit	1
4. Modification of a waste pile management practice	2
5. Storage or treatment of new wastes in waste piles	
a. That require additional or different management practices or different design of the unit	3
b. That do not require additional or different management practices or different design of the unit	2
J. Landfills and unenclosed waste piles:	
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity	3
2. Replacement of a landfill	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system	2
5. Modification of a landfill management practice	2
6. Landfill new wastes.	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	3
b. That do not require additional or different management practices, different design of the liner leachate collection system, or leachate detection system	2
K. Land treatment:	
1. Lateral expansion of or otherwise modification of a land treatment unit to increase areal extent	3
2. Modification of run-on control system	2
3. Modify run-off control system	3
4. Other modifications of land treatment unit component specifications or standards required in permit	2
5. Management of new wastes in land treatment units.	
a. That require a change in permit operating conditions or unit design specifications	3
b. That do not require a change in permit operating conditions or unit design specifications	2
6. Modification of a land treatment unit management practice to change rate or method of waste application	3
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	2
8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops	3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to § 264.278(g)(2)	3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replacement of unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements	3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replaces unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements	2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid	3
13. Changes in sampling, analysis, or statistical procedure	2
14. Changes in land treatment demonstration program prior to or during the demonstration	2
15. Changes in any conditions specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met	2
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Director	1
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration	3
18. Changes in vegetative cover requirements for closure	2
L. Incinerators:	
1. Modification of an incinerator unit	
a. To increase by more than 25% any of the following limits authorized in the permit a thermal feed rate limit, a waste feed rate limit, or an organic chlorine feed rate limit. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATIONS—Continued

Modifications	Class
b. To increase by up to 25% any of the following limits authorized in the permit: a thermal feed rate limit, a waste feed limit, or an organic chlorine feed rate limit. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	2
c. By changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl or particulate from the combustion gases, or by changing other features of the incinerator that could affect its capability to meet the regulatory performance standards. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
2. Modification of an incinerator unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards	2
3. Replacement of unit components with functionally equivalent components that would not affect its capability to meet the regulatory performance standards or the operating conditions or monitoring requirements specified in the permit	1
4. Operating requirements:	
a. Modification of the limits specified in the permit for minimum combustion gas temperature, minimum combustion gas residence time, or oxygen concentration in the secondary combustion chamber. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls	3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards, particularly if thermal feed rates, waste feed rates or organic chlorine feed rates are to be substantially changed	2
5. Incineration of new wastes:	
a. If the waste contains a POHC that is more difficult to incinerate than authorized by the permit or if incineration of the waste requires compliance with different regulatory performance standards than specified in the permit. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. If the waste does not contain a POHC that is more difficult to incinerate than authorized by the permit and if incineration of the waste does not require compliance with different regulatory performance standards than specified in the permit	2
6. Shakedown and trial burn period:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, with the prior approval of the Director, the trial burn period, or the period immediately following the trial burn	2
b. Authorization of up to an additional 720 hours of waste incineration during the shakedown period for determining operational readiness after construction, with the prior approval of the Director	[1] 1
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
7. Substitution of an alternate type of fuel that is not specified in the permit [2]	1

[1] Class 1 modifications requiring prior Agency approval.
[2] Permit modifications not addressed or agreed upon by the Regulatory Negotiating Committee.

14. In § 270.62, the last sentence of paragraph (a) introductory text and the last sentence of paragraph (b)(10) are revised to read as follows:

§ 270.62 Hazardous waste incinerator permits.

(a) * * *

The permit may be modified to reflect the extension according to § 270.42 of this chapter.

* * * * *

(b) * * *

(10) * * *

The permit modification shall proceed according to § 270.42.

* * * * *

15. In § 270.63, paragraph (d)(3) is removed and paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 270.63 Permits for land treatment demonstrations using field test or laboratory analyses.

* * * * *

(d) * * *

(1) This permit modification may proceed under § 270.42, or otherwise will proceed as a modification under § 270.41(a)(2). If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Director will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in § 124.15(b).

[FR Doc. 87-21726 Filed 9-22-87; 8:45 am]
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September 23, 1987

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2582

Bonding Under the Federal Employees' Retirement System Act of 1986; Interim Rule With Request for Comments

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2582

Bonding Under the Federal Employees' Retirement System Act of 1986

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule applies the temporary bonding regulations under the Employee Retirement Income Security Act of 1974 (ERISA) to the Thrift Savings Fund (Fund) which has been established pursuant to the provisions of the Federal Employees' Retirement System Act of 1986 (FERSA). This interim rule also prescribes the amount of bonds required under FERSA for fiduciaries and persons who handle funds or other property of the Fund.

This interim rule is being issued because the Secretary of Labor (Secretary) is required by FERSA to prescribe regulations necessary to carry out the bonding requirements of FERSA. This interim rule is also being issued because the Secretary is required by FERSA to prescribe the amount of a required bond at the beginning of each fiscal year of the Fund. The rule will help to ensure that each fiduciary and each person who handles funds or other property of the Fund will be properly bonded.

DATES: This interim rule will be effective as of April 1, 1987. Written comments concerning this interim rule must be received by the Department of Labor (the Department) on or before November 23, 1987.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Attention: Interim FERSA Rule on Bonding. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas, Office of Regulations and Interpretations, (202) 523–8194 (FTS 523–8194).

SUPPLEMENTARY INFORMATION

Background Information

Enacted on June 6, 1986, and amended by the Federal Employees' Retirement System Technical Corrections Act of 1986 (FERSTCA, Pub. L. 99–556) and the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), the Federal Employees' Retirement System Act of 1986 (Pub. L. 99–335, 100 Stat. 515, 5 U.S.C. 8401 *et seq.*) established a new program of retirement and other benefits for most federal civilian employees hired after December 31, 1983, as well as certain other federal employees. FERSA provides a tax-deferred savings plan ("Thrift Savings Plan") as an option for federal employees, whose contributions may be matched in part by contributions made by employing agencies of the United States Government. The Thrift Savings Plan became operational on April 1, 1987. When the Thrift Savings Plan is fully implemented, contributions will be invested in one or more of three separate investment funds which together comprise the Thrift Savings Fund.

In general, the fiduciary responsibility, prohibited transaction, bonding and related rules applicable to the management of the Fund under FERSA are derived from similar rules applicable to private employee benefit plans under ERISA.

The bonding requirements applicable to the Fund are set forth in section 8478 of FERSA, which closely parallels section 412 of ERISA. Section 8478(a) of FERSA requires, with certain exceptions, that each fiduciary and each person who handles funds or other property of the Fund shall be bonded as provided in section 8478 against loss by reason of acts of fraud or dishonesty. In this connection, section 8478(b)(1) provides that the Secretary shall prescribe the amount of a bond required under section 8478 at the beginning of each fiscal year. Section 8478(b)(1) further provides that the amount of bond shall not be less than 10 percent of the amount of funds handled, but in no case less than $1,000 nor more than $500,000 except that the Secretary, after due notice and opportunity for a hearing to all interested parties, may prescribe a bond in excess of $500,000. Under section 8478(b)(2), in prescribing the amount of a bond for purposes of section 8478(b)(1), the amount of funds handled must be determined by reference to the amount of funds handled during the preceding fiscal year by the person, group or class to be covered by the bond (or by their predecessor of predecessors, if any), or to the amount of funds handled during the current fiscal year, estimated as provided in regulations prescribed by the Secretary.

Pursuant to section 8478(c), a bond obtained with respect to the Fund must also include the terms and conditions required by the Secretary and must have as surety thereon a corporate surety company approved for Federal bonds. Any such bond, whether covering an individual or a group or class, must be in a form or of a type approved by the Secretary.

Section 8478(d) makes it unlawful for any person to whom FERSA's bonding requirements apply to handle, disburse, or otherwise exercise custody or control over Fund property without being bonded as required by section 8478. It is also unlawful under section 8478(d) for any fiduciary, or any other person having authority to direct the peformance of functions involving the handling of Fund property, to permit any such function to be performed by any person to whom FERSA's bonding requirements apply if the requirements of section 8478 are not met.

Section 8478(f) provides that the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of section 8478, including regulations exempting a person or a class of persons from FERSA's bonding requirements. Section 113 of FERSTCA authorizes the Secretary of Labor to apply with respect to the Fund, through December 31, 1989, the temporary bonding regulations under section 412 of ERISA that are set forth in § 2550.412–1 and Part 2580 or Subchapter I of Chapter XXV of Title 29 of the Code of Federal Regulations (CFR).

ERISA section 412 requires generally that plan officials who handle funds or other property of private employee benefit plans be bonded. On January 10, 1975, the Department published a temporary bonding regulation under ERISA section 412 (29 CFR 2655.1, redesignated as 29 CFR 2550.412–1 on May 12, 1975, at 40 FR 20654). Temporary regulation 29 CFR 2550.412–1 references selected portions of the bonding regulations originally issued under the authority of section 13 of the Welfare and Pension Plans Disclosure Act (WPPDA), which was repealed on January 1, 1975, and makes them applicable to plan officials under ERISA.

On June 28, 1985 the Department published a notice of final rulemaking in the **Federal Register** (50 FR 26704) which recodified the ERISA temporary bonding regulations in Part 2580 of Subchapter I of Chapter XXV of CFR Title 29, and which amended temporary ERISA regulation 29 CFR 2550.412–1 to make

clear that the WPPDA bonding regulations referenced therein are now located in Part 2580 of CFR Title 29.

Discussion of the Interim Rule

On April 13, 1987, the Secretary delegated to the Assistant Secretary for Pension and Welfare Benefits the authority to administer section 8478 of FERSA (Secretary's Order 1–87, 52 FR 13139, April 21, 1987). Accordingly, and under the authority of section 113 of FERSTCA, this interim rule applies the temporary bonding regulations under section 412 of ERISA to the bonding provisions of FERSA, pending the issuance of permanent regulations under section 8478, but no later than December 31, 1989. Consistent with that authority, the Department intends, in construing section 8478, to adhere to the principles contained in the ERISA temporary bonding regulations included in Part 2580 of CFR Title 29. In this connection, the interim rule explains that, for purposes of FERSA section 8478 and the temporary bonding rules applicable thereto, any reference to section 13 of the WPPDA in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA. The interim rule also explains that, where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or the ERISA temporary bonding regulations, the phrases appearing in FERSA shall be substituted therefor. The interim rule further explains that where the phases are identical but the meaning is different, the meaning given such phrases by FERSA shall govern.

This interim rule also prescribes the amount of a bond required under section 8478(a) of FERSA for each fiscal year of the Fund. The rule specifies that, for each fiscal year of the Fund, the amount of any such bond shall be not less than 10 percent of the amount of funds handled and that in no case shall a bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000.

Reference should be made to the temporary bonding regulations contained in Subpart C ("Amount of the Bond") of Part 2580 of CFR Title 29, being applied to FERSA by this interim rule, for further guidance with respect to matters relating to the amount of a bond. Such matters include, but are not limited to: The use of deductibles (§ 2580.412–11); the meaning of "funds" in determining the amount of the bond (§ 2580.412–13); determinations of the amount of funds handled during the preceding fiscal year of the Fund (§ 2580.412–14); and estimating the amount of funds to be handled during the current fiscal year in a case where there is no prior fiscal year (§ 2580.412–15).

It should be noted that, pursuant to this interim rule, the Secretary will not conduct a new rulemaking at the beginning of each fiscal year of the Fund, in order to prescribe the amount of a bond under section 8478. Instead, the interim rule contained herein automatically establishes the amount of a bond with respect to the 1987 fiscal year of the Fund, as well as for all successive fiscal years, unless the Secretary prescribes a maximum amount for such a bond in excess of $500,000, subject to the procedural requirements for notice and comment contained in section 8478(b)(1) of FERSA and the Administrative Procedure Act (APA, 5 U.S.C. *et seq.*).

Publication as an Interim Rule and Opportunity for Comment

The Department is publishing this document as an interim rule, with a request for comments, rather than as a proposed rule, as generally required by the APA, because it has determined that "good cause" exists within the meaning of section 553(b)(3)(B) of the APA for finding that a notice and comment period prior to the effective date of the rule would be impracticable, unnecessary and contrary to the public interest. Since the Thrift Savings Plan became operational on April 1, 1987, any delay in the effective date of this rule would deprive the Federal Retirement Thrift Investment Board ("Board"), which is responsible for the management and operation of the Fund, of the guidance which is necessary to implement effectively the bonding provisions of section 8478 of FERSA. Such guidance must be provided without delay, because section 8478(d) makes it unlawful for any person to whom FERSA's bonding requirements apply to handle Fund property without being properly bonded, and because it is also unlawful under section 8478(d) for any fiduciary with respect to the Fund to permit any person under his or her direction to handle Fund property without being properly bonded.

Under section 8478(b)(1) of FERSA, the Secretary is required to provide notice and an opportunity for a hearing to all interested parties only when he intends to prescribe an amount of a bond in excess of $500,000, in contrast to cases such as the present rulemaking, where he is prescribing an amount of a bond of $500,000 or less. Moreover, the Department notes that the amount of a bond prescribed under FERSA by this rulemaking will be consistent with the amount of bonds presently prescribed with respect to very large private employee benefit plans pursuant to section 412 of ERISA.

Although this interim rule will be effective as of April 1, 1987, all interested persons are invited to submit written comments on the subject matter of this notice to the address and within the time period set forth above. All comments will be considered by the Department and made available for public inspection as part of the record of the proceeding referred to herein. The Department may make modifications to the interim rule on the basis of the public comments received.

Effective Date

This document will become effective as of April 1, 1987. The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon a finding by the Department that any delay in the effective date of this rule would deprive the Board of the guidance which is necessary to implement effectively the bonding provisions of section 8478 of FERSA when the Thrift Savings Plan becomes operational on April 1, 1987.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, Pub. L. 96–354, 5 U.S.C. 601–612) requires that an agency prepare and make available for public comment in initial regulatory flexibility analysis whenever it publishes a general notice of proposed rulemaking. The purpose of the analysis is to describe the impact of the rule on "small entities," as defined in 5 U.S.C., 601(6). That definition incorporates the terms "small business" and "small organization," as defined in the RFA. However, in order to avoid unnecessary analyses, the RFA also provides that an analysis is not required if the head of the agency certifies that a rule will not, if adopted, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605.

The term "small entity," as applied to "small businesses" and "small organizations" is defined in the RFA to mean, unless an agency establishes otherwise, a business or not-for-profit enterprise which is independently owned and operated and which is not dominant in its field. That definition will apply to this certification, because the Department has not yet established an

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alternative definition and because the Department believes that whatever alternative definition it ultimately may develop for purposes of administering the fiduciary responsibility provisions of FERSA (if it should choose to establish an alternative definition) would not affect the certification.

To the extent that this interim rule can be considered a general notice of proposed rulemaking for purposes of the RFA, it is hereby certified, under the authority granted in 5 U.S.C. 605 and for the reasons set forth below, that the interim rule contained in this notice will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required in connection with this interim rule.

The reasons for the certification are as follows. This interim rule applies only to a single employee benefit plan which limits participation to employees of U.S. Government agencies. To the extent that bonding against loss by reason of acts of fraud or dishonesty are required pursuant to section 8478 of FERSA for fiduciaries with respect to the Fund or persons handling funds or other property of the Fund, very few, if any, "small entities," as defined in 5 U.S.C. 601(6), will be affected by this interim rule. This is because the Thrift Savings Plan is sponsored by the U.S. Government, and because FERSA's bonding requirements are likely to affect primarily federal employees and an insubstantial number of financial institutions which may provide various services in connection with the Fund.

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new information collection requirement.

Executive Order 12291

The Department has determined that this rule is not a "major rule" as that term is used in Executive Order 12291 because the rule will not result in: An annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Statutory Authority

This regulation is adopted pursuant to the authority contained in section 8478 of FERSA (Pub. L. 99-335; 100 Stat. 515; 5 U.S.C. 8478) and section 113 of FERSTCA (Pub. L. 99-556).

List of Subjects in 29 CFR Part 2582

Employee benefit plan, Federal Employees' Retirement System Act, Pension plan, Surety bonds.

Adoption of Amendment of Regulations

For the reasons set forth above, Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

1. A new Subchapter J, consisting of Part 2582, is added to read as follows:

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2582—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

Subpart A—Temporary Bonding Rules

Sec.
2582.8478-1 Temporary bonding requirements.
2582.8478-2 Amount of the bond.

Authority: Sec. 101, Pub. L. 99-335, 100 Stat. 515 (5 U.S.C. 8478); Sec. 113, Pub. L. 99-556; Secretary's Order 1-87, 52 FR 13139, April 21, 1987.

Subpart A—Temporary Bonding Rules

§ 2582.8478-1 Temporary bonding requirements.

(a) *General.* Pending the issuance of permanent regulations under section 8478 of the Federal Employees' Retirement System Act of 1986 (FERSA), any fiduciary with respect to the Thrift Savings Fund (Fund) established under FERSA or any person who handles funds or other property of the Fund, shall be deemed to be in compliance with the bonding requirements of section 8478 of FERSA if he or she is bonded in compliance with the temporary bonding regulations under section 412 of the Employee Retirement Income Security Act of 1974 (ERISA) set forth in Part 2580 of Title 29 of the Code of Federal Regulations.

(b) *Application of ERISA temporary bonding rules.* For purposes of this section, (1) any reference to section 13 of the Welfare and Pension Plans Disclosure Act, as amended (WPPDA), or any section thereof in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA or the corresponding subsection thereof; (2) where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or the ERISA temporary bonding regulations, the phrases appearing in FERSA shall be substituted by operation of law; and (3) where the phrases are identical but the meaning is different, the meaning given such phrases by FERSA shall govern. For example, the phrase "every administrator, officer and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan" which appears in the WPPDA and in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "each fiduciary and each person who handles funds or property of the Thrift Savings Fund," which is the term appearing in section 8478 of FERSA; the terms "employee benefit plan" and "plan" which appear in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "Thrift Savings Fund"; and the term "reporting year of the plan" which appears in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "fiscal year of the Thrift Savings Fund."

(c) *Effectiveness.* This section is effective until the earlier of the date of issuance by the Secretary of Labor of permanent regulations under section 8478 of FERSA or December 31, 1989.

§ 2582.8478-2 Amount of the bond.

(a) *General.* Under the authority of section 8478(b)(1) of the Federal Employees' Retirement System Act of 1986 (FERSA), the amount of a bond for each person, group or class to be bonded shall not be less than 10 percent of the amount of funds handled by such person, group or class with respect to any fiscal year of the Fund. In no case shall such bond be less than $1,000 nor more than $500,000. However, the Secretary of Labor reserves the authority under section 8478(b)(1) of FERSA to prescribe an amount in excess of $500,000, after due notice and opportunity for hearing to all interested parties, and other consideration of the record.

(b) *Effectiveness.* This section shall remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA.

Dated: September 17, 1987.

David M. Walker,

Deputy Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 87-21873 Filed 9-22-87; 8:45 am]
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Part IV

Department of Education

Pell Grant Program; Notice

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DEPARTMENT OF EDUCATION

Pell Grant Program

AGENCY: Department of Education.

ACTION: Publication of the 1987–88 Award Year Zero Student Aid Index (SAI) Charts.

SUMMARY: The Secretary publishes the Zero Student Aid Index (SAI) Charts for institutions to use when verifying application information under the Pell Grant Program. The use of the Zero SAI Charts is authorized by § 668.59(a)(2) of the Student Assistance General Provisions regulations, 34 CFR 668.59(a)(2).

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grant assistance to financially needy students to help them meet their cost of postsecondary education. In order to receive a Pell Grant, a student must submit an application to the Secretary which contains financial and other information that permits the Secretary to determine the student's expected family contribution, i.e., an amount that the student and his or her family may be reasonably expected to contribute toward the student's education. The expected family contribution is called the Student Aid Index or SAI in the Pell Grant Program.

The Secretary notifies the student of his or her SAI on a document called a Student Aid Report (SAR). On the SAR, the Secretary includes financial and other information reported by the applicant on the application. The Secretary uses some of this information to calculate the student's SAI.

In order to assure that applicants for Pell Grants provide accurate information on their applications, the Secretary requires these applicants to verify and update that information and has published regulations governing this verification process in Subpart E of the Student Assistance General Provisions regulations, 34 CFR Part 668, Subpart E. Generally, under these procedures, if an applicant is required to change any of his or her application information, the applicant must make the change on the SAR that he or she received and must resubmit that changed SAR to the Secretary. However, there are certain situtations where the changed application information would not change the student's SAI, and, in those situations, the Secretary does not require the applicant to resubmit his or her application.

Under § 668.59(a)(2) of the Student Assistance General Provisions regulations, 34 CFR 668.59(a)(2), the Secretary does not require an applicant to resubmit his or her changed SAR to the Secretary if the applicant has a zero SAI and the institution that the applicant is attending can determine that the applicant's SAI remains at zero using the verified information and the Zero SAI Charts.

The Zero SAI Charts are a simplified version of the formula the Secretary uses in calculating an applicant's SAI. The charts may be used only under certain conditions:

- The applicant's dependency status remains unchanged after verification, and
- The applicant's own income and assets and the parental income and assets of the dependent student do not exceed specified amounts.

Use the following criteria to determine whether to use the Zero SAI Charts to calculate the applicant's SAI:

For Dependent Students

1. Income of a single dependent student of less than $3,501;
2. Income of a married dependent student of less than $5,201;
3. No dependent student and spouse savings or net assets;
4. Net home asset of parents of less than $25,001;
5. Net farm and business assets of parents of less than $50,001; and
6. Net parental assets, other than home and farm and business assets, of less than $25,001.

For Independent Students With Dependents

1. Net home assets of less than $25,001;
2. Net farm and business assets of less than $50,001; and
3. Net value of assets, other than home and farm and business assets, of less than $25,001.

For Independent Students Without Dependents

No savings or net assets.

Zero SAI—Chart A

Applicant Is Eligible for Full Employment Expense Offset

An applicant's SAI is zero if—	
The corrected Household size is—	And the verified effective family income (EFI) [1] is less than—
1	
2	8,001
3	9,501
4	11,601
5	13,601
6	15,101
7	16,801
8	18,501
9	20,201
10	21,901
11	23,601
12	25,301
13	27,001

[1] EFI equals the annual adjusted family income (AGI + untaxed income + ½ of student's VA educational benefits) of the parents for a dependent student, or of the student and spouse for an independent student, minus any Federal income tax paid on that income.

Zero SAI—Chart B

Applicant Is Not Eligible for Full Employment Expense Offset

An applicant's SAI is zero if—	
The correct household size is—	And the verified effective family income (EFI) [1] is less than—
1	5,201
2	6,501
3	8,001
4	10,101
5	12,101
6	13,601
7	15,301
8	17,001
9	18,701
10	20,401
11	22,101
12	23,801
13	25,501

[1] EFI equals the annual adjusted family income (AGI + untaxed income + ½ of student's VA educational benefits) of the parents for a dependent student, or of the student and spouse for an independent student, minus any Federal income tax paid on that income.

FOR FURTHER INFORMATION CONTACT:
Donald Conner, Program Analyst, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue SW., ROB–3, Room 4613, Washington, DC 20202, Telephone: (202) 472–6200.

(20 U.S.C. 1094)

(Catalog of Federal Domestic Assistance No. 84.063 Pell Grant Program)

Dated: September 16, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–21893 Filed 9–22–87; 8:45 am]

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Part V

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision; Interim Final Rule

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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Interim final rule.

SUMMARY: This document presents an interim final rule partially implementing section 103(m) of Pub. L. 99–662, which directs the Secretary of the Army to reduce the non-Federal cost-share of flood control and agricultural water supply projects under an "ability to pay" determination. This interim final rule applies only to flood control projects. Agricultural water supply projects will be covered by other guidelines which will be published in the future.

This document was published in the Federal Register on September 16, 1987, as a proposed rule. In order to begin to apply the rule immediately, we are republishing it as an interim final rule. The comment period has been extended to reflect the republication. The rule itself has not changed. Minor editorial changes have been made in the Supplementary Information so that the rule's status as interim final is clearly indicated.

The ability to pay calculation is a two step procedure. In step one, an alternative level of cost-sharing is determined by comparing project flood control benefits to project flood control costs. It is assumed that even the poorest communities and states should have the ability to afford a cost-share equal to one fourth of the benefit/cost ratio, when expressed as a percentage. If this calculation yields an alternative non-Federal cost-share that exceeds the normal share (as defined in section 103), the Non-Federal interest will be required to provide the normal share.

If the benefits-based share alternative is less than the normal share, the project sponsor may be eligible to contribute the amount required by the lower share, or to provide a share that is between the two values. Eligibility will be determined by a formula that uses per capita personal income of the state(s) and county(ies) in which the project is located. If the state and county per capita income values are low enough, the project will be eligible for the full reduction. Intermediate values of state and county per capita income yield a partial reduction from the normal cost-share to the benefits-based alternative. High values of state and county income result in no reduction from the normal share.

The interim final rule also covers other subjects which are relevant to the ability to pay test. These details are discussed in the supplementary information that follows:

DATE: This interim final rule is effective as of September 23, 1987. Before adopting the interim final rule as a final rule, the Corps of Engineers will give consideration to any written comments timely submitted. Written comments must be received by December 22, 1987.

ADDRESS: Send comments to HQUSACE, Director of Civil Works, ATTN: CECW–RP, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert N. Stearns, (202) 272–0120.

SUPPLEMENTARY INFORMATION:

Background

The language of section 103(m) is broad: "Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary." There is no definite Congressional direction on how the Secretary is to proceed.

The Report of the Senate Committee on Environment and Public Works (Senate Report 99–126, Aug. 1, 1985) briefly discusses section 103(m). The first reference (p. 6) gives examples of the kinds of factors which should be included in the ability to pay criteria: income in relation to need, unemployment, and the sponsor's ability to borrow funds. The second reference (p. 69) stresses that beneficial projects should not be rejected simply because non-Federal interests lack the necessary resources, but points out that since the normal cost-sharing provisions under section 103 should not prove burdensome, ability to pay determinations reducing the non-Federal share are quite unlikely.

The debate over section 103(m) provides some insight as to Congressional intent. Senator Moynihan, on March 4, 1986 stated that floods could hit and devastate communities "which are small and could not possibly themselves take care of the cost sharing that is provided under the basic schedule." (pp. S2838–S2839) Senator Pryor on March 26, 1986, expressed his concern that "in the rural areas, there are fewer benefited parties to make up the local sponsor group, and the amount they would have to tax themselves to pay 25 to 35 percent of construction costs are onerous." (p. S3401) The debate also shows that there is no clear consensus on precisely how the section is to operate. Congressman Roe, in describing the conference agreement on Oct. 17, 1986, expressed his view that the Secretary should be encouraged "to use this discretionary authority to continue to provide new flood control protection at reduced or no non-Federal cost-sharing in areas where need exists but ability to pay does not." (p. H11546) On the other hand Senator Stafford, Chairman of the Senate Committee on Environment and Public Works argued that, "It is anticipated that the Secretary will only rarely invoke this authority. And this provision can never be used to eliminate the non-Federal share." (p. S16983) Senator Stafford also argued, "This bill now says local communities must, in general pay 25 cents to get at least $1 in benefits, sometimes much more than $1 in benefits. Even the poorest communities should be able to find a quarter to invest in order to get $1 or more in return." (p. S16983).

The Role of the Local Sponsor

In developing the ability to pay guidelines, we have had to address the issue that different states have different policies with respect to the degree of state involvement in sponsoring flood control projects and providing financial support. We believe that the guidelines should be "policy neutral" in relation to the selection of the local sponsor. Thus, states where sponsors are agencies of state governments will not be treated differently than states where sponsors may be much smaller governmental units such as cities or towns.

While our goal is to be policy neutral with respect to the selection of the local sponsor, we will not be neutral with respect to the possibility of state assistance when local sponsors have limited financial capability. We believe that states have a responsibility in cases where a local sponsor seems incapable of providing the non-Federal share. This has led to two conclusions which have been incorporated into our guidelines.

Our first conclusion is that state resources as well as project area resources should be a factor in determining any adjustments to the normal cost-share. This will be evident in the formulas described below.

Our second conclusion is that project size should not be a separate consideration. Larger projects must generate larger benefits, and therefore

affect a larger segment of the population, if they have met the economic feasibility test for Federal funding. More importantly, when compared to state budgets, every project becomes a small percentage of total capital expenditures.

The Use of Project Benefits in Developing a Cost-Share Alternative

Local sponsors and their states have two sources of economic resources that can be used to pay for the non-Federal share of the project. First, existing resources as reflected in traditional measures of income and/or wealth, may be sufficient. Second the project itself will generate benefits. Many of the benefits to flood control projects are either due to flood damage reduction or to income enhancement to households and businesses located in the project area. These benefits represent an important source of income and wealth that will be available for project funding no matter how poor the project area is before implementation.

We believe that project benefits should determine the alternative level of cost-sharing under the ability to pay test. This alternative level establishes a benefits based floor (BBF) below which the non-Federal cost-share will not be reduced. Therefore, when projects are fully eligible, the reduction in the non-Federal share would be such as to set the share equal to one fourth of the project's benefit/cost ratio, when this ratio is expressed as a percentage. For example, if a project has a benefit/cost ratio of 1.2, share reductions cannot bring the share below one fourth of this, or 30 percent of project first costs. In this example, if the "normal" level of cost-sharing, i.e. the amount required by section 103(a) or 103(b), is less than 30 percent, there will be no reduction under the ability to pay provision.

The selection of the factor of one fourth, or 25 percent, is based on the minimum level of non-Federal cost-sharing for flood control projects specified in sections 103(a) and 103(b). The position is equivalent to that expressed by Senator Stafford "[e]ven the poorest communities should be able to find a quarter to invest in order to get $1 or more in return." (see Background section above). It is expected that the reductions in cost-sharing will occur most often when normal non-Federal costs are closer to the 50 percent maximum than to the 25 percent minimum. Congress may occasionally authorize projects which have a benefit cost ratio below one. The determination of alternative levels of cost-sharing under the ability to pay test should apply in these cases, despite the low ratio. These projects will not generate the same level of economic resources (compared to project costs) as economically justified projects, and project beneficiaries will not have the same ability to pay from this source. Under no circumstances however, do we believe that the non-Federal share should be less than the five percent minimum payment of section 103(a)(1)(A), Pub. L. 99–662.

Operations and maintenance (O&M) expenses of flood control projects have traditionally been the responsibility of a non-Federal interest. This will not change; any reductions in non-Federal shares under the ability to pay provision will apply to first costs only. For administrative simplicity, we will use one fourth of the benefit cost ratio as an alternative share, even though the costs in this calculation include O&M costs. This ratio will be calculated based on the discount rate which the Corps is using to evaluate projects at the time the local cooperation agreement (LCA) is signed. For LCA's signed in 1987 for example, an 8.875 percent discount rate would be used.

The Use of Per Capita Personal Income to Determine Project Eligibility

Project eligibility for reductions in the non-Federal share will be determined by the per capita personal income of the project area (using county income as the surrogate for project area income) and the state in which the project is located. Although alternative concepts of a "fiscal capacity" or "ability to pay" index have been developed and promoted, many government programs continue to use per capita income (including Medicaid and Aid to Families with Dependent Children). The data are readily available from the Bureau of Economic Analysis on a yearly basis.

Per capita income reflects two of the three factors set out in the aforementioned report of the Senate Committee on Environment and Public Works: (1) Income in relation to need; and (2) unemployment. "Income in relation to need" is a phrase which suggests consideration not only of income, but of the relative cost of living in a particular geographic area. Unfortunately, information on regional cost of living differentials is not available from the Federal government. Data from private sources, including the *Rand McNally Places Rated Guide, 1985* are useful indicators of price differentials among urban areas, but fail to document the cost of living for rural areas within the United States, making it impossible to calculate state and county price indices accurately from these sources. Moreover, the cost of living measures reported by these sources place a heavy emphasis on the current market value of housing, a factor that may not be relevant for people who have lived in an area for a long time. This leaves us with no comprehensive information to use as a basis for precisely adjusting income figures to account for differences in the cost of living. On the other hand such a precise calculation may not be necessary. When current housing value is given a smaller weight and urban price indices are combined for all regions in a single state, the cost of living differentials set out in the private sources decrease dramatically. Per capita income thus already takes into account, to a great degree, 'income in relation to need." This fact, in addition to the unavailability of comprehensive cost of living data reaffirms the choice of per capita income as our basic statistical measure.

We should note two exceptions: Alaska and Hawaii. Even when current housing value is given less weight in calculations for these two states, their relative costs of living are far higher than the rest of the country. This finding is consistent with that of the Office of Personnel Management, which conducts surveys to determine the salary levels of Federal employees in Alaska and Hawaii which would compensate the employees for the higher prices they must pay. Cost of living adjustments will therefore be made for Alaska and Hawaii, based on the Federal Government's salary differentials in those two states for Federal employees living in non-Federal housing without Federal Commissary provisions. Pay differentials may be different for various regions in Alaska and Hawaii. For administrative simplicity, the differentials for the two most populated regions will be used; Anchorage AK (a 25 percent pay differential in 1986), and Oahu HI (a 22.5 percent differential in 1986). Information on the salary differentials for the period 1982–86 is available in FPM Bulletins 591–30, 591–32, and 591–33.

Unemployment, the second factor mentioned in the Committee report, tends to be lower in areas where per capita personal income is higher. For example, using state information for 1985, the correlation coefficient between these variables was .47, a value which is significantly different from zero statistically. Moreover, since ability to pay is more a function of the *level* of income than the *distribution* of income, PCI is preferred over a measure of unemployment.

The third factor set out in the Committee Report is the sponsor's borrowing capability. We have carefully considered how best to incorporate this factor in our calculations. We conclude that such an incorporation is inappropriate. Borrowing capability as measured for example by an entity's credit rating, will reflect a number of factors including but not limited to the underlying economic resource base. Local governments may have committed themselves to providing public services which are either discretionary or are provided by the private sector in other locations. In some cases, a community may be unable to raise additional capital because its citizens are simply unwilling to vote for the tax increases that might be required. We conclude therefore, that the borrowing capability of the local sponsor should not be a factor in the ability to pay determination.

The interim final rule will use a three year average of PCI. Although this will create lags in recognizing when an area has had a deterioration or improvement in its economic circumstances, it also reduces the likelihood that findings will be based on temporary circumstances. Other Federal programs are based on a three year average.

All U.S. Territories will be eligible for the full amount of cost-share reduction. Unpublished data from the Bureau of Economic Analysis indicates that in 1985, per capita personal income in the territories ranged from 66 percent of the U.S. average (Guam) to 25 percent of the U.S. average (American Samoa).

The Eligibility Formula

The eligibility factor (EF) will be determined by:

$$EF = a - b_1 \text{ (State PCI Index)} - b_2 \text{ (County PCI Index)}$$

where a, b_1, and b_2 are positive constants. The county and state PCI indices are a measure of the local PCI relative to the national average. If per capita income in a state equals the national average, the state's index number would be 100. If a project includes beneficiaries in more than one county, the PCI index is weighted by the share of project benefits which can be located geographically. If EF is less than zero, the project is not eligible for cost-share reductions under the ability to pay test. If EF is greater than or equal to one, the project is eligible for full application of the benefits based cost-share alternative described above. For EF less than one but greater than zero, the value represents the degree of application for which the project is eligible. For example if the normal cost-share is 50 percent and the minimum cost-share under the ability to pay formula is 30 percent and EF = .6, the project will receive 60 percent of the difference between 50 percent and 30 percent. The cost-share in this example would be 38 percent (50 − .60 (50−30) = 38).

The formula reflects our view that state participation in the cost-sharing of flood control projects should be encouraged. The choice of county data to represent a project area's per capita income is based on considerations of practicality and policy. County data is available from the Bureau of Economic Analysis, Department of Commerce, on a yearly basis. If smaller governmental units were used, there would be an increased likelihood of inaccurate statistics. Equally important, by defining in advance the governmental region to represent the project area, the non-Federal interests are free to identify the local sponsor without regard to the effect this might have on the ability to pay determination.

In selecting the parameters a, b_1, and b_2 we have had two objectives. First, in order to encourage state participation where necessary, we have given equal weights to state and county PCI, that is b_1 and b_2 have been set equal to each other (they are kept separate in the formula, so that the weights may be changed, if appropriate, after comments are considered). Second, we have been guided by our sense of the intent of Congress that the ability to pay provision should only apply in exceptional circumstances. The formula has therefore been constructed so that two thirds of the counties would not be eligible; 20 percent of the counties would be eligible for the full application; and the remaining 13⅓ percent would be eligible for a partial application.

Available county PCI data lag behind available state PCI data. Currently, county information is available through 1984, state information through 1986. The interim guidelines require the use of the three latest years even if these years are different for counties and states. We believe that this represents the most up-to-date economic profile of a project area which can be applied uniformly to all projects.

Other Factors

We have retained the five percent minimum cash requirement of section 103(a)(1)(A) even for projects where the ability to pay test leads to a reduction in the non-Federal cost-share. This requirement is intended to demonstrate that the non-Federal interest has a serious commitment to the project. Congress did not want the cash requirement changed when the normal cost-share level was at the maximum of 50 percent (see section 103(a)(3)) nor did it want the requirement waived when the non-Federal interest chooses to make a deferred payment (see section 103(a)(4)). By keeping the 5 percent cash requirement under the ability to pay provision, it may be necessary to negotiate cash repayments to the local sponsor at the end of the project, or to make Federal payments for Lands, Easements, Rights of Way, Relocations, and Dredge Material Disposal Areas (LERRD) that are normally the responsibility of the non-Federal interest.

The interim final rule also contains a provision allowing the non-Federal interest to waive application of the ability to pay test. This might be most advantageous when project benefits have not been fully enumerated before authorization or when additional research is necessary to separate flood control benefits and costs from total costs of a multi-purpose project. In these cases, local sponsors may want to accept the normal cost-share so that implementation of the project will not be delayed.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because it imposes few, if any, administrative burdens of any sort on small entities.

Furthermore, the number of entities affected by this rule is small and the relief granted in individual cases, though significant to the parties involved, is not significant within the meaning of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

Dated: September 18, 1987.

Approved:
Peter J. Cahill,
Colonel, GS, Executive, OASA(CW).

The Corps of Engineers hereby establishes a new part 241 in Title 33, Chapter II as follows:

PART 241—FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION—SECTION 103(m) OF P.L. 99-662 [ER 1165-2-121]

Sec.
241.1 Purpose.
241.2 Applicability.
241.3 References.
241.4 General policy.
241.5 Procedures for estimating the alternative cost-share.
241.6 Application of test.

Appendix A—State Per Capita Personal Income Index Numbers, State Income as a Percent of U.S. Average, 1984–86.

Appendix B—County Per Capita Personal Income Index Numbers, County Income as a Percent of U.S. Average, 1982–84.

Authority: Sec. 103(m), Water Resources Development Act of 1986 Pub. L. 99-662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Pub. L. 99-662 as it applies to flood control projects.

§ 241.2 Applicability.

This regulation applies to all HQUSACE elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

§ 241.3 References.

(a) Section 103, Water Resources Development Act, 1986, Pub. L. 99-662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

(b) U.S. Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, March 10, 1983.

(c) Office of Personnel Management, *FPM Bulletin* 591-30.

(d) Office of Personnel Management, *FPM Bulletin* 591-32.

(e) Office of Personnel Management, *FPM Bulletin* 591-33.

(f) U.S. Dept. of Commerce, Bureau of Economic Analysis, *Local Area Personal Income, 1979-84*, Volumes 1-9.

(g) U.S. Army Corps of Engineers, *Reference Handbook.*

§ 241.4 General policy.

(a) Procedures described herein will be used to establish an "ability to pay" test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the non-Federal interest at a lower level than the non-Federal share would be normally under the provisions of section 103 of Pub. L. 99-662.

(b) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(c) Since the normal non-Federal cost-share is substantially less than full costs in every case, the ability to pay test should be structured so that reductions in the level of cost-sharing will be granted in only a limited number of cases of severe economic hardship.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. The non-Federal interests will continue to be responsible for the costs of operations, maintenance and rehabilitation.

(e) Section 103(m) requires that all cost-sharing agreements for flood control be subject to the ability to pay test. This includes any projects specifically authorized by Congress as well as the "continuing authority" projects constructed under section 14 of the 1946 Flood Control Act (33 U.S.C. 701r) and section 205 of the 1948 Flood Control Act (33 U.S.C. 701s).

(f) The test should be based not only on the economic circumstances within a project area, but also on the conditions of the state(s) in which the project is located. Although states' policies with respect to supporting local interests on flood control projects are not uniform, the state represents a potential source of financial assistance which should be considered in the analysis.

(g) The alternative level of cost-sharing determined under the ability to pay principle should be governed in part by project benefits. If, as a result of the project, local beneficiaries receive more income, or are required to use fewer resources on flood damage repair or replacement, or on flood insurance, a portion of these resources should be available to pay for the non-Federal share, even in those cases where an analysis of current economic conditions indicates that there are relatively limited resources in the project area and its state.

(h) The non-Federal interest may, at its discretion, waive the application of the ability to pay test. In this case, the non-Federal interest shall be considered to have the ability to pay the normal cost-share and no further research will be required.

§ 241.5 Procedures for estimating the alternative cost-share.

(a) *Step one.* Determine the maximum reduction in the level of non-Federal cost-sharing for qualifying projects.

(1) Calculate the ratio of flood control benefits (developed using the Water Resources Council's *Principles and Guidelines*—ref. b) to flood control costs for the authorized project based on the discount rate which the Corps is currently using to evaluate projects. Costs include operations and maintenance as well as first costs. Divide the result by four.

(2) If the ratio determined in § 241.5a(1), when expressed as a percentage, is less than the level of cost-sharing that would normally be required by section 103(a) or 103(b), Pub. L. 99-662, projects may be eligible for a reduction in the non-Federal share to this "benefits based floor" (BBF), or for a partial reduction to a share between the normal level and the BBF. In no case however, will the non-Federal cost-share be less than five percent.

(3) If the ratio determined in § 241.5a(1), when expressed as a percentage, is greater than the level of cost-sharing that would normally be required by section 103(a) or 103(b), Pub. L. 99-662, the normal level of cost-sharing will apply.

(b) *Step two.* Determine project eligibility. Projects may qualify for the full amount of the reduction in cost-sharing calculated in Step one, or for some fraction of the reduction in cost-sharing, depending on a measure of the economic resources of the project area and of the state or states in which the project is located.

(1) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the state or states in which the project sponsors are located, and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis as presented in the *Survey of Current Business.* For Alaska and Hawaii only, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK and Oahu, HI (see References § 241.3(c) and § 241.3(d). Index each state's per capita personal income to the national average (U.S. = 100), and calculate the three year average of the state's index number.

(2) For each of the three latest calendar years for which information is

available, determine the level of per capita personal income in the county or counties where project benefits accrue (the "project area", and compare this to the national average of per capita personal income. Source: Reference § 241.3(e). For Alaska and Hawaii only, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK and Oahu, HI. Index each county's per capita personal income to the national average (U.S. = 100), and calculate the three year average of the county's index number.

(3) To assure consistency, the calculations in § 241.5(b) (1) and (2) will be performed by HQUSACE and distributed to all field elements. This information is included in Appendices A and B to this document. In subsequent years the information will be included in the Corps' Reference Handbook, Ref. § 241.3(g), which is updated annually.

(4) When the project area includes more than one county, calculate a composite project area index by taking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county.

(5) Calculate an "eligibility factor" for the project according to the following formula:

$$EF = a - b_1 \times (\text{state factor}) - b_2 \times (\text{area factor}).$$

If EF is one or more, the project is eligible for the full reduction in cost-share to the benefits based floor. If EF is zero or less, the project is not eligible for a reduction. If EF is between zero and one, the non-Federal cost-share will be reduced proportionately to an amount which is greater than the BBF but less than the normal non-Federal cost-share. See paragraph § 241.5(c) below. The values of a, b_1, and b_2 will be determined by HQUSACE. The parameter values will be based on the latest available data and set so that 20 percent of counties have an EF of 1.0 or more, while 66.7 percent have an EF of 0 or less. These values will be adjusted periodically as new information becomes available. Changes will be published in the Corps' Reference Handbook. The values as of July 1, 1987, are:

$a = 14.45646$
$b_1 = 0.08858$
$b_2 = 0.08858$

Note that currently, b_1 and b_2 are equal, giving the same weight to state and local income levels.

(6) For Puerto Rico, Guam and other U.S. territories the eligibility factor is administratively established to be equal to 1.

(c) *Application of the ability to pay formula to the basic cost-sharing provisions of section 103.* If a flood control project has a BBF which is less than the normal cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 of Pub. L. 99–662 as follows:

(1) when EF = 1:

$$\text{cost-share} = \text{BBF}$$

(2) when EF < 1, for structural projects covered by section 103(a):

(i) if LERRD equals or exceeds 45 percent:

$$\text{cost-share} = 50 - EF \times (50 - BBF)$$

(ii) if LERRD exceeds 20 percent but is less than 45 percent:

$$\text{cost-share} = [LERRD + 5) - EF \times [(LERRD + 5) - BBF]$$

(iii) if LERRD is less than 20 percent:

$$\text{cost-share} = 25 - EF \times (25 - BBF)$$

(3) when EF < 1, for non-structural projects covered by Section 103(b):

$$\text{cost-share} = 25 - EF \times (25 - BBF)$$

(4) In no case can the non-Federal share be less than five percent.

Note: LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas.

§ 241.6 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the share that would normally apply, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the Non-Federal interest is signed. For structural flood control projects, the normal level of cost-sharing will not be known until the end of the project (since the normal level as specified in section 103(a) includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs. For all projects, the LCA will include a clause indicating the results of the ability to pay test. If a project is eligible for a lower non-Federal share, the revised share will be specified (there will be no recalculation of this share once the LCA is signed). If at the time of project completion, the normal non-Federal share based on actual costs, is less than the ability to pay share specified in the LCA, the normal share will apply. For all projects, an exhibit attached to the LCA will include: The benefits based floor (BBF) determined in § 241.5(a); the eligibility factor (EF) determined in § 241.5(b); if the Eligibility Factor is greater than zero and less than one, the estimated normal non-Federal share; and the formula used in determining the ability to pay share as described in paragraphs § 241.5(c)(1) through (c)(4).

(c) For structural projects, the project sponsor will be required to provide a cash payment equal to a minimum of five per cent of estimated total project costs during the period of construction, regardless of the outcome of the ability to pay test. If formula § 241.5(c)(2) is used to estimate the non-Federal share, the resultant non-Federal cash requirement could continue to exceed five per cent. For example, if LERRD is 10 percent of costs, the normal cost-share requirement is 25 percent, including 15 percent cash payment; if the revised Non-Federal share under ability to pay is 20 percent, there remains a 10 percent cash requirement. In these cases, the Non-Federal interest shall pay its share of cash during construction at a rate proportionate to its projected final cash share. If the non-Federal share, adjusted for ability to pay considerations, exceeds 30 percent, section 103(a)(4), permitting deferred payment of the amount exceeding 30 percent, will still apply.

(d) If the normal LERRD plus five percent cash requirement exceeds the ability to pay cost-sharing requirement, the Federal Government will make any necessary adjustments to the Non-Federal interest through Federal payments for LERRD or reimbursement. The adjustment mechanism will be negotiated and the Local Cooperation Agreement will include a description of the mechanism.

[FR Doc. 87–21949 Filed 9–22–87; 8:45 am]
BILLING CODE 3710-08-M

Appendix A.—State Per Capita Personal Income Index Numbers, State Income as a Percent of U.S. Average, 1984–86

State	State Index No.
Alabama	76.90
Alaska	104.14
Arizona	91.71
Arkansas	75.33

State	State Index No.
California	115.84
Colorado	106.36
Connecticut	130.59
Delaware	103.32
District of Columbia	130.75
Florida	99.09
Georgia	90.61
Hawaii	85.79
Idaho	79.85
Illinois	106.50
Indiana	89.93
Iowa	91.48
Kansas	99.44
Kentucky	78.00
Louisiana	80.96
Maine	86.33
Maryland	114.04
Massachusetts	118.43
Michigan	98.13
Minnesota	101.86
Mississippi	66.59
Missouri	94.94
Montana	81.38
Nebraska	95.23
Nevada	104.48
New Hampshire	107.90
New Jersey	124.38
New Mexico	78.10
New York	116.32
North Carolina	84.05
North Dakota	86.83
Ohio	95.27
Oklahoma	87.91
Oregon	91.35
Pennsylvania	96.70
Rhode Island	100.76
South Carolina	76.88
South Dakota	81.55
Tennessee	81.21
Texas	96.07
Utah	75.45
Vermont	87.41
Virginia	104.95
Washington	100.59
West Virginia	73.67
Wisconsin	95.42
Wyoming	94.02

Source: Survey of Current Business, April, 1987.

Note.—Alaska income figures divided by 1.25 Hawaii income figures divided by 1.15, 1984, 85; By 1.225, 1986.

Appendix B.—County Per Capita Personal Index Numbers, County Income as a Percent of U.S. Average, 1982–84

County	County PCI Index
Alabama	
Autauga	77.01
Baldwin	81.85
Barbour	66.37
Bibb	61.76
Blount	64.26
Bullock	60.46
Butler	64.14
Calhoun	71.88
Chambers	67.49
Cherokee	60.04
Chilton	69.44
Choctaw	67.32
Clarke	64.10
Clay	66.14
Cleburne	63.34
Coffee	76.72
Colbert	79.24
Conecuh	61.17
Coosa	55.87
Covington	72.99
Crenshaw	72.75
Cullman	70.04
Dale	71.11
Dallas	65.71
De Kalb	65.43
Elmore	77.71
Escambia	72.56
Etowah	76.04
Fayette	71.32
Franklin	74.10
Geneva	74.29
Greene	49.02
Hale	53.04
Henry	63.45
Houston	77.47
Jackson	67.38
Jefferson	93.78
Lamar	73.87
Lauderdale	82.78
Lawrence	61.35
Lee	70.49
Limestone	73.71
Lowndes	58.54
Macon	55.37
Madison	96.41
Marengo	61.83
Marion	64.37
Marshall	73.89
Mobile	77.58
Monroe	69.84
Montgomery	92.44
Morgan	84.75
Perry	45.55
Pickens	62.25
Pike	67.41
Randolph	62.70
Russell	68.14
St. Clair	70.38
Shelby	90.04
Sumter	53.39
Talladega	66.03
Tallapoosa	69.52
Tuscaloosa	76.39
Walker	79.51
Washington	62.61
Wilcox	58.75
Winston	70.50
Alaska	
Aleutian Islands	104.84
Anchorage Borough	128.00
Bethel	63.82
Bristol Bay Bor.	130.67
Dillingham	70.55
Fairbanks N. Star	135.39
Haines Borough	104.57
Juneau Borough	139.70
Kenai Peninsula	92.26
Ketchikan Gateway	122.19
Kobuk	76.29
Kodiak Island	91.27
Matanuska-Susitna	100.47
Nome	88.00
North Slope Bor.	161.41
Pr. of Wales-Outer Ketchikan	93.64
Sitka Borough	106.76
Skagway-Yakutat-Angoon	116.48
Se Fairbanks	81.78
Valdez-Cordova	114.35
Wade Hampton	46.63
Wrangell-Petersburg	113.45
Yukon-Koyukuk	61.52
Arizona	
Apache	47.93
Cochise	71.38
Coconino	71.73
Gila	75.15
Graham	57.80
Greenlee	72.27
La Paz (2 Years)	65.79
Maricopa	101.85
Mohave	74.32
Navajo	60.85
Pima	90.66
Pinal	65.20
Santa Cruz	70.75
Yavapai	85.82
Yuma (2 Years)	69.78
Arkansas	
Arkansas	81.85
Ashley	68.71
Baxter	84.26
Benton	86.92
Boone	75.12
Bradley	66.43
Calhoun	58.13
Carroll	73.90
Chicot	52.26
Clark	68.59
Clay	64.72
Cleburne	69.87
Cleveland	62.93
Columbia	77.91
Conway	70.88
Craighead	75.89
Crawford	63.72
Crittenden	65.65
Cross	60.60
Dallas	65.81
Desha	61.74
Drew	59.15
Faulkner	78.63
Franklin	66.70
Fulton	48.18
Garland	85.70
Grant	73.20
Greene	67.23
Hempstead	68.13
Hot Spring	72.67
Howard	86.73
Independence	72.78
Izard	67.54

County	County PCI Index
Jackson	64.02
Jefferson	75.39
Johnson	66.94
Lafayette	63.87
Lawrence	68.28
Lee	47.92
Lincoln	52.68
Little River	67.42
Logan	63.60
Lonoke	72.87
Madison	61.61
Marion	62.92
Miller	72.77
Mississippi	69.78
Monroe	56.80
Montgomery	62.71
Nevada	64.22
Newton	48.18
Ouachita	72.99
Perry	58.63
Phillips	54.96
Pike	65.56
Poinsett	62.85
Polk	59.95
Pope	70.75
Prairie	65.67
Pulaski	99.01
Randolph	57.61
St. Francis	61.57
Saline	78.57
Scott	64.02
Searcy	47.87
Sebastian	87.77
Sevier	70.14
Sharp	63.52
Stone	50.11
Union	94.15
Van Buren	57.50
Washington	76.58
White	67.20
Woodruff	66.25
Yell	66.05
California	
Alameda	119.92
Alpine	80.21
Amador	91.68
Butte	81.65
Calaveras	70.62
Colusa	102.24
Contra Costa	138.51
Del Norte	75.08
El Dorado	95.10
Fresno	91.84
Glenn	94.57
Humboldt	85.73
Imperial	80.54
Inyo	92.72
Kern	92.07
Kings	80.10
Lake	87.00
Lassen	76.95
Los Angeles	114.07
Madera	81.74
Marin	174.75
Mariposa	86.64
Mendocino	86.31
Merced	81.79
Modoc	82.27
Mono	88.41
Monterey	111.39
Napa	120.87
Nevada	83.23
Orange	131.86
Placer	105.09
Plumas	81.08
Riverside	103.37
Sacramento	101.66
San Benito	82.85
San Bernardino	92.71
San Diego	105.74
San Francisco	141.22
San Joaquin	92.22
San Luis Obispo	98.23
San Mateo	156.13
Santa Barbara	120.16
Santa Clara	136.29
Santa Cruz	105.45
Shasta	84.74
Sierra	82.98
Siskiyou	80.64
Solano	100.81
Sonoma	115.58
Stanislaus	91.09
Sutter	89.28
Tehama	77.77
Trinity	73.08
Tulare	80.40
Tuolumne	80.96
Ventura	112.17
Yolo	94.42
Yuba	73.80
Colorado	
Adams	101.60
Alamosa	80.37
Arapahoe	137.74
Archuleta	68.19
Baca	92.30
Bent	77.46
Boulder	120.55
Chaffee	91.18
Cheyenne	87.80
Clear Creek	90.10
Conejos	45.02
Costilla	62.38
Crowley	94.53
Custer	71.09
Delta	75.73
Denver	122.45
Dolores	82.13
Douglas	138.70
Eagle	112.86
Elbert	104.78
El Paso	95.94
Fremont	80.76
Garfield	109.31
Gilpin	87.62
Grand	97.15
Gunnison	68.08
Hinsdale	66.37
Huerfano	71.43
Jackson	91.55
Jefferson	129.31
Kiowa	118.18
Kit Carson	93.63
Lake	70.46
La Plata	80.49
Larimer	91.20
Las Animas	69.57
Lincoln	105.46
Logan	92.08
Mesa	87.03
Mineral	97.81
Moffat	82.82
Montezuma	86.98
Montrose	74.67
Morgan	95.48
Otero	81.03
Ouray	88.40
Park	90.38
Phillips	97.34
Pitkin	155.60
Prowers	85.54
Pueblo	81.95
Rio Blanco	105.34
Rio Grande	79.26
Routt	114.30
Saguache	65.12
San Juan	74.79
San Miguel	63.10
Sedgwick	101.54
Summit	113.37
Teller	90.15
Washington	103.42
Weld	90.58
Yuma	100.37
Connecticut	
Fairfield	158.08
Hartford	125.36
Litchfield	117.96
Middlesex	121.03
New Haven	113.15
New London	112.35
Tolland	110.22
Windham	96.00
Delaware	
Kent	83.64
New Castle	115.60
Sussex	96.45
Florida	
Alachua	76.49
Baker	64.08
Bay	81.39
Bradford	57.07
Brevard	96.27
Broward	123.96
Calhoun	55.59
Charlotte	92.91
Citrus	71.41
Clay	94.72
Collier	116.31
Columbia	68.17
Dade	102.87
De Soto	68.74
Dixie	52.46
Duval	95.65
Escambia	80.42
Flagler	75.91
Franklin	52.79
Gadsden	53.78
Gilchrist	69.85
Glades	48.91
Gulf	67.35
Hamilton	63.45
Hardee	65.47

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Hernando	75.38
Highlands	80.66
Hillsborough	89.57
Holmes	52.70
Indian River	106.55
Jackson	64.30
Jefferson	60.26
Lafayette	71.63
Lake	92.48
Lee	101.53
Leon	84.80
Levy	60.37
Liberty	58.01
Madison	66.52
Manatee	103.56
Marion	76.85
Martin	113.73
Monroe	88.58
Nassau	84.72
Okaloosa	82.23
Okeechobee	60.04
Orange	99.90
Osceola	85.03
Palm Beach	130.73
Pasco	80.71
Pinellas	113.11
Polk	82.71
Putnam	71.99
St. Johns	94.78
St. Lucie	79.41
Santa Rosa	82.18
Sarasota	126.95
Seminole	96.82
Sumter	66.55
Suwannee	65.44
Taylor	71.64
Union	47.77
Volusia	90.66
Wakulla	63.72
Walton	56.01
Washington	61.79

Georgia

Appling	73.56
Atkinson	67.93
Bacon	61.69
Baker	64.30
Baldwin	72.23
Banks	71.18
Barrow	78.67
Bartow	77.19
Ben Hill	67.59
Berrien	70.14
Bibb	86.45
Bleckley	73.29
Brantley	59.62
Brooks	56.32
Bryan	66.70
Bulloch	67.11
Burke	64.88
Butts	69.10
Calhoun	72.25
Camden	82.40
Candler	60.20
Carroll	78.62
Catoosa	71.16
Charlton	60.77
Chatham	90.41
Chattahoochee	60.74
Chattooga	63.19
Cherokee	85.30
Clarke	84.83
Clay	50.31
Clayton	92.14
Clinch	64.28
Cobb	118.73
Coffee	64.36
Colquitt	70.15
Columbia	92.70
Cook	56.92
Coweta	86.71
Crawford	73.16
Crisp	66.38
Dade	61.17
Dawson	84.67
Decatur	70.39
De Kalb	116.85
Dodge	64.81
Dooly	77.98
Dougherty	78.52
Douglas	84.84
Early	65.79
Echols	55.93
Effingham	76.56
Elbert	76.57
Emanuel	60.20
Evans	66.09
Fannin	64.99
Fayette	120.55
Floyd	87.61
Forsyth	93.78
Franklin	79.88
Fulton	109.42
Gilmer	74.02
Glascock	79.59
Glynn	89.67
Gordon	80.06
Grady	68.92
Greene	64.77
Gwinnett	112.83
Habersham	69.40
Hall	91.75
Hancock	56.15
Haralson	81.22
Harris	69.97
Hart	74.43
Heard	76.05
Henry	91.29
Houston	88.92
Irwin	71.08
Jackson	76.89
Jasper	79.66
Jeff Davis	74.13
Jefferson	65.21
Jenkins	57.48
Johnson	63.11
Jones	77.28
Lamar	71.55
Lanier	60.57
Laurens	74.26
Lee	74.64
Liberty	66.60
Lincoln	66.71
Long	57.35
Lowndes	73.25
Lumpkin	68.55
McDuffie	70.75
McIntosh	55.11
Macon	58.15
Madison	73.51
Marion	63.49
Meriwether	62.46
Miller	64.52
Mitchell	62.26
Monroe	74.40
Montgomery	63.99
Morgan	78.78
Murray	70.33
Muscogee	83.48
Newton	80.34
Oconee	86.71
Oglethorpe	72.62
Paulding	73.51
Peach	79.25
Pickens	79.21
Pierce	62.29
Pike	75.37
Polk	74.36
Pulaski	76.25
Putnam	71.13
Quitman	55.00
Rabun	61.81
Randolph	54.86
Richmond	84.44
Rockdale	93.75
Schley	69.39
Screven	65.01
Seminole	69.13
Spalding	78.93
Stephens	72.72
Stewart	57.37
Sumter	74.31
Talbot	56.49
Taliaferro	72.13
Tattnall	62.31
Taylor	65.97
Telfair	71.66
Terrell	59.42
Thomas	78.21
Tift	77.95
Toombs	64.38
Towns	58.51
Treutlen	58.02
Troup	83.08
Turner	71.07
Twiggs	57.76
Union	50.44
Upson	71.35
Walker	74.99
Walton	75.65
Ware	78.71
Warren	63.68
Washington	70.39
Wayne	70.84
Webster	68.91
Wheeler	58.15
White	64.15
Whitfield	88.26
Wilcox	62.60
Wilkes	75.09
Wilkinson	72.56
Worth	67.44

Hawaii

Hawaii	69.79
Honolulu	95.11
Kauai	73.07
Maui and Kalawao	81.12

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Idaho	
Ada	98.15
Adams	83.49
Bannock	81.50
Bear Lake	71.06
Benewah	81.09
Bingham	67.53
Blaine	95.00
Boise	77.47
Bonner	69.44
Bonneville	86.16
Boundary	73.94
Butte	66.28
Camas	113.80
Canyon	74.98
Caribou	75.36
Cassia	78.17
Clark	124.46
Clearwater	67.41
Custer	76.38
Elmore	70.53
Franklin	65.40
Fremont Co & Yellowstone Park	70.02
Gem	76.53
Gooding	72.03
Idaho	69.58
Jefferson	59.90
Jerome	66.26
Kootenai	80.81
Latah	75.72
Lemhi	64.84
Lewis	101.42
Lincoln	77.79
Madison	51.70
Minidoka	62.79
Nez Perce	95.24
Oneida	66.74
Owyhee	53.91
Payette	73.85
Power	85.92
Shoshone	77.87
Teton	65.13
Twin Falls	84.35
Valley	81.51
Washington	79.29
Illinois	
Adams	91.73
Alexander	59.38
Bond	83.06
Boone	96.78
Brown	78.83
Bureau	100.23
Calhoun	79.64
Carroll	84.38
Cass	93.14
Champaign	87.06
Christian	96.45
Clark	84.52
Clay	80.87
Clinton	86.80
Coles	80.08
Cook	111.75
Crawford	94.70
Cumberland	65.43
De Kalb	86.46
De Witt	102.43
Douglas	91.04
Du Page	140.84
Edgar	88.61
Edwards	96.18
Effingham	83.91
Fayette	67.61
Ford	103.98
Franklin	88.47
Fulton	84.60
Gallatin	73.89
Greene	77.19
Grundy	111.95
Hamilton	73.86
Hancock	83.21
Hardin	58.39
Henderson	78.25
Henry	97.42
Iroquois	97.33
Jackson	76.90
Jasper	76.11
Jefferson	87.23
Jersey	84.63
Jo Daviess	88.44
Johnson	53.12
Kane	111.92
Kankakee	91.81
Kendall	101.88
Knox	91.17
Lake	134.13
La Salle	98.49
Lawrence	97.72
Lee	98.45
Livingston	100.48
Logan	100.05
McDonough	72.79
McHenry	115.82
McLean	99.70
Macon	97.87
Macoupin	89.41
Madison	98.92
Marion	86.62
Marshall	92.73
Mason	88.08
Massac	74.03
Menard	95.53
Mercer	84.32
Monroe	104.39
Montgomery	89.81
Morgan	97.30
Moultrie	86.80
Ogle	87.22
Peoria	103.19
Perry	91.99
Piatt	100.93
Pike	75.19
Pope	45.92
Pulaski	57.81
Putnam	95.29
Randolph	85.81
Richland	97.25
Rock Island	100.58
St. Clair	86.18
Saline	86.06
Sangamon	104.49
Schuyler	70.38
Scott	91.21
Shelby	79.73
Stark	106.00
Stephenson	101.51
Tazewell	99.10
Union	75.88
Vermilion	90.62
Wabash	98.27
Warren	88.11
Washington	92.51
Wayne	86.26
White	91.78
Whiteside	89.34
Will	100.92
Williamson	81.52
Winnebago	100.87
Woodford	98.94
Indiana	
Adams	79.72
Allen	95.90
Bartholomew	96.36
Benton	102.69
Blackford	77.71
Boone	104.64
Brown	70.68
Carroll	84.35
Cass	89.24
Clark	85.79
Clay	83.90
Clinton	89.67
Crawford	60.73
Daviess	74.16
Dearborn	84.83
Decatur	84.42
De Kalb	85.53
Delaware	81.97
Dubois	93.54
Elkhart	98.58
Fayette	82.72
Floyd	91.60
Fountain	79.86
Franklin	68.06
Fulton	78.86
Gibson	93.11
Grant	86.70
Greene	73.72
Hamilton	118.55
Hancock	97.95
Harrison	75.89
Hendricks	97.05
Henry	83.10
Howard	98.40
Huntington	89.38
Jackson	84.98
Jasper	84.48
Jay	80.70
Jefferson	81.96
Jennings	66.91
Johnson	98.48
Knox	84.11
Kosciusko	87.00
LaGrange	65.45
Lake	92.23
La Porte	90.06
Lawrence	80.97
Madison	86.50
Marion	101.46
Marshall	85.79
Martin	74.33
Miami	83.66
Monroe	72.23
Montgomery	87.17
Morgan	86.69
Newton	77.39
Noble	79.41
Ohio	75.55
Orange	67.10

County	County PCI Index
Owen	72.61
Parke	75.96
Perry	58.18
Pike	87.68
Porter	100.41
Posey	92.16
Pulaski	85.84
Putnam	77.26
Randolph	82.42
Ripley	79.53
Rush	83.30
St. Joseph	95.45
Scott	70.84
Shelby	88.25
Spencer	80.30
Starke	69.59
Steuben	82.64
Sullivan	79.14
Switzerland	82.34
Tippecanoe	84.30
Tipton	102.55
Union	84.31
Vanderburgh	100.04
Vermillion	77.52
Vigo	82.77
Wabash	85.08
Warren	83.98
Warrick	93.36
Washington	70.53
Wayne	83.19
Wells	86.24
White	90.59
Whitley	83.97
Iowa	
Adair	74.76
Adams	82.74
Allamakee	72.58
Appanoose	73.88
Audubon	82.54
Benton	90.27
Black Hawk	94.72
Boone	90.98
Bremer	91.13
Buchanan	79.27
Buena Vista	93.68
Butler	84.45
Calhoun	96.75
Carroll	94.93
Cass	91.42
Cedar	92.16
Cerro Gordo	98.60
Cherokee	87.61
Chickasaw	83.89
Clarke	75.70
Clay	91.08
Clayton	78.92
Clinton	92.27
Crawford	85.83
Dallas	98.57
Davis	66.31
Decatur	66.16
Delaware	74.16
Des Moines	92.50
Dickinson	93.64
Dubuque	88.27
Emmet	89.84
Fayette	79.03
Floyd	84.75
Franklin	85.37
Fremont	95.84
Greene	97.65
Grundy	93.82
Guthrie	84.97
Hamilton	99.44
Hancock	91.29
Hardin	95.63
Harrison	81.38
Henry	87.11
Howard	77.35
Humboldt	101.20
Ida	87.84
Iowa	95.11
Jackson	77.69
Jasper	92.81
Jefferson	77.82
Johnson	93.88
Jones	77.95
Keokuk	88.14
Kossuth	89.47
Lee	88.20
Linn	103.59
Louisa	80.63
Lucas	88.51
Lyon	78.77
Madison	85.55
Mahaska	81.83
Marion	94.13
Marshall	100.03
Mills	87.86
Mitchell	85.09
Monona	85.71
Monroe	80.63
Montgomery	93.36
Muscatine	103.65
O'Brien	94.14
Osceola	91.47
Page	85.49
Palo Alto	92.86
Plymouth	82.96
Pocahontas	97.75
Polk	112.56
Pottawattamie	91.85
Poweshiek	95.65
Ringgold	73.38
Sac	91.28
Scott	100.92
Shelby	87.16
Sioux	77.79
Story	87.39
Tama	89.19
Taylor	71.74
Union	89.76
Van Buren	73.62
Wapello	86.69
Warren	94.60
Washington	96.44
Wayne	80.86
Webster	94.26
Winnebago	97.97
Winneshiek	73.30
Woodbury	94.08
Worth	84.53
Wright	107.96
Kansas	
Allen	87.22
Anderson	83.31
Atchison	77.41
Barber	111.76
Barton	115.09
Bourbon	93.58
Brown	89.16
Butler	105.91
Chase	93.22
Chautauqua	75.52
Cherokee	76.71
Cheyenne	96.48
Clark	116.91
Clay	86.29
Cloud	95.78
Coffey	96.03
Comanche	115.30
Cowley	90.51
Crawford	85.44
Decatur	115.37
Dickinson	88.04
Doniphan	76.93
Douglas	79.12
Edwards	114.09
Elk	81.90
Ellis	93.74
Ellsworth	101.22
Finney	108.44
Ford	109.79
Franklin	92.32
Geary	83.61
Gove	102.25
Graham	89.76
Grant	131.01
Gray	120.18
Greeley	151.42
Greenwood	95.58
Hamilton	116.79
Harper	110.44
Harvey	93.19
Haskell	117.44
Hodgeman	136.21
Jackson	86.85
Jefferson	87.44
Jewell	99.30
Johnson	148.81
Kearny	102.55
Kingman	91.64
Kiowa	104.68
Labette	79.38
Lane	147.43
Leavenworth	85.17
Lincoln	105.25
Linn	87.85
Logan	98.29
Lyon	88.83
McPherson	100.96
Marion	93.06
Marshall	82.76
Meade	129.96
Miami	87.36
Mitchell	107.54
Montgomery	87.36
Morris	80.36
Morton	114.38
Nemaha	90.13
Neosho	93.46
Ness	115.05
Norton	101.33
Osage	83.27
Osborne	104.38
Ottawa	96.39
Pawnee	101.26
Phillips	112.80
Pottawatomie	76.77

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Pratt	122.05
Rawlins	98.34
Reno	97.15
Republic	94.60
Rice	103.62
Riley	83.97
Rooks	99.35
Rush	118.08
Russell	128.85
Saline	101.61
Scott	122.65
Sedgwick	112.75
Seward	119.19
Shawnee	107.55
Sheridan	109.38
Sherman	96.33
Smith	98.60
Stafford	136.11
Stanton	105.80
Stevens	133.41
Sumner	104.94
Thomas	94.95
Trego	107.25
Wabaunsee	89.73
Wallace	96.23
Washington	95.75
Wichita	167.33
Wilson	85.25
Woodson	86.69
Wyandotte	82.99
Kentucky	
Adair	56.41
Allen	67.79
Anderson	83.96
Ballard	80.87
Barren	71.03
Bath	59.27
Bell	64.74
Boone	90.64
Bourbon	116.35
Boyd	90.50
Boyle	80.47
Bracken	73.12
Breathitt	58.41
Breckinridge	58.27
Bullitt	72.12
Butler	52.53
Caldwell	74.28
Calloway	70.58
Campbell	87.73
Carlisle	70.28
Carroll	78.15
Carter	55.45
Casey	46.50
Christian	71.29
Clark	85.34
Clay	57.38
Clinton	42.87
Crittenden	72.93
Cumberland	57.87
Daviess	91.76
Edmonson	47.17
Elliott	43.99
Estill	59.40
Fayette	112.70
Fleming	55.28
Floyd	58.63
Franklin	100.72
Fulton	78.82
Gallatin	66.19
Garrard	69.23
Grant	71.40
Graves	78.96
Grayson	59.02
Green	64.73
Greenup	77.12
Hancock	82.96
Hardin	69.51
Harlan	63.42
Harrison	77.88
Hart	58.42
Henderson	90.88
Henry	74.91
Hickman	64.72
Hopkins	95.49
Jackson	43.32
Jefferson	101.44
Jessamine	77.66
Johnson	65.17
Kenton	91.92
Knott	55.35
Knox	51.93
Larue	67.84
Laurel	61.98
Lawrence	59.31
Lee	49.26
Leslie	48.51
Letcher	58.19
Lewis	48.96
Lincoln	55.08
Livingston	72.45
Logan	70.49
Lyon	65.45
McCracken	95.00
McCreary	40.56
McLean	76.83
Madison	67.58
Magoffin	51.79
Marion	54.65
Marshall	75.37
Martin	67.28
Mason	78.52
Meade	60.87
Menifee	41.61
Mercer	74.83
Metcalfe	51.30
Monroe	54.32
Montgomery	69.10
Morgan	48.35
Muhlenberg	84.32
Nelson	73.31
Nicholas	65.12
Ohio	70.00
Oldham	97.09
Owen	61.10
Owsley	39.65
Pendleton	69.12
Perry	61.97
Pike	68.84
Powell	53.88
Pulaski	64.21
Robertson	61.16
Rockcastle	46.72
Rowan	57.68
Russell	53.11
Scott	85.75
Shelby	84.30
Simpson	78.83
Spencer	68.72
Taylor	68.18
Todd	60.16
Trigg	76.12
Trimble	69.68
Union	83.34
Warren	72.76
Washington	61.34
Wayne	46.58
Webster	86.48
Whitley	66.26
Wolfe	46.05
Woodford	121.04
Louisiana	
Acadia	73.76
Allen	58.25
Ascension	86.69
Assumption	69.49
Avoyelles	54.06
Beauregard	67.56
Bienville	72.42
Bossier	82.95
Caddo	96.64
Calcasieu	89.54
Caldwell	58.20
Cameron	85.69
Catahoula	61.14
Claiborne	74.55
Concordia	73.68
De Soto	72.47
East Baton Rouge	101.08
East Carroll	57.32
East Feliciana	65.32
Evangeline	61.78
Franklin	53.27
Grant	57.45
Iberia	94.40
Iberville	75.95
Jackson	72.81
jefferson	106.52
Jefferson Davis	68.49
Lafayette	116.28
Lafourche	86.04
La Salle	58.53
Lincoln	72.89
Livingston	74.19
Madison	46.38
Morehouse	65.01
Natchitoches	62.20
Orleans	94.84
Ouachita	77.81
Plaquemines	85.62
Pointe Coupee	75.53
Rapides	71.78
Red River	58.81
Richland	64.34
Sabine	48.88
St. Bernard	92.41
St. Charles	100.14
St. Helena	55.83
St. James	89.46
St. John/Baptist	90.04
St. Landry	66.63
St. Martin	70.12
St. Mary	91.85
St. Tammany	103.75
Tangipahoa	63.39
Tensas	64.96
Terrebonne	88.26
Union	68.61
Vermilion	82.94

County	County PCI Index
Vernon	59.91
Washington	66.89
Webster	77.85
West Baton Rouge	83.05
West Carroll	51.55
West Feliciana	54.58
Winn	58.20
Maine	
Androscoggin	83.69
Aroostook	70.01
Cumberland	102.27
Franklin	72.06
Hancock	84.15
Kennebec	87.38
Knox	84.00
Lincoln	88.90
Oxford	76.81
Penobscot	81.41
Piscataquis	72.68
Sagadahoc	91.62
Somerset	74.15
Waldo	64.77
Washington	67.96
York	84.40
Maryland	
Allegany	78.82
Anne Arundel	111.83
Baltimore	119.14
Calvert	102.94
Caroline	79.86
Carroll	106.40
Cecil	89.80
Charles	97.67
Dorchester	83.72
Frederick	100.82
Garrett	64.26
Harford	105.07
Howard	137.13
Kent	88.78
Montgomery	166.64
E. George's	109.92
Queen Anne's	95.68
St. Mary's	85.92
Somerset	72.26
Talbot	119.65
Washington	90.22
Wicomico	86.54
Worcester	94.68
Baltimore Ind City	86.26
Massachusetts	
Barnstable	119.12
Berkshire	100.91
Bristol	93.31
Dukes	101.04
Essex	118.66
Franklin	92.92
Hampden	98.67
Hampshire	91.16
Middlesex	132.22
Nantucket	126.11
Norfolk	138.57
Plymouth	103.19
Suffolk	99.90
Worcester	97.70

County	County PCI Index
Michigan	
Alcona	67.60
Alger	67.91
Allegan	80.89
Alpena	76.14
Antrim	73.41
Arenac	68.38
Baraga	65.99
Barry	80.32
Bay	88.87
Benzie	73.88
Berrien	87.42
Branch	82.43
Calhoun	93.69
Cass	86.54
Charlevoix	77.74
Cheboygan	68.28
Chippewa	65.08
Clare	64.81
Clinton	93.15
Crawford	64.65
Delta	75.19
Dickinson	90.48
Eaton	100.19
Emmet	84.61
Genesee	100.72
Gladwin	65.15
Gogebic	71.61
Grand Traverse	93.20
Gratiot	82.18
Hillsdale	79.20
Houghton	65.52
Huron	84.28
Ingham	96.49
Ionia	77.44
Iosco	71.27
Iron	79.34
Isabella	69.99
Jackson	88.32
Kalamazoo	100.49
Kalkaska	70.45
Kent	96.59
Keweenaw	65.25
Lake	55.95
Lapeer	88.94
Leelanau	89.07
Lenawee	88.82
Livingston	102.16
Luce	81.07
Mackinac	76.01
Macomb	111.03
Manistee	76.60
Marquette	76.25
Mason	70.77
Mecosta	56.36
Menominee	76.64
Midland	103.76
Missaukee	60.10
Monroe	94.61
Montcalm	75.71
Montmorency	68.06
Muskegon	82.25
Newaygo	70.15
Oakland	137.12
Oceana	68.42
Ogemaw	60.93
Ontonagon	60.89
Osceola	62.87
Oscoda	56.71
Otsego	78.06

County	County PCI Index
Ottawa	94.32
Presque Isle	67.87
Roscommon	71.86
Saginaw	89.85
St. Clair	93.76
St. Joseph	83.80
Sanilac	77.81
Schoolcraft	71.58
Shiawassee	89.55
Tuscola	80.13
Van Buren	76.51
Washtenaw	112.88
Wayne	95.72
Wexford	70.11
Minnesota	
Atkin	65.62
Anoka	99.67
Becker	65.08
Beltrami	60.96
Benton	75.32
Big Stone	73.69
Blue Earth	91.74
Brown	90.76
Carlton	75.99
Carver	102.07
Cass	68.30
Chippewa	81.41
Chisago	86.89
Clay	80.40
Clearwater	55.50
Cook	81.02
Cottonwood	92.06
Crow Wing	78.05
Dakota	116.69
Dodge	85.18
Douglas	74.21
Faribault	91.54
Fillmore	83.44
Freeborn	95.70
Goodhue	94.62
Grant	82.48
Hennepin	130.28
Houston	81.08
Hubbard	61.27
Isanti	77.39
Itasca	72.35
Jackson	88.24
Kanabec	71.63
Kandiyohi	81.27
Kittson	92.15
Koochiching	76.92
Lac Qui Parle	79.48
Lake	59.99
Lake of the Woods	74.39
Le Sueur	87.36
Lincoln	68.19
Lyon	86.26
McLeod	98.42
Mahnomen	69.83
Marshall	84.77
Martin	103.81
Meeker	77.51
Mille Lacs	79.31
Morrison	63.45
Mower	97.09
Murray	87.00
Nicollett	85.38
Nobles	91.79
Norman	97.03

County	County PCI Index
Olmsted	117.28
Otter Tail	81.62
Pennington	81.56
Pine	67.61
Pipestone	77.79
Polk	87.02
Pope	71.36
Ramsey	115.10
Red Lake	78.74
Redwood	88.35
Renville	89.13
Rice	82.84
Rock	84.14
Roseau	83.34
St. Louis	86.84
Scott	102.99
Sherburne	78.70
Sibley	79.21
Stearns	78.50
Steele	102.77
Stevens	81.05
Swift	71.33
Todd	60.13
Traverse	80.60
Wabasha	89.33
Wadena	67.85
Waseca	92.97
Washington	109.99
Watonwan	96.44
Wilkin	84.88
Winona	81.82
Wnght	83.63
Yellow Medicine	85.23

Mississippi

Adams	79.17
Alcorn	70.96
Amite	59.74
Attala	55.23
Benton	53.90
Bolivar	54.76
Calhoun	55.37
Carroll	53.10
Chickasaw	62.38
Choctaw	57.20
Claiborne	52.83
Clarke	64.02
Clay	62.74
Coahoma	60.96
Copiah	60.81
Covington	60.85
De Soto	79.04
Forrest	73.90
Franklin	58.73
George	63.26
Greene	48.54
Grenada	69.47
Hancock	68.56
Harrison	73.58
Hinds	92.73
Holmes	45.72
Humphreys	51.58
Issaquena	48.89
Itawamba	63.49
Jackson	75.29
Jasper	61.12
Jefferson	63.15
Jefferson Davis	53.17
Jones	74.89
Kemper	47.71
Lafayette	56.87
Lamar	63.89
Lauderdale	79.96
Lawrence	53.39
Leake	62.69
Lee	80.57
Leflore	62.55
Lincoln	63.78
Lowndes	71.72
Madison	67.88
Marion	58.93
Marshall	51.09
Monroe	67.34
Montgomery	53.71
Neshoba	61.82
Newton	68.61
Noxubee	48.60
Oktibbeha	60.10
Panola	56.06
Pearl River	62.46
Perry	70.07
Pike	61.97
Pontotoc	62.06
Prentiss	58.34
Quitman	53.01
Rankin	78.81
Scott	59.58
Sharkey	56.30
Simpson	61.70
Smith	62.30
Stone	68.07
Sunflower	53.49
Tallahatchie	49.08
Tate	68.25
Tippah	64.99
Tishomingo	61.32
Tunica	51.19
Union	69.31
Walthall	57.32
Warren	84.38
Washington	66.00
Wayne	52.92
Webster	64.58
Wilkinson	53.44
Winston	61.33
Yalobusha	58.83
Yazoo	63.12

Missouri

Adair	72.34
Andrew	78.11
Atchison	81.87
Audrain	85.23
Barry	73.51
Barton	74.46
Bates	79.23
Benton	65.24
Bollinger	46.76
Boone	85.93
Buchanan	89.99
Butler	66.46
Caldwell	78.06
Callaway	87.80
Camden	74.34
Cape Girardeau	86.36
Carroll	85.13
Carter	45.43
Cass	91.78
Cedar	58.48
Chanton	79.50
Christian	73.80
Clark	64.60
Clay	107.47
Clinton	86.23
Cole	96.83
Cooper	83.78
Crawford	71.15
Dade	69.94
Dallas	60.28
Daviess	63.10
De Kalb	68.22
Dent	60.97
Douglas	49.20
Dunklin	59.87
Franklin	87.43
Gasconade	76.49
Gentry	70.46
Greene	89.37
Grundy	77.59
Harrison	67.38
Henry	87.37
Hickory	56.59
Holt	73.90
Howard	74.91
Howell	61.70
Iron	68.53
Jackson	102.73
Jasper	81.65
Jefferson	82.93
Johnson	72.36
Knox	66.56
Laclede	70.86
Lafayette	88.06
Lawrence	68.41
Lewis	65.81
Lincoln	84.81
Linn	75.49
Livingston	81.53
McDonald	58.11
Macon	71.31
Madison	57.09
Maries	57.13
Marion	78.50
Mercer	62.98
Miller	73.80
Mississippi	63.16
Moniteau	72.61
Monroe	76.76
Montgomery	78.85
Morgan	62.68
New Madrid	60.57
Newton	68.22
Nodaway	69.41
Oregon	52.92
Osage	68.10
Ozark	52.04
Pemiscot	56.92
Perry	73.27
Pettis	83.93
Phelps	72.24
Pike	74.19
Platte	107.39
Polk	65.78
Pulaski	57.97
Putnam	62.57
Ralls	69.46
Randolph	81.99
Ray	85.12
Reynolds	55.47
Ripley	47.13
St. Charles	105.55

County	County PCI Index
St. Clair	69.39
Ste. Genevieve	77.08
St. Francois	75.27
St. Louis	131.70
Saline	87.35
Schuyler	68.69
Scotland	69.66
Scott	68.39
Shannon	49.43
Shelby	74.00
Stoddard	65.78
Stone	71.82
Sullivan	70.08
Taney	79.64
Texas	59.18
Vernon	73.91
Warren	86.42
Washington	55.13
Wayne	44.64
Webster	65.30
Worth	59.89
Wright	60.67
St. Louis Ind City	93.19
Montana	
Beaverhead	79.75
Big Horn	63.71
Blaine	68.46
Broadwater	70.01
Carbon	78.97
Carter	68.49
Cascade	90.24
Chouteau	86.19
Custer	87.96
Daniels	87.04
Dawson	86.59
Deer Lodge	68.81
Fallon	80.33
Fergus	83.16
Flathead	84.28
Gallatin	78.74
Garfield	84.83
Glacier	81.87
Golden Valley	69.10
Granite	76.25
Hill	84.77
Jefferson	74.91
Judith Basin	65.40
Lake	67.19
Lewis and Clark	98.22
Liberty	95.30
Lincoln	70.30
McCone	90.22
Madison	71.61
Meagher	70.13
Mineral	75.29
Missoula	82.84
Musselshell	81.76
Petroleum	54.83
Phillips	77.80
Pondera	91.26
Powder River	83.72
Powell	89.72
Prairie	68.30
Ravalli	69.91
Richland	79.74
Roosevelt	73.78
Rosebud	87.70
Sanders	68.86
Sheridan	93.30
Silver Bow	92.97
Stillwater	81.04
Sweet Grass	86.24
Teton	80.12
Toole	108.12
Treasure	81.56
Valley	82.58
Wheatland	88.05
Wibaux	63.08
Yellowstone	101.19
Park (Incl. Ylwst. Ntl. Pk.)	81.40
Nebraska	
Adams	99.83
Antelope	90.34
Arthur	83.86
Banner	89.94
Blaine	75.47
Boone	81.54
Box Butte	75.88
Boyd	72.52
Brown	91.17
Buffalo	85.49
Burt	94.08
Butler	96.73
Cass	87.42
Cedar	69.34
Chase	95.08
Cherry	83.54
Cheyenne	98.19
Clay	100.11
Colfax	89.75
Cuming	90.55
Custer	85.24
Dakota	81.40
Dawes	79.06
Dawson	92.65
Deuel	110.42
Dixon	73.55
Dodge	100.08
Douglas	109.56
Dundy	100.96
Fillmore	101.71
Franklin	101.84
Frontier	82.46
Furnas	84.42
Gage	91.26
Garden	110.70
Garfield	80.74
Gosper	97.74
Grant	102.39
Greeley	79.21
Hall	94.91
Hamilton	100.13
Harlan	91.07
Hayes	63.88
Hitchcock	90.73
Holt	70.21
Hooker	85.21
Howard	82.62
Jefferson	92.78
Johnson	79.01
Kearney	115.53
Keith	101.62
Keya Paha	60.59
Kimball	112.25
Knox	63.53
Lancaster	99.42
Lincoln	95.18
Logan	85.42
Loup	55.94
McPherson	77.17
Madison	93.56
Merrick	85.25
Morrill	76.98
Nance	86.63
Nemaha	86.12
Nuckolls	81.69
Otoe	89.91
Pawnee	87.90
Perkins	119.43
Phelps	117.60
Pierce	72.22
Platte	100.18
Polk	109.56
Red Willow	97.39
Richardson	85.50
Rock	92.82
Saline	102.05
Sarpy	89.69
Saunders	87.71
Scotts Bluff	88.03
Seward	87.54
Sheridan	77.41
Sherman	73.75
Sioux	73.26
Stanton	75.43
Thayer	88.39
Thomas	78.92
Thurston	65.01
Valley	81.73
Washington	96.19
Wayne	69.11
Webster	84.26
Wheeler	55.61
York	105.78
Nevada	
Churchill	85.08
Clark	101.91
Douglas	128.89
Eklo	101.87
Esmeralda	93.92
Eureka	92.43
Humboldt	77.76
Lander	88.05
Lincoln	88.07
Lyon	87.88
Mineral	95.06
Nye	93.09
Pershing	87.80
Storey	94.80
Washoe	120.85
White Pine	87.68
Carson City	105.71
New Hampshire	
Belknap	95.07
Carroll	94.76
Cheshire	95.39
Coos	85.65
Grafton	93.55
Hillsborough	109.71
Merrimack	101.58
Rockingham	111.40
Strafford	91.30
Sullivan	88.74

County	County PCI Index
New Jersey	
Atlantic	112.12
Bergen	153.40
Burlington	106.13
Camden	103.15
Cape May	107.09
Cumberland	87.77
Essex	111.03
Gloucester	97.44
Hudson	94.70
Hunterdon	140.49
Mercer	117.85
Middlesex	123.85
Monmouth	121.39
Morris	150.24
Ocean	105.62
Passaic	106.65
Salem	92.90
Somerset	153.20
Sussex	107.42
Union	135.50
Warren	108.27
New Mexico	
Bernalillo	96.42
Catron	53.89
Chaves	81.79
Cibola	48.00
Colfax	81.22
Curry	81.63
De Baca	75.00
Dona Ana	67.57
Eddy	85.80
Grant	71.31
Guadalupe	52.98
Harding	77.04
Hidalgo	71.65
Lea	96.89
Lincoln	84.04
Los Alamos	159.36
Luna	69.11
McKinley	50.67
Mora	39.33
Otero	75.82
Quay	77.93
Rio Arriba	54.89
Roosevelt	66.30
Sandoval	78.09
San Juan	76.79
San Miguel	51.46
Santa Fe	91.73
Sierra	76.56
Socorro	54.72
Taos	66.89
Torrance	56.94
Union	72.41
Valencia	73.91
New York	
Albany	111.50
Allegany	65.85
Bronx	82.57
Broome	98.77
Cattaraugus	73.34
Cayuga	81.06
Chautauqua	85.66
Chemung	88.76
Chenango	75.46
Clinton	72.25
Columbia	84.72
Cortland	77.26
Delaware	74.12
Dutchess	109.35
Erie	99.06
Essex	78.84
Franklin	68.08
Fulton	82.15
Genesee	91.24
Greene	83.20
Hamilton	80.25
Herkimer	80.43
Jefferson	80.85
Kings	90.21
Lewis	67.17
Levingston	86.58
Madison	82.82
Monroe	116.59
Montgomery	87.44
Nassau	155.17
New York	157.77
Niagara	95.06
Oneida	89.55
Onandaga	102.56
Ontario	95.17
Orange	95.09
Orleans	88.44
Oswego	82.91
Otsego	77.69
Putnam	121.79
Queens	115.10
Rensselaer	90.61
Richmond	115.26
Rockland	134.28
St. Lawrence	70.67
Saratoga	95.10
Schenectady	110.60
Schoharie	70.53
Schuyler	75.51
Seneca	88.99
Steuben	85.02
Suffolk	115.44
Sullivan	87.15
Tioga	87.58
Tompkins	80.98
Ulster	95.82
Warren	89.95
Washington	76.24
Wayne	93.05
Westchester	163.00
Wyoming	76.24
Yates	82.07
North Carolina	
Alamance	87.54
Alexander	78.85
Alleghany	68.18
Anson	66.06
Ashe	62.63
Avery	61.05
Beaufort	72.03
Bertie	65.95
Bladen	59.17
Brunswick	64.75
Buncombe	86.03
Burke	78.16
Cabarrus	89.11
Caldwell	74.25
Camden	66.79
Carteret	70.84
Caswell	58.59
Catawba	91.01
Chatham	86.29
Cherokee	55.71
Chowan	69.71
Clay	55.67
Cleveland	76.92
Columbus	61.63
Craven	78.75
Cumberland	73.85
Currituck	67.76
Dare	67.43
Davidson	83.20
Davie	84.36
Duplin	67.69
Durham	95.92
Edgecombe	76.32
Forsyth	106.85
Franklin	66.62
Gaston	83.91
Gates	72.80
Graham	60.11
Granville	66.78
Greene	73.38
Guilford	101.91
Halifax	62.20
Harnett	62.96
Haywood	78.90
Henderson	93.09
Hertford	66.89
Hoke	49.69
Hyde	53.46
Iredell	80.85
Jackson	66.00
Johnston	72.08
Jones	62.76
Lee	87.26
Lenoir	75.75
Lincoln	81.57
McDowell	71.59
Macon	70.80
Madison	60.09
Martin	72.14
Mecklenburg	108.90
Mitchell	70.82
Montgomery	68.45
Moore	88.80
Nash	89.86
New Hanover	84.78
Northampton	54.35
Onslow	73.77
Orange	93.68
Pamlico	71.89
Pasquotank	78.42
Pender	63.55
Perquimans	66.56
Person	69.82
Pitt	75.87
Polk	93.00
Randolph	84.89
Richmond	66.64
Robeson	56.94
Rockingham	79.71
Rowan	84.13
Rutherford	73.99
Sampson	68.82
Scotland	68.37
Stanly	81.52
Stokes	76.17
Surry	79.09

County	County PCI Index
Swain	58.37
Transylvania	82.11
Tyrrell	79.38
Union	88.88
Vance	72.00
Wake	109.29
Warren	64.34
Washington	77.41
Watauga	65.14
Wayne	72.25
Wilkes	76.03
Wilson	86.00
Yadkin	80.92
Yancey	57.00
North Dakota	
Adams	92.23
Barnes	96.77
Benson	81.31
Billings	89.97
Bottineau	104.84
Bowman	103.15
Burke	110.95
Burleigh	110.16
Cass	110.78
Cavalier	109.61
Dickey	85.33
Divide	122.41
Dunn	92.91
Eddy	101.01
Emmons	72.60
Foster	93.93
Golden Valley	102.17
Grand Forks	88.02
Grant	69.60
Griggs	95.89
Hettinger	95.41
Kidder	77.84
La Moure	82.01
Logan	83.84
McHenry	93.41
McIntosh	84.16
McKenzie	88.97
McLean	100.47
Mercer	107.64
Morton	86.38
Mountrail	84.66
Nelson	103.18
Oliver	91.21
Pembina	108.00
Pierce	87.22
Ramsey	103.15
Ransom	91.39
Renville	109.95
Richland	87.86
Rolette	62.92
Sargent	96.71
Sheridan	87.72
Sioux	55.34
Slope	84.19
Stark	92.42
Steele	117.67
Stutsman	97.61
Towner	101.26
Traill	110.45
Walsh	92.18
Ward	96.35
Wells	105.92
Williams	115.29

County	County PCI Index
Ohio	
Adams	53.17
Allen	91.94
Ashland	85.76
Ashtabula	81.81
Athens	59.18
Auglaize	89.33
Belmont	83.76
Brown	76.62
Butler	95.20
Carroll	73.33
Champaign	79.33
Clark	87.41
Clermont	83.94
Clinton	84.30
Columbiana	75.15
Coshocton	85.86
Crawford	84.75
Cuyahoga	113.32
Darke	83.19
Defiance	91.84
Delaware	96.39
Erie	95.18
Fairfield	92.51
Fayette	74.94
Franklin	101.27
Fulton	91.03
Gallia	77.04
Geauga	111.74
Greene	96.15
Guernsey	72.87
Hamilton	108.70
Hancock	106.15
Hardin	75.54
Harrison	76.03
Henry	91.95
Highland	71.13
Hocking	73.35
Holmes	57.91
Huron	84.77
Jackson	68.41
Jefferson	86.13
Knox	79.22
Lake	106.96
Lawrence	69.01
Licking	90.28
Logan	88.07
Lorain	91.78
Lucas	99.84
Madison	75.60
Mahoning	89.14
Marion	87.96
Medina	101.27
Meigs	70.13
Mercer	86.28
Miami	93.72
Monroe	73.73
Montgomery	101.66
Morgan	80.92
Morrow	71.83
Muskingum	82.61
Noble	67.84
Ottawa	96.59
Paulding	81.16
Perry	67.80
Pickaway	83.08
Pike	63.53
Portage	87.96
Preble	83.27
Putnam	87.29

County	County PCI Index
Richland	91.08
Ross	76.95
Sandusky	90.98
Scioto	66.04
Seneca	87.32
Shelby	83.89
Stark	93.50
Summit	103.42
Trumbull	95.52
Tuscarawas	82.96
Union	88.76
Van Wert	96.43
Vinton	58.83
Warren	88.43
Washington	84.86
Wayne	88.19
Williams	91.78
Wood	93.53
Wyandot	92.45
Oklahoma	
Adair	55.46
Alfalfa	107.78
Atoka	52.77
Beaver	97.21
Beckham	75.87
Blaine	82.14
Bryan	74.44
Caddo	78.54
Canadian	104.31
Carter	95.02
Cherokee	61.20
Choctaw	59.39
Cimarron	117.84
Cleveland	99.94
Coal	61.58
Comanche	75.55
Cotton	78.21
Craig	89.21
Creek	84.88
Custer	87.15
Delaware	59.70
Dewey	94.79
Ellis	101.54
Garfield	106.44
Garvin	85.09
Grady	82.09
Grant	125.95
Greer	76.96
Harmon	72.10
Harper	111.40
Haskell	64.79
Hughes	66.31
Jackson	77.97
Jefferson	79.69
Johnston	54.13
Kay	118.63
Kingfisher	96.17
Kiowa	79.37
Latimer	59.72
Le Flore	64.27
Lincoln	81.94
Logan	85.30
Love	71.90
McClain	84.25
McCurtain	60.24
McIntosh	66.92
Major	91.96
Marshall	71.17
Mayes	76.28

County	County PCI Index
Murray	74.01
Muskogee	83.18
Noble	87.70
Nowata	79.15
Okfuskee	62.51
Oklahoma	113.60
Okmulgee	76.43
Osage	80.34
Ottawa	81.85
Pawnee	85.24
Payne	74.26
Pittsburg	68.59
Pontotoc	85.00
Pottawatomie	87.93
Pushmataha	49.76
Roger Mills	69.67
Rogers	90.86
Seminole	80.80
Sequoyah	61.51
Stephens	94.86
Texas	126.24
Tillman	71.33
Tulsa	115.69
Wagoner	79.61
Washington	131.11
Washita	65.19
Woods	101.63
Woodward	87.72
Oregon	
Baker	74.93
Benton	84.21
Clackamas	101.85
Clatsop	84.61
Columbia	84.28
Coos	79.38
Crook	80.59
Curry	85.58
Deschutes	80.45
Douglas	80.27
Gilliam	101.04
Grant	75.82
Harney	78.47
Hood River	91.13
Jackson	80.99
Jefferson	79.62
Josephine	69.64
Klamath	78.11
Lake	83.07
Lane	82.40
Lincoln	84.78
Linn	79.11
Malheur	72.14
Marion	87.03
Morrow	108.42
Multnomah	105.13
Polk	78.12
Sherman	109.31
Tillamook	81.30
Umatilla	80.03
Union	79.35
Wallowa	81.79
Wasco	94.78
Washington	110.27
Wheeler	90.95
Yamhill	83.86
Pennsylvania	
Adams	82.11
Allegheny	108.86
Armstrong	84.32
Beaver	88.62
Bedford	64.74
Berks	104.26
Blair	75.83
Bradford	73.82
Bucks	111.77
Butler	88.72
Cambria	80.71
Cameron	79.90
Carbon	86.59
Centre	76.13
Chester	122.08
Clarion	77.11
Clearfield	80.69
Clinton	72.61
Columbia	77.84
Crawford	73.85
Cumberland	107.62
Dauphin	101.27
Delaware	119.71
Elk	89.95
Erie	88.35
Fayette	76.14
Forest	70.87
Franklin	88.95
Fulton	63.44
Greene	71.41
Huntingdon	67.41
Indiana	79.15
Jefferson	80.88
Juniata	79.59
Lackawanna	87.15
Lancaster	96.65
Lawrence	78.39
Lebanon	91.95
Lehigh	107.78
Luzerne	86.42
Lycoming	83.55
McKean	86.45
Mercer	82.43
Mifflin	70.98
Monroe	88.80
Montgomery	142.43
Montour	88.34
Northampton	100.39
Northumberland	79.46
Perry	82.16
Philadelphia	89.22
Pike	86.39
Potter	67.89
Schuylkill	83.86
Synder	74.18
Somerset	76.99
Sullivan	69.40
Susquehanna	74.94
Tioga	67.68
Union	79.30
Venango	86.50
Warren	85.86
Washington	91.44
Wayne	81.49
Westmoreland	93.23
Wyoming	75.12
York	95.10
Rhode Island	
Bristol	112.76
Kent	106.62
Newport	102.46
Providence	96.17
Washington	103.05
South Carolina	
Abbeville	65.37
Aiken	88.48
Allendale	53.36
Anderson	76.51
Bamberg	56.49
Barnwell	72.83
Beaufort	92.05
Berkeley	68.86
Calhoun	70.49
Charleston	83.92
Cherokee	76.39
Chester	76.67
Chesterfield	68.95
Clarendon	53.95
Colleton	59.76
Darlington	65.97
Dillon	54.41
Dorchester	76.65
Edgefield	60.73
Fairfield	62.00
Florence	74.57
Georgetown	69.23
Greenville	91.73
Greenwood	80.35
Hampton	65.14
Horry	78.37
Jasper	63.09
Kershaw	81.75
Lancaster	70.73
Laurens	75.49
Lee	57.90
Lexington	91.39
McCormick	60.57
Marion	61.76
Marlboro	52.49
Newberry	84.15
Oconee	78.66
Orangeburg	64.00
Pickens	78.60
Richland	88.76
Saluda	64.54
Spartanburg	83.11
Sumter	65.34
Union	66.42
Williamsburg	53.72
York	87.96
South Dakota	
Aurora	64.49
Beadle	90.47
Bennett	63.43
Bon Homme	77.63
Brookings	75.55
Brown	91.49
Brule	81.65
Buffalo	56.23
Butte	77.78
Campbell	76.37
Charles Mix	66.01
Clark	80.22
Clay	73.34
Codington	82.05
Corson	52.37
Custer	76.09

County	County PCI Index
Davison	84.97
Day	78.10
Deuel	75.03
Dewey	64.31
Douglas	65.32
Edmunds	76.31
Fall River	91.23
Faulk	80.54
Grant	80.63
Gregory	74.80
Haakon	88.63
Hamlin	73.95
Hand	87.83
Hanson	64.15
Harding	85.05
Hughes	94.36
Hutchinson	77.76
Hyde	92.75
Jackson	63.01
Jerauld	88.04
Jones	105.23
Kingsbury	86.10
Lake	80.63
Lawrence	82.03
Lincoln	87.47
Lyman	82.93
McCook	74.81
McPherson	81.60
Marshall	74.97
Meade	77.86
Mellette	61.51
Miner	78.10
Minnehaha	98.78
Moody	74.36
Pennington	88.85
Perkins	89.29
Potter	92.54
Roberts	70.25
Sanborn	71.79
Shannon	29.08
Spink	85.72
Stanley	92.23
Sully	127.78
Todd	44.13
Tripp	82.68
Turner	84.70
Union	87.20
Walworth	88.08
Yankton	81.48
Ziebach	66.70

Tennessee

Anderson	94.18
Bedford	74.97
Benton	71.71
Bledsoe	55.39
Blount	82.82
Bradley	77.73
Campbell	55.53
Cannon	67.82
Carroll	75.67
Carter	60.69
Cheatham	75.51
Chester	59.50
Claiborne	54.65
Clay	53.34
Cocke	55.19
Coffee	81.98
Crockett	64.78
Cumberland	61.24
Davidson	100.55
Decatur	60.25
De Kalb	71.66
Dickson	76.96
Dyer	74.15
Fayette	55.40
Fentress	43.89
Franklin	64.54
Gibson	69.83
Giles	77.76
Grainger	54.82
Greene	70.61
Grundy	50.98
Hamblen	64.03
Hamilton	92.01
Hancock	42.42
Hardeman	58.21
Hardin	61.26
Hawkins	63.22
Haywood	55.53
Henderson	59.96
Henry	77.03
Hickman	64.17
Houston	65.79
Humphreys	71.81
Jackson	49.19
Jefferson	65.47
Johnson	57.08
Knox	87.86
Lake	53.18
Lauderdale	60.37
Lawrence	72.45
Lewis	47.22
Lincoln	66.23
Loudon	82.06
McMinn	71.66
McNairy	61.57
Macon	67.96
Madison	79.52
Marion	64.35
Marshall	79.41
Maury	78.17
Meigs	65.72
Monroe	52.76
Montgomery	74.12
Moore	73.07
Morgan	50.55
Obion	82.99
Overton	52.86
Perry	65.15
Pickett	48.19
Polk	64.47
Putnam	69.46
Rhea	73.65
Roane	73.12
Robertson	75.12
Rutherford	83.64
Scott	50.64
Sequatchie	56.44
Sevier	72.55
Shelby	93.43
Smith	65.53
Stewart	68.19
Sullivan	86.06
Sumner	86.01
Tipton	68.51
Trousdale	77.22
Unicoi	69.67
Union	53.29
Van Buren	53.28
Warren	76.74
Washington	81.49
Wayne	57.25
Weakley	61.89
White	63.16
Williamson	108.33
Wilson	86.52

Texas

Anderson	77.83
Andrews	106.46
Angelina	84.44
Arkansas	88.86
Archer	104.71
Armstrong	100.85
Atascosa	73.91
Austin	105.69
Bailey	68.52
Bandera	99.71
Bastrop	81.70
Baylor	100.70
Bee	68.84
Bell	83.80
Bexar	89.49
Blanco	96.12
Borden	102.43
Bosque	94.69
Bowie	86.00
Brazoria	106.40
Brazos	74.36
Brewster	91.70
Briscoe	103.53
Brooks	55.26
Brown	82.73
Burleson	72.11
Burnet	100.94
Caldwell	70.37
Calhoun	83.64
Callahan	86.73
Cameron	54.59
Camp	93.57
Carson	110.26
Cass	72.59
Castro	65.21
Chambers	87.49
Cherokee	86.69
Childress	81.86
Clay	96.14
Cochran	86.73
Coke	86.51
Coleman	82.23
Collin	126.05
Collingsworth	80.16
Colorado	89.05
Comal	107.01
Comanche	87.47
Concho	71.66
Cooke	99.24
Coryell	71.22
Cottle	94.81
Crane	108.39
Crockett	106.29
Crosby	72.69
Culberson	63.45
Dallam	97.17
Dallas	123.89
Dawson	84.31
Deaf Smith	85.00
Delta	87.99
Denton	123.72
DeWitt	80.32

County	County PCI Index
Dickens	68.69
Dimmit	50.01
Donley	91.67
Duval	67.16
Eastland	78.25
Ector	99.70
Edwards	90.96
Ellis	97.75
El Paso	68.74
Erath	98.37
Falls	74.14
Fannin	83.76
Fayette	99.09
Fisher	89.46
Floyd	84.93
Foard	93.64
Fort Bend	124.29
Franklin	97.37
Freestone	86.27
Frio	59.24
Gaines	77.40
Galveston	108.65
Garza	88.11
Gillespie	109.56
Glasscock	145.85
Goliad	89.05
Gonzales	90.35
Gray	114.08
Grayson	94.71
Gregg	101.29
Grimes	84.04
Guadalupe	87.23
Hale	78.90
Hall	82.61
Hamilton	74.25
Hansford	102.84
Hardeman	93.57
Hardin	88.73
Harris	118.69
Harrison	80.20
Hartley	82.50
Haskell	86.97
Hays	80.50
Hemphill	92.96
Henderson	73.63
Hidalgo	51.31
Hill	81.59
Hockley	87.79
Hood	109.61
Hopkins	98.21
Houston	92.78
Howard	92.21
Hudspeth	79.80
Hunt	87.34
Hutchinson	116.04
Irion	115.66
Jack	100.88
Jackson	97.42
Jasper	78.31
Jeff Davis	97.76
Jefferson	107.40
Jim Hogg	86.57
Jim Wells	75.56
Johnson	99.54
Jones	87.50
Karnes	82.62
Kaufman	92.99
Kendall	116.60
Kennedy	129.30
Kent	73.68
Kerr	112.39
Kimble	87.89
King	78.81
Kinney	80.09
Kleberg	75.19
Knox	79.47
Lamar	82.22
Lamb	92.83
Lampasas	84.87
La Salle	47.76
Lavaca	92.80
Lee	81.73
Leon	94.54
Liberty	92.02
Limestone	79.51
Lipscomb	100.66
Live Oak	80.11
Llano	103.20
Loving	193.55
Lubbock	92.08
Lynn	73.31
McCulloch	84.95
McLennan	92.07
McMullen	115.55
Madison	77.41
Marion	61.08
Martin	96.99
Mason	74.74
Matagorda	85.17
Maverick	33.97
Medina	77.68
Menard	90.91
Midland	134.04
Milam	88.75
Mills	97.67
Mitchell	86.85
Montague	85.25
Montgomery	121.30
Moore	97.07
Morris	86.13
Motley	57.99
Nacogdoches	79.75
Navarro	88.68
Newton	68.07
Nolan	93.07
Nueces	91.52
Ochiltree	109.60
Oldham	89.16
Orange	84.33
Palo Pinto	90.50
Panola	77.91
Parker	98.80
Parmer	74.43
Pecos	81.34
Polk	74.36
Potter	92.87
Presidio	72.43
Rains	81.48
Randall	111.14
Reagan	98.30
Real	57.39
Red River	67.76
Reeves	71.99
Refugio	97.13
Roberts	107.91
Robertson	69.70
Rockwall	134.04
Runnels	92.36
Rusk	94.39
Sabine	68.27
San Augustine	62.75
San Jacinto	71.68
San Patricio	79.54
San Saba	75.67
Schleicher	96.66
Scurry	96.44
Shackleford	100.28
Shelby	72.82
Sherman	144.04
Smith	105.03
Somervell	104.78
Starr	33.13
Stephens	88.23
Sterling	87.91
Stonewall	92.92
Sutton	88.33
Swisher	74.94
Tarrant	111.95
Taylor	98.84
Terrell	103.69
Terry	82.83
Throckmorton	96.39
Titus	94.96
Tom Green	97.70
Travis	106.95
Trinity	67.85
Tyler	85.75
Upshur	71.93
Upton	90.86
Uvalde	69.30
Val Verde	59.31
Van Zandt	87.42
Victoria	107.04
Walker	69.98
Waller	85.93
Ward	92.78
Washington	106.01
Webb	50.42
Wharton	85.14
Wheeler	88.36
Wichita	103.62
Wilbarger	97.35
Willacy	48.70
Williamson	99.84
Wilson	68.67
Winkler	92.20
Wise	95.58
Wood	92.68
Yoakum	103.92
Young	112.10
Zapata	55.13
Zavala	48.01

Utah

Beaver	57.74
Box Elder	77.53
Cache	62.84
Carbon	86.20
Daggett	58.97
Davis	76.71
Duchesne	71.94
Emery	68.54
Garfield	63.40
Grand	77.49
Iron	61.76
Juab	58.52
Kane	74.85
Millard	62.48
Morgan	83.95
Piute	55.24
Rich	50.84
Salt Lake	86.87

County	County PCI Index
San Juan	47.40
Sanpete	53.83
Sevier	75.04
Summit	94.96
Tooele	78.22
Uintah	76.15
Utah	57.40
Wasatch	67.14
Washington	63.11
Wayne	54.14
Weber	84.38
Vermont	
Addison	73.10
Bennington	88.49
Caledonia	73.72
Chittenden	95.39
Essex	67.30
Franklin	78.37
Grand Isle	78.07
Lamoille	80.58
Orange	72.19
Orleans	65.79
Rutland	87.41
Washington	90.29
Windham	87.28
Windsor	88.51
Virginia	
Accomack	79.40
Albemarle	97.23
Alleghany	71.18
Amelia	70.78
Amherst	74.24
Appomattox	73.05
Arlington	176.03
Augusta	80.15
Bath	88.85
Bedford	83.92
Bland	56.40
Botetourt	85.31
Brunswick	61.32
Buchanan	70.64
Buckingham	62.47
Campbell	85.91
Caroline	76.73
Carroll	59.91
Charles City	79.25
Charlotte	67.26
Chesterfield	113.55
Clarke	96.47
Craig	80.69
Culpeper	85.91
Cumberland	57.79
Dickenson	66.76
Dinwiddie	72.10
Essex	72.72
Fairfax	153.68
Fauquier	102.74
Floyd	62.30
Fluvanna	72.86
Franklin	65.33
Frederick	87.18
Giles	74.78
Gloucester	90.01
Goochland	100.75
Grayson	62.18
Greene	74.71
Greensville	60.64
Halifax	65.02

County	County PCI Index
Hanover	108.71
Henrico	122.56
Henry	82.31
Highland	84.16
Isle of Wight	92.03
James City	94.17
King and Queen	77.11
King George	93.50
King William	91.24
Lancaster	99.09
Lee	60.77
Loudoun	125.65
Louisa	77.22
Lunenburg	66.43
Madison	67.74
Mathews	82.39
Mecklenburg	71.63
Middlesex	75.10
Montgomery	68.28
Nelson	68.01
New Kent	98.29
Northampton	72.54
Northumberland	87.54
Nottoway	74.06
Orange	85.75
Page	74.39
Patrick	65.28
Pittsylvania	64.38
Powhatan	81.18
Prince Edward	68.47
Prince George	68.58
Prince William	108.14
Pulaski	73.20
Rappahannock	88.26
Richmond	80.53
Roanoke	103.39
Rockbridge	75.59
Rockingham	86.09
Russell	63.80
Scott	64.70
Shenandoah	82.43
Smyth	64.85
Southampton	82.82
Spotsylvania	85.81
Stafford	99.40
Surry	81.58
Sussex	80.34
Tazewell	78.18
Warren	84.98
Washington	70.15
Westmoreland	78.67
Wise	81.42
Wythe	71.24
York	98.17
Alexandria	174.95
Bedford City	95.12
Bristol	84.80
Buena Vista	76.33
Charlottesville	97.75
Chesapeake	92.22
Clifton Forge	101.19
Colonial Heights	122.19
Covington	94.85
Danville	91.77
Emporia	99.55
Fairfax City	165.15
Falls Church	194.25
Franklin	115.59
Fredericksburg	97.62
Galax	90.04
Hampton	94.63

County	County PCI Index
Harrisonburg	79.05
Hopewell	93.54
Lexington	85.03
Lynchburg	97.61
Manassas	122.68
Manassas Park	94.64
Martinsville	94.71
Newport News	97.03
Norfolk	87.84
Norton	99.26
Petersburg	96.65
Poquoson	107.68
Portsmouth	88.95
Radford	78.94
Richmond	115.39
Roanoke	96.88
Salem	100.26
South Boston	88.53
Staunton	96.17
Suffolk	84.29
Virginia Beach	109.42
Waynesboro	98.79
Williamsburg	123.69
Winchester	105.39
Washington	
Adams	107.25
Asotin	90.78
Benton	106.12
Chelan	96.59
Clallam	93.60
Clark	91.10
Columbia	125.60
Cowlitz	95.79
Douglas	90.23
Ferry	61.28
Franklin	90.56
Garfield	139.19
Grant	79.97
Grays Harbor	97.30
Island	91.80
Jefferson	95.82
King	123.99
Kitsap	101.70
Kittitas	81.20
Klickitat	85.19
Lewis	92.48
Lincoln	141.17
Mason	81.32
Okanogan	87.85
Pacific	95.04
Pend Oreille	66.15
Pierce	93.48
San Juan	110.23
Skagit	99.55
Skamania	80.33
Snohomish	99.54
Spokane	89.55
Stevens	69.10
Thurston	98.03
Wahkiakum	90.11
Walla Walla	96.93
Whatcom	85.55
Whitman	93.13
Yakima	82.58
West Virginia	
Barbour	68.76
Berkeley	79.52

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County	County PCI Index
Boone	71.79
Braxton	60.39
Brooke	79.27
Cabell	86.48
Calhoun	54.36
Clay	51.85
Doddridge	56.49
Fayette	68.39
Gilmer	61.04
Grant	66.15
Greenbrier	70.18
Hampshire	59.34
Hancock	91.11
Hardy	56.31
Harrison	82.59
Jackson	75.23
Jefferson	77.06
Kanawha	100.68
Lewis	71.83
Lincoln	53.44
Logan	71.57
McDowell	66.37
Marion	86.22
Marshall	78.31
Mason	69.01
Mercer	78.12
Mineral	67.95
Mingo	66.06
Monongalia	80.40
Monroe	58.40
Morgan	74.87
Nicholas	69.95
Ohio	93.65
Pendleton	48.76
Pleasants	78.19
Pocahontas	66.49
Preston	66.92
Putnam	83.61
Raleigh	79.17
Randolph	69.70
Ritchie	62.37
Roane	63.82
Summers	59.57
Taylor	67.88
Tucker	57.90
Tyler	68.97
Upshur	70.20
Wayne	64.18
Webster	49.35
Wetzel	80.82
Wirt	61.50
Wood	88.69
Wyoming	62.19

County	County PCI Index
Wisconsin	
Adams	60.52
Ashland	73.73
Barron	78.83
Bayfield	62.64
Brown	99.55
Buffalo	80.39
Burnett	64.46
Calumet	91.84
Chippewa	77.23
Clark	73.58
Columbia	91.10
Crawford	69.90
Dane	110.04
Dodge	85.47
Door	91.57
Douglas	76.26
Dunn	69.71
Eau Claire	84.93
Florence	63.14
Fond Du Lac	90.93
Forest	56.81
Grant	80.80
Green	102.20
Green Lake	88.02
Iowa	76.25
Iron	67.20
Jackson	74.96
Jefferson	91.60
Juneau	79.67
Kenosha	102.61
Kewaunee	83.82
La Crosse	93.95
Lafayette	85.51
Langlade	71.26
Lincoln	74.38
Manitowoc	89.01
Marathon	84.63
Marinette	79.17
Marquette	70.27
Milwaukee	107.61
Monroe	81.54
Oconto	72.18
Oneida	82.75
Outagamie	96.49
Ozaukee	130.61
Pepin	76.39
Pierce	87.81
Polk	78.50
Portage	85.16
Price	74.38
Racine	104.48
Richland	74.43
Rock	93.22
Rusk	63.81
St. Croix	95.31
Sauk	87.12
Sawyer	64.42
Sheboygan	99.14
Taylor	73.35
Trempealeau	72.32
Vernon	75.92
Vilas	69.78
Walworth	90.83
Washburn	73.55
Washington	101.35
Waukesha	123.42
Waupaca	89.35
Waushara	68.42
Winnebago	100.13
Wood	93.71
Shawano	72.63
Wyoming	
Albany	88.34
Big Horn	74.60
Campbell	105.04
Carbon	95.44
Converse	87.62
Crook	92.42
Fremont	84.42
Goshen	78.90
Hot Springs	97.93
Johnson	97.01
Laramie	109.70
Lincoln	85.46
Natrona	123.69
Niobrara	89.28
Park	100.96
Platte	75.30
Sheridan	107.65
Sublette	98.28
Sweetwater	104.37
Teton	118.02
Uinta	87.12
Washakie	93.80
Weston	106.67

Note.—Alaska Income Figures Divided by 1.25. Hawaii Income Figures Divided by 1.15.

Source: Bureau of Economic Analysis, Local Area Personal Income 1978–84.

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September 23, 1987

Part VI

Environmental Protection Agency

40 CFR Parts 262 and 271

Exception Reporting for Small Quantity Generators of Hazardous Waste; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262 and 271

[SWH-FRL-3249-1]

Exception Reporting for Small Quantity Generators of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 24, 1986, the U.S. Environmental Protection Agency (EPA) promulgated final regulations for generators of between 100 and 1000 kilograms of hazardous waste in a calendar month (i.e., generators of 100–1000 kg/mo) under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). In the final regulations, the Agency exempted these generators from the requirement to file an exception report in those instances where the generator did not receive confirmation of delivery of his hazardous waste shipment to the designated facility. As a result of this exemption, the Environmental Defense Fund (EDF) challenged the final rule. Based on the arguments raised by EDF, the Agency proposed to reinstate the exception reporting requirement in a modified form on May 1, 1987.

After considering public comments on the proposal, EPA is today promulgating in final form the exception reporting requirement as proposed.

DATE: This regulation applies to hazardous waste shipments by generators of between 100 and 1000 kg of hazardous waste per calendar month initiated after March 23, 1988.

ADDRESSES: The public docket for this rulemaking is located in Room LG–100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA RCRA Docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. The docket has been assigned code number F–87–ESQP–FFFFF. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost $0.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll free at (800) 424–9346 (in Washington, DC, call 382–3000), or the Small Business Hotline, (800) 368–5888. For information on specific aspects of today's notice, contact Paul Mushovic, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–7736.

SUPPLEMENTAL INFORMATION:

Preamble Outline

I. Background and Summary
II. Major Comments and EPA's Responses
A. The Need for Exception Reporting
1. General policy for developing standards for small quantity generators
2. Exception reporting as part of the manifest system
3. Usefulness of the exception report in enforcement cases
B. Burdens of Exception Reporting
1. Report preparation and submission
2. Recordkeeping
C. Regulatory Changes and Educational Efforts
D. Requirement to Locate Lost Shipments
III. State Authority
A. Applicability in Authorized States
B. Effect on State Authorizations
IV. Executive Order No. 12291
V. Regulatory Flexibility Act
VI. Paperwork Reduction Act
VII. Supporting Document

I. Background and Summary

On August 1, 1985, the U.S. Environmental Protection Agency (EPA) proposed regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would be applicable to generators of between 100 and 1000 kg of hazardous waste in a calendar month ("100–1000 kg/mo generators"). The proposed rules, based in large measure on the existing hazardous waste regulatory program, represented the Agency's efforts to balance the statutory mandate to protect human health and the environment with the statutory directive to keep burdensome regulation of small businesses to a minimum. Among other things, EPA proposed to exempt generators of between 100 and 1000 kg/mo from the full hazardous waste manifest system as well as the requirement to file exception reports. Under the proposed rules, there would have been only a single copy of the manifest; therefore, there would be no manifest copies for return to the generator, and, hence, no basis for exception reporting.

In the final rule issued on March 24, 1986 (see 51 FR 10146), EPA determined that the full, multiple-copy manifest system was necessary to protect public health and the environment and that its use would not impose a significant burden on 100 to 1000 kg/mo generators. See 51 FR 10155–10156. The Agency also concluded, however, that the administrative burden associated with the exception reporting requirement outweighed the incremental environmental benefits that may be gained. See 51 FR 10159–160. Subsequently, on June 6, 1986, the Environmental Defense Fund (EDF) filed a petition in the United States Court of Appeals for the District of Columbia Circuit (Environmental Defense Fund v. Thomas, No. 86–1334) for review of EPA's decision to exempt 100 to 1000 kg/mo generators from the exception reporting requirement. On December 17, 1986, EPA and EDF agreed to defer the litigation pending EPA's reconsideration of the decision made in the final rule and additional rulemaking on the exception reporting exemption.

As a result of EPA's reconsideration of this issue, the Agency proposed to reinstate the exception reporting requirement for generators of between 100 and 1000 kg of hazardous waste per month, but in a modified form designed to reduce any burden associated with the full reporting requirement. (See 52 FR 16158; May 1, 1987.) The Agency also requested comment on a number of alternative approaches to the existing exception reporting requirement that were not considered in the March 24, 1986, rulemaking. The comment period on the May 1, 1987, proposal closed on June 1, 1987.

EPA has reviewed the public comments submitted in response to the May 1 proposal and has decided to promulgate the modified exception reporting rule as proposed. The Agency arrived at this decision based on our conclusion that the modified exception reporting requirement adequately protects human health and the environment without placing undue burdens on small businesses.

The remainder of this preamble discusses the major comments received and the Agency's response to those comments, the applicability of the final rule in authorized and nonauthorized States, and EPA's consideration of impacts, as required by Executive Order No. 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act.

The reader should note that the sections affected by today's rules (40 CFR 262.42 and 262.44) have been modified slightly from the proposal to clarify the requirements; these changes are nonsubstantive. First, in the May 1 proposal, EPA limited the full exception reporting requirements of § 262.42 (a) and (b) to generators of greater than 1000 kg/mo by adding a new paragraph (c) for generators of between 100 and 1000 kg/mo. In the final rule, we simply condensed old paragraphs (a) and (b) in

§ 262.42 into a new paragraph (a), and placed the requirements for generators of between 100 and 1000 kg/mo in a new paragraph (b) (*i.e.*, now paragraph (a) applies to generators of greater than 1000 kg/mo, and paragraph (b) to generators of between 100 and 1000 kg/mo). Second, EPA has added a "note" to the end of § 262.42(b) to clarify that when a generator of between 100 and 1000 kg of hazardous waste per month must notify EPA of a nonreturned manifest, the notice can be as simple as a handwritten or typed statement on a copy of the subject manifest or on an attached sheet of paper. The preamble of the May 1, 1987, proposal indicated that this was EPA's intent (52 FR 16159), but we now have concluded that a note in the actual regulation will make communication of the intent easier and prevent any confusion over what is actually required. Finally, EPA has amended § 266.44. Previously, this section read that generators of between 100 and 1000 kg/mo are exempt from Part 262, Subpart D, "except for . . . paragraphs (a), (c) and (d) in § 262.40, and . . . §§ 262.42 and 262.43." The "except for" language was somewhat confusing, so § 262.44 now simply lists requirements in the subpart that apply to generators of between 100 and 1000 kg/mo.

II. Major Comments and EPA's Responses

This section of the preamble addresses the major issues raised in comments received on the May 1, 1987, proposal. Any comments not addressed here are addressed in a response-to-comment document available in the public docket.

As an overview, the proposal was generally well received by commenters. Of the 11 comments received, 8 were favorable. In fact, 7 of the 11 commenters stated simply that they agreed with the proposal, *i.e.*, that the modified exception reporting requirement would be beneficial to public health and the environment without causing undue burdens on small businesses. Those commenting favorably included firms representing the chemical and petroleum industries as well as several trade associations representing both large and some small businesses; the other favorable comment was from a State environmental control agency. On the other hand, the National Automotive Dealer's Association (NADA) and the U.S. Small Business Administration (SBA) primarily representing small business, commented that the exception reporting requirements were unnecessary and would impose additional burdens on small business (see discussion below).

A. The Need for Exception Reporting

The National Automotive Dealer's Association (NADA) and the U.S. Small Business Administration (SBA) questioned the need for exception reporting. These commenters argue that very few exception reports have been filed since the requirement was imposed for large quantity generators in 1980, and that when exception reports are filed the cause is usually a clerical error, not an illegal or misdirected shipment. Commenters further claim that State enforcement agencies rarely follow up on reports that do receive, and that any cases brought for illegal waste transport are discovered not through the manifest system, but through other means. NADA and SBA also claim the EPA has not demonstrated exception reporting is necessary to protect human health and environment. NADA further argues that EPA has not met the statutory test of RCRA Section 3001(d), and both NADA and SBA argue that exception reporting is simply an unnecessary burden imposed by EPA on small business. EPA will address the question of burden in Section II.B. The following is EPA's response to the claims that exception reporting is unnecessary to protect human health and the environment.

1. General Policy for Developing Standards for Small Quantity Generators

RCRA section 3001(d) reads that:

> the Administrator shall promulgate standards under sections 3002, 3003, and 3004 for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.
>
> (2) The standards . . . may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

EPA has interpreted section 3001(d) as requiring a balancing between the two competing goals inherent in that section—protecting human health and the environment and avoiding unreasonable burdens on the large number of small businesses affected by the standards. In assuring protection of human health and the environment, the Agency deemed it appropriate and consistent to consider the relative risk posed by the small aggregate amounts of waste generated by the 100 and 1000 kg/mo generators. Given the lower relative risk that these generators pose compared to larger generators in terms of quantity of waste, it is possible that the standards applicable to large quantity generators can be modified while still meeting the statutory criterion that the small generator standards protect human health and the environment.

EPA has determined that retaining the round trip manifest system for small quantity generators is necessary to protect human health and the environment. See 51 FR 10155–56 (March 24, 1986). It has also determined in previous rulemakings that exception reporting provides an important link in the "tracking" function of the round trip manifest system, and therefore, is necessary to protect human health and the environment. (See 45 FR 12731; February 26, 1980.)

EPA is not required by section 3001(d) to reexamine whether each generator standard is necessary to protect human health and the environment; rather, it is directed to vary the standards to the extent possible to reduce unreasonable burdens while still retaining their protectiveness.

Even when viewing small generators' waste as presenting a lower relative risk, EPA is unable to determine that eliminating the exception reporting for these generators would still be protective of human health and the environment. Although EPA made such a finding in the March 24, 1986, final rule, it had failed to consider a number of relevant factors. First, it had failed to consider that the relative risk associated with the illegal disposal of any given shipment of hazardous waste may be the same for large and small quantity generators since transporters often consolidate small quantity shipments for transport to TSD's. Therefore, although the small quantity shipped by a SQG may pose a minimal risk, actual shipping practices which consolidate shipments will increase the risks associated with a lost or illegally disposed of truckload. Second, the Agency failed to consider ways to reduce any unreasonable burdens imposed on small quantity generators by exception reporting while retaining the basic requirement. Under the balancing approach mentioned above, if the requirement can be modified to reduce burdens, there is no authority under section 3001(d) to eliminate a standard that has otherwise been found to be necessary to protect human health and the environment.

As EPA has proposed a means of reducing the burdens of exception reporting while retaining the necessary level of protectiveness (the May 1, 1987, proposal), and is today adopting this proposed mechanism, EPA's action is totally consistent with the statutory

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directive. Thus, EPA disagrees with NADA's and SBA's comments.

The remainder of this section goes on to explain in detail that exception reporting is an important part of the hazardous waste manifest system, and discusses the issue of using exception reports in RCRA enforcement cases.

2. Exception Reporting as Part of the Manifest System

SBA argues that the RCRA multiple-copy manifest itself, without exception reporting, is an adequate means to prevent improper transport and disposal. EPA does not agree. As explained below, exception reporting is an important part of the manifest system, and the system is not adequate without some form of exception reporting.

EPA discussed the need for a hazardous waste manifest system, and Congress's intent that EPA institute such a system, on February 26, 1980 (45 FR 12748–12744). In large part, the reader may ascertain Congress' intent from RCRA section 3002(a)(5), in which EPA is directed to:

> . . . establish requirements respecting. . . (5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, *and arrives at*, treatment, storage, or disposal facilities . . . for which a permit has been issued . . . (emphasis added).

That is, the purpose of the manifest is to ensure that hazardous waste is not only designated for, but is actually delivered to a properly permitted facility.

A basic principle supporting the utilization of the hazardous waste system is that the generator of a waste is responsible for ensuring delivery of his waste to a properly permitted facility, and that the generator is the person in the best position to monitor the tracking system to ensure his waste is properly delivered. (Id. at 12728 and 12731.) The failure of a generator to receive a signed and returned copy of the manifest is a signal or warning that a shipment may have been misdelivered or even illegally diverted to an unauthorized facility. The requirement to notify EPA of nonreceipt allows EPA (or State enforcement officials) the opportunity to begin an investigation to determine whether a violation has been committed. Additionally, the knowledge that generators must notify EPA when a manifest is not returned puts transporters and facility owners and operators on notice that manifests must be returned promptly, and so exception reporting helps maintain the manifest as a "self-policing" system. (Id. at 12731.)

3. *Usefulness of the Exception Report in Enforcement Cases*

Both NADA and SBA argue that few, if any, enforcement cases have been brought via exception reporting for large quantity generators, and therefore the requirement is virtually useless. EPA acknowledges that based on the information we have available at this time, it appears that very few enforcement cases for illegal transport or disposal have been initiated via the exception report. However, EPA does not concur with commenters who argue that because exception reporting has apparently resulted in few enforcement cases, EPA should therefore continue to exempt 100 to 1000 kg/mo generators from the requirement. Commenters presented two studies which supposedly support their contentions. It should be noted that the two studies provided by commenters covered only 5 States, but even in examining that limited universe, one study (performed by the U.S. General Accounting Office (GAO), entitled "Illegal Waste Shipments: Difficult to Detect and Deter," Feb. 1985), did identify one enforcement case that was in fact brought as a result of the generator's failure to file an exception report. (See page 27 of the GAO report, footnote 1.)

Further, EPA believes that exception reporting has a deterrent value that is hard to quantify or measure in any study. The knowledge that generators must report the nonreturn of manifest copies acts as a self-policing check between the parties involved.[1] Also, transporters or facility owners or operators who wish to evade regulation must either collude with generators or go to greater lengths to cover their tracks than if exception reporting is not required (e.g., in the GAO report, cases of transporters forging facility operator's signatures were uncovered).

In summary, EPA believes exception reporting is an important part of the manifest system, is sometimes used in enforcement cases, and is necessary for protection of human health and the environment.

B. Burdens of Exception Reporting

As explained in the May 1, 1987, proposal, EPA considered ways in which burdensome requirements could be reduced on 100 to 1000 kg/mo generators while still retaining the protective value provided by an exception reporting mechanism. (52 FR 16159–16160.) The option proposed was a modification of the requirement that applies to large quantity generators. The proposed option varied from the large generator requirement in that when a manifest is not returned, 100 to 1000 kg/mo generators are not required to attempt to locate lost shipments. Further, in lieu of a report to EPA, 100 to 1000 kg/mo generator could simply submit a copy of the unreturned manifest accompanied by a note (either typed or hand written on the manifest itself, or on an attached piece of paper) stating that the return copy was not received from the facility owner or operator. Finally, a 100 to 1000 kg/mo generator would be allowed 60 days before a report is to be submitted to EPA as compared to 45 days allowed for large quantity generators. EPA is adopting the proposed option in today's final rule to reduce any burdens that may be associated with exception reporting.

Most commenters, including several comments from associations representing small quantity generators, agreed that EPA had given due consideration to small business impacts and that the proposed requirements were reasonable. SBA and NADA claimed, however, that the requirements would still impose unreasonable burdens. In response to these comments, the following sections address each aspect of the reporting and recordkeeping burdens associated with the proposal.

1. *Report Preparation and Submission*

EPA estimated that on average a 100 to 1000 kg/mo generator would only initiate between 2 and 4 manifests per year. This is because under the rules promulgated on March 24, 1986, these generators may store waste on-site for up to 180 days (or in some cases 270 days) without a permit.[2] (See 52 FR 16160; May 1, 1987.) EPA further estimated that given such infrequent shipments, an exception report would only be required, on average, once in 10 years. (Id.) EPA estimated the actual cost of preparing and submitting an exception report to be $19 (Id.) The commenters have provided no data to indicate costs would be any higher than

[1] SBA suggested in their comments that EPA should obtain information from States which have been regulating generators of less than 1000 kg/mo previous to EPA's regulation. Presumably, a comparison could be made between States with and without exception reporting to see if there was more illegal disposal in States without. Such a study is impossible to conduct. Due to its very nature, illegal disposal is impossible to accurately measure, so any comparisons between States would be meaningless.

[2] Note that many generators who ship more frequently than this, e.g., vehicle maintenance facilities with spent solvents and spent lead acid batteries, are eligible for an exemption from the entire manifest system under 40 CFR 262.20(e) and 40 CFR Part 266, Subpart G.

these estimates, and given the relative infrequency of the reports and the modified reporting format, EPA concludes that such costs of reporting do not impose significant burdens on small businesses or on small quantity generators in general.

2. *Recordkeeping*

SBA pointed out that 100 to 1000 kg/mo generators would have to keep records to know if a manifest had not been returned within the allowable time frame, and claimed that this would be an unreasonable recordkeeping burden. EPA agrees that the requirement to file an exception report does impose some burden in addition to the burdens already imposed by § 262.40(a), made applicable to 100 to 1000 kg/mo generators on March 24, 1986, under which generators must keep copies of manifests for 3 years. (See 51 FR 10159.) Generators of between 100 to 1000 kg/mo must not only keep copies of manifests they initiate, but must also, under today's rule, be aware of when the return copy is due back and then must match returned copies against originals. EPA does not agree, however, that this is an unreasonable burden. The responsibility of a generator to ensure his waste is actually delivered to a properly permitted facility goes to the heart of the Subtitle C system; this was the intent of the manifest system. EPA expects that most generators, including small businesses, want to be sure their waste is properly delivered, and are likely to track their shipments out of their own interest to avoid liability problems. The rules promulgated today merely codify practices that make good business sense. Finally, the Agency notes that since 100 to 1000 kg/mo generators only initiate on average 2–4 shipments per year, they will typically have only one manifest outstanding at any point in time, so their recordkeeping will not be very complicated.

EPA concludes, in summary, that the burdens associated with today's rule are minimal, and are justified by the need to have the protection afforded by some form of exception reporting. EPA noted above that, first, 100 to 1000 kg/mo generators have relatively few shipments to keep track of, second, that generators keeping track of their shipments is necessary to make the manifest system work (and represents good business practices), and third, that when reports must be filed the costs are minimal due to the special modifications adopted today.

C. Regulatory Changes and Educational Efforts

One commenter, representing small quantity generators, specifically argued that "continual revision" of regulations affecting so many small businesses (i.e., small quantity generators) might adversely affect on-going compliance education programs. The Agency does not intend to continually revise the small quantity generator regulations, but at times some revisions may be necessary and this probably will make EPA's (and State and industry) educational efforts more difficult. Today's rule will not become effective for six months, so small businesses will have time to learn of their new responsibility. Also, today's rule is a minor revision to the current requirements, so major adjustments should not be necessary for most generators. To assist small quantity generators, EPA will prepare and distribute a pamphlet advising small businesses of the change in exception reporting requirements, and will update its handbook for small business, "Understanding the Small Quantity Generator Hazardous Waste Rules," to include the new requirement.

D. Requirement to Locate Lost Shipments

The Environmental Defense Fund (EDF) argued that EPA should require 100 to 1000 kg/mo generators to attempt to locate shipments when a manifest is not returned. (This is presently required of large quantity generators under 40 CFR 262.42(a).) EPA rejected this as a requirement for 100 to 1000 kg/mo generators in its May 1, 1987, proposal but rather encouraged 100 to 1000 kg/mo generators to attempt to locate shipments voluntarily. See 52 FR 16159. EDF further argues such a requirement would not be burdensome, and would only be necessary when something was (at least potentially) amiss.

EPA does not agree that an additional requirement to attempt to locate lost shipments is necessary for 100 to 1000 kg/mo generators. EPA expects that most generators will voluntarily undertake such efforts out of liability concerns and to avoid the need to file an exception report. Further, under RCRA section 3001(d), EPA must carefully consider the impacts of its rules on small businesses. Since requiring locational efforts would be of little value without an accompanying requirement to document those efforts, the requirement to attempt to locate a lost shipment would have the effect of requiring a full exception report to be filed (*i.e.*, documenting efforts taken to locate missing waste). This outcome does not seem consistent with Congressional intent for EPA to reduce paperwork burdens on small quantity generators whenever possible. Therefore, EPA is not imposing a requirement for generators of between 100 and 1000 kg/mo to attempt to locate lost shipments, but the Agency would strongly encourage 100 to 1000 kg/mo generators to attempt to locate a missing manifest or waste shipment on their own to minimize any potential long term liability as well as to avoid the need to file an exception report.

III. State Authority

Today's rules amend the March 24, 1986, rules and are being promulgated under the authority of RCRA section 3001(d). Section 3001(d) was added to RCRA by HSWA, and as explained below, HSWA contains special rules dealing with the applicability of HSWA-related requirements in authorized States, and State authorizations.

A. Applicability in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs pursuant to Subtitle C. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any hazardous waste management facilities which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames; however, the new Federal requirements did not take effect in an authorized State until the requirements were adopted as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do

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so. While States must still adopt HSWA provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

Today's final rule is promulgated pursuant to section 3001(d) of RCRA, a provision added by HSWA. Therefore, it is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final status for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement the standards in authorized States until they revise their programs to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorizaton are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993. (See § 271.24(c).)

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline by which a State must modify its programs to adopt today's rule is July 1, 1991 (or July 1, 1992 if a statutory change is needed.) These deadlines can be extended in certain cases. (See 40 CFR 271.21(e)(3).) Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

It should be noted that States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce them as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to States in their efforts to implement their programs rather than take separate action under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

IV. Executive Order No. 12291

Under Executive Order No. 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement to perform a Regulatory Impact Analysis. Today's rules would require that 100 to 1000 kg/mo generators report potentially lost shipments of hazardous waste to EPA or the appropriate State authority. However, because of the infrequent need to file such a report and the very low costs involved, I have determined that the rule would not constitute a major rule subject to the Regulatory Impact Analysis requirements of Executive Order No. 12291.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all rules, unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's rule will affect as many as 100,000 small businesses, but will not result in significantly increased compliance costs for these businesses. This is because an exception report, costing less than $19/report, will most likely only be required, on average, once every 10 years. Further, during a 10-year period, generators would, on average, only have to track 20–40 manifests in total.

Therefore, I hereby certify, pursuant to 5 U.S.C. 601(b), that this final rule will not have a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned the OMB control number 2050–0039 (Manifest Exception Reporting).

VII. Supporting Document

A background document in which EPA responds to any comments not addressed in this preamble, entitled *Summary and EPA Responses to Public Comments on the May 1, 1987, Proposed Rule Governing Exception Reporting for 100 to 1000 kg/mo Generators of Hazardous Waste*, dated September 1987, is available in the RCRA Docket at EPA (LG–100), 401 M Street, SW., Washington, DC 20460. The docket number for this rulemaking is F–87–ESQP–FFFFF. The docket is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475–9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

List of Subjects

40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 17, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

2. Section 262.42 is revised to read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of greater than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or

operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of greater than 1000 kilograms of hazardous waste in a calendar month must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.

The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

Note.—The submission to EPA need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(The information requirements in this section have been approved by OMB and assigned control number 2050–0039)

3. Section 262.44 is revised to read as follows:

§ 262.44 Special requirements for generators of between 100 and 1000 kg/mo.

A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following requirements in this Subpart:

(a) § 262.40(a), (c), and (d), recordkeeping;

(b) § 262.42(b), exception reporting; and

(c) § 262.43, additional reporting.

(The information requirements in this section have been approved by OMB and assigned control number 2050–0039)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

4. The authority citation for Part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

5. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
•	•	•	•
September 23, 1987.	Exception Reporting for Small Quantity Generators of Hazardous Waste.	52 FR.....	March 23, 1988.
•	•	•	•

[FR Doc. 87–21940 Filed 9–22–87; 8:45 am]

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Wednesday
September 23, 1987

Part VII

Department of Education

Perkins Loan, College Work Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs; Notice

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DEPARTMENT OF EDUCATION

Perkins Loan (Formerly National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs

AGENCY: Department of Education.

ACTION: Notice of procedures for certification of need analysis servicers' systems and notice of closing dates for requesting and returning agreements and transmittal of information.

SUMMARY: The Secretary of Education is informing individuals and organizations that operate need analysis systems (need analysis servicer) that the Secretary will enter into an agreement with a need analysis servicer under which the need analysis servicer's system would become a certified system. If an institution uses a certified need analysis system in the calculation of an expected family contribution for the 1988–89 academic year under the Perkins Loan, College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG) (known collectively as the campus-based programs) and Guaranteed Student Loan (GSL) Programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in Title IV, Part F, of the Higher Education Act of 1965, as amended (HEA). A need analysis servicer may also agree to incorporate Department of Education (ED) specifications and edits, and/or to select applicants for verification.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Room 4018, ROB–3, Washington, DC 20202, Telephone (202) 732–4490. For information regarding the specification package contact: Paul Hill or Dan Madzelan, Telephone (202) 732–3963.

SUPPLEMENTARY INFORMATION:

Program Information

The campus-based and Guaranteed Student Loan programs are "need-based" student financial aid programs. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs.

Part F of Title IV of the Higher Education Act of 1965 (HEA), after its amendment by the Higher Education Amendments of 1986, provides detailed formulas for determining a student's expected family contribution for the campus-based and GSL programs. The statutory formulas specify the criteria, data elements and tables for schedules of expected family contributions for these programs.

As authorized by the HEA and as a service to institutions, the Secretary will certify that an expected family contribution produced by an individual's or organization's system is consistent with the calculation prescribed by Title IV–F of the HEA. To accomplish the certification process with a minimal disruption to the existing institutional practices of awarding financial aid, the Secretary has developed four levels of participation in the certification process. These four levels are described as follows:

Each need analysis servicer whose system is certified by the Secretary is able to calculate an expected family contribution under Title IV–F of the HEA when an applicant provides all the data elements necessary for that calculation in a complete and consistent manner. A need analysis servicer that is able only to perform this function may have its system certified at Level 1.

Under Level 2, the need analysis servicer is able to perform the function described under Level 1 and select applicants for verification under ED instructions for that selection.

Under Level 3, the need analysis servicer is able to perform the function described under Level 1 and calculate an expected family contribution under Title IV–F of the HEA, even when an applicant provides incomplete and inconsistent data, through the use of ED edits.

Under Level 4, the need analysis servicer is able to perform the function described under Level 1 and calculate an expected family contribution under Title IV–F of the HEA even when an applicant provides incomplete and inconsistent data through the use of ED edits and is able to select applicants for verification under ED instructions for that selection.

The following table summarizes characteristics of each participation level:

Characteristics Table				
		Able to Calculate Expected Family Contribution (EFC) When Applicant Information is Complete and Consistent	Able to Incorporate Verification Selection Criteria	Able to Incorporate ED Edits for Incomplete or Inconsistent Information in Calculation of Expected Family Contribution (EFC)
Formula	Level 1	Yes	No	No
Formula and Verification	Level 2	Yes	Yes	No
Formula and Edits	Level 3	Yes	No	Yes
Formula, Edits, and Verification	Level 4	Yes	Yes	Yes

This notice describes below the procedures that must be followed by need analysis servicers to have their systems certified by the Secretary. The Secretary will subsequently publish other notices in January 1988 and March 1988 listing those need analysis servicers that have completed that process and whose systems have been certified.

Certification Procedural Requirements

In order to have its system certified by the Secretary, a need analysis servicer must enter into an agreement with the Secretary and follow the procedural steps below:

Step 1: The need analysis servicer requests an agreement from ED. The request must be in writing and either hand-delivered or mailed to the address indicated below.

Step 2: After ED receives a request, it provides an agreement package to the need analysis servicer. The agreement package contains information that will enable the need analysis servicer to determine whether it wishes its system to become certified and will enable the need analysis servicer to choose one of four levels of participation.

Step 3: A need analysis servicer selects its participation level by indicating that level on the agreement and returning its signed agreement to ED.

Step 4: Following submission of the signed agreement to ED, ED provides the need analysis servicer with the appropriate software development package based on the participation level selected.

Step 5: Test cases will then be transmitted to need analysis servicers at a date agreed upon between the Department and the need analysis servicer. The complexity and number of the test cases depend on the participation level the need analysis servicer has selected. (A test case is a discrete set of hypothetical applicant data which is used to test the accuracy and adequacy of a computer function and the need analysis servicer's implementation of Title IV, Part F of the HEA. A single test case may test one or more specific input, process, or output functions. An aggregate of test cases may test a particular computer process, computer run, process cycle, subsystem, or total system process.) ED will send test cases and additional information to the need analysis servicer signing the agreement, providing instructions for submitting the results of processing the test cases to ED. Each set of test cases is designed to provide evidence that will indicate the need analysis servicer's ability to actually perform operational functions at the particular level of service selected. A need analysis servicer will be given a choice of receiving its test cases by hard copy, floppy disk, or magnetic tape.

Step 6: A need analysis servicer processes all the test cases provided it and submits the results of the test cases to ED by December 14, 1987. If there are deficiencies in the test case results, these must be resolved to the satisfaction of ED by January 6, 1988 in order for that need analysis servicer to be included in the list of certified need analysis servicers that the Secretary will publish in the **Federal Register** in January 1988.

If the submission date of December 14, 1987 is not met, results of the test cases must be submitted by the need analysis servicers to ED by February 1, 1988 with deficiencies in the test case results resolved to the satisfaction of ED by March 15, 1988 in order for the need analysis servicer to be included in the list of certified need analysis servicers that the Secretary will publish in the **Federal Register** in March 1988.

A need analysis servicer will be given a choice of submitting its processed test case data and system generated results by hard copy, floppy disk or magnetic tape.

Requesting Agreements

The deadline for requesting the agreement is October 16, 1987. Agreements must be requested in writing. The request must be addressed or hand-delivered to the Department of

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Education, Office of Student Financial Assistance, Division of Policy and Program Development, Campus and State Grant Branch, 400 Maryland Avenue, SW., (Room 4018, Regional Office Building 3), Washington, DC 20202.

Submission of Agreements

All agreements must be signed and mailed or hand-delivered to the Department of Education by November 12, 1987.

Agreements Delivered by Mail

Agreements delivered by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Campus and State Grant Branch, 400 Maryland Avenue, SW., (Room 4018, Regional Office Building 3), Washington, DC 20202.

A need analysis servicer must show proof of mailing the agreement. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If agreements are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Agreements Delivered by Hand

Agreements that are hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Campus and State Grant Branch, 7th and D Streets, SW., Room 4018, Regional Office Building 3, Washington, DC 20202.

Hand-delivered agreements will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays and Federal holidays. Agreements delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Submission of Test Case Results

A need analysis servicer may choose to submit its test results data by—

(1) Submitting the processed test case data and its (the system's) generated results on hard copy;

(2) Submitting the processed test case data and generated results on floppy disks; or

(3) Submitting the processed test case data and generated results on a magnetic tape from data stored on a mainframe computer.

Regardless of which method is used for submitting test case results, need analysis servicers must submit data in accordance with the ED instructions.

Test Case Results Delivered by Mail

Test case results delivered by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Campus and State Grant Branch, 400 Maryland Avenue, SW., (Room 4004, Regional Office Building 3), Washington, DC 20202.

A need analysis servicer must show proof of mailing the test case results. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If test case results are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Test Case Results Delivered by Hand

Test case results that are hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Campus and State Grant Branch, 7th and D Streets, SW., Room 4004, Regional Office Building 3, Washington, DC 20202.

Hand-delivered test case results will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays and Federal holidays. Test case results delivered by hand will not be accepted after 4:30 p.m. on the closing date.

The Secretary plans to publish two notices listing systems that are certified. These notices are expected to be published in the **Federal Register** in January 1988 and March 1988. To ensure consideration for publication in the January 1988 notice, all test case results must be submitted by December 14, 1987 and all discrepancies resolved and approved by the Secretary by January 6, 1988. To ensure consideration for publication in the March 1988 notice, all test case results must be submitted by February 1, 1988 and all discrepancies resolved and approved by the Secretary by March 15, 1988.

Closing Dates

1. Deadline date to request agreement—October 16, 1987.

2. Deadline date to submit agreement to ED—November 12, 1987.

3. Deadline date to submit test case results to ED for January 1988 notice—December 14, 1987.

4. Deadline date to resolve test case results for January 1988 notice—January 6, 1988.

5. Deadline date to submit test case results to ED for March 1988 notice—February 1, 1988.

6. Deadline date to resolve test case results for March 1988 notice—March 15, 1988.

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Guaranteed Student Loan Program)

Dated: September 18, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-21946 Filed 9-22-87; 8:45 am]

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Thursday, September 24, 1987

Presidential Documents

Title 3—

The President

Proclamation 5705 of September 22, 1987

Fire Prevention Week, 1987

By the President of the United States of America

A Proclamation

Fire is most often preventable, but this past year it killed almost 6,000 Americans, injured 300,000, and caused more than $9.5 billion in direct property losses. Fire often affects the very young and the very old, and more than 80 percent of fires take place in the home. Such facts are exactly why our Nation observes a special week every autumn to remind ourselves that fire prevention and safety messages are vitally important to each of us and to our families.

This year the National Fire Protection Association, the originator of Fire Prevention Week, is encouraging families to be safe and to design and practice a home fire escape plan. Private sector initiatives in partnership with the public sector are complementing this effort. All who can should join with government officials at every level, fire service personnel, citizens' groups, and private citizens to develop and carry out public awareness and education programs about fires. Campaigns being formulated will reach high-risk populations, including inner city and rural residents, children, and the elderly.

On Sunday, October 11, 1987, at the National Fallen Fire Fighters Memorial Service at the National Fire Academy in Emmitsburg, Maryland, the tribute of a proud and grateful Nation will be paid to the 114 American fire fighters who died in the line of duty in 1986. Let us honor these heroes in prayerful remembrance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 4, 1987, as Fire Prevention Week, and I call upon the people of the United States to plan and actively participate in fire prevention activities during this week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-22186
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Rules and Regulations

Federal Register
Vol. 52, No. 185
Thursday, September 24, 1987

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-14-AD; Amendment 39-5731]

Airworthiness Directives; Piper Models PA-28 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Suspension of effective date.

SUMMARY: Airworthiness Directive (AD) 87-08-08 (Amendment 39-5615), applicable to certain Piper Models PA-28 and PA-32 series airplanes was issued following an in-flight wing failure on a Piper PA-28 airplane. Subsequent to its issuance, the FAA has learned that two Piper PA-32-300 airplanes were found to have similar type cracks. Piper Aircraft Corporation has presented evidence that these airplanes were subjected to heavy use and substantial damage. An extensive evaluation of the fracture surface from these airplanes has indicated that it would require an extraordinary stress level in a severe operating environment to produce the growth rate of those cracks. Therefore, since it appears failure may not exist or develop in other Piper Models PA-28 and PA-32 airplanes of the same design flown in a less severe operational environment, the effective date of AD 87-08-08 is being suspended pending further evaluation.

EFFECTIVE DATE: September 28, 1987.

ADDRESSES: Information pertaining to this action may be obtained from the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE-120A, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: AD 87-08-08, Amendment 39-5615 (52 FR 15302; April 28, 1987) was issued to require (1) removal of both wings and a visual inspection with a 10-power magnifying glass and a dye-penetrant inspection of the lower spar cap for both wings, (2) replacement of any spars found to be cracked, and (3) visual inspection of the wing upper skin for cracks and repair as necessary. AD 87-08-08R1, Amendment 39-5669 (52 FR 29505; August 10, 1987), which was issued with an effective date of August 12, 1987, revised the AD to delete the Model PA-28-201T since it was verified that its spar design configuration was different in detail and should not have been affected. The original AD was issued following an in-flight wing separation of a Piper PA-28, S/N 8090115, on March 30, 1987, near Marlin, Texas. The airplane was flying low level pipeline patrol at the time of the accident. Investigation revealed that the left wing separated from the airplane at the lower spar wing root attachment to the fuselage. NTSB and Piper personnel determined that the lower cap on the main spar had sustained a fatigue failure. The lower cap had a fatigue crack across the forward face of the lower cap just outboard of the outboard attachment hole.

The AD inspection necessitates the removal and reinstallation of close tolerance critical wing spar attachment bolts which, if not done carefully, could result in damage to the wing spar cap material that could in turn result in a future fatigue failure. In the four months that the AD has been in effect, approximately 450 airplane inspections have been performed with two other reports of spar cracks found in Model PA-32-300 airplanes. These two airplanes were operated in Alaska. A review of their maintenance records indicated extensive repairs and it was concluded that the damage, including the spar cracking, was the result of a severe operating environment. Data recently obtained from NASA confirms the frequency and severity of gust loads encountered in pipeline patrol to be approximately 20 times those encountered in normal service. There are airplanes in the fleet with 19,000 plus hours that have been inspected with no cracks found. Fatigue tests were conducted on a full-scale test article in the late 1950's and early 1960's prior to certification of the Model PA-28. These tests were performed to the equivalent of 300,000 unfactored cycles with no failure. The FAA has carefully reviewed all of the available information including a credible fatigue analysis. Striation counts on the fracture surface of the spar cap removed from one of the Model PA-32 airplanes from Alaska showed that it would require extraordinary stress levels to produce the crack growth rate found. It is concluded that the cracks found were isolated occurrences and those failures are not likely to exist or develop in other Model PA-28 or PA-32 airplanes flown in a less severe operational environment. Furthermore, with evidence of only two other wing spar cracks on Model PA-32-300 airplanes that were subjected to apparent heavy use and substantial damage, there is no basis to continue this economic burden on affected airplane owners.

Therefore, the effective date of AD 87-08-08R1 is hereby suspended. Piper has initiated an extensive analysis that will establish more accurately an inspection threshold based on different types of operations, and appropriate re-inspection intervals if necessary. At that time the AD may be reinstituted, but possibly with a different inspection threshold and with repetitive inspection intervals possible. In the interim the FAA is issuing a General Aviation Airworthiness Alert advising owners of airplanes used in conditions where these cracks may occur, of the advisability of the inspections stated in the AD.

There were approximately 25,000 U.S. registered airplanes affected by AD 87-08-08. No cost is involved in complying with the suspension of the AD's effective date. Therefore, public notice and procedure is impractical and unnecessary and contrary to the public interest and good cause exists for making this suspension effective in less than 30 days.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-14-AD; Amendment 39-5731]

Airworthiness Directives; Piper Models PA-28 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Suspension of effective date.

SUMMARY: Airworthiness Directive (AD) 87-08-08 (Amendment 39-5615), applicable to certain Piper Models PA-28 and PA-32 series airplanes was issued following an in-flight wing failure on a Piper PA-28 airplane. Subsequent to its issuance, the FAA has learned that two Piper PA-32-300 airplanes were found to have similar type cracks. Piper Aircraft Corporation has presented evidence that these airplanes were subjected to heavy use and substantial damage. An extensive evaluation of the fracture surface from these airplanes has indicated that it would require an extraordinary stress level in a severe operating environment to produce the growth rate of those cracks. Therefore, since it appears failure may not exist or develop in other Piper Models PA-28 and PA-32 airplanes of the same design flown in a less severe operational environment, the effective date of AD 87-08-08 is being suspended pending further evaluation.

EFFECTIVE DATE: September 28, 1987.

ADDRESSES: Information pertaining to this action may be obtained from the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

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SUPPLEMENTARY INFORMATION: AD 87-08-08, Amendment 39-5615 (52 FR 15302; April 28, 1987) was issued to require (1) removal of both wings and a visual inspection with a 10-power magnifying glass and a dye-penetrant inspection of the lower spar cap for both wings, (2) replacement of any spars found to be cracked, and (3) visual inspection of the wing upper skin for cracks and repair as necessary. AD 87-08-08R1, Amendment 39-5669 (52 FR 29505; August 10, 1987), which was issued with an effective date of August 12, 1987, revised the AD to delete the Model PA-28-201T since it was verified that its spar design configuration was different in detail and should not have been affected. The original AD was issued following an in-flight wing separation of a Piper PA-28, S/N 8090115, on March 30, 1987, near Marlin, Texas. The airplane was flying low level pipeline patrol at the time of the accident. Investigation revealed that the left wing separated from the airplane at the lower spar wing root attachment to the fuselage. NTSB and Piper personnel determined that the lower cap on the main spar had sustained a fatigue failure. The lower cap had a fatigue crack across the forward face of the lower cap just outboard of the outboard attachment hole.

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Therefore, the effective date of AD 87-08-08R1 is hereby suspended. Piper has initiated an extensive analysis that will establish more accurately an inspection threshold based on different types of operations, and appropriate re-inspection intervals if necessary. At that time the AD may be reinstituted, but possibly with a different inspection threshold and with repetitive inspection intervals possible. In the interim the FAA is issuing a General Aviation Airworthiness Alert advising owners of airplanes used in conditions where these cracks may occur, of the advisability of the inspections stated in the AD.

There were approximately 25,000 U.S. registered airplanes affected by AD 87-08-08. No cost is involved in complying with the suspension of the AD's effective date. Therefore, public notice and procedure is impractical and unnecessary and contrary to the public interest and good cause exists for making this suspension effective in less than 30 days.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory

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Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Part 39 of the Federal Aviation Regulations is amended, effective September 28, 1987, by suspending the effective date of AD87-08-08R1, Amendment 39-5615, originally published in the **Federal Register** on April 28, 1987, (52 FR 15302), as amended by amendment 39-5660 (52 FR 29505; August 10, 1987.

This amendment becomes effective on September 28, 1987.

Issued in Kansas City, Missouri, on September 11, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-22092 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket Nos. RM83-41-001, et al.; Order No. 466-A]

Rules of Discovery for Trial-Type Proceedings

Issued: September 17, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing and reconsideration.

SUMMARY: The Federal Energy Regulatory Commission (Commission) grants rehearing of its final rule on discovery in trial-type proceedings for the limited purpose of making several clarifying and other changes. In all other respects, rehearing and reconsideration are denied.

EFFECTIVE DATE: October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) grants rehearing of its final rule on discovery in trial-type proceedings for the limited purpose of making several clarifying and other changes. In all other respects, rehearing and reconsideration are denied.

II. Background and Discussion

On March 2, 1987, the Commission issued a final rule codifying rules for conducting discovery in trial-type proceedings.[1] The rule addressed the scope of discovery methods available, the procedures for obtaining and limiting discovery, and the sanctions that may be imposed for failure to participate in discovery.

The Commission received three timely applications for rehearing of this final rule from Tennessee Gas Pipeline Company (Tennessee Gas), Independent Petroleum Association of America (IPAA), and American Gas Association (American Gas).[2]

The Commission has decided to make four changes to its rules of discovery. First, Rule 402, as promulgated, provides that "participants may obtain discovery of any matter, not privileged, that is relevant to the subject matter of a proceeding. . . ." The Commission is modifying that provision to clarify that it refers to matters relevant to "the pending proceeding." The modified language conforms to the language in Rule 26 of the Federal Rules of Civil Procedure.

Second, Rule 403(b) requires the presiding officer to issue an order stating any and all decisions made and agreements reached during a discovery conference. In this Order, the Commission is granting the Chief Administrative Law Judge (Chief ALJ) the authority to waive, upon motion or otherwise, this requirement upon a showing of extraordinary circumstances. The Chief ALJ may not delegate this authority. As a general matter, the Commission believes that this authority should be used sparingly. Extraordinary circumstances may be present, for example, if failure to waive this requirement would unduly delay the proceeding. Moreover, the Commission notes that, at any time, a presiding officer may direct participants to file draft orders to facilitate compliance with Rule 403(b)(1).

The Commission also modifies Rule 403, governing admissions, to clarify that requests for admissions and responses to those requests must be served on all parties. Finally, Rule 410(c) is amended to clarify that material subject to a protective order may nevertheless be subject to a Freedom of Information Act (FOIA) request and to FOIA review. This suggests only that a FOIA request will be entertained, not that the information will necessarily be disclosed. Under section (b)4 of FOIA, trade secrets and commercial or financial information that is privileged or confidential is exempt from disclosure.[3]

Several applicants argue that the discovery rules are too broad in various respects and lend themselves to abuse. These arguments raise no new issues. The Commission fully considered both the information gathering purposes of discovery and its potential for abuse, and adopted effective safeguards to protect against such abuse. The Commission is not persuaded by applicants to change the careful balance now struck in the rule between the goal of encouraging a full development of the record, and the goals of ensuring a timely resolution of proceedings and avoiding delay and excessive burden on the parties. Similarly, the Commission sees no need to adopt additional formalistic requirements, such as demanding certification to accompany discovery requests or objections to discovery requests. Certification is required for responses to data requests because the information produced by the responses may become part of the evidentiary record. By contrast, the data requests themselves and the objections do not form the evidentiary record and so have no comparable need for certification. Moreover, by permitting requests for supplementation only

[1] Rules of Discovery for Trial-Type Proceedings, 52 FR 6857 (March 6, 1987), III FERC Stats. & Regs. ¶ 30,731 (1987) (Order No. 466).

[2] The Commission also received an application for rehearing filed out of time on April 2, 1987, by Texas Eastern Transmission Corporation (Texas Eastern). The Commission will address Texas Eastern's application as a petition for reconsideration in this order.

The Commission granted rehearing for purposes of further consideration on April 30, 1987. 52 FR 16844 (May 6, 1987).

[3] 5 U.S.C. 552(b)(4) (1982).

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Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Part 39 of the Federal Aviation Regulations is amended, effective September 28, 1987, by suspending the effective date of AD87-08-08R1, Amendment 39-5615, originally published in the **Federal Register** on April 28, 1987, (52 FR 15302), as amended by amendment 39-5660 (52 FR 29505; August 10, 1987.

This amendment becomes effective on September 28, 1987.

Issued in Kansas City, Missouri, on September 11, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-22092 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket Nos. RM83-41-001, et al.; Order No. 466-A]

Rules of Discovery for Trial-Type Proceedings

Issued: September 17, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing and reconsideration.

SUMMARY: The Federal Energy Regulatory Commission (Commission) grants rehearing of its final rule on discovery in trial-type proceedings for the limited purpose of making several clarifying and other changes. In all other respects, rehearing and reconsideration are denied.

EFFECTIVE DATE: October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) grants rehearing of its final rule on discovery in trial-type proceedings for the limited purpose of making several clarifying and other changes. In all other respects, rehearing and reconsideration are denied.

II. Background and Discussion

On March 2, 1987, the Commission issued a final rule codifying rules for conducting discovery in trial-type proceedings.[1] The rule addressed the scope of discovery methods available, the procedures for obtaining and limiting discovery, and the sanctions that may be imposed for failure to participate in discovery.

The Commission received three timely applications for rehearing of this final rule from Tennessee Gas Pipeline Company (Tennessee Gas), Independent Petroleum Association of America (IPAA), and American Gas Association (American Gas).[2]

The Commission has decided to make four changes to its rules of discovery. First, Rule 402, as promulgated, provides that "participants may obtain discovery of any matter, not privileged, that is relevant to the subject matter of a proceeding. . . ." The Commission is modifying that provision to clarify that it refers to matters relevant to "the pending proceeding." The modified language conforms to the language in Rule 26 of the Federal Rules of Civil Procedure.

Second, Rule 403(b) requires the presiding officer to issue an order stating any and all decisions made and agreements reached during a discovery conference. In this Order, the Commission is granting the Chief Administrative Law Judge (Chief ALJ) the authority to waive, upon motion or otherwise, this requirement upon a showing of extraordinary circumstances. The Chief ALJ may not delegate this authority. As a general matter, the Commission believes that this authority should be used sparingly. Extraordinary circumstances may be present, for example, if failure to waive this requirement would unduly delay the proceeding. Moreover, the Commission notes that, at any time, a presiding officer may direct participants to file draft orders to facilitate compliance with Rule 403(b)(1).

The Commission also modifies Rule 403, governing admissions, to clarify that requests for admissions and responses to those requests must be served on all parties. Finally, Rule 410(c) is amended to clarify that material subject to a protective order may nevertheless be subject to a Freedom of Information Act (FOIA) request and to FOIA review. This suggests only that a FOIA request will be entertained, not that the information will necessarily be disclosed. Under section (b)4 of FOIA, trade secrets and commercial or financial information that is privileged or confidential is exempt from disclosure.[3]

Several applicants argue that the discovery rules are too broad in various respects and lend themselves to abuse. These arguments raise no new issues. The Commission fully considered both the information gathering purposes of discovery and its potential for abuse, and adopted effective safeguards to protect against such abuse. The Commission is not persuaded by applicants to change the careful balance now struck in the rule between the goal of encouraging a full development of the record, and the goals of ensuring a timely resolution of proceedings and avoiding delay and excessive burden on the parties. Similarly, the Commission sees no need to adopt additional formalistic requirements, such as demanding certification to accompany discovery requests or objections to discovery requests. Certification is required for responses to data requests because the information produced by the responses may become part of the evidentiary record. By contrast, the data requests themselves and the objections do not form the evidentiary record and so have no comparable need for certification. Moreover, by permitting requests for supplementation only

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[2] The Commission also received an application for rehearing filed out of time on April 2, 1987, by Texas Eastern Transmission Corporation (Texas Eastern). The Commission will address Texas Eastern's application as a petition for reconsideration in this order.

The Commission granted rehearing for purposes of further consideration on April 30, 1987. 52 FR 16844 (May 6, 1987).

[3] 5 U.S.C. 552(b)(4) (1982).

within the constraints of the procedural schedule of the proceeding, the rule properly limits requests of this nature to the extent constrained by agreement, or order of the presiding officer or the Commission, since procedural schedules are routinely established for Commission proceedings.

One applicant seeks a modification of Rule 404(e) to the effect that only the presiding officer of the entire proceeding may make rulings on objections as to competency, materiality, or relevancy of evidence, and not the officer at the deposition, who is usually a stenographer. The applicant also suggests that the rules provide for motions to terminate or limit depositions, if there is bad faith or situations which unreasonably annoy, embarrass, or oppress the deponent or participant.

The modification sought is unnecessary, since Rule 404(c)(3) provides that objections made during the deposition will be noted by the officer taking the deposition, and provides that unless a claim of privilege is asserted or the presiding officer rules otherwise, the deponent must answer the question after the objection is noted. Similarly, the presiding officer's authority to rule on objections in depositions in Rule 404(c)(3) includes ruling on motions by participants to terminate or limit depositions where appropriate.

An applicant seeks a provision stating that any participant may be present at a deposition and may examine and cross-examine a deponent. Rule 404(c)(2) already provides that any participant may be present at a deposition, since that rule provides that any participant may examine and cross-examine a deponent. Morever, during a deposition a person being deposed has a right to be represented by counsel, but the Commission does not believe it is necessary to so state, in its discovery rules.

One applicant suggests ways to modify the procedures for treating confidential information during Commission proceedings in light of the rights and needs of the participants to have access to confidential information. The Commission sees no need to restrict the flexibility of its presiding officers in shaping protective orders, as suggested by the applicant. The Commission and presiding officers are already permitted to craft protective orders in ways that are consistent with the needs and the due process rights of the participants.

The Commission also denies the request to retain Rules 604,[4] 1905 [5] and 1906 [6] for non-Subpart E proceedings. The examples cited by the applicant of proceedings which might use these revoked rules are either advisory, nonevidentiary proceedings designed to permit parties an opportunity for oral presentations of data, views and arguments that do not require this type of formality,[7] or have procedures which incorporate the Commission's rules of practice and procedure by reference.[8] Moreover, the Commission may provide that discovery rules apply to proceedings, as appropriate.[9]

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

2. In § 385.402, paragraph (a) is revised to read as follows:

§ 385.402 Scope of discovery (Rule 402).

(a) *General.* Unless otherwise provided under paragraphs (b) and (c) of this section or ordered by the presiding officer under Rule 410(c), participants may obtain discovery of any matter, not privileged, that is relevant to the subject matter of the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having any knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible in the Commission proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * * * *

3. In § 385.403, paragraph (b) is revised to read as follows:

§ 385.403 Methods of discovery; general provisions (Rule 403).

* * * * *

(b) *Discovery conferences.* (1) The presiding officer may direct the participants in a proceeding or their representatives to appear for one or more conferences, either separately or as part of any other prehearing conference in the proceeding under Rule 601(a), for the purpose of scheduling discovery, identifying discovery issues, and resolving discovery disputes. Except as provided in paragraph (b)(2) of this section, the presiding officer, upon the conclusion of a conference, will issue an order stating any and all decisions made and agreements reached during the conference.

(2) The Chief Administrative Law Judge may, upon a showing of extraordinary circumstances, waive the requirement to issue an order under paragraph (b)(1) of this section.

* * * * *

4. In § 385.408, paragraph (a) is revised to read as follows:

§ 385.408 Admissions (Rule 408).

(a) *General rule.* A participant may serve upon any other participant a written request for admission of the genuineness of any document or the truth of any matter of fact. The request must be served upon all participants.

* * * * *

5. In § 385.408, paragraph (b)(3) is revised to read as follows:

§ 385.408 Admissions (Rule 408).

* * * * *

(b) * * *

(3) An answer must specifically admit or deny the truth of the matters in the

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[4] 18 CFR 385.604 (1986).

[5] 18 CFR 385.1905 (1986).

[6] 18 CFR 385.1906 (1986).

[7] *See, e.g.*, Order Instituting Rate Proceeding and Consolidating Proceedings, Delhi Gas Pipeline Corporation, 38 FERC ¶ 61,253 at 61,871 (March 13, 1987) (discusses procedures for section 311 staff panel proceedings). *See also*, 18 CFR 271.1105(a) (1987) (Section 190 Protection-Related Cost Board) (Any proceeding before the Board will be informal. Subpart E of Part 385 does not apply.); 18 CFR 385.1101(c)(2) (1987) (Section 502(c) adjustments before the Director of OPPR) (This subpart does not require a hearing to which Subpart E applies.)

[8] *See* 18 CFR 385.1304(b) (1987) (Joint FERC-State Commission Boards under Subpart M) (As far as applicable, the rules of practice and procedure as from time to time adopted or prescribed by the Commission will govern such board.).

[9] 18 CFR 385.401(a) (1987).

within the constraints of the procedural schedule of the proceeding, the rule properly limits requests of this nature to the extent constrained by agreement, or order of the presiding officer or the Commission, since procedural schedules are routinely established for Commission proceedings.

One applicant seeks a modification of Rule 404(e) to the effect that only the presiding officer of the entire proceeding may make rulings on objections as to competency, materiality, or relevancy of evidence, and not the officer at the deposition, who is usually a stenographer. The applicant also suggests that the rules provide for motions to terminate or limit depositions, if there is bad faith or situations which unreasonably annoy, embarrass, or oppress the deponent or participant.

The modification sought is unnecessary, since Rule 404(c)(3) provides that objections made during the deposition will be noted by the officer taking the deposition, and provides that unless a claim of privilege is asserted or the presiding officer rules otherwise, the deponent must answer the question after the objection is noted. Similarly, the presiding officer's authority to rule on objections in depositions in Rule 404(c)(3) includes ruling on motions by participants to terminate or limit depositions where appropriate.

An applicant seeks a provision stating that any participant may be present at a deposition and may examine and cross-examine a deponent. Rule 404(c)(2) already provides that any participant may be present at a deposition, since that rule provides that any participant may examine and cross-examine a deponent. Morever, during a deposition a person being deposed has a right to be represented by counsel, but the Commission does not believe it is necessary to so state, in its discovery rules.

One applicant suggests ways to modify the procedures for treating confidential information during Commission proceedings in light of the rights and needs of the participants to have access to confidential information. The Commission sees no need to restrict the flexibility of its presiding officers in shaping protective orders, as suggested by the applicant. The Commission and presiding officers are already permitted to craft protective orders in ways that are consistent with the needs and the due process rights of the participants.

The Commission also denies the request to retain Rules 604,[4] 1905 [5] and 1906 [6] for non-Subpart E proceedings. The examples cited by the applicant of proceedings which might use these revoked rules are either advisory, nonevidentiary proceedings designed to permit parties an opportunity for oral presentations of data, views and arguments that do not require this type of formality,[7] or have procedures which incorporate the Commission's rules of practice and procedure by reference.[8] Moreover, the Commission may provide that discovery rules apply to proceedings, as appropriate.[9]

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

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3. In § 385.403, paragraph (b) is revised to read as follows:

§ 385.403 Methods of discovery; general provisions (Rule 403).

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(b) *Discovery conferences.* (1) The presiding officer may direct the participants in a proceeding or their representatives to appear for one or more conferences, either separately or as part of any other prehearing conference in the proceeding under Rule 601(a), for the purpose of scheduling discovery, identifying discovery issues, and resolving discovery disputes. Except as provided in paragraph (b)(2) of this section, the presiding officer, upon the conclusion of a conference, will issue an order stating any and all decisions made and agreements reached during the conference.

(2) The Chief Administrative Law Judge may, upon a showing of extraordinary circumstances, waive the requirement to issue an order under paragraph (b)(1) of this section.

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(a) *General rule.* A participant may serve upon any other participant a written request for admission of the genuineness of any document or the truth of any matter of fact. The request must be served upon all participants.

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(b) * * *

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[4] 18 CFR 385.604 (1986).

[5] 18 CFR 385.1905 (1986).

[6] 18 CFR 385.1906 (1986).

[7] *See, e.g.*, Order Instituting Rate Proceeding and Consolidating Proceedings, Delhi Gas Pipeline Corporation, 38 FERC ¶ 61,253 at 61,871 (March 13, 1987) (discusses procedures for section 311 staff panel proceedings). *See also*, 18 CFR 271.1105(a) (1987) (Section 190 Protection-Related Cost Board) (Any proceeding before the Board will be informal. Subpart E of Part 385 does not apply.); 18 CFR 385.1101(c)(2) (1987) (Section 502(c) adjustments before the Director of OPPR) (This subpart does not require a hearing to which Subpart E applies.)

[8] *See* 18 CFR 385.1304(b) (1987) (Joint FERC-State Commission Boards under Subpart M) (As far as applicable, the rules of practice and procedure as from time to time adopted or prescribed by the Commission will govern such board.).

[9] 18 CFR 385.401(a) (1987).

percent by weight of the finished rubber product.

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010(b) is amended by revising the entry for "4-[[4,6-Bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

(b) * * *

Substances	Limitations
* * * * *	
4-[[4,6-Bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol (CAS Reg. No. 991-84-4)	For use only: 1. At levels not to exceed 0.5 percent by weight: in styrene block copolymers complying with § 177.1810 of this chapter; in rosins and rosin derivatives complying with § 175.300(b)(3)(v) of this chapter; in can end cement formulations complying with § 175.300(b)(3)(xxxi) of this chapter; in side seam cement formulations complying with § 175.300(b)(3)(xxxii) of this chapter; in petroleum alicyclic hydrocarbon resins and terpene resins complying with § 175.320(b)(3) of this chapter; in rosin and rosin derivatives complying with § 176.170(a)(5) of this chapter; in petroleum alicyclic hydrocarbon resins or their hydrogenated products complying with § 176.170(b)(2) of this chapter; in terpene resins complying with § 175.300(b)(2)(xi) of this chapter, when such terpene resins are used in accordance with § 176.170(b)(1) of this chapter; in resins and polymers complying with § 176.180(b) of this chapter; in closures with sealing gaskets complying with § 177.1210 of this chapter; in petroleum hydrocarbon resin and rosins and rosin derivatives complying with § 178.3800(b) of this chapter; and in reinforced wax complying with § 178.3850 of this chapter. 2. At levels not to exceed 0.2 percent by weight of the finished cellophane complying with § 177.1200 of this chapter. 3. At levels not to exceed 0.1 percent by weight in polystyrene and rubber-modified polystyrene complying with § 177.1640 of this chapter: *Provided*, That the finished polystyrene and rubber-modified polystyrene polymer contact food only under conditions of use B through G described in Table 2 of § 176.170(c) of this chapter. 4. In adhesives complying with § 175.105 of this chapter; in pressure-sensitive adhesives complying with § 175.125 of this chapter; and as provided in § 177.2600 of this chapter.
* * * * *	

Dated: September 8, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21975 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 436, 442, and 444

[Docket No. 87N-0021]

Antibiotic Drugs; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by making corrections, an updating, and a noncontroversial technical change in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulations.

DATES: Effective September 24, 1987; comments, notice of participation, and request for hearing by October 26, 1987; data, information, and analyses to justify a hearing by November 23, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by making corrections, an updating, and a noncontroversial technical change in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use. To aid the reader in understanding the types of amendments in this document, the amendments are grouped into three general classes for discussion in this preamble: Corrections, updating, and a technical change.

Corrections

1. In § 442.53a(b)(1)(iv)(*a*), the formula to calculate micrograms of cefotetan per milligram is corrected to reflect the moisture factor. It was incorrectly stated in the **Federal Register** of June 4, 1986 (51 FR 20264).

2. In § 436.542(c), in the eighth sentence, the dissolution time period "1 hour" is corrected to read "45 minutes." This amendment to § 436.542 was inadvertently omitted in the **Federal Register** of November 15, 1985 (50 FR 47213).

Updating

Section 444.542i is removed.

In a Drug Efficacy Study Implementation notice published in the **Federal Register** of April 23, 1982 (47 FR 17677), FDA withdrew approval of the new drug applications for Neo-Aristoderm Foam containing neomycin sulfate and triamcinolone acetonide and Neo-Decaspray Aerosol containing neomycin sulfate and dexamethasone on the basis that the products lack substantial evidence of effectiveness. Therefore, the monograph (regulation) providing accepted standards for these topical anti-infective drug products is removed.

Technical Change

In § 442.27(a)(1), the chemical name of cephalexin monohydrate is revised to be in agreement with the United States Adopted Names definition.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments therefore, shall become effective September 24, 1987. However, interested persons may, on or before October 26, 1987, submit written comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets

request or set forth in detail the reasons why the answering participant cannot admit or deny the truth of each matter. A denial of the truthfulness of the requested admission must fairly discuss the substance of the requested admission and, when good faith requires that a participant qualify the answer or deny only a part of the matter of which an admission is requested, the participant must specify that which is true and qualify or deny the remainder. The answer must be served on all participants.

* * * * *

6. In § 385.410, paragraph (c)(6) is revised to read as follows:

§ 385.410 Objections to discovery, motions to quash or to compel, and protective orders (Rule 410).

* * * * *

(c) * * *

(6) Provide a means by which confidential matters may be made available to participants so as to prevent public disclosure. Material submitted under a protective order may nevertheless be subject to Freedom of Information Act requests and review.

* * * * *

[FR Doc. 87-22026 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 177 and 178

[Docket No. 86F-0188]

Indirect Food Additives; Polymers and Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a stabilizer in articles or components of articles intended to contact food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective September 24, 1987; objections by October 26, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 27, 1986 (51 FR 19087), FDA announced that a petition (FAP 6B3922) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) and § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to expand present uses and to add additional uses of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a stabilizer in articles or components of articles intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive uses are safe, and that 21 CFR 177.2600(c)(4)(iii) and 178.2010(b) should be amended as set forth below. In addition, the agency is revising the regulations to consolidate the regulated uses of the additive with the new uses authorized by this final rule.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 26, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 177

Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Parts 177 and 178 are amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2600(c)(4)(iii) is amended by revising the entry for "4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol (CAS Reg. No. 991-84-4) for use only as a stabilizer at levels not to exceed 0.5

percent by weight of the finished rubber product.

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PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010(b) is amended by revising the entry for "4-[[4,6-Bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

(b) * * *

Substances	Limitations
* * * * *	
4-[[4,6-Bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol (CAS Reg. No. 991-84-4)	For use only: 1. At levels not to exceed 0.5 percent by weight: in styrene block copolymers complying with § 177.1810 of this chapter; in rosins and rosin derivatives complying with § 175.300(b)(3)(v) of this chapter; in can end cement formulations complying with § 175.300(b)(3)(xxxi) of this chapter; in side seam cement formulations complying with § 175.300(b)(3)(xxxii) of this chapter; in petroleum alicyclic hydrocarbon resins and terpene resins complying with § 175.320(b)(3) of this chapter; in rosin and rosin derivatives complying with § 176.170(a)(5) of this chapter; in petroleum alicyclic hydrocarbon resins or their hydrogenated products complying with § 176.170(b)(2) of this chapter; in terpene resins complying with § 175.300(b)(2)(xi) of this chapter, when such terpene resins are used in accordance with § 176.170(b)(1) of this chapter; in resins and polymers complying with § 176.180(b) of this chapter; in closures with sealing gaskets complying with § 177.1210 of this chapter; in petroleum hydrocarbon resin and rosins and rosin derivatives complying with § 178.3800(b) of this chapter; and in reinforced wax complying with § 178.3850 of this chapter. 2. At levels not to exceed 0.2 percent by weight of the finished cellophane complying with § 177.1200 of this chapter. 3. At levels not to exceed 0.1 percent by weight in polystyrene and rubber-modified polystyrene complying with § 177.1640 of this chapter: *Provided*, That the finished polystyrene and rubber-modified polystyrene polymer contact food only under conditions of use B through G described in Table 2 of § 176.170(c) of this chapter. 4. In adhesives complying with § 175.105 of this chapter; in pressure-sensitive adhesives complying with § 175.125 of this chapter; and as provided in § 177.2600 of this chapter.
* * * * *	

Dated: September 8, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21975 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 436, 442, and 444

[Docket No. 87N-0021]

Antibiotic Drugs; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by making corrections, an updating, and a noncontroversial technical change in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulations.

DATES: Effective September 24, 1987; comments, notice of participation, and request for hearing by October 26, 1987; data, information, and analyses to justify a hearing by November 23, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by making corrections, an updating, and a noncontroversial technical change in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use. To aid the reader in understanding the types of amendments in this document, the amendments are grouped into three general classes for discussion in this preamble: Corrections, updating, and a technical change.

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1. In § 442.53a(b)(1)(iv)(*a*), the formula to calculate micrograms of cefotetan per milligram is corrected to reflect the moisture factor. It was incorrectly stated in the **Federal Register** of June 4, 1986 (51 FR 20264).

2. In § 436.542(c), in the eighth sentence, the dissolution time period "1 hour" is corrected to read "45 minutes." This amendment to § 436.542 was inadvertently omitted in the **Federal Register** of November 15, 1985 (50 FR 47213).

Updating

Section 444.542i is removed.

In a Drug Efficacy Study Implementation notice published in the **Federal Register** of April 23, 1982 (47 FR 17677), FDA withdrew approval of the new drug applications for Neo-Aristoderm Foam containing neomycin sulfate and triamcinolone acetonide and Neo-Decaspray Aerosol containing neomycin sulfate and dexamethasone on the basis that the products lack substantial evidence of effectiveness. Therefore, the monograph (regulation) providing accepted standards for these topical anti-infective drug products is removed.

Technical Change

In § 442.27(a)(1), the chemical name of cephalexin monohydrate is revised to be in agreement with the United States Adopted Names definition.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments therefore, shall become effective September 24, 1987. However, interested persons may, on or before October 26, 1987, submit written comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets

request or set forth in detail the reasons why the answering participant cannot admit or deny the truth of each matter. A denial of the truthfulness of the requested admission must fairly discuss the substance of the requested admission and, when good faith requires that a participant qualify the answer or deny only a part of the matter of which an admission is requested, the participant must specify that which is true and qualify or deny the remainder. The answer must be served on all participants.

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6. In § 385.410, paragraph (c)(6) is revised to read as follows:

§ 385.410 Objections to discovery, motions to quash or to compel, and protective orders (Rule 410).

* * * * *

(c) * * *

(6) Provide a means by which confidential matters may be made available to participants so as to prevent public disclosure. Material submitted under a protective order may nevertheless be subject to Freedom of Information Act requests and review.

* * * * *

[FR Doc. 87-22026 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 177 and 178

[Docket No. 86F-0188]

Indirect Food Additives; Polymers and Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a stabilizer in articles or components of articles intended to contact food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective September 24, 1987; objections by October 26, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 27, 1986 (51 FR 19087), FDA announced that a petition (FAP 6B3922) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) and § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to expand present uses and to add additional uses of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a stabilizer in articles or components of articles intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive uses are safe, and that 21 CFR 177.2600(c)(4)(iii) and 178.2010(b) should be amended as set forth below. In addition, the agency is revising the regulations to consolidate the regulated uses of the additive with the new uses authorized by this final rule.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 26, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 177

Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Parts 177 and 178 are amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2600(c)(4)(iii) is amended by revising the entry for "4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol (CAS Reg. No. 991-84-4) for use only as a stabilizer at levels not to exceed 0.5

from the notice and comment requirements of 5 U.S.C. 553(b). Since this rule reflects current organizational changes being placed in effect and has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C. 553(d). The rulemaking merely reassigns Marine Inspection and Captain of the Port Zones to conform with changes in the Coast Guard's internal organization. There will be no effect on the public, since Eighth Coast Guard District Marine Safety Units will continue to perform all functions affecting the public that were previously performed.

Drafting Information: The principal persons involved in drafting this rulemaking are Lieutenant Commander R. G. Pond, Project Manager, Eighth Coast Guard District Marine Safety Division; and Lieutenant Commander J. J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion: Effective 1 October 1987, the Captain of the Port Office New Orleans and Marine Inspection Office New Orleans will merge resources to establish Marine Safety Office New Orleans and Marine Safety Office Morgan City. Merging the functions of Marine Inspection and Captain of the Port into unified Marine Safety Offices is an ongoing process begun by the Coast Guard in the mid-1970's. Due to the large geographic area and the extremely high volume of commercial vessel traffic in the area, two Marine Safety Offices are being established instead of one. While enabling more efficient internal management and enhancing performance of missions, this reorganization will not affect any Coast Guard services to the public.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided for in section 1(a)(3) of the Order. It is considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This final rule places no requirements on any sector of the public. It will not adversely affect Coast Guard services delivered to the public. The rule reflects a change in internal Coast Guard organization, streamlining the logistics and support functions. In accomplishing this, some functions, and personnel, will be transferred from one location to another. Since the impact of the final rule is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 3

Coast Guard Areas, Districts, Marine Inspection Zones, Captain of the Port Zones.

PART 3—[AMENDED]

In consideration of the foregoing, Part 3 of Title 33 of the Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

§ 3.40–10 [Amended]

2. Section 3.40–10, Paragraph (b) is revised to read as follows:

* * * * *

(b) The boundary of the Mobile Marine Inspection Zone and Captain of the Port Zone starts at the Florida coast 83°50′ W. longitude; thence due north to 30°15′ N. latitude, 83°50′ W. longitude; thence due west to 30°15′ N. latitude, 84°45′ W. longitude; thence due north to the southern bank of the Jim Woodruff Reservoir at 84°45′ W. longitude; thence northeasterly along the eastern bank of Jim Woodruff Reservoir and northerly along the eastern bank of the Flint River to 32°20′ N. latitude, 84°02′ W. longitude; thence northwesterly to the intersection of the Georgia-Alabama boundary at 32°53′ N. latitude; thence northerly along the Georgia-Alabama boundary to 34° N. latitude; thence due west to the Alabama-Mississippi boundary at 34° N. latitude; thence northerly along the Alabama-Mississippi boundary to the southern boundary of Tishomingo County, Mississippi; thence westerly and southerly along the southern boundaries of Tishomingo and Prentiss Counties, Mississippi, including that area of the Tennessee-Tombigby Waterway south of the Bay Springs Lock and Dam; thence southerly and westerly along the eastern and southern boundaries of Lee, Chickasaw, and Calhoun Counties, Miss.; thence southerly along the western boundaries of Webster, Choctaw, Winston, Neshoba, Newton, Jasper, Jones, Forrest and Stone Counties, Miss.; thence easterly along the northern boundary of Harrison County, Miss. to 89°10′ W. longitude; thence due south to the Mississippi Coast; thence southeasterly to 29°10′ N. latitude, 88° W. longitude; thence south to 28°50′ N. latitude, 88° W. longitude.

§ 3.40–15 [Amended]

3. Section 3.40–15, paragraph (b) is revised to read as follows:

* * * * *

(b) The boundary of the New Orleans Marine Inspection Zone and Captain of the Port Zone starts at 28°50′ N. latitude, 88° W. longitude; northerly to 29°10′ N. latitude; thence northeasterly to the Mississippi coast at 89°10′ west; thence north to the northern Harrison County boundary; thence westerly along the northern Harrison County boundary; thence northerly along the western county boundaries of Stone, Forrest, Jones, Jasper, Newton, Neshoba, Winston, Choctaw, and Webster Counties to the 8th district line thence west to the Texas-Louisiana border; thence south along the Texas-Louisiana border to the northern De Soto Parish boundary; thence easterly along the northern and eastern parish boundaries of De Soto, Sabine, Vernon, Allen Parishes thence east along the northern parish boundaries of Acadia, Lafayette, St. Martin, Iberia, Assumption and Lafourche parishes to 90° west longitude; thence southeast to 28°50′ north, 89°27′06″ west, thence east to 88° W. longitude.

4. Section 3.40–17 is added to read as follows:

§ 3.40–17 Morgan City Marine Inspection Zone and Captain of the Port Zone.

(a) The Morgan City Marine Inspection Office and Captain of the Port Office are in Morgan City, Louisiana.

(b) The Boundary of the Morgan City Marine Inspection Zone and the Captain of the Port Zone starts at 28°50′ N. latitude, 88° W. longitude; thence due west to 28°50′ N. latitude, 89°27′06″ W. longitude; thence northwesterly along the northern boundaries of Lafourche, Assumption, Iberia and St. Martin Parishes; thence westerly along the westerly boundary of Lafayette and Acadia Parishes; to an intersection with 92°23′ W. longitude; thence south along 92°23′ W. longitude to the sea.

§ 3.40–20 [Amended]

5. Section 3.40–20, paragraph (b) is revised to read as follows:

* * * * *

(b) The boundary of the Port Arthur Marine Inspection Zone, and the Captain of the Port Zone, starts at the junction of the sea and 92°23′ W. longitude; thence north along 92°23′ W. longitude to the northern boundary of Acadia Parish; thence westerly along the northern boundary of Acadia Parish; thence northwesterly along the north eastern boundaries of Allen, Vernon,

Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 26, 1987, a written notice of participation and request for hearing, and (2) on or before November 23, 1987, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

21 CFR Part 444

Antibiotics, Oligosaccharide.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436, 442, and 444 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 436.542 is amended by revising the eighth sentence in paragraph (c) to read as follows:

§ 436.542 Acid resistance/dissolution test for enteric-coated erythromycin pellets.

* * * * *

(c) *Procedure.* * * * Rotate the basket at 50 revolutions per minute for an accurately timed dissolution period of 45 minutes. * * *

* * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. Section 442.27 is amended by revising the first sentence in paragraph (a)(1) to read as follows:

§ 442.27 Cephalexin monohydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cephalexin monohydrate is the monohydrate form of 7-(D-*alpha*-amino-*alpha*-phenylacetamido)-3-methyl-3-cephem-4-carboxylic acid. * * *

* * * * *

5. Section 442.53a is amended by revising paragraph (b)(1)(iv)(*a*) to read as follows:

§ 442.53a Sterile cefotetan disodium.

* * * * *

(b) * * *

(1) * * *

(iv) *Calculations*—(*a*) Calculate the micrograms of cefotetan per milligram of sample as follows:

$$\text{Micrograms of cefotetan per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100-m)}$$

where:

A_u = Area of the cefotetan peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefotetan peak in the chromatogram of the cefotetan working standard;

P_s = Cefotetan activity in the cefotetan working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture in the sample.

* * * * *

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

6. The authority citation for 21 CFR Part 444 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

§ 444.542i [Removed]

7. Section 444.542i *Neomycin sulfate-triamcinolone acetonide topical aerosol; neomycin sulfate-dexamethasone topical aerosol* is removed.

Dated: September 11, 1987.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-21973 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 87-062]

Changes to Marine Inspection Zones, and Captain of the Port Zones, New Orleans, LA; Morgan City, LA; Mobile, AL; and Port Arthur, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule reassigns various Coast Guard Marine Inspection and Captain of the Port Zones within the Eighth Coast Guard District to reflect organizational changes in the Coast Guard. The Coast Guard is reorganizing Marine Inspection Office New Orleans and Captain of the Port Office in New Orleans into Marine Safety Offices in New Orleans and Morgan City, Louisiana. These organizational changes will not adversely affect any Coast Guard services to the public.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice C. Jackson, Project Manager, Office of Marine Safety, Security and Environmental Protection, telephone (202) 267-0389. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. These amendments are matters relating to agency organization and are exempt

from the notice and comment requirements of 5 U.S.C. 553(b). Since this rule reflects current organizational changes being placed in effect and has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C. 553(d). The rulemaking merely reassigns Marine Inspection and Captain of the Port Zones to conform with changes in the Coast Guard's internal organization. There will be no effect on the public, since Eighth Coast Guard District Marine Safety Units will continue to perform all functions affecting the public that were previously performed.

Drafting Information: The principal persons involved in drafting this rulemaking are Lieutenant Commander R. G. Pond, Project Manager, Eighth Coast Guard District Marine Safety Division; and Lieutenant Commander J. J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion: Effective 1 October 1987, the Captain of the Port Office New Orleans and Marine Inspection Office New Orleans will merge resources to establish Marine Safety Office New Orleans and Marine Safety Office Morgan City. Merging the functions of Marine Inspection and Captain of the Port into unified Marine Safety Offices is an ongoing process begun by the Coast Guard in the mid-1970's. Due to the large geographic area and the extremely high volume of commercial vessel traffic in the area, two Marine Safety Offices are being established instead of one. While enabling more efficient internal management and enhancing performance of missions, this reorganization will not affect any Coast Guard services to the public.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided for in section 1(a)(3) of the Order. It is considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This final rule places no requirements on any sector of the public. It will not adversely affect Coast Guard services delivered to the public. The rule reflects a change in internal Coast Guard organization, streamlining the logistics and support functions. In accomplishing this, some functions, and personnel, will be transferred from one location to another. Since the impact of the final rule is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 3

Coast Guard Areas, Districts, Marine Inspection Zones, Captain of the Port Zones.

PART 3—[AMENDED]

In consideration of the foregoing, Part 3 of Title 33 of the Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

§ 3.40–10 [Amended]

2. Section 3.40–10, Paragraph (b) is revised to read as follows:

* * * * *

(b) The boundary of the Mobile Marine Inspection Zone and Captain of the Port Zone starts at the Florida coast 83°50′ W. longitude; thence due north to 30°15′ N. latitude, 83°50′ W. longitude; thence due west to 30°15′ N. latitude, 84°45′ W. longitude; thence due north to the southern bank of the Jim Woodruff Reservoir at 84°45′ W. longitude; thence northeasterly along the eastern bank of Jim Woodruff Reservoir and northerly along the eastern bank of the Flint River to 32°20′ N. latitude, 84°02′ W. longitude; thence northwesterly to the intersection of the Georgia-Alabama boundary at 32°53′ N. latitude; thence northerly along the Georgia-Alabama boundary to 34° N. latitude; thence due west to the Alabama-Mississippi boundary at 34° N. latitude; thence northerly along the Alabama-Mississippi boundary to the southern boundary of Tishomingo County, Mississippi; thence westerly and southerly along the southern boundaries of Tishomingo and Prentiss Counties, Mississippi, including that area of the Tennessee-Tombigby Waterway south of the Bay Springs Lock and Dam; thence southerly and westerly along the eastern and southern boundaries of Lee, Chickasaw, and Calhoun Counties, Miss.; thence southerly along the western boundaries of Webster, Choctaw, Winston, Neshoba, Newton, Jasper, Jones, Forrest and Stone Counties, Miss.; thence easterly along the northern boundary of Harrison County, Miss. to 89°10′ W. longitude; thence due south to the Mississippi Coast; thence southeasterly to 29°10′ N. latitude, 88° W. longitude; thence south to 28°50′ N. latitude, 88° W. longitude.

§ 3.40–15 [Amended]

3. Section 3.40–15, paragraph (b) is revised to read as follows:

* * * * *

(b) The boundary of the New Orleans Marine Inspection Zone and Captain of the Port Zone starts at 28°50′ N. latitude, 88° W. longitude; northerly to 29°10′ N. latitude; thence northeasterly to the Mississippi coast at 89°10′ west; thence north to the northern Harrison County boundary; thence westerly along the northern Harrison County boundary; thence northerly along the western county boundaries of Stone, Forrest, Jones, Jasper, Newton, Neshoba, Winston, Choctaw, and Webster Counties to the 8th district line thence west to the Texas-Louisiana border; thence south along the Texas-Louisiana border to the northern De Soto Parish boundary; thence easterly along the northern and eastern parish boundaries of De Soto, Sabine, Vernon, Allen Parishes thence east along the northern parish boundaries of Acadia, Lafayette, St. Martin, Iberia, Assumption and Lafourche parishes to 90° west longitude; thence southeast to 28°50′ north, 89°27′06″ west, thence east to 88° W. longitude.

4. Section 3.40–17 is added to read as follows:

§ 3.40–17 Morgan City Marine Inspection Zone and Captain of the Port Zone.

(a) The Morgan City Marine Inspection Office and Captain of the Port Office are in Morgan City, Louisiana.

(b) The Boundary of the Morgan City Marine Inspection Zone and the Captain of the Port Zone starts at 28°50′ N. latitude, 88° W. longitude; thence due west to 28°50′ N. latitude, 89°27′06″ W. longitude; thence northwesterly along the northern boundaries of Lafourche, Assumption, Iberia and St. Martin Parishes; thence westerly along the westerly boundary of Lafayette and Acadia Parishes; to an intersection with 92°23′ W. longitude; thence south along 92°23′ W. longitude to the sea.

§ 3.40–20 [Amended]

5. Section 3.40–20, paragraph (b) is revised to read as follows:

* * * * *

(b) The boundary of the Port Arthur Marine Inspection Zone, and the Captain of the Port Zone, starts at the junction of the sea and 92°23′ W. longitude; thence north along 92°23′ W. longitude to the northern boundary of Acadia Parish; thence westerly along the northern boundary of Acadia Parish; thence northwesterly along the north eastern boundaries of Allen, Vernon,

Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 26, 1987, a written notice of participation and request for hearing, and (2) on or before November 23, 1987, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

21 CFR Part 444

Antibiotics, Oligosaccharide.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436, 442, and 444 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 436.542 is amended by revising the eighth sentence in paragraph (c) to read as follows:

§ 436.542 Acid resistance/dissolution test for enteric-coated erythromycin pellets.

* * * * *

(c) *Procedure.* * * * Rotate the basket at 50 revolutions per minute for an accurately timed dissolution period of 45 minutes. * * *

* * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. Section 442.27 is amended by revising the first sentence in paragraph (a)(1) to read as follows:

§ 442.27 Cephalexin monohydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cephalexin monohydrate is the monohydrate form of 7-(D-*alpha*-amino-*alpha*-phenylacetamido)-3-methyl-3-cephem-4-carboxylic acid. * * *

* * * * *

5. Section 442.53a is amended by revising paragraph (b)(1)(iv)(*a*) to read as follows:

§ 442.53a Sterile cefotetan disodium.

* * * * *

(b) * * *

(1) * * *

(iv) *Calculations*—(*a*) Calculate the micrograms of cefotetan per milligram of sample as follows:

$$\text{Micrograms of cefotetan per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100-m)}$$

where:

A_u = Area of the cefotetan peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefotetan peak in the chromatogram of the cefotetan working standard;

P_s = Cefotetan activity in the cefotetan working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture in the sample.

* * * * *

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

6. The authority citation for 21 CFR Part 444 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

§ 444.542i [Removed]

7. Section 444.542i *Neomycin sulfate-triamcinolone acetonide topical aerosol; neomycin sulfate-dexamethasone topical aerosol* is removed.

Dated: September 11, 1987.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-21973 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 87-062]

Changes to Marine Inspection Zones, and Captain of the Port Zones, New Orleans, LA; Morgan City, LA; Mobile, AL; and Port Arthur, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule reassigns various Coast Guard Marine Inspection and Captain of the Port Zones within the Eighth Coast Guard District to reflect organizational changes in the Coast Guard. The Coast Guard is reorganizing Marine Inspection Office New Orleans and Captain of the Port Office in New Orleans into Marine Safety Offices in New Orleans and Morgan City, Louisiana. These organizational changes will not adversely affect any Coast Guard services to the public.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice C. Jackson, Project Manager, Office of Marine Safety, Security and Environmental Protection, telephone (202) 267-0389. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. These amendments are matters relating to agency organization and are exempt

Sabine, De Soto Parishes; thence westerly along the northern boundary of De Soto Parish to the Louisiana-Texas boundary; thence north along the Louisiana-Texas boundary and the Texas-Arkansas boundary; thence westerly along the Texas-Arkansas boundary and the Texas-Oklahoma boundary to 97° W. longitude; thence south along 97° W. longitude to the southern boundary of Dallas County, Texas; thence easterly along the southern boundary of Dallas County, Texas, to the east bank of the Trinity River; thence southeasterly along the east bank of the Trinity River; thence southeasterly along the east shore of Lake Livingston; thence southerly along the east bank of the Trinity River to 30° N. latitude; thence east along 30° N. latitude to 94°23' W. longitude; thence south along 94°23' W. longitude to the sea.

Dated: September 3, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 87-22087 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD14-87-02]

Anchorage Ground; Apra Harbor, Island of Guam

AGENCY: Coast Guard, DOT.

ACTION: Final rule, Corrected.

SUMMARY: This document corrects the wording of the final regulation to indicate that § 110.238 is revised, rather than added as indicated in the final rule signed July 1, 1987 (52 FR 25864; July 9, 1987). No change is made to the final rule text.

FOR FURTHER INFORMATION CONTACT: LT M. D. WEST; (808) 541-2315.

Accordingly, Final Rule Docket (CGD14-87-02) is corrected as follows:

Final Regulations

* * * * *

"2. Section 110.238 is revised to read as follows:"

* * * * *

Dated: September 10, 1987.

W.P. Kozlovsky,

Commander, 14th Coast Guard District.

[FR Doc. 87-22084 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3266-8]

Designation of Site for Ocean Dumping; Atlantic Ocean Offshore Portland, ME

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is designating a site located offshore of Portland, Maine for the disposal of dredged material. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material. This final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective October 26, 1987.

ADDRESSES: U.S. Environmental Protection Agency—Region 1, JFK Federal Building—WQE-1900, Boston, MA 02203.

The file supporting this designation and the letters of comment are available for public inspection at the above location.

FOR FURTHER INFORMATION CONTACT: Kymberlee Keckler, (617) 565-4432.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 140 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986 the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority. The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to incorporate careful consideration of all environmental aspects of proposed actions into the decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs for ocean dumping site designations under the MPRSA [39 FR 16186 (May 7, 1974)]. The EPA has prepared a Final EIS entitled *Environmental Impact Statement (EIS) for Portland, Maine Dredged Material Disposal Site Designation.* On April 1, 1983 a notice of availability of the EIS for public review and comment was published in the Federal Register [48 FR 14037]. Anyone desiring a copy of the EIS may obtain one from the address given previously. The comment period closed on May 2, 1983. One comment was received on the Final EIS which favored giving final designation to the site. The action discussed in the EIS is destination for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness for ocean disposal is determined on a case-by-case basis as part of the permit-issuing process for ocean disposal. The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. As explained in the EIS, land-based disposal alternatives were rejected based on the lack of information on possible construction of marshlands, increased costs, and the lack of available land area near the disposal activities. A more detailed analysis of land-based alternatives will be performed as part of any application for a permit to use the site.

Alternative ocean sites which include previously used nearshore sites, were rejected from consideration. Disposing of dredged material in those sites would not significantly ameliorate any adverse effects on the environment and might conflict with commercial fisheries. Alternative deepwater sites on the Continental Slope beyond the Gulf of Maine were rejected from consideration because the greater distance from shore (240 nautical miles) increases the potential for short dumping owing to possible emergencies during adverse weather conditions. Furthermore, greater water depth (over 200 meters) would result in the deposition of dredged materials over a larger area than projected for the site, and cost to transport the dredged material would be excessive.

Sabine, De Soto Parishes; thence westerly along the northern boundary of De Soto Parish to the Louisiana-Texas boundary; thence north along the Louisiana-Texas boundary and the Texas-Arkansas boundary; thence westerly along the Texas-Arkansas boundary and the Texas-Oklahoma boundary to 97° W. longitude; thence south along 97° W. longitude to the southern boundary of Dallas County, Texas; thence easterly along the southern boundary of Dallas County, Texas, to the east bank of the Trinity River; thence southeasterly along the east bank of the Trinity River; thence southeasterly along the east shore of Lake Livingston; thence southerly along the east bank of the Trinity River to 30° N. latitude; thence east along 30° N. latitude to 94°23' W. longitude; thence south along 94°23' W. longitude to the sea.

Dated: September 3, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 87-22087 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD14-87-02]

Anchorage Ground; Apra Harbor, Island of Guam

AGENCY: Coast Guard, DOT.

ACTION: Final rule, Corrected.

SUMMARY: This document corrects the wording of the final regulation to indicate that § 110.238 is revised, rather than added as indicated in the final rule signed July 1, 1987 (52 FR 25864; July 9, 1987). No change is made to the final rule text.

FOR FURTHER INFORMATION CONTACT: LT M. D. WEST; (808) 541-2315.

Accordingly, Final Rule Docket (CGD14-87-02) is corrected as follows:

Final Regulations

* * * * *

"2. Section 110.238 is revised to read as follows:"

* * * * *

Dated: September 10, 1987.

W.P. Kozlovsky,

Commander, 14th Coast Guard District.

[FR Doc. 87-22084 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3266-8]

Designation of Site for Ocean Dumping; Atlantic Ocean Offshore Portland, ME

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is designating a site located offshore of Portland, Maine for the disposal of dredged material. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material. This final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective October 26, 1987.

ADDRESSES: U.S. Environmental Protection Agency—Region 1, JFK Federal Building—WQE-1900, Boston, MA 02203.

The file supporting this designation and the letters of comment are available for public inspection at the above location.

FOR FURTHER INFORMATION CONTACT: Kymberlee Keckler, (617) 565-4432.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 140 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986 the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority. The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to incorporate careful consideration of all environmental aspects of proposed actions into the decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs for ocean dumping site designations under the MPRSA [39 FR 16186 (May 7, 1974)]. The EPA has prepared a Final EIS entitled *Environmental Impact Statement (EIS) for Portland, Maine Dredged Material Disposal Site Designation.* On April 1, 1983 a notice of availability of the EIS for public review and comment was published in the Federal Register [48 FR 14037]. Anyone desiring a copy of the EIS may obtain one from the address given previously. The comment period closed on May 2, 1983. One comment was received on the Final EIS which favored giving final designation to the site. The action discussed in the EIS is destination for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness for ocean disposal is determined on a case-by-case basis as part of the permit-issuing process for ocean disposal. The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. As explained in the EIS, land-based disposal alternatives were rejected based on the lack of information on possible construction of marshlands, increased costs, and the lack of available land area near the disposal activities. A more detailed analysis of land-based alternatives will be performed as part of any application for a permit to use the site.

Alternative ocean sites which include previously used nearshore sites, were rejected from consideration. Disposing of dredged material in those sites would not significantly ameliorate any adverse effects on the environment and might conflict with commercial fisheries. Alternative deepwater sites on the Continental Slope beyond the Gulf of Maine were rejected from consideration because the greater distance from shore (240 nautical miles) increases the potential for short dumping owing to possible emergencies during adverse weather conditions. Furthermore, greater water depth (over 200 meters) would result in the deposition of dredged materials over a larger area than projected for the site, and cost to transport the dredged material would be excessive.

The Wilkinson Basin, an alternative site located 21 nautical miles southeast of Portland Harbor in the Gulf of Maine, was also considered. It is not seaward of the true East Coast Continental Shelf. However, it does fulfill some of the same environmental conditions of deep water (i.e., low energy and low biomass). The Wilkinson Basin has not been used previously for dredged material disposal, and the potential adverse effects of dredged sediment on indigenous organisms and resources are presently unknown.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation. This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Evironmental Quality for agencies subject to NEPA.

C. Site Designation

On July 23, 1987 EPA proposed designation of this site for the continuing disposal of dredged materials. The public comment period on this proposed action closed September 8, 1987. No significant comments was received.

This site is located approximately 6.8 miles offshore of Portland, Maine and occupies an area about one square nautical mile. Water depths within the area average 50 meters. The coordinates of the site are as follows:

43° 33' 36"N, 70° 02' 42"W;
43° 33' 36"N, 70° 01' 18"W;
43° 34' 36"N, 70° 02' 42"W;
42° 34' 36"N, 70° 01' 18"W.

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Site selection assures that interference with other marine activities is minimized, any temporary perturbations from the dumping causing impacts outside the disposal site are prevented, effective monitoring to detect any adverse impacts at an early stage is permitted. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations and § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met. The site as discussed below under the eleven specific factors, is acceptable under the five general criteria. Based on the information presented in the Final EIS, EPA has determined that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of that stated in this action. Historical use at the site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. Although no records are on file with the Corps of Engineers, the site has probably been used since 1946 or 1947 for the ocean disposal of about one million cubic yards of dredged material. Additional dredging, with volumes up to an additional 200,000 cubic yards, is expected depending upon the requirements of the Portland Harbor channel system. The characteristics of the site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water bottom topography and distance from coast* [40 CFR 228.6(a)(1)].

The site's corner coordinates, size, and distance from shore are listed under Part C, Proposed Site Designation. Water depths at the site range from 39 to 64 meters, with an average of 50 meters. Bottom topography is characterized by rough, irregular rocky outcrops with topographic relief on the order of 20 meters. A fine-grained sand and silt-covered basin approximately 600 meters square at the center of the site has been used for the point disposal location for dredged material. Because of its depth (64 meters), the basin is not significantly affected by waves and currents and is a low-energy environment. Consequently, disposed dredged material is likely to remain in the immediate area.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases* [40 CFR 228.6(a)(2)].

Areas for breeding, spawning, nursery and/or passage of commercially and recreationally important finfish and shellfish species occur on a seasonal basis across the western shelf of the Gulf of Marine. Past disposal of dredged material at the site has not caused detectable, significant or irreversible adverse impacts on living resources.

The major amenity areas in the vicinity of the site are the shallow inshore waters (less than 200 meters). Lobsters migrate into these shallow areas during the spawning season, from late spring to midsummer. It is unlikely that dredged material disposal at the site (averaging 50 meters in depth) will directly interfere with lobster spawning because bottom depths and current speed and direction should prevent the transport of dredged material from the site towards the shallower, inshore areas. Although some lobster larvae may be affected by disposal activities, this impact should not significantly affect the population because disposal will occur irregularly and affect a small area relative to the total spawning grounds.

Impacts of dredged material disposal on demersal fish at the site will probably be restricted to temporary changes in abundance, numbers of species, mean size, and food preferences. It is unlikely that disposal activities will interfere with commercially valuable fish because of their mobility. Two species of commercial fish that lay demersal eggs are not expected to be adversely affected since the substrate and offshore locale of the site are not preferred spwaning areas for these fish.

3. *Location in relation to beaches and other amenity areas* [40 CFR 228.6(a)(3)].

The site is 6.8 nautical miles from the nearest beach. Distance from shore, water depth, configuration of the basin, and net southwest transport will decrease the possibility of dredged material reaching beaches or other amenity areas. Studies reported in the EIS indicate that most of the dredged material disposed at the site has been shown to remain within the disposal area.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any* [40 CFR 228.6(a)(4)].

Dredged material released at approved sites must conform to the EPA criteria in the ocean dumping regulations (40 CFR Part 227). Sediments presently being dredged from the Portland Harbor area are composed of fine sand, silt and clay, and are similar in grain size to natural sediments in the central basin of the disposal site. The dredged material is transported in bulk by a barge equipped with a bottom dump mechanism. Approximately one million cubic yards of material have been disposed of at the site to date. Future dredging volumes may contribute an additional amount of 200,000 cubic

The Wilkinson Basin, an alternative site located 21 nautical miles southeast of Portland Harbor in the Gulf of Maine, was also considered. It is not seaward of the true East Coast Continental Shelf. However, it does fulfill some of the same environmental conditions of deep water (i.e., low energy and low biomass). The Wilkinson Basin has not been used previously for dredged material disposal, and the potential adverse effects of dredged sediment on indigenous organisms and resources are presently unknown.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation. This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Evironmental Quality for agencies subject to NEPA.

C. Site Designation

On July 23, 1987 EPA proposed designation of this site for the continuing disposal of dredged materials. The public comment period on this proposed action closed September 8, 1987. No significant comments was received.

This site is located approximately 6.8 miles offshore of Portland, Maine and occupies an area about one square nautical mile. Water depths within the area average 50 meters. The coordinates of the site are as follows:

43° 33' 36"N, 70° 02' 42"W;
43° 33' 36"N, 70° 01' 18"W;
43° 34' 36"N, 70° 02' 42"W;
42° 34' 36"N, 70° 01' 18"W.

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Site selection assures that interference with other marine activities is minimized, any temporary perturbations from the dumping causing impacts outside the disposal site are prevented, effective monitoring to detect any adverse impacts at an early stage is permitted. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations and § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met. The site as discussed below under the eleven specific factors, is acceptable under the five general criteria. Based on the information presented in the Final EIS, EPA has determined that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of that stated in this action. Historical use at the site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. Although no records are on file with the Corps of Engineers, the site has probably been used since 1946 or 1947 for the ocean disposal of about one million cubic yards of dredged material. Additional dredging, with volumes up to an additional 200,000 cubic yards, is expected depending upon the requirements of the Portland Harbor channel system. The characteristics of the site are reviewed below in terms of the eleven factors.

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The site's corner coordinates, size, and distance from shore are listed under Part C, Proposed Site Designation. Water depths at the site range from 39 to 64 meters, with an average of 50 meters. Bottom topography is characterized by rough, irregular rocky outcrops with topographic relief on the order of 20 meters. A fine-grained sand and silt-covered basin approximately 600 meters square at the center of the site has been used for the point disposal location for dredged material. Because of its depth (64 meters), the basin is not significantly affected by waves and currents and is a low-energy environment. Consequently, disposed dredged material is likely to remain in the immediate area.

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Areas for breeding, spawning, nursery and/or passage of commercially and recreationally important finfish and shellfish species occur on a seasonal basis across the western shelf of the Gulf of Marine. Past disposal of dredged material at the site has not caused detectable, significant or irreversible adverse impacts on living resources.

The major amenity areas in the vicinity of the site are the shallow inshore waters (less than 200 meters). Lobsters migrate into these shallow areas during the spawning season, from late spring to midsummer. It is unlikely that dredged material disposal at the site (averaging 50 meters in depth) will directly interfere with lobster spawning because bottom depths and current speed and direction should prevent the transport of dredged material from the site towards the shallower, inshore areas. Although some lobster larvae may be affected by disposal activities, this impact should not significantly affect the population because disposal will occur irregularly and affect a small area relative to the total spawning grounds.

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The site is 6.8 nautical miles from the nearest beach. Distance from shore, water depth, configuration of the basin, and net southwest transport will decrease the possibility of dredged material reaching beaches or other amenity areas. Studies reported in the EIS indicate that most of the dredged material disposed at the site has been shown to remain within the disposal area.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any* [40 CFR 228.6(a)(4)].

Dredged material released at approved sites must conform to the EPA criteria in the ocean dumping regulations (40 CFR Part 227). Sediments presently being dredged from the Portland Harbor area are composed of fine sand, silt and clay, and are similar in grain size to natural sediments in the central basin of the disposal site. The dredged material is transported in bulk by a barge equipped with a bottom dump mechanism. Approximately one million cubic yards of material have been disposed of at the site to date. Future dredging volumes may contribute an additional amount of 200,000 cubic

yards depending upon the requirements of the Portland Harbor channel system.

5. *Feasibility of surveillance and monitoring* [40 CFR 228.6(a)(5)].

The U.S. Army Corps of Engineers currently conducts on-board surveillance to confirm that disposal operations occur at the proper location. Monitoring by EPA and the Corps of Engineers will continue for as long as the site is active. In order to detect any transport of dredged material outside the site, the sediment will be monitored at the site and along transects of possible transport. If movement of material appears to impact known resources, analysis of the specific resource will occur. Benthic communities will be monitored to detect changes that extend beyond the site.

Periodic bioaccumulation analyses of benthic invertebrates and fishes collected from the disposal site and bioassays will indicate if the dredged material will adversely affect the marine biota. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any* [40 CFR 228.6(a)(6)].

Current velocities range from 0 to 16 centimeters per second at the site. Currents are influenced by tides in a rotational manner, but net water movement is to the southwest. The Corps of Engineers reported that Portland Harbor dredged material (primarily fine sand, silt, and clay) is cohesive; therefore, rapid settling of the released sediments should occur. Minimal horizontal mixing or vertical stratification of disposal materials should occur, resulting in low suspended sediment concentrations.

Previous studies have demonstrated the relative immobility of dredged material at the site. A major portion of the material will remain within the site boundaries and most likely within the basin at the center of the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects)* [40 CFR 228.6(a)(7)].

Several industrial and municipal discharges are located in Portland Harbor. Although these discharges are 11 nautical miles from the site, they represent the closest point source discharges of pollutants. Because of the distance involved and dilution factors associated with mixing, discharges in Portland Harbor are not expected to have a measurable effect on the site.

Previous dredged material disposal at the site has not produced any significant adverse effects on the water quality. Changes in water quality as a result of disposal operations have been of short duration (minutes) and have been confined to relatively small areas. No major differences in finfish and/or shellfish species or numbers were found in recent surveys within and adjacent to the site.

In 1943, the War Department established the area of the site for the disposal of dredged material from Portland Harbor. Major dredging projects were authorized for Portland Harbor at that time, and it is presumed in the absence of actual records that the site was used for dredged material disposal between 1943 and 1946. No pre- or post-disposal data were collected in the vicinity of the site during the 1940's to 1960's. Recent disposal of dredged material has produced localized, minor and reversible impacts of mounding, smothering of the benthos, and possible temporary impacts on demersal fish.

Sediment collected by EPA from the disposal area during 1979 and 1980 contain higher levels of mercury, cadmium, lead, and saturated and aromatic hydrocarbons than do sediments at control stations near the site and on Georges Bank. These higher trace metal and hydrocarbon concentrations probably reflect contaminants present in dredged material disposed at the site. However, concentrations of trace metals from the site and control stations were generally lower than levels present in Portland Harbor sediments. In addition, bioassays indicate that discharges of dredged material would be ecologically acceptable according to ocean dumping criteria.

Mussels monitored at the site and at a control station on Bulwark Shoals indicated that tissue concentrations of cadmium, chromium, cobalt, copper, iron, mercury, nickel, and zinc were five to fifty-five percent higher at the site than at the control station. While high cadmium concentrations may be associated with naturally occurring upwelling, high zinc levels are probably associated with anthropogenic inputs. Trace metal concentrations in tissues of crustaceans and other benthic organisms collected at the site were well below FDA action levels. In addition, the bioaccumulation tests performed indicate a low potential for toxic constituents to accumulate in the human food chain.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean* [40 CFR 228.6(a)(8)].

Extensive shipping, fishing, recreational activities, and scientific investigations take place in the Gulf of Maine throughout the year. However, previous dredged material disposal operations are not known to have interfered with these activities. The Bureau of Land Management has not announced plans to lease any areas on the nearshore Continental Shelf adjacent to the site for oil and gas exploration. Mineral extraction, desalination, and aquaculture activities do not presently occur near the site.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys* [140 CFR 228.6(a)(9)].

Investigations of dredged material disposal operations at the site have indicated that disposal has had no significant adverse effects on water quality (e.g., dissolved nutrients, trace metals, dissolved oxygen, or pH).

Diatoms and dinoflagellates are the major types of phytoplankton within the coastal areas of the Gulf of Maine, and their population dynamics are closely correlated with annual cycles of nutrients and light energy. Population cycles of zooplankton often are closely correlated with seasonal cycles of phytoplankton since many zooplankters use phytoplankton as food. At the site zooplankton begin to increase in numbers in late March and are dominated by copepods.

The infaunal communities within the site have a high degree of natural variability and an inconsistent pattern of species distribution. The epifaunal community associated with rocky surfaces is dominated by attached suspension feeders. Mobile organisms (crustaceans, asteroids, ophiroids, and demersal fish) are uncommon.

Site surveys have detected no significant differences in water quality or biological characteristics among areas within the site and adjacent areas. Therefore, dredged material disposal at the site does not appear to significantly alter water quality or ecology.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site* [40 CFR 228.6(a)(10)].

There are no known components of this dredged material or consequences of its disposal which would attract or result in recruitment or development of nuisance species to the site. Previous surveys at the site did not detect the development or recruitment of nuisance species, and the similarity of the dredged material with the existing

sediments suggests that the development or recruitment of nuisance species is unlikely.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11)].

The State of Maine Department of Archeology reported that no cultural or natural features of historical importance exist at or near the site.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatiable with the general criteria and specific factors used for site evaluation. The designation of the Portland, Maine site as an EPA approved Ocean Dumping Site is being published as final rulemaking. Management of this site has been delegated to the Regional Administrator of EPA Region 1. However, it is recognized that the Corps New England Division actually manages the site through its Regulatory Program. It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it is determined that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on small entities. Since the site designation will only have the effect of providing a disposal option for dredged material, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 16, 1987.

Michael R. Deland,

Regional Administrator for Region 1.

In consideration of the foregoing, Subchapter H of chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. sections 1412 and 1418.

2. Section 228.12 is amended by removing paragraph (a)(1)(ii)(K), the Portland, Maine, dredged material disposal site, and by adding paragraph (b)(47), an ocean dumping site for Region 1, to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(47) Portland, Maine, Dredged Material Disposal Site—Region 1

Location:

43°33'36" N, 70°02'42" W;
43°33'36" N, 70°01'18" W;
43°34'36" N, 70°02'42" W;
43°34'36" N, 70°01'18" W;

Size: 1 square nautical mile.

Depth: 50 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restrictions: Disposal shall be limited to dredged material.

[FR Doc. 87-22056 Filed 9-23-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment of List of Office of Management and Budget Approved Collection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: September 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director, (202) 634-1535.

SUPPLEMENTARY INFORMATION:

In the Matter of Editorial amendment of list of Office of Management and Budget approved information collection requirements contained in Part 0 of the Commission's Rules.

Order

Adopted: August 31, 1987.
Released: September 14, 1987.

1. Section 3507(f) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(f)) requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *It is ordered, that* § 0.408 of the rules is *Amended* in accordance with the attached appendix, effective on the date of publication in the **Federal Register**.

6. Persons having questions on this matter should contact Terry Johnson at (202) 634-1535.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

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yards depending upon the requirements of the Portland Harbor channel system.

5. *Feasibility of surveillance and monitoring* [40 CFR 228.6(a)(5)].

The U.S. Army Corps of Engineers currently conducts on-board surveillance to confirm that disposal operations occur at the proper location. Monitoring by EPA and the Corps of Engineers will continue for as long as the site is active. In order to detect any transport of dredged material outside the site, the sediment will be monitored at the site and along transects of possible transport. If movement of material appears to impact known resources, analysis of the specific resource will occur. Benthic communities will be monitored to detect changes that extend beyond the site.

Periodic bioaccumulation analyses of benthic invertebrates and fishes collected from the disposal site and bioassays will indicate if the dredged material will adversely affect the marine biota. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any* [40 CFR 228.6(a)(6)].

Current velocities range from 0 to 16 centimeters per second at the site. Currents are influenced by tides in a rotational manner, but net water movement is to the southwest. The Corps of Engineers reported that Portland Harbor dredged material (primarily fine sand, silt, and clay) is cohesive; therefore, rapid settling of the released sediments should occur. Minimal horizontal mixing or vertical stratification of disposal materials should occur, resulting in low suspended sediment concentrations.

Previous studies have demonstrated the relative immobility of dredged material at the site. A major portion of the material will remain within the site boundaries and most likely within the basin at the center of the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects)* [40 CFR 228.6(a)(7)].

Several industrial and municipal discharges are located in Portland Harbor. Although these discharges are 11 nautical miles from the site, they represent the closest point source discharges of pollutants. Because of the distance involved and dilution factors associated with mixing, discharges in Portland Harbor are not expected to have a measurable effect on the site.

Previous dredged material disposal at the site has not produced any significant adverse effects on the water quality. Changes in water quality as a result of disposal operations have been of short duration (minutes) and have been confined to relatively small areas. No major differences in finfish and/or shellfish species or numbers were found in recent surveys within and adjacent to the site.

In 1943, the War Department established the area of the site for the disposal of dredged material from Portland Harbor. Major dredging projects were authorized for Portland Harbor at that time, and it is presumed in the absence of actual records that the site was used for dredged material disposal between 1943 and 1946. No pre- or post-disposal data were collected in the vicinity of the site during the 1940's to 1960's. Recent disposal of dredged material has produced localized, minor and reversible impacts of mounding, smothering of the benthos, and possible temporary impacts on demersal fish.

Sediment collected by EPA from the disposal area during 1979 and 1980 contain higher levels of mercury, cadmium, lead, and saturated and aromatic hydrocarbons than do sediments at control stations near the site and on Georges Bank. These higher trace metal and hydrocarbon concentrations probably reflect contaminants present in dredged material disposed at the site. However, concentrations of trace metals from the site and control stations were generally lower than levels present in Portland Harbor sediments. In addition, bioassays indicate that discharges of dredged material would be ecologically acceptable according to ocean dumping criteria.

Mussels monitored at the site and at a control station on Bulwark Shoals indicated that tissue concentrations of cadmium, chromium, cobalt, copper, iron, mercury, nickel, and zinc were five to fifty-five percent higher at the site than at the control station. While high cadmium concentrations may be associated with naturally occurring upwelling, high zinc levels are probably associated with anthropogenic inputs. Trace metal concentrations in tissues of crustaceans and other benthic organisms collected at the site were well below FDA action levels. In addition, the bioaccumulation tests performed indicate a low potential for toxic constituents to accumulate in the human food chain.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean* [40 CFR 228.6(a)(8)].

Extensive shipping, fishing, recreational activities, and scientific investigations take place in the Gulf of Maine throughout the year. However, previous dredged material disposal operations are not known to have interfered with these activities. The Bureau of Land Management has not announced plans to lease any areas on the nearshore Continental Shelf adjacent to the site for oil and gas exploration. Mineral extraction, desalination, and aquaculture activities do not presently occur near the site.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys* [140 CFR 228.6(a)(9)].

Investigations of dredged material disposal operations at the site have indicated that disposal has had no significant adverse effects on water quality (e.g., dissolved nutrients, trace metals, dissolved oxygen, or pH).

Diatoms and dinoflagellates are the major types of phytoplankton within the coastal areas of the Gulf of Maine, and their population dynamics are closely correlated with annual cycles of nutrients and light energy. Population cycles of zooplankton often are closely correlated with seasonal cycles of phytoplankton since many zooplankters use phytoplankton as food. At the site zooplankton begin to increase in numbers in late March and are dominated by copepods.

The infaunal communities within the site have a high degree of natural variability and an inconsistent pattern of species distribution. The epifaunal community associated with rocky surfaces is dominated by attached suspension feeders. Mobile organisms (crustaceans, asteroids, ophiroids, and demersal fish) are uncommon.

Site surveys have detected no significant differences in water quality or biological characteristics among areas within the site and adjacent areas. Therefore, dredged material disposal at the site does not appear to significantly alter water quality or ecology.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site* [40 CFR 228.6(a)(10)].

There are no known components of this dredged material or consequences of its disposal which would attract or result in recruitment or development of nuisance species to the site. Previous surveys at the site did not detect the development or recruitment of nuisance species, and the similarity of the dredged material with the existing

sediments suggests that the development or recruitment of nuisance species is unlikely.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11)].

The State of Maine Department of Archeology reported that no cultural or natural features of historical importance exist at or near the site.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatiable with the general criteria and specific factors used for site evaluation. The designation of the Portland, Maine site as an EPA approved Ocean Dumping Site is being published as final rulemaking. Management of this site has been delegated to the Regional Administrator of EPA Region 1. However, it is recognized that the Corps New England Division actually manages the site through its Regulatory Program. It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it is determined that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on small entities. Since the site designation will only have the effect of providing a disposal option for dredged material, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 16, 1987.

Michael R. Deland,

Regional Administrator for Region 1.

In consideration of the foregoing, Subchapter H of chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. sections 1412 and 1418.

2. Section 228.12 is amended by removing paragraph (a)(1)(ii)(K), the Portland, Maine, dredged material disposal site, and by adding paragraph (b)(47), an ocean dumping site for Region 1, to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(47) Portland, Maine, Dredged Material Disposal Site—Region 1

Location:

43°33'36" N, 70°02'42" W;
43°33'36" N, 70°01'18" W;
43°34'36" N, 70°02'42" W;
43°34'36" N, 70°01'18" W;

Size: 1 square nautical mile.

Depth: 50 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restrictions: Disposal shall be limited to dredged material.

[FR Doc. 87-22056 Filed 9-23-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment of List of Office of Management and Budget Approved Collection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: September 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director, (202) 634-1535.

SUPPLEMENTARY INFORMATION:

In the Matter of Editorial amendment of list of Office of Management and Budget approved information collection requirements contained in Part 0 of the Commission's Rules.

Order

Adopted: August 31, 1987.
Released: September 14, 1987.

1. Section 3507(f) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(f)) requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *It is ordered, that* § 0.408 of the rules is *Amended* in accordance with the attached appendix, effective on the date of publication in the **Federal Register**.

6. Persons having questions on this matter should contact Terry Johnson at (202) 634-1535.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

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shall file, no later than December 1 of each year, on computer media prescribed by the Commission, a forecast of regulated and nonregulated use of network plant investment for the following year.

(f) Each local exchange carrier with annual operating revenues of $100 million or more shall file, no later than April 1 of each year, reports showing:

(1) Its revenues, expenses and investment for all accounts established in Part 32 of this chapter, on an operating company basis,

(2) The same Part 32 of this chapter, on a study area basis, with data for regulated and nonregulated operations for those accounts which are related to the carrier's revenue requirement, and

(3) The separations categories on a study area basis, with each category further divided into access elements and a nonaccess interstate category.

6. Section 43.22 is added as follows:

§ 43.22 Quarterly reports of communication common carriers.

Each local exchange carrier with operating revenues for the preceding year of $100 million or more shall file, by March 31, June 30, September 30 and December 31 of each year, a report showing for the previous calendar quarter its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as is required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access and nonaccess.

[FR Doc. 87-22016 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-346; RM-5459 and RM-5661]

Radio Broadcasting Services; Dunedin, Safety Harbor and Coral Cove, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C2 for Channel 221A at Safety Harbor, Florida, and modifies the Class A license for Station WXCR(FM), accordingly, at the request of the licensee, Entertainment Communications, Inc. Additionally, Channel 300A is allotted to Coral Cove, Florida, as a first FM service, in response to a counterproposal filed by Marinna Nemes. With this action, this proceeding is terminated.

DATES: Effective November 2, 1987; the window period for filing applications on Channel 300A at Coral Cove, Florida, will open on November 3, 1987, and close on December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-346, adopted August 6, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended for Florida by (1) Adding Channel 223C2 at Safety Harbor; (2) removing Channel 221A at Dunedin; and (3) adding Channel 300A at Coral Cove.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-21990 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-43; RM-5574]

Radio Broadcasting Services; Mountaintop, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of James E. Morgan and Ronald F. Balonis, allocates Channel 246A to Mountaintop, Pennsylvania, as the community's first local FM service. Channel 246A can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence in the allotment has been received since Mountaintop is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 2, 1987; The window period for filing applications will open on November 3, 1987, and closed on December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-43, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Pennsylvania is amended by adding Mountaintop, Channel 246A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-21981 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-485; RM-5355]

Radio Broadcasting Services; Midland, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 222C for Channel 222C1 at Midland, Texas, and modifies the license of Station KNFM(FM) to specify

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 0.408 [Amended]

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding OMB control numbers:

Rule section No	OMB control No
22.208	3060-0150
42.7	3060-0166
42.9	3060-0166
43.52	3060-0169
43.54	3060-0169
43.74	3060-0169
73.45	3060-0146
73.3542	3060-0217
80.31	3060-0365
90.155(a)	3060-0220
90.437	3060-0269

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control numbers:

Rule section No.	OMB control No
15.312(c)	3060-0387
18.203(b)	3060-0329
Part 42	3060-0166
73.1635	3060-0386
73.1690	3060-0374
76.58	3060-0376
76.66	3060-0375
97.521	3060-0368

[FR Doc. 87-21999 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 0 and 43

[CC Docket 86-182, FCC 87-242]

Common Carrier Services, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has established an Automated Reporting System for the collection of the financial and operating data that this Commission requires to administer its accounting, joint cost, jurisdictional separations, rate base disallowance, and access charge rules. Our need to organize and automate carrier data reporting has arisen from the increasing scope and complexity of our regulatory responsibilities. Automation of our data requirements will enhance our data accumulation and analysis systems so as to allow the processing of data in the most effective and efficent manner.

EFFECTIVE DATE: November 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's report and order, CC Docket 86-182, adopted July 16, 1987, and released September 17, 1987.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Report and Order

On May 7, 1986, the FCC released a Notice of Proposed Rulemaking (Notice), CC Docket 86-182 (FCC 86-227), proposing to adopt changes in our rules to implement an automated reporting system for financial and operating data for the local exchange carriers.

By this Report and Order, the FCC established an automated reporting system for financial and operating data for Tier 1 telephone companies which will be phased in over a two-year period, beginning in October, 1987. This reporting system is intended to facilitate the timely and efficient analysis of revenue requirements and rates of return, to provide an improved basis for audit and other oversight functions, and to enhance our ability to quantify the effects of alternative policy proposals. The information submitted by the carriers in the automated reporting system will provide the necessary detail to enable this Commission to fulfill its regulatory responsibilities.

Ordering Clauses

Accordingly, it is ordered, pursuant to the provisions of sections 4(i), 4(j), 201 through 205, 215, 218, 219 and 220(a) of the Communications Act of 1934, as amended, that the automated reporting system is adopted as set forth herein.

It is further ordered, that the Chief of the Common Carrier Bureau is delegated the authority to implement the policies, rules and requirements as set forth herein.

List of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 43

Reports of communication common carriers and certain affiliates.

William J. Tricarico,

Secretary.

Parts 0 and 43 of 47 CFR are amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

2. Section 0.291 (b) is amended by changing the words "and (3) act" to "(3) act", removing the period at the end of the sentence and by adding the following at the end of the paragraph as follows:

§ 0.291 Commission organization.

* * * * *

(b) * * *; and (4) approve or prescribe the specific data to be entered on and the computer format and media for, common carrier reports filed pursuant to the provisions of Part 43 of this chapter.

* * * * *

PART 43—[AMENDED]

3. The authority citation for Part 43 continues to read:

Authority: Sec. 4, 48 stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended, 47 U.S.C. 211, 219, 220.

4. Section 43.21 is amended by revising the second sentence of paragraph (a) and adding new paragraphs (e) and (f) to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

(a) * * * Except as provided in paragraphs (c), (e), and (f) of this section, each annual report required by this section * * *

* * * * *

(e) Each communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations

shall file, no later than December 1 of each year, on computer media prescribed by the Commission, a forecast of regulated and nonregulated use of network plant investment for the following year.

(f) Each local exchange carrier with annual operating revenues of $100 million or more shall file, no later than April 1 of each year, reports showing:

(1) Its revenues, expenses and investment for all accounts established in Part 32 of this chapter, on an operating company basis,

(2) The same Part 32 of this chapter, on a study area basis, with data for regulated and nonregulated operations for those accounts which are related to the carrier's revenue requirement, and

(3) The separations categories on a study area basis, with each category further divided into access elements and a nonaccess interstate category.

6. Section 43.22 is added as follows:

§ 43.22 Quarterly reports of communication common carriers.

Each local exchange carrier with operating revenues for the preceding year of $100 million or more shall file, by March 31, June 30, September 30 and December 31 of each year, a report showing for the previous calendar quarter its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as is required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access and nonaccess.

[FR Doc. 87-22016 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-346; RM-5459 and RM-5661]

Radio Broadcasting Services; Dunedin, Safety Harbor and Coral Cove, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C2 for Channel 221A at Safety Harbor, Florida, and modifies the Class A license for Station WXCR(FM), accordingly, at the request of the licensee, Entertainment Communications, Inc. Additionally, Channel 300A is allotted to Coral Cove, Florida, as a first FM service, in response to a counterproposal filed by Marinna Nemes. With this action, this proceeding is terminated.

DATES: Effective November 2, 1987; the window period for filing applications on Channel 300A at Coral Cove, Florida, will open on November 3, 1987, and close on December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-346, adopted August 6, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended for Florida by (1) Adding Channel 223C2 at Safety Harbor; (2) removing Channel 221A at Dunedin; and (3) adding Channel 300A at Coral Cove.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-21990 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-43; RM-5574]

Radio Broadcasting Services; Mountaintop, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of James E. Morgan and Ronald F. Balonis, allocates Channel 246A to Mountaintop, Pennsylvania, as the community's first local FM service. Channel 246A can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence in the allotment has been received since Mountaintop is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 2, 1987; The window period for filing applications will open on November 3, 1987, and closed on December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-43, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Pennsylvania is amended by adding Mountaintop, Channel 246A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-21981 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-485; RM-5355]

Radio Broadcasting Services; Midland, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 222C for Channel 222C1 at Midland, Texas, and modifies the license of Station KNFM(FM) to specify

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 0.408 [Amended]

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding OMB control numbers:

Rule section No	OMB control No
22.208	3060-0150
42.7	3060-0166
42.9	3060-0166
43.52	3060-0169
43.54	3060-0169
43.74	3060-0169
73.45	3060-0146
73.3542	3060-0217
80.31	3060-0365
90.155(a)	3060-0220
90.437	3060-0269

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control numbers:

Rule section No.	OMB control No
15.312(c)	3060-0387
18.203(b)	3060-0329
Part 42	3060-0166
73.1635	3060-0386
73.1690	3060-0374
76.58	3060-0376
76.66	3060-0375
97.521	3060-0368

[FR Doc. 87-21999 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 0 and 43

[CC Docket 86-182, FCC 87-242]

Common Carrier Services, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has established an Automated Reporting System for the collection of the financial and operating data that this Commission requires to administer its accounting, joint cost, jurisdictional separations, rate base disallowance, and access charge rules. Our need to organize and automate carrier data reporting has arisen from the increasing scope and complexity of our regulatory responsibilities. Automation of our data requirements will enhance our data accumulation and analysis systems so as to allow the processing of data in the most effective and efficent manner.

EFFECTIVE DATE: November 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's report and order, CC Docket 86-182, adopted July 16, 1987, and released September 17, 1987.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Report and Order

On May 7, 1986, the FCC released a Notice of Proposed Rulemaking (Notice), CC Docket 86-182 (FCC 86-227), proposing to adopt changes in our rules to implement an automated reporting system for financial and operating data for the local exchange carriers.

By this Report and Order, the FCC established an automated reporting system for financial and operating data for Tier 1 telephone companies which will be phased in over a two-year period, beginning in October, 1987. This reporting system is intended to facilitate the timely and efficient analysis of revenue requirements and rates of return, to provide an improved basis for audit and other oversight functions, and to enhance our ability to quantify the effects of alternative policy proposals. The information submitted by the carriers in the automated reporting system will provide the necessary detail to enable this Commission to fulfill its regulatory responsibilities.

Ordering Clauses

Accordingly, it is ordered, pursuant to the provisions of sections 4(i), 4(j), 201 through 205, 215, 218, 219 and 220(a) of the Communications Act of 1934, as amended, that the automated reporting system is adopted as set forth herein.

It is further ordered, that the Chief of the Common Carrier Bureau is delegated the authority to implement the policies, rules and requirements as set forth herein.

List of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 43

Reports of communication common carriers and certain affiliates.

William J. Tricarico,

Secretary.

Parts 0 and 43 of 47 CFR are amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

2. Section 0.291 (b) is amended by changing the words "and (3) act" to "(3) act", removing the period at the end of the sentence and by adding the following at the end of the paragraph as follows:

§ 0.291 Commission organization.

* * * * *

(b) * * *; and (4) approve or prescribe the specific data to be entered on and the computer format and media for, common carrier reports filed pursuant to the provisions of Part 43 of this chapter.

* * * * *

PART 43—[AMENDED]

3. The authority citation for Part 43 continues to read:

Authority: Sec. 4, 48 stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended, 47 U.S.C. 211, 219, 220.

4. Section 43.21 is amended by revising the second sentence of paragraph (a) and adding new paragraphs (e) and (f) to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

(a) * * * Except as provided in paragraphs (c), (e), and (f) of this section, each annual report required by this section * * *

* * * * *

(e) Each communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations

Proposed Rules

Federal Register
Vol. 52, No. 185
Thursday, September 24, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 87-097]

Genetically Engineered Organisms and Products; Exemption for Interstate Movement of Certain Microorganisms Under Specified Conditions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations pertaining to the introduction of certain genetically engineered organisms and products by exempting from regulation certain genetically engineered microorganisms which are moved interstate under specified conditions. This proposed amendment would remove unnecessary restrictions on the interstate movement of those microorganisms which do not present a risk of plant pest introduction or dissemination.

DATE: Consideration will be given only to written comments postmarked on or before October 26, 1987.

ADDRESS: Send written comments to Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hayattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: John Payne, Staff Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7908.

SUPPLEMENTARY INFORMATION: On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining a limited permit for the importation or interstate movement of a regulated article. Such permits are required before a regulated article can be introduced in the United States.

On page 22901 of the preamble to the rule, APHIS stated its intention to exempt from regulation, under certain conditions, the interstate movement of certain microorganisms. APHIS noted in the preamble that there appear to be circumstances under which certain genetically engineered organisms can be moved interstate under conditions which would not present a risk of plant pest dissemination, and for which no permit would be required. The preamble cited as such an example, *Escherichia coli (E. coli)* strain K–12, or other bacterial strains with similar characteristics when used a "container" or "gene library" when genetic material is moved interstate. The preamble also indicated that a unique synthetic nucleotide sequence added as a "marker" for identification of a specific microorganism, when constructed such that there are no open reading frames in any register (i.e. is non-coding), also poses no risk and is completely benign.

This document proposes to amend the rule by exempting the interstate movement of certain genetic material from any plant pest in certain hosts under specified conditions. This proposal does not amend the permit requirements concerning release into the environment or importation. Under the proposed exemption, a limited permit for interstate movement would not be required for genetic material from any plant pest contained in *E. coli* strain K–12, sterile strains of *Saccharomyces cerevisiae*, or asporogenic (non-spore forming) strains of *Bacillus subtilis*, provided all of the following conditions are met:

(i) The microorganisms are shipped in a container that meets the requirements of § 340.6(b)(3) of this part;

(ii) The cloned genetic material is maintained on a non-conjugation proficient plasmid and the host does not contain other conjugation proficient plasmids or generalized transducing phages;

(iii) The cloned material does not include the complete infectious genome of a known plant pest;

(iv) The cloned genes are not carried on an expression vector if the cloned genes code for:

(a) A toxin to plants or plant products, or a toxin to organisms beneficial to plants; or

(b) Other factors directly involved in eliciting plant disease (i.e., cell wall degrading enzymes); or

(c) Substances acting as, or inhibitory to, plant growth regulators.

It appears that genetic material from any plant pest moved interstate under the conditions set forth above, and when moved in *E. coli* strain K–12, sterile strains of *S. cerevisiae*, or asporogenic strains of *B. subtilis* would not present a risk of plant pest introduction or dissemination.

The three organisms, *E. coli* strain K–12, sterile strains of *S. cerevisiae* and asporogenic strains of *B. subtilis*, are included in this proposed exemption after review of their biosafety record for recombinant DNA research. These microorganisms have been evaluated over a number of years, and their safety has been demonstrated for recombinant DNA research. These organisms have been certified as hosts for recombinant DNA research by the Recombinant DNA Advisory Committee (RAC) of the National Institutes of Health (NIH). Further, biosafety issues for these organisms have been addressed in various volumes of the proceedings of the NIH RAC entitled "Documents Relating to the NIH Guidelines for Research Involving Recombinant DNA Molecules", and other safety data is available in the *Journal of Infectious Diseases* 137(5):613–709 (1978). These publications include safety data for health and the environment and include results of experiments to assess the potential fate of the microorganisms in the environment, in the event of accidental release. In addition to the

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operation on the new frequency, at the request of Bakcor Broadcasting, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–485, adopted August 19, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 222C1 to read 222C for Midland.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21986 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 256 and 257

[Docket No. 70969–7189]

Fishing Vessel Subsidies

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA removes two parts from the Code of Federal Regulations (CFR) pertaining to Federal funding of subsidies for construction of fishing vessels. Federal authority for these projects has expired. The intended effect is to remove extraneous text from the CFR and effect a cost savings for the Agency.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon (Fishery Management Officer), 202–673–5315.

SUPPLEMENTARY INFORMATION: This final rule removes Parts 256 and 257 from the CFR which pertain to the availability of Federal subsidies for construction of fishing vessels under the United States Fishing Fleet Improvement Act of 1960.

The Act, which is implemented by Parts 256 and 257, provided for the Secretary to accept applications for subsidies until June 30, 1972. Vessels constructed under this program were bound by their contracts for 15 years. This period ended on September 12, 1986, for the last vessel delivered. Thus, the requirements of the Act have been fulfilled and there is not further need for its implementing regulations.

Parts 256 and 257 are obsolete and ineffective. Removing them from the CFR will save annual publication costs and will have no effect on any person or entity.

Classification

This rule is not a major rule under Executive Order 12291 requiring a regulatory impact analysis because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterpises in domestic or export markets.

The Administrative Procedure Act (APA) (5 U.S.C. 553) requirements of notice and comment and delayed effective date are unnecessary because the requirements of the United States Fishing Fleet Improvement Act of 1960 have been fulfilled and there is no further need for its implementing regulations.

Notice and comment for this rule are not required by the APA or any other law. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 603).

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects

50 CFR Part 256

Fisheries, Fishing vessels, Grant programs—business, Reporting and recordkeeping requirements.

50 CFR Part 257

Administrative practice and procedure, Fisheries, Fishing vessels, Grant programs—business.

Dated: September 17, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR is amended under the authority of 46 U.S.C. 1410 as follows:

PARTS 256 AND 257—[REMOVED]

1. Parts 256 and 257 are removed.

[FR Doc. 87–21918 Filed 9–23–87; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 185
Thursday, September 24, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 87-097]

Genetically Engineered Organisms and Products; Exemption for Interstate Movement of Certain Microorganisms Under Specified Conditions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations pertaining to the introduction of certain genetically engineered organisms and products by exempting from regulation certain genetically engineered microorganisms which are moved interstate under specified conditions. This proposed amendment would remove unnecessary restrictions on the interstate movement of those microorganisms which do not present a risk of plant pest introduction or dissemination.

DATE: Consideration will be given only to written comments postmarked on or before October 26, 1987.

ADDRESS: Send written comments to Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hayattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: John Payne, Staff Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7908.

SUPPLEMENTARY INFORMATION: On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining a limited permit for the importation or interstate movement of a regulated article. Such permits are required before a regulated article can be introduced in the United States.

On page 22901 of the preamble to the rule, APHIS stated its intention to exempt from regulation, under certain conditions, the interstate movement of certain microorganisms. APHIS noted in the preamble that there appear to be circumstances under which certain genetically engineered organisms can be moved interstate under conditions which would not present a risk of plant pest dissemination, and for which no permit would be required. The preamble cited as such an example, *Escherichia coli (E. coli)* strain K–12, or other bacterial strains with similar characteristics when used a "container" or "gene library" when genetic material is moved interstate. The preamble also indicated that a unique synthetic nucleotide sequence added as a "marker" for identification of a specific microorganism, when constructed such that there are no open reading frames in any register (i.e. is non-coding), also poses no risk and is completely benign.

This document proposes to amend the rule by exempting the interstate movement of certain genetic material from any plant pest in certain hosts under specified conditions. This proposal does not amend the permit requirements concerning release into the environment or importation. Under the proposed exemption, a limited permit for interstate movement would not be required for genetic material from any plant pest contained in *E. coli* strain K–12, sterile strains of *Saccharomyces cerevisiae*, or asporogenic (non-spore forming) strains of *Bacillus subtilis*, provided all of the following conditions are met:

(i) The microorganisms are shipped in a container that meets the requirements of § 340.6(b)(3) of this part;

(ii) The cloned genetic material is maintained on a non-conjugation proficient plasmid and the host does not contain other conjugation proficient plasmids or generalized transducing phages;

(iii) The cloned material does not include the complete infectious genome of a known plant pest;

(iv) The cloned genes are not carried on an expression vector if the cloned genes code for:

(a) A toxin to plants or plant products, or a toxin to organisms beneficial to plants; or

(b) Other factors directly involved in eliciting plant disease (i.e., cell wall degrading enzymes); or

(c) Substances acting as, or inhibitory to, plant growth regulators.

It appears that genetic material from any plant pest moved interstate under the conditions set forth above, and when moved in *E. coli* strain K–12, sterile strains of *S. cerevisiae*, or asporogenic strains of *B. subtilis* would not present a risk of plant pest introduction or dissemination.

The three organisms, *E. coli* strain K–12, sterile strains of *S. cerevisiae* and asporogenic strains of *B. subtilis*, are included in this proposed exemption after review of their biosafety record for recombinant DNA research. These microorganisms have been evaluated over a number of years, and their safety has been demonstrated for recombinant DNA research. These organisms have been certified as hosts for recombinant DNA research by the Recombinant DNA Advisory Committee (RAC) of the National Institutes of Health (NIH). Further, biosafety issues for these organisms have been addressed in various volumes of the proceedings of the NIH RAC entitled "Documents Relating to the NIH Guidelines for Research Involving Recombinant DNA Molecules", and other safety data is available in the *Journal of Infectious Diseases* 137(5):613–709 (1978). These publications include safety data for health and the environment and include results of experiments to assess the potential fate of the microorganisms in the environment, in the event of accidental release. In addition to the

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operation on the new frequency, at the request of Bakcor Broadcasting, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–485, adopted August 19, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 222C1 to read 222C for Midland.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21986 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 256 and 257

[Docket No. 70969–7189]

Fishing Vessel Subsidies

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA removes two parts from the Code of Federal Regulations (CFR) pertaining to Federal funding of subsidies for construction of fishing vessels. Federal authority for these projects has expired. The intended effect is to remove extraneous text from the CFR and effect a cost savings for the Agency.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon (Fishery Management Officer), 202–673–5315.

SUPPLEMENTARY INFORMATION: This final rule removes Parts 256 and 257 from the CFR which pertain to the availability of Federal subsidies for construction of fishing vessels under the United States Fishing Fleet Improvement Act of 1960.

The Act, which is implemented by Parts 256 and 257, provided for the Secretary to accept applications for subsidies until June 30, 1972. Vessels constructed under this program were bound by their contracts for 15 years. This period ended on September 12, 1986, for the last vessel delivered. Thus, the requirements of the Act have been fulfilled and there is not further need for its implementing regulations.

Parts 256 and 257 are obsolete and ineffective. Removing them from the CFR will save annual publication costs and will have no effect on any person or entity.

Classification

This rule is not a major rule under Executive Order 12291 requiring a regulatory impact analysis because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterpises in domestic or export markets.

The Administrative Procedure Act (APA) (5 U.S.C. 553) requirements of notice and comment and delayed effective date are unnecessary because the requirements of the United States Fishing Fleet Improvement Act of 1960 have been fulfilled and there is no further need for its implementing regulations.

Notice and comment for this rule are not required by the APA or any other law. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 603).

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects

50 CFR Part 256

Fisheries, Fishing vessels, Grant programs—business, Reporting and recordkeeping requirements.

50 CFR Part 257

Administrative practice and procedure, Fisheries, Fishing vessels, Grant programs—business.

Dated: September 17, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR is amended under the authority of 46 U.S.C. 1410 as follows:

PARTS 256 AND 257—[REMOVED]

1. Parts 256 and 257 are removed.

[FR Doc. 87–21918 Filed 9–23–87; 8:45 am]

BILLING CODE 3510–22–M

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substantial data available from the RAC. APHIS has independently reviewed the pertinent scientific literature.

The rationale for imposing conditions (i)–(iv) above is as follows: (1) Requiring that the microorganisms be shipped in a container that meets the requirements of § 340.6(b)(3) of this part ensures that the microorganisms are adequately physically contained during interstate movement. Furthermore, such container requirements are simply sound and prudent measures that should be employed when shipping microorganisms between laboratories. (2) Requiring that the cloned genetic material be maintained on a non-conjugation proficient plasmid and that host organism does not contain other conjugation proficient plasmids or generalized transducing phages, ensures that in the event of an accidental release, the risk of horizontal movement (the transfer of genetic material between organisms) of the genetic material is negligible. (A conjugation proficient plasmid is a replicating non-chromosomal DNA molecule that promotes the transfer of genetic information from one bacterium to another during cell to cell contact. A generalized transducing phage is a bacterial virus capable of transferring non-specific DNA sequences between bacteria.) (3) The condition that the cloned material not include the complete infectious genome of a plant pest ensures that such genetic material would not be able to incite plant disease. (4) The requirement that certain classes of cloned genes not be carried on an expression vector, and thus not be expressed in the host, ensures that the host does not itself become a plant pest. In short, APHIS believes that when plant pest genetic material is moved interstate under the conditions set forth above, this would provide adequate safeguards which would prevent the introduction and dissemination of plant pests.

APHIS solicits credible data that would establish that there are other bacterial or fungal strains, in addition to *E. coli* strain K–12, sterile strains of *S. cerevisiae*, or asporogenic strains of *B. subtilis*, that would not present a risk of plant pest introduction or dissemination when used as a host for plant pest genetic material, under specified conditions.

Lastly, it should be noted that it has not been necessary for APHIS to include language in this proposed rule that would exempt non-coding synthetic nucleotide sequences that are used as "markers". A non-coding nucleotide sequence produced *de novo* (not made from a preexisting sequence) by synthetic means is not a regulated article as defined in § 340.1 of the rule because such sequence would not be an organism and would not be from an organism.

APHIS proposes to amend the rule by changing the title of § 340.2 to read, "Groups of organisms which are or contain plant pests and exemptions." The existing list of organisms in § 340.2 would be listed under a new paragraph (a) entitled, "*Groups of organisms which are or contain plant pests*" and a new paragraph (b) entitled, "*Exemptions*" would be added which includes the proposed exemption.

Definitions

APHIS is also proposing to add the following definition of the term "expression vector" in § 340.1 so that this term will be readily distinguished from the term "vector."

Expression vector. A cloning vector designed so that a coding sequence inserted at a particular site will be transcribed and translated into protein.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the proposed rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this proposed rule would be to exempt a person from having to obtain a limited permit when certain genetic material from a plant pest is moved interstate in certain microorganisms in accordance with specified conditions. Currently, such a limited permit requires the submission of data about the nature of the organism, how it was produced, and a description of the contained facility at destination. Such data should already be available to the researcher. The proposal would relieve a person from having to submit an application to APHIS for a limited permit, which would result in a savings of the time which would ordinarily be associated with the preparation of such a permit application. Therefore, the deletion of the requirement to submit the data to obtain a limited permit should not have a significant economic impact on a substantial number of small entities.

The conditions that would have to be complied with under the proposed exemption, are those that a researcher would normally employ when using these microorganisms as gene libraries, with the exception of not being able to ship genes that code for substances harmful to plants or organisms beneficial to plants. If such types of genetic material were shipped in these microorganisms, the proposed exemption would not apply, and a limited permit would have to be obtained. It is expected that this exemption will affect at least several thousand research scientists, some of whom may be operating small businesses which would be deemed "small entities" under the Regulatory Flexibility Act. The proposed regulation would exempt them from the requirement of having to obtain a limited permit under the circumstances described above.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 340

Agricultural Commodities, Biotechnology, Genetic engineering, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

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substantial data available from the RAC. APHIS has independently reviewed the pertinent scientific literature.

The rationale for imposing conditions (i)–(iv) above is as follows: (1) Requiring that the microorganisms be shipped in a container that meets the requirements of § 340.6(b)(3) of this part ensures that the microorganisms are adequately physically contained during interstate movement. Furthermore, such container requirements are simply sound and prudent measures that should be employed when shipping microorganisms between laboratories. (2) Requiring that the cloned genetic material be maintained on a non-conjugation proficient plasmid and that host organism does not contain other conjugation proficient plasmids or generalized transducing phages, ensures that in the event of an accidental release, the risk of horizontal movement (the transfer of genetic material between organisms) of the genetic material is negligible. (A conjugation proficient plasmid is a replicating non-chromosomal DNA molecule that promotes the transfer of genetic information from one bacterium to another during cell to cell contact. A generalized transducing phage is a bacterial virus capable of transferring non-specific DNA sequences between bacteria.) (3) The condition that the cloned material not include the complete infectious genome of a plant pest ensures that such genetic material would not be able to incite plant disease. (4) The requirement that certain classes of cloned genes not be carried on an expression vector, and thus not be expressed in the host, ensures that the host does not itself become a plant pest. In short, APHIS believes that when plant pest genetic material is moved interstate under the conditions set forth above, this would provide adequate safeguards which would prevent the introduction and dissemination of plant pests.

APHIS solicits credible data that would establish that there are other bacterial or fungal strains, in addition to *E. coli* strain K–12, sterile strains of *S. cerevisiae*, or asporogenic strains of *B. subtilis*, that would not present a risk of plant pest introduction or dissemination when used as a host for plant pest genetic material, under specified conditions.

Lastly, it should be noted that it has not been necessary for APHIS to include language in this proposed rule that would exempt non-coding synthetic nucleotide sequences that are used as "markers". A non-coding nucleotide sequence produced *de novo* (not made from a preexisting sequence) by synthetic means is not a regulated article as defined in § 340.1 of the rule because such sequence would not be an organism and would not be from an organism.

APHIS proposes to amend the rule by changing the title of § 340.2 to read, "Groups of organisms which are or contain plant pests and exemptions." The existing list of organisms in § 340.2 would be listed under a new paragraph (a) entitled, "*Groups of organisms which are or contain plant pests*" and a new paragraph (b) entitled, "*Exemptions*" would be added which includes the proposed exemption.

Definitions

APHIS is also proposing to add the following definition of the term "expression vector" in § 340.1 so that this term will be readily distinguished from the term "vector."

Expression vector. A cloning vector designed so that a coding sequence inserted at a particular site will be transcribed and translated into protein.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the proposed rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this proposed rule would be to exempt a person from having to obtain a limited permit when certain genetic material from a plant pest is moved interstate in certain microorganisms in accordance with specified conditions. Currently, such a limited permit requires the submission of data about the nature of the organism, how it was produced, and a description of the contained facility at destination. Such data should already be available to the researcher. The proposal would relieve a person from having to submit an application to APHIS for a limited permit, which would result in a savings of the time which would ordinarily be associated with the preparation of such a permit application. Therefore, the deletion of the requirement to submit the data to obtain a limited permit should not have a significant economic impact on a substantial number of small entities.

The conditions that would have to be complied with under the proposed exemption, are those that a researcher would normally employ when using these microorganisms as gene libraries, with the exception of not being able to ship genes that code for substances harmful to plants or organisms beneficial to plants. If such types of genetic material were shipped in these microorganisms, the proposed exemption would not apply, and a limited permit would have to be obtained. It is expected that this exemption will affect at least several thousand research scientists, some of whom may be operating small businesses which would be deemed "small entities" under the Regulatory Flexibility Act. The proposed regulation would exempt them from the requirement of having to obtain a limited permit under the circumstances described above.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 340

Agricultural Commodities, Biotechnology, Genetic engineering, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

Accordingly, it is proposed to amend 7 CFR Part 340 as follows:

1. The authority citation for Part 340 would continue to read as follows:

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

§ 340.1 [Amended]

2. Section 340.1 would be amended by adding the following definition of "*Expression vector*" in alphabetical order to the list of existing terms:

Expression vector. A cloning vector designed so that a coding sequence inserted at a particular site will be transcribed and translated into protein.

§ 340.2 [Amended]

3. The heading for § 340.2 "Groups of organism which are or contain plant pests" would be amended to read "Groups of organisms which are or contain plant pests and exemptions."

4. In § 340.2, at the beginning of the introductory text, a new paragraph heading would be added to read "(a) *Groups of organisms which are or contain plant pests.*"

5. In § 340.2 at the end of the text, a new paragraph (b) would be added as follows:

(b) *Exemptions.*

(1) A limited permit for interstate movement shall not be required for genetic material from any plant pest contained in *Escherichia coli* strain K–12, sterile strains of *Saccharomyces cerevisiae*, or asporogenic strains of *Bacillus subtilis*, provided that all of the following conditions are met:

(i) The microorganisms are shipped in a container that meets the requirements of § 340.6(b)(3) of this part;

(ii) The cloned genetic material is maintained on a non-conjugation proficient plasmid and the host does not contain other conjugation proficient plasmids or generalized transducing phages;

(iii) The cloned material does not include the complete infectious genome of a known plant pest;

(iv) The cloned genes are not carried on an expression vector if the cloned genes code for:

(A) A toxin to plants to plant products, or a toxin to organisms beneficial to plants; or

(B) Other factors directly involved in eliciting plant disease (i.e., cell wall degrading enzymes); or

(C) Substances acting as, or inhibitory to, plant growth regulators.

Done in Washington, DC, this 21st day of September, 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–22083 Filed 9–23–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 15 and 2002

[Docket No. R–87–1348; FR–2362]

The Freedom of Information Reform Act of 1986; Fee Schedule and Fee Waiver Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends HUD regulations governing fees charged for services incurred in response to Freedom of Information Act requests.

This proposed rule would implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) which require agencies to publish a schedule of fees to be charged and procedures to be followed in processing requests for records and requests for waiver or reduction of fees under the Freedom of Information Act.

DATES: Comment due date: October 26, 1987.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Office of General Counsel, Room 10254, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–7137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: HUD is publishing for public notice and comment a proposed schedule of fees and procedures to be followed under the Freedom of Information Act. As required by the Freedom of Information Reform Act of 1986, HUD has developed these rules in conformity with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012).

Findings and Certifications

This rule is not subject to environmental review under the Department's procedures set out in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Under 24 CFR 50.20(k), internal administrative procedures are categorically excluded from NEPA requirements.

This rule does not constitute a "major rule" as that term is defined in section (1)(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

This rule was not listed on the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14382) under Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not affect any program included in the Catalog of Federal Domestic Assistance Programs.

List of Subjects in 24 CFR Parts 15 and 2002

Classified information, Freedom of information, Testimony, Production and disclosure of material or information by HUD employees.

For the reasons set out in the preamble, 24 CFR Subtitle A and Chapter XII are proposed to be amended as follows:

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

Accordingly, it is proposed to amend 7 CFR Part 340 as follows:

1. The authority citation for Part 340 would continue to read as follows:

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

§ 340.1 [Amended]

2. Section 340.1 would be amended by adding the following definition of "*Expression vector*" in alphabetical order to the list of existing terms:

Expression vector. A cloning vector designed so that a coding sequence inserted at a particular site will be transcribed and translated into protein.

§ 340.2 [Amended]

3. The heading for § 340.2 "Groups of organism which are or contain plant pests" would be amended to read "Groups of organisms which are or contain plant pests and exemptions."

4. In § 340.2, at the beginning of the introductory text, a new paragraph heading would be added to read "(a) *Groups of organisms which are or contain plant pests.*"

5. In § 340.2 at the end of the text, a new paragraph (b) would be added as follows:

(b) *Exemptions.*

(1) A limited permit for interstate movement shall not be required for genetic material from any plant pest contained in *Escherichia coli* strain K–12, sterile strains of *Saccharomyces cerevisiae*, or asporogenic strains of *Bacillus subtilis*, provided that all of the following conditions are met:

(i) The microorganisms are shipped in a container that meets the requirements of § 340.6(b)(3) of this part;

(ii) The cloned genetic material is maintained on a non-conjugation proficient plasmid and the host does not contain other conjugation proficient plasmids or generalized transducing phages;

(iii) The cloned material does not include the complete infectious genome of a known plant pest;

(iv) The cloned genes are not carried on an expression vector if the cloned genes code for:

(A) A toxin to plants to plant products, or a toxin to organisms beneficial to plants; or

(B) Other factors directly involved in eliciting plant disease (i.e., cell wall degrading enzymes); or

(C) Substances acting as, or inhibitory to, plant growth regulators.

Done in Washington, DC, this 21st day of September, 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–22083 Filed 9–23–87; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 15 and 2002

[Docket No. R–87–1348; FR–2362]

The Freedom of Information Reform Act of 1986; Fee Schedule and Fee Waiver Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends HUD regulations governing fees charged for services incurred in response to Freedom of Information Act requests.

This proposed rule would implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) which require agencies to publish a schedule of fees to be charged and procedures to be followed in processing requests for records and requests for waiver or reduction of fees under the Freedom of Information Act.

DATES: Comment due date: October 26, 1987.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Office of General Counsel, Room 10254, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–7137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: HUD is publishing for public notice and comment a proposed schedule of fees and procedures to be followed under the Freedom of Information Act. As required by the Freedom of Information Reform Act of 1986, HUD has developed these rules in conformity with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012).

Findings and Certifications

This rule is not subject to environmental review under the Department's procedures set out in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Under 24 CFR 50.20(k), internal administrative procedures are categorically excluded from NEPA requirements.

This rule does not constitute a "major rule" as that term is defined in section (1)(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

This rule was not listed on the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14382) under Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not affect any program included in the Catalog of Federal Domestic Assistance Programs.

List of Subjects in 24 CFR Parts 15 and 2002

Classified information, Freedom of information, Testimony, Production and disclosure of material or information by HUD employees.

For the reasons set out in the preamble, 24 CFR Subtitle A and Chapter XII are proposed to be amended as follows:

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PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for 24 CFR Part 15 would be revised to read as follows:

Authority: Freedom of Information Act (5 U.S.C. 552); Freedom of Information Reform Act of 1986 (Pub. L. 99-570); sec. 7(d) of the Department of Housing and Urban Development Act (43 U.S.C. 3535(d)).

2. Subparts C, D, and E of the Table of Contents for Part 15 would be revised to read as follows:

* * * * *

Subpart C—Procedures for Assessing and Collecting Fees

Sec.
15.14 Fees.
15.15 Fees to be charged—categories of requesters.
15.16 Review of records, aggregating requests and waiving or reducing fees.
15.17 Charges for interest and for unsuccessful searches; Utilization of Debt Collection Act.
15.18 Advance payments.

Subpart D—Exemptions

15.21 Exemptions authorized by 5 U.S.C. 552.

Subpart E—Procedures for Requesting Access and Obtaining Records

15.31 Information centers.
15.32 Information officers.
15.33 Material in Department Central Information Center.
15.41 Requests for records.
15.42 Time limitations.

* * * * *

3. Section 15.14 would be revised, and new §§ 15.15 through 15.18 would be added, to read as follows:

§ 15.14 Fees.

(a) *Copies of records.* HUD will charge $0.10 per page for copies of documents up to 11" × 14". For copies prepared by computer, such as tapes or printouts, HUD will charge the actual costs, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, HUD will charge the actual direct costs of producing the document(s).

(b) *Manual searches for records.* Whenever feasible, HUD will charge at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively in a search (*e.g.*, all administrative/clerical, or all professional/executive), HUD will charge $9.25 per hour for clerical time and $18.50 per hour for professional time. Charges for search time less than a full hour will be billed by five-minute (1⅓ of one hour) segments.

(c) *Computer searches for records.* HUD will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, HUD will ensure that the ultimate cost to the requester is no greater than it would be if HUD itself had performed these tasks. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

(e) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commerical use, HUD will provide the first 100 pages of duplication and the first two hours of search time without charge. For noncommercial use requesters, HUD will not begin to assess fees until after HUD has provided the free search and reproduction. No charge will be assessed non-commerical use requesters when the search time and reproduction costs, over and above the free search time and reproduction allocation, totals no more than $5.00. For commercial use requester, no charge will be asessed when the search time, reproduction and review costs total no more than $5.00. "Search time" in this context is based on *manual search.* To apply this term to searches made by computer, HUD will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, HUD will begin assessing charges for computer search.

(f) *Payment of fees.* Payment of fees under this section and under § 15.16(a) shall be made in cash or by U.S. money order or by certified bank check payable to the Treasurer of the United States. The fees shall be sent to the organizational unit within HUD responding to the request.

(g) *Definitions.* As used in this subpart:

(1) "Direct costs" means those expenditures which HUD actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employees plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not incuded in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is distinguished from "review" of material in order to determine whether the material is exempt from disclosure.

(3) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) "Review" means the process of examining a document located in response to a request that is for a commercial use to determine whether any portion of it may be withheld, excising portions to be withheld and otherwise preparing the document for release. "Review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 15.15 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees are prescribed for each of these categories:

(a) *Commercial use requesters.* (1) HUD will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating

records sought for commercial use. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) "Commercial use" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, HUD must determine the use to which a requester will put the documents requested. Moreover, where HUD has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, HUD will seek additional clarification before assigning the request to a specific category.

(b) *Educational and non-commercial scientific institution requesters.* (1) HUD will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a comemrcial use, but are sought for furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(2) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(3) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is referenced in § 15.15(a) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(c) *Requesters who are representatives of the news media.* (1) HUD will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(2) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* HUD will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

§ 15.16 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the *initial* review; *i.e.*, the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.14.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When HUD reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees HUD may aggregate any such requests and charge accordingly.

(c) *Waiving or reducing fees.* HUD will furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. These factors are as follows:

(1) *The subject of the request:* Whether the subject of the requested records concerns "the operations or activities of the government";

(2) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding";

(4) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." The official authorized to grant access to records may waive or reduce the applicable fee where requested. The determination not to waive or reduce the fee will be subject to administrative

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PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for 24 CFR Part 15 would be revised to read as follows:

Authority: Freedom of Information Act (5 U.S.C. 552); Freedom of Information Reform Act of 1986 (Pub. L. 99-570); sec. 7(d) of the Department of Housing and Urban Development Act (43 U.S.C. 3535(d)).

2. Subparts C, D, and E of the Table of Contents for Part 15 would be revised to read as follows:

* * * * *

Subpart C—Procedures for Assessing and Collecting Fees

Sec.
15.14 Fees.
15.15 Fees to be charged—categories of requesters.
15.16 Review of records, aggregating requests and waiving or reducing fees.
15.17 Charges for interest and for unsuccessful searches; Utilization of Debt Collection Act.
15.18 Advance payments.

Subpart D—Exemptions

15.21 Exemptions authorized by 5 U.S.C. 552.

Subpart E—Procedures for Requesting Access and Obtaining Records

15.31 Information centers.
15.32 Information officers.
15.33 Material in Department Central Information Center.
15.41 Requests for records.
15.42 Time limitations.

* * * * *

3. Section 15.14 would be revised, and new §§ 15.15 through 15.18 would be added, to read as follows:

§ 15.14 Fees.

(a) *Copies of records.* HUD will charge $0.10 per page for copies of documents up to 11" × 14". For copies prepared by computer, such as tapes or printouts, HUD will charge the actual costs, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, HUD will charge the actual direct costs of producing the document(s).

(b) *Manual searches for records.* Whenever feasible, HUD will charge at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively in a search (*e.g.*, all administrative/clerical, or all professional/executive), HUD will charge $9.25 per hour for clerical time and $18.50 per hour for professional time. Charges for search time less than a full hour will be billed by five-minute (1⅓ of one hour) segments.

(c) *Computer searches for records.* HUD will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, HUD will ensure that the ultimate cost to the requester is no greater than it would be if HUD itself had performed these tasks. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

(e) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commerical use, HUD will provide the first 100 pages of duplication and the first two hours of search time without charge. For noncommercial use requesters, HUD will not begin to assess fees until after HUD has provided the free search and reproduction. No charge will be assessed non-commerical use requesters when the search time and reproduction costs, over and above the free search time and reproduction allocation, totals no more than $5.00. For commercial use requester, no charge will be asessed when the search time, reproduction and review costs total no more than $5.00. "Search time" in this context is based on *manual search.* To apply this term to searches made by computer, HUD will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, HUD will begin assessing charges for computer search.

(f) *Payment of fees.* Payment of fees under this section and under § 15.16(a) shall be made in cash or by U.S. money order or by certified bank check payable to the Treasurer of the United States. The fees shall be sent to the organizational unit within HUD responding to the request.

(g) *Definitions.* As used in this subpart:

(1) "Direct costs" means those expenditures which HUD actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employees plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not incuded in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is distinguished from "review" of material in order to determine whether the material is exempt from disclosure.

(3) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) "Review" means the process of examining a document located in response to a request that is for a commercial use to determine whether any portion of it may be withheld, excising portions to be withheld and otherwise preparing the document for release. "Review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 15.15 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees are prescribed for each of these categories:

(a) *Commercial use requesters.* (1) HUD will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating

records sought for commercial use. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) "Commercial use" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, HUD must determine the use to which a requester will put the documents requested. Moreover, where HUD has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, HUD will seek additional clarification before assigning the request to a specific category.

(b) *Educational and non-commercial scientific institution requesters.* (1) HUD will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a comemrcial use, but are sought for furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(2) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(3) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is referenced in § 15.15(a) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(c) *Requesters who are representatives of the news media.* (1) HUD will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(2) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* HUD will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

§ 15.16 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the *initial* review; *i.e.*, the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.14.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When HUD reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees HUD may aggregate any such requests and charge accordingly.

(c) *Waiving or reducing fees.* HUD will furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. These factors are as follows:

(1) *The subject of the request:* Whether the subject of the requested records concerns "the operations or activities of the government";

(2) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding";

(4) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." The official authorized to grant access to records may waive or reduce the applicable fee where requested. The determination not to waive or reduce the fee will be subject to administrative

review as provided in §15.61 after the decision on the request for access has been made.

§15.17 Charges for interest and for unsuccessful searches; utilization of Debt Collection Act.

(a) *Charging interest.* HUD will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee received by HUD, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charge for unsuccessful search.* Ordinarily no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or my be withheld as exempt, fees shall be charged.

(c) *Use of Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may, under the authority of the Debt Collection Act and Part 17, Subpart C of this title, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed the Department.

§ 15.18 Advance payments.

(a) HUD may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) HUD estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, HUD will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may require the requester to pay the full amount owed plus any applicable interest as provided by §15.17(a) or demonstrate that he has, in fact, paid the fees, and to make an advance payment of the full amount of the estimated fee before HUD begins to process a new request or a pending request from that requester.

(b) When HUD acts under paragraphs (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after HUD has received fee payments described above.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

4. HUD proposes to include in its final rule comparable amendments for the HUD Inspector General's regulations governing availability of information to the public, 24 CFR Part 2002.

Dated: July 28, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-22094 Filed 9-23-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1223-87]

Organization of the Department of Justice

AGENCY: Department of Justice.

ACTION: Proposed rulemaking.

SUMMARY: The Department of Justice proposes to amend § 0.34(c) of Title 28 of the Federal Regulations which concerns the function and membership of a policy advisory group for INTERPOL-United States National Central Bureau. The proposed change would create a Management Policy Group with discretion to convene an advisory group.

DATE: Comments must be received on or before October 26, 1987.

ADDRESS: Please submit written comments to: Richard C. Stiener, Chief, INTERPOL-United States National Central Bureau, U.S. Department of Justice, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary Jo Grotenrath, General Counsel, United States National Central Bureau, U.S. Department of Justice, Washington, DC 20530. Phone Number: (202) 272-8383. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The initial policy advisory group was structured in a manner perceived to be the most efficient and effective means of reviewing and developing INTERPOL programs and policies at the time. In actual practice over the years, responsibility for the INTERPOL programs came to be centered in what is known as the Management Policy Group which is identified in greater detail subsequently herein. Accordingly, the original structure and composition of the advisory group no longer adequately fulfills the anticipated needs.

The designated Management Policy Group with the discretion to convene an advisory group offers a more efficient and effective method of reviewing the developing INTERPOL programs and policies.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small business entities. It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure.

Accordingly, it is proposed to amend 28 CFR Part 0 as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et. seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569, 31 U.S.C. 1108; 50 U.S.C. App. 2001-2017p; Pub. L. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

§ 0.34 [Amended]

2. Paragraph (c) of § 0.34 is amended to read as follows:

* * * * *

(c) Serve as a member of a Management Policy Group to review and develop INTERPOL programs and policies. This Management Policy Group will include as well the designee of the Attorney Genetral, who is the United

review as provided in §15.61 after the decision on the request for access has been made.

§15.17 Charges for interest and for unsuccessful searches; utilization of Debt Collection Act.

(a) *Charging interest.* HUD will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee received by HUD, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charge for unsuccessful search.* Ordinarily no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or my be withheld as exempt, fees shall be charged.

(c) *Use of Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may, under the authority of the Debt Collection Act and Part 17, Subpart C of this title, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed the Department.

§ 15.18 Advance payments.

(a) HUD may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) HUD estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, HUD will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may require the requester to pay the full amount owed plus any applicable interest as provided by §15.17(a) or demonstrate that he has, in fact, paid the fees, and to make an advance payment of the full amount of the estimated fee before HUD begins to process a new request or a pending request from that requester.

(b) When HUD acts under paragraphs (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after HUD has received fee payments described above.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

4. HUD proposes to include in its final rule comparable amendments for the HUD Inspector General's regulations governing availability of information to the public, 24 CFR Part 2002.

Dated: July 28, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-22094 Filed 9-23-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1223-87]

Organization of the Department of Justice

AGENCY: Department of Justice.

ACTION: Proposed rulemaking.

SUMMARY: The Department of Justice proposes to amend § 0.34(c) of Title 28 of the Federal Regulations which concerns the function and membership of a policy advisory group for INTERPOL-United States National Central Bureau. The proposed change would create a Management Policy Group with discretion to convene an advisory group.

DATE: Comments must be received on or before October 26, 1987.

ADDRESS: Please submit written comments to: Richard C. Stiener, Chief, INTERPOL-United States National Central Bureau, U.S. Department of Justice, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary Jo Grotenrath, General Counsel, United States National Central Bureau, U.S. Department of Justice, Washington, DC 20530. Phone Number: (202) 272-8383. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The initial policy advisory group was structured in a manner perceived to be the most efficient and effective means of reviewing and developing INTERPOL programs and policies at the time. In actual practice over the years, responsibility for the INTERPOL programs came to be centered in what is known as the Management Policy Group which is identified in greater detail subsequently herein. Accordingly, the original structure and composition of the advisory group no longer adequately fulfills the anticipated needs.

The designated Management Policy Group with the discretion to convene an advisory group offers a more efficient and effective method of reviewing the developing INTERPOL programs and policies.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small business entities. It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure.

Accordingly, it is proposed to amend 28 CFR Part 0 as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et. seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569, 31 U.S.C. 1108; 50 U.S.C. App. 2001-2017p; Pub. L. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

§ 0.34 [Amended]

2. Paragraph (c) of § 0.34 is amended to read as follows:

* * * * *

(c) Serve as a member of a Management Policy Group to review and develop INTERPOL programs and policies. This Management Policy Group will include as well the designee of the Attorney Genetral, who is the United

States representative to INTERPOL, and the designee of the Secretary of the Treasury who is the alternate representative to INTERPOL. The Attorney General's designee and the Secretary of the Treasury's designee may expand the Management Policy Group to include any U.S. Government official serving as an elected officer to INTERPOL, e.g., President, Vice President or Executive Committee Member. The Management Policy Group, at its discretion, may convene as advisory group comprised of the heads of the agencies or offices which are participating members of the United States National Central Bureau (USNCB), as necessary, to assist in the review and development of INTERPOL programs and policies. The Attorney General's designee representing the Department of Justice and the Secretary of the Treasury's designee representing the Department of the Treasury may submit any matter regarding INTERPOL-USNCB leadership or organizational placement within the Department of Justice to the Advisory Group for resolution by a majority decision.

* * * * *

Dated: September 14, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-22009 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 887

Military Personnel; Issuing Certificates in Lieu of Lost or Destroyed Certificates of Separation

AGENCY: Department of the Air Force, Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is amending its regulations by revising Part 887, Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation. This regulation tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation and where and how to apply. This revision provides additional information and makes minor changes to update and to clarify the part.

DATE: Comments must be submitted on or before October 26, 1987.

ADDRESS: HQ AFMPC/DPMDOP, Randolph AFB, Texas 78150-6001.

FOR FURTHER INFORMATION CONTACT: Mr. Sal Garcia, telephone (512) 652-2089.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 887

Archives and records, Military personnel.

Therefore, 32 CFR Part 887 is proposed to be revised as follows:

PART 887—ISSUING OF CERTIFICATES IN LIEU OF LOST OR DESTROYED CERTIFICATES OF SEPARATION

Sec.

887.0 Purpose.
887.1 Explanation of terms.
887.2 Safeguarding certificates.
887.3 Persons authorized CILs.
887.4 Requesting CILs.
887.5 Issuing CILs.
887.6 Who must sign CILs.
887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.
887.8 Where to apply for certificates.
887.9 Furnishing photocopies of documents.

Authority: 10 U.S.C. 1041.

§ 887.0 Purpose.

This part tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation. It explains where and how to apply. It implements 10 U.S.C. 1041 and DOD Instruction 1332.13, December 23, 1968. This publication applies to ANG and USAFR members. It authorizes collection of information protected by the Privacy Act of 1974. The authority to collect the information is Title 10, U.S.C. 8912 and Executive Order 9397. Each form used to collect personal information has an associated Privacy Act Statement that will be given to the individual before information is collected. System of records notice F035 AF MP C, Military Personnel Records System, applies.

§ 887.1 Explanation of terms.

(a) *Certificate in lieu (CIL).* A certificate issued in lieu of a lost or destroyed certificate of service, discharge, or retirement.

(b) *Service person.* One who:

(1) Is currently serving as a member of the Air Force; or

(2) Formerly served in the active military service as a member of the Air Force and all military affiliation was terminated after September 25, 1947.

(c) *Surviving spouse.* A survivor who was legally married to a member of the service at the time of the member's death.

(d) *Guardian.* A person or group of persons legally placed in charge of the affairs of a service member adjudicated mentally incompetent.

§ 887.2 Safeguarding certificates.

Certificates of separation are important personal documents. Processing applications for CILs is costly to the Air Force. To keep requests for CILs at a minimum:

(a) Personnel officers will tell members of the importance of safeguarding the original certificates.

(b) Persons who issue CILs will type or stamp across the lower margin "THIS IS AN IMPORTANT RECORD—SAFEGUARD IT" (if it is not printed on the certificate).

Note.—Do not show this legend on DD Form 363AF, Certificate of Retirement.

§ 887.3 Persons authorized CILs.

CILs may be issued only to:

(a) A service member whose character of service was honorable or under honorable conditions.

(b) A surviving spouse.

(c) A guardian, when a duly certified or otherwise authenticated copy of the court order of appointment is sent with the application.

§ 887.4 Requesting CILs.

(a) Standard Form 180 (SF 180), Request Pertaining to Military Records, should be used by persons who had service as shown in § 887.3(a). However, a letter request, with sufficient identifying data and proof that the original certificate of separation was lost or destroyed, may be used. Members on active duty will forward their applications through their unit commander.

(b) SF 180, or any similar form used by agencies outside the Department of Defense, will be used by persons shown in § 887.3 (b), (c), and § 887.7.

Note.—Persons authorized CILs may be assisted in their request by the Customer Service Unit (DPMAC) in the consolidated base personnel office.

§ 887.5 Issuing CILs.

The issuing authority makes sure that the proper CIL form is issued, particularly if the service member has had service in both the Army and Air Force. The assignment status as of September 26, 1947 determines if the person was in the Army or Air Force at the time of discharge or release from active duty. Separations that took place

States representative to INTERPOL, and the designee of the Secretary of the Treasury who is the alternate representative to INTERPOL. The Attorney General's designee and the Secretary of the Treasury's designee may expand the Management Policy Group to include any U.S. Government official serving as an elected officer to INTERPOL, e.g., President, Vice President or Executive Committee Member. The Management Policy Group, at its discretion, may convene as advisory group comprised of the heads of the agencies or offices which are participating members of the United States National Central Bureau (USNCB), as necessary, to assist in the review and development of INTERPOL programs and policies. The Attorney General's designee representing the Department of Justice and the Secretary of the Treasury's designee representing the Department of the Treasury may submit any matter regarding INTERPOL-USNCB leadership or organizational placement within the Department of Justice to the Advisory Group for resolution by a majority decision.

* * * * *

Dated: September 14, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-22009 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 887

Military Personnel; Issuing Certificates in Lieu of Lost or Destroyed Certificates of Separation

AGENCY: Department of the Air Force, Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is amending its regulations by revising Part 887, Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation. This regulation tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation and where and how to apply. This revision provides additional information and makes minor changes to update and to clarify the part.

DATE: Comments must be submitted on or before October 26, 1987.

ADDRESS: HQ AFMPC/DPMDOP, Randolph AFB, Texas 78150-6001.

FOR FURTHER INFORMATION CONTACT: Mr. Sal Garcia, telephone (512) 652-2089.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 887

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887.5 Issuing CILs.
887.6 Who must sign CILs.
887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.
887.8 Where to apply for certificates.
887.9 Furnishing photocopies of documents.

Authority: 10 U.S.C. 1041.

§ 887.0 Purpose.

This part tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation. It explains where and how to apply. It implements 10 U.S.C. 1041 and DOD Instruction 1332.13, December 23, 1968. This publication applies to ANG and USAFR members. It authorizes collection of information protected by the Privacy Act of 1974. The authority to collect the information is Title 10, U.S.C. 8912 and Executive Order 9397. Each form used to collect personal information has an associated Privacy Act Statement that will be given to the individual before information is collected. System of records notice F035 AF MP C, Military Personnel Records System, applies.

§ 887.1 Explanation of terms.

(a) *Certificate in lieu (CIL).* A certificate issued in lieu of a lost or destroyed certificate of service, discharge, or retirement.

(b) *Service person.* One who:

(1) Is currently serving as a member of the Air Force; or

(2) Formerly served in the active military service as a member of the Air Force and all military affiliation was terminated after September 25, 1947.

(c) *Surviving spouse.* A survivor who was legally married to a member of the service at the time of the member's death.

(d) *Guardian.* A person or group of persons legally placed in charge of the affairs of a service member adjudicated mentally incompetent.

§ 887.2 Safeguarding certificates.

Certificates of separation are important personal documents. Processing applications for CILs is costly to the Air Force. To keep requests for CILs at a minimum:

(a) Personnel officers will tell members of the importance of safeguarding the original certificates.

(b) Persons who issue CILs will type or stamp across the lower margin "THIS IS AN IMPORTANT RECORD—SAFEGUARD IT" (if it is not printed on the certificate).

Note.—Do not show this legend on DD Form 363AF, Certificate of Retirement.

§ 887.3 Persons authorized CILs.

CILs may be issued only to:

(a) A service member whose character of service was honorable or under honorable conditions.

(b) A surviving spouse.

(c) A guardian, when a duly certified or otherwise authenticated copy of the court order of appointment is sent with the application.

§ 887.4 Requesting CILs.

(a) Standard Form 180 (SF 180), Request Pertaining to Military Records, should be used by persons who had service as shown in § 887.3(a). However, a letter request, with sufficient identifying data and proof that the original certificate of separation was lost or destroyed, may be used. Members on active duty will forward their applications through their unit commander.

(b) SF 180, or any similar form used by agencies outside the Department of Defense, will be used by persons shown in § 887.3 (b), (c), and § 887.7.

Note.—Persons authorized CILs may be assisted in their request by the Customer Service Unit (DPMAC) in the consolidated base personnel office.

§ 887.5 Issuing CILs.

The issuing authority makes sure that the proper CIL form is issued, particularly if the service member has had service in both the Army and Air Force. The assignment status as of September 26, 1947 determines if the person was in the Army or Air Force at the time of discharge or release from active duty. Separations that took place

on or before September 25, 1947 are considered Army separations. Those that took place on or after September 26, 1947 are considered Air Force separations, unless the records clearly show the person actually served as a member of the Army during the period of service for which the CIL is requested. Individuals indicated in § 887.3 may be issued CILs prepared on one of the following forms:

(a) DD Form 303AF, Certificate in Lieu of Lost or Destroyed Discharge, is used to replace any lost or destroyed certificate of discharge from the Air Force.

(b) DD Form 363AF, Certificate of Retirement, is used to replace any lost or destroyed certificate of retirement from the Air Force (issued only to service members).

(c) AF Form 386, Certificate in Lieu of Lost or Destroyed Discharge (AUS), is used to replace any lost or destroyed certificate of discharge from the Army.

(d) AF Form 681, Certificate in Lieu of Lost or Destroyed Certificate of Service (AUS), is used to replace any lost or destroyed certificate of service, or like form, issued on release from extended active duty (EAD) in the Army.

(e) AF Form 682, Certificate in Lieu of Lost or Destroyed Certificate of Service (USAF), is used to replace any lost or destroyed certificate of service, or like form, issued on release from EAD in the Air Force.

§ 887.6 Who must sign CILs.

(a) DD Form 363AF must be signed by a general officer or colonel.

(b) All other CILs must be signed by a commissioned officer, NCO in grade of master sergeant or above, or a civilian in grade GS–7 or above.

§ 887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.

Those persons whose character of service was under other than honorable conditions or dishonorable are not eligible for CILs. However, an official photocopy of the report of separation or certificate of discharge (DD Form 214, Certificate of Release or Discharge From Active Duty, or equivalent form), if available, may be sent on written request of the member.

(a) On the DD Forms 214 issued before October 1, 1979, the following items will be masked out before a photocopy is sent out:

(1) Specific authority for separation.

(2) Narrative reason for separation.

(3) Reenlistment eligibility code.

(4) SPD or separation designation number (SDN).

(b) For DD Forms 214 issued after October 1, 1979, send one copy with the Special Additional Information Section, and one copy without it.

(c) If a report of separation is not available, furnish a brief official statement of military service. Use the letterhead stationery of the issuing records custodian. File copy of the statement in the master personnel record (MPerR).

(d) If (obsolete form) DD Form 258AF, Undesirable Discharge Certificate, has been issued, it may be replaced with DD Form 794AF, Discharge Under Other Than Honorable Conditions.

(e) A $4.25 fee may be charged for issuing a document under this section, with the exception of paragraph (d) of this section.

§ 887.8 Where to apply for certificates.

(a) For DD Form 363AF: Headquarters, Air Force Military Personnel Center, Officer Actions Branch (HQ AFMPC/DPMDOO), Randolph AFB TX 78150–6001, for officers; and Headquarters, Air Force Military Personnel Center, Analysis and Certification Section (HQ AFMPC/DPMDOA2), Randolph AFB TX 78150–6001, for enlisted members. Applicants must attach a copy of the retirement order to SF 180 or letter.

(b) All other certificates:

(1) HQ AFMPC/DPMDOO for officers, and HQ AFMPC/DPMDOA2, for enlisted members, Randolph AFB TX 78150–6001 for:

(i) Members on EAD or on the temporary disability retired list (TDRL).

(ii) General officers in retired pay status.

(2) National Personnel Records Center, Military Personnel Records—Air Force (NPRC/MPR–AF), 9700 Page Boulevard, St. Louis MO 63132, for officers and enlisted members:

(i) Completely separated from the Air Force or Air National Guard.

(ii) In a retired pay status, except general officers.

(iii) In the retired Reserve who cannot become eligible for retired pay.

(3) Headquarters, Air Reserve Personnel Center, Reference Services Branch (HQ ARPC/DSMR), Denver CO 80280–5000, for Air National Guard and Air Force Reserve officers and enlisted members not on EAD, including retired Reserve who will be eligible for retired pay at age 60.

§ 887.9 Furnishing photocopies of documents.

This part does not prohibit authorities (see § 887.8) from supplying photocopies of certificates of service, reports of separation, or similar documents. Agencies that provide copies of DD Form 214 (or their equivalent) will conspicuously affix an "official" seal or stamp on them to indicate that these documents are copies made from official United States Air Force military personnel records.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–22011 Filed 9–23–87; 8:45 am]

BILLING CODE 3910–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3265–8]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of San Juan Harbor, Puerto Rico for the disposal of dredged material removed from San Juan Harbor and vicinity. This action is necessary to provide, an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before November 9, 1987.

ADDRESSES: Send comments to: Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278.

The file supporting this proposed rulemaking is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC 20460

EPA Region II Library, Room 402, 26 Federal Plaza, New York, NY 10278

EPA Region II, Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00907

FOR FURTHER INFORMATION CONTACT: Mario Del Vicario, 212–264–5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401

et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to the authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on August 19, 1985 (50 FR 33338). That list established the San Juan site as an interim site and extended its period of use until July 31, 1988, or until final rulemaking is completed, whichever is sooner. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA") requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

On August 13, 1982, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** (47 FR 35335). The public comment period on this draft EIS closed September 27, 1982. On February 4, 1983, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (48 FR 5308). The public record on the final EIS closed March 7, 1983.

The final EIS includes the Agency's assessment of the comments received during the comment period on the draft EIS. Comments correcting facts were incorporated into the text and the changes were noted in the final EIS. Specific comments which could not be appropriately treated as text modifications were addressed point by point. Both comments and responses are found in Appendix D of the final EIS.

Primary commenters on the draft EIS were the U.S. Army Corps of Engineers and the Commonwealth of Puerto Rico's Environmental Quality Board and Department of Natural Resources. The Corps of Engineers noted that the draft referred only to maintenance dredging from existing projects. EPA corrected this oversight in the final EIS. The proposed rule would allow disposal of dredged material from new projects as well as existing ones. Comments received from the Environmental Quality Board and the Department of Natural Resources noted that the endangered West Indian manatee has been sighted off the northeastern coast of Puerto Rico. This observation was included in the final EIS. However, no manatees have recently been seen at the site and their passage through the site, if this were to occur, would be short and infrequent. The Department of Natural Resources expressed concern that dumping at the site would introduce toxic wastes into a commercial fishery area inshore of the dump site. Previous monitoring surveys, together with current data, indicate that as a result of the prevailing coastal current system, migrating pollutants are distributed in an east-west and offshore direction away from inshore fishery areas. In addition, elutriate studies using harbor sediments indicate that trace metal contaminant concentrations, after initial dilution, do not exceed EPA chronic marine Water Quality Criteria (WQC). Therefore, it is unlikely that the dredged material disposal activities in conjunction with the coastal patterns would adversely impact inshore commercial fishing areas.

One comment was received on the final EIS. The Corps of Engineers recommended that the interim site be designated for continuing use. The proposed rule reflects acceptance of this comment.

Dredged material from new projects may be dumped at this site upon completion of an appropriate case-by-case evaluation of the impact of such material on the site. This analysis must demonstrate that the impact will be acceptable. EPA plans to monitor ambient quality trends at the site and in adjacent areas to ensure that unacceptable levels of toxic constituents are not transported outside of the site. Additional monitoring of impacts would be required if dredging volumes or characteristics of the dredged materials are changed significantly to assure that adverse effects on the ecosystem do not develop. Should monitoring surveys indicate that transport outside of the site is occurring, appropriate measures to modify or withdraw site designation are available to the Agency.

Based upon the information reported in the EIS, EPA propose to designate the existing San Juan Harbor site for continuing use for the ocean disposal of dredged material where applicants have demonstrated compliance with EPA's ocean dumping criteria. The EIS is available for inspection at the addresses given above.

EPA has initiated a Coastal Zone Management consistency determination with the Commonwealth of Puerto Rico. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of this dredged material disposal site will not affect the endangered species under their jurisdiction.

The action discussed in the EIS is the designation for continuing use of an ocean disposal site for dredged material located in the Atlantic Ocean in the vicinity of San Juan Harbor. The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the Port of San Juan and nearby coastal areas. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Site Designation

The proposed site is a rectangle located approximately 2.2. nautical miles north-northwest of the entrance to San Juan Harbor, with the following coordinates:

18d 30'10" N, 066d 09'31" W;
18d 30'10" N, 066d 08'29" W;
18d 30'10" N, 066d 08'29" W;
18d 30'10" N, 066d 09'31" W.

The site occupies an area of approximately one square nautical mile, and water depths within this area range from 200 to 400 meters. Disposal operations at the site began in 1974.

on or before September 25, 1947 are considered Army separations. Those that took place on or after September 26, 1947 are considered Air Force separations, unless the records clearly show the person actually served as a member of the Army during the period of service for which the CIL is requested. Individuals indicated in § 887.3 may be issued CILs prepared on one of the following forms:

(a) DD Form 303AF, Certificate in Lieu of Lost or Destroyed Discharge, is used to replace any lost or destroyed certificate of discharge from the Air Force.

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(e) AF Form 682, Certificate in Lieu of Lost or Destroyed Certificate of Service (USAF), is used to replace any lost or destroyed certificate of service, or like form, issued on release from EAD in the Air Force.

§ 887.6 Who must sign CILs.

(a) DD Form 363AF must be signed by a general officer or colonel.

(b) All other CILs must be signed by a commissioned officer, NCO in grade of master sergeant or above, or a civilian in grade GS–7 or above.

§ 887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.

Those persons whose character of service was under other than honorable conditions or dishonorable are not eligible for CILs. However, an official photocopy of the report of separation or certificate of discharge (DD Form 214, Certificate of Release or Discharge From Active Duty, or equivalent form), if available, may be sent on written request of the member.

(a) On the DD Forms 214 issued before October 1, 1979, the following items will be masked out before a photocopy is sent out:

(1) Specific authority for separation.

(2) Narrative reason for separation.

(3) Reenlistment eligibility code.

(4) SPD or separation designation number (SDN).

(b) For DD Forms 214 issued after October 1, 1979, send one copy with the Special Additional Information Section, and one copy without it.

(c) If a report of separation is not available, furnish a brief official statement of military service. Use the letterhead stationery of the issuing records custodian. File copy of the statement in the master personnel record (MPerR).

(d) If (obsolete form) DD Form 258AF, Undesirable Discharge Certificate, has been issued, it may be replaced with DD Form 794AF, Discharge Under Other Than Honorable Conditions.

(e) A $4.25 fee may be charged for issuing a document under this section, with the exception of paragraph (d) of this section.

§ 887.8 Where to apply for certificates.

(a) For DD Form 363AF: Headquarters, Air Force Military Personnel Center, Officer Actions Branch (HQ AFMPC/DPMDOO), Randolph AFB TX 78150–6001, for officers; and Headquarters, Air Force Military Personnel Center, Analysis and Certification Section (HQ AFMPC/DPMDOA2), Randolph AFB TX 78150–6001, for enlisted members. Applicants must attach a copy of the retirement order to SF 180 or letter.

(b) All other certificates:

(1) HQ AFMPC/DPMDOO for officers, and HQ AFMPC/DPMDOA2, for enlisted members, Randolph AFB TX 78150–6001 for:

(i) Members on EAD or on the temporary disability retired list (TDRL).

(ii) General officers in retired pay status.

(2) National Personnel Records Center, Military Personnel Records—Air Force (NPRC/MPR–AF), 9700 Page Boulevard, St. Louis MO 63132, for officers and enlisted members:

(i) Completely separated from the Air Force or Air National Guard.

(ii) In a retired pay status, except general officers.

(iii) In the retired Reserve who cannot become eligible for retired pay.

(3) Headquarters, Air Reserve Personnel Center, Reference Services Branch (HQ ARPC/DSMR), Denver CO 80280–5000, for Air National Guard and Air Force Reserve officers and enlisted members not on EAD, including retired Reserve who will be eligible for retired pay at age 60.

§ 887.9 Furnishing photocopies of documents.

This part does not prohibit authorities (see § 887.8) from supplying photocopies of certificates of service, reports of separation, or similar documents. Agencies that provide copies of DD Form 214 (or their equivalent) will conspicuously affix an "official" seal or stamp on them to indicate that these documents are copies made from official United States Air Force military personnel records.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3265–8]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of San Juan Harbor, Puerto Rico for the disposal of dredged material removed from San Juan Harbor and vicinity. This action is necessary to provide, an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before November 9, 1987.

ADDRESSES: Send comments to: Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278.

The file supporting this proposed rulemaking is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC 20460

EPA Region II Library, Room 402, 26 Federal Plaza, New York, NY 10278

EPA Region II, Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00907

FOR FURTHER INFORMATION CONTACT: Mario Del Vicario, 212–264–5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401

et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to the authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on August 19, 1985 (50 FR 33338). That list established the San Juan site as an interim site and extended its period of use until July 31, 1988, or until final rulemaking is completed, whichever is sooner. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA") requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

On August 13, 1982, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** (47 FR 35335). The public comment period on this draft EIS closed September 27, 1982. On February 4, 1983, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (48 FR 5308). The public record on the final EIS closed March 7, 1983.

The final EIS includes the Agency's assessment of the comments received during the comment period on the draft EIS. Comments correcting facts were incorporated into the text and the changes were noted in the final EIS. Specific comments which could not be appropriately treated as text modifications were addressed point by point. Both comments and responses are found in Appendix D of the final EIS.

Primary commenters on the draft EIS were the U.S. Army Corps of Engineers and the Commonwealth of Puerto Rico's Environmental Quality Board and Department of Natural Resources. The Corps of Engineers noted that the draft referred only to maintenance dredging from existing projects. EPA corrected this oversight in the final EIS. The proposed rule would allow disposal of dredged material from new projects as well as existing ones. Comments received from the Environmental Quality Board and the Department of Natural Resources noted that the endangered West Indian manatee has been sighted off the northeastern coast of Puerto Rico. This observation was included in the final EIS. However, no manatees have recently been seen at the site and their passage through the site, if this were to occur, would be short and infrequent. The Department of Natural Resources expressed concern that dumping at the site would introduce toxic wastes into a commercial fishery area inshore of the dump site. Previous monitoring surveys, together with current data, indicate that as a result of the prevailing coastal current system, migrating pollutants are distributed in an east-west and offshore direction away from inshore fishery areas. In addition, elutriate studies using harbor sediments indicate that trace metal contaminant concentrations, after initial dilution, do not exceed EPA chronic marine Water Quality Criteria (WQC). Therefore, it is unlikely that the dredged material disposal activities in conjunction with the coastal patterns would adversely impact inshore commercial fishing areas.

One comment was received on the final EIS. The Corps of Engineers recommended that the interim site be designated for continuing use. The proposed rule reflects acceptance of this comment.

Dredged material from new projects may be dumped at this site upon completion of an appropriate case-by-case evaluation of the impact of such material on the site. This analysis must demonstrate that the impact will be acceptable. EPA plans to monitor ambient quality trends at the site and in adjacent areas to ensure that unacceptable levels of toxic constituents are not transported outside of the site. Additional monitoring of impacts would be required if dredging volumes or characteristics of the dredged materials are changed significantly to assure that adverse effects on the ecosystem do not develop. Should monitoring surveys indicate that transport outside of the site is occurring, appropriate measures to modify or withdraw site designation are available to the Agency.

Based upon the information reported in the EIS, EPA propose to designate the existing San Juan Harbor site for continuing use for the ocean disposal of dredged material where applicants have demonstrated compliance with EPA's ocean dumping criteria. The EIS is available for inspection at the addresses given above.

EPA has initiated a Coastal Zone Management consistency determination with the Commonwealth of Puerto Rico. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of this dredged material disposal site will not affect the endangered species under their jurisdiction.

The action discussed in the EIS is the designation for continuing use of an ocean disposal site for dredged material located in the Atlantic Ocean in the vicinity of San Juan Harbor. The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the Port of San Juan and nearby coastal areas. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Site Designation

The proposed site is a rectangle located approximately 2.2. nautical miles north-northwest of the entrance to San Juan Harbor, with the following coordinates:

18d 30'10" N, 066d 09'31" W;
18d 30'10" N, 066d 08'29" W;
18d 30'10" N, 066d 08'29" W;
18d 30'10" N, 066d 09'31" W.

The site occupies an area of approximately one square nautical mile, and water depths within this area range from 200 to 400 meters. Disposal operations at the site began in 1974.

All of the dredged materials disposed at the designated site will be from dredging operations in the Port of San Juan, Puerto Rico and coastal areas within 20 miles of the Port entrance. The total amount of dredged material dumped at the site since 1974 has been approximately 4.3 million cubic yards. Maximum quantities of dredged material to be disposed at this site are to be determined by both EPA and the Corps of Engineers. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, further use of the site will be terminated as soon as suitable alternative disposal sites can be designated. These general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The location of the disposal site has been chosen to minimize the interference of disposal activities with other activities in the marine environment. The site is not located in major shipping lanes. While there is potential for oil and gas exploration in the area, no serious conflict with such activities is expected. Coordination with future leasing activities should effectively avoid potential conflicts [Section 228.5(a)]. Temporary perturbations in water quality from dredged material disposal can be expected to return to ambient levels before reaching any beach, shoreline or known geographical limited fishery or shellfishery [Section 228.5(b)]. Based upon disposal site evaluation studies presented in the EIS, the site proposed for designation (interim site) satisfies the criteria for site selection set forth in §§ 228.5–228.6 [Section 228.5(c)]. The disposal site has been limited in size in order to localize, for identification and control, any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long range impacts [Section 228.5(d)]. The location of the site satisfies the statutory preference for sites located off the Continental Shelf, where feasible [Section 228.5(e)]. EPA established the 11 specific factors [Section 228.6] to constitute an environmental assessment of the impact of disposal at the site. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the existing site are reviewed below in terms of these 11 factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

The rectangular site is approximately one square nautical mile in size. Its corner coordinates are given above. Water depth ranges from 200 to 400 meters with an average of 292 meters. The center of the site is 2.2 nautical miles from the Isle de Cabras. The bottom drops off steeply to the north. The Insular Slope in this area to the north is characterized by numerous submarine ridges and swales. The bottom sediments within the area of the site average 48 percent silt and 45 percent clay with the balance being sand and gravel.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

The sites does not encompass any known unique breeding, spawning, nursery or passage areas of nekton, marine mammals or birds. The open water of the site may be feeding grounds for some wide ranging pelagic fish such as tuna, jacks, and mackerel. Deep waters at the site are feeding grounds for various snappers (blackfin, silk, and vermillion), but the site is not unique in this regard.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is centered approximately 2.2 nautical miles due north of San Juan. Palo Seco and Punta Salinas, on the coast immediately west of San Juan, are both approximately 2.5 nautical miles from the center of the site. Both are developed beaches which serve metropolitan San Juan.

El Morro, one of the two fortifications in the San Juan National Historical Site, attracts thousands of visitors every year. It is located on a prominence on the western tip of Isle San Juan overlooking the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles to the north in the Atlantic Ocean and can be seen from the fortification.

4. *Types and quantities of waste proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* [40 CFR 228.6(a)(4).]

Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way.

The Corps of Engineers will continue to perform dredging using Corps-owned hopper dredges. Additional dredging will also be performed by private contractors using hopper, dragline, clamshell, and dipper dredges.

The total amount of dredged material dumped at the site since 1974 has been 4.3 million cubic yards. Maintenance dredging encompassed 1.5 million cubic yards, and dredged material from harbor improvements encompassed 2.8 million cubic yards. Dumping occurs several times a year.

A deepening project of San Juan Harbor has been proposed by the Corps of Engineers. The proposal under consideration consists of a plan for deeping, widening, and possibly realigning and extending the channels; deepening the turning basins; and easing the channel connecting angles within the authorized existing project. If the deepening project is implemented, the volume of dredged material is estimated to be 12,795,000 cubic yards of soft material and rock. Maintenance dredging would be scheduled every two years, and would involve an increase of approximately 185,000 cubic yards per year.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

Surveillance of disposal operations at the proposed site could be achieved by helicopter or shiprider.

Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to assure that adverse impacts do not develop. Periodic reports of the monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current*

direction and velocity, if any. [40 CFR 228.6(a)(6).]

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material dredged from San Juan Harbor is primarily silty clay which would cause turbidity during all phases of disposal.

The current regime off the north coast of Puerto Rico is composed of tidal and non-tidal components. Semi-diurnal tidal currents rotate in a clockwise direction, whereas wind-driven non-tidal currents are predominantly along shore in a westerly direction. The resulting net surface currents at the site indicate a general westward drift with frequent reversals and a mean speed of 0.6 km/hr. Generally, subsurface currents off the north coast are along shore but weaker than surface currents.

There is no known upwelling of subsurface water at the site. A well-mixed layer of surface water extends to approximately 20 meters in May and to 75–100 meters in January. Below 100 meters, a permanent thermocline exists and inhibits the mixing of surface and bottom waters.

The frequent reversal of currents at the site indicate that elevated levels of suspended sediments associated with dumping would be dispersed parallel to the coast, but not in a specific direction. Surface turbidity would be dispersed rapidly in the mixed layer. Elevated levels of suspended sediments in mid and bottom waters will remain below the thermocline and will also be dispersed in a westerly direction parallel to the coast until the particles settle to the bottom.

At the disposal site where the mean water depth averages 292 meters, the strength of bottom currents is unknown. However, sedimentary information indicates that the area is a depositional environment since the sea floor is relatively undistubed. Therefore, horizontal movement of dredged material on the sea floor caused by either surface wave action or bottom currents is not expected.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

Chemical and biological data suggest that previous dumping has created only minor modifications at the site. Oil and grease levels are higher in site sediments; however, levels of other trace contaminants show no consistent trends. Benthic infaunal communities at the interim site show low abundances and diversities similar to the surrounding area. The benthic community is typical of that found in muddy bottom sediments throughout the area (i.e. dominated by small-bodied invertebrate deposit feeders).

8. *Interference with shipping, fishing, recreation, mineral extraction, desalinization, fish and shellfish culture, areas scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Heavy shipping and cruise ship traffic passes through or in the vicinity of the site. However, past disposal activities have not interfered with the ship traffic.

A modest commercial fishery operates out of San Juan, but most fishing activity is concentrated in the shallow waters, inshore of the site. However, commercial fishing in this area is hampered by rought seas and strong winds throughout most of the year.

The Bureau of Land Management does not plan to lease any part of the north coast for oil or gas extraction. No other mineral extraction occurs at or near the site.

Disposal at the site would not interfere with the other activities listed above.

9. *The existing water quality and ecology of the site as determined by available data, trend assessments, or baseline surveys.* 40 CFR 228.6(a)(9).]

Environmental surveys of the site were conducted in 1980 by an EPA contractor and in 1984 by EPA. Both of these studies revealed oceanic water similar in water quality and thermohaline structure to other areas of the tropical Atlantic.

Benthic infaunal populations at the site and surrounding regions of similar depth are extremely low in density and dominated by polychaete and sipunculid worms. Fish fauna at the site are expected to be sparse and composed of wideranging pelagic fish, such as tuna, jacks, and mackerel. Deep waters at the site may be inhabited by various species having wide depth ranges (spiny dogfish, snappers, conger eels, and batfishes) and species representative of the abyssal slope such as grenadiers.

10. *Potential for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

Survey work at the site has not indicated the development or recruitment of any nuisance species. There are no components in the dredged material which could attract or recruit nuisance species to the site.

11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* [40 CFR 228.6(a)(11).]

El Morro, one of two fortifications within the San Juan National Historic Site, is located on a prominence on the western tip of Isle San Juan and overlooks the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles north in the Atlantic Ocean and can be seen from the fortification.

E. Proposed Action

The site is compatible with the criteria used for site evaluation. As part of the site selection process, EPA considered whether it would be preferable to designate a site in shallow water or in deep water. For the following reasons, EPA has determined that the site selected is environmentally preferable for the disposal of dredged material. These factors are discussed in greater detail in the EIS.

The site is limited to the minimum size necessary for the projected volume of dredged material expected to be dumped in the foreseeable future. The site is located off the Insular (Continental) Shelf and is 2.4 nautical miles from the nearest mainland shore. Bottom sediments in and around the site are over 90% silt and clay and are compatible with the types of sediments expected to be dredged in the San Juan Harbor area and disposed of at the site. It is not expected that the bottom sediments will be disturbed since there are no strong bottom currents or known upwellings, and the depth of the site (averaging 292 meters) limits the potential for disturbance by wave action.

The site is not located within any unique spawning, nursery, or passage areas for marine organisms. Although fish sometimes frequent the area, it is not a unique or an important fish ground in relation to other areas outside of the site.

The site is within easy surveillance range for U.S. Coast Guard vessels and aircraft and is amenable to shiprider surveillance. There have been two previous monitoring surveys of the site which were completed without any major difficulties. Other surveys are planned for the future. The designation of the existing San Juan Harbor Dredged Material Disposal Site as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region II. It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of material at the site. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping

All of the dredged materials disposed at the designated site will be from dredging operations in the Port of San Juan, Puerto Rico and coastal areas within 20 miles of the Port entrance. The total amount of dredged material dumped at the site since 1974 has been approximately 4.3 million cubic yards. Maximum quantities of dredged material to be disposed at this site are to be determined by both EPA and the Corps of Engineers. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, further use of the site will be terminated as soon as suitable alternative disposal sites can be designated. These general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The location of the disposal site has been chosen to minimize the interference of disposal activities with other activities in the marine environment. The site is not located in major shipping lanes. While there is potential for oil and gas exploration in the area, no serious conflict with such activities is expected. Coordination with future leasing activities should effectively avoid potential conflicts [Section 228.5(a)]. Temporary perturbations in water quality from dredged material disposal can be expected to return to ambient levels before reaching any beach, shoreline or known geographical limited fishery or shellfishery [Section 228.5(b)]. Based upon disposal site evaluation studies presented in the EIS, the site proposed for designation (interim site) satisfies the criteria for site selection set forth in §§ 228.5–228.6 [Section 228.5(c)]. The disposal site has been limited in size in order to localize, for identification and control, any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long range impacts [Section 228.5(d)]. The location of the site satisfies the statutory preference for sites located off the Continental Shelf, where feasible [Section 228.5(e)]. EPA established the 11 specific factors [Section 228.6] to constitute an environmental assessment of the impact of disposal at the site. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the existing site are reviewed below in terms of these 11 factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

The rectangular site is approximately one square nautical mile in size. Its corner coordinates are given above. Water depth ranges from 200 to 400 meters with an average of 292 meters. The center of the site is 2.2 nautical miles from the Isle de Cabras. The bottom drops off steeply to the north. The Insular Slope in this area to the north is characterized by numerous submarine ridges and swales. The bottom sediments within the area of the site average 48 percent silt and 45 percent clay with the balance being sand and gravel.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

The sites does not encompass any known unique breeding, spawning, nursery or passage areas of nekton, marine mammals or birds. The open water of the site may be feeding grounds for some wide ranging pelagic fish such as tuna, jacks, and mackerel. Deep waters at the site are feeding grounds for various snappers (blackfin, silk, and vermillion), but the site is not unique in this regard.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is centered approximately 2.2 nautical miles due north of San Juan. Palo Seco and Punta Salinas, on the coast immediately west of San Juan, are both approximately 2.5 nautical miles from the center of the site. Both are developed beaches which serve metropolitan San Juan.

El Morro, one of the two fortifications in the San Juan National Historical Site, attracts thousands of visitors every year. It is located on a prominence on the western tip of Isle San Juan overlooking the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles to the north in the Atlantic Ocean and can be seen from the fortification.

4. *Types and quantities of waste proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* [40 CFR 228.6(a)(4).]

Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way.

The Corps of Engineers will continue to perform dredging using Corps-owned hopper dredges. Additional dredging will also be performed by private contractors using hopper, dragline, clamshell, and dipper dredges.

The total amount of dredged material dumped at the site since 1974 has been 4.3 million cubic yards. Maintenance dredging encompassed 1.5 million cubic yards, and dredged material from harbor improvements encompassed 2.8 million cubic yards. Dumping occurs several times a year.

A deepening project of San Juan Harbor has been proposed by the Corps of Engineers. The proposal under consideration consists of a plan for deeping, widening, and possibly realigning and extending the channels; deepening the turning basins; and easing the channel connecting angles within the authorized existing project. If the deepening project is implemented, the volume of dredged material is estimated to be 12,795,000 cubic yards of soft material and rock. Maintenance dredging would be scheduled every two years, and would involve an increase of approximately 185,000 cubic yards per year.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

Surveillance of disposal operations at the proposed site could be achieved by helicopter or shiprider.

Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to assure that adverse impacts do not develop. Periodic reports of the monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current*

direction and velocity, if any. [40 CFR 228.6(a)(6).]

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material dredged from San Juan Harbor is primarily silty clay which would cause turbidity during all phases of disposal.

The current regime off the north coast of Puerto Rico is composed of tidal and non-tidal components. Semi-diurnal tidal currents rotate in a clockwise direction, whereas wind-driven non-tidal currents are predominantly along shore in a westerly direction. The resulting net surface currents at the site indicate a general westward drift with frequent reversals and a mean speed of 0.6 km/hr. Generally, subsurface currents off the north coast are along shore but weaker than surface currents.

There is no known upwelling of subsurface water at the site. A well-mixed layer of surface water extends to approximately 20 meters in May and to 75–100 meters in January. Below 100 meters, a permanent thermocline exists and inhibits the mixing of surface and bottom waters.

The frequent reversal of currents at the site indicate that elevated levels of suspended sediments associated with dumping would be dispersed parallel to the coast, but not in a specific direction. Surface turbidity would be dispersed rapidly in the mixed layer. Elevated levels of suspended sediments in mid and bottom waters will remain below the thermocline and will also be dispersed in a westerly direction parallel to the coast until the particles settle to the bottom.

At the disposal site where the mean water depth averages 292 meters, the strength of bottom currents is unknown. However, sedimentary information indicates that the area is a depositional environment since the sea floor is relatively undistubed. Therefore, horizontal movement of dredged material on the sea floor caused by either surface wave action or bottom currents is not expected.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

Chemical and biological data suggest that previous dumping has created only minor modifications at the site. Oil and grease levels are higher in site sediments; however, levels of other trace contaminants show no consistent trends. Benthic infaunal communities at the interim site show low abundances and diversities similar to the surrounding area. The benthic community is typical of that found in muddy bottom sediments throughout the area (i.e. dominated by small-bodied invertebrate deposit feeders).

8. *Interference with shipping, fishing, recreation, mineral extraction, desalinization, fish and shellfish culture, areas scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Heavy shipping and cruise ship traffic passes through or in the vicinity of the site. However, past disposal activities have not interfered with the ship traffic.

A modest commercial fishery operates out of San Juan, but most fishing activity is concentrated in the shallow waters, inshore of the site. However, commercial fishing in this area is hampered by rought seas and strong winds throughout most of the year.

The Bureau of Land Management does not plan to lease any part of the north coast for oil or gas extraction. No other mineral extraction occurs at or near the site.

Disposal at the site would not interfere with the other activities listed above.

9. *The existing water quality and ecology of the site as determined by available data, trend assessments, or baseline surveys.* 40 CFR 228.6(a)(9).]

Environmental surveys of the site were conducted in 1980 by an EPA contractor and in 1984 by EPA. Both of these studies revealed oceanic water similar in water quality and thermohaline structure to other areas of the tropical Atlantic.

Benthic infaunal populations at the site and surrounding regions of similar depth are extremely low in density and dominated by polychaete and sipunculid worms. Fish fauna at the site are expected to be sparse and composed of wideranging pelagic fish, such as tuna, jacks, and mackerel. Deep waters at the site may be inhabited by various species having wide depth ranges (spiny dogfish, snappers, conger eels, and batfishes) and species representative of the abyssal slope such as grenadiers.

10. *Potential for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

Survey work at the site has not indicated the development or recruitment of any nuisance species. There are no components in the dredged material which could attract or recruit nuisance species to the site.

11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* [40 CFR 228.6(a)(11).]

El Morro, one of two fortifications within the San Juan National Historic Site, is located on a prominence on the western tip of Isle San Juan and overlooks the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles north in the Atlantic Ocean and can be seen from the fortification.

E. Proposed Action

The site is compatible with the criteria used for site evaluation. As part of the site selection process, EPA considered whether it would be preferable to designate a site in shallow water or in deep water. For the following reasons, EPA has determined that the site selected is environmentally preferable for the disposal of dredged material. These factors are discussed in greater detail in the EIS.

The site is limited to the minimum size necessary for the projected volume of dredged material expected to be dumped in the foreseeable future. The site is located off the Insular (Continental) Shelf and is 2.4 nautical miles from the nearest mainland shore. Bottom sediments in and around the site are over 90% silt and clay and are compatible with the types of sediments expected to be dredged in the San Juan Harbor area and disposed of at the site. It is not expected that the bottom sediments will be disturbed since there are no strong bottom currents or known upwellings, and the depth of the site (averaging 292 meters) limits the potential for disturbance by wave action.

The site is not located within any unique spawning, nursery, or passage areas for marine organisms. Although fish sometimes frequent the area, it is not a unique or an important fish ground in relation to other areas outside of the site.

The site is within easy surveillance range for U.S. Coast Guard vessels and aircraft and is amenable to shiprider surveillance. There have been two previous monitoring surveys of the site which were completed without any major difficulties. Other surveys are planned for the future. The designation of the existing San Juan Harbor Dredged Material Disposal Site as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region II. It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of material at the site. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping

criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the authority to review the applications and to disapprove of the dumping, if it determines that environmental concerns under the Act have not been satisfied.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 3, 1987.

Christopher J. Daggett,

Regional Administrator for Region II.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing and reserving paragraphs (a)(1)(ii)(B) and (a)(1)(ii)(L) and by adding paragraph (b)(46) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(46) San Juan Harbor (Puerto Rico) Dredged Material Disposal Site

Location: 18d 30′ 10″N, 066d 09′ 31″W; 18d 30′ 10″N, 066d 08′ 29″W; 18d 31′ 10″N, 066d 08′ 29″W; 18d 31′ 10″N, 066d 09′ 31″W.

Size: 0.98 square nautical miles.

Depth: Ranges from 200–400 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Port of San Juan, Puerto Rico, and coastal areas within 20 miles of said Port entrance.

[FR Doc. 87–22057 Filed 9–23–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–355, RM–5860]

Radio Broadcasting Services; Macomb, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by McDonough Broadcasting, Inc., licensee of Station WJEQ(FM), Macomb, Illinois, proposing to substitute Channel 274B1 for Channel 276A at Macomb, and to modify its Class A license, accordingly.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: B. Jay Baraff, Baraff, Koerner, Olender, and Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–355, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21992 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–365, RM–5777]

Radio Broadcasting Services; Pella, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by GBA, Inc., licensee of Station KFMD(FM), Channel 277C1, Pella, Iowa proposing to modify its license from Class C1 facilities to a full Class C station operation on the same Channel 277.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gregg P. Skall, Esq., 1050 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–365, adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is

available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21995 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–349, RM–5679]

Radio Broadcasting Services; London, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hughes-Moore Associates, Inc., proposing the allotment of FM Channel 223A to London, Kentucky as that community's second FM broadcast service.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Esq., 10 East Fourth Street, P.O. Box 113, Frederick, Maryland 21206 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–349 adopted August 19, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21991 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–366, RM–5746]

Radio Broadcasting Services; Murray, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by West Kentucky Broadcasting Associates proposing the allotment of FM Channel 284A to Murray, Kentucky as that community's second FM channel.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, 715 G Street, SE., Washington, DC 20003 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau. (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–366, adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21993 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–358, RM–5930]

Radio Broadcasting Services; Nebraska City, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Great Lakes Broadasting Company proposing the

criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the authority to review the applications and to disapprove of the dumping, if it determines that environmental concerns under the Act have not been satisfied.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 3, 1987.

Christopher J. Daggett,

Regional Administrator for Region II.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing and reserving paragraphs (a)(1)(ii)(B) and (a)(1)(ii)(L) and by adding paragraph (b)(46) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(46) San Juan Harbor (Puerto Rico) Dredged Material Disposal Site

Location: 18d 30′ 10″N, 066d 09′ 31″W; 18d 30′ 10″N, 066d 08′ 29″W; 18d 31′ 10″N, 066d 08′ 29″W; 18d 31′ 10″N, 066d 09′ 31″W.

Size: 0.98 square nautical miles.

Depth: Ranges from 200–400 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Port of San Juan, Puerto Rico, and coastal areas within 20 miles of said Port entrance.

[FR Doc. 87–22057 Filed 9–23–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–355, RM–5860]

Radio Broadcasting Services; Macomb, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by McDonough Broadcasting, Inc., licensee of Station WJEQ(FM), Macomb, Illinois, proposing to substitute Channel 274B1 for Channel 276A at Macomb, and to modify its Class A license, accordingly.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: B. Jay Baraff, Baraff, Koerner, Olender, and Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–355, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21992 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–365, RM–5777]

Radio Broadcasting Services; Pella, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by GBA, Inc., licensee of Station KFMD(FM), Channel 277C1, Pella, Iowa proposing to modify its license from Class C1 facilities to a full Class C station operation on the same Channel 277.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gregg P. Skall, Esq., 1050 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–365, adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is

available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21995 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–349, RM–5679]

Radio Broadcasting Services; London, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hughes-Moore Associates, Inc., proposing the allotment of FM Channel 223A to London, Kentucky as that community's second FM broadcast service.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Esq., 10 East Fourth Street, P.O. Box 113, Frederick, Maryland 21206 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–349 adopted August 19, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21991 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–366, RM–5746]

Radio Broadcasting Services; Murray, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by West Kentucky Broadcasting Associates proposing the allotment of FM Channel 284A to Murray, Kentucky as that community's second FM channel.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, 715 G Street, SE., Washington, DC 20003 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau. (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–366, adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21993 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–358, RM–5930]

Radio Broadcasting Services; Nebraska City, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Great Lakes Broadasting Company proposing the

substitution of Channel 249C2 for Channel 249A at Nebraska City, Nebraska, and the modification of its license for Station KNCY–FM to specify operation on the higher powered channel. Channel 249C2 can be allocated to Nebraska City in compliance with the Commission's minimum distance separation requirements and used at Station KNCY–FM's present transmitter site. In accordance with § 1.420(g) of the Commission's Rules, we propose to modify the license of Station KNCY–FM to specify operation on Channel 249C2. In addition, since this proposal represents a co-channel upgrade, we shall not accept competing expressions of interest in use of the channel at Nebraska City nor require the petitioner to demonstrate the availability of an additional equivalent channel for interested parties.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ronald A. Siegel, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–358, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21984 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–359, RM–5932]

Radio Broadcasting Services; Mangum and Marlow, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Austin Broadcast Services, Inc., permittee of Station KFXI(FM), Channel 221A, Marlow, Oklahoma, proposing the substitution of Channel 221C2 for Channel 221A at Marlow and the modification of its permit to specify the new channel. This document also directs an Order to Show Cause to James R. Galbreath, permittee of Station KZKQ(FM), Mangum, Oklahoma, why its permit should not be modified to specify operation on Channel 249A in lieu of its present Channel 221A. Channel 221C2 can be allocated to Marlow in compliance with the Commission's minimum distance separation requirements and used at Station KFXI(FM)'s present transmitter location, if Channel 221A is deleted from Mangum. Channel 249A can be allocated to Mangum in compliance with the Commission's minimum distance separation requirements. Austin Broadcast Services, Inc. is requested to furnish a study showing the currently operating noncommercial educational stations in the Marlow area and also the impact on the possible allocation of new noncommercial educational stations on the three adjacent channels since the Commission finds that Station KFXI(FM)'s 1 mV/m contour lies on the edge of the Grade B contour of TV Channel 6 Station KAUZ, Wichita Falls, Texas. Petitioner is also requested to state its willingness to reimburse Station KZKQ(FM), Mangum, Oklahoma, for the costs associated with its change of channel. In accordance with Section 1.420(g) of the Commission's Rules, we propose to modify the permit of Station KFXI(FM) to special operation on Channel 221C2. However, we shall not accept expressions of interest in use of Channel 221C2 at Marlow nor require the petitioner to demonstrate the availability of an additional equivalent channnel.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Stephen S. Simpson, Esq., Southmayd Powell & Taylor, 1764 Church Street, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–359, adopted August 21, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21983 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-360, RM-5929]

Radio Broadcasting Services; North Bend, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Big Bay Radio, Inc. proposing the allocation of Channel 297C1 to North Bend, Oregon, as the community's second local FM service. Channel 297C1 can be allocated to North Bend in compliance with the Commission's minimum distance separation requirements without a site restriction.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret L. Tobey, Esq., Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–360, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21982 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-356, RM-5871]

Radio Broadcasting Services; Alamo, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Charles C. Allen proposing the allotment of Channel 263A to Alamo, Tennessee, as that community's first FM service.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, Esquire, 715 G Street SE., Washington, DC 20003 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–356 , adopted August 20, 1987, and released September 17 , 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21988 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-347, RM-5891]

Radio Broadcasting Services; Bastrop and Burnet, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Colorado River Broadcasters, Inc., permittee of Station KSSR(FM), Channel 296A, Bastrop, Texas, proposing the substitution of Channel 296C2 for Channel 296A at Bastrop and the modification of its permit to specify operation on the higher class of channel. In addition the proposal requires the substitution of Channel 295A for Channel 296A at Burnet, Texas, and modification of the license of Station KHLB–FM in order to accomplish the Bastrop substitution. A first wide coverage area FM station could be provided to Bastrop. Petitioner's proposed site is 22.9 kilometers (14.2 miles) west of the community.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John E. Fiorini III, Esquire, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street NW., Suite 700, Washington, DC 20007 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–347, adopted August 18, 1987, and released September 17, 1987. The full text of this Commission decision is

substitution of Channel 249C2 for Channel 249A at Nebraska City, Nebraska, and the modification of its license for Station KNCY–FM to specify operation on the higher powered channel. Channel 249C2 can be allocated to Nebraska City in compliance with the Commission's minimum distance separation requirements and used at Station KNCY–FM's present transmitter site. In accordance with § 1.420(g) of the Commission's Rules, we propose to modify the license of Station KNCY–FM to specify operation on Channel 249C2. In addition, since this proposal represents a co-channel upgrade, we shall not accept competing expressions of interest in use of the channel at Nebraska City nor require the petitioner to demonstrate the availability of an additional equivalent channel for interested parties.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ronald A. Siegel, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–358, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21984 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–359, RM–5932]

Radio Broadcasting Services; Mangum and Marlow, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Austin Broadcast Services, Inc., permittee of Station KFXI(FM), Channel 221A, Marlow, Oklahoma, proposing the substitution of Channel 221C2 for Channel 221A at Marlow and the modification of its permit to specify the new channel. This document also directs an Order to Show Cause to James R. Galbreath, permittee of Station KZKQ(FM), Mangum, Oklahoma, why its permit should not be modified to specify operation on Channel 249A in lieu of its present Channel 221A. Channel 221C2 can be allocated to Marlow in compliance with the Commission's minimum distance separation requirements and used at Station KFXI(FM)'s present transmitter location, if Channel 221A is deleted from Mangum. Channel 249A can be allocated to Mangum in compliance with the Commission's minimum distance separation requirements. Austin Broadcast Services, Inc. is requested to furnish a study showing the currently operating noncommercial educational stations in the Marlow area and also the impact on the possible allocation of new noncommercial educational stations on the three adjacent channels since the Commission finds that Station KFXI(FM)'s 1 mV/m contour lies on the edge of the Grade B contour of TV Channel 6 Station KAUZ, Wichita Falls, Texas. Petitioner is also requested to state its willingness to reimburse Station KZKQ(FM), Mangum, Oklahoma, for the costs associated with its change of channel. In accordance with Section 1.420(g) of the Commission's Rules, we propose to modify the permit of Station KFXI(FM) to special operation on Channel 221C2. However, we shall not accept expressions of interest in use of Channel 221C2 at Marlow nor require the petitioner to demonstrate the availability of an additional equivalent channnel.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Stephen S. Simpson, Esq., Southmayd Powell & Taylor, 1764 Church Street, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–359, adopted August 21, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21983 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-360, RM-5929]

Radio Broadcasting Services; North Bend, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Big Bay Radio, Inc. proposing the allocation of Channel 297C1 to North Bend, Oregon, as the community's second local FM service. Channel 297C1 can be allocated to North Bend in compliance with the Commission's minimum distance separation requirements without a site restriction.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret L. Tobey, Esq., Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–360, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21982 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-356, RM-5871]

Radio Broadcasting Services; Alamo, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Charles C. Allen proposing the allotment of Channel 263A to Alamo, Tennessee, as that community's first FM service.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, Esquire, 715 G Street SE., Washington, DC 20003 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–356 , adopted August 20, 1987, and released September 17 , 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21988 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-347, RM-5891]

Radio Broadcasting Services; Bastrop and Burnet, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Colorado River Broadcasters, Inc., permittee of Station KSSR(FM), Channel 296A, Bastrop, Texas, proposing the substitution of Channel 296C2 for Channel 296A at Bastrop and the modification of its permit to specify operation on the higher class of channel. In addition the proposal requires the substitution of Channel 295A for Channel 296A at Burnet, Texas, and modification of the license of Station KHLB–FM in order to accomplish the Bastrop substitution. A first wide coverage area FM station could be provided to Bastrop. Petitioner's proposed site is 22.9 kilometers (14.2 miles) west of the community.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John E. Fiorini III, Esquire, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street NW., Suite 700, Washington, DC 20007 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–347, adopted August 18, 1987, and released September 17, 1987. The full text of this Commission decision is

available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21989 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–348, RM–5706]

Radio Broadcasting Services; Woodville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Trinity Valley Broadcasting Company proposing the allotment of Channel 234C2 to Woodville, Texas, as that community's first FM service. A site restriction of 23.5 kilometers (14.6 miles) north of Woodville is required.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Steven M. Kramer, P.E., Sellmeyer & Kramer, Inc., P.O. Box 841, 10500 Bighorn Trail, Suite 100, McKinney, TX 75069 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–348, adopted August 19, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21985 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–357, RM–5854]

Radio Broadcasting Services; Rice Lake, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Red Cedar Broadcasters, Inc., licensee of Station WAQE–FM, Channel 249A, Rice Lake, Wisconsin, proposing the substitution of Class C2 Channel 249 for Channel 249A at Rice Lake and modification of the station license to specify operation on the higher class channel, as that community's second wide area FM station. A site restriction of 18.3 kilometers (11.4 miles) northeast of Rice Lake is required. Concurrence by the Canadian government must be obtained.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, Esquire, 715 G Street, SE., Washington, DC 20003 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–357, adopted August 20, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21987 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 185
Thursday, September 24, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Tropic Resource Conservation and Development Measure; Utah

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tropic Resource Conservation and Development Measure, Garfield County, Utah. (Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable).

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, 125 South State Street, Salt Lake City, Utah 84147, telephone 801 524–5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project consists of a grade stabilization structure and riprap wall to protect the culinary water collection system for the town of Tropic. The proposed plan will prevent the Paria River from undercutting an existing riprap wall and exposing the culinary water collection system for 400 people.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Francis T. Holt, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Francis T. Holt,

State Conservationist.

September 16, 1987.

[FR Doc. 87–22033 Filed 9–23–87; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 5:00 p.m. on September 28, 1987, in Room 505 of the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts. The purpose of the meeting is to orient new members and discuss the proceedings of a May 1987 Chairpersons Conference, the status of the agency's funding, and changes in Commission and Advisory Committee operations as a result of a recent reorganization. Guest presentations will also be made on civil rights issues such as bias-related incidents, school desegregation, and the like in Massachusetts, and the Committee is then expected to select a new project or projects for Fiscal Year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Philip Perlmutter (617/542–7525) or John I. Binkley, the Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 17, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–22014 Filed 9–23–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the proposed Dress Rehearsal Survey for the 1990 Census under the provisions of the Paperwork Reduction Act (44 USC Chapter 35). The initial request for OMB approval was submitted June 17, 1987 but it has been revised to address concerns raised by OMB. The Department is now requesting an expedited review by OMB.

The 1988 Decennial Census Dress Rehearsal Survey will be a one-time mandatory request that will affect individuals and households. This new collection will place a burden of 98,058 total reporting hours on 475,000 respondents. The 1988 "Dress Rehearsal" Program is undertaken to implement the 1990 Decennial Census procedures in as near census-like conditions as possible. The Census Bureau will employ the full array of data collection and processing techniques it intends to use in 1990. Respondents will be residents of St. Louis, Missouri, East Central Missouri, and Eastern Washington.

Copies of the information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed

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available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21989 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–348, RM–5706]

Radio Broadcasting Services; Woodville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Trinity Valley Broadcasting Company proposing the allotment of Channel 234C2 to Woodville, Texas, as that community's first FM service. A site restriction of 23.5 kilometers (14.6 miles) north of Woodville is required.

DATES: Comments must be filed on or before November 9, 1987, and reply comments on or before November 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Steven M. Kramer, P.E., Sellmeyer & Kramer, Inc., P.O. Box 841, 10500 Bighorn Trail, Suite 100, McKinney, TX 75069 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–348, adopted August 19, 1987, and released September 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21985 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–357, RM–5854]

Radio Broadcasting Services; Rice Lake, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Red Cedar Broadcasters, Inc., licensee of Station WAQE–FM, Channel 249A, Rice Lake, Wisconsin, proposing the substitution of Class C2 Channel 249 for Channel 249A at Rice Lake and modification of the station license to specify operation on the higher class channel, as that community's second wide area FM station. A site restriction of 18.3 kilometers (11.4 miles) northeast of Rice Lake is required. Concurrence by the Canadian government must be obtained.

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ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, Esquire, 715 G Street, SE., Washington, DC 20003 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

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For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–21987 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 185
Thursday, September 24, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Tropic Resource Conservation and Development Measure; Utah

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tropic Resource Conservation and Development Measure, Garfield County, Utah. (Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable).

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, 125 South State Street, Salt Lake City, Utah 84147, telephone 801 524–5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project consists of a grade stabilization structure and riprap wall to protect the culinary water collection system for the town of Tropic. The proposed plan will prevent the Paria River from undercutting an existing riprap wall and exposing the culinary water collection system for 400 people.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Francis T. Holt, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Francis T. Holt,

State Conservationist.

September 16, 1987.

[FR Doc. 87–22033 Filed 9–23–87; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 5:00 p.m. on September 28, 1987, in Room 505 of the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts. The purpose of the meeting is to orient new members and discuss the proceedings of a May 1987 Chairpersons Conference, the status of the agency's funding, and changes in Commission and Advisory Committee operations as a result of a recent reorganization. Guest presentations will also be made on civil rights issues such as bias-related incidents, school desegregation, and the like in Massachusetts, and the Committee is then expected to select a new project or projects for Fiscal Year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Philip Perlmutter (617/542–7525) or John I. Binkley, the Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 17, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–22014 Filed 9–23–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the proposed Dress Rehearsal Survey for the 1990 Census under the provisions of the Paperwork Reduction Act (44 USC Chapter 35). The initial request for OMB approval was submitted June 17, 1987 but it has been revised to address concerns raised by OMB. The Department is now requesting an expedited review by OMB.

The 1988 Decennial Census Dress Rehearsal Survey will be a one-time mandatory request that will affect individuals and households. This new collection will place a burden of 98,058 total reporting hours on 475,000 respondents. The 1988 "Dress Rehearsal" Program is undertaken to implement the 1990 Decennial Census procedures in as near census-like conditions as possible. The Census Bureau will employ the full array of data collection and processing techniques it intends to use in 1990. Respondents will be residents of St. Louis, Missouri, East Central Missouri, and Eastern Washington.

Copies of the information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed

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Department of the Air Force

SN 6–654,338 (4,673,943)
Integrated Defense Communications System Antijamming Antenna System
SN 6–656,845 (4,672,380)
Gain Restoration After Doppler Filtering
SN 6–662,204 (4,675,682)
Magnetostatic Delay Line With Improved Delay Linearity
SN 6–684,240 (4,673,826)
Autonomous Uninterruptable Power Supply Apparatus
SN 6–688,943 (4,671,117)
Apparatus For Transmitting Data From High Speed Rotors
SN 6–698,977 (4,671,605)
Length Dependent, Optical Time Delay/Filter Device For Electrical Signals
SN 6–698,979 (4,671,604)
Wavelength Dependent, Tunable, Optical Time Delay System For Electrical Signals
SN 6–726,872 (4,669,831)
Total Internal Reflection Modulator/Deflector
SN 6–749,352 (4,675,847)
CCD Recirculation Data Flow Arrangement
SN 6–751,399 (4,674,565)
Heat Pipe Wick
SN 6–765,428 (4,676,599)
Micro-Optical Lens Holder
SN 6–765,483 (4,674,091)
Methods For Tuning Free Electron Lasers To Multiple Wavelengths
SN 6–772,813 (4,673,938)
Situation Awareness Mode
SN 6–788,308 (4,675,067)
Solar Cell Coverslide Extraction Apparatus
SN 6–801,341 (4,674,607)
Shock Absorbing Device With Integral Pressure Relief Valve
SN 6–804,034 (4,674,704)
Direct Air Cooling System For Airborne Electronics
SN 6–824,822 (4,675,088)
Synthesis of R_fOTEF_5
SN 6–831,886 (4,674,479)
Anti-G Suit
SN 6–865,507 (4,674,334)
Properties of Composite Laminates Using Leaky Lamb Waves
SN 6–905,596 (4,672,570)
Network Interface Module and Method
SN 6–907,345 (4,674,011)
Alignment Reference Device
SN 6–917,934
Apparatus For Casting Directionally Solidified Articles
SN 7–041,956
LiH Thermal Storage Capsule/Heat Exchanger

Department of the Army

SN 6–817,640 (4,674,406)
Explosively Activated Impact Switch With Interlocking Contacts
SN 7–034,356
Incoherent Image Intensity Normalization, Contour Enhancement, and Pattern Recognition System
SN 7–046,343
Method of Making A Long Life High Current Density Cathode From Tungsten and Iridium Powders Using A Barium Iridiate As the Impregnant
SN 7–046,347
Method of Precisely Adjusting the Frequency of a Piezoelectric Resonator
SN 7–051,872
High-Sensitivity Infrared Polarimeter
SN 7–057,134
Television Test Signal Generator
SN 7–059,346
Cathode Material For Use In Lithium Electrochemical Cell and Lithium Electrochemical Cell Including Said Cathode Material
SN 7–060,872
Optical Processor for an Adaptive Pattern Classifier
SN 7–060,873
A TV Surveillance System That Requires No Mechanical Motion
SN 7–063,611
Process and Apparatus for Controlling Winding Angle
SN 7–065,820
Contactless Hall Coefficient Measurement and Method
SN 7–066,808
Bilateral Frequency Adjustment of Crystal Oscillators
SN 7–070,753
Organic Electrolyte For Use In A Lithium Rechargeable Electrochemical Cell and Lithium Rechargeable Electrochemical Cell Including Said Organic Electrolyte
SN 7–070,755
Switchable Dielectric Waveguide Circulator
SN 7–075,799
Method and Apparatus For Growing High Perfection Quartz

Tennessee Valley Authority

SN 6–942,565 (4,676,821)
Sulfur-Coated Urea

[FR Doc. 87–22010 Filed 9–23–87; 8:45 am]
BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Negotiated Settlement on Import Restraint Limits for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 25, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or cxall (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish and amend import limits for silk blend and other vegetable fiber textiles and textile products in Categories 831, 833, 840 and 847, produced or manufactured in the People's Republic of China and exported to the United States during 1987.

Background

A CITA directive dated June 26, 1987 (52 FR 24503) established import restraint limits for certain silk blend and other vegetable fiber textiles and textile products in Categories 833 and 847, produced or manufactured in the People's Republic of China and exported during the twelve-month periods wich began, in the case of Category 833, on September 30, 1986 and extends through September 29, 1987; and, in the case of Category 847, on December 31, 1986 and extends through December 30, 1987.

During consultations held September 1–4, 1987 between the Governments of the United States and the People's Republic of China, agreement was reached, effected by exchange of notes dated September 11 and 14, 1987, to establish specific limits for silk blend and other vegetable fiber textiles and textile products in Categories 831, 833, 840 and 847, produced or manufactured

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information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, D.C. 20503.

Dated: September 22, 1987.

Stephen Browning,

Acting Director, Office of Management and Organization.

[FR Doc. 87-22144 Filed 9-23-87; 8:45 am]

BILLING CODE 3010-07-M

International Trade Administration

Meeting; Electronic Instrumentation Technical Advisory Committee

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held October 13 and 14, 1987, Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC. The October 13 meeting will convene in Room B-841 at 9:30 a.m. On October 14 the meeting will continue to its conclusion in Room 6802 of the Herbert C. Hoover Building.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

General Session:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments are invited on the following entries on the Commodity Control List (CCL):

CCL 1522A—Lasers and Laser Systems
CCL 1529A—Test Equipment
CCL 1531A—Frequency Synthesizers
CCL 1533A—Spectrum Analyzers
CCL 1541A—Cathode Ray Tubes
CCL 1572A—Recording and Reproducing Equipment
CCL 1584A—Oscilloscopes

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security. The Committee is also interested in proposals for revision to the People's Republic of China guidelines and G-COM regulations relating to these CCL numbers.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4073, 14th Street & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes contact Betty A. Ferrell, 202/377-2583.

Date: September 21, 1987.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-22060 Filed 9-23-87; 8:45 am]

BILLING CODE 3510-DT-M

National Technical Information Service

Availability for Licensing of Government-Owned Inventions

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Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-825,004 (4,685,481)
Washer for Plant Roots and Other Articles
SN 6-845,655 (4,687,741)
Novel Enzymes Which Catalyze The Degredation and Modification of Lignin
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Dielectric Phantom Material

Department of Health and Human Services

SN E-157-87
Rapid Enzymatic Method For Measurement Of Serum Flucytosine Levels
SN 6-788,397 (4,687,001)
Subcutaneous Fluid and Culture Chamber and Implant Technique
SN 7-037,178
New Antiretrovial Agents
SN 7-039,402
Acid Deoxynucleotides Active Against HIV
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Recombinant Vaccinia Virus Containing a Chimeric Gene having Foreign DNA Flanked by Vaccinia Regulatory DNA

Department of Interior

SN 6-889,156 (4,686,443)
Constant Current, Fast and Float Rate, Variable Hysteresis Battery Charger

Department of the Air Force

SN 6–654,338 (4,673,943)
Integrated Defense Communications System Antijamming Antenna System
SN 6–656,845 (4,672,380)
Gain Restoration After Doppler Filtering
SN 6–662,204 (4,675,682)
Magnetostatic Delay Line With Improved Delay Linearity
SN 6–684,240 (4,673,826)
Autonomous Uninterruptable Power Supply Apparatus
SN 6–688,943 (4,671,117)
Apparatus For Transmitting Data From High Speed Rotors
SN 6–698,977 (4,671,605)
Length Dependent, Optical Time Delay/Filter Device For Electrical Signals
SN 6–698,979 (4,671,604)
Wavelength Dependent, Tunable, Optical Time Delay System For Electrical Signals
SN 6–726,872 (4,669,831)
Total Internal Reflection Modulator/Deflector
SN 6–749,352 (4,675,847)
CCD Recirculation Data Flow Arrangement
SN 6–751,399 (4,674,565)
Heat Pipe Wick
SN 6–765,428 (4,676,599)
Micro-Optical Lens Holder
SN 6–765,483 (4,674,091)
Methods For Tuning Free Electron Lasers To Multiple Wavelengths
SN 6–772,813 (4,673,938)
Situation Awareness Mode
SN 6–788,308 (4,675,067)
Solar Cell Coverslide Extraction Apparatus
SN 6–801,341 (4,674,607)
Shock Absorbing Device With Integral Pressure Relief Valve
SN 6–804,034 (4,674,704)
Direct Air Cooling System For Airborne Electronics
SN 6–824,822 (4,675,088)
Synthesis of R_fOTEF_5
SN 6–831,886 (4,674,479)
Anti-G Suit
SN 6–865,507 (4,674,334)
Properties of Composite Laminates Using Leaky Lamb Waves
SN 6–905,596 (4,672,570)
Network Interface Module and Method
SN 6–907,345 (4,674,011)
Alignment Reference Device
SN 6–917,934
Apparatus For Casting Directionally Solidified Articles
SN 7–041,956
LiH Thermal Storage Capsule/Heat Exchanger

Department of the Army

SN 6–817,640 (4,674,406)
Explosively Activated Impact Switch With Interlocking Contacts
SN 7–034,356
Incoherent Image Intensity Normalization, Contour Enhancement, and Pattern Recognition System
SN 7–046,343
Method of Making A Long Life High Current Density Cathode From Tungsten and Iridium Powders Using A Barium Iridiate As the Impregnant
SN 7–046,347
Method of Precisely Adjusting the Frequency of a Piezoelectric Resonator
SN 7–051,872
High-Sensitivity Infrared Polarimeter
SN 7–057,134
Television Test Signal Generator
SN 7–059,346
Cathode Material For Use In Lithium Electrochemical Cell and Lithium Electrochemical Cell Including Said Cathode Material
SN 7–060,872
Optical Processor for an Adaptive Pattern Classifier
SN 7–060,873
A TV Surveillance System That Requires No Mechanical Motion
SN 7–063,611
Process and Apparatus for Controlling Winding Angle
SN 7–065,820
Contactless Hall Coefficient Measurement and Method
SN 7–066,808
Bilateral Frequency Adjustment of Crystal Oscillators
SN 7–070,753
Organic Electrolyte For Use In A Lithium Rechargeable Electrochemical Cell and Lithium Rechargeable Electrochemical Cell Including Said Organic Electrolyte
SN 7–070,755
Switchable Dielectric Waveguide Circulator
SN 7–075,799
Method and Apparatus For Growing High Perfection Quartz

Tennessee Valley Authority

SN 6–942,565 (4,676,821)
Sulfur-Coated Urea

[FR Doc. 87–22010 Filed 9–23–87; 8:45 am]
BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Negotiated Settlement on Import Restraint Limits for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 25, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or cxall (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish and amend import limits for silk blend and other vegetable fiber textiles and textile products in Categories 831, 833, 840 and 847, produced or manufactured in the People's Republic of China and exported to the United States during 1987.

Background

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During consultations held September 1–4, 1987 between the Governments of the United States and the People's Republic of China, agreement was reached, effected by exchange of notes dated September 11 and 14, 1987, to establish specific limits for silk blend and other vegetable fiber textiles and textile products in Categories 831, 833, 840 and 847, produced or manufactured

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Dated: September 22, 1987.

Stephen Browning,

Acting Director, Office of Management and Organization.

[FR Doc. 87-22144 Filed 9-23-87; 8:45 am]

BILLING CODE 3010-07-M

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The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

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1. Opening remarks by the Chairman.
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Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security. The Committee is also interested in proposals for revision to the People's Republic of China guidelines and G-COM regulations relating to these CCL numbers.

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Date: September 21, 1987.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-22060 Filed 9-23-87; 8:45 am]

BILLING CODE 3510-DT-M

National Technical Information Service

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Please cite the number and title of inventions of interest.

Douglas J. Campion,

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Dielectric Phantom Material

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SN 6-788,397 (4,687,001)
Subcutaneous Fluid and Culture Chamber and Implant Technique
SN 7-037,178
New Antiretrovial Agents
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Acid Deoxynucleotides Active Against HIV
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Novel Interleukin 2 Receptor and Applications Thereof
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Recombinant Vaccinia Virus Containing a Chimeric Gene having Foreign DNA Flanked by Vaccinia Regulatory DNA

Department of Interior

SN 6-889,156 (4,686,443)
Constant Current, Fast and Float Rate, Variable Hysteresis Battery Charger

in the People's Republic of China and exported to the United States during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Thje United States Government has decided to control imports of these categories at the designated levels. A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983, (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 21, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs.
Department of Treasury
Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes only that portion of the directive of June 26, 1987, concerning imports into the United States of certain silk blend and other vegetable fiber textiles and textile products in Category 833, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on September 30, 1986 and extends through September 29, 1987. This directive also amends, but does not cancel, that portion of the June 26, 1987 directive concerning imports of certain products in Category 847 exported during the period December 31, 1986 through December 30, 1987.

Effective on September 25, 1987, the directive of June 26, 1987 is hereby amended to establish and amend import restraint limits for silk blend and other vegetable fiber textiles and textile products in Categories 831, 833, 840 and 847, produced or manufactured in the People's Republic of China and exported during the new import period which began on January 1, 1987 and extends through December 31, 1987.[1]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

Category	12-mo. restraint limit
831	365,000 dozen pairs.
833	20,000 dozen.
840	355,000 dozen.
847	975,000 dozen.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in Categories 831 and 840 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on September 25, 1987, you are directed to charge the following amounts to the limits established in this letter for Categories 831, 833 and 840. These charges are for goods imported during the period January 1, 1987 through July 31, 1987:

Category	Amount to be charged
831	69,205 dozen pairs.
833	4,136 dozen.
840	183,115 dozen.

In the case of Category 847, retain the charges already made to the limit and add missing charges of 186,558 dozen for the import period May 1, 1987 through July 1, 1987. These charges also reflect the deduction of charges for goods exported on December 31, 1986.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22095 Filed 9-23-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 14 and 15 October 1987.

Times of Meeting: 0800-1700 hours, 14 and 15 October 1987.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issues of the study effort; i.e., induction, atmospheric issues and adaptive defense. The subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific issues impacting on program development. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-22018 Filed 9-23-87; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

National Environmental Policy Act; Record of Decision to Homeport Naval Vessels at Naval Station Treasure Island, Hunters Point Annex

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy is making the decision to Homeport elements of a Battleship Battlegroup and a Cruiser Destroyer Group on the West Coast of the United States and specifically at the Hunters Point Annex, Naval Station (NAVSTA) Treasure Island. This action was identified as Alternative 5 in the Environmental Impact Statement (EIS). Implementation of this action will satisfy the Navy's strategy for fleet dispersal, and will make effective use of existing Naval facilities. Support for the homeporting of additional ships in the San Francisco Bay Area is also provided by the urban/industrial nature of surrounding communities. The Navy currently has a large established presence in the Bay Area, employing approximately 40,000 people, of which 28,000 are civilian residents.

Sites identified as alternatives for homeporting additional ships in the San

Francisco Bay Area were Naval Station (NAVSTA) Treasure Island; Naval Station Treasure Island, Hunters Point Annex; and Naval Air Station (NAS) Alameda. These locations were identified as the only potential sites in San Francisco Bay for navigational and operational reasons.

The decision to adopt concepts presented in Alternative 5 for both ship berthing and new construction of shoreside support facilities is consistent with the existing complex at Hunters Point Annex.

Many impacts were regional in nature and therefore common to all alternatives. Of the action alternatives, Alternative 5 clearly had substantially smaller impacts resulting from dredging (quality and quantity). Alternative 5 also had less impact on water quality, marine and terrestrial biology, traffic, energy/utilities and public health/safety.

None of the alternatives which considered Naval Station Treasure Island and Naval Air Station Alameda as homeporting sites were superior or equal to Alternative 5 when all the physical, socioeconomic and operational factors were weighed on balance.

As part of a multi-year plan to reduce the housing deficit in the San Francisco area, the Navy will develop a 1500-unit housing complex at Hunters Point Annex, along with an additional 144 units to the present housing complex at NAVSTA Treasure Island. While the impacts of the introduction of the housing residents to the area is discussed throughout the Draft and Final EIS, appropriate environmental documentation will be prepared as detailed site specific proposals are developed in support of the multi-year plan.

During the public review process of environmental impact documentation for the homeporting action, questions were raised about other Naval projects in the Bay area. The suggestion was made that these projects are integral to the homeporting action, as they involve bay dredging. Two of these other future Navy construction dredging projects (P–082, Naval Supply Center Oakland and P–202, Naval Air Station Alameda) are not related to the West Coast Homeporting of a Battleship Battlegroup and a Cruiser-Destroyer Group. These projects are ongoing and previously approved facility improvements. The estimated dredge quantities associated with these projects were included in the EIS in order to assess cumulative impacts. The project dredge amounts were included in the total projected San Francisco Bay area Navy dredging for FY86–90 and also within the estimated potential future volume of dredge material requiring disposal at the Alcatraz site or other approved aquatic site. The West Coast Homeporting dredge totals were then compared by alternative against that estimated total. The end result was an analysis that covered the cumulative impacts of both Navy and non-Navy dredging through FY91. The relationship of pier 35 rehabilitation and dredging project (P–257) at Mare Island is clearly identified within the Draft and Final FIS documentation. All three projects predate the identification of homeporting requirements and, in the case of P–082/P–202, have been held in abeyance until completion of an aquifer study requested by cognizant city and state agencies and which was begun prior to initiation of homeporting environmental documentation.

Coincident with preparation of the EIS for the Battleship Battlegroup and Cruiser-Destroyer Group homeporting, the Navy was completing environmental review of the proposed homeporting of six Naval Reserve Force ships (four fast frigates and two mine countermeasure vessels) under a plan that considered placing them at the Hunters Point Annex. The Record of Decision (ROD) for that action reaffirmed the homeporting of the NRF ships at NAVSTA Treasure Island, rather than at the Hunters Point Annex. The ROD also authorized the construction of a SIMA at Hunters Point Annex, along with various personnel support facilities.

All 11 ships of the Battleship Battlegroup and cruiser destroyer group will be placed at Hunters Point. Under a phased plan, the battleship and one cruiser will be homeported at Hunters Point in 1990. The rest of the ships would arrive subsequent to that date. Total construction dredging is estimated to be approximately 912,000 CY, of which approximately 447,000 CY will be at the south pier at Hunters Point and approximately 465,000 CY at the north pier. The estimated annual maintenance dredging is approximately 534,000 CY, of which approximately 326,000 CY will be Hunters Point and approximately 208,000 CY will be for the Naval Reserve ships at Treasure Island. It is to be noted that dredging will be limited to 42 MLLW plus *one foot* at the north side of the south pier to avoid disturbance of deeper, contaminated bottom material. The USS MISSOURI is required to be interim berthed at the north side of the south pier in order to meet initial operational capability in FY–90. North pier improvements to accommodate the USS MISSOURI will not be completed until FY–91 or later.

The year-long study program for the Battleship Battlegroup and Cruiser-Destroyer Group Homeporting included a comprehensive testing program of the sediments that are to be dredged. The testing program was designed using approved protocols and guidance from both the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA). The testing program evaluated the potential for dredging and disposal at either the existing Bay site at Alcatraz or at an as-yet-undesignated ocean disposal site.

Disposal of the dredge material will add incrementally to the overall contaminant load of the Bay. Water quality in the Bay could be affected in the short term by dredging of sediments which contained elevated concentrations of contaminants, if these contaminants were released into the water column during dredging activities or were leached from these sediments at the disposal site. However, recent studies suggest that chemical contaminants appear to remain largely bound to fine sediments and are not readily released into the water column. Eventually, the dredged sediments would be removed from the Bay to the ocean or would be buried by other sediments.

Local short-term increases in turbidity and decreases in dissolved oxygen levels would be expected to occur during the dredging and disposal operations. Dredging would alter benthic habitats through the removal of existing infaunal communities.

Although some bioaccumulation or bioconcentration of chemical contaminants could occur in aquatic organisms, particularly in benthic species at the disposal site, the long-term effects of dredging and dredge material disposal due to the Navy homeporting actions are also not likely to be significant.

Operation of the Homeport could result in degradation of the surface water quality resulting from discharge of graywater from certain classes of ships, ship maintenance materials, oil spills during refueling, and surface runoff from ships and shore facilities. A major uncontrolled oil/fuel spill would have significant effect on local water quality and associated marine/aquatic wildlife. All of these potential impacts have corresponding mitigation measures and contingency plans to obviate or significantly reduce impacts in the event of an accident.

The use of anti-fouling paints on the homeported ships also could have adverse localized water quality effects. The Navy will not use organotin-based anti-fouling paints on any of the ships proposed for homeporting addressed in

in the People's Republic of China and exported to the United States during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Thje United States Government has decided to control imports of these categories at the designated levels. A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983, (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 21, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs.
Department of Treasury
Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes only that portion of the directive of June 26, 1987, concerning imports into the United States of certain silk blend and other vegetable fiber textiles and textile products in Category 833, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on September 30, 1986 and extends through September 29, 1987. This directive also amends, but does not cancel, that portion of the June 26, 1987 directive concerning imports of certain products in Category 847 exported during the period December 31, 1986 through December 30, 1987.

Effective on September 25, 1987, the directive of June 26, 1987 is hereby amended to establish and amend import restraint limits for silk blend and other vegetable fiber textiles and textile products in Categories 831, 833, 840 and 847, produced or manufactured in the People's Republic of China and exported during the new import period which began on January 1, 1987 and extends through December 31, 1987.[1]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

Category	12-mo. restraint limit
831	365,000 dozen pairs.
833	20,000 dozen.
840	355,000 dozen.
847	975,000 dozen.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in Categories 831 and 840 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on September 25, 1987, you are directed to charge the following amounts to the limits established in this letter for Categories 831, 833 and 840. These charges are for goods imported during the period January 1, 1987 through July 31, 1987:

Category	Amount to be charged
831	69,205 dozen pairs.
833	4,136 dozen.
840	183,115 dozen.

In the case of Category 847, retain the charges already made to the limit and add missing charges of 186,558 dozen for the import period May 1, 1987 through July 1, 1987. These charges also reflect the deduction of charges for goods exported on December 31, 1986.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22095 Filed 9-23-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 14 and 15 October 1987.

Times of Meeting: 0800-1700 hours, 14 and 15 October 1987.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issues of the study effort; i.e., induction, atmospheric issues and adaptive defense. The subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific issues impacting on program development. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-22018 Filed 9-23-87; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

National Environmental Policy Act; Record of Decision to Homeport Naval Vessels at Naval Station Treasure Island, Hunters Point Annex

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy is making the decision to Homeport elements of a Battleship Battlegroup and a Cruiser Destroyer Group on the West Coast of the United States and specifically at the Hunters Point Annex, Naval Station (NAVSTA) Treasure Island. This action was identified as Alternative 5 in the Environmental Impact Statement (EIS). Implementation of this action will satisfy the Navy's strategy for fleet dispersal, and will make effective use of existing Naval facilities. Support for the homeporting of additional ships in the San Francisco Bay Area is also provided by the urban/industrial nature of surrounding communities. The Navy currently has a large established presence in the Bay Area, employing approximately 40,000 people, of which 28,000 are civilian residents.

Sites identified as alternatives for homeporting additional ships in the San

Francisco Bay Area were Naval Station (NAVSTA) Treasure Island; Naval Station Treasure Island, Hunters Point Annex; and Naval Air Station (NAS) Alameda. These locations were identified as the only potential sites in San Francisco Bay for navigational and operational reasons.

The decision to adopt concepts presented in Alternative 5 for both ship berthing and new construction of shoreside support facilities is consistent with the existing complex at Hunters Point Annex.

Many impacts were regional in nature and therefore common to all alternatives. Of the action alternatives, Alternative 5 clearly had substantially smaller impacts resulting from dredging (quality and quantity). Alternative 5 also had less impact on water quality, marine and terrestrial biology, traffic, energy/utilities and public health/safety.

None of the alternatives which considered Naval Station Treasure Island and Naval Air Station Alameda as homeporting sites were superior or equal to Alternative 5 when all the physical, socioeconomic and operational factors were weighed on balance.

As part of a multi-year plan to reduce the housing deficit in the San Francisco area, the Navy will develop a 1500-unit housing complex at Hunters Point Annex, along with an additional 144 units to the present housing complex at NAVSTA Treasure Island. While the impacts of the introduction of the housing residents to the area is discussed throughout the Draft and Final EIS, appropriate environmental documentation will be prepared as detailed site specific proposals are developed in support of the multi-year plan.

During the public review process of environmental impact documentation for the homeporting action, questions were raised about other Naval projects in the Bay area. The suggestion was made that these projects are integral to the homeporting action, as they involve bay dredging. Two of these other future Navy construction dredging projects (P–082, Naval Supply Center Oakland and P–202, Naval Air Station Alameda) are not related to the West Coast Homeporting of a Battleship Battlegroup and a Cruiser-Destroyer Group. These projects are ongoing and previously approved facility improvements. The estimated dredge quantities associated with these projects were included in the EIS in order to assess cumulative impacts. The project dredge amounts were included in the total projected San Francisco Bay area Navy dredging for FY86–90 and also within the estimated potential future volume of dredge material requiring disposal at the Alcatraz site or other approved aquatic site. The West Coast Homeporting dredge totals were then compared by alternative against that estimated total. The end result was an analysis that covered the cumulative impacts of both Navy and non-Navy dredging through FY91. The relationship of pier 35 rehabilitation and dredging project (P–257) at Mare Island is clearly identified within the Draft and Final FIS documentation. All three projects predate the identification of homeporting requirements and, in the case of P–082/P–202, have been held in abeyance until completion of an aquifer study requested by cognizant city and state agencies and which was begun prior to initiation of homeporting environmental documentation.

Coincident with preparation of the EIS for the Battleship Battlegroup and Cruiser-Destroyer Group homeporting, the Navy was completing environmental review of the proposed homeporting of six Naval Reserve Force ships (four fast frigates and two mine countermeasure vessels) under a plan that considered placing them at the Hunters Point Annex. The Record of Decision (ROD) for that action reaffirmed the homeporting of the NRF ships at NAVSTA Treasure Island, rather than at the Hunters Point Annex. The ROD also authorized the construction of a SIMA at Hunters Point Annex, along with various personnel support facilities.

All 11 ships of the Battleship Battlegroup and cruiser destroyer group will be placed at Hunters Point. Under a phased plan, the battleship and one cruiser will be homeported at Hunters Point in 1990. The rest of the ships would arrive subsequent to that date. Total construction dredging is estimated to be approximately 912,000 CY, of which approximately 447,000 CY will be at the south pier at Hunters Point and approximately 465,000 CY at the north pier. The estimated annual maintenance dredging is approximately 534,000 CY, of which approximately 326,000 CY will be Hunters Point and approximately 208,000 CY will be for the Naval Reserve ships at Treasure Island. It is to be noted that dredging will be limited to 42 MLLW plus *one foot* at the north side of the south pier to avoid disturbance of deeper, contaminated bottom material. The USS MISSOURI is required to be interim berthed at the north side of the south pier in order to meet initial operational capability in FY–90. North pier improvements to accommodate the USS MISSOURI will not be completed until FY–91 or later.

The year-long study program for the Battleship Battlegroup and Cruiser-Destroyer Group Homeporting included a comprehensive testing program of the sediments that are to be dredged. The testing program was designed using approved protocols and guidance from both the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA). The testing program evaluated the potential for dredging and disposal at either the existing Bay site at Alcatraz or at an as-yet-undesignated ocean disposal site.

Disposal of the dredge material will add incrementally to the overall contaminant load of the Bay. Water quality in the Bay could be affected in the short term by dredging of sediments which contained elevated concentrations of contaminants, if these contaminants were released into the water column during dredging activities or were leached from these sediments at the disposal site. However, recent studies suggest that chemical contaminants appear to remain largely bound to fine sediments and are not readily released into the water column. Eventually, the dredged sediments would be removed from the Bay to the ocean or would be buried by other sediments.

Local short-term increases in turbidity and decreases in dissolved oxygen levels would be expected to occur during the dredging and disposal operations. Dredging would alter benthic habitats through the removal of existing infaunal communities.

Although some bioaccumulation or bioconcentration of chemical contaminants could occur in aquatic organisms, particularly in benthic species at the disposal site, the long-term effects of dredging and dredge material disposal due to the Navy homeporting actions are also not likely to be significant.

Operation of the Homeport could result in degradation of the surface water quality resulting from discharge of graywater from certain classes of ships, ship maintenance materials, oil spills during refueling, and surface runoff from ships and shore facilities. A major uncontrolled oil/fuel spill would have significant effect on local water quality and associated marine/aquatic wildlife. All of these potential impacts have corresponding mitigation measures and contingency plans to obviate or significantly reduce impacts in the event of an accident.

The use of anti-fouling paints on the homeported ships also could have adverse localized water quality effects. The Navy will not use organotin-based anti-fouling paints on any of the ships proposed for homeporting addressed in

modified to insure compatibility. All of this results in a station emission control "bill" (procedures) which insures personnel and equipment safety. Procedures are updated as equipment and/or ordnance changes are introduced. Accordingly, it is not expected that any Navy operation, ashore or afloat, will constitute a HERO hazard to either Navy personnel or the surrounding community.

As expected with an action of this magnitude, the Navy has worked closely with Federal, State and local agencies connected with the homeporting action. That close working relationship will continue as we design, develop the homeports, and execute the final actions. Continuing coordination with other agencies will include but may not be limited to the following items:

- Section 404 Permit (Clean Water Act) administered by the COE, San Francisco District, with oversight by Region IX EPA.
- Water Quality Certification (Clean Water Act) administered by California State Regional Water Control Board
- Dredging Permit (section 10, Rivers and Harbors Act) administered by the COE.
- Ocean disposal permit (section 103 Marine Protection, Research and Sanctuaries Act) administered by the COE; if ocean disposal is necessary.
- Final Coastal Consistency Determination (Coastal Zone Management Act) administered by the San Francisco Bay Conservation and Development Commission.
- Consultation with the State Office of Historic Preservation regarding sites that might be identified as eligible for the National Register of Historic Places while homeporting proceeds.
- Authority to Construct and Permit to Operate (Clean Air Act) from the Bay Area Air Quality Management District.
- Recommendation to decision makers of the City and County of San Francisco to adopt the EIS to fulfill environmental review of certain related discretionary actions involved in the City and County's pending agreements with the Navy, pursuant to the California Environmental Quality Act (CEQA).
- Continuing coordination and consultation with and approvals if necessary, from various agencies including the State Department of Health Services, the Regional Water Quality Control Board and the federal EPA in order to ensure compliance with CERCLA and SARA.

W.R. Babington,

CDR, JAGC, USN, Federal Register Liaison.

[FR Doc. 87-21979 Filed 9-23-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Marine Corps Command and Control Systems Interoperability will meet on October 26, 1987, at the Navy Annex, South Gate Road and Columbia Pike, Arlington, Virginia. The meeting will commence at 9:00 A.M. and terminate at 3:00 P.M. on October 26, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review interservice command and control systems requirements for naval forces in the near and mid-term, and identify future communications and command and control systems architecture features with a view toward improving interoperability. The agenda will include executive sessions to discuss technical briefings received to date which addressed development programs and interoperability procedures, and continue preparation of a final report. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder U.S. Navy, Office of Naval Research (Code (OONR), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Jane Virga,

Lieutenant JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

September 21, 1987.

[FR Doc. 87-21977 Filed 9-23-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Weapons will meet on October 27-28, 1987. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:30 A.M. and terminate at 4:00 P.M. on October 27; and commence at 9:00 A.M. and terminate at 3:30 P.M. on October 28, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide for the Navy an assessment of the potential military value of laser technology for weapon applications. The agenda will include technical briefings and discussions addressing military laser weapon programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

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Date: September 21, 1987.

Jane Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 87-21978 Filed 9-23-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. G-2737-000 et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates;[1] Conoco, Inc., et al.

September 21, 1987.

Take notice that each of the Applicants listed herein has filed an

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

this ROD, until the paint's use is approved by the EPA.

Homeporting will bring approximately 12,000 people to the Bay Area, including approximately 6,000 dependents. Approximately 5,500 Navy direct employment positions and 5,000 indirect employment positions are expected to be generated. Of the 5,500 direct jobs, from 150 to 400 would be civilian jobs. Any gain of civilian jobs for the Bay Area, however, is offset by a direct associated job loss of approximately 580 jobs (250 ships repair and 330 small business/artists) at Hunters Point. It is possible that these activities will locate elsewhere in the Bay Area. This loss could also be reversed in the future by the project's generation of more jobs in ship repair.

Some housing for Navy personnel would be provided on ships and in military housing complexes in the Bay Area, largely in the Central Bay Subregion. The remaining housing demand, both military and civilian, generated by the proposed project, would be fulfilled by local communities. Private housing demand would be up to 2,100 units in widely dispersed communities, representing less than 0.5 to 1% of housing demand in any single affected county. The demand for Navy housing would be partially offset by ongoing military housing construction projects and by a 1,500-unit Navy housing project proposed at Hunters Point noted previously.

The proposed action would add approximately 21,000 additional daily vehicle trips to Bay Area regional roads. The project will increase roadside concentrations of ROC, NO_x and TSP, subject to implementation of mitigation measures proposed for traffic impacts. Adverse effects on regional SO_x levels primarily due to emissions associated with ship engines could occur, but this has a low probability of occurrence. Emissions of NO_x and ROC could also contribute to downwind ozone concentrations.

The proposed action will increase the volume of ship traffic in the San Francisco Bay. Fleet movements would increase total ship traffic on the Bay by about 0.2%. These increases in vessel traffic would increase the risk of vessel collision, grounding, or similar incidents, which are already relatively infrequent.

An approximate 33% (45% with NRF ships) increase in Navy ships homeported in San Francisco Bay would also increase the amount of ordnance handling, ship fueling operations, and hazardous waste generation. The analysis of hazardous waste generation included both ship and shoreside waste generation by the Homeporting action. The quantity of Homeporting hazardous waste was evaluated in terms of current San Francisco Bay Region Navy disposal practice to assess the Navy's ability to dispose of the total cumulative San Francisco Bay Region generated hazardous waste. The hazardous waste storage facility at DRMO Alameda is currently used to capacity. Any increase in Navy hazardous waste could aggravate the already limited storage capacity at the DRMO Alameda. Both DRMO and NAS Alameda have proposed additional hazardous waste storage capacity to alleviate this situation. A facility for storing hazardous waste less than 90 days is also planned at Hunters Point. Furthermore, Navy regulations require the development of an oil and hazardous substance spill prevention, control, and countermeasures plan and a hazardous waste management plan specifically for Hunters Point. Mitigation measures also include local development of an Emergency Preparedness Plan by the Navy, an aggressive program in the Bay Area to reduce operational oil spills, and a nationwide Navy effort to reduce hazardous waste generation.

Certain areas at Hunters Point have also been verified in recent studies as contaminated by hazardous materials from past operations. Characterization studies, now ongoing, will identify areas to be remedied. Full compliance with all applicable hazardous waste laws and/or procedures will be observed.

The Navy will comply with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, in accordance with section 120 of CERCLA. The Navy will comply with state laws concerning removal and remedial action when its facilities are not included on the National Priorities list. Accordingly, the Navy will:

- Develop additional data as appropriate through review of past disposal practices, grid surveys, and/or site specific investigations to accurately assess the scope of hazardous waste contamination at Hunters Point.
- Develop in uncontaminated areas in a manner that is compatible with possible remediation efforts at other sites.
- Follow National Contingency Plan (NCP) procedures in performing evaluations and response actions at each area contaminated by hazardous substances.
- Coordinate and consult with state regulatory agencies, and insure full public participation consistent with CERCLA, SARA and NCP.

The principal issues demonstrated by the greatest expression of public concern were: the potential for dredging to degrade water quality and introduce toxics into the aquatic ecosystem of the Bay; disposal of dredged materials; pending problems and disposal of identified hazardous waste sites at Hunters Point; a variety of nuclear related questions (such as desires for contingency planning, nuclear weapons safety, and nuclear arms control); concerns about loss and displacement of jobs at Hunters Point; housing issues relating to competition for a limited availability of affordable housing in the Bay Area; and traffic congestion.

There was also concern about local public health and mores, compatibility of the Homeport project with its surroundings, and the need for communication and liaison with the Navy in future planning. On many topics, commentors expressed the desire that the Navy work closely with the City and County of San Francisco, adhere to state and federal regulations, and promise to actively pursue mitigative measures, especially in the areas of petroleum spills, hazardous wastes, employment, traffic, and Bay area aquatic health. It is the Navy's intent to continue to pursue these issues.

Finally, in the preparation of this Record of Decision, the Navy considered comments received subsequent to the publication of the FEIS. Concerns for the most part were dredging impacts, the identification and disposal of hazardous waste and the nuclear issue.

One area of concern raised was the Hazard of Electromagnetic Radiation to Ordnance (HERO) and the likelihood that citizens and naval personnel will be adversely affected. Consideration of any HERO effects is an integral part of planning for Navy operations. Prior to facilities construction, a thorough analysis involving all prospective transmitters along with their respective antenna patterns is performed to identify safe distances from the ordnance expected to be present. Relocations are then accomplished as applicable. After installation, actual measurements are taken and arcs identified for each transmitter. Conversely, each weapon/system, ordnance assembly/handling area, access/egress route, etc. is identified and compared to the arcs previously mentioned. Again, relocations are performed where possible and/or equipment operating procedures are

modified to insure compatibility. All of this results in a station emission control "bill" (procedures) which insures personnel and equipment safety. Procedures are updated as equipment and/or ordnance changes are introduced. Accordingly, it is not expected that any Navy operation, ashore or afloat, will constitute a HERO hazard to either Navy personnel or the surrounding community.

As expected with an action of this magnitude, the Navy has worked closely with Federal, State and local agencies connected with the homeporting action. That close working relationship will continue as we design, develop the homeports, and execute the final actions. Continuing coordination with other agencies will include but may not be limited to the following items:

- Section 404 Permit (Clean Water Act) administered by the COE, San Francisco District, with oversight by Region IX EPA.
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W.R. Babington,

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[FR Doc. 87-21979 Filed 9-23-87; 8:45 am]

BILLING CODE 3810-AE-M

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September 21, 1987.

[FR Doc. 87-21977 Filed 9-23-87; 8:45 am]

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Date: September 21, 1987.

Jane Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 87-21978 Filed 9-23-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

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The proposed action would add approximately 21,000 additional daily vehicle trips to Bay Area regional roads. The project will increase roadside concentrations of ROC, NO_x and TSP, subject to implementation of mitigation measures proposed for traffic impacts. Adverse effects on regional SO_x levels primarily due to emissions associated with ship engines could occur, but this has a low probability of occurrence. Emissions of NO_x and ROC could also contribute to downwind ozone concentrations.

The proposed action will increase the volume of ship traffic in the San Francisco Bay. Fleet movements would increase total ship traffic on the Bay by about 0.2%. These increases in vessel traffic would increase the risk of vessel collision, grounding, or similar incidents, which are already relatively infrequent.

An approximate 33% (45% with NRF ships) increase in Navy ships homeported in San Francisco Bay would also increase the amount of ordnance handling, ship fueling operations, and hazardous waste generation. The analysis of hazardous waste generation included both ship and shoreside waste generation by the Homeporting action. The quantity of Homeporting hazardous waste was evaluated in terms of current San Francisco Bay Region Navy disposal practice to assess the Navy's ability to dispose of the total cumulative San Francisco Bay Region generated hazardous waste. The hazardous waste storage facility at DRMO Alameda is currently used to capacity. Any increase in Navy hazardous waste could aggravate the already limited storage capacity at the DRMO Alameda. Both DRMO and NAS Alameda have proposed additional hazardous waste storage capacity to alleviate this situation. A facility for storing hazardous waste less than 90 days is also planned at Hunters Point. Furthermore, Navy regulations require the development of an oil and hazardous substance spill prevention, control, and countermeasures plan and a hazardous waste management plan specifically for Hunters Point. Mitigation measures also include local development of an Emergency Preparedness Plan by the Navy, an aggressive program in the Bay Area to reduce operational oil spills, and a nationwide Navy effort to reduce hazardous waste generation.

Certain areas at Hunters Point have also been verified in recent studies as contaminated by hazardous materials from past operations. Characterization studies, now ongoing, will identify areas to be remedied. Full compliance with all applicable hazardous waste laws and/or procedures will be observed.

The Navy will comply with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, in accordance with section 120 of CERCLA. The Navy will comply with state laws concerning removal and remedial action when its facilities are not included on the National Priorities list. Accordingly, the Navy will:

- Develop additional data as appropriate through review of past disposal practices, grid surveys, and/or site specific investigations to accurately assess the scope of hazardous waste contamination at Hunters Point.
- Develop in uncontaminated areas in a manner that is compatible with possible remediation efforts at other sites.
- Follow National Contingency Plan (NCP) procedures in performing evaluations and response actions at each area contaminated by hazardous substances.
- Coordinate and consult with state regulatory agencies, and insure full public participation consistent with CERCLA, SARA and NCP.

The principal issues demonstrated by the greatest expression of public concern were: the potential for dredging to degrade water quality and introduce toxics into the aquatic ecosystem of the Bay; disposal of dredged materials; pending problems and disposal of identified hazardous waste sites at Hunters Point; a variety of nuclear related questions (such as desires for contingency planning, nuclear weapons safety, and nuclear arms control); concerns about loss and displacement of jobs at Hunters Point; housing issues relating to competition for a limited availability of affordable housing in the Bay Area; and traffic congestion.

There was also concern about local public health and mores, compatibility of the Homeport project with its surroundings, and the need for communication and liaison with the Navy in future planning. On many topics, commentors expressed the desire that the Navy work closely with the City and County of San Francisco, adhere to state and federal regulations, and promise to actively pursue mitigative measures, especially in the areas of petroleum spills, hazardous wastes, employment, traffic, and Bay area aquatic health. It is the Navy's intent to continue to pursue these issues.

Finally, in the preparation of this Record of Decision, the Navy considered comments received subsequent to the publication of the FEIS. Concerns for the most part were dredging impacts, the identification and disposal of hazardous waste and the nuclear issue.

One area of concern raised was the Hazard of Electromagnetic Radiation to Ordnance (HERO) and the likelihood that citizens and naval personnel will be adversely affected. Consideration of any HERO effects is an integral part of planning for Navy operations. Prior to facilities construction, a thorough analysis involving all prospective transmitters along with their respective antenna patterns is performed to identify safe distances from the ordnance expected to be present. Relocations are then accomplished as applicable. After installation, actual measurements are taken and arcs identified for each transmitter. Conversely, each weapon/system, ordnance assembly/handling area, access/egress route, etc. is identified and compared to the arcs previously mentioned. Again, relocations are performed where possible and/or equipment operating procedures are

application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

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CI65-531-000, D, Sept. 15, 1987.	BHP Petroleum Company, Inc., 5847 San Felipe—Suite 3600, Houston, Texas 77057.	Natural Gas Pipeline Company of America, Interstate Field, Eddy County, New Mexico.	[20]	
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FOOTNOTES:

[1] By two separate Instruments of Assignment dated 2-12-87, effective 11-1-86, Conoco Inc. conveyed unto Dakar Operating Company, its interest in dry gas rights underlying the SE/4 Section 161, Block 3, Gray County, Texas and E/2 NE/4 Section 83, Block 4, Carson County, Texas.

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BILLING CODE 6717-01-M

[Docket Nos. CP87-519-000 et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co. et al.

September 18, 1987.

Take notice that the following filings have been made with the Commission.

1. Colorado Interstate Gas Co.

[Docket No. CP 87-519-000]

Take notice that on August 31, 1987, Colorado Interstate Gas Company (CIG), a Delaware Corporation, Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87-519-000 and application pursuant to section 7(b) of the Natural Gas Act for authorizaiton to terminate service to the cities of Trinidad and Fort Morgan, Colorado, under Rate Schedules G-1 and PS-1 of CIG's FERC Gas Tariff, Original Volume No. 1. These Rate Schedules for Trinidad and Fort Morgan are pursuant to Service Agreements dated March 5, 1985 and September 27, 1985, respectively. CIG further seeks a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing the establishment of service to the above mentioned cities under Rate Schedule SG-1, all as more fully set forth in the application on file with the Commission and open for public inspection.

CIG states that the city of Trinidad, Colorado requested a change in its Rate Schedule from the current G-1/PS-1 Rate to the SG-1 Rate by letter dated July 28, 1987, CIG also states that the city of Fort Morgan, Colorado requested a change in its Rate Schedule from the current G-1/PS-1 Rate to the SG-1 Rate by letter dated July 10, 1987.

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natural gas per day (Transportation Quantity). It is stated that Texas Eastern would cause gas to be delivered to Southern for transportation at the following receipt points on Southern's contiguous pipeline system:

(i) The existing point of interconnection between the facilities of Texas Eastern and Southern near Mile Post 23.695 on Southern's Duck Lake-White Castle Loop Line, Iberville Parish, Louisiana (White Castle Point); and

(ii) The existing point of interconnection between the facilities of Southern and the outlet of the Venice processing plant in Plaquemines Parish, Louisiana (Venice Point); and

(iii) The existing point of interconnection between the facilities of Southern and Florida Gas Transmission Company near Mile Post 124.859 on Southern's Main Pass-Franklinton Pipeline, Washington Parish, Louisiana (Franklinton Point).

It is further stated that on any day of transportation, Southern would be required to accept a total volume up to the Transportation Quantity at the Venice and/or White Castle Points, except that Southern would determine in its sole discretion the allocation of the nominated volumes between the two points. It is also stated that Southern would redelivered to Texas Eastern at the existing point of interconnection between the facilities of Southern and Texas Eastern near Kosciusko, Attala County, Mississippi (Delivery Point), an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to be used as compressor fuel, company-use gas, and unaccounted for gas losses (Redelivery Quantity).

Southern states that the transportation agreement also provides that it would have the right to interrupt or curtail redeliveries to Texas Eastern of up to the total quantity of gas delivered by Texas Eastern to Southern on any day at Southern's option during the period from November 1 of each calendar year through March 31 of the following calendar year (Winter Season). However, it is stated that Southern (i) cannot exercise this right on any day in which Texas Eastern is curtailing its firm deliveries pursuant to Section 12 of Texas Eastern's FERC Gas Tariff; (ii) cannot exercise this right for more than three consecutive days; and (iii) cannot retain at any time an aggregate volume of Texas Eastern's gas in excess of 480,000 Mcf. It is also stated that Southern would give four hours notice to Texas Eastern of its intent to exercise its option to interrupt redeliveries of gas. Southern states that it would redeliver to Texas Eastern the aggregate of imbalance volumes resulting from Southern's interruption of redeliveries to Texas Eastern as soon as is mutually agreeable, but no later than April 30 following the Winter Season in which the interruption occurred.

Southern states that the transportation agreement provides that for the transportation service rendered each month, Texas Eastern would pay to Southern the sum of the following: (i) A reservation charge of $146,000 per month and (ii) a transportation charge consisting of an amount equal to the product of the monthly Redelivery Quantity times $0.01 per MMBtu. It is stated that this rate is a firm negotiated rate which is based on Southern's estimate of the revenue required to recover the cost of providing this service, considering the special benefits available to Southern not generally available to a transporter. It is further stated that Southern's right to interrupt or curtail the redelivery of Texas Eastern's transportation gas to help meet its peak day requirements provides a substantial benefit to Southern's customers in that this is an additional source of suply that is available without the incurrence of additional costs. It is indicated that in reaching this negotiated rate with Texas Eastern, Southern considered the unique gas supply benefit of this transportation service and a range of potential cost allocations based on evidence submitted during the hearing held in Southern's general rate proceeding pending in Docket No. RP86-63.

Southern states that the transportation agreement provides that should the Commission in any proceeding initiated by or applicable to Southern require or approve a rate higher than the rate charged Texas Eastern under the transportation agreement, or should the Commission allocate to this transportation service a portion of Southern's cost of service in excess of the revenues received by Southern under the transportation agreement, the transportation agreement would terminate. Accordingly, Southern requests that the certificate issued authorizing the transportation service include pre-granted abandonment authorization to be effective upon termination of the transportation agreement.

Southern further states that in order to permit it to receive gas from Texas Eastern, it would have to modify the existing meter station at the White Castle Point. Southern states that there are two meter runs at the White Castle Point which have both been used to enable Southern to flow gas to Texas Eastern. Southern proposes to reverse one of the meter runs for the flowing of gas from Texas Eastern to Southern. The proposed modification would provide sufficient metering and regulating capacity to accommodate the maximum Transportation Quantity of 40,000 Mcf of gas per day and at the same time retain the present capability of Southern to deliver gas to Texas Eastern, it is stated. Southern estimates the cost of the proposed modification of facilities to be $25,760 which will be financed initially by short-term financing and/or cash from current operations, and ultimately from permanent financing.

Comment date: October 9, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Co.

[Docket No. CP87-528-000]

Take notice that on September 8, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202 2563, filed in Docket No. CP87-528-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service to Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to abandon sales service to Texas Eastern on November 1, 1987. It is stated that Southern, as seller, and Texas Eastern, as buyer, are parties to a September 29, 1967, service agreement for the sale and purchase of gas in quantities up to 40,000 Mcf per day at an existing point of interconnection between Southern and Texas Eastern near Kosciusko, Attala County, Mississippi. It is stated that such service was authorized by order issued December 17, 1962, in Docket No. CP61-206. It is stated that the service agreement expires by its own terms on November 1, 1987. It is further stated that over the past five years Texas Eastern's purchases of gas from Southern have steadily declined. Southern states that by letter dated October 31, 1986, Texas Eastern informed Southern that subsequent to the expiration date of the agreement, Texas Eastern no longer desires to continue as a customer on Southern's system. Southern also states that it would not abandon any pipeline facilities in conjunction with the proposed abandonment of sales service to Texas Eastern.

Comment date: October 9, 1987, in accordance with Standard Paragraph F at the end of this notice.

service are authorized and are to be made effective prior to such effective date for future rates. CIG be allowed the opportunity to revise its rates contemporaneously with the effective date of the revised service to Trinidad and Fort Morgan.

Comment date: October 9, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Gas Gathering Corp.

[Docket No. CP87–527–000]

Take notice that on September 8, 1987, Gas Gathering Corporation (Gas Gathering), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP87–527–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223(b)) for authorization to transport up to 15 billion Btu of natural gas per day for Amoco Production Company (Amoco) under the authorization issued in Docket No. CP86–129–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Gathering proposes to transport the gas for Amoco pursuant to a transportation agreement dated June 1, 1987. Gas Gathering indicates that the primary term of the agreement expires June 30, 1987, but continues in effect on a month to month basis unless terminated by either party giving notice of termination not less than five days prior to commencement of each new contract month. Gas Gathering states that it would receive volumes of gas at the outlet of the existing measuring station owned and operated by Gas Gathering in St. Martin Parish, Louisiana and redeliver thermally equivalent volumes for the accunt of Amoco at the inlet to the existing measuring station owned and operated by Transcontinental Gas Pipe Line Corporation in Pointe Coupee Parish, Louisiana or at the outlet of Gas Gathering's meter in Pointe Coupee Parish, Louisiana. Gas Gathering also indicated it commenced a 120-day service for Amoco on June 1, 1987, and that Docket No. ST87–3101–000 was assigned to Gas Gathering's initial report.

Gas Gathering has submitted a statement indicating that it has no knowledge of any agency relationship under which a local distribution company or affiliate of the shipper would receive natural gas on behalf of the shipper. Gas Gathering also indicates that no new facilities would be required to implement the service. Gas Gathering also states that on a peak day, average day and annual basis, it would transport 15.0 billion Btu, 10.0 billion Btu and 3,650 billion Btu, respectively.

Comment date: November 2, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Gas Transport, Inc.

[Docket No. CP87–535–000]

Take notice that on September 10, 1987, Gas Transport, Inc. (Gas Transport), 109 North Broad Street, Lancaster, Ohio, 43132, filed in Docket No. CP87–535–000, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations. Gas Transport seeks authorization to transport natural gas on behalf of The Parkersburg Sanitary Board (Parkersburg) under Gas Transport's blanket transportation certificate issued in Docket No. CP86–291–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Transport states that, pursuant to a transportation agreement dated July 1, 1987, it proposes to transport natural gas on behalf of Parkersburg from a receipt point at Gravel Bank, Ohio, or other points of connection with Columbia Gas Transmission Corporation to a delivery point at the Parkersburg, West Virginia, interconnection with Hope Gas, Inc., which will make final delivery to Parkersburg. Gas Transport further states that the maximum daily, average daily and annual quantities would be 530 MMBtu, 141 MMBtu, and 51,540 MMBtu, respectively. Gas Transport states that service under § 284.223(a) of the Commission's Regulations commenced July 23, 1987, pursuant to the automatic 120-day authorization permitted by § 284.223 of the Commission's Regulations. Gas Transport also indicates that no facilities are required to be constructed to provide the proposed service for Parkersburg.

Comment date: November 2, 1987, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP87–522–000]

Take notice that on September 3, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–522–000, a request pursuant to Northern's blanket authority granted at Docket No. CP82–401–000 and § 157.205 of the Commission's Regulations for authority to construct three small-volume delivery points and appurtenant facilities to accommodate natural gas deliveries to Northern States Power Company of Wisconsin (NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to construct three small-volume delivery points to accommodate natural gas deliveries to the communities of Birch Hill, Grandad Bluff and Irish Hill, Wisconsin to be served by NSP. It is stated that the total estimated costs to construct the proposed facilities is $10,500. It is further stated that NSP will be required to make a contribution of $646 in aid of construction.

It is asserted that the estimated peak day and annual volumes to be delivered to NSP at the subject delivery points in the fifth year of service and their end-use would be as follows:

Delivery point	Quantity Mcf		End-use
	Peak day	Annual	
Birch Hill, WI	100	10,000	Residen-tial.
Grandad Bluff, WI	90	7,700	Do.
Irish Hill, WI	120	12,500	Do.

It is maintained that the volumes delivered to NSP at the proposed delivery points would be within its currently authorized firm entitlement and therefore would have no impact on Northern's peak day and annual deliveries.

Comment date: November 2, 1987, in accordance with Standard Paragraph G at the end of this notice.

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Take notice that on September 8, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–529–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Eastern Transmission Corporation (Texas Eastern) and to modify certain facilities necessary for the transportation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the terms of a July 15, 1987, transportation agreement, Southern has agreed to transport for Texas Eastern for its own account and as agent for its existing sales customers, up to 40,000 Mcf of

natural gas per day (Transportation Quantity). It is stated that Texas Eastern would cause gas to be delivered to Southern for transportation at the following receipt points on Southern's contiguous pipeline system:

(i) The existing point of interconnection between the facilities of Texas Eastern and Southern near Mile Post 23.695 on Southern's Duck Lake-White Castle Loop Line, Iberville Parish, Louisiana (White Castle Point); and

(ii) The existing point of interconnection between the facilities of Southern and the outlet of the Venice processing plant in Plaquemines Parish, Louisiana (Venice Point); and

(iii) The existing point of interconnection between the facilities of Southern and Florida Gas Transmission Company near Mile Post 124.859 on Southern's Main Pass-Franklinton Pipeline, Washington Parish, Louisiana (Franklinton Point).

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It is asserted that the estimated peak day and annual volumes to be delivered to NSP at the subject delivery points in the fifth year of service and their end-use would be as follows:

Delivery point	Quantity Mcf		End-use
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Birch Hill, WI	100	10,000	Residen-tial.
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It is stated that pursuant to the terms of a July 15, 1987, transportation agreement, Southern has agreed to transport for Texas Eastern for its own account and as agent for its existing sales customers, up to 40,000 Mcf of

[Docket No. CI79-48-001 et al.]

Application for Permanent Abandoment of Service; Chevron U.S.A. Inc.

September 21, 1987.

Take notice that on April 9, 1987, as supplemented on September 14, 1987, Chevron U.S.A. Inc. (Chevron), filed an application to abandon service due to an assignment dated July 21, 1986, effective September 1, 1986, to Angerman Associates, Inc. The purchasers, certificate docket numbers and rate schedule numbers are listing on the attached Exchibit A. This assignment covers all producing properties under the rate schedules shown in Exhibit A. Since Chevron no longer has an interest in these properties, it submits that the cancellation of the described rate schedules and abandonment of sales are appropriate and in the public interest. Chevron has retained some undeveloped acreage in areas near the producing leases. This acreage has not produced natural gas and Chevron currently has no plans to develop it. Chevron requests that it also be granted abandonment authorization for the undeveloped acreage which was retained.

The application was previously noticed on August 11, 1987, but inadvertenly was not published in the **Federal Register**.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Purchaser	Rate [illegible]	[illegible]	Chevron contract
Carnegie Natural Gas Co.	625	CI79-48	NG-5059R
Columbia Gas Transmission Co.	642	CI79-82	NG-5051R
Columbia Gas Transmission Co.	[illegible]	CI78-306	NG-553R
Consolidated Gas Supply Corp.	612	CI78-1269	NG-5052R
Consolidated Gas Supply Corp.	661	CI79-232	NG-5057R
Consolidated Gas Supply Corp.	622	CI79-46	NG-5061R
Consolidated Gas Supply Corp.	619	CI79-25	NG-5063R
Consolidated Gas Supply Corp.	610	CI78-1252	NG-5064R
Consolidated Gas Supply Corp.	[illegible]	CI79-26	NG-5065R
Consolidated Gas Supply Corp.	[illegible]	CI78-1270	NG-5066R
Consolidated Gas Supply Corp.	611	CI78-1274	NG-5067R
Consolidated Gas Supply Corp.	616	CI79-15	NG-5068R
Consolidated Gas Supply Corp.	609	CI78-1266	NG-5073R
Consolidated Gas Supply Corp.	686	CI78-1282	NG-5075R
Consolidated Gas Supply Corp.	[illegible]	CI78-1261	NG-5076R
Consolidated Gas Supply Corp.	618	CI79-14	NG-5077R
Consolidated Gas Supply Corp.	627	CI79-45	NG-5079R
Consolidated Gas Supply Corp.	[illegible]	CI79-243	NG-5085R
Consolidated Gas Supply Corp.	658	CI79-233	NG-5086R
Consolidated Gas Supply Corp.	617	CI79-18	NG-5088R
Consolidated Gas Supply Corp.	613	CI78-1267	NG-5089R
Consolidated Gas Supply Corp.	621	CI79-19	NG-5090R
Consolidated Gas Supply Corp.	614	CI78-1248	NG-5161R
Consolidated Gas Supply Corp.	615	CI78-1273	NG-5075R
Consolidated Gas Supply Corp.	[illegible]	CI78-393	NG-5291R
Equitable Gas Co.	640	CI79-69	NG-5060R
Equitable Gas Co.	632	CI79-63	NG-5069R
Equitable Gas Co.	628	CI79-61	NG-5072R
Equitable Gas Co.	623	CI79-50	NG-5074R
Equitable Gas Co.	631	CI79-62	NG-5078R
Equitable Gas Co.	[illegible]	CI79-68	NG-5081R
Equitable Gas Co.	[illegible]	CI79-49	NG-5082R
Equitable Gas Co.	654	CI79-156	NG-5083R
Equitable Gas Co.	629	CI79-60	NG-5084R
Equitable Gas Co.	653	CI79-151	NG-5087R
Equitable Gas Co.	[illegible]	CI79-64	NG-5153R
Equitable Gas Co.	[illegible]	CI78-1052	NG-5299R
Gas Transport Inc.	674	CI79-497	NG-5265R
National Fuel Gas Supply Corp.	672	CI79-461	NG-5238R
Pennzoil Co.	681	CI80-54	NG-5058R

[FR Doc. 87-22096 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-894-000]

Application for Permanent Abandonment; Crone Oil Co., Inc.

September 18, 1987.

Take notice that on September 9, 1987, as supplemented on September 14, 1987, Crone Oil Company, Inc. (Crone), P.O. Box 1440, Lubbock, Texas 79401, filed an application requesting permanent abandonment of a sale of gas to Panhandle Eastern Pipe Line Company (Panhandle) from the Oil Development Co. No. 1 well (ODC #1) in Section 101, Block 45, H&TC Railway Co., Survey, Hansford County, Texas.

Crone states that Panhandle is unwilling to purchase the allowable and that the proposed new purchaser, Phillips 66 Natural Gas Company, will take the allowable under a five (5) year

7. Southern Natural Gas Co.

[Docket No. CP87-525-000]

Take notice that on September 4, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-525-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity for a term expiring on October 31, 1988, for the Mississippi Chemical Corporation (Mississippi Chemical), as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes, to transport gas on behalf of Mississippi Chemical in accordance with the terms and conditions of a transportation agreement between Mississippi Chemical and Southern dated August 19, 1987. Subject to the receipt of all necessary governmental authorizations, Southern states that it has agreed to transport on an interruptible basis up to 60,000 MMBtu of gas per day purchased by Mississippi Chemical from SNG Trading Inc. Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988. Southern states that the Agreement provides that Mississippi Chemical will cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in Exhibit F to the Application. It is stated that Southern will redeliver to Mississippi Chemical at the Mississippi Chemical Meter Station in Yazoo County, Mississippi, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Mississippi Chemical's pro-rata share of any gas delivered for Mississippi Chemical's account which is lost or vented for any reason.

Southern states that Mississippi Chemical has agreed to pay Southern each month the transportation rate of 34.8 cents per MMBtu of gas redelivered by Southern. Southern states that it will collect from Mississippi Chemical the GRI surcharge of 1.52 cent per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern states that the transportation arrangement will enable Mississippi Chemical to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, it is stated that Southern will obtain take-or-pay relief on gas that Mississippi Chemical may obtain from its supplies.

Comment date: October 9, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Texas Gas Transmission Corp.

[Docket No. CP87-524-000]

Take notice that on September 3, 1987, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP87-524-000, an abbreviated application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission) seeking authorization to abandon a purchase of natural gas from United Gas Pipe Line Company (UGPL) with a contract demand of 428,570 Mcf, and three Worthington Compressors and related facilities located at Applicant Guthrie, Louisiana Compressor Station, which are dedicated to the nautral gas service rendered by UGPL to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its service agreement with UGPL would expire October 31, 1987. Applicant states that written notification of termination of the service has been provided by Applicant to UGPL on October 31, 1986. Applicant states that it has neither a short or long-term need for a continuation of the service beyond the contractual date of October 31, 1987. Applicant further states that any continuation of the contract beyond October 31, 1987, simply prolongs the substantial demand costs associated with maintaining UGPL's service without any corresponding benefit to Applicants customers. Finally, Applicant states that the compressor facilities sought to be abandoned would no longer be required after termination of the service agreement and the engines are operationally obsolete. Applicant seeks an effective abandonment date of November 1, 1987.

Comment date: October 9, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22093 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI79-48-001 et al.]

Application for Permanent Abandoment of Service; Chevron U.S.A. Inc.

September 21, 1987.

Take notice that on April 9, 1987, as supplemented on September 14, 1987, Chevron U.S.A. Inc. (Chevron), filed an application to abandon service due to an assignment dated July 21, 1986, effective September 1, 1986, to Angerman Associates, Inc. The purchasers, certificate docket numbers and rate schedule numbers are listing on the attached Exchibit A. This assignment covers all producing properties under the rate schedules shown in Exhibit A. Since Chevron no longer has an interest in these properties, it submits that the cancellation of the described rate schedules and abandonment of sales are appropriate and in the public interest. Chevron has retained some undeveloped acreage in areas near the producing leases. This acreage has not produced natural gas and Chevron currently has no plans to develop it. Chevron requests that it also be granted abandonment authorization for the undeveloped acreage which was retained.

The application was previously noticed on August 11, 1987, but inadvertenly was not published in the **Federal Register**.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Purchaser	Rate [illegible]	[illegible]	Chevron contract
Carnegie Natural Gas Co.	625	CI79-48	NG-5059R
Columbia Gas Transmission Co.	642	CI79-82	NG-5051R
Columbia Gas Transmission Co.	[illegible]	CI78-306	NG-553R
Consolidated Gas Supply Corp.	612	CI78-1269	NG-5052R
Consolidated Gas Supply Corp.	661	CI79-232	NG-5057R
Consolidated Gas Supply Corp.	622	CI79-46	NG-5061R
Consolidated Gas Supply Corp.	619	CI79-25	NG-5063R
Consolidated Gas Supply Corp.	610	CI78-1252	NG-5064R
Consolidated Gas Supply Corp.	[illegible]	CI79-26	NG-5065R
Consolidated Gas Supply Corp.	[illegible]	CI78-1270	NG-5066R
Consolidated Gas Supply Corp.	611	CI78-1274	NG-5067R
Consolidated Gas Supply Corp.	616	CI79-15	NG-5068R
Consolidated Gas Supply Corp.	609	CI78-1266	NG-5073R
Consolidated Gas Supply Corp.	686	CI78-1282	NG-5075R
Consolidated Gas Supply Corp.	[illegible]	CI78-1261	NG-5076R
Consolidated Gas Supply Corp.	618	CI79-14	NG-5077R
Consolidated Gas Supply Corp.	627	CI79-45	NG-5079R
Consolidated Gas Supply Corp.	[illegible]	CI79-243	NG-5085R
Consolidated Gas Supply Corp.	658	CI79-233	NG-5086R
Consolidated Gas Supply Corp.	617	CI79-18	NG-5088R
Consolidated Gas Supply Corp.	613	CI78-1267	NG-5089R
Consolidated Gas Supply Corp.	621	CI79-19	NG-5090R
Consolidated Gas Supply Corp.	614	CI78-1248	NG-5161R
Consolidated Gas Supply Corp.	615	CI78-1273	NG-5075R
Consolidated Gas Supply Corp.	[illegible]	CI78-393	NG-5291R
Equitable Gas Co.	640	CI79-69	NG-5060R
Equitable Gas Co.	632	CI79-63	NG-5069R
Equitable Gas Co.	628	CI79-61	NG-5072R
Equitable Gas Co.	623	CI79-50	NG-5074R
Equitable Gas Co.	631	CI79-62	NG-5078R
Equitable Gas Co.	[illegible]	CI79-68	NG-5081R
Equitable Gas Co.	[illegible]	CI79-49	NG-5082R
Equitable Gas Co.	654	CI79-156	NG-5083R
Equitable Gas Co.	629	CI79-60	NG-5084R
Equitable Gas Co.	653	CI79-151	NG-5087R
Equitable Gas Co.	[illegible]	CI79-64	NG-5153R
Equitable Gas Co.	[illegible]	CI78-1052	NG-5299R
Gas Transport Inc.	674	CI79-497	NG-5265R
National Fuel Gas Supply Corp.	672	CI79-461	NG-5238R
Pennzoil Co.	681	CI80-54	NG-5058R

[FR Doc. 87-22096 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-894-000]

Application for Permanent Abandonment; Crone Oil Co., Inc.

September 18, 1987.

Take notice that on September 9, 1987, as supplemented on September 14, 1987, Crone Oil Company, Inc. (Crone), P.O. Box 1440, Lubbock, Texas 79401, filed an application requesting permanent abandonment of a sale of gas to Panhandle Eastern Pipe Line Company (Panhandle) from the Oil Development Co. No. 1 well (ODC #1) in Section 101, Block 45, H&TC Railway Co., Survey, Hansford County, Texas.

Crone states that Panhandle is unwilling to purchase the allowable and that the proposed new purchaser, Phillips 66 Natural Gas Company, will take the allowable under a five (5) year

7. Southern Natural Gas Co.

[Docket No. CP87-525-000]

Take notice that on September 4, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-525-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity for a term expiring on October 31, 1988, for the Mississippi Chemical Corporation (Mississippi Chemical), as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes, to transport gas on behalf of Mississippi Chemical in accordance with the terms and conditions of a transportation agreement between Mississippi Chemical and Southern dated August 19, 1987. Subject to the receipt of all necessary governmental authorizations, Southern states that it has agreed to transport on an interruptible basis up to 60,000 MMBtu of gas per day purchased by Mississippi Chemical from SNG Trading Inc. Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988. Southern states that the Agreement provides that Mississippi Chemical will cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in Exhibit F to the Application. It is stated that Southern will redeliver to Mississippi Chemical at the Mississippi Chemical Meter Station in Yazoo County, Mississippi, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Mississippi Chemical's pro-rata share of any gas delivered for Mississippi Chemical's account which is lost or vented for any reason.

Southern states that Mississippi Chemical has agreed to pay Southern each month the transportation rate of 34.8 cents per MMBtu of gas redelivered by Southern. Southern states that it will collect from Mississippi Chemical the GRI surcharge of 1.52 cent per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern states that the transportation arrangement will enable Mississippi Chemical to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, it is stated that Southern will obtain take-or-pay relief on gas that Mississippi Chemical may obtain from its supplies.

Comment date: October 9, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Texas Gas Transmission Corp.

[Docket No. CP87-524-000]

Take notice that on September 3, 1987, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP87-524-000, an abbreviated application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission) seeking authorization to abandon a purchase of natural gas from United Gas Pipe Line Company (UGPL) with a contract demand of 428,570 Mcf, and three Worthington Compressors and related facilities located at Applicant Guthrie, Louisiana Compressor Station, which are dedicated to the nautral gas service rendered by UGPL to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its service agreement with UGPL would expire October 31, 1987. Applicant states that written notification of termination of the service has been provided by Applicant to UGPL on October 31, 1986. Applicant states that it has neither a short or long-term need for a continuation of the service beyond the contractual date of October 31, 1987. Applicant further states that any continuation of the contract beyond October 31, 1987, simply prolongs the substantial demand costs associated with maintaining UGPL's service without any corresponding benefit to Applicants customers. Finally, Applicant states that the compressor facilities sought to be abandoned would no longer be required after termination of the service agreement and the engines are operationally obsolete. Applicant seeks an effective abandonment date of November 1, 1987.

Comment date: October 9, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22093 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

APPENDIX C—Continued

Former rate schedule and docket No.	Purchaser	Location Field County, State	Contact Date
Belco Petroleum #32, CI68-727	Northwest Pipeline Corp	Green River Bend Field, Sublette County, Wyoming.	11-22-67
BelNorth Petroleum #1, CI86-55	Florida Gas Transmission Co.	Block 556, Matagorda Island Area, Texas	10-22-85

[1] Contract included herein.
[2] El Paso Natural Gas Company assigned its interest as purchaser in this transaction to Apache Gas Company, effective September 1, 1986. Attached hereto in Exhibit D is such assignment.

[FR Doc. 87-22099 Filed 9-23-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI80-3-004 et al.]

Corporate Name Change; FPCO Oil and Gas Co.

September 18, 1987.

Take notice that on September 11, 1987, FPCO Oil & Gas Co. (FPCO), of P.O. Box 60004, New Orleans, Louisiana 70160, filed an application notifying the Commission that the Corporate name of "Petro-Lewis Corporation" has been changed as a result of a merger to "FPCO Oil & Gas Co." as of May 1, 1987, and requesting that the certificates of public convenience and necessity and related FERC Gas Rate Schedules now designated in the name of Petro-Lewis Corporation be redesignated in the name of FPCO, all as more fully shown on the attached Exhibit "A". FPCO further requests that its name be substituted for that of Petro-Lewis Corporation in all proceedings now pending before the Commission, including the proceedings in Docket Nos. GP80-43-009 and GP86-1-000. This application is on file with the Commission and open to public inspection.

On May 1, 1987, the Secretary of State of the State of Colorado issued a Certificate of Merger to FPCO Merger Corp. authorizing and recognizing its merger with Petro-Lewis Corporation with the name of the surviving corporation being changed to FPCO Oil & Gas Co.

FPCO states that it will continue the sales of natural gas and the services heretofore authorized by the Commission to be made by Petro-Lewis Corporation, including those sales previously made and authorized under Petro-Lewis Corporation's small producer certificate in Docket No. CS72-204-001.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

EXHIBIT "A"

Docket No.	Purchaser	FERC GRS No.
CI80-3-001	Transcontinental Gas Pipe Line Corp.	2
CI81-506-000	Transcontinental Gas Pipe Line Corp.	II
CI83-221-000	Transcontinental Gas Pipe Line Corp	II
CI86-749-000	Williams Natural Gas Co.	II

[FR Doc. 87-22100 Filed 9-23-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-536-000]

Application; High Plains Natural Gas Co., Wheeler Gas, Inc.

September 21, 1987.

Take notice that on September 11, 1987, High Plains Natural Gas Company (High Plains), P.O. Box 777, Canadian, Texas 79014, and Wheeler Gas, Inc. (Wheeler), Box 128, Miami, Texas 79059, filed in Docket No. CP87-536-000 a joint application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and abandonment of facilities and determination of service area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that on July 28, 1987, High Plains and Wheeler entered into an Agreement of Purchase and Sale of Assets, wherein Wheeler agreed to sell all of its assets to High Plains. As a result of the purchase, Wheeler requests abandonment of its facilities and service, which are presently used in the transportation of natural gas in interstate commerce, and therefore require Commission authorization.

It is stated that High Plains requests a certificate authorizing the acquisition and operation of Wheeler's facilities. It is further stated that upon being merged into the existing High Plains corporate structure, Wheeler would function as a separate division of High Plains. It is stated that the facilities to be acquired comprise the existing Wheeler system. Furthermore, it is stated that such facilities are currently used and would continue to be used for the purpose of serving Wheeler's existing distribution customers. It is asserted that there would be no change in the service provided to Wheeler's customers as a result of the proposed acquisition, since the identical service which Wheeler currently provides with respect to the properties involved would now be provided by High Plains. It is stated that there would be no immediate change in the price of the natural gas sold to Wheeler's current customers as a result of the proposed transfer of assets. It is further stated that High Plains would be able to provide adequate, economical and reliable service to Wheeler's customers now and in the future.

Applicants requests that the Commission issue a certificate granting a service area determination for the existing Wheeler service area, so that High Plains may enlarge or extend facilities within the Wheeler service area without having to obtain Commission authority each time new facilities are added. Applicants assert that the grant of the determination would permit High Plains the needed flexibility to serve fully and efficiency

contract for close to the spot market price. By letter dated August 18, 1987, Panhandle agreed to release the gas after abandonment authorization is granted. Deliverability is approximately 815 Mcf/d. The gas is NGPA section 104 flowing gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Crone to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22098 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI77-465-002 et al.]

Application; Enron Oil and Gas Co.

September 21, 1987.

Take notice that on September 14, 1987, Enron Oil & Gas Company (Enron), of P.O. Box 1188, Houston, Texas 77251 filed an application pursuant to section 7(c) of the Natural Gas Act, for a Certificate of Public Convenience and Necessity to continue certain sales of natural gas in interstate commerce for resale which were previously made by Belco Development Corporation (Belco Development), Belco Petroleum Corporation (Belco Petroleum) and BelNorth Petroleum Corporation (BelNorth), all as more fully shown in Appendix "C" and the application which is on file with the Commission and open for public inspection. Enron Oil & Gas Company also requests redesignation of the rate schedules of Belco Development Corporation, Belco Petroleum Corporation and BelNorth Petroleum Corporation as those of Enron Oil & Gas Company, shown on the attached Appendix "C".

By Certificate of Ownership And Merger Merging BelNorth Petroleum Corporation, Belco Development Corporation and HNG Oil Company into Enron Oil & Gas Company dated December 10, 1986, Belco Development and BelNorth were merged into Enron effective December 31, 1986.

By various prior assignments Belco Petroleum assigned to Belco Development various leasehold interests in Sublette and Lincoln Counties, Wyoming, San Juan and Eddy Counties, New Mexico, St. James Parish, Louisiana and Crockett and Glasscock Counties, Texas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX C

Former rate schedule and docket No.	Purchaser	Location Field County, State	Contact Date
Belco Dev. #1, CI77-465	Colorado Interstate Gas Co	Natural Buttes Unit Area, Uintah County, Utah	06-20-74
Belco Dev. #2, CI60-66	Northwest Pipeline Corp	Bird Canyon Field, Sublette County, Wyoming	12-28-80
Belco Dev. #3, CI72-877	Northwest Pipeline Corp	Big Piney Field Sublette County, Wyoming	03-09-82
Belco Dev. #4, CI72-878	Northwest Pipeline Corp	East LaBarge Field, Sublette County, Wyoming.	10-13-80
Belco Dev. #5, CI73-5	Northwest Pipeline Corp	Big Piney Field, Sublette County, Wyoming	08-14-76
Belco Dev. #6, CI86-326	K N Energy Inc	North Shawnee—Flat Top Field, Converse County, Wyoming.	03-03-64
Belco Petroleum #1, G-19589	Northwest Pipeline Corp	Big Piney Field, Sublette & Lincoln Counties, Wyoming.	04-17-81 [1]
Belco Petroleum #4, G-16503	Mountain Fuel Resources Inc.	Big Piney Field Dry Piney Unit Area Sublette County, Wyoming.	12-07-78
Belco Petroleum #5, #6 and #14, G-20104, CI60-474, CI68-759.	Northwest Pipeline Corp	Big Piney and East LaBarge Fields, Sublette & Lincoln Counties, Wyoming.	07-01-80
Belco Petroleum #7, CI62-55	Mountain Fuel Resources Inc.	Birch Creek Area, Sublette County, Wyoming	12-06-78
Belco Petroleum #12, CI64-49	Northwest Pipeline Corp	Basin Pool Field San Juan County, New Mexico.	07-16-65
Belco Petroleum #17, CI73-26	Natural Gas Pipeline Co. of America.	Los Medanos Field, Eddy County, New Mexico.	06-02-72
Belco Petroleum #25, CI76-303	Northern Natural Gas Co	Ozona Field, Crockett County, Texas	12-01-75
Belco Petroleum #26, CI77-614	Mid-Louisana Gas Pipeline Co.	Hester Field, St. James Parish, Louisiana	05-04-77
Belco Petroleum #27, CI77-849	Apache Gas Company [2]	Crockett County, Texas	09-13-82 [1]
Belco Petroleum #28, CI78-77	Transwestern Pipeline Co	Carlsbad South Field, Eddy County, New Mexico.	04-02-80 1
Belco Petroleum #29, CI78-146	El Paso Natural Gas Co	Deadwood Fusselman Field, Glasscock County, Texas.	11-01-82 [1]
Belco Petroleum #30, CI78-162	Northwest Pipeline Corp	Big Piney Area, Sublette County, Wyoming	10-18-77

APPENDIX C—Continued

Former rate schedule and docket No.	Purchaser	Location Field County, State	Contact Date
Belco Petroleum #32, CI68-727	Northwest Pipeline Corp	Green River Bend Field, Sublette County, Wyoming.	11-22-67
BelNorth Petroleum #1, CI86-55	Florida Gas Transmission Co.	Block 556, Matagorda Island Area, Texas	10-22-85

[1] Contract included herein.
[2] El Paso Natural Gas Company assigned its interest as purchaser in this transaction to Apache Gas Company, effective September 1, 1986. Attached hereto in Exhibit D is such assignment.

[FR Doc. 87-22099 Filed 9-23-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI80-3-004 et al.]

Corporate Name Change; FPCO Oil and Gas Co.

September 18, 1987.

Take notice that on September 11, 1987, FPCO Oil & Gas Co. (FPCO), of P.O. Box 60004, New Orleans, Louisiana 70160, filed an application notifying the Commission that the Corporate name of "Petro-Lewis Corporation" has been changed as a result of a merger to "FPCO Oil & Gas Co." as of May 1, 1987, and requesting that the certificates of public convenience and necessity and related FERC Gas Rate Schedules now designated in the name of Petro-Lewis Corporation be redesignated in the name of FPCO, all as more fully shown on the attached Exhibit "A". FPCO further requests that its name be substituted for that of Petro-Lewis Corporation in all proceedings now pending before the Commission, including the proceedings in Docket Nos. GP80-43-009 and GP86-1-000. This application is on file with the Commission and open to public inspection.

On May 1, 1987, the Secretary of State of the State of Colorado issued a Certificate of Merger to FPCO Merger Corp. authorizing and recognizing its merger with Petro-Lewis Corporation with the name of the surviving corporation being changed to FPCO Oil & Gas Co.

FPCO states that it will continue the sales of natural gas and the services heretofore authorized by the Commission to be made by Petro-Lewis Corporation, including those sales previously made and authorized under Petro-Lewis Corporation's small producer certificate in Docket No. CS72-204-001.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

EXHIBIT "A"

Docket No.	Purchaser	FERC GRS No.
CI80-3-001	Transcontinental Gas Pipe Line Corp.	2
CI81-506-000	Transcontinental Gas Pipe Line Corp.	II
CI83-221-000	Transcontinental Gas Pipe Line Corp	II
CI86-749-000	Williams Natural Gas Co.	II

[FR Doc. 87-22100 Filed 9-23-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-536-000]

Application; High Plains Natural Gas Co., Wheeler Gas, Inc.

September 21, 1987.

Take notice that on September 11, 1987, High Plains Natural Gas Company (High Plains), P.O. Box 777, Canadian, Texas 79014, and Wheeler Gas, Inc. (Wheeler), Box 128, Miami, Texas 79059, filed in Docket No. CP87-536-000 a joint application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and abandonment of facilities and determination of service area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that on July 28, 1987, High Plains and Wheeler entered into an Agreement of Purchase and Sale of Assets, wherein Wheeler agreed to sell all of its assets to High Plains. As a result of the purchase, Wheeler requests abandonment of its facilities and service, which are presently used in the transportation of natural gas in interstate commerce, and therefore require Commission authorization.

It is stated that High Plains requests a certificate authorizing the acquisition and operation of Wheeler's facilities. It is further stated that upon being merged into the existing High Plains corporate structure, Wheeler would function as a separate division of High Plains. It is stated that the facilities to be acquired comprise the existing Wheeler system. Furthermore, it is stated that such facilities are currently used and would continue to be used for the purpose of serving Wheeler's existing distribution customers. It is asserted that there would be no change in the service provided to Wheeler's customers as a result of the proposed acquisition, since the identical service which Wheeler currently provides with respect to the properties involved would now be provided by High Plains. It is stated that there would be no immediate change in the price of the natural gas sold to Wheeler's current customers as a result of the proposed transfer of assets. It is further stated that High Plains would be able to provide adequate, economical and reliable service to Wheeler's customers now and in the future.

Applicants requests that the Commission issue a certificate granting a service area determination for the existing Wheeler service area, so that High Plains may enlarge or extend facilities within the Wheeler service area without having to obtain Commission authority each time new facilities are added. Applicants assert that the grant of the determination would permit High Plains the needed flexibility to serve fully and efficiency

contract for close to the spot market price. By letter dated August 18, 1987, Panhandle agreed to release the gas after abandonment authorization is granted. Deliverability is approximately 815 Mcf/d. The gas is NGPA section 104 flowing gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Crone to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22098 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI77-465-002 et al.]

Application; Enron Oil and Gas Co.

September 21, 1987.

Take notice that on September 14, 1987, Enron Oil & Gas Company (Enron), of P.O. Box 1188, Houston, Texas 77251 filed an application pursuant to section 7(c) of the Natural Gas Act, for a Certificate of Public Convenience and Necessity to continue certain sales of natural gas in interstate commerce for resale which were previously made by Belco Development Corporation (Belco Development), Belco Petroleum Corporation (Belco Petroleum) and BelNorth Petroleum Corporation (BelNorth), all as more fully shown in Appendix "C" and the application which is on file with the Commission and open for public inspection. Enron Oil & Gas Company also requests redesignation of the rate schedules of Belco Development Corporation, Belco Petroleum Corporation and BelNorth Petroleum Corporation as those of Enron Oil & Gas Company, shown on the attached Appendix "C".

By Certificate of Ownership And Merger Merging BelNorth Petroleum Corporation, Belco Development Corporation and HNG Oil Company into Enron Oil & Gas Company dated December 10, 1986, Belco Development and BelNorth were merged into Enron effective December 31, 1986.

By various prior assignments Belco Petroleum assigned to Belco Development various leasehold interests in Sublette and Lincoln Counties, Wyoming, San Juan and Eddy Counties, New Mexico, St. James Parish, Louisiana and Crockett and Glasscock Counties, Texas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX C

Former rate schedule and docket No.	Purchaser	Location Field County, State	Contact Date
Belco Dev. #1, CI77-465	Colorado Interstate Gas Co	Natural Buttes Unit Area, Uintah County, Utah	06-20-74
Belco Dev. #2, CI60-66	Northwest Pipeline Corp	Bird Canyon Field, Sublette County, Wyoming	12-28-80
Belco Dev. #3, CI72-877	Northwest Pipeline Corp	Big Piney Field Sublette County, Wyoming	03-09-82
Belco Dev. #4, CI72-878	Northwest Pipeline Corp	East LaBarge Field, Sublette County, Wyoming.	10-13-80
Belco Dev. #5, CI73-5	Northwest Pipeline Corp	Big Piney Field, Sublette County, Wyoming	08-14-76
Belco Dev. #6, CI86-326	K N Energy Inc	North Shawnee—Flat Top Field, Converse County, Wyoming.	03-03-64
Belco Petroleum #1, G-19589	Northwest Pipeline Corp	Big Piney Field, Sublette & Lincoln Counties, Wyoming.	04-17-81 [1]
Belco Petroleum #4, G-16503	Mountain Fuel Resources Inc.	Big Piney Field Dry Piney Unit Area Sublette County, Wyoming.	12-07-78
Belco Petroleum #5, #6 and #14, G-20104, CI60-474, CI68-759.	Northwest Pipeline Corp	Big Piney and East LaBarge Fields, Sublette & Lincoln Counties, Wyoming.	07-01-80
Belco Petroleum #7, CI62-55	Mountain Fuel Resources Inc.	Birch Creek Area, Sublette County, Wyoming	12-06-78
Belco Petroleum #12, CI64-49	Northwest Pipeline Corp	Basin Pool Field San Juan County, New Mexico.	07-16-65
Belco Petroleum #17, CI73-26	Natural Gas Pipeline Co. of America.	Los Medanos Field, Eddy County, New Mexico.	06-02-72
Belco Petroleum #25, CI76-303	Northern Natural Gas Co	Ozona Field, Crockett County, Texas	12-01-75
Belco Petroleum #26, CI77-614	Mid-Louisana Gas Pipeline Co.	Hester Field, St. James Parish, Louisiana	05-04-77
Belco Petroleum #27, CI77-849	Apache Gas Company [2]	Crockett County, Texas	09-13-82 [1]
Belco Petroleum #28, CI78-77	Transwestern Pipeline Co	Carlsbad South Field, Eddy County, New Mexico.	04-02-80 1
Belco Petroleum #29, CI78-146	El Paso Natural Gas Co	Deadwood Fusselman Field, Glasscock County, Texas.	11-01-82 [1]
Belco Petroleum #30, CI78-162	Northwest Pipeline Corp	Big Piney Area, Sublette County, Wyoming	10-18-77

[Docket No. FA87-69-000]

Filing; Pacific Gas and Electric Co.

September 21, 1987.

Take notice that on September 14, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing pursuant to Rules 216 of the FERC's Rules of Practice and Procedure, 18 CFR 385.216, a Notice of Withdrawal and requests Docket No. FA87-69-000 to be closed. PGandE states that in Docket No. FA87-69-000 it is collecting only DOE charges for Spent Nuclear Fuel Disposal Costs from its wholesale customers, therefore, a waiver is not required.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22102 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3267-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Policy, Planning, and Information Office of Solid Waste

Title: Survey of Hazardous Waste Generators (EPA ICR #1422). (New Collection).

Abstract: OSW will conduct a survey of hazardous waste generators to develop a comprehensive data base. OSW will use the information in implementing regulations mandated by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and in other regulations pursuant to HSWA.

Respondents: Facilities that generate hazardous waste.

Estimated Annual Burden: 100,000.

Comments on the abstracts in this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503

Date: September 16, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-22053 Filed 9-23-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 17, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et sq.).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634-1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0298.

Title: Part 61, Tariffs (Other Than Tariff Review Plan).

Action: Extension.

Respondents: Businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 4,060 Responses; 511,560 Hours.

Needs and Uses: Federal law requires communication common carriers to establish just and reasonable charges, practices, and regulations for the services they provide. The tariffs containing these charges, practices, and regulations must be filed with the Commission to enable it to determine whether such tariffs are just, reasonable, and not unduly discriminatory.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-22017 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-24]

Window Notice for the Filing of FM Broadcast Applications

Release: September 10, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning September 10, 1987 and ending October 23, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—239 A:	
Trion	GA
Belle Plaine	IA
Winterset	IA
Farmington	IL
Attica	IN
Nappanee	IN
Vivian [1]	LA
Langdon	ND
Gibsonburg	OH
Shadyside	OH
Olyphant	PA
Graysville	TN
Channel—239 C1:	
Farmington	NM
Channel—239 C2:	
Oscoda	MI

[1] This allotment is subject to the final discussion regarding a case in front of the Court of Appeals. Reference 86-1045.

the customers on the Wheeler system. It is further asserted that such a determination would reduce the cost to High Plains' customers of future Commission filings and would relieve the Commission's resources of the burden of regulatory oversight not required by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission, approval for the proposed abandonment and determination of service are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for High Plains and Wheeler to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22101 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-899-000]

Application; Mobil Oil Corp.

September 18, 1987.

Take notice that on September 14, 1987, Mobil Oil Corporation (Mobil), Nine Greenway Plaza, Suite 2700, Houston, Texas, 77046, filed in Docket No. CI87-899-000 an application, pursuant to section 7(c) of the Natural Gas Act, and § 157.23 of the Federal Energy Regulatory Commission's Regulations thereunder, for an order granting permission and approval to abandon certain leasehold properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mobil requests that the Commission issue an order granting Mobil a certificate, effective April 1, 1987, subject to Commission approval of Northwest Pipeline Corporation's Application To Abandon filed in CP87-502-000. Mobil will acquire, effective April 1, 1987, 100 percent of working interest in certain oil and gas leases and options for oil and gas leases located in the San Juan Basin area of Colorado. The proposed transfer of working interest would be effectuated in accordance with a Settlement Agreement between Northwest and Mobil dated July 17, 1987. Under the terms of the Settlement Agreement and subject to Commission and Department of Interior approval, Northwest has agreed to assign and reconvey to Mobil 100 percent of Northwest's current interest in the PLA-13 leasehold properties originally conveyed by General Petroleum Company (predecessor of Mobil) to Pacific Northwest Pipeline (predecessor of Northwest).

This effective date of transfer, April 1, 1987, of the subject properties is an integral part of the settlement. Mobil requests that the Commission approve the abandonment by transfer of its PLA-13 leasehold interests to Mobil and the certification of the sale by Mobil to be effective as of April 1, 1987.

It is stated that Northwest and Mobil have entered into a Gas Purchase Contract (GPK) dated April 1, 1987 to provide for the continued purchase by Northwest of volumes of gas to be produced from PLA-13 interests proposed to be transferred to Mobil. It is further stated that the price to be paid by Northwest for gas purchased under the GPK would be the lower of the applicable NGPA maximum lawful price or the current alternate fuel price. For pre-1973 production, Mobil states that the applicable NGPA ceiling price is to be the section 104 replacement contract rate unless such production qualifies for a higher NGPA price. It is indicated that the alternate fuel price is defined as 65 percent of the quarterly average of the high and low weekly quotes for Bunker C fuel oil in Seattle, Washington and Portland, Oregon, reduced by any third-party costs incurred by Northwest. Mobil states that the GPK also contains a market-out provision for further price adjustments if deemed necessary to enable Northwest to continue purchasing gas thereunder.

Mobil asserts that the assignment to Mobil described above is consistent with the public convenience and necessity. The Settlement Agreement represents a fair and reasonable compromise by the parties of disputed issues which would conclude long and costly litigation, it is stated. Mobil maintains that the implementation of the Settlement Agreement eliminates any future exposure which Northwest would otherwise have with respect to potential gas price increases resulting from escalating PLA-13 leasehold production which is currently committed to Northwest and its customers, including potential future development on the subject leases, would remain committed to Northwest and its customers under the GPK between Mobil and Northwest. Mobil indicated that the price to be paid for the gas purchased under the GPK does not exceed the value which Northwest otherwise would have placed on the gas as pipeline production in its PGA filings. Thus, the transfer of the assigned interest to Mobil would not increase the cost of gas produced from the assigned interest in PLA-13 properties to Northwest's customers, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mobil to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22103 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA87-69-000]

Filing; Pacific Gas and Electric Co.

September 21, 1987.

Take notice that on September 14, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing pursuant to Rules 216 of the FERC's Rules of Practice and Procedure, 18 CFR 385.216, a Notice of Withdrawal and requests Docket No. FA87-69-000 to be closed. PGandE states that in Docket No. FA87-69-000 it is collecting only DOE charges for Spent Nuclear Fuel Disposal Costs from its wholesale customers, therefore, a waiver is not required.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22102 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3267-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Policy, Planning, and Information Office of Solid Waste

Title: Survey of Hazardous Waste Generators (EPA ICR #1422). (New Collection).

Abstract: OSW will conduct a survey of hazardous waste generators to develop a comprehensive data base. OSW will use the information in implementing regulations mandated by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and in other regulations pursuant to HSWA.

Respondents: Facilities that generate hazardous waste.

Estimated Annual Burden: 100,000.

Comments on the abstracts in this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503

Date: September 16, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-22053 Filed 9-23-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 17, 1987.

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OMB Number: 3060-0298.

Title: Part 61, Tariffs (Other Than Tariff Review Plan).

Action: Extension.

Respondents: Businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 4,060 Responses; 511,560 Hours.

Needs and Uses: Federal law requires communication common carriers to establish just and reasonable charges, practices, and regulations for the services they provide. The tariffs containing these charges, practices, and regulations must be filed with the Commission to enable it to determine whether such tariffs are just, reasonable, and not unduly discriminatory.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-22017 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-24]

Window Notice for the Filing of FM Broadcast Applications

Release: September 10, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning September 10, 1987 and ending October 23, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

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Winterset	IA
Farmington	IL
Attica	IN
Nappanee	IN
Vivian [1]	LA
Langdon	ND
Gibsonburg	OH
Shadyside	OH
Olyphant	PA
Graysville	TN
Channel—239 C1:	
Farmington	NM
Channel—239 C2:	
Oscoda	MI

[1] This allotment is subject to the final discussion regarding a case in front of the Court of Appeals. Reference 86-1045.

the customers on the Wheeler system. It is further asserted that such a determination would reduce the cost to High Plains' customers of future Commission filings and would relieve the Commission's resources of the burden of regulatory oversight not required by the Commission.

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Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for High Plains and Wheeler to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22101 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-899-000]

Application; Mobil Oil Corp.

September 18, 1987.

Take notice that on September 14, 1987, Mobil Oil Corporation (Mobil), Nine Greenway Plaza, Suite 2700, Houston, Texas, 77046, filed in Docket No. CI87-899-000 an application, pursuant to section 7(c) of the Natural Gas Act, and § 157.23 of the Federal Energy Regulatory Commission's Regulations thereunder, for an order granting permission and approval to abandon certain leasehold properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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It is stated that Northwest and Mobil have entered into a Gas Purchase Contract (GPK) dated April 1, 1987 to provide for the continued purchase by Northwest of volumes of gas to be produced from PLA-13 interests proposed to be transferred to Mobil. It is further stated that the price to be paid by Northwest for gas purchased under the GPK would be the lower of the applicable NGPA maximum lawful price or the current alternate fuel price. For pre-1973 production, Mobil states that the applicable NGPA ceiling price is to be the section 104 replacement contract rate unless such production qualifies for a higher NGPA price. It is indicated that the alternate fuel price is defined as 65 percent of the quarterly average of the high and low weekly quotes for Bunker C fuel oil in Seattle, Washington and Portland, Oregon, reduced by any third-party costs incurred by Northwest. Mobil states that the GPK also contains a market-out provision for further price adjustments if deemed necessary to enable Northwest to continue purchasing gas thereunder.

Mobil asserts that the assignment to Mobil described above is consistent with the public convenience and necessity. The Settlement Agreement represents a fair and reasonable compromise by the parties of disputed issues which would conclude long and costly litigation, it is stated. Mobil maintains that the implementation of the Settlement Agreement eliminates any future exposure which Northwest would otherwise have with respect to potential gas price increases resulting from escalating PLA-13 leasehold production which is currently committed to Northwest and its customers, including potential future development on the subject leases, would remain committed to Northwest and its customers under the GPK between Mobil and Northwest. Mobil indicated that the price to be paid for the gas purchased under the GPK does not exceed the value which Northwest otherwise would have placed on the gas as pipeline production in its PGA filings. Thus, the transfer of the assigned interest to Mobil would not increase the cost of gas produced from the assigned interest in PLA-13 properties to Northwest's customers, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mobil to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22103 Filed 9-23-87; 8:45 am]

BILLING CODE 6717-01-M

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-21997 Filed 9-23-87; 8:45 am]
BILLING CODE 6712-01-M

Lottery Rankings of 900 MHz SMRS Applicants for the New Orleans, Richmond, Buffalo, Rochester and Norfolk Designated Filing Areas

August 28, 1987.

On July 31, 1987, the Federal Communications Commission conducted its fifth round of lotteries to select applicants to provide 900 MHz Specialized Mobile Radio (SMR) Service. These lotteries were used to rank applications in each of the following Designated Filing Areas (DFAs);

#27 New Orleans
#29 Norfolk
#31 Buffalo
#38 Rochester
#49 Richmond

List of the forty top-ranked applications in each of these Designated Filing Areas are attached to this Public Notice. The top 20 selectees in each DFA will be granted authorizations to provide SMR service. The next 20 ranked applicants will be alternate selectees should it be determined that any of the winners are not qualified to be licensees, or if any of the winners fail to provide the Commission with required transmitter site information within the specified time period. Within 30 days of the publication of this Public Notice in the **Federal Register**, interested parties may advise the Commission of any matter that may reflect on an applicant's qualifications to be a licensee. A copy of any such pleading must be served on the applicant in question on or before the day on which the document is filed with the Commission. *See* § 1.47(b) of the Commission's rules, 47 CFR 1.47(d). Service can be accomplished pursuant to § 1.47(d) of the Commission's rules, 47 CFR 1.47(d). Matters raised in such pleadings will be resolved prior to issuance of any license to the applicant. Individual applications may be examined at the Private Radio Bureau's Public Reference Room in Gettysburg, PA. Copies of individual applicants may be ordered from the Commission's copy contractor, International Transcription Services, at (717) 337-1433.

All applications ranked below number 40 are hereby dismissed and will not be returned to the applicants. There will be no individual notices of dismissal mailed to applicants. The Lottery Notice of July 16, 1987 contains the names and addresses of lottery participants.

For further information regarding the selection procedures, consult the November 4, 1986 Public Notice (1 FCC Rcd 543 (1986), 52 FR 1302 (January 12, 1987)) or contact Betty Woolford of the Land Mobile and Microwave Division at (202) 632-7125.

900 MHz SMR Applicants in the New Orleans DFA

Rank, and applicants name	Lottery code	File No.
Winners:		
1. Via Net Companies	871	045262
2. Holden, Dale L.	379	037831
3. McGee Communications Electronics, Inc.	551	035674
4. Electronic Distributing Corp.	266	041722
5. Richardson, Jr., Glen B.	710	049577
6. Selgrad, Robert W.	755	036073
7. Scott, Margaret A.	752	041253
8. James, John R.	[illegible]	046269
9. Russ Miller Communicatons, Inc.	728	036881
10. Lerner, Ira L.	489	035777
11. DB Mobilephone	237	042789
12. Johnson Communications	416	049930
13. Ketzel, Raymond W.	442	045958
14. Mobile Radio Service Co.	585	039311
15. Ram 900 MHz Communications, Inc.	692	039204
16. Stonnington, Nicholas H.	821	050484
17. Reyes, Sandra G.	706	042333
18. Ewens, James L.	281	046429
19. Harris Communications Co.	358	037803
20. Communications Sales & Service, Inc.	186	041915
Alternates:		
21. Eckholdt, Kent	[illegible]	040031
22. Armour Commications Services Co	[illegible]	042202
23. Brilliant, Irving	111	047840
24. General Communications Co.	325	040619
25. Polokoff, John G.	665	046158
26 Steuart, Robert E.	814	044566
27 East Coast Cellular	259	051179
[illegible] Elliot, Francis H.	271	036184
[illegible] Haskey, Richard R.	362	049452
[illegible] Denault, Jr., Herbert M.	241	040426
31. Stetter, John	813	046531
32. Pendas, Sr., Donald E.	652	035174
33. American Mobiphone Inc.	030	041040
34. May, Robert T.	539	047058
35. Mang, Beverly J.	522	044980
36. Longhorn Communications, Inc.	[illegible]	[illegible]
37. Schnedl, John S.	748	035359
38. Moroney, Robert G.	[illegible]	046590
39. Burroughs, Jr., Benton	129	039611
40. Feldman, Stephen M.	286	048719

900 MHz SMR Applications in the Norfolk DFA

Rank, and applicants name	Lottery code	File No.
Winners:		
1. Waller, David L.	679	042296
2 Berman, Gordon	[illegible]	046042
3. Christiansen, Janet L.	123	045157
4. Nash, Rene	479	046569
5. Otto A. Trzos Co., Inc.	497	046927
6. Sinelli, Andrew R.	[illegible]	046926
7. Allegro Communications Co.	020	049244
8. Travel Paging Corporation of America	654	051020
9. Comm Well Sales & Engrg. Inc.	141	035201
10. Kralowetz, Joseph	358	[illegible]
11. Castro, Gloria	115	041424
12. Bryant, John	098	048473
13. Palmer Communications Inc.	499	035018
14. Fisher Communications	235	039696
15. Boyd, Claudia G.	[illegible]	[illegible]
16. Herman, Gregory L.	294	039771
17. Schuman, Albert	579	044781

900 MHz SMR Applications in the Norfolk DFA—Continued

Rank, and applicants name	Lottery code	File No.
18. Rawlinson, Carey L.	546	048068
19. Palomar Communications Inc.	[illegible]	043470
20. Elert Systems Corporation	212	038946
Alternates:		
21. Luby, Marjone A.	403	045109
22 Smith, Bradford K.	607	036632
23. Johnston, Alan R.	331	045027
24. Cowell, Katherine S.	163	045206
25. Autophone Comm. & Electronics Inc.	[illegible]	046993
26. Corridor Communications Corp.	158	035597
27 Mazzei, Petra H.	427	045651
[illegible] Battistini, Keith	056	050043
29. Fritz, Norman	249	046312
30. Cunningham Communications, Inc.	169	050020
31. Alert Electronics, Inc.	016	036948
32. Bryant, Ann L.	097	045788
33. Dune Corporation	200	035996
34. Olivett International, Inc.	491	035035
35. U.S. West Paging Inc.	661	044046
36. Kenney, Gerald	345	046929
37 Shea, William W.	591	043747
[illegible] Payne, John W.	511	044090
39. Cutter Investments, Inc.	172	050265
40. Marshall, Greg	417	048081

900 MHz SMR Applications in the New Orleans DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Davis, J. Michael	232	049088
2. Gray Communications Marketing, Inc.	352	036824
3. Stuart, Darry W.	[illegible]	037462
4. ECT Corporation	261	048528
5. Zeff, A. Robert	946	045852
6. Cecil, Karen Kennedy	153	049307
7. Zaidi, Tanweer	942	051162
8. Clatt Communications	170	051239
9 Matthews Radio Service, Inc.	553	051208
10. Dalton, John J.	224	042860
11. Bell, Carl E.	[illegible]	037061
12. Ulie, Thomas	877	049265
13. Cockrum, Vickie D.	176	042807
14. IWL Communications, Inc.	414	050528
15. Evans, Charles J.	283	038762
16. Madigan, David M.	537	044305
17. Clinton, Joseph	172	038026
18. Hebert, Jamie E.	376	045760
19. McCabe, Robert A.	562	046731
20. Robson, James J.	726	041687
Alternates:		
21. Jehlik, Edward	425	037395
22. Luby, Marjone A.	526	045110
23. Peterson, Barney	673	037422
24. Schira, Ronald J.	758	039238
25. Takaya, Cheri	848	044539
26. Young, Christopher W.	940	044953
27. Reavill, Elizabeth A.	712	044489
28 Advance Radio Inc.	[illegible]	047790
29. Morris, William L.	607	045366
30. Devine, Donald F.	244	040915
31. Durlew, Randall T.	134	043391
32. Raymart, L.J.	711	046739
33. Minadeo, Colleen A.	593	045718
34. Waxman, Marvin N.	[illegible]	048037
35. Lewinter, Anthony A.	[illegible]	047218
36. California Mobile Communications	139	[illegible]
37. Weller, Robert R.	914	040366
38. K & R Industries Inc.	439	051379
39. Heisel, David	378	041626
40. Frontier Communications Inc.	323	036648

900 MHz SMR Applications in the Rochester DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Two Way Radio Service	845	037559
2. Aalcom Communications	003	036352
3. Schempp, Albert H	727	050772
4. Kitzman, J. Andrew	441	035990
5. White III, H. Hunter	890	040269
6. Ross, Richard T.	710	038596
7. Smelk, Andrew R.	765	046512
8. Huffman Communications Sales Inc.	392	035352
9. Santantonio, Ralph	721	036397
10. Wolfram, Duane E.	902	045751
11. Kerthley, Carter E.	430	042668
12. Motor Carrier Radio Network Inc.	587	050779
13. Andersen, Kim W.	029	040101
14. Holland, Dan	379	044835
15. Pappas, Peter	632	042012
16. Digital Transervice Corporation	239	035586
17. Lawrence, Laun	478	045093
18. Barker, Valentine R.	060	050228
19. LMR International Inc.	496	043867
20. Schuman, Albert	738	044635
Alternates:		
21. Novastar Corporation	605	047312
22. Gavin, Thomas	325	037137
23. Scheiele, James F.	729	036918
24. Foote Communications	301	037053
25. Bowker, Eleanor L.	100	041264
26. Sherwood, Stephen	755	045668
27. Stull, Charles C.	811	036394
28. Shults, William O.	759	041401
29. Smelk, Paul R.	766	046507
30. Collier, Cristine L.	173	044764
31. Berkle, Frances H.	077	049337
32. Dal Bello, Paul G.	215	042438
33. Madigan, David M.	517	044306
34. Buda Jr., William C.	122	041566
35. Aldrich, Lyman D.	015	042843
36. Surrey, Walter S.	814	040817
37. Mitchell, Michael A.	575	036025
38. Racom Services Corporation	671	039109
39. Farrar, David W.	261	040567
40. Betterton, Floyd	041	036224

900 MHz SMR Applications in the Richmond DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Hewell, Betty J.	310	043090
2. Wall Enterprises Inc.	711	040054
3. Schmidt, Terry L.	607	044795
4. Ginsberg, Richard	279	049135
5. Hankins, Elizabeth J.	292	044891
6. Sloan, Karen J.	638	044933
7. Esty Productions Inc.	234	047398
8. Comtran Associates, Inc.	158	042664
9. Kansas City Communications Ltd.	356	050083
10. Badar, Talat	047	049535
11. Jacobs, Joseph M.	336	043710
12. Miller, Ronald C.	473	043956
13. II Way Ltd.	325	035731
14. Styranovski, Myron	868	043606
15. Vader, Stephen L.	701	047247
16. G & S Communicatons Inc.	265	039391
17. Mays, Audie L.	447	037849
18. Allen, Fred C.	022	048053
19. McGaw, John E.	454	041172
20. Gavin, Thomas	273	037134
Alternates:		
21. Chalco Communication, Inc.	127	037408
22. Gatewood, Robert P.	270	045301
23. Brandon, Steven W.	091	046006
24. Wright, Katharine M.	737	044521
25. Burrell, Ira	110	051360
26. Kravetz Media Corporation	381	038807
27. Meyer, Stuart	471	036831
28. MCCA Service Corporation	450	039858
29. Ward, Thomas G.	717	050466
30. Liccardi, William J.	412	046079
31. Knight, Wendy Jo	373	049149

900 MHz SMR Applications in the Richmond DFA—Continued

Rank and applicant name	Lottery code	File No.
32. R. B. Management Services, Inc.	562	044204
33. Lima, Michael	413	046102
34. Selgrad, Robert W.	616	036074
35. O'Connell, Barbara	520	048163
36. Microwave Carphone, Inc	472	050135
37. East Coast Cellular	215	051177
38. Capobianchi, Joseph D.	117	041307
39. Bredman, Brian J.	095	043023
40. Cohen, Judith S.	147	043837

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-21998 Filed 9-23-87; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1677]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 16, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed see § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (MM Docket No. 83-493, RM-4393 Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Greenup, Kentucky, and Athens, Ohio) (MM Docket No. 86-29, RM's 4941 & 5399) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Conway, Hot Springs, Wrightsville, Fairfield Bay, Perryville, and Maumelle, Arkansas) (MM Docket No. 86-154, RM's 4968, 5068, 5360, 5439, 5483 & 5495) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ocilla, Georgia) (MM Docket No. 86-270, RM-5253) Number of petitions received: 1

Subject: Amendment of The Commission's Rules for Cellular Radio Service. (CC Docket No. 85-388, RM-5167) Number of petitons received: 14 Number of supplements received: 2

Note.—The above list includes all petitions for reconsideration filed in CC Docket No. 85-388, including those prior to September 8, 1987. The filing dates for responses is modified to correspond with this public notice.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-21996 Filed 9-22- 87; 8:45 am]
BILLING CODE 6712-01-M

[MMM Docket No.; File Nos. BPCT-861105KT et al]

Applications for Consolidated Hearing; Melvin Jones et al

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City and State	File No.	MM Docket No
A. Melvin Jones, Charleston, WV.	BPCT-861105KT	87-373
B. Jack L. McFadden, Sr., Virginia Jo McFadden and Alan R. Mevis, d/b/a/ Mountain Vista Television Co. Charleston, WV	BPCT-870121KH	
C. Teesha Broadcasting, Ltd., Charleston, WV	BPCT-870120KJ	
D. Carl M. Fisher, Charleston, WV.	BPCT-870121KK	
E. P. S. A., Inc., Charleston, WV.	BPCT-870121KN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

Air Hazard, A, C, D, E
Comparative, A, B, C, D, E
Ultimate, A, B, C, D, E
See Appendix

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-21997 Filed 9-23-87; 8:45 am]
BILLING CODE 6712-01-M

Lottery Rankings of 900 MHz SMRS Applicants for the New Orleans, Richmond, Buffalo, Rochester and Norfolk Designated Filing Areas

August 28, 1987.

On July 31, 1987, the Federal Communications Commission conducted its fifth round of lotteries to select applicants to provide 900 MHz Specialized Mobile Radio (SMR) Service. These lotteries were used to rank applications in each of the following Designated Filing Areas (DFAs);

#27 New Orleans
#29 Norfolk
#31 Buffalo
#38 Rochester
#49 Richmond

List of the forty top-ranked applications in each of these Designated Filing Areas are attached to this Public Notice. The top 20 selectees in each DFA will be granted authorizations to provide SMR service. The next 20 ranked applicants will be alternate selectees should it be determined that any of the winners are not qualified to be licensees, or if any of the winners fail to provide the Commission with required transmitter site information within the specified time period. Within 30 days of the publication of this Public Notice in the **Federal Register**, interested parties may advise the Commission of any matter that may reflect on an applicant's qualifications to be a licensee. A copy of any such pleading must be served on the applicant in question on or before the day on which the document is filed with the Commission. *See* § 1.47(b) of the Commission's rules, 47 CFR 1.47(d). Service can be accomplished pursuant to § 1.47(d) of the Commission's rules, 47 CFR 1.47(d). Matters raised in such pleadings will be resolved prior to issuance of any license to the applicant. Individual applications may be examined at the Private Radio Bureau's Public Reference Room in Gettysburg, PA. Copies of individual applicants may be ordered from the Commission's copy contractor, International Transcription Services, at (717) 337-1433.

All applications ranked below number 40 are hereby dismissed and will not be returned to the applicants. There will be no individual notices of dismissal mailed to applicants. The Lottery Notice of July 16, 1987 contains the names and addresses of lottery participants.

For further information regarding the selection procedures, consult the November 4, 1986 Public Notice (1 FCC Rcd 543 (1986), 52 FR 1302 (January 12, 1987)) or contact Betty Woolford of the Land Mobile and Microwave Division at (202) 632-7125.

900 MHz SMR Applicants in the New Orleans DFA

Rank, and applicants name	Lottery code	File No.
Winners:		
1. Via Net Companies	871	045262
2. Holden, Dale L.	379	037831
3. McGee Communications Electronics, Inc.	551	035674
4. Electronic Distributing Corp.	266	041722
5. Richardson, Jr., Glen B.	710	049577
6. Selgrad, Robert W.	755	036073
7. Scott, Margaret A.	752	041253
8. James, John R.	[illegible]	046269
9. Russ Miller Communicatons, Inc.	728	036881
10. Lerner, Ira L.	489	035777
11. DB Mobilephone	237	042789
12. Johnson Communications	416	049930
13. Ketzel, Raymond W.	442	045958
14. Mobile Radio Service Co.	585	039311
15. Ram 900 MHz Communications, Inc.	692	039204
16. Stonnington, Nicholas H.	821	050484
17. Reyes, Sandra G.	706	042333
18. Ewens, James L.	281	046429
19. Harris Communications Co.	358	037803
20. Communications Sales & Service, Inc.	186	041915
Alternates:		
21. Eckholdt, Kent	[illegible]	040031
22. Armour Commications Services Co	[illegible]	042202
23. Brilliant, Irving	111	047840
24. General Communications Co.	325	040619
25. Polokoff, John G.	665	046158
26 Steuart, Robert E.	814	044566
27 East Coast Cellular	259	051179
[illegible] Elliot, Francis H.	271	036184
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31. Stetter, John	813	046531
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33. American Mobiphone Inc.	030	041040
34. May, Robert T.	539	047058
35. Mang, Beverly J.	522	044980
36. Longhorn Communications, Inc.	[illegible]	[illegible]
37. Schnedl, John S.	748	035359
38. Moroney, Robert G.	[illegible]	046590
39. Burroughs, Jr., Benton	129	039611
40. Feldman, Stephen M.	286	048719

900 MHz SMR Applications in the Norfolk DFA

Rank, and applicants name	Lottery code	File No.
Winners:		
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2 Berman, Gordon	[illegible]	046042
3. Christiansen, Janet L.	123	045157
4. Nash, Rene	479	046569
5. Otto A. Trzos Co., Inc.	497	046927
6. Sinelli, Andrew R.	[illegible]	046926
7. Allegro Communications Co.	020	049244
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9. Comm Well Sales & Engrg. Inc.	141	035201
10. Kralowetz, Joseph	358	[illegible]
11. Castro, Gloria	115	041424
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13. Palmer Communications Inc.	499	035018
14. Fisher Communications	235	039696
15. Boyd, Claudia G.	[illegible]	[illegible]
16. Herman, Gregory L.	294	039771
17. Schuman, Albert	579	044781

900 MHz SMR Applications in the Norfolk DFA—Continued

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19. Palomar Communications Inc.	[illegible]	043470
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21. Luby, Marjone A.	403	045109
22 Smith, Bradford K.	607	036632
23. Johnston, Alan R.	331	045027
24. Cowell, Katherine S.	163	045206
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[illegible] Payne, John W.	511	044090
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17. Clinton, Joseph	172	038026
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27. Stull, Charles C.	811	036394
28. Shults, William O.	759	041401
29. Smelk, Paul R.	766	046507
30. Collier, Cristine L.	173	044764
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33. Madigan, David M.	517	044306
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35. Aldrich, Lyman D.	015	042843
36. Surrey, Walter S.	814	040817
37. Mitchell, Michael A.	575	036025
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39. Farrar, David W.	261	040567
40. Betterton, Floyd	041	036224

900 MHz SMR Applications in the Richmond DFA

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5. Hankins, Elizabeth J.	292	044891
6. Sloan, Karen J.	638	044933
7. Esty Productions Inc.	234	047398
8. Comtran Associates, Inc.	158	042664
9. Kansas City Communications Ltd.	356	050083
10. Badar, Talat	047	049535
11. Jacobs, Joseph M.	336	043710
12. Miller, Ronald C.	473	043956
13. II Way Ltd.	325	035731
14. Styranovski, Myron	868	043606
15. Vader, Stephen L.	701	047247
16. G & S Communicatons Inc.	265	039391
17. Mays, Audie L.	447	037849
18. Allen, Fred C.	022	048053
19. McGaw, John E.	454	041172
20. Gavin, Thomas	273	037134
Alternates:		
21. Chalco Communication, Inc.	127	037408
22. Gatewood, Robert P.	270	045301
23. Brandon, Steven W.	091	046006
24. Wright, Katharine M.	737	044521
25. Burrell, Ira	110	051360
26. Kravetz Media Corporation	381	038807
27. Meyer, Stuart	471	036831
28. MCCA Service Corporation	450	039858
29. Ward, Thomas G.	717	050466
30. Liccardi, William J.	412	046079
31. Knight, Wendy Jo	373	049149

900 MHz SMR Applications in the Richmond DFA—Continued

Rank and applicant name	Lottery code	File No.
32. R. B. Management Services, Inc.	562	044204
33. Lima, Michael	413	046102
34. Selgrad, Robert W.	616	036074
35. O'Connell, Barbara	520	048163
36. Microwave Carphone, Inc	472	050135
37. East Coast Cellular	215	051177
38. Capobianchi, Joseph D.	117	041307
39. Bredman, Brian J.	095	043023
40. Cohen, Judith S.	147	043837

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-21998 Filed 9-23-87; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1677]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 16, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed see § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (MM Docket No. 83-493, RM-4393 Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Greenup, Kentucky, and Athens, Ohio) (MM Docket No. 86-29, RM's 4941 & 5399) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Conway, Hot Springs, Wrightsville, Fairfield Bay, Perryville, and Maumelle, Arkansas) (MM Docket No. 86-154, RM's 4968, 5068, 5360, 5439, 5483 & 5495) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ocilla, Georgia) (MM Docket No. 86-270, RM-5253) Number of petitions received: 1

Subject: Amendment of The Commission's Rules for Cellular Radio Service. (CC Docket No. 85-388, RM-5167) Number of petitons received: 14 Number of supplements received: 2

Note.—The above list includes all petitions for reconsideration filed in CC Docket No. 85-388, including those prior to September 8, 1987. The filing dates for responses is modified to correspond with this public notice.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-21996 Filed 9-22- 87; 8:45 am]
BILLING CODE 6712-01-M

[MMM Docket No.; File Nos. BPCT-861105KT et al]

Applications for Consolidated Hearing; Melvin Jones et al

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City and State	File No.	MM Docket No
A. Melvin Jones, Charleston, WV.	BPCT-861105KT	87-373
B. Jack L. McFadden, Sr., Virginia Jo McFadden and Alan R. Mevis, d/b/a/ Mountain Vista Television Co. Charleston, WV	BPCT-870121KH	
C. Teesha Broadcasting, Ltd., Charleston, WV	BPCT-870120KJ	
D. Carl M. Fisher, Charleston, WV.	BPCT-870121KK	
E. P. S. A., Inc., Charleston, WV.	BPCT-870121KN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

Air Hazard, A, C, D, E
Comparative, A, B, C, D, E
Ultimate, A, B, C, D, E
See Appendix

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is

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available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Steward, Chief,

Video Service Division, Mass Media Bureau.

APPENDIX—NON-STANDARIZED ISSUE(S)

Applicant(s)	
Melvin Jones	1. To determine with respect to Melvin Jones: (a) Whether, in his application (BPCT-860623KE) for a construction permit for a new television station on Channel 11, Sonora, Texas (MM Docket No. 86-458), the applicant misrepresented to the Commission the availability of his proposed transmitter site and so, the effect thereof on his basic qualification to be a Commission licensee; (b) Whether he complied with § 1.65 of the Commission's Rules by failing to update his application to report the unresolved misrepresentation issue in the Sonora, Texas, proceeding and, if not, whether the omission constitutes a misrepresentation or an attempt to conceal material facts and, if so, the effect thereof on his basic qualifications.
Carl M. Fisher	2. To determine, with respect to Carl M. Fisher: (a) The basis for, and the validity of, Carl M. Fisher's estimate of costs to build six new television stations and to operate them without revenues for three months. (b) Whether Carl M. Fisher has sufficient net liquid assets on hand or available from committed sources to construct and operate the six stations for three months without revenues; (c) Whether, in light of the evidence adduced pursuant to the foregoing issues, Carl M. Fisher is financially qualified; (d) Whether Carl M. Fisher falsely certified that, at the time each application was filed, he had sufficient net liquid assets on hand or available from committed sources to construct and operate the six stations for three months without revenues; that he had reasonable assurance of a present firm intention to provide funds by a bank, other financial institution, or other sources; that he could and would meet all contractual requirements as to collateral, guarantees, and capital investment; and that he determined that reasonable assurance existed that all such sources (except banks, financial institutions and equipment manufacturers) had sufficient net liquid assets to meet their commitments; (e) If issue (d), above, is resolved in the affirmative, the effect thereof on Carl M. Fisher's basic qualifications to be a Commission licensee.

[FR Doc. 87-22002 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-372, File Nos. BPCT-87033IK8]

Applications for Consolidated Hearing; John R. Powley et al

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. John R. Powley, Longmont, CO.	BPCT-87033IK8	87-372
B. Colorado Broadcasters, Longmont, CO.	BPCT-870529KM	
C. Echonet Corp., Longmont, CO.	BPCT-870529LI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the isses whose headings are set forth below. The text of each of these issues has been standardsized and is set forth in its entirely under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Minimum Separation, A
2. Site Availability, A
3. Rule 73.685, B
4. Comparative, A, B, C
5. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-22001 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-371; File No. BPH-851018 MF et al]

Applications for Consolidated Proceeding; Charles J. Saltzman et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Charles J. Saltzman, Breaux Bridge, LA.	BPH-B851018MF	87-371
B. David Gregory Hays, Breaux Bridge, LA.	BPH-851028MZ.	
C. Baxter Broadcasting, Breaux Bridge, LA.	BPH-851115MW	
D. Breaux Bridge Broadcasting, a partnership in Commendam, Breaux Bridge, LA.	BPH-851115MX.	
E. Breaux Bridge Broadcasters Limited Partnership, Breaux Bridge, LA.	BPH-851115MY	
F. J. Warren Kirk, Breaux Bridge, LA.	BPH-851115MZ.	
G. Radio Breaux Bridge, LTD., Breaux Bridge, LA.	BPH-851115NI.	
H. Atchafalaya Broadcasting Co., Inc., Breaux Bridge, LA.	BPH-851115NJ.	
I. Breaux Bridge FM Group Limited Partnership, Breaux Bridge, LA.	BPH-851115NK.	
J. J.B.C., Inc., Breaux Bridge, LA.	BPH-851115NL.	
K. St. Martin Broadcasting Partnership, Breaux Bridge, LA.	BPH-851115NP.	
L. Jean Y. Hurley, Breaux Bridge, LA.	BPH-851115NS.	

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available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Steward, Chief,

Video Service Division, Mass Media Bureau.

APPENDIX—NON-STANDARIZED ISSUE(S)

Applicant(s)	
Melvin Jones	1. To determine with respect to Melvin Jones: (a) Whether, in his application (BPCT-860623KE) for a construction permit for a new television station on Channel 11, Sonora, Texas (MM Docket No. 86-458), the applicant misrepresented to the Commission the availability of his proposed transmitter site and so, the effect thereof on his basic qualification to be a Commission licensee; (b) Whether he complied with § 1.65 of the Commission's Rules by failing to update his application to report the unresolved misrepresentation issue in the Sonora, Texas, proceeding and, if not, whether the omission constitutes a misrepresentation or an attempt to conceal material facts and, if so, the effect thereof on his basic qualifications.
Carl M. Fisher	2. To determine, with respect to Carl M. Fisher: (a) The basis for, and the validity of, Carl M. Fisher's estimate of costs to build six new television stations and to operate them without revenues for three months. (b) Whether Carl M. Fisher has sufficient net liquid assets on hand or available from committed sources to construct and operate the six stations for three months without revenues; (c) Whether, in light of the evidence adduced pursuant to the foregoing issues, Carl M. Fisher is financially qualified; (d) Whether Carl M. Fisher falsely certified that, at the time each application was filed, he had sufficient net liquid assets on hand or available from committed sources to construct and operate the six stations for three months without revenues; that he had reasonable assurance of a present firm intention to provide funds by a bank, other financial institution, or other sources; that he could and would meet all contractual requirements as to collateral, guarantees, and capital investment; and that he determined that reasonable assurance existed that all such sources (except banks, financial institutions and equipment manufacturers) had sufficient net liquid assets to meet their commitments; (e) If issue (d), above, is resolved in the affirmative, the effect thereof on Carl M. Fisher's basic qualifications to be a Commission licensee.

[FR Doc. 87-22002 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-372, File Nos. BPCT-87033IK8]

Applications for Consolidated Hearing; John R. Powley et al

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. John R. Powley, Longmont, CO.	BPCT-87033IK8	87-372
B. Colorado Broadcasters, Longmont, CO.	BPCT-870529KM	
C. Echonet Corp., Longmont, CO.	BPCT-870529LI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the isses whose headings are set forth below. The text of each of these issues has been standardsized and is set forth in its entirely under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Minimum Separation, A
2. Site Availability, A
3. Rule 73.685, B
4. Comparative, A, B, C
5. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-22001 Filed 9-23-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-371; File No. BPH-851018 MF et al]

Applications for Consolidated Proceeding; Charles J. Saltzman et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Charles J. Saltzman, Breaux Bridge, LA.	BPH-B851018MF	87-371
B. David Gregory Hays, Breaux Bridge, LA.	BPH-851028MZ.	
C. Baxter Broadcasting, Breaux Bridge, LA.	BPH-851115MW	
D. Breaux Bridge Broadcasting, a partnership in Commendam, Breaux Bridge, LA.	BPH-851115MX.	
E. Breaux Bridge Broadcasters Limited Partnership, Breaux Bridge, LA.	BPH-851115MY	
F. J. Warren Kirk, Breaux Bridge, LA.	BPH-851115MZ.	
G. Radio Breaux Bridge, LTD., Breaux Bridge, LA.	BPH-851115NI.	
H. Atchafalaya Broadcasting Co., Inc., Breaux Bridge, LA.	BPH-851115NJ.	
I. Breaux Bridge FM Group Limited Partnership, Breaux Bridge, LA.	BPH-851115NK.	
J. J.B.C., Inc., Breaux Bridge, LA.	BPH-851115NL.	
K. St. Martin Broadcasting Partnership, Breaux Bridge, LA.	BPH-851115NP.	
L. Jean Y. Hurley, Breaux Bridge, LA.	BPH-851115NS.	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for a hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, All.
2. Ultimate, All.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. the complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–22000 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Warner Robins Christian Academy et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant City, and State	File No.	MM Docket No.
A. Bible Baptist Temple, Inc. d/b/a, Warner Robins Christian Academy, Warner Robins, Ga.	BPED–850924MI	87–386
B. Augusta Radio Fellowship Institute, Inc., Byron, Ga.	BPED–860422MA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. 307(b)-Noncommercial Educational, A, B
2. Contingent Comparative-Noncommercial Educational FM, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commissions duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–22015 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Phenix Federal Savings and Loan Association

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Phenix Federal Savings and Loan Association, Phenix City, Alabama on September 18, 1987.

Dated: September 21, 1987

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87–22046 Filed 9–23–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Social Security Disability Program Demonstration Project; Electronic Industries Foundation; Independence Through Employment

SUMMARY: The Secretary of Health and Human Services announces the following demonstration project to be conducted under the authority of Public Law (Pub. L.) 96–265, section 505(a), as amended by Pub. L. 99–272, section 12101. Through its project entitled, "Independence Through Employment," the Electronic Industries Foundation (EIF) will test the effectiveness of its Projects With Industry (PWI) model in placing Social Security disability insurance (SSDI) beneficiaries into competitive employment. Section 222(a) of the Social Security Act will be waived to conduct this project, permitting direct referral of SSDI beneficiaries from the Social Security Administration (SSA) or the State agencies that make disability determinations for SSA, to EIF. We are publishing this notice to comply with 20 CFR 404.1599, which requires publication of a notice in the **Federal Register** before starting certain demonstration projects.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Morrison, Social Security Administration, Office of Disability, 2223 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (301) 594–0301.

Background Information: The Social Security Disability Amendments of 1980, Pub. L. 96–265, section 505(a), as amended by Pub. L. 99–272, section 12101, directs the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects designed to: (1) Encourage disabled beneficiaries to return to work, and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of Title II of the Social Security Act. Section 505 of Pub. L. 96–265 as amended by Pub. L. 99–272, section 12101, also authorizes the Secretary to waive certain provisions of the Social Security Act as is necessary to conduct these experiments and demonstration projects. This includes waiver of section 222(a) which requires SSA to refer disability beneficiaries to State vocational rehabilitation (VR) agencies.

Project Objectives: We are concerned there are many disabled beneficiaries who desire to return to competitive employment but for various reasons have not returned. The EIF PWI model placed over the years many disabled workers in gainful employment, and a pilot demonstration established that the model can be effective in helping SSDI beneficiaries return to work. An enhanced demonstration will test the following hypotheses:

BEST COPY AVAILABLE

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for a hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, All.
2. Ultimate, All.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. the complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–22000 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Warner Robins Christian Academy et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant City, and State	File No.	MM Docket No.
A. Bible Baptist Temple, Inc. d/b/a, Warner Robins Christian Academy, Warner Robins, Ga.	BPED–850924MI	87–386
B. Augusta Radio Fellowship Institute, Inc., Byron, Ga.	BPED–860422MA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. 307(b)-Noncommercial Educational, A, B
2. Contingent Comparative-Noncommercial Educational FM, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commissions duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–22015 Filed 9–23–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Phenix Federal Savings and Loan Association

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Phenix Federal Savings and Loan Association, Phenix City, Alabama on September 18, 1987.

Dated: September 21, 1987

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87–22046 Filed 9–23–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Social Security Disability Program Demonstration Project; Electronic Industries Foundation; Independence Through Employment

SUMMARY: The Secretary of Health and Human Services announces the following demonstration project to be conducted under the authority of Public Law (Pub. L.) 96–265, section 505(a), as amended by Pub. L. 99–272, section 12101. Through its project entitled, "Independence Through Employment," the Electronic Industries Foundation (EIF) will test the effectiveness of its Projects With Industry (PWI) model in placing Social Security disability insurance (SSDI) beneficiaries into competitive employment. Section 222(a) of the Social Security Act will be waived to conduct this project, permitting direct referral of SSDI beneficiaries from the Social Security Administration (SSA) or the State agencies that make disability determinations for SSA, to EIF. We are publishing this notice to comply with 20 CFR 404.1599, which requires publication of a notice in the **Federal Register** before starting certain demonstration projects.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Morrison, Social Security Administration, Office of Disability, 2223 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (301) 594–0301.

Background Information: The Social Security Disability Amendments of 1980, Pub. L. 96–265, section 505(a), as amended by Pub. L. 99–272, section 12101, directs the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects designed to: (1) Encourage disabled beneficiaries to return to work, and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of Title II of the Social Security Act. Section 505 of Pub. L. 96–265 as amended by Pub. L. 99–272, section 12101, also authorizes the Secretary to waive certain provisions of the Social Security Act as is necessary to conduct these experiments and demonstration projects. This includes waiver of section 222(a) which requires SSA to refer disability beneficiaries to State vocational rehabilitation (VR) agencies.

Project Objectives: We are concerned there are many disabled beneficiaries who desire to return to competitive employment but for various reasons have not returned. The EIF PWI model placed over the years many disabled workers in gainful employment, and a pilot demonstration established that the model can be effective in helping SSDI beneficiaries return to work. An enhanced demonstration will test the following hypotheses:

BEST COPY AVAILABLE

G. The Office of Refugee Resettlement (ORR) plans, develops and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office provides direction and technical guidance to the nationwide administration of programs funded from the ORR refugee and entrant resettlement appropriations. It develops, recommends and issues program policies, procedures and interpretations to provide program direction. The Office monitors and evaluates the performance of states and other public and private agencies in administering these programs and supports actions to improve them. It provides national leadership in development and coordination of national, public and private programs giving refugee and entrant assistance. The Office coordinates and provides leadership for policies and administration of State Legalization Impact Assistance Grants and serves as a focal point within the Department for issues related to the legalization program.

4. In Chapter M, Section M.20 Functions, delete "I. The Office of Community Services" in its entirety and replace it with the following:

I. The Office of Community Services (OCS) is responsible for administering: (1) The Community Services block grant and discretionary grant programs established by sections 672 and 681 of the Omnibus Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35); (2) the close-out of the Community Services transition project grants authorized by section 682 of OBRA for implementation during Fiscal Year (FY) 1982, at the discretion of the state governments not electing to administer Community Services Block Grants in FY 1982, and the close-out thereof; (3) the programmatic close-out functions related to funds awarded by the Community Services Administration (CSA) in FY 1981 and prior years; and (4) the Low Income Home Energy Assistance Program.

5. Delete Chapter MB, Office of Management and Information Systems, in its entirety and replace it with the following:

MB.00 Mission. The Office of Management and Information Systems (OMIS), a staff office of the FSA, advises the Administrator in the areas of internal administration and management of FSA, internal information systems in FSA and external state automated systems designed to support all FSA programs except the Child Support Enforcement program. The Office provides leadership, guidance and liaison throughout FSA on administrative policies, procedures and activities including: personnel management, employee development, management studies and assessments, facilities, telecommunications, material management and similar supporting services. The Office serves as the focal point for liaison with FSA regional offices. It establishes policy, requirements, standards and guidelines for information systems internal to FSA and for state automated data processing (ADP) systems which support all FSA programs except the Child Support Enforcement program.

MB.10 Organization. The Office of Management and Information Systems is headed by the Associate Administrator who reports directly to the Administrator. The Associate Administrator also serves as the Associate Deputy Director for Information Systems Management, Office of Child Support Enforcement. The Deputy Associate Administrator assists the Associate Administrator in carrying out his/her responsibilities. The Office is organized as follows:

Office of the Associate Administrator (MB)
Division of Management and Regional Operations (MB1)
Division of State Systems Management (MB2)
Division of Federal Systems Management (MB3)
Division of Facilities and Telecommunications Management (MB4)

MB.20 Functions. A. Office of the Associate Administrator directs and coordinates all elements of the Office of Management and Information Systems; provides guidance and services to FSA staff and program components, in accordance with HHS and other federal policy, in the following areas: Personnel; administrative procedures, policies and requirements; support services; facilities and telecommunications; and management analysis. The Office directs activities to plan, budget, direct, promote and control information technology for AFDC, Refugee and Community Services programs and internal operations. It provides oversight of relationships between FSA headquarters and FSA regional offices to insure effective operations, communications and regional representation on FSA issues. The Office coordinates implementation of the Equal Opportunity and Affirmative Action programs for FSA in accordance with departmental policies and procedures.

B. Division of Management and Regional Operations provides oversight and direction to meet the administrative, management and operational needs of FSA components. The Division provides liaison between FSA components and the Office of the Assistant Secretary for Personnel to provide personnel services including position management, recruitment, employee relations and staff development. It manages the performance recognition systems and the system of awards for FSA. It maintains systems to track personnel actions and to keep FSA informed about employee programs and benefits.

The Division provides administrative and support services to FSA components including coordination of services for equipment, supplies, mail, messenger, printing, publication distribution, small purchases, forms / records management, payroll and travel. It plans, organizes and conducts management studies, analysis and evaluations of administrative, management and functional processes. It studies structural, functional and operational problems of interest to the Administrator. The Division acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval and to coordinate and track OMB reports clearance requirements and other organization management requirements; maintains official organizational files for FSA; prepares formal program, administrative and personnel delegations of authority for the Administrator. The Division coordinates and tracks administrative plans for personnel, management improvement plans and productivity improvement plans.

It serves as the FSA focal point for liaison between FSA regional offices and the Administrator on region-related matters; supports the FSA Regional Administrators in administering regional office activities and establishing and implementing crosscutting program and operational initiatives; develops and implements systems and procedures for communicating with the regional offices and for monitoring and evaluating regional office operations; plans for the utilization of regional resources to accomplish approved objectives; develops work measurement techniques and tools and provides tracking and evaluation of the use of regional resources; works with FSA components to plan and clarify requirements placed on regional offices; monitors regional involvement in operational planning initiatives to assure fulfillment of FSA goals and objectives; collects and analyzes information on regional program, operational and administrative

(1) The EIF PWI model is effective for placing SSDI beneficiaries in competitive employment,

(2) The direct referral of SSDI beneficiaries will result in larger numbers of persons who wish to return to competitive employment, and

(3) The use of new computerized criteria for screening disabled beneficiaries for rehabilitation potential will increase the number of beneficiaries placed in competitive employment.

Description of the Demonstration Project: EIF has developed and implemented a PWI model which has placed more than 4000 disabled persons in competitive employment since 1977. In 1985 they received an SSA grant and began testing their model on SSDI beneficiaries and have found there are beneficiaries who want competitive employment and the EIF program can assist them to obtain such employment.

One problem which has persisted has been the identification of disabled persons suitable for the program. Numerous techniques to resolve this problem have been tried, but they are time-consuming and result in the intermittent identification of interested disabled beneficiaries. Accordingly, many people who would use EIF services remain unaware of their availability.

In this project, EIF will develop and implement new screening criteria to identify disabled persons who can benefit from the services of the demonstration project. Those persons then will be referred directly by SSA and the State agencies that make SSA disability determinations to the local EIF project site (Boston, Philadelphia, Omaha, San Francisco or Los Angeles) and offered their programs' services. Activities will be coordinated with the appropriate State VR agency to provide any necessary training or services needed by the program participant, and EIF will work with local private employers to identify specific jobs and skills necessary to fill those jobs. The individual will be placed in a job within his/her local community. All persons placed in competitive employment will be followed to evaluate their adjustment to employment.

Statutory and Regulatory Provision to Be Waived: Section 222(a) of the Social Security Act is being waived for the purpose of conducting this demonstration project. This Section requires that SSA refer disabled persons directly to State VR agencies. This waiver authorizes SSA to refer SSDI beneficiaries directly to EIF.

Authority: Sec. 505(a), Social Security Disability Amendments of 1980, Pub. L. 96-265, as amended by Pub. L. 99-272, Section 12101.

(Catalogue of Federal Domestic Assistance Programs No. 13.812–Assistance Payment-Research)

Dated: September 18, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-22069 Filed 9-23-87; 8:45 am]

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Family Support Administration

Statements of Organization, Functions and Delegations of Authority

Part M, Chapter M (Family Support Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (51 FR 1164, April 4, 1986 as amended most recently at 51 FR 35561, October 6, 1986) is amended to reflect the following organizational changes in the Family Support Administration (FSA) headquarters and regional components.

First, some revisions are being made in the functions and organization of the Office of Family Assistance (MH), the Office of Refugee Resettlement (MJ), the Office of Child Support Enforcement (MK), and the Office of Community Services (ML). Management and administrative functions in these offices are being transferred to the existing Office of Management and Information Systems (MB) in the Office of the Administrator. The state and federal information systems functions for the Office of Family Assistance, the Office of Refugee Resettlement and the Office of Community Services are being transferred to the Office of Management and Information Systems in the Office of the Administrator. The state systems function for the Office of Child Support Enforcement (OCSE) will remain in OCSE; the federal systems function in the OCSE is being transferred to the Office of Management and Information Systems in the Office of the Administrator. The financial management functions for the Office of Family Assistance, the Office of Refugee Resettlement, the Office of Child Support Enforcement and the Office of Community Services are being transferred to the Office of Financial Management (MF) in the Office of the Administrator. Responsibility for State Legalization Impact Assistance Grants is being assumed by the Office of Refugee Resettlement.

Second, some revisions are being made in the organization of the Office of Management and Information Systems (MB) as reflected in the revised functional statement.

Third, the Low Income Home Energy Assistance Program is being transferred from the Office of Family Assistance to the Office of Community Services (ML).

Fourth, the community development credit union programs were transferred from the Office of Community Services to the National Federal Credit Union Administration.

The changes are as follows:

1. In Chapter M, Section M.20 Functions, delete "B. The Office of Management and Information Systems," in its entirety and replace it with the following:

B. The Office of Management and Information Systems (OMIS) provides management and administrative support and analysis for FSA including personnel, staff development, support services, management analysis, and organizational studies. The Office serves as the focal point for liaison with FSA regional offices. It provides management and oversight of FSA internal systems and of state information systems which support all of FSA programs except the Child Support Enforcement program. It directs and coordinates services and support to meet FSA's space management, facilities services and voice and data telecommunications needs.

2. In Chapter M, Section M.20 Functions, delete "F. The Office of Family Assistance" in its entirety and replace it with the following:

F. The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following programs: Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the U.S. Repatriate Programs; and Emergency Assistance program. It develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. The Office assesses the performance of states in administering these programs; reviews state planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to federal law and regulations in state plans for public assistance program administration.

3. In Chapter M, Section M.20 Functions, delete "G. The Office of Refugee Resettlement" in its entirety and replace it with the following:

G. The Office of Refugee Resettlement (ORR) plans, develops and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office provides direction and technical guidance to the nationwide administration of programs funded from the ORR refugee and entrant resettlement appropriations. It develops, recommends and issues program policies, procedures and interpretations to provide program direction. The Office monitors and evaluates the performance of states and other public and private agencies in administering these programs and supports actions to improve them. It provides national leadership in development and coordination of national, public and private programs giving refugee and entrant assistance. The Office coordinates and provides leadership for policies and administration of State Legalization Impact Assistance Grants and serves as a focal point within the Department for issues related to the legalization program.

4. In Chapter M, Section M.20 Functions, delete "I. The Office of Community Services" in its entirety and replace it with the following:

I. The Office of Community Services (OCS) is responsible for administering: (1) The Community Services block grant and discretionary grant programs established by sections 672 and 681 of the Omnibus Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35); (2) the close-out of the Community Services transition project grants authorized by section 682 of OBRA for implementation during Fiscal Year (FY) 1982, at the discretion of the state governments not electing to administer Community Services Block Grants in FY 1982, and the close-out thereof; (3) the programmatic close-out functions related to funds awarded by the Community Services Administration (CSA) in FY 1981 and prior years; and (4) the Low Income Home Energy Assistance Program.

5. Delete Chapter MB, Office of Management and Information Systems, in its entirety and replace it with the following:

MB.00 Mission. The Office of Management and Information Systems (OMIS), a staff office of the FSA, advises the Administrator in the areas of internal administration and management of FSA, internal information systems in FSA and external state automated systems designed to support all FSA programs except the Child Support Enforcement program. The Office provides leadership, guidance and liaison throughout FSA on administrative policies, procedures and activities including: personnel management, employee development, management studies and assessments, facilities, telecommunications, material management and similar supporting services. The Office serves as the focal point for liaison with FSA regional offices. It establishes policy, requirements, standards and guidelines for information systems internal to FSA and for state automated data processing (ADP) systems which support all FSA programs except the Child Support Enforcement program.

MB.10 Organization. The Office of Management and Information Systems is headed by the Associate Administrator who reports directly to the Administrator. The Associate Administrator also serves as the Associate Deputy Director for Information Systems Management, Office of Child Support Enforcement. The Deputy Associate Administrator assists the Associate Administrator in carrying out his/her responsibilities. The Office is organized as follows:

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Division of Facilities and Telecommunications Management (MB4)

MB.20 Functions. A. Office of the Associate Administrator directs and coordinates all elements of the Office of Management and Information Systems; provides guidance and services to FSA staff and program components, in accordance with HHS and other federal policy, in the following areas: Personnel; administrative procedures, policies and requirements; support services; facilities and telecommunications; and management analysis. The Office directs activities to plan, budget, direct, promote and control information technology for AFDC, Refugee and Community Services programs and internal operations. It provides oversight of relationships between FSA headquarters and FSA regional offices to insure effective operations, communications and regional representation on FSA issues. The Office coordinates implementation of the Equal Opportunity and Affirmative Action programs for FSA in accordance with departmental policies and procedures.

B. Division of Management and Regional Operations provides oversight and direction to meet the administrative, management and operational needs of FSA components. The Division provides liaison between FSA components and the Office of the Assistant Secretary for Personnel to provide personnel services including position management, recruitment, employee relations and staff development. It manages the performance recognition systems and the system of awards for FSA. It maintains systems to track personnel actions and to keep FSA informed about employee programs and benefits.

The Division provides administrative and support services to FSA components including coordination of services for equipment, supplies, mail, messenger, printing, publication distribution, small purchases, forms / records management, payroll and travel. It plans, organizes and conducts management studies, analysis and evaluations of administrative, management and functional processes. It studies structural, functional and operational problems of interest to the Administrator. The Division acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval and to coordinate and track OMB reports clearance requirements and other organization management requirements; maintains official organizational files for FSA; prepares formal program, administrative and personnel delegations of authority for the Administrator. The Division coordinates and tracks administrative plans for personnel, management improvement plans and productivity improvement plans.

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Dated: September 18, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-22069 Filed 9-23-87; 8:45 am]

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Family Support Administration

Statements of Organization, Functions and Delegations of Authority

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Second, some revisions are being made in the organization of the Office of Management and Information Systems (MB) as reflected in the revised functional statement.

Third, the Low Income Home Energy Assistance Program is being transferred from the Office of Family Assistance to the Office of Community Services (ML).

Fourth, the community development credit union programs were transferred from the Office of Community Services to the National Federal Credit Union Administration.

The changes are as follows:

1. In Chapter M, Section M.20 Functions, delete "B. The Office of Management and Information Systems," in its entirety and replace it with the following:

B. The Office of Management and Information Systems (OMIS) provides management and administrative support and analysis for FSA including personnel, staff development, support services, management analysis, and organizational studies. The Office serves as the focal point for liaison with FSA regional offices. It provides management and oversight of FSA internal systems and of state information systems which support all of FSA programs except the Child Support Enforcement program. It directs and coordinates services and support to meet FSA's space management, facilities services and voice and data telecommunications needs.

2. In Chapter M, Section M.20 Functions, delete "F. The Office of Family Assistance" in its entirety and replace it with the following:

F. The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following programs: Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the U.S. Repatriate Programs; and Emergency Assistance program. It develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. The Office assesses the performance of states in administering these programs; reviews state planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to federal law and regulations in state plans for public assistance program administration.

3. In Chapter M, Section M.20 Functions, delete "G. The Office of Refugee Resettlement" in its entirety and replace it with the following:

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issues for submission to the Administrator.

C. Division of State Systems Management reviews and analyzes state requests for federal financial participation for automated systems development activities which support FSA's programs, except the Child Support Enforcement programs. It provides assistance to states in developing or modifying automation plans to conform to federal requirements; recommends approval/disapproval of state funding requests. The Division monitors approved state systems development activities; conducts periodic reviews to assure state compliance with regulatory requirements applicable to automated systems supported by federal financial participation. It provides guidance to states on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve FSA through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with data utilization and safeguarding requirements.

D. The Division of Federal Systems Management oversees and coordinates computer systems design, development, maintenance and services to FSA programs. It provides technical assistance on automated systems to state and local agencies for Federal Parent Locator Services, Federal Tax Refund Offset Service and Project 1099: designs, develops and implements application systems to support FSA program requirements; manages and maintains management information systems for all FSA components.

The Division coordinates the design, development and implementation of the National Integrated Quality Control System with the Food and Nutrition Service of the Department of Agriculture and the Health Care Financing Administration. The Division manages, maintains and operates the agency mainframe computer center and telecommunications network; provides for the planning, procurement, and implementation of computer center upgrades as appropriate for support of FSA program initiatives. It develops long-range ADP plans; develops the information resource management (IRM) policy, procurement plan and budget and monitors the approved plan/budget for potential overruns in the area of equipment leases, telecommunications services and service contracts. The Division coordinates the development of the FSA ADP Security Management Plan and enforces ADP directives to ensure compliance; maintains an inventory of ADP equipment and software; develops and implements procurement strategies for major ADP acquisitions. The Division manages, maintains and operates FSA's minicomputers and network of personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing and for executive information systems; manages an information center offering services such as design assistance, application evaluation, user training, new product evaluation, and specialized technical assistance.

E. The Division of Facilities and Telecommunications Management directs and coordinates services and support to meet FSA's space management, facilities services and voice and data telecommunications needs. It develops and implements policies, standards, programs and procedures to assure adequate general services for FSA. The Division develops and implements FSA's space and facilities management plans and activities, including identification and negotiations for office space, allocations of space, coordination of physical moves, and planning and design of office layouts. It serves as liaison with HHS, General Services Administration (GSA) and outside vendors to provide facilities services including acquisition of facilities and equipment, building security, property management, inventory control, health and safety programs, labor services, facilities for handicapped employees and parking. In coordination with FSA program and staff offices, the Division develops telecommunications plans and places orders for voice and data communications services; provides liaison with HHS, GSA and private communications firms on telecommunications matters; provides assistance to FSA components to identify telecommunications needs and to use communications equipment and systems; monitors standard level user charges and telecommunications charges; and assists with budgetary projections and cost estimates for telecommunications services.

6. Delete Chapter MH, Office of Family Assistance, and replace it in its entirety with the following:

MH.00 Mission. The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following public assistance programs; Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the Emergency Assistance Program and the U.S. Repatriate Programs.

OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. The Office assesses the performance of states in administering these programs; reviews state planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to federal law and regulations in state plans for public assistance program administration.

MH.10 Organization. The Office of Family Assistance, under the leadership of the Director, is a program component of the Family Support Administration and consists of:

The Office of the Director for Family Assistance (MH)
The Immediate Office of the Director for Family Assistance (MH)
The U.S. Repatriate Program Staff (MHC)
Division of Policy (MHC1)
Division of Quality Control (MHC2)
Division of Program Evaluation (MHC3)
Division of Work Programs (MHC4)

MH.20 Functions. The functions of the organizational elements of OFA are as follows:

A. The Office of the Director for Family Assistance is directly responsible to the FSA Administrator for carrying out OFA's mission and providing direction, leadership, guidance and general supervision to the principal components of OFA. The Office is headed by the Director for Family Assistance. The Deputy Director assists the Director in carrying out his/her responsibilities and performs other duties as prescribed.

B. The Immediate Office of the Director for Family Assistance provides the Director and Deputy Director with staff assistance on the full range of their responsibilities. It provides management support and analysis and administrative support for OFA; ensures coordination and integration of operational activities among OFA components; receives, controls and coordinates replies to all public, congressional and federal inquiries on administrative and national welfare issues; and provides liaison with the Office of Communication to promote FSA's public affairs programs and initiatives.

C. The U.S. Repatriate Program Staff provides policy development and operational direction for the U.S.

Repatriate Programs and State Emergency Welfare Preparedness.

D. Division of Policy formulates national policy for the Aid to Families with Dependent Children (AFDC) and Emergency Assistance (EA) programs and the Aid to the Aged, Blind, and Disabled program in Guam, Puerto Rico and the Virgin Islands. The Office develops regulations for these programs to implement new legislation, court decisions, or directives from the Family Support Administration (FSA); consults with FSA regional offices, states, and other appropriate agencies on the meaning and application of federal policies for these programs; develops policy interpretations as necessary; responds to public, congressional or interest group inquiries concerning OFA policies and procedures.

The Division reviews state plan amendments and proposed implementing instructions for adherence to national policy; takes actions to disapprove state plan amendments based upon recommendations from the FSA Regional Administrators; monitors state compliance with federal laws and regulations and recommends compliance actions to the FSA Office of Policy; and promotes cross-program policy initiatives and policy simplification to support FSA objectives.

The Division develops and recommends OFA legislative proposals and the OFA position on non-Administration legislative proposals; and prepares briefing materials and testimony for the OFA Director, FSA Administrator, or the Secretary.

It provides support to the FSA General Counsel by developing the OFA position on court actions, including the preparation of affidavits and discovery requests.

It evaluates quality control (QC) operating instructions for consistency with OFA policies and advises the FSA regional offices on state appeals of QC difference findings; evaluates studies performed by federal audit agencies or other third parties and prepares comments which reflect the OFA perspective; ensures that all OFA policies are tracked and uniformly disseminated to states and other appropriate parties; and maintains historical files of OFA-related legislation, regulations and precedent policy directives. In addition, it reviews research and demonstration proposals for policy implications and provides consultation on operating projects.

E. Division of Quality Control develops policies, standards, procedures and guidelines for the operation of the federal/state AFDC quality control (QC) system, including statistical and program aspects of the program; establishes, maintains and evaluates the effectiveness of the federal monitoring of the state quality control operation, including technical and operating policies necessary to conduct federal subsample review of the states' sample case findings; and provides guidance and assistance to states and FSA regional offices on federal/state quality control procedures and systems. It conducts on-site reviews to appraise FSA regional office and state agency adherence to QC statistical methods and review procedures.

The Division coordinates the AFDC/QC system with the QC systems of the Food & Nutrition Service (FNS) and the Health Care Financing Administration (HCFA/Medicaid), including coordination with these agencies on the National Integrated Quality Control Data Processing System (NIQCDPS).

It analyzes QC findings and consolidates state and federal findings; establishes states' official error rate and the amount of the disallowance as prescribed by statute and regulations; compiles QC findings into a national report based on data derived from the QC system; assists in the corrective action process by providing data analysis, recommending corrective actions and by reviewing state corrective action plans and progress reports.

F. Division of Program Evaluation develops research issues on OFA programs in response to FSA priorities and formulates research questions to be resolved through data analysis and/or experimental, research, pilot and demonstration projects; coordinates with FSA components to undertake research, demonstration and pilot projects to strengthen FSA program interfaces and to reduce long-term welfare dependency; maintains responsibility for OFA's annual research and demonstration project funding cycle and for monitoring of projects. It conducts program analyses of AFDC data and other related data in support of FSA legislative proposals, congressional testimony and program initiatives; and promotes and disseminates information on useful and tested program practices.

The Division develops issues and evaluates national program performance standards for determining the effectiveness of state and local agency public assistance program administration; collects, compiles and publishes statistical and other data on OFA programs; and maintains current and historical data on state plans and program characteristics.

It develops national corrective action strategies; assesses, tracks and evaluates state corrective action activities; establishes and implements equitable criteria and processes for evaluating state quality control waiver requests; and develops national goals and assists FSA regional offices in setting guidelines to help states monitor and improve program effectiveness and efficiency.

G. Division of Work Programs provides direction, consultation and guidance to promote cost-effective work opportunity programs for AFDC applicants and recipients as an alternative to welfare dependency. The Division develops regulations and program instructions implementing legislation or interpreting existing work program policies; and provides liaison with states, FSA regional offices, the Congress, other federal agencies and public interest groups to develop consistent work program policies and appropriate related services for welfare applicants/recipients.

It develops and implements strategies to assist states in establishing expanding and/or improving work programs including: the conduct of needs assessments; identification of successful practices; and information exchange through technology transfers, publications and resource networks. The Division defines work program research issues and formulates research questions to be resolved through experimental, research, pilot and demonstration projects; determines work program project content and approach; prepares and publishes announcements of availability of project grants and contracts; evaluates applications and proposals; monitors program projects to ensure objectives are met; synthesizes and interprets findings from work program activities to formulate further research activities to provide assistance to state/local agencies on effectively operating work programs.

7. Delete Chapter MJ, Office of Refugee Resettlement, and replace it in its entirety with the following:

MJ.00 Mission. The Office of Refugee Resettlement (ORR) plans, develops, and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office provides direction and technical guidance to the nationwide administration of programs funded from the ORR refugee and entrant resettlement appropriations. It develops, recommends, and issues program policies, procedures and interpretations to provide program direction. The Office monitors and evaluates the performance of states and

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issues for submission to the Administrator.

C. Division of State Systems Management reviews and analyzes state requests for federal financial participation for automated systems development activities which support FSA's programs, except the Child Support Enforcement programs. It provides assistance to states in developing or modifying automation plans to conform to federal requirements; recommends approval/disapproval of state funding requests. The Division monitors approved state systems development activities; conducts periodic reviews to assure state compliance with regulatory requirements applicable to automated systems supported by federal financial participation. It provides guidance to states on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve FSA through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with data utilization and safeguarding requirements.

D. The Division of Federal Systems Management oversees and coordinates computer systems design, development, maintenance and services to FSA programs. It provides technical assistance on automated systems to state and local agencies for Federal Parent Locator Services, Federal Tax Refund Offset Service and Project 1099: designs, develops and implements application systems to support FSA program requirements; manages and maintains management information systems for all FSA components.

The Division coordinates the design, development and implementation of the National Integrated Quality Control System with the Food and Nutrition Service of the Department of Agriculture and the Health Care Financing Administration. The Division manages, maintains and operates the agency mainframe computer center and telecommunications network; provides for the planning, procurement, and implementation of computer center upgrades as appropriate for support of FSA program initiatives. It develops long-range ADP plans; develops the information resource management (IRM) policy, procurement plan and budget and monitors the approved plan/budget for potential overruns in the area of equipment leases, telecommunications services and service contracts. The Division coordinates the development of the FSA ADP Security Management Plan and enforces ADP directives to ensure compliance; maintains an inventory of ADP equipment and software; develops and implements procurement strategies for major ADP acquisitions. The Division manages, maintains and operates FSA's minicomputers and network of personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing and for executive information systems; manages an information center offering services such as design assistance, application evaluation, user training, new product evaluation, and specialized technical assistance.

E. The Division of Facilities and Telecommunications Management directs and coordinates services and support to meet FSA's space management, facilities services and voice and data telecommunications needs. It develops and implements policies, standards, programs and procedures to assure adequate general services for FSA. The Division develops and implements FSA's space and facilities management plans and activities, including identification and negotiations for office space, allocations of space, coordination of physical moves, and planning and design of office layouts. It serves as liaison with HHS, General Services Administration (GSA) and outside vendors to provide facilities services including acquisition of facilities and equipment, building security, property management, inventory control, health and safety programs, labor services, facilities for handicapped employees and parking. In coordination with FSA program and staff offices, the Division develops telecommunications plans and places orders for voice and data communications services; provides liaison with HHS, GSA and private communications firms on telecommunications matters; provides assistance to FSA components to identify telecommunications needs and to use communications equipment and systems; monitors standard level user charges and telecommunications charges; and assists with budgetary projections and cost estimates for telecommunications services.

6. Delete Chapter MH, Office of Family Assistance, and replace it in its entirety with the following:

MH.00 Mission. The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following public assistance programs; Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the Emergency Assistance Program and the U.S. Repatriate Programs.

OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. The Office assesses the performance of states in administering these programs; reviews state planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to federal law and regulations in state plans for public assistance program administration.

MH.10 Organization. The Office of Family Assistance, under the leadership of the Director, is a program component of the Family Support Administration and consists of:

The Office of the Director for Family Assistance (MH)
The Immediate Office of the Director for Family Assistance (MH)
The U.S. Repatriate Program Staff (MHC)
Division of Policy (MHC1)
Division of Quality Control (MHC2)
Division of Program Evaluation (MHC3)
Division of Work Programs (MHC4)

MH.20 Functions. The functions of the organizational elements of OFA are as follows:

A. The Office of the Director for Family Assistance is directly responsible to the FSA Administrator for carrying out OFA's mission and providing direction, leadership, guidance and general supervision to the principal components of OFA. The Office is headed by the Director for Family Assistance. The Deputy Director assists the Director in carrying out his/her responsibilities and performs other duties as prescribed.

B. The Immediate Office of the Director for Family Assistance provides the Director and Deputy Director with staff assistance on the full range of their responsibilities. It provides management support and analysis and administrative support for OFA; ensures coordination and integration of operational activities among OFA components; receives, controls and coordinates replies to all public, congressional and federal inquiries on administrative and national welfare issues; and provides liaison with the Office of Communication to promote FSA's public affairs programs and initiatives.

C. The U.S. Repatriate Program Staff provides policy development and operational direction for the U.S.

Repatriate Programs and State Emergency Welfare Preparedness.

D. Division of Policy formulates national policy for the Aid to Families with Dependent Children (AFDC) and Emergency Assistance (EA) programs and the Aid to the Aged, Blind, and Disabled program in Guam, Puerto Rico and the Virgin Islands. The Office develops regulations for these programs to implement new legislation, court decisions, or directives from the Family Support Administration (FSA); consults with FSA regional offices, states, and other appropriate agencies on the meaning and application of federal policies for these programs; develops policy interpretations as necessary; responds to public, congressional or interest group inquiries concerning OFA policies and procedures.

The Division reviews state plan amendments and proposed implementing instructions for adherence to national policy; takes actions to disapprove state plan amendments based upon recommendations from the FSA Regional Administrators; monitors state compliance with federal laws and regulations and recommends compliance actions to the FSA Office of Policy; and promotes cross-program policy initiatives and policy simplification to support FSA objectives.

The Division develops and recommends OFA legislative proposals and the OFA position on non-Administration legislative proposals; and prepares briefing materials and testimony for the OFA Director, FSA Administrator, or the Secretary.

It provides support to the FSA General Counsel by developing the OFA position on court actions, including the preparation of affidavits and discovery requests.

It evaluates quality control (QC) operating instructions for consistency with OFA policies and advises the FSA regional offices on state appeals of QC difference findings; evaluates studies performed by federal audit agencies or other third parties and prepares comments which reflect the OFA perspective; ensures that all OFA policies are tracked and uniformly disseminated to states and other appropriate parties; and maintains historical files of OFA-related legislation, regulations and precedent policy directives. In addition, it reviews research and demonstration proposals for policy implications and provides consultation on operating projects.

E. Division of Quality Control develops policies, standards, procedures and guidelines for the operation of the federal/state AFDC quality control (QC) system, including statistical and program aspects of the program; establishes, maintains and evaluates the effectiveness of the federal monitoring of the state quality control operation, including technical and operating policies necessary to conduct federal subsample review of the states' sample case findings; and provides guidance and assistance to states and FSA regional offices on federal/state quality control procedures and systems. It conducts on-site reviews to appraise FSA regional office and state agency adherence to QC statistical methods and review procedures.

The Division coordinates the AFDC/QC system with the QC systems of the Food & Nutrition Service (FNS) and the Health Care Financing Administration (HCFA/Medicaid), including coordination with these agencies on the National Integrated Quality Control Data Processing System (NIQCDPS).

It analyzes QC findings and consolidates state and federal findings; establishes states' official error rate and the amount of the disallowance as prescribed by statute and regulations; compiles QC findings into a national report based on data derived from the QC system; assists in the corrective action process by providing data analysis, recommending corrective actions and by reviewing state corrective action plans and progress reports.

F. Division of Program Evaluation develops research issues on OFA programs in response to FSA priorities and formulates research questions to be resolved through data analysis and/or experimental, research, pilot and demonstration projects; coordinates with FSA components to undertake research, demonstration and pilot projects to strengthen FSA program interfaces and to reduce long-term welfare dependency; maintains responsibility for OFA's annual research and demonstration project funding cycle and for monitoring of projects. It conducts program analyses of AFDC data and other related data in support of FSA legislative proposals, congressional testimony and program initiatives; and promotes and disseminates information on useful and tested program practices.

The Division develops issues and evaluates national program performance standards for determining the effectiveness of state and local agency public assistance program administration; collects, compiles and publishes statistical and other data on OFA programs; and maintains current and historical data on state plans and program characteristics.

It develops national corrective action strategies; assesses, tracks and evaluates state corrective action activities; establishes and implements equitable criteria and processes for evaluating state quality control waiver requests; and develops national goals and assists FSA regional offices in setting guidelines to help states monitor and improve program effectiveness and efficiency.

G. Division of Work Programs provides direction, consultation and guidance to promote cost-effective work opportunity programs for AFDC applicants and recipients as an alternative to welfare dependency. The Division develops regulations and program instructions implementing legislation or interpreting existing work program policies; and provides liaison with states, FSA regional offices, the Congress, other federal agencies and public interest groups to develop consistent work program policies and appropriate related services for welfare applicants/recipients.

It develops and implements strategies to assist states in establishing expanding and/or improving work programs including: the conduct of needs assessments; identification of successful practices; and information exchange through technology transfers, publications and resource networks. The Division defines work program research issues and formulates research questions to be resolved through experimental, research, pilot and demonstration projects; determines work program project content and approach; prepares and publishes announcements of availability of project grants and contracts; evaluates applications and proposals; monitors program projects to ensure objectives are met; synthesizes and interprets findings from work program activities to formulate further research activities to provide assistance to state/local agencies on effectively operating work programs.

7. Delete Chapter MJ, Office of Refugee Resettlement, and replace it in its entirety with the following:

MJ.00 Mission. The Office of Refugee Resettlement (ORR) plans, develops, and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office provides direction and technical guidance to the nationwide administration of programs funded from the ORR refugee and entrant resettlement appropriations. It develops, recommends, and issues program policies, procedures and interpretations to provide program direction. The Office monitors and evaluates the performance of states and

other public and private agencies in administering these programs and supports actions to improve them. It provides national leadership in the development and coordination of nationa1 public and private programs giving refugee and entrant assistance.

The Office also plans, develops and directs implementation of state legalization impact assistance grants. The Office provides direction and technical guidance to the nation-wide administration of federal financial assistance to states from Immigration Reform and Control Act appropriations. It develops, recommends and issues policies, procedures and interpretations and monitors grant activities.

MJ.10 Organization. The Office of Refugee Resettlement, under the leadership of the Director, is a program component of the Family Support Administration and consists of:

The Office of the Director of Refugee Resettlement (MJ)
Immediate Office of the Director (MJF)
Division of Operations (MJF1)
Division of Policy and Analysis (MJF2)
Division of State Legalization Assistance (MJF3)
Florida Office (MJF4)

MJ.20 Functions. The functions of the organizational elements of ORR are as follows:

A. The Office of the Director of Refugee Resettlement is directly responsible to the FSA Administrator for carrying out ORR's mission. These responsibilities include: Coordinating with the lead refugee and entrant program offices of other federal departments; providing leadership in representing refugee and entrant programs, policies and administration to a variety of governmental parties; acting as the coordinator of the total refugee and entrant resettlement effort for FSA and the Department; coordinating and providing leadership for policies and administration of the legalization assistance grants to a wide variety of public and private parties.

The Office is headed by the Director of Refugee Resettlement who provides general supervision to the major components of ORR and is responsible for the efficient and effective utilization of the resources of the Office. The Deputy Director assists the Director in carrying out his/her responsibilities and performs other duties as prescribed.

B. The Immediate Office of the Director provides the Director with staff assistance on the full range of his/her responsibilities.

C. The Division of Operations provides direction for the operation and implementation of the ORR refugee and entrant domestic assistance programs. It monitors state-administered domestic assistance programs and develops guidance and procedures for their implementation; designs strategies for providing assistance to state and local agencies, refugee/entrant self-help groups and voluntary agencies; recommends, to the Director, service priorities to be initiated as demonstration or pilot projects designed to promote the self-sufficiency and social/economic integration of refugees/entrants; and oversees the programmatic implementation of grants and contracts associated with national discretionary activity.

The Division has responsibility for implementing and monitoring other domestic assistance and service initiatives undertaken by ORR, such as the voluntary agency program, targeted assistance, alternative resettlement strategies and other activities as specified by the Director or required by congressional mandate.

It provides guidance to the regions in reviewing and approving state plans, and monitors state systems to ensure compliance with ORR policies with respect to cash and medical assistance and social services programs.

D. The Division of Policy and Analysis directs the development and interpretation of policy and regulations for the refugee and entrant programs. It develops priorities among various types of refugee and entrant assistance services taking into consideration funding availability, predicted effectiveness of options and emergent needs of new refugees. In accomplishing these tasks, it assures adequate involvement, comment and review from a variety of interested and knowledgeable parties.

The Division develops goals, criteria and standards for the refugee and entrant programs and designs evaluations of the technical aspects of program implementation. Based on reviews, analyses, assessments and evaluations, it makes recommendations on changes in program policy, operations and administration.

The Division collects data and performs analyses on the changing needs of the refugee and entrant population, providing direction in the design of needs assessments conducted by itself or other entities. The Division provides leadership to identify data needs and sources, formulates data and reporting requirements; and assists FSA regional offices, states and private agencies on data reporting and the resolution of reporting problems. It assures that legislative requirements are defined and met and seeks legal interpretation where such requirements or intent may be unclear. The Division makes recommendations concerning aspects of legislation that require amendment; prepares reports required by statute, congressional requests, and Department needs; and prepares legislative, regulatory, operational and policy recommendations based on program analysis.

E. Division of State Legalization Assistance directs all aspects of State Legalization Impact Assistance Grants, including development and interpretation of policy and regulations, coordination and direction of initiatives involving the use of federal funds in programs serving legalized aliens, preparation of annual reports to Congress, and serving as a focal point within the Department for issues related to the legalization program. The Division also directs implementation of legalization assistance grants, to include monitoring and grant review activities, and the collection and analysis of data relevant to the allocation formula and the use of funds.

F. Florida Office. As an out-stationed headquarters component, the Florida Office provides information and referral services, consistent with available resources, to refugees/entrants, service providers and state and federal agencies in the state of Florida. It maintains data on refugees and Cuban/Haitian entrants and provides such information as needed to national, state and local agencies working with these populations. The Office coordinates state and local resettlement activities to ensure compliance with resettlement policy; serves as the ORR contact with state and local officials and public and private agencies involved with refugee resettlement activities; and carries out refugee and entrant program duties and responsibilities with respect to the state of Florida, that are carried out for other states by the FSA regional offices.

8. Delete Chapter MK, Office of Child Support Enforcement in its entirety and replace it with the following:

MK.00. Mission. The Office of Child Support Enforcement (OCSE) provides direction, guidance and oversight to the states' Child Support Enforcement program (CSE) and for activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. The general purpose of the CSE legislation is to require states to develop programs for establishing and enforcing support obligations by locating absent parents, establishing paternity when necessary and obtaining child support. The specific responsibilities of this office are to:

Develop, recommend and issue policies, procedures and interpretations for state programs for locating absent parents, establishing paternity, and obtaining child support; develop procedures for review and approval or disapproval of state plan material; conduct complete audits of state programs at least once every three years to assure their conformity with appropriate requirements and to determine whether the actual operation of such programs conforms to federal requirements, and conduct other such audits as may be necessary; assist states in establishing adequate reporting procedures and maintaining records for the operation of the CSE programs and of amounts collected and disbursed under the CSE program and the costs incurred in collecting such amounts; provide assistance to the states to help them develop effective systems for establishing paternity and collecting child support; certify applications from states for permission to utilize the courts of the United States to enforce court orders for support against absent parents; operate the Federal Parent Locator Service; certify to the Secretary of the Treasury amounts of child support obligations that require collection in appropriate instances; submit an annual report to Congress on all activities undertaken relative to the CSE program; approve advanced data processing planning documents; review, assess and inspect planning, design and operation of state management information systems.

MK.10. Organization. The Office of Child Support Enforcement, under the leadership of the Director, is a program component of the Family Support Administration and consists of:

Office of the Director (MK)
Immediate Office of the Director (MK)
Office of the Associate Deputy Director (MKC)
  Audit Division (MKC1)
  Program Operations Division (MKC2)
  Policy and Planning Division (MKC3)
Office of the Associate Deputy Director for Information Systems Management (MKE)
  State Child Support Enforcement Systems Management Division (MKE1)

MK. 20. Functions. A. Office of the Director. The Director is also the Administrator for the Family Support Administration and is directly responsible to the Secretary of Health and Human Services for carrying out OCSE's mission. The Director delegates day-to-day operational responsibility for Child Support Enforcement programs to the Deputy Director, the Associate Deputy Director and/or the Associate Deputy Director for Information Systems Management. The Deputy Director assists the Director in carrying out his/her responsibilities and performs other duties as prescribed. The Associate Deputy Director is delegated day-to-day responsibility for OCSE's Audit, Program Operations and Policy and Planning Divisions. The Associate Deputy Director for Information Systems Management is delegated day-to-day responsibility for OCSE's State Child Support Enforcement Systems Management Division and also serves as the Associate Administrator, Office of Management and Information Systems in the office of the Administrator. The Office is responsible for establishing regulations, guidance and standards for states to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with department officials, other federal departments, state and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness and approving all instructions, policies and publications issued by OCSE staff.

B. The Immediate Office of the Director provides the Director, Deputy Director and Associate Deputy Directors with staff assistance on the full range of their responsibilities. It provides management and administrative support for OCSE including the execution of OCSE's budget; the conduct of special projects; and the coordination of OCSE's operational planning activities. In coordination with FSA's Office of Communication, it plans, designs and executes OCSE's public affairs program by communicating policies, activities and available service to the public.

C. The Office of the Associate Deputy Director provides day-to-day operational guidance and supervision to OCSE's Audit, Program Operations and Policy and Planning Divisions. He/she coordinates OCSE activities in these functional areas and advises the OCSE Director and Deputy Director on critical issues related to these areas.

1. Audit Division. As required by section 452(a)(4) of the Social Security Act (the Act), the Audit Division develops, plans, schedules and conducts periodic audits of state CSE programs in accordance with audit standards promulgated by the Comptroller General of the United States.

The Division conducts Program Results/Performance Measurements audits pursuant to the penalty provision of section 403(h) of the Act, to determine whether the actual operation of CSE programs in each state is effective and conforms to federal requirements; develops and conducts full-scope administrative cost audits of the states' Child Support Enforcement program to assess adequacy of financial operations and compliance with applicable laws and regulations; performs other audits and examinations of program operations as may be necessary or requested by program officials for the purpose of improving the efficiency, effectiveness and economy of state and local child support activities; develops consolidated reports for the Director and Deputy Director, OCSE, based on findings; provides specifications for the development of audit regulations and requirements for audits of state CSE programs; and coordinates and maintains effective liaison with the HHS Inspector General's Office and with the General Accounting Office (GAO).

2. Program Operations Division assesses state performance and provides information and assistance on program operations . It monitors implementation of program requirements; develops guides and resource materials for use by states and FSA regional offices; documents specialized program techniques for use by states and local agencies; and ensures transfer of best practices among state and local support enforcement agencies. The Division provides specialized services and operation of the Federal Parent Locator Service, the Federal Tax Refund Offset Program and the Parental Kidnapping Service. It develops and publishes informational materials and operates an information clearning-house and research center on child support programs; and monitors contracts with organizations affiliated with child support programs.

3. Policy and Planning Division formulates national policy on the CSE program; provides policy guidance and interpretations to states in developing and operating their programs according to federal law. It develops legislative proposals and regulations to implement new legislation, court decisions or directives from higher authority. The Division develops procedures for review and approval of state plans by the OCSE regional offices. It develops and monitors research, interstate, and other demonstration and evaluation studies and publishes program statistics.

D. The Office of the Associate Deputy Director for Information Systems Management also serves as the Associate Administrator, Office of Management and Information Systems

other public and private agencies in administering these programs and supports actions to improve them. It provides national leadership in the development and coordination of nationa1 public and private programs giving refugee and entrant assistance.

The Office also plans, develops and directs implementation of state legalization impact assistance grants. The Office provides direction and technical guidance to the nation-wide administration of federal financial assistance to states from Immigration Reform and Control Act appropriations. It develops, recommends and issues policies, procedures and interpretations and monitors grant activities.

MJ.10 Organization. The Office of Refugee Resettlement, under the leadership of the Director, is a program component of the Family Support Administration and consists of:

The Office of the Director of Refugee Resettlement (MJ)
Immediate Office of the Director (MJF)
Division of Operations (MJF1)
Division of Policy and Analysis (MJF2)
Division of State Legalization Assistance (MJF3)
Florida Office (MJF4)

MJ.20 Functions. The functions of the organizational elements of ORR are as follows:

A. The Office of the Director of Refugee Resettlement is directly responsible to the FSA Administrator for carrying out ORR's mission. These responsibilities include: Coordinating with the lead refugee and entrant program offices of other federal departments; providing leadership in representing refugee and entrant programs, policies and administration to a variety of governmental parties; acting as the coordinator of the total refugee and entrant resettlement effort for FSA and the Department; coordinating and providing leadership for policies and administration of the legalization assistance grants to a wide variety of public and private parties.

The Office is headed by the Director of Refugee Resettlement who provides general supervision to the major components of ORR and is responsible for the efficient and effective utilization of the resources of the Office. The Deputy Director assists the Director in carrying out his/her responsibilities and performs other duties as prescribed.

B. The Immediate Office of the Director provides the Director with staff assistance on the full range of his/her responsibilities.

C. The Division of Operations provides direction for the operation and implementation of the ORR refugee and entrant domestic assistance programs. It monitors state-administered domestic assistance programs and develops guidance and procedures for their implementation; designs strategies for providing assistance to state and local agencies, refugee/entrant self-help groups and voluntary agencies; recommends, to the Director, service priorities to be initiated as demonstration or pilot projects designed to promote the self-sufficiency and social/economic integration of refugees/entrants; and oversees the programmatic implementation of grants and contracts associated with national discretionary activity.

The Division has responsibility for implementing and monitoring other domestic assistance and service initiatives undertaken by ORR, such as the voluntary agency program, targeted assistance, alternative resettlement strategies and other activities as specified by the Director or required by congressional mandate.

It provides guidance to the regions in reviewing and approving state plans, and monitors state systems to ensure compliance with ORR policies with respect to cash and medical assistance and social services programs.

D. The Division of Policy and Analysis directs the development and interpretation of policy and regulations for the refugee and entrant programs. It develops priorities among various types of refugee and entrant assistance services taking into consideration funding availability, predicted effectiveness of options and emergent needs of new refugees. In accomplishing these tasks, it assures adequate involvement, comment and review from a variety of interested and knowledgeable parties.

The Division develops goals, criteria and standards for the refugee and entrant programs and designs evaluations of the technical aspects of program implementation. Based on reviews, analyses, assessments and evaluations, it makes recommendations on changes in program policy, operations and administration.

The Division collects data and performs analyses on the changing needs of the refugee and entrant population, providing direction in the design of needs assessments conducted by itself or other entities. The Division provides leadership to identify data needs and sources, formulates data and reporting requirements; and assists FSA regional offices, states and private agencies on data reporting and the resolution of reporting problems. It assures that legislative requirements are defined and met and seeks legal interpretation where such requirements or intent may be unclear. The Division makes recommendations concerning aspects of legislation that require amendment; prepares reports required by statute, congressional requests, and Department needs; and prepares legislative, regulatory, operational and policy recommendations based on program analysis.

E. Division of State Legalization Assistance directs all aspects of State Legalization Impact Assistance Grants, including development and interpretation of policy and regulations, coordination and direction of initiatives involving the use of federal funds in programs serving legalized aliens, preparation of annual reports to Congress, and serving as a focal point within the Department for issues related to the legalization program. The Division also directs implementation of legalization assistance grants, to include monitoring and grant review activities, and the collection and analysis of data relevant to the allocation formula and the use of funds.

F. Florida Office. As an out-stationed headquarters component, the Florida Office provides information and referral services, consistent with available resources, to refugees/entrants, service providers and state and federal agencies in the state of Florida. It maintains data on refugees and Cuban/Haitian entrants and provides such information as needed to national, state and local agencies working with these populations. The Office coordinates state and local resettlement activities to ensure compliance with resettlement policy; serves as the ORR contact with state and local officials and public and private agencies involved with refugee resettlement activities; and carries out refugee and entrant program duties and responsibilities with respect to the state of Florida, that are carried out for other states by the FSA regional offices.

8. Delete Chapter MK, Office of Child Support Enforcement in its entirety and replace it with the following:

MK.00. Mission. The Office of Child Support Enforcement (OCSE) provides direction, guidance and oversight to the states' Child Support Enforcement program (CSE) and for activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. The general purpose of the CSE legislation is to require states to develop programs for establishing and enforcing support obligations by locating absent parents, establishing paternity when necessary and obtaining child support. The specific responsibilities of this office are to:

Develop, recommend and issue policies, procedures and interpretations for state programs for locating absent parents, establishing paternity, and obtaining child support; develop procedures for review and approval or disapproval of state plan material; conduct complete audits of state programs at least once every three years to assure their conformity with appropriate requirements and to determine whether the actual operation of such programs conforms to federal requirements, and conduct other such audits as may be necessary; assist states in establishing adequate reporting procedures and maintaining records for the operation of the CSE programs and of amounts collected and disbursed under the CSE program and the costs incurred in collecting such amounts; provide assistance to the states to help them develop effective systems for establishing paternity and collecting child support; certify applications from states for permission to utilize the courts of the United States to enforce court orders for support against absent parents; operate the Federal Parent Locator Service; certify to the Secretary of the Treasury amounts of child support obligations that require collection in appropriate instances; submit an annual report to Congress on all activities undertaken relative to the CSE program; approve advanced data processing planning documents; review, assess and inspect planning, design and operation of state management information systems.

MK.10. Organization. The Office of Child Support Enforcement, under the leadership of the Director, is a program component of the Family Support Administration and consists of:

Office of the Director (MK)
Immediate Office of the Director (MK)
Office of the Associate Deputy Director (MKC)
  Audit Division (MKC1)
  Program Operations Division (MKC2)
  Policy and Planning Division (MKC3)
Office of the Associate Deputy Director for Information Systems Management (MKE)
  State Child Support Enforcement Systems Management Division (MKE1)

MK. 20. Functions. A. Office of the Director. The Director is also the Administrator for the Family Support Administration and is directly responsible to the Secretary of Health and Human Services for carrying out OCSE's mission. The Director delegates day-to-day operational responsibility for Child Support Enforcement programs to the Deputy Director, the Associate Deputy Director and/or the Associate Deputy Director for Information Systems Management. The Deputy Director assists the Director in carrying out his/her responsibilities and performs other duties as prescribed. The Associate Deputy Director is delegated day-to-day responsibility for OCSE's Audit, Program Operations and Policy and Planning Divisions. The Associate Deputy Director for Information Systems Management is delegated day-to-day responsibility for OCSE's State Child Support Enforcement Systems Management Division and also serves as the Associate Administrator, Office of Management and Information Systems in the office of the Administrator. The Office is responsible for establishing regulations, guidance and standards for states to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with department officials, other federal departments, state and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness and approving all instructions, policies and publications issued by OCSE staff.

B. The Immediate Office of the Director provides the Director, Deputy Director and Associate Deputy Directors with staff assistance on the full range of their responsibilities. It provides management and administrative support for OCSE including the execution of OCSE's budget; the conduct of special projects; and the coordination of OCSE's operational planning activities. In coordination with FSA's Office of Communication, it plans, designs and executes OCSE's public affairs program by communicating policies, activities and available service to the public.

C. The Office of the Associate Deputy Director provides day-to-day operational guidance and supervision to OCSE's Audit, Program Operations and Policy and Planning Divisions. He/she coordinates OCSE activities in these functional areas and advises the OCSE Director and Deputy Director on critical issues related to these areas.

1. Audit Division. As required by section 452(a)(4) of the Social Security Act (the Act), the Audit Division develops, plans, schedules and conducts periodic audits of state CSE programs in accordance with audit standards promulgated by the Comptroller General of the United States.

The Division conducts Program Results/Performance Measurements audits pursuant to the penalty provision of section 403(h) of the Act, to determine whether the actual operation of CSE programs in each state is effective and conforms to federal requirements; develops and conducts full-scope administrative cost audits of the states' Child Support Enforcement program to assess adequacy of financial operations and compliance with applicable laws and regulations; performs other audits and examinations of program operations as may be necessary or requested by program officials for the purpose of improving the efficiency, effectiveness and economy of state and local child support activities; develops consolidated reports for the Director and Deputy Director, OCSE, based on findings; provides specifications for the development of audit regulations and requirements for audits of state CSE programs; and coordinates and maintains effective liaison with the HHS Inspector General's Office and with the General Accounting Office (GAO).

2. Program Operations Division assesses state performance and provides information and assistance on program operations . It monitors implementation of program requirements; develops guides and resource materials for use by states and FSA regional offices; documents specialized program techniques for use by states and local agencies; and ensures transfer of best practices among state and local support enforcement agencies. The Division provides specialized services and operation of the Federal Parent Locator Service, the Federal Tax Refund Offset Program and the Parental Kidnapping Service. It develops and publishes informational materials and operates an information clearning-house and research center on child support programs; and monitors contracts with organizations affiliated with child support programs.

3. Policy and Planning Division formulates national policy on the CSE program; provides policy guidance and interpretations to states in developing and operating their programs according to federal law. It develops legislative proposals and regulations to implement new legislation, court decisions or directives from higher authority. The Division develops procedures for review and approval of state plans by the OCSE regional offices. It develops and monitors research, interstate, and other demonstration and evaluation studies and publishes program statistics.

D. The Office of the Associate Deputy Director for Information Systems Management also serves as the Associate Administrator, Office of Management and Information Systems

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in the Office of the Administrator, FSA. He/she provides day-to-day operational guidance and supervision to OCSE's State Child Support Enforcement Systems Management Division. He/she coordinates OCSE activities in this functional area and advises the OCSE Director and Deputy Director on critical issues related to this area.

1. State Child Support Enforcement Systems Management Division reviews and analyzes state requests for federal financial participation for automated systems development activities which support state/local Child Support Enforcement programs; provides assistance to states in developing or modifying automation plans to conform to federal requirements; recommends approval/disapproval of state funding requests. The Division monitors approved state systems development activities; conducts certification reviews to assure state compliance with regulatory requirements applicable to automated systems supported by federal financial participation.

It provides guidance to states on functional requirements for automated information systems which support Child Support Enforcement programs. It promotes interstate transfer of existing automated systems by assisting states with identifying donor candidates for transfer, providing technical support to states during the transfer process and providing appropriate documentation of existing systems. The Division provides assistance and guidance to improve Child Support Enforcement programs through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with data utilization and safeguarding requirements.

9. Delete Chapter ML, Office of Community Services, and replace it in its entirety with the following:

ML.00 Mission. The Office of Community Services (OCS) is responsible for administering: (1) The Community Services block grant and discretionary grant programs established by Sections 672 and 681 of the Omnibus Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35); (2) the close-out of Community Services transition project grants authorized by section 882 of OBRA for implementation during Fiscal Year (FY) 1982, at the discretion of the state governments not electing to administer Community Services Block Grants in FY 1982, and the close-out thereof; (3) the programmatic close-out functions related to funds awarded by the Community Services Administration (CSA) in FY 1981 and prior years. These programmatic close-out functions are among the CSA close-out functions assisgned to the Director of the Office of Management and Budget by Section 682(e) of OBRA who has subsequently reassigned them to the Secretary of Health and Human Services; and (4) the Low Income Home Energy Assistance Program. The Office also administers the Federal Task Force on the Homeless.

ML.10 Organization. The Office of Community Services under the leadership of the Director is a program component of the Family Support Adminstration and consists of:

Office of the Director (ML)
The Immediate Office of the Director (ML)
The Federal Task Force on the Homeless (ML1)
Office of State Project Assistance (MLB)
  Division of Block Grants (MLB1)
  Division of Discretionary Grants (MLB2)
  Division of Assessment and Evaluation (MLB3)
  Division of Audit Resolution (MLB4)
Office of Energy Assistance (MLC)
  Division of Energy Policy and Evaluation (MLC1)
  Division of Energy Program Operations (MLC2)

Functions A. The Office of the Director of Community Services provides executive direction and leadership to the Office of Community Services (OCS) and is responsible to the FSA Administrator for carrying out the OCS mission. The Office is headed by the Direcor of Community Services who is assisted by a Deputy Director. The Deputy Director assumes all of the Director's responsibilities in the Director's absence.

B. The Immediate Office of the Director provides staff assistance to the Director on the full range of his/her responsibilities including the coordination of all responses to public inquiries. It provides management and adminstrative support for OCS including execution of the OCS budget. The Office also includes a Special Assistant for Legal Affairs.

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D. Office of State Project Assistance. This office if responsible for adminstering the Community Service Block Grant Program, and the Discretionary Grant Program, under sections 672 and 681 of OBRA.

1. *Division of Block Grants* is responsible for adminstering the Community Services Block Grant Program (CSBG) through grants made to states, territories, Indian tribes and tribal organizations to alleviate the causes of poverty in communities.

In addition, the Division is responsible for providing guidance, review, support and assistance to CSBG granteees on HHS policies, regulations, procedures and systems necessary to assure efficient program operation at the state and tribal level.

2. *Division of Discretionary Grants* administers the Discretionary Program, authorized by section 681 of the Community Services Block Grant Act, either through grants, contracts or jointly financed cooperative arrangements. Assistance may be provided to profit and non-profit organizations and agencies to provide training and on going activities of national or regional significance in the areas of rural housing and community facilities as well as assistance to migrants and seasonal farm workers. Assistance may also be provided to private, locally-initiated, non-profit community development corporations (or affiliates of such corporations). These corporations and their affiliates must be governed by a board of community residents and business and civic leaders which sponsors enterprises to provide employment and business development opportunities for low-income residents of the community and to increase business and employment opportunities in the community.

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4. *Division of Audit Resolution* is responsible, in conjunction with other appropriate divisions within the office, for the review and resolution of audit issues or questioned costs with recipients of OCS transition, discretionary, and block grant funds in accordance with the appropriate audit policy as established by HHS. This division is also responsible for the monitoring of agreements relating to the expenditures of carry-over Community Services Administration (CSA) funds; the disposition of assets of former CSA

grantees; and for addressing any remaining issues arising from the responsibilities of the former CSA.

E. The Office of Energy Assistance oversees the administration of the Low Income Home Energy Assistance program (LIHEAP) at the federal level.

1. *The Division of Energy Policy and Evaluation* develops guidelines, policies and regulations to provide direction to states, territories, Indian tribes and tribal organizations in administering the Low Income Home Energy Assistance Program. The Division prepares, analyzes and recommends specific proposals for new legislation; identifies and develops research and evaluation priorities; and develops statistical information regarding state plan characteristics, energy consumption, state median income estimates, fuel costs, and housing and demographic characteristics. The Division calculates state allotments; assesses impact of research and evaluation findings and statistical data in terms of program direction; and prepares reports to Congress.

2. *The Division of Energy Program Operations* provides leadership in interpretation and application of federal program policy as it relates to compliance and audit activities in the LIHEAP program. The Division reviews grantee applications and amendments; provides the Office of Financial Management, FSA, with grantee information necessary to issue grants; investigates complaints; resolves audit findings and recommends repayment of funds where appropriate. The Division provides assistance to states, tribes and territories in developing energy program policies and operational procedures; evaluates compliance of state and tribal policies and operations with statutory and regulatory requirements; and provides support in developing and implementing program improvements. The Division also assists states and other public and private organizations with providing training and technical assistance in areas related to home energy.

Date: September 15, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-22044 Filed 9-23-87; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 87F-0290]

Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of pentasodium diethylenetriaminepentaacetate and trisodium *N*-hydroxyethyl ethylenediaminetriacetate as components of adhesives used in food packaging.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4023) has been filed by Dow Chemical Co., Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of pentasodium diethylenetriaminepentaacetate and trisodium *N*-hydroxyethyl ethylenediaminetriacetate as components of adhesives used in food packaging.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 17, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21974 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0322]

Drug Export; Recombinant Human Growth Hormone (Somatropin for Injection) (RHGH)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genentech, Inc., has filed an application requesting approval for the export of the human drug Recombinant Human Growth Hormone (Somatropin for Injection) (rhGH) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080, has filed an application requesting approval for the export of the drug Recombinant Human Growth Hormone (Somatropin for Injection) (rhGH) to Canada. This drug is indicated for use only in the long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion. The application was received and filed in the Center for Drugs and Biologics on August 31, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

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in the Office of the Administrator, FSA. He/she provides day-to-day operational guidance and supervision to OCSE's State Child Support Enforcement Systems Management Division. He/she coordinates OCSE activities in this functional area and advises the OCSE Director and Deputy Director on critical issues related to this area.

1. State Child Support Enforcement Systems Management Division reviews and analyzes state requests for federal financial participation for automated systems development activities which support state/local Child Support Enforcement programs; provides assistance to states in developing or modifying automation plans to conform to federal requirements; recommends approval/disapproval of state funding requests. The Division monitors approved state systems development activities; conducts certification reviews to assure state compliance with regulatory requirements applicable to automated systems supported by federal financial participation.

It provides guidance to states on functional requirements for automated information systems which support Child Support Enforcement programs. It promotes interstate transfer of existing automated systems by assisting states with identifying donor candidates for transfer, providing technical support to states during the transfer process and providing appropriate documentation of existing systems. The Division provides assistance and guidance to improve Child Support Enforcement programs through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with data utilization and safeguarding requirements.

9. Delete Chapter ML, Office of Community Services, and replace it in its entirety with the following:

ML.00 Mission. The Office of Community Services (OCS) is responsible for administering: (1) The Community Services block grant and discretionary grant programs established by Sections 672 and 681 of the Omnibus Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35); (2) the close-out of Community Services transition project grants authorized by section 882 of OBRA for implementation during Fiscal Year (FY) 1982, at the discretion of the state governments not electing to administer Community Services Block Grants in FY 1982, and the close-out thereof; (3) the programmatic close-out functions related to funds awarded by the Community Services Administration (CSA) in FY 1981 and prior years. These programmatic close-out functions are among the CSA close-out functions assisgned to the Director of the Office of Management and Budget by Section 682(e) of OBRA who has subsequently reassigned them to the Secretary of Health and Human Services; and (4) the Low Income Home Energy Assistance Program. The Office also administers the Federal Task Force on the Homeless.

ML.10 Organization. The Office of Community Services under the leadership of the Director is a program component of the Family Support Adminstration and consists of:

Office of the Director (ML)
The Immediate Office of the Director (ML)
The Federal Task Force on the Homeless (ML1)
Office of State Project Assistance (MLB)
  Division of Block Grants (MLB1)
  Division of Discretionary Grants (MLB2)
  Division of Assessment and Evaluation (MLB3)
  Division of Audit Resolution (MLB4)
Office of Energy Assistance (MLC)
  Division of Energy Policy and Evaluation (MLC1)
  Division of Energy Program Operations (MLC2)

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Date: September 15, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-22044 Filed 9-23-87; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

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Dated: September 17, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21974 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0322]

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ii. They enrolled in Medicare Part B during the initial enrollment period; and

b. They maintained enrollment under either a large group health plan or under Medcare Part B for all months after the initial enrollment period.

2. A SEP begins whenever the individual is no longer enrolled in a large group health plan as an active individual.

3. If the individual enrolls during the first month of a SEP, entitlement begins with the first day of that month. If he or she enrolls during the remaining 6 months of the SEP, entitlement begins on the first day of the month following the month of enrollment.

4. The months of enrollment as an active individual in a large group health plan are not counted in determining the premium increase for late enrollment or reenrollment.

C. Other Aspects of Section 9319

Section 9319 also added to the Internal Revenue Code a tax on any employer or employee organization that contributes to a large group health plan which, at any time during a calendar year, fails to comply with the requirement for making primary payments. The tax is equal to 25 percent of the expenses incurred by the employer or employee organization during the calendar year for each large group health plan to which it contributes. Although governmental employers are required to provide coverage primary to Medicare for the disabled, they are not subject to this tax penalty for noncompliance. The Internal Revenue Service is responsible for implementing this portion of § 9319.

(Catalog of Federal Domestic Assistance Programs No. 13.773 Medicare-Hospital Insurance, and No. 13.774 Medicare-Supplementary Medical Insurance)

Dated: July 29, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-22068 Filed 9-23-87; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Funding, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register**, Vol. 50, No. 74, Wednesday, April 17, 1985, pp. 15230–15232, Vol. 48, No. 198, Wednesday, October 12, 1983, pp. 48434–48448) is amended to reflect a reorganization within the Office of the Associate Administrator for Operations, Bureau of Program Operations, Office of Program Operations Procedures. The reorganization of the Division of Provider Procedures will ensure successful integration of the medical review activities recently transferred from the Health Standards and Quality Bureau.

The specific changes to Part F. are as follows:

Section FP.20.A.3.a Division of Provider Procedures (FPA81) is amended to read:

a. Division of Provider Procedures (FPA81)

Directs the development and issuance of specifications, requirements procedures, functional standards, and instructional material to implement and maintain operational systems for medical review and medical audit of claims, for processing Medicare Part A and outpatient claims, and for defining their applications to Medicare contractors, providers, suppliers of services, and HCFA. Develops productivity investments and data initiatives designed to promote efficiency and uniformity of operations. Maintains contractor and provider instructional manuals. Serves as the Bureau resource for implementing legislative changes impacting on Part A program operations. Prepares general systems plans and develops requirements for the detailed design and programming for model systems used by Medicare contractors. Develops and clarifies methodologies for performing medical review. Plans, conducts, and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relate to the administration of the Medicare program. Integrates systems within the framework of HCFA policies, goals, and objectives in an efficient and cost-effective manner. Develops, directs, and coordinates systems plans and studies for the effective integration of all Medicare automated and nonautomated processing systems at the contractor level. Designs and conducts studies, demonstrations, and surveys to improve Medicare operational systems, methods, and procedures. Designs and test new automated information systems and model systems. Conducts reviews and performs analyses for future development and model systems functions in such areas as data management, data base systems analysis and design, terminal operations, minicomputers, and operational security. Coordinates systems demonstration projects and participates in the review and evaluation of systems-related application projects. Provides direction, to and liaison with, HCFA components involved in the maintenance of health insurance utilization records. Manages data exchange systems between contractors and HCFA.

Date: September 4, 1987.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 87-22043 Filed 9-23-87; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee; Notice of Renewal

Pursuant to Pub. L. 92-463, notice is hereby given of the renewal of the National Strategic Materials and Minerals Program Advisory Committee. Following consultation with the General Services Administration, the Secretary is renewing the Advisory Committee to advise the Secretary of the Interior with respect to his responsibilities for strategic materials and minerals issues.

Further information regarding the National Strategic Materials and Minerals Program Advisory Committee may be obtained from Gully Walter, Executive Director, Room 6650, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240; (202) 343-2136.

The certification of renewal is published below.

Certification

I hereby certify that the renewal of the National Strategic Materials and Minerals Program Advisory Committee is necessary and in the public interest in connection with performance of duties imposed on the Department of the Interior by those statutory authorities listed in the Federal Land Policy and Management Act, the Mining and Minerals Policy Act of 1970, the National Materials and Minerals Policy Research and Development Act of 1980, the Defense Production Act of 1950, as amended, and the organic legislation of the Department and the several bureaus and agencies thereof.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 87-21994 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-10-M

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The agency encourages any person who submits relevant information on the application to do so by October 5, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: September 8, 1987.

Sammy R. Young,

Acting Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-21976 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-448-GN]

Changes to Medicare Secondary Payer Provisions; Omnibus Budget Reconciliation Act of 1986

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice describes how seciton 9319 of the Omnibus Reconciliation Act of 1986 (Pub. L. 99-509) affects the Medicare Program. Section 9319—

- Makes Medicare secondary for services funished to disabled beneficiaries who are "active" individuals and are covered under large group health plans;
- Provides that the Federal Government may recover double damages from group health plans that fail to make primary payments as required by the law;
- Creates a private cause of action which provides double damages from primary payers that fail to make primary payments as required by the law;
- Provides special enrollment periods so that Medicare coverage can be restored promptly when group health plan coverage terminates; and
- Provides that, in computing premium increases for late enrollment, periods of large group health plan coverage be excluded.

The statutory changes made by section 9319 do not require regulations to implement because they are clear on their face as to what the Congress intended. Thus, we can put them into effect without first issuing regulations. Moreover, we have already had to apply these provisions because the Congress made these changes applicable to services furnished on or after January 1, 1987. This notice will help to ensure that all affected parties are aware of the new provisions. This notice is not intended to be an exhaustive list of the changes, nor is it intended to represent the complete text of section 9319. Clarifying and conforming changes in the regulations are being prepared and will provide the public an opportunity for comment.

The new statutory provisions may conflict with current regulations or portions of current regulations. To the extent that they do so, the provisions of the new law supersede those portions of the regulations. Other portions of the same regulations and all other regulations remain in effect.

FOR FURTHER INFORMATION CONTACT: Herbert Pollock (301) 594-4978.

SUPPLEMENTARY INFORMATION

A. Medicare Secondary Payer.

Section 9319 of Pub. L. 99-509 amended section 1862(b) of the Social Security Act by adding two new paragraphs (4) and (5). The new paragraph (4) makes Medicare benefits secondary to coverage under large group health plans for "active individuals" (as defined in 4 below) who are under age 65 and entitled to Medicare on the basis of disability. Paragraph (5) provides for a private cause of action to collect double damages in the case of a workmen's compensation law or plan, automobile or liability insurance policy or plan or no-fault insurance plan,[1] group health plan, or large group health plan that is made a primary payer under section 1862(b) and which fail to do so or to reimburse the Medicare program.

These amendments—

1. Apply to "active" individuals who are entitled for Medicare on the basis of disability, but not to those who are (or could be if they applied) entitled on the basis of end-stage renal disease;

2. Apply to services furnished on or after January 1, 1987 and before January 1, 1992;

3. Define "large group health plan" as a plan of or contributed to by an employer (including Federal, State, or local government entities) or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.

4. Define "active individual" to include an employee (as may be defined in regulations), the employer, an individual associated with the employer in a business relationship, and a member of the family of any of those persons.

5. Prohibit Medicare payment to the extent that payment has been made or can reasonably be expected to be made under a large group health plan (except for certain payments made on condition of reimbursement to the appropriate Medicare Trust Fund).

6. Provide that, in order to recover incorrect Medicare payments the Government—

(a) May bring an action against any entity htat is required by this amendment to make payment with respect to items or services and may collect double damages from that entity;

(b) May bring an action against any entity that has received payment from a large group health plan with respect to an item or service;

(c) Is subrogated to the right of any individual or other entity to receive payment from a large group health plan to the extent of Medicare payment;

(d) May join or intervene in any action related to the events that gave rise to the need for items and services for which Medicare has paid.

HCFA may waive recovery (in whole or in part) of an individual claim if it determines that waiver is in the best interests of the Medicare program.

Medicare may make secondary payments to supplement the primary benefits paid by the large group health plan if the plan pays only a portion of the charge for the service. The coordination of benefit rules for making secondary payments are the same as those that apply to the working aged.

B. Special Enrollment Periods and Limitations on Premium Penalties

Section 9319 also amended sections 1837(i) and 1839(b) of the Act, effective with enrollments occurring on or after January 1, 1987, to provide that—

1. Special 7-month enrollment periods (SEPs) are available to disabled individuals under age 65 who meet the following requirements:

a. When first eligible to enroll in Medicare Part B—

i. They were enrolled in a large group health plan as active individuals; or

[1] Although the provision of section 1862(b) of the Act dealing with no-fault insurance does not limit its applicability to automobile no-fault, current regulations (42 CFR 405.322 through 405.325) do so. We plan to make the regulations consistent with the statute, that is, to make all types of no-fault insurance, not just automobile no-fault, primary to Medicare.

ii. They enrolled in Medicare Part B during the initial enrollment period; and

b. They maintained enrollment under either a large group health plan or under Medcare Part B for all months after the initial enrollment period.

2. A SEP begins whenever the individual is no longer enrolled in a large group health plan as an active individual.

3. If the individual enrolls during the first month of a SEP, entitlement begins with the first day of that month. If he or she enrolls during the remaining 6 months of the SEP, entitlement begins on the first day of the month following the month of enrollment.

4. The months of enrollment as an active individual in a large group health plan are not counted in determining the premium increase for late enrollment or reenrollment.

C. Other Aspects of Section 9319

Section 9319 also added to the Internal Revenue Code a tax on any employer or employee organization that contributes to a large group health plan which, at any time during a calendar year, fails to comply with the requirement for making primary payments. The tax is equal to 25 percent of the expenses incurred by the employer or employee organization during the calendar year for each large group health plan to which it contributes. Although governmental employers are required to provide coverage primary to Medicare for the disabled, they are not subject to this tax penalty for noncompliance. The Internal Revenue Service is responsible for implementing this portion of § 9319.

(Catalog of Federal Domestic Assistance Programs No. 13.773 Medicare-Hospital Insurance, and No. 13.774 Medicare-Supplementary Medical Insurance)

Dated: July 29, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-22068 Filed 9-23-87; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Funding, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register**, Vol. 50, No. 74, Wednesday, April 17, 1985, pp. 15230–15232, Vol. 48, No. 198, Wednesday, October 12, 1983, pp. 48434–48448) is amended to reflect a reorganization within the Office of the Associate Administrator for Operations, Bureau of Program Operations, Office of Program Operations Procedures. The reorganization of the Division of Provider Procedures will ensure successful integration of the medical review activities recently transferred from the Health Standards and Quality Bureau.

The specific changes to Part F. are as follows:

Section FP.20.A.3.a Division of Provider Procedures (FPA81) is amended to read:

a. Division of Provider Procedures (FPA81)

Directs the development and issuance of specifications, requirements procedures, functional standards, and instructional material to implement and maintain operational systems for medical review and medical audit of claims, for processing Medicare Part A and outpatient claims, and for defining their applications to Medicare contractors, providers, suppliers of services, and HCFA. Develops productivity investments and data initiatives designed to promote efficiency and uniformity of operations. Maintains contractor and provider instructional manuals. Serves as the Bureau resource for implementing legislative changes impacting on Part A program operations. Prepares general systems plans and develops requirements for the detailed design and programming for model systems used by Medicare contractors. Develops and clarifies methodologies for performing medical review. Plans, conducts, and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relate to the administration of the Medicare program. Integrates systems within the framework of HCFA policies, goals, and objectives in an efficient and cost-effective manner. Develops, directs, and coordinates systems plans and studies for the effective integration of all Medicare automated and nonautomated processing systems at the contractor level. Designs and conducts studies, demonstrations, and surveys to improve Medicare operational systems, methods, and procedures. Designs and test new automated information systems and model systems. Conducts reviews and performs analyses for future development and model systems functions in such areas as data management, data base systems analysis and design, terminal operations, minicomputers, and operational security. Coordinates systems demonstration projects and participates in the review and evaluation of systems-related application projects. Provides direction, to and liaison with, HCFA components involved in the maintenance of health insurance utilization records. Manages data exchange systems between contractors and HCFA.

Date: September 4, 1987.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 87-22043 Filed 9-23-87; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee; Notice of Renewal

Pursuant to Pub. L. 92-463, notice is hereby given of the renewal of the National Strategic Materials and Minerals Program Advisory Committee. Following consultation with the General Services Administration, the Secretary is renewing the Advisory Committee to advise the Secretary of the Interior with respect to his responsibilities for strategic materials and minerals issues.

Further information regarding the National Strategic Materials and Minerals Program Advisory Committee may be obtained from Gully Walter, Executive Director, Room 6650, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240; (202) 343-2136.

The certification of renewal is published below.

Certification

I hereby certify that the renewal of the National Strategic Materials and Minerals Program Advisory Committee is necessary and in the public interest in connection with performance of duties imposed on the Department of the Interior by those statutory authorities listed in the Federal Land Policy and Management Act, the Mining and Minerals Policy Act of 1970, the National Materials and Minerals Policy Research and Development Act of 1980, the Defense Production Act of 1950, as amended, and the organic legislation of the Department and the several bureaus and agencies thereof.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 87-21994 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-10-M

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The agency encourages any person who submits relevant information on the application to do so by October 5, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: September 8, 1987.

Sammy R. Young,

Acting Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-21976 Filed 9-23-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-448-GN]

Changes to Medicare Secondary Payer Provisions; Omnibus Budget Reconciliation Act of 1986

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice describes how seciton 9319 of the Omnibus Reconciliation Act of 1986 (Pub. L. 99-509) affects the Medicare Program. Section 9319—

- Makes Medicare secondary for services funished to disabled beneficiaries who are "active" individuals and are covered under large group health plans;
- Provides that the Federal Government may recover double damages from group health plans that fail to make primary payments as required by the law;
- Creates a private cause of action which provides double damages from primary payers that fail to make primary payments as required by the law;
- Provides special enrollment periods so that Medicare coverage can be restored promptly when group health plan coverage terminates; and
- Provides that, in computing premium increases for late enrollment, periods of large group health plan coverage be excluded.

The statutory changes made by section 9319 do not require regulations to implement because they are clear on their face as to what the Congress intended. Thus, we can put them into effect without first issuing regulations. Moreover, we have already had to apply these provisions because the Congress made these changes applicable to services furnished on or after January 1, 1987. This notice will help to ensure that all affected parties are aware of the new provisions. This notice is not intended to be an exhaustive list of the changes, nor is it intended to represent the complete text of section 9319. Clarifying and conforming changes in the regulations are being prepared and will provide the public an opportunity for comment.

The new statutory provisions may conflict with current regulations or portions of current regulations. To the extent that they do so, the provisions of the new law supersede those portions of the regulations. Other portions of the same regulations and all other regulations remain in effect.

FOR FURTHER INFORMATION CONTACT: Herbert Pollock (301) 594-4978.

SUPPLEMENTARY INFORMATION

A. Medicare Secondary Payer.

Section 9319 of Pub. L. 99-509 amended section 1862(b) of the Social Security Act by adding two new paragraphs (4) and (5). The new paragraph (4) makes Medicare benefits secondary to coverage under large group health plans for "active individuals" (as defined in 4 below) who are under age 65 and entitled to Medicare on the basis of disability. Paragraph (5) provides for a private cause of action to collect double damages in the case of a workmen's compensation law or plan, automobile or liability insurance policy or plan or no-fault insurance plan,[1] group health plan, or large group health plan that is made a primary payer under section 1862(b) and which fail to do so or to reimburse the Medicare program.

These amendments—

1. Apply to "active" individuals who are entitled for Medicare on the basis of disability, but not to those who are (or could be if they applied) entitled on the basis of end-stage renal disease;

2. Apply to services furnished on or after January 1, 1987 and before January 1, 1992;

3. Define "large group health plan" as a plan of or contributed to by an employer (including Federal, State, or local government entities) or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.

4. Define "active individual" to include an employee (as may be defined in regulations), the employer, an individual associated with the employer in a business relationship, and a member of the family of any of those persons.

5. Prohibit Medicare payment to the extent that payment has been made or can reasonably be expected to be made under a large group health plan (except for certain payments made on condition of reimbursement to the appropriate Medicare Trust Fund).

6. Provide that, in order to recover incorrect Medicare payments the Government—

(a) May bring an action against any entity htat is required by this amendment to make payment with respect to items or services and may collect double damages from that entity;

(b) May bring an action against any entity that has received payment from a large group health plan with respect to an item or service;

(c) Is subrogated to the right of any individual or other entity to receive payment from a large group health plan to the extent of Medicare payment;

(d) May join or intervene in any action related to the events that gave rise to the need for items and services for which Medicare has paid.

HCFA may waive recovery (in whole or in part) of an individual claim if it determines that waiver is in the best interests of the Medicare program.

Medicare may make secondary payments to supplement the primary benefits paid by the large group health plan if the plan pays only a portion of the charge for the service. The coordination of benefit rules for making secondary payments are the same as those that apply to the working aged.

B. Special Enrollment Periods and Limitations on Premium Penalties

Section 9319 also amended sections 1837(i) and 1839(b) of the Act, effective with enrollments occurring on or after January 1, 1987, to provide that—

1. Special 7-month enrollment periods (SEPs) are available to disabled individuals under age 65 who meet the following requirements:

a. When first eligible to enroll in Medicare Part B—

i. They were enrolled in a large group health plan as active individuals; or

[1] Although the provision of section 1862(b) of the Act dealing with no-fault insurance does not limit its applicability to automobile no-fault, current regulations (42 CFR 405.322 through 405.325) do so. We plan to make the regulations consistent with the statute, that is, to make all types of no-fault insurance, not just automobile no-fault, primary to Medicare.

described public lands by the Bureau of Land Management, City of Pocatello, Caribou National Forest and Bannock County. These Federal and local agencies are cooperating in the closure.

The purpose of this closure is to allow the vegetation to re-establish after the recent City Creek fire, and to protect the soils from erosion.

The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until fire damage has been rehabilitated and motor vehicle travel can continue.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, Idaho Falls District, 940 Lincoln Road, Idaho Falls, Idaho 83401, (202) 529-1020.

Date: September 16, 1987.

W. Bernard Jansen,

Acting District Manager.

[FR Doc. 87-22025 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-GG-M

Meeting; Las Vegas District Advisory Council

ACTION: Las Vegas District Advisory Council Meeting.

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held October 21, 1987.

The meeting will begin at 8:30 a.m. in the Conference room of the Bureau of Land Management Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada. The meeting agenda will be as follows:

1. Agenda approval and review of the minutes from the last meeting.
2. Council Issues.
3. BLM Las Vegas District program review.
4. East Mojave Desert Plan.
5. Cooperative Resource Management Planning (CRMP) update.
6. BLM Las Vegas District Fire Management Review.
7. Review of BLM Las Vegas District Wild Horse Gathering for Fiscal Year 1987.
8. Election of Officers.

The meeting of the Las Vegas District Advisory Council is open to the public. Oral statements may be presented to the council during the public comment period, on the day of the meeting. Written statements may also be filed with the Bureau of Land Management Las Vegas District Office for the council's consideration.

Those wishing to make oral statements to the council are asked to contact the District Manager, Bureau of Land Management Las Vegas District Office, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada, 89126, by October 19, 1987.

Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager. Summary minutes of the meeting will be maintained in the Bureau of Land Management Las District Office and will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Ben F. Collins,

District Manager.

[FR Doc. 87-22932 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-HC-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48244-BB has been received covering the following lands:

Copper River Meridian, Alaska

T. 10 N., R. 8 W.,
Sec. 9 SE¼NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from December 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48244-BB as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

Dated: September 17, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-22034 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-JA-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48939-EP has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 18 S., R. 3 E.,
Sec. 12 NW¼SW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from February 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48939-EP as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective February 1, 1987, subject to the terms and conditions cited above.

Dated: September 17, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-22035 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-JA-M

[NM-943-07-4111-13; NM NM 38635]

Notice of Proposed Reinstatement of Terminated oil and Gas Lease; New Mexico

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2-3, Texaco Producing Inc., petitioned for reinstatement of oil and gas lease NM NM 38635 covering the following described lands located in Eddy County, New Mexico:

NMPM, New Mexico

T. 24 S., R. 29 E.,
Sec. 8: NW¼; Sec. 17: N½NW¼; Sec. 21: E½NE¼, W½NW¼.

Containing 400.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $7.00 per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, March 1, 1987.

Date: September 14, 1987.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 87-22020 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-FB-M

VOL 52 ISS 185 SE 24 1987 UMI

Office of the Secretary

Privacy Act of 1974—Establishment of New Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the Minerals Management Service. The notice is entitled "Lessee/Operator Training Files—Interior, MMS–12," and describes records on training of individuals employed by lessees and operators that conduct offshore oil and gas operations. The notice is published in its entirety below.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action. 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget in its Circular A–130 requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Department of Privacy Act Officer, Office of the Secretary (PMA), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before November 23, 1987, will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 16, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

Interior/MMS–12

SYSTEM NAME:

Lessee/Operator Training Files—Interior, MMS–12

SYSTEM LOCATION:

Monitoring and Penalties Branch, Offshore Inspection and Enforcement Division, Offshore Minerals Management, Minerals Management Service (MMS), 12203 Sunrise Valley Drive, Reston, Virginia 22091.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel who have participated in well control, safety device, workover and well compietion training programs, and correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of student certification, lessee applications, trip reports, audit findings, survey notices, correspondence between the MMS and students and the MMS and lessees. Also included is correspondence between the training organizations and the MMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1334, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses of the records are for certification pertaining to the structure, management and operation of the well control, safety device, workover and well completion training programs. Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines taht the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were complied; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual and computerized form.

RETRIEVABILITY:

Indexed by social security number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computerized records.

RETENTION AND DISPOSAL:

Determination of the disposition is pending approval of the Archivist.

SYSTEM MANAGER AND ADDRESS:

Chief, Monitoring and Penalties Branch, Offshore Inspection and Enforcement Division, Offshore Minerals Management, Minerals Management Service, Mail Stop 647, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

NOTIFICATION PROCEDURES:

A written request addressed to the System Manager stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Training organizations which are approved by the MMS to provide training to offshore workers.

[FR Doc. 87–22012 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

[ID–030–07–4620–70]

Idaho; Emergency Closure of Public Lands (City)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that effective September 3, 1987, BLM-administered public lands located in the City Creek/Johnny Creek area south of Pocatello, Idaho are closed to motor vehicles. The area is bounded generally by Pocatello City limits to the northeast, Johnny Creek to the southeast, Gibson Jack Drainage to the southwest, and City Creek to the northwest. The legal description of the lands is as follows:

Township 7 South, Range 34 East

Northwest ¼ of section 13; Southwest ¼ and the Southwest ¼ of the Northwest ¼ of section 12; South ½, South ½ of section 4.

All Federal lands administered by the Bureau of Land Management described above are closed to motor vehicles from September 3, 1987 until further notice. Exceptions to this closure include administrative use of vehicles on the

described public lands by the Bureau of Land Management, City of Pocatello, Caribou National Forest and Bannock County. These Federal and local agencies are cooperating in the closure.

The purpose of this closure is to allow the vegetation to re-establish after the recent City Creek fire, and to protect the soils from erosion.

The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until fire damage has been rehabilitated and motor vehicle travel can continue.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, Idaho Falls District, 940 Lincoln Road, Idaho Falls, Idaho 83401, (202) 529-1020.

Date: September 16, 1987.

W. Bernard Jansen,

Acting District Manager.

[FR Doc. 87-22025 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-GG-M

Meeting; Las Vegas District Advisory Council

ACTION: Las Vegas District Advisory Council Meeting.

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held October 21, 1987.

The meeting will begin at 8:30 a.m. in the Conference room of the Bureau of Land Management Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada. The meeting agenda will be as follows:

1. Agenda approval and review of the minutes from the last meeting.
2. Council Issues.
3. BLM Las Vegas District program review.
4. East Mojave Desert Plan.
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7. Review of BLM Las Vegas District Wild Horse Gathering for Fiscal Year 1987.
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The meeting of the Las Vegas District Advisory Council is open to the public. Oral statements may be presented to the council during the public comment period, on the day of the meeting. Written statements may also be filed with the Bureau of Land Management Las Vegas District Office for the council's consideration.

Those wishing to make oral statements to the council are asked to contact the District Manager, Bureau of Land Management Las Vegas District Office, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada, 89126, by October 19, 1987.

Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager. Summary minutes of the meeting will be maintained in the Bureau of Land Management Las District Office and will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Ben F. Collins,

District Manager.

[FR Doc. 87-22932 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-HC-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48244-BB has been received covering the following lands:

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T. 10 N., R. 8 W.,
Sec. 9 SE¼NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from December 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48244-BB as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

Dated: September 17, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-22034 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-JA-M

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Having met all the requirements for reinstatement of lease AA-48939-EP as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective February 1, 1987, subject to the terms and conditions cited above.

Dated: September 17, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-22035 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-JA-M

[NM-943-07-4111-13; NM NM 38635]

Notice of Proposed Reinstatement of Terminated oil and Gas Lease; New Mexico

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NMPM, New Mexico

T. 24 S., R. 29 E.,
Sec. 8: NW¼; Sec. 17: N½NW¼; Sec. 21: E½NE¼, W½NW¼.

Containing 400.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $7.00 per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, March 1, 1987.

Date: September 14, 1987.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 87-22020 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-FB-M

VOL 52 ISS 185 SE 24 1987 UMI

Office of the Secretary

Privacy Act of 1974—Establishment of New Notice of System of Records

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As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action. 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget in its Circular A–130 requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Department of Privacy Act Officer, Office of the Secretary (PMA), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before November 23, 1987, will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 16, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

Interior/MMS–12

SYSTEM NAME:

Lessee/Operator Training Files—Interior, MMS–12

SYSTEM LOCATION:

Monitoring and Penalties Branch, Offshore Inspection and Enforcement Division, Offshore Minerals Management, Minerals Management Service (MMS), 12203 Sunrise Valley Drive, Reston, Virginia 22091.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel who have participated in well control, safety device, workover and well compietion training programs, and correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of student certification, lessee applications, trip reports, audit findings, survey notices, correspondence between the MMS and students and the MMS and lessees. Also included is correspondence between the training organizations and the MMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1334, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses of the records are for certification pertaining to the structure, management and operation of the well control, safety device, workover and well completion training programs. Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines taht the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were complied; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual and computerized form.

RETRIEVABILITY:

Indexed by social security number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computerized records.

RETENTION AND DISPOSAL:

Determination of the disposition is pending approval of the Archivist.

SYSTEM MANAGER AND ADDRESS:

Chief, Monitoring and Penalties Branch, Offshore Inspection and Enforcement Division, Offshore Minerals Management, Minerals Management Service, Mail Stop 647, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

NOTIFICATION PROCEDURES:

A written request addressed to the System Manager stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Training organizations which are approved by the MMS to provide training to offshore workers.

[FR Doc. 87–22012 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

[ID–030–07–4620–70]

Idaho; Emergency Closure of Public Lands (City)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that effective September 3, 1987, BLM-administered public lands located in the City Creek/Johnny Creek area south of Pocatello, Idaho are closed to motor vehicles. The area is bounded generally by Pocatello City limits to the northeast, Johnny Creek to the southeast, Gibson Jack Drainage to the southwest, and City Creek to the northwest. The legal description of the lands is as follows:

Township 7 South, Range 34 East

Northwest ¼ of section 13; Southwest ¼ and the Southwest ¼ of the Northwest ¼ of section 12; South ½, South ½ of section 4.

All Federal lands administered by the Bureau of Land Management described above are closed to motor vehicles from September 3, 1987 until further notice. Exceptions to this closure include administrative use of vehicles on the

The purpose of this exchange is to use the value of the described scattered tracts of public land in Yakima County to consolidate public lands on a portion of the rim of Moses Coulee. The exchange is consistent with Bureau of Land Management policies and planning and will serve the public interest.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, WA 99202. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, or entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be made subject to:

1. A reservation to the United States of rights-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals in the public lands being transferred (in accordance with Section 209 of FLPMA).
3. All valid existing rights of record (e.g., rights-of-way, easements, etc.).
4. Value equalization by cash payments or acreage adjustments.

David E. Sinclair,

District Manager, Acting.

[FR Doc. 87–22024 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–32–M

[ID–943–07–4520–12]

Filing Plats of Survey; Idaho

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, on the dates hereinafter stated:

Boise Meridian

T. 7 S., R. 36 E., accepted January 5, 1987, officially filed January 7, 1987.
T. 2 S., R. 35 E., accepted October 28, 1986, officially filed January 12, 1987.
T. 7 N., R. 6 E., accepted December 16, 1986, officially filed January 12, 1987.
T. 5 S., R. 9 E., accepted January 14, 1987, officially filed June 12, 1987.
T. 43 N., R. 4 W., accepted January 8, 1987, officially filed June 24, 1987.
T. 13 N., R. 18 E., accepted March 30, 1987, officially filed July 14, 1987.
T. 7 S., R. 13 E., accepted March 30, 1987, officially filed July 15, 1987.
T. 6 S., R. 44 E., accepted March 30, 1987, officially filed June 26, 1987.
T. 10 S., R. 30 E., accepted March 30, 1987, officially filed July 16, 1987.
T. 9 N., R. 43 E., accepted March 30, 1987, officially filed June 22, 1987.
T. 10 S., R. 29 E., accepted March 30, 1987, officially filed July 10, 1987.
T. 6 S., R. 12 E., accepted May 8, 1987, officially filed June 25, 1987.
T. 4 N., R. 18 E., accepted June 18, 1987, officially filed June 30, 1987.

The above plats represent dependent resurveys and subdivisions.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: September 15, 1987.

Donald A. Simpson,

Chief, Land Services Section.

[FR Doc. 87–22023 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations Coordination Document(DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1085 and 1089, Blocks 75 and 90, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on September 16, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–22050 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1783, Block 289, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on September 17, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the

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[AZ-020-87-4211-11; A-22268]

Realty Action; Recreation and Public Purpose (R&PP) Act Lease

The following lands, located near the city of Florence, Pinal County, Arizona have been found suitable for lease to the Arizona Army National Guard for training purposes, and are so classified under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741: 43 U.S.C. 869 *seq.*).

Gila and Salt River Meridian, Arizona

T. 2 S., R. 8 E.,
Sec. 15, SW¼, and the westernmost 900 feet of the NW¼, except for the northernmost 100 feet thereof.

These lands are presently withdrawn by the United States Air Force for an auxiliary air field, known as Rittenhouse Air Force Auxillary Field. It has been determined that these two uses (R&PP lease and the withdrawal) are compatible uses. These lands are not needed for any other federal purposes. Through the ennviromental assessment process, it has been determined that the lease of these lands would not affect any BLM programs and would be in the public interest.

The lease would be subject to the following conditions:

1. Provisions of the Recreation and Public Purpose Act and all regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the United States.

4. Those rights granted to the Bureau of Reclamation by permit number A-21196.

5. The lessee shall make the land available to the maximum extent practicable for use as a local training area by the U.S. Army Reserve.

6. The lessee shall, upon 30 days written notice, relinquish up to 15 acres of the leased land as determined by the BLM and U.S. Army Reserve, for a withdrawal for the U.S. Army Reserve.

For period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this proposed lease or classification of these lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix Arizona 85027. Any adverse comments will be evaluated by the State Director. In the absence of any adverse comments the classification will become effective 60 days from the date of publication of this notice. Further information concerning this Realty Action may be obtained from the Phoenix Resource Area, Phoenix District (602-863-4464).

Date: September 13, 1987.

Henri R. Bisson,
District Manager.

[FR Doc. 87-22037 Filed 9-23-87; 8:45 am]
BILLING CODE 4310-32-M

[AZ-940-07-4212-12; AR 018859]

Reconveyed Land Opened to Entry; Cochise County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reconveyed land opened to entry.

SUMMARY: This action will open 320 acres of reconveyed land in Cochise County to State Exchange Application.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On April 1, 1959, as authorized under Section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended, the United States acquired the following land:

Gila and Salt River Meridian; Arizona

T. 12 S., R. 27 E.,
Sec. 24, E½; containing 320 acres in Cochise County.

The land described above has been determined suitable for disposal by State Exchange, as provided by section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716). The land will continue to be segregated from settlement, sale, location or entries under the public land laws. The mineral estate was not reconveyed to the United States and therefore, will not be subject to entry under the mining or mineral leasing laws.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-22022 Filed 9-23-87; 8:45 am]
BILLING CODE 4310-32-M

[CA-010-87-4212-11; CA-18749]

Proposed Lease and Conveyance For Health Clinic in Mono County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of segregative effect.

SUMMARY: This notice corrects the segregative effect previously published in the **Federal Register** May 21, 1987 (52 FR 19208) for a proposed lease and conveyance for a health clinic in Mono County, CA.

The segregative effect of the notice published May 21, 1987, will terminate upon either issuance of a patent to the lands, or upon publication of a termination notice and opening order in the **Federal Register.**

All other information in the notice of May 21, 1987, remains unchanged.

Date: September 16, 1987.

Nancy J. Alex,
Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87-22036 Filed 9-23-87; 8:45 am]
BILLING CODE 4310-40-M

[OR-130-07-4212-13; GP7-294; (OR 42021 (WA))]

Realty Action; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands in Yakima County have been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

	Acres
T. 12N., R. 20E. WM	
Sec. 12: E½E½	160
T. 12N., R. 21E. WM	
Sec.	
2: SW¼NW¼, NW¼SW¼	80
8: NW¼NE¼, NE¼NW¼	80
14: SW¼	160
T. 12N., R. 22E. WM	
Sec. 18: Lots ¼, E½W½	317.22
Total:	797.22

In exchange for these lands, the Federal Government will acquire the following described private lands in Douglas and Grant Counties:

	Acres
T. 22N., R. 23E. WM	
Sec.14: NE¼SW¼, NW¼SE¼, SE¼SE¼	120
23: A11	640
24: NE¼, N½NW¼, SW¼NW¼	280
27: E½, E½W½, SW¼SW¼	520
33: E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, SE¼	400
Total:	1,960

The purpose of this exchange is to use the value of the described scattered tracts of public land in Yakima County to consolidate public lands on a portion of the rim of Moses Coulee. The exchange is consistent with Bureau of Land Management policies and planning and will serve the public interest.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, WA 99202. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, or entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be made subject to:

1. A reservation to the United States of rights-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals in the public lands being transferred (in accordance with Section 209 of FLPMA).
3. All valid existing rights of record (e.g., rights-of-way, easements, etc.).
4. Value equalization by cash payments or acreage adjustments.

David E. Sinclair,

District Manager, Acting.

[FR Doc. 87–22024 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–32–M

[ID–943–07–4520–12]

Filing Plats of Survey; Idaho

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, on the dates hereinafter stated:

Boise Meridian

T. 7 S., R. 36 E., accepted January 5, 1987, officially filed January 7, 1987.
T. 2 S., R. 35 E., accepted October 28, 1986, officially filed January 12, 1987.
T. 7 N., R. 6 E., accepted December 16, 1986, officially filed January 12, 1987.
T. 5 S., R. 9 E., accepted January 14, 1987, officially filed June 12, 1987.
T. 43 N., R. 4 W., accepted January 8, 1987, officially filed June 24, 1987.
T. 13 N., R. 18 E., accepted March 30, 1987, officially filed July 14, 1987.
T. 7 S., R. 13 E., accepted March 30, 1987, officially filed July 15, 1987.
T. 6 S., R. 44 E., accepted March 30, 1987, officially filed June 26, 1987.
T. 10 S., R. 30 E., accepted March 30, 1987, officially filed July 16, 1987.
T. 9 N., R. 43 E., accepted March 30, 1987, officially filed June 22, 1987.
T. 10 S., R. 29 E., accepted March 30, 1987, officially filed July 10, 1987.
T. 6 S., R. 12 E., accepted May 8, 1987, officially filed June 25, 1987.
T. 4 N., R. 18 E., accepted June 18, 1987, officially filed June 30, 1987.

The above plats represent dependent resurveys and subdivisions.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: September 15, 1987.

Donald A. Simpson,

Chief, Land Services Section.

[FR Doc. 87–22023 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations Coordination Document(DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1085 and 1089, Blocks 75 and 90, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on September 16, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–22050 Filed 9–23–87; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1783, Block 289, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on September 17, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the

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[AZ-020-87-4211-11; A-22268]

Realty Action; Recreation and Public Purpose (R&PP) Act Lease

The following lands, located near the city of Florence, Pinal County, Arizona have been found suitable for lease to the Arizona Army National Guard for training purposes, and are so classified under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741: 43 U.S.C. 869 *seq.*).

Gila and Salt River Meridian, Arizona

T. 2 S., R. 8 E.,
Sec. 15, SW¼, and the westernmost 900 feet of the NW¼, except for the northernmost 100 feet thereof.

These lands are presently withdrawn by the United States Air Force for an auxiliary air field, known as Rittenhouse Air Force Auxillary Field. It has been determined that these two uses (R&PP lease and the withdrawal) are compatible uses. These lands are not needed for any other federal purposes. Through the ennviromental assessment process, it has been determined that the lease of these lands would not affect any BLM programs and would be in the public interest.

The lease would be subject to the following conditions:

1. Provisions of the Recreation and Public Purpose Act and all regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the United States.

4. Those rights granted to the Bureau of Reclamation by permit number A-21196.

5. The lessee shall make the land available to the maximum extent practicable for use as a local training area by the U.S. Army Reserve.

6. The lessee shall, upon 30 days written notice, relinquish up to 15 acres of the leased land as determined by the BLM and U.S. Army Reserve, for a withdrawal for the U.S. Army Reserve.

For period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this proposed lease or classification of these lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix Arizona 85027. Any adverse comments will be evaluated by the State Director. In the absence of any adverse comments the classification will become effective 60 days from the date of publication of this notice. Further information concerning this Realty Action may be obtained from the Phoenix Resource Area, Phoenix District (602-863-4464).

Date: September 13, 1987.

Henri R. Bisson,
District Manager.

[FR Doc. 87-22037 Filed 9-23-87; 8:45 am]
BILLING CODE 4310-32-M

[AZ-940-07-4212-12; AR 018859]

Reconveyed Land Opened to Entry; Cochise County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reconveyed land opened to entry.

SUMMARY: This action will open 320 acres of reconveyed land in Cochise County to State Exchange Application.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On April 1, 1959, as authorized under Section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended, the United States acquired the following land:

Gila and Salt River Meridian; Arizona

T. 12 S., R. 27 E.,
Sec. 24, E½; containing 320 acres in Cochise County.

The land described above has been determined suitable for disposal by State Exchange, as provided by section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716). The land will continue to be segregated from settlement, sale, location or entries under the public land laws. The mineral estate was not reconveyed to the United States and therefore, will not be subject to entry under the mining or mineral leasing laws.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-22022 Filed 9-23-87; 8:45 am]
BILLING CODE 4310-32-M

[CA-010-87-4212-11; CA-18749]

Proposed Lease and Conveyance For Health Clinic in Mono County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of segregative effect.

SUMMARY: This notice corrects the segregative effect previously published in the **Federal Register** May 21, 1987 (52 FR 19208) for a proposed lease and conveyance for a health clinic in Mono County, CA.

The segregative effect of the notice published May 21, 1987, will terminate upon either issuance of a patent to the lands, or upon publication of a termination notice and opening order in the **Federal Register.**

All other information in the notice of May 21, 1987, remains unchanged.

Date: September 16, 1987.

Nancy J. Alex,
Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87-22036 Filed 9-23-87; 8:45 am]
BILLING CODE 4310-40-M

[OR-130-07-4212-13; GP7-294; (OR 42021 (WA))]

Realty Action; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands in Yakima County have been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

	Acres
T. 12N., R. 20E. WM	
Sec. 12: E½E½	160
T. 12N., R. 21E. WM	
Sec.	
2: SW¼NW¼, NW¼SW¼	80
8: NW¼NE¼, NE¼NW¼	80
14: SW¼	160
T. 12N., R. 22E. WM	
Sec. 18: Lots ¼, E½W½	317.22
Total:	797.22

In exchange for these lands, the Federal Government will acquire the following described private lands in Douglas and Grant Counties:

	Acres
T. 22N., R. 23E. WM	
Sec.14: NE¼SW¼, NW¼SE¼, SE¼SE¼	120
23: A11	640
24: NE¼, N½NW¼, SW¼NW¼	280
27: E½, E½W½, SW¼SW¼	520
33: E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, SE¼	400
Total:	1,960

Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-22049 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29963]

Bay Colony Railroad Corp. Modified Rail Certificate [1]

On September 2, 1987, a notice was filed by the Bay Colony Railroad Corporation (Bay Colony), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. Bay Colony has entered into an agreement with the Commonwealth of Massachusetts to operate the Millis Industrial Track, now operated by Consolidated Rail Corporation (Conrail), and the Lowell Secondary Track, now operated by Springfield Terminal Railway Company (ST). The Commonwealth of Massachusetts runs both of these rail lines.

The Millis Industrial Track is a 3.4 mile rail line in the Commonwealth of Massachusetts between the northeast side of the Framingham Secondary right-of-way line in Medfield Junction (Milepost 0.0) and the end of the line in Millis (Milepost 3.4), all in Norfolk County. The involved 5.3 mile segment of the Lowell Secondary Track in the Commonwealth of Massachusetts extends between West Concord (Milepost 11.5) and Acton (Milepost 16.8), all in Middlesex County.

The Lowell Secondary Track was conveyed to the Commonwealth of Massachusetts by deed of the Penn Central Transportation Company (Penn Central) dated May 14, 1982. Service on the line was continued by ST under lease from the Commonwealth of Massachusetts. ST currently has a modified certificate to operate over the Lowell Secondary. ST is expected to terminate its service pursuant to 49 CFR 1150.24 at or about the time Bay Colony commences operations.

The Millis Industrial Track was conveyed to Massachusetts Bay Transportation Authority, an agency of the Commonwealth of Massachusetts, by deed of Penn Central dated January 17, 1973, subject to a reservation of right to operate freight service over the track. Freight service on the line was continued by Penn Central, and subsequently by Conrail. Conrail's application under 45 U.S.C. 748 to discontinue operation of the Millis Industrial Track in No. AB-167 (Sub-No. 954N) was approved by decision served September 11, 1987.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: September 16, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-21912 Filed 9-23-87; 8:45 am]

BILLING CODE 7035-01-M

[1] Bay Colony's operation of the Millis Industrial Track and the Lowell Secondary Track—the two lines here at issue—is the subject of this modified rail certificate, and, contrary to Bay Colony's assertion, does not involve an amendment of Bay Colony's prior modified rail certificate, served June 29, 1982, that covers a number of lines owned by the Commonwealth of Massachusetts.

[Finance Docket No. 31081]

Railroad Operation; KKR Associates

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts retroactively KKR Associates from the requirements of prior approval under 49 U.S.C. 11343, et seq., for its control of motor, rail, and water carriers, subject to the condition for the protection of railroad employees in *New York Dock Ry.—Control Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This exemption will be effective on October 4, 1987. Petitions to reopen must be filed by October 13, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 31081 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter M. Shannon, Jr., 8300 Sears Tower, 233 South Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: September 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22052 Filed 9-23-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Modified Consent Decree in *United States v. City of Lynn, et al.*, Civil Action No. 76-2184-G, has been lodged with the United States District Court for the District of Massachusetts. The modified consent decree addresses alleged violations by the City of Lynn and the Lynn Sewer and Water Commission of the Clean Water Act and a previous consent decree in regard to the sewage system previously owned by the City of Lynn and transferred in 1982 to the Lynn Sewer and Water Commission.

The proposed Modified Consent Decree requires the Lynn Sewer and Water Commission to construct secondary treatment facilities, develop combined sewer overflow abatement projects, and develop and implement a satisfactory pretreatment program in accordance with compliance schedules set forth therein. The proposed Modified Consent Decree also requires the Lynn Sewer and Water Commission to pay a civil penalty of $95,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources

Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Lynn, et al.*, D.J. Ref. 90-5-1-1-545B.

The proposed Modified Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Modified Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Modified Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to referenced case name and D.J. Ref. number and enclose a check in the amount of $6.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-22008 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Application; Manufacturer of Controlled Substances; DuPont Pharmaceuticals

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 24, 1987, Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 16, 1987.

[FR Doc. 87-22029 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-09-M

Application; Manufacturer of Controlled Substances; Eli Lilly Industries, Inc.

Pursuant to § 1301.43(a) and 1301.61 of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 12, 1987, Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance bulk dextropropoxyphene (non-dosage form) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

Dated: September 16, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-22030 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-09-M

Application; Manufacturer of Controlled Substances; Penick Corp.

Pursuant to § 1301.43(a) and 1301.61 of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 27, 1987, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance hydromorphone (9150).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 16, 1987.

[FR Doc. 87-22031 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-09-M

Application; Importation of Controlled Substances; Minn-Dak Growers Association

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 27, 1987, Minn-Dak Growers Association, Highway 81 North, P.O. Box 1276, Grand Forks, North Dakota 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class controlled substance in Schedule I.

Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-22049 Filed 9-23-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29963]

Bay Colony Railroad Corp. Modified Rail Certificate [1]

On September 2, 1987, a notice was filed by the Bay Colony Railroad Corporation (Bay Colony), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. Bay Colony has entered into an agreement with the Commonwealth of Massachusetts to operate the Millis Industrial Track, now operated by Consolidated Rail Corporation (Conrail), and the Lowell Secondary Track, now operated by Springfield Terminal Railway Company (ST). The Commonwealth of Massachusetts runs both of these rail lines.

The Millis Industrial Track is a 3.4 mile rail line in the Commonwealth of Massachusetts between the northeast side of the Framingham Secondary right-of-way line in Medfield Junction (Milepost 0.0) and the end of the line in Millis (Milepost 3.4), all in Norfolk County. The involved 5.3 mile segment of the Lowell Secondary Track in the Commonwealth of Massachusetts extends between West Concord (Milepost 11.5) and Acton (Milepost 16.8), all in Middlesex County.

The Lowell Secondary Track was conveyed to the Commonwealth of Massachusetts by deed of the Penn Central Transportation Company (Penn Central) dated May 14, 1982. Service on the line was continued by ST under lease from the Commonwealth of Massachusetts. ST currently has a modified certificate to operate over the Lowell Secondary. ST is expected to terminate its service pursuant to 49 CFR 1150.24 at or about the time Bay Colony commences operations.

The Millis Industrial Track was conveyed to Massachusetts Bay Transportation Authority, an agency of the Commonwealth of Massachusetts, by deed of Penn Central dated January 17, 1973, subject to a reservation of right to operate freight service over the track. Freight service on the line was continued by Penn Central, and subsequently by Conrail. Conrail's application under 45 U.S.C. 748 to discontinue operation of the Millis Industrial Track in No. AB-167 (Sub-No. 954N) was approved by decision served September 11, 1987.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: September 16, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-21912 Filed 9-23-87; 8:45 am]

BILLING CODE 7035-01-M

[1] Bay Colony's operation of the Millis Industrial Track and the Lowell Secondary Track—the two lines here at issue—is the subject of this modified rail certificate, and, contrary to Bay Colony's assertion, does not involve an amendment of Bay Colony's prior modified rail certificate, served June 29, 1982, that covers a number of lines owned by the Commonwealth of Massachusetts.

[Finance Docket No. 31081]

Railroad Operation; KKR Associates

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts retroactively KKR Associates from the requirements of prior approval under 49 U.S.C. 11343, et seq., for its control of motor, rail, and water carriers, subject to the condition for the protection of railroad employees in *New York Dock Ry.—Control Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This exemption will be effective on October 4, 1987. Petitions to reopen must be filed by October 13, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 31081 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter M. Shannon, Jr., 8300 Sears Tower, 233 South Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: September 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22052 Filed 9-23-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Modified Consent Decree in *United States v. City of Lynn, et al.*, Civil Action No. 76-2184-G, has been lodged with the United States District Court for the District of Massachusetts. The modified consent decree addresses alleged violations by the City of Lynn and the Lynn Sewer and Water Commission of the Clean Water Act and a previous consent decree in regard to the sewage system previously owned by the City of Lynn and transferred in 1982 to the Lynn Sewer and Water Commission.

The proposed Modified Consent Decree requires the Lynn Sewer and Water Commission to construct secondary treatment facilities, develop combined sewer overflow abatement projects, and develop and implement a satisfactory pretreatment program in accordance with compliance schedules set forth therein. The proposed Modified Consent Decree also requires the Lynn Sewer and Water Commission to pay a civil penalty of $95,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources

Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Lynn, et al.*, D.J. Ref. 90-5-1-1-545B.

The proposed Modified Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Modified Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Modified Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to referenced case name and D.J. Ref. number and enclose a check in the amount of $6.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-22008 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Application; Manufacturer of Controlled Substances; DuPont Pharmaceuticals

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 24, 1987, Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 16, 1987.

[FR Doc. 87-22029 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-09-M

Application; Manufacturer of Controlled Substances; Eli Lilly Industries, Inc.

Pursuant to § 1301.43(a) and 1301.61 of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 12, 1987, Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance bulk dextropropoxyphene (non-dosage form) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

Dated: September 16, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-22030 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-09-M

Application; Manufacturer of Controlled Substances; Penick Corp.

Pursuant to § 1301.43(a) and 1301.61 of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 27, 1987, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance hydromorphone (9150).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 16, 1987.

[FR Doc. 87-22031 Filed 9-23-87; 8:45 am]

BILLING CODE 4410-09-M

Application; Importation of Controlled Substances; Minn-Dak Growers Association

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 27, 1987, Minn-Dak Growers Association, Highway 81 North, P.O. Box 1276, Grand Forks, North Dakota 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class controlled substance in Schedule I.

Dr. Garcia again demanded payment of $4,000.00 for four previously written prescriptions. When asked by Mr. Tovatt if he would write him another prescription, Dr. Garcia responded, "I, personally, don't want to give your name on any prescription because it is being traced. I don't want your name on any prescription." Mr. Tovatt suggested using another name. Dr. Garcia acquiesed to the suggestion and stated that the prescription would cost Mr. Tovatt $1,000.00 and would not be furnished until he was paid.

In addition, the investigative file indicates that for several years, Dr. Garcia was supplying Demerol to Sue Ann Hinton, his former employee and lover, for other than legitimate medical purposes. In one instance, Dr. Garcia issued a prescription for Valium for Ms. Hinton in her sister's name, although he had never examined or seen Ms. Hinton's sister; nor had her sister authorized the prescription.

Further, for the period from October 1, 1985 to March 1986, Dr. Garcia issued several prescriptions for controlled substances. These prescriptions were issued during a period in which Dr. Garcia's DEA registration had expired. Consequently, during that time, Dr. Garcia was not authorized to prescribe, dispense, administer, order, or otherwise handle any controlled substances.

Finally, subsequent to the issuance of the Order to Show Cause against Dr. Garcia, DEA was informed that on February 24, 1987, Dr. Garcia's license to practice medicine in the State of Florida was revoked. As a result, Dr. Garcia is no longer authorized to handle any controlled substances in that state.

The Administrator concludes that, based upon the information contained in the investigative file, there are sufficient grounds for the revocation of Dr. Garcia's DEA Certificate of Registration and for the denial of any pending applications for renewal. The fact that Dr. Garcia is no longer authorized to handle controlled substances in the State of Florida is a sufficient ground, by itself, to order the revocation of his registration. DEA has consistently held that it cannot maintain the registration of a practitioner who is not authorized to handle controlled substances in the state in which he seeks registration. See *Frank T.W. Chin, M.D.*, Docket No. 86–73, 52 FR 2774 (1987); *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). Since, in this case, Dr. Garcia is no longer authorized to handle controlled substances in the State of Florida, the Administrator cannot maintain his DEA Certificate of Registration in that state.

In addition, the information regarding Dr. Garcia's improper handling of controlled substances provides additional support for the revocation of his current registration and for the denial of any pending applications for renewal. The investigative file elucidates Dr. Garcia's absolute disregard for state and Federal controlled substance laws and regulations. For years, he has supplied a known narcotic addict with dangerous narcotics for other than legitimate medical purposes. The motivation for such activities was obviously greed on the part of the doctor. In addition, he repeatedly supplied a former employee and lover with dangerous controlled substances, although there was no demonstration of medical need for the drugs. Further, he wrote and filled several prescriptions for controlled substances in the name of a former patient, yet he dispensed or administered the drugs to persons other than the person for whom the prescriptions were issued. Also, Dr. Garcia wrote numerous prescriptions for controlled substances during a period of time between 1985 and 1986 in which his DEA Certificate of Registration had expired. Finally, although Dr. Garcia administered and dispensed large quantities of dangerous controlled substances, he failed to maintain ordering, administering and dispensing records, as required by law. Based upon these numerous and repeated violations of controlled substance laws and regulations, Dr. Garcia's continued registration with DEA would pose a serious threat to the public health and safety. Therefore, his DEA Certificate must be revoked, and any pending applications for renewal must be summarily denied.

Having concluded that, under the facts and circumstances presented in this matter, Dr. Garcia's current registration must be revoked, and any pending applications for renewal must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration, AG5971090, previously issued to Eduardo A. Garcia, M.D., be, and it hereby is, revoked; it is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective September 24, 1987.

John C. Dawn,

Administrator.

Date: September 18, 1987.

[FR Doc. 87–22061 Filed 9–23–87; 8:45 am]

BILLING CODE 4410–09–M

Revocation of Registration; Medicine Shoppe

On July 7, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued to Medicine Shoppe, 3002 Clarksville Highway, Nashville, Tennessee 37218, an Order to Show Cause proposing to revoke its DEA Certificate of Registration, AT3048053, and to deny any pending applications for the renewal of such registration. The Order to Show Cause alleged that the continued registration of Medicine Shoppe would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). Additionally, citing his preliminary finding that Medicine Shoppe's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AT3048053 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served at the pharmacy on July 9, 1987. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Medicine Shoppe is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between July 1, 1985, and December 31, 1985, Medicine Shoppe purchased approximately 62,300 dosage units of Talwin NX, a Schedule IV controlled substance. A subsequent review of the pharmacy's prescription file revealed that there were virtually no prescriptions on file for Talwin NX during the same period of time.

During 1986, Medicine Shoppe purchased approximately 161,000 dosage units of Talwin NX. An accountability audit of various controlled substances performed by investigators of the Drug Enforcement Administration revealed significant shortages of the majority of substances audited. The audit period covered January 1, 1986, through June 1, 1987. The shortages included

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird feed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 16, 1987.

[FR Doc. 87–22028 Filed 9–23–87; 8:45 am]

BILLING CODE 4410-09-M

Revocation of Registration; Eduardo A. Garcia, M.D.

On February 27, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eduardo A. Garcia, M.D., of 3554 Ocean Drive, Vero Beach, Florida, proposing to revoke his DEA Certificate of Registration, AG5971090, and to deny any pending applications for renewal as a practitioner under 21 U.S.C. 823(f). The statutory bases for seeking the revocation of Dr. Garcia's current registration are that: (1) On numerous occasions in 1985 and 1986, Dr. Garcia issued several prescriptions for controlled substances to individuals for other than legitimate medical purposes; (2) on numerous occasions in 1985 and 1986, Dr. Garcia issued prescriptions for narcotic controlled substances to an individual he knew, or should have known, was addicted to narcotic controlled substances, although at no time has Dr. Garcia ever been registered with DEA to conduct a narcotic treatment program; (3) on numerous occasions, Dr. Garcia dispensed and administered controlled substances for other than legitimate medical purposes; (4) on numerous occasions in 1985 and 1986, Dr. Garcia wrote several prescriptions for controlled substances although he did not possess a vald DEA Certificate of Registration at the time he issued the prescriptions; (5) on numerous occasions, Dr. Garcia issued prescriptions in the name of a former patient and had the prescriptions filled at pharmacy, although the former patient did not authorize the issuance or filling of those prescriptions; in addition, he dispensed or administered the controlled substances which were issued pursuant to those pescriptions to persons other than the person for whom the prescriptions were allegedly issued; (6) Dr. Garcia failed to comply with necessary reporting and recordkeeping requirements relating to ordering, receiving, dispensing and administering controlled substances; and (7) on numerous occasions, Dr. Garcia dispensed and administered controlled substances at a location other than his registered location.

The Order to Show Cause was sent registered mail, return receipt requested, to Dr. Garcia's registered address. The return receipt indicates that the Order to Show Cause was received and signed for on March 10, 1987. Dr. Garcia has not responded to the Order to Show Cause. Therefore, the Administrator finds that Dr. Garcia has waived his opportunity for a hearing on the issues raised in the Order to Show Cause, and enters this final order based upon the record as it now appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that in December 1984, Earl Tovatt, an individual known to have a serious narcotic addiction problem, contacted Dr. Garcia for the purpose of obtaining narcotic controlled substances. Dr. Garcia told Mr. Tovatt that he would supply him with injections of Demerol, a Schedule II narcotic controlled substance, for an initial payment of $25,000.00 and $1,000.00 per prescription. Mr. Tovatt acquiesced to the arrangement. At times, Dr. Garcia would charge Mr. Tovatt as much as $5,000.00 per prescription. In one year, Mr. Tovatt disclosed that he had paid Dr. Garcia between $150,000.00 and $200,000.00 for "treatment." These payments to Dr. Garcia were always made in cash. Between December 1984 and February 1986, Mr. Tovatt paid Dr. Garcia more than $440,000.00 for prescriptions and injections of Demerol. A review of a local pharmacy's records reveals that it filled more than 60 prescriptions issued by Dr. Garcia to Mr. Tovatt, each for 25 dosage units of Demerol. In addition, Dr. Garcia would often issue prescriptions for Valium, Percodan and Dolophine to Mr. Tovatt the same days he issued the prescriptions for Demerol.

On February 19, 1986, a Florida Department of Professional Regulation Investigator interviewed Dr. Garcia regarding his controlled substance prescribing and dispensing activities. During the interview, Dr. Garcia admitted that he charged $1,000.00 for each prescription of Demerol he issued, and for each injection he administered to Mr. Tovatt. Dr. Garcia denied that he had excessively charged Mr. Tovatt.

A further review of the local pharmacy's prescription records revealed that Dr. Garcia has issued thirteen prescriptions for Demerol in the name of Guenter Bork. On April 22, 1986, DEA Investigators interviewed Mr. Bork at his residence. Mr. Bork stated that he began treatment for a back injury with Dr. Garcia in 1978 and ceased treatment in February 1986. He also stated that he never filled any of his prescriptions at the pharmacy where the thirteen prescriptions were found. In addition, none of the prescriptions in question appeared in Mr. Bork's medical records. On April 22, 1986, a Florida Department of Professional Regulation Investigator inverviewed Dr. Garcia. He informed the Investigator that he presented the prescriptions and picked up Mr. Bork's drugs at the pharmacy so that he could administer them to Mr. Bork in his medical office. Dr. Garcia also told the Investigator that he had no inventory records which reflected the administering or dispensing of these drugs.

On April 29, 1986, a Florida Department of Professional Regulation Investigation visited Mr. Tovatt at his residence. During the visit, Mr. Tovatt informed the Investigator that Dr. Garcia told him that he wanted $4,000.00 for four prescriptions for Demerol he had previously written for Mr. Tovatt. Mr. Tovatt explained that he was unable to get the prescriptions filled since the Florida Department of Professional Regulation had alerted nearby pharmacies not to fill prescriptions written for him by Dr. Garcia. During the visit, Mr. Tovatt telephoned Dr. Garcia.

Dr. Garcia again demanded payment of $4,000.00 for four previously written prescriptions. When asked by Mr. Tovatt if he would write him another prescription, Dr. Garcia responded, "I, personally, don't want to give your name on any prescription because it is being traced. I don't want your name on any prescription." Mr. Tovatt suggested using another name. Dr. Garcia acquiesed to the suggestion and stated that the prescription would cost Mr. Tovatt $1,000.00 and would not be furnished until he was paid.

In addition, the investigative file indicates that for several years, Dr. Garcia was supplying Demerol to Sue Ann Hinton, his former employee and lover, for other than legitimate medical purposes. In one instance, Dr. Garcia issued a prescription for Valium for Ms. Hinton in her sister's name, although he had never examined or seen Ms. Hinton's sister; nor had her sister authorized the prescription.

Further, for the period from October 1, 1985 to March 1986, Dr. Garcia issued several prescriptions for controlled substances. These prescriptions were issued during a period in which Dr. Garcia's DEA registration had expired. Consequently, during that time, Dr. Garcia was not authorized to prescribe, dispense, administer, order, or otherwise handle any controlled substances.

Finally, subsequent to the issuance of the Order to Show Cause against Dr. Garcia, DEA was informed that on February 24, 1987, Dr. Garcia's license to practice medicine in the State of Florida was revoked. As a result, Dr. Garcia is no longer authorized to handle any controlled substances in that state.

The Administrator concludes that, based upon the information contained in the investigative file, there are sufficient grounds for the revocation of Dr. Garcia's DEA Certificate of Registration and for the denial of any pending applications for renewal. The fact that Dr. Garcia is no longer authorized to handle controlled substances in the State of Florida is a sufficient ground, by itself, to order the revocation of his registration. DEA has consistently held that it cannot maintain the registration of a practitioner who is not authorized to handle controlled substances in the state in which he seeks registration. See *Frank T.W. Chin, M.D.*, Docket No. 86–73, 52 FR 2774 (1987); *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). Since, in this case, Dr. Garcia is no longer authorized to handle controlled substances in the State of Florida, the Administrator cannot maintain his DEA Certificate of Registration in that state.

In addition, the information regarding Dr. Garcia's improper handling of controlled substances provides additional support for the revocation of his current registration and for the denial of any pending applications for renewal. The investigative file elucidates Dr. Garcia's absolute disregard for state and Federal controlled substance laws and regulations. For years, he has supplied a known narcotic addict with dangerous narcotics for other than legitimate medical purposes. The motivation for such activities was obviously greed on the part of the doctor. In addition, he repeatedly supplied a former employee and lover with dangerous controlled substances, although there was no demonstration of medical need for the drugs. Further, he wrote and filled several prescriptions for controlled substances in the name of a former patient, yet he dispensed or administered the drugs to persons other than the person for whom the prescriptions were issued. Also, Dr. Garcia wrote numerous prescriptions for controlled substances during a period of time between 1985 and 1986 in which his DEA Certificate of Registration had expired. Finally, although Dr. Garcia administered and dispensed large quantities of dangerous controlled substances, he failed to maintain ordering, administering and dispensing records, as required by law. Based upon these numerous and repeated violations of controlled substance laws and regulations, Dr. Garcia's continued registration with DEA would pose a serious threat to the public health and safety. Therefore, his DEA Certificate must be revoked, and any pending applications for renewal must be summarily denied.

Having concluded that, under the facts and circumstances presented in this matter, Dr. Garcia's current registration must be revoked, and any pending applications for renewal must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration, AG5971090, previously issued to Eduardo A. Garcia, M.D., be, and it hereby is, revoked; it is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective September 24, 1987.

John C. Dawn,

Administrator.

Date: September 18, 1987.

[FR Doc. 87–22061 Filed 9–23–87; 8:45 am]

BILLING CODE 4410–09–M

Revocation of Registration; Medicine Shoppe

On July 7, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued to Medicine Shoppe, 3002 Clarksville Highway, Nashville, Tennessee 37218, an Order to Show Cause proposing to revoke its DEA Certificate of Registration, AT3048053, and to deny any pending applications for the renewal of such registration. The Order to Show Cause alleged that the continued registration of Medicine Shoppe would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). Additionally, citing his preliminary finding that Medicine Shoppe's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AT3048053 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served at the pharmacy on July 9, 1987. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Medicine Shoppe is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between July 1, 1985, and December 31, 1985, Medicine Shoppe purchased approximately 62,300 dosage units of Talwin NX, a Schedule IV controlled substance. A subsequent review of the pharmacy's prescription file revealed that there were virtually no prescriptions on file for Talwin NX during the same period of time.

During 1986, Medicine Shoppe purchased approximately 161,000 dosage units of Talwin NX. An accountability audit of various controlled substances performed by investigators of the Drug Enforcement Administration revealed significant shortages of the majority of substances audited. The audit period covered January 1, 1986, through June 1, 1987. The shortages included

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird feed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 26, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 16, 1987.

[FR Doc. 87–22028 Filed 9–23–87; 8:45 am]

BILLING CODE 4410-09-M

Revocation of Registration; Eduardo A. Garcia, M.D.

On February 27, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eduardo A. Garcia, M.D., of 3554 Ocean Drive, Vero Beach, Florida, proposing to revoke his DEA Certificate of Registration, AG5971090, and to deny any pending applications for renewal as a practitioner under 21 U.S.C. 823(f). The statutory bases for seeking the revocation of Dr. Garcia's current registration are that: (1) On numerous occasions in 1985 and 1986, Dr. Garcia issued several prescriptions for controlled substances to individuals for other than legitimate medical purposes; (2) on numerous occasions in 1985 and 1986, Dr. Garcia issued prescriptions for narcotic controlled substances to an individual he knew, or should have known, was addicted to narcotic controlled substances, although at no time has Dr. Garcia ever been registered with DEA to conduct a narcotic treatment program; (3) on numerous occasions, Dr. Garcia dispensed and administered controlled substances for other than legitimate medical purposes; (4) on numerous occasions in 1985 and 1986, Dr. Garcia wrote several prescriptions for controlled substances although he did not possess a vald DEA Certificate of Registration at the time he issued the prescriptions; (5) on numerous occasions, Dr. Garcia issued prescriptions in the name of a former patient and had the prescriptions filled at pharmacy, although the former patient did not authorize the issuance or filling of those prescriptions; in addition, he dispensed or administered the controlled substances which were issued pursuant to those pescriptions to persons other than the person for whom the prescriptions were allegedly issued; (6) Dr. Garcia failed to comply with necessary reporting and recordkeeping requirements relating to ordering, receiving, dispensing and administering controlled substances; and (7) on numerous occasions, Dr. Garcia dispensed and administered controlled substances at a location other than his registered location.

The Order to Show Cause was sent registered mail, return receipt requested, to Dr. Garcia's registered address. The return receipt indicates that the Order to Show Cause was received and signed for on March 10, 1987. Dr. Garcia has not responded to the Order to Show Cause. Therefore, the Administrator finds that Dr. Garcia has waived his opportunity for a hearing on the issues raised in the Order to Show Cause, and enters this final order based upon the record as it now appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that in December 1984, Earl Tovatt, an individual known to have a serious narcotic addiction problem, contacted Dr. Garcia for the purpose of obtaining narcotic controlled substances. Dr. Garcia told Mr. Tovatt that he would supply him with injections of Demerol, a Schedule II narcotic controlled substance, for an initial payment of $25,000.00 and $1,000.00 per prescription. Mr. Tovatt acquiesced to the arrangement. At times, Dr. Garcia would charge Mr. Tovatt as much as $5,000.00 per prescription. In one year, Mr. Tovatt disclosed that he had paid Dr. Garcia between $150,000.00 and $200,000.00 for "treatment." These payments to Dr. Garcia were always made in cash. Between December 1984 and February 1986, Mr. Tovatt paid Dr. Garcia more than $440,000.00 for prescriptions and injections of Demerol. A review of a local pharmacy's records reveals that it filled more than 60 prescriptions issued by Dr. Garcia to Mr. Tovatt, each for 25 dosage units of Demerol. In addition, Dr. Garcia would often issue prescriptions for Valium, Percodan and Dolophine to Mr. Tovatt the same days he issued the prescriptions for Demerol.

On February 19, 1986, a Florida Department of Professional Regulation Investigator interviewed Dr. Garcia regarding his controlled substance prescribing and dispensing activities. During the interview, Dr. Garcia admitted that he charged $1,000.00 for each prescription of Demerol he issued, and for each injection he administered to Mr. Tovatt. Dr. Garcia denied that he had excessively charged Mr. Tovatt.

A further review of the local pharmacy's prescription records revealed that Dr. Garcia has issued thirteen prescriptions for Demerol in the name of Guenter Bork. On April 22, 1986, DEA Investigators interviewed Mr. Bork at his residence. Mr. Bork stated that he began treatment for a back injury with Dr. Garcia in 1978 and ceased treatment in February 1986. He also stated that he never filled any of his prescriptions at the pharmacy where the thirteen prescriptions were found. In addition, none of the prescriptions in question appeared in Mr. Bork's medical records. On April 22, 1986, a Florida Department of Professional Regulation Investigator inverviewed Dr. Garcia. He informed the Investigator that he presented the prescriptions and picked up Mr. Bork's drugs at the pharmacy so that he could administer them to Mr. Bork in his medical office. Dr. Garcia also told the Investigator that he had no inventory records which reflected the administering or dispensing of these drugs.

On April 29, 1986, a Florida Department of Professional Regulation Investigation visited Mr. Tovatt at his residence. During the visit, Mr. Tovatt informed the Investigator that Dr. Garcia told him that he wanted $4,000.00 for four prescriptions for Demerol he had previously written for Mr. Tovatt. Mr. Tovatt explained that he was unable to get the prescriptions filled since the Florida Department of Professional Regulation had alerted nearby pharmacies not to fill prescriptions written for him by Dr. Garcia. During the visit, Mr. Tovatt telephoned Dr. Garcia.

approximately 195,000 dosage units of Talwin NX, 24,000 dosage units of APAP with codeine 60 mg., 16,000 dosage units of Tussionex tablets, and 5,000 dosage units of Didrex 50 mg. Subsequent information received from a distributor revealed additional sales of Talwin NX to the pharmacy between January 1, 1986, and June 1, 1987, thereby increasing the shortage to 199,718 dosage units.

DEA investigators also audited pyribenzamine, a noncontrolled substance. This substance was audited because it is often sold in the illicit market in combination with Talwin. The audit revealed that between January 1, 1986, and June 1, 1987, the pharmacy purchased approximately 110,400 dosage units of pyribenzamine. The investigators found prescriptions at the pharmacy to account for 140 dosage units of the substance during the same period of time.

DEA investigators received information from an area distributor of controlled substances which revealed that Medicine Shoppe continued to purchase large quantities of Talwin NX until the service of the Order to Show Cause/Immediate Suspension. Consequently, the Administrator concludes that there is ample evidence to indicate that the continued registration of Medicine Shoppe is inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that the registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3048053, previously issued to Medicine Shoppe, be, and it hereby is, revoked, and any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective immediately.

When the Order to Show Cause/Immediate Suspension was served on Medicine Shoppe, all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until October 26, 1987 or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

John C. Lawn,
Administrator.

Date: September 18, 1987.

[FR Doc. 87-22062 Filed 9-23-87; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 87-27

Revocation of Registration; Denial of Pending Applications for Renewal; Ralph J.W. Small, M.D.

On January 30, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ralph J.W. Small, M.D. (Respondent) of 22962 Via Miramar, Laguna Niguel, California, proposing to revoke his DEA Certificate of Registration, AS7918115, and deny any pending applications for renewal of his registration as a practioner under 21 U.S.C. 823(f) and 824, for reason that effective January 30, 1987, Respondent's license to practice medicine in the State of California was revoked.

In a letter dated March 3, 1987, Respondent requested a hearing on the issues raised in the Order to Show Cause. In response to Respondent's request for hearing, Government counsel filed a motion for summary disposition on March 10, 1987. Subsequently, Respondent filed an opposition to the Government's motion for summary disposition requesting that DEA hold an administrative hearing regarding his DEA Certificate of Registration, since he appealed the revocation of his state medical license.

In his opinion and recommended ruling, the Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked, and any pending application for renewal be denied on the ground that Respondent currently lacks state authority to handle controlled substances.

After reviewing the administrative record, the Administrator finds that Respondent's license to practice medicine was revoked in the State of California as of January 30, 1987. Consequently, he is no longer authorized to handle controlled substances in that State.

The Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to maintain the registration of an individual who no longer is authorized to handle controlled substances in the state in which he or she is registered. See 21 U.S.C. 824(a)(3); **Emerson Emory, M.D.**, Docket No.85-46, 51 FR 9543 (1986); **Avner Kauffman, M.D.**, Docket No. 85-8, FR 34208 (1985); and **Agostino Carlucci, M.D.**, Docket No. 82-20, 49 FR 33184 (1984).

The Administrator concludes that, based upon Respondent's lack of state authorization to handle controlled substances, his DEA Certificate of Registration must be revoked, and any pending applications for renewal must be denied. Having concluded that, under the facts and circumstances presented in this matter, Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AS7918115, previously issued to Ralph J.W. Small, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective September 24, 1987.

Dated: September 18, 1987.

John C. Lawn,
Administrator.

[FR Doc. 87-22063 Filed 9-22-87; 8:45 am]
BILLING CODE 4410-09-M

LEGAL SERVICES CORPORATION

Grant Award to the American Corporate Counsel Institute

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special one-time grant of $50,000 in 1987 to the American Corporate Counsel Institute to expand efforts to motivate corporate law department attorneys to provide *pro bono* legal representation.

DATE: All comments and recommendations must be received by the Office of Field Services on or before October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Office of Field Services, Victoria O'Brien, Acting Assistant to the Director, 400 Virginia Avenue SW., Washington, D.C. 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The American Corporate Counsel Institute (ACCI) will expand efforts begun in 1983 to motivate corporate law departments to provide *pro bono* legal representation. Among other things, such efforts will

approximately 195,000 dosage units of Talwin NX, 24,000 dosage units of APAP with codeine 60 mg., 16,000 dosage units of Tussionex tablets, and 5,000 dosage units of Didrex 50 mg. Subsequent information received from a distributor revealed additional sales of Talwin NX to the pharmacy between January 1, 1986, and June 1, 1987, thereby increasing the shortage to 199,718 dosage units.

DEA investigators also audited pyribenzamine, a noncontrolled substance. This substance was audited because it is often sold in the illicit market in combination with Talwin. The audit revealed that between January 1, 1986, and June 1, 1987, the pharmacy purchased approximately 110,400 dosage units of pyribenzamine. The investigators found prescriptions at the pharmacy to account for 140 dosage units of the substance during the same period of time.

DEA investigators received information from an area distributor of controlled substances which revealed that Medicine Shoppe continued to purchase large quantities of Talwin NX until the service of the Order to Show Cause/Immediate Suspension. Consequently, the Administrator concludes that there is ample evidence to indicate that the continued registration of Medicine Shoppe is inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that the registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3048053, previously issued to Medicine Shoppe, be, and it hereby is, revoked, and any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective immediately.

When the Order to Show Cause/Immediate Suspension was served on Medicine Shoppe, all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until October 26, 1987 or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

John C. Lawn,
Administrator.

Date: September 18, 1987.

[FR Doc. 87-22062 Filed 9-23-87; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 87-27

Revocation of Registration; Denial of Pending Applications for Renewal; Ralph J.W. Small, M.D.

On January 30, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ralph J.W. Small, M.D. (Respondent) of 22962 Via Miramar, Laguna Niguel, California, proposing to revoke his DEA Certificate of Registration, AS7918115, and deny any pending applications for renewal of his registration as a practioner under 21 U.S.C. 823(f) and 824, for reason that effective January 30, 1987, Respondent's license to practice medicine in the State of California was revoked.

In a letter dated March 3, 1987, Respondent requested a hearing on the issues raised in the Order to Show Cause. In response to Respondent's request for hearing, Government counsel filed a motion for summary disposition on March 10, 1987. Subsequently, Respondent filed an opposition to the Government's motion for summary disposition requesting that DEA hold an administrative hearing regarding his DEA Certificate of Registration, since he appealed the revocation of his state medical license.

In his opinion and recommended ruling, the Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked, and any pending application for renewal be denied on the ground that Respondent currently lacks state authority to handle controlled substances.

After reviewing the administrative record, the Administrator finds that Respondent's license to practice medicine was revoked in the State of California as of January 30, 1987. Consequently, he is no longer authorized to handle controlled substances in that State.

The Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to maintain the registration of an individual who no longer is authorized to handle controlled substances in the state in which he or she is registered. See 21 U.S.C. 824(a)(3); **Emerson Emory, M.D.**, Docket No.85-46, 51 FR 9543 (1986); **Avner Kauffman, M.D.**, Docket No. 85-8, FR 34208 (1985); and **Agostino Carlucci, M.D.**, Docket No. 82-20, 49 FR 33184 (1984).

The Administrator concludes that, based upon Respondent's lack of state authorization to handle controlled substances, his DEA Certificate of Registration must be revoked, and any pending applications for renewal must be denied. Having concluded that, under the facts and circumstances presented in this matter, Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AS7918115, previously issued to Ralph J.W. Small, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective September 24, 1987.

Dated: September 18, 1987.

John C. Lawn,
Administrator.

[FR Doc. 87-22063 Filed 9-22-87; 8:45 am]
BILLING CODE 4410-09-M

LEGAL SERVICES CORPORATION

Grant Award to the American Corporate Counsel Institute

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special one-time grant of $50,000 in 1987 to the American Corporate Counsel Institute to expand efforts to motivate corporate law department attorneys to provide *pro bono* legal representation.

DATE: All comments and recommendations must be received by the Office of Field Services on or before October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Office of Field Services, Victoria O'Brien, Acting Assistant to the Director, 400 Virginia Avenue SW., Washington, D.C. 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The American Corporate Counsel Institute (ACCI) will expand efforts begun in 1983 to motivate corporate law departments to provide *pro bono* legal representation. Among other things, such efforts will

include developing models to aid companies initiating and operating *pro bono* programs, conducting seminars to activate corporate *pro bono* involvement, and compiling a directory of corporate counsel active in *pro bono* and statistical information on the *pro bono* activities. Additionally, ACCI intends to make LSC-funded legal service programs aware of the resources of its nationwide *pro bono* program by determining which programs have sufficient interest and attorney base for pursuing the recruitment of corporate personnel. LSC is providing its support to this effort as a model project.

Interested persons are invited to submit written comments and/or recommendations concerning this grant action to Victoria O'Brien.

Dated: September 21, 1987

Mary C. Higgins

Director, Office of Field Services

[FR Doc. 87-22078 Filed 9-23-87; 8:45 am]

BILLING CODE 6820-35-M

Grant Award to the Neighbor to Neighbor Justice Center, Inc.; Request for Comments

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special one-time grant of $50,000 in 1987 to the Neighbor to Neighbor Justice Center, Inc. to provide alternative dispute resolution services to the LSC client-eligible population of Chatham County, Georgia.

DATE: All comments and recommendations must be received by the Office of Field Services on or before October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Office of Field Services, Victoria O'Brien, Acting Assistant to the Director, 400 Virginia Avenue SW., Washington, D.C. 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The Neighbor to Neighbor Justice Center, Inc. (NNJC) will continue the delivery of alternative dispute resolution services to the LSC client-eligible population in Chatham County, Georgia. As a mediation center, NNJC offers a non-adversarial alternative to litigation in the following matters: neighborhood; landlord-tenant; small claims; juvenile; consumer-merchant; business-related; school; and domestic issues, including child visitation. The local client-eligible population benefits from the Project in that it effectively reduces local court system case backlogs and delays and it enhances the availability of services to resolves the aformentioned types of disputes. LSC is providing its support to this effort as a model project.

Interested persons are invited to submit written comments and/or recommendations concerning this grant action to Victoria O'Brien.

Dated: September 21, 1987.

Mary C. Higgins,

Director, Office of Field Services.

[FR Doc. 87-22079 Filed 9-23-87; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-81]

Meeting; NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC)

AGENCY: National Aeronautics and Space Administration.

Federal Register Citation of Previous Announcement: 52 FR 33669, Notice Number 87-71, September 4, 1987.

Previously Announced Times and Dates of Meeting: September 30, 1987, 8:15 a.m. to 5 p.m.

Changes in the Meeting: Date changed to November 10, 1987, 8:15 a.m. to 5 p.m.

Contact Person for More Information: Ms. Anemarie DeYoung, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2704.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 17, 1987.

[FR Doc. 87-22042 Filed 9-23-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Dance Advisory Panel (Advancement Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Advancement Section) to the National Council on the Arts will be held on October 13-14, 1987, from 9:00 a.m.-5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

September 18, 1987.

[FR Doc. 87-22048 Filed 9-23-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Delegation of Award-Approval Authority From the National Science Board to NSF Director

AGENCY: National Science Foundation.

ACTION: Notice of delegation of award-approval authority from the National Science Board to the Director of the National Science Foundation.

SUMMARY: This notice sets forth a delegation of authority from the National Science Board to the Director of the National Science Foundation that was adopted by the Board on August 21, 1987. This delegation is required by section 5(e)(1) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1864(e)(1)). It enables the Director to exercise the authority provided by section 11(c) of the NSF Act (42 U.S.C. 1870(c)) to enter into contracts, grants, and other arrangements for such scientific and engineering activities as the Foundation deems necessary for the purposes of the Act. Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)).

DATE: This delegation of authority was effective on August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Ubois, Executive Officer, National Science Board, National Science Foundation, Washington, DC 20550, 202-357-9582 (this is not a toll-free number).

BEST COPY AVAILABLE

include developing models to aid companies initiating and operating *pro bono* programs, conducting seminars to activate corporate *pro bono* involvement, and compiling a directory of corporate counsel active in *pro bono* and statistical information on the *pro bono* activities. Additionally, ACCI intends to make LSC-funded legal service programs aware of the resources of its nationwide *pro bono* program by determining which programs have sufficient interest and attorney base for pursuing the recruitment of corporate personnel. LSC is providing its support to this effort as a model project.

Interested persons are invited to submit written comments and/or recommendations concerning this grant action to Victoria O'Brien.

Dated: September 21, 1987

Mary C. Higgins

Director, Office of Field Services

[FR Doc. 87-22078 Filed 9-23-87; 8:45 am]

BILLING CODE 6820-35-M

Grant Award to the Neighbor to Neighbor Justice Center, Inc.; Request for Comments

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special one-time grant of $50,000 in 1987 to the Neighbor to Neighbor Justice Center, Inc. to provide alternative dispute resolution services to the LSC client-eligible population of Chatham County, Georgia.

DATE: All comments and recommendations must be received by the Office of Field Services on or before October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Office of Field Services, Victoria O'Brien, Acting Assistant to the Director, 400 Virginia Avenue SW., Washington, D.C. 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The Neighbor to Neighbor Justice Center, Inc. (NNJC) will continue the delivery of alternative dispute resolution services to the LSC client-eligible population in Chatham County, Georgia. As a mediation center, NNJC offers a non-adversarial alternative to litigation in the following matters: neighborhood; landlord-tenant; small claims; juvenile; consumer-merchant; business-related; school; and domestic issues, including child visitation. The local client-eligible population benefits from the Project in that it effectively reduces local court system case backlogs and delays and it enhances the availability of services to resolves the aformentioned types of disputes. LSC is providing its support to this effort as a model project.

Interested persons are invited to submit written comments and/or recommendations concerning this grant action to Victoria O'Brien.

Dated: September 21, 1987.

Mary C. Higgins,

Director, Office of Field Services.

[FR Doc. 87-22079 Filed 9-23-87; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-81]

Meeting; NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC)

AGENCY: National Aeronautics and Space Administration.

Federal Register Citation of Previous Announcement: 52 FR 33669, Notice Number 87-71, September 4, 1987.

Previously Announced Times and Dates of Meeting: September 30, 1987, 8:15 a.m. to 5 p.m.

Changes in the Meeting: Date changed to November 10, 1987, 8:15 a.m. to 5 p.m.

Contact Person for More Information: Ms. Anemarie DeYoung, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2704.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 17, 1987.

[FR Doc. 87-22042 Filed 9-23-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Dance Advisory Panel (Advancement Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Advancement Section) to the National Council on the Arts will be held on October 13-14, 1987, from 9:00 a.m.-5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

September 18, 1987.

[FR Doc. 87-22048 Filed 9-23-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Delegation of Award-Approval Authority From the National Science Board to NSF Director

AGENCY: National Science Foundation.

ACTION: Notice of delegation of award-approval authority from the National Science Board to the Director of the National Science Foundation.

SUMMARY: This notice sets forth a delegation of authority from the National Science Board to the Director of the National Science Foundation that was adopted by the Board on August 21, 1987. This delegation is required by section 5(e)(1) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1864(e)(1)). It enables the Director to exercise the authority provided by section 11(c) of the NSF Act (42 U.S.C. 1870(c)) to enter into contracts, grants, and other arrangements for such scientific and engineering activities as the Foundation deems necessary for the purposes of the Act. Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)).

DATE: This delegation of authority was effective on August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Ubois, Executive Officer, National Science Board, National Science Foundation, Washington, DC 20550, 202-357-9582 (this is not a toll-free number).

BEST COPY AVAILABLE

Document Room, 1717 H Street, NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland this 18th day of September 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 87–22081 Filed 9–23–87; 8:45 am]

BILLING CODE 7590–01–M

Meeting; Advisory Committee on Reactor Safeguards

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 8–10, 1987, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on August 17, 1987.

Thursday, October 8, 1987

8:30 a.m.–8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.–9:45 a.m.: Station Blackout, USI A–44 (Open)—Discuss proposed NRC Staff resolution of ACRS comments in its report of June 9, 1987, Subject: ACRS Comments on the NRC Staff Proposal for the Resolution of USI A–44, "Station Blackout," and related activities of NUMARC regarding this subject.

10:00 a.m.–11:00 a.m.: Integrated Safety Assessment Program (Open)—Discuss proposed NRC Staff's plan for implementation of ISAP taking into account ACRS's comments in its report of July 15, 1987.

11:00 a.m.–11:30 a.m.: Future ACRS Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

11:30 a.m.–12:30 p.m.: and 1:30 p.m.–2:15 p.m.: Management Allocation of Resources (Closed)—Discuss NRC internal allocation of resources, including personnel, to provide technical advice regarding nuclear waste management and disposal.

This session will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy and information that involves the internal personnel rules and practices of NRC.

2:30 p.m.–4:00 p.m.: Management Allocation of Resources (Closed)—Meeting with NRC Commissioners to discuss NRC internal allocation of resources, including personnel, to provide technical advice regarding nuclear waste management and disposal.

This session will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy and information that involves the internal personnel practices of NRC.

4:15 p.m.–5:15 p.m.: Zion Nuclear Station (Open)—Briefing and discussion of full field exercise to exercise emergency plans following a severe core melt accident.

5:15 p.m.–6:00 p.m.: Chernobyl Nuclear Accident (Open)—Discuss proposed NRC Staff implementation of NRC recommendations regarding the lessons learned from this accident and their applicability to U.S. nuclear power plant design and operation.

Friday, October 9, 1987

8:30 a.m.–10:30 a.m.: Seismic Qualification of Nuclear Power Plant Equipment (Open)—Briefing and discussion of the conclusions resulting from the seismic walk-through of the Zion Nuclear Station. Representatives of the NRC Staff and nuclear industry will participate.

10:45 a.m.–12:30 p.m.: Operating Experience (Open/Closed)—Briefing and discussion of recent operating events at nuclear power plants.

Portions of this session may be closed as appropriate to discuss Proprietary Information applicable to the facility being discussed or security plans applicable to the safeguarding of related nuclear facilities and materials.

1:30–3:00 p.m.: Probabilistic Risk Assessment (Open)—Briefing and discussion with representatives of the NRC Staff regarding ACRS comments on the use of NUREG-1150, Reactor Risk Reference Document.

3:15 p.m.–5:15 p.m.: Advanced Light-Water Reactor Design (Open)—Review of EPRI proposed requirements for the design of advanced LWRs.

5:15 p.m.–6:30 p.m.: Emergency Planning (Open)—Discuss proposed ACRS comments regarding use of instrumentation, etc., to monitor and predict the anticipated course of nuclear power plant accidents.

Saturday, October 10, 1987

8:30 a.m.–11:00 a.m.: ACRS Reports to NRC (Open/Closed)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting and the NRC Safety Research Program.

Portions of this session will be closed as necessary to discuss information related to the internal personnel practices of the agency and information that represents a clearly unwarranted invasion of personal privacy.

11:00 a.m.–12:45 p.m. and 1:45 p.m.–3:00 p.m.: ACRS Subcommittee Activity (Open)—Hear reports and discuss the status of assigned ACRS subcommittees activities regarding nuclear safety and regulatory matters including nuclear power plant thermal-hydraulic phenomena, auxiliary system performance, reactor coolant pump seal failure, regulatory policies and practices, PWR seismic design margins, and safety philosophy, technology, and criteria.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meetings when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information related to the internal personnel rules and practices of the agency [5 U.S.C. 552b(c)(2)], safeguards information applicable to the nuclear facilities and materials being considered [5 U.S.C. 552b(c)(3)], Proprietary Information applicable to the facilities being discussed [5 U.S.C. 552b(c)(4)], and information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting

SUPPLEMENTARY INFORMATION: The following is the delegation: (1) The Director of the National Science Foundation shall make no award involving a total commitment of more than six million dollars or more than one and one-half million dollars in any one year without the prior approval of the National Science Board, except for:

a. Any award for a new project or facility where the Board has approved a project development plan and has not specifically required approval of the award; or

b. Any continuing project, facility, or logistics-support arrangement listed in the Exemption List attached to this resolution. Such Exemption List is to be compiled, at least annually, for each calender Year for NSB approval in November of the preceding calender year.

(2) Paragraph (1)a. does not apply, however, if the award amounts would exceed the corresponding amounts specified in the budget accompanying the development plan by either (i) more than eight percent times the number of full years since the initial award for that project or facility, or (ii) more than twenty-four percent.

(3) Except as provided in paragraphs (1) and (2) or by specific resolution of the National Science Board, the Board hereby delegates to the Director authority to make any award within the authority of the Foundation, consistent with the authority of the Board to approve the Foundation's programs.

(4) Except as provided in paragraph (2) or by specific resolution of the National Science Board, when the Board approves the award of a specific amount of funds, the Director may subsequently amend the award to commit additional sums, not to exceed ten percent of the amount specified, or to change the expiration date of the award.

(5) This resolution is effective for two years and supersedes and replaces the resolution of the National Science Board on this subject adopted in January 1986, which superseded resolutions adopted in July 1968 and amended in February 1969, February 1974, and April 1977.

As stated in its final section, this delegation replaces earlier ones on the same subject. This delegation, like those preceding it, is a matter of internal agency management and therefore not subject to Executive Order 12291 of February 17, 1981 (3 CFR 1981 Comp., p. 127). Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)), which was enacted by section 109(b) of the National Science Foundation Authorization Act, Fiscal Year 1986 (99 Stat. 889; Pub. L. 99-159).

Thomas Ubois,

Executive Officer.

September 8, 1987.

[FR Doc. 87-22007 Filed 9-23-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237/249]

Environmental Assessment and Finding of No Significant Impact; Commonwealth Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 to the Commonwealth Edison Company (CECo) (the licensee) for the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the technical requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 relating to the fixed-fire detection and suppression capability in the drywell expansion gap.

The Need for the Proposed Action

Following the January 20, 1986 fire involving the polyurethane foam in the drywell expansion gap, the licensee was told by letter dated February 25, 1986, that the separation criteria in Section III.G.3 of Appendix R to 10 CFR Part 50 are apparently not met. Further, the licensee was requested to address this matter of compliance with Appendix R, showing either why the unit is in compliance, how compliance can be achieved, or, request an exemption from any requirement of Appendix R that is not met. The licensee's response of May 6, 1986, showed that the unit was in compliance in every way except the automatic fire detectors and the fixed suppression requirements. By letter dated June 5, 1986, the Licensee proposed exemption from the detection and suppression requirement.

Environmental Impact of the Proposed Action

The proposed action does not affect the level of fire protection required by Appendix R. The automatic detection and fixed fire suppression are not physically possible to install in the two-inch drywell expansion gap. However, the licensee has shown that a spread of any fire in the two-inch drywell gap to the drywell is not possible, and that if the fire did spread into the reactor building it would only affect one fire area of one unit. Therefore, an independent safe shutdown path would be available. In addition, the licensee showed that impairment of safe shutdown for either unit would not result if the penetrations through the drywell gap were damaged.

Thus, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or lesser environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of Section III.G.3 of Appendix R to 10 CFR Part 50. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated May 6 and June 5, 1986. These letters are available for public inspection at the Commission's Public

Document Room, 1717 H Street, NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland this 18th day of September 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 87–22081 Filed 9–23–87; 8:45 am]

BILLING CODE 7590–01–M

Meeting; Advisory Committee on Reactor Safeguards

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Further information regarding topics to be discussed, whether the meeting

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a. Any award for a new project or facility where the Board has approved a project development plan and has not specifically required approval of the award; or

b. Any continuing project, facility, or logistics-support arrangement listed in the Exemption List attached to this resolution. Such Exemption List is to be compiled, at least annually, for each calender Year for NSB approval in November of the preceding calender year.

(2) Paragraph (1)a. does not apply, however, if the award amounts would exceed the corresponding amounts specified in the budget accompanying the development plan by either (i) more than eight percent times the number of full years since the initial award for that project or facility, or (ii) more than twenty-four percent.

(3) Except as provided in paragraphs (1) and (2) or by specific resolution of the National Science Board, the Board hereby delegates to the Director authority to make any award within the authority of the Foundation, consistent with the authority of the Board to approve the Foundation's programs.

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(5) This resolution is effective for two years and supersedes and replaces the resolution of the National Science Board on this subject adopted in January 1986, which superseded resolutions adopted in July 1968 and amended in February 1969, February 1974, and April 1977.

As stated in its final section, this delegation replaces earlier ones on the same subject. This delegation, like those preceding it, is a matter of internal agency management and therefore not subject to Executive Order 12291 of February 17, 1981 (3 CFR 1981 Comp., p. 127). Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)), which was enacted by section 109(b) of the National Science Foundation Authorization Act, Fiscal Year 1986 (99 Stat. 889; Pub. L. 99-159).

Thomas Ubois,

Executive Officer.

September 8, 1987.

[FR Doc. 87-22007 Filed 9-23-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237/249]

Environmental Assessment and Finding of No Significant Impact; Commonwealth Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 to the Commonwealth Edison Company (CECo) (the licensee) for the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the technical requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 relating to the fixed-fire detection and suppression capability in the drywell expansion gap.

The Need for the Proposed Action

Following the January 20, 1986 fire involving the polyurethane foam in the drywell expansion gap, the licensee was told by letter dated February 25, 1986, that the separation criteria in Section III.G.3 of Appendix R to 10 CFR Part 50 are apparently not met. Further, the licensee was requested to address this matter of compliance with Appendix R, showing either why the unit is in compliance, how compliance can be achieved, or, request an exemption from any requirement of Appendix R that is not met. The licensee's response of May 6, 1986, showed that the unit was in compliance in every way except the automatic fire detectors and the fixed suppression requirements. By letter dated June 5, 1986, the Licensee proposed exemption from the detection and suppression requirement.

Environmental Impact of the Proposed Action

The proposed action does not affect the level of fire protection required by Appendix R. The automatic detection and fixed fire suppression are not physically possible to install in the two-inch drywell expansion gap. However, the licensee has shown that a spread of any fire in the two-inch drywell gap to the drywell is not possible, and that if the fire did spread into the reactor building it would only affect one fire area of one unit. Therefore, an independent safe shutdown path would be available. In addition, the licensee showed that impairment of safe shutdown for either unit would not result if the penetrations through the drywell gap were damaged.

Thus, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or lesser environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of Section III.G.3 of Appendix R to 10 CFR Part 50. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated May 6 and June 5, 1986. These letters are available for public inspection at the Commission's Public

Date: September 15, 1987.

Mildred A. Osowski,

Office of the General Counsel.

[FR Doc. 87-22004 Filed 9-23-87; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15991; File No. 812-6799]

Lutheran Brotherhood Variable Insurance Products Company et al.

September 18, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Lutheran Brotherhood Variable Insurance Products Company ("Company"), LBVIP Variable Insurance Account II ("Account"), and Lutheran Brotherhood Securities Corp.

Relevant 1940 Act Sections: Exemptions requested *under* section 6(c) *from* sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d) and 27(f), and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(iv), (b)(13)(viii), (c)(1), (c)(4), 22c-1 and 27f-1 thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit the offering of single premium variable life insurance Contracts. Specifically, Applicants seek the relief necessary to (1) permit the Account to hold shares of the Fund under an open account arrangement; (2) deduct a contingent deferred sales charge upon surrender of the contract during the first 8 contract years; (3) deduct the Cost of Insurance Charge, the Monthly Insurance Charge and the Premium Tax Charge daily from the net assets of the variable account; (4) deduct a Minimum Death Benefit Charge daily from the net assets of each Subaccount of the Account; (5) Personally deliver the right of withdrawal notice together with the contract in certain circumstances, and to furnish notice of such withdrawal right and a statement of contract charges on a written document containing information comparable to that required by Form W-27I-2; (6) base the Cost of Insurance Charge on the 1980 CSO Table; and to (7) permit the refund during the free-look period to reflect the investment performance of the chosen Subaccounts of the Account.

FILING DATE: The application was filed on June 29, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on October 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Otis F. Hilbert, 625 Fourth Avenue South, Minneapolis, MN 55415.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, attorney (202) 272-2026 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Company, a stock life insurance company, is organized under the laws of the State of Minnesota. The Account, a separate account of the Company, is registered under the 1940 Act as a unit investment trust. The Company and the Account intend to issue single premium variable life insurance contracts ("contract(s)"), as defined in paragraph (c)(1) of Rule 6e-2 under the 1940 Act, funded through the Account. The Account will invest in shares of the Fund, which is registered as a diversified open-end management company under the 1940 Act.

2. Applicants request an exemption from sections 26(a)(1) and (2) and 27(c)(2) of the Act and Rule 6e-2 to the extent necessary to permit the Account to hold shares of the Fund under an open account arrangement without the use of stock certificates and without the Company acting as trustee or custodian pursuant to a trust indenture. Applicants will meet the conditions of the proposed amendments to Rule 6e-2(b)(13)(iii), that is, that the Company complies with all other applicable provisions of section 26 as if it were a trustee, depositor or custodian for the Account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has an unassigned surplus of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operation.

3. No sales charge is deducted from the single premium payment permitted under the contract; however, the Company will deduct a contingent deferred sales charge ("surrender charge"), to recover certain expenses relating to the sale and distribution of the contracts. During the first 8 contact years the amount available to the owner upon surrender ("cash surrender value") will be adjusted to reflect a charge equal to 6% of the single premium during the first five contract years, 5% during the sixth contract year, 4% during the seventh contract year, 3% during the eighth contract year, and 0% thereafter. The surrender charge will only apply upon lapse or full surrender of the contract (no partial surrenders are permitted under the contract).

4. Applicants represent that the surrender charge benefits the public, is more advantageous to the owner than a front-end load, and is consistent with the general purpose of variable life insurance. Applicants state that the surrender charge will generally provide a higher cash surrender value and a greater death benefit than a front-end sales charge because more money is invested for the owner from the start of the contract. Applicants assert that Rule 6e-2 can be read as only contemplating sales loads imposed upon a premium payment, and Applicants seek exemptive relief in order to avoid any question regarding complete compliance with the 1940 Act and rules thereunder.

5. Section 2(a)(35) contemplates that a charge to cover sales and promotional expenses incurred in connection with the sale of investment company securities will be deducted at the time payment for those securities is made, and that a deferred sales charge may not be encompassed by the definition of sales load in Rule 6e-2, paragraphs (b)(1) and (c)(4). Applicants seek exemptive relief from those provisions to permit the imposition of a deferred sales charge on the grounds, among other things, that the timing of the surrender charge does not change its general nature. Applicants also seek

has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: September 21, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–22080 Filed 9–23–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409; License No. DPR–45 EA 87–02]

Order Imposing Civil Monetary Penalty; Dairyland Power Cooperative (LaCrosse Boiling Water Reactor)

I.

Dairyland Power Cooperative (Licensee) is the holder of Operating License No. DPR–45 (License) issued by the Nuclear Regulatory Commission (Commission or NRC) on July 3, 1967. The License authorizes the Licensee to operate the LaCrosse Boiling Water Reactor in accordance with the conditions specified therein.

II.

A routine physical security inspection of the Licensee's activities was conducted during the period November 17–24, 1986. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the Licensee by letter dated February 24, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated March 25, 1987.

III.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations, has determined as set forth in the Appendix to this Order that the violations occurred as stated.

IV.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is Hereby Ordered that:

The Licensee pay a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland this 16th day of September 1987.

[FR Doc. 87–22082 Filed 9–23–87; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 M Street NW., Washington, DC 20527; Telephone (202) 457–7151.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

Summary of Form Under Review

Type of Request: Extension
Title: Investment Missions Application Form
Form Number: OPIC–78
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All Description of Affected Public: U.S. companies investing overseas
Number of Responses: 120 per year
Reporting Hours: .5 hour per application
Federal Cost: $3,600.00
Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses)

The Investment Missions Application Form is completed by U.S. companies interested in participating in an OPIC sponsored investment mission. The form provides the necessary information for internal evaluation of a U.S. firm's capability and resources to undertake an overseas project.

Date: September 15, 1987.

Mildred A. Osowski,

Office of the General Counsel.

[FR Doc. 87-22004 Filed 9-23-87; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15991; File No. 812-6799]

Lutheran Brotherhood Variable Insurance Products Company et al.

September 18, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Lutheran Brotherhood Variable Insurance Products Company ("Company"), LBVIP Variable Insurance Account II ("Account"), and Lutheran Brotherhood Securities Corp.

Relevant 1940 Act Sections: Exemptions requested *under* section 6(c) *from* sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d) and 27(f), and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(iv), (b)(13)(viii), (c)(1), (c)(4), 22c-1 and 27f-1 thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit the offering of single premium variable life insurance Contracts. Specifically, Applicants seek the relief necessary to (1) permit the Account to hold shares of the Fund under an open account arrangement; (2) deduct a contingent deferred sales charge upon surrender of the contract during the first 8 contract years; (3) deduct the Cost of Insurance Charge, the Monthly Insurance Charge and the Premium Tax Charge daily from the net assets of the variable account; (4) deduct a Minimum Death Benefit Charge daily from the net assets of each Subaccount of the Account; (5) Personally deliver the right of withdrawal notice together with the contract in certain circumstances, and to furnish notice of such withdrawal right and a statement of contract charges on a written document containing information comparable to that required by Form W-27I-2; (6) base the Cost of Insurance Charge on the 1980 CSO Table; and to (7) permit the refund during the free-look period to reflect the investment performance of the chosen Subaccounts of the Account.

FILING DATE: The application was filed on June 29, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on October 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Otis F. Hilbert, 625 Fourth Avenue South, Minneapolis, MN 55415.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, attorney (202) 272-2026 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Company, a stock life insurance company, is organized under the laws of the State of Minnesota. The Account, a separate account of the Company, is registered under the 1940 Act as a unit investment trust. The Company and the Account intend to issue single premium variable life insurance contracts ("contract(s)"), as defined in paragraph (c)(1) of Rule 6e-2 under the 1940 Act, funded through the Account. The Account will invest in shares of the Fund, which is registered as a diversified open-end management company under the 1940 Act.

2. Applicants request an exemption from sections 26(a)(1) and (2) and 27(c)(2) of the Act and Rule 6e-2 to the extent necessary to permit the Account to hold shares of the Fund under an open account arrangement without the use of stock certificates and without the Company acting as trustee or custodian pursuant to a trust indenture. Applicants will meet the conditions of the proposed amendments to Rule 6e-2(b)(13)(iii), that is, that the Company complies with all other applicable provisions of section 26 as if it were a trustee, depositor or custodian for the Account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has an unassigned surplus of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operation.

3. No sales charge is deducted from the single premium payment permitted under the contract; however, the Company will deduct a contingent deferred sales charge ("surrender charge"), to recover certain expenses relating to the sale and distribution of the contracts. During the first 8 contact years the amount available to the owner upon surrender ("cash surrender value") will be adjusted to reflect a charge equal to 6% of the single premium during the first five contract years, 5% during the sixth contract year, 4% during the seventh contract year, 3% during the eighth contract year, and 0% thereafter. The surrender charge will only apply upon lapse or full surrender of the contract (no partial surrenders are permitted under the contract).

4. Applicants represent that the surrender charge benefits the public, is more advantageous to the owner than a front-end load, and is consistent with the general purpose of variable life insurance. Applicants state that the surrender charge will generally provide a higher cash surrender value and a greater death benefit than a front-end sales charge because more money is invested for the owner from the start of the contract. Applicants assert that Rule 6e-2 can be read as only contemplating sales loads imposed upon a premium payment, and Applicants seek exemptive relief in order to avoid any question regarding complete compliance with the 1940 Act and rules thereunder.

5. Section 2(a)(35) contemplates that a charge to cover sales and promotional expenses incurred in connection with the sale of investment company securities will be deducted at the time payment for those securities is made, and that a deferred sales charge may not be encompassed by the definition of sales load in Rule 6e-2, paragraphs (b)(1) and (c)(4). Applicants seek exemptive relief from those provisions to permit the imposition of a deferred sales charge on the grounds, among other things, that the timing of the surrender charge does not change its general nature. Applicants also seek

has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: September 21, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–22080 Filed 9–23–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409; License No. DPR–45 EA 87–02]

Order Imposing Civil Monetary Penalty; Dairyland Power Cooperative (LaCrosse Boiling Water Reactor)

I.

Dairyland Power Cooperative (Licensee) is the holder of Operating License No. DPR–45 (License) issued by the Nuclear Regulatory Commission (Commission or NRC) on July 3, 1967. The License authorizes the Licensee to operate the LaCrosse Boiling Water Reactor in accordance with the conditions specified therein.

II.

A routine physical security inspection of the Licensee's activities was conducted during the period November 17–24, 1986. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the Licensee by letter dated February 24, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated March 25, 1987.

III.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations, has determined as set forth in the Appendix to this Order that the violations occurred as stated.

IV.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is Hereby Ordered that:

The Licensee pay a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland this 16th day of September 1987.

[FR Doc. 87–22082 Filed 9–23–87; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 M Street NW., Washington, DC 20527; Telephone (202) 457–7151.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

Summary of Form Under Review

Type of Request: Extension
Title: Investment Missions Application Form
Form Number: OPIC–78
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All Description of Affected Public: U.S. companies investing overseas
Number of Responses: 120 per year
Reporting Hours: .5 hour per application
Federal Cost: $3,600.00
Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses)

The Investment Missions Application Form is completed by U.S. companies interested in participating in an OPIC sponsored investment mission. The form provides the necessary information for internal evaluation of a U.S. firm's capability and resources to undertake an overseas project.

exemptive relief from sections 2(a)(32), 27(c)(1), and 27(d), and Rule 6e–2, paragraphs (b)(12) and (b)(13)(iv), to the extent that such provisions do not contemplate the imposition of a sales charge at the time of redemption. Applicants submit that the contracts are redeemable securities, whether the sales charge is imposed at the time of purchase or whether such charge is deferred and made contingent upon an occurrence at a later time.

6. Applicants assert that Rule 6e–2(b)(12) affords exemptive relief from the provisions of section 22(c) and Rule 22c–1 with respect to redemption procedures, which include surrender and exchange provisions in the context of variable life insurance, and that Rule 6e–2(b)(12) could be read as being premised on the absence of a deferred sales charge. Applicants represent that the surrender charge would in no way have the dilutive effect which Rule 22c–1 was designed to prohibit, variable life insurance contracts do not lend themselves to the kind of speculative short-term trading against which Rule 22c–1 was aimed, and the surrender charge would discourage rather than encourage any such trading. Accordingly, Applicants seek exemptive relief from section 22(c) and Rules 22c–1 and 6e–2(b)(12) to the extent necessary to permit them to effect their proposed pricing.

7. Applicants request exemption from Rule 6e–2(c)(1)(i), which defines "variable life insurance contract" in terms of a cash surrender value that varies to reflect the investment experience of a separate account, to the extent necessary for this provision to be deemed to apply to the structure of the cash surrender value under the Applicants' contract.

8. Applicants assert that the exemptive relief provided by Rule 6e–2(b)(13)(iii) is broad enough to permit a deduction from the Account for the Cost of Insurance Charge, the Monthly Insurance Charge and the Premium Tax Charge, each of which is described below. Nevertheless, Applicants request exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

The Cost of Insurance Charge and the Monthly Insurance Charge are two alternative charges under the contract for the cost of providing insurance. Applicants state that the Company will deduct a Cost of Insurance Charge from the Account daily, equivalent on an annual basis to .50% of the daily net assets of each Subaccount of the Account. The contract also provides for an alternative insurance charge, called the Monthly Insurance Charge, which can be deducted monthly from the accumulated value whenever the actual expense of providing insurance exceeds the Cost of Insurance Charge. Cost of insurance rates will be based on the Insured's age, sex and premium class and the Company's expectations as to future experience. For any period that a Monthly Insurance Charge is made, the Company will not make the Cost of Insurance Charge and will waive any surrender charge. The Company guarantees that neither the Cost of Insurance Charge nor the Monthly Insurance Charge will exceed the maximum amount based on the 1980 Commissioners' Standard Ordinary Mortality Table ("1980 CSO Table"). Applicants believe that the Contract provides for an insurance charge which is commensurate with the risks assumed.

During the first 10 contract years, the Company will deduct a Premium Tax Charge daily, equivalent on an annual basis to .20% of the daily net assets of each Subaccount of the Account. This charge is made to compensate the Company for the average premium tax incurred when issuing the contract. After the tenth contract year, the charge will be zero.

Applicants represent that this method of deduction to recover insurance costs and premium taxes increases the amount invested on behalf of owners. Applicants assert that it is more equitable and beneficial to owners to deduct these charges on a periodic basis rather than to deduct it from the single premium. Applicants state that a deduction from the single premium for insurance costs would be large, accompanied by a significant risk charge, based on necessary assumptions about the length of time the contract would be in force, the investment performance of the various Subaccounts, and the other factors necessary to determine the net amount at risk over the life of the contract.

9. The Company deducts a Minimum Death Benefit Charge from the Account daily, equivalent on an annual basis to .40% of the daily net assets of each Subaccount of the Account. This charge is made to compensate the Company for the risk it assumes by providing a minimum death benefit and by providing certain protection against lapse. Applicants request an exemption from Sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit this deduction.

In accordance with the provisions of proposed paragraph (b)(13)(iii) of Rule 6e–2, Applicants represent that they have reviewed the level of the Minimum Death Benefit Charge and assert that it is reasonable in relation to the risks assumed by the Company under the contract. Unlike the typical variable life contract where the minimum death benefit guarantee comes into effect only when the cash value is exhausted, the minimum death benefit guarantee under the contract can come into effect immediately. A minimum death benefit guarantee cost is incurred when the Company is providing a higher death benefit than it is charging for under the Cost of Insurance Charge. This cost is incurred, when the difference between the minimum Death Benefit (that is, the initial face amount) and the actual Death Benefit being charged for (that is, the Accumulated Value multiplied by the applicable Death Benefit Factor) is positive. The "Death Benefit Factor" is a multiple used to determine the Death Benefit under the contract.

The Company will maintain at its home office, available to the Commission, a memorandum explaining the basis for the representation and the documents used to support it. Applicants do not believe that the surrender charge being imposed under the contracts will cover the expected costs of distributing the contracts. The Company has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the contracts will benefit the Account and the owners and represents that a memorandum setting forth the basis for this representation will be maintained at the Company's home office and will be available to the Commission. Applicants further represent that the Account will only invest in underlying fund(s) which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b–1 under the Act to finance distribution expenses.

10. Applicants propose to personally deliver the right of withdrawal notice together with the contract in certain circumstances, and to furnish notice of such withdrawal right and a statement of contract charges on a written document containing information comparable to that required by Form N–27I–2. Applicants request exemptions from section 27(f), Rule 27f–1, and Rule 6e–2(b)(13)(iii)(A) and (viii)(C) to permit such a delivery. Applicants believe their notice will be a more effective disclosure document since it will be tailored to the contracts and that personal delivery conforms to industry practice and is a less costly way of delivering the required notice. Applicants also state that comparable relief has been afforded to flexible

premium contracts and has been proposed for scheduled contracts in pending amendments to Rule 6e–2(b)(13)(viii)(A) and (viii)(C).

11. Applicants state that the Cost of Insurance Charge and the Monthly Insurance Charge will never exceed the maximum amount based on the 1980 CSO Table. Rule 6e–(b)(13)(i) and 6e–2(c)(4) currently contemplate the use of the 1958 Commissioners' Standard Ordinary Mortality Table (the "1958 CSO Table") for calculating the amount of sales load under a contract. Applicants request an exemption from section 27(a)(1) of the 1940 Act and Rule 6e–2(b)(13)(i) and 6e–2(c)(4) to the extent required to permit the maximum cost of insurance charges and the calculation of sales load under the contract to be based on the 1980 CSO Table rather than the 1958 Commissioners' Standard Ordinary Mortality Table. In general, insurance charges based on the 1980 CSO Table are lower than those based on the 1958 CSO Table, which would result in lower charges and higher values under the contract than if such deductions were to be based on the 1958 CSO Table.

12. Rule 6e–2(b)(13)(viii) requires that a variable life insurance contract subject to Rule 6e–2 include a "free-look" period during which the contract can be cancelled and the contract owner can receive a refund equal to the gross premium paid. The contract provides for a free-look privilege that incorporates a refund reflecting, where permitted by state law, the investment performance of the chosen Subaccounts of the Account. Applicants request an exemption from section 27(f) and Rule 6e–2(b)(13)(viii) and Rule 27f–1 to the extent necessary to permit the refund during this free-look period to reflect the investment performance of the chosen Subaccounts of the Account.

Applicants state that a substantial period of time could elapse during which the single premium will be invested in the Subaccounts. The amount invested will be substantial because the single premium will be substantial and the contract imposes no front-end charges. As a result, the amount of appreciation or depreciation in the amount invested could be substantial, which distinguishes the contract from various other scheduled premium variable life insurance contracts that are subject to Rule 6e–2. Applicants assert that allowing the owner to bear the risk and enjoy the benefit of investment experience during the free-look period is consistent with the policies of section 27(f) of the 1940 Act.

Applicants state that upon giving notice of cancellation and returning the contract (if it has been delivered), the contract owner will receive a refund equal to the sum of (1) the Accumulated Value as of the date the returned contract is received by LBVIP at its home office or by the LBVIP representative from whom the contract was purchased, plus (2) any Monthly Insurance Charge, plus (3) the Asset Charge deducted from the value of the net assets of the Variable Accout attributable to the contracts, plus, (4) the advisory fees charged by the Fund against net asset value in the Fund Portfolios attributable to the contract's value in the corresponding Subaccount(s) of the Variable Account. When state law requires a minimum refund equal to gross premiums paid, the refund will not reflect the investment experience of the Variable Account.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22039 Filed 9–23–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Meeting; Colorado Advisory Council

The U.S. Small Business Administration Colorado Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:00 a.m., on Monday, October 26, 1987, at the Byron G. Rogers Federal Building, 1961 Stout Street, Room 244, Denver, Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Dratin Hill, Jr., Colorado District Director, U.S. Small Business Administration, 721 19th. Street, Room 426, Denver, Colorado—(303) 844–3673.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 16, 1987.

[FR Doc. 87–22072 Filed 9–23–87; 8:45 am]

BILLING CODE 8025–01–M

Meeting; Region V Advisory Council

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting on October 20, 1987, at 2:00 p.m. at the U.S. Small Business Administration District Office, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–22073 Filed 9–23–87; 8:45 am]

BILLING CODE 8025–01–M

Meeting; Region IV Advisory Council

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 9:30 a.m., Thursday, October 8, 1987, at the Town House, 1615 Gervais St., Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

Further information may be obtained by writing or calling John C. Patrick, Jr., District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina—(803) 765–5539.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–22074 Filed 9–23–87; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0221]

Filing of Application for Transfer of Ownership and Control; Mighty Capital Corp.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1987) for a transfer of ownership and control of Mighty Capital Corporation (MCC), 50 Technology Park, Atlanta, Georgia 30092, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of MCC, which was licensed May 3, 1983, is subject to the prior written approval of SBA.

The transfer of ownership and control relates to a proposed acquisition by North Riverside Venture, Inc., 5775–D Peachtree Dunwoody Road, Atlanta,

exemptive relief from sections 2(a)(32), 27(c)(1), and 27(d), and Rule 6e–2, paragraphs (b)(12) and (b)(13)(iv), to the extent that such provisions do not contemplate the imposition of a sales charge at the time of redemption. Applicants submit that the contracts are redeemable securities, whether the sales charge is imposed at the time of purchase or whether such charge is deferred and made contingent upon an occurrence at a later time.

6. Applicants assert that Rule 6e–2(b)(12) affords exemptive relief from the provisions of section 22(c) and Rule 22c–1 with respect to redemption procedures, which include surrender and exchange provisions in the context of variable life insurance, and that Rule 6e–2(b)(12) could be read as being premised on the absence of a deferred sales charge. Applicants represent that the surrender charge would in no way have the dilutive effect which Rule 22c–1 was designed to prohibit, variable life insurance contracts do not lend themselves to the kind of speculative short-term trading against which Rule 22c–1 was aimed, and the surrender charge would discourage rather than encourage any such trading. Accordingly, Applicants seek exemptive relief from section 22(c) and Rules 22c–1 and 6e–2(b)(12) to the extent necessary to permit them to effect their proposed pricing.

7. Applicants request exemption from Rule 6e–2(c)(1)(i), which defines "variable life insurance contract" in terms of a cash surrender value that varies to reflect the investment experience of a separate account, to the extent necessary for this provision to be deemed to apply to the structure of the cash surrender value under the Applicants' contract.

8. Applicants assert that the exemptive relief provided by Rule 6e–2(b)(13)(iii) is broad enough to permit a deduction from the Account for the Cost of Insurance Charge, the Monthly Insurance Charge and the Premium Tax Charge, each of which is described below. Nevertheless, Applicants request exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

The Cost of Insurance Charge and the Monthly Insurance Charge are two alternative charges under the contract for the cost of providing insurance. Applicants state that the Company will deduct a Cost of Insurance Charge from the Account daily, equivalent on an annual basis to .50% of the daily net assets of each Subaccount of the Account. The contract also provides for an alternative insurance charge, called the Monthly Insurance Charge, which can be deducted monthly from the accumulated value whenever the actual expense of providing insurance exceeds the Cost of Insurance Charge. Cost of insurance rates will be based on the Insured's age, sex and premium class and the Company's expectations as to future experience. For any period that a Monthly Insurance Charge is made, the Company will not make the Cost of Insurance Charge and will waive any surrender charge. The Company guarantees that neither the Cost of Insurance Charge nor the Monthly Insurance Charge will exceed the maximum amount based on the 1980 Commissioners' Standard Ordinary Mortality Table ("1980 CSO Table"). Applicants believe that the Contract provides for an insurance charge which is commensurate with the risks assumed.

During the first 10 contract years, the Company will deduct a Premium Tax Charge daily, equivalent on an annual basis to .20% of the daily net assets of each Subaccount of the Account. This charge is made to compensate the Company for the average premium tax incurred when issuing the contract. After the tenth contract year, the charge will be zero.

Applicants represent that this method of deduction to recover insurance costs and premium taxes increases the amount invested on behalf of owners. Applicants assert that it is more equitable and beneficial to owners to deduct these charges on a periodic basis rather than to deduct it from the single premium. Applicants state that a deduction from the single premium for insurance costs would be large, accompanied by a significant risk charge, based on necessary assumptions about the length of time the contract would be in force, the investment performance of the various Subaccounts, and the other factors necessary to determine the net amount at risk over the life of the contract.

9. The Company deducts a Minimum Death Benefit Charge from the Account daily, equivalent on an annual basis to .40% of the daily net assets of each Subaccount of the Account. This charge is made to compensate the Company for the risk it assumes by providing a minimum death benefit and by providing certain protection against lapse. Applicants request an exemption from Sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit this deduction.

In accordance with the provisions of proposed paragraph (b)(13)(iii) of Rule 6e–2, Applicants represent that they have reviewed the level of the Minimum Death Benefit Charge and assert that it is reasonable in relation to the risks assumed by the Company under the contract. Unlike the typical variable life contract where the minimum death benefit guarantee comes into effect only when the cash value is exhausted, the minimum death benefit guarantee under the contract can come into effect immediately. A minimum death benefit guarantee cost is incurred when the Company is providing a higher death benefit than it is charging for under the Cost of Insurance Charge. This cost is incurred, when the difference between the minimum Death Benefit (that is, the initial face amount) and the actual Death Benefit being charged for (that is, the Accumulated Value multiplied by the applicable Death Benefit Factor) is positive. The "Death Benefit Factor" is a multiple used to determine the Death Benefit under the contract.

The Company will maintain at its home office, available to the Commission, a memorandum explaining the basis for the representation and the documents used to support it. Applicants do not believe that the surrender charge being imposed under the contracts will cover the expected costs of distributing the contracts. The Company has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the contracts will benefit the Account and the owners and represents that a memorandum setting forth the basis for this representation will be maintained at the Company's home office and will be available to the Commission. Applicants further represent that the Account will only invest in underlying fund(s) which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b–1 under the Act to finance distribution expenses.

10. Applicants propose to personally deliver the right of withdrawal notice together with the contract in certain circumstances, and to furnish notice of such withdrawal right and a statement of contract charges on a written document containing information comparable to that required by Form N–27I–2. Applicants request exemptions from section 27(f), Rule 27f–1, and Rule 6e–2(b)(13)(iii)(A) and (viii)(C) to permit such a delivery. Applicants believe their notice will be a more effective disclosure document since it will be tailored to the contracts and that personal delivery conforms to industry practice and is a less costly way of delivering the required notice. Applicants also state that comparable relief has been afforded to flexible

premium contracts and has been proposed for scheduled contracts in pending amendments to Rule 6e–2(b)(13)(viii)(A) and (viii)(C).

11. Applicants state that the Cost of Insurance Charge and the Monthly Insurance Charge will never exceed the maximum amount based on the 1980 CSO Table. Rule 6e–(b)(13)(i) and 6e–2(c)(4) currently contemplate the use of the 1958 Commissioners' Standard Ordinary Mortality Table (the "1958 CSO Table") for calculating the amount of sales load under a contract. Applicants request an exemption from section 27(a)(1) of the 1940 Act and Rule 6e–2(b)(13)(i) and 6e–2(c)(4) to the extent required to permit the maximum cost of insurance charges and the calculation of sales load under the contract to be based on the 1980 CSO Table rather than the 1958 Commissioners' Standard Ordinary Mortality Table. In general, insurance charges based on the 1980 CSO Table are lower than those based on the 1958 CSO Table, which would result in lower charges and higher values under the contract than if such deductions were to be based on the 1958 CSO Table.

12. Rule 6e–2(b)(13)(viii) requires that a variable life insurance contract subject to Rule 6e–2 include a "free-look" period during which the contract can be cancelled and the contract owner can receive a refund equal to the gross premium paid. The contract provides for a free-look privilege that incorporates a refund reflecting, where permitted by state law, the investment performance of the chosen Subaccounts of the Account. Applicants request an exemption from section 27(f) and Rule 6e–2(b)(13)(viii) and Rule 27f–1 to the extent necessary to permit the refund during this free-look period to reflect the investment performance of the chosen Subaccounts of the Account.

Applicants state that a substantial period of time could elapse during which the single premium will be invested in the Subaccounts. The amount invested will be substantial because the single premium will be substantial and the contract imposes no front-end charges. As a result, the amount of appreciation or depreciation in the amount invested could be substantial, which distinguishes the contract from various other scheduled premium variable life insurance contracts that are subject to Rule 6e–2. Applicants assert that allowing the owner to bear the risk and enjoy the benefit of investment experience during the free-look period is consistent with the policies of section 27(f) of the 1940 Act.

Applicants state that upon giving notice of cancellation and returning the contract (if it has been delivered), the contract owner will receive a refund equal to the sum of (1) the Accumulated Value as of the date the returned contract is received by LBVIP at its home office or by the LBVIP representative from whom the contract was purchased, plus (2) any Monthly Insurance Charge, plus (3) the Asset Charge deducted from the value of the net assets of the Variable Accout attributable to the contracts, plus, (4) the advisory fees charged by the Fund against net asset value in the Fund Portfolios attributable to the contract's value in the corresponding Subaccount(s) of the Variable Account. When state law requires a minimum refund equal to gross premiums paid, the refund will not reflect the investment experience of the Variable Account.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22039 Filed 9–23–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Meeting; Colorado Advisory Council

The U.S. Small Business Administration Colorado Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:00 a.m., on Monday, October 26, 1987, at the Byron G. Rogers Federal Building, 1961 Stout Street, Room 244, Denver, Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Dratin Hill, Jr., Colorado District Director, U.S. Small Business Administration, 721 19th. Street, Room 426, Denver, Colorado—(303) 844–3673.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 16, 1987.

[FR Doc. 87–22072 Filed 9–23–87; 8:45 am]

BILLING CODE 8025–01–M

Meeting; Region V Advisory Council

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting on October 20, 1987, at 2:00 p.m. at the U.S. Small Business Administration District Office, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–22073 Filed 9–23–87; 8:45 am]

BILLING CODE 8025–01–M

Meeting; Region IV Advisory Council

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 9:30 a.m., Thursday, October 8, 1987, at the Town House, 1615 Gervais St., Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

Further information may be obtained by writing or calling John C. Patrick, Jr., District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina—(803) 765–5539.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–22074 Filed 9–23–87; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0221]

Filing of Application for Transfer of Ownership and Control; Mighty Capital Corp.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1987) for a transfer of ownership and control of Mighty Capital Corporation (MCC), 50 Technology Park, Atlanta, Georgia 30092, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of MCC, which was licensed May 3, 1983, is subject to the prior written approval of SBA.

The transfer of ownership and control relates to a proposed acquisition by North Riverside Venture, Inc., 5775–D Peachtree Dunwoody Road, Atlanta,

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-070]

Meeting; Towing Safety Advisory Committee Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on 28 October 1987 in Room 3442-44-46 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of the following topics:

(a) Port Facilities and Operations
(b) Tankbarge--Construction, Certification, Operations
(c) Personnel Manning and Licensing
(d) Personnel Safety and Workplace Standards
(e) Existing Regulations Review and Restructure
(f) IMO/MARPOL Initiatives
(g) Working Group:
(1) Air Quality/Vapor Control

3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Capt J. J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001 or by calling (202) 267-1477.

Dated: September 21, 1987.

B.P. Novak,

Executive Director, Towing Safety Advisory Committee, Acting.

[FR Doc. 87-22085 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-071]

Meeting; Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on 29 October 1987 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. The agenda, which includes docketed rulemakings where indicated, is expected to be as follows:

1. Approval of minutes from July 1987 TSAC meeting.
2. Reports on the following items:

(a) TSAC participation in Coast Guard rulemaking process
(b) Mandatory Alcohol and Drug Testing Following Serious Marine Incidents (CGD 86-080)
(c) Operating a Commercial Vessel While Intoxicated (CGD 84-099)
(d) Drug Detection for Merchant Marine Personnel (CGD 86-067)
(e) Licensing of Pilots (CGD 84-060)
(f) Tankerman Requirements (CGD 79-116)
(g) Licensing of Maritime Personnel (CGD 81-059)
(h) Assistance Towing Licensing (CGD 87-017)
(i) New ABS Rules for Towing Vessels
(j) Air Quality: Vapor Control/Recovery
(k) IMO Status Report
(l) OSHA's Proposed Benzene Standard
(m) Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges (CGD 85-061)
(n) Reinspections of Certificated Vessels
(o) Enforcement Procedures for Marine Sanitation Devices
(p) Hazardous Substances Regulations (CGD 86-034)
(q) Any other matter properly brought before the Committee. Where appropriate, reports on the above items may be followed by TSAC discussion, deliberation, and recommendations concerning these subjects, including rulemaking projects.

3. Summary of Action Items
4. Adjournament

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 25 copies of written material should be submitted to the Executive Director no later than 27 October 1987.

FOR FURTHER INFORMATION CONTACT: Capt. J.J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001, (202) 267-1477.

Dated: September 21, 1987.

B.P. Novak,

Executive Director, Towing Safety Advisory Committee, Acting.

[FR Doc. 87-22086 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

FAA Approval of Noise Compatibility Program; San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its findings on the noise compatibility program submitted by the city of San Jose under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Public Law 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On August 29, 1986 the FAA determined that the noise exposure maps submitted by the city of San Jose under Part 150 were in compliance with applicable requirements. On August 7, 1987, the Administrator approved the "San Jose International Airport Noise Compatibility Program". Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the "San Jose International Airport Noise Compatibility Program" is August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt, Environmental Protection Specialist, AWP-611.2, Federal Aviation Administration, Western Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1534. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the San Jose International Airport, effective August 7, 1987.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of

Georgia 30342, of 73 percent of the stock of Mighty Holding, a company being formed to hold 100 percent of the stock of Mighty Distributing System of America, Inc., which holds 100 percent of the stock of MCC.

MCC is currently owned and managed by the following:

Name	Position	Ownership
Dallas F. Wallace	Chairman, Director	
Charles F. Leibensperger	President, Director	
Jerry D. Beck	Vice President, Director	
David P. Smith	Exec. Vice President, Secretary, Treasurer, Director.	
Gary E. Korynoski	Vice President	
Mighty Distributing System of America, Inc.		100%
If approved, the new ownership and management will be:		
Thomas R. Barry, 4030 Randall Mill Rd., NW, Atlanta, Ga 30327	Chairman, Director	
James W. McClintock IV, 445 Pine Forest Rd., Atlanta, GA 30342	President, Director	
Jerry D. Beck, 1915 Monticello Court, Dunwoody, GA 30338	Vice President Director	
David P. Smith, 8060 River Circle, Dunwoody, GA 30338	Secretary, Treasurer Director	
Mighty Distributing System of America, Inc., 50 Technology Park/Atlanta, Norcross, GA 30092.		100%
North Riverside Venture, Inc., 5775-D Peachtree Dunwoody Rd., Atlanta, GA 30342		73% [1]
Jerry D. Beck		16% [1]
David P. Smith		11% [1]

[1] Indirect ownership through ownership of newly formed company, Mighty Holding, which will own 100% of Mighty Distributing System of America, Inc.

North Riverside Venture, Inc. is controlled indirectly by Great American Management & Investment, Inc., Two North Riverside Plaza, Chicago, Illinois 60606.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Norcross, Georgia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

John L. Werner,

Acting Deputy Associate Administrator for Investment.

Dated: September 17, 1987.

[FR Doc. 87-22071 filed 9-3-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Secretary of State

[Public Notice 1027]

Certification of Foreign Assistance Determinations; Botswana et al

Pursuant to the paragarph entitled "Assistance for Southern Africa" of the Act making supplemental appropriations for the fiscal year ending September 30, 1987, (Pub. L. 100-71), as it relates to assistance for the members of the Southern Africa Development Coordination Conference, and the August 12, 1987 Delegation of Authority by the President, I hereby certify that the following countries meet the conditions specified in that paragraph: Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia.

This determination shall be reported to the Congress immediately and published in the **Federal Register**.

Dated: September 14, 1987.

Signature:

George P. Shultz,

Secretary of State.

[FR Doc. 87-22005 Filed 9-23-87; 8:45 am]

BILLING CODE 4710-24-M

Public Notice CM-8/1116

Shipping Coordinating Committee, Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 am on October 27, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 15th Session of the Assembly of the International Maritime Organization (IMO) which is scheduled for 9-20 November 1987 in London. In particular, the SHC will discuss the development of the U.S. Positions dealing with, inter alia, the following topics:

—Reports of the Major Committees

—Financial Issues

—Personnel Matters

—Council Election

Interested persons may seek information by writing: Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G-CPI) 2100 Second Street, SW, Washington, DC 20593, or by calling: 202-267-2280.

September 8, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87-22013 Filed 9-23-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-070]

Meeting; Towing Safety Advisory Committee Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on 28 October 1987 in Room 3442-44-46 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of the following topics:

(a) Port Facilities and Operations
(b) Tankbarge--Construction, Certification, Operations
(c) Personnel Manning and Licensing
(d) Personnel Safety and Workplace Standards
(e) Existing Regulations Review and Restructure
(f) IMO/MARPOL Initiatives
(g) Working Group:
(1) Air Quality/Vapor Control

3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Capt J. J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001 or by calling (202) 267-1477.

Dated: September 21, 1987.

B.P. Novak,

Executive Director, Towing Safety Advisory Committee, Acting.

[FR Doc. 87-22085 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-071]

Meeting; Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on 29 October 1987 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. The agenda, which includes docketed rulemakings where indicated, is expected to be as follows:

1. Approval of minutes from July 1987 TSAC meeting.
2. Reports on the following items:

(a) TSAC participation in Coast Guard rulemaking process
(b) Mandatory Alcohol and Drug Testing Following Serious Marine Incidents (CGD 86-080)
(c) Operating a Commercial Vessel While Intoxicated (CGD 84-099)
(d) Drug Detection for Merchant Marine Personnel (CGD 86-067)
(e) Licensing of Pilots (CGD 84-060)
(f) Tankerman Requirements (CGD 79-116)
(g) Licensing of Maritime Personnel (CGD 81-059)
(h) Assistance Towing Licensing (CGD 87-017)
(i) New ABS Rules for Towing Vessels
(j) Air Quality: Vapor Control/Recovery
(k) IMO Status Report
(l) OSHA's Proposed Benzene Standard
(m) Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges (CGD 85-061)
(n) Reinspections of Certificated Vessels
(o) Enforcement Procedures for Marine Sanitation Devices
(p) Hazardous Substances Regulations (CGD 86-034)
(q) Any other matter properly brought before the Committee. Where appropriate, reports on the above items may be followed by TSAC discussion, deliberation, and recommendations concerning these subjects, including rulemaking projects.

3. Summary of Action Items
4. Adjournament

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 25 copies of written material should be submitted to the Executive Director no later than 27 October 1987.

FOR FURTHER INFORMATION CONTACT: Capt. J.J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001, (202) 267-1477.

Dated: September 21, 1987.

B.P. Novak,

Executive Director, Towing Safety Advisory Committee, Acting.

[FR Doc. 87-22086 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

FAA Approval of Noise Compatibility Program; San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its findings on the noise compatibility program submitted by the city of San Jose under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Public Law 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On August 29, 1986 the FAA determined that the noise exposure maps submitted by the city of San Jose under Part 150 were in compliance with applicable requirements. On August 7, 1987, the Administrator approved the "San Jose International Airport Noise Compatibility Program". Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the "San Jose International Airport Noise Compatibility Program" is August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt, Environmental Protection Specialist, AWP-611.2, Federal Aviation Administration, Western Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1534. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the San Jose International Airport, effective August 7, 1987.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of

Georgia 30342, of 73 percent of the stock of Mighty Holding, a company being formed to hold 100 percent of the stock of Mighty Distributing System of America, Inc., which holds 100 percent of the stock of MCC.

MCC is currently owned and managed by the following:

Name	Position	Ownership
Dallas F. Wallace	Chairman, Director	
Charles F. Leibensperger	President, Director	
Jerry D. Beck	Vice President, Director	
David P. Smith	Exec. Vice President, Secretary, Treasurer, Director.	
Gary E. Korynoski	Vice President	
Mighty Distributing System of America, Inc.		100%
If approved, the new ownership and management will be:		
Thomas R. Barry, 4030 Randall Mill Rd., NW, Atlanta, Ga 30327	Chairman, Director	
James W. McClintock IV, 445 Pine Forest Rd., Atlanta, GA 30342	President, Director	
Jerry D. Beck, 1915 Monticello Court, Dunwoody, GA 30338	Vice President Director	
David P. Smith, 8060 River Circle, Dunwoody, GA 30338	Secretary, Treasurer Director	
Mighty Distributing System of America, Inc., 50 Technology Park/Atlanta, Norcross, GA 30092.		100%
North Riverside Venture, Inc., 5775-D Peachtree Dunwoody Rd., Atlanta, GA 30342		73% [1]
Jerry D. Beck		16% [1]
David P. Smith		11% [1]

[1] Indirect ownership through ownership of newly formed company, Mighty Holding, which will own 100% of Mighty Distributing System of America, Inc.

North Riverside Venture, Inc. is controlled indirectly by Great American Management & Investment, Inc., Two North Riverside Plaza, Chicago, Illinois 60606.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Norcross, Georgia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

John L. Werner,

Acting Deputy Associate Administrator for Investment.

Dated: September 17, 1987.

[FR Doc. 87-22071 filed 9-3-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Secretary of State

[Public Notice 1027]

Certification of Foreign Assistance Determinations; Botswana et al

Pursuant to the paragarph entitled "Assistance for Southern Africa" of the Act making supplemental appropriations for the fiscal year ending September 30, 1987, (Pub. L. 100-71), as it relates to assistance for the members of the Southern Africa Development Coordination Conference, and the August 12, 1987 Delegation of Authority by the President, I hereby certify that the following countries meet the conditions specified in that paragraph: Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia.

This determination shall be reported to the Congress immediately and published in the **Federal Register**.

Dated: September 14, 1987.

Signature:

George P. Shultz,

Secretary of State.

[FR Doc. 87-22005 Filed 9-23-87; 8:45 am]

BILLING CODE 4710-24-M

Public Notice CM-8/1116

Shipping Coordinating Committee, Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 am on October 27, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 15th Session of the Assembly of the International Maritime Organization (IMO) which is scheduled for 9-20 November 1987 in London. In particular, the SHC will discuss the development of the U.S. Positions dealing with, inter alia, the following topics:

—Reports of the Major Committees

—Financial Issues

—Personnel Matters

—Council Election

Interested persons may seek information by writing: Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G-CPI) 2100 Second Street, SW, Washington, DC 20593, or by calling: 202-267-2280.

September 8, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87-22013 Filed 9-23-87; 8:45 am]

BILLING CODE 4710-07-M

within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of the flight procedures which can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law.

Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Harrisburg, Pennsylvania.

The DACA submitted to the FAA on September 16, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 1979 to July 1981. The GPIA noise exposure maps were determined by FAA to be in compliance with the applicable requirements on March 4, 1987. Notice of this determination was published in the **Federal Register** on March 25, 1987.

The GPIA study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 4, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 14 proposed actions for noise mitigation on and off the airport and for review and monitoring of the program. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 23, 1987.

Outright approval was granted for all 14 program elements. On-airport actions include preferential runway use and run-up procedures. Off-airport elements include land acquisition, soundproofing, zoning and preventive land use planning and policies.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 23, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above, the FAA Harrisburg Airports District Office, and at the administrative offices of the Greater Pittsburgh International Airport.

Issued in Jamaica, New York, on September 8, 1987.

Arnold Aquilano,

Deputy Director, Eastern Region.

[FR Doc. 87-22091 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-13-M

Airport Noise Compatibility Program; Receipt of and Request for Review of Noise Exposure Map for Memphis International Airport, Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTON: Notice.

SUMMARY: The FAA announces its determination that the noise exposure maps submitted by the Memphis-Shelby County Airport Authority (MSCAA) for the Memphis International Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Memphis International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 8, 1988.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 10, 1987. The public comment period ends November 10, 1987.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Principal Planner/Programmer; Airports District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee 38118-3004; telephone number 901/521-3495.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Memphis International Airport are in compliance with applicable requirements of Part 150, effective September 10, 1987. Further the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 8, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abate Act of 79 (hereinafter referred to as "the Act"), an airport operator may submit to the

1979, (hereinafter referred to as "the Act"), an airport operator who has previously submitted noise exposure maps may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with the Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airways Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airport District Office in Burlingame, California.

The city of San Jose submitted to the FAA on October 24, 1985, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from 1984 through 1987. The San Jose International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 29, 1986. Notice of this determination was published in the **Federal Register** on February 27, 1987.

The San Jose International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdiction from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 11, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained twenty-eight (28) proposed actions for noise mitigation, on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 7, 1987. Outright approval was granted for twenty-three (23) of the specific program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 7, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the city of San Jose.

Issued in Hawthorne, California on September 4, 1987.

Herman C. Bliss,

Manager Airports Division, FAA Western-Pacific Region.

[FR Doc. 87-22090 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-13-M

FAA Approval of Noise Compatibility Program; Greater Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Department of Aviation, County of Allegheny (DACA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report 96-52 (1980). On March 4, 1987, the FAA determined that the noise exposure maps submitted by DACA under Part 150 were in compliance with applicable requirements. On August 23, 1987, the Administrator approved the Greater Pittsburgh International Airport (GPIA) noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the GPIA noise compatibility program is August 23, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA-610, Fitzgerald Federal Building, JFK Int'l Airport, Jamaica, NY 11430; telephone No. (718) 917-0902.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval of the noise compatibility program for GPIA, effective August 23, 1987.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted to the FAA a noise exposure map may submit a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land use and prevention of additional noncompatible land uses

within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of the flight procedures which can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law.

Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Harrisburg, Pennsylvania.

The DACA submitted to the FAA on September 16, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 1979 to July 1981. The GPIA noise exposure maps were determined by FAA to be in compliance with the applicable requirements on March 4, 1987. Notice of this determination was published in the **Federal Register** on March 25, 1987.

The GPIA study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 4, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 14 proposed actions for noise mitigation on and off the airport and for review and monitoring of the program. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 23, 1987.

Outright approval was granted for all 14 program elements. On-airport actions include preferential runway use and run-up procedures. Off-airport elements include land acquisition, soundproofing, zoning and preventive land use planning and policies.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 23, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above, the FAA Harrisburg Airports District Office, and at the administrative offices of the Greater Pittsburgh International Airport.

Issued in Jamaica, New York, on September 8, 1987.

Arnold Aquilano,

Deputy Director, Eastern Region.

[FR Doc. 87-22091 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-13-M

Airport Noise Compatibility Program; Receipt of and Request for Review of Noise Exposure Map for Memphis International Airport, Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTON: Notice.

SUMMARY: The FAA announces its determination that the noise exposure maps submitted by the Memphis-Shelby County Airport Authority (MSCAA) for the Memphis International Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Memphis International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 8, 1988.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 10, 1987. The public comment period ends November 10, 1987.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Principal Planner/Programmer; Airports District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee 38118-3004; telephone number 901/521-3495.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Memphis International Airport are in compliance with applicable requirements of Part 150, effective September 10, 1987. Further the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 8, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abate Act of 79 (hereinafter referred to as "the Act"), an airport operator may submit to the

1979, (hereinafter referred to as "the Act"), an airport operator who has previously submitted noise exposure maps may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with the Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airways Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airport District Office in Burlingame, California.

The city of San Jose submitted to the FAA on October 24, 1985, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from 1984 through 1987. The San Jose International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 29, 1986. Notice of this determination was published in the **Federal Register** on February 27, 1987.

The San Jose International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdiction from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 11, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained twenty-eight (28) proposed actions for noise mitigation, on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 7, 1987. Outright approval was granted for twenty-three (23) of the specific program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 7, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the city of San Jose.

Issued in Hawthorne, California on September 4, 1987.

Herman C. Bliss,

Manager Airports Division, FAA Western-Pacific Region.

[FR Doc. 87-22090 Filed 9-23-87; 8:45 am]

BILLING CODE 4910-13-M

FAA Approval of Noise Compatibility Program; Greater Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Department of Aviation, County of Allegheny (DACA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report 96-52 (1980). On March 4, 1987, the FAA determined that the noise exposure maps submitted by DACA under Part 150 were in compliance with applicable requirements. On August 23, 1987, the Administrator approved the Greater Pittsburgh International Airport (GPIA) noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the GPIA noise compatibility program is August 23, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA-610, Fitzgerald Federal Building, JFK Int'l Airport, Jamaica, NY 11430; telephone No. (718) 917-0902.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval of the noise compatibility program for GPIA, effective August 23, 1987.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted to the FAA a noise exposure map may submit a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land use and prevention of additional noncompatible land uses

FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for the FAA's approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Memphis International Airport, also effective on September 10, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 8, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific references to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW.; Room 617, Washington, DC 20591.

Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118–3004.

Mr. Larry D. Cox, President, Memphis-Shelby County Airport Authority, Memphis International Airport, Memphis, TN 38130.

Questions may be directed to the individual named above under the heading, "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Memphis, Tennessee, September 10, 1987.

John M. Dempsey,

Manager, Memphis Airports District Office.

[FR Doc. 87–22089 Filed 9–23–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Colbert and Lauderdale Counties, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Colbert and Lauderdale Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. R. W. Evers, District Engineer, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104–4684, Telephone: (205) 832–7379. Mr. Royce G. King, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone: (205) 261–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project DE–0026(801). This proposal is to construct a modern multi-lane bridge and approaches crossing the Tennessee River in the Shoals Metropolitan Area. Approximate length of the project is 3.5 miles.

The Tennessee River serves as a physical separation between the City of Florence, located in Lauderdale County on the north side of the river, and the cities of Muscle Shoals, Sheffield, and Tuscumbia, located in Colbert County on the south side of the river. Traffic volumes on existing bridges in the Shoals area approach or exceed the capacities of the structures. As traffic demand in the Shoals Area continues to increase (at an estimated rate of 2.26% annually), operating conditions on the existing bridge will worsen. The proposed multi-lane bridge and approaches will provide a safer and freer flowing facility for both area residents and the traveling public.

Alternatives under consideration include: (1) Alternate route locations, (2) a no action alternative, and (3) postponing the action alternative.

A public involvement meeting has been held to acquire local input on the porposed projects. Written comments have been solicited from Federal, State and local agencies, officials and individuals who may have an interest in the proposal. A scoping meeting is to be held in the auditorium of the Second Division Office of the Alabama Highway Department, Highway 20 East, Tuscumbia, Alabama, at 1:30 p.m. Central Standard Time, on November 4, 1987.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for the FAA's approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Memphis International Airport, also effective on September 10, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 8, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific references to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW.; Room 617, Washington, DC 20591.

Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118–3004.

Mr. Larry D. Cox, President, Memphis-Shelby County Airport Authority, Memphis International Airport, Memphis, TN 38130.

Questions may be directed to the individual named above under the heading, "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Memphis, Tennessee, September 10, 1987.

John M. Dempsey,

Manager, Memphis Airports District Office.

[FR Doc. 87–22089 Filed 9–23–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Colbert and Lauderdale Counties, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Colbert and Lauderdale Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. R. W. Evers, District Engineer, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104–4684, Telephone: (205) 832–7379. Mr. Royce G. King, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone: (205) 261–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project DE–0026(801). This proposal is to construct a modern multi-lane bridge and approaches crossing the Tennessee River in the Shoals Metropolitan Area. Approximate length of the project is 3.5 miles.

The Tennessee River serves as a physical separation between the City of Florence, located in Lauderdale County on the north side of the river, and the cities of Muscle Shoals, Sheffield, and Tuscumbia, located in Colbert County on the south side of the river. Traffic volumes on existing bridges in the Shoals area approach or exceed the capacities of the structures. As traffic demand in the Shoals Area continues to increase (at an estimated rate of 2.26% annually), operating conditions on the existing bridge will worsen. The proposed multi-lane bridge and approaches will provide a safer and freer flowing facility for both area residents and the traveling public.

Alternatives under consideration include: (1) Alternate route locations, (2) a no action alternative, and (3) postponing the action alternative.

A public involvement meeting has been held to acquire local input on the porposed projects. Written comments have been solicited from Federal, State and local agencies, officials and individuals who may have an interest in the proposal. A scoping meeting is to be held in the auditorium of the Second Division Office of the Alabama Highway Department, Highway 20 East, Tuscumbia, Alabama, at 1:30 p.m. Central Standard Time, on November 4, 1987.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on September 18, 1987.

Ronald W. Evers,

District Engineer, Montgomery, Alabama.

[FR Doc. 87-22047 filed 9-23-87; 8:45 am]

BILLING CODE 4910-22-pM

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 18, 1987.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0967
Form number: 8453-F
Type of review: Resubmission
Title: U.S. Fiduciary Income Tax Declaration for Magnetic Media/ Electronic Filing

Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Electronic Filing Pilot for trust and fiduciary income tax returns. This form, together with the electronic transmission, will comprise the taxpayer's income tax return (Form 1041).

Respondents: Individuals or households
Estimated burden: 467 hours

Clearance officer: Garrick Shear (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-22070 Filed 9-23-87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Revision of Quantity Control Manual for Imported Merchandise

AGENCY: U.S. Customs Service, Treasury.

ACTION: Solicitation of comments.

SUMMARY: Customs is preparing to revise the Quantity Control Manual which describes the correct procedures for reporting and accounting for discrepancies in manifested quantities of imported merchandise. Customs believes that current practices have evolved sufficiently since the last revision to warrant another edition of the Manual. The Manual is of interest to many segments of the importing community and any interested member of the public is invited to submit comments, questions, issues, and procedures to be addressed in the revision of the manual.

DATE: Comments (preferably in triplicate) must be received on or before November 23, 1987.

ADDRESS: Comments should be submitted to and may be inspected at the Regulations Control Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Marie R. Bauer or John Holl, Office of Cargo Enforcement and Facilitation (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

In 1971, Customs published the Quantity Control Manual for imported merchandise. The Manual describes the correct procedures for reporting and accounting for discrepancies in manifested quantities of imported merchandise and how Customs determines liability for various types of discrepanies. It is used by Customs officers to accomplish the goals of the Imported Merchandise Quantity Control Program. That program has three basic premises: (1) Customs manifest is correct unless timely amended by the carrier, (2) the importing carrier is liable for discrepancies between manifest quantities of unladen merchandise and "permitted" merchandise, i.e., merchandise for which Customs has authorized the carrier to deliver to the consignee or next carrier, and (3) allowances in entry, liquidation, or reliquidation will be made only if a properly executed Customs Form 5931 is submitted to Customs by the importer or his agent at the time of entry or within prescribed time limits thereafter.

The Manual was developed after consultation with various interested parties such as carriers, terminal operators, and trade associations. It was last revised in 1974, and Customs recognizes that changes have occurred in the interim which necessitate another revision. These changes include the increased role of enforcement units in making landed quantity verifications, development of automated manifests with electronic transmittal of manifest and discrepancy information, audit and inspection responsibilities of bonded warehouse proprietors and Foreign Trade Zone operators to make quantity determinations, and regulatory changes which allow importers to make independent claims of non-liability for duties supported by a dock receipt and evidence of non-receipt of merchandise (see § 158.3, Customs Regulations (19 CFR 158.3)).

Because revision of the Manual will impact the trade, Customs wishes to hear from affected segments of the importing community such as carriers, warehouse proprietors, and FTZ operators, as well as any interested member of the public concerning questions, issues, and procedures that should be addressed in a revision of the Manual. Commenters should be aware that although changing business practices are responsible for the need to revise the Manual, the goals of the quantity control program are unchanged. Those goals are to: (1) Improve the reliability of the inward foreign manifest as presented to Customs, (2) reduce or eliminate Customs involvement in commercial disputes by fixing liabilities in advance with a great deal of certainty, and (3) make Customs officers more visibly involved in the physical aspects of quantity control of imported merchandise and less burdened by paperwork controls.

Comments

All comments received will be considered as part of the revision of the Manual. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Copies of the Manual

Individual copies of the current edition of the Quantity Control Manual can be obtained free of charge from the Office of Cargo Enforcement and Facilitation, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington,

Issued on September 18, 1987.

Ronald W. Evers,

District Engineer, Montgomery, Alabama.

[FR Doc. 87-22047 filed 9-23-87; 8:45 am]

BILLING CODE 4910-22-pM

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 18, 1987.

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Internal Revenue Service

OMB number: 1545-0967
Form number: 8453-F
Type of review: Resubmission
Title: U.S. Fiduciary Income Tax Declaration for Magnetic Media/ Electronic Filing

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Respondents: Individuals or households
Estimated burden: 467 hours

Clearance officer: Garrick Shear (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-22070 Filed 9-23-87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Revision of Quantity Control Manual for Imported Merchandise

AGENCY: U.S. Customs Service, Treasury.

ACTION: Solicitation of comments.

SUMMARY: Customs is preparing to revise the Quantity Control Manual which describes the correct procedures for reporting and accounting for discrepancies in manifested quantities of imported merchandise. Customs believes that current practices have evolved sufficiently since the last revision to warrant another edition of the Manual. The Manual is of interest to many segments of the importing community and any interested member of the public is invited to submit comments, questions, issues, and procedures to be addressed in the revision of the manual.

DATE: Comments (preferably in triplicate) must be received on or before November 23, 1987.

ADDRESS: Comments should be submitted to and may be inspected at the Regulations Control Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Marie R. Bauer or John Holl, Office of Cargo Enforcement and Facilitation (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

In 1971, Customs published the Quantity Control Manual for imported merchandise. The Manual describes the correct procedures for reporting and accounting for discrepancies in manifested quantities of imported merchandise and how Customs determines liability for various types of discrepanies. It is used by Customs officers to accomplish the goals of the Imported Merchandise Quantity Control Program. That program has three basic premises: (1) Customs manifest is correct unless timely amended by the carrier, (2) the importing carrier is liable for discrepancies between manifest quantities of unladen merchandise and "permitted" merchandise, i.e., merchandise for which Customs has authorized the carrier to deliver to the consignee or next carrier, and (3) allowances in entry, liquidation, or reliquidation will be made only if a properly executed Customs Form 5931 is submitted to Customs by the importer or his agent at the time of entry or within prescribed time limits thereafter.

The Manual was developed after consultation with various interested parties such as carriers, terminal operators, and trade associations. It was last revised in 1974, and Customs recognizes that changes have occurred in the interim which necessitate another revision. These changes include the increased role of enforcement units in making landed quantity verifications, development of automated manifests with electronic transmittal of manifest and discrepancy information, audit and inspection responsibilities of bonded warehouse proprietors and Foreign Trade Zone operators to make quantity determinations, and regulatory changes which allow importers to make independent claims of non-liability for duties supported by a dock receipt and evidence of non-receipt of merchandise (see § 158.3, Customs Regulations (19 CFR 158.3)).

Because revision of the Manual will impact the trade, Customs wishes to hear from affected segments of the importing community such as carriers, warehouse proprietors, and FTZ operators, as well as any interested member of the public concerning questions, issues, and procedures that should be addressed in a revision of the Manual. Commenters should be aware that although changing business practices are responsible for the need to revise the Manual, the goals of the quantity control program are unchanged. Those goals are to: (1) Improve the reliability of the inward foreign manifest as presented to Customs, (2) reduce or eliminate Customs involvement in commercial disputes by fixing liabilities in advance with a great deal of certainty, and (3) make Customs officers more visibly involved in the physical aspects of quantity control of imported merchandise and less burdened by paperwork controls.

Comments

All comments received will be considered as part of the revision of the Manual. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Copies of the Manual

Individual copies of the current edition of the Quantity Control Manual can be obtained free of charge from the Office of Cargo Enforcement and Facilitation, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington,

D.C. 20229. Bulk orders cannot be honored.

Dated: September 17, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87-22040 Filed 9-23-87; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice:

Dated: September 17, 1987.

By direction of the Administrator:

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Matured Endowment Notification
3. VA Form 29-5767
4. This serves as the notification of a matured endowment policy and requests disposition of funds.
5. On occasion
6. Individuals or households
7. 8,751 responses
8. 2,917 hours
9. Not applicable.

[FR Doc. 87-22075 Filed 9-23-87; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the list should be described to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 17, 1987

By Direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Revision

1. Department of Veterans Benefits
2. REPS Annual Eligibility Report
3. VA Form 21-8941
4. This information is needed to determine the amount of entitlement to survivor's benefits.
5. On occasion
6. Individuals or households
7. 300 responses
8. 75 hours
9. Not applicable.

[FR Doc. 87-22076 Filed 9-23-87; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 18, 1987.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information, Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Designation of Beneficiary and Optional Settlement
3. VA Form 29-336
4. This information is used by the insured to designate a beneficiary and by VA to determine claimant's eligibility for insurance benefits.
5. On occasion
6. Individuals or households
7. 87,500 responses
8. 14,583 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits

2. Claim for Monthly Payment, National Service Life Insurance
3. VA Form 29–4125a
4. This information is used to determine beneficiaries eligibility for monthly payments of insurance benefits.
5. On occasion
6. Individuals or households
7. 2,700 responses
8. 675 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Notice of Past Due Payment
3. VA Form 29–389e
4. This information is used to determine the veteran's eligibility for continued coverage under the National Service Life Insurance program.
5. On occasion
6. Individuals or households
7. 1,936 responses
8. 484 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Statement in Support of Claim
3. VA Form 21–4138
4. This information is provided by claimants in support of claims and is used by VA to determine entitlement to benefits.
5. On occasion
6. Individuals or households
7. 752,000 responses
8. 188,000 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran
3. VA Form Letter 29–596
4. This information is used to obtain information for payment of credits due the estate of a deceased veteran.
5. On occasion
6. Individuals or households
7. 312 responses
8. 78 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Financial Counseling Statement
3. VA Form Letter 26–8844
4. This information is obtained by VA loan service representatives when counseling veteran-obligors regarding defaulted guaranteed home loans.
5. On occasion
6. Individuals or households
7. 6,000 responses
8. 4,500 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Application for Amounts Due Estates of Persons Entitled to Benefits
3. VA Form Letter 21–609
4. This information is used to determine a claimaint's entitlement to accrued benefits.
5. On occasion
6. Individuals or households
7. 750 responses
8. 375 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Certification of School Attendance or Termination
3. VA Form 21–8960
4. This information is used to verify the continued eligibility or termination of a child's educational benefits.
5. On occasion
6. Individuals or households
7. 150,000 responses
8. 12,500 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Monthly Statement of Wages Paid to Trainee
3. VA Form 28–1917
4. This information is used by the vocational rehabilitation specialist to determine the correct rate of subsistence allowance which may be paid to a trainee in an established, approved OJT or apprenticeship program.
5. Monthly
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations
7. 3,600 responses
8. 1,800 hours
9. Not applicable.

Extension

1. Department of Memorial Affairs
2. Verification of Eligibility for Burial in a National Cemetery
3. VA Form 40–4962
4. This information is used to determine eligibility for benefits.
5. One time only
6. Individuals or households
7. 52,000 responses
8. 8,667 hours
9. Not applicable.

Reinstatement

1. Department of Veterans Benefits
2. Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status
3. VA Form 28–1905
4. This information is used to verify entitlement for benefits under this program
5. On occasion
6. Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small Businesses or organizations
7. 35,000 responses
8. 2,917 hours
9. Not applicable.

[FR Doc. 87–22077 Filed 9–23–87; 8:45 am]
BILLING CODE 8320–01–M

D.C. 20229. Bulk orders cannot be honored.

Dated: September 17, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87-22040 Filed 9-23-87; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice:

Dated: September 17, 1987.

By direction of the Administrator:

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Matured Endowment Notification
3. VA Form 29-5767
4. This serves as the notification of a matured endowment policy and requests disposition of funds.
5. On occasion
6. Individuals or households
7. 8,751 responses
8. 2,917 hours
9. Not applicable.

[FR Doc. 87-22075 Filed 9-23-87; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the list should be described to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 17, 1987

By Direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Revision

1. Department of Veterans Benefits
2. REPS Annual Eligibility Report
3. VA Form 21-8941
4. This information is needed to determine the amount of entitlement to survivor's benefits.
5. On occasion
6. Individuals or households
7. 300 responses
8. 75 hours
9. Not applicable.

[FR Doc. 87-22076 Filed 9-23-87; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 18, 1987.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information, Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Designation of Beneficiary and Optional Settlement
3. VA Form 29-336
4. This information is used by the insured to designate a beneficiary and by VA to determine claimant's eligibility for insurance benefits.
5. On occasion
6. Individuals or households
7. 87,500 responses
8. 14,583 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits

2. Claim for Monthly Payment, National Service Life Insurance
3. VA Form 29–4125a
4. This information is used to determine beneficiaries eligibility for monthly payments of insurance benefits.
5. On occasion
6. Individuals or households
7. 2,700 responses
8. 675 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Notice of Past Due Payment
3. VA Form 29–389e
4. This information is used to determine the veteran's eligibility for continued coverage under the National Service Life Insurance program.
5. On occasion
6. Individuals or households
7. 1,936 responses
8. 484 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Statement in Support of Claim
3. VA Form 21–4138
4. This information is provided by claimants in support of claims and is used by VA to determine entitlement to benefits.
5. On occasion
6. Individuals or households
7. 752,000 responses
8. 188,000 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran
3. VA Form Letter 29–596
4. This information is used to obtain information for payment of credits due the estate of a deceased veteran.
5. On occasion
6. Individuals or households
7. 312 responses
8. 78 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Financial Counseling Statement
3. VA Form Letter 26–8844
4. This information is obtained by VA loan service representatives when counseling veteran-obligors regarding defaulted guaranteed home loans.
5. On occasion
6. Individuals or households
7. 6,000 responses
8. 4,500 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Application for Amounts Due Estates of Persons Entitled to Benefits
3. VA Form Letter 21–609
4. This information is used to determine a claimaint's entitlement to accrued benefits.
5. On occasion
6. Individuals or households
7. 750 responses
8. 375 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Certification of School Attendance or Termination
3. VA Form 21–8960
4. This information is used to verify the continued eligibility or termination of a child's educational benefits.
5. On occasion
6. Individuals or households
7. 150,000 responses
8. 12,500 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Monthly Statement of Wages Paid to Trainee
3. VA Form 28–1917
4. This information is used by the vocational rehabilitation specialist to determine the correct rate of subsistence allowance which may be paid to a trainee in an established, approved OJT or apprenticeship program.
5. Monthly
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations
7. 3,600 responses
8. 1,800 hours
9. Not applicable.

Extension

1. Department of Memorial Affairs
2. Verification of Eligibility for Burial in a National Cemetery
3. VA Form 40–4962
4. This information is used to determine eligibility for benefits.
5. One time only
6. Individuals or households
7. 52,000 responses
8. 8,667 hours
9. Not applicable.

Reinstatement

1. Department of Veterans Benefits
2. Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status
3. VA Form 28–1905
4. This information is used to verify entitlement for benefits under this program
5. On occasion
6. Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small Businesses or organizations
7. 35,000 responses
8. 2,917 hours
9. Not applicable.

[FR Doc. 87–22077 Filed 9–23–87; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 185
Thursday, September 24, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, September 29, 1987, 10:00 a.m.

LOCATION: Room, 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public

MATTERS TO BE CONSIDERED:

1. Enforcement Matter OS #5364

The staff will brief the Commission on Enforcement Matter OS #5364.

2. Compliance Status Report

The staff will brief the Commission on a Compliance Status Report.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
Sept. 22, 1987.

[FR Doc. 87–22183 Filed 9–22–87; 4:07 pm]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, October 1, 1987, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS:

Open to the public

MATTERS TO BE CONSIDERED:

1. *Lawn Darts: Options*

The Commission will consider options related to lawn darts.

2. *FY '88 Operating Plan*

The staff will brief the Commission on the fiscal year 1988 Operating Plan.

Closed to the Public

3. *Enforcement Matter OS #4242*

The staff will brief the Commission on Enforcement Matter OS #4242.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 87–22184 Filed 9–22–87; 4:07 pm]
BILLING CODE 6355–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 29, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, October 1, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Public Records and the Freedom of Information Act Regulations—Approval of Final Version of Regulations.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87–22147 Filed 9–22–87; 2:20 p.m.]
BILLING CODE 6715–01–M

FEDERAL HOME LOAN BANK BOARD "FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: None at this time.

PLACE: In the Board Room, 6th Floor, 1700 G Street, NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

CHANGES IN THE MEETING: The notice previously sent to you regarding the Federal Home Loan Bank Board meeting scheduled for Friday, October 2, 1987, at 8:00 a.m., should have listed the titles of the items for consideration in the following manner instead of one paragraph:

Amendments To Regulations Concerning Appraisal Standards
Amendments To Regulations Concerning Classification of Assets
Amendments To Regulations Concerning The Qualified Thrift Lender Test
Guidelines Concerning Notice and Disapproval Procedures For Applications

Nadine Y. Washington,
Acting Secretary.
No. 11, September 21, 1987.

[FR Doc. 87–22104 Filed 9–21–87; 8:59 pm]
BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 10:30 a.m., Thursday, October 1, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 21, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87–22112 Filed 9–22–87; 9:24 am]
BILLING CODE 6210–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 185
Thursday, September 24, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, September 29, 1987, 10:00 a.m.

LOCATION: Room, 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public

MATTERS TO BE CONSIDERED:

1. Enforcement Matter OS #5364

The staff will brief the Commission on Enforcement Matter OS #5364.

2. Compliance Status Report

The staff will brief the Commission on a Compliance Status Report.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
Sept. 22, 1987.

[FR Doc. 87–22183 Filed 9–22–87; 4:07 pm]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, October 1, 1987, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS:

Open to the public

MATTERS TO BE CONSIDERED:

1. *Lawn Darts: Options*

The Commission will consider options related to lawn darts.

2. *FY '88 Operating Plan*

The staff will brief the Commission on the fiscal year 1988 Operating Plan.

Closed to the Public

3. *Enforcement Matter OS #4242*

The staff will brief the Commission on Enforcement Matter OS #4242.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 87–22184 Filed 9–22–87; 4:07 pm]
BILLING CODE 6355–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 29, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, October 1, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Public Records and the Freedom of Information Act Regulations—Approval of Final Version of Regulations.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87–22147 Filed 9–22–87; 2:20 p.m.]
BILLING CODE 6715–01–M

FEDERAL HOME LOAN BANK BOARD "FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: None at this time.

PLACE: In the Board Room, 6th Floor, 1700 G Street, NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

CHANGES IN THE MEETING: The notice previously sent to you regarding the Federal Home Loan Bank Board meeting scheduled for Friday, October 2, 1987, at 8:00 a.m., should have listed the titles of the items for consideration in the following manner instead of one paragraph:

Amendments To Regulations Concerning Appraisal Standards
Amendments To Regulations Concerning Classification of Assets
Amendments To Regulations Concerning The Qualified Thrift Lender Test
Guidelines Concerning Notice and Disapproval Procedures For Applications

Nadine Y. Washington,
Acting Secretary.
No. 11, September 21, 1987.

[FR Doc. 87–22104 Filed 9–21–87; 8:59 pm]
BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 10:30 a.m., Thursday, October 1, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 21, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87–22112 Filed 9–22–87; 9:24 am]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM: Committee on Employee Benefits.

TIME AND DATE: 4:00 p.m., Wednesday, September 30, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) The General administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenace of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: Proposed early retirement program for employees of two Federal Reserve Banks. (These items were originally announced for a closed meeting on Wednesday, September 23, 1987.)

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 22, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–22141 Filed 9–22–87; 1:23 pm]

BILLING CODE 6210–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting.

TIME AND DATE: The meeting will commence at 8:00 P.M. on Thursday, October 1, 1987, and continue at 9:00 A.M. on Friday, October 2, 1987, until all official business is completed.

PLACE: Loews L'Enfant Plaza Hotel, Caucus Room (Executive Session), L'Enfant Ballroom (A), 480 L'Enfant Road, Washington, D.C. 20024.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under the Government in the Sunshine Act [5 U.S.C. 552b(c) (2), (6), (7), 9(B), and (10) and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED;

1. Personnel and Personal Matters (closed, Executive Session)
2. Litigation and Investigation Matters (closed, Executive Session)
3. Approval of Agenda
4. Approval of Minutes, August 28, 1987
5. Consideration and Review of LSC Budget FY 1988

*Delivery of Legal Assistance
—Basic Field Programs
—Native American Programs and Components
—Migrant Programs and Components
—Reserve for Special Adjustments
—Program Development
—Law School Clinics & Recruitment
—Supplemental Field Programs
—R.H. Smith Fellowship

*Support for Delivery of Legal Assistance
—Trainaing Development & Technical Assistance
—Regional Training Centers
—National Support
—State Support
—Clearinghouse
—CALR Grants
—Special Elderly Programs
—Special Law School Grants

*Management and Administration

6. Voucher Project Status Report
7. Report on Law School Clinics

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: September 22, 1987.

Maureen R. Bozell,

Secretary.

[FR Doc. 87–22185 Filed 9–22–87; 4:06 pm]

BILLING CODE 6820–35–M

FEDERAL RESERVE SYSTEM: Committee on Employee Benefits.

TIME AND DATE: 4:00 p.m., Wednesday, September 30, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) The General administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenace of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: Proposed early retirement program for employees of two Federal Reserve Banks. (These items were originally announced for a closed meeting on Wednesday, September 23, 1987.)

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 22, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–22141 Filed 9–22–87; 1:23 pm]

BILLING CODE 6210–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting.

TIME AND DATE: The meeting will commence at 8:00 P.M. on Thursday, October 1, 1987, and continue at 9:00 A.M. on Friday, October 2, 1987, until all official business is completed.

PLACE: Loews L'Enfant Plaza Hotel, Caucus Room (Executive Session), L'Enfant Ballroom (A), 480 L'Enfant Road, Washington, D.C. 20024.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under the Government in the Sunshine Act [5 U.S.C. 552b(c) (2), (6), (7), 9(B), and (10) and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED;

1. Personnel and Personal Matters (closed, Executive Session)
2. Litigation and Investigation Matters (closed, Executive Session)
3. Approval of Agenda
4. Approval of Minutes, August 28, 1987
5. Consideration and Review of LSC Budget FY 1988

*Delivery of Legal Assistance
—Basic Field Programs
—Native American Programs and Components
—Migrant Programs and Components
—Reserve for Special Adjustments
—Program Development
—Law School Clinics & Recruitment
—Supplemental Field Programs
—R.H. Smith Fellowship

*Support for Delivery of Legal Assistance
—Trainaing Development & Technical Assistance
—Regional Training Centers
—National Support
—State Support
—Clearinghouse
—CALR Grants
—Special Elderly Programs
—Special Law School Grants

*Management and Administration

6. Voucher Project Status Report
7. Report on Law School Clinics

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: September 22, 1987.

Maureen R. Bozell,

Secretary.

[FR Doc. 87–22185 Filed 9–22–87; 4:06 pm]

BILLING CODE 6820–35–M

Federal Register

Thursday
September 24, 1987

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 29 and 52

Federal Acquisition Regulation (FAR); State of New Mexico Gross Receipts and Compensating Tax; Proposed Rule

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Federal Register

Thursday
September 24, 1987

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 29 and 52

Federal Acquisition Regulation (FAR); State of New Mexico Gross Receipts and Compensating Tax; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 29 and 52

Federal Acquisition Regulation (FAR); State of New Mexico Gross Receipts and Compensating Tax

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to FAR 29.401–6 and 52.229–10 pertaining to State of New Mexico gross receipts and compensating tax.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 23, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–34 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Nine Federal agencies have entered into separate agreements with the Taxation and Revenue Department of the State of New Mexico to eliminate double taxation of Government cost-reimbursable contractors which purchase tangible personal property to be used in performing services, title to which passes to the United States upon delivery of the property to the contractor by the vendor.

This agreement is effective only when the clause at FAR 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, is included in each cost-reimbursement contract for the following Federal agencies:

United States Department of Agriculture
United States Department of the Air Force
United States Department of the Army
United States Department of Energy
United States Department of the Interior
United States Department of Labor
United States Department of the Navy
United States General Services Administration
United States National Aeronautics and Space Administration

Failure to include the proposed clause in each cost-reimbursement contract means the Government reimburses the contractor the gross receipts tax paid to a vendor for purchased tangible personal property and reimburses the contractor for its own gross receipts tax which includes the tax already paid on purchased property (double taxation).

The proposed coverage in FAR 29.401–6 encourages other agencies which expect to enter into cost-reimbursement contracts in the State of New Mexico to execute similar agreements with the New Mexico Taxation and Revenue Department.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, because its application is limited to cost-reimbursement contracts of a limited number of agencies performed within a single state. The majority of contracts awarded to small businesses are fixed price. An initial regulatory flexibility analysis, has therefore not been performed. Comments are invited from small businesses and other parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The certifications and other information specified in the clause at 52.229–10 are existing requirements under New Mexico State law.

List of Subjects in 48 CFR Parts 29 and 52

Government procurement.

Dated: September 15, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 29 and 52 be amended as set forth below:

1. The authority citation for Parts 29 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 29—TAXES

2. Section 29.401–6 is added to read as follows:

29.401–6 New Mexico gross receipts and compensating tax.

(a) *Definition.* "Services," as used in this subsection, means all activities engaged in for other persons for a consideration, which activities involve predominately the performance of a service as distinguished from selling or leasing property. "Services" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Services" also includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property.

(b) *Contract clause.* The contracting officer shall insert the clause at 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, in solicitations and contracts issued by the executive agencies identified in paragraph (c) of this subsection when all three of the following conditions exist:

(1) The contractor will be peforming a cost-reimbursement contract;

(2) The contract directs or authorizes the contractor to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor; and

(3) The contract will be for services to be performed in whole or in part within the State of New Mexico.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 29 and 52

Federal Acquisition Regulation (FAR); State of New Mexico Gross Receipts and Compensating Tax

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Failure to include the proposed clause in each cost-reimbursement contract means the Government reimburses the contractor the gross receipts tax paid to a vendor for purchased tangible personal property and reimburses the contractor for its own gross receipts tax which includes the tax already paid on purchased property (double taxation).

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(b) *Contract clause.* The contracting officer shall insert the clause at 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, in solicitations and contracts issued by the executive agencies identified in paragraph (c) of this subsection when all three of the following conditions exist:

(1) The contractor will be peforming a cost-reimbursement contract;

(2) The contract directs or authorizes the contractor to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor; and

(3) The contract will be for services to be performed in whole or in part within the State of New Mexico.

(c) *Participating agencies.* (1) The executive agencies listed below have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Therefore, the clause applies only to solicitations and contracts issued by the—

United States Department of Agriculture
United States Department of the Air Force
United States Department of the Army
United States Department of Energy
United States Department of the Interior
United States Department of Labor
United States Department of the Navy
United States General Services Administration
United States National Aeronautics and Space Administration.

(2) Any other Federal agency which expects to award cost-reimbursement contracts to be preformed in New Mexico should contact the New Mexico Taxation and Revenue Department to execute a similar agreement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.229–10 is added to read as follows:

52.229.10 State of New Mexico Gross Receipts and Compensating Tax

As prescribed in 29.401–6(b), insert the following clause:

State of New Mexico Gross Receipts and Compensating Tax (SEP 1987)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR–3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the ([1]_____) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The ([1]_____) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the ([1]_____), may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the ([1]_____) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401–6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

(End of clause)

([1] Insert appropriate agency name in blanks)

[FR Doc. 87–22038 Filed 9–23–87; 8:45 am]
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(c) *Participating agencies.* (1) The executive agencies listed below have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Therefore, the clause applies only to solicitations and contracts issued by the—

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(2) Any other Federal agency which expects to award cost-reimbursement contracts to be preformed in New Mexico should contact the New Mexico Taxation and Revenue Department to execute a similar agreement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.229–10 is added to read as follows:

52.229.10 State of New Mexico Gross Receipts and Compensating Tax

As prescribed in 29.401–6(b), insert the following clause:

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(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

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(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

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(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401–6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

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federal register

Thursday
September 24, 1987

Part III

Environmental Protection Agency

40 CFR Part 192

Standards for Remedial Actions at Inactive Uranium Processing Sites; Proposed Rule

federal register

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Environmental Protection Agency

40 CFR Part 192

Standards for Remedial Actions at Inactive Uranium Processing Sites; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[FR 3227-5]

Standards for Remedial Actions at Inactive Uranium Processing Sites

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing health and environmental regulations to correct and prevent contamination of ground water beneath and in the vicinity of inactive uranium processing sites by uranium tailings. EPA issued regulations (40 CFR Part 192 Subparts A, B, and C) for cleanup and disposal of tailings from these sites on January 5, 1983. These new regulations would replace existing provisions at 40 CFR 192.20(a) (2) and (3) that were remanded by the Tenth Circuit Court of Appeals on September 3, 1985. They are proposed pursuant to section 275 of the Atomic Energy Act (42 U.S.C. 2022), as amended by Section 206 of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604) (UMTRCA).

The regulations would apply to tailings at the 24 locations that qualify for remedial action under Title I of Pub. L. 95–604. They provide that tailings must be stabilized and controlled in a manner that permanently eliminates or minimizes contamination of ground water beneath stabilized tailings, so as to protect human health and the environment. They also provide for cleanup of contamination that existed before the tailings are stabilized.

DATES: *Comments.* Comments on this Notice of Proposed Rulemaking will be accepted until October 26, 1987.

Hearing. A Public Hearing will be held on October 29, 1987 at 9:00 a.m. (see below).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–130), U.S. Environmental Protection Agency, Attention: Docket Number R–87–01, Washington, DC 20460. The Docket is available for public inspection between 8:00 a.m. and 3:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–130), West Tower Lobby, 401 M Street SW., Washington, DC. A reasonable fee may be charged for copying.

Hearing. A Public Hearing will be held at the Strater Hotel, 699 Main Ave., Durango, Colorado 81301. Requests to participate should be made in writing to Floyd L. Galpin, Acting Director, Criteria and Standards Division (ANR–460), U.S. Environmental Protection Agency, Washington, DC 20460. All requests should include an outline of the topics to be addressed and names of the participants. Oral presentations should be limited to a maximum of 30 minutes. Presentations may also be made without prior notice, but may be subjected to time contraints at the discretion of the hearing officer. Written comments made during or in conjunction with the oral presentations will be accepted after the hearing for a period of time to be announced at the hearing.

FOR FURTHER INFORMATION CONTACT: Kurt L. Feldmann, Guides and Criteria Branch (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460; telephone number (202) 475–9620.

SUPPLEMENTARY INFORMATION:

I. Supporting Document

A report ("Draft Background Information Document—Proposed Standard for the Control of Contamination in Ground Water in the Vicinity of Inactive Uranium Mill Sites," EPA 520/1–87–014) has been prepared to support these proposed regulations. Single copies may be obtained from the Program Management Office (ANR–458), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460; (202) 475–8386.

The report contains a brief history of the Title I sites, a summary of the types and quantities of ground-water contamination present at sites for which such data are available, where and over what period of time the contamination is projected to disperse in the absence of control, and a description of alternate ground-water contamination control and cleanup technologies and their associated costs. An analysis of information supporting the decisions reflected in this proposed standard completes the report.

II. Scope of this Proposed Rulemaking

On November 8, 1978, Congress enacted the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95–604 (henceforth called "UMTRCA"). In UMTRCA, Congress enunciated its finding that uranium mill tailings ". . . may pose a potential and significant radiation health hazard to the public, and . . . that every reasonable effort should be made to provide for stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." The Act directs the Administrator of the Environmental Protection Agency (EPA) to set ". . . standards of general application for the protection of the public health, safety, and the environment . . ." to govern this process of stabilization, disposal, and control.

UMTRCA directs the Department of Energy (DOE) to conduct such remedial actions at the inactive uranium processing sites as will insure compliance with the standards established by EPA. This remedial action is to be selected and performed with the concurrence of the Nuclear Regulatory Commission (NRC).

Standards are required for two types of remedial action: disposal and cleanup. Here disposal is used to mean the operation which places tailings in a permanent condition that will minimize risk to people and harm to the environment. Cleanup is the operation which eliminates or reduces to acceptable levels the potential health and environmental consequences of tailings or their constituents that have been dispersed from tailings piles by natural forces or people prior to disposal.

On January 5, 1983, EPA promulgated final standards for the disposal and cleanup of the inactive mill tailings sites under UMTRCA (48 FR 590). These standards were challenged in the Tenth Circuit Court of Appeals by several parties (Case Nos. 83–1014, 83–1041, 83–1206, and 83–1300). On September 3, 1985, the court dismissed all challenges except one: it set aside the ground-water provisions of the regulations at 40 CFR 192.20(a)(2)–(3) and remanded them to EPA ". . . to treat these toxic chemicals that pose a ground-water risk as it did in the active mill site regulations." With this notice, EPA is proposing new regulations to replace those set aside.

III. Summary of Background Information

Beginning in the 1940's, the U.S. Government purchased large quantities of uranium for defense purposes. As a result, large piles of tailings were created by the uranium milling industry. Tailings piles pose a hazard to public health and the environment because they contain radioactive and toxic constituents which emanate radon to the atmosphere and may leach into ground water. Tailings are a sand-like material, and have also been removed from tailings piles in the past for use in construction and for soil conditioning. These uses are inappropriate, because the radioactive and toxic constituents of tailings may elevate indoor radon levels,

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[FR 3227-5]

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Standards are required for two types of remedial action: disposal and cleanup. Here disposal is used to mean the operation which places tailings in a permanent condition that will minimize risk to people and harm to the environment. Cleanup is the operation which eliminates or reduces to acceptable levels the potential health and environmental consequences of tailings or their constituents that have been dispersed from tailings piles by natural forces or people prior to disposal.

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III. Summary of Background Information

Beginning in the 1940's, the U.S. Government purchased large quantities of uranium for defense purposes. As a result, large piles of tailings were created by the uranium milling industry. Tailings piles pose a hazard to public health and the environment because they contain radioactive and toxic constituents which emanate radon to the atmosphere and may leach into ground water. Tailings are a sand-like material, and have also been removed from tailings piles in the past for use in construction and for soil conditioning. These uses are inappropriate, because the radioactive and toxic constituents of tailings may elevate indoor radon levels,

expose people to gamma radiation, and leach into ground and surface waters.

Most of these mills are now inactive and many are abandoned. Congress designated 22 specific inactive sites in Title I of UMTRCA, and the DOE subsequently added 2 more. Most other uranium tailings sites are regulated by the NRC or States under Title II of UMTRCA (DOE owns one inactive site at Monticello, Utah, that is not included under UMTRCA). The Title I sites are all located in the West, predominantly in arid areas, except for a single site at Canonsburg, Pennsylvania. Tailings piles at the inactive sites range in area from 5 to 150 acres and in height from only a few feet to as much as 230 feet. The amount at each site ranges from residual contamination to 2.7 million tons of tailings. The 24 designated Title I sites combined contain about 26 million tons of tailings covering a total of about 1000 acres.

The disposal of tailings at these sites is currently being carried out by DOE under the provisions of Title I of UMTRCA. In addition, tailings that were dispersed from the piles by natural forces, or that have been removed for use in or around buildings, or on land, are being retrieved and replaced on the tailings piles prior to their disposal.

UMTRCA requires that DOE complete all these remedial actions within 7 years of the effective date of EPA's standards; that is by March 5, 1990. Remedial actions have been completed at the Canonsburg, Pennsylvania, pile, the only site in an area of high precipitation, and at Shiprock, New Mexico. Remedial actions are currently well advanced at two other sites: Salt Lake City, Utah and Lakeview, Oregon. Work is expected to begin at approximately six others during 1987–1988. In view of the rate of progress with remedial work, the DOE is requesting a legislative extension of the completion date until September 1993.

The most important hazardous constituent of uranium mill tailings is radium, which is radioactive. Other potentially hazardous substances in tailings piles include arsenic, molybdenum, selenium, uranium, and usually in lesser amounts, a variety of other toxic substances. The concentrations of these materials vary from pile to pile, ranging from 2 to more than 100 times applicable standards. Although a variety of organics are known to have been used at these sites, none has thus far been detected in tailings.

Exposure to radioactive and toxic substances may cause cancer and other diseases, as well as genetic damage and teratogenic effects. Tailings pose a risk to health because: (1) Radium in tailings decays into radon, a gaseous radioactive element which is easily transported in air, and whose radioactive decay products may lodge in the lungs; (2) individuals may be directly exposed to gamma radiation from the radioactivity in tailings; and (3) radioactive and toxic substances from tailings may leach into water and then be ingested with food or water. It is the last of these hazards that is primarily addressed here. (Although radon from radium in ground water is unlikely to pose a hazard in these locations, these proposed standards would also address that potential hazard.) The other hazards are covered by existing provisions of 40 CFR Part 192.

We have based our analysis on detailed reports for 12 of the 24 inactive uranium mill tailings sites that have been developed to date for the Department of Energy by its contractors. Preliminary data for the balance of the sites have also been examined. These data show that the volumes of contaminated water in the existing aquifers at the 24 sites range from 23 million gallons to 4 billion gallons. In a few instances, mill effluent was apparently the sole source of this ground water. Each of the 12 sites examined in detail have ground-water contamination beneath and/or beyond the site. In some cases, the ground water upgradient of the pile already exceeded EPA drinking water standards for one or more contaminants, thus making it unsuitable for use as drinking water and, in some extreme cases, for any other purpose before it was contaminated by effluent from the mill. Some contaminants from the tailings piles are moving offsite quickly and others are moving slowly. The time for natural flushing of the contaminated portions of these aquifers is estimated to vary from several years to many hundreds of years.

Contaminants that have been identified in the ground water downgradient from a majority of the sites include uranium, sulfate, iron, manganese, nitrate, chloride, molybdenum, selenium, and total dissolved solids. Radium, cobalt, arsenic, fluoride, chromium, cadmium, ammonium, boron, vanadium, lead, thorium, zinc, silver, copper, and magnesium, have also been found in the ground water at one or more sites.

UMTRCA requires that the standards established under Title I provide protection that is consistent, to the maximum extent practicable, with the requirements of the Resource Conservation and Recovery Act (RCRA). In this regard, regulations established by EPA for hazardous waste disposal sites under RCRA provide for the specification of ground-water protection limits for the specific hazardous constituents relevant to each regulated unit in permits. These regulations contain general numerical limits for some constituents in ground water; limits for other constituents are set at their background level in ground water at the regulated unit. Together with a provision for the point of compliance, these limits become the facility's ground-water protection standard, unless alternate concentration limits (ACLs) are approved. ACLs may be requested based upon data which would support a determination that, if the ACL is satisfied, the constituent would not present a current or potential threat to human health or the environment.

IV. The Proposed Standards

The proposed standards consist of two parts; a first part governing the control of any future ground-water contamination that may occur from tailings piles after disposal, and a second part that applies to the cleanup of contamination that occurred before disposal of the tailings piles.

A. The Ground-Water Standard for Disposal

The proposed standard (Subpart A) for control of potential contaminant releases to ground water after disposal is divided into two parts that separately address actions to be carried out during period of time designated as the remedial and post-disposal periods. The remedial and post-disposal periods are defined in a manner analogous to the closure and post-closure periods, respectively, in RCRA regulations. However, there are some differences regarding their duration and the timing of any corrective actions that may become necessary due to failure of disposal to perform as designed. (Because there are no mineral processing activities currently at these inactive sites, standards are not needed for an operational period.) The remedial period, for the purpose of this regulation, is defined as that period of time beginning on the effective date of the original Part 192 (Title I) standard (March 7, 1983) and ending with completion of remedial actions by DOE. The post-disposal period begins with completion of remedial actions and ends after an appropriate period for the monitoring of ground water to confirm the adequacy of the disposal, as determined by NRC for each site. The proposed ground-water standard for the disposal to be carried out during the remedial period adopts relevant

expose people to gamma radiation, and leach into ground and surface waters.

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A. The Ground-Water Standard for Disposal

The proposed standard (Subpart A) for control of potential contaminant releases to ground water after disposal is divided into two parts that separately address actions to be carried out during period of time designated as the remedial and post-disposal periods. The remedial and post-disposal periods are defined in a manner analogous to the closure and post-closure periods, respectively, in RCRA regulations. However, there are some differences regarding their duration and the timing of any corrective actions that may become necessary due to failure of disposal to perform as designed. (Because there are no mineral processing activities currently at these inactive sites, standards are not needed for an operational period.) The remedial period, for the purpose of this regulation, is defined as that period of time beginning on the effective date of the original Part 192 (Title I) standard (March 7, 1983) and ending with completion of remedial actions by DOE. The post-disposal period begins with completion of remedial actions and ends after an appropriate period for the monitoring of ground water to confirm the adequacy of the disposal, as determined by NRC for each site. The proposed ground-water standard for the disposal to be carried out during the remedial period adopts relevant

paragraphs from Subpart F of Part 264 of this Chapter (§§ 264.92–264.95). The proposed standard for the post-disposal period adopts § 264.111 (a) and (b) of this Chapter, and also incorporates provisions for monitoring and a corrective action program. These provisions are essentially the same as those governing the licensed (Title II) uranium mill tailings sites (40 CFR 192, Subparts D and E; see also the **Federal Register** notices for these standards published on April 29, 1983 and on October 7, 1983). However, additional constituents are here proposed to be regulated (in addition to the general RCRA list of hazardous constituents and table of applicable limits) that are applicable to these sites only.

These proposed regulations would require installation of monitoring systems upgradient of the point of compliance (i.e., in the uppermost aquifer upgradient of the edge of the tailings disposal site) to determine background levels of any listed constituents that occur naturally at the site. The disposal would then be designed to control, to the extent reasonably achievable for 1000 years and, in any case, for at least 200 years, all listed constituents identified in the tailings at the site to levels for each constituent derived in accordance with § 264.94. Accordingly, the elements of the ground-water protection standard to be specified for each disposal site would include a list of relevant constituents, the concentration limits for each such constituent, and the compliance point.

To obtain an ACL for any constituent, the DOE would have to provide data to support a finding that the presence of the constituent at the proposed ACL in ground water at the site would not pose a substantial present or potential hazard to human health or the environment. ACLs could be granted provided that, after considering practicable corrective actions, a determination can be made that it satisfies the lower of the values given by the standard for setting ACLs in § 264.94(b), and the corrective action that is as low as reasonably achievable (ALARA).

The standards of Title II sites require use of a liner under new tailings piles or lateral extensions of existing piles. These standards for remedial action at the inactive Title I sites do not contain a similar provision. We assume that the inactive piles will not need to be enlarged. Several, however, will be relocated. However, unlike tailings at the Title II sites, which generally may contain large amounts of process water, the inactive tailings contain little or no free water. Such tailings, if properly located and stablized with an adequate cover, are not likely to require a liner in order to protect ground water.

However, a liner may be required to satisfy the proposed ground-water standards in situations where tailings now, or may in the future, contain water above the level of specific retention. For example, tailings to which water is added to facilitate their removal to a new site (i.e., through slurrying) or piles in areas of high precipitation or within the zone of water table fluctuation could discharge contaminants to ground water. Under § 192.20(a)(2) of these proposed standards, it would be necessary for the DOE, with the concurrence of the NRC, to propose and carry out a disposal design in such circumstances which uses a liner or equivalent to assure that ground water would not be contaminated and, at the same time, satisfy the existing requirements of these standards for control of radon emissions. In such circumstances, this may be accomplished by installing a liner beneath the tailings whose permeability is greater than that of the cover material. If the tailings form an acid solution when mixed with water, a neutalizing material mixed with the tailings or added to the liner are additional methods that may need to be considered to fix listed constituents in the immediate vicinity of a pile. In addition, a capillary break may be necessary to prevent migration of water into a pile from below. Currently, however, DOE plans do not include slurrying any tailings to move them to new locations. Further, for all but one site that has already been closed (Canonsburg), the tailings are located in arid areas where annual precipitation is low.

Disposal designs which prevent migration of listed constituents in the ground water for a short period of time would not provide appropriate protection. Such approaches simply defer adverse ground-water effects. Therefore, measures which only modify the gradient in an aquifer or create barriers (e.g., slurry walls) would not of themselves provide an adequate disposal. Where feasible, it may be appropriate to protect ground water by preventing generation of leachate containing listed constituents. A method that appears promising is fixing the constituents *in situ* (in place) so they cannot be leached out. *In situ* treatment of constituents may be considered analogous to removal when it provides long-term protection of human health or the environment. While the Agency recognizes that *in situ* treatment is an emerging technology, applied in only limited circumstances to date, it should be considered where it can provide an effective ground-water protection strategy.

At the end of the remedial period (i.e., when disposal and any cleanup required under Subpart B has been completed), ground waters would be required to be in compliance with the standards established pursuant to these regulations. During the post-disposal period, the regulations would further require that methods used for disposal provide a reasonable expectation that the provisions of § 264.111 (a) and (b) will be met. Paragraph 264.111(a) requires that a site be closed in a manner that minimizes further maintenance. Paragraph 264.111(b) requires control, minimization, or elimination of post-disposal escape of listed constituents to ground or surface water to the extent necessary to prevent threats to human health and the environment. In the context of these regulations, this would mean control pursuant to the standards established under §§ 264.92–264.95. Depending on the properties of the sites, candidate disposal systems, and the effects of natural processes over time, measures required to satisfy the proposed standards would vary from site to site. Actual site data, computational models, and prevalent expert judgment would be used in deciding that proposed measures will satisfy the standards. Under the provisions of section 108(a) of UMTRCA, the adequacy of these judgments would be determined by the NRC.

During the post-disposal period, monitoring of the disposal would be required for a period sufficient to verify the adequacy of the disposal to achieve its design objectives for containment of listed constituents. This period is intended to be comparable to the time period required under § 264.117 for waste sites regulated under RCRA (i.e., a few decades). It is not intended that monitoring be carried out for the 200- to 1000-year period over which the disposal is designed to be effective.

If listed constituents from a disposal site appeared during the post-disposal period in excess of the ground-water standards for disposal, the proposed regulations would require a corrective action program designed to bring the disposal and the ground water back into compliance. Such a corrective action would have to last as long as is necessary to achieve conformance with the ground-water protection standard, and include a modification of the monitoring program sufficient to

demonstrate that the corrective measures will be permanently successful.

Additional Regulated Constituents

For the purpose of this regulation only, the Agency proposes to regulate, in addition to the hazardous constituents referenced by § 264.93: molybdenum, nitrate, combined radium-226 and radium-228, and combined uranium-234 and uranium-238. Molybdenum, radium, and uranium were addressed by the Title II standards because these radioactive and/or toxic constituents are found in high concentrations at many mill tailings sites. Nitrate is proposed for addition because it has been identified in concentrations far in excess of drinking water standards in ground water at a number of the inactive sites.

The proposed concentration limit for molybdenum in ground water from uranium tailings is 0.10 milligram per liter. This is the value of the provisional adjusted acceptable daily intake (AADI) for drinking water developed by EPA under the Safe Drinking Water Act (50 FR 46958). The Agency has proposed neither a maximum concentration limit goal (MCLG) nor a maximum concentration limit (MCL) for molybdenum because it occurs only infrequently in water. According to the most recent report of the National Academy of Sciences (*Drinking Water and Health*, 1980, Vol. III), molybdenum from drinking water, except for highly contaminated sources (e.g., molybdenum mining wastewater) is not likely to constitute a significant portion of the total human intake of this element. However, since uranium tailings can be a highly concentrated source of molybdenum, it is appropriate to include a standard for molybdenum in this proposed rule. In addition to the hazard to humans, our analysis of toxic substances in tailings in the Final Environmental Impact Statement for Remedial Action Standards for Inactive Uranium Processing Sites (EPA 520/4–82–013–1) found that, for ruminants, molybdenum in concentrations greater than 0.5 ppm in drinking water would lead to chronic toxicity.

The proposed limit for combined uranium-234 and uranium-238 due to contamination from uranium tailings is 30 pCi per liter. At this concentration, the estimated lifetime radiation risk of fatal cancer would be the same as that for the existing ground water standard for combined radium-226 and radium-228 (5 pCi per liter) (51 FR 34836), based on dose assessments for ingestion as determined by the International Commission on Radiological Protection. This proposed limit would apply to remedial actions for uranium tailings under these regulations only; the Agency has not made a proposal for a general standard for isotopes of uranium in water. However, this limit is within the range of values currently under consideration for drinking water.

The proposed concentration limit for nitrate (as nitrogen) is 10 mg per liter. This is the value of the interim drinking water standard for nitrate.

B. The Cleanup Standard

With the exception of the point of compliance provision, the proposed standard (Subpart B) for cleanup of contaminated ground water contains identical basic provisions (§§ 264.92–.94) as the standard for disposal in Subpart A. In addition, it provides for the establishment of supplemental standards under certain conditions and for use of institutional control to permit passive restoration through natural flushing when no community drinking water source is involved.

The standards do not specify a single point of compliance for the cleanup of ground water that has been contaminated by residual radioactive materials from uranium milling before final disposal. Instead, the "point of compliance" is any point where contamination is found in the ground water. The standard requires DOE to establish a monitoring program to determine the extent of contamination (§ 192.12(c)(1)) in ground water around a processing site (§ 192.11(b)). The possible presence of any of the inorganic or organic hazardous constituents identified in tailings or used in the processing operation should be assessed. The remedial action plan referenced under § 192.20(b)(4) would document the extent of contamination, the rate and direction of movement of contaminants, and consider future movement of the plume.

The proposed cleanup standards would normally require restoration of all contaminated ground water to the levels provided for under § 264.94. These levels are either background concentrations, the levels specified in Tables 1 and A, or ACLs. In cases where the ground water is not classified as Class III, any ACL should be determined under the assumption that the ground water may be used for drinking purposes.

In certain circumstances, however, supplemental standards set at levels that assure, at a minimum, protection of human health and the environment, and come as close to meeting the otherwise applicable standards as is reasonably achievable by remedial actions could be granted if:

- The ground water at the site is Class III (See definitions, § 192.11(e)) in the absence of contamination from tailings; or
- Complete restoration would cause more environmental harm than it would prevent; or
- Complete restoration is technically impracticable from an engineering perspective.

The use of supplemental standards for Class III ground water would apply the ground water classification system established in EPA's 1984 Ground Water Protection Strategy. Procedures for classifying ground water are presented in "Guidelines for Ground-Water Classification under the EPA Ground-Water Protection Strategy" released in final draft in December 1986 and due to be finalized during late 1987. Under these draft guidelines, Class I ground waters encompass highly vulnerable resources of particularly high value, e.g. an irreplaceable source of drinking water or ecologically vital ground water. Class II ground water include all non-Class I ground water that is currently used or is potentially adequate for drinking water. Class III encompasses ground waters that are not a current or potential source of drinking water due to widespread, ambient contamination caused by natural or human-induced conditions, or cannot provide enough water to meet the needs of an average household. Human-induced conditions would not include the contribution from the uranium mill tailings. At sites with Class III ground water, the proposed supplemental standards would require only such management of contamination due to tailings as would be required to prevent additional adverse impacts on human health and the environment from that contamination. For example, if the additional contamination from the tailings would cause an adverse effect on Class II ground water that has a significant interconnection with the Class III ground water over which the tailings reside, then the additional contamination from the tailings would have to be abated.

Supplemental standards may also be appropriate in certain other cases similar to those addressed in section 121(d)(4) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA recognizes that cleanup of contamination could sometimes cause environmental harm disproportionate to the health effects it would alleviate. For example, if fragile ecosystems would be impaired by any reasonable restoration process (or by carrying a restoration process to extreme lengths to remove small amounts of residual

paragraphs from Subpart F of Part 264 of this Chapter (§§ 264.92–264.95). The proposed standard for the post-disposal period adopts § 264.111 (a) and (b) of this Chapter, and also incorporates provisions for monitoring and a corrective action program. These provisions are essentially the same as those governing the licensed (Title II) uranium mill tailings sites (40 CFR 192, Subparts D and E; see also the **Federal Register** notices for these standards published on April 29, 1983 and on October 7, 1983). However, additional constituents are here proposed to be regulated (in addition to the general RCRA list of hazardous constituents and table of applicable limits) that are applicable to these sites only.

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However, a liner may be required to satisfy the proposed ground-water standards in situations where tailings now, or may in the future, contain water above the level of specific retention. For example, tailings to which water is added to facilitate their removal to a new site (i.e., through slurrying) or piles in areas of high precipitation or within the zone of water table fluctuation could discharge contaminants to ground water. Under § 192.20(a)(2) of these proposed standards, it would be necessary for the DOE, with the concurrence of the NRC, to propose and carry out a disposal design in such circumstances which uses a liner or equivalent to assure that ground water would not be contaminated and, at the same time, satisfy the existing requirements of these standards for control of radon emissions. In such circumstances, this may be accomplished by installing a liner beneath the tailings whose permeability is greater than that of the cover material. If the tailings form an acid solution when mixed with water, a neutalizing material mixed with the tailings or added to the liner are additional methods that may need to be considered to fix listed constituents in the immediate vicinity of a pile. In addition, a capillary break may be necessary to prevent migration of water into a pile from below. Currently, however, DOE plans do not include slurrying any tailings to move them to new locations. Further, for all but one site that has already been closed (Canonsburg), the tailings are located in arid areas where annual precipitation is low.

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The proposed concentration limit for molybdenum in ground water from uranium tailings is 0.10 milligram per liter. This is the value of the provisional adjusted acceptable daily intake (AADI) for drinking water developed by EPA under the Safe Drinking Water Act (50 FR 46958). The Agency has proposed neither a maximum concentration limit goal (MCLG) nor a maximum concentration limit (MCL) for molybdenum because it occurs only infrequently in water. According to the most recent report of the National Academy of Sciences (*Drinking Water and Health*, 1980, Vol. III), molybdenum from drinking water, except for highly contaminated sources (e.g., molybdenum mining wastewater) is not likely to constitute a significant portion of the total human intake of this element. However, since uranium tailings can be a highly concentrated source of molybdenum, it is appropriate to include a standard for molybdenum in this proposed rule. In addition to the hazard to humans, our analysis of toxic substances in tailings in the Final Environmental Impact Statement for Remedial Action Standards for Inactive Uranium Processing Sites (EPA 520/4–82–013–1) found that, for ruminants, molybdenum in concentrations greater than 0.5 ppm in drinking water would lead to chronic toxicity.

The proposed limit for combined uranium-234 and uranium-238 due to contamination from uranium tailings is 30 pCi per liter. At this concentration, the estimated lifetime radiation risk of fatal cancer would be the same as that for the existing ground water standard for combined radium-226 and radium-228 (5 pCi per liter) (51 FR 34836), based on dose assessments for ingestion as determined by the International Commission on Radiological Protection. This proposed limit would apply to remedial actions for uranium tailings under these regulations only; the Agency has not made a proposal for a general standard for isotopes of uranium in water. However, this limit is within the range of values currently under consideration for drinking water.

The proposed concentration limit for nitrate (as nitrogen) is 10 mg per liter. This is the value of the interim drinking water standard for nitrate.

B. The Cleanup Standard

With the exception of the point of compliance provision, the proposed standard (Subpart B) for cleanup of contaminated ground water contains identical basic provisions (§§ 264.92–.94) as the standard for disposal in Subpart A. In addition, it provides for the establishment of supplemental standards under certain conditions and for use of institutional control to permit passive restoration through natural flushing when no community drinking water source is involved.

The standards do not specify a single point of compliance for the cleanup of ground water that has been contaminated by residual radioactive materials from uranium milling before final disposal. Instead, the "point of compliance" is any point where contamination is found in the ground water. The standard requires DOE to establish a monitoring program to determine the extent of contamination (§ 192.12(c)(1)) in ground water around a processing site (§ 192.11(b)). The possible presence of any of the inorganic or organic hazardous constituents identified in tailings or used in the processing operation should be assessed. The remedial action plan referenced under § 192.20(b)(4) would document the extent of contamination, the rate and direction of movement of contaminants, and consider future movement of the plume.

The proposed cleanup standards would normally require restoration of all contaminated ground water to the levels provided for under § 264.94. These levels are either background concentrations, the levels specified in Tables 1 and A, or ACLs. In cases where the ground water is not classified as Class III, any ACL should be determined under the assumption that the ground water may be used for drinking purposes.

In certain circumstances, however, supplemental standards set at levels that assure, at a minimum, protection of human health and the environment, and come as close to meeting the otherwise applicable standards as is reasonably achievable by remedial actions could be granted if:

- The ground water at the site is Class III (See definitions, § 192.11(e)) in the absence of contamination from tailings; or
- Complete restoration would cause more environmental harm than it would prevent; or
- Complete restoration is technically impracticable from an engineering perspective.

The use of supplemental standards for Class III ground water would apply the ground water classification system established in EPA's 1984 Ground Water Protection Strategy. Procedures for classifying ground water are presented in "Guidelines for Ground-Water Classification under the EPA Ground-Water Protection Strategy" released in final draft in December 1986 and due to be finalized during late 1987. Under these draft guidelines, Class I ground waters encompass highly vulnerable resources of particularly high value, e.g. an irreplaceable source of drinking water or ecologically vital ground water. Class II ground water include all non-Class I ground water that is currently used or is potentially adequate for drinking water. Class III encompasses ground waters that are not a current or potential source of drinking water due to widespread, ambient contamination caused by natural or human-induced conditions, or cannot provide enough water to meet the needs of an average household. Human-induced conditions would not include the contribution from the uranium mill tailings. At sites with Class III ground water, the proposed supplemental standards would require only such management of contamination due to tailings as would be required to prevent additional adverse impacts on human health and the environment from that contamination. For example, if the additional contamination from the tailings would cause an adverse effect on Class II ground water that has a significant interconnection with the Class III ground water over which the tailings reside, then the additional contamination from the tailings would have to be abated.

Supplemental standards may also be appropriate in certain other cases similar to those addressed in section 121(d)(4) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA recognizes that cleanup of contamination could sometimes cause environmental harm disproportionate to the health effects it would alleviate. For example, if fragile ecosystems would be impaired by any reasonable restoration process (or by carrying a restoration process to extreme lengths to remove small amounts of residual

issuing ACLs are listed in § 264.94(b). EPA's regulations under Title II of UMTRCA provide that the NRC, which regulates active sites, replace the EPA Regional Administrator for the above functions when any contamination permitted by an ACL will remain on the licensed site. Because section 108(a) of UMTRCA requires the Commission's concurrence with DOE's selection and performance of remedial actions to conform to EPA's standards, we propose that the Nuclear Regulatory Commission administer all such functions for Title I, including concurrence on supplemental standards.

C. Request for Comments

The Agency solicits comment on this entire proposed rule. In addition, we are particularly interested in receiving comments and recommendations on the following issues:

1. Should a liner requirement always be imposed on tailings piles that are moved to a new location? Should a liner be required only if the DOE or the NRC conclude that it is needed to satisfy the ground-water standards for disposal?

2. For designated processing sites from which tailings have been removed, is a specific requirement that DOE clean up the ground water before releasing the land to State or private owners needed to assure that such cleanup will occur?

3. Should institutional controls be relied upon, for a limited time, to prevent access of the public to ground water in order to permit-use of natural flushing of contaminants, as proposed? If so, what types of institutional controls should be allowed? Should these be specified in the rule? Is the proposed time period appropriate?

4. Should the option to make use of natural flushing for cleansing of contaminants be limited to cases where some restoration of the ground water has already been carried out? Should the use of an alternate concentration limit (ACL) be permitted, as proposed, in the case of clean up to be achieved (in whole or part) by natural flushing?

5. Are the proposed bases for supplemental standards for cleanup reasonable and adequate for the protection of public health? Should other bases be provided and, if so, what are they? Should the provisions for natural flushing and supplemental standards for cleanup apply only to existing contamination or should they also apply, as is proposed, to "new" contamination due to failure of the disposal design to perform as intended?

6. Under these proposed standards, alternate concentration limits would be concurred in by the NRC. Should EPA establish generic criteria and/or guidance governing the application of the provisions of § 264.94(b) of this Part to these judgments for these standards?

7. Should EPA publish, as part of this standard, a restricted list of just those radioactive and toxic constituents that are present at these sites, or continue to rely on the entire list (supplemented as proposed) of constituents encompassed by RCRA regulations? Should the proposed list of additional listed constituents be changed?

8. EPA could consider publishing a restricted list of just those radioactive and toxic constituents that are principal contaminants at these sites and specifying a limit for each of these, under the assumption that any minor contaminants would be taken care of in the cleanup of these principal contaminants. With such a restricted set of constituents and corresponding complete set of limits, EPA could then consider dropping the provisions for ACLs and relying solely on the remaining provisions for exceptional cases. Should EPA adopt this approach?

9. Should EPA specify a minimum or the entire period for post-disposal ground-water monitoring in Subpart A, or leave it to the DOE and NRC to determine this period on a site-specific basis, as proposed? If EPA should specify a period, what length would be appropriate to demonstrate conformance to the disposal design standard, and on what basis should this value be chosen?

10. For tailings regulated by NRC under Title II of the Act, section 84(a)(3) requires the NRC to develop regulations to conform to general requirements applicable to the possession, transfer, and disposal of hazardous materials regulated by the Administrator. Should the standards proposed here incorporate such requirements for tailings regulated under Title I?

11. Is it appropriate to base the uranium contaminant limit on radioactivity alone or should the chemical toxicity of uranium result in a more restrictive value?

12. Should the Agency consider revising the Title II regulations to incorporate those portions of the Title I regulations that are different from the Title II regulations, e.g., the additional contaminant limits in Table A?

13. Are the estimated costs of implementing these proposed standards accurate and based on reasonable assumptions?

14. What criteria should be used to judge "technically impracticable from an engineering perspective?" Can and should these criteria be specified in the rule or should they be left to the judgment of the Department of Energy and the Nuclear Regulatory Commission?

15. The criteria proposed here to specify ground water as Class III, and therefore qualified for supplemental standards, are based on draft proposals still under consideration by the Agency. Are these criteria appropriate for this application, or would others be more appropriate for use at these sites?

V. Implementation

UMTRCA requires the Secretary of Energy to select and perform the remedial actions needed to implement these standards, with the full participation of any State that shares the cost. The NRC must concur with these actions and, when appropriate, the Secretary of Energy must also consult with affected Indian tribes and the Secretary of the Interior.

The cost of remedial actions will be borne by the Federal Government and the States as prescribed by UMTRCA. The clean-up of ground water is a large-scale undertaking for which there is relatively little experience. Ground-water conditions at the inactive processing sites vary greatly, and, as noted above, engineering experience with some of the required remedial actions is limited. Although preliminary engineering assessments have been performed, specific engineering requirements and costs to meet the ground-water standards at each site have yet to be determined. We believe that costs averaging about 12 million (1986) dollars for each tailings site at which extensive cleanup is required are most likely.

The benefits from the cleanup of this ground water are difficult to quantify. We expect that, in a few instances, ground water that was unusable due to contamination from tailings piles and needed for use will be restored. In the areas where the tailings were processed, ground water is relatively scarce due to the arid condition of the land. However, most of the contamination at these sites occurs in shallow alluvial aquifers, which have limited current use in these locations because of their generally poor quality and the availability of better water from deeper aquifers.

Implementation of the disposal standard for protection of ground water will require a judgment that the method chosen provides a reasonable expectation that the provisions of the standard will be met, to the extent reasonably achievable, for up to 1000 years and, in any case, for at least 200 years. This judgment will necessarily be based on site-specific analyses of the properties of the sites, candidate

contamination), then it might be prudent to protect them in lieu of completely restoring ground-water quality. Decisions regarding tradeoffs of environmental damage can only be based on characteristics peculiar to the location. We do not know whether there are such situations in the UMTRCA program, but we believe that DOE should be permitted to propose supplemental standards in such situations, after thorough investigation and consideration of all reasonable restoration alternatives, for concurrence by the NRC.

Based on currently available information, we are not aware that at least substantial restoration of ground-water quality is technically impracticable from an engineering perspective at any of the designated sites. However, our information may be incomplete. We believe DOE should not be required to institute active measures that would completely restore ground water at these sites if such restoration is technically impracticable from an engineering perspective, and if, at a minimum, protection of human health and the environment is assured. Consistent with the provisions of SARA for remediation of waste sites generally, the proposed standards would therefore permit DOE to propose supplemental standards in such situations at levels achievable by site-specific alternate remedial actions that are technically practicable. The concurrence role of the NRC would also apply to such proposals. A finding of technical impracticability from an engineering perspective would require careful and extensive documentation, including an analysis of the degree to which remediation is practicable. It should be noted that the word "practicable" is not identical in meaning to the word "practical." As used here, the former means "able to be put into practice" and the latter means "cost-effective." In addition to documentation of technical matters related to cleanup technology, DOE would also have to include a detailed assessment of such site-specific matters as transmissivity of the geologic formation, contaminant properties (e.g., withdrawal and treatability potential), and the exent of contamination.

Finally, for aquifers where passive restoration can be projected to occur naturally within a period less than 100 years, and where the ground water is not now and is not now projected to be used for a community water supply within this period, we propose to allow extension of the remedial period to that time, provided satisfactory institutional control of public use of ground water and an adequate monitoring program is established and maintained throughout this extended remedial period.

The proposal to allow extension of the remedial period to permit reliance on passive restoration through natural flushing is based on the judgment that no active cleanup is warranted to restore ground-water quality where ground-water concentration limits will be met within a period no greater than 100 years through natural processes and no substantial use of the water exists or is projected, if institutional control is established that will effectively protect public health in the interim. This mechanism may also be a useful supplement for situations where active cleansing to completely achieve the standards is impracticable, environmentally damaging, or excessively costly, if the partially cleansed ground water can achieve the levels required by the standards through natural flushing within an acceptable extended remedial period. Alternate standards would not be required where final cleanup is to be accomplished through natural flushing, since those established under § 264.94 would be met at the end of the remedial period.

The proposed regulations would establish a time limit on such extension of the remedial period to limit reliance on extended use of institutional controls to control public access to contaminated ground water. Following the precedent established by our final rule for high-level radioactive wastes (40 CFR 191.14(a)), it is proposed that use of institutional controls be permitted for this purpose only when they will be needed for periods of less than 100 years. Otherwise, active restoration rather than passive restoration through reliance on natural flushing would be required.

Institutional controls must be effective over the entire period of time that they would be in use. Examples of acceptable measures include legal use restrictions enforceable by permanent government entities, or measures with a high degree of permanence, such as Federal or State ownership of the land containing the contaminated water. In some instances, a combination of institutional controls may have to be used at the same time to provide adequate protection, such as providing an alternate source of drinking water and placing a deed restriction on the property to prevent use of contaminated ground water. Institutional controls that would not be adequate are measures such as health advisories, signs, posts, admonitions, or any other measure that requires the voluntary cooperation of private parties. In all cases in which DOE proposes to use institutional controls, the measures must have a high probability of protecting the human health and the environment and must receive the concurrence of the NRC.

Restoration methods for ground water include removal methods, wherein the contaminated water is removed from the aquifer, treated, and either disposed of, used, or reinjected into the aquifer, and *in situ* methods, such as the addition of chemical or biological agents to fix the contamination in place. Appropriate restoration methods will depend on characteristics of specific sites and may involve use of a combination of methods. Water can be removed from an aquifer by pumping it out through wells or by collecting the water from intercept trenches. Slurry walls can sometimes be put in place to contain contamination and prevent further migration of contaminants, so that the volume of contaminated water that must be treated is reduced. The background information document contains a more extensive discussion of candidate restoration methods.

We have reviewed preliminary information on all 24 sites and detailed information on 12 of the 24 to make a preliminary assessment of the extent of potential applicability of the proposed supplemental standards and use of passive remediation under institutional control. Based on these analyses, none of the pre-existing ground water beneath uranium mill tailings piles falls into Class I. Approximately two-thirds of the sites appear to be over Class II and the balance over Class III ground waters. The rate at which natural flushing is occurring at three or four of the 24 sites would permit consideration of passive remediation under institutional control as the sole remedial method. We are not able to predict the applicability of provisions regarding technical impracticability or excess environmental harm, since this requires detailed analysis of specific sites, but we anticipate that wide application would be unlikely. It is emphasized that the above assessments are not based on final results for the vast majority of these sites, and is, therefore, subject to change.

RCRA regulations provide that, for disposal units regulated by EPA under RCRA, the constituents to be included in the ground water protection standard (§ 264.93) and acceptable concentrations of each (§ 264.94) are decided by the Regional Administrator of EPA. The regulations also provide for ACLs to be issued by the Regional Administrator. The criteria to be considered when

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The proposal to allow extension of the remedial period to permit reliance on passive restoration through natural flushing is based on the judgment that no active cleanup is warranted to restore ground-water quality where ground-water concentration limits will be met within a period no greater than 100 years through natural processes and no substantial use of the water exists or is projected, if institutional control is established that will effectively protect public health in the interim. This mechanism may also be a useful supplement for situations where active cleansing to completely achieve the standards is impracticable, environmentally damaging, or excessively costly, if the partially cleansed ground water can achieve the levels required by the standards through natural flushing within an acceptable extended remedial period. Alternate standards would not be required where final cleanup is to be accomplished through natural flushing, since those established under § 264.94 would be met at the end of the remedial period.

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Institutional controls must be effective over the entire period of time that they would be in use. Examples of acceptable measures include legal use restrictions enforceable by permanent government entities, or measures with a high degree of permanence, such as Federal or State ownership of the land containing the contaminated water. In some instances, a combination of institutional controls may have to be used at the same time to provide adequate protection, such as providing an alternate source of drinking water and placing a deed restriction on the property to prevent use of contaminated ground water. Institutional controls that would not be adequate are measures such as health advisories, signs, posts, admonitions, or any other measure that requires the voluntary cooperation of private parties. In all cases in which DOE proposes to use institutional controls, the measures must have a high probability of protecting the human health and the environment and must receive the concurrence of the NRC.

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We have reviewed preliminary information on all 24 sites and detailed information on 12 of the 24 to make a preliminary assessment of the extent of potential applicability of the proposed supplemental standards and use of passive remediation under institutional control. Based on these analyses, none of the pre-existing ground water beneath uranium mill tailings piles falls into Class I. Approximately two-thirds of the sites appear to be over Class II and the balance over Class III ground waters. The rate at which natural flushing is occurring at three or four of the 24 sites would permit consideration of passive remediation under institutional control as the sole remedial method. We are not able to predict the applicability of provisions regarding technical impracticability or excess environmental harm, since this requires detailed analysis of specific sites, but we anticipate that wide application would be unlikely. It is emphasized that the above assessments are not based on final results for the vast majority of these sites, and is, therefore, subject to change.

RCRA regulations provide that, for disposal units regulated by EPA under RCRA, the constituents to be included in the ground water protection standard (§ 264.93) and acceptable concentrations of each (§ 264.94) are decided by the Regional Administrator of EPA. The regulations also provide for ACLs to be issued by the Regional Administrator. The criteria to be considered when

disposal systems, and the potential effects of natural processes over time. Therefore, the measures required to satisfy the standard will vary from site to site. We expect that actual site data, computational models, and expert judgment will be the major tools in deciding that a proposed disposal system will satisfy the standard.

The purpose of the proposed ground-water cleanup standard is to provide the maximum reasonable protection of public health and the environment. Costs incurred by remedial actions should be directed toward this purpose. We intend the standards to be implemented using verification procedures whose cost and technical requirements are reasonable. Procedures that provide a reasonable assurance of compliance with the standards will be adequate. Measurements to assess existing contamination and to determine compliance with the cleanup standards should be performed with reasonable survey and sampling procedures designed to minimize the cost of verification.

The explanatory discussions regarding implementation of these regulations in § 192.20 (a)(2) and (a)(3) are revised to remove those provisions that the Court remanded and to reflect these new proposals.

These standards are not expected to affect the disposal work DOE has already performed on tailings. We expect, in general, that a pile that has been properly designed to comply with the disposal standards now in effect for long term stabilization and control of radon emanation from a pile will also comply with these disposal standards for the control of ground-water contamination. DOE will have to determine, with the concurrence of the NRC, if any additional work may be needed to comply with the ground-water cleanup requirements. However, any such cleanup work should not adversely affect the control systems for tailings piles that have already been or are currently being installed.

VI. Regulatory Impact Analysis/ Regulatory Flexibility

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. That order requires such an analysis if the regulations would result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation is not Major, because we expect the costs of the remedial action program for ground water in any calendar year to be less than $100 million; States bear only 10% of these costs and there are no anticipated major affects on costs or prices for others; and we anticipate no significant adverse effects on domestic or foreign competition, employment, investment, productivity, or innovation. Estimated costs under these proposed regulations are discussed in the Background Information Document.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501, et seq.

This proposed regulation will not have a signficant effect on a substantial number of small entities, as specified under section 605 of the Regulatory Flexibility Act, because there are no small entities subject to this regulation.

Dated: September 10, 1987.

Lee M. Thomas,

Administrator.

List of Subjects in 40 CFR Part 192

Environmental protection, Radiation protection, Uranium.

For reasons set forth in the preamble, 40 CFR Chapter I, Part 192, Subparts A, B and C are proposed to be amended as follows:

PART 192—HEALTH AND ENVIRONMENTAL PROTECTION STANDARDS FOR URANIUM MILL TAILINGS

1. The authority citation for Part 192 continues to read as follows:

Authority: Section 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Trailings Radiation Control Act of 1978 as amended, Pub. L. 95–604.

Subpart A—Standards for the Control of Residual Radioactive Materials From Inactive Uranium Processing Sites

* * * * *

2. Section 192.01 is amended by revising paragraph (a) and adding paragraphs (g), (h), (i), and (j) to read as follows:

§ 192.01 Definitions.

(a) Unless otherwise indicated in this subpart, all terms have the same meaning as in Title I of the Act. Reference to Part 264 of the Code of Federal Regulations is to that Part as codified on January 1, 1983. [These references will be replaced by the complete text in the final rule.]

* * * * *

(g) *Remedial period* means the period of time beginning March 7, 1983 and ending with the completion of requirements specified under a remedial action plan.

(h) *Remedial Action Plan* means a written plan for a specific site that incorporates the results of site characterization studies, environmental assessments or impact statements, and engineering assessments into a plan for disposal and cleanup which satisfies the requirements of Subparts A and B.

(i) *Post-disposal period* means the period of time beginning immediately after the completion of the requirements of Subpart A and ending at completion of the monitoring requirements established under § 192.02(b).

(j) *Ground water* is subsurface water within a zone in which substantially all the voids are filled with water under pressure equal to or greater than that of the atmosphere.

3. Section 192.02 is amended by redesignating and revising the introductory text as paragraph (a); paragraph (a) is redesignated as paragraph (a)(1); paragraph (b) introductory text is redesignated as paragraph (a)(2); paragraph (b)(1) is redesignated as paragraph (a)(2)(i); paragraph (b)(2) is redesignated as paragraph (a)(2)(ii); and paragraphs (a)(3), (a)(4), (b) and (c) are added to read as follows:

§ 192.02 Standards.

(a) Control of residual radioactive materials and their listed constituents shall be designed [1] to:

* * * * *

(3) Conform to the ground-water protection provisions of §§ 264.92–264.95 of Part 264 of this chapter, except that, for the purposes of this subpart:

(i) To the list of constituents referenced in § 264.93 of this chapter are added molybdenum, radium, uranium, and nitrate,

---

[1] Because the standard applies to design, monitoring after disposal is not required to demonstrate compliance. This footnote applies only to § 192.02(a) (1) and (2).

(ii) To the concentration limits provided in Table 1 of § 264.94 of this chapter are added the constituent limits in Table A of this subpart,

TABLE A.

Constituent	Limit
Combined radium-226 and radium-228	5 pCi/liter.
Combined uranium-234 and uranium-238	30 pCi/liter.
Gross alpha-particle activity (excluding radon and uranium)	15 pCi/liter.
Nitrate (as N)	10 mg/liter.
Molybdenum	0.1 mg/liter.

(iii) The Secretary shall determine what listed constituents are present in the tailings at a disposal site,

(iv) A monitoring program shall be established upgradient of the disposal site adequate to determine background levels of listed constituents,

(v) The Secretary may propose and, with the Commission's concurrence, apply alternate concentration limits, provided that, after considering practicable corrective actions, the Commission determines that these are as low as reasonably achievable, and that, in any case, § 264.94(b) is satisfied, and

(vi) The functions and responsibilities designated in referenced paragraphs of Part 264 of this chapter as those of the "Regional Administrator" with respect to "facility permits" shall be carried out by the Commission.

(4) Comply with the performance standard in § 264.111 (a) and (b) of this chapter.

(b) The Secretary shall propose and, following concurrence by the Commission, implement a monitoring plan, to be carried out over a period of time which shall constitute the post-disposal period, which is adequate to demonstrate that initial performance of the disposal is in accordance with the design requirements of § 192.02(a).

(c) If the ground-water standards established under provisions of § 192.02(a) are found or projected to be exceeded, as a result of the monitoring program established for the post-disposal period under § 192.02(b), a corrective action program to restore the disposal to the design requirements of § 192.02(a) and, as necessary, to clean up ground water in conformance with Subpart B shall be put into operation as soon as is practicable, and in no event later than eighteen (18) months after a finding of exceedance.

Subpart B—Standards for Cleanup of Land and Buildings Contaminated With Residual Radioactive Materials From Inactive Uranium Processing Sites

* * * * *

4. Section 192.11 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 192.11 Definitions.

* * * * *

(b) *Land* means (1) any surface or subsurface land that is not part of a disposal site and is not covered by an occupiable building, and (2) subsurface land that contains ground water contaminated by listed constituents from residual radioactive material from the processing site.

* * * * *

(e) *Class III ground water* [3] means ground water that is not a current or potential source of drinking water because (1) the concentration of total dissolved solids is in excess of 10,000 mg/1, (2) widespread, ambient contamination not due to activities involving residual radioactive materials from a designated processing site exists that cannot be cleaned up using treatment methods reasonably employed in public water-supply systems, or (3) the quantity of water available is less than 150 gallons per day.

5. In § 192.12, the introductory text is republished and paragraph (c) is added to read as follows:

§ 192.12 Standards.

Remedial actions shall be conducted so as to provide reasonable assurance that, *as a result of residual radioactive materials from any designated processing site:*

* * * * *

(c) The concentration of any listed constituent in ground water as a result of releases from residual radioactive material at any designated processing site shall not exceed the provisions of §§ 264.92–264.94 of this chapter as modified by § 192.02(a)(3) (i) and (ii), except that for the purposes of this subpart:

(1) The Secretary shall carry out a monitoring program adequate to define the extent of ground-water contamination by listed constituents from residual radioactive materials and to monitor compliance with this Subpart.

(2) The Secretary may propose and, with the Commission's concurrence, apply alternate concentration limits, provided that, after considering practicable corrective actions, the Commission determines that these are as low as reasonably achievable, and § 264.94(b) is satisfied.

(3) The functions and responsibilities designated in referenced paragraphs of Part 264 of this chapter as those of the "Regional Administrator" with respect to "facility permits" shall be carried out by the Commission.

(4) The remedial period established under Subpart A may be extended by an amount not to exceed 100 years if:

(i) The concentration limits established under this Subpart are not projected to be exceeded at the end of this extended remedial period,

(ii) Institutional control, which will effectively protect public health and satisfy beneficial uses of ground water during the extended remedial period, is instituted, as part of the remedial action, at the processing site and wherever contamination by listed constituents from residual radioactive materials is found in ground water, or is projected to be found,

(iii) The ground water is not currently and is not now projected to become a source of supply for public drinking water subject to provisions of the Safe Drinking Water Act during the extended remedial period, and

(iv) The requirements of Subpart A are satisfied within the time frame established under section 112(a) of the Act, or as extended by Act of Congress.

Subpart C—Implementation

6. In § 192.20, paragraphs (a)(2), and (a)(3) and (b)(1) are revised and paragraph (b)(4) is added to read as follows:

§ 192.20 Guidance for implementation.

* * * * *

(a) * * *

(2) Protection of water should be considered on a case-specific basis, drawing on hydrological and geochemical surveys and all other relevant data. The hydrologic and geologic assessment to be conducted at each site shall include a monitoring program sufficient to establish background ground water quality through one or more upgradient wells. New disposal sites for tailings that still contain water at greater than the level of "specific retention" or tailings that are slurried to the new location shall use

[3] Class III ground waters are further defined in *Ground-Water Protection Strategy*, Office of Ground-Water Protection, USEPA, Washington, DC 20460, August 1984, and the Final Draft of *Guidelines for Ground-Water Classification under the EPA Ground-Water Protection Strategy*, Office of Ground-Water Protection, USEPA, Washington, DC 20460, December 1986.

disposal systems, and the potential effects of natural processes over time. Therefore, the measures required to satisfy the standard will vary from site to site. We expect that actual site data, computational models, and expert judgment will be the major tools in deciding that a proposed disposal system will satisfy the standard.

The purpose of the proposed ground-water cleanup standard is to provide the maximum reasonable protection of public health and the environment. Costs incurred by remedial actions should be directed toward this purpose. We intend the standards to be implemented using verification procedures whose cost and technical requirements are reasonable. Procedures that provide a reasonable assurance of compliance with the standards will be adequate. Measurements to assess existing contamination and to determine compliance with the cleanup standards should be performed with reasonable survey and sampling procedures designed to minimize the cost of verification.

The explanatory discussions regarding implementation of these regulations in § 192.20 (a)(2) and (a)(3) are revised to remove those provisions that the Court remanded and to reflect these new proposals.

These standards are not expected to affect the disposal work DOE has already performed on tailings. We expect, in general, that a pile that has been properly designed to comply with the disposal standards now in effect for long term stabilization and control of radon emanation from a pile will also comply with these disposal standards for the control of ground-water contamination. DOE will have to determine, with the concurrence of the NRC, if any additional work may be needed to comply with the ground-water cleanup requirements. However, any such cleanup work should not adversely affect the control systems for tailings piles that have already been or are currently being installed.

VI. Regulatory Impact Analysis/ Regulatory Flexibility

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. That order requires such an analysis if the regulations would result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation is not Major, because we expect the costs of the remedial action program for ground water in any calendar year to be less than $100 million; States bear only 10% of these costs and there are no anticipated major affects on costs or prices for others; and we anticipate no significant adverse effects on domestic or foreign competition, employment, investment, productivity, or innovation. Estimated costs under these proposed regulations are discussed in the Background Information Document.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501, et seq.

This proposed regulation will not have a signficant effect on a substantial number of small entities, as specified under section 605 of the Regulatory Flexibility Act, because there are no small entities subject to this regulation.

Dated: September 10, 1987.

Lee M. Thomas,

Administrator.

List of Subjects in 40 CFR Part 192

Environmental protection, Radiation protection, Uranium.

For reasons set forth in the preamble, 40 CFR Chapter I, Part 192, Subparts A, B and C are proposed to be amended as follows:

PART 192—HEALTH AND ENVIRONMENTAL PROTECTION STANDARDS FOR URANIUM MILL TAILINGS

1. The authority citation for Part 192 continues to read as follows:

Authority: Section 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Trailings Radiation Control Act of 1978 as amended, Pub. L. 95–604.

Subpart A—Standards for the Control of Residual Radioactive Materials From Inactive Uranium Processing Sites

* * * * *

2. Section 192.01 is amended by revising paragraph (a) and adding paragraphs (g), (h), (i), and (j) to read as follows:

§ 192.01 Definitions.

(a) Unless otherwise indicated in this subpart, all terms have the same meaning as in Title I of the Act. Reference to Part 264 of the Code of Federal Regulations is to that Part as codified on January 1, 1983. [These references will be replaced by the complete text in the final rule.]

* * * * *

(g) *Remedial period* means the period of time beginning March 7, 1983 and ending with the completion of requirements specified under a remedial action plan.

(h) *Remedial Action Plan* means a written plan for a specific site that incorporates the results of site characterization studies, environmental assessments or impact statements, and engineering assessments into a plan for disposal and cleanup which satisfies the requirements of Subparts A and B.

(i) *Post-disposal period* means the period of time beginning immediately after the completion of the requirements of Subpart A and ending at completion of the monitoring requirements established under § 192.02(b).

(j) *Ground water* is subsurface water within a zone in which substantially all the voids are filled with water under pressure equal to or greater than that of the atmosphere.

3. Section 192.02 is amended by redesignating and revising the introductory text as paragraph (a); paragraph (a) is redesignated as paragraph (a)(1); paragraph (b) introductory text is redesignated as paragraph (a)(2); paragraph (b)(1) is redesignated as paragraph (a)(2)(i); paragraph (b)(2) is redesignated as paragraph (a)(2)(ii); and paragraphs (a)(3), (a)(4), (b) and (c) are added to read as follows:

§ 192.02 Standards.

(a) Control of residual radioactive materials and their listed constituents shall be designed [1] to:

* * * * *

(3) Conform to the ground-water protection provisions of §§ 264.92–264.95 of Part 264 of this chapter, except that, for the purposes of this subpart:

(i) To the list of constituents referenced in § 264.93 of this chapter are added molybdenum, radium, uranium, and nitrate,

---

[1] Because the standard applies to design, monitoring after disposal is not required to demonstrate compliance. This footnote applies only to § 192.02(a) (1) and (2).

(ii) To the concentration limits provided in Table 1 of § 264.94 of this chapter are added the constituent limits in Table A of this subpart,

TABLE A.

Constituent	Limit
Combined radium-226 and radium-228	5 pCi/liter.
Combined uranium-234 and uranium-238	30 pCi/liter.
Gross alpha-particle activity (excluding radon and uranium)	15 pCi/liter.
Nitrate (as N)	10 mg/liter.
Molybdenum	0.1 mg/liter.

(iii) The Secretary shall determine what listed constituents are present in the tailings at a disposal site,

(iv) A monitoring program shall be established upgradient of the disposal site adequate to determine background levels of listed constituents,

(v) The Secretary may propose and, with the Commission's concurrence, apply alternate concentration limits, provided that, after considering practicable corrective actions, the Commission determines that these are as low as reasonably achievable, and that, in any case, § 264.94(b) is satisfied, and

(vi) The functions and responsibilities designated in referenced paragraphs of Part 264 of this chapter as those of the "Regional Administrator" with respect to "facility permits" shall be carried out by the Commission.

(4) Comply with the performance standard in § 264.111 (a) and (b) of this chapter.

(b) The Secretary shall propose and, following concurrence by the Commission, implement a monitoring plan, to be carried out over a period of time which shall constitute the post-disposal period, which is adequate to demonstrate that initial performance of the disposal is in accordance with the design requirements of § 192.02(a).

(c) If the ground-water standards established under provisions of § 192.02(a) are found or projected to be exceeded, as a result of the monitoring program established for the post-disposal period under § 192.02(b), a corrective action program to restore the disposal to the design requirements of § 192.02(a) and, as necessary, to clean up ground water in conformance with Subpart B shall be put into operation as soon as is practicable, and in no event later than eighteen (18) months after a finding of exceedance.

Subpart B—Standards for Cleanup of Land and Buildings Contaminated With Residual Radioactive Materials From Inactive Uranium Processing Sites

* * * * *

4. Section 192.11 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 192.11 Definitions.

* * * * *

(b) *Land* means (1) any surface or subsurface land that is not part of a disposal site and is not covered by an occupiable building, and (2) subsurface land that contains ground water contaminated by listed constituents from residual radioactive material from the processing site.

* * * * *

(e) *Class III ground water* [3] means ground water that is not a current or potential source of drinking water because (1) the concentration of total dissolved solids is in excess of 10,000 mg/1, (2) widespread, ambient contamination not due to activities involving residual radioactive materials from a designated processing site exists that cannot be cleaned up using treatment methods reasonably employed in public water-supply systems, or (3) the quantity of water available is less than 150 gallons per day.

5. In § 192.12, the introductory text is republished and paragraph (c) is added to read as follows:

§ 192.12 Standards.

Remedial actions shall be conducted so as to provide reasonable assurance that, *as a result of residual radioactive materials from any designated processing site:*

* * * * *

(c) The concentration of any listed constituent in ground water as a result of releases from residual radioactive material at any designated processing site shall not exceed the provisions of §§ 264.92–264.94 of this chapter as modified by § 192.02(a)(3) (i) and (ii), except that for the purposes of this subpart:

(1) The Secretary shall carry out a monitoring program adequate to define the extent of ground-water contamination by listed constituents from residual radioactive materials and to monitor compliance with this Subpart.

(2) The Secretary may propose and, with the Commission's concurrence, apply alternate concentration limits, provided that, after considering practicable corrective actions, the Commission determines that these are as low as reasonably achievable, and § 264.94(b) is satisfied.

(3) The functions and responsibilities designated in referenced paragraphs of Part 264 of this chapter as those of the "Regional Administrator" with respect to "facility permits" shall be carried out by the Commission.

(4) The remedial period established under Subpart A may be extended by an amount not to exceed 100 years if:

(i) The concentration limits established under this Subpart are not projected to be exceeded at the end of this extended remedial period,

(ii) Institutional control, which will effectively protect public health and satisfy beneficial uses of ground water during the extended remedial period, is instituted, as part of the remedial action, at the processing site and wherever contamination by listed constituents from residual radioactive materials is found in ground water, or is projected to be found,

(iii) The ground water is not currently and is not now projected to become a source of supply for public drinking water subject to provisions of the Safe Drinking Water Act during the extended remedial period, and

(iv) The requirements of Subpart A are satisfied within the time frame established under section 112(a) of the Act, or as extended by Act of Congress.

Subpart C—Implementation

6. In § 192.20, paragraphs (a)(2), and (a)(3) and (b)(1) are revised and paragraph (b)(4) is added to read as follows:

§ 192.20 Guidance for implementation.

* * * * *

(a) * * *

(2) Protection of water should be considered on a case-specific basis, drawing on hydrological and geochemical surveys and all other relevant data. The hydrologic and geologic assessment to be conducted at each site shall include a monitoring program sufficient to establish background ground water quality through one or more upgradient wells. New disposal sites for tailings that still contain water at greater than the level of "specific retention" or tailings that are slurried to the new location shall use

[3] Class III ground waters are further defined in *Ground-Water Protection Strategy*, Office of Ground-Water Protection, USEPA, Washington, DC 20460, August 1984, and the Final Draft of *Guidelines for Ground-Water Classification under the EPA Ground-Water Protection Strategy*, Office of Ground-Water Protection, USEPA, Washington, DC 20460, December 1986.

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a liner or equivalent to prevent contamination of ground water.

(3) The remedial action plan, following approval by the Commission, will specify how applicable requirements of Subpart A are to be satisfied. The plan shall include the schedule and steps necessary to complete disposal operations at the site. It shall include an estimate of the inventory of wastes to be disposed of in the pile and their listed constituents and address (i) any need to eliminate free liquids; (ii) stabilization of the wastes to a bearing capacity sufficient to support the final cover; and (iii) the design and construction of a cover to manage the migration of liquids through the stabilized pile, function with minimum maintenance, promote drainage and minimize erosion or abrasion of the cover, and accommodate settling and subsidence so that the cover's integrity is maintained.

(b)(1) Compliance with § 192.12 (a) and (b) of Subpart B, to the extent practical, should be demonstrated through radiation surveys. Such surveys may, if appropriate, be restricted to locations likely to contain residual radioactive materials. These surveys should be designed to provide for compliance averaged over limited areas rather than point-by-point compliance with the standards. In most cases, measurement of gamma radiation exposure rates above and below the land surface can be used to show compliance with § 192.12(a). Protocols for making such measurements should be based on assuming realistic radium distributions near the surface rather than extremes rarely encountered.

* * * * *

(4) The remedial action plan, following approval by the Commission, will specify how applicable requirements of Subpart B would be satisfied. The plan should include the schedule and steps necessary to complete the cleanup of ground water at the site. It should document the extent of contamination due to releases prior to final disposal, including the identification and location of listed constituents and the rate and direction of movement of contaminated ground water. In addition, the assessment should consider future plume movement, including an evaluation of such processes as attenuation and dilution. In cases where § 192.12(c)(4) is invoked, the plan should include a monitoring program to verify projections of plume movement and attenuation throughout the remedial period. Finally, the plan should specify details of the method to be used for cleanup of ground water.

7. In § 192.21, the introductory text and paragraph (b) are revised, paragraph (f) is redesignated as paragraph (h), and new paragraphs (f) and (g) are added to read as follows:

§ 192.21 Criteria for applying supplemental standards.

Unless otherwise indicated in this subpart, all terms shall have the same meaning as defined in Title I of the Act or in Subparts A and B. The implementing agencies may (and in the case of subsection (h) shall) apply standards under § 192.22 in lieu of the standards of Subparts A or B if they determine that any of the following circumstances exists:

* * * * *

(b) Remedial actions to satisfy the cleanup standards for land, § 192.12 (a) and (c), or the acquisition of minimum materials required for control to satisfy § 192.02(a) (2) and (3), would, notwithstanding reasonable measures to limit damage, directly produce environmental harm that is clearly excessive compared to the health benefits to persons living on or near the site, now or in the future. A clear excess of environmental harm is harm that is long-term, manifest, and grossly disproportionate to health benefits that may reasonably be anticipated.

* * * * *

(f) The restoration of ground water quality at any designated processing site under § 192.12(c) is technically impracticable from an engineering perspective.

(g) The ground water is Class III.

* * * * *

8. In § 192.22, paragraphs (a) and (b) are revised and paragraph (d) is added to read as follows:

§ 192.22 Supplemental standards.

* * * * *

(a) When one or more of the criteria of § 192.21 (a) through (g) applies, the implementing agencies shall select and perform remedial actions that come as close to meeting the otherwise applicable standard as is reasonable under the circumstances.

(b) When § 192.21(h) applies, remedial actions shall, in addition to satisfying the standards of Subparts A and B, reduce other residual radioactivity to levels that are as low as is reasonably achievable.

* * * * *

(d) When § 192.21 (f) or (g) applies, implementing agencies must apply any remedial actions for the restoration of contaminated ground water that is required to assure, at a minimum, protection of human health and the environment.

[FR Doc. 87-21723 Filed 9-23-87; 8:45 am]
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a liner or equivalent to prevent contamination of ground water.

(3) The remedial action plan, following approval by the Commission, will specify how applicable requirements of Subpart A are to be satisfied. The plan shall include the schedule and steps necessary to complete disposal operations at the site. It shall include an estimate of the inventory of wastes to be disposed of in the pile and their listed constituents and address (i) any need to eliminate free liquids; (ii) stabilization of the wastes to a bearing capacity sufficient to support the final cover; and (iii) the design and construction of a cover to manage the migration of liquids through the stabilized pile, function with minimum maintenance, promote drainage and minimize erosion or abrasion of the cover, and accommodate settling and subsidence so that the cover's integrity is maintained.

(b)(1) Compliance with § 192.12 (a) and (b) of Subpart B, to the extent practical, should be demonstrated through radiation surveys. Such surveys may, if appropriate, be restricted to locations likely to contain residual radioactive materials. These surveys should be designed to provide for compliance averaged over limited areas rather than point-by-point compliance with the standards. In most cases, measurement of gamma radiation exposure rates above and below the land surface can be used to show compliance with § 192.12(a). Protocols for making such measurements should be based on assuming realistic radium distributions near the surface rather than extremes rarely encountered.

* * * * *

(4) The remedial action plan, following approval by the Commission, will specify how applicable requirements of Subpart B would be satisfied. The plan should include the schedule and steps necessary to complete the cleanup of ground water at the site. It should document the extent of contamination due to releases prior to final disposal, including the identification and location of listed constituents and the rate and direction of movement of contaminated ground water. In addition, the assessment should consider future plume movement, including an evaluation of such processes as attenuation and dilution. In cases where § 192.12(c)(4) is invoked, the plan should include a monitoring program to verify projections of plume movement and attenuation throughout the remedial period. Finally, the plan should specify details of the method to be used for cleanup of ground water.

7. In § 192.21, the introductory text and paragraph (b) are revised, paragraph (f) is redesignated as paragraph (h), and new paragraphs (f) and (g) are added to read as follows:

§ 192.21 Criteria for applying supplemental standards.

Unless otherwise indicated in this subpart, all terms shall have the same meaning as defined in Title I of the Act or in Subparts A and B. The implementing agencies may (and in the case of subsection (h) shall) apply standards under § 192.22 in lieu of the standards of Subparts A or B if they determine that any of the following circumstances exists:

* * * * *

(b) Remedial actions to satisfy the cleanup standards for land, § 192.12 (a) and (c), or the acquisition of minimum materials required for control to satisfy § 192.02(a) (2) and (3), would, notwithstanding reasonable measures to limit damage, directly produce environmental harm that is clearly excessive compared to the health benefits to persons living on or near the site, now or in the future. A clear excess of environmental harm is harm that is long-term, manifest, and grossly disproportionate to health benefits that may reasonably be anticipated.

* * * * *

(f) The restoration of ground water quality at any designated processing site under § 192.12(c) is technically impracticable from an engineering perspective.

(g) The ground water is Class III.

* * * * *

8. In § 192.22, paragraphs (a) and (b) are revised and paragraph (d) is added to read as follows:

§ 192.22 Supplemental standards.

* * * * *

(a) When one or more of the criteria of § 192.21 (a) through (g) applies, the implementing agencies shall select and perform remedial actions that come as close to meeting the otherwise applicable standard as is reasonable under the circumstances.

(b) When § 192.21(h) applies, remedial actions shall, in addition to satisfying the standards of Subparts A and B, reduce other residual radioactivity to levels that are as low as is reasonably achievable.

* * * * *

(d) When § 192.21 (f) or (g) applies, implementing agencies must apply any remedial actions for the restoration of contaminated ground water that is required to assure, at a minimum, protection of human health and the environment.

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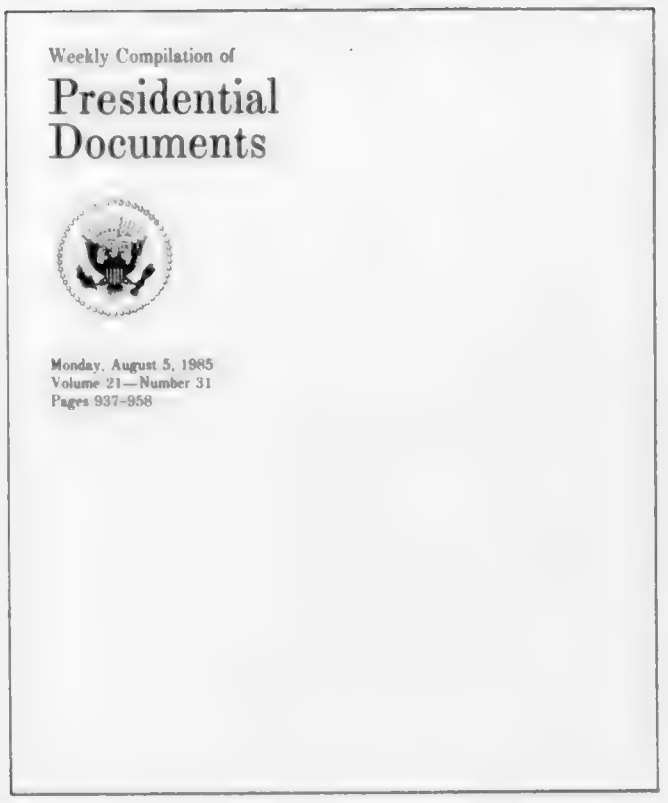

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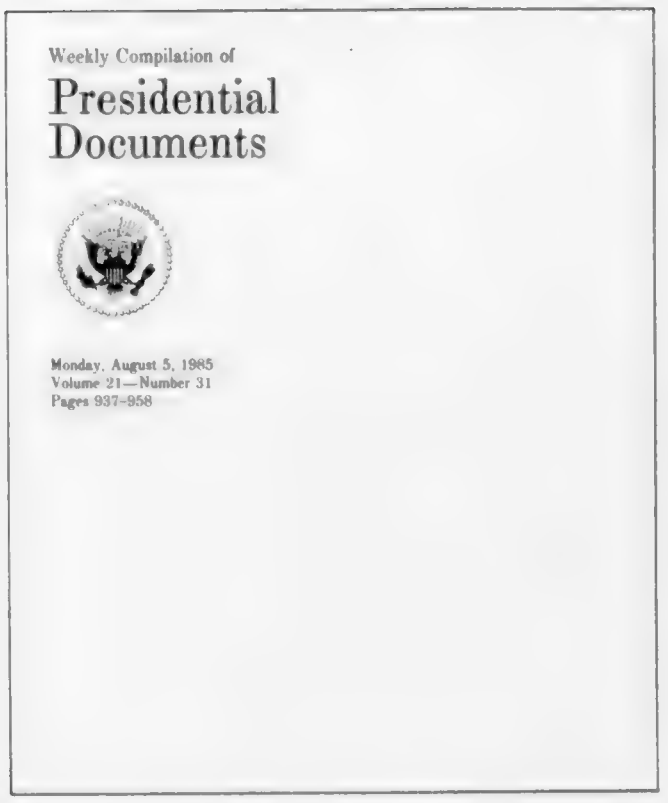

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Rules and Regulations

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Schedule A Authority for Employment of Students

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management is revising the Schedule A excepted service appointing authority used by agencies to hire student assistants. These regulations permit appointments under the authority to be made to positions outside the General Schedule. The current language of the authority provides only for appointment to General Schedule positions. However, some positions outside the General Schedule provide practical experience to supplement scientific or technical curricula. It was never intended that the authority should prohibit employment of students in such positions, as long as their employment otherwise meets the conditions prescribed in this authority.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Schedule A authority was established in 1949 for all agencies to use in appointing student assistants. Originally, the authority contained a monetary limit on the compensation that an appointee could receive during the year. In 1956, the authority was revised to set a maximum grade level of GS–7 for appointments under the authority and to replace the monetary limit with a compensation limit stated as a percentage of the grade in which a person was employed. Subsequently, the monetary limit was dropped and the service limit was set at 1040 hours for a service year, but the grade level limit remained at GS–7.

Because the regulatory language of the authority speaks only of GS–7 and makes no provision for equivalent grades, the authority does not clearly permit appointments to positions outside the General Schedule. However, there was no intent to prohibit employment of student assistants in positions outside the General Schedule when such employment otherwise met the conditions for use of the Schedule A authority.

Proposed regulations amending 5 CFR 213.3102(q) to permit appointments to positions at GS–7 and below, or equivalent, were published for comment on June 17, 1987. To ensure that all positions filled under the liberalized language would be of the type the authority was intended to cover, the proposed regulations also prohibited routine trades and crafts employment. Only one Federal agency commented on the proposed regulations; it supported the change.

Therefore, these final regulations contain no changes from the proposed regulations published June 17, 1987.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain employees in Federal agencies.

List of Subject in 5 CFR Part 213

Government employees.

Office of Personnel Management.
James E. Colvard,
Deputy Director.

Accordingly, OPM is amending 5 CFR Part 213 as follows:

PART 213—[AMENDED]

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, and 8337(h).

2. In § 213.3102(q), the first and fourth sentences are revised to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(q) Positions at grade GS–7, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. * * * No one shall be employed under this provision in—routine clerical positions; routine trades and labor positions, unless such employment clearly relates to a scientific, professional, or technical curriculum; or excess of 1040 working hours a year; except that the 1040 working-hours-a-year limitation shall not apply to positions at grade GS–4 and below that are established in connection with associate degree cooperative education programs. * * *

[FR Doc. 87–22204 Filed 9–24–87; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Bunched Spinach

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule established voluntary United States Standards for Grades of Bunched Spinach. Industry requested establishment of these grade standards in order to provide a common trading language for this product. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056, South Building, Washington, DC 20090–6456, (202) 447–5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive

Order 12291 and Departmental Regulation 1521-1 and has been determined to be a "nonmajor" rule. It would not result in an annual effect on the economy of $100 million or more. There would be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies or geographic regions. It would not result in significant effects on competition, employment investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises or domestic or export markets.

The Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the grade standards it establishes are in-line with current marketing practices. Compliance with these standards will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of such entities relative to large business. In addition, the standards are voluntary; members of the spinach industry need not have their spinach certified under these standards.

A proposal to establish United States Standards for Grades of Bunched Spinach (7 CFR 51.2891 to 51.2896) was published in the **Federal Register** on October 27, 1986, (51 FR 37914-37915), and invited interested persons to submit written comments.

This proposal was developed at the request of members of the spinanch industry, because presently there are no established U.S. standards for bunched spinach. Copies of the proposal were distributed to various individuals, growers, handlers, receivers, grocery store chains, Federal and State government officials, and industry associations or organizations for review and comment.

The 60-day comment period ended December 26, 1986, and a total of nine comments were received concerning the proposal.

Three of the commenters expressed general support of the rule as proposed. One of these also suggested the need for an additional commercial grade. The Agency does not foresee the active trading of a grade of spinach lower than U.S. No. 2 and believes such a grade is unnecessary at this time. Accordingly, this comment is not adopted. Two additional comments suggested support but recommended modification of the proposal. One suggested adding to the proposal a standard minimum size for each bunch; another recommended adding a standard size for each container. In developing the proposal, the Agency considered specifying a minimum bunch size, as well as a standard container size. These were not included in the proposed rule because they were not deemed practical. The Agency continues to believe they should not be included because of their impractibility and the rigidity they would introduce. Members of the bunched spinach industry pack a wide selection of bunch sizes and consequently use a variety of containers. However, this does not mean that individual firms cannot specify a bunch size or a container. The standards specifically permit such a specification in the "Size" section wherein it states "Size may be specified in connection with the grade in terms of number of bunches per container, or with minimum and/or maximum size of bunches in inches or pounds and/or fractions thereof."

Four commenters were opposed to the proposed rule because they felt they were unnecessary and would not enhance sales of bunched spinach. One of the four comments specifically objected to the "Tolerances" section on the basis that providing for a size tolerance would create problems because spinach does not grow to a uniform size, and limiting the smaller or larger sizes would be difficult. This comment also criticized the definitions contained in § 51.2896. The Agency does not believe these views are correct. The standards are voluntary, not mandatory. They will not impose the rigid restrictions suggested by the comments in opposition to the standards. For example, size need not be specified; but, if specified, the spinach must meet the rule's tolerance to be certified. The standards established herein are intended to provide a tool for the industry which can assist in the marketing of spinach. Members of the industry are free to continue operations without having their product certified if they so choose.

This final rule modifies the definition of "damage" and "serious damage" as proposed in § 51.2896(i) and (h), respectively. The definition of damage in the proposed rule provided that any specific defect described in this section, or any equally objectionable variation of any one of the defects described, or any other defect or combination of defects which materially detracted from the appearance or edible marketing quality would be considered damage. The definition of serious damage provided that any specific defect described in the section, or any equally objectionable variation of any one of these defects described, or any other defect or combination of defects which seriously detracted from the appearance or edible or marketing quality would be considered serious damage.

These general definitions remain unchanged in this final rule. However, this final rule deletes the phrase "and/or materially affects the appearance of the bunch" and the phrase "and/or seriously affects the appearance of the bunch" from the listed defects of seedstems, flower buds, insects, discoloration and mechanical damage as they appear in the definitions of damage and serious damage, respectively.

These phrases are deleted to clarify that the original intent of the proposed definitions was that the basis for determining damage or serious damage for a specific defect is the degree of the defect as specifically described for each individual defect, and not whether the specified defect materially or seriously affected the appearance. However, if any other defect or combination of defects materially or seriously detracts from the appearance or edible or marketing quality of bunched spinach, they then would be considered damage or serious damage, whichever is the case.

The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsiblity to develop and improve standards of quality, condition, grade and packaging in order to encourage uniformity and consistency in commercial practices. The Agency believes this final rule will enhance the marketing of bunched spinach.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

Accordingly, for the reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622-1624).

2. The table of contents for 7 CFR Part 51 is amended to add a new subpart consisting of §§ 51.2891 through 51.2896 to read as follows:

Subpart—United States Standards for Grades of Bunched Spinach

Sec.
51.2891 General.
51.2892 Grades.

Sec.
51.2893 Size.
51.2894 Tolerances.
51.2895 Application of tolerances.
51.2896 Definitions.

3. A new subpart consisting of §§ 51.2891 through 51.2896 is added to read as follows:

Subpart—United States Standards for Grades of Bunched Spinach

§ 51.2891 General.

(a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(b) These standards are applicable to spinach of goosefoot (Chenopodiaceae) family which is bunched separately and packed separately in containers as either leaves or plants.

§ 51.2892 Grades.

(a) "U.S. No. 1" consists of bunched spinach which meet the following requirements:

(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Same form;
(iii) Well grown;
(iv) Fairly clean;
(v) Well trimmed; and,
(vi) Fresh.
(2) Free from: Decay.
(3) Free from damage by:
(i) Coarse stalks;
(ii) Seedstems;
(iii) Flower buds;
(iv) Discoloration;
(v) Wilting;
(vi) Foreign material;
(vii) Insects;
(viii) Freezing; and,
(ix) Mechanical or other means.
(4) Tolerances. (See § 51.2894)

(b) "U.S. No. 2" consists of bunched spinach which meet the following requirements:

(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Same form;
(iii) Well grown;
(iv) Reasonably clean;
(v) Fairly well trimmed; and,
(vi) Fresh.
(2) Free from: Decay.
(3) Free from serious damage by:
(i) Coarse stalks;
(ii) Seedstems;
(iii) Flower buds;
(iv) Discoloration;
(v) Wilting;
(vi) Foreign material;
(vii) Insects;
(viii) Freezing; and,
(ix) Mechanical or other means.
(4) Tolerances (See § 51.2894)

§ 51.2893 Size.

Size may be specified in connection with grade in terms of number of bunches per container, or with minimum and/or maximum size of bunches in inches or pounds and/or fractions thereof.

§ 51.2894 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *Defects*—(1) *U.S. No. 1.* 12 percent for bunches in any lot which fail to meet the requirements of this grade: Provided, that included in this amount not more than 6 percent shall be allowed for defects causing serious damage; and, Provided, further, that included in this latter amount not more than 3 percent for bunches that are affected by decay.

(2) *U.S. No. 2.* 12 percent for bunches in any lot which fail to meet the requirements of the specified grade: Provided, that included in this amount not more than 3 percent for bunches which are affected by decay.

(b) *Size.* 10 percent in any lot for bunches which are smaller than a specified minimum size and 15 percent which are larger than a specified maximum size.

§ 51.2895 Application of tolerances.

The contents of individual containers in a lot shall be the sample and, based on sample inspection, are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified, except that when the package contains 13 bunches or less, individual packages may contain not more than double the tolerance specified; Provided, that the averages for the entire lot are within the tolerances specified for the grade.

(b) For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified. Provided, that at least one bunch which does not meet the requirements shall be allowed in any one package, And provided further, that the averages for the entire lot are within the tolerances specified for the grade.

§ 51.2896 Definitions.

(a) "Similar varietal characteristics" means that the spinach shall be of one type, such as crinkly leaf type or flat leaf type. No mixture of types shall be permitted which materially affects the appearance of the bunch.

(b) "Same form" means bunches and containers shall contain either plants or leaves with no more than a 15 percent by weight mixture of the other in either the bunch or the container.

(c) "Well grown" means not stunted or poorly developed.

(d) "Fairly clean" means generally free from dirt, sand or other adhering foreign matter and the appearance of the bunch is not materially affected.

(e) "Reasonably clean" means mostly free from dirt, sand or other adhering foreign matter and that the appearance of the bunch is not seriously affected.

(f) "Well trimmed" means for plants that the roots are no longer than one inch below the common point of attachment of the leafstems, and for leaves that not more than 15 percent of the leaves in the bunch have leafstems longer than the length of the attached leaf.

(g) "Fairly well trimmed" means for plants that roots are no longer than two inches below the common point of attachment of the leafstems, and for leaves that not more than 15 percent of the leaves in the bunch have leafstems longer than one and one-half times the length of the attached leaf.

(h) "Fresh" means not more than slightly wilted.

(i) "Damage" means any specific defect described in this section or an equally objectionable variation of any one of these defects, or any other defect or any combination of defects which materially detracts from the appearance or edible or marketing quality. The following specific defects shall be considered as damage:

(1) Seedstems when more than one-fourth the length of the longest leaf in the bunch.

(2) Flower buds when mostly opening in the bunch.

(3) Insects when scattered or concentrated or when insect feeding materially affects the appearance of the bunch.

(4) Discoloration when affecting an aggregate area of more than 10 percent of the total surface area of the leaves in the bunch.

(5) Mechanical damage when more than 25 percent of the leaves in the bunch are crushed, torn or broken.

(j) "Serious damage" means any specific defect described in this section or an equally objectionable variation of any one of these defects, or any other defects or any combination of defects which seriously detracts from the appearance or the edible or marketing quality. The following specific defects shall be considered as serious damage.

(1) Seedstems when more than one-half the length of the longest leaf in the bunch.

(2) Flower buds when generally open in the bunch.

(3) Insects when very concentrated or when the insect feeding seriously affects the appearance of the bunch.

(4) Discoloration when affecting an aggregate area of more than 25 percent of the total surface area of the leaves in the bunch.

(5) Mechanical damage when more than 50 percent of the leaves in the bunch are crushed, torn or broken.

Done in Washington, DC, on: September 18, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs

[FR Doc. 87-22132 Filed 9-24-87; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Director Compensation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), revises regulations relating to the compensation of members of Farm Credit System (System) district boards. The revisions implement Farm Credit Administration Order No. 866 and section 5.5 of Farm Credit Act of 1971, 12 U.S.C. 2226, as amended (Act), as the statute authorizes the FCA to approve the compensation paid to district directors for undertaking certain functions or activities.

EFFECTIVE DATE: The revisions shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Senior Attorney, or, Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On December 9, 1986 the FCA published for comment a proposed regulation relating to the compensation of members of System district boards (51 FR 44308). The proposed regulation combined existing regulations §§ 611.1020, 611.1021, 611.1022, 611.1030, and 611.1031 into a new § 611.1020. The FCA received comments from the Farm Credit Corporation of America (FCCA), the Farm Credit District of Texas (Texas District) and the Farm Credit District of Baltimore (Baltimore District). The FCA Board has carefully analyzed and considered each comment and responds to them on the basis of a thorough consideration of the merits of the positions expressed.

The FCCA stated that its comments were made on behalf of its member banks. The Texas District also submitted a separate letter expressing its agreement with these comments. In its comments, the FCCA first noted that language had been omitted from the last sentence of § 611.1020(a) of the proposed regulation. The FCA Board acknowledges that language was inadvertently omitted from this sentence. The omitted language has been added to the final regulation at the end of the last sentence of § 611.1020(a)

The FCCA also expressed concern that the last sentence of proposed § 611.1020(a) could be construed to prohibit persons serving as district board directors from being compensated by a Federal land bank association (FLBA), production credit association (PCA), or cooperative of which they are a member, for activities undertaken on behalf of these organizations. The Baltimore District also raised this concern in the comments that it submitted.

The FCA Board did not intend to prohibit district board directors from receiving compensation for services performed on behalf of a FLBA, PCA or cooperative. However, such service is not part of a district board director's official responsibilities. Therefore, as a clarification, the last sentence of § 611.1020(a) has been revised to read "* * * may not be compensated as a district board director * * *."

The Baltimore District stated a general concern that the proposed regulation requires submission of more detailed information than is appropriate for FCA, as an arm's-length regulator, to require. It suggested that the decision-making authority regarding what information is to be acquired pursuant to the regulation should rest with the district boards. The Baltimore District did not specifically object to any particular type of information that the regulation requires to be maintained and did not dispute the need for the information. The FCA Board has determined that the documentation of compensation and expense allowances that district boards are required to maintain pursuant to § 611.1020(c) provides a reasonable means of helping to ensure compliance with the regulation.

The Baltimore District also commented that, because of the daily limit on compensation and the requirement that district boards base their compensation policy primarily on meeting attendance, sufficient recognition is not given to the effort required by directors to handle routine matters and constituent problems. It also requested FCA to clarify whether compensation is allowed for participation in duly called telephone meetings. A method of payment suggested by the Baltimore District consisted of an annual retainer to cover regular monthly meetings and preparation time for such meetings with a per diem allowance for nonroutine matters. The Baltimore District stated that precedent for this arrangement is found in the compensation allowed to directors of the Federal National Mortgage Association (Fannie Mae) and Student Loan Marketing Association (Sallie Mae).

At the present time, the FCA Board declines to amend the regulation to specifically provide for a retainer method of compensation, such as the one used by Fannie Mae and Sallie Mae. A difference exists between the organization of Fannie Mae and Sallie Mae and the Farm Credit System. Unlike Fannie Mae and Sallie Mae, the System is not a single, centralized entity. In addition, section 5.5 of the Act expressly authorizes compensation to district board members for attending meetings of the board as district board and while acting as directors of the district banks, and directs FCA to set the level of compensation. Accordingly, under the regulation, payment for meeting attendance remains an important part of a district board director's overall compensation. However, as the Baltimore District notes in its comments, the Farm Credit Amendments Act of 1985 restructured FCA into an arm's-length regulator. The regulation implements this congressional directive by providing district boards with the opportunity to make policy decisions regarding other types of services for which district directors may be compensated. While the prior § 611.1020 based compensation on "attendance at board meetings and special assignments," § 611.1020(b) of the final regulation directs "(e)ach district board to develop a written policy addressing compensation." Therefore, district boards are provided the flexibility to monitor and control the number of days for which compensation and allowances are paid.

Moreover, § 611.1020(b) specifically states that the list of items to be addressed in the written policy of each district board regarding director compensation is a "minimum," thereby affording flexibility to include additional types of official services in the

compensation policy. The district board's policy-making authority is limited by the requirement that only those services performed in a district board director's official capacity are eligible for compensation. Should a district board determine that some kind of retainer method of compensation is appropriate, the FCA would review the documentation justifying the decision in the normal examination process. Should FCA find that director compensation set by any district board is beyond reasonable bounds, FCA retains the authority under section 5.5 of the Act to require adjustment of the level of compensation and to address any related unsafe of unsound practices in a System bank.

In response to the Baltimore District's specific concern about participation by telephone at duly convened meetings, the FCA Board would not object if a district board policy included a provision for compensation for such participation. However, the Board expects any such district board policy to include standards defining the level of active participation in, and contribution to, telephone meetings necessary in order to be compensated for such meetings. The documentation requirements set forth in § 611.1020(c) would apply to compensation paid pursuant to such a policy.

List of Subjects in 12 CFR Part 611

Accounting, Agriculture, Archives and records, Banks, Banking, Credit, Government securities, Investments, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is revised as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: 12 U.S.C. 2031, 2061, 2162, 2183, 2216–2216k, 2243, 2244, 2250, 2252.

Subpart F—General Rules for the Districts

2. Section 611.1020 is revised to read as follows:

§ 611.1020 Compensation of district board members.

(a) Each district board director may be compensated for services performed in that person's official capacity as a director of the district banks or as a member of the district board, provided such compensation is fair and reasonable. Payment of such compensation shall be consistent with the compensation policy established by a district board in accordance with 5.5 of the Act and this regulation. A district board director may not be compensated as a district board director for undertaking activities on behalf of Federal land bank associations, production credit associations, cooperatives of which the director is a member, or for performing other assignments of a nonofficial nature.

(b) Each district board shall develop a written policy regarding the compensation of district directors. The policy shall address, at a minimum, the following areas:

(1) The activities or functions for which the attendance or directors is necessary and appropriate and may be compensated.

(2) The rate of compensation to be paid district directors, which shall not exceed $200 per day, plus reasonable allowances for travel, subsistence, and other related expenses incurred in connection with such activities or functions.

(3) The formula used to determine each director's rate of compensation and allowance for expenses, and the timing and frequency when such compensation and allowance is periodically adjusted.

(4) The extent of the compensation to be allowed directors for travel time involved in attending such activities or functions.

(5) The circumstances, if any, under which travel and subsistence expenses for directors' spouses are a necessary expense for which reimbursement may be made.

(c) Each district board shall maintain records documenting all compensation and expense allowances paid to directors by such board. These records shall specify:

(1) The activity or function for which the director is being compensated;

(2) The reason the attendance of the director (and the director's spouse) at such activity or function is necessary and appropriate;

(3) The duration of the director's stay and the location of such activity or function;

(4) The compensation paid the director and the total payments made by the institution in order for the director to attend the activity or function; and

(5) The amount of necessary expenses of the director (and the director's spouse) that are reimbursed and an itemized explanation of the purpose and justification for the expenses.

§§ 611.1021, 611.1022, 611.1030 and 611.1031 [Removed and Reserved]

3. Sections 611.1021, 611.1022, 611.1030, and 611.1031 are removed and reserved.

Elizabeth A. Kirby,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 87–22133 Filed 9–24–87; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 382

[Docket Nos. RM87–3–002 through 018; Order No. 472–B]

Annual Charges Under Omnibus Budget Reconciliation Act of 1986

Issued September 16, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order granting rehearing in part, denying rehearing in part, and making conforming amendments.

SUMMARY: The Federal Energy Regulatory Commission grants in part rehearing of its final rule regarding "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987). The rehearing order removes certain types of gas volumes and oil revenues from the annual charge assessment computations, and specifies the required contents of a gas tariff filing for gas pipelines seeking to pass through their annual charge expenses to their customers through the use of an annual charge mechanism.

EFFECTIVE DATE: November 4, 1987.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8308.

SUPPLEMENTARY INFORMATION:

Note.—Appendixes A–D are available from the Federal Energy Regulatory Commission at the address listed under "**FOR FURTHER INFORMATION CONTACT.**"

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction and Background

The Federal Energy Regulatory Commission (Commission) grants in part and denies in part timely requests to

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rehear [1] portions of Order No. 472.[2] That final rule established annual charges as required by section 3401 of the Omnibus Budget Reconciliation Act of 1986.[3] Many of the arguments raised on rehearing are reiteration of comments filed in response to the notice of proposed rulemaking [4] in this docket. The Commission has already fully addressed these issues. However, applicants rais new issues. These are specifically discussed below.

II. Discussion

A. Constitutionality of the Budget Act and the Annual Charges Regulations

Numerous entities have again raised the argument that the enabling statute and therefore the annual charges promulgated under that statute are unconstitutional.[5] The Commission continues to believe that it must accept the constitutionality of a statute enacted by Congress, and that the regulations implementing the statute are likewise constitutional.[6] In any event, the Commission believes that Congress properly delegated the authority to promulgate these regulations to the Commission and that the Commission has not exceeded its authority.

B. Multiple Assessment of Energy Units

Many entities question the propriety of the Commission assessing an annual charge on a unit of energy each time it moves from one regulated entity to another (multiple assessment).[7] In Order No. 472, the Commission adopted this approach in lieu of the method recommended in the petition for rehearing, *i.e.*, that the Commission impose a Gas Research Institute (GRI)-type surcharge which would attach to a unit of energy only once, as it was leaving the Commission's sales or transportation jurisdiction. In supporting their position that multiple assessment is unfair and inequitable, the petitioners argue that the Conference Report merely allowed, but did not require, the Commission to base its annual charge computations on:

(1) The type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation;

(2) The total direct and indirect costs of that type of Commission regulation incurred during such year;

(3) The amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and

(4) The total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.[8]

Petitioners further argue that multiple assessment unfairly comes from "upstream" pipeline suppliers and transporters; [9] unfairly assesses multiple charges against subsidiaries, parents, affiliates, and power pool members selling or transporting the same energy; [10] and unfairly assesses the same annual charge unit amount on gas traveling through long and short natural gas pipelines despite the "fact" that regulation of gas traveling through short pipelines requires far less Commission resources.[11]

The Commission continues to believe that its approach of assessing a unit of gas or electricity each time it is sold or transported by a jurisdictional entity is fully in accord with Congressional guidance that the Commission consider: (1) The amount of energy transported or sold in interstate commerce by *each* regulated entity, and compare that amount with (2) the total amount of energy transported or sold in interstate commerce by *all* similar entities.[12] In other words, the Commission is assessing *entities* on the basis of their throughput, rather than assessing *energy volumes* as such. As noted above, annual charges computed under a GRI-type approach would be based on a comparison quite different from that set forth in the Conference Report. They would be calculated by comparing (1) the amount of energy transported or sold by a regulated entity to other entities which are not subject to Commission jurisdiction and (2) the total amount of energy sold or transported by all regulated entities to other entities which are not subject to Commission jurisdiction.

The Commission disagrees that multiple assessment unfairly burdens the "downstream" natural gas pipelines (or electric utilities) and their customers. Those entities frequently pay multiple transportation expenses to receive their energy, due to the presence of "middlemen." For instance, in its rates, an "upstream" pipeline passes along to the "downstream" pipelines the cost of obtaining its natural gas pipeline certificates. Thus, the fact that a "downstream" pipeline incurs more certificate-related costs than an "upstream" pipeline merely results from the pipelines' respective locations, not from any unfairness in the regulations. The same principle applies to annual charges.

Moreover, as noted in the final rule, the annual charge assessments are based on the expenses incurred by the Commission in regulating the energy industries, not on the expenses of the industry members in acquiring their energy. Because the Commission incurs expenses in providing benefits not specifically sought through company filings (such as audits, publication of the *FERC Reports*, availability of staff for informal consultation, *etc.*) and also incurs expenses not fully recouped through filing fees regarding every sale and transportation it reviews and regulates or certificate it issues (even for those certificates issued to subsidiaries, parents, affiliates, and power pool members), the Commission is justified in recouping those expenses from the entities which file for and receive those rates and certificates, regardless of their relationship to their suppliers or purchasers. Similarly, the Commission must issue certificates and establish rates for small and large pipelines alike. The length of the pipe does not

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[1] A list of timely applications for rehearing is included in Appendix A.

[2] Order No. 472, "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987), III FERC Stats. & Regs. ¶ 30,746, *clarified*, Order No. 472–A, 52 FR 23650 (June 24, 1987), 39 FERC ¶ 61,318.

[3] Act of October 21, 1986, Pub. L. No. 99–509, Title III, Subtitle E, sec. 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890–1891 (to be codified at 42 U.S.C. 7178), I FERC Stats. & Regs. ¶ 6253.

[4] 52 FR 3128 (Feb. 2, 1987), IV FERC Stats. & Regs. ¶ 32,434.

[5] Petitions of Interstate Natural Gas Ass'n of America (INGAA) at 3–4; ANR Pipeline Co. and Colorado Interstate Gas Co. (ANR) at 1; Texas Eastern Transmission Corp. (Texas Eastern) at 1 and 5; United Distribution Cos. (UDC) at 1–3; Connecticut Natural Gas Corp. (Connecticut Natural) at 2; Consolidated Gas Transmission Corp. (Consolidated) at 10–11; Central Illinois Public Service Co. (CIPSCo) at 1–2; Southern Company Services Inc. (SCSI) at 2–6; Southern Company Services Inc., Blackstone Valley Electric Co., Boston Edison Co., Central Vermont Public Service Corp., Eastern Edison Co., El Paso Electric Co., EUA Power Corp., Florida Power Corp., Montaup Electric Co., Northern States Power Co., Public Service Co. of Indiana, Inc., Public Service Co. of N.H., and Wisconsin Electric Power Co. (collectively referred to as Electric Utilities Group at 2–8; Edison Electric Institute (EEI) at 2–4.

[6] *See, e.g.*, McDonald v. Board of Election Comm'rs, 394 U.S. 802, 809 (1969) ("Legislatures are presumed to have acted constitutionally. . . .")

[7] Petitions of Columbia Gas Transmission Corp. (Columbia) at 2–3; INGAA at 4–7; ANR at 3–5; Texas Eastern at 2–3 and 9; Consolidated at 2–6; SCSI at 9–11; Electric Utilities Group at 9–11.

[8] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884, *quoted in* Petition of INGAA at 5.

[9] Petitions of ANR at 3–4; Columbia at 2–3; Consolidated at 4.

[10] Petitions of SCSI at 9–11; Electric Utilities Group at 10–11; Columbia at 2–3.

[11] Petitions of Consolidated at 3–4; League of Small Pipelines at 1–3.

[12] *See* 52 FR 21278, *citing* Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

necessarily affect the Commission's regulatory expenses.

C. Failure to Increase the Use of Filing Fees

Numerous petitioners criticize the Commission for failing to assess intervenors filing fees,[13] to assess larger filing fees against natural gas pipelines' competitors,[14] and to use more frequently its direct billing authority for computing filing fees.[15] As noted in the final rule, expansion or variation of the Commission's filing fee requirements is not within the scope of this rulemaking proceeding, the only purpose of which is to promulgate regulations concerning annual charges.[16] The Commission will continue to evaluate its fees annually and will refine its fee structure and change its fees as appropriate.[17]

CIPSCo asserts that the Commission should use its direct billing mechanism to recover costs on a case-by-case basis.[18] CIPSCo asserts that there is no reason why the Commission should limit its direct billing to instances where an individual entity presents an issue which will primarily benefit it and which will cost the Commission five times the average amount needed to decide issues of that kind.[19]

CIPSCo is correct that the Budget Act does not require the Commission to use only annual charges when recovering its costs. However, the Budget Act neither expands nor limits the Commission's authority to assess filing fees under the Independent Offices Appropriations Act of 1952 (IOAA).[20] Whatever costs the Commission could recover under the IOAA, it can still recover under that Act, but no more.

The Commission has already considered that extent to which it can and will utilize its direct billing authority under the IOAA. Under the IOAA, the Commission determined that the smallest practical unit for which it could develop a fee was a filing. It determined that the costs of formal evidentiary hearings initiated in connection with the services involved could not be recovered through a direct fee because of the "considerable practical difficulties in determining the primary beneficiary or beneficiaries of hearings generally." [21] Indeed, the Commission found that, given the way the necessary cost information is reported by Commission staff, "it is not administratively feasible to determine how fees should be assessed for this service [hearings]." [22] It is important to note that the IOAA only required that the Commission use the best *available* records to determine costs and that "new cost accounting systems will not be established solely for this purpose." [23]

D. Gross Receipts Tax Vulnerability

Texas Eastern asserts that the Commission's tracking methodology may subject the assessed amounts to gross receipts taxes in certain jurisdictions.[24] Texas Eastern is correct. However, such taxes would be subject to recovery in the pipelines' rate cases.[25]

E. Prorating of DOE Appeal Costs

Texas Eastern also criticizes the Commission for prorating only to interstate gas pipelines the costs associated with DOE adjustment requests and remedial orders, and for failing to take into account that the parties to the DOE cases are readily identifiable and should bear the costs.[26] The company misreads the final rule. Order No. 472 prorated the DOE appeal expenses across gas pipelines, electric utilities, power marketing agencies, and oil pipelines, not just the natural gas pipelines. Moreover, the Commission discussed at considerable length why it cannot collect the entire expense of these proceedings from the appellants.[27] Texas Eastern has raised no arguments not already fully considered and rejected in the final rule.

F. Filing Fee Credits

Texas Eastern challenges the final rule's approach of reducing program costs by the amount of filing fees collected in the prior year for that program. The company asserts that this approach results in a subsidy for some pipelines at the expense of others.[28] Texas Eastern's argument is correct, but irrelevant. As the Commission noted in the final rule, "under either approach [crediting the filing fees to the program or to the companies which paid the fees], some companies will, in varying degrees, subsidize other companies' shares of this agency's expenses.[29] The Commission concurred with numerous commenters that the crediting of individual companies for their filing fees "would undermine the Commission's filing fee system and would contravene the Commission's policy that those who use the Commission's services should pay more than those who do not." [30] Texas Eastern has raised no arguments which would lead the Commission to alter these conclusions.

G. Carrying Costs for Natural Gas Annual Charges

Petitioners argue that annual charge recipients choosing the annual charge adjustment (ACA) clause option (rather than the rate case option) by which to recoup their annual charges should be able to recoup the time value of the charges.[31] Commenters point out that the recipients will either have to borrow money at some cost to pay the charges or forego alternate interest-paying investments.[32] One commenter suggests that the Commission resolve this problem by providing for "either an interest-bearing mechanism or a built-in, one time interest component in the [ACA] unit charge" which pipelines may pass through to their customers.[33]

The Commission agrees that pipelines should be given an opportunity to collect annual charges carrying costs, to recognize the time value of money. However, the mechanism for seeking recovery of this type of expense currently exists. In a rate proceeding, a pipeline may seek to recover this cost and other such cash working capital

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[13] Petitions of INGAA at 7–9; Texas Eastern at 4, 12–13.

[14] Petition of INGAA at 7.

[15] Petition of CIPSCo at 2, 10–12.

[16] 52 FR at 21270–21271. The Commission notes that § 381.107(b)(3) of its regulations permits direct billing of intervenors. 18 CFR 381.107(b)(3) (1987).

[17] 52 FR 21271.

[18] Petition of CIPSCo at 10–11. *Cf.* Petition of Arizona Public Service Co. (APSCo) at 3–4 and 5, in which the company argues that filing fees should recover all the Commission's expenses.

[19] Petition of CIPSCo at 10–11, referring to the standard established for the use of the direct billing mechanism, Order No. 435, "Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers," 50 FR 40347–40351 (Oct. 3, 1985), FERC Stats. & Regs. (Regulations Preambles 1982–1985) ¶ 30,663 at 31,458–31,459, *reh'g denied*, 51 FR 35347 (Oct. 3, 1986), III FERC Stats. & Regs. ¶ 30,713.

[20] 31 U.S.C. 9701 (1982).

[21] Order No. 435, 50 FR at 40351.

[22] *Id.*

[23] *Id., quoting* Budget Circular A–25 at 3.

[24] Petition of Texas Eastern at 10.

[25] The Commission notes that the amount attributable to a gross receipts tax on annual charges is quite small. Assuming a 0.75 percent tax rate on sales-for-resale receipts (such as in New York), a typical natural gas pipeline company would be assessed only about .019 percent of its net income (0.75 percent of the amount by which the annual charges will reduce the gas pipeline industry's net income [2.5 percent]), or $.000015 per Mcf (0.75 percent of the per Mcf ACA unit charge of $.0021).

[26] Petition of Texas Eastern at 11.

[27] 52 FR 21266.

[28] Petition of Texas Eastern at 12.

[29] 52 FR 21267.

[30] *Id.*

[31] For a description of these two options, *see* 52 FR 21278–21279.

[32] Petitions of INGAA at 6; Consolidated at 9.

[33] Petition of Consolidated at 9.

costs. Section 154.63 of the Commission's regulations provides for the filing of a fully developed lead-lag study for purposes of determining whether a pipeline experiences a net expense payment lag in its cash items.[34] The Commission believes that this is the appropriate vehicle for providing pipelines the opportunity to collect the time value of the money used to pay annual charges.

H. Incomplete Recovery of Natural Gas Annual Charges Through Passthrough Mechanism

Two petitioners argue that the annual charge adjustment mechanism is flawed. They claim that the mechanism does not permit downstream gas pipelines to flow through to their customers all of the annual charge assessments passed on to the downstream pipelines in the rates of upstream pipelines.[35] Texas Eastern asserts that the Commission's ACA methodology exposes pipelines to the risk of undercollection.[36] INGAA raises a similar point and also argues that the collection mechanism has the potential for anticompetitive results because pipelines will be required to recover part of their annual charges in the commodity portion of their rates.[37]

Generally, the Commission's gas rate regulation does not guarantee the actual recovery of costs. It only guarantees the opportunity to recover costs. Actual recovery depends on market factors.[38] The annual charge regulations as modified herein provide natural gas pipelines the opportunity to recover both their direct and indirect annual charge expenses.

The Commission adopted the ACA mechanism in order to offer pipelines an alternative to recover of annual charges through Natural Gas Act section 4(e) rate filings.[39] The ACA charge is intended to provide for recovery of a pipeline's own annual charges costs but not the annual charges incurred by other pipelines. To the extent that annual charges are included in the cost of service, and hence the rates, of upstream pipelines, there is no reason why this particular cost component warrants special treatment in the rates of the downstream pipeline purchasing the service. Thus, if a pipeline purchases gas from another pipeline that includes an ACA charge in its sales rate, the purchasing pipeline would treat the ACA charge as part of the purchase price and pass the cost through in its rates as a purchased gas cost. Likewise, if a pipeline ships gas via another pipeline that includes an ACA charge in the transportation rate, the shipping pipeline would pass through the charge in its rates as a transportation cost (booked in Account No. 858—Transportation and Compression by Others).

The annual charge costs included in the rates of upstream pipelines are recoverable, therefore, by the downstream pipeline, and the petitioners have not shown why automatic passthrough of these costs in their ACA charges is necessary. Furthermore, the passthrough of such indirect annual charge expenses would be quite difficult to administer because each pipeline would require a different ACA unit charge, depending on the volumes of gas and the quantities of transportation and storage services it purchases from other pipelines. The ACA mechanism established by the Commission provides for an industry-wide rate calculated at the time annual charges are assessed. If upstream pipeline ACA charges are also included in each pipeline's own ACA unit charge, then each ACA unit charge would be different and the Commission would need to review and verify each calculation.

Texas Eastern points out that the ACA mechanism exposes a pipeline to the risk of underrecovery because the pipeline's throughput over which the ACA is collected may be lower than the throughput on which it was assessed. By the same token, however, the pipeline may reap a benefit if its throughput increases. Over the long term, discrepancies in throughput should balance, because the following year's annual charge will be based on the changed throughput. Moreover, if a pipeline does not wish to risk such underrecovery, it may instead seek to recoup its annual charge expenses in a rate proceeding.

INGAA complains that recovery of annual charge costs in commodity rates is anticompetitive. The Commission disagrees. All interstate pipelines are assessed the same unit charge, so there is no adverse competitive effect as between pipelines. Furthermore, this unit charge, 2.1 mills per Mcf for 1987, should have a *de minimis* effect on gas costs and competition with alternative fuels.

I. Natural Gas System Storage Double Assessment

On June 17, 1987, the Commission issued Order No. 472–A, which clarified that the only natural gas storage volumes to be considered in assessing annual charges will be those storage volumes not also included in the reporting pipeline's sales and transportation volumes. Order No. 472–A was designed to prevent the double assessment of storage volumes inherent in Order No. 472, which provided for the calculation of annual charges based upon all sales and transportation volumes plus all volumes delivered to underground storage. Order No. 472–A recognized that certain volumes delivered to storage will also be sold or transported, and endeavored to alleviate the double assessment of such volumes. While Order No. 472–A precluded the double assessment of all volumes that were delivered to storage and either sold or transported in the same calendar year, it did not preclude the double assessment of volumes delivered to storage but not removed from storage during the same calendar year. ANR, Consolidated, and Columbia object to the Commission's double assessment of

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[34] 18 CFR 154.63 (1987).

[35] Petitions of Columbia at 4; Consolidated at 6–7.

[36] Petition of Texas Eastern at 10–11.

[37] Petition of INGAA at 6–7.

[38] *See, e.g.*, Panhandle Eastern Pipeline Co., 38 FERC ¶ 61,164 at 61,470 (1987).

[39] Pipelines wishing to take advantage of the ACA mechanism must file a tariff sheet with the Commission, as they do when seeking to pass through their GRI-related expenses pursuant to § 154.38(d)(5) of the Commission's regulations. *See* 18 CFR 154.38(d)(5) (1987). Pipelines' ACA-related tariff filings must be made pursuant to § 154.38(d)(6) of the Commission's regulations. This regulation is amended to require that the ACA-related tariff sheets include language specifying the purpose and manner of collecting the ACA (to collect an ACA per unit charge as specified by the Commission, applicable to all the pipeline's sales and transportation schedules), the per unit amount of the ACA (2.1 mills per Mcf for purposes of recouping the pipelines' FY 1987 annual charges bill), the proposed effective date of the tariff change (30 days after the filing of the tariff sheet, unless a shorter period is specifically requested and justified in a waiver petition), and an expression of the pipeline's intent not to recover any annual charges recorded in FERC Account No. 928 in a NGA section 4 rate case. These tariff sheets must be accompanied by a $4,700 filing fee pursuant to § 381.204 of the Commission's regulations. 18 CFR 381.204 (1987). Subsequent tariff filings amending the initial ACA-related tariff sheet must be accompanied by the filing fee specified in § 381.205 of the Commission's regulations. However, if a pipeline files in 1987 a revision of an ACA-related tariff filing for the purpose of complying with the new requirements stated above, the pipeline will not be required to pay a filing fee for the revised tariff sheet. A pipeline seeking to take advantage of the ACA mechanism must file a tariff sheet for *all* its sales and transportation rates.

A pipeline availing itself of this option should account for its annual charges by charging the amount to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts. Section 382.106(a) of the Commission's annual charges regulations failed to specify the account into which these pipelines should charge their annual charges expenses. *See* 52 FR 21294. The Commission has amended that regulation to correct this omission.

annual charges on these unremoved system supply storage volumes.[40]

The Commission in Order No. 472–A intended to remove from the annual charges calculations all storage volumes other than contract storage volumes.[41] Order No. 472–A did not fully accomplish that objective. The Commission therefore will give natural gas pipelines the opportunity to inform the Commission of the volumes of gas or LNG which were: (1) Delivered to storage as system supply storage and subsequently sold or transported during calendar year 1986, (2) delivered to storage as system supply storage and intended for transportation or sale in a subsequent calendar year, and (3) delivered to storage as contract storage volumes. Natural gas pipelines may file this data under oath with the Commission by close of business, November 25, 1987.[42] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[43] it will also consider such data and will revise the natural gas pipelines' bills to remove assessments based on system supply storage intended for transportation or sale in a subsequent year. Any company that fails to file the data requested in this order will not benefit from the recalculation of storage volumes for the 1987 annual charge bills.

For future years, the Commission will require such data in its Form Nos. 2 and 2–A. To this end, the Commission is amending its instructions for these forms to require that every natural gas pipeline provide such data as part of a footnote on pages 520–521 of Form No. 2 or pages 18–19 of Form No. 2–A.[44]

J. Natural Gas Field Sales Double Assessment

Columbia argues that pipeline production field sales reflected in its Form No. 2 should not be included in calculating its annual charges because they have also been included in Columbia's transportation volumes.[45] The Commission in Order No. 472 did not intend such a double assessment. The Commission will therefore give a natural gas pipeline the opportunity to inform the Commission of the volumes of pipeline production field sale which were included in both the sales and the transportation totals in Form No. 2, page 521, lines 42 and 46, or Form No. 2–A, page 18, lines 11 and 13–15. The pipelines may file this data under oath with the Commission by close of business November 25, 1987.[46] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[47] it will also consider such data and will revise the pipelines' bills to correct such double assessment. A pipeline company that fails to file the data requested in this order will not benefit from this correction in the recalculation of the 1987 annual charge bills.

In future years, the Commission will require such data in its Form Nos. 2 and 2–A. To this end, the Commission is amending its instructions for these forms to require that every natural gas pipeline provide such data as part of a footnote on pages 520–521 of Form No. 2 or pages 18–19 of Form No. 2–A.[48]

K. Exemption of Natural Gas Producers and Intrastate Pipelines

INGAA and Texas Eastern object to the Commission's exemption of natural gas producers and section 311 intrastate pipelines.[49] However, these petitioners raise no arguments not previously considered and rejected in the final order.[50]

L. Assessment of Limited Jurisdiction Certificate Holders

Connecticut Natural seeks a clarification that Order No. 472 does not apply to natural gas companies holding limited jurisdiction certificates under section 7(c) of the Natural Gas Act.[51] The company also requests the Commission to revise § 382.102(a) of its annual charges regulations to provide that companies holding limited jurisdiction certificate authority are exempt from annual charges. As already noted in the final rule, the Commission intends that natural gas companies holding limited jurisdiction certificates not be assessed annual charges.[52] The definition of "natural gas pipeline company" in § 382.102(a) of the Commission's annual charges regulations is amended to reflect this intent.

M. Special Requests From Natural Gas Companies

1. *National Fuel Gas Distribution Corporation (NFGDC).* In the Commission's Notice of Proposed Rulemaking issued in this proceeding on January 28, 1987,[52a] NFGDC was listed as a "Section 7(f)" company. In its comments, NFGDC advised the Commission that its section 7(f) status had been vacated pursuant to the Commission's Order of November 4, 1986, in Docket No. CP86–351, which

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[40] Petitions of ANR at 5–6; Consolidated at 9–10; Motion for Clarification of Columbia at 1–3.

[41] *See* 52 FR 23650 (Part V) (June 24, 1987).

[42] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this order on each pipeline which is listed in Appendix B of Order No. 472 and which either reported storage volumes in its 1986 annual report or filed a 1986 Form No. 2–A. This service is by United States Mail on the date of issuance of this order.

[43] *See* 52 FR 21269. Any adjustments will be reflected by a credit to the 1988 annual charges bills of those companies filing the data specified above.

[44] The instructions which Order No. 472–A added to these pages (52 FR 23650 [June 24, 1987], 39 FERC ¶ 61,316) are deleted in their entirety, and are replaced with the following language:

Also indicate by footnote (1) the system supply volumes of gas which are stored by the reporting pipeline during the reporting year and also reported as sales, transportation and compression volumes by the reporting pipeline during the same reporting year, (2) the system supply volumes of gas which are stored by the reporting pipeline during the reporting year and which the reporting pipeline intends to sell or transport in a future reporting year, and (3) contract storage volumes.

This language supplements the instructions which Order No. 472 added to these pages (see 52 FR 21274 n. 151 and 21297–21300 [Appendices C and D]). Revised pages 520–521 and 18–19 are in Appendices B and C and contain all instructions added to those pages as a result of this rulemaking proceeding.

The Commission also notes that it is clarifying instruction 4 on pages 520–521 of Form No. 2 and instruction 2 on pages 18–19 of Form No. 2–A to replace the reference to "nonjurisdictional gas" with the reference to "gas not subject to Commission regulation." The Commission has incorporated this change into the revised pages 520–521 and 18–19. Finally, the Commission notes that it is making a similar revision in § 382.202 of the annual charges regulations by deleting the word "jurisdictional" from the phrase "jurisdictional gas subject to Commission regulation."

[45] Petition of Columbia at 3–4.

[46] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this order on each pipeline which is listed in Appendix B of Order No. 472. This service is by United States Mail on the date of issuance of this order.

[47] *See* 52 FR at 21269. Any adjustments will be reflected by a credit to the 1988 annual charges bills of those companies filing the data specified above.

[48] The new instructions added to pages 520–521 of Form No. 2 and pages 18–19 of Form No. 2–A concerning pipeline production field sales are:

Also indicate the volumes of pipeline production field sales which are included in both the company's total sales figure and the company's total transportation figure [lines 42 and 46 of page 521 on Form No. 2, or lines 11 and 13–15 of page 19 on Form No. 2–A].

Revised pages 520–521 and 18–19 are attached as Appendices B and C of this order, and contain all instructions added to those pages as a result of this rulemaking proceeding.

[49] Petitions of INGAA at 7–9; Texas Eastern at 1, 5–9.

[50] *See* 52 FR 21271–21273.

[51] Petition of Connecticut Natural at 1–3, referring to 15 U.S.C. 717f(c) (1982).

[52] *See* 52 FR at 21276.

[52a] 52 FR 3128 (Feb. 2, 1987), IV FERC Stats. & Regs. ¶ 32,434.

issued NFGDC a certificate to transport gas to Eastern Natural Gas Company (Eastern) and to construct and operate measuring facilities.[53] In Order No. 472, the Commission deleted NFGDC from the list of section 7(f) companies and placed it upon no other list. It also exempted all section 7(f) companies from annual charges.

NFGDC seek clarification that its absence from the lists appearing in Appendix B to Order No. 472 means that it is not subject to annual charges. In the November 4, 1986 order, the Commission limited its jurisdiction over NFGDC to the certificated services.[54] The order expressly stated that certification of the services to Eastern did not affect the nonjurisdictional status of NFGDC's other operations.[55] As a limited jurisdiction certificate holder, NFGDC is not subject to annual charges.[56]

2. *Phillips Petroleum Company.* Both Phillips Petroleum Co. and Marathon Oil Co. were listed as "Importers with NGA Sections 3 and Presidential Permit Authority Only," one of the classes of companies not subject to annual charges. Phillips states that these two companies export rather than import natural gas from the Kenai LNG plant in the Cook Inlet area of Alaska, and that Phillips 66 Natural Gas Co. has succeeded to export permit previously held by Phillips Petroleum Co. relating to the Kenai LNG sale. The Commission will correct its record to reflect these changes. However, as neither company pays annual charges, these corrections will not affect the amount of any company's annual charge bill.

N. Oil Not Subject to the Commission's Oil Transportation Jurisdiction

Eureka Pipe Line Co., Natural Transit Co. and Arco Pipe Line Co. argue that the Commission inadvertently failed to exclude revenue from the intrastate transportation of oil in computing annual charges for oil pipelines. It was not the Commission's intent to include such revenue, for to do so would contravene Congressional intent that the Commission base its annual charges assessments on "the amount of energy . . . transported or sold subject to Commission regulation." [57]

The Commission is therefore amending the definition of "operating revenues" in § 382.102(o) of the annual charges regulations, and will give a jurisdictional oil pipeline the opportunity to file a sworn statement which separates: (1) The revenue in FERC Account Nos. 200, 210 and 220 derived from the interstate transportation of oil from (2) the revenue in FERC Account Nos. 200, 210 and 220 derived from the intrastate transportation of oil. Such statements must be filed with the Commission by close of business, November 25, 1987.[58] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[59] it will also consider such data and will revise the oil pipelines' bills to reflect only the revenue derived from the interstate transportation of oil. A company that chooses not to file the data requested in this order will not benefit from the exclusion of intrastate transportation revenue in the recalculation of the 1987 annual charge bills.

In the future, the Commission will require this data in its Form No. 6. Therefore, the Commission is amending its instructions for Form No. 6 to require that every oil pipeline provide such data as part of a footnote on page 301 of that form.[60]

O. Proposed Apportionment of Electric Program Costs

In the final rule, the electric program costs (with the exception of the costs of regulating PMAs) are apportioned among IOUs based upon each IOU's total jurisdictional adjusted sales for resale and adjusted coordination sales. Some IOUs seek rehearing on this issue, asserting that there is no relationship between the number of kilowatt-hours sold and the budgetary impact of regulation of their rate schedules on the Commission.[61]

The Commission is not persuaded by these previously raised arguments. As Order No. 472 stated, the Conference Report indicates Congress' intent that the annual charges be assessed on the basis of the "annual sales or volumes transported." [62]

The Commission has been asked to reconsider its decision to include certain long-term coordination and transmission sales in the adjusted sales for resale category. APSCo alleges that these transactions "normally entail a nominal review by the Commission upon submission of the initial contract." [63] The Commission disagrees with APSCo's argument. Rates for long-term coordination and transmission sales usually require greater use of Commission resources than those for sales which have a duration of less than five years. Long-term sales rates tend to be based upon fully distributed costs and require cost projections (test year data) which must be reasonable. Rates for short-term coordination or transmission sales, on the other hand, are not necessarily exclusively cost-based, but may be made for many non-cost reasons as well.

CIPSCo maintains that the Commission should not assess annual charges on transmission rate volumes because the charges would discourage voluntary transmission. CIPSCo also asserts that these rates benefit the buyer or seller of the power more than the transmitting entity.[64] The Commission believes that the assessment of annual charges on the order of 1/100 of a mill per kilowatt-hour should have no appreciable effect on voluntary transmission, especially in light of the facts that transmitting entities often add up to 1 mill per kilowatt-hour to the otherwise-justified rates for unquantifiable costs. The Commission has seen no evidence that this additional one mill has jeopardized the provision of voluntary transmission service.[65] *A fortiori,* the addition of 1/100 of a mill would not discourage these transactions.

SCSI objects to the Commission's inclusion of certain unit sales in the adjusted sales for resale category. SCSI's assertion brings to light a fundamental misunderstanding reflected

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[53] 37 FERC ¶ 61,082.

[54] *Id.* at 61,214.

[55] *Id.*

[56] *See* Part II L *supra.*

[57] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[58] To facilitate oil pipeline's timely filing of this data, the Commission is serving a copy of this order on each such pipeline listed in Appendix E of Order No. 472. This service is by United States Mail on the date of issuance of this order.

[59] *See* 52 FR 21269. Any adjustments will be reflected by a credit to the FY 1988 annual charges bills of those companies filing the data specified above.

[60] A revised page 301 of Form No. 6 is in Appendix D. The new instructions are:

Also indicate by footnote: (1) The revenues in Account Nos. 200, 210 and 220 which are derived from the interstate transportation of oil, and (2) the revenues in Account Nos. 200, 210 and 220 which are derived from the intrastate transportation of oil. The sum of the two revenue figures should equal the total revenues in Account Nos. 200, 210 and 220.

[61] Petitions of APSCo at 5, 7; CIPSCo at 8.

[62] 52 FR 21287, *quoting* Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[63] Petition of APSCo at 6.

[64] Petition of CIPSCo at 17.

[65] *See* Order No. 84, "Regulations Limiting Percentage Adders in Electric Rates for Transmission Services," 45 FR 31294 (May 13, 1980). FERC Stats. & Regs. (Regulations Preambles 1977–1981), ¶ 30,153, *reh'g denied,* 12 FERC ¶ 61,017 (1980); Allegheny Power System, 20 FERC ¶ 61,336 (1982).

in many petitions for rehearing. The Budget Act does not require that the Commission tailor the annual charges so closely as to, in effect, direct bill all jurisdictional entities. The Commission may utilize reasonable generalized categories for assessment. In general, the rates for long-term unit power sales require a similar use of Commission resources to that required for other sales-for-resale transactions. Consequently, the assessment of the same annual charge per kilowatt-hour for some unit sales as for sales for resale does not give rise to an unreasonable subsidy, nor is it likely to discourage unit power sales.

SCSI maintains that the final rule creates inequities by assessing annual charges to energy transactions among subsidiaries, parents, affiliates, or power pool members. In support of this contention, SCSI makes the same arguments previously raised in response to the NOPR, *i.e.*, these transactions are not normally intended to generate a profit, and such annual charges may produce multiple billing for the same unit of electricity.[66] SCSI further asserts that these types of transactions should be exempted because annual charges would discourage voluntary interconnection and coordination of electric facilities which Congress, in section 202(a) of the Federal Power Act (FPA),[67] specifically instructed the Commission to promote and encourage.

The Commission has already adequately addressed the issue of the role that the profit motive is to play in the assessment of annual charge. Order No. 472 also adequately justified the so-called "multiple billing" for the same kilowatt-hour.[68] The Commission intends to continue encouraging voluntary interconnection.[69] However, the Commission does not believe than an annual charge of the magnitude being charged will affect an entity's decision of whether to engage in voluntary interconnection and coordination.

P. Absence of an Automatic Tracking Mechanism for Electric Annual Charges

Several IOUs argue that the Commission should reconsider its decision not to establish an automatic tracking mechanism for near-contemporaneous recovery of the electric industry's annual charges.[70] The IOUs are particularly concerned with what they characterize as arbitrary and discriminatory treatment that they will receive compared to the natural gas pipelines (which are allowed to use a rate adjustment mechanism to recover annual charges).

The Commission continues to believe that the IOU's alleged need for automatic tracking mechanisms does not outweigh the Commission's long-established policy against such tracking in the electric area. In contrast to fuel costs, which are permitted to be recovered through an automatic adjustment clause, the annual charge expense for electric utilities is a relatively stable cost item which is reasonably easy to project, once the annual charge program is underway. Second, the magnitude of the annual charge expense is not a major element of an electric utility's cost of service. Therefore, the Commission does not believe that annual charge expenses for electric utilities are an appropriate cost item for recovery through an annual charges adjustment clause. However, as stated in the final rule, these annual charge expenses are more appropriately recoverable via inclusion in test period data in an FPA Section 205 rate application.

With respect to the alleged discriminatory treatment of allowing ACA surcharge procedures for the natural gas pipelines and not the electric utilities, the discussion in the final rule as to this exception sufficiently addresses the arguments made by the IOUs in their rehearing petitions.[71]

Q. Cogeneration and Small Power Production

In late-filed request for rehearing, Edison Electric Institute (EEI) argues that the Commission should assess annual charges to cogenerators and small power producers rather than require the IOUs to absorb the cost of regulating these entities.[72] First, EEI argues that under the Budget Act the Commission does not have the authority to exempt all these entities from assessment of annual charges. According to EEI, the Commission only has the power to waive, on an individual basis, responsibility for part or all of an annual charge payment after it has been assessed.[73] Second, EEI

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[66] SCSI argues that the Commission failed to identify significant additional costs associated with the filing of rate schedules for these types of transactions. SCSI also argue that the Commission has already recovered through the filing and service fees the cost of regulating these transactions. Petitions of SCSI at 9–10; Electric Utilities Group at 10–11. SCSI misunderstands the nature of the annual charge. Costs which are directly attributable to these transactions are recovered in the filing fees or not recovered from the responsible entities for policy reasons. All costs not recovered through fees must be recovered through the annual charges. That is what Order No. 472 does.

[67] 16 U.S.C. § 824a(a) (1982).

[68] 52 FR at 21285–21286.

[69] *FERC as a Least-Cost Regulator: Hearing Before the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce, House of Representatives*, 97th Cong., 2d Sess. 30 (April 23, 1982) (statement of C.M. Butler, III, Chairman, FERC). *See also FERC Wants Volunteers for Experiments with Bulk-Power Deregulation*, Inside F.E.R.C., April 26, 1982, at 1.

[70] *See* Petitions of APSCo at 8; SCSI at 11–12; Electric Utilities Group at 12–13; EEI at 13; and CIPSCo at 19–22.

[71] In addition, there are significant differences between the electric and the natural gas regulatory programs. For example, electric utilities provide a much wider range of classes of services than do gas utilities. The rates, terms and conditions for these electric services are typically established by individual contracts. This accounts for the approximately 3,000 to 4,000 electric rate schedules on file with the Commission for fewer than 200 IOUs.

A revision in these contracts to allow special rate surcharge procedures for the annual charges similar to those adopted for the natural gas program would require a utility to file a separate filing with the Commission for each of its rate schedules, and annual revisions thereafter. It would require the Commission to notice every filing and subject to that filing to litigation.

Natural gas pipelines, however, typically have only one tariff. Consequently, implementation of ACA surcharge procedures would involve a significant ongoing process that would be unduly burdensome to implement compared to the natural gas pipelines program.

The Commission notes that implementing such a system would also present a burden on the electric utility because it would have to revise its rate schedules annually in order to incorporate the most recent annual charge data. Additionally, such a filing would require the utility to pay a filing fee for each periodic revision.

[72] EEI filed its Request for Rehearing one day after the statutorily-imposed 30-day deadline for such filings. The Request was filed with an accompanying motion for extension of time to file the Request which alleged that the Request was untimely filed through no fault of the firm representing EEI. EEI also argues that the FPA does not govern the rule to be applied to the late rehearing. Rather, EEI maintains that the Budget Act gives the Commission discretion concerning the deadline for rehearing requests.

The Commission disagrees. This proceeding was instituted under both the FPA and the Budget Act. The Budget Act contains no provision addressing this issue. Section 313(a) of the FPA requires a petition for rehearing to be made within thirty days after the issuance of a Commission order. 16 U.S.C. 825 1(a) (1982). EEI concedes that it did not file its petition within this statutory deadline. The Commission has no discretion to waive the statutory deadline. *See* Kansas Cities v. FERC, 723 F.2d 82 (D.C. Cir. 1983). While the Commission is precluded from considering the late pleading filed by EEI as a request for rehearing, it does have the discretion to consider the pleading as a motion for reconsideration. *See generally* Modesto and Turlock Irrigation Districts and City and County of San Francisco, 24 FERC ¶ 61,152 (1983). EEI was the only entity to raise the issues of assessing annual charges to cogenerators and small power producers. The Commission's decision to view EEI's petition as a reconsideration request gives those arguments one final airing. However, because EEI did not file a timely rehearing request, it will not be able to raise the issues in a later judicial appeal. FPA § 313(b), 16 U.S.C. 825 1(b) (1982).

[73] Petition of EEI at 6–7.

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argues that, even if the Commission has the power to exempt these entities from the assessment of annual charges, there is no sound policy reason to do so.[74] According to EEI, "(i)t seems utterly implausible that [the cogeneration and small power production program's] costs [of two cents per kilowatt of installed capacity] could have a 'chilling effect' on the development of cogeneration or small power production capacity."[75] Third, EEI proposes that the Commission correct the problem of not knowing which cogenerators and small power producers to assess annual charges by adopting a filing requirement specifically for that purpose.

The Commission disagrees with EEI's interpretation of the legislative grant of waiver or exemption authority. It is true that the House bill's wholesale exemption for cogenerators and small power producers was not adopted in the Budget Act. However, the Conference Report specifically addressed the issue, saying that the Commission retained the power to achieve the same result.[76] The result to which the conferees referred was the wholesale exemption of these entities from the assessment of annual charges, not the waiver of all or part of an annual charge on an individual basis.

EEI asserts that the Commission should utilize the Budget Act to recover the as-yet unrecovered two-thirds of the costs of regulating these entities. The Commission is in the process of reconsidering recovery of these costs through IOAA filing fees. In light of the possibility that the Commission may in fact decide to recovery through revised filing fees the entire cost of regulating these entities, it will deny EEI's request. At that time, interested persons will be allowed the opportunity to make relevant comments. The Commission also believes that the administrative burden of implementing and administering a new filing requirement outweighs any resulting monetary benefits to be gained from assessing annual charges to these entities.

R. Special Requests From Electric Entities

1. *Central Illinois Public Service Company (CIPSCo).* CIPSCo has requested that the Commission clarify the status of capacity participation sales which it makes to some of its customers. According to CIPSCo, these transactions, "include provisions for supplemental power, economic energy and nondisplacement energy, emergency or back-up energy, spinning reserves, transmission and many other provisions found in traditional coordination and interchange transactions."[77]

CIPSCo's Capacity Participation Agreement represents several different types of services contained within a single contract. These different services are to be used during different operating circumstances of the general plant providing the service. The central service being provided under this agreement is long-term firm capacity service. Long-term firm capacity service is properly included in the "adjusted sales for resale" category for annual charge purposes. CIPSCo refers to the other services, such as economy, emergency, supplemental power, or back-up energy as "traditional coordination and interchange transactions."[78] The Commission believes that only these services are properly categorized as "adjusted coordination sales" for annual charge purposes. CIPSCo requests that the Commission state that *all* capacity participation arrangements are "coordination sales." The Commission does not believe such a broad pronouncement would be appropriate in light of the various services being provided in this arrangement; the separate and distinct operating conditions and terms and conditions; as well as the differing terms and conditions of these various services.

CIPSCo should separate these transactions occurring under this single agreement into the two categories of adjusted sales for resale and adjusted coordination sales, as these categories are defined in Order No. 472. This separation will facilitate the proper assessment of annual charges.

2. *Texas Utilities Electric Company (TUECo).* TUECo requests reconsideration of the Commission decision to categorize it as a public utility for annual charges purposes. This objection stems from TUECo's claim that it is not a "public utility" as defined by the FPA. TUECo refers to the Notice of Proposed Rulemaking (NOPR) in this proceeding which erroneously concluded that the Conference Report instructed the Commission to use the House bill as a guide to determine every entity to be assessed charges.[79] In Order No. 472, the Commission expressly refused to adopt the NOPR's conclusion.[80] Thus, while TUECo's assertion that it is not a "public utility" within the meaning of the FPA may be true, this does not exclude TUECo from being a "public utility" within the meaning of the Budget Act. TUECo is a "public utility" for purposes of the Budget Act because it owns or operates facilities used for interconnection and wheeling under sections 210, 211, and 212 of the FPA.[81]

Order No. 472 defines the term "public utility" for the purposes of the Commission's authority to assess annual charges pursuant to the Budget Act. While the Budget Act term is the same as that in the FPA, the respective definitions are not. The very entities (other than governmental entities) that are excluded from the FPA term "public utility" are included in the Order No. 472 term "public utility." TUECo meets Order No. 472's definition of "public utility" and it meets the final rule criteria for annual charge assessment: That it files a Form No. 1 with the Commission and it has a rate schedule on file. The Commission's inclusion of TUECo in the list of entities to be assessed annual charges is therefore appropriate.

3. *Houston Lighting and Power Company (HL&PCo).* HL&PCo requests rehearing relying on the very same misinterpretation of the Budget Act's legislative history as does TUECo. It is irrelevant for purposes of the final rule whether HL&PCo meets the FPA definition of "public utility." HL&PCo admits that it will own or operate facilities subject to the jurisdiction of the Commission under sections 210, 211 and 212 of the FPA. Those sections of the FPA are in Part II of the statute; therefore HL&PCo meets the definition of "public utility" for purposes of the final rule. Because HL&PCo files a Form No. 1 and has a transmission rate schedule on file, it will be required to pay annual charges, if the charges are not waived.

HL&PCo also argues that, since it is not the direct beneficiary of the Commission's regulatory services, it is not fair or equitable to assess it annual charges. HL&PCo claims that it is not "directly affected" by the Commission's regulations. Furthermore, HL&PCo

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[74] Petition of EEI at 8–9.

[75] Petition of EEI at 9.

[76] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[77] Petition of CIPSCo at 13–14.

[78] *Id.*

[79] *See* Notice of Proposed Rulemaking, Part VI B. 52 FR 3128 at 3136–3137 (February 2, 1987). The House bill restricted the set of entities that could be assessed annual charges to only those entities which were defined as "public utilities" in the FPA. The FPA defines public utility as:

Any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title).

16 U.S.C. 824(e) (1982).

[80] 52 FR 21283 n. 276.

[81] *See, e.g.*, Central Power & Light Company, 17 FERC ¶ 61,078 (1981), *modified*, 18 FERC ¶ 61,100 (1982).

claims that the filing fees it paid covered all of the costs of Commission regulation of its transmission rate schedule.

HL&PCo misunderstands congressional intent to have entities which are "directly affected" by Commission regulation pay annual charges. In fact, HL&PCo's understanding of the term "directly affected" would make the Budget Act superfluous. HL&PCo would have the Commission assess annual charges only to entities to which it could specifically attribute a particular regulatory benefit.

If it were possible to assign directly all the Commission's costs with that level of specificity, then the Commission could recover all of its costs through IOAA fees. This cannot be done because there are many aspects of Commission regulatory activities which generally benefit jurisdictional entities and which cannot be specifically assigned. Furthermore, the Commission's resources must always be available to deal with any activities in which HL&PCo or any other IOU or their customers may wish to engage in before the Commission, *e.g.*, rate changes, investigations, and complaints. Consequently, HL&PCo is "directly affected" by Commission regulation and will be assessed annual charges based upon energy transactions carried out pursuant to the rate schedule it has on file with the Commission.[82]

4. *Citizens Energy Corporation (CEC).* On June 12, 1987, CEC requested that the Commission confirm CEC's understanding that it will not be assessed annual charges. CEC points out that the Commission waived any requirements that it file a Form No. 1 or 1–F or any other reports or maintain its accounts in accordance with the Commission's Uniform System of Accounts.[83]

CEC correctly points out that its name was excluded from Appendix F in Order No. 472 which listed the electric entities to be assessed annual charges. The Commission continues to believe that CEC should not be assessed annual charges so long as it does not meet both of these criteria.

5. *Southern Company Services, Inc. (SCSI).* In both of its requests for rehearing, SCSI asked that the Commission reconsider its decision denying requests for a longer comment period, technical conferences, and a hearing. According to SCSI, these procedures are necessary for meaningful participation of interested IOUs in this rulemaking. Such a procedure, SCSI alleges, is the only way to formulate a fair and equitable final rule.[84]

The Commission remains convinced that the procedure it adopted for public comment on the NOPR and the final rule provided for adequate and substantive participation by interested entities. SCSI has raised no new points to bolster its procedural requests. Because Order No. 472 adequately addresses these issues,[85] the Commission will not reconsider them.

III. Paperwork Reduction Act Statement

The information collection provisions of this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [86] and OMB's regulations.[87] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–5311). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

If the information collection provisions in this rule do not receive OMB approval before November 25, 1987 filing deadline, then the information collection requirements will be suspended pending OMB approval. The public will be notified by notice in the **Federal Register** if suspension of the information collection requirements is necessary.

IV. Effective Date

Section 553(d) of the Administrative Procedure Act requires, with certain exceptions, that an agency publish or serve any substantive rule not less than 30 days before its effective date.[88] In order to provide the companies sufficient time to collect and file the requested data and to provide OMB sufficient time to review the new information collection requirements, this order becomes effective on November 4, 1987.

List of Subjects

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission amends Parts 154 and 382 of Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Administrative Procedure Act; 5 U.S.C. 551–557 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12,009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 791a–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. Section 154.38(d)(6)(ii) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* * * *

(6) * * *

(ii) (A) Except as provided in paragraph (d)(6)(ii)(B) of this section, a company must reflect the ACA unit charge in each of its rate schedules applicable to sales or transportation deliveries. The company must apply the ACA unit charge to the commodity component of rate schedules with two-part rates. The company seeking authorization to use an ACA unit charge must file with the Commission an ACA-related tariff sheet which must include:

(*1*) Language specifying the purpose and manner of collecting the ACA (to collect an ACA per unit charge as specified by the Commission, applicable to all the pipeline's sales and transportation schedules),

(*2*) The per unit charge of the ACA,

(*3*) The proposed effective date of the tariff change (30 days after the filing of the tariff sheet, unless a shorter period is specifically requested and justified in a waiver petition), and

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[82] The Commission disagrees with HL&PCo's assertion that it is being treated unfairly because it is being assessed annual charges while Alaskan and Hawaiian IOUs are not. HL&PCo is being treated differently from Alaskan and Hawaiian IOUs because it has a rate schedule on file which is regulated by the Commission. HL&PCo ignores the fact that, while Alaskan and Hawaiian IOUS do file Form Nos. 1 or 1–F, they *do not* have rate schedules on file. Both conditions must be present if an annual charge is to be assessed.

[83] *See* Citizens Energy Corp., 35 FERC ¶ 61,198 (1986)

[84] Petitions of SCSI at 12–13; Electric Utilities Group at 13–14.

[85] 52 FR 21267–21268.

[86] 44 U.S.C. 3501–3502 (1982).

[87] 5 CFR 1320.13 (1987).

[88] 5 U.S.C. 553(d) (1982).

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(4) An expression of the pipeline's intent not to recover any annual charges recorded in FERC Account No. 928 in a NGA Section 4 rate case.

(5) Tariff sheets must be accompanied by the filing fee specified in § 381.204 of the Commission's regulations. Subsequent tariff filings amending the initial ACA-related tariff sheet must be accompanied by the filing fee specified in § 381.205 of the Commission's regulations.

(B) If a pipeline files in 1987 a revision of an ACA-related tariff for the purpose of complying with the requirements of this section, the pipeline will not be required to pay a filing fee for the revised tariff sheet.

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PART 382—[AMENDED]

3. The authority citation for Part 382 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12.009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

4. In § 382.102 paragraphs (a) and (o) are revised to read as follows:

§ 382.102 Definitions.

* * * * *

(a) "Natural gas pipeline company" means any person:

(1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act whose sales for resale and transportation exceed 200,000 Mcf at 14.73 psi (60°F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and

(2) Not engaged solely in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978; and

(3) To whom the Commission has not issued a Natural Gas Act Section 7(f) declaration; and

(4) Not holding a limited jurisdiction certificate.

* * * * *

(o) "Operating revenues" means the monies: (1) Received by an oil pipeline company for providing interstate common carrier services regulated by the Commission, and (2) included in FERC Account No. 200, 210, or 220 in FERC Annual Report Form No. 6, page 301, lines 1, 2 and 3, column d, under Part 352 of the Commission's regulations.

* * * * *

5. Section 382.106(a) revised to read as follows:

§ 382.106 Accounting for Annual Charges paid under Part 382.

(a) Any natural gas pipeline company subject to the provisions of this part must account for annual charges paid by charging the account to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.

* * * * *

6. Section 382.202 is revised to read as follows:

§ 382.202 Annual Charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.

The adjusted costs of administration of the natural gas regulatory program will be assessed against each natural gas pipeline company based on the proportion of the total gas subject to Commission regulation which was sold and transported by each company in the immediately preceding calendar year to the sum of the gas subject to the Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas pipeline companies being assessed annual charges.

[FR Doc. 87–21830 Filed 9–24–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Sterivet Laboratories, Inc.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Sterivet Laboratories, Inc., sponsor of approved NADA 113–510 for phenylbutazone granules, advised FDA of a change of address from 7320 Florence Blvd., Omaha, NE 68101, to 3909 Nashua Dr., Mississauga, ON, Canada L4V 1R3. The agency is amending 21 CFR 510.600(c)(1) and (2) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Sterivet Laboratories, Inc.," and in paragraph (c)(2) in the entry for "047408" by amending the sponsor address to read "3909 Nashua Dr., Unit 5, Mississauga, ON, Canada L4V 1R3."

Dated: September 18, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87–22118 Filed 9–24–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510, 520, 522, 524, and 540

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) from Wendt Laboratories to Quality Plus Essar Corp.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501, has informed FDA of a change of sponsor for several NADA's from Wendt Laboratories, 100 Nancy Dr., P.O. Box 128, Belle Plaine, MN 56011. Wendt Laboratories also informed FDA of the sponsor change. The NADA's affected are:

Product	NADA
Oxytetracycline-50 injectable	48-287
Phenylbutazone injection	48-646
Phenylbutazone tablets	48-647
Procaine penicillin G mastitis tubes	65-383
Nitrofurazone ointment	118-506
Iron hydrogenated dextran injection	119-142
Nitrofurazone solution (injection)	119-974
Dexamethasone sodium phosphate injection	123-815
Oxytocin injection	124-241

This sponsor change does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel.

FDA is amending 21 CFR 520.1720a(b)(5), 522.540(e)(2), 522.1183(e)(1), 522.1662a(i)(2), 522.1680(b), 522.1720(b)(2), 524.1580d(b), and 540.874a(c) (3)(i) and (4)(i) to reflect the sponsor change.

FDA is also amending 21 CFR 510.600(c)(1) and (c)(2) to remove Wendt Laboratories because it is no longer the sponsor of any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 520, 522, 524, and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. In § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* in paragraph (c)(1) by removing the entry for "Wendt Laboratories" and in paragraph (c)(2) by removing the entry for "015579."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1720a [Amended]

4. In § 520.1720a *Phenylbutazone tablets and boluses* by removing paragraph (b)(5).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.540 [Amended]

6. In § 522.540 *Dexamethasone injection* in pargaph (e)(2) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1183 [Amended]

7. In § 522.183 *Iron hydrogenated dextran injection* in paragraph (e)(1) by removing "015579" and inserting in its place "053617."

§ 522.1662a [Amended]

8. In § 522.1662a *Oxytetracycline hydrochloride injection* in paragraph (i)(2) by removing "015579" and inserting in its place "053617."

§ 522.1680 [Amended]

9. In § 522.1680 *Oxytocin injection* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1720 [Amended]

10. In § 522.1720 *Phenylbutazone injection* in paragraph (b)(2) by removing "015579."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

11. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1580d [Amended]

12. In § 524.1580d *Nitrofurazone solution* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617," and further in the paragraph by removing "and 053617."

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

13. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.874a [Amended]

14. In § 540.874a *Procaine penicillin G in oil* in paragraph (c)(3)(i) and (4)(i) by removing "015579" and inserting in its place "053617."

Dated: September 18, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-22119 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1971

[Docket No. S-506 B]

Servicing of Single Piece and Multi-Piece Rim Wheels at Marine Terminals

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its rules for the servicing of rim wheels at marine terminals to include safety measures to be taken for the servicing of both single piece and multi-piece rim wheels. Prior to this regulatory action, only multi-piece rim wheel servicing was addressed in OSHA's rules for marine terminals (29 CFR 1917.44(o)). With this notice, OSHA adopts by reference the General Industry Standards (29 CFR 1910.177) that are specific to the servicing of both single piece and multi-piece rim wheels, for application within the marine terminal environment.

EFFECTIVE DATE: This rule shall become effective October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3637, 200

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Constitution Avenue, NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1984, OSHA issued a final General Industry Standard on the servicing of single piece and multi-piece rim wheels (49 FR 4338). That action amended § 1910.177 by making minor revisions to the provisions for multi-piece rim wheels, and by adding provisions for the servicing of single piece rim wheels to the existing provisions for multi-piece rim wheels.

The Marine Terminals Standard, 29 CFR Part 1917, as published in 1983 (48 FR 30886), also included coverage for the servicing of multi-piece rim wheels (§ 1917.44(o)). However, since the 1984 revision of the General Industry Standard occurred subsequent to issuance of the final rule for marine terminals, single piece rim wheels coverage was not included within the framework of Part 1917. This final rule bridges that existing gap in coverage.

OSHA's intention to close that regulatory gap was buttressed by petitions from the National Maritime Safety Association (NMSA) and the International Longshoremen's and Warehousemen's Union (ILWU). The Agency subsequently issued its proposed rule on August 26, 1986 (51 FR 30230).

II. Comments Received on the Proposal

In all, five organizations submitted responses to OSHA's proposal. All five were substantially in accord with the **Federal Register** notice. The first commenter (Ex. 143–1) was R.F. Harold & Associates, a firm with substantial experience as consultants to many rim wheel and tire manufacturers concerning design, production and testing of products as well as failure analysis. They stated:

> Because the single piece and multi-piece rims in marine environments are identical to those used in commercial and industrial trucking, improper servicing can present the same potential for personal injury as in the areas now covered by OSHA regulation. Thus, we support this position and favor the inclusion of all marine facilities into the rim wheel standard.

The next commenter (Ex. 143–2) was Eagle Pacific Insurane Co., an insurer of marine terminal operators. Citing a variety of reasons why OSHA should move to cover single-piece rim wheel servicing at marine terminals, including personal experience with a number of injuries associated with such servicing, Eagle Pacific concluded by saying:

> Eagle Pacific supports the proposed changes and we believe they would have a beneficial effect on Marine Terminal injuries caused by tire changing incidents.

The next commenter (Ex. 143–3) was the American Trucking Association. Addressing the need for uniformity of regulation, they stated:

> ATA participated in the development of OSHA's General Industry Standards for servicing tires on single and multipiece rims found on 29 CFR 1910.177. We support these rules and request that they be referenced without change in 29 CFR 1917 where they will apply to work done in marine terminals. It is imperative that no changes be made to the General Industry Standards when referenced in the Marine Terminal standards, so as to maintain the integrity and quality and to avoid confusion on the part of workers transferring to or from the Marine Terminal environment.

The fourth commenter (Ex. 143–4) was the State of California's Occupational Safety and Health Administration, whose comments merely indicated that Federal OSHA's proposal would present no programmatic difficulty to its own operation.

The last commenter (Ex. 143–5) was the International Longshoremen's and Warehousemen's Union (ILWU), one of the two petitioners encouraging OSHA to take this initiative. The ILWU supported OSHA's regulatory approach saying:

> The International Longshoremen's and Warehousemen's Union fully supports the proposed revision of the Marine Terminals Standard, 29 CFR Part 1917, to include rules addressing the servicing of single piece rim wheels. This proposal is necessary due to the hazards of servicing single piece rim wheels and the recent, and projected, increased use of such wheels at marine terminals.

Additionally, the ILWU requested that these same rules be extended to apply to operations aboard vessels as well as to those on shore. However, they provided no data to support such an extension, nor is there evidence in the record as to whether similar hazards exist aboard vessels. OSHA has little information on rim wheel servicing aboard vessels. Further, while it is true that under special circumstances rim wheel servicing could possibly occur aboard some vessels, it is also true that such operations are categorized as longshoring and, as such, are under the scope of 29 CFR Part 1918. OSHA is currently developing proposed revisions of its safety and health regulations for longshoring in Part 1918. OSHA will consider the ILWU's recommendation within the context of that separate rulemaking.

III. Effect of the Final Rule

This rule amends Part 1917 by deleting the current multi-piece rim wheel servicing requirements in § 1917.44(o). In its place, OSHA is placing a reference to the General Industry Standard for the servicing of multi-piece and single piece rim wheels, § 1910.177. As a result of that reference, § 1910.177 is made applicable at marine terminals, and marine terminal employers will be required to comply with the provisions of that section in the same manner as any other Part 1917 standard.

As part of this final rule, a reference to § 1910.177 is also inserted into § 1917.1 and § 1910.16. Each of these sections contains a list of those Part 1910 provisions having application at marine terminals. Additionally, this final rule amends paragraph (a)(2) of § 1910.177, which previously indicated that the General Industry Standard did not apply to any maritime employments covered by Parts 1915–1919, to reflect that marine terminals covered by Part 1917 are now covered by § 1910.177.

IV. Regulatory Impact Assessment and Regulatory Flexibility Analysis for Servicing Single Piece Rim Wheels at Marine Terminals

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has assessed the potential economic impact of this standard. Based on the Executive Order criteria, OSHA has determined that this final rule is not a "major" action. Therefore, it does not require a regulatory impact assessment.

OSHA's determination that the amendment will not have a major impact is based primarily upon four studies. The first study was a June 1978 report by Centaur Management Consultants, Inc., for OSHA entitled, "Economic Impact Statement/Assessment for Multi/Piece Rim Assemblies" [Docket S–005, Ex. 2–33]. The second study was a March 1981 report by Dr. Roger L. McCarthy and Mr. James R. Finnegan of Failure Analysis Associates for the National Wheel and Rim Association [NWRA] entitled, "Large Vehicle Wheel Servicing: Reduction of Risk Through Implementation of an OSHA Standard Governing Multi/Piece and Single/Piece Rims" [Docket S–010, Ex. 31]. The third study was a March 1981 report prepared for NWRA by Dr. Thomas Gale Moore of the Hoover Institute, entitled "An Economic Evaluation for Proposed OSHA Single Piece Rim Standard" [Docket S–010, Ex. 4]. The fourth study was the August 1983 report by OSHA's Office of Regulatory Analysis entitled,

"Regulatory Impact and Regulatory Flexibility Assessment of the Final Standard on Servicing Single/Piece Rim Wheels" [Docket S–010, Ex. 11]. These four studies demonstrate that the single piece wheel servicing standard is technologically feasible in general industry. This amendment to the Marine Terminals Standard covers the exact same activity that is covered by the general industry single piece rim wheel servicing standard. As there do not appear to be any significant differences in the circumstances under which single piece rim wheels are serviced at marine terminals as compared to general industry, OSHA has concluded that this amendment would also be technologically feasible in marine terminals.

Currently, most, if not all, marine terminals servicing single piece rim wheels also service multi-piece rim wheels. As a result, OSHA has concluded that the promulgation of a single piece rim wheel servicing standard will result in no additional capital costs because the equipment currently required to meet the multi-piece rim wheel servicing provisions will also meet the equipment requirements for single piece rim wheel servicing.

Based on the NWRA Reports, OSHA has determined that the number of large vehicle rim wheels serviced within marine terminals will remain constant over the next 10 years. However, the percentage of single piece rim wheels of all large vehicle rim wheels is expected to increase from about 35 percent in 1987 to about one-half by 1990. This increase is due largely to greater fuel efficiency of tubeless tires which require, for the most part, the use of single piece rim wheels. Thus, OSHA expects that the number of single piece rim wheels serviced will increase while the number of multi-piece rim wheels serviced will decrease. Since equipment currently used to service multi-piece rim wheels can be shifted to servicing single piece rim wheels, no additional equipment will need to be purchased in order to comply with the single piece rim wheels servicing provisions.

Nevertheless, OSHA does expect that there will be some initial and continuing costs of compliance due to the provision requiring employee safety training and to the provision requiring tires on single piece wheels to be inflated at a safe distance from the employee. In the preamble to the general industry rule on servicing single piece rim wheels (40 FR 4338 [Ex. 6]). OSHA had estimated that the present value in 1981 dollars of the costs of compliance to be incurred by general industry during 1981–1990 would be $16.47 million. The average yearly cost for each of the approximately 102,000 workplaces was about $16. The same $16 average annual cost is projected for each of the approximately 400 affected marine terminals, for a total cost estimate of $6,400 for the whole industry.

In response to its request in the **Federal Register** Notice of Proposed Rulemaking, OSHA received no direct statistical or anecdotal information from interested commenters concerning fatalities or injuries that have occurred to marine terminal employees servicing of single piece rim wheels. Nevertheless, the physical hazards associated with servicing single piece rim wheels are the same in both general industry and in marine terminals. Consequently, OSHA has determined that the accident rate per tire serviced would be the same in both sectors. OSHA had estimated in its RIA for the standard governing the servicing single piece rim wheels in general industry [Docket S–010, Ex. 11] that there is about one injury-producing accident for every million truck tire changes. Of these accidents between 15 percent and 20 percent result in a fatality and another 15 percent to 20 percent result in a total disability that would prevent the injured employee from ever working. The remaining 60 to 70 percent of these accidents result in a lost workday injury. These lost workday injuries involve an average of six months lost from work (about 120 days). Therefore, although these accidents infrequently occur, they tend to cause an injury that is substantially more serious than the average occupational injury. Thus, incorrect methods of servicing single piece rim wheels were determined to constitute a serious safety hazard in general industry.

Similarly, OSHA has concluded that such servicing methods produce a serious safety hazard in marine terminals. For example, if an average of only two single piece rim wheels are serviced per day in a marine terminal, then there would be a total of about 200,000 single piece rim wheels annually serviced in marine terminals. Consequently, OSHA anticipates that there would be an average of about two single piece rim wheel servicing accidents (of which one would be either a fatality or a total disability) every 10 years in marine terminals. Preventing these accidents would impose a 10-year total of $64,000 in undiscounted costs of compliance.

OSHA's analysis of the accident data available for single piece rim wheel in general industry indicated that compliance with the provisions of the single piece rim wheel servicing standard would have prevented nearly all of the reported accidents. In addition, OSHA has found that there was a 75 percent national reduction in fatalities and injuries associated with servicing multi-piece rim wheels after the promulgation of the OSHA Multi-Piece Rim Wheel Servicing Standard. Further, that there was a 75 percent reduction in fatalities and injuries in California after the promulgation of their multi-piece and single piece rim wheel servicing standard in 1970. As a result, OSHA has concluded that promulgating this general industry standard for marine terminals would also prevent nearly all single piece rim wheel servicing accidents in marine terminals because the cause and the preventability of the accidents are the same in both sectors. OSHA, therefore, concludes that this standard will likely reduce the number of worker deaths and disabilities, will provide net benefits to society, and will not have a significant adverse effect on marine terminals.

Regulatory Flexibility Certification. In accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, (5 U.S.C. 601 et seq.)), OSHA has assessed the potential economic impact of this standard on small entities and has examined some of the alternatives to it. Based on this assessment, OSHA certifies that the standard will not have a significant economic effect on small entities.

The only provisions that may impose costs of compliance are those requiring employee safety training and those requiring that tires be inflated at a distance from the employee. The fact that firms must train new employees at the time they are hired largely precludes training many employees at the same time. Consequently, large employers will not garner any significant economies of scale in training and these costs will be largely proportional to the number of employees trained. Similarly, the increased time needed to service each single piece rim wheel, because the employee must move away from the tire to inflate it, is independent of the number of such rim wheels serviced. As the smaller terminals would service fewer rim wheels than would the large marine terminals, OSHA believes that these minimal costs of compliance will neither significantly affect nor create any competitive disadvantages for small entities.

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V. Environmental Impact Assessment—Finding of No Significant Impact

This rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (62 U.S.C. 4321, et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that this rule will have no significant environmental impact.

The amendment to 29 CFR Parts 1910 and 1917 for servicing multi-piece and single piece rim wheels, covers the same activity as the general industry standard. In other words, the reduction of accidents or injuries is to be achieved by means of work practices and procedures, proper use and handling of equipment, and training. Such procedures do not impact on air, water, or soil quality; or plant or animal life; or on the use of land or other aspects of the environment. These safety-oriented revisions are therefore categorized as excluded actions according to Subpart B, § 11.10 of the DOL NEPA regulations.

VI. State Plan Standards

Those of the 25 states with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of this final standard or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective"as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities.

Federal OSHA enforces maritime standards offshore in all states and provides on shore coverage of maritime activities in Federal OSHA states and in the following State plan states: Alaska, Arizona, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York [1], North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All states with State plans must also extend coverage to state and local government employees engaged in maritime activities.)

[1] Plan covers only State and Local government employees.

List of Subjects

29 CFR Part 1910

Chemicals, Diving, Electric power, Electric products, Fire prevention, Gases, Hazardous substances, Health records, Noise control, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

29 CFR Part 1917

Cargo, Certification, Gear, Intermodal container, Longshoring, Maritime, Occupational safety and health, Safety.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, under sections 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; section 41 of the Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Parts 1910 and 1917 are amended, as set forth below.

Signed at Washington, DC, this 18th day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

29 CFR Part 1910 is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart B of 29 CFR Part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35, et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Sec. 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333; Sec. 41 of the Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; National Foundation on Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Orders 12–71 (36 FR 8754, 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. A new paragraph (b)(2)(ix) is added to § 1910.16, to read as follows:

§ 1910.16 Longshoring and marine terminals.

* * * * *

(b) * * *

(2) * * *

(ix) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177.

* * * * *

3. Paragraph (a)(2) of § 1910.177 is revised to read as follows:

§ 1910.177 Servicing multi-piece and single piece rim wheels.

(a) * * *

(2) This section does not apply to employers and places of employment regulated under the Construction Safety Standards, 29 CFR Part 1926; the Agriculture Standards, 29 CFR Part 1928; the Shipyard Standards, 29 CFR Part 1915; or the Longshoring Standards, 29 CFR Part 1918.

* * * * *

29 CFR Part 1917 is amended as follows:

PART 1917—MARINE TERMINALS

4. The authority citation for Part 1917 continues to read as follows:

Authority: Secs. 4, 6, and 8, of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Sec. 41, Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

5. A new paragraph (a)(2)(ix) is added to § 1917.1 to read as follows:

§ 1917.1 Scope and applicability.

(a) * * *

(2) * * *

(ix) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177.

6. Paragraph (o) of § 1917.44 is revised to read as follows:

§ 1917.44 General rules applicable to vehicles.

* * * * *

(o) *Servicing multi-piece and single piece rim wheels.* Servicing of multi-piece and single piece rim wheels is covered by § 1910.177 of this chapter.

* * * * *

[FR Doc. 87–22105 Filed 9–24–87; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Removal of Conditions From Colorado Permanent Regulatory Program Under Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the removal of two conditions which the Secretary placed on his approval of the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in response to two legal opinions submitted by Colorado to satisfy the conditions listed at 30 CFR 906.11 (p) and (oo). The conditions pertain to the permit renewal process and Colorado's authority to cease underground mining operations.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Albuquerque, New Mexico 87102. Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent decisions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16 and are discussed in detail in the **Federal Register** published on December 16, 1982 (47 FR 56350); May 1, 1984 (49 FR 18481); November 15, 1985 (50 FR 47216); December 6, 1984 (50 FR 49925); February 5, 1986 (51 FR 4496); May 30, 1986 (51 FR 19548); July 1, 1986 (51 FR 23752); February 5, 1987 (52 FR 3632); and May 7, 1987 (52 FR 17291).

II. Discussion of Conditions and Legal Opinions

Condition "p"

As discussed in Finding 4(d)(xv) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82184), the Secretary found that the Colorado program failed to clearly provide that no holder of a valid permit could continue to mine after the term of his or her original permit expired if the State had determined that the permit should not be renewed. The State statute at CRS 34–33–109(7)(f) and the State regulations at 2.08.5(3)(f) provide that the holder of a valid permit may continue surface mining operations until a final administrative decision on renewal is rendered, provided he or she has submitted an application for renewal 180 days in advance of the permit expiration date. The conflict arises in those situations where the Division of Mined Land Reclamation ("Division") has found that the permit should not be renewed, and the operator has petitioned for administrative review of the decision. Since the final administrative decision would be made by the Mined Land Reclamation Board ("Board"), the entire process could take more than 180 days. The Federal rules applicable to such situations (30 CFR 775.11) allow continuation of mining only where the operator is granted temporary relief. Accordingly, the Secretary conditioned his approval of the Colorado program on the submission of further amendments to require that applications for renewal be submitted one year prior to expiration, or the submission of other program modifications to resolve this problem.

At a June 30, 1986 meeting attended by representatives of the Division, OSMRE's Albuquerque Field Office, and OSMRE's Division of State Program Assistance, Colorado pointed out that CRS 34–33–109(7)(a) allows only the Board to deny renewal applications; therefore, there is no administrative review process and the condition is moot. By letter dated August 14, 1986 (Administrative Record No. CO–299), OSMRE agreed that, if this strict interpretation of the statutory language was correct and affirmed by a legal opinion provided by the State, then the condition as such would cease to be relevant.

In its response of December 22, 1986, Colorado submitted a December 15, 1986 opinion prepared by an assistant attorney general within the Office of the State Attorney General affirming that only the Board has the legal authority to deny permit renewal applications (Administrative Record No. CO–310). Since, under the Colorado program, the Board receives all applications for administrative review and conducts all administrative hearings, a decision of the Board constitutes final agency action from which there is no administrative appeal.

Condition "oo"

This condition concerns the circumstances under which the Division has the authority to cease underground mining operations when they create an imminent danger to persons. Section 516(c) of SMCRA requires the regulatory authority to suspend underground coal mining under urbanized areas and adjacent to industrial or commercial buildings, major impoundments or permanent streams if an imminent danger to the inhabitants exists. The Colorado statue at CRS 34–33–121(3) requires that the Division order such closures after consultation with the operator and the Division of Mines, but only if the mining activities are in violation of CRS 34–29–125 (water control in steeply pitching veins), 34–29–128 (barrier pillars at property lines) or 34–48–102 (mining under buildings), or are adjacent to perennial streams. The Colorado regulations at 2 CCR 407–2, 4.20.4(4) contain provisions similar to the statutory language, but they also (1) extend protection to major impoundments, (2) do not require that the operator first be found in violation of one of the three provisions cited in the State statute, and (3) allow a waiver of the consultation requirement.

Previous discussions of this issue have centered on the "priority of right" exception provided by CRS 34–48–102. As discussed in Finding 4(i)(v) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82192), the Secretary conditioned his approval on the future submission of a proposed program amendment disallowing any exception to the requirement that underground mining be ceased where it creates an imminent danger to persons. In subsequent correspondence, Colorado maintained that (1) the priority of right exception provided by CRS 34–48–102 deals only with liability for surface property damage and does not prevent the State from prohibiting mining where an imminent danger to personal safety exists (letter of May 26, 1983, from David Shelton to Robert Hagen, Administrative Record No. CO–207), and (2) CRS 34–48–102 applies only to noncoal mines (letter of May 20, 1986, from David Getches to Jed Christensen, Administrative Record No. CO–290). In addition, as noted above, the Colorado regulations at 2 CCR 407–2, 4.20.4(4) do not require that the operator first be found in violation of CRS 34–48–102 before the Division can order closure of the mine.

Accordingly, by letter of August 14, 1986 (Administrative Record No. CO–229), OSMRE notified Colorado that, if it would clarify by legal certification that State rule 4.20.4(4) is not limited by CRS 34–33–121(3), i.e., that the Division does not have to first find an operator in violation of one of the three cited statutory provisions prior to issuing a cessation order, condition "oo" would be removed. In response, on January 26, 1987, Colorado submitted a December 9, 1986 opinion prepared by the Office of the State Attorney General (Administrative Record No. CO–316) concluding that Rule 4.204.(4) was

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indeed not limited by CRS 34–33–121(3). As stated in the opinion, the Division is required, pursuant to CRS 34–33–123(1), to order cessation of mining where any operator is in violation of any requirement of Article 33 or any permit condition, which condition, practice or violation creates an imminent danger to the health and safety of the public. This statutory language provides adequate basis for Rule 4.20.4(4). The opinion further states that the language of CRS 34–33–121(3) merely adds or explains additional statutory requirements dealing with environmental protection and public safety beyond the comprehensive protection standards in the enforcement provisions of CRS 34–33–123(1), and that it would therefore be logically inconsistent to intrepret CRS 34–33–121(3) as limiting Rule 4.20.4.

III. Secretary's Findings and Decision

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Secretary's findings and decisions concerning the legal opinions submitted by Colorado on December 22, 1986 and Janaury 26, 1987 pertaining to conditions of program approval "p" and "oo".

Condition "p"

For the reasons set forth in Colorado's legal opinion dated December 15, 1986, and prior correspondence from the State of Colorado, as discussed in the section of this notice entitled "Discussion of Conditions and Legal Opinions", the Secretary finds the lack of any provisions for administrative review of decisions denying applications for permit renewal renders condition "p" moot. Therefore, he is amending the Federal rules at 30 CFR 906.11 to remove paragraph (p), which establishes this condition.

Condition "oo"

For the reasons set forth in Colorado's legal opinion dated September 9, 1986, as discussed in the section of this notice entitled "Discussion of Conditions and Legal Opinions", the Secretary finds that, since the Colorado regulations at 2 CCR 407–2, 4.20.4(4) are not limited by the provisions of the Colorado statute at CRS 34–33–121(3), the State regulations are no less stringent than section 516(c) of SMCRA. Therefore, he finds that condition "oo" is now moot, and he is amending the Federal regulations at 30 CFR 906.11 to remove paragraph (oo), which contains this condition.

IV. Public Comment

The Director announced receipt of the legal opinions in the March 27, 1987 **Federal Register**, inviting the public to comment on their adequacy and providing an opportunity for a public hearing (52 FR 9887–9890). No comments were received and since no one requests an opportunity to testify at a public hearing, the hearing scheduled for April 21, 1987 was canceled.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(b)(10)(i), comments were also solicited from various Federal agencies. The Regional Forester for the Rocky Mountain Region of the U.S. Forest Service supported removal of the conditions based on the legal opinions. No other agencies elected to comment, although the Bureau of Mines, the Bureau of Land Management and the Fish and Wildlife Service acknowledged receipt of the request for comments.

V. Procedural Determinations

1. *Compliance with the National Environmental Policy Act* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Compliance with the Regulatory Flexibility Act* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Compliance With Executive Order No. 12291* On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

List of Subjects in 30 CFR Part 906:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 15, 1987

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Part 906 of Title 30, Code of Federal Regulations, is amended as follows:

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

§ 906.11 [Amended]

2. Section 906.11 is amended by removing and reserving paragraphs (p) and (oo).

[FR Doc. 87–22170 Filed 9–24–87; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[DOD Instruction 6010.15]

Coordination of Benefits

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part establishes Department of Defense policies under Pub. L. 99–272, section 2001, Consolidated Omnibus Budget Reconciliation Act of 1985, April 7, 1986. It also assigns responsibility for implementing the authority for collection by the United States of inpatient hospital costs incurred by retirees and dependents.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John Maddy, Office of the Assistant Secretary of Defense (Health Affairs), Pentagon, Washington, DC 20301, telephone (202) 694–3242.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

Accordingly, 32 CFR Part 220 is added to read as follows:

PART 220—COORDINATION OF BENEFITS

Sec.

220.1 Purpose.
220.2 Applicability.
220.3 Definitions.
220.4 Policy.
220.5 Responsibilities.
220.6 Procedures.

Authority: Pub. L. 99–272, section 2001; 10 U.S.C. Chapter 55

§ 220.1 Purpose.

This part: (a) Establishes DOD policies under Pub. L. 99–272, section 2001 and 10 U.S.C. 1074(b), 1076(a), 1076(b), and 1095.

(b) Assigns responsibility for implementing the authority for collection by the United States of inpatient

hospital costs incurred by retirees and dependents.

§ 220.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

§ 220.3 Definitions.

Inpatient Hospital Care. Treatment provided to an individual, other than a transient patient, who is admitted (placed under treatment or observation) to a bed in a medical treatment facility that has authorized or designated beds for inpatient medical or dental care.

Insurance Plan. Any plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services and supplies. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

Medical Service or Health Plan. A medical service or health plan is any plan or program of an organized health care group, corporation, or other entity for the provision of health care to an individual from plan providers, both professional and institutional. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

Third-Party Payer. An entity that provides an insurance, medical service, or health plan by contract or agreement to include plans for State and local government employees. Includes both insurance underwriters and private employers offering self-insured or partially self-insured and/or partially underwritten health insurance plans.

§ 220.4 Policy.

(a) In the case of a person who is covered by section 1074(b), 1076(a), or 1076(b) of 10 U.S.C., the United States has the right to collect from a third-party payer (to include State and local government plans) the reasonable costs of inpatient hospital care incurred by the United States for such person through a facility of the uniformed services only to the extent that the person should be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such costs on the person's own behalf. This does not include "income maintenance" or "CHAMPUS supplemental" type plans. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is the reasonable cost of the care provided less the deductible or copayment amount.

(b) A person covered by section 1074(b), 1076(a), or 1076(b) of 10 U.S.C. may not be required to pay deductible or copayment amounts to the United States for inpatient hospital care. This applies only to a deductible or copayment imposed by the third-party payer.

(c) Participating hospital agreements are premised on compliance with State and local laws and regulations by a State nonprofit health care corporation. Since Federal entities are governed by Federal statutes and regulations, DoD medical treatment facilities should not enter into local participating hospital agreements.

(d) The Military Services shall establish procedures to document that each dependent or retiree admitted as an inpatient is specifically questioned whether or not they have private insurance. Documentation will also be required for these patients to assign benefits to the United States Government for payments due from third-party payers.

(e) When a physician provides inpatient services for dependents or retirees under the Joint Health Benefits Program, the medical treatment facility will bill the third-party payer for only the hospital and ancillary charges, not the physician charges.

§ 220.5 Responsibilities.

The Military Departments shall be responsible for developing procedures to implement this Coordination of Benefits Program.

§ 220.6 Procedures.

(a) Authority to collect applies to an insurance, medical service, or health plan agreement entered into, amended, or renewed on, or after, April 7, 1986 for inpatient hospital care provided after September 30, 1986. An amendment includes, but is not limited to, any change of rates, changes in benefits, changes in carriers, and conversions from insured plans to self insured plans or the reverse.

(b) The Military Medical Treatment Facility (MTF) shall use the Uniform Bill, UB–82, to prepare bills to third-party payers for medical care and services rendered to dependents and retirees. Local situations could require using a form other than the UB–82 to bill some third-party payers. MTFs shall complete those data elements and codes identified by the National Uniform Billing Committee as required entries for submitting bills to third-party carriers.

(c) A per diem charge equal to the inpatient full reimbursement rate shall be used to bill third-party payers in accordance with the medical and subsistence charges established and published by the Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), for each fiscal year; this publication will also contain instructions on the disposition of amounts collected. For billing third-party payers, the rates for FY 1987 and thereafter shall be subdivided by OASD(C) into three categories:

(1) Hospital charges.

(2) Physician charges.

(3) Ancillary charges.

(d) Medical services and subsistence charges for dependents and retirees are considered separate rates and are an integral part of medical financial systems. Each Service shall continue to bill and collect these charges using current methods. The additional collections and billings for third-party payers provided for in this part shall be accounted for separately.

(e) Accounting records shall be established to be able to report the following:

(1) Total amount billed to third-party payers.

(2) Amount collected.

(3) Amount not collected for various reasons.

(f) Military MTFs when requested, at no charge, shall make the health care records or copies of the records of individuals for whose care the United States is seeking recovery of costs available for inspection and review by representatives of the third-party payer covering the individual's medical care. This will be done solely for permitting the carrier to verify that:

(1) Care, for which recovery of costs is sought by the MTF, was furnished.

(2) Such care to the individual meets criteria applicable under the health plan contract involved.

(g) The sponsor's Social Security Account Number (SSAN) shall be used as the patient ID number.

(h) Each Military Department shall submit a quarterly report to the Office of the Assistant Secretary of Defense (Health Affairs) (OASD(HA)). Reports shall be due on 1 February, 1 May, 1 August, and 1 November. The Report Control Symbol (RCS) number is DD–HA(Q) 1752. The following information shall be required in the report:

(1) Number of bills submitted to third-party payers.

(2) Total amount billed to third-party payers (accounts receivable).

(3) Total collected.

(4) Total not collected. The report shall provide a dollar amount for each of the categories, below, for which payment was not received:

(i) Amount of coverage (e.g., policy only pays 80 percent).

(ii) Payment reduced due to preadmission review, concurrent review, discharge planning, and second surgical opinion.

(iii) Care provided is not covered under the policy (covered by a prepaid plan that only covers emergency care outside the plan, preexisting conditions, cosmetic exclusions, and dental care etc.).

(iv) Policy expired, nonexistent, or patient not a named beneficiary on the policy.

(v) Policy not enterd into, renewed, or modified on or after April 7, 1986.

(vi) Other reasons (specify).

(5) The Secretary of the Military Department that provided care covered by this Instruction, or the Secretary's designee, may compromise, settle or waive a DoD claim under 10 U.S.C. 1095 and under this part.

(6) The Secretary of the Military Department that provided care covered by this Instruction, or the Secretary's designee, normally shall request the Department of Justice to institute and prosecute legal proceedings to collect amounts due under the Federal Claims Collection Act (31 U.S.C. 3701 et seq.) as amended by the Debt Collection Act of 1982 (Pub. L. 97-365) and this part when administrative efforts to collect such amounts are unsuccessful.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1987.

[FR Doc. 87-22190 Filed 9-24-87 8:45 am]

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32 CFR Part 251

[DoD Directive 4175.1]

Sale of Government-Furnished Equipment or Materiel and Services to U.S. Companies

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is revised to comply with the authority provided by Pub. L. 98-525 which liberalized some of the provisions of the original part that pertains to certain Army working capital funded arsenals. Articles manufactured by the arsenals and related services may not be sold to an authorized purchaser outside the Department of Defense provided specific requirements are met.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Wise, Defense Security Assistance Agency, the Pentagon, Washington DC 20301, telephone (202) 697-8108.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 251

Arms and munitions, Exports, Government property.

Accordingly, 32 CFR Part 251 is revised to read as follows:

PART 251-SALE OF GOVERNMENT-FURNISHED EQUIPMENT OR MATERIEL AND SERVICE TO U.S. COMPANIES

Sec.

251.1 Reissuance and purpose.
251.2 Applicability.
251.3 Policy.
251.4 Definitions.
251.5 Responsibilities.
251.6 Procedures
251.7 Information requirements.

Appendix A to Part 251—Status report on sales of GFE or GFM and related quality assurance services (RCS DSAA (Q)1149)

Authority: Sec. 305(2) Pub. L. 98-525, Pub. L. 97-392, 10 U.S.C. 2208(i), 22 U.S.C. 2770, and 96 Stat 1962.

§ 251.1 Reissuance and purpose.

This part reissues 32 CFR Part 251 expanding its coverage to implement Title 10, United States Code, section 2208(i). It provides policy, assigns responsibilities, and prescribes procedures.

§ 251.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 251.3 Policy.

(a) The Department of Defense executes the authority provided by 22 U.S.C. 2770 to sell to U.S. companies defense articles and defense services (hereafter also "items") in connection with proposed exports on a direct commercial basis pursuant to State Department licenses or approvals under International Traffic in Arms Regulation. The Department of Defense also executes the authority provided by 10 U.S.C. 2208(i), which applies only to a working-capital funded Department of Army Arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms.

(b) Sales under 22 U.S.C. 2770 may be authorized only if the following applies:

(1) The items are of a type approved for foreign military sales (FMS);

(2) Sale to a U.S. company under this part would simplify and expedite the direct commercial sale involved;

(3) The items are of the type that would be supplied to the prime contractor as Government-furnished equipment (GFE) or materiels (GFM) for manufacture or assembly into end items for use by the Military Services, and have in fact been supplied as GFE or GFM in connection with any past or present DoD procurement of such end items; and

(4) The other provisions of this part are complied with.

(c) Sales under 10 U.S.C. 2208(i) may be authorized by the Department of the Army only if the following applies:

(1) The article or related services are sold to a U.S. manufacturer, assembler, or developer:

(i) For use in developing new products, or

(ii) For incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government.

(2) The sale has been approved previously by the Office of Deputy Assistant Secretary of Defense (Production Support) (ODASD)(PS)), or a designee.

(3) The other applicable provisions of this part are complied with.

§ 251.4 Definitions.

(a) *Authorized purchasers under 22 U.S.C. 2770.* A company incorporated in the United States as defined in paragraphs a. and c. or in paragraphs b. and c. of the definitions.

(1) The existing prime contractor for the specific end item with a DoD contract for final assembly or final manufacture in the United States of the end item for use by the Military Services.

(2) A known DoD-qualified producer of the end item to be used by the Military Services, or one considered by the commanding officer of the Military Department procuring activity to be a responsible contractor for final assembly or final manufacture in the United States of the end item for use by the Military Services, and which is not debarred, ineligible, or suspended for defense procurement contracts.

(3) A U.S. manufacturer that has an approved license under the International Traffic in Arms Regulation, which provides for the use of GFE or GFM in the direct commercial export to a foreign country for the use of the Armed Forces of that country or international organization. The license shall identify the defense end item being sold and exported, the quantity and identification of concurrent and follow-on spares, end item delivery schedule, and name of the ultimate user.

(b) *Authorized purchasers under 10 U.S.C. 2208(i).* A company incorporated in the United States as defined in paragraphs (a) and (b) of this definition. Where export of an article from the United States is involved, paragraph (c) of this definition also applies.

(1) A known DoD-qualified manufacturer, assembler, or developer of articles, and which is not debarred, ineligible, or suspended for defense procurement contracts.

(2) A company considered by the Commanding Officer of the Military Department procuring activity to be a responsible contractor for the proposed work.

(3) A company exporting articles is restricted to sales to a friendly foreign government and must have an approved license under the International Traffic in Arms Regulation, which provides for use or sale of the article in the direct commercial export to a foreign country for use by the Armed Forces of that country. The license shall identify the article being sold and exported, the quantity and identification of arsenal-produced items provided as concurrent and follow-on spares, item delivery schedule, and name of the ultimate user.

§ 251.5 Responsibilities.

(a) The *Under Secretary of Defense for Policy (USD(P))*, or designee, shall provide overall guidance regarding the sale of the GFE or GFM to U.S. companies for commercial export.

(b) The *Director, Defense Security Assistance Agency (DSAA)*, shall:

(1) Monitor the sale of GFE and GFM to U.S. companies and implementation of this Part with coordination with the ASD(A&L), where applicable.

(2) Determine priorities or make allocations between two or more competing foreign requirements.

(c) The *Assistant Secretary of Defense (Acquisition and Logistics) (ASD(A&L))*, or designee, shall approve all sales under 10 U.S.C. 2208(i) in accordance with policies set forth in DoD Directive 4005.1.[1]

(d) The *Secretaries of the Military Departments:*

(1) Shall execute the functions conferred upon the Secretary of Defense by 22 U.S.C. 2770.

(2) May redelegate the authority under 22 U.S.C. 2770, but such delegation may not be below the level of the commanding officer or head of a procuring activity of the Military Department responsible for procurement or acquisition of the applicable end item.

(3) Shall provide a quarterly report to the Director, DSAA, of sales made to U.S. companies under 22 U.S.C. 2770.

(e) The *Secretary of the Army:*

(1) Shall execute the functions conferred by 10 U.S.C. 2208(i).

(2) May delegate the authority under 10 U.S.C. 2208(i).

(f) The *Assistant Secretary of Defense (Comptroller) (ASD(C))* shall monitor pricing compliance and financial administration set forth under DoD 7290.3–M.

§ 251.6 Procedures.

(a) *Articles and services authorized for sale under 22 U.S.C. 2770.*

(1) Defense items that currently are in fact being furnished (or have in fact been furnished) by the U.S. Government as GFE or GFM to a U.S. company that is or has been under contract to the Department of Defense for final assembly or final manufacture into an end item for use by the Military Services.

(2) Defense services that are directly associated with the installation, testing, and certification of GFE that are or have been in fact provided by the U.S. Government to a U.S. company in connection with the U.S. Government procurement of similar end items for use by the Department of Defense. Such defense services, including transportation (subject to paragraph (e)(3)(iii) of this section), may be performed only in the United States and only in support of the sale of defense articles under this part; that is, services alone may not be provided under this part.

(3) Defense items shall not be procured by the Department of Defense for sale under Section 30 of the Arms Export Control Act if they are available to the authorized purchases directly from U.S. commercial sources at such times as may be required to meet the delivery schedule of the authorized purchaser.

(b) *Articles and services authorized for sale under 10 U.S.C. 2208(i).*

(1) Articles that can be manufactured by a working-capital funded Department of the Army Arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms without present or future interference with performance of the work by that Arsenal for the Department of Defense or for a contractor performing for the Department of Defense.

(2) Services that are directly associated with the articles sold. Such services, including transportation (subject to paragraph (e)(3)(ii) of this section), may be performed only in the United States and only in support of the sale of articles under this part; that is, services alone may not be provided under this part.

(3) Articles shall not be sold by Army Arsenals under authority of 10 U.S.C. 2208(i) if they are readily available to the authorized purchaser directly from a U.S. commercial source.

(4) Nothing in this Directive shall be construed to affect the application of the export controls provided for in Section 38 of the Arms Export Control Act to items that incorporate or are produced through the use of an article sold under this part.

(c) *Pricing, Financing, and Accounting.*

(1) To afford U.S. companies the ability to conduct planning and marketing of items, Military Departments are authorized to provide cost and delivery scheduling data to authorized potential purchasers (see § 251.4) in advance of execution of a sales agreement. Such data shall be identified as estimates and shall not be binding on the U.S. Government. Efforts shall be made to provide accurate data.

(2) Actual sales of items shall be made in cash, with payment upon signature of the sales agreement by the representatives of the U.S. Government and the U.S. company. Payment shall be received by the U.S. Government in U.S. dollars upon such signature and shall precede procurement action by the U.S. Government or, in cases of stock sales, delivery to the authorized purchaser.

(3) Prices for sales from procurement or sales from DoD stocks, under 22 U.S.C. 2770 section 30 or 10 U.S.C. 2208(i) shall be established in accordance with DoD 7290.3–M. Prices to be charged shall be the same as those established for sales under the FMS Program of the same defense articles and services, to include all surcharges and accessorial charges applicable to FMS, including an amount for administration not less than the FMS administrative surcharge. Full replacement cost pricing shall be used

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

for all sales of defense articles from DoD stocks and all diversions from DoD procurement. Sales prices (under 10 U.S.C. 2208(j)), for articles to be exported or for independent research and development will include the same appropriate surcharges and accessorial charges that are applicable to sales under FMS. Sales to Federal customers other than the Department of Defense shall be priced in accordance with Chapter 26 of the DoD Accounting Manual, DoD 7220.9–M.

(4) An obligation for a reimbursable procurement may not exceed the cash received from an authorized purchaser as prescribed in paragraph (c)(2) of this section. If there is an increase in the procurement contract cost, the purchaser shall be required to make additional cash payment to the Military Service to fund the contract fully, plus applicable surcharges, when such an increase is known. The cash received from an authorized purchaser as prescribed in paragraph (c)(3) of this section, must be sufficient to fund the replacement cost of defense articles shipped from DoD stocks.

(5) Accountability shall be in accordance with DoD 7290.3–M with reimbursements from sales being credited to the current appropriation, fund, or account of the selling agency. Surcharges on items sold, such as nonrecurring cost recoupment charge, asset use charge, and FMS administrative charge, shall be accountable as FMS surcharges under DoD 7290.3–M. Amounts collected for items sold shall be credited to accounts, specified in paragraph 10402 of Foreign Military Sales Financial Management Manual, DoD 7290.3–M.

(d) *Establishment of priorities and allocations.*

(1) Unless otherwise directed by the USD(P) in coordination with the ASD(A&L), sales are not authorized if they result in inventory stockage levels dropping below the established reorder points. Except as provided in Section 21(i) of the Arms Export Control Act, sales, are not authorized if they constitute a withdrawal of assets from U.S. stocks that result in a significant adverse impact on the combat readiness of the Military Services.

(2) When procurement is required, or manufacture in Government-owned facilities is necessary, the Military Department concerned shall determine whether a sale will be concluded. Unless directed by the DSAA (see paragraph (d)(2)), the Military Department concerned is responsible for the establishment of priorities for procurement or manufacture and for allocations and delivery of military equipment and services. In determining production priorities and allocations, the Military Departments shall consider fully all existing DoD requirements for U.S. and other foreign requirements and normally will schedule delivery, manufacture, and allocation on a first-in, first-out basis. In making such determinations, the Military Departments shall be guided by DoD Directive 4410.6 [2] and related assignments of force activity designators by the Joint Chiefs of Staff (JCS).

(3) If there are two or more competing foreign requirements, the Director, DSAA, shall determine priorities or shall make allocations. Such priorities or allocations for foreign requirements shall supersede determinations made by the Military Department under paragraph (d)(2).

(e) *Sales agreement.*

(1) The sales agreement with the U.S. company will identify the company, the items and quantities being sold, the estimated availability of the items, whether from DoD stocks or procurement, the estimated price of the items, the item into which the GFE or GFM item or items will be incorporated for resale, the identity of the foreign purchaser and the number and date of the munitions export license, or State Department approval.

(2) The sales agreement shall be approved by the appropriate Military Department's General Counsel, or designee, and shall, as a minimum, indicate that the U.S. Government:

(i) Retains the right to cancel in whole or in part or to suspend performance at any time under unusual or compelling circumstances if the national interest so requires.

(ii) Provides no warranty or guarantee, either expressed or implied, regarding the items being sold.

(iii) Shall provide best efforts to comply with the delivery leadtime cited, but will incur no liability for failure to meet an indicated delivery schedule.

(iv) Shall use its best efforts to deliver at the estimated prices, but that the purchaser is obligated to reimburse the U.S. Government for the total cost if it is greater than the estimated price.

(3) Moreover, the sales agreement shall state that:

(i) Payment terms are cash, payable in advance, in accordance with paragraph (c)(2) of this section;

(ii) Delivery shall be "Free on Board (FOB) Point of Origin" with purchaser to arrange for continental U.S. (CONUS) transportation, except for sensitive or hazardous cargo that normally shall be shipped by way of the Defense Transportation Services (DTS) at rates established in DoD 7290.3–M;

(iii) The purchaser is responsible for both insurance coverage, if desired, and ultimate customs clearance for export;

(iv) The purchaser is required to reimburse the U.S. Government for all costs incurred by the U.S. Government if the purchase agreement is canceled by the purchaser before delivery of the defense materiel or completion of defense services.

(v) The purchaser renounces all claims against the U.S. Government, its officers, agents, and employees arising out of or incident to this agreement, whether concerning injury to or death of personnel, damage to or destruction of property, or other matters, and will indemnify and hold harmless the U.S. Government, its officers, agents, and employees against any such claims of third parties and any loss or damage to U.S. Government property.

(vi) The U.S. company agrees to provide for protection of classified information and will require the agreement with the foreign government to provide for protection of U.S. classified information.

§ 251.7 Information requirements.

(a) The quarterly report (see § 251.5(d)(3)) shall be provided within 30 days of the end of each fiscal quarter and shall contain the information specified in 22 U.S.C. 2770.

(b) The reporting requirement of this Directive has been assigned Report Control Symbol DSAA(Q)1149. The report format is in 22 U.S.C 2770.

[2] See footnote 1 to § 251.5(c).

Appendix A to Part 251—Status report on sales of GFE or GFM and related quality assurance services (RCS DSAA (Q)1149)

FOR PERIOD ENDING

[Military Department]

U.S. Company	Items being sold [1]	Quantities	Stock source	Procurement source	Estimated availability	Estimated price	Recipient Foreign country and recipient Armed Force	Export [2] license No. & date	Date of delivery	Final

[1] Provide breakout of items being sold as concurrent or follow-on spares that will not be incorporated into an end item by the U.S. company before sale to a foreign government.
[2] Or other State Department approval

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 18, 1987.

[FR Doc. 87-22191 Filed 9-24-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3267-3]

Standards of Performance for New Stationary Sources, Delegation of Additional Standards to North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On July 15, 1987, the North Carolina Division of Environmental Management requested that EPA delegate to the State the authority to implement and enforce EPA's New Source Performance Standards (NSPS) for a category of air pollution sources (identified below under "Supplementary Information"). Since EPA's review of pertinent North Carolina laws, rules, and regulations showed them to be adequate to implement and enforce these federal standards, the Agency has delegated authority for them to North Carolina. Affected sources are now under the jurisdiction of the State.

EFFECTIVE DATE: August 20, 1987.

ADDRESSES: Copies of the State's requests and EPA's letter of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to the Air Quality Section, North Carolina Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Bob Peddicord of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Section 111 of the Clean Air Act authorizes EPA to delegate authority to implement and enforce the Standards of Performance of New Stationary Sources (NSPS) to any state which has adequate implementation and enforcement procedures. On November 24, 1976, EPA delegated to North Carolina authority to implement and enforce most of the NSPS then extant. Since that date, EPA has updated the State's delegation several times. On July 15, 1987, the North Carolina Division of Environmental Management requested a delegation for the following recently promulgated NSPS: 40 CFR Part 60, Subpart Do, Industrial-Commercial-Institutional Steam Generating Units.

After a thorough review of the request, I determined that such delegation was appropriate with the conditions set forth in the original delegation letter of November 24, 1976 and granted the State's request in a letter dated August 20, 1987. North Carolina sources subject to the NSPS listed above are now under the jurisdiction of the State of North Carolina.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempt this rule from requirements of section 3 of Executive Order 12291.

Authority: Sec. 111, Clean Air Act (42 U.S.C. 7411)

Date: September 4, 1984.

Joe R. Franzmathes

Acting Regional Administrator.

[FR Doc. 87-22151 Filed 9-24-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-473; RM-5388]

Radio Broadcasting Services; Roseville, Chico & South Lake Tahoe, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, issued in response to a petition for rule making filed by Fuller-Jeffrey Broadcasting Companies, Inc., substitutes channels and modifies affected stations, accordingly, all of which are licensed to petitioner, as follows: Channel 229B1 is substituted for Channel 228A at Roseville, CA and the Class A license of Station KRXQ(FM) is modified to reflect the higher class channel; Channel 230B1 is substituted for Channel 229B1 at Chico, CA and the license of Station KFMF(FM) is modified accordingly. Channel 230B1 was requested in lieu of Channel 230B at South Lake Tahoe, CA with accompanying reclassification of license of Station KRLT(FM). The latter two substitutions were required to accommodate the Roseville proposal. Both Stations KFMF(FM) and KRLT(FM), were recently reclassified to Class B1 by Commission action, *Reclassification of FM Facilities Pursuant to BC Docket 80-90*, (see, *Public Notice*, April 13, 1987, No. 2698), since their operating values are less than the minimum required for Class B status.

With this action, this proceeding is terminated.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-473, adopted August 18, 1987, and released

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September 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California by amending the following entries: Chico, delete Channel 229 and add Channel 230B1; Roseville, delete Channel 228A and add Channel 229B1; South Lake Tahoe, delete Channel 230 and add Channel 230B1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–21107 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–478; RM–5484]

Radio Broadcasting Services; Seymour, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230C2 for Channel 232A at Seymour, Texas, and modifies the license of Station KSEY–FM to specify operation on the new frequency, at the request of KSEY Broadcasting, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–478; adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR PART 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas by revising Channel 232A to Channel 230C2 for Seymour.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–22164 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status and Designation of Critical Habitat for Cape Fear Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Cape Fear shiner *(Notropis mekistocholas)* to be an endangered species and designates its critical habitat under the Endangered Species Act (Act) of 1973, as amended. This fish has recently undergone a reduction in range and population. It is currently known from only three small populations in the Cape Fear River drainage in Randolph, Moore, Lee, and Chatham Counties, North Carolina. Due to the species' limited distribution, any factor that degrades habitat or water quality in the short river reaches its inhabits—e.g., land use changes, chemical spills, wastewater discharges, impoundments, changes in stream flow, or increases in agricultural runoff—could threaten the species' survival. This determination of endangered species status and the designation of critical habitat implements the protection provided by the Act for the Cape Fear shiner.

EFFECTIVE DATE: The effective date of this rule is October 26, 1987.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The Cape Fear shiner *(Notropis mekistocholas)*, the only endemic fish known from North Carolina's Cape Fear River drainage, was discovered in 1962 and described by Snelson (1971). This fish has been collected from nine stream reaches in North Carolina (Bear Creek, Rocky River, and Robeson Creek, Chatham County; Fork Creek, Randolph County; Deep River, Moore and Randolph Counties; Deep River, Chatham and Lee Counties; and Cape Fear River, Kenneth Creek, and Parkers Creek, Harnett County (Snelson 1971; W. Palmer and A. Braswell, North Carolina State Museum of Natural History, personal communication, 1985; Pottern and Huish 1985, 1986)). Based on a recently completed Service-funded study (Pottern and Huish 1985, 1986) involving extensive surveys in the Cape Fear River Basin (including all historic sites) and a review of historical fish collection records from the Cape Fear, Neuse, and Yadkin River systems, the fish is now restricted to only three populations that occur primarily on private lands. The strongest population (101 individuals collected in 1984 and 1985) is located around the junction of the Rocky River and Deep River in Chatham and Lee Counties where the fish inhabits the Deep River from the upstream limits of the backwaters of Locksville Dam upstream to the Rocky River then upstream from the Rocky River to Bear Creek and upstream from Bear Creek to the Chatham County Road 2156 Bridge. A few individuals were collected just downstream of the Locksville Dam, but because of the limited extent of Cape Fear shiner habitat at this site, it is not believed this is a separate population. Instead, it is thought these fish represent a small number of individuals that periodically drop down from the population above Locksville Dam pool.

The second population, represented by the collection of a specimen near State Highway Bridge 902 in Chatham County, is located above the Rocky River Hydroelectric Dam. This population was historically the best, but the area yielded only the one specimen after extensive surveys by Pottern and

Huish (1985). The third population was found in the Deep River system in Randolph and Moore Counties. This population is believed to be small (Pottern and Huish 1985, 1986). Three individuals were found above the Highfalls Hydroelectric Reservoir—one in Fork Creek, Randolph County, and two in the Deep River, Moore County. The species was also found downstream of the Highfalls Dam. However, the extent of suitable habitat in this stream reach is limited, and it is thought that these individuals likely result from downstream movement from above the reservoir where Cape Fear shiner habitat is more extensive.

The Cape Fear shiner is small, rarely exceeding 2 inches in length. The fish's body is flushed with a pale silvery yellow, and a black band runs along its sides (Snelson 1971). The fins are yellowish and somewhat pointed. The upper lip is black, and the lower lip bears a thin black bar along its margin. The Cape Fear shiner, unlike most other members of the large genus *Notropis*, feeds extensively on plant material, and its digestive tract is modified for this diet by having an elongated, convoluted intestine. The species is generally associated with gravel, cobble, and boulder substrates and has been observed to inhabit slow pools, riffles, and slow runs (Snelson 1971, Pottern and Huish 1985). In these habitats, the species is typically associated with schools of other related species, but it is never the numerically dominant species. Juveniles are often found in slackwater, among large rock outcrops in mid-stream, and in flooded side channels and pools (Pottern and Huish 1985). No information is presently available on breeding behavior, fecundity, or longevity.

The Cape Fear shiner may always have existed in low numbers. However, its recent reduction in range and its small population size (Pottern and Huish 1985, 1986) increases the species' vulnerability to a catastrophic event, such as a toxic chemical spill. Dam construction in the Cape Fear system has probably had the most serious impact on the species by inundating the species' rocky riverine habitat, and changes in flow regulation at existing hydroelectric facilities could further threaten the species. The deterioration of water quality has likely been another factor in the species' decline. The North Carolina Department of Natural Resources and Community Development (NCDNRCD) (1983) classified water quality in Deep River, Rocky River, and Bear Creek as good to fair, and referred to the Rocky River below Siler City as an area where sampling indicates degradation. That report also stated: "Within the Cape Fear Basin, estimated average annual soil losses from cropland ranged from 3 tons per acre in the lower basin to 12 tons in the headwaters." The North Carolina State Division of Soil and Water Conservation considers 5 tons of soil loss per acre as the maximum allowable.

The Cape Fear shiner was one of 29 fish species included in a March 18, 1975, Notice of Review published by the Service in the **Federal Register** (40 FR 12297). On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the Cape Fear shiner, along with 147 other fish species, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On April 4, 1985, the Service notified Federal, State, and local governmental agencies and interested parties that the Asheville Endangered Species Field Office was reviewing the species' status. That notification requested information on the species' status and threats to its continued existence. Twelve responses to the April 4, 1985, notification were received. The COE, Wilmington District; North Carolina Division of Parks and Recreation, Natural Heritage Program; and the North Carolina State Museum of Natural History provided data on potential threats and supported some type of protection for the species. Concern for the species' welfare was also expressed by private individuals. The other respondents provided no information on threats and did not take a position on the species' status. The Cape Fear shiner was included in the Services' September 18, 1985, Notice of Review of Vertebrate Wildlife (50 FR 37958) as a category 1 species, indicating that the Service had substantial biological data to support a proposal to list the species as endangered or threatened.

Summary of Comments and Recommendations

In the July 11, 1986, proposed rule (51 FR 25219) and associated notifications, all interested parties are requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted (county governments, regional planning commission, U.S. Army Corps of Engineers (COE), and North Carolina Wildlife Resources Commission (NCWRC) were contacted in person or by phone) and requested to comment. A newspaper notice was published in the *Sanford Daily Herald* on August 2, 1986. A news release summarizing the proposed rule and requesting comments was also provided to newspapers in North Carolina. Fourteen written comments were received and are discussed below.

The COE analyzed, as part of its Section 7 responsibilities for proposed species and critical habitat, the potential impacts of two proposed Deep River COE projects (Randleman Dam and Howards Mill Dam) on the Cape Fear shiner and its critical habitat. The COE stated that Randleman Dam, which would be located in Randolph County, North Carolina, about 30 miles upstream of the Cape Fear shiner's proposed critical habitat in Randolph and Moore Countries, is not likely to adversely modify proposed critical habitat or jeopardize the continued existence of the Cape Fear shiner. The COE concluded that listing would not result in changes to the proposed design, construction, operation, or maintenance of the project. The COE further concluded that designation of the species' critical habitat should have no economic effect on the Randleman Dam project. The Service responds that analysis of the data presented by COE on the potential downstream impacts from siltation during construction and the relocation of a sewage treatment discharge further downstream indicates that COE's assessment is correct and that no significant impacts to the fish and its proposed critical habitat are expected to occur. Concerning Howards Mill Dam, which is proposed to be located within the critical habitat in Randolph and Moore Counties, COE responded that this project could be precluded by designating critical habitat on the Deep River. However, the COE stated that the Howards Mill Dam project was placed in a deferred category in October 1980 because it lacked economic justification. The NCDNRCD, Division of Water Resources, also addressed Howards Mill Dam and concluded that it ". . . is presently a low priority project with unfavorable benefit-cost considerations. Howards Mill Dam will probably never be constructed." The Service concurs that the designation of critical habitat on the Deep River in Randolph and Moore Counties could preclude construction of the Howards Mill Dam. However, if the project were ever to become economically justifiable and of national or regional significance, the dam proponents could file for an exemption pursuant to section 10 of the Endangered Species Act.

The Federal Energy Regulatory Commission (FERC) commented that no new hydroelectric facilities were proposed for the area and that all hydroelectric facilities presently operating within or above the species and its proposed critical habitat were operating as run-of-the-river facilities and therefore should not affect stream flows and habitat conditions. FERC did conclude that the listing and designation of critical habitat could have future unknown impacts on hydroelectric activities under its jurisdiction. The Service agrees that if the existing projects are operating as conditioned in their permits as fun-of-the-river facilities, impacts to stream flow and habitat should be minimal. The Service also agrees that there may be some unknown future impacts to activities under FERC jurisdiction by the listing of the species and the designation of its critical habitat, but the Service cannot assess the significance of unknown future impacts.

The NCDNRCD provided comments through the North Carolina State Clearinghouse and stated "We concur with the listing . . . ." Other divisions within the NCDNRCD also provided individual comments. The Division of Forest Resources responded that it did not perceive any adverse impacts on its activities. The Division of Water Resources informed the Service of two COE projects and requested additional data on the potential impacts of the listing on these projects. The Service has supplied the analysis conducted by COE (see above COE comments). The NCWRC, Division of Environmental Management (DEM), Division of Coastal Management, and Division of Parks and Recreation supported the proposal. The NCWRC and DEM also expressed concern that construction and operation of Randleman Dam and the associated downstream relocation of a sewage treatment plant outfall could adversely affect the species and its habitat. The Service is aware of the potential problems associated with the Randleman Dam project. However, the only hard data and complete analysis provided on the project's potential impacts was provided by the COE (see above COE comments). Based on analysis of this data, the Service believes that the impacts of the Randleman Dam project on the fish and its habitat should be minimal. However, subsequent to listing, further consultation between the COE and the Service will occur regarding this matter.

The North Carolina Department of Human Resources, Division of Health Services, stated that it would be opposed to the listing if it would delay completion of Randleman Dam. The Service has been in contact with the COE on potential conflicts concerning Randleman Dam, and, based on analysis of the COE's data and its conclusions, the Service does not anticipate that the listing of the fish or the designation of its critical habitat will delay the completion of Randleman Dam. Further, the Service will be working with the COE as the Randleman Dam project progresses to deal quickly with any presently unforeseen conflicts between the fish and the project.

The U.S. Geological Survey, North Carolina Department of Transportation, and Pee Dee Council of Governments commented that they foresaw no major conflicts with listing the fish and designating its critical habitat. Support for listing was expressed by a college biology professor.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Cape Fear shiner should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Cape Fear shiner (*Notropis mekistocholas*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A review of historic collection records (Snelson 1971; W. Palmer and A. Braswell personal communication 1985), along with recent survey results (Pottern and Huish 1985, 1986), indicates that the Cape Fear shiner is presently restricted to only three populations (see "Background" section). Three historic populations have apparently been extirpated (Pottern and Huish 1985, 1986). The Robeson Creek population, Chatham County, was believed lost when Jordan Lake flooded part of the creek. The reasons for the loss of populations from Parkers Creek and Kenneth Creek in Harnett County are not known. The shiner has also not been recollected (Pottern and Huish 1985) from the Cape Fear River in Harnett County. However, review of historical and current collection records reveals that only one specimen has ever been collected from this portion of the river, and the fish likely was a stray individual from an upstream or tributary population. Since much of the Deep, Haw, and Cape Fear Rivers and their major tributaries has been impounded for hydroelectric power, and much of the rocky shoal habitat inundated, other populations and population segments that were never discovered have likely been lost to these reservoirs.

Of the three remaining populations, only the one located around the confluence of the Deep and Rocky Rivers in Chatham and Lee Counties (inhabiting a total of about 7.3 river miles) appears strong (Pottern and Huish 1985). The second population in the Rocky River, above the Rocky River hydroelectric facility, was the source of the type specimens used to describe the species (Snelson 1971). Historic records (W. Palmer and A. Braswell personal communication, 1985) reveal that collections of 15 to 30 specimens could be expected in this stretch of the Rocky River (State Route 902) or Chatham County Road 1010 Bridge) during a sampling visit in the late 1960s and early 1970s. Pottern and Huish (1985) sampled the Rocky River throughout this reach on numerous occasions and were able to collect only one specimen. The reason for the apparent decline in this population is unknown. The third population, located in the Deep River system in Moore and Randolph Counties, is represented by the collection of six individuals (Pottern and Huish 1986). Three individuals were taken above the Highfalls Hydroelectric Reservoir. The other specimens were taken from below the dam. As the available habitat below the dam was limited, these fish were probably migrants from the unstream population.

Potential threats to the species and its habitat could come from such activities as road construction, stream channel modification, changes in stream flows for hydroelectric power, impoundments, land use changes, wastewater discharges, coal mining operations and other projects in the watershed if such activities are not planned and implemented with the survival of the species and the protection of its habitat in mind. The species could be impacted by two COE projects presently under review for the Deep River. The Randleman Dam project would consist of a reservoir of the Deep River in Randolph County, above known Cape Fear shiner habitat. However, according to data presented by the COE to the Service, this project as presently planned should not further threaten the species' survival. The Howards Mill Reservoir would be on the Deep River in Moore and Randolph Counties and

would flood proposed Cape Fear shiner critical habitat. However, this reservoir is not likely to be constructed (see "Background" section). The species and its habitat could also be impacted by coal mining if the activity was not carried out in a manner compatible with the species. The Office of Surface Mining within the Department of the Interior is currently reviewing and evaluating a coal mining permit application submitted April 30, 1987 by the Chatham Coal Company, Inc. of Stanford, North Carolina. Preliminary discussions between the Service and the Office of Surface Mining indicate that mining operations could be planned that are also compatible with the conservation of the Cape Fear shiner and its critical habitat. Both agencies are aware of the permit application and are cooperating in their efforts to ensure the survival of this freshwater fish species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Most of the present range of the Cape Fear shiner is relatively inaccessible and overutilization of the species has not been and is not expected to be a problem.

C. *Disease or predation.* Although the Cape Fear shiner is undoubtedly consumed by predatory animals, there is no evidence that this predation is a threat to the species.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (Subsection 113–272.4) prohibits collecting wildlife and fish for scientific purposes without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal actions. Federal listing will provide additional protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The major portion of the best Cape Fear shiner population is located at the junction of the Deep and Rocky Rivers in Chatham and Lee Counties. A major toxic chemical spill at the U.S. Highway 15–105 Bridge upstream of this site on the Rocky River could jeopardize this population, and as the other populations are extremely small and tenuous, the species' survival could be threatened.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Cape Fear shiner (*Notropis mekistocholas*) as an endangered species. Because of the species' restricted range, and vulnerability of the isolated populations to a single catastrophic accident, threatened status does not appear to be appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is being proposed for the Cape Fear shiner).

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (III) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. The critical habitat designation for the Cape Fear shiner consists of about 17 river miles including: (1) Approximately 4 river miles of the Rocky River in Chatham County, North Carolina; (2) approximately 7 river miles of Bear Creek, Rocky River, and Deep River in Chatham and Lee Counties, North Carolina; and (3) approximately 6 river miles of Fork Creek and Deep River in Randolph and Moore Counties, North Carolina. (See "Regulation Promulgation" section of this final rule for the precise description of critical habitat.) These stream sections contain gravel, cobble, and boulder substrates with pools, riffles, and shallow runs for adult fish and slackwater areas with large rock outcrops, side channels, and pools for juveniles. These areas also provide water of good quality with relatively low silt loads.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Activities which presently occur within the designated critical habitat include, in part, fishing, boating, scientific research, and nature study. These activities, at their present use level, do not appear to be adversely impacting the area.

There are also Federal activities that do or could occur within and in the vicinity of critical habitat that may affect or be affected by the critical habitat designation. These activities include construction of impoundments (such as the COE reservoirs under study for the upper Deep River), stream alterations, bridge and road construction, discharges of municipal and industrial wastes, hydroelectric facilities and a coal mining permit application. These activities could, if not carried out with the protection of the species in mind, degrade the water and substrate quality of the Deep River, Rocky River, Bear Creek, and Fork Creek by increasing siltation, water temperatures, organic pollutants, and extremes in water flow. If any of these activities may affect the critical habitat area and are the result of a Federal action, Section 7(a)(2) of the Act, as amended, requires the agency to consult with the Service to ensure that actions it authorizes, funds, or carries out, are not likely to destroy or adversely modify critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional data obtained. Based on this analysis, there does not appear to be any foreseeable significant economic or other impact from the designation of any of the particular critical habitat areas. Therefore, no adjustment has been made in critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required for Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate

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their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service is presently aware of only two Federal actions under consideration (Randleman and Howards Mill Reservoirs) that may affect the Cape Fear shiner and the proposed critical habitat. The Service has been in contact with the COE concerning the potential impacts of these projects on the species and its habitat (See "Summary of Comments and Recommendations" section). It has been the experience of the Service, however, that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are availabe for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 et seq.). Based on currently available data, present and planned uses of the critical habitat area and the watershed above it are compatible with the critical habitat designation. Based on the information discussed in this rule concerning public projects within and private lands fronting the proposed critical habitat, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there is no known involvement of Federal funds that would affect or be affected by the critical habitat designation for the private lands that front the critical habitat areas. No direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by the critical habitat designation. Further, the rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia 22201.

References Cited

North Carolina Department of Natural Resources and Community Development. 1983. Status of Water Resources in the Cape Fear River Basin. 135 pp.

Pottern, G.B., and M.T. Huish. 1985. Status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14–16–0009–1522. 44 pp.

Pottern, G.B., and M.T. Huish. 1986. Supplement to the status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14–16–0009–1522. 11 pp.

Snelson, F.F. 1971. *Notropis mekistocholas*, a new cyprinid fish endemic to the Cape Fear River basin, North Carolina. Copeia 1971:449–462.

Author

The primary author of this final rule is Richard G. Biggins, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
FISHES							
*	*	*	*	*	*		
Shiner, Cape Fear	*Notropis mekistocholas*	U.S.A. (NC)	Entire	E		17.95(e)	NA
*	*	*	*	*	*		

3. Amend § 17.95(e) by adding critical habitat of the "Cape Fear Shiner," in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

Cape Fear Shiner (Notropis mekistocholas)

(1) *North Carolina.* Chatham County. Approximately 4.1 river miles of the Rocky River from North Carolina State Highway 902 Bridge downstream to Chatham County Road 1010 Bridge;

(2) *North Carolina.* Chatham and Lee Counties. Approximately 0.5 river mile of Bear Creek, from Chatham County Road 2156 Bridge downstream to the Rocky River, then downstream in the Rocky River (approximately 4.2 river miles) to the Deep River, then downstream in the Deep River (approximately 2.6 river miles) to a point 0.3 river mile below the Moncure, North Carolina, U.S. Geological Survey Gaging Station; and

(3) *North Carolina.* Randolph and Moore Counties. Approximately 1.5 river miles of Fork Creek, from a point 0.1 river mile upstream of Randolph County Road 2873 Bridge downstream to the Deep River then downstream approximately 4.1 river miles of the Deep River in Randolph and Moore Counties, North Carolina, to a point 2.5 river miles below Moore County Road 1456 Bridge.

* * * * *

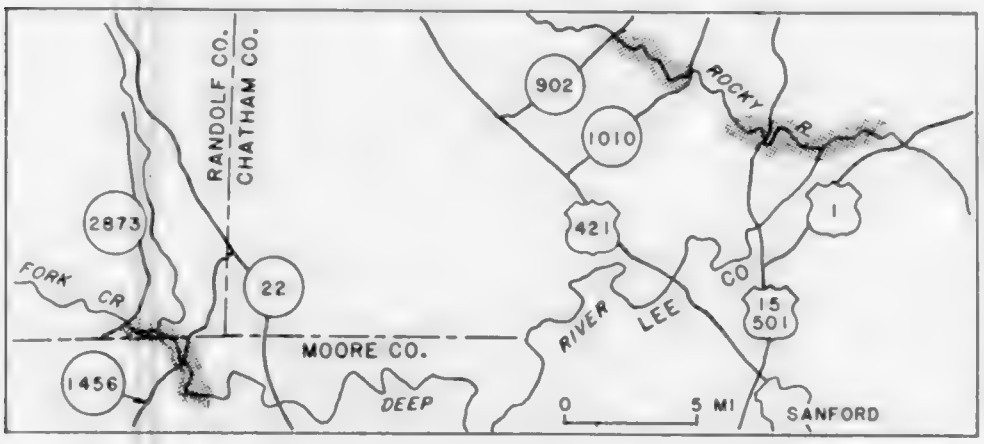

Dated: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-22268 Filed 9-24-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 61220-7033]

Groundfish of the Gulf of Alaska; Closure Modification

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure modification.

SUMMARY: The Director, Alaska Region, NMFS, is reopening the Eastern Regulatory Area of the Gulf of Alaska to trawling for groundfish species for which a target quota or a trawl gear share is available. This action is necessary to promote full utilization of groundfish, including Pacific ocean perch, without biological harm to "other rockfish". It is intended as a conservation and management measure to optimize groundfish yields from the fishery.

EFFECTIVE DATE: September 22, 1987, until 12 midnight, Alaska Standard Time (AST), December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1987, the Secretary of Commerce (Secretary) closed the Eastern Regulatory Area, defined at 50 CFR 672.2, to trawling for all groundfish species (52 FR 27202, July 20, 1987). Comments on the closure were invited until July 30, 1987.

One letter of comment was received, which was from the Alaska Factory Trawler Association (AFTA). It is summarized and responded to below.

The closure was part of a general closure to fishing for "other rockfish" in the exclusive economic zone (EEZ) of the Gulf of Alaska. The closure action was taken, because the target quota of 4,000 metric tons (mt) for "other rockfish" had been reached. The closure action was taken to protect "other rockfish", stocks of which are in a depressed condition. Fishing for other groundfish species in the Central and Western Regulatory Areas was still permitted. Trawl vessels were thus able to pursue fishing for Pacific ocean perch (POP) as well as other groundfish species for which harvest quotas remained. Any catches of "other rockfish" in those two areas were to be treated as a prohibited species and discarded at sea.

In the Eastern Regulatory Area, however, all trawling was closed under § 672.20(c)(2)(ii), even though about 1,600 mt of POP, as well as substantial amounts of other groundfish species, remained available for harvest. POP is the only species in the Eastern Regulatory Area of interest to fishermen using trawl gear for the rest of the 1987 fishing year. Closing all of the area was necessary, because the best available information indicated that POP occur in water depths similar to "other rockfish" in the Eastern Regulatory Area and that substantial amounts of "other rockfish" would be caught in a POP fishery. Additional mortality on "other rockfish" was not acceptable to the Secretary.

The information forming the basis for the closure was from the 1984 NMFS-conducted triennial Gulf of Alaska trawl survey. Actual fishery information to compare with NMFS survey data on the mix of trawl-caught "other rockfish" and

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POP was lacking for the Eastern Regulatory Area prior to 1987. As a result of the closure, about 1,600 mt of POP remain unharvested in the Eastern Regulatory Area. This amount is worth about $1.6 million.

One of AFTA's comments stated that the results of the 1987 "other rockfish" fishery showed that POP occurred in deeper water in the Eastern Regulatory Area than the results of the 1984 triennial survey indicated. AFTA has requested that trawling in the Eastern Regulatory Area be allowed to permit full utilization of unharvested POP. AFTA would voluntarily place NMFS-trained observers onboard a representative number of its vessels to provide at-sea verification that further trawling for POP would not inflict significant harm on "other rockfish" stocks.

The Regional Director recognizes that the NMFS survery data may not be the best available, since it is now three years old and that the 1987 fishery data may be more representative of the POP distribution. He has received a fishing plan from AFTA whereby no less than 40 percent of AFTA vessels would have onboard a NMFS trained observer while those vessels are engaged in trawling in the Eastern Regulatory Area. Such cause of observers would be without any cost to the Federal Government. Representatives of some other vessels that are not part of AFTA have also stated that they would place an observer onboard if the Eastern Regulatory Area were reopened to trawling. The Regional Director estimates that about five vessels might actually commence trawling. The Secretary has determined that the Eastern Regulatory Area can be opened to trawl fishing if means are available to certify that the risk of biological harm to "other rockfish" would be insignificant. As a result of AFTA's fishing plan, the Secretary finds that the means are available. By this notice, the Regional Director advises the fishing industry that a bycatch of "other rockfish" of 10 percent or less of the amount of POP caught would not jeopardize the status of "other rockfish" stocks.

Therefore, the Secretary hereby modifies the closure in the Eastern Area to allow trawling for groundfish species for which a target quota or a trawl gear share is available. Despite this modification, all gear types fishing in the Eastern Area must treat "other rockfish" as a prohibited species because the area remains closed to species for which the TQ has been reached. "Other rockfish" does not include a rockfish group in the Southeast Outside District for which a TQ of 1,250 mt is specified. The preamble to the interim notice establishing 1987 TQs (see 52 FR 785, January 9, 1987) had described these species as being in the Southeast Outside District in waters shallower than 100 fathoms. These are rockfish species that have been managed by the State of Alaska under authority of the FMP that recognizes that State's regulatory role of demersal shelf rockfish. This notice clarifies this category of "other rockfish" by listing them as follows: By species and common name, they include *Sebastes paucispinus* (Bocaccio), *S. pinninger* (Canary rockfish), *S. nebulosus* (China rockfish), *S. courinus* (Copper rockfish), *S. mallinger* (Quillback rockfish), *S. proiger* (Redstripe rockfish), *S. helvomaculatus* (Rosethorn rockfish), *S. brevispinis* (Silvergrey rockfish), *S. nigrocinctus* (Tiger rockfish), *S. ruberrimis* (Yelloweye rockfish). Since the TQ for "demersal shelf rockfish" has not been taken, catches by any gear type are retainable. Trawl vessels fishing in the West Yakutat district must also treat sablefish as a prohibited species because the trawl gear share of that species has been taken. However, a little more than 100 mt of sablefish remains of the trawl gear share of sablefish in the S.E. Outside/E. Yakutat district. Consequently, trawlers fishing in this district may retain incidentally caught sablefish up to 20% of their catch, take, or harvest.

The amount of "other rockfish" that will be caught while trawling for other species of groundfish will not pose a significant risk to "other rockfish" if they are 10 percent or less of catches of POP harvested in the trawl fishery. The Regional Director will compile the information from the observers and advise the affected trawl industry of the catch rates of "other rockfish" and POP. If observer information shows the "other rockfish" catch to be in excess of 10 percent, the Regional Director will again close the Eastern Regulatory Area to trawling.

Participating trawl vessel operators could earn about $1.6 million if they are allowed to harvest the remaining POP quota without significant risk to "other rockfish". The amount that they would forego if the Eastern Regulatory Area is not opened to trawling is not acceptable to the Secretary.

Public Comments

One letter of comment was received from AFTA, which represents certain domestic trawl vessles. The comments are summarized and responded to as follows:

Comment 1: POP are found in deeper water in the Eastern Regulatory Area than are "other rockfish".

Response: AFTA's statement was based on the results of the 1987 fishery. Although the closure was based on the best available scientific information, the results of the 1987 fishery may be new information. At-sea observation of the catches as a result of the voluntary observer program should yield quantitative information on bycatch rates of "other rockfish" in a POP directed fishery in the Eastern Regulatory Area.

Comment 2: The Eastern Regulatory Area should be opened to trawling for POP with observer coverage, to the extent NMFS deems necessary, of all gear types to monitor the "other rockfish" bycatch.

Response: The Regional Director is depending on trawl vessels to voluntarily use observers while trawling for POP to determine whether additional trawling for POP will cause unacceptable bycatches of "other rockfish".

Comment 3: "Other rockfish" should be treated as a prohibited species if no quota remains.

Response: The closure of the Gulf of Alaska to "other rockfish" included treating this group as a prohibited species Gulf-wide. This treatment will extend to the Eastern Regulatory Area during the reopening.

Comment 4: Management measures should be initiated to allow placing target species in a bycatch status when the quota is being approached.

Response: Comment noted. The NMFS is preparing a regulatory amendment that would provide authority to close directed fishing and thus leave a retainable bycatch to support other ongoing directed fisheries.

Classification

This action is required under 50 CFR 672.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 22, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-22200 Filed 9-22-87; 4:56 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0614]

Bank Holding Companies and Change in Bank Control; Board Policy Regarding the Acquisition and Operation of Thrift Institutions By Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of public comments.

SUMMARY: The Federal Reserve Board is soliciting comment on whether, in light of changing economic and regulatory circumstances, the Board should determine that the acquisition and operation of thrift institutions by bank holding companies is, as a general matter, a proper incident to banking under the Bank Holding Company Act, and, on this basis, a permissible activity for bank holding companies under the Act and Regulation Y. 12 CFR 225.25. The Board has previously determined that the operation of a thrift institution is closely related to banking, but has permitted bank holding companies to acquire thrifts only where the acquisition involved a failing thrift institution. The Board also seeks comments on the terms and conditions under which bank holding companies should be permitted to acquire and operate health thrift institutions, if it should determine to allow such acquisitions.

DATE: Comments must be received by November 20, 1987.

ADDRESS: All comments, which should refer to Docket No. R-0614, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2223, 20th & Constitution Avenue NW, Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Scott G. Alvarez, Senior Counsel (202/452-3583), Michael J. O'Rourke, Senior Attorney (202/452-3288), Legal Division; Roger Cole, Manager (202/452-2618), or Molly Wassom, Senior Financial Analyst (202/452-2305), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this request for comment is to assist the Board in its review of Board policy regarding the acquisition and operations of thrift institutions by bank holding companies, and to obtain the commenters' view as to whether any changes to that policy are appropriate in light of changing economic and regulatory circumstances. The Board is now considering adding to the list of permissible nonbanking activities in Regulation Y the acquisition and operation of thrift institutions. To date, however, the Board has approved only the acquisition of failing thrift institutions, and not thrift institutions generally. Its rationale for adopting that policy was articulated in the Board's 1977 *D.H. Baldwin* decision,[1] which is discussed below.

II. Background

A. Statutory and Regulatory Framework

The BHC Act does not specifically authorize or prohibit bank holding companies from acquiring thrift institutions. Rather, the Act contains a general prohibition against bank holding companies acquiring companies engaged in any activity unless the Board has determined the activity to be "so closely related to banking * * * as to be a proper incident thereto" within the meaning of section 4(c)(8) of the BHC Act. 12 U.S.C. 1843(c)(8). Section 4(c)(8) thus imposes a two step test for determining the permissibility of nonbanking activities for bank holding companies: (1) Whether the activity is closely related to banking; and (2) whether the activity is a proper incident to banking—that is, whether the proposed activity can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.[2]

When the Board adopted the initial list of permissible nonbanking activities for bank holding companies in 1971, it did not include the operation of an S&L. (36 **Federal Register** 1077 (1971)). Notwithstanding its 1971 decision not to include the operation of S&Ls in the Regulation Y laundry list of permissible nonbanking activities, the Board in 1972 and 1975 approved applications from New England thrifts to become bank holding companies by acquiring commercial banks, in view of the unique, longstanding affiliation between thrifts and commercial banks in that region.[3] With these few exceptions, prior to 1982 the Board did not permit bank holding companies to acquire thrift institutions. The reasons for this policy were articulated in the Board's 1977 order denying an application by D.H. Baldwin, at the time a registered bank holding company, to retain ownership of a healthy savings and loan association it had acquired in 1969 before it became a banking holding company.[4]

B. The D.H. Baldwin Case

In *D.H. Baldwin*, the Board determined that as a general matter operating an S&L is closely related to banking, but ruled that such activities should not be regarded as a proper incident to banking; that is, as a general matter the public benefits associated with the affiliation of a bank and a thrift were not sufficient to outweigh the adverse effects of such an affiliation. This determination was based on three factors: (1) The perception of a competing and conflicting regulatory framework governing banks and S&Ls; (2) the possibility that cross-industry acquisitions would undermine the perceived rivalry between the banking and thrift industries; and (3) the

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[1] *D.H. Baldwin Company*, 63 Federal Reserve Bulletin 280 (1987).

[2] *See Board of Governors v. Investment Company Institute*, 450 U.S. 46 (1984); *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975).

[3] *Newport Savings and Loan Association*, 58 Federal Reserve Bulletin 313 (1972); *Old Colony Co-Operative Bank*, 58 Federal Reserve Bulletin 417 (1972); *Profile Bancshares, Inc.*, 61 Federal Reserve Bulletin 901; 1975).

[4] *D.H. Baldwin Company*, 63 Federal Reserve Bulletin 280 (1977).

possibility that such acquisitions could undermine the interstate banking restrictions of the Douglas Amendment to the Bank Holding Company Act ("Act" or "BHC Act"). Since that time, in all its orders regarding thrift acquisitions, the Board has continued to maintain the position that, as a general matter, the acquisition of a thrift institution is not a proper incident to banking.

C. Worsening Condition of the Thrift Industry and the First Failing Thrift Acquisitions

In 1981, in response to worsening conditions in the thrift industry, the Board informed the Congress that it might be forced to allow bank holding companies to acquire failing thrifts, and requested passage of the so-called Regulators Bill, which provided a series of procedures and priorities to guide the Bank Board's discretion in approving such acquisitions and otherwise to provide capital assistance to troubled thrifts.

Before the proposed legislation could be enacted, however, the Board was faced with two proposals by bank holding companies to acquire failing thrifts, proposals which necessitated the Board's immediate consideration in order to avoid the probable failure of the institutions. The first, Scioto Savings Association in Ohio, was acquired by an instate bank holding company at the urging of the Ohio Thrift Commissioner.[5] In the second,[6] the Federal Home Loan Bank Board requested that the Board allow Citicorp to acquire Fidelity Federal Savings and Loan of San Francisco. To allay the concerns of interested trade groups, state regulatory authorities, competing banks, members of Congress, community groups and others, whose opposition could have required the Board to conduct a time consuming formal hearing on the application and thus jeopardize the attempt to rescue the institution, the Board imposed a series of conditions on the operations of an S&L acquired by a bank holding company. Several of these conditions, such as continued operation of the institution as a thrift and branching restrictions, reflect the terms or spirit of the then-pending Garn-St Germain Depository Institutions Act of 1982. As part of this process, the Board also imposed conditions that limited transactions and operations between a thrift institution owned by a bank holding company and its affiliates. These conditions, known as the tandem operations restrictions, have been imposed on all thrift acquisition since that time.[7] The tandem operation restrictions will be reviewed below with respect to the Board's request for comment regarding the terms and conditions under which bank holding companies should acquire and operate thrift instiutions, should the Board determine that, as a general matter, this activity is a proper incident to banking.

D. The 1982 Garn-St Germain Act

Shortly after the Board's approval of the Fidelity acquisition by Citicorp, Congress passed the Garn-St Germain Depository Institutions Act, which authorized the purchase of ailing S&LS by out-of-state bank holding companies, provided the FSLIC follows certain bidding procedures that gave priority to intra-industry acquisitions and in-state organizations. In addition to the bidding priorities, the Garn-St Germain Act required that FSLIC minimize the cost for any S&L rescue; allowed the Board to waive the notice and hearing requirements of section 4 of the BHC Act in approving failing thrift acquisitions; and excluded FSLIC-insured thrifts from the definition of bank in the Bank Holding Company Act, thereby permitting such acquisitions under the interstate banking provisions of the Douglas Amendment. The act also expressly limited the expansion of the acquired S&L to those locations where a national bank could branch in the state.

Throughout the course of the debate leading to passage of the Garn-St Germain Act, the Chairman of the Federal Reserve Board made clear the Board's belief that it could exercise its existing authority to approve acquisitions of thrifts by bank holding companies.[8] As a policy matter, however, the Chairman indicated that the Board had not yet exercised that power, because to do so would open up larger questions of interstate banking and healthy thrift acqusitions generally.[9] This view, that the Board could exercise existing powers to approve such acquisitions, was shared by members of Congress,[10] the acting Comptroller of the Currency,[11] the Department of Justice,[12] the Federal Home Loan Bank Board,[13] and groups opposing the pending legislation such as the Independent Bankers Association of America, among others.[14] Without passage of the Garn-St Germain Act, the Chairman and other indicated the Board might be forced to use the Board's more general powers to approve such acquisitions,[15] and there was doubt whether, as a legal matter, the Board could limit its grant of approval to failing institutions only.

E. Thrift Acquisitions Since the 1982 Garn-St Germain Act

Since passage of the Garn-St Germain Act in October, 1982, the Board has continued to approve the acquisition of failing thrifts, particularly in response to the Ohio and Maryland thrift crises.[16] In all of these instances, the Board imposed conditions substantially similar to those laid out in the *First Fidelity* Order. The Board has limited its approval to acquisitions of failing thrifts only, and, when presented with an application by Old Stone Corporation to

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[5] *Interstate Financial Corporation* (Scioto Savings Association), 68 Federal Reserve Bulletin 316 (1982).

[6] *Citicorp* (Fidelity Federal Savings and Loan), 68 Federal Reserve Bulletin 656 (1982).

[7] Citicorp petitioned the Board for relief from these conditions. In response, the Board issued a proposed rulemaking requesting comment on the tandem restrictions. The Board recently has rendered its decision on the conditions. *See* Letter of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, to Patrick Mulhern, Senior Vice President and General Counsel, Citicorp (Aug. 10, 1987).

[8] Chairman Volcker stated that: "One of the difficulties—a major difficulty—is not that we don't have those powers [to authorize bank holding company acquisitions of thrifts] but that they are not directed and limited. This bill provides a sense of priorities. Without it, we would be forced back on those powers, which I feel quite certain, would open up broader issues than is probably necessary to open up at this particular time. This bill gives us the specific authority to deal just with institutions in serious difficulty." *The Deposit Insurance Flexibility Act: Hearing on H.R. 4603 Before the Subcommittee on Financial Institutions Supervision, Regulations, and Insurance of the House Committee on Banking, Finance and Urban Affairs*, 97 Cong., 1st Sess. 167, 181 (1981) ("1981 House Hearings").

[9] *Id.*, at 177. (refrain from exercising existing authority.) Chairman Volcker continued his testimony by stating that if the Board used its existing authority to allow bank holding companies to acquire thrifts, it would be acquisition of failing thrifts. *Id.*, at 191.

[10] *See e.g.*, 127 Cong. Rec. H7798 (daily ed. Oct. 27, 1981) (remarks of Rep. Vento); 127 Cong. Rec. H7795 (daily ed. Oct. 27, 1981) (remarks of Rep. Wylie).

[11] *Financial Institutions Restructuring and Services Act of 1981: Hearings on S.1686, S.1703, S.1720, and S.1721 Before the Senate Committee on Banking, Housing, and Urban Affairs*, 97th Cong. 1st Sess. 26 (1981) (Part III) (hereafter, the "1981 Senate Hearings, Parts I, II and III", as appropriate).

[12] *Conduct of Monetary Policy: Hearings Before the House Committee on Banking, Finance and Urban Affairs*, 97th Cong. 1st Sess. 956 (1981) (hereafter, "1981 House Monetary Policy Hearings").

[13] 1981 House Monetary Policy Hearings at 109.

[14] 1981 House Hearings at 88, 95.

[15] *See* footnote 9, *supra*. *See also Capital Assistance Act and Deposit Insurance Flexibility Act: Hearing on S.2531 and S.2532 Before the Senate Committee on Banking, Housing, and Urban Affairs*, 97th Cong., 2d Sess. 54 (1982) (hereafter, "1982 Senate Hearings") (remarks of Sen. Riegle); 1982 Senate Hearings at 144 (remarks of Sen D'Amato); and 1982 Senate Hearings at 369 (remarks of Sen. Garn).

[16] These provisions have recently been renewed with the passage of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86 (enacted Aug. 10, 1987) ("CEBA").

acquire in essence a healthy thrift in June, 1984, the Board denied the application.[17] Out of the approximately 18 acquisitions of failing thrifts approved by the Board since 1982, currently only 7 remain in operation as thrifts, with the others having been converted to bank status.

III. The Changing Economic and Regulatory Climate

This request for comment is prompted by certain economic and regulatory changes since 1982 that may implicate possible changes to the Board's current bank/thrift policy. First, interstate banking has become widespread in the last two years. Approximately 23 states have authorized (or will authorize within the next 18 months) nationwide interstate banking, and only seven states have not yet authorized either regional or nationwide interstate banking. The remaining states have entered, or are about to enter, into regional interstate banking compacts. In addition, the FHLBB has approved over 50 acquisitions by thrifts of failing thrifts on an interstate basis, and also has recently allowed interstate branching under certain circumstances. This development tends to undermine one of the basic reasons for the *D.H. Baldwin* decision—concern about impairing the Congressional policy embodied in the Douglas Amendment.

Second, recent changes in the law substantially broadening the powers of thrift institutions may have tended to erode the distinction between thrift institions and banks at which the Board's conditions were directed. For example, thrift institutions have in the past several years been granted broad powers to conduct additional activities, including authority to make commercial and nonhousing related loans and to accept NOW accounts as well as demand deposits in certain circumstances—all services that are offered by commercial banks. The elimination of the interest rate differential has removed another significant distinction between banks and thrifts.

Third, it has been publicly reported that certain thrifts have considered leaving the FSLIC fund for a number of reasons. Thrifts, if converted to banks, may be attractive acquisition vehicles for bank holding companies to increase their market share on an intra-state basis, or as a cost-effective means to establish a regional banking network. Thrift institutions may also be priced more favorably, in terms of multiples of earnings, than are similarly situated banks. Moreover, there may be enhanced incentives for the thrifts themselves to consider converting their charter and applying for FDIC insurance. The imposition of a special FSLIC insurance premium has been publicly cited by some thrifts as an incentive to leave the fund. Although the recent passage of CEBA imposes a temporary moratorium on such conversions, upon its expiration thrifts would be eligible to convert their charters and opt for FDIC insurance upon payment of twice their regular and annual premiums to the FSLIC, among other requirements.[18] *See CEBA*, Pub. L. No. 100–86, section 306(h); section 302(b)(4)(B). With this recent increased interest in the conversion of FSLIC-insured thrifts to bank status, the FHLBB has indicated that such conversions may affect the FSLIC's recapitalization plans by reducing the flow of insurance premiums to FSLIC.[19]

Finally, it can be argued that the Board's existing policy itself serves as an incentive for healthy thrifts to seek to leave the FSLIC fund. Under current Board policy, a bank holding company wishing to acquire a healthy thrift in the holding company's home state or banking region has no alternative but to convert the thrift into a bank which it may acquire, because the Board's *D.H. Baldwin* policy will not permit the holding company to acquire and operate the healthy thrift as a thrift.

Accordingly, in light of the above factors, it appears that current (and changing) financial and regulatory circumstance may warrant a review of the Board's policies regarding the acquisition and operation of thrift institutions by bank holding companies. The Board requests comment on the implications of such changing circumstances for its current policies, as well as commenters' views on what additional factors, if any, the Board should consider in reaching its determination.

A. Public Benefits Considerations

Commenters may also wish to consider the nature of any impact on the FSLIC fund if the Board were to approve the acquisition of healthy thrifts. On the one hand, it could be argued that Board approval of the acquisition by bank holding companies of healthy thrifts could lower the incentive for those companies to bid on failing thrift institutions. On the other hand, bank holding company acquisition of healthy thrifts, and their continued operation as thrifts, could provide the FSLIC with a continued, stable source of insurance premiums.

At this juncture, it should be noted that bank holding companies' acquisition of thrifts has not to date provided the solution to the problems of the thrift industry. Currently, in addition to Citicorp's 4 S&Ls, only three additional thrifts acquired by bank holding companies are still operating as thrift institutions, and they are relatively small institutions. Moreover, most thrift problems to date have been resolved on a intra-industry basis through mergers with other S&Ls.

As noted above, one of the important motivations for a reconsideration of the *D.H. Baldwin* decision is the major developments in the interstate provision of depository institution services by both banks and thrifts. Nevertheless, this development is still circumscribed by the decisions of most states that have authorized some form of out-of-state acquisitions to keep interstate expansion within specific regions. In view of the fact that the Board considered that the *D.H. Baldwin* decision was necessary in order to prevent the undermining of the Douglas Amendment, the question arises, with respect to the scope of any authorization for acquisition of healthy thrifts, whether the Board should limit the acquisition of healthy thrifts to those geographic areas where a bank holding company would be permitted to buy a bank under the Douglas Amendment. Such an approach would allow bank holding companies to purchase healthy thrifts in their home state, or in those states where acquisitions are permitted because of a regional arrangement, or a reciprocal or other authorization of interstate banking. Comment is requested on whether such a limitation is necessary to carry out the Board's original intention of giving effect to the intent of the Douglas Amendment, and on whether such a limitation is still necessary in the light of present interstate banking arrangements. Comment is also requested on whether such a policy would be effective in accomplishing the public benefits of encouraging the acquisition of failing thrifts and of avoiding the creation of

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[17] *Old Stone Corporation (Catawba)*, 70 Federal Reserve Bulletin 593 (1984).

[18] Other provisions of CEBA might serve as a *dis*incentive for particular thrifts to leave the FSLIC fund, depending on the extent of that institution's so-called "secondary reserves". *See New Law Punishes Thrifts Leaving FSLIC Before 1993*, Am. Banker, Sept. 2, 1987, at 3 ("Thrift Article").

[19] *See* Testimony of Edwin Gray, Chairman, Federal Home Loan Bank Board, Before the Subcommittee on General Oversight and Investigations of the House Committee on Banking, Housing and Urban Affairs 10–13 (May 14, 1987); and a similar statement before the Senate Committee on Banking, Housing and Urban Affairs 3–4 (May 21, 1987).

artificial incentives for healthy thrifts to withdraw from participation in the FSLIC.

B. Conditions Under Which the Board Should Allow the Acquisition and Operation of Thrift Institutions Generally

If the Board should determine that the operation of a thrift institution as a general matter is a proper incident to banking, then the issue remains as to the terms and conditions under which it should allow the conduct of this activity.

Commencing with the 1982 acquisition by Citicorp of Fidelity Federal Savings and Loan of San Francisco and continuing to the present, the Board has imposed a series of conditions on the operation of thrift institutions by bank holding companies. These conditions were imposed in direct response to the concerns voiced by banking organizations, thrift institutions, their trade groups, state regulators, and others opposed to the acquisitions that: (1) The bank holding companies would divert funds from the S&Ls and housing needs in the home states of the S&Ls to other areas served by the bank holding company or its affiliates; (2) the bank holding companies would use the S&Ls to advance the business or operations of other holding company subsidiaries; (3) the acquisitions would erode interstate banking prohibitions and the statutory distinctions between banks and thrift institutions; (4) the thrifts would be operated as banks or branches of bank affiliates in violation of statutory limitations on interstate banking and bank branching; and, (5) the acquisitions would give the bank holding company and its S&Ls an unfair competitive advantage over other banks and thrifts.

Among the conditions established were requirements that:

(1) The bank holding company would operate the S&Ls as savings and loan associations having as their primary purpose the provision of residential housing credit;

(2) The S&Ls would not engage in any activities not permissible for a bank holding company;

(3) The S&Ls would not establish new branches at locations not permissible for national or state banks located in the state where the S&L is located (a specific requirement of the Garn-St Germain Act, which authorizes acquisitions by bank holding companies of failing thrifts);

(4) The S&Ls would be operated as separate independent, profit-oriented corporate entities and would not be operated in tandem with any other subsidiary of the bank holding company. In order to carry out this condition, the bank holding company and S&Ls would limit their operations so that:

(a) No banking or other subsidiary of the bank holding company would link its deposit-taking activities to accounts at the S&Ls in a sweeping arrangement or similar arrangement;

(b) The S&Ls would not directly or indirectly solicit deposits or loans for any other subsidiary of the bank holding company and the bank holding company and its subsidiaries would not solicit deposits or loans for the S&Ls;

(5) To the extent necessary to insure independent operation of the S&L and prevent the improper diversion of funds, the S&Ls would not engage in any transactions with the bank holding company or its other subsidiaries without prior approval of the appropriate Federal Reserve Bank;

(6) The S&L would not establish or operate remote service units at any location outside of the home state of the S&L;

(7) The bank holding company would not change the name of the S&L to include the word "bank" or any other term that might confuse the public regarding the S&Ls status as a nonbank, thrift institution; and

(8) The S&L would not convert its charter to a bank charter or a state thrift charter without prior Board approval.

Board approvals of all thrift acquisition by bank holding companies since 1982 have contained substantially similar restrictions. In response to a request by Citicorp for relief from the tandem operation restrictions (conditions 4 and 5 above), the Board requested public comment on whether it should retain, modify or remove the fourth and fifth conditions.[20]

On August 10th of this year, the Board granted certain limited relief from those restrictions, principally with respect to allowing such tandem operations where a bank holding company could otherwise acquire and operate a commercial bank in the state where the thrift is located, on the basis that such joint operations would not implicate the board's concerns regarding the preservation of the integrity of the Douglas Amendment in such situations.[21] The Board also allowed the Citicorp S&L to affiliate with the Citishare ATM switch in order to reduce the cost to the thrifts of joining certain ATM networks.

At this time in connection with the proposed addition of the operation of a thrift insitution to Regulation Y's list of permissible nonbanking activities, the Board will consider more generally the terms and conditions under which bank holding companies may be permitted to acquire and operate thrift institutions. The first and third of these conditions listed above—continued operation of the thrift as a thrift, and restrictions on establishment of new thrift branches to those locations permissible for banks in the state—reflect the terms or spirit of the Garn-St Germain Act emergency thrift acquisition provisions. Retention of the first condition would reflect the Congressional intent behind that Act to maintain a separate thrift industry to serve the nation's housing needs. The limitation on branching except as permitted for national banks (the third condition) appears necessary to maintain the integrity of the Garn-St Germain Act's emergency thrift acquisition provisions. If a bank holding company could acquire a healthy thrift without such a branching limitation, the incentive for bank holding companies to acquire failing thrifts would decrease, and the cost to the FSLIC of resolving those situations could well increase. Finally, commenters should direct their attention to whether these conditions are necessary to preserve the integrity of the Douglas Amendment to the BHC Act, which reserves to the states the decision to allow out-of-state bank holding companies to acquire banking institutions in the state. Continued imposition of the second condition—that a thrift subsidiary of a bank holding company should engage only in activities permissible for bank holding companies—is required by the BHC Act.[22]

The Board is prepared to entertain comments with respect to any terms or conditions under which bank holding companies may acquire and operate thrift institutions.

Conclusion:

In sum, the Board believes that changing economic and regulatory circumstances render it appropriate to review the Board's overall policy regarding the acquisition and operation of thrift institutions by bank holding companies.

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[20] Citicorp contended that the requested relief is necessary to enable its S&Ls to offer a broader range of services and to utilize the advantages inherent in the bank holding company structure (particularly, economies of scale and cross-marketing) in order to maintain its S&Ls as competitive institutions in the S&L industry.

[21] *See* Letter of William W. Wiles, Secretary, Federal Reserve Board, to Patrick Mulhern, Senior Vice President and General Counsel, Citicorp (Aug. 10, 1987).

[22] *Central Pacific Corporation*, 68 Federal Reserve Bulletin 382 (1982).

The Board will consider the following options with respect to this issue:

1. Maintain the current *D.H. Baldwin* policy;

2. Modify the *D.H. Baldwin* policy to allow the acquisition of thrifts where a bank holding company could otherwise own a bank; and

3. Overrule the *D.H. Baldwin* policy and allow the acquisition of healthy thrifts nationwide.

The Board requests comment on the advisability of selecting one of these options, or the availability of additional courses of action for its consideration. The Board also requests comment on the terms and conditions under which thrift institutions may be acquired and operated by bank holding companies, if the Board determines to allow such acquisitions a general matter.

Regulatory Flexibility Act Analysis

This proposal to expand the permissible nonbanking activites of bank holding companies is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Board is required by section 4(c)(8) of the BHC Act, 12 U.S.C. 1843(c)(8), to determine whether nonbanking activites are closely related to banking and a proper incident thereto, and thus are permissible for bank holding companies. This proposal, if adopted, would permit bank holding companies to acquire and operate healthy thrift institutions—an activity bank holding companies are not now permitted to conduct. The proposal does not impose more burdensome requirements on bank holding companies than are currently applicable, and these provisions provide no barrier to meaningful participation by small bank holding companies in the proposed activity.

The Board notes that there are not a significant number of small bank holding companies engaged in the operation of thrift institutions at this time. As noted, bank holding companies have not previously been permitted to acquire healthy thrift; the proposal, if adopted, would expand the powers of bank holding companies by authorizing bank holding companies to acquire healthy, in addition to failing, thrift institutions.

List of Subjects in 12 CFR 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board solicits comment regarding the possible amendment of 12 CFR Part 225.

The Board solicits comment regarding a proposed amendment to § 225.25(b), to add a paragraph (9) to the Board's list of permissible nonbanking activiites, which may read as follows:

(9) *Thrift Institutions.* Acquiring and operating thrift institutions, including savings and loan associations, building and loan associations, and FSLIC—insured savings banks, so long as the institution is not a bank.

In connection with solicitation of comment regarding a possible amendment to Regulation Y to authorize the acquisition and operation of healthy thrift institutions, the Board also seeks comment regarding the terms and conditions which the proposed activity should be conducted, should the Board determine to allow such acquisitions as a general matter. In that regard, the commenters' particular attention is drawn to the terms and conditions specified above that the Board traditionally has imposed on failing thrift acquisitions, and, as well, the Board's August 10, 1987 determination to grant certain limited relief from those conditions.

Board of Governors of the Federal Reserve System, September 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21980 Filed 9-24-87; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24931; File No. S7-25-87]

Multiple Trading of Options

AGENCY: Securities and Exchange Commission.

ACTION: Rescheduling of date of public hearing; extension of time for comment and for requests to appear at the hearing; and request for additional comment.

SUMMARY: The Securities and Exchange Commisson ("Commission") announced today that it has postponed until Novement 23, 1987, the public hearing on multiple trading of options originally scheduled to take place on September 29, 1987 as set forth in Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849. The Commission also is extending until October 30, 1987, the date by which those interested in testifying at the public hearing should notify the Commission; until November 10, 1987, the date by which written testimony is due; and until December 4, 1987, the comment period on the multiple trading of options. Finally, the Commission is seeking additional comment on various matters in connection with the multiple trading of options proceeding.

DATES: The public hearing will be held on November 23, 1987, at 9:30 a.m. Requests to appear at the public hearing should be received by October 30, 1987. Those scheduled to appear at the hearing must submit an original and ten copies of their written statements by November 10, 1987. All other written comments must be received by December 4, 1987, and must be submitted in triplicate.

ADDRESSES: The public hearing will be held in Room 1C30 at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Those wishing to appear at the hearing should contact Holly H. Smith, Esq., (202) 272-2406, Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should send copies of their written testimony to her. All other written comments should refer to File No. S7-25-87 and be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of all written submissions and the transcript of the public hearing will be available at the Commission's Public Reference Room, at the above address in File No. S7-25-87.

FOR FURTHER INFORMATION CONTACT: Holly H. Smith, Esq. (202) 272-2406, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On June 18, 1987, the Commission issued a release commencing a proceeding on the multiple trading of options to consider whether to (1) adopt a policy permitting the multiple trading of options on exchange-listed stocks; and (2) adopt a rule amending the rules of the options exchanges to remove restrictions on the multiple trading of options on exchange-listed stocks.[1] In that release the Commission scheduled a public hearing on multiple trading of options to take place on September 29, 1987.

By letter, dated September 1, 1987, the Chicago Board Options Exchange, Inc.

[1] *See* Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849.

("CBOE") requested a postponement of the public hearing date and an extension of the time period in which to comment on the multiple trading of options proposals.[2] In its request the CBOE maintained that because the Commission's proposal "raises issues which are of fundamental importance to the structure and health of the nation's standardized options markets," additional time is needed "to complete to its satisfaction the tasks necessary for a full presentation of its views." [3]

In view of the CBOE request for an extension of time in which to prepare its testimony and comment on this matter, the Commission has determined to postpone the date of the public hearing on the multiple trading of options until November 23, 1987, and to extend the period in which interested persons may submit written comments until December 4, 1987.[4]

Request for Additional Comment

By letter dated August 9, 1987, five members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs requested that the Commission consider a variety of issues in connection with its proceeding on the multiple trading of options.[5] In particular, the Senate Letter requests that the Commission consider (1) the feasibility of developing a national market system for options; (2) the safeguards necessary for public limit orders in a multiple trading environment; and (3) the costs and benefits of multiple trading of options in the absence of facilities to link the various options markets.[6] The Commission requests that commentators specifically address the issues raised in the Senate Letter.

Dated: September 21, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22173 Filed 9-24-87; 8:45 am]

BILLING CODE 8010-01-M

[2] *See* letter from Burton R. Rissman, Schiff Hardin & Waite, to Jonathan G. Katz, Secretary, Commission, dated September 1, 1987.

[3] *See id.*, at 1 and 2.

[4] As noted above, requests to appear at the hearing must be received by October 30, 1987, and copies of testimony must be submitted by November 10, 1987.

[5] *See* letter from Senator Alan Cranston, *et al.*, U.S. Senate, Committee on Banking, Housing, and Urban Affairs, to David S. Ruder, Chairman, Commission, dated August 19, 1987 ("Senate Letter"). The Senate Letter has been placed in File No. S7-25-87 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

[6] *See id.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N-0140]

Diluted Fruit or Vegetable Juice Beverages Other Than Diluted Organce Juice Beverages; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending for 90 days the period for submitting comments on its proposal to revoke the common or usual name regulation for diluted fruit or vegetable juice beverages other than diluted orange juice beverages. FDA is granting this extension based on requests for the extension of the comment period.

DATE: Comments by December 13, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry Troxell, Center for Food Safety and Applied Nutrition (HFF-313), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 16, 1987 (52 FR 26690), FDA proposed to revoke the regulation establishing the common or usual names for diluted fruit and vegetable juice beverages other than diluted orange juice beverages (21 CFR 102.33) and to withdraw the proposal to amend this regulation which, among other things, exempted cranberry juice products from percentage ingredient labeling requirements. Interested persons were given until September 14, 1987, to submit written comments on the proposal.

The National Juice Products Association (NJPA) submitted a request seeking a 60-day extension of the comment period on the proposed rulemaking. This extension is sought to allow NJPA to formulate appropriate recommendations for comments to be considered by the NJPA board at their mid-year meeting in October.

The Center for Science in the Public Interest (CSPI) also submitted a request seeking a 180-day extension. CSPI based its request on the fact that it needs the requested time to systematically obtain and compile, on its own initiative, data regarding consumer complaints and awareness problems concerning the value of diluted juice beverages.

Although valid data of the type CSPI is attempting to gather would be relevant in evaluating the proposal, the agency believes that the CSPI request for extension of the comment period does not support the need for a 180-day extension. The agency belives that a 90-day extension of the comment period is reasonable and will provide sufficient time for CSPI, NJPA, and any other interested persons to prepare comments on the proposed rule. Therefore, the agency is granting an extension of 90 days at this time.

Interested persons may, on or before December 13, 1987, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

Dated: September 22, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-22120 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

PEACE CORPS

22 CFR Part 302

Organization

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the Peace Corps proposes to update its statement of organization and description of available forms.

DATES: Comments must be received on or before October 26, 1987.

ADDRESS: Comments may be mailed to Peace Corps, 806 Connecticut Avenue, NW., Room P-314, Washington, DC 20526, or delivered to 1735 I Street, NW., Room P-314, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John M. von Reyn, Chief, Paperwork and Records Management Branch, Office of Administrative Services, 202-254-6180.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Peace Corps has determined that this proposed rule is not a major rule for

the purpose of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This proposed rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The Director certifies that this rule, if adopted, will not have a signficant impact on a substantial number of small entities.

The proposed regulations revise the information currently published in 22 CFR Part 302. These regulations describe Peace Corps' central and field organization; the methods whereby the public may secure information, make submittals, or request or obtain decisions, and statements of the general course and methods by which its functions are channeled and determined; a description of major Agency forms and where they may be obtained; and the location of the Agency's substantive rules of general applicability in the Code of Federal Regulations.

List of Subjects in 22 CFR Part 302

Organization and functions.

Accordingly, Title 22, Code of Federal Regulations, is proposed to be amended by revising Part 302 as follows:

PART 302—ORGANIZATION

Sec.

302.1 Introduction.
302.2 Central and field organization, established places at which, the officers from whom, and the methods whereby the public may secure information, make submittals, or request, or obtain decisions; and statements of the general course and methods by which its functions are channeled and determined.
302.3 Rules of procedure, description of forms available, the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations.
302.4 Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretation of general applicability formulated and adopted by the agency.

Authority: Sec. 4, 75 Stat. 612; 22 U.S.C. 2503, 5 U.S.C. 552, E.O. 10501, 18 FR 7049, 3 CFR 1949–1953 Comp., page 979, E.O. 11041 as amended, 27 FR 7859, 3 CFR 1959–1963 Comp., page 623, State Department Delegation of Authority No. 85–11A, as amended.

§ 302.1 Introduction.

The regulations of this part are issued pursuant to section 3 of the Administrative Procedure Act, 5 U.S.C. 552, effective July 4, 1967.

§ 302.2 Central and field organization, established places at which, the officers from whom, and the methods whereby the public may secure information, make submittals, or request, or obtain decisions; and statements of the general course and methods by which its functions are channeled and determined.

(a) The following are statements of the central and field organization of the Peace Corp:

(1) *Central Organization*—(i) Director. As head of the Peace Corps, the Director is responsible for all the activities of the agency. He or she is assisted by a Deputy Director, a Chief of Staff, and the following staff units:

(A) The Office of General Counsel which provides legal advice and assistance relating to Peace Corps programs and activities;

(B) The Office of Congressional Relations which serves as primary informational contact between Congress and the Peace Corps, advising the Director and other senior managers on governmental and legislative affairs;

(C) The Office of Public Affairs which promotes public awareness of the Peace Corps, monitors agency news coverage and prepares/disseminates national news releases and other information about the Peace Corps. The Office also coordinates agency activities and maintains files relating to graphic photographic and audiovisual services and works closely with the Advertising Council on placement of public service announcements;

(D) The Office of Private Sector Relations/Development Education which coordinates private sector support and participation in Peace Corps activities;

(E) The Executive Secretariat which manages correspondence and other documents on behalf of the Director.

(ii) Office of the Associate Director for International Operations consists of the Regional Offices for Africa; Inter-America; and North Africa, Near East, Asia and Pacific; and the Office of Training and Program Support. The immediate office of the Associate Director includes the Overseas Staff Training and the United Nations Volunteer Program staff.

(A) The Regional offices are responsible for the negotiation, establishment and operation of Peace Corps projects overseas and for the training of Peace Corps Volunteers for such projects. They also provide, on behalf of the Director, policy guidance and immediate supervision to Peace Corps staff and operations overseas.

(B) The Office of Training and Program Support provides technical assistance and policy direction in the development of effective program and training strategies/designs, and coordinates a wide variety of program and training services.

(iii) The Office of the Associate Director for Management consists of the following offices:

(A) The Office of Medical Services which provides medical screening for applicants and health care services to Volunteers and in-country staff.

(B) The Office of Special Services which provides personal and administrative support to Peace Corps trainees and Volunteers, and their families.

(C) The Office of Personnel Policy and Operations which provides Agency personnel services.

(D) The Office of Financial Management which provides accounting, contracting and budget operations.

(E) The Office of Planning and Policy Analysis which provides support to the Agency in the areas of policy, planning assessment and management information.

(F) The Office of Administrative Services whic provides administrative and logistical support to the Agency.

(G) The Office of Information Resources Management which manages the Agency's information resources and central computer facility.

(H) The Office of Compliance which carries out Agency audit, investigation, internal controls and equal opportunity functions.

(iv) The Office of the Associate Director for Volunteer Recruitment and Selection consists of the following offices:

(A) The Office of Recruitment which directs the operational and managerial aspects of headquarters and domestic field recruitment activities in support of the recruitment of qualified Peace Corps trainees.

(B) The Office of Placement which conducts final placement, processing and orientation of Peace Corps applicants in preparation for final selection and training.

(2) *Domestic Field Organization.* (i) Regional Peace Corps Recruitment Offices

(A) Chicago Regional Office, 175 West Jackson Boulevard, Room A–531, Chicago, Illinois 60604. (Overseas Area Offices in Atlanta, Chicago, Detroit, Kansas City and Minneapolis.)

(B) New York Regional Office, 1515 Broadway, Room 3515, New York, New York 10036. (Overseas Area Offices in Miami, Puerto Rico, Washington, DC, Philadelphia, New York City and Boston.)

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(C) San Francisco Regional Office, 211 Main Street, Room 533, San Francisco, California 94105. (Overseas Area Offices in San Francisco, Seattle, Denver, Los Angeles, and Dallas.)

(3) *Foreign Field Organization*—(i) *Africa Region:*

Benin, Cotonou
Botswana, Gaborone
Burundi, Bujumbura
Cameroon, Yaounde
Central African Republic, Bangui
Chad, N'Djamena
Gabon, Libreville
The Gambia, Banjul
Ghana, Accra
Guinea, Conakry
Kenya, Nairobi
Lesotho, Maseru
Liberia, Monrovia
Malawi, Lilongwe
Mali, Bamako
Mauritania, Nouakchott
Niger, Niamey
Rwanda, Kigali
Senegal, Dakar
Sierra Leone, Freetown
Swaziland,Mbabane
Tanzania, Dar es Salaam
Togo, Lome
Zaire, Kinshasa

(ii) *Inter-America Region:*

Belize, Belize City
Costa Rica, San Jose
Dominican Republic, Santo Domingo
Eastern Caribbean, Bridgetown, Barabados
Ecuador, Quito
Guatemala, Guatemala City
Haiti, Port-au-Prince
Honduras, Tegucigalpa
Jamaica, Kingston
Paraguay, Asuncion
Turks and Caicos Island (Santo Domingo, Dominican Republic)

(iii) *North Africa, Near East Asia and Pacific Region:*

Cook Islands (Apia, Western Samoa)
Fiji, Suva
Federated States of Micronesia, Pohnpei
Kiribati (Honiara, Solomon Islands)
Marshall Islands, Majuro
Morocco, Rabat
Nepal, Kathmandu
Papua New Guinea, Port Moresby
Phillippines, Manila
Republic of Palau (Pohnpei, F.S.M)
Seychelles, Victoria
Solomon Islands, Honiara
Sri Lanka, Colombo
Thailand, Bangkok
Tonga, Nuku'alofa
Tunisia, Tunis
Tuvalu (Suva, Fiji)
Western Samoa, Apia
Yemen Arab Republic, Sana'a

(b) Any person desiring information concerning a matter handled by the Peace Corps, or any persons desiring to make a submittal or request in connection with such a matter, should communicate either orally or in writing with the appropriate office. If the office receiving the communication does not have jurisdiction to handle the matter, the communication, if written, will be forwarded to the proper office, or, if oral, the person will be advised how to proceed.

§ 302.3 Rules or procedure, description of forms available, the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations.

Forms regarding the following listed matters and instructions relating thereto may be obtained upon application to the offices listed below.

Application for Peace Corps, Volunteer Service.	Office of Recruitment, Room P-301, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526, or the Peace Corps area recruitment offices listed in 302.2(a)(2)

§ 302.4 Substantive rules of general applicability adopted as authorized by law, and statement of general policy or interpretation of general applicability formulated and adopted by the agency.

The Peace Corps regulations published under the provisions of the Administrative Procedure Act are found in Part 301 of Title 22 of the Code of Federal Regulations and the Federal Register. These regulations are supplemented from time to time by amendments appearing initially in the Federal Register.

Dated: August 19, 1987.

Loret Miller Ruppe,

Director.

[FR Doc. 87-22041 Filed 9-24-87; 8:45 am]

BILLING CODE 6051-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-022]

South Carolina State Plan; Eligibility for Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the South Carolina State occupational safety and health plan, as administered by the South Carolina Department of Labor, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the South Carolina plan. This notice announces that OSHA is soliciting written public comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

DATES: Written comments or requests for a hearing must be received by October 30, 1987.

ADDRESS: Written comments or requests for a hearing should be submitted, in quadruplicate, to the Docket Officer, Docket No. T-022, Room N3670, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et. seq., (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial

approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for 18(e) determinations are found at 29 CFR Part 1902, Subpart D. In general, in order to be granted final approval, actual performance by the State must be "at least as effective" overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals Decision, that directed the Assistant Secretary to caluculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

A final requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

History of the South Carolina Plan and of Its Compliance Staffing Benchmarks.

South Carolina Plan

On May 8, 1972, South Carolina submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on May 24, 1972, a notice was published in the **Federal Register** (37 FR 10535) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan. Because of the wide public interest anticipated in the proposal, notice was also given that an informal public hearing on the plan would be held on July 10, 1972, in Columbia, South Carolina.

In response to comments on South Carolina's initial submission notice and testimony received at the informal hearing, the State submitted modifications to the plan on September 13, 1972. Notice of receipt of these modifications and an invitation for public comments on the plan as modified, as well as an opportunity to request an informal hearing, was published in the **Federal Register** on September 28, 1972 (37 FR 20289). Comments on the amended plan were received from the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO). In response to these comments as well as to OSHA's review of the plan modifications, South Carolina made additional changes in its plan. Since there were no objections which were outstanding on the plan, as amended, no further public hearing was held.

On December 6, 1972, the Assistant Secretary published a notice granting initial approval of the South Carolina plan as a developmental plan under section 18(b) of the Act (37 FR 25932). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The South Carolina State plan covers all occupational safety and health issues except private sector maritime employment, and employment on military bases. The South Carolina Department of Labor is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the South Carolina Division of Occupational Safety and Health. The plan provides for the adoption by South Carolina of standards which are "at least as effective" as Federal occupational safety and health standards. The plan requires employers to furnish employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. Employees are required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalties are now heard by an independent South Carolina Occupational Health and Safety Review Board, which was established in October 1983 and the Board's decisions may be appealed to the Court of Common Pleas. Formerly, appeals of citations and penalties were heard by a hearing officer with appeals to the Commissioner of Labor.

The notice of initial approval noted a few distinctions between the Federal and South Carolina program. The State plan does not cover safety and health in private sector maritime employment or employment on military bases. Under South Carolina law employees have the right to contest the terms and conditions of citations as well as abatement dates whereas Federally, employees may only object to the established abatement periods. The law also provides for injunctive action to relieve imminent danger situations. The Assistant Secretary's initial approval of South Carolina's development plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent

Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart C; 37 FR 25932, December 6, 1972).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before December 31, 1975. These "developmental steps" included amendments to the South Carolina Occupational Safety and Health Act, promulgation of State occupational safety and health standards essentially identical to Federal standards and program regulations, and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things, legislative amendments, management information system, a merit staffing system, regulations for inspections, citations and proposed penalties, recordkeeping and reporting regulations, a voluntary compliance program, including on-site consultation services and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of Section 18 of the Act and 29 CFR 1902.3 and 1902.4. The South Carolina subpart of 29 Part 1952 was amended to reflect each of these approval determination (see 29 CFR 1952.104).

On May 9, 1975, an operational status agreement was entered into between Federal OSHA and South Carolina. A **Federal Register** notice announcing the operational status agreement was published on June 26, 1975 (40 FR 27024) and amended May 23, 1984 (49 FR 30173, July 27, 1984). Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the South Carolina plan.

On August 3, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that South Carolina had satisfactorily completed all developmental steps (41 FR 3224). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the South Carolina plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On January 31, 1978 OSHA published notice in the **Federal Register** (43 FR 4073) requesting public comment on a petition the Agency received requesting withdrawal of OSHA approval of the South Carolina plan. The petition was submitted by the President of the Carolina Brown Lung Association. A second petition was subsequently filed by the national American Federation of Labor-Congress of Industrial Organizations (AFL–CIO). On April 21, 1978 notice was published in the **Federal Register** (43 FR 17003) requesting public comments on the AFL–CIO petition to withdraw approval of the South Carolina State Plan and providing an additional time period for public comment on the Carolina Brown Lung Association petition, which was requested by the South Carolina General Assembly's Textile Studies Subcommittee. Both petitions alleged specific performance deficiencies in enforcement of the cotton dust standard and prosecution of contested cotton dust cases and in such other areas as hazard recognition, review procedures, inspection scheduling, health referrals, and response to major Federal Program changes. In addition, the Carolina Brown Lung Association petition alleged deficiencies in employee training and education and the AFL–CIO petition alleged legislative and regulatory deficiencies.

OSHA's investigation of all allegations contained in the petitions revealed that charges of legislative and regulatory deficiencies were unfounded. Although the South Carolina Act does not mirror the Federal Act, the South Carolina Plan, along with its implementing regulations, provide coverage and employee rights comparable to that of the Federal Act. In addition, OSHA's investigation revealed that the performance deficiencies cited had been corrected or considerable improvement had been demonstrated by South Carolina, especially since the filing of the petitions. Based on the findings of OSHA's investigation, a **Federal Register** notice (44 FR 13013) was published on March 9, 1979, which denied both petitions to withdraw approval of the South Carolina State Plan.

South Carolina Benchmarks

Under the terms of a 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a "fully effective" endorcement program was required to be established for each State operating an approval Stare plan. In 1980, in respone to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 39 safety and 60 health compliance officers for South Carolina. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In September 1984 South Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 17 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

Determination of Eligibility

This **Federal Register** notice announces the eligibility of the South Carolina plan for an 18(e) determination. (29 CFR 1902.39(c) requires that this preliminary determination of eligibility be made before 18(e) procedures begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The South Carolina plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are prepared annually and made available to the State and to the public. The results of OSHA's most recent post-certification monitoring during the period from December 1, 1985 through January 31, 1987 are set forth in an 18(e) *Evaluation Report of the South Carolina Plan,* which has been made part of the record of the present proceedings.

(2) The plan meets the State's revised benchmarks for enforcement staffing. In January 1986, pursuant to the terms of the Court Order and the *1980 Report to the Court* in *AFL–CIO* v. *Marshall,* OSHA approved revised fully effective benchmarks of 17 safety and 12 health compliance officers for South Carolina based on an assessment of State-specific characteristics and historical experiences. South Carolina has

allocated these positions, as evidenced by the FY 1987 *Application for Federal Assistance* in which the State has committed itself to funding the State share of salaries for 17 safety and 12 health compliance officers. The FY 1987 application has been made part of the record in the present proceeding.

(3) South Carolina participates and has assured its continued participation in the Integrated Management Information System (IMIS) developed by OSHA.

Issues For Determination In The 18(e) Proceedings

The South Carolina plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process, to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in §1902.37(b). OSHA believes that the results of its evaluation of the South Carolina plan, contained in the 18(e) Evaluation Report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that the regulatory indices and criteria are being met, and the Assistant Secretary accordingly has made an initial determination that the South Carolina plan is eligible for an affirmative 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative 18(e) determination to South Carolina. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) Standards and Variances

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). The South Carolina plan provides for adoption of standards which are in most cases identical to Federal standards. For OSHA standards requiring State action during the 18(e) evaluation period, South Carolina's adoption process met with the six month time frame for all standards. (Evaluation Report, pp. 10–12).

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure coverage at least as effective as comparable Federal standards. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902.3(c)(1), 1902.3(d)(1), 1903.4(a), and 1902.4(b)(2). As already noted, the South Carolina plan provides for adoption of standards identical to Federal standards. South Carolina likewise adopts standards interpretations which are identical to the Federal.

The State is required to take the necessary administrative judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is adopted from the Federal standards or developed by the State. See 1902.37(b)(5). No such challenge to State standards has ever occurred in South Carolina.

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). South Carolina had six requests for a permanent variance during the 18(e) evaluation period. Four were deemed to provide equivalent protection one was denied, and one is pending. (Evaluation Report, p. 13).

Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The South Carolina temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the 18(e) evaluation period, no temporary variance requests were received (Evaluation Report, p. 14).

(b) Enforcement

Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA; section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in Section 8 of the Act.

The State inspection program must provide that sufficient resources be directed to designated target industries while providing adequate protection to all other workplaces covered under the plant. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Data contained in the 18(e) evaluation report indicates that 100% of both State programmed safety inspections and of programmed health inspections were conducted in high hazard industries. (Evaluation Report p. 38).

In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3 (e) and (f), and 1902.4(c)(2) (i) and (ix). The South Carolina Law allows the Commissioner to seek a warrant to permit entry into such establishment that has refused entry for the purpose of inspection or investigation. South Carolina had 15 denials of entry during this evaluation period, was successful in obtaining warrants for 11 of them, and gained entry voluntarily for the other 4. (Evaluation Report, pp. 46 and 47).

Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See §§ 1902.37(b)(10, 1902.3(d)(1), and 1902.4(c)(2).

Procedures for the South Carolina occupational safety and health compliance program are set out in the South Carolina Field Operations Manual, which is patterned after the Federal manual, and thus follows inspection procedures, including documentation procedures, which are similar to Federal. The evaluation Report notes overall adherence by South Carolina to these procedures.

South Carolina cites an average of 3.0 violations per programmed safety inspection with citations and 2.3 violations per programmed health inspection with citations, and 20.5% of safety and 21.2% of health violations were cited as serious. While the percent of violations cited as serious by the State was comparable to Federal OSHA, the lower number of violations per health inspection with citations is attributed to the fact that South Carolina inspected smaller establishments than did Federal OSHA. Additionally, a larger percent (48.3%) of the State's

health inspections were partial inspections. Also South Carolina's penetration rate into establishments also impacted the number of health violations cited by the State. (Evaluation Report, pp. 49–51).

State plans must include a prohibition on advance notice, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). South Carolina adopted approved procedures for advance notice similar to the Federal procedures. There were 17 instances of advance notice. In all 17 instances, advance notice was properly given in accord with procedures as required for the effective conduct of inspections (Evaluation Report, p. 48).

State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 1902.4(c)(2) (i) through (iii). South Carolina has procedures similar to Federal OSHA for processing and responding to complaints. The data indicate that during the evaluation period the State responded to 34.6% of safety complaints and 20.2% of health complaints with an inspection.

South Carolina recently adopted the "tenth letter" inspection policy, and data indicated that the States percent of safety (58.2%) and health (55.1%) complaints responded to by letter was comparable to Federal OSHA.

During the current evaluation period, 95.4% of all State inspections included either an employee representative on the walkaround or interviews with employees.

State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). The South Carolina Act and regulations provide for discrimination protection equivalent to that provided by Federal OSHA. Twenty-one (21) complaints of discrimination were investigated during this evaluation period.

Five (5) were found meritorious. Of these, four (4) were settled or litigated and the other one was still open. (Evaluation Report pp. 64–65).

The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2)(x) and (xi). The State's lapse time from last day of inspection to issuance of citation averaged 12.8 days for safety and 11.3 days for health (Evaluation Report, page 68).

The State must propose penalties in manner that is least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c)(x) and (xi).

South Carolina's procedures for penalty calculation are similar to Federal OSHA. However, there are some differences between the two programs, for example, the minimum penalty that can be proposed, number of penalty levels, multi-instance penalty, etc. The average penalty for serious safety violation is $292; and the average serious health penalty is $400 (Evaluation Report, pp. 56–58).

The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c)(vii) and (xi). South Carolina conducts a low persent of follow-up inspections (1.2% safety and 3.6% health) due to the fact that follow-up inspections resulted in the issuance of few failure-to-abate notifications (4.0% safety and 0% health). South Carolina's abatement periods averaged 8.2 days for serious safety and 17.6 days serious health violations. (Evaluation Report, pp. 37 and 55).

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3(d) and (g). The Evaluation Report for South Carolina noted no adverse adjudications which could result in program deficiencies.

(c) Staffing and Resources

The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1); 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(i). As discussed above, the South Carolina plan provides for 17 safety compliance officers and 12 industrial hygienists as set forth in the South Carolina FY 1987 grant. This staffing level meets the approved revised "fully effective" benchmarks for South Carolina for health and safety staffing, as discussed elsewhere in this notice.

South Carolina provides a comprehensive training program for new compliance personnel and refresher and specialized training for experienced staff, which includes attendance at the OSHA Training Institute and in-house training exercises. During the evaluation period, State safety and health inspectors received, on the average, 40 hours of training. (Evaluation Report, pp. 18–20).

(d) Other Requirements

States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). The South Carolina plan provides a program in the public sector which is very similar to that in the private sector, except that no penalties are proposed for other-than-serious violations. Additionally, employers in the public sector may be given a two-thirds credit on proposed penalties for serious violations if they certify that the funds saved will be utilized to correct the violations, provide safety and health training to employees, or improve other elements of their safety and health programs. Injury and illness rates for State and local government employment are lower than in the private sector (1985: All case rate—5.8; lost work day case rate—2.7). The State and local government lost workday case rate did not change from 2.7, in 1984, while the private sector rate had a slight increase from 2.7 to 2.8.

As a factor in its 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). The 1984 and 1985 Bureau of Labor Statistics injury and illness rates for South Carolina (private sector all case rate for 1984 was 6.9% and for 1985 was 7.1%; lost workday case rate for 1984 was 2.7 and for 1985 was 2.8%) were lower than rates in States where Federal OSHA provides enforcement coverage. In 1985, the all case incidence rates and the lost workday case rates for the private sector, manufacturing and construction experienced a mix of increases and decreases in South Carolina, the rates of increase were within the acceptable range established under OSHA's State Plan Activities Measures and the absolute rates in each case for 1985 were lower than corresponding rates in

Federal States. In addition, the percent change in lost workday cases for the State's five most hazardous industries were all within the acceptable range when compared to the change in rates under Federal jurisdication. In fact, only one of the five industries showed an increase (SIC 44, Water Transportation) and this increase was experienced by the Federal as well.

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(1). South Carolina employer recordkeeping requirements are identical to those of Federal OSHA, and the State particpates in the BLS Annual Survey of Occupational Illness and Injuries. As noted above, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. Training programs for both the State's staff and the public sector have been established and are ongoing. South Carolina does not differentiate between employers and employees when conducting training sessions in the public sector. In the public sector, 5754 public sector employers and employees participated in 128 training sessions. For the private sector, 1375 employers participated in 62 training sessions, while 13,254 employees participated in 598 training sessions (Evaluation Report, p. 16). South Carolina has established a Voluntary Protection Program (VPP) identical to the Federal program. The program recognizes exemplary safety and health programs as a means of expanding worker protection. Establishments which meet the program criteria will be removed from the general schedule inspection list for one year from the date of the establishment's approval. There is currently one establishment participating in this program.

Effect of 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the Sourth Carolina plan, as provided by section 18(e) of the Act and 29 CFR 1902.42(c). South Carolina has excluded from its plan: safety and health coverage in provate sector maritime activites (enforcement of occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments).

In addition, South Carolina does not cover employment on military bases. Thus, Federal coverage of private sector maritime employment and military bases would be unaffected by an affirmative 18(e) determination.

In the event an affirmative 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the **Federal Register** in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in effect, and will state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart C of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the South Carolina plan, would be amended to reflect the 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the South Carolina 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room N–3670, Docket No. T–022, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210

Regional Administrator—Region IV, U.S. Department of Labor—OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367

South Carolina Department of Labor, 3600 Forest Drive, Post Office Box 11329, Columbia, South Carolina 29211–1329

To date, the record on final approval determination includes copies of all **Federal Register** documents regarding the plan, including notices of plan submission, initial Federal approval, certification of completion of development steps, codification of the State's operational status agreement, and approval of various standards, developmental steps, and other plan supplements. The record also includes the State plan document, which includes a plan narrative, the State legislation, regulations and procedures, an organizational chart for State staffing; the State's FY 1987 Federal grant; and the December 1, 1985 through January 31, 1987 18(e) Evaluation Report and all previous, post-certification reports.

Public Participation

Request for Public Comment and Opportunity to Request Hearing

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by South Carolina of the requirements of section 13(c) of the Act and all the specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the 15 factors in 29 CFR 1902.37(b) (1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they apply to South Carolina State plan, are available to the Assistant Secretary during this administrative proceeding.

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Interested persons are invited to submit written data, views, and arguments with respect to this proposed 18(e) determination. These comments must be received on or before October 30, 1987, and submitted in quadruplicate to the Docket Officer, Docket No. T–022, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. The State of South Carolina will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed 18(e) determination. Such requests also must be received on or before October 30, 1987, and should be submitted in quadruplicate to the Docket Officer, Docket T–022, at the address noted above. Such requests must present particularized written objections to the proposed 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing writting views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–3670, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in South Carolina under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 22nd day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–22196 Filed 9–24–87; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3267–7]

Approval and Promulgation of Implementation Plan; Good Engineering Practice-Stack Height Regulations, New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA today proposes approval of New Mexico Air Quality Control Regulation (AQCR) 710 if the State remedies a single deficiency regarding public participation requirements. If appropriately supplemented and approved, AQCR 710 will ensure that the degree of emission limitation required for the control of any pollutant under New Mexico's State Implementation Plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice stack height (GEP-SH) or by any other dispersion technique. The rationale for the proposed approval is contained in today's notice and is further documented in a publicly available *Technical Support Document*. EPA solicits public comment on its proposed approval.

DATES: Comments must be received on this proposed action on or before October 26, 1987.

ADDRESSES: Written comments should be submitted to the address below: Mr. Thomas H. Diggs, Chief, SIP New Source Section (6T-AN), Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State's submittal and EPA's *Technical Support Document* along with other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1445 Ross Avenue, Dallas, Texas 75202

New Mexico Air Quality Bureau, New Mexico Department of Environmental Improvement Division, P.O. Box 968, Crown Building, 1190 St. Francis, Santa Fe, New Mexico 87504

FOR FURTHER INFORMATION CONTACT: Mr. Thomas H. Diggs, SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Section 123 of the Clean Air Act, amended August 1977, regulates the manner in which techniques for dispersion of pollutants from a source may be considered in setting emission limitations. Specifically, Section 123 requires that the degree of emission limitation shall not be affected by the portion of a stack which exceeds GEP or by "any other dispersion technique."

To fulfill this requirement of the Act, EPA initially promulgated GEP-SH regulations limiting stack height credits and other dispersion techniques on February 8, 1982 [47 FR 5864]. Portions of those regulations were successfully challenged in the U.S. Court of Appeals for the D.C. Circuit [see *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983)], resulting in their revision on July 8, 1985 [50 FR 27892]. On November 7, 1986, the GEP-SH regulations were renumbered as part of a comprehensive restructuring and consolidation of EPA's SIP development regulations [see 51 FR 40656]. Except in quoting AQCR 710, which was adopted by New Mexico prior to the renumbering, today's **Federal Register** proposal uses current regulatory citations.

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, the EPA has required that all States (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the EPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques. For any limitations that have been so affected, States have been

required to prepare revised limitations consistent with their revised SIPs.

Because New Mexico has not completed its review of existing limitations, today's proposal concerns only the first of these requirements.

On August 15, 1986, the Governor of New Mexico submitted a copy of New Mexico's GEP-SH AQCR 710, adopted by the New Mexico Environmental Improvement Board (NMEIB) on July 11, 1986, as a SIP Revision, along with supporting documents.

In essence, AQCR 710 requires that the New Mexico Environmental Improvement Department "shall give no credit for reductions in emissions due to so much of source's stack height that exceeds good engineering practice or due to any other dispersion technique" in evaluating permits for new or modified sources, then glosses the terms "good engineering practice stack height" and "dispersion technique" by incorporating federal regulatory definitions. With one exception, EPA now regards AQCR 710 adequate for implementation of Section 123 of the Clean Air Act in its permitting actions.

In relevant part, 40 CFR 51.164 requires that states provide notice, public disclosure, and opportunity for public hearing on approved fluid modeling or field studies before using them to establish GEP-SH in excess of that allowed by 40 CFR 51.100 (ii)(1) or (2). AQCR 710 does not incorporate this provision of 40 CFR 51.164 by reference nor has New Mexico otherwise imposed that procedural limitation on determining GEP-SH pursuant to 40 CFR 51.100(ii)(3). Until it does, EPA will not approve AQCR 710 as a revision to the New Mexico SIP.

Additionally, AQCR 710 does not incorporate nor has New Mexico otherwise adopted provisions equivalent to 40 CFR 51.164's "grandfather" provision which permits states to exempt certain older sources from GEP-SH requirements. To avoid uncertainty, EPA is requesting that New Mexico provide clarification on whether it intended to forego this exemption in promulgating AQCR 710.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this proposed SIP approval will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen Dioxide, Lead, Particulate Matter, Carbon Monoxide, and Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.

Date: July 16, 1987.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 87-22154 Filed 9-24-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-3267-5]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to (1) change the attainment status designation for seven counties in Ohio relative to the total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS), and (2) retain the present secondary nonattainment designation for one county. The seven counties where USEPA is proposing to change the attainment status designations are: Columbiana, Logan, Medina, Miami, Monroe, Sandusky and Scioto. The present TSP air quality status for either a part or all of these counties is nonattainment for either the primary or secondary TSP NAAQS. For these counties USEPA is proposing to either redesignate the counties to full attainment or reduce the size of the nonattainment area(s). The one county where USEPA is retaining the present secondary nonattainment designation is Jackson. The purpose of this notice is to discuss the results of USEPA's review of the State's request and supporting data and to solicit comments on these data and USEPA's proposed action.

DATE: Comments must be received by October 26, 1987.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (the Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status for all areas within the State. The primary TSP NAAQS was violated when, in a year, either: (1) The geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubic meter of air (75 ug/m^3) (the annual primary standard); or (2) the 24-hour concentration of TSP exceeds 260 ug/m^3 more than once (the 24-hour standard). The secondary TSP NAAQS was violated when, in a year, the 24-hour concentration exceeds 150 ug/m^3 more than once. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). However, EPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (52 FR 24682, column 1) describes EPA's transistion policy regarding TSP redesignations.

USEPA may redesignate an area to attainment if it is supported by all available data including eight consecutive quarters of the most recent, quality assured, representative ambient air quality data which show no violations of the NAAQS, and evidence of a fully approved and implemented SIP control strategy. In special situations, USEPA may consider less than the eight consecutive quarters of such data; for example, when a state of the art modeling analysis is provided showing that the basic SIP strategy is sound and

that actual, enforceable emission reductions are responsible for the recent air quality improvements. Note that any approved emission reductions used to support a redesignation cannot be used carte blanche to support another SIP action, i.e. provide offsets for new source review.

An exception to the requirement for a fully approved and implemented SIP control strategy can be made if the physical circumstances and long-term economic factors are such that the approved and implemented measures have the same weight as a fully approved SIP control strategy for purposes of demonstrating attainment; for example, the permanent closing of the major emitting sources, road paving to eliminate fugitive emissions, or other irreversible measures. Submittals including such approved changes, even though these changes do not constitute a fully approvable Part D SIP, have the practical air quality impact of fully approved strategies and can thus be the basis for approval of the redesignation. In addition, an exception to the requirement for a fully approved and implemented control strategy can be made for areas which were initially and inaccurately "oversignated." That is, areas which should never have been designated nonattainment initially. USEPA's policy on redesignations is summarized in a memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards, dated April 21, 1983, entitled "Section 107 Designation Policy Summary"; a memorandum from G.T. Helms, Chief, Control Programs Operations Branch, dated December 23, 1983, entitled "Section 107 Questions and Answers"; and a memorandum from G.A. Emison, Director, Office of Air Quality Planning and Standards, dated September 30, 1985, entitled "Total Suspended Particulate (TSP) Redesignations." These memoranda are available for public review in the rulemaking file on this notice.

On May 16, 1983, the State of Ohio submitted a request to revise the attainment status designation for the following 16 counties relative to the TSP NAAQS: Columbiana, Erie, Gallia, Jackson, Jefferson, Lake, Logan, Medina, Miami, Monroe, Muskingum, Richland, Scioto, Summit, Trumbull and Washington. On February 24, 1984 (49 FR 6926), in a notice of proposed rulemaking, USEPA proposed to disapprove the State's request for all of the counties because of a lack of sufficient technical support. In that notice, USEPA stated that if the State provided the additional technical support, including evidence of implemented control strategies, and USEPA determined that it was acceptable, then USEPA would withdraw its notice of proposed disapproval and approve the designations.

On April 12, 1984, the State submitted additional information for Erie County, and in a notice of final rulemaking published on April 22, 1985 (50 FR 15746), USEPA approved the redesignation for Erie County, along with Lawrence County. On June 1, 21, and 25, 1984; July 9, and 10, 1984; September 27, 1984; November 27, 1984; and April 1, 1985, the State submitted additional information for the 15 counties. In addition, in a November 27, 1984, submittal, the State amended its redesignation request for Columbiana, Jefferson, Lake, and Scioto Counties. On November 21, 1984, the State submitted a TSP redesignation request for Franklin County. On April 23, 1985, the State submitted a TSP redesignation request for Sandusky County.

However, on July 8, 1985 (50 FR 27892), USEPA promulgated a newly revised stack height regulation to comport with the stack height requirements of section 123 of the Act. The impacts of the new stack height regulations must be assessed in any TSP redesignation. Thus, until the impact of the stack height regulations is assessed, USEPA cannot proceed with rulemaking on these 17 counties (15 counties contained in the May 16, 1983, submittal: Franklin County from a November 21, 1984, redesignation request; and Sandusky County from an April 23, 1985, redesignation request).

USEPA's rulemaking on the acceptability of the TSP redesignation for these 17 counties will now be segmented into two groups. Group I consists of those counties with few sources and less potential for significant stack height impacts (Columbiana, Jackson, Logan, Medina, Miami, Monroe, Sandusky and Scioto Counties). Group II consists of those counties with more sources and greater potential for significant stack height impacts (Gallia, Franklin, Jefferson, Lake, Muskingum, Richland, Summit, Trumbull and Washington Counties).

In today's rulemaking notice, USEPA proposes to rulemake on the eight Group I counties listed above in which the State, in a December 3, 1985, letter, discussed the impacts of tall stacks or illegal dispersion techniques. USEPA will take separate action on the remaining nine Group II counties upon receipt of the necessary stack height data from the State. Before USEPA begins its discussion on the acceptability of the redesignation for the 8 counties, based upon the three policy memoranda discussed earlier and the newly revised stack height regulations, we would like to first discuss the implication of the revised stack height regulation on TSP redesignations, both in general and in Ohio.

Implications of Newly Revised Stack Height Regulations on TSP Redesignations

On July 8, 1985 (50 FR 27892), USEPA promulgated a newly revised stack height regulation under section 123 of the Act. This regulation is intended to ensure that air pollution emission limitations required under applicable SIPs are not affected by dispersion techniques. According to the regulation, a dispersion technique means any method which attempts to affect the concentration of a pollutant in ambient air by: (1) Using that portion of a stack which exceeds good engineering practice (GEP) stack height; (2) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or (3) increasing final exhaust gas plume rise by manipulating source process parameters and other methods, including the merging of exhaust gas steams. The Stack Height Regulations can affect a redesignation because improvements in air quality which are due to "non-creditable" dispersion cannot form the basis for a redesignation. Therefore, USEPA has reviewed these eight redesignations for consistency with the Stack Height Regulations. This review consisted of looking at whether the ambient air concentrations, which were used as a basis for the State's redesignation requests, were influenced by any non-creditable dispersion. A summary of the results of this review follow. Specific details are contained under each county discussion. The only two dispersion techniques which were found by the State are merged gas streams and stack heights greater than GEP.

1. *Merged Stacks*—USEPA redesignation policy states that designated nonattainment areas which are meeting the NAAQS either solely or partially through the use of unauthorized dispersion techniques cannot be redesignated to attainment. The Stack Height Regulations prohibit dispersion techniques (such as merged stacks) which increase the final exhaust gas plume rise, unless certain exemptions are met. These exemptions include where the merging both was performed in conjunction with the installation of

pollution control equipment and did not result in an increase in allowable emissions for stacks merged before July 8, 1985. (Note, only mergings before this date are relevant here since the redesignations are based on data collected before July 8, 1985.)

All the merged stacks identified by the State represent mergings that were done in conjunction with the installation of pollution control equipment that was required to comply with the SIP emission limitations. We note, however, that the State only reviewed major stack sources for compliance with the Stack Height Regulations. Consequently, allowable emissions did not increase from the identified sources, while actual emissions decreased. For these sources, this satisfies the exemption cited above. Therefore, all of the merged stacks identified by the State (i.e. major stack sources) comply with the Stack Height Regulations.

The Stack Height Regulations are to insure that certain dispersion enhancing practices, such as merged stacks, do not lower the ground-level concentration of pollutants and allow sources to emit greater amounts of pollution. The State's monitoring data show attainment at gound-level of the TSP NAAQS for most areas as discussed below. However, monitored attainment may be due to the additional effect of the unreviewed minor, and reviewed major, merged stacks. Moreover, the emission limits for these sources are technology-based (i.e., not supported by air quality modeling analysis designed to assure attainment of the NAAQS), and therefore, it is possible that compliance with these limits might not be enough alone to attain the NAAQS.

USEPA has reviewed these issues, and does not believe that the merged stacks have significantly affected the data here of monitored attainment for the following reasons: First, the most culpable sources in most cases (according to the filter analyses) are fugitive TSP sources. Plume rise is not important for these low-level sources. Furthermore, because these are non-stack sources, the concept of combining exhaust gas streams is irrelevant. Second, the lesser contributing major merged stack sources have experienced reduction in ambient impact due to the reduction in emissions alone (due to the new pollution control equipment). Thus, USEPA believes that the improvement in air quality, due both to controlling fugitive emissions and to the installation of pollution control equipment, is sufficient to support the redesignation requests.

2. *Physical Stack Height.* The Stack Height Rules allow automatic physical stack height credit up to 65 meters (m). For the sources in the areas that we are proposing redesignation, no sources have a stack greater than 65m.

In summary, USEPA has determined that the monitoring data which serve as the primary basis for these redesignations are not significantly affected by the merged stacks or illegal stack heights. Thus, USEPA accepts the State's determination that the redesignation request for these eight counties is consistent with the Stack Height Regulations.

USEPA's discussion on the acceptability of the redesignations for Columbiana, Jackson, Logan, Medina, Miami, Monroe, Sandusky and Scioto follows:

I. Columbiana

A. Present designation (40 CFR 81.336)

Primary Nonattainment—Cities of East Palestine, East Liverpool, and Wellsville, plus the Townships of Fairfield, Unity, Elk Run, Middleton, Madison, St. Clair, Liverpool, and Yellow Creek.
Attainment—Knox and West Townships
Secondary Nonattainment—Remainder of County

B. Requested Designation (November 27, 1984)

Primary Nonattainment—Cities of East Liverpool and Wellsville, Townships of Yellow Creek and Liverpool.
Secondary Nonattainment—Center Township and City of Lisbon.
Attainment—Remainder of County.

To support its request, the State submitted TSP data collected at the six monitoring sites in the County for the period January-December 1983. These data were supplemented with USEPA Storage and Retrieval of Aerometric Data (SAROAD) from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources which had installed air pollution control equipment or had been shutdown.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

For the most recent eight quarters of air quality monitoring data, there have been no violations of the primary NAAQS. A violation of the annual primary NAAQS, however, was recorded in 1982 at site 36190003I01 in the City of East Liverpool. This monitor has also measured secondary 24-hour violations in 1982, 1983, and 1984. The requested primary nonattainment area includes the area around this monitor and the Cities of East Liverpool and Wellsville and Townships of Yellow Creek and Liverpool. Violations of the secondary NAAQS for TSP were also recorded in 1984 at monitor 35200001I03 in the City of Lisbon. The requested secondary nonattainment area includes the area around this monitor, i.e., Center Township and the City of Lisbon. In the remainder of the County, no violations of the primary or secondary NAAQS for TSP have been recorded during the last 2 calendar years. Nevertheless, USEPA is concerned about the air quality in Perry Township because Eljer Plumbingware has operated at levels significantly below their permitted allowed levels. Thus, the actual emissions from this facility and other smaller sources have been less than their allowed emissions. Since the monitored air concentrations do not reflect the potential air emission, it is not certain that ambient levels would remain attainment if the sources in Perry Township were to emit at their allowable levels. Because the State has not shown that either (1) emission rates will not increase significantly at units operating below their SIP allowables or (2) ambient concentrations would reflect attainment levels (i.e., modeled attainment demonstration), USEPA is retaining Perry Township as a secondary nonattainment area. USEPA notes that because all the major sources are located in the areas that are being retained as primary or secondary nonattainment, the representativeness of the monitors in these areas was not an issue.

The State attributed the improvements in TSP levels in the area that is being redesignated to the permanent shutdown of the entire Ohio Edison East Palestine Power Plant (which had actually emitted approximately 600 TPY in 1977. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements. Actual emissions in 1983 totaled only 138 TPY in the areas being redesignated. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. USEPA believes an adequate explanation for air quality improvements has been provided to support the State's request. Based on monitoring data, and the permanent shutdown of the Ohio Edison East

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Palestine Power Plant, USEPA believes that the redesignation request is approvable.

Proposed Action

USEPA proposes to redesignate Columbia County for TSP as follows:

Primary Nonattainment—Cities of East Liverpool and Wellsville, Townships of Yellow Creek and Liverpool.
Secondary Nonattainment—Center Township including the City of Lisbon and Perry Township including the City of Salem.
Attainment—Remainder of County.

II. Jackson

A. Present Designation (40 CFR 81.336)

Secondary Nonattainment—Entire County

B. Requested Designation (May 16, 1983)

Attainment—Entire County

To support its request, the State submitted data collected at the one monitoring site in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources which have reduced emissions.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

Jackson County is a rural county and the entire county was designated secondary nonattainment based on the monitoring data at only one site (site 363100002F01) in the City of Jackson. Violations of the secondary NAAQS were recorded at this site in 1976 and 1977. No violations of the primary or secondary TSP NAAQS have occurred in Jackson for the most recent eight consecutive quarters of data.

As stated above Jackson County is rural and has a total population of only 31,000. Of the 500 TPY emissions (1983 emissions inventory) from industrial sources, the Cedar Heights Clay Company in southern Jackson County contributes about 400 TPY. USEPA considers Jackson County, except the City of Jackson and the Cedar Heights Clay Company (two plants) in Southern Jackson County, "overdesignated". Because USEPA considers the areas surrounding the City of Jackson and the Cedar Heights Clay Company to be of primary concern within this redesignation request to attainment, USEPA focused its review to these areas. A necessary redesignation criteria is that improvement in air quality must be the result of Federally enforceable emission reductions. The State attributed the improvements in TSP levels in the City of Jackson to fugitive TSP controls which include the strict enforcement of the prohibition on open burning. USEPA notes that while some of the fugitive controls may not be federally enforceable, many of the controls, such as paving of roads, are permanent. However, because Federally enforceable emission reductions are a critical part of this redesignation, the USEPA requested that the State provide any Federally enforceable emission reductions in the City of Jackson. In addition, because the City of Jackson's monitor does not represent air quality in the vicinity of the Cedar Heights Clay Company and there is a lack of short-term (24-hour) screening modeling in this area to substantiate an attainment classification, USEPA requested that the State provide results of screening modeling for the area surrounding the Cedar Heights Clay Company. None of the requested information was provided. In addition, no information was provided to support narrowing the nonattainment area(s) within the county (e.g., map of sources, allowable emission inventory, isopleths of modeling results, etc.). Therefore, without the State providing such information, USEPA cannot approve the redesignation for Jackson County and is proposing to retain it as a secondary nonattainment area. If the State provides the additional information and USEPA determines it acceptable, USEPA will propose to approve the redesignation.

Proposed Action

USEPA proposes to retain the designation of Jackson County for TSP as follows:

Secondary Nonattainment—Entire County

III. Logan

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—Entire County

B. Requested Designation (May 16, 1983)

Full Attainment—Entire County

To support its request, the State submitted data collected at one monitoring site in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality imnprovement, the State submitted descriptive information regarding the monitoring site.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

Logan County is a rural county. The present designation for the entire County is based on violations of the primary and secondary NAAQS for TSP at one site (360500001F01), located in the City of Bellefontaine. This original designation for Logan County, except Bellefontaine, was overly broad because of the generally rural nature of the County (38,000 population) and the few number of industrial sources.

One violation of the secondary TSP NAAQS occurred at the Bellefontaine site during the most recent eight consecutive quarters of data. A second high 24-hour value of 152 $\mu g/m^3$ occurred on April 30, 1984. However, the State contends that this exceedance of the secondary TSP NAAQS was due to rural fugitive dust which occurred as a result of a dust storm on April 30, 1984. On this day, 114 monitors throughout the State exceeded the 24-hour secondary standard. As support for their position that the data should not be used for designation purposes, the State submitted Local Climatological Data for Columbus, Cincinnati, and Cleveland, Ohio. According to USEPA's August 1, 1977, rural fugitive dust policy which was summarized in the March 3, 1978, **Federal Register** notice on section 107 designations (43 FR 8973), TSP exceedances attributable to rural fugitive dust do not count against the attainment/nonattainment designation of an area. USEPA agrees with the State that rural fugitive dust caused the April 30, 1984, exceedance, and will not consider this exceedance at Belefontaine monitor 360500001F01 for designation purposes.

The current monitoring network consists of two monitors in Bellefontaine. Only two small industrial sources of TSP are located in Logan County. They are Hobart Manufacturing (5 TPY, 1983) and Warren Tool (15 TPY, 1983). The State also noted that special purpose monitoring for lead near an industry in south Bellefontaine did not show any exceedances of the TSP NAAQS. in 1977, State analysis of four filters from the Bellefontaine monitor (360500001F01) showed a high percentage of limestone fragments. The State assumed that vehicle traffic passing over gravel paved surfaces caused the violation at the monitor. The State attributed the improvements in TSP levels at the Bellefontaine monitor to the paving of a parking lot and alley adjacent to the monitor.

The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on monitoring data and permanent emission reductions, USEPA believes an

adequate explanation for air quality improvement has been provided to support the State's request.

Proposed Action

USEPA proposes to redesignate Logan County for TSP as follows:
Attainment—Entire County

IV. Medina

A. Present Designation (40 CFR 81.336)

Secondary Nonattainment—Entire County

B. Requested Designation (May 16, 1983)

Attainment—Entire County.

To support its request, the State submitted data collected at the two monitoring sites in the County for the period January–December 1983. These data were submitted with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources that had reduced emissions.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The bases of the present secondary nonattainment classification were violations of the secondary NAAQS in the City of Wadsworth. One violation of the secondary TSP NAAQS occurred at the Wadsworth monitor in the most recent eight consecutive quarters of data. A second-high 24-hour concentration of 168 $\mu g/m^3$ occurred on April 30, 1984. USEPA will not use this value for attainment purposes due to the presence of rural fugitive dust (see discussion under Logan County). The rural nature of the County (i.e., the lack of significant industrial sources) is demonstrated by the low actual emission levels for industrial point sources of only 160 TPY (1983). No sources have emissions greater than 100 TPY. The State attributed the improvements in TSP levels in the Wadsworth area to the Oho Match Company permanently switching from coal to natural gas, which reduced TSP emissions by about 140 TPY. TSP emissions from burning natural gas are basically negligible. This switch can be considered permanent because the coal boiler with stokers and grates has been physically removed. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source permitting requirements. The remainder of the County contains few industrial sources, and no violations of the primary or secondary NAAQS have been recorded at the remaining site in the County since 1974. Medina County, except for the Wadsworth area, was "overdesignated". The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "non-creditable" dispersion. Based on monitoring data and permanent emission reductions, USEPA believes an adequate explanation for air quality improvements has been provided to support the State's request.

Proposed Action

USEPA proposes to redesignate Medina County for TSP as follows:
Full Attainment—Entire County.

V. Miami

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—City of Piqua.
Secondary Nonattainment—That area in Miami County North of the line determined by Fenner Road from the Darke-Miami County Line, east to Pemberton Road, south to Horse Bend Road, east to Route 55, northeast through Troy to Troy-Urbana Road, northest to Miami-Champaign County line and south of the line determined by Route 40 north from the Montgomery-Miami County line to Route 202, north to Route 571, east to Route 201, north to Route 41, east to the Miami-Clark County line and excluding the City of Piqua.
Reminder of Country—Attainment

B. Requested Designation (May 16, 1983)

Secondary Nonattainment—City of Piqua.
Attainment—Remainder of County.

To support its request, the State submitted data collected at the two monitoring sites in the County for the period January—December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality improvement, the State submitted information concerning the emission reductions at the Piqua Municipal Power Plant.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

For the most recent eight quarters of air quality monitoring data violations of the secondary, but not the primary, NAAQS for TSP were recorded in 1983 at site 365520003G01 in the City of Piqua. The requested secondary nonattainment area includes the area around this monitor and the City of Piqua. Located in the City of Piqua is the Piqua Municipal Power Plant, the major TSP source in Miami County. The 1983 emissions for Piqua Municipal Power were 1,800 TPY. In the entire County, total 1983 emissions were 1,870 TPY with no single source emitting more than 50 TPY. The State attributed the improvement in TSP levels from primary to secondary nonattainment in the City of Piqua to emission reductions at the Piqua Municipal Power Plant due to the installation of federally required and enforceable air pollution control equipment. Piqua Municipal Power replaced its multiclones with baghouses on their three boilers. USEPA recognizes that the pollution control equipment at Piqua Municipal Power has experienced malfunctions. However, the equipment has contributed to reducing TSP below the primary NAAQS. The remainder of the County contains no major industrial sources, and no violatins of the primary or secondary NAAQS have been recorded at the remaining site in the County during its operation from 1976 through the present. The impact of the stack heigh regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on monitoring data, federally enforceable emission reductions, and on overly broad original designation USEPA believes an adequate explanation for air quality improvements has been provided to support the State's request.

Proposed Action

USEPA proposes to redesignate Miami County for TSP as follows:
Secondary Nonattainment—City of Piqua
Attainment—Remainder of County.

VI. Monroe

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—City of Clarington, Townships of Salem and Switzerland.
Secondary Nonattainment—Townships of Adams, Greene, Lee, Ohio, Sunbury.
Attainment—Remainder of County.

B. Requested Designation (May 16, 1983)

Secondary Nonattainment—City of Clarington, Townships of Salem and Switzerland.
Attainment—Remainder of County.

To support its request, the State submitted date collected at the two monitoring sites in the County for the period January—December 1983. These

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data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality improvement, the State submitted a list of sources which had installed air pollution control equipment.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The two monitoring sites currently operating in Monroe County are located near the Towns of Clarington and Hannibal. For the most recent eight quarters of air quality monitoring data, violations of the secondary, but not the primary, NAAQS for TSP were recorded in 1983 at site 36446001102 near the City of Clarington and at site 364460002102 at Hannibal. The requested secondar nonattainment area includes the area around the Clarington monitor, i.e., the City of Clarington and the Townshps of Salem and Switzerland, but not the area around the Hannibal monitor. The State attributed the improvement in TSP levels in this area primary to secondary nonattainment, to the permanent shutdown of two proces sources, and the installtion of air pollution control equipment at Ohio-Ferro Alloys. Ohio-Ferro Alloys permanently shutdown in 1984. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements.

The only other major industrial source, Ormet Corporation (340 TPY, 1983) is located near the Hannibal monitor. No other sources emit more than 100 TPY. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on the monitoring data and the permanent emission reductions, USEPA believes an adequate explanation for the air quality improvement has been provided to support the State's request for the redesignation from primary to secondary nonattainment for the City of Clarington and Townships of Salem and Switzerland. However, a violation of the secondary NAAQS was recorded at the Hannible site (364460002102) in 1984 after the State submitted its requests. Therefore, USEPA cannot approve the redesignation of the present secondary nonattainment area surrounding the Hannibal site; and thus, the Townships of Adams, Greene, Lee, Ohio and Sunbury must be retained as secondary nonattainment.

Proposed Action

USEPA proposes to redesignate Monroe County for TSP as follows:

Secondary Nonattainment—City of Clarington, Townships of Adams, Greene, Lee, Ohio, Salem, Sunbury and Switzerland.

Attainment—Remainder of County.

VII. Sandusky

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—Entire County

B. Requested Designation (April 23, 1985)

Secondary Nonattainment—Woodville, Madison, Sandusky, Jackson and Ballville Townships, including the Cities of Fremont, Gibsonburg and Woodville

Attainment—Remainder of County.

To support its request, the State submitted data collected at the 14 monitoring sites in the County for the period 1981–1984. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality improvement, the State submitted a list of sources which had installed air pollution control equipment or had been shut down.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The bases of the present primary nonattainment classification were violations of the TSP primary NAAQS at six sites in 1976 and 1977 in Madison Township (City of Gibsonburg) and Woodville Township (City of Woodville). Although montoring data indicated secondary nonattainment to be an appropriate designation in Jackson, Ballville, and Sandusky Townships during this period, the entire County was designated primary nonattainment based on the monitoring data in Madison and Woodville Townships. In addition, the rural Townships of Riley, Townsend, Green Creek, York, Scott, Washington, and Rice, which have neither major sources nor ambient monitors, were included in the primary nonattainment designation. Thus, the original designation for Sandusky County was overly broad.

1. Discussion on Redesignation of Woodville Township

No violation of the primary TSP NAAQS have been recorded at the three sites (365980001F01, 365980005J02, 365980006J02) in Woodville Township for the last eight consecutive quarters of data (1983–1984) available at the time the State submitted the redesignation request. Nevertheless, USEPA is concerned about the air quality in Woodville Township because: (1) In 1983, the highest monitored 24-hour concentration was 470 ug/m^3 and the second highest was 248 ug/m^3, and (2) the currently available monitoring data for 1985 showed an exceedance of 404 ug/m^3 on May 1, 1985.

Even though ambient data are close to the primary standard, USEPA is able to redesignate an area to attainment only if certain criteria are met by the State. The State must provide evidence of either permanent or federally enforceable emission reductions which resulted in the improvement in air quality. The State also must show that actual operating rates during the most recent eight quarters were similar to anticipated operating rates. Thus, the State must demonstrate that either: (1) Emission rates will not increase significantly at units operating below their SIP allowable emission rates; or (2) plants were operating at their maximum SIP allowable operating rates.

In Woodville Township, only the emission reduction of 200 tons per year at the Ohio Lime Company are federally enforceable. The State did not demonstrate that the reduction at Ohio Lime Company was sufficient to result in attainment throughout the Township. Because the State has not provided this demonstration, USEPA is proposing to deny the State's redesignation request and, thereby, retain the primary nonattainment classification for Woodville Township, including the City of Woodville.

2. Discussion of Redesignation of Sandusky, Madison, Ballville and Jackson Townships.

No applicable violations of the primary TSP NAAQS were recorded in Sandusky, Madison, Ballville, or Jackson Townships for the last eight consecutive quarters. USEPA notes that two exceedances of the primary TSP NAAQS were recorded at Jackson Township site 36598002J02 during 1984. (The 24-hour primary standard for TSP is 260 micrograms per cubic meter (ug/m^3), not to be exceeded more than one per year. Two or more exceedances of this standard constitute a violation.) However, one of the 1984 exceedances at this site can be disregarded for designation purposes. This exceedance had a 24-hour value of 373 ug/m^3 and occurred on April 30, 1984. The State contends that this exceedance of the primary TSP NAAQS was due to rural fugitive dust which occurred as a result

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of a dust storm on that date. (See discussion of the storm in the Logan County Section.) Therefore, USEPA will not consider the April 30, 1984, exceedance at Jackson Township site 365980002J02 for designation purposes. Among the four townships of Sandusky, Madison, Ballville and Jackson, only the Gibsonburg monitor in Madison Township indicated a secondary nonattainment problem in the last eight consecutive quarters. It should be noted that the major TSP sources are located near the monitors. Major emission reductions in Madison Township resulted from the permanent shutdown of the Pfizer Corporation Plant in 1982. Ohio must submit evidence showing that these shutdown are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start up why they must be treated as new sources under Ohio's new source review permitting requirements. Actual emissions from Pfizer were 4,000 TPY in 1977. Given the permanent emission reduction from Pfizer, which resulted in a concurrent improvement in air quality, USEPA believes adequate support has been presented by the State to redesignate Madison Township from primary nonattainment to secondary nonattainment. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on primary standard violation-free monitoring data, permanent TSP emission reductions, and an overly broad original designation, USEPA believes adequate support has been presented by the State to redesignate Sandusky, Ballville, and Jackson Townships from primary nonattainment to secondary nonattainment. Actual 1983 emissions in these Townships totaled approximately 150 TPY.

3. Discussion of Redesignation of the Remainder of the County

The remainder of the County is rural. Although these portions of the County contain no monitors, they also contain no industrial sources of TSP, and the original primary nonattainment classification was based solely on monitored data in other parts of the County. Therefore, USEPA proposes to approve the State's request to redesignate to attainment the remainder of the County based upon the original overly broad designation and the lack of industrial sources of TSP in these areas.

Proposed Action

USEPA proposed to resesignate Sandusky County for TSP as follows:

Primary Nonattainment—Woodville Township including the City of Woodville.
Secondary Nonattainment—Madison, Sandusky, Jackson and Ballville Townships including the Cities of Fremont and Gibsonburg.
Attainment—Remainder of County.

VIII. Scioto

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—Cities of Portsmouth, New Boston, South Webster, and Bloom Township.
Secondary Nonatttainment—Harrison Township, excluding primary nonattainment area.
Attainment—Remainder of County.

B. Requested Designation (May 16, 1983)

Primary Nonattainment—Bloom Township and the City of South Webster
Attainment—Remainder of County.

To support its request, the State submitted data collected at the five monitoring sites in the County for the period January–December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources that had permanently reduced emissions.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

1. Discussion on Redesignation of Present Primary Nonattainment Area

The present primary nonattainment classification in Scioto County was based on violations of the primary NAAQS at monitor 365620002H01 in Portsmouth, monitor 366020002H01 in South Webster, and monitor 364720001H01 in New Boston. USEPA notes that monitor 366020002H01 (South Webster) was discontinued in 1981. The State is retaining the primary nonattainment classification for the area around this monitor, including Bloom Township and the City of South Webster, until current air quality data in this area are obatined.

For the most recent eight calendar quarters of data, the only violation of the secondary TSP NAAQS occurred at Portsmount (monitor 365620002H09). No violations of the primary or secondary TSP NAAQS have occurred at any of the remaining sities in Scioto County. For monitor 365620002H09, the State contends that one of the two exceedances of the secondary TSP NAAQS was due to rural fugitive dust which has occurred as a result of a dust storm on April 30, 1984. (See discussion under Logan County.) Winds were from the southwest on April 30, 1984, and monitor 365620002H09 is located to the southwest of the point sources in Portsmouth and New Boston. Thus, USEPA will disregard the April 30, 1984, exceedance at this monitor for designation purposes. By disregarding the April 30, 1984, data from monitor 365620002H09, the remaining monitoring data suggest a full attainment classification. The monitoring network, however, is not acceptable as being representative, because it does not accurately characterize the worst-case air quality in the New Boston area. The only monitor located near New Boston Coke Company is approximately 1.5 km to the west of the coke battery. It is USEPA's position that maximum air quality impacts from coke batteries usually occur near the source (usually within 1 km) due to the process fugitive emissions, building downwash, and the low release heights of emissions from the battery. USEPA reviewed the modeling performed by the State for New Boston Coke as part of the Part D SIP for Scioto County, and determined that it could not be used to justify attainment due to several deficiencies (e.g., failure to address both building downwash effects and the 24-hour standard).

USEPA acknowledges that emission reductions have occurred in the present nonattainment area of Portsmouth and New Boston. The major reduction occurred as a result of the permanent shutdown in 1982 of Empire Detroit Steel Company which had actual emissions in 1979 of approximately 4,500 TPY. Other smaller sources which permanently shutdown in the Portsmouth area include Portsmouth Standard Slag (60 TPY 1979 actual emissions) and Harbison-Walker (15 TPY 1979 actual emissions). Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements. Note that actual industrial point source emissions in 1983 for Scioto County were only 1,093 TPY, of which New Boston Coke contributed 888 TPY. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to

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"noncreditable" dispersion. USEPA believes an adequate explanation for the air quality improvement has been provided to redesignate most of the Cities of Portsmouth and New Boston to attainment based on monitoring data, and permanent emission reductions. Based on the lack of sufficient monitoring data or modeling results for the affected local area near New Boston Coke, however, USEPA believes a 2 km by 2 km square area around the New Boston coke battery should be retained as primary nonattainment. Specifically, this area should be those portions of the Cities of Portsmouth and New Boston that surround New Boston Coke, extending 1 km to the west, north and east of the coke battery and bounded on the south by the Ohio River. USEPA notes that its April 21, 1983, Section 107 Designation Policy Summary memorandum states that appropriate boundaries for designation of nonattainment areas are "generally political boundaries such as city or county for TSP. . . ." Because there are no appropriate geopolitical boundaries surrounding New Boston Coke, USEPA believes it is acceptable to define the nonattainment area in terms of distance from the New Boston Coke battery. USEPA chose not to retain primary nonattainment throughout the Cities of Portsmouth and New Boston because the available monitoring data in these cities indicates full attainment.

2. Discussion on Redesignation of Present Secondary Nonattainment Area

Harrison Township is rural with no industrial sources of its own, but borders the present primary nonattainment areas. While no monitors are located in Harrison Township, the monitors in bordering areas suggest that the Township is attaining the NAAQS for TSP. Further, the available SIP modeling for Harrison Township suggests attainment of the primary and secondary TSP NAAQS. The only basis for the present secondary nonattainment classification was the proximity of Harrison Township to the present primary nonattainment areas. Therefore, based on the lack of industrial sources and on monitoring and modeling data, USEPA believes it is appropriate to redesignate Harrison Township to attainment.

Proposed Action

USEPA proposes to redesignate Scioto County for TSP as follows:

Primary Nonattainment—Those portions of the Cities of Portsmouth and New Boston that surround New Boston Coke, extending 1 km to the west, north and east of the coke battery and bounded on the south by the Ohio River.

—Bloom Township and the City of South Webster.

Remainder of County—Attainment.

Note the source shutdowns (both total and partial facility) identified in this notice were relied on by the State to explain the improvement in these areas and, thus, are an integral part of the State redesignation request. Since these shutdowns are a necessary condition for the redesignations, these emission reduction credits are hereby used up and cannot be applied again. Thus, these credits would not be available for emissions trading. As a result, if these particular sources wish to resume operation, then they must first satisfy the applicable new source requirements.

All interested parties are invited to submit comments on this proposed action notice. USEPA will consider all comments received within 30 days of publication of this notice.

The Office of Management and Budget has exempted this rule from the reqirements of section 3 of Executive Order 12291.

Under 5 U.S.C. § 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks.

Authority: 42 U.S.C. 7401–7642.

Dated: December 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

[Editorial Note. This document was received at the Office of the Federal Register on September 22, 1987.]

[FR Doc. 87–22152 Filed 9–24–87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 33, 35, 75, 77, 94, 96, 108, 154, 160, 161, 192 and 195

[CGD 82–042]

Hand Held Flashlights

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rulemaking would delete 46 CFR 161.008, and incorporate by reference the American Society for Testing and Materials standard ASTM F1014–1986, Standard Specification for Flashlights on Vessels in the specific vessel regulations. The intended effect of this proposal is to incorporate this industry standard by reference in the regulations which require flashlights on lifeboats and liferafts and flashlights suitable for use in hazardous atmospheres in emergency lockers and firemen's outfits, and as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases. The present regulations for flashlights do not reflect the recent advances in technology. The proposed regulations will incorporate an up to date standard which will allow a wider variety of flashlights to be used, without jeopardizing the safety of either the vessel or personnel.

DATES: Comments must be received on or before November 9, 1987.

ADDRESSES: Comments should be mailed to the Commandant. (G-CMC/21) (CGD82–042), U.S. Coast Guard, Washington, DC 20593–0001. Between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays, comments may be delivered to, and available for inspection and copying at, the Marine Safety Council (G-CMC/21) Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, (202) 267–1477

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Nolan, Marine Technical and Hazardous Materials Division, Room 1304, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2206. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking procedure by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 82–042) and the specific section of the proposal to which each comment applies, and the reason for the comments. No public hearing is anticipated at this time, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial. All comments will be considered by the Coast Guard before taking further rulemaking action.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Thomas M., Nolan, Project Manager, and Lieutenant Sandra R. Sylvester, Project Counsel, Office of Chief Counsel.

Background

Flashlights on lifeboats and liferafts are required to be constructed in accordance with Title 46 of the Code of Federal Regulations (46 CFR), Part 161.008. 46 CFR 161.008 requires that each flashlight built to this specification be Coast Guard approved. This requirement forces shipowners and operators to purchase flashlights from a specific group of manufactures.

The present regulations for emergency outfits on Tank Vessels and in fireman's outfits on other vessels require an explosionproof flashlight or a flashlight listed by Underwriters Laboratories Inc (UL) for use in the hazardous atmosphere in which it will operate. A flashlight of this type is also required as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases.

The Coast Guard, in conjunction with the American Society for Testing and Materials (ASTM) Committee F25 on Shipbuilding, has developed a standard specification for flashlights on vessels. This standard, ASTM F1014–1986, Standard Specification for flashlights on Vessels, covers three types of flashlights. These types are as follows:

Type I—Flashlights for use in lifeboats and liferafts,

Type II—Flashlights for use in hazardous locations where fire or explosion hazards may exist due to the presence of flammable gases or vapors, flammable liquids, combustible dust, or ignitable fibers or flyings, and

Type III—Flashlights for use in lifeboats and liferafts and suitable for hazardous locations.

This proposal intends to delete 46 CFR 161.008. Manufacturers of flashlights who have current Certificates of Approval for their flashlights may continue to label their flashlights with the appropriate U.S. Coast Guard approval number up to the expiration date of the Certificate of Approval. These Certificates will not be re-issued after their expiration date. Coast Guard approved flashlights in lifeboats presently installed on U.S. flag vessels need not be replaced as long as they are in serviceable condition. These flashlights will be checked at each servicing of the lifeboats. This proposal will require flashlights for lifeboats and liferafts to be constructed to ASTM F1014–1986 as a Type I or Type III flashlight. It is also proposed that flashlights in emergency lockers, fireman's outfits, and as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases to be constructed to ASTM F1014–1986 as a Type II or Type III flashlight. ASTM F1014–1986 contains a section on marking which requires the flashlight to be marked with the ASTM standard number and the Type of flashlight. This labeling enables Coast Guard inspectors to determine product acceptability through product marking. Flashlights constructed in accordance with this ASTM Standard wil provide a wider variety of acceptable flashlights without jeopardizing the safety of either the vessel or personnel.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; Feb 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The cost of a flashlight constructed according to 46 CFR 161.008 with the required Coast Guard approval, is approximately $16.00 (sixteen dollars). Manufacturers involved in the development of the ASTM standard specification for flashlights have stated that flashlights constructed to ASTM F1014–1986 as Type I flashlights would cost approximately $8.00 (eight dollars). The cost of a flashlight constructed to ASTM F104–1986 as a Type II or Type III flashlight would not change the cost of a flashlight required in an emergency outfit, fireman's locker or as part of the safety equipment on self-propelled vessels carrying bulk liquified gases. These cost savings result from reducing the administrative overhead borne by the manufacturer to comply with 46 CFR 161.008. This overhead includes submission of plans in triplicate and samples of the flashlights to the Coast Guard for approval. Since the impact of the proposal is expected to be so minimal, the agency certifies that it will not have a significant economic impact on a substantical number of small entities.

List of Subjects

46 CFR Part 33

Marine safety, Fire protection, Tank vessels, Barges,
Incorporation by reference.

46 CFR Part 35

Marine safety, Navigation (water), Reporting requirements, Tank vessels, Barges, Seaman, Incorporation by reference.

46 CFR Part 75

Marine safety, Passenger vessels, Incorporation by reference.

46 CFR Part 77

Marine safety, Passenger vessels, Navigation (water), Incorporation by reference.

46 CFR Part 94

Cargo vessels, Marine safety, Incorporation by reference.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water), Incorporation by reference.

46 CFR Part 108

Fire protection, Vessels, Continental shelf, Oil and Gas Exploration, Marine safety, Marine resources, Incorporation by reference.

46 CFR Part 154

Gases, Hazardous materials transportation, Marine safety, Natural Gas Vessels, Incorporation by reference.

46 CFR Part 160

Marine safety, Incorporation by reference.

46 CFR Part 161

Fire prevention, Marine safety, Incorporation by reference.

46 CFR Part 192

Marine safety, Oceanographic vessels, Communications Equipment, Incorporation by reference.

46 CFR Part 195

Marine safety, Oceanographic vessels, Navigation (water), Incorporation by reference.

For the reasons set forth in the preamble, the Coast Guard proposes to amend 46 CFR Parts 33, 35, 75, 77, 94, 96, 108, 154, 160, 161, 192 and 195 of Chapter I of title 46, Code of Federal Regulations, as follows:

PART 33—[AMENDED]

1. The authority citation for Part 33 continues to read as follows:

Authority: 46 U.S.C. 3102(a), 3306; and 49 CFR 1.46.

2. In §33.15–10 paragraph (j) is revised to read as follows:

§ 33.15–10 Description of equipment of lifeboats-TA/ALL.

* * * * *

(j) *Flashlights.* The flaslight shall be a Type I or Type III constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and

overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 35—[AMENDED]

3. The authority citation for Part 35 continues to read as follows:

Authority: 46 U.S.C. 3306 and 3703; 49 CFR 1.46.

4. In § 35.30–20 paragraph (c)(3) is revised to read as follows:

§ 35.30–20

Emergency equipment-TB/ALL.

* * * * *

(c) * * *

(3) One, Type II or Type III, flashlight constructed in accordance with ASTM F1014–1986.

* * * * *

PART 75—[AMENDED]

5. The authority citation for Part 75 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

6. In § 75.20–15 paragraph (j) is revised to read as follows:

§ 75.20–15 Description of equipment for lifeboats.

(j) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced early during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 77—[AMENDED]

7. The authority citation for Part 77 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

8. In § 77.35–5 paragraph (c) is revised to read as follows:

§ 77.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed in accordance with ASTM F1014–1986.

* * * * *

PART 94—[AMENDED]

9. The authority citation for Part 94 continues to read as follows:

Authority: 46 U.S.C. 3102(a) and 3306; 49 CFR 1.46(b).

10. In § 94.20–15 paragraph (j) is revised to read as follows:

§ 94.20–15 Description of equipment for lifeboats.

* * * * *

(j) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 96—[AMENDED]

11. The authority citation for Part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

12. In § 96.35–5 paragraph (c) is revised to read as follows:

§ 96.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed in accordance with ASTM F1014–1986.

* * * * *

PART 108—[AMENDED]

13. The authority citation for Part 108 continues to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306, 46 App. U.S.C. 86; 49 CFR 1.46.

14. In § 108.497 paragraph (b) is revised to read as follows:

§ 108.497 Fireman's outfits.

* * * * *

(b) A Type II or Type III flashlight constructed in accordance with ASTM F1014–1986.

* * * * *

PART 154—[AMENDED]

15. The authority citation for Part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277, 49 CFR 1.46 (b) and (n)(4).

16. In § 154.1 paragraph (b) the entry for American Society for Testing and Materials is revised to read as follows:

§ 154.1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103

ASTM A20–1978 Steel Plates for Pressure Vessels

ASTM F1014–1986 Standard Specification for Flashlights on Vessels, 1986.

* * * * *

17. In § 154.1400 paragraphs (a)(4), (b)(4), and (c)(4) are revised to read as follows:

§ 154.1400 Safety equipment: All vessels.

(a) * * *

(4) Six Type II or Type III flashlights constructed in accordance with ASTM F1014–1986.

* * * * *

(b) * * *

(4) Eight Type II or Type III flashlights constructed in accordance with ASTM F1014–1986.

* * * * *

(c) * * *

(4) Three Type II or Type III flashlights constructed in accordance with ASTM F1014–1986.

* * * * *

PART 160—[AMENDED]

18. The authority citation for Subpart 160.051 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

19. In § 160.051–7 paragraph (c)(4) and (d)(2) are revised to read as follows:

§ 160.051–7 Equipment.

* * * * *

(c) * * *

(4) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced at each servicing of the liferaft.

* * * * *

(d) * * *

(2) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced at each servicing of the liferaft.

* * * * *

PART 161—[AMENDED]

20. The authority citation for Part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104; 49 CFR 1.46.

21. Subpart 161.008 consisting of §§ 161.008–1 through 161.008–8 is removed.

PART 192—[AMENDED]

22. The authority citation for Part 192 continues to read as follows:

Authority: 46 U.S.C. 3102(a), 3306, 3703; 49 CFR 1.46(b), unless otherwise noted.

23. In § 192.20–15 paragraph (j) is revised to read as follows:

§ 192.20–15 Description of equipment for lifeboats.

* * * * *

(j) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 195—[AMENDED]

24. The authority citation for Part 195 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

25. In § 195.35–5 paragraph (c) is revised to read as follows:

§ 195.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed in accordance with ASTM F1014–1986.

* * * * *

26. Sections 33.01–3, 35.01–3, 75.01–3, 77.01–3, 94.01–3, 96.01–3, 108.101, 160.051–0, 192.01–3, and 195.01–3 are added to read as follows:

§ _____ Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table are found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001.

(b) The material approved for incorporation by reference in this part is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103

ASTM F1014–1986 Standard Specification for Flashlights on Vessels, 1986.

August 18, 1987.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 87–22088 Filed 9–24–87; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–374, RM–5726]

Radio Broadcasting Services; Stuart, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition for rule making filed by CRB of Florida, Inc., licensee of Station WZZR(FM), Stuart, Florida, proposing to substitute Channel 224C2 for Channel 224A at Stuart, and to modify its Class A license to specify the new channel. A site restriction 9.2 kilometers (5.7 miles) north of Stuart is proposed for Channel 224C2.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerome S. Silber, Fly, Shuebruk, Gaguine, Boros and Braun, 45 Rockefeller Plaza, Suite 1759, New York, New York 10111.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–374 adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22163 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–376, RM–5839]

Radio Broadcasting Services; Dalton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Calvin R. Means, which proposes to allot Channel 297A to Dalton, Georgia, as a first FM Service.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Perties Gutmann, Pepper and Corazzini, 200 Montgomery Building, 1776 K Street NW., Washington, DC 20006 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.

87–376, adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22166 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–377, RM–5783]

Radio Broadcasting Services; Kekaha, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Timothy D. Martz which proposes to allot Channel 277A to Kekaha, Hawaii, as a first FM service.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerry V. Haines, Wiley, Rein and Fielding, 1776 K Street NW., Washington, DC 20002, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–377, adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22167 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–364, RM–5683]

Radio Broadcasting Services; Wabash, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Conaway Communications Corporation proposing the allotment of FM Channel 290A to Wabash, Indiana as that community's second FM broadcast service.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John L. Tierney, Esq., Tierney & Swift, 1020 19th Street NW., Suite 200, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–364 adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–22160 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–363, RM–5838]

Radio Broadcasting Services; Hampton, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Harold A. Jahnke proposing the allotment of FM

Channel 255A to Hampton, Iowa as that community's second FM service.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Harold A. Jahnke, 421 Central Avenue East, Hampton, Iowa 50441 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–363, adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau

[FR Doc. 87–22161 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–362, RM–5633]

Radio Broadcasting Services; Copeland, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Great Plains Christian Radio, Inc., proposing the allotment of FM Channel 256C1 to Copeland, Kansas as that community's first FM broadcast service.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Southmayd Powell & Taylor, 1764 Church Street NW., Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–362 adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau

[FR Doc. 87–22162 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–381, RM–5934]

Radio Broadcasting Services; Slaton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Williams Broadcast Group, licensee of Station KJAK(FM), Channel 225A, Slaton, Texas, proposing the substitution of Class C Channel 224 for 225A at Slaton, and modification of its license, accordingly. The proposal could provide a first wide coverage area FM station at Slaton. The substitution can be made in compliance with the Commission's minimum spacing requirements from the station's current transmitter site, which is 10.7 kilometers northwest of the city.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John H. Midlen, Jr., Esquire John H. Midlen, Jr., Chartered, 1050 Wisconsin Avenue NW., Washington, DC 20007–3633 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–381, adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

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See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-22165 Filed 9-24-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, 193, and 195

[Docket No. PS-96; Notice 1]

Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities

AGENCY: Office of Pipeline Safety (OPS), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Operators of gas pipelines and associated liquefied natural gas (LNG) facilities and hazardous liquid piplines would be required to report unsafe conditions in addition to the incidents or accidents they currently are required to report. These new reporting requirements were mandated by the 99th Congress in the pipeline safety authorization act for fiscal year 1987, Pub. L. 99-516 (October 22, 1986). The reports are intended to prevent known unsafe conditions from going uncorrected by prompting government intervention, if needed, to avoid the occurrence of an incident of accident.

DATES: Insterested persons are invited to submit written comments in duplicate before close of business on November 9, 1987. Late filed comments will be considered to the extent practicable. However, because of a statutory deadline, final rules will be issued soon after the due date for comments. Therefore, OPS urges commenters not to delay in making their submissions.

ADDRESS: Send comments to the Dockets Unit, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M Furrow, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 3 of Pub. L. 99-516 directs the Secretary of Transportation is issue regulations requiring operators of gas and hazardous liquid pipeline facilities (other than operators of master meter systems) to report certain unsafe conditions, and to provide for discovery of such conditions in their inspection and maintenance plans.

More specifically, the following new reporting requirements were added to section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 App. U.S.C. 1672(a)):

> (3) Not later than 12 months after the date of the enactment of this paragraph, the Secretary shall issue regulations requiring each person who operates pipeline facilities, not including master meters, to report to the Secretary—
>
> (A) any condition that constitutes a hazard to life or property, and
>
> (B) any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facilities.
>
> Reports submitted under this paragraph shall be in writing and shall be received by the Secretary within 5 working days after any representative of a person subject to the reporting requirements of this paragraph first determines that such condition exists. Notice of any such condition shall concurrently be supplied to appropriate State authorities.

In conjunction with these new reporting requirements, Section 13 of the NGPSA (49 App. U.S.C. 1680) was amended by adding the following requirement concerning inspection and maintenance plans: "Such plan[s] shall include terms designed to enhance the ability to discover safety-related conditions described in section 3(a)(3)."

Substantially identical amendments were made respectively to Section 203(a) and Section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 App. U.S.C. 2002(a) and 2009).

Currently, operators of gas pipeline facilities are required by regulations issued under the NGPSA (49 CFR Part 191) to report "incidents." Under these "incident" reporting requirements, operators must telephonically notify OPS of (1) each release of gas or liquefied natural gas (LNG) that involves a death, hospitalization, or property damage of $50,000 or more, (2) each emergency shutdown of an LNG facility, and (3) and other event the operator deems significant. Except for master meter systems and LNG facilities, follow-up written reports are also required. Regulations issued under the HLPSA for operators of hazardous liquid pipelines contain similar reporting requirements for pipeline "accidents" that involve releases of hazardous liquids (49 CFR Part 195, Subpart B).

Under current requirements, therefore, practically all the "incidents" and "accidents" reported to OPS involve releases of gas or hazardous liquid that have had serious or potentially serious consequences. Unsafe conditions that may be precursors of these events are not required to be reported. Pub. L 99-516 changes this situation by mandating that operators also be required to report conditions that potentially could cause "incidents" or "accidents."

Administrative Discretion

Because the statutory language broadly describes the conditions to be reported, Pub. L. 99-516 allows the Secretary discretion to determine, through the issuance of regulations, precisely what conditions are to be reported and under what circumstances. Greater specificity is in fact necessary to avoid overlapping the existing "incident" and "accident" reporting requirements, to eliminate unnecessary reporting of events that do not meet the intent of the law, and to establish a clear, uniform basis for enforcement. Providing for enforcement is important because operators who fail to submit reports as required will be liable for civil and criminal penalties under Section 11 of the NGPSA (49 App. U.S.C. 1679 a or Section 208 of the HLPSA (49 App. U.S.C. 2007).

Legislative History

For insight into the conditions Congress thought should be reported under Pub. L. 99-516, OPS has looked at the situation that led the House Committee on Energy and Commerce to include the new reporting requirements in the fiscal year 1987 pipeline authorization bill, H.R. 4426, which was the forerunner of Pub. L. 99-516. In a short period, a single interstate gas operator had suffered three major pipeline incidents in Kentucky. An investigation of one incident revealed that an employee had discovered a seriously corroded area that eventually failed. However, the employee's internal report of the matter was not acted on promptly. The Committee apparently reasoned that, had there been a legal

obligation to report the corrosion condition to the government, the information might have prompted government intervention in time to assure correction and thus avoid the eventual major incident. (132 Cong. Rec. H6935).

The legislative history of Pub. L. 99–516 in the Senate is consistent with this reasoning. It indicates that the purpose of the reports is to permit State and Federal pipeline inspection officials to review the reported information and investigate the problem to assure that appropriate remedial action is taken. (132 Cong. Rec. 515587).

To avoid a flood of routine reports, however, operators were expected to disclose only "glaring, hazardous conditions which might, if left to linger, constitute an imminent danger," or "potentially cause an incident." (132 Cong. Rec. H6935).

Additional information about the conditions to be reported is contained in "Pipeline Safety Reauthorization," a report by the House Committee on Energy and Commerce to accompany H.R. 4426 (H.R. Rept. 99–779, Part 1, 99th Cong., 2d Sess., 10). The Committee indicated that the reports are for "near accident" or "severe" conditions that are not subject to reporting under 49 CFR Part 191 (and by implication Part 195), and not for "routine replacement, repair or other types of maintenance."

Specifying Reportable Conditions

OPS is proposing that operators report hazardous and other safety-related conditions that occur on pipelines and those LNG facilities that are used to control, process or contain gas or LNG. (See proposed §§ 191.23(a) and (b) and 195.55(a) and (b)). As defined in Parts 191 and 195, "pipelines" are physical facilities through which gas or hazardous liquid moves in transportation, including such things as pipe, valves, compressors, pumps, regulator stations, and liquid breakout storage tanks. Under Part 191 and 49 CFR Part 193, "LNG Facilities" are pipeline facilities used for liquefying or solidifying natural or synthetic gas or transferring, storing or vaporizing liquefied natural gas in conjunction with the pipeline transportation of gas. Among the pipeline facilities to which the Department's safety standards in 49 CFR Parts 192, 193 and 195 apply, OPS believes that "pipelines" and those "LNG Facilities" used to control, process, or contain gas or LNG are the most likely sources of "near accidents."

In determining precisely what conditions should be reported, OPS has considered many conditions that arguably could meet the statutory test of "hazard to life or property." However, OPS is bound by the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) "to minimize the federal paperwork burden" and to "maximize the usefulness of information collected." Therefore, in light of these precepts, and the Congressional intent for reporting, OPS is proposing under §§ 191.23(a)(1)–(7) and 195.55(a)(1)–(6) that only the most severe reasonably identifiable hazardous conditions be reported, subject to the limitations discussed hereafter. Based on its pipeline safety experience, OPS believes these conditions are the ones most apt to result in imminent danger.

Some of these proposed hazardous conditions may fall into the second statutory category of conditions to be reported, "safety-related" conditions that result in a "significant change or restriction in operation." This second category includes conditions characterized by pressure reduction or shutdown occurring either as a direct consequence of the condition or as part of the operator's response to the condition. Therefore, OPS is additionally proposing under §§ 191.23(b) and 195.55(b) that any safety-related condition resulting in reduced operating pressure or shutdown be reported, subject to the limitations discussed hereafter. Since Congress intended that this reporting requirement apply to conditions that could lead to an imminent hazard, the proposed rule only would apply to such safety-related conditions.

Limitations on Reporting

Based on the legislative history, OPS is proposing three limitations on reporting. First, because the reports are intended to identify precursors of gas "incidents" or liquid "accidents," reports would not be required for conditions that are reportable "incidents" or "accidents" or subsequently develop into reportable "incidents" or "accidents" before the condition report must be filed. (See proposed §§ 191.23(c)(2) and 195.55(c)(2)). Since by statute reports of conditions are to be filed within 5 (Federal) working days after their discovery, if on the third day, for example, an unsafe condition were to turn into an "incident" or "accident" requiring a separate report, the condition report need not be filed. This provision would minimize duplicate reporting.

Operators, of course, would have to keep in mind the actual time needed to file a condition report. This generally will mean mail time or time for overnight delivery to assure receipt by the Secretary before close of business on the 5th day, in addition to the time needed for company processing. As a practical matter, therefore, an "incident" or "accident" would have to occur substantially before the filing deadline for operators to avoid filing both a condition report and a subsequent "incident" or "accident" report.

Secondly, the legislative history strongly indicates that the purpose of the condition reports is to incite government action in time to prevent unsafe conditions from turning into an "incident" or "accident." Therefore, OPS has reasoned that the reports are not to be mere vehicles for data collection, but in effect, warning notices of severe conditions requiring prompt corrective action and government attention to assure that such action is taken. Viewing the reports in this light means there is no need for operators to file reports after prompt corrective action has been taken, unless the condition involves corrosion or the corrective action constitutes a "significant change or restriction in the operation" of the pipeline (see duscussion below). Consequently, reports would not be required for conditions other than corrosion that are corrected by permanent repair or replacement before the deadline for filing the condition report. (See proposed §§ 191.23(c)(4) and 195.55(c)(3)). Thus, if after discovering a reportable condition other than corrosion, an operator effects a permanent repair or replacement within 5 (Federal) working days, no report is required. This provision should eliminate a large amount of the potential reporting burden and stimulate operators to promptly correct known unsafe conditions. Again, operators would have to keep in mind the time needed to file a report in judging whether permanent repair or replacement would be completed before the deadline.

Conditions involving corrosion, as described by §§ 191.23(a)(1) and 195.55(a)(1), would have to be reported within 5 working days of discovery regardless of repair or replacement. An exception is not proposed for these conditions, because the existence of corrosion in one location can indicate a more extensive problem in the aggregate that warrants governmental attention.

Making an unsafe condition safe solely by pressure reduction or shutdown (not in conjunction with prompt repair or replacement) would not qualify for an exception from reporting, because Pub. L. 99–516 specifically requires that any safety-related condition that causes a significant

change or restriction in operation be reported. However, OPS does not consider temporary pressure reduction or shutdown in conjunction with prompt permanent repair or replacement of a safety-related condition to be a "significant" change or restriction in operation for which reports are required by the statute.

Finally, OPS recognizes the potential for confusion and dispute over whether the circumstances surrounding particular conditions on pipelines threaten "imminent danger," or are otherwise severe enough to warrant filing a report. Therefore, the proposed reporting requirements have been founded on the assumption that when a specified unsafe or safety-related condition is discovered within a railroad or public road right-of-way, or within 220 yards of any building intended for human occupancy or outdoor place of assembly, the danger is sufficient to make the condition reportable. (The approximate limit of the hazard zone in one of the Kentucky incidents was 200 yards, and 220 yards is a dimension of the class location unit under § 192.5.) As proposed in §§ 191.23(c)(3)) and 195.55(c)(1)), no reports would be required for pipeline conditions found outside such areas. For offshore pipelines, this provision would have the effect of limiting reports to conditions near or on certain platforms and shores. Conditions relating to LNG facilities would be reportable regardless of location because of the greater potential for disaster posed by unsafe conditions proximate to LNG storage tanks.

Alternatively, OPS invites comment on whether the specified conditions for gas and liquid pipelines should be reported regardless of location, even when they occur in remote areas. If adequate justification is presented, the proposed exception under §§ 191.23(c)(3) and 195.55(c)(1) may be deleted in the final rule.

Other Proposed Rules and Amendments

In Part 191, the proposed reporting requirements would be added at the end of the existing rules, with minor word changes to the title of the part and the scope section. By contrast, many of the existing reporting requirements of Part 195 would be revised editorially to distinguish "accident" reporting from "unsafe condition" reporting. In addition to specifying the conditions to be reported, the proposed reporting requirements also set forth, in §§ 191.25 and 195.56, the format and content of the reports. A report form is not considered appropriate because of the descriptive nature of the information to be provided. Further, under §§ 191.7 and 195.58 the addressee for written reports would be amended to require concurrent filing with appropriate State agencies in keeping with the statutory mandate. Amendments are also being proposed to §§ 192.605, 193.2605, and 195.402 to implement the statutory requirements that operators adopt plans to enhance the discovery of safety-related conditions.

Effective Date

As provided by the NGPSA and the HLPSA, new regulations normally take effect 30 days after publication. OPS believes, however, that because this is the first instance of reporting conditions that are precursors to incidents and accidents, operators will need more that 30 days to revise their operating plans, instruct personnel, and otherwise prepare for compliance. Therefore, OPS is proposing that the final rules not become effective until 90 days after publication. More time is not considered necessary given that new reporting requirements are mandatory and that operators may use the time between publication of this notice and the final rule to take preliminary steps toward compliance.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in the following sections: §§ 191.7, 191.23, 191.25, 192.605, 193.2605, 195.55, 195.56, 195.58, and 195.402. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW, Washington DC 20503, Attention: Desk Officer, Research and Special Programs Administration (RSPA). Persons submitting comments to OMB are also requested to submit a copy of their comments to RSPA as indicated above under ADDRESS.

Impact Assessment

This notice is considered to be nonmajor under E.O. 12291 and is a significant rule under DOT procedures (44 FR 11034) because it implements a safety statute passed in response to serious pipeline accidents. The impact of these proposed rules is not considered large enough to warrant production of a draft economic evaluation.

The proposed reporting requirements are estimated to add less than 2 percent to the existing paperwork burden imposed on pipeline operators. OPS specifically requests commenters to address the number of reports they believe would be filed under the proposed rule, and the amount of time, on average, they estimate it would take to prepare those reports. OPS believes that the added burden should be minimal for several reasons: First, except for conditions involving corrosion, operators would have 5 working days after discovery to correct an unsafe condition and thereby avoid reporting it. OPS believes most of the proposed unsafe conditions can be returned to safety within the time frame. Secondly, the reporting burden for conditions taking a longer period for corrective action should be offset to some extent by a reduction in the burden of reporting an "incident" or "accident," since the purpose of the condition reports is to prevent these events from happening. Although the number of unsafe conditions that operators normally would correct after 5 working days before they become "incidents" or "accidents" cannot be estimated precisely, in OPS's experience it should be minimal. Finally, reports would not be required for the numerous small master meter operators or for pipelines located outside certain populated areas.

Because operators are currently required to prepare operations and maintenance plans, which have as their objective the prevention of unsafe conditions, OPS believes that the proposed minor changes to regulations affecting the existing plans should be of minimal impact.

Based on the facts available about the impact of this rulemaking action, I certify pursuant to Section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 191

Pipeline safety, Gas, Reporting and recordkeeping requirements

49 CFR Part 192

Pipeline safety, Gas, Operation, Maintenance

49 CFR Part 193

LNG facility, Operation, Maintenance

49 CFR Part 195

Pipeline safety, Hazardous liquids, Reporting and recordkeeping requirements, Operation, maintenance

In consideration of the foregoing, OPS proposes to amend 49 CFR Parts 191, 192, 193, and 195 as follows:

PART 191—[AMENDED]

1. The authority citation of Part 191 is revised to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. The title of Part 191 would be revised to read as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND UNSAFE CONDITION REPORTS

§ 191.1 [Amended]

3. In § 191.1(a), immediately after the word "incidents" the following would be added:, "unsafe conditions,".

4. Section 191.7 would be revised to read as follows:

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Information Resources Manager, Office of Pipeline Safety, U.S. Department of Transportation, Washington, DC 20590. However, incident and annual reports for intrastate pipeline transportation subject to the jurisdiction of a State agency pursuant to a certification under section 5(a) of the Natural Gas Pipeline Safety Act of 1968 may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt for incident reports and not later than March 15 for annual reports to the Information Resources Manager. Unsafe condition reports required under § 191.23 for intrastate pipeline transportation must be submitted concurrently to that State agency, and if that agency acts as an agent of the Secretary with respect to interstate transmission facilities, unsafe condition reports for these facilities must be submitted concurrently to that agency.

5. Section 191.23 would be added to read as follows:

§ 191.23 Reporting unsafe conditions.

(a) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 191.25 the existence of any of the following hazardous conditions involving facilities in service:

(1) General or localized corrosion on a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength requiring pipe replacement or reduction in operating pressure.

(2) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the structural integrity of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.

(3) Any crack or other material defect that impairs the structural integrity of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.

(4) Physical damage to a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength, such as a dent or gouge.

(5) Pressurization of a pipeline or LNG facility that contains or processes gas or LNG above its relief capacity.

(6) A leak in pipeline or LNG facility that contains or processes gas or LNG which, taking into account its severity, requires prompt repair.

(7) Inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank.

(b) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 191.25 the existence of any safety-related condition, in addition to those listed in paragraph (a) of this section, that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator) a reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG.

(c) A report is not required for any unsafe condition that—

(1) Exists on a master meter system;

(2) Is an incident or results in an incident before the unsafe condition report must be filed;

(3) Exists on pipelines outside any railroad or public road right-of-way, or more than 220 yards from any building intended for human occupancy or outdoor place of assembly; or

(4) Except for a condition under paragraph (a)(1) of this section, is corrected by permanent repair or replacement before the deadline for filing the unsafe condition report.

6. Section 191.25 would be added to read as follows:

§ 191.25 Filing unsafe condition reports.

(a) Each report required by § 191.23 must be filed (received by the Secretary) in writing within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of the operator discovers the condition that must be reported. Separate conditions may be described in a single report if they are closely related.

(b) The report must be headed "Unsafe Condition Report" and provided the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Name and job title of person who discovered the condition.

(5) Date condition was discovered.

(6) Location of condition, with reference to nearest street address, station number, or landmark.

(7) Description of the condition, including circumstances leading to its discovery and any significant effects of the condition on safety.

(8) The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned followup or future corrective action, including the anticipated schedule for starting and concluding such action.

PART 192—[AMENDED]

7. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

8. Section 192.605 would be amended by adding a new paragraph (f) and the introductory text of this section is republished to read as follows.

§ 192.605 Essentials of operating and maintenance plan.

Each operator shall include the following in its operating and maintenance plan:

* * * * *

(f) Instructions enabling personnel who perform operation and maintenance activities to recognize the hazardous and other safety-related conditions that are subject to the reporting requirements of § 191.23 of this subchapter.

PART 193—[AMENDED]

9. The authority citation for Part 193 is revised to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; 49 CFR 1.53.

10. Section 193.2605 would be amended by adding a new paragraph (c) to read as follows:

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§ 193.2605 Maintenance procedures.

* * * * *

(c) Each operator shall include in the manual required by paragraph (b) of this section instructions enabling personnel who perform operation and maintenance activities to recognize the hazardous and other safety-related conditions that are subject to the reporting requirements of § 191.23 of theis subchapter.

PART 195—[AMENDED]

11. The authority citation for Part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

12. The title of Subpart B of Part 195 would be revised to read as follows:

Subpart B—Reporting Accidents and Unsafe Conditions

13. The introductory text and title of § 195.50 would be revised to read as follows:

§ 195.50 Reporting accidents.

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid transported resulting in any of the following.

* * * * *

14. Section 195.54 would be revised to read as follows:

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000–1, or a facsimile.

(b) Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000–1, it shall file a supplemental report within 30 days.

15. Section 195.55 would be added to Subpart B to read as follows:

§ 195.55 Reporting unsafe conditions.

(a) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 195.56 the existence of any of the following hazardous conditions involving pipelines in service:

(1) General or localized corrosion requiring pipe replacement or reduction in operating pressure.

(2) Unintended movement or abnormal loading of a pipeline by environmental causes, such as an earthquake, landslide, or flood, that impairs its structure integrity.

(3) Any crack of other material defect in a pipeline that impairs its structural integrity.

(4) Physical damage to a pipeline, such as a dent or gouge.

(5) Pressurization of a pipeline above its relief capacity.

(6) A leak in a pipeline which, taking into account its severity, requires prompt repair.

(b) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 195.56 the existence of any safety-related condition, in addition to those listed in paragraph (a) of this section, that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator) a reduction in operating pressure or shutdown of operation of a pipeline.

(c) A report is not required for any unsafe condition that—

(1) Exists outside any railroad or public road right-of-way, or more than 220 yards from any building intended for human occupancy or outdoor place of assembly;

(2) Is an accident that is required to be reported under § 195.50 or results in such an accident before the unsafe condition report must be filed; or

(3) Except for a condition under paragraph (a)(1) of this section, is corrected by permanent repair or replacement before the deadline for filing the unsafe condition report.

16. Section 195.56 would be added to Subpart B to read as follows:

§ 195.56 Filing unsafe condition reports.

(a) Each report required by § 191.55 must be filed (received by the Secretary) in writing within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of the operator discovers the condition that must be reported. Separate conditions may be described in a single report if they are closely related.

(b) The report must be headed "Unsafe Condition Report" and provide the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Name and job title of person who discovered the condition.

(5) Date condition was discovered.

(6) Location of condition, with reference to nearest street address, station number, or landmark.

(7) Description of the condition, including circumstances leading to its discovery and any significant effects on the conditon on safety.

(8) The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned followup or future corrective action, including the anticipated schedule for starting and concluding such action.

17. Section 195.58 would be revised to read as follows:

§ 195.58 Addressee for written reports.

Each written report required by this subpart must be made to the Information Resources Manager, Office of Pipeline Safety, U.S. Department of Transportation, Washington, DC 20590. However, accident reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to a certification under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Resources Manager. Unsafe condition reports required under § 195.55 for Intrastate pipelines must be submitted concurrently to that State agency, and if that agency acts as an agent of the Secretary with respect to interstate pipelines, unsafe condition reports for these pipelines must be submitted concurrently to that agency.

18. Section 195–402 would be amended by adding a new paragraph (f) to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(f) *Unsafe condition reports.* The manual required by paragraph (a) of this section must include instructions enabling personnel who perform operation and maintenance activities to recognize the hazardous and other safety-related conditions that are subject to the reporting requirements of § 195.55.

Issued in Washington, DC on September 21, 1987.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 87–22127 Filed 9–24–87; 8:45 am]

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National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 87-09; Notice 3]

Odometer Disclosure Requirements; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of request for extension of comment period.

SUMMARY: This notice denies a request for an extension of the comment period on the notice of proposed rulemaking published on July 17, 1987, regarding odometer disclosure requirements. The comment period was scheduled to close on September 15, 1987. NHTSA received a petition from the American Association of Motor Vehicle Administrators (AAMVA) asking that the comment period be extended. NHTSA concluded that a response representing the comments and concerns of all states would be useful and that NHTSA should have the opportunity to consider such data before proceeding with this rulemaking. Accordingly, the comment period for the notice of proposed rulemaking was extended until September 30, 1987. The American Financial Services Association (AFSA) has requested that the comment period be extended for an additional thirty days so that all of its members have a sufficient opportunity to respond to AFSA concerning the proposed rule which will enable AFSA's legal staff to compile comments. Because the provisions of the Truth in Mileage Act concerning the title of a vehicle and the disclosure of a vehicle's mileage become effective on April 29, 1989, and these provisions will result in changes to many state motor vehicle titling laws and title forms, NHTSA has decided not to grant AFSA's request. Accordingly, the comment period will not be extended.

DATE: Comments for Docket 87-09; Notice 1, are due no later than September 30, 1987.

ADDRESS: Written comments should refer to Docket No. 87-09, Notice 1 and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION: NHTSA published a notice of proposed rulemaking regarding odometer disclosure requirements at 52 FR 27022, July 17, 1987. The comment period for that proposal was scheduled to close on September 15, 1987.

NHTSA received a petition from the American Association of Motor Vehicle Administrators (AAMVA) asking that the comment period be extended for 30 days. The reason offered for the extension was that using the procedural approach AAMVA laid out to analyze and develop a unified response, there would not be sufficient time to meet the closing date for comments.

NHTSA carefully considered this request, bearing in mind the agency's attempt to inform all those involved in selling and leasing motor vehicles and the AAMVA since the enactment of the Truth in Mileage Act about the new law; the provisions of the Act concerning the title of a vehicle and the disclosure of a vehicle's mileage become effective on April 29, 1989; and that these provisions will result in changes to many state motor vehicle titling laws and title forms. Because a unified response might yield some significant comments and NHTSA wanted the opportunity to examine this information before proceeding with this rulemaking, and to allow the interested public more time to analyze the available information, the comment period was extended for an additional fifteen days.

NHTSA has received a petition from AFSA asking that the comment period be extended for an additional thirty days to ensure that all of its members have a sufficient opportunity to respond to AFSA concerning the proposed rule, which will enable AFSA's legal staff to compile comments. NHTSA continues to recognize that a unified response might lead to significant comments. However, due to the time constraints imposed by the Truth in Mileage Act's April 29, 1989 effective date, and because certain provisions of the Act will result in changes in state motor vehicle titling laws and title forms, we must deny the request for an extension of the comment period. Comments filed after the due date of September 30, 1987, will be considered as far as practicable.

Erika Z. Jones,

Chief Counsel.

September 21, 1987.

[FR Doc. 87-22113 Filed 9-22-87; 9:36 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Mid-Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council; Atlantic Billfish Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic and the Gulf of Mexico Fishery Management Councils will hold a series of public hearings and provide comment periods to solicit public imput into the proposed Billfish Fishery Management Plan. Various measures to conserve and manage the resource will be discussed.

DATES: See "**SUPPLEMENTARY INFORMATION**" for dates and locations of the hearings. All hearings will begin at 7:00 p.m. The public comment period on the proposed plan will close November 2, 1987, for the Gulf of Mexico Fishery Management Council and will close November 22, 1987, for the Mid-Atlantic Fishery Management Council.

ADDRESSES: All written comments should be sent to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901-6790; or Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302-674-2331 concerning the hearings scheduled by the Mid-Atlantic Fishery Management Council. Contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 813-228-2815, concerning the hearings scheduled by the Gulf of Mexico Fishery Management Council.

SUPPLEMENTARY INFORMATION: The Billfish Fishery Management Plan was prepared jointly by the Mid-Atlantic, South Atlantic, New England, Gulf of Mexico, and Caribbean Fishery Management Councils. It establishes a management regime for Atlantic billfishes throughout the Atlantic, Gulf and Caribbean exclusive economic zones (EEZs) of the United States. The species addressed by this plan were listed in the notice of public hearings scheduled to be held by the South

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Atlantic Fishery Management Council published September 15, 1987 (52 FR 34825). Hearings scheduled by the New England Fishery Management Council were published September 17, 1987 (52 FR 35119).

The dates and locations of the public hearings scheduled by the Mid-Atlantic Fishery Management Council are as follows:

October 12, 1987—Holiday Inn, 39th and Oceanfront, Virginia Beach, VA

October 13, 1987—Holiday Inn, Route 13, Salisbury, MD

October 15, 1987—South Wall Fire Company, Route 34, Atlantic Avenue, Wall Township, NJ

October 20, 1987—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY

The dates and locations of the public hearings scheduled by the Gulf of Mexico Fishery Management Council are as follows:

October 12, 1987—Best Western Bayside Inn, 711 West Beach Drive, Panama City, FL

October 13, 1987—Mobile Municipal Auditorium, Room G, 401 Auditorium Drive, Mobile, AL

October 14, 1987—Seafood Museum, Highway 90 North, Biloxi, MS

October 15, 1987—Landmark Motor Hotel, 2601 Severn Avenue, Metairie, LA

October 19, 1987—Westin Galleria Hotel, 5060 W. Alabama Street, Houston, TX

October 20, 1987—Community Center, 710 Avenue A, Port Aransas, TX

October 21, 1987—Community Building, 213 Yturria, Port Isabel, TX

October 22, 1987—Holidome Holiday Inn, 2032 NE., Evangeline Thruway, LaFayette, LA

Dated: September 22, 1987.

Richard H. Schaefer,

Acting Director for Fisheries, Conservation Management.

[FR Doc. 87-22201 Filed 9-24-87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Small Business Timber Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: The Forest Service hereby gives notice of a new proposal to govern administration of the Small Business Timber Sale Set Aside Program which would replace the final policy published on June 13, 1985 at 50 FR 24788. The new procedures would: Clarify the definition of structural change; reduce the threshold for structural change qualification from 10 percent to 5 percent of purchased volume during the prior 5-year period; begin the 3-year structural change recomputation period the next full 6-month period following the structural change and implement it the next full fiscal year; increase the length of period from 6 months to 1 year for the log export reporting used in crediting nonmanufacturer volume distribution from open timber sales; eliminate future recomputations of market shares; retain the shares established in the 1986 recomputation, and establish a commitment for review of the program effects in 1991. The agency invites public comment on this latest proposal.

DATE: Comments on this proposal must reach the agency by November 9, 1987.

ADDRESSES: Those wishing to comment on this proposal should submit their views in writing to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090. Public comments received may be inspected during normal business hours in the office of the Director of Timber Management Staff, Room 3207, South Agriculture Building, 14th and Independence Avenue, SW. Parties wishing to view comments are requested to call ahead (447–6893) with their names and time of visit to facilitate their entry into the building.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations at 13 CFR Part 121 and Forest Service Manual Chapter 2430 set forth current policy and procedures for the administration of the timber sale set-aside program on National Forest System lands. The basic objective of the programs is to ensure that small timber businesses have the opportunity to purchase a fair proportion of the sales of National Forest timber.

Public Comment on the Current Policy

On November 21, 1984, the Forest Service published a proposed policy (49 FR 45889) which would change the procedures by which the agency administers the Small Business Timber Sale Set-Aside Program. On June 13, 1985, the Forest Service published their notice of adoption of final policy [50 FR 24788].

The 1985 policy recognized Regional differences in relation to (1) timber supply and demand, (2) dependence on National Forest timber, and (3) market fluctuations in recent years. The policy revised methods for determining small business shares for each marketing area, developed measures to credit volume to small and large businesses for volume purchased by non-manufacturers, limited the maximum amount of timber sale volume set aside in a given period for set-aside sale selection, provided for Regional differences in the manufacturing requirements for set-aside sale volume to be processed in small business manufacturing facilities, and eliminated volume included in the Special Salvage Timber Sale Program (SSTS) from inclusion in the regular timber set-Aside program. On November 5, 1985, a lawsuit was filed which opposed the implementation of the final policy. As settlement of this lawsuit, the Forest Service agreed to a stipulation to reopen the period of public comment to permit response to the final policy. On February 3, 1986, the Forest Service reissued a notice requesting additional comments on the final policy [51 FR 4264]. A correction to that notice was made March 28, 1986 [51 FR 10645].

The Forest Service received about 130 written comments. These came from large and small firms (119), associations representing the interests of each business group (9), one State Forester, and the Small Business Administration.

A summary of the major new comments received follows. The summary does not repeat comments received on the original proposal. Those were discussed fully in the notice of final policy published June 13, 1985 [50 FR 24788].

A. Establishment of Small Business Shares

1. *Structural Change*

The current policy defines structural change. Several reviewers asked for clarification of the definition, expansion of its application, and changed procedures for its use. Comments from both large and small business suggested clarifying whether structural change occurred when small business grew to large business or large business reduced its size class to small business. One small business commented that structural change needs to account for new market entries or mills with expanded production.

Large business felt that structural change provisions which included firms purchasing 10 percent of total sawlog volume or more during the last recomputation period unfairly favored small business because many more small businesses purchase at a level of less than 10 percent than do large businesses. A number of small businesses could change their status in a market area and not be included in the data even though collectively they would represent more than 10 percent. Large business recommended a lower figure of 5 percent to provide greater sensitivity to the structural change recomputation process. One large business asked that, if this minimum threshold were changed, that all FY 1986 structural change recomputations be redone.

The Agency agrees with the need to clarify the definition of structural change and to modity application procedures. The Agency also agrees with the position that the threshold for qualifying for structural change needs to be reduced to 5 percent. The recognition of a firm that purchased 5 percent of total sawtimber during the last recomputation period will add greater sensitivity to the structural change mechanism. Under the new proposal

two conditions would determine structural change:

1. Change in the size class of the firm(s), including purchase of one size class firm by another, internal growth by small business, purchase or merger of two or more small business firms, or shrinkage of a large business to small business.

2. The discontinuance of a firm's operation within the market area. When one or both situations occur, the affected firms must have purchased at least 5 percent of the total sawlog volume during the previous 5-year period which begins with the complete six-month period immediately preceding the structural change.

The agency disagrees that structural change occurs when a small business firm adds production but remains small, or when an intirely new entity enters the market area. Such a firm must compete within the share established by existing small businesses. The objective of recognizing structural change is to make market share adjustments to account for changes in the size class composition of those active in the market area. It is not to give an unearned advantage to an outside firm which wants to begin operations in a market area.

The agency disagrees with the suggestion that it should recompute 1986 shares if the minimum threshold is changed. The 1986 market shares were based on the procedures in effect at that time and were to be in effect for 5 years. Recomputation at this time would be disruptive to operations of large and small businesses alike.

2. Limit on Shares

Shares refer to the percent of timber volume sold by the Forest Service within a given market area that is reserved for preferential bidding by small businesses. Reviewers essentially supported the current policy which established an 80 percent upper limit and ½ of the share established in 1971 as a lower limit. Of the three comments suggesting a change, one commented on the need to set a basic floor; another wanted the same difference for the lower limit as for the upper limit; and one agreed with the 80% upper limit but wanted flexibility to better utilize National Forest timber. The current lower limit offers a minimum level of protection to small business, while the upper limit of 80 percent was designed to define the maximum level for a proportionate share and to offer enhanced opportunities for better utilization of both expanded market area volume opportunities and of materials not commonly utilized by small business. The Agency will retain the lower and upper limits defined in the current policy.

3. Recomputation of Shares

Current policy contains a complex procedure for recomputation of small business shares at 5 year intervals. Comments from small business generally supported continuance of the June 13, 1985 policy. Large business comments were opposed on the basis that with protection from competition on set-aside timber sales small businesses were free to compete aggressively on open sales and to increase their market share at each successive recomputation. This concern was most strongly expressed by respondents in the western Regions. Comments from both classes pointed out that the procedures seemed overly complex.

The Forest Service has decided that future scheduled recomputations should not occur in western Regions. Under the proposed policy, current shares would remain in effect. Future recomputation would be limited to the redefined structural changes within a market area and special recomputations as defined in the current policy. The Forest Service intends to proceed with the planned 2-year study on computation of shares for Regions 8 and 9 and will continue that study which would identify procedures for recomputation in those Regions.

B. Future Share Changes

(1) Recomputation Due to Structural Change

Under the current policy, shares are recomputed 3 years after a structural change. Large business reviewers generally supported a rapid transfer of the equivalent share of the firm changing size class or going out of business. Under their range of proposals, this recomputation would occur from immediately, to a priod of 12 to 18 months, following the change in structure. Small business uniformly supported the current policy, except for three reviewers who felt some provision should exist to reduce the small business share in the situation in which small businesses became large through internal growth or acquisition of other firms. These reviewers favored a prompt reduction in the small business share.

The Forest Service disagrees with the concept of immediate transfer of the equivalent share. This places a share related value on the purchase and harvest volumes of a firm undergoing structural change. The small business share could be dramatically reduced through purchase of small businesses by large. The Agency also disagrees with the premise that a small business, having had the protection of the Small Business Act, should immediately reduce the small business share when the firm changes size class to large. Under existing procedures, such a firm which grows internally to a large business may process volume it purchased as set-aside sales. The current policy for recomputation after 3 years would be retained.

(2) Special Recomputations

Having received no major comment, the agency would retain the policy on special recomputations which would occur under unique circumstances and when agreed to by the Forest Service and the Small Business Administration.

C. Purchases by Non-Manufacturers

Non-manufacturers are loggers or timber purchasers that do not own facilities for manufacturing logs into lumber or do not qualify as small or large timber businesses as defined in current policy. The policy affecting allocation to the large or small businesses that do manufacture their purchases of timber varies in different regions and is based on the conditions in those regions.

1. Regions 8, 9, and 10

The current procedure for allocating purchases by non-manufacturers to large and small businesses is based on the anticipated size of the processor.

Comments received supported the adopted policy.

The Forest Service proposes to retain the current procedure. Part of the planned Forest Service-Small Business Administration study of Regions 8 and 9 will include review of this procedure and evaluation of alternatives which may more accurately identify delivery source.

2. Regions 1–6

The current policy credits harvest volumes to small or large business based on actual deliveries to them from the open sales purchased by non-manufacturers.

A few comments supported the adopted policy and no other specific comments were received. However, since adoption of this policy, the Forest Service has changed procedures for export control reporting from a 6-month basis to an annual basis. Accordingly, the proposed policy will reflect annual reporting as the basis crediting sale volume purchased by non-manufacturers based on harvest records of delivery derived from the export control reporting.

Use of a 2-year rolling average, updated annually, will develop the percentage of sawtimber which non-manufacturers deliver to each manufacturer size class.

D. Triggering of Set-Aside Sales

When small businesses are unsuccessful in purchasing the established share of timber volume by more than ten percent, a portion of sales offered are set-aside for preferential bidding by small businesses. This situation is referred to as triggering.

1. The proposed policy retains current procedures for triggering a set-aside program when small business firms fail to purchase their share by 10 percent or more.

No comments supported changing this aspect of the current policy; therefore, the Agency has retained it in the new proposal.

2. The current policy includes a process for setting aside a volume of timber equal to the small business share plus the accumulated deficit volume. However, at least 20 percent of the timber volume in each 6-month period consists of open sales.

Comments reflected uniform support by small business and uniform opposition by large business. Large business advocated setting aside only the deficit volume when set-aside sales were triggered. They felt that small business deserved the opportunity to purchase the volume of their share which was in deficit from the prior period but should not get preferential opportunity to bid upon their proportionate share of the forthcoming 6-month sale program plus the deficit. The Forest Service continues to maintain that setting aside both the share plus the deficit rapidly eliminates the trigger situation. Analysis has shown that setting aside only the deficit volume can lead to continuous periods of set-aside sales. The current policy provides additional purchasing opportunities for large business by permitting elimination of the deficit volume over two 6-month periods when necessary. In the absence of factual information that refutes agency analysis, the process of setting aside the small business share and the accumulated deficit is retained in this proposal.

E. Selection of Set-Aside Sales

This policy received little additional specific comment. A few large business respondents favored sale selection solely by the Forest Service. The Agency feels that participation by the SBA representative will result in a timely selection and agreement of set-aside sales.

The proposed policy would continue the current procedure where the Forest Supervisor selects set-aside sales with the concurrence of the local SBA representative.

F. Manufacturing Requirements on Set-Aside Sales

The current policy establishes a percent of timber volume that purchasers of set-aside sales may deliver to large businesses that varies in different regions. Comments did not suggest change; therefore, the Agency would continue this policy.

G. Special Salvage Timber Sale Program (SSTS)

Comments did not suggest change; therefore, the agency would continue current policy. The Forest Service will not include the SSTS program volume in its operation of the regular set-aside program.

H. Review of Program

Even though the agency is proposing revisions in the timber sale set-aside procedures, the Forest Service still plans to review the set-aside program in 1991, after the current program has been in effect for a period of time, to determine whether the program is performing as anticipated when the current changes were made. A large number of the concerns expressed in the comments were based on uncertainty as to what the effects will actually be. The forest products industry is still restructuring as a result of the severe market slump of the early 1980's. Sufficient time must be allowed for the industry to stabilize and operate under the established procedures before the effects of the policy changes can be determined. The review will occur after enough time has elapsed to permit judgments to be made on the actual effects of this policy.

Therefore, based on consideration of comments received on the existing policy, the Forest Service proposes to revise its current timber sale set-aside program procedures. If adopted the changes would be issued as an amendment to section 2436 of the Forest Service Manual and the Sale Preparation Handbook (FSH 2409.18) containing informational and instructional material. For ease of presentation and review the full text of the proposal is set forth at the conclusion of this document.

Impacts

This proposed policy has been reviewed against the objectives and criteria of Executive Order 12291. These changes in the set-aside policy will not result in any of the economic or regulatory impacts associated with a major rule. This revision is not expected to have an annual effect on the economy of $100 million or more and would not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this proposed policy would not have significant economic impact on a substantial number of small entities. The proposal, if adopted, would continue to protect the interests of small business timber industry firms and to assure them of the opportunity to obtain a fair proportion of National Forest timber sales. The proposal would require the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This proposed policy will not significantly affect the environment. Therefore, an environmental impact statement would not be prepared. Furthermore, the proposal will not result in additional information collection requirements, therefore, it is not subject to review under the regulations at 5 CFR 1320 which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The policy revises procedural methods of conducting and administering the Small Business Timber Set-Aside Programs in response to a Forest Service-SBA Joint Review of the Small Business Timber Sale Set-Aside Program which identified key procedures in the current program which needed revision in order to make the set-aside program operate more effectively. Substantial public involvement with associations representing both timber industry size groups, individuals from both large and small business firms, and from government entities helped shape the initial proposed changes. As noted above, substantial comments on previous proposals have been published in the **Federal Register**. These comments as well as those received more recently on the current policy have influenced the changes in this proposal.

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Associate Deputy Chief, Programs and Legislation.

Proposed Timber Sale Set Aside Program Policy and Procedure

Note—The proposed policy and procedures will at the final stage be divided into direction appropriate to the Forest Service Manual, Chapter 2430, and Chapter 90 of the Sale Preparation Handbook. For ease of review it is presented as one document.

Authority

Basic authority of the Department to participate in programs with the Small Business Administration is found in the Small Business Act (15 U.S.C. 631). SBA rules applicable to administration of the small business timber sale set-aside program are set forth in 13 CFR Part 121. Forest Service rules governing award of small business set-aside sales are at 36 CFR 223.102.

Objective

The objective of the Department's participation in the Small Business Timber sale Set-Aside Program is to ensure that small business timber purchasers have the opportunity to purchase a fair proportion of the sales of National Forest Timber.

Policy

The Department endorses the declared policy of the Congress that small business should have the opportunity to purchase a fair proportion of timber sales from National Forest lands. National Forest administrators shall cooperate with Small Business Administration representatives in meeting the spirit and objectives of the Small Business Act. National Forest administrators shall apply the operational instructions pertaining to the implementation of this policy that are contained in FSH 2409.18.

Responsibility

1. *Regional Forester.* The Regional Forester is responsible for ensuring consistency between Forests in the application of the timber sale set-aside program and for resolving conflicts, appeals, and disputes which elevate to the Regional level.

2. *Forest Supervisor.* The Forest Supervisor is responsible for scheduling, coordinating, and conducting the timber sale set-aside program at the Forest level.

Definitions

1. *Small Business.* The Small Business Administration defines a small business (13 CFR Part 121) as a concern that:

(a) Is primarily engaged in the logging or forest products industry.

(b) Is independently owned and operated.

(c) Is not dominant in its field of operation.

(d) Does not employ, together with its affiliates, more than 500 persons.

(e) Agrees that it will not sell, trade, or a combination of sell and trade to a concern that is not a small business within the meaning of this paragraph more than a specified percent of such timber in each Region as set forth in this policy.

(f) Agrees to manufacture lumber or timbers from such Government logs only at its own facilities or those of concerns that qualify as a small business.

2. *Timber.* Trees in the form of logs as listed in sale contracts or permits, and which are suitable for manufacture into lumber, dimensional timbers or veneer and are normally appraised as such.

3. *Market Areas.* Market areas are the basic units for administration of the timber set-aside program. They generally coincide with logical and feasible administrative units—the National Forest in most instances. Within some Forests, traditional marketing patterns, geographic or topographic barriers, limits of the transportation system, or other factors delineate more than one market area within the Forest. Unless economic factors change substantially, market area boundaries seldom change.

4. *Base Average Share.* The original base average share determination for small business used the small business purchase history for the 5-year period from January 1, 1966, to December 31, 1970. Analysis to determine the base average share was based on a recognizable market area.

5. *Manufacturer.* A manufacturer is a concern with an existing sawmill, specialty mill (such as cedar mill, shingle mill, shake plant, or pole plant) or veneer manufacturing facility within an economic or logical haul distance, or with firm commitments and permits for construction of such a facility.

6. *Nonmanufacturer.* A nonmanufacturer is a concern:

a. Which manufactures, with its own or leased facilities, or contracts for manufacture less than 50 percent of its annual sawlog purchases within an economic or logical haul distance to such facilities.

b. That does not have the capacity to manufacture 50 percent or more of its average annual sawlog purchases because of factors such as timber species or size or specialized nature of the mill.

c. Purchases National Forest timber outside an economic and logical haul distance to its manufacturing facility.

d. Which purchases sales with a sawtimber component when it has no manufacturing facility for lumber, dimension, or veneer.

7. *Deficits and Surpluses.* These represent the accumulated volume which results from the difference between the small business market share of timber sawtimber volume sold and the volume actually purchased or credited to small business firms. These deficit and surplus volumes guide operation of the 6-month timber sale set-aside program.

8. *TRIGGER.* A small business set-aside program is initiated ("triggered") on a market area when the cumulative deficit volume of small business purchases exceeds by 10 percent, the small business share of volume sold during the current 6-month period.

9. *Structural Change.* A structural change is a collective change in the size status of firms operating in a market area. To be included in the definition of structural change the firm must have purchased 5 percent or more of the timber sold in a market area in the preceding 5 years and must have changed size class or discontinued operation in the market area. To be included in the definition of structural change the firm must have purchased 5 percent or more of the timber sold in a market area in the preceding 5 years and must have changed size class or discontinued operation in the market area.

10. *Share Percentage Points.* When the small business share changes in a market area, the change results in a change in "share percentage points." For example, the small business share may change from 45 percent to 50 percent of the timber sale program within a market area. This would represent a change of five share percentage points.

Establishment of Small Business Limit on Market Share. The small business share in any market area shall not exceed 80 percent nor decrease to less than 50 percent of the original base share established in 1971.

Recomputation of Small Business Share. Regularly scheduled recomputations will no longer be made in western Regions. The shares computed in FY 1986 shall be used unless a structural change or special recomputation occurs. In Regions 8 and 9, future recomputation procedures will be proposed following completion of the two year study now in progress.

Market Areas. Forest Supervisors, upon consultation with the Small

Business Administration representative and approval of the Regional Forester, may change market area boundaries. Documentation must support such a proposal. The definition of market areas identifies some of the factors which create them. Changes may be needed when a significant change in the Forest transportation system joins two previously separate market areas, or when a major purchaser discontinues business, and firms from outside the market area begin to routinely operate within it. The Forest Supervisor shall solicit views of firms operating within the market areas affected before submitting a proposal to change boundaries to the Regional Forester for approval.

The Forest Supervisor must accomplish a boundary change so that the weighted average recomputed share of all the market areas remains unchanged. The action must compare the results obtained with or without the boundary change. In a simple case of combining two market areas, the comparison would look like Exhibit 1. Another example, Exhibit 2, shows realignment of four market areas into three.

EXHIBIT 1

Market area	Average periodic sale program	Recomputed share	
		Percent	Volume
A	200	50	100
B	*100*	*80*	*80*
X (A+B)	300	60	*180/300=60%*

The new share for the combined area is 60 percent.

EXHIBIT 2

Market area	Average periodic sale program	Recomputed share	
		Percent	Volume
A	200	50	100
B	100	75	75
"OLD" C	150	30	45
D	*75*	*40*	*30*
Total and average	[1] 525	48	[2] 250
X	220	60	132
"NEW" Y	180	43	78
Z	*125*	*32*	*40*
Total and average	[1] 525	48	[2] 250

[1] These figures must agree.
[2] These figures must agree.

Recomputation Due to Structural Change. Small business shares shall be recomputed following structural change. The objective is to provide small business firms the opportunity to maintain their historical share when a firm changes size, class but to adjust shares to reflect the purchase and harvest patterns which actually develop. Recompute small business shares approximately 3 years after a structural change occurs, based on the purchase and harvest history for the 3-year period. Use data beginning the full 6-month period following the structural change. When a change is indicated after the three year period, make the new shares effective at the beginning of a fiscal year. The necessity for the recomputation of shares due to structural change will be determined by the Forest Supervisor, in consultation with the SBA representative.

There are two conditions that will determine structural change:

a. Change in the size of the firm(s).

b. Discontinuance of the operation of the firm(s).

To be considered, the firms must have purchased 5 percent of the timber sold in the preceding 5 years. In making decisions concerning structural changes, judgment must be exercised about what constitutes "discontinued operations." A mill closing must be carefully evaluated in terms of intent to resume operations. Cessation of operations due to natural disasters beyond the control of a firm must be evaluated in terms of the declared intent to reconstruct and resume operations. A firm with two mills in a market area may close one mill or may close both but use a mill in an adjacent market area to process timber from the first market area. Neither of these circumstances represents structural change.

Special Recomputation. Unique situations may develop which require special recomputations and departure from the established procedure. In such cases, the Forest Supervisor, in consultation with the SBA Representative, may propose procedures necessary to adapt to the situation. The Forest Supervisor shall solicit the views of firms operating within the market area before submitting a proposal for special recomputation.

Review of Program. The Forest Service shall review the timber sale set-aside program in 1991 to determine whether the program is performing as anticipated when the current changes were made.

Operation of the Regular Set-Aside Program

Semiannual Analysis. The Forest Supervisor shall prepare a semiannual analysis of the set-aside program for the first and last 6 months of each fiscal year, for each market area on the Forest. Summarize data, using Form FS–2400–31, Cumulative Set-Aside Program Analysis.

Crediting of Sales Volume. The Forest Supervisor shall credit timber sale sawtimber volume to the size class of the initial purchaser at the time of the timber sale bid, except that:

1. Sawtimber volume from set-aside sales on which no self-certified small business bids were received and that were purchased without readvertisement, or with advertisement under the same terms, by a large business firm or small business firm that did not self-certify shall be credited to small business for 6-month analysis. If a small business firm elects to purchase a set-aside sale after neither small or large business entered bids at the initial offering, credit the volume to small business. Set-asides shall not be increased later by volumes in which small business was not interested. If set-asides sales or the reoffering of such sales are not bid upon by either size class firms the volume shall not be included in the 6-month analysis.

2. Where a small business nonmanufacturer purchases sawtimber volume from set-aside sales, credit 100 percent to small business, although, in most market areas they may deliver a portion of advertised sawtimber volume to a large business firm. Do not include special salvage timber sales. Distribute sale volumes for all but excepted sales by small and large purchasers. Excepted sales may include those in urgent need of harvesting, sales under $2,000 in advertised value, sales within some Federal sustained-yield units and those sales included in the Special Salvage Timber Sale (SSTS) program.

Include sales under $2000 in advertised value in the semiannual analysis only when they form a substantive portion of the sale program over a historical period of time.

Allocate volume for 6-month analysis purposes which nonmanufacturers purchase from open sales. At the end of each 6-month period, sale award may not occur until the next period for reasons such as size protests, appeals, lawsuits, or election of Government road construction. In such instances, use the bid date in preparation of the semiannual analysis. Credit volumes to the size class of the successful bidder on

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the bid opening date. In instances where the purchaser successfully bids and receives credit for a sale, but does not consummate or receive sale award because of factors such as appeals, litigation, or failure to obtain a small business road option contract, the Forest Supervisor shall make a retroactive adjustment of the semiannual analysis for the current and one preceding semiannual analysis period. Compute the accumulated sale volumes and percentages for each 6-month analysis period by rounding to the nearest whole percent, except that .5 is to be rounded to the nearest whole even percent (19.5 and 20.5 both round to 20 percent).

The Forest Service may find that a concern changed its size status prior to actual knowledge of change or the Small Business Administration determination of such change. During affected periods, incorrect crediting of purchases by that firm occurred. Make corrections for the current semiannual analysis period and for the one semiannual analysis period preceding the determination. Such retroactive adjustment shall not include any semiannual analysis periods in which the Small Business Administration makes a final determination of size. Forest Supervisors shall delay award of set-aside sales to allow the Small Business Administration to process size class protests and appeals to the Office of Hearings and Appeals. Do not retroactively change volume credited in previous semiannual analysis periods as a result of purchase history reviews, except as noted herein.

Distribution of Nonmanufacturer Volume. Distribute nonmanufacturer volume by size class for purchasers during each semiannual analysis period at time of bid. Use the following procedure to complete 6-month analysis.

1. For Regions 8, 9, and 10, continue to follow the procedures historically used for distributing nonmanufacturer volume for open timber sales. If possible, determine where the nonmanufacturer delivered sawtimber for manufacture. If data is not available, consult with purchasers to establish delivery patterns. As a last resort use a standard formula for distribution based on the last recomputation data.

2. For all other Regions, use a 2-year rolling average, updated annually, to develop the percentage of sawtimber which nonmanufacturers deliver to each manufacturer size class. For each 6-month period, apply the calculated percentage to open sale volume purchased by nonmanufacturers to develop the volume accrued to small business in order to determine set-aside needs for the next 6-month period. Use Form FS–2400–46, Purchaser Certification of Timber Domestically Processed and Exported, to determine the source of sawtimber delivery of nonmanufacturers open sale purchases to each manufacturer size class. These reports are due annually and they form a reasonably current data base for use in crediting volume. Do not credit special salvage timber sales volume.

Initiating Required Set-Aside Program. The Forest Supervisor shall initiate a set-aside sale program when the accumulated volume deficit to date (within the current 6-month period) equals or exceeds 10 percent of the small business share for the past 6-month analysis period.

When a set-aside program results (triggers), the Forest Supervisor shall provide at least 20 percent of the volume in a 6-month period as open sales. In a trigger situation, the Forest Supervisor shall set aside the small business share for the current period and, normally, the deficit volume. The Forest Supervisor may elect two use to 6-month periods to eliminate the deficit volume situation. If not eliminated in two periods The Forest Supervisor shall act to eliminate it in each succeeding 6-month period, subject to the 20 percent of open sale volume limitation as long as the accumulated deficit exceeds the trigger volume.

When a set-aside sale program triggers, individual sale volume makeup may make it impractical to provide the exact volume for the period. Forest Supervisors may consider this factor when selecting set-aside sales.

Variation from Required Set-Aside Program. The Forest Supervisor, upon consultation with the Small Business representative, may establish or eliminate set-aside sales if determined appropriate under the Small Business Act. Such variances shall require documentation.

Selecting and Scheduling Set-Aside Sales. The Forester Supervisor shall initiate the selection of tentative set-aside sales early enough to reach agreement with the local Small Business Administration representatives 60 calendar days prior to the start of the next 6-month period.

Sale Selection. As each 6-month period progresses, the Forest Supervisor will assess the potential need for set-aside sales in the next 6-month period. If it appears that set-asides may be triggered, the Forest Supervisor will reach agreement with the local SBA representative on tentative set-aside sales. Following consultation with the SBA representative, agreement on tentative set-aside sales shall be documented in writing. When the actual volume needed for the set-aside program is established, the Forest Supervisor will list enough sales from the tentative selection to meet the required program on SBA Form 441, Joint Set-Aside for Small Business Timber, and secure the SBA representative's signature on that document. The executed Form 441 establishes authority for advertisement of the listed sales as set-asides. The Forest Supervisor will announce both the tentative and final selection of set-aside sales.

Avoid changes on departure from announced programs because of the need for prospective bidders to examine proposed sales during accessible periods. If the Forest Supervisor cannot offer specific sales, as agreed, or the program requires additional sales to meet the actual set-aside program, the Forest Supervisor shall select alternative sales in consultation with the Small Business Administration representative.

In selecting set-aside sales, the Forest Supervisor and Small Business Administration representative should consider the following:

1. The allowable sale quantity determined in the forest plan and the annual budget for the Forest control the level of timber offerings.

2. The business and timber supply needs of local forest industry enterprises that draw on National Forests for supply control the size and nature of sales that can be purchased.

3. Timber supply decisions and policies that may lead to timber allocations to individual companies or specific communities are to be avoided.

4. Multiple-use objectives may limit the volume of timber offered for sale at any particular time or place.

5. A variety of sale size classes, terms, and quality are needed to meet the range in demand represented by possible purchasers.

6. The type of material needed by small business and the capability of small business to operate the sales are critical factors.

7. The bidding system for set-asides should be the same as for other sales offered in the area.

Exclusion of Sales from Set-Aside Program. Forest Supervisors, after consulting with the Small Business Administration representative, and obtaining approval of the Regional Forester, may exclude sales from the set-aside program when unusual circumstances disrupt the planned sale program. These include sales in urgent need of harvesting because of a natural disaster or large volume sales which disrupt the normal sale pattern. The Regional Forester shall grant such

exceptions only when strict adherence to standard procedures would substantially delay rapid and orderly removal of timber in urgent need of harvesting or cause the spread of insects. The Forest Supervisors shall make appropriate adjustments in purchase history for operation of the 6-month program analysis.

If sales are in urgent need of harvesting, immediately refer disagreements over inclusion or exclusion from the set-aside program to the Chief for resolution.

Sale Selection Disputes

1. It is the intent of the sale selection process to reach agreement with the Small Business Administration. If agreement does not occur, the Small Business Administration may apply for review at higher levels in the Forest Service. Withhold advertisement of a disputed sale until the dispute is resolved.

2. The Regional Forester shall investigate, consult with the Small Business Administration, and arrive at a decision. If the matter is not satisfactorily resolved at this level, the Regional Forester or the Small Business Administration representative may submit the issue to the Washington Offices of the two agencies for resolution in a timely manner. Following review by both agencies, the Chief shall make the decision.

Special Salvage Timber Sale Program. The special salvage timber sale program operates as a joint program administered by the Forest Service and the Small Business Administration. It provides for preferential award to loggers and forest products concerns qualified under size standards promulgated by the Small Business Administration of certain salvage sales funded under section 14(h) of the National Forest Management Act of 1976. Forest Supervisor's shall not include sale volumes from sales set aside under the special salvage timber sale program in the 6-month analysis.

Special Salvage Sale Program. The Small Business Administration, under authority (see FSH 2436) of the Small Business Act, has established a small business size standard that defines firms eligible for preferential award of special salvage timber sale offerings. The program operates independent of the regular timber sale set-aside program.

Purpose. The National Forest Management act authorized the establishment of a revolving fund to cover the cost of preparing and administering sales of insect-infested, dead, damaged, or down timber. The intent of this fund is to provide for increasing the sales of such timber. The special salvage timber sale program operates on a portion of the additional volume of timber funded under this authority.

Eligible Firms. Under the special salvage timber sale program a small business is a concern that (13 CFR Part 121):

1. Is primarily engaged in the logging or forest products industry.
2. Is independently owned and operated.
3. Is not dominant in its field of operation.
4. Together with its affiliates, its number of employees has not exceeded 25 persons during any pay period for the past 12 months.
5. Will accomplish a significant portion of the logging operation, exclusive of hauling, with its own employees.
6. Will manufacture a significant portion of the logs with its own employees and will accomplish the logging of the timber, exclusive of hauling, with its own employees or will subcontract such logging only to concerns eligible for preferential award of a special salvage timber sale.

Eligible Sales. When sales meet all of the following criteria, the Forest Supervisor may set them aside for preferential bidding by small business:

1. Salvage sale funds predominately finance sale preparation activities. Eligible sales may include material such as cedar products, even though salvage sale funds did not finance preparation. Where a mix of appropriated and salvage sale funds finance sale preparation, salvage sale funds must comprise more than 50 percent of the estimated preparation cost.
2. The sale period does not exceed 1 year. For a sale sold part way through a logging season, the sale period may extend through the following operating season.
3. The sale involves only minor road construction or reconstruction. Minor means less than $10,000 in value.
4. The sale does not involve significant catastrophic damage, such as fire or windstorm.

Generally, set-aside salvage sales meet the above criteria, unless experience demonstrates that competitive bidding by small loggers and small forest products firms will not occur. Prepare and offer smaller sales suitable for completion in the time period described above and which loggers of average capability in the area can complete in time. Offer larger sales, provided the logging firms of average capability in the area can complete them in time.

Avoid larger sales suitable for logging by a limited number of operators in the area in order to prevent allocation to individual firms. When significant fire, windstorm, or other catastrophic losses occur, the circumstances may require the total capacity of the industry to salvage the timber in a timely manner. Therefore, eliminate such sales from set-aside under this program. A significant catastrophic loss results from a single, identifiable event that affects more than 10 percent of the volume planned for sale on the affected Ranger District within any 6-month period, or 1 million board feet, whichever is less. As a general rule, manage the size of the program in any locality to the existing capability of the local qualifying firms.

Sale Selection Process. Forest Supervisors administering salvage sale programs shall, after considering advice from the Small Business Administration representative, select set-aside sales for preferential bidding by concerns with less than 25 employees. The Forest Supervisor shall notify the Small Business Administration representative, using SBA Form 441, Joint Set-Aside for Small Business Timber, to document the selection process. In appropriate situations, the Forest Supervisor may lump several sales and list the expected special salvage sale volume for the period. The Small Business Administration representative shall sign and return a copy of SBA Form 441 to indicate concurrence in the selection.

In the event the Small Business Administration representative disagrees on whether or not to set aside a proposed sale, refer the matter promptly to the Regional Forester for review. Because of the need for prompt action on salvage sales, failure of the agencies' representatives to agree should not result in delay of the sale. Lacking agreement, advertise the sale as an open sale. However, if the Small Business Administration representative or the Regional Forester believes that the disagreement involves policy issues relating to the operation of the program, either may seek review of the policy issues, without delay of the particular sale, by higher authorities within the agencies. If the parties agree to a set aside, and the Forest Supervisor later finds the sale no longer advisable, or proposes a new sale after agreement on the 6-month program, the Forest Supervisor shall consult with the Small Business Administration representative, following the same procedures as outlined above.

Contract Conditions. Contracts for special salvage timber sales shall not require the purchaser to provide the

Forest Service with an accounting of log deliveries by 6-month periods. The contract shall require the purchaser to make records, including payroll, available to the Forest Service and the Small Business Administration to verify eligibility for participation in the program. Purchasers of special salvage timber sales may sell the logged volume to other firms irrespective of their size class.

Program Administration

Award of Set-Aside Sales. Delay award of all set-aside sales 5 working days to allow for protest of size class. The Forest Service has no authority to shorten this procedure.

Mergers and changes in a concern's organization make it difficult to know the current size status of every prospective bidder. Include a self-certification form with the bid form for each set-aside sale.

Under Small Business Administration regulations, accept the self-certification unless:

1. The Contracting Officer or another interested party protests within 5 working days of the bid date.

2. The Small Business Administration has previously declared the firm as a large business for sake of Government timber purposes, and the concern has not obtained a recertification of small business status.

Refer to FSM 2431.79 for procedures which a Contracting Officer may use to determine financial ability of a bidder prior to award of sales to small businesses.

Protests of Size Class. Any interested party may challenge (protest) the small business status of any bidder on a particular set-aside sale by delivering the written protest to the Contracting Officer within 5 working days of bid opening, to ensure consideration by the Small Business Administration. Also, the Contracting Officer may question the small business status of the highest bidder, by sending a written request for a size determination to the Small Business Administration. Any protester must state a factual basis in the written protest.

The Contracting Officer shall promptly forward all written size protests to the appropriate Regional Administrator of the Small Business Administration, and immediately notify the Regional Director of Timber Management and concerned Forest Supervisors of the size protest. The Director will notify other Regions when appropriate. After receipt of a protest, and response thereto, the Small Business Administration shall determine the small business status of the protested bidder and notify the Contracting Officer, the protestant, and the protested bidder of its decision within 10 working days, if possible (13 CFR Part 121).

When the Contracting Officer receives a timely protest, and the sale does not include timber in urgent need of harvesting, delay sale award until the Regional Administrator makes a size determination. However, if the delay exceeds 20 working days following the date the Contracting Officer forwarded the request to the Regional Administrator, the Regional Forester should contact the Chief for advice.

If the sale includes timber in urgent need of harvesting, and the Contracting Officer receives a timely size protest, withhold award. However, the request for a size determination to the Small Business Administration Regional Administrator shall inform the Administrator of the salvage nature of the sale and of the need for a prompt decision. In such cases, if the Small Business Administration does not render a size decision within 10 working days after notifying the Administrator, the Regional Forester should contact the Chief for advice.

Appeals to the Small Business Administration Office of Hearings and Appeals. The Small Business Administration Office of Hearings and Appeals has jurisdiction to consider appeals from formal (written) determinations of a concern's small business size status. Those who may file an appeal include:

1. Any concern or other interested party that has protested the small business status of another concern and that the Small Business Administration Regional Administrator denied.

2. Any concern adversely affected by the decision of the Small Business Administration Regional Administrator or delegate. Small Business Administration regulations (13 CFR 121.3–6) also provide: ". . . Unless written notice of such appeal is received by the Office of Hearings and Appeals before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned."

After formal determination of size class by the Small Business Administration Regional Administrator, delay sale award another 5 days to provide the affected parties the authorized time to exercise their appeal rights. Following this 5 working day period, award the sale if no appeal results, and the Regional Administrator has determined that the high bidder qualifies as a small business eligible for preferential award of the set-aside timber sale.

When a concern appeals the Regional Administrator's decision, it should direct the appeal to the Office of Hearings and Appeals, Small Business Administration, 1441 L Street NW., Washington, DC 20416, Attention: Size Specialist, within 5 working days of receipt or notification of the Decision on the Protest. The Contracting Officer should allow an additional 20 working days, if the additional delay will not disadvantage the Government. If the Office of Hearings and Appeals does not make a determination within this period and notify the Contracting Officer, the Regional Forester should contact the Washington Office for advice. Normally, allow the Office of Hearings and Appeals sufficient time to complete their size review.

In the event award of a set-aside sale results during an appeal of high bidder size class, and the decision declares the purchaser as a large business, the decision applies to the award. The purchaser must meet the small business delivery requirements which apply to the Region containing the market area. Credit the sale to small business for 6-month analysis purposes. Normally delay award until resolution of size class occurs.

The Contracting Officer shall delay award of other set-aside sales to bidders where protest or appeal affects their status until resolution of the protest or appeal results.

After resolution of protests or appeals, the Forest Supervisor shall promptly notify the Regional Director of Timber Management and concerned Forest Supervisors. The Director of Timber Management shall also promptly notify Directors in other Regions as necessary.

Required Delivery of Set-Aside Volume. The required delivery of sawtimber volume to small businesses varies by Region as stated below:

1. In Regions other than Regions 8 and 10, purchasers of set-aside sales may delivery up to 30 percent of advertised sawtimber volume (30/70 rule) to large businesses processing facilities.

2. In Region 8, purchasers of set-aside sales must deliver 100 percent of southern pine sawtimber to small businesses processing facilities. Southern pine species include slash pine, longleaf pine, shortleaf pine, and loblolly pine. For other coniferous species and all hardwood species, purchasers of set-aside sales may deliver up to 30 percent of the total advertised sawtimber volume of all species to large business processing facilities.

3. In Region 10, purchasers of set-aside sales may deliver up to 50 percent of advertised sawtimber volume to large business processing facilties.

Small Business Certification. As a condition of award for a regular set-aside sale, a small business concern must execute SBA Form 723, Small Business Certification or its equivalent. It is required on all preferential sales of set-aside timber (Except Region 8). Provisions for purchase of special salvage timber sales do not require execution of Form 723.

Contract Provisions. The requirements for delivery of set-aside timber volume to small business shall be incorporated in timber sale contracts through appropriate contract provisions. The contract requirements shall bind the purchaser and any successor in interest to the purchaser, whether or not purchaser or a successor remains a small business concern. Third-party agreements must include the required delivery to small business.

Monitoring. The Forest Service shall monitor volume delivery requirements for the regular timber sale set-aside program. The Forest Service will check set-aside sales during the course of sale administration, scaling, log accountability, and review of export control reporting. When the Contracting Officers question operator compliance with certification conditions and delivery requirements, they should notify the Small Business Administration representative for investigation and action. If the Small Business Administration certifies noncompliance, the Contracting Officer will take appropriate action for breach of contract. If a number of contracts are involved or a pattern of noncompliance occurs, the Contracting Officer shall bring the matter to the attention of the Forest Supervisor for recommendation to the Forest Service Debarring Official under 36 CFR 223.130–145.

If, after award of a set-aside sale, a small business concern sells out to, becomes controlled by, or merges with a large business, the entity shall sell an amount of sawtimber volume to one or more small businesses to comply with the applicable volume delivery requirement. Any agreement for return, directly or indirectly, of logs from small to large concerns which does not meet the delivery requirements shall constitute noncompliance. In cases of possible size change status, the Contracting Officer shall ask the Small Business Administration to determine the size status and the date of change.

The sawtimber delivery requirements shall not apply to the manufacture of preferential timber by a small business concern that purchases the set-aside sale, and at a later date exceeds the applicable small business size standard due to internal growth. Internal growth includes an internal increase in number of employees without change of control. Examples of changes of control include those which may occur in the acquisition or merger of small business concerns or in a joint venture in which conditions of the venture bind performance or operation of the subject firm's management or has the power to control it. Also, the delivery requirement shall not apply to a concern certified as small business at time of sale award but later certified as large business. This is provided that large business did not purchase, assume control, or merge with the small business after sale award date. Determinations regarding changes in size of a firm are most appropriately referred to the Small Business Administration for resolution.

To carry out its responsibility under the Small Business Act, the Small Business Administration may conduct reviews of the small business program for the sale of National Forest timber at field offices of the Forest Service. They will give due notice of intention to perform such reviews to the field office concerned and agree upon a time schedule for the review.

[FR Doc. 87–22187 Filed 9–24–87; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting; Gulf of Mexico and South Atlantic Fishery Management Councils

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils' Spiny Lobster Management Committees and Spiny Lobster Advisory Panels will convene a public meeting, October 7–9, 1987, at the Brickell Point Holiday Inn, 495 Brickell Avenue, Miami, FL. The Committees and Advisory Panels will discuss alternative management structures to determine mechanisms for ensuring more compatible state and Federal regulations, and will review alternative limited entry strategies to determine potential applicability to the spiny lobster fishery.

For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Date: September 21, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–22143 Filed 9–24–87; 8:45 am]
BILLING CODE 3510–22–M

Meeting; Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting, October 6–8, 1987, at 11 a.m., at the Council's office (address below) to prepare an annual status of stocks document which the Council will review at its November 18–19, 1987, meeting in Portland, OR.

The Council's Scientific and Statistical Committee will convene a joint public meeting with the Groundfish Management Team to discuss the annual stocks assessments for various groundfish species, October 7, 1987, at 9 a.m., in Salon 1 and 1A of the Ramada Inn at the Coliseum, 10 North Weidler, Portland, OR

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: September 21, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–22142 Filed 9–24–87; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1987 commodities produced by and a service provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 26, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite

1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 26 and July 24, 1987, the Committee for Purchase for the Blind and Other Severely Handicapped published notices (52 FR 24048 and 27841) of addition to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Janitorial/Custodial, Pueblo Army Depot Activity, Pueblo, Colorado

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6

Commodities

Screwdriver, Cross Tip
5120–00–234–8913
Screwdriver, Flat Tip
5120–00–287–2505
5210–00–227–7334
5210–00–222–8866
5210–00–180–3490
5210–00–289–9662
5210–00–278–1273
5210–00–062–8454
5210–00–236–2127
5210–00–293–0314
5210–00–222–8852
5210–00–720–4969
5210–00–260–4837
5210–00–596–9364

C.W. Fletcher,
Executive Director.

[FR Doc. 87–22139 Filed 9–24–87; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1987, Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1987 a commodity to be produced by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: October 26, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodity

Side Rack, Vehicle
2510–00–535–6797

C. W. Fletcher,
Executive Director.

[FR Doc. 87–22140 Filed 9–24–87; 8:45 am]

BILLING CODE 6820–33–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in People's Republic of China

September 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 25, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textile and Apparel, U.S Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consulations have requested call (202) 377–3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of man-made fiber coveralls and overalls in Category 659–C, produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 25, 1987 and extends through September 24, 1988 in excess of the designated level of restraint.

Background

On September 25, 1986, a notice was published in the **Federal Register** (51 FR 34116) which announced the establishment of import restraint limits for certain man-made fiber textile products, including Category 659–C, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on September 25, 1986 and extends through September 24, 1987, pending agreement on a mutually satisfactory solution concerning this category between the Government of the United States and the People's Republic of China. To avoid continued risk of market disruption, the Committee for the Implementation of Textile Agreements, in accordance with section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles, done in Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986; and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, has decided to extend

the restraint level for the twelve-month period which begins on September 25, 1987 and extends through September 24, 1988.

The United States remains committed to finding a solution concering this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 21, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 25, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 659–C,[1] produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 25, 1987 and extends through September 24, 1988, in excess of 333,228 pounds.

Goods shipped in excess of the twelve-month limit established in the directive of September 22, 1986, which began on September 25, 1986 and extends through September 24, 1987 shall be subject to the level set forth in this letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22129 Filed 9–24–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

Announcement of an Import Level for Certain Wool Textile Products Produced or Manufactured in the Republic of Maldives Effective September 29, 1987

September 22, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 29, 1987. For further information contact Kimbang Pham, International Trade Specialist (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports in Category 445/46 during the twelve-month period which begins on September 29, 1987 at the designated limit.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 7 and 19, 1984, as amended and extended, between the Governments of the United States and the Republic of Maldives establishes a specific limit for wool textile products in Category 445/446 (sweaters), produced or manufactured in the Republic of Maldives and exported during the twelve-month period which begins on September 29, 1987 and extends through September 28, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 22, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 7 and 19, 1984, as amended and extended, between the Governments of the United States and the Republic of Maldives; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 29, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in the Republic of Maldives and exported during the twelve-month period which begins on September 29, 1987 and extends through September 28, 1988, in excess of 53,530 dozen.

In carrying out this directive, entries of textile products in category 445/446, produced or manufactured in the Maldives, which have been exported to the United States during the period which began on September 29, 1986 and extends through September 28, 1987, shall, to the extent of any unfilled balances, be charged against the restraint limit established for that period. In the event the limit has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

Administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of

this agreement. Appropriate adjustments will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22130 Filed 9-24-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Licensing System to Include Silk Blend and Other Vegetable Fiber Sweaters in Category 845/846, Produced or Manufactured in the People's Republic of China

September 22, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 28, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated February 23, 1984 (49 FR 7269), as further amended on July 29, 1987 (52 FR 28741), established an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and exchange of letters dated August 28, 1987 between the Governments of the United States and the People's Republic of China, agreement was reached to further amend the existing export licensing system to include the use of export licenses for shipments of silk blend and other vegetable fiber sweaters in merged Category 845/846, excluding merchandise in Categories 845(2) and 846(2) which are assembled in Hong Kong from parts made in the People's Republic of China provided these products have an appropriate export visa from Hong Kong (see 51 FR 27235 and 52 FR 3328, published on July 30, 1986 and February 3, 1987, respectively), produced or manufactured in China and exported on or after August 3, 1987. Shipments classified in these categories and exported from China on or after August 3, 1987 for which the Government of the People's Republic of China has not issued an appropriate export license will be denied entry.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175 May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 22, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended on July 29, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements which established an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China.

Effective on September 28, 1987 and until further notice, you are directed to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber sweaters in merged Category 845/846, excluding merchandise in Categories 845pt.[1] 846pt.[2] If these products have an appropriate export visa from Hong Kong, produced or manufactured in China and exported on or after August 3, 1987 for which the Government of the People's Republic of China has not issued an appropriate export license. Shipments of merchandise in the foregoing categories exported before August 3, 1987 will not be denied entry for lack of an appropriate export license.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22131 Filed 9-24-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 845, only TSUSA numbers 381.3578, 381.6685, 381.9985, 384.2735, 384.5316 and 384.9694.

[2] In Category 846, only TSUSA numbers 381.3574, 381.8554, 384.2733 and 384.7781.

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in options on Australian dollar futures. The application also contains a petition for exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Commission has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 26, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Deputy Director, Market Analysis Section, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed Australian dollar option contract, the Commission also is requesting comment on the merits of a petition filed by the CME pursuant to § 33.11 of the Commission's rules.[1] That petition

[1] Commission Rule 33.11, adopted on August 10, 1987, provides that

The Commission may, by order, by written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provision of this Part, other than §§ 33.9 and 33.10, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

requests exemptive relief for this proposed contract from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> . . . the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application; . . .

As the Commission has previously noted, the numerical volume criterion is meant to ensure that the underlying futures market would not be affected adversely by option trading and to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value. (51 FR 17467) (May 13, 1986)).

The Commission has noted that, in certain cases, it may be appropriate for the Commission to consider the alternative test in § 33.4(a)(5)(iii) with respect to volume in the underlying futures contract. With respect to that alternative test, the Commission stated that

> . . . this provision will be most useful in instances where a newly introduced futures contract or an existing one which begins to exhibit higher volumes than in the past, trades above the 3,000 contract a week level, substantially meeting the required volume level in less than a year. Under this test, the higher the trading volume the less time would be needed to demonstrate a liquid market, but in no event could the test be met until there has been some history concerning deliveries on the contract. (51 FR 17468)

Under the alternative test, the Commission has designated options on futures contract for which there has been less than a full year's trading experience. These cases involved a sufficiently high and sustained level of trading volume in the underlying futures contract to support a reasonable expectation that sufficient liquidity would continue to exist in the underlying futures contract; among other things, in each case under the alternative criterion the underlying futures contract had a trading history of at least six months with several successful expirations, and trading volume was in the range of at least 5,000 contracts per week.

The CME began futures trading on the Australian dollar contract on January 13, 1987, and two expirations have taken place (March and June 1987) without any apparent problems. Between January 13 and the end of August 1987, volume averaged about 1,300 contracts per week. Therefore, the numerical volume requirement has not been met. The Exchange stated that, notwithstanding the trading volume to date, the present level of futures trading activity demonstrates liquidity and that the existence of the proposed option on the Australian dollar futures will enhance this liquidity.

The CME further noted that the Australian dollar futures contract and all other CME foreign currency futures contracts are constantly arbitraged with the underlying cash markets so that "any option trader that exercises into the futures will be bidding and offering in a market that is constantly scrutinized by inter-bank traders for arbitrage opportunities." Finally, the CME indicated that the presence in the market of commercials assures that spreads between the inter-bank forward market and CME futures market will not be pushed out of line to uneconomic levels.

The CME noted in its application that it did not believe that a minimum underlying futures volume level should be a precondition for Commission approval of the proposed option on a futures contract. In this connection, the CME stated that the Commission should "look through" the underlying futures market to the adequacy of the cash market. This approach, according to the CME, would provide for consistent treatment by the Commission in the designation process for options on futures with that for designation of futures contracts and options on physicals.

The Commission continues to believe that option trading should be permitted only when it is unlikely to cause adverse effects on the underlying futures market and when exercise of the option affords a reasoanble opportunity to realize the option's true economic value. The Commission, therefore, intends to move cautiously in granting any exemption from the requirements set forth in §33.4(a)(5)(iii). In this context, the Commission will consider several factors, as discussed below, in determining whether to grant an exemption from the requirements of that regulation as it pertains to options on futures which involve delivery of the physical commoity.[2]

The Commission believes that, at the minimum, the underlying cash market for the commodity must exhibit a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evalaute accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission believes that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the futute.

In requesting comment on the CME's option on Australian dollar futures, the Commission is seeking specific comment on whether it should grant the CME's request for an exemption from the requirements of § 33.4(a)(5)(iii). Commenters are requested to consider the issues noted above. Also, the Commission requests commenters to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for this proposed contract.[3]

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW.,

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[2] With respect to further possible exemptions of option contracts on futures in which the underlying futures contract has not met the volume requirement test, such petitions for an exemption from § 33.4(a)(5)(iii) will be considered on a case-by-case basis.

[3] The Commission notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for trading during a six-month period, no new option contract month may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

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Washington DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the petition and the terms and conditions of the proposed contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on September 21, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22168 Filed 9–24–87; 8:45 am]

BILLING CODE 6351–01–M

Chicago Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in options on gold futures. The application also contains a petition for exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Commission has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 26, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Deputy Director, Market Analysis Section, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed gold option contract, the Commission also is requesting comment on the merits of a petition filed by the CME pursuant to § 33.11 of the Commission's rules.[1] That petition requests exemptive relief for this proposed contract from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> . . . the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application;. . .

As the Commission has previously noted, the numerical volume criterion is meant to ensure that the underlying futures market would not be affected adversely by option trading and to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value. (51 FR 17467) (May 13, 1986)).

The Commission has noted that, in certain cases, it may be appropriate for the Commission to consider the alternative test in § 33.4(a)(5)(iii) with respect to volume in the underlying futures contract. With respect to that alternative test, the Commission stated that

> . . . this provision will be most useful in instances where a newly introduced futures contract or an existing one which begins to exhibit higher volumes than in the past, trades above the 3,000 contract a week level, substantially meeting the required volume level in less than a year. Under this test, the higher the trading volume the less time would be needed to demonstrate a liquid market, but in no event could the test be met until there has been some history concerning deliveries on the contract. (51 FR 17468)

Under the alternative test, the Commission has designated options on futures contracts for which there has been less than a full year's trading experience. These cases involved a sufficiently high and sustained level of trading volume in the underlying futures contract to support a reasonable expectation that sufficient liquidity would continue to exist in the underlying futures contract; among other things, in each case under the alternative criterion the underlying futures contract had a trading history of at least six months with several successful expirations, and trading volume was in the range of at least 5,000 contracts per week.

The CME began relisting delivery months for its gold futures contract on June 16, 1987. During the first five weeks following the relisting of the contract, trading volume averaged over 20,000 contracts per week. More recently, trading volume has averaged approximately 9,000 contracts per week and continues to be significantly above the minimum threshold level of 3,000 contracts per week. Although the cumulative trading volume in the underlying gold futures contract already exceeds the total annual trading volume required by § 33.4(a)(5)(iii) of the Commission's rules, the contract has traded only approximately three months and has had only one expiration (August 1987). Thus, the proposed option currently would not be eligible for designation under either the one-year or the alternative standard of § 33.4(a)(5)(iii).

The CME noted in its application that it did not believe that a minimum underlying futures volume level should be a precondition for Commission approval of the proposed option on a futures contract. In this connection, the CME stated that the Commission should "look through" the underlying futures market to the adequacy of the cash market. This approach, according to the CME, would provide for consistent treatment by the Commission in the designation process for options on futures with that for designation of futures contracts and options on physicals.

The CME also noted that gold futures contracts are constantly arbitraged with the underlying cash markets so that "any option trader that exercises into

[1] Commission Rule 33.11, adopted on August 10, 1987, provides that

> The Commission may, by order, by written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provision of this Part, other than §§ 33.9 and 33.10, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

the futures will be bidding and offering in a market that is constantly scrutinized by gold traders for arbitrage opportunities." Finally, the CME indicated that the presence in the market of commercials assures that spreads between the cash market and the CME futures market will not be pushed out of line to uneconomic levels.

The Commission continues to believe that option trading should be permitted only when it is unlikely to cause adverse effects on the underlying futures market and when exercise of the option affords a reasonable opportunity to realize the option's true economic value. The Commission, therefore, intends to move cautiously in granting any exemption from the requirements set forth in § 33.4(a)(5)(iii). In this context, the Commission will consider several factors, as discussed below, in determining whether to grant an exemption from the requirements of that regulation as it pertains to options on futures which involve delivery of the physical commodity.[2]

The Commission believes that, at the minimum, the underlying cash market for the commodity must exhibit a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active training in the unerlying futures contract, the Commission believes that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.

In requesting comment on the CME's option on gold futures, the Commission is seeking specific comment on whether it should grant the CME's request for an exemption from the requirements of § 33.4(a)(5)(iii). Commenters are requested to consider the issues noted above. Also, the Commission requests commenters to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for this proposed contract.[3]

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the petition and the terms and conditions of the proposed contract, or with request to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on September 21, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22169 Filed 9–24–87; 8:45 am]

BILLING CODE 6315–01–M

[2] With respect to further possible exemptions of option contracts on futures in which the underlying futures contract has not met the volume requirement test, such petitions for an exemption from § 33.4(a)(5)(iii) will be considered on a case-by-case basis.

[3] The Commission notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for trading during a six-month period, no new option contract month may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

DEPARTMENT OF DEFENSE

Defense Nuclear Agency

Meeting; Scientific Advisory Group on Effects (SAGE)

The Scientific Advisory Group on Effects (SAGE) will meet in closed session October 27 to October 29, 1987 at the Sandia National Laboratory in Albuquerque, New Mexico.

Agenda: October 27 to October 29 (0800–1700): Presentations, Discussions and Executive Sessions on Issues Related to DNA Technology supporting the issue of Hard Threat Kill. The presentations and discussions in the above cited agenda will focus on current and planned activities of the Defense Nuclear Agency (DNA).

Executive sessions will be held for the primary purpose of advising the Director, DNA, as to the adequacy of ongoing and planned activities. All planned presentations, discussions, and executive sessions may include classified defense information; therefore, under the provisions of sections 552b(c)(1) and (c), Title 5, U.S.C., this meeting is closed to the public. Any additional information concerning the meeting may be obtained from: Dorothy Pope, USAF, Scientific Secretary, SAGE, Headquarters, Defense Nuclear Agency, ATTN: DDST, Washington, DC 20305–1000.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 22, 1987.

[FR Doc. 87–22192 Filed 9–24–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 26, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room

3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 21, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Planning, Budget and Evaluation

Type of Review: NEW
Title: Postsecondary Vocational Education: A Comparison of Outstanding and Typical Programs
Agency Form Number: NA
Frequency: Once only
Affected Public: Individuals or households; non-profit institutions; businesses or other for profit; small businesses or organizations
Reporting Burden:
Responses: 840
Burden Hours: 227
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect data from a selected sample of 32 postsecondary vocational education program case studies. The data will be used by the Department to provide a report to Congress on the characteristics of effective postsecondary vocational education programs.

[FR Doc. 87–22197 Filed 9–24–87; 8:45 am]

BILLING CODE 4000–01–M

[(CFDA No.: 84.060A)]

Notice Inviting Applications for New Awards Under the Indian Education Act, Part A, Formula Grant Program for Fiscal Year 1988

Purpose:

Provides grants to local educational agencies and certain Indian tribes and organizations for projects that meet the special educational and culturally related academic needs of Indian children.

Deadline: February 12, 1988.

Deadline for Intergovernmental Review Comments: April 12, 1988

Applications Available: November 6, 1987.

Available Funds: The President's budget request for this program for fiscal year 1988 was $44,340,000. The Congress has not passed the fiscal year 1988 appropriation for this program. The following estimates are based on the President's request and the number of grants expected to be awarded in fiscal year 1987.

Estimated Range of Awards: $1,127—$1,047,190.

Estimated Average Size of Awards: $40,236.

Estimated Number of Awards: 1,102.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 251; (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For applications or information contact: Julie Lesceux, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 20202. Telephone: (202) 732–5146.

Program Authority: 20 U.S.C. 241aa–241ff.

Dated: September 21, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–22188 Filed 9–24–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–654–000, et al.]

Electric Rate and Corporate Regulation Filings; Alabama Power Co., et al.

September 21, 1987.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER87–654–000]

Take notice that on September 15, 1987, Alabama Power Company tendered for filing proposed changes in its FPC Electric Tariff, Original Volume No. 1. The proposed changes would decrease revenues from jurisdictional sales and services to reflect the new Federal corporate income tax rate pursuant to the Tax Reform Act of 1986.

Copies of the filing were served upon the public utility's jurisdictional customers taking service under Rate Schedules REA–1 and MUN–1 of the tariff.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket Nos. ER85–689–001, ER85–707–001, ER85–720–006]

Take notice that on September 14, 1987, Connecticut Light and Power Company (CL&P) tendered for filing, pursuant to Commission's Order issued July 29, 1987, a refund report. CL&P states that it made refunds on August 28, 1987 to its customers (Town of Wallingford, Second Taxing District of Norwalk and Third Taxing District of Norwalk) with interest accrued through that date for the difference between the Company's originally filed rates and the compliance rates.

This report contains the following:

Attachment A—Monthly billing determinants and revenues at prior, present and settlement rates for the period March 30, 1986 through August 28, 1987.

Attachment B—Computation of the monthly refunds, including interest, for the monthly billings for the period March 30, 1986 through August 28, 1987.

Copies of this filing have been served upon each of CL&P's wholesale customers and to all parties on the Commission's service list.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER87–653–000]

Take notice that on September 14, 1987, Minnesota Power & Light Company (Minnesota Power) tendered for filing an initial rate schedule for transmission service to Northern States Power Company (NSP) in connection with a sale of a forty (40) percent undivided ownership share of the Clay Boswell steam electric generating station Unit No. 4, located in the State of Minnesota, and associated transmission and substation facilities (Boswell 4) and lease of transmission outlet facilities to NSP for transmission capacity of up to 207 megawatts. Minnesota Power and NSP have entered into a Clay Boswell Steam Electric Generating Station, Unit No. 4 Ownership and Operating Agreement (O&O Agreement) which includes a proposed Lease of Boswell 4 Outlet Facilities. The O&O Agreement provides for a three part sale. Thirteen and one-third percent of Minnesota Power & Light Company's ownership of Boswell 4 will be purchased on or about May 1, 1989; another thirteen and one-third percent will be purchased on May 1, 1990; and the remaining thirteen and one-third percent will be purchased on may 1, 1991.

Take further notice that the initial rate schedule filed by Minnesota Power also includes electrical service to NSP for resale of power and energy furnished under an Agreement for Capacity and Energy Sale dated October 9, 1986 between Minnesota Power and NSP providing for a three part sale consisting of approximately 34 megawatts from May 1, 1989 to April 30, 1990, 68 megawatts from May 1, 1990 to April 30, 1991 and 102 megawatts from May 1, 1991 to December 31, 2007; and transmission service to NSP to export such additional power and energy sold by Minnesota Power to NSP based on such Agreement for Capacity and Energy Sale dated October 9, 1986 which includes a proposed Lease of Capacity Sale Outlet Facilities.

Comment date: October 5, 1987, in accordance with Standard paragraph E at the end of this document.

4. Allegheny Power Service Corporation on behalf of Monongahela Power Company, Potomac Edison Company, West Penn Power Company, Virginia Electric and Power Company

[Docket No. ER87–638–000]

Take notice that on September 14, 1987, Allegheny Power Service Corporation on behalf of Monongahela Power Company, Potomac Edison Company, West Penn Power Company (APS Parties), Virginia Electric and Power Company tendered for filing under § 35.13 of the Commission's regulations, a modification dated as of June 1, 1987 to an Interconnection Agreement dated January 1, 1973 between the APS Parties and Virginia Electric and Power Company (VEPCO). The Commission has previously designated the Agreement as VEPCO Schedule No. 99, Monongahela Power Schedule No. 32, West Penn Power Schedule No. 31, and Potomac Edison Schedule No. 33. The proposed Amendment makes the following changes:

Section 1 of the Amendment changes the charge for Other Operating Capacity in Schedule B, Interchange Power and Energy, from 110% of incremental cost to "up to the lesser of out-of-pocket cost plus $0.002, or 110% of out-of-pocket cost".

Section 2 of the Amendment makes the same change for Other Energy in the same schedule.

Section 3 of the Amendment changes the Schedule C Short Term reservation charges from the current $1.05 and $0.85 per kilowatt to "up to $1.777" and "up to $1.55" per kilowatt for the APS Parties and VEPCO, respectively.

Section 4 of the Amendment similarly changes the reservation charge for Short Term Power purchased from another system from the $0.24 to "up to $0.325" when VEPCO is the reserving party and "up to $0.27" when APS is the reserving party; for kilowatts not received, the charges are changed from the current $0.04 per kilowatt to "1/16 of the weekly charge per kilowatt (up to $0.054)" when VEPCO is the reserving party and "1/16 of the weekly charge per kilowatt (up to $0.045)" when APS is the reserving party.

Section 5 of the Amendment changes the Short Term Operating Capacity and Short Term Energy charges from their current fixed values to "up to" those values.

Section 6 of the Amendment changes the Schedule D Limited Term reservation charges from the current $5.50 per kilowatt to "up to $7.70" when VEPCO is the reserving party and from the current $4.50 to "up to $7.85" when APS is the reserving party.

Section 7 of the Amendment changes the Schedule D Limited Term Reservation charge for Limited Term Power purchased from another system from its current $1.00 per kilowatt to "up to $1.40" when VEPCO is the reserving party and "up to $1.40" when APS is the reserving party.

Section 8 of the Amendment inserts "up to" before "the lesser of" in the Schedule D Limited Term Operating Capacity and Energy charges during Limited Term Power reservation periods.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER87–647–000]

Take notice that on September 14, 1987, Northern States Power Company (NSP) tendered for filing the Termination Agreement Between Northern States Power Company and the City of Redwood Falls.

The Termination Agreement cancels the Interconnection and Interchange Agreement between Northern States Power Company and the City of Redwood Falls. The City's electrical requirements are provided by the Southern Minnesota Municipal Power Agency, and therefore, the services provided for under the Interconnection and Interchange Agreement are no longer required.

Northern States Power Company requests the Termination Agreement become effective July 16, 1987, and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. MSU System Services, Inc.

[Docket No. ER87–640–000 thru Docket No. ER87–645–000]

Take notice that on September 14, 1987, MSU System Services, Inc. (SSI) tendered for filing six separate agreements as follows:

(1) Arkansas Power & Light Company letter of notification to Oklahoma Gas and Electric Company, dated September 1, 1987.

(2) Arkansas Power & Light Company letter of notification to the Empire District Electric Company, dated September 1, 1987.

(3) Arkansas Power & Light Company letter of notification to Southwestern Electric Power Company, dated September 1, 1987.

(4) Oklahoma Gas and Electric Company letter of notification to Kansas Gas and Electric Company, dated September 1, 1987.

(5) Southwestern Electric Power Company letter of notification to Public Service Company of Oklahoma, dated September 1, 1987.

(6) Louisiana Power & Light Company, letters of notification to Gulf States Utilities Company and Central Louisiana Electric Company, dated September 1, 1987.

These agreements reduce the Diversity Base Amount under existing

Diversity Capacity Exchange agreements to zero, and waive a requirement for four years advance notice of the reduction. The effective date requested for each filing is the end of the exchange year ending November, 1987.

Comment date: 1October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22135 Filed 9-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES87-39-000, et al.]

Electric Rate and Corporate Regulation Filings; Terra Comfort Corp., et al.

Take notice that the following filings have been made with the Commission:

1. Terra Comfort Corporation

[Docket No. ES87-39-000]

September 17, 1987.

Take notice that on September 2, 1987, Terra Comfort Corporation, which proposes to become a public utility company subject to the Federal Power Act, has filed an application under section 204 of the Federal Power Act for authority to issue on or after October 15, 1987, 45,000 shares of common stock with $100 par value which will be issued to its parent, Iowa Southern Inc. The proceeds from issuance of the stock will be used by Terra Comfort Corporation to acquire and install electric generating facilities.

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Light Company

[Docket No. ER87-652-000]

September 18, 1987.

Take notice that on September 14, 1987, Central Illinois Light Company tendered for filing an executed power coordination agreement with Soyland Power Cooperative, Inc. (Soyland) providing for specified transmission service for Corn Belt Electric Cooperative. Transmission service will be provided for power and energy supplied by Soyland from their electric generating units operated by or interconnected with the electric system of Illinois Power Company. CILCO, with the support of Soyland, under the abbreviated filing requirements of the Commission, requests an effective date of November 14, 1987.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company and Northern States Power Company

[Docket EC87-24-000]

September 18, 1987.

Take notice that on September 14, 1987, Minnesota Power & Light Company (Minnesota Power) and Northern States Power Company (NSP) tendered for filing a Joint Application for:

(i) Authorization for Minnesota Power to sell a 40 percent undivided ownership interest in Clay Boswell Steam Electric Generating Station, Unit No. 4 (Boswell 4) associated transmission and substation facilities located at Bass Brook, Minnesota subject to jurisdiction of the Commission, to NSP,

(ii) Authorization for Minnesota Power to Lease certain transmission outlet facilities to NSP for transmission of power and energy generated by NSP at its portion of Boswell 4,

(iii) Authorization for Minnesota Power to lease certain transmission outlet facilities to NSP for transmission of power and energy generated by Square Butte Electric Cooperative at the Milton R. Young Steam Electric Generating Station, Unit No. 2 resold by Minnesota Power to NSP, and

(iv) Authorization to merge and consolidate these jurisdictional public utility facilities sold and leased by Minnesota Power with the jurisdictional facilities of purchaser and lessee NSP.

This 40 percent ownership interest in Boswell 4 is equal to approximately 207 megawatts of accredited capacity by the Mid-Continent Area Power Pool. Minnesota Power and NSP have entered into a "Clay Boswell Steam Electric Generating Station, Unit No. 4 Ownership and Operating Agreement" (O&O Agreement). The O&O Agreement provides for a three part sale. A 13⅓ percent undivided ownership interest of Boswell 4 will be conveyed on or about May 1, 1989; another 13⅓ percent will be conveyed on May 1, 1990; and the remaining 13⅓ percent will be conveyed on May 1991.

Under the O&O Agreement and a proposed Lease of Boswell 4 Outlet Facilities, Minnesota Power will lease transmission facilities, in amounts commensurate with each increment of the sale, for power and energy generated at NSP's portion of the jointly owned Boswell 4 for transmission to NSP's service territory.

Minnesota Power and NSP have also entered into an "Agreement for Capacity and Energy Sale dated October 9, 1986" (Agreement) under which Minnesota Power will resell approximately 102 megawatts of power and energy purchased from Square Butte Electric Cooperative to NSP in a three part sale in which 8⅓ percent of the power and energy purchased from Square Butte Electric Coorperative's Milton R. Young Steam Electric Unit No. 2 will be resold to NSP from May 1, 1989 to April 30, 1990; 16⅓ percent of such power and energy will be resold to NSP from May 1, 1990 to April 30, 1991; and 24½ percent of such capacity and energy will be resold to NSP from May 1, 1991 to December 31, 2007. Under the Agreement and a proposed lease of Capacity Sale Outlet Facilities, Minnesota Power will lease transmission outlet facilities in capacities commensurate with each increment of the sale, to transmit such energy from Minnesota Power's Arrowhead Transmission Substation near Duluth, Minnesota to NSP's service territory.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company and Northern States Power Company

[Docket No. EL87-65-000]

September 18, 1987.

Take notice that on September 14, 1987, Minnesota Power & Light Company (MP&L) and Northern States Power Company (NSP) tendered for filing a joint Petition for Declaratory Order. The Petition requests the Commission to determine that MP&L's sale and NSP's purchase of a 40% ownership interest in the Clay Boswell No. 4 generating unit and the sale of capacity and energy equivalent to 24.5% of that produced by the Square Butte Electric Cooperative's Milton R. Young No. 2 generating unit are prudent with respect to MP&L and NSP. The Petition further requests the

Commission to determine that NSP may recover the full purchase price of the Boswell No. 4 ownership interest, including an acquisition adjustment of $31.1 million, and may earn a return on the undepreciated balance of the full purchase price during the period of depreciation; and that NSP's accounting for Boswell No. 4 may reflect the above ratemaking treatment.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER87-646-000]

September 18, 1987.

Take notice that on September 14, 1987, Northern States Power Company (NSP) tendered for filing the Supplement No. 1 to the United States Department of Energy Western Area Power Administration Interconnection Contract with Northern States Power Company (Supplement).

The Supplement terminates Supplement No. 1, clarifies the arrangement for net billing and updates provisions providing for the sale of non-firm energy. The Interconnection Contract is on file with the Commission and is designated as FERC Rate Schedule No. 446.

NSP requests this Supplement become effective on June 1, 1987, and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this document.

6. Northern States Power Company

[Docket No. ER87-649-000]

September 18, 1987.

Take notice that on September 14, 1987, Northern States Power Company (Minnesota) tendered for filing the Supplement No. 1 to the Firm Power Service Resale Agreement between Northern States Power Company (NSP) and the City of Chaska.

The Supplement No. 1 to the Firm Power Service Resale Agreement (Supplement) recognizes changes in the interconnection facilities between NSP and the City of Chaska described in Exhibit 1 of the Firm Power Service Resale Agreement dated September 8, 1983. The Firm Power Service Resale Agreement is on file with the Commission and is designated as FERC Rate Schedule No. 424.

Northern States Power Company requests this Supplement become effective on Marh 11, 1987, and therefore, requests wavier of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company

[Docket No. ER87-648-000]

September 18, 1987.

Take notice that on September 14, 1987, Northern States Power Company (Minnesota) tendered for filing the Supplement No. 2 to the Municipal Resale and Transmission Service Agreement between Northern States Power Company and the City of East Grand Forks.

The Supplement No. 2 to the Municipal Resale and Transmission Service Agreement (Supplement) recognizes new interconnection facilities between the Western Area Power Administration and the City of East Grand Forks and necessary adjustments required for billing purposes. The Municipal Resale and Transmission Service Agreement is on file with the Commission and is designated as FERC Rate Schedule No. 387.

Northern States Power Company requests this Supplement become effective on February 9, 1987 and therefore, requests wavier of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER87-650-000]

September 18, 1987.

Take notice that on September 14, 1987, Union Electric Company tendered for filing a Wholesale Electric Service Agreement, Transmission Service Agreement, and Transmission Service Transaction 1, each dated August 14, 1987, with the City of Fredericktown, Mo., providing for the sale of electric service and the transmittal of power and energy from other sources.

Comment date: October 5, 1987, in accordance with Standard Paragrapph E at the end of this notice.

9. Pennsylvania Power Company

[Docket No. ER87-651-000]

September 18, 1987.

Take notice that on September 14, 1987, Pennsylvania Power Company (Penn Power) pursuant to 18 CFR 35.12(a)(2)(ii) tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The proposed changes would decrease revenues from jurisdiction sales and service by $368,474.42 or approximately 7.3% based on the 12-month period ending June 30, 1988. The decrease is composed of decreases in base rates and the associated state tax adjustment surcharge effective July 17, 1987. A second decrease in the state tax adjustment surcharge from 4.17% to 3.77% effective September 1, 1987 is also proposed. The effect of the change in base rates and the associated state tax adjustment surcharge results in an annual decrease in future test year revenues of $351,191.04 effective July 17, 1987. The September 1, 1987 decrease in the state tax adjustment surcharge results in an annual decrease in future test year revenues of $17,283.38. The Company also proposes to extend the availability of the Economic Development Rider (Rider III) to December 31, 1987. This change has no effect on revenues. The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

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protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22136 Filed 9-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-36-001]

Application for Recertification of Qualifying Status of Cogeneration Facility; Firestone Cogeneration Project, Limited Partnership

September 17, 1987.

On September 4, 1987, The Firestone Cogeneration Project, Limited Partnership (Applicant), of First Oklahoma Tower, Suite 810, 210 W. Park Avenue, Oklahoma City, Oklahoma 73102 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oklahoma City, Oklahoma. The facility will consist of a combustion turbine generating unit, a supplementary fired heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Thermal energy recovered from the facility will be used for tire manufacturing process in the Firestone Tire plant. The primary energy source will be natural gas. The net electrical power production capacity of the facility as originally proposed was to be 103.2 MW.

By order issued December 30, 1985, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility (33 FERC ¶ 62,481).

The recertification is requested due to change of ownership of the facility from The Firestone Cogeneration Joint Venture to The Firestone Cogeneration Project, Limited Partnership (Limited Partnership). The Limited Partnership is a Delaware limited partnership which consists of two general partners, ENIGEN, Inc., and the Firestone Cogeneration Joint Venture, and four limited partners: Energy National, Inc., Prudential Interfunding Corporation, John Hancock Mutual Life Insurance Company and Hydra-Co Enterprises Inc. The net electric power production capacity of the facility will increase to 106.1 MW. Installation of the facility will commence in December 1987. All other facility's characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22175 Filed 9-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-343-002]

Application For Recertification of Qualified Status of Small Power Production Facility; Foster Wheeler Power Systems, Inc., Mount Carmel Facility

September 18, 1987.

On August 25, 1987, Foster Wheeler Power Systems, Inc. (Applicant), of Perryville Corporate Park, Clinton, New Jersey 08809 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was originally certified as a qualifying small power production facility on February 27, 1986 (Docket No. QF86-343-000, 34 FERC ¶62,411 (1986)), and as a qualifying cogeneration facility on Apirl 23, 1987 (Docket No. QF86-343-001, 39 FERC ¶61,048 (1987)). The application for recertification changes the address of the owner/operator of the facility and requests that the configuration of the small power production facility be amended from two circulating fluidized bed combustion boilers to one circulating fluidized bed combustion boiler. All other characteristics of the facility remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22176 Filed 9-24-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Meeting; Basic Energy Sciences Advisory Committee

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC)

Date and Time: October 15, 1987, 8:00 a.m.-5:00 p.m.

Place: AT&T Technologies, 1201 S. Hayes St., Arlington, Virginia 22202.

Contact: Louis C. Ianneillo, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, D.C. 20545, Telephone; 301/353/3081.

Purpose of the Committee

To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda

Briefings and discussions of:

October 15, 1987

—Status of the Superconductivity Panel Report
—Subcommittee Reports
—Discussion of 1987 Basic Energy Sciences Report
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the

meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 21, 1987.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 87–22182 Filed 9–24–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3268–1]

Receipt of Application For a Reference Method Determination; Ambient Air Monitoring Reference and Equivalent Methods

Notice is hereby given that on August 28, 1987, the Environmental Protection Agency received an application from Andersen Samplers Incorported, 4215 Wendell Drive, Atlanta, Georgia 30336, to determine if its Sierra Andersen and General Metal Works PM_{10} High Volume Air Sampler Systems should be designated by the Administrator of the EPA as reference methods under 40 CFR Part 53 (40 FR 7049, 41 FR 11255, 52 FR 24727). If, after appropriate technical study, the Administrator determines that these methods should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

Erich Bretthaver,

Acting Assistant Administrator for Research and Development.

[FR Doc. 87–22145 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3266–7

Environmental Impact Statements and Regulations; Availability of EPA Comments

This notice announces availability of EPA comments prepared September 7, 1987 through September 11, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–COE–K36092–CA, Rating EC2, Caliente Creek Stream Group, Flood Control Plan, CA. SUMMARY: EPA expressed environmental concerns because the proposed project does not demonstrate compliance with the Section 404(b)(1) Guidelines of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the United States, including wetlands. EPA stated that the project may have greater wetlands impacts than the draft EIS indicates. EPA further noted concerns with project alternatives, project impact mitigation, and project impacts on water quality and groundwater. FINAL EISs

ERP No. F–BLM–J61046–CO, Gunnison Basin, American Flats and Silverton Planning Units, Wilderness Study Areas, Wilderness Designation, Recommendations, CO. Summary: EPA concurs with the findings of the final EIS and supports the recommendation for inclusion of the designated area into the National Wilderness Preservation System.

ERP No. F–BLM–J67006–CO, Wolf Ridge Nahcolite Solution Mine, Construction and Operation, Piceance Basin, Plan Approval, CO. Summary: EPA's review found the final EIS to be adequate and principal concerns substantially resolved with the expansion of the Water Resources section in the EIS. However, EPA has environmental concerns regarding ground and surface water protection. BLM and EPA will require all practicable permit or lease conditions that are necessary to prevent significant salt loading to surface waters. BLM's detailed analysis will be used by EPA in its underground injection control permit process.

ERP No. F–FHW–F40286–MN, TH–77/I–494 Improvements, TH–77/Cedar Avenue From 70th Street to 86th Street and I–494 from West 12th Avenue to East 34th Avenue, MN. Summary: EPA's comments regarding the draft EIS were adequately addressed in the final EIS.

ERP No. F–FRC–L05195–ID, Salmon River Basin, Fifteen Hydroelectric Projects, Construction, Operation, and Maintenance, Licenses, ID. Summary: EPA expressed environmental objections to the proposed alternative based on detrimental effects to fisheries, water quality, and wetlands. EPA recommended adoption of the less environmentally damaging alternative (Scenario A) with the mitigation measures recommended in the final EIS. Scenario A involved one project that was found to be environmentally acceptable. The other 14 hydroelectric projects had unacceptable adverse effects.

Dated: September 22, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–22272 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3266–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed September 14, 1987 through September 18, 1987.

EIS No. 870309, Draft, BLM, COE, AK, Trans Alaska Gas System (TAGS) and Associated Facilities Construction, Prudhoe Bay to Anderson Bay, Right-of-Way Permit, Section 404 and 10 Permits and Special Use Permits, Due: November 10, 1987, Contact: Jules Tileston (907) 267–1268

EIS No. 870310, Draft, COE, TX, Buffalo Bayou and Tributaries, Comprehensive Flood Damage Prevention Study, Harris, Fort Bend and Waller Counties, Due: November 9, 1987, Contact: Charles Harbaugh (409) 766–3044

EIS No. 870311, Draft, IBR, UT, Weber Basin Project, Willard Reservoir Water Change Use, Irrigation to Municipal and Industrial Water Supply Conversion, Davis and Weber Counties, Due: November 16, 1987, Contact: Harold Sersland (801) 524–5580

EIS No. 870312, Draft, AFS, WA, Gifford Pinchot National Forest, Land and Resource Management Plan, Due:

December 31, 1987, Contact: Lloyd DeWerff (206) 696–7552

EIS No. 870313, Final, AFS, ID, UT, Sawtooth National Forest, Land and Resource Management Plan and Wilderness Recommendations, Due: November 9, 1987, Contact: Roland Stoleson (208) 737–3200

EIS No. 870314, Final, COE, WV, Kanawha River Navigation Study, Winfield Locks and Dam, Lock Replacement, Putnam County, Due: October 26, 1987, Contact: Roland Meade (304) 529–5635

EIS No. 870315, Final, COE, NJ, Claremont Terminal Channel Navigation Improvement, Upper New York Bay, Hudson River County, Due: October 26, 1987, Contact: Len Houston (212) 264–4662

EIS No. 870316, DSuppl, COE, CA, Oakland Outer and Inner Harbors, Deep Draft Navigation Improvements, Alcatraz Dredge Material Disposal Site Changed Conditions, Almeda County, Due: November 9, 1987, Contact: Patricia Duff (415) 974–0441

EIS No. 870317, Draft, COE, CA, New San Clemente Project Carmel River Dam Construction, Monterey County, Due: November 24, 1987, Contact: Roger Golden (415) 974–0444

EIS No. 870318, Final, AFS, ID, WA, MT, Idaho Panhandle National Forests, Land and Resource Management Plan, Due: October 26, 1987, Contact: William Morden (208) 765–7223

EIS No. 870319, Final, BLM, NM, Farmington Resource Area Management Plan, Due: October 26, 1987, Contact: Ron Fellows (505) 325–3581

EIS No. 870320, Final, AFS, MT, ID, Kootenai National Forest, Land and Resource Management Plan, Due: October 26, 1987, Contact: James Rathbun (406) 293–6211

EIS No. 870321, Draft, NOA, ATL, MXG, REG, Atlantic, Gulf of Mexico and Caribbean Exclusive Economic Zones Billfish (White and Blue Marlins, Sailfish and the Longbill Spearfish) Fishery Management Plan, Due: November 9, 1987, Contact: William Evans (202) 673–5450

EIS No. 870322, Draft, FHW, IN, East Unit Access Road Construction, I–94 to US 12, US 12 Relocation, US 12 and LaPorte/Porter County Line to US 12 Intersection near Sheridan Avenue, Porter and LaPorte Counties, Due: November 16, 1987, Contact: James Threlkeld (317) 269–7494

EIS No. 870323, Final, UAF, PRO, SEV, Ground Wave Emergency Network (GWEN) Deployment and Land Acquisition, Final Operational Capability, Construction and Operation, Due: October 26, 1987, Contact: William Colmer (617) 271–6116

EIS No. 870324, Draft, USN, AK, Southeast Alaska Acoustic Measurement Facility (SEAFAC) Construction, Establishment, 404 Permit, Back Island, Behm Canal, Ketchikan Gateway Borough, Due: November 10, 1987, Contact: Jeff Thielen (206) 476–5775

Amended Notice

EIS No. 870308, Draft, COE, LA, Louisiana Army Ammunition Plant, Chemical and Industrial Complex, Construction and Operation, Research Development Explosive and High Melt Explosive (RDX/HMX) Expansion Program, Bossier and Webster Parishes, Published FR 9–18–87—Incorrect agency and contact information—EIS was inadvertently filed with EPA—Officially retracted.

Dated: September 22, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–22189 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51694; FRL–3268–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of sixty-six such PMNs and provides a summary of each.

DATES: Close of Review Period: P 87–1749, 87–1750, 87–1751, 87–1752, 87–1753, 87–1754, 87–1755, 87–1756, 87–1757, 87–1758, 87–1759, 87–1760, 87–1761, 87–1762, and 87–1763—December 9, 1987.

P 87–1764, 87–1765, 87–1766, 87–1767, 87–1768, 87–1769, and 87–1770—December 12, 1987.

P 87–1771, 87–1772, 87–1773, 87–1774, 87–1775, 87–1776, 87–1777, 87–1778, 87–1779, 87–1780, 87–1781, 87–1782, 87–1783, and 87–1784—December 13, 1987.

P 87–1785, 87–1786, 87–1787, 87–1788, 87–1789, 87–1790, 87–1791, 87–1792, 87–1793, 87–1794, 87–1795, and 87–1796—December 14, 1987.

P 87–1797, 87–1798, 87–1799, 87–1800, 87–1801, 87–1802, 87–1803, 87–1804, 87–1805, 87–1806, 87–1807, 87–1808, 87–1809, 87–1810, 87–1811, 87–1812, 87–1813, and 87–1814—December 15, 1987.

Written comments by:

P 87–1749, 87–1750, 87–1751, 87–1752, 87–1753, 87–1754, 87–1755, 87–1756, 87–1757, 87–1758, 87–1759, 87–1760, 87–1761, 87–1762, and 87–1763—November 9, 1987.

P 87–1764, 87–1765, 87–1766, 87–1767, 87–1768, 87–1769, and 87–1770—November 12, 1987.

P 87–1771, 87–1772, 87–1773, 87–1774, 87–1775, 87–1776, 87–1777, 87–1778, 87–1779, 87–1780, 87–1781, 87–1782, 87–1783, and 87–1784—November 13, 1987.

P 87–1785, 87–1786, 87–1787, 87–1988, 87–1789, 87–1790, 87–1791, 87–1792, 87–1793, 87–1794, 87–1795, and 87–1796—November 14, 1987.

P 87–1797, 87–1798, 87–1799, 87–1800, 87–1801, 87–1802, 87–1803, 87–1804, 87–1805, 87–1806, 87–1807, 87–1808, 87–1809, 87–1810, 87–1811, 87–1812, 87–1813, and 87–1814—November 15, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51694]" and the specific PMN number should be sent: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1749

Manufacturer. Kenrich Petrochemicals, Incorporated.

Chemical. (S) Zirconium IV 2,2–bis(2–propenolatomethyl)butanolato, cyclo di 2,2–(bis 2–propenolatomethyl) butanolato pyrophosphato–0,0.

Use/Production. (S) Industrial coupling agent for polymers; catalyst; and intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: > .5 g/kg.

P 87-1750

Importer. Confidential.
Chemical. (G) Substituted phenylazocarbopolycyclic acid, alkali metal salt.
Use/Import. (S) Industrial paper dye. Import range: Confidential.

P 87-1751

Manufacturer. Confidential.
Chemical. (G) Block aliphatic polyester polyurethane.
Use/Production. (G) Industrially used coating with an open, non-dispersive use. Prod. range: 9,000 to 45,000 kg/yr.

P 87-1752

Manufacturer. Kenrich Petrochemicals, Incorporated.
Chemical. (S) Zirconium IV tetrakis (2,2-bis-2 propenolatomethyl) butanolato.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1753

Manufacturer. Kenrich Petrochemicals, Incorporated.
Chemical. (S) 4-(2-Phenyl)2-propylphenyl neodecanoate.
Use/Production. (S) Industrial and commercial solvent; intermediate; and plasticizer. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg.

P 87-1754

Importer. M-D Group Incorporated.
Chemical. (S) Sodium 5-nitroguaiacolate.
Use/Import. (S) Commercial and consumer plant and soil auxiliary substance. Import range: 5 to 20 kg/yr.

P 87-1755

Manufacturer. Confidential.
Chemical. (S) Alkyd resin solution.
Use/Production. (S) A medium oil alkyd resin for use in architectural coatings. Prod. range: 228,000 to 1,295,676 kg/yr.

P 87-1756

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.
Toxicity Data. Acute dermal: >2,000 mg/kg; Ames test: Non-mutagenic.

P 87-1757

Manufacturer. Confidential.
Chemical. (G) Molybdate catalyst.
Use/Production. (G) Industrial polymerization catalyst. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; LC^{T}_{50} 96 hr (Bluegills): >110 mg/l; EC^{T}_{50} 96 hr (Algal): 1.1 mg/l.

P 87-1758

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.
Toxicity Data. Acute dermal: >2,000 mg/kg; Ames test: Non-mutagenic.

P 87-1759

Manufacturer. Confidential.
Chemical. (G) Substituted salicylic acid.
Use/Production. (G) Minor component in paper coatings. Prod. range: Confidential.
Toxicity Data. Ames test: Non-mutagenic.

P 87-1760

Importer. Ricoh Electronics, Incorporated.
Chemical. (S) 4,4' Methylene bis(oxyethylene thio) diphenol.
Use/Import. (G) Site-limited manufacture of office machine paper. Import range: 70,000 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.

P 87-1761

Importer. Yuka-Fine Corporation.
Chemical. (S) Reaction products with 2,6-dimethyl-2,4,6-octatriene and maleic anhydride.
Use/Import. (S) Industrial epoxy curing agent for fiber reinforced plastics. Import range: 1,000 to 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Mild, Ames test: Negative.

P 87-1762

Manufacturer. Confidential.
Chemical. (G) Ketimine derivative of polyoxypropylene amines.
Use/Production. (G) Component used in production of elastomer. Prod. range: Confidential.

P 87-1763

Manufacturer. Confidential.
Chemical. (G) Ketimine derivative of polyoxypropylene amines.
Use/Production. (G) Component used in production of elastomer. Prod. range: Confidential.

P 87-1764

Manufacturer. Confidential.
Chemical. (G) Hindered phenol derivative.
Use/Production. (S) Industrial antioxidant for lubricants. Prod. range: Confidential.

P 87-1765

Manufacturer. Confidential.
Chemical. (G) Polyurethane-polysidioxane copolymer.
Use/Production. (G) Low friction or high slip additive to coatings. Open, non-dispersive use. Prod. range: Confidential.

P 87-1766

Manufacturer. Confidential.
Chemical. (G) Trisubstituted dialkyl cycloalkane dialkyl ketal.
Use/Production. (G) Site-limited intermediate that is useful in creating compounds that will ultimately be useful in augmenting or enhancing aroma and perfumed articles or helping to impart fragrance to perfumable articles. Prod. range: Confidential.

P 87-1767

Manufacturer. Disogrin Industries Corporation.
Chemical. (S) Polymer of hexanedioic acid, polymer with 1,2-ethanediol (2,000 mw); hexanedioic acid, polymer with 1,2-ethanediol (3,000 mw); hexanedioic acid, polymer with 1,2-ethanediol (1,000 mw); naphthalene, 1,5-diisocyanato-benzenamine, N,N'-methanetetraylbis(1-methylethyl)-acetic acid; chloro-, sodium salt; water; and silicone, siloxane and 1,4-diazabicyclo [2.2.2] octane.
Use/Production. (S) Site-limited to be molded on site into mechanical goods, i.e., machinery components. Prod. range: 960 to 1,056 kg/yr.

P 87-1768

Manufacturer. ChemDesign Corporation.
Chemical. (G) Esters of diazonaphthoquinone.
Use/Production. (G) Photoimaging chemical for electronic circuits. Prod. range: Confidential.

P 87-1769

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted acetic acid ester.
Use/Production. (G) Resin cross-linker. Prod. range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,,000 mg/kg; Irritation: Skin—Severe, Eye—Severe; Inhalation: >152 mg/m^3; Ames test: Mutagenic.

P 87-1770

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted acetic acid ester.

Use/Production. (G) Resin cross-linker. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Servere, Eye—Severe; Inhalation: >152 mg/m³; Ames test: Mutagenic.

P 87–1771

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (S) 3-(2-Aminoethyl) amino propyl methyl, dimethyl, diphenyl, polysiloxane and dimethyl, methyl 3-(oxiranyl methoxy) propyl polysiloxane.

Use/Import. (S) Coating agent for general purpose. Import range: 500 to 3,000 kg/yr.

P 87–1772

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of hexanedioic acid, polymer with 1,2-ethanediol (2,000 mw); hexananedioic acid, polymer with 1,2-ethanediol (3,000 mw); hexanedioic acid, polymer with 1,2-ethanediol (1,000 mw); benzene, 1,1±-methylene bis(4-isocyanato), benzenamine, N,N'-methanetetraylbis(1-methyl ethyl)-acetic acid, chloro-, sodium salt, water, poly(oxy-], 4-butanediyl), alpha-(aminobutyl)-omega-(4-aminobutoxy)-silicone; and siloxane and 1,4-diazabicyclo [2.2.2] octane.

Use/Production. (S) Site-limited to be molded on site into mechanical goods, i.e., machinery components. Prod. range: 960 to 1,056 kg/yr.

P 87–1773

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1774

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1775

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1776

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1777

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1778

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate powder coating curing agent.

Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 87–1779

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate powder coating curing agent.

Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 87–1780

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate powder coating curing agent.

Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 87–1781

Importer. Confidential.

Chemical. (G) Styrene-N-butylacrylate copolymer.

Use/Import. (G) Commercial and consumer open, non-dispersive use. Import range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

P 87–1782

Manufacturer. Confidential.

Chemical. (G) Siloxane dimer.

Use/Production. (G) Siloxane reactant. Prod. range: Confidential.

Toxicity Data. Acute oral: <8.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—irritant.

P 87–1783

Manufacturer. Confidential.

Chemical. (G) Siloxane oligomer

Use/Production. (G) Reactive siloxane oligomer. Prod. range: Confidential.

Toxicity Data. Acute oral: > 1.8 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

P 87–1784

Manufacturer. Confidential.

Chemical. (G) Vinyl modified nonionic surfactant.

Use/Production. (G) Comonomer for emulsion polymerization. Prod. range: Confidential.

P 87–1785

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Cuparate (4−)[2[[2,4-dihydroxy-3[[2-hydroxy-5-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo-phenyl]azo]-4,8-napthalene disulfonate] (−6)]-trisodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1786

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 4,4'-Bis[[5-cholor 3-[2,4 disulfo-5-[N-ethyl-2-oxo-3-carbamido-4-methly-6-hydroxy pyridyl-5-azo]phenylamino] S-triazinylamino]]stilbene 2,2'-disulfonic acid, hexa sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1787

Manufacturer. Confidential.

Chemical. (G) Amyl ester.

Use/Production. (S) Industrial solvent. Prod. range: Confidential.

P 87–1788

Manufacturer. Confidential.

Chemical. (G) Polyurethane polymer.

Use/Production. (G) Coatings and adhesives for open, non-dispersive use Prod. range: Confidential.

P 87–1789

Manufacturer. Kenrich Petrochemicals, Incorporated.

Chemical. (S) Methane solfonyl pyrophosphate.

Use/Production. (S) Industrial acid catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: > 500 mg/kg; Irritation: Skin—Severe; Ames test: Non-mutagenic.

P 87–1790

Manufacturer. Confidential.

Chemical. (G) Polyurethane—polysiloxane copolymer.

Use/Production. (G) Low friction or high slip additive to coatings; open, non-dispersive use. Prod. range: Confidential.

P 87–1791

Manufacturer. Confidential.

Chemical. (G) Bis-imidazolinium.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87–1792

Importer. Confidential.
Chemical. (G) Acrylated polymer.
Use/Import. (G) Acrylated polymer for inks. Import range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

P 87–1793

Importer. Confidential.
Chemical. (G) Organofunctional polysiloxanes.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 87–1794

Importer. Confidential.
Chemical. (G) Organofunctional polysiloxane.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 87–1795

Manufacturer. Milliken and Company.
Chemical. (G) Substituted (polyoxyalkylene) aniline.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 87–1796

Manufacturer. Milliken and Company.
Chemical. (G) Chromophore substituted polyoxyethylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 87–1797

Manufacturer. Disogrin Industries Corporation.
Chemical. (G) Polymer of poly(oxy-], 4-butanediyl), alpha-[[(3-isocyanato methyl phenyl)amino]carbonyl]-omega-[[[(3-isocyanatomethyl phenyl)amino]carbonyl]oxy]-; and stantone Brown HCC-5513 Harwick Standard.
Use/Production. (S) Site-limited to be molded on site into wheels, rollers and mechanical part for use in general industrial applications. Prod. range: 7,980 to 8,778 kg/yr.

P 87–1798

Manufacturer. General Electric Company.
Chemical. (G) Alkylester functionalized colloidal silica.
Use/Production. (S) Consumer abrasion resistance treatment for thermoplastic resins. Prod. range: Confidential.

P 87–1799

Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified trioxane copolymer.
Use/Import. (S) Industrial injection, extrusion, compression and flow molding. Import range: 16,000 to 23,000 kg/yr.

P 87–1800

Importer. Nuodex Incorporated.
Chemical. (S) Phenal, 4-isododecyl-.
Use/Import. (S) Industrial additive for lubricants and emulsifiers. Import range: Confidential.
Toxicity Data. Acute oral: 2,200 mg/kg; Irritation: Skin—Strong irritant, Eye—Slight irritant; Ames test: Non-mutagenic.

P 87–1801

Importer. Confidential.
Chemical. (G) Acrylic acid, alkyl ester, polymer with monocarbocyclicalkene.
Use/Import/ (G) Industrial sizing agent. Import range: Confidential.

P 87–1802

Manufacturer. Confidential.
Chemical. (G) Substituted spiro[isobenzofuranxanthenone].
Use/Production. (G) Minor color-forming component in paper coatings. Prod. range: Confidential.

P 87–1803

Manufacturer. Disogrin Industries Corporation.
Chemical. (S) Polymer of hexanedioic acid, polymer with 1,4-butanediol and 1,2-ethanediol; hexanedioic acid; naphthalene, 1,5-diisocyanato-; 1,4-butanediol; and 1,3-propanediol, 2-(hydroxymethyl)-2-methyl.
Use/Production. (G) Site-limited to be molded on site into mechanical parts for use in general industrial applications. i.e., wheels, rollers. Prod. range: 14,438 to 15,882 kg/yr.

P 87–1804

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) 3H-Indolium, 2-[[(4-chlorophenyl)methyl hydrazono] methyl]-1-ethyl-3,3-dimethyl-, salt with dodecyl(sulfophenoxy) benzenesulfonic acid (2:1).
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: 3.9 g/kg; Irritation: Skin—Slight irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1805

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) Chromate(3-),bis[3-hydroxy-4-[(2-hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonate(3-)], trihydrogen, compound with 2-ethyl-hexyl amine and 2-(dodecylamino)ethanol.
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1806

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) Chromate(3-), bis [4-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-lH-pyrazol-l-yl]benzensulfonato(3-)]-trihydrogen, compound with 2-(dodecylamino)ethanol (1:3).
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1807

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) Xanthylium,9-(2-carboxyphenyl)-3,6-bis(diethylamino), salt with 2(or 5)-dodecyl-5(or 2)-(sulfophenoxy)benzensulfonic acid (2:1).
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: 7.2 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1808

Manufacturer. Milliken and Company.
Chemical. (G) Chromophore substituted polyoxyethylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 87–1809

Importer. Confidential.
Chemical. (G) Polymer of aromatic diisocyanate, alkanols and alkane diols.
Use/Import. (G) Industrial and commercial additive. Import range: 900 to 1,800 kg/yr.

P 87–1810

Manufacturer. Confidential.
Chemical. (G) Substituted aliphatic-terminated poly(dimethylsiloxane).
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

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P 87-1811

Manufacturer. Confidential.
Chemical. (G) Dimethychlorosilane of 5-vinyl-2-norbornene.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87-1812

Manufacturer. Confidential.
Chemical. (G) Cycloaliphatic dicarboxylic acid.
Use/Production. (S) Industrial polyester intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,903 mg/kg; Acute dermal: >1,000 mg/kg; Irritation: Skin—Slight irritant, Eye—Moderate irritant.

P 87-1813

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aliphatic easter of the diglycidyl ether of bisphenol A.
Use/Production. (S) Industrial crosslinkable liquid polymer for use in epoxy type coatings, adhesives and structural applications. Prod. range: Confidential.

P 87-1814

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aliphatic ester of the diglycidyl ether of bisphenol A.
Use/Produciton. (S) Industrial crosslinkable liquid polymer for use in epoxy type coatings, adhesives and structural applications. Prod. range: Confidential.

Date: September 21, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-22149 Filed 9-24-87; 8:45am]

BILLING CODE 6560-50-M

[OPTS-59833; FRL-3268-3

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provide a summary of each.

DATES: Close of Review Period:

Y 87-253 and 87-254, October 4, 1987
Y 87-255, 87-256, 87-257, 87-258, 87-259 and 87-260, October 6, 1987
Y 87-261, October 7, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-253

Manufacturer. Confidential.
Chemical. (S) 2,2-Dimethyl-1,3-propanediol, Pamolyn 300 tall oil fatty acide 2-ethyl-2-(hydroxymethyl)-1,3-propandiol; 1,3-benzenedicarboxylic acid; tall oil fatty acids; 1,3-dihydro-l,3-dioxo-5-isobenzofurancarboxylic acid.
Use/Production. (S) Industrial polymer used as a major component of a protective coating (paint) formulated for use on metal substrates. Prod. range: 54,975 to 109,950 kg/yr.

Y 87-254

Manufacturer. Confidential.
Chemical. (G) Hydrophobic polyvinyl alcohol copolymer.
Use/Production. (G) Polymer for gas and solvent barrier, hydraulic fluid additive, creping aid and polymeric hot melt adhesive. Prod. range: Confidential.

Y 87-255

Importer. Confidential.
Chemical. (G) Soya alkyd resin.
Use/Import. (G) Coatings. Import range: Confidential.

Y 87-256

Importer. Confidential.
Chemical. (G) Rosin modified alkyd resin.
Use/Import. (G) Coatings. Import range: Confidential.

Y 87-257

Importer. Confidential.
Chemical. (G) Soya alkyd resin.
Use/Import. (G) Coatings. Import range: Confidential.

Y 87-258

Manufacturer. Confidential.
Chemical. (G) Modified coconut fatty acid alkyl polymer.
Use/Production. (G) Polymer component of metal coating formulation. Prod. range: Confidential.

Y 87-259

Manufacturer. C.J. Osborn.
Chemical. (G) Polyester.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

Y 87-260

Importer. Confidential.
Chemical. (G) Saturated polyester resin.
Use/Import. (G) Polymeric industrial coating material. Import range: Confidential.

Y 87-261

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Binder for coatings. Prod. range: Confidential.

Date: September 21, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-22148 Filed 9-24-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3267-9]

Water Pollution Control; Cattaraugus Creek Basin Aquifer System in Cattaraugus, Erie, WY and Allegany Counties, NY; Sole Source Aquifer Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region II, has determined that the Cattaraugus Creek Basin Aquifer System (CCBA), underlying portions of Cattaraugus, Erie, Wyoming, and Allegany Counties, New York, is the sole or principal source of drinking water for the entire townships

of Freedom and Yorkshire; and parts of Arcade, Sardinia, Concord, Ashford, Centerville, Rushford, Farmersville, Machias, Ellicotville, East Otto, Otto, Persia, Collins, Java, Wethersfield and Eagle Townships, and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Cattaraugus Creek Basin will be subject to EPA review to ensure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review 1:00 P.M. Eastern Daylight time on October 9, 1987.

ADDRESSES: The date on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water Management, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: John S. Malleck, Office of Ground Water Management, Environmental Protection Agency, Region II at 212–264–5635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h–3(e), Pub. L. 93–523) states:

> (e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register.** After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On March 9, 1987, the Administrator duly delegated to the Regional Administrator the authority to determine, under section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), that an area has an aquifer which is the sole or principal source of drinking water for the area and which, if contaminated, would create a significant hazard to public health.

On February 28, 1985, EPA received a petition from the Southtown Homeowners Association (Helen Feraldi, Secretary-Treasurer), which petitioned EPA to designate the CCBA a sole source aquifer (SSA). On January 23, 1986 EPA published a notice in the **Federal Register** which served to reprint the petition, announce a public comment period, and to set a public hearing date. A public hearing was conducted on February 25, 1986 and the public was permitted to submit comments and information on the petition until March 25, 1986.

II. Basis for Determination

Among the factors to be considered by the Agency in connection with the designation of an area under section 1424(e) of the SDWA are (1) whether the CCBA is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the following are the findings for the determination noted above:

1. The CCBA currently provides more than 50 percent of the drinking water used by aquifer service area residents. Investigations by the Agency indicate that the CCBA serves as the "sole source" of drinking water for approximately 20,182 persons in the service area, representing 100 percent of the population.

2. There is no existing alternative drinking water source or combination of sources capable of providing 50 percent or more of the drinking water to the designated area, nor is there any available cost effective future source capable of supplying the drinking water demands for the Cattaraugus Creek Basin communities.

3. The CCBA consists of coarse sand and gravel deposits, above and below less permeable glacial till and lacustrine sediments, and fractured shale bedrock. As a result of its highly permeable soil characteristics, the aquifer is susceptible to contamination through its recharge zone from a number of sources including, but not limited to, chemical spills, highway and urban area runoff, septic systems, leaking storage (above and underground) tanks, and landfill leachate. Since ground water contamination can be difficult or sometimes impossible to remediate and since the aforementioned communities rely on the CCBA for drinking water purposes, contamination of the aquifer would pose a significant threat to public health.

III. Description of the Cattaraugus Creek Basin Aquifer System of Cattaraugus, Erie, Wyoming, and Allegany Counties, and its Recharge Zone

The CCBA is composed of permeable sand and gravel deposits above and below lacustrine clay and glacial till, and fractured shale bedrock. The aquifer area is approximately 325 square miles of the southern-most part of the Erie-Niagara River drainage basin in New York State. The designated area in which Federal financially assisted projects will be subject to review is the CCBA in portions of Cattaraugus, Erie, Wyoming, and Allegany Counties. The boundary of both the designated area and aquifer service area is the drainage divide of the Cattaraugus Creek Basin upstream from a point approximately two miles southeast of the Town of Gowanda.

For purposes of this designation, the CCBA is considered to include the entire townships of Freedom and Yorkshire; and parts of Arcade, Sardinia, Concord, Ashford, Centerville, Rushford, Farmersville, Machias, Ellicottville, East Otto, Otto, Persia, Collins, Java, Wethersfield and Eagle Townships. Because the Cattaraugus Creek Basin is covered with permeable sediments, the recharge zone, where water percolates directly to the aquifer, includes the entire areal extent of the CCBA.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Office of Ground Water Management, Room 805, 26 Federal Plaza, New York, New York 10278.

V. Project Review

When EPA publishes this determination for a sole or principal drinking water source, the consequence is that no commitment for Federal financial assistance may be made if the Regional Administrator finds that the Federally-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health (Safe Drinking Water Act Section 1424(e), 42 U.S.C. 300h3(e)). In many cases, these Federally-assisted projects may also be analyzed in an "Environmental Impact Statement" (EIS) under the National Environmental Policy Act (NEPA) 42

U.S.C. 4332(2)(C). All EIS's, as well as any other proposed Federal actions affecting an EPA program or responsibility, are required by Federal law (under the so-called "NEPA/309" process) to be reviewed and commented upon by the EPA Administrator. (42 U.S.C. 7609 required EPA to conduct this review. The "309" in a "NEPA/309" derives from the original source of this general requirement, section 309 of the Clean Air Act).

Therefore, in order to streamline EPA's review of the possible environmental impacts on designated aquifers, when an action is analyzed in an EIS, the two reviews will be consolidated and both authorities will be cited. The EPA review (under the Safe Drinking Water Act) of federally-assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review (under the "NEPA/309" process) of any EIS accompanying the same federally-assisted project. The letter transmitting EPA's comments on the final EIS to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

VI. Summary and Discussion of Public Comments

Nearly all of the comments received from the public were in favor of the designation. The New York State Department of Environmental Conservation (NYSDEC) expressed opposition, based on the nature and extent of the aquifers, the limits of the designation area, and calculations that less than 50 percent of the population in the petition area is dependent on ground water supplies. The NYSDEC defined the aquifer extent only considering the upper, unconfined aquifer. In addition, the extent of the SSA designation area has been refined since the original petition, and now delineates the actual recharge and streamflow source zone. With its present areal extent, the SSA designation area provides 100 percent of its population with drinking water from ground water resources. Cohen & Lombardo, P.C., representing C.I.D. Landfill, Inc., opposed SSA designation because (1) the CCBA not listed as a "primary" aquifer by the NYSDEC, (2) less than 50 percent of the population is served by the CCBA, (3) the Sardinia aquifer is not contiguous to the other aquifers and should not be included in the designation, and (4) the C.I.D. landfill does not overlay the aquifer, nor does it contaminate the Sardinia aquifer.

The Federal SSA Program, as administered by EPA, is based on criteria independent of any state ground water program; as indicated previously, EPA evaluation indicated that 100 percent of the SSA area population uses ground water from the CCBA for drinking water supplies; the Sardinia aquifer, as well as the Springville aquifer, are both part of the CCBA; and the presence or absence of potential sources of contamination is not a criterion EPA uses when making a SSA designation decision.

The area considered for designation was determined to meet the criteria of an area which depends upon an aquifer for its sole or principal drinking water source and which, if contaminated, would pose a serious threat to the health of the residents of Cattaraugus, Erie, Wyoming, and Allegany Counties.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the Cattaraugus, Erie, Wyoming, and Allegany County areas. The only affected entities will be those area-based businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to publuc health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act as amended at 42 U.S.C. 4321, et seq.

Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs of products and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets.

VIII. Summary

Today's action only affects the CCBA of the Cattaraugus, Erie, Wyoming, and Allegany County areas. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request Federal financial assistance.

Dated: September 3, 1987.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 87-22158 Filed 9-24-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3087-0168

Title: Application for Superfund Temporary Relocation Assistance

Abstract: This form is used to document applicant information needed to determine eligibility for, and provide temporary relocation assistance.

Type of Respondents: Individuals or households

Number of Respondents: 500

Burden Hours: 125

Frequency of Recordkeeping Reporting: On occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235, NEOB,

Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Director Officer of Administrative Support.

[FR Doc. 87-22124 Filed 9-24-87; 8:45 am]

BILLING CODE 6718-01-M

Meeting; Board of Visitors for the Emergency Management Institute

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeings: December 7-9, 1987.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

Time: December 7—7:00 p.m. to 9:00 p.m., December 8—8:30 a.m. to 5:00 p.m., December 9—8:30 a.m. to Agenda Completion.

Proposed Agenda: Minutes of August 24-26 Meeting; Preparation of White Paper; Work on Annual Report.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1251) on or before December 10, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Deputy Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 11, 1987.

Caesar A. Roy,

Deputy Associate Director, Training and Fire Programs.

[FR Doc. 87-22126 Filed 9-24-87; 8:45 am]

BILLING CODE 6718-01-M

Meeting; Board of Visitors for the National Fire Academy

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA).

Dates of Meeting: November 16-17, 1987.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time: November 16—8:30 a.m. to 5:00 p.m., November 17—8:30 a.m. to agenda completion.

Proposed Agenda: Old Business; New Business; BOV Visitation to NFA Classes and Facilities Survey.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, MD 21727 (telephone number, 301-447-1123) on or before November 9, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 16, 1987.

Caesar A. Roy,

Deputy Associate Director, Training and Fire Programs.

[FR Doc. 87-22125 Filed 9-24-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Company Engaged in Permissible Nonbanking Activities; First Interstate Bancorp

The organization listed in this notice has applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than Other 8, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California, and First Interstate Bancorp of Texas, Inc., Los Angeles, California, to acquire Allied Agency, Inc., Houston, Texas, pursuant to section 4(c)(8)(D) of the Bank Holding Company Act. Allied Agency acts as managing general agent for the vendor single interest programs of the subsidiary banks of Allied Bancshares, Inc., Houston, Texas.

Board of Governors of the Federal Reserve System, September 21, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22111 Filed 9-24-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Meetings; Employee Thrift Advisory Council

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., October 13, 1987.

Place: Conference Room 5141-A, General Services Administration Building, 18th and F Streets, NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the July 30, 1987, meeting; Status report on Thrift Savings Plan

participation, soliciting asset mangers, communications to participants and role of the Council, and the annuity request for proposals; Withdrawal regulations; 1988 election periods; Formation of subcommittees; Nondiscrimination; Employees in non-pay status; and Vice-chairman position for the Council.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara on (202) 653–2573.

Dated: September 22, 1987.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 87–22206 Filed 9–24–87; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86D–0380]

Draft Policy Guidance for Regulation of Computer Products; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Draft FDA Policy for the Regulation of Computer Products" prepared by FDA's Center for Devices and Radiological Health (CDRH) The document being made available clarifies how FDA would apply existing statutory requirements to hardware and software computer products marked for medical use.

DATE: Comments by November 24, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of the draft policy should be sent to Charles Furfine (address below).

FOR FURTHER INFORMATION CONTACT: Charles Furfine, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: FDA is making available for public comment draft policy guidance for the regulation of computer products. The draft policy guidance clarifies how FDA would apply existing statutory requirements to the regulation of computer products (i.e., both hardware and software) when such products meet the definition of a medical device in the Medical Device Amendments of 1976 (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301–392). A device is defined in section 201(h) of the act as "* * * an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is * * * (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, * * * (3) intended to affect the structure or any function of the body of man or other animals." (21 U.S.C. 321(h).)

Under the draft policy, FDA would not regard computer products used only for traditional "library" functions such as storage, retrieval, and dissemination of information—functions traditionally carried out through textbooks and journals—to be medical devices subject to regulation by the agency. Similarly, the policy notes that FDA's device regulations and authorities also would not apply to computer products used for general accounting or communications functions or solely for instructional purposes, rather than to diagnose or treat patients.

When a computer product is a "component, part, or accessory" of a product recongized as a medical device in its own right, the computer component is regulated according to the requirements for the parent device (unless the component of the device is separately classified).

Computer products which are medical devices, and not components, parts, or accessories of other articles which are themselves medical devices, are regulated with the least degree of control necessary to provide reasonable assurance of safety and effectiveness. For example, many software products known as "expert" or "knowledge based" systems that are not used with existing medical devices and that are intended to involve competent human intervention before any impact on human health occurs (e.g., where clinical judgment and experience can be used to check and intepret a system's output) are exempt from registration, listing, premarket notification, and premarket approval requirements. FDA is also not aware of any computer product that is not a component, part, or accessory of another device that would require an approval premarket approval application (PMA) before marketing.

The agency is cognizant of the need to safeguard First Amendment protections and recognizes that, in some cases, it may be difficult to make a clear distinction between software products that perform traditional "book" or "library" functions, and software products that fall within the definition of a medical device under the draft policy, based on their intended use in the diagnosis or management of health-related conditions. FDA believes flexible guidance is necessary for effective implementation of the medical devices law and specifically invites comments on the appropriateness of the approach taken in the draft policy.

Interested persons may, on or before November 24, 1987, submit written comments to the Dockets Management Branch (address above). Two copies of any comments should be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. The draft policy document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 21, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–22158 Filed 9–22–87; 3:45 pm]

BILLING CODE 4160–01–M

[Docket No. 87F–0289]

Food Additive Petition; Dow Chemical Co.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of pentaerythritol tetrastearate as an optional adjuvant substance in the manufacture of polycarbonate resin.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3995) has been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 177.1580 *Polycarbonate resins* (21 CFR 177.1580) be amended to provide for the safe use of pentaerythritol tetrastearate as an optional adjuvant substance in the manufacture of polycarbonate resins.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 17, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-22121 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting; Advisory Committee to the Director

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on November 18-19, 1987, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8:30 a.m. to 5 p.m. on November 18 and from 8:30 a.m. to approximately 4:30 p.m. on November 19 in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussions of "The Role of Biomedical Research in Combating AIDS."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496-3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22211 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meetings; National Institute of Child Health and Human Development

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for November 1987.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the disussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee
Executive Secretary: Dr. A.T. Gregorie, Rm. 6C03, Landow Building, Telephone: 301, 496-1696
Date of Meeting: November 5, 1987
Place of Meeting: Hyatt Regency, Chairman's Board Room, 1 Metro Center, Bethesda, Maryland
Open: November 5, 1987, 8:30 a.m.-10:00 a.m.
Closed: November 5, 1987, 10:00 a.m.-adjournment

Name of Committee: Maternal and Child Health Research Committe
Executive Secretary: Dr. Scott Andres, Rm. 6C08, Landow Building, Telephone: 301, 496-1485
Date of Meeting: November 9-10, 1987
Place of Meeting: Holiday Inn, Pennsylvania Room, 8120 Wisconsin Avenue, Bethesda, Maryland
Open: November 9, 1987, 9:00 a.m.-10:00 a.m.
Closed:
November 9, 1987, 10:00 a.m.-5: p.m.
November 10, 1987, 9:00 a.m.-adjournment

Name of Committee: Mental Retardation Research Committee
Executive Secretary: Dr. Susan Streufert, Rm. 6C08, Landow Building, Telephone: 301, 496-1696
Date of Meeting: November 12, 1987
Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland
Open: November 12, 1987; 9:00 a.m.-10:00 a.m.
Closed: November 12, 1987, 10:00 a.m.-adjounment

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No 13.865, Research for Mothers and Children, National Instituties of Health.)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22215 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting Change; National Cancer Institute

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors of the Division of Cancer Etiology, National Cancer Institute, October 22-23, 1987, Building 31, C Wing, Conference Room 10, National Institutes of Health, which was published in the Federal Register on September 3, (52 FR 33475).

The Board originally scheduled for a two day meeting will now be held on October 22 only, from 9 a.m. to adjournment in Building 31, C Wing, Conference Room 10. The meeting will be closed to the public from 9 a.m. to 12 p.m. and will be open to the public from 1 p.m. to adjournment.

Dated: September 21, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22212 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; Division of Cancer Treatment Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, October 1-2, 1987, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20892.

This meeting will be open to the public on October 1 from 8:30 a.m. to approximately 5:30 p.m., and again on October 2 from 8:00 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 1 from 5:45 p.m. until recess, for the review, discussion and evaluation of individual programs and projects

conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winfield Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: September 21, 1987

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–22214 Filed 9–24–87; 8:45am]

BILLING CODE 4140–01–M

Meeting; National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 5–6, 1987, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on November 4 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on November 5 will be open to the public from 8:30 to 9:15 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on November 5 from 9:15 a.m. to 5 p.m., and on November 6, from 8:30 a.m. to adjournment; and the subcommittee meeting on November 4 from 3 to 4 p.m.

These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–22213 Filed 9–24–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Library of Medicine, Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on November 16 and 17, 1987, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. on November 16 and from 8:30 a.m. to approximately 12 noon on November 17 for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 16, from approximately 4 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Date: September 21, 1987.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 87–22216 Filed 9–24–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Institute of Allergy and Infectious Diseases

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology and Transportation Research Committee, National Institute of Allergy and Infectious Diseases, on November 4–5, 1987, in Conference Room 6, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on November 4, to discuss administrative details relating to committee business and for program reveiw. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on November 4, and from 8:30 a.m. until adjournment on November 5. These applications, proposals, and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transportation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological

Sciences; 13.856, Microbiology and Infectious Diseases, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22207 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Institute of Allergy and Infectious Diseases

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 29-31, 1987, in Conference Room 7, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on October 29, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on October 29, and from 8:30 a.m. on October 30 until adjournment on October 31. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301-496-7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22210 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting, National Institute of Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on November 12, 1987, Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland. The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to the committee activities as indicated in the notice. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public on November 12 from 9:30 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 407, Bethesda, Maryland 20892, (301) 496-7326.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 1E04, Bethesda, Maryland 20892, 301-496-8273, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22208 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Cancer Institute

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 14-16, 1987, Federal Building, Conference Room B1-19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

This meeting will be open to the public on October 15 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 14, 7:30 p.m. to recess; October 15, 10 a.m. to recess; and October 16, 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7030) will furnish substantive program information.

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22209 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Announcement of Draft NTP Technical Reports Projected for Public Peer Review From November 1987 Through February/March 1989

As part of an effort to earlier inform the public and allow interested parties to comment or obtain information on toxicology and carcinogenesis studies prior to public peer review, the National Toxicology Program (NTP) will publish in the **Federal Register** a listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated ad hoc Panel of Experts (*Peer Review Panel*) during their next four or five meetings (next 12 to 18 months). The first listing covers draft Technical Reports projected for evaluation by the Peer Review Panel during the period from November 1987 through February/March 1989. The listing will be updated with announcements in the **Federal Register** approximately twice a year.

Those interested in having detailed information about any of the studies listed herein or wanting to provide input should contact the responsible NTP staff scientist (Chemical Manager) as early as possible by telephone or by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The attachment gives draft technical reports of studies listed alphabetically within estimated month of review and includes Chemical Abstracts Service registry numbers, use, routes of administration, species, responsible staff scientists (Chemical Managers) with telephone numbers, and dose levels used in the chronic studies.

Attachment.

Dated: September 21, 1987.

David P. Rall,

Director, National Toxicology Program.

TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW

Chemical name/CAS NO.	Use	Route	Species	Chemical manager	NTP TR No.	Exposure Levels
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 11/87						
Benzyl Alcohol, 100-51-6	SOLV	GAV	RM	M. Dieter, 919-541-3368	343	R: 0,200,400, M: 0,100,200 MG/KG
Iodinated Glycerol, 5634-39-9.	PHAR	GAV	RM	J. French, 919-541-7790	340	FR&FM: 0,62,125, MR&MM: 0,125, 250 MG/KG
D-Limonene, 5989-27-5	FOOD	GAV	RM	W. Jameson, 919-541-4096.	347	FR: 0,300,600, MR: 0,75,150, FM: 0,500,1000, MM: 0,250,500 MG/KG
Methyl Dopa Sesquihydrate, 41372-08-1.	PHAR	FEED	RM	J. Dunnick, 919-541-4811.	348	R: 0,3100,6300, M: 0,6300,12500 PPM
Roxarsone, 121-19-7	REAG	FEED	RM	K. Abdo, 919-541-7819	345	R: 0,50,100 M: 0,100,200 PPM
Tetracycline Hydrochloride, 64-75-5.	PHAR	FEED	RM	D. Dietz, 919-541-2272	344	R&M: 0,12500,25000 PPM
Tribromomethane (Bromoform), 75-25-2.	INTR	GAV	RM	RM, 919-B. Melnick, 919-541-4142.	350	R&FM: 0,100,200, MM: 0,50,100 MG/KG
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 03/88						
P-Chloroaniline, 106-47-8.	DYE	GAV	RM	R. Chhabra, 919-541-3386.	351	R: 0,2,6,18, M: 0,3,10,30 MG/KG
2,4-Dichlorophenol, 120-83-2.	INTR	FEED	RM	R. Melnick, 919-541-4142.	353	FR: 0,2500,5000, MR&M: 0,5000, 10000 PPM
Dimethoxane, 828-00-2	PNT	GAV	RM	K. Abdo, 919-541-7819	354	MR: 0,62.5,125, FR: 0,125,250, M: 0,250,500 MG/KG
N,N-Dimethylaniline, 121-69-7.	SOLV	GAV	RM	K. Abdo, 919-541-7819		R: 0,3,30, M: 0,15,30 MG/KG
Diphenhydramine Hydrochloride, 147-24-0.	PHAR	FEED	RM	R. Melnick, 919-541-4142.	355	MR: 0,313,625, FR&M: 0,156,313 PPM
Ethyl Bromide, 74-96-4	INTR	INHAL	RM	J. Roycroft, 919-541-3627.		R&N: 0,100,200,400 PPM
Ethyl Chloride, 75-00-3	INTR	INHAL	RM	J. Roycroft, 919-541-3627.		R&M 0,15000 PPM
Furosemide, 54-31-9	PHAR	FEED	RM	J. Bucher, 919-541-5432		R: 0,350,700, M: 0,700,1400 PPM
Hexachloroethane, 67-72-1.	SOLV	GAV	R	W. Eastin, 919-541-7941		MR: 0.10,20, FR: 0,80,160 MG/KG
Hydrochlorothiazide, 58-93-5.	PHAR	FEED	RM	J. Bucher, 919-541-4532		R: 0,250,500,2000 PPM, M: 0,2500,5000 PPM
8-Methoxypsoralen, 298-81-7.	PHAR	GAV	R	J. Dunnick, 919-541-4811.		R: 0,37.5,75 MG/KG
N-Methylolacrylamide, 924-42-5.	COSM	GAV	RM	J. Bucher, 919-541-4532	352	R: 0,6,12, M: 0,25,50 MG/KG
Ochratoxin A, 303-47-9	NATL	GAV	R	G. Boorman, 919-541-3440.		R: 0,21,70,210 MG/KG
Pentachlorophenol, Dowicide EC-7, 87-86-5.	PEST	FEED	M	E. McConnell, 919-541-3267.	349	M: 0,100,200,600 PPM

TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical name/CAS NO.	Use	Route	Species	Chemical manager	NTP TR No.	Exposure Levels
Pentachlorophenol, Technical, 87-86-5.	PEST	FEED	M	E. McConnell, 919-541-3267.	349	M: 0,100,200 PPM
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 07/88						
Benzofuran, 271-89-6	INTR	GAV	RM	R. Irwin, 919-541-3340		FR&MM: 0,60,120, MR: 0,30,60, FM: 0,120,240 MG/KG
Hydroquinone, 123-31-9	REAG	GAV	RM	F. Kari, 919-541-2926		R: 0,25,50, M: 0,50,100 MG/KG
Alpha-Methylbenzyl Alcohol, 98-85-1.	COSM	GAV	RM	M. Dieter, 919-541-3368		R&M: 0,375,750 MB/KG
Nalidixic Acid, 389-08-2	PHAR	FEED	RM	J. French, 919-541-7790		R&M: 0,200,400 PPM
Pentaerythritol Tetranitrate, 78-11-5.	PHAR	FEED	RM	J. Bucher, 919-541-4532		FR: 0,6200,12500, MR&M: 0,25000,50000 PPM
Phenylbutazone, 50-33-9	PHAR	GAV	RM	F. Kari, 919-541-2926		R: 0,50,100, M: 0,150,300 MG/KG
Rhodamine 6G, 989-38-8.	DYE	FEED	RM	J. French, 919-541-7790		R: 0,120,250, FM: 0,500,1000, MM: 0,1000,2000 PPM
Succinic Anhydride, 108-30-5.	INTR	GAV	M	R. Melnick, 919-541-4142.		MM: 0,50,100, FM 0,5,10 MG/KG
Succinic Anhydride, 108-30-5.	INTR	GAV	R	R. Melnick, 919-541-4142.		R: 0,50,100 MG/KG
Tetranitromethane, 509-14-8.	ENVH	INHAL	RM	J. Bucher, 919-541-4532		R: 0,2,5, M: 0,0.5,2 PPM
Toluene (Nitration Grade), 108-88-3.	INTR	INHAL	RM	J. Huff, 919-541-3780		R: 0,600,1200, M: 0,120,600,1200 PPM
Vinyl Cyclohexene Diepoxide, 106-97-6.	INTR	SP	RM	R. Chhabba, 919-541-3386.		R: 0,50,100, M: 0,25,50,100 MG/ML
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 11/88						
Aleyl Glycidyl Ether, 106-92-3.	SOLV	INHAL	RM	G. Boorman, 919-541-3440.		R&M: 0,5,10 PPM
Benzaldehyde, 100-52-7	INTR	GAV	RM	J. Bishop, 919-541-1876		R&MM: 0,200,400, FM: 0,300,600 MG/KG
Chloroacetophenone (CN), 532-27-4.	MLTR	INHAL	RM	R. Melnick, 919-541-4142.		R:),1,2, M: 0,2,4 MG/M3
Chloroacelophenone (CN) 532-27-4.	MLTR	INHAL	RM	R. Melnick 919-541-4142		R: 0,1,2 M: 0,2,4 MG/M3
O-Chlorobenzalmalononitrile (CS), 2698-41-1.	MLTR	INHAL	RM	K. Abdo, 919-541-7819		R: 0,.075,.24,.75, M: 0,.75,1.5 MG/M3
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 03/89						
D-Carvone, 2244-16-8	COSM	GAV	RM	J. Roycroft, 919-541-3627.		R: 0,175,375, M: 0,375,750 MG/KG
3.3'-Dimethoxybenzidine, 119-90-4.	DYE	WATER	R	J. Mennear, 919-541-4142.		R: 0,80,170,330 PPM
Epinephrine Hydrochloride, 55-31-2.	PHAR	INHAL	RM	J. Roycroft, 919-541-3627.		R: 0,1.5,5.0, M: 0,1.5,3.0 MG/M3
Ethylene Thiourea, 96-45-7.	PEST	FEED	RM	R. Chhabra, 919-541-3386.		R: 0,25,83,250, M: 0,100,333,1000 PPM
Vinyl Toluene, 25013-15-4.	SOLV	INHAL	RM	G. Boorman, 919-541-3440.		R: 0,100,300, M: 0,10,25 PPM

Abbreviations used:
USE Primary Use Category: COSM Cosmetics, DYE Used as or in the Manfuacture of Dyes, Inks and Pigments, ENVH Environmental (Air/Water) Pollutants, FOOD Food and Food Additives, INTR Chemical Intermediate or Catalyst, MLTR Used for military or Policing Purposes, NATL Naturally Occurring Substances, PEST Pesticides, General or Unclassified, PHAR Pharmaceuticals, PNT Paint Ingredient, REAG Laboratory Reagents, SOLV Vehicles and Solvents.
ROUTE Route of Administration: FEED Oral in Feed, GAV Oral, Gavage, INHAL Inhalation, SP Skin Paint, WATER Oral with Water
SPEC Species: R=Rate, M=Mice.

[FR Doc. 87-22237 Filed 9-24-87; 8:45 am]
BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Part S is being revised. Part S (last amended at 52 FR 10815 of April 3, 1987) was previously revised to establish

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Chapters S1, S2, S3, S4 and S5 to reflect the designation of the Deputy Commissioners for Programs, Operations, Systems, Policy and External Affairs, and Management and Assessment as line officials responsible for directing major organizational components. That same notice deleted the existing chapters of Part S in their entirety. That part is being amended to reflect the insertion of most of the previously existing chapters as subchapters of Chapters S1 through S5.

The changes are as follows: 1. Chapter S1 is amended to include two Subchapters, S1M, the Office of Management, Budget, and Personnel and S1L, the Office of Assessment. Previous Chapter SM, the Office of Management, Budget, and Personnel, should be inserted in its entirety as new subchapter S1M. Previous Chapter SL, the Office of Assessment, should be inserted in its entirety as new Subchapter S1L.

2. Chapter S2 is amended to include two subchapters, S2P, the Office of Central Operations and S2D, the Office of the Regional Commissioner. Previous Chapter SP, the Office of Central Operations, should be inserted in its entirety as new Subchapter S2P.

Previous Chapter SD, the Office of the Regional Commission, should be inserted in its entirety as new Subchapter S2D.

3. Chapter S3 is amended to include six Subchapters: S3H, the Office of Legislative and Regulatory Policy, S3B, the Office of Retirement and Survivors Insurance, S3C, the Office of Disability, S3E, the Office of Supplemental Security Income, S3N, the Office of the Actuary and S3G, the Office of Hearings and Appeals. Previous Chapter SH, the Office of Legislative and Regulatory Policy, should be inserted in its entirety as new Subchapter S3H.

Previous Chapter SV, the Office of Retirement and Survivors Insurance, should be inserted in its entirety as new Subchapter S3B.

Previous Chapter SJ, the Office of Disability, should be inserted in its entirety as new Subchapter S3C.

Previous Chapter SW, the Office of Supplemental Security Income, should be inserted in its entirety as new Subchapter S3E.

Previous Chapter SN, the Office of the Actuary, should be inserted in its entirety as new Subchapter S3N. Previous Chapter SG, the Office of Hearings and Appeals, should be inserted in its entirety as new Subchapter S3G.

4. Chapter S4 is amended to include five Subchapters: S4Y, the Office of Information Systems, S4Q, the Office of Strategic Planning and Integration; S4U, the Office of System Integration, S4B, the Office of System Operations and S4T, the Office of System Requirements.

Previous Chapter SY, the Office of Information Systems, should be inserted in its entirety as new Subchapter S4Y.

Previous Chapter SQ, the Office of Planning, Support and Integration should be retitled as the Office of Strategic Planning and Integration and inserted in its entirety as new Subchapter S4Q.

Previous Chapter SU, the Office of System Integration, should be inserted in its entirety as new Subchapter S4U. Previous Chapter SB, the Office of System Operations, should be inserted in its entirety as new Subchapter S4B.

Previous Chapter ST, the Office of System Requirements should be inserted in its entirely as new Subchapter S4T.

5. Chapter S5 is amended to include two subchapters, S5E, the Office of Governmental Affairs and S5R, the Office of Policy.

Previous Chapter SE, the Office of Governmental Affairs, should be inserted in its entirety as new Subchapter S5E.

Previous Chapter SR, the Office of Policy, should be inserted in its entirety as new Subchapter S5R.

Dated: September 17, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-22137 Filed 9-24-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Establishing Tentative Closing Date for Transmittal of Applications Under Water Resources Research Grant Program for Fiscal Year (FY) 1988

Applications are invited for water research projects under the Water Resources Research Grant Program.

Authority for this program is contained in section 105 of Pub. L. 98-242, Water Resources Research Act of 1984. (42 U.S.C. 10301-10309)

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State and local governments.

Closing Date for Transmittal of Applications: Applications are tentatively due on or before January 22, 1988. The announcement will state the actual due date for receipt of the applications.

Program Information: This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems.

Application Forms: The announcement is expected to be available on or about October 12, 1987, and may be obtained by writing to the U.S. Geological Survey, Attn: Melissa Calloway, MS 205C, Branch of Procurement and Contracts, 12201 Sunrise Valley Drive, Reston, VA 22092 and requesting a copy of announcement 7336. All organizations that applied for a FY 1987 award, all Historically Black Colleges and Universities, and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Frank Coley, Branch of Research, Grants, and Contracts, Water Resources Division, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703-648-6810.

(Catalog of Federal Domestic Assistance Number 15.806)

Date: September 15, 1987.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 87-22159 Filed 9-24-87; 8:45 am]

BILLING CODE 4310-3-M

Bureau of Land Management

[NV-930-07-4212-24; N-33613]

Airport Lease; Nevada; Correction

September 11, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction; Notice of Termination of Segregative Effect.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 388–6403.

SUPPLEMENTARY INFORMATION: FR Doc. 87–20003, appearing in 52 FR 32968 on September 1, 1987, erroneously provided for termination of the segregative effect of the lands described therein and stated that the lands would be open to the operation of the public land laws and mining laws at 10:00 a.m. on October 1, 1987. Said notice is hereby corrected to read that, pursuant to Pub. L. 99–548, October 27, 1986, (100 Stat. 3061), the lands described therein will remain segregated from all forms of entry and appropriation under the public land laws, including the mining laws. Public Law 99–548 also segregates the subject lands from operation of the mineral leasing and geothermal leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–22178 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–HC–M

[CO–010–87–4133–17]

Road Closure and Restriction To Entry and Use; White River Resource Area, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of road closure and restriction to entry and use.

SUMMARY: Pursuant to 43 CFR Part 8364 the BLM will close or restrict certain roads located on public lands in the White River Resource Area:

Blue Mountain Area approximately 8.4 miles of road closed and 17.8 miles of road restricted.

Township 4 North, Range 102 West

Sections 7, 8, 17, 18, 19, 20

Township 4 North, Range 103 West

Sections 10, 12, 13, 14, 15, 23, 24

Township 5 North, Range 102 West

Sections 19, 31, 32

Township 5 North, Range 103 West

Sections 24, 25, 26, 35

Certain roads on public land in the above described area will be closed to public access, restricted to use by permit only, or restricted to use by vehicles which are 45 inches or less in width. This road closure and restriction will be in effect for a period from October 1, 1987 to July 15, 1988. All motorized vehicular uses in this area will be restricted to prevent excessive erosion of fragile soils, provide protection of wildlife values and habitat in the area, protect public safety and prevent interference with oil and gas exploration activity in the area. Administrative motorized vehicular access by Federal and State agencies, private landowners within the area and access associated with oil and gas activity may be approved for certain roads by the authorized officer.

DATES: This action is effective October 1, 1987, and will remain in effect until July 15, 1988.

ADDRESSES: Maps showing the location of and information pertaining to the above closures and restrictions will be available at the BLM White River Resource Area Office in Meeker, Colorado; BLM Craig District Office in Craig, Colorado; Dinosaur National Monument Headquarters in Dinosaur, Colorado; and on County Road 16 and the Dinosaur National Monument Access Road.

FOR FURTHER INFORMATION CONTACT: B. Curtis Smith, Area Manager, BLM White River Resource Area, P.O. Box 928, Meeker, Colorado 81641, (303) 878–3601.

Dated: September 14, 1987.

B. Curtis Smith,

Area Manager.

[FR Doc. 87–21774 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–JB–M

[WY–920–07–4111–15; W–75904]

Oil and Gas Lease; Proposed Reinstatement of Terminated Lease in Wyoming

September 18, 1987.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–75904 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–75904 effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–22116 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–07–4111–15; W–59219]

Oil and Gas Lease; Proposed Reinstatement of Terminated Lease in Wyoming

September 18, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–59219 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–59219 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–22117 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–22–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent to Engage in Compensated Intercorporate Hauling Operations; Kraft Inc., et al.

September 22, 1987.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and address of principal office: Kraft, Inc., Kraft Court, Glenview, IL 60025.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

A. A. C. Oils Corp. (Delaware)

B. American Fruit & Produce Co., Inc. (Minnesota)
C. Avoset Corp. (Delaware)
D. Celestial Seasonings, Inc. (Delaware)
E. Celestial Transport, Inc. (Colorado)
F. Central Foods Co. (Delaware)
G. Cheese Analog Corp. (Delaware)
H. Chiffon Corp. (Delaware)
I. Consolidated Distribution Center, Inc. (Delaware)
J. Craig Distributing Company (Missouri)
K. Duracell, Inc. (Delaware)
L. Duracell, International, Inc. (Delaware)
M. Flying Foods International, Inc. (New York)
N. Frostex Foods, Inc. (Texas)
O. Holleb & Company (Illinois)
P. I. Feldman & Sons (Washington, DC)
Q. Mrs. Tucker Corp. (Delaware)
R. Pollio Dairy Products Corporation (New York)
S. Purity Dairy Corp. (Delaware)
T. Stagecoach Express, Inc. (Illinois)
U. Seven Seas Salad Dressing Corp. (Delaware)
V. Texas Food Oils Corp. (Delaware)
W. The All American Gourmet Company (Delaware)
X. Tombstone Pizza Corporation (Wisconsin)
Y. Westman Commission Company (Colorado)

Noreta R. McGee,

Secretary.

[FR Doc. 87-22198 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31099]

Railroad Operation; R. Lawrence McCaffrey, Jr.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts R. Lawrence McCaffrey, Jr., from the requirements of 49 U.S.C. 11322 for Mr. McCaffrey, a director of Otter Tail Valley Railroad Company, to become a director of the Kiamichi Railroad Company, Inc., the Maryland and Delaware Railroad Company and the Arkansas and Missouri Railroad Company.

DATES: This exemption will be effective on October 25, 1987. Petitions to stay must be filed by October 5, 1987 and petitions for reconsideration must be filed by October 15, 1987.

ADDRESSES: Send petitions referring to Finance Docket No. 31099 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Karen C. Reed, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing limpaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: September 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22199 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30883]

Railroad Operations; Soo Line Railroad Co.; and Chicago and North Western Transportation Co.

On May 26, 1987, the Soo Line Railroad Company (Soo) filed a notice of exemption under 49 CFR 1180.2(d)(5) for a joint project with the Chicago and North Western Transportation Company (C&NW) to relocate a line of railroad in Madison, WI. Soo and C&NW each own and operate a line of railroad in Madison.

The joint project involves the following elements:

(1) *Trackage Rights.* Soo will exercise trackage rights, acquired from C&NW pursuant to an agreement dated September 1, 1986, over C&NW's parallel line which is in close proximity to Soo's line. The trackage rights are between C&NW's milepost 138.25 and milepost 140.6 and between C&NW's milepost 140.6 and milepost 79.1. Soo also will exercise trackage rights pursuant to an agreement dated March 24, 1987, over another C&NW parallel line between C&NW's milepost 80.7 and milepost 81.25 within Madison. Once Soo's trackage rights are effective, it will reroute its overhead traffic over the C&NW line, and will continue to serve shippers over the two parallel lines.[1]

(2) *Partial Abandonment.* Soo will reroute its overhead traffic and remove its trackage and equipment from its present lines located between mileposts 166.72 and 32.91 and between mileposts 166.47 and 164.44, a distance of approximately 3.28 miles. Abandonment and relocation of operations by way of the C&NW trackage rights will result in the avoidance of added expenses for maintenance of crossings caused by road improvements by the City of Madison. Soo will refrain from removing all bridges, culverts and structures for a period of 180 days after the effective date of this exemption.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures,* 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T. & I.R.—Trackage Rights,* 363 I.C.C. 878 (1981).

Moreover, in Finance Docket No. 30639, *Louisiana & Ark. Ry. Co.—Trackage Rights Exemption—Illinois C.G. R.R. Co. and New Orleans Term. Co.* (not printed), served April 17, 1985, the abandonment of approximately 6 miles of track was exempted under the provisions of § 1180.2(d)(5) as an incident to a line relocation proposal. Similarly, the facts of this case show that the proposed abandonment is incidental to a line relocation and should be exempted under § 1180.2(d)(5).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). Any employees affected by the proposed abandonment will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

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[1] Soo had previously granted trackage rights to the Wisconsin and Calumet Railroad Company, Inc. (W&C) over the to-be-abandoned trackage. W&C has subsequently acquired substitute trackage rights over one of the same parallel C&NW lines that Soo will be operating over and the trackage rights agreement between Soo and W&C has been canceled. Consequently there will be no adverse effect on W&C as a result of this transaction. W&C has filed a notice of exemption in F.D. 31087 involving relocation of its trackage rights.

Use of this exemption is further conditioned (1) by requiring Soo to consult with the Wisconsin Departments of Transportation and Natural Resources prior to any salvage activities on the line, and (2) by requiring Soo to consult with the District Corps of Army Engineers in the event that its bridges over the Yahara River are to be salvaged.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: September 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen King,

Acting Secretary.

[FR Doc. 87-21844 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31087]

Railroad Operations; Wisconsin & Calumet Railroad Co., Inc. and Chicago and North Western Transportation Co.

On August 26, 1987, Wisconsin and Calumet Railroad Company, Inc. (WIC), filed a notice of exemption under 49 CFR 1180.2(d)(5) for WIC's relocation of its operations through acquisition of overhead trackage rights over a line of railroad between Chicago and North Western Transportation Company's ("C&NW") milepost 138.25 and C&NW's milepost 81.25, between C&NW's milepost 81.25 and C&NW's milepost 80.7, and between C&NW's milepost 80.7 and C&NW's milepost 79.7 at Madison, WI.

The joint project here involves the following elements:

(1) *Trackage rights acquisition.* WIC will exercise trackage rights acquired from C&NW pursuant to an agreement dated October 1, 1986, over C&NW's parallel line of railroad which is in close proximity to Soo's line presently hosting WIC's trackage rights. This acquisition is being done in conjunction with the relocation of Soo Line Railroad Company's ("Soo") line in Madison. Under the relocation, Soo will abandon a portion of its line over which WIC currently has trackage rights. Soo's Notice of Exemption has been filed as Finance Docket No. 30883.

(2) *Trackage rights discontinuance.* WIC will reroute its overhead traffic and discontinue use of trackage rights over the to-be-abandoned Soo line between Soo milepost 166.72 and Soo milepost 166.47 and between Soo milepost 166.47 and Soo milepost 166.44 at Madison. These rights were effectively canceled by Soo pursuant to the Soo/WIC agreement effective January 9, 1987.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

Moreover, in Finance Docket No. 30639, *Louisiana & Ark. Ry. Co.—Trackage Rights Exemption—Illinois C.G.R.R. Co. and New Orleans Term. Co.* (not printed), served April 17, 1985, the abandonment of approximately 6 miles of track was exempted under the provisions of § 1180.2(d)(5) as an incident to a line relocation proposal. Similarly, the facts of this case show that the discontinuance is incidental to a line relocation and should be exempted under § 1180.2(d)(5).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). Any employees affected by the discontinuance will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: September 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-21845 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

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[1] The Railway Labor Executives' Association (RLEA) has requested the imposition of labor protective conditions. As an exemption is sought from the requirements of 49 U.S.C. 11343, such conditions have been routinely imposed.

DEPARTMENT OF JUSTICE

Agency Information Collection Activities Under OMB Review

September 20, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry and to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer and the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is: Larry E. Miesse and can be reached on (202) 633-4312.

New Collections

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Guam Visa Waiver Information
(4) I-736
(5) On occasion
(6) Individuals or households. Pub. L. 99-396 provides for certain aliens to be exempted from the nonimmigrant visa requirement is seeking entry into and stay on Guam as a vistor for a maximum of fifteen days provided no potential threat exists

to the welfare, safety or security of the United States, its territories and commonwealths.
(7) 500,000 annual responses, .083 hours burden per response.
(8) 41,500 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Guam Visa Waiver Agreement
(4) I–760
(5) One time
(6) Businesses or other for-profit, non-profit institutions, small businesses or organizations. Pub. L. 99–396 provides for certain aliens to be exempted from the nonimmigrant visa requirement is seeking entry into and stay on Guam as a visitor for a maximum of fifteen days provided no potential threat exists to the welfare, safety or security of the United States, its territories and commonwealths. Form is used by carrier to establish agreement.
(7) 25 annual responses, .083 hours burden per response.
(8) 3 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Revision of a Currently Approved Collection

(1) Larry E. Miesse, (202) 633–4312
(2) Office of Juvenile Juistice and Delinquency Prevention, Office of Justice Programs, Department of Justice
(3) Compliance Monitoring Report
(4) N/A
(5) Annually
(6) State or local governments. This monitoring report provides the only measurement of participating State's compliance with the major mandates of the JJDP Act. The reported data is used to determine eligibility for Federal funds, to answer inquiries from the public, and to assist the Congress, OJJDP and the States in planning justice systems improvements.
(7) 52 annual responses, 3 burden hours per response plus 145 hours of annual recordkeeping burden for each respondent.
(8) 7,696 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) Capital Punishment Report of Inmates Under Sentence of Death
(4) NPS 8, 8A, 8B, 8C, 8L
(5) Annually
(6) State or local governments. This series collects data on the capital punishment statutes, population under a death sentence, and executions in State and Federal correctional institutions. The data are published annually for use by the Bureau of Justice Statistics, the Department of Justice, The Congress, the media and the general public.
(7) 2,196 annual responses, .365 burden hours per response.
(8) 562 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) National Crime Survey
(4) NCS 1, 2, 7, 500
(5) Semi-annually
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amount of crime committed against households and individuals throughout the Country.
(7) 296,280 annual responses, .21 burden hours per response.
(8) 62,066 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) National Crime Survey
(4) NCS 1, 2, 7, 500
(5) Semi-annually
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amount of crime committed against households and individuals throughout the Country.
(7) 296,280 annual responses, .21 burden hours per response.
(8) 62,066 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Student Status Form
(4) I–721
(5) Quarterly
(6) State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations. Used by educational institutions to confirm or correct Service records regarding aliens believed to be legally in the United States for the purpose of obtaining an education at a specific school.
(7) 40,000 responses, I burden hours per response.
(8) 40,000 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application To File Petition for Naturalization
(4) N–400
(5) On occasion.
(6) Individuals or households. Data required to establish petitioner's eligibility for naturalization and to enable designated officers of the Immigration and Naturalization Service to make appropriate recommendations to the Naturalization Court.
(7) 500,000 annual responses, 1 burden hours per response.
(8) 500,000 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application To File Petition for Naturalization on Behalf of Child
(4) N–402
(5) On occasion
(6) Individuals or households. Data required to establish petitioner's eligibility for naturalization to enable designated officers of the Immigration and Naturalization Service to make appropriate recommendations to the Naturalization Court.
(7) 20,000 annual responses, .5 burden hours per response.
(8) 10,000 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Larry E. Miesse,
Department Clearance Officer.

[FR Doc. 87–22115 Filed 9–24–87; 8:45 am]
BILLING CODE 4410–10–M

Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of a Federal Correctional Facility; East Peoria, Tazewell County, IL

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new federal correctional institution with an adjacent satellite prison camp is needed in its system. A 320-acre tract of land at the convergence of Mueller Road and Pinecrest Drive adjacent to the City of East Peoria will be evaluated. The proposal calls for the construction of a 600 to 700 bed facility to house medium security inmates and a 150 to 200 bed camp to house minimum security inmates.

Approximately 80 of the 320 acres would be used for road access, inmate housing, administration and program spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of East Peoria. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant Administration Division, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22065 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of Federal Correctional Facility; Manchester, Clay County, KY

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justic, Federal Bureau of Prisons has determined that a new secure 600 to 700 bed correctional institution with an adjacent 150 to 200 bed satellite prison camp is needed in its system. A site is currently being evaluated.

A tract of land totaling 250 acres is required. Of this, approximately 80 acres would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Clay County. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant, Administration Division, U.S. Bureau of Prisons, 320 First Street NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22066 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of Federal Correctional Facility; Taft, CA

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new federal correctional institution with an adjacent satellite prison camp is needed in its system. A 320-acre tract of land north of the City of Taft will be evaluated. The proposal calls for the construction of a 600 to 700 bed facility to house medium security inmates and a 150 to 200 bed camp to house minimum security inmates.

Approximately 80 of the 320 acres would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location

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convenient to the citizens of Taft. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend.

In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant Administration Division, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22064 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of a Federal Correctional Facility; Three Rivers, TX

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new financial correctional institution with an adjacent satellite prison camp is needed in its system. A 300-acre tract of land west of the community of Three Rivers near the Choke Canyon Reservoir will be evaluated. The proposal calls for the construction of a 600 to 700 bed facility to house medium security inmates and a 150 to 200 bed camp to house minimum security inmates.

Approximately 80 of the 300 acreas would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Three Rivers, Texas. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant Administration Division, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22087 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–20,048]

General Electric Wiring Device Warwick, Rhode Island; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 31, 1987 in response to a worker petition received on August 31, 1987 which was filed by the International Union of Electrical Workers on behalf of workers at General Electric Wiring Device, Warwick, Rhode Island.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

The petitioners are encouraged to submit a new petition at any time they wish to cover unemployed workers or workers threatened with the loss of their jobs.

Signed at Washington, DC this 17th day of September, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–22177 Filed 9–24–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage

determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Georgia:
GA87-24—pp.—270c-270d
GA87-25—pp.—270e-270f
GA87-26—pp.—270g-270h
GA87-27—pp.—270i-270j
GA87-28—pp.—270k-270l
GA87-29—pp.—270m-270n
GA87-30—pp.—270o-270p

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice Choctaw, Clarke, Conecuh, Escambia, Greene, Marengo, Monroe, Pickens, Sumter, Talladega, Washington and Wilcox Counties, Alabama from General Wage Determination Nos. A187-17 and AL87-18 dated January 2, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL87-17 (Jan. 2, 1987)—pp. 35-38
AL87-18 (Jan. 2, 1987)—pp. 39-41
AL87-20 (Jan. 2, 1987)—p. 45
Georgia:
GA87-9 (Jan. 2, 1987)—pp. 243-244
GA87-10 (Jan. 2, 1987)—pp. 245-246
GA87-11 (Jan. 2, 1987)—pp. 247-248
GA87-12 (Jan. 2, 1987)—pp. 249-250
Pennsylvania:
PA87-3 (Jan. 2, 1987)—p. 868
PA87-5 (Jan. 2, 1987)—pp. 884-886
PA87-6 (Jan. 2, 1987)—pp. 898-903
PA87-9 (Jan. 2, 1987)—pp. 926-929
PA87-24 (Jan. 2, 1987)—pp. 1012-1013
Virginia: VA87-14 (Jan. 2, 1987)—p. 1156
Listing by Location (index)—pp. xxi-xxii, pp. xxiv-xxvii
Listing by decision (index)—pp. li-lxii

Volume II

Kansas:
KS87-6 (Jan. 2, 1987)—p. 356
New Mexico:
NM87-1 (Jan. 2, 1987)—pp. 690-705
Oklahoma:
OK87-16 (Jan. 2, 1987)—p. 912b
Texas:
TX87-15 (Jan. 2, 1987)—pp. 958-959

Volume III

Colorado:
CO87-4 (Jan. 2, 1987)—p. 119

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 18th Day of September 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-21909 Filed 9-24-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Renewal and Transfer of DOE/NSF Nuclear Science Advisory Committee to the National Science Foundation

Pursuant to the Federal Advisory Committee Act Pub. L. 92-463), the Assistant Director for Mathematical and Physical Sciences has certified that renewal of the DOE/NSF Nuclear Science Advisory Committee and transfer from the Department of Energy to the National Science Foundation is in the public interest in connection with the performance duties imposed upon the National Science Foundation. This determination follows consultation with the Committee Management Secretariat, General Services Administration and is consistent with the Federal Advisory Committee Act and other applicable regulations.

The DOE/NSF Nuclear Science Advisory Committee (NSAC) will provide advice upon request to both the Department of Energy and the National Science Foundation on scientific priorities within the field of basic

nuclear research. Basic nuclear research is understood to encompass experimental and theoretical investigations of the fundamental interactions, properties, and structure of atomic nuclei. NSAC activities will include assessment of and recommendations concerning:

a. Objectives, directions, and development of the field of basic nuclear research;

b. Adequacy of present facilities and the need and relative priority for new facilities;

c. Facility and instrumentation development programs needed to advance the field;

d. Institutional balance of support for optimized scientific productivity and training of nuclear scientists;

e. Relationships of basic nuclear research with other fields of science.

Authority for the DOE/NSF Nuclear Science Advisory Committee shall expire on September 23, 1989 unless formal determination is made that continuance is in the public interest.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22110 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Advisory Panel for Cell Biology

Name: Advisory Panel for Cell Biology.

Date and Time: Wednesday, Thursday, and Friday, October 14, 15, and 16, 1987, from 9:00 a.m. to 5:00 p.m.

Place: Room 642, 1800 G Street NW., Washington, DC. 20550.

Type of Meeting: Closed.

Contact Person: Dr. M. V. Parthasarathy, Program Director, Cell Biology Program, Room 321. Telephone: 202-357-7474.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

September 21, 1987.

M. Rebecca Winkler

Committee Management Officer.

[FR Doc. 87-22106 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Advisory Panel for Developmental Biology

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Biology.

Date and Time: October 14, 15, 16, 1987, starting at 9:00 a.m. to 5:30 p.m.

Place: State Plaza Hotel 2117 E Street NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Ralph Hecht, Program Director or Dr. Judith Plesset, Assistant Program Director, Developmental Biology Program, Room 321, Telephone 202/357-7989.

Purpose of Advisory Panel: To provide advice and recommendations concerning support of research in developmental biology.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries, and the personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22107 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting of DOE/NSF Nuclear Science Advisory Committee

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: October 16, 1987, 12:00 to 2:00 pm.

Place: Conference Room C, Hyatt Regency Hotel, 2 Albany Street, New Brunswick, New Jersey 08901.

Type of Meeting: Open

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda: Report on the budgets and status of the NSF nuclear physics program.

Report on the budgets and status of the DOE nuclear physics program.

Status report on the Subcommittee on Nuclear Theory.

Disposition of the report from the Manpower Subcommittee.

Report of the working group on inflation.

Public comment.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22109 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Social and Developmental Psychology Advisory Panel

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Social and Developmental Psychology.

Date and Time: October 15-16, 1987: 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW. Room 642, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Jean B. Intermaggio, Program Director, Social and Developmental Psychology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9485.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support of research in social and developmental psychology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries, and the personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22108 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237/249]

Environmental Assessment and Finding of No Significant Impact; Commonwealth Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of exemptions from the requirements of Section III.G.1 of Appendix R to 10 CFR Part 50 to the Commonwealth Edison Company (CECo) (the licensee) for the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions from requirements of Section III.G.1 of Appendix R to 10 CFR Part 50 relating to proposed repairs, i.e., pulling of fuses and/or replacing blown fuses, for achieving and maintaining hot shutdown of the plant following certain fire scenarios. The licensee requested exemption from the III.G.1 requirement, that one train of systems needed for hot shutdown be free of fire damage, insofar as the requirement is interpreted as disallowing repairs for achieving and maintaining hot shutdown. these exemptions were determined by the licensee to be necessary at Dresden during a reverification program initiated in response to Commission clarification of Appendix R requirements.

The Need for the Proposed Action

When the reverification program indicated the need for additional modifications, necessary engineering and procurement were required by CECo. Among other things, the licensee proposed an alternate safe shutdown procedure which required that fuses be pulled or blown fuses replaced in order to achieve and maintain hot shutdown.

Environmental Impacts of the Proposed Action

The proposed action is related to the method of achieving and maintaining hot shutdown in case of a fire in certain areas. The exemption would permit certain fuses to be pulled or certain fuses to be replaced. The exemption would be necessary for the implementation of hot shutdown. Thus, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact assocated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with Section III.G.1 of Appendix R to 10 CFR Part 50 requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated August 10, 1984 as supplemented March 1, August 9 and September 18, 1985 and January 9, March 12, March 20 and May 30, 1986 and April 14, 1987. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland this 18th day of September 1987.

For The Nuclear Regulatory Commission.

Marshall Grotenhuis,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 87–22181 Filed 9–24–87; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.1, Revision 2, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material," describes procedures acceptable to the NRC staff for the prevention of criticality accidents in solutions of fissile material. The guide endorses the revised ANSI/ANS–8.5–1986, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 17th day of September 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87–22180 Filed 9–24–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service, Schedules A, B, and C; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B,

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and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on August 25, 1987 (52 FR 32087). Individual authorities established or revoked under Schedule A, B, or C between August 1, 1987, and August 31, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Department of Navy

All positions at the Pacific Missile Range Facility, Barking Sands, Hawaii. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988. Effective July 29, 1987.

The following exception was revoked:

Department of Transportation

Positions at Washington National and Dulles International Airports that were filled before control of the airports was transferred to the Metropolitan Washington Airports Authority. Effective August 3, 1987.

Schedule B

The following exception was established:

Department of Commerce

Up to 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992. Effective August 7, 1987.

Schedule C

The following exceptions were established:

Department of Agriculture

One Private Secretary to the Administrator for Agricultural Marketing Service. Effective August 5, 1987.

One Confidential Assistant to the Administrator, for Animal and Plant Health Inspection Service. Effective August 7, 1987.

One Private Secretary to the Under Secretary for Small Community and Rural Development. Effective August 7, 1987.

One Special Assistant for Agricultural Labor to the Assistant Secretary for Economics. Effective August 10, 1987.

One Special Assistant to the Assistant Secretary for Marketing and Inspection Services. Effective August 17, 1987.

One Private Secretary to the Administrator, for Rural Electrification Administration. Effective August 17, 1987.

Department of Commerce

One Congressional Affairs Officer to the Assistant Director for External Affairs, Minority Business Development Agency. Effective August 8, 1987.

Department of Defense

One Personal and Confidential Assistant to the Assistant Secretary of Defense. Effective August 11, 1987.

One Private Secretary to the Deputy Under Secretary of Defense. Effective August 13, 1987.

One Staff Assistant to the Associate Director, Office of Presidential Personnel. Effective August 14, 1987.

One Speechwriter to the Assistant Secretary of Defense. Effective August 21, 1987.

One Director, Low-Intensity Conflict to the Deputy Assistant Secretary of Defense. Effective August 21, 1987.

Department of Education

One Special Assistant to the Assistant Secretary for Civil Rights. Effective August 10, 1987.

One Secretary's Regional Representative to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 11, 1987.

One Executive Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 11, 1987.

One Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective August 13, 1987.

One Staff Assistant (Typing) to the Director, Scheduling and Briefing Staff for the Office of the Secretary. Effective August 18, 1987.

One Confidential Assistant to the Chief of Staff and Counselor to the Secretary. Effective August 18, 1987.

One Executive Assistant to the Comptroller. Effective August 21, 1987.

One Confidential Assistant to the Director of Public Affairs. Effective August 21, 1987.

Department of Energy

One Staff Assistant to the Assistant Secretary for Management and Administration. Effective August 3, 1987.

One Legislative Affairs Specialist to the Director, Office of Congressional Affairs. Effective August 11, 1987.

One Staff Assistant to the Special Assistant to the Secretary. Effective August 20, 1987.

One Director, Public Liaison and Intergovernmental Affairs, to the Chairman, Federal Energy Regulatory Commission. Effective August 21, 1987.

One Supervisory Intergovernmental Affairs Specialist to the Director, Office of Communications. Effective August 24, 1987.

Department of Health and Human Services

One Special Assistant to the Director of Intergovernmental Affairs. Effective August 6, 1987.

One Confidential Assistant to the Associate Administrator for External Affairs. Effective August 17, 1987.

One Associate Commissioner for the Children's Bureau to the Commissioner, Administration for Children, Youth and Families. Effective August 20, 1987.

One Associate Commissioner, Head Start Bureau, to the Commissioner, Administration for Children, Youth and Families. Effective August 20, 1987.

One Special Assistant to the Director, Policy Development Staff, Social Security Administration. Effective August 20, 1987.

Department of Housing and Urban Development

One Special Assistant to the General Counsel. Effective August 5, 1987.

One Special Assistant to the Assistant Secretary for Housing. Effective August 7, 1987.

One Confidential Assistant to the President, Government National Mortgage Association. Effective August 7, 1987.

One Executive Assistant to the Deputy Assistant Secretary for policy, Financial Management and Administration, Office of Housing. Effective August 7, 1987.

One Staff Assistant to the Secretary. Effective August 13, 1987.

One Effective August 7, 1987.

One Confidential Assistant to the General Counsel. Effective August 18, 1987.

Department of Interior

One Special Assistant to the Assistant Secretary for Policy, Budget and Administration. Effective August 3, 1987.

One Secretary (Typing) to the Secretary of the Interior. Effective August 5, 1987.

Department of Justice

One Special Assistant to the Assistant Attorney General, Office of Legal Policy. Effective August 1, 1987.

One Special Assistant to the Assistant Attorney General, Civil Division. Effective August 1, 1987.

One Special Assistant to the Assistant Attorney General, Office of Justice Programs. Effective August 1, 1987.

One Social Science Program Manager to the Director, Office for Victims of Crime. Effective August 11, 1987.

One Attorney-Advisor (Special Assistant) to the Assistant Attorney General, Civil Division. Effective August 12, 1987.

One Special Assistant to the Attorney General. Effective August 13, 1987.

Department of Labor

One Executive Assistant to the Assistant Secretary for Labor-Management Standards. Effective August 20, 1987.

Department of State

One Supervisory Protocol Oficer to the Chief of Protocol. Effective August 17, 1987.

One Secretary (Stenography) to the Inspector General. Effective August 21, 1987.

One Special Assistant to the Legal Adviser. Effective August 26, 1987.

Department of Transportation

One Secretary (Stenography) to the Associate Administrator for Policy and International Aviation. Effective August 28, 1987.

One Confidential Assistant to the Administrator. Effective August 28, 1987.

One Intergovernmental Liaison Officer to the Director, Office of Intergovernmental and Consumer Affairs. Effective August 28, 1987.

Department of Treasury

One Travel Clerk to the Deputy Assistant Secretary for Administration. Effective August 7, 1987.

One Confidential Assistant to the Assistant Secretary (Legislative Affairs). Effective August 14, 1987.

One Confidential Assistant to the Assistant Secretary (Public Affairs and Public Liaison). Effective August 14, 1987.

Equal Employment Opportunity Commission

One Director, Legislative Affairs Staff, to the Director, Office of Communications and Legislative Affairs. Effective August 21, 1987.

Federal Home Loan Bank Board

One Assistant to the Board Member. Effective August 11, 1987.

General Services Administration

One Director, Office of the Executive Secretariat to the Administrator. Effective August 11, 1987.

U.S. International Trade Commission

One Staff Assistant to a Commissioner. Effective August 13, 1987.

One Staff Assistant to a Chairman. Effective August 26, 1987.

Pension Benefit Guaranty Corporation

One Staff Assistant to the Executive Director. Effective August 19, 1987.

Securities and Exchange Commission

One Program Specialist to the Regional Administrator in New York. Effective August 13, 1987.

Small Business Administration

One Special Assistant to the Associate Administrator for Business Development. Effective August 13, 1987.

One Special Assistant to the Regional Administrator. Effective August 17, 1987.

Veterans Administration

One Confidential Assistant to the Chief of Staff. Effective August 5, 1987.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–22205 Filed 9–24–87; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24932; File No. SR–CBOE–87–39]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b), notice is hereby given that on August 31, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The CBOE proposes a new rule 8.14, which limits the affiliations of a designated primary market-maker (DPM).[1] The rule provides that no person or organization affiliated with a DPM may purchase or sell an option in a DPM's appointment except to reduce or liquidate positions with appropriate identification and floor official approval. The rule provides an exemption from this limitation in guidelines which follow the rule. These guidelines for exemption provide for what is commonly referred to as a "Chinese Wall."

The "Chinese Wall" guidelines call for (i) separate organization of the DPM and the affiliated firm, including separate books and records, separate financial compliance, no common control over the DPM's conduct, and only such general managerial oversight as not to conflict with or compromise the DPM's market maker responsibilities; and (ii) procedures to prevent the use of material non-public corporate or market information to influence the DPM's conduct and to avoid the misuse of DPM market information to influence the affiliated firm's conduct.

The firm seeking exemption is to submit to the Exchange a written statement setting forth: (i) Manner of complying with the foregoing guidelines, (ii) the firm individuals responsible for maintenance and surveillance of the procedures, (iii) that the DPM may not give special information to a broker affiliated with the firm; (iv) that the firm must disclose its affiliation with a DPM if it popularizes a security in which the DPM is registered as such; (v) that the firm will file information and reports required by the Exchange; (vi) that appropriate remedial actions will be taken for a breach of procedure; (vii) the procedures to ensure a separation of firm proprietary clearing activity to assure the "Chinese Wall" is not compromised; and (viii) that no individual associated with the firm may trade as market maker in a security on which the DPM has an appointment.

The firm compliance officer is to be notified if the DPM receives information which the guidelines prohibit, and what action should be taken, including giving up the appointment, or temporarily providing a replacement DPM. The compliance officer is to keep a written record of each such incident, and provide such records to the Exchange

[1] The CBOE DPM program recently approved in Securities Exchange Act Release No. 24934 (September 22, 1987), is published elsewhere in today's issue.

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for review. No exemption is effective until granted by the Exchange in writing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change provides for a ninety day effective period for "Chinese Walls" so that member organizations with an integrated business will be able to be associated with designated primary market-makers ("DPM"), with the assurance that there are adequate controls to assure that the DPM will not have access to material non-public corporate or market information which the firm may possess, and to prevent the misuse by a firm of its DPM's non-public market information.

The guidelines provide procedures to be used in temporary DPM appointments where the DPM becomes "contaminated" following a breach of the "Chinese Walls." The guidelines also specify that a firm's procedures should insure that information regarding securities positions, trading activity and margin financing arrangements between the affiliated upstairs firm and the DPM should be available solely to senior management in the firm exercising general managerial oversight of the DPM. Once in place, these procedures will substantially lessen the need for the prohibitions contained in the rules discussed above to the extent they apply to upstairs firms affiliated with DPM's. The restrictions would remain in effect as to the DPM itself.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 ("Exchange Act") and, in particular, section 6(b)(5) thereof, in that the proposal will enhance enforcement of Exchange rules and the Exchange Act. The rule change will also facilitate the entry of large diversified retail broker-dealers into becoming DPM's on the Exchange floor and in so doing will enhance depth and liquidity in the options market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Exchange Act. In support of its request, the CBOE notes that the proposed rules are very similar to the "Chinese Wall" provisions applicable to specialists at other exchanges. In addition, the CBOE has filed with the Commission a companion filing (File No. SR–CBOE–87–40) that provides for publication for notice and comment of the "Chinese Wall" provisions that would be implemented on a 90 day basis pursuant to this rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [2] and the rules and regulations thereunder. The proposed "Chinese Wall" provisions are substantially similar to those in place at other exchanges [3] and are designed to ensure that a DPM will not have access to material non-public information possessed by its affiliated firm, and that a firm will not misuse its DPM's non-public information.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The CBOE wants to implement its Modified Trading System as soon as possible. Before appointing a DPM that is affiliated with an "upstairs firm," the CBOE must have adequate "Chinese Wall" provisions in place. The provisions outlined above have been approved for other exchanges and are identical to the standards in file number SR-CBOE-87-40. Until SR-CBOE-87-40 is approved, the interim standards should be sufficient.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [October 16, 1987].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

FR Doc. 87–22194 Filed 9–24–87; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f (1982).

[3] *See* Securities Exchange Act Releases Nos. 23768 (November 3, 1986), 51 FR 41183 (American and New York Stock Exchanges), and 24323 (April 10, 1987), 52 FR 12996 (Philadelphia Stock Exchange).

[Release No. 34–24934; File No. SR–CBOE–87–18, Amendments No. 1 and 2]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On May 4, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a two year Modified Trading System ("MTS") pilot program that will allow the CBOE to assign a Designated Primary Market-Maker ("DPM") in any option class opened for trading at the Exchange after May 1, 1987. On July 21, 1987 the CBOE submitted Amendment

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b–4 (1986).

No. 1 to the proposal and submitted Amendment No. 2 on August 14, 1987.

The proposed rule change was noticed in Securities Exchange Act Release No. 24520 (May 27, 1987), 52 FR 21139 (June 4, 1987). No comments were received on the proposed rule change.

I. Introduction

The CBOE currently employs a competing market-maker system of trading on its floor. It is proposing an MTS pilot to determine whether a specialist-type trading system will enhance the CBOE's market-making capabilities in new options products and classes. As explained below, the proposed rule change will permit the CBOE to appoint a DPM, who has powers and responsibilities akin to a specialist, in new products and classes until CBOE determines that trading in the products or classes is sufficient to support a competing market maker system. The Exchange believes the program will increase the depth and liquidity of its markets, create long-term commitments by market-makers to option classes, generate greater flexibility in responding to varying market conditions, provide current quotes in all series, and encourage a continuous commitment to trade all option series. MTS is designed as a two-year pilot program, which should allow sufficient time for the CBOE and the Commission to evaluate the pilot and for the CBOE to determine whether to request permanent approval of the program.

The MTS program may be used in any option class opened for trading after May 1, 1987. Existing options classes and replacements thereof will continue to be traded in the CBOE's competitive market-maker trading system, except in classes in which MTS is authorized by a membership vote.[3]

II. Duties of the DPM

The DPM is a CBOE member who functions in approved classes as a market-maker, floor broker, and Order Book Official ("OBO"). The DPM will be exempt from Rule 8.8, which generally restricts members from acting as a market-maker and as a floor broker on the same business day. In acting as a market-maker, the DPM must fulfill all the obligations of a market-maker in his appointed option class or classes. In acting as a floor broker, and in the place of the OBO in appointed options classes, the DPM must continue to exert due diligence and fulfill all other obligations associated with these functions.[4]

The DPM's responsibilities are set forth in proposed Rule 8.13(c)(1)–(10). In addition to the normal obligations of a floor broker and a market-maker, the DPM is responsible for the dissemination of accurate market quotations and must honor those quotations for up to five contracts (or such other minimum number as set from time to time by the Committee). The DPM also must disseminate the algorithm for AutoQuote,[5] participate in automatic execution systems as applicable, and resolve trading disputes in accordance with Exchange rules. In addition to fulfilling general market-maker obligations under Rule 8.7, a DPM must be present at the trading post throughout every business day.

The proposal also requires the DPM, with respect to trading as a market-maker, to effect trades that correlate generally with the overall trading distribution of each series in an option class. The CBOE believes that the closer this correlation, the more likely the DPM is providing necessary depth and liquidity to the market-place. Whether a DPM's trading distribution is the same as the overall trading distribution in an option class, however, is not dispositive of whether the DPM satisfies his market making obligations. Other factors, such as whether the market-maker is providing proper pricing or sufficient size in quoted markets, will be considered.

The DPM must accord priority to orders he represents as floor broker over his activity as market-maker. He will, however, have the right as market-maker to participate pro rata with the trading crowd in trades that take place at the DPM's principal bid or offer. The DPM may not charge brokerage in any transaction in which he participates as market-maker and is required to disclose book information under Exchange Rule 7.8.

The DPM is limited in effecting stop or stop limit orders which may be in the limit order book or which he represents as floor broker. He only may be party to the election of a stop or stop limit order when the executing transaction is made with approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing sale.[6]

In appointed classes, the DPM will perform all functions of the OBO, pursuant to CBOE Rules 7.3 through 7.10. In appointed options classes, the DPM may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed on the book, and represent such orders as floor broker. The DPM may not, however, represent discretionary orders [7] as floor broker and all orders in the DPM's possession that are eligible to be booked must be booked.

The Exchange continues to be responsible for the maintenance, handling and billing of the book. In this regard, the Exchange will designate and compensate the DPM for serving in the function of OBO. In that function, the DPM shall assure satisfactory levels of staffing. The Exchange may provide personnel to the DPM for handling this function, and may charge the DPM a reasonable fee for their services.

III. Selection and Removal of DPMs

The selection and removal process for DPMs will be conducted by the MTS Appointment Committee ("Committee"). This Committee will be comprised of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine other members to be nominated by the Exchange Nominating Committee and appointed by the Board, whose business functions are as follows: six market-makers, one floor broker not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. The nine appointed Committee Members will have staggered two-year terms so that four or five members' appointments will expire each year. The CBOE expects that the composition of the Committee will assure a balanced approach to the appointment and removal of DPMs.

Any regular member or member organization is eligible for appointment as a DPM. Appointments will be made by the Committee on the basis of its judgment as to the candidate best able to perform the functions of DPM in the subject options class or classes. Factors to be considered include: capital adequacy, experience with trading, willingness to promote the Exchange as

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[3] *See* proposed Rule 8.13(a).

[4] *See* CBOE Rules 8.1, 8.2, 8.3 and 8.7.

[5] AutoQuote essentially is a computer algorithm that permits a market-maker to update his quotes in all option series (based on his quote for near-term in-the-money options) automatically to reflect a price change in the underlying security.

[6] *See* proposed Rule 8.13(c)(10).

[7] CBOE Rule 6.75 provides that no floor broker shall be vested with discretion as to: (1) The choice of the class of options to be bought or sold, (2) the number of contracts to be bought or sold or (3) whether any such transaction shall be one of purchase or sale. Floor brokers, however, may be vested with price and time discretion.

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a market place,[8] operational capacity, support personnel, history of adherence to Exchange rules and criteria specified as DPM responsibilities, and trading crowd evaluations under Rule 8.12. The Committee also may specify any one or more additional conditions on the appointment concerning any representations made in the application process, including, but not limited to, capital, operations, or personnel.[9] The DPM is obligated promptly to inform the Committee of any material change in financial or operational conditions, or personnel. The appointment may not be transferred without approval of the Committee. The DPM will serve until he is relieved of his obligations by the Committee.

The Committee may, in its discretion, open an option class or classes to a new DPM selection process if, upon review, the Committee determines that a DPM has not performed satisfactorily any condition of his appointment or his designated functions or duties under proposed Rule 8.13(c). The Committee may conduct reviews of appointments at any time, and will do so at least quarterly. Likewise, if a DPM incurs a material financial, operational, or personnel change or, for any reason, becomes ineligible for appointment, a new selection process may be initiated. In addition, if a DPM organization changes its specified nominee and the former nominee requests a new selection process, one will be initiated. The incumbent DPM may apply for appointment in the new selection process.

The Committee has discretion to relieve a DPM of his appointment due to a material financial, operational, or personnel change warranting immediate action. If a DPM has been relieved of his appointment or the appointment otherwise becomes vacant, the Committee has discretion to appoint an interim DPM pending the conclusion of a new DPM selection process. The appointment as interim DPM is not a prejudgment of the new DPM selection process. MTS trading also can be terminated in a particular option class by the Committee, if it decides reversion to the usual Exchange market-maker system is warranted operationally.[10] More specifically, if certain predetermined levels of trading activity are reached, the Committee may decide to discontinue a DPM in a particular class of option. Alternatively, the Committee may determine that, based on all available facts and circumstances, the DPM is unnecessary to facilitate trading. The CBOE does not expect that the alternative "fail-safe" provision will be used frequently.[11]

If the Committee decides to terminate a DPM's appointment for cause or to revert to the market maker system, the terminated DPM will receive a proportionate share of the net book revenues, not to exceed one-half, for any period specified by the Committee up to a maximum of five years. In making this award the Committee will take into account the length of time of DPM service, capital commitment and efforts expended during the DPM appointment.[12]

IV. Hearings and Review of Appointment and Removal Decisions

Each applicant for appointment as a DPM will be provided an opportunity to present any matter which he wishes the Committee to consider in conjunction with the appointment decision. The Committee may require that presentation to be solely or partially in writing, and may require the submission of additional information from an applicant, member, or any person associated with a member. Formal rules of evidence do not apply to these proceedings. The DPM who is the subject of Committee review in conjunction with the termination of the DPM appointment will be so advised and provided an opportunity to present any matter which he wishes the Committee to consider in conjunction with the termination decision.

A DPM relieved of an appointment as a result of material financial, operational or personnel changes warranting immediate action, or a determination by the Committee that trading would be better suited to a market-maker system, is entitled to a review of that decision under the procedures of Chapter XIX of the CBOE's Rules.[13] A DPM relieved of an appointment for failing to perform satisfactorily or for material changes in financial, personnel or operational conditions also is entitled to a review of that decision under the procedures of Chapter XIX of the Exchange Rules. This review, however, is only available if he applies for reappointment and is denied. In any situation in which a DPM is relieved of his appointment for reasons other than volume in the options class reaching a pre-determined level, the Exchange will provide written reasons for the removal.[14]

The Committee may perform all functions of the CBOE's Market Performance Committee under Exchange Rules in respect of reviews and evaluation of the conduct of DPMs in the classes of their DPM appointment, including but not limited to Rules 6.71, 8.1, 8.2, 8.3, 8.7, and 8.12.[15] The process for review of any action taken by the Committee will be the same as if the action had been taken by the Market Performance Committee.

V. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[16] and the rules and regulations thereunder. The Commission believes that the MTS pilot: (1) May enhance the market-making mechanism on the CBOE, thereby improving the markets for listed options on the Exchange; (2) contains specialist-type dutues and responsibilities of DPMs consistent with those of specialists on other options exchanges and consistent with the Exchange Act; and (3) provides adequate due process safeguards in the DPM selection and termination procedures.

First, the Commission believes that the MTS pilot may improve the CBOE's market-making capabilities by creating

[8] Amendment No. 2 to the filing added an interpretation to proposed Rule 8.13 clarifying that promotion of the exchange as a marketplace includes assisting in meeting and educating market participants (and taking the time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to competition in offering competitive markets and competitively priced services, and other like activities. The Commission emphasizes that, in connection with the willingness of a DPM applicant to promote the Exchange as a marketplace, the scope of the CBOE's proposal would not permit the CBOE to weigh against a particular firm its activities in other markets. Thus, a firm's decision to route customer orders to another market or to make markets in CBOE listed options on another exchange or in the over-the-counter market would be irrelevant to the CBOE's review.

[9] Amendment No. 2 also added a policy interpretation requiring a DPM to possess a cash liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of twenty trading units of each security in which the DPM holds an appointment, whichever amount is greater.

[10] *See* proposed Rule 8.13(b)(7).

[11] *Id.*

[12] The factors to be taken into account in determining a terminated DPM's share of net book revenues were clarified in Amendment No. 1 to the proposed rule change.

[13] Chapter XIX of CBOE Rules provides procedures for hearings and review for persons aggrieved by Exchange action.

[14] Telephone conversation between Fredric Krieger, Associate General Counsel, CBOE, and Howard Kramer, Assistant Director, Division of Market Regulation, SEC, September 11, 1987.

[15] These rules address, in order, Floor Broker Registration, Definition of Market-Makers, Registration, Appointment and Obligations of Market-Makers, and Trading Crowd Evaluations.

[16] 15 U.S.C. 78f (1982).

long-term commitments to option classes. It is difficult to attract market-makers to low volume options classes, as business practicalities attract market-makers to busier posts. A DPM, however, will commit to trading a particular option class and will assume the affirmative obligations of an option specialist. In return for this commitment, the DPM will receive specific incentives such as the authority to act as OBO in the designated class, continued ability to act as a market-maker, and authority to participate as a floor broker in the commission revenues generated from the execution of public customer orders. The result may be increased depth and liquidity in the markets for various options classes, and a greater flexibility in responding to varying market conditions.

Second, a DPM will fulfill the obligations associated with a specialist.[17] In its capacity as a market-maker, a DPM must maintain a fair and orderly market as articulated in CBOE rule 8.7.[18] The DPM is subject to a minimum capital requirement of $100,000, which is consistent with the requirement for options specialists on the American Stock Exchange ("Amex"). The DPM must be present at the trading post throughout the day. The DPM also must assure that disseminated quotes are accurate and that those quotes are honored up to five contracts (or such minimum number as set by the Appointment Committee). In addition, the DPM must determine and disclose to the crowd the formula for automatically updating quotations, and participate at all times in any automated execution system that may be open in an appointed option class. Finally, the DPM must resolve trading disputes (subject to Floor Official review). As agent, the DPM must ensure order book priority and must book all orders eligible to be booked.[19] Further, a DPM must accord priority to orders he represents as floor broker over his activity as market maker, though he may participate pro rata as market-maker with the trading crowd in trades that take place at the DPM's principal bid or offer. The Commission believes these standards are consistent with the maintenance of fair and orderly markets, and the protection of investors.[20]

Third, the Commission believes the due process safeguards incorporated into the appointment and removal provisions of the pilot are sufficient.[21] The composition of the Exchange's DPM Appointment Committee is balanced between management, marketmakers, a floor broker and members doing a public customer business. The two year terms of members are staggered to ensure continuity. In this regard, the composition of the CBOE's committee is consistent with the composition of allocation committees of other exchanges.[22]

DPMs will be selected based on specific factors and will be evaluated based on standards of conduct that are consistent with the ability to uphold his principal and agent responsibilities.[23] An applicant for an appointment as DPM will be provided an opportunity to present any matter he wishes for the committee to consider in conjunction with the appointment decision. The standards upon which a DPM may be removed are similarly well defined and consistent with upholding the DPM's obligations. Moreover, in most circumstances a DPM will be able to rely on a previously established daily contract volume level to determine when his position will be terminated in favor of a competitive market-making system.[24] Finally, the CBOE's procedure provide for full review of appointment and removal decisions under Chapter XIX of the CBOE rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Dated: September 22, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22193 Filed 9-24-87; 8:45 am]

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[17] *See, e.g.,* New York Stock Exchange Rule 104 describing Functions of Specialists.

[18] CBOE Rule 8.7 states generally that market-makers transactions should constitute a course of dealings reasonably calculated to contribute to the maintenance of fair and orderly markets. CBOE Rule 8.7(a) also specifically notes that market-makers are prohibited from entering into transactions or making bids or offers that are inconsistent with their obligations to maintain fair and orderly markets. Although the DPMs negative obligation differs from the traditional exchange specialist's negative obligation to effect proprietary trades only to the extent those transactions are reasonably necessary to maintain a fair and orderly market, the Commission believes that the CBOE's specified affirmative obligations for market makers generally, in conjunction with the specific obligations imposed on DPMs by Rule 8.13(c) (1)–(10), provide adequate assurance that DPM proprietary trading will contribute to a fair and orderly market and bring increased depth and liquidity to the market. More specifically, with respect to a class of options in which he holds appointment, a market-maker has a continuous affirmative obligation to engage in dealings for his own account when there exists a lack of price continuity, temporary disparity between supply and demand, or a temporary distortion of price relationships between option contracts of the same class.

[19] *Id. See* Amex Rule No. 171.

[20] In addition, the CBOE will refuse to assign as a DPM an integrated firm until it has approved by the Commission rules requiring adequate procedures separating the DPM from the rest of the firm. *See,* SR–CBOE–87–39 and 40.

[21] Amendment No. 1 to the filing clarified the language of several provisions in this area.

[22] *See, e.g.,* Philadelphia Stock Exchange By-Laws, Section 10–7 describing the composition of the Exchange's Allocation, Evaluation and Securities Committee.

[23] While the CBOE has trading crowd evaluations in which floor brokers evaluate market makers' performance, there is no floor broker questionnaire to evaluate a DPM's agency performance (*e.g.,* the NYSE SPEQ questionnaire). In this regard, however, the CBOE is still obligated to delineate specifically the reasons for relieving a DPW of its appointment in writing. The reasons should be consistent across DPMs, allowing for variance in the specific conditions attached to a particular DPM's appointment, and should not result in unfair discrimination among CBOE members (*See,* Securities Exchange Act Release No. 15827 (May 15, 1979) 44 FR 29778). This is true even though the DPM reappointment process is not a disciplinary action.

[24] An exception to this could occur if the Exchange determined, "considering all the facts and circumstances," that trading in a particular option class would be better accommodated by introduction of a competitive market-maker system without a DPM. The Commission understands that this provision is a "fail-safe" clause to deal with partially unforseen circumstances and that the CBOE does not expect to invoke this clause frequently. In view of these representations, as well as the fact that termination of the MTS trading is subject to further review procedures, the Commission believes it is appropriate for the CBOE to reserve such authority during the pilot. Nevertheless, the Commission expects the CBOE will further define, during the pilot period, the circumstances under which this authority could be invoked.

[25] 15 U.S.C. 78s(b)(2)(1982).

[26] 17 CFR 200.30–3(a)(12)(1986).

[Release No. IC–15996; 812–6756]

Application; BellSouth Capital Funding Corporation

September 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: BellSouth Capital Funding Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant, a wholly-owned subsidiary of BellSouth Corporation ("BellSouth"), seeks an order to permit it to engage in financing activities that will provide funds for use by BellSouth in connection with its own diversification and in support of the activities of subsidiaries of BellSouth.

Filing date: The application was filed on June 11, 1987 and amended on September 16, 1987.

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Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on their application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Southern Bell Center, 675 West Peachtree Street, NE., Atlanta, Georgia 30375.

Applicant's Representations

1. The Applicant, a Georgia corporation, was incorporated on May 22, 1987, and is a wholly-owned subsidiary of BellSouth Corporation ("BellSouth"). BellSouth is one of seven holding companies (collectively referred to herein as the "RHCs") formed by American Telephone and Telegraph Company pursuant to its Plan of Reorganization (the "Plan") approved by the United States District Court of the District of Columbia (the "Court") in conjunction with the settlement by AT&T and the Department of Justice ("DOJ") of antitrust litigation brought by the DOJ. The settlement is embodied in the Modification of Final Judgment (the "MFJ") agreed to by AT&T and the DOJ and entered by the Court after cetain changes required by the Court had been made.

2. BellSouth was incorporated in 1983 under the laws of the State of Georgia. BellSouth owns South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (the "Telephone Companies"), which provide exchange communication and exchange access services in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky and Louisiana. The Telephone Companies are subject to regulation by public utilities or public service commissions in each of the states in which they operate. In addition, the Telephone Companies are regulated as to interstate matters by the Federal Communications Commission (the "FCC"). BellSouth also engages in other business activities as permitted under the MFJ and, pursuant to waivers obtained thereunder from the Court, through the activities of various subsidiaries, including subsidiaries of the Telephone Companies the operations of which are not subject to regulation by tariff ("Diversified Subsidiaries"). Neither BellSouth nor any of the Diversified Subsidiaries which will obtain financing through the Applicant is an investment company under section 3(a) of the 1940 Act.

3. On December 31, 1986, BellSouth had total assets of $26.2 billion. For the year ended December 31, 1986, BellSouth had net income of approximately $1.6 billion, and revenues of approximately $11.5 billion. In the year ended December 31, 1986, the Telephone Companies declared approximately $1.2 billion in cash dividends payable to BellSouth.

4. The Applicant will raise funds through the offiering and sale of debt securities (collectively, the "Securities") in the United States, European and other overseas markets and, in turn, loan the proceeds of these issuances to BellSouth and the Diversified Subsidiaries. All loans by the Applicant to BellSouth and the Diversified Subsidiaries will bear interest at least equal to that which the Applicant is required to pay to obtain funds through its corresponding borrowings plus a small mark-up sufficient to cover operating costs. Further, the amounts and maturity of these loans will allow the applicant to make timely payments of principal, interest and premium, if any, on the Securities. The Applicant represents that it will not issue voting securities to any person other than BellSouth or a wholly-owned subsidiary of BellSouth, and that it will not hold securities other than as permitted by Rule 3a–5(a)(6).

5. The MFJ limits the lines of business which may be engaged in by the RHCs (or which the Applicant is one). Pursuant to the MFJ, the Court has held that the RHCs may be permitted to engage in certain new competitive ventures (such as many of the activities of the Diversified Subsidiaries) under certain circumstances, so long as any guarantee of obligations owned in Securities issued to finance the activities thereof would not grant recourse against the stock or assets of the Telephone Companies. BellSouth is therefore prohibited from guaranteeing any of the Securities issued by or for the benefit of such Diversified Subsidiaries if the guarantee would permit recourse against the stock or assets of the Telephone Companies.

6. Before Applicant issues any Securities, Bellsouth and the Applicant will enter into a support agreement (The "Support Agreement"). Under the Support Agreement, BellSouth will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest or premium, if any, owned by it in connection with the Securities, then Bell-South shall provide funds to the Applicant to assure that the Applicant will be able to pay when due such principal, interest or premium, if any. The Support Agreement will also provide that in the event of any default by BellSouth in meeting its obligations under such Support Agreement, or in the event of default by the Applicant in the timely payment of principal interest or premium, if any, owed on any Securities, holders of Securities or, if applicable a trustee acting on their behalf shall be entitled to proceed directly against BellSouth, so long as no holder of Securities or trustee acting on their behalf will have recourse to or against the stock or assets of the Telephone Companies.

7. The Support Agreement will also provide that either BellSouth or subsidiaries of BellSouth shall own all of the outstanding voting capital stock of the Applicant throughout the term of the Support Agreement; that without the Written consent of all the holders of the then outstanding Securities maturing in more than one year the Support Agreement may not be terminated, or modified or amended in ways less favorable to holders of Securities than the existing agreement; and that it may be terminated only after all outstanding Securities have been retired.

8. Applicant's offerings of Securities are expected to consist of shortterm, intermediate-term and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") or in public offerings of securities registered under the 1933 Act. In the case of public offering of any of its Securities not exempt from the registration requirements of the 1933 Act, the Applicant and BellSouth will, prior to offering such Securities, file a registration statement under the 1933 Act with the Commission and will not sell such Securities until the registration statement is declared effective by the Commission and any related indenture is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. Applicant and BellSouth will comply with the prospectus delivery requirements of the 1933 Act in

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connection with the offering and sale of such Securities.

9. In the case of offering of Securities not requiring registration under the 1933 Act, the Applicant will provide each offeree with disclosure materials which will include a descripion of the business of BellSouth and other data of the character customarily supplied in such offerings. In the event of subsequent offering, these materials will be updated at the time thereof to reflect material changes in the financial condition of BellSouth and its subsidiaries, taken as a whole.

10. Prior to any issuance and sale of Applicant's Securities in the United States capital market, such Securities shall have received one of the three highest investment grade ratings pertaining to debt securities from at least one nationally recognized rating organization. No such rating shall be required, however, if the Applicant's counsel opines that an exemption from registration is available with respect to such issue and sale under section 4(2) of the 1933 Act.

Applicant's Legal Conclusion

1. The Applicant was formed as a financing conduit for the diversification activities of BellSouth and the Diversified Subsidiaries of BellSouth and to advance efficient administration and management of financing activities for BellSouth and certain of the Diversified Subsidiaries. The Applicant will meet all requirements of Rule 3a-5 except for the unconditional guarantee requirement. BellSouth's execution and delivery of the Support Agreement provides a functional equivalent to an unconditional guarantee of the securities since the Support Agreement enables purchasers of the securities the right to proceed directly against BellSouth in the event the Applicant fails to meet its obligations, limited only so as to exclude the stock or assets of the Telephone Companies. Despite this limitation, funds available to BellSouth to satisfy any obligation under the Support Agreement will include dividends paid by the Telephone Companies as well as the revenue and assets of BellSouth and the Diversified Subsidiaries. Therefore, the Support Agreement will enable purchasers of the Securities to look ultimately to BellSouth for repayment.

2. Given the limitations of the MFJ and related orders of the Court, BellSouth intends to support the Securities with all legally available assets. By means of the Support Agreement, BellSouth will make available to all holders of the Securities the same assets which would be available to the holders of BellSouth's own debt securities used to fund the Diversified Subsidiaries and thus the holders of the Securities will be in the same position as if BellSouth itself had issued the Securities directly.

3. Granting of the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22195 Filed 9-24-87:8:45am]

BILLING CODE 8010-01-M

[Release No. IC-15993; File No. 812-6810]

Applications for Exemption; Fidelity Standard Life Insurance et al.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Fidelity Standard Life Insurance Company ("Company"), Fidelity Standard Life Separate Account ("Separate Account") and Security First Financial, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2).

Summary of Applications: Applicants seek an order to permit the Company to deduct from the Separate Account the mortality, expense and distribution risk charges imposed under the group flexible payment deferred variable annuity contracts ("Contracts") funded in the Separate Account.

Filing Date: The application was filed on August 4, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Fidelity Standard Life Insurance Company, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey (202) 272-2067 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (In Maryland (301) 253-4300).

Applicant's Representative

1. The Separate Account was established by the Company pursuant to Delaware law to fund the Contracts. The Separate Account is registered as a unit investment trust under the 1940 Act. A Registration Statement on Form N-4 under the Securities Act of 1933, as amended, has been filed to register the offering of the Contracts. The Separate Account presently consists of three Series, each of which invests solely in the shares of one of three series of the Security First Trust ("Fund").

2. For assuming certain risks under the Contracts, the Company imposes mortality and expense risk charges in the amount of .80% and .45%, respectively, of the average net assets of each Series. Applicants represent that the mortality and expense risk charges cannot be increased under the Contract.

3. The contract has a contingent deferred sales charge that may be deducted upon full or partial surrender from the Separate Account. The charge is based upon a graduated table of charges starting at 7% for purchase payments credited within the calendar year of the surrender and decreasing 1% for each preceding calendar year until the fifth calendar year before surrender when the charge is reduced to 0%. The Company does not anticipate that this sales charge will cover distribution expenses, therefore it is taking a distribution expense risk charge of .10% of net asset value. The contingent deferred sales charge when combined with the distribution expense charge will not exceed 9% of purchase payments.

4. Applicants represent that the mortality and expense risk charges are reasonable in relation to the risks assumed by the Company under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing the Company to undue risk of

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loss, and fall within the range of similar charges imposed under competitive variable annuity products.

5. Applicants represent that the mortality and expense risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is bad on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates.

6. Applicants represent that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The Company will maintain at its home office and make available to the Commission upon its request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey of competitive annuity products.

2. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis of its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

3. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22171 Filed 9–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15992; File No. 812–6311]

Applications for Exemption; Southwestern Life Insurance Co. et al.

September 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Southwestern Life Insurance Company ("Southwestern") and Variable Annuity Fund II Separate Account ("Separate Account").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants seek an order to permit Southwestern to deduct from the Separate Account the mortality and expense risk charges imposed under the individual deferred fixed benefit annuity contracts ("Contracts") funded in the Separate Account.

Filing Date: The application was filed on February 28, 1986, with amendments thereto on July 15, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Southwestern Life Insurance Company, 500 North Akard, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey, (202) 272–2067 or Special Counsel Lewis B Reich, (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. The Separate Account was established by Southwestern pursuant to Texas law to fund the Contracts. The Separate Account is registered as a unit investment trust under the 1940 Act. A Registration Statement on Form N–4 under the Securities Act of 1933, as amended, has been filed to register the offering of the Contracts. The Separate Account presently consists of five Subaccounts, each of which invests solely in the shares of one of the series of The Insurer Series Fund, Inc. ("Fund").

2. For assuming certain risks under the Contracts, Southwestern imposes mortality and expense risk charges in the amount of .85% and .40%, respectively, of the average net assets of each Subaccount. Applicants represent that the mortality and expense risk charges cannot be increased under the Contract.

3. Applicants represent that the mortality and expense risk charges are reasonable in relation to the risks assumed by Southwestern under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing Southwestern to undue risk of loss, and fall within the range of similar charges imposed under competitive variable annuity products.

4. Applicants represent that the mortality and expense risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates.

5. Applicants represent that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. Southwestern will maintain at its home office and make available to the Commission upon its request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Southwestern's comparative survey of competitive annuity products.

2. Southwestern will maintain and make available to the Commission upon request a memorandum setting forth the basis of its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

3. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management

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company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22172 Filed 9–24–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S–813]

Application for Increase in Subsidized Sailings Under Contact MA/MSB–417; American President Lines, Ltd.

Notice is hereby given that American President Lines, Ltd. (APL), by letter application of August 28, 1987, has requested amendment of its subsidized service description as set forth in Appendix A of APL's Operating-Differential Subsidy Agreement, Contract MA/MSB–417, to perform 26 additional subsidized sailings annually on either Line A or Line B, or a combination thereof. Along with the letter application, APL submitted a report dated August 21, 1987, by Temple, Barker & Sloan, Inc. (TBS). APL states that the report establishes that service to be performed by APL with the requested increase in sailings is required to help achieve "adequate" U.S.-flag service, both currently and for the foreseeable future.

APL's Appendix A service description describes the Line A—California/Far East service, requiring a minimum/maximum of 72/108 sailings annually, and the Line B—Washington-Oregon/Far East service, requiring a minimum/maximum of 54/80 sailings annually; the aggregate maximum on Lines A and B is 188 sailings annually. APL desires authority to perform 26 additional subsidized sailings on either Line A or Line B, as trade conditions warrant, with an aggregate maximum on Lines A and B of 214 sailings annually. APL asks no increase in its authorized fleet of 23 subsidized vessels, and points out that as a result there would be no increase in operating subsidy beyond that already authorized under its contract.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on October 9, 1987. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.
Date: September 22, 1987.

James E. Saari,

Secretary.

[FR Doc. 87–22202 Filed 9–24–87; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name; Better Working Environments, Inc.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Better Working Environments, Inc." used by the Better Working Environments, Inc., a corporation organized under the laws of the State of Nevada, located at 3716 Scripps Way, Las Vegas, Nevada 89103.

The application states that the trade name is used in connection with asbestos treatment chemicals including an asbestos penetrating encapsulant and an asbestos removal encapsulant, manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before November 24, 1987.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: September 18, 1987.

John F. Atwood,

Acting Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87–22174 Filed 9–24–87; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds; Planet Indemnity Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24622 to reflect this addition:

PLANET INDEMNITY COMPANY.
BUSINESS ADDRESS: 8 Greenway Plaza, Suite 1450, Houston, TX 77046.
UNDERWRITING LIMITATION *b*: *$105,000.* SURETY LICENSES *c*: TX.
INCORPORATED IN: Texas.
FEDERAL PROCESS AGENTS *d*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, telephone (202) 634–2214.

Dated: September 18, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87–22114 Filed 9–24–87; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Meeting; Art Advisory Panel

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

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SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held October 21–22, 1987.

FOR FUTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue, NW., Room 2575, Washington DC 20224, Telephone No. (202) 566–9259, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on October 21–22 in Room 3411 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of materials in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122.)

Lawrence Gibbs,

Commissioner.

[FR Doc. 87–22179 Filed 9–24–87; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 28, 1987, from 2:00 p.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Kirby, Acting Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Farm Credit Administration Board will be closed to the public. The matter to be considered at the meeting is:

1. Legislative Matters.[1]

Dated: September 23, 1987.

Elizabeth A. Kirby,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 87-22313 Filed 9-23-87; 3:53 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Governors will meet in open session at 2:00 p.m. on Tuesday, September 29, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

University Federal Savings Bank, an operating non-FDIC-insured savings association located at 6400 Roosevelt Way, N.E., Seattle, Washington, for Federal deposit insurance upon its conversion to a State-chartered stock savings bank with the title "University Savings Bank."

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,091
The Bowery Savings Bank, New York City (Manhattan), New York

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Discussion regarding the issue whether an insured bank that has received assistance from the Federal Deposit Insurance Corporation should be eligible to participate as a bidder in connection with purchase and assumption transactions involving failed banks or as a party to acquire, on an open bank basis, another insured bank with FDIC assistance.

Review of the FDIC staff study entitled "Mandate for Change: Restructuring the Banking Industry."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: September 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-22283 Filed 9-23-87; 1:21 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, September 29, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 522b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Matters relating to the Corporation's audit procedures.

Matters relating to the Corporation's assistance agreement with an insured bank.

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[1] Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(9).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–22284 Filed 9–23–87; 1:22 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Tuesday, September 22, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–22280 Filed 9–23–87; 1:17 pm]

BILLING CODE 6714–01–M

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: None at this time.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

CHANGES IN THE MEETING: The Bank Board Meeting Previously Scheduled to start at 8:00 a.m., has been changed to start at 9:30 a.m., on Friday, October 2, 1987.

Nadine Y. Washington,

Acting Secretary.

No. 13, September 23, 1987.

[FR Doc. 87–22303 Filed 9–23–87 3:10 pm]

BILLING CODE 6720–01–M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 9:30 a.m., Monday, October 5, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED: Amendments to regulations concerning uniform accounting standards, a policy statement on troubled debt restructuring, amendments to regulations concerning capital forbearance, and amendments to regulations concerning minimum capital requirements.

John M. Buckley, Jr.

Secretary.

No. 12, September 23, 1987.

[FR Doc. 87–22304 Filed 9–23–87; 3:10 pm]

BILLING CODE 6720–01–M

MERIT SYSTEMS PROTECTION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 34865, September 15, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 23, 1987.

CHANGE IN THE MEETING: Postponed.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Date: September 22, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–22203 Filed 9–23–87; 8:50 am]

BILLING CODE 7400–01–M

Corrections

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 61003-7137]

Approval of Federal Information Processing Standards Publication 29-2; Interpretation Procedures for Federal Information Processing Standards for Software

Correction

In notice document 87-21095 beginning on page 34696 in the issue of Monday, September 14, 1987, make the following correction:

On page 34697, in the first column, under paragraph 6, in the second line, "(date)" should read "September 14, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0257]

Filing of Food Additive Petition; Ferro Corp.

Correction

In the issue of Thursday, September 17, 1987, on page 35187, a correction to FR Doc.87-20267 appeared. The second paragraph was inaccurate and should have appeared as follows:

In the first column, in **SUPPLEMENTARY INFORMATION**, in the seventh line, "§ 728.2010" should read "§ 178.2010".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8158]

Income Taxes; Tax on Unearned Income of Certain Minor Children

Correction

In rule document 87-20459 beginning on page 33577 in the issue of Friday, September 4, 1987, make the following corrections:

§ 1.1(i)-1T [Corrected]

1. On page 33579, in the third column, in paragraph A-6, in the fourth line, "income" was misspelled.

2. On page 33581, in the second column, in *Example (6)*, in the fourth line, "$69,000" should read "$69,900".

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Part II

Environmental Protection Agency

40 CFR Parts 85 and 600

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 600

[FRL 3176-8]

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is exercising its discretion to revise portions of EPA regulations at 40 CFR 85.1501 et seq., which regulate the importation of nonconforming motor vehicles and motor vehicle engines ("nonconforming vehicles"). EPA also is acting to revise portions of 40 CFR Part 600 specifying the manner in which fuel economy data for nonconforming vehicles are generated. Nonconforming vehicles are ones not conforming with Federal emission requirements at the time of conditional importation. (Excluded from this definition are vehicles entered under EPA-approved catalyst and O_2 sensor control programs.)

Today's action, except for certain specified exceptions, permits only independent commercial importers (ICI) who hold valid certificates of conformity issued by EPA to import nonconforming vehicles. In general, individuals who previously could import a nonconforming vehicle directly now will be required to arrange for importations through certificate holders. Certificate holders will be responsible for assuring that subsequent to importation the vehicles are properly modified and/or tested to comply with emission and other requirements over their useful lives. The certificate holder also will be responsible for recalls, maintenance instructions, emission warranties, and vehicle emission labeling and for compliance with fuel economy requirements.

EPA is also announcing the abolition of its "five model year old personal use" policy which permitted a first-time individual importer to import a nonconforming vehicle over five model years old for his/her own personal use without the need to demonstrate that such vehicle complied with Federal emission standards. Abolition of this policy is needed to eliminate the abuses associated with the policy and the significant numbers of noncomplying vehicles that were being imported under this policy.

The Agency is taking these actions to improve the emissions compliance of these nonconforming vehicles and the administrative efficiency of the imports program. As a separate matter, EPA is considering strengthening its "small volume" certification procedures and intends to publish a Notice of Proposed Rulemaking on that subject at some future date.

DATES: Abolition of the five model year old policy and the provisions of these regulations promulgated today will be effective for vehicles imported beginning on July 1, 1988.

ADDRESSES: Copies of materials relevant to this rulemaking proceeding are contained in public Docket EN-79-9 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street, SW., Washington, DC 20460, and are available for review weekdays between 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mary T. Smith, Chief, Manufacturers Programs Branch (202/382-2500) or Claude Magnuson, Chief, Investigation/Imports Section (202/382-2542), Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. EPA's Current Regulatory Program

The regulations governing EPA's program providing for the importation of nonconforming vehicles were originally promulgated in 1972 pursuant to the Clean Air Act, as amended 42 U.S.C. 7401 et seq. ("the Act"). Section 203 of the Act prohibits the importation of any new motor vehicle or engine (hereinafter "vehicle") not covered by a certificate of conformity unless it is exempted by the Administrator or otherwise authorized jointly by EPA and U.S. Customs Service (Customs) regulations, 42 U.S.C. 7522. Such regulations must be appropriate to insure that imported nonconforming vehicles will be brought into conformity with the applicable emission standards. The authority to allow importation of nonconforming vehicles is discretionary with EPA and Customs.

The regulatory framework of EPA's current program, contained in EPA regulations at 40 CFR 85.1501 et seq. and in Customs regulations at 19 CFR 12.73, generally permits the conditional importation of a nonconforming vehicle, for 90 days, by any person provided that a bond is posted with Customs and the vehicle is brought into conformity with EPA emission requirements, 40 CFR 85.1504. This may be done by either modifying the vehicle to make it identical to a vehicle certified for sale in the U.S. or by successfully testing the vehicle in accordance with the Federal Test Procedure (FTP) at 40 CFR Part 86. Under the second option, which is more commonly used, some modification is usually necessary before the imported vehicle can pass the FTP (the "modification and testing" approach). These two methods of emissions demonstration have traditionally comprised a little less than one-half of the nonconforming imported vehicles.

Certain exceptions to emissions compliance demonstration are recognized by EPA. These exceptions are discussed in more detail in Parts IV and VI below. Of particular note is the five model year old exception which has traditionally accounted for almost one-half of the nonconforming imports. This enforcement policy permits a first-time individual importer to import one nonconforming vehicle at least five model years old for personal use without demonstrating emissions compliance.

B. Background of EPA's Regulatory Revision Effort

Today's action represents the culmination of a lengthy rulemaking process EPA has undertaken to examine and evaluate revisions to its imports regulations.

The rulemaking process has involved publication of three notices for public comment, each of which proposed various revisions to the imports regulations. The most recent, and the notice providing most of the proposed regulatory language for today's action, was a Supplemental Notice of Proposed Rulemaking (SNPRM) which was issued on September 9, 1985 (50 FR 36838). Numerous written comments were received in response to this notice and two public hearings were held. The two earlier notices were a Notice of Public Workshops (Workshops Notice) issued on November 4, 1983 (48 FR 50902) and a Notice of Proposed Rulemaking (NPRM), issued on June 21, 1980 (45 FR 48812). Many (65) written comments were received in response to the Notice of Public Workshops and two public workshops were held. Over 370 written comments were received in response to the 1980 NPRM and one public hearing was held. EPA has summarized and analyzed all significant comments to these three notices in a document entitled "Summary and Analysis of Comments Pertaining to the Proposed Rulemaking Entitled 'Importation of Motor Vehicles and Motor Vehicle

Engines under the Clean Air Act' " (SAC) and has placed the SAC in the public docket. The basis for EPA's action includes the summary and analysis of comments and EPA's response thereto contained in the SAC. Comments received, together with EPA submitted information in the docket, are referred to throughout this document as "the record."

As explained in previous notices, the lengthy process of rulemaking was undertaken at a time of great change and uncertainty in the Imports program. EPA delayed final action early on in the rulemaking process after consideration of the comments received to the NPRM (see Part V), proposed Congressional revisions to the Act which would have significantly affected the provisions applicable to the importation of nonconforming vehicles, and needed additional analyses. In the interim, EPA made various changes to its enforcement procedures and policies to reduce its resource burden, including allowing first-time importers to import one nonconforming vehicle at least five model years old at time of importation, without having to bring the vehicle into conformity. See, e.g., 48 FR 16485 (April 18, 1983). Since then the rulemaking process has provided EPA with an opportunity to consider various options and issues, the resolution of which has resulted in today's action.

II. Summary Description of Today's Action

By today's action, EPA is exercising its discretion to adopt a program, part of which will be phased-in between 1988 and 1993 which substantially changes both the manner in which nonconforming vehicles can be imported and the manner by which emissions compliance can be demonstrated.[1] EPA has adopted a program that is an outgrowth of several previously proposed options and comments on those options. It provides, with some exceptions, that only independent commercial importers (ICIs) [2] who are certificate holders may import nonconforming vehicles. This program also places other restrictions on imported nonconforming vehicles. In particular, with some exceptions during the phase-in period, it permits nonconforming vehicles less than six original production (OP) years [3] old to be conditionally admitted without bond only if they are subsequently modified and tested, if applicable, so as to be covered by a certificate of conformity. It also allows, beginning in 1988, nonconforming vehicles six OP years old and older to be imported, also without bond, under a more stringent "modification and test" procedure than that existing under the present program. During the phase-in period, some vehicles less than six OP years old may be imported under the new modification/test program. However, the number of such vehicles which may be "modified/tested" decreases each year of the phase-in period until 1993 when all vehicles less than six OP years old (with few exceptions) must be imported under the new certification-based program. Finally, the new program establishes an exemption from emission requirements for vehicles greater than twenty OP years old.

Certain aspects of the previous imports program—including bonded importations by persons other than certificate holders, the current "modification and test" procedure and the "five model year old personal use" exception (*see* Part V)—are abolished; while other parts of the current program involving exemptions and exclusions and the catalyst replacement program are retained with changes. A description of today's action is discussed in more detail in the SAC and in Part IV. below.

Today's action is taken after consideration of a wide variety of regulatory options which were either proposed in the NPRM, the Workshops Notice or the SNPRM, or in comments received in response to these three notices. In summary, these options were—

1. Maintain the current program (with or without some modifications),
2. Prohibit the importation of nonconforming vehicles,
3. Require nonconforming vehicles to be covered by a certificate of conformity prior to entry into the United States,
4. Permit conditional entry of nonconforming vehicles but require them to be covered by a certificate of conformity prior to final entry,
5. Require all vehicles to be covered by a certificate of conformity prior to final entry except for those models whose aggregate volume does not exceed a certain threshold (these would be modified/tested) or
6. Require newer vehicles to be covered by a certificate of conformity prior to final entry and older vehicles to be modified/tested.

Other options considered were essentially the same as above but contained differing personal use exemptions. These options are discussed in more detail in the SAC and in Parts III, IV, and VI below.

III. Rationale for EPA's Decision Not to Continue the Present Regulatory Program

In EPA's view, there are at least six significant problems associated with EPA's current regulatory program for imported nonconforming vehicles which cannot be solved by regulatory amendments while at the same time maintaining the current imports program structure.

(1) Credibility and Effectiveness—Improper Modifications

The first problem is that the "modification and test" part of the program lacks credibility and effectiveness. The record provides very strong evidence that large numbers of the vehicles imported under that procedure either were not, or are not, being modified at all, or have been modified improperly. The problem has two aspects: falsification of data and durability. The first, the falsification of data aspect, concerns the generation and reporting of false information to EPA. The second, the durability aspect, concerns modifications which, although they enable a vehicle to initially conform to Federal emission standards, are not durable over the useful life of the vehicle as required by the Act. Part of this durability problem concerns modifications which are subsequently removed (or otherwise tampered with) due to the fact that they are either perceived as making the vehicle less driveable or that they, in fact, make it less driveable. The other part of the durability problem is faulty system designs or defective components which cause vehicles to deteriorate rapidly in-use.

(a) Falsification of Data

The record confirms EPA's assessment that this aspect is significant, although its actual extent remains controversial and uncertain. The bulk of the data pertaining to falsification of data involves misreporting to EPA by various laboratories (although various data, addressed in Part VI., also exists in connection with the "five model year old" policy). To date, EPA has conducted administrative and/or criminal investigations of six

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[1] Revision of these regulations is being done in conjunction with the U.S. Customs Service which will publish its own revised regulations addressing importations of nonconforming vehicles

[2] The term "independent commercial importer" as used here means an importer who does not have a contractual agreement with an original equipment manufacturer (OEM) to act as its authorized representative for the distribution of motor vehicles and motor vehicle engines into the U. S. market.

[3] For definition of "OP" year, see note 11, infra

laboratories across the country which have submitted false data. All of these laboratories have been delisted and, thus far, in four of these cases corporate officers and/or laboratory personnel have pleaded guilty to various counts of falsification of data and/or mail fraud.

EPA believes that such falsification of data occurs, in part, because of the difficulty in modifying a vehicle to comply with standards, the expense of the FTP and price competition among the laboratories. This conclusion is supported by the record. For example, one private laboratory commented that barely 10 percent of the modified vehicles pass the FTP the first time and that this figure was as low as 2–3 percent just one year ago. It also stated that many of the vehicles that fail at its facility never return to it for retest yet are subsequently submitted to EPA for admission. The EPA staff have received similar statements from ICI modifiers and laboratories as well as from the California Air Resources Board (CARB).

(b) Non-durable Modifications

The record contains very strong evidence supporting EPA's assessment that many mod/test vehicles are not being properly modified and that most modifications lack durability for five years or 50,000 miles (as required by the Act). Moreover, in spite of requests by EPA, the record is devoid of any mod/test data (except for retests of an EPA/CARB study diesel vehicle and two diesel vehicles reported by a private laboratory, Olson Engineering, Inc.) indicating that mod/test vehicles are durable. While some ICIs did challenge the EPA/CARB study (see below), many ICIs admitted that many vehicles are not being properly modified and that the modifications are not durable.

Various vehicle survey data also indicate that purported modifications are not always being performed. Surveys conducted by five OEMs (Mercedes Benz of North America, Inc. (MBNA); BMW of North America, Inc.; Jaguar Cars, Inc.; National Automobile Dealers Association; and, the Texas Automobile Dealers Association) of nonconforming vehicles appearing at dealerships throughout the United States after admission under the modification/test procedure revealed consistently low rates of emission control parts present on the vehicles. For example, catalyst installation rates ranged from only 55 percent to 75 percent.

The MBNA survey also provided some evidence that many of the vehicles may not be durable. For example, some vehicles were modified with oxidation catalyst systems. In EPA's judgement, many European vehicles [4] modified with oxidation catalysts are not likely to meet current model year standards for their useful lives. In addition, various states, including California, Oregon and Alaska, submitted data to show specific problems with improperly modified vehicles in their states.

The general lack of durability of the modifications is supported by the test results of the joint EPA/CARB testing program, conducted in September and October, 1984. The purpose of the program was to provide information for use in reevaluation of the EPA imports program. The EPA/CARB joint program considered a sample of twenty-seven vehicles that had been imported under the modification/test procedure and alleged to have met emission standards. The vehicles were re-tested in accordance with the FTP by CARB. Twenty-six vehicles failed the emissions tests for at least one pollutant. (The passing vehicle was a diesel vehicle.) In many cases, failures were by substantial margins, even though many of the vehicles had relatively little mileage accumulation. The sample of twenty-seven vehicles tested in the program was originally selected, utilizing statistical sampling techniques according to specified criteria, from a larger number of vehicles which five test laboratories located in Southern California had reported to EPA to be in conformity at the time they were tested by the laboratories. (At the time of retesting, EPA had not approved release of the obligation on the importation bonds for any of the vehicles.) A description of the program and the results obtained were placed in the docket, as well as additional information relating to specifics of procurement and testing sequences of actual vehicles.

Various commenters, including the Automobile Importers Compliance Association (AICA) and International Motors, criticized the procurement methodology and emission test procedures utilized in the EPA/CARB program. Specifically, they said it was unfair that the ICIs for the vehicles in question were not given an opportunity to inspect the vehicles prior to the CARB test nor to be present for the testing. Among other concerns, they noted that the vehicles were tested in an "as is" condition and not set to specifications as are other vehicles tested in EPA's in-use program. In addition, various modifiers and laboratories who had either modified or tested vehicles involved in the study, and who responded to EPA's request for an explanation of the test results, also criticized the methodology and actual conduct of the testing. The methodology criticism was the third most frequent explanation given for the results followed by the presence of tampering and component failure. Except for component failure, EPA disagrees with those criticisms. A detailed analysis of those comments and EPA's positions on various issues raised is contained in a document entitled "Supplementary Information on Joint EPA/CARB program, September-October, 1984: Analysis of Responses by Affected Modifiers and Test Laboratories to EPA Request for Explanation of Program Results" that has been placed in the docket for the rulemaking.

In summary, EPA still is confident that the vehicle procurement and testing procedures were valid and appropriate and that the test results strongly indicate the non-durability of most modifications. Other possible explanations offered by the ICIs for vehicles' failures such as tampering (i.e., removing or disabling emission controls) would simply confirm EPA's conclusion that many mod/test vehicles are not durable. With respect to the criticism that vehicles were not "set to specifications" prior to test, EPA believes testing vehicles in an "as-received" condition is representative of the emissions of the vehicles since none of the vehicles were supplied with such specifications.

Finally, it should be noted that the only data in the record relating to vehicles modified in accordance with certificates held by ICIs include emission re-test results on three vehicles (as tested by one OEM and two ICIs): "certification" emission tests on vehicles of the types not generally imported under the program; and, MBNA survey data on five vehicles covered by ICI certificates. Two of the three vehicles that were re-tested passed or only marginally failed, but in each case, the deterioration factor [5]

[4] Expensive European vehicles comprise more than 99 percent of the vehicles imported under the current regulations (excluding the catalyst replacement provision).

[5] The current small volume certification regulations (40 CFR 86.084–14) provide that a small volume manufacturer must demonstrate compliance on an actual vehicle whose emissions have been stabilized (accumulated mileage may range from zero up to 4,000 miles). A deterioration factor specified by EPA is then applied to the emissions level of the vehicle to project emissions at 50,000 miles. The projected emission rate at 50,000 miles is used to establish compliance. (This procedure is in contrast to large volume certification which requires a 50,000 mile durability demonstration on a prototype vehicle.)

exceeded that assigned in certification. The third vehicle, re-tested by MBNA, showed test results which are the basis of significantly higher deterioration factors than ones assigned in certification. The "certification" tests (on the vehicles mentioned above) showed durability at high mileages. However, some parts were found missing on three of the five vehicles surveyed by MBNA.

(2) Administration of the Program—Excessive Paperwork

The second problem with nearly all aspects of the current EPA program is the extensive resource requirements associated with its administration. Large amounts of paperwork and technical data are required to be submitted for each individual vehicle imported. Such paperwork and technical data must be received, processed, evaluated and then responded to, including recommendations to U.S. Customs concerning releases of the bond (or, in some cases, payment of a mitigated penalty for vehicles that are not brought into conformity). Also, with the vastly increased volumes of nonconforming vehicles imported annually (from 1500 in 1980 to about 68,000 in 1985), delays are created in the system which then serve to stimulate written and oral inquiries to EPA concerning the review status of particular vehicles. EPA estimates that, in addition to the paperwork associated with compliance demonstration, in 1985, it received approximately 350–400 pieces of correspondence and 1000 telephone inquiries per week concerning nonconforming imported vehicles. Such paperwork and inquiries severely overburden EPA resources which might better be allocated to more productive enforcement activities.

(3) EPA Enforcement

Thirdly, the technical requirements and diffused responsibilities associated with the "modification and test" part of the program pose significant enforcement problems. The problems have two main aspects.

The first aspect is that, from a practical perspective, responsibility for emissions control is diffused among various persons in the chain of commerce making it difficult to have an effective enforcement program. The Act requires the importer to bring the imported nonconforming vehicles into compliance. Yet, under the existing regulations, anyone can be an importer (there are no special requirements); most importers are individuals or businesses who are not generally knowledgeable about emissions compliance and must rely on other entities, such as a modifier that performs the modifications and/or a private emission test laboratory that performs the FTP emissions test. In making its judgements concerning the emissions compliance of a vehicle, under the existing rules, EPA relies on data submitted from test laboratories recognized by EPA as technically capable of performing an FTP. In many cases, however, the laboratories do not perform the actual modifications; they merely conduct the FTP, report the test results, identify the parts only in general terms and attach photographs of such modifications. Often the laboratory claims it is responsible only for the test results and is not responsible for assessing the durability of the modifications. Moreover, there are no special requirements or qualifications for being a modifier. The result is a situation in which there are many opportunities for abuse with each person in the chain disavowing knowledge of, and responsibility for, abuses such as falsification of data, tampering and improper or nondurable modifications. Moreover, the legally responsible party, the importer, is often the person who had the least to do with actually assuring emissions compliance.

The second aspect of EPA's enforcement problem is the presence of large numbers of importers, the majority of which are individuals who import one or two vehicles (as opposed to individual commercial importers), who have limited knowledge and/or information concerning the quality of modifications or emission testing. While normally enforcement against a few violators provides sufficient deterrence to other similarly regulated parties, such an effect is difficult where there are thousands of relatively unknowledgeable persons often operating in virtual isolation from each other. Thus, oversight of the regulation's requirements is very difficult.

(4) Compliance With Other Requirements

The fourth problem with EPA's current program is that it does not effectively ensure that importers comply with various types of manufacturer requirements with which OEMs must comply. By definition under section 216 of the Act, ICIs are considered to be manufacturers. OEMs, viewing this as an equity issue, have argued that the current regulations are unfair because OEMs must bear additional costs in conducting extensive certification programs to demonstrate that their vehicles will meet Federal emission standards for five years or 50,000 miles, and must assure their vehicles comply with such requirements for certified vehicles as emissions warranty and recall provisions under section 207 of the Clean Air Act, submission of Corporate Average Fuel Economy (CAFE) data and payment of "gas guzzler" taxes under the Energy Tax Act of 1978, 26 U.S.C. 4064. OEMs also cited special problems (such as potential product liability and other legal claims and customer relations problems) caused by imported nonconforming vehicles being presented to the OEMs for servicing, due to the fact that either proper service cannot be performed on such vehicles or cannot, because of delays in obtaining parts, be performed in a timely manner.

EPA's assessment of the comments indicates that the current program fails to require adequate demonstrations of compliance with emission requirements and fails to ensure compliance with non-emission requirements (such as gas guzzler tax) by ICIs comparable to that required of OEMs. In the main, this is because of the existing regulatory framework of the program, e.g., many importers are individuals who import for personal use, not manufacturers, and, hence, the assembly line inspection, warranty and recall requirements of the Act do not apply to them.

(5) Complaints From States and Others—Air Quality

The fifth problem is that the program has generated complaints from states and others concerning air quality impacts and interference with air pollution control reduction strategies. In EPA's judgement, there are indications, particularly as reflected in the comments of California, Alaska and Oregon, that EPA's current program does interfere with the implementation of Inspection and Maintenance (I/M) programs in some states, especially those most affected by nonconforming vehicles. This impact is dependent on the nonconforming vehicle importation rates (rates in 1986 are significantly lower than in 1985). While these states and various OEMs argued that such impacts do exist, some other commenters, including the U.S. Small Business Administration, argued that such impacts are negligible. However, EPA agrees with the argument advanced by California concerning the incremental nature of air pollution.[6]

[6] California argues that while any single polluting source—such as an individual vehicle not meeting applicable standards—may not in itself cause significant environmental harm, it contributes an incremental part to the cumulative air quality problem in any particular area.

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California has provided an analysis of the impact in Southern California which points to a particular problem in that area.

(6) Exceptions and Enforcement Policies

Finally, the current program features a "five model year old" personal use enforcement policy and other exceptions which themselves pose problems. These problems are discussed below in Part VI.

In summary, the record and EPA's experience with the present program demonstrates the need for more control over the modifications that are made to these nonconforming vehicles to assure proper modification of the vehicles, as well as their durability. Moreover, all requirements (warranty, labeling, recall, etc.) of the Act imposed on other manufacturers should be imposed on commercial importers of nonconforming vehicles to ensure compliance with emission standards over the useful life of the vehicles and to ensure fair treatment for all manufacturers.

The problems associated with the current imports program can only be solved by substantial changes to the present structure. EPA believes that proper oversight can only be accomplished by adopting a program that requires more and more, and ultimately most, vehicles be covered by certificates of conformity. In this way, EPA will review and test the modification designs to be placed on many more nonconforming vehicles before they are imported and modified, thereby resulting in better and more durable designs. EPA also believes that as a result of successful completion of the certification process, this technology will be transferred, in whole or in part, to "modification and test" vehicles that will be permitted to be imported, especially if importation of "mod/test" vehicles is limited to importers that have already obtained at least one certificate.

Limiting importation only to certificate holders will also solve several of the problems associated with the current program. First, the burden of administering the paperwork associated with the imports program will decrease. This, as discussed in Part V, is primarily because today's action replaces the bonding requirement for each vehicle with a fifteen working day hold mechanism and more stringent sanctions. Therefore, additional resources will be available to conduct regular inspections of vehicle modifications to ensure that they are properly performed. Second, selective enforcement will be more effective when the total number of importers is smaller than now. Third, better modification designs are anticipated as a likely result of the certification requirements.

Finally, a provision permitting only commercial importers to import vehicles enables EPA to impose warranty, labeling, recall and other emission compliance and manufacturer responsibilities on importers. The imposition of these requirements further ensures compliance with Federal emission standards for the useful lives of these imported vehicles.

As indicated above, EPA believes that the final program must make substantial changes to the current imports program in order to correct the problems associated with it. Two options were proposed which would modify the present program but keep its basic structure. One was proposed by a representative of ICIs, the Automobile Importers Compliance Association (AICA); the other was by an ICI, Olson Engineering, Inc. EPA believes adoption of either of these two options would be inappropriate for the reasons outlined in the SAC and below.

1. The AICA "Self Policing" Option—In its comments, AICA said that its proposal would address problems of the current program such as durability, excessive EPA paperwork and enforcement. The AICA proposal would change the administrative arrangement of the current program in three ways. First, it would provide for additional requirements for laboratories conducting emissions tests used for compliance determinations. Second, it would provide a "ten day hold" of vehicles at the emission laboratories to allow EPA an opportunity to inspect them and, if needed, require retests. After the "ten day hold" period, automatic releases of the Customs bonds would take place should EPA fail to reject the laboratory's test results. Finally, it proposed a monitoring program through which AICA would supplement EPA laboratory inspections and vehicle retests through its own laboratory inspections and oversight of vehicle testing. This "self policing" program would feature AICA stickers on each vehicle tested and found to be in compliance. AICA re-tests of vehicles resulting in test results different from those submitted to EPA and which showed violation of standards would lead to revocation of the stickers. AICA would report to EPA all test data and sticker revocations. AICA would require a performance bond to be obtained by participating members which would be forfeited to AICA upon revocation. AICA said active EPA enforcement would be a precondition for a successful program. The proposal would also add requirements for driveability tests for vehicles in the monitoring program and for emission warranties for all vehicles. It also would revise the small volume certification regulations.

2. Olson Engineering Proposal—This ICI proposed addressing the problems with the current program through creation of a new entity, responsible to EPA through a license process, that would perform the current EPA activities (and others) with ICIs paying for the service. EPA would establish laboratory approval and testing oversight criteria and perform a review and audit of the licensee's performance. The licensee(s) would periodically review laboratory capability, review test documentation, and provide responses to requests for information. EPA would sign bond releases and remain responsible for other elements of the program that cannot be delegated.

While these proposals contain thoughtful innovations, they do not address effectively the problems of the current program for several reasons. First, they contain no provision for assuring the durability of vehicles. Second, neither proposal adequately addresses the various problems of administration and enforcement outlined above. The two proposals would permit importations by any person, thereby continuing the practice of diffused responsibilities among the various importers, modifiers and emission test laboratories.

The proposals are flawed in other ways as indicated in the SAC. For example, EPA is concerned that the "self policing" feature of AICA's option would be difficult to implement. In fact, an AICA self-policing program similar to that proposed by AICA (called ACEP) presently exists. EPA is aware that there is little participation by ICIs in the program. However, as discussed below, EPA has incorporated in the rule, as proposed in the SNPRM, a "fifteen day hold" concept for vehicles, similar to the provision suggested by AICA.

IV. Rationale for EPA's Decision Not To Prohibit the Importation of Nonconforming Vehicles (SNPRM Option 1)

In addition to having considered, and rejected, proposals to maintain the current program, EPA considered and rejected the idea of completely prohibiting importation of nonconforming vehicles. Option 1 in the Supplemental Notice of Proposed Rulemaking (SNPRM) suggested elimination of the importation of all nonconforming vehicles, except (1) vehicles covered originally by a certificate of conformity, and (2) some

special exemptions (e.g., display exemptions), by abolishing the current regulatory framework and prohibiting ICIs from obtaining certificates of conformity. Elimination of the importation of nonconforming vehicles altogether is, in EPA's view, unnecessary at this time. After careful consideration of all arguments and data received in comments, EPA believes that total elimination of imported nonconforming vehicles is not justified given the sparse data in the record concerning certified vehicles. Furthermore, EPA does not agree with the legal arguments propounded by the commenters supporting prohibition.

As explained in the preamble to the SNPRM, SNPRM Option 1 originally stemmed from comments EPA had received from various OEMs and the State of California in response to the November 4, 1983 Notice of Public Workshops. Comments on the SNPRM indicate that the option is now supported mainly by OEMs. It is explicitly opposed by two OEMs, all ICIs, two Federal agencies and various individuals.

Most of the comments dealt with the following four major issues.

1. Denial of Certification to ICIs Based on the Record

The first issue was whether ICIs as a class should be denied the opportunity to certify because they are unreliable and/or lack knowledge and control over vehicles they modify. Without such control, OEMs argued, it is unlikely that vehicles will be properly modified in accordance with the provisions of a certificate. Various OEMs argued that the data in the record concerning improper modifications (*see* Part III, *supra.*) provide clear evidence of such unreliability and lack of knowledge. They pointed in particular to the various OEM dealer surveys, the results of the joint EPA/CARB program and emission tests of two vehicles covered by certificates of conformity held by ICIs. Some cited the data in the record concerning falsification of data as the basis for arguing that even when ICIs have the requisite knowledge and skill, they will not use it to perform the necessary modifications because they will take advantage of EPA's limited enforcement capability. Thus, they argued, if vehicles are improperly modified and tested under the current EPA program, it is unlikely they will be properly modified under a new EPA program that requires imported vehicles to be modified so as to be covered by a certificate of conformity.

Various ICIs did not dispute the evidence concerning improper modifications but argued that it pertained almost exclusively to the current program which is admittedly flawed and, therefore, is irrelevant to a consideration of a certification program for ICIs.

EPA notes that the data base in the record relates almost entirely to the reliability and knowledge of ICIs is the context of the current "modification/test" program. The data relating to the ability of ICIs to properly produce vehicles under EPA's certification program is too sparse to justify banning all ICIs as a class from certification. EPA believes that reasonable alternatives which are designed to address the deficiencies of the present program should be explored before a complete ban could be considered and that, as discussed above, today's action provides such a reasonable alternative.

Some OEMs also provided information on "running changes" [7] as further evidence of the need to ban the importation of nonconforming vehicles. OEMs argued that ICIs should be banned from certification because of their lack of knowledge of running changes affecting emissions performance. EPA does not believe that lack of knowledge of running changes by ICIs is adequate to justify eliminating the importation of nonconforming vehicles, especially given that there are reasonable alternatives available to address the running change issue. (The issue of how to address running changes in a new program is discussed in Part V, below.)

2. Denial of Certification on Legal Grounds

The second major issue was whether under sections 216(1) or 206 of the Clean Air Act, EPA should prohibit ICIs as a class from obtaining certificates. Various OEMs argued that EPA lacks any legal basis for allowing ICIs to certify. Section 216(1) defines a "manufacturer as a person engaged in the manufacturing or assembling of new motor vehicles . . . or engines, or importing such vehicles or engines for resale, or who acts for or is under the control of any such person [except dealers]. . . ." Despite the explicit inclusion of commercial importers in the definition, some OEMs argued that Congress did not intend that the definition of "manufacturer" in section 216(1) apply to ICIs, but only to entities in the original manufacturer's standard chain of production (other than dealers) that are responsible for the Act's requirements. As such, they argued, the list of entities in the definition of "manufacturer" in section 216(1) includes OEMs' authorized importers but not independent importers. Moreover, two OEMs (MBNA and Associated Ferrari Dealers of America (AFDA)) argued that although the 1965 legislative history of the Motor Vehicle Pollution Control Act, where the present form of section 216(1) first appeared, does not specifically discuss this subsection, there are other indicators in the 1965 legislative history supporting this view. MBNA claimed that the 1965 legislative history refers to the role played by the original manufacturer's normal chain of production in assuring emission compliance, specifically, "[t]he record [Congressional Record of September 24, 1965] has several references to the cooperation of, and duties imposed upon, the automobile industry." [8] Therefore, MBNA argued that the problem of "independent, free-rider entrepreneurs such as grey market importers" was simply not thought of at the time of the Act's adoption and, hence, that ICI's were not meant to be included within the definition of manufacturer in section 216(1).[9]

AFDA also cited similar portions of the legislative history in concluding that Congress intended to impose obligations on the auto industry as it then existed and that Congress neither foresaw the rise of the grey market nor intended its definition of manufacturer to encompass gray marketers.[10]

Furthermore, according to MBNA, the Act's amendments to section 203 in 1970, to give EPA discretion to allow some nonconforming imports, were designed to address only two problems: Original manufacturers who imported old nonconforming cars and individuals who imported new or old nonconforming vehicles for purposes other than sale or resale. The legislative history, it claimed, does not recognize other types of importations. Thus, the 1970 legislative history purportedly also supports the conclusion that Congress never contemplated the importation of nonconforming vehicles by commercial interests other than original manufacturers.

Various OEMs argued that this legal analysis and the data in the record indicate that EPA lacks any basis for

[7] Running changes are those changes in configuration, equipment, calibration and so forth which may be made by a manufacturer in the course of production of a model line or engine family and which may have an effect on vehicle emissions performance.

[8] See MBNA submission to EPA Docket EN 79-9, January 23, 1984, pp. 7-15.

[9] Id. at p. 9.

[10] See AFDA submission to EPA Docket EN-79-9, pp. 14-19.

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allowing ICIs to certify. One OEM argued that even if EPA did believe ICIs were manufacturers, there is a legal basis for ignoring that interpretation when an ineffective program has been demonstrated.

One ICI disagreed and argued explictly that section 216 of the Act makes it clear that ICIs are manufacturers and that it has been EPA's practice to recognize this. The SNPRM, according to this ICI, does not contain any justification for EPA to change its view.

EPA still believes that ICIs are manufacturers under section 216(1) of the Act, and, hence, are entitled to apply for certification. Section 216(1) expressly provides that the term "manufacturer" includes "any person engaged in the manufacturing . . . of new motor vehicles or new motor vehicle engines, or *importing such vehicles or engines for resale*, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles
or . . . engines. . . . (Emphasis added.)

Thus, the statutory language on its face specifically provides that any importer for resale is a manufacturer without regard to whether the importer is independent or an authorized representative of the OEM. The statutory language implicitly provides additional support for this interpretation. The definition includes not only persons manufacturing, assembling, or importing new vehicles, but also persons "who act for or are under the control of any such person in connection with the distribution . . ." of such vehicles. This last category would cover authorized importers who act for or are under the control of the OEMs. Thus, if the specific reference to importers for resale in section 216(1) were limited to authorized importers, as the OEMs suggest, the latter phrase would be superfluous and redundant. EPA does not believe that Congress would have intended such a meaningless redundancy. Accordingly, the reference to importers in the definition must include importers who are *not* authorized representatives of OEMs.

EPA believes that OEM reliance on the 1965 and 1970 legislative history of the Act is weak at best, especially in light of the clear statutory language of section 216(1) of the Act. The sections of 1965 legislative history cited by MBNA are largely focused on the health effects of air pollution and the need for Federal, as opposed to state, regulation to protect auto manufacturers from divergent regulations. There is no emphasis in the cited portions of the legislative history on the structure of the auto industry or on the relevance of the industry's structure to the then-pending legislation. Accordingly, EPA does not find MBNA's reading of these casual references to auto manufacturers as intentionally limiting the reach of the legislation to the typical production chain to be persuasive.

The legislative history cited by AFDA addresses the auto industry's technical knowledge and skill in manufacturing autos with emission control equipment. EPA believes that Congress was addressing a general situation when it spoke of the auto industry's knowledge and skill and was not focusing on the narrow issue of who would equip imported autos with emissions equipment. In summary, EPA believes that the 1965 references to the "auto industry" cited by the OEMs were not intended to carry any special significance regarding the status of importers under section 216 and sheds no light on the meaning of the definition.

EPA also believes that the 1970 legislative history of section 203 cited by MBNA merely acknowledges Congressional concern about the legal importation of slightly-used foreign-built nonconforming vehicles by manufacturers and individuals. At most, this indicates that Congress did not expressly consider the role of independent importers under section 203. It does not, however, lend support to the argument that Congress implicitly intended ICIs to be prohibited from importing nonconforming vehicles, especially when the language of section 216(1) so clearly encompasses them.

3. Denial of Certification to ICIs Since Certification Is Inadequate to Assure Compliance With Standards

The third major issue was whether SNPRM Option 1 should be adopted because it is the only option which provides an adequate regulatory program to meet the requirements of the Act by ensuring compliance of vehicles over their useful lives. One OEM stressed that any option featuring a certification process for ICIs is not appropriate since it assumes an identicality among imported vehicles of the same model such that each vehicle modified to meet the specifications of the certificate will have similarly allowable emissions. The OEM claimed that such similarity cannot exist since there are numerous differences (not always known or of concern to ICIs) among imported vehicles of the same model which may lead to different emission results even if they are similarly modified. Therefore, it argued, none of the options presented were adequate.

However, EPA believes that an imports program relying more and more heavily on the certification process, with the contemplated increased design scrutiny and increased enforcement discussed in Part V, and other improvements in the modification/testing process, will provide an adequate regulatory program and should prevent the problems raised by the OEMs. In addition, the concern over the identicality of models is related to the running change issue and has been adequately addressed in the new program (see discussion in Part V, below).

4. Impacts of Eliminating Nonconforming Vehicles

The fourth major issue concerned the impacts of SNPRM Option 1. Various OEMs argued that SNPRM Option 1 should be adopted since it is the only option resulting in an equitable situation for them. This is because ICIs would be permitted under the certification options proposed by EPA (SNPRM Options 2 and 3) to meet more relaxed (and less expensive) requirements. EPA, they argued, should impose the same burden on all who import vehicles.

One OEM disagreed saying SNPRM Option 1 is unfair to ICIs since it would eliminate them entirely. One ICI and the U.S. Small Business Administration also expressed concern that the ICI businesses would be eliminated unjustifiably.

The U.S. Department of Justice (U.S. DOJ) and one ICI said that SNPRM Option 1 would result in a high cost to consumers since OEMs would no longer have to compete with importers of nonconforming vehicles. U.S. DOJ estimated that it would result in a combined loss of $249 million to United States consumers. (The SAC should be consulted for further information on DOJ's analysis of the impact of this option on consumers, together with that of other options presented in the SNPRM and one OEM's detailed rebuttal.)

EPA believes it is not necessary to address the ICI's and U.S. DOJ's comments in opposition to Option 1 since, for reasons discussed earlier in this section, EPA has chosen not to adopt this option (concerns about the DOJ analysis are contained in the SAC). With respect to the OEM's equity argument, EPA believes that since all ICI models that have to be certified will go through certification procedures applicable to both small volume OEMs and ICI's, equity is assured for certified

vehicles. For the vehicles that use the new stringent "modification and test" procedure, the ICIs are subject to the requirements (discussed in Part V, below) regarding 100 percent testing, the application of deterioration factors (assigned by EPA as in small volume certification), warranties, recall, labeling and maintenance instructions. Thus, the burden on an ICI using this option should be comparable to that of any person who imports under a certificate.

V. Today's Action: EPA's New Regulatory Program for Imported Nonconforming Vehicles

Today's action provides a new regulatory program, part of which will be phased-in between 1988 and 1993, that permits entry to imported nonconforming vehicles while addressing effectively the problems posed by the old program. The new program is an outgrowth of previously proposed options and comments which, with some exceptions during the phase-in period, requires certification for imported vehicles less than six OP years old [11] at the time of importation, but allows importation of vehicles six OP years old or older under an enhanced modification/test program. Requirements imposed on certificate holders for both certified and modification/test vehicles (durability demonstration, recall, warranty, etc.) proposed in SNPRM Option 3 have been incorporated for the most part in this final rule. As discussed in Part 5.C below, during the phase-in period some vehicles less than six OP years old may be imported under the new modification/test program under certain circumstances. However, the number of such vehicles which may be "modified/tested" decreases each year of the phase-in period until 1993 when all vehicles less than six OP years old (with a few exceptions) must be imported under the new certification-based program. Additionally, the new program provides for an exemption from emission requirements for vehicles greater than twenty OP years old. The new program has six major parts.

A. New Imports Program

1. Importations Only by Certificate Holders

The first part of the new program is a provision that permits only ICIs that possess a certificate of conformity from EPA to import nonconforming vehicles [12] (except in cases of exemptions and catalyst retrofit vehicles, see Part V.A.6, below).[13] Certificate holders would bear responsibility not only for performing, within 120 days of entry, all necessary modifications and emissions testing, but also for assuring compliance of the vehicles they import with EPA emission requirements over the useful lives of the vehicles. In effect, this will impose on ICIs the same emission requirements currently imposed on OEMS by the Act.

Today's action does not preclude an individual from importing a vehicle into the U.S. Instead, it requires individuals to arrange for such importations through a certificate holder who will take responsibility for the emissions compliance of the vehicles. These vehicles would be part of the certificate holder's "production line" and the certificate holders would be responsible for complying with all requirements for vehicles which are not actually owned by the certificate holder. A certificate holder must explicitly agree to these requirements as a condition of approval for final admission of the vehicle into the United States.

The provision that only certificate holders may import nonconforming vehicles is a major step in addressing the problems of the old program. First, it focuses responsibilities for importation and for emission control on one entity (the certificate holder) and, thus, will largely eliminate the problem of diffuse responsibilities among various persons under the old program. Second, it assures that there is a responsible entity that will provide emission warranties, maintenance instructions and recall liability and that will properly affix emissions labels and comply with fuel economy requirements. Finally, since the number of regulated persons will significantly decrease under the new program, more effective EPA enforcement is anticipated. All of the above, together with the stringent sanctions applicable to certificate holders in this final rule, are expected to result in more durable modifications, substantial prevention of improper modifications and, hence, better air quality than under the current program.

In comments on the SNPRM, there was objection by several individuals and a few ICIs to this provision. One commenter proposed allowing individuals to import vehicles over two years old (see discussion in Part VI of this and other proposals relating to variants of the option selected for today's action). On the other hand, there was support for this provision among most ICIs, state government agencies and at least two OEMs. For the reasons stated above, EPA believes that the prohibition against importations by individuals is appropriate.

2. New Administrative Requirements

The second part of the program involves certain new administrative requirements that provide for streamlined reporting requirements and a "fifteen day hold" period which, together with the availability of new sanctions, replaces bonding.

For vehicles covered by certificates of conformity and for vehicles entering under the new modification and test provision, EPA has eliminated the requirement for an EPA obligation on the Customs bond pending final admission of a vehicle, and has substituted a "fifteen working day hold" mechanism that is expected to reduce the administrative burden on EPA and Customs. Under this arrangement, each vehicle is required to be stored for a period of fifteen (15) working days following notification to EPA of modification and/or testing to provide the opportunity for EPA confirmatory testing and inspection of vehicles and records. SNPRM Option 3 had proposed retaining the bonding requirement for vehicles entering under the modification and test provision. EPA has eliminated this requirement in this final rule since EPA believes that the "fifteen working day hold" concept, together with the sanctions provided in § 85.1513, are an effective substitute for bonding for these vehicles just as with certified vehicles. The bonding mechanism has been retained for most vehicles entering

[11] For purposes of determining OP year, OP year is the calendar year of original production. The number of original production years a vehicle is old is determined by subtracting the original production year of the vehicle from the calendar year of importation. For example, under the new program, for nonconforming vehicles imported in calendar year 1994: Vehicles originally produced January 1, 1989 and later must be modified in accordance with an ICI's certificate of conformity; vehicles originally produced between January 1, 1974 and December 31, 1988 may be modified in accordance with a certificate or modified/tested; and vehicles which are not otherwise excluded which were originally produced before January 1, 1974 would be entitled to an exemption from demonstrating compliance with emission requirements.

[12] Today's action provides that a nonconforming vehicle includes any vehicle imported by an ICI possessing a valid certificate of conformity but which has not yet been finally admitted under these regulations. Until such final admission, vehicles imported under § 85.1505 are not considered to be covered by a certificate of conformity.

[13] While the Act permits any person to import a vehicle covered by a certificate of conformity, these regulations permit only certificate holders (with a few exceptions) to import nonconforming vehicles. It should be noted that an importer for purposes of these regulations does not necessarily comport with "importer of record" for purposes of the Tariff Act of 1930, as amended. *See* 19 U.S.C. 1484. Under EPA's amended regulations, the importer must be a certificate holder and need not be the owner, purchaser or an authorized Customshouse broker, as provided for in the Tariff Act.

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under some special exemptions and catalyst and O_2 sensor equipped vehicles which are not participating in programs approved by the Administrator.

In comments on the SNPRM, there was virtually no objection to the concept of the hold period. While three ICIs commented that the hold period should be shorter (e.g., ten days or three days), as indicated in the SAC, EPA believes that fifteen days is appropriate, given the number of vehicles expected to be imported and the need to provide EPA flexibility and a realistic opportunity to conduct inspections.

Paperwork requirements for reporting compliance of each vehicle to EPA (in the cases of both certified and mod/test vehicles) are streamlined under the new program. When a certificate holder voluntarily imports a nonconforming vehicle, it is required to report this "conditional entry," as before, on a brief form to EPA. When all modifications (and testing, where applicable) are completed, it then submits only a brief application containing information demonstrating that the vehicle has been properly modified and/or tested. The application forms shall be completed in accordance with EPA instructions and are likely to be designed so that they can be read automatically by an optical character reader into EPA's computer. Alternatively, the final rule provides that a certificate holder may choose to submit the data electronically to the EPA computer using a prescribed EPA format. These data then will serve as a tool for use by EPA in inspection/enforcement strategies. Through this new system, the extensive test documentation reporting requirement under the present program is eliminated and, thus, administration and enforcement are facilitated.

3. Requirements for Certified Vehicles Covered by Certificates

The third part of the new imports framework are the requirements imposed on certificate holders for vehicles they import which are intended to be modified and/or tested in accordance with a certificate of conformity. Unlike the present imports program, the EPA small volume certification regulations at 40 CFR 86.084–14—under which most nonconforming vehicles will eventually be certified—involve some "up front" screening for durability problems on a prototype vehicle and require test values to be adjusted using deterioration factors that project emissions over a vehicle's useful life. As indicated in the SNPRM, EPA intends to perform confirmatory tests on prototype vehicles for importers under the new program and to carefully scrutinize vehicle designs before issuing the certificate. Vehicles then imported under the certificate must be modified in accordance with the certificate. This fact alone should greatly facilitate enforcement since instead of having to retest vehicles to determine compliance, as was often necessary under the old "modification and test" method, EPA will be able to inspect many vehicles and check the parts installed against the description in the certification application to determine whether the certificate holder has met its emission responsibilities.

Today's action also imposes a requirement for certificate holders to provide assurance to EPA that vehicles modified in accordance with the provisions of an importer's certificate would not be adversely affected by unknown running changes. The new regulation provides that assurance can be given through successful completion of an FTP test on every third vehicle (with application of a deterioration factor) or presentation to EPA of a statement by the appropriate OEM that the OEM will provide all information concerning running changes to the importer and, at the same time, to EPA. This latter scheme would need prior EPA approval which would not be given unless the importer, among other things, could demonstrate that it had the capability of evaluating the effect of the running changes on emissions. As noted below, EPA has made some relatively minor changes from the language proposed in the SNPRM in this regard.

Furthermore, certificate holders are required to comply with various requirements imposed on OEMs. These include requirements for assembly line inspections, recall, maintenance instructions, warranty, emissions labeling and fuel economy requirements (including fuel economy labeling), and gas guzzler tax. There are also recordkeeping requirements which have been imposed on certificate holders. Most of these requirements are promulgated as described in the preamble to the SNPRM and thus are discussed in detail below only when significant comments were received or changes were made.

Major comments focused on the following: a. Durability/in-use testing, b. configuration control/running changes, c. service availability, d. financial responsibility and e. definition of model year. Additional comments were made on provisions relating to: f. Assembly line inspections, g. recall, h. driveability assurance and i. repair manuals. While EPA received no comments concerning proposed regulations for laboratories, EPA, as explained below, has decided not to issue these regulations.

a. Durability assurance/in-use testing. Many commenters expressed the concern that EPA's small volume certification regulations are an inadequate means of assuring the emissions durability of nonconforming vehicles. OEMs indicated that the assigned deterioration factors used in small volume certification to predict emission performance at 50,000 miles were not appropriate for ICI small volume certification. This is because these assigned deterioration factors are based on 50,000 mile durability tests performed on vehicles with technology purportedly different from that used on nonconforming vehicles. OEMs were also concerned that a requirement for 5000 mile testing permitted by section 206(a) of the Act for small volume manufacturers would not be adequate since catalyst deterioration data showed that it was not necessarily a good predictor of vehicle emissions at 50,000 miles. Many of the OEMs proposed that ICIs should be required to do 50,000 mile durability testing to certify. ICI commenters, on the other hand, argued that the small volume procedures were adequate and appropriate for use by ICIs and that requiring 50,000 mile durability testing of small volume certifiers may not be legal.

Assuming ICIs will qualify for small volume (as opposed to large volume) certification, EPA believes today's action will provide an adequate level of durability assurance for certified vehicles for the following reasons. First, EPA plans to carefully scrutinize vehicle modifications proposed in certification applications and to take aggressive measures where poor modifications are identified which may significantly affect emissions durability. This is expected to result in more durable technology. Second, the final rule, unlike the present program, requires that importers comply with all regulatory requirements imposed on other manufacturers. Third, consolidation of the nonconforming imports industry, (i.e., mergers of ICIs, modifiers and other businesses) and the reduction in paperwork that will likely result from the final rule, will free EPA resources for better enforcement and use of the stringent sanctions available. Fourth, EPA believes that better and more durable technology will likely be developed by a consolidated industry, in contrast to that used by the highly diversified and individualized industry existing under the present program.

Some commenters, including the State of California, urged EPA to impose a new in-use testing requirement to be paid for by ICIs. This would be similar to a requirement imposed by California in its new regulations regarding newly manufactured nonconforming imports. The purpose of the requirement would be to provide an alternative means of durability assurance to compensate for the lack of a 50,000 mile certification testing requirement for small volume ICIs. There was mixed reaction to that concept among commenters. One OEM urged EPA to adopt the concept with the stipulation that a 50,000 mile durability test requirement as a prerequisite for certification also be included. Other commenters expressed doubts about the legality, fairness and practicality of the concept.

EPA believes that while an in-use testing requirement as described by California has some merit, for reasons indicated above, it is not essential to the effectiveness of the new program. For example, EPA already has authority under section 207(c) of the Act to perform in-use testing of any manufacturer's vehicles in the exercise of EPA's recall authority.

Several commenters proposed that an engine mapping [14] requirement be added as a means of durability demonstration. EPA believes that engine mapping is not an adequate means of addressing the durability issue. First, there are no widely accepted procedures for engine mapping. Second, engine maps are developed using a fully warmed-up engine or catalyst and thus thermal transients such as cold start emissions (which contribute substantially to the overall emission levels of a vehicle) do not show up on such maps. Third, engine maps are usually developed using steady-state speeds and loads while real engines in real vehicles operate in a transient fashion. Thus, differing results can be expected for the two situations. Therefore, EPA believes that an engine mapping requirement is not appropriate at this time.

Some OEMs argued that the small volume certification procedures provided for by section 206(a) of the Act could not be utilized by ICIs since legislative history shows that the provision was designed only for small manufacturers who produce vehicles for sale in the U.S. EPA disagrees. As discussed in Part IV above, there is no indication in the legislative history that Congress did not intend section 206(a) to apply to all small volume manufacturers, including eligible ICIs.

Various OEMs commented that all sales of a given make by all ICIs should be aggregated with all U.S. sales of that make by OEMs to determine if any ICI is eligible for small volume status under 40 CFR 86.082–14 (i.e., total sales under 10,000 per year). EPA historically has not required ICIs to aggregate their vehicle sales with respective OEMs for purposes of determining eligibility for small volume certification procedures. EPA believes this practice is still appropriate under the present regulation. As indicated in the preamble to the final rule establishing optional small volume procedures, the intent of the aggregation provision at 40 CFR 86.082–14(b)(2), was to ensure that large volume certification was not circumvented. In particular, the small volume certification rule, published on March 12, 1981 (46 FR 16259), noted that EPA was concerned that a large volume manufacturer would market small numbers of vehicles through many distributors or importers, making each distributor or importer eligible for small volume certification even though the manufacturer would have been ineligible. Such a cooperative arrangement between the ICIs and their OEM counterparts is not the case with ICI importations. Hence, EPA believes that aggregation of their sales was not intended by 40 CFR 86.082–14(b)(2). (However, EPA may consider changes to this requirement in a separate, future, rulemaking pertaining to the small volume certification rules.)

b. Configuration control/running changes. After consideration of all comments on this issue, EPA has decided on two methods by which ICIs could provide assurances to EPA that the emissions of vehicles modified in accordance with the provisions of an ICI's certificate of conformity would not be adversely affected by production or running changes.

First, the certificate holder may present to EPA a statement by the OEM that the OEM will provide to the certificate holder and to EPA all information concerning running changes. When running changes do occur, the certificate holder must assure that a description of the running changes and an assessment of their emissions effects are actually received by EPA. This provision differs slightly from the SNPRM in that it only requires a statement from the OEM, as opposed to an enforceable agreement between the OEM and the certificate holder. The change was made in response to comments from two OEMs that indicated that they would provide to EPA information on running changes. In addition, prior approval of this method must be obtained from EPA in order to ensure that notification of the running changes will be received and that the certificate holder will have the technical expertise to evaluate the emissions effects of the running changes.

The second method requires that an FTP test be conducted on every third vehicle imported under a certificate until a threshold of 300 vehicles is imported (under that certificate) without having to make adjustments or other modifications due to running changes, at which time an FTP test on every fifth vehicle is required. If, at any time, any "running changes" are made to the vehicles by ICIs on their own initiative (as described below) in order to bring their vehicles into compliance, then counting for purposes of determining the 300 figure and testing of every third vehicle will begin again, starting with the first vehicle receiving such changes.

Today's action provides that certificate holders are required to report test failures to EPA. Should a vehicle fail an FTP, the certificate holder may retest the vehicle within five working days subsequent to the first test. Such retest must involve no adjustment of the vehicle (e.g., adjusting the RPM) from the first test other than adjustments of adjustable parameters that, upon inspection, were found to be out of tolerance. (When such an allowable adjustment is made, the parameter may be reset only to the nominal value, but not to any other value within the tolerance band.) Should a second failure occur, then the certificate holder must initiate a running change pursuant to existing 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal standards (as demonstrated by passage of an FTP test [15]). In order to be deemed acceptable by EPA, ICI running changes involving adjustments of adjustable vehicle parameters must be changes in the nominal values (i.e., not simply changes to values other than nominal values in the tolerance bands). Such running changes must be reported to EPA but mere reporting (or final admission of vehicles with the running change) will not constitute automatic

[14] Engine mapping is a technique used to make estimates of engine and vehicle performance over complicated driving cycles such as that specified in the FTP. An engine map is analogous to a topographical map of a geographical area. Emissions of the engine are analogous to height on the topographical map while engine speed and engine load are analogous to two directions. Thus, a map of a pollutant from an engine would be lines of constant emissions on an engine speed/load graph.

[15] FTP testing associated with proveout of running changes must be performed at the laboratory which conducted certification testing for the ICI.

approval by EPA of the ICI's running change.

Today's action differs slightly from the SNPRM in various ways. First, it deletes the requirement for emission-related parts identification for each of the vehicles that are not FTP-tested as a means of detecting running changes. One OEM indicated that identical parts numbers are not always a reliable indicator that running changes affecting emissions have not occurred and EPA agrees.

Second, it deletes the SNPRM proposal for 100 percent testing (as an alternative to Method 1 above or Method 2 with a requirement for parts identification for the non-tested vehicles). EPA believes that testing every third (or fifth) vehicle imported provides adequate assurance that running changes do not affect emissions significantly and, hence, 100 percent testing has not been required.

The third way today's action differs from the SNPRM is the provision for a lower percentage (20 percent) of required FTP testing for vehicles imported under any certificate as the volume imported under the certificate exceeds 300 vehicles. Even though the percentage of testing is reduced after the volume of importations under a certificate reaches 300, the total number of vehicles tested by larger volume importers under a certificate is approximately equal to the number of vehicles tested by a lower volume importer. Therefore, the burden of testing is reduced while at the same time the amount of information regarding running changes remains fairly constant.

Most OEMs objected to one or more of the three methods proposed in the SNPRM, calling them "unworkable" and proposed in-use testing or engine mapping as methods of addressing the issue. At least one OEM and various ICIs supported one or more of the methods as did the State of California (who urged this be complemented by in-use testing). Various ICIs supported the notion of testing every third vehicle while others argued for requiring lesser amounts of testing.

EPA does not agree with OEMs who commented that Method 1 is unworkable. For example, EPA is already aware of at least two OEMs who have said they will make information on running changes available. Moreover, ICIs who use this method are required to submit such changes to EPA with an analysis of the change on emissions. Thus, EPA believes that this method will be workable and effective.

EPA acknowledges that the zero mile testing requirements of EPA Methods 2 and 3 do not address the long term effects of running changes. However, no reasonable alternatives exist. Even OEMs are not required to perform durability testing to demonstrate the long term effects of running changes unless they create a new engine family or emission control system. Such a requirement is generally not practical, and, therefore, engineering analysis or judgment often is used. Also, EPA believes neither in-use testing nor engine mapping are appropriate for the reasons discussed above.

c. Service network and warranty. Virtually all OEMs, as well as three state agencies commented that ICIs should be required to provide service outlets to ensure effective warranty and recall and to provide relief for OEM dealers and OEMs from complaints often received at the OEM dealers about nonconforming vehicles. A service network would also obviate the need for "post repair" reimbursements from ICIs for repairs performed by OEM dealers.

There was no clear opposition from ICIs on this issue. One ICI said such a requirement would not be "unreasonable" although it was not needed because the OEM network does an adequate job of servicing the vehicles. Others argued that an ICI dealer structure will evolve naturally anyway.

EPA believes that while a service network requirement may have merit, it should be studied further before being required. There is some evidence in the record that a service network may be a potential outgrowth of a certification-based program which causes consolidation of ICIs. Moreover, the OEM surveys show that servicing is generally available at OEM dealers. EPA, therefore, believes it would be more appropriate to evaluate this issue at a later time.

d. Financial responsibility. OEMs, together with the State of California, which has a requirement of this type in its new ICI regulations, suggested requiring ICI certificate holders to acquire bonds and/or prepaid insurance to cover ICI warranty and recall liability for the useful life of each vehicle. There was no opposition from ICIs regarding this concept even though it was discussed at length in both of the public hearings on the SNPRM.

CARB noted that its own new regulation addressing non-conforming vehicles requires modifiers to post a prepaid surety bond in the amount of $1000 per vehicle to cover its obligation to perform recalls. The bond is refundable at the end of the useful life of the vehicle (i.e., as associated with the CARB program, 5, 7 or 10 years) or when the recall period for an engine family has ended. Alternatively, the modifier can purchase insurance which will cover the modifier's recall obligation and thereby avoid the posting of bonds.

CARB argued that because this industry is composed of small businesses, it is quite likely that a number of firms will fail over time. Without a requirement for a bond or insurance policy to cover warranty and recall repairs, owners of vehicles obtained from firms that are no longer in business would have to bear the warranty costs. Without adequate warranty coverage, tampering is more likely to occur.

Today's action contains a provision for a prepaid insurance policy that, in effect, assures effective warranty coverage. Thus, a bond that is required to be held to assure an effective recall and warranty program is unnecessary and, therefore, should not be made a part of the final rule. Furthermore, as discussed in the preceding part, a service network may be a likely outgrowth of the new program and will help address warranty and recall concerns. Finally, sanctions are available in the new regulation and the Act for failure to properly conduct recalls. Thus, EPA does not believe an additional bonding requirement is necessary at this time.

e. Model year. Various ICIs urged EPA to change its policy regarding model year as it applies to vehicles modified by an ICI pursuant to a certificate of conformity. They argued that the current EPA model year definition unfairly limits the period in which ICIs can sell their vehicles since the certification process for a "new" model cannot even begin until January 1 and will not be completed until at least two months later. Since the certificate is only valid until December 31, the ICIs argued that the "window of importation" is thus limited, at best, to only eight to ten months a year.

EPA believes that the current policy is fairly applied to both OEMs and ICIs and that part of the problem may be due a misunderstanding of the policy.

Section 206(a) of the Act provides that a certificate of conformity may be issued for a period of not more than one year EPA has interpreted the phrase "one year" to mean one model year which can extend for as long as almost two calendar years. For example, a certificate may be obtained as early as January 2 of the calendar year preceding the calendar year for the named model year and expires by December 31 of the calendar year for which the model year is named (see Advisory Circular No. 6A

(Subject: Duration of Certificates of Conformity and Production Period, September 1, 1972)). EPA will apply this definition equally to OEMs and ICIs.

However, in order to determine whether a particular ICI or OEM vehicle is covered by a certificate of conformity, EPA must look to factors other than the model year [16] designated by the certificate holder. Specifically, EPA must examine the description of the emission prototype vehicle in the certificate holder's application for certification. If the vehicle produced is materially the same as the description in the certification application, then it is covered by the certificate holder's certificate of conformity; if it is not, then the vehicle is not covered.

The decision as to whether an ICI vehicle is covered by the ICI's certificate depends not only on the type of modifications the ICI makes to the OEM vehicle but also on the configuration of the OEM vehicle. This is because changes in the emission systems installed by the ICI or the OEM vehicle as originally manufactured can affect vehicle emissions. In the past, ICI certification applications have contained only a technical description of the ICI's modifications and were devoid of any technical description of the vehicle as originally manufactured by the OEM. Therefore, it was necessary for EPA to determine the production period or model year of the OEM in order to assure that no significant new production changes had been made to the vehicle as originally manufactured which might affect emissions and, hence, certificate coverage.

EPA has found, however, that apparently some European manufacturers have no formal production period and model year is determined in Europe by reference to the date of first registration. Therefore, EPA decided, in accordance with 40 CFR 86.085–2, to designate the European production period (or model year) as the calendar year of original production. Accordingly, to determine whether a particular ICI vehicle is covered by the ICI's certificate of conformity, reference must be made to both the date that the ICI modified the vehicle (which must fall within the ICI's model year or production period stated on the certificate) and the date the vehicle was originally manufactured (which must fall within the same calendar year as the certification prototype was originally manufactured). For example, an ICI can obtain a 1987 EPA certificate of conformity [17] in calendar year 1986 for vehicles produced in Europe in calendar year 1986. This certificate will be valid for vehicles produced in Europe in calendar year 1986 and modified by the ICI through December 31, 1987.

Without more information about the designation of the OEM production period or model year, which has not been supplied during the rulemaking, EPA intends to use the approach outlined above. At present, it is the method best available to determine certificate coverage.

ICIs are incorrect in assuming that EPA's approach to certificate coverage limits ICI production to eight to ten months. As indicated above, a production period can be almost two years.

f. Assembly line inspections. As proposed, EPA is promulgating provisions allowing EPA to inspect and test vehicles imported under the new program which are still under the control of the importer. EPA inspections, as provided in new § 85.1506, could occur at any time during operating hours. Many will focus only on examining records and vehicles while others can be expected to require reasonable numbers of FTP tests. (Such vehicles need not necessarily be ones tested originally by the ICI to satisfy the "one in three" testing requirement.) One ICI commented that the regulation should contain a limitation on the numbers of tests that can be required. As discussed in the SAC, EPA disagrees that more specific criteria are needed.

g. In-use inspections and recall requirements. As proposed, importers under the new program will be subject to recall requirements as provided in new § 85.1508 if EPA determines that a substantial number of an imported model fail to comply with emission standards in-use. One ICI commented that the criterion of "substantial" number of failures upon which to base a recall is too vague. EPA believes that the term "substantial" is appropriate since it is also used in section 207(c) of the Act, which authorizes recalls, and in the existing recall regulations at 40 CFR Part 85, Subpart S.

h. Driveability requirement. The State of California urged EPA to include a driveability requirement to remove the incentive to tamper. However, EPA believes that a specific test is outside the scope of the previous three notices and that no such test is necessary at this time. Furthermore, EPA believes that it can scrutinize vehicle designs for driveability problems as part of the certification process and withhold or deny certification based on driveability concerns. See *Chrysler Corp.* v. *EPA*, 631 F.2d 865 (D.C. Cir 1980), *cert. denied* 449 U.S. 1021.

i. Repair manuals. A few commenters said EPA should require certificate holders to provide repair manuals to owners. This regulation does not do so. EPA does not believe such a requirement is necessary at this time since the regulation provides for maintenance instructions and emission labeling. In addition, the record indicates that there is already availability of servicing at OEM dealers and the potential for more ICI dealer networks. EPA, however, believes it would be more appropriate to reevaluate the issue at a later time.

j. Laboratory requirements. EPA has decided not to adopt the proposed regulatory language in the SNPRM pertaining to requirements for emission laboratories which perform the Federal Test Procedure. EPA believes that a laboratory recognition program is no longer necessary because the responsibility for emission compliance in the new program will rest with the certificate holder. The certificate holder, as such, will be responsible for the validity and reliabilty of all testing performed on its nonconforming vehicles and, hence, should ensure that the laboratory that performs emission tests on its behalf is capable and reliable. As a result, EPA will discontinue maintaining lists of laboratories capable of performing the FTP which must be utilized when submitting test data to EPA. However, EPA may still conduct inspections and correlation testing at laboratories utilized by the ICI for certification testing as has been the practice for laboratories used by OEMs for certification testing.

It should be noted that since EPA clearly intended in the SNPRM that vehicles would be FTP-tested *subsequent* to their importation into the U.S., and not at laboratories outside the U.S., EPA is clarifying the regulation by inserting some explicit language to this effect in new §§ 85.1505(a)(2)(ii) and 85.1509(b)(2).

k. Emission labeling. EPA has clarified and made some minor modifications to the SNPRM provision regarding vehicle labeling. The changes require that the original production year and a vacuum hose diagram be included on the label and will provide valuable repair information to vehicle owners and mechanics.

[16] Here model year is designated only for purposes of determining applicable emission standards and requirements which may vary by model year.

[17] Vehicles produced under this certificate must comply with 1987 emission requirements.

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4. Requirements for Vehicles Entering Under the New "Modification and Test" Provision

The fourth major part of the new imports program is the provision that permits vehicles six OP years old or older to be imported by certificate holders, at their option, under a new, more stringent "modification/test" procedure rather than under the certification provision. EPA believes that few vehicle models six OP years old or older are likely to be certified because the relatively smaller number of vehicles of that model likely to be imported would make it impractical or uneconomical to do so (see also discussion in Part VI below). EPA has decided to permit entry of these older vehicles under the revised "modification and test" procedure in part to provide a greater degree of model availability to consumers while still maintaining a primarily certification-based program. Moreover, EPA believes that many of the problems identified with the present program ultimately will be eliminated under this two-tier system given that: The majority of imported nonconforming vehicles are expected to be less than six OP years old, and thus, after the phase-in period, must be certified; during the phase-in period, the percentage of vehicles less than six OP years old that must be certified will increase year by year; the expertise obtained by ICIs in certifying certain models is expected to be transferred to modification and testing of other vehicles; the reduced number of vehicles eligible for modification/testing (both during and after the phase-in period) should decrease the incentive for deliberate abuse of, or risk of negligent noncompliance with, the mod/test requirements; and the new, more stringent mod/test procedures should reduce even further any risk of noncompliance with the emission standards.

EPA has chosen six OP years old as the appropriate vehicle age threshold (with certain exceptions during the phase-in period) for permitting vehicles to be optionally mod/tested after consideration of various age thresholds. EPA believes that, under the current program, a significant drop in the overall volume of mod/test imports occurs at six OP years. This is an indication that at this level certification begins to become unlikely for a number of models. (Based on EPA mod/test import data, vehicles that are six model years old are currently less than thirty-three per cent of those that are five model years old, while thereafter the percentages decrease less dramatically.) While EPA believes this drop currently is heavily influenced by the existence of the five model year old policy (which is abolished by today's action), EPA believes that without this policy the drop-off would result somewhat later (not sooner). Given this uncertainty and the fact that the extra margin of increased model availability afforded by six OP years (as opposed to some higher year threshold) can be accomodated without potentially undermining the ultimate certification program (as discussed earlier), EPA believes six OP years is a reasonable threshold.

Certificate holders with vehicles entering under this provision are required, just as in the case of certified vehicles, to bear responsibility for their compliance with standards over the vehicles' useful lives. They also must meet requirements similar to those imposed for certified vehicles, including special assembly line inspections, recall, maintenance instructions, warranty, emissions labeling and fuel economy requirements (for comments on these requirements, see Part V.A.3, above). Moreover, all vehicles entering under the new modification and test procedure are required to comply with emission standards in effect at the time such vehicles are modified. This requirement ensures consistency with the approach used for certified vehicles. (This will be true as well for vehicles less than six OP years brought in under the modification/test option during the phase-in period.)

Although relatively less durability assurance is provided for "modification and test" vehicles, EPA believes such assurance is sufficient for various reasons. First, as proposed, the new program will permit only certificate holders with clearly defined responsibilities to import these vehicles. As indicated above, this will likely result in a transferral of expertise and technology from certified vehicles to "modification and test" vehicles (both during and after the phase-in period) so that the durability of these vehicles will approximate that of certification vehicles. Second, certificate holders are required to adjust the zero mile emission test results on each vehicle by a deterioration factor assigned by EPA and such adjusted results must comply with standards. (The existing "modification and test" procedure contains no such requirement.) Finally, EPA intends to conduct inspections and retests of these vehicles. As appropriate, when EPA determines that a certificate holder has improperly modified and/or tested any vehicle, or has failed to comply with any applicable provision of the rule, such as the record-keeping and reporting requirements, EPA intends to apply the stringent sanctions provided for in this rule. Such sanctions include revocation or suspension of active certificates, denial of the privileges of certifying vehicles and/or denial of importing "modification and test" vehicles for an appropriate period of time.

The main elements of this option, and the major comments received and EPA changes to requirements proposed in the SNPRM for modification/test vehicles, are indicated below.

a. Vehicles eligible for modification/test. Although modification and testing is prohibited in all cases where a vehicle is less than six OP years old (except during the phase-in period), EPA has determined, in response to a comment provided by the Department of Defense (DOD), that this prohibition on the modification and test provision shall not be applicable in the case of certain vehicles purchased by military and other U.S. Government personnel stationed overseas that meet certain "special circumstances" criteria. DOD was concerned about military personnel who are prohibited from importing U.S. certified vehicles overseas or who are stationed in areas that do not have adequate repair facilities to service U.S. certified vehicles. DOD indicated that if nonconforming vehicles used by these military personnel were not allowed entry into the U.S., these individuals would experience particular hardship under the new rules. EPA agrees. Therefore, for nonconforming vehicles less than six OP years old, owned by military and other U.S. civilian government personnel in the circumstances outlined above, and if there is no ICI certificate which covers that model and OP year, the vehicle will be eligible for entry (through a certificate holder) under the modification and test provision. More specifically, the eligible vehicles are those privately owned vehicles purchased by Federal personnel eligible (under criteria established by those agencies) for shipment of their vehicles at U.S. Government expense in connection with a permanent change of assignment outside the continental U.S. The eligible personnel are those stationed in overseas areas (designated by those agencies) which either prohibit importation of U.S. certified vehicles or which do not have (as determined by those agencies) adequate repair facilities to service U.S. certified vehicles. EPA anticipates that the number of such vehicles imported each year will be small.

The SNPRM asked for comment on how new models should be treated in the final rule. Various OEMs argued that it was inequitable not to limit the importation of new models the first year since OEMs would have to certify these new models but ICIs would be able to import them under a mod/test program. AICA recommended that the mod/test provision not extend to new vehicles but only to those over two years old in order to ensure consistency with the California regulation and also avoid confusion among ICIs. One ICI said new models should be permitted to use a modification/testing procedure since it provides a good way for testing the market for models from countries, such as Portugal, for which the U.S. represents new markets.

As indicated above, EPA has decided ultimately (after the phase-in period) to limit modification/test to all vehicles at least six OP years old. Therefore, the OEM's concern over new models expressed in response to SNPRM Option 3 will be alleviated by the final rule. (See discussion of new models in phase-in period, Part V.C below.) EPA believes that allowing all new models to be imported under the modification/testing option on a permanent basis would greatly reduce the number of vehicles coming in under the certification option, which is the cornerstone of the final imports program. In that event, the long-term benefits expected from primary reliance on the certification option (as already discussed) would fail to materialize.

Finally, the SNPRM asked for comments on whether the modification/testing option should be limited to models *not* on a list of models for which certificates had already been obtained or which were imported in sufficient numbers to make certification economically practical. In light of the decision to limit that option (with exceptions during the phase-in period) to vehicles six or more OP years old, the concept of a "list" is no longer necessary. EPA expects that most of the models that would have been on such a list are or will be newer models that eventually will have to comply with the certification option under the revised final rule. Moreover, the revised final rule will avoid two problems that such a list would have created, namely: (1) What the proper threshold number should be for placing a model on the list; and (2) what to do about models initially placed on the list but which, over time, would be imported in such decreasing numbers that certification would no longer be economical or practical.

b. Model year. Various ICIs objected to EPA's proposal to advance the model year to the date of modification for all mod/test vehicles. AICA argued that EPA lacks statutory authority for this proposal; that nowhere in the Act is it suggested that the Administrator has the authority to discriminate among groups of vehicles within a class in the application of standards. AICA also argued that the method renders certain vehicles, such as carbureted, older vehicles, impossible to import since they cannot be modified to meet present model year standards.

The U.S. Small Business Administration also urged EPA to allow two years old and older cars to meet emission standards applicable to the model year in which they were originally manufactured rather than the year of modification because it is difficult to modify the older cars and, thus, a number would be excluded. USSBA also said the incremental air quality difference between the two requirements would be minimal.

EPA believes it has statutory authority for its approach to vehicle model year for emission compliance purposes. First, section 203(b) gives EPA broad discretion to determine the appropriate terms and conditions for importation of nonconforming vehicles. Moreover, section 202(b)(3) of the Act defines vehicle model year for certified vehicles:

> "Model year" means the manufacturer's annual production period (as determined by the Administrator) which includes January, of such calendar year: Provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

EPA's certification regulations at 40 CFR 86.082–2 contain the same definition.

Presently, for certification purposes, EPA considers an ICI certificate holder's modification process as its production process. Therefore, the approach taken in the SNPRM is consistent with the Act, EPA's certification regulations and prior Agency practice. Moreover, EPA believes that many older vehicles, in particular carbureted models, can be modified to meet present model year standards. EPA bases this judgement, in part, on the fact that a number of engines produced in 1986 have existed in a generic sense since 1968 (with some modifications), the year the first Federal standards went into effect. No commenter provided data that would indicate that a 1968 or later vehicle cannot be successfully modified to meet the new standards.

c. The "P.E." provision. EPA had proposed in the SNPRM that certificate holders' applications for final admission for each mod/test vehicle would require that the attestation that the vehicles are durable be signed by a professional engineer (P.E.) with emission control experience. Various commenters said that the P.E. provision provides little additional benefit. EPA concurs. Thus, EPA has not adopted this provision in today's action.

One commenter, AICA, suggested that a driveability evaluation for modification/test vehicles should be added in lieu of the P.E. provision so that any incentive to remove emission controls would be eliminated. EPA has decided not to impose a driveability evaluation requirement at this time. EPA intends to consider the issue of whether a driveability test for these vehicles is needed as experience is gained in implementing the new imports program.

5. Exemptions and Exclusions

The fifth major part of the new imports program consists of the provisions for ten different types of exemptions and exclusions. With the exception of the twenty OP year exemption, these have been adopted without substantive change from the SNPRM. Significant comments were received on three of them. These comments are summarized below. (The reasons for the elimination of the existing five model year old personal use exception and establishment of a twenty-year-old exemption are discussed in Part VII. below.)

a. Hardship exemptions. Today's action incorporates certain hardship exemptions to cover the following limited situations of severe hardship:

(a) Handicapped individuals who need a special vehicle unavailable in a certified configuration;

(b) Individuals who purchased a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

(c) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship; and

(d) Other individuals in similar circumstances that give rise to a severe hardship, as approved by the Administrator.

EPA intends to grant such exemptions only for extraordinary circumstances and expects very few vehicles to qualify. Moreover, EPA requires approval of such exemptions prior to permitting the final admission of vehicles into the United States.

The SNPRM proposed approval prior to conditional admission along with the posting of a bond. EPA believes that given that approval is necessary prior to

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entry, the provisions for conditional admission and bonding are unnecessary and, hence, the final rule eliminates them.

The California Air Resources Board (CARB) and the California Department of Justice (Cal Justice) were the only commenters objecting to EPA's proposed scope of coverage for this exemption. CARB said it could support a hardship exemption only for handicapped persons. Cal Justice opposed extending the hardship exemption to immigrants on the grounds that it is not among those specifically listed in section 203(b)(1) of the Act and, therefore, EPA is circumventing (and, therefore, undermining) the purpose of sections 202 and 203 of the Act which is to reduce the levels of vehicle emissions.

As indicated in the SAC, EPA believes it does have authority for this exemption pursuant to section 203(a)(1) of the Act which provides that EPA may promulgate regulations permitting persons to import vehicles not covered by certificates of conformity. No data were presented that indicated past abuse of the exemption. Therefore, EPA will provide for this exemption with the expectation that very few vehicles will qualify and there will be no significant impact on emissions.

EPA has deleted, however, one situation subcategory of the hardship provision proposed in the SNPRM which would have permitted entry to an individual owning a vehicle for some substantial period of time and who did not purchase the vehicle with the intention of importing it into the United States. EPA feels that the potential for abuse associated with this subcategory is too great and that all cases falling within this subcategory are not necessarily hardship situations justifying a blanket exemption. The remaining hardship exemption in this final rule still provides sufficient flexibility for specific cases of hardship within this subcategory.

b. Pre-certification exemption. This final rule provides that ICIs interested in obtaining a pre-certification exemption on a prototype vehicle for the purpose of product development, production method assessment and market promotion must apply to EPA, as required by regulations at 40 CFR 85.1706(b). To qualify as an ICI for purposes of this section, an ICI need not have imported vehicles previously but must have been designated a small volume manufacturer by EPA.

It has been the Agency's experience that while numerous ICIs have requested designation as a "small volume manufacturer," and even more have requested information concerning the small volume certification program, relatively few importers have actually applied for a certificate of conformity. As a result, the Agency is concerned that some ICIs, because of their inexperience with the requirements of the certification process, may apply for the pre-certification exemption with the intention of certifying, and subsequent to importing a number of nonconforming vehicles under the exemption, decide not to pursue certification. EPA is particularly concerned because vehicles so imported might not be exported if they are required to be certified in order to remain in the U.S. Similarly, for vehicles that may be modified and tested, EPA is concerned that vehicles brought in under the exemption might not be brought into conformity under the provision for "modification and testing". Consequently, as proposed, EPA will require a bond for any "pre-certification" vehicle conditionally entered by an ICI which would be forfeited unless (1) a certificate of conformity is issued, (2) the vehicle is eligible for and, in fact, has been modified and tested in accordance with the modification and test provision under § 85.1509 or (3) the vehicle is exported within 180 days from the date of entry. EPA received no comments objecting to the bond provision. Additionally, each ICI could import no more than one vehicle for the purpose of pre-certification for each model of vehicle for which it is seeking certification.

Two ICIs commented that the exemption was too restrictive. One said EPA should determine the number of vehicles allowed under an exemption on a case by case basis while the other said that 10 vehicles would be reasonable. EPA disagrees and has decided to limit the availability to one vehicle for two reasons. First, current small volume procedures require the testing of only one prototype vehicle and, as discussed elsewhere, EPA expects that most importers will apply only for small volume certification. This is in contrast to large volume certification which requires one vehicle for durability testing and several other vehicles to be used as emission data vehicles. Second, EPA is concerned that this exemption could be abused and be used as a means to circumvent the requirements of the present program. Should the requirements for small volume certification change, EPA is willing to reconsider the appropriateness of more than one pre-certification exemption per engine family.

c. Diplomatic and foreign military exemption. The final rule continues EPA's exemption for nonconforming vehicles imported by diplomatic and foreign military personnel. One commenter (California Department of Justice) (Cal Justice) opposed continuation of this exemption. In its opinion, the exemption is unauthorized by the Act since it is not among those specifically listed in section 203(b)(1). The commenter said the exemption was inconsistent with the purpose of sections 202 and 203 of the Act which is to reduce the levels of vehicle emissions. Cal Justice also said it is familiar with abuses in California, whereby members of foreign embassies are engaged in the business of importing and selling vehicles to residents. EPA has retained the exemption under authority of section 203(a)(1) which provides that EPA may promulgate regulations permitting persons to import vehicles not covered by certificates of conformity. Additionally, Cal Justice submitted no specific data indicating abuse of the exemption and EPA has no reason to believe significant abuse has occurred or will occur.

d. Other exemptions and exclusions. Additional comments received on the other proposed exemptions and exclusions are summarized and responded to in the SAC. These exemptions and exclusions are being promulgated as proposed. (See Part VII below for discussion of changes to EPA's enforcement policy.)

Two commenters requested clarification that the final rule was not intended to regulate LPG/LPN powered vehicles or light-duty engines. EPA agrees that this was not the intent of the SNPRM and language has been added to the definition of nonconforming vehicle or engine to clarify the coverage of the final rule.

6. Catalyst and O_2 Sensor-Equipped Vehicles

The sixth part of the new imports program expands the provision in the current imports regulations regarding catalyst-equipped vehicles covered by a certificate of conformity at the time of manufacture which have been driven outside the United States, Canada or Mexico. A proposed requirement to replace the O_2 sensor on O_2 sensor equipped vehicles has been added to take account of more current technology. Moreover, language has been added to include vehicles in the program which had been imported by ICIs and then brought into conformity in accordance with these regulations. The purpose of the regulations is to insure the replacement of catalysts and replacement of O_2 sensors on vehicles which may have been contaminated

with leaded gasoline. This requirement is still deemed necessary because unleaded gasoline is still not widely available outside North America. No comments were received on this proposal.

B. Clarification of Useful Life

The final rule contains a definition of useful life for imported nonconforming vehicles and engines. EPA finds it appropriate to confirm its long-standing interpretation or when useful life begins for imported nonconforming vehicles in light of a recent decision in a criminal case, *U.S.* v. *Strecker, et al.*, No. CR86–95TB (W.D.WA, April 3, 1987), in which the Court found that once an imported nonconforming vehicle is older than five years of age or has accumulated greater than 50,000 miles, it is no longer subject to the emission requirements of the Act.

EPA disagrees with the Court's holding in *Strecker*. EPA's position is that the useful life of an imported nonconforming vehicle or engine begins after modifications and/or tests are performed on the imported vehicle or engine in order to bring it into conformity with Federal emission requirements and after (1) the vehicle or engine is first resold after modification and/or testing, in the case of a vehicle which is owned by the certificate holder; or (2) in the case of a vehicle or engine not owned by the certificate holder, when the certificate holder transfers possession of the vehicle back to the owner after modification and/or test. EPA has applied this interpretation consistently to imported vehicles since the beginning of the nonconforming imports program.

The interpretive definition of useful life for light-duty vehicles contained in § 85.1502(14) of today's rule is consistent with EPA's past practice, as well as with the definitions of "useful life" contained in section 202(d) of the Act and § 86.084–2, in which useful life is defined as "a period of *use*" of five years or 50,000 miles, whichever occurs first. (Emphasis added.) Moreover, it is consistent with EPA's treatment of useful life for vehicles originally built in a U.S.-certified configuration. Under section 216(3) of the Clean Air Act, these vehicles are considered "new" and, hence, their useful lives begin to run, when transfer is made to the first ultimate purchaser, while imported nonconforming vehicles generally are defined as "new" when imported. EPA believes that the statutory definition indicates that Congress expected all "new" vehicles to meet Federal emission standards when *operated in the United States*. Thus, consistent with this expectation, EPA has always considered the useful life of a U.S.-certified vehicle to begin at the time the "new" vehicle is transferred to the ultimate purchaser and the useful life of a new imported nonconforming vehicle to begin when the vehicle is transferred to the ultimate purchaser in the U.S. after modification and/or testing. The Court's ruling in *Strecker*, by contrast, would not fulfill this Congressional expectation since imported vehicles, not otherwise exempted, but beyond five years of age or 50,000 miles at the time of importation, would not be required—according to that Court—to comply with Federal emission standards.

Since EPA believes that the *Strecker* decision is incorrect and inconsistent with the Clean Air Act, EPA will *not* acquiesce in that decision. Instead, EPA will continue to follow its long-standing practice under the current rules and, as of July 1, 1988, under the revised rules.

C. Phase-in Period

EPA believes that it is appropriate to provide for a five year phase-in period for the new program during which certificate holders need not certify certain vehicles less than six OP years old and may, instead, modify and test them under the new, more stringent, modification/test procedures.[18] A phase-in period is appropriate primarily in order to give ICIs, especially the large number of ICIs which are unfamiliar with the certification process, enough lead time to obtain certificates for vehicle models between one and six OP years old.

The regulation during the phase-in period (July 1988–December 1992) provides that vehicles of varying ages less than six OP years old may be modified and tested so long as the certificate holder possesses a "qualifying certificate" for a model of like make (i.e., originally produced by the same OEM) and fuel type (gasoline or diesel). More specifically, the final rule provides that in 1988, the first year the rule is effective, a certificate holder must obtain at least one certificate for a vehicle model originally produced in 1988 or 1987 (qualifying certificate) which then permits the certificate holder to modify/test vehicles originally produced by the OEM in 1983 through 1987 which are of the same make and fuel type as the model for which the qualifying certificate was obtained. The final rule then provides that in 1989, all vehicle models originally produced in 1988 through 1989 must be certified. Modification/test is then available only for vehicles originally produced in 1984 through 1987 so long as they are of the same make and fuel type as the model for which the qualifying certificate was obtained. In each subsequent year of the phase-in, one additional OP model year (the then-current year) is required to be certified and modification/test availability decreases by one OP model year. Thus, as the phase-in period continues, more and more of the less than six OP years old vehicles will need to be certified until, by the end of the phase-in (December 31, 1992), all such newer vehicles will need to be certified.

In each of the subsequent years of the phase-in period, likely only one OP model year of the model needs to be certification tested; all later OP model years of that model required to be certified will likely be certified by means of existing "carry-over" certification procedures. For example, if a 1988 certificate is obtained for a model originally produced in 1987 (or 1988), the certificate holder may obtain (see requirements set forth in Advisory Circular No. 17F) a new 1989 certificate for the version of that model originally produced in 1987 (or 1988) by means of existing carry-over certification procedures. Should carry-over certification be obtained, no new testing is required for previously certified models, merely a short certification application. New testing must be performed only for the OP model year for each new model being certified for the first time (again assuming the requirements for carry-over certification have been met).

This phase-in period eliminates some unnecessary hardships that otherwise would be associated with ICIs having to certify many OP model years of the same model should a final rule contain either no phase-in period or one of lesser duration.[19] These burdens would be especially onerous for ICIs given that (1) most, if not all, are small businesses and (2) the recent significant decrease in importation rates.[20] Moreover, the phase-in program will ensure that a reasonable number of models will continue to be available to consumers while ICI's are becoming familiar with the certification process.

On the other hand, the phase-in scheme would not seriously impede the change from the current (mod/test-based) program to the primarily

[18] Of course, as of July 1, 1988, any ICI holding a valid certificate may modification/test any imported nonconforming vehicle six or more OP years old.

[19] Presently, only a handful of ICIs hold certificates for older models, primarily those originally produced in 1985 and 1986.

[20] In 1986, the importation rate was 36,000 vehicles. In 1985, it was 68,000 vehicles and importations during January 1–May 31, 1987 indicate a 1987 importation rate of 28,000 vehicles.

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certification-based program which is the cornerstone of the final rule. In fact, the phase-in program should facilitate a smooth transition since, as the phase-in progresses, EPA expects that an ever-increasing number of certificates will be obtained by ICI's. Thus, by the end of the phase-in period, the ICI's, as a whole, will have obtained substantial experience and expertise in complying with the certification process which should help EPA in administering the new program and in ensuring that the benefits of certification are fully realized.

Moreover, by further limiting the modification/testing of newer vehicles during the phase-in to models of the same make and fuel type as that covered in the "qualifying certificate," EPA intends to assure that ICI's have the experience and capability to correctly install emission control systems which are effective and durable in the modification/test vehicles. Specifically, this limitation will help ensure that the modifier has experience in working with that makes' designs, especially the emission control components and systems. EPA recognizes that certifying one engine family does not necessarily guarantee the capability of the ICI to modify other vehicles made by the same OEM. However, there are basic similarities throughout most OEM product lines in terms of hardware and electronic controls. (For example, Mercedes uses Bosch fuel systems throughout its gasoline product line.) Thus, successfully modifying and certifying vehicles within the same make and fuel type will better assure success in modifying/testing other vehicles of that make and fuel type. Thus, in EPA's judgment, this transitional phase-in program will not only avoid unnecessary and undue disruption of the imports industry, but will also help prevent many of the problems identified with the current program, especially as the phase-in period progresses.

VI. Rationale for not Selecting Other Certification-Based Options

As indicated in the SAC and above, EPA has considered other certification-based options during this rulemaking process. All of these have been discussed and responded to in the SAC. The major certification-based options proposed in the SNPRM and by commenters in response to the SNPRM and the reasons why EPA chose not to adopt them are as follows:

A. SNPRM Option 2

SNPRM Option 2 provided that all vehicles, except for certain specified and narrow exemptions and exclusions, must be imported by certificate holders and that such certificate holders must modify their vehicles in accordance with their certificate of conformity. The final rule adopted today incorporates this requirement by 1993 for vehicles that are less than six OP years old. EPA has chosen not to require certification for vehicles older than five OP years since EPA believes that it is less likely that certificate holders will obtain certificates for older vehicle models because of the expected relatively small demand for such vehicles in the future.[21] Thus, without some alternative to certification, consumers would not be able to obtain such older models in the United States.

In today's action, EPA has decided to institute a primarily certification-based program, to be phased-in starting in 1988, since it believes that such a program will ensure compliance of both certified and modification/test vehicles. As discussed in more detail in Parts III and IV D above, EPA believes that the more durable and better scrutinized certification designs will be transferred to modification/test vehicles.

EPA does not believe that the number of modification/test vehicles permitted under the program during and after the phase-in period will undermine the results EPA expects from the final rule's certification-based program. In fact, EPA estimates that approximately seventy-five percent (or more) of vehicles imported under this program will be covered by certificates of conformity by 1993.[22]

B. SNPRM Option 3

As discussed earlier, SNPRM Option 3 also provided for a certification-based program with a provision for the importation of a limited number of modification/test vehicles which would provide an extra measure of model availability. Eligibility for modification/test was to be determined by reference to a list of models "not qualified for modification/test." The proposed list would have included certified models and models whose historic import volumes were at least sixty vehicles.[23] The list was to be issued annually with the possibility of additional vehicle models being added each year.

After full consideration of this list mechanism, however, EPA has decided that the list would have created more administrative problems and confusion than originally anticipated. In particular, EPA is concerned that the complexities of the list could have led to a great deal of confusion as to what was eligible for importation, either because the list was not properly understood or an outdated list was used by the importer. As a result of such confusion, many individuals and ICIs might have purchased vehicles that could not have been imported into the U.S. This would have created obvious problems for the individuals or ICIs, as well as for EPA and U.S. Customs who would have had to explain that the vehicles could not be imported and to ensure that the vehicles were exported or destroyed.

Similarly, EPA is concerned that because of the complexity of the list, SNPRM Option 3, compared with other certification-based options, would have had additional administrative burdens associated with it for both EPA and U.S. Customs. This burden would have been the result of several factors:

(1) A likely increase in persons desiring hardship exemptions for vehicles not qualified for importation but which were purchased because of misunderstandings over what could be imported,

(2) An expected increase in the number and length of public correspondence and phone calls requesting explanations of the list concept and the contents of the list,

(3) Resources necessary to create the list annually, and assure the list was timely distributed to U.S. Customs ports and other interested persons, and

(4) An increase in administrative and enforcement resources necessary to assure that each modification/test vehicle is not a model on the list.

EPA believes that today's action fulfills much of the purpose of SNPRM Option 3 without its complexities and administrative burdens. As indicated above, SNPRM Option 3 was proposed as a means of providing some measure of model availability for vehicles that would likely not be certified. The program to be in place in 1993 also provides additional model availability for certain vehicles which are not

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[21] While there was significant demand for certain vehicle models greater than five model years old under EPA's five mode year policy, this demand is expected to substantially decrease with today's newly enacted requirements that certificate holders modify and test, assure durability, offer warranties, etc. For these vehicles. At most, EPA estimates that demand for older vehicles will return to the pre-1981 level (in 1981 EPA instituted the Five model year old policy) of twenty-five percent of the nonconforming import total. The actual number could be lower.

[22] This figure does not account for any vehicles six OP model years old and older which will be covered by certificates of conformity. While certification of these vehicles is not precluded by today's action, EPA expects few of these older vehicles to be certified.

[23] Sixty vehicles was the minimum number of vehicles EPA estimated as needed to make certification economically attractive.

certified. In fact, EPA believes that the final program will result in a somewhat larger percentage of modification/test vehicles being imported than would have been under SNPRM Option 3. In this way, model availability will be somewhat enhanced. Moreover, during the phase-in period, an even larger percentage of modification/test vehicles will be available.

Moreover, the criterion established by this final rule (i.e., vehicle age) to distinguish what vehicles are eligible for modification/test is clearly defined, not variable, and easy to understand and enforce. EPA expects that as a result many fewer individuals and ICIs will purchase vehicles which are ineligible for importation.

Finally, as discussed earlier, the final rule avoids at least two difficult and controversial questions raised by the "listing" proposal—i.e., what number to use as a "threshold" for placement on the list and what to do about listed vehicles no longer imported in sufficient numbers to warrant certification.

C. The "AICA Option"

This option would require certification for vehicles under two years old and allow modification/test for all vehicles over two years old. As with today's action, vehicles would still have to be imported by certificate holders.

AICA argued that its proposal will provide ICI's "flexibility" to continue business operations under the new program while certification is underway. AICA also said that its proposal for limiting the mod/test program to vehicles over two years old would eliminate confusion between the California and Federal programs for ICIs.

AICA noted that its option would not be expected to shift the entire market to mod/test for vehicles over two years old for two reasons. First, much of the demand is for new vehicles. Second, a certificate holder is the only person who could utilize the new modification and test procedure and it would have more incentive than an importer under the current program to obtain a certificate of conformity in order to reduce testing costs.

EPA is concerned that the AICA option, if adopted as a permanent program, would expand the scope of a mod/test program beyond the final (post-1993) program which EPA has adopted today by increasing the incentive to import vehicles over two years old, thereby further increasing the numbers of mod/test vehicles.[24] This could undermine on a long-term basis the effectiveness of this certification-based program and potentially create some of the enforcement problems associated with the current program. For example, using current importation data, EPA estimates that more vehicles would be modified/tested under AICA's option than would be modified in accordance with an ICI certificate of conformity, even given the expected substantial decline in the importation of vehicles five OP years old and older. (See note 22, *supra.*) By contrast, under the final program promulgated today, the number of vehicles imported under the certification procedure is eventually expected to be at least three times greater than the number imported under the revised mod/test procedure.

D. The U.S. Department of Justice Option

U.S. DOJ proposed requiring that each ICI have one certificate as a condition for bringing in *any* other cars using the mod/test procedure with no limitation on the number and types of vehicles which could be imported. Individuals could not import directly but would have to import through a certificate holder.

U.S. DOJ stated that minimal harmful effect on consumers would be achieved by allowing any certificate holder to mod/ test any vehicle so long as it held at least one certificate. In this way, the certification process would serve as a screen to ensure that ICIs have an adequate level of competence and sophistication to properly modify a car. U.S. DOJ argued that the threat of the loss of the certificate would provide leverage to assure compliance.

However, EPA believes that tne DOJ proposal, as a permanent program, would leave open the door for most vehicles to enter under a revised modification and test procedure. Thus, the importance of certification would be substantially diminished in the long run. Once a certificate is issued under the DOJ option, *any* vehicle of *any* make, model or model year, could be modification/tested. This would be similar to retaining a substantial portion of the present program indefinitely with many of its problems and, therefore, the option was not adopted as a long term solution. By contrast, the phase-in program adopted today is a short-term program with substantial restrictions on the types of newer vehicles that a certificate holder may modify/test.

E. U.S. Small Business Administration (USSBA) Option

USSBA agreed with the DOJ proposal but also proposed another option requiring certification for vehicles under two years old which could be imported only by certificate holders. Vehicles over two years old could be mod/tested and imported by anyone. USSBA argued that its proposal would alleviate the disproportionate impact on small business in that it would have the effect of allowing the larger importers to obtain certificates for new vehicles while still allowing smaller importers, modifiers and testers to remain in the market place. Also, this would allow individuals to continue importing and provide some form of personal exemption for military personnel.

For the reasons discussed above regarding the AICA and DOJ proposals, EPA believes that the U.S. SBA proposal would also clearly prevent the long-term benefits of a primarily certification-based program. Moreover, by allowing any individual to import under the mod/test procedure, USSBA's proposal would have even greater adverse effects than AICA's proposal. This is because many of the problems in the old program associated with individual importations would be expected to continue. In fact, the proposal essentially maintains the current program and, therefore, was not adopted.

F. U.S. Senator Rudman

Senator Rudman supported the AICA proposal but also recommended that EPA consider the idea of allowing ICIs to import vehicles for which certificates have already been issued to other ICIs as long as the vehicles are modified in accordance with the certificate. Each ICI would have the same responsibilities as the original certificate holder vis-a-vis the vehicles it imports and modifies but would be spared the expense of certification.

Senator Rudman said the AICA option would grant some short term flexibility and be consistent with California requirements. As a means of lowering importation costs, he proposed that ICIs be able to import and modify in accordance with another ICI's certificate.

Since Senator Rudman endorsed AICA's proposal, EPA's response to that proposal applies. Moreover, EPA believes that his suggestion of allowing some ICIs to circumvent the certification process by using the same technology as those models which have been certified

[24] EPA does not expect the same trend in the final (post-1993) program adopted today since the modification/test program that has been adopted is ultimately limited to much older vehicles and EPA believes that the attractiveness of, and incentive to import, vehicles six or more OP years old will be substantially less than it would be for newer vehicles between two and six OP years old.

by other importers has other problems associated with it. EPA is concerned that focusing responsibility on an entity other than the person holding the certificate for the model imported could result in improper modifications since the entity may lack necessary familiarity with the technology underlying the modifications. For instance, a less durable material might be used by the subsequent ICI or the internal specifications of a part might differ from the original, thus causing an adverse emission impact. Furthermore, the sanction of revoking the certificate for that model based on improper modifications would not be available against someone other than the person holding the certificate for that model.

VII. Rationale for Elimination of "Five Model Year Personal Use" Exceptions Policy

In today's action, EPA has decided to eliminate the "five model year personal use" provision of EPA's enforcement policy under the current program. However, EPA believes that some relaxation of requirements for much older vehicles is appropriate and, therefore, has chosen to exempt from emission compliance vehicles that are greater than twenty OP years old. As explained below, EPA has also considered, but not yet decided whether to eliminate the nonresident provision.

A. Five Year Personal Use Provision

The five model year old personal use policy permitted a first-time individual importer to import one nonconforming vehicle at least five model years old for personal use without a need to demonstrate conformity with Federal emission requirements. EPA originally implemented this enforcement policy in order to reduce the administrative burden on the Agency, particularly the review of test documentation, and to minimize the hardship to private individual importers unfamiliar with the imports requirements. See 48 FR 16485 (April 18, 1983). As a direct result of the establishment of the policy, an increasing percentage and number of five year old vehicles have been imported. Specifically, in 1981 when the policy was inaugurated, about 500 of these vehicles were imported, comprising about 25 percent of all nonconforming imports. In 1985, over 30,000 of these vehicles were imported, comprising almost 50 percent of all nonconforming imports.[25]

EPA is eliminating the policy for two major reasons. First, the policy created a number of serious enforcement problems. The record contains numerous examples of criminal investigations of persons abusing the policy. EPA is aware of other such investigations and believes these investigations represent only a fraction of the actual abuse that exists. As the record discloses, the most common abuse is the falsification of entry documents so that the vehicles appear to have been imported by individuals who are eligible for the policy when in fact the vehicles were actually imported by commercial enterprises. EPA believes that this abuse is difficult to detect and, therefore, cannot easily be controlled by a greater enforcement effort.

Second, the policy potentially poses a threat to air quality. Several states, most notably California, which is most impacted by the importation of these nonconforming vehicles, submitted comments to the record indicating that the increase in the number of these vehicles being imported affects air quality (through the actual emission increases caused by these vehicles) and interferes with Inspection and Maintenance programs (by requiring additional resources needed for handling these vehicles—e.g., answering questions, tracking vehicles—which they argue could be better spent for training and enforcement.)

EPA has received considerable comment on the possible elimination of the "five model year old" policy both in response to the SNPRM and in response to the Workshop Notice. The comments are summarized in the SAC. Comments submitted in response to the SNPRM indicate that the only commenters now expressing support for the policy are individuals, most of whom directly benefit from the policy. They argue that the policy should be continued since it provides an equitable means for car collectors and other individuals to obtain vehicles of their choice at significantly reduced cost without having adverse effects on air quality. A few individuals were concerned that elimination of the policy would hurt small businesses who perform safety modifications on the vehicles since many vehicles would no longer be imported. Various OEMs, on the other hand, expressed opposition to the policy primarily because of adverse effects on new vehicle sales, problems associated with warranty claims and air quality or difficulty in enforcement. Only a few ICIs have commented on this issue, with one opposing the exemption based on air quality considerations. As discussed above, various states have been consistently opposed to the policy.

EPA believes that arguments supporting the retention of the "five model year old" policy are not persuasive. The program adopted today by EPA should provide substantial model availability. The enforcement and air quality problems associated with the retention of the old policy make the elimination of the policy appropriate at this time. (These effects are also discussed in the Regulatory Flexibility Analysis (RFA) which has been placed in the docket.)

The SNPRM also invited comments on whether any personal use exemption based on the age of the vehicle ought to exist and on the appropriate constraints of such exemption. One commenter explicitly supported a ten model year old exemption to benefit collectors. EPA believes this is not appropriate for two reasons. First, EPA statistics indicate that presently over 25 percent of the vehicles being imported under the five model year policy are ten model years old or older. Given EPA's experience with the five model year policy, it is likely that such numbers could increase with a ten model year old exemption. Hence, EPA believes a ten year exemption, even given present importation rates, may pose some of the same enforcement and air quality problems associated with the present policy.

Second, certain exclusions and exemptions based on the age of the vehicles at the time of import are provided for in the final rule and in the Clean Air Act. For example, under sections 203(a)(1) and 216(3) of the Act, the prohibition against importation of nonconforming vehicles applies only to vehicles originally manufactured *after* the effective date of standards which would have been applicable to such vehicles. Given that no such standards existed for light-duty vehicles prior to 1968, a light-duty vehicle originally manufactured prior to January 1, 1968 may be imported by an individual without the need to bring the vehicle into compliance. Also, as indicated above, EPA is establishing an exemption from emission requirements for vehicles greater than twenty OP years old (see discussion in Part VII. B below). Thus, many collectors will be able to import desirable older vehicles.

Many of the individuals commenting on the SNPRM were military and overseas civilian personnel who (together with the U.S. Small Business

[25] EPA does not believe that there would be such an increase in importation of six OP years old or older vehicles (after the phase-in period) under the revised mod/test procedure, since the requirements applicable to such vehicles (in contrast to the prior exemptions of five MY old personal use vehicles) are stringent enough to deter any such increase.

Administration) argued that even if the "five model year old" policy were eliminated, the military should be treated differently. Some proposed that the five model year policy be continued; others proposed that it be extended to them by means of a "grandfather" clause which would extend the policy to military personnel who had already purchased nonconforming vehicles anticipating using the policy at the end of their tour of duty.

These commenters presented three arguments for their position. The first contention was that the "five model year old" policy was originally intended for the military and only has been abused by others. Therefore, its elimination is not justified for the military. The second argument was that the military situation, in which personnel are stationed overseas for years, is a unique one and deserves special treatment or reward by the government; to do otherwise will affect morale. The third argument was that elimination of the provision will impose hardship on this group by requiring them to incur an additional $3000 related to the cost of emission modification or forcing resale in Europe on short notice.

The same arguments were used to support the inclusion of a "grandfather" clause for the military if EPA decided not to retain the five model year old policy for the military.

EPA believes that the reasons for the need for eliminating the five model year policy are equally applicable here. No special treatment appears to be warranted simply because of military status.[26] While some individual military personnel submitted comments objecting to the abolition of the policy, the Department of Defense did not advocate a continuation of the exemption or the inclusion of a grandfather clause in their comments to the rulemaking. Additionally, the abolition of the policy will not go into effect until July 1, 1988, thus permitting military personnel to ship their vehicles back to the U. S. before abolition of the policy takes effect. Moreover, many commenters, who indicated the date of the end of their tour of duty, will not be affected by the policy's elimination because the end of their tour of duty precedes the effective date of the elimination of the policy.

B. Greater Than Twenty OP Years Old Exemption

While EPA has chosen to eliminate the five model year exemption in today's action and has rejected an exemption for ten year old vehicles, it believes that some relief for older vehicles is appropriate. Hence, to the extent that vehicles are not excluded from the Act because they were manufactured prior to the effective date of standards for that vehicle class, EPA has chosen to create an exemption from emission compliance for vehicles that are greater than twenty OP years old. EPA believes an exemption for younger vehicles is not warranted. As indicated in Part VII. A. above, EPA believes that an exemption for much younger vehicles may result in unacceptable numbers of nonconforming vehicles being imported under this exemption. Also, many state Inspection/Maintenance programs regulate vehicles twenty years of age and under. Thus, an exemption for vehicles less than twenty OP years old could lead to increased failures by such vehicles to pass I/M tests, with resulting inconvenience and expense for owners of failed vehicles.

EPA believes, however, that an exemption for vehicles greater than twenty OP years old is particularly appropriate for two reasons. First, EPA expects little conflict with state Inspection/Maintenance programs since most of these programs do not regulate vehicles beyond twenty years of age. In fact, of those states that submitted comments to the docket expressing concerns over the air quality impacts and Inspection/Maintenance problems with the five model year old exemption, only Connecticut regulates vehicles greater than twenty years old (and only for one additional year).

Second, EPA believes that very few vehicles will be imported under this exemption so that overall air quality will not be impacted by this exemption.[27]

EPA has required that the importation of vehicles entitled to this twenty OP year old exemption must be arranged through certificate holders. EPA believes that this provision is appropriate since certificate holders will be knowlegeable about import requirements and can facilitate the importation of these vehicles. Most importantly, EPA believes that certificate holders will be best able to ascertain the date of original production which is determinative of eligibility for the exemption. Additionally, EPA will receive greater assurance of accurate representations of vehicle age given that certificate holders are subject to stringent sanctions under both the Act and these regulations for failing to do so.

C. Nonresident Policy Provision

This enforcement policy permitted nonresidents of the United States to import a nonconforming vehicle for personal use for not more than one year. Vehicles imported under this provision are not permitted to be sold in the United States.

As indicated in the SNPRM, EPA is concerned that vehicles admitted under this exemption are being resold in violation of EPA requirements. EPA lacks the administrative capability to monitor all the vehicles admitted under this exemption and, hence, detect the illegal resale of such vehicles. As shown in the SAC, all commenters agreed with EPA that this policy is being abused and cannot effectively be enforced.

EPA announced in the SNPRM that, for reasons outlined above, it was considering eliminating the provision. Since that time, however, EPA has become aware of two international treaties [28] to which the United States is a signatory that address the movement of vehicles among various countries. EPA is concerned that elimination of the provision may be inconsistent with the intent of the treaties and believes additional time is needed to consider the matter. Moreover, this provision is actually contained in Customs regulations as well as being an EPA policy. Therefore, EPA has decided that it is appropriate to defer final decision on what changes are needed to this provision, pending consultation with Customs, until such time as changes are made to Customs regulations at 19 CFR 12.73 (see note 1, *supra*).

VIII. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The Agency has prepared a final RFA for this rule, which has been placed in the public docket for this rulemaking.

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[26] It should be noted that this policy was not originally intended only for the military.

[27] Given the substantial age of vehicles eligible for the exemption, EPA does not expect that existence of the exemption will create an incentive for persons to import significantly greater numbers of vehicles over twenty OP years old. Also, this exemption will not take effect until older vehicles are no longer entitled to the statutory exclusion based on the original date of manufacture discussed earlier in this notice. (See § 86.1511(e)(1) of today's action.)

[28] Customs Convention on the Temporary Importation of Private Road Vehicles opened for signature June 4, 1954, 8 U.S.T. 2087, T.I.A.S. No. 3943, entered into force December 15, 1957. Convention on the Regulation of Inter-American Automotive Traffic, opened for signature December 15, 1943, 61 Stat. 1129, T.I.A.S. No. 1567, entered into force October 29, 1946.

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IX. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare Regulatory Impact Analyses (RIAs) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of $100 million or more. Additionally, it will not result in a major increase in industry costs or prices. Finally, this action will not have a significant adverse effect on industry, competition, employment, investment, productivity, innovation or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, an RIA has not been prepared. Potential economic effects, however, are addressed in the Regulatory Flexibility Analysis prepared in accord with the RFA requirements.

X. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Public Docket EN–79–9 located in EPA's Central Docket Section (LE–131A), 401 M Street, SW., Washington, DC 20460.

XI. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned an OMB control number 2060–0095.

XII. Judicial Review

The final actions described in this notice are made under the authority of sections 203, 206, 207, 208(a), and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before November 24, 1987. Judicial review may not be obtained in subsequent enforcement proceedings.

List of Subjects

40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Administrative practice and procedure, Fuel economy.

Dated: September 17, 1987.

Lee M. Thomas,

Administrator.

For reasons discussed in the preamble, 40 CFR Part 85, and 40 CFR Part 600 are amended as follows:

PART 85—[AMENDED]

1. Subpart P is revised to read as follows:

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Sec.

85.1501 Applicability.
85.1502 Definitions.
85.1503 General requirements for importation of nonconforming vehicles.
85.1504 Conditional admission.
85.1505 Final admission of certified vehicles.
85.1506 Inspection and testing of imported motor vehicles and engines.
85.1507 Maintenance of certificate holder's records.
85.1508 "In Use" inspections and recall requirements.
85.1509 Final admission of modification and test vehicles.
85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.
85.1511 Exemptions and exclusions.
85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.
85.1513 Prohibited acts; penalties.
85.1514 Treatment of confidential information.
85.1515 Effective dates.

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Authority: Secs. 203, 206, 207, 208(a), and 301(a), Clean Air Act, as amended (42 U.S.C. 7422, 7525, 7541, 7542(a) and 7601(a)).

§ 85.1501 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to motor vehicles and motor vehicle engines which are offered for importation or imported into the United States and for which the Administrator has promulgated regulations under Part 86 prescribing emission standards but which are not covered by certificates of conformity issued under section 206(a) of the Clean Air Act (i.e., which are nonconforming vehicles as defined below), as amended, and Part 86 at the time of conditional importation. Compliance with regulations under this subpart shall not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for importation of motor vehicles and motor vehicle engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth at 19 CFR 12.73.

§ 85.1502 Definitions.

As used in this subpart, all terms not defined herein have the meanings given them in 19 CFR 12.73, in the Clean Air Act, as amended, and elsewhere in Parts 85 and 86 of this chapter.

(1) *Act.* The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(2) *Administrator.* The Administrator of the Environmental Protection Agency.

(3) *Certificate of conformity.* The document issued by the Administrator under section 206(a) of the Act.

(4) *Certificate holder.* The entity in whose name the certificate of conformity for a class of motor vehicles or motor vehicle engines has been issued.

(5) *FTP.* The Federal Test Procedure at Part 86.

(6) *Independent commercial importer (ICI).* An importer who is not an original equipment manufacturer (OEM) (see definition below) or does not have a contractual agreement with an OEM to act as its authorized representative for the distribution of motor vehicles or motor vehicle engines in the U.S. market.

(7) *Model year.* The manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year; *Provided,* That if the manufacturer has no annual production period, the term "model year" shall mean the calendar year in which a vehicle is modified. A certificate holder shall be deemed to have produced a vehicle or engine when the certificate holder has modified the nonconforming vehicle or engine.

(8) *Nonconforming vehicle or engine.* A motor vehicle or motor vehicle engine which is not covered by a certificate of conformity prior to final or conditional importation and which has not been finally admitted into the United States under the provisions of § 85.1505, § 85.1509 or the applicable provisions of § 85.1512. Excluded from this definition are vehicles admitted under provisions of § 85.1512 covering EPA approved manufacturer and U.S. Government

Agency catalyst and O_2 sensor control programs.

(9) *Original equipment manufacturer (OEM).* The entity which originally manufactured the motor vehicle or motor vehicle engine prior to conditional importation.

(10) *Original production (OP) year.* The calendar year in which the motor vehicle or motor vehicle engine was originally produced by the OEM.

(11) *Original production (OP) years old.* The age of a vehicle as determined by subtracting the original production year of the vehicle from the calendar year of importation.

(12) *Running changes.* Those changes in vehicle or engine configuration, equipment or calibration which are made by an OEM or ICI in the course of motor vehicle or motor vehicle engine production.

(13) *United States.* United States includes the Customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

(14) *Useful life.* A period of time/mileage as specified in Part 86 for a nonconforming vehicle which begins at the time of resale (for a motor vehicle or motor vehicle engine owned by the ICI at the time of importation) or release to the owner (for a motor vehicle or motor vehicle engine not owned by the ICI at the time of importation) of the motor vehicle or motor vehicle engine by the ICI after modification and/or test pursuant to § 85.1505 or § 85.1509.

(15) *Working day.* Any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days.

§ 85.1503 General requirements for importation of nonconforming vehicles.

(a) A nonconforming vehicle or engine offered for importation into the United States must be imported by an ICI who is a current holder of a valid certificate of conformity unless an exemption or exclusion is granted by the Administrator under § 85.1511 of this subpart or the vehicle is eligible for entry under § 85.1512.

(b) Final admission shall not be granted unless:

(1) The vehicle or engine is covered by a certificate of conformity issued in the name of the importer under Part 86 and the certificate holder has complied with all requirements of § 85.1505; or

(2) The vehicle or engine is modified and emissions tested in accordance with the provisions of § 85.1509 and the certificate holder has complied with all other requirements of § 85.1509; or

(3) The vehicle or engine is exempted or excluded under § 85.1511; or

(4) The vehicle was covered originally by a certificate of conformity and is otherwise eligible for entry under § 85.1512.

§ 85.1504 Conditional admission.

(a) A motor vehicle or motor vehicle engine offered for importation under § 85.1505, § 85.1509 or § 85.1512 may be conditionally admitted into the United States, but shall be refused final admission unless:

(1) At the time of conditional admission, the importer has submitted to the Administrator a written report that the subject vehicle or engine has been permitted conditional admission pending EPA approval of its application for final admission under § 85.1505, § 85.1509, or § 85.1512. This written report shall contain the following:

(i) Identification of the importer of the vehicle or engine and the importer's address and telephone number;

(ii) Identification of the vehicle or engine owner and the vehicle or engine owner's address, telephone number and taxpayer identification number;

(iii) Identification of the vehicle or engine;

(iv) Information indicating under what provision of these regulations the vehicle or engine is to be imported;

(v) Identification of the place where the subject vehicle or engine will be stored until EPA approval of the importer's application to the Administrator for final admission;

(vi) Authorization for EPA Enforcement Officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder;

(vii) Identification, where applicable, of the certificate by means of which the vehicle is being imported;

(viii) The original production year of the vehicle; and

(ix) Such other information as is deemed necessary by the Administrator.

(b) Such conditional admission shall not be under bond for a vehicle or engine which is imported under § 85.1505 or § 85.1509. A bond will be required for a vehicle or engine imported under applicable provisions of § 85.1512. The period of conditional admission shall not exceed 120 days. During this period, the importer shall store the vehicle or engine at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1505 Final admission of certified vehicles.

(a) A motor vehicle or engine may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator. Such application shall be made either by completing EPA forms or by submitting the data electronically to EPA's computer, in accordance with EPA instructions. Such application shall contain:

(1) The information required in § 85.1504(a);

(2) Information demonstrating that the vehicle or engine has been modified in accordance with a valid certificate of conformity. Such demonstration shall be made in one of the following ways:

(i) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate, and presentation to EPA of a statement by the appropriate OEM that the OEM will provide to the certificate holder and to EPA information concerning running changes to the vehicle or engine described in the certificate holder's application for certification, and actual receipt by EPA of notification by the certificate holder of any running changes already implemented by the OEM at the time of application and their effect on emissions; or

(ii) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate of conformity and that the certificate holder has conducted an FTP test, at a laboratory within the United States, that demonstrates compliance with Federal emission requirements on every third vehicle or third engine imported under that certificate within 120 days of entry, with sequencing of the tests to be determined by the date of importation of each vehicle or engine. Should the certificate holder have exceeded a threshold of 300 vehicles or engines imported under the certificate without adjustments or other changes in accordance with paragraph (a)(3) of this section, the amount of required FTP testing may be reduced to every fifth vehicle or engine.

In order to make a demonstration under paragraph (a)(2)(i) of this section, a certificate holder must have received permission from the Administrator to do so;

(3) The results of every FTP test which the certificate holder conducted on the vehicle or engine. Should a subject vehicle or engine have failed an FTP at

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any time, the following procedures are applicable:

(i) The certificate holder may either:

(A) Conduct one FTP retest that involves no adjustment of the vehicle or engine from the previous test (e.g., adjusting the RPM, timing, air-to-fuel ratio, etc.) other than adjustments to adjustable parameters that, upon inspection, were found to be out of tolerance. When such an allowable adjustment is made, the parameter may be reset only to the specified (i.e., nominal) value (and not any other value within the tolerance band); or

(B) Initiate a change in production (running change) under the provisions of 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal emission requirements.

(ii) If the certificate holder chooses to retest in accordance with paragraph (a)(3)(i)(A) of this section:

(A) Such retests must be completed no later than five working days subsequent to the first FTP test;

(B) Should the subject vehicle or engine fail the second FTP, then the certificate holder must initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal emission requirements.

(iii) If the certificate holder chooses to initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal requirements, changes involving adjustments of adjustable vehicle parameters (e.g., adjusting the RPM, timing, air/fuel ratio) must be changes in the specified (i.e., nominal) values to be deemed acceptable by EPA.

(iv) Production changes made in accordance with this section must be implemented on all subsequent vehicles or engines imported under the certificate after the date of importation of the vehicle or engine which gave rise to the production change.

(v) Commencing with the first vehicle or engine receiving the running change, every third vehicle or engine imported under the certificate must be FTP tested to demonstrate compliance with Federal emission requirements until, as in paragraph(a)(2)(ii) of this section, a threshold of 300 vehicles or engines imported under the certificate is exceeded, at which time the amount of required FTP testing may be reduced to every fifth vehicle or engine.

(vi) Reports concerning these running changes shall be made to both the Manufacturers Operations and Certification Divisions of EPA within ten working days of initiation of the running change. The cause of any failure of an FTP shall be identified, if known;

(4) The applicable deterioration factor;

(5) The FTP results adjusted by the deterioration factor;

(6) Such other information that may be specified by applicable regulations or on the certificate under which the vehicle or engine has been modified in order to assure compliance with requirements of the Act;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle's or engine's compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section;

(9) The name, address and telephone number of the person who the certificate holder prefers to receive EPA notification under § 85.1505(c); and

(10) Such other information as is deemed necessary by the Administrator.

(b) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle has not been properly modified to be in conformity in all material respects with the description in the application for certification or has not complied with the provisions of § 85.1505(a)(2) or its final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(c) Except as provided in § 85.1505(b), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under § 85.1505(a). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA forms, the date on a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1506 Inspection and testing of imported motor vehicles and engines.

(a) In order to allow the Administrator to determine whether a certificate holder's production vehicles or engines comply with applicable emission requirements or requirements of this subpart, EPA Enforcement Officers are authorized to conduct inspections and/or tests of vehicles or engines imported by the certificate holder. EPA Enforcement Officers shall be admitted during operating hours upon demand and upon presentation of credentials to any of the following:

(1) Any facility where any vehicle or engine imported by the certificate holder under this subpart was or is being modified, tested or stored; and

(2) Any facility where any record or other document relating to modification, testing or storage of the vehicles or engines, or required to be kept by § 85.1507, is located.

EPA may require inspection or retesting of vehicles or engines at the test facility used by the certificate holder or at an EPA-designated testing facility, with transportation and/or testing costs to be borne by the certificate holder.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA Enforcement Officer shall be allowed during operating hours:

(1) To inspect and monitor any part or aspect of activities relating to the certificate holder's modification, testing and/or storage of vehicles or engines imported under this subpart;

(2) To inspect and make copies of any records or documents related to modification, testing and storage of a vehicle or engine, or required by § 85.1507; and

(3) To inspect and photograph any part or aspect of any such vehicle or engine and any component used in the assembly thereof.

(c) Any EPA Enforcement Officer shall be furnished, by those in charge of a facility being inspected, with such reasonable assistance as he/she may request to help him/her discharge any function listed in this subpart. A certificate holder shall cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA (whether or not the certificate holder controls the facility).

(d) The requirements of paragraphs (a), (b) and (c) of this section apply whether or not the certificate holder owns or controls the facility in question. Noncompliance with the requirements of paragraphs (a), (b) and (c) may preclude an informed judgment that vehicles or engines which have been or are being

imported under this subpart by the certificate holder comply with applicable emission requirements or requirements of this subpart. It is the certificate holder's responsibility to make such arrangements as may be necessary to assure compliance with paragraphs (a), (b) and (c) of this section. Failure to do so, or other failure to comply with paragraphs (a), (b) and (c), may result in sanctions as provided for in the Act or § 85.1513(e).

(e) Duly designated Enforcement Officers are authorized to proceed ex parte to seek warrants authorizing the inspection or testing of the motor vehicles or motor vehicle engines described in paragraph (a) of this section whether or not the Enforcement Officer first attempted to seek permission from the certificate holder or facility owner to inspect such motor vehicles or motor vehicle engines.

(f) The results of the Administrator's test under this section shall comprise the official test data for the vehicle or engine for purposes of determining whether the vehicle or engine should be permitted final entry under § 85.1505 or § 85.1509.

(g) For purposes of this section:

(1) "Presentation of Credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle stroage areas or facilities are concerned, "operating hours" shall means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those specified in paragraph (g)(2) of this section are concerned, "operating hours" shall mean all times during which the facility is in operation.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his/her questions.

§ 85.1507 Maintenance of certificate holder's records.

(a) The certificate holder subject to any of the provisions of this subpart shall establish, maintain and retain for six years from the date of entry of a nonconforming vehicle or engine imported by the certificate holder, adequately organized and indexed records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of that vehicle or engine, including but not limited to:

(1) The declaration required by 19 CFR 12.73;

(2) Any documents or other written information required by a Federal government agency to be submitted or retained in conjunction with the certification, importation or emission testing of motor vehicles or motor vehicle engines;

(3) All bills of sale, invoices, purchase agreements, purchase orders, principal or agent agreements and correspondence between the certificate holder and the purchaser, of each vehicle or engine, and any agents of the above parties;

(4) Documents providing parts identification data associated with the emission control system installed on each vehicle or engine demonstrating that such emission control system was properly installed on such vehicle or engine;

(5) Documents demonstrating that, where appropriate, each vehicle or engine was emissions tested in accordance with the Federal Test Procedure.

(6) Documents providing evidence that the requirements of § 85.1510 have been met.

(7) Documents providing evidence of compliance with all relevant requirements of the Clean Air Act, the Energy Tax Act of 1978, and the Energy Policy and Conservation Act;

(8) Documents providing evidence of the initiation of the "15 day hold" period for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(9) For vehicles owned by the ICI at the time of importation, documents providing evidence of the date of sale subsequent to importation, together with the name, address and telephone number of the purchaser, for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(10) For vehicles not owned by the ICI at the time of importation, documents providing evidence of the release to the owner subsequent to importation for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509; and

(11) Documents providing evidence of the date of original manufacture of the vehicle or engine.

(b) The certificate holder is responsible for ensuring the maintenance of records required by this section, regardless of whether facilities used by the certificate holder to comply with requirements of this subpart are under the control of the certificate holder.

§ 85.1508 "In Use" inspections and recall requirements.

(a) Vehicles or engines which have been imported, modified and/or FTP tested by a certificate holder pursuant to § 85.1505 or § 85.1509 may be inspected and emission tested by EPA throughout the useful lives of the vehicles or engines.

(b) Certificate holders shall maintain for six years, and provide to EPA upon request, a list of owners of all vehicles or engines imported by the certificate holder under this subpart.

(c) A certificate holder will be notified whenever the Administrator has determined that a substantial number of a class or category of the certificate holder's vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 202 when in actual use throughout their useful lives (as determined under section 202(d)). After such notification, the Recall Regulations at Part 85, Subpart S, shall govern the certificate holder's responsibilities and references to a manfacturer in the Recall Regulations shall apply to the certificate holder.

§ 85.1509 Final admission of modification and test vehicles.

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f), a motor vehicle or motor vehicle engine may be imported under this section by a certificate holder possessing a currently valid certificate of conformity only if:

(1)(i) The vehicle or engine is six OP years old or older; or

(ii) The vehicle was owned, purchased and used overseas by military or civilian employees of the U.S. Government and

(A) An ICI does not hold a currently valid certificate for that particular vehicle; and

(B) The Federal agency employing the owner of such vehicle determines that such owner is stationed in an overseas area which either prohibits the importation of U.S.-certified vehicles or which does not have adequate repair facilities for U.S.-certified vehicles; and

(C) The Federal agency employing the personnel owning such vehicles determines that such vehicles are eligible for shipment to the United States at U.S. Government expense; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(b) In calendar year 1988, a motor vehicle or motor vehicle engine originally produced in calendar years

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1983 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1987 or 1988 and the make (i.e., the OEM) and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holder's ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(c) In calendar year 1989, a motor vehicle or motor vehicle engine originally produced in calendar years 1984 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1988 or 1989 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(d) In calendar year 1990, a motor vehicle or motor vehicle engine originally produced in calendar years 1985 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1989 or 1990 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(e) In calendar year 1991, a motor vehicle or motor vehicle engine originally produced in calendar years 1986 and 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1990 or 1991 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(f) In calendar year 1992, a motor vehicle or motor vehicle engine originally produced in calendar year 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar year 1991 or 1992 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(g) A motor vehicle or motor vehicle engine conditionally imported under this section may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator. Such application shall be made either by completing EPA forms or, if the applicant chooses, by submitting the data electronically to EPA's computer, in accordance with EPA instructions. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) An attestation by the certificate holder that the vehicle or engine has been modified and/emission tested in accordance with the FTP at a laboratory within the United States;

(3) The results of any FTP;

(4) The deterioration factor assigned by EPA;

(5) The FTP results adjusted by the deterioration factor;

(6) An attestation by the certificate holder that emission testing and development of fuel economy data as required by § 85.1510 was performed after the vehicle or engine had been modified to conform to Department of Transportation safety standards;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle's or engine's compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section.

(9) The name, address and telephone number of the person who the certification holder prefers to receive EPA notification under § 85.1509(i).

(10) For any vehicle imported in accordance with paragraphs (b) through (f), an attestation by the certificate holder that the vehicle is of the same make and fuel type as the vehicle covered by a qualifying certificate as described in paragraphs (b) through (f), as applicable.

(11) Such other information as is deemed necessary by the Administrator.

(h) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle's final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(i) Except as provided in § 85.1509(h), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under § 85.1509(g). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA form, the date of a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to inspect the vehicle or engine.

(j) EPA list of certificate holders ineligible to import vehicles for modification/test. EPA shall maintain a current list of certificate holders who have been determined to be ineligible to import vehicles or engines under this section. Such determinations shall be made in accordance with the criteria and procedures in § 85.1513(e) of this subpart.

(k) Inspections. Prior to final entry, vehicles or engines imported under this section are subject to special inspections as described in § 85.1506 with these additional provisions:

(1) If a significant number of vehicles imported by a certificate holder fail to comply, in the judgment of the Administrator, with emission requirements upon inspection or retest, or if the certificate holder fails to comply with any provision of these regulations that pertain to vehicles imported pursuant to § 85.1509, the certificate holder may be placed on the

EPA list of certificate holders ineligible to import vehicles under this section as specified in paragraph (j) of this section and § 85.1513(e);

(2) Individual vehicles or engines which fail an FTP retest or inspection must be repaired and retested, as applicable, to demonstrate compliance with emission requirements before final admission.

(3) Unless otherwise specified by EPA, the costs of all retesting under this subsection, including transportation, shall be borne by the certificate holder.

(l) In-Use inspection and testing. Vehicles or engines imported under this section may be tested or inspected by EPA at any time during the vehicle's or engine's useful life in accordance with § 85.1508 (a) and (b). If, in the judgment of the Administrator, a significant number of properly maintained and used vehicles or engines imported by the certificate holder fail to meet emission requirements, the name of the certificate holder may be placed on the EPA list of certificate holders ineligible to import vehicles under the modification/test provision as specified in paragraph (j) of this section and § 85.1513(e).

§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.

The provisions of this section are applicable to all vehicles or engines imported under the provisions of §§ 85.1505 and 85.1509.

(a) *Maintenance Instructions.* (1) The certificate holder shall furnish to the purchaser or to the owner of each vehicle or engine imported under § 85.1505 or § 85.1509 of this section, written instructions for the maintenance and use of the vehicle or engine by the purchaser or owner. Each application for final admission of a vehicle or engine shall provide an attestation that such instructions have been or will be (if the ultimate producer is unknown) furnished to the purchaser or owner of such vehicle or engine at the time of sale or redelivery. The certificate holder shall maintain a record of having furnished such instructions.

(2) For each vehicle or engine imported under § 85.1509, the maintenance and use instructions shall be maintained in a file containing the records for that vehicle or engine.

(3) Such instructions shall not contain requirements more restrictive than those set forth in Part 86 (Maintenance Instructions), and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

(4) Certificate holders shall furnish with each vehicle or engine a list of the emission control parts, and emission-related parts added by the certificate holder and the emission control and emission related parts furnished by the OEM.

(b) *Warranties.* (1) Certificate holders shall provide to vehicle or engine owners emission warranties identical to those required by sections 207 (a) and (b) of the Act and 40 CFR Part 85, Subpart V. The warranty period for each vehicle or engine shall commence on the date the vehicle or engine is delivered by the certificate holder to the ultimate purchaser or owner.

(2) Certificate holders shall ensure that these warranties:

(i) Are insured by a prepaid mandatory service insurance policy underwritten by an independent insurance company;

(ii) Are transferable to each successive owner for the periods specified in sections 207 (a) and (b); and

(iii) Provide that in the absence of a certificate holder's facility being reasonably available (i.e., within 50 miles) for performance of warranty repairs, such warranty repairs may be performed anywhere.

(3) Certificate holders shall attest in each application for final admission that such warranties will be or have been provided. Copies of such warranties shall be maintained in a file containing the records for that vehicle or engine.

(c) *Emission labeling.* (1) The certificate holder shall affix a permanent legible label in a readily visible position in the engine compartment. The label shall meet all the requirements of Part 86 and shall contain the following statement "This vehicle or engine was originally produced in (month and year of original production). It has been imported and modified by (certificate holder's name, address and telephone number) to conform to U.S. emission regulations applicable to the (year) model year." If the vehicle or engine is owned by the certificate holder at the time of importation, the label shall also state "this vehicle or engine is warranted for five years or 50,000 miles from the date of purchase, whichever comes first." If the vehicle or engine is not owned by the certificate holder at the time of importation, the label shall state "this vehicle or engine is warranted for five years or 50,000 miles from the date of release to the owner, whichever comes first." For vehicles imported under § 85.1509, the label shall clearly state in bold letters that "this vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution control requirements under a modification/test program." In addition, for all vehicles, the label shall contain the vacuum hose routing diagram applicable to the vehicles.

(2) As part of the application to the Administrator for final admission of each individual vehicle or engine under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. Certificate holders importing under § 85.1505 or § 85.1509 shall attest to compliance with the above labeling requirements in each application for final admission.

(d) *Fuel economy labeling.* (1) The certificate holder shall affix a fuel economy label that complies with the requirements of 40 CFR Part 600, Subpart D.

(2) For purposes of generating the fuel economy data to be incorporated on such label, each vehicle imported under § 85.1509 shall be considered to be a separate model type.

(3) As part of the application to the Administrator for final admission of each individual vehicle or engine imported under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. In each application for final admission of a vehicle or engine under § 85.1505, or § 85.1509, the certificate holder shall attest to compliance with the above labeling requirements.

(e) *Gas guzzler tax.* (1) Certificate holders shall comply with any applicable provisions of the Energy Tax Act of 1978, 26 U.S.C. 4064, for every vehicle imported under § 85.1505 and § 85.1509.

(2) For vehicles not owned by the certificate holder, the certificate holder shall furnish to the vehicle owner applicable IRS forms (currently numbered 720 (Quarterly Federal Excise Tax) and 6197 (Fuel Economy Tax Computation Form)) which relate to the collection of the gas guzzler tax under the Energy Tax Act of 1978, 26 U.S.C. 4064.

(3) As part of the certificate holder's application to EPA for final admission of each vehicle imported under § 85.1509, the certificate holder shall furnish any fuel economy data required by the Energy Tax Act of 1978, 15 U.S.C. 4064.

(f) *Corporate Average Fuel Economy (CAFE).* (1) Certificate holders shall comply with any applicable CAFE requirements of the Energy Policy and Conservation Act, 15 U.S.C. 2001 et seq., and 40 CFR Part 600, for all vehicles imported under § 85.1505 and 85.1509.

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§ 85.1511 Exemptions and exclusions.

(a) Individuals, as well as certificate holders, shall be eligible for importing vehicles into the United States under the provisions of this section, unless otherwise specified.

(b) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine entitled to one of the temporary exemptions of this paragraph may be conditionally admitted into the United States if prior written approval for such conditional admission is obtained from the Administrator. Conditional admission shall be under bond. A written request for approval from the Administrator shall contain the identification required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond or exporation of the vehicle or engine. The following temporary exemptions are permitted by this paragraph:

(1) *Exemption for repairs or alterations.* Owners of fleet vehicles or engines may import such vehicles or engines solely for purposes of repairs or alterations. Such vehicles or engines may not be registered or licensed in the United States for use on public roads and highways. They may not be sold or leased in the United States and must be exported upon completion of the repairs or alterations.

(2) *Testing exemption.* Testing vehicles or engines may be imported by any person subject to the requirements of 40 CFR 85.1705 and 85.1708. Test vehicles or engines may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. The exemption shall be limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer concerning the vehicle in accordance with § 85.1705(f) for a subsequent one-year period.

(3) *Precertification exemption.* Prototype vehicles for use in applying to EPA for certification may be imported by independent commercial importers subject to applicable provisions of 40 CFR 85.1706 and the following requirements:

(i) No more than one prototype vehicle for each engine family for which an independent commercial importer is seeking certification shall be imported by each independent commercial importer.

(ii) Unless a certificate of conformity is issued for the prototype vehicle, the total amount of the bond shall be forfeited or the vehicle must be exported within 180 days from the date of entry.

(4) *Display exemptions.* (i) Vehicles or engines intended solely for display may be imported subject to the requirements of 40 CFR 85.1707.

(ii) Display vehicles or engines may be imported by any person. Display vehicles or engines may not be sold in the United States and may not be registered or licensed for use on or operated on public roads or highways in the United States, unless an applicable certificate of conformity has been received.

(c) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine may be finally admitted into the United States under this paragraph if prior written approval for such final admission is obtained from the Administrator. Conditional admission of these vehicles is not permitted for the purpose of obtaining written approval from the Administrator. A request for approval shall contain the identification information required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption or exclusion. The following exemptions or exclusions are permitted by this paragraph:

(1) *National security exemption.* Vehicles may be imported under the national security exemption found at 40 CFR 85.1708. Only persons who are manufacturers may import a vehicle under a national security exemption.

(2) *Hardship exemption.* The Administrator may exempt on a case-by-case basis certain motor vehicles from Federal emission requirements to accommodate unforeseen cases of extreme hardship or extraordinary circumstances. Some examples are as follows:

(i) Handicapped individuals who needs a special vehicle unavailable in a certified configuration;

(ii) Individuals who purchase a vehicle in a foreign country where resale is prohibited upon the departure of such as individual;

(iii) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship.

(d) Foreign diplomatic and military personnel may import nonconforming vehicles without bond. At the time of admission, the importer shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)). Such vehicles may be be sold in the United States.

(e) *Racing exclusion.* Racing vehicles may be imported by any person provided the vehicles meet one or more of the exclusion criteria specified in 40 CFR § 85.1703. Racing vehicles may not be registered or licensed for use on or operated on public roads and highways in the United States.

(f) *Exclusions/exemptions based on date of original manufacture.* (1) Notwithstanding any other requirements of this subpart, the following motor vehicles or motor vehicle engines are excluded from the requirements of the Act in accordance with section 216(3) of the Act and may be imported by any person:

(i) Gasoline-fueled light-duty vehicles and light-duty trucks originally manufactured prior to January 1, 1968.

(ii) Diesel-fueled light-duty vehicles originally manufactured prior to January 1, 1975.

(iii) Diesel-fueled light-duty trucks originally manufactured prior to January 1, 1976.

(iv) Motorcycles originally manufactured prior to January 1, 1978.

(v) Gasoline-fueled and diesel-fueled heavy-duty engines originally manufactured prior to January 1, 1970.

(2) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine not subject to an exclusion under § 85.1511(f)(1) but greater than twenty OP years old is entitled to an exemption from the requirements of the Act, provided that it is imported into the United States by a certificate holder. At the time of admission, the certificate holder shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)).

(g) Applications for exemptions and exclusions provided for in paragraphs (b) and (c) of this section shall be mailed to: Investigation/Imports Section (EN-340F), Office of Mobile Sources, U.S. Environmental Protection Agency, Washington, DC 20460.

(h) Vehicles conditionally or finally admitted under paragraphs (b)(2), (b)(4), (c)(1), (c)(2), and (f)(2) of this section must still comply with all applicable requirements, if any, of the Energy Tax Act of 1978, the Energy Policy and Conservation Act and any other Federal or state requirements.

§ 85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.

(a) (1) Notwithstanding other provisions of this subpart, any person may conditionally import a vehicle which:

(i) Was covered by a certificate of conformity at the time of original manufacture or had previously been admitted into the United States under § 85.1505 or § 85.1509 (after June 30, 1988).

(ii) Was certified, or previously admitted under § 85.1505 or § 85.1509 (after June 30, 1988), with a catalyst emission control system and/or O_2 sensor;

(iii) Is labeled in accordance with 40 CFR Part 86, Subpart A or, where applicable, § 85.1510(c); and

(iv) Has been driven outside the United States, Canada and Mexico or such other countries as EPA may designate.

(2) Such vehicle must be entered under bond pursuant to 19 CFR 12.73 unless it is included in a catalyst and O_2 sensor control program approved by the Administrator upon such terms as may be deemed appropriate. Catalyst and O_2 sensor programs conducted by manufacturers may be approved each model year.

(b) For the purpose of this section, "catalyst and O_2 sensor control program" means a program instituted and maintained by a manufacturer, or any U.S. Government Agency for the purpose of preservation, replacement, or initial installation of catalytic converters and cleaning and/or replacement of O_2 sensors and, if applicable, restricted fuel filler inlets.

(c) For the purpose of this section, "driven outside the United States, Canada and Mexico" does not include mileage accumulated on vehicles solely under the control of manufacturers of new motor vehicles or engines for the purpose of vehicle testing and adjustment, and preparation for shipment to the United States.

(d) Vehicles conditionally imported pursuant to this section and under bond must be modified in accordance with the certificate of conformity applicable at the time of manufacture. In the case of vehicles previously imported under § 85.1509 or § 85.1504 (prior to July 1, 1988), the replacement catalyst and O_2 sensor, if applicable, must be equivalent (in terms of emission reduction) to the original catalyst and O_2 sensor. Such vehicles may be granted final admission upon application to the Administrator, on forms specified by the Administrator. Such application shall contain the information required in § 85.1504(a)(1) (i) through (v) and shall contain both an attestation by a qualified mechanic that the catalyst has been replaced and the O_2 sensor has been replaced, if necessary, and that both parts are functioning properly, and a copy of the invoice for parts and labor.

§ 85.1513 Prohibited acts; penalties.

(a) The importation of a motor vehicle or motor vehicle engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service at 19 CFR 12.73 is prohibited. Failure to comply with this section is a violation of section 203(a)(1) of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a vehicle shall not:

(1) Operate the vehicle on streets or highways,

(2) Sell or offer the vehicle or engine for sale, or

(3) Store the vehicle on the premises of a dealer.

(c) Any vehicle or engine conditionally admitted pursuant to § 85.1504, § 85.1511 or § 85.1512, and not granted final admission within 120 days of such conditional admission, or within such additional time as the U.S. Customs Service may allow, shall be deemed to be unlawfully imported into the United States in violation of section 203(a)(1) of the Act, unless such vehicle or engine shall have been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. Any vehicles or engines not so delivered shall be subject to seizure by the U.S. Customs Service.

(d) Any importer who violates section 203(a)(1) of the Act is subject to a civil penalty under section 205 of the Act of not more than $10,000 for each vehicle or engine subject to the violation. In addition to the penalty provided in the Act, where applicable, under the exemption provisions of § 85.1511(b), or under § 85.1512, any person or entity who fails to deliver such vehicle or engine to the U.S. Customs Service is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

(e) (1) A certificate holder whose vehicles or engines imported under § 85.1505 or § 85.1509 fail to conform to Federal emission requirements after modification and/or testing under the Federal Test Procedure (FTP) or who fails to comply with applicable provisions of this subpart, may, in addition to any other applicable sanctions and penalties, be subject to any, or all, of the following sanctions:

(i) The certificate holder's currently held certificates of conformity may be revoked or suspended;

(ii) The certificate holder may be deemed ineligible to apply for new certificates for up to 3 years; and

(iii) The certificate holder may be deemed ineligible to import vehicles or engines under § 85.1509 in the future and be placed on a list of certificate holders ineligible to import vehicles or engines under the provisions of § 85.1509.

(2) Grounds for the actions described in paragraph (e)(1) shall include, but not be limited to, the following:

(i) Action or inaction by the certificate holder or the laboratory performing the FTP on behalf of the certificate holder which results in fraudulent, deceitful or grossly inaccurate representation of any fact or condition which affects a vehicle's or engine's eligibility for admission to the U.S. under this subpart;

(ii) Failure of a significant number of vehicles or engines imported to comply with Federal emission requirements upon EPA inspection or retest; or

(iii) Failure by a certificate holder to comply with requirements of this subpart.

(3) The following procedures govern any decision to suspend, revoke, or refuse to issue certificates under this subpart:

(i) When grounds appear to exist for the actions described in paragraph (e)(1), the Administrator shall notify the certificate holder in writing of any intended suspension or revocation of a certificate, proposed ineligibility to apply for new certificates, or intended suspension of eligibility to conduct modification/testing under § 85.1509, and the grounds for such action.

(ii) Except as provided by paragraph (e)(3)(iv) of this section, the certificate holder must take the following actions before the Administrator will consider withdrawing notice of intent to suspend or revoke the certificate holder's certificate or the certificate holder's eligibility to perform modification/testing under § 85.1509:

(A) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicle or engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the certificate holder to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented; or

(B) Demonstrate that the vehicles or engines do in fact comply with applicable regulations in this chapter by retesting such vehicles or engines in accordance with the FTP.

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(iii) A certificate holder may request within 15 calendar days of the Administrator's notice of intent to suspend or revoke a certificate holder's eligibility to perform modification/testing or certificate that the Administrator grant such certificate holder a hearing:

(A) As to whether the tests have been properly conducted,

(B) As to any substantial factual issue raised by the Administrator's proposed action.

(iv) If, after the Administrator notifies a certificate holder of his/her intent to suspend or revoke a certificate holder's certificate of conformity or its eligibility to perform modification/testing under § 85.1509 and prior to any final suspension or revocation, the certificate holder demonstrates to the Administrator's satisfaction that the decision to initiate suspension or revocation of the certificate or eligibility to perform modification/testing under § 85.1509 was based on erroneous information, the Administrator will withdraw the notice of intent.

(4) Hearings on suspensions and revocations of certificates of conformity or of eligibility to perform modification/testing under § 85.1509 shall be held in accordance with the following:

(i) Applicability. The procedures prescribed by this section shall apply whenever a certificate holder requests a hearing pursuant to subsection (e)(3)(iii).

(ii) Hearing under paragraph (e)(3)(iii) of this section shall be held in accordance with the procedures outlined in § 88.613, where applicable, provided that where § 86.612 is referred to in § 86.613: Section 86.612(a) is replaced by § 85.1513(d)(2); and § 86.612(i) is replaced by § 85.1513(d)(3)(iii).

(5) When a hearing is requested under this paragraph and it clearly appears from the data or other information contained in the request for a hearing, or submitted at the hearing, that there is no genuine and substantial question of fact with respect to the issue of whether the certificate holder failed to comply with this subpart, the Administrator will enter an order denying the request for a hearing, or terminating the hearing, and suspending or revoking the certificate of conformity or the certificate holder's eligibility to perform modification/testing under § 85.1509.

(6) In lieu of requesting a hearing under paragraph (e)(3)(iii) of this section, a certificate holder may respond in writing to EPA's charges in the notice of intent to suspend or revoke. Such a written response must be received by EPA within 30 days of the date of EPA's notice of intent. No final decision to suspend or revoke will be made before that time.

§ 85.1514 Treatment of confidential information.

(a) Any importer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, an importer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter.

§ 85.1515 Effective dates.

The provisions of this subpart are effective on July 1, 1988.

PART 600—[AMENDED]

2. The authority citation for Part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2003, 2005, 2006.

3. 40 CFR 600.007–80 is amended by adding a new paragraph (b)(7) to read as follows:

§ 600.007–80 Vehicle acceptability

* * * * *

(b) * * *

(7) For vehicles imported under § 85.1509 or § 85.1511 (b)(2), (b)(4), (c)(2), (c)(4), or (e)(2) (when applicable) only the following requirements must be met:

(i) For vehicles imported under § 85.1509, a highway fuel economy value must be generated contemporaneously with the emission test used for purposes of demonstrating compliance with § 85.1509. No modifications or adjustments should be made to the vehicles between the highway fuel economy and the FTP emissions test.

(ii) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) with over 10,000 miles, the equation in § 600.006–86 (g)(1) shall be used as though only 10,000 miles had been accumulated;

(iii) Any required fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) shall be considered a separate type for the purposes of calculating a fuel economy label for a manufacturer's average fuel economy.

4. 40 CFR 600.007–80 is amended by revising paragraph (f) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(f) All vehicles used to generate fuel economy data must be covered by a certificate of conformity under Part 86 before:

(1) The data may be used in the calculation of any approved general or specific label value, or

(2) The data will be used in any calculations under Subpart F, except that vehicles imported under § 85.1509 and § 85.1511 need not be covered by a certificate of conformity.

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September 25, 1987

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program; Notice

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to establish a Juvenile Justice Statistics and Systems Development Program.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 241 and 224(b)(1) of the Juvenile Justice and Delinquency Prevention Act, as amended, is sponsoring a program to establish a Juvenile Justice Statistics and Systems Development Program. The purpose of this program will be to develop and implement strategies for improving:

- The quality and utility of national and subnational (state and local) statistics on juvenile justice; and,
- Decision making and management information systems within the juvenile justice system.

This effort will assist OJJDP in implementing the recommendations from the Assessment of National Juvenile Justice Statistics. This requires formulating and implementing a program of national and subnational juvenile justice statistics that promotes the development and effective use of statistics for systemwide and individual agency planning and management; policy and program development; and, research and evaluation at the Federal, state and local level. The scope of the program related to improving national and subnational statistics includes Federally-sponsored national surveys of individuals regarding their experience as victims and/or offenders as well as Federally-sponsored administrative surveys that involve the collection of data from local reporting units regarding some aspect of the justice system response to these juveniles.

In addition to performing the tasks related to planning and improving national and subnational statistical networks and products, the recipient will be responsible for:

- Assessing operational juvenile justice agencies' decision making and related management information systems;
- Developing prototypical decision making and related management information systems and promoting the effective use of the information generated by the systems for planning, management and resource allocation development;
- Developing training and technical assistance materials to promote the adoption of the prototypical systems to test sites; and,
- Providing intensive training and technical assistance to implement the prototypes in the test sites.

It is expected that these two tracks: National Statistics and Systems Development, will complement each other and will improve the capability of Federal, state and local, public and private juvenile justice agencies to understand the needs of the juvenile population they serve and as a result more effectively manage their resources for delinquents and other juveniles in need of services.

Eligibility

Applications are invited from public agencies and private not-for-profit organizations which can demonstrate the capability to effectively carry out the mission of the Juvenile Justice Statistics and Systems Development Program to enter into a cooperative agreement with OJJDP. The project period will be four years, with incremental budget periods. OJJDP has allocated up to $1,000,000 for the initial budget period of 24 months. Based on successful completion of the first budget period, several non-competing awards are anticipated. Applicants are encouraged to submit cost-competitive proposals.

DATE: The deadline for receipt of applications is November 9, 1987. For further information contact: Barbara Allen-Hagen, Research and Program Development Division (202/724–5929); or Douglas C. Dodge, Special Emphasis Division (202/724–5914), Office of Juvenile Justice and Delinquency, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

Juvenile Justice Statistics and Systems Development Program

I. Definitions
II. Introduction and background
III. Program goals and objectives
IV. Program strategy
V. Dollar amount and duration
VI. Eligibility requirements
VII. Application requirements
VIII. Procedures and criteria for selection
IX. Submission of application
X. Civil Rights compliance

I. Definition

The following definitions are offered to clarify terms and concepts frequently used in this solicitation. Because one of the purposes of this program is to help OJJDP further define the parameters of a national statistical program and a model decision making system(s), these definitions are subject to change.

Juvenile—any person under the age of 18 in the United States (1) who is or may be, for statutorily determined conduct or circumstances (e.g., delinquency noncriminal misbehavior and abuse/neglect), subject to the adjudication and supervision processes of the juvenile court, or (2) who, although not described by criterion (1) above, is under the age of 18 and is either under criminal court jurisdiction or is a victim of a criminal offense.

Juvenile and Criminal Justice System Response—any official action (arrest/taking into custody, filing a petition, detention order, diversion, waiver/transfer, adjudication, disposition, probation order, commitment/placement, release from custody/jurisdiction, etc.) made in response to acts committed by or against a juvenile (delinquency, status offense, or abuse/neglect or criminal victimization) that may come before the juvenile or criminal court for adjudication, disposition or judicial review. These actions may be taken by local and/or state agencies depending on the locus of the authority.

National Juvenile Justices Statistics Program—a series of routinely administered data collection efforts that are designed to produce current, reliable, nationally representative data regarding the extent and nature of juvenile offending and victimization and the juvenile or criminal justice system response.

Subnational Statistics—data routinely gathered on juvenile or criminal justice system response generated or maintained by any local or state agency or organization with the appropriate statutory or delegated authority to perform such a function.

Assessment Recommendation—a series of recommendations contained in a draft document entitled, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", (hereinafter referred to as "Agenda"), James P. Lynch, April 1987, based on a jointly-sponsored OJJDP/Bureau of Justice Statistics assessment of Federally-sponsored national data collection efforts regarding juveniles as victims and offenders. Copies of this document can be obtained by calling Barbara Allen-Hagen, at 202/724-5929 or Douglas C. Dodge, at (202) 724–5914.

Management Information System (MIS) Prototype—a proposed set (the minimum number) of variables and data elements with standardized definitions for juvenile or criminal justice system

responses that meet local or state agency information needs, as well as national informations system requirements for developing national estimates regarding juvenile justice system response to juvenile victims and offenders. Model or prototype management information systems will be developed for each component agency of the juvenile justice system or, where applicable, the criminal justice system.

Decision Making System Prototype

A systematic approach to decision making which delineates the range of juvenile or criminal justice system responses that can be made by local/state agencies regarding the processing of juveniles through each decision point in the juvenile or criminal justice system from initial contact with law enforcement or referral to juvenile or family court or court of similar jurisdiction through disposition and release from jurisdiction.

II. Introduction and background

Recently OJJDP and the Bureau of Justice Statistics (BJS) undertook the first major assessment of the quality and utility of existing national statistics on juveniles as victims and offenders. The overwhelming conclusion of this assessment was that critical information on the extent and nature of juvenile crime and victimization was seriously deficient for both policy and research purposes. In addition, national, state, and local data on important aspects of the justice system response are fragmented, non-comparable, or non-existent. Further, if significant improvements were to be made, the current inadequacies of the existing system would have to be approached systematically. The product of this effort, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", outlines a comprehensive series of recommendations for improving the quality, utility and accessibility of data for national, state and local uses. Incorporated in the discussion of the recommendations are steps to be taken to achieve a particular information goal. For national and subnational statistics these steps range from conducting secondary analysis of existing data to initiating new data collection efforts.

There is general consensus that there is a need to improve juvenile justice decision making related to planning, policy and program development and management within and across juvenile justice agency lines. Often decisions are not guided by explicit policies or criteria. These decisions are frequently made in the absence of critical information that is often not available within a single agency or is not shared between agencies. Both of these inadequacies need to be addressed simultaneously for effective management of juvenile justice resources. For example, in order to determine the need for additional detention beds, a jurisdiction needs to specify the policies/screening criteria used to make detention decisions; to identify where the decisions are made; and, to develop information on the number and types of youth detained as well as their lengths of stay. Without this type of information, population projections that may form the basis for expenditure of funds will be flawed. There are a host of basic policy and information needs, such as those identified in the above example, that are common to almost any juvenile justice "system" that should be identified, and, around which a model decision making system(s) should be developed. Therefore, it is necessary to assess decision making policies and procedures, delineating agency-level activities at each critical decision point in juvenile justice system. In addition, the assessment should document agencies' use of currently collected data; and from this assessment develop a prototypical decision making and related complementary management information system(s). The local management information system(s) must be designed to contribute to the development of a national base of information on critical aspects of the juvenile justice system response to juvenile crime and victimization.

The Juvenile Statistics and Systems Development Program is an integral part of the strategy to implement the recommendations to improve national and subnational statistics, as well as to improve the decision making capability of local juvenile justice agencies. The program is being established to guide choices regarding the future direction of national statistics and methods for assisting the development of local decision making and information systems data collection efforts. Finally it will focus on integrating these two activities to ensure that local and state information systems can become the building blocks for a national juvenile justice statistics program. This is the beginning of a long term commitment which is needed to document and monitor trends in the level and nature of delinquency and victimization, as well as the juvenile justice system's response to these problems. One of the major functions of this program will be the dissemination of existing information for policy-making purposes as well as to provide greater access of existing data sets to the research community for policy analysis and program evaluation.

III. Program goals and objectives

There are two major goals of this program:

- To create a national juvenile justice statistics program that is responsive to Federal, state and local information needs; and
- To improve systemwide decision making and management information capabilities of juvenile justice system and component agencies.

A national juvenile justice statistics program must be developed that produces useful and reliable national and subnational statistics on juveniles that inform the public about the extent and nature of juvenile delinquency and victimization, their correlates and consequences, as well as juvenile justice system response to these social problems. This program must yield data on these phenomenon that are useful for policy and program development and evaluation at the Federal, state and local level.

A concurrent goal of this program is to improve the capability of the juvenile justice system and its component agencies to respond to the problems of juvenile crime and victimization, through the development and testing of prototypical decision making and management information systems. The program is designed to promote the understanding and the use of prototypical system wide juvenile justice decison-making policies and practices to assess, monitor and improve the administration of juvenile justice. In addition to supporting systems inprovement, the program also is intended to contribute to building a national statistical system which promotes the effective use of statistics for planning, resource allocation and other juvenile justice system management decisions at the Federal, state and local level.

In order to achieve these goals, a comprehensive program to improve the quality and utility of national and subnational statistics, and decision making must be developed and implemented. The Assessment of National Juvenile Justice Statistics has outlined a broad agenda for making needed improvements in national and subnational statistics. The establishment of the Juvenile Justice Statistics and Systems Development Program is intended to build upon this work. The recipient will be responsible

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for providing the necessary technical and substantive resources to achieve the following objectives during the first 24-month phase of the program's operation:

National statistics objectives

- Assist in formulating long-term and short-term plans for systematically improving juvenile statistics, including prioritizing information needs; choosing which Assessment Recommendations to pursue; and carrying out the necessary steps to implement these plans;
- Assess the potential of existing subnational statistical systems/networks for contributing data to a national statistical reporting system; and,
- Develop a strategy for the analysis, publication and dissemination of existing national and subnational data on juveniles and the justice system;

Systems development objectives

- Assess operational juvenile justice agencies' decision making related management information activities, policies, and procedures;
- Develop prototypical decision making systems and complementary management information systems as well as model output reports pertaining to planning, management, resource development and allocation, an intra and inter agency coordination;
- Develop training and technical assistance materials to transfer prototypes;
- Develop and implement a strategy for testing the effectiveness of the prototypical decision making and management information systems; and,
- Determine the feasibility of the building a network of jurisdictions to contribute to a national juvenile justice statistical reporting program on juvenile justice system response.

IV. Program strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases: research, development, demonstration and dissemination. The framework guides the decision making process regarding the funding of future phases of the program.

This program falls within the research and development phases. The purpose of the research phase is to develop new knowledge and to monitor trends to inform and assess policy and program development. The national/subnational statistics objective fall under this phase. The purpose of the development phase is to develop prototypes and, to determine their effectiveness through a testing process, and to disseminate the prototypes to the field. The systems development objectives fall within this phase.

This initiative is designed to evolve along two tracks. The first involves developing strategies to improve the quality and utility of federally-sponsored national data collection efforts, including surveys of individuals regarding their experience as victims and/or offenders as well as administrative surveys that involve the collection data from local reporting units regarding some aspect of the justice system response. The second track involves efforts to improve the quality and utility of state and local decision making and related management information systems. While each track has its defined objectives and expected results, the two tracks are clearly interdependent. Therefore, although the activities of each track require somewhat different skills, strategies and schedules, it is critical that the grantee structure an approach to ensure that the development of the two tracks is closely coordinated and that the results of each track complement the work of the other.

Each track will involve several basic stages of development. As will be described below, it is anticipated that stages one through three of the national statistics track and stages one through three of the systems development track will be completed during the first 24-month project period. Each stage of the process detailed below is designed to result in complete and publishable products, and a dissemination strategy to inform the field of the development of the program and the results and products of each stage.

A project advisory committee, consisting of knowledgeable survey methodologists; statisticians; data users and suppliers; practitioners and experts in juvenile justice policy, systems and resource management will be appointed to provide guidance to the progam in carrying out its functions, reviewing plans, and products. Two subcommittees, supplemented by technical consultants as necessary, should be formed to advise the development of each track.

National Statistics Track

Stage I—Assessment

"During this stage the recipient will review the recommendations of the "Agenda", and other relevant literature, and assist OJJDP in selecting those recommendations that should be adopted and in what priority order they should be pursued. It is anticipated that this will require an intensive process involving the participation of OJJDP, the recipient, and the project advisory board. This stage will also involve preliminary identification of national data system requirements that will inform the development of local management informations system prototypes under the Systems Development Track.

To assist in the prioritization and selection of recommendations to be pursued, the recipient will provide the necessary background information on the resources, technology and agency cooperation that would be required to implement the recommendations. Based on the approval by OJJDP of the first set of recommendations to be adopted, the recipient will identify the steps involved in implementing each selected recommendation. Finally, the recipient will develop a detailed, comprehensive plan for the implementation of the selected recommendations focused on improvement of national and subnational statistics, and on the analysis and dissemination of existing information.

Activities

The major activities of this stage are:

- Establishment and convening of the project advisory committee board;
- Development of an assessment plan specifying the approach for each step of the assessment stage;
- Identification of the national data system information requirements that should be incorporated into the development of the prototype local management information systems under the System Development Track.
- Review of the National Juvenile Justice Statistics Assessment and Prioritization of Recommendations;
- Specifications of the steps required to implement selected recommendations; and,
- Development of a detailed plan to implement the selected national/subnational statistical programs. (It should be recognized that each of the data collection activities which are selected for implementation will likely proceed at a different pace through the next three stages of development, depending on the specific nature of the activity.)

Products

The products to be completed during this stage are:

1. Assessment Plan.
2. Recommendation for prioritization of Statistics Assessment recommendations.
3. Report specifying the resources, technology, agency cooperation, and the

implementation activities for each of the priority recommendations.

4. Recommendations for assessing quality and utility of subnational statistical systems/networks for contributing to national information on juvenile justice system response.

5. Plan for implementing selected national/subnational statistical programs.

6. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage II—Analysis and dissemination

Upon successful completion of stage one, the recipient will conduct those activities in the plan developed during the assessment stage which involve analysis and dissemination of existing national and/or subnational data sets to inform policy and program development. This will involve the development of a dissemination strategy to: (1) Make available to the field statistical information from existing national and subnational data sets; and (2) to examine the utility of existing data sets for addressing selected policy issues.

The first task will be accomplished by preparing a national report on juvenile offending and victimization, which will be updated bi-annually by the program.

The second task will involve the preparation of papers based on analysis of one or more data sets to address particular policy or program issues in juvenile justice. The topics will be selected by OJJDP in consultation with the recipient and the program advisory committee. The analysis will also include an examination of the utility of a particular data set for meeting information needs in the field.

Activities

The major activities of this stage are:

- Development of a plan for the analysis and dissemination activities;
- Selection of topics for issue papers;
- Preparation of a draft and final national report on results of juvenile offending and victimization;
- Preparation of issue papers based on analysis of existing data sets; and,
- Development and implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

(1) Plan for conducting the analysis and dissemination activities;

(2) Draft and final national report on juvenile offending and victimization;

(3) A minimum of three papers on selected policy or program issues;

Stage III—Survey design and feasibility studies

During this stage, the recipient will initiate the design of new data collection activities included in the plan developed during the assessment stage. These may consist of revisions to existing national data collection efforts, or the design and implementation of new efforts. This stage will involve three steps as appropriate. For those data collection efforts that are to be revised, the first step consists of secondary analysis of the relevant national data set. For new data collection initiatives, the first step will consist of evaluating existing data collection efforts and conducting secondary analyses of these, if available, to determine the potential for collecting the desired information through an existing survey mechanism. The second step will be the conduct of *feasibility studies* to develop more definitive information on the viability of particular approaches to data collection for addressing a particular issue.

Third, based upon the results of the secondary analyses and/or feasibility studies, the recipient will prepare a recommendation regarding the viability of the proposed new or revised data collection activity. As appropriate, the recommendation should include a proposed survey design, specifying the substantive, strategic costs and methodological requirements, and projected costs for full implementation of the data collection activity. It must provide an in-depth statement of the rationale for each effort; an articulation of the specific policy, programmatic, and/or research purposes that the particular effort is designed to address; and a justification for the proposed design based on the experience of the secondary analyses phase and/or the feasibility studies.

Should OJJDP choose to implement a new national data collection effort, most likely it will be supported through an interagency agreement, or a competitively awarded cooperative agreement or contract. For the latter options, it is anticipated that the recipient will be excluded from competition. The recipient will however, provide the necessary consultation to assure that the survey(s) is implemented in a manner consistent with the proposed design and the direction of the project advisory board.

Activities

The major activities to be conducted during this stage are:

- Development of a plan for the design of new data collection efforts; including the steps for each effort;
- Conduct of secondary analyses of existing relevant data sets;
- Conduct of feasibility studies;
- Coordination of the design of new national activities with the local systems;
- Preparation of draft and final recommendations for each new data collection effort;
- Development and implementation of a dissemination strategy;

Products

The products to be completed during this stage are:

1. Plan for the design of new data collection efforts;

2. Draft and final recommendations for new data collection efforts; and,

3. Dissemination strategy to inform the field of the development of the program and products of this stage.

Stage IV—Implementation of new data collection efforts

During this stage the recipient will provide methodological advice and oversight of newly initiated data collection efforts. Program staff and consultants who have been involved in the design stage will serve in a consultant capacity to organizations selected to conduct these efforts. The program's Advisory Committee will also review these efforts as appropriate. Additional ongoing activities under this stage include the refinement of plans, re-analysis of relevant data sets for policy or program development purposes, conduct of additional feasibility or pilot tests, as needed, and the production and dissemination of recurring and ad hoc reports resulting from the program's work.

Activities

The major activities of this stage are:

- Development of a plan for implementation of new data collection efforts;
- Technical Assistance to new data collection activities;
- Advisory Committee review of new data collection activities, and on-going OJJDP data collection projects;
- Preparation of reports based on existing and new data collection activities; and,
- Identification of new priorities.

Products

1. Plan for implementation of new data collection efforts.

2. Reports on the status of new data collection activities.

3. Recommendations for new priority areas.

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Systems development track

Stage I—Assessment

The recipient will be responsible for designing and conducting an assessment of selected state and local decision making systems; existing management information systems and the current or potential analytical uses of operational data for juvenile justice system management, policy development, planning and evaluation; and the potential of local data collection activities for contributing to a national data collection program on juvenile justice system response. The assessment must be designed to provide OJJDP with specific recommendations for optimal operation of both decision making and complementary management information systems that will be the basis for the prototype development activities occurring in the next stage as well as the development of a strategy for a national program for collection of data on juvenile justice system response.

During this stage the recipient will conduct a review of the literature on juvenile justice decison making policies, procedures and practices at the system as well as the individual agency level, and on management information systems that gather and analyze data that are designed to support decision making activities. Based on the review, and the guidance from the advisory committee and OJJDP, the recipient will develop criteria to select and conduct onsite assessment of existing state and local agency decision making and management information systems.

The assessment will focus on system design and operation, by examining the decision making and information activities of the individual component agencies as well as activities involved in referring youth from one component of the system to another. It will examine who makes decisions regarding the handling of different types of youthful offenders and nonoffenders, what types of decisions are made, and the subsequent resources expended in responding to those decisions. It will also examine the type of information that is collected by component agencies, who collects it, how it is collected, how it is analyzed and how it is used. This will include a review of the purpose and usefulness of output reports generated for use by juvenile justice agencies. In order to monitor trends and to make critical management decisions on an agency and systemwide basis in the areas of planning, policy formulation, program development, resources allocation, research evaluation and budget development and control. Particular attention will be paid to the potential contribution of various management information systems to a national data collection system.

Activities

The major activities of this stage are:

- Convening the project advisory committee;
- Development of an assessment plan specifying the approach for each step of the assessment stage;
- Review of the literature;
- Development of the criteria for site assessment activities;
- Implementation of the site assessment;
- Development of preliminary testing design guidelines;
- Development of recommendations for the national reporting program on juvenile justice system response based on assessment of existing management information systems;
- Development of a draft and final assessment report;
- Development of a dissemination strategy;

Products

The products to be completed during this stage are:

1. Project Advisory Committee Recommendations;
2. Assessment Plan;
3. Literature Review;
4. Criteria for Site Assessment Activities;
5. Recommendations with regard to Preliminary Guideline for Test Design;
6. Preliminary strategy for developing a national reporting program on juvenile justice system response based on local/state reporting units;
7. Draft and Final Assessment Report; and
8. Dissemination strategy to inform the field of the development of the program and products and results of this stage.

Stage II—Prototype Development

Upon successful completion of stage one, the recipient will develop one of more prototypes of a juvenile justice decision making and complementary management information system for implementation at the state and local level. The prototypes will explain how to operationalize and assess agency policy through the implementation of a well-defined decision making system and a supportive management information system. The prototype information will be detailed in operational manuals which contain detailed specifications for the development, implementation and operation of the prototypical state and local decision making and management information systems. The prototypes will describe, for each component agency of the juvenile justice system, how to define policy and implement it through the establishment of decision making criteria, practices and procedures for processing juveniles; and the establishment of a management information system that will provide the information specified by the decision criteria, as well as data on the flow of juveniles through the system.

In developing the prototype management information systems, the requirements of a national data system must be addressed. This must include recommendations regarding: the scope of initial program, sampling issues related to implementation, identification of both incentives and necessary assurances regarding the use and disclosure of data in order to ensure participation in the program, and the identification of specific products or reports that the system would be capable of generating for national purposes.

Because of the need to demonstrate the potential utility of both the decision making model and the management information system, the prototypes must include the identification of the practical uses and potential benefits to an agency as well as to the overall juvenile justice system that may adopt the prototype systems. Model output reports that would result from the implementation of the prototypes should be designed. The recipient will prepare examples of such reports and include those for: planning (e.g., development of population or personnel projections); policy formulation (e.g., establishing criteria for use of secure detention, or for setting dispositional/release guidelines); program development (e.g., determining the need for a urinalysis program to monitor probationers, or the need for runaway shelter); budgeting (e.g., setting per diem rates for contract services, determining juvenile justice system annual expenditures by agency); program and policy evaluation (e.g., determining the effectiveness of jail removal policies and alternatives, or the impact of a truancy reduction program on reported daytime burglaries); and research (e.g., documenting trends in the percentage of personal crimes involving juvenile gangs, or the percentage of violent crimes in which kidnapping of a juvenile was a corollary offense). This will involve identifying necessary decision making activities and corresponding data elements, minimum requirements regarding the data collection procedures, for each use.

Activities

The major activities of this stage are:
• Participation of the Advisory Committee;
• Development of a plan for prototype development;
• Development of the decision making and information system prototypes and related materials;
• Development of recommendations regarding the scope, content and approach to developing a national reporting program on juvenile justice system response based on data generated by the management information system prototypes; and,
• Development of a dissemination strategy.

Products

1. Prototype Development Plan.
2. Dissemination Strategy to inform the field of the development of the program, and the products and results of this stage.
3. Draft and Final Prototype Designs and Operation Manuals.
4. Draft and Final Design for the National Reporting Program on Juvenile Justice System Response.

Stage III Training and technical assistance

While a decision to develop training and technical assistance materials and to test the prototype design(s) will be made during or following the completion of the prototype system development stage, the applicant is expected to explain the methods and approaches that would be employed to implement all of the stages. As noted, funds for this stage will be provided in the initial award period. Funds for the testing stage will be provided through non-competitive continuation awards. In order to ensure the applicant's understanding of the entire development effort, however, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, prototype development, training and technical assistance development, and testing).

Upon successful completion of stage 3 and with the approval of OJJDP, the grantee will transfer the prototype decision making and management information system design(s), including policies and procedures, into a training and technical assistance package. A comprehensive training manual which outlines the major issues that need to be addressed in developing programs for state and local subnational policy level decision makers, and detail program prototypes, must be developed to encourage and facilitate implementation of prototypes. The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policymakers and practitioners involved in resource allocation and program development at the state and local subnational levels. The manual must be designed for a formal training setting, and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, the manual should include a complete description of the decision making prototype and incorporate related policies and procedures to operationalize the prototypes. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaptation and implementation of the prototypes.

Activities

The major activities of this stage are:
• Preparation of a plan for developing the training and technical assistance package;
• Development of the training and technical assistance materials;
• Recruitment and preparation of the training and technical assistance personnel;
• Testing of the training curriculum manual;
• Participation and review by the advisory committee; and,
• Development and implementation of a dissemination strategy which may include workshops or seminars for national and subnational level decision makers.

Products

The products to be completed during this stage are:
1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance package-including the training curriculum manual and information materials; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage IV—Prototype implementation and testing

This stage of the program consists of a test, in selected jurisdictions, of the prototypes developed in Stage II. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be required to provide intensive training and technical assistance to help test sites implement the decision making and management information system prototypes on an experimental basis. Finally, the grantee will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:
• Develop recommendations for a program announcement to select test sites;
• Assist OJJDP in review and selection of test sites;
• Provide intensive training and technical assistance to test sites regarding the implementation of prototypes on an experimental basis;
• Develop procedures for working cooperatively with the program evaluator, particularly in the areas of data collection and feedback; and
• Develop and implement a dissemination strategy.

Products

The major products for this stage are:
1. Recommendations for the program announcement for test sites;
2. Plan for providing training and technical assistance to test sites and,
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

V. Dollar amount and duration

A cooperative agreement will be awarded to the successful applicant. The project period is four (4) years. OJJDP has allocated up to $1,000,000 for the first budget period of 24 months: Up to $350,000 allocated for the National Statistics Track, and up to $650,000 is allocated for the System Development Track.

Funds for noncompeting continuation awards within the approved four-year project period may be withheld for justifiable reasons. They include:

(1) There is no continued need for program activity;

(2) The grantee is delinquent in submitting required reports;

(3) Adequate funds of the grantor agency are not available to support the project;

(4) The grantee has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of award;

(5) A grantee's management practices have failed to provide adequate stewardship of grantor agency's funds;

(6) Outstanding audit exceptions have not been cleared; and

(7) Any other reason which indicates that continued funding would not be in the best interest of the Federal government.

VI. Eligibility Requirements

Public agencies and private not-for-profit organizations are eligible to apply to conduct both the National Statistics Track and System Development Track. Private for-profit organizations are eligible to conduct only the National Statistics Track, due to legislative restrictions for different types of discretionary funds. Applicant organizations may choose to submit proposals with other eligible organizations, as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. In order to be eligible for consideration the applicant, together with any co-applicant, must have experience in each of the following areas specified in A–C below.

A. Design, development, or implementation of national or subnational (multi-jurisdictional) data collection efforts regarding crime and delinquency or the criminal or juvenile justice system; or, the maintenance of a data archive for the promotion of secondary analysis of data for research, policy or program evaluation;

B. Applied research or policy analysis regarding crime, delinquency, or the criminal/juvenile justice system; and,

C. The development of decision making and management information systems, and the development and delivery of training and technical assistance to state and local criminal or juvenile justice agencies.

VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a Program Narrative (Part IV), a Detailed Budget, and a Budget Narrative. In response to the Part IV requirements of the SF 424 (Program Narrative), all applicants must provide concise responses to the information required in this Section of the solicitation. The Program Narrative Section of the application should not exceed 100 double-spaced pages in length, excluding the budget, the budget narrative and appendices.

In submitting applications which contain more than one applicant organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization must agree to be jointly responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint responsibility with the other co-applicants.

Applications which include sole source contracts for the provision of specific goods or services must include a sole source justification for any procurement in excess of $10,000.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in Section VII of this solicitation.

1. Organizational Experience

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section VI above. Applicants must demonstrate how their organizational experience and current capabilities will enable them to achieve the goals and objectives of this initiative. Applicants should highlight significant organizational accomplishments which demonstrate their responsiveness to the needs of the field, reliability in terms of producing quality products in a timely fashion, and having the ability to work effectively with operational justice agencies.

2. Project Staffing

Applicants must provide a list of key personnel responsible for managing and implementing the program. Applicants must present detailed position descriptions, qualifications and selection criteria for each position, whether they are salaried or staff, hired by contractor(s) of the grantee. In addition, if key functions or services are to be provided by consultants on a contractual basis, the applicant must indicate the individuals to be hired for specific tasks, or the specific skills that would be needed to perform these tasks and the means of acquiring them. Resumes must be provided and may be submitted as appendices to the application. Applicants must demonstrate that the proposed staff complement have the requisite background and experience to accomplish the major responsibilities outlined in Section V above. Applicants should highlight significant accomplishments of the proposed staff in relation to their respective roles in the project. In addition, the percentage of each staff person's time committed to the project must be clearly indicated in the budget narrative.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and Financial Capability Questionnaire (OJARS Form 7120/1). Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Strategy and Goals

Applicants must demonstrate their understanding of the goals and objectives of this program by their approach to the program strategy. Specifically applicants must address the following items:

1. Outline the criteria for selecting and procedures for establishing the project advisory board, and describe their role in the Program's operations.

2. Describe the approach to developing the long-term and short-term objectives for improving juvenile justice statistics, including the prioritization of information needs and choices of Agenda recommendations to pursue.

3. Discuss the process for recommending which secondary analyses should be undertaken, their specific purposes, and proposed products and the resources that will be used for conducting them.

4. Outline the basic components of a national report on juvenile offending, victimization and juvenile justice system response; and propose a strategy for dissemination of products related to both the national and subnational data.

5. Discuss the process for recommending which new data collection efforts should be undertaken, the choice of an appropriate design and

methodology and the need for preliminary feasibility or pilot testing. Applicants should also describe how resources will be allocated for carrying out the design work. For purposes of illustration, applicants are requested to apply their proposed process to the design of a hypothetical survey of institutionalized juvenile offenders.

6. Indicate the critical factors that must be considered in developing a design for the implementation of the assessment of national and subnational data collection, and prototypical decision making and management information systems. Also, discuss the potential impediments to and opportunities for establishing a national juvenile justice statistical reporting series on justice system response to juveniles. Indicate how the decision making and local information system prototypes will be coordinated with the design of national statistical systems.

7. Outline the process and criteria for selecting sites for the assessment of decision making and management information systems. Include a preliminary estimate of the number and types of jurisdictions that should be included in the assessment of juvenile justice agencies. Provide a brief discussion of how the assessment would be conducted and what information would be collected.

8. Discuss how the results of the assessment will be utilized to develop prototypes for the decision making and management information systems that improve state/local decision making capabilities and contribute to building a national information system.

9. Describe the basic components of the policies and procedures manual for operationalizing the decision making and management information system prototypes, and the process to be used for their development and finalization. Also, discuss how the efforts of the preceding stages will contribute to the development of a strategy for implementing and testing the prototypes.

10. Discuss the basic approach to disseminating information regarding the decision making and management information system, including potential audiences, primary means of dissemination of products and to communicating with the field regarding the development and testing of the prototypes.

C. Program Implementation Plan

Applicants shall describe how they will allocate the available resources to implement the program.

1. Applicants must develop an implementation plan which addresses the major responsibilities of the grantee described in Section IV. of the solicitation. The plan must include:

a. An annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components related to the National Statistics and Systems Development Tracks and their respective phases.

b. The implementation plan must clearly indicate how staff and other resources (such as consultants, project advisory board) will be utilized for each of the major activities.

c. A concise discussion of the coordination and administration issues related to the program strategy and how the grantee's organizational structure and management strategy would address these issues.

2. Applicants must develop a detailed time-task plan for the first 24 month budget period, clearly identifying major milestones related to each phase. This must include designation of organizational and staff responsibility, and a schedule for the completion of the tasks and products identified in Section IV.

D. Program Budget

Applicants shall provide an 24-month budget with a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the bases for these costs must be well documented in the budget narrative. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets and budget narratives for each organization's expenses.

The applicant must also budget for the costs of convening at least four project advisory board meetings during the first budget period.

VIII. Procedures and Criteria for Selection

Applications will be rated based on the extent to which they meet the following weighted criteria. All applications received will be reviewed in terms of their responsiveness to the application requirements set forth in Section VIII. Selection criteria and weights have been developed to guide the applicants in the development of their proposals and the peer reviewers in their evaluation of: the applicant's organizational capability to meet the goals of the project; the quality of the staff and other resources; the soundness, thoroughness and creativity of the applicant's proposed approach to program strategy and implementation issues; the utility of potential products; and the appropriateness and reasonableness of costs in relation to the proposed activities and products. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CRF Part 34, Subpart B, published August 2, 1985, at 50 **Federal Register**, 31366.

A. Organizational Capability (15 Points)

1. The extent and quality of organizational experience and current capability related to: the design, development, or maintenance of national juvenile/criminal justice data; applied research and policy analysis; and program development, training or technical assistance in juvenile or criminal justice, as outlined in Section VI A–C. (10 points)

2. The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (5 points)

B. Project Staffing (20 Points)

1. The breadth and depth of relevant experience of staff identified to manage and implement the program, including staff to be hired through contracts and/or as consultants. (15 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specifically designated functions. (5 points)

C. Program Goals and Strategy (35 Points)

The applicant's understanding of the program goals, objectives and strategy will be evaluated in terms of the soundness, thoroughness and creativity of their responses to the ten requirements outlined in Section VII. B. Specifically, attention will be paid to: the clarity, feasibility and appropriateness of the responses to each requirement; the understanding of the interdependence of the National Statistics and Systems Developmental Tracks; attention to definitional and measurement issues; the potential utility of products for policy and program development; and, the responsiveness of the proposed dissemination plan to the needs of the field.

D. Implementation Plan (15 Points)

The appropriateness of allocation of resources to accomplish the goals and objectives of the program within the 24 month budget period. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organizational and

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individuals' roles and responsibilities for the completion of significant tasks and development of products.

E. Budget (15 Points)

Applicants must include a 24 month-budget with a detailed narrative justifying the costs as specified in Section VII. D. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the task to be accomplished.

Applications will be evaluated by a peer review panel. The application which receives the highest total score on the above criteria will be recommendation for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

IX. Submission of Applications

All applicants responding to the solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by *October 15, 1987.* Such notification should specify: the name of the should specify: applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. *The submission of this notification is optional.* It is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and four copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on *November 16, 1987.* Those applications sent by mail should be addressed to Research and Development Program: Juvenile Justice Statistics Resource and Development Program, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531. Hand delivered applications must be taken to the OJJDP, Room 724, 633 Indiana Avenue NW., Washington, DC. between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended: Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subpart C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extend financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Verne L. Speirs,

Administrotor, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-22122 Filed 9-24-87; 8:45 am]

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Federal Register

Friday
September 25, 1987

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Pawnee Montane Skipper (Hesperia leonardus montana); final rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Pawnee Montane Skipper (Hesperia leonardus montana) To Be Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a butterfly, the Pawnee montane skipper (*Hesperia leonardus montana*), to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not being designated. This butterfly is restricted to the South Platte River drainage in the Front Range of central Colorado. Its habitat has been impacted by housing and other development activities, construction of roads and an existing dam and reservoir. The proposed Two Forks Reservoir project will eliminate some of this species' range and some individuals of the species. This determination that *Hesperia leonardus montana* is threatened implements the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is October 26, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office at 134 Union Boulevard, fourth floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Listing Coordinator, Fish and Wildlife Enhancement, Endangered Species Division, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 or telephone 303/236–7398 or FTS 776–7398.

SUPPLEMENTARY INFORMATION:

Background

The Pawnee montane skipper, a member of the Hesperiidae butterfly family, was first described in 1911 as *Pamphila* (*Hesperia*) *pawnee montana* (Skinner 1911). Scott and Stanford (1982) combined two species (*Hesperia pawnee* and *Hesperia leonardus*), retaining the older specific name *leonardus*, and treated the Pawnee montane skipper as *Hesperia leonardus montana*. This subspecies occurs only on the Pikes Peak Granite Formation in the South Platte River drainage system in Colorado. There are two other related subspecies: *Hesperia leonardus leonardus* occurring in the eastern U.S. and Canada, and *Hesperia leonardus pawnee* occurring in the Northern Great Plains. This latter subspecies is not known from the Pikes Peak formation, and its range does not overlap with *Hesperia leonardus montana*. The presence of ventral hind wing spots and its darker color differentiate *Hesperia leonardus montana* from *Hesperia leonardus pawnee* (Scott and Stanford 1982).

An adult Pawnee montane skipper is a small brownish-yellow butterfly, with a wingspan slightly over 1 inch. Small, fulvous (dull brownish-yellow), usually distinct spots occur near the outer margins of the upper surface of the wings, while 1 to 4 distinct brownish to off-white spots occur on the lower (ventral) surface of the wings. The ventral spots are larger on the hind wings and are generally whiter in the female butterflies.

The Pawnee montane skipper is found only in four Colorado counties (Teller, Park, Jefferson, and Douglas) within the South Platte River drainage system along the Front Range of central Colorado. The known range of this skipper has always been very restricted. The range (not all occupied) is roughly 23 miles long and 5 miles wide (Keenan et al. 1986). The portion of the range that appears to be suitable habitat covers about 38 square miles (Environmental Research and Technology (ERT) Company 1986). Suitable habitat occurs in bands along the North and South Forks of the South Platte River and extends a short distance along the South Platte River below the confluence of the two forks. The present habitat configuration allows for an interchange of individuals throughout the habitat. The area occupied by the skipper is managed and/or owned by the U.S. Forest Service (Pike National Forest), U.S. Bureau of Land Management, Denver Water Department, the County of Jefferson, and numerous private individuals.

The skipper's habitat is in a mountainous area characterized by canyons with steep slopes and narrow river valleys. The topography is very steep near the confluence of the North and South Forks of the South Platte River, but is less steep upriver. The soil layer is very unstable and susceptible to landslides (Keenan et al. 1986).

Skippers occur in dry, open, ponderosa pine (*Pinus ponderosa*) woodlands on outcrops of Pikes Peak granite where soils are thin, unstable, and susceptible to water erosion. Woodland slopes inhabited by skippers are moderately steep with a south, west or east aspect. The understory in the pine woodlands is very sparse, with generally less than 30 percent ground cover. Blue grama grass (*Bouteloua gracilis*), the larval food plant, and the prairie gayfeather (*Liatris punctata*), the primary nectar plant, are two necessary components of the ground cover strata. Small clumps of blue grama occur throughout the hot, open slopes inhabited by skippers, but this grass species actually covers a very small part of the surface area (less than 5 percent). Prairie gayfeather occurs in small patches throughout the ponderosa pine woodlands. Skippers are very uncommon in pine woodlands with a tall shrub understory (Keenan et al. 1986) or where young conifers dominate the understory (ERT Company 1986). Even though skippers inhabit dry ponderosa woodlands, they have usually been collected within 1 mile of a stream (Scott 1986).

Pawnee montane skippers emerge as adult butterflies as early as late July, with the males emerging before the females by about a week to ten days. Adults spend most of their short existence feeding and mating. Adult females deposit eggs singly directly on leaves of blue grama grass, which is the only known larval food plant (Scott and Stanford 1982, McGuire 1982, Opler 1986). The species overwinters as larvae, and little is known of the larval and pupal stages. Pupation is generally short (13–23 days) in most butterfly species. The species completes its life cycle (egg to larva to pupa to adult butterfly to egg) annually (Keenan et al. 1986). ERT Company (1986) suggested that adults probably fly until a major killing frost occurs. They also indicated that the phenology of prairie gayfeather, the primary nectar plant, and the pawnee montane skipper are highly synchronous. During 1986, the gayfeather plant began blooming in late July, which coincided with the first observation of adult pawnee montane skippers. The prairie gayfeather was still being used as the preferred nectar source when the last pawnee montane skipper observations were made on September 17.

Although the prairie gayfeather is the most important nectar source for the species, other plants have also been noted as nectar sources for the butterfly. Of the other plants, the musk thistle (*Carduus nutans*) is especially important, particularly along river bottom edges and up some ravines. Female skippers have been seen in large numbers on musk thistle along the South Platte River canyon bottom (Opler 1986). The prairie gayfeather seems to grow in areas subject to disturbance such as

logging or fire, but it appears that the butterfly does not colonize such areas for at least several years following the disturbance. Recently burned or logged areas surveyed in 1986 had low numbers of Pawnee montane skippers (Opler 1986).

The community preferred by the skipper is evidently the northern-most extension of the ponderosa pine/grama grass community, which is documented from southern Colorado and northern New Mexico. However, the preferred nectar plant of the skipper, prairie gayfeather, does not occur in similar habitats to the south. The restricted overlap between the northeastern limit of the ponderosa pine/grama grass community and the southwestern limit of the prairie gayfeather might be a primary factor maintaining the species in this limited/specialized area (Getches 1986).

The elevational range of the species is 6,000–7,500 ft. Studies in 1985 showed that the ratio of male to female skippers was much greater at higher elevations that at lower elevations (32 males: 7 females above 7,100 ft. and 34 males: 20 females below 7,100 ft.; Keenan et al. 1986). In 1986 the Denver Water Department contracted for a study that was designed to determine, among other things, the difference in relative abundance of skippers and prairie gayfeather plants above and below the intended water line (6,575 ft.) of the proposed Two Forks Reservoir. ERT Company (1986) found that the abundance of the gayfeather plant was significantly less above than below the intended waterline, and that adult skipper occurrence and abundance showed a strong association with the presense and abundance of prairie gayfeather. Thus, the densest adult skipper populations occurred below the proposed 6,575 ft. reservoir inundation line, and near the lower boundary of the species' elevational range. The distribution of larvae was not ascertained, so this study could not demonstrate that adult skippers, especially the males, do not disperse outside of (and to higher elevations than) the habitat areas where they are produced.

Construction of an existing dam and reservoir, and road, housing, and other development has destroyed, modified and curtailed the skipper's habitat and range. Future developments, housing, road construction, off-road vehicle use, and the proposed Two Forks reservoir project, along with its associated activities, including recreational development, could further destroy, modify, and curtail the skipper's habitat and range to the extent of endangering the species' survival.

The Pawnee montane skipper was first proposed for Federal listing as endangered on July 3, 1978 (43 FR 28938). The 1978 Amendments to the Endangered Species Act mandated a 2-year limit on finalizing listing proposals. The Service published a notice on March 6, 1979, announcing that certain proposals, including the Pawnee montane skipper proposal, would either be supplemented with regard to their critical habitats or withdrawn. The proposal expired on July 3, 1980, and was then officially withdrawn on September 2, 1980 (45 FR 58171).

Comments were received during the comment period for the 1978 proposal from the U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, Denver Water Department, The Nature Conservancy, lepidopterists, and private individuals. Comments ranged from being supportive to being opposed to the listing, while some simply provided clarifying information. Some commenters questioned the butterfly's taxonomic status and the accuracy of the distribution information commonly accepted. Scott and Stanford's work (1982) revised and updated the taxonomy, but validated and left unchanged its status as a subspecies eligible for listing, and further searches funded by the Denver Water Department in 1985 and 1986 did not locate the skipper outside the South Platte River drainage. A frequent suggestion in the comments was that the listing was motivated by political rather than biological factors. Those suggesting a political motive claimed that listing advocates only wished to prevent the construction of the Two Forks Dam.

The Service published a review of invertebrate wildlife for listing as endangered or threatened on May 22, 1984 (49 FR 21664), which included the Pawnee montane skipper as a Category 1 species. Category 1 comprises taxa for which the Service has sufficient biological information to support their being proposed to be listed as endangered or threatened. The Butterfly Specialist Group of the International Union for Conservation of Nature and Natural Resources, Species Survival Commission, recommended the Pawnee montane skipper as a high priority for listing in 1985.

A second proposed rule to list the Pawnee montane skipper was published September 25, 1986 (51 FR 34106). Comments received on this second proposal are summarized below.

Summary of Comments and Recommendations

In the September 25, 1986, proposed rule (51 FR 34106) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published on October 13, 20, 27 and November 3, 1986, in the *Rocky Mountain News*, the *Lakewood Sentinel*, and the *Castle Rock Douglas County News Press*. The *Cripple Creek Teller County Times*, and *Fairplay Flume/Park County Republican* published notices October 17, 24, 31, and November 7, 1986, which invited general public comment. No public hearing was requested or held.

During the comment period, 13 comments were received. Of the commenters that stated a position, 7 supported listing and 3 opposed it. Several commenters provided factual information regarding the species; such information has been incorporated, as appropriate, in this final rule. Support for the listing proposal was stated by the Colorado Department of Natural Resources, Environmental Protection Agency, Environmental Defense Fund, International Union for Conservation of Nature and Natural Resources, and three other interested parties. Opposition to listing the species was received from three local agencies: Denver Board of Water Commissioners, Denver Water Department, and Metropolitan Water Providers. Opposing comments concluded, in general, that habitat losses and other perceivable threats are not of sufficient magnitude to warrant listing the skipper as a threatened species, and that present management practices such as restricted public access, off-road vehicle management, and no use of chemical forest pest control measures are adequate safeguards against the foreseeable threats.

Written comments received during the comment period are discussed below. Comments disagreeing with the proposed rule can be summarized under several general issues. Discussion of these issues, and the Service's response to each, follows:

Issue 1: Commenters disagreed with the logic used to arrive at the conclusion that the skipper is a threatened species and maintained that the conclusion was not consistent with the criteria outlined

in section 3 of the Endangered Species Act. They claimed that the Pawnee montane skipper does not warrant listing as a threatened species because projected habitat losses and modifications are not of sufficient magnitude to jeopardize the continued existence of the species. They estimated the skipper habitat that would remain after construction of Two Forks Dam and Reservoir to be approximately 31 square miles, occurring as continuous habitat strips ranging from 0.25 to 1 mile wide that would extend along side slopes of the South Platte River from the vicinity of Oxyoke southward to the inlet of Cheesman Reservoir (approximately 10 miles); along slopes of West Creek (approximately 10 miles); and along the North Fork of the Platte River from Buffalo Creek westward to Cliffdale (approximately 6 miles). They considered all of this remaining habitat to be in excellent condition and largely under the control of the U.S. Forest Service and the Denver Water Department, except in the vicinity of Pine. They indicated that this, taken collectively, should be sufficient habitat to maintain the Pawnee montane skipper indefinitely, even following the construction of the Two Forks Project. They pointed out that the Service had not quantified the likelihood of its endangerment.

Service Response: In using the term "jeopardize the continued existence of the species," this comment confuses a consideration that is made during consultation on listed species (as required by section 7 of the Endangered Species Act) with the criteria used to determine if a species should be listed as threatened or endangered. The definition of a threatened species is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus the Endangered Species Act does not require that the probability of endangerment be estimated numerically, but only that endangerment be likely and foreseeable. In addition to this basic definition, a determination as to whether a species should be listed is based on any one of the five factors listed in Section 4(a)(1) of the Endangered Species Act, and discussed under the "Summary of Factors" section of this rule. Determinations on the factors are made on the basis of the best scientific and commerical data available to the Service. The Service finds that the best available data support the listing of the Pawnee montane skipper as a threatened species.

Cumulative losses and modification of habitat due to continued housing and other development activities, road construction, off-road vehicle use, and the proposed Two Forks project and associated developments, including recreational activities, are of sufficient magnitude to be considered significant to the species's survival. Higher skipper population density and numbers below the proposed Two Forks Reservoir inundation line in the 1986 Pawnee montane skipper census (ERT Company 1986) suggest that the habitat there is better or more productive than habitat above the proposed inundation line, and the possibility remains that dispersal of adult skippers, especially upward dispersal of males, may make the distribution of adults an overestimate of the real distribution of productive habitat. The water barrier created by Two Forks would separate the remaining habitat into two smaller, discontinous portions or "islands." This would increase the chance of population islands being lost to stochastic (random) events, limit skipper movements, and decrease gene flow among population units. Possible microclimatic effects of the proposed reservoir on skipper habitat nearby are unknown, but might occur, and be either deleterious or beneficial.

Issue 2: Some commenters claimed the proposed action falls short of fulfilling the intent of Congress in passing the Endangered Species Act. They noted that the Act empowered the Service to take the necessary steps to protect the ecosystems that support a threatened or endangered species, and that courts have interpreted this language to create an affirmative duty on the part of the agency to preserve the listed species, not to merely avoid elimination of the species. They advised the Service to take the following steps to adequately ensure the perpetuation of this species: (1) List the Pawnee montane skipper as an endangered species, not a threatened species; (2) designate critical habitat for this species; and (3) acquire lands supporting habitat critical to survival of this species.

Service Response: The Pawnee montane skipper is not being listed as an endangered species since existing habitat conditions are such that the species is not currently in danger of extinction. Critical habitat is not being designated because the species is subjected to some collecting pressure and publication of exact locations of the species would increase collecting pressures.

The skipper's habitat is mostly administered/owned by the U.S. Forest Service and the Denver Water Department. The U.S. Bureau of Land Management manages some small holdings within the species' range. Federal agencies are mandated to manage for the conservation (which includes recovery) of listed species. The Denver Water Department will be required to abide by the requirements of the Endangered Species Act if the Two Forks project is approved since the agencies that have authority to issue permits for the project must insure that the project is not likely to jeopardize the continued existence of the species. The Service will prepare a recovery plan for the skipper. Land acquisition and management of such lands for the preservation of the skipper have been identified as potential recovery activities.

Issue 3: Commenters questioned whether recreational development, off-road vehicle use, invasion of exotic plants, pine bark beetle spraying, and collection/vandalism are significant threats to the Pawnee montane skipper as indicated in the proposed rule. They pointed out that Pawnee montane skippers survived earlier logging disturbance, that they still occur in one well-used forest campground, that use of off-road vehicles has been controlled by the Forest Service and areas eroded by use have been closed, that exotic plants have not made serious inroads into the native vegetation of this area, that pest control spraying has not been used, and that there is little reason to expect collection and/or vandalism against this species.

Service Response: These threats were included in the proposal as factors that *may* affect the skipper and that may be expected to increase. The Service agrees that their significance will be difficult to determine and unlikely to equal the significance of the threat of habitat loss or degradation. These items should be considered as a part of the recovery process by land managing agencies in order to insure optimum conditions for the skipper.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Pawnee montane skipper should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be

determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Pawnee montane skipper (*Hesperia leonardus montana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Pawnee montane skipper occurs in only one restricted area. Past habitat loss or degradation probably occurred when Cheesman Reservoir was constructed and when residential and commercial communities within the skipper's range were developed. No early distribution or range information exists to determine to what extent this may have occurred. The habitat has also been impacted by road construction and housing and other development activities that are anticipated to continue. Some off-road vehicle use occurs within the butterfly's habitat and results in accelerated soil erosion or destruction of skippers and/or their food plants. The land managing agencies have acted to limit this activity, and, taken alone, its impact is minor.

Additionally, construction of the proposed Two Forks Dam and Reservoir and associated roads and recreational facilities, if completed as planned, will result in elimination of individual skippers and portions of the species' habitat. A contractor's estimate of suitable habitat for the skipper lost through inundation directly (ERT Company 1986) is about 22 percent of an estimated 37.9 square miles of suitable habitat. Population estimates made in the 1986 flight season (ERT Company 1986) placed only about 19 percent of the skippers in the inundation zone early in the season when males predominated, but this increased to about 33 percent later, when females were more numerous and the estimated density and total numbers of adult skippers had doubled over the earlier period.

Losses associated with construction activities (roads, access points, maintenance facilities, etc.) and recreational development associated with Two Forks Reservoir or for other purposes could further degrade or even eliminate the habitat of the Pawnee montane skipper beyond the inundation losses. Recreational use of the area would increase, and increased trampling from foot traffic or off-road vehicles could result in the destruction of skippers or the host and nectar plants at certain stages of their life cycles. Residential development within the skipper's range would also be expected to increase if the proposed reservoir is constructed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Collection is not as large a problem for skippers as it is for some butterfly groups. Some collection of this species has occurred, but, to date, it has been primarily for scientific studies. With increased public awareness of its rarity, the Pawnee montane skipper could become more sought after by collectors.

C. *Disease or predation.* Various predators and parasitoids are considered to hold insect populations under "natural control," and several are known to feed on various *Hesperia* butterflies; however, no such agents are believed to pose a serious threat to the species' populations or continued existence. Opler (1986) observed that spiders that frequent *Liatris* plants do prey on Pawnee montane skippers.

D. *The inadequacy of existing regulatory mechanisms.* The Pawnee montane skipper is not presently protected by any State or Federal law. Listing under the Endangered Species Act would provide needed protection through recovery and interagency cooperation provisions.

E. *Other natural or manmade factors affecting its continued existence.* Mountain pine beetle (*Dendroctonus ponderosae*) and spruce bud worm (*Choristoneura occidentalis*) infestations occur within the skipper's habitat. The use of insecticides to control these pests or other pests within the area where the Pawnee montane skipper occurs could result in the loss of skipper individuals or populations. However, insecticides are not presently being applied aerially to control mountain pine beetles or spruce bud worms within the skipper's range. At this time no known losses occur due to insecticides.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hesperia leonardus montana* as a threatended species. This species fits the definition of threatened better than that of endangered since existing habitat conditions are such that the species is not currently in danger of extinction. The species has a restricted range, and portions of its habitat will be eliminated by the proposed Two Forks Dam and Reservoir and associated facilities. Its habitat has already been impacted by road construction, housing and other development activities. Critical habitat is not being determined for reasons explained in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Collection could become a problem for this species through increased publicity if critical habitat maps were published as part of the listing process. All the involved agencies have been informed of the location of the populations of the Pawnee montane skipper and the importance of protecting this species' habitat. No further notification benefits would accrue from designating critical habitat. Protection of the species' habitat and its proper management will be addressed through the recovery process and through section 7 consultations. Therefore, it would not be prudent to determine critical habitat for the Pawnee montane skipper at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical

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habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Pawnee montane skipper occurs on lands administered by the U.S. Forest Service (Pike National Forest) and U.S. Bureau of Land Management. The U.S. Army Corps of Engineers, Forest Service, and Bureau of Land Management are the Federal permitting agencies for Two Forks Reservoir. The Service will work with the three Federal agencies and all other involved parties to achieve protection for the skipper. The section 7 Interagency Regulations (50 CFR 402.10) require each Federal agency to confer with the Service on any action that is likely to jeopardize the continued existence of any proposed species. By letter dated May 4, 1987, the Corps of Engineers requested such a conference on the proposed Two Forks Project.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

ERT Company. 1986. 1986 Pawnee montane skipper field studies. Prepared for the Denver Water Department, Denver, Colorado. November 1986. 40 pp.

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Opler, P.A. 1986. Letter to Fish and Wildlife Service, dated November 6, 1986. U.S. Fish and Wildlife Service, Office of Information Transfer, Fort Collins, Colorado. 2 pp.

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Scott, J.A. and R.E. Stanford. 1982. Geographic variation and ecology of *Hesperia leonardus* (Hesperiidae). Journal of Research on the Lepidoptera 20(1):18–35.

Skinner, H. 1911. New species or subspecies of North American butterflies. Entomological News 22:412–413.

Author

The primary author of this final rule is Dr. James L. Miller of the Service's Denver Regional Office staff (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend §17.11(h) by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Skipper, Pawnee montane	*Hespena leonardus montana*	U.S.A. (CO)	NA	T	289	NA	NA

Dated: September 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–22157 Filed 9–24–87: 8:45 am]

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September 25, 1987

Part V

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 630

Uniform System of Accounts and Records and Reporting System:

Clarification of Procedures for Addressing Noncompliance With Reporting Requirements; Final Rule

Changes to Section 15; Notice

VOL 52 ISS 186 SE 25 1987 UMI

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 630

[Docket No. 86-E]

Uniform System of Accounts and Records and Reporting System; Clarification of Procedures for Addressing Noncompliance With Reporting Requirements

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule.

SUMMARY: This document implements a number of changes that simplify the language and requirements of the current 49 CFR Part 630 (Uniform System of Accounts and Records and Reporting System) and revises it to conform to the Urban Mass Transportation Act of 1964, as amended (the UMT Act). It restructures Part 630 in order to separate the regulatory requirements of the rule from the descriptive text. It also clarifies UMTA's procedures for Section 15 Reports that are late, incomplete, uncertified, or inaccurate. This final rule continues to require the use of the reporting instructions and records systems currently embodied in the Reference Volumes of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Because the current edition of the Reference Volumes already governs the Section 15 Reports submitted by transit agencies, and this document updates and streamlines the regulation to clarify procedural requirements, this document does not greatly affect submissions. Overall, the corrections and changes to Part 630 have little substantive effect on the rights and responsibilities of most UMTA grantees or beneficiaries. The revised regulation does, however, more precisely set out how UMTA will enforce the statutory mandate that transit agencies comply with section 15 as a precondition of eligibility to receive section 9 grants.

EFFECTIVE DATE: The revised regulation is effective October 26, 1987, and applies to all section 15 reporting years beginning with 1988. The 1988 reporting year covers local transit agencies fiscal years ending on or between January 1, 1988 and December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Wilson, Chief, Audit Review and Analysis Division, Urban Mass Transportation Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590, Telephone (202) 366-1610.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1986, UMTA issued a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 17145) which proposed a comprehensive revision of the regulation of the Uniform System of Accounts and Records and Reporting System. Both Systems implement section 15 of the UMT Act which requires applicants and direct beneficiaries of grants under section 9 of the UMT Act to maintain and report uniform financial and operating information. The goals of the proposed revision were to:

- Simplify the rule's structure by separating the procedural requirements from the description of the Uniform System of Accounts and Records and Reporting System;
- Clarify the procedures UMTA will follow in keeping reporting agencies informed of changes and updates to the section 15 requirements; and
- Clarify the procedures UMTA will follow for late, incomplete, uncertified, or inaccurate Section 15 Reports.

In addition to its publication in the **Federal Register**, UMTA sent the NPRM to every section 15 reporting agency. UMTA received 11 written comments in response to the NPRM. The comments were submitted by 8 transit operating agencies, 1 public transportation authority, 1 state Department of Transportation, and 1 public transit trade organization. In general, each comment supported some of the proposed changes and objected to, raised concerns with, or offered alternatives to some of the others. The comments were carefully considered by UMTA in formulating this final rule.

Additionally, this final rule is set forth in conjunction with UMTA's publication elsewhere in the **Federal Register** today of a Final Notice that announces several changes to the data submissions for the section 15 Uniform System of Accounts and Records and Reporting System. Those changes are being implemented to streamline data collection, recordkeeping, and reporting requirements by reducing reporting agencies' burdens while improving data reliability.

II. Summary of Changes and Comments

A. Simplication of the Rule's Structure

The NPRM proposed to replace Part 630 with a simpler regulation which would prescribe section 15 procedural requirements and would continue to require the use of the current Uniform System of Accounts and Records and the Reporting System instructions and explanatory documents. The NPRM also proposed that information on the overall structure of the Section 15 Reporting and Accounts and Records Systems be included as Appendix A to Part 630. This restructuring would create a shorter, simpler regulation setting out the procedural requirements for compliance with the Uniform System of Accounts and Records and Reporting System, and a separate, explanatory Appendix that outlines the basic elements and structure of these Systems. As with the existing rule, reporting agencies actually responsible for submitting section 15 reports would need to refer directly to the current Reference Volumes of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System. The general overview in the Appendix would provide sufficient detail to allow a reader to understand the purposes and methodology of the Uniform Accounts and Records and Reporting Systems, but would not provide enough detail for actual completion of a section 15 Report.

While commenters raised issues on specific matters discussed below, they supported this overall simplification and clarification of the procedures, and UMTA essentially has adopted the structure of the rule proposed in the NPRM.

B. Keeping the Uniform Accounts and Records System and the Reporting Instructions and Forms Current

The NPRM generally proposed a continuation of the existing procedures for changing or refining requirements and for keeping reporting agencies current. However, the proposed rule spelled out in more detail the responsibilities of the reporting agencies and UMTA. Reporting agencies would therefore be able to more clearly determine their rights and responsibilities under section 15.

In the definitions section, the NPRM referred to the "current edition" of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System and defined it as the most recently issued edition of the Uniform System of Accounts and Records and Reporting System instructions, as modified by any superseding Circulars or other written modifications, for which reasonable notice has been given. The NPRM defined "reasonable notice," for the purposes described above, to mean the following: Reporting agencies would be responsible for the information and

instructions appearing in the most recent edition of the reporting instructions if the most recent edition had been mailed to them no later than 120 days before their reporting deadline. Similarly, the NPRM proposed that reporting agencies be responsible for incorporating all minor reporting modifications about which they have received notice in writing no later than 30 days before a reporting deadline. Circulars, Manuals, and Reference Volumes will be clearly marked to indicate the documents they supersede and to explain reporting agencies' obligations.

The NPRM proposed to continue to mail copies of each new edition of the Reference Volumes, Circulars, and other reporting revisions to each "section 15 contact person" as identified in he reporting agency's most recent Section 15 Report or New Reporter Letter. Further, the NPRM proposed to publish the **Federal Register** a notice of: (a) Any new editions of the Reference Volumes, and (b) any significant corrections to the system of accounts and records and reporting instructions.

Two of the commenters were in agreement with the proposed changes, while three other commenters expressed concern about the time periods which define "reasonable notice." These commenters indicated that changes, especially significant ones, to the Uniform System of Accounts and Records and Reporting System should be mailed to the reporting agencies before the start of the affected reporting year in order to adequately prepare for such changes. UMTA understands these concerns and intends to continue the practice of issuing any significant changes to the Uniform System of Accounts and Records and Reporting System through **Federal Register** publication. This practice was followed for issuing this rulemaking as well as for issuing the "Final Notice of Changes to the Uniform System of Accounts and Records and Reporting System" published elsewhere in the **Federal Register** today. UMTA plans to continue this practice unless special circumstances such as legislative changes warrant immediate action.

These notifications referenced in the NPRM pertained primarily to those changes which do not require significant adjustments to reporting agencies' data collecting, recording, and reporting procedures. Therefore, UMTA has decided to adopt this change as proposed in the NPRM.

C. Procedures for Late, Incomplete, Uncertified, and Inaccurate Reports

The existing rule provides, in accordance with section 15 of the UMT Act, that "[f]ailure to report * * * data in the manner required * * * will make the designated recipient ineligible to receive * * *" grants. 49 CFR 630.34. The NPRM proposed to clarify the ineligibility determination procedures to ensure that affected parties have adequate notice regarding their reporting responsibilities and the consequences of failure to comply. Specifically, the NPRM proposed to address the problems of submission of late, incomplete, uncertified, and inaccurate Section 15 Reports through the following amendments:

1. Late Reports

The NPRM proposed the following procedures for handling late reports:

- Proposed § 630.6(a) would retain the 120 day deadline (i.e., that reports must be submitted no later than the 120th day after the end of the reporting agency's fiscal year).
- Proposed § 630.6(b) would treat failure to submit a report on time as failure to submit a report under § 630.5, unless the reporting agency has requested and been granted an extension of time to submit its report.
- Proposed § 630.6(c) would grant one request for a 30-day extension for good cause (i.e., for reasons other than the reporting agency's negligence) if UMTA receives the request for extension at least 30 days before the report is due.
- Proposed § 630.6(d) states that a second 30-day extension would be granted at the Administrator's discretion only upon a showing of extraordinary and unforeseeable circumstances that warrant exceptional treatment. This time extension would not be considered if it would delay apportionment of section 9 funds.

As discussed below, failure to report renders a reporting agency ineligible to receive any section 9 grants during an entire Federal fiscal year.

Various comments were submitted about the procedures proposed for handling late reports. Several expressed concern that the procedures would be too severe and objected to withholding funds for late reports. One supported the 120 day deadline while others stated it was not long enough and yet another proposed a grace period after the due date. One comment indicated that a 30 day extension was adequate while another said it was not. Several indicated that the period allowed for requesting the extension should be shorter than 30 days before the due date.

This is a critical issue. Too often in the past the annual publication of the formula apportionments in the **Federal Register** has been delayed because of late, incomplete, or inaccurate submissions, which meant that areas that *had* submitted their data on a timely basis experienced delays in funding availability because of the unresponsiveness of others. UMTA thus believes that the section 15 regulation must provide a precise schedule for the submission of reports in order for UMTA to have validated data to apportion section 9 funds in a timely manner. However, UMTA has considered the comments and concerns expressed and has made the following decisions for the final rule:

- The 120-day deadline for submitting section 15 Reports will be retained (i.e., reports must be submitted not later than the 120th day following the last day of the reporting agency's fiscal year).
- A 15-day grace period following the 120-day deadline will be provided. Reports received by UMTA within the grace period will not be considered late.
- UMTA must receive any request for extension of the time for good cause at least 15 days (instead of the 30 days proposed originally) before the report is due (not counting the grace period).
- The 30-day extension period for good cause will remain as proposed.

2. Incomplete Reports

The NPRM proposed that submission of an incomplete report be treated as failure to submit a report. A complete report was defined as a report containing all required forms listed in the current edition of the Reporting Manual. All forms submitted have to be completed in such a way that UMTA can carry out its data-gathering and analytic functions. While UMTA did not intend to classify a report as incomplete if a question or two is inadvertently omitted or an arithmetic error is uncovered, UMTA would expect a report to reflect a good faith effort on the part of the reporting agency to answer every required question accurately and completely.

Commenters expressing an opinion on incomplete reports were mostly in disagreement with the proposed procedures. Generally, these commenters stated that UMTA should not treat an incomplete report as failure to submit a report. The commenters focused on the submission or non-submission of those section 15 data items which are used to apportion section 9 funds. One commenter stated that the report should be considered complete if at least all section 9 data

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items are submitted. Several stated that UMTA had other alternatives for apportioning funds if the data were incomplete or missing. The suggested alternatives included using estimates until the final data are received and withholding funds attributable to only those data items that are missing.

While UMTA understands the concerns expressed, it must establish procedures consistent with the governing statute. Section 15 of the UMT Act specifically states that "* * * the Secretary shall not make any grants under section 5 or section 9 unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to both the reporting system and the uniform system of accounts and records * * *". In order to be in compliance, reporting agencies must submit complete reports. The clear intent of section 15 is to require entities to develop a full range of transit financial and operating statistics, and not just those data items necessary for the apportionment of section 9 funds. Consequently, UMTA has decided to adopt the NPRM language concerning treatment of an incomplete report as failure to submit a report.

Another concern expressed in a couple of comments involved the problems reporting agencies may have in submitting complete or timely data from purchased transportation contractors with less than 50 vehicles operated in maximum service. Data from these contractors are included in reporting agencies' section 15 Reports whereas data from purchased transportation contractors with 50 or more vehicles operated in maximum service are submitted directly to UMTA in separate and complete section 15 Reports. UMTA agrees that the reporting agency cannot always control the timely and complete submission of data by another organization. UMTA has therefore amended its original proposal to have it pertain only to directly-operated services in order not to adversely affect a reporting agency for an action over which it has no control.

3. Failure to Report

The NPRM proposed that failure to submit any report at all, or failure to submit a complete and timely section 15 Report, would render the reporting agency ineligible to receive any section 9 grants during the entire Federal fiscal year for which the section 15 report year data in question are used to apportion section 9 money. This would apply to all reporting agencies regardless of the size of the urbanized areas served by them. However, a reporting agency would be eligible to receive the population/ population density apportioned funds for the applicable Federal fiscal year in some future year if a complete report were received by UMTA within 120 days after the original report due date. Moveover, if a report including all data elements were received from a reporting agency serving an urbanized area of over 200,000 inhabitants within that time, an adjustment could be made using the late section 9 data in the succeeding year's apportionment to that urbanized area. If changes in the authorizing statute occurred in the intervening year, a grantee's allocation would of course be subject to any additional restrictions that Congress imposed.

Comments received concerning the failure to report expressed disagreement with UMTA's proposed denial of grants. Several commenters suggested that UMTA use estimates to compute the section 9 apportionment if no data are submitted. Another commenter proposed that withholding of funds should only apply to the submission of the section 9 data items and not to the other data in the section 15 Report. Several indicated that UMTA should only deny the funding affected by the specific data items not submitted. In other words, UMTA should provide the part of the apportionment based on population and population density factors which do not rely on data submissions. One commenter suggested that UMTA deduct a percentage from the previous year's apportionment and then withhold a portion of the apportioned funds until the report is received.

Two comments specifically addressed the 120 day period after the due date for submitting a report for eligibility and adjustment of funds in a succeeding fiscal year; one agreed with the time period and the other stated it was too rigid.

Again, similar to the discussion above regarding incomplete reports, UMTA believes that to be responsive to the precise language and intent of the law, section 9 grants should be denied to those agencies not in compliance with the Uniform System of Accounts and Records and Reporting System. An agency is demonstrating non-compliance with the Reporting System when it does not submit a complete section 15 Report within the required timetable. As noted earlier, a complete report is one which includes all required financial and operating data, not just the few data items used in the section 9 apportionment formula. Consequently, UMTA is implementing the change as originally proposed in the NPRM concerning a reporting agency's ineligibility to receive section 9 grants for failure to submit a report or failure to submit a complete or timely report. The apportionment to the reporting agency's urbanized area will still be made (using population/population density figures and data from other reporting agencies, if any) but the apportionment funding will not be available for grant award to the reporting agency directly from UMTA or through another public agency during the fiscal year of ineligibility. Such ineligibility would not affect a recipient's ability to draw down funds under an already-approved grant, but it would mean that during the year of ineligibility the reporting agency could not receive any new grants either from the current year's apportionment or from carryover funds from previous years' apportionments. In addition, UMTA has modified the proposal which would have allowed an adjustment in the succeeding year for urbanized areas with populations of 200,000 or more if the data were received within 120 days after the original due date. No such adjustment will be made. A reporting agency has ample time to submit the data in a timely fashion and if it does not do so it should not be able to receive grants for a year.

Finally, previous reference to section 5 grants has been deleted since the last possible date of a section 5 grant award was September 30, 1986.

4. Uncertified Reports

The NPRM proposed that if a reporting agency submits an otherwise complete report that has the required certification by the Chief Executive Officer (CEO) but is missing the required section 9 and/or financial certification statements by an independent auditor, the data will be included in the calculation of the urbanized area's section 9 formula apportionment. The CEO in its certification should also commit to obtain the necessary certification(s) from the independent auditor in a timely manner. However, until the validity of the data submitted has been assured through the receipt of the required certification(s) from the independent auditor, the NPRM proposed to withhold release of the section 9 apportionment attributable to the reporting agency's data. UMTA also proposed to make necessary adjustments in a future fiscal year apportionment if as a result of the auditor's certification(s) the data are changed or disputed.

There were very few comments submitted regarding these certification procedures. One commenter disagreed with the procedure of withholding funds

while another suggested withholding only 50 percent of the apportioned funds. UMTA has decided to finalize the rule concerning missing certifications to restrict the reporting agency's eligibility to receive directly or indirectly any section 9 grants until the appropriate certification(s) has (have) been received.

5. Inaccurate Data (Vehicle Revenue Miles)

The NPRM proposed procedures for resolution of possible future disagreements over vehicle revenue mile data. In the past, UMTA has experienced problems verifying this data, particularly in the area of "deadhead miles" —i.e., those miles a vehicle travels when out of service or when there is no reasonable expectation of carrying revenue passengers. Following the close of each reporting year, UMTA proposed to calculate the statistical range for vehicle miles that are vehicle revenue miles for each mode of transportation. UMTA would use these figures to screen the net vehicle revenue miles being reported by each reporting agency for the subsequent reporting year. The figures would not be made public except as described below, and in the ordinary course of compiling mass transportation information.

Upon receipt of a reporting agency's section 15 Report, UMTA would compare the percentage of total vehicle miles that are vehicle revenue miles for each mode reported to UMTA with the previous year's statistical ranges. If a reporting agency's vehicle revenue mile data are on the high side of the statistical range, UMTA would automatically initiate verifiction and calculation procedures as follows:

The Administrator would write directly to the CEO of the reporting agency, informing the CEO that the reporting agency's figure for vehicle revenue miles is too high based on statistical analyses.

The CEO would have ten days to respond and would be advised that a re-certification of the accuracy of the vehicle revenue miles must accompany the transit agency's ultimate submission of documentation. The CEO would be invited to provide UMTA with additional documentation to justify its data. Such documentation might include, among other things, route maps, locations of garages and layover points, maintenance facilities, or ridership data from the garage to the end of the line.

The Administrator would then render a decision on whether the documentation supports the vehicle revenue miles reported. If the documentation does not justify the reported figure, the Administrator would propose a new figure. At that point, the CEO would have ten days to reach agreement with the Administrator on a figure.

If the reporting agency's data do not support the reported vehicle revenue miles and the CEO rejects the Administrator's determination or fails to reach agreement on a new figure within ten working days, UMTA proposes to impute to the reporting agency the vehicle revenue miles figure originally proposed by the Administrator. The Administrator would render the decision in writing, which would constitute a final UMTA action.

Several comments were received on the procedures for resolving disputed vehicle revenue mile data. Questions were raised concerning the use of previous year's data to determine the norm by mode; several suggestions were made for using other factors, such as number of revenue vehicles, geographic size of service area, populations, etc. One commenter suggested that UMTA not implement the procedure since the data are independently certified for accuracy. Still others requested a period longer than 10 days to respond to the Administrator's proposal or asked for a clarification as to when the 10 day period begins.

UMTA has considered these comments and has decided to amend its previous proposal in the NPRM to accommodate some of the concerns raised. UMTA has made the following decisions or clarifications:

- UMTA has added a new finding to the section 9 data certification which attests to the accuracy of the deadhead miles (i.e., the difference between the total vehicle revenue miles and the total vehicle miles).
- UMTA will use a dispute resolution mechanism for vehicle revenue miles only when the section 9 data certification has not been submitted or if the certification questions (but does not dispute or claim a negative finding) the reliability of these data.
- The 10 working day period for responding to the Administrator's new vehicle revenue mile figure has been changed to 15 calendar days. This 15 day period begins on the day the reporting agency receives written notification of the Administrator's decision, and it means 15 calendar days, not business days.
- UMTA will compare the statistical ranges by mode as proposed if the dispute resolution mechanism is used.

6. Negative Certification Findings

The NPRM proposed that if an independent auditor's certification(s) of the section 9 data items indicates that any of the data do not appear accurate or have not been collected and reported in accordance with UMTA's definitions and/or confidence and precision levels, or expresses any other negative finding, such as the lack of documentation or reliable recordkeeping system, then UMTA would enter a zero for the questionable data item(s) for use in computing the section 9 apportionment.

Several commenters suggested that UMTA use a value other than zero for the questionable data items. Others expressed concern that UMTA may misinterpret an independent auditor's recommendation for improvement as a negative finding. UMTA has decided to finalize the rule concerning negative certification findings as proposed. The comments lacked any clear rationale for establishing a value other than zero to use for a questionable data item. UMTA has decided to retain the use of a zero which should motivate careful record-keeping that will save all parties concerned the costly burden of dealing with negative findings.

7. Waiver of Reporting Requirements

The NPRM proposed that waivers would be granted at the discretion of the Administrator only upon a showing that the party seeking a waiver cannot furnish the data required without unreasonable expense and inconvenience. There were no comments submitted on the proposed change. UMTA has decided to finalize the rule as proposed.

III. Appendix

Attached to the revised Part 630 is Appendix A which explains the overall structure of the section 15 Reporting and Accounts Records Systems. This Appendix provides a general overview of the Systems. It is important to emphasize that in the actual preparation of a Report, reporters must use Part 630, the Reporting Manual, and any other materials provided by UMTA. Appendix A describes the required and voluntary levels of reporting and recordkeeping used in both the Reporting and the Accounts and Records Systems. It also describes the use and structure of both the Uniform System of Accounts and Records and the Reporting System. Finally, Appendix A provides a list of required reporting forms in Table 9.

Appendix A also includes a description of the certification by an independent auditor of the section 15 data used to apportion section 9 funds to urbanized areas with a populaton greater than 200,000. UMTA is concerned about the veracity of this data and believes that this certification

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is necessary to safeguard against false and erroneous data submission which could inflate a grantee's apportionment. The proposed rule discussed the question whether its provisions were consistent with OMB Circular A-128, "Single Audits of State and Local Governments." The OMB Circular prohibits Federal agencies from adding single audit requirements over and above those required by the Circular. One commenter raised some concern about the cost of the independent certification.

After reviewing this issue UMTA believes the continuation of its practice is not in conflict with the OMB Circular because the certification of operating data by an independent auditor is not mandated as part of the Single Audit Process. While the UMTA regulation requires independent auditors to certify certain transit operating data, the grantee is able to use its own discretion as to how the certification will be obtained from independent auditors. The cost of the certification is an eligible use of grant funds which responds to the cost concern raised by the commenter. Also, since these costs are more significant for small operators, UMTA has removed the independent certification requirement for section 15 reports covering less than 50 vehicles operated in maximum service for all modes.

IV. Regulatory Impacts

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that the economic impact of this regulation is so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. To the extent the new regulation would be more easily understood and more clearly states the basic reporting procedures, it may save small entities time in determining their rights and responsibilities.

C. Environmental Impacts

This final regulation would not adversely affect the environment.

D. Paperwork Reduction Act

The collection of information requirements in the present rule are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35.

These requirements were submitted to and approved by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The OMB approval number is 2132–0008. As the final rule does not affect the approved reporting requirements now required by existing Part 630, UMTA has determined that there are no new information collection requirements.

List of Subjects in 49 CFR Part 630

Mass transportation, Reporting and record keeping requirements, Uniform System of Accounts.

V. Revision of 49 CFR Part 630

Based on the comments received and UMTA experience in administering the section 15 program, UMTA is revising the procedures applicable to the Uniform System of Accounts and Records and Reporting System as set forth below. Accordingly, 49 CFR Chapter VI is amended by revising Part 630 to read as follows:

PART 630—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS AND REPORTING SYSTEM

Sec.

630.1 Purpose.
630.2 Scope.
630.3 Definitions.
630.4 Requirements.
630.5 Failure to report data.
630.6 Late and incomplete reports.
630.7 Inaccurate data.
630.8 Negative certification findings.
630.9 Waiver of reporting requirements.
630.10 Data adjustments.
630.11 Display of OMB control numbers.
Appendix A to Part 630—Overview and Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System

Authority: Sec. 111, Pub. L. 93–503, 88 Stat. 1573 (49 U.S.C. 1611); secs. 303(a) and 304(c), Pub. L. 97–424, 96 Stat. 2141 (49 U.S.C. 1607); and 49 CFR 1.51.

§ 630.1 Purpose.

The purposes of this part are to prescribe the requirements and procedures necessary for compliance with the Uniform System of Accounts and Records and the Reporting System which are mandated by section 15 of the Urban Mass Transportation Act of 1964 (UMT Act), as amended, 49 U.S.C. 1611, and to set forth the procedures for addressing a reporting agency's failure to comply with these requirements.

§ 630.2 Scope.

These regulations apply to all applicants and beneficiaries of Federal financial assistance under section 9 of the UMT Act (49 U.S.C. 1604 and 1607).

§ 630.3 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), are used in this part as so defined.

(b) Terms defined in the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System are used in this part as so defined.

(c) For purposes of this part:

"Administrator" means the Urban Mass Transportation Administrator or the Administrator's designee.

"Applicant" means an applicant for assistance under section 9 of the UMT Act.

"Assistance" means Federal financial assistance for the acquisition, construction, or operation of public mass transportation services.

"Beneficiary" means any organization operating and delivering urban transit services that receives benefits directly from assistance under section 9 of the UMT Act.

"Chief Executive Officer" means the principal executive in charge of and responsible for the transit or reporting agency.

"Current Edition" of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System means the most recently issued edition of the Reference Volumes, as modified by any Circulars or other written modifications, about which the reporting agency has received reasonable notice. For the Reference Volumes, "reasonable notice" is given for the applicable report if the most recent edition is mailed to the reporting agency at least 120 days before the agency's reporting deadline. For Circulars and other written modifications, "reasonable notice" is given if the reporting agency is mailed the modifications at least 30 days before a reporting deadline. However, UMTA reserves the right to waive these notice requirements in unique cases that require immediate implementation (such as a change in the statute).

"Days" means calendar days.

"Deadhead miles" means the miles a vehicle travels when out of service, i.e., returning to the garage, changing routes, etc., or when there is no reasonable expectation of carrying revenue passengers. The total miles traveled by

revenue vehicles consist of miles traveled when in revenue service *and* these deadhead miles.

"Mass Transportation Agency" or "transit agency" means an agency authorized to transport people by bus, rail, or other conveyance, either publicly or privately owned, and which provides to the public general or special service (but not including school, charter, or sightseeing service) on a regular and continuing, scheduled or unscheduled, basis. Transit agencies are classified according to the mode of transit service operated. A multi-mode transit agency is one operating two or more modes, as such modes are defined in the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

"Metropolitan Planning Organization" means the organization designated by the Governor as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134 (Federal-Aid Highway Planning Requirements) and capable of meeting the requirements of 49 U.S.C. 1607(a) (Urban Mass Transportation Planning Requirements). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

"Reference Volume(s)" means the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records, which is composed of Volume I—General Description; Volume II—Uniform System of Accounts and Records; and Reporting Manual and Sample Forms (All Reporting Levels). These Volumes are subject to periodic revision. Beneficiaries and applicants are responsible for ensuring that they are using the current edition of the Reference Volumes.

"Reporting agency" means the agency required to submit a report under section 15.

"The UMT Act" means the Urban Transportation Act of 1964, as amended. (49 U.S.C. 1601 et seq.)

"Vehicle revenue miles" means the miles a vehicle travels when in revenue service. A transit vehicle is in revenue service only when the vehicle is available to the public and there is reasonable expectation of carrying passengers that either directly pay fares, are subsidized by public policy, or provide payment through some contract arrangement.

§ 630.4 Requirements.

(a) *Uniform System of Accounts and Records.* Each applicant for and direct beneficiary of Federal financial assistance under the UMT Act must comply with the applicable requirements of the section 15 Uniform System of Accounts and Records, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(b) *Reporting System.* Each applicant for and direct beneficiary of Federal financial assistance under the UMT Act must comply with the applicable requirements of the section 15 Reporting System, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(c) *Copies.* Copies of the referenced documents are available from the Urban Mass Transportation Administration, Office of Grants Management, Audit Reviews and Analysis Division (UGM–13), 400 7th Street SW., Room 9315, Washington, DC 20590. These materials are subject to periodic revision. Revisions of these documents will be mailed to all persons required to comply, and a Notice of any significant change in these materials will be published in the Federal Register.

§ 630.5 Failure to report data.

(a) *Declaration of ineligibility.* Failure to report data in accordance with this Part and the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System will result in the Administrator declaring the reporting agency ineligible to receive directly or indirectly (e.g., a public agency receiving UMTA funds through another public agency rather than directly from UMTA) any section 9 grants during an entire Federal fiscal year. This shall be the fiscal year for which the section 9 apportionment is based, in part, on data from the prior section 15 reporting year for which the agency failed to submit a report. This ineligibility applies to all reporting agencies without regard to the size of the urbanized area served by the reporting agency.

(b) *Notification of ineligibility.* A reporting agency which fails to report data in accordance with this Part shall receive written notification from the Administrator of its ineligibility to receive any section 9 grants in the particular fiscal year.

(c) *Status of ineligibility declaration.* Notification to a reporting agency of its ineligibility for section 9 grants will constitute a final UMTA action.

§ 630.6. Late and incomplete reports.

(a) A report is to be received by UMTA not later than the 120th day following the last day of the reporting agency's fiscal year.

(1) There is an automatic 15 day grace period immediately following the 120 days after the reporting agency's fiscal year in which UMTA will accept receipt of a Section 15 Report without the report being considered late.

(2) Failure to submit the required report by the date due or last day of the grace period will be treated under § 630.5 as failure to report data.

(3) An extension of 30 days after the due date provided for in section 630.6(a) may be requested by a reporting agency. UMTA shall consider such a request only if it is received at least 15 days in advance of the original due date. UMTA shall grant one 30-day extension upon a showing of good cause. Administrative convenience of the reporting agency does not constitute good cause.

(4) A second 30-day extension after the due date provided for in § 630.6(a) will be granted at the Administrator's discretion only where unforseeable circumstances beyond the reporting agency's control have made it impossible to meet the due date. No second extensions will be granted if they would delay the apportionment of formula grants to other grantees.

(b) *Incomplete Reports.* Omissions other than missing auditors' section 9 data certifications and financial certifications.

(1) Submission of a report which does not contain all of the required reporting forms, data, or Chief Executive Officer certification for services directly operated by the reporting agency in substantial conformance with the definitions, procedures, and format requirements set out in the section 15 Uniform System of Accounts and Records and Reporting System shall be treated under § 630.5 as failure to report data.

(2) The Administrator may, at the Administrator's discretion, treat an incomplete report as defined in § 630.6(b)(i) as a request for up to a thirty day extension. The extension will be effective on the date of UMTA's written notification letter to the reporting agency that the report is incomplete. Failure to adequately respond to the issues in UMTA's notification letter within the time frame specified will be treated under § 630.5 as failure to report data.

(3) Submission of a Report with incomplete data or missing forms for services provided under contract to the reporting agency by private or public

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carriers shall not be treated under § 630.5 as failure to report data.

(4) Submission of a Report which does not contain the statement from the Metropolitan Planning Organization (MPO) or a late or incomplete MPO statement shall not be treated as failure to report data under § 630.5.

(c) *Incomplete Reports—Auditor Certification.* (1) Submission of an otherwise complete Report that does not contain an independent auditor's certification of the data used to compute section 9 apportionments and of the financial data, if required, but that contains the required certification by the Chief Executive Officer and commitment to obtain the required auditor's certification(s) in a timely manner, will result in the Administrator's including the data in the calculation of the urbanized area's section 9 apportionment but withholding any new grants to the reporting agency until after proper certification(s) has (have) been received and accepted by the Administrator. Reporting agencies should submit reports on time, even if the certifications are not completed or if local activities are underway to resolve auditor disputes of the data reported.

(2) If as a result of the auditor's certification(s) the data are changed or disputed, UMTA shall make necessary adjustments in a future year's apportionment.

§ 630.7 Inaccurate data.

(a) *Vehicle Revenue Miles.* (1) A transit agency's vehicle revenue mile data may be rebuttably presumed to be erroneous if the independent auditor's section 9 data certification is not submitted or if the independent auditor's section 9 data certification questions (without a negative certification finding) the reliability of these data. In such cases, statistical checks to validate these data will be performed for each mode to determine if the data vary by a significant amount on the high side from the previous year's national data set for that mode. The previous year's statistical ranges will be determined by the Administrator for each transit mode for which a Section 15 Report is required to be filed.

(2) If the portion of a reporting agency's total vehicle miles which are considered in revenue service varies significantly on the high side from an analysis of the previous year's data, the Administrator will send written notice to the agency's Chief Executive Officer, notifying the Officer of that fact, and that:

(i) The transit agency's submission has triggered a rebuttable presumption of error and has prompted a request for additional documentation to rebut the presumption;

(ii) The Chief Executive Officer is invited to submit, within 15 days of receipt of the notice, further documentation in support of the vehicle revenue mile data initially submitted. Such documentation:

(A) Must include a re-certification or attestation of accuracy, signed by the Chief Executive Officer, in order to receive consideration; and

(B) May include, for example: Route maps; locations of garages and/or layover points; locations of maintenance facilities; and ridership data covering distances from the garage to the end of the line.

(3) If the Administrator receives additional documentation and re-certification from the Chief Executive Officer within the 15 day time limit, the Administrator will review the documentation and make a determination as to whether the reporting agency has adequately justified the data.

(i) If the Administrator is satisfied that the documentation supports the vehicle revenue mile data, the Administrator will accept the report as submitted and so notify the agency in writing.

(ii) If the Administrator determines that the documentation supports a vehicle revenue mile figure different from that submitted by the reporter, the Administrator will notify the reporter's Chief Executive Officer in a certified letter of the figure the Administrator deems appropriate and will invite the reporting agency to accept the determination.

(4) The Chief Executive Officer will have 15 days from the date of receiving the Administrator's letter to resolve with the Administrator a final figure for vehicle revenue miles. Lacking agreement on a new figure, UMTA will use the figure in the Administrator's letter for section 9 formula purposes.

(i) The figures used for section 9 purposes will also be used in the processing and publishing of the section 15 Annual Report.

(ii) The reporting agency may request that this item be given special attention in the next triennial review of the agency. Should an adjustment be warranted based on that review, this will be accommodated in a future year section 9 apportionment to the extent feasible.

(iii) The use of the vehicle revenue mile figure in the Administrator's letter will constitute a final UMTA action.

(b) *Failure to respond to data validation questions.* UMTA either directly or through a contractor will review each Section 15 Report to verify the reasonableness of the data submitted. If any of the data does not appear reasonable, UMTA or its contractor will notify the reporting agency of this fact and request justification to document the accuracy of the questioned data. Failure of a reporting agency to make a good faith response to this request will be treated under § 630.5 as failure to report data.

§ 630.8 Negative certification findings.

UMTA will enter a zero for use in computing the section 9 apportionment for any questionable data item(s) in a reporting agency's Section 15 Report if the independent auditor's section 9 data certification for that Report indicates that any of the data do not appear accurate or have not been collected and reported in accordance with UMTA's definitions and/or confidence and precision levels, or expresses any other negative finding, such as the lack of adequate documentation or a reliable recordkeeping system.

§ 630.9 Waiver of reporting requirements.

(a) Request for waivers of reporting requirements must be received 60 days before the due date in order to receive consideration.

(b) The Administrator may, at the Administrator's discretion, consider a waiver request or grant a waiver on the Administrator's own initiative not received 60 days in advance if good cause is shown by the requesting party.

(c) Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a showing that the party seeking the waiver cannot furnish the data required without unreasonable expense and inconvenience.

§ 630.10 Data adjustments.

Errors in the data used in making the apportionment may be discovered after any particular year's apportionment is completed. If so, UMTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

§ 630.11 Display of OMB control numbers.

All of the information collection requests in this part have been approved by the Office of Management and Budget under control number 2132–0008.

Appendix A to Part 630—Overview and Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System

A. Introduction

Section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), provides for establishment of two information-gathering analytic systems: A Uniform System of Accounts and Records, and a Reporting System for the collection and dissemination of public mass transportation financial and operating data by uniform categories. The purpose of these two systems is to provide information on which to base public transportation planning and public sector investment decisions. The section 15 program is administered by the Urban Mass Transportation Administration (UMTA).

The Uniform System of Accounts and Records consists of:

- Various categories of accounts and records for classifying financial and operating data;
- Precise definitions as to what data elements are to be included in these categories; and
- Definitions of practices for systematic collection and recording of such information.

While a specific accounting system is recommended for this recordkeeping, it is possible to make a translation from most existing accounting systems to comply with the *Section 15 Reporting System*, which consists of forms and procedures:

- For transmitting data from transit agencies to UMTA;
- For editing and storing the data; and
- For UMTA to report information to various groups.

Under the terms of UMT Act section 15, all applicants for and beneficiaries of Federal assistance under section 9 of the Act (i.e., under the formula grant programs) must comply with the Reporting System and the Uniform System of Accounts and Records in order to be eligible for Federal grants. It should be noted that separate and complete Section 15 Reports must be submitted by or for each purchased transportation service provider that operates 50 or more revenue vehicles for the purchased service during the maximum service period.

B. Purpose of this Appendix

This Appendix presents a general introduction to the structure and operation of the two systems. It is not a detailed set of instructions for completion of a section 15 Report establishment of a System of Accounts and Records. Persons in need of more information should refer to the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System, available from:

Urban Mass Transportation Administration, Office of Grants Management, Audit Review & Analysis Division (UGM–13), 400 Seventh Street SW., Room 9315, Washington, DC 20590, (202) 366–1610

The current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System is composed of:

Volume I—General Description (Jan. 10, 1977)
Volume II—Uniform System of Accounts and Records (Jan. 10, 1977)
Reporting Manual and Sample Forms (All Reporting Levels) (April 1987)

UMTA periodically updates these reference documents or supplements them to revise or clarify section 15 definitions and reporting forms and instructions. Section 630.4 makes clear that reporting agencies must use the most recent edition of the reference documents and reporting forms to comply with the section 15 requirements. UMTA therefore urges local officials to check with UMTA before completing a section 15 Report to avoid unnecessary effors and delays.

C. Special (Reduced) Reporting Requirements

The unique characteristics of certain transportation modes require UMTA to tailor certain information collection and recording requirements and reporting forms to such modes. Until the 1987 report year, there were specific reduced reporting requirements for commuter rail systems and vanpool services.

Thus, reporting agencies that operated commuter rail systems or vanpool services complied with the applicable requirements contained in the reference volumes and special supplementary publications. Copies of these documents are available from UMTA.

D. Required and Voluntary Levels of Reporting and Recordkeeping

UMTA, in close cooperation with the transit industry, developed both systems to be adaptable to the varying sizes of transit agencies. The systems also provide for the varying levels of recordkeeping specificity and complexity that are necessary to accommodate variations in size, local laws, and modes of transport. All transit agencies covered by the section 15 reporting and recordkeeping requirements must maintain at least a minimum level of detail in their Section 15 Reports and Accounts and Records Systems. This minimal level is designated R (or Required). The Uniform Systems set out three additional, and progressively more detailed, levels of reporting and keeping records on revenue and expense data. The most detailed of these levels indicates the subcategories of data that should be aggregated to record each object class or expense function at the other levels and thus serves to define the more aggregated data. The definitions for the required data are consistent with and summarized from those for the more extensive voluntary data. Reporting agencies voluntarily may adopt these levels (or modify them to suit local needs). The three voluntary reporting and recordkeeping levels are designated Level C (least detailed), Level B (next most detailed) and Level A (most detailed).

E. The Uniform System of Accounts and Records

The Uniform System of Accounts and Records consists of a financial accounting and operational recordkeeping system designed for mass transportation manager and planners. Its uniformity permits more thorough and accurate comparisons and analyses of different transit agencies' operating costs and efficiencies than if each had a unique recordkeeping and accounting system. The system establishes various categories of accounts and records for classifying mass transportation operating and financial data, and includes precise definitions of transportation terminology to ensure that all users share a common understanding of how to use and interpret the data collected.

(1) Use of the Accounts and Records System

Beneficiaries of and applicants for Federal assistance are not required to use the Uniform System of Accounts and Records in keeping their own records. If an applicant or beneficiary chooses not to use the System, however, it must nevertheless be able to translate its accounts and records system to the accounts prescribed in the System. The accounting system that the reporter uses must permit preparation of financial and operating data that conforms to the Uniform System directly from its records at the end of the fiscal year, and must be consistent with the following:

(i) The data must have been developed using the accrual basis of accounting. Those transit systems that use cash-basis accounting, in whole or in part, will have to make work sheet

adjustments in their account books to record the data on the accrual basis.

(ii) Reporting agencies must follow or be able to directly translate their system to the accounting treatment specified in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

(iii) The reporting agency's accounting categories (chart of accounts) must be correctly related, via a clear audit trail, to the accounting categories prescribed in the Uniform System of Accounts and Records and Reporting System.

(2) General Structure of Uniform Accounts and Records System

In the section 15 System, operating expenses incurred by the transit system are classified by mode. The expenses of each mode are recorded in two dimensions:

(i) The type of expenditure (expense object class); and

(ii) The function or activity performed.

The expense object classes are typical of those of most transit accounting systems. Table 1 presents the expense object classes required under section 15. Table 2 is a more detailed list which includes recommended expense object classes that have been developed to assist reporting agencies in implementing the section 15 requirements. Discussion about the remaining tables appears before each table.

Table I—Required Expense Object Classes

Expense Object Classes

501. Labor
- 01 Operators' Salaries and Wages
- 02 Other Salaries and Wages

502. Fringe Benefits
503. Services
504. Materials and Supplies
- 01 Fuel and Lubricants
- 02 Tires and Tubes
- 99 Other Materials and Supplies

505. Utilities
506. Casualty and Liability Costs
507. Taxes
508. Purchased Transportation
- 01 Less Than 50 Vehicles
- 02 50 or More Vehicles

509. Miscellaneous Expense
510. Expense Transfers
511. Interest Expenses
512. Leases and Rentals
513. Depreciation
- 13 Amortization of Intangibles

514. Purchase Lease Payments
515. Related Parties Lease Agreement
516. Other Reconciling Items

Table 2—Recommended Expense Object Classes

Recommended Expense Object Classes

501. Labor [1]
- 01 Operators' Salaries and Wages [1]
- 02 Other Salaries and Wages [1]

502. Fringe Benefits [1]
- 01 FICA or Railroad Retirement
- 02 Pension Plans (including long-term disability insurance)
- 03 Hospital, Medical and Surgical Plans
- 04 Dental Plans
- 05 Life Insurance Plans
- 06 Short-Term Disability Insurance Plans
- 07 Unemployment insurance
- 08 Workmen's Compensation Insurance or Federal Employees Liability Act Contributions
- 09 Sick Leave
- 10 Holiday (including all premiums paid for working on holidays)
- 11 Vacation
- 12 Other Paid Absence (bereavement pay, military pay, jury duty pay, etc.)
- 13 Uniform and Work Clothing Allowances
- 14 Other Fringe Benefits
- 15 Distribution of Fringe Benefits

503. Services [1]
- 01 Management Service Fees
- 02 Advertising Fees
- 03 Professional and Technical Services
- 04 Temporary Help
- 05 Contract Maintenance Services
- 06 Custodial Services
- 07 Security Services
- 99 Other Services

504. Materials and Supplies [1]
- 01 Fuel and Lubricants [1]
- 02 Tires and Tubes [1]
- 99 Other Materials and Supplies [1]

505. Utilities [1]
- 01 Propulsion Power
- 02 Utilities Other Than Propulsion Power

506. Casualty and Liability Costs [1]
- 01 Premiums for Physical Damage Insurance
- 02 Recoveries of Physical Damage Losses
- 03 Premiums for Public Liability and Property Damage Insurance
- 04 Payouts for Uninsured Public Liability and Property Damage Settlements
- 05 Provision for Uninsured Public Liability and Property Damage Settlements
- 06 Payouts for Insured Public Liability and Property Damage Settlements
- 07 Recoveries of Public Liability and Property Damage Settlements
- 08 Premiums for Other Corporate Insurances
- 09 Other Corporate Losses
- 10 Recoveries of Other Corporate Losses

507. Taxes [1]
- 01 Federal Income Tax
- 02 State Income Tax
- 03 Property Tax
- 04 Vehicle Licensing and Registration Fees
- 05 Fuel and Lubricant Taxes
- 06 Electric Power Taxes
- 99 Other Taxes

508. Purchased Transportation [1]
- 01 Less Than 50 Vehicles [1]
- 02 50 or More Vehicles [1]

509. Miscellaneous Expense [1]
- 01 Dues and Subscriptions
- 02 Travel and Meetings
- 03 Bridge, Tunnel and Highway Tolls
- 04 Entertainment Expense
- 05 Charitable Donations
- 06 Fines and Penalties
- 07 Bad Debt Expense
- 08 Advertising/Promotion Media
- 99 Other Miscellaneous Expense

510. Expense Transfers [1]
- 01 Function Reclassifications
- 02 Expense Reclassifications
- 03 Capitalization of Nonoperating Costs

511. Interest Expenses [1]
- 01 Interest on Long-Term Debt Obligations (net of interest capitalized)
- 02 Interest on Short-Term Debt Obligations

512. Leases and Rentals [1]
- 01 Transit Way and Transit Way Structures and Equipment
- 02 Passenger Stations
- 03 Passenger Parking Facilities
- 04 Passenger Revenue Vehicles
- 05 Service Venicles
- 06 Operating Yards or Stations
- 07 Engine Houses, Car Shops and Garages
- 08 Power Generation and Distribution Facilities
- 09 Revenue Vehicles Movement Control Facilities
- 10 Data Processing Facilities
- 11 Revenue Collection and Processing Facilities
- 12 Other General Administration Facilities

513. Depreciation [1]
- 01 Transit Way and Transit Way Structures and Equipment
- 02 Passenger Stations
- 03 Passenger Parking Facilities
- 04 Passenger Revenue Vehicles
- 05 Service Vehicles
- 06 Operating Yards or Stations
- 07 Engine Houses, Car Shops and Garages
- 08 Power Generation and Distribution Facilities
- 09 Revenue Vehicle Movement Control Facilities
- 10 Data Processing Facilities
- 11 Revenue Collection and Processing Facilities
- 12 Other General Administration Facilities
- 13 Amortization of Intangibles

514. Purchase Lease Payments [1]
515. Related Parties Lease Agreement [1]
516. Other Reconciling Items [1]

[1] Denotes required object classes.

Within each object class, the Uniform System categorizes expenditures by four basic functions: Vehicle operations, vehicle maintenance, non-vehicle maintenance, and general administration. UMTA has developed the four standard functional classifications for uniformity and to enhance the usefulness of the data collected under section 15. They may differ significantly from the

classifications formerly used by transit operators (indeed, they have changed since the inception of the section 15 System), but it is hoped that use of these classifications will, over time, yield useful results.

The four functional classifications are used for recordkeeping and reporting of R- and C-level data. Levels B and A use progressively more detailed breakdowns of each function. Table 3 shows the three levels of functional classifications and how they relate to each other.

TABLE 3.—AGGREGATION OF FUNCTIONS FOR EXPENSE CLASSIFICATIONS

Level A	Level B	Level C and R
011 Transportation Administration	10 Administration of Transportation	010 Vehicle Operations
012 Revenue Vehicle Movement Control		
021 Scheduling of Transportation Operations	020 Scheduling of Transportation Operations	
031 Revenue Vehicle Operation	030 Revenue Vehicle Operation	
041 Maint. Administration—Vehicles	041 Maint. Administration-Vehicles	041 Vehicle Maintenance
051 Servicing Revenue Vehicles	050 Servicing Revenue Vehicles	
061 Insp. & Maint. of Revenue Vehicles	060 Insp. & Maint. of Revenue Vehicles	
062 Accident Repairs of Revenue Vehicles	062 Accident Repairs of Revenue Vehicles	
071 Vandalism Repairs of Revenue Vehicles	070 Vandalism Repairs of Revenue Vehicles	
081 Servicing & Fuel of Service Vehicles	080 Servicing & Fuel of Service Vehicles	
091 Insp. & Maint. of Service Vehicles	090 Insp. & Maint. of Service Vehicles	
042 Maint. Administration—Non-Vehicles	042 Maint. Administration—Non-Vehicles	042 Non-Vehicle Maint.
101 Maint. of Vehicle Movement Control Systems	100 Maint. of Vehicle Movement Control Systems	
111 Maint. of Fare Collection & Counting Equip	110 Maint. of Fare Collection & Counting Equip	
121 Maint. of Roadway & Track		
122 Maint. of Structure, Tunnels, & Subways		
123 Maint. of Passenger Stations		
124 Maint. of Operating Station Bldgs, Grounds & Equip		
125 Maint. of Garage & Shop Bldgs, Grounds & Equip	120 Maint. of Garage & Shop Bldgs, Grounds & Equip	
126 Maint. of Communication System		
127 Maint. of Gen. Admin. Bldgs, Grounds & Equip		
128 Accident Repairs of Bldgs, Grounds & Equip		
131 Vandalism Repairs of Bldgs, Grounds & Equip	130 Vandalism Repairs of Bldgs, Grounds & Equip	
141 Operation & Maint. of Electric Power Facilities	140 Operation & Maint. of Electric Power Facilities	
145 Preliminary Transit System Development	145 Preliminary Transit System Development	160 Gen. Administration
151 Ticketing & Fare Collection	150 Ticketing & Fare Collection	
161 System Security		
165 Injuries & Damages		
166 Safety		
167 Personnel Administration		
168 General Legal Services		
169 General Insurance		
170 Data Processing	160 General Administration	
171 Finance & Accounting		
172 Purchasing & Stores		
173 General Engineering		
174 Real Estate Management		
175 Office Management & Services		
176 General Management		
162 Customer Services		
163 Promotion		
164 Market Research	179 Marketing	
177 Planning		
181 General Function	180 General Function	

Table 4 presents the revenue object classes required under section 15. Table 5 is a more detailed list which includes recommended revenue object classes that have been developed to assist reporting agencies in implementing the section 15 requirements.

Table 4.—Required Revenue Object Classes

Required Revenue Object Classes

401. Passenger Fares for Transit Service
402. Special Transit Fares
403. School Bus Service Revenues
404. Freight Tariffs
405. Charter Service Revenues
406. Auxiliary Transportation Revenues
407. Nontransportation Revenues
408. Taxes Levied Directly by Transit System
409. Local Cash Grants and Reimbursements
410. Local Special Fare Assistance
411. State Cash Grants and Reimbursements
412. State Special Fare Assistance
413. Federal Cash Grants and Reimbursements
430. Contributed Services
440. Subsidy From Other Sectors of Operations

Table 5.—Recommended Revenue Object Classes

Recommended Revenue Object Classes

401. Passenger Fares for Transit Service [1]
  01 Full Adult Fares
  02 Senior Citizen Fares
  03 Student Fares
  04 Child Fares
  05 Handicapped Rider Fares
  06 Park and Ride—Parking Revenues Only
  99 Other Primary Ride Fares
402. Special Transit Fares [1]
  01 Contract Fares for Postmen
  02 Contract Fares for Policemen
  03 Special Route Guarantees
  04 Other Special Contract Transit Fares—State and Local Government
  05 Other Special Contract Transit Fares—Other Sources
  07 Non-Contract Special Service Fares
403. School Bus Service Revenues [1]
  01 Passenger Fares from School Bus Service
404. Freight Tariffs [1]
  01 Hauling Freight
405. Charter Service Revenues [1]
  01 Passenger Fares from Charter Service
406. Auxiliary Transportation Revenues [1]
  01 Station Concessions
  02 Vehicle Concessions
  03 Advertising Services
  04 Automotive Vehicle Ferriage
  99 Other Auxiliary Transportation Revenues
407. Nontransportation Revenues [1]
  01 Sales of Maintenance Services
  02 Rental of Revenue Vehicles
  03 Rental of Buildings and Other Property
  04 Investment Income
  05 Parking Lot Revenue
  99 Other Nontransportation Revenues
408. Taxes Levied Directly by Transit System [1]
  01 Property Tax Revenue
  02 Sales Tax Revenue
  03 Income Tax Revenue
  04 Payroll Tax Revenue
  05 Utility Tax Revenue

[1] Denotes required object classes.

99 Other Tax Revenue
409. Local Cash Grants and Reimbursements [1]
01 General Operating Assistance
02 Special Demonstration Project Assistance—Local Projects
03 Special Demonstration Project Assistance—Local Share for State Projects
04 Special Demonstration Project Assistance—Local Share for UMTA Projects
05 Reimbursement of Taxes Paid
06 Reimbursement of Interest Paid
07 Reimbursement of Transit System Maintenance Costs
08 Reimbursement for Snow Removal Costs
09 Reimbursement of Security Costs
99 Other Financial Assistance
410. Local Special Assistance [1]
01 Handicapped Citizen Fare Assistance
02 Senior Citizen Fare Assistance
03 Student Fare Assistance
99 Other Special Fare Assistance
411. State Cash Grants and Reimbursements [1]
01 General Operating Assistance
03 Special Demonstration Projects Assistance—State Projects
04 Special Demonstration Project Assistance—State Share for UMTA Projects
05 Reimbursement of Taxes Paid
06 Reimbursement of Interest Paid
07 Reimbursement of Transit System Maintenance Costs
09 Reimbursement of Security Costs
99 Other Financial Assistance
412. State Special Fare Assistance [1]
01 Handicapped Citizen Fare Assistance
02 Senior Citizen Fare Assistance
03 Student Fare Assistance
99 Other Special Fare Assistance
413. Federal Cash Grants and Reimbursements [1]
01 General Operating Assistance
04 Special Demonstration Project Assistance
99 Other Financial Assistance
430. Contributed Services [1]
01 State and Local Government
02 Contra Account for Expense
440. Subsidy From Other Sectors of Operations [1]
01 Subsidy from Utility Rates
02 Subsidy from Bridge and Tunnel Tolls
99 Other Subsidies

Table 6 presents the classification for assets, liabilities and capital accounts required under section 15. Table 7 is a more detailed list which includes recommended balance sheet accounts that have been developed to assist reporting agencies in implementing the section 15 requirements.

Table 6.—Required Balance Sheet Object Classes

Required Balance Sheet Object Classes

Assets

101. Cash and Cash Items
102 Receivables
103. Materials and Supplies Inventory
104. Other Current Assets
105. Work in Progress
111. Tangible Transit Operating Property
03 Accumulated Depreciation
112. Tangible Property Other Than for Transit Operations
02 Accumulated Depreciation
121. Intangible Assets
06 Accumulated Amortization
131. Investments
141. Special Funds
151. Other Assets

Liabilities

201. Trade Payables
202. Accrued Payroll Liabilities
203. Accrued Tax Liabilities
204. Short-term Debt
205. Other Current Liabilities
211. Advances Payable
221. Long-Term Debt
231. Estimated Liabilities
241. Deferred Credits

Capital

301. Public (Governmental) Entity Ownership
302. Private Corporation Ownership
303. Private Noncorporate Ownership
304. Grants, Donations and Other Paid-In Capital
305. Accumulated Earnings (Losses)

Table 7.—Recommended Balance Sheet Object Classes

Recommended Balance Sheet Object Classes

Assets

101. Cash and Cash items [1]
01 Cash
02 Working (Imprest) Funds
03 Special Deposits, Interest
04 Special Deposits, Dividends
05 Special Deposits, Other
06 Temporary Cash Investments
102. Receivables [1]
01 Accounts Receivable
02 Notes Receivable
03 Interest and Dividends Receivable
04 Receivables from Associated Companies
05 Receivable Subscriptions to Capital Stock
06 Receivables for Capital Grants
07 Receivables for Operating Assistance
08 Other Receivables
09 Reserve for Uncollectible Accounts
103. Materials and Supplies Inventory [1]
104. Other Current Assets [1]
105. Work in Progress [1]
01 Unbilled Work for Others
02 Capital Projects
111. Tangible Transit Operating Property [1]
01 Property Cost
02 Leased-Out Property Cost
03 Accumulated Depreciation [1]
112. Tangible Property Other Than for Transit Operations [1]
01 Property Cost
02 Accumulated Depreciation [1]
121. Intangible Assets [1]
01 Organization Costs
02 Franchises
03 Patents
04 Goodwill
05 Other Intangible Assets
06 Accumulated Amortization [1]
131. Investments [1]
01 Investments and Advances, Associated Companies
02 Other Investments and Advances
03 Reserve for Revaluation of Investments
141. Special Funds [1]
01 Sinking Funds
02 Capital Asset Funds
03 Insurance Reserve Funds
04 Pension Funds
05 Other Special Funds
151. Other Assets [1]
01 Prepayments
02 Miscellaneous Other Assets

Liabilities

201. Trade Payables [1]
01 Accounts Payable
02 Payables to Associated Companies
202. Accrued Payroll Liabilities [1]
203. Accrued Tax Liabilities [1]
204. Short-Term Debt [1]
01 Notes Payable
02 Matured Equipment and Long-Term Obligations
03 Unmatured Equipment and Long-Term Obligations, Current Portion
04 Matured Interest Payable
05 Accrued Interest Payable
06 Current Pension Liabilities
205. Other Current Liabilities [1]
01 Unredeemed Fares
02 C.O.D.s Unremitted
03 Dividents Declared and Payable
04 Short-Term Construction Liabilities
05 Miscellaneous Other Current Liabilities
211. Advances Payable [1]
01 Advances Payable to Associated Companies
02 Other Advances Payable
221. Long-Term Debt [1]
01 Equipment Obligations
02 Bonds
03 Receivers' and Trustees' Securities
04 Long-Term Construction Liabilities
05 Other Long-Term Obligations
06 Unamortized Debt Discount and Expense
07 Unamortized Premium on Debt
08 Reacquired and Nominally Issued Long-Term Obligations
231. Estimated Liabilities [1]
01 Long-Term Pension Liabilities
02 Uninsured Public Liability and Property Damage Losses
03 Other Estimated Liabilities
241. Deferred Credits [1]

Capital

301. Public (Governmental) Entity Ownership [1]
302. Private Corporation Ownership [1]
01 Preferred Capital Stock
02 Common Capital Stock
03 Premiums and Assessments on Capital Stock
04 Discount on Capital Stock

[1] Denotes required object classes.

05 Commission and Expense on Capital Stock
06 Capital Stock Subscribed
07 Reacquired Securities
08 Nominally Issued Securities
303. Private Noncorporate Ownership [1]
01 Sole Proprietorship Capital
02 Parnership Capital
304. Grants, Donations and Other Paid-In Capital[1]
01 Federal Government Capital Grants
02 State Government Capital Grants
03 Local Government Capital Grants
04 Nongovernmental Donations and Other Paid-in Capital
305. Accumulated Earnings (Losses) [1]
01 Accumulated Earnings (Losses)
02 Dividend Appropriations
03 Restricted Accumulated Earnings

The Uniform System of Accounts and Records also includes collecting and recording of certain operating data elements. The required operating data elements are listed in Table 8.

TABLE 8—Required Operating Data Elements

Basic Information
Transit System Identification
Contractual Relationship Identification
Vehicles (for Directly Operated and Purchased Transportation Services) Operated in and Available for Maximum Service by Mode, Vehicle Type, and Ownership Identification
Supplementary Information
Summary of Statistics Used for the section 9 Apportionment by Mode, Fixed Guideway and Nonfixed Guideway Operations, Type of Service, and Urbanized Area
Service Periods
Revenue Vehicles Maintenance Performance and Energy Consumption
Roadcalls for Mechanical Failure
Roadcalls for Other Reasons
Labor Hours for Inspection and Maintenance
Number of Light Maintenance Facilities
Energy Consumption[1]
Transit Way Mileage
Fixed Guideway Classifications for Rail and Nonrail Modes
Directional Route Miles
Miles of Track
Number of Crossings
Number of Stations
Employee Equivalents
Operating and Capital Employee Equivalents for Labor Classifications
Service Supplied
Number of Vehicles, Trains, and Passenger Cars in Operation
Total Actual Vehicle, and Passenger Car Revenue Miles
Total Scheduled Vehicle, and Passenger Car Revenue Miles
Total Actual Vehicle, Train, and Passenger Car Revenue Miles
Miles of Charter and School Bus Service
Total Actual Vehicle, Train, and Passenger Car Revenue Hours
Total Actual Vehicle, Train, and Passenger Car Hours
Hours of Charter and School Bus Service
Service Consumed
Unlinked Passenger Trips
Passenger Miles (These data must meet prescribed precision and confidence levels only every three years, beginning with the 1987 reporting year, for reporting agencies that serve urbanized areas of less than 500,000 population, or reporting agencies that directly operate 50 of fewer revenue vehicles for all modes in maximum service, or purchased transportation service, i.e., private or public carrier providing transit service under contract to a public agency, *except* those purchased transportation services submitting separate Section 15 Reports)
Service Personnel Classifications
Service Operated and Nonoperated (Days) Classifications
Revenue Vehicle Inventory

[1] Denotes requires object classes.

The definitions for the above expense object classes, functions, revenue object classes, balance sheet object classes, and operating date elements are contained in the Reference Volumes.

F. The Reporting System

(1) The Section 15 Reporting System consists of forms and procedures for transmitting data from transit agencies to UMTA. All beneficiaries of Federal financial assistance must submit the required forms and information in order to allow UMTA to: (1) Store and generate data and information on the Nation's mass transportation systems; and (2) (for urbanized areas of 200,000 or more inhabitants) calculate the apportionment allocations for the section 9 formula grant program. Agencies submitting Section 15 Reports may only submit data for transit services which they directly operate and purchase under contract from public agencies and/or private carriers. Separate and complete Section 15 Reports must be submitted by or for each purchased transportation service provider that operates 50 or more revenue vehicles for the purchased service during the maximum service period. The reporting requirements include the following major segments, which are based on information assembled through the Uniform System of Accounts and Records:

1. Balance sheet
2. Revenue report
3. Expense report
4. Nonfinancial operating data reports
5. Miscellaneous auxiliary questionnaires and subsidiary schedules
6. Data certifications
7. Metropolitan Planning Organization statement

(2) The following Table 9 lists all reporting forms required to be filed (R-Level) by all reporting agencies:

Table 9.—Required-Level Reporting Forms

Basic Information Forms

Transit System Identification Schedule
Contractual Relationship Identification Schedule
Maximum Service Vehicles Summary Schedule—Directly Operated Service
Maximum Service Vehicles Summary Schedule—Purchased Transportation
Supplemental Information Schedule
Section 9 Statistics Summary

Capital Report Forms

Balance Sheet Summary Schedule
Capital Subsidiary Schedule—Sources of Public Capital Assistance

Revenue Report Forms

Revenue Summary Schedule
Revenue Subsidiary Schedule—Sources of Public Assistance

Expense Report Forms

Expenses Classified by Function
Operators Wages Subsidiary Schedule [1]
Fringe Benefits Subsidiary Schedule [1]
Pension Plan Questionnaire[1]

Non-Financial Operating Data Report Forms

Transit System Service Period Schedule
Revenue Vehicle Maintenance Performance and Energy Consumption Schedule
Transit Way Mileage Schedule
Transit System Employee Equivalent Schedule
Transit System Accidents Schedule
Transit System Service Supplied, Service Consumed, Service Personnel and Service Operated Schedule [2]
Revenue Vehicle Inventory Schedule

(3) The Section 15 Reporting System includes several data certification requirements.

(a) Financial Data Certification

Reporting agencies must submit with their Section 15 Report a letter or report signed by an independent public accountant or other responsible independent entity such as a State audit agency. This statement must attest to the conformity, in all material respects

[1] Reporting agencies with 25 or fewer revenue vehicles for all modes directly operated in maximum service are not required to submit this Form.

[2] Reporting agencies that serve urbanized areas of less than 500,000 population, or reporting agencies in any size urbanized area that directly operate 50 or fewer revenue vehicles for all modes in maximum service, or purchased transportation services (i.e., private or public carriers providing transit service under contract to a public agency) except those purchased transportation services submitting separate Section 15 Reports are required to collect Service Consumed data for passenger miles using statistically valid sampling procedures meeting prescribed precision and confidence levels every third year, beginning with the 1987 reporting year.

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of the financial data reporting forms in the Section 15 Report with the Uniform System of Accounts and Records and Reporting System. The letter or report shall also state whether any of the reporting forms do not conform to the section 15 requirements, and describe the discrepancies.

A reporting agency need not submit the above financial data certification if it meets the criteria in either Condition I or Condition II below.

Condition I. The financial data certification requirement is waived until further notice for those reporting agencies that have adopted the Uniform System of Accounts and Records, and have previously submitted a Section 15 Report compiled using the Uniform System of Accounts and Records and certified by an independent auditor. Instead, the CEO shall annually certify that the accounting system from which the Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records.

Condition II. The financial data certification requirement is waived until further notice for those reporting agencies that (1) use an internal accounting system other than the accounting system prescribed by the Uniform System of Accounts and Records, (2) use the accrual basis of accounting, (3) directly translate their system and accounting categories, via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records, and (4) have previously submitted a Section 15 Report which was compiled using the same internal accounting system and translation to the Uniform System of Accounts and Records and which was certified by an independent auditor. Instead, the CEO shall annually certify that each of the above four criteria have been met.

UMTA reserves the right to periodically require independent financial data certifications from all section 15 reporting agencies on an as needed basis for reasons such as finding numerous reporting inaccuracies or as the result of implementing substantial changes to the Section 15 Uniform System of Accounts and Records and Reporting System.

A suggested form of a financial data certification letter or report follows:

"In connection with our regular examination of the financial statements of _____, for the year ended _____, on which we have reported separately under date of _____, we have also reviewed the reporting forms listed below and included in the _____ report for the year ended _____, required under section 15 of the Urban Mass Transportation Act, for conformity in all material respects with the requirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did not make a detailed examination such as would be required to determine that each transaction has been recorded in accordance with the Uniform System of Accounts and Records.

List of Reporting Forms Being Reported Upon

Based on our review, in our opinion, the accompanying reporting forms identified above (except as noted below) conform in all material respects with the accounting requirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System."

(b) Section 9 Data Certification

Certification of the data used to apportion section 9 funds is required for section 15 reports covering 50 or more vehicles operated in maximum service by all modes that are in or serve urbanized areas with populations of 200,000 or more. All section 9 data (directly operated as well as purchased service) in the report will be certified. This section 9 data certification must be signed by an independent auditor. The data used to apportion section 9 funds are: directional route miles, vehicle revenue miles, passenger miles, and operating cost. The certification should discuss the following for *each* item to be used in the section 9 formula allocation:

—Verification that there is a system in place and maintained for recording data in accordance with section 15 definitions. Verify that the correct data are being measured and that there are no systematic errors.

—Verification that there is a system in place to record data on a continuing basis and that the data gethering is an ongoing effort.

—Verification that source documents are available to support the reported data and are maintained for UMTA review and audit for a minimum of 3 years following UMTA's receipt of the Section 15 Report. The data must be fully documented and securely stored.

—Verification that there is a system of internal controls to assure the accuracy of the data collection process and recording system and that reported documents are not altered. Verify that documents are reviewed and signed by a supervisor as required.

—Verification that the data collection methods are those suggested by UMTA, or have been approved by UMTA and/or a statistical expert as being equivalent in assuring quality and precision. Confirm the collection methods documented are being followed.

—Verification that the deadhead miles, computed by taking the difference between the reported "total actual vehicle miles" data and the reported "total actual vehicle revenue miles" data, appear to be accurate.

—Documentation of an analytic review of the reported data to confirm that data are consistent with prior reporting periods and other facts known about agency operations.

—Documentation of the list of specific documents examined and tests performed.

In addition, the section 9 certification should describe (1) the procedures for determining the above attestations and (2) how revenues were handled for purchased transportation, i.e., no revenues were retained by the contractor or that all revenues retained by the contractor were reported on Form 006.

(c) Independence of Certification

The above financial and section 9 data certifications must be made by an independent auditor. UMTA will determine independence by considering the criteria for independence as described in the *Standards For Audit of Governmental Organizations, Programs, Activities, and Functions,* developed by the Comptroller General.

(d) The Chief Executive Officer (CEO) Certification

The CEO of each reporting agency is required to submit a certification with each annual Section 15 Report. The certification must attest:

—To the accuracy of all data contained in the Section 15 Report;

—That all data submitted in the Section 15 Report are in accord with section 15 definitions;

—If applicable, that the reporting agency's accounting system used to derive all data submitted in the Section 15 Report is the Section 15 Uniform System of Accounts and Records and that a Section 15 Report using this system was certified by an independent auditor in a previous report year; and

—If applicable, the fact that the reporting agency's internal accounting system is other than the Uniform System of Accounts and Records, and that its: (i) Accounting system uses the accrual basis of accounting, (ii) accounting system is directly translated, via a clear audit trail, to the accounting treatment and categories specified by the Section

15 Uniform System of Accounts and Records, and (iii) accounting system and direct translation to the Uniform System of Accounts and Records are the same as those certified by an independent auditor in a previous reporting year.

A suggested form of a CEO section 15 certification statement follows:

"I hereby certify to the following concerning the financial and non-financial/operating data submitted in the (name of agency's) Section 15 Report for its fiscal year ending _____:

1. The financial and non-financial/operating data (a) are accurate and truthful records of the financial transactions and operations of the (name of agency) and (b) conform, in all material respects, with the accounting and definitional requirements of the Urban Mass Transportation Administration's (UMTA) Uniform System of Accounts and Records and Reporting System.

2. The verifications below pertain to *each data item* to be used in the section 9 formula allocation. (These data include directional route miles, vehicle revenue miles, passenger miles and operating costs.) Discuss the following for each data item:

a. Verification that there is a system in place for recording data in accordnce with UMTA definitions. Verify that the correct data are being measured (e.g., vehicle revenue miles as opposed to total vehicle miles) and that there are no systematic errors (i.e., all data are recorded).

b. Verification that there is a system to record data on a continuing basis and that data gathering is an ongoing effort.

c. Verification that source documents are available to support the reported data and are maintained for a minimum of three years. The data must be fully documented and securely stored.

d. Verification that there is a system of internal controls to assure the accuracy of the data collection process and recording system and that reported documents are not altered. Verify that documents are reviewed and signed by a supervisor as required.

e. Verification that the data collection methods are those suggested by UMTA or equivalent. Verify that UMTA standards for precision and accuracy are satisfied in that the sampling technique has either been approved by UMTA or in advance of the UMTA approval by a statistical expert serving the agency. Confirm the collection methods documented are being followed.

f. Verification that the data are accurate. Documentation of an analytic review of the reported data to confirm that data are consistent with prior reporting periods and other facts known about agency operations.[1]

3. The accounting system from which this Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records. The (name of agency) has adopted the Uniform System of Accounts and Records and has previously submitted a Section 15 Report for its fiscal year ending _____ which was compiled using the Uniform System of Accounts and Records and which contained an independent auditor's section 15 financial data certification signed by (name of independent auditor) and dated _____.[2]

4. The (name of agency)'s internal accounting system is other than the accounting system prescribed by the Uniform System of Accounts and Records but uses the accrual basis of accounting and is directly translated, via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records. The (name of agency) has previously submitted a Section 15 Report for its fiscal year ending _____ which was compiled using the same internal accounting system and translation to the Uniform System of Accounts and Records and which contained an independent auditor's section 15 financial data certification signed by (name of independent auditor) and dated _____.[2]

Signed: _____

Date: _____

(4) All reporting agencies must submit with their annual Section 15 Report a statement from their local Metropolitan Planning Organizations providing the agencies' operational service area square miles and operational service area populations. Rational planning procedures must be used to determine the operational service area and these procedures shall be described in the statement.

Issued on: September 17, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 87-21967 Filed 9-24-87; 8:45 am]

BILLING CODE 4910-7-M

[1] Paragraph 2 is applicable only for reporting agencies that are in or serve urbanized areas with populations of 200,000 or more.

[2] Paragraph 3 or 4 may be included for reporting agencies which meet the applicable criteria and in lieu of an independent auditor's financial data certification.

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

[Docket No. 86-F]

Changes to Section 15, Uniform System of Accounts and Records and Reporting System

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final notice of changes to the Uniform System of Accounts and Records and Reporting System.

SUMMARY: In this document, UMTA announces several changes to the Section 15 Uniform System of Accounts and Records and Reporting System. The intent of these changes is to streamline data collection, recordkeeping, and reporting requirements by reducing reporting agencies' burdens while improving data reliability.

EFFECTIVE DATE: These changes are effective October 26, 1987, and apply to all section 15 reporting years beginning with 1988. The 1988 reporting year covers local transit agencies fiscal years ending on or between January 1, 1988 and December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Wilson, Chief, Audit Review and Analysis Division, Office of Grants Management, Urban Mass Transportation Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590, (202) 368–1610.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1986, UMTA issued a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 17144) which requested comments on sevewral proposed changes to the Uniform System of Accounts and Records and Reporting System. Both Systems implement section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), which requires applicants and direct beneficiaries of funding under section 9 of the UMT Act to maintain and report uniform financial and operating information.

At the same time UMTA issued another NPRM in the **Federal Register** (51 FR 17145), which proposed a complete revision of the regulation which implements section 15, 49 CFR Part 630. Those changes to the regulation are procedural and are contained in a Final Rule published elsewhere in the **Federal Register** today as a new Part 630.

This document, in contrast, is not a Final Rule, but a Final Notice of Changes, all of which are included in the Reference Volumes, and sometimes also in the Appendix of the new Part 630 if appropriate. "Reference Volume(s)" means the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records, which is composed of Volume I—General Description; Volume II—Uniform System of Accounts and Records; and Reporting Manual and Sample Forms (All Reporting levels). These Volumes describe transit agencies section 15 recordkeeping and reporting requirements and are subject to periodic revision.

In general, the changes published in this document are intended to streamline data collection, recordkeeping, and reporting requirements by reducing reporting agencies' burdens while improving data reliability.

The NPRM proposed seven changes. The comments received and the final decisions made with respect to those changes are summarized below.

II. Summary of Comments and Final Changes

UMTA received 19 written comments in response to the NPRM. Comments were submitted by 15 transit operating agencies, two transportation authorities, one state Department of Transportation, and one public transit trade organization. The comments generally supported the proposed changes.

A. Metropolitan Planning Organization Data

The NPRM proposed to eliminate the requirement that Metropolitan Planning Organizations (MPO) submit user surveys, measures of walking accessibility, and demographic data. Instead of this requirement, the NPRM proposed that each reporting agency submit, along with its annual Section 15 Report, a statement from the local MPO stating the square miles of the reporting agency's service area and its population. Of the comments received, 14 agreed with this proposed change and none disagreed. Substantive comments included a request to clarify the "service area" in terms of legal or operational area and concerns that UMTA should not consider a Section 15 Report as late or incomplete if the MPO statement is not submitted by the due date since the reporting agency cannot control the timely submission of data by another organization.

UMTA has addressed these concerns as follows: First, failure of a reporting agency to submit the MPO statement will not be treated either as a late report or a failure to report data under § 630.5 or § 630.6 of the Final Rule published elsewhere today in the **Federal Register.**

Second, the requirement that MPOs submit user surveys, measures of walking accessibility, and demographic data in current § 630.12(a)(7)(i), is eliminated. In place of this requirement, each reporting agency must submit, along with its annual Section 15 Report, a statement from the local MPO stating the square miles of the reporting agency's operational service area and its population. Finally rational planning procedures must be used to determine the operational service area and these procedures shall be described in the statement. The MPO statement is also described in Appendix A of the new Final Rule and in the Reference Volumes.

B. Service Consumed Data for Twenty-Five or Fewer Vehicles and for Purchased Transportation Services.

The NPRM proposed to elminate the reporting requirement for service consumed (unlinked passenger trip and passenger mile) data for reporting agencies with 25 or fewer revenue vehicles operated in maximum service and for all purchased transportation service (i.e., private or public carriers providing transit service under contract to a public agency). It should be noted that 25 or fewer revenue vehicles "operated in maximum service" refers to all vehicles directly operated by the reporting agency and not to the number of vehicles in each separate mode operated by the agency. Of the comments received, 12 agreed with this proposed change and two disagreed. Major substantive comments concerned: (a) Some confusion as to whether the passenger mile data for the affected agencies may be submitted for use in the section 9 formula allocation; and (b) the impact on the national transit ridership data base as a result of eliminating this data.

UMTA has considered these comments and has decided that for policy reasons it must continue to require the reporting of unlinked passenger trip and passenger mile data from all section 15 reporting agencies. However, in order to reduce the data collection burden, UMTA has decided that it will not require annual statistical sampling for collecting passenger mile data for reporting agencies that serve urbanized areas of less than 500,000 population, or reporting agencies that directly operate 50 or fewer revenue vehicles for all modes in maximum service in any size urbanized area, or purchased transportation services except those purchased transportation

services submitting separate Section 15 Reports. Rather, these agencies will be required to conduct samples on which to estimate passenger miles meeting the required confidence and precision levels once every three years. Data for intermediate years may be estimated using the average trip length factor derived from the sample drawn each third year. UMTA will use intermediate year estimates of passenger mile data in the incentive tier of the section 9 apportionment formula since these agencies represent a very small portion of the incentive tier, i.e., less than 5% of the passenger mile data. The mandatory years for the affected agencies are the 1987 reporting year, 1990 reporting year, 1993 reporting year, etc.

UMTA has made this policy decision because the passenger mile data from .these reporting agencies, while representing about 5% of the national data base, will reduce burden for over half the reporting agencies. Research on the impact this relaxation of statistical sampling requirements has on the accuracy of passenger mile data reported will guide the further extension of this policy.

Therefore, the requirement that passenger mile data be collected using statistically valid sampling procedures meeting prescribed precision and confidence levels is mandatory only every third year for:

- Reporting agencies that serve urbanized areas of less than 500,000 population; or
- Reporting agencies in any size urbanized area that directly operate 50 or fewer revenue vehicles for all modes in maximum service; or
- Purchased transportation services except those purchased transportation services submitting separate Section 15 Reports.

UMTA will allow the use of this passenger mile data in the incentive tier of the section 9 apportionment formula where it is valid and applicable. This change is reflected in the Appendix of the Final Rule which revises Part 630 and in the Reference Volumes.

C. Elimination of Section 5 Reporting Requirements

The NPRM proposed to eliminate the section 5 apportionment factors reporting requirements now set out in Subpart D of Part 630. The section 5 formula grants program has been phased out and replaced with the section 9 program as a result of the 1982 Surface Transportation Assistance Act (STAA). UMTA already has effectively eliminated the reporting requirements of Subpart D through issuance of superseding Circulars; the deletion of Subpart D would simply conform the rule to current UMTA practice.

Of the comments received, 16 agreed with this proposed change and none disagreed. There were no major substantive comments. UMTA has decided to finalize this change as proposed in the NPRM.

D. Capacity Mile Data

The NPRM proposed to eliminate the requirement that Section 15 Reports contain capacity mile data. Of the comments received, 16 agreed with this proposed change and none disagreed. There were no major substantive comments, yet UMTA has reconsidered the elimination of capacity mile data. Since capacity mile data provide important information and have a negligible impact on section 15 reporting costs, UMTA has decided that for internal policy analysis purposes it will continue to require the reporting of capacity mile data. However, since most analyses utilize annual estimates of capacity miles, UMTA has decided to require reporting of capactiy mile data by *annual totals only* and to eliminate the reporting of capacity mile data by the following sparate days of week and times of day: Average weekday a.m. peak, average weekday midday, average weekday p.m. peak, average weekday other, average weekday total, average Saturday total, and average Sunday total. UMTA is considering a better method to measure and define transit utilization and may replace the capacity mile data requirement with an improved data item in the future.

Therefore, the requirement that Section 15 Reports contain capacity mile data by day of week and time of day is eliminated. Capacity mile data are required by annual totals only. This information is currently reported on Forms 406 and 407, entitled "Transit System Service Supplied, Service Consumed, Service Personnel, and Service Operated Schedule (Rail and Non-Rail Modes)" in the reporting manual of the Reference Volumes and will be changed accordingly.

E. Passenger Mile Data by Average Weekday Time Periods Eliminated

The NPRM proposed to eliminate the requirement (also on Forms 406 and 407) that "unlinked passenger trips" and "passenger mile" data be reported separately by the following average weekday time periods: Average weekday a.m. peak, average weekday midday, average weekday p.m. peak, and average weekday other. Instead, UMTA proposed that the reports reflect only the average weekday total, and would continue to include the average Saturday total, average Sunday total, and annual total. Of the comments received, 15 agreed with this proposed change and none disagreed. There were no major substantive comments. UMTA has decided to finalize this change as proposed for passenger mile data only. UMTA has reconsidered the importance of collecting unlinked passenger trip data by average weekday time periods and has decided to keep this reporting requirement. UMTA believes that elimination of these data would reduce the utility of the section 15 data base without achieving significant cost savings for reporting agencies. The data are used to measure the peaking characteristics of demand, to analyze disparities between supply and demand, to identify potential areas for cost savings, to develop efficient pricing policies, and to distribute optimally fleet and labor resources. Since providing average weekday breakdowns of unlinked passenger trip data is not excessively burdensome for reporting agencies and since this information will represent the only source of national time period ridership data, UMTA has decided not to eliminate the collection and reporting of unlinked passenger trip data by separate average weekday time periods.

Therefore, the requirement in Forms 406 and 407 of the reporting manual in the Reference Volumes that "passenger miles" data be reported separately by the following average weekday time period breakdowns is eliminated: Average weekday a.m. peak, average weekday midday, average weekday p.m. peak, and average weekday other.

F. Chief Executive Officer Certification

The NPRM proposed that the Chief Executive Officer (CEO) of each reporting agency be required to submit a certification with each annual Section 15 Report. Of the comments received, 14 agreed with this proposed change and none disagreed. There were no substantive comments submitted. UMTA has decided to finalize this change as proposed with one adjustment to accommodate the revision in a proposed change as described below.

The CEO certification must attest to:

(1) The accuracy of all data contained in the Section 15 Report;

(2) The fact that all data submitted in the Section 15 Report are in accord with section 15 definitions;

(3) If applicable, the fact that the reporting agency's accounting system used to derive all data submitted in the Section 15 Report is the Section 15 Uniform System of Accounts and Records; and

(4) If applicable, the fact that the reporting agency's internal accounting system is other than the Uniform System of Accounts and Records, and (i) its accounting system uses the accrual basis of accounting, (ii) its accounting system is directly translated via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records, and (iii) the reporting agency's accounting system and direct translation to the Uniform System of Accounts and Records are the same as those certified by an independent auditor in a previous reporting year.

The NPRM proposed a suggested form for the certification. The suggested form was modified slightly regarding section 9 data items and is now incorporated in the Appendix of the Final Rule which revises Part 630 and in the Reference Volumes.

G. Financial Data Certification by Independent Auditor

The NPRM proposed to eliminate the annual independent auditor's financial data certification requirement for a reporting agency if it has adopted the Uniform System of Accounts and Records and has previously submitted a Section 15 Report using the Uniform System of Accounts and Records and certified by an independent auditor. Instead, the NPRM proposed that the CEO would annually certify that the accounting system from which the Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records. Of the comments received, 13 generally agreed with this proposed change and 1 disagreed. Several suggested that the proposed change should also apply to those transit agencies which are certified as using an accounting system other than the Uniform System of Accounts and Records and yet are able to directly translate their system to the accounting treatment specified in the Section 15 Uniform System of Accounts and Records.

UMTA has considered these comments and has decided that the annual financial data certification requirement from an independent auditor is waived until further notice for those reporting agencies which meet either of the following sets of criteria:

1. The financial data certification requirement from an independent auditor is waived until further notice for a reporting agency that has adopted the Uniform System of Accounts and Records, and has previously submitted a Section 15 Report compiled using the Uniform System of Accounts and Records and certified by an independent auditor. However, the *CEO* must annually certify that the accounting system from which the Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records.

2. The financial data certification requirement by an independent auditor is waived until further notice for a reporting agency if it uses an internal accounting system other than the accounting system prescribed by the Uniform System of Accounts and Records if it: (i) Uses the accrual basis of accounting, (ii) can directly translate its system and accounting categories, via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records, and (iii) has previously submitted a Section 15 Report which was compiled using the same internal accounting system and translation to the Uniform System of Accounts and Records and was certified by an independent auditor. However, the CEO must annually certify that each of the above criteria have been met.

Further, UMTA has decided to reserve the right to periodically require independent auditors' financial data certifications from any section 15 reporting agency if there are suspected reporting inaccuracies or in order to see if required substantial changes to the Reference Volumes have been made.

H. Section 9 Data Certification by Independent Auditor

In contrast to the procedures for financial data certification discussed above, it should be noted that the final rule continues the certification of Section 9 data in Section 15 reports covering 50 or more vehicles operated in maximum service by all modes in urbanized areas over 200,000.

Issued on: September 17, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 87-21988 Filed 9-24-87; 8:45 am]

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Part VI

Department of Transportation

Research and Special Programs Administration

Hazardous Materials; Illinois Fee on Transportation of Spent Nuclear Fuel; Inconsistency Ruling; Wisconsin Electric Power Co. et al.; Notice

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-34]

State of Illinois Fee on Transportation of Spent Nuclear Fuel; Inconsistency Ruling; Wisconsin Electric Power Co. et al.

AGENCY: Research and Special Programs Administration; DOT.

ACTION: Decision on appeal.

SUMMARY: In response to the appeals of the Department of Energy, the Wisconsin Electric Power Company and the Electric Utility Companies' Nuclear Transportation Group from the findings made in Inconsistency Ruling No. IR–17 (51 FR 20926; June 9, 1986), that Inconsistency Ruling is affirmed.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel: 202/366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a state or political subdivision thereof, which is inconsistent with any requirement of the HMTA or the Hazardous Materials Regulations (HHMR), issued thereunder (49 CFR Parts 171–179). Section 107.209 (c) of Title 49, Code of Federal Regulations set forth the following factors which are considered in determining whether a state or political subdivision requirement is inconsistent: (1) Whether compliance with both the state or political subdivision requirement and the HMTA and the HMR is possible (the "dual compliance" test); and (2) the extent to which the state or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings and decisions on appeals of such rulings only address preemption issues under the HMTA and the HMR. They do not address issues of preemption arising under other statutes or under the Commerce Clause of the United States Constitution.

On March 21, 1985, the Wisconsin Electric Power Company (WEPCO) applied for an administrative ruling on the question of whether an Illinois statutory transportation fee of $1,000 per cask of spent nuclear fuel traversing the state is inconsistent with, and thus preempted by, the HMTA or the HMR. The transit fee is part of Illinois' Nuclear Safety Preparedness Program.

II. The Inconsistency Ruling (IR–17)

On June 4, 1986, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 17 (IR–17), which was published at 51 FR 20926 on June 9, 1986. That ruling determined that the Illinois transit fee is not inconsistent with the HMTA or the regulations issued thereunder.

III. The Appeals of IR–17

On September 3, 1986, pursuant to 49 CFR 107.211, appeals of IR–17 were filed with the Administrator of the Research and Special Programs Administration by the Electric Utility Companies' Nuclear Transportation Group (the Group), the Department of Energy (DOE) and Wisconsin Electric Power Company (WEPCO) (which merely adopted and incorporated by reference the Group's brief).

The appellants made the following arguments:

(1) the OHMT allegedly failed to attribute appropriate importance to the potentially substantial cumulative effects of the adoption of escalating fee requirements by many States, including the likelihood that fee that will support practices that DOT has already found to be inconsistent with the HMTA and the OHMT decision allegedly enhances undesirable multiplicity and cannot be reconciled with the decision in IR–15.

(2) OHMT allegedly failed to examine the extent to which Illinois is uniquely burdened with respect to spent fuel shipments and the implications of singling out spent fuel shipments from all other hazardous materials shipments for discriminatory treatment.

(3) OHMT allegedly did not adequately explore the potential for delay inherent in the duplicative and time-consuming Illinois inspection and escort programs, such delay being inconsistent with the provisions of the HMTA and the HM–164 rule on highway routing of radioactive materials.

(4) OHMT's decision allegedly undercuts the ability of the DOE to negotiate appropriate arrangements with states under the Nuclear Waste Policy Act (NWPA).

(5) The Illinois transit fee allegedly fails the "obstacle" test by redirecting, restricting, and delaying shipments of spent fuel, thereby undermining the national transportation safety system carefully developed by DOT.

On September 29, 1986, RSPA published a public notice and invitation to comment on these appeals (51 FR 34527). A correction was published on October 8, 1986 (51 FR 36125). In response, comments were submitted by the City of New York Department of Environmental Protection (DEP), DOE, Duke Power Company, the Environmental Defense Fund (EDF), the Pennsylvania Emergency Management Agency (EMA), the State of Colorado, the State of Illinois, the State of Washington Nuclear Waste Board (NWB), the University of Missouri Research Reactor Facility, and Washington State Senator Sam C. Guess (two comments).

Subsequently, rebuttal comments were filed by DOE, EDF, the Group, the New Mexico Environmental Improvement Division, the State of Illinois, and the Wisconsin Radioactive Waste Review Board.

IV. Decision on Appeal

I have fully considered all of the issues raised in the appeals and the discussion of them in the comments and rebuttal comments. Many of the issues being appealed were discussed exhaustively by the Director of OHMT in IR–17. I will respond only to the specific issues raised on appeal and generally will not reiterate the Ruling's discussions, with all of which I fully concur.

Although all major issues and arguments raised by appellants and other commenters are summarized, I have not responded to or commented on many of those which are irrelevant to my decision. My silence concerning any issue or argument should not be construed as agreement or disagreement with them.

I will discuss and decide each of the issues raised by the Group and DOE and described above in section III.

(1) *The OHMT allegedly failed to attribute appropriate importance to the potentially substantial cumulative effects of the adoption of escalating fee requirements by many States, including the likelihood that fees will support practices that DOT has already found to be inconsistent with the HMTA. The OHMT decision allegedly enhances undesirable multiplicity and cannot be reconciled with decision in IR–15.*

(a) Appellants' Arguments.

The Group argues that IR–17 fails to give adequate consideration to the possibilities of many states imposing fees, their increasing the amounts of the fees, their applying them to types of radioactive materials other than spent

nuclear fuel, and their use of the fees for activities inconsistent with the HMTA. It contends that RSPA must consider the precedential effect of its decision and is not precluded from doing so by Commerce Clause cases cited by other commenters. DOE adds that IR–17 enhances multiplicity and undermines the national transportation scheme as much as the indistinguishable Vermont transit fee which was found inconsistent in IR–15.

The University of Missouri expresses its concerns about the impact of possible $1,000 transit fees in each of six states its casks traverse during routine Missouri-to-South Carolina shipments. Washington State Senator Sam C. Guess observes that within eight to ten years after a single state adopts a restrictive tax or regulation a majority of the states do likewise.

DOE states that Oregon, Colorado, Pennsylvania, and Minnesota have enacted transit fees for spent nuclear fuel and that Washington and Wisconsin are considering similar measures.

Duke Power states that IR–17, "encourages the kind of multiplicity of conflicting state and local regulations which congress had sought to avoid in enacting the HMTA."

(b) Appellees' Arguments

In response, Illinois and Pennsylvania EMA cite *Evansville-Vanderburgh Airport Authority Dist. v. Delta Airlines, Inc.*, 415 U.S. 707 (1972) and *New Hampshire Motor Transport v. Flynn*, 751 F.2d 43 (1st Cir. 1984) for the proposition that the "cumulative effect" analysis is not to be used in determining whether state and local transportation fee systems are preempted by Federal regulation. They contend that the Group's "cumulative effect" argument is speculative, without support and wholly at odds with prevailing law. Similarly, Wisconsin argues that a state regulation cannot be overturned on the basis of speculation concerning regulations other states may adopt.

To the argument that other states will be encouraged by IR–17 to adopt inconsistent regulations, Illinois responds:

> The existence of a validly appropriate and consistent program in Illinois cannot be rendered invalid, inappropriate and inconsistent by virtue of other jurisdictions adopting other, inconsistent programs.

New York City DEP contends that there is no evidence of harmful effects of "cascading" fees on transportation safety and that if there were RSPA could solve the problem with its rulemaking authority.

Colorado argues that the cumulative effect issue is not a cognizable preemption issue and that DOT lacks jurisdiction to consider the issue. EDF adds that the issue of alleged discrimination is irrevelant.

EDF also contends that the absence of a comprehensive Federal program, for inspections and emergency response training sufficient to ensure that all spent fuel shipments arrive safely at their destinations, justifies states' financing their own inspection and escort programs.

(c) Administrator's Decision

The issue in this proceeding is the consistency of Illinois' transit fee with the HMTA and the HMR. Whether other states are likely to adopt similar transit fees is irrevelant to the determination of whether such fees are consistent. The impact of widespread adoption of such fees is a "burden on commerce" issue which would be relevant to Commerce Clause litigation and in waiver-of-preemption proceedings under section 112(b) of the HMNTA (49 App. U.S.C. 1811(b)) but is not relevant in inconsistency proceedings under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). If Illinois' transit fee is consistent in all repects with the HMTA and the HMR, then identical transit fees adopted in other states also are likely to be consistent with the HMTA. Likewise, if Illinois' transit fee is inconsistent with the HMTA or the HMR, then identical transit fees adopted in other states are likely to be similarly inconsistent.

There was an extensive discussion of this issue in IR–17:

> Next, WEPCO argues that if Illinois can impose a transit fee, other jurisdictions can and will do so; and the cumulative effect will be far greater than that of the Illinois requirement alone. To some extent, this echoes language which the Department has used in prior inconsistency rulings. (See e.g.—IR–6, 48 FR 760, 765 "If the approach taken by Covington were deemed an appropriate local activity, it would be no less so for Covington's neighbors * * *"; also IR–10, 49 FR 46645, 46647 ["] * * * if one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may [do] so."] The Department, however, has never relied on the potential cumulative effect of a requirement as a basis for finding inconsistency. Rather, the Department has used this device to illustrate more effectively the adverse impact of a requirement already found to be inconsistent. In its first inconsistency ruling (IR–1, 43 FR 16954, April 20, 1978), the Department found no Federal requirement under the HMTA with which to compare a New York City transportation ban for inconsistency and acknowledged the great likelihood that other jurisdictions would enact similar restrictions, the cumulative effect of which could seriously impact transportation safety. Because of the potential cumulative effect, the Department announced that it would initiate rulemaking to address the problem. This, and not a finding of inconsistency, was the response to anticipated cumulative effect.

51 FR 20934. I agree with and affirm that language.

Furthermore, IR–15 and IR–17 are not irreconcilable. The virtually identical Vermont transit fee found inconsistent in IR–15 (49 FR 46660; Nov. 27, 1984) was used to fund a state program permeated with requirements found to be inconsistent with the HMTA and the HMR. The transit fee at issue here, conversely, is used to fund a state program which, as found in IR–17 and affirmed below, is consistent with the HMTA and the HMR. As discussed in IR–17, Illinois requires the transporter simply to pay a fee; but Vermont, on the other hand, had a permitting system involving a detailed application, administrative processing by the State and affirmative action by the State to grant written approval, provisions which were inconsistent under the obstacle test. 51 FR 20932.

Therefore, because the multiplicity issue is irrelevant to a determination of inconsistency and IR–15 is distinguishable, I find no merit in appellants' first argument.

(2) *OHMT allegedly failed to examine the extent to which Illinois is uniquely burdened with respect to spent fuel shipments and the implications of singling out spent fuel shipments from all other hazardous materials shipments for discriminatory treatment.*

(a) Appellants' Arguments

The Group contends that there has been no showing that Illinois is unique among the states with respect to the transportation of spent nuclear fuel, and also no justification for imposition of the transit fee on spent fuel but not on other hazardous materials.

DOE argues that Illinois unfairly has singled out radioactive materials transportation, which DOE contends presents risks less than those for other hazardous materials. Duke Power also complains of discrimination against a particular type of hazardous waste transportation.

In support of its position that there is no rational basis for Illinois' singling out radioactive materials for different treatment, the Group quotes IR–15: "On the basis of both shipment frequency and accident history, spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals * * *" 49

FR 46664. It also quotes a Congressional Office of Technology Assessment report on "Transportation of Hazardous Materials," which concluded that "* * * technical evidence and cask performance in service indicate that NRC performance standards yield spent fuel shipping cask design specifications that provide for a very high level of public protection—much greater than that afforded in any other current hazardous materials shipping activity."

(b) Appellees' Arguments

Illinois responds that its "unique" status in terms of exposure to radiological risk is totally irrelevant to the decision; it says that "no analysis of Illinois' uniqueness is required to support IR–17, because the opinion is not based on a finding that Illinois constitutes a 'unique exception' ".

New York City DEP and Pennsylvania EMA contend that Illinois' uniqueness should not be an issue since RSPA has long recognized (citing IR–2, 44 FR 75566 at 75568; Dec. 20, 1979) that states and localities must have flexibility to tailor their emergency response programs to their individual needs.

Illinois' response to the arguments concerning alleged discrimination against radioactive materials transportation is that the state's program rests upon a rational distinction between radioactive waste in particular and hazardous materials generally. It contends that the U.S. Supreme Court has permitted states to establish rational classifications and cites a Federal court decision for the proposition that a "State is not required to address all of the problems inherent in hazardous materials transportation in order for its enactments to be given effect." *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509, 521 (R.I. 1982), aff'd 698 F.2d 559 (1st Cir. 1983). It points out that Federal laws and regulations similarly treat radioactive materials differently than hazardous materials generally.

New York DEP asserts that the issue of which category of materials a state chooses to regulate is immaterial and that the issue is whether the fee itself is consistent with Congress' objectives in enacting the HMTA.

Colorado, on the other hand, turns the appellants' argument around and contends that Illinois' addressing "the unique problems raised by the transportation of nuclear materials" is not unlike the HMR. It says:

> DOT has implicitly, if not explicitly, recognized these problems by mandating specific requirements for radiological materials in the HMR. E.g., Subpart I, Part 173 of 49 C.F.R., and 49 C.F.R. Section 173.825. Rather than being inconsistent with the HMTA or the HMR, Illinois' program furthers its goals.

(c) Administrator's Decision

Illinois' uniqueness and its distinct treatment of spent fuel shipments are both irrelevant to the issue at hand: consistency of Illinois' transit fee with the HMTA and the HMR.

Although exceptional or special circumstances are required to be demonstrated by a state or local government seeking a waiver of preemption for an inconsistent and otherwise preempted requirement, Nonpreemption Determination No. 1 (NPD–1, 50 FR 37308 (Sept. 12, 1985), affirmed 51 FR 47182 (Dec. 30, 1986), there is no such issue or burden in inconsistency proceedings. There is no requirement that Illinois demonstrate exceptional or unique circumstances in order for its requirements to be found consistent with the HMTA and the HMR.

Illinois' selectivity in imposing a transit fee on spent nuclear fuel shipments, while not imposing a similar fee on other hazardous materials shipments, likewise is not a relevant issue in this proceeding. The State uses the fee to support its radioactive materials transportation inspection, escort and emergency response programs, which, as discussed below, are consistent with the HMTA and the HMR.

As numerous commenters aptly indicated, there is ample precedent for separate and more rigorous regulation of the transportation of radioactive materials. For example, Subpart I of Part 173 of the HMR (49 CFR 173.401 *et seq.*) prescribes numerous detailed requirements specifically and solely for the transportation of radioactive materials. These include such requirements as those for radiation level limitations (§ 173.441), thermal limitations (§ 173.442), and contamination control (§ 173.443). In addition, § 173.22 requires shippers of fissile radioactive materials and of Type B or highway route controlled quantity packages of radioactive materials to notify consignees of the dates of shipment and expected arrival of such materials. Section 177.825 specifies general routing requirements for all placarded radioactive materials and a specific routing rule for highway route controlled quantity shipments, such as spent fuel; it also contains specific driver training requirements applicable when highway route controlled quantity radioactive materials are being transported. For shipments of highway route controlled quantities of radioactive materials, the shipper must file with RSPA a route plan (including changes thereto); information on the shipper, carrier and consignee; and a copy of the shipping paper. § 173.22(d). All of these requirements are unique to radioactive materials, some of them unique to the type of radioactive materials regulated by Illinois.

The transportation of radioactive materials is regulated by both RSPA and the NRC, and RSPA's incorporation by reference of many NRC requirements creates a distinctive regulatory regime with respect to their transportation. For example, § 173.22(c) requires the shipper of irradiated reactor fuel to provide physical protection in compliance with a plan established under NRC requirements or equivalent requirements approved by RSPA. Section 177.825(e) allows variation from the requirements of § 177.825 when necessary to meet requirements imposed by the NRC in 10 CFR Part 73. The uniqueness of the regulation of radioactive materials transportation is further demonstrated by the existence of a DOT/NRC Memorandum of Understanding on the subject. In fact, it is probable that the existence of all these unique requirements is a significant reason for the lower risk of accidents involved in the transportation of radioactive materials which was referred to in IR–15 (49 FR 46664) and cited by the Group. Although the existence of these requirements may result in greater Federal preemption of substantive requirements regarding radioactive materials transportation than of hazardous materials transportation generally, their existence does not result in preemption of state requirements which enhance their enforcement. In carrying out its radioactive materials inspection and escort programs in consonance with RSPA's and NRC's regulations, therefore, Illinois is acting in a rational and legal manner.

In summary, neither the uniqueness of radioactive materials transportation in Illinois nor Illinois' treatment of that transportation in a manner distinct from that of other hazardous materials to transportation is relevant to a determination of consistency. These arguments do not demonstrate how any goal of the HMTA or the HMR is being impaired and thus provide no basis for reversal of IR–17.

(3) *OHMT allegedly did not adequately explore the potential for delay inherent in the duplicative and time-consuming Illinois inspection and escort programs, such delay being inconsistent with the provisions of the*

HMTA and the HM–164 rule on highway routing of radioactive materials.

(a) Appellants' Arguments

Both the Group and DOE assert that the Ruling below improperly failed to consider the potential as well as observed delaying effects of Illinois' fee, inspection and escort requirements, as well as the potential delays associated with multiple inspections and escort programs conducted by other states along multi-state routes. DOE says that OHMT has not reconciled how the fee can support time-consuming and duplicative inspections and still not result in delays; it questions the validity of the inspections.

The University of Missouri indicates its shipments experience a delay at each Illinois inspection of 1.5 to 2 hours, or 30% of its scheduled 5-hour transit of Illinois. DOE cites other delayed shipments (including those from Surrey, Virginia) due to delays in the arrival of escorts.

In support of its position, DOE quotes from the preamble to HM–164:

> Lastly, because of the importance of expediting radioactive materials shipments, due to the risk and added normal dose attendant to delay, other forms of State and local regulation that affect motor carriers of radioactive materials should not result in unnecessary delay (see 177.853(a)). A delay is unnecessary unless it is required by an exercise of State and local regulatory authority over a motor vehicle that so clearly supports public health and safety as to justify the safety detriment and burden on commerce caused by the delay (such as in an emergency). 46 F.R. 5315, January 19, 1981.

DOE indicates that Illinois is conducting two inspections of Three Mile Island (TMI) spent waste shipments in addition to five-party inspections at TMI; state inspections in Ohio, Indiana, and Missouri; and destination inspections in Idaho by DOT and DOE. It concludes that the Illinois inspections are duplicative and unnecessary and do not meet the quoted standard. It also argues that the escort requirements carry the potential for forbidden delays.

(b) Appellees' Arguments

Illinois responds that IR–17 properly examined the actual workings of the Illinois program and properly concluded that it does not delay shipments but is consistent with the goals and requirements of the HMTA. It cites a "well established principle of law" that a statute is interpreted in accordance with how it is actually enforced and cites *Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977) for that proposition. EDF cites an HMTA case for the same principle (*National Tank Truck Carriers, Inc., and Ritter Transportation, Inc.*, v. *City of New York*, 677 F.2d 270, 274 (2d Cir. 1982), *cert. den.* 104 S. Ct. 1403 (1982)).

Illinois also cites a DOE spokesman's public statement that Illinois has "a very effective inspection program."

Wisconsin asserts that appellants' arguments on delay are speculative and essentially are unsupportable contentions that fees supporting state regulatory programs are inconsistent *per se*. In response to the University of Missouri's statements about delays its shipments have experienced, Illinois states that the delays were partially due to failure of those shipments to comply with Federal notification and documentation requirements. It says that these violations were discovered as a result of the Illinois inspection program supported by its transit fee and adds that these types of reasonable delays guarantee compliance with the HMTA's objectives. Similarly, it states that the Surrey, Virginia shipment delays involved shipment documentation problems and discrepancies and "major violations." Illinois cites the following IR–17 language:

> From an examination of the record, it appears that the only highway shipments where movement is restricted in Illinois are those which have been found to be in violation of applicable Federal safety standards. This is not the sort of significant restriction which the Department considers to be inconsistent with the HMTA. Rather, it is precisely the sort of state action which the Department endorses as sound enforcement policy.
>
> 51 FR 20929.

Concerning DOE's assertions that Illinois was conducting two inspections of each TMI shipment, Illinois says that it conducted only a single entry inspection, that the East St. Louis, Illinois inspections were done by Missouri as its entry inspection, and that Illinois provided Missouri with instruments, data and technical health physics assistance. It concludes that "Illinois' cooperation and assistance to another state to ensure safe, speedy, and accurate inspections should not be used to argue that Illinois program causes delay, confusion, and multiplicity."

Pennsylvania EMA also says the "potential delay" argument is speculative. It also contends that the Illinois statute and the possibility of other states' enactment of similar laws create an incentive for DOT and DOE to develop a Federal/state partnership in the area of hazardous materials transportation inspections.

New York City DEP cites 49 CFR 177.853 for the proposition that RSPA is concerned about "unnecessary" delays rather than delays or potential for delays generally. EDF agrees with this conclusion.

New York City DEP compares the Illinois situation with Tucson's 48-hour advance notice for short-lived radioactive materials shipments addressed in IR-16 (50 FR 20872; May 20, 1985) and concludes:

> Unlike short-lived radioactive materials, the nature of spent fuel shipments is such that transporters have ample lead time to arrange for payment of the fee. Moreover, the delay which the Department found does occur—from twenty to sixty minutes—is not disproportionate to other delays such as rest, food, and fuel stops . . . . Consequently, appellant's claim that the OHMT failed to adequately explore the potential for delay inherent in the Illinois inspection and escort program must be rejected.

EDF contends that there is neither evidence that Illinois' transit fee will result in consistently longer shipping times nor that any inspection or escort-related delays are unreasonable. It argues that delays caused by Illinois' inspections and escorts are reasonable and do not conflict with any regulation in the HMR; it adds that inconsistencies must be with actual regulations, not with preamble language or policy statements (such as Appendix A to Part 177).

(c) Administrator's Decision

The delays inherent in Illinois' inspection and escort programs are relevant because the transit fee's consistency depends upon the consistency of the programs it supports. These are not, however, the types of "significant" delays which are inconsistent with the HMTA and the HMR. See Appendix A to 49 CFR Part 177.

I have found nothing in the record indicating that the Illinois programs deviate from the regulatory scheme contemplated by RSPA and NRC. As accurately indicated in IR–17, DOT encourages states to adopt and enforce the HMR under the Cooperative Hazardous Materials Enforcement Development Program (and its predecessor, the State Hazardous Materials Enforcement Development Program), and Illinois' inspection program is an excellent example of carrying out such an effort at the state level. IR–17 also addressed the alleged delays arising out of Illinois' escorts:

> Since the HMR require all shipments of spent fuel to comply with a physical protection plan [49 CFR 173.22(c)] which

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provides for escorts capable of communicating with local law enforcement agencies, the operational impact of notifying Illinois of shipment arrival time would not appear to involve any significant transportation delay.

51 FR 20930

There is no evidence of unnecessary or unreasonable delays; to the contrary, the evidence is that the delays have been limited to the times necessary to inspect for violations, to take corrective action concerning violations and to arrange for appropriate escorts. These delays, because they support compliance with Federal regulations, are consistent with the HMTA and the HMR.

In summary, I find that the Illinois fee and the programs it supports do not cause unreasonable or unnecessary delays and thus do not constitute obstacles to the accomplishment of the objectives of the HMTA and the HMR. Therefore, I affirm the findings in IR–17 that the Illinois fee does not result in unreasonable delays in the transportation of spent nuclear fuel in Illinois.

(4) *OHMT's decision allegedly undercuts the ability of the DOE to negotiate appropriate arrangements with states under the Nuclear Waste Policy Act (NWPA).*

(a) Appellants' Arguments

The Group's argument is that IR–17 creates a disincentive for states to cooperate with DOE, DOT, and other states in developing uniform national programs for inspections, escorts, and prenotification. They contend that individual states' inspection and fee programs will result in delays, restrictions and multiplicity constituting obstacles to the accomplishment of the HMTA's objectives. They argue that RSPA should consider the impact of its ruling on DOE's implementation of the NWPA.

DOE adds: "If the Illinois transit fee is allowed to stand, other states would be encouraged to enact similar fees supporting inspection programs, undermining both DOE and DOT's goal of a uniform national enforcement system through a Federal/state partnership." It urges consideration of the potential effect of this ruling on the large number of future shipments under the NWPA.

DOE states that it has executed a cooperative agreement with the Commercial Vehicle Safety Alliance (CVSA) to study inspection and enforcement needs under the NWPA as a first step in developing a national program. It contends that a "national inspection program that eliminates unnecessary duplication would reduce costs while enhancing safety by eliminating the unnecessary delays caused by multiple inspections."

DOE further contends that the NRC's apparent endorsement of Illinois' regulatory program, in NRC's denial of a Wisconsin rulemaking petition, did not constitute endorsement of the Illinois transit fee. DOE also says NRC was not familiar with DOE's experience with its Surrev or TMI shipments.

(b) Appellees' Arguments

Illinois contends that appellants have presented no evidence of actual undercutting of DOE's ability to make arrangements with the states under the NWPA. It points to Illinois' chairmanship of the DOE-funded and CVSA-created High Level Nuclear Waste Task Force to coordinate state activities and establish a uniform inspection and escort program for spent fuel shipments. The State also cites NRC recognition of the Illinois inspection and escort program as providing an added measure of assurance without, apparently, imposing burdensome procedures on licenses and carriers. 51 FR 36824 (Oct. 16, 1986).

Wisconsin and Pennsylvania EMA argue that the appellants' NWPA argument is outside the scope of this proceeding, which is limited to a determination of consistency with the HMTA. Colorado speaks in terms of the issue being outside RSPA's jurisdiction.

Even if this issue were relevant, Pennsylvania EMA contends, Illinois' transit fee would be offset by numerous incentives for states to cooperate with DOE, DOT, and each other in establishing a uniform national progam with respect to inspections, escorts, and prenoticication—sharing of limited resources, elimination of duplication of effort, exchange of information and expertise, and emergency management compacts among the states.

Colorado argues that DOE's contract with CVSA and follow-through cooperation with the states, all following the issuance of IR–17, demonstrate that "DOT's ruling has not and will not affect DOE's ability to negotiate with the states."

Washington NWB contends that appellants' argument is speculative and concerns distantly future matters. It also points out that the NWPA provides: "Nothing in this Act shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste" (42 USC 10108). Thus, the NWB argues, neither the HMTA nor the NWPA gives DOE special authority over this transportation. and the Group's "undercutting of DOE" argument is irrelevant.

(c) Administrator's Decision

Like arguments (1) and (2), the issue of the transit fee's impact on DOE's ability to negotiate with states under the NWPA is irrelevant to a determination of the transit fee's consistency with the HMTA and the HMR. Furthermore, the arguments concerning the alleged effect of the Illinois transit fee on DOE's ability to negotiate with states under the NWPA are speculative and, as such, do not merit consideration in determining the consistency of the Illinois fee with the HMTA and the HMR.

DOE's negotiating ability under the NWPA is not one of the goals or objectives of the HMTA or the HMR which I must consider in making a decision on the transit fee's consistency. Therefore, I find no basis in this argument for reversing any of the findings in IR–17.

(5) *The Illinois transit fee allegedly fails the "obstacle" test by redirecting, restricting, and delaying shipments of spent fuel, thereby undermining the national transportation safety system carefully developed by DOT.*

DOE contends that the Illinois fee fails the "obstacle" test for consistency by redirecting, restricting, and delaying spent fuel shipments. It argues that the Illinois transit fee both restricts and redirects transport and that redirection would be eliminated only if every state enacted an identical fee. The University of Missouri supports the redirection argument; it apparently is going to bypass Illinois because of the costs and delays associated with a transit of Illinois. DOE further contends that Illinois' requirement that the transit fee "shall be paid * * * prior to the movement of such shipments within this State" constitutes a forbidden permit requirement—especially in light of the statement in IR–16 that "the actual language of the law must govern." 50 FR 20872 at 20877 (May 20, 1985).

The Group says that private shippers must either pay the transit fee or risk an enforcement action; they add that the risk of litigation in the sensitive area of radioactive materials transportation constitutes a significant deterrent to shipments through Illinois.

Duke Power cites IR–16 and IR–15 as relevant precedents for a finding of inconsistency and contends that the Illinois fee requirement has the potential effect of redirecting highway shipments of spent fuel "away from preferred routes." It concludes that "the Department of Transportation can encourage coordinated state emergency

preparedness programs without tying such programs to transport fees * * *."

(b) Appellees' Arguments

Pennsylvania EMA says that there is no hard evidence or facts to support this "redirect/restrict/delay" argument.

Illinois asserts that IR–17 finds that rerouting "on a pure cost basis" is not possible because it is not allowed under the HMTA. EDF says that such rerouting is illegal under the HMTA. It further claims that DOE's own shipments through Illinois without its thus far paying the transit fee demonstrate that the fee does not restrict spent fuel shipments.

Concerning the University of Missouri's consideration of rerouting to avoid Illinois, Illinois asserts that such a diversion over a route "not significantly longer" than the one through Illinois would not extend the time in transit and thus is not the type of rerouting which would be occasioned by a prohibited "routing rule." EDF agrees that if Missouri reroutes for permissible reasons, then the transit fee has not caused impermissible rerouting.

EDF contends that DOE's argument that the transit fee redirects transportation is inconsistent with its concerns about the possible enactment of fees by other states, which would make redirection to avoid fees impossible or impractical. EDF says that the only Illinois restrictions are permissible ones, i.e., those prohibiting shipments not in compliance with Federal regulations. It also argues that sophisticated parties like DOE and utility operators of nuclear power plants are not delayed or restricted by the requirement for advance payment of the transit fee.

EDF also argues that DOE's citation of IR–16, for the principle that the law's actual language controls, is not relevant here. In IR–16, a City of Tucson ordinance provided exceptions to its applicability, and the City had instructed its Fire Chief to expand the exceptions; IR–16 stated that the actual language of the ordinance governed. EDF says that IR–16 involved a question of whether legislative intent modified the clear language of the Tucson ordinance, but that the issue here is whether RSPA should consider Illinois' actual interpretation and administration of the statute of DOE's theoretically possible construction of the law.

Although the Illinois inspection and escort programs (as distinguished from the transit fee) are not the subject of this proceeding, Wisconsin contends that they are supported by the fee and are a reasonable exercise of Illinois' emergency response responsibility, a responsibility it says RSPA has recognized in IR–2 (44 FR 75566, 75568; Dec. 20, 1979), IR–8 (49 FR 46637, 46640–1; Nov. 27, 1984), and IR–15 (49 FR 46660, 46662–3; Nov. 27, 1984). Colorado opines that Illinois' inspection and escort program furthers the purposes of the HMTA and the HMR, particularly § 177.825(a).

(c) Administrator's Decision

Along with the "delay" argument in (3) above, this argument goes to the heart of the issue before me. If the Illinois transit fee resulted in unreasonable or unnecessary redirection, restriction, or delay of spent nuclear fuel shipments, it would fail the "obstacle" test and be inconsistent.

In (3) above, I determined that the record does not contain evidence of unreasonable transportation delays engendered by the Illinois programs. Nor does the record reflect unreasonable redirections or restrictions of spent nuclear fuel shipments caused by the Illinois programs funded by the transit fee.

As indicated in the Ruling below, the Tucson ordinance found inconsistent in IR–16 imposed requirements on short-lived radioactive materials shipped upon short notice as contrasted with the Illinois transit fee's applicability solely to long-lived spent nuclear fuel shipments, all of which involve long lead times. IR–16, therefore, is distinguishable with respect to the issue of delay.

Similarly distinguishable is the statement in IR–16 that "the actual language of the law must govern." That statement was made in the context of determining whether the clear language of an ordinance or the alleged *ex post facto* legislative intent controlled. That issue is not present here. In the case at hand, the Illinois requirement that the transit fee "shall be paid . . . prior to the movement of shipments" within Illinois may properly be analyzed in light of its actual application. Illinois has not delayed any shipments because of failure to pay its transit fee.

Unlike the situation in IR–15 (49 FR 46660, Nov. 27, 1984), where the Vermont transit fee and related program were shown to have caused actual diversions around Vermont, there is no showing here of any actual diversions around Illinois. The threatened diversion around Illinois of its highway shipments of spent fuel by the University of Missouri, by virtue of the requirement in § 177.825 to use preferred routes and reduce time in transit, would not be a diversion of such magnitude as to constitute an obstacle to implementation of the HMTA and the HMR.

Furthermore, the types of restrictions involved in the Illinois program do not impose unreasonable burdens on shippers or carriers. They involve submission to state inspections for compliance with Federal or consistent requirements and acceptance of state-provided escorts consistent with NRC's safeguards requirements. Illinois' state-provided escorts and notice requirements related to them, like the front and rear escort requirements considered in IR–14 (49 FR 46656, Nov. 27, 1984), impose no substantial burdens beyond those already required by the HMR (through incorporation of the NRC's safeguards requirements) and thus are consistent with the HMTA and the HMR. They are distinguishable from the requirements for additional or special escorts found inconsistent in IR–11 (49 FR 46647; Nov. 27, 1984), IR–13 (49 FR 46653; Nov. 27, 1984), IR–15(A) (52 FR 13062; Apr. 20, 1987), and IR–18 (52 FR 200; Jan. 2, 1987). Reasonable delays arising out of state inspections for compliance with substantive Federal or consistent state requirements are a necessary concomitant of state enforcement of Federal standards and are presumptively valid.

In conclusion, because of the absence of evidence of unreasonble or unnecessary delays, restrictions, or redirections resulting from the Illinois transit fee or the programs funded by it, I find no basis for determining that the transit fee fails the "obstacle" test or is inconsistent with the HMTA or the HMR. Therefore, I affirm the findings to that effect contained in IR–17.

V. Other Issues

Comments in this case raised two additional issues which need to be addressed because of their potential relevance in future inconsistency cases.

(1) Issue of Required Conflict With the HMTA or the HMR

Colorado contends that appellants cannot now argue that the transit fee is inconsistent with 49 CFR 177.825 because WEPCO failed to identify that rule in its original application for an inconsistency ruling.

It points out that WEPCO alleged that the transit fee is inconsistent with Appendix A to 49 CFR Part 177, which itself is not a regulation but a policy statement. Thus, Colorado contends, WEPCO failed to meet the 49 CFR 107.203(b)(3) requirement to specify either an HMTA or HMR provision with which the challenged provision is inconsistent. It urges that this failure should result in IR–17 being affirmed.

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While this procedural objection by Colorado might have had some merit had it been raised in a timely manner, this objection has been waived because it was not raised until after the Director, OHMT had issued an inconsistency ruling comparing the challenged requirement with the HMTA and § 177.825. In any event, the Director, OHMT, had the authority to issue an inconsistency ruling on this matter *sua sponte*—i.e., with no application for same. 49 CFR 107.209(b); see, e.g., IR–12 through IR–15, 49 FR 46650 *et seq.* (Nov. 27, 1984). Therefore, I have considered the merits of appellants' arguments concerning alleged inconsistencies between the Illinois transit fee and § 177.825.

(2) The "Silence Equals Consent" Issue

DEP points out that there is no RSPA rule on transit fees, and it and the New York City DEP contend that RSPA could issue a rule on the issue if it wanted to preempt state and local transit fees. Wisconsin says that in the absence of such a rule there is no basis for arguing that a fee system is inconsistent *per se*.

In opposition, the Group contends that there is a relevant Federal rule and that even if there were not the states would not be free to enact any regulations they desire on the subjects they desire. The Group cite the following language from *State of Wisconsin* v. *Northern States Power Co.* #85 CV 0032 (Dane County Circuit Court, June 6, 1985):

> The State argues that because the DNR order addresses a subject matter not specifically addressed by current federal regulations (the environment) the order is not inconsistent with the federal regulations and no pre-exemption exists. Again, the State deals in semantics. If a State can pass statutes or impose regulations not specifically detailed in present Federal regulations, the States would be free to re-regulate the entire field of hazardous materials transportation. Each State could impose its own requirements, different from the federal requirements and different from each other, and thereby block interstate transportation altogether. In other words, the States could accomplished by "not inconsistent" regulations what federal pre-emption is designed to prohibit. Slip op. at 8–9.

The fact that there is no Federal regulation addressing the same subject as a challenged state or local requirement is not determinative of the issue of that requirement's consistency. In some instances the absence of a specific relevant Federal provision may indicate a Federal intent that state or local requirements may occupy that field. In other cases, however, the absence of a specific relevant Federal provision may reflect a Federal intent that the particular field not be occupied at all. Each individual case must be examined on its own merits. In this instance, the Illinois transit fee has not occupied a field intended to be completely occupied by RSPA; the absence of a transit fee in the HMTA and the HMR does not preclude the Illinois transit fee.

V. Conclusion

For the reasons indicated above and for the reasons set forth in IR–17 itself, I affirm the determination by the Director of the Office of Hazardous Materials Transportation in IR–17 that the transit fee of $1,000 per cask imposed by Illinois Revised Statutes, Chapter 111½, section 4304(7) upon owners of spent nuclear fuel traversing the State of Illinois is consistent with the HMTA and the HMR. This decision does not preclude a contrary ruling in the future if the HMTA or the HMR is amended in a manner rendering such transit fees inconsistent.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on September 18, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–22128 Filed 9–24–87; 8:45 am]

BILLING CODE 4910–60–M

Friday
September 25, 1987

Part VII

The President

Proclamation 5706—Emergency Medical Services Week, 1987

Proclamation 5707—Veterans Day, 1987

Executive Order 12609—President's Commission on Compensation of Career Federal Executives

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Federal Register
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Friday, September 25, 1987

Presidential Documents

Title 3—

The President

Proclamation 5706 of September 23, 1987

Emergency Medical Services Week, 1987

By the President of the United States of America

A Proclamation

We can all be extremely proud of and grateful for those who staff our Nation's emergency medical services (EMS). They make a tremendous difference in our land as they save lives and care for the injured and the critically ill. Dedicated physicians, nurses, paramedics, park rangers, fire fighters, law enforcement officers, and countless devoted volunteers form a system that works daily for the safety and well-being of all Americans. Many perform their tasks under severe conditions, and many risk their lives to rescue accident victims; all of them make EMS a national success.

Most of us can tell from personal experience of quick, efficient EMS teams who have saved the lives of people we know and love. Despite these many successes, however, more than 750,000 Americans continue to lose their lives from emergencies each year. That is why EMS teams across our country strive constantly to improve their remarkable lifesaving record. They work to upgrade their training and skills, to find new methods and better equipment, and to establish nationwide standards for EMS training and the delivery of care. Additionally, they work to teach citizens what to do when emergencies confront us in our homes, places of work, or on the street.

We can all recognize, appreciate, encourage, and support our local emergency medical services teams. We can also improve the current EMS system by developing awareness of accident prevention, by following good health practices, and by learning CPR (cardiopulmonary resuscitation). These personal efforts can help make life safer for all of us.

The Congress, by House Joint Resolution 134, has designated the week of September 20 through September 26, 1987, as "National Emergency Medical Services Week" and authorized and requested the President to issue a proclamation in observance of this event.

[FR Doc 87-22
Filed 9-24-87;
Billing code 31

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 20 through September 26, 1987, as National Emergency Medical Services Week, and I call upon all Americans to participate in appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc 87-22370
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Presidential Documents

Proclamation 5707 of September 23, 1987

Veterans Day, 1987

By the President of the United States of America

A Proclamation

For decades America has paused on the 11th of November, the anniversary of the armistice that concluded World War I, to remember and to honor our veterans of military service. We do so in proud and grateful recognition of the hardships and sacrifices demanded from and faithfully accepted by the millions of men and women who have defended our land in war and in peace.

Our observance of Veterans Day this year, the Bicentennial of the Constitution, reminds us in a special way of the service men and women who have made liberty's cause their own. Our fundamental charter lives on because through the years countless brave Americans have gladly willed to "provide for the common defence." No one is more responsible for securing the "Blessings of Liberty to ourselves and our Posterity" than our veterans. That is why, this November 11 and always, we let veterans know that their service is not forgotten, that their sacrifices are appreciated, and that America salutes its defenders.

In order that we may pay fitting homage to those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Wednesday, November 11, 1987, as Veterans Day. I urge all Americans to recognize the valor and sacrifice of our veterans through appropriate public ceremonies and private prayers. I also call upon Federal, State, and local government officials to display the flag of the United States and to encourage and take part in patriotic activities throughout our country. I invite the business community, churches, schools, unions, civic and fraternal organizations, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Filed 9-24-87; 11:53 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12609 of September 23, 1987

President's Commission on Compensation of Career Federal Executives

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the period within which the President's Commission on Compensation of Career Federal Executives may complete its work, it is hereby ordered that Section 2(b) of Executive Order No. 12592 of April 10, 1987, is amended by striking out "August 1, 1987" and inserting in lieu thereof "February 28, 1988".

Ronald Reagan

THE WHITE HOUSE,
September 23, 1987.

[FR Doc. 87-22372
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Federal Register
Vol. 52, No. 187
Monday, September 28, 1987

Presidential Documents

Title 3—

The President

Proclamation 5708 of September 24, 1987

National Historically Black Colleges Week, 1987

By the President of the United States of America

A Proclamation

Setting aside a week in recognition of our country's historically Black colleges and universities is most appropriate because they are truly valuable national resources. During more than a century and a quarter they have educated hundreds of thousands of Americans who have gone on to contribute substantially to our Nation in every walk of life. Their alumni have included some of our most outstanding leaders and scholars.

This year, commemoration of the role of historically Black colleges and universities falls during our Nation's observance of the Bicentennial of the Constitution. That cherished document is the guarantor of liberty, union, and self-government for all Americans. Thanks to it we remain a strong people united in the richness of our diversity. We can all be proud of the role of historically Black colleges and universities in strengthening our country. Keeping these fine institutions a vital force in American education is a worthy national goal.

To acknowledge the accomplishments of historically Black colleges and universities and the appropriateness of focusing national attention on their contributions, the Congress, by Senate Joint Resolution 22, has designated the week of September 21 through September 27, 1987, as "National Historically Black Colleges Week" and authorized and requested the President to issue a proclamation in observance of this commemoration.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 21 through September 27, 1987, as National Historically Black Colleges Week. I urge all Americans to observe this week with appropriate ceremonies and activities to express our respect and appreciation for the outstanding academic and social accomplishments of our Nation's historically Black institutions of higher learning.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-22423
Filed 9-24-87; 4:28 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of September 24 on signing Proclamation 5708, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 38).

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Federal Register
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Monday, September 28, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 580]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 580 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 265,000 cartons during the period September 27 through October 3, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 580 (§ 910.880) is effective for the period September 27 through October 3, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456, telephone; (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on September 22, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 2 vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for large sized lemons, poor for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.880 is added to read as follows:

§ 910.880 Lemon regulation 580.

The quantity of lemons grown in California and Arizona which may be handled during the period September 27 through October 3, 1987, is established at 265,000 cartons.

Dated: September 23, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-22324 Filed 9-25-87; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedure for Enforcement Actions: Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised policy statement.

SUMMARY: The NRC is publishing minor revisions to its Enforcement Policy to further explain enforcement actions involving individuals, to describe the criteria to be used for reopening closed enforcement actions, to provide for the exercise of discretion to refrain from issuing a Notice of Violation or a proposed civil penalty under certain limited circumstances, and to make minor deletions and language changes. The policy statement is intended to inform licensees, vendors, and the public of the bases for taking various enforcement actions. The policy is codified as Appendix C to 10 CFR Part 2.

DATES: This revised statement of policy is effective September 28, 1987 while comments on the changes are being received. Submit comments on or before November 27, 1987.

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ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC between 7:30 a.m. to 4:15 p.m.

Copies of comments may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–492–8214).

SUPPLEMENTARY INFORMATION:

Background:

The criteria used by the Commission to conduct its enforcement activities were first published on October 17, 1972 (37 FR 21962). These criteria were subsequently modified on January 3, 1975 (40 FR 820) and on December 3, 1979 (44 FR 77135). In late 1979, the Commission directed the staff to prepare a comprehensive statement of enforcement policy. This staff effort was given added urgency by the enactment of Pub. L. 96–295 (signed June 30, 1980), that, among other things, amended section 234 of the Atomic Energy Act to raise the maximum civil penalty the NRC can impose from $5,000 to $100,000 per violation per day and eliminated the provision limiting the total civil penalties for any 30-day period to $25,000. On September 4, 1980, the Commission approved a proposed general statement of policy on enforcement. Comments were solicited on the policy and a series of public meetings was held. On March 9, 1982, the Commission published a final version of the policy (47 FR 9987). After the policy had been in effect for about two years, the Commission determined that certain minor revisions should be made. These revisions were published in the **Federal Register** (49 FR 8583) and became effective on March 8, 1984. The criteria were further revised to describe how the NRC Enforcement Policy applies to vendors of products or services on November 20, 1985 (50 FR 47716). In conjunction with approving the March 1984 revision to the Enforcement Policy, the Commission decided to establish a committee of outside experts to review the Enforcement Policy and provide the Commission with recommendations on any changes it believed advisable. The committee was established on August 31, 1984 and issued its report on November 22, 1985. The Commission subsequently decided that the Enforcement Policy should be revised to include some of the recommendations of the committee and other changes. Accordingly, the Commission has approved the following revisions to the Enforcement Policy which explain enforcement actions involving individuals, add a section regarding the criteria to be used for reopening closed enforcement actions, provide for the exercise of discretion to refrain from issuing a Notice of Violation or a proposed civil penalty under certain limited conditions, and make language deletions and changes in other sections.

Revisions to the Enforcement Policy

Revisions to the policy now being made are described in the following paragraphs. Only the sections to which changes were made are discussed here. The numbering of the sections tracks the section numbers in the policy.

I. Introduction and Purpose

Profiting from Violation

The Commission is deleting the following sentence in the second paragraph under Section I of the Enforcement Policy. "It is the Commission's intent that sanctions should be designed to ensure that a licensee does not deliberately profit from violations of NRC requirements." The Commission believes that the wording is ambiguous and that, in fact, few violations are the result of a calculated judgment to profit from noncompliance. Other wording in the policy clearly states that sanctions and severity levels may be increased for deliberate violations.

V. Enforcement Actions

Notice of Violation for Certain Severity Level IV and V Violations

Section V.A., Notice of Violation, previously discussed circumstances under which the NRC will not generally issue a Notice of Violation for Severity Level IV or V violations. Because this could be regarded as a type of discretionary enforcement, the discussion has been moved to the new Section V.F., Exercise of Discretion.

Enforcement Actions Against Individuals

The NRC has taken actions against individual licensed operators in certain instances where misconduct occurred. Generally, the staff policy has been that the NRC should defer to the licensee in the supervision of operators but should take action directly against licensed operators when their actions result in significant violations of NRC requirements involving incompetence or willfulness or where it appears operators are not competent to safely perform their duties. Such an approach places primary responsibility for operator errors where it belongs—with the facility licensee which is responsible for operator training and for developing adequate procedures to govern facility operations.

Despite this philosophy, the NRC does issue licenses to operators and has many regulations that recognize that timely actions by NRC-licensed individuals are an important part of safety. Specifically, the regulations state that:

- Generally, only licensed operators are permitted to manipulate the controls that directly affect reactivity (10 CFR 50.54(i));
- Licensed operators must be present at the controls at all times during the operation of the facility (10 CFR 50.54(k));
- Mechanisms and apparatus, other than controls, the operation of which may indirectly affect the power level or reactively of a reactor, may be manipulated only with the knowledge and consent of an operator licensed in accordance with Part 55 (10 CFR 50.54(j));
- Licensed senior operators must be present at the facility during specified conditions, and available or on call at other times during operation (10 CFR 50.54(m)); and
- An NRC licensed individual must observe all applicable rules, regulations and orders of the Commission, whether or not stated in the license (10 CFR 55.31(d)).

Because of the importance the Commission places on high standards of performance by facility staff, the guidance on when enforcement action against an individual will be considered has been expanded in renumbered Section V.E.

Allowing Mitigation of Civil Penalties for Severity Level I Violations

The Commission believes that mitigation of a civil penalty for a Severity Level I violation should be available on the same basis as for Severity Level II and III violations since the practical justifications for allowing mitigation of these violations is the same; i.e., to encourage self-identification and reporting, extensive corrective actions, and good performance by a licensee. The second paragraph under V.B. of the Enforcement Policy is modified as follows:

"Civil penalties are imposed absent mitigating circumstances for Severity Level I and II violations, are considered for Severity

Level III violations, and may be imposed for Severity Level IV violations that are similar to the previous violations for which the licensee did not take effective corrective action.

Reopening Closed Enforcement Actions

The agency's enforcement program does not address the criteria for reopening closed enforcement actions. There have been rare instances where it was appropriate to reopen an enforcement action to correct an inappropriately applied action. A new paragraph on Reopening Closed Enforcement Actions is added to Section V.

The Commission believes that reopening a previously closed enforcement action may be appropriate under certain circumstances. If significant new information is received by the NRC which indicates that an enforcement sanction was incorrectly applied, that action could be reopened to correct the record. Reopening should occur only (1) if remedial action, e.g., in the form of an order, is necessary to abate the continued harm of a violation to the public health and safety, the common defense and security, or the environment or (2) if new information shows that a violation was less serious than originally believed or that it did not occur. Enforcement action would normally not be reopened where the only change to the prior action would be to increase the severity level of a violation or to impose or increase a civil penalty. Reopening an enforcement action is expected to occur only rarely and would require specific approval of the Deputy Executive Director for Regional Operations.

Exercise of Discretion

As discussed in Section I above, the discussion of circumstances under which the NRC will not generally issue a Notice of Violation for Severity Level IV or V violations has been moved to new Section V.G., Exercise of Discretion.

Additionally, discussion of other circumstances under which a Notice of Violation or proposed civil penalty might not be issued by the NRC is added. Although strict application of the escalating and mitigating factors set forth in the enforcement policy would suggest that issuance of a civil penalty in a particular case would be appropriate, the benefits to be gained from issuing a civil penalty are doubtful for violations identified by a licensee during a forced shutdown where a licensee is diligently and aggressively addressing the causes of the violations. In particular, it is questionable whether such an action would provide incentives to meet the objectives set forth in the enforcement policy: specifically, encouraging prompt correction of existing violations and adverse conditions; deterring future violations and adverse conditions, and encouraging improved performance by the licensee and, by example, that of the industry; and at the same time, not discouraging aggressive and comprehensive implementation of a structured program to identify and correct problems.

In view of this, the Commission has decided that discretion may be exercised, provided there is prior staff consultation, to refrain from issuing a Notice of Violation and a proposed civil penalty for violations that meet all of the following criteria which are listed in a new paragraph in Section V:

1. (a) NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or the licensee is forced into an extended shutdown or work stoppage related to generally poor performance over a long period; (b) the licensee has developed and is aggressively implementing during the shutdown a comprehensive program for problem identification and correction; and (c) NRC concurrence is needed by the licensee prior to restart;

2. Non-willful violations are identified by the licensee (as opposed to the NRC) as the result of its comprehensive program, or the violations are identified as a result of an employee allegation to the licensee. If the NRC identifies the violations, the NRC should determine whether enforcement action is necessary to achieve remedial action;

3. The violations are based upon activities of the licensee prior to the events leading to the shutdown; and

4. The non-willful violations would normally not be categorized as higher than Severity Level III violations under the NRC's Enforcement Policy.

Notwithstanding the above, a civil penalty may be proposed in a case where multiple Severity Level III violations are discovered. This action would be taken when judgment warrants it on the circumstances of the individual case.

The reason for the first condition is to limit the circumstances under which such discretion would be exercised to cases in which the incentives for problem identification and correction are the greatest and the deterrent effects of civil penalty enforcement action are likely to be fewest—when the licensee is in an extended shutdown caused by a major event or period of poor performance so significant that the NRC will not allow restart until it is sure that major problems have been satisfactorily resolved.

The reason for the second condition is to provide an incentive for licensee identification of violations. If the NRC finds the problem, and believes that the licensee's corrective action program is not working adequately, civil penalty enforcement action may be appropriate.

The reason for the third condition is that if violations are identified associated with work performed after the event or shutdown, this may also indicate that the incentives for conducting an adequate program are not sufficient and the deterrent effects of civil penalty enforcement may be necessary.

The reason for the fourth condition is to distinguish less significant violations from more significant violations. Although the rationale for refraining from civil penalty enforcement action may be the same for Severity Level I and II violations that meet the other three criteria, with violations at this level, it may be important to convey a message to other licensees regarding the significance and consequences of such violations.

Supplement VII

The reference to section 210 of the Energy Reorganization Act, which prohibits discrimination against employees for engaging in certain protected activities, has been replaced with a reference to 10 CFR 50.7 and similar NRC regulations prohibiting discriminations against employees. The requirements of § 50.7 apply to Part 50 licensees, but similar requirements appear in other parts of NRC regulations governing other types of licensed activity. Harassment and intimidation of quality assurance workers may constitute violations of the independence criterion for quality assurance programs, such as is required under 10 CFR Part 50, Appendix B. The replacement of the reference in Supplement VII to Section 210 with a reference to NRC regulations is appropriate because NRC regulations, not section 210, form the basis for violations and enforcement actions related to wrongful discrimination or harassment.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination,

Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following statement of policy as Appendix C to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68, Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. Appendix C to Part 2 is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission and its staff in initiating enforcement actions, and of presiding officers, the Atomic Safety and Licensing Appeal Boards, and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the public health and safety, the common defense and security, and the environment.[1]

I. Introduction and Purpose

The purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment by:

- Ensuring compliance with NRC regulations and license conditions;
- Obtaining prompt correction of violations and adverse quality conditions which may affect safety;
- Deterring future violations and occurrences of conditions adverse to quality; and
- Encouraging improvement of licensee and vendor [b] performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees or vendors who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects. Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the appropriate NRC Office Director initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The licensee is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the licensee's response, the Director may mitigate, remit, or impose the civil penalty. An opportunity

[1] Antitrust enforcement matters will be dealt with on a case-by-case basis.

[b] The term "vendor" means a supplier of products or services to be used in an NRC-licensed facility or activity.

is provided for a hearing if a civil penalty is imposed.

The procedure for issuing an order to show cause why a license should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 10 CFR 2.202. The mechanism for modifying a license by order is set forth in 10 CFR 2.204. These sections of Part 2 provide an opportunity for a hearing to the affected licensee. However, the NRC is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. Severity of Violations

Regulatory requirements[2] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process.

Consequently, violations are categorized in terms of five levels of severity to show their relative importance within each of the following eight activity areas:

I. Reactor Operations;
II. Facility Construction;
III. Safeguards;
IV. Health Physics;
V. Transportation;
VI. Fuel Cycle and Materials Operations;
VII. Miscellaneous Matters; and
VIII. Emergency Preparedness.

Licensed activities not directly covered by one of the above listed areas, e.g., export license activities, will be placed in the activity area most suitable in light of the particular violation involved. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are caused for significant concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

Camparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Reactor Construction.

While examples are provided in Supplements I through VIII for determining the appropriate severity level for violations in each of the eight activity areas, the examples are neither exhaustive nor controlling. These examples do not create new requirements. Each is designed to illustrate the significance which the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

The severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used here embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, i.e., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position of the person involved in the violation (e.g., first-line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

The NRC expects licensees to provide full, complete, timely, and accurate information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event which it failed to report. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which a civil penalty or other escalated enforcement action may be warranted, or recurring nonconformance on the part of a vendor, the NRC will normally hold an enforcement conference with the licensee or vendor prior to taking enforcement action. The NRC may also elect to hold an enforcement conference for other violations, e.g., Severity Level IV violation which, if repeated, could lead to escalated enforcement action. The purpose of the enforcement conference is to (1) discuss the violations or nonconformance, their significance and causes, and the licensee's or vendor's corrective actions, (2) determine whether there are any aggravating or mitigating circumstances, and (3) obtain other information which will help determine the appropriate enforcement action.

In addition, during the enforcement conference, the licensee or vendor will be given an opportunity to explain to the NRC what corrective actions (if any) were taken or will be taken following discovery of the potential violation or nonconformance. Licensees or vendors will be told when a meeting is an enforcement conference. Enforcement conferences will not normally be open to the public.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order modifying, suspending, or revoking a license, will be taken prior to the enforcement conference. In such cases, an enforcement conference may be held after the escalated enforcement action is taken.

V. Enforcement Actions

This section describes the enforcement sanctions available to NRC and specifies the conditions under which each may be used. The basic sanctions are notices of violation, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins and confirmatory action letters, notices of nonconformance and notices of deviation are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied,

[2] The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

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NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters. With very limited exceptions, whenever a violation of NRC requirements is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, action by an NRC regional office is appropriate in the form of a Notice of Violation requiring a formal response from the recipient describing its corrective actions. In situations involving nonconformance on the part of vendor, a Notice of Nonconformance will be issued. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have significant impact on the licensee's operation. These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking licenses; or orders to cease and desist from designated activities.

A. Notice of Violation

A notice of violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the recipient to provide a written statement describing (1) corrective steps which have been taken and the results achieved; (2) corrective steps which will be taken to prevent recurrence; and (3) the date when full compliance will be achieved. NRC may require responses to notices of violation to be under oath. Normally, responses under oath will be required only in connection with civil penalties and orders.

NRC uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Sections V.B and V.C, respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

Licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (a) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rule or orders, (b) any requirement for which a license may be revoked, or (c) reporting requirements under Section 206 of the Energy Reorganization Act. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Civil penalties are imposed absent mitigating circumstances for Severity Level I and II violations, are considered for Severity Level III violations, and may be imposed for Severity Level IV violations that are similar [3] to previous violations for which the licensee did not take effective corrective action.

In applying this guidance for Severity Level IV violations, NRC normally considers civil penalties only for similar Severity Level IV violations that occur after the date of the last inspection or within two years, whichever period is greater.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act, and for any willful violation of any Commission requirement including those at any severity level.

NRC imposes different levels of penalties for different severity level violations and different classes of licensees. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis.

NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective licensee audit programs when licensees find, correct, and report problems expeditiously and effectively. To encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee.

On the other hand, ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $100,000 per violation, per day. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of such involvement may not be used to mitigate a civil penalty.

Allowance of mitigation could encourage lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

NRC reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of licensees. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

1. Prompt Identification and Reporting

Reduction of up to 50% of the base civil penalty may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor,

[3] The word "similar," as used in thos policy, refers to those violations which could have been reasonably expected to have been prevented by the licensee's corrective action for the previous violation.

consideration will be given to, among other things, the length of time the violation existed prior to discovery, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to this factor if the licensee does not take immediate action to correct the problem upon discovery.

2. Corrective Action to Prevent Recurrence

Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed. Unusually prompt and extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action—such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. Past Performance

Reduction by as much as 100% of the base civil penalty shown in Table 1 may be given for prior good performance in the general area of concern. On the other hand, the base civil penalty may be increased as much as 100% for prior poor performance in the general area of concern.

In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance such as Systematic Assessment of Licensee Performance (SALP) evaluations for power reactors, and prior enforcement history including Severity Level IV and V violations in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty.

4. Prior Notice of Similar Events

The base civil penalty may be increased as much as 50% for cases where the licensee had prior knowledge of a problem as a result of a licensee audit, or specific NRC or industry notification, and had failed to take effective preventive steps.

5. Multiple Occurrences

The base civil penalty may be increased as much as 50% where multiple examples of a particular violation are identified during the inspection period.

The above factors are additive. However, in no instance will a civil penalty for any one violation exceed $100,000 per day.

The duration of a violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. For example: (1) If a licensee is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

(2) If a licensee is unaware of a condition resulting in a continuing violation, but clearly should have been aware of the condition or had an opportunity to correct the condition but failed to do so, a separate violation and attendant civil penalty may be considered for each day that the licensee clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so.

(3) Alternatively, whether or not a licensee is aware or should have been aware of a violation that continues for more than one day, the civil penalty imposed for one violation may be increased to reflect the added significance resulting from the duration of the violation.

The Tables and the mitigating factors determine the civil penalties which may be assessed for each violation. However, the focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem may be based on the amount shown in the table for a problem of that Severity Level, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem. In addition, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty, if the licensee is aware of the matter that should have been reported.

TABLE 1A.—BASE CIVIL PENALTIES

	Plant operations, const, health physics and EP	Transportation		
		Safeguards	Greater than type A quantity [1]	Type A quantity or less [2]
a. Power Reactors	$100,000	$100,000	$100,000	5,000
b. Test Reactors	10,000	10,000	10,000	2,000
c. Research Reactors & Critical Facilities	5,000	5,000	5,000	1,000
d. Fuel Fabricators and Industrial Processors [3]	25,000	100,000 [4]	25,000	5,000
e. Mills and Uranium Conversion Facilities	10,000		5,000	2,000
f. Industrial Users of Material [5]	10,000		5,000	2,000
g. Waste Disposal Licensees	10,000		5,000	2,000
h. Academic or Medical Institutions [6]	5,000		2,500	1,000
i. Other Material Licensees	1,000		2,500	1,000

[1] Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.
[2] Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.
[3] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

[4] This amount refers to Category 1 Licensees (as defined in 10 CFR 73.2 (bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.
[5] Includes industrial radiographers, nuclear pharmacies, and other industrial users.
[6] This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

TABLE 1B.—BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (percent of amount listed in table 1A)
I	100
II	80
III	50
IV	15
V	5

C. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (*see* 10 CFR 2.202 and 2.204). Orders may be issued as set forth below. Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate.

(1) License Modification Orders are issued when some change in licensee equipment, procedures, or management controls is necessary.

(2) Suspension Orders may be used:
(a) To remove a threat to the public health and safety, common defense and security, or the environment;
(b) To stop facility construction when (i) further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component, or (ii) the licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;
(c) When the licensee has not responded adequately to other enforcement action;
(d) When the licensee interferes with the conduct of an inspection or investigation; or
(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

(3) Revocation Orders may be used:
(a) When a licensee is unable or unwilling to comply with NRC requirements,
(b) When a licensee refuses to correct a violation,
(c) When a licensee does not respond to a notice of violation where a response was required,
(d) When a licensee refuses to pay a fee required by 10 CFR Part 170, or
(e) For any other reason for which revocation is authorized under Section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

(4) Cease and Desist Orders are typically used to stop an unauthorized activity that has continued after notification by NRC that such activity is unauthorized.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show cause why the order should not be issued in the proposed manner.

D. Escalation of Enforcement Sanctions

NRC considers violations of Severity Levels I, II, or III to be serious. If serious violations occur, NRC will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. NRC carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections V.B and V.C, above.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

Normally the progression of enforcement actions for similar violations will be based on violations under a single license. When more than one facility is covered by a single license, the normal progression will be based on similar violations at an individual facility and not on similar violations under the same license. However, it should be noted that under some circumstances, e.g., where there is common control over some facet of facility operations, similar violations may be charged even though the second violation occurred at a different facility or under a different license. For example, a physical security violation at Unit 2 of a dual unit plant that repeats an earlier violation at Unit 1 might be considered similar.

TABLE 2.—EXAMPLES OF PROGRESSION OF ESCALATED ENFORCEMENT ACTIONS FOR SIMILAR VIOLATIONS IN THE SAME ACTIVITY AREA UNDER THE SAME LICENSE

Severity of violation	Number of similar violations from the date of the last inspection or within the previous two years (whichever period is greater)		
	1st	2nd	3rd
I	[a]+[b]	[a]+[b]+[c]	[d]
II	[a]	[a]+[b]	[a]+[b]+[c]
III		[a]	[a]+[b]

[a] Civil penalty
[b] Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.
[c] Show cause for modification or revocation of the license, as appropriate.
[d] Further action, as appropriate.

E. Enforcement Actions Involving Individuals

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action will normally be taken only when there is little doubt that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence), failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III, IV or V violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC),

concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Examples of situations which could result in enforcement actions against individuals include, but are not limited to, violations which involve:

- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully performing unauthorized bypassing of required reactor safety systems.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Inattention to duty such as sleeping or being intoxicated while on duty.
- Willfully taking actions that violate TS Limiting Conditions for Operation.
- Falsifying records required for NRC regulations or by the facility licensee.
- Willfully failing to take "immediate actions" of emergency procedures.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel.

Any proposed enforcement action against individuals must be done with the concurrence of the Deputy Executive Director for Regional Operations. The opportunity for an Enforcement Conference with the individual will usually be provided.

Examples of sanctions that may be appropriate against NRC-licensed operators are:

- Issuance of a letter of reprimand to be placed in the operator's license file,
- Issuance of a Notice of Violation, and
- Suspension for a specified period, modification, or revocation of the license.

The sanctions are listed in escalating order of significance.[4] The particular sanction to be used should be determined on a case-by-case basis.

In the case of an unlicensed individual, an Order modifying the facility license to require the removal of the individual from all nuclear-related activities for a specified period of time or indefinitely may be appropriate.

F. Reopening Closed Enforcement Actions

If significant new information is received by the NRC which indicates that an enforcement sanction was incorrectly applied, that action could be reopened to correct the record. This should occur only (1) if remedial action, e.g., in the form of an Order, is necessary to abate the continued harm of a violation to the public health and safety, the common defense and security, or the environment, or (2) if new information shows that a violation was less serious than originally believed or that it did not occur. Enforcement actions would not normally be reopened where the only change to the prior action would be to increase the severity level of a violation or to impose or increase a civil penalty. Reopening an enforcement action is expected to occur only rarely and would require specific approval of the Deputy Executive Director for Regional Operations.

G. Exercise of Discretion

1. Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC will not generally issue a notice of violation for a violation that meets all of the following criteria:

a. It was identified by the licensee;

b. It fits in Severity Level IV or V;

c. It was reported, if required;

d. It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

e. It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation.

2. The NRC may also refrain from issuing a Notice of Violation or a proposed civil penalty for violations that meet all of the following criteria:

a. (i) NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or the licensee is forced into an extended shutdown or work stoppage related to generally poor performance over a long period; (ii) the licensee has developed and is aggressively implementing during the shutdown a comprehensive program for problem identification and correction; and (iii) NRC concurrence is needed by the licensee prior to restart.

b. Non-willful violations are identified by the licensee (as opposed to the NRC) as the result of its comprehensive program, or the violations are identified as a result of an employee allegation to the licensee. If NRC identifies the violation, the NRC should determine whether enforcement action is necessary to achieve remedial action.

c. The violations are based upon activities of the licensee prior to the events leading to the shutdown, and

d. The non-willful violations would normally not be categorized as higher than Severity Level III violations under the NRC's Enforcement Policy.

Notwithstanding the above, a civil penalty may be proposed in a case where multiple Severity Level III violations are discovered. This action would be taken when judgment warrants it on the circumstances of the individual case.

H. Related Administrative Actions

In addition to the formal enforcement mechanisms of notices of violation, civil penalties, and orders, NRC also uses administrative mechanisms, such as bulletins, information notices, generic letters, notices of deviation, notices of nonconformance and confirmatory action letters to supplement its enforcement program. NRC expects licenses and vendors to adhere to any obligations and commitments resulting

[4] Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties for violations on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

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from these processes and will not hesitate to issue appropriate orders to licensees to make sure that such commitments are met.

(1) Bulletins, Information Notices and Generic Letters are written notifications to groups of licensees identifying specific problems and recommending specific actions.

(2) Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A notice of deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

(3) Confirmatory Action Letters are letters confirming a licensee's or a vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

(4) Notices of Nonconformance are written notices describing non-licensees' failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

I. Referrals to Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice for investigation. Referral to the Department of Justice does not preclude the NRC from taking other enforcement action under this General Statement of Policy. However, such actions will be coordinated with the Department of Justice to the extent practicable.

VI. Public Disclosure of Enforcement Actions

In accordance with 10 CFR 2.790, all enforcement actions and licensees' responses are publicly available for inspection. In addition, press releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Levels I, II, or III, press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for Notices of Violation.

VII. Responsibilities

The Deputy Executive Director for Regional Operations (DEDRO), as the principal enforcement officer of the NRC, has been delegated the authority to issue notices of violations, civil penalties, and orders.[5] Regional Administrators may also issue notices of violation for Severity Level IV and V violations and may sign notices of violation for Severity Level III violations with no proposed civil penalty and proposed civil penalty actions with the concurrence of the DEDRO. In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the DEDRO or the Regional Administrator must exercise judgment and discretion in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to impose a civil penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose civil penalties in amounts greater than 3 times the Severity Level I values shown in Table 1A;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any enforcement action that involves a finding of a material false statement;

(5) Refraining from taking enforcement action for matters meeting the criteria of Section V.F.2;

(6) Any action the Office Director believes warrants Commission involvement; or

(7) Any proposed enforcement action on which the Commission asks to be consulted.

VIII. Vendor Enforcement

The Commission's enforcement policy is also applicable to non-licensees (vendors). Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors are required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors of reactor and materials licensees and Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

The NRC conducts inspections of reactor licensees to determine whether they are ensuring that vendors are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on safety. As part of the effort of ensuring that licensees fulfill their obligations in this regard, the NRC inspects reactor vendors to determine if they are meeting their obligations. These inspections include examination of the quality assurance programs and their implementation by the vendors through examination of product quality. The NRC may also inspect vendors, including suppliers of Part 71 and materials licensees, to determine whether they are complying with Part 21. When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failure to ensure that their vendors have programs that meet applicable requirements including Part 21. Notices of Violation will be issued for vendors which violate Part 21. Civil penalties will only be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for

[5] The Director, Office of Enforcement, acts for the Deputy Executive Director for Regional Operations in the latter's absence or as directed. The Directors of the Offices of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Special Projects have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR, NMSS, and OSP will be confined to actions necessary in the interest of public health and safety. The Director, Office of Administration and Resources Management, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license fees. (It is planned to consider redelegation of some or all of these authorities to the Administrators of the NRC Regional Offices over the next several years.)

vendors which fail to meet committments related to NRC activities.

Supplement I—Severity Categories

Reactor Operations

A. Severity I.—Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, being exceeded;

2. A system [6] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function [7] when actually called upon to work;

3. An accidental criticality; or

4. Release of radioactivity offsite greater than ten (10) times the Technical Specifications limit [8]

B. Severity II—Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function; or

2. Release of radioactivity offsite greater than five (5) times the Technical Specifications limit.

C. Severity III—Violations involving for example:

1. A significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

b. In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (e.g, safety system not operable unless offsite power is available; materials or components not environmentally qualified);

3. Dereliction of duty on the part of personnel involved in licensed activities;

4. Changes in reactor parameters which cause unanticipated reductions in margins of safety;

5. Release of radioactivity offsite greater than the Technical Specifications limit;

6. Failure to meet the requirements of 10 CFR 50.59 such that a required license amendment was not sought; or

7. Licensee failure to conduct adequate oversight of vendors resulting in the use of products or services which are of defective or indeterminate quality and which have safety significance.

D. Severity IV.—Violations involving for example:

1. A less significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

b. In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable.

2. Failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation;

3. Failure to meet regulatory requirement that have more than minor safety or environmental significance; or

4. Failure to make a required Licensee Event Report.

E. Severity Level V.—Violations that have minor safety or environmental significance.

Supplement II—Severity Categories

Part 50 Facility Construction

A. Severity I.—Violations involving a structure or system that is completed [9] in such a manner that it would not have satisfied its intended safety related purpose.

B. Severity II.—Violations involving for example:

1. A breakdown in the quality assurance program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). Such deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity III.—Violations involving for example:

1. A deficiency in a licensee quality assurance program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). Such significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. Failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. Failure to make a required 10 CFR 50.55(e) report.

D. Severity IV.—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

E. Severity V.—Violations that have minor safety or environmental significance.

Supplement III—Severity Categories

Safeguards

A. Severity I.—Violations involving for example:

1. An act of radiological sabotage or actual theft, loss, or diversion of a formula quantity of strategic special nuclear material [10] (SSNM);

2. Actual entry of an unauthorized individual into a vital area or material access area from outside the protected area (i.e., penetration of both barriers) that was not detected at the time of entry; or

3. Failure to promptly report knowledge of an actual or attempted theft or diversion of SSNM or an act of radiological sabotage.

B. Severity II.—Violations involving for example:

1. Actual theft, loss or diversion of special nuclear material (SNM) of moderate strategic significance;[11]

2. Failure to control access such that all three elements of access control (barrier, monitoring, and response) at the protected area or vital area are inadequate or two of three elements are inadequate in both the protected and vital area;

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[6] "System" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[7] "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. For example, considering a BWR's high pressure ECCS capability, the violation must result in complete invalidation of both HPCI and ADS subsystems. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

[8] The Technical Specification limit as used in this Supplement (Items A.4, B.2 and C.5) does not apply to the instantaneous release limit.

[9] "Completed" means completion of construction including review and acceptance by the construction QA organization.

[10] *See* 10 CFR 73.2(bb).

[11] *See* 10 CFR 73.2(x).

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3. Failure to implement approved compensatory measures when the central and secondary alarm stations are inoperable;

4. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of a formula quantity of SNM from areas of authorized use or storage; or

5. Failure to use established transportation security systems designed or used to prevent the theft, loss, or diversion of a formula quantity of SNM or acts of radiological sabotage.

C. Severity III.—Violations involving for example:

1. Failure to control access such that two of the three elements of access control at the vital area or protected area barrier are inadequate;

2. Failure to control access to a transport vehicle or the SNM being transported that does not constitute a Severity I or II violation;

3. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of SNM of moderate strategic significance from areas of authorized use or storage;

4. Failure to implement approved compensatory measures when the central (or secondary) alarm station is inoperable;

5. Failure to conduct a proper search at the access control point that results in introduction to the site of firearms, explosives, incendiary devices, or other items which could be used for industrial sabotage; or

6. Failure to properly secure or protect classified or other sensitive safeguards information which would significantly assist an individual in an act of radiological sabotage or theft of special nuclear material.

D. Severity IV.—Violations involving for example:

1. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of SNM of low strategic significance [12] from areas of authorized use or storage;

2. Failure to implement 10 CFR Parts 25 and 95 and information addressed under section 142 of the Act, and the NRC approved security plan relevant to those parts;

3. Failure to control access to a vital area or material access area from inside the protected area or failure to control access to the protected area in that one of the three elements of access control is inadequate;

4. Failure to properly secure or protect classified or other sensitive safeguards information which would not significantly assist an individual in an act of radiological sabotage or theft of special nuclear material; or

5. Other violations, such as failure to follow an approved security plan, that have more than minor safeguards significance.

E. Severity V.—Violations that have minor safeguards significance.

Supplement IV—Severity Categories

Health Physics 10 CFR Part 20 [13]

A. Severity I.—Violations involving for example:

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;

2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 10 CFR 20.106;

4. Disposal of licensed material in quantities or concentrations in excess of ten times the limits of 10 CFR 20.303; or

5. Exposure of a worker in restricted areas of ten times the limits of 10 CFR 20.103.

B. Severity II.—Violations involving for example:

1. Single exposure of a worker in excess of 5 rems of radiation to the whole body, 30 rems to the skin of the whole body, or 75 rems to the feet, ankles, hands or forearms;

2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of five times the limits of 10 CFR 20.106;

4. Failure to make an immediate notification as required by 10 CFR 20.403(a)(1) and 10 CFR 20.403(a)(2);

5. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.303; or

6. Exposure of a worker in restricted areas in excess of five times the limits of 10 CFR 20.103.

C. Severity III.—Violations involving for example:

1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 18.75 rems to the feet, ankles, hands or forearms;

2. A radiation level in an unrestricted area such that an individual could receive greater than 100 millirem in a one hour period or 500 millirem in any seven consecutive days;

3. Failure to make a 24-hour notification as required by 10 CFR 20.403(b) or an immediate notification required by 10 CFR 20.402(a);

4. Substantial potential for an exposure or release in excess of 10 CFR 20 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey, operation of a radiation facility with a nonfunctioning interlock system);

5. Release of radioactive material to an unrestricted area in excess of the limits of 10 CFR 20.106;

6. Improper disposal of licensed material not covered in Severity Level I or II;

7. Exposure of a worker in restricted areas in excess of the limits of 10 CFR 20.103;

8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;

9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic, rather than an isolated weakness in radiation protection;

10. Conduct of licensee activities by a technically unqualified person; or

11. Significant failure to control licensed material.

D. Severity IV.—Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.101 not constituting Severity Level I, II, or III violations;

2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one-hour period or 100 millirem in any seven consecutive days;

3. Failure to make a 30-day notification required by 10 CFR 20.405;

4. Failure to make a followup written report as required by 10 CFR 20.402(b), 20.408, and 20.409; or

5. Any other matter that has more than minor safety or environmental significance.

E. Severity V.—Violations that have minor safety or environmental significance.

[12] *See* 10 CFR 73.2(y).

[13] Personnel overexposures and associated violations, incurred during a life saving effort, will be treated on a case-by-case basis.

Supplement V—Severity Categories

Transportation [14]

A. Severity I.—Violations of NRC transportation requirements involving for example:

1. Annual whole body radiation exposure of a member of the public in excess of 0.5 rems of radiation; or

2. Breach of package integrity resulting in surface contamination or external radiation levels in excess of ten times the NRC limits.

B. Severity II.—Violations of NRC transportation requirements involving for example:

1. Breach of package integrity resulting in surface contamination or external radiation levels in excess of NRC requirements;

2. Surface contamination or external radiation levels in excess of five times NRC limits that did not result from a breach of package integrity; or

3. Failure to make required initial notification associated with Severity Level I or II violations.

C. Severity III.—Violations of NRC transportation requirements involving for example:

1. Breach of package integrity;

2. Surface contamination or external radiation levels in excess of, but less than a factor of five above NRC requirements, that did not result from a breach of package integrity;

3. Any noncompliance with labelling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

a. Improper identification of the type, quantity, or form of material;

b. Failure of the carrier or recipient to exercise adequate controls; or

c. Substantial potential for personnel exposure or contamination, or improper transfer of material; or

4. Failure to make required initial notification associated with Severity Level III violations.

D. Severity IV.—Violations of NRC transportation requirements involving for example:

1. Package selection or preparation requirements which do not result in a breach of package integrity or surface contamination or external radiation levels in excess of NRC requirements; or

2. Other violations that have more than minor safety or environmental significance.

E. Severity V.—Violations that have minor safety or environmental significance.

Supplement VI—Severity Categories

Fuel Cycle and Materials Operations

A. Severity I.—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed ten times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function; or

3. A nuclear criticality accident.

B. Severity II.—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license; or

2. A system designed to prevent or mitigate a serious safety event being inoperable.

C. Severity III.—Violations involving for example:

1. Failure to control access to licensed materials for radiation purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct licensed activities by a technically unqualified person;

5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license; or

6. Medical therapeutic misadministrations.

D. Severity IV.—Violations involving for example:

1. Failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental signficance; or

3. Failure to report medical diagnostic misadministrations.

E. Severity V.—Violations that have minor safety or environmental significance.

Supplement VII—Severity Categories

Miscellaneous Matters

A. Severity I.—Violations involving for example:

1. A Material False Statement (MFS) [15] in which the statement made was deliberately false;

2. Falsification of records which NRC requires be kept of significant information in which the records were deliberately falsified by or with the knowledge of management;

3. A knowing and intentional failure to provide the notice required by Part 21; or

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee.

B. Severity II.—Violations involving for example:

1. A MFS or a reporting failure, involving information which, had it been available to the NRC and accurate at the time the information should have been submitted, would have resulted in regulatory action or would likely have resulted in NRC seeking further information;

2. A MFS in which the false statement was made with careless disregard;

3. Deliberate falsification of records which NRC requires be kept involving significant information;

4. Action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or

5. A failure to provide the notice required by Part 21.

C. Severity III.—Violations involving for example:

1. A MFS not amounting to a Severity Level I or II violation.

2. Deliberate falsification, of falsification by or with the knowledge of management, of records which the NRC requires be kept that did not involve significant information.

3. Action by first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or

4. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV.—Violations involving for example:

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[14] Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper (10 CFR 73.20) and a carrier (10 CFR 70.20a). When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

[15] In essence, a Material False Statement is a statement that is false by omission or commission and is relevent to the regulatory process. As can be seen in the examples, in determing the specific severity level of a violation involving material false statements or falsification of records, consideration will be given to such factors as the position of the person involved in the violation (e.g., first line supervisor or senior manager), the significance of the information involved, and the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness). The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

1. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance;

2. A false statement caused by an inadvertent clerical or similar error involving information which, had it been available to NRC and accurate at the time the information should have been submitted, would probably not have resulted in regulatory action or NRC seeking additional information; or

E. Severity V.—Violations of minor procedural requirements of Part 21.

Supplement VIII—Severity Categories

Emergency Preparedness

A. Severity I.—Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

B. Severity II.—Violations involving for example:

1. In a site area emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity III.—Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement emergency planning standard involving assessment or notification.

D. Severity IV.—Violations involving for example:

Licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

E. Severity V.—Violations that have minor safety or environmental significance.

Dated at Washington, DC, this 23d day of September 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-22314 Filed 9-25-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-202-AD; Amdt. 39-5734]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, which requires repetitive testing, inspection, and rework, if necessary, of the ram air turbine (RAT) uplock and roller, and provides an optional terminating action. This amendment is prompted by reports of failure of the RAT to deploy during ground testing because the uplock hook was dented and the roller seized. This condition, if not corrected, could result in loss of emergency standby hydraulic power to the flight controls.

EFFECTIVE DATE: October 30, 1987.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires testing, inspections, and rework of the ram air turbine (RAT) uplock and roller on certain Airbus Model A310 series airplanes, was published in the **Federal Register** on November 28, 1986 (51 FR 43010). The proposal was amended to clarify the terminating action and was published on July 14, 1987 (52 FR 26349).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received in response to the amendment to NPRM. The commenter concurred with the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $20,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($400). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310 series airplanes with serial numbers listed in Airbus Service Bulletin A310-29-2010, Revision 3, dated August 21, 1985, certificated in any category. Compliance is required within 700 hours time in service after the effective date of this AD, unless previously accomplished.

To prevent failure of the ram air turbine (RAT) extension system and ensure deployment of the RAT when necessary, accomplish the following:

A. Test, inspect, and rework, if necessary, the RAT uplock hook and roller in accordance with Airbus Industrie Service Bulletin A310–29–2019, Revision 3, dated August 21, 1985.

B. Repeat the tests, inspections, and necessary rework required by paragraph A., above, at intervals not to exceed 1,400 hours time in service.

C. Incorporation of both Modification AI–5876 described in Airbus Industrie Service Bulletin A310–29–2011, Revision 1, dated September 2, 1986, and Modification AI 5958 described in Airbus Industrie Service Bulletin A310–29–2012, Revision 1, dated September 2, 1986, constitutes terminating action for the repetitive inspection requirements of paragraph B of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 30, 1987.

Issued in Seattle, Washington, on September 16, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–22225 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–07–AD; Amdt. 39–5603]

Airworthiness Directives; Pacific Scientific Company Technical Standard Order (TSO) C22f Lap Belt Assembly, Part Number 1107177 (All Dash Numbers)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to Pacific Scientific Company Technical Standard Order (TSO) C22f lap belt assemblies, which requires replacement of certain lap belt retractor shafts. This amendment is prompted by a report that some retractor shafts were installed which were not manufactured of the correct material. This condition, if not corrected, could lead to structural failure of the lap belt assembly during an emergency landing.

EFFECTIVE DATE: October 26, 1987.

ADDRESSES: The applicable service information may be obtained from Pacific Scientific Company, 1346 S. State College Boulevard, Anaheim, California 92803. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Western Aircraft Certification Office, ANM–173W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297–1388.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection for and replacement of certain incorrectly manufactured lap belt retractor shafts that do not provide adequate strength, was published in the **Federal Register** on March 12, 1987 (52 FR 7619).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requested extending the proposed compliance time of 90 days to 180 days. This was requested because the specific aircraft on which this type of lap belt are installed can not be identified, and some airlines with large fleets will require additional time to inspect all of their airplanes. The FAA concurs and has determined that an extension of the compliance time to 180 days after the effective date of this AD can be granted without compromising safety. The final rule has been changed accordingly.

In addition, paragraph A. of the final rule has been revised to clarify the requirement that incorrectly-manufactured lap belt retractor shafts must be replaced prior to further flight.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the change previously noted.

It is estimated that 4,800 shafts on lap belt assemblies of the affected type are installed in both large and small airplanes of U.S. registry and will be affected by this AD; approximately 880 of these shafts are made of the incorrect material and must be replaced. It will require one-quarter man-hour to inspect each of the 4,800 shafts, and an additional one-half man-hour to remove and replace each of the unacceptable shafts, for a total of 1,640 man-hours to accomplish the required action. The average labor cost will be $40 per man-hour. The lap belts with the unacceptable shafts can be returned to Pacific Scientific Company at no charge for replacement of the shafts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($30). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Pacific Scientific Company: Applies to TSO C22f lap belt assemblies, part number 1107177 (all dash numbers), manufactured between September 1, 1984, and January 1, 1988.

Compliance required within 180 days after the effective date of this AD, unless previously accomplished.

To eliminate lap belt assemblies with belt retractor shafts which do not provide adequate strength, accomplish the following:

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A. Inspect all Pacific Scientific TSO C22f lap belt assemblies, part number 1107177 (all dash numbers), in accordance with Pacific Scientific Company Safety Advisory Letter (on the Mark V Reel Lap Belt Assembly, which deals with this problem), to determine if they have part number 1106294–01 retractor shafts made of the correct material. This is determined by visual examination of the end of the shaft: If the color is gold anodize, the shaft is acceptable. If the color is a dull battleship grey anodize, the shaft must be replaced prior to further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Pacific Scientific Company, 1346 S. State College Boulevard, Anaheim, California 92803. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective October 26, 1987.

Issued in Seattle, Washington, on September 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–22221 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–11]

Revision to the Sacramento Metropolitan Airport, CA; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Sacramento Metropolitan Airport, CA; control zone. Construction of a new runway parallel to the existing runway will be completed shortly. The airport reference point (ARP) will change and controlled airspace will be required for instrument landing system (ILS) and nondirectional radio beacon (NDB) instrument approaches to the new runway.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Torikai, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Sacramento Metropolitan Airport, CA; control zone (52 FR 26153). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Sacramento Metropolitan, CA; control zone. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Sacramento Metropolitan Airport, CA. [REVISED]

Within a 5-mile radius of the Sacramento Metropolitan Airport (lat. 38°41'44"N., long 121°35'23"W.), within 2.5 miles each side of the Runway 16R/34L localizer N and S courses, extending from the 5-mile radius zone to 6 miles north and south of the airport, within 2.5 miles each side of the Runway 16L/34R localizer N and S courses, extending from the 5-mile radius zone to 6 miles north and south of the airport, and including that airspace adjoining the Sacramento McClellan AFB, CA., and the Sacramento Municipal Airport, CA., control zones between lat. 38°44'43" N., and the Sacramento VORTAC 351° radial.

Issued in Los Angeles, California, on September 8, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87–22226 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–AWA–6]

Alteration of Jet Routes, Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of four of eight jet routes located in the vicinity of New York that were published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. However, due to numerous technical and administrative problems, only J–190, J–193, J–211 and J–221 will be implemented at this time. This amendment is part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation

Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–174, J–190, J–191, J–193, J–208, J–209, J–211 and J–221 located in the vicinity of New York (52 FR 25607). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, due to numerous technical and administrative problems, the FAA has determined that only J–190, J–193, J–211 and J–221 should be implemented at this time. The other four jet routes will be delayed until a later date. Except for editorial changes and the omission of four jet routes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of four of eight jet routes located in the vicinity of New York that was published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–190 [Amended]

By removing the words "to Rockdale, NY." and substituting the words "Rockdale, NY; to Albany, NY."

J–193 [Revised]

From Wilmington, NC; Cofield, NC; Harcum, VA; to INT Harcum 006° and Hopewell, VA, 030° radials.

J–211 [Amended]

By removing the words "From Johnstown, PA, via INT Johnstown 129° and Westminster, MD, 292° radials; " and substituting the words "From Youngstown, OH; Johnstown, PA; INT Johnstown 129° and Westminster, MD, 292° radials;"

J–221 [Removed]

Issued in Washington, DC, on September 15, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–22227 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–AWA–7]

Alteration of Jet Routes, Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of three of nine jet routes located in the vicinity of New York that were published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. However, due to numerous technical and administrative problems, only J–522, J–547 and J–563 will be implemented at this time. This amendment is part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–222, J–225, J–228, J–518, J–522, J–547, J–563, J–573 and J–581 located in the vicinity of New York (52 FR 25610). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, due to numerous technical and administrative problems, the FAA has determined that only J–522, J–547 and J–563 should be implemented at this time. The other six jet routes will be delayed until a later date. Except for editorial changes, and the omission of six jet routes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of three of nine jet routes located in the vicinity of New York that was published in the notice. These routes are part of an overall plan

designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–522 [Amended]

By removing the words "to Huguenot, NY," and substituting the words "to Kingston, NY,"

J–547 [Amended]

By removing the words "Syracuse, NY; INT Syracuse 094° and Albany, NY, 058° radials;" and substituting the words "Syracuse, NY; Cambridge, NY;"

J–563 [Amended]

By removing the words "via INT of Albany 008° and Sherbrooke, PQ, Canada, 217° radials" and substituting the words "via INT of Albany 006° and Sherbrooke, PQ, Canada, 217° radials"

Issued in Washington, DC, on September 15, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–22228 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–AWA–6]

Alteration of Jet Routes, Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes two of four jet routes located in the vicinity of New York that were published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. However, due to numerous technical and administrative problems, only J–223 and J–227 will be implemented at this time. This amendment is part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish Jet Routes J–213, J–215, J–223 and J–227 located in the vicinity of New York (52 FR 25609). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, due to numerous technical and administrative problems, the FAA has determined that only J–223 and J–227 should be implemented at this time. The other two jet routes will be delayed until a later date. Except for editorial changes and the omission of two jet routes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes two of four jet routes located in the vicinity of New York that was published in the notice. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-223 [New]

From LaGuardia, NY, via LaGuardia 310° and Elmira, NY, 100° radials; to Elmira.

J-227 [New]

From Armel, VA; INT Armel 001° and Elmira, NY, 193° radials; to Elmira.

Issued in Washington, DC, on September 15, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-22229 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25392; Amdt. No. 1357]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on September 18, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: Section 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective January 14, 1988

Pago Pago, American Samoa—Pago Pago Intl, VOR/DME or TACAN–B, Amdt. 4
Atlantic, IA—Atlantic Muni, NDB RWY 12, Amdt. 7
Cambridge, OH—Cambridge Muni, VOR–A, Amdt. 1
Cambridge, OH—Cambridge Muni, NDB RWY 4, Amdt. 5
Zanesville, OH—Zanesville Muni, VOR RWY 22, Amdt. 2
Zanesville, OH—Zanesville Muni, NDB RWY 4, Amdt. 11
Sheboygan, WI—Sheboygan County Memorial, VOR RWY 3, Amdt. 6
Sheboygan, WI—Sheboygan County Memorial, VOR RWY 21, Amdt. 6

. . . Effective December 17, 1987

Visalia, CA—Visalia Muni, ILS RWY 30, Amdt. 4
Kissimmee, FL—Kissimmee Muni, VOR/DME–A, Amdt. 6
Kissimmee, FL—Kissimmee Muni, NDB RWY 15, Amdt. 8
Kissimmee, FL—Kissimmee Muni, RNAV RWY 15, Amdt. 4
Bloomington-Normal, IL—Bloomington-Normal, VOR RWY 11, Amdt. 10
Bloomington-Normal, IL—Bloomington-Normal, VOR RWY 21, Amdt. 16
Bloomington-Normal, IL—Bloomington-Normal, VOR/DME RWY 21, Amdt. 1
Bloomington-Normal, IL—Bloomington-Normal, LOC BC RWY 11, Amdt. 7
Bloomington-Normal, IL—Bloomington-Normal, ILS RWY 29, Amdt. 7
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 28, Amdt. 20
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 28, Amdt. 7
Newberry, MI—Luce County Hale, VOR RWY 11, Amdt. 8
Newberry, MI—Luce County Hale, VOR RWY 29 Amdt. 8
Cross Keys, NJ—Cross Keys, VOR RWY 9, Amdt. 4
Washington, NC—Warren Field, VOR/DME RWY 5, Amdt. 2
Harrisburg, PA—Capital City, RADAR–1, Amdt. 12
Houston, TX—Houston Intercontinental, NDB RWY 8, Amdt. 9, Cancelled
Houston, TX—Houston Intercontinental, NDB RWY 26, Amdt. 1, Cancelled
Rutland, VT—Rutland State, LDA RWY 19, Amdt. 4

. . . Effective November 19, 1987

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Orig.

. . . Effective October 22, 1987

Coeur D'Alene, ID—Coeur D'Alene Air Term, VOR RWY 5, Amdt. 2, Cancelled
Coeur D'Alene, ID—Coeur D'Alene Air Term, VOR–A, Orig.
Coeur D'Alene, ID—Coeur D'Alene Air Term, NDB RWY 5, Amdt. 1
Coeur D'Alene, ID—Coeur D'Alene Air Term, ILS RWY 5, Amdt. 3

[FR Doc. 87–22231 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1207

Standards of Conduct; Correction

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule, correction.

SUMMARY: A final rule entitled "Standards of Conduct" was published in the **Federal Register** on June 16, 1987 (52 FR 22755–22764). An error was made in the paragraph stating the procedure of how to include employees who are GM–13 or GS–13 in the category of employees who must file confidential statements of employment and financial interests. This is corrected below.

FOR FURTHER INFORMATION CONTACT: Elizabeth N. Siegel, 202 453–2465.

1. 14 CFR Part 1207.405 (a)(4) is correctly revised to read as follows:

§ 1207.405 [Corrected]

(a) * * *

(4) Employees classified below the GM–13 or GS–13 level under 5 U.S.C. 5332, or at a comparable pay level under other authority, and who are in positions which otherwise meet the criteria of § 1207.405(a)(1) or § 1207.405(a)(3), when designated in writing by the Designated Agency Ethics Official, after such designation has been justified in accordance with 5 CFR 735.403(d).

* * * * *

John E. O'Brien,

General Counsel.

[FR Doc. 87–22273 Filed 9–25–87; 8:45 am]

BILLING CODE 7510–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C–3215]

Prohibited Trade Practices, and Affirmative Corrective Actions; American Hoechst Corporation, et al.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, American Hoechst Corp. to divest certain polyester fiber businesses. The respondent must make the divestiture to a Commission-approved acquirer within one year and must obtain the Commission's prior approval for certain acquisitions for the next ten years.

DATE: Complaint and Order issued July 2, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/A–3302, Ronald B. Rowe, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: On Thursday, March 5, 1987, there was published in the **Federal Register,** 52 FR 6806, a proposed consent agreement with analysis In the Matter of American Hoechst Corporation, Hoechst Aktiengesellschaft, and Celanese Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.5–20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Polyester textile fibers, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 87–22261 Filed 9–25–87; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket C–3216]

Prohibited Trade Practices, and Affirmative Corrective Actions; L'Air Liquide Societe Anonyme Pour L'Etude et L'Exploitation des Procedes Georges Claude

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, L'Air Liquide to divest some assets to resolve any antitrust concerns in the production and sale of liquid gases and to obtain prior Commission approval for similar acquisitions.

DATE: Complaint and Order issued July 15, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/S–2105, Ernest A. Nagata, Washington, DC 20580, (202) 326–2714.

SUPPLEMENTARY INFORMATION: On Tuesday, November 4, 1986, there was published in the **Federal Register**, 51 FR 40039, a proposed consent agreement with analysis In the Matter of L'Air Liquide Societe Anonyme Pour L'Etude Et L'Exploitation Des Procedes Georges Claude, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered a modified order to divest, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.5–20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Liquid gases, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 87–22262 Filed 9–25–87; 8:45 am]

BILLING CODE 6750–01–M

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; State Supplementation Provisions; Agreements; Payments; Mandatory Passalong of Federal Supplemental Security Income Benefit Increases to Recipients of State Supplementary Payments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: The final regulations provide the rules we will use to implement the amendments made to the passalong provisions of section 1618 of the Social Security Act (the Act) by section 186 of Public Law (Pub. L.) 97–248 (Tax Equity and Fiscal Responsibility Act of 1982), enacted September 3, 1982; section 147 of Pub. L. 97–377 (Fiscal Year 1983 Continuing Budget Resolution for the Department of Health and Human Services), enacted December 21, 1982; section 402 of Pub. L. 98–21 (Social Security Amendments of 1983), enacted April 20, 1983; and section 12201(a) of Pub. L. 99–272 (Consolidated Omnibus Budget Reconciliation Act of 1985), enacted April 7, 1986.

Generally, the passalong provisions of section 1618 of the Act require States that supplement the Federal supplemental security income (SSI) benefit to "pass along" Federal cost-of-living increases to individuals who are eligible for State supplementary payments. In order to meet the passalong requirements of the Act, States that make supplementary payments on or after June 30, 1977, must have in effect an agreement with the Secretary to continue making these supplementary payments and to keep them at certain levels. If a State does not have such an agreement in effect, or if the State has such an agreement but does not keep the payments at the required levels, the State is subject to loss of Medicaid reimbursement under title XIX of the Act. However, the State will not be found to be out of compliance with the passalong requirements because it did not keep its payments at a particular level if it maintains its total annual expenditures for State supplementary payments at an amount at least equal to its expenditures for such payments in the preceding 12-month period provided that the State was in compliance for such preceding 12-month period.

DATES: These rules are effective September 28, 1987, but the statutory changes which the regulations reflect were effective on the dates provided for by the legislation, namely; section 186 of Pub. L. 97–248, enacted September 3, 1982; section 147 of Pub. L. 97–377, enacted December 21, 1982; section 402 of Pub. L. 98–21, enacted April 20, 1983; and section 12201(a) of Pub. L. 99–272 enacted April 7, 1986. Because the rules implementing section 12201(a) of Pub. L. 99–272 (see § 416.2097(c)) were not included in the Notice of Proposed Rulemaking, we are publishing these rules as final rules but will consider any comments concerning that provision that we receive by November 27, 1987, and will revise such rules if public comment warrants.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or deliver them to the Office of Regulation, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during the same hours by making arrangements with the contact person below.

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FOR FURTHER INFORMATION CONTACT: Dave Smith, 3–B–3 Operations Building, 6401 Security Blvd., Baltimore, Maryland 21235, (301) 594–7460.

SUPPLEMENTARY INFORMATION:

Introduction

These regulations were published as a Notice of Proposed Rulemaking in the **Federal Register** on February 25, 1985 (50 FR 7607) with a 60-day comment period. A number of comments were received and are discussed under the heading titled *Discussion of Comments.* In addition to the changes made as a result of the comments, we made some minor clarifications to the regulations in order to make them easier to read and understand. The following regulations sections were clarified: 20 CFR 416.2096(c)(5), 416.2096(c)(3)(i); 416.2096(c)(3)(ii); 416.2097 (a) and (c); and 416.2098.

These regulations also implement section 12201(a) of Pub. L. 99–272 (Consolidated Omnibus Budget Reconciliation Act of 1985), which adds section 1618(f) to the Act and which was enacted subsequent to the notice of proposed rulemaking. We are including regulations reflecting this provision as final regulations but with an opportunity for public comment. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. Section 1618(f), as added by section 12201(a), provides a special rule for passalong compliance for the period January 1, 1984 through December 31, 1985 under which a State will not be found out of compliance for that period if in the period January 1, 1986 through December 31, 1986 its suppiementary payment levels are not less than its payment levels in effect in December 1976 increased by the percentage by which the Federal Benefit Rate has increased after December 1976 and before February 1986. The language of the statute is not subject to any interpretation. The regulation implementing section 12201(a) does not involve an exercise of discretion or administrative policy choice. It does not grant or deny rights beyond those provided by the statute. Accordingly, we have determined that under 5 U.S.C. 553(b)(3), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on the regulations implementing section 1618(f) of the Act since opportunity for public comment is unnecessary.

Relationship of Federal SSI Benefit and State Supplementary Payment

Beginning January 1974, the SSI program replaced the Federal/State matching grant program of assistance to the aged, blind, and disabled. To assure that individuals converted to SSI from the State rolls received at least the same amount as before the conversion, the States were required to supplement the SSI payment to these individuals where necessary. In addition to these mandatory payments, the States could, at their election, provide optional supplementary payments to SSI recipients.

Purpose of the Passalong Provision

The purpose of the passalong provision of section 1618 of the Act is to encourage States to pass along to SSI beneficiaries the amount of any Federal benefit increase. Some States had not done this prior to enactment of section 1618 on October 21, 1976. Instead, when Congress enacted cost-of-living increases in the Federal SSI benefit amount, some States would reduce the levels of the State supplementary payments by the amount of the Federal benefit increase. Thus, the SSI beneficiaries in these States received the same combined Federal/State benefit they were receiving before the increase, and did not receive the additional money provided by the benefit increase.

Description of the Passalong Provision

The original passalong provisions of section 1618 of the Act required States that supplemented Federal SSI benefits to "pass along" Federal cost-of-living increases to individuals eligible for State supplementary payments. To meet the passalong requirements, a State that makes supplementary payments on or after June 30, 1977 must, under an agreement with the Secretary, continue making the payments and keep them at certain levels. If the State does not comply it is subject to loss of Medicaid reimbursement under Title XIX of the Act. A State will not be found out of compliance with the requirement that it maintain its payments at certain levels with respect to any particular month or months if it maintains its total expenditures for supplementary payments in the 12-month period within which the month or months fall, beginning on the effective date of any increase in the level of SSI benefits pursuant to section 1617, at least equal to its expenditures for such payments in the preceding 12-month period provided that the State was in compliance for such preceding 12-month period.

Amendments to Passalong Provision

Congress, over the past 4 years, has enacted four amendments to section 1618 of the Act.

Section 186 of Pub. L. 97–248 (section 1618(c) of the Act) permitted a State which had not maintained all its December 1976 payment levels, but had been meeting the passalong requirements through total annual expenditures, to switch to the maintenance-of-payment-levels method without having to pass along all the Federal cost-of-living increases that had occurred since December 1976. Prior to the enactment of section 1618(c), for months from July 1, 1977 through June 30, 1982, a State shifting from the total-annual-expenditures method to the maintenance-of-payment-levels method was required to maintain its supplementary payments at levels at least equal to its December 1976 levels or, if a State first made supplementary payments after December 1976, the levels for the first month the State made supplementary payments. However, section 1618(c) provided that for any period beginning after June 30, 1982, a State switching to the maintenance-of-payment-levels method could elect to maintain the payment levels in effect in the immediately preceding December rather than those in effect in either December 1976 or in the first month thereafter that the State began making such payments. Because of the interaction of section 402 of Pub. L. 98–21 (discussed below) with section 186 of Pub. L. 97–248, section 1618(c) was applicable only to the period from July 1, 1982, through March 31, 1983, and the only December a State switching from the total-annual-expenditures method to the maintenance-of-payment-levels method could use was December 1981.

Section 147 of Pub. L. 97–377 (section 1618(d) of the Act) created a special method of compliance for meeting the passalong requirements of section 1618 of the Act by the total-annual-expenditures test for the period July 1, 1980 through June 30, 1981. Under this provision, the total expenditures for that period must only have equaled or exceeded the total expenditures for July 1, 1976 through June 30, 1977, rather than the total expenditures for the preceding 12-month period. As noted above, this provision did not become effective until December 21, 1982. Therefore, we will

give credit to States which already had made additional payments (prior to the enactment of section 147 of Pub. L. 97–377) in order to make up shortfalls for the July 1, 1980 through June 30, 1981 period, if the States so request. This credit will be limited to the amount of "excess" payments made by the State and will be applied to any shortfall(s) in total expenditures (should one exist) in any period(s) ending on or before December 31, 1986. A 3-year period has been selected to parallel the exception for shortfall States formerly provided in § 416.2096(c) of the regulations for the three 12-month periods ending before July 1980. Also, the 3-year period imposes a limit that is long enough to provide the States with some flexibility and yet short enough so that we can close these periods and resolve the accounts. This is noted in § 416.2096(c)(3)(ii) of the final regulations. This policy was explained in the preamble of the Notice of Proposed Rulemaking but was inadvertently omitted from the regulation itself.

Section 402 of Pub. L. 98–21 (section 1618(e) of the Act) changed the measure for determining passalong compliance from a concept of "State supplementary payment level" to a concept of a "combined level" of State supplementary payments and Federal SSI payments and established the March 1983 combined level as the base for compliance for months after March 1983. The purpose of this change was twofold: to prevent States on the total-expenditures method of compliance from reverting to December 1976 or other levels below the March 1983 levels; and to require that States maintaining supplementary payment levels pass along that part of the July 1983 Federal SSI benefit increase that would have occurred had there been a cost-of-living increase in July 1983.

Section 401 of Pub. L. 98–21 amended section 1617 of the Act to provide for an increase in SSI benefit rates effective July 1, 1983. The passalong provisions of section 1618(b) of the Act refer to total expenditures for State supplementary payments in a 12-month period beginning on the effective date of any Federal SSI benefit increase pursuant to section 1617 of the Act. Prior to July 1983, all section 1617 increases were cost-of-living adjustments (COLA's) and are referred to as such in the existing regulations. The July 1983 general Federal SSI benefit increase was not a COLA, but it did take place pursuant to section 1617 of the Act. For this reason, the passalong provisions of section 1618(b) apply to the July 1983 Federal SSI benefit increase.

Section 111 of Pub. L. 98–21 provides in effect that future COLA's in SSI benefits will occur in January rather than July as they had in the past. Therefore, the current and immediately preceding 12-month periods for passalong compliance under the total-expenditures test will run from January through December, beginning January 1, 1984. This change in the effective date for future COLA's from July 1 to January 1 caused a transitional 6-month period to occur that does not appear to have been contemplated by the passalong statute, which measures compliance in 12-month periods beginning with the effective date of each increase in the federal SSI benefit rate pursuant to section 1617 of the Act. That 6-month period is July 1, 1983 through December 31, 1983. Section 416.2096(c)(3)(i) of the final regulations provides a special rule for compliance under the total-expenditures test for this 6-month period. This rule is explained under *Discussion of Comments.*

Section 12201(a) of Pub. L. 99–272 (section 1618(f) of the Act) provided a special method of compliance for the period January 1, 1984 through December 31, 1985. A State will not be found out of compliance for that period if in the period January 1, 1986 through December 31, 1986, its supplementary payment levels are not less than its supplementary payment levels in effect in December 1976 increased by the percentage by which the Federal Benefit Rate has increased after December 1976 and before February 1986.

Revisions to the Regulations

We have updated § 416.2095 to reflect the reorganization of this subpart.

In § 416.2096(a), we discuss the State agreement with the Secretary. Basically, the State must have in effect an agreement with the Secretary to continue making supplementary payments at certain levels. For months prior to April 1983, these levels must have been either the levels in effect in December 1976 or, if newly established payments, the levels in effect for the first month of payment, or, in certain circumstances, the levels in effect in December 1981. For months beginning April 1983, the supplementary payment levels must be such as to maintain the combined supplementary/SSI payment levels of March 1983, increased by any subsequent Federal SSI benefit increases except that a State need pass along only a portion of the July 1, 1983, increase to the Federal Benefit Rate (FBR) and essential person increment. Effective July 1, 1983, the FBR was increased $20/$30 for an individual/couple and the essential person increment increased by $10. While these increases are not actually cost-of-living increases, they are increases pursuant to section 1617 of the Act and are, therefore, subject to the passalong requirements of section 1618 of the Act. A State was required to pass along only $9.70/$14.60 (individual/couple) and raise the essential person increment by $4.50. This represents the amount by which the FBR and essential person increment would have increased had there been a COLA (3.5 percent) effective July 1, 1983. A State could reduce its supplement by any amount up to $10.30/$15.40 (individual/couple) and reduce the essential person increment by up to $5.50.

If a State does not maintain these levels, but does make total State supplementary payments during a 12-month period that are at least equal to the expenditures for such payments made in the 12-month period before a Federal benefit increase, we will consider the State to have complied with the passalong requirements provided that the State was in compliance for such preceding 12-month period. We have also revised § 416.2096 to provide for a special 6-month transition period (July 1, 1983 through December 31, 1983) for total expenditures purposes. This is necessary to effectuate properly the provision of Pub. L. 98–21 whereby SSI cost-of-living increases beginning with 1984 occur in January rather than July, as discussed above, which caused a cost-of-living increase to occur on January 1, 1984—6 months following the previous SSI benefit increase.

In an effort to avoid passing along to SSI recipients the July 1983 Federal benefit increase, some States, which had not maintained all their December 1976 supplementary payment levels, but which had increased some of their supplementary payment levels, might have switched from the total expenditures test (which they had been meeting to comply with the passalong requirements) to maintenance of their December 1976 or other levels lower than their March 1983 levels. To prevent States from doing this, Congress introduced in section 1618(e), as added by Pub. L. 98–21, the concept of the combined supplementary/SSI payment level and established the March 1983 combined level for payment level passalong compliance purposes. Section 416.2096(b) was revised to reflect this provision.

We have deleted from the regulations the exception found at § 416.2096(c)(3)

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for compliance with the passalong requirements under the total-expenditure test for the three 12-month periods ending before July 1980, because this exception has become obsolete due to passage of time.

In § 416.2097, a new section, we provide that in order for a State to comply by the payment-levels method the combined supplementary/SSI payment level for each payment category must at least equal the total of the Federal SSI benefit and State supplementary payment that a recipient with no countable income received for March 1983, increased by the amount of all subsequent SSI Federal benefit increases (including cost-of-living increases) except that we use for the amount of the July 1983 increase the amount (3.5 percent) by which the Federal benefit rate would have increased had there been a COLA. For months after March 1983, States that choose to comply by a means other than the total-expenditures test must maintain these combined March 1983 levels in order to comply with the passalong requirements.

For months prior to April 1983, the rules for passalong compliance are based on the definition of "supplementary payment level". In § 416.2098(f), we continue to define the December 1976 (or later month if it was the first month of supplementation) supplementary payment level as the amount of the supplementary payment established by the State that an individual in each payment category received in the State in December 1976 (or later month if it was the first month of supplementation) if the individual had no countable income. States must have maintained these levels to comply with the passalong requirements.

For example, the Federal SSI benefit amount in December 1976 for an individual living in his or her own household and having no income was $167.80 per month. If a State made a $50 per month optional State supplementary payment to individuals in this situation, they would receive a total payment of $217.80 per month under the SSI program. In July 1977, the Federal cost-of-living increase was $10 and the Federal SSI benefit amount was increased to $177.80 per month. Under these circumstances, a State would maintain the level of its supplementary payment if the State continued to make a $50 per month supplementary payment above the Federal SSI benefit to individuals in this situation. Thus, the individuals would receive a total payment of $227.80 per month under the SSI program, and the Federal cost-of-living increase of $10 per month would be passed along to them.

Pub. L. 97–248 made one change as to what month's supplementary payment level a State could maintain under certain conditions and still comply with the payment-levels test. Section 186 of Pub. L. 97–248, effective September 3, 1982, provided that when a State had not maintained one or more of the December 1976 supplementary payment levels but, instead, had met the total-expenditures test for a particular 12-month period and decided to switch to the maintenance-of-payment levels test for the next 12-month period, the State could elect to maintain all its supplementary payment levels in effect in the preceding December instead of the December 1976 levels, provided that the preceding December was subsequent to 1980. Because of the interaction of section 402 of Pub. L. 98–21 with section 186 of Pub. L. 97–248, this option could be applied only for the period July 1, 1982, through March 31, 1983, and the only supplementary payment levels which could be elected instead of those which were in effect in December 1976 were those which were in effect in December 1981. Section 416.2098(b)(2) reflects this change.

In § 416.2099 (formerly § 416.2098), we discuss what we will require the States to do to show that they are complying with the passalong rules. Generally, a State must keep records and provide information about: (1) Its supplementary payment levels in December 1976 or, if no supplementary payments were made in December 1976, the first month such payments were or are made; (2) its March 1983 supplementary payment levels; (3) its total expenditures for supplementary payments for the 12-month period beginning July 1976 through June 1977 and the following 12-month periods, as well as its advance estimates of the total State supplementary payment expenditures for each 12-month period covered by the passalong agreement between the State and the Secretary; and (4) its total expenditures for supplementary payments in the 6-month period July 1983 through December 1983. If a State is not complying with the passalong rules, the State will be subject to a finding by the Secretary of ineligibility for payments under title XIX (Medicaid) of the Act.

Discussion of Comments

As previously indicated, we received a number of comments on the Notice of Proposed Rulemaking published in the **Federal Register** on February 25, 1985 (50 FR 7607). A summary of the comments and our responses follows.

Comment: One State suggested that paragraph (4) of § 416.2097 be clarified, or that we add a paragraph which would provide that State payments should be counted for passalong purposes in the month of entitlement when the State can document such month and the month of issuance if the entitlement month cannot be identified.

Response: The State's comment obviously applies to § 416.2096(c)(4) since § 416.2097 has no paragraph (4). Our policy, as reflected in § 416.2096(c)(4), has been to count the payment in the 12-month period in which it is processed (paid). The only instance in which we count payments made in the current 12-month period for a previous period is when the payments are made to correct a shortfall. In such an instance the payments are counted (included) as payments in the shortfall period only. (See § 416.2096(c)(5)). We do not believe a change in our present procedures would be beneficial to the States or to the SSI program. We must have a final cut-off date for each 12-month period since we cannot continue to reopen closed periods. If we reopened closed periods we would be increasing base-year amounts against which succeeding 12-month periods must be measured.

Comment: One commenter stated that it is unclear how court ordered retroactive payments will be treated for passalong purposes under § 416.2096(c)(5). Will the payments be recorded in the period in which the payments are made, thus inflating the State's expenditures in the current 12-month period, or will they be apportioned over the periods to which the court order applies?

Response: Section 416.2096(c)(5) provides that total State expenditures for a relevant 12-month period include adjustments made after the expiration of the relevant 12-month period if the payments are made to correct a shortfall. This is the only exception provided in the regulations to our general policy that State payments are attributed to the periods in which they are actually made. We believe the regulation is clear, i.e., there is no additional exception for court ordered retroactive payments. Therefore, court ordered retroactive payments will be recorded in the period in which the payments are made. Historically, all State supplementary payments have been recorded on the cash basis of accounting. As stated in the previous response, we cannot continually reopen closed periods. Therefore, § 416.2096(c)(5) is not being revised.

Comment: Two States suggested that for the July-1, 1983 through December 31, 1983, period (the transitional 6-month period) an additional comparison period or periods be permitted for those States complying with section 1618 of the Act by the total-expenditures method. The States requested that, for compliance purposes, total expenditures for the period January 1, 1983 through December 31, 1983, be at least as much as the total expenditures in the period January 1, 1982 through December 31, 1982. An additional comparison period suggested is to compare total expenditures for July 1, 1983 through December 31, 1983, with expenditures for July 1, 1982 through December 31, 1982.

Response: After considering the implications of these comments we are revising § 416.2096(c)(3)(i) to include two additional comparison periods. They are: (1) That total expenditures for State supplementary payments in the 12-month period January 1, 1983 through December 31, 1983, must be at least as much as in the 12-month period January 1, 1982, through December 31, 1982; or (2) that total expenditures for State supplementary payments in the 6-month period July 1, 1983 through December 31, 1983, must be at least as much as in the 6-month period July 1, 1982 through December 31, 1982. As provided in the Notice of Proposed Rulemaking a third comparison period would require that total expenditures for State supplementary payments in the 6-month period July 1, 1983 through December 31, 1983, be at least equal to one-half of the total expenditures for the period July 1, 1982 through June 30, 1983. Since it appears that Congress did not contemplate this 6-month period, the choice of comparison periods is a matter within the Secretary's authority to issue regulations that are necessary for efficient administration of the Act. Use of each of the three periods described above for purposes of passalong compliance for the 6-month transitional period is consistent with section 1618(b) of the Act, which measures compliance for total-expenditure States by the amount expended in the preceding period. Since the 6-month period overlaps two 12-month periods (July 1, 1983 through June 30, 1984 and January 1, 1983 through December 31, 1983), it is appropriate to provide several alternative comparison periods.

Comment: One State requested both a credit and that the final regulations provide for credit for State supplementary payments expended during the 12-month period July 1, 1981, through June 30, 1982, to make up a shortfall for the 12-month period July 1, 1980 through June 30, 1981. The State further requested that credits used to make up the shortfall not be added to a calendar year's total expenditures in measuring future compliance.

Response: We have provided for credits to States which made additional payments (prior to the enactment of section 147 of Pub. L. 97–377) in order to make up shortfalls for the July 1, 1980 through June 30, 1981, period. Credits must have been used by December 31, 1986. Once a base year expenditure amount under the total-expenditures method of compliance has been established, it cannot be decreased while the State remains on this method of compliance. If, in the succeeding calendar year, the State spends less than it spent in the prior year, a shortfall results. Credits are then used to increase the current year expenditures to the base year amount. The base year has not changed. To permit a State to use the amount expended prior to the addition of the credits as a new (and lower) base year would reduce the base-year amount for future years. This would clearly be inequitable to recipients.

Comment: One State requested that a "good faith effort" provision be incorporated in the regulations to cover the July 1, 1983 through December 31, 1983, period. The State was unaware of the fact that, under the payment-level method of compliance, at least a portion of the July 1, 1983, Federal benefit increase was required to be passed along to all recipients. It further stated that misinformation and lack of understanding on its part resulted in a reduction of a payment level. It also points out that a lack of published regulations also hindered its ability to make the proper decision to pass along the increase.

Response: Almost simultaneously with passage of the 1983 amendments, all States were notified that while the July 1, 1983, increase in the Federal benefit rate was not a cost-of-living adjustment (COLA) it took place pursuant to section 1617 of the Act. We notified all States in writing that they were required to pass along at least that portion of the increase that would have been required had there been a COLA in July 1983 (3.5 percent). Only seven States were out of compliance for the transitional 6-month period and were so notified by the Secretary. Since the other States have complied with the passalong requirements for this period, it would not be equitable to incorporate a "good faith effort" provision into the regulations.

Because these final regulations are being published after the close of this 6-month period and include additional compliance periods, we will soon be notifying States of the exact amount of their shortfalls. For this reason also, we are granting States additional time to correct any shortfalls. Any State with a shortfall for the transitional 6-month period must either restore retroactively the deficient payment levels to the March 1983 level or March 1983 level as adjusted (payment-level States) or increase payments to recipients in the current calendar year (total-expenditures States) by December 31, 1987.

Comment: One commenter does not believe the interpretation placed on section 402 of Pub. L. 98–21 (that the March 1983 payment levels must be maintained) is in compliance with the wording of the law or the intent of Congress. The commenter believes it was the intent of Congress to lock into regulation the March 1983 payment level for those States which had, at some point after 1977, reduced benefits below the December 1976 level and met the passalong requirements with aggregate expenditures.

Response: We do not agree with the above interpretation. This interpretation would permit the continued use of December 1976 State supplementary payment levels to satisfy the passalong requirements (section 1618(a)(4)).

The legislative history of section 402 of Pub. L. 98–21 clearly supports our position that the March 1983 levels are those that now must be maintained. The House bill substituted the State supplementary payment levels in effect in March 1983 for those in effect in December 1976 as the levels States must maintain to comply with the passalong requirements. The Senate amendment would have given States the option of maintaining either December 1976 levels or March 1983 levels. The Conference Committee rejected the Senate amendment, agreeing instead to follow the House version. *See* H.R. Rep. No. 47, 98th Cong., 1st Sess. 165–166 (1983).

Therefore, while section 1618(a)(4) of the Act still refers to levels in effect for December 1976 (in reference to payment-level States) the law does not provide these levels as bench marks for months after March 1983. For months after March 1983 a State which elects the payment level(s) method for complying with section 1618 of the Act must maintain the combined Federal/State payment level(s) in effect in March 1983 increased by all federal cost-of-living adjustments occurring subsequent to March 1983 except that a State need

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passalong only a portion of the July 1, 1983, increase in the FBR's as discussed above.

Comment: One commenter believes that section 402 of Pub. L. 98–21 was only intended to update the payment level standard set forth in section 1618(a)(4) and was not intended to foreclose States from meeting passalong requirements under section 1618(c) of the Act. The commenter contends that a State which complies by the total-expenditures method for any period on or after June 30, 1982, may switch to the maintenance-of-payment-levels method of compliance if it maintains the payment levels in effect during December of the immediately preceding 12-month period. A State which complied with the payment-level standard of section 1618(a)(4) must, for months after March 1983, maintain payment levels in accordance with the combined-levels method set forth in section 1618(e).

Response: We do not believe that section 1618(e), as added by section 402 of Pub. L. 98–21 must be applied so narrowly. The combined supplementary-payment-level standard of section 1618(e) is applicable to "a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) by reason of subsection (b) * * *." In other words, a State meeting the basic passalong payment-level requirement of section 1618(a)(4) by a method other than by maintaining total annual expenditures for supplementary payments under section 1618(b), must maintain its payment levels in accordance with section 1618(e). Since a State that satisfies passalong by complying with the "previous December" payment-level-method of section 1618(c) would be a State "not treated as meeting the requirements imposed by paragraph (4) of subsection (a) by reason of subsection (b) * * *," such a State would appear from this language to now be required to comply with the payment level provisions of section 1618(e) rather than the "previous December" payment levels set forth in section 1618(c). Furthermore, section 1618(e) provides that for any months after March 1983, a State shall be treated as meeting the basic passalong requirement of section 1618(a)(4) "if and only if" it maintains the March 1983 combined levels together with the July 1983 passalong amount of section 1618(e)(2) and any subsequent increases in the Federal SSI benefit. The language "if and only if" stresses that Congress intended for there to be no exception to the March 1983 passalong level requirement, such as the December 1976 level requirement of section 1618(a)(4) or the previous December level requirement of section 1618(c).

In addition to the express language of section 1618(e), the legislative history of that section also provides some indication of the intent of the legislature with respect to the continued applicability of section 1618(c). In this regard, the differences in the Senate version of section 1618(e) of the Act from the version proposed by the House Bill, as summarized in the Conference Committee Report on H.R. 1900, dated March 24, 1983 (H.R. Rep. No. 98–47, 98th Cong., 1st Sess. 165, 166 (1983)) are most significant. Both the House and Senate versions continued the aggregate-spending-level option of section 1618(b) of the Act without change. As to the supplementary-payment-level option, however, the Senate version retained the December 1976 requirement of section 1618(a)(4) of the Act as well as the "previous December" option of section 1618(c) of the Act and made the March 1983 standard yet a third method for compliance available to the States, rather than a substitute for the December 1976 payment-level option. On the other hand, the House Bill required States which opt for maintaining supplementary payment levels to maintain March 1983 levels plus the July 1983 passthrough amount plus all subsequent increases in the FBR, in lieu of maintaining the December 1976 levels.

The Conference Committee rejected the Senate Amendment, which provided for the continuance of section 1618(c) of the Act and recommended adoption without change of the House Bill, which made clear that States which elect to meet the passthrough requirement by recourse to the supplementary-payment-levels option must, without exception, comply with the new March 1983 standard. Thus, in passing the House Bill into law, Congress abandoned section 1618(c) of the Act in favor of a uniform March 1983 supplementary-payment-level standard applicable to all States which meet the passthrough requirement by maintaining supplementary payment levels.

Moreover, under the commenter's approach, two classes of States meeting passalong requirements under the levels test could be created over time: those that were required to meet the precise test of 1618(e), and those that would be permitted to use as the basis for subsequent passalong compliance whatever their previous December levels happened to be. Since under Pub. L. 98–21, total-expenditure compliance is now measured for the period January through December, those levels could be significantly below the combined levels required under section 1618(e). Since such a result could seriously undermine the purpose of the passalong provision, which is to protect recipients from erosion of their benefits, we do not believe that the statute must be read to authorize it.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not create any costs. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

Section 416.2099 of this final rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements were requested to send them to us and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, ATTN: Robert J. Fishman. No comments were received on the information collection requirements.

Section 416.2099 was formerly § 416.2098, and this section has been approved by the Office of Management and Budget, approval number 0960–0240.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: July 17, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 21, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart T of Part 416 continues to read as follows:

Authority: Secs. 1102, 1616, 1618, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382e, 1382g, and 1383; sec. 212 of Pub. L. 93–66, 87 Stat. 155; sec. 401 of Pub. L. 92–603, 86 Stat. 1485; sec. 8 of Pub. L. 93–233, 87 Stat. 956; secs. 1 and 2 of Pub. L. 93–335, 88 Stat. 291.

2. Section 416.2095 is revised to read as follows:

§ 416.2095 Passalong of Federal benefit increases.

(a) *General.* This section and the four sections that follow describe the rules for passing along increases in the Federal SSI benefit to recipients of State supplementary payments.

(1) Section 416.2095(b) indicates when the passalong rules apply to State supplementary payments.

(2) Section 416.2096 describes the basic passalong rules. The States must have an agreement to "pass along" increases in Federal SSI benefits. A State passes along an increase when it maintains (rather than decreases) the levels of all its supplementary payments after a Federal benefit increase has occurred. Generally, a passalong of the increase permits recipients to receive an additional amount in combined benefits equal to the Federal benefit increase. A State can decrease one or more of its payment levels if it meets an annual total expenditures test.

(3) Section 416.2097 explains the required combined supplementary/SSI payment level.

(4) Section 416.2098 explains how to compute the March 1983, December 1981, and December 1976 supplementary payment levels.

(5) Section 416.2099 discusses what information a State must provide to the Secretary concerning its supplementation programs so that the Secretary can determine whether the State is in compliance. That section also discusses the basis for findings of noncompliance and what will occur if a State is found out of compliance.

(b) *When the passalong provisions apply.* (1) The passalong requirements apply to all States (and the District of Columbia) that make supplementary payments on or after June 30, 1977, and wish to participate in the Medicaid program.

(2) The passalong requirements apply to both optional State supplementary payments of the type described in § 416.2001(a) and mandatory minimum State supplementary payments as described in § 416.2001(c), whether or not these State supplementary payments are Federally administered.

(3) The requirements apply to State supplementary payments both for recipients who receive Federal SSI benefits and those who, because of countable income, receive only a State supplementary payment.

(4) The requirements apply to State supplementary payments for recipients eligible for a State supplementary payment on or after June 30, 1977.

(5) Supplementary payments made by a State include payments made by a political subdivision (including Indian tribes) where—

(i) The payment levels are set by the State; and

(ii) The payments are funded in whole or in part by the State.

3. Section 416.2096 is revised to read as follows:

§ 416.2096 Basic passalong rules.

(a) *State agreements to maintain supplementary payment levels.* (1) In order to be eligible to receive Medicaid reimbursement, any State that makes supplementary payments on or after June 30, 1977, must have in effect an agreement with the Secretary. In this agreement—

(i) The State must agree to continue to make the supplementary payments;

(ii) For months from July 1977 through March 1983, the State must agree to maintain the supplementary payments at levels at least equal to the December 1976 levels (or, if a State first makes supplementary payments after December 1976, the levels for the first month the State makes supplementary payments). For months in the period July 1, 1982 through March 31, 1983, a State may elect to maintain the levels described in paragraph (b)(2) of this section; and

(iii) For months after March 1983, the State must agree to maintain supplementary payments at least sufficient to maintain the combined supplementary/SSI payment levels in effect in March 1983, increased by any subsequent SSI benefit increases, except as provided in § 416.2097(b) and § 416.2097(c).

(2) We will find that the State has met the requirements of paragraph (a)(1) of this section if the State has the appropriate agreement in effect and complies with the conditions in either paragraph (b) or (c) of this section. We will consider a State to have made supplementary payments on or after June 30, 1977, unless the State furnishes us satisfactory evidence to the contrary.

(b) *Meeting the passalong requirement—supplementary payment levels.* (1) We will consider a State to have met the requirements for maintaining its supplementary payment levels (described in § 416.2098) for a particular month or months after March 1983 if the combined supplementary/SSI payment levels have not been reduced below the levels in effect in March 1983 (or if a State first made supplementary payments after March 1983, the combined supplementary/SSI payment levels in effect the first month the State made supplementary payments), increased by any subsequent Federal SSI benefit increases, except as provided in § 416.2097(b) and § 416.2097(c). We will consider a State to have met the requirements for maintaining its supplementary payment levels for a particular month or months between June 1977 and April 1983 if the supplementary payment levels have not been reduced below the levels in effect in December 1976 (or if a State first made supplementary payments after December 1976, the levels in effect the first month the State made supplementary payments, or in certain cases described in paragraph (b)(2) of this section, the levels in effect in December 1981.)

(2) We will also consider a State to have met the requirements for maintaining its supplementary payment levels for a particular month or months in the period July 1, 1982, through March 31, 1983, if the State had met the requirements of paragraph (c) of this section for a particular month or months in the 12-month period July 1, 1981 through June 30, 1982, and, with respect to any month in the period July 1, 1982 through March 31, 1983, the State maintained the payment levels in effect in December 1981.

(3) If a State reduced any of its supplementary payment levels for a month or months within any 12-month period beginning with the effective date of a Federal benefit increase, we will consider the State to have met the requirement to maintain its supplementary payment levels if—

(i) Within 12 months after the relevant 12-month period, the State restores the levels retroactively; and

(ii) The State makes a single retroactive benefit payment to each of

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the beneficiaries eligible for the retroactive payment.

(c) *Meeting the passalong requirement—total expenditures.* (1) If a State does not meet the conditions in paragraph (b) of this section, we will consider a State to have met the requirement for maintaining supplementary payment levels for a particular month or months if total State expenditures for supplementary payments in the 12-month period within which the month or months fall, beginning on the effective date of a Federal SSI benefit increase, are at least equal to the total State expenditures for supplementary payments in the 12-month period immediately before the Federal SSI benefit increase provided that the State was in compliance for such preceding 12-month period. The combined Federal/State payment level for those persons receiving a mandatory minimum State supplementary payment can be no lower than the recipient's total income for December 1973 as defined in section 212(a)(3)(B) of Pub. L. 93–66.

(2) If total State expenditures in the relevant 12-month period are less than the total expenditures in the preceding 12-month period (a "shortfall"), we also will consider a State to have met the requirement for maintaining supplementary payment levels for the relevant 12-month period if in the following 12-month period the State increases the total expenditures required for that period by an amount at least equal to the amount of the shortfall in the relevant 12-month period. The increased amount up to the amount needed to correct the shortfall shall be deemed to be an expenditure in the relevant 12-month period, for passalong purposes only. (See paragraph (c)(5) of this section.)

(3)(i) Exception for the 6-month period from July 1, 1983 through December 31, 1983: We will consider the State to have met the total-expenditures requirement for the 6-month period July 1, 1983 through December 31, 1983, if—

(A) Total expenditures for State supplementary payments for the period July 1, 1983 through December 31, 1983, equal or exceed the total of such expenditures for the period July 1, 1982 through December 31, 1982;

(B) Total expenditures for State supplementary payments for the period January 1, 1983 through December 31, 1983, equal or exceed the total of such expenditures for the period January 1, 1982 through December 31, 1982; or

(C) Total expenditures for State supplementary payments for the period July 1, 1983 through December 31, 1983 equal or exceed one-half of the total of such expenditures for the period July 1, 1982 through June 30, 1983. The provisions of paragraphs (c)(4) and (c)(5) of this section and of § 416.2099 (b), (c), and (d) shall apply to this 6-month period in the same manner as they apply to the 12-month periods referred to therein.

(ii) Exception for the 12-month period ending June 30, 1981: If a State did not meet the conditions in paragraph (b) of this section, we will consider a State to have met the maintenance-of-supplementary-payment-levels requirement for this 12-month period if the State's expenditures for supplementary payments in that period were at least equal to its expenditures for such payments for the 12-month period ending June 30, 1977 (or, if the State made no supplementary payments in that period, the expenditures for the first 12-month period ending June 30 in which the State made such payments); if a State made additional State supplementary payments during the period July 1, 1981 through June 30, 1982, in order to make up a shortfall in the 12-month period ending June 30, 1981 (determined by a comparison with the preceding 12-month period) which later resulted in an excess payment (determined by comparison with the 12-month period July 1, 1976 through June 30, 1977) we will credit the State with the amount of the excess payments if the State so requests. This credit will be applied to any shortfall(s) in total expenditures (should one exist) in any period(s) ending on or before December 31, 1986.

(4) Total State expenditures for supplementary payments are the State's total payments for both mandatory minimum and optional State supplementary payments in the appropriate 12-month period less any amounts deemed to be expenditures for another 12-month period under paragraph (c)(2) of this section, less the amount of any payments recovered and other adjustments made in that period. Total State expenditures do not include State administrative expenses, interim assistance payments, vendor payments, or payments made under other Federal programs, such as Titles IV, XIX, or XX of the Social Security Act.

(5) Adjustments in total State supplementary payments made after the expiration of the relevant 12-month period for purposes of meeting total State expenditures under paragraph (c) of this section shall be considered a State expenditure in the relevant 12-month period only for purposes of the passalong requirement. For purposes of § 416.2080, which discusses the rules for limitation on fiscal liability of States (hold harmless), these retroactive adjustments are State expenditures when made and shall be counted as a State expenditure in the fiscal year in which the adjustments are made.

4. Sections 416.2097 and 416.2098 are redesignated as §§ 416.2098 and 416.2099, a new § 416.2097 is added and, as redesignated, § 416.2098 and paragraph (a) of § 416.2099 are revised. As amended, §§ 416.2097, 416.2098, and 416.2099 read as follows:

§ 416.2097 Combined supplementary/SSI payment levels.

(a) The combined supplementary/SSI payment level for each payment category that must be provided in any month after March 1983 (or if a State first made supplementary payments after March 1983, the combined supplementary SSI payment levels in effect the first month the State made supplementary payments) in order for a State to meet the requirement of the first sentence of § 416.2096(b) is the sum of—

(1) The SSI Federal benefit rate (FBR) for March 1983 for a recipient with no countable income;

(2) That portion of the July 1983 benefit increase computed in accordance with paragraph (b) of this section;

(3) The full amount of all SSI benefit increases after July 1983; and

(4) The State supplementary payment level for March 1983 as determined under § 416.2098.

(b) The monthly FBR's were increased in July 1983 by $20 for an eligible individual and $30 for an eligible couple, and the monthly increment for essential persons was increased by $10 in lieu of the expected cost-of-living adjustment which was delayed until January 1984. However, in computing the required combined supplementary/SSI payment levels for the purpose of determining passalong compliance, we use only the amounts by which the FBR's and the essential person increment would have increased had there been a cost-of-living adjustment in July 1983 (a 3.5 percent increase would have occurred). These amounts are $9.70 for an eligible individual, $14.60 for an eligible couple and $4.50 for an essential person.

(c) For the 24-month period January 1, 1984, through December 31, 1985, a State will not be found out of compliance with respect to its payment levels if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels are not less than its supplementary payment levels in effect in December 1976 increased by the percentage by which the FBR has increased after December 1976 and

before February 1986. The FBR for an individual in December 1976 was $167.80. The FBR for an individual in effect on January 31, 1986, was $336.00, an increase of 100.24 percent over the December 1976 FBR. In order for a State to take advantage of this provision for the 24-month period January 1, 1984, through December 31, 1985, the State supplementary payment levels in effect for calendar year 1986 must be at least 100.24 percent higher than the State supplementary payment levels in effect in December 1976. This provision does not apply to State supplementary payments to recipients in Federal living arrangement "D" (residents of a medical facility where title XIX pays more than 50 percent of the costs).

§ 416.2098 Supplementary payment levels.

(a) *General.* For the purpose of determining the combined supplementary/SSI payment levels described in § 416.2097(a), (i.e., the levels that must be provided in any month after March 1983), the supplementary payment level for each payment category must be no less than the total State payment for March 1983 for that payment category that a State provided an eligible individual (or couple) with no countable income in excess of the FBR for March 1983. For July 1983 and successive months, a State can reduce the total State payment for March 1983 as described above by that portion of the July 1983 increase which does not relate to the cost of living (i.e., $10.30). For States that did not make supplementary payments in March 1983, the supplementary payment level for each payment category must be no less than the total State payment for the first month after March 1983 in which a State makes supplementary payments.

(b) *Calculation of the required mandatory minimum State supplementary payment level.* (1) Except for States described in paragraph (b)(2) of this section, the mandatory minimum State supplementary payment level for March 1983 is a recipient's December 1973 income, as defined in section 212(a)(3)(B) of Pub. L. 93–66, plus any State increases prior to April 1983, less any reductions made at any time after December 1973 due to changes in special needs or circumstances, less the March 1983 FBR. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later the amount calculated in the first sentence shall continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., $10.30), so long as that reduction does not cause the mandatory minimum State supplementary level to fall below that required by section 212(a)(3)(A) of Pub. L. 93–66.

(2) Section 1618(c) of the Act permitted any State that had satisfied the requirements of section 1618 of the Act by the total-expenditures method for the 12-month period July 1, 1981, through June 30, 1982, and that elected to change and meet the section 1618 requirements by the maintenance-of-payment-levels method for the period July 1, 1982, through June 30, 1983, to do so by paying benefits at levels no lower than the levels of such payments in effect for December 1981. However, a recipient's December 1981 total income (December 1981 mandatory minimum State supplement plus the FBR) could not be less than the recipient's total income for December 1973 as defined in section 212(a)(3)(B) of Pub. L. 93–66. For a State that elected the option in the preceding two sentences, the mandatory minimum State supplementary payment level for March 1983 is a recipient's December 1981 total income (but not less than the total income for December 1973 as defined by section 212(a)(3)(B) of Pub. L. 93–66) plus any State increases after December 1981 and prior to April 1983, less any reductions made at any time after December 1981 due to changes in special needs or circumstances, less the March 1983 FBR. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later, the amount calculated under the preceding sentence defining the required March 1983 mandatory minimum State supplementary payment level would continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., $10.30), so long as that reduction does not cause the mandatory minimum State supplementary level to fall below that required by section 212(a)(3)(A) of Pub. L. 93–66.

(c) *Calculation of the required optional State supplementary payment level for flat grant amounts.* The optional State supplementary payment level for March 1983 for flat grant amounts is the total amount that an eligible individual (or couple) with no countable income received for March 1983 in excess of the FBR for March 1983. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later the amount calculated in the first sentence shall continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., $10.30). If the State varied its payment levels for different groups of recipients (e.g., paid recipients different amounts based on eligibility categories, geographic areas, living arrangements, or marital status), each variation represents a separate supplementary payment level.

(d) *Calculation of the required optional State supplementary payment level for individually budgeted grant amounts.* The optional State supplementary payment level for individually budgeted grant amounts for March 1983 is the amount that the State budgeted for March 1983 in excess of the March 1983 FBR for an eligible individual (or couple) having the same needs and no countable income. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later the amount calculated in the first sentence shall continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., $10.30).

(e) *Optional State supplementary payment level for per diem based grant amounts.* (1) The optional State supplementary payment level for March 1983 for per diem grant amounts is the total dollar amount that the State paid to an eligible individual (or couple) with no countable income at rates in effect for March 1983 (number of days in the calendar month multiplied by the March 1983 per diem rate plus any March 1983 personal needs allowance) in excess of the March 1983 FBR.

Example:

March 1983:	
$15.40	Per diem rate.
×31	Days in month.
477.40	
477.40	
+42.00	Personal needs allowance.
519.40	
519.40	Combined State supplementary/SSI payment.
−284.30	March 1983 FBR.
235.10	State supplementary payment level.

(2) The optional State supplementary payment level for months subsequent to March 1983 for per diem grant amounts is the total dollar amount that the State paid to an individual (or couple) with no countable income at rates in effect in March 1983 (number of days in the calendar month multiplied by the March 1983 per diem rate plus any March 1983 personal needs allowance) in excess of the March 1983 FBR for an individual (or couple) with no countable income

increased by all FBR increases subsequent to March 1983 with the exception of the July 1, 1983 increase. For the July 1, 1983 increase to the FBR, a State need passalong only that portion of the increase which represented the increase in the cost of living adjustment (3.5 percent).

Example:

Note.—Example assumes the State passed along only $9.70 of the $20.00 increase in the FBR effective July 1, 1983.

The March 1983 combined supplementary/SSI payment level for a 31-day month was $519.40.

July 1983 level:	
$519.40	March 1983 combined payment.
+9.70	July 1983 COLA-equivalent.
529.10	Required July 1983 combined level.
Payment:	
529.10	Required July 1983 combined level.
Payment:	
−304.30	July 1983 FBR.
224.80	Required State Supplementary level.
Payment:	
529.10	Required July 1983 combined level.
Payment:	
−42.00	Personal needs allowance.
487.10	
487.10	
÷31	Days in month.
15.71	Per diem rate.

The required July 1983 combined supplementary/SSI payment level for a 31-day month was $529.10. This amount is equal to the March 1983 combined payment amount for a 31-day month plus the July 1983 COLA-equivalent ($519.40 + $9.70).

(f) *Required Optional State supplementary payment level for months prior to April 1983.* In determining passalong compliance under the maintenance-of-payment-levels test for months from July 1977 through March 1983, we used December 1976 (or December 1981 under the circumstances described in paragraph (g) of this section) as the standard month for determining the required State supplementary payment level. To determine the December 1976 State supplementary payment levels for categories described in paragraphs (a) through (e) of this section substitute "December 1976" for "March 1983" and "January 1977" for "April 1983" whenever they appear in these paragraphs only.

(g) *Alternative required Optional State supplementary payment level for July 1982 through March 1983.* States which were in compliance solely under the total-expenditures test for the 12-month period ending June 30, 1982, had the option of substituting December 1981 for December 1976 and switching to the maintenance-of-payment-levels test for July 1982 through March 1983 (see § 416.2096(b)(2)). If this situation applies, determine the December 1981 State supplementary payment levels for categories described in paragraphs (a) through (e) of this section by substituting "December 1981" for "March 1983" and "January 1982" for "April 1983" whenever they appear in these paragraphs only.

§ 416.2099 Compliance with passalong.

(a) *Information regarding compliance.* Any State required to enter into a passalong agreement with the Secretary shall provide appropriate and timely information to demonstrate to the Secretary's satisfaction that the State is meeting the passalong requirements. The information shall include, where relevant—

(1) The State's December 1976 supplementary payment levels, any subsequent supplementary payment levels, and any change in State eligibility requirements. If the State made no supplementary payments in December 1976, it shall provide such information about the first month in which it makes supplementary payments;

(2) The State's March 1983 supplementary payment levels, any subsequent supplementary payment levels, and any changes in State eligibility requirements;

(3) The total State expenditures for supplementary payments in the 12-month period beginning July 1976 through June 1977, in each subsequent 12-month period, and in any other 12-month period beginning on the effective date of a Federal SSI benefit increase. The State shall also submit advance estimates of its total supplementary payments in each 12-month period covered by the agreement; and

(4) The total State expenditures for supplementary payments in the 6-month periods July 1, 1982 through December 31, 1982 and July 1, 1983 through December 31, 1983.

(b) *Records.* Except where the Secretary administers the State supplementary payments, the State shall maintain records about its supplementary payment levels and total 12-month (or 6-month where applicable) expenditures for supplementary payments and permit inspection and audit by the Secretary or someone designated by the Secretary.

(c) *Noncompliance by the States.* Any State that makes supplementary payments on or after June 30, 1977, and does not have a passalong agreement with the Secretary in effect, shall be determined by the Secretary to be ineligible for payments under Title XIX of the Act. A State does not have an agreement in effect if it has not entered into an agreement or has not complied with the terms of the agreement. Ineligibility shall apply to total expenditures for any calendar quarter beginning after June 30, 1977, for which a State has not entered into an agreement. A State that enters into an agreement but does not maintain its payment levels or meet the total-expenditures test in a particular 12-month or transitional 6-month period, shall be determined by the Secretary not to have an agreement in effect for any month that the State did not meet the passalong requirements during that particular period. The State shall then be ineligible for title XIX payments for any calendar quarter containing a month for which an agreement was not in effect. If a State first makes supplementary payments beginning with a month after June 1977, ineligibility shall apply to any calendar quarter beginning after the calendar quarter in which the State first makes payments.

(d) *Notices to States about potential noncompliance.* Within 90 days after the end of the relevant 12-month period, the Secretary shall send a notice to any State that has not maintained its supplementary payment levels and that appears not to have maintained its total expenditures during the period. The notice will advise the State of the available methods of compliance and the time within which corrective action must be taken (see §§ 416.2096(b)(3) and 416.2096(c)(2)) in order to avoid a determination of noncompliance. If the State fails to take the corrective action, the Secretary shall make a timely determination of noncompliance.

(Approved by the Office of Management and Budget under control number 0960–0240.)

[FR Doc. 87–22138 Filed 9–25–87; 8:45 am]
BILLING CODE 4190–11–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 86-17, Notice 2]

Design Standards for Highways; Standard Specifications for Highway Signs, Luminaires and Traffic Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts for application on Federal-aid highway projects the American Association of State Highway and Transportation Officials' (AASHTO) "Standard Specifications for Highway Signs, Luminaires and Traffic Signals, 1985" except for the requirements of Section 7 of the document which deal with breakaway supports. The FHWA is not yet ready to make a final decision regarding appropriate breakaway requirements for sign and luminaire supports. In the interim, the FHWA will continue to following the requirements for breakaway supports found in section 7 of the 1975 edition of AASHTO's "Standard Specifications for Highway Signs, Luminaires and Traffic Signals."

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Hatton, Office of Engineering, (202) 366-1629, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1382, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM), FHWA Docket 86-17, (51 FR 40817, November 10, 1986), presented FHWA's proposal to adopt for application on Federal aid highway projects revised specifications for structural supports for highway signs, luminaires, and traffic signals. The FHWA has been following as a design standard on Federal-aid highway projects the specifications found in the 1975 edition of AASHTO's "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals." In May 1985, AASHTO approved a new edition of these standard specifications which included several revisions to the previous specifications. It is these revised specifications (1985 edition) which FHWA has proposed to adopt.

There were 14 commenters on the NPRM. Comments were received from five State highway agencies, five suppliers of breakaway luminaire support systems, two distributors of traffic control systems, a lighting support industry group, and a safety advocacy group. Two State highway agencies, one luminaire support supplier, and the two distributors of traffic control devices recommended that FHWA adopt the 1985 AASHTO specification in its entirety.

Four other commenters, two State highway agencies and two luminaire support suppliers, recommended that FHWA adopt the 1985 AASHTO specification except for section 7, Breakaway Supports. It was suggested that FHWA's adoption of section 7 be deferred until there has been an opportunity to evaluate the results of FHWA's ongoing program to crash test existing breakaway luminaire support systems. The safety advocacy group also identified the need for making crash test results publicly available. It has always been FHWA's intention to publish for public information and comment the results from its ongoing luminaire crash testing program before a final decision is made regarding section 7. Additional information on this matter is discussed below.

Three other commenters, two luminaire support suppliers and the safety advocacy group, presented several suggestions concerning additional design information and other design detail modifications that might be included in the 1985 AASHTO specification. The FHWA is of the opinion that these proposed modifications would have no significant impact on the safety of sign and luminaire supports and they are not being incorporated into this final rule. The FHWA will forward the suggested modifications to the AASHTO Subcommittee on Bridges and Structures for its consideration in any future updates to the material in the AASHTO sign and luminaire specification.

Two suggestions could have some bearing on safety and are discussed in further detail as follows. One commenter recommended that the 1985 AASHTO specifications be revised to include guidance covering the placement of luminaires on slopes similar to the guidance that the FHWA issued to its regional offices in 1985. The FHWA is of the opinion that its previous guidance on this matter has served its intended purpose and there is no need to incorporate this material into a standard specification. The FHWA is working with the AASHTO on development of a Roadside Design Guide and this item will be considered for inclusion in that document.

The second comment concerning safety was that revisions to section 1.1.3(C) of the 1985 AASHTO specifications would result in the placement of overhead sign supports in locations vulnerable to vehicle impact and without barrier or impact attenuator protection. The FHWA does not share this concern. The 1985 AASHTO specification eliminates the reference to the fixed 30-foot clear zone for shielding of supports and instead references the AASHTO "Guide for Selecting, Locating, and Designing Traffic Barriers." It is expected that this AASHTO guide will be used for determining appropriate clear zones for the highway facility involved and that supports located within the designated clear zones will be shielded.

Several comments were also receive regarding the breakaway support requirements within section 7 of the 1985 AASHTO specification. Issues raised included:

- Concerns about the need to reduce the test vehicle from 2,250 pounds to 1,800 pounds.
- A need for the FHWA to develop a breakaway support standard that covers all licensed vehicles including those weighing as little as 1,200 pounds.
- A recommendation to lower the change of velocity criterion below 15 feet/second.
- A need for compliance dates for any new requirements established.
- Concerns about the reliability of the crash testing methods used at FHWA's testing facility.

As explained below, the FHWA is not proceeding at this time with the adoption of section 7 of the 1985 AASHTO specifications. Comments received to the NPRM regarding section 7 plus anticipated future comments received once the crash tests results are published will be considered later when a final decision is made regarding adoption of section 7.

The FHWA has decided to adopt as a design standard for use on Federal-aid highway projects the provisions of the 1985 AASHTO sign and luminaire specifications with the exception of section 7, Breakaway Supports. For the time being, FHWA's requirements regarding breakaway requirements for sign and luminaire supports will remain to be those found in section 7 of the 1975 AASHTO specification. The reasons for this are discussed below:

The November 10, 1986, NPRM noted that to assist in determining whether currently accepted hardware meets the breakaway requirements of the new 1985 AASHTO specifications, the FHWA would be conducting limited

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testing of previously accepted luminaire hardware. Crash testing of various luminaire support systems with an 1,800-pound bogie vehicle at impacts of 20 mph and 60 mph is on-going. The NPRM also noted that when this capability testing was completed the FHWA would publish in the **Federal Register** a supplemental notice summarizing the test results and requesting public comment. Based on FHWA's analysis of the comments received and the test results, the FHWA would then adopt sign and luminaire support breakaway requirements it deemed appropriate.

Several suppliers have provided breakaway luminaire systems for the testing program. This program is taking longer to complete than originally anticipated and overall test results are not yet available. As a consequence, the FHWA will not be in a position to publish the supplemental notice until later this year.

So as to not unnecessarily delay FHWA's acceptance of other material in the 1985 AASHTO specification, FHWA is adopting all sections of the 1985 AASHTO specifications with the exception of section 7, Breakaway Supports. In the interim, FHWA's requirements for breakaway sign and luminaire supports on Federal-aid highways will remain to be those found in the 1975 AASHTO specification. These requirements are that satisfactory performance for a breakaway support is indicated when the maximum changes in momentum for a 2,250-pound vehicle, or its equivalent, striking the support at speeds of 20 mph and 60 mph does not exceed 1,100 pound-seconds but desirably does not exceed 750 pound-seconds.

Although the FHWA has not yet adopted section 7, Breakaway Supports, of the 1985 AASHTO specifications, a State or local highway agency has the option to begin applying on Federal-aid highway projects the more stringent requirements of section 7 of the 1985 AASHTO specification if it so chooses.

As previously noted, when the capability testing program for existing luminaire hardware is completed, an overall summary of test results will be published in a supplemental notice. Following an opportunity for public comment, the FHWA will then make a decision as to whether section 7 of the 1985 AASHTO specification should be adopted for application on Federal-aid highway projects.

Discussion of Revisions

The 1985 AASHTO specifications that the FHWA is adopting are divided into sections which address: General features of design; application and consideration of loads; method of analysis; steel, aluminum, and prestressed concrete design, including corresponding allowable unit stress; foundations and their design criteria; details of design; use of timber; and an accompanying commentary covering each section. The significant changes from the 1975 AASHTO specifications are discussed in detail below.

Section 1. The 1975 edition referred to the need to shield overhead sign supports when placed within 30 feet of the edge of the traveled way. The 1985 edition clarifies that these supports should be shielded wherever warranted. Also, the horizontal clearance from the rail to the face of the support has been clarified to demonstrate that this distance is measured from the back of the rail to the face of the supports.

Section 2. Wind drag coefficients for hexdecagonal, square and diamond shapes have been added in an attempt to more accurately apply expected wind load forces on structural supports. Information from wind tunnel tests suggests these drag coefficients should now be used in designing structural supports. This should result in a design procedure that incorporates the latest research findings.

Section 3. New requirements are established regarding telescopic field splices for high level lighting supports. Also, changes in the requirements for the use of anchor bolts include: optional use of cut or rolled threads; sizing of bolts due to combined loading of shear and tension; and increases in the allowable unit stresses. These changes should permit the structural designer more flexibility in specifying hardware and will give the industry more flexibility in supplying that hardware.

Section 4. New requirements have been added regarding: width to thickness ratios of compression elements, penetration criteria for longitudinal seam welds, and silicon content of structural steel to be galvanized. These changes have been included to ensure that the structure is a safe, reliable, and economical as possible.

Section 5. The allowable unit stresses for aluminum alloy members have been increased. The stresses allowed are now in conformance with building type structures rather than those for bridge type structures. This will result in more consistency between the factors of safety of aluminum structures and those of steel structures.

Section 6. Changes in the design of prestressed concrete materials include: A new equation for allowable stresses under severe corrosive exposure conditions, such as coastal areas; a revised ultimate strength design procedure; and recommendations on the use of epoxy coated reinforcement. These changes are expected to merely extend the life expectancy of prestressed concrete materials.

Section 7. The changes in the 1985 edition are not being adopted (see previous discussion).

Section 8. There are no significant changes to this section from the 1975 edition.

Section 9. Suggested deflection criteria for cantilever supports has been added to aid those wishing to control deflection for esthetic purposes. Under the 1985 AASHTO specifications, supports for small roadside signs would be exempt from the minimum thickness requirements for steel support. Experience has indicated that small roadside sign supports not meeting the minimum thickness requirements in the 1975 edition have sufficient durability and that they may have safety advantages.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and the procedures of the Department of Transportation. For the sections of the 1985 AASHTO specifications which are being adopted in this final rule, the economic impacts, if any, are minimal. This determination is based on the fact that, although the Revised Specifications contain standards which in some cases have been clarified, modified, or revised, the basic structural support design criteria will remain essentially the same. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies this action will not have a significant economic impact on a substantial number of small entities.

The manufacturers of sign and luminaire support systems may be minimally affected should FHWA decide, at a future date, to adopt section 7 of the 1985 AASHTO specification. A draft regulatory evaluation discussing these impacts was prepared and made available when the November 10, 1986, NPRM was published. This regulatory evaluation will be finalized at such time that the FHWA has made a final decision regarding adoption of section 7 of the 1985 AASHTO specification.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting requirements.

In consideration of the foregoing, Part 625 to Chapter 1 of Title 23, Code of Federal Regulations, is amended as set forth below.

Issued on: September 22, 1987.

Ray A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA hereby amends 23 CFR Part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.4, paragraph (b)(5) is amended to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(b) * * *

(5) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1985, and Interim Revisions, AASHTO 1986, except for section 7, Breakaway Supports. The FHWA requirements for breakaway sign and luminaire supports are contained in section 7 of Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1975. (3)

* * * * *

[FR Doc. 87-22332 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 807

Publications Sales

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This part has been rearranged and certain areas expanded to clarify handling procedures for specific types of requests from the public. This part provides Air Force procedures for issuing publications and forms to private citizens, organizations and commercial activities.

EFFECTIVE DATE: October 28, 1987.

ADDRESS: SAF/AADPD, Bolling AFB, DC 20332-6468.

FOR FURTHER INFORMATION CONTACT: Walter S. Frazer, SAF/AADPD, Bolling AFB, DC 20332-6468, telephone (202) 767-6077.

SUPPLEMENTARY INFORMATION: On July 24, 1987, the Air Force published a proposed rule on issuing Air Force publications and forms outside the Air Force (52 FR 27825). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 807

Government contracts, government procurement.

Therefore, 32 CFR Part 807 is revised to read as follows:

PART 807—PUBLICATIONS SALES

Sec.

807.1 General requirements.
807.2 Charges.
807.3 Requests for classified material, For Official Use Only (FOUO) material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.
807.4 Availability and non-availability of stock.
807.5 Processing requests.
807.6 Depositing payments.

Authority: 10 U.S.C. 8013.

§ 807.1 General requirements.

(a) Unaltered Air Force publications and forms in this distribution system will be made available to the public with or without charge subject to the requirements of this part. Base Chiefs of Administration will establish procedures to accommodate these requirements and will make available Master Publications Libraries for public use in accordance with AFR 5-31. Requesters will be advised of the availability of these libraries since in many instances this will satisfy their requirements and reduce workloads involved in processing sales requests. If the item is on sale by the Superintendent of Documents, Government Printing Office, refer the request to that outlet.

(b) These unaltered publications and forms are not considered records within the meaning of the Freedom of Information Act (FOIA) as outlined in 5 U.S.C. 552 and implemented by Part 806 of this chapter. Requests which involve the FOIA will be referred to the Chief, Base Administration for processing.

(c) Requests under the Foreign Military Sales Program (FMS) will be processed in accordance with AFR 7-1, Chapter 11.

(d) Requests from foreign governments, their representatives, or international commands are answered only by offices holding delegation of disclosure authority letters, as described in AFR 200-9. Such requests must be sent to the foreign disclosure policy office within a command, and at HQ USAF to HQ USAF/CVAI. Copies of such requests should also be sent to the base public affairs office for their information. Commands will supplement this requirement to include policies pertaining to those items which they have authority to release.

(e) Requests for non-Air Force items will be returned to the requester for submission to appropriate agency.

§ 807.2 Charges.

(a) Air Force policy provides that charges will be applied to all requests unless specifically excluded.

(b) Charges will be applied in accordance with Part 813 of this chapter. Additional guidance is in Part 812, including specific exclusions for charges as listed in § 812.5. As indicated, the list of exclusions is not all inclusive and recommendations for additional exclusions will be forwarded to the OPR for Part 812 of this chapter.

(c) Publications and forms required for contract performance will be furnished without charge to the contractor when these requirements are approved by the government contracting officer.

§ 807.3 Requests for classified material, For Official Use Only (FOUO) material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.

(a) *Classified material.* Answer these requests by telling the requesters that the material is not authorized for release because it is currently and properly classified in the interest of national security as authorized by Executive Order, and must be protected from unauthorized disclosure.

(b) *FOUO material.* Requests will be reviewed by the Office of Primary Responsibility for the material to determine its releasibility.

(c) *Accountable forms.* These requests will be returned to the requester stating that the forms are stringently controlled and cannot be released to unauthorized personnel since their misuse could jeopardize Department of Defense

security or could result in fraudulent financial gain or claims against the government.

(d) *Storage safeguard forms.* These requests will be returned to the requesters stating that the forms are specially controlled and are not releasable outside the Department of Defense since they could be put to unauthorized or fraudulent use.

(e) *Limited (L) distribution items.* These items are not releasable outside the Department of Defense without special review in accordance with AFR 700–6. Requests will be referred to the SIS Manager shown in the index or on the cover of the publications. Advise the requesters of the referral.

(f) *Items with restrictive distribution caveats.* Some publications have restrictive distribution caveats on the cover. Follow the instructions stated and advise the requesters of the referral.

§ 807.4 Availability and non-availability of stock.

(a) It is Air Force policy to limit quantities furnished so that stock levels required for operational Air Force support are not jeopardized.

(b) If the item is not available from PDO stock, obtain it from the Air Force Publishing Distribution Center (AFPDC).

(1) If the item is not stocked by the AFPDC, check the appropriate index to see if it is available from another source and refer the request to that source. Advise the requester of the referral.

(2) If the item is under revision, advise the requester that it is being revised and no stock is available.

(c) If stock is not available and the item is being reprinted, advise the requester that stock is expected to be available in 90 days and to resubmit at that time.

§ 807.5 Processing requests.

Payment will be required before shipping the requested material. Payment must be by check or money order.

(a) When the request is received, determine the cost involved and advise the requester to ensure that he/she is willing to pay.

(b) If the requester agrees to pay the cost involved, take action to obtain the material.

(c) When the item is received advise the requester to remit the required payment and forward the material after payment is received.

(d) If the material cannot be obtained, advise the requester of the reason.

§ 807.6 Depositing payments.

Obtain instructions from the local Accounting and Finance Office regarding how checks or money orders must be prepared and required procedures for depositing them.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–22006 Filed 9–25–87; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 84–004]

Shipping Safety Fairways; Approach to New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in the final rule published in the **Federal Register** on September 4, 1987 (52 FR 33587). The final rule established two new parallel shipping safety fairways to connect the Eastern approach off Nantucket and the Eastern approach off Ambrose lanes of the traffic separation scheme (TSS Off New York).

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) Daphne Reese at (202) 267–0365.

SUPPLEMENTARY INFORMATION: There is a typographical error on page 33589 (first column, lines 58–65 and second column, lines 5–12). The geographical positions for the fairway are given in degrees and minutes to the nearest hundreth of a minute. The geographic positions for the fairways should be listed in degrees, minutes, and seconds.

Section 166.500, paragraph (b) is correctly added to read as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

§ 166.500 Areas along the Atlantic Coast.

* * * * *

(b) *Designated Areas*—(1) *Off New York Shipping Safety Fairway.* (i) Ambrose to Nantucket Safety Fairway. The area enclosed by rhumb lines, [North American Datum of 1927 (NAD–27)] joining points at:

Latitude	*Longitude*
40°32'20" N.	73°04'57" W.
40°30'58" N.	72°58'25" W.
40°34'07" N.	70°19'23" W.
40°35'37" N.	70°14'09" W.
40°30'37" N.	70°14'00" W.
40°32'07" N.	70°19'19" W.
40°28'58" N.	72°58'25" W.
40°27'20" N.	73°04'57" W.

(ii) *Nantucket to Ambrose Safety Fairway.* The area enclosed by rhumb lines, NAD–27, joining point at:

Latitude	*Longitude*
40°24'20" N.	73°04'58" W.
40°22'58" N.	72°58'26" W.
40°26'07" N.	70°19'09" W.
40°27'37" N.	70°13'46" W.
40°22'37" N.	70°13'36" W.
40°24'07" N.	70°19'05" W.
40°20'58" N.	72°58'26" W.
40°19'20" N.	73°04'58" W.

Dated: September 23, 1987.

A.B. Smith,

Acting Chief, Office of Navigation.

[FR Doc. 87–22305 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[(A-1-FRL-3267-8)]

Approval and Promulgation of Implementation Plans; Rhode Island; James River Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision approves an administrative consent agreement to control volatile organic compound (VOC) emissions from five coating lines at James River Corporation's Decorative Products Division (formerly Whitman Products Limited) in Johnston, Rhode Island. The intended effect of this action is to reduce ozone levels as required under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will be effective November 27, 1987 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, JFK Building, Room 2311, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Division of Air & Hazardous Materials, Department of Environmental Management, 75 Davis Street, Cannon Building, Room 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: David B. Conroy (617) 565–3252, FTS 835–3252.

SUPPLEMENTARY INFORMATION: On July 6, 1983 (48 FR 31026), EPA approved Rhode Island's Ozone Attainment Plan and incorporated it into the SIP. As part of the attainment plan, Rhode Island adopted Regulation No. 19, "Control of Volatile Organic Compounds from Surface Coating Operations." This regulation applies to facilities which emit more than 100 tons per year (TPY) of VOC emissions from either paper, fabric or vinyl surface coating operations. A source subject to this regulation is required under subsection 19.3.1 to apply reasonably available control technology (RACT) to its VOC emitting processes by July 1, 1985. The RACT limitations specified in subsection 19.3.1 are equivalent to those specified in EPA's applicable control techniques guideline (CTG) document (EPA–450/2–77–0 08).

On November 5, 1985, June 16, 1986, and November 3, 1986 the Rhode Island DEM submitted a revision to its SIP. This revision consists of an administraive consent agreement originally negotiated between the DEM's Division of Air and Hazardous Materials and Whitman Products Limited and now applicable to the new owner of the facility, James River Corporation (James River) in Johnston, Rhode Island. This consent agreement was issued pursuant to provisions found in Rhode Island Regulation No. 19, subsection 19.3.3.

The provisions found in subsection 19.3.3 allow the DEM to specify alternative final compliance dates to those set forth in subsection 19.3.1 on a case-by-case basis.

Rhode Island submitted subsection 19.3.3 on May 14, 1982 and EPA approved it on July 6, 1983 (48 FR 31026) as part of Rhode Island's Ozone Attainment Plan. It was EPA's intention when approving subsection 19.3.3 that all alternative compliance dates granted pursuant to this subsection by the DEM would be submitted to EPA as SIP revisions.

Summary of SIP Revision

James River operates eight coating/printing lines in Johnston, Rhode Island. James River coats book covering materials. James River is subject to the control requirements of Rhode Island SIP Regulation No. 19, subsection 19.3.1 which requires that the VOC content of each coating employed at James River be at or below 2.9 pounds VOC/gallon of coating (minus water) by July 1, 1985 except as provided in subsection 19.3.3.

At the time Rhode Island Regulation No. 19 was developed, the former owner of the facility, Whitman Products Limited, primarily employed solvent-based coatings on its coating/printing lines. During 1979, the first year this regulation was effective, the VOC emissions from this source were 2080 TPY. In 1985, the VOC emissions from this source were 504 TPY. Whitman Products Limited achieved this substantial reduction by reformulating a large percentage of its basecoats to agueous-based formulations. However, the reformulations do not reduce the facility's VOC emissions to the level required by the Rhode Island SIP. James River has proposed to achieve further reformulations by December 31, 1986 which would reduce James River's VOC emissions to approximately 293 TPY. Once James River implements the additional reformulations, the company will have achieved approximately a 86% reduction in VOC emissions from the 1979 level. This reduction is likely more than James River could have achieved had it installed add-on control equipment on its coating/printing lines.

Pursuant to subsection 19.3.3, the Rhode Island DEM has submitted a revision providing James River with a compliance date extension to December 31, 1986 for five of its eight coating/printing lines. After that date, James River will be subject to the existing SIP emission limitation in subsection 19.3.1 which will require James River to achieve continuous compliance with the emission limit of 2.9 pounds VOC/gal coating (minus water) for all coatings, or to comply on a daily plant-wide basis if the provisions of Rhode Island's generic bubble rule (subsection 19.4) are utilized.

The administrative consent agreement requires James River to reformulate certain basecoats to higher solids formulations and certain base and topcoats to aqueous formulations. The source is also required to meet and maintain daily interim emission limitations on each line during the reformulation program. The consent agreement also has a provision in it which would have required James River to install add-on control equipment by December 31, 1986 if James River's reformulation efforts to convert its solvent-based coatings to high solids and aqueous-based coatings were not achieving a certain level of success by April 1, 1986. However, James River was not required to install add-on controls since the Rhode Island DEM determined that the company was achieving the progress required by the consent agreement by April 1, 1986.

Rhode Island has demonstrated that it has achieved sufficient VOC reductions necessary to show attainment of the National Ambient Air Quality Standard (NAAQS) for ozone by December 31, 1982. EPA approved this demonstration on July 6, 1983 (48 FR 31026). (The entire State of Rhode Island, however, continues to be nonattainment due to transport of ozone from upwind sources into Rhode Island.) Additionally, Rhode Island has demonstrated in a letter to EPA dated November 3, 1986 that there is an adequate margin for growth, below the level of emissions necessary to show attainment of the NAAQS for ozone, to absorb the temporary increased emissions resulting from this compliance date extension. Each year Rhode Island recalculates that growth margin based on updated emission figures for all existing sources and emissions from new sources. Rhode Island only allows increases in VOC emissions from new sources based on the availability of emissions in that growth margin. Therefore, since James River itself does not consume the entire growth margin nor will Rhode Island give offsets to any new source which consumes the remainder of the growth margin, this compliance date extension for James River will not interfere with the continued maintenance of the NAAQS for ozone in Rhode Island.

Moreover, the DEM showed that Rhode Island's Ozone Attainment Plan projected Whitman Products (now James River Corporation) to emit approximately 2179 TPY in 1983, 2505 TPY in 1984, 2485 TPY in 1985, and 2402 in 1986. From Rhode Island's VOC emissions inventory, it can be seen that Whitman Products (now James River Corporation) actually emitted 720 TPY in 1983, 678 TPY in 1984, and 504 TPY in 1985. Furthermore, James River was expected to emit approximately 293 TPY of VOC in 1986 with the compliance date extension, which required James River to achieve additional reductions. Therefore, it was shown that James River has emitted much less over the past four years than were projected in Rhode Island's Ozone Attainment Plan.

For these reasons, this compliance date extension for James River will not interfere with Reasonable Further Progress (RFP) towards attainment of the ozone standard in Rhode Island.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another

will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective Novemeber 27, 1987.

Final Action

EPA is approving the administrative consent agreement for James River Corporation submitted as a SIP revision by the Rhode Island DEM on November 5, 1985, June 16, 1986 and November 3, 1986. EPA believes that the conditions of the DEM's consent agreement were established in accordance with the compliance date provisions of federally-approved subsection 19.3.3 of the Rhode Island SIP. This compliance date extension is not to be construed as an alternative RACT determination for this source. A more detailed description of EPA's evaluation is presented in the Technical Support Document that has been prepared for the revision. Copies of that document may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (November 27, 1987). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmentional relations, Reporting and Recordkeeping requirements, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 18, 1987.

Lee M. Thomas,

Administrator.

PART 40—[AMENDED]

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart 00—Rhode Island

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2070 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(26) Revisions submitted on November 5, 1985, June 16, 1986 and November 3, 1986 by the Rhode Island Department of Environmental Management (DEM) consisting of an administrative consent agreement between the DEM's Division of Air and Hazardous Materials and Whitman Products Limited (now James River Corporation's Decorative Product Division) in Johnston, Rhode Island. When the consent agreement expires on December 31, 1986, James River Corporation will be subject to the emission limits in Rhode Island Regulation No. 19, subsection 19.3.1.

(i) Incorporation by reference. (A) An administrative consent agreement between the Rhode Island and Providence Plantation Department of Environmental Management and Whitman Products Limited. The consent agreement became effective on May 29, 1985.

(B) Letters of June 16, 1986 and September 17, 1985 from the Department of Environmental Management to EPA.

(ii) *Additional materials.* (A) Letter submitted on November 3, 1986 affirming that a sufficient growth margin exists, below the level of emissions necessary to show attainment of the national ambient air quality standard for ozone in Rhode Island, to absorb the increased emissions resulting from this compliance date extension.

3. In § 52.2081 table 52.2081 is amended by adding the following entry at the end of No. 19 as indicated below:

§ 52.2081 EPA-approved EPA Rhode Island State regulations.

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52 2070	Comments/unapproved sections
No. 19	Control of VOCs from Surface Coating Operations.	5/29/85	/ /87	52 FR	(c)(26)	Compliance date extension for James River Corp. in Johnston.

[FR Doc. 87–22155 Filed 9–25–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6763]

Suspension of Community Eligibility; Maine et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42

U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001 through 4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Maine	Medway, town of, Penobscot County.	230175	July 16, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	Sept. 30, 1987	Sept. 30, 1987.
Do	Winslow, town of, Kennebec County.	230071	May 22, 1974, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region II					
New York	Unadilla, town of, Otsego County.	361281	Jan. 2, 1976, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Unadilla, village of, Otsego County.	361044	July 28, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region III					
Pennsylvania	Canaan, township of, Wayne County.	422160	Aug. 28, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Cooper, township of, Montour County.	421920	Aug. 21, 1974, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Dyberry, township of, Wayne County.	422165	May 2, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Foxburg, borough of, Clarion County.	421502	Feb. 28, 1977, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Lewis, township of, Union County.	422104	July 29, 1976, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Lynn, township of, Lehigh County.	421812	July 21, 1976, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Do	Madison, township of, Clarion County.	422370	Jan. 16, 1976, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Mayberry, township of, Montour County.	421923	May 28,. 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Polk, township of, Monroe County.	421893	Dec. 18, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Springboro, borough of, Crawford County.	420353	May 23, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Texas, township of, Wayne County.	422176	July 24, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	West Buffalo, township of, Union County.	422106	June 4, 1979, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
West Virginia	Milton, town of, Cabell County.	540019	Oct. 3, 1974, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Cabell County, unincorporated areas.	540016	May 3, 1976, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Wayne, town of, Wayne County.	540231	Dec. 30, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region IV					
Tennessee	Lauderdale County, unincorporated areas.	470333	Apr. 14, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region V					
Ohio	Tuscarawas County, unincorporated areas.	390782	Feb. 18, 1977, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region VIII					
Colorado	Castle Rock, town of, Douglas County.	080050	Apr. 22, 1975, Emerg. Aug. 15, 1978, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Douglas County, unincorporated areas.	080049	Aug. 28, 1974, Emerg. Sept. 3, 1980, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Parker, town of, Douglas County.	080310	March 12, 1986, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
North Dakota	Bowman County, unincorporated areas.	380355	Apr. 3, 1978, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Gascoyne, city of, Bowman County.	380677	Apr. 8, 1987, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Mandan, city of, Morton County.	380072	Apr. 4, 1974, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Morton County, unincorporated areas.	380148	Sept. 13, 1973, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Reiles Acres, city of, Cass County.	380324	March 22, 1978, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Scranton, city of, Bowman County.	380014	Aug. 27, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region IX					
California	Imperial Beach, city of, San Diego County.	060291	Jan. 28, 1974, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Do	Loomis, town of, Placer County.	060721	Dec. 29, 1986, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region IV, Minimal Conversions					
North Carolina	Chadbourn, town of, Columbus County.	370065	July 9, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
Region VI					
Louisiana	Richwood, town of, Ouachita Parish.	220378	Feb. 9, 1978, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.
New Mexico	Colfax County, unicorporated areas.	350126	July 8, 1975, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	do	Do.

State	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VIII					
Nebraska	Ogallala, city of, Keith County.	310129	Nov. 7, 1974, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	.....do.....	Do.
Iowa	Union, city of, Hardin County.	190142	Dec. 15, 1975, Emerg. June 1, 1987, Reg. Sept. 30, 1987, Susp.	June 1, 1987.....	Do.
North Dakota	Creel, township of, Ramsey County.	380625	June 18, 1979, Emerg. Sept. 30, 1987, Reg. Sept. 30, 1987, Susp.	Sept. 30, 1987.....	Sept. 30, 1988.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 87-22249 Filed 9-25-87; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

PROPOSED BASE (100-YEAR) FLOOD ELEVATION

Source of flooding and location	# Depth in feet above ground *Elevation in feet (NGVD)
Alabama	
Carbon Hill (city), Walker County (FEMA Docket No. 6909)	
Lost Creek:	
About 0.5 mile downstream of U.S. Highway 78	*402
About 1.2 miles upstream of Howard Road	*425
Poplar Tributary:	
About 0.5 mile downstream of Widow's Lane Road	*402
Just downstream of Poplar Street	*428
Just upstream of Poplar Street	*446
About 850 feet upstream of 8th Avenue	*476
Allen Creek:	
At mouth	*418
About 1,450 feet upstream of Nubbin Ridge Road	*424
Maps available for inspection at the City Hall, Carbon Hill, Alabama.	
Childersburg (city), Talladega County (FEMA Docket No. 6909)	
Coosa River:	
About 1.1 miles downstream of 12th Avenue	*413
About 4,000 feet upstream of Norfolk Southern Railway	*414
Talladega Creek:	
At mouth	*414
About 0.7 mile upstream of confluence of Four-mile Branch	*416
Town Creek:	
At mouth	*416
About 1,000 feet upstream of Park Lane	*432
Griffin Branch: Within community	*417
Talladega Creek:	
Just downstream of Norfolk Southern Railway	*415
About 1.7 miles upstream of Norfolk Southern Railway	*418
Maps available for inspection at the City Hall, 118 6th Avenue, S.W., Childersburg, Alabama.	
Demopolis (city), Marengo County (FEMA Docket No. 6909)	
Tombigbee River:	
About 0.9 mile downstream of Demopolis Lock and Dam	*92
About 3.2 miles upstream of Demopolis Lock and Dam	*93
Black Warrior River:	
About 4.4 miles upstream of confluence with Tombigbee River	*93
About 5.3 miles upstream of confluence with Tombigbee River	*94
Maps available for inspection at the City Hall, Demopolis, Alabama.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Dothan (city), Houston and Dale Counties (FEMA Docket No. 6912)	
Limestone Creek	
About 1.5 miles downstream of Taylor Road	^223
About 0.87 mile upstream of Moore Road	^284
Beaver Creek Tributary:	
At mouth	^258
About 2,300 feet upstream of Honeysuckle Road	^279
Beaver Creek	
At confluence with Newton Creek	^212
About 1,700 feet upstream of South Park Avenue	^280
Newton Creek:	
At mouth	^200
At confluence of Beaver Creek	^212
Little Choctawhatchee River	
About 1,000 feet downstream of confluence of Newton Creek	^199
About 0.72 mile upstream of Brookside Drive	^245
Murphy Mill Branch:	
At mouth	^220
Just downstream of Kelly Springs Road	^247
Just upstream of Kelly Springs Road	^255
About 2,000 feet upstream of U.S. Highway 231	^268
Rocky Branch:	
Just upstream of Rocky Branch Road	^254
About 1,800 feet upstream of Bic Road	^302
Rock Creek:	
At mouth	^227
Just downstream of Seaboard Coast Line Railroad	^281
Just upstream of Seaboard Coast Line Railroad	^289
About 1,200 feet upstream of Murray Road	^312
Rock Creek Tributary:	
At mouth	^243
About 0.65 mile upstream of mouth	^259
Cypress Creek:	
About 0.89 mile downstream of Seaboard Coast Line Railroad (downstream crossing)	^245
Just downstream of Seaboard Coast Line Railroad (upstream crossing)	^273
Just upstream of Seaboard Coast Line Railroad (upstream crossing)	^280
About 1,500 feet upstream of Seaboard Coast Line Railroad (upstream crossing)	^282
Poplar Spring Branch:	
Just upstream of Old Webb Road	^236
Just downstream of Seaboard Coast Line Railroad	^263
Just upstream of Seaboard Coast Line Railroad	^268
Just downstream of Norfolk Southern Railway	^270
Just upstream of Norfolk Southern Railway	^290
Maps available for inspection at the City Hall, Dothan, Alabama.	
Eufaula (city), Barbour County (FEMA Docket No. 6912)	
Chattahoochee River	
About 2.7 miles downstream of confluence of Cheneyhatchee Creek	^196
About 5.6 miles upstream of confluence of Cowikee Creek	^200
Maps available for inspection at the City Hall, Eufaula, Alabama.	
Flomaton (city), Escambia County (FEMA Docket No. 6909)	
Big Escambia Creek:	
About 0.6 mile downstream of Louisville & Nashville Railroad	^65
About 1.2 miles upstream of Highway 31	^78
Maps available for inspection at the City Hall, Flomaton, Alabama.	
Jackson (city), Clarke County (FEMA Docket No. 6909)	
East Bassett Creek:	
About 500 feet downstream of Depot Road	^34
About 2.45 miles upstream of Depot Road	^45
Tombigbee River:	
About 1,150 feet downstream of Norfolk Southern Railway	^35
About 2.18 miles upstream of Norfolk Southern Railway	^36
Maps available for inspection at the City Hall, Jackson, Alabama.	
Stevenson (city), Jackson County (FEMA Docket No. 6909)	
Bengis Creek:	
About 0.85 mile downstream of Kentucky Street	^607
About 1.17 miles upstream of the Louisville and Nashville Railroad	^618
Crow Creek:	
Just downstream of Lee Highway	^607
About 0.5 mile upstream of the Louisville and Nashville Railroad	^611
Bengis Creek Tributary	
At mouth	^609
Just downstream of Carroll Street	^619
Maps available for inspection at the City Hall, 296 West Main Street, Stevenson, Alabama.	
Sylacauga (city), Talladega County (FEMA Docket No. 6909)	
Upper Shirtee Creek:	
About 750 feet downstream of Old U.S. Highway 280	^517
About 2430 feet upstream of U.S. Highway 280	^544
Tributary No. 1:	
At mouth	^529
About 400 feet upstream of Airport Road	^544
Tributary No. 2:	
At mouth	^539
About 2580 feet upstream of mouth	^545
Tributary No. 3:	
At mouth	^539
About 2750 feet upstream of mouth	^545
Darby Branch:	
About 800 feet downstream of 4th Street	^529
Just downstream of Quarry Road	^574
Just upstream of Quarry Road	^580
Just downstream of U.S. Highway 280	^592
Just upstream of U.S. Highway 280	^599
Just upstream of Pinecrest Road	^631
Big Ditch:	
Just upstream of 8th Street	^530
About 470 feet upstream of Bay Street	^587
Shirtee Creek:	
Just downstream of Odena Road	^465
Just downstream of 6th Street	^533
Crooked Creek:	
About 0.80 mile downstream of State Highway 148	^520
About 0.62 mile upstream of Brickyard Road	^552
Maps available for inspection at the City Hall, Sylacauga, Alabama.	
Vernon (city), Lamar County (FEMA Docket No. 6909)	
Yellow Creek:	
About 1.1 miles downstream of State Highway 17	^270
About 1.6 miles upstream of Columbus Avenue East	^293
Tributary No. 1:	
About 1250 feet downstream of Yellow Creek Road	^273
About 2100 feet upstream of State Highway 18	^304
Buck Creek:	
About 1500 feet downstream of State Highway 18	^281
About 2500 feet upstream of State Highway 18	^293
Town Branch:	
About 700 feet downstream of State Highway 17	^288
About 1.6 miles upstream of First Street Northwest	^338
Maps available for inspection at the City Hall, Vernon, Alabama.	
ARKANSAS	
Independence County (FEMA Docket Nos. 6903 and 6909)	
White River (Lower Reach):	
At confluence of Black River	^233
At upstream County boundary	^234
White River (Upper Reach):	
Approximately 6.8 miles downstream County boundary (extended)	^252
At upstream side of U.S. Route 67	^266
Approximately 6 miles upstream of County boundary (extended)	^270
Miller Creek:	
Approximately 50 feet downstream of County boundary	^278
Approximately 1.0 mile upstream of confluence of Blue Creek	^297
Blue Creek:	
At confluence with Miller Creek	^286
Downstream side of State Route 25/233	^302
Approximately 1,600 feet upstream of County Route 97	^341
Pfeiffer Creek:	
At confluence with Miller Creek	^279
Upstream side of County Route 235	^357
40 feet upstream of County Route 87	^392
Polk Bayou:	
At confluence with White River	^266
At State Route 69 bypass	^280
Dry Run Creek:	
At confluence with Polk Bayou	^267
Approximately 1,350 feet upstream of State Route 106	^285
Tributary to Miller Creek:	
At confluence with Miller Creek	^293
Approximately 1,350 feet upstream from confluence with Miller Creek	^297
Maps available for inspection at the County Judge's Office, County Courthouse, Batesville, Arkansas.	
CALIFORNIA	
Colton (city), San Bernardino County (FEMA Docket No. 6909)	
Warm Creek:	
City of Colton Corporate Limits	#960
Upstream of San Bernardino Freeway	#960
Downstream of San Bernardino Freeway	#957
Southern Pacific Railroad	#957
Reche Canyon Channel:	
City of Colton Corporate Limits (most upstream limit of study)	^1304
Mobile Home Road	^1244
Barton Road	^1041
Confluence with San Timoteo Wash A Baseline	^930
Confluence with Santa Ana River	^925
San Timoteo Wash A:	
Hunts Lane	^934
Confluence with San Timoteo Wash B Baseline	^966
Interstate 15	^962
Mt. Vernon Avenue	^939
Confluence with Reche Canyon Channel	^939
San Timoteo Wash B:	
Confluence with San Timoteo Wash A	^966
Interstate 15	^962
Limit of Study	^952
Maps are available for inspection at City Hall, 650 N. La Cadena Drive, Colton, California.	
Marina (city), Monterey County (FEMA Docket No. 6912)	
Salinas River:	
Approximately 4,350 feet downstream of Blanco Road	^28
Approximately 310 feet upstream of Blanco Road	^32

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	* Depth in feet above ground. ^Elevation in feet (NGVD)
Maps are available for inspection at City Hall, 211 Hillcrest, Manna, California.	
Orinda (city), Contra Costa County (FEMA Docket No. 6909)	
San Pablo Creek:	
50 feet upstream of Bear Creek Road at EB mud erosion control dam	*340
150 feet above confluence with Lauterwasser Creek	*391
50 feet downstream of Orinda Way	*403
At confluence with Overhill Creek	*477
150 feet downstream of Brookside Road	*526
Lauterwasser Creek:	
At confluence with San Pablo Creek	*390
North crossing at Miner Road	*423
100 feet upstream of Oak Arbor Road	*437
150 feet upstream of Lombardy Lane	*467
3400 feet upstream of Lombardy Lane	*537
Cascade Creek:	
At confluence with San Pablo Creek	*391
870 feet above confluence with San Pablo Creek	*416
1920 feet above confluence with San Pablo Creek	*470
Overhill Creek:	
320 feet above confluence with San Pablo Creek at Moraga Way	*475
1240 feet above confluence with San Pablo Creek	*511
2000 feet above confluence with San Pablo Creek	*532
Moraga Creek:	
Corporate limits of the City of Orinda at Ivy Drive	*517
100 feet upstream of Lavenida Drive	*548
100 feet upstream of El Camino Moraga	*575
20 feet downstream of Pacific Gas and Electric Access Road	*605
Maps are available for inspection at City Hall, 26 Orinda Way, Orinda, California 94563.	
Sacramento (city), Sacramento County (FEMA Docket No. 6909)	
Sacramento River:	
Approximately 700 feet downstream of Pioneer Memorial Bridge	*30
At downstream corporate limits	*24
Morrison Creek:	
At Western Pacific Railroad	*15
At Meadowview Road	*16
At Franklin Boulevard	*17
Approximately 400 feet upstream of Stockton Boulevard	*24
Just downstream of Logan Street Extention	*28
At Florin Perkins Road	*40
Just downstream of Central California Traction Railroad	*43
Approximately 300 feet downstream of Elk Grove Road	*46
Elder Creek:	
Just downstream of Franklin Boulevard	*17
Approximately 200 feet downstream of Center Parkway	*20
Just downstream of U.S. Highway 99	*23
Florin Creek:	
Approximately 150 feet downstream of Franklin Boulevard	*17
Just downstream of Brookfield Drive	*18
Just upstream of Center Parkway	*20
Just downstream of Florin Perkins Road	*37
Laguna Creek:	
Just upstream of Franklin Boulevard	*18
Approximately 150 feet downstream of Sheldon Road	*23
Unionhouse Creek:	
Just downstream of Franklin Boulevard	*16
Approximately 300 feet upstream of Center Parkway	*20
Approximately 120 feet upstream of U.S. Highway 99	*26
Just downstream of Stockton Boulevard	*27

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	* Depth in feet above ground. ^Elevation in feet (NGVD)
Maps are available for inspection at City Hall, Department of Public Works, 915 I Street, Room 207, Sacramento, California.	
Stockton (city), San Joaquin County (FEMA Docket No. 6909)	
San Joaquin River:	
At downstream corporate limits	*7
At Navy Drive	*8
Just upstream of State Highway 4	*11
Along Atchison Topeka and Santa Fe Coal Road on Roberts Island	*7
In North Stockton at the intersection of March Lane and Quail Lakes Drive	*7
Wright Tract between the corporate limits and Fourteen Mile Slough	*7
Along Mariners Drive North of Lower Mosher Creek	*7
In North Stockton at the intersection of Wagner Heights Road extended and an unnamed road located approximately 850 feet southwest of the intersection of Wagner Heights Road and Lucille Avenue	*7
Calaveras River:	
At the intersection of Pershing Avenue and Monterey Avenue	*11
At the intersection of Buena Vista Avenue and Luceme Avenue	*8
Maps are available for inspection at the Department of Public Works, 425 N. El Dorado Street, Stockton, California.	
COLORADO	
Hinsdale County (unincorporated areas), (FEMA Docket No. 6909)	
Lake Fork of Gunnison River:	
2,080 feet upstream of Vine Street, South of Lake City	*8,687
150 feet upstream of Spring Street, 420 feet south of Lake City corporate limits	*8,669
190 feet downstream of Lake City corporate limits	*8,630
2,050 feet downstream of San Juan Drive	*8,590
Henson Creek:	
At Lake City corporate limits	*8,685
900 feet upstream of Gunnison Avenue	*8,686
Maps are available for inspection at the Hinsdale County Courthouse, County Administrator's Office, Henson Street, Lake City, Colorado.	
Lake City (city), Hinsdale County (FEMA Docket No. 6909)	
Lake Fork of Gunnison River:	
Just upstream of Henson Creek at Lake City corporate limits	*8,667
450 feet downstream of 9th Street Bridge	*8,632
Henson Creek:	
250 feet upstream of Lake Fork of Gunnison River	*8,667
Just upstream of Gunnison Avenue	*8,676
At Hinsdale County corporate limits	*8,685
Maps are available for inspection at the Hinsdale County Courthouse, County Administrator's Office, Henson Street, Lake City, Colorado.	
CONNECTICUT	
Norfolk (town), Litchfield County (FEMA Docket No. 6903)	
Blackberry River:	
Downstream corporate limits	*821
Confluence of North Brook	*874
Upstream side of River Place Road	*1,022
Confluence of Wood Creek and Spaulding Brook	*1,124
Norfolk Brook:	
Confluence with Spaulding Brook	*1,200
Upstream side of Cooper Street	*1,259
Upstream side of Norfolk Detention Reservoir Dam	*1,321
Approximately 0.8 mile upstream of Norfolk Brook Detention Reservoir Dam	*1,341

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	* Depth in feet above ground. ^Elevation in feet (NGVD)
Spaulding Brook:	
Confluence with Blackberry River and Wood Creek	*1,124
Upstream side of downstream crossing of Westside Road	*1,177
Upstream side of West Pond Flood Detention Reservoir #5 Dam	*1,214
Upstream side of upstream crossing of Westside Road	*1,257
Approximately 0.8 mile upstream of Bigelow Pond Dam	*1,330
Wood Creek:	
At confluence with Blackberry River	*1,124
Upstream side of Wood Creek Detention Reservoir #9 Dam	*1,180
Approximately 0.5 mile downstream of Ashpohtag Road	*1,240
Upstream side of Wood Creek Pond Dam	*1,372
Maps available for inspection at the Planning and Zoning Commission, Norfolk, Connecticut.	
Roxbury (town), Litchfield County (FEMA Docket No. 6903)	
Shepaug River:	
Downstream corporate limits	*204
At confluence of Jack's Brook	*268
Upstream side of State Route 67	*317
Upstream corporate limits	*374
Maps available for inspection at the Zoning Commission, Town Hall, Roxbury, Connecticut.	
FLORIDA	
Caryville (city), Washington County (FEMA Docket No. 6912)	
Choctawhatchee River:	
Downstream corporate limits	*59
Upstream corporate limits	*62
Maps available for inspection at the City Hall, Caryville, Florida.	
Chattahoochee (city), Gadsden County (FEMA Docket No. 6912)	
Apalachicola River:	
At the upstream side of the Louisville and Nashville Railroad	*77
Approximately 500 feet downstream of the Jim Woodruff Dam	*79
Mosquito Creek:	
At the confluence with the Apalachicola River	*77
At the downstream side of the Apalachicola Northern Railroad	*80
At the downstream side of U.S. Route 90	*82
Maps available for inspection at the City Hall, Chattahoochee, Florida.	
Columbia County (unincorporated areas) (FEMA Docket No. 6909)	
Sante Fe River:	
At western county boundary	*34
At confluence of Olustee Creek	*58
Alligator Lake: Entire Shoreline	*104
Maps available for inspection at Building Official's Office, County Annex Building, Lake City, Florida.	
Destin (city), Okaloosa County (FEMA Docket No. 6912)	
Choctawhatchee Bay: About 1,750 feet north of the intersection of Chickasaw Way and Indian Bayou Drive	*3
Gulf of Mexico: About 400 feet south of the intersection of Gulf Shore Drive and Nornego Road	*9
Maps available for inspection at the City Hall, Destin, Florida.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Lake City (city), Columbia County (FEMA Docket No. 6909)	
Alligator Lake: Along shoreline	°104
Montgomery Outlet Stream:	
At mouth	°104
Just downstream of service road east of South Marion Street	°104
Just upstream of South Marion Street	°109
Just downstream of South First Street	°110
Just upstream of Columbia City Road	°115
About 500 feet upstream of Alamo Drive	°131
Montgomery Lake. Along shoreline	°131
Maps available for inspection at the Building Official's Office, City Building, 150 North Alachua, Lake City, Florida.	
Suwannee County (unincorporated areas) (FEMA Docket No. 6909)	
Suwannee River:	
At confluence of Santa Fe River	°32
Just upstream of State Road 250	°59
About 3.5 miles upstream of Interstate 75	°85
Santa Fe River:	
At mouth	°32
About 0.7 mile upstream of confluence of Ichetucknee River	°34
Maps available for inspection at the County Coordinator's Office, County Courthouse, 224 Pine Avenue, Live Oak, Florida	
GEORGIA	
Barnesville (city), Lamar County (FEMA Docket No. 6912)	
Tobesofkee Creek	
About 2500 feet downstream of confluence of Tobesofkee Creek Tributary	°764
Just downstream of Redbud Drive	°784
Just upstream of Redbud Drive	°790
Just downstream of College Drive	°809
Just upstream of College Drive	°816
Tobesofkee Creek Tributary:	
At mouth	°777
Just downstream of Gordon Road	°783
Just upstream of Gordon Road	°788
Just upstream of Honeysuckle Lane	°793
About 1125 feet upstream of Honeysuckle Lane	°794
Maps available for inspection at the City Hall, 109 Forsyth Street, Barnesville, Georgia.	
Chattahoochee County (unincorporated areas) (FEMA Docket No. 6909)	
Chattahoochee River:	
About 9.0 miles downstream of confluence of Oswichee Creek	°212
At the confluence of Upatoi Creek	°224
Maps available for inspection at the Office of the Board of Commissioners, County Courthouse, Cusseta, Georgia.	
Clarkesville (city), Habersham County (FEMA Docket No. 6912)	
Soque River	
About 1200 feet downstream of Monroe Street	°1,300
About 0.77 mile upstream of Bridge Street	°1,310
Soque River Tributary:	
At mouth	°1,307
Just upstream of Grant Street	°1,310
Maps available for inspection at the City Hall, Clarkesville, Georgia.	
Jesup (city), Wayne County (FEMA Docket No. 6912)	
Mosely Bay:	
About 1.0 mile downstream of downstream crossing of Sunset Boulevard	°81
Just downstream of upstream crossing of Sunset Boulevard	°103
Millikin Bay:	
At mouth	°82
About 2800 feet upstream of Sunset Boulevard	°100
Millikin Bay Tributary	
At mouth	[illegible]
Just upstream of 1st Street	[illegible]
Walker Creek	
About 1900 feet downstream of Sunset Boulevard	[illegible]
Just downstream of Seaboard Coast Line Railroad	°77
Just upstream of Seaboard Coast Line Railroad	°87
About 1.7 miles upstream of Seaboard Coast Line Railroad	°97
Little McMillen Creek:	
About 1.0 mile downstream of Grantham Road	°46
Just upstream of 1st Street	°62
Maps available for inspection at the City Hall, Jesup, Georgia.	
Swainsboro (City), Emanuel County (FEMA Docket No. 6912)	
Crooked Creek:	
Just downstream of Old Nunez Road	°201
Just downstream of Empire Expressway	°219
Just upstream of Empire Expressway	°225
Just downstream of Meadowlake Parkway	°244
Just upstream of Meadowlake Parkway	°250
Just downstream of Mabel Avenue	°264
Just upstream of Mabel Avenue	°271
Just downstream of Covena Road	°284
Tributary No. 1:	
At mouth	°251
Just downstream of Lakewood Drive	°256
Just upstream of Lakewood Drive	°268
Tributary No. 2:	
At mouth	°271
About 300 feet upstream of Hemington Street	°288
Hughes Prong Canoochee Creek	
About 2100 feet downstream of East Main Street	°234
About 2600 feet upstream of East Main Street	°242
Hughes Prong Canoochee Creek Tributary:	
Just upstream of East Main Street	°247
Just downstream of State Route 56	°266
Yam Grandy Creek Tributary	
Just upstream of Holloways Pond Dam	°251
About 1400 feet upstream of Ponderosa Drive	°290
Maps available for inspection at the City Hall, 101 Main Street, Swainsboro, Georgia.	
Winder (city), Barrow County (FEMA Docket No. 6912)	
Cedar Creek:	
About 1.1 miles downstream of confluence of Tributary No. 1	°776
Just downstream of Winder Dam	°836
Tributary No. 1:	
At mouth	°821
Just downstream of Sims Road	°840
Just upstream of Sims Road	°848
Tributary No. 2:	
At mouth	°827
Just downstream of Langford Street	[illegible]
Maps available for inspection at the City Hall, Winder, Georgia.	
IDAHO	
Jefferson County (FEMA Docket No. 6912)	
Snake River (near Roberts):	
At County Road (at Jefferson/Bonneville County border)	°4,758
Approximately 2,000 feet above County Road Bridge	°4,759
Approximately 6,000 feet above County Road Bridge	°4,761
Approximately 3,700 feet above County Road Bridge	°4,764
Snake River (near Heise):	
At Heise Bridge	°4,991
Approximately 5,000 feet above Heise Bridge	°4,999
At Dry Bed Headgate	°5,004
Approximately 7,500 feet above Dry Bed Headgate	°5,017
Dry Bed (at Heise):	
At Poplar Road	°4,987
Approximately 2,000 feet above Poplar Loop Bridge	°4,990
Approximately 5,000 feet above Poplar Loop Bridge	°4,996
At Dry Bed Headgate	°5,000
Dry Bed (near Rigby):	
At US Highway 20	°4,856
At UPRR Bridge	°4,860
At County Road 300 East	°4,879
Diversion Canal approximately 4,500 feet above County Road 300 East	°4,887
At State Highway 48	°4,921
Maps are available for review at the Jefferson County Planning and Zoning Commission, County Courthouse, Rigby, Idaho.	
ILLINOIS	
Forsyth (village), Macon County (FEMA Docket No. 6909)	
Stevens Creek:	
Just upstream of Weaver Avenue	°657
About 2,600 feet upstream of Weaver Avenue	°658
Maps available for inspection at the Village Hall, 424 Elwood, Forsyth, Illinois.	
KANSAS	
Geary County (unincorporated areas) (FEMA Docket No. 6912)	
Smoky Hill River Overflow:	
Just upstream of East 6th Street	°1,074
At diversion from Smoky Hill River	°1,083
Kansas River:	
About 0.85 mile downstream of Henry Drive	°1,066
At mouth of Smoky Hill River	°1,070
Smoky Hill River:	
At mouth	°1,070
About 1.0 mile upstream of U.S. Highway 77	°1,090
Republican River:	
At confluence with Smoky Hill River	°1,070
About 3.0 miles upstream of Washington Street	°1,077
Milford Lake: At shoreline	°1,181
Geary County Lake: At shoreline	°1,206
Lyon Creek	
At confluence with Smoky Hill River	°1,087
At confluence of Carry Creek	°1,148
Maps available for inspection at the County Courthouse Annex, Junction City, Kansas.	
Pottawatomie County (unincorporated areas) (FEMA Docket No. 6912)	
Kansas River:	
At downstream County boundary	°931
Approximately 800 feet downstream of confluence of Lost Creek	°952
Approximately 1,200 feet downstream of confluence of downstream Sand Creek	°991
At upstream County boundary	°1,012
Big Blue River:	
At confluence with Kansas River	°1,009
Approximately 800 feet downstream of Rocky Ford Dam	°1,019
At upstream County boundary	°1,028
Cedar Creek:	
At confluence with Big Blue River	°1,017
Aproximately 1.75 miles upstream of confluence with Big Blue River	°1,038
Approximately 1.0 mile downstream of State Route 13 Bridge	°1,060
Approximately 300 feet downstream of State Route 13 Bridge	°1,091
Willard Creek:	
At downstream County boundary	°943
Approximately 60 feet downstream of Dunnk Street Bridge	°963

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 830 feet upstream of Dunnk Street Bridge	*973
East Unnamed Creek:	
At confluence with Kansas River	*976
Approximately 30 feet upstream of U.S. Routes 24 and 40	*998
Approximately 280 feet downstream of Lilac Lane	*1,006
Approximately 0.7 mile upstream of State Route 99	*1,018
Rock Creek:	
Approximately 4,200 feet downstream of State Route 99	*1,003
Upstream side of County Road 541	*1,049
Approximately 3.6 miles upstream of County Road 541	*1,079
At State Route 99	*1,141
Approximately 1.6 miles downstream of County Road 1464	*1,190
Downstream side of County Road 1464	*1,221
Approximately 0.7 mile upstream of County Road 1464	*1,233
Maps available for inspection at the County Courthouse, Westmoreland, Kansas.	
KENTUCKY	
Perryville (city), Boyle County (FEMA Docket No. 6906)	
Chaplin River:	
About 0.5 mile downstream of Second Street	*845
About 0.5 mile upstream of Third Street	*857
Maps available for inspection at the City Hall, Perryville, Kentucky.	
Whitesburg (city), Letcher County (FEMA Docket No. 6909)	
North Fork Kentucky River:	
About 1.06 miles downstream of confluence of Sandlick Creek	*1,124
About 1.4 miles upstream of Palisade Drive	*1,177
Maps available for inspection at the City Hall, Whitesburg, Kentucky.	
LOUISIANA	
Basile (town), Evangeline Parish (FEMA Docket No. 6912)	
Basile Coulee:	
At downstream corporate limits	*37
Approximately 60 feet upstream of West Railroad Street	*41
At upstream corporate limits	*45
Tributary No. 1:	
At downstream corporate limits	*35
At upstream corporate limits	*35
Tributary No. 2:	
At confluence with Tributary No. 1	*35
Approximately 800 feet upstream of confluence with Tributary No. 1	*43
Bayou Barwick Tributary:	
At downstream corporate limits	*44
Approximately 28 feet upstream of East Stagg Avenue	*44
Maps available for inspection at the Town Hall, Basile, Louisiana	
Calcasieu Parish (Unincorporated Areas) (FEMA Docket No. 6640)	
Sabine River:	
Cutoff Island	*8
Approximately 1.8 miles north of U.S. Route 90	*11
Prutt Bluff	*13
Cooper Lake	*15
Approximately 2.5 miles upstream of Cooper Lake	*16
Gulf of Mexico:	
Intersection of Intracoastal Waterway & Vinton Drainage Canal	*7
Vinton Canal east of Ged Lake	*7
Clear Marais	*9
Bayou Choupique:	
At confluence of Spring Gully	*9
Dugas Road (downstream side)	*10
Calcasieu River:	
At Calcasieu Ship Channel and Intracoastal Waterway	*12
Moss Lake	*11
Indian Marias	*10
Coon Island	*9
Downstream of confluence with West Fork Calcasieu River	*10
Intracoastal Waterway: At south bank of State Route 384	*12
Maps available for inspection at the Office of Parish Planning and Development, Calcasieu Parish Police Jury, Lake Charles, Louisiana.	
Iowa (town), Calcasieu Parish (FEMA Docket No. 6912)	
Lateral 14:	
Downstream corporate limits	*16
Approximately 100 feet upstream of upstream corporate limits	*24
Lateral 14–4:	
At confluence with Lateral 14	*20
Upstream corporate limits	*21
Lateral 14B:	
Approximately 105 feet downstream of downstream corporate limits	*16
Upstream side of State Route 383 (South Thompson Avenue)	*21
Lateral 14B–2:	
At confluence with Lateral 14B	*16
Approximately 0.59 mile upstream of U.S. Route 90 (West Fourth Street)	*20
Lateral 14–3:	
At confluence with Lateral 14–4	*20
Upstream side of East Miller Street	*22
Lateral 14–1:	
At confluence with Lateral 14	*18
Approximately 900 feet upstream of confluence with Lateral 14	*19
Lateral 14–2:	
At confluence with Lateral 14	*18
Approximately 70 feet upstream of West Miller Street	*20
Maps available for inspection at the Town Hall, Thomas Highway, Iowa, Louisiana.	
Krotz Springs (town), Landry Parish (FEMA Docket No. 6909)	
Latanie Bayou:	
At downstream corporate limits	*17
Approximately 115 feet upstream of Ninth Street	*23
Approximately 1,060 feet upstream of Eighth Street	*26
Atchafalaya River: Entire length affecting community	*39
West Atchafalaya Floodway: Entire length affecting community	*29
Maps available for inspection at the Town Hall, Krotz Springs, Louisiana	
MAINE	
Eastport (city), Washington County (FEMA Docket No. 6903)	
Atlantic Ocean:	
Shoreline at Old State Route 190 (extended)	*15
Shoreline at Deep Cove Road (extended)	*18
Shoreline at Capon Avenue (extended)	*21
Shoreline at Custom Street (extended)	*23
Shoreline approximately 0.75 mile northeast of Intersection of Old Route 190 with State Route 190	*26
Maps available for inspection at the City Manager's Office, City Hall, 78 High Street, Eastport, Maine.	
Fairfield (town), Somerset County (FEMA Docket No. 6912)	
Kennebec River:	
At downstream County boundary	*92
Upstream side of Interstate Route 95 (northbound)	*102
Approximately 100 feet upstream of Shamut Dam	*120
Approximately .8 mile upstream of Shamut Dam	*121
At State Route 23	*125
At upstream corporate limits	*126
Martin Stream	
At U.S. Route 201 (State Route 23)	*124
Downstream side of State Route 104 (Middle Road)	*146
At the confluence of Alder Brook	*193
Approximately 1 mile downstream of Maine Central Railroad	*212
Upstream side of Maine Central Railroad	*216
Approximately 0.9 mile upstream of Martin Stream Road	*223
Maps available for inspection at the Code Enforcement Office, Fairfield, Maine.	
Waterville (city), Kennebec County (FEMA Docket No. 6912)	
Kennebec River:	
Approximately 0.59 mile downstream of confluence of Trafton Road Brook	*55
Downstream of Lockwood Dam	*62
Upstream of Lockwood Dam	*66
Approximately 0.34 mile downstream of Scott Paper Company Dam	*71
Downstream side of Scott Paper Company Dam	*79
Upstream side of Scott Paper Company Dam	[illegible]
Approximately 0.45 mile upstream of confluence of Holland Brook	*92
Messalonskee Stream	
At confluence with Kennebec River	*57
Upstream side of Union Gas Project Dam	*76
Upstream of State Routes 11 and 137 Bridge	*77
Downstream side of Automatic Project Dam	*83
Upstream side of Automatic Project Dam	*100
Upstream side of North Street Bridge	*105
Approximately 0.6 mile upstream of confluence of Fish Brook	*106
Maps available for inspection at the City Engineer's Office, Waterville, Maine	
MASSACHUSETTS	
Marion (town), Plymouth County (FEMA Docket No. 6903)	
Buzzard's Bay	
State Route 105 and western corporate limits	*15
East side of U.S. Route 6 at Sippican River	*16
Intersection of Doran Way and South Street	*15
Bass Point Road extended to shoreline	*20
Hermitage Road extended to shoreline	*18
Intersection of Front Street and Vine Street	*15
Intersection of Front Street and Island Wharf Road	*17
Front Street extended to shoreline	*20
Intersection of Holly Road and Delano Road	*15
Rodgers Drive extended east to shoreline	*20
Approximately 1,700' southwest on North Drive from Point Road	*15
Sippican Lane extended to shoreline	*17
Richardson Road extended southwest to shoreline	*21
Intersection of Rocky Knoor Lane and Soloman Road	*14
Approximately 500' northeast along Holly Pond Road from intersection of Holly Pond Road and Indian Cove Road	*17
Aucoot Avenue extended to shoreline	*20
Intersection of Bay Road and Cabana Road	*18
Bay Road extended to shoreline	*20
Entire shore of Bird Island	*22

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Maps available for inspection at the Town Office, Marion, Massachusetts.	
MICHIGAN	
Au Sable (township), Iosco County (FEMA Docket No. 6909)	
Au Sable River:	
At mouth	*584
About 1,400 feet upstream of River Road	*585
Lake Huron: Shoreline	*584
Maps available for inspection at the Township Hall, 311 Fifth Street, Oscoda, Michigan.	
Blissfield (village), Lenawee County (FEMA Docket No. 6912)	
River Raisin	
Approximately 125 feet downstream of Blissfield Dam	*685
Upstream side of Adrian Street Bridge	*687
Maps available for inspection at the Village Hall, 117 West Adrian Street, Blissfield, Michigan.	
Hamlin (township), Mason County (FEMA Docket No. 6909)	
Lake Michigan: Along shoreline	*584
Hamlin Lake: Within community	*595
Maps available for inspection at the Township Hall, 3775 North Jebavy Drive, Ludington, Michigan.	
Hillsdale (city), Hillsdale County (FEMA Docket No. 6909)	
St. Joseph River:	
About 2,800 feet downstream of Mechanic Street	*1,068
About 400 feet upstream of South Street	*1,088
About 450 feet upstream of South Street	*1,097
About 800 feet upstream of Griswold Street	*1,097
Baw Beese Lake: Within community	*1,099
Maps available for inspection at the City Hall, Corner of Broad and Hillsdale, Hillsdale, Michigan.	
Sebewaing (village), Huron County (FEMA Docket No. 6909)	
Saginaw Bay: Within community	*584
Sebewaing River:	
At mouth	*584
At confluence of State Drain	*593
State Drain: Within community	*593
Maps available for inspection at the Village Hall, 108 West Main, Sebewaing, Michigan.	
Summit (town), Mason County (FEMA Docket No. 6909)	
Lake Michigan: Along shoreline	*584
Bass Lake: Along shoreline	*584
Maps available for inspection at the Township Hall, 6019 South U.S. 31, Ludington, Michigan.	
MINNESOTA	
Carver County (unincorporated areas) (FEMA Docket No. 6909)	
Minnesota River:	
About 3.7 miles downstream of County Highway 9	*725
About 500 feet upstream of State Highway 25	*732
South Fork Crow River:	
About 700 feet upstream of county boundary	*934
Just downstream of County Highway 30	*952
Mapes Creek: Within community	*935
Maps available for inspection at the Planning and Zoning Office, 600 East Fourth Street, Chaska, Minnesota.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Sibley County (unincorporated areas) (FEMA Docket No. 6909)	
Minnesota River:	
About 1,300 feet downstream of State Highway 25	*730
About 0.8 mile upstream of State Highway 93	*784
Maps available for inspection at the Planning and Zoning Office, Gaylord, Minnesota.	
MISSISSIPPI	
Pass Christian (city), Harrison County (FEMA Docket No. 6912)	
Johnson Bayou (Canal No. 1)	
Just upstream of Espy Avenue	*12
About 0.5 mile upstream of Espy Avenue	*16
Maps available for inspection at the City Hall, Pass Christian, Mississippi	
MISSOURI	
Bigelow (village), Holt County (FEMA Docket No. 6909)	
Missouri River: Within community	*866
Maps available for inspection at the Sportman Lodge, Bigelow, Missouri.	
Big Lake (village), Holt County (FEMA Docket No. 6909)	
Missouri River:	
At intersection of U.S. Highway 159 and State Highway 111	*861
About 1.2 miles south of intersection of State Highway 111 and State Highway 118	*866
Maps available for inspection at the City Building, Big Lake, Missouri.	
Chariton County (unincorporated areas) (FEMA Docket No. 6909)	
Missouri River:	
About 0.4 mile downstream of confluence of Little Chariton River	*628
About 6.7 miles upstream of confluence of Grand River	*651
Maps available for inspection at the County Courthouse, Keytesville, Missouri.	
Corning (town), Holt County (FEMA Docket No. [illegible])	
Missouri River: Within community	*879
Maps available for inspection at the Town Clerk's Residence, Rt. 1, Corning, Missouri.	
Craig (city), Holt County (FEMA Docket No. 6909)	
Missouri River: Within community	*871
Maps available for inspection at the City Hall, Craig, Missouri.	
Forest City (city), Holt County (FEMA Docket No. 6909)	
Missouri River:	
At intersection of Burlington Northern railroad and B Street	*850
At intersection of Burlington Northern railroad and Collins Street	*851
Maps available for inspection at the Mayor's Office, City Hall, Forest City, Missouri.	
Fortescue (town), Holt County (FEMA Docket No. 6909)	
Missouri River: Within community	*861
Maps available for inspection at the Chairman's Home, Fortescue, Missouri.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Gasconade County (unincorporated areas) (FEMA Docket No. 6912)	
Missouri River:	
About 0.78 mile downstream of eastern County Boundary	*513
At western County Boundary	*528
Maps available for inspection at the Emergency Operations Center, County Courthouse, (Basement Floor), Hermann, Missouri	
Holt County (unincorporated areas) (FEMA Docket No. 6909)	
Missouri River:	
At confluence of Nodaway River	*833
At northern county boundary	*885
Maps available for inspection at the County Clerk's Office, Oregon, Missouri.	
Lake St. Louis (city), St. Charles County (FEMA Docket No. 6909)	
Pereque Creek:	
Just downstream of North Outer Road	*491
Just downstream of Lake St. Louis Dam	*492
Just upstream of Lake St. Louis Dam	*505
About 1.2 miles upstream of U.S. Highway 40	*516
Maps available for inspection at the City Hall, 1000 Lake St. Louis Boulevard, Lake St. Louis, Missouri.	
Mound City (city), Holt County (FEMA Docket No. 6909)	
Missouri River:	
At the intersection of Interstate 29 and Burlington Northern railroad	*866
About 1,000 feet west of intersection of Highway N and North Street	*867
Maps available for inspection at the City Hall, 205 East Sixth Street, Mound City, Missouri.	
Pattonsburg (town), Daviess County (FEMA Docket No. 6912)	
Big Creek:	
About 3,400 feet downstream of Norfolk Southern Railway	*779
About 1,000 feet upstream of U.S. Highway 69	*783
Grand River:	
Just upstream of U.S. Highway 69	*779
About 550 feet upstream of County Road	*782
Maps available for inspection at the City Office, Second and Z Highway, Pattonsburg, Missouri.	
Perry County (unincorporated areas) (FEMA Docket No. 6909)	
Mississippi River:	
At southern county boundary	*370
About 2.0 miles upstream from confluence of Old River	*393
Apple Creek:	
About 2.7 miles downstream of U.S. Highway 61	*388
About 1.7 miles upstream of U.S. Highway 61	*420
Maps available for inspection at the County Courthouse, 15 West Ste. Manes, Perryville, Missouri.	
Vandalia (city), Audrain County (FEMA Docket No. 6912)	
Tributary A:	
Just downstream of State Highway F	*740
Just downstream of U.S. Highway 54	*743
Just upstream of U.S. Highway 54	*748
Just downstream of Illinois Central Gulf Railroad	*748
Just upstream of Illinois Central Gulf Railroad	*757
About 1,300 feet upstream of Illinois Central Gulf Railroad	*757
Tributary B:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Galloway Road	*743
Just downstream of Illinois Central Gulf Railroad	*754
Just upstream of Illinois Central Gulf Railroad	*762
About 1,800 feet upstream of Illinois Central Gulf Railroad	*762
Maps available for inspection at the City Hall, 200 East Park Street, Vandalia, Missouri.	
MONTANA	
Lake County (unincorporated areas) (FEMA Docket No. 6909)	
Lower Swan River:	
Approximately 100 feet upstream of the Flathead County line	*3,034
Approximately 800 feet upstream of Johnson Creek at Swan Lake	*3,073
Upper Swan River:	
At downstream limit of detailed study	*3,095
Approximately 3,120 feet downstream of the confluence with Whitetail Creek	*3,120
Approximately 4,350 feet downstream of the confluence with South Woodward Creek	*3,172
At confluence with Cedar Creek	*3,233
Approximately 120 feet downstream of the confluence with Lion Creek	*3,358
At the confluence with Jim Creek	*3,417
Approximately 320 feet upstream of the confluence with Alder Creek	*3,430
At Missoula County Line	*3,503
Maps are available for inspection at the Lake County Planning Division, County Courthouse, Polson, Montana.	
NEBRASKA	
Saline County (unincorporated areas) (FEMA Docket No. 6912)	
Big Blue River:	
About 0.6 mile downstream of County Road (at upstream extraterritorial limits of DeWitt)	*1,294
Just upstream of State Highway 41	*1,317
At northern county boundary	*1,372
Maps available for inspection at the County Courthouse, Wilber, Nebraska.	
NEVADA	
Lincoln County (unincorporated areas) (FEMA Docket No. 6912)	
Meadow Valley Wash (near Caliente):	
Approximately 100 feet upstream of State Route 55 crossing which is located approximately 4.75 miles south of the City of Caliente	*4,192
Approximately 1.22 miles downstream of State Route 55 crossing which is located approximately 2.5 miles south of the City of Caliente	*4,235
Approximately 500 feet upstream of State Route 55 crossing which is located approximately 2.5 miles south of the City of Caliente	*4,288
Approximately 1.18 miles downstream of Union Pacific Railroad	*4,313
Approximately 700 feet downstream of Union Pacific Railroad	*4,353
Maps are available for review at the Lincoln County Courthouse, Main Street, Pioche, Nevada.	
NEW JERSEY	
Bound Brook (borough), Somerset County (FEMA Docket No. 6903)	
Middle Brook:	
Upstream side of CONRAIL bridge (3rd upstream crossing)	*40
Approximately 600 feet upstream of State Route 28	*53
Approximately 1,750 feet upstream of State Route 28	*61
Green Brook	
At downstream corporate limits	*34
Approximately 300 feet upstream of the upstream corporate limits	*36
Maps available for inspection at the Municipal Building, 230 Hamilton Street, Bound Brook, New Jersey.	
NEW YORK	
Fayette (town), Seneca County (FEMA Docket No. 6909)	
Seneca Lake: Entire shoreline within community	*449
Seneca River:	
At eastern corporate limits	*448
Upstream side of State Route 96A	*449
Cayuga Lake: Entire shoreline within community	*386
Maps available for inspection at the Town Clerk's Office, 2932 Route 96, Waterloo, New York.	
Lodi (town), Seneca County (FEMA Docket No. 6909)	
Seneca Lake: Entire shoreline within community	*449
Maps available for inspection in c/o of Louis Jennings, Town Clerk, East Seneca Street (10 a.m.–4 p.m., Monday-Friday).	
Ovid (town), Seneca County (FEMA Docket No. 6909)	
Cayuga Lake: Entire shoreline within community	*386
Seneca Lake: Entire shoreline within community	*449
Maps available for inspection in c/o of Cynthia J. Xavier, Town Clerk, 7122 Orchard Street, Ovid, New York.	
Pamelia (town), Jefferson County (FEMA Docket No. 6906)	
Kelsey Creek:	
Approximately 150' downstream of CONRAIL bridge	*395
Downstream side of State Route 37	*402
Downstream side of U.S. Route 11	*415
Maps available for inspection at the Pamelia Town Hall, Jenkins Road, Pamelia, New York.	
Starkey (town), Yates County (FEMA Docket No. 6909)	
Seneca Lake: Entire shoreline within community	*449
Maps available for inspection at the Town Hall, 40 Seneca Street, Dundee, New York.	
Torrey (town), Yates County (FEMA Docket No. 6909)	
Seneca Lake: Entire shoreline within community	*449
Keuka Lake Outlet:	
Confluence with Seneca Lake	*449
Downstream side of CONRAIL bridge	*459
At upstream side of Route 14 Bridge	*473
Maps available for inspection at the Torrey Town Clerk's Office, Geneva Street, Dresden, New York.	
Varick (town), Seneca County (FEMA Docket No. 6909)	
Seneca Lake: Entire shoreline within community	*449
Cayuga Lake: Entire shoreline within community	*386
Maps available for inspection at the Town Clerk's Home, 1736 Route 336, Romubus, New York.	
NORTH CAROLINA	
Banner Elk (town), Avery County (FEMA Docket No. 6912)	
Elk River:	
Just upstream of Mill Pond Dam	*3,643
About 250 feet upstream of State Road 1341	*3,696
Whitehead Creek:	
Just upstream of State Road 194	*3,436
About 1,650 feet upstream of Old Turnpike Road	*3,524
Shawneehaw Creek:	
About 3,120 feet downstream of Dogwood Road	*3,668
About 1,100 feet upstream of Balsam Road	*3,748
Hanging Rock Creek:	
At mouth	*3,656
About upstream of State Road 1337	*3,712
Horse Bottom Creek:	
At mouth	*3,686
About 0.36 mile above mouth	*3,713
Sugar Creek:	
At mouth	*3,680
About 0.48 mile upstream of mouth	*3,724
Maps available for inspection at the Town Hall, Banner Elk, North Carolina.	
Calabash (town), Brunswick County (FEMA Docket No. 6912)	
Calabash River: At the intersection of Oak Street and River View Drive	*13
Maps available for inspection at the Town Hall, Route 7, Shallotte, North Carolina.	
NORTH DAKOTA	
Enderlin (city), Ransom County (FEMA Docket No. 6909)	
Maple River:	
At upstream face of County Road 55	*1,075
At downstream face of State Highway 46	*1,086
At a point 1,720 feet north of a point 800 feet northwest along Soo Line Railroad from its crossing with State Highway 46	*1,090
South Branch Maple River:	
At a point 200 feet downstream from the downstream face of Railway Street	*1,080
At upstream face of Railway Street	*1,082
At a point 800 feet west of a point 200 feet south along County Road 5 from its intersection with County Road 14	*1,089
Maps are available for review at City Hall, 325 Railway Street, Enderlin, North Dakota 85072	
OHIO	
Belmont County (FEMA Docket No. 6912)	
Ohio River:	
At river mile 108.5	*647
At river mile 90.7	*659
Wheeling Creek:	
At downstream County boundary	*659
Approximately 100 feet upstream of Township Route 326	*716
Approximately 150 feet upstream of Barton-Blaine Road (3rd upstream crossing)	*779
Approximately 0.63 mile upstream of St. Clairesville-Barton Road	*804
McMahon Creek:	
Approximately 350 feet at downstream County boundary	*656
Upstream side of Fowke Road	*693
Approximately 100 feet upstream of Neffs Sandhill Road	*730
Wegee Creek:	
At confluence with Ohio River	*654
Approximately 1,900 feet upstream of Wegee Road (3rd upstream crossing)	*690
Approximately 200 feet upstream of Wegee Road (4th upstream crossing)	*757
Captina Creek:	
Approximately 1,800 feet at downstream County boundary	*647
Downstream side of State Route 148 (1st upstream crossing)	*757
Upstream side of CONRAIL	*776
Approximately 0.86 mile upstream of Pugh Ridge Road	*830

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Sanitary Sewer District Office, Belmont County, Ohio.	
Brookside (village), Belmont County (FEMA Docket No. 6912)	
Wheeling Creek:	
At downstream corporate limits	*659
At upstream corporate limits	*659
Maps available for inspection at the Town Hall, 875 National Road, Brookside, Ohio.	
Garfield Heights (city), Cuyahoga County (FEMA Docket No. 6909)	
Mill Creek:	
About 800 feet downstream of Broadway	*790
Just downstream of McCracken Road	*842
Maps available for inspection at the City Hall, 5555 Turney Road, Garfield Heights, Ohio	
Pike County (unincorporated areas) (FEMA Docket No. 6912)	
Scioto River:	
About 2.0 miles downstream of U.S. Route 23	*567
About 0.5 mile upstream of confluence of Mutton Run	*593
Maps available for inspection at the County Engineer's Office, County Courthouse, Waverly, Ohio.	
Piketon (village), Pike County (FEMA Docket No. 6912)	
Scioto River	
About 0.8 mile downstream of U.S. Route 23	*567
About 0.7 mile upstream of U.S. Route 23	*569
Maps available for inspection at the Municipal Building, Piketon, Ohio.	
Port Washington (village), Tuscarawas County (FEMA Docket No. 6912)	
Tuscarawas River:	
About 0.8 mile downstream of Saint Clairsville Street	* 812
About 0.4 mile upstream of Saint Clairsville Street	* 815
Maps available for inspection at the Clerk's Residence, 400 West Main Street, Port Washington, Ohio.	
Waverly (city), Pike County (FEMA Docket No. 6912)	
Scioto River	
About 1,100 feet downstream of Bridge Street	* 572
About 1.1 miles upstream of Norfolk Southern Railway	* 575
Maps available for inspection at the Municipal Building, 201 North Street, Waverly, Ohio.	
OKLAHOMA	
Luther (town), Oklahoma County (FEMA Docket No. 6912)	
Deep Fork:	
At downstream corporate limits	*876
Upstream side of 206th Street	*[illegible]
At upstream corporate limits	*903
Wildhorse Creek:	
At confluence with Deep Fork	*[illegible]
Approximately 120 feet downstream of 178th Street	*907
Maps available for inspection at 119 South Main Street, Luther, Oklahoma.	
Tishomingo (city), Johnston County (FEMA Docket No. 6909)	
Pennington Creek:	
At downstream corporate limits	*640
Upstream side of Twelfth Street	*644
Approximately 100 feet upstream of New Low Water Dam	*680
Approximately 1,000 feet downstream of upstream corporate limits	*665
Pennington Creek Tributary 1:	
Downstream side of Kemp Avenue	*640
100 feet downstream of State Route 22	*651
Maps available for inspection at 201 South Capitol Street, Tishomingo, Oklahoma.	
Wyandotte (town), Ottawa County (FEMA Docket No. 6906)	
Lost Creek: Approximately 250 feet upstream of Lost Creek County Highway	*758
Wyandotte Ditch.	
At Pine Street	#1
At 3rd Street	#1
Maps available for inspection at the Town Hall, Wyandotte, Oklahoma.	
Wynnewood (city), Garvin County (FEMA Docket No. 6912)	
Savage Creek:	
At downstream corporate limits	*875
Upstream side of Kean Street	*885
Upstream side of Chickasaw Street	*891
Downstream side of State Route 29	*891
Upstream side of State Route 29	*894
Downstream side of Clayton Avenue	*897
Downstream side of Cox Avenue	*903
Upstream corporate limits	*907
Approximately 190 feet upstream of corporate limits	*908
Maps available for inspection at 207 West Robert S. Kerr, Wynnewood, Oklahoma.	
OREGON	
Enterprise (city), Wallowa County (FEMA Docket No. 6912)	
Wallowa River:	
At upstream side of Fish Hatchery Road Bridge	*3,749
At upstream side of Hurricane Creek Bridge	*3,769
At southern corporate limit of City of Enterprise	*3,777
Prairie Creek.	
At downstream corporate limit of City of Enterprise	*3,717
At upstream side of Montclair Street Bridge	*3,744
At upstream side of River Street Bridge	*3,757
At upstream side of Wallowa Lake Highway	*3,773
At southeastern corporate limit of City of Enterprise	*3,790
Maps are available for inspection at Wallowa County Planning Department, County Courthouse, 101 South River Street, Enterprise, Oregon.	
Joseph (city), Wallowa County (FEMA Docket No. 6912)	
Wallowa River:	
At upstream side of Wallowa Avenue Bridge	*4,146
At upstream side of Park Street Bridge	*4,165
At western corporate limit near Third Street	*4,189
At southwestern corporate limit of City of Joseph	*4,226
Maps are available for inspection at Wallowa County Planning Department, County Courthouse, 101 South River Street, Enterprise, Oregon 97828.	
Prairie City (city), Grant County (FEMA Docket No. 6912)	
John Day River:	
At western corporate limit of Prairie City	*3,506
At confluence of Dixie Creek	*3,510
At upstream side of Bridge Street Bridge	*3,523
At upstream side of Main Street Bridge	*3,525
At eastern corporate limit of Prairie City	*3,535
Dixie Creek:	
At confluence with John Day River	*3,510
At upstream side of Lumber Mill Access Road	*3,525
At upstream side of U.S. Highway 26 Bridge	*3,534
At Fourth Street	*3,542
At northern corporate limit of Prairie City	*3,588
Maps are available for inspection at City Recorder's Office, City Hall, 133 Bridge Street, Prairie City, Oregon.	
Wallowa (city), Wallowa County (FEMA Docket No. 6912)	
Wallowa River:	
500 feet downstream of Highway 82 Bridge	*2,879
At upstream side of State Highway 82 Bridge	*2,882
At upstream side of Union Pacific Railroad Bridge	*2,916
At upstream side of Troy Road Bridge	*2,923
At southeastern corporate limit of City of Wallowa	*2,935
Maps are available for inspection at Wallowa County Planning Department, County Courthouse, 101 South River Street, Enterprise, Oregon.	
Wallowa County (FEMA Docket No. 6912)	
Wallowa River (at Wallowa):	
550 feet downstream of Highway 82 Bridge	*2,879
At upstream side of State Highway 82 Bridge	*2,882
At upstream side of Union Pacific Railroad Bridge	*2,916
At upstream side of Troy Road Bridge	*2,923
At southeastern corporate limit of City of Wallowa	*2,935
Wallowa River (from Enterprise to Wallowa Lake):	
900 feet downstream of confluence of Hurricane Creek	*3,699
At upstream side of Hurricane Creek Road Bridge	*3,769
At upstream side of County Road 572 Bridge	*3,882
At upstream side of Russel Lane	*4,069
At upstream side of Wallowa Avenue Bridge	*4,146
200 feet downstream of Wallowa Lake Dam	*4,353
Wallowa River (South Channel):	
At convergence with main channel of Wallowa River	*3,761
At upstream side of Hurricane Creek Road Bridge	*3,776
At upstream side of Union Pacific Railroad Bridge	*3,791
At divergence from main channel of Wallowa River	*3,809
Wallowa River (Upstream of Wallowa Lake):	
At mouth at Wallowa Lake	*4,384
At upstream side of Wallowa Lake State Park Access Road	*4,404
At confluence of East Fork Wallowa River	*4,465
50 feet above confluence of B.C. Creek	*4,584
Lostine River:	
At township line between Township 1 and 2 South	*3,666
At confluence of Bitter Creek	*3,681
At bridge 1,050 feet downstream of Lostine River Road Bridge	*3,723
At upstream side of Lostine River Road Bridge	*3,747
150 feet downstream of confluence of Silver Creek	*3,925
PENNSYLVANIA	
Bath (borough), Northampton County (FEMA Docket No. 6912)	
Monocacy Creek.	
At downstream corporate limits	*406
Upstream side of Main Street	*427
Upstream side of Creek Road	*449
Approximately 25 feet upstream of corporate limits	*466
Maps available for inspection at the Borough Office, 250 East Northampton Street, Bath, Pennsylvania 18014.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Chalfont (borough), Bucks County (FEMA Docket No. 6912)	
West Branch Neshaminy Creek	
Upstream side of Butler Avenue	
Confluence with Tributary No. 1	*247
Upstream corporate limits	*249
Tributary No. 1 to West Branch Neshaminy Creek	*250
Confluence with West Branch Neshaminy Creek	
Maps available for inspection at the Borough Building, 40 North Main Street, Chalfont, Pennsylvania	*249
Chestnuthill (township), Monroe County (FEMA Docket No. 6912)	
McMichael Creek	
At downstream corporate limits	*623
Approximately 75 feet upstream of T-434	*649
Upstream side of T-432	*706
Upstream side of LR 45099	*780
Upstream side of T-378	*814
Approximately 1.4 miles upstream of T-378	*880
Upstream side of LR 45067	*938
Approximately 0.2 mile upstream of State Route 715 (3rd upstream crossing)	*1,019
Pohopoco Creek:	
At downstream corporate limits	*703
Upstream side of T-445	*732
Approximately 50 feet upstream of T-447	*758
Downstream side of T-439	*798
At second upstream crossing of LR 45066	*841
Upstream side of LR 45066 (3rd upstream crossing)	*900
Approximately 350 feet downstream of LR 45055	*961
Approximately 0.3 mile upstream of LR 45055 (1st upstream crossing)	*991
Sugar Hollow Creek	
At confluence with Pohopoco Creek	*803
Approximately 65 feet upstream of LR 45042 (1st upstream crossing)	*843
Upstream side of LR 45042 (2nd upstream crossing)	*876
Approximately 725 feet upstream of T-459	*900
Approximately 0.9 mile upstream of T-459	*982
Weir Creek:	
At downstream corporate limits	*696
Upstream side of Hickory Lane	*705
At T-430	*734
Maps available for inspection at the Township Building, Chestnuthill, Pennsylvania	
Eldred (township), Monroe County (FEMA Docket No. 6912)	
Buckwha Creek:	
At downstream corporate limits	*490
Approximately 1,550 feet downstream of Chestnut Ridge Road	*521
Approximately 0.4 mile upstream of Chestnut Ridge Road	*532
Chapple Creek	
At confluence with Buckwha Creek	*510
Approximately 1,775 feet upstream of LR 45004	*560
At upstream side of T-361	*624
Upstream side of T-365	*694
At Bollinger Road	*731
Pine Creek	
At confluence with Princess Run	*691
Approximately 1,400 feet upstream of T-370 (1st upstream crossing)	*750
At T-370 (2nd upstream crossing)	*905
Princess Run	
At confluence with Buckwha Creek	*532
Upstream side of LR 45003 (1st upstream crossing)	*573
Upstream side of LR 45003 (2nd upstream crossing)	*642
Approximately 0.8 mile upstream of LR 45003 (2nd upstream crossing)	*680
Upstream side of T-369	*721
Upstream side of Princess Run Road	*746

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Eldred Township Building, Eldred, Pennsylvania	
Fayette (township), Juniata County (FEMA Docket No. 6909)	
Lost Creek:	
Approximately 1,200 feet downstream of State Route 35	*560
Downstream side of State Route 35	*566
Approximately 500 feet upstream of State Route 35	*569
Little Lost Creek	
Approximately 2,900 feet downstream side of State Route 35	*612
Upstream side of State Route 35	*629
Upstream side of County Route 235	*640
Approximately 1,350 feet upstream of LR34034	*655
Maps available for inspection at c/o Ms. Joyce Hart, Township Secretary, R.D. 1, Cocolamus, Pennsylvania	
Greenwood (township), Juniata County (FEMA Docket No. 6909)	
Cocolamus Creek:	
At downstream corporate limits	*475
Approximately 1,575 feet upstream of downstream corporate limits	*481
Maps available for inspection at the Township Building, Route 235, Greenwood, Pennsylvania	
Hamilton (township), Monroe County (FEMA Docket No. 6906)	
McMichael Creek:	
At downstream corporate limits	*458
At upstream side of first downstream crossing of Manor Drive	*473
At upstream side U.S. Route 209	*509
At upstream side Bush Lane	*515
At upstream side of first downstream crossing of Township Route 221	*567
At downstream side Legislative Route 45085	*620
Appenzell Creek:	
At confluence with McMichael Creek	*484
At Business Route 209	*538
Lake Creek	
At confluence with McMichael Creek	*550
At Meadow Lake Road	*558
Kettle Creek	
At confluence with Appenzell Creek	*493
Approximately 0.5 mile upstream of Legislative Route 164	*533
Maps available for inspection at the Hamilton Township Building, Sciota, Pennsylvania.	
Hatfield (township), Montgomery County (FEMA Docket No. 6912)	
West Branch Neshaminy Creek:	
Upstream side of Countyline Road at downstream corporate limits	*269
Upstream side of State Route 309	*276
Confluence with Unionville Tributary	*282
Colmar Tributary:	
Confluence with West Branch Neshaminy Creek	*272
A point approximately 890 feet downstream of Walnut Street	*274
Unionville Tributary:	
Confluence with West Branch Neshaminy Creek	*282
Upstream side of Lexington Road	*299
Confluence with Tributary to Unionville Tributary	*311
Downstream side of U.S. Route 309 at the upstream corporate limits	*343
Tributary to Unionville Tributary:	
Confluence with Unionville Tributary	*311
Approximately 320 feet upstream of the confluence with Unionville Tributary	*313
North Hatfield Tributary:	
Upstream side of Unionville Pike	*330
Approximately 825 feet upstream of Bergey Road	*370

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Hatfield Township Building, School Road and Chestnut Street, Hatfield, Pennsylvania.	
Lack (township), Juniata County (FEMA Docket No. 6909)	
Tuscarora Creek	
Approximately 1,300 feet downstream of confluence with George Creek	*685
Approximately 160 feet upstream of Legislative Route 34001	*704
Maps available for inspection at the Township Secretary's Office, East Waterford, Pennsylvania.	
Ross (township), Monroe County (FEMA Docket No. 6912)	
Aquashicola Creek:	
At downstream corporate limits	*576
At upstream side of Faulstick Road	*603
At upstream side of Tittle Road	*614
At downstream side of Mount Eaton Road	*634
Buckwha Creek:	
Approximately 1.2 miles upstream of downstream corporate limits	*615
Approximately .5 mile downstream of Township Route 378	*653
Lake Creek	
At downstream corporate limits	*641
Approximately 1,000 feet upstream of Legislative Route 45004	*660
Lake Creek Tributary	
At confluence with Lake Creek	*662
At downstream side of Old State Route 115	*690
Princess Run	
At downstream corporate limits	*757
Approximately 500 feet upstream of Stone Hill Lane	*904
Maps available for inspection at the Municipal Building (Garage), Saylorsburg, Pennsylvania.	
Starrucca (borough), Wayne County (FEMA Docket No. 6912)	
Shadigee Creek:	
Confluence with Starrucca Creek	*1,296
Downstream side of Cemetery Road	*1,325
At State Route 365	*1,348
Starrucca Creek:	
Downstream corporate limits	*1,269
Downstream side of LR 57054	*1,302
Downstream side of Buck Road	*1,349
Approximately .5 mile upstream of Buck Road	*1,360
Maps available for inspection at the Starrucca Garage, Box 36, Starrucca, Pennsylvania.	
Tuscarora (township), Juniata County (FEMA Docket No. 6909)	
Tuscarora Creek:	
Approximately 2,400 feet downstream of LR [illegible]	*607
Upstream side of LR 34068	*611
Upstream corporate limits	*613
Laurel Run:	
Approximately 2,000 feet downstream of T-309 (extended)	*603
Downstream side of T-309 (extended)	[illegible]
Approximately 1,350 upstream of State Route 75	[illegible]
Laurel Run (east):	
Side channel approximately 900 feet upstream of Flint Hollow Road	*610
Side channel approximately 600 feet downstream of State Route 75	*665
Laurel Run (west):	
Side channel approximately 700 feet upstream of State Route 75	*678
Side channel approximately 1,200 feet upstream of State Route 75	*695

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection in c/o Elleanor Page, Township Secretary, R.D. #1, Honey Grove, Pennsylvania.	
Washington (township), Armstrong County (FEMA Docket No. 6912)	
Allegheny River:	
Approximately 0.4 mile downstream of Lock and Dam No. 8	*806
Downstream side of Lock and Dam No. 9	*827
Approximately 2,000 feet upstream of Huling Run	*838
Maps available for inspection at the Washington Township Building, R.D. 1, Cowansville, Pennsylvania.	
Washington (township), Dauphin County (FEMA Docket No. 6906)	
Wiconisco Creek:	
At downstream corporate limits	*469
Approximately 375 feet upstream of U.S. Route 209	*474
Approximately 673 feet downstream of State Route 225	*514
Approximately 1,640 feet upstream of State Route 225	*520
Approximately 160 feet downstream of Motter Road	*554
Approximately 240 feet upstream of Legislative Route 22035	*577
Maps available for inspection at the Township Building, Manors Road, Washington, Pennsylvania.	
West Perry (township), Snyder County (FEMA Docket No. 6909)	
West Branch Mahantango Creek:	
Approximately 240 feet downstream of Legislative Route 34010	*618
Upstream side of State Route 35	*639
Approximately 300 feet upstream of Township Route 306	*665
Maps available for inspection at Mr. Elmer Apple's Residence, Township Secretary, Star Route, Richfield, Pennsylvania.	
SOUTH CAROLINA	
Clemson (city), Pickens and Anderson Counties (FEMA Docket No. 6912)	
Eighteenmile Creek.	
About 0.45 mile downstream of Pendleton Road	*701
About 0.7 mile upstream of Central Road	*714
Tributary No. 1:	
At mouth	*709
About 0.77 mile upstream of Downs Loop	*750
Tributary No. 2:	
At mouth	*704
Just downstream of Clarendon Drive	*745
Twelvemile Creek Tributary:	
Just upstream of Old Central Road	*670
About 0.38 mile upstream of Old Central Road	*674
Maps available for inspection at the City Hall, Amtrak Building, Elm Street/Highway 123, Clemson, South Carolina.	
Hampton County (FEMA Docket No. 6912)	
Tributary to Coosawhatchie River:	
At upstream side of State Road 68	*64
Approximately .4 mile downstream of upstream County boundary	*79
Approximately 0.5 mile downstream of State Highway 363	*86
Approximately 800 feet upstream of State Highway 363	*97
Sanders Branch	
At upstream side of State Road 593	*53
At Moxon Street (extended)	*61
At upstream corporate limits	*63
House Fork.	
At confluence with Sanders Branch	*54
Approximately .8 mile upstream of confluence with Sanders Branch	*68
Approximately 550 feet downstream of State Highway 68	*75
Maps available for inspection at the County Administrator's Office, 201 Jackson Street West, Hampton, South Carolina	
TENNESSEE	
Cocke County (unincorporated areas) (FEMA Docket No. 6909)	
French Broad River	
About 0.7 mile downstream of the confluence of Clay Creek	*1,001
About 2.0 miles upstream of Good Hope Branch	*1,063
Pigeon River:	
At mouth	*1,017
Just downstream of Greasy Cove Road	*1,179
Sinking Creek:	
At mouth	*1,031
Just upstream of Norfolk Southern Railway	*1,036
Just downstream of the upstream crossing of U.S. Route 411	*1,112
Just upstream of the upstream crossing of U.S. Route 411	*1,120
At Carson Springs Road	*1,493
Cosby Creek:	
Just downstream of Ball Park Road	*1,321
Just downstream of State Route 32	*1,649
Indian Camp Creek	
At mouth	*1,403
About 1.4 miles upstream of mouth	*1,547
Maps available for inspection at the County Executive's Office, County Courthouse, Newport, Tennessee	
Fayetteville (city), Lincoln County (FEMA Docket No. 6912)	
Elk River:	
About 2.6 miles downstream of Old Huntsville Highway	*665
About 7.1 miles upstream of confluence of Norris Creek	*680
Norris Creek.	
At mouth	*670
About 1.2 miles upstream of Louisville and Nashville Railroad	*681
Wells Creek:	
About 1,500 feet downstream of Liberty Road	*673
Just upstream of Private Road	*689
Cotton Mill Branch:	
At mouth	*677
About 0.47 mile upstream of Mount Drive	*704
Boonshill Road Branch:	
About 1,100 feet downstream of Private Drive	*665
Just downstream of Old Boonshill Road	*674
Maps available for inspection at the Municipal Building, Fayetteville, Tennessee	
Lewisburg (city), Marshall County (FEMA Docket No. 6912)	
Big Rock Creek.	
About 0.85 mile downstream of Nashville Highway (U.S. Route 31A)	*701
About 800 feet downstream of Old Lake Road	*748
Snake Creek	
About 500 feet downstream of Nashville Highway (U.S. Route 31A)	*693
About 500 feet upstream of Finley Beech Road	*738
About 0.6 mile upstream of U.S. Route 431	*788
Just downstream of Louisville and Nashville Railroad	*799
Snell Branch:	
At mouth	*703
Just downstream of Ellington Parkway	*705
Just upstream of Ellington Parkway	*711
Just downstream of Louisville and Nashville Railroad	*728
Just upstream of Louisville and Nashville Railroad	*733
Just downstream of Heil Quaker Avenue	*733
Just upstream of Heil Quaker Avenue	*738
About 1,400 feet upstream of Heil Quaker Avenue	*742
Collins Creek:	
At mouth	*726
About 600 feet upstream of Ellington Parkway	*752
Loyd Branch:	
At mouth	*736
About 1,700 feet upstream of White Drive	*820
Capps Branch.	
At mouth	*713
About 1.08 miles upstream of Old Belfast Road	*823
Maps available for inspection at the City Hall, Lewisburg, Tennessee	
Marshall County (unincorporated areas) (FEMA Docket No. 6912)	
Snake Creek:	
At mouth	*693
Just upstream of Louisville and Nashville Railroad	*800
Snell Branch.	
At mouth	*703
Just downstream of Ellington Parkway	*705
Just upstream of Ellington Parkway	*711
Just downstream of Louisville and Nashville Railroad	*728
Just upstream of Louisville and Nashville Railroad	*733
Just downstream of Heil Quaker Avenue	*733
Just upstream of Heil Quaker Avenue	*738
About 1,400 feet upstream of Heil Quaker Avenue	*742
Collins Creek:	
At mouth	*726
Just downstream of Springplace Road	*779
Big Rock Creek.	
About 2.9 miles downstream of Nashville Highway (U.S. Route 31A)	*693
Just downstream of New Lake Road	*758
Loyd Branch:	
At mouth	*736
About 1,700 feet upstream of White Drive	*820
Capps Branch:	
At mouth	*713
About 1.08 miles upstream of Old Belfast Road	*823
Maps available for inspection at the County Courthouse, Lewisburg, Tennessee.	
Mount Pleasant (city), Maury County (FEMA Docket No. 6912)	
Sugar Fork:	
About 1,050 feet downstream of State Route 6 Bypass	*608
Just downstream of U.S. Route 43	*612
Just upstream of U.S. Route 43	*618
Sugar Creek.	
Just upstream of U.S. Route 43	*618
About 600 feet upstream of Arrow Mine Road	*652
Maps available for inspection at the City Hall, Mount Pleasant, Tennessee.	
Newport (town), Cocke County (FEMA Docket No. 6909)	
Pigeon River:	
About 1.9 miles downstream of McMahan Street	*1,034
About 0.8 mile upstream of Broadway	*1,067
Sinking Creek:	
At mouth	*1,031
About 0.43 mile upstream of Broadway	*1,056
Maps available for inspection at the City Hall, Newport, Tennessee.	
Shelbyville (city), Bedford County (FEMA Docket No. 6912)	
Duck River.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground ²Elevation in feet (NGVD)
About 1.1 miles downstream of confluence of Flat Creek	*727
About 0.5 mile upstream of confluence of Holland Branch	*744
Holland Branch:	
About 450 feet downstream of Depot Street	*744
Just upstream of Blue Ribbon Parkway	*766
Tributary B:	
At mouth	*766
About 0.38 mile above mouth	*777
Big Spring Creek	
Just downstream of Madison Street	*737
About 550 feet upstream of Cedar Street	*759
Little Hurricane Creek:	
About 1,160 feet downstream of Midland Road	*751
About 400 feet upstream of Main Street	*761
Pettus Branch: Within community	*731
Flat Creek:	
About 1.0 mile downstream of Cannon Boulevard	*729
About 0.74 mile upstream of Cannon Boulevard	*738
Bomar Creek:	
About 700 feet downstream of confluence of Tributary A	*750
Just downstream of Eagle Boulevard	*770
Tributary A:	
At mouth	*754
Just downstream of Madison Street	*763
Just upstream of Madison Street	*770
Just upstream of Ledbetter Road	*782

Maps available for inspection at the City Hall, 109 Lane Parkway, Shelbyville, Tennessee

TEXAS

Archer County (FEMA Docket No. 6909)

Holliday Creek:	
Confluence with Lake Wichita	*986
Downstream side of FM 1954	*1,005
Holliday Creek Tributary	
Confluence with Holliday Creek	*999
Downstream side of U.S. Route 82 and 277	*1,018
Pecan Creek:	
Confluence with lake Wichita	*986
At FM 1954	*1,004
Lake Wichita: Entire shoreline within community	*986

Maps available for inspection at the County Courthouse, Archer City, Texas

Arlington (city), Tarrant County (FEMA Docket No. 6912)

Cottonwood Creek:	
Approximately 1,740 feet downstream of Timberlake Drive	*528
Approximately 1,740 feet upstream of Susan Drive	*558
South Fork Cottonwood Creek:	
Approximately 1,300 feet downstream of Forum Drive	*557
Approximately 1,580 feet upstream of State Route 360, Right Frontage Road	*597
Fish Creek:	
Upstream side of Watson Road	*540
Approximately 100 feet downstream of Nathan Lowe Road	*583
Approximately 2,160 feet upstream of Matlock Road	*616
Stream FC-1:	
At confluence with Fish Creek	*549
Approximately 500 feet upstream of confluence with Fish Creek	*550
Approximately 1.1 miles upstream of New York Avenue	*586
Stream FC-2:	
At confluence with Fish Creek	*571
Approximately 1.8 miles upstream of confluence with Fish Creek	*604
Lynn Creek:	
Approximately 820 feet downstream of Webb-Lynn Road	*552
Upstream side of Nathan Lowe Road	*610
Approximately 160 feet upstream of Matlock Road	*624

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground ²Elevation in feet (NGVD)
Bowman Branch:	
Approximately 1.5 miles downstream of Webb Ferrel Road	*542
Approximately 1.8 miles upstream of Mansfield Webb Road	*609
Stream BB-1:	
At confluence with Bowman Branch	*576
Approximately 0.8 mile upstream of confluence with Bowman Branch	*601
Johnson Creek:	
At downstream corporate limits	*509
Upstream side of Randol Mill Road	*542
Approximately 200 feet upstream of Texas and Pacific Railroad	*562
Approximately 850 feet upstream of East Mitchell Street	*575
Approximately 100 feet downstream of West Park Row	*583
Upstream side of Arkansas Lane	*613
Approximately 850 feet downstream of Matlock Road	*629
Upstream side of Matlock Road	*632
Approximately 100 feet upstream of High Point Road	*656
Stream JC-1:	
At downstream corporate limits	*502
0.85 mile upstream of corporate limits	*533
Stream JC-2:	
At confluence with Johnson Creek	*588
Approximately 400 feet upstream of East Tucker Boulevard	*610
Stream JC-3:	
At confluence with Johnson Creek	*612
Approximately 0.6 mile upstream of Station Drive	*645
West Fork Trinity River:	
Approximately 1.1 miles downstream of confluence of Stream WF(A)-1	*464
Downstream side of U.S. Route 157	*468
Approximately 250 feet upstream of confluence of Stream WF(A)-2	*475
Approximately 1.5 miles upstream of confluence of Stream WF(A)-2	*478
Stream WF(A)-1:	
At confluence with West Fork Trinity River	*465
Upstream side of Forest Oak	*532
Approximately 60 feet upstream of Stadium Road	*556
Stream WF(A)-2:	
At confluence with West Fork Trinity River	*475
Approximately 120 feet upstream of North Cooper Street	*509
Village Creek:	
At confluence with West Fork Trinity River	*479
At confluence of Rush Creek	*490
Approximately 850 feet downstream of State Route 303	*500
Approximately 1,600 feet upstream of confluence of Stream VC(A)-2	*506
Stream VC(A)-1:	
Approximately 0.7 mile downstream of West Lamar Boulevard	*479
Approximately 2,000 feet downstream of West Lamar Boulevard	*486
Downstream side of West Lamar Boulevard	*492
Approximately 50 feet upstream of Fielder Road	*545
Rush Creek	
Approximately 0.6 mile downstream of Pioneer Parkway (State Route 303)	*500
At confluence of Kee Branch	*540
Approximately 550 feet upstream of Interstate Route 20	*566
Approximately 100 feet downstream of Kennedale Sublett Road	*597
Approximately 0.5 mile upstream of Willow Oak	*654
Stream RC-1	
At confluence with Rush Creek	*491
Approximately 100 feet upstream of Bowen Road	*562
Stream RC-1-A:	
At confluence with Stream RC-1	*529
Approximately 70 feet upstream of Bowen Road	*562
Pantego Branch:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground ²Elevation in feet (NGVD)
Approximately 600 feet upstream of confluence with Rush Creek	*500
Approximately 1,820 feet upstream of Park Springs Boulevard	*533
Stream RC-2:	
At confluence with Rush Creek	*517
Approximately 60 feet upstream of Arkansas Lane	*562
Kee Branch:	
At confluence with Rush Creek	*540
Upstream side of Poly Webb Road	*589
Upstream side of Kennedale Sublett Road	*639
Stream KB-1:	
At confluence with Kee Branch	*571
Approximately 530 feet upstream of Green Oaks Boulevard	*605
Sublett Creek:	
At confluence with Rush Creek	*604
Approximately 1.3 miles upstream of U.S. Route 287	*671
Stream VC(A)-2:	
At confluence with Village Creek	*506
Approximately 0.7 mile upstream of confluence with Village Creek	*564

Maps available for inspection at the City Hall, 200 West Abrahams, Arlington, Texas.

Cross Roads (town), Denton County (FEMA Docket No. 6906)

Lewisville Lake: Upstream and downstream corporate limits	*537

Maps available for inspection at Jim Cundall's Violin Shop, Mosley Road, Aubrey, Texas

Granbury (city), Hood County (FEMA Docket No. 6912)

Brazos River:	
Approximately 1 mile downstream of confluence of Rough Creek	*697
Approximately 1,000 feet upstream of State Route 426 (Pearl Street)	*699
Rough Creek. Upstream and downstream of State Route 144	*697
Lambert Branch:	
Confluence with Brazos River	*698
Upstream of Moore Street	*718
Confluence of Stream LB-2	*733
Approximately 1,100 feet upstream of Park Street	*747
2,500 feet downstream of Highway 377 Business Route	*765
Downstream of Highway 377 Business Route	*787
Downstream of southern corporate limits	*790
Stream LB-1:	
Confluence with Lambert Branch	*720
At downstream corporate limits	*722
Stream LB-2	
Confluence with Lambert Branch	*733
Downstream of Ables Street	*750
Upstream of Walters Drive	*760
Downstream side of U.S. Route 377	*774

Maps available for inspection at the City Hall, 116 West Bridge Street, Granbury, Texas.

Jacksboro (city), Jack County (FEMA Docket No. 6909)

Stream LCC-1:	
Confluence with Little Cleveland Creek	*1,020
Downstream side of Wichita Street	*1,041
Approximately 50 feet upstream of Archer Street	*1,084
Stream LCC-1 Diversion Channel.	
Confluence with Stream LCC-1	*1,041
Divergence of Stream LCC-1	*1,049
Stream LCC-2	
Downstream corporate limits	*1,054
Approximately 50 feet upstream of upstream corporate limits	*1,085
Lost Creek.	
Downstream corporate limits	*983
Confluence of Stream LC-3	*1,032

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 100 feet upstream Abandoned Chicago Rock Island Pacific Railroad	*1,051
Lake Jacksboro Spillway Channel:	
Confluence with Lost Creek	[illegible]
Lake Jacksboro Spillway	*1,023
LC-1	
Upstream side of County Road	*1,034
Upstream corporate limits	*1,044
Stream LC-2:	
Confluence with Lost Creek	*1,025
Approximately 2,000 feet upstream of confluence with Lost Creek	*1,070
Stream LC-3:	
Confluence with Lost Creek	*1,032
Approximately 200 feet upstream of upstream corporate limits	*1,092
Stream LC-4:	
Confluence with Lost Creek	*1,040
Downstream side of West Belnap Street	*1,071
Rock Quarry Reservoir:	
Confluence with Stream LC-3	*1,075
Divergence from Stream LC-3	*1,084

Maps available for inspection at the City Hall, Archar Street, Jacksboro, Texas.

Navasota (city), Grimes County (FEMA Docket No. 6912)

Cedar Creek:	
Approximately 370 feet downstream of downstream corporate limits	*185
At upstream side of 5th Street bridge	*200
At upstream side of Brosig Avenue bridge	*221
At upstream corporate limits	*249
Cedar Creek Tributary 1:	
At confluence with Cedar Creek	*230
At upstream corporate limits	*248
West Tributary of Sandy Creek:	
At downstream corporate limits	*219
Upstream side of Old Huston Road	*224
At upstream corporate limits	*259

Maps available for inspection at the Department of Public Works, 204 East McAlpin, Navasota, Texas.

UTAH

Duchesne (city), Duchesne County (FEMA Docket No. 6909)

Strawberry River: At South Boundary Street	*5,498
Duchesne River: 120 feet upstream from center of Centre Street	*5,518
Indian Creek: 100 feet upstream from confluence with Strawberry River	*5,514

Maps are available for review at the Planning Department, 165 S. Center, Duchesne, Utah [illegible]

City of Manti, Sanpete County (FEMA Docket No. 6909)

South Creek	
Intersection of Main Street (U.S. Highway 89) and 300 South Street	#1
Intersection of 200 South Street and 400 West Street	#1
Intersection of 400 South Street and 400 West Street	#1

Maps are available for inspection at Office of City Recorder, 50 South Main Street, Manti, Utah

WASHINGTON

Asotin (city), Asotin County (FEMA Docket No. 6909)

Asotin Creek:	
140 feet downstream of State Highway 129 (First Street)	*752
Above Second Street	*761
Above Costley Lane Bridge	*775
At Western corporate limits, 660 feet above Costley Lane Bridge	*777

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Asotin Creek Right Overbank: Between First and Second Streets	#1

Maps available for inspection at City Hall, 130 Second Street, Asotin, Washington.

Asotin County (FEMA Docket No. 6909)

Grande Ronde River:	
700 feet above center line of Snake River	*834
Approximately 1.1 miles above center line of Snake River	*848
Approximately 2.1 miles above center line of Snake River and 170 feet from Section Line between Sections 23 & 24	*863
Asotin Creek:	
140 feet downstream of State Highway 129 (First Street)	*752
Above Costley Lane Bridge	*775
At upstream side of Morgan Road Bridge	*815
At Unnamed Bridge approximately 1.2 miles above Morgan Road Bridge	*891
120 feet below confluence of George Creek	*937

Maps are available for inspection at the Asotin County Courthouse, 135 Second Street, Asotin, Washington.

WEST VIRGINIA

Greenbrier County (FEMA Docket No. 6906)

Howard Creek:	
Approximately 400 feet upstream of confluence with Greenbrier River	*1,688
Approximately 0.16 mile upstream of Interstate Route 64	*1,755
Downstream side of dam	*1,823
Approximately 0.4 mile upstream of upstream County boundary	*1,878
Meadow River:	
At Chessie System	*2,392
Approximately 1.5 miles upstream of CONRAIL crossing	*2,409
Wades Creek:	
At downstream County boundary	*1,899
Upstream side of County Route 60-25	*1,933
Downstream side of Eastbound Interstate 64	*1,998
Sewell-Little Sewell Creek:	
Confluence with the Meadow River	*2,393
Approximately 0.5 mile upstream of County Route 60-32	*2,402
Dry Creek:	
At the downstream County boundary	*1,888
Approximately 0.7 mile upstream of County boundary	*1,920
Approximately 1.2 miles upstream of County boundary	*1,942

Maps available for inspection at the County Courthouse, 200 North Court Street, Lewisburg, West Virginia.

WYOMING

Evanston (city), Uinta County (FEMA Docket No. 6909)

Bear River:	
Approximately 4000 feet downstream of Avenue C at corporate limits	*6,698
Just downstream of Holland Drive	*6,727
Approximately 100 feet upstream of County Road	*6,738
Approximately 150 feet upstream of Route 89	*6,744
Just downstream of Interstate 80	*6,766
Approximately 3000 feet upstream of Interstate 80	*6,785

Maps are available for inspection at the Assistant Engineer's Office, 33 Independence Circle, Evanston, Wyoming.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Tucson (city), Pima County (FEMA Docket No. [illegible])	
Agua Caliente Wash	
At confluence with Tanque Verde Wash	*2,555
On Tanque Verde Road, 1,700 feet east of intersection with Powder Horn Drive	*2,594
Alamo Wash:	
On East Fort Lowell Road, 360 feet west of intersection with Arcadia Boulevard	*2,428
At intersection of Golf Links Road and Avenida del Sol	*2,673
Alvernon Wash:	
60 feet southeast of intersection of Kleindale Road and Alvernon Way	*2,397
180 feet south of intersection of East Grant Road and Alvernon Way	*2,445
Arcadia Wash:	
400 feet upstream of confluence with Alamo Wash	*2,448
490 feet northeast of intersection of East 22nd Street and Van Buren Avenue	*2,590
Arroyo Chico:	
200 feet west of intersection of 13th Street and South Campbell Avenue	*2,438
80 feet downstream of La Jolla Circle	*2,532
Cemetery Wash:	
300 feet downstream of North Oracle Road	*2,325
80 feet downstream of North Stone Avenue	*2,339
Cholla Wash	
At confluence with West Branch Santa Cruz River	*2,375
540 feet west of intersection of San Marcos Boulevard and Camino Santiago	*2,430
Christmas Wash:	
180 feet east of intersection of North Jackson Boulevard and Roger Road	*2,351
150 feet west of intersection of East Fort Lowell and North Country Club Roads	*2,402
Citation Wash:	
At confluence with Arroyo Chico	*2,459
100 feet east of point 160 feet south of intersection of 17th Street and South Country Club Road	*2,478
Columbus Wash:	
At confluence with Alvernon Wash	*2,412
120 feet south of intersection of East Grant Road and Columbus Boulevard	*2,454
Earp Wash:	
500 feet downstream of Irvington Road	*2,536
Just west of intersection of Bantam and Country Club Roads	*2,569
Enchanted Hills Wash:	
100 feet upstream of confluence with West Branch Santa Cruz River	*2,394
1,400 feet upstream of unnamed road that is approximately 0.5 mile upstream of La Cholla Boulevard	*2,512
Flowing Wells Wash:	
On downstream face of La Cholla Boulevard bridge	*2,273
At intersection of Erma Avenue and Fort Lowell Road	*2,313
Gardner Lane Area:	
At north end of Freeway Airport Runway	#1
On Gardner Lane, 600 feet west of intersection with Interstate Highway 10	#2
Hidden Hills Wash:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
1,100 feet downstream of Wrightstown Road	*2,541
Approximately 400 feet northwest of intersection of East Broadway Boulevard and Harrison Road	*2,703
High School Wash:	
100 feet upstream of North 2nd Avenue	*2,387
90 feet west of intersection of East 6th Street and Norton Avenue	*2,449
Kennison Wash:	
6,090 feet east of a point 500 feet north of intersection of Stella Road and Manitoba Avenue	*2,698
400 feet north of a point 400 feet east of intersection of Kolb and Irvington Roads	*2,754
Navajo Wash:	
300 feet downstream of North Oracle Road	*2,324
On west side of Mountain Avenue, 370 feet south of intersection with East Fort Lowell Road	*2,369
Naylor Wash:	
300 feet west of a point 100 feet south of intersection of Camino De La Colina and Alvernon Way	*2,511
80 feet downstream of Swann Road	*2,552
Pantano Wash:	
1,750 feet east of intersection of East Grant and Wilmot Roads	*2,492
2,600 feet west from a point 210 feet north of intersection of Pantano Road and 4th Street	*2,553
Pima Wash:	
At confluence with Rillito Creek	*2,297
160 feet north of a point 300 feet west of intersection of North Oracle Road and Genematas Drive	*2,315
Rillito Creek:	
70 feet west of a point 1,100 feet north of intersection of Rillito Lane and Kerland Avenue	*2,295
400 feet west of a point 1,300 feet north of intersection of Cactus Boulevard and Allen Road	*2,355
Robb Wash:	
Just upstream of Pima Street	*2,549
1,100 feet upstream of East Speedway Boulevard	*2,592
Rose Hill Wash:	
400 feet east of a point 720 feet south of intersection of Glenn Street and Sahuara Avenue	*2,462
60 feet south of intersection of East Broadway and Langly Drive	*2,598
San Juan Wash:	
At confluence with West Branch Santa Cruz River	*2,381
1,600 feet of intersection of 33rd Street and San Jose Drive	*2,417
Santa Clara Wash:	
300 feet downstream of Oahu Avenue	*2,489
Just downstream of San Fernando Road	*2,522
Santa Cruz River:	
1,360 feet south of a point 2,500 feet west of intersection of West Sunset Road and Interstate Highway 10	*2,219
On downstream face of El Camino del Curo bridge	*2,236
Tanque Verde Creek	
900 feet south of a point 200 feet west of intersection of Tanque Verde and Bears Path Roads	*2,522
At Ford site on dirt road that extends north along Tanque Verde Creek from intersection of East Speedway Boulevard and Houghton Road	*2,576

Maps are available for review at the Department of Transportation, Engineering Division, Tucson City Hall, Tucson, Arizona 85726.

MASSACHUSETTS

Acton (town), Middlesex County (FEMA Docket No. 6902)

Nagog Brook:	
At confluence with Nashoba Brook	*144
Approximately 60 feet downstream of Nagog Pond Dam	*218
Butter Brook:	
At confluence with Nashoba Brook	*174
Upstream corporate limits	*177
Nashoba Brook:	
Upstream side of State Route 27	*173
Upstream corporate limits	*181
Inch Brook:	
At confluence with Fort Pond Brook	*207
Approximately 1,275 feet upstream of confluence with Fort Pond Brook	*207
Guggins Brook:	
At confluence with Inch Brook	*207
Upstream corporate limits	*207
Fort Pond Brook:	
Upstream side of Boston & Maine Railroad (4th upstream crossing)	*207
Upstream corporate limits	*207
Grassy Pond Brook:	
At confluence with Fort Pond Brook	*204
Approximately 100 feet upstream of State Route 2	*217

Maps available for inspection at the Town Engineer's Office, Acton, Massachusetts.

NEW YORK

Rockland (town), Sullivan County (FEMA Docket No. 6730)

Willowemoc Creek:	
Confluence with Beaver Kill	*1,277
Upstream of State Route 17 westbound bridge (second upstream crossing)	*1,316
Upstream side of Hazel Road	*1,341
Upstream side of State Route 17 westbound bridge (fourth upstream crossing)	*1,367
Downside side of covered bridge	*1,400
Upstream side of County Route 178	*1,431
Approximately 0.93 mile downstream of confluence of Sprague Brook	*1,480
Confluence of Sprague Brook	*1,510
Approximately 1,000' upstream of Parkston Road	*1,547
Beaver Kill:	
Confluence of Willowemoc Creek	*1,277
Approximately 110' upstream of corporate limits	*1,308
Stewart Brook:	
Confluence with Willowemoc Creek	*1,293
Approximately 0.5 mile downstream of Huber Road (extended)	*1,340
Approximately 1,450' upstream of Huber Road (extended)	*1,394
Cattail Brook:	
Confluence with Willowemoc Creek	*1,422
Upstream of Hoos Road	*1,469
Approximately 1,170' upstream of Shandelee Road	*1,524
Little Beaver Kill:	
Confluence with Willowemoc Creek	*1,422
Approximately 1.0 mile upstream of confluence with Willowemoc Creek	*1,428
Upstream of County Route 148	*1,467
Upstream of Old Liberty Road	*1,492
Approximately 220' upstream of corporate limits	*1,517
Sprague Brook:	
Confluence with Willowemoc Creek	*1,510
Upstream side of Grooville Road	*1,566
Approximately 0.38 mile upstream of Grooville Road	*1,610
Approximately 0.77 mile upstream of Grooville Road	*1,659

Maps available for inspection at the Town Hall, Main Street, Rockland, New York.

TEXAS

Burleson (city), Johnson and Tarrant Counties (FEMA Docket No. 6903)

Village Creek:	
Approximately 500 feet downstream of the most downstream corporate limits	*659
At the most upstream corporate limits	*[illegible]
Quil Miller:	
At the confluence with Village Creek	*661
Approximately 60 feet upstream of Interstate Route 35 Frontage Road	*725
Hurst Creek:	
At the confluence with Quil Miller Creek	*675
Approximately 1.4 miles upstream of County Route 601A	*721
Bypass Creek:	
At downstream corporate limits	*721
At upstream corporate limits	*725
North Creek:	
At the confluence with Village Creek	*672
Approximately 400 feet downstream of McAllister Road	*746
Little Booger Creek:	
At the confluence with Village Creek	*689
Approximately 0.9 mile upstream of Southwest Thomas Road	*748
Shannon Creek:	
At the confluence with Village Creek	*718
Approximately 840 feet upstream of the corporate limits	*751
South Shannon Creek:	
At the confluence with Shannon Creek	*723
Approximately 0.9 mile upstream of County Route 920	*785
Stream VC-8:	
At the confluence with Village Creek	*758
Approximately 160 feet upstream of the confluence of Stream VC-8A	*777
Stream VC-8A:	
At the confluence with Stream VC-8	*776
Approximately 450 feet upstream of the most upstream corporate limits	*778
Willow Creek:	
At the confluence with Village Creek	*770
At the most upstream corporate limits	*793

Maps available for inspection at 141 West Renfro, Burleson, Texas.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 16, 1987.

[FR Doc. 87-22123 Filed 9-25-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status For Eriastrum Densifolium ssp. Sanctorum (Santa Ana River Woolly-star) and Centrostegia leptoceras (Slender-horned Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determined two plants, *Eriastrum densifolium* ssp. *sanctorum* (Santa Ana River woolly-star) and *Centrostegia leptoceras* (slender-horned spineflower), to be

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endangered species. *Eriastrum densifolium* ssp. *sanctorum* occurs patchily on the higher floodplain terraces of the Santa Ana River from Redlands east to the mouth of the Santa Ana Canyon in San Bernardino County, southern California. A disjunct stand occurs on Lytle Creek in the city of San Bernardino. *Centrostegia leptoceras* is currently known from five small isolated populations. The total area occupied by this species is less than 4 hectares (10 acres). Historic and present threats facing these plants include encroaching developments within the floodplain, sand and gravel mining, grazing by domestic animals, and competition from exotic plants. This rule implements the protection and recovery provisions of the Endangered Species Act (Act) of 1973, as amended, for these two plants.

DATES: The effective date of this rule is October 28, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Eriastrum densifolium ssp. *sanctorum* was first collected by Hall. This subspecies was described as *Gilia densifolia* var. *sanctorum* by Milliken (1904) and renamed as *Huegelia densifolia* var. *sanctorum* by Jepson (1925). Wooton and Standley (1913) proposed the replacement of *Huegelia* with *Eriastrum*; Mason (1945) accepted the new genus name. *Centrostegia leptoceras* was first collected by Lobb in 1849. It was described by Gray in 1870 (Torrey and Gray 1870); and then placed in the genus *Chorizanthe* by Watson (1877). Goodman (1934) transferred it back to *Centrostegia*.

Eriastrum densifolium ssp. *sanctorum* is a shrub occasionally reaching one meter (3.3 feet) in height. This plant has gray-green stems and leaves. The bright blue flowers are up to 30 millimeters (1.4 inches) long and are contained in heads of about 20 blossoms each. *Centrostegia leptoceras* is a small prostrate annual. The diameter of the basal rosette of a mature plant varies between about 3 and 10 centimeters (1.4 and 4.5 inches). The flowering stalks are from 5 to 15 centimeters (2.3 to 6.8 inches) in length, and bear three-lobed bracts at the nodes. The leaves and bracts turn bright red with age. One to three involucres containing several flowers each occur at an axil and are 4 to 6 millimeters (0.2 to 0.3 inches) long (Munz 1974).

Eriastrum densifolium ssp. *sanctorum* is endemic to the Santa Ana River drainage of southern California. Formerly this subspecies was a conspicuous shrub in the alluvial fan scrub community on the higher floodplain terraces of the Santa Ana River and its tributaries in Orange, Riverside and San Bernardino Counties. The range of elevations occupied by this plant was from about 150 to 600 meters (500 to 2,000 feet) (Craig 1934, Mason 1945).

Centrostegia leptoceras was formerly more widespread, and occurred on old sandy benches or floodplain terraces containing alluvial fan scrub vegetation in Los Angeles, San Bernardino, and Riverside Counties (Munz 1974). This plant is currently known from only five localities, totaling less than 4 hectares (10 acres) in extent, in San Bernardino and Riverside Counties (Krantz 1984).

Alluvial fan scrub receives little natural disturbance. Sheet flood flows probably occur once every one to two hundred years, and such scouring appears to maintain this plant community. The perennial vegetative cover where *Eriastrum densifolium* spp. *sanctorum* and *Centrostegia leptoceras* occur is relatively low (seldom over 50 percent); annual cover is also fairly low (Zembal and Kramer 1984). The plant community is characterized by old *Juniperus californica* (California juniper), *Cercocarpus betuloides* (mountain mahogany) and *Eriodictyon trichocalyx* (Yerba Santa). *Eriastrum densifolium* spp *sanctorum* is found in disjunct stands within this habitat, and tends to occupy areas with slight surface disturbance (Zembal and Kramer 1984). Conversely, *Centrostegia leptoceras* exists almost exclusively in small isolated areas lacking any evidence of surface disturbance (Reveal and Krantz 1979; Krantz 1984).

The Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51), which included *Centrostegia leptoceras* but not *Eriastrum densifolium* ssp. *sanctorum*, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3)(A)) and giving notice of its intention to review the status of the plant taxa named therein, including *Centrostegia leptoceras*. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Centrostegia leptoceras*, to be endangered species pursuant to section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

In 1978, amendments to the Endangered Species Act required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. This notice of withdrawal included *Centrostegia leptoceras*.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82840). This notice included *Centrostegia leptoceras* and *Eriastrum densifolium* ssp. *sanctorum*. On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that the listing of these two species may be warranted in accordance with section 4(b)(3)(A) of the Act as amended in 1982. Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. On October 13, 1983, October 12, 1984, and again on October 11, 1985, further findings were made that the listing of *Centrostegia leptoceras* and *Eriastrum densifolium* ssp. *sanctorum* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. The proposed rule to list both species as endangered was published in the **Federal Register** on April 9, 1986 (51 FR 12180).

Summary of Comments and Recommendations

In the April 9, 1986, proposed rule (51 FR 12180) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, landowners, scientific organizations,

and other interested parties were contacted and requested to comment. Newspaper notices that invited public comment were published in the Los Angeles Times (May 7, 1986), the Los Angeles Herald Examiner (May 6, 1986), the San Bernardino Sun Telegram (May 6, 1986), the San Jacinto Valley Register (May 5, 1986), and the Riverside Press Enterprise (May 8, 1986). A public hearing was requested by the Environmental Management Agency of Orange County and was held on July 7, 1986. The public comment period was reopened for an additional 30 days on June 24, 1986 (51 FR 22955).

Oral and written comments were received from a total of 16 agencies and individuals. Nine commenters supported the proposed rule, two suggested that the rule be split—listing *Eriastrum densifolium* ssp. *sanctorum* separately from *Centrostegia leptoceras*. One commenter, a representative of a sand and gravel mining company, opposed the listing of *Eriastrum densifolium* ssp. *sanctorum*. No other opposing testimony was received. The written comments and oral testimony received (from five individuals) at the public hearing are grouped below and discussed by issue.

Issue 1: Critical habitat should be designated for these species.

Reponse: The Service believes that the danger posed by designating critical habitat would outweigh the potential benefits. As discussed in the "Summary of Factors Affecting the Species" section below under Factor "B," both species could be adversely affected by curiosity seekers. Designation of critical habitat would increase the degree of threat facing these species.

Issue 2: A question was raised regarding the applicability of a Habitat Conservation Plan for *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras*. This plan was suggested as an early means of designing recovery actions.

Reponse: A Habitat Conservation Plan is specifically defined in section 10(a) of the Act. It provides for the preservation of certain areas of an animal species' habitat and grants a permit to developers for incidental take (as defined in section 9 of the Act). The prohibition of take only applies for plants that are deliberately removed from lands under Federal jurisdiction; consequently, plants are not protected from incidental take. Such taking of plants on lands under Federal jurisdiction is addressed through the consultation process as described in section 7 of the Act. Therefore, as defined in section 10(a) of the Act, it would not be appropriate to design a Habitat Conservation Plan for these two species. However, the Service recognizes the importance of establishing management objectives for conserving and enhancing endangered species, and anticipates developing a recovery plan for these two plants.

Issue 3: It would be more appropriate to work towards propagation of these species than to fine tune their status (e.g., go through the listing process). *Eriastrum densifolium* ssp. *sanctorum*, for example, could be established in Orange County.

Response: The Service will pursue actions to improve the status of these species following listing during the recovery process. Recovery efforts may include establishing the plants in portions of their historic range where they have been extirpated; however, recognition of their endangered status via listing under the Act is an appropriate step in this process.

Issue 4: The listing of these plants may result in delays and increased costs to portions of the Santa Ana Mainstem project. The Service should evaluate the impacts of this U.S. Army Corps of Engineers (COE) project on the two plants, and specifically address required mitigation. Potential recovery actions and their effects on the Santa Ana River project should also be addressed.

Response: The COE's Santa Ana River Mainstem project is presently in Phase I. Phase II will not commence until there is congressional authorization. During Phase II specific project impacts and compensation or mitigation measures will be determined. Because the project is in its early stage and information is lacking, it would be premature for the Service to determine mitigation measures. Given that the COE is responsible for this project, it also would be inappropriate for the Service to provide information on project design. In general, the Service is concerned that certain project features (dam and borrow pit locations) may directly remove some individuals of *Eriastrum densifolium* ssp. *sanctorum*. Indirect effects such as increased urban development in the floodplain below the proposed Upper Santa Ana River Dam could adversly affect both species. Representatives of the Service and the COE have been and will continue to work together in the design of this project and remain optimistic about their ability to resolve these issues. When it is appropriate, the procedures described in Section 7 of the Act will be followed.

Issue 5: Centrostegia leptoceras and *Eriastrum densifolium* ssp. *sanctorum* are different species and listing actions ought to be handled separately.

Response: *Centrostegia leptoceras* and *Eriastrum densifolium* ssp. *sanctorum* occur in alluvial fan scrub. Their remaining ranges overlap, and historic ranges have been reduced due to similar causes. Therefore, the Service believes it is appropriate to list them jointly.

Issue 6: Eriastrum densifolium ssp. *sanctorum* may not qualify for Federal listing because it is too widespread, it is not vulnerable to competition from exotics as it is a taller shrub, it is not grazed upon by rabbits, and it occurs on disturbed sites.

Response: A species need not meet every listing criterion to be endangered. The total remaining range of *Eriastrum densifolium* ssp. *sanctorum* occurs in the drainage of the Santa Ana River of San Bernardino County. The range of this plant has been significantly reduced (see Factor "A" in the "Summary of Factors Affecting the Species" section). Most of the areas on which the plant occurs have been proposed for sand and gravel mining in the recent past.

Although adult *Eriastrum densifolium* ssp. *sanctorum* shrubs have been found in some places dominated by exotic species, seedlings have not been found in these sites. Transect data revealed that this plant occurs in relatively open areas where the total vegetation cover is usually less than 50 percent (Zembal and Kramer 1984). It is likely that this species requires full sun for growth and seed germination. Establishment of exotics in areas with stands of *Eriastrum densifolium* ssp. *sanctorum* may not adversely affect these mature plants; however, self-sustaining populations with all age classes represented have not been found in areas dominated by weedy exotics such as *Bromus* and *Brassica*.

The Service is not aware of any studies on the effects of herbivory on either species.

Eriastrum densifolium ssp. *sanctorum* has rarely been found in disturbed sites. Seedlings of this plant have sprouted in a few places that had been scraped or bulldozed. Some of the adult plants recovered after one locality west of Orange Street had been superficially scraped. In these cases, there was a nearby source of seed from mature plants. It appears that on occasion human-caused disturbance mimics natural disturbance required for seed germination. Most former alluvial fan scrub habitats that have been adversely affected by discing, scraping, or sand and gravel operations do not contain *Eriastrum densifolium* spp. *sanctorum*. However, recent success in transplanting this plant offers some

hope that habitat restoration is possible. It will be important to determine the extent of seed set and germination in these transplanted patches of *Eriastrum densifolium* spp. *sanctorum*.

Issue 7: The Service's notification of the public on this proposal was inadequate.

Response: The Service went through an extensive notification process to make the public aware of this proposal; this process satisfied the requirements of the Act and is described at the beginning of this section.

Issue 8: Several commenters requested the exact locations of these plants.

Response: For the reasons discussed under Issue 1 above and in the section dealing with Critical Habitat below, the Service believes that giving exact locations would increase the degree of threat facing these species.

Issue 9: Increased persistent flooding could result in the extinction of the plants.

Response: These plants occur naturally on the higher floodplain terraces, and are probably adapted to a certain range of flood conditions. Too high a frequency of flooding may result in the extirpation of some populations. However, elimination of all flood flows also appears to eliminate the plants; some flooding appears to maintain the sparsely vegetated conditions under which these plants thrive.

In summary, no substantive comments or data received in response to the proposal indicated that *Eriastrum densifolium* ssp. *sanctorum* or *Centrostegia leptoceras* are more widespread or less vulnerable to disturbance or degradation of habitat than previously thought. Some anecdotal evidence was presented suggesting that *Eriastrum densifolium* ssp. *sanctorum* has recovered from disturbance at certain sites; however, Service personnel who are familar with this plant's habitat and range believe these sites represent exceptional cases. Both species occupy restricted ranges that are vulnerable to encroaching development.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their applications to *Eriastrum densifolium* (Benth.) Mason ssp. *sanctorum* (Milliken) Mason and *Centrostegia leptoceras* Gray are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Eriastrum densifolium* ssp. *sanctorum* once occurred on the higher floodplain terraces along the Santa Ana River and its tributaries in Orange, Riverside, and San Bernardino Counties. It has been extirpated from Orange and Riverside Counties. In Orange County, urban development, citrus groves, horse stables, and urban parks occur to the edge of the Santa Ana River. In Riverside County, the higher floodplain terraces contain urban neighborhoods, ranches and agriculture, and sand and gravel mines. The terraces that have not been built upon or converted to agriculture have been overgrazed. In San Bernardino County where the Santa Ana River has been channelized (mostly with earthen banks), urban and agricultural developments occur to its edge. *Eriastrum densifolium* ssp. *sanctorum* now occurs in isolated stands along the Santa Ana River in San Bernardino County between 360 and 630 meters (1,200 and 2,000 feet) in elevation. One disjunct population remains on Lytle Creek at 360 meters (1,200 feet) in elevation. Approximately 720 hectares (1,800 acres) remain (Krantz 1986 pers. comm.).

Centrostegia leptoceras once occurred in alluvial fan scrub of Los Angeles, San Bernardino, and Riverside Counties. Currently it is known from 5 localities totaling less than 4 hectares (10 acres) in extent. Populations occur adjacent to Lytle Creek, the Santa Ana River, Temescal Creek, and the San Jacinto River (Krantz 1984). A population also remains adjacent to Bautista Creek in Riverside County. The alluvial fan scrub of Los Angeles County has been replaced by the ever-expanding cities of the Los Angeles Basin. Most former San Bernardino localities have been overtaken by urbanization or san and gravel mines.

Extant populations of *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras* in San Bernardino County are further threatened by proposed sand and gravel mines. The BLM is preparing a management plan for these areas. Proposed land uses in the plan include the conservation of these plants, sand and gravel mining, shooting ranges and other activities. In addition, an indirect effect of flood-control dams proposed by the COE in the Upper Santa Ana River Canyon and Lytle Creek could be relaxation of zoning restrictions that now apply to floodplain development. Such zoning changes could allow increased urbanization downstream from the dams and lead to the extinction of *Eriastrum densifolium* ssp. *sanctorum* and to the extirpation of *Centrostegia leptoceras* in San Bernardino County. In Riverside County, the San Jacinto River Temescal Creek and Bautista Canyon drainages are also sites of urbanization and agricultural developmnts. These activities have reduced the range of *Centrostegia leptoceras* on these drainages. Off-road vehicle activity and trash dumping has adversely affected some areas supporting *Centrostegia leptoceras*.

B. *Overutilization for commercial, recreational, scientific, or education purposes.* Neither of these species is known to have suffered as a result of collecting or other utilization. However, *Eriastrum densifolium* ssp. *sanctorum* is extremely attractive when in flower and could be sought by collectors, and *Centrostegia leptoceras* is found on easily distrubed sites that could be damaged by curiosity seekers.

C. *Disease or predation.* Historically, cattle grazing affected many of the areas once supporting *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras*. In some areas, plant species composition was undoubtedly altered significantly by grazing animals. Although grazing may have contributed to the extirpation of these species in some places, areas that are now grazed are so altered that they no longer appear to be capable of supporting either plant, even if grazing were the cease. Grazing does not appear to be a threat in those areas still supporting these species.

D. *The inadequacy of existing regulatory mechanisms.* The California Fish and Game Commission has listed both species as endangered. This designation gives these plants some protection from take, but not habitat destruction. Under the California Endangered Species Act of 1985, State lead agencies are required to consult with the Department of Fish and Game when their projects may affect State-listed species. In the case of *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras*, few (if any) State projects are anticipated. A general prohibition exists against destroying or removing vegetation on BLM land without a permit to do so. The County of San Bernardino has required some sand and gravel operators to avoid populations of *Eriastrum densifolium*

ssp. *sanctorum* and conduct transplant efforts. However, these regulations have not been effective in reducing habitat loss.

E. *Other natural or manmade factors affecting its continued existence.* *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras* do not occur in areas dominated by weedy exotics such as *Bromus rubens* and *Brassica geniculata*. As a prostrate annual that apparently requires full sun and can only tolerate minimal, if any, disturbance, *Centrostegia leptoceras* is especially sensitive to invasion of taller annual species. All known localities of this plant are near areas dominated by weedy exotics. Some herbicide spraying by the San Bernardino County Department of Agriculture for vegetation control may have inadvertently reduced the quality of habitat of these species (Gardner, San Bernardino County Agriculture Commission 1986 pers. comm.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras* as endangered. This preference reflects the strong likelihood that without the protection of the Endangered Species Act of 1973, as amended, these plant species would become extinct throughout their ranges.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. Two of the five localities for *Centrostegia leptoceras* are in Federal ownership. *Eriastrum densifolium* ssp. *sanctorum* occurs on Federal lands; however, it is a conspicuous and attractive shrub. Designation of critical habitat for *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras* would likely focus attention upon these plants and their rare and vulnerable status, and might encourage vandalism or taking for collections or commercial purposes. As mentioned above, *Eriastrum densifolium* ssp. *sanctorum* is an attractive shrub when flowering and could easily be subjected to horticultural collecting if its habitat were closely identified through publication of maps and descriptions. *Centrostegia leptoceras*, although not a likely horticultural subject, is confined to extremely localized sites that could easily be disturbed by foot traffic if they were made known to curiosity-seekers. All involved parties and landowners will be notified of the location and importance of protecting these species habitats. The potential danger posed to these species by designating critical habitat outweighs the minimal protection that such designation would provide. Therefore, it would not be prudent to determine critical habitat for these plants at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provided for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

Two Federal agencies have proposed projects that may affect *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras*. The COE, Los Angeles District, has proposed to construct dams on the Upper Santa Ana River Canyon and Lytle Creek Canyon. The Service is concerned that these dams might increase urbanization and agricultural developments in areas occupied by *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras*, and physically alter flooding conditions necessary to maintain these plants. The Service will continue to work with the COE in protecting this plant. The COE is concerned about the survival of these plants and has expressed support for conserving them. The BLM has proposed to develop a habitat management plan for lands occupied by these plants. Competing interests such as sand and gravel mining and shooting ranges may be included in the BLM's plan. One of its goals is to provide for the protection of these plants on its land (Baier 1986). Listing of *Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras* will provide further encouragement to the BLM to conserve these plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Because transplant techniques have been recently developed for *Eriastrum densifolium* ssp. *sanctorum*, and because it is an attractive shrub, trade permits may be sought for this plant. It is anticipated that few trade permits would ever be sought or issued for *Centrostegia leptoceras* since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as

amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Karla J. Kramer, U.S. Fish and Wildlife Service, 24000 Avila Road, Laguna Niguel, California 92656.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 98–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, under family names indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
.	.	.	.	.	.	.
Polemoniaceae—Phlox family:						
Eriastrum densifolium ssp. *sanctorum*	Santa Ana River woolly-star	U.S.A. (CA)	E	291	NA	NA
.	.	.	.	.	.	.
Polygonaceae—Buckwheat family:						
Centrostegia leptoceras	Slender-horned spineflower	U.S.A. (CA)	E	291	NA	NA
.	.	.	.	.	.	.

Dated: September 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–22374 Filed 9–25–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 61225–7052]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: In-season adjustment and notice of closure to directed fishing.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the domestic annual processing (DAP) portion of the domestic annual harvest (DAH) under provisions of the fishery management plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the closure of the Aleutian Islands area to directed fishing for sablefish. Groundfish are apportioned according to the regulations implementing the FMP. The intent of these actions is to assure optimum use of these groundfish while conserving sablefish stocks.

DATES: Effective: September 23, 1987. Comments will be accepted through October 8, 1987.

ADDRESSES: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catches (TACs) for various groundfish species are apportioned initially among DAH, reserves and total allowable level of foreign fishing (TALFF). The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(b) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect

the conservation of groundfish resources or prohibited species.

The initial specifications of domestic annual processing (DAP) for 1987 were based on the needs of the U.S. industry as projected by the Director, Alaska Region, NMFS (Regional Director). Certain species, including sablefish, are considered fully utilized by DAP and bycatch amounts only were made available to JVP and TALFF. After fifteen percent of TAC was placed in the nonspecific reserve, as required at 50 CFF 675.20(a)(3), the initial interim specification for the Aleutian Islands area sablefish DAP was determined to be 3,317 mt (52 FR 785, January 9, 1987). The current status of nonspecific reserve is 47,071 mt and will be further reduced to 46,471 mt by this action.

In the Aleutian Islands area, several catcher/processors and several U.S. longliners delivering fish to shoreside plants are conducting directed fisheries for sablefish. The estimated catch through September 5 is 3,250 mt. The Regional Director estimates that the entire Aleutian Islands sablefish TAC, 4,000 mt, will be taken by the directed DAP fishery by late September. When the Aleutian Islands area sablefish TAC is taken, current regulations require that all domestic vessels operating in the Aleutian Islands area discard sablefish in the same manner as prohibited species. Thus, sablefish taken in fisheries for other groundfish species and discarded as required by regulation would be wasted for the remainder of the year.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC (MT)

Current This Action Revised:				
Sablefish (Aleutian Islands)	DAP	3,317	+600	3,917
TAC 4,000; EY 4,000	JVP	83		83
	TALFF	0		0
Total	DAP	336,123	+600	336,723
TAC 2,000,000	JVP	1,484,110		1,484,110
	TALFF	132,696		132,696
	RESERVES	47,071	−600	46,471

The following action is taken by this notice to reapporation specifications in the BSA fisheries.

To the BSA DAP

To allow continued DAP fisheries for sablefish in the Aleutian Islands area, 600 mt of the nonspecific reserve is apportioned to the Aleutian Islands sablefish DAP. This is the maximum reserve amount that can be apportioned to the Aleutian Islands sablefish TAC without exceeding the initial TAC. The Secretary is providing that 500 mt of the reserve apportionment amount is to be used for bycatch only, as set out below.

This apportionment does not result in overfishing of the sablefish stock, as the resulting TAC is 4,000 mt, equal to the equilibrium yield (EY).

Notice of Closure to Directed Fishing

Under 50 CFR 675.20(a)(7), when the Regional Director determines that the remaining amount of the TAC of any target species is necessary for bycatch in fisheries for other groundfish species during the remaining fishing year, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species for the remainder of the fishing year. The Regional Director has determined that the estimated amount of Aleutian Islands area sablefish DAP (500 mt) remaining after September 19, will be needed for bycatch in DAP fisheries conducting directed fisheries in the Aleutian Islands area for up to 10,000 mt of other groundfish species during the remainder of the year. Therefore, in order to prevent wastage and encourage the full utilization of all sablefish harvested, directed fishing for sablefish by DAP fishermen in the Aleutian Islands area must cease effective noon, Alaska Daylight Time, September 23, 1987.

Thus, U.S. vessels participating in DAP fisheries may continue fishing for other groundfish species and retain sablefish provided that their catch, take or harvest of sablefish does not exceed 20 percent of their take as defined at 50 CFR 675.2. DAP fishermen should note, however, that DAP fisheries should rarely experience bycatches of sablefish in excess of 5 percent, and many DAP fisheries should have bycatches of less than 1 percent. If higher bycatches occur, and the remaining sablefish TAC is taken prior to the end of the year, sablefish would become a prohibited species. Under this circumstance, the Secretary could, under 50 CFR 675.20(a)(9), limit directed fishing for other groundfish by any method including area closures, gear restrictions or prohibition of directed fishing on certain species in order to prevent overfishing of sablefish.

Classification

This action is taken under the authority of 50 CFR 611.93(b), 675.20(b) and 675.20(a)(7) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to prevent wastage and encourage the full utilization of all sablefish harvested. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: September 23, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-22331 Filed 9-23-87; 4:51 pm]

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Proposed Rules

Federal Register
Vol. 52, No. 187
Monday, September 28, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 85-122]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to increase the amount of Federal indemnity for brucellosis exposed bison and certain brucellosis exposed cattle destroyed during herd depopulation. Cattle affected by this action would be nonregistered cattle other than dairy cattle. The increased indemnity is necessary to give herd owners sufficient financial incentive to depopulate their herds and would help eradicate brucellosis in the United States.

DATE: Consideration will be given only to comments postmarked or received on or before October 28, 1987.

ADDRESSES: Send your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they are in response to Docket No. 85-122. Written comments we receive may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. H. E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8713.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious, infectious disease of animals and man caused by bacteria of the genus *Brucella*. In cattle, the disease causes abortion, infertility, and low milk yields. The Secretary of Agriculture is authorized to cooperate with the States to eradicate and prevent the interstate spread of brucellosis. To encourage livestock owners to cooperate with the National State-Federal Brucellosis Eradication Program, Title 9, Code of Federal Regulations, Part 51 (referred to below as the regulations), provides for Federal indemnity for animals destroyed because of brucellosis.

Under the regulations, owners are eligible for Federal indemnity for cattle and bison destroyed as brucellosis reactors and, under certain conditions, for cattle and bison destroyed because of exposure to brucellosis. Federal indemnity may be paid for cattle and bison destroyed because of exposure to brucellosis only if the cattle and bison are female calves or are destroyed during herd depopulation. However, 40 to 60 percent of herd owners offered herd depopulation decline, many choosing instead to have their animals destroyed only if the animals are later identified as brucellosis reactors. The amount of Federal indemnity authorized for brucellosis exposed cattle and brucellosis exposed bison destroyed during herd depopulation equals the amount authorized for cattle and bison destroyed as brucellosis reactors.

Brucellosis exposed cattle and brucellosis exposed bison have a high probability of contracting brucellosis, and may, in fact, be contagious before they react to an official test for brucellosis. The incubation period varies in cattle and bison. Usually cattle and bison develop a positive reaction to the blood test for brucellosis within 3 to 12 weeks after infection, but some may not do so for 8 months or longer. Meanwhile, the exposed cattle and bison are potential transmitters of the disease. Most herds known to be affected are made up of nonregistered cattle other than dairy cattle. In most States, owners are eligible for Federal indemnity of only $50 a head for bison and for nonregistered cattle, other than dairy cattle, that are destroyed during herd depopulation because of exposure to brucellosis. This amount is inadequate for most owners to consider depopulation. We therefore propose to increase the amount of Federal indemnity for these brucellosis exposed cattle and for brucellosis exposed bison destroyed during herd depopulation. This action would provide financial incentive for owners to depopulate in a timely manner, reducing the risk of the disease spreading.

Owners of brucellosis exposed cattle and brucellosis exposed bison destroyed during herd depopulation now are eligible for Federal indemnity in the following amounts: In all States except Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, up to $250 for any registered cattle, $250 for any nonregistered dairy cattle, $50 for any nonregistered cattle other than dairy cattle, and $50 for any bison; and in Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, up to $250 for any registered cattle, $250 for any nonregistered dairy cattle, $150 for any nonregistered cattle other than dairy cattle, and $150 for any bison. We propose the following rates of Federal indemnity for brucellosis exposed cattle and brucellosis exposed bison destroyed during herd depopulation: In all States except Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, up to $250 for any registered cattle, $250 for any nonregistered dairy cattle, $150 for any nonregistered cattle other than dairy cattle, and $150 for any bison; and in Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, up to $250 for any cattle or bison.

We propose to specify that Federal indemnity payments would be made at the rates in effect at the time the Deputy Administrator approves the herd for depopulation. This action would remove any incentive for herd owners to delay depopulation in anticipation of an increase in Federal indemnity rates.

We also propose to amend § 51.7 by extending the time that may be granted owners of registered cattle to present registration papers. The regulations now provide that in cases where registration papers are unavailable or where the cattle are less than 1 year old and not registered, the Veterinarian in Charge may grant owners up to 30 days to present the papers. The Deputy Administrator may grant an additional 30 days. We have found that the 30 days granted by the Veterinarian in Charge usually is not long enough and that extensions of time are routinely requested. We propose to allow the Veterinarian in Charge to grant owners up to 60 days to present papers, and to

allow the Deputy Administrator to grant an extension longer than 60 days.

Miscellaneous

We propose to add definitions to § 51.1 for "recognized slaughtering establishment" and "specifically approved stockyard." Footnote 1 in § 51.6, which refers readers to § 78.1 of this chapter for definitions of these terms, would be removed.

We also propose to correct present footnote 1 in § 51.3 (proposed footnote 3), which now begins as follows: "The Deputy Administrator shall authorize payment of Federal indemnity by the Department at the applicable maximum percent in § 51.3(a)(1) and (2) and the maximum per head rates in § 51.3(a)(3)". This footnote, which reflects a system of indemnity payments based on market values for slaughter and replacement, was revised by an interim rule published in the **Federal Register** on November 26, 1982 [47 FR 53320–53325, Docket No. 82–061], and affirmed March 27, 1985 [50 FR 11992–11993, Docket No. 83–107]. The footnote was revised to read as follows: "The Deputy Administrator shall authorize payment of Federal indemnity by the Department at the applicable maximum per head rate in § 51.3". This revision was necessary because the interim rule established an indemnity system based on flat, per head rates for cattle and bison destroyed because of brucellosis. Indemnity payments for swine destroyed because of brucellosis were already based on flat, per head rates. The current regulations should contain the footnote as it was revised by the rule on March 27, 1985.

In addition, we propose to make several nonsubstantive changes to clarify the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the proposed rule, owners of brucellosis exposed cattle and brucellosis exposed bison destroyed during herd depopulation would be eligible for Federal indemnity amounting to an increase of $100 over the present rates for bison and nonregistered cattle other than dairy cattle. We estimate that we will offer herd depopulation for fewer than 500 of the approximately 1.6 million herds of cattle and bison in the United States in the coming year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and have been assigned OMB control number 0579–0067.

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

Accordingly, we propose to amend 9 CFR Part 51 as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 51.1, the definition of "Department" would be removed and two new definitions would be added in alphabetical order to read as follows:

§ 51.1 Definitions.

* * * * *

Recognized slaughtering establishment. Any slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601 through 695) or a State meat inspection act.[1]

* * * * *

Specifically approved stockyard. Premises approved by the Deputy Administrator, in accordance with § 78.44 of this chapter, for assembling cattle or bison for sale.[2]

* * * * *

§ 51.3 [Amended]

3. In § 51.3, footnotes 1 and 2 and the references to them would be redesignated footnotes 3 and 4, respectively.

4. In § 51.3, all references to "Department" would be revised to read "United States Department of Agriculture".

5. In § 51.3, paragraph (a)(2) would be revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) * * *

(2) *Herd depopulation*—(i) *Eligibility.* The Deputy Administrator may authorize payment of Federal indemnity [3] by the United States Department of Agriculture to any owner whose herd of cattle or bison is destroyed because of brucellosis. The United States Department of Agriculture shall pay Federal indemnity for brucellosis exposed cattle or brucellosis exposed bison in the herd only when the Deputy Administrator determines that destruction of all cattle and bison in the herd will contribute to the brucellosis eradication program. Owners must furnish proof of destruction [4] to the

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[1] The names and addresses of recognized slaughtering establishments may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Washington, DC 20250.

[2] Notices containing lists of specifically approved stockyards are published in the **Federal Register**. Lists of specifically approved stockyards also may be obtained from the State animal health official, State representatives, or Veterinary Services representatives.

[3] The Deputy Administrator shall authorize payment of Federal indemnity by the United States Department of Agriculture at the maximum per head rates in § 51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

[4] The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, Veterinary Services representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

Veterinarian in Charge prior to payment of Federal indemnity. The United States Department of Agriculture shall pay Federal indemnity for brucellosis reactor cattle and brucellosis reactor bison in accordance with paragraph (a)(1) of this section.

(ii) *Amount of Federal indemnity.* Payments of Federal indemnity shall be made at the rates in effect at the time the Deputy Administrator approves depopulation for the herd. In all States except Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity shall not exceed $250 for any registered cattle, $250 for any nonregistered dairy cattle, $150 for any nonregistered cattle other than dairy cattle, and $150 for any bison. In Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity shall not exceed $250 for any cattle or bison.

* * * * *

§ 51.6 [Amended]

6. In § 51.6, footnote 1 and the references thereto would be removed.

7. In § 51.6, footnote 2 and the reference thereto would be redesignated as "5" and would be revised to read

"[5] Markets are approved by the Deputy Administrator in accordance with § 76.18 of this chapter.".

8. In § 51.7(a), in the last sentence, "Department" would be revised to read "United States Department of Agriculture".

9. In § 51.7, paragraph (b) would be revised to read as follows:

§ 51.7 Claims for indemnity.

* * * * *

(b) Claims for indemnity for registered cattle shall be accompanied by the cattle's registration papers issued in the name of the owner. If the registration papers are unavailable or if the cattle are less than 1 year old and are not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Deputy Administrator may grant an extension longer than 60 days for the presentation of registration papers.

Done at Washington, DC, this 23rd day of September, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-22263 Filed 9-25-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-105-AD]

Airworthiness Directives; Airbus Industrie A310-203, -221, and -222 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to all Airbus Industrie Model A310 series airplanes, that would require inspection, modification, and repair, if necessary, of the rear pressure bulkhead. This proposal is prompted by reports of cracks detected in the attachment angles during the fatigue test of the rear pressure bulkhead. This condition, if not corrected, could eventually lead to failure of the bulkhead.

DATE: Comments must be received no later than October 27, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) oy submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direcion Général de L'Aviation Civile—France (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of cracks detected in certain rear pressure bulkhead attachment angles during the fatigue test on certain Airbus Industrie Model A310 series airplanes. The cracks are attributed to fatigue. This condition, if not detected and corrected, could lead to failure of the bulkhead attachment.

Airbus Industrie has issued Service Bulletin A310-53-2024, Revision 1, dated June 20, 1986, which describes procedures for the inspection and repair of cracks in the rear pressure bulkhead attachment angles and Service Bulletin A310-53-2025, dated April 21, 1986, which describes procedures for modification of the attachment of the rear pressure bulkhead to frame (FR) 80/82. The DGAC has classified these service bulletins as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the rear pressure bulkhead, and repair, if necessary, in accordance with the service bulletins previously mentioned.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD,

that it would take approximately 590 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $70,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model A310 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to certain Model A310 series airplanes, as listed in Service Bulletin A310–53–2025, dated April 21, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the rear pressure bulkhead, accomplish the following:

A. Prior to the accumulation of 6,000 landings time in service or within the next 3,000 landings after the effective date of this AD, whichever occurs later, accomplish the following:

1. Inspect the rear pressure bulkhead for cracks, using x-ray procedures, in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industrie Service Bulletin A310–53–2024, Revision 1, dated June 20, 1986. If any cracks are detected, repair prior to further flight in accordance with paragraph 2.C., Repair, of the service bulletin.

2. Modify the attachment of the rear pressure bulkhead to FR 80/82 in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industrie Service Bulletin A310–53–2025, dated April 21, 1986.

B. On airplanes that were modified in accordance with paragraph A.2., above, after the accumulation of 6,000 landings, repeat the x-ray inspection of the rear pressure bulkhead required by paragraph A.1., above, within 6,000 landings after modification, and thereafter at intervals not to exceed 12,000 landings.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 26, 1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region.

[FR Doc. 87–22223 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–122–AD]

Airworthiness Directives; British Aerospace Model H.S. 748 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to British Aerospace (BAe) Model H.S. 748 series airplanes, that would require modifying the overwing escape hatch locking mechanism. This proposal is prompted by reports of hatches not being properly closed and locked or the hatch locking mechanisms being strained by mishandling. This condition, if not corrected, could lead to escape hatches opening and becoming detached from the airplane during flight.

DATE: Comments must be received no later than October 30, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–122–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–122–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral

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airworthiness agreement, notified the FAA of an unsafe condition which may exist on British Aerospace Model H.S. 748 series airplanes. There have been numerous reports of overwing escape hatches opening and detaching from airplanes in flight due to hatches not being properly locked prior to flight. This condition, if not corrected, could lead to decompression due to the door leaving the airplane in flight with associated damage to the airplane and possible injuries to people on board and on the ground.

British Aerospace has issued Service Bulletin 52/127, dated May 29, 1985, which describes a modification to the overwing escape hatch locking device, which consists of installing a replacement for the existing hatch locking mechanism that allows visual identification of the hatch locked/unlocked status. With this modification installed, it will no longer be necessary to raise a cover to determine if the lock is engaged. The United Kingdom CAA has classified the BAe service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the overwing escape hatch locking mechanism be modified in accordance with the service bulletin previously mentioned.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 33 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2640.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Art that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model H.S. 748 series airplanes, as listed in British Aerospace Service Bulletin 52/127, dated May 29, 1985, certificated in any category. Compliance required within 5 months after the effective date of this AD, unless previously accomplished:

To prevent the loss of the overwing escape hatch during flight, due to improper locking, accomplish the following:

A. Replace the escape hatch locking mechanism with P/N 1OD14062 locking mechanism assembly, in accordance with the instructions in British Aerospace Service Bulletin No. 52/127, dated May 29, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 16, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-22222 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-108-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes, which currently require inspection for cracking of the forward service doorway aft frame and repair, if necessary. This proposal would combine the inspections required by both AD's and add inspections of the frame support structure for the lower four door stop fittings. This action is prompted by several reports of cracks of the door stop support structure for the door stops on the aft frame. This condition, if not corrected, could result in the loss of pressurization.

DATE: Comments must be received no later than October 27, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-108-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All

communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-108-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On December 30, 1986, the FAA issued AD 87-01-U6, Amendment 39-5509 (52 FR 517; January 7, 1987), which requires inspection for cracks and repair, if necessary, of the aft frame of the forward service door in the area of the upper two door stops fittings.

After the issuance of AD 87-01-06, additional service experience indicated that cracks also could occur in the frame around the lower door stop fittings (Number 3-6), as well as in the backup structure for these door stops. On May 6, 1987, the FAA issued AD 87-10-03, Amendment 39-5621 (52 FR 17935; May 13, 1987), to require inspection and repair, if necessary, of the forward service door aft frame in the area of the lower four door stop fittings.

Recent reports indicate that the supporting structure must also be inspected for cracks. Therefore, the FAA has determined that the areas required to be inspected in accordance with AD 87-01-06 and AD 87-10-03 must be expanded to include the support structure for the lower four stops. This action is necessary to ensure the structural integrity of the door support structure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-53A1108, Revision 2, dated August 13, 1987, which describes procedures for inspection, repairs, and terminating action, for cracks in the forward service door aft frame and the door stop support structure.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspections and repairs, as necessary, of the forward galley doorway aft frame around the six door stops, and their support structure, in accordance with the service bulletin previously mentioned, and would supersede AD 87-01-06 and AD 87-10-03. It would also provide terminating action for the required repetitive inspections.

It is estimated that 450 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $108,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87-01-06, Amendment 39-5509 (52 FR 517; January 7, 1987), and AD 87-10-03, Amendment 39-5621 (52 FR 17935; May 13, 1987), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737-53A1108, Revision 2, dated August 13, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the forward service door support structure, accomplish the following:

A. Prior to the accumulation of 25,000 landings or within the next 125 landings after the effective date of this AD, or 250 landings since the last inspection, whichever occurs later, perform a close visual inspection around the six door stop fittings of the forward service doorway aft frame in accordance with Boeing Alert Service Bulletin 737-53A1108, Revision 2, dated August 13, 1987, or later FAA-approved revisions. Repeat the inspections at intervals not to exceed 250 landings until the inspection required by paragraph B., below, is accomplished. If cracks are found, prior to further flight, perform a visual inspection for cracks in the intercostals and stringers, which support these door stops. Parts found cracked must be repaired prior to further flight in accordance with the aforementioned service bulletin.

B. Prior to the accumulation of 25,000 landings or within the next 4,500 landings after the effective date of this AD, whichever occurs later, perform an internal visual inspection for cracks in the intercostals and stringers, which support these door stops, in accordance with Boeing Alert Service Bulletin 737-53A1108, Revision 2, dated August 13, 1987, or later FAA-approved revisions. Parts found cracked must be repaired before further flight in accordance with the aforementioned service bulletin. Repeat the inspection at intervals not to exceed 9,000 landings.

C. The repetitive inspections required by paragraph B., above, may be terminated after the intercostals and stringers have been modified in accordance with the terminating action specified in Paragraph III of the "Accomplishment Instructions" of Boeing Alert Service Bulletin 737-53A1108, Revision 2, dated August 13, 1987, or later FAA-approved revisions, or incorporation of a modification approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial

Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 26, 1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region.

[FR Doc. 87-22224 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-22]

Proposed Alteration of VOR Federal Airways; Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the descriptions of several Federal Airways located in the vicinity of Missoula, MT. Changes to instrument flight procedures to the Missoula Airport now require the Salt Lake City Air Route Traffic Control Center (ARTCC) controllers to position arriving aircraft on published routes or approach transition prior to transfer of control to the Missoula Air Traffic Control Tower. This action would be compatible with the new instrument approach procedures thus expediting the traffic in the Missoula terminal area and increasing flight safety.

DATE: Comments must be received on or before November 6, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 87-ANM-22, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ANM-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-2, V-120, V-257 and V-343 located in the vicinity of Missoula, MT. Changes to the instrument flight procedures at the Missoula Airport now require the Salt Lake City ARTCC to position arriving aircraft on a published route prior to transfer of control to the Missoula Air Traffic Control Tower. This procedure involves radar vectors at altitudes compatible with the instrument approach procedures. This proposed action would reduce the vectoring requirement, thereby reducing the controller workload and improving traffic flow. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-2 [Amended]

By removing the words "Mullan Pass, ID; 5 miles, 53 miles, 91 MSL, Missoula, MT; 6 miles, 84 MSL, Drummond, MT; 11 miles, 84

MSL," and by substituting the words "Mullan Pass, ID; Missoula, MT; Drummond, MT;"

V-120 [Amended]

By removing the words "Mullan Pass, 5 miles, 55 miles, 95 MSL, 43 miles, 125 MSL," and by substituting the words "Mullan Pass;"

V-257 [Amended]

By removing the words "22 miles, 85 MSL"

V-343 [Revised]

From Dubois, ID; Bozeman, MT; to Drummond, MT.

Issued in Washington, DC, on September 15, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-22230 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 177

Proposed Customs Regulations Amendments Relating to Tariff Designation on Entry Documents

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to require that if a person has received written notice from a Customs official of the Customs designation of the duty/statistical reporting number for imported articles, the person filing an entry summary (Customs Form 7501), or other applicable Customs forms, must provide that designation as stated in the notice. If the person fails to comply with this requirement Customs may subject the person to a claim for monetary penalty under 19 U.S.C. 1592. Compliance with the requirement would not constitute waiver of the person's right to protest liquidation of the entry. By providing written notice to a person, and requiring that person to provide the Customs designation of the duty/statistical reporting number as stated in the notice, Customs will be better able to carry out its statutory responsibility to ascertain the proper classification and rate of duty applicable to imported merchandise.

DATE: Comments must be received on or before November 27, 1987.

ADDRESS: Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani, or Charles D. Ressin, Entry Procedures and Penalties Division, (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

Section 484(a)(1)(B), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(1)(B)), provides that an importer of record shall file with Customs, documentation which, among other things, enables a Customs officer to properly assess duties on the merchandise, collect accurate statistics, and determine whether any other applicable requirement of law is met. Further, Section 500, Tariff Act of 1930, as amended (19 U.S.C. 1500), requires the appropriate Customs officer to "ascertain the classification and rate of duty applicable to (imported) merchandise." In accordance with 19 U.S.C. 1484(a)(1)(B), § 141.61(e), Customs Regulations (19 CFR 141.61(e)), requires the filing of the applicable statistical reporting information required by the General Statistical Headnotes, Tariff Schedules of the United States Annotated ("TSUSA"), and places the responsibility for providing the information on the person filing the form.

It has now been determined necessary to propose to amend § 141.61(e), Customs Regulations, to require that any person who has received written notice from a Customs official of the Customs designation of the duty/statistical reporting number, must provide that designation to Customs on the entry summary (Customs Form 7501), or other applicable forms. The complete designation number must be placed in Block 30 of Customs Form 7501. If the person does not provide the Customs designation of the duty/statistical reporting number, the person may be subject to liability under Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

Customs has been reluctant to impose a penalty under 19 U.S.C. 1592 if the only material falsity upon entry involves supplying an incorrect tariff designation. Customs reluctance stems, in part, from the requirement of 19 U.S.C. 1500 placing the obligation on Customs to "ascertain the classification and rate of duty applicable to (imported) merchandise." Because of substantial increases in annual import volume, however, more accurate reporting data are required to enable Customs to carry out its statutory responsibilities. The need for importer cooperation has become particularly necessary since the adoption of the Automated Commercial System (ACS) which considerably increases Customs reliance upon information contained in the entry documents filed by the importer.

Accordingly, Customs believes it is necessary (1) to assert the authority of the Secretary of the Treasury under 19 U.S.C. 1484 if a person, or agent, has received written notice from a Customs official of the Customs designation of the duty/statistical reporting number for specific merchandise and (2) to advise importers that a claim for monetary penalty may be assessed if, after notice, another designation is provided.

By providing written notice to a person, and requiring that person to provide the Customs designation of the duty/statistical reporting number as stated in the notice, Customs will be better able to carry out its statutory duty under 19 U.S.C. 1500. Furthermore, the written notice requirement will assist Customs in establishing one of the levels of culpability necessary to constitute a violation under 19 U.S.C. 1592 in appropriate cases.

Compliance with the requirement to provide the Customs designation of the duty/statistical reporting number would not constitute, in any way, a waiver of a persons right to challenge Customs determination by filing a protest under Section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and Part 174, Customs Regulations (19 CFR Part 174)

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in

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E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

Furnishing the tariff designation number is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The information is furnished on the Customs Form 7501 which has been submitted to and approved by OMB under control number 1515–0065.

Drafting Information

The principal author of this document was Marvin M. Amernick, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 141 and 177

Entry and entry summary documentation, Statistical reporting number, Administrative rulings.

Proposed Amendments

It is proposed to amend Parts 141 and 177, Customs Regulations (19 CFR Parts 141 and 177), as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to revise § 141.61 (e)(2) and (e)(5) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

* * * * *

(e) *Statistical information.* * * *

* * * * *

(2) *Responsibility.* The person filing the form is responsible for providing the information required by paragraph (e)(1) of this section.

(i) (A) *Classification information-importer.* If the person filing the form is an importer, and that importer receives written notice as defined in paragraph (e)(2)(i)(B) of this section, from a Customs official of the Customs designation of the duty/statistical reporting number for the specific merchandise, the importer shall record only that number in the designated location on the form for the merchandise subject to the notice and any other entries of identical merchandise.

(B) *Written notice.* Written notice provided to the person must state the Customs designation of the duty/statistical reporting number. The term "Written notice" includes, but is not limited to:

(*1*) Customs rulings issued pursuant to 177.8 of this chapter and decisions on requests for internal advice issued pursuant to § 177.11 of this chapter;

(*2*) A protest decision issued pursuant to Part 174 of this chapter;

(*3*) A notice of action (Customs Form 29);

(*4*) An entry rejection notice; or

(*5*) An advice letter.

(C) *Classification information-Customs broker.* If the person filing the form is a customs broker and that customs broker has received, or has actual knowledge that its importer-client has received, written notice of the information described in paragraph (e)(2)(i)(A) of this section, with regard to specific merchandise, the broker shall record only that number in the designated location on the form for the merchandise subject to the notice and any other entries of identical merchandise.

(ii) *Value information.* If the information required by subparagraph (XIV), (XV), and (XVI), General Statistical Headnote 1(a), TSUSA, cannot be obtained readily, the person filing the form shall provide reasonable estimates of the required information. The acceptance of an estimate for a particular transaction does not relieve the person filing the form from the obligation of obtaining the necessary information for similar future transactions. The district director may require additional documentation to substantiate the statistical information required by paragraph (e)(1) of this section. The importer shall give an appropriate bond for the production of the required documentation, as follows:

(A) Except for merchandise entered for warehouse, the documentation shall be produced within 50 days after the entry summary (or the entry, if there is no entry summary) is required to be filed.

(B) If merchandise is entered for warehouse, the documentation shall be produced within 2 months after the date of withdrawal, except that if an invoice is part of the documentation, the invoice shall be produced within 50 days after the entry summary for warehouse is required to be filed. The district director may grant a reasonable extension of time to produce the required documentation for good cause shown. (See § 141.91(d) for bond requirements relating to failure to produce an invoice and §§ 113.42 and 113.43 of this chapter relating to the time period for the production of documents.).

* * * * *

(5) (i) *Penalty procedures; when not invoked.* Except as provided for in paragraph (e)(5)(ii) of this section, penalty procedures relating to erroneous statistical information shall not be invoked against any person who in good faith attempts to comply with the statistical requirements of the General Statistical Headnotes, TSUSA.

(ii) *Penalty procedures; when invoked.* A failure to comply with the requirements of paragraph (e)(2)(i) of this section shall not be considered to be an act in good faith, and may subject the person to a claim for monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). Compliance with this requirement does not constitute a waiver of the person's right to protest liquidation of the entry in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and Part 174 of this chapter.

* * * * *

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624.

Section 177.3 also issued under 19 U.S.C. 1481, 1484.

2. It is proposed to amend § 177.8(a)(2) by adding the following after the last sentence:

§ 177.8 [Amended]

(a) * * *

(2) * * *

Also see requirements under Subpart E of Part 141 of this chapter relating to presentation of entry papers.

William von Raab,

Commissioner of Customs.

Approved: September 3, 1987.

Francis A. Keating,

Assistant Secretary of the Treasury.

[FR Doc. 87–22299 Filed 9–25–87; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Entitlement Charges for Refresher, Remedial and Deficiency Course

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: Current regulations do not state how to charge entitlement when a veteran or eligible person is pursuing some courses for which entitlement is charged concurrently with refresher, remedial or deficiency courses for which no charge is made against entititlement. The result has been inconsistent

adjudication of cases by the various Veterans Administration (VA) offices. The proposed regulation specifies the manner in which entitlement charges are to be made, thus eliminating the possibility of nonuniform administration of the program.

DATES: Comments must be received on or before November 9, 1987. Comments will be available for public inspection until November 24, 1987.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 24, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 31782 and 31783 of the **Federal Register** of September 5, 1986, there was published a notice of proposed rulemaking to amend Part 21 to provide a specific rule for computing the correct entitlement charge for veterans training under the Vietnam Era GI Bill (38 U.S.C. Chapter 34) and eligible spouses and surviving spouses receiving Dependents' Educational Assistance (38 U.S.C. Chapter 35) who concurrently enroll in courses for which entitlement is charged and courses for which entitlement is not charged.

Interested people were given 30 days to submit suggestions, comments or objections. The VA received three letters. Two were from officials of educational organizations and supported the proposal. One was from a university official and contained two suggestions.

One suggestion was to expand the regulation so that a list of the education programs administered by the VA would appear in 38 CFR 21.1045(c) along with a statement as to whether the revised regulation applied to each program. The university official suggested including vocational rehabilitation (38 U.S.C. Chapter 31), the New GI Bill (38 U.S.C. Chapter 30), the Post-Vietnam Era Educational Assistance Program (38 U.S.C. Chapter 32), the Vietnam Era GI Bill (38 U.S.C. Chapter 34), Dependents' Educational Assistance (38 U.S.C. Chapter 35) and Educational Assistance for Members of the Selected Reserve (10 U.S.C. Chapter 106).

The VA does not believe this is necessary. The 38 CFR 21.1000 series of regulations apply to the education programs described in 38 U.S.C. Chapters 34 and 35. The paragraphs preceding the amended paragraph as well as the amended paragraph itself make this clear. The other chapters either are already adequately covered elsewhere (for example, 38 CFR 21.5072) or they will be covered when the VA publishes regulations implementing 38 U.S.C. Chapter 30 and 10 U.S.C. Chapter 106.

The second suggestion was that rather than make the proposed regulation final, the VA should adopt a rule which would result in a charge against entitlement for all credit hours which count towards a degree.

In most cases this method would result in the same charge against entitlement as the proposed amended regulation. However, in some cases the suggested method would result in a greater entitlement charge than the proposed rule.

The VA evaluated the alternatives, including the one offered by the comment writer and determined that the amended regulation as originally proposed might lend itself to abuse of the Vietnam Era GI Bill and Dependents' Educational Assistance more easily than a regulation modeled after the university official's suggestion. Accordingly, the VA is withdrawing its original proposal and is publishing for comment a new proposed regulation which adopts an alternative approach and takes the suggestion into account. The method used in this propsal would eliminate the potential area of abuse and accomplish the original goal of stating a uniform adjudicatory rule.

The VA has determined that this proposed amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the proposed amended regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111 and 64.117)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 25, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, *Vocational Rehabilitation and Education*, § 21.1045 is amended by revising paragraph (c)(1) and by adding paragraph (c)(3) to read as follows:

§ 21.1045 Entitlement charges.

* * * * *

(c) * * *

(1) For all other courses, after making any adjustments required by paragraph (c)(3) of this section, the VA will make a charge against entitlement.

* * * * *

(3) A veteran or eligible spouse or surviving spouse may concurrently enroll in a refresher, remedial or deficiency course or courses for which paragraph (a)(4) of this section requires no charge against entitlement and in a course or courses for which paragraph (b) of this section requires a charge against entitlement. When this occurs, the VA will charge entitlement for the concurrent enrollment based only on pursuit of the course or courses described in paragraph (b) of this section, measured in accordance with §§ 21.4270 through 21.4275 of this part, as appropriate.

(Authority: 38 U.S.C. 1661, 1677(b))

* * * * *

[FR Doc. 87–22302 Filed 9–25–87; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3268-6]

Approval and Promulgation of Implementation Plans; Texas Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: As required by section 110(a) of the Clean Air Act (CAA) and the October 5, 1978 (43 FR 46246), promulgation of National Ambient Air Quality Standards (NAAQS) for lead, the State of Texas has submitted revisions to its State Implementation Plan (SIP) for lead for the El Paso area of the State. EPA announced its approval/disapproval action on the El Paso SIP on August 13, 1984 (49 FR 32184). Proposed approval of the State's request for a two year extension of the attainment date for lead NAAQS for a limited area in El Paso, Texas was announced on August 16, 1985 (50 FR 33069). Federal promulgation of a compliance date for the installation of secondary hoods on copper converters at the ASARCO primary smelter in El Paso County was announced on May 20, 1986 (51 FR 18440). This action announces EPA's proposed approval of emission limit revisions to Texas Regulation III, Subchapter B titled Lead from Stationary Sources. Nonferrous Smelters in El Paso County and announces EPA's proposed approval of the Texas Lead SIP for the limited area surrounding the ASARCO facility in El Paso County. A modeling analysis using these proposed revised emission limits now demonstrates attainment by modeling of the NAAQS for El Paso County. Since attainment is now demonstrated and such attainment is within three years of the August 13, 1984, approval of the El Paso lead SIP, the two year extension of the NAAQS attainment date is no longer necessary. The Federal promulgation of the compliance date for the installation of secondary hoods on copper converters as is required by Texas Rule 113.53 is not affected by today's action. The rest of the Texas SIP was previously approved by EPA (except for the Dallas and El Paso part of the SIP) in a **Federal Register** notice published on October 4, 1983 (48 FR 45246).

DATES: Comments must be received on or before October 28, 1987. Public comments on this document are requested and will be considered before taking final action on these SIP revisions.

ADDRESSES: Written comments should be sent to Thomas H. Diggs, Chief, SIP/New Source Review Section, EPA (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202. Copies of the SIP and FPA's evaluation report are available for public review during normal business hours at the following locations: Texas Air Control Board, 6330 Hwy 290 East, Austin, Texas 78723, and EPA, Region 6, Library, 12th Floor, Allied Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Jim Callan, State Implementation Plan/New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202, telephone (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (ug lead/m^3) averaged over a calendar quarter. As required by section 110 of the CAA, and the October 5, 1978, promulgation of the NAAQS for lead, each State must submit a SIP which will provide for attainment and maintenance of the lead NAAQS within three years from the date of approval of the plan. Section 110(e) of the CAA allows EPA to grant up to a two-year extension of the lead NAAQS attainment date if the Governor of a State requests it for a specified area of the State, and if the State's SIP provides a proper justification for the need for a two year extension (explained below).

On June 12, 1980, the Governor of Texas submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead. On October 4, 1983 (48 FR 45246). EPA approved the Texas lead SIP except for the part of the SIP concerning the Dallas and El Paso areas. On June 20, 1984, the Governor of Texas submitted to EPA the State's Lead SIP for El Paso County. On August 13, 1984 (49 FR 32184), EPA approved the Texas lead SIP and regulations for El Paso County, except for a disapproval of the compliance date for the installation of secondary hoods on copper converters (explained in the August 13 **Federal Register** notice), and except for a no-action on the lead NAAQS attainment date for El Paso County. ASARCO petitioned EPA to reconsider the compliance date disapproval, but the petition was denied and the compliance date was Federally promulgated to be August 13, 1987, on May 20, 1986 (51 FR 18440). On August 16, 1985 (50 FR 33069), the EPA proposed approval of the State's request for a two year extension of the lead NAAQS attainment date for a limited area around the primary lead smelter in El Paso County, Texas, and explained that the attainment date for the main part of El Paso County will be August 13, 1987. As a condition to full approval of this request, however, the State was required to consider production curtailments and similar alternative measures that might result in attainment within three years. In a September 11, 1985, letter to the EPA the Texas Air Control Board (TACB) submitted its follow up study plan outlining its intention to (1) reevaluate emission rates based on stack test results from the ASARCO facility to determine if attainment can be demonstrated through dispersion modeling, and (2) revise current SIP control requirements determined to be inadequate to provide an attainment demonstration. ASARCO conducted stack tests at the ASARCO lead smelter indicating that actual emissions were lower than those listed in the current SIP. On January 8, 1987, TACB submitted to EPA a draft proposed revision to the current SIP in which lower lead emission limits are required. Modeling was conducted by ASARCO's consultant, TRC, using the ASARCO facility's revised emission rates. The modeling results were submitted to the TACB on March 13, 1987, and to the EPA on May 15, 1987. However, EPA's review of the State's submittal raises two concerns. The first concern is the potential impact of emissions from the zinc plant on ambient lead levels. This is important since the zinc plant's shutdown is not enforceable. The second concern is an inconsistency in the options used in the modeling. Both concerns are addressed in today's notice. Analysis of the submitted modeling shows that attainment of the lead NAAQS will result at these lower proposed emission rates, and it is judged that resolving these two concerns will not adversely affect the attainment demonstration.

Todays notice calls for the adoption of lower revised emission limits at the El Paso facility. This notice also proposes final approval of the Lead SIP based upon demonstration of NAAQS attainment through modeling.

The TACB is parallel-processing this proposed revision for final submittal by the Governor to the EPA.

II. Summary of SIP Revision

The TACB submitted to the EPA a draft revision to the lead SIP for El Paso County in a letter dated January 8, 1987. In that letter, the TACB requested a revision of the lead emission limits for certain vent gas streams based on stack tests conducted by ASARCO indicating that lead emissions at the site were lower than the emissions documented in the current SIP. Previous technical analysis by the staff of the TACB has shown that lead emissions from the smelter operated by ASARCO and from the use of leaded gasoline in automobiles and other gasoline-powered vehicles account for most of the measured lead concentrations in El Paso. The smelter is the principal contributor to lead concentrations at the ambient monitors closest to the smelter where the highest concentrations have been measured as determined by modeling and by analyses of the monitor filters. Since the use of leaded gasoline is projected to continue to decline with the phase-out of older vehicles and since the smelter is the greatest contributor to the concentrations, the control strategy for attainment of the lead standard is based primarily on lead emission reductions at the ASARCO facility. TACB Regulation III, Subchapter B, Lead from Stationary Sources, Nonferrous Smelters in El Paso County, requires Reasonably Available Control Technology (RACT) measures for the smelting of lead, copper, and zinc to control lead emissions from fugitive sources and point sources (stacks). All point sources (stacks) at the smelter are equipped with RACT, including baghouses, electrostatic precipitators (ESP's), or ESP's followed by an acid plant.

Prior to September 15, 1985, ASARCO's El Paso Operations included copper, lead, and zinc primary smelting. On September 15, 1985, lead smelting was suspended temporarily and zinc smelting was suspended permanently due to poor economic market conditions.

An earlier letter from the Governor of Texas dated June 20, 1984, requested that a two-year extension of the lead NAAQS attainment date be granted by EPA for a limited area around the ASARCO smelter in El Paso, as allowed by section 110(e) of the CAA. The Governor's letter explained that, despite the application of state-of-the-art controls to all stacks and stringent controls on all significant fugitive sources at the ASARCO smelter, values slightly above the lead NAAQS were predicted by dispersion modeling for areas in Texas in the vicinity of the smelter when the smelter is operating at maximum production. The State provided justification for the request for the two-year extension in the attachments to the Governor's letter. The State explained that Texas Regulation III, as adopted by the TACB on February 17, 1984, requires the implementation of lead emission control measures at the ASARCO lead and copper smelter in El Paso. The Regulation III provisions ensure that: (A) All point sources (stacks) at ASARCO having the potential to emit significant quantities of lead have emission limitations requiring the use of RACT such as baghouses, electrostatic precipitators, or scrubbers, and (B) all significant sources of fugitive lead emission are controlled by RACT methods such as enclosure or local hooding of emission points with routing to a ventilation system, and paving, cleaning, wetting and/or chemical treatment of plant roads and open unpaved plant property. With these controls already required, the TACB explained that additional control studies were needed and that this would warrant an extension of the attainment date.

On August 16, 1985, the EPA announced its proposed approval of the attainment date extension. EPA noted that final approval of the extension request would require the State to consider production curtailments and similar alternative measures that might result in attainment within three years. The State had committed to studying the emission reduction methods necessary to demonstrate attainment of the lead standard. In a letter to the EPA dated September 11, 1985, TACB outlined a scheduled plan of emission reduction studies, investigating both additional controls and production curtailments. In a December 19, 1985, letter to the EPA, the TACB recommended that production curtailment not be further considered and that the modeling based on monitored stack emissions data be analyzed to demonstrate attainment of the standard.

ASARCO submitted an April 1986 draft report to the TACB entitled "Model Analysis of Revised Stack Emissions in Support of Revised State Implementation Plan for Lead in El Paso, Texas" evaluating monitored emissions from its primary smelter. In an August 5, 1986, letter to the TACB, ASARCO requested a revision to the lead SIP based on the emission limits documented in the report. After reviewing the draft report TACB identified discrepancies between ASARCO's modeling input and that used by the TACB staff in the latest SIP submittal. These discrepancies were addressed in a December 8, 1986, letter to ASARCO from its consultant, TRC Environmental Consultants, Inc. On May 15, 1987, the TACB submitted modeling analysis performed by TRC showing attainment of the NAAQS. The State of Texas now requests that the lower revised limits be incorporated in the SIP and that attainment of the NAAQS be considered demonstrated by modeling at those limits.

III. Review of SIP Revision

The TACB's draft SIP revision request leaves the existing Subchapter B of TACB Regulation III unaltered except for amending Table 113.71(1), Lead Emission Limits for Certain Vent Gas Streams at Nonferrous Smelting Operations. Emission limits stated in pounds of lead per hour are revised for the Lead and Copper Ore Conveying Baghouse, Lead Ore Unloading Building Baghouse, Lead and Copper Ore Bedding Building Baghouse (Total), Copper Ore Unloading Building Baghouse, and the Copper Converter Building Ventilation Baghouse stacks. These revised limits allow a total lead emission rate of 25.8 lb/hr for the vent gas streams addressed in Table 113.71(1). This results in a 26% reduction in emission limits from those allowed in the current TACB regulation. An increase in lead emission limits is requested for the Copper Ore Unloading Building Baghouse and Copper Converter Building Ventilation Baghouse stacks.

ASARCO contracted TRC to revise the ambient air quality impact analysis. Following the submittal and revision of a draft report, a final report was submitted. Emission rates which were consistent with the revised limits in Table 113.71(1) where used in the revised modeling. Both the Industrial Source Complex Model-Long Term (ISC–LT) and Valley-Bid were utilized. Fugitive emission rates modeled remained the same as in the previous SIP analysis. Stack emission rates were revised in the modeling analysis consistent with revisions in TACB regulation 113.71(1). Stack sampling also revealed differences in stack exit parameters from those used in the original SIP, and changes in the modeling parameters were made accordingly.

Air Quality Impact Analysis

The previous air quality analysis performed by the TACB showed that for most of El Paso County, Texas and for all affected areas in the State of New Mexico, which is across the Rio Grande

River immediately to the northwest, the lead National Ambient Air Quality Standard would be attained and maintained under the final Texas lead SIP of August 13, 1984. However, the previous modeling identified an area of potential monitored violation in an area conterminous to the smelter.

The lead air quality impact analysis which supports this demonstration of attainment and maintenance was separated into two evaluations based on the type of terrain. In other words, the model known as Valley was applied to assess ASARCO lead emission impact on those receptors in complex terrain areas, and the ISC–LT was used for evaluating the lead air quality impact in the other area surrounding the smelter.

In general there are four elements considered in the application of an air quality model: (1) Input of the sources of the emissions, (2) selection of a meteorological data set which best represents dispersion and transport in the area, (3) identification of receptors, and (4) choice of model options. The consideration of the source data in both the ISCLT and Valley model analyses was acceptable. The sources of emissions were adequately characterized. For example, sources in ISCLT were properly represented as point, area or volume. Source emissions were also adequately considered regarding the effects of aerodynamic downwash and deposition.

Long-term modeling often involves the use of statistically summarized meteorological data. In this case four years of meteorological data on a calendar quarter basis for the period 1976 through 1979 were applied. The development of the meteorological data base required special processing in the following respects: (1) Merge on-site 75 foot tower wind data measured at the ASARCO facility with cloud data from the El Paso Airport to develop stability class, (2) adjust wind speed with height, and (3) deal with missing and invalid data.

Two separate receptor networks were prepared for each of the models, ISCLT and Valley, considering terrain height. An evaluation was performed in order to ensure that the receptor networks were representative of the areas of expected maximum concentrations.

In regard to selecting model options, as in other aspects of air quality modeling, the guideline provides for some degree of standardization to ensure consistency while allowing the flexibility needed to assure the technically best analysis for each regulatory application. For the case of the El Paso lead SIP air quality analysis, the recommended regulatory version of the ISCLT model (UNAMAP 6) was not fully applied. The concern is primarily with the model option chosen for plume rise and consideration of stack tip downwash. The regulatory option was not selected. It is believed that this results in air quality estimates which do not ensure consistency and are not reflective of the technically best analysis.

Before finalizing this revision to the SIP, the ISCLT modeling will be reworked using the recommended regulatory option. (The Valley modeling is fully acceptable; an equivalent version of Valley was used including acceptable options such as bouyancy induced dispersion). It is judged to be very unlikely that the revised analysis will show results different from the current analysis which predicts that no concentration will exceed the lead standard in the ambient air around the smelter. Moreover it is expected that the revised analysis will provide air quality estimates which are close to those in the current modeling. The details of the modeled results are provided in the evaluation report.

Effects of Revision

This revision to TACB Regulation III and the EL Paso Lead SIP changes only the emission limits pertaining to stacks at the ASARCO facility. These changes result in a net reduction in the SIP's allowed lead emission limits. Modeling at these lower revised limits (predicts) shows attainment of the NAAQS for lead based on 16 consecutive quarters of meteorological data and maximum plant operating rates, and typical operating parameter conditions. Approval of this revision will demonstrate that the lead NAAQS around the ASARCO facility will be attained. As this is not a revision of the control technology, it will be in effect immediately upon approval by the TACB.

IV. EPA Reasons for Approval

EPA proposes to approve the State's request for an emission limit revision to the lead SIP for El Paso County by demonstration of attainment by modeling. EPA also announces proposed approval of the Texas Lead SIP for the limited area surrounding the ASARCO facility in El Paso County. Prior to final approval of this SIP revision however, the State is required to submit reworked ISCLT modeling incorporating the regulatory option. Also, the State must either provide modeling of the zinc plant emissions for EPA review or provide an enforceable mechanism to ensure the permanency of the zinc plant's shut down. Upon adoption of the lower emission limits by the State, EPA judges that attainment in the limited area around the ASARCO facility will be demonstrated, and that this demonstration will not be adversely affected by the impact of the zinc plant and the regulatory option modeling. The ASARCO El Paso facility has shown through stack testing analysis that its lead emissions from certain gas streams are lower than those limits documented in the current SIP. ASARCO is not committing to any additional controls, but is simply committing to lower emission limits. Reduction of lead emissions at the ASARCO facility and the Lead-phasedown-in-gasoline Federal program are the joint methods of attaining the NAAQS. The TACB has studied all sources of lead emissions in the ambient air in the El Paso area and has determined that control of lead emissions from the major nonferrous smelter is the only means available to reduce emissions adequately to attain the primary NAAQS for lead in El Paso County. Texas Regulation III requirements provide for the installation and implementation of all fugitive emission control equipment and work place practices determined to be feasible and reasonable for the smelter. All point sources (stacks) at the smelter are already equipped with RACT, including baghouses, electrostatic precipitators (ESP's), or ESP's followed by an acid plant. Baghouses currently represent state-of-the-art in particulate control equipment. The August 16, 1985 (50 FR 33069), proposed approval of the State's request for a two year extension to the attainment date for the lead NAAQS for the limited area in El Paso was to allow the TACB time to evaluate extra control measures. Rather than pursuing production curtailments, the TACB chose to tighten emission limits and model using these revised limits to demontrate attainment. As noted above, the EPA proposes to approve this tightening of lead emission limits. Before publishing final approval, the State will submit modeling to include the regulatory option in the ISCLT model. Also, since the permanency of the shutdown of the zinc plant is not currently enforceable, the State must either provide modeling of the zinc plant emissions for EPA evaluation or provide an enforceable mechanism to ensure the permanency of the zinc plant's shutdown status. EPA judges that the addition of the ambient levels contributed by the zinc plant and the regulatory option to the modeling previously submitted will still demonstrate attainment of the lead standard. This will result in a demonstration of attainment of the lead

NAAQS, and a proposal to complete the El Paso Lead SIP approval of August 13, 1984.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Texas and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

Proposed Action

EPA proposes to approve the State's request for a revision of the stack lead emission limits in the Texas Lead SIP for El Paso. Upon approval of these tightened emission limits by the State, attainment of the NAAQS for lead will be demonstrated by modeling for the limited area surrounding the ASARCO facility in El Paso County. This action proposes EPA's approval of the part of the Texas Lead SIP for El Paso that was not previously approved on August 13, 1984 (49 FR 32184). However, as indicated above, in order for EPA to fully approve this emission limit revision, the SIP revisions must have been fully adopted by Texas and submitted to EPA for incorporation in the SIP. Also, to fully approve the demonstration, the air quality modeling analysis must be reworked to address two concerns raised in today's notice.

The Regional Administrator hereby issues this notice setting forth EPA's proposed approval of the request for a revision of the lead emission limits for the vent gas stacks in the Texas Lead SIP for El Paso, announces EPA's proposed approval of the portion of the Texas Lead SIP for El Paso that was not previously approved on August 13, 1984 (49 FR 32184), and advises the public that interested persons may participate by submitting written comments to the Region 6 office. Comments received on or before the date listed in the **DATES** section will be considered. Comments received will be available for public inspection at the EPA Region 6 Office listed in the **ADDRESSES** section of this notice.

The Administrator's final decision to approve or disapprove the request will be based on the comments received, and if the request meets the requirements of section 110(a) of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entitites. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, and Intergovernmental Relations.

Authority: 42 U.S.C. 7401–7642.

Date: June 29, 1987.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 87–22289 Filed 9–25–87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 584

[Docket No. 83–05; Notice 4]

Splash and Spray Suppression Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; notice of public meetings.

SUMMARY: The Surface Transportation Assistance Act of 1982 declares that visibility on wet roads should be improved by using practicable and reliable means for reducing splash and spray generated by truck tractors, trailers, and semitrailers. To carry out this directive, the statute specified that the Department of Transportation shall establish:

(1) Minimum performance standards for spray suppression devices to be installed on truck tractors, trailers, and semitrailers;

(2) Installation standards for spray suppression devices to be installed on all new truck tractors, trailers and semitrailers used on the Interstate system beginning one year after the standards are established under paragraph (1); and

(3) Installation standards for spray suppression devices to be installed on all truck tractors, trailers, and semitrailers in service on the Interstate system beginning four years after the standards are established under paragraph (1).

To carry out the first two provisions listed above, NHTSA published a proposal in the April 12, 1985 issue of the **Federal Register**. The agency tentatively concluded in that proposal that the only splash and spray suppression devices that might be practicable and reliable at that time were spray suppressant flaps and side skirts. Accordingly, NHTSA proposed that spray suppressant flaps achieve a certain level of spray reduction, as measured in a spray tunnel, and that new truck tractors, trailers, and semitrailers have spray suppressant flaps and side skirts installed at specified positions beginning one year after the final rule was published. The agency noted in that proposal, however, its misgivings about proceeding with the rulemaking at that time. Both the testing conducted before publication of the agency's proposal and subsequent research and testing have shown that installation of the proposed spray suppressant flaps and side skirts on truck tractors, trailers, and semitrailers would *not* reduce spray sufficiently so that drivers on wet roads would experience satisfactory visibility under normal wet weather conditions.

The Highway Safety Act of 1987 amended the Surface Transportation Assistance Act. The law now provides that DOT must establish final minimum standards for splash and spray suppression devices not later than April 2, 1988, *unless* DOT has determined that there is no available technology that can *significantly* reduce splash and spray from truck tractors, semitrailers, and trailers and can *significantly* improve visibility of drivers. Any determinations of significant reductions in splash and spray and significant visibility improvements must be based on testing on highways, at test facilities, and in laboratories to take into account possible wind and rain conditions.

This notice seeks public comment on the agency's analysis of currently available data indicating that neither the proposed devices nor any alternative devices can significantly reduce splash and spray or significantly improve visibility for drivers when taking into account possible wind and rain conditions. Additionally, this notice seeks any data, in addition to those

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which have been analyzed by the agency, that any member of the public believes demonstrate that some splash and spray suppression device significantly reduces splash and spray and significantly improves driver visibility. These data should include the relevant test data for the highways, test facilities, and laboratories where the device has been tested and explain how the testing accounted for possible wind and rain conditions.

DATES: *Public Meeting—Deadline for Arranging Oral Presentation.* Persons wishing to make oral presentations at the public meetings should contact Mr. Kenneth Rutland (whose address and telephone number are provided under the heading "For Further Information Contact") by October 16, 1987, so that any necessary time limitations and special equipment, such as projectors, can be discussed and final arrangements can be made.

Public Meeting—Deadline for Submitting Outline of Oral Presentation. A general outline of each planned oral presentation should be submitted to Mr. Rutland by October 23, 1987.

Public Meeting(s): Public meeting(s) to receive oral comments will be held on November 13, 1987, in Washington, DC, at 9:00 am and on November 9, 1987, in Columbus, Ohio at 9:00 am.

Public Comments: All written comments on this notice must be received by NHTSA on or before November 27, 1987.

Proposed Effective Date: If the agency determines that some splash and spray suppression device has been shown to significantly reduce splash and spray and significantly improve driver visibility, it would require, without further request for comments, that such devices be installed on new vehicles manufactured on or after April 2, 1989.

ADDRESSES: *Public Meeting(s):* Public meetings will be held at the following locations: Federal Aviation Administration Auditorium, 800 Independence Avenue, SW., Washington, DC 20591.

Holiday Inn, Columbus Airport, 750 Stelzer/James Road, Columbus, Ohio 43219.

These facilities are accessible to the handicapped.

Public Comments: Written comments on this notice must refer to Docket No. 83–05; Notice 4, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Rutland, Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–5275).

SUPPLEMENTARY INFORMATION:

1. Statutory Background for this Rulemaking

As originally enacted, section 414 of the Surface Transportation Assistance Act of 1982, (49 U.S.C. 2314), read as follows:

(a) The Congress declares that visibility on wet roadways on the Interstate system should be improved by reducing, by a practicable and reliable means, splash and spray from truck tractors, semitrailers, and trailers.

(b) The Secretary shall by regulation—

(1) Within one year of the date of the enactment of this title, establish minimum standards with respect to the performance and installation of splash and spray supression devices for use on truck tractors, semitrailers, and trailers.

(2) Within one year after the date on which the standards are established under paragraph (1) of this subsection, require that all new truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection; and

(3) Within four years after the date on which the standards are established under paragraph (1) of this subsection, require that all truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection.

* * * * *

In response to this statutory mandate, NHTSA reviewed the research conducted since 1960 on the problem of truck splash and spray, and initiated some additional research of its own. After the review of past research was completed, but before the additional agency research efforts were finished, NHTSA published a notice of proposed rulemaking on April 12, 1985; 50 FR 14632.

That notice stated, "The only devices which current research indicates might be both practicable and reliable for use on existing vehicle designs are spray suppressant flaps and side skirts." 50 FR 4634. Spray suppressant flaps are flaps that hang down behind the tires and are designed to absorb some of the energy in the oncoming stream of water from the tires, contain and channel most of the water out of the area where spray could be formed, or otherwise reduce the formation of spray clouds behind those tires. Side skirts are flat surfaces that hang down from the side of a vehicle above and round the tires and are designed to prevent the water coming off the top of the wheel wells and tires from forming into spray clouds alongside the wheels. Other devices that had been considered during the research to reduce splash and spray included conventional fenders and mudflaps, a DOT spray protector, and air and water deflectors. However, none of these alternative splash and spray suppression devices had been demonstrated to be an effective means of improving visibility with current truck designs, as was discussed in the proposal.

Section 414(b) of the Surface Transportation Assistance Act of 1982 was amended on April 2, 1987, when Congress enacted the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17). Title II of this Act is referred to as The Highway Safety Act of 1987, and section 205 in Title II of this Act amended section 414(b) to read as follows:

(b) The Secretary shall by regulation—

(1) Within one year of the date of the enactment of the Highway Safety Act of 1987, establish final minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, and trailers unless the Secretary has determined that there is no available technology which—

(A) Can significantly reduce splash and spray from truck tractors, semitrailers, and trailers, and

(B) Can significantly improve visibility of drivers, as demonstrated during testing on highways, at test facilities, and in laboratories to take into account possible wind and rain conditions.

(2) Within one year after the date on which the standards are established under paragraph (1) of the subsection, require that all truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection; and

(3) Within four years after the date on which the standards are established under paragraph (1) of the subsection, require that all new truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards

established pursuant to paragraph (1) of this subsection.

* * * * *

NHTSA interprets this statutory change as follows. This agency is required to issue final minimum standards for the performance and installation of splash and spray suppression devices by April 2, 1988, *unless* the agency determines that no available technology has been demonstrated during testing on highways, at test facilities, and in laboratories, which testing accounts for possible wind and rain conditions, to *significantly* reduce splash and spray from trucks and *significantly* improve driver visibility as a result of reducing splash and spray. If no available technology can be demonstrated to satisfy these statutory criteria by April 2, 1988, the agency would determine that no available technology has been demonstrated to satisfy the statutory criteria, and terminate this rulemaking action. If the agency were to make such a determination, its statutory obligations under section 414 would be completed. Any subsequent rulemaking actions with respect to splash and spray suppression devices would have to be based on authority granted to the agency under other statutes, most notably the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*). This notice seeks public comment on the agency analyses to date and seeks any data purporting to demonstrate that any available splash and spray suppression device will significantly reduce splash and spray from trucks and significantly enhance driver visibility.

2. Tentative Conclusions from Analysis of Data for Spray Suppressant Flaps and Side Skirts

As described above, the 1985 proposal focused exclusively on spray suppressant flaps and side skirts as the potentially practicable and reliable devices to be required on trucks to improve visibility on wet roads. It is important, however, to emphasize that these devices were only *potentially* practicable and reliable means of improving visibility. The prior research and the agency's new research had reached somewhat conflicting conclusions about how consistently effective the devices were at improving visibility.

The first major research effort examining the proposed devices was sponsored by the Federal Highway Administration in 1977 at Fort Stockton, Texas. This study concluded that a combination of spray suppressant flaps and side skirts was the most effective of the tested devices at suppressing spray. NHTSA's own testing of spray suppressant flaps and side skirts in 1983 raised some significant questions about the ability of these devices to reduce spray sufficiently so that the difference would be perceptible to the unaided eye. Testing sponsored by the Motor Vehicle Manufacturers Association (MVMA) in 1984 concluded that trucks fitted with a combination of spray reduction devices, including devices not proposed to be required, can reduce splash and spray by as much as 50 percent over trucks that use the standard hard rubber flaps typically now in use. The MVMA study cautioned that test results could not be repeated consistently, that no specific combination of devices was found best for all vehicles, and that these devices can decrease, but not eliminate splash and spray. After examining these research results, NHTSA stated, "This mixed pattern of research results leaves the agency with misgivings about the appropriateness of proceeding with rulemaking at this time." 50 FR 14634.

Additional and significant MVMA test data were received after the comment closing date for the notice of proposed rulemaking, as were two other comments containing field test data concerning the effectiveness of the proposed devices. Since NHTSA believed that the data in the late-filed comments could significantly affect its analysis in this rulemaking, the agency reopened the comment period to invite the public to analyze and comment on these data. 51 FR 5383; February 13, 1986. Seventeen more comments on the splash and spray rulemaking were submitted during this reopened comment period.

After a thorough review of the available data, NHTSA has tentatively concluded that the proposed spray suppressant flaps and side skirts would *not* significantly reduce truck splash and spray and would *not* significantly improve driver visibility, for several reasons. First, both the NHTSA tests and the two sets of MVMA tests indicate that the proposed devices only marginally reduce the amount of spray produced by the vehicle. That is, the laser transmissometers used to measure the density of the spray clouds produced by the tractor-trailer combinations showed that those spray clouds were generally less dense when the vehicles were equipped with the proposed devices than when the vehicles were equipped with conventional mudflaps.

This finding, by itself, does not establish that the proposed devices could significantly improve driver visibility, however. Transmissometer-measured increases in the transmission of light through spray clouds do not directly translate into increases in visibility, i.e., the ability of the unaided eye of the typical motorist to see through those clouds. Just as a photometer can measure slight increases in the amount of light in an essentially dark room that are insufficient to improve a person's ability to see objects within the room, so a transmissometer can detect reductions in the density of a spray cloud that are insufficient to improve the ability of motorists to see the road ahead. The recent statutory amendments make clear that the law is intended to require splash and spray suppression devices *only* if those devices can be shown to significantly reduce splash and spray from large trucks so that motorists can see the road and traffic ahead significantly better than is true at present.

Even with the measured reductions in spray cloud density, the spray clouds that resulted from vehicles equipped with the proposed devices were still too dense to allow acceptable visibility. The available data on this topic indicate that 40 percent or greater light transmission, as measured by the laser transmissiometers, is necessary for observers to rate visibility as satisfactory. On the upwind side of the test trucks in the most recently completed MNMA study, the 40 percent transmission level was met or exceeded in 21 of 48 test runs by trucks equipped with convential mudflaps. When those trucks were equipped with flaps measured as achieving a 75 percent visibility rating in the spray tunnel with side skirts at the positions NHTSA proposed for one year after publications of a final rule, the 40 percent level was met or exceeded in 26 of 48 test runs. When equipped with the 75 percent flaps and side skirts at all positions proposed to be required four years after publication of the final rule, the 40 percent level was met or exceeded in 23 of 48 test runs.

The data for the downwind side of the test trucks were much simpler. Regardless of whether those trucks were equipped with conventional mudflaps, the one year devices, or the four year devices, not one test run ever met or exceeded the level needed for satisfactory visibility.

Several points should be noted in connection with these test results. First, the upwind side of trucks does not present nearly the same degree of visibility problems as the downwind side does. Satisfactory visibility was present more than one-third of the time

on the upwind side of the test trucks without using any spray suppression devices, while it was never present on the downwind side. Second, the proposed devices would offer marginal visibility improvements on the less problematic upwind side of trucks. Using the 40 percent level for satisfactory visibility, drivers would experience satisfactory visibility about 44 percent of the time without any additional spray suppression devices, 54 percent of the time with the proposed one year devices, and 48 percent of the time with the proposed four year devices. Third, the proposed devices would never result in satisfactory visibility on the downwind side of the trucks. Thus, the net effect of requiring these devices would be to offer motorists only marginal visibility improvements on the upwind side of the trucks, while never resulting in satisfactory visibility on the downwind side of trucks.

Based on these results, NHTSA does not believe it could determine that the proposed devices would significantly reduce splash and spray and significantly improve driver visibility even on test tracks under conditions designed to limit the impacts of the environmental factors that influence the effectiveness of the proposed devices. However, NHTSA's statutory mandate is not so limited. Instead, the agency is required to determine whether any devices will significantly reduce splash and spray and significantly improve driver visibility, as demonstrated during testing on highways, at test facilities, and in laboratories *to take into account possible wind and rain conditions.* When these environmental conditions are taken into account, the potential effectiveness of the proposed devices is further reduced.

The proposed spray suppressant flaps and skirts appear to have their potential effectiveness sharply diminished in the presence of cross winds. Both NHTSA's on testing and the testing sponsored by MVMA showed that cross winds significantly reduce the effectiveness of the proposed devices. According to data compiled by the National Weather Service, the mean wind velocity for the vast majority of the United States is 8 mph or greater. When winds of that or greater velocity are present at cross winds for vehicles equipped with the proposed devices, the already marginal effectiveness of the proposed devices is further reduced.

Additionally, the data show that the amount of spray generated by a vehicle is significantly greater when the vehicle is driven at speeds in excess of 55 mph, as compared with the spray generated with the vehicle is driven at 55 mph. When tractor-trailers are driven at speeds above 55 mph, the data show that the spray generated is increased to such a level that none of the proposed devices can reduce the spray sufficiently for drivers on the Interstate system to experience satisfactory visibility. When these real would reductions of potential effectiveness for the proposed devices are considered along with the only marginal effectiveness shown by the devices under controlled test conditions, the agency must tentatively conclude that the proposed devices would *not* significantly reduce splash and spray and significantly improve driver visibility under the conditions set forth in the law.

The only data received by the agency purporting to show that the proposed devices would result in visibility improvements were submitted by Schlegel, one of the manufacturers of the proposed devices. These data consisted of visual observations of truck spray in the State of Oregon. In this study, Oregon State police and weighmasters filled out rating forms to assess visibility on wet roads while passing marked trucks, almost all of which were equippped with spray suppression devices. The observer was then instructed to find an unmarked tractor-trailer and perform a similar rating. The study collected 868 pairs of ratings between March 1985 and March 1986.

After examining these data, NHTSA does not believe that the Oregon study shows that the proposed devices would significantly improve driver visibility on wet roads. On the contrary, NHTSA believes these Oregon data support the agency's conclusions that the proposed devices have a marginal effect on the amount of spray produced by tractor-trailers, and that enviromental and operating conditions have a very large effect on visibility.

This agency belief is based on the following observations about the Oregon study:

1. The test results were dominated by the presence of trucks equipped with aeroaids, devices that were not proposed to be required. Almost 84 percent of the marked trucks were equipped with aeroaids. The data from the 1985 MVMA testing and the agency analysis of that data indicate that aeroaids alone may improve visibility more than the proposed devices. In the Oregon study, it is impossible to segregate the extent to which the observed visibility improvements were attributable to the proposed devices from the improvements resulting solely from aeroaids.

2. The treated trucks were typically driven at lower speeds than the untreated trucks. Only 6 percent of the treated trucks were travelling above 55 mph, while 22 percent of the untreated trucks exceeded 55 mph. This is significant, because both the 1978 FHWA testing at Fort Stockton and the 1984 MVMA testing have shown that spray generation increases as vehicle speed increases. The Oregon study itself showed that observers rated the spray much higher as vehicle speed rose. Therefore, it seems very likely that some of the observed visibility improvements were a result of the untreated trucks travelling at a higher speed than the treated trucks, and not the effectiveness of the proposed devices at reducing spray.

3. The Oregon study's analysis of visibility improvements for trucks equipped with the proposed devices and aeroaids shows relatively small improvements. The study asked observers to use a visibility rating scale from 1 ("very good") to 8 ("very poor"). The observers made their ratings for each test in two positions relative to the measured vehicles. One rating was before passing, when the observers were clear of all spray, and the second visibility rating was made while passing the measured vehicle. The "visibility while passing" rating was subtracted from the "visibility before passing" rating to calculate the difference in these ratings for both treated and untreated vehicles. The mean visibility difference ratings of the various spray suppressant treatments were calculated, and the highest mean visibility difference for either treated or untreated trucks was 0.27 points. Considering that an 8 point system was used, a difference of well under 0.5 points indicates that the proposed devices have a very minor impact on visibility. If anything, the agency believes this finding is consistent with the other data showing that the proposed devices can, at best, marginally reduce the amount of spray generated by tractor-trailers.

4. Even assuming that the study were controlled for significant variables, and NHTSA does not believe it was, as explained in points 1 and 2 above, there is no indication that the difference would result in any meaningful visibility improvements for drivers in normal wet weather conditions. For instance, if the baseline visibility were rated as "adequate" or better, an increase of 0.27 points would not enhance the visibility of drivers on the wet roads. On the other hand, if the baseline visibility were

rated as less than "adequate", an increase of 0.27 points still leaves drivers with less than adequate visibility.

5. The multiple regression evaluations performed by the Oregon study's author demonstrate little correlation between spray suppression treatment and visibility ratings. The author himself stated that the correlation was "quite low ($r = 0.12$), although statistically significant." Further, the author's multiple regression equations based on spray ratings showed that the amount of rainfall had a much greater effect on the spray ratings (explaining 29 percent of the variation) than did the spray suppressant devices (explaining 14 percent of the variation).

Accordingly, the agency believes that the results from the Oregon tests are generally consistent with the results of the MVMA tests. The proposed spray suppression devices might marginally reduce the amount of spray generated in some instances, but they do not do so consistently nor do they *significantly* reduce the amount of splash and spray. Moreover, both studies indicate that the effectiveness of the proposed devices is extremely sensitive to vehicle operating conditions. The MVMA study identified vehicle speed and cross winds as two important factors that greatly reduce the effectiveness of the proposed devices. The Oregon study adds the amount of rainfall to that list of factors.

Therefore, NHTSA has tentatively determined that the proposed devices would not significantly reduce the amount of splash and spray generated by large trucks and would not significantly improve driver visibility, under the conditions set forth in the law. Public comment is specifically requested on the agency's analysis of the available data and on this tentative determination. All comments will be fully considered before the agency makes its final statutory determination with respect to the proposed devices.

NHTSA has prepared an addendum to the preliminary regulatory evaluation for this proposed rulemaking action. This addendum summarizes the agency's analysis of the available data on splash and spray suppression devices. Copies of this addendum have been placed in Docket No. 83–05, Notice 4. Any interested person may obtain a copy of this addendum by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

3. Request for Data on Splash and Spray Suppression Devices Other than the Proposed Devices

The agency has focused its efforts almost exclusively on evaluating the potential effectiveness of the proposed spray suppressant flaps and side skirts, since those were the devices that would have been required if the notice of proposed rulemaking were adopted as a final rule. However, the amended language in section 414 requires the agency to determine that no available technology has been demonstrated during testing on highways, at test facilities, and in laboratories, which testing takes into account possible wind and rain conditions, to *significantly* reduce splash and spray and *significantly* improve driver visibility.

The data available to the agency at this time indicate that no splash and spray suppression device other than the proposed devices has been demonstrated during testing to significantly reduce splash and spray and significantly improve driver visibility. The alternative splash and spray suppression devices about which the agency has the most testing information are aerodynamic devices called "aeroaids". When attached to a truck tractor that is pulling a semitrailer called a "van" and when there is little or no crosswind present, these devices have been found to improve visibility to a degree that would generally be helpful to motorists. However, the available test data for aeroaids indicate that the devices offer no visibility improvements when transverse perpendicular crosswinds reach speeds of only 8 mph. Additionally, aeroaids have been tested only with van semitrailers. It appears from engineering analysis applying principles of aerodynamics that aeroaids would not provide any visibility improvements if the truck tractors were coupled with non-van trailers or semitrailers. Given these data, and considering the full range of vehicles specified in section 414 of the Surface Transportation Act, as amended, as well as the full range of weather conditions, NHTSA could not now determine that aeroaids have been demonstrated to significantly reduce splash and spray and significantly improve visibility.

As noted above, however, the agency has not focused its efforts on examining the potential visibility improvements available from aeroaids. With respect to all other technologies available for reducing splash and spray, the agency has very little test data. To allow the agency to fully consider all data that is currently available, this notice specifically invites any persons that have test data for aeroaids or any other currently available splash and spray suppression technology to submit such data to the agency. It is important that these data be provided as soon as possible, to allow the agency to comply with the one year deadline in the law for making a determination whether any available technology has been demonstrated to significantly reduce splash and spray and significantly improve driver visibility. All data that are received during this comment period will be analyzed and evaluated in connection with this comment period, the agency will use the data that are currently available as the basis for its determination.

4. Public Meetings

Public meetings will be held on November 13, 1987, in Washington, DC, and on November 9, 1987, in Columbus, Ohio, at the times and addresses specified near the beginning of this notice. The agency invites interested members of the public to participate in these meetings and to comment on all of the issues raised in this notice.

No opportunity will be afforded the public to directly question participants in the meetings. However, persons desiring that questions be addressed to a particular participant may submit those questions to the presiding panel of Department officials for its consideration. The members of the panel may address those questions as well as questions of their own to any person making an oral presentation at the meetings.

Persons wishing to make oral presentations at the public meetings should contact Mr. Ken Rutland (whose address and telephone number are provided near the beginning of this notice) by October 16, 1987, so that any necessary time limitations and special equipment, such as projectors, can be discussed and final arrangements can be made. A general outline of each planned oral presentation should be submitted to Mr. Rutland by October 23, 1987. Persons whose presentations will include slides, motion pictures, or other visual aids should submit copies of the visual aids for the record at the meeting. Oral presentations will be limited to between five and 15 minutes, depending on the number of persons desiring to make presentations. If the number of requests for oral presentations exceeds the available time, the agency may ask prospective witnesses having similar views or belonging to similar types of groups or occupations to combine their presentations.

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Persons making oral presentations are requested but not required to submit 25 written copies of the full text of their presentation to Mr. Rutland, no later than the day before the meetings begin. If time permits, persons who have not requested time in advance, but would like to make a statement, will be afforded an opportunity to do so at the end of each day's schedule. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of the public meetings will be prepared and also placed in the NHTSA docket as soon as possible after the meetings. A schedule of the persons making oral presentations at the meeting will be available at the designated meeting area at the beginning of each public meeting.

Written Comments

Interested persons are invited to submit comments on this request. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before an after the date. To the extent possible, comments filed after the closing date will also be considered. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: September 23, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-22312 Filed 9-23-87; 4:48 pm]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 52, No. 187

Monday, September 28, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Resumption of Tobacco Estimates by Class and Type

The National Agricultural Statistics Service (NASS) is publishing this notice to announce plans to resume the publication of tobacco acreage and production estimates by class and type in all forecast months.

Since March of 1982, when NASS announced a number of program reductions, estimates for all classes and types have only been shown in the August *Crop Production* report and end-of-year *Crop Production* annual summary, usually released about mid-January.

The recent program change means that class and type estimates will now be shown in the February *Prospective Plantings* and July *Crop Production* acreage reports and all other monthly *Crop Production* reports normally containing tobacco forecasts as well as the end-of-year *Crop Production* annual summary. The first class and type estimates, under the new program, will be published in the October 8, 1987 *Crop Production* report.

Questions and comments on these changes to the tobacco estimating program should be directed to John Witzig, Chief, Crops Branch, NASS/USDA, Room 5175–S, Washington, DC 20250–2000; telephone (202) 447–2127.

Dated: September 21, 1987.

Charles E. Caudill,

Administrator.

[FR Doc. 87–22330 Filed 9–25–87; 8:45 am]

BILLING CODE 3410–20–M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: December 4, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202) 647–2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency. Each individual will serve a one year renewable term beginning on the effective date of this notice. Specific Performance Review Boards will be established as needed from the register.

These appointments supercede those in the announcement published at 51 FR 43402 on December 2, 1986.

Name and Title

David Emery—Deputy Director
Manfred Eimer—Assistant Director, Verification and Intelligence Bureau
Lynn Hansen—Assistant Director, Multilateral Affairs Bureau
Michael Gukin—Counselor
William Montgomery—Administrative Director
Thomas Graham, Jr.—General Counsel
Mary E. Hoinkes—Deputy General Counsel
Louis Nozenso—Deputy Assistant Director, Strategic Programs Bureau
Norman Wulf—Deputy Assistant Director, Nuclear and Weapons Control Bureau
William Staples—Executive Secretary
R. Lucas Fischer—Division Chief, Strategic Affairs Division, Strategic Affairs Division, Strategic Programs Bureau
Alfred Lieberman—Division Chief, Operations and Analysis Division, Verification and Intelligence Bureau
Joerg Menzel—Division Chief, Nuclear Safeguards and Technology Division, Nuclear and Weapons Control Bureau
Stanley Riveles—Division Chief, Theatre Affairs Division, Strategic Programs Bureau
Michael Rosenthal—Division Chief, International Nuclear Affairs Division, Nuclear and Weapons Control Bureau
Owen J. Sheaks—Division Chief, Science & Technological Division, Multilateral Affairs Bureau
Robert Summers—Division Chief, Verification Division, Verification and Intelligence Bureau

William J. Montgomery,

Administrative Director.

[FR Doc. 87–22278 Filed 9–25–87; 8:45 am]

BILLING CODE 5820–32–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 363]

Resolution and Order Approving the Application of the Economic Development Council for the Peoria Area, for a Special-Purpose Subzone for the Chrysler Plant in Belvidere, IL, Adjacent to the Chicago Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the EDC, Inc., the Economic Development Council for the Peoria Area, grantee of FTZ 114, filed with the Foreign-Trade Zones Board (the Board) on October 21, 1985, requesting special-purpose subzone status for the automobile manufacturing plant of Chrysler Corporation in Belvidere, Illinois, adjacent to the Chicago Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

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Grant of Authority to Establish a Foreign-Trade Subzone in Belvidere, IL, Adjacent to the Chicago Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The EDC, Inc., the Economic Development Council for the Peoria Area, grantee of Foreign-Trade Zone 114, has made application (filed October 21, 1985, Docket No. 39–85, 50 FR 45446) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing plant of Chrysler Corporation in Belvidere, Illinois, adjacent to the Chicago Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed October 21, 1985, the board hereby authorizes the establishment of a subzone at the Chrylser plant in Belvidere, Illinois, designated on the records of the Board as Foreign-Trade Subzone No. 114B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant if further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 18th day of September 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–22325 Filed 9–25–87; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[Application #84–A0024]

Export Trade Certificate of Review; Gerhardt's Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued a second amendment to the export trade certificate of review of Gerhardt's Inc. granted on September 20, 1984 (49 FR 37821, September 26, 1984 and 49 FR 38964, October 2, 1984). The first amendment was granted on August 30, 1985, effective as of July 15, 1985 (50 FR 36126, September 5, 1985). The second amendment consists of: (1) A change of the certificate holder from Gerhardt's, Inc. to Gerhardt Holding Company, Inc. (GHC), due to an organizational restructuring of Gerhardt's, Inc.; (2) the addition of the original certificate holder Gerhardt's, Inc. and two other subsidiaries of GHC as members to the certificate, and changes in the description of some original members to the certificate; (3) the addition of "taking title to goods" to "Export-Related Services;" (4) the change of one product listing under "Products" from "electrical governors" to "electronic governors;" and (5) the addition of the establishment of the resale price of Products in Export Trade under "Export Trade Activities and Methods of Operation." This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade

1. Products

Diesel fuel injection systems; hydraulic, mechanical, pneumatic and electronic governors; automatic lubrication systems; turbochargers; starters, generators and alternators; industrial ignition systems; oilfield engines and parts; and engine accessories, instruments and test devices.

2. Export-Related Services

To facilitate Export Trade in the Products, GHC and its Members intend to provide advice concerning, and/or to arrange for financing, including letters of credit, insurance, shipping, utilization of brokers, customer requirements, including bidding requirements, as well as, to provide engineering, technical and retrofitting services and training and marketing advice concerning the

Products in connection with export transactions, and to take title to Products in Export Trade.

Export Markets. The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members. Gerhardt's, Inc. (Louisiana); Gerhardt's, Inc. (Texas); Gerhardt's, Inc./New Mexico d/b/a/ Gerhardt's, Inc. (Texas); Gerhardt's International, Inc. (U.S. Virgin Islands); Gerhardt's, Inc. (California); and Gerhardt, S.A. de C.V. (Mexico).

Export Trade Activities and Methods of Operation. GHC and its Members may:

1. Enter into nonexclusive agreements with individual suppliers to act as an Export Intermediary for Products in Export Trade.

2. Enter into agreements with individual suppliers of Products wherein:

a. GHC or any Member may agree to serve as the exclusive Export Intermediary for Products in any Export Market and, in addition, may agree not to represent any competitors of such supplier for Products in any Export Market; and/or

b. The supplier may agree not to sell, directly or indirectly through any other intermediary, into the Export Markets in which GHC or any Member exclusively represents the supplier as an Export Intermediary.

3. Enter into nonexclusive agreements with individual entities in which those entities agree to act as Export Intermediaries for GHC and its Members for Products in Export Trade.

4. Enter into agreements with individual Export Intermediaries whereby:

a. GHC and its Members may agree to deal in Products in Export Markets exclusively through such Export Intermediaries; and/or

b. Such Export Intermediaries may agree not to represent GHC's or its Members' competitors in the sale of Products in any Export Markets or not to buy Products from GHC's or its Members; competitors for resale in any Export Markets.

5. In connection with the sale of Products to Export Markets, purchase Products from suppliers at prices lower than those charged by such suppliers to other purchasers of the Products.

6. Refuse to sell Products to purchasers located in Export Markets.

7. Establish the resale price of Products in Export Trade.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: September 21, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-22311 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-DR-M

[A-588-706]

Initiation of Antidumping Duty Investigation; Butadiene/Acrylonitrile Copolymer Synthetic Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of butadiene/acrylonitrile copolymer synthetic rubber (nitrile rubber) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before October 15, 1987, and we will make ours on or before February 8, 1988.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On September 1, 1987, we received a petition filed in proper form by Uniroyal Chemical Company, Inc., on behalf of the U.S. industry producing nitrile rubber. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of nitrile rubber from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner's estimate of United States price was based on statements by its customers that also purchase Japanese nitrile rubber. Petitioner made adjustments for ocean freight, U.S. inland freight, commissions and general expenses, and interest for inventory costs in the U.S.

Petitioner based the foreign market value on information obtained in Japan listing quoted prices for medium acrylonitrile grade rubber. Petitioner made adjustments for differences in quantity, overhead and indirect expenses, freight, and interest cost.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins ranging from 39 to 240 percent.

Petitioner also alleges that "critical circumstances" exist with respect to imports of nitrile rubber from Japan.

After analysis of petitioner's allegation and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on nitrile rubber from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of nitrile rubber from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 8, 1988.

Scope of Investigation

The product covered in this investigation is nitrile rubber, not containing fillers, pigments, or rubber-processing chemicals, provided for in item 446.15 of the *Tariff Schedules of the United States* (TSUS) and currently classifiable under Harmonized System (HS) item number 4002.59.00. For purposes of this investigation, nitrile rubber refers to the synthetic rubber

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that is made from the polymerization of butadiene and acrylonitrile and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product.

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized system by January 1, 1988. In view of this, we will be providing both the appropriate TSUS item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Additionally, all customs offices have reference copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by October 15, 1987, whether there is a reasonable indication that imports on nitrile rubber from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

September 21, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–22320 Filed 9–25–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–030]

Final Results of Antidumping Duty Administrative Review; Large Power Transformers From France

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 29, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from France. We have not changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 28323) the preliminary results of its administrative review of the antidumping finding on large power tansformers from France (37 FR 11772, June 14, 1972). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of large power transformers ("transformers"); that is, all types of transformers rated 10,000 kVA (kilovolt/amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under Harmonized System item numbers 8504.22.00, 8504.23.00, 8504.34.00, 8504.40.00, 8504.50.00, and 8505.50.00.

The review covers one exporter of French large power transformers to the United States, Alsthom-Atlantique ("Alsthom"), and the period June 1, 1983 through May 31, 1986.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. We determine to assess antidumping duties for merchandise manufactured by Alsthom according to these results:

Period	Margin (percent)
6/1/83–5/31/84	1.82 [1]
6/1/84–5/31/86	72.85

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on Alsthom directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 72.85 percent shall be required on shipments of large power transformers manufactured by Alsthom.

For any future shipments of this merchandise from a new exporter or manufacturer not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1986 and who is unrelated to Alsthom or any other previously reviewed firm, a cash deposit of 1.82 percent shall be required on shipments of large power transformers from France.These deposit requirements are effective for all shipments of French large power transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: September 18, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-22321 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-404]

Final Results of Antidumping Duty Administrative Review; Neoprene Laminate From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 16, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on fabric expanded neoprene laminate from Japan. The review covers two manufacturers/exporters of this merchandise to the United States and the period March 15, 1985 through June 30, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, Rubatex Corporation, and one respondent, Heiwa Rubber Industries. Based on our analysis of comments received and correction of certain clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Anne S. D'Alauro or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 1987, the Department of Commerce published in the **Federal Register** (52 FR 26712) the preliminary results of its administrative review of the antidumping duty order on fabric expanded neoprene laminate ("FENL") from Japan. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

Scope of the Review

Imports covered by the review are shipments of FENL currently provided for in items 355.81, 355.82, 350.50 and 359.60 of the Tariff Schedules of the United States Annotated. These products are also currently classifiable under item numbers 5906.91.20, 5906.99.20, 5911.10.20, 5906.91.25, 5906.99.25 and 5602.10.00 of the Harmonized system.

The review covers two manufacturers/exporters of Japanese FENL, and the period March 15, 1985 through June 30, 1986.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and one respondent.

Petitioner's Comments

Comment 1: Petitioner claims that, for the two shipments to the United States for which Heiwa had not received payment, the Department should assign a zero purchase price rather than consider the sales to represent bad debt. Petitioner argues that, since the respondent continued to sell to this customer, these sales were the equivalent of free goods.

Department's position: The failure of a customer to pay its bills is considered to constitute bad debt. It is the Department's policy to consider bad debt as an indirect selling expense. As the basis of comparison for this review is purchase price, there is no authority to adjust for indirect selling expenses.

We do not regard the fact that the exporter continued to sell to the non-paying buyer as constituting acceptance of the situation by the exporter. The record shows the exporter changed the terms of payment to protect himself against further failure to pay by this customer. For the final results of review, we included these sales in the analysis at their contracted sale price, and used the best information available to determine the credit expense for these sales.

Comment 2: Petitioner argues that the Department erred in using Yamamoto Corporation's rate of 3.09 percent from the fair value investigation as the best information available for this review. Petitioner cites the appreciation of the yen against the dollar as the reason that Yamamoto's margin should be significantly higher during the current review. In addition, the petitioner argues that, but for the penal nature of the application of best information otherwise available, there is little incentive for a foreign manufacturer with low margins to cooperate in the administrative review process.

Department's position: Unless the facts of a case indicate otherwise, the Department generally uses for best information available for a non-responsive firm the higher of (1) that firm's prior rate, or (2) the highest rate for any responsive firm during the period of review. Thus, contrary to petitioner's argument, there is an incentive for a firm with an initial low rate to cooperate in future antidumping annual reviews.

For this review, the petitioner provided no evidence to support its allegation that the prior rate for Yamamoto does not represent the best information available. Therefore, consistent with past practice, we conclude that the prior rate does constitute the best information available.

Heiwa's Comment

Heiwa states that the weighted average foreign market value used for comparison for April 1986 is not representative of the average selling price because it is based on one sales transaction of a limited quantity. It argues that this sale price is aberrational when compared with the weighted average of the previous and following months for the same product, and recommends the use of the weighted average price from March 1986 as the basis of FMV for this product.

Department's position: We disagree. Review of the sales data does not show the April 1986 sale to be outside the normal course of trade by reason of quantity or selling price. The sale is, therefore, appropriately used as the basis of FMV for this month.

Final Results of Review

As a result of our review of the comments received and correction of clerical errors, we determine that the following margins exist:

Manufacturer/Exporter	Margin (percent)
Heiwa Rubber Industries	0.29
Yamamoto Corp.	3.09

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

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Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties of 3.09 percent shall be required for shipments by Yamamoto Corporation. Since the margin for Heiwa Rubber Industries is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit for this firm. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1986 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese fabric expanded neoprene laminate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-22322 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-001]

Preliminary Results of Antidumping Duty Administrative Review; Sodium Nitrate From Chile

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from Sociedad Quimica y Minera de Chile, S.A., the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on sodium nitrate from Chile. The review covers one exporter of this merchandise to the United States and the period March 1, 1986 through February 28, 1987. The review indicates the existence of dumping margins for the firm during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Linda Pasden or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 25897) the final results of its last administrative review of the antidumping duty order on sodium nitrate from Chile (48 FR 12580, March 25, 1983). Sociedad Quimica y Minera de Chile, S.A., the respondent, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of antidumping duty administrative review on April 22, 1987 (52 FR 13628). The Department has now conducted that administrative review in accordance with seciton 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedule of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of industrial grade sodium nitrate (98 percent or more pure), currently classifiable under item 480.2500 of the TSUSA and under HS item number 3102.50.00.

The review covers one exporter of this merchandise to the United States, Sociedad Quimica y Minera de Chile, S.A. ("SQM"), and the period March 1, 1986 through February 28, 1987.

United States Price

In calculating United States price the Department used exporter's sales price, as defined in section 772 of the Tariff Act. Exporter's sales price was based on the delivered or f.o.b. packed or unpacked price to an unrelated purchaser in the United States. Where applicable, we made deductions for discounts, foreign inland freight, marine insurance, ocean freight, handling charges, U.S. brokerage charges, credit, and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. Home market price was based on the delivered or the f.o.b. packed price with adjustments, where applicable, for inland freight, credit, differences in packing, and for indirect selling expenses to offset U.S. selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 1.54 percent exists for SQM for the period March 1, 1986 through February 28, 1987.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between

United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act and based on the above margin, a cash deposit rate of estimated antidumping duties of 1.54 percent shall be required for all shipments by SQM of industrial sodium nitrate. For any future entries of this merchandise from a new exporter or manufacturer not covered in this or prior administrative reviews, whose first shipments occurred after February 28, 1987 and who is unrelated to any previously reviewed firm, a cash deposit of 1.54 percent shall be required. These deposit rates are effective for all shipments of Chilean industrial sodium nitrate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

Date: September 18, 1987.

[FR Doc. 87-22323 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the South Essex Sewerage District, Massachusetts, From an Objection by the Massachusetts Coastal Zone Management Office

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On July 29, 1987, the Department of Commerce received a letter from the South Essex Sewerage District, Massachusetts, (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the Massachusetts Coastal Zone Management Office to Appellant's consistency certification for its proposed modification of secondary treatment requirements for discharge into marine waters off Marblehead, Massachusetts, under the Federal Water Pollution Control Act (revised section 301(h) Application for Waiver of Secondary Treatment). Appellant simultaneously submitted supporting information.

Appellant has been given until October 27, 1987, to submit any other data or information it wishes. After expiration of that date, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235 (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: September 22, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87-22269 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by the Town of Swampscott, MA, From an Objection by the Massachusetts Coastal Zone Management Office

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Appeal.

On July 27, 1987, the Department of Commerce received a letter from the Town of Swampscott, Massachusetts, (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the Massachusetts Coastal Zone Management Office to Appellant's consistency certification for its proposed modification of secondary treatment requirements for discharge into marine waters off Swampscott under the Federal Water Pollution Control Act (revised section 301(h) Application for Waiver of Secondary Treatment). Appellant indicated in the notice of appeal that it would submit supporting information within fifteen days. On August 10, 1987, Appellant accordingly submitted supporting information.

Appellant has been given until October 27, 1987, to submit any other data or information it wishes. After expiration of that date public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: September 22, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87-22270 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Jay C. Poole From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On July 20, 1987, the Department of Commerce received a letter from Jay C. Poole (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the South Carolina Coastal Council to Appellant's consistency certification for U.S. Army Corps of Engineers Permit Application No. 86-2c-367, under section 10 of the River and Harbor Act of 1899 and section 404 of the Federal Water Pollution Control Act, for excavation of a boat slip and construction of a bulkhead, with associated backfill, in wetlands along the Black River in Georgetown County, South Carolina. Some of the backfill has already been placed.

If Appellant perfects that appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: September 22, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87-2227 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-08-M

Joint Meeting; National Marine Fisheries Service and U.S. Fish and Wildlife Service; Emergency Striped Bass Research Study

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96-118).

DATE: The meeting will convene on Friday, November 13, 1987, at 10:00 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: National Marine Fisheries Service, Room 928, Universal Building South, 1825 Connecticut Avenue NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235 Telephone: (202) 673-5359.

Dated: September 23, 1987.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 87-22282 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-22-M

[P406]

Application for Permit, Marine Mammals; Dr. R.H. Defran

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Dr. R.H. DeFran, Cetacean Behavior Laboratory, Department of Psychology, San Diego, California 92182.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Bottlenose dolphin (*Tursiops truncatus*) 200.

4. Type of Take: The animals may be inadvertently harassed while being photographed and censused, of the two hundred animals up to twenty will be neonates.

5. *Location of Activity:* The research will take place in the following areas: (1) San Diego Study Area: Broad Area—Coastal waters between Oceanside and the United States/Mexican Border; Core Area—The coastal waters between La Jolla and South Carlsbad State Beach; (2) Ventura-Santa Barbara Study Area: Broad Area—Coastal waters between the Santa Barbara Marina and the Ventura Marina; (3) Santa Barbara Channel Islands Study Area; Broad Area—The coastal waters surrounding the Santa Barbara Channel Islands including: San Miguel, Santa Rosa, Santa Cruz, Anacapa, Santa Barbara, San Nicholas, Santa Catalina and San Clemente; (4) Orange County—Los Angeles County Study Area; Broad Area—Coastal waters of Orange County and Los Angeles County; and (5) Point Conception—Monterey Study Area: Broad Area—Coastal waters between Point Conception and Monterey Bay.

6. *Period of Activity:* 3 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: September 21, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-22281 Filed 9-25-87; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as a contract market in options on Five-Year U.S. Treasury Note futures. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 28, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Reference should be made to the NYCE Five-Year U.S. Treasury Note futures option contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: The NYCE commenced trading in the Five-Year Treasury Note futures contract, which underlies the proposed option contract, on May 6, 1987. Since then, trading volume in the futures contract has averaged over 9,000 contracts per week, and the cumulative trading volume in the underlying futures contract has exceeded the total annual trading volume requirement of Commission Regulation 33.4(a)(5)(iii). One expiration in this future contract took place in June 1987, without any apparent problems, and a second expiration (September 1987) will have

taken place by the end of the comment period for this proposed option on a futures contract.

Copies of the terms and conditions of the proposed futures option contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commissions's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on September 22, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–22265 Filed 9–25–87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Meeting; Historical Advisory Committee

1. In accordance with section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.

Date: 22–23 October 1987.

Place: Conference Room, National Guard Association Building, 1 Massachusetts Avenue, NW., Washington, DC.

Time: 22 October, 1300–1600; 23 October, 0900–1200, 1330–1500.

Proposed Agenda:

22 October—Review of historical activities.

23 October—Discussion of activities and executive session of the Committee.

Purpose of meeting: The Committee will review the past year's historical activities based on reports and manuscripts received throughout the year and formulate recommendations through the Chief of Military History to the Chief of Staff, U.S. Army and the Secretary of the Army for advancing the purpose of the Army Historical Program.

2. Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 22–23 October meeting.

3. Any members of the public may file a written statement with the Committee before, during, or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. David F. Trask, Chief Historian, U.S. Army Center of Military History, Washington, DC 20314–0200.

Dated September 4, 1987.

David F. Trask,

Chief Historian.

[FR Doc. 87–22245 Filed 9–25–87; 8:45 am]

BILLING CODE 3710-08-M

Intent To Grant A Limited Exclusive Patent License to Houston Biotechnology Inc.

The Department of the Army announces its intention to grant Houston Biotechnology Incorporated, a corporation of the State of Delaware, a limited exclusive license under U.S. patent application serial no. 06/911,689, filed September 25, 1986, entitled "Phospholipid Compositions and Their Effective Use as Anti-Tumor Agents" by M. Jett-Tilton, et al.

The proposed limited exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR Part 404. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Patent Counsel, Walter Reed Army Institute of Research, Washington, DC 20307–5100.

For further information concerning this notice, contact: Lieutenant Colonel Francis A. Cooch, Patent Counsel, Building T-20, Room 206E, Walter Reed Army Institute of Research, Washington, DC 20307–5100, Telephone no. (Area Code 202) 576–4369/4370.

[FR Doc. 87–22248 Filed 9–25–87; 8:45 am]

BILLING CODE 3710-08-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 87–339; FCC 87–274]

Common Carrier Services; Establishment of a Program to Monitor the Impact of Joint Board Decisions

AGENCY: Federal Communications Commission.

ACTION: Report and order adopting Recommendation.

SUMMARY: The Commission adopted the recommendation of the Federal-State Joint Board in CC Docket No. 80–286 to establish a program to monitor the impact of Joint Board decisions.

EFFECTIVE DATE: August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Belinfante, Industry Analysis Division, Common Carrier Bureau, (202) 632–0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's report and order, CC Docket No. 87–339, adopted August 18, 1987, and released August 26, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Summary of Report and Order

On May 28, 1987, the Docket No. 80–286 Joint Board released a Recommended Decision and Order [1] describing a proposed monitoring program. It recommended that a series of quarterly reports be issued for the next five years, beginning in September 1987. The information in these reports is

[1] Not published in the Federal Register.

to fall into eight categories: (1) Subscribership and penetration levels; (2) lifeline assistance plans, including both our subscriber line charge waiver and Link-Up programs; (3) costs and high cost assistance; (4) network usage and growth; (5) rates and revenues; (6) bypass; (7) pooling and rate deaveraging; and (8) jurisdictional shifts in revenue requirements.

By this Report and Order, the Commission has adopted the Joint Board's recommendations. A new open docket is established to implement the program. comments are and materials can be submitted at any time in this docket, but comments are especially solicited during the period from August 28, 1987, through October 28, 1987.

William J. Tricarico,

Secretary.

[FR Doc. 87-21409 Filed 9-25-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 581

The Federal Maritime Commission requests clearance for an amendment to its final regulations to enforce the service contracts provisions of section 8(c) of the Shipping Act of 1984. The rule defines service contract records and requires that ocean common carriers and conferences amend their service contracts to contain a description of the shipment records which will be maintained to support the contract. It also requires respondents to submit such to the Commission within 30 days after a Commission request for the production of documents. Provisions requiring that records be located in the United States or a certification that service contract records will be produced if located outside the United States have been stayed indefinitely, pending Commission assessment of the respondents' compliance with production requests.

To comply with this amendment, the Commission estimates approximately 100 respondents and 1700 annual manhours. Total estimated annual cost to the Government for this amendment is $2188; estimated annual cost to the public is $39,000.

Joseph C. Polking,

Secretary.

[FR Doc. 87-22286 Filed 9-25-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Kerr Steamship, Inc.

The Federal Martime Commission hereby gives notice of the filing of the following agreemeant(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200038.

Title: Port of Houston Terminal Agreement.

Parties:

Port of Houston Authority (Port)

Kerr Steamship, Inc. (Kerr)

Synopsis: The proposed agreement provides for Kerr to perform freight handling services at Port's Wharves and Transit Sheds Number 19 and 20, and allocates space within the facility to accommodate cargo of ships assigned to berth at the facility by Port.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 23, 1987.

[FR Doc. 87-22285 Filed 9-25-87; 8:45 am]

BILLING CODE 6730-01-M

Sea-Land Service, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Rom 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010286-014.

Title: South Europe/U.S.A. Pool Agreement.

Parties:

Compania Transatlantica Espanola, S.A.
Costa Line (Costa Container Lines, S.p.A., Genoa)
Evergreen Maritime Corporation
Farrell Lines, Inc.
"Italia" de Navigazione, S.p.A.
Jugolinija
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
A.P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
Trans Freight Lines
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would establish a second pool period extending from May 1, 1988 through December 31, 1988 and would provide that prior to July 1, 1988, the parties will meet to review the agreement's effectiveness and to assess the fairness and value of the basic pool shares. In addition, it would also establish liquidated damages for withdrawal by a member prior to December 31, 1988 and would provide for renegotiation by Lykes Lines of its basic pool shares and withdrawal provisions should the members fail to reach agreement with Lykes.

Agreement No.: 217-011149.

Title: CCNI-TNE Space Charter Agreement.

Parties:

Compania Chilena de Navegacion Interoceanica, S.A.
Transportes Navieros Ecuatorianos

Synopsis: The proposed agreement would permit the parties to charter

space on each other's vessels and to utilize related equipment in the trade between U.S. Atlantic and Gulf ports and Chilean ports and their inland and coastal points and between U.S. Atlantic ports (excluding Florida) and Ecuadorian ports and their inland and coastal points.

Agreement No.: 206-011150.
Title: Atlantic Westbound Stabilization Agreement.
Parties:
South Europe/U.S.A. Freight Conference
North Europe-U.S. Atlantic Conference
North Europe-U.S. Gulf Freight Association

Synopsis: The proposed agreement would permit the parties to agree upon rates, service contract terms and other matters in the trade from ports in Germany (East and West), Belgium, the Netherlands, France, Italy and Yugoslavia, and from all points in Continental Europe (except points in Spain and Portugal) via such ports, to U.S. Atlantic and Gulf ports and to Continental U.S. interior and coastal points via such U.S. Atlantic and Gulf ports.

By Order of the Federal Maritime Commission. [06]Joseph C. Polking,
Secretary.

Dated: September 22, 1987.

[FR Doc. 87-22287 Filed 9-25-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities Under OMB Review

September 17, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Proposal to approve under OMB delegated authority the revision of the following report:

1. Report title: Statement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency form number: FR U-1.
OMB Docket number: 7100-0115.
Frequency: Recordkeeping requirement.
Reporters: Commercial Banks.
Annual reporting hours: 94,637.
Small businesses are affected.

General description of report

This information collection is mandatory [15 U.S.C. 78g, 78w] and is not given confidential treatment.

A purpose statement is required to be completed by a bank and borrower whenever credit is secured directly or indirectly by any margin stock in an amount exceeding $100,000. It is used to determine the purpose of the loan proceeds, serve as an evidentiary tool to ascertain the intention of the parties involved, and document the securities serving as collateral.

Board of Governors of the Federal Reserve System, September 22, 1987.
William W. Wiles,
Secretary of the Board.

[FR Doc. 87-22234 Filed 9-25-87; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control, Acquisitions of Shares of Banks or Bank Holding Companies; James K. Caldwell, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 13, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *James K. Caldwell,* Whitewater, Wisconsin; to acquire 1330 Class B Common voting shares of CBE, Inc., Elkhorn, Wisconsin.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ronald E. Brown,* Broken Arrow, Oklahoma; to acquire 15.55 percent of the voting shares of American State Bancshares, Inc., Broken Bow, Oklahoma, and thereby indirectly acquire American State Bank, Broken Bow, Oklahoma.

2. *Lonnie M. Jarman,* Oklahoma City, Oklahoma; to acquire 68.75 percent of the voting shares of Mustang Community Ban Corp, Inc., Mustang, Oklahoma, and thereby indirectly acquire Mustang Community Bank, Mustang, Oklahoma.

Board of Governors of the Federal Reserve System, September 22, 1987.
James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-22235 Filed 9-25-87; 8:45 am]
BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Cook Investment, Inc., et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 13, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cood Investment, Inc.*, Beatrice, Nebraska; to acquire Charter West Agency, Inc., West Point, Nebraska, and thereby engage in leasing real and personal property pursuant to section 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *La Jolla Bancorp*, San Diego, California; to acquire H.D. McNee Realty Advisers, Inc., San Diego, California, and thereby engage in mortgage loan servicing, mortgage loan origination services, real property consulting services, long term mortgage financing and property management services pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in San Diego County, California. *Comments on this application must be received by October 15, 1987.*

Board of Governors of the Federal Reserve System, September 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22236 Filed 9-25-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Society for Savings Bancorp, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be a presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Baord of Governors not later than October 15, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Society for Savings Bancorp, Inc.*, Hartford, Connecticut; to engage *de novo* through its subsidiary, Fidelity Acceptance Corporation, Minneapolis, Minnesota, in the sale of single interest property and casualty insurance assuring repayment of an outstanding extension of credit pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Compagnie Financiere de Suez*, Paris, France, and Banque Indosuez, Paris, France; to engage *de novo* through their subsidiaries Locasuez America, Inc., New York, New York, and LSA Leasing Corp., Louisville, Kentucky, in making or acquiring commercial loans and other extensions of credit; leasing real and personal property; acting as agent, broker or advisor with respect to such financing and leasing activities; and servicing loans and other extensions of credit pursuant to §§ 225.25 (b)(1), (b)(4), and (b)(5) of the Board's Regulation Y.

2. *Continental Bancorp*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, CB Brokerage Service, Inc., Philadelphia, Pennsylvania, in providing securities brokerage services, related securities, credit activities, and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y.

3. *Keycorp*, Albany, New York, and Key Bancshares of New York Inc., Albany, New York; to engage *de novo* through their subsidiary, Key Bank Life Insurance Ltd., Phoenix, Arizona, in underwriting, as reinsurer, of credit life and credit accident and health insurance directly related to extensions of credit by their subsidiaries pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Comments on this application must be received by October 19, 1987.

4. *U.S. Trust Corporation*, New York, New York; to engage *de novo* through its subsidiary, U.S. Trust Company of California, National Association, Los Angeles, California, in performing the functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature) and to act as investment or financial adviser pursuant to §§ 225.25 (b)(3) and (b)(4) of the Board's Regulation Y.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Hibernia Corporation*, New Orleans, Louisiana; to engage *de novo* through its subsidiaries, Hibernia Mortgage Corporation of Alabama, Birmingham, Alabama; Hibernia Mortgage Corporation of Florida, Orlando, Florida; and Hibernia Mortgage Corporation of Tennessee, Memphis, Tennessee; in the activity of making, acquiring and/or servicing loans or other extensions of credit for each company's account or for the account of others such as would be made by a mortgage company, including, but not limited to residential mortgage loans for one to four family dwelling units in the communities within which each company will operate pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the states of Alabama, Florida and Tennessee.

2. *Northwest Georgia Financial Corporation*, Dallas, Georgia; to engage *de novo* in providing data processing and data transmission services, facilities, and data bases by any technological means to its subsidiaries and other banks pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22237 Filed 9-25-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Tandy Corp., et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requries that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: SEPTEMBER 19, 1987 AND SEPTEMBER 16, 1987

Name of acquiring prson, name of acquired person, name of acquired entity	PMN No.	Date terminated
(1) Smiths Industries Public Limited Co., Lear Siegler Holdings Corp., Lear Siegler Instrument and Avionic Systems Corp	87-2043	09/03/87
(2) Meshulam Riklis, Eli Lilly and Co., Eli Lilly and Co.	87-2200	09/03/87
(3) LEP Group plc, Profit Systems Inc., Profit Systems Inc.	87-2239	09/03/87
(4) Tandy Corp., Cibcorp, Citibank (Marytand), N.A.	87-2261	09/03/87
(5) Subaru of America, Inc., Automotive Imports, Inc., d/b/a/ Subaru Inter-Mountain, Automotive Imports, Inc., d/b/a Subaru Inter-Mountain	87-2263	09/03/87
(6) William Collins PLC, The News Corporation Limited, Harper Holdings Corp.	87-2264	09/03/87
(7) John M. Harber III, Allied-Signal Inc., Combustion Power Co. & GWF Power Systems Co., Inc.	87-2265	09/03/87
(8) CRH PLC, William H. Lane, Big River Industries, Inc., Bayou Ash, Inc., Big River	87-2290	09/03/87
(9) Atari Corp., Wilfred Schwartz, The Federated Group, Inc.	87-2295	09/03/87
(10) Fletcher Challenge Limited, George S. Schuchart, Wright Schuchart, Inc.	87-2298	09/03/87
(11) HealthEast, American Healthcare Management, Inc., American Healthcare Management, Inc.	87-2272	09/04/87
(12) Roxboro Investments (1976) Ltd., H.H. Robertson Co.,H.H. Robertson Co.	87-2234	09/08/87
(13) James W. Wilson, Jr., Grand Metropolitan Public Limited Co., Diversified Products Corp., Diversified Products, Ltd.	87-2259	09/08/87
(14) First Executive Corp., Medco Containment Services, Inc., Medco Containment Services Inc.	87-2311	09/08/87
(15) Martin J. Wygod, Medco Containment Services, Inc., Medco Containment Services, Inc.	87-2312	09/08/87
(16) Paine Webber Income Properties Eight Ltd. Partnership, Marriott Corp., Marriott Suites Hotel	87-2278	09/09/87
(17) PACCAR Inc., Norcliffe Co., Norcliffe Co.	87-2291	09/10/87
(18) Cablevision Systems Corp. (Charles F. Dolan, UPE), Adams-Russell Co., Inc., Adams-Russell Co., Inc.	87-2187	09/11/87
(19) Alan Evelyn Clore, Rorer Group Inc., Rorer Group Inc.	87-2265	09/11/87
(20) Foote, Cone & Belding Communications, Inc., Measured Marketing Services, Inc., Krupp/Taylor USA	87-2273	09/11/87
(21) Measured Marketing Services, Inc., Foote, Cone & Belding Communications, Inc., Krupp/Taylor FCB, Inc.	87-2274	09/11/87
(22) Saratoga Partners, L.P., Daniel Floeck, Sr., Hi-Lo Auto Supply Companies, Inc.	87-2293	09/11/87
(23) John A. Kanas, Astroline Corp., Astroline Corp.	87-2296	09/11/87
(24) Bechtel Investments, Inc., Cost Plus, Inc., Cost Plus, Inc.	87-2300	09/11/87
(25) The Northwestern Mutual Life Insurance Co., Pierce Manufacturing Inc., Pierce Manufacturing Inc.	87-2302	09/11/87
(26) The Marcade Group, Inc., Europe Craft Imports, Inc., Europe Craft Imports, Inc.	87-2319	09/11/87
(27) Cookson Group Plc, Boruch B. Frusztajer, Polyclad Lamnates, Inc.	87-2271	09/14/87
(28) SmithKline Beckman Corp., National Patent Development Corp., International Hydron Corp.	87-2277	09/14/87
(29) Richard J. Howling, National Medical Enterprises, Inc., National Medical Enterprises, Inc.	87-2282	09/14/87
(30) South Timbers Limited Partnership, Royal Dutch Petroleum Co., Shell Oil Co.	87-2317	09/14/87
(31) Centex Corp., Crosland Homes, Inc., Crosland Homes, Inc.	87-2343	09/14/87
(32) West Timbers Limited Partnership, Royal Dutch Petroleum Co., Shell Oil Co.	87-2350	09/14/87
(33) The Henley Group, Inc., Itel Corp., Itel Corp.	87-2229	09/15/87
(34) Borden, Inc., Laura Scudder's, Inc., Laura Scudder's, Inc.	87-2269	09/15/87
(35) Philips Industries, Inc., Dearborn Fabricating and Engineering Corp., Dearborn Fabricating and Engineering Corp.	87-2327	09/15/87
(36) Lowe Howard-Spink & Bell Plc, GDL Inc., GDL Inc.	87-2340	09/15/87
(37) The Estate of Alfred L. Kaskel, Kansas City Southern Industries, Kansas City Southern Industries	87-2216	09/16/87
(38) The Quaker Oats Co., Peter J. Taggares, Sr., Chef-Reddy Foods Corp.	87-2267	09/16/87
(39) Philip Morris Companies, Inc., Charles Freihofer Baking Co., Inc., Charles Freihofer Baking Co., Inc.	87-2292	09/16/87

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-22260 Filed 9-25-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service; Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95-454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Federal Performance Review Board Members

Richard H. Adamson, Ph.D.
Duane F. Alexander, M.D.
Michele W. Applegate
Loran D. Archer
William H. Aspden, Jr.
Joseph H. Autry, M.D.
Gerald L. Barkdoll
Joyce T. Berry, Ph.D.
Katherine L. Bick, Ph.D.

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Robert A. Whitney, Jr., D.V.M.
T. Franklin Williams, M.D.
Frank E. Young, M.D.

Date: September 21, 1987.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 87-22264 Filed 9-25-87; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Reestablishment of Psychopathology and Clinical Biology Research Review Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986, (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, effective September 21, 1987 of the following committee:

Psychopathology and Clinical Biology Research Review Committee, NIMH.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Date: September 22, 1987.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-22254 Filed 9-25-87; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Grant with Morehouse School of Medicine; Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1987 for a grant to support the Morehouse School of Medicine (MSM) to identify reasons for elevated numbers of low birthweight infants born to black women, including factors that contribute to the 2-fold excess of low birthweight infants born to college educated black women. This is not a formal request for applications. Assistance will be provided only to MSM for the support of this project. No other applications are solicited or will be accepted.

Authority

This grant is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Background

National Infant Mortality Surveillance Project (NIMS) data, as well as other studies, show that low birthweight (LBW) among black infants is a major reason for their 2-fold higher infant mortality compared to white infants. This relationship is found regardless of maternal education. For example, among infants born to better educated women, the discrepancy between white and black infant mortality rates is even greater than among less educated women. NIMS data indicate that among infants born to college-educated women, black infants experienced a 4-fold excess of live births weighing less than 500 grams compared to white infants. Similarly, among infants born to college-educated women, black infants had a 3.4-fold excess of live births weighing between 500 and 999 grams compared to white infants. These differences account for a great deal of the 2-fold increase in infant mortality for black infants compared with white infants. The reasons for this excess of low birthweight among blacks who should have good access to care are not clear, but if explained may provide prevention strategies for other groups at risk for low birthweight.

Because MSM serves minority high risk populations and trains health care providers to serve this population, it has established the need to identify risk factors for low birthweight as a priority for improving health care services. MSM

is interested in collaborating with CDC in this area as an extension of research capacity building previously established between the two institutions. In addition, as part of its plan to develop a regional center for preventive medicine and health promotion, MSM will use information from the low birthweight study to develop interventions targeted at reducing infant mortality and morbidity and to disseminate them through community programs for minority groups.

Reasons for Single Source Award

The MSM is part of the Atlanta University Center (AUG), a cluster of four undergraduate colleges, two graduate schools, and a medical school, which makes AUC the largest association of private historically black colleges and universities in the United States. Spelman College, one of only two predominantly black women's colleges in the United States, is a member of the Atlanta University Center and has an enrollment of approximately 1,200 undergraduates. Two of the other undergraduate colleges, Clark College and Morris Brown College, are co-educational and have a combined undergraduate female enrollment of approximately 2,000. This provides unique access to an expansive pool of black female university graduates. Agnes Scott College, a private predominantly white women's college, is also located in Metropolitan Atlanta. The combination of MSM, Spelman College, and Agnes Scott College, as well as the other predominantly black AUC colleges, provides a unique environment to compare offspring of women educated at comparable private colleges and to collaborate with minority researchers who are familiar with health care issues peculiar to minority populations. Rapid followup of study participants is assured because the Atlanta Metropolitan area has absorbed a significant number of graduates of both the Atlanta University Center and other area universities and colleges.

Review Requirements

This program is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Availability of Funds

A total of $150,000 will be available in Fiscal Year 1987 to fund this grant. It is expected that the grant will begin on or before September 30, 1987, and continue for a period not to exceed 18 months. Funding from a single appropriation is considered necessary.

Information

Information on this program may be obtained from Henry Cassell, Grants Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NW., Room 321, Atlanta, Georgia 30305.

Dated: September 22, 1987.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 87-22356 Filed 9-25-87; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Advisory Council Meetings for October, 1987

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of October 1987:

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: October 5, 1987 8:00 a.m.—5:00 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendation regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the outlook for supply, appropriate Federal policies and suggestions for voluntary action by hospitals, medical and osteopathic schools and accrediting bodies regarding physician supply, and shortages and excesses.

Agenda: Agenda items include: (1) Discussion of preliminary subcommittee conclusions regarding current and future adequacy of aggregate physician supply; (2) discussion of subcommittee preliminary conclusions regarding current and future adequacy of primary care physician supply; (3) discussions of preliminary recommendations to the Council regarding current and future adequacy of aggregate and primary care physician supply in the U.S.; and (4) discussion of a draft set of principles for the Council.

Anyone requiring information regarding the subject Subcommitte should contact Jerald Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443-6364.

Name: Subcommittee on Foreign Medical Graduates of the Council on Graduate Medical Education.

Time: October 5, 1987 8:30 a.m.—5:00 p.m.

Place: Conference Room I, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: The Subcommittee reviews and analyzes existing data and information on alien and U.S. foreign medical graduates in training and in practice regarding adequacy of existing data bases, effect of existing policies and procedures regarding distribution, service delivery and international relations.

The Subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the appropriate Federal policies and efforts to be carried our voluntarily by hospitals, schools of medicine and osteopathy, licensing, certifying, and accrediting bodies with respect to issues relating to foreign medical graduates.

Agenda: Agenda items include (1) panel discussion of the difference treatment of Medical school graduates based on citizenship and/or Country of medical education; (2) review and acceptance of COGME principles; and (3) development of conclusions and recommendations for the foreign medical graduate chapter of the first report to the Secretary and Congress.

Anyone requiring information regarding the subject Subcommittee should contact Magdalena Miranda, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (303) 443-3626.

Name: Subcommittee on Graduate Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: October 5, 1987 8:00 a.m.—5:00 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

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Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy and accrediting bodies with respect to medical education programs.

Agenda: Agenda items include Discussions of (1) studies of use of and transition to ambulatory care settings in medical education programs; (2) Federal policy-related activities in the financing of graduate medical education; (3) subcommittee preliminary conclusions regarding appropriate federal policies on the financing of graduate medical education; (4) preliminary recommendations to the Council regarding appropriate Federal policies on the financing of graduate medical education; and (5) a draft set of principles for the Council.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D. Subcommittee Principle Staff Liaision, Division of Medicine, Bureau of Health Professions, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6326.

Name: Council on Graduate Medical Education.

Time: October 6, 1987 8:30 a.m.—4:30 p.m.

Place: Conference Room G–H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: Agenda items include presentations on graduate medical education (GME) financing issues and on recent GME developments in the State of New York; Reports from the Administrator, Health Resources Administration; update on plans for public hearing scheduled for November 19–20, 1987, review of Council set of principles, and reports from the three subcommittees focusing on preliminary conclusions and recommendations. A Public comment period is also included as part of the agenda.

Anyone requiring information regarding the subject Council should contact Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 14–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2033.

Agenda Items are subject to change as priorities dictate.

Date: August 24, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–22406 Filed 9–25–87; 9:12 am]

BILLING CODE 4160–15–M

Social Security Administration

Meeting; Disability Advisory Council

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule, proposed agenda, and location of a forthcoming meeting of the Disability Advisory Council (the Council). The Council published a notice of meetings in the **Federal Register** on December 24, 1986 at 51 FR 46724. The notice announced the schedule of regular meetings to be held by the Council. The Council is scheduling an additional regular meeting for October.

Date: October 29, 1987, 8:00 a.m. to 5:00 p.m.

Place: Hubert H. Humphrey Building, Room 337–339A, 200 Independence Avenue, SW., Washington, DC 20201.

Agenda: Approve Final Report.

FOR FURTHER INFORMATION CONTACT: W. Douglas Badger, Executive Director, Disability Advisory Council, P.O. Box 17064, Baltimore, Maryland 21203, (301) 965–4643.

SUPPLEMENTARY INFORMATION: The Council is established and governed by the provisions of section 12102 of Pub. L. 99–272. The Council is chaired by Dr. John E. Affeldt.

This meeting is open to the public to the extent that space is available. Anyone wishing to submit his or her views and/or questions for consideration by the Council should send them to the Executive Director of the Council at the address shown above.

A transcript of the Council meeting is available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

Date: September 22, 1987.

W. Douglas Badger,

Executive Director, Disability Advisory Council.

[FR Doc. 87–22257 Filed 9–25–87; 8:45 am]

BILLING CODE 4190–11–M

Redelegations of Authorities to the Position of Social Insurance Claims Examiner (Disability), Located in the Guam Social Security Office, for Adjudication of Disability Claims From Individuals in the Northern Mariana Islands

Public Law 94–241 provided approval of a covenant between the United States (U.S.) and the Northern Mariana Islands (NMI) to establish the conditions by which the NMI would become a U.S. Comonwealth. With this convenant having been established and approved, and with the termination of the existing Trusteeship Agreement, the NMI officially became a U.S. Commonwealth on January 1, 1987.

Under its new political status, the NMI has the statutory authority that States have to make disability determinations under the Social Security Act, as amended (the Act). Accordingly, the Social Security Administration (SSA) has been in consultation with the NMI Government to provide it with the opportunity to perform this function. Previously, this function was performed by an SSA employee, in the position of Social Insurance Claims Examiner (Disability) located in the Guam Social Security office (commonly referred to as

the Federal Disability Examiner in Guam), under formal authorities redelegated to that position. These authorities covered disability determinations under Titles II and XVI of the Act, nondisability determinations under these titles required in connection with adjudication of disability claims, procurement of medical/psychological examinations and other medical evidence necessary for disability determinations and claimant travel and advance of funds for medical/psychological examinations.

However, the NMI Government has decided that the Federal Disability Examiner in Guam should continue to perform all aspects of the disability determination function for disability claims filed by individuals in the NMI. This requires exercise of all authorities previously redelegated to this position. Accordingly, notice is hereby given that the Commissioner of Social Security has reaffirmed existing redelegations of the following authorities to the position of Federal Disability Examiner in Guam, as necessary for adjudication of NMI disability claims:

A. Authorities Under Title II of the Act

1. Authority to make determinations of disability and authority to make findings of fact and decisions relating to periods of disability, under section 221(g) of the Act.

2. Authority to review determinations of disability and authority to take action in such cases reviewed, as provided under section 221(c) of the Act.

3. Authority to make findings of fact and decisions which constitute initial determinations under title II of the Act, as defined in 20 Code of Federal Regulations (CFR) 404.902, under section 205(b) of the Act.

4. Authority to make findings of fact and decisions which do not constitute initial determinations under Title II of the Act, as defined in 20 CFR 404.903, under section 205(b) of the Act.

B. Authorities Under Title XVI of the Act

1. Authority to make findings of fact and decisions regarding the existence, absence, duration or continuation of disability or blindness, under section 1614 of the Act.

2. Authority to make findings of fact and decisions affecting Supplemental Security Income (SSI) claimants, under sections 1602, 1611 through 1616, 1631 and 1633 of the Act.

3. Authority to make findings of fact and decisions as to the presumption that individuals applying for SSI benefits are disabled or blind, within the meaning of section 1614 of the Act, prior to completion of a formal determination of disability or blindness, and authority to authorize payment of benefits to such individuals presumptively eligible for not more than 3 months, under sections 1614(a), 1631(a)(4)(B) and 1633 of the Act.

4. Authority to determine whether individuals eligible for SSI payments, and medically determined to be drug addicts or alcoholics, are complying with the terms and conditions of appropriate available treatment, under section 1611(e)(3) of the Act.

5. Authority to review initial determinations and make reconsideration determinations in cases involving SSI claimants who are in disagreement with determinations under section 1631(c) of the Act, including authority to make findings as to whether good cause exists for failure to request reconsideration of an initial determination within 60 days after receiving notice of such determination.

C. Authority Under Titles II and XVI of the Act

Authority to approve travel and advance of funds for claimants who attend medical/psychological examinations requested by the Federal Disability Examiner in Guam, in connection with disability determinations, not to exceed a total amount of $500, under sections 201(j) and 1631(h) of the Act.

D. Authorities Under Title III of the Federal Property and Administrative Services Act of 1949, as Amended, and Implementing Regulations

1. Authority to purchase services of physicians and psychologists to perform medical or psychological examinations of disability claimants, not to exceed a total amount of $500 in any transaction, under pertinent provisions of the above law and regulations.

2. Authority to purchase medical evidence of record, laboratory tests and any other medical tests necesary for disability determinations, not to exceed a total amount of $500 in any transaction, under pertinent provisions of the above law and regulations.

Conditions

(1) Further redelegations are not authorized.

(2) The above authorities must be exercised in accordance with all pertinent provisions of law, regulations, operating instructions and other relevant requirements.

This action is effective on the date that this notice is published in the **Federal Register**. I affirm and ratify any actions by persons in the position of Federal Disability Examiner in Guam which may constitute the exercise of any of the above authorities before that date.

Dated: September 16, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 87-22258 Filed 9-25-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

September 18, 1987.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: 25 CFR Part 31, Subchapter E, *Federal School for Indians.*

Abstract: The student enrollment application is needed to determine a student's enrollment eligibility for Indian students desiring to attend Bureau operated or Bureau funded schools. The application contains background information on students, such as schools previously attended, tribe affiliation, census number, degree of Indian blood, and language spoken in the home. The information collection will involve individual students, parents and/or guardians.

Bureau Form Number: BIA-6248.

Frequency: Upon enrollment.

Description of Respondents: Students, parents or guardians.

Annual Responses: 15,000.

Annual Burden Hours: 7,504 hours.

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Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Ronal D. Eden,

Acting Deputy to the Assistant Secretary/Director, Indian Affairs (Indian Education Programs).

[FR Doc. 87–22244 Filed 9–25–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[ID–010–07–4331–12]

Restricted Vehicle Use Closure Order; Idaho

AGENCY: Bureau of Land Management, Idaho, Interior.

ACTION: Notice of restricted vehicle use closure order.

SUMMARY: Notice is hereby given in accordance with Title 43 CFR Group 8000—Outdoor Recreation and in conformance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, that approximately 3,694 acres of public land located within the Hagerman Fauna Sites National Natural Landmark in Twin Falls County, Idaho, are closed to motorized vehicles except on designated roads.

Careful review and analysis in cooperation with other agencies, professionals in the field of paleontology, and the public has determined that use of this area by motorized vehicles operated off-road is causing severe damage to the scientific and other natural features. Continued off-road use by motorized vehicles will continue to cause damage to paleontological specimens and geologic features of international importance and to the terrain, soil, vegetation, and visual values of the area. An early closure, published in the Federal Register of April 30, 1985, was an emergency closure. This Notice implements the closure decision of the Jarbidge Resource Management Plan which was approved March 23, 1987.

All forms of motorized vehicles, including those used for outdoor recreation purposes, mining exploration, farming operations, scientific investigations, and resource management are excluded from the area except for use on designated roads.

The intended effect of this action is to eliminate the unnecessary and undue degradation of the natural values of the Hagerman National Natural Landmark.

SUPPLEMENTARY INFORMATION: The closure applies to all public lands administered by the Bureau of Land Management within the area known commonly as the Hagerman Fossil Beds (and officially designated as the Hagerman Fauna Sites National Natural Landmark). The area is bounded on the east by Lower Salmon Falls Reservoir on the Snake River, on the west by developed farms, on the south by a fense line along or through sections 3, 4, and 5, T. 8 S., R. 13 E., B.M., and on the north by a fence line through Sections 8, 9, and 10, T. 7 S., R. 13 E., B.M., Idaho.

The legal description of the area is:

Boise Meridian, Idaho

T. 7 S., R. 13 E.,
- Sec. 9, SE¼SW¼, E½SE¼, SW¼SE¼;
- Sec. 10, lots 3 and 6, NW¼SE¼, SW¼;
- Sec. 15, lot 4;
- *Sec. 16, lots 1, 2, 4, and 5, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
- Sec. 17, E½E½, SW¼NE¼, NE¼SW¼, NW¼SE¼;
- Sec. 20, E½E½;
- Sec. 21, lots 2 to 4, inclusive, 7, and 8, W½W½, SE¼NW¼, NE¼SW¼;
- Sec. 28, lots 2, 3, 6, and 7, NW¼NW¼;
- Sec. 29, E½E½, S½SW¼, W½SE¼;
- Sec. 32;
- Sec. 33, lots 2, 3, 6, and 7, SW¼SW¼.

T. 8 S., R. 13 E.,
- Sec. 3, lots 4 and 5, SW¼;
- Sec. 4, lots 2 to 4, inclusive, and 6, SW¼NE¼, S½NW½, S½;
- Sec. 5, lots 1 to 4, inclusive, S½N½.

*Section 16 is owned by the Idaho Parks and Recreation Department. The area is managed the same as the Federal lands in accordance with a Memorandum of Understanding between the Bureau of Land Management and the Idaho Department of Parks and Recreation.

All lands within the above described areas administered by the Bureau of Land Management are closed to vehicle use except on designated roads on a year-round basis until further notice. Signs will be posted to identify the exterior boundaries and to mark road open and/or closed to motorized use. A map of the closure areas is posted at the Twin Falls and Hagerman Post Offices, Twin Falls County Courthouse, and at the Boise District Office located at 3948 Development Avenue, Boise, Idaho 83705. Cooperation of all will be sincerely appreciated.

Temporary exceptions are authorized to the listed controls for any fire, emergency, or law enforcement vehicle while it is being used for emergency purposes, any vehicle in official use, and any vehicle whose use is expressly authorized by the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582.

Gene L. Schloemer,

Associate District Manager.

Date: September 14, 1987.

[FR Doc. 87–22019 Filed 9–25–87; 8:45 am]

BILLING CODE 4310–GG–M

[ID–050–4410–08–2411]

Meeting; Shoshone District Advisory Council

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Tuesday, October 20, 1987.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: K. Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

Updates of District Activities
Field Tour of Blaine County Projects

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 43 U.S.C. 1701 *et seq.*) as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of the Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council at 9:00 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the District Manager by October 19, 1987. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K. Lynn Bennett,

District Manager.

[FR Doc. 87–22247 Filed 9–25–87; 8:45 am]

BILLING CODE 4310–GG–M

[ID-050-07-4322-14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Monday, October 19, 1987, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: K Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Review of proposed range betterment projects (8100) and (2) update on district activities.

Operation and administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District by October 16, 1987. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K Lynn Bennett,

District Manager.

[FR Doc. 87–22246 Filed 9–25–87; 8:45 am]

BILLING CODE 4310-GG-M

[OR-020-07-4410-08; GP7-290]

Intent To Prepare a Resource Management Plan for the Drewsey and Riley Planning Units of the Burns District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Opportunity for public comment; notice of intent to prepare a Resource Management Plan (RMP).

SUMMARY: In accordance with 43 CFR 1601.3–1, notice is hereby given that the Bureau of Land Management, Burns District, Oregon intends to prepare a Resource Management Plan for the Drewsey and Riley Planning Units. The RMP includes the 1.1 million acres in the Riley Planning Unit, 0.7 million acres in the Drewsey Planning Unit. The subject area is located in portions of Harney, Lake and Malheur Counties.

The purpose of the RMP is to update land use planning decisions to be consistent with current conditions and trends, as required by the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701).

DATES: Comments are due by November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District Office, 74 South Alvord, Burns, Oregon 97720 (Telephone 503–573–5241).

SUPPLEMENTARY INFORMATION: Issues proposed to be included in the RMP include: (1) Livestock grazing management; (2) land tenure adjustment; (3) wildlife forage demands and habitat condition; (4) fire management; and (5) special management areas (including consideration of areas of critical environmental concern).

Resource management programs to be represented on the interdisciplinary team preparing the RMP and Environmental Impact Statement (EIS) include: Wildlife, wild horses, recreation, wilderness, cultural, watershed, minerals, lands and realty, range, botanical, threatened and endangered plants and animals, fire management; and land use planning.

More detailed information on planning criteria, issues and preliminary management alternatives is available at the Burns District Office and has also been mailed to known interested individuals and parties. The comment period on preliminary issues and planning criteria for the RMP and associated EIS will close November 2. Other public participation activities will include a 90-day review of the draft RMP/EIS and an open house or public meeting to receive comments and answer questions. Dates, times and location will be announced through local media and mailing to interested parties. Planning documents will be available for inspection at the Burns District Office during normal working hours.

Dated: September 8, 1987.

Donald R. Cain,

Burns Associate District Manager.

[FR Doc. 87–22253 Filed 9–25–87; 8:45 am]

BILLING CODE 4310-33-M

[AA-630-07-4113-02]

Information Collection Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20505, 202–395–7340.

Title: 43 CFR Part 3260, Geothermal Resources Operations

Abstract: Data submitted by geothermal lessees and operators issued for agency approval of specific and/or additional operations on a well and to report the completion and/or progress of such additional work

Bureau Form Numbers: 3260–1, 3260–2, 3260–3, 3260–4, 3260–5

Frequency: Nonrecurring, on occasion, and monthly

Description of Respondents: Lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight

Annual Responses: 835

Annual Burden Hours: 1,775

Bureau Clearance Officer: Rick Iovaine 202–653–8853.

Date: September 22, 1987.

Robert H. Lawton,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 87–22279 Filed 9–25–87; 8:45 am]

BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone

number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

Abstract: Sections 507(b), 508(a) and 516(b) of Pub. L. 95–87 require applicants for underground mine permits to provide a description of each existing structure proposed to be used in the mining and reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operation. This information is used by the regulatory authority in determining if the applicant can comply with the applicable performance and environmental standards

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Underground coal mining operators

Annual Responses: 500

Annual Burden Hours: 178,604

Bureau clearance officer: Darlene Grose-Boyd (202) 343–5447

Date: August 21, 1987.

Donald Hinderliter,

Acting, Assistant Director for Budget and Administration.

[FR Doc. 87–22239 Filed 9–25–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

[Civil Action No. 85–4475]

Pollution Control; Consent Decree in Action to Enjoin Discharge of Water Pollutants; Alberts Plating Works, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Alberts Plating Works, Inc.*, Civil Action No. 85–4475, was lodged with the United States District Court for the Eastern District of New York on August 20, 1987. The consent decree establishes a compliance program for two New York plants owned and operated by Albert Plating Works, Inc. to bring the plants into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $37,500.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Alberts Plating Works, Inc.*, D.J. Ref. No. 90–5–1–1–2472.

The consent decree may be examined at the office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–22240 Filed 9–25–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 87–3398]

Pollution Control; Consent Decree in Action to Enjoin Discharge of Water Pollutants; Allan Finishing Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Allan Finishing Corp.*, Civil Action No. 87–3398, was lodged with the United States District Court for the District of New Jersey on August 13, 1987. The consent decree establishes a compliance program for the New Jersey plant owned and operated by Allan Finishing Corp. to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $60,483.

The Department of Justice will rceive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Allan Finishing Corp.*, D.J. Ref. No. 90–5–1–1–2538.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, 502 Federal Bldg., 970 Broad St., Newark, NJ. 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

August 6, 1987.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–22241 Filed 9–25–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 86–0675]

Pollution Control; Consent Decree in Action to Enjoin Discharge of Water Pollutants; Continental Connector Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Continental Connector Corp.*, Civil Action No. 86–0675, was lodged with the United States District Court for the Eastern District of New York on August 28, 1987. The consent decree establishes a compliance program for the New York plant owned and operated by Continental Connector Corp. to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $51,000.00.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Continental Connector Corp.*, D.J. Ref. No. 90–5–1–1–2539.

The consent decree may be examined at the office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page

reproduction charge)— payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-22242 Filed 9-25-87; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. 87-649-B]

Lodging of Consent Decree Pursuant to the Clean Air Act; Natural Gas Pipeline Co. of America

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 11, 1987, a proposed consent decree in *United States of America v. Natural Gas Pipeline Company of America.*, Civil Action No. 87-649-B, was lodged with the United States District Court for the Southern District of Iowa.

The proposed consent decree resolves a judicial enforcement action brought by the United States against Natural Gas Pipeline Company of America ("NGPL") for violations of the Clean Air Act. The complaint filed by the United States alleged that the defendant violated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos during demolition and renovation activities that took place at defendant's facility in Harper, Iowa.

The proposed consent decree enjoins NGPL from violating the asbestos NESHAP in the future. The proposed consent decree also requires NGPL to pay a civil penalty of $24,500 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Natural Gas Pipeline Company of America.*, D.J. Ref. 90-5-2-1-1079.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, Des Moines Iowa 50309, and at the Region VII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Henry Rompage, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, 10th and Pennsylvania NW., Washington, DC 20530.

[FR Doc. 87-22243 Filed 9-25-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pollution Control; Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Derby, CT

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. City of Derby, Connecticut*, Civil Action No. N-86-67 (EBB), was lodged with the United States District Court for the District of Connecticut on September 17, 1987. The Decree requires payment of $200,000 in four annual installments, plus interest at 7% per annum on the remaining balance, in satisfaction of the claims for recovery of response costs pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, and a civil penalty pursuant to section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. City of Derby, Connecticut*, D.J. Ref. No. 90-11-3-109.

The consent decree may be examined at the office of the United States Attorney, District of Connecticut, U.S. Courthouse, 141 Church Street, New Haven, Connecticut 06510; at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 87-22298 Filed 9-25-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances, Registration of Sigma Chemical Co.

By Notice dated July 23, 1987, and published in the **Federal Register** on July 29, 1987; (52 FR 28361), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63178, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Pethidine (mependine) (9230)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as an importer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 22, 1987.

[FR Doc. 87-22295 Filed 9-25-87; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration of Mallinckrodt, Inc.

By Notice dated March 26, 1987, and published in the **Federal Register** on April 3, 1987; (52 FR 10824), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to Section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

Dated: September 22, 1987.

[FR Doc. 87-22296 Filed 9-25-87; 8:45 am]

BILLING CODE 4410-09-M

Application, Importation of Controlled Substances; Diagnostic Products Corp.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 13, 1987, Diagnostic Products Corporation, 5700 West 96th Street, Los Angeles, California 90045, made application to the Drug Enforcement Administration to be registered as an importer of a urine-based tri-level control preparation containing the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Tetrahydrocannabinols (7370)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 28, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 22, 1987.

[FR Doc. 87-22294 Filed 9-25-87; 8:45am]

BILLING CODE 4410-09-M

[Docket No. 86-49]

Revocation of Registration, Denial of Application; Thomas Parker Elliott, D.O.

On May 13, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Thomas Parker Elliott, D.O. (Respondent) of 2133 West Bay Drive, Largo, Florida 33540. The Order to Show Cause sought to revoke DEA Certificate of Registration AE7940441 and to deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) and 824(a). The statutory predicate for the proposed revocation and denial was that the registration of Respondent would be inconsistent with the public interest as defined in 21 U.S.C. 823(f) and as evidenced by, but not limited to, the following: (1) During the period from July 13, 1979, to September 7, 1984, Dr. Elliott issued to ten individuals at least 1,380 prescriptions, primarily for Schedule II narcotic controlled substances, which prescriptions were not issued for a legitimate medical purpose in the usual course of his professional practice as an osteopathic physician; and (2) on July 22, 1985, Respondent entered a plea of nolo contendere to an information charging him with delivery of a controlled substance in violation of the Florida Comprehensive Drug Abuse Prevention and Control Act and, on September 18, 1985, in the Circuit Court of Pinellas County, Florida, he was placed on probation for a period of three years. The crimes with which he was charged were felony offenses relating to controlled substances. Although the court withheld adjudication, such withholding of adjudication on these charges constitutes a final judgment of the trial court, subject to review, and is a conviction within the meaning and intent of 21 U.S.C. 824(a)(2). See *United States* v. *Hartsfield*, 387 F. Supp. 16 USDC M.D. Fla. 1975); *United States* v. *Cook*, 10 M.J. 138 (U.S. Mil. App. 1981); *Matter of Stephen Granet Rosen, D.D.S.*, DEA Docket No. 84-44, 50 FR 46844 (1985).

In a letter dated June 11, 1986, Respondent, proceeding through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Tampa, Florida, on November 5, 1986. On March 30, 1987 Judge Young issued his Opinion and recommended Ruling, Findings of Fact, Conclusions of Law and Decision. No exceptions were filed and on June 29, 1987, the Administrative Law Judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is an osteopathic physician who came to the attention of the Pinellas County, Florida, Sheriff's Office in April 1982 in connection with an investigation of some of Respondent's prescriptions which were determined to have been forged. In August 1983, the Sheriff's Office received complaints from pharmacies concerning what certain pharmacists felt were an overabundance of Respondent's prescriptions for Schedule II controlled substances. Subsequent investigation did reveal an unusually large number of prescriptions for Schedule II substances written by Respondent. Schedule II prescriptions written by Dr. Elliott were found at approximately 60% of the 270

pharmacies investigated in Pinellas County.

A detective for the Pinellas County Sheriff's Office interviewed an individual who had been arrested in 1984 for trafficking in Schedule II opiates and who was attempting to negotiate a plea agreement. This individual stated that when he wanted Dilaudid on his frequent visits to Pinellas County, he sought out Respondent, since Respondent was known to him as "the man to see in the County when one wanted to obtain Dilaudid." In July 1984, the investigators took prescription profiles and other information about some of Respondent's patients to two highly-respected osteopathic physicians in the area. The doctors examined the prescriptions and the profiles and stated that, on the face of the prescriptions, they appeared to be excessive for an osteopathic physician practicing medicine in good faith in Pinellas County. The doctors stated that the Schedule II analgesics prescribed by Respondent were highly addictive and should only be used in the treatment of terminal cancer patients or chronic acute pain patients. However, they were unable to formulate a definite opinion without first seeing the related medical records for the patients.

The medical records of Dr. Elliott's patients were then obtained pursuant to a search warrant. After examining the records, the two physicians opined that, while all 23 of the patients were being overprescribed, 10 of them, in particular, would not fit into the category of being terminally ill or experiencing chronic pain. With respect to those 10 patients, the doctors concluded that Dr. Elliott was not practicing medicine in good faith in the course of professional practice. In the opinion of a third osteopathic physician, all 23 had been illegally overprescribed.

The investigators prepared profiles for 10 of the Respondent's patients, listing not only the prescriptions found by investigators at local pharmacies, but also the information as to prescriptions written according to Respondent's own office records. The entries on this profile list prescriptions written by Dr. Elliott from July 13, 1979, to September 7, 1984. They list a total of 1,385 prescriptions, primarily for Schedule II controlled substances, written by the Respondent for the 10 named individuals over that period. One of the patients received a total of 474 prescriptions: 243 for Percodan, 198 for Dilaudid and 10 for Tyloz, all Schedule II narcotics; 17 for Tuinal, a Schedule II barbiturate sedative; and 6 for Desoxyn, a Schedule II stimulant containing methamphetamine. Although Dr. Elliott testified that he began prescribing Desoxyn on March 2, 1984, for the treatment of this patient's narcolepsy (a predisposition to excessive sleepiness), just one month earlier, on February 2, 1984, Respondent had prescribed Tuinal, a sedative, for this same patient. Throughout the period during which he was receiving Desoxyn for his "narcolepsy," this patient was also receiving prescriptions from Respondent for Percodan and Tylox, both of which have a sedative effect.

On February 6, 1985, Respondent was arrested. He was charged in a Florida State Court with 10 counts of unlawful prescribing, one count for each of the 10 persons mentioned above. Dr. Elliott entered a plea of nolo contendere to one of the 10 counts.

On August 20, 1985, pursuant to a Florida procedure, adjudication was withheld and the Respondent was placed on probation for three years. The offense charged in the count to which the Respondent pled is a second degree felony carrying a 15-year maximum penalty. The conditions of probation imposed by the court prohibit Respondent from prescribing any Schedule II drug. That order was dated August 20, 1985, and was filed on September 18, 1985.

On July 17, 1986, Dr. Elliott executed an application for renewal of his DEA registration. On that application, he applied for continued authorization to handle Schedule II narcotic and non-narcotic substances, as well as those in other schedules, without revealing the restrictive condition of his court probation.

The Administrative Law Judge concluded that there is a lawful, statutory basis for the revocation of Dr. Elliott's DEA registration pursuant to 21 U.S.C. 824(a)(2). He has been convicted of a controlled substance-related felony in a Florida State court. The court's order withholding adjudication of guilt and placing defendant on probation constitutes such a conviction. *Stephen Granet Rosen, D.D.S.* Docket No. 84–44, 50 FR 46844 (1985); *Delaney v. State*, 190 So. 2d 579 (Fla. 1966); *United States v. Hartsfield*, 387 F. Supp. 16 USDC, (M.D. Fla., 1975). A conviction entered following a plea of nolo contendere is no less a conviction. *Sokoloff v. Saxbe*, 501 F.2d 571 (2nd Cir. 1974); *Noell v. Bensinger*, 586 F.2d 544 (5th Cir. 1978).

Judge Young concluded that Respondent's experience in the handling controlled substances clearly warrants finding that his continued registration is inconsistent with the public interest. Respondent prescribed enormous quantities of highly addictive drugs to 10 individuals over a period of several years. Such prescribing of these substances can be justified medically only in cases of terminal illness, such as cancer, or for chronic, severe and incapacitating pain. No such justifying circumstances existed in cases of the 10 patients discussed in Respondent's testimony at the hearing. Respondent's prescribing was not done in good faith and in accordance with competent medical practices in the osteopathic field, according to three reputable osteopathic physicians practicing in the same area as Respondent.

The Administrative Law Judge recommended that Respondent's DEA registration be revoked and any pending applications for registration denied. The Administrator adopts the Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge in its entirety. Dr. Elliott's prescribing practices have been highly irresponsible. A doctor showing the degree of irresponsibility in dispensing controlled substances found in this record cannot be entrusted with a DEA registration. Respondent's retaining his registration would be wholly inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100 (b), hereby orders that DEA Certificate of Registration AE7940441, previously issued to Thomas Parker Elliott, D.O. be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective October 28, 1987.

John C. Lawn,

Administrotor.

Date: September 22, 1987.

[FR Doc. 87–22293 Filed 9–25–87; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances, Registration; Western Fher Laboratories, Inc.

By Notice dated April 21, 1987, and published in the **Federal Register** on April 27, 1987; (52 FR 13883), Western Fher Laboratories, Inc., Carretera 132, KM 25.3, P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Phenmetrazine and its salts (1631), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 22, 1987.

[FR Doc. 87-22297 Filed 9-25-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS). Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration

Statement of Selected Workloads and Expenditures of Federal Funds for Unemployment Compensation for Federal Employees and Unemployment Compensation for Ex-servicepersons
1205-0162; ETA 191
Quarterly
State or local governments
53 respondents; 1,272 burden hours; 1 form.

Federal agencies must reimburse the Federal Employees Compensation Account for the amount expended for benefits to former Federal employees (UCFE/UCX). The report informs ETA of the amount to bill to each Federal agency as well as specific information on expenditures in the SESAs.

Reinstatement

Occupational Safety and Health Administration

Occupational Exposure to Noise
OSHA 238
1218-0048
Recordkeeping; On Occasion
Business and other for-profit; Federal agencies or employees, small businesses or organizations
311,094 respondents; 5,823,286 burden hours; 1 form.

This standard requires employers to establish and maintain accurate records of employee exposure to noise and audiometric testing performed in compliance with the provisions of the standard. These records are used by the physician, employer, employee and the Government to determine whether occupation-related hearing-loss has occurred, to prevent further deterioration of hearing and to determine the effectiveness of the employer's hearing conservation program.

Signed at Washington, DC, this 23rd day of September, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-22328 Filed 9-25-87; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COUNCIL ON PUBLIC WORKS IMPROVEMENT

Open Public Meeting

The National Council on Public Works Improvement will hold a meeting open to the public on October 19, 1987, from 1:00 p.m. to 4:00 p.m. in Conference Room 4830 of the U.S. Department of Commerce, Main Entrance at 14th Street between Constitution and Pennsylvania Avenues, Washington, DC. If you are interested in attending this meeting, for security purposes you must contact the Council office at 653-0298, so a list of attendees can be provided to the Commerce Department security personnel.

The Council will meet with Advisory Group members to provide them with a progress report of the Council's work.

The National Council on Public Works Improvement was created by Congress to report to the President and the Congress on the state of the nation's infrastructure.

Nancy S. Rutledge,

Executive Director.

[FR Doc. 87-22256 Filed 9-25-87; 8:45 am]

BILLING CODE 6115-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Plenary Meeting XVI of the President's Committee on the Arts and the Humanities; National Endowment for the Arts

Thursday, October 15, 1987 has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XVI. A morning meeting has been scheduled at 9:30 a.m. in the Douglas Dillion Board Room at the Metropolitan Museum of Art in New

York City to discuss the potential effects of the current art market on institutions. The Honorable C. Douglas Dillon will lead the discussion. Panelists are Philippe de Montebello, Eugene Thaw, Hilton Kramer, and John Marion. Activities of the President's Committee will be reviewed and progress reported in an afternoon session from 2:00 p.m. until 3:30 p.m. Reports will be made by Dr. Frank Stanton on the *Liberal Arts and the Corporate Workplace Survey*, Rawleigh Warner on the *New York and the World* secondary education project, Roger Stevens on the *Fund for New American Plays*, Stanley Freehling on the *Invest in the American Collection* conservation forum, Leonard Silverstein and George Gould on tax reform, and Karen Munro on the *Initiative for State Humanities* Councils. Because space is limited, reservations must be made in advance by calling 202–682–5409 or 212–883–7026.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

For further information individuals may call (202) 682–5409.

August 21, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operation, National Endowment For the Arts.

[FR Doc. 87–22238 Filed 9–25–87; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Order To Import Licensees (South African Uranium); Eldow International Co., et al

Pursuant to Commission decision, the public is advised that the Nuclear Regulatory Commission has issued immediately effective orders to all holders of nuclear material import licenses that amend their import licenses to prohibit their use for the import of uranium ore or uranium oxide produced or manufactured in South Africa. The licensees affected are:

Edlow International Co., Docket No. 11002967, License No. ISNM–82020
Transnuclear, Inc., Docket No. 11003111, License No. ISNM–83005
Westinghouse Electric Corp., Docket No. 11002348, License No. ISNM–81001
Edlow International Co., Docket No. 11000168, License No. IU–78019
International Energy Associates Ltd., Docket No. 11003688, License No. ISNM–84012
Separative Work Unit Corp., Docket No. 11002597, License No. ISNM–82016
Braunkohle Transport, USA, Docket No. 11003204, License No. ISNM–83011
Advanced Nuclear Fuels Corp., Docket No. 11003365, License No. ISNM–83025
Phibro-Salomon, Inc., Docket No. 11002933, License No. ISNM–82015
New York Nuclear Corp., Docket No. 11003097, License No. ISNM–83003
Transnuclear, Inc., Docket No. 11002593, License No. ISNM–81017

The generic provisions of the orders follow.

On October 2, 1986, Congress enacted the Comprehensive Anti-Apartheid Act of 1986 (the Act). Section 309 of the Act, which became effective on December 31, 1986, prohibits the import into the United States of (1) uranium ore and (2) uranium oxide that is produced or manufactured in South Africa. Section 303 of the Act prohibits the import of any article which is grown, produced, marketed, or otherwise imported into the United States by a parastatal organization of South Africa.

As an interim step to comply with the statutory deadline of the Act, on December 31, 1986, the Commission promulgated an amendment to 10 CFR Part 110 that required a specific license for all imports of South Africa origin uranium.

On June 12, 1987, the Commission granted a petition for leave to intervene and a hearing request to a number of petitioners who had requested that eight applications to import South African uranium be denied. CLI–87–6, 25 NRC ____, 52 FR 23091 (June 17, 1987). These same petitioners had also requested that proceedings be instituted to revoke eleven existing NRC import licenses to the extent that the existing license authorize the importation of special nuclear material and source material of South African origin. The central issues for these proceedings were the types of South African uranium products which should be barred from import into the United States under the Act.

Following written briefs submitted by the petitioners and other interested parties, in a Decision on September 21, 1987, the Commission held, *inter alia*, that the Act bars the import of all South African and Namibian uranium ore and uranium oxide, but does not bar other forms of uranium such as uranium hexafluoride or uranium ore and uranium oxide that have been substantially transformed into other forms of uranium in countries other than South Africa. CLI–87–9, 26 NRC ____ (1987).

In another Decision on this same date (CLI–87–10, 26 NRC ____ (1987)), the Commission held that the Director, Office of Government Affairs, should review the eleven existing licenses being challenged and promptly issue, effective immediately, orders to amend, suspend, or revoke those licenses, in accord with its Decision in CLI–87–9.

In view of the foregoing, and pursuant to section 53a., 62, 161b., 161i., and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. Part 110, it is hereby ordered effective immediately that:

License No. ISNM82015 is amended by the addition of the following license condition:

No form of uranium produced, manufactured, marketed, or otherwise exported by a parastatal organization of South Africa or Namibia shall be imported into the United States under this license. Uranium ore and uranium oxide produced or manufactured in South Africa or Namibia also shall not be imported into the United States under this license, but uranium hexafluoride or other forms of uranium are not barred from import. Uranium that has been substantially transformed in countries other than South Africa or Namibia is not barred from import into the United States.

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel at the same address. Any request for a hearing shall not stay the immediately effectiveness of this order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained. Persons requesting a hearing should specify with particularity (1) their interest in having a hearing, (2) how that interest may be affected by the results of a hearing, and (3) all issues they seek to raise.

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For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, International Programs, Office of Governmental and Public Affairs.

Dated at Washington, DC, this 23d day of September, 1987.

[FR Doc. 87-22315 Filed 9-25-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Exemption; Consumers Power Co. (Palisades Plant)

I

The Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR-20 which authorizes operation of the Palisades Plant. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility comprises one pressurized water reactor at the licensee's site located in Van Buren County, Michigan.

II

10 CFR Part 50, Appendix J, section III.A.6.(b) states:

> If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5.(b), notwithstanding the periodic retest schedule of III.D, a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5.(b), after which time the retest schedule specified in III.D may be resumed.

Palisades Plant has failed the acceptance criteria for the last three Type A tests because of leakage through containment penetrations. The Type A test is a test of the entire containment building and is normally performed every three to four years, such that three tests are conducted every ten-year period. Containment penetrations are also testable by local leak rate tests (Type B and Type C tests) which are required every refueling outage and at least every two years.

III

By letter dated August 22, 1986, the licensee requested an exemption to the requirements of section III.A.6.(b) proposing an aggressive "Local Leak Rate Testing—Corrective Action Plan" in lieu of more frequent Type A tests. The licensee has stated that the failures of the Type A tests were the result of Type B and C penalty additions to the test results. The NRC staff confirmed this statement by reviewing the test reports and notes that the licensee has proposed and implemented a corrective action program consistent with NRC Office of Inspection and Enforcement Information Notice No. 85-71, issued August 22, 1985. This Information Notice provides guidance to licensees that states in circumstances as described above "* * * the general purpose of maintaining a high degree of containment integrity might be better served through an improved maintenance and testing program for containment penetration boundaries and isolation valves. In this situation, the licensee may submit a Corrective Action Plan with an alternative leakage test program proposal as an exemption request for NRC staff review. If this submittal is approved by the NRC staff, the licensee may implement the corrective action and alternative leakage test program in lieu of the required increase in Type A test frequency incurred after the failure of two successive Type A tests." In addition, the NRC staff notes that the results of the Type A tests, neglecting the addition of the penalties for the penetration leakages determined from the Type B and C tests, do not indicate any deterioration of the containment building and are typical of results of similar containment tests in the industry. Therefore, the NRC staff concludes that the Corrective Action Plan, including an augmented local leak rate test program and trending program, if properly carried out, would more efficiently detect and correct the types of excess leakage that have occurred in the past (i.e., penetration leakage). Further, the staff sees no benefit to be gained by requiring a Type A test at this time since new equipment to correct the problems experienced during the January 1986 Type A test will not be available before June 1, 1988. The staff finds that for these circumstances, the licensee should be granted exemption from the 18-month restriction and further, that if the Type A test performed at the next refueling outage meets the acceptance criteria of Appendix J indicating the success of the Corrective Action Plan, the schedule for Type A tests may revert to that required under Section III.D of Appendix J. The Corrective Action Plan will continue in effect at least until the augmented local leak rate testing program produces consistently satisfactory results.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission finds that special circumstances are present in that application of the regulation and in these particular circumstances would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule, in that, as discussed in section III., the proposed alternative better meets the purpose of correcting excess leakage and confirming low leakage on a more frequent test schedule. The exemption provides only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation by implementing an alternative program to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants the following exemption from the requirements of section III.A.6.(b) of Appendix J to 10 CFR Part 50:

1. The 18-month limit on the interval between the January 1986 Type A test and the next required Type A test is waived provided that the licensee appropriately implements the Local Leak Rate Testing Corrective Action Plan described in its letter dated August 22, 1986;

2. If the results of the next Type A test meet the acceptance criteria of section III.A.5.(b), the next required test shall be in accordance with the requirements of section III.D.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (52 FR 32979).

A copy of the Commission's concurrently issued Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room located at the Van Zoeren Library, Hope College, Holland, Michigan 49428. A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Bethesda, Maryland, this 17th day of September, 1987.

[FR Doc. 87-22317 Filed 9-25-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 30-01267, 70-01717; License Nos. 06-06941-01, SNM-1504; EA 87-93]

Order Imposing a Civil Monetary Penalty; Norwalk Hospital

I

Norwalk Hospital (the "licensee") Norwalk, Connecticut 06856, is the holder of Byproduct Material License Nos. 06-06941-01 and SNM-1504 (the "licenses") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorize the licensee to possess and use radioactive materials for diagnostic and therapeutic medical procedures. The licenses were issued on November 22, 1960, were most recently renewed on May 10, 1983, and are due to expire on June 30, 1988.

II

An NRC safety inspection of the licensee's activities under the licenses was conducted on April 28, 1987. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 25, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated August 7, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region I.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 21st day of September 1987.

Appendix—Evaluations and Conclusions

On June 25, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during a routine NRC inspection. Norwalk Hospital responded to the Notice on August 7, 1987. In its response, the licensee does not specifically deny any of the cited violations, but does appear to question the appropriateness of the NRC citing three of the violations. The licensee also requests that the Severity Level be reduced or eliminated. The NRC's evaluation and conclusion regarding the licensee's arguements are as follows:

I. Restatement of Violations

A. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with all sections of Part 20, and are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, a survey was not made to evaluate the extent of radiation hazards incident to waste disposal under 10 CFR 20.301, which describes the authorized means of disposing of licensed material contained in waste. Specifically, on April 28, 1987, a vial containing 125 microcuries of licensed material was disposed in the normal trash, and prior to disposal, a survey was not made to evaluate the presence of radioactive material.

B. 10 CFR 20.203(e)(1) requires that each room in which lecensed materials are used or stored and which contain any radioactive materials (other than natural uranium or thorium) in an amount exceeding 10 times the quantity specified in Appendix C of Part 20 shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "Caution Radioactive Material."

Contrary to the above, on April 28, 1987, the brachytherapy storage and mold preparation area contained radioactive material in excess of 10 times the amounts specified in Appendix C of Part 20, namely, a 150 millicurie cesium-137 calibration source and a 900-microcurie strontium-90 calibration source, and the room was not posted with a "Caution Radioactive Material" sign.

C. Condition 17 of License No. 06-06941-01 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in the license application dated April 12, 1983.

1. Block 10 of this application requires that, prior to using a survey meter, the technologist check the meter to verify that it is operational, including a response check with a source of radioactivity.

Contrary to the above, on April 28, 1987, a technologist using a survey meter did not first verify that the survey meter was operational. Specifically, she did not perform a response check of the meter with a source of radioactivity.

2. Block 10 of this application requires that the dose calibrator be calibrated in accordance with procedures contained in Appendix D, section 2, of Regulatory Guide 10.8.

a. Item A.1 of Appendix D, section 2, requires that the dose calibrator

linearity be determined at installation and quarterly thereafter.

Contrary to the above, the dose calibrator linearity test had not been performed for the 3rd quarter of 1985 and the 2nd quarter of 1986.

b. Item C of Appendix D, section 2, requires that the daily constancy test be performed before each day's use of the instrument.

Contrary to the above, on April 28, 1987, a technologist used the dose calibrator to assay a technetium-99m generator elution for molybdenum content, and the constancy test was not performed until after that assay.

C. Item C of Appendix D, section 2, requires that a comparison be made between the measured dose calibrator output reading and the decay corrected activity and that the percent deviation be recorded.

Contrary to the above, from April 1, 1987 until April 28, 1987, no comparison was made between the measured dose reading and the decay corrected activity and the percent deviation was not calculated and recorded.

3. Block 15 of this application requires that radioactive material be used in accordance with Appendix G of Regulatory Guide 10.8.

a. Item 1 of Appendix G, requires that laboratory coats or other protective clothing be worn at all times in areas where radioactive materials are used.

Contrary to the above, on April 28, 1987, a technologist performed work with radioactive material in the hot lab, and at the time, the technologist did not wear a laboratory coat or other protective clothing.

b. Item 5.b of Appendix G, prohibits the storage of food, drink, or personnel effects in areas where radioactive materials are used or stored.

Contrary to the above, as of April 28, 1987, food was stored in the brachytherapy storage and mold preparation room, a place where radioactive material is used and stored.

c. Item 8 of Appendix G requires that TLD finger badges be work during elution of generators and preparation, assay, and injection of radiopharmaceuticals.

Contrary to the above, on April 28, 1987, a technologist eluted a generator, and prepared and assayed radiopharmaceuticals, without wearing the required TLD finger badge.

4. Block 17 of this application requires that surveys be performed in accordance with the "Area Survey Procedures" in Appendix I of Regulatory Guide 10 8.

a. Item 3 of Appendix I requires that a weekly survey, including wipes, be performed of selected areas and the results of these surveys be documented.

Contrary to the above, between December 1986, and April 1987, wipes of selected areas were only performed on a monthly basis.

b. Item 5 of Appendix I requires that a permanent record be kept of all survey results.

Contrary to the above, daily surveys were conducted but a record was not maintained for November 11, 12, 13, 14, 1986; the week of November 17, 1986; the week of November 24, 1986; December 11, 12, 15, 1986 and for the month of March 1987.

Collectively, these violations have been categorized in the aggregate as a Severity Level III problem (Supplements IV and VI)

Cumulative Civil Penalty—$2,500—assessed equally among the violations.

II. Summary of Licensee Response

The licensee, in its response, does not specifically deny any of the violations. However, the licensee does appear to question the appropriateness of citing Violations C.2.a, C.2.b, and C.2.c. With regard to Violation C.2.a, the licensee argues that the calibrations were performed, but are missing from the records. The licensee also claims that over the five year period since the last inspection, only two quarterly calibrations could not be found. With regard to Violation C.2.b, the licensee argues that the technician did perform a constancy check after the equipment was used, but prior to patient use, and that reviewing prior data indicates constancy checks have been performed on a daily basis. With regard to Violation C.2.c, the licensee states that performing a decay correction from month to month is redundant, since the half life of the radioactive material is 30 years, and that an annual decay correction suffices given the ±5% control limits of the constancy test. While the licensee admits that the tolerance ranges from the March use sheet were not transferred to the April use sheet, it argues that this does not imply that the constancy check was performed improperly but that the technologists, aware that the activity changed imperceptibly, simply applied the March control limit to the April observations.

The licensee also requests that the NRC reduce or eliminate the Severity Level, stating that it is the judgement of its chief physicist and an outside consulting physicist that Severity Level III conditions did not exist.

III. NRC Evaluation of Licensee Response

With respect to the licensee's claims concerning Violation C.2.a, the NRC notes that the license requires linearity tests be performed quarterly with no exceptions. The NRC can not accept the licensee's argument that the calibrations were performed but are missing from the records. The licensee had maintained records of all other linearity tests performed between January 1985, and April 1987, as a regular practice. As documentation was missing only for tests performed for the 3rd quarter of 1985 and 2nd quarter of 1986, the NRC concludes that this lack of documentation indicates that these two tests were not performed. With respect to the licensee's arguments regarding Violation C.2.b, Item C of Appendix D, Section 2 of Regulatory Guide 10.8 requires that the test for constancy be performed before each day of use of the instrument. As the licensee admits that the constancy check was performed after the equipment was used, a violation occurred. With respect to the licensee's arguments regarding Violation C.2.c, the inspectors asked the licensee's physicist if a comparison had been made between the measured value and decay corrected calibrated activity, and were informed that the expected values had not been calculated and documented as required by Appendix D, Section 2 of Regulatory Guide 10.8. Therefore, the NRC concludes that the violation occurred as stated in the Notice of Violation.

With respect to the licensee's request to reduce or eliminate the Severity Level, the licensee provides no basis for its request. The NRC recognizes that each violation, if considered individually, would normally be classified at Severity Level IV. However, the violations, when considered collectively, are appropriately classified as a Severity Level III problem because collectively they demonstrate a lack of management control over the licensee's radiation safety program.

IV. NRC Conclusion

The licensee has not provided an adequate basis for withdrawing any of the violations or for reducing the Severity Level of the violations. The NRC has concluded that the violations collectively represent a breakdown in management control of the radiation safety program, occurred as stated in the Notice of Violation, and were appropriately classified in the aggregate as a Severity Level III problem. Therefore, the NRC concludes that the

proposed civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 87-22318 Filed 9-25-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-267]

Environmental Assessment and Finding of No Significant Impact; Public Service Company of Colorado

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to the Public Service Company of Colorado (the licensee) for the Fort St. Vrain Nuclear Generating Station located in Weld County, Colorado.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of sections III.G and III.J of Appendix R to 10 CFR Part 50, which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage and to the provision of emergency lighting. The exemptions are technical since the licensee must demonstrate that fire protection and emergency lighting configurations meet the specific requirements of section III.G and III.J or that alternate fire protection and emergency lighting configurations can be justified by an acceptable analysis.

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant would result in a net benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of this exemption request.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at Fort St. Vrain. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are not significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated April 1, 1985 (P-85113). The letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Greely Public Library, City Complex Building, Greely, Colorado.

Dated at Bethesda, Maryland, this 16th day of September, 1987.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-22319 Filed 9-25-87; 8:45 am]
BILLING CODE 7590-01-M

Application for Licenses To Export Nuclear Facilities or Materials; Nissho Iwai and Transnuclear, Inc.

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follow.

NRC Export Applications

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Nissho Iwai, 9-1-87, 9-11-87, XSNMO1778, Amend. 05	Enriched Uranium.	Add'l 85.560	Add'l 38.500	Add'l fuel for JMTR Research Reactor.	Japan.
Transnuclear, Inc., 9/17/87, 9/17/87, XSNMO2353	Enriched Uranium.	38.095	35.543	Fuel for HFR-Petten Research Reactor.	The Netherlands.

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For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

Dated this 22d day of September 1987, at Bethesda, Maryland.

[FR Doc. 87-22316 Filed 9-25-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15995; 812-6656]

Greater Washington Investors, Inc. Application;

September 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Greater Washington Investors, Inc. ("GWI").

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 57(c) from the provisions of sections 12(d), 17(a), 18(a), 19(b), 57(a)(1), (2), and (3), 60 and 61 and under section 17(d) and Rule 17d-1, approving certain transactions.

Summary of Application: Applicants seek an order to permit the establishment and operation of a wholly-owned subsidiary under the terms of the proposed reorganization in which Applicant will transfer assets, including its small business investment company license, in exchange for all of the common stock of the subsidiary.

Filing Date: The application was filed on March 19, 1987 and amended on June 17, August 14, 1987, and September 9, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 5454 Wisconsin Avenue, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Fran Pollack, Staff Attorney (202 272-3024 or Karen L. Skidmore, Special Counsel (202) 272-3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. GWI is a corporation which was organized under the laws of the District of Columbia on August 26, 1959. GWI is a closed-end, non-diversified, management investment company and is registered with the SEC under section 8(b) of the 1940 Act. GWI is also licensed by the Small Business Administration ("SBA") as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 (the "1958 Act"). GWI has elected to be regulated as a business development company under the 1940 Act by filing a notification of election with the SEC.

2. GWI operates as a "venture capital" company, principally furnishing capital to industry, financing promotional enterprises, and purchasing securities of issuers for which no ready market is in existence. GWI also makes available significant managerial assistance to the issuers of such securities. GWI seeks to change its structure and operations to enable it to: (1) Make investments that would not be permitted under the 1958 Act, and (2) increase its ability to obtain funds for investment in its business ventures.

3. Under a proposed plan of reorganization, GWI intends to transfer certain of its assets (initially approximately twenty-five percent), including its license to operate as an SBIC, to a newly formed and wholly-owned subsidiary, Greater Washington Investments, Inc. ("Investments"). In return, Investments would assume certain indebtedness of GWI to the SBA, and would issue to GWI all of its outstanding capital stock. After the transfer of assets and liabilities, Investments would carry on the SBIC activities previously conducted by GWI while GWI would engage in a broader range of investment activities. Investments would operate as an SBIC and as a registered investment company. GWI will contiue to operate as a business development company.

4. GWI presently contemplates that it may from time to time make additional investments in Investments either as contributions to capital, purchases of additional stock or loans following GWI's initial contribution. It is not contemplated that Investments would purchase or otherwise acquire any of the capital stock of GWI. In addition, Investments would from time to time pay dividends and make other distributions to GWI with respect to its investments in Investments's stock, including capital gains dividends subject in each case to the requirements of the 1958 Act and regulations thereunder. GWI intends to cause Investments to qualify and elect to be taxed as a regulated investment company and accordingly, Investments would be required to pay out as dividends substantially all of its so-called "investment company taxable income." GWI intends to continue to qualify and elect to be taxed itself as a "regulated investment company" and accordingly, would be required to pay out as dividends substantially all of its so-called "investment company taxable income." Investments may also from time to time make loans or other advances to GWI other than on account of purchases of Investments' stock. GWI and Investments might also from time to time invest in securities of the same issuer, simultaneously or sequentially, in the same or different securities of such issuer, and deal with such investments separately or jointly. GWI or Investments might also from time to time purchase all or a portion of portfolio investments held by the other in order to enhance the liquidity of the selling company.

5. GWI's proposed reorganization could be deemed to violate a number of the provisions of the 1940 Act if the requested exemptions are not granted. The proposed transaction may be prohibited by sections 12(d)(1)(A) and 12(d)(1)(C). As a business development company, the provisions of section 12 would apply to GWI through section 60. Under the proposed reorganization, GWI, a business development company, will acquire all of the capital stock of Investments, a closed-end investment company, thereby potentially violating both sections 12(d)(1) (A) and (C). In addition, in the future GWI may make loans or advances to Investments, and Investments may make loans or advances to GWI. Those transactions also might be considered acquisitions of securities prohibited by sections 12(d) and 60.

6. Section 17(a) may prohibit the proposed transaction because GWI will be an affiliated person of Investments and Investments will be affiliated person of GWI (as defined in sections

2(a)(3) of the 1940 Act). As a business development company, the substantially identical provisions of section 57(a) of the 1940 Act would apply to GWI. Portfolio companies of GWI Investments may also be affiliated persons of GWI or Investments by reason of ownership of five percent or more of such portfolio company's voting securities. Accordingly, any exchange of securities between GWI and Investments, and between either or both of them and their portfolio companies, could constitute an affiliated transaction prohibited by sections 17(a) and 57(a) of the 1940 Act.

7. Section 17(d) of the 1940 Act and Rule 17d–1(a) may prohibit transactions whereby GWI and Investments invest in securities of the same issuer and deal with such investments separately or jointly. As a business development company, the substantially identical provisions of section 57(a)(1), (2) and (3) of the 1940 Act would apply to GWI. As noted above, GWI and Investments would each be affiliated persons of the other. Therefore, investments by both in portfolio companies of either in which the other is or is proposed to beome an investor may be prohibited by section 17(d), Rule 17d–1 and section 57(a) of the 1940 Act.

8. GWI has also requested relief from those provisions of the Act governing capital structure. The proposed transaction will not meet the asset coverage requirements of section 18 of the 1940 Act. However, section 18(k) provides special exemptions from these provisions for SBIC's. In addition, for companies which have elected to be regulated as business development companies, the asset coverage requirement is reduced to 200 percent for all senior securities. As it currently is organized, GWI is entitled to the 18(k) exclusion for its SBA-guaranteed debentures, SBA-guaranteed debt being excluded from the asset coverage requirements. Following the proposed reorganization, Investments, as an SBIC, would be entitled to the section 18(k) exclusion and thus would not need any asset coverage for its SBA-guaranteed debentures. However, GWI, since it would no longer be an SBIC, would be subject to the asset coverage requirements of section 18(a) (as modified by section 61(a)), without the benefit of the 18(k) exclusion, with respect to senior securities it directly issued, as well as the senior securities issued by Investments, its wholly-owned subsidiary, of which GWI would be deemed to be the indirect issuer. Therefore, GWI is seeking an exemption for both itself and Investments to permit the issuance of senior securities only to the following extent: (1) GWI and Investments could issue and sell to banks, insurance companies and other financial institutions their secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, provided that: (a) Such notes or evidences of indebtedness were not intended to be publicly distributed, (b) such notes or evidences of indebtedness could not be convertible into, exchangeable for or accompanied by any options to acquire any equity security (except that with respect to GWI, these restrictions shall not be applicable except to the extent they are applicable generally to business development companies), and (c) immediately after the sale or issuance of such notes or evidences of indebtedness, GWI and Investments on a consolidated basis and individually would have 200 percent asset coverage, except that any SBA-guaranteed debenture would not be considered senior securities requiring asset coverage; and (2) in addition, (a) Investments may obtain financing through the issuance of SBA-guaranteed debentures on such basis and in such amount as the SBA might from time to time permit for SBIC's; (b) Investments may borrow from GWI and vice-versa, and such borrowings would not be considered senior securities requiring asset coverage; and (c) GWI may guarantee any borrowing of Investments without the guarantee being considered a senior security requiring asset coverage.

9. It is contemplated that Investments will pay dividends and other distributions on a regular basis of long-term capital gains which may violate section 19(b) and Rule 19b–1. Permitting distributions by Investments to GWI more often than once a year will permit GWI to more efficiently manage its internal cash flow which could result in administrative savings.

Applicant's Legal Conclusions

1. Rule 60a–1 under the 1940 Act would permit GWI to acquire the securities of Investments which is operated as a wholly-owned subsidiary of the business development company.

2. If GWI were to continue to operate as one company, transactions with portfolio affiliates whether controlled or not controlled would be permissible without Commission approval by virtue of section 57(a) of the 1940 Act and Rule 57b–1 thereunder. Moreover, transactions between business development companies or investment companies and their downstream affiliates are exempt from the prohibitions of sections 57(a), 17(a), and 17(d) of the 1940 Act by virtue of Rules 17a–6 and 57b–1. Therefore, Investments should be permitted to invest in downstream affiliates of GWI and vice versa. It is the intent of this request only to permit GWI and Investments to carry on their businesses as otherwise permitted by the 1940 Act, if GWI and Investments were a single company.

3. If GWI and Investments were one combined company, Rule 17d–1(d)(5) under the 1940 Act would exempt transactions under section 17(d) of the 1940 Act and Rule 17d–1 between them and their downstream affiliates and if they were one combined business development company such transactions would be exempted by Rule 57b–1 of the 1940 Act. It is reasonable and fair to exempt GWI and Investments from the provisions of section 17(d) of the 1940 Act and Rule 17d–1 thereunder to the extent that GWI would not be subject to such provisions had it remained a single company.

4. With respect to the exemptions from sections 17 (a) and (d) and 57(a) (1), (2), and (3), since Investments will be a wholly-owned subsidiary of GWI and since no officers or directors of either Investments or GWI or any controlling persons of other "upstream affiliates" of GWI will have any prohibited financial interest in the transactions described, there can be no overreaching on the part of any person and no harm to the public interest will occur in transactions solely between GWI and Investments.

5. With respect to the section 18(a) exemption, the net effect of application of the "asset coverage" requirements on a consolidated basis as to GWI and Investments following the reorganization, if relief is not obtained, could be to restrict the ability of Investment to obtain financing through the issuance of SBA-guaranteed debentures from that which would be available to GWI if the proposed reorganization were not affected. Accordingly, no harm to the public interest will occur if the section 18(a) exemption is obtained.

6. Since the section 19(b) exemption relates solely to dividends from Investment to GWI, it is patently an internal matter and does not affect the public interest.

7. The issuance of the exemptive order requested is clearly within the authority of the Commission under sections 6(c) and 57(c). If the requested exemptive order is granted, GWI will be able to achieve several goals that would be both beneficial to its shareholders and in the public interest. The proposed

reorganization is intended to permit GWI to engage in an expanded scope of operations, beyond that permitted to be engaged in by an SBIC while at the same time retaining its SBIC operations and the benefits available to its shareholders through the SBIC program. The formation of the wholly-owned subsidiary to operate as an SBIC would be in the best interests of the shareholders of GWI. The proposed reorganization also would be consistent with the congressional intent and the policies underlying the 1940 Act and the Small Business Incentive Act of 1980 (the "1980 Act"). The exemptions requested herein coincide with the principle purpose of the 1940 Act, as amended by the 1980 Act, to remove regulatory burdens on venture capital companies while assuring adequate protection of the interests of investors in such companies.

8. The position of GWI's shareholders basically will be unchanged except that their interest in the SBIC subsidiary will be indirect. Since Investments will be a wholly-owned subsidiary of GWI and since, in all material respects, its shareholders will have the same rights with respect to Investments that they currently have with respect to GWI, the shareholders of GWI will retain substantially all of GWI while gaining the opportunity to share in GWI's successes as a business development company not limited to SBIC investments.

Applicant's Conditions

If the requested order is granted, the Applicant agrees to be subject to the following conditions:

1. GWI will at all times own and hold beneficially and of record all of the outstanding capital stock of Investments; Investments will at all times be wholly owned by GWI and will therefore never have public shareholders.

2. Investments will not change any of its fundamental investment policies or engage in any of the activities described in section 13(a) of the 1940 Act unless so authorized by a vote of the majority of the outstanding voting securities of GWI.

3. No person will serve or act as an investment adviser to Investments subject to section 15 of the 1940 Act, unless shareholders and directors of both GWI and Investments have given the necessary approval.

4. No person shall serve as a director of Investments who shall not have been elected as a director of GWI at its most recent annual meeting.

5. For purposes of section 17 analysis, Investments will always be collapsed into GWI which has currently elected business development company status (and not vice versa), and, without further order of the Commission, will never be separated in order to produce a greater advantage.

6. GWI will not issue, and it will not permit Investments to issue, any senior security unless it and Investments, on an unconsolidated basis, and it on a consolidated basis, meet the 200 percent asset coverage test under the conditions described in the application.

7. GWI will file with the Commission and provide to its shareholders the financial statements required by the 1940 Act and other Federal securities laws, on a consolidated basis as to GWI and Investments, and on an unconsolidated basis with respect to Investments.

8. No officers or directors of either Investments or GWI or any controlling persons or other "upstream affiliates" of GWI will have any prohibitive financial interest in the transactions described in this notice and the application.

9. GWI will cause Investments to conduct its operations in compliance with the provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22277 Filed 9-25-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15997; 812-6731]

IDS Certificate Co., Application;

September 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: IDS Certificate Company ("IDSC"), IDS Financial Corporation ("IDS") (collectively "Applicants").

Relevant 1940 Sections: An amended exemptive order is requested pursuant to sections 6(c) and 17(d) of the 1940 Act from the provisions of sections 12(d)(3), 17(a) and 17(d) of the 1940 Act and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an extension of the maturity date of a promissory note from IDS to IDSC that has been approved in earlier exemptive orders.

Filing Date: The application was filed on May 21, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, IDS Tower 10, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representatives

1. IDSC, formerly known as Investors Syndicate of America, Inc., a registered face amount certificate company, and its parent, IDS, formerly IDS Financial Services, Inc., sought and received Commission approval in 1981 for IDSC to sell to IDS a block of securities bearing substantial unrealized depreciation (Investment Company Act Release No. IC-12060, November 27, 1981). IDS then sold the securities on the open market thereby realizing a loss of tax purposes. The price IDS agreed to pay for the securities was the higher of book or market value.

2. IDS paid IDSC an amount equal to book value for the securities by paying cash equal to the market value and a promissory note (the "Note"), at 15% per annum, for the balance. The Note is due December 31, 1988. The Note becomes immediately due and payable if IDS defaults, if any other indeptedness of IDS is in default, if IDS becomes insolvent or if IDS' consolidated net worth (less IDSC's net worth) becomes less than $150 million. Morevover, if IDSC's qualified assets were to fall below the amount required by the 1940 Act. IDSC could accelerate an amount of the Note's principal sufficient to cover the projected deficiency.

3. Market conditions changed before IDS could sell the securities with the result that IDS did not realize the entire taxable loss it originally sought. Therefore, in 1982, IDS, IDSC and IDS Life Insurance Company, an affiliate, sought and received an amendment to the original order (Investmernt Company Act Release No. IC–13040, February 18, 1983). In this amended order, the Commission permitted additional private placement securities to be sold by IDSC to IDS at book value. IDS, in turn, sold the securities to IDS Life Insurance Company at market value incurring a loss.

4. IDS now seeks an extension of the Note from December 31, 1988 to December 31, 1991. All other terms and conditions of the Note would continue including the 15% per annum rate.

5. The amendment currently sought is necessary and appropriate in the public interest and consistent with the protection of investors because IDSC will keep a creditworthy, high interest bearing asset on its books. The Note from IDS bears interest at 15%, well in excess of current market rates. Timely payment of the Note would mean IDSC would have to invest the proceeds in investments bearing a much lower rate of interest. Also, the qualified reserves of IDSC that back its publicly held certificates are not affected by the extension of the Note because the Note is not included in the reserve calculations. The principal of the Note would nevertheless be available either through an acceleration of the Note or a pledge, assignment or transfer thereof, if needed to increase the reserves. While this provision offers a measure of added safety, IDSC is in no present jeopardy of having inadequate reserves. At March 31, 1987, assets on deposit exceeded certificate liabilities by $27.6 million. Neither IDS or IDSC has any reason to believe principal acceleration would be necessary during the life of the Note as extended.

6. IDSC and its certificates holders have the additional assurance of a very creditworthy investment. IDS is required under the terms of the Note to maintain a net worth of at least $150 million, less IDSC's net worth. At March 31, 1987, its consolidated net worth (less IDSC's net worth) was approximately $545.2 million. Moreover, IDSC is intimately familiar with IDS, IDS's parent American Express Company, and the business of each. More than with any other of its investments, IDSC is in a position to monitor the quality of the investment.

7. ISC and IDSC recognize that both parties will benefit from the requested relief. Through the extension, IDS will be able to continue to use its capital for continuing and expanding business operations. As of March 31, 1987, the balance of the Note was $40.1 million. If the Note was paid on December 31, 1988, IDSC would receive approximately $14.6 million. The benefits to IDS, however, do not change the fact that IDSC and its certificate holders receive material benefits from the Note extension. IDS has in good faith regularly and timely paid interest on the Note and also sought to reduce the Note's principal.

8. The requested relief is within the purpose fairly intended by the policy and provisions of the Act because it clearly does not involve overreaching by affiliates. The terms are fair and reasonable and will work to the advantage of the certificate holder investors as well as IDSC.

9. The IDSC Board of Directors has approved the Note extension, subject to Commission approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22276 Filed 9–25–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15999; File No. 812–6742]

Application; The Manufacturers Life Insurance Co. of America et al.

Date: September 22, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Manufacturers Life Insurance Company of America ("Company"), Separate Account Two of The Manufacturers Life Insurance Company of America ("Account Two") and ManEquity, Inc.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants seek an order to permit the deduction of mortality and expense risk charges under certain variable annuity contracts ("Contracts").

Filing Date: The application was filed on June 1, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 19, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Company and Account Two, Three Mellon Bank Center, Philadelphia, PA 19102. ManEquity, Inc., 9085 East Mineral Circle, Suite 300, Englewood, CO 80112.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Clifford E. Kirsch (202) 272–3032 or Special Counsel Lewis B. Reich (202) 272–2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations and Statements

1. The Company is a stock life insurance company organized under the laws of Pennsylvania in 1977. Account Two is a separate account of the Company established under the laws of Pennsylvania for the purpose of funding variable annuity contracts. The assets of Account Two will be invested in shares of ManuLife Series Fund, Inc., a Maryland corporation registered under the 1940 Act as a diversified open-end management investment company. Account Two is registered under the 1940 Act as a unit investment trust. ManEquity, Inc., an indirect wholly-owned subsidiary of The Manufacturers Life Insurance Company, will be the principal underwriter of the variable annuity contracts funded through Account Two.

2. The Contracts provide for the deduction of an administration fee equal to 2% of the total Contract value (up to a maximum of $30) on any Contract anniversary that the total Contract value is less than $25,000 and for the deduction of that fee on a pro-rata basis upon full surrender of a Contract on a date other than a Contract anniversary if on the date of full surrender the total Contract value is less than $25,000. The fee will be deducted from the fixed

portion of the Contract and, if necessary, from the value of the Contract in Account Two.

3. In addition, the Contracts provide for a withdrawal charge (contingent deferred sales charge) to be assessed in some circumstances when a cash withdrawal is made from a Contract or a Contract is surrendered in full. Amounts surrendered or withdrawn during a Contract year which exceed 10% of the total Contract value as of the most recent Contract anniversary will be subject to a withdrawal charge based upon when the purchase payments to which such amounts are deemed attributable were made, as follows:

Number of complete contract years elapsed since purchase payment was made-	Withdrawal charge (percent)
0	8
1	8
2	8
3	5
4	4
5	3
6	2
7	1
8	0

For purposes of determining the withdrawal charge applicable to a full surrender or cash withdrawal, any amount surrendered or withdrawn, other than an amount not subject to a withdrawal charge by reason of a 10% free-withdrawal provision, will be deemed to be a liquidation of a purchase payment, and the oldest previously unliquidated purchase payment will be deemed to have been liquidated first, then the next oldest and so forth. In no event will the sum of the withdrawal charges exceed 9% of total purchase payments made.

4. Finally, the Company proposes to deduct from the assets of Account Two a charge at an annual rate of 1.00% as compensation for the mortality and expense risks it assumes under the Contracts. The mortality risk assumed is the risk that annuitants may live for longer periods of time than the periods indicated in the mortality tables on which the Company calculated the annuity tables in the Contracts and the risk that mortality will cause a Contract to terminate prematurely before the assumed annuitization date. The expense risk assumed is that expenses in administering the Contracts will be greater than the Company estimated. Of the 1.00% charge, .10% is for the mortality risk and .90% is for the expense risk.

5. Applicants seek an exemption from sections 26(a) and 27(c)(2) of the 1940 Act to the extent necessary to permit the issuance and sale of the Contracts providing for such mortality and expense risks charge. Applicants represent that the 1.00% which the Company proposes to charge is within the range of industry practice for comparable annuity products. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence of other charges, the number of transfers permitted without charge and the nature of the free withdrawal provisions. The Company will maintain at its service office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

6. Applicants acknowledge that the withdrawal charge to be made under the Contracts is expected to be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risks charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. In such circumstances a portion of the mortality and expense risks charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Account Two and the Contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its service office and will be available to the Commission. Moreover, the Company represents that Account Two will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22274 Filed 9-25-87; 8:45am]

BILLING CODE 8010-01-M

[Release No. IC-15998; File No. 812-6763]

Application; The Manufacturers Life Insurance Co. of America, et al.

September 22, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Manufacturers Life Insurance Company of America ("Company"), Separate Account One of The Manufacturers Life Insurance Company of America ("Account One") and ManEquity, Inc.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rule 6e-2(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit the sale of shares of ManuLife Series Fund, Inc. to both variable annuity and variable life insurance separate accounts of the Company.

Filing Date: The application was filed on June 18, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 19, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Company and Account One, Three Mellon Bank Center, Philadelphia, PA 19102. ManEquity, Inc., 9085 East Mineral Circle, Suite 300, Englewood, CO 80112.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Clifford E. Kirsch (202) 272-3032 or Special Counsel Lewis B. Reich (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from either the SEC's Public Reference Branch in person or the

SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations and Statements

1. The Company is a stock life insurance company organized under the laws of Pennsylvania in 1977. It is authorized to do business in the District of Columbia and all States of the United States except New York. The Company is an indirect wholly-owned subsidiary of The Manufacturers Life Insurance Company, a mutual life insurance company based in Toronto, Canada.

2. Account One is a separate account of the Company established under the laws of Pennsylvania. Account One is used for certain scheduled premium variable life insurance contracts issued by the Company. Assets of Account One are invested in shares of ManuLife Series Fund, Inc. ("Fund"), a Maryland corporation registered under the 1940 Act as a diversified open-end management investment company. Account One is registered under the 1940 Act as a unit investment trust. ManEquity, Inc., also an indirect wholly-owned subsidiary of The Manufacturers Life Insurance Company, is the principal underwriter of the variable life insurance contracts participating in Account One. Pursuant to the provisions of Rule 6c–3 under the 1940 Act, the Company, Account One and ManEquity are relying on the provisions of Rule 6e–2 for the necessary exemptive relief to issue the contracts participating in Account One.

3. The Company proposes to issue certain variable annuity contracts which will be funded by Separate Account Two of The Manufacturers Life Insurance Company of America ("Account Two"), also a separate account of the Company established under the laws of Pennsylvania. Assets of Account Two will be invested in shares of the Fund. The Company has also established two additional separate accounts to fund flexible premium variable life insurance contracts, the assets of which are or will be invested in shares of the Fund. The variable life insurance policies funded by such accounts are or will be issued in reliance on the provisions of Rules 6c–3 and 6e–3(T) under the 1940 Act.

4. Since Fund shares will not be sold exclusively to variable life insurance separate accounts of the Company, Applicants request exemption from sections 9(a), 13(a), 15(a) and 15(b) of the Act and paragraph (b)(15) of Rule 6e–2 to the extent necessary to permit the sale of Fund shares to both variable annuity and variable life insurance separate accounts subject to the provisions of clauses (i) through (iv) of Rule 6e–2(b)(15) and the undertakings set forth below.

5. Applicants assert that there is no policy reason why the exemptions provided by paragraph (b)(15) of Rule 6e–2 should not apply solely because Account Two and other variable annuity separate accounts of the Company as well as Account One and other variable life insurance separate accounts invest in Fund shares. Applicants will comply with the following conditions:

(1) The Board of Directors of the Fund, constituted with a majority of disinterested directors, will monitor the Fund for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders investing in the Fund and interests of holders of variable life insurance contracts investing in the Fund.

(2) The Company agrees that it will be responsible for reporting any potential or existing conflicts to the directors of the Fund.

(3) If a material irreconcilable conflict arises, the Company will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the variable life insurance contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22275 Filed 9–25–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2290]

Declaration of disaster Loan Area; Pennsylvania

Lancaster and Lehigh counties and the adjacent counties of Berks, Carbon, and Northampton in the State of Pennsylvania constitute a disaster area because of damage from flash flooding which occurred on September 8, 1987. applications for loans for physical damage may be filed until the close of business on November 19, 1987, and for economic injury until the close of business on June 20, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th floor, Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available elsewhere	8.000
Homeowners Without Credit Available elsewhere	4.000
Businesses With Credit available elsewhere	8.000
Businesses Without Credit Available elsewhere	4.000
Businesses (EIDL) Without Credit Available elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 229006 for physical damage and for economic injury the number is 655300.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: September 18, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–22255 Filed 9–25–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending September 18, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45143 R–1—R–29

Parties: Members of International Air Transport Association.

Date filed: Sept. 17, 1987.

Subject: Mid-Atlantic—Europe Fares.

Proposed effective date: October 1, 1987.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–22326 Filed 9–25–87; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending September 18, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following

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the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45144

Date filed: September 18, 1987.

Due date for answers, conforming applications, or motion to modify scope: October 16, 1987.

Description: Application of Interamericana De Aviacion, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit authorizing it to engage in nonscheduled, including charter, foreign air transportation of property and mail between Miami, Florida and points in Venezuela, via certain optional intermediate points and areas, with all flights to the U.S. originating or terminating in Venezuela.

Docket No. 45142

Date filed: September 17, 1987.

Due date for answers, conforming applications, or motions to modify scope: October 15, 1987.

Description: Application of Aer Turas Teoranta pursuant to Section 402 of the Act and Subpart Q of the Regulations, for renewal of its foreign air carrier permit to engage in charter air transportation of property and mail, between any point in Ireland, on the one hand, and any point in the United States, its territories and possessions, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-22327 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 87-072]

Meeting; Subcommittee on Marine Occupational Safety and Health, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Wednesday, November 4, 1987 in Room 6319, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m.

In addition to subcommittee discussions concerning old and new business, the agenda for the meeting will include a morning presentation reviewing Coast Guard efforts to develop a comprehensive occupational safety and health program for marine hazardous chemical workers. The presentation will be given by a representative from Southwest Research, Inc., the Coast Guard's primary project contractor in this effort. During the afternoon session, public reports generated during the multi-year research and development effort will be available for review and discussion by subcommittee participants interested in specific aspects of the development.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Ocken or Mr. Mike Morrissette, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593, (202) 267-1217.

Dated: September 22, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-22306 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-87-25]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; American Airlines, et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 19, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 22, 1987.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
25259	American Airlines	§§ 121.411(a)(1), (a)(2), (a)(3), and (a)(6), 121.411(b) and 121.413(b) and (c).	To allow petitioners to utilize Aeroformation pilot simulators/flight instructors for the purpose of training petitioner's initial cadre of pilots in the Airbus Industrie A300-600R type airplane in Toulouse, France, without those instructors holding appropriate U.S. certificates and ratings and without their meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR
¥			*Partial Grant, September 10, 1987.*

PETITIONS FOR EXEMPTION—Continued

Docket No	Petitioner	Regulations affected	Description of relief sought
21882	China Airlines Limited	§§ 61.77(a) and (b), 63.23 (a) and (b)	To allow the issuance of U.S. special purpose pilot and flight engineer certificates to petitioner's airmen, without meeting the requirement that they hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation (ICAO). *Granted, September 10, 1987*
25192	Eastern Air Lines, Inc	§§ 121.685, 121.697(a), (b), (c), and (d)	To allow petitioner to substitute a computer application signature for the signed load manifest required by these sections. *Granted, September 3, 1987*
25008	Melvin M. Aman, et al	§ 121.383(c)	To allow petitioner and 38 other current and former pilots (petitioners) to continue to serve as a pilot in Part 121 air carrier operations after reaching their 60th birthday. Subsequent to the submission of the petition four of the petitioners have requested that their names be withdrawn. *Denied, September 8, 1987*
25351	USAir	§§ 121.371 (a) and 121.378	To allow petitioner to use foreign vendors to perform inspection repair, and overhaul work on airframe, engines, components, and equipment on petitioner's fleet of British aerospace BAC 1-11, Boeing 737-300, 737-200, and McDonnell-Douglas DC-9-30 aircraft, where such foreign vendors are the original equipment manufacturers of such equipment
25309	City of Pasadena	§ 45.29	To allow the petitioner to operate certain aircraft with the registration numbers placed on non-standard configuration.
25301	Condon & Forsyth	§§ 25.853 and 121.312(b)	To allow Airborne Express to operate certain aircraft without complying with the seat cushion flammability requirements in §§ 25.853 and 121.312(b)

[FR Doc. 87-22232 Filed 9-25-87; 8:45 am]
BILLING CODE 4910-13-M

Closing of Flight Service Station at Paso Robles, CA

Notice is hereby given that on or about September 25, 1987, the Flight Service Station at Paso Robles, California, will be closed. Services to the general aviation public of Paso Robles, formerly provided by this office, will be provided by the Flight Service Station in Hawthorne, California. This information will be reflected in the next reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Arlene B. Feldman,

Acting Director, Western-Pacific Region.

Issued in Lawndale, California, on September 15, 1987.

[FR Doc. 87-22233 Filed 9-25-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information collection Requirements Submitted to OMB for Review

Date: September 22, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0710
Form Number: 5500, 5500-C, 5500-R, Schedules B (5500) and Schedule P (5500)
Type of Review: Revision
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules

Description: Forms 5500, 5500-C and 5500-R 4 annual information returns filed by employee benefit plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 926,811 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-22251 Filed 9-25-87; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 22, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8645
Type of Review: New Collection
Title: Soil and Water Conservation Plan Certification

Description: Form 8645 is used to certify that conservation expenses claimed as a deduction on Schedule F, (Form 1040) are part of an approved plan for their farm area. The approved plan requirement comes under Code section 175(c)(3).

Respondents: Farms
Estimated Burden: 8,500 hours
OMB Number: 1545-0016
Form Number: 706-A
Type of Review: Revision
Title: United States Additional Estate (and Generation-Skipping Transfer) Tax Return

Description: Form 706-A is used by individuals to compute and pay the additional estate (and GST) taxes due under Code section 2032(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).

Respondents: Individuals or households
Estimated Burden: 857 hours
OMB Number: 1545-0098
Form Number: 1045
Type of Review: Revision

Title: Application for Tentative Refund

Description: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 798,262 hours
OMB Number: 1545–0122
Form Number: 1118
Type of Review: Revision
Title: Computation of Foreign Tax Credit-Corporations

Description: Form 1118 is used by domestic and foreign corporations to claim a credit against tax for taxes paid to foreign countries. Schedule F (Form 1118) is used to reduce foreign taxes paid by corporations on foreign oil extraction income. The IRS uses Form 1118 and Schedule F (Form 1118) to determine if the corporation has computed the foreign tax credit correctly.

Respondents: Businesses or other for-profit
Estimated Burden: 175,590 hours
OMB Number: 1545–0242
Form Number: 6197
Type of Review: Extension
Title: Gas Guzzler Tax

Description: Form 6197 is used to compute tax on gas-guzzler automobiles under section 26 U.S.C. 4064. Tax is reported quarterly on Form 720. One Form 6197 is filed when production and sales of a model year is ended. Autos not meeting certain standards are taxable. IRS uses the information to verify computation of tax and compliance with the law.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 90 hours
OMB Number: 1545–0582
Form Number: 1139
Type of Review: Revision
Title: Corporation Application for Tentative Refund

Description: Form 1139 is used by corporations to apply for a quick refund of taxes due to a net operating loss, net capital loss, unused business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 6,738 hours
OMB Number: 1545–0704
Form Number: 5471, Schedules M, N, and O
Type of Review: Revision
Title: Information Return with Respect to a Foreign Corporation

Description: Form 5471 and its related schedules are used by U.S. persons that have an interst in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to report a U.S. person's acquisition of a 5% interest in a foreign corporation; and to report income and deductions of a foreign personal holding company. The IRS uses Form 5471 to determine if U.S. persons have correctly reported income from the foreign corporation.

Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 135,306 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224,

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

U.S. Customs Service

OMB Number: 1515–0021
Form Number: 3499
Type of Review: Reinstatement
Title: Application and Approval to Manipulate, Examine, Sample or Transfer Goods

Description: Customs Form 3499 is used by importers or consignees as an application to request examination, sampling, repacking, or the transfer of merchandise under Customs supervision; manipulation of merchandise in a bonded warehouse; and an application for abandonment or destruction of merchandise in bond.

Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 13,740 hours.

Clearance Officer: B. J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 87–22252 Filed 9–25–87; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 23, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB review enlisted and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0971.
Form Number: 1040–ES.
Type of Review: Revision.
Title: Estimated Income Tax for Fiduciaries.

Description: Form 1040–ES is used by fiduciaries of estates and trusts to make estimated tax payments if their estimates tax is $500 or more. IRS used the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.

Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 264,375 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 87–22310 Filed 9–25–87; 8:45 am]
BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following

information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATE: Comments on the information collection should be directed to the OMB Desk Officer by November 27, 1987.

Dated: September 23, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Report of Accidental Injury in Support of Claim for Compensation or Pension
3. VA Form 21–4176
4. This information is used to determine the veteran's eligibility for compensation and pension benefits.
5. On occasion
6. Individuals or households
7. 4,400 responses
8. 2,200 hours
9. Not applicable.

[FR Doc. 87–22301 Filed 9–25–87; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, October 8, 1987, at 2:30 p.m.
Thursday, October 22, 1987, at 2:30 p.m.
Thursday, November 5, 1987, at 2:30 p.m.
Thursday, November 19, 1987, at 2:30 p.m.
Thursday, December 3, 1987, at 2:30 p.m.
Thursday, December 17, 1987, at 2:30 p.m.
Wednesday, December 30, 1987, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: September 21, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–22300 Filed 9–25–87; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 187
Monday, September 28, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

THE COMMISSION OF FINE ARTS

The Commission of Fine Arts next scheduled meeting is Thursday, October 22, 1987 at 10:00 AM in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC September 22, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 87–22353 Filed 9–24–87; 11:31 am]

BILLING CODE 6330–01–M

COUNCIL ON ENVIRONMENTAL QUALITY

Date: September 24, 1987.

DATE, TIME, PLACE: Tuesday, October 6, 1987, 1:00 pm, Council on Enfironmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED.

1. The Council on Environmental Quality has held a series of public meetings on the issues of stratospheric ozone depletion and global warming. To date, the speakers have concentrated on the scientific aspects of these problems.

At this meeting, the Council will be hearing a presentation by Dr. Margaret Kripke, Chairman of the Department of Immunology, University of Texas Cancer Center. Dr. Kripke will address the human health implications of stratospheric ozone depletion.

The discussion will be limited to Dr. Kripke, the Council, and Council staff. Questions from the public will not be entertained.

2. Other matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395–5754.

A. Alan Hill,

Chairman.

[FR Doc. 87–22341 Filed 9–24–87; 10:16 am]

BILLING CODE 3125–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 1:30 p.m., Wednesday, September 30, 1987.

PLACE: Eighth Floor, 1120 Vermont Avenue NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Greene* v. *Department of Health and Human Services,* PH07528510754, PH07528610683, and PH075285C0745; *Marchese* v. *Department of Navy,* PH07528610209; *Covington* v. *Department of Health and Human Services,* DC035182A0591, DC035182A3007, and DC035182A0687; and *Polite* v. *Department of Navy,* AT0315M8710151.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Date: September 24, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–22386 Filed 9–24–87; 2:18 pm]

BILLING CODE 7400–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:00 p.m., Friday October 2, 1987.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Regional Office Boundaries.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone (202) 254–9430.

Dated: Washington, DC, September 24, 1987.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 87–22396 Filed 9–25–87; 3:18 pm]

BILLING CODE 7545–01–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, October 7, 1987.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of September, 1987.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of Notice: September 23, 1987.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 87–22393 Filed 9–24–87; 2:59 pm]

BILLING CODE 7550–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 28, October 5, 12, and 19, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 28

Thursday, October 1

2:00 p.m.—Discussion of Pending Investigations (CLOSED—Ex. 5 & 7)

3:30 p.m.—Affirmation/Discussion and Vote (*Public Meeting*)

a. Final Broad Scope Rule to Modify General Design Criteria 4 of Appendix A (Tenatative)

b. Alfred J. Morabito's Request for Modification of Order Granting Him a Hearing on Denial of a Senior Reactor Operator's License at Beaver Valley (Tentative)

Friday, October 2

10:00 a.m.—Briefing on Technical Specifications Improvement Project (*Public Meeting*)

Week of October 5—Tenative

Tuesday, October 6

2:00 p.m.—Briefing on Transportation and the Modal Study (*Public Meeting*)

Friday, October 9

10:00 a.m.—Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

Week of October 12—Tentative

Friday, October 16

10:00 a.m.—Briefing on Status of Rancho Seco (*Public Meeting*)

11:30 a.m.—Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

Week of October 19—Tentative

Wednesday, October 21

10:00 a.m.—Briefing on Status of Unresolved Safety/Generic Issues (*Public Meeting*)

2:00 p.m.—Briefing on the Federally Funded Research Development Center (FFRDC) (*Public Meeting*)

Thursday, October 22

10:00 a.m.—Discussion/Possible Vote on Full Power Operating License for Palo Verde–3 (*Public Meeting*)

2:00 p.m.—Briefing on Status of Licensee Fitness for Duty Initiatives (*Public Meeting*)

3:30 p.m.—Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

September 24, 1987.

[FR Doc. 87–22409 Filed 9–24–87; 3:35 pm]

BILLING CODE 7590–01–M

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federal register

Monday
September 28, 1987

Part II

Environmental Protection Agency

40 CFR Parts 796 and 797
Toxic Substances Control Act Test Guidelines; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796 and 797

[OPTS-42095; FRL-3253-4]

Toxic Substances Control Act Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA proposes to add new test guidelines of general procedures for laboratory testing for an effect or characteristic deemed important for evaluating the fate and environmental hazards of a chemical substance or mixture (test substance). These general guidelines may be utilized in developing chemical-specific TSCA section 4 rules under 40 CFR Part 799.

DATE: Submit written comments on or before November 27, 1987.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42095), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202)-554-1404.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 27, 1985 (50 FR 39252), EPA issued 40 CFR Parts 796, 797, and 798, which codified TSCA test guidelines that were previously prepared by EPA. At that time, EPA stated that new guidelines would be added as the state of the art evolves and the need for new guidelines arises. This document proposes to codify certain new guidelines that may be used to establish test standards in future TSCA section 4 test rules in 40 CFR Part 799. The test guidelines are state-of-the- art methods for generating test data and, when cited in chemical-specific test rules, would assist the Agency in reaching decisions regarding the risk of a particular chemical. These guidelines have been extensively reviewed by both internal and external experts in the disciplines covered by the guidelines.

Codification of these guidelines would not impose any regulatory obligation on any person who may be subject to a TSCA section 4 test rule. Specific guidelines would not become mandatory test standards until they are promulgated as such in individual section 4 rulemakings. Therefore, when promulgated in specific TSCA test rules, the pertinent TSCA guidelines will become the test standards for only that particular section 4 rule. EPA may propose modifications to the various guidelines as they are used for chemical-specific test rules. In each chemical-specific rule, the proposed test standards and any modifications would be subject to public comment.

II. Rulemaking Record

EPA has established a record for this rulemaking, docket number OPTS-42095. This record contains the basic information considered by the Agency in developing this proposal and appropriate **Federal Register** documents.

This record includes the following information:

1. Support documents for each test guideline providing rationales for conditions specified in each guideline.
2. List of experts that reviewed each of the guidelines.
3. Copies of all references cited in the guidelines.

III. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

The proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that these guidelines, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070-0033. Submit comments on these requirements to the Office of Information and Regulatory Affairs: OMB, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 796 and 797

Chemical fate, Chemicals, Environmental effects, Environmental protection, Hazardous substances, Incorporation by reference, Laboratories, Reporting and recordkeeping requirements.

Date: August 14, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 796—[AMENDED]

1. In Part 796:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 796.3510 is added to Subpart D to read as follows:

§ 796.3510 Hydrolysis as a function of pH and temperature.

(a) *Introduction*—(1) *Background and purpose.* (i) The majority of the earth's surface is covered by water in the form of oceans, seas, rivers, lakes, streams, or ponds. As a result, chemical substances or mixtures (test substances) released to the environment are likely to enter aqueous media and could undergo transformation via hydrolysis. Hydrolysis represents the transformation of a chemical substance by reaction with water into new chemicals different from their precursors. Certain classes of these substances, upon entering aquatic

media, can undergo hydrolysis, which is one of the most common chemical reactions controlling stability and is, therefore, one of the principal chemical transformation pathways of these substances in the environment.

(ii) Since hydrolysis can be such an important chemical degradation pathway for certain classes of chemical substances, it is necessary, in assessing the fate of these chemicals in the environment, to know whether, at what rate, and under what conditions a substance will hydrolyze. Some of these reactions can occur so rapidly that there may be greater concern for the transformation products than for the parent substance. In other cases, a chemical substance will be resistant to hydrolysis under typical environmental conditions; while in other instances, the substance may have an intermediate stability that can result in the need for an assessment of both the parent substance and the transformation products. The importance of hydrolysis in aqueous media in the environment can be determined quantitatively from data on hydrolysis rate constants and half-lives.

(iii) The test guideline in § 796.3500 of this Part was developed to determine hydrolysis rate constants and half-lives of test substances at any pH of environmental concern at 25 °C. However, the temperature of aquatic media in the United States can vary anywhere from near 0 °C in the winter in the northern latitudes to near 30 °C in the summer in the southern latitudes. Thus, the test guideline in this section was developed to determine hydrolysis rate constants and half-lives of substances at any environmentally relevant pH and temperature anywhere in the United States.

(2) *Definitions and units.* (i) "Hydrolysis" is defined as a reaction of an organic chemical with water such that one or more bonds are broken and the reaction products incorporate the elements of water (H_2O). This type of transformation often results in the net exchange of the group X, in an organic chemical substance RX, for the OH group from water. This reaction can be written as

Equation 1

$$RX + HOH \longrightarrow ROH + HX .$$

Another result of hydrolysis can be the incorporation of both H and OH in a single product. An example of this reaction is the hydrolysis of an epoxide which can be represented by the reaction

Equation 2

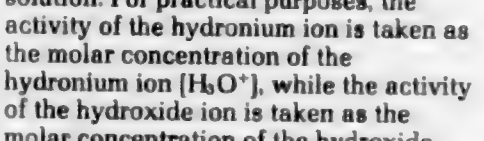

(ii) An "elimination reaction" means the reaction of an organic chemical substance RX in water in which the X group (as HX) is lost. These reactions generally follow the same type of rate laws that hydrolysis reactions follow, and, therefore, are also covered in this test guideline.

(iii) A "first-order reaction" means a reaction in which the rate of disappearance of the test substance is directly proportional to the concentration of the test substance and is not a function of the concentration of any other substance present in the reaction mixture.

(iv) A "second-order reaction" means a reaction in which the rate of disappearance of a test substance is directly proportional to the product of the first power of the concentration of the test substance and the first power of the concentration of another species in the reaction mixture.

(v) The half-life "($t_{1/2}$" of a test substance means the time required for the concentration of the test chemical to be reduced to one-half its initial concentration.

(vi) The "pH" of an aqueous solution means the negative decadic logarithm of the activity of the hydronium ion in solution. For practical purposes, the activity of the hydronium ion is taken as the molar concentration of the hydronium ion [H_3O^+]. Thus, pH is defined mathematically as

Equation 3

$$pH = -\log[H_3O^+].$$

(vii) The "ion product of water (K_w)" means the product of the activities of the hydronium and hydroxide ions in solution. For practical purposes, the activity of the hydronium ion is taken as the molar concentration of the hydronium ion [H_3O^+], while the activity of the hydroxide ion is taken as the molar concentration of the hydroxide ion [OH^-]. Thus,

Equation 4

$$K_w = [H_3O^+][OH^-].$$

(viii) The "pK_w" means the negative decadic logarithm of K_w. Thus,

Equation 5

$$pK_w = -\log K_w.$$

(ix) The "specific acid catalyzed rate constant (k_H)" means the second-order rate constant for the hydrolysis of a chemical catalyzed by the hydronium ion (H_3O^+). The units of k_H are in molar^{-1} time^{-1}.

(x) The "specific base catalyzed rate constant (k_{OH})" means the second-order rate constant for the hydrolysis of a chemical substance catalyzed by the hydroxide ion (OH^-). The units of k_{OH} are in molar^{-1} time $^{-1}$.

(xi) The "neutral water rate constant (k_N)" means the pseudo first-order rate constant for the reaction of a chemical substance with water. The units of k_N are in time^{-1}.

(3) *Principle of the test method*—(i) *Rate of hydrolysis as a function of pH at a fixed temperature.* (A) At a fixed temperature, the rate law for the hydrolysis of a substrate RX can be put in the form—

Equation 6

$$-(d[RX]/dt) = k_h[RX] = k_H[H_3O^+][RX] + k_{OH}[OH^-][RX] + k_N[H_2O][RX],$$

where k_H, k_{OH}, and k'_N are the second-order rate constants for acid and base catalyzed and neutral water processes, respectively. In dilute solutions, such as are encountered in this test guideline, water is present in great excess, and its concentration is, therefore, essentially constant during the course of the hydrolysis reaction. At a fixed pH, the reaction becomes pseudo first-order and the net hydrolysis rate constant k_h is given by the expression—

Equation 7

$$k_h = k_H[H_3O^+] + k_{OH}[OH^-] + k_N,$$

where k_N is now the pseudo first-order neutral water rate constant. Since this is a first-order process, the half-life ($t_{1/2}$) is independent of the concentration of a test substance and is given by the expression—

Equation 8

$$t_{1/2} = 0.693/k_h.$$

At a fixed pH and temperature, equation 6 in this paragraph can be integrated to yield the first-order rate expression—

Equation 9

$$\ln([C_o]/[C_t]) = k_h t,$$

where $[C_o]$ and $[C_t]$ represent the molar concentration of RX, the test substance, at time zero and t, and k_h is the net hydrolysis rate constant.

(B) In order to determine k_h as a function of pH, at a fixed temperature T_j, it is necessary to obtain the values of k_H, k_{OH}, and k_N in equation 7 under

paragraph (a)(3)(i)(A) of this section. This can be accomplished by measuring k_h at three different pH's at a fixed temperature T_j and solving the three equations for k_H, k_{OH}, and k_N. This has been carried out mathematically and the results are summarized below. Equation 7, under paragraph (a)(3)(i)(A) of this section can be written in the following form:

Equation 10

$$K_{h(i)} = k_H[H_3O^+] + k_{OH}[OH^-] + k_N,$$

where i corresponds to the pH at which the hydrolysis rate constant k_h is measured. For the boundary conditions—

Equation 11

i=1, pH=x
i=2, pH=x+y
i=3, pH=x+y+z.

When the lowest pH is 3 and the increments are at least 2—, i.e., if $x>2$, $y>2$, $z>2$, then k_H, k_{OH}, and k_N are given by the following mathematical expressions:

Equation 12

$$k_H = 10^x k_{h(1)} - 10^x k_{h(2)} + 10^{(x+z)} k_{h(3)};$$

Equation 13

$$k_{OH} = 10^{(pK_W - x - 2y - z)} k_{h(1)} - 10^{(pK_W - y - z)} k_{h(2)} + 10^{(pK_W - z)} k_{h(3)};$$

Equation 14

$$k_N = -10^{-y} k_{h(1)} + k_{h(2)} - 10^{-z} k_{h(3)}.$$

(C) The term pK_w that appears in equation 13 under paragraph (a)(3)(i)(B) of this section can be calculated from equation 5 under paragraph (a)(2)(viii) of this section and the following equation:

Equation 15

$$\log K_w = -(6014/T) - 23.65 \log T + 64.70,$$

where T is the absolute temperature in °K, T=t+273.2 and t is the temperature in °C.

(D) For 25 °C and x=3, y=z=4, the pH values for i=1, 2, and 3 correspond to 3, 7, and 11 (using equation 11 under paragraph (a)(3)(i)(B) of this section); pK_w=14.00 (using equation 1 under paragraph (a)(2)(viii) of this section and equation 15 under paragraph (a)(3)(i)(C) of this section); and equations 12, 13, and 14 under paragraph (a)(3)(i)(B) of this section reduce to the same equations, equation 5 of the test guideline under § 796.3500 of this part, entitled "Hydrolysis as a function of pH at 25 °C."

(E) To experimentally determine k_H, k_{OH}, and k_N at temperature T_j, the three pH's 3, 7, and 11 have been chosen. It should be noted that the pH's need not be precisely 3, 7, and 11, but must be close to these pH values (e.g., pH±0.3). However, the pH must be fixed and measured precisely to ±0.03 pH units. Solutions of test substance are prepared at an initial molar concentration of 10^{-3} M or less in buffered distilled water at pH's 3, 7, and 11 [C_o]. The solutions are placed in a constant temperature bath controlled to ±0.1 °C at temperature t_j(°C), or T_j(K), and the concentration of test substance is measured at regular time intervals [C_t] to provide a minimum of 7 time points between 10 and 80 percent hydrolysis. Linear regression analysis of these data in equation 9 under paragraph (a)(3)(i)(A) of this section gives a slope equal to k_h. From the exact values of the three pH's in equation 11 under paragraph (a)(3)(i)(B) of this section, x, y, and z are calculated. Using the precise values of x, y, and z and the experimental values of $k_{h(i)}$ at the three pH's (i=1, 2, 3) in equations 12, 13, and 14 under paragraph (a)(3)(i)(B) of this section, along with pK_w (calculated from equation 5 under paragraph (a)(2)(viii) of this section and equation 15 under paragraph (a)(3)(i)(C) of this section at temperature T_j, k_H, k_{OH}, and k_N can be calculated.

(F) The hydrolysis rate constant at any pH of environmental concern at temperature T_j can be calculated using the values of k_H, k_{OH}, k_N, $[H_3O^+]$, and $[OH^-]$ in equation 7 under paragraph (a)(3)(i)(A) of this section. Finally, the half-life of test substance can be calculated by substituting the value of k_h in equation 8 under paragraph (a)(3)(i)(A) of this section.

(ii) *The rate of hydrolysis as a function of pH and temperature.* (A) In order to calculate k_h at any temperature of environmental concern, it is necessary to determine k_H, k_{OH}, and k_N as a function of the temperature T (K). This can be accomplished by using the Arrhenius equation for the three different rate processes—

Equation 16

$$k_H = A_H \exp(-E_H/RT)$$

Equation 17

$$k_{OH} = A_{OH} \exp(-E_{OH}/RT)$$

Equation 18

$$k_N = A_N \exp(-E_N/RT),$$

where A_H, A_{OH}, and A_N are constants and E_H, E_{OH}, and E_N correspond to the energy of activation for the acid, base, and neutral water processes; T is the absolute temperature in K; and R is the gas constant, which equals 1.99×10^{-3} kcalories/mole or 8.31×10^{-3} kjoules/mole. Equations 16, 17, and 18 in this paragraph are conveniently transformed to the following expressions

Equation 19

$$\ln k_H = \ln A_H - (E_H/R)(1/T)$$

Equation 20

$$\ln k_{OH} = \ln A_{OH} - (E_{OH}/R)(1/T)$$

Equation 21

$$\ln k_N = \ln A_N - (E_N/R)(1/T).$$

(B) Paragraph (a)(3)(i) of this section describes a procedure for determining k_H, k_{OH}, and k_N by measuring k_h at pH's 3, 7, and 11 in buffered distilled water at temperature T_j. These experiments are repeated at two other elevated temperatures T_k and T_l, each temperature being separated by at least 15 °C (15 K). These experiments yield k_H, k_{OH}, and k_N as a function of the temperatures T_j, T_k, and T_l. Using these data in equations 19, 20, and 21 under paragraph (a)(3)(ii)(A) of this section and linear regression analysis, A_H, A_{OH}, A_N, E_H, E_{OH}, and E_N can be determined.

(C) With the appropriate Arrhenius constants A and E in equations 16, 17, and 18 under paragraph (a)(3)(ii)(A) of this section, k_H, k_{OH}, and k_N can be calculated at any environmentally relevant temperature T_m of concern. At a fixed $(pH)_n$ of environmental concern, $[H_3O^+]_n$ and $[OH^-]_n$ can be calculated; and using these results in equation 7 under paragraph (a)(3)(i)(A) of this section along with k_H, and k_{OH}, and k_N, k_h can be calculated. The corresponding half-life can be calculated by using k_h in equation 8 under paragraph (a)(3)(i)(A) of this section.

(4) *Applicability and specificity.* (i) There are several different common classes of organic chemical substances that are subject to transformation by hydrolysis. These classes of substances include alkyl halides, epoxides, ethers, esters, amides, carbamates, phosphoric and phosphonic esters, lactones, and anhydrides. Processes other than nucleophilic displacement by water can also take place. Among these are elimination reactions that exhibit kinetic behavior similar to hydrolysis and are, therefore, also covered in this test guideline. This test guideline is not applicable to the above classes of chemicals which contain functional groups which ionize or protonate and are located close to the hydrolytic reaction center.

(ii) For most test substances, the hydrolysis experiments should be carried out at pH's 3, 7, and 11. However, for a few chemicals, the rate of hydrolysis could be too rapid at pH's 3 and 11 so that measuring the loss of test substance would be too difficult. For these substances, the hydrolysis experiments should be carried out at pH's 5 and/or 9 because the rates are reduced by approximately a factor of 100 relative to pH's 3 and/or 11. At pH's 5, 7, and 9, equations 12, 13, and 14

under paragraph (a)(3)(i)(B) of this section are still applicable. If the rates are still too fast at pH's 5 and/or 9, then the pH's should be adjusted to give rates that are easily measured in the laboratory.

(b) *Test procedures*—(1) *Test conditions*—(i) *Special laboratory equipment.* Special laboratory equipment shall include:

(A) A thermostatic bath that can be controlled to 0.1 °C in the temperature range 10–90 °C;

(B) A pH meter with an accuracy of ±0.03 pH units or better; and

(C) Stoppered volumetric flasks (no grease) or glass ampoules that can be sealed.

(ii) *Purity of water.* Reagent-grade water shall be used (e.g., water meeting ASTM Type IIA standards or an equivalent grade). ASTM Type IIA water is described in ASTM D–1193–77, "Standard Specification for Reagent Water." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from (insert the name of standard producer or publisher and address). Copies may be inspected at Rm. NE–G004, Environmental Protection Agency, 401 M St., SW., Washington, DC, or at the Office of the Federal Register, 1100 L St., NW., Rm. 8301, Washington, DC.

(iii) *Sterilization.* It is required that all glassware be sterilized, aseptic conditions be used in the preparation of all solutions, and aseptic conditions be used in carrying out all hydrolysis experiments to minimize or eliminate biodegradation. Glassware can be sterilized in an autoclave or by any other suitable nonchemical methods.

(iv) *Temperature controls.* All hydrolysis experiments must be carried out at a temperature controlled to ±0.1 °C.

(v) *Volatile chemical substances.* If a test substance is volatile, it is extremely important to take special precautions when carrying out hydrolysis experiments, especially at very high temperatures. Thus, the reaction vessels must be effectively sealed. Sealed tubes or tubes with gas-tight Mininert valves are recommended for elevated temperature studies. At lower temperatures, volumetric flasks or tubes with Teflon-lined screw caps can often be used successfully. Volumetric or other glass-stoppered flasks should be used without grease. In addition, the reaction vessel should be almost completely filled, and when conducting the hydrolysis experiments, especially at elevated temperatures, it is extremely important to submerge the reaction vessel completely below the fluid in the constant-temperature bath.

(vi) *pH.* (A) It is recommended that all hydrolysis experiments be performed at pH's of approximately 3, 7, and 11 but fixed precisely to ±0.03 pH units. Buffers listed in paragraph (b)(2)(i)(A) of this section are strongly recommended.

(B) In order to measure the pH accurately, the pH meter must be calibrated with NBS primary and secondary standards. In addition, some hydrophobic test substance could adsorb to the surface of the glass electrode in the pH meter and cause anomalous kinetic results. Hence, for these hydrophobic substances, the glass electrode should be checked for contamination.

(vii) *Concentration of solutions of test substances.* It is required that the concentration of the test substance be less than one-half its solubility in water and not greater than 10^{-3} M.

(viii) *Buffers.* For certain test substances, buffers may catalyze the hydrolysis reaction. If this is suspected, then hydrolysis rate determinations must be carried out with the appropriate buffers and the same experiments must be repeated at buffer concentrations lowered by at least a factor of five. If the hydrolysis reaction produces a change of greater than 0.03 pH units in the lower concentration buffers at the end of the measurement time, then the test substance concentration must be lowered by at least a factor of five. Alternatively, test substance concentration and buffer concentration may be both lowered simultaneously by a factor of five. A sufficient criterion for minimization of buffer catalysis is an observed equality in the hydrolysis rate constant of two different solutions differing in buffer or test substance concentration by a factor of five.

(ix) *Light sensitive test chemicals.* The solution absorption spectrum should be employed to determine whether a particular test chemical is potentially subject to photolytic transformation upon exposure to light. The absorption spectrum can be obtained by using the test guideline under § 796.1050 of this Part, entitled "Absorption in aqueous solution: ultraviolet/visible spectra." For substances that absorb light of wavelengths greater than 290 nm, it is recommended that the experiments be carried out by wrapping the reaction vessels with aluminum foil, by the use of amber or red colored glassware, by the use of amber or red safelights, or any other suitable technique which will eliminate the possibility of photolytic transformation.

(x) *Substances susceptible to oxidation.* If a test substance is suspected of being susceptible to oxidation with air, the following experiments should be performed. At a fixed pH and temperature, the rate of hydrolysis should be determined with and without purging the reaction solutions with purified argon or nitrogen gas. If the rate constant k_h measured in the unpurged solution is faster than the rate constant in the purged solution, then air oxidation may be occurring and all reaction solutions should be purged before all hydrolysis rate measurements are performed. For volatile test substances, the buffer solution must be purged before adding the test substance.

(xi) *Chemical analysis of solutions of test substance.* In determining the concentration of the test substance in solution, the most applicable analytical method may be employed. Chromatographic methods are recommended because of their compound specificity in analyzing the parent chemical without interferences from impurities. Whenever practicable, the chosen method should have a precision within ± 5 percent. The test guideline requires that the specific analytical technique utilized be completely described.

(2) *Preparations*—(i) *Reagents and solutions*—(A) *Buffer solutions.* (*1*) Prepare buffer solutions using reagent-grade chemicals and reagent-grade water as follows:

(*i*) pH 3: Use 500 mL of 0.100 M potassium hydrogen phthalate ($KHC_8H_4O_4$) and 223 mL of 0.100 M hydrochloric acid, diluted to 1.000 L with water.

(*ii*) pH 5: Use 250 mL of 0.100 M potassium hydrogen phthalate and 113 mL of 0.100 M sodium hydroxide, diluted to 500 mL with water.

(*iii*) pH 7: Use 500 mL of 0.100 M potassium dihydrogen phosphate (KH_2PO_4) and 291 mL of 0.100 M sodium hydroxide, diluted to 1.000 L with water.

(*iv*) pH 9: Use 250 mL of 0.0250 M borax ($Na_2B_4O_7$) and 23 mL of 0.100 M hydrochloric acid, diluted to 500 mL with water.

(*v*) pH 11: Use 500 mL of 0.0500 M sodium bicarbonate ($NaHCO_3$) and 227 mL of 0.100 M NaOH, diluted to 1.000 L with water.

(*2*) Recommended buffers at other pH's are listed in the test guideline under § 796.3500 of this Part.

(B) *Adjustment of buffer concentrations.* (*1*) The concentrations of all the buffer solutions are the maximum concentrations to be employed in carrying out hydrolysis experiments. If the initial concentration

of the test substance is less than 10^{-3} M, it is extremely important that the buffer concentrations be lowered by a corresponding amount, e.g., if the initial concentration of the test substance is 10^{-4} M, then reduce the concentration of the buffers by a factor of 10. In addition, for those reactions in which an acid or base is not a reaction product, then use the minimum buffer concentration necessary for maintaining the pH within ±0.03 units.

(*2*) Check the pH of all buffer solutions with a pH meter at temperature T_j and adjust the pH to the proper value with acid or base, if necessary.

(C) *Preparation of test substance solution.* (*1*) If the test substance is readily soluble in water, prepare an aqueous solution of the test substance in the appropriate buffer and determine the concentration of the test substance [C_o]. Alternatively, a solution of the substance in pure water may be prepared and added to an appropriate buffer solution, and the concentration of the test substance may then be determined. In the latter case, it is important that the aliquot be small enough so that the concentration of the buffer in the final solution and the pH of the solution remain essentially unchanged. Do not employ heat in dissolving the test substance. The final concentration of the test substance must not be greater than one-half its solubility in water and not greater than 10^{-3} M.

(*2*) If the test substance is too insoluble in pure water to permit reasonable handling and reliable analysis, it is recommended that the substance be dissolved in reagent-grade acetonitrile (or reagent-grade ethanol if the hydrolysis experiments are carried out at temperatures above 80 °C), and buffer solution is then added to an aliquot of the acetonitrile (or ethanol) solution. Do not employ heat to dissolve the substance in acetonitrile (or ethanol). The final concentration of the test substance must not be greater than one-half its solubility in water and not greater than 10^{-3} M. In addition, it is extremely important that the final concentration of acetonitrile (or ethanol) be 1 volume percent or less.

(3) *Performance of the test.* (i) Prepare the test substance solution as described in paragraph (b)(2)(i)(C) of this section at pH's of approximately 3, 7, and 11. Measure the pH of each solution to ± 0.03 pH units at temperature T_j, where T_j corresponds to the temperature of the constant temperature bath where the hydrolysis experiments will be carried out. Record the exact values of the three pH's and the temperature, T_j, of the constant temperature bath to 0.1 °C (0.1 K) or less. For each kinetic experiment at each pH: measure the initial concentration of the test substance [C_o] in duplicate; measure the concentration of test substance in duplicate at regular time intervals [C_t] to provide a minimum of 7 time points with the extent of hydrolysis between 10 and 80 percent; and repeat each rate measurement once. Five of the 7 time points should be between 20 and 70 percent hydrolysis. Rates should be rapid enough so that 70 to 80 percent of the test substance hydrolyzes within 1 week.

(ii) If the pH at the end of the concentration measurements has changed by more than 0.03 units from the initial pH, repeat the experiments using a solution having a test substance concentration lowered sufficiently to keep the pH variation within 0.03 pH units.

(iii) Repeat the above experiments at two elevated temperatures, T_k and T_l, each temperature separated by at least 15 °K (15 °C).

(4) *Analytical methodology.* Select an analytical method that is most applicable to the analysis of the test substance (paragraph (b)(1)(xi) of this section).

(c) *Data and reporting*—(1) *Treatment of results*—(i) *Rate of hydrolysis as a function of pH at a fixed temperature.*

(A) The objective of this set of experiments is to determine k_H, k_{OH}, and k_N of the test substance at a fixed temperature T_j, from the rates of hydrolysis at the three pH's (3, 7, and 11). This can be accomplished by the following steps.

(*1*) Hydrolysis experiments shall be carried out at three pH's at a fixed temperature T_j, and the molar concentration of test substance is measured as a function of the time. These data are used to determine $k_{h(i)}$ at the three pH's (i.e., pH's 3, 7, and 11 corresponding to i=1, 2, 3), and using these data in equation 9 under paragraph (a)(3)(i)(A) of this section and linear regression analysis with ln([C_o]/[C_t]) as the dependent variable and t as the independent variable, the slope of the best straight line is obtained. The slope of this line is $k_{h(i)}$.

(*2*) From equation 11 under paragraph (a)(3)(i)(B) of this section and the exact values of the pH's (measured precisely to 2 decimal places), calculate the values of x, y, and z.

(*3*) Calculate the value of pK_w, at T_j, from the value of log K_w from equation 15 under paragraph (a)(3)(i)(C) of this section and $pK_w = -\log K_w$.

(*4*) Using 12, 13, and 14 under paragraph (a)(3)(i)(B) of this section and the values of $k_{h(1)}$, $k_{h(2)}$, $k_{h(3)}$, x, y, z, and pK_w, calculate k_H, k_{OH}, and k_N.

(B) [Reserved]

(ii) *Rate of hydrolysis as a function of pH and temperature.* The objective of this set of experiments is to determine the rate of hydrolysis and half-life of the test substance at any pH and temperature of environmental concern.

(A) *The rate constants k_H, k_{OH}, and k_N as a function of temperature.* Hydrolysis experiments shall be carried out at three pH's at three different temperatures T_j, T_k, and T_l and k_H, k_{OH}, and k_N are calculated as described in paragraph (c)(1)(i) of this section. Using these data in equations 19, 20, and 21 under paragraph (a)(3)(ii)(A) of this section and linear regression analysis, A_H, A_{OH}, A_N, E_H, E_{OH}, and E_N can be calculated. For example, consider the experimental data for k_H at T_j, T_k, and T_l. Using linear regression analysis of these data in equation 19 with ln k_H as the dependent variable and (1/T) as the independent variable (with T in K), the slope and y-intercept can be calculated. From equation 19, the slope is equal to (E_H/R); and using the value of $R = 8.3 \times 10^{-3}$ kjoules/mole, E_H can be calculated. From equation 19, the y-intercept is equal to ln A_H; hence, A_H can be calculated.

(B) *Rate of hydrolysis and the half-life in the environment.* The calculation of the rate of hydrolysis and the half-life of the test substance at any temperature T_m and $(pH)_n$ of environmental concern can be accomplished by the following steps.

(*1*) Using equations 16, 17, and 18 under paragraph (a)(3)(ii)(A) of this section and the values of A_H, A_{OH}, A_N, E_H, E_{OH}, and E_N determined above, calculate k_H, k_{OH}, and k_N at any temperature T_m of environmental concern.

(*2*) Calculate the ion product of water, K_w, and T_m using equation 15 under paragraph (a)(3)(i)(C) of this section.

(*3*) At a given $(pH)_n$ of environmental concern, $(pH)_n$ is equal to $-\log [H_3O^+]_n$ and $[OH^-]_n$ is equal to $K_w/[H_3O^+]_n$. From the value of $(pH)_n$, calculate $[H_3O^+]_n$; and from the value of K_w calculated from step (*2*) and $[H_3O^+]_n$, calculate $[OH^-]_n$.

(*4*) Calculate k_h using the values of $[H_3O^+]_n$, $[OH^-]_n$, k_H, k_{OH}, and k_N in equation 7 under paragraph (a)(3)(i)(A) of this section.

(*5*) Calculate the half-life, $t_{1/2}$, by substituting the value of k_h in equation 8 under paragraph (a)(3)(i)(A) of this section.

(2) *Test data report*—(i) *Test conditions.* Report the following:

(A) The name, structure, purity of the test substance, and whether the

substance absorbs light at lambda >290 nm;

(B) The type of reaction vessels used;

(C) The exact pH's and temperature used for each experiment;

(D) The type of solvent, if used, to solubilize the test substance and the percent by volume;

(E) The initial and final pH for each experiment;

(F) A description of the buffers used if they are not listed in this test guideline; and

(G) If buffer effects were observed, describe how they were minimized or eliminated.

(ii) *Specific analytical and recovery procedures.* (A) Provide a detailed description or reference for the analytical procedures, including the calibration data and precision; and

(B) If extraction methods were used to separate the solute from the aqueous solution, provide a description of the extraction method as well as the recovery data.

(iii) *Test data report.* Report the following:

(A) The initial molar concentration [C_o] of test substance for each replicate and the mean value for each hydrolysis experiment (i.e., at pH's corresponding to i=1, 2, 3, and at temperatures T_j, T_k, T_l);

(B) The two separate values of the molar concentration [C_t] and the mean value for each time point for each hydrolysis experiment (i.e., at pH's corresponding to i=1, 2, 3, and temperatures T_j, T_k, T_l);

(C) The value of $k_{h(i)}$ and the correlation coefficient for each set of experiments at temperatures T_j, T_k, T_l;

(D) The average value of $k_{h(i)}$ from the two separate experiments at temperatures T_j, T_k, T_l;

(E) The calculated values of k_H, k_{OH}, and k_N at T_j, T_k, T_l (in K) in tabular form;

(F) Using the appropriate data from paragraph (c)(2)(iii)(E) of this section, report the values of A and E and the correlation coefficient for each process (e.g., A_H, E_H, and the correlation coefficient, etc.); and

(G) If the compound was susceptible to oxidation, report the data under paragraph (c)(2)(iii) (A) through (F) of this section for the purged solutions.

(d) *References.* For additional background information on this test guideline, the following references should be consulted:

(1) American Society Testing and Materials, Annual Book of Standards, Part 31, Standard specification for water, Philadelphia, PA, pp. 20–22, 1979.

(2) U.S. Environmental Protection Agency. Section 796.3510 Technical Support Document, "Hydrolysis as a Function of pH and Temperature." 1986.

PART 797—[AMENDED]

2. In Part 797:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. New Subpart D, consisting at this time of §§ 797.2900, 797.3050, 797.3100, 797.3700, and 797.3775, is added to read as follows:

Subpart D—Microcosm Guidelines

Sec.

797.2900 Rhizobium-legume chronic toxicity test.
797.3050 Generic freshwater microcosm test.
797.3100 Site-specific aquatic microcosm test.
797.3700 Soil microbial community toxicity test.
797.3775 Soil-core microcosm test.

Subpart D—Microcosm Guidelines

§ 797.2900 Rhizobium-legume chronic toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the toxicity of chemical substances and mixtures ("test substances") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 14 U.S.C. 2601 *et seq.*). The guideline prescribes tests using commercially important terrestrial plants and their nitrogen-fixing bacterial symbionts to develop data on the phytotoxicity of test substances. The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a test substance to the environment.

(b) *Definitions.* The definitions in section 3 of TSCA and Part 792—Good Laboratory Practice Standards of this Chapter apply to this test guideline. The following definitions also apply:

"EC X" means the experimentally-derived test substance concentration that is calculated to affect X percent of the test effect (e.g., EC_{50}).

"Germination" means the resumption of active growth by a plant embryo.

"Legume" means a member of the pea family (Leguminosae) and includes many species of great economic importance.

"N fixation" means the conversion of elemental nitrogen to nitrates by *Rhizobium* which colonize legume root nodules.

"*Rhizobium*" means a genus of symbiotic bacteria that forms nodules on the roots of certain legumes.

"Support media" means the quartz sand used to support the plant.

"Symbiont" means either of two organisms participating in a symbiotic relationship.

"Symbiosis" means the close union of two dissimilar organisms in a mutually beneficial relationship.

(c) *Test procedures*—(1) *Summary of the test.* Seeds of a legume species are inoculated with their specific *Rhizobium* symbiont and planted in sand irrigated with a nutrient solution. The test substance is applied to the plant-bacteria complex via the nutrient solution or is adsorbed to the support media, resulting in continuous exposure to the test substance from the time the seed (or seedling, if appropriate) is planted to maturity of the plant. After significant leaf development has occurred (usually after several weeks during which the *Rhizobium*-infected plants are irrigated at regular intervals with the nutrient solution), all plants are harvested for analysis. Effects are evaluated by comparing plant yield, nodule production, and N-fixation in plants exposed to the test substance to those plants not exposed (negative controls) to the test substance.

(2) *Application of test substance.* (i) Deionized or glass-distilled water shall be used in making stock solutions of a water-soluble test substance. Sufficient quantities of each concentration should be made as needed to minimize storage time and disposal volume. A measured portion of the stock solution shall be added to the nutrient solution just before beginning the test.

(ii) A test substance that is insoluble in water, but which can be suspended in an aqueous solution by a carrier, should be added, with the carrier, to the nutrient solution. The carrier should be soluble in water, nontoxic to plants, and used in the minimum amount required to dissolve or suspend the test substance. There are no preferred carriers; however, acetone, gum arabic, polyethylene glycol, ethanol, and others have been used extensively in testing herbicides, plant growth regulators, fungicides, and other chemical substances that affect plants. Carrier controls shall be included in the experimental design and tested simultaneously with the test substance.

(iii) A water-insoluble test substance for which no nontoxic, water-soluble carrier is available should be dissolved in an appropriate volatile solvent. The stock solution of the test substance should be mixed with the support media, then placed in a rotary vacuum apparatus and evaporated, leaving a uniform coating of the test substance on the support media. A weighed portion of support media shall be weighed, the test

substance shall be extracted with the same organic solvent, and the concentration of the test substance shall be determined before the potting containers are filled. Solvent controls shall be included in the experimental design and tested simultaneously with the test substance.

(3) *Selection of initial test substance concentrations.* (i) A preliminary test should be conducted to determine the concentrations of test substance to be used in the definitive test for each *Rhizobium*-legume association. For this purpose, seed germination, the first event in the establishment of a *Rhizobium*-legume symbiotic relationship, may be used.

(ii) If the concentration of test substance to which the *Rhizobium*-legume association is likely to be exposed in nature can be predicted, seeds of the selected legume should be treated with concentrations that are 0.1, 1, and 10 times the anticipated environmental concentration. After a given exposure period, the effects shall be assessed as the sum of the root lengths (mm) of all plants at each test concentration, relative to that evidenced in the controls. Should reasonable predictions of potential environmental exposure concentrations not be possible, seeds of the same legume shall be exposed to a series of widely spaced concentrations (e.g., 0.01, 0.1, 1.0, 10, 100, 1,000 mg/L) of the test substance. After a given period, root lengths shall be compared as previously described. The lowest concentration tested in the series, exclusive of controls, should be at the analytical detection limit of the test substance. The upper concentration, for water-soluble test substances, should not exceed 50 percent of the saturation concentration.

(iii) The seed-germination test consists of exposing a minimum of 15 seeds of one legume species (representing the plant host in the selected *Rhizobium*-legume association) to each concentration of test substance and to the control. Seeds, placed between sheets of filter paper moistened with varying concentrations of test substance, should be incubated in darkness at room temperature (approximately 22 °C) in petri dishes, allowing adequate room for linear root growth. When 65 percent of the control seeds have germinated and developed roots at least 20 mm long, the test may be terminated.

(iv) No replicates are required and nominal concentrations are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine whether the test substance is toxic to the selected *Rhizobium*-legume association and, if so, to delineate its concentration response curves and EC_{50}s for each of three variables of the test system used.

(ii) Since the anticipated fate of the test substance involves soil or soil water, and the mechanism of toxicity depends upon root exposure, the test substance shall be applied in nutrient solution to the support media or coated on the support media for water-insoluble test substances for which no nontoxic, water-soluble carrier is available. The test substance should be chemically stable in the nutrient solution.

(iii) Seeds of legume species that are subject to attack by mold (e.g., clovers) may be washed with ethanol before being planted.

(iv) Seeds should be mixed with a small amount of moist commercial peat previously inoculated with the desired *Rhizobium* species. Seeds of some legumes (e.g., *Trifolium repens*, white clover) may be planted immediately in pots (0.3 g dry seed/pot) filled to within 2.5 cm of the top with support media of clean, coarse (0.5 to 1.0 mm diameter) sand, while others (e.g., *Phaseolus vulgaris*, bush bean), once inoculated with *Rhizobium*, should be allowed to germinate for as many as 6 days in darkness between moist paper towels before being planted, one seedling per pot. The support media shall be irrigated with the nutrient solution before planting occurs. Unless it is necessary to adsorb the test substance to the support media, the nutrient solution shall contain the desired concentration of test substance.

(v) Six replicate pots of seed for each of at least five concentrations of test substance, exclusive of controls, should be used in the definitive test. For each *Rhizobium*-legume association tested, the concentration range should be selected to define, as closely as possible, the concentration-response curve between the EC_{10} and EC_{90}.

(vi) Pots shall be irrigated regularly (for example, 30 minutes every hour) with nutrient solution, preferably using a system in which water flows from the bottom of the pot upward. Irrigation shall be suspended for 6 to 8 hours before N-fixation measurement. Nutrient solution should be replaced with fresh solution at least once every 2 weeks. If the test substance is rapidly degraded under test conditions, it may be necessary to replace the nutrient solution more frequently.

(vii) Every test shall include controls consisting of the same dilution water, conditions, procedures, bacteria from the same culture, and seed from the same lot used in the exposed groups, except that none of the test substance shall be added. If a carrier solvent is needed to dissolve or suspend the test substance, a carrier control shall also be included.

(viii) Alternative planting methods may be required when the test substance is highly volatile. An impervious barrier of polyethylene film, a modification of the double pot method, a glass plate, or other appropriate apparatus should be used to prevent volatilization from the root zone. Seeds should be germinated in the dark at approximately 22 °C, and the barrier should be positioned such that the shoots pass through holes in the barrier. A ring of nontoxic, inert, pliable putty should be used to seal the holes around the stems. Control pots should be handled identically to the test pots but with no exposure to the test substance.

(ix) The definitive test consists of exposing the selected *Rhizobium*-legume association to at least five concentrations of the test substance, using a minimum of six replicate pots for each concentration and control, followed by measurements and analyses of N-fixation, nodulation performance, and plant yield. The duration of the test should be 3 to 7 weeks from the date of planting, depending on the legume used.

(x) Plants should be observed daily. All visible effects of the test substance on plant growth and morphology, such as stunting, discoloration, chlorosis, or necrosis of the leaves shall be noted.

(xi) To measure N-fixation for a small-to-moderate-sized legume species (e.g., *T. repens*, white clover), each pot shall be enclosed in an airtight chamber. To enhance the reduction of acetylene (C_2H_2), the chambers may be flushed with an inert gas (evacuating the N_2-containing air) before introducing the C_2H_2. Following exposure to C_2H_2 for a period of time sufficient to yield a linear production of ethylene (C_2H_4), gas samples shall then be withdrawn and analyzed for C_2H_4 as an index of N-fixation, using gas chromatography. Should the *Rhizobium*-legume association selected for the test use a larger species of legume (e.g., *P. vulgaris*, bush bean), plant roots may be removed, washed with distilled water, and placed in an airtight plastic jar. Gas samples shall then be withdrawn and analyzed for C_2H_4 after an appropriate incubation period (as above) in the presence of C_2H_2. Using the test conditions and clover and bean species recommended, incubation periods of 5 hours and 1 hour, respectively, are suitable for N-fixation determinations. Optimal incubation times for other species in containers of other sizes may be different.

(xii) Nodulation performance shall be assessed by counting the cumulative number of root nodules on the plants from each treatment group. Yield shall be recorded as the total dry (70 °C, 48 hours) biomass (tops and roots) per pot.

(xiii) The assignment of pots to test substance concentrations shall be random. In addition, placement of groups of pots (six per group, all within each group receiving nutrients and test substance from the same source) shall be randomized, to the extent possible, in the greenhouse or growth chamber.

(xiv) Irradiation measurements should be taken at the top of the plant canopy and the mean, maximum, and minimum values determined over the plant-growing area. These measurements should be taken daily, but shall be taken at least at the start and completion of the test. If the test is conducted in a greenhouse facility, hourly measurements of irradiation should be recorded and presented as daily total irradiance including representative hourly curves for clear-sky conditions and cloudy days.

(xv) Temperature shall be monitored continuously at the top of the plant canopy, while humidity shall be measured at least once during each light and dark period.

(xvi) For chamber-grown plants, measurements of carbon dioxide concentrations should be made at the top of the plant canopy on a "continuous basis."

(5) [Reserved]

(6) *Analytical measurements*—(i) *Test Substance.* Stock solutions of test substance should be diluted with glass distilled or deionized water to obtain the test solutions. Standard analytical methods, if available, should be used to establish concentrations of these solutions and should be validated before beginning the test. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interference. The pH of these solutions should also be measured before use.

(ii) *Numerical.* Entire plants (tops and roots) should be dried and weighed, and numbers of root nodules should be counted for the definitive test. Means and standard deviations of ethylene production (from acetylene reduction assay), plant yields, and nodulation should be calculated and plotted for each treatment and control. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration response curves.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) A species of the genus *Trifolium* (e.g., *T. repens,* white clover) is the preferred legume for this test. The specific complementary species of *Rhizobium* shall be obtained from a reliable source of bacterial cultures.

(B) As an alternative, other legume species (e.g., *Phaseolus vulgaris,* bush bean) of economic or ecologic importance to the region of impact may be selected for testing. The rationale for selecting alternative species should be provided.

(ii) *Seed selection.* Information on seed lot, the seed year, or growing season collected and germination percentage should be provided by the source of the seed. Only untreated seed (not treated with fungicides, repellants, etc.) taken from the same lot and year or season of collection shall be used in a given test. In addition, all seed of a species used in a test should be of the same size class, and that size class which contains the most seed should be selected and used in a given test. Any damaged seed shall be discarded.

(2) *Facilities*—(i) *Apparatus.* (A) Greenhouse or environmental chambers shall provide adequate environmental controls to meet the carbon dioxide, humidity, irradiation, photoperiod, and temperature specifications. Chambers shall be designed to prevent escape of internal air into the external environment other than through appropriate filtering material or media to prevent contamination of the external environment with the test substance.

(B) Laboratory facilities for testing should include non-porous floor covering, absorbent bench covering with non-porous backing, and adequate disposal facilities to accommodate plant nutrient, test, and wash solutions containing the test substance at the end of each run, and any bench covering, lab clothing, or other contaminated materials.

(ii) *Containers and support media.* (A) For each run, at least 36 to 42 potting containers (6 per concentration of test substance, 6 for the control, and 6 if a carrier control is necessary) will be needed. Containers used in each experiment shall be of equal size and volume and possess the same configuration. Potting containers should be filled with support media to within 2.5 cm of their tops. Perlite, vermiculite, native soils, etc. should not be used for root support. A cellulose sponge plug in the pot drain hole will prevent the loss of sand during drainage.

(B) Six or seven 25–L carboys (one per concentration of test substance and one for controls; another if a carrier control is necessary) will serve as reservoirs from which nutrient solution will be delivered, under air pressure, to the appropriate tray of potting containers. An automatic system design is recommended (See the following Figure 1.

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FIGURE 1--CROSS-SECTIONAL DIAGRAM OF A REPRESENTATIVE TRAY UNIT AND THE NUTRIENT SOLUTION RESERVOIR FOR IRRIGATING POTTED PLANTS.

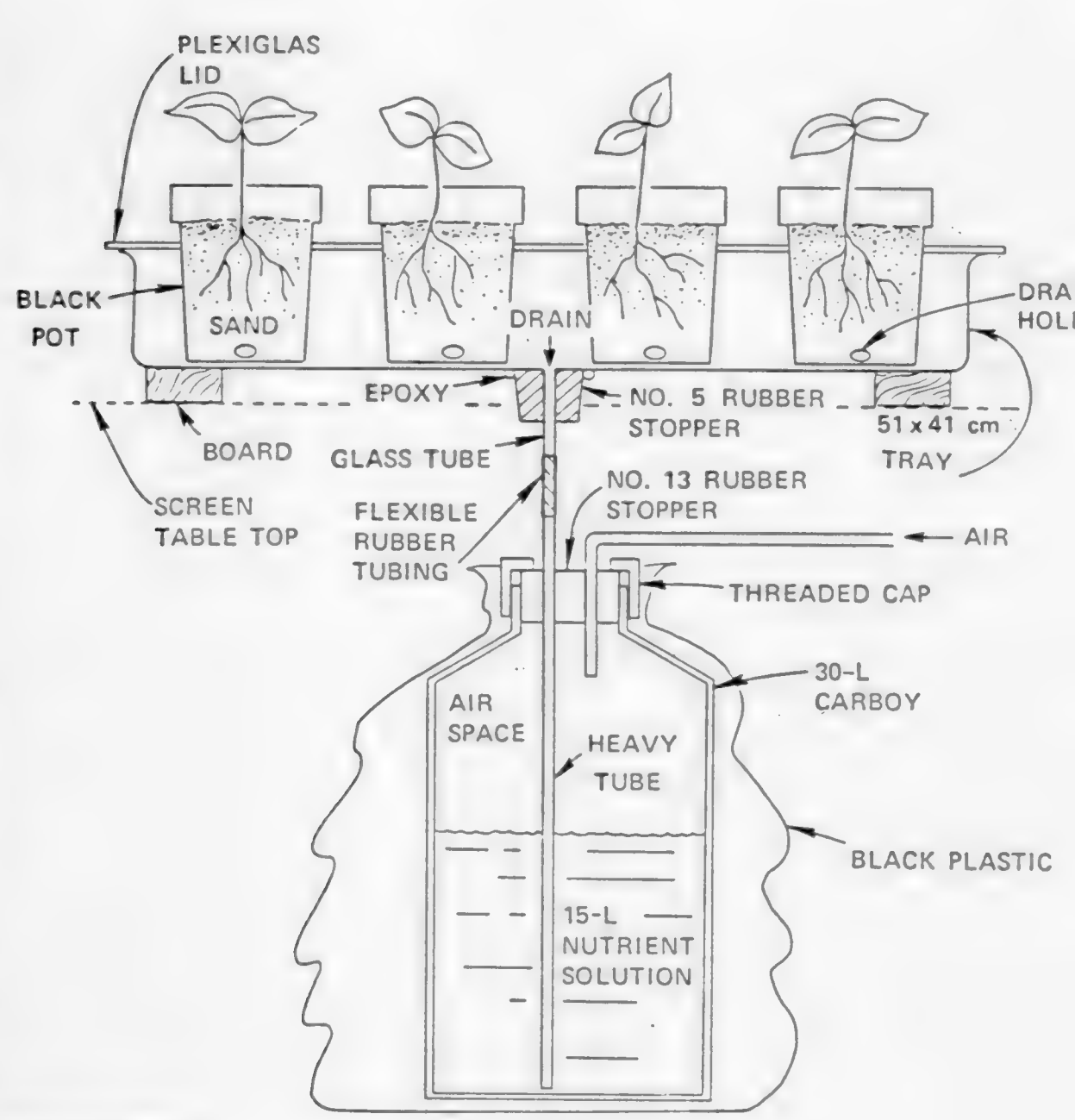

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(C) Each series of six replicate pots (per test concentration, control, and, if applicable, carrier control) may be placed in a large tray into which the appropriate nutrient solution will be delivered (see Figure 1 in paragraph (d)(2)(ii)(B) of this section). Trays should be constructed of an inert material to which adsorption of the test substance will be minimal, e.g., glass, Teflon, polyethylene or linear high-density polypropylene. Each tray may then be covered with a plexiglas sheet bearing six holes to accommodate the pots, keeping them upright and properly spaced.

(iii) *Cleaning and sterilization.* (A) Potting and receiving containers, nutrient storage containers, and support media shall be cleaned before use. All equipment should be washed according to good standard laboratory procedures to remove any residues remaining from manufacturing or prior use. A dichromate solution shall not be used for cleaning pots or other containers.

(B) Support media shall be discarded at the end of the test. Disposal shall conform to existing regulations.

(iv) *Nutrient media.* (A) The recommended medium for growth and establishment of the *Rhizobium*-legume association consists of the following:

Chemical	Amount (mg/L)
K_2SO_4	801
KH_2PO_4	272
$CaCl_2$	416
$MgSO_4 \cdot 7H_2O$	493
Fe	8.3
H_3BO_3*	2.9
$MnCl_2 \cdot 4H_2O$[1]	1.8
$ZnSO_4 \cdot 7H_2O$[1]	0.22
$H_2MoO_4 \cdot H_2O$[1]	0.02
$CuSO_4 \cdot 5H_2O$[1]	0.08

[1] A single stock solution containing 1,000X concentrations of each of these trace elements should be prepared in advance. One ml of stock solution/L of nutrient solution yields the required amount of each.

For certain legumes (e.g., *Phaseolus vulgaris,* bush bean), growth in this medium will be enhanced by the addition, after 2 weeks, of 50 mL of a nitrate supplement (18.2 g of KNO_3/L and 28.3 g of $Ca(NO_3)_2 \cdot 4H_2O$/L) to the 15 L of nutrient solution.

(B) The pH of the nutrient medium shall be maintained within a range of 4 to 7.

(C) Nutrient solution levels in 25–L carboys shall be maintained at 15–L throughout the experiment by replacing transpired water with distilled water, and by complete replacement with fresh solution at least twice a week.

(D) Nutrient solutions shall be transported by inert tubing from the carboys to the trays of pots at regular intervals. A timer-activated air pump is recommended for maintaining a controlled irrigation schedule.

(3) *Test parameters.* Environmental conditions shall be maintained as follows:

(i) If a growth chamber is used, the carbon dioxide concentration should be 350±50 ppm.

(ii) Irradiation, measured at 1 meter from the source, at 350±50 $\mu E/m^2/sec.$ at 400 to 700 nm.

(iii) Photoperiods of 16 hours light and 8 hours darkness.

(iv) Optimum temperature for growth and N-fixation for the species used. For example, the optimum range for clover is 15 to 25 °C.

(v) Relative humidity in growth chambers should approach 70±5 percent during light periods and 90±5 percent during dark periods.

(vi) pH range of 5 to 8.

(e) *Reporting.* (1) The final report should include, but not necessarily be limited to, the following information.

(i) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(ii) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(iii) Statistical methods used for analyzing the data.

(iv) The test substance identified by name, Chemical Abstracts Service (CAS) number or code number, source, lot or batch number, strength, purity, and composition or other appropriate characteristics.

(v) Stability of the test and, if used, control substances under the conditions of administration.

(vi) A description of the methods used, which should include the following:

(A) Description of greenhouse or environmental chamber conditions, including type, size, and carbon dioxide concentration (applicable to chambers), temperatures, humidity, photoperiod, and lighting intensity.

(B) Description of nutrient solution including source of any unusual component(s).

(C) Description of delivery system including a diagram if the design is complex.

(D) Method(s) used to determine the placement of potting containers in the test trays and the assignment of test concentrations to particular trays of pots to ensure randomization of exposure.

(E) Frequency, duration, and methods of observations.

(vii) A description of the test system used, including the scientific names and sources of the test species (legume and bacterial), and histories of the species (e.g., percentage of plants germinating, seed size class, and culture history of *Rhizobium* strain used).

(viii) The number or total weight (for smaller species) of seeds tested per concentration, number of replicates, description of carriers, any seed sterilization procedures used, and times of exposure.

(ix) Concentration of the test substance in nutrient solution and in the support media when the test substance is soluble in water or solubilized with a carrier; the concentration of carrier solvent in nutrient solution when carrier is used; the quantity of test substance per unit weight of root support media when the substance is coated on the sand.

(x) pH of the nutrient solution when fresh and when replaced. The reported results should include:

(A) The results of the preliminary test and measurements. Species and concentrations of test substance used, and observed effects on seed germination, should be stated.

(B) For the definitive test, the species, concentrations of test substance used, and the following:

(*1*) Mean plant yield (g dry wt/pot), cumulative nodule count (per pot), and C_2H_4 production (nmol/g dry wt/hour and nmol/pot/hour) for untreated controls and for each concentration of the test substance used.

(*2*) Visible effects, if any, of the test substance on the intact plants (tops, roots, and nodules).

(xi) A description of all circumstances that may have affected the quality or integrity of the data.

(xii) The name of the sponsor, study director, principal investigator, names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(xiii) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis. Results of the analysis of data should include the concentration response curves with 95-percent confidence limits, the results of a goodness-of-fit test (e.g., chi-square test), and EC_{50}'s.

(xiv) The signed and dated reports of each of the individual scientists or other professionals involved in the study including each person who, at the

request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(xv) The locations where all specimens, raw data, and the final report are stored.

(xvi) The statement prepared and signed by the quality assurance unit.

§ 797.3050 Generic freshwater microcosm test.

(a) *Purpose.* This guideline is intended for use in developing data on the chemical fate and/or ecological effects of chemical substances and mixtures ("test substances") subject to environmental effects testing regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 et seq.) This guideline prescribes methodologies to predict the potential fate and/or effects of a chemical substance in freshwater ecosystems using various types of microcosms, i.e., standardized aquatic microcosm, naturally derived mixed-flask culture microcosm, or naturally derived pond microcosm, with and without sediment. The microcosms contain freshwater algae and zooplankton with an assortment of unidentified bacteria and fungi. The United States Environmental Protection Agency (EPA) will use data from this test in assessing the potential hazard of a chemical substance to freshwater ecosystems.

(b) *Definitions.* The definitions in section 3 of TSCA and the definitions in Part 792—Good Laboratory Practice Standards—of this chapter apply to this guideline. The following definitions also apply to this guideline:

"Aseptic" means free from contaminating organisms, e.g., aseptic transfer of an algal culture into a sterilized tube via a sterile inoculating loop.

"Axenic" means free from other living organisms. An axenic culture (pure culture) of algae contains only one species of algae, no bacteria, and no fungi.

"Batch culture" means a culture of organisms that use only the initial supply of nutrients in the culture medium. Without replenishment of nutrients, concentrations of nutrients decline and waste products accumulate in the culture medium with the increase in numbers of organisms.

"Bioconcentration factor (BCF)" means the ratio of the concentration of the test substance in an organism or tissue (i.e.,the biota) to the concentration in microcosm water or sediment, as specified.

"Carrier" means the organic solvent, solubilizer and/or other substance used to disperse the test substance into microcosm water.

"Detritivore" means an organism (e.g., ostracod) that feeds on detritus, i.e., dead organic matter.

"Ecosystem" means a community of organisms and its interrelated physical and chemical environment functioning as a unit.

"EC–X" means the experimentally derived test substance concentration, in the aqueous phase, that is calculated to affect X percent of the test species.

"Generic microcosm" means a general representation of an aquatic ecosystem in which a microcosm is maintained under constant laboratory conditions and no attempt is made to simulate the physical/chemical environment of the natural system.

"Gnotobiotic" means a culture or community containing only known species or organisms.

"Grazer" means an animal that grazes or feeds on growing plants, e.g., daphnids, rotifers, and some protozoa.

"Herbivore" means an animal that feeds on plants, synonymous with grazer.

"Linear contrast" means the statistical comparison of the means of two treatment groups, e.g., the control and another treatment group.

"Medium" means the chemically-defined culture solution used in the microcosms.

"Microcosm" means a miniaturized model of a natural ecosystem.

"Naturally-derived" means using an assortment of organisms and/or water and sediment collected from one or more natural freshwater ecosystems.

"Net daytime production" means the increase in dissolved oxygen (DO) concentration in microcosm water during the light phase of the photoperiod.

"Nighttime respiration" means the decline in dissolved (DO) concentration during the dark phase.

"Semi-continuous culture" means an algae culture that is periodically harvested by partial draining and replenished with an equal volume of fresh nutrient solution.

"Standardized aquatic microcosm" (SAM) means a culture of a community containing known species of algae and aquatic invertebrates, but containing uncharacterized species of protozoa and microorganisms.

"Treatment group" means the replicate microcosms that receive the same amount (if any) of the test substance; controls are treatment groups that receive none of the test substance.

"Unialgal culture" means the cultivation or growth of a single species of algae; each species of algae is established and maintained in a separate culture.

"Xenic" means a culture or community containing one or more kinds of unidentified organisms.

(c) *Test procedures*—(1) *Summary of the test.* (i) In preparation for the test, a sufficient number of containers for the test plus an appropriate number of extra containers shall be filled with appropriate volumes of nutrient medium or natural water, numbers and types of organisms, and, in some cases, natural or artificial sediment. Microcosm components shall be allowed to interact and adjust to one another for a specified period of time. Then, after culling microcosms which deviate most from the group as a whole, microcosms shall be randomly assigned to treatment groups and to specific locations in the test area.

(ii) The test shall be started by applying the test substance to the microcosms. Appropriate control groups shall be established. Microcosms shall be sampled and/or monitored for changes in one or more attributes at specified intervals during the exposure period or the recovery period or both. The means of the attributes should be compared using suitable statistical methods to assess the fate or effects of the test substance. Dose-response curves should be plotted for appropriate attributes.

(iii) Microcosms should be monitored for at least 6 weeks after the test substance is applied. Monitoring may be terminated earlier if all test parameters in the treatment microcosms treated with the test substance remain the same as the control microcosms for 2 weeks after the application of test substance (the last application in the case of multiple applications).

(2) *Administration of test substance.* (i) When possible, it is preferred that a test substance be radiolabeled so that its residues can be rapidly and accurately measured by radioassay.

(ii) A test substance that is soluble in water should be dissolved in distilled water to make a stock solution of known concentration; a nominal concentration of test substance could be established in the microcosm by adding a measured volume of stock solution and thoroughly dispersing it by adequate stirring.

(iii) A test substance that is insoluble in water, but that is soluble in relatively non-toxic, water-miscible solvents, such as acetone, shall be dissolved in the minimum volume of carrier solvent required to form a homogenous stock

solution of known concentration. At the beginning of the test, a measured portion of stock solution shall be added to microcosm water and dispersed to form a homogeneous suspension. Carrier controls should be included in the experimental design and monitored simultaneously with microcosms treated with test substance.

(iv) A test substance that is insoluble in both water and water-miscible solvents should be dissolved in more than one carrier, for example, consisting of a lipophilic solvent and an emulsifier, and then a measured portion of stock solution should be dispersed into microcosm water to form a homogeneous suspension.

(v) In the pond microcosm, where stirring is hampered by the macrophyte vegetation and the potential siltation of natural sediment, the stock solution of test substance may be mixed thoroughly with 1 or 2 liters of water taken from the microcosm, and then poured slowly back into the microcosm while the microcosm water is gently stirred.

(vi) Sufficient quantities of stock solution should be made as needed to minimize storage time and disposal volume.

(vii) If the test substance is a formulated preparation, the strength of the active ingredient (AI) in the preparation and the concentration of the test substance in microcosm water should be specified in terms of percent AI.

(viii) The nominal concentration of test substance in both stock solution and microcosm water should be confirmed by chemical analyses at the beginning of the exposure period.

(3) *Range-finding test.* (i) A range-finding test may be conducted to establish if definitive testing is necessary and, if it is necessary, to establish concentrations of the test substance for the definitive test.

(ii) Culled, old control, or newly established microcosms should be exposed for 2 weeks to a series of test substance concentrations (e.g., 0.1, 1.0, 10, and 100 μg/L). Controls should also be used. The exposure period may be shortened if sufficient data are gathered in a shorter time.

(iii) The lowest test substance concentration in a test series, exclusive of controls, should be the lowest concentration which can be analytically quantified. The highest concentration should be 100 μg/L or the maximum water solubility of the test substance at ambient temperature. Replicates are not needed, and nominal concentrations of the test substance are acceptable for range-finding. If all calculated EC_{50}s for all species are greater than 100 μg/L or less than the analytical detection limit, definitive testing is not necessary. However, replicates and measured concentrations of the appropriate dose are needed to substantiate this result.

(iv) A range-finding test is not necessary if data on environmental concentrations of the test substance are available from monitoring studies, or environmental releases of the test substance are known or can be predicted from models, and the objective of the test is to bracket environmental concentrations which result from the releases. Otherwise, a range-finding test is advisable since microcosm response can differ significantly from single species tests.

(4) *Definitive test*—(i) *Purpose.* The purpose of the definitive test is to determine the potential ecological effects and/or fate of a test substance released into the freshwater environment.

(ii) *Concentration.* At least three concentrations of test substance, exclusive of controls, shall be tested. The concentration range selected shall define the dose-response curves for major microcosm species between EC_{10} and EC_{90}, unless a known environmental or release concentration is being bracketed. A minimum of six replicate microcosms shall be used for each concentration.

(iii) *Controls*—(A) *General requirements.* Each test shall include controls consisting of the same nutrient medium or natural water, types of biological groups, kind and amount of sediment (if present), and otherwise shall be treated the same as exposed groups, except that none of the test substance is added. If a carrier is used to dissolve or suspend the test substance, additional controls containing the carrier shall also be included in the test to determine any effect of the carrier on the microcosms.

(B) *Standardized aquatic microcosm.* To demonstrate the health of standardized microcosms in use, untreated controls shall meet the criteria specified below; otherwise, test data may be rejected by EPA, unless adequately justified.

(*1*) On day 28, the following criteria should be met in the static microcosms:

(*i*) At least 90 percent reduction in nitrate (NO_3) concentration;

(*ii*) Algal biomass in each mL of medium has exceeded $2{,}000\times10^4$ $(\mu m)^3$;

(*iii*) Oxygen gain has exceeded 4 mg/L (ppm);

(*iv*) Population density of daphnids, including members of all size groups, has exceeded 85 *Daphnia* per 100 mL;

(*v*) Coefficient of variation for each microcosm attribute within ±0.5 more than 50 percent of the time except as noted; coefficient of variation should not be calculated for any nitrate concentration below 2 μM or for oxygen gain below 1 mg/L (ppm); and

(*vi*) pH values in late-afternoon between 6 and 10; coefficient of variation among replicate microcosms within ±0.05 more than 50 percent of the time.

(*2*) From day 28 to the conclusion of the test, the performance of control microcosms should always meet the following criteria:

(*i*) Algal biomass exceeds 100×10^4 $(\mu m)^3$ per mL;

(*ii*) Positive oxygen gain in daytime;

(*iii*) Daphnid population density exceeds 15 *Daphnia* per 100 mL;

(*iv*) More than 50 percent of the time, the coefficient of variation is within ±0.5 among replicates of control microcosms for algal biomass, daphnid population density, and for oxygen gain above 1.00 mg/L (ppm); and

(*v*) pH values in late-afternoon between 6 and 9, and coefficient of variation for pH values among control replicates within ±0.05 more than 50 percent of the time.

(*3*) When control microcosms fail to meet the above criteria, adequate statistical justification is required for EPA acceptance of test data.

(iv) *Initiation and maintenance of microcosms*—(A) *Standardized aquatic microcosm.* The standardized microcosm shall be initiated and maintained as follows:

(*1*) At least 36 glass jars (or more if extra controls are needed) shall be filled with 3 liters of culture medium, 200 g of acid-washed silica sand, 0.5 g of rinsed chitin, and 0.5 g of cellulose powder, and then sterilized in an autoclave as specified in (d)(2)(ii)(A)(*2*) of this section.

(*2*) On day 0, at least 30 of the 36 autoclaved jars containing sterilized culture media shall be inoculated with 10 species of algae at 10^3 cells/mL for each species. Algal cultures are then covered and incubated on a white table under adequate illumination.

(*3*) On day 4, algae cultures shall be examined for algal abundance, pH, oxygen gain, and other variables and then each jar of algal culture shall be stocked with five species of animals, which include both grazers and detritivores. The numbers of microinvertebrates to be added to each liter of algal culture are 110 *Hypotrich* protozoans and 30 *Philodina* rotifers. The volume of media with protozoa and rotifers should not exceed 5 mL. The macroinvertebrates to be stocked into each microcosm include:

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(*i*) Sixteen daphnids consisting of 3 adults with embryos, 3 adults without embryos, and 10 juveniles;

(*ii*) Six ostracods; and

(*iii*) Twelve amphipods consisting of 3 mating pairs (if possible) and 6 juveniles.

(*4*) On day 7, the 30 microcosms shall be reexamined and any outliers should be culled. At least 24 microcosms shall be selected for the test. The following attributes of microcosms should be used in the selection of the 24 microcosms:

(*i*) Dissolved oxygen gain in the daytime;

(*ii*) pH value (pre-light);

(*iii*) Abundance of daphnids and the presence of ostracods and amphipods; and

(*iv*) Abundance of *Selenastrum* and *Chlamydomonas*.

(*5*) Selected microcosms shall be randomly assigned to one of the treatment groups including the controls, and then located on the support table in a six-block design as follows:

(*i*) Initially, each of the 24 selected microcosms (the number of microcosms for a typical test) shall be randomly assigned to one of the four treatment groups (including the control), appropriately labeled, and then treated with appropriate concentrations of the test substance except that the control microcosm does not receive the test substance.

(*ii*) Then, each of the six microcosms in each of the four treatment groups shall be randomly assigned to one of the six block groups on the table; therefore, each block group has four microcosms, one from each treatment group.

(*iii*) Finally, each of the four microcosms in each block group shall be randomly assigned to one of the four specific locations within that block on the table.

(*iv*) To facilitate the handling of microcosms during the test, a series of new numbers should be assigned to the microcosms according to their ordered locations on the table.

(*6*) The test substance shall be added after sampling on experiment day 7 (paragraph (c)(4)(iv)(A)(*4*) of this section).

(*7*) The standardized microcosm should be sampled and examined at least once every 7 days after the test substance is added and reinoculated as follows:

(*i*) After sampling and enumeration on each Friday, any microcosm that is underpopulated (<three individuals) with mature macroinvertebrates shall be reinoculated with reproductive age adults so that each microcosm contains at least three individual amphipods, daphnids, and ostracods.

(*ii*) About 0.05 mL (1 drop) of dense hypotrich protozoan culture and the same volume of dense *Philodina* rotifer culture should be added to each microcosm after each examination.

(*iii*) Each microcosm shall be reinoculated every 7 days with about 0.05 mL of an algal mixture that is prepared by pooling equal volumes of monoculture from each of the 10 algal species.

(B) *Naturally-derived mixed-flask microcosm.* The mixed-flask microcosm shall be initiated and maintained as follows:

(*1*) A culture medium shall be prepared from fresh refrigerated stock solution (warmed to ambient temperature before measuring) in sufficient volume to fill each container with 950 mL of culture medium from the same stock solution.

(*2*) Stock cultures, which are derived from biotic samples collected from a variety of ecosystems, shall be at least 3 months old before they are inoculated into the microcosms.

(*3*) Each microcosm shall contain 50 mL of inoculum, 950 mL of culture medium, and 50 mL of acid-washed sand, and shall be randomly assigned to one of the four treatment groups, including controls.

(*4*) Inoculum in each 50-mL beaker should be placed under microcosm water with the beaker and then decanted into the microcosm water to avoid exposing the zooplankton to the air during inoculation and cross-seeding.

(*5*) Microcosms are placed in the environmental chamber according to a randomized block design.

(*6*) All microcosms shall be cross-seeded at least twice per week for 3 weeks following inoculation. Cross-seeding should be performed by collecting a 50-mL aliquot of a homogeneous suspension from each microcosm, carefully pooling and mixing them together and then returning a 50-mL aliquot of the mixture to each microcosm.

(*7*) Each microcosm should be reinoculated weekly with a 50-mL inoculum.

(*8*) Following weekly reinoculation, distilled water should be added to each microcosm to return the volume to 1 L to compensate for loss of water through evaporation.

(*9*) The test substance (and carrier, if needed) should be introduced into appropriate microcosms 6 weeks following initial inoculation of the system.

(C) *Naturally-derived pond microcosm.* The pond microcosms shall be initiated and maintained as follows:

(*1*) All microcosm components, including water, sediment and biota, should be collected from a single ecosystem, preferably on the same day they are to be used. A shallow pond is the best source of material for pond microcosms, but littoral zones of lakes, or slow-moving rivers, may be acceptable alternatives.

(*2*) Water should be collected before sediment. At least 60 liters of water should be collected from the pond for each microcosm.

(*3*) Sediment should be collected from the upper 26 cm of the pond bottom and placed in appropriate containers for transportation. Stones, twigs, and other large debris should be removed before the sediment is placed in microcosm containers. At least 12 L of sediment are required for each microcosm.

(*4*) If a macrophyte community is present in the pond, a portion should be collected from the bottom and placed in an appropriate container. All organisms naturally associated with the macrophyte community may be included in the samples except crayfish. At least 100 gm of the macrophytes shall be needed for each microcosm. If macrophyte communities are unavailable in the pond, filamentous algae communities may be collected instead if present.

(*5*) Water, sediment, and biota should be protected from bright sunlight and extreme temperatures, and placed, as soon as possible, in an environmental chamber that is set at a temperature equal to that of the pond water.

(*6*) The glass aquaria should be positioned in the environmental chamber before filling.

(*7*) Approximately twelve L of sieved sediment should be placed in each aquarium, resulting in a layer of sediment about 6.7 cm thick. Sediment in each transportation container should be equally divided among all microcosms.

(*8*) If interstitial water sampling is planned, two suitable water collectors, such as a glass diffuser, should be embedded in the sediment of each microcosm. The fritted-glass disk of the air diffusers should be positioned 4 cm below the sediment surface which is then leveled and smoothed.

(*9*) Approximately fifty-five L of pond water should be slowly added to each aquarium. Pond water in each transportation container should be equally divided among all microcosms. To minimize resuspension of sediment during water filling, a plastic film may be used to cover the sediment layer and a simple diffuser should be used to dissipate the kinetic force of the water

flow. The diffuser may be made of the bottom half of a 4–L polyethylene jug with holes punched around the perimeter.

(*10*) One hundred grams of drained macrophytes or filamentous algae from the source, such as *Elodea canadensis*, should be planted in the sediment in each microcosm.

(*11*) After macrophytes are planted, 1 to 2 L of water remaining in the macrophyte collection container should be added to each microcosm as an additional source of biota.

(*12*) The microcosm should be incubated in the environmental chamber for at least 4 weeks before the test substance is applied.

(*13*) Distilled water should be added to the microcosms periodically to compensate for the loss of water through evaporation. If a significant volume of microcosm water is removed in sampling, it should be replaced with an equal volume of dechlorinated tap water or well water.

(v) *Sampling procedures*—(A) *Ecological effects.* Sampling of microcosms for routine monitoring and final sampling can be performed as follows:

(*1*) Each species of macroinvertebrates, including daphnids, ostracods, and amphipods, in the microcosm can be counted visually if the numbers of animals are less than 20 and the water is clear enough for counting. When a dense population or turbid water hampers direct counting of all macroinvertebrates in the microcosm, a series of 100-mL subsamples shall be taken out of the standardized microcosm for enumeration of each macroinvertebrate species until 20 of each invertebrate are counted or 6 subsamples are removed, whichever occurs first. Water samples should be quickly captured and confined in a wide-mouth sampler before removal. Periphyton shall be scraped from the glass surface and thoroughly dispersed into the culture media preceding sampling of the water column. Zooplankton should be counted in the mixed-flask microcosm by removing a series of 25 mL subsamples. Four such samples are usually sufficient. In the pond microcosm, zooplankton population should be measured twice per week. They are captured with a 2–L beaker that is submerged rapidly into the microcosm water, concentrated on a 80-um mesh plankton bucket, stained, and preserved. Population density for three groups of zooplankton, (i.e., cladocera, copepod, and rotifers) should be counted in the pond microcosm; major groups of zooplankton should be identified according to genus, or species if possible.

(*2*) The population density of protozoa and rotifiers shall be determined in standardized aquatic microcosms, a water sample of up to 2 mL shall be dispersed in a 0.01, 0.1, or 0.2 mL aliquot on counting plates (e.g., Palmer cell with water depth of 4 mm) at 12 times magnification under a stereomicroscope. The total volume of aliquots examined should contain at least 50 individuals per species.

(*3*) The population density of each algal species can be counted twice per week. In the standardized aquatic microcosm, at least 50 cells shall be counted for each known algal species from a series of up to 35 fields on the counting chamber under the microscope. If species cannot be identified, then the major genus of the phytoplankton and periphyton should be identified for the following groups of algae: diatoms, green algae, euglenoid, and blue-green algae.

(*4*) Filamentous algae in the algal mat should be examined every 7 days with a microscope to detect the potential extinction of any inoculated algae and the possible presence of contaminant algal species.

(*5*) The biomass of primary producers should be estimated twice per week with *in vivo* fluorescence or optical density of chlorophyll *a* in acetone solution.

(*6*) The rate of uptake of dissolved inorganic carbon-14 by phytoplankton should be measured every 7 days as follows:

(*i*) Primary productivity in each microcosm should be measured in duplicate bottles under the same light intensity as that intensity over the microcosm, with a set of two duplicate bottles placed in the dark as controls.

(*ii*) Dissolved inorganic carbon-14 shall be kept sterile before the test. For example, it may be kept in a sealed ampule and then autoclaved.

(*iii*) About 100 mL of water should be taken from each microcosm, sieved through a 440-μm nylon screen and then placed in a 125-mL conical flask.

(*iv*) The sieved phytoplankton suspension in each flask should be shaken vigorously and poured into a set of four 16.5-mL test tubes until water rises to the rim of each tube, which is then sealed with a serum stopper.

(*v*) About 10 μCi of carbon-14 labeled sodium bicarbonate (specific activity about 1.0 μCi/1.0 μg) per milliliter of alkaline aqueous solution should be maintained at pH 9.5, packed in a glass ampule, and sterilized after the ampule is sealed.

(*vi*) About 1 μCi of $NaH^{14}CO_3$ in 0.1 mL aqueous solution should be injected into each of the four 16.5 mL test tubes. Two of the tubes shall be immediately placed in the dark inside a light-tight box while the other two should be exposed to the same level of light intensity as that prevailing over the microcosms. All tubes should be vigorously shaken during the 2-hour incubation.

(*vii*) After incubation, the phytoplankton culture in each tube should be filtered through a 0.45 um filter membrane over a vacuum flask. The membrane filter and the phytoplankton retained on its surface shall be dried and stored in a desiccator over silica gel before the radioassay.

(*viii*) Immediately before liquid scintillation counting, each filter membrane with the phytoplankton materials should be fumed over concentrated hydrochloric acid for at least 90 seconds to remove remaining inorganic carbon-14, and then placed in a counting vial for radioassay.

(*ix*) The counting rate for each liquid scintillation counting vial that holds the particulate matter from one of the incubation tubes should be properly calibrated for quenching effects.

(*x*) If the absolute rate of carbon assimilation (besides the relative carbon-14 uptake) is desired, the total dissolved inorganic carbon shall be determined. The total content of dissolved inorganic carbon in the microcosm, which affects the specific activity of carbon-14 (added as sodium bicarbonate) in the incubation tube, shall be measured simultaneously with measurement of carbon-14 uptake rate. Total carbon dioxide content is usually calculated from measured values of total carbonate alkalinity and pH in the microcosm water. It can also be measured by gas chromatography if the buffering capacity of the microcosm medium interferes with the alkalinity-pH method.

(*7*) The content of chlorophyll *a* in microcosm water should be measured weekly as follows:

(*i*) A sample of microcosm water, from 30 to 60 mL depending on the standing crop of algae, shall be sieved through a 0.3 mm nylon screen to remove any macroinvertebrates among the phytoplankton.

(*ii*) Sieved microcosm water shall be filtered under suction through a 0.45 um filter pad, which is covered with a fine powder of magnesium carbonate at about 10 mg/cm^2 of filter area. Following filtration, phytoplankton on the filter pad shall be immediately

extracted for chlorophyll *a* or temporarily stored at −30 °C.

(*iii*) Retained on the filter pad, the phytoplankton and magnesium carbonate shall be placed in a glass, pestle-type homogenizer with 3 to 5 mL of 90 percent acetone and then homogenized at 500 rpm for about 1 minute.

(*iv*) After each homogenate is transferred to a graduated centrifuge tube equipped with a cap, the homogenizer and its pestle shall be rinsed 2 to 3 times with 90 percent acetone before its next use. The final volume of pooled homogenate and washes shall be adjusted to 15.0 mL.

(*v*) After the cap is fastened, the centrifuge tube with its contents shall be allowed to stand in a dark, cold (below 10 °C) place for at least 1 hour, and then centrifuged at 4,000–5,000 g for approximately 10 minutes. Any turbid supernatant shall be recentrifuged if its absorbance at 750 um exceeds 0.005 at 1 cm of light path.

(*vi*) Without disturbing the precipitate, the supernatant in the centrifuge tube shall be poured or pipetted into a tube, capped, placed in a dark place, and warmed to room temperature before quantification of chlorophyll *a* by a fluorometric or spectrophotometric method.

(*vii*) In spectrophotometry, the band-width of each monochromatic light should be 3 nm or less. The absorbance (A) of the acetonic extract shall be measured at 750, 663, 645, and 630 nm against a 90 percent acetone blank. The concentration of chlorophyll *a* in the acetonic extract (μg/mL) should be calculated from the length of the optical path (cm) and the absorbance at each of the four wave lengths using the formula:

[Chlorophyll *a*] = m11.64 (A663–A750) − 2.16 (A645–A750) + 0.10 (A630–A750)% (light path).

(*viii*) The concentration of chlorophyll *a* in a water sample (μg/L) is calculated by multiplying the concentration in the extract by the volume of the extract (in milliliters), and dividing the product by the total volume of the water sample (in liters).

(*8*) At least twice each week, the peak and troughs on the diel curve of DO in microcosm water can be measured to estimate oxygen gain and loss resulting from daytime photosynthesis and nighttime respiration, respectively. The morning measurement of DO should be taken immediately before the light is turned on, while the afternoon measurement should be taken in the late afternoon or evening after the DO concentration in each microcosm has reached the peak in its diel cycle. At least once during the early part of the study, DO readings should be taken hourly during the light cycle to determine when the peak occurs. The net daytime community production, which is the gain in DO during the 12-hour photophase, should be calculated as the difference between the DO concentration at the end of the photophase and the DO concentration at the end of the preceding dark phase. The net nighttime community respiration, which is the loss of DO in the microcosm during the dark phase, should be calculated as the difference between the DO concentration at the end of the photophase and the DO concentration at the end of the following dark phase.

(*9*) The pH values of microcosm water should be read to 0.01 unit after the pH meter is calibrated with standard buffers of pH 7 and pH 10, and the pH probe should be rinsed very thoroughly between readings. The pH value should be taken at the same time day on scheduled sampling dates after addition of the test substance to the microcosm as, for example, 0, 1, 2, 3, 5, 7, 10, 14, 21, 28, 35, and 42 days after addition of the test substance. It is preferable to take the pH reading at the end of the dark phase to reflect community respiration or at the end of the photophase to reflect photosynthetic activity.

(*10*) Dissolved nutrients in the microcosms should be monitored at least twice each week for the first 4 weeks and at least once every 7 days thereafter; the samples should be filtered through a 0.45 μm membrane and kept frozen before they are analyzed by standard analytical methods for soluble reactive phosphorus, ammonia, nitrite, and nitrate.

(*11*) Net daytime community production and net nighttime community respiration should be measured on scheduled sampling dates as, for example, days 0, 1, 2, 3, 5, 7, 10, 14, 21, 28, 35, and 42 after addition of the test substance.

(*12*) Biomass decomposition rate, represented by the decomposition rate of ^{14}C-glucose in 15 mL of microcosm suspension, can be measured on scheduled sampling dates as, for example, days 0, 1, 2, 3, 5, 7, 10, 14, 21, 28, and 35, after addition of the test substance to the microcosms. Sampling for biomass decomposition (^{14}C-glucose decomposition) shall precede reinoculation if both occur on the same day. The ^{14}C-glucose decomposition should be performed as follows:

(*i*) A 15 mL water sample should be collected in a 50 mL flask.

(*ii*) A glucose solution that contains 0.15 μCi radioactivity in 0.3 mL of distilled water should be added to the flask.

(*iii*) The flask should be immediately sealed with a specially designed serum stopper, which is fitted with a plastic center well containing a 2 x 5 cm strip of chromatographic paper, and then shaken gently for approximately 15 minutes in the dark.

(*iv*) The heterotrophic activity should be stopped by injecting 1.0 mL of 2N sulfuric acid into the flask. A CO_2 trapping agent, such as carbosorb, should then be immediately injected onto each filter paper under the stopper after the acidification to collect the evolving carbon dioxide.

(*v*) The flask should be gently shaken for at least 2 hours, and the ^{14}C activity in the filter paper should be counted with a liquid scintillation counter.

(*vi*) The percentage deviation in the counts per minute (CPM) of the treatment from the control should be calculated.

(*13*) Total alkalinity, dissolved organic carbon, and specific conductivity of microcosm water can be measured weekly.

(*14*) Interstitial water in the sediment, if present, can be collected weekly to be analyzed for ammonium-nitrogen content. The first 5-mL water sample from the embedded gas diffuser, as specified in the pond microcosm, shall be discarded, and the second sample of 10 mL shall be filtered before chemical analysis.

(*15*) Any extinction of macrophytes, such as *Elodea canadensis* in the pond microcosm, in treated microcosms can be noted during the test, and biomass of macrophytes should be determined at the end of the test.

(*16*) The extinction and reappearance of benthic fauna, such as insects, snails, and oligochaetes, can be observed weekly in those microcosms containing natural sediments.

(*17*) Water-borne bacteria can be counted weekly.

(B) *Chemical fate.* Sampling should be performed according to the following procedures:

(*1*) The initial concentration of test substance in microcosm water shall be determined by chemical analysis of samples that are taken immediately after the test substance is thoroughly dispersed in microcosm water.

(*2*) The dissolved test substance, its total residue, or both should be measured in the filtrate of microcosm water semiweekly immediately after the test substance is applied and at least once more during the first week,

measured at least once during the second week, and then measured biweekly until the end of the test. The filtrate may be substituted with unfiltered microcosm water if the test substance is partitioned into the particulate fraction in such a high proportion that the chemical concentration in the filtrate fraction falls below the analytical detection limit for the test substance using the most practical analytical method.

(*3*) The concentration of test substance in macrophyte shoots, if present, can be measured biweekly if the sample is less than 5 percent of biomass.

(*4*) Distribution of the test substance among compartments of microcosms can be determined at the end of the test; the components may include:

(*i*) Macrophytes, subdivided into roots, shoots, and leaves;

(*ii*) Phytoplankton;

(*iii*) Zooplankton;

(*iv*) Benthic fauna;

(*v*) Sediment core, sectioned into 1-cm subcores; and

(*vi*) Periphyton, if any.

(5) [Reserved].

(6) *Analytical measurements*—(i) *Chemical.* Standard analytical methods should be used in performing analyses. The analytical method used to measure the amount of test substance in a sample should be validated by appropriate laboratory practices before beginning the test. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interference which cannot be systematically identified and mathematically corrected.

(ii) *Numerical.* (A) The following data shall be obtained from the standardized microcosm test:

(*1*) Abundance of each species of alga and macroinvertebrate;

(*2*) Abundance of each type of microscopic animal (i.e., protozoa and rotifers);

(*3*) Net daytime production;

(*4*) Net nighttime respiration;

(*5*) Chlorophyll *a* concentration;

(*6*) Water pH;

(*7*) Nutrients (at least nitrate) in water.

(B) The following data shall be obtained from the mixed-flask microcosm test:

(*1*) Abundance of phytoplankton and zooplankton;

(*2*) Net daytime production (DO gain);

(*3*) Net nighttime respiration (DO loss);

(*4*) Chlorophyll *a* concentration;

(*5*) Water pH;

(*6*) Carbon-14 glucose decomposition rate.

(C) The following data shall be obtained for the pond microcosm:

(*1*) Abundance of phytoplankton and zooplankton;

(*2*) Abundance of each type of benthic fauna;

(*3*) Net daytime production;

(*4*) Net nighttime respiration;

(*5*) Chlorophyll *a* concentration;

(*6*) Water pH, alkalinity, conductivity, and dissolved oxygen;

(*7*) Concentrations of the test substance in each compartment of the microcosm;

(*8*) Bioconcentration factor.

(D) Means and standards deviations of each chemical and biological attribute specified in paragraphs shall be calculated for the replicates of each treatment and control groups.

(E) EC_{50} values and their 95 percent confidence limits should be calculated for each of the appropriate attributes for the time between application of the test substance and recovery from test substance treatment, if data are adequate for statistical analysis. Otherwise, EC_x should be calculated as the percent deviation of an attribute in a treatment group from that in the control.

(F) Appropriate statistical analyses (e.g., Dunnett's procedure) shall be performed to determine whether significant differences in attributes exist between the carrier (if appropriate) and carrier-free controls and between the control and treated groups, and between microcosms receiving different concentrations of test substance.

(G) For the pond microcosm, appropriate statistical analyses should be performed to determine whether significant differences in the amount and in the bioconcentration factor of the test substance exist between treated different compartments within treated microcosms and between treated microcosms receiving different treatments.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) The organisms inoculated into the standardized microcosm shall include 10 algal species; one protozoa, rotifer, daphnid, ostracod, and amphipod species; and an uninvited assortment of unidentified heterotrophs, such as bacteria and fungi. (*1*) The following 10 species of algae shall be included:

(*i*) *Anabaena cylindrica;*

(*ii*) *Ankistrodesumus* sp.;

(*iii*) *Chlamydomonas reinhardi;*

(*iv*) *Chlorella vulgaris;*

(*v*) *Lyngbya* sp.;

(*vi*) *Nitzschia kutzigiana;*

(*vii*) *Scenedesmus obliquus;*

(*viii*) *Selenastrum capricornutum;*

(*ix*) *Stigeoclonium* sp.;

(*x*) *Ulothrix* sp.

(*2*) *Daphnia magna* should be included. Species identity of the test daphnids should be verified using appropriate systematic keys.

(3) Amphipods, *Hyalella azteca,* also named *H. knickerbockeri,* should be used in the test. Mating pairs and the young are inoculated into the microcosm.

(*4*) Ostracods chosen should be either *Cypridopsis* or *Cyprinotus* sp. Only adults should be used.

(5) Protozoa should belong to the order *Hypotrichida,* and the culture should be 72 hours old when it is inoculated into the microcosm.

(*6*) Rotifers should belong to the *Philodina* sp.

(B) Inoculum for the mixed-flask microcosm test shall at least contain the following:

(*1*) Two species of single-celled green algae or diatoms;

(*2*) One species of filamentous green alga;

(*3*) One species of nitrogen-fixing blue-green alga;

(*4*) One species of grazing macroinvertebrate;

(*5*) One species of benthic, detritus-feeding macroinvertebrate;

(*6*) Bacteria and protozoa.

(C) The following broad groups of biota shall be included in the pond microcosm:

(*1*) Macrophyte;

(*2*) Phytoplankton;

(*3*) Periphyton;

(*4*) Zooplankton;

(*5*) Benthic animals.

(ii) *Source.* (A) Each unialgal culture that is a part of the 10-species composite inoculum for all standardized microcosms in a test should be of the same batch that in turn is subcultured to the exponential growth phase from a single source. Before the test, at least two successive subcultures outside the microcosm are required to acclimate the algal monoculture from agar slant to microcosm medium. A semicontinuous culture system is recommended for culture of unicellular algae. *Anabaena, Ankistrodesumus, Selenastrum,* and *Lyngbya* should be cultured in batch culture before they are inoculated into microcosms. Recommended procedures for culturing algae as well as the other organisms used in this test are described by Taub and Read (1984) under paragraph (f)(2) of this section.

(B) The original stock culture for the mixed-flask microcosm shall be collected from a variety of natural ecosystems. Then, new stock culture should be added to the old stock

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cultures at least twice each year. To prepare the inoculum for microcosms, samples from several different aged stock cultures should be mixed together. Stock cultures should be at least 3 months old to be used as a source of microcosm inoculum. Distilled water should be added to the stock cultures in the open aquaria as needed to replace losses by evaporation. Aquatic organisms collected from a variety of natural ecosystems should be inoculated into culture medium to start stock cultures.

(C) Organisms for the pond microcosm should be obtained from the same natural ponds that supply the water and sediment used in the microcosm.

(2) *Facilities*—(i) *Apparatus.* (A) The environmental chambers or room housing the microcosms shall provide adequate environmental controls to meet temperature, irradiation, photoperiod, and air circulation requirements. Chambers shall be designed to prevent escape of contaminated internal air into the external environment by using appropriate filtering devices to prevent contamination of the external environment with the test substance.

(B) Laboratory facilities where the test substance is handled should have nonporous floor covering, absorbent bench covering with impermeable backing, and adequate disposal facilities to accommodate liquid waste (e.g., test and waste solutions containing the test substance at the end of each test), and solid wastes (e.g., bench covering, lab clothing, disposable glassware, or other contaminated materials).

(C) The test substance should be stored in a room separate from stock cultures and microcosms.

(D) A large autoclave capable of sterilizing several 1-gallon microcosm containers shall be used. An autoclave large enough for sterilizing culture medium in a 20–L (5 gallon) carboy is desirable.

(E) The dimensions of the bench space for the gnotobiotic microcosms shall be at least 2.6×0.85 m and should have a white top or white covering.

(F) Standard laboratory equipment and, if the test substance is radiolabeled, a liquid scintillation counter for radioassays is required.

(G) For the standardized and mixed-flask microcosm tests, a special sampler shall be used to capture macroinvertebrates from the microcosm. The sampler should be taller than the microcosm to reach the bottom of the jar, have a large diameter for free passage of water into the sampler, and a rubber stopper attached to a long glass rod to stir the water before sampling and to seal the bottom of the sampler for transferring water out of the microcosm after the sample is taken.

(ii) *Containers and media*—(A) *Standardized microcosm.*

(*1*) The containers used in each standardized microcosm test shall be new glass jars with the capacity of at least 1 gallon (3.8 liters). The jars should be at least 25 cm in height and 16.0 cm in diameter, with an opening 10.6 cm in diameter. The new jars should be washed with diluted (1:10) hydrochloric acid, flushed with tap water, and then rinsed with distilled water before use.

(*2*) Each standardized microcosm should contain at least 3 liters of a medium, such as Taub's T82MV, in addition to an artificial sediment made of silica sand (200 g) enriched with chitin (0.5 g) and cellulose (0.5 g). Before use, the sand should be washed with diluted (1:10) hydrochloric acid for 2 hours, repeatedly rinsed with clean water until the pH rises to 7, and then dried in an oven at 120 °C. The crude chitin from commercial sources should be rinsed with distilled water, air-dried, ground in a blender, and sifted through a 0.4 mm sieve. The cellulose powder, which is also packing material for chromatographic columns, is commercially available.

(B) *Naturally derived mixed-flask microcosm.* Hard-glass containers (e.g., 1-liter Pyrex® beakers), should be selected for testing organic substances in mixed-flask microcosms. Polypropylene beakers may be used for testing inorganic substances.

(C) *Naturally derived pond microcosm.* For the pond microcosm test, 72–L glass aquaria (60 cm L×30 cm W×40 cm D) should be used as containers. About 12 L of sieved sediment and 55 L of pond water should be added to each container.

(D) *Materials and equipment.* Materials and equipment that contact test solutions should be selected to minimize sorption of test substances from the microcosm and should not contain substances that can be leached into aqueous solution in quantities that can affect test results.

(iii) *Cleaning and sterilization.* Microcosm containers, stock culture containers, nutrient storage containers, and all other glassware should be cleaned before use. All glassware and equipment should be washed according to good standard laboratory procedures to remove any residues remaining from manufacturing or previous use. A dichromate solution should not be used for cleaning glassware. In the standardized microcosm, all glass containers and equipment for culturing and testing organisms should be sterilized by autoclave where possible. DO and pH probes may be cleaned with ethanol and thoroughly rinsed with distilled water before use. All sampling devices should be sterilized before each test; sampling devices in contact with lake water or sediment should be sterilized after each use.

(iv) *Nutrient media.* (A) Taub's T82MV in Taub and Read (1984) under paragraph (f)(2) of this section, medium is recommended for use in the standardized microcosm. It consists of the following compounds in Table 1:

TABLE 1.—NUTRIENT MEDIUM,[1] TAUB T82MV

Compound	Molecular weight	Concentration		
		mM	Element	mg/liter
$NaNO_3$	85.0	0.5	N	7.0
$MgSO_4 \cdot 7H_2O$	246.5	0.1	Mg	2.43
KH_2PO_4	136.0	0.04	P	1.23
NaOH	40.0	0.099	Na	2.27
$CaCl_2 \cdot 2H_2O$	147.0	1.0	Ca	40.0
NaCl	58.5	1.5	Na	34.5
$Al_2(SO_4)_3 \cdot 18H_2O$	666.5	0.0048	Al	0.26
$Na_2SiO_3 \cdot 9H_2O$	284.0	0.80	Na	36.8
			Si	22.4
		μM		
Trace Metals:				
$FeSO_4 \cdot 7H_2O$	278.0	1.12	Fe	0.0625

TABLE 1.—NUTRIENT MEDIUM,[1] TAUB T82MV—Continued

Compound	Molecular weight	Concentration		
		mM	Element	mg/liter
EDTA	292.0	1.42	EDTA	0.4145
H_3BO_3	61.8	0.75	B	0.008
$ZnSO_4 \cdot 7H_2O$	287.5	0.025	Zn	0.0015
$MnCl_2 \cdot 4H_2O$	197.9	0.25	Mn	0.0135
$Na_2MoO_4 \cdot 2H_2O$	242.0	0.025	Mo	0.0024
$CuSO_4 \cdot 5H_2O$	249.7	0.005	Cu	0.00032
$Co(NO_3)_2 \cdot 6H_2O$	291.0	0.0025	Co	0.00015
Vitamins:		μM		
Calcium pantothenate	476.5	1.47		0.70
Cyanocobalamin (B_{12})	1,355.4	0.000022		0.00003
Thiamin (B_1)	337.3	0.18		0.06
Riboflavin (B_2)	376.4	0.11		0.04
Nicotinamide	122.1	1.06		0.13
Folic Acid	441.4	0.75		0.33
Biotin	244.3	0.12		0.03
Putrescine	161.1	0.19		0.03
Choline	181.7	2.75		0.50
Inositol	216.2	5.09		1.10
Pyridoxine monohydrochloride	205.7	2.43		0.50

[1] pH adjusted to 7.0 with diluted (1:10) HC1.

(B) The recommended medium for growth and establishment of stock cultures for the mixed-flask microcosm is Taub's T82, which is the same as T82MV without vitamins. The modified Taub's #36 medium (Leffler 1981) under paragraph (f)(1) of this section used in the early protocol development is also adequate.

(C) There is no need to add nutrients to pond microcosms.

(3) *Test parameters.* (i) Environmental conditions for the microcosms shall be maintained as follows:

(A) Temperature within 21 to 25 °C (23±2 °C),

(B) Photoperiod of 12 hours light and 12 hours darkness, and

(C) Standard deviation of light intensities among the microcosms within ±10 percent of the mean and a light intensity of 150 $\mu Em^{-2}sec$ for this test.

(ii) [Reserved]

(e) *Reporting.* (1) The final report shall include, but not necessarily be limited to, the following information:

(i) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(ii) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(iii) Statistical methods used for analyzing the data.

(iv) The test substance identified by name, Chemical Abstract Service (CAS) number or code number, source, lot or batch number, strength, purity, and composition, or other appropriate characteristics.

(v) Stability of the test substance under the conditions of administration.

(vi) A description of the methods used, including the facilities and supporting equipment.

(vii) A description of the test system used, including: microcosm dimensions and water volume, sediment type and volume if used, temperature, photoperiod, and light intensity over the water surface.

(viii) A description of the organisms included in the microcosms representing various functional groups that are essential for the maintenance of a healthy microcosm.

(ix) A description of the nutrient media, if applicable.

(x) A description of the experimental design, treatment concentrations and media, and pattern of administration.

(xi) The materials, the methods, and the results of any range-finding test.

(xii) For the definitive test, reported results should include:

(A) For the standardized microcosm, a description of the following ecological effects and the fate of the test substance in the biota:

(*1*) Phytoplankton abundance, in numbers per mL, for each species;

(*2*) Population density of rotifers and protozoans, in numbers per mL, for each species;

(*3*) Abundance of daphnids, in numbers per liter, for each size group (small, medium, and large);

(*4*) Abundance of amphipods, in numbers per microcosm, for each size group (small and large);

(*5*) Abundance of ostracods, in numbers per microcosm;

(*6*) Relative abundance of phytoplankton in microcosms;

(*i*) Optical density at 440 nm, as an index of the particulate materials, including phytoplankton.

(*ii*) Content of chlorophyll *a*.

(*iii*) *In vivo* fluorescence.

(*7*) Concentrations of major mineral nutrients, such as orthophosphate, ammonia, nitrite, and nitrate in the filtrate of microcosm water,

(*8*) Primary productivity, as measured by ^{14}C-uptake methods,

(*9*) Community production and respiration, measured by the three-point methods (the net gain in dissolved oxygen during the photophase is the photosynthetic production of phytoplankton, while the loss of dissolved oxygen during the dark phase is an indicator of community respiration).

(*10*) Carrier effects when a carrier is used. Assessed by comparing biological variables in carrier controls to those in plain-water controls.

(*11*) Chemical effects assessed by comparing biological data in treated microcosms to that in plain-water controls or in combined controls for both the carrier and plain water.

(B) For the mixed-flask microcosm, a description of the following ecological effects and the fate of the test substance in biota:

(*1*) Phytoplankton abundance for the entire community or standing crop for each of the major species, in number of plants per mL.

(*2*) Zooplankton abundance for the community or standing crop for each life

stage of the major species, in numbers of animals per liter.

(3) Type and total number of the benthic organisms, or the standing crop for each species of benthic organism, in numbers of organisms per m^2.

(4) Carrier effects when carrier is used.

(5) Chemical effects assessed by comparing treated microcosms to controls.

(6) EC_{50} values for the test substance expressed in terms of pH change, net daytime community production, net nighttime community respiration, and decomposition rate of organic matter.

(7) Concentration of test substance residues in aquatic organisms or in specific tissues.

(8) The Bioconcentration factors of the test substance or its total residues.

(9) Effect of the initial concentration of the test substance on its bioconcentration factor.

(C) For the pond microcosm, a description of the following ecological effects and fate of the test substance in biota:

(1) Phytoplankton abundance for the entire community or standing crop for each of the major species, number of phytoplankton per mL or chlorophyll *a* concentration.

(2) Chlorophyll *a* content of periphyton and the major groups of periphytons, such as diatoms, green algae, blue-green algae, and euglenoid, if possible, genus or species names.

(3) Abundance of macrophytes in the microcosm calculated by estimating the volume of microcosm water occupied by the macrophytes and determining the standing crop of the macrophytes, including tops and roots.

(4) Zooplankton abundance for the community or standing crop for each life stage of the major species, in number of animals per liter.

(5) Type and total number of benthic organisms, or standing crop for each species of benthic organism, in number of organisms per square meter.

(6) Concentration of major dissolved nutrients, such as ammonium-nitrogen, nitrate and nitrite, and orthophosphate, in microcosm water.

(7) Carrier effects when carrier solvent is used.

(8) Chemical effects assessed by comparing treated microcosms to controls.

(9) The median effect concentration (EC_{50}) and its 95-percent confidence limit if the concentration of test substance causes partial reduction in any biological attribute in enough treatment groups. If the partial reduction occurs in only a few treatment groups, indicate the percentage reduction of biological abundance caused by the concentration of test substance (EC_x).

(10) Element cycling such as ammonium-nitrogen content, in $\mu g/L$.

(11) Maximum and minimum diel DO concentration on sampling date.

(12) Net daytime production and net nighttime respiration, in mg/L of DO change.

(13) Ratio of production to respiration (P/R ratio).

(14) Concentrations of the test substance in both particulate and dissolved fractions of the water column.

(15) Concentration of test substance in representative species of zooplankton and benthos.

(16) Concentration of test substance in periphyton.

(17) Vertical distribution of the test substance in the sediment core.

(18) Concentrations of the test substance in total biota.

(19) Concentrations of the test substance which may include its transformation products, at steady state in the water column and sediment profile, and the amount in the periphyton on the glass surface.

(20) Effect of the test substance concentration applied to the microcosm on the residual concentration of the test substance in each compartment.

(21) Bioconcentration factors of the test substance or its total residues.

(22) Effect of the initial concentration of test substance on its bioconcentration factors.

(D) A description of any circumstance that may have affected the quality or integrity of the data, including reporting and explaining any significant excursions from normal for microcosm parameters during the test.

(xiii) The name of the sponsor, study director, principal investigator, names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(xiv) A description of the transformations, calculations, or operations performed on the data, and a statement of the conclusion drawn from the analysis.

(xv) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(xvi) The locations where all specimens, raw data, and the final report are stored.

(xvii) The statement prepared and signed by the quality assurance unit.

(f) *Literature references.* For additional background information on this guideline, the following references should be consulted:

(1) Leffler, J.W. "Tentative protocol of an aquatic microcosm screening test for evaluating ecosystem-level effects of chemicals," Final report, EPA Contract No. 68–01–5043 (Subcontract No. T6411(7197)025 with EPA Office of Toxic Substances, Washington, DC (1981). Available from J.V. Nabholz, TS–796, Environmental Effects Branch, Health and Environmental Review Division, Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460–0001.

(2) Taub, F.B., and Read, P.L. "Standardized aquatic microcosm protocol," Draft final report, U.S. Food and Drug Administration Contract No. 223–83–7000 with FDA, Washington, DC 20204 (1986). Available from Dr. B.L. Hoffmann, U.S. FDA, HFF–304, Rm. 5157, 200 C Street, SW., Washington, DC 20204.

§ 797.3100 Site-specific aquatic microcosm test.

(a) *Purpose.* This guideline is intended for use in developing site-specific data on the chemical fate and ecological effects of chemical substances and mixtures ("test substances") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes methodologies to predict the potential fate and/or effects of either organic or inorganic substances in a natural aquatic ecosystem using a microcosm made of an indigenous water column and sediment core. This test system is capable of evaluating organic chemical substances, either soluble or insoluble, which may form either air-water surface films or aggregates which sink to bottom sediments. The United States Environmental Protection Agency (EPA) will use data from this test in assessing the potential hazard of a chemical substance to a particular natural aquatic system (natural system).

(b) *Definitions.* The definitions in section 3 of TSCA and Part 792—Environmental Effects Testing Good Laboratory Practice Standards, of this Chapter, apply to this test guideline. The following definitions also apply to this guideline:

"Benthic community" or benthos means numbers, species composition, size range, and feeding types of organisms present in the sediment of the natural system.

"Benthic subsystem" means an undisturbed core collected from the natural system and placed in the microcosm.

"Bioaccumulation factor" or "bioconcentration factor" means the ratio of the concentration of the test substance in an aquatic organism (i.e., biota) to the associated exposure concentration of the test substance from the food particles and the surrounding exposure medium (i.e., water or sediments).

"Carrier" means the organic solvent, solubilizer and/or other substance used to disperse the test substance into microcosm water.

"Chemical residues" means the test substance and its transformation products retained in the water, sediment, surface film, biota, and glass surfaces of the microcosm during the experiment period.

"Exposure concentration" means the concentration of test substance in the water or the sediment in which the aquatic organisms live.

"Natural aquatic system" or "natural system" means a particular geographic location consisting of a water column and its associated benthic component.

"Radioactivity budget" or "radioactivity mass balance" means a quantitative relationship among the input, retention, and export of radioactivity in a microcosm after applying a radiolabeled test substance into the microcosm. The amount of radioactivity added to the microcosm during the test usually is equal to the sum of the radioactivity remaining in the microcosm compartments and the radioactivity exported from the microcosm with the departed water, surface film, and exhaust air.

"Ratio of benthic surface area to water volume" means the ratio obtained by dividing the calculated benthic surface area of the natural system by the best estimate of water volume of the system.

"Sediment" means the bottom substrate existing at the mean water depth within the natural system during the period of the test.

"Site-specific aquatic microcosm" means a miniaturized mimic of a specific natural aquatic system.

"Stick protector" means a partially submerged glass cylinder within which surface film is removed.

"Water column" means the water within the natural system or the microcosm tank.

"Water flow rates over the sediment surface" means the rate of average water flow over the surface of the sediment as measured in the natural system or in the microcosm tank.

"Water replacement" or "replacement water" means the natural water added to the microcosm at specific intervals to simulate water turnover rate.

"Water turbulence" means the average water motion in the water column of the natural system or the microcosm tank during the test.

"Water turnover rate" or "residence time" means the time required for one complete water replacement or exchange within the natural system.

(c) *Test procedures*—(1) *Summary of the test.* A site-specific microcosm is constructed with an indigenous water column and the intact sediment core associated with it. The water and sediment retain their associated organisms in the pelagic and benthic components, respectively, of the natural aquatic system. Environmental variables such as temperature, water turbulence, and water turnover rate are manipulated to be similar to the conditions found in the natural aquatic system. After the test substance is initially introduced into the microcosm, the fate of the test substance as well as properties indicative of the structure and function of the microcosm are monitored for at least 30 days. Effects of the test substance on the abundance and diversity of aquatic life, and on elemental cycling in the microcosm are determined by comparisons with microcosms that do not contain the test substance.

(2) *Administration of test substance.* (i) Only test substances that are resistant to photolysis (i.e., $t_{1/2}$=30 days) should be tested in this microcosm system.

(ii) All the test substance added to the microcosms during the study shall be accounted for by mass balance. If the test substance is degradable (not persistent), then it is recommended that the test substance be radiolabeled.

(iii) Test substances can be either gases, liquids, or solids and may or may not be soluble in water.

(A) If the test substance is soluble in water, it should be dissolved in distilled water to make a stock solution of known concentration. Measured portions of the stock solution shall be added to the water in the microcosms and thoroughly dispersed by adequate stirring.

(B) If the test substance is insoluble in water but soluble in a relatively nontoxic, water-miscible solvent such as acetone, it should be dissolved in the minimum volume of carrier solvent required to form a homogeneous stock solution of known concentration. A measured portion of the stock solution should be dispersed into the microcosm water at the beginning of the test to form a homogeneous suspension. Carrier controls shall be included in the experimental design and monitored simultaneously with the microcosms treated with the test substance.

(C) If the test substance is a solid and is insoluble in either water or a suitable carrier, it should be ground to a fine powder, weighed to achieve the mass required, and added to a 1-liter aliquot of the test water contained in a 2-liter separatory funnel. The separatory funnel should be shaken vigorously to achieve as homogeneous a suspension as possible and then the suspension should be added to the microcosm water.

(D) If the test substance is a liquid, the measured portion should be added to 1 liter of the microcosm water contained in a 2-liter separatory funnel, and shaken to achieve as homogenous a suspension as possible. The suspension should then be mixed and added to the microcosm tanks.

(E) The amount of test substance remaining in the separatory funnel must be determined by suitable solvent extraction and analyses to accurately determine the amount added to the microcosms.

(iv) Sufficient quantities of the stock solution should be made as needed to minimize storage time and disposal volume.

(v) A test substance that is insoluble in both water and water-miscible carriers should be dissolved in more than one carrier, for example, consisting of a lipophilic solvent and an emulsifier, and then a measured portion of stock solution should be dispersed into the microcosm water to form a homogeneous suspension.

(vi) The method and pattern of applying a test substance to microcosms should reasonably reflect the release pattern expected in the natural system. If the input of the test substance to the natural system is other than a one dose application (i.e., multiple application, runoff), the test substance must be added to the microcosm tank in the same manner as the initial dose and each time there is a microcosm water replacement, but only in quantities sufficient to achieve the desired test concentrations in the replacement water.

(3) *Selection of treatment concentration.* (i) Range-finding tests are not recommended, but may be needed to determine treatment concentrations.

(ii) Initially, the microcosms should be treated with concentrations of the test substance that are 0.1, 1, and 10 times as high as the average ambient concentration of the test substance

observed or predicted in the natural system.

(iii) The test substance should be tested in concentrations of 1, 10, and 100 μg/L, if reliable data on observed or predicted average ambient concentrations are not available.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the potential fate and ecological effects of a test substance in a specific aquatic ecosystem.

(ii) At least three concentrations of the test substance, exclusive of controls, shall be tested for at least 30 days. A minimum of five replicate microcosms shall be used for each concentration. All tanks within a given airtight compartment shall be treated with the same concentration of the test substance.

(iii) A minimum of five control microcosms shall be used in the test for each water-soluble test substance. For those test substances that require a carrier, two of the five control microcosms shall be designated carrier controls and treated with the carrier leaving the remaining microcosms as carrier-free controls.

(iv) Two tests are recommended for each test substance. One should be performed in the summer and another in the winter if the fate and ecological effects of the test substance are expected to vary significantly with seasons.

(v) Microcosms should be installed and maintained in the following manner:

(A) All microcosm tanks should be placed in a water bath maintained within ±1 °C of the ambient water temperature in the natural system. Water may be pumped from the natural system into the water bath to regulate the temperature in the microcosms if the test laboratory is nearby.

(B) Water for the microcosm shall be collected from the natural system, at mid-tide for estuaries, by hand bucketing or non-destructive pumping, e.g., diaphragm pump. If the natural water column in the natural system is stratified, the microcosm water should contain subsamples taken from various depths.

(C) Water samples should be transported to the test facility in glass containers. On arrival at the test facility, water in each container shall be distributed equally among microcosms to a prescribed volume of approximately 140 liters. Plankton samples must be collected from each microcosm tank and analyzed to ensure homogeneous distribution.

(D) Each sediment core shall be collected undisturbed from the natural system by inserting a glass cylinder into the sediment and extracting the core from a prescribed location. The bottom of the core is sealed by seating it in a crystallization dish slightly larger than the cylinder (in the following Figure 1). It is desirable to use scuba divers to inspect the uniformity of the benthic component in the natural system, to select representative cores of appropriate length to preserve intact habitats, and then to collect the cores with as little disturbance as possible.

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FIGURE 1--EXPERIMENTAL MICROCOSM (not drawn to scale)

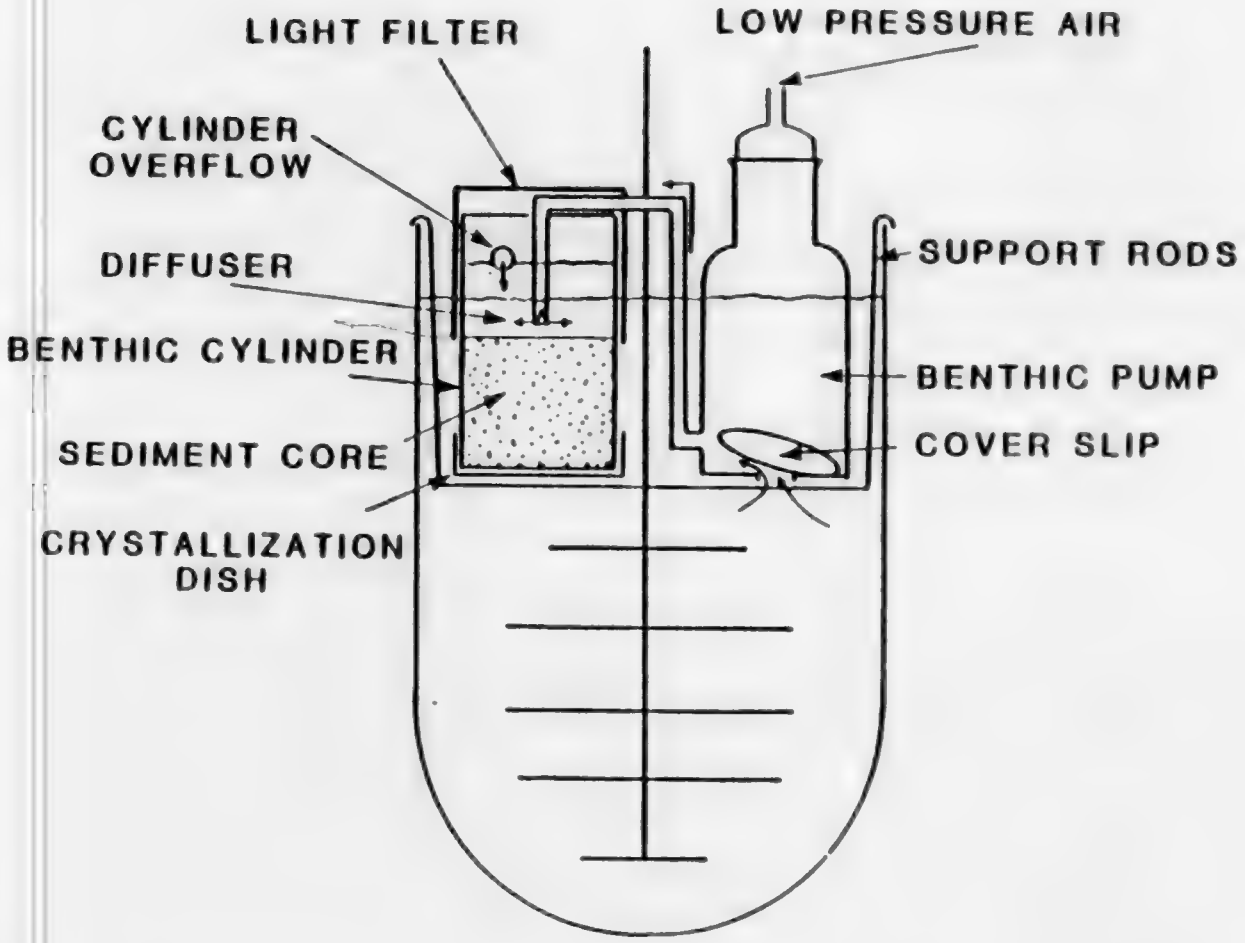

(E) The ratio of benthic surface area to water volume in the microcosm should be made equal to that ratio in the natural system being simulated. Because the water volume in the microcosm is fixed, the desired ratio is obtained by selecting benthic cylinders with the appropriate inner diameter.

(F) The benthic cylinder housing the sediment core shall be mounted in the microcosm tank so that the overflow port of the box is 5 cm above the water level in the tank (see Figure 1 in paragraph (c)(4)(v)(D) of this section). Any disturbed sediment shall be allowed to settle for at least 30 minutes before starting water circulation in the benthic box and water turbulence in the microcosm tank.

(G) The benthic pump shall be mounted beside the benthic cylinder with the outlet diffuser of the pump submerged below the surface of the water (overflow port of the cylinder) but above the sediment surface (see Figure 1 in paragraph (c)(4)(v)(D) of this section). The rate of water flow over the sediment surface in the microcosm tank shall be adjusted to be equivalent to the average water flow rate over the sediment surface in the natural system.

(H) The light intensity over the microcosms shall be adjusted to produce an abundance of phytoplankton statistically equivalent to that in the natural system. Preliminary tests should be performed to establish the proper light intensity over the microcosms and should be done with all the microcosm equipment and facilities (i.e., water bath, tank paddle, benthic cylinder and pump) in place. The preliminary tests should be performed at several light intensities for at least 14 days. The photoperiod in both preliminary and definitive tests shall be set once every 7 days to match the actual photoperiod within 0.5 hour in the location of the natural system.

(I) The light intensity on the surface of the sediment core in the microcosms

shall be adjusted to the level that is equivalent to the average light intensity on the sediment surface in the natural system. Light intensity can be adjusted by covering the upper portion of the benthic cylinder with a screen, such as a nylon net, or other spectrally-neutral light filters.

(J) The speed of the stirring paddle installed in the microcosm tanks shall be adjusted to generate a water turbulence level statistically equivalent to that in the natural system, as measured in the gypsum dissolution method. This method measures the turbulence level by the average dissolution of pure gypsum. Weight loss shall be at least 5–10 percent. This may take several hours depending on temperature and turbulence. Dissolution rates shall be measured and water turbulence should be adjusted in the microcosms before each test.

(K) Any resuspended sediment that settles on the bottom of a microcosm tank shall be collected with a tubing pump and returned to the benthic cylinders when water turnover is simulated.

(L) Water turnover in the natural system shall be simulated in the microcosm as follows:

(*1*) A measured portion of the water in each microcosm tank shall be replaced at least three times every 7 days with water newly collected from the natural system;

(*2*) The water replacement shall match the water turnover rate observed in the natural system;

(*3*) Water replacement shall be scheduled immediately after sampling of microcosm water and shall occur on the same day.

(*4*) The volume of microcosm water to be removed each time should be the difference between the calculated volume to be replaced and the total volume of water samples removed to keep the water volume at 140 L.

(M) If the test substance accumulates in a thin film on the surface of water in the microcosm tank, a portion of the film should be removed with a filter pad or other absorbent material prior to removal of the volume of water to be replaced. This simulates the surface film advective transport from the natural system. The area (cm^2) of surface film to be removed should be equal to the product of (a) the ratio of the replacement water volume to total tank volume ratio, and (b) the surface area of the tank water minus (c) the area displaced by the benthic pump and cylinder.

$$\text{Film area removed} = \frac{\text{Replacement water}}{\text{Total tank volume}} \times \left[\text{Tank water surface area} - \left(\text{Benthic pump area} + \text{Benthic cylinder area}\right)\right]$$

(vi) Sampling procedures for the study of chemical fate should be performed as follows:

(A) Water samples should be taken at approximately 0, 1, 2, 3, 6, 12, and 24 hours after the initial application of the test substance. Thereafter, samples should be taken before each water replacement. Water samples should be collected through a slick protector within which the surface film has been removed. Samples may be taken more frequently to follow the fate of a chemical substance that is disappearing from the system at a relatively rapid rate. The samples should be collected at a location at least 3 cm from the side of the tank and 10 cm below the water surface while both the stirring paddle and the benthic pump are in operation.

(B) If the test substance accumulates in a thin film on the water surface, it should be sampled with a filter pad before each water replacement. The quantity of a radiolabeled test substance absorbed onto the filter membrane can be easily determined with liquid scintillation counting assuming all radioactivity represents the original form of the test substance. If the test substance has degraded, the percentage of the total radioactivity that is the test substance should be determined.

(C) Samples of selected zooplankton species in the microcosm should be collected once every 7 days to be analyzed for the test substance and, if practical, for its transformation products.

(D) Air samples should be collected once every seven days with a suitable sampler. For example, an inverted crystallization dish equipped with inlet and outlet tubes on the side may be placed above the water surface to collect air samples for chemical analysis; fresh air could be drawn by a vacuum pump at the end of the sampling train, entering the modified dish through the inlet tube, sweeping over the water surface, and carrying any volatilized forms of the test substance through the outlet tube to a suitable trap for subsequent quantification. Under the inverted dish, air flow over the water surface should be adjusted to match the flow rate over the rest of the water surface in the microcosm. The duration for each sample collection should be kept as short as possible.

(E) The quantity of test substance adsorbed onto the glass surfaces of the microcosm above and below the water surface should be sampled and estimated as follows:

(*1*) For estimates of the test substance adsorbed onto the glass of the microcosm tanks below the surface, glass rods of known surface area should be suspended in the water column, and removed periodically from the water and placed in a scintillation counting vial for radioassay. If a surface film is present, glass rods should be removed through a slick protector. If possible, the estimated quantity of the radiolabeled chemical substance on the glass surfaces using the glass rod method should be verified with extraction of the test substance from all subsurface glass surfaces whenever a microcosm is sacrificed during the test.

(*2*) A portion of the interior microcosm tank wall extending from the water surface to the lip of the tank should have an appropriate absorbent material attached to it. This material should be removed and extracted at the conclusion of the test to provide an estimate of the amount of the test substance adsorbed to the tank walls above the water.

(*3*) Any unlabeled test substance on the glass surface shall be thoroughly extracted and quantified after the water and sediment are removed from the microcosm.

(F) The quantities of the test substance in the benthic component should be determined as follows: (*1*) One of the five replicate microcosm

tanks for each of the three treatments should be randomly selected for sampling and samples of the core contents shall be collected on day 10; another of the remaining replicate microcosm tanks should be selected for sampling and samples shall be collected on day 20. The three remaining treated replicates and the controls shall be sampled at the end of the test on day 30.

(*2*) Three sediment subcores, at least 25 cm in diameter x 7 cm in depth, shall be collected from each benthic component to determine the vertical distribution of the test substance in the benthic component, i.e., concentration of test substance in each centimeter of the sediment core.

(*3*) Before triplicate sediment subcores are taken, the surface film (if present) on both the microcosm tank and the benthic cylinder should be removed with suitable tools such as a suction skimmer or a sheet of absorbent material, and then the water in both the tank and the benthic cylinder should be drained.

(*4*) Samples of each of the major animal species in the benthic component should be analyzed for the test substance and its transformation products, if possible.

(vii) Sampling procedures for ecological effects study should be performed as follows: (A) Water samples from microcosms should be taken as described in paragraphs (c)(4)(vi) (A) and (B) of this section.

(B) When water replacement and ecological effects sampling occur on the same day, biological samples shall be taken first.

(C) Samples of at least 2 mL of water should be collected daily from the microcosms and such samples shall be analyzed for enumeration and identification of phytoplankton.

(D) Samples of at least 2 liters of water should be collected from the microcosms at least twice each week and such samples shall be analyzed for enumeration and identification of zooplankton and transient larval forms. The water samples shall be collected at a rate sufficient to overcome the zooplankters' avoidance reaction and should be screened through a 20–uM plankton net. The retained organisms should be rinsed into a Petri dish and preserved for subsequent determination of population density and species composition.

(E) The ammonium-nitrogen concentration in the water column of the microcosms and the natural system should be determined once every 7 days.

(F) Population densities of phytoplankton and zooplankton in the natural system should be determined at least twice each week, and ammonium-nitrogen concentration in natural water should be measured at least once every 7 days. This can be done conveniently at the time for water replacement.

(G) The flux rate of ammonium-nitrogen between the benthic component and its associated water column should be determined weekly by stopping the benthic pump for a period of 1 to 3 hours. Ammonia concentrations in water above the benthic component should be measured at the beginning and end of this period. The flux rate should be expressed as the weight of ammonium-nitrogen produced by each square meter of sediment surface area per hour.

(H) The abundance and diversity of benthos shall be determined. Benthic animals shall be captured by sieving the wet sediment through a 0.5 mm screen. All animals retained on the screen should be identified and counted. Similar characterization of the benthic community of the natural system shall be established at the time of the experiment.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Instrumental methods.* Atomic absorption and gas chromatography are preferrable to colorimetric methods for quantitative analyses of metals and organic compounds, respectively. Liquid scintillation counting is recommended for quantitative analysis of radiolabeled test substances, and high-pressure liquid chromatography is recommended in conjunction with liquid scintillation counting for separation and quantification of the test substance and its transformation products.

(ii) *Chemical.* (A) A stock solution of the test substance shall be prepared just before use, and its nominal concentration and purity shall be confirmed by chemical analysis. Standard analytical methods, if available, shall be used to determine the chemical concentration in microcosm samples and stock solution. The analytical methods used to measure all environmental samples shall be validated before the beginning of the test.

(B) Concentrations of the test substance, and its transformation products, if possible, shall be measured for the following components of the microcosm:

(*1*) Air.

(*2*) Surface film, if present.

(*3*) Water column, both particulate and dissolved fractions.

(*4*) Various layers of the benthic component.

(*5*) Representative species of zooplankton.

(*6*) Representative benthic organisms.

(*7*) Glass surfaces above and below the water surface.

(C) If a radiolabeled test substance is used, a complete budget of all radioactivity shall be calculated, including the amount of radioactivity added to the microcosm, removed by gas transport and water replacement, and remaining among the compartments of the microcosm.

(iii) *Numerical.* (A) Mean and standard deviations of biological attributes shall be calculated for each treatment and control. The following information shall be determined: Abundance of phytoplankton, zooplankton, and each type of benthic fauna. If the species of plankton can be identified, abundance shall be calculated for each one.

(B) Statistical analyses shall be performed to determine: (*1*) Whether significant differences exist in biological attributes between:

(*i*) The control microcosms and the natural system.

(*ii*) The carrier control and the carrier-free control.

(*iii*) The control and the microcosms treated with the test substance.

(*2*) Whether significant differences exist in the amount, export, and bioconcentration of the test substance among:

(*i*) Different compartments of the microcosms receiving the same treatment, and

(*ii*) The microcosms receiving different treatments.

(d) *Test conditions*—(1) *Test species.* (i) The organisms tested shall include the indigenous fauna and flora representing both the pelagic and benthic communities of the natural system, except the macrofauna.

(ii) Neither acclimation nor supplemental food is necessary for the test organisms.

(2) *Facilities*—(i) *Supporting equipment.* (A) The capacity of the water bath used to maintain the water temperature and the flow rate of the water through the water bath shall be such that the water temperature in all microcosms will be kept within ±1 °C of the ambient water temperature in the natural system.

(B) "Cool white" fluorescent light should uniformly illuminate the water surface of all microcosms. The fluorescent lights should be mounted on a canopy above the microcosm tanks, (in the following Figure 2). The desired, uniform light intensity is achieved by wrapping the fluorescent lamps with aluminum foil.

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FIGURE 2--EXPERIMENTAL MICROCOSM FACILITY

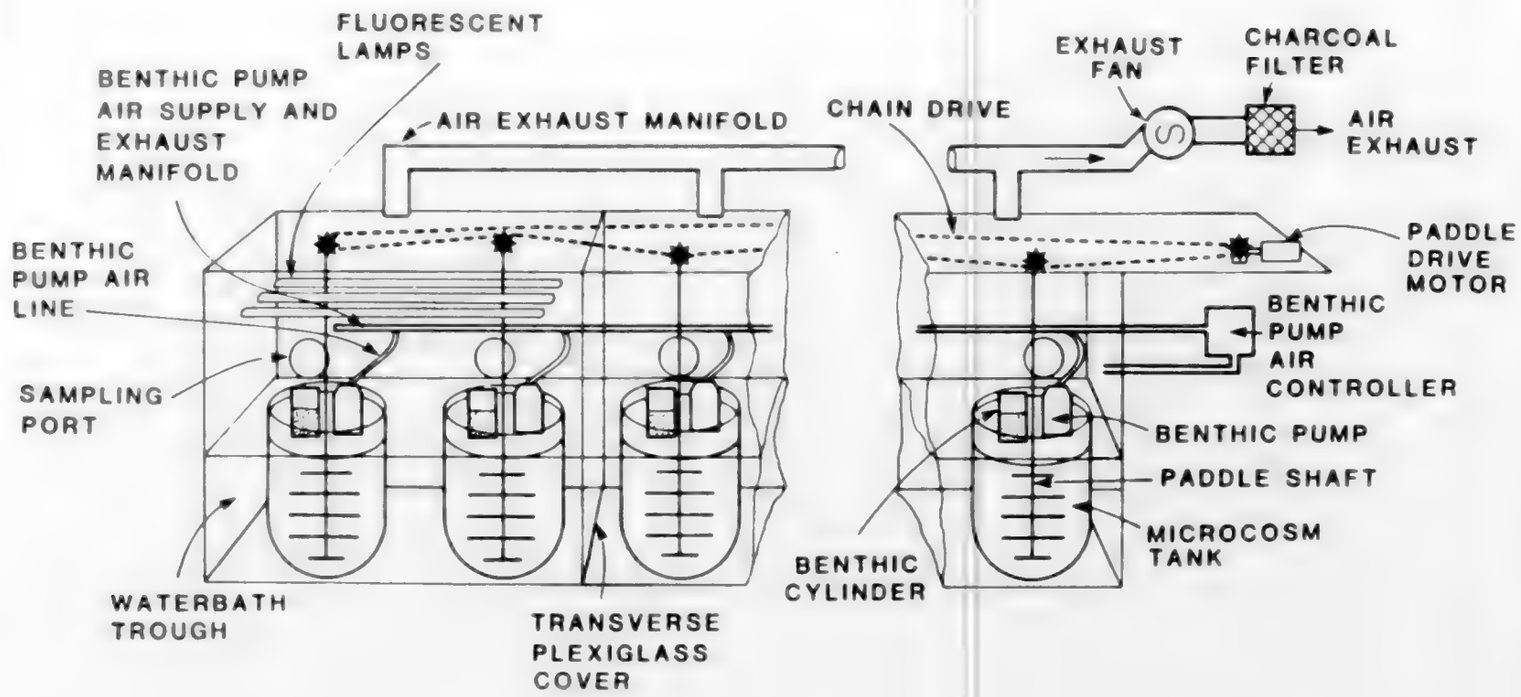

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(C) In the room containing the microcosms, no light source except that specifically for the microcosms shall be allowed.

(D) To match the water turbulence in the natural system, the water turbulence level in the microcosms should be controlled by the speed of an electric motor that is mounted with its chain drive and drive shafts above the canopy and controls the speed of all stirring paddles (see Figure 2 in paragraph (d)(2)(i)(B) of this section).

(E) The gypsum dissolution method measures the water turbulence level by the average dissolution rate (i.e., weight loss/time) of cubes (2.5 cm x 1.5 cm x 1.0 cm) of pure gypsum ($CaSO_4$) suspended in the microcosm tank or in the natural system. Gypsum cubes from the same source and lot should be used for the entire set of dissolution tests in the microcosms and in the natural system.

(F) The airspace between the canopy and water bath should be enclosed and sealed with acrylic plastic sheets to facilitate containment of the test substance transported into the gas phase (atmosphere) from the water (see Figure 2 in paragraph (d)(2)(i)(B) of this section).

(*1*) The enclosed volume under the canopy and above the water bath should be divided into relatively airtight compartments with Plexiglas ® panels mounted transversely to the module and extending approximately 5 cm below the water surface of the water bath.

(*2*) Each airtight compartment should have its own air outlet to the exhaust, a removable front cover to facilitate setting up and filling the microcosm tanks, and hinged ports in the front cover to provide access to the tanks during testing.

(G) Airflow over the water surface (microcosms and water bath) in each compartment should be maintained by a manifold connected to an exhaust fan which draws the air from all compartments through its outlet tube and then vents the exhaust air through a charcoal filter and a stack outside the laboratory building (see Figure 2 in paragraph (d)(2)(i)(B) of this section).

(ii) *Microcosm.* Each microcosm is a multi-trophic level model that combines pelagic and benthic communities similar to those existing in the natural system.

(A) Hard glass (e.g., Pyrex®) containers are preferred to soft glass or plastic ones for the testing of organic chemicals.

(B) For each experiment, at least 20 microcosm tanks shall be required. Each tank, about 140 L in capacity shall hold enough water and sediment to support the quantity of benthic invertebrates present in the benthic subsystem, such as a medium-sized shellfish, for 30 days or more.

(C) The benthic cylinder, up to 30 cm tall, shall have an inner diameter that makes the ratio of the sediment surface area to water volume in the microcosm equal to that in the natural system.

(D) The benthic cylinder, which holds the sediment core, should be sealed at the bottom end with a crystallization dish.

(E) The benthic pump (Figure 1 of this section) should be an all-glass, air displacement pump. It shall be large enough to provide the appropriate water flow rate over the sediment surface.

(F) To minimize disturbance of the sediment core by the discharge from the benthic pump, a diffuser shall be attached to the water outlet tube of the benthic pump to direct the outgoing water into several horizontal streams over the sediment surface.

(G) If the test substance forms a thin film covering the microcosm water surface, a 6-cm length of glass cylinder, or surface film protector, should be partially submerged in the water to provide a sampling port for uncontaminated water samples after the surface film inside the cylinder is removed.

(iii) *Cleaning.* Microcosm tanks, benthic cylinders, crystallization dishes, benthic pumps, support rack, slick protectors, and glass rods should be cleaned before use. All equipment should be washed according to standard laboratory practices to remove any residues remaining from manufacturing or previous use. A dichromate solution should not be used for cleaning glass containers. Solvents and/or high temperature (450 °C for 8 hours) combustion may be necessary to ensure the ultimate cleanliness of the microcosms and associated glass components. If cleansing solvents are used, disposal should conform to existing federal regulations.

(3) *Test parameters.* Environmental conditions in the microcosm shall simulate the natural aquatic system as closely as possible.

(e) *Reporting.* (1) The final report shall include, but not necessarily be limited to, the following information:

(i) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(ii) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(iii) Statistical methods employed for analyzing data.

(iv) The test substance identified by name, Chemical Abstracts Service (CAS) number or code number, source, lot or batch number, strength, purity, and composition or other appropriate characteristics.

(v) Stability of the test substance under the conditions of administration.

(vi) A description of the methods used, including: (A) Description of microcosm facilities and supporting equipment; and

(B) Description of natural system being simulated, including boundaries of natural system, pelagic community, benthic community, sediment type, water quality, history of natural system, light regime, ratio of benthic surface area to the water volume, water turbulence rate, water flow rate over sediment surface, water turnover rate, light intensity over sediment surface, seasonal attributes (e.g., water temperature), and ecological attributes (e.g., productivity).

(vii) A description of the test system used, including: microcosm tank size, sediment core size, ratio of benthic surface area to water volume, light intensity on water surface, light intensity on sediment surface, water flow rate over sediment surface, and water turbulence.

(viii) A description of the experimental design, treatment concentrations, and methods and pattern of administration. The report results should include:

(A) The results of the preliminary tests.

(B) For the definitive test, various ecological effects and chemical fate parameters may include:

(*1*) *Ecological effects.* (*i*) Phytoplankton abundance, in numbers per mL, for the community or for each species.

(*ii*) Zooplankton and transient larval forms abundances, in numbers per liter, for the community or for each life stage of each species.

(*iii*) Number of organisms in the benthic community or, if known, in each species, expressed in numbers per m^2. Indicate the categories of benthic organisms if species identification is not feasible.

(*iv*) Concentrations of major nutrients, such as ammonium-nitrogen, in the water column.

(*v*) Carrier effects when a carrier solvent is used.

(*vi*) Assessment of microcosm realism by comparing the biological attributes in the natural system to that in the control microcosms.

(*vii*) Effects of the test substance are assessed by comparing the treated microcosms to carrier controls.

(*2*) *Chemical fate.* (*i*) The concentrations of test substance in

representative species of zooplankton and benthic organisms.

(*ii*) The amount of test substance transported to the atmosphere.

(*iii*) The amount of test substance adsorbed onto the glass surface of the microcosm.

(*iv*) The vertical distribution of the test substance in the sediment core of the benthic component.

(*v*) The uptake and biotransformation of the test substance in biota.

(*vi*) A mass balance consisting of the total quantity of the test substance added to the microcosm, the quantities exported from the microcosm and the quantities remaining in the microcosm.

(*vii*) Concentrations of the test substance and its transformation products, at steady state in the water column and sediment core, and the amount on the glass surfaces both above and below the water surface and on the surface film, if present.

(*viii*) The effect of treatments on the residual concentrations of the test substance in each ecosystem compartment.

(*3*) *Transport of test substance and its transformation products.* (*i*) Amount of test substance and transformation products exported from the microcosm through the air, water replacement, and removal of surface film.

(*ii*) The effect of the treatments on the export rate of test substance and transformation products from each ecosystem compartment and on the total amount of test substance being exported.

(*4*) *Bioaccumulation potential of test substance in aquatic organisms.* (*i*) The concentrations of test substance residues in aquatic organisms (mass of test substance per kilogram wet weight).

(*ii*) The bioaccumulation factor for selected benthos as well as water column species, such as zooplankton.

(*iii*) The effect of the treatments concentration on the bioaccumulation factor.

(ix) A description of all circumstances that may have affected the quality or integrity of the data.

(x) The name of the sponsor, study director, principal investigator, names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(xi) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(xii) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(xiii) The locations where all specimens, raw data, and the final report are stored.

(xiv) The statement prepared and signed by the quality assurance unit.

§ 797.3700 Soil microbial community toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the toxicity of chemical substances and mixtures ("test substances") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 14 U.S.C. 2601 *et seq.*). The guideline prescribes a test using natural soil samples to develop data on the toxicity of test substances to microbial populations indigenous to the soil. The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a test substance to the environment.

(b) *Definitions.* The definitions in section 3 of TSCA and Part 792—Good Laboratory Practice Standards, of this chapter, apply to this guideline. The following definitions also apply:

"Ammonification" means conversion of organic nitrogen compounds to ammonia (NH_3) or ammonium (NH_4) compounds, performed by a variety of microorganisms in soil and water.

"Carbon dioxide (CO_2) efflux" means the evolution of CO_2 gas from substrates mineralized by microbial action; indicative of respiration.

"EC X" means the experimentally-derived test substance concentration that is calculated to affect X percent of the test species.

"kiloPascal (kPa)" means a unit of pressure in the meter-kilogram-second system equivalent to one newton per square meter (i.e., one Pa) x 1,000; used as a measure of water availability in soils.

"Mineralization" means the complete or ultimate degradation by microorganisms of organic material to form inorganic end-products, e.g., carbon dioxide, water, chloride, ammonium, nitrates, or orthophosphate.

"Nitrification" means the oxidation of ammonium salts to nitrites (NO_2) and nitrates (NO_3), performed by relatively specialized microorganisms.

"Surface soil" means that layer of soil representing the top 15 cm of the area to be sampled, excluding the litter horizon.

(c) *Test procedures*—(1) *Summary of the test.* Surface soil is sieved and supplemented with ground, dry alfalfa. The test substance, if soluble, is added as a solution to moisten the soil, or is added in a manner that best simulates its anticipated mode of entry in nature. All soil samples are then incubated in darkness at approximately 22 °C. On days 5 and 28 after introduction of the test substance, samples are analyzed for NH_3 and NO_3 content to establish ammonification and nitrification values, respectively, and for CO_2 efflux as an indication of microbial respiration.

(2) *Application of test substance.* (i) Deionized or glass-distilled water shall be used in making stock solutions of a water-soluble test substance. Sufficient quantities of each concentration should be made as needed to minimize storage time and disposal volume. A constant volume of the stock solution shall be added at the beginning of the test to each soil sample designated to receive the test substance.

(ii) A test substance that is insoluble in water, but which can be suspended in an aqueous solution by a carrier, should be added, with the carrier, to those soil samples designated to receive the test substance. The carrier should be soluble in water, nontoxic to microbial life at the concentration applied, and used in the minimum amount required to dissolve or suspend the test substance. There are preferred carriers; however, acetone, gum arabic, ethanol, and others have been used extensively in testing herbicides, plant growth regulators, fungicides, and other chemical substances that affect plants. Any such carrier may be used for this test, providing it neither enhances nor inhibits the activities of the soil microbes. Carrier controls shall be included in the experimental design and tested simultaneously with the test substance.

(iii) A water-insoluble test substance for which no nontoxic, water-soluble carrier is available should be dissolved in an appropriate volatile solvent. The solution should be mixed with the ground alfalfa soil supplement, then placed in a rotary vacuum apparatus and evaporated, leaving a uniform coating of the test substance on the alfalfa. A portion of the alfalfa shall be weighed and the test substance shall be extracted with the same organic solvent. Then the test substance shall be assayed before the alfalfa is mixed with the soil in the test containers. Solvent controls (i.e., alfalfa treated only with solvent) shall be included in the experimental design and tested simultaneously with the test substance.

(iv) If the test substance is not readily soluble in water or in another commonly-used carrier, and is known to

be applied or transported in nature directly to the soil as a previously prepared liquid or powder, it should be mixed, in its liquid or dry form, directly into the soil samples. Mixing must be thorough, however, to ensure equal distribution of the test substance throughout each test sample.

(3) *Range-finding test.* (i) A range-finding test shall be conducted to establish (A) if definitive testing is necessary and (B) the concentrations of test substance to be used in the definitive test.

(ii) If the maximum concentration of test substance to which the soil microbial community is likely to be exposed in nature can be predicted, soil samples should be treated with concentrations that are 0.1, 1, and 10 times the anticipated environmental exposure concentration. On days 5 and 28 after introduction of the test substance, the effects of treatment shall be assessed as the CO_2 efflux rate and the NO_3 and NH_3 concentrations per gram of dry soil in treated samples, relative to untreated controls and, if applicable, carrier controls, and to values in freshly sieved (pretreatment) soil. Should reasonable predictions of anticipated environmental exposure concentrations not be possible, soil samples shall be exposed to a series of widely-spaced concentrations (e.g., 1, 10, 100, 1,000, 10,000 $\mu g/g$) of the test substance. In general, the highest concentration in the series should not be less than 1,000 $\mu g/g$, although for water-soluble test substances, it is recommended that levels not exceed 50 percent of the saturation concentration. As before, CO_2 efflux and NO_3 and NH_3 concentrations shall be compared with controls.

(iii) The test shall consist of exposing at least two samples of soil from the same source to each concentration of test substance and to each control, with the exception of the controls for which one sample will suffice. To be appropriate for this guideline, a soil shall possess a pH of 4 to 8, an organic matter content between 1 and 8 percent, a cation exchange capacity greater than 7 meq/100g, and consist of less than 70 percent sand. Soils to which fertilizer or pesticide(s) have been applied within the past 24 months should be avoided. Soil collections shall be restricted to the surface soil. Large objects shall be removed manually, and the remaining soil allowed to air-dry until sievable (approximately 12 percent water content), after which it is passed through a 2-mm mesh screen. For each sample, an amount of soil equivalent to approximately 50 g oven-dry weight shall be placed in an inert container. Wide-mouth jars (for example, glass canning, 0.5 pint or 110-mL capacity) are adequate for this purpose. At least one of these samples, considered to be the control, should be extracted immediately to determine NH_3 and NO_3 content (see paragraph (c)(4)(vii) of this section). Alfalfa, dried and ground to pass through a 0.6-mm mesh screen, shall be added (0.3 g) to each remaining sample and the sample shall be thoroughly mixed. Water content of the soil shall be adjusted to approximately 10 kPa by adding distilled water containing the desired concentration of test substance (in carrier, if necessary). If insoluble in both water and commonly used carriers, the test substance should be mixed into the soil as a solid and the appropriate amount of water added subsequently. The test containers may be covered with 0.13 μm (0.5 mil) polyethylene to minimize water loss, yet permit gas exchange, or left open and watered to their original weight every 7 days. Regardless, the test substance shall be applied only during the original watering.

(iv) Controls shall receive an equal volume of water without the test substance. If a carrier solvent is required to dissolve or suspend the test substance, a carrier control (i.e., solvent in water without the test substance) shall also be included. Should the test substance be a powder that is mixed directly into soil and subsequently moistened with distilled water, the control shall receive an equal volume of such water only. All samples shall be incubated in darkness at 22 °C (or at the temperature to which the microorganisms are most accustomed in their soil environment).

(v) Of the soil samples prepared for each concentration of test substance or control, one sample shall be assayed after 5 days of exposure to the test substance for NH_3 and NO_3 content, and then discarded. A second sample shall be analyzed the same day for CO_2 evolution and then reincubated (dark, 22 °C). On day 28, after exposure to the test substance, all remaining (reincubated) samples shall be assayed first for CO_2 efflux and then again for nitrogen content.

(vi) The test substance shall be chemically stable in distilled water or in any chemical substance used as a carrier.

(vii) No replicates are required, and nominal concentrations are acceptable unless definitive testing is not required.

(viii) Definitive testing is not necessary if the highest concentration of test substance tested (but not less than 1,000 $\mu g/g$) results in less than a 50-percent reduction of ammonification, nitrification, and CO_2 evolution; or if that concentration representing the analytical detection limit (if tested) results in greater than a 50-percent reduction of NH_3 and NO_3 content of the soil and of CO_2 generation.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine whether the test substance is toxic to the community of microorganisms residing in a particular soil and, if so, to delineate its concentration-response curves and EC_{50}s for each of three variables (CO_2 evolution and NH_3 and NO_3 soil content) that indicate the capacity of the soil microbial community to decompose organic matter and release plant nutrients.

(ii) Preparations for the test shall be made as described for the range-finding test (see paragraphs (c)(3) (iii) through (v) of this section) except that more samples of each soil source to be tested are required. As before, at least two series of soil samples should be prepared for each concentration; one series to be analyzed 5 days after exposure, the other to be analyzed on the 28th day after exposure. Series replicates of at least five concentrations of test substance, exclusive of controls, shall be used for each of the two series. For each soil source tested, the concentration range should be selected to define, as closely as possible, the concentration-response curve between the EC_{10} and EC_{90} for each variable.

(iii) Every test shall include controls consisting of the same distilled water, soil, and alfalfa supplement used in the treated soil samples, that none of the test substance is added. Environmental conditions shall likewise be the same. If a carrier is needed to dissolve or suspend the test substance, a carrier control shall also be included.

(iv) Test containers may be covered with polyethylene film (0.13-μm; 0.5-mil) to prevent water loss. Control containers should be handled identically to the test containers except that none of the test substance is added.

(v) The definitive test consists of testing soil (containing the natural microbial population) from a particular source with the test substance (see paragraph (c)(3)(iii) of this section). For a particular test substance, a test is the exposure of the selected soil to two identical series of five concentrations of the test substance in a minimum of five replicate containers per concentration, and includes appropriate controls, with analyses of CO_2, NH_3, and NO_3 on the 5th and 28th days after exposure to the test substance.

(vi) To measure CO_2 efflux, each container of test substance and control container is closed with a two-hole stopper fitted with Teflon tubes and twistcock connectors for attachment to the measurement apparatus. The apparatus (see Figure 1 in this paragraph) shall deliver a stream of humid, CO_2-free air to the test system, and the effluent air shall be dried, diluted, and delivered for infrared gas analysis (IRGA). The period of incubation should be adjusted to match the CO_2 efflux rate with the detection capability of the IRGA, and may vary from one to 77 hours. In lieu of IRGA, CO_2 may be trapped in a hydroxide solution and titrated, or measured gas-chromatographically.

FIGURE 1--FLOW DIAGRAM FOR THE IRGA METHOD OF DETERMINING CO_2 EVOLUTION FROM SOIL SAMPLES

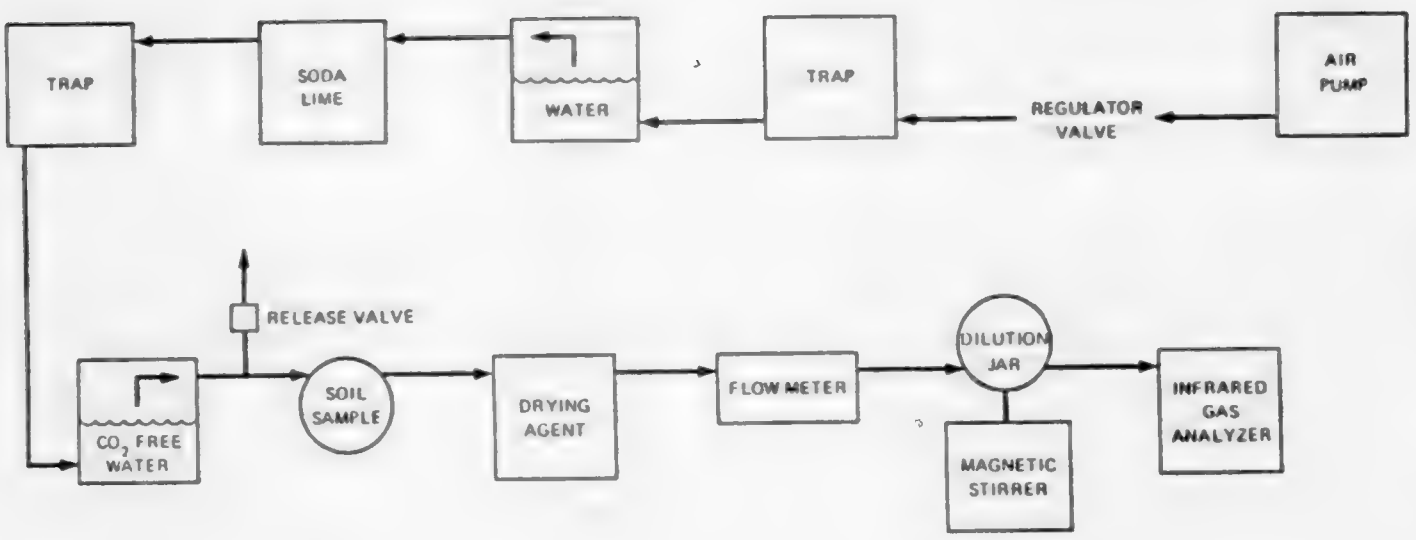

(vii) Accumulation of inorganic nitrogen is measured by extracting each soil sample with 80 mL of 1 *N* potassium chloride (KC1). After adding KCl and shaking each container by hand to suspend the soil, sample containers shall be placed on a rotary shaker at high speed for 1 hour, then shaken again by hand to resuspend the soil. Samples shall be filtered (Whatman #42 low-nitrate filter paper) and the extract (filtrate) shall be analyzed for NO_3 and NH_3. Being rapid and precise, standard Autotechnicon analysis techniques are recommended. Acceptable alternative methods are available, however.

(viii) The assignment of soil containers to test substance concentrations shall be random. In addition, placement of the containers in the incubation chamber shall be randomized.

(ix) Temperature in the incubation chamber shall be monitored continuously.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Chemical.* For readily aqueous-soluble test substances, stock solutions of the test substance shall be diluted with glass-distilled or deionized water to obtain the test solutions. Standard analytical methods shall be used to establish concentrations of these solutions and shall be validated before beginning the test. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interference. The pH of these solutions shall also be measured before use.

(ii) *Numerical.* CO_2 efflux rates (μg/g of dry soil/hr) and NO_3 and NH_3 concentrations (μg/g of dry soil) in treated samples should be determined and compared with values obtained from untreated controls, carrier controls (if a carrier is used), and from the freshly sieved, pretreatment soil. The significance of differences between means may be established using Duncan's Multiple Range Test. Means and standard deviations should be plotted for each treated sample and each control. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration-response curves.

(d) *Test conditions*—(1) *Test species.* (i) No particular species of test organisms are recommended for use in this test due to the emphasis placed on maintaining the natural state of the soil samples and their resident populations of microorganisms. The test organisms

are, therefore, those that occur naturally in the soil, and no others are to be introduced.

(2) *Facilities*—(i) *Apparatus.* (A) Test chambers shall provide adequate space and controls necessary to incubate numerous soil samples in total darkness at a constant temperature for prolonged periods of time. Chambers shall be designed to prevent escape of internal air into the external environment other than through appropriate filtering material or media to prevent contamination of the external environment with the test substance.

(B) Laboratory facilities for test substance determinations should include nonporous floor covering; absorbent bench covering with nonporous backing, and adequate disposal facilities to accommodate test and wash solutions containing the test substance at the end of each test, and any bench covering, lab clothing, or other contaminated materials.

(ii) *Containers.* For each test, at least 60 to 70 soil containers (two series of 5 per concentration of test substance, two series of 5 for the control, and two series of 5 if a carrier control is necessary) shall be used. In addition, soil to be extracted immediately as the control is most easily handled in an identical container. All containers used in each experiment shall be of equal size and volume, possess the same configuration, and shall be made of the same inert material.

(iii) *Cleaning and sterilization.* (A) Soil containers and test solution storage containers shall be cleaned before use. All equipment should be washed according to good standard laboratory procedures to remove any residues remaining from manufacturing or prior use. A dichromate solution shall not be used for cleaning containers.

(B) If cleaning and rinsing of previously used soil containers has been thorough, the effects of any microorganisms remaining on the interior surface of the containers should be insignificant in the presence of the new test soil. Sterilization should not be necessary, but is considered an acceptable option.

(C) Soil treated with the test substance and solvent control soil shall be discarded at the end of the experiment. Disposal shall conform to applicable federal regulations.

(3) *Test parameters.* Environmental conditions shall be maintained as follows:

(i) Constant incubation temperature of 22 °C (or that temperature to which the microorganisms are most accustomed in nature).

(ii) Total darkness during incubation to prevent photosynthesis by algae or the growth of moss.

(e) *Reporting.* (1) The final report shall include, but not necessarily be limited to, the following information.

(i) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(ii) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(iii) Statistical methods used for analyzing the data.

(iv) The test substance identified by name, Chemical Abstracts Service (CAS) number or code number, source, lot or batch number, strength, purity, and composition or other appropriate characteristics.

(v) Stability of the test and, if used, control substances under the conditions of administration.

(vi) A description of the methods used, which should include the following:

(A) Description of environmental conditions, including type and size of incubation chamber and temperature used.

(B) Description of test diluent/solvent if other than distilled water, e.g., if carrier is required.

(C) Description of experimental design and/or arrangement of equipment, including a diagram, if complex.

(D) Method(s) used to determine the placement of soil containers in the incubation chamber and the assignment of test concentrations to containers to ensure randomization of exposure.

(E) Frequency and methods of adding water to soil containers during the test period.

(vii) A description of the test system used, including the source of the test soil, the type of ecosystem from which it was removed, its chemical and physical characteristics (mechanical analysis), and any available geological information including soil type (classification).

(viii) A description of the amount of soil tested per concentration, number of replicates, carrier (if any), and incubation periods.

(ix) The concentration of the test substance per unit dry weight of test soil when the test substance is dissolved in water, solubilized with a carrier, or coated on the alfalfa supplement and/or mixed into the soil.

(x) pH of the test solution applied to the soil samples. The reported results should include:

(A) The results of the range-finding test expressed as μg of CO_2 evolved/g of dry soil/hr, and μg of each of NH_3 and NO_3 present/g of dry soil, in treated and untreated samples. If the range-finding test indicated that the highest concentration of the test substance tested (but not less than 1,000 $\mu g/g$) had no effect on the test system, report the results by soil source and type and state that the test substance has a low potential for adversely affecting microbial functions in such soils. If the range-finding test indicated a greater than 50-percent reduction of the endpoints of the test at a concentration of the test substance that represents the analytical detection limit (if tested), report the results by soil source and type and state that the test substance is toxic to microbial life in such soils at concentrations at or below the analytical detection limit used in this study.

(B) For the definitive test, the soil source and type, concentrations of test substance used ($\mu g/g$ dry soil), and data for the same variables used in the range-finding test (see paragraph (e)(1)(x)(A) of this section) shall be reported.

(xi) A description of all circumstances that may have affected the quality or integrity of the data.

(xii) The name of the sponsor, study director, principal investigator, names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(xiii) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis. Results of the analysis of data should include the concentration-response curves with 95-percent confidence limits, the results of a goodness-of-fit test, e.g., chi-square test, and EC_{50}'s.

(xiv) The signed and dated reports of each of the individual scientists or other professionals involved in the study including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(xv) The locations where all specimens, raw data, and the final report are stored.

(xvi) The statement prepared and signed by the quality assurance unit.

(2) [Reserved]

§ 797.3775 Soil-core microcosm test.

(a) *Purpose.* This guideline is intended for use in developing data on the toxicity and fate of chemical substances and mixtures ("test substances") subject to environmental effects test regulations

under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 14 U.S.C. 2601 *et seq.*). This guideline prescribes tests using soil-core microcosms to provide information on the potential fate and ecological effects of chemical substances released to a specific terrestrial ecosystem. The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a test substance to the environment.

(b) *Definitions.* The definitions in section 3 of TSCA and Part 792—Good Laboratory Practice Standards, of this chapter, apply to this test guideline. The following definitions also apply:

"Bioconcentration factor (BCF)" means the ratio of the concentration of test substance in plant tissue (i.e., biota) to that in soil.

"Biota" means the organisms in the soil at the time of extraction of the core and the natural vegetation or crop species introduced as the autotrophic component. Biota includes all heterotrophic and carnivorous invertebrates in the soil and all soil and plant bacteria, fungi, and viruses.

"Carrier" means the organic solvent, solubilizer and/or other substance used to disperse the test substance into microcosm water.

"Soil-core" means an intact, undisturbed (nonhomogenized) core that is extracted in situ from a soil type typical of the region or site of interest and that is of sufficient depth to allow a full growing season for the natural vegetation or the crops selected, without causing the plants to become significantly root bound.

"Soil-core microcosm" means a physical miniaturized model of an interacting community of autotrophs, omnivores, herbivores, carnivores, and decomposers within an intact soil profile.

(c) *Test procedures*—(1) *Summary of the test.* The purpose of the soil-core microcosm test is to determine the potential fate and ecological effects of a chemical substance, including its transformation products, released to a specific terrestrial ecosystem. A soil core, as shown in the following Figure 1, containing biota typical of the region of interest, is treated with the test substance under controlled conditions in either a growth chamber or greenhouse. The test is usually continued for a minimum of 12 weeks from first application of the test substance to final harvest. Single or multiple applications of the test substance may be chosen, depending on the expected mode of introduction of the test substance into the environment. Leachate, soil, and plant samples are analyzed to evaluate the environmental fate of the test substance. Ecological effects of the substances are evaluated on the basis of measurements of primary productivity and nutrient loss, as well as on determinations of BCFs and observations of plant condition.

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FIGURE 1--MICROCOSM STRUCTURE AND MATERIALS

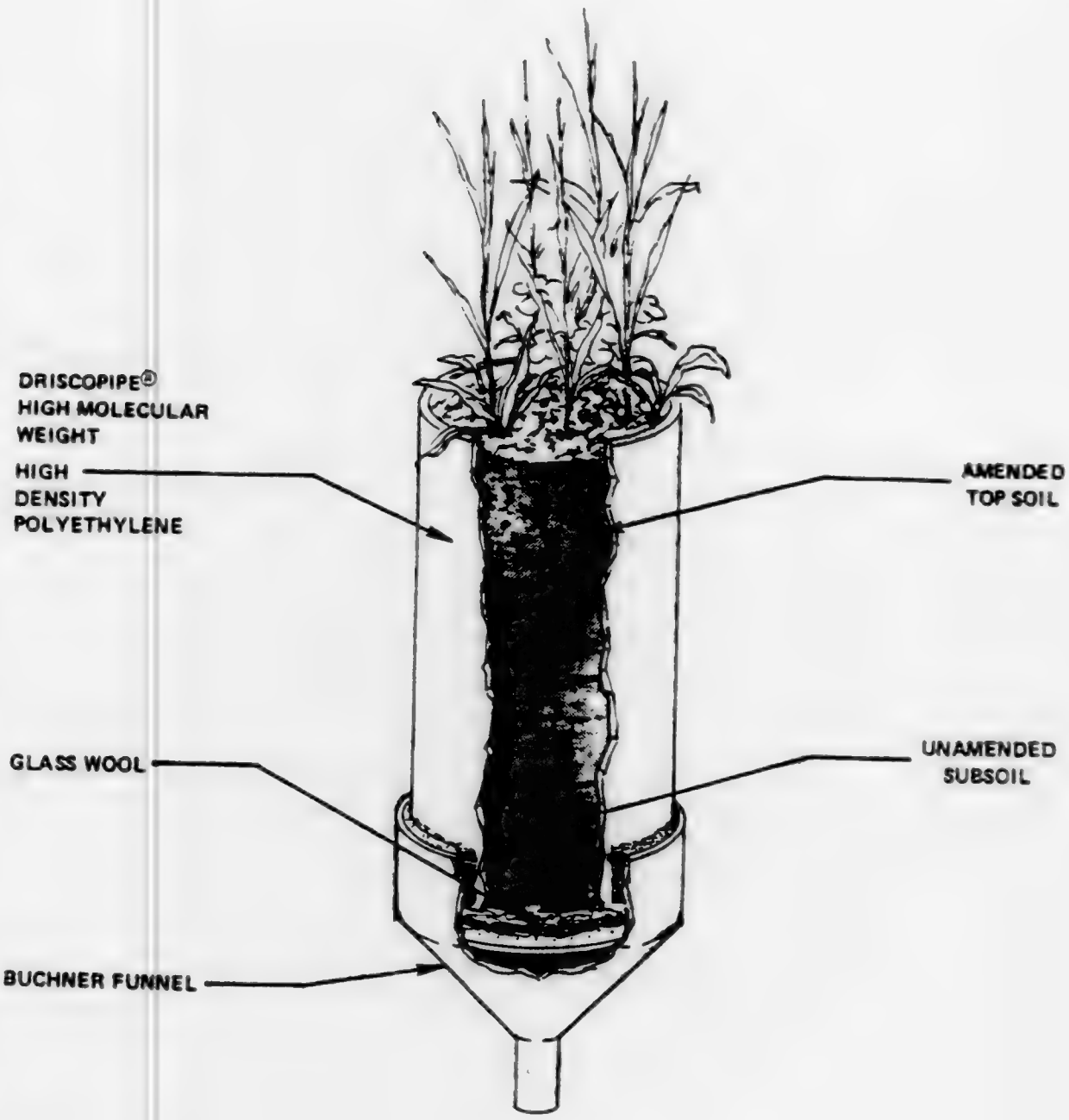

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(2) *Application of the test substance.* (i) Whenever possible, the test substance should be radiolabeled. The label may be ^{14}C, stable isotopes such as ^{15}N, or other suitable labels and, if possible, should be located in a portion (or portions) of the molecule known or expected to persist and/or have biological activity. For single chemical substances, two or more portions of the molecule may need to be labeled; in the case of mixtures, each component must be labeled and studied separately.

(ii) The test substance should be applied in a form which is reasonably consistent with the form in which it is expected to be released into the environment. The method and pattern of application should also reflect the actual or predicted field situation.

(A) If the primary mode of exposure to the test substance is anticipated to be by addition of pH-adjusted, reverse osmosis (RO) water or rainwater containing appropriate concentrations of the substance, the following procedure is recommended.

(*1*) Test substances which are likely to be released into the environment as a liquid or powder, and which can be mixed with water, should be applied as a single dose of liquid in a volume sufficient to bring the A horizon of the soil surface of the microcosm to field capacity.

(*2*) Water simulating rainfall or leaching should be filtered rainwater from the site being evaluated or purified (i.e., reverse osmosis) untreated laboratory water with a known chemical composition.

(*3*) The volume of reverse osmosis (RO) water or rainwater required for laboratory microcosms may be determined on-site using a microcosm of the same soil type without vegetation. The volume selected shall be identical for all microcosms and be sufficient to bring the A horizon of the soil surface to field capacity.

(*4*) Carriers other than water should not be used unless they are likely to be released into the environment with the test substance. If a carrier is necessary, acetone or ethanol should be considered; however, the use of carriers should be avoided unless they are essential to produce a realistic exposure.

(B) Several typical methods of application are suggested for particular types of test substances:

(*1*) If the test substance is likely to be a contaminant of irrigation water, it should be applied periodically, such as daily or weekly, in proportionate concentrations, such that the total amount applied equals the desired level of treatment.

(*2*) If the test substance does not mix with water, it should be applied as evenly as possible to the top of the microcosm. If the microcosm is simulating an agricultural system, the test substance should be mixed into the topsoil before planting.

(*3*) If the test substance is normally sprayed on growing plants, the desired amount should be mixed with the volume of water necessary to wet the soil surface and wet the plants to the point at which they begin to drip. A chromatography sprayer should be used to spray plants that are past the seedling stage. The manufacturer's recommendations for field spraying the test substance should be followed as closely as possible, and the test should be terminated at least 8 weeks after plants are sprayed.

(C) Water solubility and dissociation constant(s) of the test substance and soil pH must be considered in determining the formulation of the test substance.

(*1*) The treatment concentrations should bracket the known or expected environmental concentration of the test substance. However, if the environmental concentration is unknown and cannot be estimated, the maximum concentration of the substance in solution should not exceed half of saturation.

(*2*) [Reserved].

(3) *Range-finding test.* (i) A range-finding test may be conducted if definitive testing is necessary and to determine the concentrations of test substance to be used in the definitive test.

(ii) Physicochemical information supplied for the test substance should be used to tailor the general range-finding test procedures to the specific substance.

(iii) Phytotoxicity and/or bacteriostatic action, if known, should be considered in selecting exposure concentrations for the range-finding test. Only one concentration greater than that known to cause at least a 50-percent change in plant growth or a 50-percent change in bacterial growth/respiration should be tested. Also, the lowest concentration to be used should not be lower than a factor of 10 times the analytical detection limit in soil and 100 times the analytical detection limit in water.

(iv) The range-finding test should last at least 4 weeks from first application of the test substance to plant harvest. At the beginning of the test, microcosms should be treated with a minimum of five concentrations of the test substance. Three replicate microcosms are used for each concentration and for the control, resulting in a total of at least 18 microcosms. Concentrations typically used for treatment are 0.1, 1.0, 10, and 100 mg/L (ppm), if actual environmental concentrations are not known and cannot be predicted. If appropriate, 1,000 μg of test substance per g of top 15 cm of dry soil should also be used. The bulk density (g/cm^3) of the dry soil should be used to calculate the exposures. Depending on the expected mode of release of the test substance, each recommended concentration may be applied as a single dose or may be divided into multiple doses. In either case, the total amount of test substance applied for any given concentration must be the same.

(v) Each microcosm cart, in the following Figure 2, holding one replicate of each test substance concentration and a control, should be moved once per 7 days in the greenhouse to minimize location-induced effects.

FIGURE 2--ARRANGEMENT OF MICROCOSMS IN STYROFOAM CART

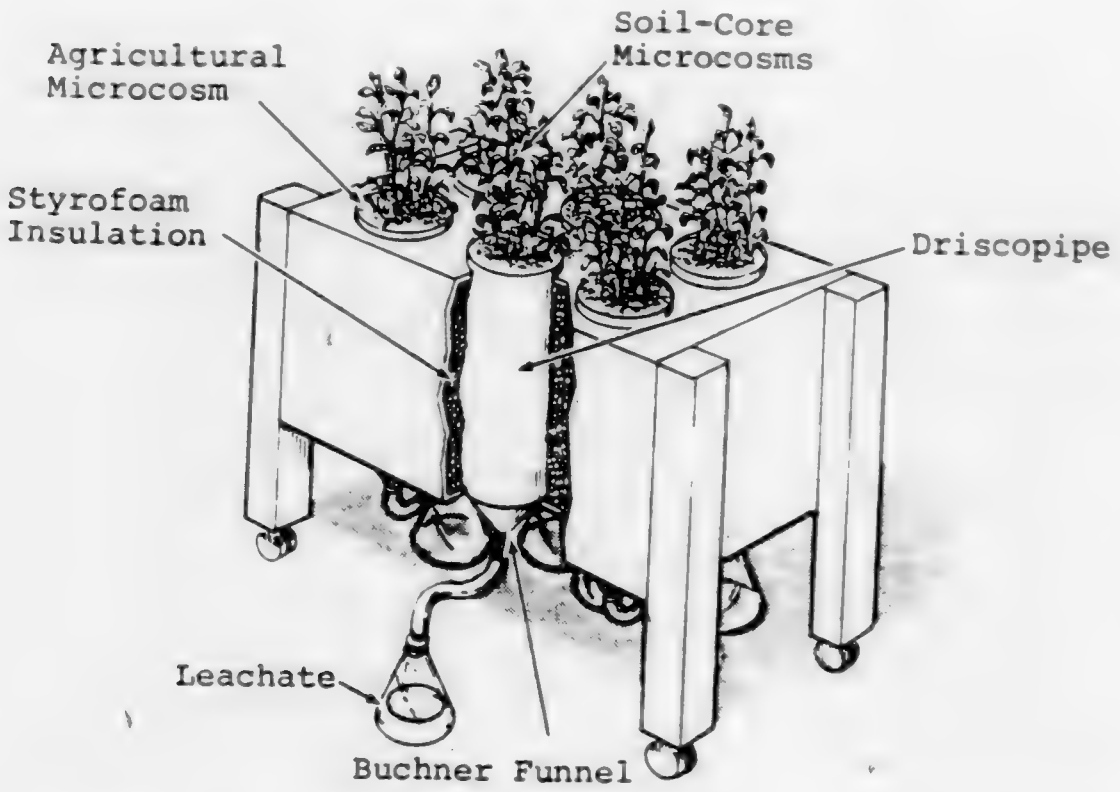

(vi) Losses of calcium, potassium, nitrate-nitrogen, orthophosphate, ammonium-nitrogen, and dissolved organic carbon (DOC) should be measured in soil leachates. Leachate should be collected in acid-washed, 500-mL flasks attached to the end of the Buchner funnel by inert plastic tubing. Leaching is induced by adding a volume of rainwater or RO water above that necessary to bring the soil profile to field capacity. The volume of additional water needed to induce leaching in a specific core should be determined when the cores are extracted from the field. The volume of rainwater or RO water needed should be recorded. Flasks to collect the leachate may be supported by a wooden board fastened under the microcosm cart. The volume of leachate should be recorded and the pH determined using a glass electrode. Samples should be centrifuged at low speed (e.g., 5,000 rpm) and filtered through a 0.45-micron filter. The sample should be divided into two aliquots and stored in the dark at 4 °C with blanks consisting of distilled water and reference standards in quantities sufficient for instrument calibration.

(vii) At the termination of the range-finding test, soil samples should be collected from the top, middle, and bottom of the 60-cm soil cores. If the radiolabeled test substance or its transformation products are not detected in the deeper soil samples by liquid scintillation counting, soil samples at the end of the definitive test should be taken nearer the top of the soil column.

(viii) If no discernible effects of the test substance are detected during the range-finding test at one-half of saturation or 1,000 μg/g (whichever is higher), including visible effects of plant injury, no definitive test is necessary.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the potential fate and ecological effects of a test substance, including its transformation products, in a site-specific natural grassland or agricultural ecosystem.

(ii) Chemical substances with high vapor pressures or high Henry's law constants should not be tested in the soil-core microcosm as prescribed in this guideline.

(iii) Soil cores (17-cm diameter by 60-cm deep) shall be extracted from either a natural grassland ecosystem or a typical agricultural soil in the region of interest. The intact system should be extracted with a specially designed, steel extraction tube, as shown in the following Figure 3, and a backhoe. Disturbances during extraction and preparation of the soil core should be minimized.

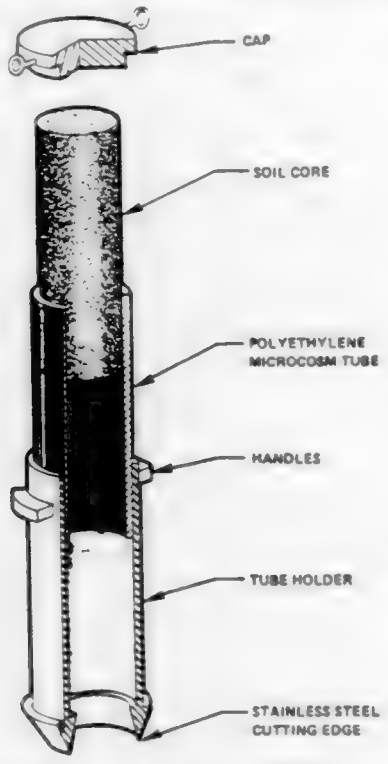

FIGURE 3--DIAGRAM OF MICROCOSM EXTRACTION TUBE

(iv)(A) For an agricultural microcosm, the soil which is plowed (generally, the top 15 cm of soil) should be moved aside and saved. Once the core is cut by the leading edge of the driving tube, it should be forced up into the microcosm tube or Driscopipe® as demonstrated in Figure 1 in paragraph (c)(1) of this section. The Driscopipe® should then contain a 45-cm core of subsoil. The homogenized topsoil that was saved should be backfilled into the upper 15 cm of the microcosm tube after it has been returned to the laboratory.

(B) A mixture of grasses and broad leaves (e.g., legumes) should be included in the agricultural microcosm. Seeds from two or three species of grasses or legumes that are typically grown together as an agricultural crop in the region of interest should be chosen and planted. The rate of seed application should duplicate standard farming practice for the region of interest. Seeds should be planted evenly and covered to an appropriate depth with soil.

(v)(A) For a natural grassland microcosm, the vegetation covering the natural grassland ecosystem shall be clipped to a uniform height before the core is extracted. Natural plant cover should be sufficiently diverse to be representative of plant species in the region of interest.

(B) The soil core from the grassland ecosystem should be removed as a single unit (soil and Driscopipe®) from the extraction tube, taken to the laboratory, and placed on a Buchner funnel covered by a thin layer of glass wool. The funnel and tube should be washed with acid (50-percent conc. HNO_3) before use and then rinsed with RO water.

(vi) Six microcosms are typically contained in a moveable cart which is packed with Styrofoam® beads, as shown in Figure 2 in paragraph (c)(3)(v) of this section.

(vii) An appropriate random process shall be used, such as completely randomized, randomized block, or Latin-square design, to assign microcosms to different concentrations of the test substance.

(viii) The method and pattern of application and the form of the test substance used should approximate a reasonable scenario of how the substance is expected to be released at the site in question (see paragraph (c)(2)(ii) of this section).

(ix) At the beginning of the test, microcosms shall be treated with at least three concentrations of the test substance. Ten replicate microcosms shall be used for each of the three concentrations and for the control, for a total of 40 microcosms. The treatment concentrations should be selected to produce a 20- to 25-percent change in plant productivity in each treatment based on results from the range-finding test. The ten replicate microcosms in each treatment group should be used as five replicate pairs.

(x) Microcosms that have been paired for analysis shall be placed in different carts to ensure that environmental conditions are as uniform as possible.

(xi) The structure, materials, and treatment of control microcosms shall be the same as that of exposed microcosms except that none of the test substance is applied.

(xii) Microcosms should be watered as dictated by a predetermined water regime based on site history with either reverse osmosis (RO) water or with rainwater that has been collected from the region of interest, filtered, and stored in a cooler at 4 °C. Care shall be taken to provide sufficient water for normal plant functions without over-watering. If the test substance is applied as an aerosol or powder, plants should be sprinkled immediately after treatment to avoid resuspension of particulates and reduce the potential for cross-contamination of exposure concentrations.

(xiii) Data regarding solubility of the test substance in water and its capacity to sorb to soils should be used, along with the results of the range-finding test, to help determine the appropriate regime for soil leachate collection and analysis. Microcosms should be leached, as described in paragraph (c)(3)(vi) of this section, at least twice before application of the test substance and once every 2 or 3 weeks after such application. The frequency of rainfall in the region of interest should be considered when a leaching regime is selected. Water to leach the microcosm should be added to each microcosm over an 8 to 12-hour period to avoid waterlogging the soil surface. To ensure that all test microcosms will leach within a 2-day period, at least 15 percent more soil cores should be extracted than are required for the tests. When the microcosms are leached before planting, those which do not leach, leach too quickly, or take longer than 2 days to produce 100 mL of leachate after the soil has been brought to field capacity shall be discarded.

(xiv) Light intensity measurements should be taken daily, but shall be taken at least at the beginning and end of the test.

(xv) Temperatures shall be monitored continuously at the top of the plant canopy.

(xvi) Plants shall be carefully monitored for changes in physical appearance, such as stunting, discoloration, or chlorosis and/or necrosis of the leaves.

(xvii) To measure plant primary productivity, plants from the natural grassland or agricultural microcosm shall be harvested at the end of the test period (a minimum of 12 weeks) and, possibly, once or twice during that period, depending on the types of plants grown. For example, vigorously growing grasses may be sampled during the middle of the test. Plants should be clipped to approximately 2.5 cm above the soil surface. Harvested plants should be stored in separate paper bags for each microcosm, and air-dried, oven-dried, or both soon after harvest. The test may be extended beyond 12 weeks to accommodate plant species which take longer to reach the desired maturity (e.g., seed production). Plant productivity, depending on the plant species, may be measured as total yield and/or yield by plant part, e.g., total biomass or grain. Minimally, plant productivity shall be measured as oven-dry weight expressed in g/m^2; in the grassland microcosms, monocotyledons and dicotyledons should be separated for both plant productivity measurements and radiochemical assay.

(xviii)–(xix) [Reserved]

(xx) Nutrient losses should be sampled in soil leachates. Nutrients to be measured should be selected based on the properties of the test substance

and the results of the range-finding test (see paragraph (c)(3)(vi) of this section).

(xxi) Samples of soil leachate, plant tissue (including roots and shoots), and soil from three depths should be analyzed for radioactivity, and identification and quantification of the test substance. The three soil depths should be selected based on soil sorption of the test substance and results from the range-finding test. These depths should be relatively close to the soil surface (1 to 2 cm) for radiolabeled chemicals that are strongly sorbed to soils. If any isotope appears in the leachate during the range-finding test, the depth selection should be lower in the soil profile. The entire soil layer should be taken as the sample, and then subsamples should be homogenized and extracted with solvents appropriate for the test substance. Additional extraction steps, such as acidification and extraction with non-polar solvents, Sohxlet extractions with polar and/or nonpolar solvents, alkaline or acid hydrolysis with or without heat, detergent extractions, or protease digestion may be necessary. The ^{14}C in the soil or plant samples which cannot be extracted should be oxidized and analyzed as $^{14}CO_2$ and reported as bound residue. Extracts and the oxidized or dissolved samples should be counted by ^{14}C liquid scintillation.

(xxii) Soil invertebrates and microbes may be sampled at the end of the test.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Chemical.* (A) Standard analytical methods, if available, shall be used to establish actual concentrations of solutions of the test substance and shall be validated before beginning the test. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, cause positive or negative interference. The pH of these test solutions should also be measured before use.

(B) The fate or final distribution of the test substance and its transformation products shall be determined by methods appropriate to the test, including sensitivity factors adequate to verify exposure and distinguish between the test substance, its transformation products, and naturally occurring materials present in the test system. Whenever possible, this should involve use of a radiolabeled test substance, and subsequent analysis of the primary microcosm compartments and soil leachate for radioactivity and chemical identity.

(C) Identification and quantification of the test substance or its transformation products, expressed as a percent of the original application, in various compartments of the microcosm should be performed using gas-liquid chromatography (GLC), thin-layer chromatography (TLC) or high-pressure liquid chromatography (HPLC). TLC autoradiography using no-screen x-ray film for chromatographed fractions which are found to be radioactive by liquid scintillation counting may be most cost-effective. However, whenever possible, the identity of the test substance and its transformation products in fractions which are found to be radioactive by liquid scintillation counting should be verified by GLC, HPLC, or other appropriate methods. Also, the concentration of the test substance and transformation products should be verified by an alternative chromatographic method (e.g., HPLC or GLC) with known standards.

(D) Standard techniques suitable for nutrient analysis may include atomic absorption spectrophotometry for calcium and potassium, and a Technicon Autoanalyzer II for nitrate-nitrogen, orthophosphate, DOC, and ammonium-nitrogen.

(ii) *Numerical*—(A) *Experimental design.* Analysis of variance (ANOVA) calculations should be performed to test for position effects within the carts and within the environmental area where the test is performed. If these tests are significant at the 5-percent level ($P < 0.05$), this should be accounted for in subsequent statistical analyses.

(B) *Productivity.* (*1*) The effects of different concentrations of the test substance on productivity can be evaluated initially by using side-by-side histograms displaying calculated means (expressed in g/m^2), variances, 95-percent confidence intervals, and two standard errors for air-and oven-dried biomass collected from control and treatment groups. Early evaluation will indicate whether logarithmic or some other transformation of the data is necessary for graphic display and analysis. Pair-wise comparisons may be necessary for variables which were measured only once during the 12-week test.

(*2*) Biomass data should be analyzed by ANOVA and least significant differences multiple-range procedures. The level of significance for all tests should be at the 5-percent level. Where treatment effects and interactions between and among various factors are important, a two-way ANOVA or factorial analysis should be performed.

(*3*) Regression/correlation analysis should be performed on plant productivity results. Obvious recording or reporting errors in the data should be excluded but noted in the final report. If substantial data are excluded, deficiencies in quality control may necessitate repeating the test. Once outlying values have been detected and removed from further statistical evaluations, regression models or probit analysis should be used to estimate the concentration at which 50 percent of the productivity observed in controls occurred in the treated groups (EC_{50}). Ordinary linear-least-squares-regression analysis should initially be performed, and predicted responses in each group should be compared using a Student t-test (one-sided). If productivity appears to be bimodal when compared to controls, a two-sided Student t-test may be necessary. It may also be necessary to transform the data or fit a quadratic or cubic least-squares-regression model to the data for this type of response. Positional effects should be included in the data. Computer software packages such as SAS (Statistical Analysis System) or BMCP (Biomedical Computer Program) may be useful.

(C) *Plant injury.* Statistical analyses of the effects of the test substance and transformation products on the appearance of plants are not necessary unless there is a clearly identifiable pattern of effects. If deemed necessary, types of injury should be ranked by severity. A non-parametric test, such as the Kruskal-Wallis test, should then be performed.

(D) *Nutrient losses.* (*1*) Based on the nutrients selected for analysis in soil leachate, the total cumulative loss of each nutrient from each microcosm shall be calculated by multiplying the concentration of the nutrient collected at each sampling time by the total volume leached from that microcosm for that collection date and adding the product to the previous sum of total loss.

(*2*) Means (+/−SE) of the cumulative nutrient losses for each treatment concentration for each collection date should be plotted as a function of days after seeding for the agricultural microcosm or days after application of the test substance for the natural grassland microcosm. Zero loss should be the starting point. If there was no leachate for any microcosm during a particular collection period, the data point should be recorded as zero so that no data are considered missing.

(*3*) A one-way ANOVA should be performed on total cumulative nutrient loss data at the end of the test, to evaluate effects of different concentrations of the test substance. A multiple-range procedure, such as Duncan's, should be used to determine which specific treatment means are different from each other.

(4) Regression and/or correlation analysis comparing losses of each nutrient analyzed versus plant productivity should be performed.

(E) *Chemical fate analysis.* (1) At the end of the test, the mass balance or final distribution of the test substance and its transformation products in above-and below-ground plant tissues, selected depths through the soil profile, and losses through soil leaching and gaseous transport shall be calculated for each concentration of the substance tested.

(2) Calculations should be based on measured radioactivity in a specific compartment of the microcosm, on a per-gram basis, times the total weight or volume of test substance in that compartment, expressed as dry weight when appropriate. All calculations should be corrected for radioactive decay (as appropriate) that has occurred since the beginning of the test. Quantities of the test substance and its transformation products should be expressed as a percent of the original application of the test substance.

(3) Statistical analyses shall be performed for each exposure concentration on any differences in distribution of the test substance in the primary compartments of the microcosm and in soil leachate. Multi-compartmental modeling and multivariate analysis of variance may also prove useful in assessing the fate of a test substance and its transformation products.

(4) The time to reach steady-state loss through leaching and the time to initiate leaching shall be calculated for each exposure concentration.

(F) *Radioactivity budget.* Calculation of a complete mass balance of all radioactivity should be performed as follows:

(1) Total radioactivity added per microcosm should be calculated based on the decay rate of the radioactive label (e.g., ^{14}C), the total amount of radioactive label added to the test substance initially, the length of time between formulation and microcosm exposure (radioactive decay), and the particular concentration of the test substance added to the microcosm.

(2) Total radioactivity removed from the microcosm should be calculated based on the following data:

(*i*) Soil leachate concentration times the volume of soil leachate lost per collection date;

(*ii*) Calculated gaseous losses of the test substance; and

(*iii*) The type of radiolabel and rate of radioactive decay of that label during the test.

(3) Total radioactivity remaining in the microcosm can be calculated based on analysis of the radioactivity in each of the following primary compartments:

(*i*) Above-ground plant tissues;

(*ii*) Below-ground plant tissues, i.e., cleaned of soil particles; and

(*iii*) The soil profile.

(G) *Bioconcentration.* The ratio of the amount of radioactivity in above-ground plant tissues to the amount in the top 15 cm of soil should be calculated on a concentration-per-unit, dry-weight basis. Side-by-side histograms of the BCFs should be compared for statistical differences.

(H) *Soil organisms.* Appropriate statistical methods shall be used to evaluate the distribution and abundance of soil invertebrates and function of the soil microbial community with respect to treatment concentrations.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* Biota shall be included in the microcosm. A mixture of two or three species of grasses or broad leaves, such as legumes, representative of the area or region where the test substance is expected to be released or applied to crops or soil, should be included in the agricultural microcosm. Chosen species shall be compatible and able to grow to maturity in the limited surface area of the microcosm. Thus, large crops such as corn or sorghum cannot be used under these guidelines.

(ii) *Seed selection.* Information on seed lot, seed year, or growing season collected and germination percentage shall be provided by the source of the seed. Only untreated seed (not treated with fungicides, repellants, etc.) taken from the same lot and year or season of collection shall be used in a given test. In addition, all seed of a species used in a test should be of the same size class, and that size class which contains the most seed should be selected and used in a given test. Any damaged seed shall be discarded.

(2) *Facilities*—(i) *Apparatus.* (A) The greenhouse or growth chamber shall provide adequate environmental controls to meet light and temperature specifications.

(B) Laboratory facilities for test substance determinations should include: Nonporous floor covering; absorbent bench covering with nonporous backing; and adequate disposal facilities to accommodate radiolabeled test solutions and wash solutions containing the test substance at the end of each test, and any bench covering, lab clothing, or other contaminated materials; appropriate equipment for analytical determinations; drying ovens; refrigerators; and standard laboratory glassware.

(C) A specially designed steel extraction tube and a backhoe are needed to extract soil cores.

(ii) *Containers and supporting equipment.* (A) For the definitive test, at least 18 microcosms are required. The three basic materials used for a single microcosm are: a 60-cm-long Driscopipe® tube (17.5 cm diameter), a 186 mm-diameter porcelain Buchner funnel, and a thin layer of glass wool (see Figure 1 in paragraph (c)(1) of this section). Containers used in each test shall be of equal size and volume and possess the same configuration.

(B) Three mobile carts shall be used to hold 18 microcosms. The carts should be designed to hold adequate Styrofoam® beads for insulation in Figure 2 under paragraph (c)(3)(v) of this section.

(iii) *Cleaning.* All equipment used in the test shall be cleaned before use and should be washed according to good standard laboratory practices, to remove any residues remaining from manufacture or use. A dichromate solution should not be used for cleaning containers. Disposal of all detergents and acids that have been used to clean the Driscopipe®, funnels, and laboratory glassware, and disposal of all liquid and solid samples and remaining undisturbed portions of the test system shall conform to applicable existing federal regulations.

(3) *Test parameters.* Microcosms shall be kept in a greenhouse or environmental chamber with controlled environmental conditions.

(i) The temperature shall approximate outdoor temperatures that occur during a typical growing season in the region of interest.

(ii) The photoperiod and intensity of light typical for the growing season in the region of interest shall be simulated. Light for the test system can be supplied by artificial lighting suitable for plant growth in either an environmental chamber or greenhouse or can be the natural photoperiod occurring in a greenhouse. If the test is performed in an environmental chamber, the daily photoperiod for the microcosm shall be at least the average monthly incident radiation (quantity and duration) for the month in which the test is being performed, with a cycle equivalent to the natural photoperiod.

(e) *Reporting.* (1) The report shall include, but not necessarily be limited to, the following information:

(i) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(ii) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(iii) Statistical methods used for analyzing the data.

(iv) The test substance identified by name, Chemical Abstracts Service (CAS) number or code number, source, lot or batch number, strength, purity, and composition or other appropriate characteristics, such as water solubility and vapor pressure at 25 °C.

(v) Stability of the test substance and, if used, control substances under the conditions of administration.

(vi) A description of the methods used, including:

(A) Greenhouse or environmental chamber conditions, including type and size, temperature, photoperiod, and light intensity.

(B) Source, any special treatment, and chemical composition of the water used.

(C) Method and equipment used to extract the soil core.

(D) Randomization procedures used to position microcosms and assign test concentrations to particular microcosms.

(E) Frequency, duration, and methods of observations.

(vii) A description of the test system used, including:

(A) The soil core, including chemical, biological, and physical characteristics, source, soil type, and when applicable, identification of plant species included in the natural vegetation or the scientific names and sources of the agricultural plants selected and histories of the species, e.g., percentage of seeds germinating and seed size class.

(B) Planting procedures and any special handling of seed before planting.

(C) Number or total weight (for smaller species) of seeds tested per concentration (in agricultural microcosm).

(viii) A description of the experimental design, test substance concentrations, method and pattern of application, replicates, controls, and carriers. The reported results should include:

(A) Results of the range-finding test and measurements.

(B) Results of the definitive test including:

(*1*) Visible effects of the test substance on intact plants.

(*2*) Total productivity and/or yield by plant part (e.g., total biomass or grain) expressed as g/m^2 oven-dry weight.

(*3*) Losses of selected nutrients in leachates.

(*4*) Percent distribution of the test substance and its transformation products in the primary compartments of the microcosm, including above- and below-ground plant tissues and selected depths through the soil profile expressed as dry weight, and in soil leachate expressed as g/m^2. Losses via gaseous transport should be estimated and expressed as mg/m^3.

(*5*) A radioactivity budget including total radioactivity added to, removed from (via soil leaching, gaseous transport, and radioactive decay), and remaining in each microcosm (plant tops and roots and selected soil depths).

(*6*) Bioconcentration of the test substance in above-ground plant tissue expressed as the ratio of the concentration in plant tissue to the concentration in the top 15 cm of dry soil.

(ix) A description of all circumstances that may have affected the quality or integrity of the data.

(x) The name of the sponsor, study director, principal investigator, names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(xi) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis. Results of the analysis of data should include the concentration response curves with 95-percent confidence limits, the results of a goodness-of-fit test, e.g., chi-square test, and EC_{50}'s.

(xii) The signed and dated reports of each of the individual scientists or other professionals involved in the study including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(xiii) The locations where all specimens, raw data, and the final report are stored.

(xiv) The statement prepared and signed by the quality assurance unit.

(2) [Reserved]

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Part III

Department of Education

34 CFR Part 628

Endowment Challenge Grant Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 628

Endowment Challenge Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Endowment Challenge Grant Program, formerly called the Endowment Grant Program. The regulatory changes conform the regulations to the changes made to the statute governing the Endowment Challenge Grant Program, Parts C and D of Title III of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99–498.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the U.S. Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 20026. Telephone: (202) 732–3308.

SUPPLEMENTARY INFORMATION:

A. Background

The Endowment Challenge Grant Program is one of several programs authorized by Title III of the HEA and known collectively as the Institutional Aid Programs. Under the Endowment Challenge Grant Program, the Secretary awards grants to eligible institutions of higher education to enable them to establish or increase endowment funds. Grantees must match the Federal grant funds that they receive. The Federal grant and the institutional match are called the endowment fund corpus. Institutions must invest and may not spend the endowment fund corpus for a 20-year grant period. When the grant expires, the institution may use the endowment fund corpus for any educational purpose.

In general, a grantee may spend up to 50 percent of the endowment fund income earned before the date of each proposed expenditure. Endowment fund income is an amount equal to the difference between the total value of the endowment fund and the endowment fund corpus. The total value of the endowment fund includes the endowment fund corpus plus appreciation (or minus depreciation, if applicable), cumulative interest and dividends. A grantee may use that 50 percent of endowment fund income to defray any expenses necessary to operate the institution. A grantee must invest the other 50 percent of endowment fund income for the entire grant period. When the grant expires, the grantee may use all the income for any educational purpose.

B. Explanation of Changes

The Higher Education Amendments of 1986, Pub. L. 99–498, amended the authorizing statute governing the Endowment Challenge Grant Program, Parts C and D of Title III of the HEA, in several areas. The Secretary is amending the regulations in the following areas: Institutional eligibility, limitations on the receipt of endowment challenge grants, and the penalty for use of the endowment fund corpus.

The Secretary published final regulations for the Endowment Challenge Grant Program in the **Federal Register** of April 8, 1987, 52 FR 11256. In the preamble to those final regulations, the Secretary stated that regulations addressing institutional eligibility for the Endowment Challenge Grant Program would be published when the regulations for the Strengthening Institutions and the Strengthening Historically Black Colleges and Universities Programs were published. The regulations for these programs were published in the **Federal Register** of August 14, 1987, 52 FR 30526, and 30536. In addition, the Secretary believes that the Endowment Challenge Grant Program regulations published on April 8, 1987 were not clear regarding the statutory limitation on how often an institution is eligible to receive an endowment challenge grant and the penalty for a grantee's use of endowment fund corpus. These regulations clarify those matters.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1231(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations only include provisions implementing mandatory statutory changes to the Endowment Challenge Grant Program required by the Higher Education Amendments of 1986, Pub. L. 99–4.98 and clarifications of existing regulations. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The changes made in these regulations will not create any additional burden on small institutions that will participate in the program.

Paperwork Reduction Act of 1980

The regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031—Endowment Challenge Grant Program)

Dated: September 9, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 628 of Title 34 of the Code of Federal Regulations as follows:

PART 628—[AMENDED]

1. The authority citation for Part 628 continues to read as follows:

Authority: 20 U.S.C. 1065a, unless otherwise noted.

2. Section 628.2 is revised to read as follows:

§ 628.2 Which institutions of higher education are eligible to apply for an endowment challenge grant?

An institution of higher education is eligible to apply for an endowment challenge grant if—

(a) It qualifies as an eligible institution for the Strengthening Institutions Program under 34 CFR 607.2;

(b) It qualifies as an eligible institution for the Strengthening Historically Black Colleges and

Universities Program under 34 CFR 608.2;

(c) It would have qualified as an eligible institution for the Strengthening Institutions Program if 34 CFR 607.2(a)(3) referred to a postgraduate degree rather than a bachelor's degree;

(d) It would have qualified as an eligible institution for the Strengthening Historically Black Colleges and Universities Program if 34 CFR 608.2(a)(4)(i) referred to a postgraduate degree rather than a bachelor's degree; or

(e) It qualifies as an institution that makes a substantial contribution to graduate or postgraduate medical educational opportunities for minorities and the economically disadvantaged.

(Authority: 20 U.S.C. 1064)

3. In § 628.4, paragraphs (a) and (b) are revised to read as follows:

§ 628.4 How often is an institution eligible to receive an endowment challenge grant?

(a) Except as provided in paragraphs (b) and (c) of this section, an institution is eligible to receive an endowment challenge grant in a fiscal year, even if it has already received another endowment challenge grant in a previous fiscal year, as long as it does not receive endowment challenge grants in more than two fiscal years out of any five consecutive fiscal years.

(b) An institution that receives an endowment challenge grant in excess of $1,000,000 is ineligible to receive another endowment challenge grant in any amount for a period of ten years from the date it received the grant in excess of $1,000,000.

* * * * *

4. In § 628.5, paragraph (a)(2) is removed and reserved, paragraph (a)(3) is removed and paragraph (a)(1) is revised to read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

(a) The following regulations apply to the Endowment Challenge Grant Program:

(1) The regulations in this Part 628.

(2) [Reserved]

* * * * *

5. In § 628.6, the introductory text is revised to read as follows:

§ 628.6 What definitions apply to the Endowment Challenge Grant Program?

The following definitions apply to the regulations in this part:

* * * * *

6. In § 628.48, paragraph (a)(2) is removed, paragraph (a)(1) is redesignated as paragraph (a)(2) and a new paragraph (a)(1) is added to read to follows:

§ 628.48 What happens if a grantee fails to administer the endowment grant in accordance with applicable regulations?

(a) * * *

(1) Withdraws or spends any part of the endowment fund corpus in violation of § 628.44(a)(1);

* * * * *

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Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Revision of Construction Industry Test and Inspection Records; Final Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–020A]

Revision of Construction Industry Test and Inspection Records

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises three construction industry recordkeeping requirements to minimize the paperwork burdens imposed on employers and to clarify what information is required. The final rule eliminates certain requirements under which an employer must prepare and maintain written records. The revised provisions require, instead, that the employer simply prepare a certification record at the time the required work (inspection or test) is done, which includes the date the inspection or test was performed; the signature of the person who performed the work; and the identity of the equipment or machinery that was inspected or tested. OSHA has determined that the implementation of this final rule will minimize the paperwork burden on employers as required by the Paperwork Reduction Act of 1980, without reducing the protection of employee safety and health.

DATES: These revisions will become effective October 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) was enacted to minimize the Federal paperwork burden and maximize the efficiency and usefulness of Federal information-gathering activities. That Act set goals for the phased reduction of Federal information-gathering burdens. The Paperwork Reduction Act also required the Office of Management and Budget (OMB) to promulgate regulations which would guide the Federal agencies in their compliance efforts. OMB has published implementing regulations at 5 CFR Part 1320 and has issued supplemental directives.

In addition, section 8(d) of the Occupational Safety and Health Act (the OSH Act) states that "Any information obtained by the Secretary * * * under this Act shall be obtained with a minimum burden upon employers. * * *"

In an effort to meet these statutory goals, OSHA conducted a comprehensive review of the OSHA standards to identify all recordkeeping requirements. OSHA then analyzed each of the 38 requirements identified to determine which recordkeeping burdens could be reduced.

Each requirement was reviewed to determine:

—What kind of information was required;
—How this information would be used;
—Whether this information was collected by other authorities (e.g. pursuant to state and local law or regulation);
—Whether this record would provide information that a compliance officer would not otherwise ascertain at the time of inspection; and,
—Which requirements contributed directly to employee safety and health.

On the basis of this careful review and analysis, OSHA identified 22 provisions in the standards found in 29 CFR Parts 1910, 1915, and 1926 that, in its opinion, did not directly contribute to worker safety and health and, therefore, unnecessarily burdened employers with requirements that they prepare and maintain records of tests, inspections, and maintenance checks.

In particular, OSHA determined that the recordkeeping requirements in question were adopted because the Agency wanted the employer to provide evidence that the required tests and inspections had been performed. Having made that determination, OSHA compared the purposes for the recordkeeping requirements with their language and found that they required more information than OSHA needed to determine if equipment or machinery was safe to operate. Therefore, OSHA determined that revisions were appropriate.

OSHA also identified as appropriate for deletion, a duplicative recordkeeping provision and another which dealt with concerns outside OSHA's jurisdiction.

On January 3, 1986, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 312) to revise the 22 provisions in question and to revoke the other two provisions. The NPRM included three recordkeeping requirements in the existing Construction Safety and Health Standards, 29 CFR Part 1926. The three recordkeeping requirements in question are § 1926.550(b)(2)—Cranes and derricks; § 1926.552(c)(15)—Material hoists, personnel hoists and elevators; and § 1926.903(e)—Underground transportation of explosives.

OSHA determined during the NPRM comment period that it had not formally consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding those three proposed revisions as required by section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333). The Agency, therefore, withdrew the three construction recordkeeping requirments from consideration when it issued a Notice of Informal Public Hearing on March 14, 1986 (51 FR 8844). The remaining 19 provisions were revised through the publication of a Final Rule in the September 29, 1986, **Federal Register** (51 FR 34552).

On April 29, 1986, OSHA formally consulted with the ACCSH to obtain the Committee's recommendations on revising the three recordkeeping requirements which, as has been discussed above, were removed from consideration for revision in the March 14, 1986 hearing notice. The transcript of the Advisory Committee meeting is Exhibit 2 in Docket S–020A.

On April 14, 1987, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (52 FR 12120) to revise the three construction provisions in question. In the preamble to the NPRM, a discussion of the Advisory Committee's recommendations concerning this revision effort can be found. In the NPRM, OSHA proposed to eliminate certain requirements for written, detailed records and reports and replace them with provisions under which employers would prepare a certification record at the time the required test or inspection was performed. The certification record would include the date the test or inspection was performed, the signature of the person who performed the test or inspection, and the identity of the equipment or machinery which was tested or inspected.

The NPRM established a 60-day period, which ended June 15, 1987, for submission of written comments and hearing requests. There were six comments received on the NPRM and no hearing requests.

As stated above, OSHA adopted the recordkeeping requirements in question to provide assurance that employers have performed the required tests and inspections. OSHA has determined, based on its 15 years of experience

enforcing those requirements, that requiring an employer to maintain detailed test or inspection records does not add to compliance with the test and inspection requirements. Therefore, OSHA is revising the pertinent requirements so that employers are required to prepare a contemporaneous certification record, as provided herein.

The contemporaneous certification record can be kept in any manner which provides the required information. For example, a list of the pieces of equipment which were inspected would have to be signed and dated only once if the same person performed all of the inspections or tests on the same date. With such a list, the person performing the inspections or tests would not have to sign and date a separate record identifying each piece of equipment.

If employers keep track of their inspections or tests with automated data processing, and if, as above, the same person performed all of the inspections or tests on the same date, compliance can be achieved by having that person sign and date a printout of equipment identifiers. The signed and dated computer printout would, of course, have to be maintained, until superseded, and made available for review at the time of an OSHA inspection.

Employer can comply with this certification requirement in the manner which least disrupts their operations. They may find that they need to place a tag on the equipment in question or they may find that the addition of an entry to a checklist or log they already maintain will suffice. Some employers may even find that they do not need to change their recordkeeping methods to comply with these revised requirements.

OSHA estimates that the revisions will reduce its imposed paperwork burden by approximately 670,000 hours and that employers will save approximately $1.8 million annually. In addition, employers will gain clear guidance as to what information must be included when verifying compliance.

OSHA has determined that the revisions will not reduce the protection of employee safety and health since the testing and inspection requirements will remain in effect. OSHA believes that a certification record will provide evidence of compliance with the pertinent testing or inspection requirements which is equivalent to that provided by the detailed records formerly required.

OSHA will continue to review its recordkeeping requirements in an effort to ensure that they provide the necessary protection for employees while imposing the minimum burden on employers.

II. Discussion of Issues Raised in the Comments

A. General Comments

OSHA received six comments in response to the Notice of Proposed Rulemaking. Four of the comments pertained to the proposed recordkeeping revisions in general. Those comments are discussed below. The comments which refer to individual provisions are discussed in the Summary and Explanation.

The New York State Conference of the International Union of Operating Engineers (Ex. 3–2) opposed the revision of the recordkeeping requirements in §§ 1926.550(b)(2) and 1926.552(c)(15). The Operating Engineers felt that OSHA was inviting "falsification of equipment inspections by unscrupulous contractors," and that the recordkeeping provisions are invaluable in preventing serious accidents. In addition, they commented that "the primary tool for inspecting a crane, a components checklist, was being replaced by a meaningless scrap of paper." The Operating Engineers, however, did not submit information to support their positions.

Concerns regarding record falsification, the value of records in preventing accidents, and the use of checklists were raised as concerns in the rulemaking relating to certain recordkeeping requirements in the General Industry and Maritime Standards (51 FR at 34553). OSHA will address these three issues in turn.

First, in the earlier rulemaking, OSHA responded to commenters' concerns regarding employer error and dishonesty by adopting the suggestion that "contemporaneous certification" would provide the necessary assurance of compliance, because a record prepared at the time work is performed is more likely to be accurate.

Second, at the public hearing held to develop the record for the earlier rulemaking, the International Union of Operating Engineers testified regarding the value of records in preventing accidents involving cranes used in general industry. This testimony also dealt with false recordkeeping. Excerpts from the Agency's discussion of that testimony in the final rule for the previous recordkeeping revisions (50 FR 34553) follows:

> Commenters who opposed the proposal, such as the United Brotherhood of Carpenters and Joiners of America [Exs. 4–4, 4–7 and 14 and Tr. 55–56] and the International Union of Operating Engineers [Exs. 4–12 and 16 and Tr. 69–70 and 73–77], have stated that the retention of currently required records is essential, or at least beneficial, to employee protection. The opponents stated that access to records enables workers to verify compliance with the substantive requirements of the standards. They, however, did not document a single instance where a hazardous situation was detected and cited or abated because an employee examined records.
>
> The International Union of Operating Engineers, for example, testified [Tr. 121–124] that having the record of a previous inspection would be beneficial to a crane operator who was inspecting equipment. However, the union witness added that, even without the record, a good inspection would be done * * *.
>
> Indeed, the Operating Engineers presented testimony at the hearing [Tr. 92–93] which indicated that a crane operator provided with inspection record information would inspect the crane anyway and not rely on the inspection record when deciding whether or not the equipment was in safe condition. Also, the Operating Engineers provided examples of "bogus" recordkeeping to explain why a written record of a test or inspection would not provide assurance that the equipment in question was safe.

OSHA notes that the Operating Engineers also testified that in at least two cases violations of recordkeeping requirements led to serious accidents. However, neither their testimony nor their post-hearing submission substantiated the existence of a causal relationship (51 FR at 34553). In the absence of evidence that the specific crane test or inspection records are necessary, OSHA has determined that compliance with the test or inspection provisions will not be affected by the shift to certification.

Finally, regarding the use of a checklist as a certification record, OSHA has specifically stated that "Employers can comply with this certification requirement in the manner which least disrupts their operations . . . they may find that the addition of an entry to a checklist or log they already maintain will suffice" (52 FR at 12121). In addition, OSHA observes that the regulations have never required that employers use a checklist to comply with the crane test or inspection requirements. Accordingly, if an employer has used a checklist, it was for purposes other than to comply with OSHA regulations. Therefore, OSHA does not expect that employers would stop using a checklist simply because OSHA has revised its requirement for information to verify compliance. Once again, OSHA emphasizes that the requirements to test or inspect the critical crane components are unchanged.

Another commenter, the National Institute for Occupational Safety and Health (NIOSH), concurred with the

substitution of certification records for detailed records. NIOSH also suggested, in general, that

—OSHA require employers to keep their certification records on file for 12 months from time of preparation so that employers will have more information on which to base equipment use decisions;
—The certification records indicate whether the inspected or tested equipment passed or failed; and,
—Sections 1926.550(b)(2) and 1926.903(e) contain the requirement already in § 1926.552(c)(15) that a "competent person," as defined in § 1926.32(f), shall perform the requisite tests and inspections.

OSHA believes that compliance with the proposed requirement for record retention will provide the necessary assurance that the employer has complied with the test or inspection requirements. The Agency does not believe that retaining the certifications for a longer period would be useful, becuase the required information would not include any of the details which might assist an employer in making decisions. Furthermore, OSHA reiterates that it adopted the recordkeeping provisions in question solely in order to obtain verification of compliance. Therefore, the suggested change, even if it provided useful information, is not relevant to the Agency's concern.

OSHA also believes that the suggested addition of pass/fail information is unnecessary because it would not contribute to verification of compliance with the test or inspection requirements. Indeed, regardless of any previous test or inspection experience, OSHA requires that employers perform the scheduled tests and inspections so that any equipment defects would be discovered. In addition, in the case of cranes, the ANSI B30.5–1968, as referenced in § 1926.550(b)(2), specifies that any "critical" crane components found to be defective be repaired or removed from service.

In addition, as OSHA stated in the final rule for the earlier recordkeeping revisions, "Just because a particular piece of equipment was in safe condition 29 days ago does not mean it is in safe condition today" [51 FR at 34554]. Regardless of the outcome of a previous inspection or test, OSHA requires the employer to conduct each scheduled test and inspection with such thoroughness that it will disclose any deficiency.

Thus, there is no need to make a written notation that the equipment or machinery passed or failed. If equipment or machinery failed the inspection or test, then it is unsafe and must be repaired or replaced. Otherwise, its use is prohibited by other construction regulations.

OSHA notes that NIOSH's suggestion for use of the term "competent person" in §§ 1926.550(b)(2) and 1926.903(e) is not related to the purpose of this rulemaking. Accordingly, OSHA has not made the suggested changes. OSHA further observes, however, that § 1926.20(b)(2) of the general safety and health provisions for construction already requires that employers designate competent persons to perform workplace inspections. Also, as regards § 1926.550(b)(2), OSHA notes that the general requirements for cranes and derricks, § 1926.550(a)(5), provide that the employer must designate a competent person to inspect all equipment and make sure that the equipment is in safe operating condition. OSHA believes, therefore, that the above-cited existing provisions already address the concern expressed by NIOSH.

OSHA is aware that some employers keep records for purposes other than complying with the OSHA standards and may desire to keep records beyond what OSHA requires. Indeed, OSHA has no objection if employers feel they need certification records which, for example, cover an extended period, such as 12 months, or which state whether the equipment passed or failed a test or inspection.

The Associated General Contractors of America (AGC) (Ex. 3–4) and Bechtel Construction, Inc. (Ex. 3–6) expressed support for the proposed changes. The Bechtel Construction, Inc. stated that, "We are pleased that the agency is making meaningful, cost effective changes * * *" The AGC stated that "AGC believes that all recordkeeping requirements for construction should be included in future proposals. If an employer is permitted to certify that he has performed certain requirements pertaining to a particular standard, there should be no differentiation." Again, OSHA reiterates that it will continue its efforts to identify provisions where the recordkeeping burdens could be reduced without reducing employee protection.

III. Summary and Explanation

Section 1926.550(b)(2)—Crawler, locomotive and truck cranes.

The final rule revises the recordkeeping portion of the provision and requires the employer to prepare a certification record. The certification record must contain the date the inspection was performed, the signature of the person who performed the inspection and the identity of the crane inspected. The final rule does not alter the existing requirements to comply with the crane inspection procedures of the ANSI B30.5–1968.

The final rule is identical to the proposed rule. In the proposed rule OSHA explained that the existing rule requires compliance with the provisions of ANSI B30.5–1968, Safety Code for Crawler, Locomotive and Truck Cranes. Section 5–2.1.5 of ANSI B30.5–1968 requires that written, dated, and signed inspection reports and records be prepared monthly on critical items such as brakes, crane hooks and ropes. The latest ANSI standard, B30.5–1982, Mobile and Locomotive Cranes, in Section 5–2.1.5 contains slightly different wording with regard to the recordkeeping requirements. It requires a dated record for periodic inspections of critical items. Neither edition of ANSI B30.5 specifies the information to be included in the record or report. Both editions are in Exhibit 2 of Docket S–020A.

OSHA received three comments on this provision. the California Department of Industrial Relations (CAL/OSHA) and the Tennessee Valley Authority (TVA) (Exs. 3–1 and 3–5) suggested that OSHA revise the existing standard to require compliance with the 1982 edition of ANSI B30.5 instead of the 1968 edition. CAL/OSHA also suggested that OSHA require the modification of cranes put in service before 1968 to comply with B30.5–1968, to the extent feasible. OSHA observes that these comments pertain to matters outside the scope of this rulemaking. Therefore, it would be necessary for OSHA to initiate a separate rulemaking proceeding in order to act on the CAL/OSHA and TVA suggestions.

In addition, NIOSH suggested that OSHA add the word "critical" to specify which crane items were covered by paragraph (b)(2). OSHA, however, believes that the suggested change is not within the scope of this rulemaking and that the standard already clearly states its requirements. The term "critical," which appears in Section 5–2.1 of ANSI B30.5–1968, effectively differentiates those crane components which are to be inspected at frequent or periodic intervals from those which need not be inspected at specified times. The 1982 edition uses the same language. Therefore, OSHA believes that no further revision of this provision is necessary.

OSHA has determined that the revised standard will not reduce the protection of employee safety and health because the existing inspection requirements are retained and employers are still required to correct

any defects found at the time of inspection.

Section 1926.552(c)(15)—Material hoists, personnel hoists and elevators.

The final rule revises the recordkeeping portion of the provision and requires the employer to prepare a certification record. The revised standard eliminates unnecessary recordkeeping burdens, and clarifies what information is to be recorded. The certification record must contain the date the work was performed, the signature of the person who performed the inspection and test, and the identity of the hoist that was inspected and tested. The final rule does not alter the inspection and test requirements of this paragraph.

In the proposed rule, OSHA explained that the existing standard requires the employer to inspect and test all hoist functions and safety devices at least every three months following assembly and erection. A similar inspection and test is required following major alterations of an existing installation. The existing standard further requires that records be maintained. However, the existing standard does not state what information should be kept on the record.

CAL/OSHA (Ex. 3–1) recommended adoption of the proposed revision because it felt, "this change clarifies the inspection test information that is to be recorded and the file retention time."

OSHA has determined that the revised standard will not reduce the protection of employee safety and health because the existing testing and inspection requirements are retained. Employers are still required to detect any defects in hoist functions or safety devices during these tests and inspections and to correct them.

Section 1926.903(e)—Underground transportation of explosives.

The final rule revises the recordkeeping requirements of this provision and requires the employer to prepare a certification record. The revised standard clarifies what information the employer must record. The certification record must contain the date the inspection was performed, the signature of the person who checked the electrical system and the identity of the truck inspected. The final rule retains the inspection requirements.

In the proposed rule, OSHA explained that the existing standard requires employers to conduct a weekly check of the electrical systems of trucks used to transport explosives underground to detect failure which may constitute electrical hazards. The standard further provides that a written record of the inspection must be kept, but does not state what information this written record must contain.

OSHA received one comment on this paragraph. CAL/OSHA (Ex. 3–1) suggested that OSHA extend the existing inspection requirements to cover vehicles other than trucks. CAL/OSHA was concerned that other vehicles might be used to transport explosives underground or might emit explosive vapors. OSHA notes that the suggestion falls outside the scope of this rulemaking. The Agency has not proposed any changes to the pertinent inspection requirements. Therefore, OSHA would have to initiate a separate rulemaking proceeding in order to act on CAL/OSHA's suggestion.

OSHA has determined that the revised standard will not reduce employee safety and health because it retains the requirement that employers conduct the weekly check of covered electrical systems.

IV. Regulatory Impact Assessment and Regulatory Flexibility Assessment

OSHA has determined that this rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Based on a review of the relevant information, OSHA concludes that a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 603, 605), is not necessary. OSHA estimates that the construction industry expends approximately $2.2 million annually in complying with the recordkeeping provisions which will be revised by this rule. OSHA also estimates that compliance costs after this rule is promulgated will be approximately $430,000 annually. Therefore, the compliance cost differential will be $1.8 million. This total economic impact will generally be distributed over numerous construction firms, so OSHA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

V. OMB Approval Under the Paperwork Reduction Act

The revised provisions require that employers prepare certifications. Under the terms of 5 CFR 1320.7(k)(1), certifications are not subject to the Paperwork Reduction Act or its implementing regulations. Hence, OMB approval under the Paperwork Reduction Act is not required.

VI. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States and territories are: Alaska, Arizona, California, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York [1], North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 107 of the Construction Safety Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, OSHA amends 29 CFR Part 1926 as set forth below.

Signed at Washington, DC this 23rd day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

List of Subjects in 29 CFR Part 1926

Certification, Occupational safety and health, Recordkeeping, Safety.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for Subpart N of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8,

[1] Plan covers only State and local government employees.

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Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. In § 1926.550, paragraph (b)(2) is revised to read as follows:

§ 1926.550 Cranes and derricks.

* * * * *

(b) * * *

(2) All crawler, truck, or locomotive cranes in use shall meet the applicable requirements for design, inspection, construction, testing, maintenance and operation as prescribed in the ANSI B30.5–1968, Safety Code for Crawler, Locomotive and Truck Cranes. However, the written, dated, and signed inspection reports and records of the monthly inspection of critical items prescribed in section 5–2.1.5 of the ANSI B30.5–1968 standard are not required. Instead, the employer shall prepare a certification record which includes the date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number, or other identifier, for the crane inspected. The most recent certification record shall be maintained on file until a new one is prepared.

* * * * *

3. In § 1926.552, paragraph (c)(15) is revised to read as follows:

§ 1926.552 Material hoists, personnel hoists and elevators.

* * * * *

(c) * * *

(15) Following assembly and erection of hoists, and before being put in service, an inspection and test of all functions and safety devices shall be made under the supervision of a competent person. A similar inspection and test is required following major alteration of an existing installation. All hoists shall be inspected and tested at not more than 3-month intervals. The employer shall prepare a certification record which includes the date the inspection and test of all functions and safety devices was performed; the signature of the person who performed the inspection and test; and a serial number, or other identifier, for the hoist that was inspected and tested. The most recent certification record shall be maintained on file.

* * * * *

PART 1926—[AMENDED]

4. The authority citation for Subpart U of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

5. In § 1926.903, paragraph (e) is revised to read as follows:

§ 1926.903 Underground transportation of explosives.

* * * * *

(e) Trucks used for the transportation of explosives underground shall have the electrical system checked weekly to detect any failures which may constitute an electrical hazard. A certification record which includes the date of the inspection; the signature of the person who performed the inspection; and a serial number, or other identifier, of the truck inspected shall be prepared and the most recent certification record shall be maintained on file.

* * * * *

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Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Revision of Telecommunications Training Records; Final Rule

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DEPARTMENT OF LABOR

29 CFR Part 1910

[Docket No. S-020B]

Revision of Telecommunications Training Records

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises the recordkeeping requirements in the training provisions of the Telecommunications Standard (29 CFR 1910.268(c)), in order to minimize the paperwork burdens imposed on employers and to clarify what information is required. The final rule eliminates the requirement that the employer prepare a written description of the training program. It also revises the requirement that the employer maintain a record of employees trained, substituting a requirement that the employer prepare a certification record to demonstrate compliance with the training requirements. This certification record will be prepared at the time the training is completed and will include the identity of the employee trained, the signature of the employer or the person who conducted the training, and the date the training was completed. OSHA believes that this action will minimize the paperwork burden on employers, as intended by the Paperwork Reduction Act of 1980, without reducing the protection of employee safety and health.

DATES: This revision will become effective October 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) was enacted to minimize the Federal paperwork burden and maximize the efficiency and usefulness of Federal information-gathering activities. That Act set goals for the phased reduction of Federal information-gathering burdens. The Paperwork Reduction Act also required the Office of Management and Budget (OMB) to promulgate regulations which would guide the Federal agencies in their compliance efforts. OMB has published implementing regulations at 5 CFR Part 1320 and has issued supplemental directives.

In addition, section 8(d) of the Occupational Safety and Health Act (the OSH Act) states that "Any information obtained by the Secretary * * * under this Act shall be obtained with a minimum burden upon employers * * *."

In an effort to meet these statutory goals, OSHA conducted a comprehensive review of the OSHA standards to identify all recordkeeping requirements. OSHA then analyzed each of the 38 requirements identified to determine which recordkeeping burdens could be reduced.

Each requirement was reviewed to determine:

—What kind of information was required;

—How this information would be used;

—Whether this information was collected by other authorities (e.g., pursuant to State and local law or regulation);

—Whether this record would provide information that a compliance officer would not otherwise ascertain at the time of inspection; and,

—Which requirements contributed directly to employee safety and health.

On the basis of this careful review and analysis, OSHA identified 22 provisions in the standards found in 29 CFR Parts 1910, 1915, and 1926 that, in its opinion, did not directly contribute to worker safety and health and, therefore, unnecessarily burdened employers with requirements that they prepare and maintain records of tests, inspections, and maintenance checks.

In particular, OSHA determined that the recordkeeping requirements in question were adopted because the Agency wanted the employer to provide evidence that the required tests and inspections had been performed. Having made that determination, OSHA compared the purposes for the recordkeeping requirements with their language and found that they required more information than OSHA needed. Therefore, OSHA determined that revisions were appropriate.

OSHA also identified, as appropriate for deletion, a duplicative recordkeeping provision and another which dealt with concerns outside OSHA's jurisdiction.

On January 3, 1986, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 312) to revise the 22 provisions in question and to revoke the other two provisions. The three construction industry recordkeeping requirements which were proposed for revision were removed from consideration for revision in the March 14, 1986, Notice of Public Hearing (51 FR 8844), because OSHA determined that it had not formally consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding them. These three provisions have subsequently been formally reviewed by ACCSH and are the subject of a separate rulemaking. A public hearing was held on April 15, 1986, on the nineteen remaining provisions and they were revised by publication of a Final Rule in the September 29, 1986, **Federal Register** (51 FR 34552).

OSHA indicated in that Final Rule that it would continue its efforts to identify provisions where the recordkeeping burdens could be reduced without reducing worker protection (51 FR 34553). Consistent with this statement, OSHA reviewed the recordkeeping requirements in the training provisions of the Telecommunications Standard (§ 1910.268(c)). Currently, this standard requires that an employer develop a training program which includes a list of the subject courses and the types of personnel to be trained. The employer is also required to provide OSHA, upon request, with a written description of the program and a record of the employees trained. OSHA determined that this paragraph required more information than was needed to demonstrate compliance with the training requirement.

Based on that determination, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 14, 1987 (52 FR 12116). The Agency proposed to revise paragraph (c) of the existing standard so that employers would be required to prepare certification records to demonstrate that employees had been trained as required by the standard.

The NPRM established a 60-day period, which ended June 15, 1987, for submission of written comments and hearing requests. OSHA received four comments on the NPRM and no hearing requests. Those comments will be discussed in the Summary and Explanation section.

As OSHA noted in the NPRM, the Telecommunications Standard already specifies the elements to be included in the training program. Therefore, OSHA determined that requiring employers to write out descriptions of their training programs was redundant and unnecessarily burdensome. In addition, OSHA notes that employers have generally complied with the "written description" requirement by simply preparing a course outline for each subject listed in the training program.

The "written description," therefore, actually provided less information than would be gained from reading § 1910.268.

OSHA has also determined that employers should not be required to list the types of personnel to be trained because the stated purpose of existing paragraph (c) is to "insure that employees do not engage in the activities to which this section applies until such employees have received proper training; * * *." Therefore, the key concern is whether a given employee will be performing work covered by § 1910.268, not whether that employee has a particular job title.

In addition, OSHA has determined that the existing standard does not clearly state what constitutes a "record." The final rule clarifies the requirement so that an employer can comply by preparing a certification record which contains the identity of the employee(s) trained, the signature of the employer or the person providing the training, and the date of the training. The certification record is to be prepared when the training has been completed and will be maintained on file for review by the OSHA Compliance Officer at the time of an inspection.

As stated above, OSHA adopted the recordkeeping requirements in question to provide assurance that employees were trained as required by the standard. OSHA has determined, based on its 15 years of experience enforcing similar types of requirements, that the written documents currently required under this standard are not necessary to verify compliance with the training requirements. Therefore, OSHA is revising the pertinent requirements so that employers are required to prepare a contemporaneous certification record, as provided herein.

The contemporaneous certification record can be kept in any manner which provides the required information. For example, a list of the employees who were trained would have to be signed and dated only once if all the employees were trained on the same date. With such a list, the employer or the person performing the training would not have to sign and date a separate record for each trained employee. In addition, employers may find that they need only to sign an entry in the employee's personnel file which indicates the date the training was received. Some employers may find that they do not need to change their recordkeeping methods at all to comply with these revised requirements.

If the employer keeps track of training with automated data processing, and several employees are trained on the same date, compliance can be achieved by having the person who conducted the training, or the employer, sign and date a printout which identifies the persons trained. The computer printout would, of course, have to be maintained and made available for review at the time of an OSHA inspection.

OSHA estimates that the revision will reduce its imposed paperwork burden by about 21,000 hours and that employers in the telecommunications industry would save approximately $164,000 annually. In addition, employers will gain clear guidance as to what information must be included when the employer verifies compliance.

OSHA has determined that the revision will not reduce the protection of employee safety and health, since the requirement in § 1910.268(c) to train employees will not be changed. OSHA believes that a certification record will provide evidence of compliance with the pertinent training requirement which is equivalent to that provided by the specific records formerly required.

OSHA will continue to review its recordkeeping requirements in an effort to ensure that they provide the necessary protection for employees while imposing the minimum burden on employers.

II. Summary and Explanation

The final rule is identical to the proposed rule. In the proposed rule OSHA explained that the existing provisions of paragraph § 1910.268(c) require the employer to train employees in the precautions and safe practices required by the standard before the employer assigns employees to perform work covered by the standard. To demonstrate compliance with the training requirements, employers are required to prepare a written description of their training program, including a list of subject courses and the types of personnel to be trained. As explained in the Background section, above, OSHA determined that requiring a "written description" of the training program is redundant and unnecessary because the written description is not an elaboration of how the training will be accomplished; but, rather, a brief description of what subject areas would be covered. Therefore, the Agency has concluded that the "written description" requirement does not provide any information which the Agency could use to verify compliance with the pertinent training requirements of the standard.

In addition, under the existing standard, employers are required to prepare and maintain a record of employees who have received such training. OSHA agrees that recording the identity of employees who have been trained provides useful information by which to verify compliance with the training requirements. Therefore, the Agency has retained this provision as part of the certification requirement.

The final rule revises the recordkeeping provisions of the telecommunication standard by requiring employers to prepare a certification record which indicates that employees have been trained as required by the standard. This certification record must contain the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The final rule does not alter the existing requirement to train employees, but eliminates the requirement to prepare a written description of the training program.

The California Department of Industrial Relations (CAL/OSHA) (Ex. 3–1) recommended adoption of the proposal and also suggested that OSHA add "Work area protection and traffic control" to the list of subjects covered by the training. OSHA observes that this suggested addition relates to matters outside the scope of this rulemaking. Therefore, it would be necessary to initiate a separate rulemaking proceeding in order to act on CAL/OSHA's recommendation.

The Connecticut Union of Telephone Workers, Inc. (CUTW) (Ex. 3–2) commented that "In order to guarantee that employees received adequate safety training, employers should continue to maintain a written description of their training program * * *." The CUTW supported their comment by explaining that "Maintaining up to date safety training records is one small step toward accomplishing this end" and that "These records are necessary for OSHA to determine whether employers are providing adequate training * * *." CUTW further stated that "In order for employees to be made aware of how this standard affects them, each training program should continue to include a list of the subject courses and the types of personnel (job titles) required to receive the instruction." The CUTW did not, however, submit any information, examples, or evidence to demonstrate that worker safety would be endangered if the training program (including the list of subject courses and types of personnel required to receive the instruction) were not written down. Nor did the CUTW submit any evidence to demonstrate that worker safety would be endangered if the employer were

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allowed to prepare and maintain a certification record to demonstrate that the employee had been trained. The CUTW, also, did not explain how requiring the training program to be written would "* * * guarantee that employees received adequate safety training * * *." In the absence of information supporting the CUTW position, the Agency adheres to its determination explained above, that the deleted information requirements were not needed to verify compliance. OSHA reiterates that the requirement to train employees is not being altered by this revision.

The National Institute for Occupational Safety and Health (NIOSH) (Ex. 3–3) agreed with the certification approach to determining compliance, but recommended that the certification record include the signature of the employee trained and either a table of contents or course agenda for the training program.

As has been explained above, OSHA believes that the proposed revision will provide the necessary assurance that employers have complied with the training requirements. As with the CUTW, NIOSH has presented no evidence to substantiate the view that the recordkeeping requirements it recommends are necessary for the protection of employee safety and health. In particular, the Agency has determined that requiring the identity of trained employees on the certification record provides adequate assurance of compliance, so that also requiring the trained employees to sign the certification record is unnecessary.

Further, with regard to NIOSH's suggestion that the employee sign the training certification record, OSHA believes that the responsibility for demonstrating compliance with the training requirement should remain with the employer or the person who conducts the training. OSHA notes that employers, not employees, are required to ensure that the training requirements are followed, so trained employees are not the appropriate parties to prepare the certification of compliance.

The NIOSH suggestion that the certification record include a table of contents or course agenda would, if adopted, require employers to, in effect, continue to prepare "written descriptions" of the training programs. As has already been discussed above, OSHA had determined that such a requirement is unnecessary.

In addition, NIOSH recommended that OSHA replace the term "artificial respiration" with the more precise and commonly used term "cardio-pulmonary resuscitation (CPR)." OSHA notes that this suggestion falls outside the scope of the rulemaking. Therefore, it would be necessary for OSHA to initiate a separate rulemaking proceeding in order to act on NIOSH's recommendation.

The National Arborist Association, Inc. (NAA) (Ex. 3–4) raised two concerns related to matters outside the scope of this rulemaking. To act on either of these matters would require OSHA to initiate a separate rulemaking proceeding. The first concern was that, on one hand, the proposed standard would require that employees be "trained" before working, while, on the other hand, it would permit "on-the-job training." The NAA stated that, given the apparent conflict in the proposed regulatory language, "trainees are allowed to receive on-the-job training, but are not allowed to receive it by performing covered work!" The Agency observes that the pertinent regulatory language is not proposed for revision and, therefore, will be not changed by this final rule. As a point of clarification, however, OSHA does not consider employees receiving on-the-job training to be engaged in activities for which they have not received the required training.

The NAA also stated that the certification requirement would be too burdensome for its members because they must train large numbers of transient workers at many different times and locations. OSHA notes that although it is concerned with reducing paperwork burdens, it cannot exempt employers from complying with this standard simply because employers find any paperwork to be "too burdensome." OSHA observes that the NAA's comment could just as well be addressed to the existing recordkeeping requirements as to the revised requirement. Indeed, if anything, the NAA's members have had heavier recordkeeping burdens under the existing requirements than they will have under the new certification record provision. Accordingly, OSHA believes that the NAA's members, like other employers subject to this standard, will find that this revision provides the appropriate relief from unnecessary recordkeeping burdens.

OSHA has determined that the revised standard will not reduce the protection of employee safety and health because the existing requirement that employers train their employees before they engage in activities covered by § 1910.268 has not been revised.

III. Regulatory Impact Assessment and Regulatory Flexibility Assessment

OSHA has determined that this rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Based on a review of the relevant information, OSHA concludes that a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 603, 605), is not necessary. OSHA estimates that the telecommunications industry expends approximately $204,000 annually to comply with the recordkeeping requirement which will be revised by this rule. OSHA also estimates that compliance costs after this rule is promulgated will be approximately $40,000 annually. Therefore, the compliance cost savings will be $164,000. This total economic impact will generally be distributed over numerous employers, so OSHA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

IV. OMB Approval Under the Paperwork Reduction Act

The revision requires that employers prepare a certification. Under the terms of 5 CFR 1320.7(k)(1), certifications are not subject to the Paperwork Reduction Act or its implementing regulations. Hence, OMB approval under the Paperwork Reduction Act is not required.

V. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States and territories are: Alaska, Arizona, California, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York [1], North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia,

[1] Plan covers only State and local government employees.

Virgin Islands, Washington, and Wyoming.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, OSHA amends 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 23rd day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

List of Subjects in 29 CFR Part 1910

Certification, Occupational safety and health, Recordkeeping, Safety, Telecommunications, Training.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart R of Part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.274, and 1910.275 also issued under 29 CFR Part 1911.

2. In § 1910.268, paragraph (c) is revised to read as follows:

§ 1910.268 Telecommunications.

* * * * *

(c) *Training.* Employers shall provide training in the various precautions and safe practices described in this section and shall insure that employees do not engage in the activities to which this section applies until such employees have received proper training in the various precautions and safe practices required by this section. However, where the employer can demonstrate that an employee is already trained in the precautions and safe practices required by this section prior to his employment, training need not be provided to that employee in accordance with this section. Where training is required, it shall consist of on-the-job training or classroom-type training or a combination of both. The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health. Such training shall, where appropriate, include the following subjects:

(1) Recognition and avoidance of dangers relating to encounters with harmful substances and animal, insect, or plant life;

(2) Procedures to be followed in emergency situations; and,

(3) First aid training, including instruction in artificial respiration.

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H.J. Res. 134/Pub. L. 100–114

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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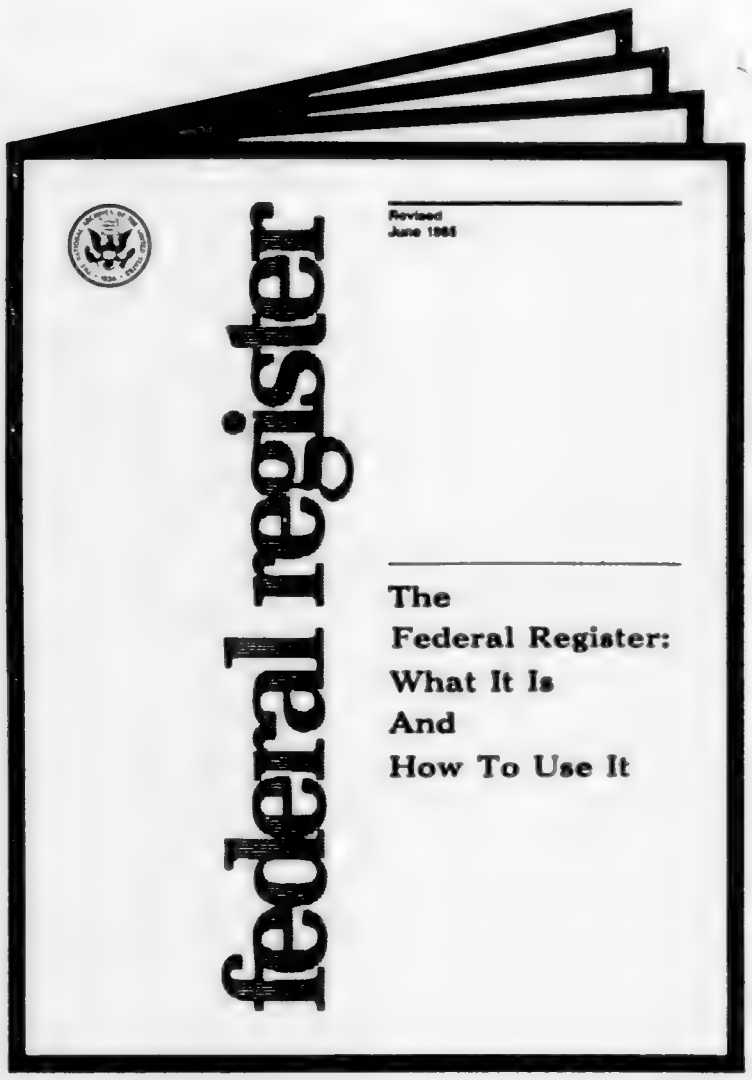

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

Federal Employees Retirement System; Death Benefits and Employee Refunds

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising (1) the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities and (2) the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees Retirement System (FERS) Act of 1986. These rules are necessary to conform the tables to the previously published economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–5560.

SUPPLEMENTARY INFORMATION: On June 18, 1987, OPM published (52 FR 23222) a notice in the **Federal Register** to revise the normal costs percentages under the FERS Act of 1986, Pub. L. 99–335, based on changed economic assumptions. Those changed economic assumptions (principally the change in expected investment return from 6.5% to 7.0%) require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act.

Section 843.309 of Title 5, Code of Federal Regulations, regulates the payment of the basic employee death benefit. Under section 8442(b) of Title 5, United States Code, the basic employee death benefit may be paid as a lump sum or as an equivalent benefit in 36 installments. These rules amend § 843.309(b)(2) of Title 5, Code of Federal Regulations, to conform the factor used to convert the lump sum to 36-installment payments with the revised economic assumptions.

Section 843.311 of Title 5, Code of Federal Regulations, regulates the benefits for the survivors of separated employees under section 8442(c) of Title 5, United States Code. This section provides a choice of benefits for eligible current and former spouses. If the current or former spouse is the person entitled to the unexpended balance under the order of precedence in section 8424 of Title 5, United States Code, he or she may elect to receive the unexpended balance instead of an annuity. Alternatively, an eligible current or former spouse may elect to receive an annuity commencing on the day after the employee's death or on the deceased separated employee's 62nd birthday. If the annuity commences on the deceased separated employee's 62nd birthday, it equals 50 percent of the annuity that the separated employee would have received when he or she attained age 62. If the current or former spouse elects the earlier commencing date, the annuity is reduced using the factors in Appendix A to Subpart C of Part 843 to make the annuity actuarially equivalent to the annuity that he or she would have received if it commenced on the retiree's 62nd birthday. These rules amend that appendix to conform with the revised economic assumptions.

Under section 553 (b)(3)(B) and (d)(3) of Title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. These rules are required by changes in economic assumptions that have already been published. Providing a comment period on the result of mathematical computations resulting from the changed economic assumptions is unnecessary, and to the extent that it would delay benefit payments is contrary to the public interest.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

1. The authority citation for Part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; Sections 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; Section 843.309 also issued under 5 U.S.C. 8442; Section 843.406 also issued under 5 U.S.C. 8441.

2. In § 843.309, paragraph (b)(2) is revised to read as follows:

§ 843.309 Basic employee death benefit.

* * * * *

(b) * * *

(2)(i) For deaths occurring before October 1, 1987, 36 equal monthly installments of 3.05642 percent of the amount of the basic employee death benefit.

(ii) For deaths occurring on or after October 1, 1987, 36 equal monthly installments of 3.06921 percent of the amount of the basic employee death benefit.

3. Appendix A to Subpart C is revised to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

With at least 10, but less than 20 years of creditable service—

Age of separated employee at birthday before death	Multiplier
26	0.0280
27	.0309
28	.0340
29	.0375
30	.0413
31	.0454
32	.0500
33	.0550
34	.0605
35	.0665
36	.0731
37	[illegible]
38	[illegible]
39	.0973
40	.1071
41	.1179
42	.1298
43	.1430
44	.1577
45	.1739
46	[illegible]
47	.2121
48	.2348
49	.2597
50	.2878
51	.3193
52	.3544
53	.3934
54	.4365
55	.4842
56	.5367
57	.5948
58	.6591
59	.7305
60	.8103
61	[illegible]

With at least 20, but less than 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier
36	0.0901
37	.0991
38	[illegible]
39	.1199
40	.1319
41	.1452
42	.1600
43	.1762
44	.1943
45	.2144
46	.2367
47	.2615
48	.2892
49	.3202
50	.3548
51	[illegible]
52	[illegible]
53	.4851
54	.5383
55	.5971
56	.6620
57	.7337
58	.8131
59	.9015

With at least 30 years of creditable service—

Age of separated employee at birthday before death	Multipliers by separated employee's year of birth		
	After 1964	From 1949 to 1964	Before 1949
46	0.3224	0.3573	0.3962
47	.3582	.3948	.4378
48	.3940	.4367	.4842
49	.4362	.4835	[illegible]
50	.4835	[illegible]	.5942
51	[illegible]	.5945	.6592
52	.5954	[illegible]	.7317
53	.6610	.7327	.8124
54	.7336	.8132	.9017
55	[illegible]	.9021	.0000
56	.9023		

[FR Doc. 87-22369 Filed 9-28-87; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 277

[Amendment No. 298]

Food Stamp Program; Provisions of the Stewart B. McKinney Homeless Assistance Act and the Provision on the Treatment of Third-Party Payments From the Food Security Act of 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule and correction.

SUMMARY: This action amends Food Stamp Program (FSP) regulations to address all the FSP provisions contained in Pub. L. 100-77, the Stewart B. McKinney Homeless Assistance Act enacted July 22, 1987. The majority of the provisions are intended to help homeless individuals obtain Food Stamp Program eligibility and benefits. The provisions of Pub. L. 100-77 included in this action affect the areas of Program informational activities, definitions, household concept, expedited service, excess shelter expense deduction amounts for October 1987, annual adjustments to the standard and shelter deductions, annual adjustments to the income eligibility limits, and the calculation of claims. This action also addresses a provision contained in Pub. L. 99-198, the Food Security Act of 1985 relative to the treatment of third-party payments made on behalf of food stamp households. The 1985 provision was amended by the Stewart B. McKinney Homeless Assistance Act. Thus, both legislative provisions are addressed in this action. In addition, this action corrects a regulatory cite in Part 277.

DATES: The provisions of this action are effective, and must be implemented, as follows: the definition of "General assistance" in § 271.2, § 273.9(b)(2)(i), new § 273.9(c)(1)(ii)(A), § 273.9(c)(1)(ii)(B), § 273.9(c)(1)(ii)(C), and § 273.9(c)(1)(iv)(B) are effective retroactively to April 1, 1987; § 271.2 the removal of the definition of "Homeless food stamp household" and addition of the definition of "Homeless individual" in § 271.2 is effective retroactively to July 22, 1987; § 273.1(a)(2)(i)(C), § 273.1(a)(2)(i)(D), § 273.10(f)(2), § 273.9(d)(7)(i), and first, second, and third sentences of § 273.9(d)(8)(i) are effective October 1, 1987; § 273.9(c)(1)(ii)(D) is effective for the period beginning October 20, 1987 and ending September 30, 1989; § 273.2(i) is effective December 1, 1987; § 273.9(a)(3) is effective July 1, 1988; the last sentence of § 273.9(d)(8)(i) is effective October 1, 1988; § 272.5 is effective retroactively to July 22, 1987; § 273.18 is effective retroactively to September 5, 1987. Section 272.1(g)(93) and the technical amendments to Part 277 are effective September 29, 1987. Comments must be received on or before December 28, 1987 to be assured of consideration.

ADDRESSES: Comments should be submitted to Bruce Clutter, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments shall be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Certification Rulemaking Section at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this action as nonmajor. This action will not have a significant effect on the economy. This action will have little, if any, effect on cost or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive

Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Some potentially eligible households will become aware of the availability of the Program. Some currently ineligible households will become eligible for Program benefits. Some currently participating households will realize an increase in Program benefits.

Interim Rule

The provisions of this rulemaking which implement Pub. L. 100–77, are required to be effective on the specific dates mandated for each provision in accordance with the statute. The provisions of this rulemaking which implement Pub. L. 99–198, are specifically required by section 1508(2) of that statute to be effective not later than April 1, 1987. Since prior notice and comment rulemaking procedures cannot be completed before the statutory effective dates for the majority of the provisions contained in this action, Anna Kondratas, Administrator of the Food and Nutrition Service, has determined, pursuant to 5 U.S.C. 553, that public comment on this rulemaking prior to implementation is impracticable. For the same reason, good cause is found pursuant to 5 U.S.C. 553(d) for the publication of this rulemaking less than thirty days prior to the effective dates for some of the provisions. In addition, a number of the provisions in this rulemaking, including the expedited service provision, § 273.2(i), are interpretive rules. However, because the Department believes that the administration of the rule may be improved by public comment, comments are solicited on this rule for 90 days. All comments will be analyzed and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

Paperwork Reduction Act

Information collection requirements associated with the Food Stamp Program application form are approved under OMB No. 0584–0064. Changes required to be made to the application as a result of the provision in § 273.2(i) of this action do not significantly alter the methodologies used to determine the burden estimates currently approved for the application under OMB No. 0584–0064.

Background

Program Information for the Homeless—Section 272.5 and Part 277

Section 808 of Pub. L. 100–77 amends section 11(e) of the Food Stamp Act to allow State agencies the option of carrying out Program informational activities directed toward homeless individuals. The statute also amends section 16(e) of the Food Stamp Act to provide for Federal funding of one-half the cost of such activities. Use of this option is intended to ensure that the homeless are aware of their potential eligibility for food stamp benefits.

Under the Food Stamp Act, State agencies were required to conduct outreach activities to encourage persons who were potentially eligible for food stamps to apply for them. Legislation enacted in 1981 prohibited the Department from reimbursing State agencies for outreach activities. However, State agencies still had the option to conduct outreach activities provided they used their own funds. State agencies may have continued to conduct outreach activities using their own funds.

These regulations allow State agencies, at their option, to carry out Program informational activities for the homeless in the Food Stamp Program. The regulations also exclude the costs of these activities from nonreimbursable outreach costs. The rule clarifies that the Department will only reimburse State agencies that choose to implement this provision for the cost of Program informational activities aimed specifically at the homeless. Costs of Program informational activities designed to inform the general public about the availability of the Program will not be reimbursed, even though the homeless would be included in that population. The rules do not impose specific standards for providing Program information to the homeless because the Department believes that State agencies are in the best position to determine how to reach the homeless. Thus, the regulations give State agencies maximum flexibility to implement the provision. State agencies may wish to focus their efforts in this area on shelters for the homeless, soup kitchens, emergency feeding facilities, and the like.

The Department is also taking this opportunity to make a technical amendment to current rules. A reference to § 272.6 contained in 7 CFR 277, Appendix A, paragraph C(14) is being changed to a reference to § 272.5. Section 272.6 was redesignated as § 272.5 by a previous rule and is hereby corrected.

Expedited Service—Section 273.2(i)

Section 809 of Pub. L. 100–77 amends section 11(e)(9) of the Food Stamp Act to include two more types of households that would be entitled to receive benefits under the Food Stamp Program's expedited service procedures.

Current regulations at 7 CFR 273.2(i) provide for expedited service to migrant and seasonal farm workers who are destitute and households with less than $150 in monthly gross income. Both of these types of households must also have liquid resources of $100 or less to qualify for expedited service. The Food Stamp Act requires that State agencies provide such households with coupons not later than five calendar days following the household's date of application.

Pub. L. 100–77 requires that benefits also be provided not later than five days following a household's date of application for eligible households in which all members are homeless individuals and eligible households whose combined gross income and liquid resources are less than the household's monthly rent or mortgage and utilities. Legislative history clarifies that this provision is intended to apply only to those households that otherwise meet food stamp eligibility standards, including rules governing household composition and the eligibility of those in institutions. (H.R. Rep. No. 100–174, 100th Cong., 1st Sess. 104 (1987)). Accordingly, this action amends 7 CFR 273.2(i) to provide that expedited service shall be available to eligible homeless households and households whose monthly gross income and liquid resouces are less than their monthly rent or mortgage, and utilities costs.

Definitions—Section 271.2

Current regulations at 7 CFR 271.2 define a "homeless food stamp household" as an eligible food stamp household which does not have a fixed mailing address or does not reside in a permanent dwelling. This definition was adopted for Program purposes by regulations published March 11, 1987 for implementing the Homeless Eligibility Clarification Act (1986). With enactment of Pub. L. 100–77, this definition is no longer necessary. Section 801 of Pub. L. 100–77 amends section 3 of the Food Stamp Act to establish a statutory

definition of "homeless individual". The statute defines a homeless individual as an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is: (1) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter); (2) a halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized; (3) a temporary accommodation in the residence of another individual; or (4) a place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places). This action amends 7 CFR 271.2 to remove the current definition of homeless food stamp household and add the statutory definition of homeless individual. This definition is generally consistent with the current definition of homeless food stamp household and with Congressional intent surrounding enactment of the Homeless Eligibility Clarification Act.

Individuals Living with Parents/ Siblings—Sections 273.1(a) and 273.10(f)

Prior to the passage of Pub. L. 100–77, the Food Stamp Act provided that parents and children living together and siblings living together shall be considered as one household for Food Stamp Program purposes, unless at least one of the parents/siblings is elderly or disabled.

Section 802 of Pub. L. 100–77 amends section 3 of the Food Stamp Act to allow a parent, with his/her minor children, to live together with the parent's sibling and yet be considered a separate household if the parent with minor children purchases food and prepares meals separately from the parent's sibling. The statute also allows three generations living together to form two separate households if the parent with minor children purchases and prepares meals separately from the children's grandparent(s). Accordingly, this action amends 7 CFR 273.1(a) to provide that an individual who is the parent of minor children, along with that individual's children and spouse, may be granted separate household status if the individual and that individual's children are living with the individual's parent or sibling and purchasing and preparing meals separate from the parent/sibling. It is the Department's intent that current policy be applied to this provision when determining who constitutes a minor child. Current policy has traditionally considered children under 18 years of age who are under the parental control of an adult household member to be minors.

Additionally, this action amends 7 CFR 273.10(f) to provide that such households shall be assigned a certification period that shall not exceed six months. Section 802 of Pub. L. 100–77 specifically provides that such households be subject to reexamination at least once every six months.

Income Eligibility Limit Updates—Section 273.9(a)(3)

The eligibility of households for the Food Stamp Program, except those in which all members are receiving public assistance (PA) or supplemental security income (SSI) benefits, is determined by comparing their incomes to the appropirate income eligibility limits. Households containing an elderly or disabled member only need to have net incomes below the net income limit. Households which do not contain an elderly or disabled member must have net incomes below the net income limits and gross incomes below the gross income limits. Households in which all members are receiving PA or SSI benefits are categorically eligible and do not have to meet the income limits.

The gross and net income limits are derived from the Federal income poverty guidelines. The gross income limit is 130 percent of the guidelines; the net income limit is 100 percent of the guidelines. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility limits are updated annually.

Currently, the updates of the Food Stamp Program's income eligibility limits are effective July 1 each year. This schedule was changed by section 803 of Pub. L. 100–77. Beginning with the 1988 update, the change in the income eligibility limits will be effective each October 1. The update effective on July 1, 1987, will remain in effect until Ocotober 1, 1988. Accordingly, this action amends 7 CFR 273.9(a)(3) to reflect that the Program's income eligibility limits for Fiscal Year 1989 and each subsequent year will be updated each October 1.

Third-party Payments—Section 273.9(c)(1)

Congress passed legislation on December 23, 1986 (Pub. L. 99–198) which contained a provision governing the treatment of public assistance (PA) and general assistance (GA) vendor payments as income. Before the Department promulgated regulations to implement this provision, the provision was further amended by Pub. L. 100–7. Pub. L. 100–77 contains a provision which supercedes, for a limited time, a portion of the vendor payment policies based on the provisions of Pub. L. 99–198 which are implemented by this rulemaking. The following preamble discussion will first address the provisions of Pub. L. 99–198 and related policy determinations by the Department. Then the preamble will address the effect of the provisions of Pub. L. 100–77 which are being implemented.

Public Law 99–198

Section 5(d) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)) excludes from the definition of income any gain or benefit which is not in the form of money payable directly to a household. The legislative history accompanying this provision clarified that any money payable to a household, but diverted to a third party (vendor payments) either of the household's own free will or involuntarily would be counted as income and would not be excluded. House Report No. 95–464, 95th Cong., 1st Sess., June 24, 1977, page 34. Based on this legislative history and notice and comment rulemaking in 1978, the Program's regulations at 7 CFR 273.9(c)(1)(iii) provide that money obligated or otherwise payable to the household, but diverted to a third party, shall be considered income and not excluded as a vendor payment. For more details *see* preamble discussions at 43 FR 18888, 47865 and 47904 (1978).

Longstanding Department regulatory policy is that public assistance (PA) and most general assistance (GA) vendor payments provided by State and local governments fall under this provision because the payments are provided from funds that otherwise would be payable to the household. However, for GA vendor payments this policy has been challenged in court suits. Some States, localities and households have argued that some GA payments should be excluded from income even where they are otherwise payable to the household. Partially in response to that litigation, "the Senate Committee has included a new statutory provision to help assure that the Federal Government's position is upheld and Congressional intent is served." S. Rept. 145, 99th Cong., 1st Sess., pg. 234; reprinted at 1985 U.S. Code Cong. & Ad. News, 1900. This new provision, section 1508(2) the Food Security Act of 1985, Pub. L. 99–198, amended section (5) of the Food Stamp Act to specifically provide that assistance payable for living expenses by PA or State or local GA programs, or other basic assistance programs comparable to GA as determined by the Secretary, shall be, with certain

exceptions, considered income to the household if diverted to a third party on behlaf of the household. *See* Senate Report 99–145, 99th Cong., 1st Sess., page 234; reprinted at 1985 U.S. Code Cong. & Ad. News 1899–1900. That Senate Report notes that this provision "will reinforce Congress' historical intent that payments from governmental assistance programs be included as income regardless of their form * * *." Id. This action amends 7 CFR 273.9(c) to specifically state that PA and State and local GA grants or benefits issued in the form of vendor payments are income and not excluded as a vendor payment, except under certain specified conditions.

As provided by the statute, the Secretary must determine which State and local basic assistance programs are comparable to a GA program. It is the Department's opinion that any State or local program which provides assistance on a regular or on an as needed basis to meet a household need which would safeguard health or improve personal well-being is a program consistent with the characteristics of most State and local GA programs. For example, the State or local program may provide the household with a check or voucher to present to a store to deal with a wide variety of needs such as food, furniture and clothing. These types of programs are, in the Department's opinion, providing assistance to meet household needs that would safeguard health or improve well-being.

Accordingly, this action amends the definition of "general assistance" at 7 CFR 272.2 to provide that general assistance means assistance financed by State or local funds and provided through a program intended to cover living expenses or other basic household needs which would safeguard health or improve well-being. A program which provides only in-kind assistance (i.e.; gives the recipient food, rather than a vendor payment), would continue to be excluded under the definition. Any State or local program which meets the amended definition would be considered to be a GA program for FSP purposes and the assistance would be considered income, even if provided in the form of a vendor payment.

The Department believes that implementing the statutory provision through a redefinition of general assistance is administratively more feasible than identifying various State or local programs by name or some other special characteristic. The characteristics of the definition would encompass a State or local GA program and those programs which the Department considers to be comparable to GA, but are not so named by the State or local government. The Department believes that the definition of general assistance implements the statutory reaffirmation of Department rules and meets the intent of Congress "that payments from government assistance programs be included as income * * *" and to "ensure equity between groups of individuals who receive assistance in varying forms." *See* Senate Report 99–145 as cited above.

Additionally, some States and localities which disburse payments in the form of two-party checks or vouchers have challenged that the assistance is not "general assistance" as defined at 7 CFR 271.2 which currently implies that general assistance means "cash assistance" financed by State and local funds. Legislative history accompanying Pub. L. 99–198 clarifies that general assistance is provided in many different names and in different forms but that "none of these distinctions would matter, since any governmental payments made to the provider of goods or services on behalf of a household (in lieu of payment made directly to a household) would be included as income unless specifically excluded by regulation under 7 U.S.C. 2014(k)(2)(E) * * *." S. Rept. 99–145, Id. The Department has the discretion to determine whether payments, by whatever name, are for living expenses, and, in effect, part of a regular program of aid and thus subject to treatment as income under the provision. *See* Senate Report 99–145 as cited above. Therefore, this action further amends the definition of general assistance at 7 CFR 271.2 to include cash assistance and other forms of assistance financed by State or local funds.

Section 5 of the Food Stamp Act, as amended by section 1508(2) of Pub. L. 99–198, provides that medical, child care and energy assistance, and assistance provided by State or local housing authorities are excluded from the provision. The legislative history accompanying Pub. L. 99–198 clarifies that "* * * *as specified in current regulations,* medical, energy and child care assistance would not be included as income" under this provision. Senate Report 99–145, at 233; reprinted at 1985 U.S. Code Cong. & Ad. News 1899–1900. The reference to an exclusion for assistance provided by State and local housing authorities was added to the statute during Congressional Conference and it is assumed that this additional exclusion was also intended to exclude such assistance in the same manner as it is currently excluded. *See* House Conf. Rept. 99–447, 99th Cong., 1st Sess., p. 523; reprinted at 1985 U.S. Code Cong. & Ad. News 2449. Current rules at 7 CFR 273.9(c)(1) already contain a provision that address the exclusion from income of assistance from State and local housing authorities as vendor payments. This action amends 7 CFR 273.9(c)(1) to add a specific income exclusion provision for public assistance and general assistance vendor payments for medical, child care or energy assistance. Current rules at 7 CFR 273.9(c)(11) define energy assistance for the purpose of providing an income exclusion for cash energy assistance. The rule clarifies that the same definition of energy assistance is applicable for the purpose of providing an income exclusion of a PA or GA vendor payment for energy assistance. The Department does not believe it necessary to further define medical or child care assistance for this income exclusion provision.

Pub. L. 99–198 also provides a specific exclusion for State or local emergency or special assistance vendor payments, as determined by the Secretary. Current rules at 7 CFR 273.9(c)(1)(iii)(B) allow an exclusion for such assistance in that payments are excluded to the extent that the payment is not normally provided as part of a PA grant and is provided over and above the normal PA grant even if it is otherwise payable to the household.

The Department intends to continue to use the general policy that excluded assistance cannot be part of the normal PA grant and must be provided over and above the normal PA grant to be considered "emergency" or "special" assistance" and expands this policy to include GA. Accordingly, this action amends 7 CFR 273.9(c)(iii)(B) to allow an income exclusion for any State or local assistance payments that would not normally be provided as part of the normal PA or GA grant or benefit and that are provided over and above the normal PA or GA grant or benefit, where such payments are made to a third party on behalf of the household for a household expense.

There has been some confusion as to what is considered to be "part of the normal PA grant and over and above the normal PA grant." The Department is taking this opportunity to clarify this policy. By way of explanation, most PA and GA grants are composed of various needs-based components or standards for such expenses as, but not limited to, shelter, transportation, food and clothing for categories of persons in need of or eligible for such aid. A

maximum payment amount and/or rate of payment is established for each component. To the extent that State or local assistance is not included as a regular component of a PA or GA grant or benefit or to the extent that the amount exceeds the maximum rate of payment estabished for the relevant component, the assistance would be considered over and above the normal grant and not part of the grant. For example, if this same PA or GA program provides all persons with school age children a monthly "extra" children's clothing allowance, and this was paid through a vendor payment directly to a clothing store, that allowance would not be excluded under this provision because it is part of the regular monthly assistance for all households in that category and is not really an "extra" payment. On the other hand, if a fire destroyed the household's clothing and it receives an "emergency" amount paid to a clothing store, that amount could be excluded under the provision. Where the program is not composed of various standards or components, but is simply designed to provide assistance on an as needed basis for the particular household need in question, it is the Department's view that such assistance is not provided over and above the normal grant. For example, if the program provides the household with a food voucher to present to a store, the value of the voucher is not excluded as emergency or special assistance under this provision because it is not over and above the normal grant, it is the normal grant. These examples have been incorporated into the regulations at 7 CFR 273.9(c)(1)(iii)(B) for clarification of the provision. Please note that 7 CFR 273.9(c)(1)(iii)(B) is redesignated by this action as 7 CFR 273.9(c)(1)(iv)(B).

This clarified policy establishes the framework for considering certain vendor payments as "emergency" or "special". However, FNS has reviewed various State and local vendor payment assistance programs and believes that it would be difficult to establish rules to cover all situations that might arise in the nation. Thus, this action also amends 7 CFR 273.9(c)(iii)(B) to provide that if it is not clear that certain PA or GA vendor payments established for dealing with emergency and special situations are excluded under the general policy, the State agency must apply to FNS for an exclusion determination. Under the rule, State agencies would apply to the appropriate FNS regional office. The State would have to precisely explain the nature of the vendor payment, the type of assistance it provides, who is eligible to receive the assistance, how the State or local government makes the payment and how the vendor payment fits into the overall public assistance or general assistance scheme. A copy of the rules, ordinances or statutes which create and authorize the program should accompany the application for the exclusion. Once FNS has gained more experience in this area it is possible that other more specific rules may be published.

Public Law 100–77

Based on current regulations at 7 CFR 273.9(c)(1), a PA or GA housing assistance payment made to a third party on behalf of a household residing in temporary housing facilities for the homeless can only be partially excluded form income as emergency or special assistance. (*See* 7 CFR 273.9(c)(1)(iii)(B)) The only portion which is excluded is that portion of the assistance provided over and above the normal shelter cost component of a regular PA or GA grant. For example, where a PA or GA program is designed to provide a monthly grant or allowance which contains a standard shelter cost component of $200 for all households and the State or local government provides a total of $500 ($200 plus an additional $300 monthly rental allowance) for households residing in welfare hotels, only the $300 additional rental allowance is excluded as income because it exceeds the normal shelter cost component ($200 in this example) and, therefore, is considered to be over and above the normal PA or GA grant.

However, Congress recently passed legislation that supercedes this policy, for a limited time, for particular households in temporary housing facilities. Section 807 of Pub. L. 100–77, amends section 5(k)(2) of the Food Stamp Act to provide an income exclusion for PA or GA housing assistance made to a third party on behalf of households residing in temporary housing facilities, if the temporary housing unit provided to the household as a result of such assistance lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption.

Using the example described above, under the provisions of Pub. L. 100–77 the normal shelter cost component of $200 as well as the additional $300 rental allowance would be excluded from income of the specific households covered by the statute.

Accordingly, this action amends 7 CFR 273.9(c)(1) to provide a specific income exclusion for a PA or GA housing assistance payment made on behalf of a household and paid by the State or local government directly to a housing provider, for households residing in temporary housing, if the temporary housing unit provided for the household lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption.

In accordance with Pub. L. 100–77, this action also provides that the income exclusion under this provision shall expire September 30, 1989. This action also amends 7 CFR 273.9(c)(1)(iii)(B), which is redesignated by this action as 7 CFR 273.9(c)(1)(iv)(B), to conform that provision to the income exclusion policies discussed above set forth in § 273.(c)(1)(i) of this action.

Additionally, this action amends 7 CFR 273.9(b)(2)(i) to conform that provision to the vendor payments provisions outlined in § 273.9(c) of this action when determining if a PA or GA vendor payment is considered as unearned income under 7 CFR 273.9(b)(2)(i).

Standard and Shelter Expense Deductions—Section 273.9(d) (7) and (8)

Food Stamp Program benefits are calculated on the basis of an individual household's net income. The lower the household's net income, the higher the food stamp benefit it may be entitled to receive. Section 5(e) of the Food Stamp Act of 1977, as amended, provides for certain deductions from household income.

Deductions serve to lower household net income. The standard deduction is available to all households. The excess shelter expense deduction is available to households with high shelter costs. There is a maximum amount for the excess shelter expense deductions, unless the household has an elderly or disabled member, in which case there is no maximum. The amounts of the standard and the excess shelter expense deductions are adjusted annually to take into account certain changes in the cost of living.

Pub. L. 100–77 made changes relating to the standard and excess shelter expense deductions. It changed the methodology for making annual adjustments in the standard deduction, changed the maximum amount of the excess shelter expense deduction, and changed the methodology for making annual adjustments in the maximum excess shelter expense deduction. In order to understand the rationale for the changes relating to the standard and excess shelter expense deductions, it is necessary to have a historical perspective relating to the method of adjusting these deductions.

When the Food Stamp Act of 1977 was enacted, adjustments in the level of the standard deduction were based on changes in the Consumer Price Index (CPI) for items other than food. Adjustments in the level of the excess shelter expense deduction were based on changes in the shelter, fuel, and utilities components of housing costs in the CPI. Both of these CPI measures (1. items other than food and 2. shelter, fuel, and utilities) incorporated the month-to-month changes in prices of five expenditures of owning a home, two of which, house prices and contracted mortgage interest costs, were based on the six percent of all families who actually purchased a home in the CPI base period. The prices used for houses and mortgage interest rates were "current" prices, which meant that those expenditure items overstated inflation after the 1977 Act was implemented because they were the most rapidly rising parts of the fixed market basket of goods and services upon which the CPI was based.

In order to correct the overstatement of inflation and base food stamp deduction adjustments on a methodology which related more closely to renters (the majority of food stamp households), Pub. L. 97–35, enacted August 13, 1981, made a change in the method of adjusting the standard and excess shelter expense deductions.

Under Pub. L. 97–35, the annual adjustment in the level of the standard deduction took into account changes in the Consumer Price Index for All Urban Consumers (CPI–U) for items other than (1) food, (2) homeownership (homeowners' costs), and (3) maintenance and repair component of shelter costs. The homeownership (homeowners' costs) and maintenance and repair components were also removed from the shelter component of the CPI–U when computing the annual adjustment in the excess shelter expense deduction, so that the excess shelter expense deduction was based on changes in the shelter (less homeownership (homeowners' costs) and maintenance and repair component of shelter costs), fuel, and utilities components of housing costs in the CPI–U.

It was originally thought that deleting the components of the CPI relating to homeownership from the market basket used to adjust the standard and excess shelter expense deductions would slow the upward trend in these deductions, result in smaller and more appropriate annual increases in the two deductions, and make them more reflective of the situation of renters. However, because of changed circumstances, Congress felt that this understated the deductions for food stamp households. (*Congressional Record*, April 9, 1987, S 4941). Therefore, Pub. L. 100–77 will base the standard deduction adjustment on changes in the CPI–U for items other than food. It will base the maximum excess shelter expense deduction adjustment on changes in the shelter, fuel, and utilities components of housing costs in the CPI–U. Although this appears to be the same procedure as was used before Pub. L. 97–35 was enacted, it is not because the Bureau of Labor Statistics (BLS), which publishes the CPI–U, has recently changed their calculation of homeowners' costs to make them more reflective of renters by including a rental equivalence component and an owners' rent component.

Accordingly, this action amends 7 CFR 273.9(d)(7) to provide that the standard deduction shall be adjusted on October 1, 1987, and each October 1 thereafter, to reflect changes in the CPI–U for items other than food. This action also amends 7 CFR 273.9(d)(8) to provide that the excess shelter expense deduction shall be adjusted October 1, 1988 and each October 1 thereafter, to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI–U.

Additionally, Pub. L. 100–77 increased the maximum value of the excess shelter expense deduction. Accordingly, effective October 1, 1987, for all new applicants and recertifications, the new shelter deductions will be $164 in the 48 States and DC, $285 in Alaska, $234 in Hawaii, $199 in Guam, and $121 in the Virgin Islands. These amounts will also be announced in a Notice published in the **Federal Register** when the October 1, 1987 adjustments in the allotments and standard deductions are announced. In accordance with the statute, the new deduction cap does not apply with respect to an allotment issued for a certification period beginning before October 1, 1987. Accordingly, the rule provides that the new shelter deduction limits shall be phased-in for households whose certification periods began before October 1, 1987. Such households shall receive the new deduction amounts when the household is recertified after October 1, 1987. Until they are phased-in, these households shall have their shelter deduction limit based on the procedure that was in effect under the Food Stamp Act prior to the enactment of Pub. L. 100–77. That statutory provision provides for a cost-of-living update to the shelter deduction limit to become effective on October 1, 1987. This update will occur. Thus, the phased-in households will have an adjusted shelter deduction limit applied to them on October 1, 1987 and then have the new limit under Pub. L. 100–77 applied when they are recertified.

Loss-of-Benefits Penalty—Section 273.18

Section 805 of Pub. L. 100–77 amends section 5(e) of the Food Stamp Act to impose a new loss-of-benefits penalty on those food stamp recipients who fraudulently fail to report income. This provision is intended to ensure that food stamp recipients who deliberately fail to report earnings are not given the advantage of a deduction that is intended to encourage work.

Under current regulations at 7 CFR 273.18, food stamp recipients who fail to report earnings must repay the benefits received in excess of what would have been received had earnings been properly reported. The amount to be repaid is the difference between what the household received in benefits and what it would have received if it had reported its earnings correctly. In calculating the amount of overissuance owed, State agencies must apply the 20 percent earned income deduction to the unreported earnings.

The new statutory provision prohibits the earned income deduction from being applied to unreported earnings when the amount of food stamp benefits paid improperly because of fraudulent failure to report is calculated for collection. The amendment specifically states that the provision only applies to that portion of income which the household fails to report, not the entire amount of earned income. By doing this, the household that benefited from the fraudulent act is penalized since the amount it has to repay in overissuance will be increased. For example, if a food stamp household reports a monthly income of $500 when it actually received $600, the 20 percent earned income deduction would not be applied to the $100 in unreported earnings when the State agency calculates the amount of overissued benefits.

Accordingly, this action amends 7 CFR 273.18(c)(2)(ii) to provide that when determining the amount of benefits a household should have received, for the purpose of calculating a claim against the household, the State agency shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report. (The statutory provision refers to willful or fraudulent failure to report; the Department interprets willful, or intentional, failure to report to be synonymous with fraudulent failure to

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report.) However, when determining whether or not there is an error for quality control (QC) purposes, the earned income deduction should not be disregarded. This is because QC determines the accuracy in which State agencies have determined households eligible or ineligible for program participation. To disregard the earned income deduction for QC purposes would penalize the State agencies when the provision is only intended to penalize those households which intentionally violate the Program.

It is important to note that this provision only applies in cases where the recipient has been found, in accordance with the Act, to have intentionally failed to report earnings, thereby limiting its application to cases of proven rather than alleged fraud. The Department still encourages State agencies to process a claim against the suspect household as an inadvertent household error claim prior to the determination of intentional Program violation. The Department realizes that in cases where the household is found guilty, State agencies must refigure the amount of the claim. However, since there can sometimes be a significant lapse of time between the discovery of an overissuance and a finding of fraud the Department still believes that proceeding with the claim as an inadvertent household error claim is the best course of action.

Implementation—Section 272.1(g)

In accordance with Pub. L. 99–198 and Pub. L. 100–77, this action amends 7 CFR 272.1(g) to provide that the provisions of this action are effective, and must be implemented, as follows:

The provision which replaces the definition of "homeless food stamp household" with a definition of "homeless individual" is effective July 22, 1987. The definition is utilized for the expedited service provisions and the provisions governing disbursement of Program information to the homeless contained in this action. The definition is also used in conjunction with the current rules, promulgated to implement the Homeless Eligibility Clarification Act, governing the redemption of coupons by homeless food stamp households. The expedited service provisions and the provisions governing the disbursement of Program information to the homeless are effective at a significantly later date. The definition does not alter or change current provisions governing redemption of coupons by homeless individuals. Therefore, this action provides that State agencies immediately inform caseworkers of the new definition. No other implementation efforts are required of the State agencies.

The provision which defines "General assistance", the provision which excludes PA/GA vendor payments from consideration as income if provided for medical, child care, or energy assistance, and the provision which excludes PA/GA vendor payments from income as emergency or special assistance are effective retroactively to April 1, 1987. The provision governing emergency or special assistance vendor payments and the provision which defines "General assistance" reflect longstanding Departmental policy and do not require implementation efforts by State agencies. State agencies must implement the other exclusions immediately in order to come into compliance with the statute. In the event that there are affected households, such households shall be entitled to restored benefits, if appropriate, back to the date of the household's application or April 1, 1987, whichever occurs later. For QC purposes only, QC reviewers shall not identify variances resulting solely from the inclusion or exclusion from income of medical, child care or energy assistance PA/GA vendor payments in cases with review dates between April 1, 1987 and October 31, 1987.

The provision which grants an income exclusion for vendor payments made by State or local governments to welfare hotels and similar facilities is effective and shall be implemented for new applicant households for the period beginning October 20, 1987 and ending September 30, 1989. By law, this provision does not apply to allotments issued to any household for any month beginning before the effective date of the provision. Therefore, this action provides that State agencies convert their affected current caseload to this provision, if otherwise eligible, at household recertification, when the household requests a review of its case, or when the State agency otherwise becomes aware that a review needed, but not prior to October 20, 1987.

The provisions which allow State agencies to provide and obtain Federal reimbursement for Program informational activities aimed at the homeless are effective July 22, 1987.

The provision which allows separate household status to be granted to certain individuals living with their parent(s) or sibling(s) and the conforming provision which requires such households to be assigned a certification period that does not exceed six months is effective and must be implemented on October 1, 1987. New applicant households which apply for benefits on or after October 1, 1987 may be granted separate household status under this provision. Current participants which may be eligible for separate household status under this provision may be granted separate status, but not prior to October 1, 1987, if the household requests separate status and the State agency determines that the household meets the requirements of this provision.

In accordance with Pub. L. 100–77, the Department has the discretion to establish the effective date of the provision which extends the current expedited service procedures to two additional categories of households. By law, the effective date cannot be later than 160 days after enactment of Pub. L. 100–77. This action provides that this provision is effective and shall be implemented for applicant households on December 1, 1987.

The provision which changes the effective date for annual cost-of-living adjustments to the income eligibility limits from July 1 to October 1 each year is effective July 1, 1988. Thus, the income eligibility limits that were placed into effect on July 1, 1987 will remain in effect until October 1, 1988. Annual adjustments to the income eligibility limits will now be on the same schedule with the annual cost-of-living adjustments for the Thrifty Food Plan and deductions.

The provision which changes the methodology for making annual cost-of-living adjustments to the standard deduction is effective October 1, 1987. The provision which changes the methodology for making annual cost-of-living adjustments to the excess shelter expense deduction is effective October 1, 1988.

The provision which establishes new amounts for the maximum excess shelter expense deduction is effective October 1, 1987. State agencies shall apply the new deduction limit to all households which apply for benefits on or after October 1, 1987. However, in accordance with the statute, the new deduction limits are not to be applied to participating households whose certification period began prior to October 1, 1987. Rather, these households are to be phased-in to the new limits as they are recertified. Until they are phased-in, these households shall have the shelter deduction limit applied to them that was in effect under the Food Stamp Act prior to the enactment of Pub. L. 100–77. That statutory provision provides for a cost-of-living update to the shelter deduction limit to become effective on October 1, 1987. This update will occur. Thus, the phased-in households will have an

adjusted shelter deduction limit applied to them on October 1, 1987 and then have the new limits under Pub. L. 100–77 applied when they are recertified.

The statute requires that the provision which imposes an earned income deduction penalty when calculating fraud claims take effect September 5, 1987. It is important to note that the date an allotment is issued is not the determining factor as to the implementation of this provision. Rather, the determining factor is the month for which benefits are issued. The statute specifies that the provision not apply to any allotments issued for months beginning before the effective date. Therefore, this rule requires State agencies to apply the provision to all allotments reflecting overissuances resulting from the international failure to report earned income issued for the month immediately following the month in which the effective date of the provision falls. For most State agencies, those that issue on a calendar month basis, this means the provision is to be applied to the allotments issued for October 1987 and all allotments issued for subsequent months. Thus, as noted above, State agencies that issue on a calendar month basis must implement this provision for allotments issued for October, even if the issuance occurs in September. Likewise, issuance made in October for September or earlier months must not have the provision applied to them. State agencies that issue on other than a calendar month basis will need to determine which issuance month begins immediately after September 5, 1987 and apply the provision to issuances for that month. The same principles noted above for calendar month systems would apply to these systems.

This action further provides that State agencies must implement the provisions of Pub. L. 100–77 as outlined in this action on the specific dates required for each provision. If, for any reason, the State agency fails to implement the provisions on the date required, affected households, if appropriate, shall be entitled to restored benefits back to the date of application or the effective date of the provisions involved, whichever occurs later.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 277

Food stamps, Government procurement, Grant programs-social programs, Investigations, Reporting and recordkeeping requirements.

Accordingly, Parts 271, 272, 273, and 277 are amended as follows:

1. The authority citation for Parts 271, 272, 273 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, *Definitions,* the definition of "General assistance" is revised, the definition of "Homeless food stamp household" is removed, and a new definition for "Homeless individual" is added.

The revision and addition read as follows:

§ 271.2 Definitions.

* * * * *

"General assistance (GA)" means cash or another form of assistance, excluding in-kind assistance, financed by State or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients.

* * * * *

"Homeless individual" means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

(1) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);

(2) A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

(3) A temporary accommodation in the residence of another individual; or

(4) A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1 a new paragraph (g)(93) is added in numberical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(93) *Amendment No. 298.* The provisions of Amendment No. 298 are effective, and shall be implemented, as follows:

(i) The provision in § 271.2 of this amendment which defines "General assistance" and the provisions contained in § 273.9(b)(2)(i), § 273.9(c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(1)(ii)(C), regarding exclusion of certain PA/GA vendor payments are effective retroactively to April 1, 1987. The provision in § 273.9(c)(1)(iv)(B), exclusion of emergency/special PA/GA vendor payments, is also effective retroactive to April 1, 1987, however, this provision reflects current policy and requires no implementation efforts by State agencies. State agencies shall immediately implement the other provisions listed above. Affected households shall be entitled to restored benefits back to the date of application or April 1, 1987, whichever occured later. For QC purposes only, QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of these provisions in cases with review dates between April 1, 1987 and October 31, 1987.

(ii) The technical amendment to Part 277 is effective September 29, 1987, and does not require implementation efforts by State agencies. The remaining provisions of Amendment No. 298 are effective, and must be implemented, as follows:

(A) Section 271.2, definition of "Homeless individual," effective July 22, 1987. State agencies shall immediately inform caseworkers of the new definition. No other implementation efforts are required to the State agencies.

(B) Section 273.9(c)(1)(ii)(D), the income exclusion of certain PA/GA vendor payments, is effective and shall be implemented for new applicant households which apply for benefits during the period beginning October 20, 1987 and ending September 30, 1989. This provision does not apply to allotments issued to any household for any month beginning before the effective period of the provision. State agencies shall convert their affected current caseload to this provision, if otherwise eligible, at recertification.

when the household requests a review of its case, or when the State agency otherwise becomes aware that a review is needed but not prior to October 20, 1987.

(C) Section 272.5, the financial reimbursement for Program informational activities for the homeless, is effective July 22, 1987.

(D) Section 273.1(a)(2)(i)(C), § 273.1(a)(2)(i)(D), § 273.10(f)(2), the exception to certain household composition requirements, and the rule regarding recertification of households subject to the exception, are effective and must be implemented on October 1, 1987. Households which apply for benefits on or after October 1, 1987 may be granted separate household status under this provision. Current participants which may be eligible for separate household status under this provision, may be granted separate status, but not prior to October 1, 1987, if the household requests separate status and the State agency determines that the household meets the requirements of this provision.

(E) Section 273.2(i), the expansion of expedited service, is effective, and must be implemented, for affected households applying for Program benefits on or after December 1, 1987.

(F) Section 273.9(a)(3), regarding the date of making the annual adjustment to the income standards, is effective with the 1988 annual adjustment. The July 1, 1987 income limits will remain in effect until October 1, 1988.

(G) The first three sentences of § 273.9(d)(8)(i), the raising of the shelter deduction limit for the 48 States and DC., Alaska, Hawaii, Guam and Virgin Islands, are effective October 1, 1987. State agencies shall implement the higher deduction limits appearing in the first sentence of § 273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin on or after October 1, 1987. State agencies shall implement the lower deduction limits appearing in the second sentence of § 273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin before October 1, 1987. The State agency shall implement the higher deduction limits for households whose certification periods begin before October 1, 1987 beginning with the month in which such household is recertified after October 1, 1987.

(H) Section 273.9(d)(7)(i), the change in the standard deduction methodology, is effective October 1, 1987.

(I) The last sentence of § 273.9(d)(8)(i), the change in the excess shelter deduction methodology, is effective, October 1, 1988.

(J) Section 273.18(c)(2)(ii), the earned income deduction penalty, is effective on September 5, 1987. State agencies which issue on a calendar month basis, shall apply this provision to allotments issued for October 1987 and all allotments for subsequent months. State agencies which issue on other than a calendar month basis shall apply the provision to the issuance for the first issuance month beginning after September 5, 1987.

(iii) State agencies must implement the provisions as outlined in paragraph (g)(93)(ii) of this section on the specific dates required for each provision. If, for any reason, the State agency fails to implement the provisions on the required date, affected households, if appropriate, shall be entitled to restored benefits back to the date of application or the effective date of the provision involved, whichever occurred later.

4. In § 272.5: a. Paragraph (a) is amended by removing the words "to applicant and recipient households".

b. Introductory paragraph (b) is amended by adding before the period appearing at the end of the paragraph, the words "for applicants and recipients".

c. A new paragraph (c) is added. The addition reads as follows.

§ 272.5 Program informational activities.

* * * * *

(c) *Program information for the homeless.* State agencies, at their option, may carry out Program informational activities directed toward homeless individuals. When providing Program information such as this, only those efforts specifically directed toward homeless individuals, as defined in § 271.2, will be funded by FNS in accordance with Part 277. State agencies shall inform FNS in writing what they will do to ensure that Program information is directed only toward individuals who are actually homeless.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.1: a. Paragraph (a)(2)(i)(C) is amended by adding a new sentence to the end of paragraph (a)(2)(i)(C).

b. Paragraph (a)(2)(i)(D) is amended by adding a new sentence to the end of paragraph (a)(2)(i)(D).

The additions read as follows:

§ 273.1 Household concept.

(a) *Household definition.* * * *

(2) *Special definition.*

(i) * * *

(C) * * * If the natural, adopted or stepchild is a parent of minor children and he/she and the children are living with his/her parent(s), the parent of the minor children, together with such children, may be granted separate household status based on the provisions of paragraph (a)(1) of this section and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section and the certification period as required by § 273.10(f)(2).

(D) * * * If a sibling is the parent of minor children and he/she and the children are living with his/her sibling, the sibling who is the parent of the minor children, together with such children, may be granted separate household status based on the provisions of paragraph (a)(1) of this section and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section and the certification period as required by § 273.10(f)(2).

* * * * *

6. In § 273.2, paragraph (i)(1) is revised in its entirety to read as follows:

§ 273.2 Application processing.

* * * * *

(i) *Expedited service.*—(1) *Entitlement to expedited service.* The following households are entitled to expedited service:

(i) Households with less than $150 in monthly gross income, as computed in § 273.10 provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100;

(ii) Migrant or seasonal farmworker households who are destitute as defined in § 273.10(e)(3) provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100;

(iii) Eligible households in which all members are "homeless individuals" as defined in § 271.2; or

(iv) Eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage, and utilities.

* * * * *

7. In § 273.9: a. Introductory paragraph (a)(3) is revised.

b. The first sentence of paragraph (b)(2)(i) is revised and a new sentence is added after the first sentence.

c. Paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) are redesignated as paragraphs (c)(1)(iii), (c)(1)(iv) and (c)(1)(v), respectively and a new paragraph (c)(1)(ii) is added.

d. Newly redesignated paragraph (c)(1)(iv)(B) is revised in its entirey.

e. Paragraphs (d)(7)(i) and (d)(8)(i) are revised.

The revisions and addition read as follows:

§ 273.9 Income and deductions.

(a) *Income eligibility standards.*
* * *

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.
* * * * *

(b) *Definition of income.* * * *
(2) * * *

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of paragraph (c)(1) of this section. * * *
* * * * *

(c) *Income exclusions.* * * *
(1) * * *

(ii) A PA or GA payment which is not made directly to the household, but paid to a third party on behalf of the household to pay a household expense, shall be considered an excludable vendor payment and not counted as income to the household if such PA or GA payment is for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance (as defined in paragraph (c)(11) of this section); or

(D) Housing assistance payments made to a third party on behalf of a household residing in temporary housing, if the temporary housing unit provided for the household as a result of such assistance lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption, *provided* that such vendor payments shall be excluded under this provision if paid to the housing provider during the period beginning October 20, 1987 and ending September 30, 1989.
* * * * *

(iv) * * *

(B) All or part of a public assistance (PA) or general assistance (GA) grant or payment which is diverted to a third party or to a protective payee for purposes such as, but not limited to, managing a household's expenses, shall be considered income to the household and not excluded as a vendor payment, except as provided for in paragraphs (c)(1)(i) and (c)(1)(ii) of this section. Assistance financed by State or local funds which is provided over and above the normal PA or GA grant or payment, or is not normally provided as part of such grant or payment would be considered emergency or special assistance and excluded as income if provided to a third party on behalf of the household. For example, where a PA or GA program provides all households with school age children with a monthly "extra" childrens clothing allowance, paid directly to a clothing store, that allowance would not be excluded because it is part of the regular monthly assistance for all households in that category and is not really an "extra" payment. On the other hand, if a fire destroyed the household's clothing and it receives an "emergency" amount paid directly to a clothing store, such a payment could be excluded under this provision. Where the program is not composed of various standards, allowances, or components, but is simply designed to provide assistance on an as needed basis rather than provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision. For example, if such a program provides a household with a food voucher to be presented to a store, the value of the voucher is not excluded as emergency or special assistance because it is not provided over and above the normal grant, *it is the normal grant.* If it is not clear that a certain type of PA or GA vendor payment is covered under this general exclusion policy, the State agency shall apply to the appropriate FNS Regional Office for a determination of whether PA or GA vendor payments that the State believes are provided for emergency or special circumstances should be excluded. The application for this exclusion determination must explain: the emergency and special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA or GA scheme. A copy of the rules, ordinances or statutes which creates and authorizes the program shall accompany the application request.
* * * * *

(d) *Income deductions.* * * *

(7) *Adjustment of standard deduction.*

(i) Effective October 1, 1987, and each October 1 thereafter, the standard deduction shall be adjusted to reflect change in the CPI–U for items other than food for the twelve months ending the preceding June 30.
* * * * *

(8) *Adjustment of shelter deduction.*

(i) Effective October 1, 1987, for households whose certification period begins on or after October 1, 1987, the maximum monthly excess shelter expense deduction limits shall be $164 for the 48 States and D.C., $265 for Alaska, $234 for Hawaii, $199 for Guam, and $121 for the Virgin Islands. Effective October 1, 1987, for households whose certification period began before October 1, 1987, the maximum monthly excess shelter deduction limits shall be $152 for the 48 States and D.C., $261 for Alaska, $217 for Hawaii, $185 for Guam, and $112 for the Virgin Islands. Households whose certification period began before October 1, 1987 shall receive the higher deduction limits stated in this paragraph beginning with the first month of the certification period for which such households are recertified after October 1, 1987. Effective October 1, 1988, and each October 1 thereafter, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI–U for the twelve months ending the preceding June 30.
* * * * *

8. In § 273.10, paragraphs (f)(2) through (f)(7) are redesignated as paragraphs (f)(3) through (f)(8), respectively, and a new paragraph (f)(2) is added to read as follows:

§ 273.10 Determining household eligibility and benefit levels.
* * * * *

(f) *Certification periods.* * * *

(2) Households which are granted separate household status, in accordance with § 273.1(a)(2)(C) and (D), because the household consists of an individual and that individual's minor child(ren) living with the individual's parent or sibling and purchasing and preparing meals separate from the parent/sibling shall be assigned a certification period not to exceed six months.
* * * * *

9. In § 273.18, paragraph (c)(2)(ii) is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 273.18 Claims against households.
* * * * *

(c) *Calculating the amount of claims.*
* * *

(2) * * *

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(ii) * * * When determining the amount of benefits the household should have received, the State agency shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report.

* * * * *

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Appendix A—Amended

10. In Appendix A, under section entitled *Standards for Selected Items of Costs*, paragraph C. (14) is amended by replacing the reference to "§ 272.6" with a reference to "§ 272.5".

Anna Kondratas,

Administrator, Food and Nutrition Service.

Date: September 24, 1987.

[FR Doc. 87-22359 Filed 9-28-87; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 14; Doc. No. 4751S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by re-defining the insurance period for all insured crops to provide that insurance attaches on the later of when the crop is planted or when the application is properly completed, signed and delivered to the service office in addition to the other attachment references therein. The intended effect of this rule is to prevent the possibility of adverse selectivity resulting in an automatic replant payment. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective date:* September 29, 1987. Comments may be submitted until November 30, 1987.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends 7 CFR Part 401—General Crop Insurance Regulations, effective for the 1988 and succeeding crop years to provide that, in addition to the other insurance period references therein, insurance attaches on the later of when the crop is planted or when the application is signed.

Present provisions contained in section 7 of the general crop insurance policy published in the **Federal Register** on Thursday, July 30, 1987 at 52 FR 28443, provide only that insurance attaches on each unit, or part of a unit, when the insured crop is planted or on the calendar date for the beginning of the insurance period if specified in the crop endorsement.

FCIC has identified several states where insurable crops (primarily corn and grain sorghum) are planted as much as 6 weeks in advance of the sales closing date for the area for such crops. After damage occurs, a non-insured determining that the planted crop will not reach production, may buy crop insurance and collect an automatic replant payment. Such adverse selection is counter to the principles of an actuarially sound insurance program and provides an opportunity for fraudulently obtaining crop insurance coverage.

FCIC has determined that it is necessary to amend the insurance period provisions in the general crop insurance policy to prevent such occurrences.

This amendment has no effect on any other provision of the general crop insurance policy.

While this amendment is not considered an emergency rule, the far reaching effect of this provision allowing a producer to plant several weeks in advance of the sales closing date, then just prior to the closing date to purchase insurance virtually guaranteeing a replant payment payment, requires an immediate change in this provision in order to protect the integrity of the crop insurance program.

Therefore, FCIC has determined that it good cause is shown to make this rule effective upon publication in the **Federal Register** and to allow 60 days following publication for the public to submit written comments, data, and opinions on the rule.

This rule will be scheduled for review so that any amendment made necessary by public comment may be published as quickly as possible following the public comment period.

Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written comments received in connection with this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation herewith amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CROP YEARS

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended by revising § 401.8(d)7 to read as follows:

* * * * *

§ 401.8 The application and policy.

* * * * *

(d) * * *

7. Insurance period.

Insurance attaches on each unit or part of a unit when the insured crop is planted or when the application is properly signed, completed, and delivered to your service office, whichever is later, or on the calendar date for the beginning of the insurance period if specified in the crop endorsement, and ends at the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit;

(c) Final adjustment of a loss on a unit; or

(d) The calendar date for the end of the insurance period contained in the crop endorsement.

* * * * *

Done in Washington DC on September 2, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–22345 Filed 9–28–87; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 87N–0261]

Administrative Practices and Procedures; Conforming Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an amendment to its regulation specifying the date on which the administrative record of a regulation closes so that the record closes on the date of publication of the regulation rather than on the date of the Commissioner's decision on the regulation. This amendment conforms FDA's regulation to the review requirements under Executive Order 12291 and the Secretary's reservation of authority to approve certain FDA regulations (21 CFR 5.11).

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: Part 10 of FDA's administrative practices and procedures regulations, § 10.40(h) (21 CFR 10.40(h)), provides in part that "The record of the administrative proceeding closes on the date of the Commissioner's decision unless some other date [is] specified." Inadvertently, neither at the time the President issued Executive Order 12291 on review of regulations (46 FR 13193; February 19, 1981) nor at the time the Secretary, Department of Health and Human Services, issued § 5.11 (47 FR 16318; April 16, 1982) did FDA issue a conforming amendment to § 10.40(h) to take into account the need to close the administrative record on a regulation at the time of its publication, not at the time the Commissioner of Food and Drugs completed his review. Accordingly this document amends § 10.40(h) by changing the date on which the administrative record closes from "the date of the Commissioner's decision" to "the date of publication of the final regulation in the **Federal Register** unless some other date is specified."

Because this rule merely conforms FDA's administrative practices and procedures regulation to the review requirements of Executive Order 12291 and of 21 CFR 5.11 and is a rule on agency management, notice, public procedure, and delayed effective date are unnecessary under 5 U.S.C. 553 (a)(2), (b)(A), (b)(B), and (d)(3).

List of Subjects in 21 CFR Part 10

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR Part 10 continues to read as follows:

Authority: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1 through 10, Chapter 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89–755, 80 Stat. 1298 as amended (15 U.S.C. 1451 et seq.).

2. Section 10.40 is amended by revising paragraph (h) to read as follows:

§ 10.40 Promulgation of regulations for the efficient enforcement of the law.

* * * * *

(h) The record of the administrative proceeding closes on the date of publication of the final regulation in the **Federal Register** unless some other date is specified. Thereafter, any interested person may submit a petition for reconsideration under § 10.33 or a petition for stay of action under § 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the final regulation.

* * * * *

Dated: September 22, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–22352 Filed 9–28–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Novobiocin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co. The NADA provides for the manufacture of a Type B medicated feed containing 17.5 grams novobiocin per pound for making Type C medicated feeds for the treatment or control of certain infections in chickens, turkeys, ducks, and mink.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for

Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, has filed a supplement to NADA 12–375, Albamix® Feed Medication (novobiocin) providing for a Type B medicated feed containing 17.5 grams novobiocin per pound. The Type B medicated feed is for making Type C medicated feed as follows: For chickens and turkeys for the treatment of staphylococcal synovitis, generalized staphylococcal infections, and as an aid in the treatment of breast blisters associated with staphylococcal infections susceptible to novobiocin; for turkeys (only) for the treatment of acute outbreaks of fowl cholera and as an aid in control of recurring outbreaks of fowl cholera caused by strains of *Pasteurella multocida* susceptible to novobiocin; for mink for the treatment of generalized infections, abscesses, or urinary infections caused by staphylococcal or other novobiocin sensitive organisms; and ducks for control of infectious serositis and fowl cholera caused by *Pasteurella anatipestifer* and *P. multocida* susceptible to novobiocin. The application is approved and 21 CFR 558.415(a) is amended to reflect the approval.

Approval of this supplement is an administrative action that did not require generation of new effectiveness or safety data. Therefore, a freedom of information summary (pursuant to 21 CFR 514.11(e)(2)(ii)) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.415 is amended by revising paragraph (a) to read as follows:

§ 558.415 Novobiocin.

(a) *Approvals.* Type A medicated articles: 25 grams of activity per pound to 000009 in § 510.600(c) of this chapter. Type B medicated feeds: 17.5 grams per pound to 000009 in § 510.600(c) of this chapter.

* * * * *

Dated: September 22, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 87–22351 Filed 9–28–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 372

[DoD Directive 5122.10]

American Forces Information Service (AFIS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part updates the current AFIS charter to reflect Visual Information, Armed Forces Radio and Television Service, and Defense Information School responsibilities that have been assigned to the Director, AFIS since the charter was last issued on March 19, 1980. It also authorizes the Director, AFIS to approve Joint Service Achievement Medals for AFIS personnel.

EFFECTIVE DATE: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Office of the Assistant Secretary of Defense (Comptroller), the Pentagon, Washington, DC 20301, telephone (202) 697–0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 372

Organization and function.

Accordingly, 32 CFR Part 372 is revised to read as follows:

PART 372—AMERICAN FORCES INFORMATION SERVICE (AFIS)

Sec.

372.1 Reissuance and purpose.
372.2 Applicability.
372.3 Definitions.
372.4 Mission.
372.5 Organization and management.
372.6 Responsibilities and functions.
372.7 Relationships.
372.8 Authority.
372.9 Administration.
Appendix A—Delegations of Authority.

Authority: 10 U.S.C. 191.

§ 372.1 Reissuance and purpose.

Under the authority vested in the Secretary of Defense by Title 10, United States Code, this part to update the mission, functions, authorities, and relationships of the American Forces Information Service (AFIS) and is the authority for the existence of the Department of Defense Internal Information Program. This part also reestablishes the American Forces Information Council (AFIC).

§ 372.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and the Department of Defense Field Activities (hereafter referred to collectively as "DoD Components").

§ 372.3 Definitions.

(a) *Acquisition.* The process through which equipment, programs, materials, products, and services are obtained from public and commercial sources.

(b) *Armed Forces Radio and Television Service (AFRTS).* A worldwide broadcast organization that comprises an AFRTS headquarters element within AFIS, the AFRTS centralized management elements within the Military Departments, AFRTS outlets and activities around the world, and the AFRTS Boradcast Center in Los Angeles, CA.

(c) *AFRTS outlet.* Any facility authorized by the Director, AFIS, in accordance with policy to disseminate radio or television programming. An outlet includes AFRTS radio and television stations and networks, relay sites, translators, Navy and Military Sealift Command ships using AFRTS program materials, mini-TV sites, and any other AFRTS broadcast facility.

(d) *AFRTS activity.* Any activity in support of AFRTS broadcast operations, i.e., centralized management elements, regional production centers, program duplicating facilities, etc. "Support" can be in many forms—administrative, logistical, equipment maintenance, etc.

(e) *AFRTS network.* Two or more AFRTS stations, authorized by the Director, AFIS, to disseminate programming through interconnecting broadcast-quality transmission circuits.

(f) *AFRTS mini-TV.* A self-contained videotape playback system used in remote or isolated areas not accessible to an AFRTS television signal.

(g) *AFRTS broadcast center.* A field activity of the AFIS located in Los Angeles, CA, that provides information and entertainment programming to AFRTS outlets.

(h) *AFRTS regional production center.* Regional production centers (RPC's) are radio and television spot production facilities located in the two major overseas theaters (Pacific and Europe) and managed by the Air Force Broadcasting Service (AFBS). RPC's produce internal information spot announcements appropriate to their respective theaters to supplement the DoD (AFIS) worldwide spot production effort. Subjects, concept treatments, and scripts are coordinated through the appropriate Unified Command and approved by AFIS prior to final production and release.

(i) *Audiovisual (AV).* A subset of visual information relating to produced motion media with sound.

(j) *Broadcast equipment.* Items of a durable nature used for recording, producing, mixing, reproducing, broadcasting, and all items commonly used in the broadcasting and television industry for the recording, processing, distribution, reproduction, and transmission of radio and TV signals.

(k) *Internal information.* All information that is intended to keep DoD military and civilian personnel and their family members well informed on matters concerning national defense, readiness, military benefits, American and military heritage, and issues affecting their own morale and well-being. This includes information disseminated through periodicals, other publications, radio, television, motion pictures, videotape, and related media.

(l) *Joint Visual Information Service (JVIS).* A visual information service operated and maintained by a DoD Component to support more than one DoD Component.

(m) *Military department broadcasting service.* Centralized management staff elements within the Departments of the Army, Navy, and Air Force, which are responsible for the day-to-day management and operational control of all AFRTS outlets and activities that have been assigned to the executive agency of their Department.

(n) *Print media.* Printed publications issued in support of the internal information program of the Department of Defense. This includes, but is not limited to, newspapers, periodicals, pamphlets, booklets, posters, magazines, newsletters, news summaries, and news bulletins.

(o) *Visual information (VI).* Use of one or more of the various visual media with or without intrinsic sound. VI includes still photography, motion picture photography, video recording (with or without sound), graphic arts, visual aids, models, displays, visual presentation services, and the support processes.

§ 372.4 Mission.

(a) The AFIS shall:

(1) Advise and act for the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) in the:

(i) Management of DoD internal information programs.

(ii) Development of policies, guidelines, and standards for the management of DoD visual information (VI) activities and programs.

(iii) Development of policies, guidelines, and standards for the management of Armed Forces Radio and Television Service (AFRTS) outlets and activities.

(2) Provide joint-interest print, radio, film, and television materials for use in the internal information programs of the Military Departments and other DoD Components.

(b) The AFIC shall provide a forum for the exchange of information and advise on DoD internal information matters.

§ 372.5 Organization and management.

(a) The AFIS is established as a DoD Field Activity under the direction, authority, and control of the ASD(PA). It shall consist of a Director and such essential subordinate organizational elements as are established by the Director to accomplish the AFIS mission within resources assigned by the Secretary of Defense.

(b) The AFIC is established as a policy committee reporting to the ASD(PA). It shall consist of the following:

(1) Director, AFIS, who shall serve as Chairman.

(2) The Chief of Public Affairs of each of the Military Departments.

(3) A representative of the Chairman of the Joint Chiefs of Staff (CJCS).

(4) An Executive Secretary, who shall be designated by the Director, AFIS.

§ 372.6 Responsibilities and functions.

(a) The *Secretaries of the Military Departments* shall:

(1) Conduct internal information activities pertaining to their Department's programs, operations, and activities.

(2) Operate and maintain AFRTS outlets and activities in designated geographic areas. Continue to sustain broadcast operations, and provide maintenance and administrative support for these outlets and activities during contingencies when their operational control has been temporarily assumed by a Unified Commander in accordance with paragraphs (c)(1) and (c)(2) of this section.

(3) Centrally manage and control all AFRTS outlets and activities of their Department.

(4) Centrally manage and control all VI activities of their Department.

(5) Operate VI activities in support of assigned missions.

(b) The *Assistant Secretary of Defense (Public Affairs)* (ASD(PA)) shall:

(1) Develop broad policy guidelines and objectives for DoD internal information programs.

(2) Provide policy and operational direction to the Director, AFIS.

(c) The *Commanders of the Unified Commands* (CINCs) shall:

(1) Develop plans for and assume operational control of assigned AFRTS facilities within their respective geographic areas of responsibility during periods of military contingency, as required to ensure a coordinated internal information effort.

(2) Ensure that requirements for the provisions of AFRTS service are considered and integrated into all military contingency and deliberate wartime planning guidance within their respective geographic areas of responsibility.

(3) Expeditiously notify the Secretaries of the Military Departments, the CJCS, and the ASD(PA) of military contingency occurrences requiring the implementation of plans for assuming operational control of AFRTS outlets, and again upon the termination of the contingency situation. Return control of AFRTS outlets to the Military Departments immediately upon termination of the contingency situation.

(4) Provide advice with respect to host-country sensitivities concerning the nature and content of radio and television programs.

(5) Conduct internal information activities on joint matters within assigned areas of operation.

(d) The *Director, American Forces Information Service* (AFIS), shall:

(1) Organize, direct, and manage the AFIS and all assigned resources.

(2) Serve as Director of AFRTS.

(3) For print media internal information programs:

(i) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of periodicals, pamphlets, armed forces newspapers, and civilian enterprise publications, including the provisions of 32 CFR Part 248 and 32 CFR Part 297.

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(ii) Serve as DoD point of contact (POC) in the United States for Unified Command newspaper editorial and business policy, business guidance and assistance, and other matters.

(iii) Serve as DoD POC with the Congressional Joint Committee on Printing and other congressional entities for matters pertaining to DoD periodicals, armed forces newspapers, and civilian enterprise publications.

(iv) Develop, publish, or procure appropriate internal information materials of a DoD-wide, joint-interest nature.

(4) For AFRTS radio and television internal information programs:

(i) Designate geographic areas of responsibility for the operation of Military Department AFRTS outlets and activities, and exercise program management control of AFRTS.

(ii) Develop and oversee the implementation of policies and procedures pertaining to the management and operation of radio and television outlets and activities, including the provisions of 32 CFR Part 372a.

(iii) Exercise fiscal and manpower resource control through the Planning, Programming, and Budgeting System (PPBS). Provide guidance on, review, and approve or revise proposed resource programs; formulate budget estimates; recommend resource allocations; and monitor the implementation of approved programs.

(iv) In conjunction with the CJCS, coordinate contingency and wartime requirements with the CINCs.

(v) Administer centralized management information and resource management systems, in accordance with DoD Directive 7750.5 [1] and DoD Directive 5000.11.[2]

(vi) Establish guidelines for and authorize the establishment of new stations, the disestablishment of existing stations, and the configuration of broadcast networks.

(vii) Develop and maintain a program for the standardization of broadcast equipment. Establish broadcast equipment technical specifications and performance standards, and certify equipment for use.

(viii) Establish manning standards for outlets and overhead staffs, and qualification standards for broadcast and technical support personnel. Review and concur or nonconcur in the selection of network commanders.

(ix) Negotiate for, acquire, and provide commercial program materials, including a free flow of general and military news, sports, and current events programs. Under normal circumstances, this function shall be carried out by the Commander, AFRTS Broadcast Center, Los Angeles, CA, under the authority, direction, and control of the Director, AFIS.

(x) Develop, produce, and procure spot announcements and public service announcements (PSA's) in support of the DoD internal information program.

(5) For VI activities and programs:

(i) Develop, promulgate, and monitor the implementation of policies, procedures, and programs, and establish management responsibilities for DoD VI activities and resources consistent with DoD Directive 5040.2.[3]

(ii) Operate the Federal Audiovisual Contract Management Office (FACMO) as Executive Agent for the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

(iii) Manage necessary information systems to support these requirements.

(iv) Develop common VI formats and standardization guidelines.

(6) Exercise management oversight of the Joint Visual Information Services (JVIS) consistent with DoD Directive 5040.3,[4], in addition to the responsibilities established in paragraph (d)(5) of this section, to:

(i) Review JVIS plans, programs, actions, and taskings to assure that JVIS programs and systems accommodate operational requirements.

(ii) Serve as program review authority for JVIS-related Program Objectives Memorandum (POM) and budget submissions.

(iii) Oversee contract quality control and assurance responsibility for audiovisual (AV) productions obtained under the Federal AV contract management system.

(7) Develop and provide DoD information training requirements, policy, and guidance, and provide training and management oversight and assistance on behalf of the ASD(PA) for the Defense Information School (DINFOS) established under DoD Directive 5160.48.[5]

(8) Provide assistance to other joint-service visual information training programs.

(9) Perform other related internal information functions that the ASD(PA) may assign.

(e) The *Members of the American Forces Information Council* shall meet periodically to:

(1) Consider questions of policy and advise the ASD(PA) with respect to internal information programs.

(2) Exchange information among the membership.

§ 372.7 Relationships.

(a) In the performance of assigned functions, the Director, AFIS, shall:

(1) Coordinate actions with other DoD Components having collateral or related functions in the field of assigned responsibilities.

(2) Maintain appropriate liaison with DoD Components and other Governmental and non-Government Agencies for the exchange of information and advice on programs in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense and other Government Agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the Director, AFIS, on all matters related to the mission, responsibilities, and functions of AFIS.

§ 372.8 Authority.

The Director, AFIS, is authorized to:

(a) Obtain form DOD Components, consistent with the policies and criteria of DoD Directive 7750.5, information, advice, and assistance necessary to carry out AFIS programs and activities.

(b) Communicate directly with the Military Departments and other DoD Components on matters related to AFIS responsibilities, programs, and activities.

(c) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out the functions assigned under this part.

(d) Communicate with representatives of foreign governments and commercial broadcast agencies regarding broadcast frequencies and the rights to broadcast for AFRTS outlets and activities.

(e) Exercise the administrative authorities contained in the Appendix of this part.

§ 372.9 Administration.

(a) The Director, AFIS, shall be selected by the ASD(PA).

(b) The AFIS shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense considers necessary.

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 372.6(d)(4)(v).

[3] See footnote 1 to § 372.6(d)(4)(v).

[4] See footnote 1 to § 372.6(d)(4)(v).

[5] See footnote 1 to § 372.6(d)(4)(v).

(c) The Military Departments shall assign military personnel to AFIS in accordance with approved authorizations and estblished procedures for assignment to joint duty.

(d) Administrative support for AFIS shall be provided by DoD Components through interservice support agreements in accordance with DoD Directive 4000.19.[6]

Appendix A—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, AFIS, or, in the absence of the Director, the person acting for the Director, is hereby delegated authority, as required in the administration and operation of AFIS, to:

1. Perform the following functions in accordance with the provisions of 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979, as appropriate:

a. Designate any position in AFIS as a sensitive position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in AFIS for a limited period for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within AFIS.

2. Authorize and approve overtime work for AFIS civilian employees, in accordance with the provisions of 5 U.S.C. Chapter 55, Subchapter V, and applicable Office of Personnel Management regulations.

3. Develop, establish, and maintain an active and continuing Records Management program, pursuant to section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102) and DoD Directive 5015.2, "Records Management Program," September 17, 1980.

4. Authorize the publication of advertisements, notices, or proposals in public periodicals, as required for the effective administration of AFIS, consistent with 44 U.S.C. 3702.

5. Establish and maintain, for the functions assigned, an appropriate publication system for the promulgation of common supply and service regulations, instructions, reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980.

6. Approve Joint Service Achievement Medals (JSAMs) for personnel assigned under the direct organizational authority of the Director, AFIS, as delegated by ASD(PA) under the provisions of Chapter 3, subparagraph D.5.c.(2), DoD 1348.33–M, "Manual of Military Decorations and Awards," August 1985.

[6] See footnote 1 to § 372.6(d)(4)(v).

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 24, 1987.

[FR Doc. 87–22436 Filed 9–28–87; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 381

[DoD Directive 5105.31]

Defense Nuclear Agency (DNA)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part implements selected recommendations of the Defense Science Board Task Force on DNA management, delineates the relationship of DNA to the newly created position of the Under Secretary of Defense (Acquisition) and incorporates other guidance on DNA functions and responsibilities.

EFFECTIVE DATE: March 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Furtner, Office of the Assistant Secretary of Defense (Comptroller), the Pentagon, Washington, DC 20301 telephone (202) 695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 381

Organization and function.

Accordingly, Title 32 is amended to add Part 381 as follows:

PART 381—DEFENSE NUCLEAR AGENCY (DNA)

Sec.

381.1 Reissuance and purpose.
381.2 Mission.
381.3 Organization and management.
381.4 Responsibilities and functions.
381.5 Relationships.
381.6 Authority.
381.7 Administration.

Appendix A—Delegations of Authority.

Authority: 10 U.S.C. Chapter 8.

§ 381.1 Reissuance and purpose.

Under the authority vested in the Secretary of Defense by Title 10, United States Code, this part is issued to update the responsibilities, functions, relationships, and authority of the Defense Nuclear Agency (DNA).

§ 381.2 Mission.

(a) DNA shall provide support to the Office of the Secretary of Defense (OSD), the Joint Chiefs of Staff (JCS), the Military Departments, the Unified and Specified Commands, the Defense Agencies (hereafter referred to collectively as "DOD Components"), and other Federal Agencies on matters concerning nuclear weapons, nuclear weapons system acquisitions, nuclear weapons effects on weapons systems and forces, and such other aspects of the DOD nuclear program as may be directed by the Secretary of Defense.

(b) During wartime and international crises, in accordance with national priorities and as directed by the Chairman, Joint Chiefs of Staff (CJCS), DNS shall redirect its resources to support the JCS and the Commanders of the Unified and Specified Commands in analyzing nuclear weapons planning and action options.

§ 381.3 Organization and management.

DNA is established as a separate agency of the Department of Defense. It shall consist of a military Director, a civilian Deputy Director, and such subordinate organizational elements, as are established by the Director within resources authorized by the Secretary of Defense. The Director, DNA, reports to both the Under Secretary of Defense for Acquisition (USD(A)) and the Chairman, Joint Chiefs of Staff (CJCS), as defined in subsequent sections of this part.

§ 381.4 Responsibilities and functions.

(a) The *Director, DNA,* shall: (1) Organize, direct, and manage the DNA and all assigned resources.

(2) Maintain the national nuclear weapon stockpile data bases during peace, crisis, and war. Maintain overall surveillance and provide guidance, coordination, advice, or assistance for all nuclear weapons in DoD custody including production, composition, allocation, deployment, movement, storage, maintenance, quality assurance and reliability assessment, report procedures, and retirement.

(3) Manage the DoD nuclear weapons effects test programs.

(4) Conduct research, through exploratory development and/or proof of principle, in coordination with the Military Services, other appropriate DoD Components, and other Federal Agencies to develop technologies and techniques to improve the security and survivability of nuclear weapons systems.

(5) Provide advice and assistance on matters concerning nuclear weapons, nuclear weapons systems, effects of nuclear weapons, the technologies to determine the vulnerability and survivability of military systems and installations in accordance with DoD

Instruction 4245.4[1] and related arms control matters to DoD Components and Government Agencies.

(6) Jointly manage the national nuclear test readiness program with the Department of Energy (DoE) and perform associated technical, operational, and safety planning. Maintain access to facilities necessary to resume above-ground testing.

(7) Act as the cental coordinating agency within the Department of Defense on nuclear weapon stockpile data base management, nuclear effects testing, and nuclear effects research within approved policies and programs, and pertinent DoD–DoE agreements.

(8) Provide technical assistance and support to the Secretary of Defense, the Military Departments, and the JCS in developing nuclear weapon system safety, security and use-control standards, requirements, and operating procedures. Provide a member to joint DoD/DoE nuclear weapon system studies and reviews. Coordinate on proposed nuclear weapons safety rules and changes.

(9) Provide emergency response support to the DoD Components and other Federal Agencies as follows:

(i) Develop policies and procedures to respond to a nuclear weapon accident. Conduct nuclear weapon accident command post and field exercises. Maintain an Accident Advisory Team to assist the on-scene commander and support the DoD nuclear weapons accident/incident response team.

(ii) Monitor and participate in planning and exercises relating to improvised nuclear device (IND) countermeasures.

(iii) Maintain and operate a Joint Nuclear Accident Coordinating Center (JNACC) in conjunction with the DoE.

(10) Maintain and provide nuclear weapons stockpile information to the DoD Components and other Government Agencies, as required.

(11) Conduct, for the JCS, nuclear weapons technical inspections of units having responsibilities for assembling, maintaining, or storing nuclear weapon systems, their associated components, and ancillary equipment.

(12) Provide nuclear weapon quality assurance program oversight for the Department of Defense.

(13) Provide logistics management support for nuclear weapons under DoD control, including:

(i) Integrated material management functions for all specially designed and quality controlled nuclear ordnance items, and for Military Department-designed and quality controlled nuclear ordnance items, where such management is mutually agreed upon between DNA and the appropriate Military Department, or as directed by the USD(A).

(ii) Manage that portion of the Federal Cataloging Program pertaining to nuclear ordnance items, including the maintenance of the central data bank and the publication of Federal Supply Catalogs and Handbooks for all nuclear ordnance items.

(iii) Control the standardization of nuclear ordnance items in coordination with the appropriate Military Department.

(iv) Manage a technical logistics data and information program.

(v) As Inventory Control Manager of stockpile support items, manage the DoD–DoE logistics supply interface.

(vi) Manage the DoD–DoE loan account for nuclear materials.

(14) Represent the Department of Defense in its relations with the DoE on all policy matters relating to the administration and operation of the Joint Nuclear Weapons Publication System. These policy matters shall be coordinated and approved by the Military Departments. Coordinate with DoE on Nuclear Weapon Accident Directives.

(15) In support of the Secretary of Defense and DoD Components, perform technical analyses, studies, research, and development on:

(i) Alternate arms control restraints and measures to limit nuclear tests facing the United States and the Soviet Union;

(ii) Technical and employment options for new nuclear weapons, including the relationship of advanced conventional munitions to these options;

(iii) The effects of nuclear weapons on communications, command, and control systems improvements that may be needed to ensure reliable operation of forces;

(iv) The effect of technology on nuclear force structure, operations, and political-military constraints;

(v) Technologies that would enhance the security, survivability, and effectiveness of nuclear systems at both the strategic and theater levels; and evaluation of tactics, doctrine, force postures, operations, and training in order to better direct the DNA nuclear related programs.

(vi) Techniques for assessing and evaluating alternate nuclear operations and tactics.

(16) Conduct joint programs involving, as appropriate, the Defense Advanced Research Projects Agency (DARPA), the Military Departments, Allied Commands, and other Defense Agencies in matters regarding DNA/developed technologies. This includes test, evaluation, and demonstration of appropriate technologies.

(17) In coordination with the DoE and the Military Departments, disseminate technological information of joint interest relating to nuclear technology, development, and weapons through laboratory liaison, technical reports, and nuclear weapons technical publications. Assist in technology transfer and implementation of successful research programs into the Services and Allied Commands.

(18) Perform technical analyses, studies, and research on non-nuclear matters of critical importance to the Department of Defense where DNA has unique capabilities developed as part of its nuclear responsibilities.

(19) Through the Armed Forces Radiobiology Research Institute (AFRRI), conduct research in the field of radiobiology and related matters essential to the operational and medical support of the Department of Defense and DoD Components.

(20) Operate the Joint Atomic Information Exchange Group (JAIEG) in accordance with policy guidance furnished jointly by the Assistant to the Secretary of Defense for Atomic Energy for the Department of Defense and the Director for Military Applications for the DoE.

(21) Perform such other functions as may be assigned by the Secretary of Defense.

(b) The *Under Secretary of Defense for Acquisition* shall exercise staff supervision over the research and developmental activities, programing and budgeting, and such other activities not herein elsewhere assigned.

(c) The *Chairman, Joint Chiefs of Staff*, shall:

(1) Exercise staff supervision over the military operational aspects of DNA activities.

(2) Review and provide military advice on the adequacy of DNA efforts in nuclear weapons testing and nuclear weapons effects research that are related directly to systems employed in joint operations.

(d) The *Military Departments and other DoD Components* shall:

(1) Provide assistance within their respective fields of responsibility to the Director, DNA, in carrying out his or her assigned responsibilities and functions;

(2) Provide information, as necessary, to DNA on all programs that include, or are related to, nuclear weapons effect

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

research, nuclear weapons effects testing, or nuclear weapons accident response as well as the safety, security and survivability of nuclear weapon systems and forces.

(3) Keep the Director, DNA, informed as to the substance of major actions being coordinated with other DoD Components, the DoE and its laboratories, and other Government Agencies that relate to DNA functions; and

(4) Provide the Director, DNA, with requirements for nuclear weapons effects research and nuclear weapons effects testing, and information regarding long-term nuclear weapons development, and the security, safety and survivability of nuclear systems and forces.

§ 381.5 Relationships.

In performing assigned functions, the Director, DNA, shall:

(a) Report to the USD(A) for research and development activities, DNA programing and budgeting functions, and such other DNA functions as are otherwise herein assigned.

(b) Report to the CJCS for operational matters within JCS cognizance as well as requirements associated with the joint planning process.

(c) Coordinate actions, as appropriate, with other DoD Components and those Departments and Agencies of Government having related functions.

(d) Maintain liaison with other DoD Components and other Agencies of the Executive Branch for the exchange of information on programs and activities in the field of assigned responsibility.

(e) Use established facilities and services in the Department of Defense or other Government Agencies, whenever practicable, to achieve maximum efficiency and economy.

(f) Exploit data from nuclear tests performed by other countries to obtain information of utility in designing U.S. nuclear forces and assisting the Unified and Specified Commands in target planning.

(g) Ensure that DoD Components are kept fully informed of DNA activities.

§ 381.6 Authority.

The Director, DNA, is specifically delegated authority to:

(a) Have free and direct access to, and communication with, all elements of the Department of Defense and other Executive Departments and Agencies, as necessary, to carry out DNA functions and responsibilities.

(b) Obtain such reports, information, advice, and assistance from other DoD Components consistent with the policies and criteria of DoD Directive 7750.5 [2] as may be necessary for the peformance of assigned functions and reponsibilities.

(c) Communicate directly with appropriate personnel in the Military Departments and other DoD Components on matters related to DNA programs and activities.

(d) Establish facilities necessary to accomplish the DNA mission in the most efficient and economical manner.

(e) Exercise the administrative authorities contained in the Appendix of this part.

§ 381.7 Administration.

(a) The Director, DNA, shall be a commissioned officer of Lieutenant General or Vice Admiral rank appointed by the Secretary of Defense upon recommendation of the CJCS and USD(A). Normally, the position of Director will rotate among the Military Services.

(b) The Deputy Director, DNA, shall be a senior civilian employee of appropriate Senior Executive Service rank appointed by the Secretary of Defense upon the joint nomination of the CJCS and USD(A).

(c) DNA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The Military Departments shall assign military personnel to DNA in accordance with approved Joint Manpower Program authorizations. Changes to these authorizations shall be coordinated with the appropriate Military Services. Procedures for such assignments shall be as agreed upon between the Director, DMA, and the individual Military Departments.

Appendix A—Delegation of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DNA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DNA to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction, and general administration of DNA civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, DNA, shall follow the wage schedule established by the DoD Wage Fixing Authority.

3. Establish advisory committees and employ part-time advisors, as approved by the Secretary of Defense, for the performance of DNA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

4. Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DNA to perform this function.

5. Establish a DNA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DNA or its subordinate activities, in accordance with the provisions of 5 U.S.C. 4503 and applicable OPM regulations.

6. In accordance with the provisions of 5 U.S.C. 7532; Excutive Orders 10450, 12333, and 12356; and 32 CFR Part 156, "DoD Personnel Security Program," December 20, 1979; as appropriate:

a. Designate any position in DNA as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DNA for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check (NAC), has not been completed.

c. Authorize the suspension but not terminate the services of a DNA employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by DNA. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2–R, "DoD Personnel Security Program," December 1979.

7. Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under Section 3122 of the Internal Revenue Code of 1954, as amended, and Section 205(p)(1) and (2) of the Social Security Act as amended (42 U.S.C. 405(p)(1) and (2)) with respect to DNA employees.

8. Authorize and approve overtime work for DNA civilian officers and employees in accordance with the provisions of 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

9. Authorize and approve:

a. Travel for DNA civilian officers and employees in accordance with Volume II, Joint Travel Regulations.

b. Temporary duty travel for military personnel assigned or detailed to DNA in

[2] See footnote 1 to § 381.4(a)(5).

accordance with Volume I, Joint Travel Regulations.

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DNA activities, pursuant to the provisions of 5 U.S.C. 5703.

10. Approve the expenditure of funds available for travel by military personnel assigned or detailed to DNA for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

11. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of 44 U.S.C. 3102 and DoD Directive 5015.2,[3] "Records Management Program," September 17, 1980.

12. Establish and use imprest funds for making small purchases of material and services, other than personal, for DNA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71,[4] "Delegation of Authority and Regulations Relating to Cash held at Personal Risk Including Imprest Funds," March 5, 1973.

13. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DNA consistent with 44 U.S.C. 3702.

14. Establish and maintain appropriate property accounts for DNA, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DNA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

15. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DNA, pursuant to DoD Directives 5200.8,[5] "Security of Military Installations and Resources," July 29, 1980.

16. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and change thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1,[6] "Department of Defense Directives System," October 16, 1980.

17. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required for the effective performance of DNA functions and responsibilities.

18. Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration (GSA) with respect to the disposal of surplus personal property.

19. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of DNA. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

20. Lease property under the control of DNA under terms that will promote the national defense or that will be in the public interest, pursuant to the provisions of 10 U.S.C. 2667.

The Director, DNA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective immediately.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 24, 1987.

[FR Doc. 87-22435 Filed 9-28-87; 8:45 am]

BILLING CODE 3810-01-M

[3] See footnote 1 to § 381.4(a)(5)
[4] See footnote 1 to § 381.4(a)(5)
[5] See footnote 1 to § 381.4(a)(5)
[6] See footnote 1 to § 381.4(a)(5)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3251-2]

Standards of Performance for New Stationary Sources; Reference Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Method 16A revisions and Method 16B were proposed in the **Federal Register** on December 8, 1986 (51 FR 44075). This action promulgates "Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions from Stationary Sources," which are to be added to Appendix A of 40 CFR Part 60. The intended effect is to add an alternative procedure for certifying the recovery gas used in Method 16A and to add Method 16B as an alternative method to Method 16 for determining total reduced sulfur emissions from Kraft pulp mills.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

EFFECTIVE DATE: September 29, 1987.

ADDRESSES: *Docket.* Docket No. A-86-08, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 16A requires the concentration of the recovery check gas to be verified by Method 11 or by gas chromatography calibrated against permeation devices. The revision will allow an additional alternative for verifying cylinder gas concentrations and will thus increase the flexibility in choice of testing procedures. Method 16B will offer an alternative test method to Method 16. The principle of operation is similar to Method 16, yet the method is simpler to operate and less expensive.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

II. Public Participation

The opportunity to hold a public hearing on January 22, 1987, at 10:00 a.m., was presented in the proposal

notice, but no one desired to make an oral presentation. The public comment period was from December 8, 1986, to February 23, 1987.

III. Significant Comments and Changes to the Proposed Test Method

Two comment letters were received from the proposal of the revisions and test method. The comments and the Agency's responses are summarized here along with subsequent method changes.

In the Method 16A revisions, one commenter was concerned with the accuracy and precision of the new procedure's titration analysis. The procedure warns of difficulty in observing the titration endpoint and that the method is extremely sensitive to errors in titration. The commenter recommended that the procedure be validated by a multiple operator/interlaboratory study before it is promulgated.

Evaluating a method through multiple operator/interlaboratory studies is an excellent way to establish its accuracy and precision. However, other means of evaluation that are less expensive and less labor-intensive are also effective. The accuracy and precision of the new method have been demonstrated through analyzing multiple cylinder gases of know concentrations that were certified by National Bureau of Standards reference materials. In most cases, the method will be used to verify manufacturer tag concentrations, which will have been previously determined. With this limited application, the Agency does not think that the burden of a multiple operator/interlaboratory evaluation is necessary.

The difficulties associated with the method's titration are fully discussed in the method. The potential for error is minimized when the recommended precautions are observed.

Comments were received from the developer of the method requesting revisions to the proposed method to expand its analytical range. The EPA has accepted these changes, which were considered to be minor, because they expand the method's utility to include higher concentration gases that are used for instruments that require sample dilution before analysis. The sampling system has been modified to use a critical orifice in place of the dry gas meter for sample volume measurement. The sampling provisions of Section 7.1.4 (have been expanded to increase the range of selected sample volumes and to give instructions on preparing the critical orifice. Section 7.1.7 and 7.1.8.4 have been added to discuss the critical orifice calibrations, and Section 7.1.9.4 has been added as a revised sample volume calculation.

For Method 16B, the commenter felt the method was incomplete bacause it did not specify a gas chromatographic column type. The column type was thought to be critical in separating interferences which could coelute with sulfur dioxide, and that inappropriate columns could cause a negative bias in the measurement.

Several available columns are acceptable for this purpose, and the system performance check of Section 4.3 serves as a quality control check. Specifications have been included as an example of one of the acceptable column types.

IV. Administrative

The docket is an organzied and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis (RFA) in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking adds alternative test procedures associated with emission measurement requirements that would apply irrespective of this rulemaking.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Kraft pulp mills, Reporting and recordkeeping requirements, Incorporation by reference.

Date: September 18, 1987.

Lee M. Thomas,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By revising (d)(1) and (d)(3) of § 60.285 to read as follows:

§ 60.285 Test methods and procedures.

* * * * *

(d) * * *

(1) Method 16 or, at the discretion of the owner or operator, Method 16A or 16B for the concentration of TRS.

* * * * *

(3) When determining compliance with § 60.283(a)(4), use the results of Method 2, Method 16, 16A, or 16B, and the black liquor solids feed rate in the following equation to determine the TRS emission rate on an equivalent hydrogen sulfide (H_2S) basis.

$$E = (C_{TRS})(F)(Q_{sd})/BLS$$

where:

E = Mass of TRS emitted per unit of black liquor solids, g/kg (lb/ton).

C_{TRS} = Average combined concentration of TRS as determined by Method 16, 16A, or 16B during the test period, ppm.

F = 0.001417 g H_2S/m^3 ppm for metric units.
= 0.08844 lb H_2S/cf ppm for English units.

Q_{sd} = Dry volumetric stack gas flow rate corrected to standard conditions, dscm/hr (dscf/hr).

BLS = black liquor solids feed rate, kg/hr (ton/hr).

* * * * *

3. In Method 16A, of Appendix A, section 7 is redesignated as section 8 and revised and a new section 7 is added to read as follows:

Appendix A—Reference Methods

* * * * * * *

Method 16A—Determination of Total Reduced Sulfur Emissions From Stationary Sources (Impinger Technique)

* * * * * * *

7. Alternative Procedures

7.1 *Determination of H_2S Content in Cylinder Gases.* As an alternative to the procedures specified in section 3.1.4, the following procedure may be used to verify the concentration of the recovery check gas. The H_2S is collected from the calibration gas cylinder and is absorbed in zinc acetate solution to form zinc sulfide. The latter compound is then measured iodometrically. The method has been examined in the range of 5 to 1500 ppm. There are no known interferences to this method when used to analyze cylinder gases containing H_2S in nitrogen. Laboratory tests have shown a relative standard deviation of less than 3 percent. The method showed no bias when compared to a gas chromatographic method that used gravimetrically certified permeation tubes for calibration.

7.1.1 *Sampling Apparatus.* The sampling train is shown in Figure 16A–4 and consists of the following components:

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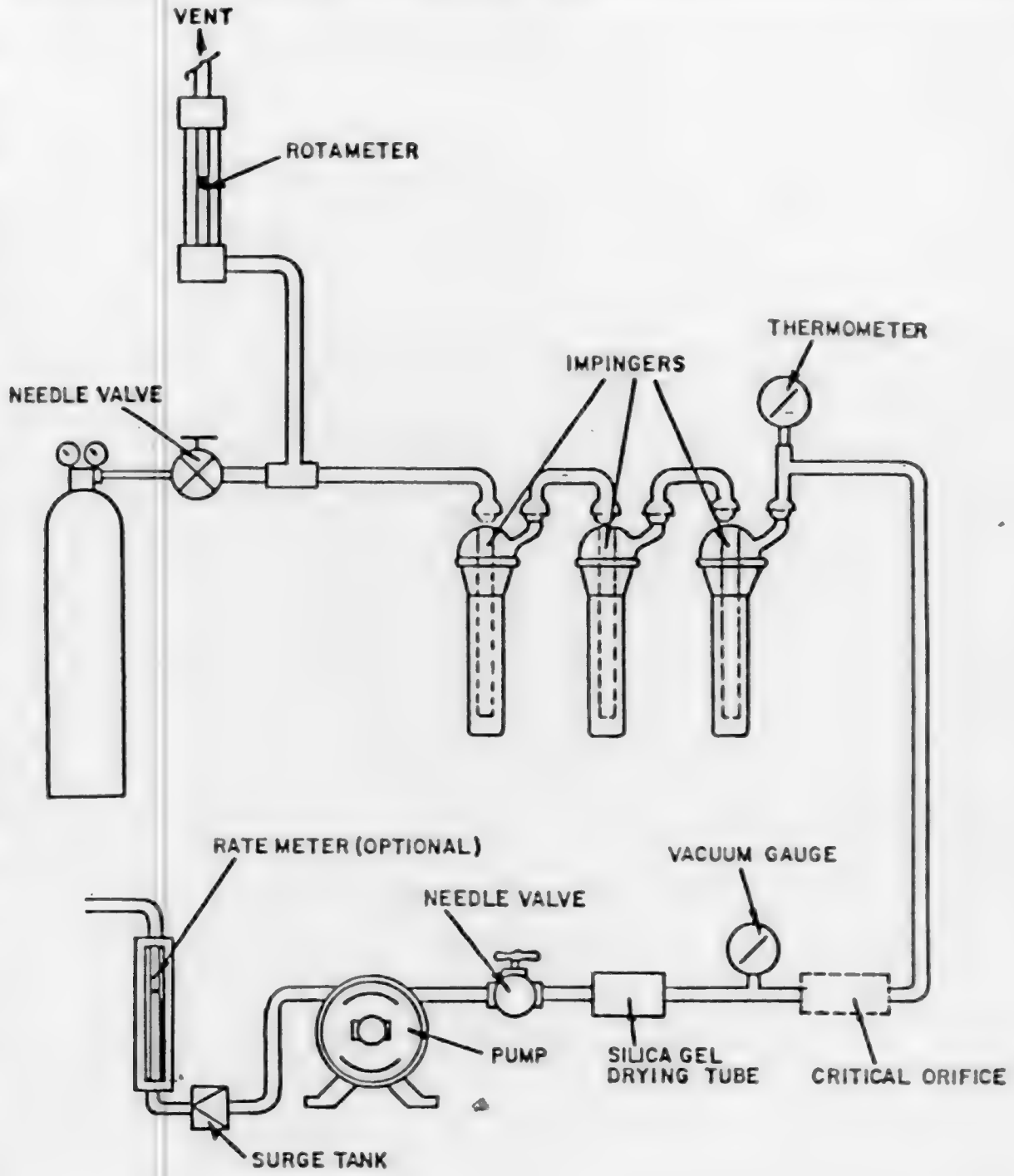

Figure 16A-4. Recovery check gas sampling train.

BILLING CODE 6560-50-C

7.1.1.1 *Sampling Line.* Teflon tubing (¼-in.) to connect the cylinder regulator to the sampling valve.

7.1.1.2 *Needle Valve.* Stainless steel or Teflon needle valve to control the flow rate of gases to the impingers.

7.1.1.3 *Impingers.* Three impingers of approximately 100-ml capacity, constructed to permit the addition of reagents through the gas inlet stem. The impingers shall be connected in series with leak-free glass or Teflon connectors. The impinger bottoms have a standard ²¹⁄₂₅ ground-glass fitting. The stems are from standard ¼-in. (0.64-cm) ball joint midget impingers, custom lengthened by about 1 in. When fitted together, the stem end should be approximately ½ in. (1.27-cm) from the bottom (Southern Scientific, Inc., Micanopy, Florida: Set Number S6962–048). The third in-line impinger acts as a drop-out bottle.

7.1.1.4 *Drying Tube,* Flowmeter, and Barometer. Same as in Method 11, Sections 5.1.5, 5.1.8, and 5.1.10.

7.1.1.5 *Cylinder Gas Regulator.* Stainless steel, to reduce the pressure of the gas stream entering the Teflon sampling line to a safe level.

7.1.1.6 *Soap Bubble Meter.* Calibrated for 100 and 500 ml, or two separate bubble meters.

7.1.1.7 *Critical Orifice.* For volume and rate measurements. The critical orifice may be fabricated according to Section 7.1.4.3 and must be calibrated as specified in Section 7.1.8.4.

7.1.1.8 *Graduated Cylinder.* 50-ml size.

7.1.1.9 *Volumetric Flask.* 1-liter size.

7.1.1.10 *Volumetric Pipette.* 15-ml size.

7.1.1.11 *Vacuum Gauge.* Minimum 20-in. Hg capacity.

7.1.1.12 *Stopwatch.*

7.1.2 *Sample Recovery and Analysis Apparatus.*

7.1.2.1 *Erlenmeyer Flasks.* 125- and 250-ml sizes.

7.1.2.2 *Pipettes.* 2-, 10-, 20-, and 100-ml volumetric.

7.1.2.3 *Burette.* 50-ml size.

7.1.2.4 *Volumetric Flask.* 1-liter size.

7.1.2.5 *Graduated Cylinder.* 50-ml size.

7.1.2.6 *Wash Bottle.*

7.1.2.7 *Stirring Plate and Bars.*

7.1.3 *Reagents.* Unless otherwise indicated, all reagents shall conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

7.1.3.1 *Water.* Same as in Method 11, Section 6.1.3.

7.1.3.2 *Zinc Acetate Absorbing Solution.* Dissolve 20 g zinc acetate in water and dilute to 1 liter.

7.1.3.3 *Potassium Bi-iodate [$KH(IO_3)_2$ Solution, Standard 0.100 N.* Dissolve 3.249 g anhydrous $KH(IO_3)_2$ in water, and dilute to 1 liter.

7.1.3.4 *Sodium Thiosulfate ($Na_2S_2O_3$) Solution, Standard 0.1 N.* Same as in Method 11, Section 6.3.1. Standardize according to Section 7.1.8.2.

7.1.3.5 *$Na_2S_2O_3$ Solution, Standard 0.01 N.* Pipette 100.0 ml of 0.1 N $Na_2S_2O_3$ solution into a 1-liter volumetric flask, and dilute to the mark with water.

7.1.3.6 *Iodine Solution, 0.1 N.* Same as in Method 11, Section 6.2.2.

7.1.3.7 *Standard Iodine Solution, 0.01 N.* Same as in Method 11, Section 6.2.3. Standardize according to Section 7.1.8.3.

7.1.3.8 *Hydrochloric Acid (HCl) Solution, 10 Percent by Weight.* Add 230 ml concentrated HCl (specific gravity 1.19) to 770 ml water.

7.1.3.9 *Starch Indicator Solution.* To 5 g starch (potato, arrowroot, or soluble), add a little cold water, and grind in a mortar to a thin paste. Pour into 1 liter of boiling water, stir, and let settle overnight. Use the clear supernatant. Preserve with 1.25 g salicylic acid, 4 g zinc chloride, or a combination of 4 g sodium propionate and 2 g sodium azide per liter of starch solution. Some commercial starch substitutes are satisfactory.

7.1.4 *Sampling Procedure.*

7.1.4.1 *Selection of Gas Sample Volumes.* This procedure has been validated for estimating the volume of cylinder gas sample needed when the H_2S concentration is in the range of 5 to 1500 ppm. The sample volume ranges were selected in order to ensure a 35 to 60 percent consumption of the 20 ml of 0.01 N iodine (thus ensuring a 0.01 N $Na_2S_2O_3$ titer of approximately 7 to 12 ml). The sample volumes for various H_2S concentrations can be estimated by dividing the approximate ppm-liters desired for a given concentration range by the H_2S concentration stated by the manufacturer.

Approximate cylinder gas H_2S concentration (ppm)	Approximate ppm-liters desired
5 to <30	[illegible]
30 to <500	800
500 to 1500	1000

For example, for analyzing a cylinder gas containing approximately 10 ppm H_2S, the optimum sample volume is 65 liters (650 ppm-liters/10 ppm). For analyzing a cylinder gas containing approximately 1000 ppm H_2S, the optimum sample volume is 1 liter (1000 ppm-liters/1000 ppm).

7.1.4.2 *Critical Orifice Flow Rate Selection.* The following table shows the ranges of sample flow rates that are desirable in order to ensure capture of H_2S in the impinger solution. Slight deviations from these ranges will not have an impact on measured concentrations.

Cylinder gas H_2S concentration (ppm)	Critical orifice flow rate (ml/min)
5 to <50 ppm	1500 ± 500
50 to <250 ppm	500 ± 250
250 to <1000 ppm	200 ± 50
>1000 ppm	75 ± 25

7.1.4.3 *Critical Orifice Fabrication.* Critical orifice of desired flow rates may be fabricated by selecting an orifice tube of desired length and connecting ⅛-in. x ¼-in. (0.16-cm x 0.64-cm) reducing fittings to both ends. The inside diameters and lengths of orifice tubes needed to obtain specific flow rates are shown below.

Tube (in. OD)	Tube (in. ID)	Length (in.)	Flow rate (ml/min)	Alltech catalog No.[1]
1/16	0.007	1.2	85	301430
1/16	0.01	3.2	215	300530
1/16	0.01	1.2	350	300530
1/16	0.02	1.2	1400	300230

[1] Alltech Associates, 2051 Waukegon Road., Deerfield, Illinois 60015.

7.1.4.4 *Determination of Critical Orifice Approximate Flow Rate.* Connect the critical orifice to the sampling system as shown in Figure 16A–4 but without the H_2S cylinder. Connect a rotameter in the line to the first impinger. Turn on the pump, and adjust the valve to give a reading of about half atmospheric pressure. Observe the rotameter reading. Slowly increase the vacuum until a stable flow rate is reached, and record this as the critical vacuum. The measured flow rate indicates the expected critical flow rate of the orifice. If this flow rate is in the range shown in Section 7.1.4.2, proceed with the critical orifice calibration according to Section 7.1.8.4.

7.1.4.5 *Determination of Approximate Sampling Time.* Determine the approximate sampling time for a cylinder of known concentration. Use the optimum sample volume obtained in Section 7.1.4.1.

$$\text{Approximate sampling time (min)} = \frac{\text{Optimum volume} \times 1000}{\text{Critical orifice flow rate (ml/min)}}$$

7.1.4.6 *Sample Collection.* Connect the Teflon tubing, Teflon tee, and rotameter to the flow control needle valve as shown in Figure 16A–4. Vent the rotameter to an exhaust hood. Plug the open end of the tee. Five to 10 minutes prior to sampling, open the cylinder valve while keeping the flow control needle valve closed. Adjust the delivery pressure to 20 psi. Open the needle valve slowly until the rotameter shows a flow rate approximately 50 to 100 ml above the flow rate of the critical orifice being used in the system.

Place 50 ml of zinc acetate solution in two of the impingers, connect them and the empty third impinger (dropout bottle) and the rest of the equipment as shown in Figure 16A–4. Make sure the ground-glass fittings are tight. The impingers can be easily stabilized by using a small cardboard box in which three holes have been cut, to act as a holder. Connect the Teflon sample line to the first impinger. Cover the impingers with a dark cloth or piece of plastic to protect the absorbing solution from light during sampling.

Record the temperature and barometric pressure. Note the gas flow rate through the rotameter. Open the closed end of the tee. Connect the sampling tube to the tee, ensuring a tight connection. Start the sampling pump and stopwatch simultaneously. Note the decrease in flow rate through the excess flow rotameter. This decrease should equal the know flow rate of the critical orifice being used. Continue sampling for the period determined in Section 7.1.4.5.

When sampling is complete, turn off the pump and stopwatch. Disconnect the sampling line from the tee and plug it. Close the needle valve followed by the cylinder valve. Record the sampling time.

7.1.5 *Blank Analysis.* While the sample is being collected, run a blank as follows: To a 250-ml Erlenmeyer flask, add 100 ml of zinc acetate solution, 20.0 ml 0.01 N iodine solution, and 2 ml HCL solution. Titrate, while stirring, with 0.01 N $Na_2S_2O_3$ until the solution is light yellow. Add starch, and continue titrating until the blue color disappears. Analyze a blank with each sample, as the blank titer has been observed to change over the course of a day.

Note.—Iodine titration of zinc acetate solutions is difficult to perform because the solution turns slightly white in color near the end point, and the disappearance of the blue color is hard to recognize. In addition, a blue color may reappear in the solution about 30 to 45 seconds after the titration endpoint is reached. This should not be taken to mean the original endpoint was in error. It is recommended that persons conducting this test perform several titrations to be able to correctly identify the endpoint. The importance of this should be recognized because the results of this analytical procedure are extremely sensitive to errors in titration.

7.1.6 *Sample Analysis.* Sample treatment is similar to the blank treatment. Before detaching the stems from the bottoms of the impingers, add 20.0 ml of 0.01 N iodine solution *through the stems* of the impingers holding the zinc acetate solution, dividing it between the two (add about 15 ml to the first impinger and the rest to the second). Add 2 ml HCl solution through the stems, dividing it as with the iodine. Disconnect the sampling line, and store the impingers for 30 minutes. At the end of 30 minutes, rinse the impinger stems into the impinger bottoms. Titrate the impinger contents with 0.01 N $Na_2S_2O_3$. Do not transfer the contents of the impinger to a flask because this may result in a loss of iodine and cause a positive bias.

7.1.7 *Post-test Orifice Calibration.* Conduct a post-test critical orifice calibration run using the calibration procedures outlined in Section 7.1.8.4. If the Q_{std} obtained before and after the test differs by more than 5 percent, void the sample; if not, proceed to perform the calculations.

7.1.8 *Calibrations and Standardizations.*

7.1.8.1 *Rotameter and Barometer.* Same as in Method 11, Sections 8.2.3 and 8.2.4.

7.1.8.2 *$Na_2S_2O_3$ Solution, 0.1 N.* Standardize the 0.1 N $Na_2S_2O_3$ solution as follows: To 80 ml water, stirring constantly, add 1 ml concentrated H_2SO_4, 10.0 ml 0.100 N $KH(IO_3)_2$ and 1 g potassium iodide. Titrate immediately with 0.1 N $Na_2S_2O_3$ until the solution is light yellow. Add 3 ml starch solution, and titrate until the blue color just disappears. Repeat the titration until replicate analyses agree within 0.05 ml. Take the average volume of $Na_2S_2O_3$ consumed to calculate the normality to three decimal figures using Equation 16A–5.

7.1.8.3 *Iodine Solution, 0.01 N.* Standardize the 0.01 N iodine solution as follows: Pipet 20.0 ml of 0.01 N iodine solution into a 125-ml Erlenmeyer flask. Titrate with standard 0.01 N $Na_2S_2O_3$ solution until the solution is light yellow. Add 3 ml starch solution, and continue titrating until the blue color just disappears.

If the normality of the iodine tested is not 0.010, add a few ml of 0.1 N iodine solution if it is low, or a few ml of water if it is high, and standardize again. Repeat the titration until replicate values agree within 0.05 ml. Take the average volume to calculate the normality to three decimal figures using Equation 16A–6.

7.1.8.4 *Critical Orifice.* Calibrate the critical orifice using the sampling train shown in Figure 16A–4 but without the H_2S cylinder and vent rotameter. Connect the soap bubble meter to the Teflon line that is connected to the first impinger. Turn on the pump, and adjust the needle valve until the vaccum is higher than the critical vacuum determined in Section 7.1.4.4. Record the time required for gas flow to equal the soap bubble meter volume (use the 100-ml soap bubble meter for gas flow rates below 100 ml/min, otherwise use the 500-ml soap bubble meter). Make three runs, and record the data listed in Table 1. Use these data to calculate the volumetric flow rate of the orifice.

7.1.9 *Calculations.*

7.1.9.1 *Nomenclature.*

B_{wa} = Fraction of water vapor in ambient air during orifice calibration.

C_{H_2S} = H_2S concentration in cylinder gas ppm.

K = Conversion factor = 12025 ml/eq

$$= \frac{17.03\ g}{g\text{-}eq} \frac{24.05\ liters\ H_2S}{mole\ H_2S} \frac{1\ mole\ H_2S}{34.06\ g\ H_2S} \frac{10^3\ ml}{liter}$$

M_a = Molecular weight of ambient air saturated at impinger temperature, g/g-mole.
M_b = Molecular weight of sample gas (nitrogen) saturated at impinger temperature, g/g-mole. (For tests carried out in a laboratory where the impinger temperature is 25 °C, M_a = 28.5 g/g-mole and M_b = 27.7 g/g-mole.)
N_1 = Normality of standard iodine solution (0.01 N), g-eq/liter.
N_T = Normality of standard $Na_2S_2O_3$ solution (0.01 N), g-eq/liter.
P_{bar} = Barometric pressure, mm Hg.
P_{std} = Standard absolute pressure, 760 mm Hg.
Q_{std} = Volumetric flow rate through critical orifice, liters/min.

Date _____
Critical orifice ID _____
Soap bubble meter volume, V_{sb} _____ liters
Time, θ_{sb}
Run no. 1 _____ min _____ sec
Run no. 2 _____ min _____ sec
Run no. 3 _____ min _____ sec
Average _____ min _____ sec
Convert the seconds to fraction of minute:
Time
= _____ min + _____ Sec/60
= _____ min
Barometric pressure, P_{bar} = _____ mm Hg
Ambient temperature, t_{amb} = 273 + _____ °C
= _____ °K
Pump vacuum, = _____ mm Hg. (This should be approximately 0.4 times barometric pressure.)

$$V_{sb(std)} = \frac{(V_{sb})\ (T_{std})\ (P_{bar})\ (10^{-3})}{(T_{amb})\ (P_{std})}$$

$$= _____ \text{ liters}$$

$$Q_{std} = \frac{V_{sb(std)}}{\theta_{sb}}$$

$$= _____ \text{ liters/min}$$

Table 1. Critical orifice calibration data.

Q_{std}, average = Average standard flow rate through critical orifice, liters/min.
Q_{std}, before = Average standard flow rate through critical orifice determined before H_2S sampling (Section 7.1.4.4), liters/min.
Q_{std}, after = Average standard flow rate through critical orifice determined after H_2S sampling (Section 7.1.7), liters/min.
T_{amb} = Absolute ambient temperature, °K.
T_{std} = Standard absolute temperature, 293 °K.
θ_s = Sampling time, min.
θ_{sb} = Time for soap bubble meter flow rate measurement, min.
$V_{m(std)}$ = Sample gas volume measured by the critical orifice, corrected to standard conditions, liters.
V_{sb} = Volume of gas as measured by the soap bubble meter, ml.
$V_{sb(std)}$ = Volume of gas as measured by the soap bubble meter, corrected to standard conditions, liters.
V_1 = Volume of standard iodine solution (0.01 N) used, ml.
V_T = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used, ml.
V_{TB} = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used for the blank, ml.

7.1.9.2 Normality of Standard $Na_2S_2O_3$ Solution (0.1. N).

$$N_T = \frac{1}{\text{ml } Na_2S_2O_3 \text{ Consumed}} \qquad \text{Eq. 16A-5}$$

7.1.9.3 Normality of Standard Iodine Solution (0.01 N).

$$N_1 = \frac{N_T V_T}{V_1} \qquad \text{Eq. 16A-6}$$

7.1.9.4 Sample Gas Volume.

$$V_{m(std)} = (Q_{std})\ (\theta_s)\ (1-B_{ws})\ \frac{M_a}{M_b} \qquad \text{Eq. 16A-7}$$

7.1.9.5 Concentration of H_2S in the Gas Cylinder.

$$C_{H2S} = \frac{K\ N_T\ (V_{TB}-V_T)}{V_{m(std)}} \qquad \text{Eq. 16A-8}$$

8. Bibliography

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Wastewater. Washington, D.C. American Public Health Association. 1975. p. 316–317.

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5. Curtis, F., and G.D. McAlister. Development and Evaluation of an Oxidation/Method 6 TRS Emission Sampling Procedure. Emission Measurement Branch, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. February 1980.

6. Gellman, I. A Laboratory and Field Study of Reduced Sulfur Sampling and Monitoring Systems. National Council of the Paper Industry for Air and Stream Improvement, Inc., New York, New York. Atmospheric Quality Improvement Technical Bulletin No. 81. October 1975.

7. Margeson, J.H., J.E. Knoll, and M.R. Midgett. A Manual Method for TRS Determination. Draft Available from the authors. Source Branch, Quality Assurance Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

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9. National Council of the Paper Industry for Air and Stream Improvement. Wet Chemical Method for Determining the H_2S Concentration of Calibration Cylinder Gases. Technical Bulletin Number 450. New York, New York. January 1985. 23 p.

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* * * * *

4. By adding Method 16B to Appendix A to read as follows:

Appendix A—Reference Methods

* * * * *

Method 16B—Determination of Total Reduced Sulfur Emissions From Stationary Sources

1. Applicability, Principle, Range and Sensitivity, Interferences, and Precision and Accuracy

1.1 *Applicability.* This method is applicable to the determination of total reduced sulfur (TRS) emissions from recovery furnaces, lime kilns, and smelt dissolving tanks at kraft pulp mills, and from other sources when specified in an applicable subpart of the regulations. The TRS compounds include hydrogen sulfide (H_2S), methyl mercaptan, dimethyl sulfide, and dimethyl disulfide.

The flue gas must contain at least 1 percent oxygen for complete oxidation of all TRS to sulfur dioxide (SO_2).

1.2 *Principle.* An integrated gas sample is extracted from the stack. The SO_2 is removed selectively from the sample using a citrate buffer solution. The TRS compounds are then thermally oxidized to SO_2 and analyzed as SO_2 by gas chromatography (GC) using flame photometric detection (FPD).

1.3 *Range Sensitivity.* Coupled with a GC utilizing a 1-ml sample size, the maximum limit of the FRD for SO_2 is approximately 10 ppm. This limit is expanded by dilution of the sample gas before analysis or by reducing the sample aliquot size. For sources with emission levels between 10 and 100 ppm, the measuring range can be best extended by reducing the sample size.

1.4 *Interferences.* The TRS compounds other than those regulated by the emission standards, if present, may be measured by this method. Therefore, carbonyl sulfide, which is partially oxidized to SO_2 and may be present in a lime kiln exit stack, would be a positive interferent.

Particulate matter from the lime kiln stack gas (primarily calcium carbonate) can cause a negative bias if it is allowed to enter the citrate scrubber; the particulate matter will cause the pH to rise and H_2S to be absorbed before oxidation. Proper use of the particulate filter, described in Section 2.1.3 of Method 16A, will eliminate this interference.

Carbon monoxide (CO) and carbon dioxide (CO_2) have substantial desensitizing effects on the FPD even after dilution. Acceptable systems must demonstrate that they have eliminated this interference by some procedure such as eluting these compounds before the SO_2. Compliance with this requirement can be demonstrated by submitting chromatograms of calibration gases with and without CO_2 in diluent gas. The CO_2 level should be approximately 10 percent for the case with CO_2 present. The two chromatograms should show agreement within the precision limits of Section 1.5.

1.5 *Precision and Accuracy.* The GC/FPD and dilution calibration precision and drift, and the system calibration accuracy are the same as in Method 16, Sections 4.1 to 4.3.

Field tests between this method and Method 16A showed an average difference of less than 4.0 percent. This difference was not determined to be significant.

2. Apparatus

2.1 *Sampling.* A sampling train is shown in Figure 16B–1. Modifications to the apparatus are accepted provided the system performance check is met.

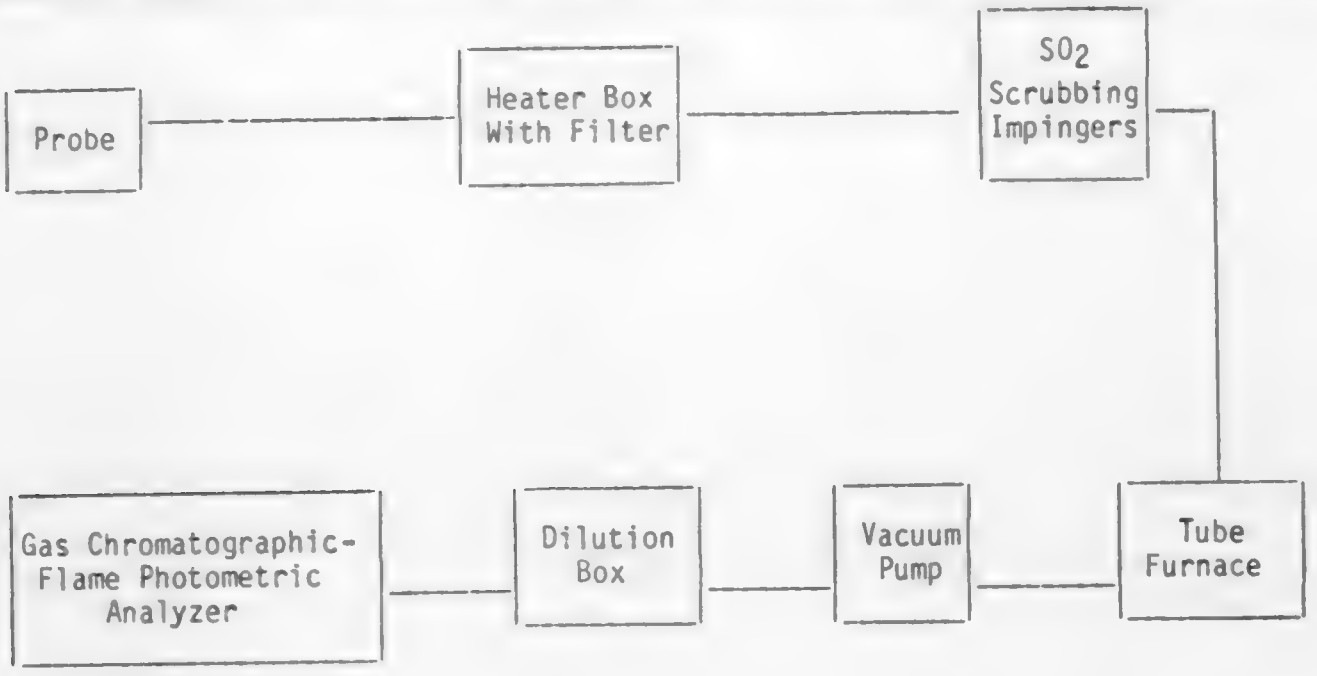

Figure 16B-1. Sampling train.

2.1.1 *Probe, Probe Brush, Particulate Filter, SO_2 Scrubber, Combustion Tube, and Furnace.* Same as in Method 16A, Sections 2.1.1 to 2.1.6.

2.1.2 *Sampling Pump.* Leakless Teflon-coated diaphragm type or equivalent.

2.2 *Analysis.*

2.2.1 *Dilution System (optional), Gas Chromatograph, Oven, Temperature Gauges, Flow System, Flame Photometric Detector, Electrometer, Power Supply, Recorder, Calibration System, Tube Chamber, Flow System, and Constant Temperature Bath.* Same as in Method 16, Sections 5.2, 5.4, and 5.5.

2.2.2 *Gas Chromatograph Columns.* Same as in Method 16, Section 12.1.4.1.1. Other columns with demonstrated ability to resolve SO_2 and be free from known interferences are acceptable alternatives.

3. Reagents

Same as in Method 16, Section 6, except the following:

3.1 *Calibration Gas.* SO_2 permeation tube gravimetrically calibrated and certified at some convenient operating temperature. These tubes consist of hermetically sealed FEP Teflon tubing in which a liquefied gaseous substance is enclosed. The enclosed gas permeates through the tubing wall at a constant rate. When the temperature is constant, calibration gases covering a wide range of known concentrations can be generated by varying and accurately measuring the flow rate of diluent gas passing over the tubes. In place of SO_2 permeation tubes, National Bureau of Standards traceable cylinder gases containing SO_2 in nitrogen may be used for calibration. The calibration gas is used to calibrate the GC/FPD system and the dilution system.

3.2 *Recovery Check Gas.* Hydrogen sulfide (100 ppm or less) in nitrogen, stored in aluminum cylinders. Verify the concentration by Method 11, the procedure discussed in Section 7.1 of Method 16A, or gas chromatography where the instrument is calibrated with an H_2S permeation tube as described below. For the wet-chemical methods, the standard deviation should not exceed 5 percent on at least three 20-minute runs.

Hydrogen sulfide recovery gas generated from a permeation device gravimetically calibrated and certified at some convenient operation temperature may be used. The permeation rate of the device must be such that at a dilution gas flow rate of 3 liters/min, an H_2S concentration in the range of the stack gas or within 20 percent of the standard can be generated.

3.3 *Combustion Gas.* Gas containing less than 50 ppb reduced sulfur compounds and less than 10 ppm total hydrocarbons. The gas may be generated from a clean-air system that purifies ambient air and consists of the following components: diaphragm pump, silica gel drying tube, activated charcoal tube, and flow rate measuring device. Gas from a compressed air cylinder is also acceptable.

4. Pretest Procedures

Same as in Method 16, Section 7.

5. Calibration

Same as in Method 16, Section 8, except SO_2 is used instead of H_2S.

6. Sampling and Analysis Procedure

6.1 *Sampling.* Before any source sampling is done, conduct a system performance check as detailed in Section 7.1 to validate the sampling train components and procedures. Although this test is optional, it would significantly reduce the possibility of rejecting tests as a result of failing the post-test performance check. At the completion of the pretest system performance check, insert the sampling probe into the test port making certain that no dilution air enters the stack through the port. Condition the entire

system with sample for a minimum of 15 minutes before beginning analysis. If the sample is diluted, determine the precise dilution factor as in Section 8.5 of Method 16.

6.2 *Analysis.* Pass aliquots of diluted sample through the SO_2 scrubber and oxidation furnace, and then inject into the GC/FPD analyzer for analysis. The rest of the analysis is the same as in Method 16, Sections 9.2.1 and 9.2.2.

7. Post-Test Procedures

7.1 *System Performance Check.* Same as in Method 16A, Section 4.3. Sufficient numbers of sample injections should be made so that the precision requirements of Section 4.1 of Method 16 are satisfied.

7.2 *Recalibration.* Same as in Method 16, Section 10.2.

7.3 *Determination of Calibration Drift.* Same as in Method 16, Section 10.3.

8. Calculations

8.1 *Nomenclature.*

C_{SO2} = Sulfur dioxide concentration, ppm.
C_{TRS} = Total reduced sulfur concentration as determined by Equation 16B-1, ppm.
d = Dilution factor, dimensionless.
N = Number of samples.

8.2 SO_2 *Concentration.* Determine the concentration of SO_2 (C_{SO2}) directly from the calibration curves. Alternatively, the concentration may be calculated using the equation for the least-squares line.

8.3 *TRS Concentration.*

$$C_{TRS} = (C_{SO2})\,(d) \quad \text{Eq. 16B-1}$$

8.4 *Average TRS Concentration.*

$$\text{Avg. } C_{TRS} = \frac{\sum_{i=1}^{n} C_{TRS}}{N} \quad \text{Eq. 16B-2}$$

9. Example System

Same as in Method 16, Section 12. Single column systems using the column in Section 12.1.4.1.1 of Method 16 or a 7-ft Carbosorb B HT 100 column have been found satisfactory in resolving SO_2 from CO_2.

10. Bibliography

1. Same as in Method 16, Sections 13.1 to 13.6.

2. National Council of the Paper Industry for Air and Stream Improvement, Inc. A Study of TRS Measurement Methods. Technical Bulletin No. 434. New York, New York. May 1984. 12 p.

3. Margeson, J.H., J.E. Knoll, and M.R. Midgett. A Manual Method for TRS Determination. Draft available from the authors. Source Branch, Quality Assurance Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

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[FR Doc. 87-22291 Filed 9-28-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[FRL-3269-2]

Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants; Delegation of Additional Standards to Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On March 23, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet requested that EPA delegate to the Commonwealth of Kentucky the authority to implement and enforce two additional categories of Standards of Performance for New Stationary Sources (NSPS) and two additional categories of National Emission Standards for Hazardous Air Pollutants (NESHAP). These categories are listed below under "**SUPPLEMENTARY INFORMATION.**" Since EPA's review of pertinent Kentucky laws, rules, and regulations has shown them to be adequate to implement and enforce these federal standards, the Agency has delegated authority for them to Kentucky. Affected sources are now under the jurisdiction of the Commonwealth.

EFFECTIVE DATE: May 22, 1987.

ADDRESSES: Copies of the Commonwealth's request and EPA's letter of delegation are available for public inspection at the EPA Region IV office, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (listed below) should be submitted to the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Pamela Adams of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Sections 111 and 112 of the Clean Air Act authorize EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) to any state which has adequate implementation and enforcement procedures.

On April 12, 1977, EPA delegated to the Commonwealth of Kentucky the authority for implementation of the NSPS and NESHAP that had been promulgated by EPA as of March 18, 1977. Since that date, EPA has updated the State's delegation several times. On March 23, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet requested a delegation for the following recently revised or promulgated NSPS and NESHAP:

40 CFR Part 60, Subpart G: New Nitric Acid Plants
40 CFR Part 60, Subpart I: New Hot Mix Asphalt Facilities
40 CFR Part 61, Subpart O: Inorganic Arsenic Emissions from Primary Copper Smelters
40 CFR Part 61, Subpart P: Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.

After a thorough review of the request, I determined that such delegation was appropriate with the conditions set forth in the original delegation letter of April 12, 1977. Therefore, the Commonwealth's request was granted in a letter dated May 22, 1987. Kentucky sources subject to the NSPS and NESHAP listed above are now under the jurisdiction of the Commonwealth of Kentucky.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Date: September 15, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

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BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[FRL-3269-4]

Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants; Delegation of Additional Standards to Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On December 29, 1986, the Kentucky Natural Resources and Environmental Protection Cabinet requested that EPA delegate to the Commonwealth of Kentucky the authority to implement and enforce six additional categories of Standards of Performance for New Stationary Sources (NSPS) and three additional categories of National Emission Standards for Hazardous Air Pollutants (NESHAP). These categories are listed below under "**SUPPLEMENTARY INFORMATION.**" A thorough review of pertinent Kentucky laws, rules, and regulations has shown them to be adequate to implement and enforce these federal standards. Therefore, the Agency has delegated authority for them to Kentucky, and affected sources are now under the jurisdiction of the Commonwealth of Kentucky.

EFFECTIVE DATE: March 23, 1987.

ADDRESSES: Copies of the Commonwealth's request and EPA's letter of delegation are available for public inspection at the EPA Region IV office, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the Kentucky Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Pamela Adams of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Sections 111 and 112 of the Clean Air Act authorize EPA to delegate authority to implement and enforce the Standards of Performance of New Stationary Sources (NSPS) and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) to any state which has adequate implementation and enforcement procedures.

On April 12, 1977, EPA delegated to the Commonwealth of Kentucky the authority for implementation of NSPS and NESHAP that had been promulgated by EPA as of March 18, 1977. Since that date, EPA has updated the Commonwealth's delegation several times. On December 29, 1986, the Kentucky Natural Resources and Environmental Protection Cabinet requested a delegation for the following recently revised or promulgated NSPS and NESHAP:

40 CFR Part 60, Subpart N: Iron and Steel Plants (Basic Oxygen Process Furnaces)
40 CFR Part 60, Subpart Na: Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which construction is Commenced after January 20, 1983
40 CFR Part 60, Subpart AA: Steel Plants: Electric Arc Furnaces Constructed after 10/21/74, and on or before 8/17/83
40 CFR Part 60, Subpart AAa: Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after 8/17/83
40 CFR Part 60, Subpart KKK: Equipment Leaks of VOC from Onshore Natural Gas Processing Plants
40 CFR Part 60, Subpart LLL: Onshore Natural Gas Processing: SO_2 Emissions
40 CFR Part 61, Subpart E: Mercury
40 CFR Part 61, Subpart M: Asbestos (Including Work Practices)
40 CFR Part 61, Subpart N: Inorganic Arsenic Emissions from Glass Manufacturing Plants

After a thorough review of the request, EPA determined that such delegation was appropriate with the conditions set forth in the original delegation letter of April 12, 1977. The Commonwealth's request was granted in a letter dated March 23, 1987. Kentucky sources subject to the NSPS and NESHAP listed above are now under the jurisdiction of the Commonwealth of Kentucky.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Date: September 15, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87-22380 Filed 9-28-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[FRL-3269-5]

Standards of Performance for New Stationary Sources; National Emisssions Standards for Hazardous Air Pollutants; Supplemental Delegation of Authority to South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The State of South Carolina requested delegation of authority for the implementation and enforcement of additional categories of National Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA's review of South Carolina's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these federal standards, and the Agency made the delegation as requested.

EFFECTIVE DATE: These delegations of authority to South Carolina were effective July 23, 1987.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street NE., Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards should not be submitted to the EPA Region IV Office, but should instead be submitted to the following address: Mr. Otto E. Pearson, Chief Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the EPA Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/347-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Section 310, in conjunction with sections 110, 111(c)(1) and 112(d)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60 (NSPS) and 40 CFR Part 61 (NEAHAP).

On October 26, 1976, EPA initially delegated the authority for implementation and enforcement of the NESHAP and NSPS programs to the State of South Carolina. On June 29, 1987, South Carolina requested a delegation of authority for implementation and enforcement of the

following recently promulgated or revised NSPE categories found in 40 CFR Part 60:

1. Industrial Boilers, Subpart D_b as promulgated November 26, 1986.
2. Petroleum Refineries, Subpart J, as revised June 1, 1987.
3. Lime Manufacturing Plants, Subpart HH, as revised February 17, 1987.
4. VOL Storage Vessels, Subpart K_b, as promulgated April 8, 1987.

The State also requested authority for the following NESHAP categories set forth in 40 CFR Part 61:

1. Vinyl Chloride, Subpart F, as revised September 30, 1986.
2. Equipment Leaks (Fugitive Emission Souces), Subpart V, as revised January 21, 1986.

Action

Since review of the pertinent South Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS and NESHAP, I delegated to the State of South Carolina my authority for the source categories listed above on July 23, 1987.

The Office of Management and Budget has exempted this delegation from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: September 21, 1987.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 87-22381 Filed 9-28-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL-3269-1]

Designations of Areas for Air Quality Planning Process Attainment Status Designations; Wisconsin; Correction

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Direct final rulemaking; notice of correction.

SUMMARY: This notice corrects a codification error published in a direct final rulemaking on the designation of areas for air quality planning purposes for Wisconsin.

The rulemaking being corrected was in a December 15, 1981, (46 FR 61126) notice, which redesignated a subcity portion of Milwaukee County for the pollutant Carbon Monoxide (CO).

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

Correction: In particular, on page 61127 of the December 15, 1981 **Federal Register**, in the third column, in the PART 81-Designation of Areas for Air Quality Planning Purposes [*sic*], the section number for "Milwaukee County" in the table "Wisconsin-CO" was incorrectly published as appearing at § 81.351. Instead, this section number should have been numbered as § 81.350. USEPA regrets any inconvenience this error has caused.

Correction of this codification error in no way affects the designation of Milwaukee, which remains as published in the table on page 61127.

Dated: September 15, 1987.

Valdas V. Adamkus,

Regional Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Wisconsin

Section 81.350 of Part 81 of Chapter 1, Title 40, Code of Federal Regulations is amended. In the table of "Wisconsin-CO," the entry for Milwaukee County should be revised to read as follows:

§ 81.350 Wisconsin.

WISCONSIN-CO

	Does not meet primary standards	Cannot be classified or better than national standards
Wisconsin Counties: * * * *		
Milwaukee:		
North 75th Street and West Beckett Street on the east, West Perkins Avenue on the South, North 77th Street on the west and West Hope Avenue and Manon Street on the north.	x	
The north boundary is West Wisconsin Avenue from 16th Street to 6th Street, the east boundary is 6th Street from Wisconsin Avenue to the Menomonee River, the south boundary is the Menomonee River, and the west boundary is 16th Street from the Menomonee River to West Wisconsin Avenue		x
The remainder of Milwaukee County		x

* * * * *

[FR Doc. 87-22385 Filed 9-28-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 230, and 253

Department of Defense Federal Acquisition Regulation Supplement; Defense Acquisition Circular (DAC) 86-5

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule with respect to DoD Profit Policy, published in the **Federal Register** on Monday, August 3, 1987 (52 FR 28705), and corrected in the **Federal Register** on Monday, August 17, 1987 (52 FR 30687). This document also designates final rules published at 52 FR 28705, August 3, 1987, and at 52 FR 30687, August 17, 1987, as Defense Acquisition Circular (DAC) 86-5.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, the DoD FAR supplement is amended as set forth below:

PART 204—ADMINISTRATIVE MATTERS

1. The final rule published on August 3, 1987 (52 FR 28705) is designated as Defense Acquisition Regulatory Circular (DAC) 86-5 without change.

PART 215—CONTRACTING BY NEGOTIATION

2. The final rules published on August 3, 1987 (52 FR 28705) and on August 17, 1987 (52 FR 30687) are designated as Defense Acquisition Regulatory Circular (DAC) 86-5 with the following changes:

215.902 [Corrected]

3. Section 215.902 is amended by substituting in the third sentence of paragraph (a)(1)(i) the reference "FAR 15.805-3" in lieu of the reference "215.805-3"; by substituting in the fourth sentence of paragraph (a)(1)(i) the reference "FAR 15.804-3(b)" in lieu of the reference "215.804-3(b)"; and by adding in paragraph (S-72) between the word "or" and the word "similar" the word "a".

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215.970–1 [Corrected]

4. Section 215.970–1 is amended by removing in the second line of the table following paragraph (b)(2)(i) under the heading "Contract type" the hyphen and the word "fee"; by removing in the second line of the table following paragraph (b)(2)(ii) under the heading "Contract type" the hyphen and the word "fee"; by adding in the table following paragraph (b)(2)(ii) a footnote "1" and the words "(percent)" after the heading "Normal value"; by removing from paragraph (b)(2)(iv) the hyphen and the word "fee"; by substituting in paragraph (b)(4)(ii) the reference "FAR 32.501–1" in lieu of the reference "232.501–1"; and by substituting in the second sentence of paragraph (c)(3)(i) the word "product" in lieu of the word "produce".

215.971–2 [Corrected]

5. Section 215.971–2 is amended by substituting in the first sentence the reference "FAR 31.205–10" in lieu of the reference "231.205–10".

215.972–1 [Corrected]

6. Section 215.972–1 is amended by substituting in paragraph (a) the word "objective" in lieu of the word "objectives"; and by substituting in the last sentence of paragraph (a)(1) the reference "215.970–1(a)(2)(ii)" in lieu of the reference "15.970–1(a)(2)(ii)".

215.973 [Corrected]

7. Section 215.973 is amended by substituting in the first sentence the reference "FAR 16.404–2" in lieu of the reference "216.404–2".

PART 230—COST ACCOUNTING STANDARDS

8. The final rule published on August 3, 1987 (52 FR 28705) is designated as Defense Acquisition Regulatory Circular (DAC) 86–5 without change.

PART 253—FORMS

9. The final rule published on August 3, 1987 (52 FR 28705) is designated as Defense Acquisition Circular (DAC) 86–5 without change.

[FR Doc. 87–22362 Filed 9–28–87; 8:45 am]
BILLING CODE 3810–01–M

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48 CFR Parts 204, 252, and 253

Department of Defense Federal Acquisition Regulation Supplement; Commercial and Government Entity (CAGE) Code Reporting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council has approved revisions to Subpart 204.6, and Parts 252 and 253 of the DoD FAR Supplement with respect to Commercial and Government Entity (CAGE) Code Reporting.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement has been revised to provide uniform guidance concerning the completion of the DD Form 350, beginning October 1, 1987. Three data elements are being added to the contract reporting system without modification to the DD Form 350. The new data will be entered in Part E of the May 85 edition of the form in accordance with the instructions at 204.671–5(f). New Item E2, Extent Competed, must be provided with each DD Form 350 submitted. Items E3, Standard Industrial Classification (SIC) Code, and E4, Commercial and Government Entity (CAGE) Code, may be left blank in the first quarter of FY 88 if the information is not available within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office. A related clause and a new DD Form 2051 are added.

(Note: DD Forms are not codified in the Code of Federal Regulations.)

B. Regulatory Flexibiity Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected parts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR parts 204, 252, and 253

Government procurement.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 252, and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.670–2 is amended by adding in alphabetical sequence the following definition:

204.670–2 Definitions.

"Commercial and Government Entity (CAGE) Code" means:

(a) A code assigned by the Defense Logistics Services Center (DLSC) to identify a contractor or manufacturer; or

(b) A code assigned by a member of the North Atlantic Treaty Organization (NATO) and maintained by DLSC.

(c) One of the above codes used in subpart 204.6 to identify contractors.

3. Section 204.670–5 is added to read as follows:

204.670–5 CAGE Codes.

(a) When a CAGE code is required from the offeror, contracting officers shall insert the provision at 252.204–7007, to request the offeror to supply its CAGE code.

(b) The contracting officer shall assist the offeror in obtaining the required contractor identification code(s).

(c) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a contractor identification code.

(d) If a CAGE code is being requested, it is the responsibility of the contracting activity to request the assignment of the CAGE code by completing Section A of the DD Form 2051—Request for Assignment of a Commercial and Government Entity (CAGE) Code. (See 253.303–70–DD–2051.) The prospective contractor will complete Section B of the form. The completed form will be submitted by the contracting activity to DLSC–FBA for processing and code assignment after it has verified the data submitted by the contractor.

4. Section 204.671–5 is amended by revising paragraph (b)(5)(iii); by removing the introductory text in paragraph (f); and by adding paragraph (f)(2) to read as follows:

204.671–5 Instructions for Completion of DD Form 350.

* * * * *

(b) * * *

(5) * * *

(iii) *Item B5B.* Enter the state or country code from the appropriate Federal Information Processing Standards (FIPS) Publication. FIPS 55 is used for the identification of State and state equivalents in the United States, Puerto Rico, and US possessions and territories. FIPS 10–3 is used to identify foreign countries.

* * * * *

(f) *Part E, DD Form 350.*

* * * * *

(2) *Item E2, Extent Competed.* Enter the appropriate code.

(i) *Code A—Competed Action.* Enter this code when any of the following conditions apply:

(A) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(B) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(C) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received:

(Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., 8(a) awards; brand name commercial products for authorized resale; or awards for utilities (except telecommunications) are excluded from Code A and should be reported in Code B.)

(D) Contract action resulted from a contract awarded prior to CICA that used two-step sealed bidding, other sealed bidding, or was negotiated competitively.

(ii) *Code B—Not available for competition.* Enter this code when any of the following conditions apply to the award:

(A) Awards for utilities (excluding telecommunications) where there is no opportunity for competition;

(B) Brand name commercial products for authorized resale;

(C) Procurements authorized or required by statute to be awarded to a designated source;

(D) 8(a) awards;

(E) Foreign Military Sales/ International Agreements;

(F) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD(P)) has determined that there is no opportunity for competition.

(iii) *Code C—Follow-on to competed action.* Enter this code when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program where such placement was necessitated by prior acquisition decisions (204.671–5(d)(5)(ii)(C)).

(iv) *Code D—Not competed.* Enter this code when Codes A, B, or C do not apply.

(3) *Item E3, Standard Industrial Classification (SIC) Code.* This item identifies the SIC of the procurement (as opposed to the SIC of the Manufacturer or Dealer). Enter the SIC codes from the OMB Standard Industrial Classification Manual. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(4) *Item E4, Commercial and Government Entity (CAGE) Code.* Enter the 5-position code assigned by the Defense Logistics Services Center (DLSC) that identifies the Contractor's plant or establishment receiving the award. For 8(a) awards, report the CAGE code of the performing contractor, *not* the Small Business Administration.

(i) The CAGE code is available from one or more of the following sources:

(A) The offeror's response to the solicitation;

(B) The bi-monthly H–8 publication issued by DLSC–JBDA, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084, telephone numbers: AUTOVON 932–4725, FTS 522–4725, commercial (616) 961–4725.

(C) On-line access to the CAGE file through the Defense Integrated Data System (DIDS);

(D) On-line access to the Defense Logistics Agency CAGE file through the DLA Network; or

(E) Submission of a DD Form 2051 (Request for Assignment of a CAGE Code) or electronic equivalent to DLSC–FBA at the above address. Questions concerning obtaining computer tapes, electronic updates or code assignments should be directed to DLSC, Attn: DLSC–FBA, telephone numbers: AUTOVON 932–4358, FTS 522–4358, commercial (616) 961–4358.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.204–7007 is added to read as follows:

252.204–7007 Commercial and Government Entity (CAGE) Code Reporting.

As prescribed at 204.670–5(a), insert the following provision:

Commercial and Government Entity (CAGE) Code Reporting (Oct 1987)

In the block with its name and address, the Offeror should supply the CAGE code applicable to that name and address. The CAGE code should be preceded by "CAGE:". If the Offeror does not have a CAGE code the Offeror may request the Contracting Officer to initiate a DD Form 2051. The Contraction Activity will complete Section A and the Offeror must complete Section B of the DD Form 2051. A CAGE code will be assigned when a completed DD Form 2051 is received by the Defense Logistics Services Center, Attn: DLSC–FBA, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084. No Offeror should delay the submission of its offer pending receipt of its CAGE code

(End of provision)

PART 253—FORMS

6. Section 253.204–70 is added to read as follows:

253.204–70 Contractor Identification (DD Form 2051).

DD Form 2051, Request for Assignment of a Commercial and Government entity (CAGE) Code, is prescribed for use in requesting CAGE codes. (See 204.670–5(d).)

7. The list of forms following section 253.204–70 is amended by adding between the listing "253.303–70–DD–2025 DD Form 2025: Packaging Change Recommendation/Approval" and the listing "253.303–70–DD–2139 DD Form 2139: Subcontract Report of Foreign Purchases" the listing "253.303–70–DD–2051 DD Form 2051: Request for Assignment of a Commercial and Government Entity (CAGE) Code".

[FR Doc. 87–22363 Filed 9–28–87; 8:45 am]

BILLING CODE 3810–01–M

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48 CFR Parts 214, 215, 227, and 252

Department of Defense Federal Acquisition Regulation Supplement; Defense Acquisition Circular (DAC) 86–3

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule with respect to technical data, other data, computer software, and copyrights published in the **Federal Register** on Thursday, April 16, 1987 (52 FR 12387). This document also designates final rules published at 52 FR 12387, April 16, 1987, and at 52 FR 19871,

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May 28, 1987, as Defense Acquisition Circular (DAC) 86–3.

EFFECTIVE DATE: May 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, c/o OUSD (A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, the DoD FAR Supplement is amended as set forth below:

PART 214—SEALED BIDDING

1. The final rule published on May 28, 1987 (52 FR 19871) is designated as Defense Acquisition Circular (DAC) 86–3 without change.

PART 215—CONTRACTING BY NEGOTIATION

2. The final rule published on May 28, 1987 (52 FR 19871) is designated as Defense Acquisition Circular (DAC) 86–3 without change.

PART 227—PATENTS, DATA, AND COPYRIGHTS

3. The final rule published on April 16, 1987 (52 FR 12390) is designated as Defense Acquisition Circular (DAC) 86–3 with the following changes:

4. The table of contents for Subpart 227.4 is amended by revising the title of section 227.472–1 to read "Deferred Ordering and Deferred Delivery"; by adding the words "Policy for" at the beginning of the title of section 227.472–6; and by adding the words "Procedures for" at the beginning of the title of section 227.473–2.

227.471 [Corrected]

5. Section 227.471 is amended by adding in the parenthetical phrase in the last sentence of the definition entitled "Government purposes license rights" between the word "or" and the word "the" the word "in".

227.472–1 [Corrected]

6. Section 227.472–1 is amended by substituting in the introductory paragraph the word "competing" in lieu of the word "competitive"; by substituting in the last sentence of paragraph (a) the word "alternative" in lieu of the word "alternate"; and by substituting in the title of paragraph (b) the word "interests" in lieu of the word "interest".

227.472–2 [Corrected]

7. Section 227.472–2 is amended by substituting in the fourth sentence the word "item" for the word "items".

227.472–4 [Corrected]

8. Section 227.472–4 is amended by substituting in the title the word "prohibition" in lieu of the word "prohibitions".

227.472–5 [Corrected]

9. Section 227.472–5 is corrected to read "227.472–5".

227.473–1 [Corrected]

10. Section 227.473–1 is amended by substituting in the first sentence of paragraph (a) the word "processes" for the word "processed".

227.473–3 [Corrected]

11. Section 227.473–3 is amended by substituting in the first sentence of paragraph (a) the word "data" for the word "date".

227.473–4 [Corrected]

12. Section 227.473–4 is amended by adding in paragraph (a)(2) a comma after the word "circling" and by adding in the first sentence of paragraph (c) between the word "the" and the word "contract" the words "contractor on technical data delivered to the Government under a".

227.473–5 [Corrected]

13. Section 227.473–5 is corrected by substituting in the title of paragraph (a)(4)(i) the words "fails to respond" in lieu of the word "responds"; by substituting at the end of paragraph (a)(4)(i) the number "*(4)*" in lieu of the number "*(5)*"; by substituting at the beginning of the second sentence of paragraph (a)(4)(ii)(A) the word "The" in lieu of the word "This"; and by substituting in the penultimate sentence of paragraph (a)(4)(ii)(A) the word "subcontractor" in lieu of the word "subcontract".

227.474–1 [Corrected]

14. Section 227.474–1 is amended by substituting in the second sentence the word "used" in lieu of the word "use".

227.475–2 [Corrected]

15. Section 227.475–2 is amended by substituting in the fourth sentence of paragraph (b) the word "date" in lieu of the word "data".

227.475–6 [Corrected]

16. Section 227.475–6 is amended by substituting in the last sentence the reference "paragraph 227.482(a)(1)" in lieu of the references "paragraphs 227.403–3(a) and 227.481–2(a)"; and by substituting in the same sentence the reference "227.472" in lieu of the reference "227.403–2".

§ 227.475–8 [Corrected]

17. Section 227.475–8 is amended by substituting in the first paragraph the reference "252.227–7013" in lieu of the reference "52.227–7013".

§ 227.478–2 [Corrected]

18. Section 227.478–2 is amended by adding in the first sentence of paragraph (a)(ii) between the word "of" and the word "building" the word "a".

§ 227.478–3 [Corrected]

19. Section 227.478–3 is amended by adding in the first sentence after the word "copyrights" a comma; and by substituting in the first sentence the words "solicitations and contracts" in lieu of the words "solicitation and contracts".

§ 227.479 [Corrected]

20. Section 227.479 is amended by removing in the second sentence in paragraph (b) the comma after the word "recommended".

§ 227.480 [Corrected]

21. Section 227.480 is amended by substituting in the first sentence the word "owned" in lieu of the word "owner".

§ 227.481–1 [Corrected]

22. Section 227.481–1 is amended by adding at the end of paragraph (a)(3)(i) a semi-colon; by substituting at the end of the second sentence of paragraph (d) the words "infringement of copyright" in lieu of the words "infringement or copyright"; and by substituting in paragraph (f) the word "restrictions" in lieu of the word "restriction".

§ 227.482 [Corrected]

23. Section 227.482 is amended by adding in paragraph (a)(1)(iii) between the word "Rico," and the word "which" the word "in"; by substituting at the end of paragraph (a)(2) the reference "277.474–2" in lieu of the reference "227.474–4"; by substituting in paragraph (a)(3) the word "officer" in lieu of the word "office"; by substituting the designation of paragraph "(1)" in lieu of the designation "(1)"; by substituting in paragraph (n) the word "provision" in lieu of the word "provisions"; and by substituting in paragraph (s) the word "solicitations" in lieu of the word "solicitation".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§ 252.227-7013 [Corrected]

24. Section 252.227-7013 is amended by substituting in the introductory paragraph the word "at" in lieu of the word "as"; by adding at the end of paragraph (b)(1)(i) of the clause between the reference "227.477-1 (b)(2)" and the word "and " a semi-colon; by substituting in paragraph (f)(2) of the clause the words "sixty (60)" in lieu of the number "60"; by substituting in the introductory paragraph of Alternate I of the clause the reference "227.482(a)(2)" in lieu of the reference "227.474-4" and by substituting the introductory paragraph of Alternate II of the clause the reference "227.482(a)(3)" in lieu of the reference "227.475-8".

§ 252.227-7016 [Corrected]

25. Section 252.227-7016 is amended by substituting in the introductory paragraph the reference "227.482(b)" in lieu of the reference "227.412(d)".

§ 252.227-7017 [Corrected]

26. Section 252.227-7017 is amended by substituting in the last sentence of the clause between the word "royalties" and the word "charges" the word "or" in lieu of the word "of".

§ 252.227-7018 [Corrected]

27. Section 252.227-7018 is amended by substituting in the introductory paragraph the reference "227.482(d)" in lieu of the reference "227.473-4 (b)".

§ 252.227-7020 [Amended]

28. Section 252.227-7020 is amended by substituting in the third sentence of paragraph (b) of the clause the word "works" in lieu of the word "work".

§ 252.227-7021 [Corrected]

29. Section 252.227-7021 is amended by substituting in paragraph (c)(2) of the clause the word "same" in lieu of the word "some".

§ 252.227-7023 [Corrected]

30. Section 252.227-7023 is amended by adding in the introductory paragraph a comma after between the reference "227.482(i)" and the word "insert".

252.227-7024 [Corrected]

31. Section 252.227-7024 is amended by substituting in the introductory paragraph the reference "227-482(j)" in lieu of the reference "227.482(l)".

252.227-7025 [Corrected]

32. Section 252.227-7025 is amended by substituting in the introductory paragraph the reference "227.482(k)" in lieu of the reference "227.479"; by adding in the parenthetical phrase in the last sentence of paragraph (b)(ii) between the word "or" and the word "note" the word "a"; by substituting in the undesignated paragraph between paragraph (b)(2)(iv) and paragraph (b)(2)(iv)(A) the word "shall" in lieu of the word "must"; by adding in the third sentence of the undesignated paragraph between paragraph (b)(2)(iv)(B) and paragraph (b)(3) between the word "assumes" and the word "liability" the word "no"; by removing in paragraph (c)(1)(i) between the word "agreed" and the word "will" the word "with"; by substituting in the second sentence of paragraph (c)(1)(i) following the "Restricted Rights Legend" the word "restrictions" in lieu of the word "restriction"; by substituting in the third sentence of paragraph (c)(1)(i) the word "in" in lieu of the word "on"; by substituting in paragraph (c)(3)(i) the word "or delivered" in lieu of the words "to deliver"; by adding a comma after the words "restricted rights" in the fourth sentence of paragraph (e)(1) and changing the capital "T" to a lower-case "t" in the last sentence; by substituting in the last sentence of paragraph (f)(2) the words "sixty (60)" in lieu of the number "60"; by substituting in the title of paragraph (h) the word "on" in lieu of the word "of"; by substituting in the first sentence of paragraph (h) the words "it is the policy" in lieu of the words "is is the policy"; and by substituting in the first sentence of paragraph (i)(2) the word "higher-tier" in lieu of the word "high-tier".

252.227-7026 [Corrected]

33. Section 252.227-7026 is amended by substituting in the title words "data or" in lieu of the words "data of"; and by substituting in the reference in the introductory paragraph the letter "(l)" in lieu of the number "(1)".

252.227-7027 [Corrected]

34. Section 252.227-7027 is amended by substituting in the second sentence of the clause the word "data" in lieu of the word "date".

[FR Doc. 87-22361 Filed 9-28-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 47]

Occupant Crash Protection and Automatic Restraint Phase-In Reporting; Correction

AGENCY: National Highway Traffic Safety Administration DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a citation contained in a final rule amending Standard No. 208, *Occupant Crash Protection.* This rule was intended to modify the head injury criteria set forth in sections S6.1.2 and S6.2.2 of Standard No. 208 by limiting the calculation of a maximum time interval of 36 milliseconds. However, as published on October 17, 1986 (51 FR 37028, at 37033), the rule amended section S6.2 of Standard No. 208. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-2992).

Accordingly, the following correction is made to page 37033 of Volume 51 of the **Federal Register**, in this issue of October 17, 1986:

In the second column, the sixth amendment is corrected to read as follows and the designation "S6.2" in the regulatory text is removed in order to show that the text will appear identically in two places.

6. S6.1.2. and S6.2.2 are revised to read as follows:

Issued on September 24, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-22375 Filed 9-28-87; 8:45 am]

BILLING CODE 4910-59-M

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VOL 52 ISS 188 SEP 29 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 188
Tuesday, September 29, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 13 Docket No. 4736S]

General Crop Insurance Regulations; Safflower Crop Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA
ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.123, to be known as the Safflower Crop Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on safflowers in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 29, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart, V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.123, the Safflower Crop Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuraing safflowers.

Upon publication of 7 CFR 401.123 as a final rule, the provisions for insuring safflowers contained therein will supersede those provisions for insuring safflowers contained in 7 CFR Part 452 the Safflower Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 452 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will proposed to amend the title of 7 CFR Part 452 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Safflower Endorsement to 7 CFR Part 401 as outlined below, FCIC is proposing changes in section 5 of the endorsement as follows:

1. Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Safflower crop endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.123 Safflower Seed Crop

Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.123 Safflower seed crop endorsement.

The provisions of the Safflower Seed Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Safflower Seed Crop Endorsement

1. Insured crop.

a. The crop insured will be safflower seed ("safflowers").

b. In addition to the safflowers not insurable in section 2 of the general crop insurance policy, we do not insure any safflowers on which safflowers, sunflowers, dry beans, soybeans, mustard, rapeseed, or lentils have been grown the preceding crop year.

2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insect infestation;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9 of the general policy.

3. Annual Premium.

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance period.

The calendar date for the end of insurance period is October 31 of the calendar year in which the safflowers are normally harvested.

5. Unit division.

Safflower acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured Safflowers is located in separate legally identifiable sections or, in the absence of section descriptions the land is identified be separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The safflowers are planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; or

b. Acreage planted to safflowers is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Safflowers planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined for the purpose of calculating an indemnity.

6. Notice of damage or loss.

The representative samples of unharvested safflowers as required in section 8 of the general crop insurance policy will be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from that result the total production of safflowers to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature safflower production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 8.0 percent.

(2) Mature safflower production will be adjusted for quality when, due to insurable causes, such production has a test weight below 35 pounds per bushel or has seed damage in excess of 25 percent as determined by a grader licensed to grade safflowers by the Federal Grain Inspection Service.

(3) Mature safflower production which is eligible for quality adjustment, due to insurable causes, will be adjusted by:

(a) Dividing the value per pound of damaged safflowers by the average market price per pound for undamaged safflowers; and

(b) Multiplying the result by the number of pounds of such safflowers.

For the purpose of this insurance, the applicable price for damaged safflowers will be not less than 50 percent of the average market price for undamaged safflowers.

(4) Any harvested production from other volunteer plants growing in the safflowers will be counted as safflowers on a weight basis.

(5) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to unisured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of safflowers becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and termination date.

The cancellation and termination date for all states is April 15.

9. Contract changes.

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date.

10. Meaning of terms.

a. "Harvest" means the completion of combining or threshing of safflowers on the unit.

b. "Value per pound of damaged safflowers" means the value of the damaged safflowers (test weight below 35 pounds per bushel or seed damage in excess of 25 percent) at the local market but not less than 50 percent of the average market price for undamaged safflowers.

Done in Washington, DC, on September 10, 1987.

E. Ray Fosse,

Manager, Federal Corp Insurance Corporation.

[FR Doc. 87-22343 Filed 9-28-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 14 Doc. No. 4766S]

General Crop Insurance Regulations; Sunflower Crop Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.124, to be known as the Sunflower Crop Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on sunflowers in an endorsement to the general crop insurance policy which contains the standard terms and

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conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 29, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more: (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.124, the Sunflower Crop Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring sunflowers.

Upon publication of 7 CFR 401.124 as a final rule, the provisions for insuring sunflowers contained therein will supersede those provisions for insuring sunflowers contained in 7 CFR Part 428 the Sunflower Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 428 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 428 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Sunflower Endorsement to 7 CFR Part 401 as outlined below, FCIC is proposing changes in section 5 as follows:

1. Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Sunflower crop endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.124 Sunflower Seed Crop Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.124 Sunflower seed crop endorsement.

The provisions of the Sunflower Seed Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Sunflower Seed Crop Endorsement

1. Insured crop.

a. The crop insured will be sunflower seed ("sunflowers").

b. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but, if such insured acreage is destroyed and replanted by broadcasting, drilling, or in rows too close to permit cultivation, it will be considered insured acreage.

2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general policy.

Annual premium.

a. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the sunflower policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance period.

The calendar date for the end of insurance period is November 30 of the calendar year in which the sunflowers are normally harvested.

5. Unit division.

Sunflower acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured Sunflowers is located in separate legally identifiable sections or, in the absence of section descriptions the land is identified be separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section of Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The safflowers are planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; or

b. The acreage planted to sunflowers is located in a single section or Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Sunflowers planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area.

If you have a loss of any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of damage or loss.

The representative samples of unharvested sunflowers as required in section 8 of the general crop insurance policy will be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sunflowers to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature sunflower production (quantity) which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 10 percent; or

(2) Mature sunflower production which, due to insurable causes, has a test weight below 25 pounds per bushel for oil type sunflowers or below 22 pounds per bushel for non-oil type sunflowers will be adjusted by:

(a) Dividing the value per pound by the price per pound of No. 2 sunflowers; and

(b) Multiplying the result by the number of pounds of insured sunflowers.

The applicable price for No. 2 sunflowers will be the local market price on the earlier of the day the loss is adjusted or the day the sunflowers are sold.

(3) Any harvested production from other crops growing in the sunflowers will be counted as sunflowers on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good sunflower farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production or harvested or unharvested acreage.

(5) Any appraisal we have made on insured acreage and given written consent for that acreage to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sunflowers becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and termination date.

The cancellation and termination date for all states is April 15.

9. Contract changes.

The date by which contract changes will be available in your service office will be December 31 preceding the cancellation date.

10. Meaning of terms.

a. "Harvest" means the completion of combining or threshing of sunflowers on the unit.

b. "Replanting" means performing the cultural practices necessary to replant insured acreage to sunflowers.

Done in Washington, DC, on September 10, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-22342 Filed 9-28-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 452

[Amdt. No. 1; Doc. No. 4746S]

Safflower Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Safflower Crop Insurance Regulations (7 CFR Part 452), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Safflower Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.123, Safflower Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 29, 1987, to be sure of consideration.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090 South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a reivew as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date

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established for these regulations is November 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local government, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact State is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 452 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Safflower Endorsement will be published as an endorsement to 7 CFR Part 401 § 401.123, Safflower Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Safflower Crop Insurance Regulations, now contained in 7 CFR Part 452, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 452 be effective for the 1987 crop year.

List of Subjects in 7 CFR Part 452

Crop insurance, Safflower.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the Safflower Crop Insurance Regulations (7 CFR Part 452), as follows:

PART 452—[Amended]

1. The Authority citation for 7 CFR Part 452 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 452 is revised to read as follows:

Subpart—Regulations for the 1987 Crop Year.

Done in Washington, DC on September 2, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–22346 Filed 9–28–87; 8:45 am]

BILLING CODE 3410–08–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: The NCUA Board is considering certain changes to its policies on chartering new Federal credit unions (FCU's) and amendments to the charters of existing Federal credit unions. The Board requests public comment on these changes. Specifically, the Board requests comment on whether it should establish a standard Federal credit union charter amendment to permit Federal credit unions to add occupational groups of 300 or less to their fields of membership without prior NCUA approval. The Board also seeks comment on whether the minimum number of potential members for a new charter should be increased and whether Investigation Report Forms for FCU charter applicants should be revised.

DATE: Comments must be received on or before November 27, 1987.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, NCUA, Regional Director, Region IV, 230 S. Dearborn, Suite 3346, Chicago, Ill. 60604, telephone: (312) 886–9697 or Hattie Ulan, NCUA, Office of General Counsel, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: NCUA's Interpretive Ruling and Policy Statement 84–1 (IRPS 84–1) (*see* 49 FR 46536, Nov. 27, 1984), entitled Membership in Federla Credit Unions, is the principal directive for NCUA chartering and field of membership policy. For the past year, the chartering staffs of NCUA's Regional offices have reviewed NCUA's chartering and field of membership policies. As a result of that review, the NCUA Board requests comments on the proposed changes described below. If, after reviewing the comments, the Board determines to adopt final changes, a new Interpretive Ruling and Policy Statement will be issued that either supplements IRPS 84–1 or incorporates and supersedes it.

Charter Amendments—Field of Membership Expansions—Occupational Groups

Section 109 of the FCU Act (12 U.S.C. 1759) states, in part, that FCU membership "shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district * * *." The NCUA Board has interpreted the first part of this provision to allow more than one occupational or associational group to be included in the same field of membership on the condition that each group has its own common bond (*see*

IRPS 84–1). This policy is known as the select group field of membership expansion policy. As noted in IRPS 84–1, the addition of any occupational or associational group must be approved by the appropriate NCUA Regional Director.

A significant number of credit unions have used the select group expansion policy to broaden their base of operations and extend credit union services to new members. It is estimated that 78 percent of all select group expansions have involved groups of under 300 potential members. These expansions have brought credit union service to thousands of new members.

The NCUA Board believes the procedures currently being followed can be simplified to further facilitate select group expansions. Comment is requested on whether the NCUA Board should adopt a general charter amendment to allow FCU's to expand their fields of membership to select occupational groups of less than 300 persons within the FCU's operational area (defined as within 25 miles of the FCU's main or any branch office) without the prior approval of the appropriate NCUA Regional Director. The amendment would be limited to occupational groups since these can readily be identified by FCU's and NCUA. An FCU would be required to apply to the Regional Director to adopt the general field of membership charter amendment. Approval of the amendment would be based on the overall financial and operational soundness of the FCU. An FCU would generally have to possess a CAMEL rating of 1 or 2 to qualify. Once NCUA approved the amendment for a particular FCU, the FCU could add select occupational groups of 300 or less to its field of membership without further action on the part of NCUA. Select groups would apply in writing to the FCU stating the name of the group, its location, number of employees, and a statement that credit union service is not available to the group. The FCU would maintain a permanent file for review by NCUA during examinations on all written requests from groups added to its field of membership pursuant to this amendment. NCUA would reserve the right to revoke or suspend the amendment for any FCU and would notify the FCU in writing of such revocation or suspension. Field of membership expansion requests for occupational groups exceeding 300 and for all associational groups would continue to be handled by submitting the request to the NCUA Regional Director for approval. (*All* field of membership expansion requests by FCU's without the standard charter amendment would continue to be handled by submitting the request to the NCUA Regional Director for approval.)

Chartering Standards—All FCU's—Minimum Membership

NCUA requires that organizers of an FCU show that a minimum number of potential members exists before an FCU can be chartered. These potential member requirements are found in NCUA's 1980 *Chartering and Organizing Manual for Federal Credit Unions* and are as follows: 200 employees for an occupational charter; 300 members for an associational charter, and 1000 residents for a community charter. Experience has shown that these minimums are unrealistically low in today's financial environment.

A minimum potential membership base is necessary if an FCU is to have a realistic chance of becoming a viable financial institution. The NCUA Board believes that, as a guideline, the minimum potential base should be 2,000 members for all three types of charters. This would not preclude new charters for groups that fall below the minimum, but it would require the organizers to substantiate that a smaller group has the ability to support and operate a successful credit union and provide needed and beneficial services to its members. In other words, the economic advisability of establishing the credit union would become a more critical factor for a group that does not meet the minimum guideline. The NCUA Board is therefore requesting comment on whether the minimum potential membership should be raised to 2,000 for all types of charters.

Investigation Report Forms

Currently, a separate Investigation Report Form exists for each type of FCU charter (NCUA Forms 4001, 4002, and 4003). The NCUA Board is considering replacement of the three forms with one form and revision to place greater emphasis on proof of economic feasibility. The revised form would require a survey of potential membership interest and pledges to participate in the proposed FCU. Further, the Board believes that a thorough business plan, as well as a formal investigation of the subscribers, prospective officials and key employees, should be required for every FCU charter applicant. The NCUA Board request comment on these proposed policy changes.

By the National Credit Union Administration Board on September 9, 1987.

Becky Baker,

Secretary of the Board.

[FR Doc. 87–22413 Filed 9–28–87; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 6

[Notice No. 643]

Cost Adjustment Factor; "Tied House"

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Current regulations permit industry members to provide certain things of value to retailers, subject to fixed dollar limitations. Further, by regulation, these dollar limitations are adjusted *annually*, based on changes in the Bureau of Labor Statistics' consumer price index (CPI). Since the dollar limitation adjustments over the past several years have been minimal, and in order to prevent confusion within the industry as to what the specific dollar limitations are, ATF is proposing to amend the regulations by providing that the cost adjustment would be made when the one year change or the multiyear change in the CPI, from December to December, would require the previously published dollar limitation to be adjusted by at least ten percent.

DATE: Written comments must be received on or before October 29, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, Attn: Notice No. 643.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

Section 5(b)(3) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(b)(3), prohibits industry members from "furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value * * *",

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assuming all other elements of the statute are present. This section goes on to state, however, that the Secretary of the Treasury may, by regulation, provide exceptions to these inducements.

The exceptions to section 5(b)(3) are found in 27 CFR Part 6, "Tied-House." Industry members may provide certain things of value to retailers, subject to the conditions and limitations prescribed in Subpart D of Part 6. In that regard, industry members who wish to furnish, give, rent, loan, or sell product displays (e.g., wine racks, bins, etc.) or retailer advertising specialties (e.g., trays, coasters, etc.) to retailers are subject to dollar limitations specified in §§ 6.83 and 6.85, respectively. Industry members making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show are also subject to dollar limitations, as prescribed in § 6.100.

On September 23, 1980, ATF published a final rule in the **Federal Register**, T.D. ATF–74 (45 FR 63242), providing for, among other things, a new § 6.82. This section authorized adjustments to the dollar limitations prescribed in §§ 6.83, 6.85, and 6.100. The adjustments would be made on an annual basis, and would be determined by a "cost adjustment factor" equal to the change in the Bureau of Labor Statistics' consumer price index. Adjusted dollar limitations are established each January using the consumer price index for the preceding December.

Currently, the dollar limitation for "Product Displays" (§ 6.83(c)) is $128.00 per brand. Similarly, the dollar limitation for "Retailer Advertising Specialties" (§ 6.85(b)) is $63.00 per brand, and the "Participation in Retail Association Activities" (§ 6.100(e)) is $128.00 per year. These adjusted dollar limitations were enumerated in the March 4, 1987 issue of the **Federal Register** (52 FR 6644).

The dollar limitation adjustments are published annually in the **Federal Register**, as a General Notice. Unfortunately, since the adjustments are published as a notice, and not as a final rule (Treasury decision), they do not appear in the annually updated revision of the Code of Federal Regulations (CFR). Thus, ATF believes that there may be confusion within the industry as to what the current dollar limitations are. The dollar limitations prescribed for §§ 6.83, 6.85, and 6.100 of the most recent edition of the CFR have not been changed since they were established back in September 1980. If the proposed amendments are adopted, ATF will then amend the applicable regulations, as necessary, to reflect the revised dollar limitations. Thus, the current dollar limitations will appear in the annually updated revision of the CFR.

In addition, over the past several years the annual change in the consumer price index has been minimal to where, most recently, it was only 1.1 percent higher in December 1986 than in December 1985.

With the above in mind, ATF is proposing to amend section 6.82, by providing that the cost adjustment would be made when the one year change or the multiyear change in the CPI, from December to December, would require the previously published dollar limitation to be adjusted by at least ten percent.

For example, the consumer price index for December 1986 was 331.1, 1.1 percent higher than in December of the preceding year. The dollar limitations in §§ 6.83, 6.85, and 6.100 were adjusted accordingly, to $128, $63, and $128, respectively. If adopted as proposed, a cost adjustment would be made when the consumer price index changed at least ten percent. Thus, when the CPI changed to 364.2 (ten percent above 331.1), or 298.0 (ten percent less than 331.1), the dollar limitations in §§ 6.83, 6.85, and 6.100 would be increased, or decreased, by ten percent.

In addition, the dollar limitation would be rounded to the nearest dollar. For example, if the dollar amount was calculated to be $140.80, it would then be rounded up to $141.

Further, if the one year change or multiyear change in the CPI exceeds ten percent, the dollar limitation would be adjusted accordingly. Thus, if the one year change or multiyear change in the CPI was 12%, the dollar limitation amounts prescribed in §§ 6.83, 6.85, and 6.100 would be adjusted by 12%.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 6

Advertising, Alcohol and alcoholic beverages, Antitrust, Credit, and Trade practices.

Authority and Issuance

27 CFR Part 6—"TIED-HOUSE" is amended as follows:

PART 6—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 6 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 6.82 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 6.82 Cost Adjustment factor.

(a) *General.* * * * The Director, Bureau of Alcohol, Tobacco and Firearms, shall establish the adjusted dollar limitation when the adjusted one year change or multiyear change (as determined by a series of cost adjustment factors) would require the previously published dollar limitation to be adjusted by at least ten percent.

* * * * * *

Signed: August 28, 1987.

Stephen E. Higgins,

Director.

Approved: September 16, 1987.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 87-22307 Filed 9-28-87; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 644; Re: Notice No. 620]

Stags Leap District Viticultural Area; Public Hearing

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of a public hearing on a proposed rule.

SUMMARY: This notice announces the time and place of a public hearing to be held by the Bureau of Alcohol, Tobacco and Firearms concerning the establishment of a viticultural area in Napa County, California, to be known as "Stags Leap District." In Notice No. 620 (52 FR 4350) published in the **Federal Register** on February 11, 1987, ATF detailed a proposal for the establishment of this viticultural area and requested comments. In consideration of the comments received, ATF has determined that the public interest would be best served by the holding of a public hearing on this matter. The purpose of the hearing is to gather additional information and to receive evidence with respect to the establishment of this viticultural area, the proposed boundaries, and other possible boundaries.

DATES: The hearing will be held on December 1 and 2, 1987, at 9:30 a.m. [an evening session may be held if necessary at 7:00 p.m.].

Persons desiring to make oral comments at the hearing should submit a letter notifying ATF of their intent to comment on or before November 6, 1987. Written comments must be received on or before December 15, 1987.

ADDRESS: The hearing will be held at the: Veterans Home of California (Lincoln Auditorium—Lee Lounge), Veterans Home Station, Yountville, CA 94599.

Letter notifications and written comments are to be submitted to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attn: Notice No. 644.

FOR FURTHER INFORMATION CONTACT: Jim Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1987, ATF published a notice of proposed rulemaking, No. 620 (52 FR 4350), in the **Federal Register**. In the notice, a proposal was made for the establishment of a viticultural area in Napa County, California, to be known as "Stags Leap District."

As specified in the notice, the proposed viticultural area is located east of the city of Yountville, and approximately seven miles north of the city of Napa. It is bounded on the north by a group of adjacent hills that are located just below the Grant Body (Yountville Cross) Road. The western boundary is the Napa River, and the eastern boundary is the Stags Leap promontory and its adjacent hills.

In response to the notice of proposed rulemaking, ATF received two comments. One comment, submitted by Mr. Stanley Anderson, a winery and vineyard owner, included a request to extend the northern boundary some 500 yards, to the Yountville Cross Road. Mr. Anderson's comment included letters of support from several vineyard owners who are also located in the area just south of the Yountville Cross Road. With the exception of the northern boundary, Mr. Anderson supported the other boundaries as proposed in the notice.

Hearing

Based on the information presented in the comments, it is apparent that disagreement exists on a boundary for the viticultural area. In addition, ATF desires to obtain more information on the establishment of this viticultural area, the proposed boundaries, and other possible boundaries.

For these reasons, ATF has determined that a hearing is necessary and would serve the public interest. The purpose of the hearing is to obtain evidence for the record and to afford interested parties an opportunity to express their views. Evidence obtained and views expressed will be considered in the preparation of any final rule on this matter.

Participation

Any person desiring to participate in the hearing should notify ATF by submitting a letter specifying the name, address and daytime telephone number of the individual who will present oral comments. Any preference a person may have as to the time of day for presentation of comments should also be stated. The letter must be accompanied by an outline which briefly summarizes the topics the commenter will discuss and the information to be presented. Each topic to be discussed should be separately numbered and each numbered topic should specify the information to be presented. Assurance of having the opportunity to be heard is given only to those persons notifying ATF prior to the scheduling cutoff date of November 6, 1987.

Any person unable to attend the hearing or who prefers not to present oral comments may submit written comments before or after the hearing. ATF will accept written comments until December 15, 1987. In written comments, each topic to be discussed should be separately numbered and each numbered topic should specify the factual basis supporting the views, data, or arguments presented. All written comments received will be considered in the development of a decision on this matter.

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General Information on Hearing Procedures

The hearing will be conducted under the procedural rules contained in 27 CFR 71.41(a)(3) and will be open to the public, subject to the limitations of space. In the event attendance exceeds available seating space, persons scheduled to present oral comments will be given preference in respect to admission. Time limitations make it necessary to limit the length of oral presentations to ten (10) minutes. Commenters will not be permitted to trade their time to obtain a longer presentation period. However, the hearing officer may allow any person additional time after all other commenters have been heard. To the extent that time is available after presentation of oral comments by those who are scheduled to comment, others will be given an opportunity to be heard.

In order to insure that ATF will have the full benefit of their views even if time constraints limit an oral presentation, persons presenting oral comments are urged to supplement their oral statement with a more complete written statement. A written statement submitted to the hearing officer at the time of presentation of the oral statement will be considered part of the hearing record.

After making an oral presentation, a person should be prepared to answer questions from the hearing panel on not only the topics presented but also on matters relating to any written comments which he or she has submitted. Other persons will not be permitted to question a commenter. However, questions may be submitted, in writing, to the hearing officer who will evaluate their relevance. If the hearing officer determines that elicitation of further discussion would be beneficial, they may be presented to a commenter for a response.

Persons will be scheduled, if possible, according to the time preference mentioned in their letter notification to ATF. ATF will confirm by telephone the time a person is scheduled to present oral comments. A letter notification received by ATF prior to the cutoff date ensures that a person will be scheduled to comment. Letter notifications received after the cutoff date and up to one (1) working day preceding the hearing, will be honored to the extent practicable on a first-come-first-serve basis. Any scheduled commenter not present at the hearing when called will lose his or her place in the scheduled order, but will be recalled after all other scheduled commenters have been heard.

ATF will prepare an agenda listing the persons scheduled to comment and copies will be available at the hearing. In addition, copies of the petitions and all received written comments will be available at the hearing for public inspection.

Comments

Any person participating in the hearing or submitting written comments may present such data, views, or arguments as they desire. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter. However, comments consisting of mere allegations or denials are counterproductive to the rulemaking process.

ATF specifically requests that commenters consider making comments on the following questions:

1. What are the historical and current boundaries (north, south, east, west) of the area known as "Stags Leap District?"

2. Why, and how, should the boundaries as proposed in Notice No. 620 be modified?

3. What geographical features, particularly in the north, support the boundaries as proposed in Notice No. 620; as suggested by Mr. Anderson, or any other boundaries?

4. Is there evidence that the name of the proposed viticultural area is locally or nationally known as including the area north to the Yountville Cross Road, or even beyond?

5. What do wineries outside of the proposed area consider to be the "Stags Leap District" grape growing area?

6. What name other than "Stags Leap District" has been applied to the area as proposed in Notice No. 620, or to the extended area to the Yountville Cross Road?

7. To what extent have wineries in the area proposed in Notice No. 620, as well as those in the area north to the Yountville Cross Road, identified themselves as being in "Stags Leap District?"

8. To what extent have grapes grown in the proposed area, or the extended area north of the boundaries proposed in Notice No. 620, been or not been marketed as "Stags Leap District" grapes?

Drafting Information

The author of this document is James Ficaretta, Coordinator, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, and Wine.

Authority

This notice of hearing is issued under the authority of 27 U.S.C. 205.

Approved: September 23, 1987.

Philip C. McGuire,

Acting Director.

[FR Doc. 87-22309 Filed 9-28-87; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 642]

Warren Hills Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in northwestern New Jersey, to be known as "Warren Hills." This proposal is the result of a petition submitted by a group of wineries and grape growers located in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable winemakers to label wines more precisely and will help consumers to better identify the wines they purchase.

Comment date: Written comments must be received by November 13, 1987.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 642). Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite

viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition, prepared by Mr. Rudolf Marchesi of Alba Vineyard and submitted on behalf of a group of wineries and grape growers from Warren County, New Jersey. The group consists of Alba Vineyard, Marble Mountain Vineyards, Four Sisters Winery, Tamuzza Vineyards, and Mr. Daniel Campanelli (an individual grower). The petition proposes establishment of a viticultural area to be known as "Warren Hills." The proposed area would be located entirely within Warren County. The area contains approximately 226 square miles, within which there are approximately 77 acres planted to winegrapes. Three wineries are operating within the area. The proposed area is located a little to the north of the approved "Central Delaware Valley" viticultural area.

Geography of the Area

Geographically, the proposed area consists of a series of narrow, parallel valleys, formed by tributaries of the Delaware River. The petitioner submitted evidence that the area is distinguished from surrounding areas by soil, topography, and climatic conditions.

According to the petitioner, the "Warren Hills" soils are less acidic than those of some surrounding areas, "due to the nature of the bedrock." He explained that "The vineyard soils of the Warren Hills region are formed from Dolomitic Limestone which has a high concentration of calcium and magnesium," but that the soils of surrounding areas "are formed from shale and other sources." The relative pH values of vineyard soils within and to the north of the area are contrasted as follows:

"Warren Hills" soils	Soils to the north
Hazen Loam 5.6–7.8	Bath soils 4.5–6.5.
Annandale Gravely Loam 5.1–6.5.	Nassau soils 4.5–5.5.
Washington Loam 5.6–6.3	Swartswood soils 3.6–5.5.

The higher pH values of the "Warren Hills" soils indicate less acidity. Those values show that "Warren Hills" vineyard soils range from moderately acidic to slightly alkaline. Soils to the north and to the south are more acidic. Typical vineyard soils in the Central Delaware Valley viticultural area (south of the "Warren Hills") have been described, in soil surveys published by the U.S. Department of Agriculture, as: "Natural reaction is strongly acid," and "Natural reaction ranges from medium acid to strongly acid."

The soils to the northeast of the proposed viticultural area are also distinguishable. The northeastern boundary of the area corresponds generally to the terminal morraine of a glacial advance known as the "Wisconsin." According to the petitioner, there was once a large glacier, which covered the land to the northeast of the proposed area but did not extend into the area itself. When the glacier receded, it left behind some glacial deposits, which became mixed with the native soil, rendering it less suitable for viticulture. By contrast, the "Warren Hills" soil generally does not contain such glacial deposits. Westward, across the Delaware River, limestone soils like those of the "Warren Hills" reappear. However, the petitioner has indicated that they are less prominent there, and further, that the topography of that region is significantly different, so that the Delaware River does form a proper boundary, despite the similarity of soils. The farmland across the Delaware River lies mostly in a single broad valley (the Lehigh Valley); whereas the "Warren Hills" area contains about five narrower valleys. Those valleys run southwest to northeast; consequently, in the "Warren Hills" there are numerous south-facing or southeast-facing slopesides, which make the best vineyard sites. More direct exposure to sunlight creates microclimates with warmer than average temperatures, especially in winter. Further, the valleys of the "Warren Hills" create a desirable air crainage situation, in which cool air drains downward, away from the hillside vineyards. This feature is important in the spring and fall, when there may be a danger of untimely frost.

Another way in which the topography of the proposed area affects its viticulture is by channeling the prevailing southwest winds. Since the area's valleys parallel the wind direction, they form channels through which the winds may travel with minimal obstruction. The winds cool the vines on hot summer afternoons and reduce relative humidity. These effects, together with the favorable air drainage already mentioned, "assist in the control of mold and mildew on the vines," according to the petitioner. Topography also forms a basis for the northwestern boundary of the "Warren Hills," for that boundary marks the beginning of a more mountainous area: Kittatinny Mountain, a member of the Pocono chain. Similarly, the southeastern border of the proposed area reflects a topographical distinction that marks the boundary of two geological regions of New Jersey: The "Upland Valley" region (in which the "Warren Hills" lie) and the "Piedmont" region. The Piedmont's rolling hills contrast with the straight, narrow valleys of the "Warren Hills." (This distinction was previously cited by ATF in the rulemaking for the "Central Delaware Valley" viticultural area.) The petitioner also contrasted his proposed area with surrounding areas on the basis of climate. In particular, he noted that the eastern boundary of the area lies where the growing season drops off to less than 150 days. Inside the proposed area, the growing season "averages 175 frost-free days, but is often longer on selected sites," says the petitioner. This difference is significant for viticulture, because it means that certain late-ripening varieties, such as vidal blanc, seyval blanc, and cabernet sauvignon, could not be grown in the area to the east. Some of the climatic features that affect viticulture during the growing season are directly caused by the area's unique topography. The combination of southward-facing vineyard slopes and the funneling effect of the long, narrow valleys on the prevailing winds result in

"warm days and cool nights," which benefit the grapes, according to the petitioner.

Name of the Area

The petitioner submitted evidence that the area is locally known by the name "Warren Hills." Evidence included a page from the local telephone directory, listing the "Warren Hills Family Health Center." The petitioner also stated that there is a "Warren Hills High School" and a "Warren Hills Junior High School" in the area.

The Warren Hills High School draws students from most parts of the proposed viticultural area, according to the petitioner. The northern part of Warren County, outside the proposed area, is served by a different high school, named the "North Warren Regional High School." The Warren Hills Junior High is near the Warren Hills High School, and the two schools draw students from approximately the same area, the petitioner said.

The name "Warren Hills" derives from Warren County and from the proposed area's topography. The county was named in the early nineteenth century after a Revolutionary War patriot from the area who died in the Battle of Bunker Hill.

Boundaries of the Area

The proposed area is bounded by the Delaware River, the Musconetcong River, the Warren County/Sussex County line, and Paulins Kill (a stream). The boundaries may be found on 13 U.S.G.S. maps of the 7.5 minute series; namely, the Riegelsville, Easton, Bangor, Bloomsbury, Belvidere, Portland, High Bridge, Washington, Blairstown, Hackettstown, Tranquility, Flatbrookville, and Newton West Quadrangles. The boundaries would be as described in the proposed § 9.121.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal, because the Notice of Proposed Rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this Notice of Proposed Rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this Notice, because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Further, while this document proposes possible boundaries for the "Warren Hills" viticultural area, comments concerning other possible boundaries for this area will be given consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.121, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.121 Warren Hills.

* * * * *

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.121, which reads as follows:

§ 9.121 Warren Hills.

(a) *Name.* The name of the viticultural area described in this section is "Warren Hills."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Warren Hills viticultural area are thirteen U.S.G.S. maps of the 7.5 minute series. They are titled:

(1) Riegelsville Quadrangle, Pennsylvania—New Jersey, 1956 (photorevised 1968 and 1973).

(2) Bloomsbury Quadrangle, New Jersey, 1955 (photorevised 1970).

(3) High Bridge Quadrangle, New Jersey, 1954 (photorevised 1970).

(4) Washington Quadrangle, New Jersey, 1954 (photorevised 1971).

(5) Hackettstown Quadrangle, New Jersey, 1953 (photorevised 1971, photoinspected 1976).

(6) Tranquility Quadrangle, New Jersey, 1954 (photorevised 1971).

(7) Newton West Quadrangle, New Jersey, 1954 (photorevised 1971).

(8) Flatbrookville Quadrangle, New Jersey—Pennsylvania, 1954 (photorevised 1971).

(9) Blairstown Quadrangle, New Jersey—Warren Co., 1954 (photorevised 1971).

(10) Portland Quadrangle, Pennsylvania—New Jersey, 1955 (photorevised 1984).

(11) Belvidere Quadrangle, New Jersey—Pennsylvania, 1955 , (photorevised 1984).

(12) Bangor Quadrangle, Pennsylvania—New Jersey, 1956 (photorevised 1968 and 1973).

(13) Easton Quadrangle, New Jersey—Pennsylvania, 1956 (photorevised 1968 and 1973).

(c) *Boundary*—(1) *General.* The Warren Hills viticultural area is located in Warren County, New Jersey. The beginning point of the following boundary description is the junction of the Delaware River and the Musconetcong River, at the southern tip of Warren County (on the Riegelsville map).

(2) *Boundary Description.* (i) From the beginning point, the boundary goes northeastward along the Musconetcong River for about 32 miles (on the Riegelsville, Bloomsbury, High Bridge, Washington, Hackettstown, and Tranquility maps) to the point where it intersects the Warren County/Sussex County line;

(ii) Then northwestward along that county line for about 10 miles (on the Tranquility, Newton West, and Flatbrookville maps) to Paulins Kill;

(iii) Then generally southwestward along Paulins Kill (on the Flatbrookville, Blairstown and Portland maps) to the Delaware River;

(iv) Then generally south-southwestward along the Delaware River (on the Portland, Belvidere, Bangor, Easton, and Riegelsville maps) to the starting point.

Approved: September 17, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-22308 Filed 9-28-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

Geological and Geophysical Explorations of the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the timeframes for protection of proprietary geological and geophysical data and information collected in the Outer Continential Shelf (OCS). This revision would provide additional assurance that the party that incurred the cost to produce the data and information would have a reasonable opportunity for exclusive use of them during subsequent lease sales in the general area. Two different approaches are presented for the text of the rule, and comments are solicited concerning which approach should form the basis for the final rule.

DATE: Comments must be received or postmarked no later than October 29, 1987.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, telephone: (703) 648-7816.

SUPPLEMENTARY INFORMATION: Section 26(c) of the OCS Lands Act requires that—

> The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information * * *.

Current regulations of §251.14 provide a 10-year period of time during which G&G data and information collected under a permit are not available to the public without the consent of the permittee.

The MMS has issued two proposed rules which address this situation. One was published in the **Federal Register** on June 30, 1983 (48 FR 30147), and the second on February 20, 1986 (51 FR 6133).

Following the publication of these notices and analysis of the comments received in response to the notices, MMS determined that to develop the best possible rule in the area of protection of geophysical data and information collected under a permit, MMS should issue another proposed rule prior to issuing a final rule. This determination was in part due to the fact that MMS is considering two approaches as to how a final rule should be structured and believes that the public should be provided with an opportunity to comment on the approaches. To provide MMS with the opportunity to revise the rules governing the period of protection of prelease geophysical data and information without releasing such proprietary geophysical data and information in the interim, a temporary rule which suspended the release of prelease proprietary geophysical data and information for a period of 1 year was published in the **Federal Register** on June 22, 1987 (52 FR 23440).

The MMS is now addressing comments which have been received in response to the two previous **Federal Register** Notices to the extent that those comments pertain to the subject of this proposed rule.

The notice which was published on June 30, 1983, proposed to extend the period of protection for G&G data and information collected either on a lease or under a permit. Timely comments were received in response to this publication from 20 interested parties—16 oil production/exploration companies, 1 trade/technical association, 2 States, and 1 support/service contractor.

The majority of the commenters (15 out of 20) favored the proposed change. The primary reason given for favoring the change was that the company developing costly data and information should be entitled to exclusive use of the data and information for at least one lease sale. Fewer commenters (5 out of 20) opposed the proposed change. The primary reason given for opposing the change was that it restricted the free flow of G&G data and information which are needed by the public for the development of offshore oil production and by the States to determine the impact of such development.

In developing this proposed rule change, MMS has considered both the needs of the public and the States for these data and information and the need to provide certain minimum protection for the party incurring the cost of obtaining the data.

Many commenters raised specific points concerning the proposed change in the regulations. Each of these comments was considered and is discussed below.

Several commenters questioned the use of a planning area as the criteria used to determine when a lease issuance or offering would allow release of geophysical information. Some commenters felt that this was too broad an area for the information to be relevant while other commenters felt that a planning area was not well enough defined. One commenter questioned what would be done for a

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leasing moratorium in a portion of the planning area. In place of a planning area, commenters suggested criteria of various distances from 50 miles to as small as 10 miles. In one of the proposed alternatives, MMS has used the planning area as a criterion since geophysical data and information, in many cases, apply to a large area. Also, this approach takes into consideration the fact that the protection being provided through the amendment is additional protection over and above the terms currently provided for in MMS regulations. In some cases when lease sales are delayed, MMS will have used acquired information to determine that an area is not likely to contain hydrocarbons, or potential lessees will have used available information as the basis for decisions not to express an interest in an area. When these areas are omitted from a lease sale, it is because of the available information and, thus, there is little need to provide further protection to information concerning these areas. In the other proposed alternative, a set time is used; location of lease offerings is not a factor.

Two commenters suggested that, to avoid confusion when a 50-mile arc cuts through a lease, MMS clearly state that if any portion of an issued lease is within the specified distance, then the data will be released. The MMS agrees with this suggestion, and the proposed rule includes the suggested addition in cases where a distance criterion is used.

One commenter questioned why continental offshore stratigraphic test (COST) well data which previously were available within a few years will now be withheld for 20 years. Another commenter questioned the change from the wording "whichever is lesser" to the wording "whichever is later." In each of these cases, there appears to be some confusion as to when the later date applied and when the earlier date applied. With COST wells, the release date is proposed to be extended only when a lease sale has not occurred in the area. Under present regulations when COST well data are released in a few years, it is because a lease has been issued within 50 geographic miles of the well. The MMS has proposed the use of the 20-year limit (in place of the current 10-year limit) for those cases where a lease is not issued within 50 geographic miles of the well. This would prevent unlimited protection of data. The phrase "whichever is later" refers to the later between the minimum protection provided and the first lease issuance in the area. In response to these comments, the wording of the proposals has been changed to clarify the relationship of the events with regard to release of data and information.

One commenter felt that "data and information" in sections 26 (a) and (c) of the OCS Lands Act (OCSLA) are not the same as "data and information" in section 18(h) of the OCSLA. The basic treatment of data and information is an established part of current rules and is not being proposed for change. This amendment only covers the term of protection. The basic question of what data should be protected is outside the scope of this rulemaking.

There were comments both in favor of and against the concept of applying the amended rule to all data in the possession of MMS not just data submitted after the amended rule is effective. The MMS feels it is necessary to apply the amended rule to all data whether they were submitted before or after the amended rule becomes effective. The MMS realizes that many companies collected data with the understanding that a lease sale would occur prior to the end of the minimum time period for protection from disclosure but then anticipated lease sales were delayed. The MMS feels that to be fair to these companies, the proposed rule is written to apply to all data in the possession of MMS.

One commenter suggested that 60 days after issuance of a lease be changed to 6 months after issuance of a lease to allow for challenges to a lease. Another commenter suggested that the time should be 60 days after the lease is not longer subject to challenge. The MMS disagrees with these suggested changes. A challenge to a lease will normally occur before the lease is issued and will delay the issuance of the lease. The MMS does not feel that any additional time is necessary beyond the 60 days after issuance. Accordingly, portions of the proposed rule which rely on lease offerings do not allow time beyond a lease sale.

One commenter suggested that further protection of data is needed and suggested that data and information not be released until all immediately adjacent, unleased acreage has been offered for lease and until it is reoffered in cases where a lease bid has been rejected. The MMS has proposed two approaches which provide what MMS considers to be balanced proposal for protection of data and information.

Several commenters questioned particular wording used in the regulation. The MMS has modified the wording, where approriate, in the new proposal to improve clarity.

On February 20, 1986, MMS published a notice of proposed rulemaking in the Federal Register (51 FR 6133). At that time, MMS proposed to extend the period of time that G&G data and information would be protected from disclosure in those areas which the Secretary of the Interior (Secretary) designates as unavailable for leasing. It was proposed to extend the period of time that data and information are protected from disclosure for a period of time equal to the period of time during which the Secretary determined that the area was unavailable for leasing.

Fifteen timely comments were received. Twelve were from oil companies, 2 were from geophysical companies, and 1 was from a geophysical trade association. All commenters favored the proposed amendment although many of the commenters suggested further changes.

The main comment received related to the need for protection regardless of why a sale did not occur. The MMS agrees, and one of the proposed alternatives follows the proposed rule published June 30, 1983. In addition, the approach includes a provision to further extend the 10-year period of protection in areas subject to congressionally imposed leasing moratoria when a lease sale does not occur for 20 years or when a lease sale occurs in the planning area although the area to which the geophysical information applies is subject to the moratoria. The specification of a congressionally imposed leasing moratoria addresses commenters who expressed the feeling that the phrase "the area designated by the Secretary," which was used in the February 1986 proposed rule, should be replaced by a more rigid defintion. The phrase "congressionally imposed moratoria" provides a more rigid definition and has been used in the first alternative rule. This is not a factor in the second alternative rule.

The rules proposed on June 30, 1983, and February 20, 1986, would have applied both to data and information obtained under a permit and to data and information obtained under a lease. This proposed rule applies to data and information obtained under a permit. The MMS published a notice of final rulemaking on April 22, 1987 (52 FR 13235), which amended postlease rules regarding the period of protection of geological data and information. Comments concerning the period of protection of postlease proprietary data and information were addressed at that time.

The MMS is not considering two approaches to amend rules governing the period of protection of prelease geophysical data and information.

Interested parties are invited to submit written comments indicating whether the regulations should be amended, and if so, which of the two alternative approaches should be followed in the final rule. Specific comments should address both alternative approaches since either alternative rule 1 or alternative rule 2 may form the basis for the final rule. The two alternative approaches are summarized below.

Alternative Rule 1

1. Geophysical information collected under a permit, which is currently protected for 10 years, will be protected beyond 10 years when a lease sale has not occurred in the planning area in which the information was generated. This protection would extend until a lease is offered in the planning area and would not exceed 20 years. A provision is being proposed to allow the Director to release the information anytime after 10 years if certain criteria are met. These criteria allow for cases where the release is necessary to create a unitized lease, when a significant determination of hydrocarbons or an environmental hazard is made and is announced in a manner to minimize the release of data and information (i.e., the expected existence of hydrocarbons or an environmental hazard would be announced but the underlying data and information would not be released), or when the releases of the data and information is needed for specific scientific or research purposes by the Government and would further the national interest without unduly damaging the competitive position of the permittee. Comments are specifically invited concerning this criteria and whether other criteria would be more appropriate.

2. The maximum term of protection for geological data and information obtained from a deep stratigraphic test or geophysical information submitted in support of a deep stratigraphic test would be increased from 10 to 20 years. Data and information would be protected for this maximum period of time when a lease has not been issued within 50 miles of the well site. If such a lease has been issued, the data and information are released 60 days after the lease sale under current rules and would continue to be released at that time under the proposed rules.

3. The period of protection of geophysical data obtained under a permit would be increased from 10 years to 20 years. A provision is being proposed to allow the Director to release the data anytime after 10 years if certain criteria are met. These criteria allow for cases where the release is necessary to create a unitized lease, when a significant determination of hydrocarbons or an environmental hazard is made and is announced in a manner to minimize the release of data and information (i.e., the expected existence of hydrocarbons or an environmental hazard would be announced but the underlying data and information would not be released), or when the release of the data and information is needed for specific scientific or research purposes by the Government and would further the national interest without unduly damaging the competitive position of the permittee. Comments are specifically invited concerning this criteria and whether other criteria would be more appropriate.

4. An additional change has been proposed to provide an extended period of protection for data and information that apply to a portion of the OCS subject to congressionally imposed leasing moratoria. In instances where a lease sale in a planning area triggers the release of data or information, the lease sale would not be considered to have occurred for the purpose of releasing data or information if such data or information were collected in a portion of the OCS which is under a moratorium at the time of the lease sale. Also, the 20-year maximum allowable protection provided during which the portion of the OCS, where the data or information are generated, is covered by a moratorium.

5. For the purpose of streamlining the rule and improving the clarity of the rule, all provisions governing protection of data and information related to deep stratigraphic tests would be put into a new paragraph (e).

Alternative Rule 2

1. Geophysical data and information which are protected for 10 years under current regulations would be protected for 20 years. A provision is being proposed to allow the Director to release the data and information anytime after 10 years if certain criteria are met. These criteria allow for cases where the release is necessary to create a unitized lease, when a significant determination of hydrocarbons or an environmental hazard is made and is announced in a manner to minimize the release of data and information (i.e., the expected existence of hydrocarbons or an environmental hazard would be announced but the underlying data and information would not be released), or when the release of the data and information is needed for specific scientific or research purposes by the Government and would further the national interest without unduly damaging the competitive position of the permittee. Comments are specifically invited concerning this criteria and whether other criteria would be more appropriate.

2. After 20 years, the data and information would be released unless the permittee requested a 5-year extension of the period of protection. If an extension is requested, the data and information would be released at the end of the 5-year extension. The permittee would be allowed to request an extension of the period of protection during the last year of the 20-year period of protection and at least 90 days prior to the end of the original 20-year period of protection.

3. The maximum period of protection for geological data and information obtained from a deep stratigraphic test or geophysical information submitted in support of a deep stratigraphic test would be increased from 10 to 20 years. Data and information would be protected for this maximum period of time when a lease has not been issued within 50 miles of the well site. If such a lease has been issued, the data and information are released 60 days after the lease sale under current rules and would continue to be released at that time under the new rules.

4. For the purpose of streamlining the rule and improving the clarity of the rule, all provisions governing protection of data and information related to deep stratigraphic tests would be moved into a new paragraph (e).

The Department of the Interior (DOI) has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*) as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct offshore activities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author

The document was prepared by John V. Mirabella; Branch of Rules, Orders,

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and Standards; Offshore Rules and Operations Division; Minerals Management Service.

List of Subjects in 30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands-mineral resources; Reporting and recordkeeping requirements, Research.

Dated: August 21, 1987.

David W. Crow,

Acting Director, Minerals Management Service.

PART 251—[AMENDED]

Alternative Rule 1

For the reasons set forth above, 30 CFR Part 251 is proposed to be amended as follows:

1. The authority citation for Part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 et seq. (1970); Coastal Zone Management Act of 1972, as amened, 16 U.S.C. 1451 et seq.

2. Section 251.14–1 is amended to remove paragraph(c)(3).

3. Section 251.14–1 is amended by revising paragraphs (d) (1) and (2) and (e), removing paragraph (d)(3), and adding paragraph (f) to read as follows:

§ 251.14–1 Disclosure of information and data to the public.

* * * * *

(d) * * *

(1) The Director shall make geophysical data available to the public 20 years after the issuance of the permit under which the data were obtained. However, the Director may release the data and information anytime after 10 years if the Director determines that (i) the data and information are needed to unitize operations on 2 or more leases, to ensure proper plans of development for competitive reservoirs, or to ensure operational safety, and the data and information are shown only to persons with an interest in the issue, (ii) a significant environmental hazard or indication of hydrocarbons has been encountered in an unleased area where the existence of hydrocarbon deposit has not previously been confirmed and the determination is announced in a manner to minimize the amount of proprietary data and information released, or (iii) the geophysical data and information are necesssary for specific scientific or research purposes for the Government and the release of such data and information would further the national interest without unduly damaging the competitive position of the permittee. When indications of hydrocarbons are announced, the data and information upon which the announcement is based shall not be released.

(2) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information at the later of the following times: 10 years after the date of submission to the Dirctor, or 60 calendar days after the issuance of the first OCS oil and gas lease from a sale subsequent to the date of submission such that the sale offers tracts in the planning area in which the information was generated provided that no geophysical information shall be held more than 20 years. However, the Director may release the data and information anytime after 10 years if the Director determines that (i) the data and information are needed to unitize operations on 2 or more leases, to ensure proper plans of development for competitive reservoirs, or to ensure operational safety, and the data and information are shown only to persons with an interest in the issue. (ii) a significant, environmental hazard or indication of hydrocarbons has been encountered in an unleased area where the existence of hydrocarbon deposits has not previously been confirmed and the determination is announced in a manner to minimize the amount of proprietary data and information released, or (iii) the geophysical data and information are necessary for specific scientific or research purposes for the Government and the release of such data and information would further the national interest without unduly damaging the competitive position of the permittee. When indications of hydrocarbons are announced, the data and information upon which the announcement is based shall not be released. A lease sale will not be considered to have occurred for the purpose of release of information under this paragraph if any of the areas to which the information applies was under congressionally imposed leasing moratoria at the time of the lease sale.

(e) The Director shall make available to the public all geophysical data and information obtained from drilling a deep stratigraphic test, geological data, geological information, processed geophysical information, reprocessed geophyical information, and interpreted geophysical information submitted in support of a application for a permit to drill a deep stratigraphic test, or which the permittee is required to obtain in order to conduct the drilling of a deep stratigraphic test, at the earliest of the following times: (i) 20 years after completion of the test, or (ii) for a lease sale held after the test well is completed, 60 calendar days after the Department of the Interior executes the first lease for a tract, any part of which is within 50 geophysical miles (92.6 kilometers) of the site of the completed tests.

(f) In areas presently or previously subject to congressionally imposed leasing moratoria, the 20-year limit to the period of protection specified in paragraphs (d)(1), (d)(2), and (e) of this section shall be extended to limit the maximum allowable protection to 20 years plus the length of time during which the area to which the submitted data or information apply was covered by a congressionally imposed leasing moratorium.

Alternative Rule 2

For the reasons set forth above, 30 CFR Part 251 is proposed to be amended as follows:

1. The authority citation for Part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. et seq.

2. Section 251.14–1 is amended by removing paragraph (c)(3).

3. Section 251.14–1 is amended by revising paragraphs (d) (1) and (2) and (e), and removing paragraph (d)(3) to read as follows:

§ 251.14–1 Disclosure of information and data to the public.

* * * * *

(d) * * *

(1) The Director shall make geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information available to the public 20 years after the issuance of the permit under which the data or information were obtained unless the permittee requests an extension of the period of protection in accordance with paragraph (d)(2) of this section. When an extension is granted in accordance with paragraph (d)(2) of this section, the Director shall make such geophysical data and information available to the public 25 years after the issuance of the permit under which the data or information

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were obtained. However, the Director may release the data and information anytime after 10 years if the Director determines that (i) the data and information are needed to unitize operations on 2 or more leases, to ensure proper plans of development for competitive reservoirs, or to ensure operational safety, and the data and information are shown only to persons with an interest in the issue, (ii) a significant environmental hazard or indication of hydrocarbons has been encountered in an unleased area where the existence of hydrocarbon deposits has not previously been confirmed and the determination is announced in a manner to minimize the amount of proprietary data and information released, or (iii) the geophysical data and information are necessary for specific scientific or research purposes for the Government and the release of such data and information would further the national interest without unduly damaging the competitive position of the permittee. When indications of hydrocarbons are announced, the data and information upon which the announcement is based shall not be released.

(2) Upon the request of the permittee, the Director shall grant a 5-year extension of the period of protection of proprietary data and information provided that the request for extension is submitted at least 90 days and not more than 365 days prior to the expiration of the original 20-year period of protection.

(e) The Director shall make available to the public all geological data and information obtained from drilling a deep stratigraphic test, geological data, geological information, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted in support of an application for a permit to drill a deep stratigraphic test, or which the permittee is required to obtain in order to conduct the drilling of a deep stratigraphic test, at the earliest of the following times: (i) 20 years after completion of the test, or (ii) for a lease sale held after the test well is completed, 60 calendar days after the Department of the Interior executes the first lease for a tract, any part of which is within 50 geographic miles (92.6 kilometers) of the site of the completed test.

[FR Doc. 87-22360 Filed 9-28-87; 8:45 am]
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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area, Anaheim Bay Harbor, CA

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which established a danger zone in the Waters of Anaheim Bay Harbor, California, by redesignating the area as a restricted area and make other changes to simplify enforcement of the restricted area regulations. These proposed amendments will, if approved, eliminate the requirement for a separate decal marking and registration system and will establish a small craft channel in the Inner Harbor to prevent vessels from intruding in the restricted area.

DATE: Written comments must be submitted on or before October 29, 1987.

ADDRESS: HQDA, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Reader at (213) 894-0351 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her address, identify this notice and give the reasons for the comment. All comnents received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received and the Corps of Engineers determines that the opportunity to make oral presentations will aid the rulemaking process. The Naval Weapons Station has revised their internal security process to create a more navigable and more easily controlled waterway. Part of this effort has resulted in a properly marked small boat channel in the southern part of the Inner Harbor in Anaheim Bay. This did not exist in the past other than as a customary usage channel. The decal registration system required by current regulations has proven to be unwieldy and awkward to enforce. This amendment to the regulation codifies actual practice by requiring small craft transiting the Inner Harbor to remain within the limits of the marked channel, and eliminates the registration and decal requirement.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and provisions of Executive Order 12291 do not apply. The Corps of Engineers certifies that if adopted, this proposal will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the foregoing, the Corps of Engineers proposes to amend Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. One authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; 33 (U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.930 is revised to read as follows:

§ 334.930 Anaheim Bay Harbor, California; Naval Weapons Station, Seal Beach.

(a) *The restricted area.* The waters of Anaheim Bay Harbor between the east and west jetties at the United States Naval Weapons Station, Seal Beach, California, and the contiguous tidal channel and basin as far east as the Anaheim Bay Bridge.

(b) *The regulation.* (1) The authority of the Naval Weapons Station Commanding Officer in this area extends to restricting and disallowing the navigating or anchorage of craft during such times as the Commanding Officer determines that considerations of national security or safety warrant such action(s).

(2) All craft authorized transit of this area shall stay within the limits of the entrance channel in the Outer Harbor, and confine their movement to within the limits of the marked small craft channel at the southern portion of the Inner Harbor.

(3) Recreational craft, such as water skis, jet skis, rowboats, canoes, kayaks, wind surfers, sailboards, surfboards, etc., are specifically prohibited within the restricted area.

(4) Boats unable to throttle down or to maintain steerage way at 5 miles per hour speed shall proceed at the minimum speed consistent with seamanship in an area regularly subject to waterborne explosive handling operations. In case of doubt, boat operators of inbound boats will remain in the west end of the basin and outbound boats in the east end of the basin until informed by a representative

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of the Naval Weapons Station or U.S Coast Guard of the completion of the waterborne explosive handling hazard.

(5) Smoking, open flames and barbecues in boats are prohibited during the transit of this area.

(6) Nothing in the regulations in this section shall be construed as relieving the owner or persons in command of any vessels or plant from the penalties of the law for obstructing navigation or for not complying with the navigation laws in regard to lights or signals or for otherwise violating law.

(7) All vessel operators shall heed and obey all posted signs and/or instructions issued by security personnel of the U.S. Naval Weapons Station.

(8) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Weapons Station, Seal Beach, California, and such agencies as he/she may designate. For clarification or other information, the U.S. Naval Weapons Station Command Duty Officer should be contacted at (213) 594–7101.

Date: September 3, 1987.

Joseph T. Larremore,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 87–21289 Filed 9–28–87; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3238–3]

Amendments to Standards of Performance for New Stationary Sources; Notification and Recordkeeping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the reporting requirements of several Subparts in order to be consistent with current EPA policy. Affected Subparts are Subpart A (General Provisions), Subpart D, and Subparts EE, MM, RR, SS, TT, WW and HHH (surface coating standards) of 40 CFR Part 60. Amending these Subparts will not change monitoring or recordkeeping requirements of the affected facilities. The intended effect of the amendments is to reduce the reporting burden and to provide EPA sufficient information to carry out effective monitoring and enforcement.

DATES: *Comments.* Comments must be received on or before October 26, 1987 (Contact Ann Eleanor at FTS 629–5578).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–85–01, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket. Docket No. A–85–01, containing supporting information used in developing the proposed amendments, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Amanda Aldridge, Standards Development Branch, Emission Standards and Engineering Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5568 or 5268.

SUPPLEMENTARY INFORMATION:

1. Background for Proposed Amendment

Rationale for Proposed Reporting Frequencies

In 1985, the Agency reviewed the information collection requirements and reporting frequencies of new source Performance standards (NSPS). As a result of that review, the policy under which the Agency determines reporting frequencies for NSPS was developed and published July 27, 1987, in the **Federal Register** as part of the preamble for proposed standards of performance for fluid catalytic unit regenerators (November 8, 1985 50 FR 46464).

For NSPS, the information collected is of three different types that are of different utilities to the enforcing agency. These types of information are monitored parameter data, excess emission data as measured by continuous monitoring systems (CMS) [1], and direct compliance information. Direct compliance information is most useful to an enforcement agency because the compliance status of the source is evident from the information itself, and no further testing is necessary for documentation. Because these data can be used so quickly, and because it is beneficial to an enforcement action to have the most current data available, sources will be required to report this information to EPA on a quarterly basis. However, if no exceedances of the standard have occurred during a particular quarter, only a statement to that effect (negative declaration) is needed. Further, these negative declarations may be made on a semiannual basis. This helps focus the resources both of the industry and of EPA on sources where remedial action is warranted.

For the other types of reported information (i.e., monitored parameter data and CMS excess emission data), EPA currently must take some other step (e.g., performance test, inspection, etc.) before proving a violation of an applicable emission limit. Under the new policy for NSPS, reporting frequencies of data other than direct compliance information are reviewed regulation by regulation and semiannual reporting is required in the absence of evidence as to why this is not sufficient. Factors that are reviewed include location and size of the source, number of sources, likelihood of excess emissions, potential for severe adverse air quality impacts, and other factors as appropriate. More frequent reporting of excess emission data from CMS may be required if in the future EPA determines that CMS excess emission data may also be used for direct enforcement.

In certain subparts (e.g., Subparts P, Q, and R), the CMS data are to be used to determine compliance during a performance test. However, except for the performance test, the CMS data are not intended to determine compliance with the standards. Therefore, except during performance tests, the CMS data are considered to be excess emission data rather than direct compliance information and should be reported semiannually.

Amendment to General Provisions

The EPA is proposing to amend the General Provisions (Subpart A) of 40 CFR Part 60. The General Provisions specify procedures and definitions that apply to all owners and operators of air pollution sources covered by NSPS. Currently, under 40 CFR 60.7(c), owners and operators of certain affected facilities required to install and operate CMS must submit a written report of excess emissions to the Administrator every calendar quarter. Sources that must comply with this provision are identified in the individual subparts (e.g., Subpart G—Nitric Acid Plants). This notice proposes that the frequency of submission of excess emission reports

[1] Emission data measured by CMS can be either excess emission data or direct compliance information depending on how the use of the CMS is defined in the applicable subpart. The applicable subpart must specify the CMS as the compliance method for the emission data measured by the CMS to be direct compliance information.

required by § 60.7(c) be reduced from quarterly to semi-annually. For certain other affected facilities (e.g., those subject to Subpart Db), continuous monitoring data are used directly for determination of compliance and are required to be submitted quarterly. Today's action does not affect this requirement.

This proposed revision to the General Provisions would implement the new reporting policy with regard to excess emission reports, which generally consist of continuous emission monitoring data. The EPA is proposing to change the reporting period for excess emission reports to semiannual in order to reduce the burden to industry of preparing and submitting excess emission reports and to reduce the volume of reports to be handled by regulatory agencies. It is the Agency's judgment that less frequent reporting will have no effect upon the utility of the data which may be obtained from such reports and that the effects upon enforcement of NSPS would be minimal. However, if the Administrator judges that more frequent reporting is needed from owners/operators of some affected facilities, he may so require, either by requests for particular sources or by regulation for classes or categories of sources.

The proposed revision would reduce to semiannual the excess emission reporting requirements for the following subparts and affected facilities: Subpart G—Nitric Acid Plants; Subpart H—Sulfuric Acid Plants; Subpart J—Petroleum Refineries (except SO_2 excess emission data); Subpart P—Primary Copper Smelters; Subpart Q—Primary Zinc Smelters; Subpart R—Primary Lead Smelters; Subpart Z—Ferroalloy Production Facilities; Subpart AA—Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or before August 17, 1983; Subpart BB—Kraft Pulp Mills; Subpart CC—Glass Manufacturing Plants; Subpart GG—Stationary Gas Turbines; Subpart HH—Lime Manufacturing Plants; and Subpart NN—Phosphate Rock Plants.

Amendment to Subpart D

The EPA is also proposing to amend Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971. The facilities affected by Subpart D are large sources of sulfur dioxide and nitrogen oxides emissions. Section 60.45(g) currently requires quarterly reporting of excess emissions. The previously discussed amendment to § 60.7(c) of the General Provisions would change the excess emission reporting to semiannual. However, since facilities affected by Subpart D are some of the largest individual sources of sulfur dioxide and nitrogen oxides, anything less than quarterly reporting could result in an unreasonably high level of emissions before corrective action could be taken. Also, quarterly reporting will involve only a minor burden on the source, since in almost all cases excess emission reports will be stored in a computer system and analyzed automatically. Therefore, the EPA has determined that quarterly excess emission reporting is appropriate for those sources affected by Subpart D. Consequently, the EPA is proposing to amend Subpart D, § 60.45(g) so that current requirements for quarterly excess emission reports remain the same.

It should be noted that on October 21, 1983, (40 FR 48960), EPA proposed a revision to Subpart D that would allow sulfur dioxide compliance testing by continuous emission monitoring, stack testing, or fuel sampling and analysis. If this proposal is promulgated, the compliance provisions and the contents of reports required for sulfur dioxide would change, but the frequency of reporting would remain quarterly. Also, the October 21, 1983, proposal will have no impact on opacity or nitrogen oxide requirements.

Amendment to Surface Coating Standards

In order to be consistent with the new reporting policy, the EPA also proposes to amend several standards of performance for surface coatings (i.e., Subparts EE, MM, RR, SS, TT, WW, HHH). These subparts currently require monthly compliance tests and monitoring of control device parameters, but the reporting requirements vary widely. Subparts EE, SS, and TT require reporting of initial performance tests only. Subparts RR, WW, and HHH require semiannual reporting of exceedances of the standard. Subpart MM requires monthly submission of reports when the standard is exceeded. The data resulting from the monthly compliance tests is direct compliance information which may be used by the enforcement agency as the sole evidence of a violation of the standard; therefore, it is important to have the most recent data available. As a result, sources should report these data quarterly if an exceedance of the standard has occurred and semiannually otherwise. Conversely, monitored parameter data cannot stand alone as justification for an enforcement action, so these reports should be submitted semiannually.

Therefore, the EPA is proposing to amend the surface coating standards to require quarterly reporting when the results of the monthly compliance tests show emissions exceeding the standard and to semiannually if no exceedances occur, and to require semiannual reporting of monitored parameter data.

II. Administrative Requirements

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except as noted in section 307(d)(7)(A)).

III. Office of Management and Budget Reviews

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Pub. L. 95–511) requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). This proposed amendment increases the reporting requirements for Subparts EE, RR, SS, TT, WW, and HHH, and decreases the reporting required for Subparts G, H, J, P, Q, R, Z, AA, BB, CC, GG, HH, MM, and NN. The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

B. Executive Order 12291 Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this amendment to the General Provisions and Subparts D, EE, MM, RR, SS, TT, WW, and HHH would result in none of the adverse economic effects set forth in section 1 of the order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that these amendments are not a "major rule" under Executive Order 12291.

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C. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed amendment to 40 CFR Part 60 will not, if promulgated, have a significant economic impact on a substantial number of small entities. The amendment will only add new reporting requirements to Subparts EE, RR, SS, TT, WW, and HHH of Part 60. Consequently, it will not add significant costs to compliance with NSPS.

List of Subjects in 40 CFR Part 60

Air pollution control, Electric power plants, Intergovernmental relations, Reporting and recordkeeping requirements, Can surface coating, Fossil-fuel-fired steam generators, Synthetic fibers, Incorporation by reference.

Date: September 21, 1987.

Lee M Thomas,

Administrator.

It is proposed that 40 CFR Part 60 be amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 301(a), Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7601(a)).

2. By revising paragraph (c) of § 60.7 of Subpart A—General Provisions to read as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(c) Each owner or operator required to install a continuous monitoring system shall submit a written report of excess emissions (as defined in applicable subparts) to the Administrator semiannually, except as otherwise provided by individual subparts. All semiannual reports shall be postmarked by the 30th day following the end of each calendar half and shall include the following information:

* * * * *

3. By revising paragraph (g) of § 60.45 of Subpart D—Standards of Performance for Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971 to read as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(9) Excess emission reports shall be submitted to the Administrator for every calendar quarter. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter. Each excess emission report shall include the information required in § 60.7(c). Periods of excess emissions that shall be reported are defined as follows:

* * * * *

4. In Subpart EE—Standards of Performance for Surface Coating of Metal Furniture, § 60.315: 1. Paragraph (b) is revised. 2. Paragraph (c) is redesignated as paragraph (d) and revised. 3. New paragraph (c) is added.

§ 60.315 Reporting and recordkeeping requirements.

* * * * *

(b) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.312. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit as specified in § 60.7(c):

(1) Where compliance with § 60.312 is achieved through the use of thermal incineration, each 3-hour period when metal furniture is being coated during which the average temperature of the device was more than 28 °C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.313.

(2) Where compliance with § 60.312 is achieved through the use of catalytic incineration, each 3-hour period when metal furniture is being coated during which the average temperature of the device immediately before the catalyst bed is more than 28 °C below the average temperature of the device immediately before the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.313. Additionally, when metal furniture is being coated, all 3-hour periods during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.313 will be recorded.

(3) For thermal and catalytic incinerators, if no such periods as described in paragraphs (c)(1) and (c)(2) of this section occur, the owner or operator shall submit a negative report.

(d) Each owner or operator subject to the provisions of the subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine VOC emissions from each affected facility. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain at the source, daily records of the incinerator combustion chamber temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed. Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall maintain at the source daily records of the amount of solvent recovered by the system for each affected facility.

5. In Subpart MM—Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations, § 60.395: 1. Paragraph (b) is revised. 2. Paragraph (c) is revised.

§ 60.395 Reporting and recordkeeping requirements.

* * * * *

(b) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.392. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually. Where compliance is achieved through the use of a capture system and control device, the volume weighted average after the control device should be reported.

(c) Where compliance with § 60.392 is achieved through the use of incineration, the owner or operator shall continuously record the incinerator combustion temperature during coating operations for thermal incineration or the gas temperature upstream and downstream of the incinerator catalyst bed during coating operations for catalytic incineration. The owner or operator shall submit a written report as specified in § 60.7(c) and as defined below.

* * * * *

6. In Subpart RR—Standards of Performance for Pressure Sensitive Tape

and Label Surface Coating Operations, § 60.447: 1. Paragraph (b) is revised. 2. Paragraph (c) is redesignated as paragraph (d) and revised. 3. New paragraph (c) is added.

§ 60.447 Reporting requirements.

* * * * *

(b) Following the initial performance test, the owner or operator of each affected facility shall submit quarterly reports to the Administrator of exceedances of the VOC emission limits specified in § 60.442. If no such exceedances occur during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) The owner or operator of each affected facility shall also submit reports as specified in § 60.7(c) when the incinerator temperature drops as defined under § 60.443(e). If no such periods occur, the owner or operator shall submit a negative report.

(d) The requirements of this subsection remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under control number 2060–0004)

7. In Subpart SS—Standards of Performance for Industrial Surface Coating: Large Appliances, § 60.455: 1. Paragraph (b) is revised. 2. Paragraph (c) is redesignated as paragraph (d) and revised. 3. New paragraph (c) is added.

§ 60.455 Reporting and recordkeeping requirements.

* * * * *

(b) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.452. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit as specified in § 60.7(c).

(1) Where compliance with § 60.452 is achieved through use of thermal incineration, each 3-hour period of coating operation during which the average temperature of the device was more than 28 °C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.453.

(2) Where compliance with § 60.452 is achieved through use of catalytic incineration, each 3-hour period of coating operation during which the average temperature recorded immediately before the catalyst bed is more than 28 °C below the average temperature at the same location during the most recent performance test at which destruction efficiency was determined as specified under § 60.453. Additionally, all 3-hour periods of coating operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.453 will be recorded.

(3) For thermal and catalytic incinerators, if no such periods as described in paragraphs (c)(1) and (c)(2) of this section occur, the owner or operator shall submit a negative report.

(d) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine VOC emissions from each affected facility. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed. Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall maintain at the source daily records of the amount of solvent recovered by the system for each affected facility.

8. In Subpart TT—Standards of Performance for Metal Coil Surface Coating, § 60.465: 1. Paragraph (c) is redesignated as paragraph (e) and revised. 2. New paragraphs (c) and (d) are added.

§ 60.465 Reporting and recordkeeping requirements.

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.462. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(d) The owner or operator of each affected facility shall also submit reports as specified in § 60.7(c) when the incinerator temperature drops as defined under § 60.464(c). If no such periods occur, the owner or operator shall submit a negative report.

(e) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine monthly VOC emissions from each affected facility and to determine the monthly emission limit where applicable. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed.

9. In Subpart WW—Standards of Performance for the Beverage Can Surface Coating Industry, § 60.495: 1. Paragraph (b) is revised. 2. Paragraphs (c) and (d) are redesignated as (d) and (e) and revised. 3. New paragraph (c) is added.

§ 60.495 Reporting and recordkeeping requirements.

* * * * *

(b) Following the initial performance test, each owner or operator shall identify, record, and submit quarterly reports to the Administrator of each instance in which the volume-weighted average of the total mass of VOC per volume of coating solids, after the control device, if capture devices and control systems are used, is greater than the limit specified under § 60.492. If no such instances occur during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit as specified in § 60.7(c):

(1) Where compliance with § 60.492 is achieved through the use of thermal incineration, each 3-hour period when cans are processed, during which the average temperature of the device was

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more than 28 °C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.493.

(2) Where compliance with § 60.492 is achieved through the use of catalytic incineration, each 3-hour period when cans are being processed, during which the average temperature of the device immediately before the catalyst bed is more than 20 °C below the average temperature of the device immediately before the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.493 and all 3-hour periods, when cans are being processed, during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.494.

(3) For thermal and catalytic incinerators, if no such periods as described in paragraphs (c)(1) and (c)(2) of this section occur, the owner or operator shall submit a negative report.

(d) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine VOC emissions from each affected facility in the initial and monthly performance tests. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain at the source daily records of the incinerator combustion chamber temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed. Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall maintain at the source daily records of the amount of solvent recovered by the system for each affected facility.

(e) The requirements of this section remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected facilities within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under control number 2060-0001)

* * * * *

10. In Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities, § 60.604: 1. The section heading is revised. 2. Paragraph (a)(2) is revised.

§ 60.604 Reporting and recordkeeping requirements.

(a) * * *

(2) The results of subsequent performance tests that indicate that VOC emissions exceed the standards in § 60.602. These reports shall be submitted quarterly at 3-month intervals after the initial performance test. If no exceedances occur during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

* * * * *

[FR Doc. 87-22153 Filed 9-28-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3267-2]

Final Authorization of State Hazardous Waste Management Program; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking and public comment period.

SUMMARY: Indiana has submitted a revision to its authorized Hazardous Waste Management Program under the Resource Conservation and Recovery Act (RCRA), as amended.

The United States Environmental Protection Agency (EPA) has reviewed Indiana's revision and has made a decision, subject to public review and comment, that Indiana's Hazardous Waste Management program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Indiana's Hazardous Waste Management program revision. Indiana's application for program revision is available for public review and comment.

DATES: Authorization for Indiana's program revision shall become effective November 30, 1987 unless EPA publishes a prior Federal Register action withdrawing this action. Comments on Indiana's program revision must be received by the close of business on October 29, 1987.

ADDRESSES: Copies of Indiana's program revision are available during the business hours of 8:30 a.m. to 4:30 p.m., at the following addresses for inspection and copying:

Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206. Contact: Mr. Michael Dalton, (317) 232-8884.

U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, Program Management Section, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois 60604. Contact: Mr. George Woods, (312) 886-6134.

U.S. EPA Headquarters, Library, PM 211A, 401 M Street, SW., Washington, DC 20460, (202) 382-5926.

Written comments should be sent to: U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, Program Management Section, 230 South Dearborn Street, 5HS-JCK-13, P.O. Box A3587, Chicago, Illinois 60604. Attention: Mr. George Woods, (312) 886-6134.

FOR FURTHER INFORMATION CONTACT: Mr. George Woods, U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, Program Management Section, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois 60604, (312) 886-6134.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Management program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21 (a) and (e), revisions to State hazardous waste management programs are necessary when Federal or State statutory or regulatory authority is modified or upon certain other changes to EPA's regulations in 40 CFR Parts 260-268, 124 and 270.

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B. Indiana

Indiana initially received final authorization on January 31, 1986. On June 29, 1987, Indiana submitted a program revision application for additional program approval. Today, Indiana is seeking approval of its program revision in accordance with 40 CFR 271.21(e).

EPA has reviewed Indiana's revision application and has made a decision, subject to public review and comment, that Indiana's Hazardous Waste Management program revision does reflect the State's equivalency with the Federal program. Consequently, EPA intends to grant Indiana authorization for this program modification. The public may submit written comments on EPA's proposed approval on this revision, up until October 29, 1987. Copies of Indiana's program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Indiana's program revision shall become effective 60 days after the date of publication in the **Federal Register** (FR) unless an adverse comment pertaining to the State's revisions, discussed in this notice, is received. If comments pertaining to the revision application or this decision are received, EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Indiana has revised their program to obtain final authorization for the following provisions:

Non-HSWA Cluster I

11–13–84—Exclusion of Household Waste (49 FR 44980)
11–21–84—Interim Status Standards Applicability (49 FR 46095)
12–04–84—Corrections to Test Methods Manual (49 FR 47391)
12–20–84—Satellite Accumulation (49 FR 49571)
01–04–85—Redefinition of Solid Waste (50 FR 614)
04–23–85—Interim Status Standards for Landfill Cover Design Standards (50 FR 16044)

Non-HSWA Cluster II

08–20–85—Correction to Redefinition of Solid Waste (50 FR 33541)
05–28–86—Clarification of Spent Pickle Liquor Listing (51 FR 19320)

Any RCRA hazardous waste permits, or portions of permits, issued by EPA under the provisions for which the State is applying for authorization, prior to the effective date of authorization, shall be administered by EPA. EPA will suspend issuance of any further permits under the provision for which the State is authorized on the effective date of authorization. EPA had previously suspended issuance of permits for other provisions on January 31, 1986, the effective date of Indiana's authorization for the RCRA program. Indiana is not authorized nor seeking to be authorized to operate the Federal program on Indian Lands. This authority shall remain with EPA.

C. Effect of HSWA on Indiana's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they can take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Indiana if today's RCRA authorization is granted. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Indiana until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

In addition to the eight non-HSWA provisions for which Indiana is seeking authorization at this time, the State's program revision as published in the May 1, 1987, issue of the *Indiana Register* (10 IR 1563), and which became effective on April 15, 1987, encompasses all of the Special HSWA Cluster I provisions promulgated through March 31, 1986. However, in as much as the authorization deadline for these HSWA provisions is July 1, 1989, and because of State resource considerations, Indiana elected not to seek authorization for any of the Special HSWA Cluster I provisions now. The State has indicated that it intends incrementally to pursue authorization for the HSWA provisions, all well in advance of the 1989 deadline.

Today's proposed rulemaking does not include authorization of Indiana's program for any requirement implementing the HSWA. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1987.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization is for modifications to the State's existing authorized program and is not designed to increase the regulated population. It does not impose any new burdens on small entities.

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List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87-22290 Filed 9-28-87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 188
Tuesday, September 29, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Doc. No. 4662S]

Crop Insurance Availability; Hawaiian Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of availability of insurance in the State of Hawaii.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice to private insurance companies of the availability of Federal crop insurance in the State of Hawaii under the provisions an Agency Sales and Service Contract with FCIC, and to those private insurance companies selling crop insurance policies in the State of Hawaii, of the availability of reinsurance for such policies of insurance under a Reinsurance Agreement with FCIC.

The provisions of the standards for approval for reinsured companies are contained in 7 CFR Part 400, Subpart L—General Administrative Regulations—Standards for Approval; Standard Reinsurance Agreement were published in the **Federal Register** on Monday, May 11, 1987 (52 FR 17540), as a final rule setting forth the financial and operational standards for approval to be met by private entities under a Reinsurance Agreement with the Federal Crop Insurance Corporation, effective for the 1988 contract year (beginning on July 1, 1987).

The provisions setting forth the standards for financial requirements for private entities under an Agency Sales and Service Contract are contained in 7 CFR Part 400, Subpart C, published by FCIC as a final rule on Friday, September 19, 1986.

This notice is intended to advise all interested parties of the availability of Federal crop insurance, and the availability of reinsurance to all qualifying private entities selling crop insurance in the State of Hawaii.

FOR FURTHER INFORMATION CONTACT: Further information with respect to this notice, and on applying for either an Agency Sales and Service Contract or a Reinsurance Agreement for the 1988 contract year, may be obtained from David W. Gabriel, Assistant Manager for Program Administration, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 475–4407.

Done in Washington, DC, on September 17, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–22344 Filed 9–28–87; 8:45 am]

BILLING CODE 3410–08–M

Forest Service

Intent To Prepare Environmental Impact Statement; Fremont National Forest, OR

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to mine approximately 120 million tons of combined gold ore and waste rock from an open-pit gold mine. The ore will be processed using sodium cyanide heap leaching techniques. The Quartz Mountain Project is located in the Bly Ranger District of the Fremont National Forest near the summit of Quartz Mountain Pass.

The National Environmental Policy Act requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed action will be invited to participate in the process (scoping). Input gathered during scoping will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying the potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring alternatives
5. Identifying potential environmental effects of the proposed action and alternatives.
6. Determining potential cooperating agencies and task assignments.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will include the no action alternative. Other alternatives will consider different locations for the project facilities, different project sizes, and different rates and methods of mining and processing the ore.

Public meetings are scheduled for mid-October in Lakeview, Bly, and Klamath Falls, Oregon. Notice of meeting dates and locations will be published in local newspapers and posted in public buildings.

The analysis is expected to take about 7 months. The DEIS is expected to be available for public comment and review by spring of 1988. The final environmental impact statement should be completed by summer of 1988.

Orville Grossarth, Fremont National Forest, Forest Supervisor, is the responsible official.

Written comments and suggestions concerning the analysis, questions about the proposed action and environmental impact statement, or information about public meeting dates and places should be directed to, Sherman Radtke, Minerals Staff Officer, Fremont National Forest, 524 North G Street, Lakeview, Oregon 97630 by November 20th, 1987.

Date: September 21, 1987.

Orville D. Grossarth,

Forest Supervisor.

[FR Doc. 87–22366 Filed 9–28–87; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Posted Stockyards; Cullman Feeder Pig Association et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), it was ascertained that the livestock markets named below were stockyards within the definition of that term

contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
AL-171—Cullman Feeder Pig Assoc., Hanceville, AL	June 22, 1987
AR-163—Ward Livestock Auction, Ward, AR	July 28, 1987
IA-259—The Auction Farm, Sheldon, IA	July 21, 1987
KY-173—Gateway Livestock Auction, Inc., Mt. Sterling, KY	May 6, 1987
MS-162—Glenwild Livestock Auction, Grenada, MS	May 8, 1987
MO-263—Lyle Stockyards, Savannah, MO	May 11, 1987
MO-264—MFA Livestock Association, Inc., Centerville, MO	May 26, 1987
MO-265—Hwy 47 Auction, St. Clair, MO	June 1, 1987

Done at Washington, DC, this 23rd day of September, 1987.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 87-22420 Filed 9-28-87; 8:45am]

BILLING CODE 3410-KD-M

Proposed Posting of Stockyards; Hwy 20 Horse Auction, et al.

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

GA-195—Hwy 20 Horse Auction, Canton, Georgia
GA-196—Sunny Farm Stables, Cumming, Georgia
GA-197—Southeastern Livestock Co., Quitman, Georgia
NC-158—Stegall's Livestock and Auction Barn, Concord, North Carolina
TN-184—Beech River Feeder Pig Sale, Inc., Parsons, Tennessee
TX-334—Ellis County Livestock, Inc., Waxahachie, Texas
VA-157—Springlake Livestock Market, Inc., Moneta, Virginia
VA-158—Farmers Livestock Market, Inc., of Tazewell, Virginia, Tazewell, Virginia

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, United States Department of Agriculture, Washington, DC 20250, by October 14, 1987.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 23rd day of September, 1987.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 87-22421 Filed 9-28-87; 8:45 am]

BILLING CODE 3410-KD-M

Deposting of Stockyards; McCreary Sales Co. et al.

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
IA-123—McCreary Sales Company, Centerville, IA.	May 16, 1959
IA-157—Kieth E. Myers Enterprises, a Division of Keith E. Myers, Inc., Grundy Center, IA	June 24, 1966
IA-159—Parks Livestock Auction, Hampton, IA	Dec. 11, 1961
IA-165—Iowa Falls Livestock Sales, Iowa Falls, IA.	June 9, 1959
IA-170—Bingley Sales Company, Knoxville, IA	Apr 30, 1957
IA-182—Belle Plaine Livestock Auction, Inc., d/b/a/ Marengo Livestock Auction, Marengo, IA	June 3, 1959
IA-194—Oelwein Livestock Exchange, Oelwein, IA	June 3, 1959
IA-195—Olke Livestock Exchange, Olke, IA.	June 9, 1959
IA-230—Washington Livestock Auction, Inc., Washington, IA.	June 4, 1957
IA-245—Spencer Dairy Auction, Spencer, IA.	Feb 22, 1973
IA-254—Producers Livestock Marketing Assn. Feeder Pigs, Creston, IA.	Feb. 5, 1979
KS-121—Downs Sales Company, Downs, KS.	Apr 25, 1950
KS-122—J.J. Livestock Commission Co., Effignham, KS	May 22, 1959
KS-124—G&V Cattle Company, Elkhart, KS	Apr 13, 1950
KS-158—Marion Livestock Sales and Commission Co., Marion, KS	June 2, 1959
KS-183—Beverly Stockyards Co., Inc., Salina KS	Jan 21, 1936
KS-185—Wilson Livestock Auction, Salina, KS	July 14, 1934
KS-189 Turon Sale Company, Turon, KS	
MO-142—Halbert Horse Auction, Kansas City, MO	Dec 11, 1964
MO-146—Kirksville Community Sale, Inc., Kirksville, MO.	May 9, 1959
MO-150—Public Auction Yards, Inc., Lewiston, MO	May 11, 1959
MO-161—Midstates Livestock Market, Inc., Maryville, MO	Oct 12, 1966
MO-240—Mountain View Sales Company, Mountain View, MO	Oct 8, 1975
MO-251—SKM Horse Auction, Humphreys, MO	July 9, 1980
NB-100—Ainsworth Livestock Market, Ainsworth, NE	Sept 6, 1956
NB-105—Arthur Livestock Commission Company, Arthur, NE	Feb 6, 1950
NB-113—Bloomfield Livestock Auction, Bloomfield, NE	Apr 27, 1959
NB-125—Curtis Livestock Commission Co., Curtis, NE	Mar 10, 1958
NB-134—Geneva Sale Barn, Geneva, NE	June 9, 1959
NB-138—Bachman & Lester Company Stock Yards, Grand Island, NE	Dec 17, 1931
NB-143—Holdrege Livestock Auction, Holdrege, NE	Aug 12, 1967
NB-156—Nebraska City Sale Barn, Inc., Nebraska City, NE	June 12, 1965
NB-168—Plainview Sales Pavillion, Plainview, NE	May 6, 1959
NB-186—Farmers Livestock Auction, Inc., Wayne, NE	June 10, 1959
MD-105—The Caroline Sales Company, Denton, MD	Oct 28, 1959
NC-102—New River Livestock Market, Boone, NC	Feb 9, 1968
NC-114—Hillsborough Livestock Market, Hillsborough, NC	Apr 13, 1959
NC-118—Lumberton Auction Company, Inc., Lumberton, NC	July 10, 1959
NC-119—Norwood Stock Yard, Inc., Marshville, NC	May 15, 1959
NC-121—Farmers Livestock Market of Mount Airy, Mt Airy, NC	Apr 2, 1959
NC-146—R H. Lanier Horse Auction, Chinquapin, NC	Sept 27, 1973
NC-152—Eastern Carolina Livestock Arena, Rocky Mount, NC	Apr 19, 1982
NC-156—Lucky Dollar Horse Auction, Grifton, NC	July 31, 1986
SC-138—Intercoastal Auction Barn, Conway, SC	Oct 8, 1985
TX-174—Georgetown Commission Company, Georgetown, TX	Mar 27, 1959
VT-106—Vergennes Livestock Commission Sales, Vergennes, VT	Nov 19, 1959
VA-113—Galax Livestock Market, Inc., Galax, VA	Feb 16, 1968
VA-114—Farmers Livestock Market, Gate City, VA	Feb 16, 1968
VA-136—Staunton Livestock Market, Inc., Staunton, VA	Apr 8, 1959
VA-140—Farmers Livestock Market, Inc., Tazewell, VA	Mar 2, 1959
VA-143—Woodstock Livestock Market, Inc., Woodstock, VA	June 10, 1959
VA-152—Farmers Livestock Market, Inc., Rose Hill, VA	Nov 30, 1978

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register**. This notice shall become effective upon publication in the **Federal Register**.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*).

Done at Washington, DC, this 23rd day of September, 1987.

[FR Doc. 87-22422 Filed 9-28-87; 8:45 am]

BILLING CODE 3210-KD-M

Rural Electrification Administration

Finding of No Significant Impact; Dairyland Power Cooperative

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a new administration building in the City of La Crosse, Wisconsin. The new building site is located in part of the SW–¼, NW–¼ of Section 16, and part of the SE–¼, NE–¼ of Section 17, all in T15N, R7W. The property is approximately 3.4 hectares (8.5 acres), located in La Crosse County, Wisconsin, and will be built by Dairyland Power Cooperative (DPC) of La Crosse, Wisconsin.

FOR FURTHER INFORMATION CONTACT: REA's Environmental Assessment (EA) and FONSI and DPC's Borrower's Environmental Report (BER) may be reviewed at the office of the Director, Northwest Area—Electric, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone number (202) 382–1400; or at the office of Dairyland Power Cooperative, James W. Taylor, Manager, 2615 East Avenue, South, La Crosse, Wisconsin 54602–0817, telephone number (608) 787–1258, during regular business hours. Copies of the BER, EA, and FONSI can be obtained from either of the contacts listed above. All comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjuntion with a request for construction approval from DPC, has reviewed the BER submitted by DPC and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The project consists of constructing a new administation building which will provide for DPC's entire administrative needs including the new System Operations Center (SOC) in La Crosse County, Wisconsin. REA determined that the proposed project will have no effect on floodplains, wetlands, important farmland, prime rangelands or forest lands, threatened or endangered species or critical habitat, or any property listed or eligible for listing in the *National Register of Historic Places*. No other matters of potential environmental concern were identified by REA.

Alternatives examined for the proposed project included no action, upgrading existing facilities, constructing a separate new building to accommodate only the new SOC, constructing a new building to accommodate all operations within one building, and alternative sites for construction. REA determined that the proposed construction of a new administration building in the City of La Crosse, Wisconsin, is an environmentally acceptable alternative. The proposed project will maintain the reliability of DPC's existing system and provide for DPC's entire administrative needs including the new SOC. Based upon the BER, REA prepared an EA concerning the proposed project and its impacts. REA has independently evaluated the proposed project, and has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement is not necessary

In accordance with REA Environmental Policies and Procedures (7 CFR Part 1794), DPC advertised and requested comments on the environmental aspect of the proposed project in the La Crosse Tribune, a public daily newspaper of general circulation. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850-Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Date: September 17, 1987.

Jack Van Mark,

Acting Administrator.

[FR Doc. 87–22364 Filed 9–28–87; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[P77#7]

Endangered Species; Proposed Modification of Permit; Southwest Fisheries Center

Notice is hereby given that the Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038 has requested a modification of Permit No. 413 issued on April 20, 1983 (48 FR 17638), under the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

Permit No. 413 authorized, among other things, the collection of three male Hawaiian monk seals for captive experimental studies including feeding, disease treatments, and testing of marking techniques. The Holder requests authorization to include research that would involve behaviorally conditioning the seals so that basal metabolic rates can be determined.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this proposed modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: September 22, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–22378 Filed 9–28–87; 8:45 am]

BILLING CODE 3510–22–M

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DEPARTMENT OF ENERGY

Floodplain Statement of Findings for the Industrial Wastewater Pretreatment Facility at the DOE Kansas City Plant, Operated by the Allied Corporation, Bendix Kansas City Division

AGENCY: Department of Energy.

ACTION: Statement of findings.

SUMMARY: This document serves to give public notice of the alternative selected by DOE on the proposed Industrial Wastewater Pretreatment Facility. Information contained in this Statement of Findings is presented in support of the decision to construct the Pretreatment Facility at the DOE Kansas City Plant as originally proposed. The related Floodplain Involvement Notification was published in the **Federal Register**, Vol. 52, No. 83. Page 15747, dated April 30, 1987.

DATES: Comments must be filed on or before October 14, 1987.

ADDRESS: Address any comments or requests to the Albuquerque Operations Office, Department of Energy/EHD, P.O. Box 5400, Albuquerque, New Mexico, 87115. All requests should refer to the project by title.

FOR FURTHER INFORMATION CONTACT: Earl W. Bean, Area Manager, Kansas City Area Office, Department of Energy, P.O. Box 202, Kansas City, Missouri 64141.

I. Project Description

The Kansas City Plant resides on a very compact highly developed site within the completed portion of the flood protection system. This project proposes to construct a 37,000 square-foot steel frame building to house industrial wastewater pretreatment equipment. The building will be located in an area east of Building 16 and north of Building 22, part of which is now occupied by a salvaged materials storage lot. In addition to all pretreatment process equipment and tankage, the building will house sludge handling and storage equipment; chemical storage and feed equipment; an office/control room; a laboratory; and restrooms. Site specific information can be obtained through the Kansas City Plant Environmental Assessment (DOE/EA–0002).

The Plant will treat industrial wastewater from the DOE manufacturing facility that presently flows into the south lagoon and then to the City sanitary sewer. Three wastestreams contribute to lagoon influent: (1) Acid wastewater; (2) caustic wastewater; and (3) industrial wastewaters, as defined by 40 CFR Part 433; plus, other wastewaters from manufacturing and support operations. The pretreatment facility will also treat concentrated solutions from metal finishing processes that are presently hauled off-site for disposal by a subcontractor. The pretreatment facility will treat or remove cyanide; ammonia; metals (including hexavalent chromium and chelated metals); acids; caustics; and organic pollutants.

II. Alternatives

Reasonable alternatives to the action as proposed include the following: (1) No action, and (2) location of the pretreatment facility closer to the Main Plant. Alternative (1) was rejected because the applicable pretreatment standards would be exceeded periodically resulting in noncompliance with these regulations. Alternative (2) was ultimately rejected because sufficient land area is not available near the main facility. The Plant occupies 136 acres, only three percent of which is readily available for future development. With relocation, the pretreatment facility would still be situated in the floodplain as the entire federal complex is located within the 500-year floodplain.

III. Mitigation

Construction of the proposed Industrial Wastewater Pretreatment Plant will have no measurable impact on the basic characteristics of the Blue River floodplain. All construction activities will be within the existing flood protection zone where protection from flooding is provided by a levee constructed by the U.S. Corps of Engineers in 1972. The flood protection system restricts the floodway of the Blue River and Indian Creek from flowing through the Federal Complex. Engineering controls will also be used to reduce damage in the unlikely event that flooding should occur. The tops of containment walls and the floors will be set above the current level of flood protection, which according to the U.S. Army Corps of Engineers is presently providing protection for the 70-year flood. This action will lessen the chance of inundating equipment and stored chemicals. In addition, efforts to further minimize the release of industrial waste to the environment during flooding conditions will include halting the flow of wastewater to the pretreatment facility, that is, stopping factory operations and storing sludge above the current flood protection level. Because of the essentially "fully developed" characteristic of the federal complex, it is not believed necessary to evalaute effects on flora and fauna in the area.

IV. Determination

Benefits derived from the proposed project, as described in section (I), have been determined to outweigh the potential environmental impacts. As a result of the review of alternatives and evaluation of the environmental impacts, the DOE has determined that there is no practical alternative to the proposed action and that the proposed action has been designed to minimize harm to and within the floodplain. All actions will be in conformity with all applicable State and local ordinances.

The location map for this site is available from Randy F. Reddick, Albuquerque Operations Office, DOE-EHD, P.O. Box 5400, Albuquerque, New Mexico 87115, (505) 846–4340.

Date: August 3, 1987.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs, Department of Energy.

[FR Doc. 87–22266 Filed 9–28–87; 8:45 am]

BILLING CODE 6450–01–M

Floodplain Statement of Findings for Pedestrian Safety Roadway Relocation at the DOE Kansas City Plant, Operated by the Allied Corporation, Bendix Kansas City Division

AGENCY: Department of Energy.

ACTION: Statement of findings.

SUMMARY: This document serves to give public notice of the alternative selected by DOE on the proposed Pedestrian Safety Roadway Relocation project. Information contained in this Statement of Findings is presented in support of the decision to proceed with the roadway relocation as originally proposed. The related Floodplain Involvement Notification was published in the **Federal Register**, Vol. 52, No. 83, Pages 15748–15749, dated April 30, 1987.

DATES: Comments must be filed on or before October 14, 1987.

ADDRESS: Address comments or requests to the Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, New Mexico, 87115. All comments should refer to the project by title.

FOR FURTHER INFORMATION CONTACT: Earl W. Bean, Area Manager, Kansas City Area Office, Department of Energy, P.O. Box 202, Kansas City, Missouri 64141.

I. Project Description

The Kansas City Plant resides on a very compact highly developed site

within the completed portion of the flood protection system. The project will consist of the relocation of part of the existing 95th Street as it runs from Michigan Avenue to the new bridge over the Blue River east of the IRS facility. Pedestrian safety will be increased by minimizing the amount of parking south of the thoroughfare and constructing a pedestrian tunnel under the relocated roadway. This will also provide an expanded security control area directly in front of the main offices of the DOE facility. The increased security will be achieved by creating a fenced outer security buffer zone between the existing perimeter fence and the public roadway.

From the 1940's to 1984, the area south of 95th Street and east of the railroad tracks was a landfill used for the deposition of plant wastes. The proposed roadway relocation is located directly over a portion of the former landfill which is situated on the Federal Complex area. General plant refuse, trash, rubble, and metal shavings were routinely buried. Historical accounts of isolated incidents of disposal of liquids and plating waste have been reported. The landfill is now referred to as the IRS Landfill because of its proximity to the Internal Revenue Service center. The nature of waste in the area has been generally characterized, and data obtained from monitoring wells in the vicinity suggest that the area is a minor source of groundwater contamination

Six borings were drilled in June 1985, from which a total of 26 split-spoon samples were retrieved. Samples were collected from both the fill and the subjacent alluvium. A total of 22 samples were analyzed for metals. Eight of these samples with high metal concentrations were also subjected to a leach test, applying the EP Toxicity Method to six metals: Cadmium, chromium, copper, lead, nickel, and zinc. A total of nine samples were analyzed for volatile and semivolatile Priority Pollutants. Organic vapors were also monitored during drilling and sampling. An unidentified gas, believed to be methane, was noted in a number of borings.

The results of the leach test demonstrate that none of the samples were hazardous with respect to lead, cadmium, and chromium. Copper, nickel, and zinc are not EP Toxicity metals, so regulatory standards for leachability do not exist. The data indicate, however, that these three metals are not leachable. The site characterization study confirms historical reports of a general refuse landfill without concentrated sources of hazardous waste.

II. Alternatives

Alternative sites for the proposed roadway were considered, but all potential sites are within the same floodplain. Since the roadway will not adversely affect the floodplain, there is no advantage to a "no action" alternative. Flood induced damages to the roadway will be minimal, with some temporary rerouting of city traffic during the period of high water, and consist only of repairs to signal and tunnel lighting.

III. Mitigation

Part of the relocated roadway will cross an area that has been identified as an abandoned landfill. Analysis of landfill contents by drilling has not revealed any significant hazards. However, to limit surface percolation and to prevent migration of potential pollutants, an impervious seal will be placed under the roadway where it crosses the IRS landfill. This seal will extend beyond the edge of any roadway section a distance sufficient to allow placement of additional seal material to cover a larger area at a later date without jeopardizing the waterproof characteristics of the original seal. The seal will be impervious to methane gas which may be present in small quantities in the landfill. Various methods to be reviewed for sealing the landfill are available; representative samples are given in U.S. Department of Commerce Manuals, PB82–239054, dated March 1982, and AD/AL40–655, dated February 1984.

IV. Determination

Benefits derived from the proposed project, as described in section (I), have been determined to outweigh the potential environmental impacts. As a result of the review of alternatives and evaluation of the environmental impacts, the DOE has determined that there is no practicable alternative to the proposed action and that the proposed action has been designed to minimize harm to and within the floodplain. All actions will be in conformity with all applicable State and local ordinances.

Date: August 3, 1987.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs, Department of Energy.

BILLING CODE 6450–01–M

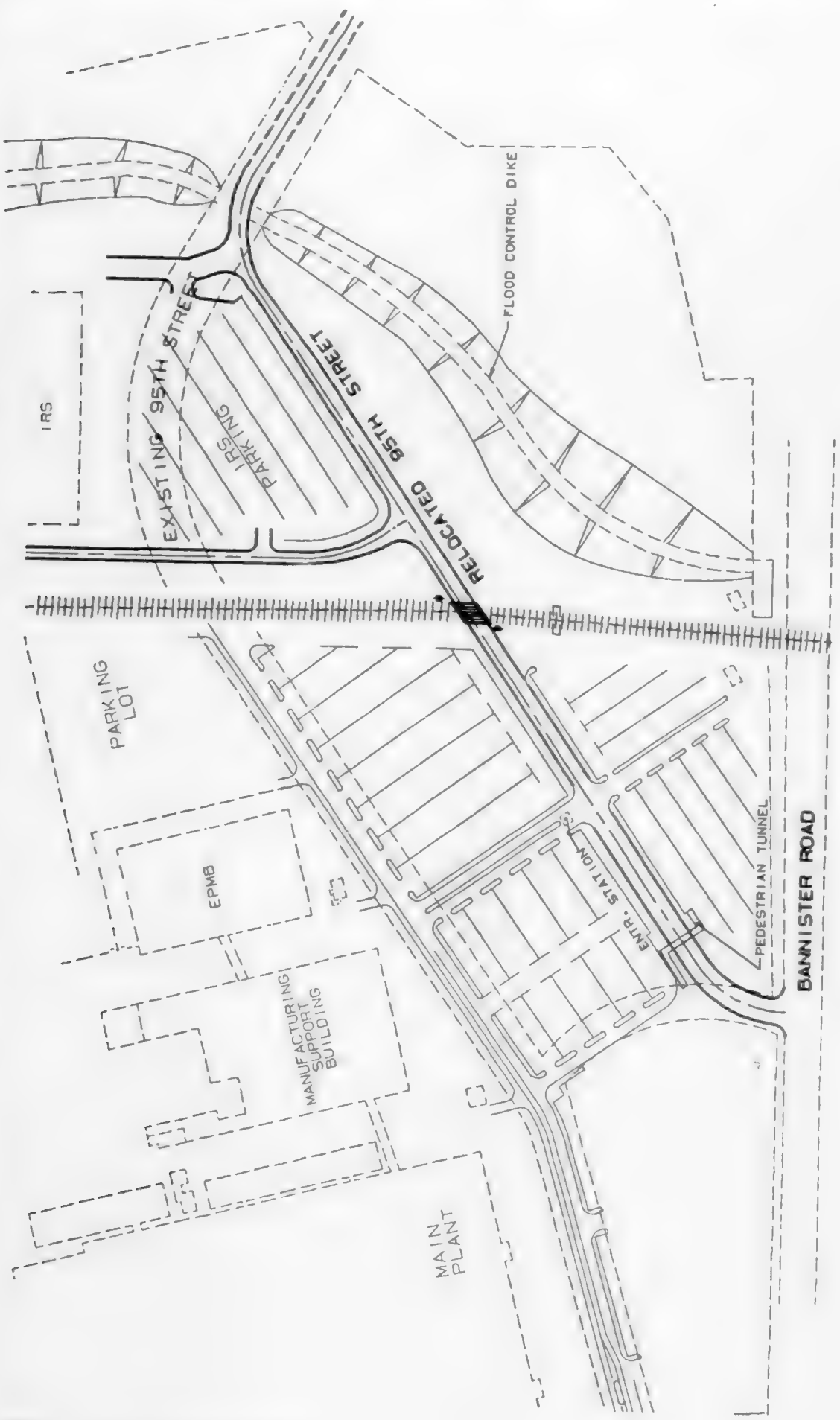

[FR Doc. 87-22267 Filed 9-28-87; 8:45 am]
BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Project Nos. 7175–009 et al.]

Hydroelectric Applications Filed; Resource Management Co. et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Surrender of License.

b. Project No.: 7175–009.

c. Date Filed: August 11, 1987.

d. Licensee: Resource Management Company.

e. Name of Project: Woodruff Narrows.

f. Location: Occupies, in part, 5.0 acres of U.S. lands administered by the Bureau of Land Management located on Bear River, in Uinta County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036, (202) 857–9885.

i. FERC Contact: Thomas Dean, (202) 376–9275.

j. Comment Date: October 26, 1987.

k. Description of Project: Project works consisting of: (1) A 620-foot-long, 65-foot-high earthen dam owned by the State of Utah; (2) a 2,312-acre reservoir; (3) a 500-foot-long open channel; (4) a 3,600-foot-long penstock; (5) a powerhouse containing two generating units with a total capacity of 2,500 kW; (6) a 400-foot-long outlet channel; (7) a 1,600-foot-long portion of the Francis-Lee Canal; (8) a 6-mile-long transmission line; and (9) appurtenant facilities.

The license states that it has been unable to secure a purchaser for energy to be generated at the project at a price that will justify investment in the project. The licensee also states that the project cannot be financed at the current rates offered by prospective purchasers.

1. Purpose of Project: The licensee intended to sell the power generated from the proposed facility.

m. Anyone desiring to be heard about this action should submit comments, a protest, or a motion to intervene with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. Any of the above named documents must be filed by providing an original and 14 copies to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 10450–000.

c. Date Filed: August 5, 1987.

d. Applicant: Grand Valley Energy Resources, Inc.

e. Name of Project: Big Drop Canal.

f. Location: On the Main Line Grand Valley Canal in Mesa County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Thomas A. Patterson, Grand Valley Energy Resources, Inc., 662 26 Road, Grand Junction, CO 81506.

i. FERC Contact: Hector Mr. Perez, (202) 376–1669.

j. Comment Date: November 16, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) A new weir with trashracks about 200 feet downstream from Road 26; (2) two parallel 250-foot-long, 5.5-foot-diameter pipelines; (3) a new powerhouse with a total installed capacity of 750 kW; (4) a 400-foot-long, 13–kV transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 3,427,200 kWh to be sold to the Public Service Company of Colorado.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3. a. Type of Application: Major License.

b. Project No.: 6329–001.

c. Date Filed: November 15, 1984.

d. Applicant: Intermountain Power Corporation.

e. Name of Project: Oxbow Bend Hydroelectric.

f. Location: On the South Fork Payette River in Boise County, Idaho, within the Boise National Forest, sections 31 and 32, T9N, R7E, Bosie Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Marc A. Auth, Intermountain Power Corporation, 8669 Kiowa Street, Boise, Idaho 83709, (208) 376–7330.

i. FERC Contract: James Hunter, (202) 376–9814.

j. Comment Date: November 16, 1987.

k. Description of Project: The proposed project would consist of: (l) A 30-foot-long, 10-foot-high diversion dam with crest elevation 3,655 feet; (2) a 100-foot-long, 10-foot-wide streamside intake structure; (3) an 850-foot-long, 12-foot-diameter steel liner within an existing tunnel; (4) a 100-foot-long, 12-foot-diameter buried penstock; (5) a 56-foot-long, 30-foot-wide concrete and steel powerhouse at elevation 3,625 feet containing two generating units, rated at 300 kW and 2,850 kW; (6) a 750-foot-long, 12.5–kV transmission line; and (7) upgrading 12,000 feet of existing road for use as an access road. A concrete chute will be installed opposite the intake to safely pass recreational craft. The estimated project cost in 1985 dollars is $4,400,000.

This application has been accepted for filing as of May 13, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. et al., 28 FERC ¶ 61,062, issued July 18, 1984.

1. Purpose of Project: Project output would be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: B. C. and D1.

n. Refiling of motions to intervene in this docket is not necessary. This notice supplements the notice issued Janaury 24, 1985, in the light of additional information that has been filed by the Applicant on 4–15–85, 6–3–85, 3–24–86, 10–8–86, and 4–7–87.

4. a. Type of Application: New Minor License.

b. Project No: 1235–000.

c. Date Filed: October 3, 1986.

d. Applicant: City of Radford, Virginia.

e. Name of Project: Municipal Hydroelectric Plant.

f. Location: On Little River near Radford, Montgomery and Pulaski Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: R.P. Asbury, Jr., 619 Second St., Radford, VA 24141, (703) 731–3603.

i. FERC Contact: Michael Dees, (202) 376–9830.

j. Comment Date: November 19, 1987.

k. Description of Project: The project as currently licensed consists of: (1) A concrete dam 293 feet long and 58 feet high; (2) a 350-acre reservoir with a gross storage capacity of 1,600-acre-feet as an elevation of 1,760 feet m.s.l.; (3) a 96-inch steel-lined concrete penstock; (4) a powerhouse containing one 1,000-kW hydropower unit; (5) a concrete trailrace; (6) a 69–kV transmission line 2.7 miles long; and (7) appurtenant facilities. There are no plans for future hydropower units or modifications to the existing facilities.

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l. Purpose of Project: Project energy is supplied to the City of Radford municipal electric system.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: Transfer of License.

b. Project No: 2905–008.

c. Date Filed: July 21, 1987.

d. Applicant: Vermont Public Supply Authority and the Village of Enosburg Falls Municipal Water and Light Department.

e. Name of Project: Enosburg Falls Project.

f. Location: On the Missisquoi River in Franklin County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms. Frances E. Francis, Spiegel & McDiarmid, 1350 New York Ave., Washington D.C. 20005, (202) 879–400.

i. FERC Contact: Robert Bell, (202) 376–5706.

j. Comment Date: October 28, 1987.

k. Description of Transfer: On July 12, 1983, a license was to the Vermont Public Power Supply Authority (licensee), to construct, operate, and maintain the Enosburg Falls Project 2905. The licensee was granted an amendment to this license on March 17, 1987. The licensee intends to transfer the license to the Village of Enosburg Falls Municipal Water and Light Department (transferee) which will purchase, build and operate the project. Both the licensee and transferee are municipalities.

1. This notice also consists of the following standard paragraphs: B and C.

6 a. Type of Application: Major License (Over 5 MW).

b. Project No.: 9999–000.

c. Date Filed: May 27, 1986.

d. Applicant: City of St. Marys, West Virginia.

e. Name of Project: Willow Island Hydroelectric Development.

f. Location: On the Ohio River near Willow Island, Pleasants County, West Virginia, and Washington County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James B. Price, West Virginia Hydro Corporation, 120 Calumet Court, Aiken, SC 29801, (803) 642–2749.

i. Comment Date: October 26, 1987.

j. Competing Application: Project No. 6902–003, Date Filed: October 8, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Willow Island Dam and reservoir and would consist of: (1) A proposed intake waterway 140 feet wide, 22 feet deep, and approximately 300 feet long; (2) a proposed powerhouse, 140 feet by 274 feet, housing two 20,000-kW hydropower units; (3) a proposed tailrace 140 feet wide; (4) a proposed 138-kV transmission line approximately 5,000 feet long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 181 GWh. The applicant proposes to sell the energy to a power company or other energy user.

1. This notice also consists of the following standard paragraphs: A4, B, C.

7 a. Type of Application: Exemption from Licensing.

b. Project No: 10007–001.

c. Date Filed: February 11, 1987.

d. Applicant: John P. MacMunn.

e. Name of Project: Bunny Run Project.

f. Location: an unnamed Stream which flow into the west Branch of the Pleasant River in the Androscoggin River Basin in the Township of Mason, Oxford County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Applicant Contact: Mr. John P. MacMunn, P.O. Box 92, West Bethel, ME 04286, (207) 836–3375.

i. FERC Contact; Robert Bell, (202) 376–5706.

j. Comment Date: October 30, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing 6-foot-long, 6-foot-high concrete and stone dam; (2) an impoundment having a surface area of 320 acres, with negligible storage, and normal water surface elevation of 1,133 feet m.s.l.; (3) a proposed intake structure; (4) a proposed 2,200-foot-long, 8-inch-diameter PVC penstock; (5) a proposed powerhouse containing one generating unit having an installed capacity of 10kW; (6) a proposed tailrace; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 100,000 kWh.

1. Purpose of Project: The applicant proposes used the power generated domestically and all excess would be sold to Central Maine Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3A.

8 a. Type of Application: Minor License.

b. Project No.: 9794–001.

c. Date Filed: January 16, 1987.

d. Applicant: City of Kings Mountain, North Carolina.

e. Name of Project: John Henry Moss.

f. Location: Buffalo Creek, Cleveland County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: John Henry Moss, Mayor, City of Kings Mountain, Post Office Box 429, Kings Mountain, NC 28086, (704) 734–0333.

i. FERC Contact: Dean Wright, (202) 376–9820.

j. Comment Date: November 27, 1987.

k. Description of Project: The proposed project would consist of (1) an existing earthfill dam 840 feet long and 99 feet high; (2) an existing reservoir of 1350 acres surface area and 38000 acre-feet volume at a normal maximum surface elevation of 736 feet msl; (3) proposed 12-inch-high flashboards; (4) a proposed reinforced concrete intake structure 40 feet high and 15 feet square; (5) an existing 54-inch-diameter steel penstock 370 feet long; (6) a proposed concrete powerhouse 40 feet long and 20 feet wide housing two proposed turbine-generators with a combined capacity of 1100 kW; (7) a proposed 2.3 kV transmission line 900 feet long; and (8) appurtenant facilities. The net hydraulic head would be 81 feet. The estimated annual energy production is 3.7 GWh. Project power would be used by the applicant. The existing facilities are owned by the applicant.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10435–000.

c. Date Filed: June 24, 1987.

d. Applicant: EDC Foundation of Chicago.

e. Name of Project: Pumped Storage.

f. Location: Tunnel and Reservoir Plan (TARP) System and Chicago Sanitary and Ship Canal, Chicago, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Joseph H. Abel, Executive Director, EDC Foundation of Chicago, 1503 Merchandise Mart, Chicago, IL 60654, (312) 744–9547.

i. FERC Contact: Dean Wright, (202) 376–9821.

j. Comment Date: November 27, 1987.

k. Description of Project: The proposed project would operate as pumped storage and would consist of: (1) The existing Tunnel and Reservoir Plan (TARP) system, a series of existing and proposed deep tunnels; (2) the existing Chicago Sanitary and Ship Canal serving as a surface reservoir of 892 acres and 291 million gallon storage capacity, operating with a maximum drawdown of 12 inches; (3) three proposed 72-inch diameter penstocks, to be installed in existing Metropolitan Sanitary District of Greater Chicago (MSDGC) dropshafts; (4) three proposed

concrete intake structures; (5) a proposed subsurface powerhouse vault enclosing three proposed turbine-pump-generators of 10 MW capacity each; (6) a proposed 13.8 kV transmission line 1500 feet long, and (7) appurtenant facilities. The hydraulic head is 265 feet. Annual generation (not including pumping energy) is estimated to be 87.6 GWh. Project power would be sold to Commonwealth Edison Company. The existing facilities are owned by MSDGC. Applicant estimates the cost of studies to be performed under the permit to be $215.000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10455–000.

c. Date Filed: August 10, 1987.

d. Applicant: JDJ Energy Company.

e. Name of Project: River Mountain Pumped Storage.

f. Location: Arkansas River (Lake Dardanelle) in Logan County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Doyle W. Jones, P.E., 902 Highway 270 North, Suite 102, Malvern, AR 72104, (501) 337–4904.

i. FERC Contact: Dean Wright, (202) 376–9820.

j. Comment Date: November 27, 1987.

k. Description of Project: The proposed project would use the existing Lake Dardanelle, a part of the McClellan-Kerr Arkansas River Navigation System owned and operated by the U.S. Army Corps of Engineers, Little Rock District, P.O. Box 867, Little Rock, AR 72203, as a lower reservoir, and would consist of (1) a proposed rockfill embankment 60 feet high and 20 feet wide forming a circular impoundment approximately 2700 feet in diameter; (2) a proposed reservoir of 117 acres surface area and 5400 acre-feet volume at a normal maximum surface elevation of 990 feet NGVD; (3) a proposed reinforced concrete intake structure 95 feet high, 75 feet wide, and 80 feet long; (4) two proposed 16.8-foot-diameter steel penstocks 7200 feet long; (5) a proposed reinforced concrete powerhouse 150 feet high, 180 feet long, and 90 feet wide housing two proposed reversible turbine-pump-generators of 200 MW capacity each; (6) a proposed 500 kV transmission line 8000 feet long; and (7) appurtenant facilities. The estimated annual energy production (based on an annual energy input of 1139 GWh) is 876 GWh. Project power would be sold. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $70,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commmission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION",

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"COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*1* (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal request will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency (ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 24, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–22397 Filed 9–28–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP79–467–014]

Petition To Amend; ANR Pipeline Co.

September 21, 1987.

Take notice that on September 9, 1987, ANR Pipeline Company, (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP79–467–014 a petition to amend the order issued on June 10, 1981, as amended, pursuant to section 7(c) of the Natural Gas Act so as to: (1) Extend the authorization for transportation services provided by ANR for Texas Eastern Transmission Corporation (Texas Eastern) and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) through October 31, 2000, and (2) authorize a further modification in the transportation service being provided by ANR for Texas Eastern, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

ANR states that both Texas Eastern and Tennessee purchase Canadian natural gas supplies from ProGas Limited which are imported into the United States at a point on the international boundary near Emerson, Manitoba. ANR further states that from the point of importation, the gas supplies are transported by Great Lakes Gas Transmission Company (Great Lakes) and subsequently redelivered to ANR at a point of interconnection between ANR and Great Lakes near Farwell, Michigan.

ANR indicates that by order dated November 28, 1986, in Docket No. CP79–467–009, ANR was authorized, among other things, to provide downstream transportation for up to 75,000 Mcf of

natural gas per day for Texas Eastern through a period expiring October 31, 1987. By a previous Commission Order issued July 18, 1985, in Docket Nos. CP79–467–003 and CP79–467–005, ANR states it was further authorized to provide downstream transportation for up to a like quantity for Tennessee, also through October 31, 1987. At the time of issuance of each of the aforementioned orders, the termination date of October 31, 1987, was consistent with the then existing import and/or export authorizations, it is stated.

ANR states that by opinion and order issued June 10, 1986, by the Economic Regulatory Administration (ERA) in Docket No. 86–06–NG, Tennessee received authorization to import ProGas' gas volumes through October 31, 2000. It is further stated that Texas Eastern has applied to the ERA for import authorization through an identical term. Such application is presently awaiting resolution by the ERA in Docket No. 87–37–NG, it is indicated.

ANR indicates that it currently provides transportation services to Tennessee under Rate Schedule X–121 of ANR's F.E.R.C. Gas Tariff, Original Volume No. 2. Similarly, ANR states it provides transportation services to Texas Eastern under its Rate Schedule X–120. It is asserted that the primary term of the transportation arrangements between ANR and Tennessee, and ANR and Texas Eastern would expire no later than October 31, 2000. Accordingly, for purposes of consistency with the contracts and with the ERA authorization received by Tennessee and that requested by Texas Eastern, ANR requests that the certificate be amended to now authorize the continuation of the transportation services for Texas Eastern and Tennessee through October 31, 2000.

ANR states that currently, Rate Schedule X–120, which covers service for Texas Eastern provides that the contract demand shall not be less than 56,250 Mcf per day for the eighth contract year (November 1, 1987 to November 1, 1988), 37,500 Mcf per day for the ninth contract year (November 1, 1988 to November 1, 1989), 18,750 Mcf per day for the tenth contract year (November 1, 1989 to November 1, 1990), and zero for the eleventh contract year (November 1, 1990 to November 1, 1991). ANR further states that the foregoing arrangements were approved by the Commission on November 28, 1986, in Docket No. CP79–467–009. ANR indicates that ProGas and Texas Eastern entered into a new sales agreement dated November 1, 1986, which superseded the previous sales agreement. ANR further indicates that ANR and Texas Eastern have modified the existing transportation agreement to conform to the new sales agreement. Specifically, it is stated that the parties have agreed that the contract demand shall be 75,000 Mcf per day for the remaining term of the contract. ANR states that Texas Eastern, however, has reserved the right to reduce the contract demand on 23 months prior notice in conformance with the "Daily Contract Quantity" set forth in the aforementioned superseding sales agreement. To obviate the need of further modification to the certificate, ANR requests authorization to reflect any reduction in contract demand with an appropriate tariff filing made prior to the first day of the contract year wherein a reduced quantity is to be made effective.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–22404 Filed 9–28–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP87–111–001 and RP85–169–026]

Proposed Changes in FERC Gas Tariff; Consolidated Gas Transmission Corp.

September 23, 1987

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on September 18, 1987, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Fourteenth Revised Sheet No. 31
Substitute Alternate Fourteenth Revised Sheet No. 31
Alternate Fifteenth Revised Sheet No. 31
Revised Second Revised Sheet No. 33
Third Revised Sheet No. 33
Alternate Second Revised Sheet Nos. 121 and 128
First Revised Sheet No. 130
Alternate Third Revised Sheet No. 136
Alternate First Revised Sheet No. 137.

The proposed effective dates are September 1 and October 1, 1987. These tariff sheets are being filed (1) to supplement the filing of August 31, 1987, in Docket No. RP87–111–000, which was made in compliance with the Commission's Annual Charge Adjustment Rules promulgated in Order No. 472 issued May 29, 1987, in Docket No. RM87–3–000, and (2) to reduce sales and transportation rates to reflect changes in the federal income tax rate consistent with the requirements of Article XII of the pending Stipulation and Agreement in Consolidated's Docket No. RP85–169, filed February 10, 1986.

Additionally, Consolidated is withdrawing "Second Revised Sheet No. 33" filed on August 31, 1987, in Docket No. RP87–111–000 in order to correct a numbering error.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested States commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All motions or protests should be filed on or before September 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–22399 Filed 9–28–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–906–000]

Application for Permanent Abandonment; Estate of Roy Furr

September 23, 1987.

Take notice that on September 16, 1987, the Estate of Roy Furr (Furr), 1306 Broadway, Lubbock, Texas 79401, filed

an application requesting permanent abandonment of a sale of gas to Panhandle Eastern Pipe Line Company (Panhandle) from the O'Loughlin No. 1–17 well, Section 17, Block 2, SA&MG Survey, Bernstein (Upper Morrow) Field, Hansford County, Texas.

Furr states that Panhandle has no market for the subject gas. By letter dated August 18, 1987, Panhandle agreed to release the gas after abandonment authorization is granted. By letter dated August 17, 1987, Phillips 66 Natural Gas Company made a contract offer, valid for 60 days, for purchase of the subject gas, provided that prior abandonment authority is obtained, and provided that Furr obtains a release from the prior dedication to Panhandle. Deliverability is approximately 760 Mcf/d. The gas is NGPA section 104 flowing gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Furr to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87—22402 Filed 9–28–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88–1–47–000 and RP87–143–000]

Proposed Purchased Gas Adjustment Rate Change; MIGC, Inc.

September 23, 1987.

Take notice that on September 17, 1987, MIGC, Inc. tendered for filing copies of First Revised Sheet Nos. 31B through 31D, Forty-Fourth Revised Sheet No. 32, Alternate Forty-Fourth Revised Sheet No. 32, Forty-Fifth Revised Sheet No. 32, Twelfth Revised Sheet No. 32A, First Revised Sheet No. 38, Alternate First Revised Sheet No. 38, Third Substitute Original Sheet Nos. 39 through 52, and Alternate Third Substitute Original Sheet Nos. 39 through 52 to its FERC Gas Tariff, Original Volume No. 1, in accordance with the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Forth-Fourth Revised Sheet No. 32, First Revised Sheet No. 38 and Third Substitute Original Sheet Nos. 39 through 52 provide for an Annual Charge Adjustment Clause ("ACA Clause"), and an Annual Charge Adjustment Rate increase of $.0018 per MMBtu ($.0021 per Mcf), to permit MIGC to collect its Omnibus Budget Reconciliation Act charges by means of the ACA Clause alternative, in accordance with FERC Order Nos. 472, *et seq.* MIGC is proposing that the ACA Clause and the Annual Charge Adjustment Rate be made effective October 1, 1987, on less than 30 days' notice. In the event, however, that waiver of the thirty (30) day notice requirement is not granted as hereby requested, MIGC has included Alternate Forty-Fourth Revised Sheet No. 32, Alternate First Revised Sheet No. 38 and Alternate Third Substitute Original Sheet Nos. 39 through 52, all to become effective November 1, 1987.

MICG's Alternate Forty-Fourth Revised Sheet No. 32 and Forty-FIfth Revised Sheet No. 32 provide for a Purchased Gas Adjustment rate decrease of 88.67 cents per MMBtu, effective November 1, 1987, in order (1) to provide for a current gas cost adjustment to permit MIGC to reflect the lower cost of gas purchases which it is currently incurring (Table II); (2) to provide for an adjustment to MIGC's Unrecovered Purchsed Gas Cost Account as of July 31, 1986 and July 31, 1987 (Table III), and (3) to recover carrying charges as permitted under FERC Order No. 47 (Table IV) as set forth in MIGC's First Revised Sheet No. 31A.

MIGTC's First Revised Sheet Nos. 31B through 31D and Twelfth Revised Sheet No. 32A reflect the removal of incremental pricing language from MIGC's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervent or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervent. Copies of this filing are on file with the Commission and are available for the public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–22405 Filed 9–28–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–142–000]

Proposed Changes in FERC Gas Tariff; Mississippi River Transmission Corp.

September 23, 1987.

Take notice that on September 17, 1987, Mississippi River Transmission Corporation (Mississippi) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Second Revised Volume No. 1.

Original Sheet No. 4D
Third Revised Sheet No. 61
Original Sheet No. 61A

Mississippi states that the above referenced tariff sheets were submitted in accordance with Commission Order No. 472, issued May 29, 1987. The proposed changes provide Mississippi with the mechanism to recover from its jurisdictional sales and transportation customers the charges assessed it by the Commission by means of a surcharge of $.0021 per Mcf. Mississippi further states that at this time it elects to use the Annual Charge Adjustment (ACA) method of recovering those charges assessed.

Mississippi states that Eighth Revised Sheet No. 72 was submitted to reflect current contract and expiration dates.

Mississippi requests that these proposed tariff sheets become effective on October 1, 1987. Mississippi also states that copies of its filing have been served upon its customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22400 Filed 9-28-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-196-004]

Proposed Changes in FERC Gas Tariff; Transcontinental Gas Pipe Line Corp.

September 23, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on September 17, 1987 tendered for filing certain original tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1. The proposed effective date is September 1, 1987.

Transco states that on August 18, 1987 the Commission issued a certificate of public convenience and necessity which *inter alia,* authorized Transco to provide a new storage service to six distribution company customers under a proposed Rate Schedule SS-1 for a term of 20 years. Transco further states that the Commission's Order also authorized Transco to construct and operate certain pipeline facilities in the states of New Jersey and Pennsylvania.

Transco states that the purpose of the instant filing is to reflect the revisions to the initial proposed SS-1 rates, in accordance with the rate conditions contained in Ordering Paragraphs (L) and (Q) of the Commission's August 18 Order. In that connection, Transco states that Ordering Paragraph (L) required that Transco's firm initial SS-1 incremental transportation rates be redesigned on the basis of a Modified Fixed Variable (MFV) rate design with separate D-1 and D-2 components. Transco states that it is also required to submit workpapers detailing the derivation of the MFV rates, in addition to a breakdown of its operation and maintenance expenses into fixed and variable costs. Further, Transco states that Ordering Paragraph (Q) of the Commission's Order required that Transco revise the initial SS-1 rates to reflect the requirement contained in that ordering paragraph that Consolidated Gas Supply Corporation (Con Gas) charge its fully allocated maximum Rate Schedule TF rate for its firm transportation portion of the SS-1 service in lieu of the lower incremental rate proposal contained in the Con Gas application.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22401 Filed 9-28-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-55-029]

Tariff Filing; Transcontinental Gas Pipe Line Corp.

September 23, 1987.

Take notice that on September 18, 1987, Transcontinental Gas Pipe Line Corporation ("Transco") tendered for filing the revised tariff sheets identified in Appendix A to this Notice. The proposed effective dates of the revised tariff sheets are April 1, 1987 and May 1, 1987.

The purpose of the filing was to revise Transco's sales and transportation rates to reflect the cost allocation and rate design methodology approved for the Transco system by the Commission in Opinion Nos. 260 and 260-A issued in this docket on December 30, 1986 and August 19, 1987, respectively. Transco states that the rates are based on the cost of service and billing determinants contained in Transco's compliance filing of April 1, 1987 in Docket No. RP87-7-007 which was accepted to become effective on said date by the Commission's Order issued May 20, 1987. *Transcontinental Gas Pipe Line Corporation,* 39 FERC ¶ 61,189 (1987).

Transco further states that the tariff rates contained in the revised tariff sheets proposed to be effective April 1, 1987 and May 1, 1987 are based on (i) the cost of gas and fuel components (including where applicable the unit rates attributable to demand charges paid to Sulpetro Limited) which were effective for the relevant periods pursuant to Tranco's filing of May 29, 1987 which was approved by the Commission Order issued July 16, 1987 in Docket Nos. TA85-1-29-012 *et al., Transcontinental Gas Pipe Line Corporation,* 40 FERC, ¶ 61, ——— (1987) and (ii) the non-gas cost component of the sales rates derived in accordance with Opinion Nos. 260 and 260-A. The tariff sheets proposed to be effective May 1, 1987 are intended to supercede the tariff sheets proposed to be effective April 1, 1987 in order to take account of the different PGA surcharge adjustments applicable for such periods.

Upon Commission approval of the revised tariff sheets, Transo states that it will make appropriate billing adjustments, including interest, to effectuate the revised rate levels to be effective April 1, 1987 and May 1, 1987.

Transco states that copies of the filing have been served upon its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR, § 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22403 Filed 9-28-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3269-3]

Reestablishment of the FIFRA Scientific Advisory Panel

The U.S. Environmental Protection Agency announces the reestablishment of the FIFRA Scientific Advisory Panel following consultation with the Committee Management Secretariat, General Services Administration. Since the statutorily created Panel will terminate on September 30, 1987, EPA has determined that reestablishment of this advisory Panel as a non-statutory committee is in the public interest in connection with the performance of

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duties imposed on the Agency by law. The charter which continues this advisory committee for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The Panel will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Mary Anne Beatty, EPA Committee Management Officer (PM–213), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202/382–5036.

Date: September 15, 1987.

Kathryn Petruccelli,

Director, Management and Organization Division.

[FR Doc. 87–22378 Filed 9–28–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3268–9]

Management Advisory Group to the Construction Grant Programs; Open Meeting

Under Pub. L. 19–463, notice is hereby given that a meeting of the Management Advisory Group to the Construction Grant Program (MAG) will be held at the Loews L'Enfant Hotel, 480 L'Enfant Plaza SW., Washington, DC 20024, beginning at 9:00 a.m., on October 15 and ending at about 1:00 p.m. on October 16, 1987.

The agenda will include a review and discussion of the implementation of provisions of the Water Quality Act of 1987, including the State Revolving Loan Program. The status of privatization of sewage treatment facilities will also be reviewed. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any members of the public wishing to make comments are invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. Additional information on the meeting may be obtained from Ms. Vicki Gillispie at the Environmental Protection Agency, WH–547, 401 M Street SW., Washington, DC 20460, telephone number: (202) 382–5859.

Lawrence J. Jensen,

Assistant Administrator for Water (WH–556).

September 22, 1987.

[FR Doc. 87–22382 Filed 9–28–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00247; FRL 3269–9]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel to review a set of scientific issues being considered by the Agency in connection with a briefing paper on the Agency's proposed response to a petition from the Center for Science in the Public Interest (CSPI), other environmental advocacy organizations, State government agencies, and public health organizations.

DATE: Thursday and Friday, October 15–16, 1987, from 9:00 a.m. to 4:30 p.m. on Thursday, and 8:30 a.m. to 2:00 p.m. on Friday.

ADDRESS: The meeting will be held at: U.S. Environmental Protection Agency, Room 1112, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By Mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), 401 M Street SW., Washington, DC 20460, Office location and phone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703–557–7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

Review of the scientific issues being considered by the Agency on a briefing paper on the Proposed Response to the CSPI Petition to adopt new guidelines and require more extensive neurotoxicity testing under FIFRA.

In a petition filed on February 12, 1987, CSPI and a group of States, public interest groups, and professional societies are seeking to have EPA, under FIFRA, "issue testing methods necessary to fully assess the neurotoxic and neurobehavioral effects of pesticide active and inert ingredients and require that registrants undertake such tsts for priority chemicals detailed herein." The petitioners propose specifically that EPA adopt 7 neurotoxicity guidelines developed by the Office of Toxic Substances and require their use for most chemical categories subject to FIFRA, including inert ingredients. They assert that current data are inadequate for risk assessment of acute or chronic hazards, that the scope of potential hazards is broad, i.e., including sensory, motor, intellectual, and affective effects, and that current guidelines will neither adequately identify nor characterize these effects. The briefing paper is intended to provide sufficient overview to the issues raised in the petition for technical review by a Subpanel of the Scientific Advisory Panl of the Agency's proposed response. This briefing paper summarizes the petition, summarizes the opinions of numerous professional groups convened to discuss neurotoxicity and neurobehavioral testing, describes current testing requirements and assessments procedures in the Office of Pesticide Programs, analyzes why traditional methods may be inadequate, and proposes a series of changes.

The Agency has convened a Subpanel of the SAP to review the scientific issues on the proposed OPP response. The Subpanel will be chaired by Dr. James Swenberg, a member of the SAP. The members of the Panel are Dr. Debra Cory-Slechta, University of Rochester; Dr. John O'Donoghue, Eastman Kodak; Dr. Donald McMillan, University of Arkansas; Dr. Rudy Richardson, School of Public Health, University of Michigan; and Dr. Hugh Tilson, National Institute of Environmental Sciences.

Copies of documents relating to the item listed above, may be obtained by contacting:

Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Office location and telephone number: Rm. 240, Crystal Mall No. 2, Arlington, VA, 703–557–2805.

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking

any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no later than October 8, 1987, in order to ensure appropriate consideration by the panel.

Dated: September 24, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-22518 Filed 9-28-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3269-6]

Superfund Program: Covenants Not To Sue

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment; extension of comment period.

SUMMARY: The Agency is today extending the 60-day public comment period on the interim guidance governing the issuance of covenants not to sue under section 122(f) of SARA by 30 days. The interim guidance was published on July 27, 1987, at 52 FR 28038. In accordance with this extension, comments are due by October 30, 1987.

DATE: Comments must be provided on or before October 30, 1987.

ADDRESS: Comments should be addressed to Jon Fleuchaus, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE-134S, 401 M Street SW., Washington, DC 20460, (202) 382-3077.

FOR FURTHER INFORMATION CONTACT: Jon Fleuchaus, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Divison, LE-134S, 401 M Street SW., Washington, DC 20460, (202) 382-3077.

Date: September 23, 1987.

Steven L. Leifer,

Acting Associate Enforcement, Counsel for Waste.

[FR Doc. 87-22377 Filed 9-28-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59250; FRL-3268-7]

Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATE: Written comments by: October 14, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59250[" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87-31

Close of Review Period. October 28, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) Indophenol derivative.

Use/Import. (S) Consumer dye for heat transfer recording material. Import range: 20 to 100 kg/yr.

T 87-32

Close of Review Period. October 28, 1987.

Importer. Dai Nippon Printing Company Ltd.

Chemical. (G) Azomethine dye derivative.

Use/Import. (S) Consumer dye for heat transfer recording material. Import range: 20 to 100 kg/yr.

T 87-33

Close of Review Period. October 28, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) Indophenol derivative.

Use/Import. (S) Consumer dye for heat transfer recording material. Import range: 20 to 100 kg/yr.

T 87-34

Close of Review Period. October 28, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) Azomethine dye derivative.

Use/Import. (S) Consumer dye for heat transfer recording material Import range: 20 to 100 kg/yr.

Date: September 21, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-22384 Filed 9-28-87; 8:45 am]

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[FRL-3268-8]

National Pollutant Discharge Elimination System; Final Modification of General Permits for Oil and Gas Operations on the Outer Continental Shelf and in State Waters of Alaska, Bering Sea and Beaufort Sea

AGENCY: Environmental Protection Agency.

ACTION: Notice of final modification of NPDES general permits.

SUMMARY: The Regional Administrator, Region 10, (the Region) is modifying the National Pollutant Discharge Elimination System (NPDES) general permits for the Bering and Beaufort seas, which appeared in the **Federal Register** on June 7, 1984 (49 FR 23734). The Bering Sea general permit (AKG283000) authorizes discharges from offshore

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operations in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) during Federal Lease Sales 70 (St. George Basin) and 83 (Navarin Basin). The Beaufort Sea general permit (AKG284000) authorizes discharges from offshore facilities in areas offered for lease by: (1) MMS during Federal Lease Sales 71 and 87, (2) the State of Alaska in State Lease Sales 36, 39, 43, and 43A, and (3) MMS or the State of Alaska in Federal/State Lease Sale BF and contiguous inshore State lease sales, except for the area generally known as the Stefansson Sound Boulder Patch. Some of the lease blocks offered but not leased under the above lease sales may be reoffered in 1988 in Lease Sale 97. In this case, EPA will grant coverage under the Beaufort Sea II general permit. The permits do not authorize discharges into any wetlands adjacent to the territorial waters of the State of Alaska or from facilities defined as "coastal" or "onshore" (see 40 CFR Part 435 Subparts C and D).

The Agency is modifying the general permits for the Bering and Beaufort seas in response to the court decision in *American Petroleum Institute, et al.*, v. *EPA, et al.*, 787 F.2d 965 (5th Cir. 1986). The court vacated the condition in both permits prohibiting the discharge of drilling muds containing diesel oil and remanded this condition to the Agency for further proceedings consistent with the opinion. The court vacated the condition because the court determined that EPA had failed to comply with the Agency's regulations in designating diesel oil as an indicator pollutant and in regulating diesel oil as a "toxic" pollutant. EPA believes that today's notice reestablishing the prohibition on the discharge of muds and cuttings contaminated with diesel oil fully complies with the applicable regulations and the court's decision.

Only this condition of the permits has been reopened and modified, in accordance with 40 CFR 124.5(c)(2). All other conditions of the existing permits shall remain in effect. However, in response to a comment, the Region has included definitions of mineral oil and diesel oil. A new administrative record has been developed to support the proposed modification.

The notice of the final general permits (49 FR 23734, June 7, 1984) set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the original permits. Region 10 published a notice of proposed modification and detailed fact sheet on August 19, 1986 (51 FR 29600). The basis for the final modification is given in the fact sheet for the proposed modification (51 FR 29600) and in supplementary information published below.

DATES: This modification to the Bering and Beaufort seas permits shall become effective October 29, 1987, thirty days after publication in the **Federal Register**. These permits shall expire at midnight on May 30, 1989.

ADDRESS: The administrative record for the final modification to the permits is available for public review at EPA, Region 10 at the following address: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section (WD–137), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Janis Hastings may be contacted at (206) 442–8504 or Anne Dailey may be reached at (206) 442–2110. Both may also be contacted at the above address. Copies of the final modification, response to comments, and today's final notice may be obtained by writing to the above address or by calling Kris Flint at (206) 442–8155.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Introduction
II. Statutory Basis for Permit Conditions
III. Prohibition of the Discharge of Diesel Oil
A. Summary of Basis for Modification
B. Proposed Effluent Limitation on Diesel Oil
C. Diesel Oil as an Indicator of Toxic Pollutants
D. Mineral Oil as a Substitute for Diesel Oil
E. Cost Considerations
F. Alternative to Diesel Oil Prohibition: Removal of Diesel Pill and Oil Limitation
G. Environmental Considerations
IV. Other Legal Requirements
A. Oil Spill Requirements
B. Endangered Species Act
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D. Marine Protection, Research and Sanctuaries Act
E. State Water Quality Standards and State Certification
F. Executive Order 12291
G. Paperwork Reduction Act
H. Regulatory Flexibility Act
References

I. Introduction

The Regional Administrator of Region 10 is today issuing a final modification to the NPDES general permits for the Bering and Beaufort seas. The permits are being modified in response to the court decision in *American Petroleum Institute, et al.*, v. *EPA, et al.*, 787 F.2d 965 (5th Cir. 1986). The court vacated the condition in both permits prohibiting the discharge of drilling muds and cuttings contaminated with diesel oil. The condition was remanded to the Agency for additional proceedings consistent with the opinion. EPA has also investigated whether mineral oil is an acceptable substitute for diesel oil. EPA believes that today's notice to reestablish the prohibition on the discharge of muds and cuttings contaminated with diesel oil fully complies with the applicable regulations and the court's decision.

On August 19, 1986 (51 FR 29600), the Agency published a notice of the proposed modification to the Bering and Beaufort seas permits, which is being issued in final form today. The public comment period closed on September 19, 1986. Comments and supporting documents on the proposed modification were received from 10 parties. EPA Region 10 requested and received additional information from the American Petroleum Institute (API) as a follow-up to their comments. All of the material submitted during the public comment period and in API's responses to the Region's request is included in the administrative record and was considered in determining the conditions for today's final modification. No public hearing was held since no request to hold a hearing was received.

Region 10 published a detailed document containing supplementary information and a fact sheet for the proposed modification (51 FR 29600). Part I of the fact sheet (Statutory Basis for Permit Conditions) is being included by reference without change as part of the final modification (51 FR 29601–29602). Part II (Prohibition on the Discharge of Diesel Oil) is also included by reference with further detail in several subsections (51 FR 29602–29607). The material in the above mentioned sections of the proposed notice should be consulted in reviewing the applicability and scope of the final modification. (Note that section numbers in the fact sheet differ from those within this document.)

A detailed listing of and response to public comments received on the proposed modification is included in the document entitled "Response to Comments Received on the Proposed Modification to the Bering and Beaufort seas General Permits." The comments and responses have not been printed in today's notice due to their number and length. The document and the original comment letters have been included in the administrative record for the permit modification. The document is being sent to all commenters and is also available upon request from EPA Region 10 at the address listed above.

II. Statutory Basis for Permit Conditions

Sections 301(b), 304, 401, 402, and 403 of the Clean Water Act provide the basis for the permit conditions contained in the permit. The final modified permit condition is a technology-based effluent limitation. Part I of the Draft Notice of Proposed Modification, which further describes the statutory basis for permit conditions, is herein included by reference (51 FR 29601–29602).

III. Prohibition of the Discharge of Diesel Oil

A. Summary of Basis for Modification

The general permits for the Bering and Beaufort seas were challenged by the American Petroleum Institute (API), Atlantic Richfield Company, Conoco Inc., Exxon Corporation, and Mobil Oil Corporation. In a decision dated April 18, 1986, six out of seven challenged conditions were upheld. *API, et al.,* v. *EPA, et al.,* 787 F.2d 965 (5th Cir. 1986). The seventh condition, a prohibition on the discharge of drilling muds containing diesel oil, was vacated and remanded to the Agency for further proceedings consistent with the opinion. The condition was vacated because the court determined that EPA had failed to comply with the Agency's regulations in designating diesel as an indicator pollutant and in regulating diesel as a "toxic pollutant." The court recommended that EPA also analyze the "operational, safety and cost concerns, as well as the actual evaluation of the toxicity of the diesel oil when used solely in the infrequent applications of a 'pill.' "

The fact sheet for the draft permit fully explains EPA's findings with respect to designating diesel oil as an indicator of toxic pollutants. Additional details are presented in the response to comments. EPA also investigated the suitability of mineral oil as a substitute for diesel oil and has concluded that mineral oils perform effectively in applications in which diesel oil has been commonly used in the past. Hence, the permit modification reestablishes the ban on the discharge of diesel-contaminated muds and has been developed to respond to the issues raised by the court. Further information regarding the basis for this modification is presented within the fact sheet (51 FR 29602–29603) and is herein included by reference.

B. Proposed Effluent Limitation on Diesel Oil

The permit modification issued today prohibits the discharge of muds which have been contaminated by diesel oil (i.e., those drilling muds which have contained diesel oil) or drill cuttings associated with these muds. This prohibition was incorporated in the original permits. Part II.B. (Proposed Effluent Limitation on Diesel Oil) of the fact sheet (51 FR 29603) is herein included by reference.

C. Diesel Oil as an Indicator of Toxic Pollutants

While the limitation on diesel oil controls the toxic as well as conventional pollutants, the Agency's primary concern is control of the toxic pollutants. The pollutant diesel oil is being used as a indicator of the listed toxic pollutants which are controlled through compliance with the effluent limitation (i.e., no discharge). The Region's decision to take this approach is in full compliance with the applicable permitting regulations in 40 CFR 125.3(h)(1). The technology-basis for this limitation is product substitution of less toxic mineral oil for diesel oil. Part II.C. of the fact sheet provides an explanation of why diesel oil is an indicator of toxic pollutants and is herein included by reference (51 FR 29603–29604).

D. Mineral Oil as a Substitute for Diesel Oil

The prohibition of the discharge of diesel oil is a technology-based BAT limitation based on product substitution. As explained in detail in the notice of the proposed modification and associated documents (51 FR 29604–29606), low toxicity mineral oils are available as product substitutes for diesel. In the notice for proposed modification (Part II.D), Region 10 presented information pertaining to (1) the availability and successful formulation and use of chemical additives, (2) the commercial availability of mineral oil spotting fluids, and (3) the demonstrated performance of mineral oil spotting fluids as documented by published case histories and performance statistics. This information is included herein by reference.

API and others have contended that survey data on the relative success rates of diesel oil and mineral oil pills refute the finding that mineral oil is an acceptable substitute for diesel oil. The 1983–1984 API survey of hydrocarbon use (Burgbacher 1985) was described in the proposed modification (51 FR 29605–29606). In analyzing the results, EPA observed the relative performance of the oils cannot be assessed without information on the comparability of drilling situations. In addition to the base oil, numerous other factors could impact the success of a pill. For example, Love (1983) determined that the chances of freeing stuck pipe in 113 cases and the potential success of freeing the pipe were related to specific conditions at each well. Success decreased with increasing angle of the well, mud weight, amount of open hole, API fluid loss of the mud, and bottom-hole-assembly length. The chances of success dropped off substantially when a numerical index calculated from the above factors exceeded a certain level. In addition to the above factors, pill additive packages (e.g., surfactants, emulsifiers, etc.), rheological properties of the mud, time until spotting, site-specific geological characteristics, and operator experience could affect the outcome of a spotting operation. Critical information on whether these factors were comparable for the wells treated using the two kinds of oil is not included in the API survey. Hence, the relative difficulty of freeing the stuck pipe and fishing cannot be directly compared between the two groups of wells in the API survey. EPA noted that the API survey is inconclusive regarding the relative effectiveness of diesel and mineral oil in freeing stuck pipe. EPA invited any recent or supplementary data on this issue.

API provided comments based on the results and also noted that another industry survey was being conducted during late 1986. To ensure that EPA could fully evaluate the surveys mentioned in API's comments, Region 10 requested that API provide additional information on the design, questions, methods, and forms used in the survey. In response, API submitted copies of forms completed by participants in the 1983–1984 API survey, and an example of the 1983–1986 OOC survey form (Sawyer 1987).

Region 10 has carefully reviewed the comments and all the available data regarding the surveys. This data included information requested from API by EPA regarding the 1983–1984 API survey of pill use (Sawyer 1987) and the 1983–1986 Offshore Operators Committee (OOC) survey (Ayers et al. 1987). Results of the EPA/API Diesel Pill Monitoring Program (U.S. EPA and API 1987) have also become available. A detailed review of this information is contained in the Region's Response to Comments document.

The OOC survey of diesel and mineral oil pill usage was conducted in late 1986 and early 1987 at API's request in response to the Region's "observations and criticisms" of the API survey. The OOC requested more detailed information from operators in the Gulf

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of Mexico for a longer period of time (1983 through 1986). Sixteen written responses from 12 oil companies were received. Some companies have more than one operating division, which are represented separately in the survey. OOC's final report lists each respondent separately and the Region has evaluated each respondent, or "operator," individually.

Diesel and mineral oil pill success rates of 52.7 percent and 32.7 percent, respectively, were reported for the OOC survey (Ayers et al. 1987). For multiple-pill sticking incidents, only the first pills at the same depth were included in the statistical calculations, and were recorded as failures since the first attempt was a failure. Multiple sticking incidents at different depths on the same well were analyzed as separate incidents. For the 2287 wells included in the survey, 506 pills were applied, producing an average sticking frequency of 22.1 percent. For both mineral oil and diesel oil, the success rates were greater for straight holes than deviated holes. The OOC survey also indicates that as the time until spotting decreased, the success rates increased. This is particularly true for diesel pills, and apparently less critical for mineral oil applications. When the time until spotting increases from "less than 5 hours" to "more than 10 hours", the success rates drop 19.3 percent (from 60.8 to 41.5 percent) for diesel pills and decrease 3.9 percent (from 34.9 to 31.0 percent) for mineral oil pills (Ayers et al. 1987).

EPA requested copies of the survey forms submitted by participants in the OOC survey. Using these raw data sheets, EPA tabulated a summary inventory by respondent, since such a summary table was not included in the OOC report (Ayers et al. 1987). The tabulation demonstrates that the success rates for mineral oil pills vary considerably among operators. The five respondents with mineral oil pill usage rates greater than 90 percent experienced an average success rate of 37 percent (ranging from 26 to 58 percent) with mineral oil pills. In contrast, the five respondents which reported using mineral oil for 15 percent or less of their stuck pipe incidents were on average successful with less than 16 percent of their mineral oil pills. Some of the operators in the OOC survey achieved extremely high mineral oil pill success rates, which were comparable to the highest diesel pill success rates. The three most successful operators had success rates of 58, 60, and 75 percent. The three operators with the highest diesel pill success rates were calculated at 60, 60, and 64 percent. While the number of wells varies among the cases and there are fewer cases for mineral oil, the data are the best available on overall success rates for individual operators.

In spite of industry's claim that diesel pills are more effective than mineral oil pills, the OOC survey did show that mineral oil was used by operators in 41 percent of the stuck pipe incidents. Of the 506 incidents in the OOC survey, 298 (59 percent) were treated with a diesel pill, while 208 (41 percent) were treated with a mineral oil pill. For some survey participants, mineral oil was the material of choice. Three respondents out of 16 used mineral oil pills exclusively. It can be concluded that during this period, mineral oil was in common use by operators in the Gulf of Mexico. According to Region 10's records, operators have historically relied on mineral oil pills for exploratory wells in Alaska.

Results to date from EPA/API Diesel Pill Monitoring Program (U.S. EPA and API 1987) shed doubt on the industry's position that mineral oil is not an acceptable substitute for diesel oil in pill applications. The success rate of diesel pills in the DPMP (35.9 percent) as of April 21, 1987 was comparable to that reported for mineral oil pills in the OOC survey (32.7 percent). It is not clear why the diesel pill success rate in the DPMP was lower than that reported in the OOC survey (52.7 percent), since there were no apparent factors that might account for this difference. Both tallies contain data collected in the Gulf of Mexico and include only the first pill of multiple-pill sticking events at a single depth.

EPA acknowledges that the OOC survey is more comprehensive than the earlier API surveys; however, any retrospective analysis is limited by the completeness and accuracy of available records and by the technique for picking representative samples. For this analysis, data had not been collected in such a way that all the parameters expected to affect the success of freeing stuck pipe were measured (see above discussion and Love 1983). Such information is probably difficult to obtain from existing records, and a prospective study would be needed to address these parameters and to ensure that complete information is collected on all wells selected for analysis. In the OOC survey it is unclear why various operators did or did not participate in the survey. Even though OOC studied a large sample of wells, it is difficult to confirm that the sampling methods are valid and that the results accurately represent the relative performance of the two oils. These considerations lead EPA to determine that only tentative conclusions can be drawn from the surveys.

The success rate with diesel pills was also highly variable over the course of compiling the OOC survey results. The success rates for diesel oil changed significantly in the time between the interim report of the OOC survey presented in a letter dated 11/26/86 from W.G. Frick, API, to Region 10 and the final OOC survey report (Ayers et al. 1987). In the interim report diesel oil and mineral oil have success rates of 47.7 percent and 32.3 percent, respectively. The final report indicates a 52.7 percent success rate for diesel oil and 32.7 percent for mineral oil. To arrive at these final values, the diesel pill episodes included after the interim report had a success rate of 69.5 percent (41 successes out of 59 attempts). This diesel pill success rate is unusual because it is much higher than any other reported, even for any individual company in the OOC survey. This example highlights the variability in the success rates depending on which groups of wells are analyzed.

In summary, EPA has carefully considered the survey data and believes that final conclusions regarding the relative performance of mineral oil pills under best operating conditions cannot be drawn solely from these surveys. The results are best evaluated in the context of all other data available to the Region on the relative performance of mineral oil pills. Such data support the Region's conclusion that mineral oil-based fluids have a demonstrated product development and performance as substitutes for diesel oil-based fluids. This determination is based on the following: (1) availability, successful formulation and use of chemical additives that are compatible with mineral oils, (2) commercial availability of mineral oil spotting fluids, (3) the demonstrated performance of mineral oil spotting fluids documented by published case histories, and (4) performance statistics from the 1983–1984 API surveys, the 1983–1986 OOC survey, and the Diesel Pill Monitoring Program. For additional details see Part II.D. of the fact sheet (51 FR 29604–29606) and the Response to Comments document.

E. Cost Considerations

EPA has evaluated the cost of the diesel oil prohibition based on product substitution as a treatment technology. Operators are not prevented from using diesel oil and barging the contaminated

mud for land disposal to meet the permit terms. The costs associated with this alternative have not been evaluated since barging is not the technology basis for the effluent limitation. Based upon a detailed evaluation of cost considerations presented in Part II.E. of the fact sheet (51 FR 29606), EPA concluded that the cost associated with the prohibition on the discharge of diesel oil is clearly economically achievable for Alaskan offshore operations. This cost estimate included the mineral oil itself, its storage and transport, and pill additives.

API commented that if EPA maintains that mineral oil is a product substitute for diesel, then the "cost of that technology must include the added costs attributable to its lack of equivalence (e.g., the added cost of redrilling/sidetracking and the cost of barging and disposing of muds that have contained diesel)."

As explained in Part II.E. of the fact sheet (51 FR 29606) and noted above, since product substitution rather than barging is the technology basis for the effluent limitation, EPA did not evaluate the costs of barging diesel-contaminated mud systems. EPA did determine that the increased cost due to the barging of mineral oil pills, if they were removed from the mud system after use, would be 0.05 percent or less of the total drilling cost.

In estimating the cost of redrilling or sidetracking, API noted that of an average 16 exploratory wells drilled annually on the Alaskan OCS, 5 sticking events per year would be expected. To arrive at this estimate, API extrapolated the data from the "Gulf of Mexico survey" (API 1983–1984 survey) to the Alaskan OCS. Based upon this extrapolation, API also stated that 1 of the 5 wells stuck annually would be "needlessly lost" (i.e., would require redrilling or sidetracking) if only mineral oil pills were used. This estimate was based on the API survey's 48 percent success rate for diesel pills (i.e., 2 to 3 wells) and 33 percent success rate for mineral oil pills (i.e., 1 to 2 wells). (The differential suggests that one well would be redrilled/sidetracked as a result of the diesel ban.) API estimated that sidetracking or redrilling the one well lost due to the diesel ban would cost the industry an additional $10 million annually (minimum drilling cost of one well on the Alaskan OCS as stated in the API comment letter) beyond costs outlined in the proposed permit modification.

EPA believes that the assumptions and extrapolations used by API are not appropriate for the Alaskan OCS and cause an unrealistically high estimate of costs associated with the diesel prohibition. First, API assumed that 5 of the 16 wells drilled annually on the Alaskan OCS would have sticking events and that one would require sidetracking or redrilling if only mineral oil pills were used. The 31 percent (5 out of 16) rate of sticking assumed by API is unrealistically high. The 1983–1986 OOC survey and the API survey report sticking rates of 22 percent and 29 percent, respectively. (The "sticking rate" in both the API and OOC surveys is defined as the number of ills applied divided by the number of wells included in the survey. Hence, a frequency of sticking of 22 percent does not mean that 22 percent of all wells had a sticking event; due to multiple sticking events on individual wells, the percentage of wells involved in sticking events is expected to be somewhat less.) Further, both the OOC and API surveys include data from the Gulf of Mexico, not the Alaskan OCS.

In contrast, EPA Region 10 records indicate that the sticking rate for offshore Alaskan wells is approximately 1 in 10 (10 percent), where sticking is indicated by application of a spotting fluid. EPA records indicate that out of over 40 exploratory wells drilled on the Alaskan OCS from 1984 through early 1987, only 5 wells have had sticking events which necessitated an application of spotting fluid. This is in contrast to the 5 wells *annually* with sticking events assumed by API. The reason for this difference may be attributable to the fact that only exploratory drilling is included in the Alaskan calculation. The Gulf of Mexico survey data includes developmental drilling, which usually involves a greater percentage of high angle wells. High-angle wells are generally at greater risk for sticking.

In addition, EPA questions API's conclusions regarding the success differential between mineral oil and diesel oil pills. As noted above, EPA questions the reliability of the data from the recent Offshore Operators Committee (OOC) survey of spotting fluid use on the Gulf of Mexico for drawing such conclusions. The OOC results also show that the success rates for mineral oil pills vary considerably. Some of the participants achieved high success rates, which were comparable to the highest diesel pill success rates. Nonetheless, results from the EPA/API Diesel Pill Monitoring Program indicate that the success rate of diesel applications (35.9 percent) was considerably lower than those reported for diesel oil in the OOC survey and comparable to the overall success rate reported for mineral oil pills in the OOC survey (32.7 percent). There is no apparent reason for the different success rates as indicated in Part II.D. above.

The combination of (1) fewer sticking events reported on the Alaskan OCS than estimated by API and (2) the potential for achieving high success rates with mineral oil pills, indicates that the number of wells requiring redrilling or sidetracking due to the diesel prohibition is likely significantly less than the 1 in 16 wells suggested by API.

Even using API's differential success rate of 15 percent between diesel oil and mineral oil (48 percent minus 33 percent) and using the observed sticking rate for the Alaskan OCS of 1 well in 10, then costs of sidetracking or redrilling would be 0.5 percent or less of annual drilling costs. (On the average, 1.6 wells experience sticking per year, 0.24 would require sidetracking or redrilling at a cost of $10 million per well, and the base cost per well is $30 million.) Furthermore, the costs incurred during redrilling or sidetracking a well could be less than API's estimate if only a portion of the well required redrilling. Also, as noted by API, if an operator expected to use diesel oil and barge the contaminated muds, the increased cost for that well would be even lower, approximately $200,000 to $400,000. EPA does not however agree that the additional costs quoted by API would need to be incurred as a result of the diesel prohibition.

In conclusion, EPA has evaluated the cost associated with the diesel prohibition and has determined that it clearly is economically achievable for Alaskan offshore operations.

F. Alternative to Diesel Oil Prohibition: Removal of Diesel Pill and Oil Limitation

One alternative to the diesel oil prohibition would be to allow the discharge of drilling muds in which a diesel pill had been used, provided that the pill is removed and the residual drilling mud meets specified limitations on oil content and/or toxicity. Such an approach depends on accomplishing effective pill removal such that the drilling mud can meet all other effluent limitations. The oil content and/or toxicity limitation would be set at a level which not only reflects BAT control of toxic pollutants in diesel oil but also provides adequate safeguards for the marine environment. The effectiveness of pill recovery in removing diesel oil from drilling muds is being addressed by the EPA/API Diesel Pill Monitoring Program (DPMP). While industry commenters requested

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extension of this program to Alaska, the Region expects the study to be concluded shortly. Also, the Region believes that extending the program to Alaska is unnecessary for the purpose of determining the effectiveness of pill removal in reducing the diesel oil content and toxicity of the discharged mud.

Results from the first 9 months of the DPMP show that pill removal is not very effective in controlling diesel oil content and toxicity of the discharged drilling mud. Results presented in the Fourthly Quarterly Report (4/23/87) include complete analyses of 34 pill episodes (U.S. EPA and API 1987). Both the pill and a buffer (50 barrels of mud both before and after the pill) were removed from the mud system for only 24 of these 34 episodes. Chemical analyses for these 24 cases show that after pill and buffer removal an average of 10,369 mg/kg (or ppm) of diesel oil remains in the mud. This level of diesel oil is toxic to marine organisms; in seawater, diesel oil is acutely toxic to various organisms at concentrations as low as 0.1 to 1000 ppm. Bioassays of mud samples taken after pill removal show LC_{50} values ranging from 0.01 to 5.50 percent of the suspended particulate phase (SPP) and have an average LC_{50} of 1.01 percent SPP. In only 1 of the pill episodes were the samples after pill and buffer removal less toxic than the toxicity limitation (i.e., above the minimum LC_{50} limitation of 3 percent SPP). In summary, both chemical analyses and bioassays indicate that pill removal techniques are inadequate in reducing either the diesel oil content or the toxicity of the mud system after addition of a diesel pill.

DPMP results to date indicate that the toxicity of drilling muds increases with their diesel oil content, but that pill recovery techniques currently in use are not capable of removing up to 30 percent of the diesel oil added as a pill.

Based on results available, the Region has concluded that the recovery techniques being implemented in the DPMP to date are not successful in recovering the diesel and reducing mud toxicity to an acceptable level. Hence, the Region has determined that the prohibition on the discharge of drilling fluids and cuttings contaminated with diesel oil is appropriate for the BAT level of control. Should new information from the study result in conclusions contrary to those drawn from the preliminary results, the Region will consider such new information in future permit decisions.

G. Environmental Considerations

The prohibition on the discharge of diesel oil is a technology-based BAT limitation designed to control the discharge of toxic pollutants present in diesel oil. An environmental assessment under section 403(c) was therefore not the basis for the limitation. EPA has, however, considered the general environmental effects of diesel oil-contaminated muds in developing the proposed diesel oil prohibition. Part II.G. of the proposed modification (51 FR 29607) further explains environmental considerations and is herein included by reference.

IV.—Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permits are excluded from the provisions of section 311. However, these permit modifications do not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

B. Endangered Species Act

Based on information in the Final Ocean Discharge Criteria Evaluations and in the Final Environmental Impact Statements prepared for the lease sales covered by the general permits. EPA has concluded that this permit modification will have no adverse effect on the continued existence of any endangered or threatened species or on its critical habitat. EPA requested comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Both agencies concurred with EPA's determination.

C. Coastal Zone Management Act

The proposed modifications and consistency determinations were submitted to the State of Alaska for state interagency review at the time of public notice. The State of Alaska has concurred that the activities allowed by this permit are consistent with local and State Coastal Management Plans.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

The State of Alaska has certified pursuant to section 401 that the discharges authorized in state waters by this permit comply with state water quality standards and regulations.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these draft modifications under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

H. Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these permit modifications will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 et seq. (Feburary 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: September 15, 1987

Robie G. Russell,

Regional Administator, Region 10.

Ayers, R.C., Jr. J.E. O'Reilly, and L.R. Henry. 1987.
Offshore Operators Committee Gulf of Mexico Spotting Fluid Survey. April 3, 1987, 3 pp. plus attachments.
Burgbacher, J. 1985.
Letter dated October 30, 1985, to Dennis Ruddy, Industrial Technology Division, EPA, with two-page attachment.
Frick, W.G. 1986.
Letter dated November 26, 1986, to EPA, Region 10 re: Supplemental Comments to the Proposed Modification of NPDES General Permits, 51 FR 29600.
Love, R.E. 1983.
Stickiness factor—a new way of looking at stuck pipe. Proceedings, IADC/SPE 1983 Drilling Conference, New Orleans, LA. Paper No. IADC/SPE 11383.
Sawyer, C.T. 1987.
Letter dated 1/20/87 from C.T. Sawyer, API, to Robert S. Burd, EPA, re: Proposed modification of NPDES general permits. Attachments.

U.S. Environmental Protection Agency and American Petroleum Institute. 1987. Diesel Pill Monitoring Program, Report Number Four. Prepared for the Fourth Meeting of the Diesel Pill Monitoring Program Oversight Committee, April 23, 1987.

NPDES General Permit Numbers AKG283000 (Bering Sea) and AKG284000 (Beaufort Sea)

For the reasons set forth above, EPA is modifying NPDES Permit No. AKG283000 (Bering Sea) and Permit No. AKG284000 (Beaufort Sea) published June 7, 1984 (49 FR 23734) by incorporating the following provisions:

II.A.1. *General Requirements*

a.

* * * * *

Effluent characteristic	Discharge limitation	Monitoring requirements		Reported value(s)
		Frequency	Method	
. . . . .	. . . . .	. . .	. . .	. . .
Diesel oil content of drilling muds	No discharge of diesel oil			

* * * * *

b. *Prohibition on the discharge of oil-based muds or diesel oil and associated cuttings.* The discharge of oil-based drilling muds (containing oil as the continuous phase with water as the dispersed phase) is prohibited. The discharge of water-based drilling muds which have contained diesel oil or of cuttings associated with any muds which have contained diesel oil is also prohibited. Compliance with the limitation on diesel oil shall be demonstrated by analysis of drilling mud collected from the end-of-well mud system. In all cases, the determination of the presence or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility (see Part II.A.1.a., above).

* * * * *

III.D. *Definitions*

* * * * *

31. "Diesel oil" means the class of distillate fuel oil typically used in conventional oil-based drilling fluids which contains a number of toxic pollutants. For the purposes of this permit, "diesel oil" refers to the fuel oil present at the facility.

32. "Mineral oil" means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

[FR Doc. 87-22383 Filed 9-28-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010636-024.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Gulf Container Line (GCL), B.V.
Trans Freight Lines
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would provide for allowances to shippers performing direct overland transportation from a party's discharge port in lieu of the party providing overland transportation from the discharge port to the bill of lading port in connection with alternate port service between designated European Continental port pair combinations.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 24, 1987.

[FR Doc. 87-22394 Filed 9-28-87; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 87-18]

Filing of Petition for Declaratory Order; Matson Navigation Co., Inc.; Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii

Notice is given that a petition for declaratory order has been filed by Matson Navigation Company, Inc. ("Matson") requesting that the Federal Maritime Commission resolve a controversy between Matson and Young Brothers, Limited ("Young Bros."), an intrastate barge carrier operating in Hawaii. The controversy concerns Federal Maritime Commission jurisdiction over certain ocean cargo movements between ports and points outside the State of Hawaii and islands within the State of Hawaii. Matson seeks a declaration by the Federal Maritime Commission that Matson's interisland carriage of cargoes having origin points in the mainland United States or foreign countries and moving through warehouse or distribution centers on Oahu is interstate commerce subject to the exclusive regulatory jurisdiction of the Federal Maritime Commission.

The petition was served on Young Bros. and its counsel, and the Public Utilities Commission of the State of Hawaii and those parties may file a reply to the petition with the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 on or before November 13, 1987. An original and fifteen copies of such replies shall be submitted and a copy thereof served on David F. Anderson, Esq., Matson Navigation Company, Inc., Post Office Box 7452, San Francisco, California 94120, and C. Jonathan Benner, Esq., Benner, Burnett & Coleman, 1401 New York Avenue, NW., Washington, DC 20005. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101. Participation by persons other than those named above will be permitted only upon grant of a petition to intervene by the Commission pursuant to Rule 72 (46 CFR 502.72). Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its

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factual and legal presentation in the matter.

Joseph C. Polking,

Secretary.

[FR Doc. 87-22395 Filed 9-28-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; First National Cincinnati Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 15, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Cincinnati Corporation,* Cincinnati, Ohio; to acquire 100 percent of the voting shares of The First National Bank, Sidney, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Merchants Bancshares, Inc.,* Bay St. Louis, Mississippi; to become a bank holding company by acquiring 80 percent of the voting shares of Merchants Bank & Trust Company, Bay St. Louis, Mississippi.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNB Bancorp, Inc.,* Danville, Illinois; to acquire 96.2 percent of the voting shares of Lake Shore National Bank, Danville, Illinois. Comments on this application must be received by October 13, 1987.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *FNB Financial Corp.,* Scottsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers National Bank, Scottsville, Kentucky.

2. *Security Bancshares, Inc.,* Charleston, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First Security State Bank, Charleston, Missouri, and 96.5 percent of The National Bank of Caruthersville, Caruthersville, Missouri.

3. *Trenton Bancshares, Inc.,* Trenton, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Commerce, Trenton, Tennessee.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Linton Bancshares, Inc.,* Bismarck, North Dakota; to become a bank holding company by acquiring at least 95 percent of the voting shares of The First National Bank, Linton, North Dakota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Tulsa National Bancshares, Inc.,* Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Tulsa National Bank, Tulsa, Oklahoma. Comments on this application must be received by October 13, 1987.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *ENB Holding Company,* Escondido, California; to acquire 100 percent of the voting shares of San Marcos National Bank, San Marcos, California.

Board of Governors of the Federal Reserve System, September 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22335 Filed 9-28-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Minonk Bancshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 19, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Minonk Bancshares, Inc.,* Minonk, Illinois; to acquire 32.1 percent of the voting shares of Washburn Bancshares, Inc., Washburn, Illinois, and thereby indirectly acquire The Washburn Bank, Washburn, Illinois. *Comments on this application must be received by October 16, 1987.*

2. *Washburn Bancshares, Inc.,* Washburn, Illinois; to become a bank holding company by acquiring at least 50 percent of the voting shares of The Washburn Bank, Washburn, Illinois. *Comments on this application must be received by October 16, 1987.*

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Monticello Bankshares, Inc.,* Monticello, Kentucky; to acquire at least 35 percent of the voting shares of Bank of Clinton County, Albany, Kentucky.

C. **Federal Reserve Bank of Dallas** (W Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Somerset Bancshares Corporation, Inc.,* Somerset, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Somerset National Bank, Somerset, Texas.

Board of Governors of the Federal Reserve System, September 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22336 Filed 9-28-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Shares of Banks or Bank Holding Companies; Change in Bank Control Notice; Robert L. Swanson

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 14, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Robert L. Swanson,* Moraga, California, and Dewey F. Bargiacchi, Alameda, California; to acquire 11.90 percent of the voting shares of Bay Commercial Services, San Leandro, California, and thereby indirectly acquire Bay Bank of Commerce, San Leandro, California.

Board of Governors of the Federal Reserve System, September 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22337 Filed 9-28-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Prevention Centers Grant Review Committee; Establishment

ACTION: Notice of reestablishment, Prevention Centers Grant Review Committee.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control announces the reestablishment of the following Federal advisory committee by the Secretary of Heath and Human Services:

Designation: Prevention Centers Grant Review Committee.

Purpose: This Committee will provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director, Centers for Disease Control, regarding the scientific merit of grant applications received from schools of public health, schools of medicine, and schools of osteopathy relating to the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention.

Authority for this committee will expire July 25, 1988, unless the Secretary of Health and Human Services, with the concurrent of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated. September 23, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 87-22354 Filed 9-28-87; 8:45 am]

BILLING CODE 4160-70-M

Injury Research Grant Review Committee; Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee.

Time and Date: 9 am–4:30 pm—October 26, 1987; 8 am–3pm—October 27, 1987.

Place: Colony Square Hotel, Peachtree and 14th Street, Brookwood Room, Atlanta, Georgia 30361.

Status: Open.

Purpose: This Committee is charged with advising the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of Injury Control Research and Demonstration Projects and Injury Prevention Research Centers.

Matters To Be Discussed: This meeting will review the Injury Prevention Research Centers and Research and Demonstration Grants Program's past funding decisions and review the program's progress to date. Following the review of funding decisions and progress to date, future funding needs will be identified. The Committee will conclude the meeting with prioritized recommendations for future funding. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: James Monroe, Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Atlanta, Georgia, 30333, telephones—FTS: 236–4690; Commercial: 404/454–4690.

Dated: September 23, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination. Centers for Disease Control.

[FR Doc. 87-22355 Filed 9-28-87; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Maternal and Child Health Research Grants Review Committee; Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1987:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 16–18, 1987, 9:00 a.m.

Place: Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 16, 1987, 9:00 a.m.–10:00 a.m.—Closed for remainder of meeting.

Purpose: To review research grant applications in the program area of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 16, at 10:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should

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contact Gontran Lamberty, Dr.Ph.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–2190.

Agenda Items are subject to change as priorities dictate.

Date: September 24, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–22398 Filed 9–28–87; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Health Resources and Services Administration; Title V of the Social Security Act and Field Engineering and Facility Management Services; Delegation of Authority

Notice is hereby given that in furtherance of the delegations of authority of September 1, 1982, and September 1, 1984, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), the Administrator, HRSA, has delegated to the Director, Bureau of Maternal and Child Health and Resources Development, with authority to redelegate, the following authorities:

(1) All of the authorities under Title V of the Social Security Act pertaining to the Maternal and Child Health Services Block Grant, excluding the authorities to promulgate regulations, to submit reports to the Congress, to take final action to withhold funds from States, and to act under the nondiscrimination provisions of the Act.

(2) All of the authorities for field engineering and facilities management services as indicated below:

(a) All administrative authorities relating to engineering, facilities planning and construction, and direct Federal special-purpose construction activities.

(b) Authority to approve the expenditure of funds within specified limits set by the Director, Office of Management, as certified to the Assistant Secretary for Health as available for design, construction, and related services pertinent to projects administered by the Public Health Service.

(c) Authority to request from the Administrator, General Services Administration, a modification or waiver as stated in section 6 of Pub. L. 90–480, on a case-by-case basis, of such standards issued for design, construction, and alteration of buildings, as defined in Pub. L. 90–480, as may be necessary to ensure that the physically handicapped have access to, and use of buildings as defined in Pub. L. 90–480.

These delegations superseded the following delegations:

(1) The May 5, 1982, delegation by the Acting Administrator, Health Services Administration, to the Director, Bureau of Community Health Services, vested in the Director, Bureau of Health Care Delivery and Assistance, via the Reorganization Order of September 1, 1982, as it pertains to Title V of the Social Security Act.

(2) The September 20, 1984, delegation by the Administrator, Health Resources and Services Administration, to the Associate Administrator for Operations and Management.

All previous redelegations of these authorities to other HRSA officials and to PHS Regional Office officials continue in effect in them or their successors provided they are consistent with these delegations.

These delegations became effective on October 1, 1987.

Date: September 21, 1987

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87–22349 Filed 9–28–87; 8:45 am]

BILLING CODE 4160–15–M

Health Resources and Services Administration; Health Care for the Homeless, Section 340 of the Public Health Service Act; Delegation of Authority

Notice is hereby given that the following delegations have been made regarding Health Care for the Homeless under section 340 of the Public Health Service Act (42 U.S.C. 256), as amended.

1. Delegation from the Administrator, Health Resources and Services Administration, to the PHS Regional Health Administration, Regions I–X, with authority to redelegate, of the following authorities under section 340 of the Public Health Service Act (42 U.S.C. 256) for exercise within their respective regions for projects that are not multi-regional or national in scope:

(a) To award grants to public and nonprofit private entities to meet the initial costs of establishing and operating health care programs for the homeless;

(b) To enter into grants and contracts with public and private entities for the provision of technical assistance related to providing health care for the homeless.

2. Delegation from the Administrator, Health Resources and Services Administration, to the Director, Bureau of Health Care Delivery and Assistance, with authority to redelegate, of all the authorities under section 340 of the Public Health Service Act except those authorities specifically delegated to the Regional Health Administrator, excluding the authorities to issue regulations and submit reports to Congress.

Previous delegations and redelegations made to officials within the Public Health Service of authorities under section 340 of the Public Health Service Act may continue in effect provided they are consistent with this delegation.

The above delegation was effective on Septembe 2, 1987.

Date: September 2, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87–22350 Filed 9–28–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1740]

Submission of Proposed Information Collecting to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Officer of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monthly Report of Excess Income.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Section 236 insured and uninsured project owners are required by the Housing and Urban Development Act of 1968 to pay HUD the total rental charges collected in excess of the basic rents for all approved occupied units. Project owners and management agents use the form to compute any required payment due HUD.
Form Number: HUD–93104 and 93104A.
Respondents: Businesses or Other For-Profit, Federal Agencies or Employers, and Non-Profit Institutions.
Frequency of Response: Monthly.
Estimated Burden Hours: 27,138.
Status: Extension.
Contact: James J. Tahash, HUD, (202) 426–9344, or John Allison, OMB, (202) 395–6880.

Proposal: Collection of Multifamily Assisted Housing Addresses and Site Identification Codes.
Office: Policy Development and Research.
Description of the Need for the Information and Its Proposed Use: Under Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Executive Order 11063, the Department is responsible for determining that HUD-assisted and public housing programs are operated in a nondiscriminatory manner. After a one-time collection effort, these data will be used to generate information descriptive of HUD's multifamily housing programs, and to more effectively monitor HUD's program and target compliance reviews.
Form Number: HUD–951.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Response: Single-Time.
Estimated Burden Hours: 20,790.
Status: New.
Contact: John B. Carson, Jr., HUD, (202) 755–5574, or John Allison, OMB, (202) 395–6880.

Proposal: Certificate of Family Participation—Existing Housing.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Under the Section 8 Existing Housing Program, HUD enters into an Annual Contributions Contract with Public Housing Agencies to assist very low-income families who enter into leases directy with private owners of existing rental housing. The form authorizes the family to look for an eligible rental unit and specifies the appropriate unit size necessary to meet the family's needs.
Form Number: HUD–52578 and 52578S.
Respondents: State or Local Governments.
Frequency of Response: On Occasion.
Estimated Burden Hours: 20,000.
Status: Reinstatement.
Contact: Myra E. Newbill, HUD, (202) 755–6887, or John Allison, OMB, (202) 395–6880.

Proposal: Procurement Policies and Procedures Handbook (2210.3, REV 3).
Office: Administration.
Description of the Need for the Information and Its Proposed Use: The Federal Acquisition Regulation (FAR), Title 48 of the Code of Federal Regulations, sets forth the uniform policies and procedures applicable to Federal agencies in the procurement of personal property and non-personal services. This handbook implements the policies established and provides guidance and procedures to be used in the procurement process by HUD.
Form Number: HUD–441, 441.1, 442, 443, 661, 661.1, 662, 663, and 770.
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.
Frequency of Respondents: On Occasion, Monthly, and Quarterly.
Estimated Burden Hours: 148,302.
Status: Extension.
Contact: Gladys G. Gines, HUD, (202) 755–5294, or John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 22, 1987.

John T. Murphy,
Director, Information Policy and Management Division.

[FR Doc. 87–22424 Filed 9–28–87; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–87–1741; FR 2412]

Mortgage and Insurance Programs; Debenture Recall

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces a debenture recall of certain General Insurance fund debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Chief, Financial Procedures and Review Branch, Office of Financial Management, Room 9138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–1591. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all General Insurance Fund debentures (MM series) with coupon rates of 8¼ percent of higher, outstanding as of September 30, 1987. The date of the call is January 1, 1988. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Kanasas City by December 1, 1987.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of

the call date. Final interest on any called debenture will be paid with the principal at redemption. During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by a mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debenturess covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1987. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after October 1, 1987, and provision will be made for the payment of final interest due on January 1, 1988, with the principal thereof, to the actual owner, as shown by the assignments thereon.

Instructions for the presentation and surrender of debentures for redemption will be provided by the Department of the Treasury.

Date: September 24, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87-22426 Filed 9-28-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-040-07-4341-15]

Closure of Public Lands; Salmon District, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of vehicle closure for Henry's Creek located on public lands in Lemhi County, Idaho. (1) The area is located 10 miles south of Salmon and encompasses 4500 acres. Henry's Creek will be closed to vehicles from September 20 to April 10 each year. (2) The road will be open to motorized vehicles from April 11 to September 19. This action will take place in accordance with the final approved Lemhi Resource Management Plan for protection of watershed values, and human safety.

FOR FURTHER INFORMATION CONTACT: Lyle Lewis, Bureau of Land Management, P.O. Box 430, Salmon, ID 83467; telephone (208) 756-5400.

Dated: September 17, 1987.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 87-22430 Filed 9-28-87; 8:45 am]

BILLING CODE 4310-GG-M

[M-63929 (ND); MT-030-06-4212-14]

Realty Action; Competitive Sale of Public Land in Morton County, ND; Amendment

AGENCY: Bureau of Land Management, Dickinson District, Interior.

ACTION: Competitive sale of public land in Morton County, North Dakota amended.

SUMMARY: This notice amends a previous Notice of Realty Action to change the sale time and date of the proposed Competitive Sale of Public Lands, Case M-63929 (ND), published in the **Federal Register**, Vol. 52, No. 152, Pages 29447, 29448, issue of August 7, 1987 (FR Doc. 87-17942).

The sale will be held at 10:00 a.m. MST on December 17, 1987. Bids will be accepted until 10:00 a.m. on December 17, 1987. The sealed bid envelopes must be marked with the December 17, 1987 date.

William F. Krech,

District Manager.

Date: September 23, 1987.

[FR Doc. 87-22429 Filed 9-28-87; 8:45 am]

BILLING CODE 4310-DN-M

Bureau of Reclamation

Public Hearings on the Planning Report Draft Environmental Statement; San Jacinto Project, TX

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Hearings on the Planning Report/Draft Environmental Statement, San Jacinto Project, Texas.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Reclamation, has prepared a Planning Report/Draft Environmental Statement for the San Jacinto Project, Texas. This document (DES 87-25, dated September 1, 1987) was made available to the public on September 8, 1987.

The purpose of these hearings is (1) to receive views and comments from interested organizations and individuals relating to the environmental impacts of the project and (2) to provide the public with information on the effect this project will have on wetlands (Executive Order 11990) and on floodplains (Executive Order 11988). The hearings will give the public an opportunity to participate in the decisionmaking process.

DATES: Public Hearings will be held at 7 p.m. on October 29, 1987, and at 3 p.m. on October 31, 1987, at the Conroe High School cafeteria, 320 West Davis (Highway 105 West), Conroe, Texas.

FOR FURTHER INFORMATION CONTACT: Nicolas Palacios, Planning Study Manager, Bureau of Reclamation, 714 South Tyler, Suite 201, Amarillo, Texas 79101, Telephone (806) 378-5474.

Dated: September 24, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87-22368 Filed 9-28-87; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

AGENCY: National Park Service, Martin Luther King, Jr., National Historic Site.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: October 14, 1987.

ADDRESS: The Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312, Telephone (404) 331-4979.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site.

The matters to be discussed at this meeting will include the status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection

approximately 4 weeks after the meeting.

Date: September 18, 1987.

Robert L. Deskins,

Regional Director, Southeast Region.

[FR Doc. 87-22338 Filed 9-28-87; 8:45 am]

BILLING CODE 4310-70-M

National Park System Advisory Board; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247), that a meeting of the National Park System Advisory Board will be held in Death Valley National Monument, California, November 9–13, 1987.

The general business session will start at 8:00 am, Wednesday morning, November 11; and conclude during the late afternoon on Thursday, November 12. It will be held in the Oasis Room of the Furnace Creek Inn, P.O. Box 1, Death Valley, California 92328 (telephone 619–786–2345). The Advisory Board will consider potential National Historic Landmark nominations plus a variety of matters relating to the National Park System. The meeting will follow an orientation tour and briefings on issues at Death Valley National Monument.

The business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on first-come, first-served basis. Anyone may file with the Advisory Board a written statement concerning this meeting. Persons wishing further information concerning this meeting may contact Mr. David L. Jervis, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–7456).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting in Room 1218 Interior Building, 18th and C Streets, NW., Washington, DC.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 87-22339 Filed 9-28-87; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 19, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 14, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Chilton County

Maplesville vicinity, *Walker—Klinner Farm*, 3.5 miles E of Maplesville on AL 22

DISTRICT OF COLUMBIA

Washington

Langston Terrace Dwellings, N from Benning Rd. to H St., NE

KENTUCKY

Bullitt County

Clermont, *Beam, T. Jeremiah, House*, Big Level Rd.

MAINE

Washington County

Calais, *Holmes Cottage*, 241 Main St.

York County

Buxton, *Salmon Falls (East) Historic District*, Portions of ME 117 and Simpson Rd.

Hollis vicinity, *Salmon Falls (West) Historic District*, Salmon Falls Rd. and portion of US 202

NEW YORK

Erie County

Buffalo, *Berkeley Apartments*, 24 Johnson Park

Madison County

Cazenovia, *Abell Farmhouse and Barn (Cazenovia Town MRA)*, Ballina Rd.

Cazenovia, *Annas Farmhouse (Cazenovia Town MRA)*, 4812 Ridge Rd.

Cazenovia, *Beckwith Farmhouse (Cazenovia Town MRA)*, 4652 Syracuse Rd.

Cazenovia, *Brick House (Cazenovia Town MRA)*, 3318 Rippleton Rd.

Cazenovia, *Chappell Farmhouse (Cazenovia Town MRA)*, Ridge Rd.

Cazenovia, *Cobblestone House (Cazenovia Town MRA)*, Syracuse Rd.

Cazenovia, *Comstock, Zephnia, Farmhouse (Cazenovia Town MRA)*, 2363 Nelson St.

Cazenovia, *Crandall Farm Complex (Cazenovia Town MRA)*, 2430 Ballina Rd.

Cazenovia, *Evergreen Acres (Cazenovia Town MRA)*, Syracuse Rd.

Cazenovia, *Meadows Farm Complex (Cazenovia Town MRA)*, Rippleton Rd.

Cazenovia, *Middle Farmhouse (Cazenovia Town MRA)*, 4875 W. Lake Rd.

Cazenovia, *Niles Farmhouse (Cazenovia Town MRA)*, Rippleton Rd.

Cazenovia, *Parker Farmhouse (Cazenovia Town MRA)*, 3981 East Rd.

Cazenovia, *Rolling Ridge Farm (Cazenovia Town MRA)*, 3937 Number Nine Rd.

Cazenovia, *Sweetland Farmhouse (Cazenovia Town MRA)*, Number Nine Rd.

Cazenovia, *Tall Pines (Cazenovia Town MRA)*, Ridge Rd.

Cazenovia, *Maples, The, (Cazenovia Town MRA)*, 2420 Nelson Rd.

NORTH CAROLINA

Alamance County

Haw River vicinity, *Scott, Kerr, Form*, N and S sides of SR 2123

TENNESSEE

Montgomery County

Clarksville, *Minglewood Farm*, 1650 Hopkinsville Hwy.

VIRGINIA

Norfolk (Independent City)

First Calvary Baptist Church, 1036–1040 Wide St.

Richmond (Independent City)

Chesterman Place, 100 W. Franklin St.

[FR Doc. 87-22340 Filed 9-28-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 51 [1] (Amdt. No. 2)]

Agreement; Indiana Motor Rate and Tariff Bureau, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Indiana Motor Rate and Tariff Bureau, Inc. (Indiana) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of Indiana's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from Indian's representatives: Louis I. Webster, Indiana Motor Rate and Tariff Bureau, Inc., 2165 South High School Road, Indianapolis, IN 46241.

Additional information is in the Commission's decision. Copies may be obtained from Office of the Secretary,

[1] Section 5 was recodified as section 10706.

Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

DATES: Comments from interested persons are due October 29, 1987. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 51 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Richard Hartley, (202) 275–7786
or
Andrew L. Lyon, (202) 275–7691, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: We have provisionally approved Indiana's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96–296,* 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: Identification and description of member carriers; right of independent action; rate bureau protests; open meetings; proxy voting; quorum standard; final disposition of cases; and single-line rates. We have also offered comments and imposed requirements concerning the agreement generally. Indiana has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra,* we request applicant and other interested parties to comment on our interpretation of the controlling authority and administrative criteria, and their application to Indiana's agreement.

A copy of any comments filed with the Commission must also be served on Indiana, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modification that Indiana must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: September 22, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre concurred with a separate expression

Noreta R. McGee,
Secretary.

[FR Doc. 87–22391 Filed 9–28–87; 8:45 am]
BILLING CODE 7035–01–M

Change of Public Decision Distribution Contractor; Dynamic Concepts, Inc.

Effective October 1, 1987, Dynamic Concepts, Inc. will become the Interstate Commerce Commission's public decision distribution contractor. The company will be located in Room 2229 of the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW. Its phone number will be (202) 289–4357 or 289–4359. Dynamic Concepts, Inc. will continue to provide the box service and all other services provided by the current contractor.

To facilitate the changeover, there will be no service of decisions or the *ICC Register* on September 30 or October 1, 1987.

Noreta R. McGee,
Secretary.

[FR Doc. 87–22501 Filed 9–28–87; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub-No. 5) (87–4)]

Quarterly Rail Cost Adjustment Factor; Approval and Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has decided to approve the fourth quarter 1987 cost index filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* We have modified the fourth quarter 1987 RCAF filed by AAR to adjust for a .001 downward change in its adjustment for forecast error. Application of the index, as adjusted for second quarter 1987 forecast error, provides for a fourth quarter 1987 RCAF of 1.093. Since there is a bank of credits sufficient to offset any increase in maximum RCAF rate levels, maximum adjusted base rates may not exceed the current ceiling of 1.057. No rate actions are ordered.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275–7354
or
Robert C. Hasek, (202) 275–0938
(TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: By decision served January 2, 1985 (50 FR 87, January 2, 1985) we outlined the procedures for the calculation of the all inclusive index of railroad input prices and the methodology for the computation of the RCAF. These procedures replaced an interim methodology which was formerly used. AAR is required to calculate the forecasted index on a quarterly basis and submit it on the fifth day of the last month of each calendar quarter.

We have reviewed AAR's calculations of the index for the fourthquarter of 1987 and find that these calculations comply with the rules. We have recalculated the linked index for the second quarter 1987 actual from 130.1, as submitted by AAR, to 130.0. This reduces the forecast error adjustment to .006 resulting in an RCAF of 1.093.

In our decision served December 27, 1985, we restated a lump sum payment to certain members of the United Transportation Union by amortizing it over the life of the present union contract with interest calculated using the three-month Treasury Bill rate. We instructed AAR to continue this calculation by amortizing the principal balance over the remaining quarters using a three-month Treasury Bill interest rate available seven days prior to the submission date of the quarterly index. The weights in the fourth quarter submission have been updated to the 1986 level. We have verified AAR's lump sum calculations and find that they comply with our instructions.

The index weights are updated annually to reflect the changing mix of the various index components. AAR has recalculated the index weight to 1986 levels and has used them for the first time in its calculation of the fourth quarter 1987 RCAF. We have reviewed AAR's calculations and find that they have been made in accordance with our rules. We do note an increase in the depreciation component from 8.7 percent using 1985 weights to 12.3 percent using 1986 weights. Much of this increase was caused by an extraordinarily high amount of asset writedowns taken during 1986.

We find the RCAF for the fourth quarter of 1987 to be 1.093. This figure was calculated by adjusting the preliminary fourth quarter 1987 RCAF for the fourth quarter 1987 forecast error. Since there is a bank of credits sufficient to offset any increase in maximum

RCAF rate levels, adjusted base rates may not exceed the current ceiling of 1.057. No rate actions are ordered.

The indices and RCAF derived from AAR's fourth quarter 1987 calculations are shown in Table A of the appendix to this decision. The adjustment for second quarter 1987 forecast error is also shown in Table A. Table B shows the second quarter 1987 index and RCAF calculated on both an actual basis and a forecasted basis for comparative purposes. Table C shows our calculation of the bank of credits (including the application of an opportunity cost adjustment) used to offset increases in the RCAF.

Since the published fourth quarter 1987 RCAF of 1.093 is higher than the current maximum RCAF rate level of 1.057, the bank of credits will again be reduced. We expect further reductions in the bank to occur. We will continue to calculate the size of the bank of credits and include that information in each quarterly decision as long as there are any remaining credits.

In a decision served August 27, 1987, we established a new proceeding for the handling of quarterly RCAF matters only. This is the first RCAF decision to be served under Ex Parte No. 290 (Sub-No. 5), *Quarterly Rail Cost Adjustment Factor* which continues the quarterly RCAF portion of Ex Parte No. 290 (Sub-No. 2), *Rail Cost Recovery Procedures.*

Finally, we note that certain shipper parties have filed petitions for release of data which underlies the RCAF and AAR has replied to those petitions.

Comments on release of index data were requested in a decision served August 13, 1987. Those comments are due September 30 and replies on October 15. We expect to issue a decision on release of index data after our analysis of comments and replies.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: September 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred with the result.

Noreta R. McGee,

Secretary.

TABLE A.—EX PARTE NO. 290 (SUB-NO. 5) (87-4)

[All Inclusive Index of Railroad Input Costs]

Line No.	Index component	1985 weights [1] (percent)	1986 weights [2] (percent)	Third quarter 1987 forecast	Fourth quarter 1987 forecast
1.	Labor	48.6	46.7	164.2	164.9
2.	Fuel	9.7	5.9	60.2	67.6
3.	Materials and Supplies	7.6	6.9	98.6	99.7
4.	Equipment Rents	9.0	9.2	140.2	141.4
5.	Depreciation	8.7	12.3	115.4	115.5
6.	Other Items [3]	16.4	19.0	123.4	124.5
7.	Weighted Average	100.0	100.0	136.0	138.7
8.	Linked Index [4]			130.4	131.4
9.	Preliminary Rail Cost Adjustment Factor [5] (10/1/82=100) 120.9			1.079	1.087
10.	Adjustment for Forecast Error [6]			.008	.006
11.	RCAF (Line 9 plus Line 10)			1.087	1.093

[1] Weights for 1985 were used to calculate the third quarter 1987 RCAF.
[2] Weights for 1986 were used to calculate the fourth quarter 1987 RCAF.
[3] Other items are a combination of Purchased Services, Casualties and Insurance, General and Administrative, Other Taxes and Loss and Industrial Commodities Less Fuel and Related Products and Power.
[4] Linking is necessitated by a change to 1986 weights beginning with the fourth quarter 1987. The following formula was used for the fourth quarter 1987 index:

$$\frac{\text{4th Quarter 1987 Index (1986 Weights)}}{\text{3rd Quarter 1987 Index (1986 Weights)}} \times \text{3rd Quarter 1987 Index (Linked Index)} = \text{Linked Index (1980 Weights to 1986 Weights)}$$

$$\text{or: } \frac{138.7}{137.6} \times 130.4 = 131.4$$

[5] The denominater was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980.
[6] Second quarter 1987 forecast error adjustment is calculated as follows:

1. Second quarter 1987 RCAF calculated using forecasted data	1.069
2. Second quarter 1987 RCAF calculated using actual data	1.075

3. Difference (Line 2 minus Line 1). Since the actual second quarter 1987 RCAF was higher than the forecast the difference will be added to the fourth quarter 1987 preliminary RCAF ..... .006

TABLE B.—EX PARTE NO. 290 (SUB-NO. 5) (87-4)

[Comparison of Second Quarter 1987 Index Calculated on Both a Forecasted and an Actual Basis]

Line No.	Index component	1985 weights (percent)	Second quarter 1987 forecast	Second quarter 1987 actual
1	Labor	48.6	163.7	163.7
2	Fuel	9.7	51.6	59.6
3	Materials and Supplies	7.6	98.2	98.2
4	Equipment Rents	9.0	139.6	140.2
5	Depreciation	8.7	116.5	115.7
6	Other Items	16.4	122.3	123.2
7	Weighted Average	100.0	134.8	135.7
8	Linked Index		129.2	130.0
9	Rail Cost Adjustment Factor		1.069	[1] 1.075

[1] For comparative purposes only, an RCAF for the second quarter 1987 has been calculated using actual data. The published RCAF for the second quarter 1987 was computed using forecasted data.

TABLE C.—EX PARTE NO. 290 (SUB-NO. 5) (87-4)

[Calculation of RCAF Credits and Application of Opportunity Cost Adjustment]

1. Bank of RCAF credits 6-30-87	.086
2. Maximum RCAF rate level, third quarter 1987	1.057
3. Published RCAF third quarter 1987	1.087
4. Reduction ( ) or addition to bank of credits for second quarter 1987 (Line 2 minus Line 3)	(.030)
5. Bank of RCAF credits 9-30-87 (Line 1 plus Line 4)	056
6. Third quarter allowance for opportunity cost (Three-month Treasury Bill rate for sale of 8-24-87 (6.12 percent) divided by 4)	1.53%
7. Bank of RCAF credits 9-30-87 adjusted for opportunity cost (Line 5 × (1.0 + Line 6))	.057

[FR Doc. 87-22392 Filed 9-28-87; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31114]

Trackage Rights; CSX Transportation, Inc.; Grand Trunk Western Railroad Co.; Exemption

Grand Trunk Western Railroad Company (GTW) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), beginning at point of switch of Track No. 93-1 at milepost 40.60 and ending at point of switch of Track No. 4 at milepost 40.96, and including the first 440 feet of Track No. 4, a total distance of approximately 0.44 miles, in Mershon, Saginaw, MI. The trackage rights became effective on September 16, 1987.

This Notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: September 18, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22387 Filed 9-28-87; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-106X)]

Abandonment Exemption; CSX Transportation, Inc.; Tuscarawas County, OH

CSX Transportation, Inc.,[1] has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*, to abandon its 1.57-mile line of railroad between mileposts 29.45 and 31.02 at Dover in Tuscarawas County, OH.

[1] The Chesapeake and Ohio Railway Company was merged into CSX Transportation, Inc., on September 1, 1987

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that the line does not handle overhead traffic; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective October 29, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 9, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 19, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 15, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22051 Filed 9-28-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-39 (Sub-No. 9X)]

Abandonment Exemption; St. Louis Southwestern Railway Co. in Wyandotte County, KS, and Jackson County, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by St. Louis Southwestern Railway Company of 1.017 miles of track in Wyandotte County, KS, and Jackson County, MO, subject to conditions for labor protection and historic preservation.

DATES: This exemption is effective on October 2, 1987. Petitions for reconsideration must be filed by October 19, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-39 (Sub-No. 9X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Bldg., One Market Plaza, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup in Room 2229 at Commission headquarters.

Decided: September 22, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22368 Filed 9-28-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-25]

Revocation of Registration; Robert Vidor, M.D.

On March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert Vidor, M.D. (Respondent) of 659 Kearny Avenue, Kearny, New Jersey 07032 and 15 W. 12th Street, New York, New York 10011 proposing to revoke his DEA Certificates of Registration AV4675003 and AV2808422 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of Respondent is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

On May 9, 1986, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing proceedings, a hearing was held in Newark, New Jersey, on October 7, 8 and 9, 1986. On May 11, 1987, Judge Young issued his Opinion and Recommended Ruling, Findings of Facts, Conclusions of Law and Decision. Pursuant to 21 CFR 1316.66, Respondent filed exceptions to the Administrative Law Judge's Recommended Ruling and the Government filed a response to such exceptions. On July 24, 1987, Judge Young transmitted the record in these proceedings, including Respondent's exceptions and the Government's response thereto, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent has been a practicing psychiatrist in the Kearny, New Jersey, area for the past twenty-three years. Beginning in 1981, the Kearny Police Department received an ongoing series of complaints from confidential informants, concerned citizens, family members of Respondent's patients and anonymous callers regarding Respondent's controlled substance prescribing practices. These complaints were to the effect that Respondent was prescribing controlled substances for individuals without any examination or consultation and that these individuals were then either abusing drugs themselves or selling them on the street.

As a result of the complaints, the Kearny Police Department requested that the Hudson County Prosecutor's Office initiate an undercover investigation into Respondent's controlled substance prescribing practices. In response to this request, on three separate occasions in 1983, an investigator with the Hudson County Prosecutor's Office, went to Respondent's office, in an undercover capacity, to attempt to purchase prescriptions for controlled substances from Respondent without a showing of legitimate medical need for the drugs.

During each of the three visits, Respondent wrote the investigator a prescription for 100 Xanax tablets, a Schedule IV controlled substance. Respondent never took a complete medical history from the investigator on any occasion before prescribing controlled substances for him. The investigator clearly indicated to Respondent that his "wife" was both using and selling some of the drugs Respondent was prescribing for him, not for his wife. The Administrative Law Judge concluded, however, that in light of all that transpired between the investigator and Respondent, these circumstances do not in themselves establish that the prescriptions written for the investigator could not have been intended by Respondent for a legitimate medical purpose.

On three separate occasions in 1983, another investigator with the Hudson County Prosecutor's Office, went to Respondent's office, in an undercover capacity, to attempt to purchase prescriptions for controlled substances from Respondent without a showing of legitimate medical need for the drugs. During his first visit on June 8, 1983, the investigator told Respondent that he was currently going to a methadone clinic, that he was buying drugs on the street and that he used cocaine. Respondent proceeded to write the investigator two prescriptions, one for 15 dosage units of Dalmane, a Schedule IV controlled substance, and one for 60 dosage units of Valium 10 mg., also a Schedule IV controlled substance. Before prescribing these drugs, Respondent did not take a complete medical history from the investigator; he did not perform any psychiatric counseling; and he did not ask the investigator to sign a release of records form so he could obtain information regarding the investigator's supposed treatment at the methadone clinic.

During this visit, Respondent cautioned the investigator not to sell

anything that he prescribed for him. The investigator had not said anything about selling the drugs prior to Respondent's making this statement. The investigator then stated that he could sell the drugs in Newark, to which Respondent replied: "Newark is another thing * * *. I don't know about that, okay?" Before the investigator left Respondent's office, Respondent stated that he had to write something on the investigator's medical chart to justify the issuance of the prescriptions. Specifically, Respondent stated: "I have to write that you're quite nervous, okay * * *. You have anxiety, tense, nervous, okay? * * * Sometimes you can't sleep." The investigator responded: "you can write down anything you want." Respondent replied: "No, you mustn't disagree."

The investigator returned to Respondent's office on June 27, 1983. Respondent wrote the investigator one prescription for 100 dosage units of Valium 10 mg. and 20 dosage units of Dalmane. Respondent did not offer the investigator any sort of psychiatric counseling.

On September 12, 1983, the investigator returned to Respondent's office. During this visit, the investigator told Respondent that he was taking some of the drugs that Respondent prescribed for him and selling some. Respondent warned the investigator to be careful because the "Feds are everywhere." Respondent proceeded to write the investigator a prescription for 60 dosage units of Valium 10 mg. and 24 dosage units of Elavil, a non-controlled substance. Once again, Respondent stated that he had to write something on the investigator's medical chart to justify the issuance of the prescription. He suggested that: "[Y]ou sometimes feel like down, like depressed * * * [L]ike you broke up with your girlfriend." Respondent did not provide the investigator with any psychiatric counseling before prescribing the drugs for him. The Administrative Law Judge concluded that the controlled substances prescribed for the investigator on this occasion, and on June 8 and 27, 1983, were not prescribed for a legitimate medical purpose.

The Administrative Law Judge found that some of Respondent's patients were clients at area methadone treatment clinics. The exchange of information between a treating doctor and the methadone clinic regarding an individual is necessary to ensure that medications are not improperly combined.

The director of a local methadone treatment facility attempted to contact Respondent on several occasions to attempt to implement certain procedures for the coordination of treatment when a client of the clinic is also Respondent's patient. Respondent showed no interest in effecting such medically necessary coordination. In one instance in 1980, Respondent became aware that a patient of his was also a client at the methadone clinic, yet Respondent failed to contact the clinic regarding the patient's treatment and he did not ask the patient to sign a release of records form until April 1986, after the initiation of proceedings to revoke his DEA Certificate of Registration. Generally, Respondent did not begin to contact local methadone clinics to attempt to obtain information regarding his patients who were also clients at the clinics until the spring of 1986, after the initiation of these proceedings.

The Administrative Law Judge further found that as of early 1986, Respondent had been writing prescriptions for controlled substances, on a regular basis for four years for a patient who is a drug addict. The individual was then reselling the drugs or trading them on the street for other drugs. The individual's sister contacted Respondent on several occasions to attempt to discuss his prescribing of controlled substances for her sister. The sister specifically told Respondent that her sister was selling the drugs Respondent prescribed for her. Respondent threatened the sister by telling her to "butt out" or she'd be in trouble. Respondent further stated, "[i]f I didn't give her drugs, she'd buy more dangerous ones on the street."

The Administrative Law Judge recommended that Respondent's DEA Certificates of Registration be revoked. Although he concluded that not all of the Government's allegations of wrongdoing by Respondent were supported by the evidence in the record, he found that a number of them were, and that those were sufficient to persuade him that Respondent ought not to be permitted to handle controlled substances.

The Administrator adopts the findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The Administrator also considered Respondent's exceptions to Judge Young's opinion and recommended ruling. However, nothing in Respondent's exceptions persuades the Administrator to conclude that the continued registration of Respondent is consistent with the public interest. Respondent prescribed controlled substances for an individual even after being told that the individual was a drug addict and was selling some of the drugs Respondent prescribed for him. In addition, Respondent freely prescribed controlled substances to methadone clinic clients without coordinating treatment with the clinic. The Administrator concludes that the evidence clearly establishes that the continued registration of Respondent is inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AV4675003 and AV2808422, previously issued to Robert Vidor, M.D., be, and they hereby are, revoked. The Administrator further orders that any pending applications for the renewal of such registrations be, and they hereby are, denied. This order is effective October 29, 1987.

John C. Lawn,

Administrator.

Date: September 23, 1987.

[FR Doc. 87-22348 Filed 9-28-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Wyoming State Standards; Approval

1. Background. Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adoption by the Wyoming Health and Safety Commission.

4. Review and approval by the Governor.

5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA's review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated June 10, 1987, from Donald D. Owsley, Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's Construction Standards (29 CFR 1926.55: Gases, Vapors, Fumes, Dusts, and Mists, 51 FR 22756, June 20, 1986; 29 CFR 1926.58: Asbestos, Tremolite, Anthophyllite, and Actinolite, 51 FR 22756, June 20, 1986; 29 CFR 1926.152: Flammable and Combustible Liquids and 29 CFR 1926.351: Arc Welding and Cutting and 29 CFR 1926.803: Compressed Air and 29 CFR 1926.400: Electrical, 51 FR 25318, July 11, 1986).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, Section 27–11–105(a)(viii).

State standards for 29 CFR 1926.55: Gases, Vapors, Fumes, Dusts, and Mists; 29 CFR 1926.58: Asbestos, Tremolite, Anthophyllite and Actinolite; 29 CFR 1926.152: Flammable and Combustible Liquids; 29 CFR 1926.351: Arc Welding and Cutting; 29 CFR 1926.803: Compressed Air; and 29 CFR 1926.400: Electrical were adopted by the Health and Safety Commission of Wyoming on November 14, 1986 (effective December 19, 1986, for §§ 1926.55 and 1926.58; March 10, 1987 for §§ 1926.152, 1926.351, 1926.803 and 1926.400), pursuant to Wyoming statute 1977, section 27–11–105. These State standards are substantially identical to the Federal standard actions, except for the following minor differences: (a) Paragraph numbering; and (b) minor wordage appropriate to the Wyoming statutes.

2. *Decision.* Having reviewed the State submissions in comparison with Federal standards, it has been determined that the State standards are substantially identical to the Federal standards, and are accordingly approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective September 29, 1987.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado, this 7th Day of August, 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87–22329 Filed 9–28–87; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Docket No. 030–13435, License No. 53–17854–01, EA 87–186

Order Suspending License (Effective Immediately); Finlay Testing Laboratories, Inc.

I

Finlay Testing Laboratories, Inc., (the licensee) Testing and Inspection Services 99–940 Iwaena Street, Aiea, Hawaii 96701, is the holder of Byproduct Material License No. 53–17854–01 issued by the Nuclear Regulatory Commission (NRC/Commission) on March 1, 1978 pursuant to 10 CFR Part 34. The license is due to expire on August 31, 1988. The license authorizes the licensee to possess and use licensed materials (cobalt-60, iridium-192, and cesium-137 sources of up to 30, 100, and 0.14 curies per source, respectively) in industrial radiography and survey instrument calibration. The license specifies that sources shall be used by, or under the supervision of, Gordon Finlay or individuals who have completed the training program described in letters dated February 28, 1983 and August 2, 1983.

II

In response to allegations received by the NRC Region V office, an investigation was initiated on August 31, 1987. The allegations included:

1. Exposure devices being placed by the licensee in luggage and loaded on commerical passenger aircraft for flights to and from the islands of Oahu and Hawaii, and on military cargo/passenger aircraft to Johnston Island.

2. Failure to use shipping papers or labels for those transfers.

During the investigation at the licensee's office in Aiea, island of Oahu, NRC personnel inquired about activities conducted under the NRC license. The licensee's Radiation Safety Officer initially denied that work had been performed on the island of Hawaii. When confronted with evidence of that work, however, he admitted that the work had been done. Radiographers employed by the licensee also stated during discussions with NRC personnel that radiographic work had been performed on the island of Hawaii during 1987 and that licensed material had been transported on passenger-carrying aircraft in violation of Federal regulations.

The licensee's representatives were unable to produce required documentation that showed that work had been performed on the island of Hawaii or that the licensed material had been transported from the island of Oahu to the island of Hawaii in accordance with Federal regulations. The investigation disclosed substantial evidence that, in fact, the material had been transported in luggage via commerical passenger aircraft in violation of Federal regulations which prohibit the transportation of radioactive material on passenger aircraft. 10 CFR 71.5 and 49 CFR 173.448(f).

The NRC investigation also confirmed that on August 18, 1987 the licensee shipped a radiogpraphic device by military passenger/cargo plane to Johnston Island also in violation of Federal regulations. 10 CFR 71.5 and 49

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CFR 173.448(f). In both instances, labeling and documentation requirements were not met.

The Federal regulations for shippping redioactive material have been established, in part, to protect the public, including passengers in aircraft, from the potentially serious dangers of radioactive material. For the safety of handlers and passengers, regulations dictate packaging, labeling, and documentation requirements for shipping radioactive material and limit the types of flights on which the material may be carried.

While the investigation is continuing, the information developed to date indicates that the violations appear to be deliberate, which raises a question whether the licensee is able or willing to comply with the Commission's requirements to protect the public health and safety. Therefore, the NRC no longer has reasonable assurance that licensed activities will be conducted without undue risk to the public health and safety. I have determined pursuant to 10 CFR 2.201(c) and 1.202(f) that the public health and safety require that the license be suspended pending the results of the investigation, that the suspension be immediately effective, and that no prior notice is required.

IV

Accordingly, in view of the foregoing and pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 34, *It Is Hereby Ordered, Effective Immediately, That:*

A. Activities under License No. 53–17854–01 are suspended.

B. The licensee shall place all byproduct material in its possession in locked storage and notify the Region V office of compliance.

The Regional Administrator, Region V, may, in writing, relax or rescind any of the above provisions on demonstration of good cause by the licensee.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why License No. 53–17854–01 should not be suspended by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in section IV above. Upon consent of the licensee to the provisions set forth in section IV of this Order, or on failure of the licensee to file an answer within the specified time, the provisions specified in section IV above shall be final without further Order.

VI

Pursuant to 10 CFR 2.202(b), the licensee or any other person adversely affected by this Order may request a hearing within 20 days of this Order. An answer to this Order and any request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement, at the same address , and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region V, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this order should be sustained.

For The Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 21st day of September 1987.

[FR Doc. 87–22407 Filed 9–28–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 30–05900 et al., License Nos. 35–00502–02 et al., EA 87–35]

Order Modifying Licenses; Halliburton Co., (Halliburton Services Division)

I

Halliburton Company (the Licensee) Post Office Drawer 1431, Duncan, Oklahoma 73536, is the holder of several byproduct material licenses. License No. 35–00502–02 authorizes the Licensee to possess and use byproduct material for the purpose of performing tracer studies in oil and gas wells. Amendment No. 25 to the license was issued December 18, 1986. The license expires on March 31, 1991. License No. 35–00502–03 authorizes the Licensee to possess and use byproduct material for the purposes of research and development and the manufacture of tracer materials and gauging equipment used in oil field operations. Amendment No. 55 to the license was issued July 7, 1987. The license expires on March 31, 1991. License No. 42–01068–07 authorizes the Licensee to possess and use byproduct material for the purpose of performing tracer studies and well logging in oil and gas wells. Amendment No. 42 to the license was issued August 31, 1986. The license expires on August 31, 1989.

II

On December 8–12, 1986, the NRC conducted a special inspection to review the circumstances surrounding alleged activities being performed under License Nos. 35–00502–03 and 35–00502–05. Several apparent violations were identified during the inspection. One of the violations was of particular concern because it involved activities being performed without NRC authorization. Specifically, Halliburton Industrial Services, Inc. was authorized under License No. 35–00502–05 to perform salvage and decontamination activities of spent fuel racks at its facility in Duncan, Oklahoma. On April 11, 1985, while disposal activities were taking place, Halliburton Industrial Services, Inc. was dissolved as a separate corporation. On that same day, Halliburton Company took possession of the facility. When the salvage and decontamination activities proved economically unfeasible, the spent fuel racks were cut into small pieces by Halliburton Company without NRC authorization and disposed of at an authorized disposal site. Because Halliburton Company was not an authorized recipient of the byproduct material, such possession violated NRC requirements. Further, contrary to NRC requirements, Halliburton Company continued to conduct decontamination activities at the Duncan, Oklahoma site from April 11, 1985 to December 19, 1985. At no time prior to the inspection did Halliburton Industrial Services, Inc. or Halliburton Company notify the NRC of these occurrences.

These circumstances, when viewed together with the other violations, demonstrated that Halliburton Company management failed to exercise adequate oversight and control of its radiation safety program. The NRC communicated its concerns to the Licensee during an enforcement conference held on January 26, 1987. Pursuant to NRC request, the Licensee committed, by letter dated April 16, 1987, not to conduct activities

which had been authorized under License No. 35–00502–05. Further, in a Confirmatory Action Letter dated May 1, 1987, the NRC documented the Licensee's commitment to request an amendment to License No. 35–00502–03 which would authorize the decontamination activities previously authorized under License No. 35–00502–05.

Another enforcement conference was held on May 27, 1987 to discuss with the Licensee the need to develop a comprehensive audit program. The NRC determined that an audit program was necessary because of the multiple licenses held the Licensee and because the violations identified during the inspection indicated the need for greater management involvement in the radiation safety program. Consequently, on June 9, 1987, Halliburton Company submitted a letter describing its proposed audit program. The NRC documented the Licensee's commitment in a Confirmatory Action Letter dated July 1, 1987.

III

After consideration of the facts, the NRC has concluded that there was a significant breakdown in management oversight and control of operations involving licensed material and has determined that an improved program of internal auditing and corporate management notification is needed. Further, the NRC has determined that the Licensee's completed and proposed corrective actions do not extend far enough to ensure thorough management involvement in the day-to-day operations of its licensed activities. Therefore, an Order describing in greater detail the requirements of the corporate audit program is necessary.

IV

In view of the foregoing and pursuant to sections 81, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended (Act), and the Commission's regulations 10 CFR 2.204, and Parts 30 and 39, it is hereby ordered that:

A. The Licensee shall submit within 30 days of the date of this Order a description of a corporate audit program for NRC review and approval. NRC approval will constitute incorporation of the corporate audit program into the following licenses: (1) No. 35–00502–02, (2) No. 35–00502–03, and (3) No. 42–01068–07. As a minimum, the audit program shall consist of the elements described below.

1. Comprehensive audits of the handling, use, storage and disposition of licensed materials shall be conducted at intervals not to exceed 3 months by either the Radiation Safety Officer (RSO) or Assistant Radiation Safety Officer (ARSO) for their licenses for which they are responsible. Audits shall be conducted at each active field station or service center. (Active sites are those at which radioactive material has been possessed, used, or stored within the previous 6 months.) Any deficiencies noted by the audit shall be promptly corrected. The audits shall be documented in a report within 30 days of each audit and the report shall be submitted to the Manager of the Government Regulations Department, Halliburton Services. A determination shall be made whether the deficiency was an isolated event or one that indicates a potential systematic failure in which case all field stations and service centers shall be notified.

2. Additional unannounced audits shall be performed if prior corrective actions are not implemented or if the corrective actions were not effective.

3. As a minimum, a review of the audit findings shall be conducted for each licensed activity by the Manager of Government Regulations Department, Halliburton Services, at intervals not to exceed six months and the review shall be documented in a report. In addition, the Manager of Government Regulations Department, or an NRC-approved alternate, shall conduct periodic audits at selected active field stations or service centers.

B. Within 30 days of the audit review required by Item A.3 above, copies of the completed audit report shall be provided to the President, Halliburton Services, for his review.

C. The President, Halliburton Services, shall be the responsible Licensee representative to ensure that all corrective actions are properly implemented and incorporated into the licensee's program.

D. Records of the reviews and audits identified above shall be maintained for inspection by the Commission for a period of 3 years.

The Regional Administrator, Region IV, or his designee may relax or rescind any of the above provisions for good cause.

The Licensee or any other person adversely affected by this Order may within 30 days of the date of this Order request a hearing. A request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of General Counsel. U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region IV, 611 Ryan Plaza, Suite 1000, Arlington, Texas 76011. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interst is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this order shall be effective without further proceedings.

In the event the Licensee or any other person requests a hearing as provided above, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 23rd day of September, 1987.

[FR Doc. 87–22408 Filed 9–28–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on TVA Organizational Issues; Change in Date of Meeting

The ACRS TVA Organizational Issues Subcommittee meeting scheduled for October 2, 1987 has been postponed to Wednesday, November 4, 1987. All other items pertaining to this meeting remain the same as previously published in the **Federal Register** dated Monday, September 14, 1987 (52 FR 34728).

Date: September 24, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–22410 Filed 9–28–87; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a meeting on Thursday, October 15, 1987, and on Friday, October 16, 1987.

In accordance with the provisions of the Government in the Sunshine Act, 5 U.S.C. 552(c) (2) and (6), the meeting will

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be closed to the public on October 15th. This meeting will be devoted to discussing internal personnel rules and practices and information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting on Friday, October 16th will be open to the public and will be held from 9:00 a.m. to 1:00 p.m. in the Loy-Henderson Conference Room, Department of State, 2201 C Street, NW., Washington, DC 20520. The purpose of the meeting on the 16th is to discuss (1) the Preliminary Report and organizational approach toward meeting the charges of the Presidential mandate; (2) future meetings and other business items submitted by the commissioners.

Records shall be kept of all commission proceedings and shall be available for public inspection at 655—15th Street NW., Suite 901, Washington, DC 20005.

William J. Walsh, III,

Executive Secretary, Presidential Commission on the Human Immunodeficiency Virus Epidemic.

[FR Doc. 87-22373 Filed 9-28-87; 8:45 am]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24935; File No. SR-CBOE-87-40]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b), notice is hereby given that on August 31, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commissions publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The CBOE proposes a new rule 8.14, which limits the affiliations of a designated primary market-maker (DPM).[1] The rule provides that no person or organization affiliated with a DPM may purchase or sell an option in a DPM's appointment except to reduce or liquidate positions with appropriate identification and floor official approval. The rule provides an exemption from this limitation in guidelines which follow the rule. These guidelines for exemption provide for what is commonly referred to as a "Chinese Wall."

The "Chinese Wall" guidelines call for (i) separate organization of the DPM and the affiliated firm, including separate books and records, separate financial compliance, no common control over the DPM's conduct, and only such general managerial oversight as not to conflict with or compromise the DPM's market maker responsibilities; and (ii) procedures to prevent the use of material non-public corporate or market information to influence the DPM's conduct and to avoid the misuse of DPM market information to influence the affiliated firm's conduct.

The firm seeking exemption is to submit to the Exchange a written statement setting forth: (i) Manner of complying with the foregoing guidelines, (ii) the firm individuals responsible for maintenance and surveillance of the procedures, (iii) that the DPM may not give special information to a broker affiliated with the firm; (iv) that the firm must disclose its affiliation with a DPM if it popularizes a security in which the DPM is registered as such; (v) that the firm will file information and reports required by the Exchange; (vi) that appropriate remedial actions will be taken for a breach of procedure; (vii) the procedures to ensure a separation of firm proprietary clearing activity to assure the "Chinese Wall" is not compromised; and (viii) that no individual associated with the firm may trade as market maker in a security on which the DPM has an appointment.

The firm compliance officer is to be notified if the DPM receives information which the guidelines prohibit, and what action should be taken, including giving up the appointment, or temporarily providing a replacement DPM. The compliance officer is to keep a written record of each such incident, and provide such records to the Exchange for review. No exemption is effective until granted by the Exchange in writing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change provides for "Chinese Walls" so that member organizations with an integrated business will be able to be associated with designated primary market-makers ("DPM"), with the assurance that there are adequate controls to assure that the DPM will not have access to material non-public corporate or market information which the firm may possess, and to prevent the misuse by a firm of its DPM's non-public market information.

The guidelines provide procedures to be used in temporary DPM appointments where a DPM becomes "contaminated" following a breach of the "Chinese Walls." The guidelines also specify that a firm's procedures should insure that information regarding securities positions trading activity and margin financing arrangements between the affiliated upstairs firm and the DPM should be available solely to senior management in the firm exercising general managerial oversight of the DPM. Once in place, these procedures will substantially lessen the need for the prohibitions contained in the rules discussed above to the extent they apply to upstairs firms affiliated with DPM's. The restrictions would remain in effect as to the DPM itself.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 ("Exchange Act") and, in particular, section 6(b)(5) thereof, in that the proposal will enhance enforcement of Exchange rules and the Exchange Act. The rule change will also facilitate the entry of large diversified retail broker-dealers into becoming DPM's on the Exchange floor and in so doing will enhance depth and liquidity in the options market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[1] The CBOE DPM program recently was approved in Securities Exchange Act Release No. 24934 (September 22, 1987).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by October 20, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 22, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22417 Filed 9-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24936; File No. SR-CBOE 87-19]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.

On May 7, 1987, the Chicago Board Options Exchange, Inc. ("CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 10b-b thereunder,[2] a proposed rule change to make permanent the Exchange's new Standard & Poor's 500 stock index option contract ("NSX"), the exercise settlement value of which is based on an index value derived from opening, rather than closing prices on the last business day prior to its expiration.

The proposed rule change was noticed in Securities Exchange Act Release No. 24751 (June 10, 1987). No comments were received on the proposed rule change. In Securities Exchange Act Release No. 24755 (July 28, 1987), the Commission granted partial approval to the proposed rule change.

The Exchange seeks permanent approval of the new NSX option contract, which is the same as the current Standard and Poor's 500 option contract ("SPX"), except that NSX's exercise settlement value would be based on opening prices of each stock comprising the index on the last business day prior to expiration Saturday. This value would be different from the current index value at any point in time, because the opening prices of the constituent stocks will be established at different times. NSX has expiration months of March, June, September and December, the same expiration months as the Standard and Poor's 500 futures contract.

The Exchange takes this action because the Chicago Mercantile Exchange ("CME") has moved the Standard and Poor's futures contract's settlement value to opening prices on the delivery date. The CBOE continues to believe that heightened volatility at expiration of index options and futures can better be addressed by improving procedures for information dissemination at the close of trading than by changing the terms of contracts to provide for exercise settlement based on opening prices. However, in light of the action of the CME, the CBOE believes it should promptly provide investors in SPX an alternative contract value on the same basis as the Standard and Poor's 500 future. Introduction of NSX will provide investors with offsetting Standard and Poor's 500 futures and SPX positions with a means of alleviating risk resulting from disparate valuation methods.

While a change to outstanding contracts would appear more straightforward than introduction of new contracts with changed terms, that alternative is not available. The Options Clearing Corporation ("OCC"), out of justifiable concern for potential liability, had declined to alter the terms of outstanding contracts.[3]

The CBOE recognizes that the existence of two Standard and Poor's 500 option contracts in the same expiration month with different methods of valuation may give rise to confusion. However, the CBOE believes that the potential for confusion should not be an obstacle to introduction of NSX. SPX is used primarily by institutional investors, who have indicated a need to have the option settle as the future does.

The Commission has determined to grant continuing partial approval to the proposed rule change by approving the NSX contract through the December 18, 1987 expiration. The Commission currently is evaluating the results of the disparate expirations of June 19 and September 18, 1987, and has determined to complete its review of the June and September settlements before approving the CBOE proposal on a permanent basis. Based on the results of that review, the Commission will examine whether to continue disparate expriation settlements, or whether index settlement based on opening prices may be appropriate for all options products. Accordingly, the Commission believes it is appropriate to approve the CBOE proposal on a temporary basis through the December expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 22, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22418 Filed 9-28-87; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] The Commission notes that the OCC recently amended its disclosure document to disclose that the settlement of index option contracts may be altered, and also adopted a By-law amendment that will permit options exchanges to provide by rule that the settlement value of any index on which options are traded on a particular exchange will be determined by reference to the prices of the constituent stocks at times other than the close of trading. See, Securities Exchange Act Release Nos. 24259 (March 25, 1987), and 24277 (March 27, 1987).

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

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[Rel. No. IC-16000; 812-6761]

Applications; Rightime Fund, Inc., et al.

September 23, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Rightime Fund, Inc.; The Rightime Fund Series, The Rightime Government Securities Fund Series and the Rightime Fund Blue Chip Fund Series of The Rightime Fund, Inc.; all future investment company series of The Rightime Fund, Inc.; and all future investment companies for which Rightime Econometrics, Inc., or subsidiaries or affiliates thereof serve as investment adviser (collectively "Funds"), and Rightime Econometrics, Inc. (the "Adviser").

Relevant 1940 Act Sections: Exemption requested under section 6(c) for an order permitting a joint transaction under section 17(d) of the Act and Rule 17d-1 thereunder.

Summary of Application: The Funds seek an order to permit them to deposit uninvested daily cash balances into a single joint account and to participate in a proposed joint trading account.

Filing Date: The application was filed on June 18, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 16, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, The Benson East Office Plaza, Jenkintown, Pennsylvania 19046.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272-3046, or Curtis R. Hilliard, Special Counsel, (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The existing Funds are investment companies registered under the 1940 Act and are series of The Rightime Fund, Inc. Rightime Econometrics, Inc. serves as investment adviser to each of the Funds.

2. Purchase orders for shares of each of the Funds are received at the office of the Funds' distributor and transfer agent, Lincoln Investment Planning, Inc., and all purchase checks are deposited in The Rightime Fund, Inc.'s purchase account at First Pennsylvania Bank, N.A., on the day of receipt. The amount of monies deposited are not allocated to a particular Fund until after the Fund's net asset value per share is computed at the close of business on the day of receipt. Accordingly, such monies are not available for investment by a Fund in portfolio securities or repurchase agreements on that day and remain in the purchase account until wired to each Fund's custodian bank on the following day. During the twelve months ended May 31, 1987, the average daily amount in the combined purchase account was approximately $483,333.24.

3. In addition, each of the Funds has, or may be expected to have, uninvested cash balances in its custodian bank from time to time which would not be invested in portfolio securities by the portfolio manager at the end of each trading day. In the normal course, if the amount of such assets of each Fund is separately of sufficient size, the Adviser attempts to invest the assets of such Fund in federal securities, overnight repurchase agreements with a bank or major brokerage house, or other similar short-term investment contracts, in order to earn additional income for that Fund. A Fund with residual assets which are not of adequate size to permit such an investment is unable to invest its residual assets in a similar manner.

4. The Funds believe that they can reduce expenses, earn additional income on their cash balances, and eliminate certain inefficiencies by pooling their cash balances held in the purchase and custodian accounts and investing these cash balances in one or more large repurchase agreements.

5. Applicants propose to establish a joint trading account ("Account"). Each Fund will automatically transfer its uninvested cash remaining after the conclusion of its daily trading activity into such custodial or sub-custodial Account. The Account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank or a designated sub-custodian bank except that monies from a Fund will be deposited on a commingled basis. The Account will not have any separate existence which will have indicia of a separate legal entity. The sole function of the Account will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Fund of its uninvested cash balances.

6. Cash in the Account will be invested in repurchase agreements collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the uniform standards set by the Funds for such investments. Any repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration, and in no event will it have a duration of more than seven days.

7. All investments held by the Account will be valued on an amortized cost basis. Each Fund will use the average maturity of the Account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such Account on that day.

8. In order to assure that a Fund can only use its balance of the Account, Funds will not be allowed to create a negative balance in the Account for any reason. A Fund's decision to invest in the Account wil be solely at the Fund's option. A Fund will not be obligated to invest in the Account nor to maintain any minimum balance. A Fund may withdraw all, or a portion, of its investment in the Account at any time. In addition, a Fund will retain the sole rights of ownership of any of its assets, including any interest payable on such assets invested in the Account. Each Fund's investment in the Account will be documented daily on the books of the Funds as well as on the books of the Fund's custodian.

9. Each Fund will participate in the income earned or accrued in the Account on each day on the basis of the Fund's percentage of the total amount in the Account on any day represented by its shares of the Account.

10. The Adviser will administer the investment of the cash balance in and operation of the joint account as part of its duties under its existing or any future

investment management contract with each Fund and would not collect any additional fee for the management of the joint account. The Adviser will continue to collect its fees based upon the total net assets of each separate Fund as provided in each respective investment management agreement.

11. The Account will be administered within the fidelity bond coverage required by section 17(g) of the 1940 Act and Rule 17g–1 thereunder. The Board of Directors of the existing Fund and of future funds participating in the Account will evaluate the Account arrangements annually, and will continue the Account only if they determine that there is a reasonable likelihood that the Account will benefit the Funds and their shareholders.

Applicants Legal Conclusions

1. Each Fund will participate in the Account on the same basis as every other Fund and in conformity with each Fund's fundamental investment objectives and restrictions. Participation in the Account will not result in any conflicts of interests between any of the Funds or between a Fund and the Adviser. Future series of the Rightime Fund, Inc. and future investment companies for which Rightime Econometrics, Inc., or its subsidiaries or affiliates serve as investment advisers, will be required to participate in the Account on the same terms and conditions as the existing Funds.

2. Applicants believe that the Funds will earn a higher return by participating in the Account rather than by maintaining individual accounts because it is possible to negotiate a rate of return on a large repurchase agreement which is greater than the rate of return which can be negotiated for smaller repurchase agreements. Also, the Funds will collectively save approximately $18,750.00 in yearly transaction fees at present asset levels.

Applicants' Conditions

Applicants agree to operate the Account in accordance with the representations set forth in paragraphs 4 through 10 above and agree that such representations may be made express conditions of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–22416 Filed 9–28–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[CM–8/117]

Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92–463, that a meeting of the Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas will be held on October 29 and 30, 1987 beginning at 9:30 a.m. The meetings will be held at the offices of the National Marine Fisheries Service, Room 928, Universal Building (South), 1825 Connecticut Avenue NW., Washington, DC.

On October 29 and the morning of October 30 the meeting will be open to the public, and the public may participate in the discussions subject to the instructions of the Committee Chairman. Items on the agenda include overview of preparations for the Standing Committee on Research and Statistics (SCRS) meeting, review of research concerning Bluefin Tuna and Billfish, review of ICCAT Activities with respect to Tropical tunas and Albacore, report of Bluefin Tuna Fishery conducted in the U.S. and Canadian Zones, estimates of Japanese Harvest of Tunas and Billfish in the U.S. EEZ, review of the progress of the Swordfish Working Group, and review of the Large Pelagic Research Program.

The Advisory Committee will meet in closed session on the afternoon of October 30, 1987. At this session documents classified in accordance with Executive Order 12356 of April 2, 1982, will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure. Accordingly, a determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, s.10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information should be directed to Barbara Rothschild, Office of International Fisheries Affairs, National Marine Fisheries Service, Department of Commerce. She may be reached by telephone on (202) 673–5281.

Date: September 21, 1987.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 87–22431 Filed 9–28–87; 8:45 am]

BILLING CODE 4710–09–M

[CM–8/1120]

Shipping Coordinating Committee, National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP) will conduct a special meeting on October 26, 1987, at 1:30 p.m. in Room 2415 of U.S. Coast Guard Headquarters. 2100 Second Street, SW., Washington, DC.

The purpose of this special meeting will be to receive comments from the public to ascertain the desirability of having the Gulf of Mexico designated a "Special Area" under Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating thereto (MARPOL 73/78). U.S. positions on Annex V and progress towards U.S. ratification will also be discussed.

A report from the Texas General Land Office compiling information in support of designating the Gulf of Mexico as a Special Area has been submitted to the Coast Guard. This report forms the basis for this special meeting. A copy of the report is available for review at U.S. Coast Guard Headquarters. A limited number are available upon request.

Annex V Special Area Definition: Special Area means a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by garbage is required. Special Areas shall include those listed in Regulation 5 of Annex V.

Annex V Requirements Outside Special Areas: Specifically, these requirements would apply to all ships and would prohibit:

(1) Disposal into the sea of all plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags. The accidental loss of synthetic fishing nets is exempted providing that all reasonable efforts have been taken to prevent such loss;

(2) Disposal of dunnage, lining, and packing materials which will float within 25 nautical miles from the nearest land;

(3) Disposal of food wastes, glass, rags, paper, metal, bottles, crockery and similar refuse within 12 nautical miles from the nearest land.

Annex V would also require adequate reception facilities at ports and

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terminals for reception of garbage from ships.

Annex V Requirements Within Special Areas: For an area designated a Special Area under Annex V, more stringent garbage discharge provisions would apply. Specifically, these requirements would apply to all ships and would prohibit the disposal of all garbage described above, except food wastes which may be discharged outside 12 nautical miles from the nearest land.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information or documentation pertaining to the NCPMP meeting, contact either Commander D.B. Pascoe or Lieutenant G.T. Jones, U.S. Coast Guard Headquarters (G-MER-3), 2100 Second Street, SW., Washington, DC 20593-0001, Telephone: (202) 267-0419.

Date: September 22, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87-22432 Filed 9-28-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1122]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on Friday, October 9, 1987, at the Environmental Protection Agency, Waterside Mall, 401 M Street SW., Washington, DC. The meeting will convene at 10 a.m. in the EPA Conference Center, North Conference Room 9. The Conference Center is located on the first floor with entrance through the Mall commercial area. Members of the public are invited and free to attend up to the seating capacity of the room.

The purpose of the meeting is to discuss (1) U.S. response to a London Dumping Convention questionnaire on disposal of low-level radioactive waste at sea; (2) U.S. participation in a London Dumping Convention Intergovernmental Panel of Experts on Radioactive Waste Disposal at Sea, which will meet in London October 19-23, 1987; and (3) U.S. preparation for the London Dumping Convention Legal Experts Meeting to consider the Law of the Sea and liability, to be held in London simultaneously with the above-named Panel. If further information is needed, please contact Alan Sielen of the Office of International Activities, EPA, at (202) 475-9630.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

September 25, 1987.

[FR Doc. 87-22576 Filed 9-25-87; 5:04 pm]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Exception to Charter Policy; Hawaiian Submarines, Inc.

SUMMARY: Under 46 App. U.S.C. 808 (Act), it is unlawful, without the approval of the Secretary of Transportation, to charter vessels documented, or last documented, under the laws of the United States to noncitizens. The Secretary has delegated approval authority to the Maritime Administration (MARAD).

On July 3, 1975, MARAD revised its policy regarding bareboat and demise charters to persons who do not meet the standards set forth in 46 App. U.S.C. 802(a) for operation in the coastwise trade, and announced that approval of such transactions would no longer be granted (40 FR 28832, July 9, 1975).

Hawaiian Submarines, Inc., 615 Piikoi Street, Ste. 1510, Honolulu, Hawaii 96814, has filed application for MARAD approval of the bareboat charter of eight groups of vessels (each group being comprised of a submarine, a tender and a passenger launch), more fully described below, to Atlantis Submarines, Inc. (Atlantis), a Hawaiian corporation. Atlantis does not meet the requirements for United States citizenship in 46 App. U.S.C. 802. The vessels would be chartered for a period of 17 years, commencing late 1987, for the carriage of tourists on short underwater trips to view coral reefs, sunken vessels, and the like in Hawaii.

The eight submarines are either under construction at Everett, Washington, or will be constructed in the United States. They are battery powered, 65' in length, 1-2 knots speed, 78 gross tons, and will carry 48 passengers and a crew of three. The applicant has indicated that the submarines are certified to a depth of 150 feet and will comply with all American Bureau of Shipping and U.S. Coast Guard regulations. These submarines will be designated ATLANTIS 4 through ATLANTIS 11.

While being used, each submarine will be followed on the surface by a small tender that is available to assist in surface maneuvering and, if necessary, in the event of a mishap. The applicant has advised that they will acquire eight 20 to 30 foot diesel powered 17 knot vessels from qualified U.S. sources to serve as surface support and communication vessels for the submarines. These vessels, to be designated TENDER 4 through TENDER 11, will either be documented, or redocumented, in Hawaii, and will operate with a complement of one officer.

There will be a passenger launch for each submarine to ferry passengers from shore to the submarine and back. These launches are to be 50 to 60 feet in length, diesel powered 17 knot vessels, and designated LAUNCH 4 through LAUNCH 11. They also are to be acquired from qualified U.S. sources, will either be documented, or redocumented, in Hawaii, and will operate with a complement of two, one officer and one crew.

It is MARAD's opinion that, notwithstanding the policy statement of 1975, approval of the application should be granted for the following reasons:

1. The technology for the construction of the vessels providing the sightseeing service was developed by the Canadian parent of the charterer that proposes to operate the submarines. This technology would be transferred to U.S. shipbuilding and vessel operating interests.

2. Construction of the submarines will provide much-needed employment for U.S. shipyards.

3. The proposed service is unique and one for which there is no known competition.

4. Introduction of the service would increase maritime employment and promote tourism in the State of Hawaii.

Interested parties are invited to submit written comments regarding approval of the above application. MARAD will consider all written comments received on or before 30 days from publication date.

Send the original and one copy of comments to the Secretary, Maritime Administration, Department of Transportation, Rm. 7300, 400 Seventh Street, SW., Washington, DC 20590. Anyone submitting comments who wishes acknowledgment of their receipt by MARAD should include a stamped, self-addressed postcard or envelope.

Dated: September 22, 1987.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 87-22428 Filed 9-28-87; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

[Notice No. 87-3]

Compressed Gas Cylinders; DOT or ICC 4-Series Specification Cylinders; Potential Safety Problems

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Advisory notice.

SUMMARY: The purpose of this notice is to advise interested persons that certain compressed gas cylinders, marked as meeting DOT or ICC 4-series specifications, and repaired or rebuilt in Puerto Rico, may not have been manufactured or maintained in full compliance with those specifications. Many of these welded or brazed steel cylinders, which are used for liquefied petroleum gas, are being imported from foreign manufacturers, and are being repaired or rebuilt by companies in Puerto Rico that have not been approved under the requirements of 49 CFR Part 173. Because RSPA is in the process of addressing this problem, it is not yet in a position to assure the public as to which of the DOT or ICC 4-series cylinders, currently in use, are in compliance and therefore presumptively safe for use. In the absence of such assurance, the RSPA is notifying persons in possession of cylinders for which compliance cannot be established that the cylinders may not be transported in commerce and should not be refilled after use.

FOR FURTHER INFORMATION CONTACT: James E. Henderson, Hazardous Materials Enforcement Division (DHM-10), Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4700.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (HMR), issued under authority of the Hazardous Materials Transportation Act (Pub. L. 93-633; 49 App. U.S.C. 1801 *et seq.*), are found in the Code of Federal Regulations (CFR), Title 49, Subchapter C, which is comprised of Parts 171 through 179. In Subpart C of Part 178, the HMR set forth specifications for cylinders used as packagings for compressed gases.

In 1985, at the request of the Puerto Rican Public Service Commission (PRPSC), RSPA compliance inspectors inspected several Puerto Rican companies that repair or rebuild cylinders marked as meeting specifications in the DOT 4-series, (e.g., DOT 4B, 4BA, etc.). The PRPSC was concerned about the compliance of these cylinders because the DOT had no record indicating that the companies had been approved for repairing (§ 173.34(i)) or rebuilding (§ 173.34(l)). The cylinders at issue are commonly used for the transportation of liquefied petroleum gases, such as butane and propane. During the inspection in 1985, some cylinders were identified as having been made by foreign manufacturers in the Caribbean Islands, and Central and South America. At that time, there were no foreign cylinder manufacturers in these areas approved under § 173.300b to manufacture cylinders for use in the United States.

Inspections performed at six of eight known repair facilities in Puerto Rico revealed that some of these companies were capable of becoming approved to repair non-pressurized parts. However, none had the equipment necessary to rebuild cylinders, which entails access to proper equipment for welding, performing heat treatments, physical testing and pressure testing. In cooperation with the PRPSC, these companies were notified of their noncompliance wtih the HMR, and told to contact the RSPA, Office of Hazardous Materials Transportation, Approvals Branch for approval requests. To date, one application for approval has been received, but none of these companies have been approved by RSPA.

In February 1987, DOT compliance inspectors conducted additional inspections in Puerto Rico in response to a complaint from a local company. During this investigation, the inspectors noticed that there was a marked increase in the number of cylinders in Puerto Rico manufactured by unapproved foreign manufacturers. Information supplied by the U.S. Coast Guard indicated that over 6,000 cylinders, manufactured by CILCASA, (Cilindros De Centro America, S.A.) of Guatemala City, Guatemala, were being imported into Puerto Rico. These cylinders were determined to have been manufactured without DOT approval. To date, the only approved foreign manufacturer of DOT 4-series cylinders, importing to Puerto Rico, in the area of concern, is Mangles Minas Ind., S.A. of Tres Coracoes, Brazil, which received an approval beginning October 8, 1986.

The regulatory issues associated with the manufacture, repairing and rebuilding of compressed gas cylinders, and violation of these requirements, are major concerns of the RSPA. Unapproved manufacture and unapproved repairing and rebuilding of cylinders, and the use of unauthorized cylinders for the transportation of compressed gases, pose unnecessary risks to carrier personnel and the public at large, as well as significant regulatory problems. Each person who manufactures, rebuilds or repairs cylinders is required to comply with all applicable regulations, including the approval to manufacture, repair and rebuild cylinders.

Persons in possession of DOT 4-series cylinders which have been repaired or rebuilt in Puerto Rico are hereby notified that most of these cylinders are not in compliance with the applicable DOT specifications. They are not authorized for the transportation of hazardous materials, and may be unsafe. Cylinders repaired or rebuilt by approved companies can be identified by the letter "K" with 3 numbers (e.g., K123) stamped in a square pattern between the month and year of repairing or rebuilding. Example: A cylinder retested in August, 1987 by an approved retester who has been issued identification number K123 would be stamped as follows:

K1

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The RSPA is currently developing a comprehensive strategy to resolve the problem of unapproved and potentially unsafe cylinders in Puerto Rico. The strategy, of which this notice is but a first step, will utilize enforcement, both within and outside Puerto Rico. Other measures under consideration include conducting a compliance program to bring existing rebuilders and retesters into conformance with applicable regulations by providing on site technical/regulatory assistance. The RSPA intends to institute an inspection and hydrostatic testing program to determine which cylinders are unsafe. This strategy will also involve substantial assistance of the Puerto Rican Public Service Commission and the U.S. Customs Service. In addition, anyone with information concerning potential violations of the HMR with regard to the manufacture and repair of cylinders in Puerto Rico is requested to submit that information to Mr. James E. Henderson, Hazardous Materials Enforcement Division (DHM-40), Office fo Hazardous Materials Transportation, Research and Special Programs

Administration, U.S. Department of Transportation, Washington, DC 20590.

(49 U.S.C. 1802, 1803, 1804, 1805, 1806, 1808; 49 CFR 1.53(e)).

Issued in Washington, DC on September 24, 1987 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87-22412 Filed 9-28-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 25-87]

Treasury Notes of September 30, 1989; Series AD-1989

September 17, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of September 30, 1989, Series AD-1989 (CUSIP No. 912827 VH 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 30, 1987, and will accrue interest from that date, payable on a semiannual basis on March 31, 1988, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000 and $1,000,000 and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, et seq. (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving Time, Tuesday, September 22, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, September 21, 1987, and received no later than Wednesday, September 30, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount of each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the

offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, September 30, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury: in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, September 28, 1987. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, September 30, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-22513 Filed 9-25-87; 2:22 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 26-87]

Treasury Notes of September 30, 1991; Series P-1991

September 17, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of September 30, 1991, Series P-1991 (CUSIP No. 912827 VJ 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 30, 1987, and will accrue interest from that date, payable on a semiannual basis on March 31, 1988, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, et seq. (May 16, 1986), apply to the Notes offered in this circular.

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3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, September 23, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 22, 1987, and received no later than Wednesday, September 30, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1.000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage alltoments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, September 30, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not ovedue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, September 28, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, September 30, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount wil be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-22511 Filed 9-25-87; 2:22 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 27-87]

Treasury Notes of October 15, 1994; Series G-1994

September 17, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,750,000,000 of United States securities, designated Treasury Notes of October 15, 1994, Series G-1994 (CUSIP No. 912827 VK 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 7, 1987, and will accure interest from that date, payable on a semiannual basis on April 15, 1988, and each subsequent 6 months on October 15 and April 15 through the date that the principal becomes payable. They will mature October 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000 $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, et seq. (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, September 24, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, September 23, 1987, and received no later than Wednesday, October 7, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this prupose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subjects to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accpeted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interst rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount on noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to

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provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the aveage yield is over par.

4. Reservations

4.1. The Department of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, October 7, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no late than Monday, October 5, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, October 7, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Department of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Department of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Department of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-22512 Filed 9-25-87; 2:22 pm]

BILLING CODE 4810-40-M

OFFICE OF MANAGEMENT AND BUDGET

Meeting; President's Commission on Privatization

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATE AND TIME: September 30, 1987. from 1:00 p.m. to 6:00 p.m.

ADDRESS: Room 608 of the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wiley Horsley, Commission Staff Manager, temporarily at the Department of the Interior, 18th and C Streets NW., Washington, DC 20240, 202/343-3347.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Commission members to discuss which privatization issues it will pursue, to decide on certain procedural matters and to be briefed on specifics of privatization in housing and be provided materials relating to that issue. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including committee members). Places will be allocated on a first come, first served basis.

James C. Miller, III,

Director, Office of Management and Budget.

[FR Doc. 87-22637 Filed 9-28-87; 1:22 pm]

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 188
Tuesday, September 29, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 P.M. (Eastern Time) Tuesday, October 6, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations—[A Resolution Honoring Mary-Jean S. Moore]
3. Proposed Management Directive No. 713, Affirmative Action for the Hiring, Placement and Advancement of Individuals with Handicaps
4. Proposed Management Directive No. 714, Instructions for the Development and Submission of Federal Affirmative Employment Multi-Year Program Plans, Annual Accomplishment Reports and Annual Plan Updates for Fiscal Year 1988 Through Fiscal Year 1992

Closed Session

1. Consideration of Certain Commissioners' Charges
2. Litigation Authorizations: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Acting Executive Officer on (202) 634–6748.

Date: September 24, 1987.

Cynthia Clark Matthews,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued September 24, 1987.

[FR Doc. 87–22439 Filed 9–25–87; 9:41 am]

BILLING CODE 6750–06–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11:00 a.m., Monday, October 5, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 25, 1987.

James McAfee,

Associate Secretary of the Board

[FR Doc. 87–22528 Filed 9–25–87; 3:42 pm]

BILLING CODE 6210–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The meeting will commence at 8:00 p.m. on Thursday, October 1, 1987, and continue at 9:00 a.m. on Friday, October 2, 1987, until all official business is completed. The notice of the meeting was published previously in the **Federal Register** of September 24, 1987 (52 FR 35993).

PLACE: Loews L'Enfant Plaze Hotel, Caucus Room (Executive Session), L'Enfant Ballroom (A), 480 L'Enfant Road, Washington, DC 20024.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Goverment in the Sunshine Act (5 U.S.C. 552b (c) (2), (6), (7), (9) (B), and (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h).

MATTERS TO BE CONSIDERED:

1. Personnel and Personal Matters (closed, Executive Session)
2. Litigation and Investigation Matters (closed, Executive Session)
3. Approval of Agenda
4. Approval of Minutes, August 28, 1987
5. Consideration and Review of LSC Budget FY 1988

*Delivery of Legal Assistance
—Basic Field Programs
—Native American Programs and Components
—Migrant Programs and Components
—Reserve for Special Adjustments
—Program Development
—Law School Clinics & Recruitment
—Supplemental Field Programs

* Support for the Delivery of Legal Assistance
—Tranining Development & Technical Assistance
—Regional Training Centers
—National Support
—State Support
—Clearinghouse
—CALR Grants
—Special Elderly Programs
—Special Law School Grants

* Management and Administration.

6. Voucher Project Status Report
7. Report on Law School Clinics

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: September 25, 1987.

Maureen R. Bozell,

Secretary.

[FR Doc. 87–22531 Filed 9–25–87; 3:42 pm]

BILLING CODE 6820–35–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:30 p.m., Wednesday, September 23, 1987.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(9)(B) (premature disclosure of information where such disclosure would be likely to significantly frustrate implementation of a proposed agency action).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570. Telephone (202) 254–9430.

Dated, Washington, DC, September 25, 1987.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 87-22544 Filed 9-25-87; 4:01 pm]

BILLING CODE 7445-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (52 FR 35609 September 22, 1987).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, August 31, 1987.

CHANGE IN THE MEETING: Deletion.

The following item was not considered at a closed meeting on Tuesday, September 22, 1987:

Report of investigation.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

Shirley E. Hollis,

Assistant Secretary.

September 22, 1987.

[FR Doc. 87-22414 Filed 9-24-87; 4:33 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 28, 1987:

An open meeting will be held on Wednesday, September 30, 1987, at 10:00 a.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, September 30, 1987, at 10:00 a.m., will be:

Consideration of whether to recommend to the Congress proposed amendments to the Trust Indenture Act of 1939. If enacted, the amendments would conform the Act to contemporary financing techniques, expand the Commission's exemptive authority, promulgate new conflicts-of-interest standards for indenture trustees, permit certain foreign persons to act as indenture trustees, and effect miscellaneous technical changes. For further information, please contact Michael Hyatte at (202) 272-2573.

The subject matter of the closed meeting scheduled for Wednesday, September 30, 1987, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Report of investigation.

Formal orders of investigation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Shirley E. Hollis,

Assistant Secretary.

September 22, 1987.

[FR Doc. 87-22415 Filed 9-24-87; 4:33 pm]

BILLING CODE 8010-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 8:00 a.m., October 5, 1987.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 Meeting—Board of Regents

(1) Approval of Minutes—July 20, 1987; (2) Faculty Matters; (3) Report—Admission; (4) Report—Associate Dean for Operations; (5) Report—President, USUHS: (a) University Awards, (b) Hebert School of Medicine, (c) Post Graduate School of Military Medicine, (d) Henry M. Jackson Foundation for the Advancement of Military Medicine, (e) Civilian Employee Drug Abuse Testing Program, (f) University Advance; (6) Comments—Members, Board of Regents; (7) Comments—Acting Chairman, Board of Regents; (8) Faculty Presentations

New Business

Scheduled Meetings: January 11, 1988.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3028.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 24, 1987.

[FR Doc. 87-22434 Filed 9-25-87; 9:13 am]

BILLING CODE 3810-01-M

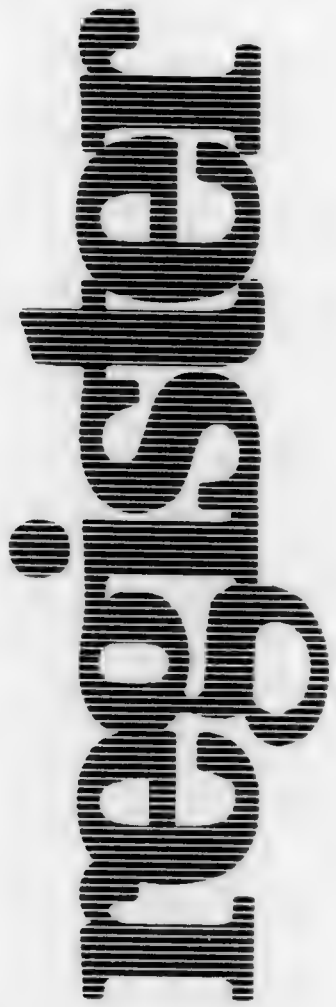

Tuesday
September 29, 1987

Part II

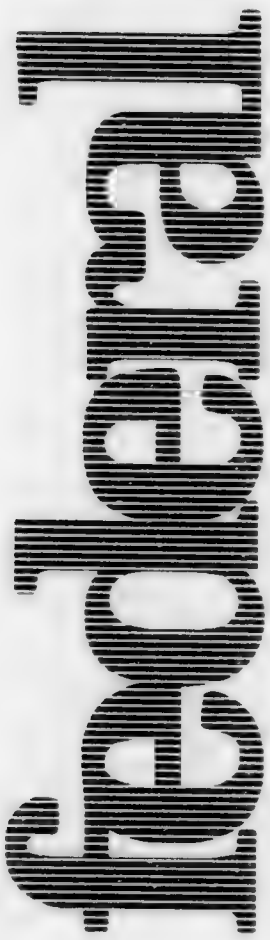

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons; special restrictions to reduce the black duck harvest; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; additional sandhill crane seasons in the Central Flyway and in Arizona; coots, common moorhens, and snipe in the Pacific Flyway; and additional special extended falconry seasons. Taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The rules will permit taking of the designated species during the 1987–88 season within specified periods of time beginning as early as September 26.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Matomic Building Room 536, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC, telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

On March 13, 1987, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20, with comment periods ending June 18, July 14 and August 25, 1987, respectively, for the 1987–88 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; other early seasons; and the late hunting-seasons. That document dealt with the establishment of hunting seasons, hours, areas, and limits for migratory game birds under §§ 20.101 through 20.107 and § 20.109 of Subpart K. On June 3, 1987, the Service published in the **Federal Register** (52 FR 20757) a second document consisting of a supplemental proposed rulemaking dealing with the early- and late-season frameworks. On July 2, 1987, the Service published for public comment in the **Federal Register** (52 FR 25170) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 3, 1987, the Service published in the **Federal Register** (52 FR 28717) a fourth document containing final frameworks for Alaska, Puerto Rico, and the Virgin Islands. On August 6, 1987, the Service published a fifth document (52 FR 29187) containing final frameworks for other early-season migratory bird hunting regulations from which State wildlife conservation agency officials selected early-season hunting dates, shooting hours, areas and limits for 1987–88. On August 14, 1987, the Service published in the **Federal Register** (52 FR 30395) a sixth document consisting of proposed frameworks for the late-season migratory bird hunting regulations. On August 24, 1987, the Service published in the **Federal Register** (52 FR 31773) a seventh document consisting of a final rule amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas, and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in portions of Illinois, Michigan, and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and special extended falconry seasons. On September 18, 1987, the Service published in the **Federal Register** an eighth document (52 FR 35248) consisting of a final rulemaking for the late-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected late season hunting dates, hours, areas, and limits for 1987–88.

The final rule described here is the ninth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for species subject to late hunting regulations.

Nontoxic Shot Regulations

In the July 21, 1987, **Federal Register** (52 FR 27352) the Service published a final rule describing areas in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 hunting seasons. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service at the address indicated under the caption "**ADDRESSES**" in the **Federal Register** of September 18, 1987 (52 FR 35248). As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. A draft SEIS will be available in early October.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act "[and shall]" insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." The Service therefore initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season regulations frameworks.

On June 15, 1987, the Office of Endangered Species concluded that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, DC.

Regulatory Flexibility Act, Executive Order 12291 and Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987 (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28717).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

After analysis of the migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the late season proposals (52 FR 7900, March 13, 1987; 52 FR 20757, June 3, 1987; and 52 FR 30395, August 14, 1987), the Service published in the **Federal Register** on September 18, 1987 (52 FR 35248) final late-season frameworks. Copies of the final frameworks were sent to the officials of the State conservation agencies who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas, and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 26 and will benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting, must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 13, June 3, and August 14, 1987, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas, and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. (d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are hereby corrected and amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

BILLING CODE 4310-55-M

PART 20 - [AMENDED]

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K is revised as follows.

1. The authority citation for Part 20 continues to read as follows:
Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103-04.

Note - The following annual hunting regulations provided for by Sections 20.104, 20.105, 20.106, 20.107 and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.104 is revised to read as follows:

20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.
Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit.....	25 (1)	See footnote (2).	5 (3)	8
Possession limit.....	25 (1)	See footnote (2).	10 (3)	16

Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Seasons in the Atlantic Flyway:				
Connecticut.....	Sep. 1-Nov. 7.	Sep. 1-Nov. 7.	Oct. 17-Nov. 30.	Oct. 17-Dec. 5.
Delaware.....	Sep. 1-Nov. 9.	Sep. 1-Nov. 9.	Nov. 16-Dec. 30.	Nov. 16-Jan. 31.
Florida.....	Sep. 1-Nov. 9.	Sep. 1-Nov. 9.	Dec. 12-Jan. 25.	Nov. 1-Feb. 15.
Georgia.....	Sep. 5-Nov. 13.	Sep. 5-Nov. 13.	Nov. 28-Jan. 11.	Nov. 20-Feb. 28.
Maine.....	Sep. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sep. 1-Dec. 16.
Maryland.....	Sep. 1-Nov. 9.	Sep. 1-Nov. 9.	Oct. 14-Nov. 27.	Oct. 1-Jan. 15.
Massachusetts.....	Sep. 1-Nov. 8.	Closed.	Oct. 10-Nov. 23.	Sep. 1-Dec. 13.
New Hampshire.....	Closed.	Closed.	Oct. 1-Nov. 14.	Oct. 1-Nov. 30.
New Jersey (4):				
North Zone.....	Sep. 1-Nov. 9.	Sep. 1-Nov. 9.	Oct. 10-Nov. 13.	Oct. 2-Jan. 16.
South Zone.....	Sep. 1-Nov. 9.	Sep. 1-Nov. 9.	Nov. 7-Dec. 5 & Dec. 19-Dec. 24.	Oct. 2-Jan. 16.
New York:				
Long Island.....	Closed.	Closed	Oct. 1-Nov. 14.	Closed.
Remainder of State.....	Sep. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sep. 1-Dec. 16.

North Carolina.....	Sep. 7-Nov. 14.	Sep. 7-Nov. 14.	Nov. 21-Jan. 4.	Nov. 13-Feb. 27.
Pennsylvania.....	Sep. 1-Nov. 7.	Closed.	Oct. 17-Nov. 7.	Oct. 17-Dec. 12.
Rhode Island.....	Sep. 14-Nov. 22.	Sep. 14-Nov. 22.	Oct. 17-Nov. 30.	Sep. 14-Dec. 4 & Dec. 14-Jan. 7.
South Carolina.....	Sep. 4-Oct. 10 & Oct. 23-Nov. 24.	Sep. 4-Oct. 10 & Oct. 23-Nov. 24.	Nov. 26-Jan. 9.	Nov. 14-Feb. 28.
Vermont.....	Sep. 26-Dec. 4.	Closed.	Oct. 1-Nov. 14.	Sep. 26-Dec. 4.
Virginia.....	Sep. 1-Nov. 9.	Sep. 1-Nov. 9.	Nov. 2-Nov. 26 & Dec. 21-Jan. 9.	Oct. 16-Jan. 30.
West Virginia.....	Sep. 1-Nov. 7.	Closed.	Oct. 17-Nov. 30.	Sep. 1-Dec. 16.
Seasons in the Mississippi Flyway:				
Alabama (10).....	Nov. 12-Jan. 20.	Nov. 12-Jan. 20.	Nov. 28-Jan. 31.	Nov. 14-Feb. 28.
Arkansas.....	Sep. 1-Nov. 9.	Closed.	Nov. 7-Dec. 13 & Jan. 9-Feb. 5.	Sep. 12-Sep. 20 & Nov. 21-Feb. 26.
Illinois.....	Sep. 1-Nov. 9.	Closed.	Oct. 1-Dec. 4.	Sep. 12-Dec. 29.
Indiana.....	Sep. 1-Nov. 9.	Closed.	Sep. 19-Sep. 25 &	Sep. 1-Dec. 16. Oct. 3-Nov. 29.
Iowa (5).....	Sep. 5-Nov. 13.	Closed.	Sep. 19-Nov. 22.	Sep. 5-Dec. 20.
Kentucky.....	Nov. 26-Jan. 16.	Closed.	Oct. 1-Dec. 4.	Oct. 1-Dec. 4.
Louisiana.....	Sep. 19-Sep.27 & Nov. 7-Jan. 6.	Sep. 19-Sep. 27 & Nov. 7-Jan. 6.	Dec. 5-Feb. 7.	Nov. 7-Feb. 21.
Michigan (6).....	Sep. 15-Nov. 14.	Closed.	Sep. 15-Nov. 14.	Sep. 15-Nov. 14.
Minnesota.....	Sep. 1-Nov. 4.	Closed.	Sep. 1-Nov. 4.	Sep. 1-Nov. 4.
Mississippi.....	Oct. 17-Dec. 25.	Oct. 17-Dec. 25.	Dec. 26-Feb. 28.	Nov. 14-Feb. 28.
Missouri.....	Sep. 1-Nov. 9.	Closed.	Oct. 15-Dec. 18.	Sep. 1-Dec. 16.
Ohio.....	Sep. 1-Nov. 9.	Closed.	Sep. 25-Nov. 28.	Sep. 1-Nov. 28 & Dec. 7-Dec. 24.
Tennessee.....	Dec. 9-Jan. 17.	Closed.	Oct. 24-Nov. 29 & Feb. 1-Feb. 28.	Nov. 14-Feb. 28.
Wisconsin(13)				
North Duck Zone..	Oct. 1-Nov. 9	Closed.	Sep. 12-Nov. 15.	Oct. 1-Nov. 9.
South Duck Zone..	Oct. 1-Oct. 11 & Oct. 21-Nov. 18.	Closed	Sep. 12-Nov. 15.	Oct. 1-Oct. 11 & Oct. 21-Nov. 18.
Seasons in the Central Flyway:				
Colorado (7).....	Sep. 1-Nov. 9.	Closed.	Closed.	Sep. 1-Dec. 2.
Kansas.....	Sep. 12-Nov. 20.	Closed.	Oct. 3-Dec. 6.	Sep. 12-Dec. 27.
Montana (7).....	Closed.	Closed.	Closed.	Oct. 3-Dec. 1.
Nebraska (8).....	Sep. 1-Nov. 9.	Closed.	Sep. 15-Nov. 18.	Sep. 1-Dec. 15.

New Mexico(7)(11)..	Sep. 1-Oct. 31.	Closed.	Closed.	Sep. 1-Nov. 30.
North Dakota.....	Closed.	Closed.	Closed.	Oct. 3-Nov. 22.
Oklahoma.....	Sep. 1-Nov. 9.	Closed.	Oct. 24-Dec. 27.	Oct. 1-Jan. 15.
South Dakota (9)...	Closed.	Closed.	Closed.	Sep. 1-Oct. 31.
Texas.....	Sep. 1-Nov. 9.	Sep. 1-Nov. 9.	Nov. 21-Jan. 24.	Oct. 31-Feb. 14.
Wyoming (7).....	Sep. 19-Nov. 27.	Closed.	Closed.	Sep. 19-Jan. 3.
Seasons in the Pacific Flyway:				
Arizona(12).....	Closed.	Closed.	Closed.	Oct. 9-Nov. 29 & Dec. 15-Jan. 10.
California:				
Northeastern Zone(4).....	Closed.	Closed.	Closed.	Oct. 10-Dec. 27.
Colorado River Zone.....	Closed.	Closed.	Closed.	Oct. 9-Nov. 29 & Dec. 15-Jan. 10.
Southern Zone(4).....	Closed.	Closed.	Closed.	Oct. 17-Nov. 29 & Dec. 7-Jan. 10.
Balance of the State Zone.....	Closed.	Closed.	Closed.	Oct. 24-Jan. 10.
Colorado (7).....	Sep. 1-Nov. 9.	Closed.	Closed.	Sep. 1-Dec. 2.
Idaho(4):				
Zone 1.....	Closed.	Closed.	Closed.	Oct. 10-Dec. 27.
Zone 2.....	Closed.	Closed.	Closed.	Oct. 10-Nov. 29 & Dec. 7-Jan. 3.
Montana (7).....	Closed.	Closed.	Closed.	Oct. 3-Dec. 20.
Nevada(13):				
Clark County.....	Closed.	Closed.	Closed.	Oct. 24-Jan. 10.
Remainder of State.....	Closed.	Closed.	Closed.	Oct. 17-Jan. 3.
New Mexico(7)(11)..	Sep. 1-Oct. 31.	Closed.	Closed.	Sep. 1-Nov. 30.
Oregon:				
Morrow and Umatilla Counties.....	Closed.	Closed.	Closed.	Oct. 17-Jan. 10.
Remainder of State.....	Closed.	Closed.	Closed.	Oct. 17-Nov. 29 & Dec. 7-Jan. 10.
Utah(13).....	Closed.	Closed.	Closed.	Oct. 3-Dec. 6 & Dec. 21-Jan. 3.
Washington:				
Eastern Washington(4)(13).....	Closed.	Closed.	Closed.	Oct. 17-Jan. 10.
Western Washington(4)(13).....	Closed.	Closed.	Closed.	Oct. 17-Nov. 6 & Nov. 14-Jan. 10.
Wyoming (7).....	Sep. 19-Nov. 27.	Closed.	Closed.	Sep. 19-Dec. 20.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.
(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.
(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.
(4) For description of zones or management units within a State, see State regulations.
(5) In Iowa, rail limits are 15 daily and 25 in possession.
(6) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.
(7) The Central Flyway portion consists of: Colorado and Wyoming — the area lying east of the Continental Divide; Montana — the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; New Mexico — the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.
(8) In Nebraska, the rail limits are 10 daily and 20 in possession.
(9) In South Dakota, the snipe limits are 5 daily and 15 in possession.
(10) In Alabama, the rail limits are 15 daily and 15 in possession.
(11) In New Mexico, the rail limits are 10 daily and 10 in possession.
(12) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.
(13) Check State regulations for shooting hours restrictions.

3. Section 20.105 is amended to read as follows:

20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) Waterfowl, coots and gallinules in Atlantic, Mississippi, Central, and Pacific Flyways.

ATLANTIC FLYWAY

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Flywaywide Restrictions.

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted--Check State regulations.
Canvasbacks - All areas of the Flyway are closed to canvasback hunting.
Black ducks — When the black duck is permitted in the daily bag, it is part of the daily and possession limits for ducks.
Hooded mergansers — In States selecting conventional regulations, no more than 1 hooded merganser may be taken daily nor more than 2 hooded mergansers may be possessed.
CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.
The season dates for mergansers and coots are the same as those for ducks in the following tables:

	Season Dates	Limits Bag	Possession
Connecticut			
Ducks:			
North Zone (1)			
Black Ducks	Nov. 25-Dec. 26.	1	2
Ducks	Oct. 17-Oct. 24 & Nov. 25-Dec. 26.	4(2)	8(2)
Extra teal during regular season	Oct. 17-Oct. 24.	2(3)	4(3)
South Zone (1)			
Black Ducks	Dec. 9-Jan. 16.	1	2
Ducks	Oct. 17 & Dec. 9-Jan. 16.	4(2)	8(2)
Extra teal during regular season	Oct. 17.	2(3)	4(3)
Scaup-only season (4)	Jan. 18-Jan. 30.	[illegible]	10
Sea ducks (5)(6)(7)	Oct. 2-Jan. 16.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 7.	15(8)	30(8)
Geese:			
Canada:			
North Zone	Oct. 17-Jan. 14.	3	6
South Zone	Oct. 17 & Nov. 9-Jan. 14.	3	6
	Jan. 15-Feb. 5.	5	10
Snow (including blue):		4	8
North Zone	Oct. 17-Jan. 14.		
South Zone	Oct. 17 & Nov. 3-Jan. 30.		
Brant:		2	4
North Zone	Dec. 16-Jan. 14.		
South Zone	Dec. 18-Jan. 16.		
Delaware			
Ducks:			
Black Ducks	Nov. 24-Nov. 28 & Dec. 5-Jan. 2.	1	2
Ducks	Nov. 2-Nov. 7 & Nov. 24-Nov. 28 & Dec. 5-Jan. 2.	4(2)	8(2)
Extra teal during regular season	Nov. 2-Nov. 7 & Nov. 24-Nov. 26.	2(3)	4(3)
Extra scaup during regular season	Nov. 2-Nov. 7 & Nov. 24-Nov. 28 & Dec. 5-Jan. 2.	2(3)	4(3)
Sea ducks(5)(6)(7)	Sept. 26-Jan. 9.	7	14
Mergansers	Same as for ducks.	[illegible]	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:			
Canada	Nov. 2-Nov. 28.	[illegible]	6
	Dec. 5-Jan. 23.	3	6
Snow (including blue)	Oct. 19-Oct. 31(9) & Nov. 2-Nov. 28 & Dec. 5-Jan. 23.	4	[illegible]
Brant	Dec. 21-Jan. 19.	2	4
Florida			
Ducks:			
Special September [illegible]	Sept. 26-Sept. 30.	4	8

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Regular season	Nov. 25-Nov. 29 & Dec. 15-Jan. 18	Point system.	
Scaup-only season(4)	Jan. 19-Jan. 31.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese	Closed.	-	-
Georgia			
Ducks:			
Black ducks	Nov. 26-Nov. 28 & Dec. 12-Jan. 17.	1	2
Ducks	Nov. 26-Nov. 28 & Dec. 12-Jan. 17.	4(2)	8(2)
Extra teal during regular season	Nov. 26-Nov. 28 & Dec. 12-Dec. 17.	2(3)	4(3)
Extra scaup during regular season (17)	Nov. 26-Nov. 28 & Dec. 12-Jan. 17.	2(3)	4(3)
Sea ducks(5)(6)(7)	Nov. 26-Jan. 17.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Nov. 26-Nov. 28 & Dec. 12-Jan. 17.	15(8)	30(8)
Geese	Closed.	-	-
Brant	Closed.	-	-
Maine			
North Zone (Wildlife Management Units 1-5)			
Black Ducks:		1	2
Units 1-3	Oct. 5-Nov. 9.		
Units 4 & 5	Oct. 16-Nov. 9.		
Ducks	Oct. 1-Nov. 9.	4(2)	8(2)
Extra teal during regular season	Oct. 1-Oct. 9.	2(3)	4(3)
South Zone (Wildlife Management Units 6-8)			
Black Ducks	Nov. 12-Dec. 7.	1	2
Ducks	Oct. 1-Oct. 14 & Nov. 12-Dec. 7.	4(2)	8(2)
Extra teal during regular season	Oct. 1-Oct. 9.	2(3)	4(3)
Scaup only season (4)	Oct. 27-Nov. 11.	5	10
Sea ducks(5)(6)(7)	Oct. 1-Jan. 15.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:			
Canada	Oct. 1-Dec. 9.	1	5
Snow (including blue)	Oct. 1-Dec. 29.	4	8
Brant	Oct. 1-Oct. 30.	2	4
Maryland			
Ducks:			
Black Ducks	Nov. 23-Nov. 27 & Dec. 7-Jan. 2.	1	2
Ducks	Oct. 9-Oct. 10 & Nov. 17-Nov. 27 & Dec. 7-Jan. 2.	4(2)	8(2)
Extra teal during regular season	Oct. 9-Oct. 10 & Nov. 17-Nov. 23.	2(3)	4(3)
Extra scaup during regular season	Oct. 9-Oct. 10 & Nov. 17-Nov. 27 & Dec. 7-Jan. 2.	2(3)	4(3)
Sea ducks(5)(6)(7)	Oct. 6-Jan. 20.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Closed.		

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Geese:			
Canada:			
Delmarva Peninsula(1)	Nov. 13-Nov. 27 & Dec. 7-Jan. 30.	3	6
Remainder of State	Nov. 3-Nov. 27 & Dec. 7-Jan. 20.	3	6
Snow (including blue)	Oct. 24-Nov. 27 & Dec. 7-Jan. 30.	4	[illegible]
Brant	Nov. 25-Nov. 27 & Dec. 7-Jan. 2.	2	4
Massachusetts			
Ducks:			
Western (Berkshire) Zone (1)			
Black Ducks	Oct. 13-Nov. 21.	1	2
Ducks	Oct. 13-Nov. 21.	4(2)	8(2)
Extra teal during regular season	Oct. 13-Oct. 21.	2(3)	4(3)
Central Zone (1)			
Black Ducks	Oct. 13-Oct. 24 & Nov. 21-Dec. 18.	1	2
Ducks	Oct. 13-Oct. 24 & Nov. 21-Dec. 18.	4(2)	8(2)
Extra teal during regular season	Oct. 13-Oct. 21.	2(3)	4(3)
Coastal Zone (1)			
Black Ducks	Oct. 20-Oct. 24 & Nov. 25-Dec. 29.	1	2
Ducks	Oct. 20-Oct. 24 & Nov. 25-Dec. 29.	4(2)	8(2)
Extra teal during regular season	Oct. 20-Oct. 24.	2(3)	4(3)
Scaup-only season(4)	Jan. 15-Jan. 30.	5	10
Sea ducks(5)(6)(7)	Oct. 2-Jan. 16.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Closed.		
Geese:			
Canada:			
Western (Berkshire) Zone (1)	Oct. 13-Nov. 28 & Dec. 11-Jan. 2.	3	6
Central Zone (1)	Oct. 13-Oct. 24 & Nov. 21-Jan. 16.	3	6
Coastal Zone (1)	Oct. 20-Oct. 31 & Nov. 25-Jan. 20.	3	6
	Jan. 21-Feb. 5.	5	10
Snow (including blue):			
Western (Berkshire) Zone (1)	Oct. 13-Nov. 28 & Dec. 11-Jan. 2.	4	8
Central Zone (1)	Oct. 13-Oct. 24 & Nov. 21-Jan. 16.	4	[illegible]
Coastal Zone (1)	Oct. 20-Oct. 31 & Nov. 25-Jan. 20.	4	[illegible]
Brant:			
Inland & Central Zone	Closed.		
Coastal Zone	Dec. 18-Jan. 16.	2	4
New Hampshire			
Ducks:			
Inland Zone (1)			
Black Ducks	Oct. 5-Oct. 29 & Nov. 21-Dec. 5.	1	2
Ducks	Oct. 5-Oct. 29 & Nov. 21-Dec. 5.	4(2)	8(2)
Extra teal during regular season	Oct. 5-Oct. 13.	2(3)	4(3)

Coastal Zone (1)			
Black Ducks	Oct. 17-Oct. 25 & Nov. 26-Dec. 26.	1	2
Ducks	Oct. 17-Oct. 25 & Nov. 26-Dec. 26.	4(2)	8(2)
Extra teal during regular season	Oct. 17-Oct. 25.	2(3)	4(3)
Scaup only season (4)	Dec. 27-Jan. 11.	5	10
Sea ducks(5)(6)(7)	Sept. 15-Dec. 30.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Closed.		
Geese:			
Canada:		3	6
Inland Zone	Oct. 5-Dec. 13.		
Coastal Zone	Oct. 17-Dec. 25.		
Snow (including blue):		4	8
Inland Zone	Oct. 5-Jan. 2.		
Coastal Zone	Oct. 17-Jan. 2.		
Brant:		2	4
Inland Zone	Oct. 5-Nov. 3.		
Coastal Zone	Nov. 26-Dec. 25.		
New Jersey			
Ducks:			
North Zone (1)			
Black Ducks	Oct. 10-Oct. 24 & Nov. 25-Dec. 19.	1	2
Ducks	Oct. 10-Oct. 24 & Nov. 25-Dec. 19.	4(2)	8(2)
Extra teal during regular season	Oct. 10-Oct. 17.	2(3)	4(3)
South Zone (1)			
Black Ducks	Oct. 10-Oct. 17 & Nov. 25-Dec. 26.	1	2
Ducks	Oct. 10-Oct. 17 & Nov. 25-Dec. 26.	4(2)	8(2)
Extra teal during regular season	Oct. 10-Oct. 17.	2(3)	4(3)
Coastal Zone (1)			
Black Ducks	Oct. 31-Nov. 7 & Dec. 2-Jan. 2.	1	2
Ducks	Oct. 31-Nov. 7 & Dec. 2-Jan. 2.	4(2)	8(2)
Extra teal during regular season	Oct. 31-Nov. 7.	2(3)	4(3)
Scaup only season (4)	Jan. 8-Jan. 23.	5	10
Sea ducks(5)(6)(7)	Oct. 2-Jan. 16.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	10(8)	20(8)
Geese:			
Canada:		4	8
North Zone (1)	Oct. 10-Oct. 31 & Nov. 17-Jan. 23.		
South Zone (1)	Oct. 10-Oct. 31 & Nov. 24-Jan. 30.		
Coastal Zone (1)	Oct. 10-Nov. 7 & Nov. 24-Jan. 23.		
Snow (including blue)	Oct. 10-Jan. 7.	4	8
Brant	Oct. 31-Nov. 7 & Dec. 2-Dec. 23.	2	4
New York			
Long Island Zone:			
Ducks:			
Black Ducks	Nov. 20-Nov. 29 & Dec. 12-Jan. 10.	1	
Ducks	Nov. 20-Nov. 29 & Dec. 12-Jan. 10.	4(2)	8(2)

Scaup only season(4)	Jan. 16-Jan. 31.	5	10
Extra teal during regular season	Nov. 20-Nov. 28.	2(3)	4(3)
Sea ducks (5)(6)(7)	Sept. 26-Jan. 11.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Geese:	Nov. 3-Jan. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Dec. 12-Jan. 10.	2	4
Lake Champlain Zone:			
Ducks:			
Black Ducks	Oct. 7-Oct. 11 & Oct. 24-Nov. 27.	1	2
Ducks	Oct. 7-Oct. 11 & Oct. 24-Nov. 27.	4(2)	8(2)
Special scaup and goldeneye season (11)	Nov. 28-Dec. 13.	3	6
Extra teal during regular season	Oct. 7-Oct. 11.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 26-Dec. 4.	15(8)	30(8)
Geese:	Oct. 7-Dec. 15.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 17-Nov. 15.	2	4
Northeastern Zone (1):			
Ducks:			
Black Ducks	Oct. 5-Oct. 18 & Nov. 4-Nov. 15.	1	2
Ducks	Oct. 5-Oct. 18 & Nov. 4-Nov. 29.	4(2)	8(2)
Extra teal during regular season	Oct. 5-Oct. 13.	2(3)	4(3)
Extra scaup during regular season	Oct. 5-Oct. 18 & Nov. 4-Nov. 29.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:	Oct. 5-Jan. 2.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 17-Nov. 15.	2	4
Southeastern Zone (1):			
Ducks:			
Black Ducks	Nov. 7-Dec. 6.	1	2
Ducks	Oct. 9-Oct. 18 & Nov. 7-Dec. 6.	4(2)	8(2)
Extra teal during regular season	Oct. 9-Oct. 17.	2(3)	4(3)
Extra scaup during regular season	Oct. 9-Oct. 18 & Nov. 7-Dec. 6.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:	Oct. 9-Jan. 6.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 17-Nov. 15.	2	4
Western Zone (1):			
Ducks:			
Black Ducks	Oct. 16-Nov. 15.	1	2
Ducks	Oct. 16-Nov. 15 & Nov. 28-Dec. 6.	4(2)	8(2)
Extra teal during regular season	Oct. 16-Oct. 24.	2(3)	4(3)

Extra scaup during regular season	Oct. 16-Nov. 15 & Nov. 28-Dec. 6.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:	Oct. 1-Nov. 15 & Nov. 28-Jan. 10.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 17-Nov. 15.	2	4
North Carolina			
Ducks:			
Black Ducks	Oct. 1-Oct. 3 & Nov. 26-Nov. 28 & Dec. 14-Jan. 16.	1	2
Ducks	Oct. 1-Oct. 3 & Nov. 26-Nov. 28 & Dec. 14-Jan. 16.	4(2)(10)	8(2)(10)
Extra scaup during regular season (12)	Oct. 1-Oct. 3 & Nov. 26-Nov. 28 & Dec. 14-Jan. 16.	2(3)	4(3)
Extra teal during regular season	Oct. 1-Oct. 3 & Nov. 26-Nov. 28 & Dec. 14-Dec. 16.	2(3)	4(3)
Sea ducks(5)(6)(7)	Oct. 2-Jan. 16.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 7-Nov. 14.	15(8)	30(8)
Geese:			
Canada:			
East of I-95	Dec. 31-Jan. 16.	1	2
West of I-95	Closed.		
Snow (including blue)	Nov. 2-Jan. 30.	4	8
Brant	Dec. 18-Jan. 16.	2	4
Tundra swan	Nov. 2-Jan. 30.	only by permit; 1 swan per season	
Pennsylvania			
Ducks:			
North Zone (1)			
Black Ducks	Oct. 31-Nov. 21.	1	2
Ducks	Oct. 14-Nov. 21.	4(2)	8(2)
Extra teal during regular season	Oct. 14-Oct. 21.	2(3)	4(3)
South Zone (1)			
Black Ducks	Nov. 13-Dec. 5.	1	2
Ducks	Oct. 19-Oct. 24 & Nov. 13-Dec. 16.	4(2)	8(2)
Extra teal during regular season	Oct. 19-Oct. 24.	2(3)	4(3)
Northwest Zone (1)			
Black Ducks	Nov. 4-Nov. 28.	1	2
Ducks	Oct. 16-Oct. 23 & Nov. 4-Dec. 5.	4(2)	8(2)
Extra teal during regular season	Oct. 16-Oct. 23.	2(3)	4(3)
Lake Erie Zone (1)			
Black Ducks	Nov. 3-Dec. 12.	1	2
Ducks	Nov. 3-Dec. 12.	4(2)	8(2)
Extra teal during regular season	Nov. 3-Nov. 11.	2(3)	4(3)
Extra scaup during regular season	Nov. 3-Dec. 12.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 7.	15(8)	30(8)

Geese:			
Canada		3(18)	6
Snow (including blue)		3	6
North Zone (1)	Oct. 7-Dec. 15.		
South Zone (1)	Oct. 19-Dec. 26.		
Northwest Zone (1)	Oct. 7-Dec. 15.		
Lake Erie Zone (1)	Oct. 7-Dec. 15.		
Southeastern Zone (1)	Oct. 19-Jan. 16.		
Brant	Oct. 19-Nov. 16.	1	4
Rhode Island			
Ducks:			
Black Ducks	Oct. 9-Oct. 12 & Nov. 25-Nov. 29 & Dec. 5-Jan. 4.	1	2
Ducks	Oct. 9-Oct. 12 & Nov. 25-Nov. 29 & Dec. 5-Jan. 4.	4(2)	8(2)
Extra teal during regular season	Oct. 9-Oct. 12 & Nov. 25-Nov. 29.	2(3)	4(3)
Scaup-only season (4)	Jan. 16-Jan. 31.	5	10
Sea ducks(5)(6)(7)	Oct. 9-Jan. 20.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 14-Nov. 22.	15(8)	30(8)
Geese:	Oct. 9-Oct. 12 & Nov. 7-Jan. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Dec. 7-Jan. 5.	2	4
South Carolina			
Ducks:			
Mottled duck	Closed.	-	-
Black Ducks (13)	Dec. 14-Jan. 18.	1	2
Ducks	Nov. 25-Nov. 28 & Dec. 14-Jan. 18.	4(2)	8(2)
Extra teal during regular season	Jan. 10-Jan. 18.	2(3)	4(3)
Extra scaup during regular season (14)	Nov. 25-Nov. 28 & Dec. 14-Jan. 18.	2(3)	4(3)
Sea ducks(5)(6)(7)	Oct. 6-Jan. 20.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 4-Oct. 10 & Oct. 23-Nov. 24.	15(8)	30(8)
Geese:			
Canada	Closed		
Snow (including blue)	Nov. 25-Nov. 28 & Dec. 14-Jan. 18.	4	8
Brant	Dec. 20-Jan. 18.	2	4
Vermont			
Ducks:			
Lake Champlain Zone (1)			
Black Ducks	Oct. 7-Oct. 11 & Oct. 24-Nov. 27.	1	2
Ducks	Oct. 7-Oct. 11 & Oct. 24-Nov. 27.	4(2)	8(2)
Extra teal during regular season	Oct. 7-Oct. 11.	2(3)	4(3)
Special scaup and goldeneye season (11)	Nov. 28-Dec. 13.	3	6
Interior Vermont Zone (1)			
Black Ducks	Oct. 7-Nov. 15.	1	2
Ducks	Oct. 7-Nov. 15.	4(2)	8(2)
Extra teal during regular season	Oct. 7-Oct. 15.	2(3)	4(3)

Extra scaup during regular season	Oct. 7-Nov. 15.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 26-Dec. 4.	15(8)	30(8)
Geese:			
Canada		3	6
Snow (including blue)		4	8
Lake Champlain Zone	Oct. 7-Dec. 15.		
Interior Vermont Zone	Oct. 7-Dec. 15.		
Brant		2	4
Lake Champlain Zone	Oct. 17-Nov. 15.		
Interior Vermont Zone	Oct. 17-Nov. 15.		
Virginia			
Ducks:			
Black Ducks	Oct. 7-Oct. 10 & Nov. 26-Nov. 28 & Dec. 17-Jan. 18.	1	2
Ducks	Oct. 7-Oct. 10 & Nov. 26-Nov. 28 & Dec. 17-Jan. 18.	4(2)(10)	8(2)(10)
Extra teal during regular duck season	Oct. 7-Oct. 10 & Nov. 26-Nov. 28 & Dec. 17-Dec. 18.	2(3)	4(3)
Scaup only season(4)	Jan. 19-Jan. 30.	5	10
Sea ducks(5)(6)(7)	Oct. 6-Jan. 20.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Same as for ducks.	15(8)	30(8)
Geese:			
Canada:			
Back Bay Area(15)	Nov. 26-Nov. 28 & Dec. 4-Dec. 12 & Dec. 14-Jan. 20.	2	4
Delmarva Peninsula	Oct. 31 & Nov. 2-Nov. 7 & Nov. 9-Jan. 30.	4	8
Remainder of State	Nov. 10-Nov. 14 & Nov. 16-Nov. 21 & Nov. 23-Jan. 20.	3	6
Snow (including blue):			
Back Bay Area (16)	Nov. 26-Nov. 28 & Dec. 17-Jan. 18.	4	8
Remainder of State	Oct. 31 & Nov. 2-Nov. 7 & Nov. 9-Jan. 30.	4	8
Brant	Dec. 18-Dec. 19 & Dec. 21-Dec. 26 & Dec. 28-Jan. 18.	2	4
West Virginia			
Ducks:			
Allegheny Mountain Upland Zone (Zone 2) (1)			
Black Ducks	Oct. 5-Oct. 17 & Nov. 2-Nov. 26.	1	2
Ducks	Oct. 5-Oct. 17 & Nov. 2-Nov. 26.	4(2)	8(2)
Extra teal during regular season	Oct. 5-Oct. 13.	2(3)	4(3)
Extra scaup during regular season	Oct. 5-Oct. 17 & Nov. 2-Nov. 26.	2(3)	4(3)
Remainder of State (Zone 1)(1)			
Black Ducks	Oct. 5-Oct. 17 & Dec. 23-Jan. 16.	1	2
Ducks	Oct. 5-Oct. 17 & Dec. 23-Jan. 16.	4(2)	8(2)

Extra teal during regular season	Oct. 5-Oct. 13.	2(3)	4(3)
Extra scaup during regular season	Oct. 5-Oct. 17 & Dec. 23-Jan. 16.	2(3)	4(3)
Gallinules/Moorhens		15(8)	30(8)
Zone 1	Oct. 5-Oct. 17 & Dec. 23-Jan. 16.		
Zone 2	Oct. 5-Oct. 17 & Nov. 2-Nov. 26.		
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Geese:			
Allegheny Mountain Upland Zone (1)	Oct. 5-Oct. 17 & Nov. 2-Nov. 26.		
Remainder of State	Oct. 5-Oct. 17 & Dec. 23-Jan. 16.		
Canada		3	6
Snow (including blue)		4	8
Brant		2	4
Allegheny Mountain Upland Zone	Nov. 2-Nov. 26.		
Remainder of State	Dec. 23-Jan. 16.		

Point system -- Ducks, mergansers and coots. The Atlantic Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days.

The point values assigned to the species and sexes are as follows:

Atlantic Flyway

100 points	70 points	20 points	35 points
Female mallard	Wood duck	Blue-winged teal	Male mallard
Black duck	Redhead	Green-winged teal	Ring-necked duck
Pintail	Hooded merganser	Shoveler	Bufflehead
Florida tree duck (only in Florida)		Gadwall	and all other species of ducks
Mottled duck (except South Carolina)		Wigeon	
		Scaup	
		Sea ducks	
		Mergansers (except hooded)	

Note: All areas of the Flyway are closed to canvasback hunting.

(1) Described in the September 18, 1987, Federal Register (52 FR 35248) and/or the State Regulations.

(2) The daily bag limit may include no more than 3 mallards of which only 1 may be a hen, 1 pintail, 1 black duck, 2 wood ducks, 2 redheads and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

(3) The daily bag and possession limits specified here are in addition to any other bag and possession limits specified elsewhere.

(4) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(5) An open season for taking scoter, eider, and oldsquaw ducks is prescribed during the period between September 15, 1987, and January 20, 1988, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey,

South Carolina, and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

(6) The daily bag limit is 7 and possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

(7) Notwithstanding the provisions of this Part 20 the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

(8) Bag and possession limits given for common moorhens and purple gallinules, are singly or in the aggregate of the two species. In Florida, the gallinule season applies to the common gallinule only. There is no open season on the purple gallinule in Florida.

(9) In Delaware, during October 19 through October 31 the snow goose season is limited to the area bounded on the north by Delaware Route 6, on the west by Delaware Route 9, on the south by the Leipsic River and on the east by the Delaware Bay. Hunting will only be allowed under permits issued by the Delaware Division of Fish and Wildlife or the Refuge Manager of Bombay Hook National Wildlife Refuge.

(10) No special daily bag and possession limit restrictions apply to wood ducks in North Carolina during October 1-October 3, and in Virginia during October 7-October 10.

(11) In the Lake Champlain Zone (described and delineated in the hunting regulations of New York and Vermont) a special hunting season for scaup and goldeneye is prescribed with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate and 6 scaup or 6 goldeneyes or 6 in the aggregate in possession.

(12) Only in waters east of U.S. Highway 17, except Currituck Sound north of U.S. Highway 158.

(13) In South Carolina, there is no open season on black ducks in Georgetown, Charleston, Colleton, and Beaufort Counties.

(14) Only in waters east of U.S. Highway 17, north of Charleston, and east of the old Seaboard Railroad bed south of Charleston.

(15) In Virginia, the Back Bay Area is defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake lying east of U.S. Highway 17 and Interstate 64. Canada geese may only be taken on the waters of Back Bay, November 26-28 and December 17-January 18.

(16) In Virginia, the Back Bay Area is defined for snow (including blue) geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Lake Tecumseh and Red Wing Lake and the marshes adajacent thereto.

(17) East of Intracoastal Waterway in Chatham, Bryan, Liberty, McIntosh, Glynn and Camden Counties, Georgia.

(18) In Crawford, Erie, Mercer and Butler Counties, Pennsylvania the Canada goose daily bag limit is 1.

MISSISSIPPI FLYWAY

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Flywaywide Restrictions

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise restricted--Check State regulations.

Canvasbacks - All areas of the Flyway are closed to canvasback hunting.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

The season dates for mergansers and coots are the same as those for ducks in the following tables.

	Season Dates	Limits	
		Bag	Possession
Alabama			
Ducks:		Point system.	
North Zone (1)	Dec. 9-Jan. 17.		
South Zone (1)	Nov. 13-Nov. 22 & Dec. 19-Jan. 17.		
Coots		15	30
Gallinules/Moorhens	Nov. 12-Jan. 20.	15(5)	15(5)
Geese:	Nov. 9-Jan. 17.	5	5
Limits include no more than:			
Canada or white-fronted 2		4	
Snow (including blue) and brant		5	5
Arkansas			
Ducks	Nov. 21-Dec. 6 & Dec. 19-Jan. 11.	Point system.	
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(5)	30(5)
Geese:		5	10
Canada	Closed.	-	-
Snow (including blue)	Nov. 21-Jan. 29.	5	10
White-fronted geese	Nov. 21-Jan. 17.	2	4
Brant	Nov. 21-Jan. 17.	5	10
Illinois:			
Ducks:		Point system.	
North Zone (1)	Oct. 14-Nov. 22.		
Central Zone (1)	Oct. 22-Nov. 30.		
South Zone (1)	Oct. 29-Dec. 7.		
Coots		15	30
Geese(2):		5	10
Canada(3):		2	4
North Zone(1):			
Tri-County Area(1)	Oct. 22-Nov. 20.	1	4
Remainder of North Zone	Oct. 14-Nov. 22.	2	4
Central Zone (1):			
Tri-County Area(1)	Oct. 22-Nov. 20.	1	4
Remainder of Central Zone	Oct. 22-Nov. 30.	2	4
South Zone (1):			
Southern Illinois Quota Zone (Alexander, Jackson, Union, and Williamson Counties)(3)	Nov. 16-Jan. 4.	2	4
Rend Lake Quota Zone (Franklin and Jefferson Counties)(3)	Nov. 16-Jan. 4.	2	4
Remainder of South Zone	Nov. 16-Dec. 25.	1	1
Other Geese:			
North Zone (1)	Oct. 14-Nov. 22.		

Central Zone (1)	Oct. 22-Nov. 30.		
South Zone (1)	Nov. 16-Dec. 25.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10
Indiana			
Ducks:		Point system.	
North Zone (1)	Oct. 16-Oct. 19 & Oct. 30-Dec. 4.		
South Zone (1)	Oct. 24-Oct. 27 & Nov. 21-Dec. 26.		
Ohio River Zone (1)	Nov. 26-Nov. 29 & Dec. 5-Jan. 9.		
Scaup-only season (Lake Michigan only)(4)	Dec. 12-Dec. 27.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(5)	30(5)
Geese:		5	10
Canada(3):		2	4
North Zone (1)	Oct. 16-Oct. 19 & Oct. 30-Jan. 3.		
South Zone (1):			
Posey County (3)	Dec. 13-Jan. 31.		
Remainder of South Zone	Oct. 24-Oct. 28 & Nov. 14-Jan. 17.		
Ohio River Zone(1):			
Posey County	Dec. 13-Jan. 31.		
Remainder of Ohio River Zone	Nov. 9-Jan. 17.		
Other Geese:			
North Zone(1)	Oct. 16-Oct. 19 & Oct. 30-Jan. 3.		
South Zone(1)	Oct. 24-Oct. 28 & Nov. 14-Jan. 17.		
Ohio River Zone(1)	Nov. 9-Jan. 17.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10
Iowa			
Ducks:		Point system.	
North Zone(1)	Oct. 17-Nov. 20.		
South Zone(1)	Oct. 24-Nov. 29.		
Coots		15	30
Geese:		5	10
Canada:		2	4
Southwest Zone (1)	Oct. 17-Nov. 30.		
Remainder of State	Oct. 3-Nov. 16.		
Other geese:			
Southwest Zone (1)	Oct. 17-Dec. 25.		
Remainder of State	Oct. 3-Dec. 11.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Kentucky			
Ducks	Nov. 26-Nov. 29 & Dec. 12-Jan. 16.	Point system.	
Coots		15	30
Gallinules/Moorhens	Nov. 26-Jan. 16.	15(5)	30(5)
Geese(2):		5	10
Canada:		2	4
Western Zone (1)(3)	Dec. 12-Jan. 30.		

Remainder of State	Nov. 8-Jan. 16.		
Other geese:			
Western Zone(1)(6)	Nov. 26-Jan. 17.		
Remainder of State	Nov. 8-Jan. 16.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Louisiana		Point system.	
Ducks:			
East Zone (1)	Nov. 21-Nov. 30 & Dec. 19-Jan. 17.		
West Zone (1)	Nov. 7-Nov. 29 & Dec. 19-Jan. 9.		
Scaup only season (4)	Jan. 18-Jan. 31.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 19-Sept. 27 & Nov. 7-Jan. 6.	15(5)	30(5)
Geese:			
Canada	Closed.	-	-
Other Geese:		5	10
East Zone(1)	Nov. 21-Jan. 29.		
West Zone (1)	Nov. 7-Nov. 29 & Dec. 19-Feb. 3.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Michigan		Point system.	
Ducks:			
North Zone (1)	Oct. 3-Nov. 11.		
Middle Zone (1)	Oct. 3-Nov. 11.		
South Zone (1)	Oct. 10-Nov. 15 & Nov. 27-Nov. 29.		
Scaup only season:			
South Zone (1)(4)	Nov. 16-Nov. 26.	5	10
Remainder of State(4)	Nov. 14-Nov. 29.	5	10
Coots		15	30
Gallinules/Moorhens:		15(5)	30(5)
North Zone(1)	Oct. 3-Nov. 11.		
Middle Zone(1)	Oct. 3-Nov. 11.		
South Zone(1)	Oct. 10-Nov. 15 & Nov. 27-Nov. 29.		
Geese:		5	10
Canada(3):			
North Zone (1):			
Superior Counties Goose Management Area(1)(3)	Sept 26-Oct. 15.	2	4
Remainder of North Zone	Sept. 26-Nov. 4.	2	4
Middle Zone (1)	Oct. 3-Nov. 11.	2	4
South Zone (1):			
Allegan County Goose Management Area(1)(3)	Oct. 17-Nov. 29.	1	2
Muskegon Wastewater Goose Management Area (1)(3)	Oct. 17-Nov. 13 & Dec. 1-Dec. 13.	2	4
Saginaw County Goose Management Area (1)(3)	Oct. 3-Nov. 15 & Nov. 27-Nov. 29.	2	4

Southern Michigan Goose Management Area(1):			
East of U.S. Highways 27 and 127	Oct. 10-Nov. 15 & Nov. 27-Nov. 29 & Jan. 9-Feb. 7.	2	4
West of U.S Highways 27 and 127	Oct. 10-Nov. 15 & Nov. 27-Nov. 29.	1	2
	Jan. 9-Feb. 7.	2	4
Remainder of South Zone:			
East of U.S. Highways 27 and 127	Oct. 10-Nov. 15 & Nov. 27-Nov. 29.	2	4
West of U.S. Highways 27 and 127	Oct. 10-Nov. 15 & Nov. 27-Nov. 29.	1	2
Other geese:			
North Zone (1)	Sept. 26-Nov. 11.		
Middle Zone (1)	Oct. 3-Nov. 11.		
South Zone (1)	Oct. 10-Nov. 15 & Nov. 27-Nov. 29.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Minnesota			
Ducks:	Oct. 3-Nov. 11.	4	8
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession)		2	4
Pintails		2	4
Black ducks		1	2
Wood ducks		2	4
Redheads		1	2
Mergansers (no more than 1 hooded merganser daily or 2 in possession)	5	10	
Coots		15	30
Gallinules/Moorhens	Oct. 3-Nov. 11.	15(5)	30(5)
Geese:		5	10
Canada:			
West Central Zone (Lac qui Parle Goose Management Block)(1):			
Lac qui Parle Quota Zone(1)(3)	Oct. 3-Nov. 1.	1	2
Remainder of Lac qui Parle Goose Management Block	Oct. 3-Nov. 1.	1	2
Southeastern Zone (1):			
Metro Goose Management Block(1) and Olmsted County	Oct. 3-Dec. 11 & Dec. 18-Dec. 27.	[illegible]	4
Remainder of Southeastern Zone	Oct. 3-Dec. 11.	2	4
Remainder of State	Oct. 3-Nov. 11.	1	2
Other geese:			
Lac qui Parle Goose Management Block(1)	Oct. 3-Nov. 1.		
Southeastern Zone(1)	Oct. 3-Dec. 11.		

Remainder of State	Oct. 3-Nov. 11.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Mississippi			
Ducks	Dec. 5-Dec. 7 & Dec. 12-Jan. 17.	Point system.	
Coots		15	30
Gallinules/Moorhens	Oct. 17-Dec. 25.	15(5)	30(5)
Geese:		5	10
Canada:		[illegible]	[illegible]
Sardis Zone (1)	Dec. 5-Dec. 14 & Jan. 12-Jan. 31.	1	[illegible]
Remainder of State	Jan. 3-Jan. 17.	1	2
Other geese	Nov. 9-Jan. 17.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Missouri			
Ducks:		Point system.	
North Zone (1)	Oct. 31-Dec. 9.		
South Zone (1)	Nov. 21-Dec 13 & Dec. 26-Jan. 11.		
Coots		15	30
Geese(2):		5	10
Canada:			
North Zone (1):			
Swan Lake Zone (1) (3)	Oct. 31-Dec. 9.	2	4
Southeastern Zone (east of U.S. Highway 67 and south of Crystal City)	Dec. 9-Jan. 17.	1	2
Remainder of North Zone	Oct. 31-Dec. 9.	1	2
South Zone (1):			
Southeastern Zone (1)	Dec. 9-Jan. 17.	1	2
Remainder of South Zone	Nov. 21-Dec. 13 & Dec. 26-Jan. 11.	[illegible]	2
Other geese:			
North Zone(1)	Oct. 31-Jan. 8.		
South Zone(1)	Nov. 9-Jan. 17.		
Southeastern Zone(1)	Nov. 9-Jan. 17.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Ohio			
Pymatuning Area (1):			
Ducks:			
Black Ducks	Nov. 4-Nov. 28.	1	[illegible]
Other Ducks	Oct. 16-Oct. 23 & Nov. 4-Dec. 5.	4	[illegible]
Limits include no more than:			
Mallards (no more than 1 female daily or 2 in possession)		3	6
Black Ducks		1	2
Pintails		1	2

Wood Ducks		2	4
Redheads		2	4
Extra teal during regular season	Oct. 16-Oct. 23.	[illegible]	[illegible]
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(5)	30(5)
Mergansers (except hooded)		5	10
Hooded mergansers		1	2
Geese:			
Brant	Oct. 19-Nov. 16.		
Other Geese	Oct. 7-Dec. 15.		
Limits include no more than:			
Canada		1	6
Snow (including blue)		3	6
Brant		2	4
Remainder of State:			
Ducks:		4	8
North Zone (1)	Oct. 19-Nov. 21 & Dec. 7-Dec. 12.		
South Zone (1)	Oct. 19-Oct. 31 & Dec. 7-Jan. 2.		
Ohio River Zone (1)	Oct. 19-Oct. 31 & Dec. 21-Jan. 16.		
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession		2	4
Pintails		2	4
Black ducks		1	2
Wood ducks		2	4
Redheads		1	2
Scaup-only (North Zone only) (4)	Dec. 28-Jan. 12.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(5)	30(5)
Geese	Oct. 19-Nov. 28 & Dec. 7-Jan. 4.	5	10
Limits include no more than:			
Canada:		2	4
Ashtabula, Auglaize, Erie, Lucas, Marion, Mercer, Ottawa, Sandusky, Trumbull, and Wyandot Counties	1	2	
Remainder of State		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Tennessee			
Ducks:		Point system	
Reelfoot Zone (1)	Nov. 7-Nov. 10 & Dec. 13-Jan. 17.		
State Zone (1)	Dec. 9-Jan. 17.		
Coots		15	30
Gallinules/Moorhens	Dec. 9-Jan. 17.	15(5)	30(5)
Geese:		5	10
Canada:			
Northwest Zone(1)(3)	Dec. 13-Jan. 31.	[illegible]	[illegible]
Southwest Zone (1)	Jan. 3-Jan. 17.	1	[illegible]
Remainder of State:			
West of Highway 13	Nov. 9-Jan. 17.	[illegible]	[illegible]
East of Highway 13	Nov. 9-Jan. 17.	1	2
Other geese	Nov. 9-Jan. 17.		
Limits include no more than:			
White-fronted		2	4

Snow (including blue) and brant		5	10
Wisconsin			
Ducks:		Point system	
North Duck Zone (1)	Oct. 1-Nov. 9.		
South Duck Zone (1)	Oct. 1-Oct. 11 & Oct. 21-Nov. 18.		
Scaup-only season:			
North Duck Zone (1)(4)	Nov. 10-Nov. 25.	5	10
South Duck Zone (1)(4)	Nov. 19-Dec. 4.	5	10
Coots		15	30
Gallinules/Moorhens:		15(5)	30(5)
North Duck Zone (1)	Oct. 1-Nov. 9.		
South Duck Zone (1)	Oct. 1-Oct. 11 & Oct. 21-Nov. 18.		
Geese:		5	10
Canada(3):			
Northeast Goose Zone(1):			
Brown County	Oct. 1-Oct. 12.	1	2
	Dec. 1-Dec. 31.	2	4
Remainder of Northeast Zone	Oct. 1-Oct. 12.	1	2
Southeast Goose Zone (1):			
Horicon and Central Zones (1)(3):	Oct. 1-Nov. 9 & Dec. 1-Dec. 10.	Tag system - See State Regulations	
Theresa Sub-zone(1)(3)	Oct. 1-Nov. 19.	Tag system	
Rock Prairie Zone (1)	Oct. 21-Nov. 1 & Nov. 7-Dec. 6.	1	2
Remainder of Southeast Zone	Oct. 21-Nov. 1.	1	2
Northwest Goose Zone(1):			
Mississippi River Zone(1)	Oct. 1-Nov. 15.	1	2
	Nov. 25-Dec. 18.	2	4
Remainder of Northwest Zone	Oct. 1-Oct. 20.	1	2
Southwest Goose Zone (1):			
Mississippi River Zone (1)	Oct. 1-Oct. 11 & Oct. 21-Nov. 24.	1	2
	Nov. 25-Dec. 18.	2	4
Remainder of Southwest Zone	Oct. 1-Oct. 11 & Oct. 21-Oct. 29.	1	2
Other geese:			
North Duck Zone(1):			
Brown County	Oct. 1-Nov. 9 & Dec. 1-Dec. 30.		
Mississippi River Zone (1)	Oct. 1-Nov. 15 & Nov. 25-Dec. 18.		
Remainder of North Zone	Oct. 1-Nov. 9.		
South Duck Zone (1):			
Rock Prairie Zone (1)	Oct. 1-Oct. 11 & Oct. 21-Dec. 6.		
Mississippi River Zone (1)	Oct. 1-Oct. 11 & Oct. 21-Dec. 18.		
Remainder of South Zone	Oct. 1-Oct. 11 & Oct. 21-Nov. 18.		
Limits include no more than:			

White-fronted	2	4
Snow (including blue) and brant	5	10

The point values assigned to the species and sexes are as follows:

Mississippi Flyway

100 points	70 points	20 points	35 points
Black duck Female mallard	Wood duck Redhead Hooded merganser	Blue-winged teal Green-winged teal Cinnamon teal Wigeon Shoveler Gadwall Scaup Mergansers (except hooded).	Male mallard, Pintail, and all other species of ducks.

Note: All areas of the Flyway are closed to canvasback hunting.

(1) Described in the September 18, 1987, Federal Register (52 FR 35248) and/or the State Regulations.

(2) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(3) Harvests of Canada geese will be limited as follows:

Illinois:
- Southern Illinois Quota Zone - 26,300
- Rend Lake Quota Zone - 7,900
- Remainder of State - 18,300

Kentucky:
- West Kentucky Zone:
  - Ballard Subzone - 10,400
  - Henderson-Union Subzone - 3,300
  - Remainder of West Kentucky Zone - 2,800

Wisconsin:
- Horicon and Central Zones - 32,500
- Remainder of State - 17,000

Missouri: Swan Lake Zone - 10,000

Minnesota: Lac qui Parle Quota Zone - 4,000

Michigan:
- Superior Counties Goose Management Area - 6,500
- Allegan County Goose Management Area - 3,000
- Muskegon Wastewater Goose Management Area - 500
- Saginaw County Goose Management Area - 4,500
- Remainder of State - 43,500

Tennessee:
- Northwest Zone:
  - Reelfoot Subzone - 5,000
  - Remainder of Northwest Zone - 2,200

Indiana:
- Posey County - 4,700
- Remainder of State - 11,300

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Lac qui Parle Quota Zone in Minnesota, the Ballard and Henderson-Union Subzones in Kentucky, the Reelfoot Subzone in Tennessee, and the Superior Counties, Allegan County, Muskegon Wastewater and Saginaw County Goose Management Areas in Michigan, will have been filled, the season for taking Canada geese in the respective area

will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(4) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(5) The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

(6) In Kentucky's Western Zone, the season for snow and white-fronted geese and brant will close with the Canada goose season if the Canada goose season closes prior to January 17, 1988.

CENTRAL FLYWAY

The Central Flyway consists of Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese include all species of geese and brant.

Dark Geese include Canada geese, white-fronted geese, and "black" brant.

Light Geese include all other species.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted--Check State regulations.

Canvasbacks — All areas of the Flyway are closed to canvasback hunting.

Mergansers — All mergansers are to be included within the daily bag and possession limits under conventional and point system regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Limits		
	Season Dates	Bag	Possession
Colorado			
Ducks	Oct. 3-Oct. 17 & Oct. 31-Nov. 29 & Dec. 12-Jan. 2.	Point system.	
Coots	Same as for ducks.	15	30
Geese:			
North-Central Unit(1):			
West of I-25	Oct. 3-Oct. 10 & Oct. 24-Jan. 10.	4	[illegible]
Including no more than:			
Dark geese		2	4
Remainder of North Central Unit	Oct. 24-Jan. 10.	[illegible]	[illegible]
Including no more than:			
Dark geese		2	[illegible]
South Park Unit (1)	Oct. 3-Oct. 10 & Oct. 24-Dec. 31.	2	4
San Luis Valley Unit(1) (special permit)	Oct. 31-Dec. 31.	2 geese per season.	
North Park Unit(1) (special permit)	Oct. 3-Oct. 10.	1 goose per season.	
Remainder of State in Central Flyway	Oct. 31-Jan. 16.	4	[illegible]

Including no more than:			
Dark geese		2	4
Kansas			
Ducks:		Point system.	
High Plains Area (west of U.S. 283)	Oct. 10-Oct. 30 & Nov. 7-Dec. 6 & Dec. 19-Jan. 3.		
Low Plains Area (east of U.S. 283)	Oct. 24-Nov. 9 & Nov. 14-Dec. 6 & Dec. 24-Jan. 3.		
Coots	Same as for ducks.	15	30
Dark geese (2)	Oct. 31-Jan. 10.	2	4
including no more than:			
White-fronted	Oct. 31-Jan. 10.	1	2
Canada	Nov. 30-Jan. 10.	1	2
Light geese			
Unit 1 (east of U.S. 75 and north of I-70)	Nov. 14-Dec. 9 & Dec. 17-Feb. 14.	5	10
Unit 2 (remainder of State)	Nov. 7-Jan. 3 & Jan. 9-Feb. 5.	5	10
Montana			
Ducks			
Zone 1 (3)	Oct. 3-Nov. 22 & Dec. 12-Dec. 27.	Point system	
Zone 2 (3)	Oct. 3-Oct. 11 & Oct. 31-Dec. 27.		
Coots	Same as for ducks.	15	30
Geese:	Oct. 3-Jan. 3.		
Limits:			
Sheridan County:			
Dark geese		2	4
Light geese		3	6
Remainder of State in Central Flyway:			
Dark geese		3	6
Light geese		3	6
Tundra swans	Oct. 3-Jan. 3.	Only by permit; 1 swan per season	
Nebraska			
Ducks:		Point system.	
High Plains Area	Oct. 10-Nov. 29 & Dec. 19-Jan. 3.		
Low Plains Area			
Zones 1 and 2 (4)	Oct. 17-Oct. 25 & Oct. 31-Dec. 11.		
Zones 3 and 4 (4)	Oct. 10-Nov. 29.		
Coots	Same as for ducks.	15	30
Dark geese			
North Unit (5)	Oct. 3-Dec. 20.	2	4
Including no more than:			
White-fronted	Oct. 3-Dec. 20.	1	2
Canada	Oct. 3-Nov. 13.	1	2
East Unit (5)	Oct. 3-Dec. 13.	2	4
Including no more than:			
White-fronted	Oct. 3-Dec. 13.	1	2
Canada	Nov. 23-Dec. 13.	1(6)	2(6)
Central Unit (5)	Oct. 24-Jan. 3.	2	4
Including no more than:			
White-fronted	Oct. 24-Jan. 3.	1	2
Canada	Nov. 23-Jan. 3.	1	2
Panhandle Unit (5)	Nov. 10-Jan. 3.	2	4
Including no more than:			
White-fronted	Nov. 10-Jan. 3.	1	2
Canada	Nov. 23-Jan. 3.	1	2

Sandhills Unit(5)	Nov. 1-Dec. 31.	Only by permit - 1 Canada goose per season.	
Light Geese	Oct. 3-Dec. 27.	5	10
New Mexico			
Ducks:		Point system.	
Zone 1 (7)	Oct. 10-Dec. 15.		
Zone 2 (7)	Nov. 12-Jan. 17.		
Coots	Oct. 10-Dec. 19.	15	30
Common Moorhens	Oct. 10-Dec. 19.	5	10
Geese:			
Dark geese (8)	Oct. 17-Jan. 17.	2	4
Light geese:			
Rio Grande Valley Unit(9)	Nov. 1-Jan. 10 & Jan. 23-Feb. 27.	[illegible]	20
Remainder of State in Central Flyway	Nov. 28-Feb. 27.	5	10
North Dakota			
Ducks:	Oct. 3-Nov. 22.	4	[illegible]
Including no more than:			
Mallards (no more than 1 female mallard daily and 1 in possession)		3	6
Pintails		3	6
Redheads		1	2
Wood ducks		2	4
Hooded Mergansers		1	2
Additional blue-winged teal	Oct. 3-Oct. 11.	2(9)	4(9)
Additional scaup	Oct. 24-Nov. 22.	2(9)	4(9)
Coots	Same as for ducks.	15	30
Dark geese	Oct. 3-Nov. 15.	2	4
Including no more than:			
Canada	Oct. 3-Nov. 1.	1	2
Light geese	Oct. 3-Nov. 29.	5	10
Oklahoma			
Ducks:		Point system.	
High Plains Area(10)	Oct. 10-Nov. 29 & Dec. 12-Dec. 27.		
Low Plains			
Zone 1 (10)	Oct. 24-Nov. 20 & Dec. 5-Dec. 27.		
Zone 2 (10)	Nov. 7-Nov. 20 & Dec. 12-Jan. 17.		
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(16)	30(16)
Dark geese(17)	Nov. 7-Jan. 17.	2	4
including no more than:			
White-fronted	Nov. 7-Jan. 17.	1	2
Light geese	Nov. 7-Jan. 31.	5	10
South Dakota			
Ducks:		Point system	
High Plains Area (11)	Oct. 3-Nov. 22 & Dec. 19-Jan. 3.		
Low Plains Area			
North Zone (11)	Oct. 3-Nov. 22.		
South Zone (11)	Oct. 17-Dec. 6.		
Coots	Same as for ducks.	15	30
Dark geese			
Missouri River Unit(12)	Oct. 3-Dec. 20.	2	4
including no more than:			
Canada	Oct. 3-Nov. 13.	1	2
White-fronted	Oct. 3-Dec. 20.	1	2
Remainder of State	Oct. 3-Dec. 13.	2	4
Including no more than:			

Canada	Oct. 3-Dec. 13.	1	2
White-fronted	Oct. 3-Dec. 13.	1	2
Light geese	Oct. 3-Dec. 27.	5	10
Texas			
Ducks (except masked duck):		Point system.	
High Plains Area (13)	Oct. 31-Nov. 8 & Nov. 21-Jan. 17.		
Remainder of State	Oct. 31-Nov. 4 & Nov. 21-Nov. 29 & Dec. 12-Jan. 17.		
Masked duck	Closed season.	-	-
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(16)	30(16)
Geese:			
East of U.S. Highway 81:			
Dark geese(14)	Oct. 31-Dec. 4 & Dec. 12-Jan. 17.	2	4
Including no more than:			
Canada		1	2
White-fronted		1	2
Light geese	Oct. 31-Jan. 24.	5	10
West of U.S. Highway 81:			
Geese:	Oct. 17-Jan. 17.	5	10
Including no more than:			
Dark geese		2	4
Wyoming			
Ducks and coots		Point system.	
Zone 1 (15)	Oct. 3-Nov. 1 & Nov. 21-Dec. 27.		
Zone 2 (15)	Oct. 10-Nov. 29 & Dec. 12-Dec. 27.		
Zone 3 (15)	Oct. 3-Nov. 22 & Dec. 12-Dec. 27.		
Zone 4 (15)	Oct. 3-Nov. 1 & Nov. 21-Dec. 27.		
Geese:		2	4
Zone 1 (15)	Oct. 3-Dec. 31.		
Zone 2 (15)	Nov. 7-Jan. 10.		
Zone 3 (15)	Oct. 3-Dec. 31.		
Zone 4 (15)	Oct. 3-Jan. 3.		

Point system - Ducks, mergansers and coots. The Central Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days. The shooting (including hawking) hours are one-half hour before sunrise until sunset daily unless otherwise indicated.

The point values assigned to the species and sexes are as follows:

Central Flyway

100 points	70 points	20 points	35 points
Female mallard	Wood duck	Blue-winged teal	Male mallard,
Mottled duck	Redhead	Green-winged teal	Pintail, and
Black duck	Hooded merganser	Cinnamon teal	all other
	Texas only:	Shoveler	species of
	Black bellied	Gadwall	ducks*
	and fulvous	Wigeon	
	whistling (tree)	Scaup	
	ducks	Merganser (except	
		hooded).	

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* In Texas only, there is no open season on the Masked duck.

Note: All areas of the Flyway are closed to canvasback hunting.

(1) North Central Unit: Bounded by the Continental Divide, the northern State line, and highways US-85 to I-76, I-76 to I-25, I-25 to I-70, and I-70 to the Continental Divide. South Park Unit: Chaffee, Fremont, Lake, Park, and Teller Counties. San Luis Valley Unit: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide. North Park Unit: Jackson County.

(2) In Kansas, exceptions to the dark goose season are as follows: (a) Marais des Cygnes Valley Unit - Season dates: December 19, 1987 through January 10, 1988 - Dark goose permits issued by the Kansas Department of Wildlife and Parks required. One hundred (100) permits are available with one (1) dark goose per permit and one (1) permit per individual. Leg tagging of dark geese is required in this area. The area is bounded by the Missouri State Line to K-68, K-68 to U.S-169, U.S.-169 to K-7, K-7 to K-31, K-31 to U.S.-69, U.S.-69 to K-239, K-239 to the Missouri State Line; (b) South Flint Hills Unit - Dark geese may not be hunted in an area southwest of Emporia bounded by Highways K-57 to U.S.-75, U.S.-75 to K-39, K-39 to K-96, K-96 to U.S.-77, U.S.-77 to U.S.-50, U.S.-50 to K-57; (c) Central Flint Hills Unit - Dark geese may not be hunted in an area southwest of Topeka bounded by Highways U.S.-75 to Interstate 35, Interstate 35 to U.S.-50, U.S.-50 to U.S.-77, U.S.-77 to Interstate 70, Interstate 70 to U.S.-75; and (d) Strip Pits Unit - Dark geese may not be hunted in an area of southeast Kansas bounded by the Missouri State Line to U.S.-160, U.S.-160 to U.S.-69, U.S.-69 to K-57, K-57 to K-3, K-3 to K-146, K-146 to U.S.-59, U.S.-59 to K-47, K-47 to U.S.-169, U.S.-169 to U.S.-160, U.S.-160 to U.S.-59, U.S.-59 to the Oklahoma State Line, and the Oklahoma State Line to the Missouri State Line.

(3) Zone 1: The Central Flyway portion, except Zone 2, of Montana. Zone 2: The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

(4) High Plains: West of Highways US-183 and US-20 from the northern State line to Ainsworth, N-7 and N-91 to Dunning, N-2 to Merna, N-70 to Arnold, N-40 and N-47 and N-47 through Gothenburg to N-23, N-23 to Elwood, and US-283 to the southern State line. Zone 1: Keya Paha (east of US-183) and Boyd Counties including all waters of the Niobrara River. Zone 2: Bounded by Highways and political boundaries starting at the State line near Falls City, US-73 north to N-67; north through Nemaha to US-73-75; north to US-34; west to the Alvo Road; north to US-6; northeast to N-63; north and west to US-77; north to N-92; west to US-81; south to N-66; west to N-14; south to I-80; west to US-34; west to N-10; south to the State line; west to US-283; north to N-23; west to N-47; north to US-30; east to N-14; north to N-52; northwesterly to N-91; west to US-281; north to and including Wheeler, Garfield, and Loup (east US-183) Counties; east on N-70 from Wheeler County to N-14; south to N-39; southeast to N-22; east to US-81; southeast to US-30; east to US-73; north to N-51; east to the State line; and south and west along the State line to US-73. Zone 3: The area, excluding Zone 1, north of Zone 2. Zone 4: The area south of Zone 2.

(5) North Unit: Boyd (west of US-81), Keya Paha (east of US-183), and Knox Counties. East Unit: The area, excluding the North Unit, east of highways US-183 and US-20 from the northern State line to Atkinson, N-11 to Burwell, N-91 to near Taylor, US-183 to Ansley, N-2 to Grand Island, and US-281 to the southern State line. Panhandle Unit: South and west of the northern boundaries of Scotts Bluff, Morrill, and Garden Counties and highways N-2 from Garden County to N-61, N-61 to Grant, and N-23 to the State line. Central Unit: The remainder of the State.

(6) Only 1 Canada goose and 1 white-fronted goose are allowed each day for the entire season in Dodge, Platte and Colfax Counties; in those parts of Butler, Saunders and Polk Counties north of Nebr. 92; and Merrick County along the Platte River where it borders Polk County.

(7) New Mexico: Zone 1: North of highways I-40 and US-54. Zone 2: South of highways I-40 and US-54.

(8) Dark geese may not be hunted in Bernalillo, Sandoval, Sierra, Socorro, and Valencia Counties.

(9) The daily bag and possession limits specified here are in addition to any other bag and possession limits specified elsewhere.

(10) High Plains: Beaver, Cimarron, and Texas Counties. Zone 1: Northwestern Oklahoma, except the Panhandle, bounded by highways OK-33 from the western State line to Roll, OK-47 to US-183, US-183 to Clinton, I-40 to US-177, US-177 to Perkins, OK-33 to Guthrie, I-35 to US-60, US-60 to US-64, US-64 to Nash, and OK-132 to the northern State line. Zone 2: The remainder of the State south and east of Zone 1.

(11) High Plains: West of highways and political boundaries starting at the State line north of Herreid; US-83 and US-14 to Blunt, Blunt-Canning Road to SD-34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I-90, and US-183 to the southern State line. North Zone: East of the High Plains except the South Zone. South Zone: Bon Homme County (south of S.D. Highway 50), Yankton County (south of S.D. Highway 50), and Clay County (south of S.D. Highway 50); Charles Mix County (south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and CFAS 6516 to Lake Andes, and S.D. Highway 50 to Bon Homme County); Gregory County; and Union County (south and west of S.D. Highway 50 and Interstate Highway 29).

(12) Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of highway SD-65), Dewey, Gregory, Haakon (north of Kirley Road and part of Plum Creek), Hughes, Hyde, Lyman (north and east of highways I-90 and US-183), Potter, Stanley, Sully, Tripp (east of highway US-183), Walworth, and Yankton (west of highway US-81).

(13) High Plains: West of highways US-183 from the northern State line to Vernon, US-283 to Albany, T-6 and T-351 to Abilene, US-277 to Del Rio, and the Del Rio International Toll Bridge access road.

(14) In Texas, the season on Canada geese is closed in Anderson and Henderson Counties.

(15) Zone 1: The Counties of Campbell, Converse, Crook, Johnson, Natrona, Niobrara, Sheridan, and Weston. Zone 2: The Counties of Goshen, Laramie, and Platte. Zone 3: The Counties of Albany and Carbon. Zone 4: The Counties of Big Horn, Fremont, Hot Springs, Park and Washakie. Goose management units, respectively, coincide with duck zones.

(16) The daily bag and possession limit of purple gallinules and common moorhens is singly or in the aggregate of the two species.

(17) See State regulations for areas closed to Canada goose hunting except by State permit.

PACIFIC FLYWAY

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily, except as otherwise restricted--Check State regulations.

Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.

White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are for snow, including blue, and Ross' geese, either singly or in the aggregate; and seasons and limits for dark geese are for Canada and white-fronted geese, brant, and all other species of geese, either singly or in the aggregate, except in

Washington, Oregon, and California where there are separate seasons and limits on brant.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits	
		Bag	Possession
Arizona			
Ducks	Oct. 9-Nov. 29 & Dec. 15-Jan. 10.	See footnote (1).	
Geese:	Nov. 15-Jan. 17.	6	6
Including no more than:			
Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and common moorhens (singly or in the aggregate)	Same as for ducks.	25	25
Common Snipe	Same as for ducks.	8	16
Sandhill cranes (only in Game Management Units 30 A, 30B, 31, and 32)	Nov. 6-Nov. 8 & Nov. 10-Nov. 12 & Nov. 14-Nov. 16 & Nov. 18-Nov. 20.	Only by permit; 2 cranes per season.	
California (2)			
Ducks:			
Northeastern Zone (3)	Oct. 10-Dec. 27.	See footnote (1)	
Colorado River Zone (3)	Oct. 9-Nov. 29 & Dec. 15-Jan. 10.	See footnote (1)	
Southern Zone (3)	Oct. 17-Nov. 29 & Dec. 7-Jan. 10.	See footnote (1)	
Balance of State Zone(3)	Oct. 24-Jan. 10.	See footnote (1)	
Geese (except cackling Canada, Aleutian Canada and brant):			
Northeastern Zone (3)	Oct. 10-Jan. 10.	3	6
Including no more than:			
Canada geese (except Aleutian and Cackling)		2	4
White-fronted geese (except that the season shall be Oct. 10-Nov. 1).		1	2
White geese		3	6
Colorado River Zone(3)	Nov. 15-Jan. 17.	6	6
Including no more than:			
Dark (but no more than 2 Canada geese)(4)		3	3
White		3	3
Southern Zone (3)	Oct. 17-Jan. 17.	6	6
Including no more than:			
Dark (except that Canada geese shall not exceed 2 in the daily bag and possession limits; but in that portion of District 22 within the Southern Zone,			

Canada geese may not exceed 1 in daily bag and 2 in possession; and the season on Canada geese shall be Oct. 24-Jan. 17.) (4)		3	3
White		3	3
Balance-of-the-State Zone(3)	Oct. 31-Jan. 17.	3	3
Including no more than:			
Dark (4)(5):		1	1
Except that the season on Canada geese shall be:			
Counties of Del Norte and Humboldt	Closed.	-	-
Sacramento Valley Area (3)	Closed.		
San Joaquin Valley Area (3)	Oct. 31-Nov. 23.		
Except that the season on white-fronted geese shall be:	Oct. 31-Jan. 3.		
Sacramento Valley Area (3)	Oct. 31-Nov. 30.		
Remainder of Zone	Oct. 31-Jan. 3.		
White		3	3
Cackling Canada geese and Aleutian Canada geese	Closed.	-	-
Brant	Nov. 1-Nov. 30.	2	4
Coots and common moorhens, singly or in the aggregate.	Same as for ducks.	25	25
Common snipe	Same as for ducks.	[redacted]	16
Colorado			
Ducks	Oct. 3-Oct. 16 & Nov. 7-Jan. 10.	See footnote (1)	
Geese:			
Brown's Park, Moffat County	Oct. 24-Dec. 6.	1	2
Delta and Montrose Counties	Nov. 14-Jan. 3.	Only by permit; 2 geese per day; 3 per season.	
Mesa County	Nov. 14-Jan. 3.	Only by permit; 2 4 6 geese per season.	
Dolores, Gunnison, LaPlata and Montezuma Counties	Closed.	-	-
Remainder of State in Pacific Flyway	Oct. 3-Oct. 16 & Oct. 24-Jan. 3.	2	4
Coots	Same as for ducks.	25	25
Common snipe	Sept. 1-Dec. 2.	8	16
Idaho			
Ducks			
Zone 1 (3)	Oct. 10-Dec. 27.	See footnote (1)	
Zone 2 (3)	Oct. 10-Nov. 29 & Dec. 7-Jan. 3.	See footnote (1)	
Geese:		3	6
Goose Area 1 (3)(6) including no more than:	Oct. 12-Jan. 3.		
Dark		2	4
Goose Area 2 (3) including no more than:	Oct. 24-Jan. 3		
Dark		2	4

Goose Area 3 (3)	Oct. 12-Dec. 6.		
including no more than:			
Dark		2	4
Goose Area 4 (3)	Oct. 12-Jan. 3.		
including no more than:			
Dark	Oct. 12-Nov. 8.	1	1
	Nov. 9-Dec. 13.	2	4
	Dec. 14-Jan. 3.	1	1
Goose Area 5 (3)	Oct. 10-Jan. 3.		
including no more than:			
Dark		2	4
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Montana			
Ducks	Oct. 3-Dec. 20.	See footnote (1)	
Geese: (7)			
East of the Continental Divide	Oct. 3-Jan. 3.	5	6
Including no more than:			
Dark		3	6
White		3	6
West of the Continental Divide	Oct. 3-Jan. 3.	5	6
Including no more than:			
Dark		2	2
White		3	6
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Teton and Cascade Counties	Oct. 3-Dec. 20.	Only by permit; 1 swan per season.	
Nevada			
Ducks:			
Clark County	Oct. 24-Jan. 10.	See footnote (1)	
Remainder of State	Oct. 17-Jan. 3.	See footnote (1)	
Dark geese:			
Clark County	Nov. 28-Jan. 17.	2	2
White River Valley in Nye County, and Pahranagate Valley in Lincoln County	Dec. 5-Jan. 17	1	2
Remainder of State	Oct. 17-Jan. 17.	1	4
White geese:			
Clark County	Nov. 28-Jan. 17.	3	3
White River Valley in Nye County, and Pahranagate Valley in Lincoln County	Dec. 5-Jan. 15.	3	3
Ruby Valley in Elko and White Pine Counties	Closed.	-	-
Remainder of State	Oct. 17-Jan. 17.	3	3
Coots and common moorhens, singly or in the aggregate	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Churchill, Lyon, and Pershing Counties)	Oct. 17-Jan. 3.	Only by permit; 1 swan per season	
New Mexico			
Ducks	Oct. 10-Oct. 25 & Nov. 11-Jan. 10.	See footnote (1)	

Geese:			
North of Interstate 40	Jan. 2-Jan. 17.	3 geese (not more than 2 dark) per season.	
South of Interstate 40	Oct. 24-Jan. 17.	6	6
Including no more than:			
Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and common moorhens, singly or in the aggregate)	Same as for ducks.	25	25
Common snipe	Sept. 1-Nov. 30.	8	16
Oregon			
Ducks:			
Entire State, except Morrow and Umtailla Counties	Oct. 17-Nov. 29 & Dec. 7-Jan. 10.	See footnote (1)	
Morrow and Umatilla Counties	Oct. 17-Jan. 10.	See footnote (1)	
Geese (except cackling Canada, and Aleutian Canada):			
Western Oregon(4)(8)(9)	Oct. 17-Jan. 17.	2	4
Eastern Oregon, except Baker, Malheur, Klamath, and Lake Counties	Oct. 17-Jan. 17.	6	6
Including no more than:			
Dark(4)		3	6
White		3	6
Baker and Malheur Counties(4)	Oct. 17-Jan. 3.	2	4
Klamath and Lake Counties		6	6
Including no more than:			
Dark (4), except the season on white-fronted geese does not open until Nov. 1.	Oct. 17-Jan. 17.	3	6
White	Oct. 17-Jan. 17.	3	6
Cackling and Aleutian Canada geese	Closed.	-	-
Brant	Dec. 26-Jan. 10.	only by permit; 2	4
Coots	Same as for ducks	25	25
Common snipe	Same as for ducks	8	16
Utah			
Ducks	Oct. 3-Dec. 6 & Dec. 21-Jan. 3.	See footnote (1)	
Geese:			
General Season:	Oct. 10-Jan. 3.	5	5
Including no more than:			
Dark geese		2	4
White geese		3	6
Special Seasons:			
Daggett County east of U.S. Highway 191	Oct. 24-Dec. 6.		
Including no more than:			
Canada geese		1	2
Washington County	Oct. 17-Jan. 10.		
Including no more than:			
Canada geese		2	2
Emery County	See State Regulations.		
Coots	Same as for ducks.	25	25

Common snipe	Same as for ducks.	8	16
Tundra swans	Oct. 3-Dec. 6 & Dec. 21-Jan. 3.	Only by permit; 1 swan per season.	
Washington			
Ducks:			
Eastern Washington(10)	Oct. 17-Jan. 10.	See footnote (1)	
Western Washington(10)	Oct. 17-Nov. 6 & Nov. 14-Jan. 10.	See footnote (1)	
Geese (except cackling Canada Aleutian Canada and brant)			
Eastern Washington(10): Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogon, Spokane, and Walla Walla Counties, and east of Satus Pass (Highway 97) in Klickitat County	Oct. 17-Jan. 10 (11).	3	6
Remainder of Eastern Washington (4)	Oct. 17-Jan. 10.	3	6
Western Washington(10): Island, Skagit, Snohomish and Whatcom Counties	Oct. 17-Jan. 1.	3	6
Clark, Cowlitz, Pacific and Whakiakum Counties		See footnotes (4) & (12)	
Remainder of Western Washington (4)	Oct. 17-Jan. 17.	3	6
Cackling Canada geese and Aleutian Canada geese:	Closed.	-	-
Brant: Skagit and Whatcom Counties only.	Dec. 12, 13, 16, 17, 19, 20 and 23.	2	4
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Wyoming			
Ducks and coots, singly or in the aggregate	Oct. 3-Dec. 20.	See footnote (1)	
Canada Geese	Oct. 3-Dec. 20.	3	6
Common snipe	Sept. 19-Dec. 20.	8	16

(1) Duck Limits. Basic daily bag and possession limits on ducks (including mergansers, and in Wyoming including coots) throughout the entire Flyway is 5, including no more than 4 mallards but only 1 female (hen) mallard, 4 pintails but only 1 female (hen) pintail and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily limit. Additionally, the following restrictions apply to limits in Arizona and Idaho. In Arizona, the daily limit may include no more than either 1 female (hen) mallard or 1 Mexican-like duck, but not both; and not more than 2 female (hen) mallards or 2 Mexican-like ducks may be in possession. In Idaho, in the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone, the daily bag and possession limits, each, may not include more than two wood ducks.

(2) In California, no hunting of ducks, coots, geese and brant is authorized in the following areas unless and until the State approves the nontoxic shot requirements and the Service subsequently publishes final frameworks for these areas: Butte, Colusa, Contra Costa, Glenn, Imperial, Merced, Sacramento, San Joaquin, Solano, Sutter, Yolo and Yuba Counties; and those portions of Siskiyou, Shasta, Sierra, Tehama, and Plumas Counties, and all of Lesser and Modoc Counties, bounded by the following line: Beginning at Interstate 5 at the Oregon border, southerly on Interstate 5 to State Highway 89, thence

southeasterly on State Highway 89 to State Highway 70, thence easterly on State Highway 70 to U.S. Highway 395, thence southerly on U.S. Highway 395 to the Nevada border.

(3) Zone/Area boundaries described in the September 18, 1987, Federal Register and/or State regulations.

(4) The season on cackling Canada geese and Aleutian Canada geese is closed.

(5) The dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese, except for cackling Canada and Aleutian Canada geese for which the season is closed.

(6) The season on white geese is closed in Fremont and Teton Counties.

(7) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; Benton Lake; Missoula County; and Kleinschmidt Lake.

(8) Western Oregon consists of all counties west of the summit of the Cascades excluding Kalmath and Hood River Counties. Eastern Oregon consists of all counties east of the simmit of the Cascades, including all of Kalmath and Hood River Counties. Those portions of Coos, Curry, Douglas and Lane Counties lying west of U.S. Highway 101, that portion of western Oregon north of Highway 126 and west of Interstate 5 are closed to all goose hunting, except for a special Northwest Oregon permit goose hunt.

(9) Northwest Oregon Special Permit Goose Season - November 14-November 29 and December 7-January 17 on Sauvie Island Wildlife Area (excluding North Unit and Columbia River Beaches), Private lands of Sauvie Island (including Scappoose Flat), Ankeny NWR, Private lands adjacent to William L. Finley NWR, and Private lands adjacent to Baskett Slough NWR. See State regulations for specific places, times, days and other conditions of the permit season.

(10) Eastern Washington includes all areas lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County. Western Washington includes all areas lying to the west of Eastern Washington.

(11) Geese may be hunted only on Saturdays, Sundays, and Wednesdays, and on November 11, 26 and 27, and December 25 and January 1 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties and east of Satus Pass (U.S. Highway 97) in Klickitat County. Geese may be hunted every day during January 11-17 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties.

(12) The hunting season for all geese except Canada geese in Clark, Cowlitz, Pacific and Whakiakum Counties is October 10 thorugh January 17; 3 geese may be taken daily and 6 may be in possession. The Canada goose season is closed in Clark, Cowlitz, Pacific and Whakiakum Counties except in the following areas: (a) in Clark and Cowlitz Counties all lands south of the Kalama grain elevator in Cowlitz County and west of Interstate 5 in Clark and Cowlitz Counties, and (b) in Pacific County all lands west of Highway 101, Highway 4 or Highway 401. Canada goose hunting in these two areas is by permit only. See State regulations for times, days and specific conditions of the permit hunts.

4. Section 20.106 is revised to read as follows:

20.106 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive dates are October 3 through November 29, 1987.

(b) In New Mexico (a) in the counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 24, 1987, through January 24, 1988; (b) in the Middle Rio Grande Valley Hunt Area (described in State regulations) the inclusive dates for the two experimental seasons are October 17 through October 24, 1987, and October 25 through October 31, 1987. Hunting in the experimental seasons is by State permit only, the daily bag limit is 3 sandhill cranes and the seasonal bag limit is 9, and shooting hours are sunrise to sunset.

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 10 through November 20, 1987, and November 28, 1987 through January 17, 1988.

(d) In Texas, in Zone A the inclusive dates are November 14, 1987, through February 14, 1988. In Zone B the inclusive dates are November 28, 1987, through February 7, 1988. In Zone C the inclusive dates are January 2, 1988, through February 7, 1988. In the remainder of the State, the season is closed. See State regulations for description of zones.

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to the north shore of Lake Sakakawea, then west along the north shore of Lake Sakakawea to ND No. 23, then east on ND No. 23 to ND No. 8, then north on ND No. 8 to the Canadian line; and west of a line starting where ND No. 14 enters Canada, then south on ND No. 14 to U.S. Highway 83, then south on U.S. Highway 83 to South Dakota) the inclusive dates are September 5 through November 1, 1987, in Zone 2 (that area east of Zone 1 and west of U.S. Highway 281) the inclusive dates are September 5 through October 2, 1987.

(f) In South Dakota, the inclusive season dates are September 26 through November 1, 1987.

(g) In Montana (the Central Flyway portion except that area south of I-90 and west of the Bighorn River), the inclusive dates are October 3 through November 29, 1987.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 19 through November 15, 1987.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season dates are November 6-8, November 10-12, November 14-16 and November 18-20, 1987. Hunting will be by special permit to be issued by the State. Each permittee may take 2 sandhill cranes per season.

(b) In Wyoming's sandhill crane-Canada goose hunt areas: Hunting is by State permit only.

Bear River area in Lincoln County - the season dates are September 5 through September 7, 1987. Season limits are 2 sandhill cranes per hunter.

Riverton Boysen Unit in Fremont County - the season dates are September 12 through September 13, 1987, and September 19 through September 20, 1987. Season limits are 2 sandhill cranes per hunter.

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Salt River (Star Valley) area in Lincoln County - the season dates are September 1 through September 7, 1987. Season limits are 2 sandhill cranes and 2 Canada geese per hunter.

Eden - Farson Agricultural Project in Sweetwater and Sublette Counties - the season dates are September 5 through September 7, 1987. Season limits are 3 sandhill cranes and 1 Canada goose per hunter.

5. Section 20.107 is revised as follows:

20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Whistling swans may be taken only by State-issued permit. Permittees may take only one whistling swan per season. Successful permittees must immediately validate their harvest by that method required in State regulations. Shooting hours are from one-half before sunrise to sunset daily except as otherwise restricted--Check State hunting regulations. Seasons are:

Central Flyway: (a) In Montana, tundra swans may be hunted from October 3, 1987, through January 3, 1988.

Pacific Flyway: (a) In Montana, whistling swans may be hunted only in Teton and Cascade Counties from October 3 through December 20, 1987; (b) In Nevada, tundra swans may be hunted only in Churchill, Lyon and Pershing Counties from October 17, 1987, through January 3, 1988; (c) In Utah, tundra swans may be hunted from October 3 through December 6, 1987, and December 21, 1987, through January 3, 1988.

Atlantic Flyway: (a) In North Carolina, tundra swans may be hunted from November 2, 1987, through January 30, 1988.

6. Section 20.109 is revised to read as follows:

20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit..... 3 singly or in the aggregate.
Possession limit..... 6 singly or in the aggregate.
These limits apply during both regular hunting seasons and extended falconry seasons.
Hawking hours: One-half hour before sunrise until sunset daily.
CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS.

Atlantic Flyway

Florida:

Mourning doves and white-winged doves..... Sept. 26-Dec. 4.

Woodcock..... Oct. 24-Dec. 6.

Snipe..... Nov. 1-Feb. 15.

Ducks and coots..... Oct. 4-Nov. 21.

Common moorhens and rails..... Sept. 26-Dec. 4.

Georgia

Ducks, coots, mergansers and gallinules/moorhens..... Oct. 3-Jan. 17.

Maine

Ducks, coots and mergansers	
North Zone	Nov. 10-Jan. 15.
South Zone	Oct. 15-Nov. 11 & Dec. 8-Jan. 15.

Maryland:

Mourning doves	Sept. 1-Oct. 24 & Nov. 4-Dec. 26.
Rails	Sept. 1-Dec. 16.
Woodcock	Oct. 5-Jan. 19.
Snipe	Oct. 1-Jan. 15.
Ducks, coots, and mergansers	Oct. 6-Jan. 18.
Canada geese:	
Delmarva Peninsula	Oct. 17-Jan. 31.
Remainder of State	Oct. 6-Jan. 20.
Snow geese	Oct. 17-Jan. 31.
Brant	Oct. 6-Jan. 20.

Massachusetts:

All permitted ducks, geese, mergansers, and coots	Oct. 12-Jan. 13.

New York:

Ducks, coots, and geese	
Western Zone	Oct. 2-Oct. 15.
Southeastern Zone	Oct. 1-Oct. 8 & Oct. 19-Oct. 24.
Northeastern Zone	Oct. 1-Oct. 4 & Oct. 19-Oct. 28.
Long Island Zone	Nov. 6-Nov. 19.

Pennsylvania:

Mourning doves	Sept. 1-Dec. 12.
Ducks and geese	Oct. 7-Jan. 16.

South Carolina:

Ducks, coots, and mergansers	Oct. 4-Nov. 24 & Nov. 29-Dec. 13.

Virginia:

Woodcock and snipe	Oct. 16-Jan. 30.
Mourning doves and rails	Sept. 1-Nov. 30 & Dec. 19-Jan. 3.
Ducks, mergansers, coots, and geese	Oct. 6-Jan. 18.

Mississippi Flyway

Illinois:

Mourning doves, woodcock and rails	Sept. 1-Dec. 16.

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Snipe	Sept. 12-Dec. 29.
Teal	Sept. 5-Sept. 13.
Ducks, mergansers and coots	Oct. 3-Jan. 6.
Indiana:	
Mourning doves	Oct. 16-Nov. 5.
Woodcock	Sept. 1-Sept. 18.
Ducks, mergansers, and coots:	
North Zone	Oct. 3-Oct. 15 & Oct. 20-Oct. 29 & Dec. 5-Jan. 8.
South Zone	Oct. 3-Oct. 23 & Oct. 28-Nov. 20 & Dec. 27-Jan. 8.
Ohio River Zone	Oct. 4-Nov. 25 & Nov. 30-Dec. 4.
Iowa:	
Rails and snipe	Sept. 5-Dec. 5.
Woodcock	Sept. 19-Jan. 3.
Geese	Oct. 3-Jan. 17.
Ducks and coots	Sept. 19-Sept. 30 & Oct. 3-Jan. 5.
Kentucky:	
Ducks, mergansers, and coots	Nov. 1-Nov. 25 & Nov. 30-Dec. 11.
Rails and gallinules/moorhens	Nov. 1-Nov. 25.
Geese:	
Western Zone	Nov. 1-Dec. 11.
Eastern Zone	Nov. 1-Nov. 7.
Michigan:	
Snipe, rails and moorhens	Sept. 1-Dec. 16.
Ducks, mergansers, coots and geese	Oct. 4-Jan. 17.
Minnesota:	
Woodcock, snipe, and rails	Sept. 1-Dec. 16.
Ducks, mergansers, coots and geese	Oct. 3-Jan. 17.
Mississippi:	
Ducks, mergansers and coots	Oct. 31-Dec. 12.
Mourning doves	Sept. 28-Oct. 1 & Nov. 20-Dec. 13.
Missouri:	
Mourning doves	Sept. 1-Dec. 16.
Ducks, mergansers, coots, and geese	Oct. 6-Jan. 11.
Wisconsin:	
Rails, woodcock, snipe, and gallinules	Sept. 1-Dec. 16.

Ducks, mergansers, and coots	Oct. 1-Jan. 15.
Central Flyway	
Colorado:	
Ducks, mergansers, coots and geese	Oct. 18-Oct. 30 & Nov. 30-Dec. 11.
Montana:	
Mourning doves	Sept. 1-Oct. 12.
Snipe	Oct. 3-Jan. 10.
Ducks and geese	Oct. 3-Jan. 10.
Nebraska:	
Ducks, mergansers, coots and geese	Oct. 3-Jan. 17.
New Mexico: (1)	
Mourning doves	Sept. 1-Nov. 6 & Nov. 22-Dec. 30.
Band-tailed pigeons	Sept. 1-Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties	Oct. 10-Jan. 24.
Ducks, coots and common moorhens	Oct. 10-Jan. 15.
Canada and white-fronted geese	Oct. 10-Jan. 17.
Snow, blue, and Ross' geese	Nov. 14-Feb. 28.
Oklahoma:	
Duck, coots and mergansers	Oct. 10-Nov. 29 & Dec. 2-Jan. 17.
Texas:	
Mourning doves (statewide)	Sept. 1-Nov. 30 & Jan. 2-Jan. 17.
Rails and gallinules	Sept. 1-Dec. 16.
White-winged doves	Sept. 1-Nov. 30 & Jan. 2-Jan. 17.
Ducks, geese and coots	Oct. 20-Jan. 25.
Sandhill cranes (Zones A, B, and C)	Nov. 1-Feb. 17.
Woodcock	Nov. 1-Feb. 17.
Snipe	Nov. 1-Feb. 17.
Wyoming:	
Mourning doves	Sept 1-Oct. 15.
Snipe and rails	Sept. 19-Nov. 27.
Ducks, mergansers, coots, and geese (1)	Oct. 3-Jan. 3.

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Pacific Flyway

Colorado:

Ducks, mergansers, coots, and geese..... Oct. 17-Nov. 6.

Idaho:

Mourning doves..... Sept. 1-Dec. 16.

Ducks, mergansers, coots, and snipe..... Oct. 3-Jan. 10.

Geese:
Pacific Population (2)..... Oct. 3-Jan. 3.
Rocky Moutain Population (2)..... Oct. 10-Jan. 3.

Montana:

Mourning doves..... Sept. 1-Oct. 12.

Snipe..... Oct. 3-Jan. 10.

Ducks and geese..... Oct. 3-Jan. 10.

New Mexico (1)

Mourning doves..... Sept. 1-Nov. 6 & Nov. 22-Dec. 30.

Band-tailed pigeons..... Sept. 1-Nov. 30.

Ducks, coots and common moorhens..... Oct. 10-Jan 10.

Canada and white-fronted geese..... Oct. 10-Jan. 17.

Snow, blue and Ross' geese..... Oct. 7-Jan. 11.

Oregon

Mourning doves..... Sept. 1-Dec. 16.

Band-tailed pigeons..... Sept. 7-Dec. 16.

Ducks, coots, and snipe..... Oct. 3-Jan. 10.

Utah:

Ducks, geese, mergansers, coots, and snipe..... Oct. 3-Jan. 10.

Washington:

Ducks, geese, mergansers, and coots..... Oct. 3-Jan. 10.

Wyoming

Mourning doves..... Sept. 1-Oct. 15

Snipe and rails..... Sept. 19-Nov. 27.

Ducks, mergansers, coots, and geese(1).... Oct. 3-Jan. 3.

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(1) In Wyoming, the aggregate daily bag and possession limits of all ducks, mergansers, coots and geese are 2.

(2) In Idaho, the Pacific Population is that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. 93) to Challis, thence northerly on U.S. Highway 93 to

the Montana border; the Rocky Mountain Population is that portion of Idaho lying east of the line described above.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Date: September 23, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Federal Register

Tuesday
September 29, 1987

Part III

Department of Energy

Low-Level Radioactive Waste; Procedures for Submitting Documentation and Guidelines for Evaluating State and Regional Compliance with January 1, 1988, Milestone; Notice

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DEPARTMENT OF ENERGY

Low-Level Radioactive Waste; Procedures for Submitting Documentation and Guidelines for Evaluating State and Regional Compliance With the January 1, 1988, Milestone

AGENCY: Office of Nuclear Energy, DOE.

ACTION: Notice respecting compliance with the Low-Level Radioactive Waste Program, January 1, 1988, Milestone.

SUMMARY: The Low-Level Radioactive Waste Policy Amendments Act of 1985 establishes milestones for the development of new disposal facilities in compact regions and States that do not currently have operating disposal facilities. These non-sited compact regions and nonmember States must meet the milestones in order to receive rebates of a portion of the surcharges paid by their generators to the three States with operating disposal sites. Twenty-five percent of the applicable surcharges are received from these sited States and held in an escrow account maintained by the Department of Energy (DOE), which disburses the rebates upon determining that a State has complied with the applicable milestone.

Part I of this Notice discusses comments received on a March 5, 1987, **Federal Register** Notice of Inquiry (52 FR 6942), which contained draft Guidelines for DOE to determine the compliance of non-sited compact regions and nonmember States with the second milestone specified in section 5(e)(1)(B) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, which occurs on January 1, 1988. Part II contains procedures for submitting information to DOE and DOE's guidelines for evaluating compliance with the January 1, 1988 milestone. The information collections contained in these procedures are covered under the Paperwork Reduction Act of 1980, as amended, and are approved by the Office of Management and Budget (OMB) under OMB control number 1910–0900.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Smiley, Program Manager, Low-Level Waste Management Program, NE–24, U.S. Department of Energy, Washington, DC 20545, (301–353–4216).

SUPPLEMENTARY INFORMATION:

Background

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99–240) (the Act), sets out milestones at section 5(e)(1) for the development of new low-level radioactive waste disposal facilities in non-sited compact regions and nonmember States. Non-sited compact regions and nonmember States that are in compliance with a milestone received a rebate of 25 percent of the applicable surcharges paid by generators in their compact regions or States on waste disposed in the three State disposal facilities that are currently operating. Non-sited compact regions and nonmember States that are not in compliance with a milestone forfeit their potential rebate to the sited States in which the waste was disposed.

As trustee for the surcharge escrow account, DOE must determine whether each non-sited compact region and nonmember State is in compliance with the milestone and eligible for a rebate.

Non-sited compact regions and nonmember States must meet the requirements of section 5(e)(1)(B) of the Act in order to be found in compliance with the January 1, 1988, milestone. Section 5(e)(1)(B) of Pub. L. 99–240, states:

> By January 1, 1988—
>
> (i) each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed, and each compact region or the State in which its low-level radioactive waste disposal facility is to be located shall develop a siting plan for such facility providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application and shall delegate authority to implement such plan;
>
> (ii) each non-member State shall develop a siting plan providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application for a low-level radioactive waste disposal facility and shall delegate authority to implement such plan; and
>
> (iii) the siting plan required pursuant to this paragraph shall include a description of the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in the Act. Such plan shall include a description of the objectives and a sequence of deadlines for all entities to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning facility operation. Such plan shall also identify to the extent practicable, the process for (1) screening for broad siting areas; (2) identifying and evaluating specific candidate sites; and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State.

In Part II of this notice, DOE is issuing final procedures for non-sited compact regions and nonmember States to use in submitting milestone compliance documentation and guidelines for DOE to use in evaluating such documentation

Part I—Comments received on the Federal Register Notice of Inquiry

In order to solicit comments on the issues surrounding the submission and evaluation of milestone compliance documentation and also to solicit comments on DOE's procedures for administering the Surcharge Escrow Account, DOE published a Notice of Inquiry in the **Federal Register**, 52 FR 6942 (March 5, 1987), entitled, "Proposed Criteria for Complying with the Low-Level Waste Program, January 1, 1988, Milestone." Seventeen entities provided comments on (1) DOE's proposed criteria for evaluating compliance with the January 1, 1988, milestone, and (2) DOE's procedures for administering the Surcharge Escrow Account.

The milestone guidelines contained herein reflect the milestone requirements prescribed in the Act, and are responsive to the comments received from interested parties. The final DOE guidelines include the following changes from the earlier draft:

- The requirement that the siting plan include the signature(s) of the person(s) designated to approve the plan has been deleted.
- The proposed prescriptive list of siting plan elements implied by the Act has been deleted.
- Guidance on siting plan format and documentation requirements has been included.
- The requirement for demonstrating the "critical path" for the site development schedule has been deleted.
- Guidance has been added that the siting plan include a schedule that demonstrates operation of a low-level waste disposal facility within the time period specified in the Act.
- Guidance has been added that authority be legally delegated by January 1, 1988, to an entity or entities responsible for implementing the siting plan.

Comments submitted to DOE on the Notice of Inquiry and DOE's responses are discussed below.

A. Comments on Proposed Criteria for the January 1, 1988, Milestone

Fifteen entities commented on the proposed DOE compliance criteria. Most of these comments focused on the requirements for the siting plan. No comments were received concerning the requirement for designation of a host

State for a low-level waste disposal facility, or on the requirements for delegation of authority to implement the siting plan. The following summarizes these comments and DOE's resolution of the issues they raised:

1. One commentor felt that DOE should allow each non-sited compact region and nonmember State to establish its own protocol for submission of the siting plan because there may not be a person legally authorized by such State or compact region "to approve the siting plan." The final guidelines do not require the signature of a person authorized to approve the plan.

2. Nine commentors stated that the proposed guidelines exceeded the provisions of the Act in both the requirements for siting plan content and the level of detail required. The proposed guidelines included in the table of requirements certain tasks that DOE felt would necessarily have to be accomplished before a disposal facility could become operational. This list of implied tasks has been deleted from the final guidelines so as to permit States and compact regions to develop siting plans tailored to the circumstances prevailing in their particular jurisdictions.

3. Five commentors emphasized that DOE's siting plan requirements should be prefaced by the phrase, "to the extent practicable," wherever this phrase is included in the corresponding provision of the Act. The final guidelines incorporate this suggestion and DOE will evaluate documentation in these areas accordingly.

4. Four commentors expressed concern that DOE was requiring information on processes or tasks that would not be available by the January 1, 1988, milestone date. Neither the proposed nor final guidelines require that siting plans include the actual results or conclusions of tasks that have not yet been completed. The final guidelines do, however, require that siting plans include a general description of the processes that will lead to the development and operation of a disposal facility.

5. Eight commentors felt that the proposed guidelines required that siting plans adhere to a format that did not take into account the various approaches that would be taken by different entities preparing siting plans. However, the proposed guidelines did not specify any particular format. The final guidelines provide that no particular format is required as long as the documentation is complete. However, where a siting plan consists of a collection of documents, DOE has provided that this documentation should be cross-referenced to the provisions of the Act to which it is responsive, in order to ensure that such documentation is complete.

6. Two commentors felt that the proposed criteria for siting plan content should have been promulgated in accordance with substantive rulemaking procedures. However, the final guidelines on siting plan content reflect specific provisions of the Act without adding any new substantive material; in this sense, they are only "interpretive" and need not be adopted in accordance with substantive rulemaking procedures.

7. Eight commentors expressed concern that development of a siting plan with the level of detail required in the proposed guidelines would divert resources from more important aspects of site development. The Act is clear in its requirement for a siting plan that includes detailed descriptions. The final guidelines reflect the specific requirements of the Act.

8. Two commentors suggested that the DOE criteria be similar to the compliance criteria issued by the sited States. The final DOE guidelines are similar in many respects to the guidelines issued by the sited States, but must reflect DOE's interpretation of the Act and its responsibilities thereunder.

9. Two commentors suggested deleting the recommendation in the proposed criteria that non-sited compact regions and nonmember States send a copy of the request for rebate to the Governors or their designees in the three sited States. In view of the fact that DOE has no authority to specify informational procedures to be applied by the sited States, this requirement has been deleted. The commentors also suggested that the final guidelines be revised to indicate that DOE would make compliance determinations independently of evaluations made by the sited States and sited compact regions. The guidelines have never provided that DOE and the sited States and compact regions would make joint determinations regarding milestone compliance. DOE may discuss issues involving milestone compliance with the sited States, but in every instance will make its own determinations.

10. At the July 27, 1987, quarterly meeting of the Low-Level Radioactive Waste Forum, DOE representatives discussed with representatives of States and compact regions the provision of the Act requiring siting plans to "describe the optimum way to attain operation of a (facility) within the time period specified in the Act." (Sec. (5)(e)(1)(B)(iii)) In interpreting this provision, DOE proposed that each siting plan contain a schedule indicating compliance with the January 1, 1990, and the January 1, 1992, milestones, and that the siting plan indicate that the region or State would take title to the waste if a facility were not available by January 1, 1996.

Following these discussions DOE determined that 1996 could not serve as the deadline for the time period specified in the Act for operation of new disposal facilities. The various penalties and liabilities that are prescribed in the Act for the period between January 1, 1993, and January 1, 1996, were meant to reinforce the January 1, 1993, deadline, and were not intended to substitute 1996 as the deadline. Instead, 1996 applies to an entirely separate responsibility. On January 1, 1996, a State is required to assume liability for low-level radioactive waste generated within its borders if the State cannot provide for disposal of the waste or fails to take possession of the waste.

The final guidelines include an evaluation criterion that siting plans describe the optimum way to attain operation of a disposal facility by January 1, 1993. January 1, 1993, is identified at section 5(d)(2)(C) of the Act as the "deadline" for providing for the disposal of all low-level waste generated within a State or region. That date marks the end of the "interim access period," the period during which low-level waste generators in nonmember States and non-sited compact regions have conditional access to the three existing disposal sites. Moreover, Congress included in the Act provisions for penalizing regions and States that have not provided for the disposal of their waste by January 1, 1993. After January 1, 1993, regions and States that have not provided for such disposal will forfeit to generators in their regions surcharges in incremental proportions until such time as they can provide for disposal.

It also has been suggested that, by permitting a "Governor's certification", Congress implied that the region or State could manage its waste without a disposal facility after 1992 if it were unable to develop a disposal site by that date. By another amendment advancing the final date that a region or State could submit a disposal site license application from January 1, 1990, to January 1, 1992, some States have suggested that Congress implicitly abandoned January 1, 1993, as the deadline specified in the Act for the operation of new disposal facilities. Both the Governor's certification and the January 1, 1992, license application milestone are contingencies for regions

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and States that cannot submit a license application for a disposal facility by January 1, 1990. DOE feels that these provisions were not meant as an invitation to delay submission of a license application beyond January 1, 1990. The Act recognizes that various regions or States might not attain operation of a disposal facility by January 1, 1993, but such an observation is not equivalent to a postponement of January 1, 1993, as the time period specified in the Act for establishment of new disposal facilities.

Therefore, DOE believes that the siting plan submitted in response to the January 1, 1988, milestone should describe the optimum way to attain by January 1, 1993, operation of a facility for the disposal of all low-level waste generated within a nonmember State or non-sited compact region.

DOE encourages each entity preparing a Siting Plan to develop a plan whose schedule, required under section 5(e)(3)(1)(B)(i) and (ii) of the Act, and sequence of deadlines required under section 5(e)(1)(B)(iii), reflect the optimum way to attain operation of a facility by January 1, 1993. DOE also encourages each entity to provide sufficient flexibility in the overall schedule and sequence of deadlines so that, notwithstanding any potential deviation, it will be able to attain operation of a facility by January 1, 1993.

In the event that the planned schedule and sequence of deadlines described in the Siting Plan for establishing a disposal facility may materially deviate from the optimum way to attain operation of a facility by January 1, 1993, then the Siting Plan should indicate why the planned schedule and sequence of deadlines may so deviate.

B. Comments on Administration of the Surcharge Escrow Account

1. Four commentors requested that DOE make rebate disbursements to a non-sited compact region or nonmember State as soon as that entity demonstrates compliance with a forthcoming milestone. One commenter stated that the current disbursement policy is "contrary to Congress' clear intent to encourage the expeditious development of new LLW sites." DOE feels that the Act clearly directs that rebates be made after the milestone date. If surcharge funds were disbursed before the milestone dates, a region which had earlier demonstrated compliance could retract the legal basis for the compliance determination, leaving no means for DOE to recover the funds for redistribution to the sited states in accordance with the Act. DOE provides quarterly reports to non-sited compact regions and nonmember States regarding the amount of funds in their surcharge rebate accounts.

2. One commentor encouraged DOE to take a more active role in assuring that the sited States transfer all surcharges on a timely basis in order to avoid delays in disbursing rebate funds. DOE actively works with the sited States to establish appropriate procedures for payments into and disbursements from the escrow account and will continue to do so.

3. Two commentors requested that the deadline for transfer of surcharge funds by the sited States to DOE, announced in the **Federal Register** notice at 51 FR 23030 (June 24, 1986) dealing with the first milestone, be extended by five days to the 25th day of each month in order to allow the site operators and sited States additional time for processing and verification of the sources of the funds. DOE will continue its current policy of requiring these transfers by the 20th of each month in order to maximize investment earinings, and so that quarterly reports may be prepared and rebate disbursements can be made in as timely a manner as possible. DOE recognizes, however, that processing and verification procedures may sometimes delay submission of the surcharge funds.

II. Procedures for Submitting Documentation and for Evaluation Compliance with the January 1, 1988, milestone

A. Submitting Documentation

The Governor or authorized agent of a nonmember State or Executive Director, Chairman, or authorized agent of a non-sited comact region must send a request for rebate along with a complete siting plan by January 1, 1988, to: Manager, Low-Level Waste Management Program, U.S. Department of Energy, NE–24, Washington, DC 20545. The request should state that the nonmember State or nonsited compact region has met the requirements of the January 1, 1988, milestone as prescribed in section 5(e)(1)(B) of the Act. The request should include five copies of all applicable documentation. These copies are needed to permit the necessary reviews within the time limits of the program.

DOE encourages early submission of rebate requests and compliance documentation in order to facilitate the timely disbursement of surcharge funds from the Escrow Account following the January 1, 1988, milestone date.

B. Guidelines for Evaluation Milestone Compliance Documentation

1. Host State Identification.

Requirements of the Act: "* * * each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed * * *" (5(e)(1)(B)(i))

DOE evaluation guideline: The Compact Commission Chairman, Executive Director, or designated agent of the non-sited compact region shall submit documentation to DOE that identifies (1) the State in which its low-level waste disposal facility will be located and the legal documents committing the developer to develop that site.

2. Development of a Siting Plan

Requirements of the Act: "* * * each compact region or the State in which its low-level radioactive waste disposal facility is to be located, shall develop a siting plan * * *" (5(e)(1)(B)(i)) "* * * each non-member State shall develop a siting plan * * *" (5(e)(1)(B)(ii))

DOE evaluation guideline:

a. The Commission Chairman, Executive Director, or designated agent of each non-sited compact region should submit one siting plan to DOE. The Governor or designated agent of each nonmember State should submit one siting plan to DOE.

b. Although there is no prescribed format or organizational layout for the siting plan, the plan should address all requirements prescribed in the Act at section 5(e)(1)(B).

c. Siting plans consisting of various documents, e.g., legislation, regulations, technical reports, supporting plans, should be accompanied by a summary which cross references the siting plan requirements cited in the Act to the corresponding siting plan documentation. A collection of documents not accompanied by such cross referencing will not be considered an acceptable siting plan.

3. Siting Plan Contents

a. Requirements of the Act: The siting plan shall "* * * provide detailed procedures and a schedule for establishing a facility location and preparing a facility license application * * *" (5)(e)(1)(B)(i) and (ii))

DOE evaluation guideline:

The siting plan should include a schedule for filing a disposal site license application and provide detailed procedures as described in the guidelines below.

b. Requirements of the Act: "Such plan shall also identify, to the extent practicable, the process for (1) screening for broad siting areas; (2) identifying and evaluating specific candidate site(s); and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State." (5)(e)(1)(B)(i) and (iii))

DOE evaluation guideline:

The siting plan should describe, to the extent practicable, the process for completing each of the tasks leading to submission of the license application. These descriptions should indicate the objective of the tasks, identify the compact region or State entity(ies) that are or are expected to be responsible for ensuring completion of the tasks, provide general information on how each task will be completed, and provide a schedule for completion of each task.

c. Requirements of the Act: "The siting plan * * * shall include a description of the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in this Act * * *" (5)(e)(1)(B)(iii)) DOE evaluation guideline:

In the event that the planned schedule and sequence of deadlines described in the Siting Plan for establishing a disposal facility may materially deviate from the optimum way to attain operation of a facility by January 1, 1993, then the Siting Plan should indicate why the planned schedule and sequence of deadlines may so deviate.

d. Requirements of the Act: "Such plan shall include a description of the objectives and a sequence of deadlines for all entities required to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion of such activities will cause a delay in beginning facility operation." (5)(e)(1)(B)(iii)).

DOE evaluation guidelines:

1. To the extent practicable, the siting plan should identify those scheduled tasks whose delay may lead to a delay in facility operation. The siting plan may identify such tasks by indicating critical deadlines for the completion of such tasks along with the scheduled date of completion.

2. If any tasks have been completed before the siting plan is prepared, the siting plan should indicate the date that the tasks were completed, briefly describe the significant accomplishments or conclusions of such tasks, and cite any published reports or documents that resulted from execution of the tasks.

4. Delegation of Authority

Requirements of the Act: Each (non-sited) compact region or the State in which its low-level radioactive waste disposal facility is to be located "shall delegate authority to implement such plan * * *" (5(e)(1)(B)(i)) Each nonmember State "* * * shall delegate authority to implement such plan * * *" (5(e)(1)(B)(ii)) DOE evaluation guideline:

a. The siting plan may demonstrate that authority has been delegated either by providing evidence that a lead entity has been legally delegated the authority for coordinating the implementation of the tasks described in the plan, or by providing evidence that each entity identified in the siting plan has the legal authority and responsibility to implement the task or tasks assigned to it in the siting plan.

b. If a non-sited compact region submits a siting plan that is to be implemented by the compact commission on behalf of such compact region, the compact commission should demonstrate that it has legal authority, in the State in which its low-level radioactive waste disposal facility is to be located, to implement each planned activity.

Issued in Washington, DC, on September 22, 1987.

William R. Voigt, Jr.,

Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

[FR Doc. 87-22427 Filed 9-28-87; 8:45 am]

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Part IV

Department of Agriculture

Food and Nutrition Service

Department of Health and Human Services

Family Support Administration

7 CFR Part 273
45 CFR Parts 205 and 233

Consistency for Food Stamp Program, Aid to Families With Dependent Children (AFDC) Program, and Adult Assistance Programs; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

7 CFR Part 273

45 CFR Parts 205 and 233

[Amdt. No. 297]

Consistency for Food Stamp Program, Aid to Families with Dependent Children (AFDC) Program and Adult Assistance Programs

AGENCIES: Food and Nutrition Service, USDA, and Family Support Administration, HHS.

ACTION: Proposed rules.

SUMMARY: A Notice of Intent to Develop Regulations was published on February 19, 1985 (50 FR 6970). The purpose of that notice was to solicit comments and recommendations from the public on ways the Family Support Administration (FSA) which administers the Aid to Families with Dependent Children (AFDC) Program and the Food and Nutrition Service (FNS) which administers the Food Stamp Program could enhance consistency between the two programs given existing statutory constraints. This rulemaking is the result of that notice of intent and sets forth proposed changes to the regulations of both the AFDC and Food Stamp programs for greater consistency. It also applies to the Adult Assistance Programs (Titles I, X, XIV, and XVI (Aid to the Aged, Blind or Disabled) of the Social Security Act).

This proposal does not address the provision on the categorical eligibility of certain AFDC, Adult Assistance and SSI households for food stamps contained in the Food Security Act of 1985 (Pub. L. 99–198; December 23, 1985). However, the manner in which categorical eligibility affects the issues in this proposal is discussed, where applicable: e.g., the preamble section on verification.

DATES: Comments must be received on or before November 30, 1987.

ADDRESSES: Comments should be submitted in writing to the Administrator of the Family Support Administration, Attention: Mark Ragan, Acting Director, Office of Policy, Office of Family Assistance, Department of Heath and Human Services (HHS), 330 Independence Avenue SW., Room 5600, Washington, DC 20201, or delivered to the Office of Family Assistance, Family Support Administration, Room B–448, Transpoint Building, 2100 Second Street SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m., on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact persons shown below.

FOR FURTHER INFORMATION CONTACT: At the Family Support Administration: Mark Ragan, Office of Family Assistance, Family Support Administration, Transpoint Building, 2100 Second Street SW., Washington, DC 20201, telephone (202) 245–3290.

At the Department of Agriculture: Ms. Bonny O'Neil, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302, telephone (703) 756–3414.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–11. The Departments have classified this action as non-major. The effect of this action on the economy will be less than $100 million and will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related Notice(s) of 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, and Wayne Stanton, Administrator, Family Support Administration, have certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the programs. Potential and current participants will be affected because of changes to various policies and procedures for both programs.

Paperwork Reduction Act

Food Stamp Program

The proposed § 273.2(e)(3)(i) requiring the State agency to advise households of its policy to immediately deny an application after the household misses one interview does not significantly alter or change burden estimates for application processing approved under the Office of Management and Budget's (OMB) No. 0584–0064. The reporting and recordkeeping requirements contained in proposed §§ 273.2(g)(3), 273.10(g)(1)(i), (ii) and (iii), 273.12(a), 273.13, and 273.15(q) are approved under OMB No. 0584–0064. The remaining provisions do not contain any reporting or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

AFDC Program

The reporting and recordkeeping requirements contained in proposed § 205.10 are approved under OMB No. 0960–0260. The remaining provisions do not contain any reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act of 1980.

Background

An on-going initiative for both the Department of Health and Human Services and the Department of Agriculture has been to bring about increased consistency to the AFDC and Food Stamp Programs by eliminating unnecessary differences. Both Departments recognize that many individuals participate in both programs and similar information is required in each program's eligibility determination process. In proposing changes to certain policies in order to achieve consistency, this proposed rule is intended to reduce unnecessary burdens on recipients as well as on the States in the administration of the programs. Suggestions for additional modifications or improvements which would further these purposes are welcomed.

Format

This preamble is divided into four sections. This first section provides the rationale for the proposed rule, definitions, and explanations on other related regulatory changes. The second section clarifies existing policies which currently permit consistency between the programs without regulatory change. The third section discusses regulatory

changes proposed for the AFDC, Adult Assistance and Food Stamp programs. The last section concerns commenters' recommendations for changes which were not adopted.

Rationale, Definitions and Other Related Rules

These proposed changes are designed to remove barriers to consistent administration of the AFDC, Adult Assistance and Food Stamp Programs and are based primarily on the comments received on the Notice of Intent to Develop Regulations. Additional changes are proposed which did not result from comments or legislative amendments but are changes which we believe will further contribute to greater consistency. An example of such a change for the Food Stamp Program is how households with fluctuating income are to report status changes rather than changes in dollar amounts. For AFDC and the Adult Assistance Programs, the fair hearings regulations were reviewed for consistency changes that were not necessarily addressed by commenters. Any issues dealing with monthly reporting/retrospective budgeting (MRRB) are being handled separately by both Departments.

All comments received in response to the Notice were reviewed but only those issues that were either repeatedly addressed or those over which the programs have some regulatory flexibility are discussed in any detail. Comments concerning policies which have been adopted by State option rather than required by Federal regulation and comments which were unclear or not pertinent are not addressed in this preamble.

Definitions

The Food Stamp Program defines (7 CFR 271.2) public assistance (PA) as the following programs under Titles I, IV–A, X, XIV, and XVI (AABD) authorized by the Social Security Act of 1935, as amended:

- Aid to Families with Dependent Children (AFDC) (all States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands).
- Old-Age Assistance (OAA) (Guam, Virgin Islands).
- Aid to the Blind (AB) (Guam, Virgin Islands).
- Aid to the Permanently and Totally Disabled (APTD) (Guam, Virgin Islands).
- Aid to the Aged, Blind or Disabled (AABD) (Puerto Rico).

The last four programs are in operation in the areas specified above instead of the SSI program. Therefore, whenever a proposed change is applicable to households in which all members receive some type of PA benefits, all of the programs in the definition are included. The HHS rules refer to the latter four programs as the Adult Assistance programs. In the food stamp portion of this docket, the terms "PA" and "AFDC and Adult Assistance programs" are used interchangeably.

Categorical Eligibility

A number of commenters asked that PA recipients be categorically eligible, that is eligible to receive food stamps simply because of their eligibility for PA benefits. At the time of intent to propose rulemaking this could not be done by regulations. However, section 1507(a) of the Food Security Act amended section 5(a) of the Food Stamp Act to mandate categorical eligibility for households containing only recipients of AFDC, SSI, and Adult Assistance under titles, I, X, XIV and XVI of the Social Security Act within certain restrictions for "pure" PA/SSI households. This provision expires September 30, 1989 and USDA must evaluate the provision and report to Congress on the results of categorical eligibility.

The revisions needed to implement categorical eligibility and a discussion of issues are contained in a separate interim rulemaking published August 5, 1986. The information on categorical eligibility is provided to assist readers of this docket with how categorical eligibility will affect the various issues discussed herein.

Clarification of Existing Policy

The following discusses issues raised by commenters on which some degree of consistency can now be reached without any regulatory amendments.

Verification

A number of comments were received on verification requirements, especially those for citizenship. These comments were nearly evenly divided as to whether AFDC or food stamp's methods should be adopted. Food Stamp regulations set minimum requirements on what factors must be verified, and specify minimums on the types of acceptable documentation. The AFDC and Adult Assistance programs' regulations require substantiation of eligibility but do not set specific verification requirements for the eligibility worker. Consistency can be achieved within current regulatory provisions since State PA agencies are free to establish their own requirements. As States are ultimately held responsible for the accuracy of their determinations through quality control reviews, it is important for States to verify any information which affects eligibility or payments as thoroughly as possible. Since the Food Stamp Program's verification requirements are the more specific, State agencies may wish to consider applying those specific requirements to the AFDC and Adult Assistance programs. This proposed rule solicits comments regarding any limitations on the ability of States to verify the same information for all the programs involved.

Terminology

A number of commenters asked that the AFDC and Food Stamp programs come into closer conformity on the terminology used. A number of the terms involved were reviewed. We found that many terms have a specific meaning for each program. For example, "household" for the Food Stamp Program is defined, in short, as persons who eat together. "Assistance unit", for the AFDC Program, is defined, in short, as persons included in the AFDC payment. Additionally, the persons who eat together may include persons who are not eligible for AFDC, e.g., unrelated persons. One food stamp household may contain a number of AFDC assistance units because food stamps is interested in who purchases and prepares food together. So, in actuality, these terms are not comparable even though, on the surface, they appear to be. We are making the terminology in the area of notices to households after certification more consistent. The Food Stamp Program proposes to define notice as "timely and adequate" or simply "adequate" as does the AFDC Program. It should be noted that this change is one in terminology and that current time frames remain the same. We encourage commenters to provide specific examples when recommending changes for consistency in terminology. We would also like to point out that States could now use consistent terminology in developing their internal handbooks and instructions.

Rounding

Several commenters proposed that the AFDC and Food Stamp Programs use the same methods for rounding. Under current statutes and regulations at 7 CFR 273.10(e)(2)(ii)(A)(2) and 45 CFR 233.20(a)(2)(iv), State agencies are required to round down the AFDC payment amounts and the Food Stamp allotment amounts. In addition, for the AFDC Program, both the statute and regulations require rounding down of the standard of need. In all other levels of computation, i.e., income, payment

standard deductions. States may round in either direction when determining need and the AFDC payment. Also, the Food Stamp Program regulations at 7 CFR 273.10(e)(1)(ii) permit States to apply the same rounding precedures used by the AFDC Program. States may round in either direction when determining need and the amount of an Adult Assistance payment. Therefore, there are no inconsistencies which would necessitate a change in regulations.

Verification for Denials of Food Stamp Applications

A comment was raised that the Food Stamp Program should not require verification of household circumstances when an application is denied. There is apparently some confusion since the programs do not require verification under these circumstances. For example, if a household reports information which clearly makes it ineligible (such as a savings account with $10,000 in it), verification is not required unless the household wishes to provide it or if the reported information is somehow questionable. For quality control purposes, the household's statement would be considered adequate. No regulatory changes are needed for conformance. This procedure is of valuable assistance to State agencies as it saves eligibility workers time and frees them to devote time to more difficult cases.

Continuation of Food Stamp Benefits When AFDC Benefits Are Terminated

Several commenters asked that a household's food stamp benefits be terminated when its PA benefits are terminated. Pursuant to section 11(i) of the Food Stamp Act, as revised by Pub. L. 99–198, and 7 CFR 273.12(f) when a household's PA benefits are terminated, food stamp benefits can be denied only if the household is not eligible for food stamps. For example, food stamp benefits would be continued if the factor causing termination of the PA benefits did not affect eligibility for food stamps. However, if the factor (such as an increase in countable income) also affected the household's food stamp benefits, action is taken as appropriate to adjust the household's food stamp benefits. A single notice of adverse action is sent if there is sufficient information to make the food stamp change. If there is insufficient information, the household is provided a notice of expiration so that the household's situation can be explored in more detail. By this method, both the State agency and the household have some flexibility in handling the change. No revisions are being made on handling changes on jointly processed cases in this proposed rule.

Additional Conditions of Eligibility for AFDC and Adult Assistance

Commenters raised a number of issues about areas of eligibility conditions which must be met in the Food Stamp Program but not in the AFDC Program. Within certain limitations, specified at 45 CFR 233.10(a)(1)(ii)(B), States may now adopt parallel requirements in the AFDC and Adult Assistance programs. This regulation, to promote efficient administration and independent State welfare policies, permits the States to impose additional conditions of eligibility as long as the conditions are consistent with Title IV–A of the Social Security Act and are in keeping with its statutory goals. For example, a State could require cooperation with a Quality Control reviewer as a condition of AFDC eligibility, or it could specify periods of ineligibility for those individuals or assistance groups who transfer assets to be eligible for assistance.

Work Registration Procedures for AFDC

One commenter suggested that the AFDC Program conform to the Food Stamp Program which requires that work registration be performed by the State agency. Although it is a statutory requirement that registration for the regular Work Incentive Program (WIN) must be with the State employment services agency (SESA), under a memorandum of agreement the State welfare agency could perform the registration function for SESA. In States which have chosen to operate a WIN Demonstration Program, work registration is the responsibility of the IV–A State agency.

Treatment of the Earned Income Credit for AFDC

Another commenter suggested that the AFDC Program follow the Food Stamp Program's practice of treating the Earned Income Credit as income only when it is received. The Deficit Reduction Act of 1984 (DEFRA) has made this a statutory requirement, and a revised regulation has already been published at 45 CFR 233.20(a)(6)(ix).

Bilingual Requirements for AFDC and Adult Assistance

Several commenters suggested that the AFDC program amend its rules to require certain State agencies, serving a substantial number of non-English-speaking households, to have bilingual personnel and printed material. Another commenter proposed that the Food Stamp Program's multilingual requirement for notices by replaced with a multilingual label for the notice telling households to have the notice translated.

Under the AFDC program's current rules, and the Adult Assistance programs as well, States are free to hire bilingual staff and print forms, etc., in as many languages as the State deems necessary with costs matched by the Federal government. Many States have adopted this procedure. The Family Support Administration does not believe it would be cost effective to require the use of bilingual staff and printed materials as States should have maximum flexibility in this area to adapt their own programs to meet the needs of their recipient populations. As to the comment on substituting a multilingual label in the Food Stamp Program, the Act requires that materials be available in other languages if appropriate, not just an indication that a translation is available.

Timely Reporting of Changes for AFDC and Adult Assistance

Severly commenters recommended that the two programs adopt uniform requirements for reporting changes which would affect eligibility or the amount of assistance. Although the Food Stamp Program regulations require such changes to be reported within 10 days, neither AFDC nor Adult Assistance regulations establish a time limit. States are therefore free to set their own standards for reporting changes and may adopt standards for AFDC and Adult Assistance which are consistent with those required for the Food Stamp Program.

Regulatory Changes

The following sections set forth what changes are being proposed for the AFDC, Adult Assistance and Food Stamp programs. The proposed food stamp changes are discussed first in their entirety because they appear first in the Code of Federal Regulations (Part 7 versus Part 45). A discussion of the AFDC and Adult Assistance changes follows immediately thereafter. In some cases the proposed rule results in the same requirements for all the programs. Even in these cases separate discussions are maintained (although the Adult Assistance Programs are generally included in the discussions of the AFDC changes) in order to establish a rationale within each program's framework.

Food Stamp Program

Application Processing/Scheduled Interviews-§ 273.2(e)(3)

The Notice of Intent specifically requested comments on the Food Stamp Program's current policy on second interviews contained in 7 CFR 273.2(e)(3). The current rule requires the State agency to attempt to schedule a second interview if the household fails to appear for the first interview. Further, the State agency can only deny the case if the household misses two interviews and the 30-day processing time from the date of application has elasped. Federal policy for the AFDC and Adult Assistance Programs does not require an interview. However, if the State under its policy requires one, it is not mandated to reschedule a missed interview, and the State agency may deny the application immediately after the applicant fails to appear for the initial interview. The large majority of the comments received on second interviews recommended the use of the AFDC Program's policy. While food stamps cannot delete the interview requirement because of the Food Stamp Act, the Department of Agriculture is proposing to delete the requirement to schedule a second interview if the household failed to appear for the first scheduled interview. The State agency would also have the option of either immediately denying the household when it misses the first interview scheduled or denying the application on the 30th day following the initial application. Whichever option is chosen, the entire caseload for the State must be handled in the same way. The State agency would be required to inform the household prior to the first scheduled interview of the consequences of missing that interview; i.e., it is the household's reponsibility to schedule another interview as the State agency would not be rescheduling the missed interview and whether the State agency has opted to immediately deny the application. This information must be provided in writing, either with the application form or when the household is given its interview time.

States which choose to immediately deny the household after missing a scheduled interview must provide a notice of denial at the time of the missed interview to inform the household that it must reapply if it wishes to receive food stamps. The State agency may develop a system to permit the household to reapply using only Part 1 of the FNS–385, Application for Food Stamps, (the "tear-off" sheet) to avoid completion of an additional multi-page application form. Any changes from the original information on the application would be updated and initialed by the applicant or the authorized representative. For quality control (QC) purposes, the State agency must clearly differentiate between the original denied application and the reapplication made after the household misses the initial interview. If the State agency does not opt to immediately deny the household after missing the initial interview, the notice of denial would be sent at the end of the 30-day processing time for households which have not contacted the State agency to reschedule an interview. At its option, the State agency may send a reminder to the household after it misses its scheduled interview, again explaining the consequences of missing the scheduled interview.

The Department is further proposing to allow the State agency to immediately deny an application after the household misses a recertification interview provided the interview was scheduled after the household had timely filed the application. However, if the household failed or refused to appear for an interview prior to submission of a timely application, the State agency is required to attempt to reschedule another interview. If the household fails to appear for the second scheduled interview, the State agency may immediately deny the application.

Application Processing-§ 273.2(g) and (h)

The AFDC regulations, at 45 CFR 206.10(a)(3), require that a decision of eligibility shall be made "not in excess of 45 days" from the date of application while for disability under APTD and AABD the limit is 60 days. Section 11(e)(3) of the Food Stamp Act, as amended, provides that the State agency complete certification and provide an allotment not later than 30 days following the filing of an application. In addition, Food Stamp Program regulations at 7 CFR 273.2(h) provide that if the State cannot take any further action on the application due to the fault of the household, the State agency must give the household an additional 30 days to take the required action. If verification is lacking, the State may hold the application pending for 30 days following the date of the initial request for the missing verification. Currenty, the State has the option to either send a household a notice of denial or a notice of pending status if verification is lacking and a decision of eligibility cannot be made by the 30th day after application. However, elsewhere in this regulation, a proposal is made to modify the notification requirements.

Several comment letters addressed the application processing timeframes of the two programs. Most of the commenters recommended that the Food Stamp Program adopt the AFDC Program's timeframes which recommendation cannot be followed due to statutory restrictions. This proposed rule retains the statutorily mandated 30-day food stamp processing standard, but deletes the 30-day pending status in § 273.2(h) to be more compatible with the AFDC Program by at least eliminating the pending period which the AFDC Program does not have. The Department of Agriculture believes that households in need of assistance should take responsibility for promptly meeting all application processing requirements. However, no program can deny assistance at the end of the mandated processing time solely because the time limit for processing the application has lapsed. Therefore, the food stamp requirements in § 273.2(h)(3) on continuing to process an application when the State agency causes the delay is retained in the revised § 273.2(h). It should be noted that State agencies are not precluded from using a 30-day processing standard for their PA caseload to conform with that of the Food Stamp Program.

Residue—§ 273.3

The regulations of the Food Stamp Program at 7 CFR 273.3 require that a household reside in the project area in which it files an application for participation. A project area is a subdivision of the State, normally a county or independent city. However, some States have a Statewide project area. The AFDC and Adult Assistance programs require that the individual be a resident of the State. Commenters asked that the Food Stamp Program adopt the AFDC residence policy. This rulemaking changes 7 CFR 273.3 to permit States to allow Statewide residency. The State agencies could still designate limited project areas and could restrict where a given household could apply. This change will assist in reduction of quality control errors caused by a household participating in the wrong project area.

Work Registration Exemptions—§ 273.7(b)

A number of commenters suggested that the exemptions from AFDC's work incentive (WIN) program and food stamp's work registration be brought into closer alignment. Most of the current exemptions are specified by statute and are unalterable thus precluding total consistency. As a result of DEFRA, women in their third trimester of pregnancy are now exempt

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(see 42 U.S.C. 602(a)(19)). For consistency, the Food Stamp Program proposes to also exempt these women from work registration under the authority of 7 U.S.C. 2013(c) and 2015(d). Since publication of the Notice of Intent, the Department has made efforts to bring requirements of the AFDC and Food Stamp Program into closer conformity in the area of work programs. For example, DEFRA excused from work requirements all individuals actually employed under a Work Supplementation Program (WSP). Through WSP, the AFDC Program diverts the grant to an employer in order to subsidize wages. Under this program, AFDC recipients may choose, on a voluntary basis, to accept an offer of work which is subsidized with State and Federal funds. Prior to December 31, 1986 regulations at 7 CFR 273.7(b) provided a work registration exemption for persons "subject to and participating in the WIN program under title IV." The Department recognized that this language precluded work registration exemptions for persons participating in title IV work programs other than WIN. It was not the intent of the Food Stamp Program to exempt those participating in WIN (title IV–C) from work registration while requiring registration of individuals participating in title IV–A work programs (including CWEP, job search and WSP). Therefore, a change was made in the final rule, entitled Employment and Training Requirements, published at 51 FR 47378, December 31, 1986. Now household members subject to and participating in any work program under title IV–A of the Social Security Act, as amended, are also exempt from food stamp work registration requirements.

Jointly Held Resources—§ 273.8(d)

Some comments were received on the Food Stamp Program's policy at 7 CFR 273.8(d) which requires counting as available to each household any jointly held resource, unless it is proven inaccessible. Under the AFDC and Adult Assistance programs, States establish criteria consistent with State law for determining the availability of jointly held resources.

To more closely conform the Food Stamp Program's and the PA policy, this proposal would exclude as a resource any jointly held available resource which State law prohibits noncontributory signatories from withdrawing or liquidating for their own benefit. Existing regulations cover jointly held unavailable resources in that they are considered inaccessible if the household's access to them depends on agreement of a joint owner who will not comply. The AFDC and Adult Assistance programs are also amending their regulations in this area.

Funeral and Burial Agreements—§ 273.8(e)

Both the AFDC and Food Stamp Programs exclude one burial plot per member of the food stamp household and the assistance unit for AFDC from being considered an available resource. In addition, the regulations of the AFDC Program exclude for resource purposes the value, up to $1500 in equity value per member of the assistance unit, of a bona fide funeral/burial agreement. The $1500 limit was taken from the SSI program. The Food Stamp Program, by an indexed policy memorandum (Policy Memorandum 82–3, October 8, 1981) issued under the Policy Interpretation Response System, extends the regulatory exclusion (now statutory) for burial plots to funeral/burial agreements. The policy memorandum advised that no exclusion could be provided unless such funds are inaccessible or must be repaid, if withdrawn, according to a contractual agreement. However, no limit is now placed on the amount of the agreement.

Commenters requested consistency in this area, the majority preferring that the Food Stamp Program adopt the AFDC Program's policy. Therefore, it is proposed that 7 CFR 273.8(e)(2) be amended to exclude as a resource the value of a formal funeral/burial agreement up to $1500 in equity value per household member. Examples of formal agreements are those which are either completely inaccessible or for which there is a contractual obligation to repay any withdrawals. By placing a limit on the amount of the agreement, the Food Stamp Program is not only becoming consistent with the AFDC Program but is lessening the likelihood of abuse of the exemption.

Interest Income—§ 273.10(c)

Commenters requested that the Food Stamp Program adopt their understanding of the AFDC policy on interest income. The commenters believed, incorrectly, that the AFDC program counted interest as a resource. However, both programs now count interest as income in the month received. Determining and verifying each month's interest amount can be very difficult, given the normally minimal amount involved and the fact that statements may not be available on a monthly basis. Therefore the programs are proposing that States agencies be given the option of projecting monthly interest income by periodically averaging monthly interest.

The eligibility worker would take a series of monthly figures, divide that total by the number of months involved, and project that average as the monthly figure taking into account any evidence that this average would no longer be expected to continue as a reliable average. This is different from taking an amount paid quarterly or semi-annually and prorating it over the period the payment covered, which can currently be done. The State agency would have the option of having the household report the monthly amount each month or only reporting each month's payment at recertification. These options should assist States by easing their administrative burden while still capturing a source of income to the household.

Notices—§ 273.10(g) and 273.13

A number of comments were received on the notices the programs provide to recipients. As a result, changes are being proposed to the programs' notice provisions. For the Food Stamp Program, the notices of adverse action, eligibility and denial are being changed. Use of the notice of pending status will be limited to State agency-caused delays. A discussion of the proposed revisions and why other requested changes were not made follows here.

Notices of eligibility, denial and pending status—§ 273.10(g)

While the large majority of comments on notices used by the Food Stamp Program dealt with the notice of adverse action, this proposal affords FNS the opportunity to bring the initial notices of eligibility, denial and pending status into closer consistency with notices provided in the AFDC and the Adult Assistance programs. In addition, the material included in these notices would be streamlined. However because certain information is needed for the Food Stamp Program (such as for variable benefits) that might not be needed for the PA programs and vice versa, there are some areas where notices must remain different. The notice of eligibility provisions would no longer require the form to contain information about legal aid availability or about how to contact the food stamp office. In addition, the optional reminder to the household to report changes or provide other useful information would no longer be specified. This information is given to the household at certification. The AFDC and Adult Assistance programs do not have such requirements. Households should know how to contact their local offices and should feel free to inquire about legal aid availability.

Also, households are told to report changes either on the monthly report or otherwise.

Further, the State agency may still provide such information or any other information it feels is useful. It is not necessary to provide such detail as to how a State must design its notices. Also, because many Statewide systems are in place and more may be established, given the change in the residency requirements in this docket, it may be difficult to provide such information about individual communities.

The notice of denial is also being redesigned. In addition to deletion of information on legal aid availability and how to contact the local office as discussed above, the notice of denial would be sent to households whose applications were not processed at the end of 30 days after application unless the State agency is at fault. The State agency will no longer have the option to send a notice of pending status. The notice of pending status must still be used for delays caused by the State agency.

Notice of Adverse Action—§ 273.13

Many commenters asked that the definitions for an adequate and timely notice be the same for all programs. For consistency, this proposal would remove the requirement at 7 CFR 273.13(a)(2) about a contact person and on legal aid availability and would add a requirement that the notice of adverse action include the specific regulations or law supporting the action taken. For the purposes of the notice, the regulation may either be the Federal or State regulatory citation or the State manual or handbook citation. For clarification, this proposal adds a statement that for monthly reporting households, adequate notice is defined elsewhere. Also, it clarifies that the household would have a right to continued benefits if it requests a fair hearing within 10 days after the notice was mailed.

As to the exemptions, this proposal would add an exemption from sending a notice of adverse action if agency mail is returned with no known forwarding address but requires provision of benefits if the household's whereabouts becomes known in the issuance month. In addition, the exemption section is being revised to make a distinction among the time when: (1) A timely and adequate notice must be given; (2) no notice of any kind is given; (3) an adequate notice is given; or (4) when another type of notification is given.

Several commenters asked that the Food Stamp Program adopt the AFDC Program's voluntary waiver to a notice of adverse action and the right to continued benefits pending a hearing if an overissuance would result. This recommendation is not adopted as there are already adequate ways for the household to avoid an overissuance, such as not transacting its authorization card or returning its coupons.

Disallowed Costs of Producing Self-employment Income—§ 273.11(a)(4)

A number of commenters suggested that the items which are disallowed as costs of doing business when calculating self-employment income be made the same. Currently, self-employment income, or profit, is derived from subtracting certain business expenses from the gross receipts. Business expenses must be directly related to producing the goods or services. Certain items are excluded by each program from allowable business expenses. This rule conforms the list of items excluded by each program.

Boarders § 273.11(b)

A number of commenters recommended that the Food Stamp Program count income received from boarders when the household does not own and operate a commercial boardinghouse in the same manner as does the AFDC program. The AFDC and Adult Assistance programs treat boarder-generated income the same as all other self-employment income, and do not differentiate between income received by households which own and operate a boardinghouse and those which do not. The Food Stamp Program does differentiate between these two types of boarder income, treating income to households which own and operate a commercial boardinghouse the same as all other self-employment income. Income received from boarders in cases where the household does not own a commercial boardinghouse is calculated differently.

Current Food Stamp Program regulations at 7 CFR 273.11(b)(1) provide that States must use the Thrifty Food Plan as a basis of establishing the cost of doing business for income received from boarders if the household does not own and operate a commercial boardinghouse. The rules provide that the cost of doing business is either: (1) The cost of the Thrifty Food Plan for a household size equal to the number of boarders; or (2) the actual documented cost of providing room and meals, if that cost exceeds the Thrifty Food Plan. The majority of comment letters received on this subject recommended that the policy be more flexible, and patterned after the AFDC policy. Although its policy is not currently found in regulation, the AFDC and Adult Assistance programs permit States to designate a flat percentage or a flat amount as the cost of doing business provided there is an objective and justifiable basis. If it can be shown that the actual expenses are higher than those resulting from application of the State's method, the State must use the higher amount. In this proposed rule, the Food Stamp Program is adopting the PA method, and the AFDC and Adult Assistance programs are putting their policy into regulation. This proposal establishes a ceiling of 75 percent of boarder-generated income as the cost of doing business. The figure of 75 percent was arrived at using 1982 data from the *Statistics of Income Bulletin, Summer 1984* issued by the Internal Revenue Service. This data showed for rooming and boarding houses (no data is available for individual roomers and boarders) that 72 percent of business gross income is for allowable expenses which excludes depreciation. We have rounded this figure up to 75 percent. For the Food Stamp Program, income received from boarders in a commercial boardinghouse will continue to be regarded as self-employment income. FNS encourages comments on the different treatment of boarder-generated income between households which own a commercial boardinghouse and those which do not.

Change Reporting Requirements for Non-Monthly Reporting Households § 273.12(a)

On January 16, 1981, the Department of Agriculture published a proposed rulemaking (46 FR 6310) which included a provision to revise the current policy on when certified households should report changes in income. Currently households are required to report changes in the source of income and gross monthly income changes exceeding $25, with some exceptions. While this requirement causes no confusion in those instances when income either does not change or changes in a way which can be anticipated, the requirement is not clear with regard to fluctuating income. There are a number of interpretations of how to apply the change reporting requirements to fluctuating income and a number of options were considered when the original proposal was prepared. Please refer to the January 16, 1981, proposed rulemaking for a further discussion of the background of this issue.

The proposed revision to the change reporting policy was not adopted as a final rule because the Department felt,

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at that time, monthly reporting would solve the problem of what changes recipients must report. Monthly reporting has now been in effect for a while but has not provided the complete solution the Department thought it would. A number of households are not subject to monthly reporting, either because of a statutory exclusion or because a waiver was granted for various categories of households for which monthly reporting is not cost-effective. For households exempt from monthly reporting but which have fluctuating income, the reporting of non-status (e.g., temporary overtime or loss of a few hours pay) changes is inconvenient and is difficult for States to administer. Also reporting changes in fluctuating income makes it difficult to calculate an accurate method of review for QC purposes. The AFDC Program does not specify by regulation how its recipients are to report changes. Each State agency decides how non-monthly reporters should report changes. A number of States define changes in circumstances as outlined in the AFDC QC manual. The AFDC QC manual (section 3 subsection 3050(B)) defines a change in circumstance as any employment status change which results in either increased or decreased income, for example, part-time to full-time, loss of job or change in hourly rate. Therefore, in the interest of consistency with the AFDC Program and to reopen comment on the issue of how to report changes in fluctuating income, the Department is reproposing an amendment to 7 CFR 273.12(a) on how changes are to be reported.

The Department proposes to require households with fluctuating income to report changes in the source of income, in the wage rate of fluctuating income, and ongoing changes in the number of hours worked—rather than changes of more than $25 a month found in the current regulations. (There would be no change in the reporting requirements for households who do not have fluctuating incomes). Errors in household income are more frequently attributable to changes in basic employment status, such as converting from unemployed to employed status or from part-time to full-time employment, rather than fluctuations in the hours worked. The reporting of more permanent changes in wage rates would allow State agencies to more exactly match benefits to households' long term circumstances.

Under this proposal, households would report permanent changes in their circumstances. These would be changes that would affect future months' income and not sporadic changes. Because only permanent changes would be reported, the handling of changes by clients and caseworkers would be less susceptible to error and the household would have a better understanding of what would have to be reported. Finally, this proposal would be easier for State agencies to monitor and would set a uniform method to be followed in QC reviews.

The Department recognizes that this proposal poses some issues of its own, such as the need to have a different set of income reporting requirements for households with fluctuating income than for other households. The Department would appreciate comments, especially on how State agencies are currently handling changes in fluctuating income.

Current regulations do not provide for the reporting of changes by households which have filed food stamp applications but have not yet been certified. Both section 6(c) of the Food Stamp Act of 1977 and § 273.12(a)(1) of the current regulations require only participating or certified households to report. The Department proposes to correct this omission by requiring applying households to report changes which have occurred since the filing of the application at the food stamp interview. Applicants and eligibility workers would discuss such changes when attempting to anticipate future circumstances. The Department further proposes that households report changes that occur between the food stamp interview an the eligibility determination within ten days after being certified as eligible. This procedure will avoid imposing an unnecessary burden on households not yet participating in the program, yet will not allow important changes to go unreported. Allowing such households ten days after being certified to report is consistent with current reporting requirements.

Fair Hearing Appeals—§ 273.15(q)

The PA regulations at 45 CFR 205.10(a) permit State agencies to establish a hearing appeals system which would provide recipients either a hearing before the State agency or an evidentiary hearing at the local level with a right of appeal to a State agency hearing. In the latter, a two-tier system, the second hearing can be either a "review hearing"of the prior evidence (if the recipient does not request another new hearing (a "de novo" hearing)) or it can be a "de novo" hearing.

The Food Stamp Program regulations at 7 CFR 273.15(q) provide that after a local level hearing which upholds the State agency action the household shall be notified of its right to request a completely new ("de novo") State agency level hearing. If a new hearing would pose an inconvenience to the household, a State level review of the local hearing may be requested instead of a new hearing. If the household indicates that it wishes to appeal, but does not select the method, the State agency shall proceed with a new State level hearing.

No comments were received on this subject but in the interest of conformity a change is proposed to adopt the PA policy. This proposal would allow State agencies the option of offering either a "de novo" or review hearing as the second tier in a two-tier system if the recipient does not specify a "de novo" hearing.

Time Limits for Taking Collection Action—§ 273.18(d)(3)

Comments were received on bringing the programs' policies and procedures on recipient claims closer together. While many of the Food Stamp Program's requirements on recipient claims are statutory, those of the AFDC Program are not. The AFDC statute requires the collection of all overpayments except that States may elect not to take action to recover overpayments of less than $35 from individuals no longer receiving assistance. Within this framework the basic AFDC policy is that States develop policies for recovering overpayments and take all reasonable steps to promptly recover overpayments in a timely manner. Therefore, State agencies now have flexibility to conform the procedures of the AFDC Program to those of the Food Stamp Program.

There is, however a specific regulatory requirement in the AFDC Program establishing a time limit for the State agency to take action once a claim/overpayment has been identified. There is no similar provision in the Food Stamp Program. In this proposal, the Food Stamp Program will adopt the AFDC Program's requirement because it will enhance consistency as well as improve the efficiency of claims/overpayment collection efforts. This new provision would require the State agency to take one of the following actions by the end of the quarter following the quarter in which the need for a claim is first identified: (1) Recover the claim, (2) initiate action to locate and/or recover the claim from a non-recipient, (3) execute a repayment agreement or, if applicable, reduce the household's benefits, or (4) initiate action to recover the claim from a recipient who is not subject to benefit reduction. Where compliance with the

above is not possible, the extenuating circumstances must be documented. For example, if collection of the claim would prejudice a potential fraud case or if there are problems with obtaining information needed to establish the claim, the State agency should document the appropriate details.

AFDC and Adult Assistance

Notice of Adverse Action § 205.10(a)(4)

Many commenters asked that the definitions for an adequate and timely notice be the same for both the AFDC and Food Stamp Programs. The AFDC and Adult Assistance programs' regulations at 45 CFR 205.10(a)(4)(i) (A) and (B), which define adequate and timely respectively, provide considerable flexibility for States to design notices and adopt policies which would accommodate the notice requirements of food stamps. Therefore, for the most part, proposed regulations represent adoption of a common, or at least similar, terminology with the Food Stamp Program rather than a change in current AFDC and Adult Assistance requirements.

There is, however, one policy change in the notice requirement proposed for the AFDC and Adult Assistance programs. This is addressed at § 205.10(a)(4)(ii)(B) of this rule which exempts from timely notice any termination of assistance resulting from a recipient's volunary oral request for termination in the presence of an eligibility worker. This change will permit States to terminate assistance at the oral request of the recipient without advance notice as is currently permitted by the Food Stamp Program. As for any case where action is taken without timely notice, agencies are required to send adequate notice of adverse action no later than the date of action; and, if the recipient requests a hearing within 10 days of the mailing of that notice, the State agency must reinstate assistance until a decision is rendered after the hearing. Thus, the recipient is protected in case there is a misunderstanding.

Subparagraphs in paragraph (ii) of § 205.10(a)(4) have also been reordered to be more like the order of regulations of the Food Stamp Program.

Fair Hearings § 205.10(a) (7) and (13)

From the comments received and from analysis conducted in conjunction with development of this proposal, one change has been identified that would make the AFDC and Adult Assistance programs' fair hearings requirements more consistent with those in the Food Stamp Program. This proposal would amend 45 CFR 205.10(a)(7) to permit, at State option, reinstatement of assistance pending a hearing if the recipient has good cause for failing to request a hearing with the 10 days after the date of the action. Good cause is limited to circumstances beyond the recipient's control, e.g., hospitalization, death in the family. The current regulation already permits reinstatement if the recipient requests a hearing up to 10 days after the date of the action.

In addition to the change described above, this proposal also would add headings to a number of paragraphs in this section in order to make the regulations easier to read.

Some of the comments received requested regulatory changes which are unnecessary because States currently have the flexibility to modify their AFDC and Adult Assistance programs' fair hearing requirements in these areas to conform with those for the Food Stamp Program. For instance, a commenter requested that the AFDC Program adopt the Food Stamp Program provision that permits a participant to waive continuation of benefits pending a hearing decision. Section 205.10(a)(6)(i)(c) of a Final Rule published on March 18, 1986, in the **Federal Register** (Vol. 51, No. 52, p. 9203), makes it explicit that States may permit recipients to waive continuation of benefits.

Another area in which States have the option of establishing consistency is requests for hearings. Although the Food Stamp Program requires States to accept both oral and written requests, the AFDC and Adult Assistance regulation at 45 CFR 205.10(a)(5)(i) permits States to accept oral requests or to require that requests be in written form. Since some comments favored requiring acceptance of oral requests while others favored allowing States to accept written requests only, States will continue to have maximum flexibility in this area.

One commenter suggested that the AFDC regulation be amended to adopt the Food Stamp Program requirement that assistance must be continued pending a hearing if the timely notice period ends on a weekend or holiday and the hearing request is received the next day. Since the regulation at 45 CFR 205.10(a)(7) permits reinstatement of assistance if the request is received up to 10 days after the date of the action, States may institute such a provision without a change to the regulation.

Another recommendation would expand the AFDC regulation at § 205.10(a)(8) to match the detailed and specific Food Stamp Program requirements regarding the time, date, and place of the hearing and the content of the advance notification to the applicant or recipient. Since the existing regulation already permits States to have the same requirements and many, in fact, do, DHHS does not believe that it is necessary to amend the regulation to require the adoption of identical provisions.

One suggestion called for the AFDC Program to adopt a Food Stamp Program requirement with respect to the reinstatement and continuation of benefits pending a hearing decision. The Food Stamp Program's regulations at 7 CFR 273.12(e) require that, when benefits are automatically reduced or terminated because of a mass change, the benefits cannot be reinstated and continued pending the hearing unless the issue being contested is one of improper computation of benefits or misapplication or misinterpretation of Federal law or regulation. The corresponding AFDC and Adult Assistance programs' regulation at 45 CFR 205.10(a)(5) provides that, "A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation." Since this provision permits a State to not grant a hearing when the sole issue being contested is the State or Federal law itself, it is broad enough to permit a State to grant a hearing if the issue is one of misapplication or misinterpretation of the law. Therefore, in actuality, a State could follow food stamp policy on this point.

Social Security Numbers § 205.52

A number of commenters requested that similar policies with respect to Social Security Numbers (SSN) be adopted by both the AFDC and Food Stamp Programs. Most differences were addressed in the final Income and Eligibility Verification System (IEVS) Rule on section 1137 of the Social Security Act published in the **Federal Register** on February 28, 1986, (Vol. 51, No. 40 p. 7271). However, the final Food Stamp Program IEVS rule changes § 273.6 to permit continued participation when there is good cause for failure to complete an application for an SSN but the final AFDC and Adult Assistance IEVS rule at § 205.52 does not.

Current AFDC regulations provide for two procedures when an AFDC applicant/recipient is unable to furnish an SSN. First, States may execute agreements with the Social Security Administration whereby the State agency will complete an SSN application for the AFDC applicant/recipient. If the individual is otherwise

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eligible, financial assistance is provided without undue delay. Secondly, in the non-agreement States, the regulations require that the AFDC applicant/recipient must apply directly to the Social Security office for an SSN. In this instance, the requirement "to apply" is very strictly interpreted. For example, the individual who actually applies at the Social Security office for an SSN and is told that the application cannot be completed because of the lack of necessary evidentiary documentation, is not considered, under current policy, to have met the requirement "to apply for an SSN." The trip(s) to the Social Security office, and the need to secure the required documentation (which is not always immediately available) contribute to the delay or denial of financial assistance under these circumstances.

In addition to moving towards consistency with food stamp policy, the proposed rule will remove a major obstacle to providing assistance payments to needy individuals. It will permit continued AFDC and Adult Assistance if the State agency has determined good cause exists for failing to complete the application for an SSN, e.g., the individual provides documentation that he or she has sent for and is awaiting receipt of a birth certificate from another State. If the State agency determines that good cause exists, and the applicant is otherwise eligible, the individual will be eligible for assistance for a period of no longer than four months. If the applicant has been unable to obtain the documents required to complete the SSN application, the State agency's eligibility worker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly during the four-month period in order for the individual to continue to receive assistance. The State agency must maintain documentation of the good cause determination in the case file. Good cause will not exist when delays are due to factors such as illness, lack of transportation or temporary absence because the Social Security Administration makes provision for mail-in applications in lieu of applying in person.

Jointly Held Resources—§ 233.20(a)(3)(ii)(D)

Some commenters suggested that changes be made which would permit consistency when resources are jointly owned by a member of the assistance unit (household) and a non-member. AFDC and Adult Assistance regulations at 45 CFR 233.20(a)(3)(ii)(D) require States to consider resources available for current use and further provide that resources are considered available when actually available, and when the applicant/recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. An Action Transmittal, AT–82–27, dated November 1, 1982, interpreted this to mean that whether or not a jointly owned resource is considered available in its entirety to an applicant/recipient owner must be determined in accordance with applicable State law. An exception is made for resources jointly held by SSI and AFDC recipients. In those cases, the value of the jointly held resources are prorated among the owners.

Section 5(g) of the Food Stamp Act requires that the Secretary prescribe allowable amounts of liquid and nonliquid resources. Federal regulations at 7 CFR 273.8(d) specify that resources owned jointly shall be considered in their entirety to each owner unless the applicant/recipient can establish that such resources are inaccessible.

The programs are amended their regulations to provide that States must consider any jointly held available resource in its entirety to each owner unless State law prohibits noncontributory signatories from withdrawing joint account funds or liquidating resources for their own benefit. This proposal would also specify that this policy applies to resources jointly held by SSI and AFDC recipients. This change is consistent with section 402(a)(24) of the Social Security Act, as amended, which precludes States from counting an SSI recipient's income and resources in determining eligibility for AFDC and payment amounts. When State law permits unrestricted access to either individual, the resource belongs in its entirety to each individual even though it may be jointly held. The proposal therefore reflects the reality of what resources the individual has access to.

Proration of Contractual and Self-Employment Income—§ 233.20(a)(3)(iii)

Current AFDC and Adult Assistance programs' regulations permit States to average or prorate income received by individuals paid on a contractual basis over the period of the contract and income received by farmers or self-employed individuals over the period covered by the income. On the other hand, Food Stamp Program regulations at 7 CFR 273.10(c)(3)(iii) and 273.11(a)(1) require State agencies to prorate income over twelve months for self-employed households and those under contract which derive annual income in periods less than one year.

The AFDC and Adult Assistance programs' regulations at 45 CFR 233.20(a)(3)(iii) would be revised to permit States to adopt the Food Stamp Program's policy and prorate an individual's annual income over a 12-month period. For example, school teachers who receive annual income in only nine months of the year would have their income prorated over twelve months, even if they only have a nine-month contract, as long as there is no evidence that they will not be rehired following the summer break.

Averaging of Interest Income—§ 233.20(a)(3)(iii)

Commenters requested that the Food Stamp Program adopt AFDC policy on interest income. However, this request was based on the commenters' misconception that the AFDC Program requires that interest income be counted as a resource. Current regulations of all the programs require that under retrospective budgeting interest be counted as income in the budget month in which it is received. It is difficult and time consuming to determine and verify interest income monthly. Therefore, because there is usually a small amount involved and statements may not be available on a monthly basis, the Programs propose to amend their regulations to permit States to project monthly interest income by periodically averaging monthly interest income. This will ease their administrative burden while accurately reflecting what income is available.

Self-Employment Income—§ 233.20(a)(6)(v)(B)

Commenters suggested that the same business expense deductions from gross self-employment income be used for each program. Although the current AFDC regulation at 45 CFR 233.20(a)(6)(v)(B) limits deductions only to those expenses ". . . without which the goods or services could not be produced," it does not identify the same specific prohibitions contained in the Food Stamp Program's regulations at 7 CFR 273.11(a)(4)(ii). This proposal only applies to AFDC and would amend the regulation at 45 CFR 233.20(a) to specifically exclude the following additional items from business expenses: Net losses from prior periods; money set aside for retirement purposes; the purchase price or payments on the principal of loans for equipment or machinery; and Federal, State or local personal income taxes.

A number of commenters requested that the Food Stamp Program adopt the AFDC Program's policies on determining the business expenses associated with income produced by providing room and board. This proposed rule codifies what has been a longstanding AFDC and Adult Assistance Program's policy by adding a new paragraph (C) to 45 CFR 233.20(a)(6)(v) to expressly permit States, in lieu of actual expenses, to use a flat amount or fixed percentage of broader-generated gross income to determine business expenses. The maximum deduction, whether a flat amount or fixed percentage, can be no more than 75 percent as long as the method used has an objective and justifiable basis. (Rationale is provided for the 75 percent in the food stamp discussion of this issue.) In any case, actual expenses must be used if the applicant or recipient can demonstrate that the actual expenses are higher than those which result from use of the State's method.

Conversion to Monthly Income—§ 233.31(b)

Several commenters proposed that the AFDC Program amend regulations to permit States to use conversion factors for weekly and bi-weekly income as is currently permitted under the Food Stamp Program's regulations at 7 CFR 273.10(d)(2). The definition of prospective budgeting would be amended at 45 CFR 233.31(b) to state that a best estimate may be derived by multiplying weekly amounts by 4.3 and bi-weekly amounts by 2.15. This would not, however, relieve States from adjusting for any overpayments and underpayments which result when the best estimate does not reflect actual income. Conversion may not be used to adjust a payment budgeted retrospectively. Using conversion factors is already permissible for the Adult Assistance Programs.

Regulatory Changes Which Will Not Be Made

A number of commenters suggested changes to provisions which were not adopted because of policy considerations or statutory requirements. This section discusses these issues.

Policy Issues

Face-to-Face Interviews for AFDC and Adult Assistance

Several commenters suggested that the AFDC and Food Stamp Programs have consistent policy requirements for face-to-face interviews. Another commenter asked that the AFDC Program permit States to waive face-to-face interviews under circumstances that parallel those in the Food Stamp Program. Another commenter proposed that the Food Stamp Program should only require face-to-face interviews at certification and every 12 months thereafter.

Final rules for AFDC at § 206.10(a)(9)(iii) published in the **Federal Register** March 18, 1986 (Vol. 51, No. 52, p. 9203) require that at least one AFDC redetermination for each individual case every 12 months must be face-to-face. The regulation does not specify where it must take place. However, the Adult Assistance Program's regulations currently in effect do not require face-to-face interviews either at application or redetermination. On the other hand, the Food Stamp Program's regulations at 7 CFR 273.2(e) and 272.7(g) require that a face-to-face interview be held in a food stamp office or other certification site prior to initial certification and all recertifications. The State agency may waive the office interview in very limited circumstances and, instead, schedule a home interview or, in very limited circumstances, conduct the interview by telephone.

The AFDC Program's regulations are not being changed to permit waivers of face-to-face interviews. Inasmuch as the waiver would apply for AFDC in only very limited circumstances, it does not justify a regulatory change. Personal contact is essential to identify inconsistencies in information provided by the family. Since AFDC interviews may be scheduled in the home or office, where most of the Food Stamp interviews take place, and is only required every 12 months, conflict between the two programs' requirements should be rare and the administrative burden minimal.

Use of Authorized Representatives

Commenters requested that States be required to permit the use of authorized representatives in the AFDC Program. The existing regulation at 45 CFR 206.10(a)(1)(ii) now provides for the use of authorized representatives in the application process, in that it requires a written application "from the applicant himself, or his authorized representative. . . ." Similarly 45 CFR 205.10(a)(3)(iii) provides for an authorized representative in the hearing process. This proposal will not, however, expand the AFDC or the Adult Assistance Programs' regulations to require the use of authorized representatives to the same extent as in the Food Stamp Program. To do so would require permitting an authorized representative to substitute for a recipient in redeterminations and for AFDC would conflict with the philosophy of the Final Rule at 45 CFR 206.10(a)(9) published March 18, 1986 which requires face-to-face redeterminations at least once every 12 months. The importance of the face-to-face redetermination in reducing erroneous payments is sufficient to preclude any expansion of the AFDC Program's authorized representative provisions.

Accessory Value of Vehicles

The recommendation that the AFDC Program exclude the value of accessories and optional features in determining the value of a vehicle is not being adopted. The Food Stamp Program, for the most part, uses the fair market value of licensed vehicles and only counts that value as a resource to the extent that it exceeds $4,500. On the other hand, AFDC regulations at 45 CFR 233.20(a)(3)(i)(B)(2) permit States to exclude from consideration as a resource the equity value of a car up to $1,500 and apply any excess to the $1,000 resource limit. AFDC, therefore, counts the value of accessories, except for special equipment for the handicapped, because it values this car in the same way as it values other resources, i.e., the amount that would be received if the item were sold. The accessory value of vehicles would not affect households categorically eligible for food stamps as these households would have the AFDC policy applied. However, under 45 CFR 233.20(a)(3)(i)(A), the Adult Assistance programs permit States to exclude the full value of an automobile including accessories.

Earned Income In-Kind

Some commenters proposed that the AFDC Program adopt the Food Stamp Program's regulations at 7 CFR 273.9(c)(1) which preclude States from counting earned income received in-kind. Alternatively, another commenter suggested that the Food Stamp Program adopt the AFDC Program's regulations at 45 CFR 233.20(a)(6)(iii) which provide that earned income includes earned income received in-kind and must be counted. However, the Food Stamp Program is precluded by statute from counting any in-kind income. We propose not to change AFDC or Adult Assistance regulations. It is appropriate to treat earned income received in-kind differently by both programs because of each program's focus. Generally the most common example of earned income received in-kind is shelter. AFDC and Adult Assistance payments

are made to meet basic needs which include shelter; therefore, if the employer provides shelter rather than cash, it is appropriate to count it.

Irregular/Infrequent (Casual/ Inconsequential) Income

Several commenters suggested that the AFDC Program adopt the Food Stamp Program's policy on irregular and infrequent income. Food Stamp Program regulations at 7 CFR 273.9(c)(2) implementing section 5(d)(2) of the Food Stamp Act of 1977, as amended, require that States disregard any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated but not in excess of $30 in a quarter. The AFDC Program is not adopting the Food Stamp Program's policy because it wishes to see the impact of final AFDC regulations at § 233.20(a)(3)(iv) recently published in the **Federal Register** on March 18, 1986 (Vol. 51, No. 52, p. 9205) which provide that States may exclude only gifts which represent reasonable, nominal amounts not to exceed $30 for any recipient for any quarter, e.g., Christmas, graduation, and birthday gifts. We propose no change in Adult Assistance regulations which currently permit States to conform to food stamp policy.

Vendor Payments

Some commenters proposed that the AFDC Program adopt the Food Stamp Program's policy at 7 CFR 273.9 which follows section 5(d) of the Food Stamp Act and excludes certain vendor payments (third-party payments) from income.

The AFDC Program's regulations do not address the treatment of vendor payments as unearned income. However, longstanding AFDC and Adult Assistance policy permits States to disregard the value of vendor payments as in-kind income. No changes are being proposed at this time in the treatment of vendor payments.

Educational Grants, Loans and Scholarships and Non-educational Loans—§ 233.20(a)(3)(iv)

Some commenters suggested that the AFDC and Food Stamp Program policies on educational grants and loans be made the same, while others requested that the AFDC Program adopt the Food Stamp Program policy of excluding non-educational loans from consideration as income.

The current AFDC and Adult Assistance regulation at 45 CFR 233.20(a)(3)(kv)(B) requires the exclusion of "* * * loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs." An exception to the AFDC and Adult Assistance regulation, however, established by Pub. L. 90–575 (the Higher Education Act), mandates that the AFDC and Adult Assistance programs totally exclude all loans and grants made under the auspices of the Department of Education. The Food Stamp Program's statutory requirement is that deferred-payment educational loans, grants and like must be excluded to the extent they are used for tuition, mandatory school fees and certain other educational expenses at an institution of post secondary education or school for the handicapped. The programs, while similar in the treatment of educational loans, differ considerably in the treatment of non-educational loans. In the Food Stamp Program, it is a statutory requirement to exclude non-educational loans from consideration as income. In the AFDC and Adult Assistance programs, non-educational loans have been considered under the same criteria as educational loans, i.e., they are excluded if they are "* * * obtained and used under conditions that preclude their use for current living costs." However, the AFDC Program is not adopting the Food Stamp Program's policy at this time pending further review.

Fair Hearings

Two issues were raised by commenters on fair hearings. One was to make the time periods for the State agency to complete action on a fair hearing request the same and the other was to make the limits for applicants and recipients to request fair hearings the same. The AFDC program gives the State agency 90 days after the applicant's or recipient's request for a fair hearing to take final administrative action. The Food Stamp Program allows 60 days. At this time, no changes are being proposed to the fair hearing time frames because of differences in what must be accomplished in each program within the specified time frame and because the House Committee Report regarding the 1977 Food Stamp Act (H.R. Rep. No. 95–464) urges the program to use 60 days.

The second issue was whether food stamps should conform to the AFDC Program's 90-day time limit for an applicant or recipient to request a fair hearing. Under Food Stamp regulations, a household may request a fair hearing within 90 days of the action of which it is aggrieved or at any time during the certification period. About half of the persons or groups that commented on this issue wanted the Food Stamp Program to delete the requirement that a household could request a fair hearing at any time during its certification period. The Department of Agriculture has decided not to revise the current provision because the Department feels that a household should have the right to a fair hearing to correct any action which occurs at any time during its certification period.

Statutory Issues

Commenters suggested many changes which cannot be made through regulation because the requirements are established by the statutes governing the AFDC and Food Stamp Programs. Both Departments are exploring a number of these suggestions for upcoming legislative initiatives. Those policy areas where commenters suggested changes which are precluded from conformity by statute are:

STATUTORY PROVISIONS

Policy	AFDC program	Food stamp program
Lump Sums [1]	Counts as income	Counts as a resource.
Child Support Exclusion for Title IV–D Payments [1].	Disregards first $50 in child support collected each month.	Permits States to disregard first $50 as does AFDC *if* the State reimburses USDA.
Earnings of Students under 18 [1]	State has option to disregard any earnings of a dependent child who is a full-time student in the determination of eligibility for up to six months per calendar year. (This disregard is applicable to both applicants and recipients).	Excludes as income.

STATUTORY PROVISIONS—Continued

Policy	AFDC program	Food stamp program
	Disregards earnings of a dependent child who is a full-time student or is a part-time student who is not employed full-time in the determination of need and the amount of payment. (This disregard is applicable to recipients only).	
	Applies the general earned income deductions to other students 18 years old or under.	
Earnings of 18-year-old High School Students [1].	Same as above	Counts as earned income.
Earned Income Deductions	Disregards: $75 standardized work expense deduction.	Disregards 20% of total gross household earnings.
	Actual costs up $160 per month per dependent child or incapacitated adult living in the same home and receiving AFDC when employment is full time. A lesser amount is set by the State for part-time employment.	Actual costs up to $160 per month per household when care for a dependent or an incapacitated adult is needed to accept or continue full or part-time employment or to conduct job search.
	$30 and one-third of remainder in four consecutive months; then $30 is available in eight additional consecutive months. The disregard is not applied again until the person has been off the AFDC rolls for a period of 12 consecutive months.	
Earnings Under JTPA State Training Programs [1].	State has option to disregard income of any dependent child. Earned income may be disregarded for up to six months per calendar year. (Unearned income may be disregarded indefinitely.).	Included as earned income except for dependents under 19.
	Earnings of other JTPA program participants are disregarded under the general AFDC earned income deductions.	
	State has option to disregard unearned income of other IV-A program participants to the extent permitted under the complementary program relationship regulatory provision.	
Dependent Care Deduction	Actual costs up to $160 per month per dependent child or incapacitated adult living in the same home and receiving AFDC when employment is full time. A lesser amount is set by State for part-time employment.	Actual costs up to $160 per month per household when care is needed for dependent child or incapacited adult in order to accept or continue full or part-time employment to do job search and for certain students.
Definition of Proper Payments for Recoupment	Changes in circumstances that affect eligibility or payments in the month in which the change occurs is either an overpayment or underpayment for that month.	Changes in circumstances reported as required do not affect benefits in the month the change occurs.
Cash Surrender Value of Life Insurance [1]	Counts as a resource	Excludes as a resource.
Income-Producing Real Property [1]	Same as other real property: counts as a resource except allows conditional AFDC payments for up to 9 months if trying to sell real property other than house.	Excludes as a resource if producing income consistent with fair market value but counts income.
Vehicles [1]	Excludes equity value prescribed by Secretary—first $1500 of (including accessories) and counts remainder as available resource. State may set lower limit.	Counts market value in excess of $4,500 (excluding accessories) with amount over $4,500 counted counts equity value of excess vehicles.
Resource Limits [1]	Allows $1,000 per assistance unit. State may set lower limit.	Allows $2,000 per household or $3,000 for households with an elderly member(s).
Strikers	Assistance unit is ineligible if either parent is on strike last day of month; otherwise only non-parent ineligible if on strike last day of the month.	Household ineligible if any member is on strike unless household was eligible prior to strike or member is exempt from work registration.
Frequency of Work Registration	Nonexempt individual must register for work once and registration continues with eligibility.	Nonexempt household member must register at certification and once every 12 months thereafter.
Collections of Claims/Overpayments by Recovery from Grant or Allotment.	Mandatory for all types of overpayments including State agency error.	Mandatory for fraud claims and household errors; voluntary for State agency errors.
Special Needs	Includes in States need standard	Includes as income as statute does not list as specific exclusion.
Potential Sources of Income	Requires that AFDC applicants explore and, if potentially eligible, apply for benefits from other programs.	Statute does not permit approval for food stamps to be conditioned upon application for any other program.

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[1] Because of categorical eligibility for households with all members receiving or authorized to receive PA and/or SSI benefits, food stamp eligibility is determined solely on the basis of the household's PA/SSI status. In this sense, the PA resource and income definitions are used to determine food stamp eligibility.

Implementation

The proposed implementation schedule would be that the revised regulatory requirements would be implemented for all AFDC and Adult Assistance cases and for new food stamp cases 90 days from the first of the month following publication. For other food stamp cases, conversion would be at recertification or when other changes are being processed, including monthly reports occurring after 90 days from the first month following publication. As for State agency options, these could be adopted at any time, as long as implementation is done uniformly. Changes to notices for conformity purposes would be done within 180 days from the first of the month following the month of publication.

List of Subjects

7 CFR Part 273

Administrative practice and procedure, Aliens, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Port 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

Accordingly, 7 CFR Part 273 and 45 CFR Parts 205 and 233 are proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for 7 CFR Part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 273.2:

a. Paragraph (e) is amended by revising paragraph (e)(3) in its entirety.

b. In paragraph (g)(3), the second and third sentences are revised.

c. The text of paragraph (h)(1) is revised in its entirety.

d. Paragraph (h)(2) is removed and paragraphs (h)(3) and (h)(4) are redesignated (h)(2) and (h)(3) respectively.

e. In the newly redesignated paragraph (h)(3):

1. Sentences 3 and 4 in (h)(3)(i) are removed;

2. The last sentence of (h)(3)(ii) is removed; and

3. Paragraph (h)(3)(iii) is removed.

The additions and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(e) *Interviews.* * * *

(3) The State agency shall schedule all interviews as promptly as possible to ensure that eligible households receive an opportunity to participate within 30 days after the application is filed. If the household fails to appear for the first scheduled interview, the State agency is not required to initiate any further action to reschedule a second interview. While the State agency may initiate efforts to schedule a second interview, it is the household's responsibility to schedule the interview. The State agency may either immediately deny the household after it misses the interview or may deny the household 30 days after the application was filed.

(i) State agencies which deny households immediately after the household misses the first scheduled interview must so advise the household in writing on the application materials or on a separate information sheet provided to the household at the time the household receives an application or schedules its initial interview. Such agencies must also advise the household in the manner stated above that the household will have to reapply if it misses the scheduled interview. Denial notices shall be sent immediately after the scheduled interview is missed.

(ii) State agencies which deny households when the 30-day processing time has elapsed after the household misses the first scheduled interview and no other interview was conducted, must advise the household in the same manner as in paragraph (e)(3)(i) of this section that if the household misses that first interview the household will be denied unless an interview is conducted within the 30-day processing time period. Denial notices must be sent on the 30th day following the date of application as provided in § 273.2(g)(3).

* * * * *

(g) *Normal processing standard.* * * * (3) *Denying the application.* * * * The State agency may either send the notice of denial immediately after the household misses one scheduled interview or send the notice of denial on the 30th day following the date of application. If a notice of denial is sent immediately after the first interview is missed or on the 30th day, it shall explain to the household that it must file a new application if it wishes to participate in the Program.

(h) *Delays in processing.* * * *

(1) *Determining cause.* The State agency shall first determine whether the cause of the delay is the household or the State agency. If it is the household's fault, the State agency shall deny the household. If the delay is caused by the State agency, the procedure in paragraphs (h)(2) and (h)(3) of this section shall be followed.

* * * * *

3. In § 273.3, the first sentence is removed and three new sentences added in its place to read as follows:

§ 273.3 Residency.

Households must be living in the State in which they file applications for participation. Within the State, the State agency may establish project areas as defined in § 271.2. The State agency may also require households to file applications for participation in specified project areas or offices. * * *

4. In § 273.7, paragraph (b)(1)(ix) is added.

The addition reads as follows:

§ 273.7 Work registration requirements.

* * * * *

(b) *Exemptions from work registration.*

(1) * * *

(ix) A pregnant woman when it is verified, on the basis of medical evidence, that the child is expected to be born in the month that registration otherwise would be required or within the next 3 months.

* * * * *

5. In § 273.8:

a. Paragraph (d) is amended by redesignating paragraphs (d)(1) and (d)(2) as paragraphs (d)(2)(i) and (d)(2)(ii), respectively, designating the first three sentences of introductory paragraph (d) as paragraph (d)(1), designating the last two sentences of introductory paragraph (d) as paragraph (d)(2) introductory text and a new sentence is added at the end of newly designated paragraph (d)(1).

b. The first sentence of (e)(2) is revised and a new sentence is added immediately following that sentence.

The revisions and additions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(d) *Jointly owned resources.* (1) * * * In addition, jointly-held available resources, such as accounts in financial institutions, shall not be counted as a resource for each household if State law prohibits noncontributory signatories from withdrawing funds from or liquidating such assets for their own benefit.

* * * * *

(e) *Exclusions from resources.* * * *

(2) Household goods, the cash value of life insurance policies, personal effects including one burial plot (no limit) per household member and one formal burial or funeral agreement per household member, provided that the agreement does not exceed $1,500 in equity value, in which event the value above $1,500 is counted. Examples of formal agreements are those from which no withdrawals can be made or if withdrawals are allowed there is a contractual obligation to make repayment. * * *

* * * * *

6. In § 273.10:

a. A new paragraph (c)(1)(iii) is added.

b. Paragraph (g)(1)(i)(A), is amended by removing the last four sentences and adding a new sentence in their place.

c. Paragraph (g)(1)(ii) is amended by revising the first sentence, removing the second sentence and adding two new sentences in its place, and by removing all text following the sentence which ends with the words "PA and/or SSI benefits."

d. Paragraph (g)(1)(iii) is revised in its entirety.

The revisions and additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(c) *Determining income*—(1) *Anticipating income.* * * *

(iii) When determining interest income the State agency has the option of: Prorating interest, using the total interest income and dividing it by the number of months it covers, e.g., annually, semi-annually, and/or quarterly; using an average of each month's interest amounts adjusted for any known differences from the information used for the average; or counting each month's actual amount. Any of these procedures may be used for households prospectively or retrospectively budgeted, regardless of whether a monthly report is submitted. The State agency has the option of how the household reports the interest information on the monthly report.

* * * * *

(g) *Certification notices to households.*

(1) * * *

(i) *Notice of eligibility.* (A) * * * The notice shall also advise the household of its right to a fair hearing and, if the State agency chooses, a statement on reporting changes since the application was filed.

* * * * *

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial and the household's right to request a fair hearing. The State agency shall also use a notice of denial when a delay was caused by the household's failure to take action to complete the application process within the 30-day processing standard. If the State agency elects to deny a household immediately following a missed interview, as specified in § 273.2(e), the notice shall inform the household of its right and responsibility to contact the agency in order to reapply. * * *

(iii) *Notice of pending status.* If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273 (h)(2) and (h)(3), the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

* * * * *

7. In § 273.11:

a. Paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(C) are revised in their entirety.

b. Paragraph (b)(1)(ii) is revised.

The revisions read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *

(4) *Allowable costs of producing self-employment income.* * * *

(ii) * * *

(A) The purchase price or payments on the principal of loans for the purchase of capital assets, equipment, machinery, property or other durable goods;

* * * * *

(C) Money set aside for retirement purposes; Federal, State or local personal income taxes; personal business, entertainment and transportation expenses; and

* * * * *

(b) *Boarders*—(1) *Household with boarders.* * * *

(ii) *Cost of doing business.* In determining the income received from boarders, the State agency shall exclude that portion of the boarder payment which is a cost of doing business. To ascertain the cost of doing business, a State may use, in lieu of actual expenses, a flat amount or a fixed percentage of the gross income, provided that the method used is objective and justifiable, is stated in the State's Plan of Operation, manual, or directive and the result does not exceed 75% of the gross income from boarder-generated payments. However, if the applicant or recipient can show that the actual costs of doing business are higher than those resulting from application of the State's method, the State must use the higher amount. The cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals.

* * * * *

8. In § 273.12, introductory paragraph (a)(1) and paragraphs (a)(1)(i) are revised and (a)(2) is amended by adding a new sentence after the first sentence.

The revisions and addition read as follows:

§ 273.12 Reporting changes.

(a) *Household responsibility to report.* (1) Certified and applicant households are required to report the following changes in circumstances:

(i) Changes in income:

(A) Households with fluctuating income shall report changes in the source or in the wage rate of fluctuating income and changes in the numbers of hours worked by household members with fluctuating income;

(B) Households without fluctuating income shall report changes in the sources of income or in the amount of gross, monthly, non-fluctuating income of more than $25;

(C) Households shall not be required to report changes in the public assistance grant, or in the general assistance grant in project areas where GA and food stamp cases are jointly processed in accordance with § 273.2(j)(2). Since the State agency has prior knowledge of all changes in the public assistance grant and general assistance grants, action shall be taken on the State agency information;

* * * * *

(2) * * * Applicant households that have not yet been certified when the change occurs shall report changes at the certification interview or, for changes occurring after the interview but before the eligibility determination,

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within 10 days after the date of the determination. * * *

* * * * *

9. In § 273.13:

a. Paragraph (a) is revised.

b. Paragraph (b) is redesignated as paragraph (c).

c. A new paragraph (b) is added.

d. Newly redesignated introductory paragraph (c) is revised, paragraphs (c)(3) through (c)(13) are removed and a new paragraph (c)(3) is added.

e. A new paragraph (d) is added.

§ 273.13 Notice of adverse action.

(a) *Use of notice.* (1) Prior to any action to reduce or terminate a household's benefits within the certification period, the State or local agency shall give a timely and adequate notice of adverse action, except as provided for in paragraphs (b), (c) and (d) of this section. An adequate notice for purposes of this section shall be a written notice that explains in easily understandable language: The proposed action; the reason for the proposed action; the specific regulations (either State or Federal citation) supporting such action, or a statement of the specific law requiring such action when changes in State or Federal law require automatic grant adjustments for classes of recipients; the household's right to request a fair hearing; and the circumstances under which assistance is continued if a hearing is requested; and, if the agency action is upheld, that any overissuances must be repaid. For the purpose of a monthly reporting retrospective budgeting system, the definition of "adequate notice" in § 271.2 shall apply.

(2) "Timely" is defined as the advance notice period set by the State agency for its PA caseload provided the notice is mailed at least 10 days before the date of action, i.e., the date upon which the action would become effective. Unless it waives its right, as discussed in § 273.15(k), the household shall receive continued benefits if it requests a fair hearing within 10 days after the timely notice is mailed. If the adverse notice period ends on a weekend or holiday and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request received within the request period.

(b) *Exemptions from timely notice.* The agency shall send adequate notice as defined in paragraph (a)(1) of this section no later than the date of the action when:

(1) The agency receives a clear written statement signed by the household that it no longer wishes assistance or that gives information which requires termination or reduction of assistance based solely upon the household's written information with these conditions:

(i) The household retains its right to a fair hearing;

(ii) The household retains its right to continued benefits by requesting a fair hearing within ten days of the date the notice was mailed; and

(iii) The State agency continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

(2) The household voluntarily requests in the presence of a caseworker that its participation be terminated. The household retains the rights listed in paragraphs (b)(1) (i) through (iii) of this section.

(3) The household's whereabouts are unknown and mail directed to it has been returned by the post office indicating no known forwarding address. The household's benefits must, however, be made available to it within five working days if its whereabouts become known during the payment period covered by a returned benefit. The household has a right to a fair hearing and continued benefits with this notice.

(c) *Exemptions from notice.* Under the following circumstances, a timely and adequate notice shall not be provided, although an informational notice may be provided:

* * * * *

(3) The State agency determines, based on reliable information, that the household has moved from the State or, if where a household may apply is limited, the jurisdiction or project area established by the State agency.

(d) *Specific notices.* Under the following circumstances a timely and adequate notice is not required. Rather, the notice specified for each circumstance shall be provided:

(1) The State agency has elected to assign a longer certification period to a household certified on an expedited basis and for which verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State agency may act on the verified information without further notice as provided in § 273.2(i)(4).

(2) The State agency is converting a household from cash and/or food stamp coupon repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in § 273.18(g)(2)(ii).

(3) The State agency is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from the appropriate agency or agencies of the State (as defined in § 271.2) or has its status as an authorized representative suspended due to FNS disqualifying it as a retailer. The notice requirements for these instances are discussed in § 273.11(e)(7) and (f)(6). However, residents of group living arrangements applying on their own behalf are still eligible to participate.

(4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(5) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.

(6) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(7) A household member is disqualified for an intentional Program violation, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualification are explained in § 273.16.

(8) The State agency must change the household's benefits back to the original benefit level as required in § 273.12(c)(1)(iii).

10. In § 273.15, the first sentence of paragraph (b) and paragraph (q)(3)(ii) are revised.

The revisions read as follows:

§ 273.15 Fair hearings.

* * * * *

(b) *Hearing system.* Each State agency shall provide for either a fair hearing at the State level or for a hearing at the local level which permits the household to further appeal a local decision to a State level "de novo" hearing or State level review of the local level hearing.

* * *

* * * * *

(q) *Hearing decisions* * * *

(3) * * *

(ii) After a local level hearing decision which upholds the State agency action, the household shall be notified of available appeal rights and that a reversal of the decision may result in the restoration of lost benefits to the household. A clear description of available appeal procedures must be included to enable the household to make an informed choice if it wishes to appeal.

* * * * *

11. In § 273.18, paragraph (d)(3) is amended by redesignating paragraphs (d)(3)(i) through (iii) as (d)(3)(iii) through (v), respectively and adding new paragraphs (d)(3)(i) and (d)(3)(ii) to read as follows:

§ 273.18 Claims against households.

* * * * *

(d) *Collecting claims against households.* * * *

(3) *Initiating collection on claims.* (i) The State agency shall take one of the following actions by the end of the quarter following the quarter in which the claim is first identified:

(A) Recover the claim;

(B) Initiate action to locate and/or recover the claim from a former recipient;

(C) Execute a recovery agreement from a current recipient or initiate allotment reduction, if appropriate; or

(D) Initiate action to recover the claim from a current recipient if allotment reduction is not appropriate.

(ii) Problems with meeting any of the deadlines in paragraph (3)(i) of this section shall be documented.

* * * * *

12. The authority citation for 45 CFR Parts 205 and 233 continues to read as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

13. Section 205.10 is amended by:

a. Adding titles to paragraphs (a)(4), (a)(5), (a)(6), (a)(13), (a)(14) and (a)(15).

b. Revising paragraphs (a)(4)(i), (a)(4)(ii) and (a)(7). The introductory text of paragraph (a)(4) is republished.

The revisions and additions read as follows:

§ 205.10 Hearings.

(a) * * *

(4) *Notice of adverse action.* In cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective, vendor, or two-party payment under § 234.60:

(i) The State or local agency shall give a timely and adequate notice of adverse action, except as provided for in paragraphs (a)(4) (ii), (iii) and (iv) of this section.

(A) An adequate notice shall be a written notice that explains in easily understandable language: The proposed action; the reason for the proposed action; the specific regulations supporting such action, and/or a statement of the specific law requiring such action when changes in State or Federal law require automatic grant adjustments for classes of recipients; the individual's right to request an evidentiary hearing (if provided) and a State agency hearing; the circumstances under which assistance is continued if a hearing is requested and, if the agency action is upheld, that such assistance must be repaid under title IV–A and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

(B) The notice of adverse action shall be considered timely if the notice is mailed at least 10 days before the date of action, i.e., the date upon which the action would become effective.

(ii) *Exemptions from timely notice.* The agency may dispense with timely notice but shall send an adequate notice of adverse action not later than the date of action when:

(A) The agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance based solely upon the recipient's written information, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information.

(B) The recipient orally voluntarily requests in the presence of an eligibility worker that assistance be terminated;

(C) The recipient's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The recipient's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(D) For AFDC, the agency takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete or a timely monthly report without good cause (See § 233.37);

(E) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance.

(F) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

(G) The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as new payee;

(H) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

(I) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(J) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for post hearings in such circumstances.

(K) An AFDC child is removed from the home as a result of a judicial termination, or voluntarily placed in foster care by his legal guardian.

* * * * *

(5) *Availability of hearings.* * * *

(6) *Continuation of assistance.* * * *

(7) *Reinstatement of assistance.* If a recipient requests a hearing after the date of the action:

(i) A State may, at its option, reinstate and continue assistance until the hearing decision, except as provided for in paragraphs (a)(6)(i)(A), (B) and (C) of this section, if:

(A) The recipient requests a hearing no more than 10 days after the date of action; or

(B) The recipient requests a hearing more than 10 days after the date of action but establishes good cause for failing to do so within the 10 days following the action. Good cause is limited to circumstances beyond the recipient's control, e.g., hospitalization, death in the family.

(ii) A State must reinstate and continue assistance, except as provided for in paragraphs (a)(6)(i)(B) and (C) of this section, if:

(A) The action was taken without timely notice;

(B) The recipient requests a hearing within 10 days of the mailing of the notice of the action; and

(C) The agency determines that the action resulted from other than the

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application of State or Federal law or policy or a change in State or Federal law.

* * * * *

(13) *Hearing process rights.* * * *
(14) *Hearing record.* * * *
(15) *Hearing decisions.* * * *

* * * * *

14. Section 205.52 is amended by designating paragraph (a)(2) as (a)(2)(i) and by adding new paragraphs (a)(2) (ii) and (iii) to read as follows:

§ 205.52 Furnishing of social security numbers.

* * * * *

(a) * * *
(2) * * *

(ii) If the applicant or recipient has been unable to complete the application for an SSN because the necessary documentation is not immediately available, the State agency will determine whether or not good cause exists for failure to comply with paragraph (a)(2)(i) of this section. If the State agency determines that good cause exists, and the applicant is otherwise eligible, the individual will be eligible for assistance for a period of no longer than four months. If the applicant has been unable to obtain the documents required to complete the SSN application, the State agency's eligibility worker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly during the four-month period in order for the individual to continue to receive assistance. The State agency must maintain documentation of the good cause determination in the case file.

(iii) Good cause exists if the applicant or recipient has made every effort to supply the Social Security Administration with the necessary information and does not include delays due to factors such as illness, lack of transportation or temporary absence, because the Social Security Administration makes provisions for mail-in applications in lieu of applying in person.

* * * * *

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

15. Section 233.20 is amended by:

a. Revising paragraphs (a)(3)(ii)(D), (a)(3)(iii), and (a)(6)(v)(B).

b. Adding a new paragraph (a)(6)(v)(C).

The additions and revisions read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *
(3) * * *
(ii) * * *

(D) Income, after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. The entire value of an available jointly-held resource will be counted as a resource to an applicant or recipient unless State law prohibits noncontributory signatories from withdrawing funds from or liquidating such assets for their own benefit.

* * * * *

(iii) States may prorate income received by individuals employed on a contractual basis over the period of the contract or may prorate intermittent income received quarterly, semiannually, or yearly over the period covered by the income. States may elect to prorate over a 12-month period income received by individuals who because of a contract or self-employment derive their income in a period of time shorter than one year. States may elect to periodically average monthly interest income. In OAA, AB, APTD and AABD, they may use the prorated or averaged amount to determine need under § 233.23 and the amount of the assistance payment under §§ 233.24 and 233.25. In AFDC, they may use the prorated or averaged amount to determine need under § 233.33 and the amount of the assistance payment under §§ 233.34 and 233.35.

* * * * *

(6) * * *
(v) * * *

(B) For AFDC, with respect to self-employment, the term "earned income" means the total profit from a business enterprise, farming, etc., resulting from a comparison of the gross receipts with the "business expenses," i.e., expenses directly related to producing the goods or services and without which the goods or services could not be produced. However, the following items shall not be considered as business expenses: Depreciation; the purchase price or payments on the principal of loans for the purchase of capital assets, equipment, machinery or other durable goods; net losses from previous periods; money set aside for retirement purposes; Federal, State or local personal income taxes; personal business, entertainment and transportation expenses.

(C) For OAA, AB, APTD, AABD and AFDC income derived from providing room and board, a State may use, in lieu of actual expenses, a flat amount or a fixed percentage of the gross income to determine the business expense, provided that the amount or percentage used is objective and justifiable and the result does not exceed 75% of the gross boarder-generated income. However, if the applicant or recipient can show that the actual expenses of producing the income are higher than those resulting from the application of the State's method, the State must use the higher amount.

* * * * *

16. Section 233.31 is amended by revising paragraph (b)(1) to read as follows:

§ 233.31 Budgeting methods for AFDC.

* * * * *

(b) * * *

(1) "Prospective budgeting" means that the agency shall determine eligibility and compute the amount of assistance based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances, and may be derived by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15 (or reasonably equivalent fractions).

* * * * *

Date: September 22, 1987.

Richard E. Lyng,

Secretary of Agriculture.

Date: September 23, 1987.

Otis M. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-22365 Filed 9-28-87; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 52, No. 189
Wednesday, September 30, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 299]

Food Stamp Program; Application Processing for Expedited Service

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On January 12, 1987, the Department published an interim rule and correction in the **Federal Register** entitled "Food Stamp Program; Application Processing for Expedited Service". The rule was published in response to the decision in *Harley v. Lyng*, Civ. 84–4101 (E.D. Pa. October 10, 1986), which held that the Department's previous expedited service policy was inconsistent with the requirement of 7 U.S.C. 2020(e)(9) mandating the issuance of benefits within five days of the date of application for households entitled to expedited service. This rule implements as a final rule the January 12, interim rule. This rule also contains a technical amendment specifying that the five-day processing standard applies to residents of treatment facilities for drug addicts and alcoholics and group living arrangements

EFFECTIVE DATE: This final action is effective retroactive to January 12, 1987.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302 or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and Related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action does not have a significant economic impact on a substantial number of small entities. The action will primarily affect State and local welfare agencies and current and potential food stamp participants.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

On January 12, 1987, the Department published an interim rule at 52 FR 1298 implementing the decision in *Harley v. Lyng* Civ 84–4101 (E.D. Pa. October 10, 1986), which mandated the issuance of benefits to households entitled to expedited service no later than the fifth calendar day following the date of application. The lawsuit was precipitated by the failure of the Pennsylvania Department of Public Welfare to issue benefits within the five-day statutory time frame. The interim rule amended 7 CFR 273.2(i)(3)(i) by specifying that the State agency is required to issue coupons or ATP cards within five calendar days following the date of application. The regulatory provision in effect prior to the interim rule specified (1) if the fifth calendar day is Saturday, the ATP or coupons must be available for pickup or mailed on the previous Friday; (2) if the fifth calendar day is Sunday, the ATP coupons must be available for pickup on the following Monday or mailed in the earliest outgoing mail on Monday morning; (3) if the fifth calendar day is a holiday which falls on a Monday, the ATP or coupons must be available for pickup on the following Tuesday or mailed in the earliest outgoing mail on Tuesday morning; and (4) if the fourth or fifth calendar day is a holiday which falls on a Friday, the ATP or coupons must be available for pickup or mailed on the previous Thursday.

The Department accepted comments on the January 12, 1987 interim rulemaking through March 13, 1987. The Department received six comment letters in response to the interim rule. Commenters included four State agencies, one local agency and one public interest group. The major concerns raised by the commenters are discussed below. Comments which are not relevent to the final rulemaking process are not discussed. A complete explanation of the court's decision and the rationale of the rule are contained in the preamble of the interim rule. For a full understanding of the provisions of this final rule the reader should refer to the preamble of that rule.

Three commenters addressed the short implementation time frame mandated by the interim rule. Two of the commenters indicated that they had implemented or were in the processing of implementing the rule. One commenter expressed concern that the implementation time frame was extremely short. The Department recognizes that the implementation time frame contained in the interim rule may have imposed a burden on some State agencies, however, it should be noted that the period for implementation was consistent with the court order which mandated that the Department publish

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rules implementing the decision within a very short time frame.

Several commenters addressed the five day time frame for application processing. While these commenters recognized that the Department cannot extend the five days processing time, they still raised several concerns. Two commenters expressed concern regarding the ability of county offices to comply with the processing standard. These commenters expressed the belief that the processing standard would result in program abuse and additional errors. One of the commenters also expressed concern that the rule does not provide exceptions when the fifth day falls on a weekend or holiday. Although an absolute five day time frame for processing applications may result in difficulty for some State agencies, the decision in *Harley* and a strict construction of the statute clearly provide no exceptions to the five day processing standard. Consequently, the final rule remains unchanged.

One commenter expressed the opinion that the interim rule should have prohibited mail issuance for households entitled to expedited service unless specifically requested by the household. The Department has elected not to prohibit mail issuance since many State agencies have experienced no problem with issuing coupons or authorization to participate (ATP) cards through the mail within the five calendar day processing period. If a State agency is not capable of providing benefits through its mail issuance system within the five calendar day period the Department expects the State agency to utilize an alternative method of issuance which will ensure compliance with the five day standard.

The same commenter also expressed concern that a general statement that benefits must be delivered within five days cannot be counted upon to ensure compliance without strong federal monitoring of States' compliance with the expedited service standards. Since October 1985 the Department has emphasized the importance of compliance with the expedited service requirements by targeting these requirements during all State agency operations reviews and management evaluation reviews. The Department has again targeted the expedited service requirements for fiscal year 1987 and will continue to emphasize this area during 1988. As a result, all States and project areas reviewed will be examined for compliance. Any problems identified during these reviews will continue to be addressed through State agencies' corrective action processes.

Two commenters addressed the issue of providing expedited service to residents of drug addiction and alcoholic treatment centers and to residents of group living arrangements. One commenter expressed the belief that applying the five calendar day standard to these applicants would be burdensome to the agency. Another commenter expressed the opposite view, noting that the Department failed to change the mail issuance time frames specified in 7 CFR 273.2(i)(3)(ii) for providing expedited service to such applicants. The interim rule specified a five day time frame for picking up or mailing coupons or an ATP. The Department agrees that the regulatory provisions concerning delivery of benefits to residents of treatment facilities entitled to expedited service must be exactly the same as the provisions governing the delivery of benefits to other households entitled to expedited service. To correct the inconsistency in the interim rule, this final rule changes the language in 7 CFR 273.2(i)(3)(ii) to conform to 7 CFR 273.2(i)(3)(i) to provide that the State agency make available to these recipients coupons or an ATP card not later than the fifth calendar day following the date the application is filed.

Implementation

The implementation section of the interim rule specified that the rule was effective upon publication and mandated implementation within 30 days of the date of publication. Since the provisions of the interim rule are unchanged by this final rule the implementation section of the interim rule is adopted in its entirety by this final rule. Implementation of the conforming amendment in this final action regarding residents of drug addiction and alcoholism treatment facilities and group living arrangements is also retroactive to February 11, 1987 to ensure consistent implementation of the decision in *Harley v. Lyng*.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

Therefore, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The amendment to § 272.1 to add a new paragraph (g)(83), as published at 52 FR 1298, January 12, 1987 is adopted as final and a new paragraph (g)(94) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(94) *Amendment No. 299.* The changes to § 273.2(i)(3)(ii) are effective January 12, 1987 and shall be implemented no later than February 11, 1987.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.2:

a. Paragraph (i)(3)(i) as published at 52 FR 1300, January 12, 1987, is adopted as final without change.

b. Paragraph (i)(3)(ii) is revised to read as follows:

§ 273.2 Application processing.

* * * * *

(i) *Expedited service.* * * *

(3) *Processing standards.* * * *

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements who are entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the fifth calendar day following the date an application was filed.

* * * * *

Dated: September 24, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87–22536 Filed 9–29–87; 8:45 am]

BILLING CODE 3410–30–M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures, and Authorizations; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: FmHA corrects a final rule published March 13, 1987, (52 FR 7998). The reference to § 1924.9(d) of Subpart

A of Part 1924 in paragraph XIII of Exhibit F of Subpart A of Part 1944 was not changed to § 1924.12 of Subpart A of Part 1924. The intent of this action is to correct this error.

FOR FURTHER INFORMATION CONTACT: Ray McCracken, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agricultural Building, Washington, DC 20250. Telephone (202) 382–1486.

SUPPLEMENTARY INFORMATION: The following correction is made to 52 FR on page 8036 dated March 13, 1987, by adding the following amendment after amendment 44:

Subpart A—[Amended]

44a. In Exhibit F, Paragraph XIII is amended by changing the reference "§ 1924.9(d)" to "§ 1924.12."

Dated: September 4, 1987.

Eric P. Thor,

Associate Administrator, Farmers Home Administration.

[FR Doc. 87–22419 Filed 9–29–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–CE–28–AD; Amendment 39–5733]

Airworthiness Directives; Cessna Models 185, 185A, 185B, 185C, 185D, 185E, A185E and A185F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), which installs quick drains on the fuel reservoirs (accumulators) on early model Cessna 185 Series airplanes. The FAA has determined that many of the early model Cessna 185 series airplanes are not equipped with quick drains on the fuel reservoirs. This action is designed to preclude engine power loss caused by undrained fuel contamination.

DATES: *Effective date:* September 30, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: A copy of this information is contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Mike Kelley Aircraft Supplemental Type Certificate (STC) SA2272CE information may be obtained from Mr. Kent McIntyre, Vice President, Mike Kelley Aircraft, Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326–8581. Safe Air Repair Supplemental Type Certificate (STC) SA2245CE information may be obtained from Mr. John T. Roscoe, President, Safe Air Repair, Inc., 3325 Bridge Avenue, Albert Lea, Minnesota 56007, telephone (507) 373–5408.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE–140W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 84–10–01 [Amendment 39–4863] (49 FR 21507; May 22, 1984) was issued to be effective on May 23, 1984, to require the installation of fuel system quick drain provisions on all fuel bladder equipped single engine Cessna airplanes. Fuel bladder and fuel reservoir (accumulator) quick drains were available for all airplanes affected by AD 84–10–01 from Cessna Aircraft Company except for their early model Cessna 185 Series airplanes. AD 84–10–01 also allowed the use of fuel system quick drains that were considered to be equivalent aircraft standard hardware. The FAA has been advised that not all owners and operators believed they were required to equip their early model Cessna 185 Series airplanes' fuel reservoirs (accumulators) with quick drains when they complied with AD 84–10–01.

During compliance with AD 86–19–11 [Amendment 39–5407] (51 FR 30853; August 29, 1986) the FAA discovered that owners of early model Cessna 185 Series airplanes could not comply with the requirements to drain the fuel reservoir (accumulator) during the preflight inspection because these airplanes were not equipped with fuel reservoir quick drains.

The FAA has issued Supplemental Type Certificates (STCS) SA2245CE to Safe Air Repair, Inc. and SA2272CE to Mike Kelley Aircraft, Inc. for installation of fuel reservior (accumulator) quick drains on certain Cessna 185 Series airplanes. The FAA has determined that there is sufficient confusion over the installation requirements of the fuel reservoir (accumulator) quick drains on early model Cessna 185 Series airplanes, that a new AD is needed. This AD does not increase the regulatory burden on the public because the installation of fuel reservoir quick drains was required by AD 84–10–01. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is not a major rule under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedure of Order 12291 with respect to this rule. If this action is subsequently determined to involve a significant regulation a final regulatory evaluation or analysis as appropriate will be prepared and placed in the regulatory docket (otherwise an evaluation is not required). A copy of it when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised. Pub. L. 97–449, January 12, 1983); and 14 CFR Part 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Model 185, 185A, 185B, 185C, 185D, 185E, A185E and A185F (Serial Numbers 185–0001 thru 18503153) airplanes certificated in any category.

Compliance: Within the next 50 hours of operation or before completion of the next annual inspection, whichever comes first, after the effective date of this AD, unless already accomplished per AD 84–10–01 (49 FR 21507; May 22, 1984).

To prevent power loss or engine stoppage due to water contamination of the fuel system, accomplish the following:

(a) Modify the aircraft fuel system using one of the options in the following subparagraph (a)(1), (a)(2), or (a)(3).

(1) Install fuel reservoir (accumulator) quick drains in accordance with STC SA2272CE. This STC is held by Mike Kelley Aircraft Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326–8581. This STC is applicable to Cessna 185 and 185A thru 185E, A185E and A185F Serial Numbers 185–0001 thru 18503153.

(2) Install fuel reservoir (accumulator) quick drains in accordance with STC SA2245CE. This STC is held by Safe Air

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Repair, Inc., 3325 Bridge Avenue, Albert Lea, Minnesota 56007, telephone (507) 373–5408. This STC is applicable to Cessna 185A thru 185E, A185E and A185F, Serial Numbers 185–0414 thru 18503153.

(3) Install quick drains in the fuel reservoir (accumulator) outlet line by using equivalent aircraft standard hardware.

Note: A one time inspection of the Cessna fuel line Part Number 0500106–329 which is used on Serial Number 185–0001 thru 185–0413 should be performed during installation of the fuel reservoir quick drains. This fuel line requires careful attention to routing in order to insure adequate clearance from moving control components located immediately adjacent to this fuel line.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished if it is determined that no water is present in the fuel reservoir (accumulator) or any other part of the fuel system from which fuel will be used.

(c) An equivalent means of compliance with this AD may be used, if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the document(s) referred to herein upon request to FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 30, 1987.

Issued in Kansas City, Missouri, on September 15, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–22468 Filed 9–29–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 45

[Docket No. 25033; Amdt. 45–17]

Aircraft Identification and Retention of Fuel System Modification Records; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In the September 9, 1987, issue of the **Federal Register** (52 FR 34096), the FAA published a final rule addressing the size of registration numbers, location of identification plates, and retention of FAA Form 337. The effective date of this rule is December 8, 1987. Application of this rule is to be 90 days after this effective date, or March 7, 1988. However, because of a miscalculation in the current amendatory language, §§ 45.11(d) and 45.29(h) do not reflect this date. This document serves to correct that error.

Correction of the Amendment

In consideration of the foregoing, §§ 45.11(d) and 45.29(h) of the Federal Aviation Regulations (14 CFR Part 45) are corrected as follows:

§ 45.11 [Corrected]

On p. 34101 in the third column, last paragraph, second line, "December 8, 1987," is corrected to read "March 7, 1988,".

§ 45.29 [Corrected]

On p. 34102 in the second column, first paragraph, first line, "December 8, 1987," is corrected to read "March 7, 1988,".

John H. Cassady,

Assistant Chief Counsel for Regulations and Enforcement.

[FR Doc. 87–22474 Filed 9–29–87; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 87–ANM–10]

Revision of Transition Area, Evanston, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the transition area at Evanston, Wyoming, to accommodate a new VOR/DME–A approach procedure to the Evanston-Uinta County Airport. This action is necessary to ensure segregation of aircraft using the approach procedure in instrument weather conditions and other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–10, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Evanston, Wyoming (52 FR 28725). This action was proposed to provide controlled airspace for a new instrument approach procedure to the Evanston-Uinta County Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Evanston, Wyoming, transition by adding additional controlled airspace to accommodate a new VOR/DME–A approach procedure to the Evanston-Uinta County Airport. This action is necessary to ensure segregation of aircraft using the approach procedure in instrument weather conditions and other aircraft operating in visual weather conditions.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Evanston, Wyoming, Transition Area (Revised)

That airspace extending upward from 700 feet above the surface between lat. 41°18'30"N., long. 111°33'00"W., lat.

41°32'00"N., long. 110°47'00"W., lat. 41°27'00"N., long. 110°20'00"W., lat. 41°18'30"N., long. 110°24'00"W., lat. 41°15'00"N., long. 110°37'00"W., lat. 40°51'00"N., long. 111°05'30"W., lat. 41°05'00"N., long. 111°27'00"W., to point of beginning excluding that airspace within the Fort Bridger, Wyoming, 700 foot transition area; and that airspace extending upward from 1,200 feet above the surface between lat. 41°18'30"N., long. 111°33'00"W., lat. 41°24'00"N., long. 111°36'00"W., lat. 41°35'30"N., long. 110°56'00"W., lat. 41°32'00"N., long. 110°47'00"W., lat.41°27'00"N., long. 110°27'00"W., lat. 41°18'30"N., long. 110°24'00"W., lat. 41°15'00"N., long. 110°37'00"W., lat. 40°51'00"N., long. 111°05'30"W., lat. 41°05'00"N., long. 111°27'00"W., to point of beginning excluding the airspace within the Fort Bridger, Wyoming, 1,200 foot transition area.

Issued in Seattle, Washington, on September 21, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-22472 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-14]

Alteration to Transition Area, Austin, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Austin, MN, transition area to accommodate a new VOR/DME-A Standard Instrument Approach Procedure (SIAP) to Austin Municipal Airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, August 3, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Austin, MN, transition area (52 FR 28726).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Austin, MN, transition area to accommodate a new VOR/DME-A SIAP to Austin Municipal Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Austin, MN [Revised]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Austin Municipal Airport (lat. 43°40'00" N., long. 92°56'00" W.); within 3 miles each side of the Austin VOR 350 radial extending from the 5 mile radius to 8 miles north of the VOR; and within 3 miles each side of the Austin VOR 175 radial extending from the 5 mile radius to 8 miles south of the VOR; and within 3 miles each side of the Rochester VOR/DME 240 radial extending from the Austin Municipal Airport 5 mile radius to 7 miles northeast of the airport.

Issued in Des Plaines, Illinois, on September 18, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-22579 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 374

[Docket No. 70876-7176]

Export Licensing; General License Baggage; Permissive Reexports

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration is adding General License Baggage to the other General Licenses specified in § 374.2(a)(1), which allows permissive reexport privileges. A commodity that may be exported under the provisions of General License Baggage (§ 371.6) may be permissively reexported to a new country of destination as long as the direct export would be authorized from the United States to that country(ies) under the provisions of General License Baggage (§ 371.6).

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs and military function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these

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APA requirements because it involves a foreign affairs and military function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 15 CFR Part 374

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 374—[AMENDED]

1. The authority citation for 15 CFR Part 374 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Paragraph (a)(1) of § 374.2 is revised to read as follows:

§ 374.2 Permissive reexports [2]

* * * * *

(a) * * *

(1) May be exported directly from the United States to the new country of destination under General License G–DEST, GTE, G–COM, G–CEU, GCG, G–NNR, G–FTZ or BAGGAGE;

* * * * *

Dated: September 25, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Trade Admininstration.

[FR Doc. 87–22524 Filed 9–29–87; 8:45 am]

BILLING CODE 3510–DT–M

[2] See § 374.9 for effect on foreign laws.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 790

[OPTS–42052D; FRL–3270–3]

Modification of Procedures Governing Two-Phase Test Rules Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: This immediately effective interim final rule amends EPA's regulations for developing and implementing testing requirements under section 4 of the Toxic Substances Control Act (TSCA). These amendments: (1) Modify the definition of the test standard for two-phase test rules; and (2) eliminate the requirement for the submission of final study plans for tests required under two-phase test rules. EPA believes that the amended regulations will eliminate unnecessary delays in the development of the required health or environmental effects data and reduce certain paperwork burdens associated with the current procedures.

EFFECTIVE DATE: September 30, 1987. Submit written comments on or before October 30, 1987.

ADDRESS: Written comments should bear the document control number OPTS–42052D, and should be submitted in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Room NE–G004, 401 M Street SW., Washington, DC 20460.

All written comments filed under this proposal will be available for public inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room E–543, 401 M Street SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: This rule amends the procedural regulations in 40 CFR Part 790 which govern the development and implementation of testing requirements under section 4 of TSCA.

I. Amendments

These amendments are the outgrowth of EPA's increased experience with two-phase test rules, and are intended to simplify the two-phase rulemaking process and to decrease certain paperwork burderns associated with it for both test sponsors and the Agency.

The amendment to § 790.50 eliminates the requirement for test sponsors to submit final study plans no later than 45 days before the initiation of each test. This requirement was intended to provide EPA complete copies of the final approved study plan to facilitate review and audit of the studies. However, under the current process for adopting test standards and schedules for two-phase rules, for each required test EPA now incorporates the proposed study plan submitted by the test sponsor plus any revisions resulting from EPA review and public comment into one document. EPA now finds that this EPA-compiled document is sufficient for the purpose of a complete, approved final study plan and no longer finds a need for test sponsors to submit a separate final study plan. It should be noted, however, that this amendment does not nullify the reequirement pursuant to 40 CFR 790.50(c)(2) for test sponors to supply information on the testing facility and personnel utilized for each test before the initiation of testing, if it was not previously submitted with the proposed study plan or if it has changed since that submission.

The amendment to § 790.52 redefines the test standard to include only the revised study protocol section of the revised study plan. The test standard is currently defined as the entire revised study plan, excluding the revised schedule section. The revised schedule section remains the schedule for the required testing. This amendment will reduce the burden of testing required by two-phase test rules by eliminating the requirement for applications to modify the test stanard for all but the revised study protocol section of the revised study plan. Currently, for example, if a test sponsor changes the personnel conducting the test, the sponsor must submit an application for modification of the test standard to the Agency. In addition, although EPA may notify the test sponsor by telephone or letter of its approval of such a non-substantive change, the Ageny must publish a notice in the **Federal Register** announcing that EPA has approved this modification. The redefinition of the test standard for two-phase test rules also makes this definition more consistent with that utilized for single-phase test rules and testing consent order.

EPA is promulgating these amendments as an immediately effective interim final rule so that the current requirements for test sponsors to apply for non-substantive modifications of test standards for two-phase test

rules and the submission of final study plans may be quickly rescinded. This will result in an immediate savings in time and resources for both Agency and regulated industries, and ongoing testing will not be delayed. These amendments represent only procedural changes, and do not impose any substantive requirements on manufacturers or processors subject to TSCA section 4(a) test rules. Further, EPA finds that providing for comment before making these changes would be contrary to the public interest and that good cause exists to make the changes effective immediately.

However, EPA is inviting comment on these changes and will take any comments into consideration when promulgating a final rule on procedures governing modification of test standards or schedules.

II. Rulemaking Record

EPA has established a record for this rulemaking, docket number [OPTS–42052D]. This record, which includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** Notices, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule on procedures governing two-phase test rule development and implementation under section 4 of TSCA is not major because it does not meet any of the criteria set forth in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (U.S.C. 601, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small business entities.

The procedural amendments described in this rule are expected to reduce the administrative and financial burdens which two-phase test rules might otherwise impose on regulated industries.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 790

Test procedures, Environmental protection, Hazardous substances, Chemicals.

Dated: September 22, 1987.

V.J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 790 is amended as follows:

PART 790—[AMENDED]

1. The authority citation of Part 790 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 790.50 [Amended]

2. In § 790.50 by removing and reserving paragraph (a)(2)(ii).

3. In § 790.52 by revising paragraph (c) to read as follows:

§ 790.52 Phase II test rule.

* * * * *

(c) After receiving and considering public comments on the study plan, EPA will adopt, as proposed or as modified in response to EPA review and public comments, the study protocol section of the study plan, as defined by § 790.50(c)(1)(v) of this chapter, as the test standard for the required testing, and the schedule section of the study plan, as defined by § 790.50(c)(1)(vi) of this chapter, as the schedule for the required testing in a final Phase II test rule.

[FR Doc. 87–22521 Filed 9–29–87; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 790

[OPTS–42052E; FRL–3270–2]

Procedures Governing Modification of Test Standards and Schedules for Tests Required Under Test Rules and Testing Consent Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is amending the procedures governing modification of test standards and schedules for tests required under test rules and testing consent agreements under the authority of section 4 of the Toxic Substances Control Act (TSCA). EPA believes that the amended procedures will eliminate unnecessary delays in the development of the required health or environmental effects data and reduce certain paperwork burdens associated with the current procedures.

DATES: Effective on October 30, 1987. Submit written comments on or before October 30, 1987.

ADDRESS: Submit written comments, identified by the document control number [OPTS–42052E], in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE–G004, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room 543, 401 M Street SW., Washington, DC 20460, (202) 554–1401.

SUPPLEMENTARY INFORMATION: This rule amends the procedural regulations in 40 CFR Part 790.

I. Statutory Background

Section 4(a) of TSCA, 15 U.S.C. 2603(a), authorizes EPA to require manufacturers (including importers) and/or processors of chemical substances and mixtures (chemicals) to conduct tests on those chemicals to determine whether they have adverse health or environmental effects. EPA exercises this authority by promulgating test rules or issuing testing consent agreements. Each test rule or testing consent agreement includes the identity of the chemical to be tested, specifies the studies to be performed, provides standards for the development of test data, and establishes deadlines for the submission of test results.

II. Procedures Governing Modification of Test Standards and Schedules

A. Current Procedures

Under EPA's current procedures governing test rules and testing consent agreements in 40 CFR Part 790, any test sponsor who wishes to modify the test standards or schedules for any test required under a test rule or testing consent agreement must submit an application in accordance with § 790.55 or § 790.68. The application must include an appropriate explanation of why the modification is necessary.

The procedures specify that EPA, to the extent feasible, will seek public comment on all substantive changes in the test standards and schedules. EPA

will issue a notice in the **Federal Register** seeking comments on requested modifications. However, EPA will act on the requested modification without seeking public comment if either: (1) EPA believes that an immediate modification to a test standard is necessary to preserve the accuracy or validity of an ongoing study, or (2) EPA determines that a modification clearly does not pose any substantive issues. When EPA approves a modification, it will publish a notice in the **Federal Register** indicating that the test standard or schedule has been modified.

B. Amended Procedures

EPA has received requests for modifications of test standards and schedules for several test rules in the past year. Based on its consideration of these requests under the existing procedures, EPA has concluded that the current procedures are unduly cumbersome, require a considerable expenditure of EPA resources, and are likely to result in unavoidable delays of testing under test rules and testing consent agreements. Accordingly, EPA is amending the current procedures for approving modifications of test standards and schedules for tests required under test rules and testing consent agreements. The amended procedures will allow requested modifications, which do not alter the scope of a test or significantly change the schedule for completing the test, to be approved by letter without the need for public comment. Letters approving such modifications will be placed in EPA's public files immediately. In addition, EPA will publish a notice of such modifications in the **Federal Register** on an annual basis.

Requests for modifications of test standards and schedules likely will fall into two categories: (1) Those which would alter the scope of a required test or significantly change the schedule for completing it and (2) those which would not. EPA believes that it is appropriate to continue to approve modifications falling into the first category through notice and comment procedures in the **Federal Register**. The current procedures for both test rules and testing consent agreements call for such notice and comment, because such modifications may lead to a test which provides quite different data in relation to its original purpose.

EPA has found that the requested modifications to date fall into the second category and would not alter the scope of the tests in question or significantly delay completion of the tests. Some recent examples include changing the purity of the test substance used in a study from 99 percent to 97 percent because 99 percent pure substance is no longer being manufactured, adjusting the study protocol to change the temperature at which a study is conducted, and slight extensions of schedules of less than six months to deal with technical difficulties encountered during preliminary phases such as problems with volatility or solubility of the test substance. In such cases, EPA believes that the modifications, while often substantive in nature, are necessary and very unlikely to be controversial. Yet, by making such modifications only through notice and comment procedures, EPA likely would have to further extend the testing schedule to account for the delays resulting from such procedures.

Under the current procedures, EPA is committed to using notice and comment procedures to adopt modifications except in two circumstances: (1) When immediate modification is necessary to preserve the accuracy or validity of an ongoing study and (2) when the modification clearly does not pose any substantive issues. None of the requested modifications to date have fit the first of these categories because they have been encountered at the beginning of a test. While the modifications that have been granted were determined to fit the second category, EPA finds that such determinations may be seen as somewhat ambiguous in the future unless the language used in this category is stated in more specific terms.

The current procedures, to the extent that they require a notice and comment process to adopt modifications that do not affect the scope of the test or significantly change the timing of the test, serve to delay testing. A test sponsor cannot make a change in how it conducts the test until EPA has completed the notice and comment process for approving the change. Consequently, because of the relatively tight schedules for submission of test data in EPA test rules and consent agreements, EPA would have to extend those submission dates by an amount equal to that taken up by the notice and comment process, further delaying receipt of test data. Thus, following these procedures is contrary to the public interest in expeditious completion of the required toxicity testing.

To deal with these problems, EPA is amending the current procedures governing modification of test standards and schedules for tests required under test rules and testing consent agreements to allow EPA to respond more quickly and efficiently to such requests, to minimize delays in completion of testing and receipt of results, and to reduce paperwork burdens.

Section 790.55, which governs modifications of test standards and schedules for tests required under test rules, is amended to allow EPA to approve modifications of test standards and schedules for tests required under test rules by letter without seeking public comment, where EPA determines that the modifications would not alter the scope of the test or significantly change the schedule for completing the test. All other modifications will continue to be made after providing for public comment through a notice in the **Federal Register**, except where immediate modification of a test standard is necessary to preserve the accuracy or validity of the test. Modifications which would alter the scope of the test or significantly change the schedule for completing it are described in § 790.55(b)(4). EPA believes that this new approach is consistent with the language of the existing rule, which refers to modifications that do not raise substantive issues, but is clearer.

To reduce the cost and burden of publishing notices in the **Federal Register** describing modifications of this type, § 790.55 is also amended to provide that EPA will publish a notice once a year describing all of the modifications approved during the previous year. EPA will place copies of the modification applications and EPA's approvals in the rulemaking records for the applicable test rules immediately. These will be available to the public in EPA's public files, in Room G–004, NE-Mall, 401 M St. SW., Washington, DC 20460, to the extent they do not contain confidential business information. Finally, until EPA has published the annual notice, each modification will apply only to the test sponsor who made the application.

The changes to § 790.68 for modifications of test standards and schedules for tests required under testing consent agreements are virtually the same. There are two minor differences from the procedures in § 790.55. First, EPA's approval letter will be sent not only to the test sponsor who requested the modification but also to any other persons who have signed the consent order. Second, the modification will apply only to the testing conducted by that test sponsor, even after publication of the annual notice in the **Federal Register**, because consent agreements apply only to those persons who sign consent orders.

EPA is promulgating these amendments as an interim final rule so that they may be used immediately. The

amendments are to procedural rules and, thus, do not require public comment. However, EPA requests comment on this approach to modification of test standards and schedules for tests required under test rules and testing consent agreements and will consider such comments when promulgating a final rule on procedures governing test rules and testing consent agreements.

III. Rulemaking Record

EPA has established a record for this rulemaking, docket number [OPTS–42052E]. This record, which includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460.

IV. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule on procedures governing modification of test standards and schedules for tests required under test rules and testing consent agreements under the authority of section 4 of TSCA is not major because it does not meet any of the criteria set forth in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small business entities.

The procedural amendments described in this rule are expected to expedite the development of test data and to reduce certain paperwork burdens associated with current regulations.

List of Subjects in 40 CFR Part 790

Test procedures, Environmental protection, Hazardous substances, Chemicals.

Dated: September 23, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 790 is amended as follows:

PART 790—[AMENDED]

1. The authority citation for Part 790 continues to read as follows:

Authority: 15 U.S.C. 2603.

2. In § 790.55 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 790.55 Modification of test standards or schedules during conduct of test.

* * * * *

(b) *Adoption.* (1) Where EPA concludes that the requested modification of a test standard or schedule for a test required under a test rule is appropriate, EPA will proceed in accordance with this paragraph (b).

(2) Where, in EPA's judgment, the requested modification of the test standard or schedule would not alter the scope of the test or significantly change the schedule for completing the test, EPA will not ask for public comment before approving the modification. EPA will notify the test sponsor by letter of EPA's approval. EPA will place copies of each application and EPA approval letter in the rulemaking record for the test rule in question. EPA will publish a notice annually in the **Federal Register** indicating the test standards or schedules for tests required in test rules which have been modified under this paragraph (b)(2) and describing the nature of the modifications. Until the **Federal Register** notice is published, any modification approved by EPA under this paragraph (b)(2) shall apply only to the test sponsor who applied for the modification under this paragraph (a) of this section.

(3) Where, in EPA's judgment, the requested modification of a test standard or schedule would alter the scope of the test or significantly change the schedule for completing the test, EPA will publish a notice in the **Federal Register** requesting comment on the proposed modification. However, EPA will approve a requested modification of a test standard under this paragraph (b)(3) without first seeking public comment if EPA believes that an immediate modification to the test standard is necessary to preserve the accuracy or validity of an ongoing test. EPA will publish a notice in the **Federal Register** approving any modification under this paragraph (b)(3).

(4) For purposes of this paragraph (b), a requested modification of a test standard or schedule for a test required under a test rule would alter the scope of the test or significantly change the schedule for completing the test if the modification would:

(i) Change the test species.

(ii) Change the route of administration of the test chemical.

(iii) Change the period of time during which the test species is exposed to the test chemical.

(iv) Result in a delay of over six months in receiving the final report of the test.

(c) *Disapproval.* Where EPA concludes that the requested modification of a test standard or schedule for a test required under a test rule is not appropriate, EPA will so notify the test sponsor in writing.

3. In § 790.68 by revising paragraphs (b)(2) and (3) to read as follows:

§ 790.68 Modification of consent agreements.

* * * * *

(b) * * *

(2)(i) Where EPA concludes that the requested modification of a test standard or schedule for a test required under a consent agreement is appropriate, EPA will proceed in accordance with this paragraph (b)(2).

(ii) Where, in EPA's judgment, the requested modification of a test standard or schedule would not alter the scope of the test or significantly change the schedule for completing the test, EPA will not ask for public comment before approving the modification. EPA will notify the test sponsor, and any other persons who have signed the consent agreement, by letter of EPA's approval. EPA will place copies of each application and EPA approval letter in the administrative record maintained for the consent agreement in question. EPA will publish a notice annually in the **Federal Register** indicating the test standards or schedules for test required in consent agreements which have been modified under this paragraph (b)(2)(ii) and describing the nature of the modifications.

(iii) Where, in EPA's judgment, the requested modification of a test standard or schedule would alter the scope of the test or significantly change the schedule for completing the test, EPA will publish a notice in the **Federal Register** requesting comment on the proposed modification. However, EPA will approval a requested modification of a test standard under this paragraph (b)(2)(iii) without first seeking public comment if EPA believes that an immediate modification to the test standard is necessary to preserve the

accuracy or validity of an ongoing test. EPA will publish a notice in the **Federal Register** approving any modification under this paragraph (b)(2)(iii).

(iv) For purposes of this paragraph (b)(2), a requested modification of a test standard of schedule for a test required under a consent agreement would alter the scope of the test or significantly change the schedule for completing the test if the modification would:

(A) Change the test species.

(B) Change the route of administration of the test chemical.

(C) Change the period of time during which the test species is exposed to the test chemical.

(D) Result in a delay of over six months in receiving final report of the test.

(3) Where EPA concludes that the requested modification of a test standard or schedule for a test requirement under a consent agreement is not appropriate, EPA will so notify the test sponsor in writing.

[FR Doc. 87-22520 Filed 9-29-87; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

[FPMR Temp. Reg. G-50]

Use of Cash for Official Travel

AGENCY: Federal Supply Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation temporarily amends the Federal Property Management Regulations (FPMR) by raising the monetary limit on cash purchases of official passenger transportation services from $100 to $500. This increase will eliminate the requirement for agencies to request a written exemption from the General Services Administration (GSA) before reimbursing travelers for nonemergency cash purchases up to $500. Prior to the expiration date of this regulation, GSA will determine whether to make this increase permanent. This regulation also changes the correspondence symbol for submissions to ensure better monitoring and changes agencies' submission requirements concerning cash purchases of passenger transportation services costing more than $10.

DATES: *Effective date:* September 30, 1987.

Expiration date: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, (202) 786-3014 or FTS 786-3014.

SUPPLEMENTARY INFORMATION: This revised cash policy requires agencies to make Code E submissions of all cash purchases of passenger transportation services costing more than $10 (§ 101-41.203-2(b)(3)). Also, § 101-41.203-2(a)(1) specifically prohibits the use of cash in excess of $10 to circumvent the regulations governing the contract airline program.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act [5 U.S.C. 605(b)], GSA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Maritime carriers, Passenger services, Railroads, Transportation.

Authority: 31 U.S.C. 3726; Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter G to read as follows:

[Federal Property Management Regulations Temporary Regulation G-50]

August 27, 1987.

To: Heads of Federal agencies.

Subject: Use of cash for official travel.

1. *Purpose.* This temporary regulation modifies FPMR 101-41.203-2 by raising the monetary limit on cash purchases of official passenger transportation services from $100 to $500.

2. *Effective date.* This regulation is effective September 30, 1987.

3. *Expiration date.* This regulation expires on September 30, 1988, unless sooner revised or superseded.

4. *Applicability.* This regulation applies to all Government agencies that are subject to the audit authority of GSA under 31 U.S.C. 3726.

5. *Background.* FPMR Amendment G-72, published May 14, 1985 (50 FR 20101), prescribes the policy and procedures for the cash purchase of passenger transportation services. Normally, the Government Transportation Request (GTR), Government Travel System account, or a Government-issued charge card is used to purchase these services; however, agencies may require travelers to use cash instead of the prescribed methods when transportation services cost more than $10 but do not exceed $100. This regulation temporarily raises the cash limit from $100 to $500. This regulation also requires the submission of documentation relating to all cash purchases of passenger transportation services exceeding $10.

6. *Revised policy.* Section 101-41.203-2 is revised to read as follows:

§ 101-41.203-2 Use of cash.

(a) Cash shall be used to procure all passenger transportation services costing $10 or less, exclusive of Federal transportation tax, and to pay air excess baggage charges of $15 or less for each leg of a trip (see § 101-41.203-6), unless special circumstances justify the use of a GTR or Government Excess Baggage Authorization Ticket (GEBAT). Agencies have the option of requiring travelers to use cash to procure passenger transportation services from, to, or between points in the United States, including Alaska and Hawaii, and its possessions or trust territories, where such services cost more than $10, but do not exceed $500; exclusive of Federal transportation tax, for each trip authorized on an official travel authorization. GTR's shall be used to procure all passenger transportation services costing in excess of $500, excluding Federal transportation tax, unless otherwise exempted herein. For the purpose of this subpart, references made to GTR's also apply to Government Travel System (GTS) accounts and Government-issued charge cards. For cash purchased tickets costing more than $10, ticket coupons, travel authorizations, or SF 1170's shall be forwarded for audit to General Services Administration (FWCPR), Attention: CODE E, Washington, DC 20405.

(1) Approval for the use of cash in excess of $500 should be obtained prior to travel. In the absence of advance written authorization or approval, passenger transportation services shall be purchased in accordance with

policies and procedures prescribed in the Federal Travel Regulations (FTR), FPMR 101–7. The traveler shall be responsible for any additional costs incurred when cash is used to procure transportation services, such as the use of foreign-flag carriers, first-class travel, or more costly modes, unless such use is approved on the travel voucher in accordance with the governing provisions of the FTR. The traveler should be aware that the use of a GTR may be required to obtain certain discount fares and to comply with the mandatory provisions of FPMR Temporary Regulations (A Series) governing the use of contract airline services between designated city-pairs. Cash shall not be used to circumvent the regulations governing airline city-pair contracts.

(2) Agencies shall not impose a financial hardship on travelers by requiring their use of personal funds to purchase the services set forth in paragraph (a) of this section but should provide the funds through travel advances.

(3) Use of credit cards, other than the GSA contractor-issued charge cards, and all travelers checks to purchase passenger transportation services shall be considered the equivalent of cash and subject to the $500 limitation provided in paragraph (a) of this section.

(4) Passenger transportation services procured with GSA contractor-issued charge cards or under Government Travel System accounts are not subject to the $500 cash limitation.

(5) Passenger transportation services procured in accordance with the group or charter provisions of section 1–3.4(2)(a) of the FTR are not subject to the provisions of this subpart.

(b) Under emergency circumstances, where the use of GTR's is not possible, heads of agencies, or their designated representatives, may authorize travelers to exceed the $500 limitation when procuring passengers transportation services.

(1) Delegation of authority for authorizing and approving the use of cash in excess of $500 for the procurement of emergency transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances. These delegations of authority shall be made in writing and copies retained to permit monitoring of the system. These records of delegations of authority shall be available for examination by GSA auditors.

(2) To justify the use of cash in excess of $500 instead of GTR's when procuring passenger transportation services, both the Government agency head, or his/her designated representative, and the traveler shall certify on the travel voucher the reasons for this use.

(3) After the traveler has been reimbursed for an emergency cash purchase in excess of $10, copies of travel authorizations, ticket coupons, and any ticket refunds applications, or SF 1170's, Redemption of Unused Tickets shall be forwarded for audit to the General Services Administration (FWCP/R), Attention: Code E, Washington, DC 20405.

(4) Travel vouchers shall be maintained by the agency and be made available for site audit by GSA auditors. General Records Schedule 9, Travel and Transportation Records (see 36 CFR 1228.22) provides instructions for the disposal of these travel vouchers.

(c) Under nonemergency circumstances, where use of a GTR is possible, heads of agencies, or their designated representatives, shall request an exemption from the Assistant Commissioner, Officer of Transportation Audits (FW), GSA, Washington, DC 20405, for cash purchases exceeding the $500 limitation.

(1) Requests shall be made in writing, shall only be for individual travel itineraries, and shall fully explain why an exemption should be granted. Traveler convenience will not be cause for GSA approval. For the purpose of performing a fare audit, requests shall also include copies of travel authorizations, ticket coupons, and any ticket refund applications, or SF 1170's associated with the travel in question.

(2) Travelers shall not be reimbursed for the nonemergency use of cash to procure passenger transportation services costing more than $500 unless written approval is granted by GSA.

(d) Suspected travel management errors and/or misroutings which result in higher travel costs to the U.S. Government will be reported by GSA (FWCA) to the appropriate military or civil agency travel manager for corrective action with the violating agency.

(e) Travelers using cash to purchase individual passenger transportation services shall procure such services directly from carriers, travel agents under GSA contract (see § 101–41.203–1), or SATO's and shall account for those expenses on their travel vouchers, furnishing passenger coupons or other evidence as appropriate in support thereof. Moreover, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment is preprinted on the travel voucher and shall be initiated by the traveler.

(f) Travelers using cash to procure passenger transportation services shall be made aware of the provisions of § 101–41.209–4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space. Also, travelers using cash shall adhere to the regulations of the General Accounting Office (4 CFR 52.2) regarding the use of U.S.-flag vessels and air carriers (see § 101–41.203–1(b)).

Paul Trause,

Acting Administrator of General Services.

[FR Doc. 87–22433 Filed 9–29–87; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC–403–CN]

Capital Payments Under the Inpatient Hospital Prospective Payment System; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of correction.

SUMMARY: In the September 1, 1987 issue of the **Federal Register** (FR Doc. 87–20081), beginning on page 33168, we amended the Medicare regulations governing the inpatient hospital prospective payment system to incorporate capital costs into that system. This notice corrects inadvertent errors we made in the preamble and regulations text of that document. We note that the change in the regulations text of 42 CFR 412.92 is necessary because of the interaction of the mandatory language concerning § 412.92 that was issued in the final rule with comment period published on August 14, 1987 (52 FR 30367) and in the subject final rule.

FOR FURTHER INFORMATION CONTACT: Mike Fiore, (301) 594–4269.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the September 1, 1987 document:

1. On page 33181, in the second column, beginning with the first full paragraph and proceeding through the sixth step of the example ending in the second column on page 33182, the entire day outlier example and the entire cost outlier example are corrected to read as follows:

The following is an example of how additional payment would be

determined for a day outlier (which does not qualify as a cost outlier) in FY 1988.

Hospital X is a small central city teaching hospital located in the San Francisco MSA. Hospital X is entitled to an indirect medical education adjustment of 7.871 percent as well as a disproportionate share adjustment of five percent. Mrs. Smith is admitted to hospital X on October 3, 1987 and is discharged October 31, 1987. Mrs. Smith's stay is classified in DRG 31. Because Mrs. Smith's 28 day stay exceeds the 22 day length-of-stay outlier threshold for DRG 31, hospital X is eligible for payment for six outlier days in addition to the otherwise applicable prospective payment. The amount of Hospital X's outlier payment (excluding the usual Federal payment that applies to both outliers and non-outlier cases) is calculated as follows:

Step 1: Computation of Federal Rate (excludes capital, indirect medical education (IME), and disproportionate share hospital (DSH) payments)

National Urban Standardized Amounts:
Labor-related: $2337.09
Nonlabor-related: 828.12
San Francisco Wage Index: 1.4946
DRG 31 Relative Weight: .6550
.6550×(2337.09×1/4946+828.12)=$2830.34

Step 2: Computation of Federal Capital Payments

A. Plant/fixed Equipment:
Federal Rate: $180.03
San Francisco Construction Cost Index: 1.043
DRG 31 Relative Weight: .6550
Federal Portion of Plant/Fixed Equipment Capital Rate: 5%
.6550×(180.03×1.043)×.05=$6.15

B. Movable Equipment:
Federal Rate: $122.39
DRG 31 Relative Weight: .6550
Federal Portion of Movable Equipment Capital Rate: 5%
.6550×(122.39)×.05=$4.01

C. Capital Outlier Payment Amount
6.15+4.01=$10.16

Step 3. Payment Amount, Including Capital:

DRG 31 2830.34+10.16=$2840.50

Step 4. Computation of Day Outlier Payments

DRG 31 Geometric Length of Stay: 4.2 days
Outlier Threshold: 22 days
Outlier Days: 28 day length of stay minus 22 day threshold=6 days
Marginal Cost Factor: .60
Outlier Payment (excluding IME & DSH adjustment)=# of outlier days×(Total Federal Payment÷Geometric length of stay for DRG)×Marginal cost factor
6×(2840.50÷4.2)×.60=$2434.71

Step 5: Computation of IME and DSH adjustment for Day Outliers

IME Adjustment Factor: .07871
DSH Adjustment Factor: .05
Outlier Payment: $2434.71
IME Outlier Adjustment: 2434.71×.07871=$191.64
DSH Outlier Adjustment: 2434.71×.05=$121.74

Step 6: Total Day Outlier Payments

Regular	2434.71
IME	191.64
DSH	121.74
Total	2748.09

Step 7: Total payment for DRG 31 including day outlier payment.

Federal Payment Including Capital	$2,840.50
IME Adjustment	223.58
DSH Adjustment	142.03
Total Day Outlier Payment	2,748.09
Total	5,954.20

The following is an example of how the additional payment would be determined for a high cost outlier in FY 1988. Same facts as in the day outlier example with the exception that Mrs. Smith's length of stay was 16 days and she incurred total billed charges of $100,000.

Step 1: Computation of Hospital X's Standardized Costs (Includes Capital)

Billed charges—$100,000
National Ratio of cost to Charges[2]—.71
IME Ajustment Factor —07871
DSH Adjustment Factor—.05

$$\text{Standardized Cost} = \frac{\$100{,}000}{1 + (.07871 + .05)} \times .71 = \$62{,}903.67$$

Step 2: Determination of Cost Outlier Thresholds

Computation 1—(Based on Federal Rate) DRG 31 Federal rate excluding capital—$2830.34
DRG 31 Federal capital payment rate:
DRG 31 relative weight: .6550
Plant/fixed Equipment Federal Rate: $180.03
Construction Cost Index (San Francisco): 1.043
Movable Equipment Federal Rate: $122.39
Federal Capital Rate = (180.03 × 1.043 +122.39)×.6550=$203.16
Federal Rate including capital for threshold computation—$2830.34 + 203.16 = $3033.50
Federal Rate, doubled = 2 × $3033.50 = $6067.00

[2] This factor reflects the inclusion of capital costs and the exclusion of interest income on funded depreciation as described in the June 3, 1986 NPRM (51 FR 20029).

Computation 2—Based on Adjusted Standard Cost Outlier Threshold:
Standard Cost Outlier Threshold—$14,000
Labor-related share [3]—68.632%
San Francisco MSA wage index—1.4946
Nonlabor-related share, excluding capital [3]—23.628%
Nonlabor-related share, capital only [3]—
Plant/Fixed Equipment Share—5.761%
Movable Equipment Share—1.979%
Construction Cost Index (San Francisco)—1.043
Adjusted Cost Outlier Threshold including capital = (14,000 × .68632 × 1.4946) + (14,000 × .23628) + (14,000 x .05761 x 1.043) + (14,000 × .01979) = $18,787.03
Computation 1 result—$6,067.00
Computation 2 result—$18,787.03
Applicable cost outlier threshold—$18,787.03

Step 3: Calculation of Cost Outlier Payment

Outlier Cost—
$62,903.67 − 18,787.03 = $44,116.64
Capital portion of outlier cost
—Plant/Fixed Equipment:
$44,116.64 × .05761 = $2,541.56
Federal portion of Plant/Fixed Equipment Rate: 5%
Federal Plant/Fixed Equipment Portion of Outlier Cost:
$2,541.56 × .05 = $127.08
—Movable Equipment
$44,116.64 × .01979 = $873.07
Federal Portion of Movable Equipment Rate: 5%
Federal Movable Equipment Portion of Outlier Cost: $873.07 × .05 = $43.65
Outlier Cost Excluding Capital
$44,116.64 − (2,541.56 + 873.07) = $40,702.01
Marginal Cost factor—.60
Outlier payment—capital and noncapital portions
($127.08 + 43.65 + 40,702.01) × .60
= $24,523.64

Stept 4: Indirect medical education adjustment for cost outlier payment

Percent add-on for indirect medical education–7.871%
Indirect medical education cost outlier payment–$24,523.64 × .07871 = $1,930.26

Step 5: Disproportionate share hospital (DSH) adjustment for cost outlier payment

DSH percentage add-on–5%
DSH outlier payment
$24,523.64 × .05 = $1,226.18

[3] These market basket weights reflect updated 1986 market basket components, including capital, which are based on 1982 cost data as described in the June 3, 1986 proposed rule (51 FR 19985–19988).

Step 6: Total cost outlier payments

Regular	$24,523.64
Indirect Medical Education	1,930.26
Disproportionate Share	1,226.18
Total	27,680.08

Step 7: Total payment for DRG 31 including cost outlier payment

Federal Payment Including Capital	$2,840.50
IME Adjustment	223.58
DSH Adjustment	142.03
Total Cost Outlier Payment	27,680.08
Total	30,886.19

2. On page 33184, in the second column, in the eleventh line from the bottom of the page, the phrase "100 percent of its Federal rate" is corrected to read "50 percent of its hospital-specific costs and 50 percent of its Federal rate".

§ 412.65 [Corrected]

3. On page 33187, in the first column, in § 412.65(b), the date "*September 30, 1987*" in the title is corrected to read "*September 30, 1997*".

4. On page 33189, in the second column, paragraph (d) of § 412.92 is correctly revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(d) *Determining prospective payments for sole community hospitals.*

(1) *General rule.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community hospitals equal the sum total of the following payment rates:

(i) 75 percent of the hospital-specific base payment rate as determined under § 412.73;

(ii) 25 percent of the appropriate regional prospective payment rate as determined under Subpart D of this part; and

(iii) The capital payment as determined under § 412.67(f).

(2) *Adjustments to payments.* A sole community hospital may receive an adjustment to its payments to take into account a significant decrease in number of discharges or significant increase in inpatient operating costs, as described in paragraphs (e) and (f) of this section, respectively.

* * * * *

(Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended; 42 U.S.C 1302, 1320a–1, 1395hh, and 1395ww; 42 CFR 412.65 and 412.92)
Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program)

Dated: September 24, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87–22491 Filed 9–29–87; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[AA–320–87–4220]

Special Laws and Rules; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The final rulemaking providing a restatement of procedures for the segregation and opening of public lands under 43 CFR Part 2090, Special Laws and Rules, that appeared on pages 12171 through 12178 of the **Federal Register** of April 15, 1987 (52 FR 12171), contained a typographical error in two citations that appeared on page 12178, column two. These citations are hereby corrected by replacing the citation "part 2470" in the two places it appears in § 2091.7–1(b)(1) (i) and (ii) with the citation "part 2740".

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Claire Newcomer, (202) 343–6489.

James. E. Cason,

Deputy Assistant Secretary of the Interior.

September 23, 1987.

[FR Doc. 87–22547 Filed 9–29–87; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Parts 2800 and 2880

[AA–330–07–02–NCPF–2410]

Rights-of-Way, Principles and Procedures and Rights-of-Way Under the Mineral Leasing Act; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: Two final rulemakings amending the existing regulations on Rights-of-Way, Principles and Procedures—43 CFR Part 2800—and Rights-of-Way Under the Mineral Leasing Act—43 CFR Part 2880—were

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published on pages 25802 through 25823 of the Federal Register of July 8, 1987 (52 FR 25802). Several errors were found in the final rulemakings and are corrected by this correction notice.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Theodore Bingham, (202) 343–5441.

SUPPLEMENTARY INFORMATION: The corrections to the final rulemakings are as follows:

§ 2808.4 [Corrected]

1. On page 25810, column 1, § 2808.4(a)(1), the citation "§ 2802.2–2" is corrected to read "§ 2808.2–2".

2. On page 25810, column 2, § 2808.4(a)(1), the table is corrected by removing footnote 1 which reads "[1] Shall be included with costs determined under § 2802.3" because the footnote is no longer needed.

§ 2808.6 [Corrected]

3. On page 25811, column 1, § 2808.6(b), the citation "§ 2808.5(d)" is corrected to read "§ 2808.5(c)".

§ 2803.1–2 [Corrected]

4. On page 25818, column 3, § 2803.1–2(a), the third sentence thereof is corrected by removing the phrase "that the minimum rental under paragraph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further," because its retention in the final rulemaking was an oversight. The preamble to the final rulemaking discusses its removal.

5. On page 25819, column 3, § 2803.1–2(c)(3)(i), the phrase "under paragraph (c)(1)(v) of this section. And for non-linear right-of-way grants and temporary use permits (e.g., communications sites," is corrected to read "under paragraph (c)(1)(v) of this section, and for non-linear right-of-way grants and temporary use permits (e.g., communication sites,".

6. On page 25820, column 1, § 2803.1–2(c)(3)(i), in the last sentence thereof the phrase "communications sites," is corrected to read "communication sites,".

8. On page 25820, column 1, § 2803.1–2(d), the phrase "and such default for nonpayment default continues" is corrected to read "and such default for nonpayment continues".

James E. Cason,

Deputy Assistant Secretary of the Interior.

September 23, 1987.

[FR Doc. 87–22546 Filed 9–29–87; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Part 3160

[AA–630–07–4111–02]

Onshore Oil and Gas Operations; Final Rulemaking Changing a Form Number

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: A final rulemaking was published in the Federal Register on February 20, 1987 (52 FR 5384), which, among other things, corrected Operating Form numbers for several forms used by the Bureau of Land Management. That final rulemaking did not change the number for Operating Form "Form 9–331" to "Form 3160–5" in the Note at the beginning of 43 CFR Part 3160. The final rulemaking did, however, correct various provisions of 43 CFR Part 3160 to change "Form 9–331" to "Form 3160–5". This final rulemaking will amend the note at the beginning of 43 CFR Part 3160 to correct "Form 9–331" to "Form 3160–5".

EFFECTIVE DATE: September 30, 1987.

ADDRESS: Any inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen Spector (202) 653–2147.

SUPPLEMENTARY INFORMATION: The change made by this final rulemaking is an administrative change designed to conform the Operating Form numbers in the Note at the beginning of 43 CFR Part 3160 with the changes in Operating Form Numbers already made in 43 CFR Part 3160. The amendment will have no impact other than clarification of the Operating Form numbers as they are set forth in the regulations. Therefore, this final rulemaking making this administrative change is being published as a final rulemaking, with no comment period, and is being made effective upon publication.

The principal author of this final rulemaking is Stephen Spector, Division of Fluid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.) Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

September 25, 1987.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Indian Mineral

Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Note 1, *Operating Forms*, is amended as follows:

A. In the first column, the number "9–331" is removed and replaced with the number "3160–5"; and

B. In the third column, the number "1010–0002" is removed and replaced with the number "1004–0135".

[FR Doc. 87–22545 Filed 9–29–87; 8:45 am]
BILLING CODE 4310–84–M

43 CFR Public Land Order 6658

[ID–943–07–4220–10; I–4966]

Withdrawal of Land for Roadless Recreation Area; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 183.47 acres of National Forest land for 20 years in order to protect one of the few remaining stands of old-growth western red cedar as a roadless recreation area. This action will close the land to mining, but not to surface entry or mineral leasing.

EFFECTIVE DATE: September 30. 1987.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1735.

By virtue of the authority vested in the Secretary of the Interior, by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714 it is ordered as follows:

1. Subject to valid existing rights, the following-described National Forest lands, which are under jurisdiction of the Secretary of Agriculture, are hereby withdrawn from appropriation under the general mining laws, 30 U.S.C. Chapter 2, but not from leasing under the mineral leasing laws, for protection of the Settler's Grove of Ancient Cedars Roadless Recreation Area.

Boise Meridan, Idaho, Coeur d'Alene National Forest

T. 50 N., R. 5 E.,
Sec. 4, NW¼NE¼ of lot 1, NW¼ of lot 1, SW¼SW¼ of lot 1, N½SW¼ of lot 1, SE¼NE¼ of lot 2, SE¼ of lot 2, NE½SW¼NE¼, NW¼SE¼SW¼NE¼, E½ NW¼SW¼NE¼, SW¼ NW¼SW¼ NE¼, SW¼SW¼NE¼, E½SE¼NW¼, SW¼NW¼SE¼ NW¼, SE¼SW¼SE¼ NW¼, NW¼NE¼SW¼, NE¼NE¼S W¼, S½NE¼ NW¼SW¼, SE¼ NW¼ NW¼SW¼, NE¼SW¼ NW¼SW¼, N½SE¼ NW¼SW¼, W½ NW¼ NW¼SE¼.
T. 51 N., R. 5 E.,
Sec. 33, S½SE¼ NE¼SE¼, SE¼SW¼ NE¼SE¼, NE¼SE¼SE¼,E½ NW¼SE¼SE¼, W½SE¼SE¼SE¼, SW¼SE¼SE¼, NE¼SE¼SE¼SE¼;
Sec. 34, SW¼NW¼SW¼, NW¼SW¼ SW¼, S½ NW¼ NW¼SW¼.

The area described aggregates 183.47 acres in Shoshone County.

2. The withdrawal made by this order does not alter that applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their nonlocatable mineral or vegetative resources.

3. This withdrawal with expire 20 years from the effective date of this order unless, as a result of the review conducted before the expiration date, pursuant, to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

September 21, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–22450 Filed 9–29–87; 8:45 am]
BILLING CODE 4310–GG–M

43 CFR Public Land Order 6659

[ES–960–07–4220–10; ES–11592]

Withdrawal of Public Land for Buffalo National River; Arkansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 723.05 acres of public lands from surface entry and mining for the National Park Service for protection of Buffalo National River. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Weaver, BLM, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, 703–274–0083.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. chapter 2), but not from leasing under the mineral leasing laws, and are reserved for use by the National Park Service as part of the Buffalo National River.

Fifth Principal Meridian

T. 15 N., R. 17 W.,
Sec. 3, NE¼NE¼.
T. 15 N., R. 18 W.,
Sec. 6, NW¼NW¼;
Sec. 10, NW¼NE¼.
T. 16 N., R. 19 W.,
Sec. 25, SW¼SE¼.
T. 16 N., R. 22 W.,
Sec. 1, S½SW¼, SW¼SE¼, and NE¼SE¼;
Sec. 2, S½SE¼;
Sec. 7, SE¼NW¼, and SW½NE¼;
Sec. 12, NE¼NW¼, and SW¼SE¼;
Sec. 17, NW¼SE¼.
T. 17 N., R. 14 W.,
Sec. 2, S½SW¼.
T. 17 N., R. 21 W.,
Sec. 29, SW¼SW¼.
T. 18 N., R. 14 W.,
Sec. 34, SE¼SE¼.

The areas described aggregate 723.05 acres in Marion, Searcy, and Newton Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

J. Steven Griles,

Assistant Secretary of the Interior.

September 21, 1987.

[FR Doc. 87–22451 Filed 9–29–87; 8:45 am]
BILLING CODE 4310–GJ–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–303; RM–5236]

Radio Broadcasting Services; Pleasant Hope, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 238C2 to Pleasant Hope, Missouri, as that community's first broadcast service, in response to a petition filed by Charles Williams. A counterproposal to allot a higher class channel at Aurora, Missouri and a lower class channel at Pleasant Hope was denied. With this action, this proceeding is terminated.

DATES: Effective November 9, 1987; the window period for filing applications will open on November 10, 1987, and close on December 10, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-303, adopted August 20, 1987, and released September 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[Amended]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Missouri by adding Channel 238C2 at Pleasant Hope.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-22448 Filed 9-29-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 630

[Docket No. 70990-7190]

Atlantic Swordfish Fishery; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: This rule corrects the effective dates of two sections of the foreign fishing regulations in subpart D, Part 611, and provisions of the Atlantic swordfish regulations, Part 630, to avoid their unintentional expiration at the end of this year.

EFFECTIVE DATE: September 30, 1987, except for § 611.61(b)(4); § 630.7(a) (5), (7), and (8), 630.21, and 630.23, which are removed and reserved effective January 1, 1988.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen (Regulatory Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: The effective date section of the notice of the final rule (50 FR 33952, August 22, 1985) implementing the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP) indicated that § 611.60(a)(3), § 611.61(b)(3), and all of Part 630 would expire December 31, 1987. This was an error. In approving the FMP, NOAA specified that only its provisions for seasonal closures (implemented by § 630.7(a) (5), (7), and (8), § 630.21, and § 630.23 of the regulations) would expire on December 31, 1987. This technical amendment removes the time limitation of December 31, 1987, from § 611.60(a)(3), § 611.61(b)(3), and the remaining sections of 50 CFR Part 630. This notice conforms the appropriate sections of 50 CFR Parts 611 and 630 with the original intent of the agency.

This correction will be reflected in the next printing of the Code of Federal Regulations.

It is noted that this action has no effect on the October 31, 1987, expiration date of § 630.5 (Reporting requirements). This is being addressed in a separate action.

Classification

The Assistant Administrator for Fisheries finds for good cause that because this rule only corrects an error and the change will have no substantive effect, it is unnecessary to seek prior public comment or to delay the effective date of this rule under 5 U.S.C. 553 (b) and (c). As no notice of proposed rulemaking is required, this rule is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 603).

This rule merely corrects an error and therefore is not a major rule under Executive Order 12291. There will be no change in the impacts analyzed in the regulatory impact review prepared for the implementing regulations.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

(16 U.S.C. 1801 *et seq.*)

Dated: September 25, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 611 and 630 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Parts 611 and 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 611—FOREIGN FISHING

§§ 611.60 and 611.61 [Amended]

2. The effectiveness of § 611.60(a)(3) and § 611.61(b)(3) is extended indefinitely and on January 1, 1988, § 611.61(b)(4) is removed and reserved.

PART 630—ATLANTIC SWORDFISH FISHERY

§§ 630.5, 630.7, 630.21 and 630.23 [Amended]

3. The effectiveness of Part 630, except for §§ 630.5, 630.7(a)(5), (7), and (8), 630.21, and 630.23, is extended indefinitely.

§ 630.7 [Amended]

4. Effective January 1, 1988, § 630.7(a)(5), (7), and (8) are removed and reserved.

§§ 630.21 and 630.23 [Amended]

5. Effective January 1, 1988, §§ 630.21 and 630.23 are removed and reserved.

[FR Doc. 87-22532 Filed 9-29-87; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 70993-7193]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to implement a technical amendment to the regulations for the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This is a housekeeping rule which corrects two definitions, clarifies the participants in State/Federal agreements for data collection, corrects a reference in the prohibitions section, removes inappropriate and surplus wording, and clarifies the catch allowance for undersized Spanish mackerel. The intended effect is to clarify the regulations and conform them with current usage.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen (Regulatory Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: The mackerel fishery is managed under the FMP and its implementing regulations at 50 CFR Part 642.

This rule revises the definition of Authorized officer to remove obsolete language, corrects the telephone number of Center Director, clarifies that the U.S. Coast Guard is not a party to a State/Federal agreement for data collection, corrects a reference in one of the prohibitions, removes the term "allocation" where it is inappropriately inserted in connection with zone quotas, clarifies the catch allowance of undersized Spanish mackerel, replaces "FCZ" with "EEZ" where it was not changed in a previous amendment, and removes "State of" as surplus language before "Florida".

Other Matters

This technical amendment is taken under the authority of 50 CFR Part 642 and in compliance with Executive Order 12291. Because this action only makes minor corrections, in which the public is not particularly interested, the Assistant Administrator for Fisheries, NOAA, finds that it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment on this rule and that there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date.

Because notice and a comment for this action are not required by 5 U.S.C. 553 or any other law, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 603) and none has been prepared.

This rules does not contain a collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

This rule will have no effect on any person or any fishing practice; therefore no supplementary reports have been prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 25, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.2, introductory text, the word "shall" is removed; in the definition fot *Total length* the word "laying" is revised to read "lying"; and paragraph (b) under *Authorized officer* and the telephone number under *Center Director* are revised to read as follows:

§ 642.2 Definitions.

* * * * *

Authorized officer means;

* * * * *

(b) Any special agent of NMFS;

* * * * *

Center Director * * * telephone 305–361–4200 * * *

* * * * *

3. In § 642.3, paragraph (b) is revised to read as follows:

§ 642.3 Relation to other laws.

* * * * *

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a State/Federal agreement for data collection and a tripartite agreement among the State, the U.S. Coast Guard, and the Secretary for enforcement.

* * * * *

§ 642.7 [Amended]

4. In § 642.7(a)(9), the reference to paragraph "(h)" is removed and "(a)(8)" is added in its place.

§ 642.21 [Amended]

5. In § 642.21(a)(1)(i) and (ii), the word "allocation" is removed.

6. In § 642.23, paragraph (a)(2) is revised to read as follows:

§ 642.23 Size restrictions.

(a) * * *

(2) *Catch allowance.* A catch of Spanish mackerel under the minimum size limit is allowed equal to five percent by weight of the total catch of Spanish mackerel on board.

* * * * *

§ 642.26 [Amended]

7. In § 642.26, in paragraph (a)(1), introductory text, the latitude "27°0.6′ N." is revised to read "27°00.6′ N." and the words "the State of" before "Florida" are removed; in paragraph (a)(1)(ii), the initials "FCZ" are revised to read "EEZ" and the word "a" is added between "of" and "line"; in paragraphs (b) (1) and (2), (c)(3)(i) (B) and (E), and (c)(4), the words "State of" before "Florida" are removed; in paragraph (c)(4) the word "Chairman" is twice revised to read "Chairmen" and the word "Council" is revised to read "Councils"; and in Table 1, under Point 3 and Point 4, the latitude "27°0.6′ N." is revised to read "27°00.6′ N." and under Point 3 the longitude "80°2.6′ W." is revised to read "80°02.6′ W.".

[FR Doc. 87–22587 Filed 9–28–87; 9:01 am]

BILLING CODE 3510–22–M

VOL 52 ISS 189 SE 30 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 189
Wednesday, September 30, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the Department of Agriculture (USDA) proposes to amend 7 CFR 1.123 by adding three systems of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k). The USDA also will amend the existing list of exempt systems it maintains to reflect changes in the numbering and names of those systems.

DATE: Comments must be received on or before October 30, 1987.

ADDRESS: Interested persons may submit written comments to: Kenneth E. Cohen, Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447–5565.

FOR FURTHER INFORMATION CONTACT: Paul E. Jordan, Office of the General Counsel, USDA, (202) 447–3564.

SUPPLEMENTARY INFORMATION: These amendments are necessary to provide for exemption of a Privacy Act system of records entitled "AMS Office of Compliance Review Cases, USDA/AMS–11" and for the exemption of two existing systems of records, "Administrative proceedings brought by the Department, court cases in which the Government is plaintiff and the court cases in which the Government is a defendant brought pursuant to the United States Warehouse Act, USDA/OGC–43" and "Investigations Undertaken by the Government Pursuant to the U.S. Grain Standards Act of 1976, as amended, or the Agricultural Marketing Act of 1946, as amended, USDA/FGIS–2." A separate notice regarding USDA/AMS–11 will be published in the **Federal Register**. This system will contain detailed information pertaining to cases in which the Agricultural Marketing Service (AMS) Office of Compliance is involved. The authority for maintenance of this system is found in the legislation listed in 7 CFR 2.50. The legislation enumerated in that section, authorizes AMS to be responsible for compliance activities pertaining to the various programs administered by AMS. System notices for USDA/OGC–43 and USDA/FGIS–2 already have been published, but they inadvertently were left off the list of exempt systems. USDA/OGC–43 contains information from investigations conducted pursuant to 7 U.S.C. 243, which authorizes both the investigation of storage, warehousing, weighing, classifying, and certification of agricultural products, and the inspections of warehouses. In accordance with 7 U.S.C. 71 et seq. and 7 U.S.C. 1621, et seq., USDA/FGIS–2 consists of investigatory material pertaining to alleged violations of the subject Acts. They, therefore, contain "investigatory material compiled for law enforcement purposes * * *" and may be exmpted from certain sections of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2). Amendments to the existing list of systems maintained by USDA are necessary to reflect changes made in the numbering of systems, the restructuring of some systems, and the transfer of a system. The system formerly entitled "Court cases brought by the Government pursuant to either the Naval Stores Act, the Honeybee Act, the Virus-Serum-Toxin Act or the Tobacco Seed and Plant Exportation Act, USDA/OGC–33" has been split into two systems: "Court cases brought by the Government pursuant to either the Naval Stores Act or the Tobacco Seed and Plant Exportation Act, USDA/OGC–29" and "Cases by and against the Department under the Virus-Serum-Toxin Act, USDA/OGC–44"; both of which are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). A system formerly maintained by the Animal and Plant Health Inspection Service and entitled, "Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industrial Compliance Records System, USDA/APHIS–1," has been transferred to the Food Safety and Inspection Service and is entitled "Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS–1."

This rule has been reviewed under the Secretary's Memorandum 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy.

For the reasons set out in the preamble, 7 CFR, Subtittle A, Part 1, Subpart G, § 1.123 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 1, Subpart G, reads as follows:

Authority: 5 U.S.C. 552a.

2. Part 1, Subpart G—Privacy Act Regulations, § 1.123 is amended by revising the list of exempt systems to read as follows:

§ 1.123 Specific exemptions.

* * * * *

Agricultural Marketing Service

AMS Office of Compliance Review Cases, USDA/AMS–11.

Agricultural Stabilizations and Conservation Service

EEO Complaints and Discrimination Investigation Reports, USDA/ASCS–12.
Investigation and Audit Reports, USDA/ASCS–18.
Producer Appeals, USDA/ASCS–21.

Animal and Plant Health Inspection Service

Plant Protection and Quarantine Program—Regulatory Actions, USDA/APHIS–1.
Veterinary Services Programs—Records of Accredited Veterinarians, USDA/APHIS–2.
Veterinary Services Programs—Animal Quarantine Regulatory Actions, USDA/APHIS–3.
Veterinary Services Programs—Animal Welfare and Horse Protection Regulatory Actions, USDA/APHIS–4.

Farmers Home Administration

Credit Report File, USDA/FmHA–3.

Federal Grain Inspection Service

Investigations Undertaken by the Government Pursuant to the United States Grain Standards Act of 1976, as amended, or

the Agricultural Marketing Act of 1946, as amended, USDA/FGIS–2.

Food and Nutrition Service

Civil Rights Complaints and Investigations, USDA/FNS–1.

Claims Against Food Stamp Recipients, USDA/FNS–3.

Investigations of Fraud, Theft, or Other unlawful Activities of Individuals Involving Food Stamps, USDA/FNS–5.

Food Safety and Inspection Service

Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS–1.

Office of the General Counsel

Regulatory Division

Cases by the Department under the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the voluntary inspection and certification provisions of the Agriculture Marketing Act of 1946, USDA/OGC–6.

Cases by the Department under the Human Methods of Livestock Slaugter Law (i.e., the Act of August 27, 1958), USDA/OGC–7.

Cases by the Department under the 28 Hour Law, as amended, USDA/OGC–8.

Cases by the Department under the various Animal Quarantine and related laws, USDA/OGC–9.

Cases by the Department under the various Plant Protection and Quarantine and related laws, USDA/OBC–10.

Cases by the Department under the Horse Protection Act of 1970, USDA/OGC–41.

Cases by the Department under the Laboratory Animal Welfare Act, USDA/OGC–42.

Community Development Division

Community Development Division Litigation, USDA/OGC–11.

Farmers Home Administration (FmHA) General Case Files, USDA/OGC–12.

Foods and Nutrition Division

Claims by and against USDA Under the Food Assistance Legislation, USDA/OGC–13.

Perishable Agricultral Commodities, USDA/OGC–14.

Foreign Agriculture and Commodity Stabilization Division

Agricultural Stabilization and Conservation Service (ASCS), Foreign Agricultural Service (FAS), and Commodity Credit Corporation Cases, USDA/OGC–15.

Federal Crop Insurance Corporation (FCIC) Cases, USDA/OGC–16.

Administrative proceedings brought by the Department, court cases in which the government is plaintiff and court cases in which the government is a defendant brought pursuant to the United States Warehouse Act, USDA/OGC–43.

Marketing Division

Administrative proceedings brought by the Department pursuant to the Plant Variety Protection Act, the Federal Seed Act, or the Agricultural Marketing Act of 1946, USDA/OGC–18.

Cases brought by the Government pursuant to the Cotton Futures provisions of the Internal Revenue Code of 1954, USDA/OGC–22.

Court cases brought by the Government pursuant to either the Agricultural Marketing Act of 1946 or the Tobacco Inspection Act, USDA/OGC–24.

Court cases brought by the Government pursuant to either the Agricultural Marketing Agreement Act of 1937, as amended, or the Anti-Hog-Cholera Serum and Hog Cholera Virus Act, USDA/OGC–25.

Court ceases brought by the Government pursuant to either the Cotton Research and Promotion Act, Potato Research and Promotion Act or the Egg Research and Consumer Information Act, USDA/OGC–28.

Court cases brought by the Government pursuant to either the Export Apple and Pear Act or the Export Grape and Plum Act, USDA/OGC–27.

Court cases brought by the Government pursuant to either the Cotton Statistics and Estimates Act of 1927 or the United States Cotton Standards Act, USDA/OGC–28.

Court cases brought by the Government pursuant to either the Naval Stores Act, or the Tobacco Seed and Plant Exportation Act, USDA/OGC–29.

Court cases brought by the Government pursuant to either the Peanut Statistics Act or the Tobacco Statistics Act, USDA/OGC–30.

Court cases brought by the Government pursuant to either the Plant Variety Protection Act or the Egg Products Inspection Act, USDA/OGC–31.

Court cases brought by the Government pursuant to either the Produce Agency Act, or the Process of Renovated Butter Provisions of the Internal Revenue Code of 1954, USDA/OGC–32.

Court cases brought by the Government pursuant to either the United States Grain Standards Act or the Federal Seed Act, USDA/OGC–33.

Court cases brought by the Government pursuant to the Agricultural Fair Practices Act, USDA/OGC–34.

Cases by and against the Department under the Virus-Serum Toxin Act, USDA/OGC–44.

Packers and Stockyards Division

Packers and Stockyards Act, Administrative Cases, USDA/OGC–69.

Packers and Stockyards Act, Civil and Criminal Cases, USDA/OGC–70.

Research and Operations Division

Personnel Irregularities, USDA/OGC–75.

Office of Inspector General

Intelligence Records, USDA/OIG–2.

Investigative Files and Subject/Title Index, USDA/OIG–3.

Office of the Secretary

Non-Career Applicant File, USDA/SEC–1.

Done this 24th day of September 1987, at Washington, DC.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87–22482 Filed 9–29–87; 8:45 am]

BILLING CODE 3410–01–M

Food and Nutrition Service

7 CFR Part 275

[Amdt. No. 296]

Food Stamp Program; Quality Control Arbitration Process Technical Amendment

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Food Stamp Program regulations pertaining to the quality control arbitration process. It would limit the scope of arbitration to the issue or issues in dispute between the State agency and the Food and Nutrition Service (FNS) regional quality control findings. The intent of the proposed rule is to enhance efficiency of the quality control arbitration process.

DATE: Comments on this proposed rulemaking must be received on or before November 30, 1987 to be assured of consideration.

ADDRESS: Comments should be submitted to Joseph Pinto, Supervisor, Certification Policy and Quality Control Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. All written comments will be available for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 am to 5:00 pm, Monday through Friday) at 3101 Park Center Drive, Alexandria, VA, Room 706.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. Pinto at the above address or by telephone at (703) 756–3471.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. This action will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based

enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 94 Stat. 1164 (1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that his action will not have a significant economic impact on a substantial number of small entities.

This action does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Regulations issued on January 23, 1981, at 46 FR 7257, allowed State agencies to have quality control cases arbitrated when the State disputed the Federal review findings. Informally, procedures were developed at the regional and national levels to arbitrate disputes about case findings. Under these procedures, arbitration comprises review of the entire case and the arbitrator is responsible for evaluating the accuracy of the entire case.

In response to the proposed rulemaking on arbitration issued on March 21, 1986 (51 FR 9821), one State agency recommended that arbitration be limited to only the issues raised by the State agency in its request for arbitration. We have decided to consider this recommendaion and therefore are issuing this proposed rulemaking.

Limiting the review to the issues in dispute would be advantageous in several ways. It would save time and resources for both the State agencies and FNS as only arguments and material pertinent to the dispute would need to be submitted and reviewed by the arbitrator instead of the entire quality control case record. For example, if a State were contesting a sampling procedure or an implementation date which affected a large number of cases, each case affected by the decision would not have to be submitted for an individual decision. However, this proposed rule would not preclude the arbitrator from requesting portions of the quality control case record or the entire case record if necessary to properly evaluate the issue(s) under dispute. The proposed rule would eliminate determinations concerning undisputed aspects of the case. Under current arbitration procedures, the entire case record is submitted for each case and all aspects of the case are reviewed and evaluated separately. Under an issue-only review, only the issue(s) in dispute would be addressed.

Implementation

The Department proposes that this rulemaking become effective 30 days after publication as a final rule. State agencies may opt for either an entire case review or an issue only review for all cases for which an arbitration request was submitted before the effective date, provided that the arbitration decision has not already been made.

List of Subjects in 7 CFR Part 275

Administrative practice and procedures, Food Stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 275 is amended as follows:

1. The authority citation for Part 275 continues to read as follows:

Authority: (7 U.S.C. 2011-2029).

PART 275—PERFORMANCE REPORTING SYSTEM

2. Section 275.3 is amended by adding a sentence to the end of paragraph (c)(4). The sentence reads as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) Validation of State Agency Error Rates. * * *

(4) *Arbitration.* * * * The arbitration review shall be limited to the point(s) within the Federal findings that the State agency disputes.

* * * * *

Date: September 27, 1987.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 87-22535 Filed 9-29-87; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1052-87]

Definitions of Felony and Misdemeanor

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service is proposing to amend the definitions of the terms "felony" and "misdemeanor" that are set forth at 8 CFR 245a.1(o) and 8 CFR 245a.1(p), respectively. This proposal is being made to alleviate the effects that the application of the current definition is causing on certain otherwise eligible aliens who apply for temporary resident status under section 245A of the Immigration and Nationality Act.

DATES: Written comments must be submitted on or before October 30, 1987.

ADDRESS: Please submit comments, in triplicate, to Director, Policy, Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Director Policy, Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3291

For Specific Information: Francesco Isgro, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-2895

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA) established a program whereby certain aliens who have been residing unlawfully in the United States since January 1, 1982, would be permitted to legalize their status. IRCA set forth a number of statutory criteria that an alien would have to meet in order to legalize his or her status. One of these criteria is that the alien must establish that he or she "has not been convicted of any felony or of three or more misdemeanors committed in the United States." 8 U.S.C. 1255a(a)(4)(B). After a notice and comment period the Immigration and Naturalization Service (Service) promulgated final regulations implementing the legalization program and defining the terms "felony" and

"misdemeanor" for purposes of the eligibility criteria under the legalization program. See 52 Federal Register 16205–16216 (May 1, 1987).

The term "felony" has been defined as "a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any." 8 CFR 245a.1(p). The term "misdemeanor" has been defined as "a crime committed in the United States punishable by imprisonment for a term of one year or less but more than five days, regardless of the term such alien actually served, if any." 8 CFR 245a.1(o).

Since May 5, 1987, aliens have had the opportunity to apply for temporary resident status under the legalization program. The Service has also had an opportunity to review the effects of the regulations implementing this provision. To determine whether an alien has been convicted of a "felony" or "misdemeanor" the Service looks at the maximum term of imprisonment provided in that particular criminal statute. If the statute provides a term of imprisonment of more than one year, an alien convicted under that statute would be ineligible for legalization regardless of the sentence imposed. The Service has determined that certain States' criminal statutes provide possible terms of imprisonment for more than one year for certain offenses, while other States provide possible terms of imprisonment for less than one year for the same offenses. Thus, aliens who would be eligible for legalization, had they been convicted in one State of a particular offense, would be ineligible if they were convicted in another State for the same offense.

Accordingly, consistent with the spirit of the legalization program and in order to uniformly treat aliens who apply for legalization, the Service is proposing an exception to the definition of "felony". That exception will provide that in the case of an alien who is convicted under a state law that defines the offense as a "misdemeanor" *and* the sentence imposed is less than one year, the crime shall be treated as a misdemeanor for purposes of legalization. The definition of "misdemeanor" is also amended to include crimes that are treated as misdemeanors under the exception to the definition of felony.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule would not, if promulgated, have a significant impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and Permanent resident status.

PART 245a—[AMENDED]

1. Authority citation for Part 245a continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359; 8 U.S.C. 1101 note.

2. In § 245a.1, paragraphs (o) and (p) are revised to read as follows:

§ 245a.1 Definitions.

* * * * *

(o) "Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less but more than five days, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 CFR 245a.1(p).

(p) "Felony" means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: when the State law on which the conviction is based is defined as a misdemeanor and the sentence imposed is less than one year. Under this exception, for purposes of 8 CFR Part 245a, the crime shall be treated as a misdemeanor.

* * * * *

Dated: September 8, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 87–22425 Filed 9–29–87; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Second Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of second meeting.

SUMMARY: The Nuclear Regulatory Commission will hold the second meeting of the High-Level Waste Licensing Support System Advisory Committee on October 15–16, 1987. The committee, established under authority of the Federal Advisory Committee Act (FACA), is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). The Committee is attempting to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding.

DATE: The second meeting of the HLW Licensing Support System Advisory Committee will be held October 15–16, 1987, beginning at 9:30 a.m.

ADDRESS: The location of the October 15–16, 1987 meeting of the HLW Licensing Support System Advisory Committee is the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: The second meeting of the HLW Licensing Support System Advisory Committee ("negotiating committee") is scheduled to include: (1) A review of the legal and technical aspects of this rulemaking on the HLW licensing support systerm, (2) training on the principles of negotiation, and (3) the establishment of the agenda for the third meeting of the negotiating committee.

Dated at Washington, DC, this 28th day of September 1987.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 87–22671 Filed 9–29–87; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–124–AD]

Airworthiness Directives: British Aerospace BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Model BAe 125 series

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airplanes, that would require relocation of the 115V. AC stall vane heater power circuit breakers, and modification of the electronic flight instrument system power supply cables. This action is prompted by a report of cable chafing that resulted in the lose of certain flight instruments, the engine fuel computer, and the windscreen alternator. This condition, if not corrected, could result in the loss of critical flight instruments during flight.

DATES: Comments must be received no later than October 30, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O .Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All comunications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an inservice incident involving cable chafing that resulted in the loss of both electronic flight instrument systems, the engine 1 and 2 fuel computer, the number 2 air data system, and the number 1 windscreen alternator on a British Aerospace Model BAe 125 airplane.

British Aerospace (BAe) issued Service Bulletin 24-259-(3171B), dated November 1986, which described relocation of the 115V. AC stall vane heater power circuit breakers and provides modification of the electronic flight instrument power supply cables by transposing certain circuit breakers and introducing separaters. The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the relocation of the stall vane heater power circuit breakters, and modification of the power supply cables for the electronic flight instrument systems, in accordance with the service bulletin previously mentioned.

It is estimated that 65 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $31,200.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulations which is not major under Executive Order 12291 and (2) is not significant rule pursuant to the Department of Transportation Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125 800A and 800 B series airplanes listed in British Aerospace BAe 125 Service Bulletin 24-259-(3171B), dated November 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of critical flight instruments, accomplish the following:

A. Within the next three months after the effective date of this AD, relocate the 15V. AC stall vane heater power circuit breakers, and modify power supply cable runs for the electronic flight instrument systems, in accordance with the accomplishment instructions of British Aerospace BAe 125 Service Bulletin 24-259-(3171B), dated November 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc.,

Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 16, 1987.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 87-22467 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASO-12]

Proposed Control Zone and Extension to Transition Area for Mackall Army Airfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a control zone to encompass airspace surrounding Mackall Army Airfield near Fort Bragg, North Carolina, and amend the existing transition area with an extension needed to contain an instrument approach procedure. This action will allow positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions. Airspace affected by designation of the control zone extends upward from the surface of the ground within a five-mile radius of the airport, with an extension needed to contain IFR arrival and departure operations. Airspace affected by amending the transition area extends upward from 700 feet above the surface from the existing 6.5-mile radius of Mackall AAF and three miles either side of the 295° bearing from the Mackall RBN to 9.5 miles northwest of the RBN. The control zone is planned to be effective on a part-time basis as military requirements dictate.

DATE: Comments must be received on or before October 26, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 87-ASO-12, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Mel Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASO-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a control zone to encompass airspace surrounding Mackall Army Airfield, North Carolina, and amend the existing transition area for an instrument approach procedure. These actions will allow for positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions and enhance aviation safety in that area. Those sections of Part 71 of the Federal Aviation Regulations were republished in FAA Order 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Mackall AAF, NC [New]

Within a five-mile radius of Mackall AAF (lat. 35°02'13" N., long. 79°29'54" W.); within three miles each side of the 295° bearing from the Mackall RBN, extending from the five-miles radius zone to 8.5 miles northwest of the RBN. This control zone is effective during the specific days and time established in advance by a Notice to Airmen. The effective

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days will thereafter be continuously published in the Airport/Facility Director.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Mackall AAF, NC [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mackall AAF (lat. 35°02'13" N., long. 79°29'54" W.); within 3 miles each side of the 295° bearing from the Mackall RBN, extending from the 6.5-mile radius to 9.5 miles northwest of the RBN; excluding that portion that coincides with the Southern Pines, NC, transition area.

Issued in East Point, Georgia, on September 15, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87-22469 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-32]

Proposed Amendment of Control Zone; Altus, OK and Proposed Amendment of Transition Area; Hobart, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the existing control zone at Altus, OK, and amend the existing transition area at Hobart, OK. This action is necessary since there are two new standard instrument approach procedures (SIAP) developed for the Altus Municipal Airport, Altus, OK. The intended effect of this proposed multiple action is to provide additional controlled airspace for aircraft executing the new SIAP's to the Altus Municipal Airport.

DATES: Comments must be received on or before November 19, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-32, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to amend the control zone at Altus, OK, and, simultaneously with this action, amend the transition area at Hobart, OK. This multiple action is necessary in order to provide additional controlled airspace for aircraft executing two new SIAP's to the Altus Municipal Airport, Altus, OK. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Altus, OK [Amended]

By deleting the words, "excluding that airspace within a 1½ mile radius of the Altus, OK, Municipal Airport (lat. 34°41'57"N., long. 99°20'21"W.); and substituting the words, "and within a 5-mile radius of the Altus Municipal Airport (lat. 34°42'00"N., long. 99°20'00" W.)."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Hobart, OK [Amended]

By deleting the words, "within an 8-mile radius of the Altus AFB;" and substituting the words, "within an 11-mile radius of the Altus AFB."

Issued in Fort Worth, TX on September 19, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-22577 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-31]

Proposed Removal of Transition Area; Crockett, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area at Crockett, TX. The intended effect of this proposed action is to release controlled airspace established for a standard instrument approach procedure (SIAP) to the Houston County Airport, Crockett, TX. This action is necessary since the SIAP has been canceled. Coincident with this action, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before November 19, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-31, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and engergy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The proposal

The FAA is considering an amendment to Section 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area at Crockett. TX. This action is necessary based on the fact that the SIAP to the Houston County Airport has been canceled. The SIAP was based on a nondirectional radio beacon (NDB) located at the Houston County Airport. The NDB has been removed, therefore requiring the cancellation of the SIAP and the associated 700-foot transition area. Coincident with this action, the Houston County Airport status will change from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures 87-(44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Crockett, TX [Removed]

Issued in Fort Worth, TX, on September 19, 1987.

Larry L. Craig

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-22578 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 70865-7165]

U.S. Trade in Services; Revisions in reporting requirements for the BE-47, BE-48, and BE-93 Surveys of Services Transactions with Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules to change the titles and reporting requirements for three annual surveys of U.S. services transactions with foreign persons, conducted by the Bureau of Economic Analysis (BEA).

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U.S. Department of Commerce. The three surveys are the BE–47 (on construction, engineering, architectural, and mining services), the BE–48 (on insurance), and the BE–93 (on royalties, license fees, and other receipts and payments for intangible rights). These surveys are mandatory and are conducted pursuant to the International Investment and Trade in Services Survey Act.

The proposed rules will amend 15 CFR Part 801, as published in the **Federal Register** on March 6, 1986. They implement changes in the three surveys that were proposed for them when they were to have been included in the original draft of BEA's new BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons. That draft, which was to cover 1985, was disapproved by the Office of Management and Budget (OMB). In preparing the revised version, which was approved and covers 1986, it was decided to keep these three surveys separate, but to revise them along the lines proposed in the BE–20.

DATE: Comments on the proposed rules will recive consideration if submitted in writing on or before November 16, 1987.

ADDRESS: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 607, Tower Building, 1401K Street, NW., Washington, DC 20005. Comments received will be available for public inspection in Room 607, Tower Building, between 8:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Acting Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: These proposed rules will change the titles and reporting requirements for the BE–47, BE–48, and BE–93 surveys of U.S. services transactions with foreign persons, in order to implement changes in them that were proposed when they were to have been included in the original draft of the new BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons. That draft was disapproved by OMB in October 1985. Following the disapproval, a task force composed of members of the Business Council on the Reduction of Paperwork (formerly The Business Advisory Council on Federal Reports) agreed that the BE–47, –48, and –93 surveys should remain separate forms. Thus, they were omitted from the BE–20 for 1986 as finally approved by OMB and will be kept separate from the annual follow-on survey to the BE–20 planned for subsequent years.

It was, however, understood that, despite being kept separate, the BE–47, –48, and –93 would be revised to incorporate many of the changes proposed earlier in the BE–20. This proposed rulemaking is intended to implement these changes. It should be noted that the proposed rules will *not* change the exemption levels for the three surveys. However, because of changes in some of the information to be reported, the exemption levels may be applied to additional items.

The title of the BE–47 has been changed to "Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons." (The former title was "Foreign Contract Operations of U.S. Construction, Engineering, Architectural, and Related Consulting and Technical Services Firms.") The addition of "mining services" in the Title Clarifies that such services are covered by the form. (They were covered previously as well, but the title did not so indicate.) The deletion of "related consulting and technical services" in the title is intended to avoid erroneous inclusion of all consulting and technical services on this form. Consulting and technical services are to be included on the BE–47 only if they are integral parts of a reportable construction, engineering, architectural, or mining services project; if they are not integral parts of such projects, they are to be reported in the BE–20 benchmark (or its planned annual follow-on) survey instead.

The revised description of "Who must report" in the BE–47 survey is primarily for clearification purposes; no substantive changes are intended.

The current $1,000,000 exemption level for the BE–47 survey would be applied, under these proposed rules, to a new item being added to the form. Thus, it would be applied, not only to gross operating revenues, as at present, but also to the new item, gross value of new contracts received.

These proposed rules would change the title of the BE–48 survey to "Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies With Foreign Persons." (Its former title was "Reinsurance Transactions With Insurance Companies Resident Abroad.") The change in title reflects an expansion in survey coverage. Formerly, the BE–48 covered only reinsurance transactions with foreign persons (whether affiliated or unaffiliated). As proposed, it will also cover sales of insurance by primary insurers directly to foreign persons and losses paid on such insurance. The rules on "Who must report" are being revised to indicated that sales of primary insurance will now be reportable. Also, as proposed, the current $1,000,000 exemption level for the form will now apply to primary insurance premiums received and primary insurance losses paid, as well as to reinsurance premiums received, premiums paid, losses paid, and losses recovered. It should be noted that only sales of direct insurance are to be covered; purchases of such insurance are reportable on the BE–20 benchmark (or its planned annual follow-on) survey.

The proposed rules would change the title of the BE–93 survey to "Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons." (The former title was "international Transactions in Royalities, Licensing Fees, Film Rentals, Management Fees, Etc., With Unaffiliated Foreign Residents.") The proposed change in title, and also in the reporting requirements for this survey, mainly reflect the exclusion of management and administrative fees from the form; such fees are now covered on the BE–20 benchmark (0r its planned annual follow-in) survey. Also, on the form itself, a disaggregation by type of intangible right has been added; this disaggregation, however, does not require a rule change to implement.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100.0 million or more;

(2) A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competion, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. The Existing BE–47 and BE–48 surveys have been approved by OMB for use through December 31, 1988 (OMB Nos. 0608–0015

and 0608–0016, respectively), and the BE–93 survey has been approved for use through November 30, 1987 (OMB No. 0608–0017). The paperwork to revise these surveys to conform them more closely in concept and definition to the BE–20 benchmark survey, and to incorporate changes planned for them when they were previously to be included in that survey, has been submitted to OMB. Comments regarding the collection of information requirements may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Bureau of Economic Analysis, Washington, DC 20503.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have a significant economic impact on a substantial number of small entities. The exemption levels of $1,000,000 for the BE–47 and BE–48 surveys and $500,000 for the BE–93 survey, below which reporting of foreign transactions of the types covered is not required, exclude small businesses from being reported.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Businesses Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 801 is amended as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Sections 801.9(b) (3), (4), and (5) are revised to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(3) BE–47, Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons:

(i) *Who must report.* Form BE–47 must be filed by each U.S. person (other than U.S. Government agencies) providing the following types of services of a contract, fee, or similar basis to unaffiliated persons on foreign projects: the services of general contractors in the fields of building construction and heavy constuction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; services of a professional nature in the fields of engineering, architecture, and land surveying; and mining services in the development and operation of mineral properties, including oil and gas field services.

(ii) *Exemption.* Any U.S. person otherwise required to report is exempted from reporting if, for all countries and all projects combined, the gross value of new contracts received and gross operating revenues are both less than $1,000,000. If *either* the gross value of new contracts received or gross operating revenues is $1,000,000 or more, than a report is required.

(4) BE–48, Annual Survey of Reinsurance and other Insurance Transactions by U.S. Insurance Companies with Foreign Persons:

(i) *Who must report.* Reports on Form BE–48 are required from U.S. persons who have engaged in reinsurance transactions with foreign persons, or who have received premiums from, or paid losses to, foreign persons in the capacity of primary insurers.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if, with respect to transactions with foreign persons, each of the following six items was less than $1,000,000 in the reporting period: reinsurance permiums received, reinsurance premiums paid, reinsurance losses paid, reinsurance losses recovered, primary insurance premiums received, and primary insurance losses paid. If *any* one of these items is $1,000,000 or more in the reporting period, a report must be filed.

(5) BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons:

(i) *Who must report.* Reports on Form BE–93 are required from U.S. persons who have entered into agreements with unaffiliated foreign persons to buy, sell, or use intangible assets or proprietary rights, excluding those copyrights and other intellectual property rights that are related to computer software, and excluding oil royalties and other natural resources (mining) royalties.

(ii) *Exemption.* A U.S. person otherwise required to report is exempt if total receipts and total payments of the types covered by the form are each less than $500,000 in reporting year. If the total of *either* covered receipts or payments is $500,000 or more in the reporting year, a report must be filed.

* * * * *

[FR Doc. 87–22561 Filed 9–29–87; 8:45 am]

BILLING CODE 3510–06–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

AGENCY: National Labor Relations Board.

ACTION: Proposed rule; notice of extension of time for filing comments upon completion of hearing; notice of change of hearing location.

SUMMARY: The National Labor Relations Board gives notice that it is extending the time for filing comments on the proposed rulemaking for collective-bargaining units in the health care industry from October 30, 1987, to November 20, 1987, to allow sufficient time following the conclusion of the added October 7 hearing for interested parties to obtain and review the transcripts of the final hearing in order to prepare their comments. Additionally, the location for the hearing commencing October 7, 1987, has been changed, as indicated below.

DATES: The comment period which presently ends at the close of business on October 30,1987, has been extended to the close of business on November 20, 1987.

ADDRESSES: Comments should still be submitted to the Executive Secretary as set forth in 52 FR 25142, July 2, 1987. The hearing scheduled to commence October 7, 1987, at 9 a.m. has been relocated from the Board's Hearing Room to the Ceremonial Courtroom at the United States District Court for the District of Columbia, Sixth Floor, 3rd Street and Constitution Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Curtis A. Wells, Associate Executive Secretary, Telephone (202) 254–2430.

SUPPLEMENTARY INFORMATION:

Background

The Board's notice of proposed rulemaking and original notice of hearing was published in the **Federal Register** (52 FR 25142) on July 2, 1987.

That notice provided for three hearings: on August 17, 1987, in Washington, DC; on August 31, 1987, in Chicago, Illinois; and on September 14, 1987, in San Francisco, California. The notice also provided that the period for comment ended at the close of business on October 30, 1987.

Thereafter, in response to requests by large numbers of organizations and individuals who wished to testify, the Board added a fourth hearing date, October 7, 1987, in Washington, DC. The Board published notice of the additional hearing in the **Federal Register** (52 FR 29038) on August 5, 1987. That notice stated that the comment right period still ended at the close of business on October 30, 1987.

Subsequently, a number of participants in the hearings contacted the Board to request an extension of time for the comment period, noting that while there were approximately 6 weeks between the conclusion of the originally scheduled hearings on September 18, 1987, and the end of the comment period on October 30, 1987, permitting sufficient time for interested parties to obtain and review the hearing transcripts in preparation of their comments to the Board, the addition of the second Washington, DC hearing scheduled to begin October 7, and expected to end about October 15, 1987, narrowed the review time to approximately 2 weeks until the comment period ended.

It will take approximately 10 days following the close of the October 7 hearings for transcripts to be available for review—approximately October 25. Since under the present schedule, interested parties might have to prepare comments without benefit of the transcripts in the October hearing, and this would reduce the value of the comments of interested parties to the Board regarding its proposed rulemaking, the Board has decided to extend the period for making comments until the close of business on November 20, 1987.

Furthermore, the hearing scheduled to commence October 7, 1987, has been moved to a larger facility, the Ceremonial Courtoom at the United States District Court for the District of Columbia at the address noted above.

Dated, Washington, DC, September 25, 1987.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 87-22515 Filed 9-29-87; 8:45 am]

BILLING CODE 7545-01-M

POSTAL SERVICE

39 CFR Part 601

Establishment of the Procurement Manual To Replace the Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service has determined to simplify and modernize its procurement procedures, with greater emphasis on business objectives. For that purpose it has prepared a complete replacement of the Postal Contracting Manual (PCM) in the form of a revised, renumbered, and renamed Procurement Manual. The new Manual emphasizes significant policies and processes, rather than detailed procedures, and is intended to be less complex and easier to use. It follows established commercial procedures wherever possible, to the extent consistent with the Postal Service's mission and statutory requirements. It provides greater discretion to contracting officers and Postal Service officials to exercise business judgment in the many decisions that must be made in the course of a procurement. Specific important differences between the PCM and the new Procurement Manual are described in the Supplementary Information, below.

DATE: Comments must be received on or before November 30, 1987.

ADDRESS: Request for copies of the new Procurement Manual and written comments should be mailed or delivered to the Assistant Postmaster General, Procurement and Supply Department, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-6200. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 4137, at the above address.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 268-4632.

SUPPLEMENTARY INFORMATION:

Background

The general legislation upon which much civilian federal procurement procedure is based, the Federal Property and Administrative Services Act of 1949, does not govern or affect the authority of the Postal Service (see 40 U.S.C. 474(15), 39 U.S.C. 410). Nevertheless, the PCM, which was issued in January 1972, was based in large part upon the Federal Procurement Regulations issued pursuant to the Federal Property and Administrative Services Act, as they existed in 1971. The new Procurement Manual is an attempt at simplification and modernization of postal procedures along more businesslike lines.

Specific Differences Between the PCM and the Procurement Manual

The following is a list of the most important specific differences between the existing PCM and the new Procurement Manual.

1. The Procurement Manual establishes a single method for competitive purchasing, involving a form of negotiated procurement. Award may be made based on initial proposals received, or on the basis of revised proposals following negotiations. Whenever price or price-related factors are the most important or the only evaluation criteria, award will normally be made without negotiations by acceptance of the most advantageous proposal. Proposals must be evaluated in accordance with a pre-established source selection plan whenever price or price-related factors will not be the sole basis for evaluation and award.

2. The Procurement Manual establishes a new policy of advance procurement planning, a policy not covered in the PCM. Effective procurement planning should result in shorter lead times, efficient utilization of personnel resources, competition among qualified suppliers, and assurance that the supplies or services obtained will meet requirements.

3. The Procurement Manual establishes a policy to obtain adequate competition from qualified sources, rather than maximum competition. It gives contracting officers the authority to restrict competition to products and contractors of proven quality and reliability through prequalification procedures. The ability to restrict competition to approved sources or prequalified contractors will reduce procurement lead time, since source selection can be made on the basis of price proposals without having to investigate contractor qualifications before award. It will also permit relaxation of contract administration requirements for quality assurance and inspection.

4. It raises the threshold for synopsizing solicitations in the Commerce Business Daily to $50,000, and limits synopses to competitive procurements, reducing paperwork and procurement lead time.

5. The Procurement Manual establishes a system of national and regional contracts and agreements for ordering supplies and services, reducing admininstrative effort and resulting in lower prices.

6. Policy on late proposals and proposal modifications has been simplified, consistent with the Manual's scheme of negotiated procurement. As long as award has not been made, a late proposal or modification may be considered when the contracting officer determines that doing so is in the Postal Service's interest. Guidance is given on when it is normally in the Postal Service's interest to consider a late proposal.

7. The general ceiling for use of simplified procedures is set at $50,000, up from the current $25,000 ceiling for informal purchases. Higher dollar ceilings may be established for individual purchases or categories of supplies or services considered suitable for purchase using simplified procedures.

8. Instead of the 20-page discussion of allowable costs in the PCM, the new manual has a 4-page exposition of cost categories that are unallowable. Otherwise, cost allowability is left to the contracting officer's business judgment, subject to the normal tests of reasonableness and allocability. For contracts with educational institutions, nonprofit organizations, and state and local governments, it adopts the cost principles contained in Office of Management and Budget Circulars.

9. The Procurement Manual emphasizes price analysis—rather than detailed cost analysis—in determining fair and reasonable prices. Cost and pricing data are to be obtained only to the extent necessary to ensure price reasonableness. Normally, cost analysis is to be used only when there is not adequate price competition and no method of price analysis will ensure a fair and reasonable price. When necessary, the contracting officer may use cost analysis in addition to price analysis, but may never replace market pricing with cost analysis. The requirement for certification of cost or pricing data has been eliminated. The submission of cost or pricing data that is relied on by the Postal Service is sufficient to trigger the defective pricing clause. The emphasis on price analysis over cost analysis will reduce burdensome requirements on contractors for submission of detailed cost data. It will also reduce the cost analysis burden on the Postal Service side, as well as shorten procurement lead time. Market-oriented price analysis will in most cases ensure fair and reasonable prices, and will guard against irrational results on contracts priced using cost analysis alone.

Effect on Implementation of Statutory Policies

The Postal Service as a matter of policy has adopted procedures to comply voluntarily with a number of procurement statutes not otherwise applicable to it. Except to the extent noted above, the Manual continues in effect that voluntary compliance. The Manual does not, of course, have any effect on the applicability of procurement-related statutes which have been made applicable to the Postal Service.

Description of the Contents of the Procurement Manual

The Procurement Manual contains twelve chapters and six appendices, as follows:

1. Chapter 1—Authority, Responsibility, and Policy

Chapter 1 covers general procurement policies, including the delegation of procurement authority and responsibility. It describes the procedures for issuing and changing the Procurement Manual, and for obtaining approval of deviations. It contains a section defining important words and terms used in the manual, and sets forth policies on such matters as competition, contracts with Postal Service employees, release and exchange of information, protection of individual privacy, conflicts of interest, standards of conduct, and contingent fees. It prescribes a numbering system for all solicitations, contracts, and related purchasing documents.

2. Chapter 2—Procurement Planning

Chapter 2 contains policy and procedures for advance procurement planning, including market research, and describes requirements for individual written procurement plans and implementation plans. It identifies specific matters to be considered in procurement planning, such as quality requirements, warranties, and suitability for multiyear procurement, and provides guidance for each. It establishes requirements for source selection plans, including the development of proposal evaluation criteria and procedures. It contains a section on specificiations, requiring that they be stated in terms of function, performance, or design requirements; known acceptable brand-name products; or a statement of work.

3. Chapter 3—Sources

Chapter 3 covers sources of supplies and services and their priority; included are Postal Service sources, other Government sources, and commercial sources. It establishes mandatory and optional Postal Service national and regional contracts and ordering agreements as sources for supplies and services covered by such contracts and ordering agreements. It provides for purchases from approved sources and from prequalified contractors, in addition to sources obtained through normal competitive procedures. It establishes requirements for publicizing procurements, including Commerce Business Daily synopses of solicitations and contract awards. It contains a section on contractor qualifications, including standards for determining contractor responsibility, and matters concerning debarment, suspension, and ineligibility.

4. Chapter 4—Purchasing Methods

Chapter 4 describes competitive purchasing procedures, including solicitation, evaluation of proposals, conduct of discussions, price negotiation, and contractor selection. Provision is made for award without discussions based on initial proposals received. Simplified procedures and provided for fixed-price purchases below certain dollar ceilings. It establishes limitations on the use of noncompetitive purchasing methods. It contains a section setting forth rules for filing and considering protests against Postal Service contracting procedures and awards.

5. Chapter 5—Contract Pricing

Chapter 5 describes the types of contracts authorized for Postal Service use and the circumstances for their use. It sets forth principles for determining or negotiating the allowability of costs under Postal Service contracts, and describes specific categories of costs that are unallowable. It contains procedures for establishing billing rates and final indirect cost rates. It describes policies and procedures for evaluating initial contract and subcontract prices, and for pricing contract modifications; price analysis is the preferred method of analysis, cost analysis being used only when no method of price analysis will serve.

6. Chapter 6—Contract Administration

Chapter 6 describes responsibilities and procedures for the administration of Postal Service contracts. It provides for the appointment of contacting officer's representatives to perform certain functions, and specifies records to be kept. It describes procedures for monitoring contract performance and for obtaining assurance of performance. Inspection, testing, and acceptance are

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covered, with procedures for dealing with nonconforming supplies and services. It contains requirements for invoices, payment, withholding of payment, and the payment of interest by the Postal Service, in voluntary compliance with the Prompt Payment Act and OMB's implementing circular. Coverage is provided for matters concerning Postal Service property, Subcontracting, claims, and disputes. Procedures are prescribed for contract changes, equitable adjustments, and termination of contracts for default and for the convenience of the Postal Service. Detailed procedures necessary to implement this and some other parts of the new Manual will be in a separate Procurement Handbook, scheduled for issuance of January 1, 1988.

7. Chapter 7—Bonds, Insurance, and Taxes

Chapter 7 sets forth policies and procedures governing bonds and insurance under contracts, and discusses the applicability of Federal, State, and local taxes. Coverage includes performance bonds, payment bonds, patent infringement bonds, fidelity bonds, and the deposit of assets instead of surety bonds. The types of insurance described include workers' compensation, employers' liability, general liability, automobile liability, self insurance, and errors and omissions insurance required for certain categories of professional services.

8. Chapter 8—Special Categories of Contracts

Chapter 8 treats types of contracts subject to special procedures and describes the authorities of officials authorized to issue policy and procedural directives supplementing the Procurement Manual. Coverage is provided for professional and consultant services, computers and information systems, research and development, and utility services. Provisions is made for additional contracts requiring special procedures and forms (e.g., cleaning services, food services, vehicle hire, law enforcement, revenue production) to be covered in a supplemental Procurement Handbook.

9. Chapter 9—Patents and Data Rights

Chapter 9 covers the acquisition of patents, copyrights, and other rights in data. It includes policies regarding commercial application of inventions, privately developed patients and data, patent indemnification, disclosure of private data, and use of patented inventions.

10. Chapter 10—Socioeconomic Policies

Chapter 10 contains procedures for contracting with minority-owned businesses, and policies carrying out the requirements of certain statutes, including the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act, and the Service Contract Act. It establishes Postal Service policy and preference regarding purchase of domestic-source products and materials.

11. Chapter 11—Facilities and Related Services

Chapter 11 covers the specialized procedures involved in the procurement of construction, including minor repairs and alterations, the acquisition of real property, and leases. In addition to construction and architect-engineer services, it covers services related to real property acquisition and management, and services related to facilities design and construction management. Procedures are included to preclude organizational conflicts of interest, and contractor prequalification procedures are described.

12. Chapter 12—Mail Transportation

Chapter 12, when completed, will prescribe special policies and procedures for the procurement of mail transportation and directly related ancillary services by contract. The coverage in this chapter will be supplemented by a Mail Transportation Handbook containing procedures for—

- Highway transportation service;
- Rail transportation service;
- Water transportation service;
- Domestic surface and intermodal service;
- Air transportation service;
- Emergency service contracts;
- Terminal handling contracts.

This chapter is reserved for issuance on or about January 4, 1988.

13. Appendix A—Solicitations

Appendix A prescribes the forms, format, and provisions to be used in preparing solicitations, and the establishment and maintenance of solicitation mailing lists. It contains all solicitation provisions prescribed in the manual.

14. Appendix B—Contract Clauses

Appendix B prescribes certain clauses not prescribed elsewhere in the manual and contains all clauses prescribed in the manual.

15. Appendix C—Forms Listing

Appendix C lists Postal Service forms related to procurement. This appendix is reserved for issuance on or about January 4, 1988.

16. Appendix D—Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting

Appendix D contains a reprint of the rules of practice issued as 39 CFR Part 957.

17. Appendix E—Rules of Practice Before the Postal Service Board of Contract Appeals

Appendix E contains a reprint of the rules of practice issued as 39 CFR Part 955.

18. Appendix F—Index

Appendix F is an alphabetical index of important words and terms used in the manual.

Implementation Schedule

Implementation of the new Procurement Manual will be phased over a period of months in order to provide time for training postal employees in its use and to secure some early experience which, along with the comments invited in this rulemaking, should enable the Postal Service to minimize transitional problems. Employees at the 100 procurement offices, the five Facilities Service Centers, and the eleven Facilities Service Offices will all be trained, but not all at the same time. Training will begin in the first 15 procurement offices in November and continue through mid-January, 1988. At the conclusion of that training period, except to the extent required pursuant to the terms of contracts already in effect or awarded after the effective date pursuant to preexisting solicitation, the procedures of the new Manual will be used exclusively in those 15 offices, and the PCM will no longer be effective there. Notices of the effective date for particular offices will be published in the Federal Register.

Between January and April 1988 training will commence in 38 other selected procurement offices and facilities service centers and offices, and between April and June it will commence in 63 more locations. At the conclusion of each training period the new Manual will be used instead of the PCM, until all 116 procurement offices and facilities centers and offices have received training.

Following the close of the public comment period at the end of November, comments received from the public plus recommendations and suggestions received from employee participants in the training sessions will

be evaluated and incorporated, as appropriate, into the next change of the Procurement Manual, presently scheduled for issuance on January 4, 1988. Chapter 12 and Appendix C of the Manual, publication of which, as noted in the *Description of the Contents of the Procurement Manual,* were reserved for a later time, will be included in this issuance. Opportunities for issuing further perfecting Manual changes are scheduled on April 1, 1988 and July 1, 1988, at which latter time the Manual is expected to have completely superseded the PCM throughout the country. Later revisions are scheduled to be made at least annually. Notice of these changes will be published in the **Federal Register**, and changes will also be made to 39 CFR Part 601 to reflect replacement of the PCM with the Procurement Manual.

Although exempt by 39 U.S.C. 410(a) from the requirements of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553 (b), (c), the Postal Service invites public comments on the new Procurement Manual described above, which will take the place of the Postal Contracting Manual, as incorporated by reference in the Code of Federal Regulations. See 39 CFR 601.100.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-22529 Filed 9-29-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AMO 23 DE; FRL-3268-5]

Proposed Revisions of the Delaware State Implementation Plan; Stack Height Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes the approval of revisions to the Delaware State Implementation Plan (SIP). The proposed revisions consist of draft amendments to Regulation No. XXVII, for Stack Height and Regulation No. XXV, Requirements for Pre-construction Review. EPA has reviewed these revisions and has concluded that they conform to 40 CFR Part 51, including the July 8, 1985 stack height amendments (50 FR 27906). Therefore, EPA proposes to approve the amendments, following their final enactment by the State, as revisions to the Delaware SIP.

DATES: Comments must be received on or before October 30, 1987.

ADDRESSES: Copies of the proposed SIP revisions and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Ms. Esther Steinberg (3AM11).

Delaware Department of Natural Resources and Environmental Control, Division of Environmental Control Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, DE 19901, Attn: Mr. Robert R. French.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking proceeding by submitting written comments to Mr. David L. Arnold, Chief, Delmarva/DC Section (3AM13) at EPA Region III address stated above. Please reference the EPA Docket Number found at the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin A. Magerr, (3AM13) at the EPA Region III address above or call (215) 597-6863.

SUPPLEMENTARY INFORMATION: The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by the State of Delaware and submitted to EPA for incorporation into the SIP. Parallel processing can reduce the time necessary for final approval of these SIP revisions by three to four months.

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act. These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (DC Cir 1983). On October 11, 1983, the Court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 35710, and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the Court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985. Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and promulgated on July 8, 1985 (50 FR 27892). the revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modify some of the criteria for determining Good Engineering Practice (GEP) stack height.

Pursuant to section 406(d)(2) of the Act, all states were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, the states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations.

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Regulation Description

The State of Delaware, in order to conform to the July 8, 1985, stack height **Federal Register** Notice, drafted amendments to its air pollution regulations as described below:

Under Regulation No. XXVII—Stack Heights, Section 2—Definitions Specific to this Regulation, the State amended the following definitions to correspond to EPA's regulations:

Dispersion Technique
Excessive Concentrations
Nearby
Stack
Stack in Existence

The State deleted the definitions for "Elevated Terrain" and "Plume Impaction," as they do not conform with the revised EPA regulations.

The State amended section 3—Requirements for Existing and New Sources, by expanding the definition of "Good Engineering Practice" to include the changes of the July 8, 1985 **Federal Register** notice.

Under Regulation No. XXV—Requirements for Preconstruction Review, section 3.5—Stack Height, the State declares that Regulation No. XXVII is applicable to this section.

This regulation applies to new source or modifications in Delaware as required in 40 CFR 51.164, as well as existing sources as required in 40 CFR 51.118. This means that this rule applies to all sources that were constructed, reconstructed or modified subsequent to December 31, 1970.

The regulations adopted by the State do not include EPA's definition of "emission limitation" or "emission standard" found at 40 CFR 51.110(z) (old § 51.1(z)). Delaware's regulations contain a definition for "emission standard" in Regulation No. 1, Definition and Administrative Principles. That definition is not consistent with the EPA definition § 51.100(z). The State of Delaware is committed to revising its definitions to be consistent with EPAs. EPA proposes to incorporate the State's committal letter as part of the SIP in the final rulemaking.

EPA Action

EPA proposes approval of these revisions to the Delaware SIP. The Regional Administrator's decision to propose approval of these revisions is based on a determination that the amendments meet the requirements of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of the State Implementation Plan.

The public is invited to submit comments on the proposed SIP revision. All comments submitted with in 30 days of publication of this Notice will be taken into account in the Administrator's decision to approve or disapprove this proposed SIP revision.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 87–22292 Filed 9–29–87; 8:45 am]

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40 CFR Part 61

[AD–FRL–3270–4]

National Emission Standards for Hazardous Air Pollutants; Coke Oven Emissions From Wet-Coal Charged By-Product Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and reopening of public comment period.

SUMMARY: On April 23, 1987, EPA proposed national emission standards which would limit coke oven emissions from wet-coal charged by-product coke oven batteries in the iron and steel industry (52 FR 13586). In response to requests by environmental and citizens groups, the period for receiving written comments is being reopened. Also in response to requests by several citizens groups, a public hearing will be held in Allegheny County, Pennsylvania.

DATES: *Public Hearing.* A public hearing will be held on October 29, 1987, beginning at 10:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the Allegheny County Health Department by October 21, 1987.

Comments. Comments must be received on or before November 30, 1987.

ADDRESSES: *Public Hearing.* A public hearing will be held in the City Council Chambers at the Clairton Municipal Building, 551 Ravensburg Boulevard, Clairton, Pennsylvania 15025. Persons wishing to present oral testimony should notify Ms. Karen Jones, Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, Pennsylvania 15201, telephone number (412) 578–8103.

Comments. Comments should be submitted (in duplicate, if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–79–15, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Mr. Sam Duletsky, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5568, or (919) 541–5256.

SUPPLEMENTARY INFORMATION: On July 2, 1987, the Group Against Smog and Pollution (GASP), acting with Citizens for a Better Environment (CBE) and Save the Dunes Council (SDC), requested that EPA extend the August 6, 1987, deadline for public comments by 30 or 60 days to give them additional time to analyze the complex technical information which comprises the background and the basis for the proposed standards. Also, on July 31, 1987, the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund (EDF) requested that the comment period for the proposed coke oven emissions standards be extended an additional 60 days. The NRDC and EDF requested the extension to obtain additional time to factor into their comments the ramifications of the July 28, 1987, decision on the national emission standards for hazardous air pollutants (NESHAP) for vinyl chloride by the U.S. Court of Appeals for the District of Columbia Circuit (*NRDC vs. EPA*, No. 85–1150). In response to these requests, EPA is reopening the public comment period until November 30, 1987. This additional time will ensure that all interested parties will have adequate time to review the background information and comment on the coke oven emissions NESHAP in light of the decision on the vinyl chloride NESHAP.

In addition to requesting an extension to the public comment period, GASP (along with CBE and SDC) and the Allegheny County Air Pollution Control Advisory Committee requested a public hearing in Allegheny County to provide those citizens most affected by coke oven emissions an opportunity to express their views on the proposed emission standards. Consequently, EPA will hold a public hearing in Allegheny County on October 29, 1987, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standard for wet-coal charged by-

product coke oven batteries or the listing of coke oven emissions under section 112.

Date: September 24, 1987.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 87-22522 Filed 9-29-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 152, 153, 158 and 162

[OPP-250077; FRL-3268-4]

Notification to Secretary of Agriculture of a Final Regulation on Pesticide Registration Procedures and Pesticide Data Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule sets out in 40 CFR Part 152 which products are considered to be pesticides, lists exemptions, and describes the procedures for registration, classification, and suspension. The rule also modifies pesticide data requirements in 40 CFR Part 158. This action is required by section 25(a)(2)(B) of FIFRA, as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0944).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days prior to signing it for publication in the Federal Register. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the Federal Register, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the Federal Register anytime after the 15-day period.

As required by FIFRA section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this final rule has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: September 21, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-22146 Filed 9-29-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6912]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 52 FR 22801 on June 16, 1987. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Gordon, Wilkinson County, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Gordon, previously published at 52 FR 22801 on June 16, 1987, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 92-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	Number in feet above ground *Elevation in feet (NGVD)
Little Commissioner Creek:	
Just upstream of State Route 18	*332
About 2660 feet upstream of pipe bridge	*[illegible]
Little Commissioner Creek Tributary	
Just downstream of Norfolk-Southern Railway	*332
Just downstream of Englehaard Dam	*358
Just upstream of Englehaard Dam	*372
About 3600 feet upstream of Englehaard Dam	*[illegible]

Issued: September 24, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-22477 Filed 9-29-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-391, RM-5797]

Radio Broadcasting Services; Fowler, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bilmar Communications, Inc., proposing the substitution of FM Channel 244B1 for Channel 244A at Fowler, California, and modification of the license of Station KEZL-FM accordingly, to provide that community with its first expanded coverage area FM service.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark A. Kanai, Esq., Law Offices of Mark A. Kanai, P.C., 1101-15th Street, Modesto, CA 95353.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-391 adopted September released

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September 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments. See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22447 Filed 9–29–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–375, RM–5827]

Radio Broadcasting Services; Freeport, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Gary Randall Billingsley and Paul H. Reynolds, which seeks to allot Channel 229A to Freeport, Florida, as a first FM broadcast service.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Paul H. Reynolds, Amerimedia, 415 N. College Street, Greenville, Alabama 36037 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 87–375, adopted August 25, 1987, and released September 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22446 Filed 9–29–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–361, RM–5852]

Radio Broadcasting Services; Dennysville, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Timothy D. Martz, proposing the allocation of FM Channel 275A to Dennysville, Maine, as that community's first FM broadcast service. Concurrence of the Canadian government is required for the allotment of FM Channel 275A at Dennysville.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Jerry V. Haines, Wiley, Rein & Fielding, 1776 K Street, NW, Washington, DC 20006, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–361, adopted August 20, 1987, and released September 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22449 Filed 9–29–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–379, RM–5870]

Radio Broadcasting Services; Crystal Falls, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Munising Radio, Inc., requesting the substitution of FM Channel 264C1 for 264C at Crystal Falls, Michigan. Channel

264C at Crystal Falls has been available for application since October 12, 1984. The channel is currently vacant with no pending applications on file at the Commission. Munising Radio, Inc. has requested the substitution of channels because of the unavailability of transmitter sites for a full Class C facility. Channel 264C1 can be allocated to Crystal Falls with a site restriction 1 kilometer southwest of the community. Concurrence of the Canadian government is required for the allotment of FM Channel 264C1 at Crystal Falls.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert A. Kramer, Munising Radio, Inc., 205 Chichester Cove, Longwood, Florida 32779.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–379, adopted August 25, 1987, and released September 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The compete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22459 Filed 9–29–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–378, RM–5927]

Radio Broadcasting Services; Saint Robert, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kevin A. Barton, proposing the allocation of FM Channel 243A to Saint Robert, Missouri, as that community's first FM broadcast service.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kevin A. Barton, Route #1, Box 313A, Dixon, Missouri 65459.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–378, adopted August 25, 1987, and released September 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

[FR Doc. 87–22460 Filed 9–29–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–335, RM–5634 and RM–5897]

Radio Broadcasting Services; Steelville and Hermann, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule correction.

SUMMARY: This is a corrected version of the Notice of Proposed Rule Making for Docket 87–335, released on August 26, 1987, and published 52 FR 33256 September 2, 1987. This document requests comments on two separate petitions Twenty-One Sound Communications Inc. requests the substitution of FM Channel 227C2 for 244A at Steelville, Missouri and modification of its license for Station KNSX–FM to specify operation on channel 227C2. Kenneth W. Kuenzie proposes the allotment of FM Channel 227A to Hermann, Missouri as that community's first FM broadcast service. There is a site restriction 6.8 kilometers (4.2 miles) west of the community.

DATES: Comments must be filed on or before November 13, 1987, and reply comments on or before November 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Randal Wachter, Twenty-One Sound Communications, Inc., 3418 Douglas Road, Florissasnt, Missouri 63034.

Kenneth W. Kuenzie, 102 Elm Street, Suite 203, Washington, Missouri 63090.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's corrected Notice of Proposed Rule Making, MM Docket No. 87–335, adopted August 5,

BEST COPY AVAILABLE

1987, and released September 22, 1987. The full text of this Commission decision is avialable for inspection and copying during normal business hours in the FCC Dockets Branch (Room 23), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

[FR Doc. 87–22445 Filed 9–29–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–279; RM–5823]

Television Broadcasting Services; Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the initial comment date in the Proposed Rule making in this proceeding concerning TV allotment in Lewisburg, West Virginia.

DATES: Comments on the Proposal are due on or before September 28, 1987. The reply comment period remains unchanged.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: The original proposal was published on August 17, 1987, 52 FR 30693.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–22453 Filed 9–29–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

Western Pacific Crustacean Fisheries; Availability of Amendment to Fishery Management Plan and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council has resubmitted Amendment 5 to the Spiny Lobster (Crustacean) Fishery Management Plan of the Western Pacific Region (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public.

DATE: Comments will be accepted through October 25, 1987.

ADDRESSES: Send comments to E.C. Fullerton, Director, Southwest Region, NMFS 300 South Ferry Street, Terminal Islands, CA 90731. Copies of the amendment are available on request from the Council at 1164 Bishop Street, Room 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 808–523–1368.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act, which requires that the Secretary, upon receiving an FMP or amendment, must immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

Amendment 5 was originally submitted on June 24, 1987. A notice of availability was published in the **Federal Register** on June 29, 1987 (52 FR 24197); however, the amendment was disapproved by the Secretary of Commerce on August 7, 1987, because it did not contain a specification of optimum yield or total allowable level of foreign fishing (TALFF) for the slipper lobster resource. The amendment was withdrawn from public review while the Council amended the document. The Council resubmitted the amendment on September 21, 1987.

This resubmitted version of the amendment proposes the same measures as the original amendment: (1) To establish a minimum legal size for slipper lobster, (2) to require escape vent panels in all lobster traps, (3) to require release of any slipper lobster carrying eggs, (4) to revise the daily lobster catch report, (5) to revise permit application forms, (6) to eliminate the annual processor's report, (7) to revise the trip processing and sales report, and (8) to change the name of the FMP. The receipt date for the resubmitted version of this amendment is September 26, 1987.

Authority: 16 U.S.C. 1801, et seq.

Dated: September 25, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–22588 Filed 9–28–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 189
Wednesday, September 30, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 25, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should adivse the OMB Desk Office of your intent as early as possible.

Extension

Farmers Home Administration

7 CFR 1951–K, Predetermined Amortization Schedule System (PASS) Policies
On occasion
Individuals or household; Non-profit institutions; Small businesses or organizations; 300 responses; 75 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Farmers Home Administration

7 CFR 1955–A, Liquidation of Loans Secured by Real Estate and Aquisitions of Real and Chattel Property
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; 18,610 responses; 12,232 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Foreign Agricultural Service

Declaration of Sale
FAS–359
On occasion
Businesses or other for-profit; 706 responses; 176 hours; not applicable under 3504(h)
James Chase (202) 447–5780

Food Safety and Inspection Service

Regulations Governing Meat Inspection, Part 309.16, Livestock suspected of having biological residues
On occasion
Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 760,000 responses; 42,683 hours; not applicable under 3504(h)
Roy Purdie, Jr., (202) 447–5372

Revision

Rural Electrification Administration

Loans for Telephone System Improvements and Extensions
REA 490, 494, 495 and 569
On occasion
Small businesses or organizations; 800 responses; 4,100 hours; not applicable under 3504(h)
F. Lamont Heppe, Jr. (202) 382–8530

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 87–22554 Filed 9–29–87; 8:45 am]

BILLING CODE 3410–01–M

Determination of Market Stabilization Price for Sugar for Fiscal Year 1988

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the market stabilization price for sugar for the period October 1, 1987–September 30, 1988 as 21.76 cents per pound, raw value.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Foreign Agricultural Service, Room 6095, South Building, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: The market stabilization price is used to determine bond requirements and maximum liabilities under certain programs authorized by Presidential Proclamation No. 5002 of November 30, 1982 (47 FR 54269). The calculation of the market stabilization price is provided for in 7 CFR 6.300 through 6.302 and is the sum of (1) the price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cent per pound. The adjusted average transportation costs are the weighted average costs of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs are the amount of interest, as determined and estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable where, as under the current sugar price support program, a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral.

The Secretary of Agriculture has anounced that the applicable loan rate under the price support program for sugar, expressed in cents per pound for raw cane sugar, will be 18.00 cents per pound for loans disbursed during the period October 1, 1987–September 30, 1988.

Accordingly, after appropriate review, it has been determined that the market stabilization price for fiscal year 1988

shall be 21.76 cents per pound. This consists of the 18.00 cents per pound loan rate; adjusted average transportation costs of 2.96 cents per pound; an interest cost of .60 cent per pound; and 0.2 cent per pound. The transportation factor represents data for the most recent year for which complete data are available, 1986, projected forward to 1987 by applying a projected increase in the Producer Price index for finished goods over this time. The interest factor is based on an estimated average interest rate of 6.625 percent over the year, and a six month loan maturity period.

Notice

Notice is hereby given that, in conformity with the provisions of 7 CFR 6.300(a), the market stabilization price for sugar for fiscal year 1988 has been determined to be 21.76 cents per pound.

Signed at Washington, DC on September 25, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-22548 Filed 9-29-87; 4:43 pm]

BILLING CODE 3410-10-M

Forest Service

Exterior Boundary Changes; Chugach National Forest, AK

AGENCY: Forest Service, USDA.

ACTION: Notice; boundary changes.

SUMMARY: The Alaska National Interest Lands Conservation Act of December 2, 1980 (Pub. L. 96-487, 94 Stat 2371; 16 U.S.C. 3210) changed the exterior boundary of the Chugach National Forest, Alaska, in five locations with a net addition of 1,893,390 acres.

Legal descriptions and maps of the College Fiord, the Controller Bay, the Copper/Rude River, and the Nellie Juan additions and the Two Indians exlusion are now on file for public inspection at the following offices:

Chief, Forest Service, USDA, South Agriculture Building, Room 4238, 12th and Independence Avenue, SW., Washington, DC 20013

Regional Forester, Alaska Region, P.O. Box 021628, Juneau, AK 99802-1628

Forest Supervisor, Chugach National Forest, 201 E. 9th Avenue, Suite 206, Anchorage, AK 99501

FOR FURTHER INFORMATION CONTACT: Charles Low, Lands, Minerals, and Watershed Staff, Alaska Region, P.O. Box 021628, Federal Office Building, Juneau, AK 99802, (907) 586-7874.

Dated: August 19, 1987.

Michael A. Barton,

Regional Forester, Alaska Region.

[FR Doc. 87-22483 Filed 9-29-87; 8:45 am]

BILLING CODE 3410-11-M

Electronic Communications Rental Fees for the Eastern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: The Eastern Region of the Forest Service headquartered in Milwaukee, Wisconsin hereby gives notice that it is adopting new policy and procedures for determining rental fees for electronic communications sites. A minimum fee schedule for certain types of electronic communications has been established. The policy also provides for the establishment of rental fees above the minimum fees and fees for other types of electronic uses not specifically noted; based on market evidence and other sound business management practices.

EFFECTIVE DATE: This policy is effective September 30, 1987. The policy will be disseminated through the Agency's internal directive system.

FOR FURTHER INFORMATION CONTACT: Timothy G. Curtis, Lands, Watershed and Minerals Management Staff, (414) 291-1902.

SUPPLEMENTARY INFORMATION: On May 4, 1987, the Eastern Region of the Forest Service published notice of a proposed change to the existing policy for determining annual rental fees for communications sites in the Region (52 FR 16293, 16294).

The Region proposed the establishment of minimum fees as follows:

—Two-way Radios. A minimum fee of $200 per year. Applies to permittees renting space on an existing tower or for a permittee with a tower and associated building.

—Commercial Radio/TV Broadcasting and Microwave. A minimum fee of $1000 per year.

Rental fees above these minimums and for all other forms of electronic uses may be established on the basis of market evidence and other sound business management practices, including fees based on individual site appraisal, competitive bidding for large or unique sites or where competitive interest exists. Fee negotiations may also be appropriate.

Analysis of Public Comment

Each electronic site permittee in the Eastern Region was mailed a copy of the proposed policy. The general public was notified of the proposed policy through the **Federal Register.** The Forest Service received 8 responses; the number and percentage of which are categorized as follows:

Respondent	Number	Percentage
Amateur Radio Permittees	3	37.5
Other Government Permittees	2	25.0
Cable TV Permittees	2	25.0
Electronic Site User	1	12.5
Total	8	100.0

All of the comments received have been reviewed and given consideration in reaching the final decision. Comments have been summarized by type of respondent.

1. Amateur Radio Permittees.

All of the amateur radio respondents expressed the opinion there should be no charge for use by this group. They point out that amateur radio is frequently called upon to provide communication service in times of emergencies such as floods, tornados and fires.

They are chartered as nonprofit organizations by law and, therefore, do not charge for their services.

The Eastern Region agrees that amateur radio operators can provide a useful public service. The fee for two-way radios may be partially waived depending on the extent of public service provided; to be determined by the authorizing officer in conformity with 36 CFR 251.57(b).

2. Other Government Permittees.

Two government agencies (one state, one county) commented. In both cases these agencies provide reciprocal use for Forest Service communication facilities. Where state or local government agencies provide reciprocal use without charge, their fee may generally be waived. However, should these agencies sublet space for a charge, they in return will normally be subject to a fee. The authorizing officer shall determine on a case by case basis, in conformity with 36 CFR 251.57(b) if fees should be charged or waived.

3. Cable TV Permittees.

The respondents generally expressed concerns that the minimum fee schedules being proposed would be excessive. However, the minimum fee schedule does not apply to this category of users. Fees for cable TV permittees will be established on an individual basis to reflect market value of the area in which the use is located.

4. Electronic Site User.

One comment was received by a commercial user who expressed support for the revision of fee determination policy but felt that fees should reflect rental prices in the local area. We believe the changes proposed in our fee policy will accomplish this. The minimum fee schedule does not exceed the market value based on our previous market analysis. Additionally there were no comments expressing concerns that the minimum rates published in the initial **Federal Register** Notice were too high. The local rental market will be the basis for charging fees above the minimum fee schedule.

Summary of Final Notice

Minimum fees by category of user is established as follows:

Type of use	Minimum fee (per annum)
Two-way radio	$200
Commercial radio/TV broadcast and microwave	1,000

Rental fees above these minimums and fees for all other categories of electronic uses will be established on the basis of market evidence and other sound business management practices, including fees based on individual site appraisals, competitive bidding for large or unique sites, or where competitive interest exists. Fee negotiations may also be appropriate. Overall guidance for determining fees for communication sites can be found in Forest Service Manual 2728, Amendment 90, January, 1987.

Fees will be adjusted annually using changes reflected by the second quarter Implicit Price Deflator-Gross National Product (IPD–GNP) index. The fees for electronic uses will be updated at 5-year intervals.

The initial notice indicated an effective date of January 1, 1988. New permits issued between publication of the final notice and January 1, 1988, were to conform to the new fee policy prorated to the effective date of January 1, 1988. This has been changed to make the effective date of the final policy the date of publication in the **Federal Register.** New fees will be implemented upon publication of this Final Notice.

So that holders may adjust their operations to the fee changes, the portion of the new fee that exceeds 100% increase will be phased in over a three year period beginning with CY 1988 fees. To facilitate calculation of the phased in amounts, IPD–GNP annual adjustments will be deferred until full fees are attained for CY 1990.

This decision is subject to appeal under provision of 36 CFR 211.18. Notice of such appeal must be received by the Regional Forester within 45 days of publication in the **Federal Register.**

Date: September 17, 1987.

Jim Jordan,

Deputy Regional Forester.

[FR Doc. 87–22489 Filed 9–29–87; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission scheduled for 9:00 a.m. on October 1, 1987, at the Radisson Mart Plaza Hotel, Palm Room, 711 NW., 72nd Ave., Miami, Florida has been postponed until further notice.

For further information, contact Committee Chairperson Michael J. Moorhead (904/392–2211) or John I. Binkley, Director of the Eastern Regional Division, at (202/523–5264; TDD (202/376–8117).

Dated at Washington, DC, September 22, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–22498 Filed 9–29–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–577–701]

Initiation of Countervailing Duty Investigation; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of carbon steel wire rod, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before November 27, 1987.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–0161 or 377–0189.

SUPPLEMENTARY INFORMATION:

The Petition

On September 3, 1987, we received a petition in proper form from Armco, Inc., Georgetown Steel Corp. and Raritan River Steel Co., filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Malaysia of carbon steel wire rod receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. international Trade Commission is not required to determine whether, imports of the subject merchandise from Malaysia materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Malaysia and have found that the petition meets these requirements.

We conducted a previous investigation of the subject merchandise from Malaysia and made a negative preliminary determination (51 FR 20324, June 4, 1986). Subsequent to our verification, petitioners withdrew their petition and we terminated the investigation. In the current petition, petitioners have asked us to investigate programs which were not investigated in

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the earlier case, new programs, and programs which may have changed since the earlier negative preliminary determination. In light of these allegations, we have determined that an investigation is warranted.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of carbon steel wire rod, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before November 27, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contract the Import Specialist at their local Customs office to consult the schedule.

For purposes of this investigation, the term "carbon steel wire rod" covers coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *Tariff Schedules of the United States Annotated* and under HS item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.49.00 and 7213.50.00

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Malaysia of carbon steel wire rod receive benefits that constitute bounties or grants under the following programs. We are initiating an investigation on the following allegations:

Export Tax Incentives

- An abatement of taxable income based on value added and/or the ratio of export sales to total sales
- An abatement of net taxable income of eight percent of the f.o.b. value of export sales if Malaysian content is more than 50 percent under section 29 of the investment incentives act of 1968
- An abatement of taxable income of five percent for trading companies exporting Malaysian-made products
- An abatement of taxable income of five percent of the value of Malaysian made inputs incorporated into exports
- An abatement of taxable income of five percent of the value of indigenous materials used in exports
- A double deduction from taxable income for export credit insurance premiums purchased from government approved insurance companies
- A double deduction from taxable income for expenses related to export promotion
- A duty and surtax exemption on imported materials available on preferential terms to manufacturers who export
- An industrial building allowance income tax deduction for a percentage of the value of warehouses used to store materials ultimately destined for export

Other Export Incentives

- Short term export financing at preferential rates
- Export insurance issued by a government corporation at premium rates which are inadequate to cover the long term operating costs and losses of the insurance program

Other Tax Incentives

- Pioneer status benefits including tax holidays, exemptions from company taxes, exemptions from development taxes, exemptions from excess profits tax, exemptions from taxes on dividends paid out of profits earned during the tax holiday, and additional tax holidays
- Investment tax allowance/ investment tax credit for qualifying capital expenditures

Government Financial Assistance

- Medium- and long-term loans on terms inconsistent with commercial considerations

We are not initiating an investigation on the following program:

Government Equity Infusions

Petitioners allege that the Government of Malaysia has provided financial assistance in the form of investments on terms inconsistent with commercial considerations in Malayawata Steel Bhd. In order for the Department to investigate an allegation on equity, the petition must contain (1) evidence of government equity participation, and (2) a showing that such participation may be on terms inconsistent with commercial considerations.

Petitioners provided insufficient information regarding Government of Malaysia equity participation in Malayawata. Therefore, we are not initiating an investigation on this allegation.

As a standard practice in our countervailing duty questionnaires, we ask for information on the ownership structure of each firm and for financial statements. If the information provided in response to these standard questions shows that the Government of Malaysia has invested in Malayawata on terms inconsistent with commerical considerations, we will examine this issue further.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 23, 1987.

[FR Doc. 87–22556 Filed 9–29–87; 8:45 am]

BILLING CODE 3510–DS–M

Withdrawal of Application for Duty-Free Entry of Scientific Instruments; SRI International

SRI International has withdrawn Docket Number 86–056R, an application for duty-free entry of a CO_2 Laser. We have discontinued processing in accordance with § 301.5(g) of 15 CFR Part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–22557 Filed 9–29–87; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction in Charges of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

September 25, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commission of Customs to be effective on October 1, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct charges made to the restraint limits established for Categories 331/631, 338/339/638/639 and 347/348/647/648 for the period which began on September 1, 1986 and extends through December 31, 1987. Subsequently, these same amounts will be charged to the guaranteed access levels established for properly certified textile products in Categories 331/631, 338/339/638/639 and 347/348/647/648 which are assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during this same sixteen-month period.

Background

On November 21, 1986 a notice was published in the **Federal Register** (51 FR 42128) announcing import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 331/631, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987. A notice published on February 27, 1987 (52 FR 6049) announced guaranteed access levels for textile products in Category 331/631, among others, which are properly certified textile products assembled in Jamaica from fabric formed and cut in the United States.

Further, a notice was published in the **Federal Register** on April 1, 1987 (52 FR 10398) announcing import restraint limits for certain cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987. This notice also announced guaranteed access levels for products in the foregoing categories which are properly certified textile products assembled in Jamaica from fabric formed and cut in the United States.

During consultations between the Governments of the United States and Jamaica, the United States agreed to deduct charges for shipments qualifying for guaranteed access levels which were made to designated consultation levels. It was further agreed that these goods would be charged to corresponding guaranteed access levels.

The Government of Jamaica has provided documentation to the U.S. Government establishing that products in Category 331/631 and additional products in Categories 338/339/638/639 and 347/348/647/648 were assembled exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access levels. These goods were charged to the designated consultation levels because of the unavailability of proper documentation (CBI Export Declaration (Form ITA–370P)) required for entry under TSUSA 807.0010.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 25, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica, I request that, effective on October 1, 1987, you deduct the following amounts from charges made to the import restraint limits established in the directive of November 17, 1986 for cotton and man-made fiber textile products in Category 331/631 and, as amended on March 27, 1987, in Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.

Category	Amount to be deducted
331	250,070 dozen pairs.
338	7,666 dozen.
347	32,598 dozen.
348	5,051 dozen.
638	2,139 dozen.
647	730 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register**.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22558 Filed 9–29–87; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

September 25, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 1, 1987. For further information contact Kimbank Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quotas status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the

Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established import restraint limits for Categories 342 and 636, produced or manufactured in Korea and exported during 1987.

Background

A CITA directive dated December 23, 1986 (51 FR 47044) established important restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including Categories 342 and 636, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended, and at the request of the Government of the Republic of Korea, the limits for Categories 342 and 636 are being increased by application of swing. In addition, Category 636 also is being increased for carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 25, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 1, 1987, the directive of December 23, 1986 is amended to include the following adjustments to the previously established restraint limits for cotton and man-made fiber textile products in Categories 342 and 636, under the terms of the bilateral agreement of November 21 and December 4, 1986, as amended [1]

Category	Adjusted 12-mo. limit[1]
342	79,816 dozen.
636	240,630 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22560 Filed 9-29-87; 8:45 am]

BILLING CODE 3510-DR-M

Proposed Correlation; Textile and Apparel Categories With Tariff Schedules of the United States Annotated 1988

September 25, 1987

For Further Information Contact: Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

The purpose of this notice is to advise the public that a proposed Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated for 1988 will be available beginning October 5, 1987.

The Correlation provides for placement of numbers from the Tariff Schedules of the United States (TSUSA) in the textile and apparel category system. This publication will set forth the new category system to be used by the United States to implement bilateral textile agreements and Article 3 restraints under the Arrangement Regarding International Trade in Textiles and unilateral restraints under Section 204 of the Agricultural Act of 1956, as amended, under the proposed Harmonized System (see 52 FR 6597, published on March 4, 1987).

To obtain a copy of the proposed Correlation, send an $80.00 check or money order, payable to the U.S. Department of Commerce, to: U.S. Department of Commerce, 14th and Constitution Avenue NW., Room H3100, Washington, DC, 20230 Attn: Proposed Correlation.

James H. Babb,

Chairman, Committee for the Implementation of textile Agreements.

[FR Doc. 87-22559 Filed 9-29-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that (1) group limits, specific limits and sublimits may be exceeded by designated percentages for swing, carryforward and/or carryover. No carryforward will be available in the final agreement year, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius Effective on October 1, 1987

September 25, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 1, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 331, 335/835, 338/339, 340, 341/641, 347/348, 604-A, 638/639, 640, 640pt., 647/648/847, and Categories 345, 438, 445, 446, 645 and 646, and a group (Group I), produced or

manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1987 and extends through September 30, 1988, at designated limits.

Background

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius establishes import restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 331, 335/835, 338/339, 340, 341/641, 347/348, 604–A, 638.639, 640, 640pt., 647/648/847, and cotton, wool and man-made fiber textile products in Categories 345, 438, 445, 446, 645 and 646, and a group (Group I), produced or manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1987 and extends through September 30, 1988.

Further, during consultations in September 1986 and March 1987 between the Governments of the United States and Mauritius, agreement was reached to charge 1986 overshipments for Category 341 to each of the next three agreement years, beginning with the period October 1, 1987 through September 30, 1988. Consequently, 36,966 dozen shall be charged for Category 341 to the restraint limit established in this directive for Category 341/641.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (48 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 25, 1987.

Committee For The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1987 and extends through September 30, 1988, in excess of the following restraint levels:

Category group I	12-mo restraint level
345, 438, 445, 446, 645 and 646, as a group.	118,485 dozen
331	318,000 dozen pairs
335/835	47,700 dozen
338/339	224,720 dozen
340	238,203 dozen
341/641	253,340 dozen
347/348	450,500 dozen
604–A [1]	564,980 pounds
638/639	258,428 dozen
640	121,900 dozen of which not more than 42,665 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling in TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550
647/648/847	371,000 dozen

[1] In Category 604–A, only TSUSA numbers 310.5049 and 310.6045.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Mauritius, which have been exported to the United States during the periods which began, in the case of Categories 345, 438, 445, 446, 645 and 646 in Group I and Categories 331, 338/339, 340, 341/641, 347/348, 638/639 and 640, on October 1, 1986; in the case of Categories 335/835 and 604–A, on March 1, 1987; and, in case of Category 647/648/847, on April 1, 1987; and extend through September 30, 1987, shall, to the extent of any unfilled balances, be charged against the restraint limits established for those periods. In the event the limits have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius, which provide, in part, that the limits may be exceeded by not more than 10 percent for carryover and carryforward and the limits for Categories 338/339 and 638/639 may be exceeded by not more than 7 percent for swing, provided that an equal amount in equivalent square yards is deducted from one or more specific limits during the same agreement year. Any appropriate adjustments under the provisions of the agreement referred to above will be made to you by letter.

Also effective on October 1, 1987, you are directed to charge 36,966 dozen for Category 341 to the limit established in this letter for Category 341/641.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22582 Filed 9–29–87; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1987 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 30, 1987.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145

SUPPLEMENTARY INFORMATION: On June 26 1987, the Committee for Purchase for the Blind and Other Severely Handicapped published notice (52 FR 24049 of a proposed addition to Procurement List 1987, November 3, 1986 (51 FR 39945).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987: Janitorial/Custodial, 914 Tactical Airlift Group (AFRES), Niagara Falls International Airport, Niagara Falls, New York.

C.W. Fletcher,

Executive Director.

[FR Doc. 87–22505 Filed 9–29–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Electron Devices Advisory Group

SUMMARY: Working Group B (Microelectonics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 10:30 a.m., Tuesday, 6 October 1987, and 9:00 a.m., Wednesday, 7 October 1987.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 25, 1987.

[FR Doc. 87–22562 Filed 9–29–87; 8:45 am]

BILLING CODE 3810–01–M

Meeting; Election Devices Advisory Group

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 14 October and 0900, Thursday, 15 October 1987.

ADDRESS; The meeting will be held at Lawrence Livermore National Laboratory, Bldg. 481, Room 2005, Livermore, California.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economic and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 25, 1987.

[FR Doc. 87–22563 Filed 9–29–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), announcement is made of the following Committee Meetings:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19–22 October 1987.

Times of Meeting: 0800–1700 hours.

Place: Fort Bragg, North Carolina.

Agenda: The 1987 Army Science Board Fall General Membership Meeting will include:

19 October, 0905–0945—Closed. The rest of the day is open.

20 October, 0800–1300—Open. Briefings by Ft. Bragg personnel.

20 October, 1300–1700 through COB 22 October—Closed.

Subjects to be discussed include Competitive Strategies, Information Management, Bio Defense, BAST Overview and Force Cost Drivers. This portion of the meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contracted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–22497 Filed 9–29–87; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; New System of Records Established for Computer Matching Purposes to Implement Debt Collection Actions Under the Debt Collection Act of 1982

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency, DoD.

ACTION: This action constitutes notice for public comment of a new system of records established for computer matching purposes by interagency agreement to assist Federal creditor

agencies implement debt collection actions under the Debt Collection Act of 1982.

SUMMARY: The Defense Manpower Data Center, Defense Logistics Agency, Department of Defense, is proposing a new record system established under an interagency agreement, devoted exclusively for debt collection efforts under the Debt Collection Act of 1982, in order to conduct computer matching with Federal creditor agencies for the purpose of identifying and locating individuals receiving Federal salaries or other Federal benefit payments and indebted to the U.S. Government. This new record system will identify delinquent debtors and allow Federal creditor agencies to initiate prompt collection action by contacting the debtors for voluntary repayment or pursue involuntary offset procedures against the employees' wages.

DATES: This proposed action shall be effective on or before October 30, 1987, unless comments are received that would result in a contrary determination.

ADDRESS: Send any comments to Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202. Telephone: (202) 694–3027, Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: The establishment of this new system of records was accomplished after study, planning and coordination of an interagency working group and resulted in an interagency agreement for the Federal Salary Offset Initiative to improve and implement debt collection efforts by Federal agencies. The interagency agreement, with attachments, is published in full text below and proposes a central location for records to be matched. This central focus on the use of computer matching techniques as a tool will permit any Federal creditor agency that may wish to avail itself of this opportunity in its efforts on collection of delinquent debts. Federal creditor agencies interested in participating should contact the record system manager reflected in the system notice and should strictly follow the guidelines set forth in the attachments of the interagency agreement.

The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22897) May 29, 1985 (Compilation)
FR Doc. 85–30123 (50 FR 51898) December 20, 1985
FR Doc. 86–17259 (51 FR 27443) July 31, 1986
FR Doc. 86–19035 (51 FR 30104) August 22, 1986
FR Doc. 87–21654 (52 FR 35304) September 18, 1987

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on September 18, 1987 to the Administrator, Office of Information and Regulatory Affairs, OMB, the President of the Senate, and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985) and paragraph 5.f.(1) of the OMB "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982 (47 FR 21656, May 19, 1982).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 24, 1987.

Interagency Agreement for Federal Salary Offset Initiative Implementation of the Debt Collection Act of 1982

The Office of Management and Budget (OMB) has established an Interagency Working Group for the Federal Employee Salary Offset Initiative. It is to assist Federal agencies in identifying Federal employees and others receiving Federal compensation who are delinquent debtors to such agencies. It has been established as a mechanism to enforce the provisions of the Debt Collection Act of 1982.

The Interagency Working Group shall consist of the following agencies: The Financial Management Service, the Office of Management and Budget, the Department of Defense (DoD), and the Office of Personnel Management (OPM). The Department of the Treasury shall serve as lead agency.

The OPM shall provide the DoD with current automated files on all personnel employed or compensated by the Federal Government. The Department of Transportation and the U.S. Postal Service may in the near future provide DoD with similar files of all employed personnel at the U.S. Coast Guard and the Postal Service.

The DoD, Defense Manpower Data Center (DMDC) shall use the above separate data bases on Federal employment and Federally compensated persons. They shall establish and maintain the capability to respond to inquiries from Federal creditor agencies about identifying data about persons who are delinquent in a debt to the Federal Government.

The agencies who are members of the Group in coordination with OMB, shall develop and publish operating procedures. These procedures will include strict compliance with the Debt Collection Act of 1982 and the Privacy Act of 1974.

When the Working Group becomes operational, all creditor agencies will be requested to submit to the Group names of persons against whom they have determined to have a clear valid claim.

Interagency Agreement for Federal Salary Offset Initiative

Background

The Debt Collection Act of 1982, (Pub. L. 97–365), provided an administrative mechanism for Federal Agencies to collect delinquent debts owed by individuals receiving salary or similar compensation from the Federal Government. Delinquent debts can be collected via an involuntary offset to salaries and pensions of fifteen percent disposable income. It is clearly the policy of the Administration that Federal employees should honor their just debts and that the provisions of the Debt Collection Act be used where voluntary compliance is not forthcoming. The utilization of computer matching programs is key to the ability of various Federal agencies to identify and locate delinquent debtors receiving offsetable payments from various Federal sources. Efforts to date under the Debt Collection Act have for the most part been bilateral between selected agencies having delinquent debtors and other agencies having records on large numbers of individuals receiving various forms of Federal compensation.

Purpose

The purpose of this agreement is to bring a central focus on the use of computer matching techniques as a tool for the collection of delinquent debts. While it is clearly preferable to receive voluntary repayment of such debts from individuals who may be identified through computer matching, it is recognized that involuntary offset procedures under the provisions of the Debt Collection Act will be utilized when voluntary repayment is not forthcoming. The Office of Management and Budget (OMB) has designated the Department of the Treasury, Financial Management Service, as the Lead Agency to coordinate and monitor the implementation of the government's Federal Salary Offset program.

This agreement, restricted exclusively to the implementation of the Debt

Collection Act, is intended to establish an Interagency Working Group to facilitate computer matching and subsequent salary offset throughout the Federal government under the auspices and oversight of the Office of Management and Budget (OMB). The Interagency Working Group will be chaired by Treasury and will consist of those agencies having records on individuals receiving Federal compensation offsetable under the Debt Collection Act. At the outset, the members of the Interagency Working Group will consist of the Department of Treasury, Office of Personnel Management (OMB), and the Department of Defense (DoD).

Objectives

It is recognized at the outset that computer matching can be conducted most efficiently if there is central location for records to be matched. Such centralization will eliminate duplication in data processing, in the negotiation of required Memoranda of Understanding between agencies, and in the publication of various announcements in the **Federal Register** which are required by the Privacy Act of 1974, as amended, and by the OMB Guidelines on Computer Matching. It is further recognized and agreed upon that no data base will be used for any other purposes other than that authorized by the Debt Collection Act. No single agency (e.g. DoD) maintaining the data bases as the matching agency shall have sole responsibility for determining what other uses shall be made of records in its custody received from another source agency. These activities shall be controlled as a policy matter by the Interagency Working Group, with each of the member agencies retaining control of the uses made of its own records.

An additional objective of this agreement is to establish procedures for sharing the work load and financial burden associated with computer matching subsequent salary offset among those members of the Interagency Working Group as well as among those other Federal creditor agencies who will utilize the resources of the Interagency Working Group to recover funds owed them. Attachment A, Roles and Responsibilities, and Attachment B, Example of Interagency Memorandum of Understanding (MOU) to Perform a Debt Collection Computer Matching Program, establish the procedures to be utilized to ensure a sharing of this burden.

It is a basic tenant of this effort that all matching activities, access to and disclosure of records, and efforts to recover funds owed will be undertaken in strict compliance with the Privacy Act, the OMB publications "Revised Supplemental Guidance for Conducting Matching Programs" and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," and the due process and other provisions of the Debt Collection Act and applicable regulations.

Reporting Relationships

In its role as both the designated Lead Agency and the Chair of the Interagency Working Group, the Department of the Treasury will be responsible for establishing reporting requirements for the Interagency Working Group, for those Federal agencies which utilize the services of the group, and also, for reporting periodically to OMB on progress made and problems encountered in administering this program.

For Department of the Treasury,

W.E. Douglas,

Commissioner, Financial Management Service.

Dated: April 10, 1987.

For Office of Management and Budget,

Gerald R. Riso,

Associate Director for Management.

Dated: April 14, 1987.

For Department of Defense,

H.H. Kraft, Jr.,

Deputy Assistant Secretary of Defense (Management Systems).

Dated: April 24, 1987.

For Defense Manpower Data Center,

Kenneth C. Scheflen,

Director, DMDC.

Dated: April 16, 1987.

For the U.S. Office of Personnel Management.

Central Personnel Data File,

Phillip A.D. Schneider,

Assistant Director for Work Force Information.

Dated: April 23, 1987.

Civil Service Retired File,

Jerome D. Julius,

Deputy Associate Retirement & Insurance.

Dated: April 15, 1987.

Attachment A—Roles and Responsibilities

Agency roles and responsibilities are as follows:

Treasury Financial Management Service (FMS), lead agency, will

coordinate and monitor the implementation of the government's Federal Salary Offset program. FMS will:

- Chair the Interagency Working Group.
- Establish reporting requirements for the Interagency Working Group, agencies submitting delinquent debtor files for matching, and employing agencies.
- Report periodically to OMB and Treasury management regarding the progress of this initiative.
- Coordinate with participating agencies processing for all phases of the matching and offset procedures to ensure timely completion.
- Assist OMB in monitoring compliance with Privacy Act requirements and OMB published guidance.
- Assure agency compliance with reporting requirements on collection activity.
- Assist agencies in resolving any problems which might otherwise impede implementation of this initiative.

The Department of Defense (DoD) will:

- Negotiate the Memoranda of Understanding (example shown as Attachment B) for the matches with each agency providing the delinquent debtor file. DOD will receive and approve a Memorandum of Understanding from each creditor agency for the conduct of the match. It is in these agreements that specifics for reimbursement of DoD for costs related to the match will be contained.
- Publish a notice to match in the **Federal Register** on or about the time of the match in conformance with OMB matching guidelines.
- Perform the computer matching runs as matching agency, utilizing delinquent debtor files provided by, but not limited to, the Departments of Agriculture, Education, Housing and Urban Development, and by the Veterans Administration and Small Business Administration. DoD will match these files against civilian and retired employment files provided by the Office of Personnel Management, as well as, DoD civilian and active, retired and reserve military personnel files.
- Report the volume and dollar total of raw hits for each creditor agency match by employing agency of record to the Financial Management Service, Department of the Treasury.
- Provide a quarterly schedule of when creditor agencies are to be matched to the agencies providing the employment files.

The Office of Personnel Management will provide updated active and retired employment files on a recurring basis for matching in accordance with its agreed upon schedule with DoD.

The Office of Management and Budget will monitor privacy act compliance as a part of its ongoing oversight review responsibility.

Each creditor agency participating in the salary offset program and providing files for matching will:

- Enter into a reimbursable agreement with DoD for matching. The Agencies will draft Memorandum of Understanding for DoD approval.
- Transmit to DoD only the delinquent debtor file to be matched containing the agreed upon record fields to be matched, accompanied by format specifications enabling the match.

Each agency will designate a primary and alternate point of contact for this initiative.

Attachment B.—Example of Inter-Agency Memorandum of Understanding (MOU) To Perform a Debt Collection Computer Matching Program

Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish, before any matching takes place, administrative procedures and assign responsibility for a government-wide debt collection computer matching program. The matches will be performed at the Defense Manpower Data Center (DMDC) utilizing employment records provided by the Department of Defense and the Office of Personnel Management. The employment records will be matched with records of individuals delinquent in their debt to the Federal government as supplied by the signatory creditor agency to this MOU.

General

Under authority of the Debt Collection Act of 1982, and other applicable regulations, the head of a Federal agency may request that deductions be made from the pay of an employee or member delinquent in his/her debt to the United States. This matching program will facilitate the identification of the delinquent debtor employees and members by the employment records at one location (DMDC). The matches will be performed to allow the creditor agency to receive a current home or work address in order to issue the required due process notice. The creditor agency will be responsible for sending the request for offset to the employing agency. These procedures are expected to shorten the collection agency timeframes and reduce confusion due to utilizing standard formats and procedures.

Responsibilities

Defense Manpower Data Center shall:

• Establish and maintain a system of records (S322.11 DLA–LZ, Federal Creditor Agency Debt Collection Data Base) devoted exclusively for Federal debt collection efforts containing, at the onset, a data bank record of DoD active and retired military members, including the Reserve, National Guard, and the OPM Government-wide Federal civilian and retired civilian records for computer matching purposes with any Federal creditor agency that may wish to avail itself of this opportunity to utilize this resource.

• Assure before any matching takes place that the participating creditor agency has published a system of records notice in the **Federal Register** with an adequate routine use permitting disclosure of delinquent debtor records for computer matching purposes and that DMDC publishes a proper notice of the proposed match for public comment, including the starting date, as required by the OMB Computer Matching Guidelines.

• Provide name, social security number, demographic information and current address based on a match of social security number to the creditor agency within thirty (30) days of the start of the match.

• Bill the creditor agency for match reimbursement.

The Federal Creditor Agency shall:

• Provide to DMDC before any matching occurs a copy of the full text notice of the record system(s), and any amendments thereto, originally published in the **Federal Register** (not from Privacy Act Issuances Compilation) containing an appropriate routine use authorizing the disclosure of debtor records to DMDC(DoD) for the purpose of conducting a computer matching program.[1]

• Provide only delinquent debtor records to DMDC in an agreed upon format with any specific instructions as to the control and final disposition of the creditor agency records upon completion of the match.[2]

• Assure by proper certification or statement that due process has been, or shall be, given upon locating the debtor prior to requesting any administrative or salary offset procedures according to the Debt Collection Act of 1982, 4 CFR Chapter II, 5 CFR 550.1101–.1108, and any other applicable regulations of the creditor agency.

• Provide quarterly reports to DMDC on collection activity resulting from hits of the matches in a format and content as agreed upon jointly by DMDC and the creditor agency.

• Assure that proper reimbursement is made to DoD in accordance with schedule of charges.

• Designate a primary and an alternate contact point with full name, title, address and telephone number.

Reimbursement for Match

Costs of the file maintenance, computer time and staff time for the matching effort will be reimbursed by the creditor agency to DMDC according to the following schedule of charges:

Schedule of Charges

$500 flat fee per match plus $.25 per "hit" record.

Data Security

Both the creditor agency and DMDC will safeguard individual data as required by the Privacy Act of 1974 and the OMB computer matching guidelines. Data security extends to non-hit records which will not be used for any purpose. Hard copy records will be stored in lockable desks or file cabinets and automated records will be stored in limited access computer facilities.

Duration of Agreement

This MOU will remain in force unless notified or terminated in writing by both agencies.

For
(Creditor Agency)
For
Defense Manpower Data Center

_____

(Responsible Official)

_____

Date

_____

_____

Kenneth C. Scheflen, Director

[1] Model "Routine Use" for record system notice of creditor agency to disclose records of debtors to DMDC for conducting computer matching programs.

[2] Procedures for participation in matching program.

Date

To the Defense Manpower Data Center, Department of Defense, to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the * * * (insert Federal creditor agency name) * * * in order to collect the debts under the provisions of the Debt Collection Act of 1982, (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

General

All computer matches are performed at the Defense Manpower Data Center (DMDC) in Monterey, CA using an IBM computer system located at the Naval Postgraduate School (NPS) in Monterey, CA. Computer files of Active Duty, Retired and Reserve members, Federal Civil Service employees and retirees are maintained at the NPS Computer Center and are updated on a quarterly (for DoD files) or semiannual (for other files) basis. All file matching is performed using the full nine (9) digit social security number as the determinate.

Participation and Contract Point

All Federal agencies are eligible to participate in the matching program after entering into a written memorandum of understanding (MOU) with DMDC. A sample MOU is included in this notice. Signed agreements should be sent to: Kenneth C. Scheflen, Director, Defense Manpower Data Center, 1600 N. Wilson Blvd., Suite 400, Arlington, VA 22209–2593, Telephone (202) 696–5816.

Technical inquiries can be directed to Debt Collection Project Leader, Stewart Reiman, telephone (408) 646–2951.

Legal or policy questions can be directed to Don Rouse, Treasury FMS—telephone (202) 634–2031.

Data Information

All data submitted for a match must consist only of delinquent debts of individuals indebted under a Federal Program. At a minimum, the data must contain: Social Security Number, Name of Debtor (Last, First, MI), Amount of Delinquent Debt.

—The matching agency will provide to the creditor agency summary totals and dollar amounts of raw hits.

—Matching will be on SSN, and validated using the name. The natching agency will identify for the creditor agency invalid hits because of garbled data, incorrect SSN, same SSN, different name, etc.

—The matching agency will transmit to the creditor agency the matched records containing the following data elements from the employment records:

—Agency where employed and location.

—Address of employment and home address or latest address of record.

—The matching agency, within 30 days after the match, will as standard practice either erase or return to the creditor agency the

file of delinquent debt records unless contrary specific instructions are furnished by the creditor agency.

—The creditor agency will reimburse the matching agency for the cost of operations according to a schedule of charges set forth in the MOU.

Tape Specifications

IBM compatible, unlabled, 6250 (or 1600) BPI, fixed block, 9 track, odd parity, EBCDIC, character data. Tape(s) should be sent to: Defense Manpower Data Center, ATTN: Debt Collection Project, 550 Camino El Estero, Suite 200, Monterey, CA 93940–3231.

S322.11 DLA–LZ

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base.

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000 Decentralized segments: Military and civilian payment and personnel centers of the military services, the Office of Personnel Management, and Federal creditor agencies. Backup location: Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940–3231

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officers and enlisted personnel, members of reserve and guard components, retired military personnel. All Federal-wide civilian employees and retirees. Individuals identified by Federal creditor agencies as delinquent in repayment of debts owed to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Account Number, debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, duty and home address, and various dates identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514 "Installment deduction of indebtedness"; 5 U.S.C. 552a "Privacy Act of 1974"; 10 U.S.C. 136; 4 CFR Chapter II "Federal Claims Collection Standards"; 5 CFR 550.1101–.1108 "Collection by Offset from Indebted Government Employees"; Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987).

PURPOSE(S):

The primary purpose for the establishment of this system of records is to maintain a computer data base permitting computer matching to assist and implement debt collection efforts by Federal creditor agencies under the Debt Collection Act of 1982 to identify and locate individual debtors. To increase the efficiency of U.S. Government-wide efforts to collect debts owed the U.S. Government. To provide a centralized Federal data bank for computer matching of Federal employment records with delinquent debt records furnished by Federal creditor agencies under an interagency agreement sponsored and monitored by the Department of the Treasury and the Office of Management and Budget. To identify and locate employees or beneficiaries who are receiving Federal salaries or other benefit payments and indebted to the creditor agency in order to recoup the debt either through voluntary repayment or by administrative or salary offset procedures established by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Individual's name, SSN, Federal agency or military service, category of employee, Federal salary or benefit payments, records of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose contacting the debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

The DoD Blanket Routine Uses do not apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic computer tape.

RETRIEVABILITY:

Records are retrieved by social security number and name from a computerized index.

SAFEGUARDS:

Primary location at the W.R. Church Computer Center, Monterey, CA, tapes are stored in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At the back-up location in Monterey, CA tapes are stored in rooms protected with cypher locks, the building is locked up after hours, and only property cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Records are erased within six months after each match cycle.

SYSTEM MANAGER AND ADDRESS:

Deputy Director, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940–3231

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager.

RECORDS ACCESS PROCEDURE:

Requests from individuals should be addressed to the system manager. Written requests for information should contain the full name, social security number, current address and telephone number of the individual requesting information.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the system manager and are contained in Defense Logistics Agency Regulation 5400.21 (32 CFR Part 1286).

RECORD SOURCE CATEGORIES:

Federal creditor agencies, the Office of Personnel Management and DoD personnel and finance centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 87–22481 Filed 9–29–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Wednesday, October 7, 1987, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m.

The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is being held at the offices of the IEA on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the agenda.
2. Summary record of the 57th meeting.
3. Report on discussions of the Governing Board on future work related to oil emergency questions.
4. IEA test issues.
(a) Test Guide for Coordinated Emergency Response Measures.
(b) Status of preparations for data test/Sixth Allocation Systems Test.
5. Emergency stocks.
(a) Revision of minimum operating requirements—progress report.
(b) Mandatory stocks of IEA member countries.
(c) Questionnaire on "compensation" for early coordinated emergency response measures.
6. Other emergency preparedness issues.
(a) U.S. Plan of Action—progress report.
(b) Member countries' emergency response program reviews—status report and revised timetable.
(c) Middle East oil supply flows.
(d) New forms of oil trading—the futures market—possible implications for the IEA Oil Emergency Sharing System.
7. 1988 program of work.
8. Other topics.
(a) End-September oil market report.
(b) Base Period Final Consumption (3Q86–2Q87).
(c) OECD Electronic mailbox—a way to expedite data/information transmission.
9. Any other business.
10. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the SEQ meeting is open only to representatives of members of the SEQ, representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the SEQ or the IEA.

Issued in Washington, DC, September 25, 1987.

J. Michael Farrell,
General Counsel.

[FR Doc. 87–22584 Filed 9–29–87; 8:45 am]
BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–25–NG]

Order Granting Blanket Authorization To Import Natural Gas; Continental Natural Gas, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Continental Natural Gas, Inc. (CNG), blanket authorization to import natural gas. The order issued in ERA Docket No. 87–25–NG authorizes CNG to import up to 185 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 100 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 22, 1987.

Constance L. Buckley,
Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–22583 Filed 9–29–87; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–658–000 et al]

Electric Rate and Corporate Regulation Filings; Southern California Edison Co. et al.

September 23, 1987.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Co.

[Docket No. ER87–658–000]

Take notice that on September 17, 1987, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, which has been executed by Edison, San Diego Gas & Electric Company (SDG&E), the City of Anaheim, California (Anaheim), and the City of Riverside, California (Riverside) (collectively "Parties").

San Onofre Refueling Exchange Agreement among Southern California Edison Company, San Diego Gas & Electric Company, City of Anaheim and City of Riverside.

The San Onofre Refueling Exchange Agreement provides for an arrangement whereby, for system reliability purposes, a planned refueling outage can be changed to either an early refueling outage or a delayed refueling outage at the request of one or more Parties and the nonparticipating Parties will receive an exchange of energy and capacity as if the changed refueling outage had not occurred.

Copies of this filing were served upon the Public Utilities Commission of the State of California, San Diego Gas & Electric Company, the City of Anaheim, and the City of Riverside.

Comment date: October 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Southern Utilities Co.

[Docket No. ER87–454–000]

Take notice that on September 18, 1987, Iowa Southern Utilities Company (Iowa Southern) tendered for filing an amendment to its earlier filing in this docket.

Iowa Southern states that the purpose of the amendment is to submit: a second set of fixed charge rates by each filing utility which incorporate the 34% statutory federal income tax rate to become effective July 1, 1987; and the details supporting the calculations of the levelized rates of return and the income tax components for each filing utility.

Copies of this filing have been served upon all parties in interest.

Iowa Southern requests a waiver of the Commission's notice requirement and Iowa Southern requests that the filing be permitted to become effective May 22, 1981.

Comment date: October 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corp.

[Docket No. ER87–657–000]

Take notice that on September 17, 1987, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing, as a supplemental rate schedule to FERC No. 70 an executed Agreement dated March 1, 1987 between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for Transmission of Capacity and Energy by Central Hudson for O&R between Central Hudson's 69 Kv. transmission

interconnection with New York State Electric & Gas Corporation's (NYSE&G) West Woodbourne Substation and Central Hudson's 115 Kv. interconnection with O&R at O&R's Sugarloaf Substation and from New York Power Authority's Blenheim-Gilboa Pumped Storage Hydroelectric Plant.

The rate schedule provides for a monthly transmission charge of $1.00 per megawatt hour of Energy received from NYSE&G for O&R's account at NYSE&G's West Woodbourne Substation for delivery to O&R Sugarloaf Substation and from New York Power Authority's Blenheim-Gilboa Pumped Storage Hydroelectric Plant.

Central Hudson states that copies of the subject filing were served upon: Orange and Rockland Utilities, Inc., 75 West Route 59, Spring Valley, New York 10977.

Comment date: October 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Fedeal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22543 Filed 9-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-74-000]

Request To Reopen and Vacate Well Category Determinations; State of Pennsylvania, CNG Development Co.

September 25, 1987.

Take notice that on July 28, 1987, CNG Development Company requested the Commission to reopen and cate final NGPA section 102 well category determinations for four wells [1] due to the existence of marker wells within 2.5 miles of each well.

The question of whether refunds plus interest will be required in connection with CNG's request is a matter subject to review and final decision by the Commission.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rule 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register.** All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of CNG's request are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22539 Filed 9-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-144-000]

Proposed Changes in FERC Gas Tariff; Northern Border Pipeline Co.

September 24, 1987.

Take notice that on September 21, 1987, Northern Border Pipeline Company (Northern Border) tendered for filing to become a part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volumes Nos. 1 and 2 the following tariff sheets:

Original Volume No. 1

First Revised Sheet Number 120
Original Sheet Number 121
First Revised Sheet Numbers 202, 203 and 204
Second Revised Sheet Number 210

Original Volume No. 2

First Revised Sheet Number 11

The revised tariff sheets were filed to accomplish two objectives. First, to change the definitions of terms in Original Volume No. 1; Contract Dekatherm-Miles, Total Maximum Receipt Quantity and Daily Receipt Quantity, and in Original Volume No. 2; Daily Contract Receipt Quantity, to provide increased operational flexibility for Northern Border and its customers. Secondly, to insert a credit worthiness standard aplicable to potential firm service pursuant to Rate Schedule T-1.

Northern Border has requested that the filed tariff sheets be effective on October 19, 1987. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22538 Filed 9-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-855-000]

Application For Permanent Abandonment With Three-Year Limited-Term Pregranted Abandonment; Petro-Energy Exploration, Inc., et al.

Take notice that on August 28, 1987, as supplemented on September 15, 1987, Petro-Energy Exploration, Inc. *et al.*.[1] (Applicants) filed an application pursuant to Section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for a permanent abandonment of their sale of gas to ANR Pipeline Company (ANR) from the NE/4 of section 35, T23N-R16W, Major County, Oklahoma. Applicants also request three-year limited-term pregranted abandonment for the sale of gas initially under a proposed percentage-of-

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[1] CNGD No. 76, Aaron Leamer No. 2 (FERC No. 84-11509). CNGD No. 83, Theodore Garman No. 1 (FERC No. 84-23348). CNGD No. 395, Theodore Garman No. 2 (FERC No. 84-23349). CNGD No. 84, Wm. Somerville No. 1 (FERC No. 84-24526).

[1] The *et al.* parties are Imperial Oil Company of California; Well, Rich and Greene, Inc; Total Minatome Corporation; Petro-Search Nominee Partnership Co. and Rosemary McCord.

proceeds contract and for any subsequent sales under Applicants' small producer certificates.

In support of their application Applicants state that ANR has taken gas on an average of ½ day per month. Applicants have been and expect to continue suffering substantially reduced takes without payment.[2] As part of a settlement of contract claims against ANR, ANR agreed to terminate the contract and release the acreage. Applicants propose to sell the gas under a percentage-of-proceeds contract to Union Texas Products Corporation which will resell the gas at the tailgate of its processing facility in the spot market. Deliverability is approximately 900 Mcf/d. The gas is NGPA section 104 small producer flowing gas which is currently limited by the contract with ANR to the NGPA minimum rate.

Since Applicants have requested that their application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22540 Filed 9-29-87; 8:45 am]

BILLING CODE 6717-01-M

[2] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[Docket No. CI87-867-000 and Docket No. CI87-880-000]

Applications for Two-Year Limited-Term; Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate; Thomas R. Fuller and Resource Reserves Co.

September 25, 1987.

Take notice that on August 31, 1987, Thomas R. Fuller and on September 3, 1987, Resource Reserves Co., c/o Carolyn Lee Baker, 1212 Main Street, Suite 364, Houston, Texas 77002, filed applications in Docket Nos. CI87-867-000 and CI87-880-000, respectively, requesting limited-term abandonment of the sale of gas to ANR Pipeline Company from their interest in the Cheap C-1 well in Harper County, Oklahoma. Applicants request the abandonment for a period of two years and request pregranted abandonment for two years for sales for resale in interstate commerce under small producer certificates of Resource Reserves Co. in Docket No. CS87-29-000 and Thomas R. Fuller in Docket No. CS87-30-000.

In support of their applications Applicants state that ANR cannot purchase the gas due to market constraints. Applicants therefore request that their applications be considered on an expedited basis pursuant to 18 CFR 2.77.[1] Estimated deliverability is 25 Mcf/d. The gas is NGPA section 104 minimum rate gas.

Since Applicants state that they are subject to substantially reduced takes without payment and have requested that their applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2253 Filed 9-29-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in Section 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[Docket Nos. CP87-451-001, -002 and -003]

Order Granting Rehearing; Northeast U.S. Pipeline Projects

Issued: September 25, 1987.

Before Commissioner: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On July 24, 1987, in Docket No. CP87-451-000 (40 FERC ¶ 61,087), the Commission issued a notice inviting applications to provide new gas service to the Northeast. The notice established a cut-off date, December 1, 1987, for the filing of new applications for certificate authority to provide such service. Applications on file as of that date would then be evaluated as a class to determine the need for a comparative evidentiary hearing. Applications filed, or amended, subsequent to that date would be considered on their merits but would not be deemed to be competitive with, or mutually exclusive to, applications filed prior to that date.

The notice afforded all interested persons an opportunity to file requests for rehearing. Such requests have been filed by Champlain Pipeline Company, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., ANR Pipeline Company, and the Vermont Department of Public Service.[1]

[1] Champlain, Tennessee and Vermont also filed motions to intervene. The motions are granted by Rule 214. However, inasmuch as the notice did not require the filing of motions to intervene as a prerequisite to filing a request for rehearing, ANR, by virtue of its request for rehearing, is also a party to this docket. The applications for new service, when filed, will be assigned separate docket numbers, and all persons having an interest in those applications will have ample opportunity to intervene in those dockets.

ANR contends that it would be "unwise and undesirable * * * for the Commission to adopt hard and fast rules which limit its ability to review reasonable *bona fide* alternatives to 'complete proposals' on file by December 1, 1987." Tennessee takes the opposite approach, urging us to rigidly adhere to the cut-off date except upon a showing of "truly extraordinary circumstances." Tennessee also asks us to define the concepts of "complete", "in compliance with the Commission's regulations", "ripe", and "amendments". Champlain raises comparable issues.

The July 24 notice does not preclude or foreclose any procedural options available to the Commission. Rather, the purpose of the notice is to enable the Commission "if it so chooses, to use December 1, 1987, as a cut-off date, so that subsequent applicants cannot delay whatever proceeding may have been established (if any) to process mutually exclusive applications that were on file, complete, and ripe for action as of December 1, 1987." Notice at p. 6.

While the Commission is determined to act expeditiously in evaluating the Northeast gas markets and any proposals that may be submitted to provide new service to that region, the Commission must necessarily reserve the flexibility to respond to the situation before it as the matter evolves. In the long run, we believe that the Commission, the potential applicants, and the potential ultimate customers would all be best served by a procedural regime that permits the Commission to determine the course of its proceedings in light of the legal and factual context before it as events transpire.

Thus, we do not wish to adopt definitions so rigid as to defeat our purpose of expeditious consideration of *bona fide* proposals. We do not wish to exclude from consideration, for instance, timely proposals that contain inadvertent minor flaws that could easily be remedied without disruption to whatever proceedings might transpire. Similarly, we do not wish to discourage parties for negotiating reasonable revisions to their proposals during the course of such proceedings. For instance, if interveners raise legitimate environmental objections to a proposed pipeline route, and if the parties then work out a mutually acceptable solution that would permit construction of a desirable pipeline along a modified route pursuant to an amendment to the application, the public interest would not be well served by a procedural framework so rigid that the only alternatives available to the parties and the Commission were (a) to proceed with consideration of the unmodified, flawed proposal or (b) to defer consideration of a modified, acceptable proposal to some later proceeding on grounds that the modification post-dated the cut-off date for consideration. Under such circumstances, the Commission would want to proceed with consideration of a modified proposal even if the modification necessitated the filing of an amendment to the application.

On the other hand, our purpose in proceeding expeditiously to consider new service to the Northeast would be defeated if applicants were permitted to meet the standards of the cut-off date by filing sketchy *pro forma* applications, applications that are patently deficient in light of our regulations, applications for proposals that are still under negotiation and are likely to be revised, or applications that the applicants are not prepared to explain, support, and, if approved, implement. The standards, therefore, must necessarily be sufficiently flexible to permit the Commission to embark promptly on expeditious consideration of meaningful, well formulated proposals that are ready to be considered—and to permit subsequent changes to those proposals if such changes are warranted—while excluding from contemporaneous consideration proposals that are in such early stages of formulation that prompt and meaningful analysis of their merits is not feasible.

In light of all of these considerations, we have established a cut-off date procedure to enable the Commission to exclude from consideration in a competitive proceeding (if one is established) applications that are not complete and ripe for consideration as of that cut-off date. In so doing, the Commission has reserved to itself the right to exercise its procedural discretion to permit consideration of particular proposals, or modifications thereof, under circumstances in which such consideration would not derogate from expeditious consideration and authorization of new facilities or services mandated by the public interest.

Tennessee seeks clarification on several other points. First, Tennessee asks us to declare that the notice does not apply to applications on file prior to July 24, 1987, or to new applications that "propose the use of existing facilities or minor facilities." The July 24 notice makes clear that all applications on file by the cut-off date will be deemed to meet the cut-off date regardless of whether they were filed prior or subsequent to July 24. The notice also makes clear that all applications will be processed on their merits. We note, in fact, that subsequent to July 24 the Commission issued several orders granting certificate authority with respect to smaller proposals to provide gas service in discrete markets in the Northeast, under circumstances in which there were no issues of mutual exclusivity. We will continue to act on pending cases, as well as on newly filed cases, as appropriate in light of the circumstances presented. The July 24 notice does not mandate a competitive evidentiary proceeding, nor any other particular procedure, for consideration of whatever applications may be filed. It merely sets a cut-off date that can be invoked—and for which all potential applicants have been afforded prior notice—in the event that a competitive evidentiary hearing is warranted with respect to particular applications received by that date.

Tennessee perceives a potential ambiguity in the July 24 notice with respect to applications filed pursuant to the optional certificate procedures. There is no ambiguity. The language quoted by Tennessee is clear: "Applications filed under our optional certificate procedures (Subpart E of Part 157 of our Regulations) are deemed not to be mutually exclusive for the purpose of establishing a comparative evidentiary hearing * * *."[2]

We turn now to Champlain's rehearing request, which raises case specific issues arising out of its own proposed project. Champlain states that it is preparing an application for certificate authority to construct new pipeline facilities running from the Quebec/Vermont border to the Boston area. Champlain states that it is very sensitive to environmental concerns in the New England area, and that it is attempting to resolve these concerns through extensive consultation with State and local agencies, elected officials, and the Commission's environmental staff. In particular, Champlain is seeking to determine a precise route for its proposed pipeline, rather than a more generalized corridor, and that in the interest of avoiding unnecessary environmental controversy it is seeking to determine that route *before* it files its application. Champlain is also seeking to complete the "engineering/design" of its pipeline as an integral part of its environmental inquiry and consultation, so as to minimize potential concern over land use, health and safety. Champlain states

[2] Notice at p. 5, n. 2.

that its current schedule for completion of this work is March 1, 1988, and requests that the Commission extend the cut-off date accordingly.[3]

We find Champlain's rehearing request highly persuasive. The densely populated nature of the Northeast U.S. puts a particular premium on careful environmental planning and consultation, and Champlain's efforts to resolve these matters in detail before filing its application are highly laudable. On the other hand, we are reluctant to delay until March 1, 1988, the commencement of our consideration of potential major new service to the Northeast. Furthermore, while there is considerable merit to Champlain's desire to refine its route in detail before filing an application, such a level of refinement is not a prerequisite to meeting the cut-off date of the July 24 notice. For purposes of meeting the cut-off date, an application that contains the information required by Subpart A of Part 157 of the Commission's Regulations would constitute a meaningful filing that is ripe for serious consideration, and the subsequent filing (after the cut-off date) of revised or more detailed route maps would not constitute an amendment that jeopardized the timeliness of the underlying application vis-a-vis the cut-off date.

In this regard, we note that our Regulations do not specify what scale of map is required to be submitted as part of the application. Champlain states in its request for clarification that it was advised by our environmental staff to include a pipeline route map at a scale of 1 inch equals 500 feet. While a map at that scale will eventually be needed in order to fully evaluate the potential environmental impact of the proposed project, that level of detail is not mandated by Part 157 of the Regulations, and is therefore not required as a prerequisite to meeting the cut-off date.

In order to be able to commence its environmental review, our environmental staff needs to have maps at the level of detail of U.S. Geological Survey (USGS) 7.5 minute series (scale 1:24000) topographic maps. The Commission's environmental staff has routinely requested applicants to file USGS 7.5 minute series maps to complete their applications in those instances when such maps have not been included in the application as originally filed. It is our understanding that such maps are readily available from the USGS. Inasmuch as the environmental review process generally requires the greatest lead time in processing this type of application, the Commission strongly encourages applicants to submit such maps at the outset, as part of their applications, so as to avoid delay in the processing of these applications. Inasmuch as such maps are not specified in Subpart A of Part 157 of the Regulations, however, the cut-off date can be met through filing whatever maps will show the location of the facilities proposed to the level of detail specified in Subpart A of Part 157.

While the discussion above was prompted by the questions posed in Champlain's request for clarification with respect to its own application, that discussion is, of course, equally applicable to all potential applicants, not just to Champlain.

In addition, in light of the matters raised by Champlain, and in recognition that the clarifications discussed in this order on rehearing might have some impact on the planning of all potential applicants, we will extend the cut-off date from December 1, 1987 to January 15, 1988.

Finally, Champlain, like Tennessee, urges us to make the cut-off date binding and absolute, contending that it would be unfair to allow potential competitors to have more time to prepare and file their applications, and to prepare them with advance knowledge of the details of Champlain's application if Champlain files its application by the cut-off date and others do not. For the reasons discussed above, the Commission deems it unwise to legally preclude itself from considering anything filed subsequent to the cut-off date. Champlain's potential competitors, however, are on notice that, absent compelling public interest justifications, such filings bear a very heavy risk of being deemed not mutually exclusive with Champlain's application, and of being processed separately from Champlain's, and on a later schedule.

The Commission orders:

(A) The cut-off date for the filing of applications to provide new gas service to the Northeast U.S., as that cut-off date is explained above and in the notice issued July 24, 1987, is extended from December 1, 1987 to January 15, 1988.

(B) The notice is clarified as discussed above.

(C) In all other respects, the requests for rehearing are denied.

(D) The Secretary shall cause this order to be published in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22542 Filed 9-29-87; 8:45 am]

BILLING CODE 6717-01-M

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[3] The comments filed by the Vermont Department of Public Service support Champlain's request for the extension of time, for the reasons stated by Champlain.

[Docket No. GP87-53-000]

Regarding Production-Related Costs; Trunkline Gas Co. v. Sun Exploration and Production Co.

September 25, 1987.

On May 21, 1987, Trunkline Gas Company (Trunkline) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of 385.206. Trunkline requests that the Production-Related Costs Board (Board) find that Sun Exploration and production Company (Sun) has collected production-related costs in violation of 18 CFR 271.1104.

Trunkline states that Sun sold natural gas to Trunkline from the West Cameron Block 639 Field, Offshore Louisiana pursuant to an April 18, 1973, gas sales contract. On September 27, 1974, the Commisison, in Docket No. CI73-878, granted Sun a certificate of public convenience and necessity, authorizing Sun to sell the subject gas at the national rate specified in § 2.56a of the Commisison's Rules of Practice and Procedure. By an amendment dated January 23, 1976, Sun and Trunkline agreed to an initial contract price in excess of the national rate with specific annual escalation. Sun petitioned for special relief in Docket No. RU76-117 and by order issued on January 19, 1977, the Commission accepted a settlement of the case and grated Sun's petition.

On May 3, 1976, Trunkline entered into a gas purchase agreement with Clark Oil Producing Company (Clark) for the sale of gas from Clark's working interest in the West Cameron Block 639 Field. The contract contained the same pricing provisions in the January 23, 1976, amendment to the gas sales contract between Sun and Trunkline. In Docket No. RI76-133, Clark sought special relief allowing it to collect a price above the national rate. On March 1, 1977, the Commission accepted a settlement of the case and granted Clark's petition.

Trunkline states that when Sun and Clark filed their Notices of Rate Change pursuant to the special relief orders each had received, the rates did not include any adjustments for the generic gathering rates then in effect.

Trunkline further states that under Section 104 of the NGPA and § 271.402(c)(1) of the Commisison's regulations, special relief rates

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established pursuant to § 2.56a(g) of the regulations (plus inflation adjustment) were allowed to continue in effect as the maximum lawful price. Sun filed the appropriate blanket affidavit to establish the special relief rate, increased by the contract escalation and NGPA inflation adjustment factors, as the maximum lawful price for its sales from West Cameron Block 639. Clark followed an identical course of action and on May 1, 1984, Sun acquired Clark's contract with Truckline by assignment from Clark's successor, Petro-Lewis Corporation.

Finally Trunkline states that on September 12, 1984, it received Sun's bill for production-related costs applicable to Sun's working interests in various offshore blocks dedicated to Trunkline, including West Cameron Block 639, retroactive to July 25, 1980 and it paid Sun $7,520,572.18 for Sun's production-related costs for the period from July 25, 1980 through February 28, 1985, on September 30, 1985. Trunkline further states this payment did not include any amount related to Sun's claim for production-related costs associated with its working interests in West Cameron Block 639. Trunkline asserts that on October 19, 1985, Sun unilaterally appropriated $1,263,796.85 as reimbursement for production-related costs associated with Sun's working interests in West Cameron Block 639 from other funds of Trunkline that were temporarily in Sun's possession.

Trunkline requests that the Board issue an order finding that Sun is not entitled to collect production-related costs in addition to the special relief prices paid for first sales of natural gas from its working interests in West Cameron Block 639 Field and directing Sun to refund to Trunkline the amount of $1,263,796.85 plus interest.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Sun must file an answer to Trunkline's complaint with the Commisison unless otherwise ordered by the Commisison. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Sun shall file its answer with the Commisison not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protest or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22541 Filed 9-29-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00246; FRL 3270-1]

FIFRA Scientific Advisory Panel Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of three members to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of May 20, 1987, page 18950.

FOR FURTHER INFORMATION CONTACT: By Mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel (TS-769C), Office of Pesticide Programs. Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA 22202, (703-557-7695).

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members, selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. List of nominees were obtained from NIH and NSF, and a public notice of nominees, including biographical data, appeared in the **Federal Register** as indicated above. One comment was received in response to this Notice.

My decision to appoint the following three nominees to serve as members of the Scientific Advisory Panel is based upon several factors including comments received, the need for a disciplinary mix, and the need for wide geographic representation.

Robert G. Anthony, Department of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon 97331.

Edward Bresnick, Eppley Institute for Research in Cancer and Allied Diseases, University of Nebraska Medical Center, Omaha, Nebraska 68105.

Mont R. Juchau, Department of Pharmacology, School of Medicine, University of Washington, Seattle, Washington 98195.

I am reappointing Joe W. Grisham, Department of Pathology, School of Medicine, University of North Carolina, to the Panel.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register** at least 15 days prior to each meeting.

Dated: September 23, 1987.

A. James Barnes,

Acting Administrator.

[FR Doc. 87-22519 Filed 9-29-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3270-7]

Science Advisory Board, Radiation Advisory Committee, Radon Mitigation Subcommittee; Meetings

Under Pub. L. 92-463, notice is hereby given that a meeting of the Radon Mitigation Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held on October 13-14, 1987 at the U.S. Environmental Protection Agency, Administrator's Conference Room 1103 West Tower, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. Tuesday and adjourn no later than 5:00 p.m. Wednesday. The Radiation Advisory Committee will meet at the same location on October 15-16, 1987 beginning at 8:30 a.m. on Thursday and adjourn no later than 5:00 p.m. Friday.

The Subcommittee will review the March 9, 1987 draft of *Radon Reduction Research and Development: Program Descriptions and Plans* and two related memoranda on data analysis. Copies of the document being reviewed may be obtained by calling or writing Paul Shapiro on (202) 382-2583, Office of Environmental Engineering and Technology Demonstrations (RD-681), U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The Committee will hear the report of the Radon Mitigation Subcommittee; review the radiation portions of *EPA Indoor Air Quality Implementation Plan;* begin a review of the radon measurement proficiency program; and

be briefed on EPA's radiation related activities. *EPA Indoor Air Quality Implementation Plan* EPA–600/8–87/014, June 1987 is available through CERI, 26 W. St. Clair Street Cincinnati, Ohio 45268 (513) 569–7562. The earlier *Report to Congress on Indoor Air Pollution and Radon Under Title IV Superfund Amendments and Reauthorization Act of 1986* is available from Richard Guimond and the documents describing the radon measurement proficiency program are available from Michael Mardis. The address for Mr. Guimond and Mr. Mardis is Office of Radiation Programs (ANR–460), U.S. Envrionmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 475–9600.

Both meetings are open to the public; however, seating is limited. Any member of the public wishing to attend, make brief oral comments, or submit written comments to the Subcommittee, should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Radiation Advisory Committee, Science Advisory Board, by the close of business on October 8, 1987. The telephone number is (202) 382–2552.

Kathleen W. Conway,

Deputy Director, Science Advisory Board.

Date: September 29, 1987.

[FR Doc. 87–22516 Filed 9–29–87; 8:45 am]

BILING CODE 6560–50–M

[FRL 3270–8]

Science Advisory Board, Research Strategies Subcommittee, Risk Reduction Work Group; Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Risk Reduction Work Group of the Science Advisory Board's Research Strategies Subcommittee will meet Monday, October 12, 1987 from 9:00 a.m. to 5:00 p.m. in the Administrator's Conference Room, 1101 West Tower of the U.S. Environmental Protection Agency's headquarters building at 401 M Street, SW., Washington, DC.

The purpose of the meeting is to begin preparation of a draft strategy on environmental risk reduction.

Members of the public wishing to attend must call Mrs. Dorothy Clark on (202) 382–2552 no later than October 6, 1987. Because October 12 is a Federal Holiday, security will only admit those members of the public who have made prior arrangements with Mrs. Clark to attend the meeting. Some form of identification, such as a driver's license, should be brought with you.

Kathleen W. Conway,

Deputy Director, Science Advisory Board.

Dated: September 25, 1987.

[FR Doc. 87–22517 Filed 9–29–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3270–6]

Draft NPDES General Permit for Oil and Gas Operations on the Outer Continetal Shelf (OCS) of Alaska; Beaufort Sea General Permit II

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft NPDES general permit.

SUMMARY: The Regional Administrator, Region 10, is proposing to issue a draft National Pollutant Discharge Elimination System (NPDES) general permit for oil and gas stratigraphic test and exploration wells on the Alaskan Outer Continental Shelf.

The proposed Beaufort Sea II general permit will authorize oil and gas stratigraphic test and exploration wells only (not production wells) in the federal waters of the Beaufort and Chukchi seas. The permit will authorize discharges from operations in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) during Federal Lease Sale 97. A general NPDES permit (49 FR 23734, June 7, 1984) was issued May 30, 1984, for all previous Beaufort Sea lease sales including Federal Lease Sales 71 and 87, all contiguous inshore State lease sales, and joint Federal/State Lease Sale BF. Some of the lease blocks offered but not leased in these prior sales may be reoffered in Lease Sale 97. In this case, EPA will grant coverage under this general permit as it reflects Region 10's most recent Ocean Discharge Criteria Evaluation.

When issued, the proposed permit will establish effluent limitations, standards, prohibitions, and other conditions on discharges from facilities in the general permit area. These conditions are based on the administrative record. EPA regulations and the permit contain a procedure which allows the owner or operator of a point source discharge to apply for an individual permit instead of coverage under the general permit.

A brief description of the basis for the conditions and requirements of the proposed permit is given in the fact sheet published below.

Public comment period: Interested persons may submit comments on the draft general permit to EPA, Region 10, at the address below. Comments must be submitted to the regional office by November 9, 1987.

Public hearing: Public hearings on the proposed general permit are tentatively scheduled to be held in Anchorage and Barrow, Alaska. The Anchorage hearing will be held at the Federal Building, Room C121, 710 "C" Street, Anchorage, Alaska on November 3, 1987, from 9 a.m. until all persons have been heard. The Barrow hearing will be held at the North Slope Borough Assembly Chambers on November 4, 1987, from 2 p.m. until all persons have been heard. Persons interested in making a statement at the hearing must contact Kris Flint at the address below or at (206) 442–8155 by 4:00 p.m. on October 28, 1987. Either or both of the public hearings will be cancelled if insufficient interest is expressed in them. Interested persons can contact Kris Flint between the hours of 8:30 a.m. and 4 p.m. on October 29, 1987, to confirm that the hearings will take place. At the hearings, interested persons may submit oral or written statements concerning the draft general permit.

Request for coverage: Written request for authorization to discharge under the general permit shall be provided, as described in Part I.A. of the draft permit, to EPA, Region 10, at least 60 days prior to initiation of discharges. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to operations at the discharge site. The permit also requires permittees to notify EPA no more than seven (7) days prior to the initiation of discharges at the site, and prior to the initiation of discharges from each new well at a given site.

Administrative record: The administrative record for the draft permit is available for public review at EPA, Region 10, Room 13D, at the address listed below.

Address: Public comments and requests for coverage should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section WD–137, 1200 Sixth Avenue, Seattle, Washington 98101.

For further information contact: Duane Karna, Region 10, at the address listed above or telephone (206) 442–1413. Copies of the draft general permit and today's publication will be provided upon request.

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Fact Sheet

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations [40 CFR 122.28(a)(2)], EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require similar monitoring requirements; and
- In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

In addition, under EPA regulations [40 CFR 122.28(c)(1)], the Regional Administrator is required to issue general permits covering discharges from offshore oil and gas facilities within the Region's jurisdiction. Where the offshore area includes areas for which separate permit conditions are required, such as areas of environmental concern, a separate individual or general permit may be required by the Regional Administrator.

The Regional Administrator has determined that exploratory oil and gas facilities operating in the area described in this general NPDES permit are more appropriately controlled by a general permit than by individual permits. The decision of the Regional Administrator is based on an evaluation of the section 403(c) Ocean Discharge Criteria (40 CFR Part 125, Subpart M) for discharges from exploratory operations into the waters of Lease Sale 97, the Agency's recent permit decisions in other Alaskan OCS areas, and the Final Environmental Impact Statement (Final EIS) for OCS Lease Sale 97.

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Division, EPA, Region 10 ("Director"). A source located within a general permit area, excluded from coverage under the general permit solely because it already has an individual permit (i.e., a permit that has not been continued under the Administrative Procedure Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of NPDES permits are provided by 40 CFR 122.62—122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

II. Covered Facilities and Nature of Discharges

The general permit proposed today authorizes the discharge of drilling muds, drill cuttings, and associated operational wastewaters from exploratory operations in federal waters. Exploratory operations are defined as those operations involving the drilling of wells to determine the nature of potential hydrocarbon reserves. Under the permit, the number of wells from which discharges may occur is limited to a maximum of five at a single site. Exploration facilities covered by this general permit are included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435).

This general permit authorizes the following discharges: drilling mid; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalination unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; mud, cuttings, and cement at the seafloor; and test fluids. Descriptions of discharges are given in Part II.A. of the draft permit.

Drilling muds and cuttings are the major pollutant sources discharged from exploratory drilling operations.

III. Statutory Basis for Permit Conditions

Sections 301(b), 304, 308, 401, 402, and 403 of the Act provide the basis for the permit conditions contained in the permit. The general requirements of these sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in section IV of this fact sheet.

A. Technology-Based Effluent Limitations

1. *BPT effluent limitations*: The Act requires particular classes of industrial discharges to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subparts A and D) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines required "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation required that a discharge shall not cause a film or sheen upon or discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be desposited beneath the surface of the water or upon adjoining shorelines [40 CFR 435.11(d)]. The BPT effluent limitations guideline for sanitary waste required that the concentration of chlorine be maintained as close to 1 mg/1 as possible in discharges from facilities housing ten or more persons. For facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons, the BPT effluent limitations guideline for sanitary waste required no discharge of floating solids. A "no floating solids" guideline is also applied to domestic waste. BPT limitations on oil and grease in produced water allowed a daily maximum of 72 mg/1 and a monthly average of 48 mg/1.

2. *BAT and BCT effluent limitations:* As soon as practicable but in no case later than March 31, 1989, all permits are required by section 301(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) and nonconventional pollutants through the use of Best Available Technology Economically Achievable (BAT), and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (ph, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less strigent than BPT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) were proposed on August 26, 1985 (50 FR 34592). Promulgation of the final guidelines and standards for muds and cuttings is expected to occur in mid-1988. In the absence of effluent limitations guidelines for the Offshore Subcategory, permit conditions must be established using Best Professional Judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). This permit incorporates BAT and BCT effluent limitations based on the Agency's Best Professional Judgment. Previous BPJ determinations

for offshore oil and gas exploratory operations were incorporated into the general permits for the Bering and Beaufort seas (49 FR 23734, June 7, 1984), Norton Sound (50 FR 23578, June 4, 1985), and Cook Inlet (51 FR 35460, October 3, 1986).

As required by section 304(b)(2)(B) of the Act, in developing the BPJ/BAT permit conditions, the Agency considered the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Director deemed appropriate.

The types of equipment and processes employed in exploratory drilling operations are well known to the Agency. Region 10 has issued numerous general and individual permits for such operations. The records for this permit and those earlier permits thoroughly discuss the types of equipment, facilities and processes employed in exploratory drilling operations. With regard to the engineering aspects of the application of various types of control techniques, there are no BAT permit limitations based on installation of control equipment. All proposed BAT permit limitations can be achieved through product substitution, the technology basis for the limitations in this permit. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated. A discussion of such evaluations is presented below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the Act, Region 10 considered the same factors is determining BPJ/BCT permit conditions, but with one exception. Rather than considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate industrial technology fails the BCT "cost test", BCT effluent limitations are set equal to BPT.

Region 10's evaluation of the BAT factors, as discussed above, is also applicable to BCT, as well as to the Region's best professional judgment determinations of BPT in instances where there is no BPT effluent limitation guideline for a particular wastestream. Unlike the BAT permit limitations, there is one BCT limitation based on installation of control equipment. There is a 10 percent limitation on the oil content of cuttings, based on the efficiency of conventional cuttings washers. With respect to the BCT "cost test," all BCT limitations are equal to the BPT effluent limitations guidelines or to the Region's best professional judgment determinations of BPT. Therefore, no incremental cost will be incurred.

B. Ocean Discharge Criteria

Section 401 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a determination of unreasonable degradation cannot be made because of a lack of sufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

The Director has concluded that there is sufficient information to determine that exploratory oil and gas facilities operating under the effluent limitations and conditions in this general permit will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines. Conditions imposed under section 403(c) of the Act are discussed below in section IV.D., Requirements Based on the Ocean Discharge Criteria Evaluation.

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i), the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in this permit, as listed in the table below.

IV. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT;

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) Evaluation of the Ocean Discharge Criteria for discharges in the Offshore Subcategory, assuming conditions in (1) and (2), above, were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in sections B. through D., respectively. For convenience, these conditions and the regulatory basis for eacha are cross-referenced by discharge in the following table.

Discharge and permit condition	Statutory basis
Drilling muds and cuttings:	
Authorized muds and additives only	BAT.
No oil-based muds	BCT.
No diesel	BAT.
10% max. oil content of cuttings	BCT.
No free oil	BCT.
3 mg/kg cadmium and 1 mg/kg mercury in barite.	BAT.
Monitoring of metals, oil content and toxicity	Section 308.
Monitor volume discharged	Section 308.
Chemical inventory	Section 308.
Depth and area related discharge rate limits.	Section 403(c).
Deck drainage:	
No free oil	BCT.
Monitor discharge rate	Section 308.
Sanitary wastes:	
No floating solids	BCT.
Chlorine 1.0 mg/l (facilities with more than 10 people).	BCT.
Monitor discharge rate	Section 308.
Domestic wastes:	
No floating solids	BCT.
Monitor discharge rate	Section 308.
Miscellaneous discharges (Discharges 006 to 014 in the permit):	
No free oil	BCT.
Monitor discharge rate	Section 308.
Inventory of added substances	Section 308.
Test fluids:	
pH 6.5–8.5	BCT & Marine Water Quality Criteria.
No free oil	BCT.

Discharge and permit condition	Statutory basis
Oil & grease limits: 48 mg/l monthly avg., 72 mg/l daily max	BCT
Monitor frequency and volume of discharge	Section 308
All discharges:	
No halogenated phenol compounds, diesel oil, sodium chromate, sodium dichromate, or trisodium nitrilotriacetic acid	BAT
No floating solids	BCT

B. BCT Requirements

1. *Oil and grease in test fluids:* Limited volumes of formation waters which are encountered during testing of the well are authorized for discharge as test fluids. Under BPT oil and grease in discharges of produced water were limited to a 48 mg/1 monthly average and a 72 mg/1 daily maximum based on oil/water separation technologies. Since formation waters may be present in test fluids, these limits are applied to the discharge of test fluids under BCT. This limitation is equal to BPT because Region 10 does not have technology performance data available at this time on which to base a more stringent limitation. As this limitation is equal to the BPT level of control, there is no incremental cost involved.

2. *Free oil and oil-based muds:* No discharge of free oil is permitted from discharges authorized by this permit. Region 10 has determined that the BPT effluent limitations guideline of no discharge of free oil from the discharge of deck drainage, drilling muds, drill cuttings, and well treatment fluids should apply to other discharges, including uncontaminated bilge water, uncontaminated ballast water, test fluids, desalination unit wastes, boiler blowdown, non-contract cooling water, excess cement slurry, blowout preventer fluid, fire control system test water, mud, cuttings and cement at the seafloor. Thus, the no free oil limitation is Region 10's best professional judgment determination of BPT controls for these discharges. They have been subject to a no free oil limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation.

Under the draft permit, the discharge of oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) is prohibited since oil-based muds would violate the BCT effluent limitation of no discharge of free oil.

No technology performance data available to Region 10 indicate that more stringent standards are appropriate at this time. Region 10 has, therefore, set BCT effluent limitations equal to the BPT level of control. As such, these limitations impose no incremental costs.

Compliance with the free oil limitation for deck drainage and miscellaneous discharges will be by visual observation for a sheen on the receiving water, except for deck drainage and bilge water under the conditions described below. This requirement is similar to that in the Region's BPT permits and will not result in any additional costs to the industry. The requirement was also a condition of Region 10's BAT/BCT permits for the Bering and Beaufort seas (49 FR 23734, June 7, 1984), Norton Sound (50 FR 23578, June 4, 1985), and Cook Inlet (51 FR 35460, October 3, 1986).

Compliance with the free oil limitation for muds and cuttings will be monitored by year-round use of the Static Sheen Test. The Static Sheen Test will also be required for the monitoring of deck drainage and bilge water during unstable or broken ice and stable ice conditions. This requirement for muds and cuttings was a condition of the Region's BPT permits and thus imposes no additional cost to industry. These requirements and those on deck drainage and bilge water were also conditions of the Region's BAT/BCT permits. Use of the Static Sheen Test will prevent a violation of the free oil limitation due to those discharges most likely to be contaminated with oil. This would not be possible with an after-the-fact visual observation of a sheen on the receiving water.

3. *Oil content of cuttings:* The draft general permit restricts the discharge of oil-contaminated cuttings by prohibiting the discharge of free oil (see paragraph 2. above) and by limiting the maximum mineral oil content of cuttings. The limitation of 10 percent by weight on oil content is based on the efficiency of conventional cuttings washers in removing oil from drill cuttings. Region 10 expects that if mineral oil-based drilling muds or water-based muds with high concentrations of mineral oil additives are used, drill cuttings would, at a minimum, have to be washed by cuttings washers to meet the free oil limitation. The limitation on the maximum oil content of drill cuttings has been imposed as an additional means of effectively controlling the discharge of oil from cuttings associated with these muds.

Region 10 expects that cuttings washers will routinely be required only for drilling operations which use mineral oil-based drilling muds or water-based muds with high concentrations of mineral oil additives, and not for all drilling operations. Due to the rare usage of such muds by exploratory drilling operations, very few, if any, Alaskan exploratory facilities will require the installation of cuttings washers. Any facility requiring a cuttings washer to meet the 10 percent oil limitation is expected to already require a cuttings washer to meet the BPT effluent limitation of no free oil. Therefore, there is no incremental cost involved beyond the cost of monitoring compliance, and the limitation passes the BCT cost test.

Region 10 has taken an approach to controlling the oil content of cuttings which differs from that taken by Regions 4 and 6 in the Gulf of Mexico permit (51 FR 284897). Regions 4 and 6 have imposed a visible sheen test to determine compliance of cuttings with the no free oil limit, in combination with a prohibition on the discharge of cuttings from oil-based mud systems. The prohibition on the discharge of cuttings from oil-based mud systems is necessary since some of these cuttings are expected to have free oil and the visible sheen test results would not be evident until after a discharge to the receiving water had occurred. Region 10 has chosen to require the Static Sheen Test rather than the visible sheen test. An advantage of the Static Sheen Test is that it is done prior to discharge and cuttings which do not pass the test cannot be discharged. This test is also appropriate for the harsh weather and extended periods of darkness common in Alaska. Although the 10 percent oil limitation in Region 10 is less stringent than the prohibition by Regions 4 and 6 on discharges of cuttings from oil-based mud systems, any cuttings which pass the 10 percent limitation must also pass the Static Sheen Test prior to discharge.

EPA is presently studying a newly developed technology for removing oil and grease from drill cuttings from oil-based and invert emulsion drilling muds discharged into the Gulf of Mexico. This new technology, if successful, may be able to achieve a limit lower than 10 percent oil and grease and not result in the discharge of free oil. Should this new information become available during the public notice period, Region 10 will consider it in developing the final permit.

The permit requires an analysis of drill cuttings for oil content daily when oil-based drilling fluids or oil additives are used. Analysis is also required daily when drilling fluids could be contaminated with hydrocarbons from the formation. In addition, analysis is required immediately on any sample that has failed the daily Static Sheen Test if a discharge has occurred. Two alternative analytical methods for

determining the oil content of drill cuttings are specified in the permit: (1) The soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), and (2) the American Petroleum Institute retort distillation procedure for oil (Recommended Practice 13B, 1980).

4. *pH*: The pH of discharged test fluids (which may have a substantially different pH from that of the ambient receiving water) has been limited to a range of 6.5–8.5 at the point of discharge. In Region 10's best professional judgment, this limitation appropriately equals a BPT level of control. No more stringent standard has been identified by the Region at this time. Therefore, Region 10 is setting a BCT effluent limitation for the pH of test fluids equal to that of BPT. This limitation will ensure that pH changes greater than 0.2 pH unit will not occur beyond the edge of the 100-meter mixing zone [40 CFR 125.121(c)]. This requirement has been and is routinely complied with by operations under previous BPT permits and thus, reflects no cost incremental to BPT.

5. *Floating solids*: The BCT prohibition on floating solids is equal to the BPT level of control for sanitary wastes. As with the free oil limitations for other waste streams, Region 10 has determined that the BPT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Thus, the no floating solids limitation is Region 10's best professional judgment determination of BPT limitations for these discharges. They have been subject to this limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time, Therefore, Region 10 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

6. *Chlorine*: The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/1 in sanitary waste discharges for facilities manned by ten (10) or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry.

C. BAT Requirements

1. *Diesel oil:* The discharge of drilling muds and associated cuttings which have been contaminated diesel oil is prohibited. Diesel, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. While this limitation thereby controls the toxic as well as nonconventional pollutants present in diesel, Region 10's primary concern is to control the toxic pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

Diesel as an Indicator of Toxic Pollutants: Region 10 selected "diesel" as an "indicator" as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in the diesel-contaminated waste streams. The listed toxic pollutants found in various diesel oils include naphthalene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons. The light aromatic hydrocarbons, such as benzenes, naphthalenes, and phenanthrenes, constitute the most toxic major components of petroleum products. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils. Diesel oil also contains a number of nonconventional pollutants, including polynuclear aromatic hydrocarbons such as methylnaphthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

The Region has determined that eliminating the discharge of drilling fluids contaminated with diesel oil will reduce the levels of toxic pollutants present in discharged fluids. Results of the EPA/API Diesel Pill Monitoring Program (DPMP) and other studies show that when the amount of the diesel is reduced in drilling muds, the concentrations of toxic pollutants and the overall toxicity and the fluid generally is reduced. Available data clearly establish that diesel oil as a class contain significantly higher levels of toxic pollutants than do mineral oils as a class. It is reasonable and appropriate to conclude that BAT-level control of toxic pollutants (i.e., reduction in concentrations through substitution of mineral oil for diesel oil) will be achieved by regulating diesel oil as an indicator pollutant.

Region 10 has concluded that establishing effluent limitations for each of the seven toxic pollutants present in diesel oil is not economically or technically feasible at this time. The level achievable by BAT controls on the specific toxics can be calculated using available data on the three mineral oils which have been extensively characterized. However, the limited data on the many diesel and mineral oils, mud formulations, and the various additives used, and on the unquantified effects of drilling discharges all frustrate an attempt to develop specific toxic pollutant effluent limitations at this time.

Not only is it infeasible to establish limitations on the specific toxic pollutants, but to comply with specific limitations on each of the toxic pollutants would be costly and technically complex. The analytical costs for specific pollutant analyses would be much greater than the cost of analyzing for diesel by gas chromatography alone. The high cost of compliance monitoring, which may include awaiting results of analyses, which must be conducted onshore, possibly outside the State of Alaska, also would be unwarranted. Either operators would have to delay discharge until monitoring results confirmed compliance or they would discharge and risk permit noncompliance. A permit limitation that prohibits the discharge of diesel oil is economically and technologically feasible and allows a determination of permit compliance prior to discharge.

Mineral Oil as a Substitute of Diesel Oil: In the proposed modification to the Bering and Beaufort seas general permits (50 FR 29600), Region 10 presented information pertaining to the operational performance of mineral oil as a substitute for diesel oil. This information is herein incorporated by reference. API and other parties have contended in the past that survey data on the relative success rates of diesel oil and mineral oil pills refute the above findings that mineral oil is an acceptable substitute for diesel oil. Region 10 has carefully reviewed all the available data concerning the 1983–1984 API (Burgbacher 1985) and the 1983–1986 Offshore Operators Committee (OOC) (Ayers et al. 1987) surveys as well as results from the DPMP (U.S. EPA and API 1987).

In spite of industry's claim that diesel pills are more effective than mineral oil pills, the OOC survey did show that mineral oil was used by operators in 41

percent of the stuck pipe incidents. Of the 506 incidents in the OOC survey, 298 (or 59 percent) were treated with a diesel pill, while 208 (or 41 percent) were treated with a mineral oil pill. For some operators, mineral oil was the material of choice. Three operators out of 16 used mineral oil pills exclusively. It can be concluded that during the period of this study, mineral oil was in common use by operators in the Gulf of Mexico.

Mineral oil is also commonly planned for use in drilling operations on the Alaskan OCS. Operators under Region 10's existing Bering and Beaufort seas general permits have routinely requested authorization in advance to discharge these products. Differential sticking is not an uncommon drilling problem, and it is planned for in advance of drilling operations.

Results to date from the EPA/API DPMP also shed doubt on the industry's position that mineral oil is not an acceptable substitute for diesel oil in pill applications. The success rate of diesel pills as of April 21, 1987 in the DPMP (35.9 percent) was comparable to that reported for mineral oil pills in the OOC survey (32.7 percent). It is not clear why the diesel pill success rate in the DPMP was lower than that reported in the OOC survey (52.7 percent), since there were no apparent factors that might account for this difference. Both tabulations included data from the Gulf of Mexico and incorporate only the first pill of multiple pill sticking events. These findings are consistent with the other information available to Region 10 supporting the determination that mineral oil is an operationally acceptable substitute for applications where diesel oil has been used.

In summary, regarding the technology of product substitution, mineral oil-based fluids have a demonstrated product development and performance as acceptable substitutes for diesel oil-based fluids. This determination is based on the following: (1) The availability and successful formulation and use of chemical additives that are compatible with mineral oils, (2) the commercial availability of mineral oil spotting fluids, and (3) the demonstrated performance of mineral oil spotting fluids as documented by published case histories (see 51 FR 29604–06) and (4) a consideration of the performance statistics from the 1983–1984 API surveys, the 1983–1986 OOC survey, and the Diesel Pill Monitoring Program.

Cost Considerations: The prohibition on the discharge of diesel oil is a technology-based BAT limitation based on product substitution. Low toxicity mineral oils are available as product substitutes for diesel oil, and do not impose unreasonable additional costs on industry. Region 10 has quantified the increased cost associated with the use of a mineral oil pill in place of a diesel pill by assuming that mineral oil would be stored in a rented tank on the rig. The details of this analysis are contained in the proposed modification to the Bering and Beaufort seas general permit. The total cost per mineral oil pill is estimated to be $22,765 ($7,665 for oil, $13,900 for chemical additives, and $1,200 for storage tank rental). Estimates of the total cost for use of diesel pills range from $19,700 up to $32,200 (including hauling the contaminated mud ashore). If removal and barging of the mineral oil pill is required to meet the limitations on toxicity or free oil, the increased cost of a mineral pill over a diesel pill may be attributed primarily to the increased cost of mineral oil ($5,500), chemical additives ($4,700), and tank storage ($1,200), resulting in a total increased cost of $11,400.

The cost of drilling an exploratory well is approximately $40 to $50 million in the Beaufort Sea, not including the island or drilling structure, and roughly $20 to $30 million in the Bering Sea (Weeks and Weller 1984). The increased cost due to a mineral oil pill is approximately 0.05 percent or less of the total drilling cost. The cost associated with the prohibition on the discharge of diesel oil clearly is economically achievable for Alaskan offshore operations.

Environmental Concerns: While an environmental assessement under section 403(c) was not the basis for the limitation, Region 10, however, is considering the general environmental effects of diesel-contaminated muds in developing the proposed diesel oil prohibition. Diesel oil is highly toxic to marine organisms in the water column, but also poses a potential longer term threat to bottom-dwelling (benthic) organisms. Certain diesel oils, such as the frequency used No. 2 diesel fuel oil "are among the most toxic petroleum products to marine organisms" (National Research Council 1983, p. 105). Laboratory studies have demonstrated the higher toxicity of diesel oils relative to mineral oils (e.g., see U.S. EPA 1985, p. 4–34). Since diesel oil is known to be highly toxic, substitution of low toxicity mineral oils for diesel in drilling fluids will reduce the poptential hazard to marine organisms from these discharges.

Alternatives to Diesel Oil Prohibition (Removal of Diesel Pill and Oil Limitation): One suggested alternative to the diesel oil prohibition would be to allow the discharge of drilling muds in which a diesel pill had been used, provided that the pill is removed and the residual drilling mud meets specified limitations on oil content. Such an approach depends on accomplishing effective pill removal such that the drilling mud can meet all other effluent limitations. The oil content limitation would be set at a level which not only reflects BAT control of toxic pollutants in diesel oil but also provides adequate safeguards for the marine environment. The Diesel Pill Monitoring Program (DPMP) was conducted to address the effectiveness of pill recovery in removing diesel oil from drilling muds. Based on results available to date, Region 10 has concluded that the recovery techniques being implemented in the DPMP to date are not successful in recovering the diesel pill and reducing mud toxicity to acceptable levels. DPMP results to date indicate that the toxicity of drilling muds increases with their diesel oil content, and that pill recovery techniques currently in use may leave up to 30 percent of the diesel oil added as a pill. Hence, Region 10 has determined that the prohibition on the discharge of drilling fluids and cuttings contaminated with diesel oil is appropriate for the BAT level of control.

Region 10 has considered using "free oil," "oil-based drilling fluids," and "oil content of cuttings" as indicators of toxic pollutants. While the Region has determined that such effluent limitation will control the discharge of toxic pollutants in diesel oils, it is unnecessary to designate these pollutants as indicators since the same levels of control have been established under BCT, which are equal to levels of control required by the BPT effluent limitations guidelines. Therefore, redundant limitations under BAT are not proposed for these pollutant parameters.

Conclusion: Region 10 has evaluated alternative control technologies and alternative control parameters to reduce the toxic pollutants in discharged drilling muds. Based on this evaluation, the Region has determined that the prohibition on the discharge of diesel contaminated drilling mud is reasonable and appropriate since complete diesel pill recovery is unproven and substitution of a mineral oil pill for a diesel pill is technologically feasible and economically achievable.

2. *Mercury and cadmium in barite:* The permit contains limitations of 1 mg/kg mercury and 3 mg/kg cadmium in barite, a major constituent of drilling muds. These restrictions are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals which can occur as contaminants in some sources of barite. An identical limitation is included in the general permits for the

Bering and Beaufort seas, Norton Sound, and Cook Inlet.

As discussed in the facts sheets for the above permits, the justification for the limitation under BAT is product substitution; i.e., Alaskan operators can substitute "clean" barite, which meets the above limitations, for contaminated barite which does not. Numerous offshore exploratory wells have been drilled in Alaska over the past years, and chemical analyses have shown that the barite used has not exceeded the limitations. Given that "clean" barite is available and that operators in the above referenced general permit areas have been complying with an identical limitation, Region 10 believes that this limitation is both technologically feasible and economically achievable.

Region 10 has determined that it is impractical at this time to place the limitations on drilling mud until additional data are collected.

Furthermore, if the limitation were placed on the drilling mud rather than on the barite, it would not be feasible for an operator to determine in advance if the discharge complied with the permit requirements since metals analyses must be conducted at commercial laboratories onshore. Such a requirement may impose costly and unreasonable delays while the analyses were being conducted.

Region 10 does recognize the possibility of changes in the available supply of "clean barite. The draft permit contains a provision (Part II.B.1.g.) which would allow the Director the discretion to grant a waiver from the limitations on a case-by-case basis if the permittee (1) satisfactorily demonstrates that barite which meets the limitation is not available, and (2) provides results of analyses of the substitute barite. In determining the availability of "clean" barite under this provision, Region 10 will reasonably consider all relevant factors, including the cost of obtaining barite which meets the limitations.

3. *Generic muds and authorized additives.* The draft permit limits the discharge of toxic substances in drilling fluids of allowing only the discharge of generic drilling muds (listed in Table 1 of the draft permit) and additives for which acceptable bioassay or chemical data are available. Permittees are required to certify in advance of discharge that only generic drilling muds and authorized additives will be discharged.

The generic muds listed in Table 1 of the draft permit are the same generic muds listed on Table 1 of the Cook Inlet NPDES general permit (51 FR 35460, October 3, 1986). The six listed generic muds are the result of several changes to the original eight generic muds (listed on previous tables in permits for Norton Sound, Bering Sea, and Beaufort Sea). Three lignosulfonate muds (previously 2, 7, and 8) have been combined into a single mud, Generic Mud No. 2. The Region will use the toxicity of the most toxic of the three muds (old Generic Mud No. 8) in performing additive toxicity calculations. If a permittee requests authorization to discharge an additive in Generic Mud No. 2 as listed in Table 2 of this draft permit and can demonstrate that generic mud components will not exceed the concentrations of old Generic Mud Nos. 2 or 7, Region 10 will use the toxicity values for those muds instead. Reference to "generic muds" throughout this fact sheet means the six muds currently listed on Table 1 of the draft permit.

Authorized additives which may be discharged in combination with Generic Muds Nos. 2 through 6 are listed in Table 2 of the draft permit. The Region has determined that the toxicity limitations (i.e,, generic muds and authorized additives) constitute a reasonable approach which is expected to control not only listed toxic pollutants, but other toxic substances (i.e., toxic nonconventional pollutants) as well. The technology basis for this permit condition is product substitution: that is, mud additives and components which would cause the toxicity of a mud system to exceed that of Generic Mud No. 1 can be replaced by less toxic mud additives and components. This principle has been successfully applied in Region 10 with the development of several "non-generic" muds. These "non-generic muds" are functionally similar to Generic Mud No. 1 but they are less toxic and may be used with specialty drilling fluid additives (e.g., polymers) without exceeding the toxicity of Generic Mud No. 1.

Permittees may discharge additives listed in Table 2 of the draft permit up to the specified concentrations in Generic Muds Nos. 2 through 6 without prior authorization. This table is an updated version of Table 2 in the Cook Inlet general permit (51 FR 35460, October 3, 1986). Tables 1 and 2 of this permit may be administratively updated during the effective period of the permit. Updated versions will be mailed to permittees when they become effective, and will supersede all earlier versions. Any additive or mud receiving authorization in the future by administrative update will be evaluated according to the regional criteria used for this permit before the tables are amended.

Most additives listed in Table 2 of the permit may not be discharged in Generic Mud No. 1 without prior authorization because Region 10 has determined that the addition of additives would cause the toxicity of the discharged mud to be more toxic than Generic Mud No. 1 alone. The only additives listed on Table 2 which may be added to Generic Mud No. 1 are: aluminum stearate; calcium carbide; cellophane flakes; flakes of silicate mineral mica; inert spheres (glass or plastic); basic zinc carbonate (Mil-Gard); crushed granular nut hulls; sodium polyphosphate; vegetable plus polymer fibers, flakes, and granules; zinc carbonate and lime; and zinc oxide (Sulf-X ES). (Mention of any trade names or commerical products does not constitute endorsement or recommendation by the U.S. Environmental Protection Agency for use.). These additives were originally authorized in Table 2 of the Bering Sea (AKG283000) and Beaufort Sea (AKG284000) general permits. They are not expected to appreciably affect the toxicity of Generic Mud No. 1. Although the most recent versions of Table 2 (Norton Sound [AKG287000] and Cook Inlet [AKG285000]) did not clearly exclude other additives from discharge in Generic Mud No. 1, the Region has not authorized any other additives. Thus, this condition is not expected to have any effect on industry.

Any discharge of a generic mud which has been modified by addition of an additive not listed in Table 2 requires prior authorization by Region 10. Permittees may request authorization to discharge additives (including mineral oils) not listed in Table 2 by submitting appropriate information and bioassay data in advance of discharge. Region 10 will determine whether the use of requested additives is likely to cause the mud system to be more toxic than Generic Mud No. 1, which is the base formulation the Agency uses to determine acceptable toxicity levels for discharge of fluids. Other criteria (e.g., persistence and degradation) are also considered in the evaluation process, as appropriate. For the evaluation of mineral oil additives the draft permit contains a provision (Part II.B.1.f.) which allows an exception for the discharge of muds which exceed the toxicity of Generic Mud No. 1 if the least toxic available alternative is discharged.

In some cases, interim authorizations for the discharge of muds and additives may be granted if perliminary bioassay data are submitted and appear acceptable but the Region determines that additional bioassay testing or other analyses are required. For example, such testing may be required to examine possible cumulative or synergistic

effects if the additive is to be used in combination with a number of other additives or if a "non-generic mud" (described above) is to be used, with or without additives. Because the additional testing may take a considerable amount of time to conduct, interim authorization to discharge may be granted, if a reasonable amount of data are available, so that operations are not impaired for an unreasonable amount of time. The information obtained under the requirements of an interim authorization will be used in further evaluations of the subject additives or muds. Thus, interim authorizations do not set a precedent for future full authorization of the subject additives or muds. Interim authorizations may require testing a used drilling mud from a rig.

This approach to limiting toxicity is expected to control the discharge of listed toxic as well as nonconventional pollutants is drilling muds. For example, the toxicity of muds containing lubricants, including mineral oil products, may vary widely, and such additives may greatly increase the toxicity of the mud. Studies on diesel-contaminated drilling muds have shown toxicity to be strongly correlated with the content of aromatic hydrocarbons, which include listed toxic pollutants. Some mineral oils also contain aromatic hydrocarbons which are listed toxics, such as fluorene, naphthalene, and phenanthrene. The toxicity of muds containing these oils is assumed to be caused, in part, by the listed toxic pollutants as well as by the nonconventional pollutants. Region 10 has determined that it is technically and economically infeasible to directly limit the toxic pollutants in drilling muds, as discussed above in section IV.C.I. Therefore, the Region has determined that the toxicity limitations constitute a reasonable approach which is expected to control not only listed toxic pollutants, but other toxic substances (i.e., toxic nonconventional pollutants) as well.

Under section 308 of the Act, compliance with this permit condition will be monitored in two ways. First, by requiring that permittees certify that only generic muds and authorized additives will be discharged; and second, by requiring that permittees submit an end-of-well inventory listing all chemicals and the amounts of each added to each mud system. In addition, permittees must analyze at least one mud sample for metals content and toxicity. The draft permit requires that any discharged mud system which has a mineral oil lubricity of spotting agent must be sampled and analyzed when the mineral oil content is highest. In the event that no mineral oil lubricity or spotting agents are used, analyses are required on a sample of discharged mud use at the greatest well depth, typically referred to as an "end-of-well" sample. The metals data will be used to verify that mercury and cadmium limits on barite are adequately controlling metal concentrations in used muds. The Drilling Fluids Toxicity Test will provide a comparsion between the toxicity of used muds containing mixtures of additives and the bioassay data submitted on individual additives prior to discharge.

4. *Other toxic and nonconventional compounds.* Under the permit discharges of the following pollutants are prohibited: halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The class of halogenated phenol compounds includes toxic pollutants, and sodium chromate and sodium dichromate contain chromium, also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. The discharge of these compounds was previously prohibited in the BPT general permits for the Beaufort Sea and Norton Sound (48 FR 54881, December 7, 1983) as well as in the BAT/BCT general permits for the Bering and Beaufort seas, Norton Sound, the Cook Inlet. These compounds are therefore subject to BAT limitations. Bcause operators complied with this provision in the BPT permit, there is no additional cost to the industry.

The draft permit contains a provision that the discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. These products contain primarily nonconventional pollutants. This provision previously appeared in the BPT permits for the Beaufort Sea and Norton Sound, as well as in the Region's other BAT/BCT permits. Because operators complied with the provision in the BPT permits, there is no additional cost to the industry.

D. Requirements Based on the Ocean Discharge Criteria Evaulation

1. *Drilling muds, cuttings, and washwater:* Additional restrictions on these discharges are necessary to ensure no unreasonable degradation of the environment. Lease Sale 97 includes water depths from 2 to about 1,000 meters deep. Discharge rate limitations on total muds and cuttings have been established in the Ocean Discharge Criteria Evaluation process in order to allow adequate dispersion of the discharges. These maximum rates are:

- 1,000 bbl/hr for discharges into waters greater than 40 m in depth,
- 750 bbl/hr for discharges into waters greater than 20 m but not more than 40 m in depth.
- 500 bbl/hr for dicharges into waters greater than 5 m but not more than 20 m in depth, and
- 250 bbl/hr for dicharges into waters greater than 2 m but not more than 5 m in depth.

These limits are necessary because for any given discharge rate, the dilution of drilling muds and cuttings is not as great in shallow waters as in deeper waters. However, at any particular water depth, greater dilution close to the discharge point will be achieved with a lower discharge rate. These maximum rates will ensure that acceptable toxicity limits will not be exceeded at the edge of the 100 m mixing zone (Bigham et al. 1984, p. 62).

Discharge of muds, cuttings, and washwater are prohibited in the following three areas: (a) Between the shore (mainland and island) and the 2 m isobath, (b) within 1000 m of river mouths or deltas during unstable or broken ice or open water conditions, and (c) near the Stefansson Sound Boulder Patch (see Part II.B.2. and 3. of the permit).

With regard to (a) and (b) above, EPA has extensively studied the nearshore zone of the Alaskan Beaufort Sea in two Ocean Discharge Criteria Evaluations (Jones & Stokes 1983, 1984). These evaluations have clearly shown that these nearshore areas provide important feeding and migratory habitat for a large number of species including fish, waterfowl, and mammals. Further, these are areas provide essential feeding and preferred habitat for species of major importance for substance and commercial fisheries. Concerning (c) above. Region 10 proposes a permit that does not authorize discharges within 1000 m of the Stefansson Sound Boulder Patch as defined by Dunton et al. (1983). The "Patch" is a rare and unique biological community that is susceptible to adverse affects caused by discharged drilling muds and cuttings. In accordance with 40 CFR 125.123(b), the Director has prohibited these discharges as the Region has determined they will cause inreasonable degradation of the marine environment. These prohibitions are also contained in the previous Beaufort Sea NPDES general permit (49 FR 23734, June 7, 1984).

Additionally, three areas included in the draft permit are of particular concern to Region 10. They involve discharges of drilling muds and cuttings: (a) to open water in water depths from 2–5 m, (b) below-ice to water depths shallower than 20 m, and (c) within 1000 m of an area of biological concern (i.e., a unique biological community or habitat). The Director has determined that controlled discharges to these areas, in accordance with 40 CFR § 125.123 (a) and the limitations and conditions in the draft permit, will not cause unreasonable degradation of the marine environment. Monitoring is required to verify that the discharge of effluents to these areas will not produce conditions in the future that would lead to unreasonable degradation. These monitoring requirements are the same as those required by the previous Beaufort Sea general permit, except that the monitoring requirements for below-ice discharges have changed from "any depth" to "waters less than 20 m deep." Region 10 believes that the OOC (Offshore Operators Committee) model can successfully be used to predict the fate of under-ice discharges into waters greater than 20 m deep (excluding ice thickness).

2. *Other discharges (003–015).* These discharges are adequately controlled by the technology-based limitations in Part II.C. through E. of the draft permit to ensure no unreasonable degradation of the marine environment due to those discharges.

V. Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of section 311. However, this permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

B. Endangered Species Act

Based on information in the Draft Ocean Discharge Criteria Evaluation and in the Final Environmental Impact Statement prepared for Federal Lease Sale 97, Region 10 has concluded that the discharges authorized by this general permit are not likely to adversely affect any endangered or threatened species nor adversely affect its critical habitat. Region 10 is requesting written concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on this determination. Region 10 will consult with the services as appropriate, depending upon the outcome of the request for concurrence, and otherwise will comply with the requirements of section 7 of the Endangered Species Act before issuing the final permit.

C. Coastal Zone Management Act

EPA has determined that the activities authorized by this general permit are consistent with local and state Coastal Management Plans. The proposed permit and consistency determination will be submitted to the State of Alaska for state interagency review at the time of public notice. The requirements for State Coastal Zone Management Review and approval must be satisfied before the general permit may be issued.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

No state waters are included in this permit.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part II.B.4 of this permit are similar to the monitoring requirements that were approved by OMB for the previously issued Beaufort Sea general permit (June 7, 1984; 49 FR 23734) and the Norton Sound general permit (50 FR 23578, June 4, 1985). The final general permit will explain how the information collection requirements respond to any OMB or public comments.

H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Robert Burd,

Acting Regional Administrator, Region 10.

VI References

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National Research Council. 1983. Drilling discharges in the marine environment. National Academy Press. Washington, DC 180 pp.

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BILLING CODE 6560–50–M

[OPP-240077; FRL-3266-4]

State Registration of Pesticides; Alabama, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 23 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Owen F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC. Office location and telephone number: Room 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7893.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May through July 1987. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 87 0003. ICI Americas, Inc. Registration is for Gramoxone Super Paraquat Herbicide to be used on fescue to control endophyte. June 30, 1987.

Arizona

EPA SLN No. AZ 87 0006. Dow Chemical. Registration is for Lorsban 50W to be used on fruit and nut crops to control various insects. February 24, 1987.

EPA SLN No. AZ 87 0011. Gowan Co. Registration is for Prokil Dicofol EC to be used on Bermudagrass grown for seed to control mites. June 15, 1987.

EPA SLN No. AZ 87 0015. Gustafson, Inc. Registration is for Gustafson Flo-Pro IMZ Flowable Systemic Fungicide to be used as wheat and barley seed treatment to control common root rot and barley leaf stripe. July 27, 1987.

EPA SLN No. AZ 87 0016. Wilbur-Ellis Co. Registration is for Nu-Zone 10ME to be used on wheat and barley as seed treatment to control common root rot and barley leaf stripe. July 27, 1987.

California

EPA SLN No. CA 87 0002. Lake County Dept. of Agriculture. Registration is for Grasshopper Bait to be used on various crops to control grasshoppers. January 12, 1987.

EPA SLN No. CA 87 0011. California Dept. of Water Resources, Division of Flood Management. Registration is for Rodeo to be used on settling basins and flood channels to control alders, poison oak, wild roses, and willows. February 26, 1987.

EPA SLN No. CA 87 0016. California Dept. of Human Services. Registration is for Cythion Premium Grade Malathion to be used on wild rice to control mosquitoes. May 11, 1987.

EPA SLN No. CA 87 0018. Northrup King Co. Registration is for Malathion 25 Insect Spray to be used on seed trials of various commodities to control aphids. May 15, 1987.

EPA SLN No. CA 87 0019. Monterey County Agricultural Commissioner. Registration is for Mesurol 75 Wettable Powder to be used on sugar beets grown for seed to control linnets. May 20, 1987.

EPA SLN No. CA 87 0021. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Harvest Aid to be used on field corn (grain) for desiccation of corn grown for seed. April 3, 1987.

EPA SLN No. CA 87 0022. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Harvest Aid to be used on okra and cauliflower grown for seed for desiccation. March 3, 1987.

EPA SLN No CA 87 0023. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Harvest Aid to be used on wheat grown for seed to control various weeds. March 3, 1987.

EPA SLN No. CA 87 0024. Imperial County Agricultural Commissioner. Registration is for Poast to be used on alfalfa to control grassy weeds. June 1, 1987.

EPA SLN No. CA 87 0026. Desert Cotton Growers Association. Registration is for Gramoxone to be used on cotton to control annual weeds and perennial weeds. June 22, 1987.

EPA SLN No. CA 87 0027. Glenn County Dept. of Agriculture. Registration is for Apron 25W to be used on sugar beet seed to control *Pythium* damping-off and early season *Phytophthora* infections. July 6, 1987.

EPA SLN No. CA 87 0028. San Diego County Dept. of Agriculture/Weights and Measures. Registration is for Safer Insecticidal Soap to be used on strawberries to control spider mites. July 1, 1987.

Delaware

EPA SLN No. DE 87 0001. Union Carbide. Registration is for Arvin SC Thiodicarb Insecticide to be used on sweet corn used to control European corn borers, corn earworms, and fall armyworms. May 14, 1987.

Florida

EPA SLN No. FL 87 0004. Morgan International Products. Registration is for Rethrocide to be used on horses to control face and biting flies. April 16, 1987.

EPA SLN No. FL 87 0005. Pennwalt Corp. Registration is for Aquathol K Aquatic Herbicide to be used on ponds, lakes, reservoirs, marshes, bayous, and various areas where water is quiescent or moving to control hydrilla. May 13, 1987.

EPA SLN No. FL 87 0006. Pennwalt Corp. Registration is for Aquathol Granular Aquatic Herbicide to be used on ponds, lakes, reservoirs, marshes, bayous, and various areas where water is quiescent or moving to control hydrilla. May 13, 1987.

EPA SLN No. FL 87 0007. Mobay Corp. Registration is for Baygon 70% Wettable Powder to be used on turfgrass to control mole crickets. April 16, 1987.

EPA SLN No. FL 87 0008. Mobay Corp. Registration is for Baytex Liquid Concentrate to be used for aerial spray to control mosquito adults in mosquito-infested areas. May 7, 1987.

EPA SLN No. FL 87 0009. Union Carbide. Registration is for Temik Brand 10G Aldicarb Pesticide to be used on ornamental and nursery plants to control certain insects, mites, and nematodes. May 7, 1987.

EPA SLN No. FL 87 0010. D.A. Darnell Co. Registration is for Fly Guard to be used in homes and buildings to control house flies, mosquitoes, gnats, moths, and other flying insects. June 8, 1987.

Georgia

EPA SLN No. GA 87 0005. Unocal Corp. Registration is for N-TAC Desiccant to be used on lima beans and southern peas for plant desiccation. July 9, 1987.

Hawaii

EPA SLN No. HI 87 0003. Rohm and Haas Co. Registration is for Goal 1.6E Herbicide to be used on nonbearing age coffee plantings to control certain broadleaf weeds. April 13, 1987.

Idaho

EPA SLN No. ID 87 0010. Pennwalt Corp. Registration is for Topsin M 70W Fungicide to be used on bean crops for in-furrow treatment to control fusarium and rhizoctonia. May 18, 1987.

EPA SLN No. ID 87 0011. Pennwalt Corp. Registration is for Topsin M 4.5F Fungicide to be used on bean crops for in forrow treatment to control fusarium and rhizoctonia. May 18, 1987.

EPA SLN No. ID 87 0012. Wilbur-Ellis Co. Registration is for Red-Top Methyl Parathion 5 Spray to be used on lentils to control several insect pests. June 12, 1987.

EPA SLN No. ID 87 0013. FMC Corp. Registration is for Thiodan 3EC Insecticide to be used on conifers and Christmas trees to control Cooley spruce adelgid and Douglas fir needle midge. June 19, 1987.

EPA SLN No. ID 87 0014. FMC Corp. Registration is for Thiodan 50 WP Insecticide to be used on conifers and Christmas trees to control Cooley spruce adelgid and Douglas fir needle midge. June 19, 1987.

EPA SLN No. ID 87 0015. Pennwalt Corp. Registration is for Des-I-Cate Harvest Aid to be used on hops to control hops sucker growth. July 20, 1987.

EPA SLN No. ID 87 0016. Mobay Corp. Registration is for Sencor 4 Flowable Herbicide to be used on potatoes to control various weeds. July 7, 1987.

EPA SLN No. ID 87 0017. Mobay Corp. Registration is for Sencor DF 75% Dry Flowable to be used on potatoes to control various weeds. July 7, 1987.

EPA SLN No. ID 87 0018. Gustafson, Inc. Registration is for Gustafson Flo-Pro IMZ Flowable Systemic Fungicide to be used as seed treatment on wheat and barley to control common root rot and barley leaf stripe. July 24, 1987.

Iowa

EPA SLN No. IA 87 0003. FMC Corp. Registration is for Pounce 3.2 EC to be used on seed corn to control earworms. July 20, 1987.

Michigan

EPA SLN No. MI 87 0001. Platte Chemical Co. Registration is for Clean Crop Captan 50W to be used on blueberries to control anthracnose fruit rot and botyrytis gray mold. April 16, 1987.

EPA SLN No. MI 87 0004. American Cyanamid Co. Registration is for Cycocel Plant Growth Regulant to be used on geraniums as a growth regulator. May 22, 1987.

EPA SLN No. MI 87 0005. FMC Corp. Registration is for Pounce 3.2 EC Insecticide to be used on asparagus to control cutworms and asparagus beetles. June 2, 1987.

Minnesota

EPA SLN No. MN 87 0001. FMC Corp. Registration is for Furadan CR-10 to be used on rape seed for export to Canada to control crucifer and striped flea beetles. May 12, 1987.

Montana

EPA SLN No. MT 87 0002. FMC Corp. Registration is for Thiodan 50 WP Insecticide to be used on conifers (including Christmas trees) to control Cooley spruce adelgid and Douglas fir needle midge. July 10, 1987.

EPA SLN No. MT 87 0003. FMC Corp. Registration is for Thiodan 3EC Insecticide to be used on conifers (including Christmas trees) to control Cooley spruce adelgid and Douglas fir needle midge. July 10, 1987.

Nevada

EPA SLN No. NV 87 0001. ICI Americas. Registration is for Gramoxone Super Herbicide to be used on garlic to control broadleaf annual weeds and grass. May 27, 1987.

EPA SLN No. NV 87 0004. E.I. du Pont de Nemours & Co. Registration is for Du Pont Oust Herbicide to be used under asphalt and concrete pavements to control weeds. June 24, 1987.

EPA SLN No. NV 87 0005. Nevada Dept. of Agriculture. Registration is for Poast Herbicide to be used on alfalfa to control grassy weeds. July 1, 1987.

EPA SLN No. NV 87 0006. Chevron Chemical Co. Registration is for Ortho Diquat Herbicide H/A to be used on potatoes for desiccation to facilitate harvest. July 7, 1987.

EPA SLN No. NV 87 0007. ICI Americas. Registration is for Gramoxone Super Herbicide to be used on seeded onions to control broadleaf weeds and grasses. July 9, 1987.

EPA SLN No. NV 87 0008. Pennwalt Corp. Registration is for Des-I-Cate to be used on alfalfa to control potato vine. July 16, 1987.

North Carolina

EPA SLN No. NC 87 0002. FMC Corp. Registration is for Talstar 10 WP to be used on outdoor ornamentals to control insects and mites. March 27, 1987.

EPA SLN No. NC 87 0004. Chevron Chemical Co. Registration is for Ortho Diquat Herbicide to be used on evening primrose (seed crops only) for preharvest desiccation of foliage. June 6, 1987.

Oklahoma

EPA SLN No. OK 87 0002. PBI Gordon Corp. Registration is for Pestroy 8 EC to be used on pine trees to control southern pine beetles. July 9, 1987.

EPA SLN No. OK 87 0003. Sandoz Crop Protection Corp. Registration is for Banvel Herbicide to be used on grass to control annual and perennial broadleaf weeds. July 9, 1987.

Oregon

EPA SLN No. OR 87 0006. Uniroyal Chemical Co. Registration is for Omite-CR to be used on pears, postharvest and nonbearing trees only, to control two-spotted McDaniel spider mites and European red mites. June 29, 1987.

EPA SLN No. OR 87 0007. Platte Chemical Co. Registration is for Clean Crop Diazinon 14G to be used on cranberries to control cranberry girdler. July 14, 1987.

EPA SLN No. OR 87 0008. Union Carbide. Registration is for Weedar 64 Broadleaf Herbicide to be used on cranberry bogs to control tall weeds. July 16, 1987.

EPA SLN No. OR 87 0009. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Pydrin Insecticide 2.4 to be used on cranberries to control oblique-banded leafroller, orange tortrix, and aphids. July 22, 1987.

Pennsylvania

EPA SLN No. PA 87 0003. Union Carbide. Registration is for Larvin SC Thiodicarb Insecticide to be used on sweet corn to control armyworms, corn earworms, and European corn borers. May 29, 1987.

EPA SLN No. PA 87 0004. Union Carbide. Registration is for Larvin 3.2 Thiodicarb Insecticide to be used on sweet corn to control armyworms, corn earworms, and European corn borers. June 1, 1987.

EPA SLN No. PA 87 0005. E.I. du Pont de Nemours & Co. Registration is for Du Pont Phosdrin 4 EC Insecticide to be used on watercress to control aphids. June 30, 1987.

EPA SLN No. PA 87 0006. Union Carbide. Registration is for Larvin 3.2

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Thiodicarb Insecticide to be used on soybeans to control slugs. July 23, 1987.

Puerto Rico

EPA SLN No. PR 87 0003. Pedro J. Vivon. Registration is for Maintain CF–125 to be used on pineapples as a growth regulator. May 18, 1987.

EPA SLN No. PR 87 0004. Pedro J. Vivon. Registration is for Toxaphene 8–EC to be used on pineapples to control gummosis moth. May 19, 1987.

Tennessee

EPA SLN No. TN 87 0008. FMC Corp. Registration is for Furadan 4F to be used on strawberries to control root weevils. June 15, 1987.

EPA SLN No. TN 87 0009. Fermenta Plant Protection Co. Registration is for Dacthal W–75 Herbicide to be used on upland grass at seeding to control crabgrass and other annual grasses and certain broadleafed weeds. June 19, 1987.

Virginia

EPA SLN No. VA 87 0004. Chempar Products. Registration is for Rozol Berry Vole Control to be used on crop producing fields to control field mice. May 15, 1987.

EPA SLN No. VA 87 0005. Union Carbide. Registration is for Larvin 3.2 Thiodicarb Insecticide to be used on sweet corn to control armyworms, corn earworms, and European corn borers. June 8, 1987.

EPA SLN No. VA 87 0006. Union Carbide. Registration is for Larvin SC Thiodicarb Insecticide to be used on sweet corn to control armyworms, corn earworms, and European corn borers. June 8, 1987.

Washington

EPA SLN No. WA 87 0019. Gustafson Corp. Registration is for Gustafson Flo-Pro IMZ Flowable Systemic Fungicide to be used on wheat and barley to control common root rot and barley leaf stripe. May 28, 1987.

EPA SLN No. WA 87 0020. Unocal Corp. Registration is for N–TAC Desiccant to be used on grapevines to control sucker growth. June 10, 1987.

EPA SLN No. WA 87 0022. Riverside/Terra Corp. Registration is for Dimethoate 4E to be used on lentils to control aphids and lygus. July 25, 1987.

EPA SLN No. WA 87 0023. Platte Chemical Co. Registration is for Clean Crop Dimethoate 267 to be used on lentils to control aphids and lygus. July 25, 1987.

EPA SLN No. WA 87 0024. Platte Chemical Co. Registration is for Clean Crop Dimethoate 400 to be used on lentils to control aphids and lygus. July 25, 1987.

EPA SLN No. WA 87 0025. Hopkins Agricultural Chemical Co. Registration is for Hopkins Basamid Granular to be used on nonbearing plants as a soil treatment. July 25, 1987.

EPA SLN No. WA 87 0026. ICI Americas, Inc. Registration is for Fusilade 2000 Herbicide to be used on various crops grown for seed to control grassy weeds. June 25, 1987.

EPA SLN No. WA 87 0027. Pennwalt Chemical Co. Registration is for Deccoquin 305 Concentrate to be used for postharvest use on Bartlett pears to control scald. June 30, 1987.

EPA SLN No. WA 87 0028. Uniroyal Chemical Co. Registration is for Omite-CR to be used on Christmas trees to control spider mites. July 6, 1987.

EPA SLN No. WA 87 0029. Uniroyal Chemical Co. Registration is for Comite to be used on mint to control spider mites. July 7, 1987.

EPA SLN No. WA 87 0030. Platte Chemical Co. Registration is for Clean Crop Diazinon 14G to be used on cranberries to control cranberry girdler. July 13, 1987.

West Virginia

EPA SLN No. WV 87 0001. Uniroyal Chemical Co. Registration is for Omite 6E to be used on apples to control European redmite and two-spotted mites. May 20, 1987.

Wyoming

EPA SLN No. WY 87 0004. Mobay Corp. Registration is for Dy-Syston 8 to be used on triticale for foliar application to control aphids and mites. May 20, 1987.

EPA SLN No. WY 87 0005. Mobay Corp. Registration is for Di-Syston 8 to be used on native and tame grass to control Russian wheat aphids. June 16, 1987.

EPA SLN No. WY 87 0006. FMC Corp. Registration is for Command 4 EC to be used on fallow croplands and crops of winter wheat and/or spring wheat to control preemergence weeds. July 21, 1987.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: September 14, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87–22058 Filed 9–29–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

September 21, 1987.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0051
Title: Ship/Aircraft License Expiration Notice and/or Renewal Application
Form No.: FCC 405–B

A revised form FCC 405–B has been approved for use through 6/30/90. The April 1986 edition with an expiration of 11/30/87 will remain in use until revised forms are available.

OMB No.: 3060–0090
Title: Registration of Canadian Radio Station Licensee and Application for Permit to Operate in the U.S.
Form No.: FCC 410

The approval on application form FCC 410 has been extended through 9/30/90. The March 1987 edition with an expiration of 9/30/87 will remain in use until updated forms are available.

OMB No.: 3060–0039
Title: Application for a New or Modified Common Carrier Microwave Radio Station License Under Part 21
Form No.: FCC 436

The approval on application form FCC 436 has been extended through 6/30/89. The November 1984 edition with a previous expiration of 8/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0096
Title: Application for Ship Radio Station License and Temporary Operating Authority
Form No.: FCC 506/506–A

A revised application form FCC 506/506–A has been approved for use through 6/30/90. The February 1986 edition with an expiration date of 11/30/88 will remain in use until revised forms are available.

OMB No.: 3060–0056
Title: Application for Registration of Equipment to be Connected to the Telephone Network
Form No.: FCC 730

The approval on form FCC 730 has been extended through 8/31/90. The March 1987 edition with a previous

expiration date of 8/31/87 will remain in use until updated forms are available.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-22457 Filed 9-29-87; 8:45 am]

BILLING CODE 6712-01-M

Lottery Rankings of 900 MHz SMRS Applicants for the Indianapolis, San Antonio, Charlotte and Greensboro Designated Filing Areas

September 18, 1987.

On August 21, 1987, the Federal Communications Commission conducted its sixth round of lotteries to select applicants to provide 900 MHz Specialized Mobile Radio (SMR) Service. These lotteries were used to rank applicants in each of the following Designated Filing Areas (DFAs):

#32 Indianapolis
#33 San Antonio
#35 Charlotte
#45 Greensboro

Lists of the forty top-ranked applications in each of these Designated Filing Areas are attached to this Public Notice. The top 20 selectees in each DFA will be granted authorizations to provide SMR service. The next 20 ranked applicants will be alternate selectees should it be determined that any of the winners are not qualified to be licensees, or if any of the winners fail to provide the Commission with required transmitter site information within the specified time period. Within 30 days of the publication of this Public Notice in the **Federal Register**, interested parties may advise the Commission of any matter that may reflect on an applicant's qualifications to be a licensee. A copy of any such pleading must be served on the applicant in question on or before the day on which the document is filed with the Commission. *See* § 1.47(b) of the Commission's rules, 47 CFR 1.47(b). Service can be accomplished pursuant to § 1.47(d) of the Commission's rules, 47 CFR 1.47(d). Matters raised in such pleadings will be resolved prior to issuance of any license to the applicant. Individual applications may be examined at the Private Radio Bureau's Public Reference Room in Gettysburg, PA. Copies of individual applications may be ordered from the Commission's copy contractor, International Transcription Services, at (717) 337-1433.

All applications ranked below number 40 are hereby dismissed and will not be returned to the applicants. There will be no individual notices of dismissal mailed to applicants. The Lottery Notice of August 5, 1987 contains the names and addresses of lottery participants.

For further information regarding the selection procedures, consult the November 4, 1986 Public Notice [1 FCC Rcd 543 (1986), 52 FR 1302 (January 12, 1987)] or contact Betty Woolford of the Land Mobile and Microwave Division at (202) 632-7125.

900 MHz Applications in the Indianapolis DFA

Rank and applicants name	Lottery code	File No.
Winners:		
1. Kohler, Alan C.	277	058529
2. German, Richard H.	207	056206
3. Wildes, Gregory G.	562	060389
4. Certified Systems, Inc.	097	055097
5. Blasucci, Daniel	061	057800
6. Schneider, Mary Elizabeth	471	051880
7. Styranovski, Myron	513	056886
8. Associated Technologies, Inc.	028	059693
9. Henschel, Benjamin L.	236	057223
10. Wawcomm Partnership	551	051703
11. Boyd, Claudia G.	069	056768
12. Feiler, Michael H.	182	059707
13. Euclidean Corporation	176	055883
14. Shaw, David Carl	478	058452
15. Esty Productions, Inc.	175	059082
16. Erekson, R. Crisman	174	051634
17. Louisiana Cellular Services, Inc.	313	054063
18. March Enterprises	321	058711
19. Metrowest Systems, Inc.	351	058355
20. Rosenthal, Paul C.	452	055290
Alternates:		
21. Mountain Relay Co.	368	052977
22. Crowningshield, Gloria	129	052700
23. Allison, Kenneth	019	059700
24. Stone, Jr., Earl Lee	508	057670
25. Select Communications and Data Acquisition	473	060399
26. Riley, Michael W.	447	060338
27. B T Cellular Corp.	038	056563
28. Columbus, R. Timothy	114	055620
29. Wang, Robert Y. & Jennifer W.	549	057180
30. Jones, Maureen A.	265	053328
31. Sheahan, Dennis P.	480	055563
32. Enterprise Electronics	172	055776
33. Atlantic Coast Communication, Inc.	029	057758
34. Telecommunications Network, Inc.	519	056577
35. United Radiophone System	536	052017
36. Kenton, Richard	271	057070
37. Denault Jr., Herbert Maurice	150	058322
38. Skall, Gregg P.	494	052466
39. Cooper, Charles B.	121	054882
40. Cordaro, Vincent S.	123	056532

900 MHz Applications in the Indianapolis DFA—Continued

900 MHz SMR Applications in the San Antonio DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Farquhar, George R.	0247	060132
2. Betterton, Floyd	0076	052830
3. Carter, Richard M.	0131	058987
4. San Diego Communications Group Inc.	0635	059665
5. Ciferri, Michael A.	0146	053792
6. Ryan, John P.	0629	053692
7. Otterbein, J. Cortney	0537	057890
8. Gaeta, Edwin L.	0279	059654
9. Longhorn Communications [1]	0807	060764
10. Sinelli, Paul R.	0678	059657
11. Repeaters For Rent Inc.	0602	059639
12. Parkhurst, Mark	0546	059994
13. Roe Comm Inc.	0616	054256
14. Dechert, Glen R.	0205	057567
15. Litt, Robert S.	0427	057964
16. Brasher, Patricia	0097	052619
17. Waller, David L.	0757	058465
18. Nashawaty, Thomas	0519	052417
19. Treanor, David	0731	055355
20. Cade, Samuel H.	0121	057271
Alternates:		
21. Kitzman, J Andrew	0385	052991
22. Dean, Richard C.	0204	056997
23. Fisher, Elizabeth B.	0260	057580
24. McLean, Brian J.	0472	054321
25. N Eyesh Properties Partnership	0516	051666
26. Risingsun, Richard E.	0612	051730
27. Hollister, Gary	0338	054225
28. Wang, Richard Y: Wang, Janet C.	0759	057050
29. TRS Inc.	0735	059663
30. Zadel, Edward M.	0798	055999
31. Sefcelk, Robert E.	0653	059642
32. Schempp, Albert	0644	057916
33. Wawcomm Partnership	0762	051706
34. Jones, Maureen A.	0385	053329
35. Shenn, Jen: Song, Sue Jen	0665	057606
36. Shults, William O.	0672	058992
37. Hollar Communications	0337	053381
38. Luck, Charlotte T.	0435	057828

900 MHz SMR Applications in the San Antonio DFA—Continued

Rank and applicant name	Lottery code	File No.
39. G & S Communications Inc.	0278	054141
40. Kirkbride, Richard: Kirkbride Laura	0384	057287

[1] This application was not listed in the Lottery Notice dated August 5, 1987. Their address is: 3724 FM 1960 West, Suite 206, Houston, TX 77068.

900 MHz Applications in the Charlotte DFA

Rank and applicants name	Lottery code	File No.
Winners:		
1. Kahan, Eric	272	051735
2. DHT Transportation, Inc.	151	059760
3. Battistini, Keith	045	060146
4. Cureton, Terry Lynn	132	059057
5. Hartpence, Elmer	233	054384
6. Electronic Communications Service	165	053765
7. Bobrowsky, Charles	063	053650
8. Folta, Edmund V	193	054845
9. Maxwell, Earl A	333	059294
10. Cooper, Charles B.	117	054880
11. E.F. Johnson Company	158	053484
12. Channel One Communications, Inc.	095	060217
13. Enterprise Electronics	172	055763
14. German, Richard H.	210	056204
15. Gerber, Bob	209	051716
16. Blair, Robert A.	058	058704
17. Friedland, Albert	197	053959
18. Telecommunications Network, Inc.	522	056579
19. Domencich, Thomas A.	155	055545
20. Perkins, Robert H.	406	052052
Alternates:		
21. Cordaro, Vincent S.	119	056530
22. N J Natural Gas Co., Inc.	378	058655
23. Capper, Emmett M.	086	052531
24. Must Bon Realty Company	376	054795
25. Rhodes, Sharon	447	060486
26. Loomis Radio Communications, Inc.	315	054074
27. Harper, Betty F.	228	058966
28. Shaw, David Carl	481	058338
29. General Electric Radio Services Corp.	208	058735
30. Morris Communications, Inc.	369	054276
31. WKH Cell Inc.	569	055732
32. Byrne, Patrick F.	082	054505
33. Certififed System, Inc.	094	055080
34. Horner, Jack	247	053073

900 MHz Applications in the Charlotte DFA—Continued

Rank and applicants name	Lottery code	File No.
35. Belendiuk, Micael	052	056865
36. Wiztronics, Inc.	551	053829
37. Clear Channel Communications Corp.	102	053734
38. King James Partnership	278	059956
39. Dodd, Jr., William A.	154	053896
40. Silver, Irving	492	053266

900 MHz SMR Applications in the Greensboro DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Wawcomm Partnership	0563	051696
2. Jekic, William W.	0269	059775
3. East Coast Cellular	0164	058235
4. AMK Communications	0026	060651
5. Cureton, Terry L.	0137	058795
6. Communications Engineering Co.	0117	052731
7. Calpage Inc.	0087	052993
8. Cristina, Daniel	0130	058376
9. Cleveland Mobile Radio Sales Inc.	0108	054765
10. Reyes, Sandra Gail	0458	059170
11. RB Management Services Inc.	0452	055704
12. Moroney, Robert G	0378	059360
13. Mays, Audie L	0345	053219
14. Liccardi, William J.	0315	059373
15. DHT Transportation Inc.	0156	059759
16. Telecom Inc.	0535	060410
17. Dodd Jr, William A.	0159	053895
18. Louthan, Ronald J.	0326	059579
19. Battistini, Keith	0048	060147
20. Allen Electronics	0018	053490
Alternates:		
21. Lee, Bernard D	0310	057681
22. N J Natural Gas Co Inc.	0388	058656
23. Kenton, Richard	0283	057080
24. Munch, David	0381	060640
25. Berkovich, Marlene J	0056	0566411
26. Ward, Thomas G	0562	052071
27. Becker, Philip	0052	056697
28. Kahan, Eric	0278	051739
29. Mobile Radio Service Co	0375	052587
30. Bell, Carl E	0055	053887
31. Shibayama, Mas	0498	059921
32. Kay Jr, James A	0281	057369
33. Clinton, Joseph	0110	060362
34. Denault Jr, Herbert Maurice	0152	058332
35. Henry Bros Electronics Inc	0241	051981
36. Davis, J Michael	0146	054373

900 MHz SMR Applications in the Greensboro DFA—Continued

Rank and applicant name	Lottery code	File No.
37. Payne, John W	0415	054335
38. Knight, Wendy Jo	0289	053750
39. Marion, Joseph J	0337	057601
40. American Mobilephone Inc	0023	057691

Federal Communications Commission.

William J. Tricario,

Secretary.

[FR Doc. 87-22458 Filed 9-29-87; 8:45 am]

BILLING CODE 6712-01-M

[REPORT NO. 1679]

Petitions for Reconsideration and Clarification of Actions

September 23, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for review and copying in Room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Notwithstanding the general filing provisions of § 1.4(b)(1) of the Commission's rules, which specify shorter filing periods, oppositions to these petitions may be filed within 30 days of the date of public notice of these petitions in the **Federal Register**. Replies must be filed within 15 days after the time for filing oppositions has expired.

Subject: Inquiry into § 73.1910 of the Commission's Rules and Regulations Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees. (MM Docket No. 87-26)

Number of petitions received: 1.

Subject: Syracuse Peace Council against Television Station WTVH, Syracuse, New York (*Meredith* Fairness Doctrine case).

Number of petitions received: 2 (Although an adjudicatory proceeding, comments will be received in accordance with the same procedures specified in the Commission's *Order Requesting Comment* in this proceeding released January 23, 1987, FCC 87-33, 52 FR 2805 (January 27, 1987).

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-22455 Filed 9-29-87; 8:45 am]
BILLING CODE 6712-01-M

[PR Docket No. 87-345]

Hearing Designation Order; Mobile Marine Radio, Inc., et al.

AGENCY: Federal Communications Commission.

ACTION: Hearing Designation Order.

SUMMARY: The Commission has designated two mutually exclusive applications for VHF public coast station frequency 161.825 MHz for hearing. These stations propose to serve Mobile and Foley, Alabama.

DATE: applicants must file a notice of appearance within 20 days of the mailing of the designation order.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order in PR Docket No. 87-345 which designates the applications of Mobile Marine Radio, Inc. (MMR) and COM/NAV Marine, Inc. (COM/NAV) for hearing. The issues in this proceeding are to determine if MMR's application is subject to an additional frequency showing and to determine which applicant should be licensed based on various comparative criteria. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-22456 Filed 9-29-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Lyons Federal Trust and Savings Bank, Countryside, IL

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Lyons Federal Trust and Savings Bank, Countryside, Illinois, on September 24, 1987.

Dated: September 24, 1987.
By the Federal Home Loan Bank Board.
John M. Buckley, Jr.,
Secretary.
[FR Doc. 87-22550 Filed 9-29-87; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010839-002.
Title: Port of Seattle Terminal Lease Agreement.
Parties:

Port of Seattle (Port)
American President Lines, Ltd. (Lessee)

Synopsis: The proposed agreement amends the basic lease between the parties to provide for the rental of a fifth container Crane at the Port's Terminal 5 by lessee.

Joseph C. Polking,
Secretary.
Dated: September 24, 1987.
[FR Doc. 87-22534 Filed 9-29-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 24, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For further information contact: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Proposal to approve under OMB delegated authority the extension, with revision, of the following report:

1. Report title: Report of Condition for Edge and Agreement Corporations
Agency form number: FR 2886b
OMB Docket number: 7100-0086
Frequency: Quarterly or annually
Reporters: Edge and agreement corporations
Annual reporting hours: 4945 hours
Small businesses are not affected.

General description of report: This report collects balance sheet and income data from Edge and Agreement corporations. The data are used to supplement examination reports and support the applications process, to monitor aggregate institutional trends, and to measure the effect of and compliance with the Board's Regulation K. The proposed revisions consist of changes to Schedule E that are designed to maintain consistency with similar information collected from commercial banks in Schedule N of the Reports of Condition and Income (FFIEC 031-034). Under the proposal, the title of Schedule E would be changed to "Past Due, Nonaccrual Loans and Leases;" item 4, entitled Renegotiated "troubled" debt would be deleted; item 5, Total would be renumbered item 4; and a memorandum item would be added to collect restructured loans and leases included in the total reported in item 4.

This report is required and authorized by law [12 U.S.C. 602 and 605]. Certain

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respondent data are given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

Board of Governors of the Federal Reserve System, September 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-22466 Filed 9-29-87; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council, Meeting

The Consumer Advisory Council will meet on Thursday, October 22, and Friday, October 23. The meeting, which will be open to public observation, will take place in Terrance Room E of the Martin Building. The October 22 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m. with a lunch break from 1:00 p.m. until 2:00 p.m. The October 23 session is expected to begin at 9:00 a.m. and continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Government Check-Cashing and Basic Banking Services.* Informational session led by the Basic Banking Subcommittee on cost and benfits of mandatory check cashing; and discussion of packages designed by trade associations on how to develop a basic banking account (tentative).

2. *Industry Survey on Home Equity Lines of Credit.* Briefing by staff on the results of an industry-sponsored survey of home equity lending by financial institutions (tentative).

3. *Developments Regarding Caps in Certain Adjustable Rate Transactions and Home Equity Lines of Credit.* Report by a Council subcommittee on proposed federal legislation to establish additional disclosure and advertising requirements for home equity lines of credit; and a briefing by staff on (1) a Board proposal that implements federal law mandating interest rate caps for adjustable rate mortgages (including home equity lines of credit) and solicits comment on disclosure of the creditor's right to terminate and to require payment in full once the maximum interest rate is reached, and (2) issues regarding whether different or additional Truth in Lending disclosure requirements should apply to home equity lines of credit.

4. *Community Reinvestment Act.* Report by the Community Affairs Committee on a proposed survey of Federal Reserve examiners to determine how banks' varios CRA activities are evaluated, and on th results of a survey of community groups' information needs concerning CRA; and discussion of the Federal Reserve's role in the implementation of privately negotiated CRA agreements.

5. *Update on 1986 Survey of Consumer Finances.* Briefing by staff on the results of the Board-sponsored 1986 nationwide survey of consumer finances.

6. *Interstate Banking.* Briefing by staff on interstate banking developments.

7. *Expanded Powers and Financial Services Restructuring.* Reports and recommendations by the Financial Structure Committee.

8. *Consumer Education.* Report by the Consumer Education Committe on its assessment of consumer education material available to the public, and recommendations for enhancing the Federal Reserve System's education program.

9. *Delayed Funds Availability.* Briefing by staff on consumer aspects of the Expedited Funds Availability Act, which directs the Board to issue rules governing institutions' disclosure policies, and mandatory schedules in connection with institution's delayed availability practices.

10. *Regulary Update.* Report by staff on the status of recent Board actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secetary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, October 16, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452-2412; Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users, may contact Earnestine Hill or Dorothea Thompson (202) 452-3544.

Board of Governors of the Federal Reserve System, September 24, 1987.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 87-22462 Filed 9-29-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; BankWorcester Corporation et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statment of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 20, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BankWorcester Corporation,* Worcester, Massachusetts; to become bank holding company by acquiring 100 percent of the voting shares of Worcester County Institution for Savings, Worcester, Massachusetts, which is a participant in the Massachusetts Saving Bank Life Insurance Program.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Whitley City Bancshares, Inc.,* Whitley City, Kentucky; to become a bank holding company by acquiring 50.73 percent of the voting shares of Bank of McCreary County, Whitley City, Kentucky.

2. *Whitley City Bancshares, Inc.,* Whitley City, Kentucky; to merge with McCreary Bancshares, Inc., Whitley City, Kentucky, and thereby indirectly acquire Bank of McCreary County, Whitley City, Kentucky.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Embry Bankshares, Inc.*, Atlantic, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Embry National Bank, Atanta, Georgia, a *de novo* bank.

2. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 100 percent of the voting shares of Gulf-Bay Financial Corporation, Tampa, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Associated Banc-Corp.*, Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Valders Bancorporation, Valders, Wisconsin, and thereby indirectly acquire Valders State Bank, Valders, Wisconsin.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gower Bancshares, Inc.*, Gower, Missouri; to become a bank holding company by acquiring 92.4 percent of the voting shares of Farmers Bank of Gower, Gower, Missouri.

F. **Federal Reserve Bank of Dalls** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Royal Bancshares, Inc.*, Farmers Branch, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Centre National Bank-Farmers Branch, Farmers Branch, Texas.

Board of Governors of the Federal Reserve System, September 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22465 Filed 9–29–87; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Barney U. Brown, Jr.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. § 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 15, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Barney U. Brown, Jr.*, Oklahoma City, Oklahoma; to acquire 1.74 percent; Barney U. Brown Trust, Oklahoma City, Oklahoma, to acquire 5.29 percent; and Red Rock Petroleum Co., Oklahoma City, Oklahoma; to acquire .01 percent of the voting shares of Guaranty Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Guaranty Bank and Trust Company, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, September 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22463 Filed 9–29–87; 8:45 am]

BILLING CODE 6210–01–M

Applications To Engage de Novo in Permissible Nonbanking Activities; the United States Bank of Kuwait PLC et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) of the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of the Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The United Bank of Kuwait PLC*, London, England; to engage *de novo* through its subsidiary, United Bank Mortgage Services, which is to be incorporated in New York, New York, in servicing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Insurance Company, Phoenix, Arizona, formerly Third National Life Insurance Company, in underwriting, as reinsurer, credit life and credit accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Business Bancorp*, San Jose, California; to engage *de novo* in providing data processing services to nonaffiliated financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y. This activity will be conducted in the State of California.

Board of Governors of the Federal Reserve System, September 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22464 Filed 9–29–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: Dallas District Office, chaired by Gerald

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E. Vince, District Director. The topic to be discussed is health claims on food labels.

DATE: Tuesday, October 20, 1987, 1 p.m. to 3 p.m.

ADDRESS: FDA Library, 3032 Bryan St., Dallas, TX 75204.

FOR FURTHER INFORMATION CONTACT: Hazel J. Wallace, Consumer Affairs Officer, Food and Drug Administration, 1200 Main Tower Bldg., Dallas, TX 75202, 214–767–5433.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 23, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–22473 Filed 9–29–87; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Fiscal Year 1987 Fellowship Eligibility Criteria and Final Funding Preference for Post-baccalaureate Faculty Fellowship Grants

The Health Resources and Services Administration announces the fellowship eligibility criteria and final funding preference which will govern the distribution of Fiscal Year 1987 grant awards for Post-baccalaureate Faculty Fellowship Grants authorized by section 830(b) of the Public Health Service Act, as amended.

Proposed fellowship eligibility criteria and a funding prefernce were published for public comment in the **Federal Register** on June 29, 1987 (52 FR 24221). The proposed criteria for fellowship eligibility stated that potential fellows must:

1. Hold a baccalaureate degree.
2. Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.
3. Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1988 or sooner.
4. Undertake a reported study, thesis or dissertation focusing on an:

(a) Investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations; such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or

(b) Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention.

5. Be licensed to practice as a registered nurse in a State.

The proposed funding preference stated that preference would be given to those schools that have been successful in recruiting or retaining minority faculty.

One professional organization and four schools of nursing responded to the notice. The Department has retained the eligibility criteria and funding preference as proposed for the reasons discussed below.

In terms of the criteria, it was suggested that:

(1) Proposed fellows should hold a baccalaureate degree in nursing;

(2) Eligibility should not be limited to the final year of study but be extended to the entirety of the degree program in which the faculty member is enrolled, including full-time, summer-only graduate programs;

(3) Two years should be allowed for completion of the study, thesis or dissertation; and

(4) The study areas be expanded.

The Department believes that restricting the baccalaureate degree to one in nursing would be contrary to the intent of the law. It would impact adversely on institutions which employ faculty with baccalaureate degrees in other disciplines who have the potential to make a contribution to nursing. Further, most schools admit students to Masters in Nursing programs only if the individual holds a baccalaureate degree in nursing or its equivalent.

The Department appreciates the fact that some faculty members may need assistance throughout the entirety of the academic programs they are pursuing and that many factors impinge both on decisions about part time versus full time study as well as the time an individual may need to complete a study. Nevertheless, the main intent of the Post-baccalaureate Faculty Fellowship program is to enable faculty to study areas of national concern through the mechanism of a fellowship. The Department has elected to limit funding to faculty able to complete a pertinent study and degree requirements within the budget year in order to:

(1) Assist faculty who might, without this assistance, need a longer period of time to complete their studies; and

(2) Provide some financial relief to faculty in the dissertation stage of study.

With regard to the expansion of study areas, while the Secretary is authorized to designate other areas of nursing practice considered to require additional study, there is immediate need to address the broad areas of concern designated in the authorizing legislation.

Comment was made that policy should be expanded to provide cost reimbursement for release time (faculty replacement salary costs) and to provide administrative compensation. These grants are authorized only for student support. They are provided to help schools increase the quality of their faculties by providing support through the schools to allow certain faculty members to complete degree requirements in the course of carrying out prescribed studies. The cost of hiring faculty to replace the fellows supported under the grant is not within the scope of this legislative authority.

Concerning the proposed funding preference, the comment was made that the preference would discriminate against schools located where minority faculty were not readily available for hiring. The Department realizes that there are many reasons why some schools have more success than others in recruiting and retaining minority faculty. Nevertheless, both the recruitment and retention of minority faculty must be the goal of all schools in order to maintain and increase the progress made toward a better racial mix in higher education in general and in the health professions particularly.

Fellowship Criteria

In order to be considered for a fellowship from an award made under section 830(b) of the Public Health Service Act, as amended, a person must:

1. Hold a baccalaureate degree.
2. Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.
3. Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1988 or sooner.
4. Undertake a reported study, thesis or dissertation focusing on an:

(a) Investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically

and mentally disabled individuals, and ethnic and minority groups; or

(b) Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention.

5. Be licensed to practice as a registered nurse in a State.

Final Funding Preference

In determining the order of funding, preference will be given to approved applications which satisfactorily demonstrate success in recruiting or retaining minority faculty. All eligible applications, however, will be reviewed and given consideration for funding.

(This program is listed at 13.147 in the *Catalog of Federal Domestic Assistance*)

Dated: September 24, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87-22514 Filed 9-29-87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; National Institutes of Health

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 52 FR 16457, May 5, 1987) is amended to reflect the following changes in the Office of the Director, NIH: (1) Change the functional statement of the Office of Intramural Research (HNA4); and (2) establish the Office of Intramural Affairs (HNA43) in the Office of Intramural Research (HNA4). These changes will enable the Deputy Director for Intramural Research to fulfill his responsibilities for overall supervision and overview of the intramural activities of the NIH, while creating an organizational focal point for intramural policy and administrative responsibilities.

Section HN-B, Organization and Functions is amended as follows:

(1) Under the heading *Office of Intramural Research (HNA4),* delete the functional statement in its entirety and substitute the following:

Office of Intramural Research (HNA4). (1) Acts on behalf of the Director, NIH, to implement and coordinate intramural research policy and programs; and (2) advises the Director, NIH, and staff on issues relating to the intramural program.

(2) Under the heading *Office of Intramural Research (HNA4),* insert the following:

Office of Intramural Affairs (HNA43). (1) Advises the Deputy Director for Intramural Research on matters pertaining to the management of NIH intramural research programs; (2) formulates and recommends policies on such intramural research issues as personnel systems for scientists, research evaluation, use of humans and animals in research, outside work, commercialization of research findings, and scientific misconduct; (3) provides staff support to the Scientific Directors' meetings; (4) reviews intramural personnel actions, appointments to the Visiting Program, the NRC Research Associates Program, and the Intramural Research Training Award Program; (5) reviews outside work requests; (6) chairs and staffs the NIH Patent Policy Board, NIH Oversight Committee on AAALAC Accreditation, and the Positron Emission Tomography/Policy Advisory Committee; (7) monitors the evaluation of intramural research programs by Boards of Scientific Counselors; (8) manages the annual reporting on intramural research achievements, the NIH Lecture Series, and the foreign work-study program; (9) represents the OD on the NIH Animal Care and Use Committee, the Radiation Safety Committee, the Medical Board, and represents the intramural program on task groups and ad hoc committees; (10) performs a variety of activities involving the interactions of universities and industry with intramural research; and (11) responds to inquiries concerning intramural research.

Date: September 21, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87-22503 Filed 9-29-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Establishment of New Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the Bureau of Land Management. The notice is entitled "Uniform Accountability System—Interior, BLM-30," and describes records on inventorying, distribution, and accountability for uniforms issued to employees authorized to wear the Bureau's uniform. The notice is published in its entirety below.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget in its Circular A-130 requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMA), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before November 30, 1987, will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 22, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

INTERIOR/LLM-30

SYSTEM NAME:

Uniform Accountability System—Interior, BLM-30.

SYSTEM LOCATION:

Division of Administrative Services, Bureau of Land Management, U.S. Department of the Interior, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

BLM employees or volunteers authorized to wear the uniform.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying the individual's name, sex, position title, series, and grade, sizing information (such as height, weight, waist measurement, etc.), last seven digits of the individual's social security number, office cost accounting data, name and addresses for the administrative and shipping offices, type of appointment (such as full-time employee, volunteer, ranger, etc.), amount of allowance authorized, class(es) of uniforms authorized, dates of authorization, the name of the authorizing individual, and all ordering data (such as items shipped, exchanged, returned, etc.) are obtained

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via uniform allowance authorization and ordering forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5901, Uniform Allowances, and 5 U.S.C. 301, Departmental Regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to establish and maintain an individual uniform allowance account for BLM employees and volunteers, to ensure individual allowance amounts do not exceed the authorized limitations, to accommodate the efficient processing of individual uniform orders, to expedite payments to the contractor, and to bill appropriate BLM office accounts for uniform items received. The information contained in this system of records is provided to management through reports for purposes of expediting payments to the contractor, auditing of records, and maintenance of the overall program. Disclosure outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; (4) to the Department of Treasury to effect payment to Federal, State, and local government agencies, nongovernmental organizations, and individuals; and (5) to a debt collection agency to effect payment to the contractor for items ordered by BLM employees and volunteers that are in excess of the authorized uniform allowance amount.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An individual's allowance authorization, ordering, and shipping data are stored in a computer data base at the supplier's facility by the individual's name and account number (last seven digits of their social security number). A copy of the forms are stored in file folders at the supplier's facility and BLM administrative offices arranged alphabetically by name.

RETRIEVABILITY:

Indexed by individual's name and/or account number, order and shipping data, and BLM cost accounting data.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized and manual records.

RETENTION AND DISPOSAL:

BLM offices are required to maintain all file copies of transactions for a minimum of three years. The supplier is required to maintain all file copies of transactions for the life of the contract or termination of the individual's authorization (whichever terminates first). The records control schedule governing these records is pending the approval of the Archivist.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Administrative Services, Bureau of Land Management (850), Room 2444, Main Interior Building, 18th and C Sts., NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

A written request addressed to the Systems Manager is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the Systems Manager describing as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the Systems Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

(1) Individual BLM employees and volunteers authorized to wear the uniform, (2) BLM state and administrative office's, and (3) the authorized supplier.

[FR Doc. 87-22500 Filed 9-29-87; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[AK-964-4213-15; F-14912-A]

Alaska Native Claims Selection; Northway Natives Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Northway Natives Incorporated for approximately 297 acres. The lands involved are within U.S. Survey No. 2630 (T. 14 N., R. 18 E., Copper River Meridian), in the vicinity of Northway, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 (907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 30, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Charlotte M. Pickering,

Chief, Branch of Doyon Adjudication.

[FR Doc. 87-22492 Filed 9-29-87; 8:45 am]

BILLING CODE 4310-JA-M

[NM-018-07-4410-08]

Availability of the Proposed Resource Management Plan/Final Environmental Impact Statement for the Taos Resource Area, Albuquerque District, NM

AGENCY: Bureau of Land Management, Albuquerque District, Taos Resource Area, New Mexico, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management announces the availability of the Taos Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS). This document identifies and analyzes the future options for managing 564,000 acres of public land and 1,800,000 acres of federal mineral estate in northeastern New Mexico. The Plan also contains recommendations that the Areas of Critical Environmental Concern (ACEC) be designated.

The Draft Taos RMP/EIS was made available for public review and comment on March 27, 1987. Comments received on the Draft were considered in preparing the Proposed RM/Final EIS. Any person who participated in the planning process and has an interest that is or may be affected by approval of the Proposed RMP may file a protest.

DATE: Protests must be postmarked no later than November 9, 1987.

ADDRESS: Comments should be sent to: Director, Bureau of Land Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dan Wood, Area Manager, Taos Resource Area, Bureau of Land Management, Box 6168, Taos, New Mexico 87571–6168. Telephone (505) 758–8851.

SUPPLEMENTARY INFORMATION: The Proposed RMP provides a comprehensive framework for allocating public land and resources within the Taos Resource Area during the next 10 to 20 years. The document is primarily focused on resolving five key resource management issues that were identified with public involvement early in the planning process. The issues are: (1) Special Management Areas; (2) Transportation; (3) Vegetative Uses; (4) Land Ownership Adjustments and (5) Rights-of-Way Exclusion Areas. The "Continuing Management Guidance" section of the Proposed RMP describes those aspects of current management which are not at issue and will continue after the RMP is approved. The Continuing Management Guidance was developed primarily from laws, regulations, and manuals, as well as from previous land use plans.

The Proposed Plan is a slightly modified version of the Preferred Alternative (Alternative D) presented on the Draft RMP/EIS. Slight changes were made to the Special Management Areas and Land Ownership Adjustments issue resolutions of the Preferred Alternative as a result of comments received on the Draft RMP/EIS.

The Proposed Plan will protect important environmental values and sensitive resources while at the same time allowing development of resources which provide commercial goods and services.

Areas of Critical Environmental Concern

Eight ACEC's were recommended for designation in the Draft RMP/EIS and were described in the **Federal Register** on March 27, 1987. As a result of the comments received on the Draft RMP/EIS, the Proposed Plan recommends the designation of nine ACEC's. The Draft RMP recommended that the entire San Antonio/Pot Mountain SMA be designated as an ACEC. The Proposed Plan recommends the designation of two smaller ACEC's within the San Antonio SMA, and has dropped the ACEC recommendation for the remaining SMA acreage.

Dated: September 22, 1987.

Larry L. Woodard,

State Director.

[FR Doc. 87–22461 Filed 9–29–87; 8:45 am]

BILLING CODE 4310–FB–M

[WY-920-07-4111-15; W-63426]

Proposed Reinstatement of Terminated Oil and Gas Lease; Washakie County, WY

September 21, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–63426 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accuring from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16–2/3 percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–63426 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–22475 Filed 9–29–87; 8:45 am]

BILLING CODE 4310–22–M

[CO-942-06-4520-12]

Filing of Plats of Survey; Colorado

September 21, 1987.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., September 21, 1987.

The plat representing the dependent resurvey of portions of the south and east boundaries and the subdivisional lines, and the survey of the subdivision of certain sections, T. 7 S., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted August 21, 1987.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87–22452 Filed 9–29–87; 8:45 am]

BILLING CODE 4310–JB–M

[ES-940-07-4520-12; (ES 037647, Group 155)]

Filing of Plat of Dependent Resurvey; Minnesota

September 21, 1984.

1. The plat of the dependent resurvey of the south and west boundaries, a portion of the north and east boundaries and a portion of the subdivisional lines, Township 144 North, Range 39 West, Fifth Principal Meridian, Minnesota, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on November 5, 1987.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy

BEST COPY AVAILABLE

State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 5, 1987.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 87-22493 Filed 9-9-87; 8:45 am]

BILLING CODE 4310-GJ-M

[NM-940-07-4220-11; NM NM 52329]

Amended Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice.

SUMMARY: This notice amends the Notice published in FR Doc. 85-27048 appearing on page 47121 in the issue of Thursday, November 14, 1985.

The first and second lines of the summary are amended to read "Summary: The Corps of Engineers proposes that 21,880.70 acre." Line 15 is amended to read "The Corps of Engineers." Lines 15–17, from the bottom, are amended to read "Those unsurveyed portions of sections 7, 18, 19, 30, and 31 lying west of the Cibola National Forest."

Column 2, line 15, from the top is amended to read "21,880.70 acres in McKinley County."

Dated: September 18, 1987.

Malcolm J. Schnitker,

Deputy State Director, Operations.

[FR Doc. 87-22494 Filed 9-29-87; 8:45 am]

BILLING CODE 4310-FB-M

[WY-930-07-4220-11; W-0150196, W-28577, W-094183, W-059320, W-0195835, W-0321051, W-068665, W-058362, W-074121]

Proposed Modification and Continuation of Withdrawals; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that the withdrawal of approximately 1,504.43 acres covering portions of 34 recreation/administrative sites in the Medicine Bow National Forest be modified to establish a 20-year term and to modify the segregation on 8 sites to be closed only to mining location. These lands have been and will remain closed to mining. All of the lands have been and will remain open to mineral leasing. Additionally, certain legal descriptions will be modified to conform to current surveys.

DATE: Comments must be received by December 29, 1987.

ADDRESS: Comments should be sent to the Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Rochelle S. Ames, Wyoming State Office, (307) 772-2071.

The Forest Service proposes that the existing land withdrawn by Public Land Order Nos. 5140, 3777, 2978, 2796, 3250, 4265, 2278, 4788, 3310, 1658*, and 2643 dated October 18, 1971, August 10, 1965, March 18, 1963, October 19, 1962, October 10, 1963, August 30, 1967, February 27, 1961, April 2, 1970, January 17, 1964, June 17, 1958, and April 6, 1962, respectively, be continued for a period of 20 years, and that order marked with an asterisk (*) be modifed to segregate the lands only from location under the mining laws; pursuant to section 204 of the Federal land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Sixth Principal Meridian

**Barber Lake Picnic Ground*

T. 16 N., R. 78 W.,
Sec. 29, NW¼SW¼NE¼SE¼, NE¼SE¼ NW¼SE¼.

Battle Creek Campground

T. 13 N., R. 87 W.,
Sec. 15, E½SE¼NW¼SE¼, W½SW¼ NE¼SE¼.

Beaver Meadows Campground

T. 14 N., R. 79 W.,
Sec. 3, lots 6, 10, 11.

Bobbie Thomson Campground

T. 14 N., R. 79 W.,
Sec. 27, SW¼NW¼NE¼, E½SE¼ NE¼NW¼.

Bottle Creek Campground

T. 14 N., R. 85 W.,
Sec. 13, W½SW¼SW¼SE¼, SE¼SE¼ SW¼.

Brooklyn Lake Administration Site

T. 16 N., R. 79 W.,
Sec. 11, NW¼SW¼SW¼.

**Brooklyn Lake Recreation Area*

T. 16 N., R. 79 W.,
Sec. 10, SE¼NE¼NE¼;
Sec. 11, W½SW¼NW¼NW¼.

Brush Creek Administrative Site

T. 16 N., R. 81 W.,
Sec. 20, S½NE¼NE¼NW¼, NW¼NE¼ NW¼, E½SW¼NE¼NW¼, SE¼NE¼ NW¼.

Centennial Administrative Site

T. 15 N., R. 78 W.,
Sec. 4, NE¼NE¼SE¼.
T. 16 N., R. 78 W.,
Sec. 33, SW¼NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, NW¼SE¼SE¼.

Deep Creek Campground

T. 17 N., R. 79 W.,
Sec. 9, S½NW¼NE¼SE¼, N½SW¼ NE¼SE¼.

Fox Creek Park Administrative Site

T. 13 N., R. 78 W.,
Sec. 21, S½SW¼NE¼SE¼ (excluding Parcel 2 of Tract 37) (portion of lot 4), S½SE¼NW¼SE¼ (portion of lot 3), N½NE¼SW¼SE¼, N½NW¼SE¼SE¼ (portion of lot 4).

French Creek Campground

T. 15 N., R. 81 W.,
Sec. 34, NE¼SW¼NE¼.

Hidden Valley Community Picnic Ground

T. 15 N., R. 72 W.,
Sec. 26, S½SE¼SE¼SW¼;
Sec 35, NW¼NW¼NE¼, NE¼NE¼NW¼.

Hog Park Reservoir Recreation Area

T. 12 N., R. 84 W.,
Sec. 8, S½SE¼SW¼NW¼, S½SW¼ SE¼NW¼, E½SE¼NW¼.

Holmes Campground

T. 14 N., R. 79 W.,
Sec. 4, NW¼NW¼NE¼.
T. 15 N., R. 79 W.,
Sec. 33, S½SW¼SW¼SE¼.

Jack Creek Campground

T. 15 N., R. 87 W.,
Sec. 12, N½SW¼NE¼SE¼, NW¼NE¼ SE¼.

Keystone Administrative Site

T. 14 N., R. 79 W.,
Sec. 22, E½E½SW¼NE¼, W½SE¼NE¼.

**Lake Marie Picnic Ground*

T. 16 N., R. 80 W.,
Sec. 24, SW¼SE¼SE¼;
Sec. 25, N½NW¼NE¼NE¼.

Lake Owen Recreation Area

T. 14 N., R. 78 W.,
Sec. 25, S½SW¼SE¼;
Sec. 36, N½NW¼NE¼, NE¼NE¼NW¼.

**Libby Creek Picnic Ground*

T. 16 N., R. 78 W.,
Sec. 28, E½NE¼SW¼SW¼, SE¼SW¼, W½SW¼SE¼, SE¼SW¼SE¼;
Sec. 33, N½NW¼NE¼.

Libby Flats Observation Point

T. 16 N., R. 79 W.,
Sec. 20, NW¼SE¼NW¼, E½NE¼ SW¼NW¼.

Lincoln Park Campground

T. 16 N., R. 81 W.,
Sec. 8, NE¼NE¼NE¼, N½SE¼NE¼NE¼.

Little Sandstone Campground

T. 14 N., R. 87 W.,
Sec. 33, E½SW¼SE¼NW¼, W½SE¼ SE¼NW¼, NE¼NW¼NE¼SW¼, NW¼NE¼NE¼SW¼.

Lost Creek Campground

T. 14 N., R. 86 W.,
Sec. 33, E½SW¼SW¼NW¼, SE¼SW¼ NW¼.

**Mirror Lake Picnic Ground*

T. 16 N., R. 79 W.,
Sec. 19, S½N½ of lot 3, N½S½ of lot 3.
T. 16 N., R. 80 W.,
Sec. 24, SE¼NE¼NE¼SE¼, NE¼SE¼ NE¼SE¼.

**Nash Fork Picnic Ground*

T. 16 N., R. 79 W.,
Sec. 13, NW¼SW¼SW¼SE¼, NE¼SE¼ SE¼SW¼.

Pelton Creek Campground

T. 13 N., R. 79 W.,
Sec. 19, S½SE¼SE¼SE¼;
Sec. 30, NE¼NE¼NE¼.

Pike Pole Campground

T. 14 N., R. 80 W.,
Sec. 31, SW¼SW¼SE¼.

Sandstone Administrative Site

T. 13 N., R. 87 W.,
Sec. 10, SE¼SW¼SW¼NW¼, S½SE¼ SW¼NW¼, NE¼NW¼NW¼SW¼, N½NE¼NW¼SW¼.

**Silver Lake Campground*

T. 16 N., R. 80 W.,
Sec. 34, SE¼NE¼SE¼NE¼, NE¼,SE¼ SE¼NE¼;
Sec. 35, S½NW¼SW¼NW¼, N½SW¼ SW¼NW¼.

Six-Mile Gap Campground

T. 12 N., R. 80 W.,
Sec. 5, NE¼NE¼NE¼, E½NW¼N E¼NE¼.

Snowy Range Natural Area

T. 16 N., R. 79 W.,
Sec. 13, NW¼NE¼SW¼SW¼, S½NE¼ SW¼SW¼, W½SW¼SW¼, SE¼SW¼ SW¼, SW¼SE¼SW¼;
Sec. 14, SW¼SE¼SW¼NE¼, S½SW¼ SW¼NE¼, SE¼SE¼SE¼NW¼, NE¼NE¼NE¼SW¼, S½N½ NE¼SW¼, S½NE¼SW¼, S½N½ NW¼SW¼, S½NW¼SW¼, S½SW¼, S½NE¼NE¼SE¼, NW¼NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 15, S½NE¼NE¼SE¼, S½NE¼SE¼, SE¼SE¼;
Sec. 22, NE¼NE¼;
Sec. 23, N½N½, N½S½NE¼, N½SE¼ NW¼;
Sec. 24, N½NW¼, N½S½NW¼.

South Brush Creek Campground

T. 16 N., R. 81 W.,
Sec. 21, S½NE¼NW¼NE¼, N½SE¼ NW¼NE¼, SE¼NW¼NW¼NE¼, NE¼SW¼NW¼NE¼.

**Upper Nash Fork Campground*

T. 16 N., R. 79 W.,
Sec. 14, W½SE¼NW¼NE¼, SW¼NW¼NE¼.

The area described contains approximately 1,504.43 acres in Albany and Carbon Counties, Wyoming.

The purpose of these withdrawals is to protect the financial investment in the recreational and administrative facilities on these sites. The withdrawals segregate the lands from the operation of the mining laws, and those sites marked with an asterisk (*) are further segregated from the operation of the public land laws generally. All of the lands have been and will remain open to mineral leasing. A modification in the segregative effect of the lands marked with an asterisk (*) is proposed to remove the segregation on the lands to the operation of the public land laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Hillary A. Oden,

State Director.

September 18, 1987.

[FR Doc. 87-22495 Filed 9-29-87; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Placid Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Placid Oil Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5882 and 6994, Blocks 29 and 31, respectively, Green Canyon Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Houma and Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on September 21, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 21, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-22440 Filed 9-29-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1134, Block 191, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

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DATE: The subject DOCD was deemed submitted on September 21, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 21, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-22441 Filed 9-29-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on October 8, 1987.

The primary purposes of the meeting are to: (1) Review Participant Training concerns and issues; (2) to review the recommendation of the June Meeting in Rhode Island; (3) to react to proposed activities over the next year around the theme, "Getting Ready for the 90's"; (4) and to review proposed plans for the JCARD Sub-Committee on Agricultural Research and Technology Transfer.

JCARD will meet from 10:00 a.m. to 5:00 p.m. on October 8 in the State Plaza Hotel, 2117 E Street NW., Washington, DC. Any interested person may attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meetings. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, D.C. 20523 or telephone him at (202) 647-6987.

Date: September 23, 1987.

John Stovall,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.

[FR Doc. 87-22496 Filed 9-29-87; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-265]

Certain Dental Prophylaxis Methods, Equipment and Components Thereof; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Sanofi, S.A. and Sanofi, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on September 21, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 21, 1987.

[FR Doc. 87-22570 Filed 9-29-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Issuance of Limited Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a limited exclusion order in the above-captioned investigation prohibiting the unlicensed importation of certain dynamic random access memories (DRAMs) of 64 and 256 kilobits, or any combinations thereof (such as DRAMs of 128 kilobits), manufactured abroad by Samsung Company, Ltd. and/or Samsung Semiconductor & Telecommunications

Co., Ltd., or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns, whether assembled or unassembled, or incorporated into a carrier of any form, including Single-Inline-Packages and Single-Inline-Modules, or assembled into circuit boards of any configuration. The order also prohibits the unlicensed importation of computers (such as mainframe, personal, and small business computers), facsmilie equipment, telecommunicatons switching equipment, and printers containing infringing DRAMs of 64 or 256 kilobits (or any combinations thereof such as 128 kilobits) manufactured by Samsung Company, Ltd. and/or samsung Semiconductor & Telecommunications Co., Ltd., or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns.

Authority: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.58 of the Commission's Rules of Practice and Procedure (19 CFR 210.58).

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 19, 1986, in response to a complaint filed on February 7, 1986, by Texas Instruments, Inc. (TI) of Dallas, Texas to determine whether there is a violation of section 337 (19 U.S.C. 1337) and 19 U.S.C. 1337a in the importation and sale of certain dynamic random access memories (DRAMs). The complaint alleged that such important and sale by the nineteen named respondents constitute unfair methods of competition and unfair acts by reason of infringement of certain claims of ten U.S. patents owned by TI. The complaint further alleged that the effect or tendency of these unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. During the course of the proceedings, thirteen of the original nineteen respondents were terminated from the investigation on the basis of license and settlement agreements.

On May 21, 1987, the presiding administrative law judge (ALJ) issued her initial determination (ID), finding that there is a violation of section 337 and 19 U.S.C. 1337a in the importation and sale of certain DRAMs by two of the remaining respondents, Samsung Company, Ltd. and Samsung Semiconductor & Telecommunications Co., Ltd., and that there is no violation of section 337 and 19 U.S.C. 1337a in the importation and sale of certain DRAMS by the other four remaining respondents, Hitachi, Ltd. and Hitachi America, Ltd. (the Hitachi respondents) and NEC Coporation and NEC Electronics, Inc. Subsequently, the Hitachi respondents were terminated from the investigation on the basis of a license and settlement agreement. 52 FR. 26577 (July 15, 1987). On July 24, 1987, the Commission ordered review of certain portions of the ID, and requested written submissions regarding certain specific questions raised by the issues under review. The Commission vacated certain portions of the ID, including those concerning the Hitachi respondents, and determined not to review the remainder of the ID, which thereby became the determination of the Commission. The Commission also requested written submissions concerning the questions of remedy, bonding, and the public interest. 52 FR 29077 (Aug. 5, 1987). Having considered the record in this investigation, including the written submissions of the parties and comments from the U.S. Customs Service and members of the public, the Commission made its determinations disposing of the issues on review, and the questions of remedy, bonding, and the public interest.

Notice of this investigation was published in the **Federal Register** of March 19, 1986 (51 FR 9537).

Copies of the Commission's Action and Order, the nonconfidential versions of opinions issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: Setember 21, 1987.

[FR Doc. 87–22568 Filed 9–29–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–262]

Certain Hard Sided Molded Luggage Cases; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: La Societe Delsey and Delsey Luggage, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on September 10, 1987.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–0161. Hearing imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

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FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 23, 1987.

[FR Doc. 87–22572 Filed 9–29–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. TA–603–10]

Industrial Forklift Trucks; Revised Schedule for the Subject Investigation

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigation.

SUMMARY: The Commission has revised its schedule in connection with its preliminary investigation No. TA–603–10, concerning industrial forklift trucks, to reflect a 45-day postponement of the hearing approved on September 1, 1987. The Commission will now hold its hearing on October 22, 1987.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1987, the Commission received a request from Clark Equipment Company, acting on its own behalf and on behalf of certain other parties to the investigation, asking that the Commission postpone the hearing to be held in connection with this investigation for a period of 90 days. On September 1, 1987, the Commission decided to postpone the hearing for a nonrenewable period of 45 days and cancelled its public hearing scheduled for September 2, 1987. Notice of the investigaiton and originally scheduled hearing was published in the **Federal Register** of July 29, 1987 (52 FR 15258).

Participation in the Investigation

Persons wishing to participate in the investigation as parties who have not previously entered an appearance in accord with the procedures set forth in the earlier notice may request an opportunity to enter an appearance. Such requests will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown.

Revised Schedule

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 22, 1987, at the U.S. International Trade Commission Building, 701 E. Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 14, 1987. Parties will be contacted after that date regarding time allocations for the hearing. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs by October 19, 1987. Posthearing briefs must be submitted not later than the close of business on October 27, 1987. All written submissions, including briefs, should be filed in accordance with the procedures described in the **Federal Register** notice of July 29, 1987.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 19, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 22, 1987.

[FR Doc. 87–22571 Filed 9–29–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–248]

Certain Plastic Fasteners and Processes for the Manufacture Thereof; Decision To Review Initial Determination and To Extend Deadline for Completion of Investigation

AGENCY: International Trade Commission.

ACTION: Review of initial determination and extension of deadline for completion of investigation.

SUMMARY: Notice is given that the Commission has determined to review the presiding administrative law judge's (ALJ's) initial determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. Further, the Commission has determined to extend the deadline for completion of the investigation until December 18, 1987. This action is taken pursuant to Commission rules 210.53–210.56, 210.59 (19 CFR 210.53–210.56, 210.59).

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0421.

SUPPLEMENTARY INFORMATION: On June 18, 1986, the Commission instituted an investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain plastic feasteners. The investigation was instituted on the basis of a complaint filed by Dennison Manufacturing Company, alleging unfair methods of competition and unfair acts by reason of the alleged manufacture abroad by a process which, if practiced in the United States, would infringe: (1) Claims 1–4 and 8–12 of U.S. Letters Patent 4,183,894; (2) claims 1–6, 9–11, and 13 of U.S. Letters Patent 4,304,743; (3) claims 1–2, 6–7, and 11–15 of U.S. Letters Patent 4,416,838, and (4) would infringe claims 1–4 and 8–12 of U.S. Letters Patent 4,429,437, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated in the United States.

On June 19, 1987, the ALJ issued an ID that there is no violation of section 337. Complainant and respondents filed petitions for review of various parts of the ID pursuant to § 210.54(a) (19 CFR 210.54(a)) of the Commission's rules.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has concluded that review of the ID is warranted. The Commission does not require further written submissions from the parties regarding the merits of the ID and the determination of no violation of section 337.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles.

Accordingly, the Commission is interested in receiving written submissions which address the form of remedy, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist order(s) would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in written submissions which address the aforementioned public interest factors in the context of this investigation.

If the Commission finds that a violation of section 337 has occurred and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

While the Commission has determined that no hearing will be held in this investigation and no written submissions are necessary regarding the ID, the parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding, must be filed by October 23, 1987. Reply submissions on remedy, the public interest, and bonding, must be filed by October 30, 1987.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the nonconfidential version of the ALJ's ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 18, 1987.

[FR Doc. 87–22569 Filed 9–29–87; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Pollution Control; Consent Decree; Ashland Chemical Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), notice is hereby given that on September 16, 1987, a proposed consent decree in *United States v. Ashland Chemical Company, a division of Ashland Oil, Inc., et al.*, Civil Action No. CA87–0475, was lodged with the United States District Court for the District of Rhode Island. The proposed consent decree involves claims by the United States for recovery of clean-up costs incurred and to be incurred at the Picillo Farm Superfund Site in Coventry, Rhode Island as well as claims for injunctive relief. These claims were brought against defendants Ashland Chemical Company, a division of Ashland Oil, Inc.; GAF Corporation; General Electric Company; and Monsanto Company pursuant to RCRA and CERCLA.

The proposed consent decree requires the defendants to perform the remedial action selected in the Record of Decision issued by the United States Environmental Protection Agency on March 3, 1987, which specifies removal of three piles of contaminated soil at the Site to a secure off-site landfill. The estimated cost for the government to perform this remedial action is approximately $3.5 million. The defendants are also required to pay $100,000 to the state of Rhode Island and the United States Environmental Protection Agency for past costs expended at the Site. In return, the defendants are given a release from claims for past costs at the Site and a release for the costs associated with a future groundwater remedial investigation and feasibility study to be conducted at the Site. The defendants are also given a release for certain natural resource damage claims.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ashland Chemical Co., et al.*, D.J. Ref. No. 90–11–2–131.

The proposed consent decree may be examined at the Office of the United States' Attorney for the District of Rhode Island, 223 Federal Building and Courthouse, Kennedy Plaza, Providence, Rhode Island 02903 and at the Region I Office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.00 (10 cents per page reproduction cost) payable to the Treasurer to the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–22443 Filed 9–29–87; 8:45 am]

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Pollution Control; Consent Decree; Renora, Inc., et al.,

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 16, 1987, a proposed consent decree in *United States v. Renora, Inc., et al.*, Civil Action No. 86–3462, was lodged with the United States District Court for the District of New Jersey. The proposed consent decree involves claims by the United States for recovery of certain clean-up costs incurred at the Renora Superfund Site in Edison, New Jersey. These claims were brought against defendants pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607.

The proposed consent decree only deals with the liability of defendants Ronald Kaschner, Viking Wire, Inc., Jersey State Power Equipment Manufacturing Co., and Whatman, Inc. The decree requires these defendants to pay $78,000 towards the government's pasts costs associated with the Site. In return, the defendants are given a release from claims for past costs at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Renora, et al.*, D.J. Ref. No. 90–11–3–113.

The proposed consent decree may be examined at the Offce of the United States' Attorney for the District of New Jersey, Federal Building, 970 Broad Street, Newark, New Jersey 07102 and at the Region II Office of the United States Environmental Protection Agency, 26 Federal Plaza, Room 437, New York, New York 10278. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Divsion of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Divsion.

[FR Doc. 87–22442 Filed 9–29–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Aramco Service Co. et al

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 13, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 13, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 21st day of September 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Aramco Service Co (workers)	Houston, TX	9/21/87	9/8/87	20,097	Oil
Centralab, Incorp., Ceramic Dept (workers)	El Paso, TX	9/21/87	9/9/87	20,098	Ceramic capacitors.
Chalmers Rig Service, (workers)	Abilene, TX	9/21/87	9/8/87	20,099	Oil
Corona Plastics (AFL-CIO)	Denville, NJ	9/21/87	9/8/87	20,100	Plastic products
Foremost Petroleum Co. (workers)	Victoria, TX	9/21/87	9/1/87	20,101	Oil & gas
Harowe-Servo Controls, Inc. (UERMW)	Westchester, PA	9/21/87	9/11/87	20,102	Electromechanical devices.
Inland Steel Co. (USWA)	E. Chicago, IN	9/21/87	9/9/87	20,103	Steel
Lynda Lee Fashions, Inc. (LGWU)	Rutland, VT	9/21/87	8/25/87	20,104	Dresses
Otis Engineering Corp. (workers)	Carrollton, TX	9/21/87	9/11/87	20,105	Tools
Rebel Geophysical, Inc	Denver, CO	9/21/87	9/3/87	20,106	Oil & Gas
Reliance Electric, Inc. (workers)	Columbiana, OH	9/21/87	9/9/87	20,107	Castings
Trans-Buckeye Crop. (USWA)	Steubenville, OH	9/21/87	9/11/87	20,108	Steel
USX Steel-Minnesota Ore Oper. (USWA)	Mt. Iron, MN	9/21/87	9/10/87	20,109	Taconite
Van Leer Containers, Inc. (Company)	Jersey City, NJ	9/21/87	9/10/87	20,110	Steel containers

[FR Doc. 87–2248 Filed 9–29–87; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–19,671 and TA–W–19,671A]

Revised Determinations on Reconsideration; Hobart Corp.

In the matter of Hobart Corporation, Torrence Street and Huffman Avenue, Dayton, Ohio.

On August 21, 1987, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for former workers of the Hobart Corporation's Torrence Street plant in Dayton, Ohio. The affirmed notice was published in the **Federal Register** on September 1, 1987 (52 FR 32975).

The application for reconsideration from the International Union of Electronic and Electrical Workers (IUE) claims that the Hobart Corporation is transferring its production of food weighing scales from Dayton to Taiwan. According to the union, the transferred production will be sold to Hobart's domestic customers.

On reconsideration, the Department confirmed the union's claims that Hobart transferred production of food weighing scales to an overseas location. The findings show that a substantial amount of the production from the Torrence Street plant in Dayton, Ohio was transferred to Taiwan in 1987. The Torrence Street plant ceased production in May, 1987. Additional findings show that the first shipment of the transferred production re-entered the U.S. for sale to domestic customers in September, 1987.

Also, on reconsideration it was found that the Huffman Avenue plant is a parts distribution center for 15 other plants of the Hobart Corporation, none of which have workers certified eligible to apply for adjustment assistance. A substantial part of Huffman's operations are not derived from any single plant of Hobart.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased company imports of articles like or directly competitive with food weighing scales at Hobart Corporation contributed importantly to the decline in production and to the total or partial separation of workers at the company's Torrence Street plant in Dayton, Ohio. In accordance with the provisions of the Trade Act of 1974, I make the following revised determinations.

All workers of the Torrence Street plant, Dayton, Ohio of Hobart Corporation who became totally or partially separated from employment on or after March 1, 1987 and before September 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that the Department's negative determination for workers at the Huffman Avenue plant, Dayton, Ohio of Hobart Corporation be affirmed.

Signed at Washington, DC, this 21st day of September, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-22479 Filed 9-29-87; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Parker Hannifin Corp., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 14, 1987—September 18, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,900; Parker Hannifin Corp., Cylinder Division, Plymouth, MI

TA-W-19,989; Anamag, Inc., Shelbyville, IN

TA-W-19,894; HPM Corp., Eastern Div., Hartford, CT

TA-W-19,959; Motion Control, Industries, Ridgway, PA

TA-W-19,887; Art Embroidery, West New York, NJ

TA-W-19,873; McNally Pittsburg, Inc., Ohio Div., Wellston, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-19,914; Donnelley Rocappi, Cherry Hill, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,983; SKF Automotive Products, Casey, IL

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,970; AT & T Information Systems, Charlotte, NC

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,046; Elm Coal Corp., Paintsville, KY

U.S. imports of coal are negligible the ratio of imports to domestic production is less than one percent.

TA-W-19,977; Energy Exchange Corp., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,881; Emerson Electric, U.S. Electrical Motors Div., Prescott, AZ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,006; Drelco Co., Inc., Iraam, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,995; Edco Drilling and Producing, Mt. Gilead, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,035; TMBR/Sharp Drilling, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,912; Cachuma Drilling Corp, Vernal, UT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-19,898; Litton Industrial Automation Systems, Inc., New Britain Machine Div., New Britain, CT

A certification was issued covering all workers of the firm separated on or after June 24, 1986.

TA-W-19,891; E.J. Fennel, Inc., Hagerstown, MD

A certification was issued covering all workers of the firm separated on or after July 6, 1986.

TA-W-19,984; Trico Products Corp., Buffalo, NY

A certification was issued covering all workers of the firm separated on or after July 27, 1986.

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TA–W–19,802; AT & T Network Systems, Allentown, PA

A certification was issued covering all workers of the firm separated on or after June 3, 1986.

TA–W–20,023; Storey Manufacturing Co., Ennis, TX

A certification was issued covering all workers of the firm separated on or after July 15, 1986.

TA–W–19,954; FL Phillips Drill Co., Inc., Milwaukee, OR

A certification was issued covering all workers of the firm separated on or after July 14, 1986.

TA–W–19,916; Franklin Mint Co., Franklin Center, PA

A certification was issued covering all workers of the firm separated on or after July 7, 1986.

I hereby certify that the aforementioned determinations were issued during September 14, 1987—September 18, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business ours or will be mailed to persons who write to the above address.

Dated: September 22, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–22478 Filed 9–29–87; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the following meetings will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of agency action, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 45, United States Code.

1. Date: October 15–16, 1987
   Time: 7:30 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1988.
2. Date: October 22–23, 1987
   Time: 7:30 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1988.
3. Date: October 27–28, 1987
   Time: 7:30 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1988.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 87–22510 Filed 9–29–87; 8:45 am]

BILLING CODE 7536–00

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 30, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 24, 1987.

The applications received are as follows:

1. Applicant

David C. White, Institute for Applied Microbiology, University of Tennessee, Knoxville, Tennessee 37932.

Activity for Which Permit Requested

Enter Specially Protected Area. The applicant is conducting a study of shallow water benthic marine microorganisms, and requests access to Litchfield Island Specially Protected Area for taking of samples.

Location

Palmer Station vicinity, Antarctica.

Dates

December 1987—March 1988

2. Applicant

Robert G. Robbins, ITT/Antarctic Services, Inc., 621 Industrial Avenue, Paramus, New Jersey 07652.

Activity for Which Permit Requested

Enter Specially Protected Area. The applicant proposes to enter Specially Protected Area No. 17, Litchfield Island, to inspect a boating operations survival cache. Inspection is conducted twice annually during December and March. The applicant will also examine notification signs that indicate Litchfield Island is a specially protected area, and participate in a census of bird populations.

Location

Palmer Station vicinity, Antarctica

Dates

November 1987—November 1988

3. Applicant

J. Alan Campbell, P.O. Box 209, Athens, Georgia 30603.

Activity for Which Permit Requested

The applicant proposes to enter protected areas accessible from McMurdo Station, Antarctica to observe, draw/sketch, paint, and photograph Antarctic wildlife. The applicant is an artist who is being supported by the National Science Foundation to document, depict, and interpret the Antarctic landscape, wildlife, and the Antarctic experience.

Location

McMurdo Station and vicinity, Antarctica.

Dates

December 1987–February 1988.

4. Applicants

Edward G. Atkins, Children's Television Workshop, One Lincoln Plaza, New York, New York 10023.

Activity for Which Permit Requested

Taking, Enter Specially Protected Areas, Enter Site of Special Scientific Interest. The applicant will be filming scientific investigators working in Antarctica. The applicant requests permission to enter protected areas and film scientists working with protected species at close range.

Location

McMurdo Station and vicinity.

Dates

November 16–30, 1987.

5. Applicant

Barry Lopez, Finn Rock, Oregon 97488.

Activity for Which Permit Requested

Take, enter Specially Protected Areas, enter Sites of Special Scientific Interest. The applicant will be writing articles about scientific investigators working in Antarctica. He requests permission to enter protected areas and observe at close range scientists working with protected species of birds and mammals.

Location

McMurdo Station and vicinity; Palmer Station vicinity.

Dates

November 1987–February 1988.

6. Applicant

Charlotte Evans, 741 Sport Hill Road, Easton, Connecticut 06612.

Activity for Which Permit Requested

Take, enter specially protected areas, enter sites of special scientific interest. The applicant will be writing news and feature articles about scientific investigators working in Antarctica. The applicant requests permission to enter protected areas, and observe at close range scientists working with protected species of birds and mammals.

Location

McMurdo Station and vicinity; Palmer Station and vicinity.

Dates

November 16–30, 1987 and January 4–February 4, 1988.

7. Applicant

Bailey Smith Barash, Turner Broadcasting System, Box 105366, Atlanta, Georgia 30348.

Activity for Which Permit Requested

Taking, Enter Specially Protected Areas, Enter Site of Special Scientific Interest. The applicant will be filming scientific investigators working in Antarctica. The applicant requests permission to enter protected areas and film scientists working with protected species at close range.

Location

McMurdo Station and vicinity.

Dates

November–December 1987.

Charles E. Myers,

Permit Office.

[FR Doc. 87–22499 Filed 9–29–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 8–10, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on September 21, 1987. Portions of this meeting for Thursday, October 8, 1987 have been cancelled to accommodate the availability of participants, and sessions have been added.

Thursday, October 8, 1987

8:30 a.m.–8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.–9:45 a.m.: Revision to the Backfit Rule (Open)—Discuss the recently published revision to the Backfit Rule.

10:00 a.m.–11:00 a.m.: Integrated Safety Assessment Program (Open)—Discuss proposed NRC Staff's plan for implementation of ISAP taking into account ACRS's comments in its report of July 15, 1987..

11:00 a.m.–11:30 a.m.: Future ACRS Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

11:30 a.m.–12:30 p.m.: and 1:30 p.m.–2:15 p.m.: Management Allocation of Resources (Closed)—Discuss NRC internal allocation of resources, including personnel, to provide technical advice regarding nuclear waste management and disposal.

This session will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy and information that involves the internal personnel rules and practices of NRC.

2:15 p.m.–3:15 p.m.: Zion Nuclear Station (Open)—Briefing and discussion of full field exercises to exercise emergency plans following a severe core melt accident.

3:30 p.m.–4:15 p.m.: Chernobyl Nuclear Accident (Open)—Discuss proposed NRC Staff implementation of NRC recommendations regarding the lessons learned from this accident and their applicability to U.S. nuclear power plant design and operation.

4:15 p.m.–5:15 p.m.: Planning Subcommittee Meeting Agenda

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(Open)—Discuss proposed agenda items for the Planning Subcommittee Meeting to be held October 22–24, 1987 and discuss scheduling of ACRS reviews.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: September 24, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–22567 Filed 9–29–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos.: 50–454, STN 50–455 and STN 50–456]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Commonwealth Edison Co.

September 22, 1987.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendments to Facility Operating License Nos. NPF–37 and NPF–66 issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Facility Operating License No. NPF–72, issued to the licensee, for operation of Braidwood Station, Unit 1, located in Will County, Illinois. It is the staff's intention to apply this amendment, if it is found acceptable, to Braidwood Station, Unit 2, when it receives its operating license.

The amendment would revise Technical Specifications 4.2.3.4, 4.4.4.1, 4.4.6.1, 4.4.9.3.1 and 4.5.1.2, and Technical Specification Tables 4.3–1, 4.3–2, 4.3–3, 4.3–6, 4.3–7, 4.3–8 and 4.3–9 for a one-time extension to 32 months for the interval for performing certain 18-month instrument surveillances, in accordance with the licensee's application for amendment dated September 3, 1987.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall filed a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Isham, Lincoln, and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 3, 1987, which is available for public inspection at the Commission's Public Document

Room, 1717 H Street, NW., Washington, DC; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Bethesda, Maryland this 22nd day of September, 1987.

For the Nuclear Regulatory Commission.

Jan A. Norris,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87–22564 Filed 9–29–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Gulf States Utilities Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company, for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would revise Attachment 3, "TDI Diesel Engines Requirements," to the River Bend Station Operating License, NPF–47. This revision would modify the provisions on maintenance and surveillance for the TDI emergency diesel generators. The revision would incorporate the recommendations of Revision 2 to Appendix II of the TDI Diesel Generator Owners Group Design Review and Qualification Revalidation (DR/QR) report, submitted May 1, 1986, as reflected in the staff's generic Safety Evaluation Report (SER), NUREG–1216, "Safety Evaluation Report Related to the Operability on Reliability of Emergency Diesel Generators Manufactured by Transamerica Delaval, Inc.," August 1986. The NRC staff's evaluation of the River Bend Station DR/QR report is documented in Supplement 3 to the Safety Evaluation Report related to the operation of River Bend Station, NUREG–0989.

The proposed license condition change is in accordance with the licensee's application dated August 4, 1986 as amended August 15, 1986, supplemented September 26, 1986, and amended September 8, 1987.

A previous notice on this subject was published in the **Federal Register** on October 22, 1986 (51 FR 37512).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Gulf States Utilities Company (GSU) addressed the above three standards in the amendment:

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The Transamerica Delaval Inc. (TDI) Owners Group DR/QR Report requires inspections that are more thorough than the inspections currently being performed in accordance with the manufacturers recommendations. Gulf States Utilities' (GSU's) commitment to the DR/QR Report is designed to increase the reliability of the Division I and II diesel generators. Implementing revision 2 of Appendix II of TDI DR/QR report will increase the reliability of the diesel generators at River Bend Station (RBS). Furthermore, this change is within the existing safety analysis provided in the RBS Final Safety Analysis Report (FSAR).

Thus, there is no increase in the probability or consequences of any accident previously evaluted.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The change clarifies the existing commitments presently being adhered to. The River Bend Station Unit 1 Facility Operating License (NPF–47) currently contains a condition that GSU shall implement the TDI requirements as incorporated within the license. By implementing the recommendations of Revision 2 of Appendix II of the TDI DR/QR Report, GSU will be implementing a program that has undergone extensive industry and regulatory review (reference NUREG–1216 dated July, 1986). Implementing revision 2 of Appendix II of the TDI DR/QR report will increase the reliability of the diesel generators at RBS. Thus no new or different kind of accident scenario is introduced for any accident previously evaluated.

3. This change would not involve a significant reduction in the margin of safety because:

The change makes the license condition consistent with the NRC Staff approved program (reference NUREG–1216) which ensures that the design adequacy and manufacturing of the TDI diesel generators for nuclear standby service is within the range normally assumed for diesel engines designed and manufactured in accordance with General Design Criterion (GDC) 17 and 10 CFR Part 50, Appendix B. Therefore, this change does not reduce any margin of safety as defined in the Technical Specifications Bases.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for

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leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo, Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental peititions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respects to this action, see the application for amendment dated August 4, 1986, as amended August 15, 1986, supplemented September 26, 1986 and amended September 8, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Bethesda, Maryland, this 25th day of September, 1987.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Project Manager, Project Directorate–IV, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 87–22565 Filed 9–29–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Gulf States Utilities Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company, for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would revise license condition 2.C(1), Attachment 1, Item 4.b. This license condition requires that the licensee verify that adequate radio communication capability exists from all appropriate plant areas prior to startup following the first refueling outage. The revision would replace this license condition with new license conditions Items 5., 6., and 7., of Attachment 1. Proposed Item 5. would require that the installation of equipment improvements

to the security radio communications system be accomplished by May 31, 1988. Proposed Item 6. would require that testing be conducted to determine if adequate radio communications capability exists from appropriate plant areas and this testing would be accomplished prior to startup following a subsequent outage with a planned duration of seven days or longer following May 31, 1988. Proposed Item 7. would require that any further modifications or testing which may be determined to be necessary as the result of acceptance testing, be performed during a subsequent outage of sufficient duration but prior to start-up following the second refueling outage in accordance with the licensee's application for amendment dated September 8, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. The staff modified items 1. and 3., below, to delete safeguards information.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The River Bend Station (RBS) communication system is designed to provide reliable intraplant and interplant (plant-to-offsite) communication under both normal plant operation and accident operations. An independent and redundant communication system exists for communications between the Central Alarm Station (CAS) and Secondary Alarm Station (SAS), operators, security officers, watch officers, and armed response personnel through the use of several different types of systems. The SER related to the operation of River Bend Station (NUREG–0939) has reviewed the RBS communication system in Section 9.5.2 and determined that the communication system is designed to provide a reliable intraplant and interplant (or plant-to-offsite) communications under both normal plant operations and accident conditions, to start-up, continue safe operation, or safely shut down. The two-way radio communications systems is not an initiator of any accident in FSAR Chapters 6 and 15. No Limiting Conditions for Operation are identified in the Technical Specifications for security communications. In addition, this change does not revise any safety analyses as described in the Final Safety Analysis Report.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

River Bend Station relies on an established onsite physical protection system and a dedicated, well trained security force to implement an accepted program with capabilities for the protection of design basis threats to the plant. No changes are proposed to these other measures of protection, (i.e., Physical Barriers, Access Control, Detection Capabilities and Response Force). Therefore, there is no anticipated decrease in levels of overall program effectiveness. Radiological sabotage, attach threats and other miscellaneous event potentials are based on postulated considerations. This change has no significant effect on such contingencies. This provides additional assurance prior to installation and system testing that the system does not initiate any new or different kinds of accident from any previously evaluated.

3. This change would not involve a significant reduction in the margin of safety because:

No plant system, as it relates to plant operations and other security systems, will be altered as a result of this change. As identified in NUREG–0908, "Acceptance Criteria for the Evaluation of Nuclear Power Reactor Security Plans," for those cases where areas have been identified where use of portable radios could interfere with plant monitoring equipment, etc., an alternate means of communication exists with the CAS and SAS via several other alternate systems. These alternate means of communications will continue to be available during the extended period.

In addition, the CAS and SAS will continue to have the capability with alternate communication systems to provide fully independent and redundant communication with local law enforcement and the plant control room(s). This adheres to NUREG–0416, "Security Plan Evaluation Report Workbook." Security force control and coordination links are separate and distinct from all other internal administrative operations, logistics, telemetry, and process control communication systems in the facility.

This system will improve the existing radio communications throughout RBS. The proposed change does not reduce the margin of safety defined in the current Technial Specification Bases for security communications. Therefore, this proposed change does not significantly decrease the margin of safety.

This change is not considered, as stated above, to increase the probability or consequences of a previously analyzed accident due to the requested extended period for installation and testing of the system. The security force will continue to function as it has during the first cycle with the current system. Therefore, this request does not create the possibility of a new or different type of accident. The system, once completed, will improve the existing radio communications. Therefore, continuing operation with the current system will not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo, Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Bethesda, Maryland, this 24th day of September, 1987.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Project Manager, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 87–22566 Filed 9–29–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

OSHA "Hazard Communication" Standard; Open Public Meeting

AGENCY: Office of Management and Budget.

ACTION: Notice of public meeting.

SUMMARY: The Office of Management and Budget (OMB) will solicit comments on the recordkeeping, notification and other paperwork requirements of the Occupational Safety and Health Administration's (OSHA) recently expanded standard, "Hazard Communication" (29 CFR 1910.1200) at a public meeting. Members of the public are invited to provide comments and suggestions concerning these requirements and the associated paperwork. This meeting will be conducted under the authority of the

Paperwork Reduction Act of 1980 (Pub. L. 96–511).

DATE: October 16, 1987, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the New Executive Office Building, Room 2010, 726 Jackson Place, NW., Washington DC, (use 17th Street entrance). To obtain entrance into the building, please call (202) 395–6880 with your full name and birthdate by October 14 and request that your name be placed on the access list. Attendees who notify OMB in writing do not need to call to be cleared into the building.

FOR FURTHER INFORMATION CONTACT: Scott H. Jacobs, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–6880.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (PRA) requires OMB to review Federal information requirements and to provide interested persons early and meaningful opportunity to comment on information requirements imposed by Federal agencies (44 U.S.C. 3517). Public participation in review of such requirements is appropriate in assisting OMB and other Federal agencies to carry out the goals of the Act. Under the Act and implementing regulations at 5 CFR 1320.4(b), agencies must ensure that collections of information have practical utility, are the least burdensome necessary to achieve program objectives, and are not duplicative of information otherwise available. The Act prohibits agencies from conducting or sponsoring any collection of information which has not received OMB approval or an OMB control number.

OMB conducted a public meeting on April 2, 1987, on the paperwork requirements of the Hazard Communication Standard, which at that time covered only manufacturers (the transcript and all submitted documents for that meeting are available to the public in OMB paperwork docket 1218–0072 at the above address). On August 24, 1987, pursuant to an order from the U.S. Court of Appeals for the Third Circuit, OSHA published a final rule expanding coverage of the Standard to the nonmanufacturing sector. Recognizing that "there may be additional information" regarding the "feasibility or practicality" of the expanded rule, OSHA asked that comments on the final rule be submitted within 60 days so that OSHA could determine whether additional rulemaking is required. Subsequently, OMB has received several letters from the affected public requesting that OMB conduct a second public meeting under the PRA to examine the paperwork requirements of OSHA's expanded Standard.

On September 10, 1987, OSHA submitted the paperwork requirements of the Standard to OMB for review under the PRA. These requirements include chemical hazard evaluation, written hazard communication programs, labeling, development and provision of Material Safety Data Sheets (MSDS), and the paperwork and notification aspects of access to trade secrets. OSHA has estimated that the expanded Standard imposes a paperwork burden of 34,780,000 hours in the first year, and 8,080,000 hours in subsequent years. OSHA's statement of justification and calculation of burden for the paperwork requirements is available from the Department of Labor, Office of the Assistant Secretary for Administration and Management (Paul Larson, 523–6331). A detailed explanation of the evidence in the public record and policy considerations upon which OSHA based the information collection and paperwork requirements of the expanded Standard can be found in the preamble to the final rule (52 FR 31852).

The purpose of this public meeting is to solicit comments from a wide range of individuals and organizations on the information collection requirements of the expanded standard. These comments will assist OMB in determining if the information requirements of the Standard are consistent with the Paperwork Reduction Act, and, if not, in suggesting possible revisions to the Standard. Copies of these comments will also be placed in OSHA's public record for this Standard. Comments provided for the OMB public meeting of April 2, 1987, need not be resubmitted.

Commenters are urged to present their views with as much data as possible so that the merits of their cases can be evaluated. Comments are welcome on all aspects of the paperwork requirements of the standard; however, the audience will be particularly encouraged to comment on the following issues:

Burden Estimates

• What will be the paperwork burden required for compliance with the standard? How many hours will be required to comply with the paperwork requirements? What will be the costs of compliance associated with these requirements?

Transmittal of Hazard Information

• Does each recordkeeping, notification and paperwork component of the expanded "Hazard Communication" standard contribute to the efficient, effective transmittal of hazard information? Can these components be made more efficient or effective?

Consumer Products

• What is the practical utility of the paperwork requirements that apply to consumer products? Are there specific classes or categories of products that should or should not be covered?

Sealed Containers

• Are the paperwork provisions covering sealed containers the least burdensome necessary to address the hazards?

Multi-Employer Worksites

• What is the practical utility of the paperwork requirements covering multi-employer worksites? Are these provisions the least burdensome necessary to address the hazards and conditions at those sites?

Solid Products

• OSHA has included a limited exemption from labeling requirements for solid metal. Should this limited exemption be applied to other solid products, such as wood or plastics?

Generic Hazard Communication Program

• Are there administrative actions that OSHA or other agencies of the Federal government can take to reduce the paperwork burden, such as developing a generic hazard communication program?

Computerized Hazard Information Systems

• Are computerized hazard information systems widely available that can assist in reducing the time and resources needed to comply with the paperwork provisions of the Standard?

Coverage of "De Minimis" Exposures

• What would be the practical utility of paperwork provisions for substances or exposure circumstances for which exposures or risks may be "de minimis"? If appropriate, could the paperwork provisions be revised so as to exclude "de minimis" situations?

Impact on Community Right-to-Know

• What will be the paperwork burden and associated costs required for compliance with sections 311 and 312 of

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the Superfund Amendments and Reauthorization Act, following the expansion of scope of the Standard to nonmanufacturers? Does the expansion affect the practical utility of the section 311 and 312 paperwork requirements? Are there regulatory alternatives that OSHA could adopt which would achieve the goals of sections 311 and 312 while reducing the paperwork burdens?

Persons who wish to speak at the public meeting should notify OMB in writing or by telephone at the above number by October 14, and should provide the full names and birthdates of all attendees, as well as an estimate of the time needed. Oral presentations will be limited to 15 minutes for each individual or organization, except under special circumstances. An agenda of the meeting and a list of attendees will be available on October 15. Persons who are unable to attend but who wish to provide comment may do so in writing. Comments, particularly recommendations for alternatives, should be as detailed and specific as possible, and should include supporting data. All written comments should be submitted on or before October 19, 1987, to the following address: Office of Management and Budget; OIRA Docket Library; Room 3201; Washington, DC 20503, Attn: Scott Jacobs.

Joseph R. Wright, Jr.,

Deputy Director.

[FR Doc. 87-22591 Filed 9-29-87; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

File No. 270-94, Rule 17a-11;
File No. 270-25, Rule 15A-1, Forms X-15AJ-1, X-15AJ-2;
File No. 270-35, Rule 17f-2(c);
File No. 270-37, Rule 17f-2(e);
File No. 270-11, Rule 15b3-1;
File No. 270-38, Rule 19b-4 and Form 19b-4;
File No. 270-36, Rule 11Ab2-1 and Form SIP;

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB clearance the following rules and forms under the Securities Exchange Act of 1934:

Rule 17a-11-Supplemental Current Financial and Operational Reports to be made by Certain Exchange Members, Brokers and Dealers. Six hundred respondents incur as estimated average of one hour to comply with the Rule.

Rule 15Aj-1 (17 CFR 240.15Aj-1) and Forms X-15AJ-1 and X-15AJ-2 (17 CFR 249.802 and 803) which provide for registered securities associations to file annual amendments to their registration statements to reflect changes made during the preceding year in the information contained in those statements. One respondent incurs an estimated average of three burden hours to comply with this rule.

Rule 17f-2(c) (17 CFR 240.17f-2(c)) which generally requires registered national securities exchange and registered national securities associations to submit plans for collecting, processing and forwarding fingerprint cards to the FBI. A respondent incurs an estimated average of one burden hour to comply with this rule.

Rule 17f-2(e) (17 CFR 240.17f-2(e)) which generally requires members of national securities exchanges, brokers, dealers, registered transfer agents and registered clearing agencies claiming exemptions from the fingerprint requirement to prepare and maintain a statement supporting their claim for exemption. One respondent incurs an estimated total of one-half burden hour to comply with the rule.

Rule 15b3-1 (17 CFR 240.15c3-3) which requires brokers or dealers to amend the information contained in Form BD whenever such information becomes inaccurate for any reason. One respondent incurs an estimated average of two-thirds of an hour to comply with the rule.

Rule 11Ab2-1 and Form SIP (17 CFR 240.11Ab2-1) which outline the requirements for filing an application to register as an exclusive processor of securities information. One respondent incurs 440 burden hours to comply with this rule.

Submit comments to OMB Desk Officer: Mr. Robert Neal (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

September 25, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22553 Filed 9-29-87; 8:45 am]

BILLING CODE 8010-01-W

[Release No. 34-24942; File No. SR-CBOE-87-38]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Government Securities Options Permits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 13, 1987, the Chicago Board Options Exchange, Inc., ("Exchange") filed with the Securities and Exchange Commission, the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The addition is italicized; there are no deletions.

Additional Government Security Options Permits

Rule 3.22A. The Exchange may issue up to 20 three-year permits for effecting transactions in Government security options settled by physical delivery, since no new permits may be issued under Rule 3.20. All of these permits shall expire three years after [insert date to be set by the Exchange after SEC approval]. These additional permits shall have the same terms as the old permits with the following exceptions. There is no right to purchase a regular membership. No member or member organization may hold more than two permits. A member who is a sole proprietor may employ a nominee to use a permit, with the approval of the Membership Committee. The Membership Committee may withdraw, temporarily or permanently, some or all unused permits.

In addition, the Exchange (1) may provide that the 20 permits described above also enable permit holders to effect transactions as market makers and floor brokers in option contracts on interest rate measures traded on the Exchange and/or (2) may issue up to 75 additional permits on the same terms as the permits described above, except that they shall expire three years after the date trading begins in interest rate measures, which permits would enable permit holders to effect transactions as market makers and floor brokers in option contracts on Government securities and on interest rate measures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to give the Exchange the flexibility to facilitate the development of the exchange's market for the trading of option contracts on interest rate measures, which market is scheduled to open later this year. The proposed permits would have the same terms as those permits recently approved by the SEC in filing SR–CBOE–87–15, except that the proposed permits would expire three years after the date trading begins in interest rate measures. In addition, the Board may provide that the 20 permits that are limited to the trading of government securities option contracts settled by physical delivery be broadened to include option contracts on interest rate measures. The proposed permits are designed to provide inexpensive access in order to attract market-makers and floor brokers to trade a new product, namely, option contracts on interest rate measures. The statutory basis for this proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934, in that the proposed permits are designed to facilitate transactions in option contracts on interest rate measures.

(B) Self-Regulatory Organization's Statement on Burden on Competiton

The proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be approriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 21, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 25, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–22551 Filed 9–29–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24941; File No. SR–NYSE–87–10]

Self-Regulatory Organizations; Amendment to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Trading Review, Investigation and Reporting Requirements, Annual Compliance Reports, Customer Complaint Statistics, and Compliance Official Examination.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 26, 1987, the Exchange filed a proposed rule change (the "March Filing") that, among other changes, amends Rules 342 and 351 to codify, clarify and make explicit certain supervisory and compliance obligations of members and member organizations.[1] Amendment No. 1 makes additional changes to those two rules.

The Exchange proposes to amend proposed rule 342.21 to confine the scope of the review of trades to seeking to identify trades that may violate "the provisions of the Securities Exchange Act of 1934, the rules under that act and the rules of the Exchange prohibiting insider trading and manipulative and deceptive devices." This conforms with the requirements of the "no reasonable cause" statement required by proposed rule 351(e). In addition, the application of the "no reasonable cause" statement to employee trades is narrowed to cover only those trades of a particular quarter actually reviewed.

As discussed in Item II(A) below, the Exchange also makes minor textual changes to proposed rules 342.30 (Annual Reports) and 342.20 (Information Requests).

Finally, the Exchange is amending proposed rule 342.13(b) to provide that the person designated to direct day-to-day compliance activity, as well as any other person who directly supervises ten or more persons engaged in compliance activity, must pass the Compliance Official Qualification Examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

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[1] *See* Securities Exchange Act Release No. 24363 (April 7, 1987), 52 FR 13781.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of Amendment No. 1 is to revise the text of the changes proposed in the March Filing to (a) clarify the Exchange's orginal intent in drafting the proposed rules and (b) reflect practical and drafting suggestions made in comment letters received by the Exchange in response to publication of the proposed rules (the "Comment Letters") and in discussions with the Commission staff. The following paragraphs discuss the key changes.

(a) *Proprietary and employee trading review.* Many of the Comment Letters indicate that their writers (the "Commentators") interpret proposed rule 342.21 to require a review of each and every proprietary and employee trade. In addition, some Commentators objected to reviewing trades for violations of all Federal securities laws. Proposed rule 342.21 has been revised to make clear the Exchange's original intent that the review procedures need not necessarily mandate an examination of every trade, but could use sampling techniques. The proposed rule also conforms the review requirement to the scope of the statement that rule 351(e) requires; i.e., the review seeks to identify trades that may violate "the provisions of the Securities Exchange Act of 1934, the rules under that act and the rules of the Exchange prohibiting insider trading and manipulative and deceptive devices".

In reviewing the consequences of using sampling techniques for the written statement that proposed rule 351(e) requires, it became evident that conceptually the rule 351(e) statement and the sampling technique that could be employed as a review procedure were in tension. Members or member organizations whose sample disclosed no questionable trades could state that they have "no reasonable cause to believe" that a violation had occurred. But how could members or member organizations whose samples disclosed one or more questionable trades do so? If their sampling techniques were valid, they would know that all their trades were questionable in the same proportion as their samples' trades had proven to be. They would likely have to go back and review all their trades in order to make the required statement.

Since the likely practical consequence of the statement requirement was to cause the review of all trades during the first pass, the Exchange determined to address Commentators' concerns about the burden of reviewing trades by reducing the frequency of employee trade reviews.

Amendment No. 1 implements that determination by confining the "no reasonable cause" statement as it applies to employee trades to cover only those trades actually reviewed. An information circular will make clear that each employee account must be reviewed at least once a year. Thus, member or member organizations that uncover one or more questionable employee trades will not then have to review every employee trade of the current quarter to make the required statement.

The Exchange will also use its authority to exclude classes of trades in furtherance of achieving an appropriate balancing of the review burden against the benefits of review. Initially, the Exchange anticipates permitting members and member organizations to exclude proprietary trades of 1000 shares or less so long as their procedures adequately address the possibility of splitting trades into 900-share lots to avoid review.

In addition, the Exchange has amended proposed rule 342.21 to make clear that the accounts that will be subject to review will include the accounts of family members of employees. An information circular will amplify what is meant by family members.

(b) *Annual report.* At the suggestion of the Commentators, the Exchange has revised the language of proposed rule 342.30 to provide for the identification and analysis of future systems and procedures to detect violations of federal securities laws and rules and Exchange rules.

(c) *Information requests.* In response to Commentators' concerns with respect to complying with the Exchange's information requests by specified dates when the nature or volume of a response legitimately requires adjustments, the language of proposed rule 342.20 has been revised to provide that information must be provided by the date required by the Exchange. This makes clear that the Exchange can adjust deadlines for members or member organizations which show reasonable grounds for not meeting the timetable of an information request.

(d) *Compliance official qualification examination.* To make the Exchange's original intent clearer, proposed rule 342.13(b) has been revised to state that the person at a member organization designated to direct day-to-day compliance activity as well as any other person at such organization who directly supervises ten or more persons engaged in compliance activity must pass the Compliance Official Qualification Examination. The Exchange determined that, rather than testing the person or persons with overall responsibility for compliance, the most effective way of promoting responsible compliance activity would be to have (i) the person or persons designated to direct day-to-day compliance activity and (ii) persons directly supervising ten or more persons engaged in compliance activity take the Compliance Official Qualification Examination. While it is desirable that the person or persons with overall responsibility for compliance have a good understanding of the Federal securities laws and rules and the Exchange rules, unless he or she is also the person or persons supervising compliance on a daily basis (which is often not the case at larger member organizations), the provision would miss its mark. The revised text corrects this mistargeting.

(2) *Statutory basis.* As noted in the March filing, the statutory basis for the proposed rule change is section 6(b)(5) of the Act. The NYSE also stated that the rule change also relates to Section 9, 10, and 14 of the Act. See March filing.

B. Self-Regulatory Organization's Statement on Burden on Competition.

As noted in the March filing, the NYSE continues to believe that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

At the time of the March filing the NYSE had received four letters commenting on drafts of the rules included in the proposed rule change.[2] Subsequently, the NYSE received thirteen additional comment letters, which have been filed with the Commission.[3] The NYSE has submitted, at the request of Commission staff, a memorandum to the Division of Market Regulation discussing the thirteen additional comment letters it has received and the Exchanges response.[4]

[2] *See* March Filing for a summary of these comment letters.

[3] The Commission also received five comment letters in response to their publication of the proposal.

[4] Copies of the comment letters and the NYSE's memorandum are available from the Commission at the address noted below in Section IV or from the NYSE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.[5] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications, relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submittted by October 21, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 25, 1987.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 87-22552 Filed 9-29-87; 8:45 am]

BILLING CODE 8010-01-M

[5] The Commission notes that comments received in response to the March filing are presently being considerded, and requests that comments submitted pursuant to the present filing should be limited to the content of the above-described amendments.

[Release No. 34-24939; File No. SR-MSE-86-5]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted on August 14, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder to amend its standards for listing on the Exchange.[1]

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release (Securities Exchange Act Release No. 23564), August 26, 1986) and by publications in the **Federal Register** (51 FR 31862, September 5, 1986). The Commission did not receive any comments on the proposal in response to its solicitation, although the MSE forwarded to the Commission nine comment letters it had received in response to its own solicitation of comments.[2]

Under the MSE's proposed rule change, two new listing requirements would be added to Article XXVIII, Rule 7, of the Rules of the MSE. First, listed companies would be required to maintain a minimum of two independent directors on their board of directors. Second, all listed companies would be required to establish an Audit Committee composed of a majority of independent directors.[3] The Exchange states that these changes have been proposed to help ensure that companies listed on the MSE will continue to maintain their financial integrity and favorable reputation while meeting minimal standards necessary for the protection of investors.

As defined by the MSE's proposed rule, the term independent director would mean "a person, other than an officer or employee of the company or its subsidiaries or any other person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director."[4] The Audit Committee, which the proposed rule requires companies to establish and maintain, would be required to have the majority of its membership composed of independent directors.[5]

Amendment No. 1 to the proposed rule change adds a provision that addresses the application of these revised standards to companies that are currently listed on the MSE. It provides that, upon approval of the proposed rule change, all companies currently listed on the Exchange will be notified of the revised standards and informed that they have two years from the date of such notification to come into compliance with those standards.[6] The

[1] On June 3, 1987, the MSE submitted amendment No. 1 to File No. SR-MSE-86-5. This amendment adds a provision to the proposed rule that sets out procedures under which currently listed companies must come into compliance with the proposed revised requirements.

[2] *See* note 5, *infra.*

[3] The New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex") and the National Association of Securities Dealers ("NASD") have similar requirements for audit committees and independent directors. The NYSE Listed Company Manual, § 303.00, requires domestic listed companies to establish and maintain an Audit Committee comprised solely of independent members of the board of directors. The Amex Company Guide, section 121, recommends that every listed company have at least two independent directors. This provision also recommends that every listed company establish and maintain an Audit Committee composed solely of independent directors. Subdivision D, Schedule D, Part II of the By-Laws of the NASD requires National Market System ("NMS") companies quoted on the NASD's Automated Quotation System ("NASDAQ") to maintain a minimum of two independent directors on their board of directors. In addition, NASDAQ/NMS companies must have an Audit Committee with the majority of its membership made up of independent directors. These requirements were part of a group of corporate governance standards which the Commission recently approved for NASDAQ/NMS companies. *See* Securities Exchange Act Release No. 24633, June 23, 1987, 52 FR 24234, (hereafter "NASDAQ/NMS Release").

[4] The definition of independent director in the proposed MSE rule is similar to the definitions used in the comparable NYSE, Amex and NASD rules. *See* note 3, *supra.* The NYSE rule defines independent director as being independent of management and free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as an audit committee member. Under the NYSE rule, directors who are affiliates of the company or officers or employees of the company or its subsidiaries would not be qualified for audit committee membership.

The Amex rule defines independent directors as directors who are not officers of the company; who are neither related to its officers nor represent concentrated or family holdings; and who, in the view of the company's board of directors, are free from any relationship that would interfere with the exercise of independent judgment.

The recently adopted NASD rule defines independent director as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

[5] MSE issued a notice to its members and listed companies soliciting comments on the proposed rule change on July 12, 1985. Eight of the comment letters received were from companies currently listed on the MSE and one letter was from an MSE member broker-dealer. All of the nine comment letters expressed support for the proposed rule change. The proposed rule change was approved by the Executive Committee of the MSE Board of Governors on July 23, 1986.

[6] There are currently 18 MSE listed companies. Eight of those companies are exclusively listed on

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MSE would require such listed companies to notify the Exchange in writing, within the two year period, of their compliance with the rules. Companies applying for listing after approval of the proposed rule change would be required to comply with the revised standards prior to Exchange approval of their application.[7]

As noted above, the proposed MSE rule change would adopt independent director and audit committee listing standards for MSE listed companies that are similar to standards required by Amex, and NYSE and which were recently adopted, along with a number of other corporate governance requirements, by the NASD for NASDAQ/NMS companies. As the Commission stated in its order approving the adoption of corporate governance standards for NASDAQ/NMS companies, the exchanges have become accepted as sources of fundamental investor protection and therefore it is reasonable for an SRO to continue to set standards affecting minimum investor protection. As noted in the NASDAQ/NMS Release, the establishment of minimum exchange listing and NASDAQ/NMS authorization standards create uniformity that helps to assure investors that all the companies traded in those markets have the fundamental safeguards they have come to expect of major companies.[8] As a consequence of this, investors are spared the costs of evaluating the significance of varying corporate structures in making investment decisions.

The MSE proposal seeks to adopt standards which the Commission understands, and the comments of MSE listed companies indicate, have been met or surpassed by most major U.S. corporations. In addition, the Commission does not believe that compliance with these proposed standards will impose substantial cost burdens on those MSE companies that will need to come into compliance with these new standards. In this regard, the Commission believes that Amendment No. 1 to the proposed rule change grants existing MSE issuers a sufficient period of time to comply wtih the new standards.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder in that they will serve to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 24, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22506 Filed 9-29-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24940; File No. SR-NYSE-87-29]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Order Size of Specialist's "One-Half Point Error Guarantee" (Rule 123A.47(b)) From 1,099 Shares to 2,099 Shares

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amending Rule 123A.47(b)[1] to increase specialists responsibility for errors up to one-half point for Super DOT[2] market, marketable limited price orders and limited price orders from 1,099 shares to 2,099 shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose for adopting Rule 123A.47(b) in October, 1982,[3] was to provide for a more efficient, cost-efficient way of resolving errors in order executions reported through the Super DOT System.[4] Ever since the Designated

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the MSE. The remaining 10 companies are listed on both the MSE and the NYSE and, thus, are already in compliance with the new MSE standards. The MSE's procedures for bringing currently listed companies into compliance with the new standards are similar to the procedures employed by the NASD with the adoption of new corporate governance standards for NASDAQ/NMS companies. The NASD has given existing NASDAQ/NMS companies 18 months from the effective date of the changes (i.e., until February 1, 1989) to come into compliance with their new standards. New companies receiving NASDAQ/NMS designation must be in compliance with the corporate governance standards. *See* Commission's order approving NASDAQ/NMS corporate governance standards, note 3, *supra*, at 5.

[7] The MSE did not solicit comments from members and listed companies on the contents of Amendment No. 1. However, of the eight listed companies commenting on the original proposed rule change, all supported the proposal and four of those companies indicated that they were already in compliance with the proposed standards.

[8] *See* Commission's order approving NYSE requirement for audit committee composed solely of independent directors. Securities Exchange Act Release No. 13346, March 9, 1977, 11 SEC Doc. 1945.

[1] Under Rule 123A.47(b), a specialist guarantees the execution price he reports to member firms via Super DOT, unless the reported price is more than ½ point away from the actual execution price, in which case the actual price is binding.

[2] The NYSE's Super DOT system is an order routing and execution system for market and marketable limited price orders up to a certain size. Currently the size limit for the system is 2,099. Super DOT electronically routes orders from a NYSE Member's office to the specialist in the particular stock on the floor of the NYSE.

[3] *See*, Securities Exchange Act Rel. No. 19366 (December 22, 1982), 47 FR 58420. Under the Rule is a specialist reports an erroneous execution price to a subscribing Super DOT member firm, he absorbs the difference between the erroneous reported price and the actual price, provided the difference is less than one-half point form the actual price. When the difference between the reported price and actual price is greater than one-half point, the specialist is permitted to correct the erroneous price through the Super DOT system; he is not, however, liable for the difference between the reported price and the actual price. In this case, the member firm has the option to either place the transaction in its error account or require the customer to absorb the difference.

[4] According to the Exchange, it costs a member firm an average of $75-$80 per trade to correct an erroneously reported execution price. In addition, reported errors are not corrected immediately; there is usually a lag in correcting erroneously reported prices. During the time lag, member firms usually quote the erroneous price to their customers. The one-half point guarantee provided in Rule 123A.47(b) protects both the member firm and its customer since the specialist aborbs any price

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Order Turnaround ("DOT") System was first introduced, the Exchange has remained sensitive to the needs of its membership constituency to provide a fast, efficient, cost-effective way to send orders to the Floor and receive back execution reports.

As other system enhancements were added, the entire system became known as Super DOT. When the last amendment was made to Rule 123A.47(b) in July, 1985, the average trade size was 1,860 shares.[5] In the first six months of 1987, the average trade size has increased to 2,045 shares.[6]

This request to increase the size of orders that will be subject to the "one-half point error guarantee" requirement contained in Rule 123A.47(b) from 1,099 shares to 2,099 shares directly responds to specific member firm subscriber requests to permit them to obtain the inherent efficiencies of Super DOT for larger orders.

(2) Statutory Basis for the Proposed Rule Change

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that it will ". . . foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, . . ." and section 17A(a)(1) of the Act in that it will enhance "the prompt and accurate clearance and settlement of securities transactions, ..."

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

difference below one-half a point. In addition, the Rule eliminates the cost a member firm would incur if it were to correct the erroneous price.

[5] *See* Securities Exchange Act Rel. No. 22498 (October 2, 1985) 50 FR 41082. The amendment permitted the Exchange to determine the size of market, marketable limited price orders and limited price orders that are subject to the "one-half point error guarantee" provision of Rule 123A.47(b).

[6] NYSE Business Research Department Statistics.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to the file number in the caption above and should be submitted by October 21, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 24, 1987

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22509 Filed 9-29-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16002; 812-6682]

Applications; Prudential-Bache Municipal Bond Fund et al.

September 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Prudential-Bache Municipal Bond Fund ("Fund"), The Prudential Insurance Company of America ("Prudential"), and Prudential Reinsurance Company ("PruRe").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from the provisions of section 17(a), permission for joint transactions under section 17(d) and Rule 17d-1 thereunder, and an exemption under section 6(c) for prospective relief.

Summary of Application: Applicants seek an order to allow its Insured Series, and any other series of the Fund that may be established in the future having an investment objective and investment policies and restrictions that are substantially similar to those of the Insured Series ("Future Insured Series"), to purchase the portfolio insurance coverage described herein from an affiliate and to accept full settlements arising from claims made upon the insurance.

Filing Date: The application was filed on April 10, 1987, and amended on September 11, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 19, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Prudential-Bache Municipal Bond Fund, One Seaport Plaza, New York, New York 10292. The Prudential Insurance Company of America, Prudential Plaza, Newark, New Jersey 07101. Prudential Reinsurance Company, 100 Mulberry Street, Newark, New Jersey 07102.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-2190 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copies who can be

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contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. Prudential is the investment adviser of the Fund, an open-end, diversified, management investment company registered under the 1940 Act. The Fund currently consists of three separate series; additional series may be added in the future. The investment objective of the Insured Series of the Fund is to provide the maximum amount of income that is eligible for exclusion from federal income taxes consistent with the preservation of capital, and this objective is to be achieved, *inter alia*, through investing in municipal obligations that are insured. This insurance may be either "New Issue Insurance" obtained by the issuer or underwriter of a municipal bond or note at the time of issuance, "Secondary Market Insurance" on a particular municipal bond or note purchased by the Insured Series or a previous bondholder or noteholder, or "Portfolio Insurance" maintained by the Insured Series. Unlike New Issue or Secondary Market Insurance (which continues in force for the life of the municipal obligation), Portfolio Insurance covers obligations only while held by the Insured Series.

2. New Issue, Portfolio and Secondary Market Insurance may be obtained from AMBAC Indemnity Company ("AMBAC"), among other unaffiliated insurers, (each an "Insurer") guaranteeing the scheduled payment of principal and interest on certain securities while in the portfolio of the Insured Series. In selecting an Insurer, consideration is given to the insurance premium rates charged, the capacity or allocation of insurance made available for a given issuer, ratings given to an Insurer by a nationally recognized rating agency, and the level of service provided by and reputation of an Insurer.

3. PruRe reinsures, in part, AMBAC's insurance obligations on an excess of loss basis to protect against catastrophic losses incurred by AMBAC for all of AMBAC's financial guaranty policies. Since PruRe's reinsurance applies to New Issue, Secondary Market and Portfolio Insurance written for the Insured Series and other bond funds, PruRe's interest is not limited solely to those losses which may be experienced by the Insured Series. However, PruRe is one of five reinsurers that are parties to a reinsurance treaty with AMBAC that provides for reinsurance of $30 million in excess of $200 million only after all of AMBAC's first layer reinsurance has been used. Because the Insured Series is expected to generate a portfolio of municipal obligations of several hundred million dollars, the reinsurance policy limits provided by PruRe on the aggregate loss cover are not anticipated to be greater than 10% of the Insured Series' portfolio of municipal obligations for which Portfolio or Secondary Market Insurance has been obtained. Further, PruRe has never been called upon to pay under the reinsurance treaty with AMBAC, which has been in effect approximately four and a half years.

4. The premiums on any policy of Portfolio or Secondary Market Insurance will be paid by the Insured Series directly to an Insurer and, by virtue of the Insurer's reinsurance arrangement, indirectly to PruRe or another affiliate of Prudential providing reinsurance to that Insurer. Insurance premiums on New Issue Insurance are typically paid for by the issuer of or the obligor on a municipal obligation; the Insured Series indirectly pays for the insurance through the price it pays for the security.

5. The proposed insurance would involve the payment by the Insured Series to Insurers of premium rates determined by the Insurers within a rate framework applicable to all mutual funds and filed with applicable state insurance regulatory authorities based upon an Insurer's determination of the creditworthiness of the issuers of the municipal obligations, the risk of default by such issuers, the potential liability arising from insuring such issues, and the demand of mutual funds to apply for such insurance. Neither the Fund, Prudential nor PruRe will have any role in setting such rates. The insurance premiums paid to the Insurers and the level of insurance coverage obtained by the Insured Series will be negotiated at arm's length and will not be directly affected by an unrelated Insurer's reinsuring with an affiliate of Prudential.

6. The premium rates for each issue of municipal bonds, notes or other securities protected by a policy obtained by the Insured Series are irrevocably fixed by the terms of the insurance. The premium for Secondary Market Insurance on municipal obligations for which the Insured Series has purchased Portfolio Insurance is determined at the time the Insured Series purchases the Portfolio Insurance, and the premium will not be paid at the time of sale to another holder unless it increases the net sale price of the security. In addition, the Portfolio Insurance will be non-cancellable and will remain in force as long as the Insured Series exists and the premium is paid, the Insurer is in business and the securities continue to be held by the Insured Series. Further, the Secondary Market Insurance and New Issue Insurance will also be non-cancellable and will remain in force as long as the Insurer is in business and the securities insured thereby remain outstanding. The Insured Series will not participate in the proposed Portfolio Insurance unless the Fund is entitled to charge such Insured Series for the expense of the required Portfolio Insurance premium. Premiums paid for Secondary Market Insurance will be treated as capital costs by the Fund, which will increase the cost basis of the investment, and thereby reduce the effective yield of the investment.

7. If there is a payment default on an obligation held by the Insured Series, once an Insurer makes the required payment the Insured Series will be in the same position it would have been in had there been no default. Furthermore, the Insurer's obligation to pay the principal of and interest on a security is fixed regardless of the identity of the shareholder, thus preserving the fairness of the transaction.

Applicants' Legal Conclusions:

1. Prudential, the Fund's investment adviser, is an "affiliated person" of the Fund under section 2(a)(3)(E) of the 1940 Act. PruRe is an "affiliated person" of Prudential under section 2(a)(3)(C) of the 1940 Act. Therefore, PruRe may be deemed an "affiliated person of an affiliated person" of the Fund for purposes of the prohibitions in sections 17(a) and 17(d) of the 1940 Act against transactions by a registered investment company and affiliates thereof. Applicants request an order under section 17(b) of the 1940 Act to the extent that the proposed reinsurance of the Insured Series by PruRe might be deemed to be the sale of property to the Insured Series. Applicants also request an order under section 17(b) of the 1940 Act to the extent that, in the event of a payment default on a security held by the Insured Series and covered by a policy of New Issue, Portfolio or Secondary Market Insurance, the Insured Series acquires rights to payments under such policy by an Insurer and the making of payments under the reinsurance to an Insurer by PruRe might be deemed the purchase of securities from the Insured Series. To the extent that the reinsurance of Portfolio or Secondary Market Insurance might be considered to involve a joint transaction, Applicants request an order under Rule 17d–1 of the 1940 Act to permit PruRe to reinsure Portfolio Insurance and Secondary Market Insurance for the Insured Series. Applicants further request an order

under section 8(c) of the 1940 Act from the application filing requirements of section 17(b) and Rule 17d–1 to permit the Insured Series, as well as any Future Insured Series of the Fund, to purchase municipal obligations insured by AMBAC and any other unaffiliated Insurer whose insurance obligations are reinsured by PruRe or any other affiliated person of Prudential.

2. The order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Also, the proposed transactions will be reasonable and fair, will not involve overreaching on the part of any person concerned, will be consistent with the investment policy of the Insured Series, and no party will be disadvantaged by any Insured Series purchasing insurance from AMBAC of any other Insurer, whose insurance obligations are reinsured by PruRe or any affiliate of Prudential. The terms of the reinsurance between PruRe and an Insurer will be negotiated at arm's length and will not directly involve the Fund or any series thereof. The Fund will pay premium rates to Insurers that are fixed in nature, easily ascertainable and comparable to the rates paid by other mutual funds for the same or similar coverage, so no party will be disadvantaged by the Fund purchasing insurance from an Insurer. PruRe has not been established solely for the purpose of effecting the proposed transactions.

Applicants' Conditions:

If the requested order is granted, Applicants agree to the following conditions:

1. If the Fund selects an Insurer (i.e., an unaffiliated insurer whose obligations are reinsured by PruRe or any other affiliate of Prudential), the selection will be in the best interests of the Fund.

2. Applicants will seek an amended order prior to such time as PruRe determines to reinsure the obligations of an affiliated insurer that insures municipal obligations that may be purchased by the Fund.

3. Each Insured Series will not settle any claim under Portfolio Insurance provided by an Insurer for less than full payment without obtaining a further exemptive order or other relief from the SEC.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–22508 Filed 9–29–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24464]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Magnolia Power Co. et al.

September 24, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 19, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

Monongahela Power Company, et al. (70–7300)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, wholly owned electric-utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b) and 7 and Rule 50 thereunder.

By order dated June 12, 1987 (HCAR No. 24410), Monongahela, Potomac and West Penn were authorized to issue and sell from time to time through December 31, 1987, pursuant to the alternative competitive bidding procedures, their first mortgage bonds in maximum aggregate principal amounts of $115 million, $110 million, and $35 million, respectively. On July 1, 1987, Monongahela issued and sold $40 million of its bonds. No other bonds have yet been sold. Because the companies intend to redeem certain of their currently outstanding first mortgage bonds with all but $40 million of the proceeds from the issuance and sale of the bonds, and because interest rates may not decline sufficiently during 1987 to permit such redemptions, the applicants-declarants now request authorization for Monongahela to issue and sell up to $75 million and West Penn up to $35 million of remaining bonds, through December 31, 1988.

GPU Service Corporation, et al. (70–7429)

GPU Service Corporation ("Service Company") and General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07960, have filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

Service Company proposes to enter into a revolving credit agreement ("Credit Agreement") with the Bank of New York ("Bank") under which Service Company would issue to the Bank from time to time until September 30, 1990, Service Company's unsecured promissory notes ("Notes") in an aggregate principal amount of up to $15.4 million at any one time outstanding. Each Note would mature not less than 30 days and not more than one year from its date of issuance, and would bear interest, at the election of Service Company, at a rate set by using any one of four rate-setting methods. The Credit Agreement provides that GPU will unconditionally guarantee Service Company's payments of principal and interest on the Notes and other obligations under the Credit Agreement.

Alabama Power Company (70–7431)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32501, and Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, wholly owned subsidiaries of The Southern Company, a registered holding company, and Southern Electric Generating Company ("SEGCO"), 600 North 18th Street, Birmingham, Alabama 35291, a subsidiary of Alabama and Georgia,

have filed a declaration pursuant to section 12(c) of the Act and Rule 42 thereunder.

The companies propose, at any time or from time to time through December 31, 1992, to acquire and retire their first mortgage bonds and preferred stock, as well as pollution control or industrial development revenue bonds issued by public bodies for their benefit, up to the respective aggregate amounts indicated in the following table:

	First mortgage bonds (principal amount) $ millions	Preferred stock (par or stated value $ millions	Revenue bonds (principal amount) $ millions
Alabama	225	30	315
Georgia	1,110	240	1,365
Gulf	75	10	125
Mississippi		10	
SEGCO	9		20

The proposed transactions in which such securities are to be acquired may include purchases on the open market, purchases in privately negotiated transactions, and acquisitions pursuant to tender or exchange offers to the then current holders in which the consideration offered consists of cash, first mortgage bonds, preferred stock or revenue bonds (as the case may be) of a newly issued series, or a combination thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22507 Filed 9-29-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Senior Executive Service Performance Review Boards; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's Senior Executive Service Performance Review Boards.

SUMMARY: Public Law 95-454 dated October 13, 1978, (Civil Service Reform Act of 1978) requires that Federal agencies publish notification of the appointment of individuals who serve as members of that agency's Performance Review Board (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. John R. Cox, Associate Administrator, for Business Development
2. Charles Freeman, Regional Administrator, New York
3. Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance
4. William A. Powell, Regional Administrator, Kansas City
5. Lawrence R. Rosenbaum, Comptroller
6. Richard L. Osbourn, Director of Personnel, (Non-voting Technical Advisor)
7. George H. Robinson, Director of Equal Employment Opportunity and Compliance (Non-voting Equal Employment Advisor)
8. Martin D. Teckler, Deputy General Counsel
9. Thomas Topuzes, Regional Administrator, San Francisco
10. Janice E. Wolfe, Deputy Associate Administrator for Management Assistance (SBDC)
11. Lawrence J. Dempsey, Assistant Inspector General for Investigations, General Services Administration
12. Paul F. Gibbons, Inspector General, Federal Home Loan Bank Board.

James Abdnor,

Administrator.

September 25, 1987.

[FR Doc. 87-22575 Filed 9-29-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1119]

Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 22, 1987 at 9:30 a.m. in Conference Room 6802, Department of Commerce, 14th and Constitution Avenue NW., Washingotn, DC.

Study Group 1 deals with matters relating to efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing, taking into account the attainable characteristics of radio equipment and systems; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting is to continue the plan of work for the Study Group during the 1986-1990 period.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

Date: September 17, 1987.

[FR Doc. 87-22444 Filed 9-29-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-9-57]

Fitness Determination of WRA, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 87-9-57, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that WRA, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: September 24, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-22530 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Compatibility Program; Lambert-St. Louis International Airport; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its findings on the noise compatibility program submitted by the city of St. Louis Airport Authority under the provisions of Title I of the Aviation

Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On April 29, 1987, the FAA determined that the noise exposure maps submitted by the city of St. Louis Airport Authority under Part 150 were in compliance with applicable requirements. On August 23, 1987, the Administrator approved the Lambert-St. Louis International Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Lambert-St. Louis International Airport noise compatibility program is August 23, 1987.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Ornes, ACE–615B, Federal Aviation Administration, Airports Division, 601 E. 12th St., Kansas City, Missouri 64106, Telephone No. (816) 374–6614. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Lambert-St. Louis International Airport, effective August 23, 1987.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability or unacceptability of that land use under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program, nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

The city of St. Louis Airport Authority submitted to the FAA on February 17, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 1986 through June 1987. The Lambert-St. Louis International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on April 29, 1987. Notice of this determination was published in the **Federal Register** on May 11, 1987.

The Lambert-St. Louis International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 29, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 17 proposed actions for noise abatement and mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 23, 1987.

Outright approval was granted for all of the specific program elements. Noise abatment measures include re-evaluation and adjustment of noise monitoring sites, continuation of existing informal, voluntary noise abatement procedures, and restrictions on engine test run-ups and night-time powerbacks. Also included are actions by the sponsor to support noise related legislation and oppose continued use of stage 1 aircraft. Noise mitigation measures involve elimination or control of imcompatible land uses by continuation of existing acquisition or acoustical treatment programs, rezoning and adoption of fair disclosure ordinances as spelled out in detail in the Record of Approval.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 23, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices for the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri, on September 14, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–22580 Filed 9–29–87; 8:45 am]

BILLING CODE 4910–13–M

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Noise Compatibility Program and Request for Review; Palm Springs Municipal Airport; Palm Springs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its determination that the Noise Exposure Maps submitted by the city of Palm Springs, California for the Palm Springs Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and the 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas J. Conley, Environmental Protection Specialist, AWP–611.3, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297–1621.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for the Palm Springs Municipal Airport, Palm Springs, California, are in compliance with applicable requirements of Part 150, effective August 24, 1987.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), Part 150, promulgated pursuant to Title 1 of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by the city of Palm Springs, on June 30, 1986. The specific maps under consideration are 4E and 4F in the submission. The FAA has determined that the Noise Exposure Maps for the Palm Springs Municipal Airport are in compliance with applicable requirements. This determination is effective on August 24, 1987. The FAA's determination on an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by provisions of section 107 of the Act. These functions are inseperable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of the FAR Part 150, that the statutorily required consultation has been accomplished. Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC. 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Boulevard, Room 6E25, Hawthorne, California 90261

Mr. Allen Smoot, Director of Transportation & Energy, P.O. Box 1786, Palm Springs, California 92263–1786.

Questions may be directed to the individual named above under the heading, for further information contact.

Issued in Hawthorne, California, on September 2, 1987.

James J. Wiggins,

Manager, Airport Planning & Programming Branch, Western-Pacific Region.

[FR Doc. 87–22470 Filed 9–29–87; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–814]

Application for a Waiver of Section 804 of the Merchant Marine Act, 1936, as Amended To Permit the Charter of Two Foreign-flag Vessels, American President Lines, Ltd.

American President Lines, Ltd. (APL), by application of September 17, 1987, requests a waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended (Act), so as to permit APL to charter two foreign-flag vessels to be deployed between ports in the Philippine Islands and Hong Kong and/or Kaohsiung.

APL plans to charter two foreign-flag self-sustaining vessels each of approximately 400 TEU capacity, principally to carry canned and fresh pineapple from the Philippines to destinations on Trade Route 29. The vessels would be deployed in a weekly service from the Philippines to Hong Kong at the present time and later, if circumstances warrant, Kaohsiung. APL wishes to charter the vessels for a period of approximately one year.

APL advises that in addition to the carriage of pineapple, it would make space available for other cargoes that may be offered, but the principal purpose would be for pineapples. Currently, no U.S.-flag service is offered in this trade except for APL's PRESIDENT KENNEDY shuttle, but this service would continue whether or not APL is successful in obtaining the pineapple contract.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC. 20590. Comments must be received no later than 5:00 P.M. on October 9, 1987. This notice is published

as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By Order of the Maritime Administrator
Date: September 25, 1987.

James E. Saari,

Secretary.

[FR Doc. 87-22502 Filed 9-29-87; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW, Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0415.
Form Number: W-4P.
Type of Review: Revision.
Title: Withholding Certificate for Pension or Annuity Payments.
Description: Used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.
Respondents: Individuals or households.
Estimated Burden: 2,496,204 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Comptroller of the Currency

OMB Number: 1557-0057.
Form Number: CC 7021-01 and CC 7027-01.
Type of Review: Extension.
Title: Establishment of Domestic Branches, Seasonal Agencies and CBCT's.
Description: This collection of information contains data needed to evaluate applications.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 3,425 hours.
OMB Number: New.
Form Number: G-Fin: G-Fin-W..
Type of Review: New Collection.
Title: Registration and Withdrawal of Government Securities Brokers and Dealers.
Description: The Government Securities Act of 1986 requires all financial institutions that act as government securities brokers and dealers to notify designated Federal regulatory agencies of their broker/dealer activities, unless exempted from the notice requirement by Treasury Department regulations. These forms are developed to meet the requirement of the act.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 250 hours.
Clearance Officer: Eric Thompson, (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Robert Fishman, (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-22526 Filed 9-29-87; 8:45 am]

BILLING CODE 4810-25-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on October 27 and 28, 1987 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies, Securities Committee.

The agenda for the Public Securities Association, U.S. Government and Federal Agencies Securites Committee meeting provides for a working session on October 27 and the preparation of a written report to the Secretary of the Treasury on October 28, 1987.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commerical and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commerical or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Charles O. Sethness,

Assistant Secretary (Domestic Finance).

[FR Doc. 87-22504 Filed 9-29-87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 87-105]

Revocation of Individual Broker's License No. 5502; Robert J. Fusco

AGENCY: Customs Service, Treasury.

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ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury, on July 15, 1987, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), revoked the individual broker's license No. 5502 issued to Robert J. Fusco, New York, in January 1976. The decision is effective as of September 15, 1987.

Dated: September 23, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87-22525 Filed 9-29-87; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 189
Wednesday, September 30, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR FR 35608, September 22, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday September 28, 1987.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed statement to be presented to the House Subcommittee on Financial Institutions Supervision, Regulation and Insurance on proposals to establish a secondary market for agricultural loans.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: September 28, 1987.

James McAffee,

Associate Secretary of the Board.

[FR Doc. 87–22666 Filed 9–28–87; 3:19 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–87–36]

TIME AND DATE: Monday, October 5, 1987 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Marine Automatic Pilots and Components Thereof (Docket Number 1418)
5. FY 89 Budget
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161

Kenneth R. Mason,

Secretary.

September 24, 1987.

[FR Doc. 87–22585 Filed 9–25–87; 5:07 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–87–37]

TIME AND DATE: Wednesday, October 14, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Programmable Digital Clock Thermostats (Docket Number 1419)
5. Inv. 731–TA–384 (P) (Nitrile Rubber from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason

Secretary.

September 24, 1987.

[FR Doc. 87–22586 Filed 9–25–87; 5:07 pm]

BILLING CODE 7020–02–M

NEIGHBORHOOD REINVESTMENT CORPORATION

TIME & DATE: 2:00 p.m.—Tuesday, October 6, 1987.

PLACE: 1325 G Stret, NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376–2623.

AGENDA:

I. Call to Order and Remarks of Chairman
II. Approval of Minutes, June 17, 1987
III. Budget Committee Report
—Approval of FY 1988 Line Item Budget
—Approval of Enhanced Level of FY 1989 Budget Submission to OMB
IV. Executive Director's Activity Report
V. Annual Appointment of Audit Committee
VI. Treasurer's Report

Carol J. McCabe,

Secretary.

[FR Doc. 87–22672 Filed 9–28–87; 3:57 pm]

BILLING CODE 7570–01–M

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Corrections

Federal Register
Vol. 52, No. 189
Wednesday, September 30, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Revision of User Fees for Cotton Classification, Testing, and Standards

Correction

In rule document 87-21467 beginning on page 35215 in the issue of Friday, September 18, 1987, make the following corrections:

1. On page 35217, in the second column, in the table, in entry "3.5c" in the second column, "14.0c.5c" should read "14.0c".

§ 28.956 [Corrected]

2. On page 35220, in § 28.956, in the first column, in the table, in entry "9.0", in the second column, in the second line, "gainned" should read "ginned".

PART 61—[CORRECTED]

3. On page 35221, in the first column, under amendatory instruction 16, in the authority, in the second line, "(7 U.S.C. 1624, unless)" should read "(7 U.S.C. 1624) unless".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Correction

In notice document 87-21781 appearing on page 35564 in the issue of Tuesday, September 22, 1987, make the following correction:

In the second column, under *Time and place:*, in the second line, "at the Washington Blvd." should read "at the Sheraton National Hotel, Columbia Pike and Washington Blvd."

BILLING CODE 1505-01-D

federal register

Wednesday
September 30, 1987

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107 et al.

Hazardous Materials, Editorial Corrections and Clarifications; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 175, 177, 178, and 179

[Docket No. HM-189E, Amdt. Nos. 107-17, 171-95, 172-111, 173-204, 775-41, 177-71, 178-89, and 179-41]

Hazardous Materials; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Hazardous Materials Regulations (HMR) is to correct certain editorial errors and to make minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Ann Boylan, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, RSPA performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in Title 49, Code of Federal Regulations (CFR), Parts 100 through 199, revised as of October 1, 1986, include typographical errors, incorrect references to other rules and regulations in the CFR and misstatements of certain regulatory requirements. Additionally, in response to inquiries which RSPA received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, these amendments are effective without the customary 30-day delay following publication. This will allow these changes to appear in the next revision of 49 CFR.

The RSPA has determined that this rule, as promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment was not prepared, as these amendments are not substantive changes to the HMR.

Based on limited information available concerning the size and nature of entities likely to be affected by these amendments, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

The following is a section-by-section summary of the amendments:

Appendix A to Subpart B of Part 107. The address for the Office of Motor Carriers is changed to read: "Chief, Field Programs Division, Office of Motor Carrier Safety Field Operations, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day 202-366-1975 and Night 202-267-2100."

Section 107.315(c). Civil penalty payments are no longer remitted to the Chief Counsel's office. Certified checks or money orders are made payable to the "Department of Transportation" and sent to: Chief, General Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Sections 171.7 (c)(21) and (c)(31). In paragraph (c)(21), the address for the American Welding Society is changed to read "550 N.W. Le Jeune Road, Miami, Florida 33126." In paragraph (c)(31), the address for INTEREG is changed to read, "4000 West Victoria Avenue, Chicago, Illinois 60646."

Section 171.8. The definition of "reportable quantity" is revised to read: "Reportable quantity (RQ) for the purposes of this subchapter means the quantity specified in Column 3 of the Appendix to § 172.101 for any material identified in column 1 of the Appendix." This change is necessary to correspond to amendments made under Docket HM-145F in final rules published in the **Federal Register** on November 21, 1986 [51 FR 42174] and February 17, 1987 [52 FR 4824].

Section 172.101. In column 5(b) of § 172.101, "173.316" is added for the proper shipping name "Air, refrigerated liquid, (*cryogenic*)," In column 4 of § 172.101, the word "liquid" is added following "Flammable", for the proper shipping name "Ethylene glycol diethyl ether." These changes are necessary to correct omissions made under Docket HM-166U final rule published in the **Federal Register** on April 20, 1987 [52 FR 13034].

Section 172.102. The shipping name "N,N-Diethylene diamine", is corrected to read "N,N-Diethylethylene diamine", UN 2685. The shipping name "Dicyclohexylammonium nitrate" is corrected to read "Dicyclohexylammonium nitrite", UN 2687. (This correction is also made in Appendix A to Subpart B.)

Section 172.400. In paragraph (c) the reference to "MAGNETIZED MATERIAL labels" is removed. The MAGNETIZED MATERIAL label which appeared in § 172.446 was removed under Docket HM-166S final rule published in the **Federal Register** on November 25, 1985 [50 FR 48419].

Section 172.510. Paragraph (b) is removed and reserved. The tank cars which required a DOME placard are no longer in service.

Section 172.512. Paragraph (a)(1) erroneously refers to § 172.504(c)(1). The correct reference is § 172.504(c).

Section 173.34. In note 1 of paragraph (e)(9), "method of external" should read "method or external".

Section 173.115. In paragraph (b)(2)(ii), the typographical error "-his subchapter" is corrected to read "this subchapter."

Section 173.253. In paragraph (a)(2), "Spec. IM" is corrected to read, "Spec. 1M".

Section 173.271. In paragraph (a)(7), the typographical error "Speification" is corrected to read "Specification". In paragraph (a)(9), on the second line, "111A00F2" is corrected to read "111A100F2".

Section 173.272. In paragraph (i)(2), "test requirements prescribed in § 178.219-10" is corrected to read "test requirements in § 178.210-10".

Section 173.294. In paragraph (a), line 1, the word "monochloroacetic" is corrected to read "chloroacetic". In paragraph (a)(3), line 6 should read "304 or 316".

Section 173.304. In paragraph (a)(4), the word "without" is corrected to read "with the".

Section 173.386. In paragraph (d), the typographical error "zgquirements" is corrected to read "requirements".

Section 173.421-1. In paragraph (a), reference to "§ 173.425" is corrected to read "§ 173.424".

Section 173.427. In paragraph (a), reference to § 173.421 (b), (c), and (d)" is corrected to read "§ 173.421 (b), (c) and (e)".

Section 175.31 In paragraph (a), the office designation "FAA Air Transportation Security Field Office" is changed to "FAA Civil Aviation Security Office".

Section 177.824. In paragraph (f), the language is changed to reflect the recent reorganization within the Office of Motor Carriers, which consolidates the hazardous materials functions into the Office of Motor Carrier Safety Field Operations.

Section 177.825 In paragraph (b)(1), the introductory language is changed to read: "A preferred route consists of either or both:" to indicate that a preferred route need not consist of both an interstate highway and a state-designated route. In line 16 of paragraph (c), the typographical error of "shippper" is corrected to "shipper".

Section 177.861. In paragraph (a), line 10, a comma is inserted following the word "buildings" to read: "buildings, * * *."

Section 178.54. The entire DOT 4B240–FLW specification contained in §§ 178.54 through 178.54–23 is removed and reserved. Section 178.54 for 4B240 cylinders was removed from Part 178 under Docket HM–166U final rule published in the **Federal Register** on April 20, 1987 [52 FR 13034]. The amendment is being reprinted in this document to ensure the removal of all applicable sections.

Section 178.135–8. Paragraph (a)(1) is amended to include an example of the specification markings on a DOT–37C drum.

Section 179.3. In paragraph (c), the last line is changed from "DOT Special Permits" to read "exemptions".

Section 179.4. In paragraph (a), "special permit" is changed to read "exemptions".

Section 179.103–5. As amended under Docket HM–166U final rule, paragraph (b)(1), line 12, the word "value" is corrected to read "valve".

Section 179.222. This section was added under Docket HM–166U final rule. The section heading "§ 179.222 *Chloroprene*" is correctly designated "§ 179.222–1 *Chloroprene.*"

List of Subjects

49 CFR Part 107

Hazardous materials, Program procedures.

49 CFR Part 171

Hazardous materials transportation, Incorporated by reference.

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 177

Hazardous materials transportation, Carriage by public highway.

49 CFR Part 178

Hazardous materials transportation, Shipping container specifications.

49 CFR Part 179

Hazardous materials transportation, Specifications for tank cars.

In consideration of the foregoing, 49 CFR Parts 107 through 179 are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53 and App. A of Part 1, Pub. L. 89–670 (49 U.S.C. 1653(d), 1655).

Appendix A to Subpart B of Part 107 [Amended]

2. The address for the Office of Motor Carriers in Appendix A to Subpart B of Part 107 is changed to read as follows:

Chief, Field Programs Division, Office of Motor Carrier Safety Field Operations, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day 202–366–1975 and Night 202–267–2100.

3. Paragraph (c) of § 107.315 is revised to read as follows:

§ 107.315 [Amended]

* * * * *

(c) Payment of a civil penalty must be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for Part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§ 171.7 [Amended]

5. In paragraph (c)(21) of § 171.7, the address for the American Welding Society is changed to read "550 N.W. LeJeune Rd., Miami, Florida 33126." In paragraph (c)(31) of § 171.7, the address for INTEREG is changed to read, "4000 West Victoria Avenue, Chicago, Illinois 60646".

6. In § 171.8, the definition for "reportable quantity" is revised to read as follows:

§ 171.8 [Amended]

* * * * *

"Reportable quantity (RQ)" for the purposes of this subchapter means the quantity specified in Column 3 of the Appendix to § 172.101 for any material identified in Column 1 of the Appendix.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

7. The authority citation for Part 172 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

8. In the § 172.101 Hazardous Materials Table:

a. "§ 173.316" is added in column 5(b) for the proper shipping name "Air, refrigerated liquid (*cryogenic*)."

b. The word "liquid" is added following the word "Flammable" in column 4 for the proper shipping name "Ethylene glycol diethyl ether".

§ 172.102 [Amended]

9. In the § 172.102 Optional Hazardous Materials Table:

a. The shipping name "N,N-Diethylene diamine" is corrected to read "N,N-Diethylethylene diamine", UN 2685.

b. The shipping name "Dicyclohexylammonium nitrate" is corrected to read "Dicyclohexylammonium nitrite", UN 2687.

§ 172.400 [Amended]

10. In paragraph (c) of § 172.400, the words "or the MAGNETIZED MATERIAL label" are removed.

Appendix A to Subpart B [Amended]

11. In Appendix A to Subpart B, the shipping name "N,N-Diethylene diamine" is corrected to read "N,N-Diethylethylene diamine", UN 2685.

In Appendix A to Subpart B, the shipping name "Dicyclohexylammonium nitrate" is corrected to read "Dicyclohexylammonium nitrite", UN 2687.

§ 172.510 [Amended]

12. Paragraph (b) of § 172.510 is removed and reserved.

§ 172.512 [Amended]

13. In paragraph (a)(1) of § 172.512, reference to "§ 172.504(c)(1)" is corrected to read "§ 172.504(c)".

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PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for Part 173 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

§ 173.34 [Amended]

15. In note 1 of paragraph (e)(9) of § 173.34, "method of external" is corrected to read "method or external".

§ 173.115 [Amended]

16. In paragraph (b)(2)(ii) of § 173.115, the typographical error "-his subchapter" is corrected to read "this subchapter."

§ 173.253 [Amended]

17. In paragraph (a)(2) of § 173.253, "Spec. IM" is corrected to read "Spec. 1M".

§ 173.271 [Amended]

18. In § 173.271, paragraph (a)(7), the typographical error of "Speification" is corrected to "Specification". In paragraph (a)(9), "111A00F2" is corrected to read "111A100F2".

§ 173.272 [Amended]

19. In paragraph (i)(2) of § 173.272, reference to "§ 178.219–10" is corrected to read "§ 178.210–10".

§ 173.294 [Amended]

20. In the first line of paragraph (a) of § 173.294, the word "Monochloroacetic" is corrected to read "Chloroacetic". In paragraph (a)(3), line 6, "304 of 316" is corrected to read "304 or 316".

§ 173.304 [Amended]

21. In the introductory text to paragraph (a)(4) of § 173.304, the word "without" is corrected to read "with the".

§ 173.386 [Amended]

22. In paragraph (d) of § 173.386, the typographical error "zgquirements" is corrected to read "requirements".

§ 173.421–1 [Amended]

23. In the first sentence of paragraph (a) of § 173.421–1, reference to "§ 173.425" is corrected to read "§ 173.424".

§ 173.427 [Amended]

24. In paragraph (a) of § 173.427, reference to "§ 173.421 (b), (c) and (d)" is corrected to read, "§ 173.421 (b), (c) and (e)".

PART 175—CARRIAGE BY AIRCRAFT

25. The authority citation for Part 175 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1807, 1808; 49 App. U.S.C. 1472(h) (1); 49 CFR Part 1, unless otherwise noted.

§ 175.31 [Amended]

26. In paragraph (a) of § 175.31, the office designation "FAA Air Transportation Security Field Office" is changed to "FAA Civil Aviation Security Office".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

27. The authority citation for Part 177 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

28. The introductory text of paragraph (f) of § 177.824 is revised to read as follows:

§ 177.824 [Amended]

* * * * *

Reporting requirements. Each motor carrier shall file with the Chief, Federal Programs Division, Office of Motor Carrier Safety Field Operations, Federal Highway Administration, Department of Transportation, Washington, DC 20590, a written listing of all MC 330 or MC 331 cargo tanks he has in service. Each motor carrier, upon placing in service or withdrawing from service any MC 330 or MC 331 cargo tank (other than a cargo tank used in interchange service which is reported upon by another motor carrier), shall file a supplemental report with the Office of Motor Carrier Safety Field Operations.

* * * * *

§ 177.825 [Amended]

29. In paragraph (b)(1) of § 177.825, the introductory text is revised to read: "A preferred route consists of either or both:". In paragraph (c), line 16, the typographical error of "shippper" in line 16 is corrected to read "shipper".

§ 177.861 [Amended]

30. In paragraph (a) of § 177.861, line 10 is corrected by adding a comma after the word "buildings".

PART 178—SHIPPING CONTAINER SPECIFICATIONS

31. The authority citation for Part 178 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

§§ 178.54 through 178.54–23 [Removed and Reserved]

32. Sections 178.54 through 178.54–23 are removed and reserved.

33. In § 178.135–8, paragraph (a)(1) is revised to read as follows:

§ 178.135–8 Marking.

(a) * * *

(1) DOT–37C*** and the letters NRC, located near the DOT mark to indicate a nonreusable drum. Stars are to be replaced by the authorized gross weight, or less, at which the container was type tested (for example, DOT–37C 80).

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

34. The authority citation for Part 179 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

§ 179.3 [Amended]

35. In paragraph (c) of § 179.3, line 10, the phrase "DOT Special Permits" is replaced with the word "exemptions".

§ 179.4 [Amended]

36. In paragraph (a) of § 179.4, line 11, "special permit" is changed to read "exemptions".

§ 179.103–5 [Amended]

37. In paragraph (b)(1) of § 179.103–5, line 12, "value" is corrected to read "valve".

§ 179.222–1 [Correctly Designated]

38. Section 179.222 *Chloroprene* is correctly designated "§ 179.222–1 *Chloroprene*".

Issued in Washington, DC, on September 24, 1987 under authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–22411 Filed 9–29–87; 8:45 am]

BILLING CODE 4910–60–M

Wednesday
September 30, 1987

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 30

Federal Acquisition Regulation; Incorporation of Cost Accounting Standards; Correction

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AGENCIE
(DOD), G
(GSA), a
Space A

ACTION:

SUMMAR
final rule
(FAC) 84
Register
(52 FR 35

DEPARTMENT OF DEFENSE

GENERAL SERVICE ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 30

Federal Acquisition Regulation (FAR); Incorporation of Cost Accounting Standards; Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule in Federal Acquisition Circular (FAC) 84–30 published in the **Federal Register** on Tuesday, September 22, 1987 (52 FR 35612).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION: The requirements of FAR 1.303, Publication and codification, specify that supplementary material for which there is no counterpart in the FAR shall be codified using numbers of 70 and up. In FR Doc. 87–21682, beginning on page 35612, all subsection references ending with "–70" are to be corrected to read "–61". In addition, all internal references to "–70" are to be changed accordingly. Please make the following corrections:

30.401–70 [Corrected]

On page 35622, in the first column, "30.401–70" should read "30.401–61".

30.402–70 [Corrected]

On page 35624, in the first column, "30.402–70" should read "30.402–61".

30.403–70 [Corrected]

On page 35626, in the first column, "30.403–70" should read "30.403–61".

30.414–70 [Corrected]

On page 35650, in the third column, "30.414–70" should read "30.414–61".

30.418–70 [Corrected]

On page 35665, in the third column, "30.418–70" should read "30.418–61".

30.420–70 [Corrected]

On page 35667, in the first column, "30.420–70" should read "30.420–61".

List of Subjects in 48 CFR Part 30

Government procurement.

Dated: September 24, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 87–22438 Filed 9–29–87; 8:45 am]

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Federal Register

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Part IV

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry; Proposed Rule and Notice of Public Hearing

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3190-3]

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed polypropylene, polyethylene, polystyrene, and polyester [poly(ethylene terephthalate)] production plants. The proposed standards implement section 111 of the Clean Air Act and are based on the determination that VOC emissions from these polymer production plants cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of the proposed standards is to require new, modified, and reconstructed polypropylene, polyethylene, polystyrene, and polyester [poly(ethylene terephthalate)] production plants to control emissions to the level achievable by the best demonstrated system of continuous emission reduction for control of VOC emissions, considering costs, nonair quality health, and environmental and energy impacts.

A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before December 10, 1987 (Contact Ann Eleanor at FTS 629–5578).

Public hearing. If anyone contacts EPA requesting to speak at a public hearing by October 16, 1987 (Contact Ann Eleanor at FTS 629–5578), a public hearing will be held on (Contact Ann Eleanor at FTS 629–5578) beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541–5578 to verify that a hearing will be held.

Request to speak at hearing. Persons wishing to present oral testimony must contact EPA by November 16, 1987 (Contact Ann Eleanor at FTS 629–5578).

Incorporation by reference. The incorporation by reference of certain publications in these standards will be approved by the Director of the Federal Register as of the date of publication of the final rule.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–82–19, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public hearing. If anyone contacts EPA requesting a public hearing, the public hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Background information document. The background information document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. For information on the polymer manufacturing industry, please refer to "Polymer Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–83–019a. For detailed information on fugitive emissions, please refer to "VOC Fugitive Emission Sources in the Synthetic Organic Chemicals Manufacturing Industry—Background Information for Proposed Standards," EPA–450/30–80–033a, and "VOC Fugitive Emissions in Synthetic Organic Chemicals Manufacturing Industry—Background Information for Promulgated Standards," EPA–450/3–80–033b.

Docket. Docket No. A–82–19, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on the proposed standards, contact Mr. Sims Roy (telephone number (919) 541–5263); for information on the BID, contact Mr. Jim Berry (telephone number (919) 541–5605), Emission Standards and Engineering Division (MU–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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I. Proposed Standards

The proposed standards of performance cover certain process sources of VOC within polymer manufacturing plants that produce the following basic polymers: polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate). In addition, the proposed standards would apply to certain sources in polymer manufacturing plants that produce copolymers consisting of at least 50 percent by weight of ethylene, propylene, or bis-(2-hydroxylethyl)-terephthalate, or at least 80 percent by weight of styrene. The proposed standards also cover fugitive emission sources of VOC in all of these plants except those producing poly(ethylene terephthalate) or poly(ethylene terephthalate) copolymers. The affected facilities within these polymer manufacturing plants are process sections for process sources of VOC and process units for fugitive emission

sources of VOC. The definitions of process section and process unit are discussed below in "Selection of Affected Facilities."

An organic compound is considered to be a VOC unless it is specifically determined not to be a VOC. To date, the following compounds have been determined not to be VOC: methane; ethane; 1,1,1-trichloroethane; methylene chloride; trichlorofluoromethane; dichlorodifluoromethane; chlorodifluoromethane; trifluoromethane; trichlorotrifluoroethane; dichlorotetrafluoroethane; and chloropentafluoroethane. The emission limits are expressed in terms of total organic compounds (minus methane and ethane) rather than VOC. As discussed below under "Compounds Used for Determining Compliance," this is a reflection of the technology, data, and test methods on which the proposed standards are based.

A. Process Emissions

The proposed process emission standards for polypropylene plants would apply to certain new, modified, and reconstructed process sections involved in the manufacture of polypropylene or polypropylene copolymers. For plants producing polypropylene using a liquid phase production process, the affected facilities are each raw materials preparation section, polymerization reaction section, material recovery section, and product finishing section. The proposed process emission standards would require 98 percent reduction of emissions of total organic compounds minus methane and ethane (TOC) contained in gas streams continuously discharged to the atmosphere from each new, modified, or reconstructed raw materials preparation section, polymerization reaction section, material recovery section, and product finishing section. In addition, the proposed standards would require the flaring of gas streams intermittently discharged to the atmosphere from each new, modified, or reconstructed polymerization reaction section.

For plants producing polypropylene using a gas phase production process, the affected facilities are each polymerization reaction section and material recovery section. The proposed process emission standards would require 98 percent reduction of emissions of TOC contained in gas streams continuously discharged to the atmosphere from each new, modified, or reconstructed material recovery section and flaring of gas streams intermittently discharged to the atmosphere from each new, modified, or reconstructed polymerization reaction section.

The proposed process emission standards for polyethylene plants would apply to certain new, modified, and reconstructed process sections involved in the manufacture of low density (including linear low density) polyethylene, high density polyethylene, or polyethylene copolymers. For plants producing low density polyethylene or low density polyethylene copolymers using a high pressure production process, the affected facilities are each raw materials preparation section, polymerization reaction section, material recovery section, product finishing section, and product storage section. The proposed process emission standards would require flaring of gas streams intermittently discharged to the atmosphere from all new, modified, or reconstructed process sections (except emergency releases).

For plants producing low density polyethylene or low density polyethylene copolymers using a low pressure production process or high density polyethylene or high density polyethylene copolymers using a gas phase production process, the affected facilities are each raw materials preparation section, polymerization reaction section, and product finishing section. The proposed process emission standards would require 98 percent reduction of emissions of TOC contained in the gas streams continuously discharged to the atmosphere from each new, modified, or reconstructed raw materials preparation section and product finishing section. The proposed standards would also require the flaring of gas streams intermittently discharged to the atmosphere from each new, modified, or reconstructed raw materials preparation section and polymerization reaction section (except emergency releases).

For plants producing high density polyethylene or high density polyethylene copolymers using a liquid phase slurry process, the affected facilities are each raw materials preparation section, material recovery section, and product finishing section. The proposed process emission standards would require 98 percent reduction of emissions of TOC contained in the gas streams continuously discharged to the atmosphere from each new, modified, or reconstructed material recovery section and product finishing section and flaring of gas streams intermittently discharged to the atmosphere from each new, modified, or reconstructed raw materials preparation section.

For plants producing high density polyethylene or high density polyethylene copolymers using a liquid phase solution process, the affected facilities are each raw materials preparation section, polymerization reaction section, and material recovery section. The proposed process emission standards would require 98 percent reduction of emissions of TOC contained in the gas streams continuously discharged to the atmosphere from each new, modified, or reconstructed raw materials preparation section and material recovery section. The proposed standards would also require the flaring of gas streams intermittently discharged to the atmosphere from each new, modified, or reconstructed raw materials preparation section, polymerization reaction section, and material recovery section.

The proposed process emission standards for polystyrene plants would apply to certain new, modified, and reconstructed process sections involved in the manufacture of general purpose (crystal) or impact polystyrene or polystyrene copolymers. The proposed standards would apply only to certain process sections in those plants producing general purpose or impact polystyrene using a continuous process. No process emission standards are being proposed at this time for plants that produce general purpose (crystal) or impact polystyrene or polystyrene copolymers using a batch production process or for plants that produce expandable polystyrene using either an in-situ suspension process or a post-impregnation suspension process.

For plants producing general purpose or impact polystyrene using a continuous process, the affected facility is each material recovery section. The proposed process emission standards would limit the emissions of TOC from each new, modified, or reconstructed material recovery section to 0.0036 kilograms (kg) of TOC per megagram (Mg) of product (0.0036 lbs TOC/1,000 lbs product). Compliance could also be achieved by limiting the outlet gas temperature from each final condenser in the material recovery section to −25 °C (−13 °F).

The proposed process emission standards for poly(ethylene terephthalate) plants would apply to certain new, modified, or reconstructed facilities producing poly(ethylene terephthalate) or poly(ethylene terephthalate) copolymers using either the dimethyl terephthalate process or the terephthalic acid process. The proposed standards would apply only to certain facilities in those plants using a

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continuous production process. No standards are being proposed at this time for facilities that use a batch production process.

For plants producing low viscosity poly(ethylene terephthalate) with either a single end finisher or multiple end finishers or high viscosity poly(ethylene terephthalate) with a single end finisher using the dimethyl terephthalate process, the affected facilities are each material recovery section and polymerization reaction section. The proposed process emission standards would limit TOC to the atmosphere from each new, modified, or reconstructed material recovery section (i.e., methanol recovery) to 0.0027 kg of TOC per Mg of product (0.0027 lbs TOC/1,000 lbs product). Compliance could also be achieved by limiting the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to −24 °C (−11 °F). The proposed process emission standards would limit TOC to the atmosphere from each new, modified, or reconstructed polymerization reaction section to 0.02 kg of TOC per Mg of product (0.02 lbs TOC/1,000 lbs product). This limit includes emissions from any equipment used to recover further the ethylene glycol for reuse in the process or sale offsite, but does not include organic compound emissions released to the atmosphere from the cooling tower used to provide the cooling water to the vacuum system servicing the polymerization reactor(s). The proposed standards would also limit the ethylene glycol concentration in the condensate exiting the vacuum system servicing the polymerization reaction section to 0.35 percent or less by weight based on a 14-day rolling average on a daily basis.

For plants producing low viscosity poly(ethylene terephthalate) with either a single end finisher or multiple end finishers or high viscosity poly(ethylene terephthalate) with a single end finisher using the terephthalic acid process, the affected facilities are each raw materials preparation section and polymerization reaction section. The proposed process emission standards would limit TOC to the atmosphere from each new, modified, or reconstructed polymerization reaction section to 0.02 kg TOC per Mg of product (0.02 lbs TOC/1,000 lbs product). This limit includes emissions from any equipment used to recover further the ethylene glycol for reuse in the process or sale offsite, but does not include organic compound emissions released to the atmosphere from the cooling tower used to provide the cooling water to the vacuum system servicing the polymerization reaction section. The proposed standards would also limit the ethylene glycol concentration in the condensate exiting the vacuum system servicing the polymerization reaction section to 0.35 percent or less by weight based on a 14-day rolling average on a daily basis. The proposed standards would limit TOC from each new, modified, or reconstructed raw materials preparation section (i.e., the esterifiers) to 0.04 kg of TOC per Mg of product (0.04 lbs TOC/1,000 lbs product).

For plants producing high viscosity poly(ethylene terephthalate) with multiple end finishers using the terephthalic acid process, the affected facilities are each raw materials preparation section and polymerization reaction section for those plants using the terephthalic acid process, and each material recovery section and polymerization reaction section for those plants using the dimethyl terephthalate process. The proposed process emission standards would limit TOC to the atmosphere from each new, modified, or reconstructed polymerization reaction section to 0.02 kg TOC per Mg of product (0.02 lbs TOC/1,000 lbs product). This limit includes emissions from any equipment used to recover further the ethylene glycol for reuse in the process or sale offsite, but does not include organic compound emissions released to the atmosphere from the cooling tower used to provide the cooling water to the vacuum system servicing the polymerization reaction section. The proposed standards would also limit the ethylene glycol concentration in the cooling water in the cooling water tower to 6.0 percent or less by weight based on a 14-day rolling average on a daily basis. The proposed process emission standards would limit TOC to the atmosphere from each new, modified, or reconstructed raw materials preparation section (i.e., the esterifiers) to 0.04 kg of TOC per Mg of product (0.04 lbs TOC/1,000 lbs product) in those plants using the terephthalic acid process. The proposed process emission standard would limit TOC to the atmosphere from each new, modified, or reconstructed material recovery section (i.e., methanol recovery) to 0.0027 kg of TOC per Mg of product (0.0027 lbs TOC/1,000 lbs product) or the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to −24 °C (−11 °F).

As an alternative to demonstrating compliance with the 98 percent emission reduction requirements contained in any of the standards outlined above, affected facilities may demonstrate compliance with a TOC emission limit of 20 ppm. Flares may be used to comply with the proposed standards, provided the flares are operated under conditions, as specified in these proposed standards, that have been shown to result in a 98 percent reduction in TOC.

The proposed standards for intermittent gas streams would require the use of a smokeless flare and a thermocouple heat sensor to indicate the continuous presence of a flame at each pilot light included in the flare.

The proposed process emission standards would not apply to any process section with an uncontrolled emission rate at or below the "threshold" level specified for that process section.

B. Fugitive Emissions

The proposed standards of performance would cover certain fugitive emission sources of VOC within polypropylene, polyethylene, polystyrene, polypropylene copolymer, polyethylene copolymer, and polystryene copolymer manufacturing plants. The proposed fugitive emission standards would not cover equipment in poly(ethylene terephthalate) or poly(ethylene terephthalate) copolymer manufacturing plants.

The proposed standards would require owners and operators of affected facilities in the plants identified above to comply with 40 CFR Part 60—Subpart VV—*Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry* (SOCMI) and would apply to pumps, valves, sampling connections, pressure relief devices, open-ended valves, and compressors in VOC service within each new, modified, and reconstructed process unit. "In VOC service" means that a fugitive emission source contains or contacts a fluid containing 10 or more percent by weight VOC.

The SOCMI standards that would be made applicable to the affected facilities in the plants specified above require: (1) A leak detection and repair program for valves in gas or light liquid service and for pumps in light liquid service; (2) certain equipment for compressors, sampling connection systems, and open-ended valves; and (3) no detectable emissions from pressure relief devices in gas service during normal operation. "In gas service" means that a fugitive emission source contains VOC fluids in the gaseous or vapor state. "In light liquid service" means that a fugitive emission source contains a liquid in which the vapor pressure of one or more

of the components is greater than 0.3 kPa at 20 degrees Centigrade, as obtained from standard reference texts or as determined by ASTM Method D–2879, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 degrees Centigrade is equal to or greater than 20 percent by weight.

The SOCMI standards allow the use of "leakless" equipment for valves, pumps, compressors and sampling connection systems as an alternative to the required equipment and work practices. In addition, the SOCMI standards for valves provide for the use of alternative leak detection and repair programs. The SOCMI standards also contain a procedure for determining the equivalency of alternative leak detection and repair programs.

II. Bubble Considerations

During the development of these proposed standards, the Agency considered the possibility of incorporating a "generic" numerical bubble limit or limits into the proposed standards. However, after examining this, the Agency concluded that inclusion of such bubble limits in these proposed standards is not advisable due to the widely varying process designs and controlled and uncontrolled emission rates in this industry, and the resulting inability to define general baselines in advance of specific situations. Thus, the proposed standards do not provide general numerical bubble limits. However, the Agency has recently approved a new source performance standard (NSPS) bubble application. (52 FR 28946.) In doing this, the Agency made clear that we will receive case-by-case applications for NSPS compliance bubbles. The major factors that will influence decisions on whether to approve them were also described. The Agency will consider bubbles for polymer manufacturing facilities on a case-by-case basis in accordance with such factors.

III. Summary of Environmental, Energy, and Economic Impacts

Compared to the existing or anticipated "baseline" level of emissions, the proposed standards of performance would reduce process and fugitive emissions of VOC from new, modified, and reconstructed facilities that produce polypropylene, polyethylene, polystyrene, poly(ethylene terephthalate) and copolymers of these polymers from, on a plant-wide basis, approximately 2 percent, in several plants producing polypropylene or polyethylene, and up to 40 percent, in plants producing polystyrene using a continuous process. In the fifth year following implementation of the the proposed standards, VOC emissions from new plants have been estimated to be over 4.3 gigagrams (Gg), a reduction of slightly less than 3.0 Gg from the over 7.3 Gg of VOC emissions estimated to be emitted in the absence of the proposed standards. Emissions of VOC would also be reduced from modified and reconstructed facilities. This emission reduction is not expected to be significant as the Agency does not anticipate many existing facilities to become subject to the proposed standards. There would be no adverse water quality, solid waste, or noise impacts. The proposed standards would slightly increase energy usage at most new polymer production plants. Nationwide, however, energy usage would decrease due primarily to the energy savings resulting from implementation of fugitive emission controls, which generally offset any increase in energy usage associated with process and fugitive emission controls. In most polymer production plants, the magnitude of the increase in energy usage would be small.

The economic impact of the proposed standards would be minor. The proposed standards would cover the equivalent of about 27 new polymer production plants within 5 years and would result in an aggregate annualized cost of approximately $1.4 million in the fifth year following implementation of the proposed standards. In terms of individual polymer production plants, the annualized cost of the proposed standards would range from about $600 per process line in plants producing low viscosity poly(ethylene terephthalate) using a dimethyl terephthalate process to about $94,000 per process line in plants producing polypropylene using a liquid phase process.

The proposed standards would result in an aggregate capital cost of approximately $4.5 million in the fifth year following implementation of the proposed standards. In terms of individual polymer production plants, the capital cost of the proposed standards would range from about $1,500 per process line in plants producing poly(ethylene terephthalate) using a dimethyl terephthalate process to about $273,000 per process line in plants producing polypropylene using a liquid phase process.

The proposed standards would have a minimal impact on product prices. Assuming all costs were passed through to the customer, the maximum product price increase would be about 0.44 percent for plants producing polypropylene using a liquid phase process. The range of projected price increases for the other model plants is 0.0 to 0.13 percent. The proposed standards would not have any effect on the ability of firms owning and operating polymer production plants to raise capital. Little or no postponement of plant construction would occur. Finally, the proposed standards would have no significant aggregate adverse impacts on production, employment, competition, industry structure, productivity, or foreign trade.

IV. Rationale

A. Selection of Sources and Pollutants

The Priority List (40 CFR 60.16, 44 FR 49222, August 21, 1979) includes various major source categories that have been determined to contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare and for which standards are to be promulgated. Segments of the polymer production industry on the Priority List include polypropylene, polyethylene, polystyrene, and polyester resins.

The polymer production industry consists of operations that convert monomer or chemical intermediate materials obtained from the petroleum refining or basic petrochemical industry into polymers or copolymers. Many polymer production plants are located close to or in conjunction with petroleum refineries or petrochemical plants Other plants, such as poly(ethylene terephthalate) plants, are less tied to the raw material sources and are located close to their market areas. In either situation, most polymer production plants are located near urban populations.

In 1976, the polymer production industry is estimated to have emitted over 235,000 Mg of VOC to the atmosphere. This value represents about 16 percent of the estimated 1.5 million Mg of VOC emitted to the atmosphere from the entire organic chemical manufacturing industry. Currently, the polymer production industry, less the polyvinyl chloride segment which is regulated by national emission standards for hazardous air pollutants, is responsible for approximately 13 percent of the estimated VOC emissions from the organic chemical manufacturing industry.

There are many distinct segments within the polymer production industry. Polypropylene, high density and low density polyethylene, polystyrene, and polyester polymer segments of the industry have a significant growth rate

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and are included on the Priority List. A typical plant in those four segments of the polymer manufacturing industry emits large quantities of VOC. These four segments account for approximately 75 percent of the total estimated VOC emissions from the industry.

Emissions of VOC contribute to the formation of ozone in the atmosphere. Ozone is a criteria pollutant for which ambient air quality standards exist. Since each of these four segments of the polymer production industry is considered a significant contributor of VOC emissions, each was selected for development of standards of performance (see 40 CFR 60.16).

Total potential VOC emissions from new polymer production plants in these four segments over the next 5 years have been projected to be over 7.3 Gg. Of this total, almost 4.8 Gg would be from process emission sources and over 2.5 Gg from fugitive emission sources.

These four segments of the polymer production industry include not only the production of the basic polymer (i.e., polypropylene, polyethylene, polystyrene, or poly(ethylene terephthalate)), but also the production of various copolymers. As increasing proportions of a second monomer are polymerized with the primary monomer in the production of a copolymer, the final product exhibits increasingly different characteristics. In addition, the production process required to manufacture copolymers containing high levels of the second monomer may differ substantially from the process utilized in the manufacture of the basic polymer.

It appears that as long as the proportion of propylene, ethylene, and bis-(2-hydroxylethyl)-terephthalate used in the production of polypropylene, polyethylene, and poly(ethylene terephthalate) copolymers is at least 50 percent by weight in the copolymer product, the production processes used to manufacture both the polymer and the copolymer are essentially the same. For the manufacture of polystyrene copolymers, as long as the proportion of styrene monomer used in the production of polystyrene copolymers is at least 80 percent by weight in the copolymer product, the production processes used to manufacture both the polymer and the copolymer are essentially the same. Consequently, polymer production plants that produce polypropylene, polyetnylene, or poly(ethylene terephthalate) copolymers containing 50 or more percent by weight of propylene, ethylene, or bis-(2-hydroxylethyl)-terephthalate monomer, and plants that produce polystyrene copolymers containing 80 percent or more by weight of styrene monomer would be covered by the proposed standards.

Polyester polymers may be either "saturated" or "unsaturated." Production of "saturated" polyester polymers results in significantly greater VOC emissions than production of "unsaturated" polyester polymers. In addition, "saturated" polyester polymers may be classified as one of two types: Poly(ethylene terephthalate) or nonpoly(ethylene terephthalate). Production volume of poly(ethylene terephthalate) is much larger than nonpoly(ethylene terephthalate). Consequently, consistent with the need to set priorities in establishing new source performance standards, development of standards of performance for polyester polymers has focused initially on production of saturated poly(ethylene terephthalate) polyester polymers.

In addition to VOC emissions, other criteria pollutants, such as nitrogen oxides, particulates, and sulfur oxides, are emitted from polymer production plants. These pollutants, however, are emitted at much lower quantities (VOC is by far the primary pollutant emitted from polymer production plants) and, as a result, standards development for this industry is focusing initially on limiting emissions of VOC.

B. Selection of Affected Facilities

Under section 111 of the Clean Air Act, standards of performance apply to "new sources," where "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant." Most industrial plants, however, consist of numerous pieces of equipment or operations that emit air pollutants. Consequently, although the particular kind of industrial plant that is covered by a given standard is designated as the source, the term "affected facility" is used to designate the actual equipment or operations, within the plant, that must comply with the standards.

The selection of affected facilities includes consideration of the expected impacts under section 111. Selection of the breadth of the definition of affected facilities will affect the degree to which replacement equipment is brought under the standards. If, for example, an entire plant was designated as the affected facility and a piece of equipment was replaced, no part of the plant would be covered by standards unless the replacement caused the plant, as a whole, to be "modified" or "reconstructed." Conversely, the plant, as a whole, could be considered reconstructed if the cost of the replacement exceeded 50 percent of the cost of an entirely new plant and, therefore, existing equipment would be covered by the standards. If, on the other hand, each piece of equipment or unit operation is designated as the affected facility, then as each piece of equipment or unit operation is replaced, the replacement equipment would be a new source subject to the standards regardless of the cost of the replacement or whether the replacement caused emissions from the plant, as a whole, to increase.

In general, narrowly defined affected facilities are designated under section 111 because more emission reduction can usually be obtained as it is presumed that plants are more likely to add one new item rather than a group of items. This practice ensures that new emission sources within plants will become subject to the standards as they are installed. This presumption can be overcome, however, if analysis concludes that a broader designation of the affected facility would result in greater emission reductions or avoid unreasonable impacts (i.e., costs, energy, or other environmental impacts).

1. Process Emissions

Four alternatives were considered in developing the proposed process emission standards for defining the affected facility: (1) Each individual emission point, (2) each process section (such as raw materials preparation, polymerization reaction), (3) each process line, and (4) the entire plant.

The first alternative is the designation of each individual emission point as an affected facility. If the affected facility is defined on this basis, any replacement of an equipment component would be considered a new source and would be subject to the new source standards. There are a large number of individual emission points within a polymer plant. For example, a typical plant producing low density polyethylene by the gas phase process may have as many as 40 individual process emission points. With this many individual sources, attempting to maintain records of which pieces of equipment were subject to standards of performance and which were not, as individual pieces of equipment in existing plants were upgraded or replaced, would be difficult for the owner/operator of existing polymer production plants and for EPA. Furthermore, using this definition would require setting separate standards for each process emission point, which would be administratively impracticable, and testing numerous separate emission points, which would be very costly.

The second alternative is designating each individual process section as the affected facility. A process section refers to a group of equipment designed to accomplish a general, but well-defined, task such as raw materials preparation, polymerization, or material recovery. For the example cited above, this alternative would reduce the potential number of affected facilities in a process line producing low density polyethylene by the gas phase process to five: raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage. (The total number of affected facilities in the plant would depend on the number of process lines and the sharing of process sections by more than one process line.) This designation would reduce the number of affected facilities to an administratively manageable number and limit the facility that must actually be controlled to the process section. In addition, significant changes are more likely to be made at the process section level rather than the individual emission point level. Thus, this definition is likely to ensure the application of best demonstrated emission control at existing plants that undergo component replacement or addition.

The third alternative is designating each process line as the affected facility. A process line may be viewed as being comprised of the five basic process sections, from raw materials preparation through end product storage. This alternative would further reduce the number of affected facilities. However, there are formidable practical problems with using this definition. A process line cannot be delineated clearly where certain process equipment (e.g., that equipment used in raw materials preparation or material recovery) is shared by more than one process line. In general, existing polymer plants have multiple lines where each line consists of two or three process sections that are separate and independent for each line and two or three process sections that are shared by all or several lines at a plant. In addition, different plants producing the same basic polymer may have different line configurations, making it difficult to ensure application of best available control technology. Finally, this definition would not include as many new, modified, or reconstructed sources as the previous definitions and thus would result in less emission control.

The fourth alternative is to designate the entire plant as the affected facility. Using this definition, an existing plant would probably not be affected under the reconstruction and modification provisions. If an entire process line were replaced within an existing plant site, no emission increase would result and, therefore, the line and site would not be subject to the standards under modification considerations. If the plant site consisted of many process lines, the replacement of one line would probably not exceed 50 percent of the replacement cost of the affected facility (all process lines at the site) and, therefore, the line and site would not be subject to the standards under reconstruction considerations.

On the basis of the relative merits of each definition as it is applied to this particular industry, the Administrator has selected process section as the definition of affected facility for the proposed process emission standards. Designating each process section as the affected facility results in standards that would require best demonstrated technology. Although there may be existing facilities within the same line that may be controlled cheaper, it would be extremely difficult to consider all of the possible configurations to assess cost effectiveness of process lines.

For the purposes of the proposed standards, a process section is defined as equipment designed to accomplish a general, but well-defined task in polymer production. Process sections include raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage. The number of affected facilities at a plant depends on the number of process lines and the extent to which process section equipment is shared by more than one process line. For example, a plant that is composed of four process lines may have, for example, four polymerization process sections but only one raw material preparation section that provides material for each of the four polymerization process sections; while another plant that also has four process lines, but in which there is no "sharing" of equipment between process lines, may have four raw materials preparation process sections and four polymerization process sections. The first plant would have, in this example, five affected facilities, while the second plant would have eight affected facilities.

2. Fugitive Emissions

As was done for the SOCMI fugitive VOC standards, three alternatives were considered for defining affected facility under these proposed fugitive emission standards: (1) Individual fugitive emission sources (equipment components), (2) groups of equipment components that are operated in conjunction with each other (process units), and (3) groups of process lines at one location (plant sites). In addition, the process section definition was also considered for fugitive emissions.

As discussed in the notice accompanying the proposed standards for control of fugitive emissions in the synthetic organic chemical manufacturing industry (SOCMI) (see January 5, 1981, **Federal Register**, pp. 1136 through 1165) and as promulgated for the SOCMI (see October 18, 1983, **Federal Register**, pp. 48328–48361), the definition of the affected facility included in those standards is the process unit. Due to the similarity between the SOCMI and polymer production industry, EPA believes that the reasoning supporting the process unit definition for the SOCMI standards supports the same definition for the polymer production industry. Using the process section definition instead could mean that the cost of fugitive emission control techniques required by the proposed standards (in particular, the leak detection and repair programs) may be unreasonable as applied to certain process sections (e.g., product finishing or storage) if the cost of controlling a very small proportion of the equipment components at a plant site is high in relation to the emission reduction achieved. Therefore, the process unit definition of the affected facility used in the SOCMI standards was also selected for the proposed standards for control of fugitive emissions in polymer production plants.

A process unit is very similar to a process section in that both refer to a group of equipment performing a certain task in the polymer production process. The key definitional difference is that equipment in a process unit can be operated independently from other process units if supplied with sufficient input material and storage facilities for the output product; while the equipment in a process section may not be able to be operated independently from equipment in other process sections even if supplied with sufficient input material and storage facilities. The result of the difference in the affected facility definition selected above is that equipment at a polymer plant may be grouped into a larger affected facility under the process unit definition for the fugitive emission standards than under the process section definition for the process emission standards.

Since the process emission standards would apply to "process sections" while the fugitive emission standards would apply to "process units," it follows that

a modification or replacement sufficient to trigger the process emission standard may not trigger the fugitive emission standard, and vice-versa. Whether modification or replacement of equipment (including fugitive emissions components) triggers the NSPS standard is determined independently in each case. For example, the replaced equipment may result in process emissions increasing, while fugitive emissions remain the same. Provided the modification requirements are met, the process emission standards would become applicable but not the fugitive emission standards. Another example is where the added or replaced fugitive emission components are only a small portion of the total fugitive emission components in the process unit that contains the added or replaced process section. In this situation, the requirements for triggering the fugitive emission standards under the reconstruction provisions may not be met, while the requirements that trigger the process emissions standards have been met.

3. Summary

For process emissions, the affected facility is defined as the process section. A process section is defined generally as that group of equipment designed to carry out one of the five steps in polymer production. All equipment, including fugitive emission sources, are to be included.

For fugitive emissions, the affected facility is defined as all fugitive emission sources in VOC service within a process unit. A process unit is defined as the equipment that is assembled to perform any of the physical and chemical operations within a polymer manufacturing plant and that can be operated independently if supplied with sufficient input material and storage facilities for output material. For fugitive emissions, the equipment is limited to those equipment components that are fugitive emission sources (valves, pumps, etc.).

C. Selection of Basis of the Proposed Standards

Section 111 of the Clean Air Act requires that standards of performance reflect the degree of emission control achievable through the application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts, and energy requirements) has been adequately demonstrated. This requires analyzing emission control techniques that can be used to reduce emissions and the environmental, energy, and economic impacts of various levels of emission reduction achieved by different combinations of control techniques.

1. Control Techniques

Control of process emissions may be accomplished by a number of control technologies, which can be characterized as being either destruction or recovery techniques. Destruction techniques consist primarily of combustion technologies such as flares, thermal incinerators, catalytic incinerators, and boilers. Recovery techniques include condensers, absorbers, and adsorbers. Control of fugitive emissions from equipment leaks may be accomplished through leak detection and repair programs or through use of certain types of equipment, design, and operations.

Process emissions. Process emissions from the manufacture of polymers are diverse in composition and flow and may differ in temperature, pressure, heating value, miscibility, and economic value. This diversity can affect the availability and appropriateness of approaches to controlling different emission streams. For example, waste gas streams in polypropylene and polyethylene production are characterized by the presence of low boiling components, polymerizable monomers, and a mixture of VOC's. These characteristics tend to make recovery techniques impractical. Condensers, for example, are not cost effective for recovery of low boiling VOC's, such as propylene and ethylene, or VOC's in gas streams containing large quantities of inerts such as air or nitrogen. Recovery in such situations would require refrigerated condensers. While this approach would be technically viable (unless the gas stream also contained water or heavy organics which might freeze and foul the condenser), refrigeration increases the cost of condensation considerably. Controlling these waste gas streams, therefore, is more likely to involve combustion rather than recovery techniques.

In polystyrene and polyester production, on the other hand, emission streams tend to be single component streams (i.e., styrene, ethylene glycol) with relatively high boiling points. Such streams lend themselves to recovery. The proposed standards take these factors into account by assuming the use of recovery rather than combustion techniques where possible.

Of the four combustion technologies examined, flares are the most widely used control devices at polypropylene and polyethylene manufacturing plants. They are used to control emergency gas stream releases from process units and to combust various continuous VOC emission gas streams. Depending on the heat value of the VOC's contained in the gas stream, auxiliary fuel may be required to ensure proper combustion. Also, depending on gas composition and flare tip design, steam or air may be required to promote smokeless operation.

Thermal incinerators can be used to control a wide variety of continuous gas streams. They can control VOC in streams with a wide range of concentration and types of VOC. Although they can accommodate minor fluctuations in gas stream flow, incinerators cannot efficiently control intermittent gas stream flows because of the large auxiliary fuel requirements required to keep the incinerator in a state of readiness during periods when there is little or no gas stream flow.

Catalytic incinerators may also be used to control continuous gas emission streams. They are best suited for continuous gas streams that are low in VOC (higher VOC concentrations lead to higher catalyst temperatures, which can seriously damage the catalyst) and free from solid particulates and catalyst "poisons." Although most gas streams in the polymers production industry are sufficiently high in heating value to self-combust without using auxiliary fuel, catalytic incinerators may be favored for dilute streams because they can destroy the VOC at a lower temperature and, therefore, use less auxiliary fuel than thermal incinerators.

Despite potential problems and the need for certain modifications, boilers are used in several instances to combust continuous gas streams containing VOC emissions from polypropylene, polyethylene, and expandable polystyrene plants. The decision to use a boiler as a control device is predicated on the assumption that the plant generates some or all of its own steam, or the fuel value of the waste gas is sufficient to make the process an exporter of steam. Not all plants, however, have a boiler or the need for steam. In such instances, other control devices, such as thermal incinerators, have a cost advantage. If a plant has a boiler and the need for steam, however, boilers are more cost effective than either flares or thermal incinerators.

The four combustion devices (flares, thermal and catalytic incinerators, and boilers) are essentially equivalent in their VOC destruction efficiency when controlling continuous streams, capable of achieving at least 98 percent VOC

emission reduction under certain operating conditions. As reported in "A Report on a Flare Efficiency Study" (see Docket Reference No. II–I–107), a study conducted jointly by the Agency, the Chemical Manufacturers Association, and the John Zink Company, has shown that flares operated under certain conditions are capable of achieving 98 percent or greater VOC emission reduction. Thermal incinerator tests at a polyethylene facility and other similar facilities along with kinetic theory studies show that thermal incinerators can achieve 98 percent or greater VOC emission reduction with an operating temperature of 870 degrees Centigrade (1,600 °F) and a firebox residence time of 0.75 seconds. Catalytic incinerators may also be designed to achieve and maintain similar efficiencies. Boilers typically operate with higher temperatures and longer residence times than thermal incinerators; therefore, boilers are also considered capable of achieving a 98 percent reduction in VOC emissions.

Compared to destruction technologies such as combustion, recovery technologies, such as condensers, carbon adsorbers, and absorbers, offer the advantage of material recovery. Condensers are effective in recovering easily condensable VOC's such as styrene and, therefore, are common in the polystyrene industry.

Spray condensers are used in the poly(ethylene terephthalate) industry for the recovery of ethylene glycol that might otherwise be lost in emissions to the atmosphere. The waste gas from the polymerizers enters a spent ethylene glycol spray condenser prior to entering the vacuum system. The condensed ethylene glycol may then be recovered through a series of distillation columns, condensers, and reboilers for reuse in the process. This system is essentially the same whether applied to a plant using the dimethyl terephthalate process or one using the terephthalic acid process. Spray condensers may be used on process lines producing either low viscosity poly(ethylene terephthalate) or high viscosity poly(ethylene terephthalate).

Certain operating conditions on end finishers used in the production of high viscosity poly(ethylene terephthalate), however, make the application of spray condensers difficult, if not impossible. In an alternative, less efficient recovery system currently used in the poly(ethylene terephthalate) industry, the waste gas stream discharged from the polymerizers passes directly without condensation into the vacuum system, which consists of steam-jet ejectors. The ethylene glycol is carried into barometric intercondensers where it is condensed, entrained in the water, and passed to a cooling tower from which it is partially evaporated. The ethylene glycol remaining in the cooling water is then partially recovered through distillation. Finally, to complete the cycle, the water is recirculated through the steam-jet ejectors in the vacuum system and some "blowdown" water from the cooling tower is sent to a wastewater treatment plant.

Carbon adsorbers can effectively remove VOC emissions contained in gas streams in dilute concentrations. High VOC concentration gas streams, however, which are typical in the polymer production industry, require special precautions to prevent excessive temperatures within the adsorber due to the heat of adsorption. As a result, carbon adsorption systems are frequently impractical for high VOC concentration gas streams and generally are not employed in the polymer production industry.

Absorbers are generally limited to applications in which the spent absorbent can be reused directly or with minimum treatment. Absorption may not be practical if the waste gas stream contains a mixture of organics since all of the organics are not likely to be effectively controlled by one absorbent. Like carbon adsorbers, absorbers have found limited use as a VOC emission control device in the polymer production industry.

Recovery techniques, such as condensation as outlined above, can achieve VOC emission reductions of over 98 percent, provided they are properly designed, operated, and maintained on appropriate gas streams. The ethylene glycol spray condenser recovery system, for example, has been reported to remove around 99 percent of the ethylene glycol from the polymerizer offgas. The cooling tower recovery system is estimated to result in the recovery of about 80 percent of the ethylene glycol contained in the polymerizer offgas.

Fugitive emissions. Fugitive emissions of VOC are emitted from valves, pumps, compressors, open-ended lines, and other pieces of equipment. Fugitive VOC emission reduction may be accomplished through either a leak detection and repair program or equipment, design, and operational requirements. Leak detection and repair programs consist of monitoring potential fugitive emission sources to detect fugitive emissions of VOC and then repairing any leaks found.

The specific control techniques selected for fugitive emission sources in the polymers production industry include leak detection and repair programs for valves and pump seals, rupture disks for pressure relief devices, plugs and caps for open-ended lines, vented seal areas for compressors, and closed purge systems for sampling connections. Selection of these control techniques for analysis was based on the results of analyses conducted during development of new source performance standards for control of fugitive VOC emissions within the SOCMI.

SOCMI fugitive emission factors and control techniques are appropriate for the polymer production industry and are proposed to be used for this rule. Because the equipment and chemicals (monomers) used in the polymer production industry are the same as those used in the SOCMI, the basic parameters influencing fugitive emission rates, the effectiveness of controls, and the costs of these controls are essentially the same for the polymer production industry and the SOCMI. To the extent that the basic parameters are different, the average SOCMI estimates would tend to understate emission reduction because the major monomers used in the polymer production industry are among the chemicals found to have the highest leak rates and emission rates in the SOCMI fugitive data base. Application of these control techniques to the polymers production industry would also provide consistency and uniformity in regulating fugitive VOC emissions within these closely related industries, which should help to promote better understanding and reduce confusion.

Other potential fugitive VOC control techniques and a full analysis of the available regulatory alternatives for control of fugitive emission sources are contained in "VOC Fugitive Emission Sources in the Synthetic Organic Chemicals Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–80–033a; "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs," EPA–450/3–82–010; January 5, 1981, **Federal Register**, pp. 1136 through 1165; "VOC Fugitive Emissions in Synthetic Organic Chemicals Manufacturing Industry—Background Information for Promulgated Standards," EPA–450/3–80–033b; and October 18, 1983, **Federal Register**, pp. 48328 through 48361.

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2. Regulatory Alternatives

Regulatory alternatives represent various emission reduction schemes that could be selected as the basis for standards of performance. Regulatory alternatives provide a basis for analyzing environmental, energy, cost, and economic impacts associated with various standards of performance. The magnitude of these impacts are estimated by assessing the impact of each regulatory alternative on "model" plants, representative of plants found within the industry.

Twelve model plants were developed to analyze the impacts of various regulatory alternatives for standards of performance limiting process VOC emissions from the polymer production industry:

1. Polypropylene, liquid phase process;
2. Polypropylene, gas phase process;
3. Low density polyethylene, high pressure process;
4a. Low density polyethylene, low pressure process;
4b. High density polyethylene, gas phase process;
5. High density polyethylene, liquid phase slurry process;
6. High density polyethylene, liquid phase solution process;
7. Polystyrene, continuous process (general purpose and impact polystyrene);
8. Expandable polystyrene, batch post-impregnation suspension process;
9. Expandable polystyrene, batch in-situ suspension process;
10. Poly(ethylene terephthalate), dimethyl terephthalate process;
11. Poly(ethylene terephthalate), terephthalic acid process producing a low viscosity product or producing a high viscosity product with a single end finisher; and
12. Poly(ethylene terephthalate), terephthalic acid process producing a high viscosity product with multiple end finishers.

These model plants represent all known processes for making these polymers that are currently in commercial operation and are likely to be used in the future at new plants. Model plants and proposed regulations were not developed for the polystyrene batch process producing general purpose or impact grade polystyrene and for poly(ethylene terephthalate) batch processes because available information indicates that no new plants will be constructed using batch processes.

For fugitive VOC emissions, a single model plant was selected. Based on both equipment counts and VOC emission estimates for the 12 model polymer production plants, a single model plant, corresponding to the SOCMI Model Plant B analyzed in the SOCMI background information document (EPA–450/3–80–033a), was chosen to represent the fugitive emission characteristics of the polymer production industry (see Docket A–82–19, Item No. II–B–44). This model plant was used for regulatory analysis for each polymer production industry segment except poly(ethylene terephthalate). Plants producing poly(ethylene terephthalate) using the dimethyl terephthalate process are already regulated by the fugitive emission standards for the SOCMI because of their methanol by-product production. Plants producing poly(ethylene terephthalate) using the terephthalic acid process use only heavy liquids and solids, control of which has not been found to be cost effective. For example, the cost effectiveness of controlling fugitive emissions from pumps and valves in heavy liquid service is greater than $10,000 per megagram.

Following development of model plants, the regulatory baseline was identified. The regulatory baseline reflects the level of control that would typically be employed in new plants due to existing State regulations in the absence of new source performance standards and forms a basis for calculating national emission reduction benefits and impacts of the standard. Determination of the regulatory baseline for the polymer production industry, however, is difficult. Not all States regulate VOC emissions from polymer production plants and the States that do have regulations of varying stringency. Therefore, the following approach was followed to define the regulatory baseline.

For polypropylene and polyethylene plants, the following criteria were used to identify VOC emission streams likely to be controlled under the regulatory baseline:

1. Large intermittent gas streams;
2. Continuous streams containing large amounts of VOC emissions; and
3. Exceptions to the above based on specific information.

The first criterion focuses on the nature of the stream. There are a number of intermittent streams in the polymer manufacturing industry that have large flows and occur as a result of equipment breakdowns, process upsets, or process maintenance startup, shutdown, and purges. Those streams that result from equipment breakdowns or process upsets are typically known as emergency vents and, in most cases, are controlled already by flares for safety reasons. Consequently, control of these large intermittent streams is included in the regulatory baseline.

The second criterion focuses on the VOC content of various continuous streams. Continuous streams with VOC flow rates larger than 91 Mg per year (100 tons/year) are likely to be controlled under existing State regulations. Consequently, control of these streams is also included in the regulatory baseline. This criterion was based on requirements found in section 22.8 of the Louisiana State regulation governing waste gas disposal. Similar requirements were also found in regulations of several other States.

Although they appear to qualify for inclusion in the regulatory baseline according to the two general criteria mentioned above, some VOC emission streams have been excluded from the regulatory baseline. In these cases, specific industry information indicates that these streams are not currently being controlled and will not necessarily be controlled in new plants.

For the polystyrene model plants and the poly(ethylene terephthalate) model plants, a different approach was used to identify the regulatory baseline. Both industries currently use various VOC emission recovery technologies that achieve varying levels of control. Consequently, the regulatory baselines for polystyrene and poly(ethylene terephthalate) production were based primarily on current industry practice.

As described in the background information document, the source of the process VOC emissions from polystyrene production plants using a continuous process is the vacuum system in the material recovery section. In the past, steam-jet ejectors have generally been employed in this vacuum system to produce and maintain the necessary vacuum. Recently, however, a number of existing plants have replaced their steam-jet ejectors with vacuum pumps in order to reduce energy consumption and operating costs. As a result, it now appears that a new general purpose or impact polystyrene production plant using a continuous process would likely employ vacuum pumps in the vacuum system rather than steam-jet ejectors. The regulatory baseline for the regulatory analysis, therefore, reflects the use of vacuum pumps. As current industry practice in controlling emissions from plants producing expandable polystyrene varies considerably between plants, it was assumed for analysis purposes that there would be no baseline control for the expandable polystyrene model plants.

For poly(ethylene terephthalate) plants producing a low viscosity product or a high viscosity product with a single end finisher, the regulatory baseline reflects the use of spent ethylene glycol spray condensers that recover the ethylene glycol directly from the offgases from the polymerizers. For poly(ethylene terephthalate) plants producing a high viscosity product with multiple end finishers, the regulatory baseline reflects the use of spent ethylene glycol spray condensers that recover the ethylene glycol directly from the offgases from the initial end finishers only. The offgases from the remaining end finishers are assumed to pass directly to the vacuum system and into the cooling tower. The regulatory baseline also assumes that there is some recovery of ethylene glycol from the cooling tower using a distillation column. This system of ethylene glycol recovery is slightly different from the current system used in the industry for this process, but reflects the type of system industry indicates it would now use on new process lines with multiple end finishers.

For fugitive emissions, the regulatory baseline assumes that 75 percent of all gas pressure relief devices and sampling connections, most of the open-ended lines, and none of the other fugitive emission sources are currently subject to any sort of routine leak detection and repair program. These assumptions are consistent with those made in the analysis of fugitive emission control for the SOCMI.

Once the model plants and the regulatory baselines were defined, regulatory alternatives specific for each model plant were identified by applying various levels of VOC emission control to each model plant. The regulatory alternatives for the polypropylene and polyethylene model plants are based on the use of flares and incinerators (thermal and catalytic) to reduce process VOC emissions contained in gas streams discharged continuously from these plants. Although they may be used to comply with the proposed standards, boilers have not been considered as part of any regulatory alternative, because not all polypropylene and polyethylene plants employ boilers or have a need for steam. For control of VOC emissions contained in gas streams discharged intermittently from these plants, only flares were used to develop various regulatory alternatives. Flares are the only control device considered economically feasible for control of intermittent gas streams. The regulatory alternatives for the polystyrene continuous process and poly(ethylene terephthalate) plants are based on recovery techniques such as condensation to recover styrene monomer, ethylene glycol, and methanol and distillation to recover ethylene glycol.

The regulatory alternatives for the expandable polystyrene model plants are based on use of condensation for streams containing styrene monomer and on combustion for streams containing the blowing agent. Combustion devices examined were flares and incinerators (thermal and catalytic) for process VOC emissions contained in gas streams discharged continuously and flares for process VOC emissions discharged intermittently.

The regulatory alternatives were developed by first applying fugitive VOC emission controls and then process VOC emission controls. Fugitive controls were applied first simply because they were known beforehand, from the SOCMI standard for equipment leaks, and the placement of fugitive control in the regulatory alternative order would not make any difference in the analysis. In addition, by dealing with fugitive emission controls first, the succeeding regulatory alternative could focus on process emission controls exclusively and their relative costs and associated emission reductions. The order of the regulatory alternatives for process emissions was based, for the most part, on initially controlling the process section with the largest uncontrolled emissions, then adding sections down to the process section with the smallest uncontrolled emissions.

In generating the regulatory alternatives for process emissions, the VOC process emission control techniques were applied to each process section in a typical process line within each model plant. While some process sections may be shared by process lines, for the regulatory analysis a typical process line was assumed to be composed of its own dedicated process sections. (As discussed earlier, process section refers to a group of equipment designed to accomplish a well-defined task such as raw materials preparation or polymerization reaction.) Within each process section, continuously discharged gas streams were combined with other continuously discharged gas streams, or intermittently discharged gas streams were combined with other intermittently discharged gas streams, to provide overall estimates of emission control costs and emission reductions resulting from application of each regulatory alternative.

The analysis performed takes into account the fact that new growth can occur in several ways—individual process sections, process lines, new plants. The environmental, economic, and energy impacts of the proposed standards are different for each of these three potential growth scenarios. For example, new plants are likely to utilize single control devices, where possible, to control emissions from more than one process section. This analysis results in lower costs of control than if equivalent growth occurred on either an individual process section or process line basis. Each major polymer-process type combination, therefore, was examined individually to estimate the most likely manner in which the new growth would be distributed among the three ways mentioned above. Combining this distribution and the particular emission reduction impacts associated with new growth as process section, process line, and plant, average or typical capital, annual, and cost effectiveness impacts of the proposed standards were calculated. Secondary air quality, energy, and economic impacts associated with a worst case growth distribution (i.e., by process section only) were also calculated.

A summary of the regulatory alternatives for polypropylene and polyethylene production is presented in Table 1 and a summary of the regulatory alternatives for polystyrene and poly(ethylene terephthalate) production is presented in Table 2. In each case, Regulatory Alternative 1 represents the regulatory baseline. In addition, Regulatory Alternative 2 represents the regulatory baseline plus fugitive emission control, except for the poly(ethylene terephthalate) model plants. Each regulatory alternative is more stringent than the previous regulatory alternative and, in most cases, includes all the controls included in the previous regulatory alternative plus additional control of VOC emissions. (The details of this analysis are discussed in depth in the background information document.)

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Table 1. SUMMARY OF REGULATORY ALTERNATIVES FOR POLYPROPYLENE AND POLYETHYLENE PLANTS

Model Plant	Regulatory Alternatives	Process Sections Controlled[a,b] RMP	PR	MR	PF	PS	Fugitive Emission Regulatory Control	Annual Emission Reduction[c] Mg/yr	Percent
Polypropylene, liquid phase	1 (Baseline)		C[d]	C[e]			No	1,705	89
	2		C[d]	C[e]			Yes	1,725	90
	3		C[d]	C[e]	C[e]		Yes	1,852	97.0
	*4	C[e]	C[d]	C[e]	C[e]		Yes	1,856	97.3
Polypropylene, gas phase	1 (Baseline)		C[f]	C[e]			No	1,270	95
	*2		C[f]	C[e]			Yes	1,290	97
Low density, polyethylene high pressure	1 (Baseline)	C[f]	C[f]	C[f]	C[f]	C[f]	No	594	81
	*2	C[f]	C[f]	C[f]	C[f]	C[f]	Yes	609	83
	3	C[f]	C[f]	C[f]	C[f]	C[e,f]	Yes	664	91
	4	C[f]	C[f]	C[f]	C[e,f]	C[e,f]	Yes	678	93
	5	C[f]	C[f,g]	C[f]	C[e,f]	C[e,f]	Yes	704	96
Low density polyethylene, low pressure and high density polyethylene, gas phase	1 (Baseline)	C[f]	C[f]		C[e]		No	1,725	94
	2	C[f]	C[f]		C[e]		Yes	1,755	96.1
	*3	C[e,f]	C[f]		C[e]		Yes	1,760	96.4
	4	C[e,f]	C[f]		C[e]	C[e]	Yes	1,765	96.7
	5	C[e,f]	C[f,g]		C[e]	C[e]	Yes	1,770	96.9
High density polyethylene, slurry process	1 (Baseline)	C[f]		C[e]			No	900	92
	2	C[f]		C[e]			Yes	920	94
	*3	C[f]		C[e]	C[e]		Yes	950	97
High density polyethylene, solution process	1 (Baseline)	C[d]	C[f]	C[d]			No	825	90
	*2	C[d]	C[f]	C[d]			Yes	845	92
	3	C[d]	C[f]	C[d]	C[e]		Yes	890	97

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*Regulatory alternative selected as basis of proposed standard.

[a] Process Sections:
RMP—raw materials preparation.
PR—polymerization reaction.
MR—material recovery.
PF—product finishing.
PS—product storage.

[b] Control Devices:
C=combustion devices including flares, incinerators, boilers.

[c] From uncontrolled levels on a per line basis.

[d] Control of intermittent and continuous streams.

[e] Control of continuous streams.

[f] Control of non-emergency intermittent streams.

[g] Control of emergency intermittent streams from polymerization reactors and, for low density polyethylene high pressure plants, separators.

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Table 2. SUMMARY OF REGULATORY ALTERNATIVES FOR POLYSTYRENE AND POLY(ETHYLENE TEREPHTHALATE) PLANTS

Model Plant	Regulatory Alternatives	Process Sections Controlled[a,b] RMP	PR	MR	PF	PS	Fugitive Emission Regulatory Control	Annual Emission Reduction[c] Mg/yr	Percent
Polystyrene, continuous process	1 (Baseline)[d]						No	23	27
	2						Yes	53	62
	3			RR[e]			Yes	57.05	67.1
	4			RR[f]			Yes	57.23	67.3
	*5			RR[g]			Yes	57.37	67.4
	6			RR[h]			Yes	57.41	67.5
	7			RR[i]			Yes	57.43	67.6
Expandable Polystyrene, post-impregnation suspension process	1 (Baseline)						No	15	5
	*2						Yes	35	12
	3					C[j]	Yes	91	32
	4				C[k]	C[j]	Yes	184	64
	5				C[j,k]	C[j]	Yes	237	[illegible]
	6				C[j,k]	C[j,k]	Yes	266	92.7
	7		R[k]		C[j,k]	C[j,k]	Yes	267	93.0
Expandable Polystyrene, in-situ suspension process	1 (Baseline)						No	5	9
	*2						Yes	12	21
	3		C[k]				Yes	21	36
	4		C[k]		C[j]		Yes	43	76
	5		C[k]		C[j]	C[j]	Yes	49	[illegible]
	6	C[k]	C[k]		C[j]	C[j]	Yes	50.2	88
	7	C[k]	C[k]		C[j,k]	C[j]	Yes	50.6	[illegible]
Poly(ethylene) terephthalate), dimethyl terephthalate	1 (Baseline)[l]		[illegible]				N.A.[m]	0	0
	2		R	RR[n]			N.A.	2.43	30
	3		R	RR[o]			N.A.	2.48	31
	4		[illegible]	RR[p]			N.A.	2.59	32
	*5		R	RR[q]			N.A.	2.66	33
	6		R	RR[r]			N.A.	2.67	33.3
	7		RR[s]	RR[r]			N.A.	5.33	66
Poly(ethylene) terephthalate),[t] terephthalic acid	*1 (Baseline)[u]	R	R				N.A.	[illegible]	[illegible]
	2	RR	RR[v]				N.A.	2.4	44
Poly(ethylene) terephthalate),[w] terephthalatic acid	1 (Baseline)[x]	R	[illegible]				N.A.	0	[illegible]
	[illegible]	R	RR[y]				N.A.	7.2	10
	3	R	RR[y]				N.A.	14.7	21
	*4	R	RR[y]				N.A.	22.3	31
	5	R	RR[y]				N.A.	26.1	37
	6	R	RR[y]				N.A	29.8	42
	7	R	RR[y]				N.A.	37.3	53

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*Regulatory alternative selected as basis of proposed standard.

[a] Process Sections:
RMP—raw materials preparation (including esterification in poly(ethylene terephthalate) plants),
PR—polymerization reaction,
MR—material recovery,
PF—product finishing,
PS—product storage.

[b] Control Devices:
C=combustion devices including flares, incinerators, boilers.
R=recovery devices used under baseline as part of process.
RR=additional recovery devices or more efficient recovery system.

[c] From uncontrolled levels on a per line basis.

[d] Emissions from the polymerization reaction section are indirectly controlled as part of normal process operation (i.e., baseline) by condensers for the recovery of styrene. The control of the emissions from this material recovery is indicated in Regulatory Alternatives 3 through 7.

[e] The additional control is the application of a refrigerated condenser controlling emissions of 0.12 kg VOC per Mg of product from the material recovery section down to 0.012 kg VOC per Mg of product.

[f] Control by refrigerated condensers to 0.0072 kg VOC per Mg of product.

[g] Control by refrigerated condensers to 0.0036 kg VOC per Mg of product.

[h] Control by refrigerated condensers to 0.0024 kg VOC per Mg of product.

[i] Control by refrigerated condensers to 0.0018 kg VOC per Mg of product.

[j] Continuous streams.

[k] Non-emergency intermittent streams.

[l] As part of normal process operation, methanol emissions from raw materials preparation are recovered by condensers. The emissions from this methanol material recovery are controlled as indicated in Regulatory Alternatives 2 through 6. In addition, as part of normal process operation, ethylene glycol emissions from the polymerizers are recovered by spray condensers prior to the vacuum system evacuating the polymerizers. Additional control was evaluated for this section in Regulatory Alternative 7.

[m] N.A.=not applicable.

[n] Control by refrigerated condensers to 0.018 kg VOC per Mg of product.

[o] Control by refrigerated condensers to 0.0144 kg VOC per Mg of product.

[p] Control by refrigerated condensers to 0.0072 kg VOC per Mg of product.

[q] Control by refrigerated condensers to 0.0027 kg VOC per Mg of product.

[r] Control by refrigerated condensers to 0.0018 kg VOC per Mg of product.

[s] Control by distillation column on cooling water tower resulting in a 50 percent reduction in emissions from polymerization reaction section via the cooling water tower.

[t] These regulatory alternatives are for a low viscosity PET line or a high viscosity PET line with a single end finisher.

[u] As part of normal process operations, ethylene glycol is recovered from the process vessels using a spent ethylene glycol spray condensers. Additional control was evaluated under Regulatory Alternative 2.

[v] Additional control reflects the use of a distillation column on the cooling water tower that results in a 50 percent reduction of ethylene glycol emissions to the atmosphere from the polymerization reaction section via the cooling water tower.

[w] These regulatory alternatives are for a high viscosity PET line with multiple end finishers.

[x] As part of normal process operations, ethylene glycol is recovered from the process sections. Baseline control includes distillation columns on the esterifiers and cooling tower, and spent ethylene glycol spray condensers on the first end finisher.

[y] Additional control reflects the reduction in ethylene glycol concentration in the cooling water tower through an increase in the drawoff of cooling water to the distillation column that results in emission reductions ranging from 15 percent, under Regulatory Alternative 2, up to about 90 percent, under Regulatory Alternative 7.

As can be seen in Tables 1 and 2, certain process sections do not appear as part of the regulatory analysis (e.g., product storage for the polypropylene, liquid phase model plant). In most instances, such process sections were not analyzed because VOC emissions were not identified as being emitted from the process section to the atmosphere. In a few instances, a particular process section did not exist (e.g., there is no material recovery process section in either expandable polystyrene process). The extruder quench vent stream (product finishing) from the polystyrene, continuous process was excluded because a previous analysis had shown this very high flow, low styrene concentration emission stream to be not cost effective (greater than $12,000 per Mg of VOC) to control via a national standard for this industry. Similarly, in a separate analysis, the raw materials preparation vent from the polystyrene continuous process was found to be not cost effective (greater than $2,000 per Mg of VOC) to control via a national standard for this industry.

3. Selection of Best System of Continuous Emission Reduction

Based on an analysis of the average (or typical) VOC emission reduction impacts, annual and capital costs, and the cost-effectiveness values associated with the most likely growth distribution and on the secondary air quality, energy, and economic impacts associated with a worst case growth distribution, the regulatory alternatives presented in Tables 1 and 2 that are marked with an asterisk (*) were selected as the basis for the proposed standards. For several of the plants, the most stringent level of control was selected as the basis of the proposed standards. The proposed standards indicated by the selected regulatory alternatives would apply to individual process sections when the process section is constructed, modified, or reconstructed.

In determining which regulatory alternative for each model plant represents the best system of continuous emission reduction, EPA considered "the cost of achieving such emission, any nonair quality health and environmental impact and energy requirement . . ." (Section 111 of the Clean Air Act). On the basis of the history of the legislation and its past implementation, the EPA has set the levels of standards considering the cost-effectiveness of varying levels of emission reduction and has rejected some NSPS control options on the ground that their costs are unreasonably high in light of the emissions reductions they achieve for those specific industries. Since the purpose of cost-effectiveness analyses is to avoid such a disproportion, the annual cost of controlling VOC emissions and the resultant VOC emission reduction for each regulatory alternative in the average or typical situation were analyzed. In deciding which control alternatives are considered ineffective, EPA considered: (1) The cost effectiveness of such control in relation to the cost effectiveness of controlling VOC streams as prescribed in NSPS that EPA has already promulgated, and (2) the extent to which suspected or known toxic compounds are present in polymer manufacturing emission streams.

On the basis of these considerations, for each model plant, the cost-effectiveness values of the regulatory alternatives that are more stringent (i.e., provide greater VOC emission reduction) than the regulatory alternative selected as the basis of the proposed standard for that model plant were not considered reasonable. The incremental cost-effectiveness values for the more stringent regulatory alternatives immediately after the regulatory alternatives selected as the basis of the proposed standards range from $1,100 up to $184,000 per megagram of VOC reduced (see Docket A–82–19, Item II–B–92). The incremental cost of achieving the additional emission reduction that would result from the selection of any of these more stringent regulatory alternatives is not considered to be reasonable when compared to the additional emission reductions for the purposes of a national standard. Therefore, these more stringent regulatory alternatives were not selected. The noise, solid waste, water, energy, and economic impacts, as well

as the cost effectiveness, associated with the regulatory alternatives marked with an asterisk are considered reasonable. Therefore, the regulatory alternatives marked with an asterisk were selected as the basis for the proposed standards.

The impacts of the proposed standards for each model plant are summarized in Table 3.

Note: In summarizing the impacts of the proposed standards, the following paragraphs do not include the poly(ethylene terephthalate), terephthalic acid process using a single end finisher per process line since the proposed standards have no impacts above the regulatory baseline.

Under the regulatory alternatives selected as the basis for the proposed standards, annual emission reductions over the regulatory baseline range from more than 2 Mg per year for each process line in a poly(ethylene terephthalate) plant using a dimethyl terephthalate process to about 150 Mg per year for each process line in a polypropylene plant using a liquid phase process. Nationally, VOC emissions would be reduced in the fifth year following implementation of the proposed standards by about 3.0 Gg. This represents an emission reduction of approximately 42 percent from projected emission levels under the regulatory baseline.

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Table 3. SUMMARY OF IMPACTS OF PROPOSED STANDARDS[a]

Plant	Projected Number of New Lines	VOC Emission Reduction (Mg/yr)	Annual Energy Consumption[b,d] (Terajoules)	Expenditures[c] ($1000 June 1980 dollars) Capital	Expenditures[c] ($1000 June 1980 dollars) Annualized	Price Change[d] (percent)	Cost-effectiveness[c] ($/Mg VOC reduced) Average	Cost-effectiveness[c] ($/Mg VOC reduced) Incremental
1. Polypropylene, liquid phase	[illegible]	151	+ 1.4	273	94.0	0.44	620	610
2. Polypropylene, gas phase	[illegible]	20	[illegible]	24.3	6.1	0.04	300	300
3. Low Density Polyethylene, High Pressure	4	15	0	23.6	7.2	0.02	480	[illegible]
4a. Low Density Polyethylene, Low Pressure	10	37	+ 0.75	37.7	8.9	0.05	240	275
4b. High Density Polyethylene, Gas Phase	10	37	+ 0.75	37.7	8.9	0.05	240	275
5. High Density Polyethylene, Slurry Process	[illegible]	48	+ 0.1	87.9	28.3	0.13	590	780
6. High Density Polyethylene, Solution Process	[illegible]	20	[illegible]	26.4	6.9	0.04	345	345
7. Polystyrene, Continuous Process	2	34	+ 0.06	39.7	7.0	0.03	205	115
8. Expandable Polystyrene, Post-impregnation Suspension Process	2	20	0	28.4	7.7	0.02	385	385
9. Expandable Polystyrene, In-situ Suspension Process	3	7	0	15.6	6.2	0.05	930	930
10. Poly(ethylene terephthalate) dimethyl terephthalate process	7	2.7	+ 0.02	1.5	0.6	< 0.01	240	130
11. Poly(ethylene terephthalate)[e], terephthalic acid process	13	0	0	0	0	0.00	0	0
12. Poly(ethylene terephthalate)[f], terephthalic acid process	1	22	+1.95	50.9	10.9	0.03	485	720

[a] Impacts are over baseline levels for the selected regulatory alternatives marked with an asterisk (*) in Tables 1 and 2 and are on a per line basis.

[b] Does not include energy credits for the energy value of reduced VOC consumption or recovered VOC. When energy credits are accounted for there is a national decrease in energy consumption of about 34 terajoules per year.

[c] Based on a most likely growth distribution in each segment by combination of individual process sections, process lines, and whole plants. (See Docket Reference Number II-B-92, "Calculations of Average, or Typical, Cost-Effectiveness Values for the Regulatory Alternatives Selected as the Basis for the Proposed Standards and the Next More Stringent Regulatory Alternatives," in Docket Number A-82-19).

[d] Based on "worst case" (i.e., most costly) assumption that all new growth is by individual process section.

[e] The impact projections apply only to a process line using a single end finisher. There is no impact over baseline for these 13 PET lines.

[f] These impacts are for a process line using multiple end finishers.

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In most polymer production plants, the proposed standards would increase energy consumption slightly over the regulatory baseline. The largest amount of additional energy required under the proposed standards would be about 1.9 terajoules (1.8 billion Btu) per year for a process line producing a high intrinsic viscosity poly(ethylene terephthalate) product with multiple end finishers. This increase is offset partially when the heat value of the recovered ethylene glycol is considered.

Nationally, total energy consumption would decrease from the regulatory baseline by about 36 terajoules (34 billion Btu) per year in the fifth year after implementation of the proposed standards. This result is obtained by calculating the energy value of the VOC recovered as a result of the proposed standards and subtracting it from the increased energy usage due to the control devices associated with the proposed standards.

For individual plants, the average cost per megagram of VOC reduction of the proposed standards over the regulatory baseline ranges from about $205 per megagram of VOC reduced per process line-equivalent in plants producing polystyrene using a continuous process to about $930 per megagram of VOC reduced per process line-equivalent in plants producing expandable polystyrene using an in-situ suspension process (see Docket A–82–19, Item II–B–92, Table 6). The incremental cost effectiveness of the proposed standards over the next less stringent regulatory alternative ranges from about $115 per megagram of VOC reduced per process line-equivalent in plants producing polystyrene using a continuous process to a high of about $930 per megagram VOC reduced per process line-equivalent in plants producing expandable polystyrene using an in-situ suspension process.

Under the proposed standards, increased capital expenditures over the regulatory baseline would range from about $1,500 dollars per process line-equivalent in plants producing poly(ethylene terephthalate) using a dimethyl terephthalate process to about $273,000 per process line-equivalent in plants producing polypropylene using a liquid phase process. Annualized cost increases over the regulatory baseline range from about $600 per line-equivalent in plants producing poly(ethylene terephthalate) using a dimethyl terephthalate process to about $94,000 per line-equivalent in plants producing polypropylene using a liquid phase process. Total increased capital and annualized expenditures over the regulatory baseline in the fifth year after implementation of the proposed standards would be about $4.5 million and $1.4 million, respectively.

Finally, an analysis of the economic impacts associated with the proposed standards showed that the impacts would be minor. Based on the worst-case assumption that all costs are passed through to the customer, maximum price increases ranging from less than 0.01 percent, for plants producing poly(ethylene terephthalate) using a dimethyl terephthalate process, to about 0.44 percent, for polypropylene plants using a liquid phase process, were projected (see Chapter 9, p. 9–47, of the BID).

An analysis of the impact of the proposed standards on capital availability indicates that the increased costs associated with the proposed standards would not have any significant impact on the ability of the polymer production industry to raise capital (see Chapter 9 of the BID). Consequently, the proposed standards would not curtail or postpone plant construction or expansion. In addition, the proposed standards would have no significant adverse aggregate impacts on employment, competition, industry structure, productivity, or foreign trade.

D. Selection of Format for the Proposed Standards

Several formats could be selected for the proposed standards. Section 111 of the Clean Air Act requires, however, that standards of performance be written in terms of emission limits, unless such standards are not feasible. Under section 111(h)(2), such standards are not feasible if either the pollutants cannot be emitted through a capture system or the application of measurement technology is not practicable due to technological or economic limitations. In such cases, standards may be written in terms of equipment design, work practice, or operational practices.

1. Process Emissions

The alternative formats considered were emission limits expressed in terms of VOC concentration, mass of VOC emissions per unit of production, and percent VOC emission reduction.

For polypropylene and polyethylene production, the proposed standards are based on the use of combustion devices such as flares, thermal incinerators, catalytic incinerators, and boilers. For polystyrene and poly(ethylene terephthalate) production, however, the proposed standards are based primarily on the use of recovery techniques (condensation or distillation).

The emissions from incinerators, boilers, and condensers can be measured. Thus, standards structured in terms of emission limits are appropriate for these control technologies. Unlike boilers, heaters, and incinerators in which combustion takes place in an enclosed chamber, flaring is an open combustion process. Measurement of emissions from a flare to determine its efficiency is, therefore, very difficult. While emission measurement is technologically possible, the costs involved due to the necessity of hooding the flare and other equipment needs make measurement of emissions economically impracticable. As a result, emission limits for flares have been determined to be not feasible. As mentioned previously, 98 percent reduction is known to be achieved when flares are operated under certain specific conditions. Therefore, the proposed standards include these certain equipment, design, and operational requirements that apply when flares are used to control emissions.

For controls involving combustion in enclosed chambers, EPA has selected a percent reduction format. Structuring emission limits in terms of VOC concentration does not reflect the performance capability of incinerators or boilers, which are capable of achieving essentially the same high degree of emission reduction over a very wide range of uncontrolled VOC concentrations through complete combustion. The degree of emission reduction necessary to comply with an emission limit on the VOC concentration discharged to the atmosphere will vary depending on the VOC concentration in the uncontrolled gas stream. A concentration limit, therefore, could allow incomplete combustion to occur, which not only reduces the degree of emission reduction, but can also lead to increased ozone formation in the atmosphere due to the higher photochemical reactivity of partially combusted VOC's.

Emission limits in terms of percent reduction in VOC emissions avoid the variability of concentration limits and the potential for increased ozone from incomplete combustion. By requiring the same high degree of emission reduction regardless of the VOC concentration in the uncontrolled gas stream, a percent reduction format ensures complete combustion and reflects the performance capability of combustion.

For the proposed standards that are based on the use of condensation, emission limits expressed in terms of percent VOC reduction, mass of VOC

emissions per unit of production, and VOC concentration were considered. Emission limits in terms of percent reduction by themselves were not considered appropriate. Condensation technology reduces the concentration of VOC in the uncontrolled gas stream to a specific level, which depends on the vaporization and condensation properties of the VOC in question. This level is not particularly sensitive to the initial VOC concentration in the uncontrolled gas stream; that is, for any given VOC, the technology will reduce emissions to essentially the same concentration level over a relatively wide range of uncontrolled VOC concentrations. Since the degree of emission reduction achieved varies depending on the uncontrolled VOC concentrations, emission limits in terms of percent VOC reduction are not consistent with the performance capabilities of a condenser.

A format of mass of VOC emissions per unit of production reasonably reflects the performance capabilities of condensation technology. As mentioned above, condensers are essentially capable of reducing VOC concentrations to a specific level regardless of variations in uncontrolled VOC concentrations. The volume of the gas stream discharged to the atmosphere, on the other hand, varies directly with production rate (i.e., the greater the production rate the greater the volume of the gas stream discharged). Mass emissions, which are the product of multiplying the concentration of VOC in the gas stream discharged to the atmosphere from the condensers by the volume of the gas stream, also vary directly with production rate. As a result, where control technologies, such as condensation, that limit VOC concentrations in the gas streams discharged to the atmosphere are employed, the ratio of mass of VOC emissions divided by production rate is essentially constant. Condensation technology can thus be employed to achieve the same controlled emission rate.

As noted above, condensation technology reduces VOC concentration to a specific level depending on the vaporization and condensation properties of the VOC in question regardless of the uncontrolled VOC concentration. As a result, a concentration format can best represent the performance capabilities of condensers. There is one serious potential drawback to a standard based solely on VOC concentration. VOC concentrations depend to a large extent on the amount of dilution of the gas stream that occurs prior to measurement of emissions. This problem can be overcome in many cases by correcting all measurements of VOC concentrations to a common reference basis (i.e., essentially limiting the amount of dilution permitted). In the case of polymers production, however, selecting a common reference basis for this purpose is difficult. The amount of dilution present in the gas streams discharged from the steam-jet ejectors in poly(ethylene terephthalate) production plants, for example, varies depending on the degree of vacuum maintained in this system. For a specific VOC, however, concentration is directly proportional to outlet gas temperature; a given temperature will result in a given VOC concentration. Outlet gas temperature is easier to measure and monitor than concentration and cannot be "diluted" in the same way as can concentration.

A temperature requirement is easy to monitor and enforce, but does not encourage process improvements that reduce atmospheric emissions, because all systems are operated with the same outlet gas temperature regardless of the amount of emissions being released to the atmosphere. A mass emission rate VOC per unit of production standard, on the other hand, requires somewhat more effort to monitor and enforce, but does encourage process improvements that reduce atmospheric emissions. Both formats generally reflect the performance capability of best demonstrated technology (i.e., condensers). Therefore, based on these and the above considerations, the proposed standards for condensation technology allow an affected facility owner or operator to meet a standard based on the emission rate per unit of production format or as a surrogate, maintain a specified condenser outlet temperature.

Finally, the proposed standards for poly(ethylene terephthalate) production are based in part on the recovery of the ethylene glycol prior to its entering the steam-jet ejectors used to maintain a vacuum in the polymerizers and in part on the reduction of its concentration in the cooling tower through the drawing off of cooling water from the tower and recovering the ethylene glycol in a distillation column. An emission limit standard for these cooling tower VOC emissions is not practicable. There is no add-on technology for abating the ethylene glycol emissions in the air stream from a cooling tower. Furthermore, the various parameters affecting emission levels from cooling towers vary from one cooling tower to another making it impracticable to establish a measurement methodology upon which a percent reduction-, mass-, or concentration (in air)-based standard can be based. Therefore, it is infeasible, as that term is defined in section 111(h), to establish an emission limitation for cooling tower emissions.

Recovery of ethylene glycol from the polymerizer offgases prior to its entering the steam-jet ejectors controls VOC emissions of this material to the atmosphere from the cooling tower. Consequently, rather than placing a limit on emissions from the cooling tower, a section 111(h) operational limit is proposed in the form of a maximum concentration of ethylene glycol either in the cooling water in the cooling tower or in the cooling water exiting the vacuum system servicing the polymerization reaction section and then entering the cooling tower. Use of percent reduction or mass of VOC per unit of production for the ethylene glycol in the cooling tower water would not result in any greater reduction in VOC emissions from the cooling tower and would be more difficult to determine and enforce.

2. Fugitive Emissions

The proposed standards for fugitive emissions in the polymer manufacturing industry are the same as those promulgated for the SOCMI. The following paragraphs summarize the proposed standards.

For fugitive emissions from equipment leaks, it is generally not feasible to structure performance standards in terms of emission limits. Except in those cases where emission limits could be set at "no detectable level," the only way to measure emissions from fugitive emission sources, such as pumps and valves, would be to use a bagging technique for each source. "Bagging" means to enclose a fugitive emission source with a shroud in order to capture all of the emissions from the source. After an appropriate equilibration time, a sample of the effluent from the shroud is taken to determine the VOC concentration. The VOC mass emission rate is then calculated based on the low volumetric flow rate and VOC concentration. The great number of sources and their distribution over large areas would make such a requirement economically impracticable. Therefore, a VOC emissions limit format was not selected for the proposed fugitive emission standards.

A slightly different approach would be a limit on the number or percentage of fugitive emission sources that would be allowed to leak. This approach, which would add flexibility to the proposed

standards, would be more qualitative than an approach based on quantitative emission measurements such as bagging. This approach, however, would be potentially applicable to only valves. Other fugitive emission sources are too few in number for this approach to be meaningful. As a way to avoid imposing unreasonable impacts on operators who have facilities with very few leaking valves, the proposed standards incorporate this approach as an alternative for controlling fugitive emissions from valves. For other fugitive emission sources, except where a no detectable emission limit can be established, the proposed standards are structured solely in terms of equipment design, operational procedures, work practices, or performance standards. The specific format selected for each fugitive emission source is discussed in the next section.

E. Selection of Numerical Emission Limits, Equipment Design, Operational Procedures, or Work Practice Standards

1. Continuous Process Emissions

The proposed standards for continuous process emissions in polypropylene and polyethylene production plants are based on the use of combustion to control VOC emissions. The formats selected for the proposed standards that are based on the use of combustion are percent VOC emission reduction for combustion devices other than flares and an equipment standard for flares.

As described in the background information document, test data show that certain types of flares can achieve 98 percent VOC emission reduction under specific conditions and that only flares operating under these conditions achieve a 98 percent VOC emission reduction. The net heating value of the flared gas must not be less than 11.2 megajoules per standard cubic meter (300 Btu/scf) for a steam-assisted or air-assisted flare, or less than 7.45 megajoules per standard cubic meter (200 Btu/scf) for a nonassisted flare. In addition, the exit velocity of the flare gas at the flare tip must not exceed a maximum velocity, which is dependent on the net heating value of the flared stream, for steam-assisted or nonassisted flares. The maximum exit velocity is determined using an equation included in the regulation. If the net heating value of the gas stream being combusted is greater than 37.3 megajoules per standard cubic meter (1,000 Btu/scf), then the exit velocity of the flare gas at the flare tip must not exceed 122 meters per second (400 ft/sec) for steam-assisted or nonassisted flares. Air-assisted flares must also operate below a maximum exit velocity, which is dependent on the net heating value of the flared stream. The maximum exit velocity is determined using an equation included in the regulation.

In addition to the above conditions, the proposed standards require the use of a smokeless flare. According to the current knowledge of flare design, the best available flare design or state-of-the-art flare design is the smokeless flare. Smoking flares are environmentally less desirable because they emit particulates. The environmental impact associated with smoking flares is considered unreasonable, especially in light of the availability of smokeless flares capable of achieving the same destruction efficiency.

Another consideration in developing the equipment standards for flares is the need to adjust operation of a flare in response to flow surges. Surges in gas stream flow can cause a flare to smoke for short periods of time until the flare is adjusted. Five minutes is a reasonable period of time for alleviating the smoking condition by making the needed adjustments to a flare. Flow surges occur infrequently and generally do not occur more than once in a 2-hour period. Therefore, a limit on visible emissions of no more than 5 minutes within any 2-hour period is included in the proposed standards for flares.

Based on data summarized in the background information document, combustion devices such as thermal and catalytic incinerators, process heaters, and boilers can achieve a 98 weight percent VOC reduction. For thermal incinerators, the data show that 98 percent reduction is achieved when using a combustion temperature of 870 degrees Centigrade or more and a residence time of 0.75 seconds or more, provided the VOC concentration of the emission stream is greater than approximately 2,000 parts per million by volume (volume, by compound). For catalytic incinerators, 98 weight percent VOC reduction can be achieved at lower temperatures.

Destruction efficiencies of 98 percent VOC emission reduction are achievable in process heaters and boilers provided the waste stream is introduced into the flame zone where temperatures are highest. Unlike incinerators, in which firebox temperatures are fairly uniform, firebox temperatures in boilers and process heaters are highest in the flame zone with a distinct temperature gradient between the flame zone and the walls. Consequently, the proposed standards would require gas streams to be introduced directly into the flame zone where process heaters and boilers are used to comply with the standards.

Data summarized in the background information document show that 20 parts per million by volume (ppmv) is the lowest VOC concentration achievable by combustion of gas streams containing less than 2,000 ppmv VOC. Consequently, the proposed standards to be met by the use of combustion devices other than flares include a lower TOC concentration limit of 20 ppmv to allow for the drop in achievable destruction efficiency when combusting streams containing less than 2,000 ppmv VOC. The proposed emission limits, therefore, are a 98 percent TOC emission reduction, or TOC emission reduction to 20 ppmv (volume, by compound), whichever is less stringent. The proposed TOC concentration limit of 20 ppmv is referenced to an oxygen concentration of 3 percent by volume.

The proposed standards for continuous process emissions from general purpose or impact polystyrene production plants using a continuous process are based on the use of condensers to control VOC emissions. The formats selected for the proposed standards that are based on the use of recovery technologies, such as condensation, are a mass emission rate per unit of production and an operational limit on the outlet gas temperature.

Analysis indicates that the use of refrigerated condensers, cooling the gas stream discharged from the material recovery section to −26 degrees Centigrade (−15 °F), would reduce VOC emissions to 0.0036 kg VOC per megagram of product (see Docket A–82–19, Item II–B–91). Temperature monitors are required to have an accuracy of 1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater. Consequently, based on this analysis and taking into account allowable temperature monitor accuracy, an emission limit of 0.0036 kg TOC per megagram of polystyrene product or, as a subrogate, A limit of −25 °C (−13 °F) on the outlet gas temperature are included in the proposed standards limiting VOC emissions from the material recovery section of general purpose or impact polystyrene production plants using a continuous production process. As noted earlier, an affected facility owner or operator would be required to meet one limit or the other, not both.

The proposed standards for continuous process emissions from poly(ethylene terephthalate) production plants are based primarily on the use of spray condensers to reduce VOC emissions from the polymerization reactors in plants using either the terephthalic acid process or the dimethyl terephthalate process. For some high viscosity poly(ethylene terephthalate) plants, the proposed standards are based in part on the use of distillation columns. In addition, the proposed standards are also based on the use of condensers to control VOC emissions and recover methanol from the material recovery section in plants using the dimethyl terephthalate process and ethylene glycol from the raw materials preparation section (i.e., the esterifiers) in plants using the terephthalic acid process. As mentioned earlier, the formats selected for the proposed standards that are based on recovery technologies, such as condensation, are a mass emission per unit of production and an operational limit on the outlet gas temperature.

The spray condenser system mentioned above is actually composed of a spent ethylene glycol spray condenser and associated equipment, such as distillation columns, which further recover the condensed ethylene glycol for either recycle to the process or sale offsite. Emissions in this recovery system occur from the associated equipment and not from the spray condenser itself. The overheads from the spray condenser pass through a vacuum system composed of steam-jet ejectors and barometric intercondensers. Ethylene glycol in the overheads is condensed and entrained in the water from the vacuum system and carried to a cooling tower, from which VOC emissions occur.

Based on data summarized in the background information document, VOC emissions discharged from the recovery part of this system are 0.02 kilograms per megagram or less. Consequently, the proposed standards would limit TOC emissions from the recovery section of this system to 0.02 kilograms per megagram of poly(ethylene terephthalate) produced. The data available show that a well-operated spray condenser is capable of reducing the concentration of ethylene glycol in the cooling water exiting the vacuum system to 0.35 weight percent or less, based on a 14-day rolling average, in plants where a low viscosity product is produced or where a high viscosity product is produced using a single end finisher. The 14-day averaging period was selected because shorter averaging periods would not take into account adequately the cyclic nature of the concentration of ethylene glycol in the cooling tower water. A shorter time period (e.g., 1-hour, 24-hour) would require a higher concentration level, which would not require best demonstrated technology be applied at all times. Consequently, the proposed standards for these poly(ethylene terephthalate) plants would limit the concentration of ethylene glycol in the condensate exiting the vacuum system serving the polymerization reaction section to 0.35 weight-percent, based on a 14-day rolling average, on a daily basis. The daily average would be calculated by taking that day's concentration, adding it to the previous 13 operating days' concentrations, and dividing the sum by 14.

For high viscosity poly(ethylene terephthalate) plants using multiple end finishers, analysis shows that a well-operated spray condenser on the initial end finisher(s) and distillation column on the cooling tower are capable of reducing the concentration of ethylene glycol in the cooling tower to at least 1 weight percent or less; however, reduction beyond 6 percent by weight becomes unreasonable considering the additional costs and emission reduction (see Chap. 8, Table 8–42b, of the BID and Docket A–82–19, Item II–B–90, Table II–2). Consequently, the proposed standards for poly(ethylene terephthalate) plants producing a high viscosity product with multiple end finishers would limit the ethylene glycol concentration in the cooling tower to 6.0 weight percent, based also on a 14-day rolling average, on a daily basis.

As described in the background information document, the reaction of dimethyl terephthalate and ethylene glycol produces bis-hydroxyethyl terephthalate and methanol. The methanol by-product is recovered in a material recovery section through the use of condensers. Methanol emissons from the material recovery section are around 0.18 kg VOC per megagram of product. Analysis indicates that the use of refrigerated condensers, cooling the methanol stream to −25 °C (−13 °F), would reduce VOC emissions to 0.0027 kg VOC per megagram of product. Consequently, based on this analysis and the allowable temperature monitor accuracy (as noted earlier), an emission limit of 0.0027 kg TOC per megagram of product and an operational limit of −24 °C (−11 °F) for the outlet gas temperature are included in the proposed standards limiting VOC emissions from the material recovery section (i.e., methanol recovery) of poly(ethylene terephthalate) plants using a dimethyl terephthalate process. An affected facility owner or operator would be required to meet one limit or the other, not both.

Data summarized in the background information document show that the condensers controlling VOC emissions from the esterifiers in plants using the terephthalic acid process are capable of reducing emissions to 0.04 kilograms VOC per megagram of product or less. The proposed standards, therefore, limit VOC emissions from the raw materials preparation section (i.e., the esterifiers) to 0.04 kilogram TOC per megagram of poly(ethylene terephthalate) produced.

2. Intermittent Process Emissions

The proposed standards for intermittent process emissions from polypropylene plants and polyethylene plants are based on combustion by flares. The format selected for the proposed standards that are based on flares is equipment design and operation procedures. Intermittent gas streams differ from continuous gas streams in that the former are highly variable with much higher flow rates. These characteristics make it impossible to prescribe uniform equipment design and operating procedures that will ensure 98 percent VOC emission reduction. Flares controlling intermittent emissions, however, can be designed to operate smokelessly for most of the gas flow range they are expected to handle and with a stable flame. Although the degree of emission reduction achieved by combusting intermittent gas streams in a flare may be less than 98 percent in many cases, flaring of these gas streams does achieve a significant reduction in VOC emissions. Consequently, the proposed standards for intermittent process gas streams would require that these streams be combusted in a smokeless flare that is operated with a stable flame. To ensure smokeless operation, visible emissions would be limited to less than 5 minutes in any 2-hour period as determined by Method 22.

3. Threshold Emission Levels for Process Emissions

If uncontrolled emission levels are small, then the cost of controlling these small quantities of emissions may be unreasonable; that is, at some "threshold" emission level it may no longer be reasonable to require control. An analysis was undertaken, therefore, to identify for each process section for which standards are being proposed the uncontrolled emission level (i.e., threshold levels) below which the cost

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of control is unreasonable in light of the small amount of VOC emission reduction (see Docket A–82–19, Items II–B–87 and II–B–95).

This analysis assumed that VOC emissions from each process section would be controlled by their own control device if the process section is constructed, modified, or reconstructed by itself or by a shared control device (i.e., a control device controlling emissions from the other process sections for which standards are being recommended) if the process section is part of a constructed, modified, or reconstructed process line or plant. Some process sections were assumed to have their own control device even when constructed as part of a new process line because of the flow characteristics of their VOC emissions. The distribution of new individual process sections, process lines, and plants was estimated for each model plant (as noted earlier under "Regulatory Alternatives") and represents the "most likely growth" distribution. The emissions from each process section were reduced by lowering the flow. (Where a shared control device was assumed, the flows and emissions from the other process sections were assumed to remain at their model plant levels.) At the same time, the cost of the control device was reduced to correspond to the process section's reduced flow and emissions. Emission levels were reduced for each process section until the incremental cost of control associated with the most likely growth distribution for that model plant became unreasonable with regard to the VOC emission reduction achieved.

On the basis of this analysis, the Administrator concludes that the cost of requiring control of any process section whose uncontrolled emission rate is at or below its respective threshold emission rate is unreasonably high compared to the emission reduction achieved. After allowance for these threshold levels, EPA believes the remaining costs are reasonable for the proposed standards.

The threshold levels calculated for each process section are included, as emission of TOC per unit of product, in the proposed standards. If a new, modified, or reconstructed affected facility (i.e., process sections for which standards are being proposed) has an uncontrolled TOC emission rate at or below the threshold level set for that process section, then the proposed standard (e.g., 98 percent reduction) for that process section does not apply.

For new affected facilities for which control is based on recovery techniques, such as condensation, no threshold levels were calculated because the standards provide an emission level that serves the same role as a threshold level. For modified or reconstructed affected facilities for which control is based on recovery, threshold levels were calculated because existing plants, which have "given" emission levels, may not be able to meet the emission level in the proposed standards at a reasonable cost. Thus, the proposed standards provide threshold levels for these existing affected facilities.

4. Compounds Used in Determining Compliance

The proposed standards are intended to reduce emissions of VOC through the application of the best system of continuous emission reduction (considering costs and other impacts), and the emission limits in the proposed standards are designed to reflect the performance of the best system of continuous emission reduction. The best systems of continuous emission reduction applicable to polymer production operations do not selectively control VOC (i.e., the proportion of the organics that is regarded as photochemically reactive), but rather these technologies control all organic compounds. Moreover, the numerical values of the emission limits were based on total organic data (excluding methane and ethane). To reflect accurately the performance of technologies selected as the best systems of continuous emission reduction and to make the emission limits consistent with the data and test methods from which the limits were derived, EPA has expressed the proposed standards in terms of total organic compounds minus methane and ethane. For the same reason, the test procedure in the proposed standards prescribes measurement of total organic compounds minus methane and ethane. In short, EPA is relying on control of total organic compounds minus methane and ethane as the best demonstrated surrogate for controlling volatile organic compounds, which react to form ozone in the atmosphere.

5. Fugitive Emissions

The emission limits, equipment design, operational procedures, or work practice requirements in the proposed standards for fugitive emissions vary for each fugitive emission source and are discussed for each source in this section. A discussion of the evaluation of the appropriate standards for fugitive emission sources is contained in "VOC Fugitive Emission Sources in the Synthetic Organic Chemicals Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–80–033a, November 1980 (Docket Item No. II–A–16); January 5, 1981, **Federal Register**, pp. 1136 through 1165; "Fugitive Emission Sources of Organic Compounds Additional Information on Emissions, Emission Reductions, and Costs," EPA–450/3–82–010, April 1982 (Docket Item No. II–A–32); "VOC Fugitive Emissions in Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards," EPA–450/3–80–033b; and October 18, 1983, **Federal Register**, pp. 48328 through 48361. That evaluation is the basis for the proposed standards for fugitive emission sources employed in the production of polypropylene, polyethylene, and polystyrene, and their copolymers.

Pressure relief devices. Rupture disks were selected as the basis for the proposed standards for gas service pressure relief devices. This control technique essentially eliminates VOC emissions from pressure relief devices. Consequently, an emission limit of "no detectable emissions" was selected for pressure relief devices. An instrument reading of less than 500 parts per million by volume (ppmv) above a background concentration using Method 21 represents "no detectable emissions."

As the function of pressure relief devices is to discharge process fluids, if necessary, to reduce dangerously high pressures within equipment, the "no detectable emission" limit would not apply to discharges through the pressure relief device during overpressure relief. Following a discharge, however, the proposed standards specify that the pressure relief device be returned to a state of "no detectable emissions" within 5 days. The proposed standards would further require an annual test to verify the "no detectable emissions" status of pressure relief devices.

As an alternative to the use of rupture disks and other techniques that achieve the "no detectable emission" limit, the proposed standards accommodate the venting of pressure relief devices to control devices that meet various requirements outlined below.

Leakless equipment. The proposed standards would not require the use of "leakless" equipment, such as sealed-bellows and diaphragm valves, canned and diaphragm pumps, and sealless compressors. This equipment is either not widely applicable, or the cost effectiveness of the emission reduction achieved through the use of this equipment is considered unreasonable. However, use of "leakless" equipment is

equivalent to the proposed standards, and the proposed standards accommodate the use of such equipment.

"Leakless" equipment would be required to operate with "no detectable emissions" at all times it is in service. The proposed standards would require that the "no detectable emissions" status of this equipment be verified annually.

Compressors. The proposed standards for compressors require either enclosure of the compressor seal area and venting of the captured emissions to a control device or the use of mechanical seals with barrier fluid systems and control of the degassing vents. Venting of the enclosure around the compressor seal area and control of the degassing vents would require use of control devices that meet various requirements outlined below.

Open-ended valves. The basis of the proposed standards is enclosure of the open-end of the valve. The proposed standards would require, therefore, that open-ended valves be equipped with a cap, plug, or a second valve. If a second valve is used to close the open end, the proposed standards would require the upstream valve to be closed first. After the upstream valve is completely closed, the downstream valve would be closed. This operational requirement is necessary in order to prevent trapping process fluid between the two valves, which could result in a situation equivalent to the uncontrolled open-ended valve.

Sampling connection systems. Closed-purge sampling was selected as the basis for the proposed standards for sampling connection systems. Although closed-purge sampling effectively eliminates VOC emissions due to purging, a "no detectable emissions" limit could not be selected because closed-purge systems may have detectable emissions. Thus, the use of closed-purge sampling itself was selected as the requirement for sampling connection systems. The proposed standards, however, would also allow the use of closed-vent vacuum systems connected to control devices and in-situ sampling systems as alternatives to closed-purge sampling.

Pumps and valves. Work practices consisting of periodic leak detection and repair programs were selected as the basis for the proposed standards for pumps and valves. Several factors influence the level of emission reduction that can be achieved by a leak detection and repair program. The three main factors are the monitoring interval, leak definition, and repair interval.

The monitoring interval is the frequency at which individual pumps and valves are checked for leaks. The proposed standards would require monthly monitoring for pumps and valves, although quarterly monitoring would be allowed for valves that have been found not to leak for 2 successive months.

Modified or reconstructed facilities would be permitted to monitor annually valves that are difficult to monitor. Valves that are difficult to monitor are defined as valves that would require elevating personnel more than 2 meters above any readily available support surface.

The proposed standards would also allow use of leak detection and repair programs tailored to the unique circumstances for valves that are considered unsafe to monitor. Valves considered unsafe to monitor would be those that the plant owner or operator demonstrates would place personnel in potentially hazardous situations.

The "leak definition" is the instrument reading observed during monitoring that defines which emission sources (e.g., pump, valve) require repair. The best leak definition would be the one that achieved the most emission reduction at reasonable costs. The EPA has determined that valves found leaking at levels of 10,000 ppm or greater can be brought to levels below 10,000 ppm with proper maintenance. A leak definition lower than 10,000 ppm may be practicable in the sense that leaks can be repaired to levels less than 10,000 ppm. However, EPA is unable to conclude that a leak definition lower than 10,000 ppm would provide additional emission reductions and would, therefore, be reasonable. In fact, using a lower leak definition, such as 1,000 ppm, may actually result in an increase in emissions as a result of attempted repair. It is unknown precisely at what "action level" maintenance efforts begin to result in increased emissions. Therefore, a leak definition lower than 10,000 ppm was not selected because EPA has determined that using a lower leak definition would not increase emission reduction significantly and the potential net benefit of a lower leak definition is questionable. Consequently, an emission level of 10,000 ppm was selected as the definition of a leak.

The repair interval is the length of time allowed between the detection of a leaking source and repair of the source. The proposed standards would require an initial attempt to repair a leaking pump or valve within 5 days and complete repair, except as discussed below, within 15 days.

Delay of repair beyond 15 days would be allowed for leaks that could not be repaired without shutting down a facility. In general, these leaks would have to be repaired at the next scheduled facility shutdown. Spare parts for pumps and valves can usually be stocked such that all leaks that could not be repaired without shutting down the affected facility could be repaired during the shutdown.

Several types of pumps with ancillary equipment can achieve emission reductions of VOC equivalent to that achieved by a monthly leak detection and repair program for pumps. This equipment includes dual mechanical seal systems that utilize a barrier fluid between the seals, sealless pumps, and enclosures of the pump seal areas.

Pumps with dual mechanical seal systems and sealless pumps, such as diaphragm or canned pumps, are not covered by the requirements for routine leak detection and repair programs contained in the proposed standards. In addition, the proposed standards would allow the use of enclosed seal areas that are connected to a control device by a closed vent system.

Alternative standards for valves. The cost effectiveness of leak detection and repair programs is considered unreasonable for process units having, on the average, fewer than 1.0 percent of their valves leaking over time. (See Chapter 14 in "VOC Fugitive Emissions in Synthetic Organic Chemicals Manufacturing Industry—Background Information for Promulgated Standards," EPA 450/3–80–033b, June 1982.) An average of 1.0 percent of valves leaking over time can be reflected by a maximum level of 2.0 percent of valves leaking at any point in time. The proposed standards pertaining to the required routine leak detection and repair program for valves include two alternatives that allow an owner or operator to comply with the 2.0 percent limit for valves leaking at any point in time.

The first alternative would limit the number of valves leaking within an affected facility to 2.0 percent at any point in time. Use of this alternative would require a minimum of one performance test per year. If more than 2.0 percent of the valves were found to be leaking, this would be an indication of noncompliance with the proposed standards.

In some cases, performance tests could be waived under the General Provisions of 40 CFR Part 60 where it could be shown that a routine leak detection and repair program for valves is not necessary to control fugitive VOC

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emissions. Such cases might include facilities that use valves of a superior design due to the value or hazardous nature of the product, or facilities in which the valves simply do not "leak" for unexplained reasons. Demonstration that a leak detection and repair program is not necessary to control fugitive VOC emissions from valves would require, in most cases, a number of performance tests over a period of time that not only demonstrate the achievability of the 2.0 percent criteria for leaking valves, but that also indicate that this criteria will be achieved on a continuing basis.

The second alternative would allow the use of "skip-period" leak detection for valves. Under skip-period leak detection, the frequency of monitoring valves could decrease for valves that have shown a history of not leaking. A skip-period leak detection program could be used when fewer than 2.0 percent of the valves were found to be leaking over two consecutive quarters. The monitoring interval for valves could then become semi-annual. If fewer than 2.0 percent of the valves were found to be leaking over five consecutive quarterly leak detection periods, the monitoring interval could then become annual. When more than 2.0 percent of valves were found to leak on any test, the monitoring interval for valves would revert to monthly until sufficient data had been gathered to resume the skip-period program.

Fugitive emission control devices. Control devices used to control fugitive VOC emissions would be required by the proposed standards to achieve an emission reduction efficiency of 95 percent. In many cases, these control devices would not be new, but would be existing and would be designed to dispose of organic vapor streams from other sources in the plant. Establishing a higher percentage reduction standard based on the performance of combustion devices capable of achieving 98 percent control would require some source owners to install control devices achieving that higher level even though they have existing devices that achieve 95 percent control. This would impose unreasonable costs in light of the small additional emission reduction that it would achieve. Therefore, 95 percent reduction is considered the appropriate requirement, based on the performance of most existing vapor recovery systems, enclosed combustion devices, and flares.

Miscellaneous. Flanges, pressure relief devices in liquid service, equipment operated at subatmospheric pressures, and all components in "heavy liquid" VOC service (i.e., VOC fluids in which the total concentration of the pure components having a vapor pressure less than or equal to 0.3 kPa at 20 degrees Centigrade is less than 80 percent by weight) are excluded from the routine monitoring requirements of the proposed standards. Even though the proposed standards do not require monitoring these equipment for leaks, the proposed standards require that if indications of VOC leaks are visually or otherwise detected from these equipment, they must be monitored using Method 21 to detect leaks. If a leak is detected, it must be repaired within 15 days.

F. Modification/Reconstruction Considerations

An existing facility is a facility that was constructed or modified before the proposal date of standards of performance. However, an existing facility on which modification or reconstruction commenced after the date of proposal of the standards becomes an affected facility. Standards apply to all affected facilities that commence construction, modification, or reconstruction after the date of proposal of standards of performance.

Modification is defined in the General Provisions of 40 CFR Part 60 as any physical or operational change to an existing facility that increases the emission rate of any pollutant to which a standard applies. Exemptions to this definition include an increase in production rate, if such an increase can be made without capital expenditure; an increase in the hours of operation; the use of an alternative fuel or raw material, if the facility was designed to accommodate the alternate fuel or raw material prior to proposal of the standards; routine maintenance, repair, and replacement; and relocation or change in ownership.

Reconstruction is defined in the General Provisions of 40 CFR Part 60 as any replacement of components in an existing facility where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility and the Administrator determines, on a case-by-case basis, that it is technologically and economically feasible to meet the applicable standards. Fixed capital cost means the capital needed to provide all depreciable components of the facility.

Based on available information, it is likely that some alterations that could be considered modifications and reconstructions will occur in existing polyethylene and polypropylene plants. However, it is unlikely that any such alterations will occur in existing polystyrene and polyester plants. (Conversion of existing batch process lines to continuous process lines in the polystyrene industry requires the complete replacement of the existing line (and therefore of process sections and process units) and would be considered a new facility rather than a modified or reconstructed facility (as to process sections and process units) under the proposed standards.) Potential alterations that could be considered modifications or reconstructions in polypropylene and polyethylene plants include use of new catalysts and conversion to copolymer production or new copolymer production.

Catalysts play a vital role in polypropylene and polyethylene manufacturing. For example, in polypropylene plants, a new catalyst may be employed to improve product mix, reduce operating costs, or increase conversion rates. Use of a new catalyst may increase VOC emissions. However, if the existing facility was designed to accommodate use of the new catalyst, then such an alteration to a process section or process unit would not be considered a modification. [See 40 CFR 60.14(e)(4)].

Some polyethylene and polypropylene manufacturers are diversifying their product lines by shifting to production of polypropylene and polyethylene copolymers. Production of copolymers could result in increased VOC emissions due to the presence of the new monomers employed to produce the copolymers. However, if the existing facility was designed to accommodate use of the new monomer, then production of the new copolymers would not be considered a modification. Simply shifting from polymer to copolymer production in an existing facility by itself would not constitute a modification.

If the use of new catalysts or shifting to the production of copolymers were to increase VOC emissions at a facility not designed to accommodate use of the new material, then such alterations would be considered a modification. The costs associated with controlling VOC emissions to comply with the proposed standards, however, would be of the same order of magnitude as those associated with control of emissions from new facilities. In many cases, the costs of controlling emissions from modified facilities would probably be less than controlling emissions from new facilities. To avoid being considered a modification, emissions from the affected facility would need to be controlled so that emissions after the alteration is made are no greater than

emissions before the alteration. In most cases, this requires less control and, as a result, lower costs than complete control of emissions that would be required to comply with the proposed standards if the existing facility became an affected facility through modification. Consequently, the costs associated with various alterations that could be considered modifications are considered reasonable, and no provisions have been included in the proposed standards exempting various alterations from consideration as modifications.

In order for alterations to an existing process section or process unit to be considered a reconstruction, the section unit must undergo sufficient replacement of components to exceed 50 percent of the fixed cost of a comparable new section or unit. For the most part, only a few facilities are expected to undergo such extensive replacement of components. The conversion of existing conventional low density polyethylene process lines to linear low density polyethylene process lines by replacement of existing equipment, however, is an example where the extent of equipment replacement may be sufficient to constitute a reconstruction of a process section or process unit.

G. Selection of Monitoring Requirements

Intermittent and continuous process emissions may be controlled through use of a flare. Continuous process emissions may also be controlled through the use of thermal or catalytic incinerators, boilers, process heaters, condensers, absorbers, and adsorbers. Each of these types of devices has different design and operating characteristics that influence the selection of monitoring requirements. Therefore, selection of the monitoring requirements is discussed individually for each type of device.

The typical method of monitoring the operation of a flare is observation for visible emissions. However, if a flare is operating smokelessly, it can be difficult to determine if a flame is present. The presence of a flame can be determined through the use of a heat sensing device on a flare's pilot flame, such as a thermocouple or ultraviolet (UV) beam sensor. One disadvantage of thermocouples is that they burn out if not installed properly. However, UV systems are not as accurate as thermocouples in indicating the presence of a flame. Since thermocouples are considered superior to UV systems for indicating the presence of a flame, the proposed standards would require installation of a thermocouple heat sensor to indicate the presence of a flame at each pilot to ensure proper operation and maintenance of the flare.

Among the criteria governing the use of flares under the proposed standards is a maximum exit gas velocity requirement. Compliance with this requirement is determined by performance testing. While continuous monitoring of the exit gas velocity is not required, it is important to ensure that the vent stream is continuously vented to the flare. Therefore, the proposed standards would require the owner or operator of an affected facility using a flare to comply with the proposed standards to install and operate a flow indicator that provides a record of vent stream flow to the flare for each vent stream.

Incinerators used to comply with the proposed standards need to be maintained and operated properly if a 98 percent reduction, or reduction to 20 ppm, is to be achieved on a continuing basis. Monitoring can generally be used to ensure that such proper operation and maintenance occurs. Two methods of monitoring to ensure proper operation and maintenance of incinerators used to comply with the proposed standards were considered. These methods were continuous monitoring of VOC emission reduction and continuous monitoring of various combustion parameters such as combustion temperature and vent stream flow rate.

Continuous monitoring of VOC emission reduction by monitoring inlet and outlet VOC emissions would be the preferred method of monitoring, because it would provide a continuous, direct measurement of actual emissions. However, operation of a continuous monitor measuring total organic compounds (minus methane and ethane) currently available is complex and labor-intensive, as well as relatively expensive since two monitors (inlet and outlet) could be required. Consequently, this approach to monitoring was not selected.

In terms of monitoring various combustion parameters, it is well accepted that low combustion temperatures can cause significant decreases in VOC destruction efficiency. Test results also indicate that temperature increases can adversely affect control device efficiency. In terms of cost, temperature monitors are relatively inexpensive, and are simple to operate. Consequently, requirements to monitor continuously the combustion temperature in incinerators are included in the proposed standards.

Where a device is used to combust waste VOC streams alone, flow rate can also be an important measure of VOC destruction efficiency since it relates directly to residence time in the combustion device. Gas stream flow rates from polymer production facilities may be small in comparison to the other streams that may be ducted to the same combustion device. As a result, flow rate of the gas stream may not always give a reliable indication of residence time of the VOC. It would, however, provide assurance that the gas streams are being routed to the combustion device for control of VOC emissions. Flow indicators are inexpensive and easy to operate. Therefore, the proposed standards would also require the use of flow indicators with incinerators.

These two combustion parameters (temperature and flow rate) would be measured during the original (or most recent) performance test. These parameters would then be monitored to determine if the combustion temperature deviated from the value measured during the performance test and to ensure that the gas stream is being routed to the control device.

For boilers and process heaters of less than 150 million Btu/hr heat input design, performance testing is required to ensure efficient VOC destruction. For these units, just as for incinerators, temperature would be required to be measured during the original (or most recent) performance test and to be monitored to determine if it deviated from the values measured during the original (or most recent) performance test. Monitoring of temperature would not be required for boilers or process heaters with a design heat input capacity of 150 million Btu/hr or greater.

For boilers or process heaters of any size, it is necessary, for the purpose of ensuring proper operation and maintenance, to know that the boiler or heater is operating and to know that the waste gas is being introduced into the boiler or heater. For boilers and process heaters of less than 150 million Btu/hr heat input design, the continuous temperature monitor provides a record of operation. However, for boilers and process heaters with a heat input design capacity of 150 million Btu/hr or greater, temperature monitoring is not required. Therefore, to ensure that these larger boilers and process heaters are operating, the proposed standards require the maintenance of records (e.g., steam production records) that would indicate the periods of operation of the boiler or process heater. The nature of the records to be kept to comply with this requirement is left to the discretion of the owner or operator of the facility, but they must be readily available for

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inspection. Finally, to ensure that the vent stream is being introduced into the boiler or heater, the proposed standards require owners or operators to install and operate a flow indicator that provides a record of vent stream flow to the boiler or heater (of any size) for each vent stream.

For condensation, the exit temperature of the gas stream from the condenser is the primary determinant of condenser performance and VOC emission control. Condenser temperature monitors are available at a reasonable cost and are simple to operate. Consequently, the proposed standards would require continuous monitoring of the condenser exit temperature of the gas stream.

For an absorber, two operating parameters were identified as the primary determinants of absorption performance and associated organic compound emission control: absorbing liquid temperature and specific gravity. Absorbing liquid temperature monitors and specific gravity measurement devices are available at a reasonable cost. Consequently, the proposed standards would require continuous monitoring of absorbing liquid temperature and specific gravity. The proposed standards would accommodate continuous monitoring of parameters other than absorbing liquid temperature and specific gravity to determine absorbing liquid saturation, provided these alternative parameters are approved, on a case-by-case basis, by the Administrator.

For carbon adsorption, the carbon bed temperature (after regeneration and completion of any cooling cycles), the amount of steam used to regenerate the adsorption bed, and the frequency of regeneration of the carbon bed are the primary determinants of adsorber performance and VOC emission control. Carbon bed temperature monitors and steam flow meters, which indicate the quantity of steam used over a period of time, are available at reasonable cost. However, these two variables do not ensure that the carbon bed is being regenerated with sufficiently frequent cycles to maintain control efficiency. Thus, monitoring of these two variables would have to be supplemented with data on the actual frequency of the cycles and the frequency necessary to maintain control efficiency.

A better, more direct monitoring technique is the use of organics concentration monitors on the gas stream discharged from adsorbers. Because performance specifications have not been developed for these monitors, the monitors would not be used to make continuous compliance determinations or to determine exact outlet concentrations. However, these monitors can be used to indicate the status of operation and maintenance practices for the carbon adsorber. Therefore, the proposed standards require the use of organics concentration monitors. A recording device would also be installed so that a record of the measurements is produced.

As mentioned previously, a number of streams other than those covered by the proposed standards could enter the control device being used to comply with the standards. The value of the various parameters that are required to be monitored could vary significantly depending on whether these other gas streams are routed through the device. As the control efficiency of the control device could also vary, the proposed standards would require the normal routing of all gas streams through any control device during the performance test. The value of the parameters that are required to be monitored would then be indicative of proper operation and maintenance during normal operation of the control device.

The proposed standards require the reporting of any process operation change that may result in the increase in the uncontrolled emission rate from process sections that have uncontrolled emission rates at or below the threshold level set for that process section. Although the owners or operators of such process sections do not have to meet the proposed standard (e.g., 98 percent reduction) for that process section, they will need to perform monitoring of process operation variables, whose change may result in emission increases, as is necessary (in the owner's or operator's judgement) to determine if such an increase in emissions may result. The Agency believes this provides sufficient monitoring of such process sections to ensure the appropriate applicability of the proposed standards, and thus no specific monitoring requirements have been included in the proposed standards for such process sections.

H. Selection of Test Methods

1. Process Emissions

When boilers or process heaters with a design heat input capacity of 150 million Btu per hour or greater are used to comply with the proposed standards, performance testing would not be required. Boilers and process heaters with a design heat input capacity of 150 million Btu per hour or greater have been shown to achieve consistently a VOC reduction efficiency of 98 percent or VOC reduction to 20 ppmv as long as the gas stream containing VOC emissions is introduced directly into the flame zone. Such boilers and heaters are generally operated at temperatures and residence times greater than 1,100 degrees Centigrade (2,012 °F) and 1 second, respectively. In some cases, the residence time is less than 1 second. However, in these cases, the firebox temperature is much greater than 1,100 degrees Centigrade (2,012 °F), and 98 percent reduction is still achieved. For these reasons, use of a boiler or heater with a design heat input capacity of 150 million Btu per hour or greater to combust gas streams containing VOC emissions is an acceptable means of demonstrating compliance with the proposed standards provided the vent stream is introduced into the flame zone. The requirement for a performance test on such devices, therefore, has been waived. In lieu of the performance test, however, an initial report describing the location at which the vent stream is introduced into the boiler or process heater is required.

Owners or operators that seek to use the threshold emission rate provision in the proposed standards would be required to perform an initial performance test to demonstrate that the uncontrolled emission rate for each such process section is at or below the threshold level.

Method 18 of Appendix A was selected as the emission test method for determining compliance with the proposed standards for continuous process VOC emissions. This method employs gas chromatography to measure VOC emissions. The primary advantage of this method over others is that individual components can be measured separately. In addition, emissions of methane and ethane, which are considered to have negligible photochemical reactivity, can be measured separately from other VOC emissions. This method was promulgated with the standards limiting equipment leaks of VOC emissions from the SOCMI. The method yields results in terms of concentrations of individual organic compounds.

Method 1 or 1A of Appendix A would be required, as appropriate, to be used for selection of the sampling site. To determine TOC mass emission rates per unit of polymer production, Method 2, 2A, 2C, or 2D of Appendix A would be required to determine the volumetric flow rate of the gas stream discharged to the atmosphere. Multiplying the volumetric flow rate by the TOC emission concentrations and the appropriate molecular weights yields the TOC mass emission rates. Dividing the

TOC mass emission rate by the polymer production rate yields TOC emissions in terms of mass per unit of production. Method 3 of Appendix A would be required to be used for an air dilution correction to 3 percent oxygen in the emissions.

To determine percent TOC emission reduction, mass emissions of TOC entering the control device may be determined as outlined above using Method 18 and Method 2. The difference between mass emissions of TOC entering the control device and mass emissions of TOC discharged to the atmosphere, divided by mass emissions of TOC entering the control device, and multiplied by 100, yields the percent TOC emission reduction.

As mentioned earlier, test methods for measuring VOC emissions from flares are quite complex and costly. Consequently, the proposed standards do not require measurement of VOC emissions from flares, and no test methods were selected for determining compliance with the proposed standards limiting VOC emissions from continuous and intermittent process gas streams controlled by flares. A visible emissions test would be required, however, to ensure compliance with the requirement for smokeless operation.

To determine compliance with the outlet gas temperature requirement for condensers, no specific test method has been selected. The proposed standards require each owner and operator of an affected facility to install a temperature monitor that is demonstrated to work at the temperatures required by the proposed standards, is equipped with a continuous recorder, and has an accuracy of 1 percent of the temperature being measured in degrees Celsius or ±0.5 °C, whichever is greater, on the exit side of the condenser.

To determine the ethylene glycol concentration in the water in the cooling tower or in the cooling water exiting the vacuum system servicing the polymerization reaction section in poly(ethylene terephthalate) plants, the procedures described in ASTM D2908–74, "Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography," were selected to form the basis of a test method. The procedures in ASTM D2908–74 were selected over other potential procedures primarily due to reproducibility of results. In addition, grab sampling procedures of ASTM D3370–76, "Standard Practices for Sampling Water," were selected for collecting the cooling water samples to be tested.

2. Fugitive Emissions

The method selected for the detection of fugitive VOC emission equipment leaks is Method 21 of Appendix A. This method incorporates the use of a portable VOC analyzer to detect the presence of VOC emissions from various points, such as equipment seals, where direct leakage of VOC to the atmosphere could occur. Soaping can be used as a preliminary screening technique. If no bubbles are observed when the soap solution is applied to the potential leak surfaces, the source is presumed not to be leaking.

An additional procedure provided in Method 21 is for the determination of "no detectable emissions." The portable VOC analyzer is used to determine the local ambient VOC concentration in the vicinity of the emission source to be evaluated, and then a measurement is made at the surface of the potential leak interface. If a VOC concentration change of less than 500 ppm or 5 percent of the leak definition (i.e., 10,000 ppm) is observed, then a "no detectable emissions" condition exists. The 5 percent of leak definition was selected based on the readability of a meter scale graduated in 2 percent increments from 0 to 100 percent of scale, and not, necessarily on the performance of emission sources.

Performance test requirements under the General Provisions of 40 CFR Part 60 include a notification to the Agency 30 days before each performance test. For fugitive emission sources, tests to determine "no detectable emissions" may occur throughout a year and must occur after each overpressure relief. Requiring an owner or operator to notify the Agency is not considered reasonable for these proposed standards. Thus, the proposed standards exempt fugitive emission testing from this requirement included in the General Provisions.

Method 21 does not include identification of the organic compounds to use for instrument calibration. Based on the results of field tests and laboratory studies, however, methane or hexane are recommended as the reference instrument calibration gases.

I. Selection of Reporting and Recordkeeping Requirements

1. Process Emissions

The General Provisions of 40 CFR Part 60 require submittal of several one-time notifications for occurrences such as construction, modification, reconstruction, scheduled dates for performance tests, and performance test results. Owners and operators of boilers and process heaters with design heat input capacities of 150 million Btu per hour or greater and flares would not report performance test results, since the proposed standards would waive the requirement of such a test. Instead, for such boilers or process heaters, operators would be required to file a report describing the location at which the vent stream is introduced into the boiler (or heater) to be used. For flares where the gas stream being flared is a continuous process gas stream, operators would be required to include in the initial report the type of flare (e.g., steam-assisted), the results of performance testing to determine compliance with the visible emission requirements, and the heat content and the maximum exit gas velocity criteria.

In addition, records must be kept and semiannual reports would be required for exceedances of certain operating parameters for process sections with uncontrolled emissions over the threshold level, and for any change in process operations that increases the uncontrolled emission rate of the process line in which a process section complying with the threshold level provision is located, as applicable. These data are needed by the plant operator to ensure proper operation and maintenance and continuing compliance, and the reports are necessary in order for proper enforcement of the proposed standards. A semiannual basis is the minimum reporting frequency that will allow adequate enforcement. Semiannual reports are waived for affected sources in States where the program has been delegated if, in the course of delegation, different reporting requirements or an alternative means of source surveillance adopted by the State are approved. Such sources would be required to comply with the requirements adopted by the State.

The proposed standards would require maintenance of records of startup, shutdown, and malfunction. Also, maintenance of records indicating whether control equipment has been properly operated and maintained would be required. Records indicating proper operation and maintenance would be based on the monitoring of control device or product recovery device parameters discussed in the previous section.

2. Fugitive Emissions

The proposed standards would require recording general information pertaining to the leak detection and repair program required by the proposed standards. Each valve or pump found to leak would be marked with a readily visible, weatherproof identification. The

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identification could be a tag attached to the valve or pump, or a number designation permanently marked on the valve or pump. The identification could be removed after a valve is repaired and found not to leak for the next 2 successive months and after a pump is repaired.

Under these requirements, a log would be maintained to record the efforts by an owner or operator pertaining to the leak detection and repair program. The log would contain the instrument and operator identification numbers, the leaking source identification number, the date of detection of the leaking source, the date of the first attempt to repair the leaking source, repair methods applied to repair the source, and the date of final repair. The log would be kept for 2 years following the survey. If the leaking component could not be repaired within 15 days, the reasons for unsuccessful repair and the date of anticipated successful repair would be recorded on the leak report form. Once the leaking source was successfully repaired, the date of repair would be recorded on the leak report form. These records would provide the information necessary to allow the owner or operator to evaluate the effectiveness of repair efforts and to allow enforcement personnel to assess compliance with the standards.

V. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact the individuals identified at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see the **ADDRESSES** section of this preamble).

VI. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials [section 307(d)(7)(A)]).

VII. Miscellaneous

As prescribed by section 111, establishment of standards of performance for the polypropylene, polyethylene, polystyrene, and polyester [poly(ethylene terephthalate)] manufacturing industry was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that polypropylene, polyethylene, polystyrene, and polyester contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous meetings were held with industry representatives and trade associations during the development of the proposed standards. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test methods.

The information provisions (reporting and recordkeeping requirements) associated with this proposed rule (40 CFR 60.565) have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB—marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection provisions. For the purposes of OMB's review, EPA has estimated the labor-hour burden of the reporting and recordkeeping requirements. During the first 3 years of this regulation, the average annual burden of the reporting and recordkeeping requirements for the 16 polymer manufacturing respondents would be about 0.8 person-years. The supporting statement that documents the calculation of this burden is filed as item II–B–76 in docket A–82–19.

Comments are specifically invited on the reporting requirements of the proposed regulation. Any comments submitted should contain specific information and data pertinent to an evaluation of the magnitude and severity of any adverse impact and should suggest alternative courses of action to avoid this impact. Recommended alternative reporting requirements should contain complete instructions and should state all the reasons the recommended requirements would be considered an improvement.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards represent the best system of emission reduction considering costs. The economic impact assessment is included in the background information document.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because the estimated annualized cost of 1.4 million dollars is well below the 100 million dollar per year criteria for major rules.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB and any response to those comments are available for public inspection at EPA's Central Docket in Washington, DC (see the **ADDRESSES** section of this preamble).

The Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980) directs Federal agencies to pay close attention to minimizing any potentially adverse impacts of a standard on small businesses, small governments, and small organizations. It may affect some small businesses, but the impacts will be few and minor. Essentially, all firms that will be required to comply with the standard are either not small businesses, or are subsidiaries of large firms.

The businesses that are expected to own or operate polymers producing

plants during the first five years following proposal are those currently in the field. The Small Business Administration (SBA) classifies small businesses in SIC 2821 (polypropylene, polyethylene, polystyrene) as those with 750 or fewer employees and in SIC 2824 [poly(ethylene terephthalate)] as those with 1,000 or fewer. These levels were set as criteria for most SBA programs (13 CFR Part 121). Only two of the firms are believed to be small businesses, and both of these produce poly(ethylene terephthalate). Because of the competitive nature of the industries and the relatively high levels of capital required to construct polymer manufacturing plants, it is unlikely that any businesses constructing new plants would be small.

Furthermore, any potential adverse economic impacts on new plants, regardless of whether they are owned or operated by large or small businesses, would be minor. For example, the proposed standard would have a minimal impact on product prices even if all costs were passed through to the customer. The maximum product price increase would be about 0.44 percent for plants producing polypropylene using a liquid phase process.

Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small entities that would be affected is not substantial and the impact of the proposed rule is not significant.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Plastics materials, synthetic resins, and nonvulcanizable elastomers (SIC 2821), Reporting and recordkeeping requirements.

Date: September 18, 1987.

Lee M. Thomas,

Administrator.

It is proposed that 40 CFR Part 60 be amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding a new subpart DDD to read as follows:

Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Polymer Manufacturing Industry

Sec.

60.560 Applicability and designation of affected facilities.
60.561 Definitions.
60.562–1 Standards: Process emissions.
60.562–2 Standards: Equipment leaks of VOC.
60.563 Monitoring requirements.
60.564 Test methods and procedures.
60.565 Reporting and recordkeeping requirements.
60.566 Delegation of authority.

Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Polymer Manufacturing Industry

§ 60.560 Applicability and designation of affected facilities.

(a) The provisions of this subpart apply to affected facilities involved in the manufacture of polypropylene, polyethylene, polystyrene, or poly(ethylene terephthalate).

(1) The affected facilities for purposes of the standards for process emissions emitted continuously are defined as each of the following process sections:

(i) For the manufacture of polypropylene using a liquid phase process: each raw materials preparation section, each polymerization reaction section, each material recovery section, and each product finishing section;

(ii) For the manufacture of polypropylene using a gas phase process: each material recovery section;

(iii) For the manufacture of low density polyethylene using a low pressure process or high density polyethylene using a gas phase process: each raw materials preparation section and each product finishing section;

(iv) For the manufacture of high density polyethylene using a liquid phase slurry process: each material recovery section and each product finishing section;

(v) For the manufacture of high density polyethylene using a liquid phase solution process: each raw materials preparation section and each material recovery section;

(vi) For the manufacture of polystyrene using a continuous process: each material recovery section;

(vii) For the manufacture of poly(ethylene terephthalate) using dimethyl terephthalate in a continuous process: each material recovery section and each polymerization reaction section; and

(viii) For the manufacture of poly(ethylene terephthalic acid in a continuous process: each raw materials preparation (i.e., esterification) section and each polymerization reaction section.

(2) The affected facilities for purposes of the standards for process emissions emitted intermittently are defined as each of the following process sections:

(i) For the manufacture of polypropylene using a liquid phase process: Each polymerization reaction section;

(ii) For the manufacture of polypropylene using a gas phase process: Each polymerization reaction section;

(iii) For the manufacture of low density polyethylene using a high pressure process: Each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section;

(iv) For the manufacture of low density polyethylene using a low pressure process or high density polyethylene using a gas phase process: Each raw materials preparation section and each polymerization reaction section;

(v) For the manufacture of high density polyethylene using a liquid phase slurry process: Each raw materials preparation section; and

(vi) For the manufacture of high density polyethylene using a liquid phase solution process: Each raw materials preparation section, each polymerization reaction section, and each material recovery section.

(3) The affected facilities for purposes of the standards for equipment leaks of VOC are defined as follows:

(i) The group of all fugitive emissions equipment (as defined in § 60.561) within any process unit (as defined in § 60.561) except process units that manufacture poly(ethylene terephthalate).

(b) Any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after September 30, 1987, is subject to the requirements of this subpart except as provided in paragraphs (c) and (d) of this section.

(c) Except for new polystyrene and poly(ethylene terephthalate) facilities, new, modified, or reconstructed affected facilities with uncontrolled emission rates at or below those identified in Table 1 are exempt from the requirements of § 60.562–1, except that owners or operators seeking to comply with this subpart by complying with the uncontrolled emissions rates in Table 1 are still required to conduct an initial performance test as required by § 60.8.

TABLE 1.—MAXIMUM UNCONTROLLED EMISSION RATES [a]

Production process	Process section	Uncontrolled emission rate, kg VOC/Mg product
Polypropylene, liquid phase process	Raw Materials Preparation	0.15[b]
	Polymerization Reaction	0.14[b], 0.24[c]
	Material Recovery	0.19[b]
	Product Finishing	1.57[b]
Polypropylene, gas phase process	Polymerization Reaction	0.12[c]
	Material Recovery	0.02[b]
Low Density Polyethylene, high pressure process	Raw Materials Preparation	0.41[d]
	Polymerization Reaction	(e)
	Material Recovery	(e)
	Product Finishing	(e)
	Product Storage	(e)
Low Density Polyethylene, low pressure process	Raw Materials Preparation	0.05[f]
	Polymerization Reaction	0.03[g]
	Production Finishing	0.01[b]
High Density Polyethylene, liquid phase slurry process	Raw Materials Preparation	0.25[c]
	Material Recovery	0.11[b]
	Product Finishing	0.41[b]
High Density Polyethylene, liquid phase solution process	Raw Materials Preparation	0.24[f]
	Polymerization Reaction	0.16[ch]
	Material Recovery	1.68[f]
High Density Polyethylene, gas phase process	Raw Materials Preparation	0.05[f]
	Polymerization Reaction	0.03[g]
	Product Finishing	0.01[b]
Polystyrene, continuous process	Material Recovery	0.016[b, h]
Poly(ethylene terephthalate), dimethyl terephthalate process	Material Recovery	0.06[b, h]
	Polymerization Reaction	1.80[h, i, j]
		3.92[h, i, k]
Poly(ethylene terephthalate), terephthalic acid process	Raw Materials Preparation	1
	Polymerization Reaction	1.80[h, j, m]
		3.92[h, k, m]

[a] "Uncontrolled" emissions refer to the emissions that would be emitted to the atmosphere in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.
[b] Emission rate applies to continuous emissions only.
[c] Emission rate applies to intermittent emissions only.
[d] Total emission rate for non-emergency intermittent emissions from raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage process sections.
[e] See footnote d.
[f] Emission rate applies to both continuous and intermittent emissions.
[g] Emission rate applies to non-emergency intermittent emissions only.
[h] Applies to modified or reconstructed affected facilities only.
[i] Includes emissions from the cooling tower.
[j] Applies to a process line producing low viscosity poly(ethylene terephthalate).
[k] Applies to a process line producing high viscosity poly(ethylene terephthalate).
[l] See footnote m.
[m] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling water tower) and the raw material preparation section (i.e., the esterifiers).

(d) No process section of an experimental process line is considered an affected facility for continuous or intermittent process emissions.

Note.—The numerical emission limits in these standards are expressed in terms of total organic compounds, measured as total organic compounds less methane and ethane.

§ 60.561 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 60, or in Subpart VV of Part 60, and the following terms shall have the specific meanings given them.

"Boiler" means any enclosed combustion device that extracts useful energy in the form of steam.

"Continuous emissions" means any gas stream containing VOC that is generated essentially continuously when the process line or any piece of equipment in the process line is operating.

"Continuous process" means a polymerization process in which reactants are introduced in a continuous manner and products are removed either continuously or intermittently at regular intervals so that the process can be operated and polymers produced essentially continuously.

"Control device" means an enclosed combustion device, vapor recovery system, or flare.

"Copolymer" means a polymer that has two different repeat units in its chain.

"Emergency vent stream" means, for the purpose of these standards, an intermittent emission that results from a decomposition, power failure, equipment failure, or other unexpected cause that requires immediate venting of gases from process equipment in order to avoid safety hazards or equipment damage.

"End finisher" means a polymerization reaction vessel operated

under very low pressures, typically at pressures of 2 torr or less, in order to produce high viscosity poly(ethylene terephthalate). An end finisher is preceded in a high viscosity poly(ethylene terephthalate) process line by one or more polymerization vessels operated under less severe vacuums, typically between 5 and 10 torr. A high viscosity poly(ethylene terephthalate) process line may have one or more end finishers.

"Expandable polystyrene" means a polystyrene bead to which a blowing agent has been added using either an in-situ suspension process or a post-impregnation suspension process.

"Experimental process line" means a polymer or copolymer manufacturing process line with the sole purpose of operating to evaluate polymer manufacturing processes, technologies, or products. An experimental process line does not produce a polymer or resin that is sold or that is used as a raw material for nonexperimental process lines.

"Flame zone" means that portion of the combustion chamber in a boiler occupied by the flame envelope.

"Fugitive emissions equipment" means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service and any devices or systems required by Subpart VV.

"Gas phase process" means a polymerization process in which the polymerization process is carried out in the gas phase; i.e., the monomer(s) are gases in a fluidized bed of catalyst particles and granular polymer.

"High density polyethylene (HDPE)" means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight and having a density of greater than 0.940 g/cm^3.

"High pressure process" means the conventional production process for the manufacture of low density polyethylene in which a reaction pressure of about 15,00O psig or greater is used.

"High viscosity poly(ethylene terephthalate)" means poly(ethylene terephthalate) that has an intrinsic viscosity of 0.9 or higher and is used in such applications as tire cord and seat belts.

"Incinerator" means an enclosed combustion device that is used for destroying VOC.

"In-situ suspension process" means a manufacture process in which styrene, blowing agent, and other raw materials are added together within a reactor for the production of expandable polystyrene.

"Intermittent emissions" means those gas streams containing VOC that are generated at intervals during process line operation and includes both planned and emergency releases.

"Liquid phase process" means a polymerization process in which the polymerization reaction is carried out in the liquid phase; i.e., the monomer(s) and any catalyst are dissolved, or suspended in a liquid solvent.

"Liquid phase slurry process" means a liquid phase polymerization process in which the monomer(s) are in solution (completely dissolved) in a liquid solvent, but the polymer is in the form of solid particles suspended in the liquid reaction mixture during the polymerization reaction; sometimes called a particle form process.

"Liquid phase solution process" means a liquid phase polymerization process in which both the monomer(s) and polymer are in solution (completely dissolved) in the liquid reaction mixture.

"Low density polyethylene (LDPE)" means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight and having a density of 0.940 g/cm^3 or less.

"Low pressure process" means a production process for the manufacture of low density polyethylene in which a reaction pressure markedly below that used in a high pressure process is used. Reaction pressure of current low pressure processes typically go up to about 300 psig.

"Low viscosity poly(ethylene terephthalate)" means a polyethylene terephthalate that has an intrinsic viscosity of less than 0.75 and is used in such applications as clothing, bottle, and film production.

"Material recovery section" means the equipment that recovers unreacted or by-product materials from any process section for return to the process line, off-site purification or treatment, or sale, including equipment that treats recovered materials, but not including equipment that also treats raw materials. For the purposes of these standards, material recovery does not apply to the onsite recovery of ethylene glycol from poly(ethylene terephthalate) plants. This equipment in these plants is covered under the standards applicable to the polymerization reaction section.

"Operating day" means, for the purposes of these standards, any calendar day during which equipment used in the manufacture of polymer was operating for at least 8 hours or one labor shift, whichever is shorter. Only operating days shall be used in determining compliance with the standards specified in § 60.562–1(c)(1)(iv), (2)(ii), (3)(ii), and (4)(ii). Any calendar day in which equipment is used for less than 8 hours or one labor shift, whichever is less, is not an "operating day" and shall not be used as part of the rolling 14-day period for determining compliance with the standards specified in § 60.562–1(c)(1)(iv), (2)(ii), (3)(ii), and (4)(ii).

"Polyethylene" means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight; see low density polyethylene and high density polyethylene.

"Poly(ethylene terephthalate) (PET)" means a polymer or copolymer comprised of at least 50 percent bis-(2-hydroxyethyl)-terephthalate (BHET) by weight.

"Poly(ethylene terephthalate) (PET) manufacture using dimethyl terephthalate" means the manufacturing of poly(ethylene terephthalate) based on the esterification of dimethyl terephthalate (DMT) with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate (BHET) that is subsequently polymerized to PET.

"Poly(ethylene terephthalate) (PET) manufacture using terephthalic acid" means the manufacturing of poly(ethylene terephthalate) based on the esterification reaction of terephthalic acid (TPA) with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate (BHET) that is subsequently polymerized to form PET.

"Polymerization reaction section" means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer chains (oligomers or low polymers), but not including equipment designed to prepare raw materials for polymerization, e.g., esterification vessels.

"Polypropylene (PP)" means a polymer or copolymer comprised of at least 50 percent propylene by weight.

"Polystyrene (PS)" means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or para-methylstyrene by weight.

"Post-impregnation suspension process" means a manufacture process in which polystyrene beads are first formed in a suspension process, washed, dried, or otherwise finished and then added with a blowing agent to another reactor in which the beads and blowing agent are reacted to produce expandable polystyrene.

"Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubular coils,

including all fluids except water that is heated to produce steam.

"Process line" means a group of equipment assembled that can operate independently if supplied with sufficient raw materials to produce polypropylene, polyethylene, polystyrene (general purpose, crystal, or expandable) or poly(ethylene terephthalate) or one of their copolymers. A process line consists of the equipment in the following process sections (to the extent that these process sections are present at a plant): raw materials preparation, polymerization reaction, product finishing, product storage, and material recovery.

"Process section" means the equipment designed to accomplish a general but well-defined task in polymer production. Process sections include raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage and may be dedicated to a single process line or common to more than one process line.

"Process unit" means equipment assembled to perform any of the physical and chemical operations in the production of polypropylene, polyethylene, polystyrene (general purpose, crystal, or expandable), or poly(ethylene terephthalate) or one of their copolymers. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. Examples of process units are raw materials handling and monomer recovery.

"Product finishing section" means the equipment that treats, shapes, or modifies the polymer or resin to produce the finished end product of the particular facility. Product finishing equipment may accomplish extruding and pelletizing, cooling and drying, blending, additives introduction, curing, or annealing. Product finishing does not include polymerization or shaping such as fiber spinning, molding, or fabricating, or modification such as fiber stretching and crimping.

"Product storage section" means the equipment that is designed to store the finished polymer or resin end product of the particular facility. Product storage does not include any intentional modification of the characteristics of any polymer or resin product or shipment of a finished polymer or resin product to another facility for further finishing or fabrication.

"Raw materials preparation section" means the equipment located at a polymer manufacturing plant designed to prepare raw materials such as monomers and solvents for polymerization. The raw materials preparation section may include equipment that accomplishes purification, drying, or other treatment of raw materials or of raw and recovered materials together, activation of catalysts, and esterification including the formation of some short polymer chains (oligomers), but does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw materials.

"Recovery system" means an individual unit or series of material recovery units, such as absorbers, condensers, and carbon absorbers, used for recovering volatile organic compounds (VOC).

"Total organic compounds (TOC)" means those compounds measured according to the procedures specified in § 60.564.

"Vent stream" means any gas stream released to the atmosphere from any polymers and resins process line.

"Volatile organic compounds (VOC)" means, for the purposes of these standards, any reactive organic compounds as defined in § 60.2 Definitions.

§ 60.562–1 Standards: Process emissions.

(a) *Polypropylene, low density polyethylene, and high density polyethylene.* On or before the date on which the performance test is required by § 60.8, each owner or operator of a polypropylene, low density polyethylene, or high density polyethylene process line containing a process section subject to the provisions of this subpart shall comply with the following:

(1) For each vent stream that emits continuous emissions in an affected facility as defined in § 60.560(a)(1) (i), (ii), (iii), (iv), and (v):

(i) Reduce emissions of total organic compounds (TOC) (minus methane and ethane) by 98 weight percent, or to a TOC (minus methane and ethane) concentration of 20 ppm by volume (ppmv), expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(ii) Combust the emissions in a flare as follows:

(A) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in § 60.564(b)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(B) Flares shall be operated with a flame present at all times, as determined by the methods specified in § 60.564(b)(2).

(C) Flares used to comply with provisions of this subpart shall be steam-assisted, air-assisted, or nonassisted.

(D) Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted being 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in § 60.564(c)(7).

(E)(*1*) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in § 60.564(c)(4), less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (a)(1)(ii)(E) (*2*) and (*3*) of this section.

(*2*) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.564(c)(4), equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec) are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1000 Btu/scf).

(*3*) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.564(c)(4), less than the velocity, V_{max}, as determined by the method specified in § 60.564(c)(b), and less than 122 m/sec (400 ft/sec) are allowed.

(F) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in § 60.564(c)(6).

(2) For each vent stream that emits intermittent emissions in an affected facility as defined in § 60.560(a)(2), except for emergency vent streams in low density polyethylene plants using either a high pressure or low pressure process and high density polyethylene plants using a gas phase process:

(i) Combust the emissions in a flare:

(A) That is designed for and operated with no visible emissions as determined by the methods specified in § 60.564(b)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(B) That is operated with a flame present at all times, as determined by the methods specified in § 60.564(b)(2).

(C) That is designed to maintain a stable flame.

(b) *Polystyrene.* On or before the date on which the performance test is required by § 60.8, each owner or operator of a polystyrene process line containing process sections subject to the provisions of this subpart shall comply with the following:

(1) For polystyrene process lines using a continuous process,

(i) Not allow continuous TOC emissions from the material recovery section to be greater than 0.0036 kg TOC/Mg product; or

(ii) Not allow the outlet gas stream from each final condenser in the material recovery section to exceed −25 °C (−13 °F).

(c) *Poly(ethylene terephthalate).* On or before the date on which the performance test is required by § 60.8, each owner or operator of a poly(ethylene terephthalate) process line containing process sections subject to the provisions of this subpart shall comply with the following:

(1) For poly(ethylene terephthalate) process lines producing a low viscosity product using the dimethyl terephthalate process,

(i) Not allow continuous TOC emissions from the material recovery section (i.e., methanol recovery) to be greater than 0.0027 kg TOC/Mg product, or

(ii) Not allow the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to exceed −24 °C (−11 °F).

(iii) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to further recover the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product.

(iv) If steam-jet ejectors are used as vacuum producers for the polymerization reaction, maintain the concentration of ethylene glycol in the condensate from the ejectors at or below 0.35 percent by weight averaged on a daily basis over a rolling 14-day period of operating days as determined by the procedures specified in § 60.564(e).

(2) For poly(ethylene terephthalate) process lines producing a low viscosity product using the terephthalic acid process,

(i) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to further recover the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product.

(ii) If steam-jet ejectors are used as vacuum producers for the polymerization reaction, maintain an ethylene glycol concentration in the condensate from the ejectors at or below 0.35 percent by weight averaged on a daily basis over a rolling 14-day period of operating days as determined by the procedures specified in § 60.564(d).

(iii) Not allow continuous TOC emissions from the esterification vessels in the raw materials preparation section to be greater than 0.04 kg TOC/Mg product.

(3) For poly(ethylene terephthalate) process lines producing a high viscosity product using a single end finisher,

(i) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to further recover the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product.

(ii) If steam-jet ejectors are used as vacuum producers for the polymerization reaction, maintain an ethylene glycol concentration in the condensate from the ejectors at or below 0.35 percent by weight averaged on a daily basis over a rolling 14-day period of operating days as determined by the procedures specified in § 60.564(e).

(iii) If the terephthalic acid process is being used, not allow continuous TOC emissions from the esterification vessels in the raw materials preparation section to be greater than 0.04 kg TOC/Mg product.

(iv) If the dimethyl terephthalate process is being used, not allow continuous TOC emissions from the material recovery section (i.e., methanol recovery) to be greater than 0.0027 kg TOC/Mg product, or not allow the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to exceed −24 °C (−11 °F).

(4) For poly(ethylene terephthalate) process lines producing a high viscosity product with multiple end finishers,

(i) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to recover further the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product.

(ii) If steam-jet ejectors are used as vacuum producers for the polymerization reaction, maintain an ethylene glycol concentration in the condensate from the ejectors at or below 6.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days as determined by procedures specified in § 60.564(e).

(iii) If the terephthalic acid process is being used, not allow continuous TOC emissions from the esterification vessels in the raw materials preparation section to be greater than 0.04 kg TOC/Mg product.

(iv) If the dimethyl terephthalate process is being used, not allow continuous TOC emissions from the material recovery section (i.e., methanol recovery) to be greater than 0.0027 kg TOC/Mg product, or not allow the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to exceed −24 °C (−11 °F).

(d) Closed vent systems and control devices used to comply with this subpart shall be operated at all times when emissions may be vented to them.

§ 60.562–2 Standards: Equipment leaks of VOC.

(a) Each owner or operator of an affected facility subject to the provisions of this subpart shall comply with the requirements specified in §§ 60.482–1 through 60.482–10 as soon as practicable, but no later than 180 days after initial startup.

(b) An owner or operator may elect to comply with the requirements specified in §§ 60.483–1 and 60.483–2.

(c) An owner or operator may apply to the Administrator for a determination of equivalency for any means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to the reduction in emissions of VOC achieved by the controls required in this subpart. In doing so, the owner or operator shall comply with requirements specified in § 60.484.

(d) Each owner or operator subject to the provisions of this subpart shall comply with the provisions specified in § 60.485 except as follows:

(1) An owner or operator may use the following provision in addition to § 60.485(e): Equipment is in light liquid service if the percent evaporated is greater than 10 percent at 150 °C as determined by ASTM Method D–86 (incorporated by reference as specified in § 60.18).

(e) Each owner or operator subject to the provisions of this subpart shall comply with § 60.486 and § 60.487.

§ 60.563 Monitoring requirements.

(a) If an incinerator is used to comply with § 60.562–1, except § 60.562–1(a)(2), the owner or operator of an affected

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facility shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of 1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, this temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator in each vent stream at a point closest to the inlet of each incinerator and before being joined with any other vent stream. Each flow indicator shall provide a record of vent stream flow to the incinerator at least once every hour for each affected facility.

(b) If a flare is used to comply with § 60.562–1, except § 60.562–1(a)(2), the owner or operator of an affected facility shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A thermocouple or similar monitoring device at each pilot light in the flare to indicate the continuous presence of a flame, and

(2) A flow indicator that provides a record of vent stream flow to the flare at least once every hour for each affected facility.

(c) The owner or operator of an affected facility subject to § 60.562–1(a)(2) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A thermocouple or similar monitoring device at each pilot light in the flare to indicate the continuous presence of a flame, and

(2) A flow indicator that provides a record of vent stream flow to the flare for each affected facility.

(d) If a boiler or process heater is used to comply with § 60.562–1, except § 60.562–1(a)(2), the owner or operator of an affected facility shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) At a point closest to the inlet of each boiler or process heater and before being joined with any other vent stream, a flow indicator that provides a record of vent stream flow to the boiler or process heater at least once every hour for each affected facility, and

(2) For boilers or process heaters with a heat input design capacity of less than 150 million Btu/hr, a temperature monitoring device equipped with a continuous recorder and having an accuracy of 1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater. For watertube boilers, the temperature monitoring device shall be installed between the radiant section and the convection zone. For firetube boilers, the temperature monitoring device shall be installed between the furnace (combustion zone) and the firetubes.

(3) For boilers or process heaters with a heat input design capacity of 150 million Btu/hr or greater, the owner or operator of an affected facility shall maintain such records to indicate the periods of operation of the boiler or process heater. The records must be readily available for inspection.

(e) Where an absorber, condenser, or adsorber is used to comply with § 60.562–1, except § 60.562–1(a)(2), the owner or operator of an affected facility shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator:

(1) If an absorber is the final unit in a system,

(i) A scrubbing liquid temperature monitoring device having an accuracy of 1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater, and a specific gravity monitoring device having an accuracy of ±0.02 specific gravity unit, each equipped with a continuous recorder, or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photoionization, or thermal conductivity, equipped with a continuous recorder, for the outlet of the absorber.

(2) If a condenser is the final unit in a system,

(i) A condenser exit (product side) temperature monitoring device equipped with a continuous recorder and having an accuracy of 1 percent of the temperature being measured expressed in degrees Cellsius or ±0.5 °C, whichever is greater, or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photoionization, or thermal conductivity, each equipped with a continuous recorder, for the outlet of the condenser.

(3) If a carbon adsorber is the final unit in a system,

(i) An organic monitoring device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photoionization, or thermal conductivity, equipped with a continuous recorder, for the outlet of the carbon bed.

(f) Owners or operators of control devices used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs.

(g) An owner or operator of an affected facility complying with the standards specified under § 60.562–1 with control devices other than an incinerator, boiler, process heater, flare, absorber, condenser, or carbon adsorber or by any other means shall provide to the Administrator information describing the operation of the control device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

§ 60.564 Test methods and procedures.

(a) The test methods in Appendix A to this part, except as provided under § 60.8(b), shall be used as reference methods for determining TOC (minus methane and ethane) reduction efficiency or the TOC (minus methane and ethane) concentration at the outlet of the control device to determine compliance with the standards specified under § 60.562–1 when control devices other than flares are used, as follows:

(1) Method 1 or 1A, as appropriate, for selection of the sampling site. The sampling site for determination of offgas molar composition or TOC reduction efficiency shall be prior to the inlet of any combustion device and after all product recovery units.

(2) Method 2, 2A, 2C, or 2D, as appropriate, for determination of the volumetric flow rate.

(3) Method 3 for air dilution correction, based on 3 percent oxygen in the emission sample.

(4) Method 18 to determine the individual concentrations of all organics.

(5) The following equation shall be used to determine the TOC concentration (minus methane and ethane) in the emission sample:

$$C_{TOC} = \sum_{i=1}^{n} C_i$$

where:

C_{roc} = the concentration of total organic compounds (minus methane and ethane), ppm.
C_i = the concentration of sample component i, ppm.

(6) The following equation shall be used to determine the concentration corrected for oxygen, based on 3 percent oxygen in the emission sample:

$$C_{CORR} = C_{MEAS} \times \left(\frac{17.9}{20.9 - Y}\right)$$

where:
C_{CORR} = the concentration corrected for oxygen.
C_{MEAS} = the concentration uncorrected for oxygen.
Y = the measured 12-hour average volumetric oxygen concentration.

(7) The following equation shall be used to determine the percent emission reduction of TOC (minus methane and ethane):

$$P = \frac{E_{inlet} - E_{outlet}}{E_{inlet}} \times 100$$

where:
P = percent reduction.
E_{inlet} = mass emissions, kg TOC/Mg product, entering the control device.
E_{outlet} = mass emissions, kg TOC/Mg product, discharged to the atmosphere.

(8) Where a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater is used, the requirement for an initial performance test is waived, in accordance with § 60.8(b). However, the Administrator reserves the option to require testing at such other times as may be required, as provided for in § 114 of the Act.

(b) When a flare is used to comply with § 60.562–1:

(1) Method 22 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(c) The test methods in Appendix A to this part, except as provided under § 60.8(b), shall be used as reference methods for determining the TOC (minus methane and ethane) emission rate in terms of kilogram emission per megagram of product, exit velocities, or net heating value of the gas combusted to determine compliance under § 60.560(c) and § 60.562–1, as follows:

(1) Method 1 or 1A, as appropriate, for selection of the sampling site. The sampling site for the molar composition and vent stream flow rate determination prescribed in §§ 60.564(c) (2) and (3) shall be prior to the inlet of any combustion device and prior to any dilution of the stream with air.

(2) The composition of the process vent stream shall be determined as follows:

(i) Method 18 and ASTM D2504–67 (reapproved 1977) (incorporated by reference—see § 60.17) to measure the concentration of TOC (minus methane and ethane) and concentration of all other compounds present except water vapor and carbon monoxide.

(ii) Method 4 to measure the content of water vapor.

(3) The volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, as appropriate.

(4) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Method 2, 2A, 2C, or 2D as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

(5) The maximum permitted velocity, V_{max}, for flares complying with § 60.564(a)(1)(ii)(E)(iii) shall be determined using the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:
V_{max} = Maximum permitted velocity, m/sec.
28.8 = Constant.
31.7 = Constant.
H_T = The net heating value as determined in paragraph (c)(7) of this section.

(6) The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084(H_T)$$

where:
V_{max} = Maximum permitted velocity, m/sec.
8.706 = Constant.
0.7084 = Constant.
H_T = The net heating value as determined in paragraph (c)(7) of this section.

(7) The net heating value of the process vent stream being combusted in a flare shall be calculated using the following equation:

$$H_T = K \left(\sum_{i=1}^{n} C_i H_i\right)$$

where:
H_T = Net heating value of the sample, MJ/scm, where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C;

$$K = \text{Constant, } 1.740 \times 10^{-7} \frac{(1)}{\text{ppm}} \frac{(\text{g mole})}{\text{scm}} \frac{(\text{MJ})}{\text{kcal}},$$

where standard temperature for $\frac{(\text{g mole})}{\text{scm}}$ is 20 °C:

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946–82 (incorporated by reference as specified in § 60.17); and

H_i = Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion of process vent stream components may be determined using ASTM D2382–76 (reapproved 1977) (incorporated by reference as specified in § 60.17) if published values are not available or cannot be calculated.

(8) The emission rate of TOC (minus methane and ethane) in the process vent stream shall be calculated using the following equation:

$$E_{TOC} = K \left(\sum_{i=1}^{n} C_i M_i \right) Q_s$$

where:

E_{TOC} = Emission rate of total organic compounds (minus methane and ethane) in the sample, kg/hr.

K = Constant, 2.494×10^{-6} (1/ppm) (g-mole/scm) (kg/g) (min/hr), where standard temperature for (g-mole/scm) is 20 °C.

C_i = Concentration of sample component i, ppm.

M_i = Molecular weight of sample component i, g/g-mole.

Q_s = Vent stream flow rate (scm/min), at a standard temperature of 20 °C.

(9) The rate of polymer produced, P_p (kg/hr), shall be determined by dividing the weight of polymer pulled in kilograms (kg) from the process line during the performance test by the number of hours (hr) taken to perform the performance test. The polymer pulled, in kilograms, shall be determined by direct measurement or, subject to prior approval by the Administrator, computed from materials balance by good engineering practice.

(10) The emission rate of TOC (minus methane and ethane) in terms of kilograms of emissions per megagram of production shall be calculated using the following equation:

$$ER_{TOC} = \frac{E_{TOC}}{P_p \times \frac{1\ Mg}{1{,}000\ kg}}$$

where:

ER_{TOC} = Emission rate of total organic compounds (minus methane and ethane), kg TOC/Mg product.

E_{TOC} = Emission rate of total organic compounds (minus methane and ethane) in the sample, kg/hr.

P_p = The rate of polymer produced, kg/hr.

(d) For purposes of determining compliance with § 60.562–1(b)(1)(ii), (c)(1)(ii), (c)(3)(iv), or (c)(4)(iv), a condenser exit temperature monitor equipped with a continuous recorder and having an accuracy of 1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater, shall be used to calculate the average exit temperature, measured at least every 15 minutes and averaged over the performance test period while the vent stream is normally routed and constituted. Each 3-hour period constitutes a performance test.

(e) For purposes of determining compliance with § 60.562–1(c) (1)(iv), (2)(ii), (3)(ii), or (4)(ii), the ethylene glycol concentration in either the cooling tower or the condensate from steam-jet ejectors used to produce a vacuum in the polymerization reactors, whichever is applicable, shall be determined using procedures that conform to the methods described in ASTM D2908–74, "Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Chromatography" (incorporated by reference—see § 60.17). At least one sample per operating day shall be collected using the grab sampling procedures of ASTM D3370–76, "Standard Practices for Sampling Water" (incorporated by reference—see § 60.17). An average ethylene glycol concentration by weight shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average ethylene glycol concentration so calculated constitutes a performance test.

(f) Each owner or operator of an affected facility shall conduct a performance test according to the procedures specified by § 60.546 (a) through (e), as appropriate, in order to determine compliance with § 60.562–1 whenever changes are made in production capacity, feedstock type or catalyst type, or whenever there is replacement, removal, or addition of a control device.

§ 60.565 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily-accessible record of the following data measured during each performance test, and shall include the following data in the report of the initial performance test in addition to the written results of such performance tests as required under § 60.8. Where a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater is used to comply with § 60.562–1(a)(1)(i), a report containing performance test data need not be submitted, but a report containing the information in § 60.565(a)(2)(i) is required. The same data specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a combustion device, or the outlet concentration of TOC (minus methane and ethane) is determined.

(1) When an incinerator is used to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed), measured at least every 15 minutes and averaged over the performance test period, and

(ii) The percent reduction of TOC (minus methane and ethane) achieved by the incinerator, the concentration of TOC (minus methane and ethane) (ppmv, by compound) at the outlet of the control device on a dry basis corrected to 3 percent oxygen, or the emission rate in terms of kilograms TOC (minus methane and ethane) per megagram of product at the outlet of the control device, whichever is appropriate.

(2) When a boiler or process heater is used to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) A description of the location at which the vent stream is introduced into the boiler or process heater, and

(ii) For boilers or process heaters with a design heat input capacity of less than 150 million Btu/hr, all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance was determined.

(3) When a flare is used to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) All visible emission readings, heat content determination, flow rate measurements, and exit velocity determinations made during the performance test,

(ii) Continuous records of the flare pilot light flame heat-sensing monitoring, and

(iii) Records of all periods of operations during which the pilot flame is absent.

(4) For flares used to meet the requirements of § 60.562–1(a)(2):

(i) All visible emission readings made during the performance test,

(ii) Continuous records of the flare pilot light flame heat-sensing monitoring, and

(iii) Records of all periods of operation during which the pilot flame is absent.

(5) When an absorber is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) The specific gravity (or alternative parameter that is a measure of the degree of absorbing liquid saturation, if approved by the Administrator), and average temperature, measured at least every 15 minutes and averaged over the performance test period, of the absorbing liquid (both measured while the vent stream is normally routed and constituted).

(6) When a condenser is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) The average exit (product side) temperature, measured at least every 15 minutes and averaged over the performance test period while the vent stream is normally rated and constituted.

(7) Daily measurement and daily average 14-day rolling average of the ethylene glycol concentration in the condensate exiting the vacuum system servicing the polymerization reaction section, if an owner or operator is subject to § 60.562–1 (c)(1)(iv), (c)(2)(ii), or (c)(3)(ii), or of the ethylene glycol concentration in the cooling water in the cooling tower, if subject to § 60.562–1(c)(4)(ii).

(8) When a carbon adsorber is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2): the concentration level or reading indicated by the organics monitoring device at the outlet of the adsorber, measured at least every 15 minutes and averaged over the performance test period while the vent stream is normally routed and constituted.

(9) When an owner or operator seeks to comply with the requirements of this subpart by complying with the uncontrolled emission rate cutoff provision in § 60.560(c), each process operation variable (e.g., pressure, temperature, type of catalyst) that may result in an increase in the uncontrolled emission rate should such operating parameter or input be changed.

(b) Where an incinerator is used to comply with § 60.562–1, except § 60.562–1(a)(2), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.563 (a) and (g), as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Periods of operation during which the parameter boundaries established during the most recent performance test are exceeded are defined as follows:

(1) For thermal incinerators, all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance was demonstrated.

(2) For catalytic incinerators, all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the vent stream during the most recent performance test at which compliance was demonstrated. The owner or operator also shall record all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which compliance was demonstrated.

(c) Where a boiler or process heater is used to comply with § 60.562–1, except § 60.562–1(a)(2), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) The flow records specified under § 60.563(d)(1),

(2) All periods when there has been no flow rate for each vent stream,

(3) Where a boiler or process heater with a heat input design capacity of 150 million Btu/hr or greater is used, all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements), and

(4) Where a boiler or process heater with a heat input design capacity of less than 150 million Btu/hr is used, each owner or operator shall also keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Periods of operation during which the parameter boundaries established during the most recent performance test are exceeded are defined as all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance was demonstrated.

(d) Where a flare is used to comply with § 60.562–1, each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) The flow records specified under § 60.563(b)(2) or, if complying with § 60.562–1(a)(2), under § 60.563(c)(2).

(2) All periods when there has been no flow rate at each vent stream,

(3) All periods of operations in which the pilot flame is absent, and

(4) The flare pilot light flame heat sensing monitoring specified under § 60.563(b) or, if complying with § 60.562–1(a)(2), under § 60.563(c).

(e) Each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily-accessible continuous records of the equipment operating parameters specified to be monitored under § 60.563 (e) and (g) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Where an owner or operator seeks to comply with § 60.562–1, periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) Where an absorber is the final unit in a system:

(i) All 3-hour periods of operation during which the average absorbing liquid temperature was more than 11 °C (20 °F) above the average absorbing liquid temperature during the most recent performance test, and

(ii) All 3-hour periods of operation during which the average absorbing liquid specific gravity was more than 0.1 unit above, or more than 0.1 unit below, the average absorbing liquid specific gravity during the most recent performance test (unless monitoring of an alternative parameter that is a measure of the degree of absorbing liquid saturation is approved by the Administrator, in which case he or she will define appropriate parameter boundaries and periods of operation during which they are exceeded).

(2) Where a condenser is the final unit in a system:

(i) All 3-hour periods of operation during which the average condenser operating temperature was more than 6 °C (10 °F) above the average operating temperature during the most recent performance test.

(3) Where a carbon adsorber is the final unit in a system:

(i) All 3-hour periods of operation during which the average concentration of TOC (minus methane and ethane) in the carbon adsorber gases is more than 20 percent greater than the exhaust gas concentration level or reading measured

by the organics monitoring system during the most recent performance test.

(f) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.562–1 shall keep up-to-date, readily accessible records of:

(i) Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal or addition of product recovery equipment; and

(ii) The results of any performance test performed pursuant to the procedures specified by § 60.564 (b), (c), (d), or (e).

(g) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the uncontrolled emission rate cutoff provision in § 60.560(c) shall keep for at least 2 years up-to-date, readily accessible records of any change in process operation that increases the uncontrolled emission rate of the process line in which the affected facility is located.

(h) Each owner and operator subject to the provisions of this subpart is exempt from § 60.7(c) of the General Provisions.

(i) The Administrator will specify appropriate reporting and recordkeeping requirements where the owner or operator of an affected facility complies with the standards specified under § 60.562–1 other than as provided under § 60.565 (a) through (e).

(j) Each owner or operator that seeks to comply with the requirements of this subpart by complying with the uncontrolled emission rate cutoff provision of § 60.560(c) or the requirements of § 60.562–1 shall submit to the Administrator semiannual reports of the following recorded information, as applicable. The initial report shall be submitted within 6 months after the initial start-up date.

(1) Exceedances of monitored parameters recorded under § 60.565 (b), (c)(4), and (e).

(2) All periods recorded under § 60.565(c) or § 60.565(d) when the vent stream has been diverted from the control device or has no flow rate.

(3) All periods recorded under § 60.565(c) when the boiler or process heater was not operating.

(4) All periods recorded under § 60.565(d) in which the pilot flame was absent.

(5) All periods recorded under § 60.565(a)(7) when the 14-day rolling average exceeded the standard specified in § 60.562–1(c) (1)(iv), (2)(ii), (3)(ii), or (4)(ii), as applicable.

(6) Any change in process operations that increases the uncontrolled emission rate of the process line in which the affected facility is located, as recorded in § 60.565(g).

(k) Each owner or operator subject to the provisions of this subpart shall notify the Administrator of the specific provisions of § 60.562 or § 60.560(c), as applicable, with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3). If an owner or operator elects at a later date to use an alternative provision of § 60.562 with which he or she will comply or becomes subject to § 60.562 for the first time (i.e., the owner or operator can no longer meet the requirements of this subpart by complying with the uncontrolled emission rate cutoff provision in § 60.560(c)), then the owner or operator shall notify the Administrator 90 days before implementing a change and, upon implementing a change, a performance test shall be performed as specified in § 60.564.

(l) The requirements of this subsection remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves alternative reporting requirements or means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

§ 60.566 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authority contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 60.562–2(c).

3. Section 60.17 is amended by revising paragraphs (a)(6), (a)(38), and (a)(39) and by adding paragraphs (a)(48) and (a)(49) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(6) ASTM D1946–82, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 60.45(f)(5)(i) and § 60.564(c).

* * * * *

(38) ASTM D2382–76 (Reapproved 1977), Standard Test Method for Heat of Combustion of Hydrocarbon Fuel by Bomb Calorimeter (High-Precision Method), IBR approved for § 60.485(g) and § 60.564(c).

(39) ASTM D2504–67 (Reapproved 1977), Noncondensable Gases in C_3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for § 60.485(g) and §§ 60.564 (a) and (c).

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(48) ASTM D2908–74, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Chromatography, IBR approved for § 60.564(d).

(49) ASTM D3370–76, Standard Practices for Sampling Water, IBR approved for § 60.564(d).

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Part V

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Monthly Actuarial Rates and Part B Premium Rates Beginning January 1, 1988; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-013-N]

Medicare Program; Monthly Actuarial Rates and Part B Premium Rates Beginning January 1, 1988

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for calendar year 1988. It also announces the montly SMI premium rate to be paid by all enrollees during calendar year 1988. The 1988 monthly Part B premium will be increased from $17.90 to $24.80.

The $6.90 increase in the SMI premium is a result of several factors. First, because the trust fund reserve at the end of 1986 was larger than necessary to provide an adequate program contingency, the actuarial rate, and hence the premium, promulgated for 1987 was, as for the two previous years, set at a level lower than would otherwise have been required to finance projected 1987 expenditures. This reduced the 1987 premium by $1.43. In contrast, because the trust fund has since been reduced to the minimum level, the 1988 premium is increased by 6.5 cents to replenish the trust fund reserves. The difference between the $1.43 negative contingency margin for 1987 and the positive margin of 6.5 cents of 1988 accounts for $1.50 of the premium increase. Second, our current estimate of 1987 expenditures is 12.1 percent higher than projected at the time we promulgated the 1987 premium. Finally, we estimate Part B expenditures to increase by 13.9 percent in 1988. Almost 60 percent of the premium increase is due to growth in physician expenditures; from 1984 through 1988, Part B spending for physicians' services is growing at 11.5 percent annually.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield, (301) 594–2893.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare Part A). The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR Part 405, Subparts B and I, respectively.

The Secretary of Health and Human Services is required by section 1839 of the Social Security Act (42 U.S.C. 1395r) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of Pub. L. 92–603, (the Social Security Amendments of 1972) and until the passage of section 124 of Pub. L. 97–248, (the Tax Equity and Fiscal Responsibility Act of 1982) the premium rate was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

Section 124 of Pub. L. 97–248 changed the premium basis to 25 percent of program costs.

Section 606 of Pub. L. 98–21, section 2302 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) and section 9313 of Pub. L. 99–272 (Consolidated Omnibus Reconciliation Act) amended section 1839 of the Social Security Act ("the Act") to extend through 1988 the provision that the premium be based on 25 percent of program costs. In January 1989, calculation of the premium rate will revert to the method in section 1839(a) of the Act used before the passage of Pub. L. 97–248, Pub. L. 98–21, Pub. L. 98–369 and Pub. L. 99–272, except that it will remain on a calendar year basis.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act that was added by section 2302 of Pub. L. 98–369. This provision refers to section 215(i) of the Act, which provides for cost-of-living increases in social security benefits. Section 1839(f)(1) of the act, as amended by section 9313 of Pub. L. 99–272, states that if no cost-of-living increase under section 215(i) of the Act becomes effective in December 1985, 1986 or 1987, there will be no increase in the SMI monthly premium paid by the enrollees for the following year. Thus, the premium will remain at the December level. (However, those individuals who enroll in the SMI program after the expiration of their initial enrollment period, or reenroll after a termination of a coverage period, are still subject to the increase in premium described in section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.)

Section 1839(f)(2) of the Act, as added by section 2302 of Pub. L. 98–369, and amended by section 3.(a)(4) of Pub. L. 98–617, section 9313 of Pub. L. 99–272, and section 9001(c) of Pub. L. 99–509, contains provisions that are applicable if there is a cost-of-living increase for 1986, 1987 or 1988. The law provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the premium increase would be reduced to avoid causing a decrease in the individual's benefit payment. This would occur if the increase in the individual's social security benefit due to the cost of living adjustment under section 215(i) of the Act is less than the increase in the premium amount applies of the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.[1]

[1] Note: — A check for benefits under section 202 or 223 is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is

Continued

Generally, the reduced SMI premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December.

(2) The monthly premium for that individual for that December.

Again, those individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. In these cases, the monthly premium would be calculated as specified in (1) and (2) above with the addition of the amount specified under the provisions of section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.

In determining the premium limitations under section 1839(f)(2) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f)(2) of the Act, it will not be changed during the calendar year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

For calendar year 1988, the notices of the monthly actuarial rates and the monthly premium rate are as follows:

II. Notice of Monthly Actuarial Rates

As required by sections 1839(a)(1) and (4) of the Act (42 U.S.C. 1395r(a)(1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for calendar year 1988 are $49.60 for enrollees age 65 and over, and $48.60 for disabled enrollees under age 65. The accompanying statement (section IV.) gives the actuarial assumptions and bases from which these rates are derived.

III. Notice of Monthly Premium Rate

As required by section 1839(a)(3), (e)(1) and (f) of the Act as amended (42 U.S.C. 1395r(a)(3), (e)(1) and (f)), I have determined that the standard monthly premium amount will be $24.80 during calendar year 1988. However, if monthly Social Security benefits are not increased for 1988, the premium will not be increased, but will remain at $17.90 monthly. The accompanying statement shows how the premium amount was derived.

IV. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Standard Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1988

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis, i.e., the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the calendar year is added to the trust fund and used when needed.

Because the rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of projection error in addition to the amount of incurred but unpaid expenses.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 1986 through 1987.

TABLE 1. ESTIMATED ACTUARIAL STATUS OF THE SMI TRUST FUND AS OF THE END OF THE FINANCING PERIODS, JANUARY 1, 1986–DECEMBER 31, 1987

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 1986	$8,291	$5,106	$3,185
Dec. 31, 1987	4,793	6,287	-,494

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half of the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of projection error and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for calendar year 1988 was determined by projecting per-enrollee cost for the 12-month periods ending June 30, 1988 and June 30, 1989, by type of service. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July 1 annual fee screen update used for benefits prior to the passage of section 2306(b) of Pub. L. 98–369. The values for the 12-month period ending June 30, 1985, were established from program data. Subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. Those per-enrollee values are then adjusted to apply to a calendar year period. The projected values for financing periods from January 1, 1985, through December 31, 1988, are shown in Table 3.

TABLE 2—PROJECTION FACTORS,[1] 12-MONTH PERIODS ENDING JUNE 30 OF 1985–1989

[In percent]

12-month period ending June 30	Physicians' services		Outpatient hospital services	Home health agency services	Group practice prepayment plans	Independent lab services
	Fees [2]	Residual [3]				
Aged:						
1985	0.8	4.6	27.8	6.1	12.9	23.3

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received. Therefore, a benefit check for November is not received until December and has the December's SMI premium deducted from it.

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TABLE 2—PROJECTION FACTORS,[1] 12-MONTH PERIODS ENDING JUNE 30 OF 1985–1989—Continued

[In percent]

12-month period ending June 30	Physicians' services		Outpatient hospital services	Home health agency services	Group practice prepayment plans	Independent lab services
	Fees [2]	Residual [3]				
1986	0.4	8.9	4.2	5.4	57.7	42.5
1987	6.8	9.5	21.7	10.8	38.0	13.1
1988	4.6	7.6	18.1	12.4	22.3	18.0
1989	3.4	5.8	18.3	10.7	19.0	17.6
Disabled:						
1985	0.8	1.7	8.3	0.0	26.4	14.8
1986	0.4	3.2	7.1	0.0	60.1	49.5
1987	6.8	9.1	13.4	0.0	18.7	9.0
1988	4.6	6.5	7.5	0.0	−1.1	−3.9
1989	3.4	6.0	10.1	0.0	30.9	14.2

[1] All values are per enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER, FINANCING PERIODS ENDING DECEMBER 31, 1985 THROUGH DECEMBER 31, 1988

	Financing periods			
	CY 1985	CY 1986	CY 1987	CY 1988
Covered services (at level recognized)				
Physicians' reasonable charges	$31 28	$35 45	$40 63	$45 06
Outpatient hospital and other institutions	7 34	8 30	9 94	11 75
Home health agencies	0 05	0 05	0 05	0 06
Group practice prepayment plans	1 43	2 08	2 67	3 22
Independent lab	0 77	0 96	1 11	1 31
Total services	40 87	46 84	54 40	61 40
Cost-Sharing:				
Deductible	2 63	2 69	− 2 69	2 68
Coinsurance	6 98	− 7 98	9 34	10 61
Total benefits	31 26	36 17	42 37	48 11
Administrative expenses	1 34	1 37	1 39	1 42
Incurred expenditures	32 60	37 54	43 76	49 53
Value of interest	− 1 17	0 92	− 0 34	− 0 06
Contingency margin for projection error and to amortize the surplus or deficit	0 43	− 5 62	7 62	0 13
Monthly actuarial rate	31 00	31 00	35 80	49 60

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for calendar year 1988 is $49.53. The monthly actuarial rate of $49.60 provides an adjustment of −$0.06 for interest earnings and $0.13 for a contingency margin. Based on current estimates, it appears that the assets are not sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of projection error. Thus, a positive contingency margin is needed to build assets toward an appropriate level.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projection for the aged, using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES, FINANCING PERIODS ENDING DECEMBER 31, 1985 THROUGH DECEMBER 31, 1988

	Financing periods			
	CY 1985	CY 1986	CY 1987	CY 1988
Covered services (at level recognized):				
Physicians' reasonable charges	$33.74	$37.45	$42.78	$47.23
Outpatient hospital and other institutions	19.97	20.93	22.21	23.46
Home health agencies	0.00	0.00	0.00	0.00
Group practice prepayment plans	0.08	0.11	0.12	0.13
Independent lab	0.91	1.11	1.17	1.25

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES, FINANCING PERIODS ENDING DECEMBER 31, 1985 THROUGH DECEMBER 31, 1988—Continued

	Financing periods			
	CY 1985	CY 1986	CY 1987	CY 1988
Total services	$54.70	$59.60	$66.28	$72.07
Cost-Sharing:				
Deductible	−2.35	−2.40	−2.39	−2.38
Coinsurance	−9.85	−10.66	−11.90	−12.97
Total benefits	$42.50	$46.54	$51.99	$56.72
Administrative expenses	1.82	1.76	1.70	1.67
Incurred expenditures	$44.32	$48.30	$53.69	$58.39
Value of interest	−7.45	−8.13	−9.36	−9.79
Contingency margin for projection error and to amortize the surplus or deficit	15.83	0.63	8.67	−0.00
Monthly actuarial rate	$52.70	$40.80	$53.00	$48.60

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for calendar year 1988 is $58.39. The monthly actuarial rate of $48.60 provides an adjustment of −$9.79 for interest earnings and a $0.00 for a contingency margin.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a study on the average historical error in the respective increase factors. All assumptions not shown in Table 5 are the same as in Table 2.

TABLE 5—PROJECTION FACTORS AND THE ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER ALTERNATIVE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 1988

	This Projection			Low Cost Projection			High Cost Projection		
	12-month periods ending June 30,			12-month periods ending June 30,			12-month periods ending June 30,		
	1987	1988	1989	1987	1988	1989	1987	1988	1989
Projection Factors (in present): [1]									
Physician services—fees: [2]									
Aged	6.8	4.6	3.4	6.0	3.5	1.3	7.6	5.7	5.5
Disabled	6.8	4.6	3.4	6.0	3.5	1.3	7.6	5.7	5.5
Physician services—Residual: [3]									
Aged	9.5	7.6	5.8	7.9	5.2	3.4	11.1	10.0	8.3
Disabled	9.1	6.5	6.0	5.8	2.2	2.0	12.4	10.9	9.9
Outpatient hospital services:									
Aged	21.7	18.1	18.3	15.0	10.5	12.7	28.4	25.7	23.8
Disabled	13.4	7.5	10.2	2.5	−6.4	−1.6	24.3	21.3	21.9

	As of December 31,			As of December 31,			As of December 31,		
	1986	1987	1988	1986	1987	1988	1986	1987	1988
Actuarial status (in millions):									
Assets	$8,291	$4,793	$6,184	$8,291	$6,878	$12,190	$8,291	$2,573	(*)
Liabilities	$5,106	$6,287	$7,601	$3,726	$4,654	$5,605	$6,519	$7,981	$9,721
Assets Less Liabilities	$3,185	$−1,494	$−1,417	$4,565	$2,224	$6,585	$1,772	$−5,408	(*)

	As of December 31,			As of December 31,			As of December 31,		
1986	1987	1988	1986	1987	1988	1986	1987	1988	
Ratio of assets less liabilities to expenditures (in percent)[5]	9.6	−3.9	−3.3	14.7	6.5	17.2	5.0	−12.6	(4)

[1] All values are per enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] The trust fund will be depleted by December 31, 1988 under this set of assumptions.
[5] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates will result in an excess of assets over liabilities of −$1,417 million by the end of December 1988. This amounts to −3.3 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic (and, therefore, test the adequacy of the assets to accommodate projection errors) deplete the trust fund by the end of December, 1988. Under fairly optimistic assumptions, the monthly actuarial rates will result in a surplus of $6,585 million by the end of December, 1988, which amounts to 17.2 percent of the estimated total incurred expenditures for the following year.

E. Standard Premium Rate

For calendar years 1984 through 1988, the law provides that the standard monthly premium rate for both aged and disabled enrollees shall be 50 percent of the monthly actuarial rate for enrollees age 65 and older. Therefore, the standard monthly premium rate for both aged and disabled enrollees for calendar year 1988 is $24.80, which is 50 percent of the monthly actuarial rate for this period ($49.60).

V. Explanation of 1988 Premium Increase

In 1988, the Part B premium will increase from the current $17.90 monthly to $24.80 monthly, an increase of $6.90 or 38.5 percent. The increase can be attributed to these factors:

	Dollars	Percent
• Contingency margin difference	$1.50	8.4
• 1987 expenditures exceeding projections	2.40	13.4
• Projected expenditure increase, 1987–88	3.00	16.7
	6.90	38.5

Contingency reserve

Because the trust fund reserve at the end of 1984 was larger than necessary to provide an adequate program contingency, the actuarial rates, and hence premiums, promulgated during the period 1985 to 1987 were set at levels lower than otherwise would have been required to finance projected expenditures in each year. This reduced the trust fund reserve to the minimum level deemed adequate to protect the program. For example, in 1987 the premium was $1.43 lower than necessary to finance projected 1987 expenditures, had they not been funded partially by drawing down the contingency reserve. In contrast since the trust fund reserve now has been depleted relative to estimated expenditures, the premium in 1988 is increased by 6.5 cents (half of the 13 cents margin incorporated in the monthly actuarial rate) to replenish the reserve. The difference between the negative $1.43 contingency margin for 1987 and the positive 6.5 cents 1988 margin accounts for $1.50 of the premium increase.

Expenditures in 1987 exceed projections

Current actuarial estimates of 1987 expenditures are 12.1 percent higher than projected one year ago at the time of the premium promulgation for 1987. Based on these current estimates, the reestimated 1987 premium would be $2.40 higher; this difference accounts for 13.4 percentage points of the 38.5 percentage point increase in the premium for 1988. Components of the increase are:

	Percent
• Physicians' reasonable charges	12.1
• Group practice prepayment plans.....	2.2
• Other categories	−0.9
	13.4

Increases in physician expenditures account for more than 90 percent of the 13.4 percentage point increase.

Projected expenditure increase, 1987–88

Current actuarial estimates show Part B expenditures increasing 13.9 percent in 1988. This growth accounts for $3.00 of the $6.90 premium increase, or 16.7 of the 38.5 percentage point increase. Components of the increase are:

	Percent
• Physicians' reasonable charges	10.6
• Outpatient hospital & other institutions	4.3
• Group practice prepayment plans.....	1.3
• Independent lab.....	0.5
• Home health agencies.....	0.0
	16.7

Increases in payments for physicians' services account for more than 63 percent of the 16.7 percentage point increase arising from projected Part B spending growth from 1987 to 1988.

Summary

As shown in the summary table below, almost 60 percent of the premium increase ($4.05 of the $6.90) is due to growth in physician expenditures. From 1984 through 1988, Part B spending for physicians' services is growing at 11.5 percent annually.

SUMMARY OF COMPONENTS OF 1988 PREMIUM INCREASE

	Dollars	Percent	Percent
Growth in physician spending.....	4.05	22.7	58.7

SUMMARY OF COMPONENTS OF 1988 PREMIUM INCREASE—Continued

	Dollars	Percent	Percent
Contingency drawdown	1.50	8.4	21.7
Growth in all other Part B spending.....	1.35	7.5	19.6
	6.90	38.4	100.0

VI. Regulatory Impact Statement

The monthly SMI premium rate of $24.80 for all enrollees during calendar year 1988 is 38.5 percent higher than the $17.90 monthly premium amount for the previous financing period. The estimated cost of this increase over the current premium to the approximately 31.7 million SMI enrollees will be about $2,622 million for calendar year 1988.

This notice merely announces amounts required by section 1839 of the Social Security Act. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 24, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-22490 Filed 9-25-87; 12:52 pm]

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Part VI

Department of the Interior

Minerals Management Service

Outer Continental Shelf Operations; Mid-Atlantic Lease Sale 121; Notice

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UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Mid-Atlantic
OCS Lease Sale 121
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1356 (1982)), as amended by the OCSLA Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256) with regard to proposed OCS Lease Sale 121 in the Mid-Atlantic Planning Area tentatively scheduled for October 1989.

As a preliminary step to the Call, the Minerals Management Service (MMS) published a Request for Interest in the Federal Register on May 29, 1987, requesting information on oil and gas industry interest in leasing and exploring within the Mid-Atlantic Planning Area. A number of companies provided information. Based on the information provided, it was determined that sufficient interest exists to proceed with the issuance of a Call at this time. This information, along with the information provided in response to this Call, will be used in decisions whether to proceed with the lease sale process. This Call does not indicate a preliminary decision to lease in the areas described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible adverse effects and use conflicts will be used in the analysis of environmental impacts in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. This will make possible key decisions in connection with the next step in the leasing process--Area Identification--to further resolve conflicts by deferring blocks where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the Environmental Impact Statement (EIS). The Area Identification is scheduled for December 1987.

A third purpose for this Call is to solicit comments as part of the scoping process for the EIS. Also included in the scoping process will be a series of public meetings and an additional formal written comment period. A Notice of Intent to Prepare an EIS and a more detailed description of the scoping process for this proposed sale is included below. As a result of the scoping process, a number of alternatives to the proposed action will be identified and analyzed in the EIS. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Coastal Management Plans (CMP's) of affected States.

The Call area includes blocks in several military operating areas, submarine transit lanes, and shipping traffic lanes. Presale consultation with the Department of Defense and the U.S. Coast Guard will occur during the comment period for this Call. Blocks presenting defense or navigation related multiple-use conflicts, which cannot be otherwise mitigated, may be deleted at the Area Identification stage.

Areas Deferred or Highlighted in the 5-Year Program Approval Process

- The U.S.S. Monitor National Marine Sanctuary and Buffer Zone (deferred)

- The National Aeronautics and Space Administration Wallops Island Flight Center operating area (deferred except 19 blocks of interest highlighted for special consideration (see p.4))

- A minimum of 15 nautical miles or, where further, offshore areas of low potential (deferred)

Previous Sale Related Activities

Mid-Atlantic acreage has been offered for lease in seven previous sales. Four of these were Mid-Atlantic sales. The first was Sale 40, held on August 17, 1976, and the last was Sale 76, held on April 26, 1983. Additionally, two South Atlantic OCS lease sales and one reoffering sale contained acreage now situated within the Mid-Atlantic Planning Area. The U.S. Treasury has received almost $2 billion for the 272 leases issued as a result of these lease sales. A total of 200 leases have been relinquished or have expired, leaving 72 active Mid-Atlantic leases.

The last proposed lease sale in this area, Sale 111, was cancelled on June 13, 1986, following a determination that there was little industry interest in a sale at that time.

There have been 32 exploratory wells drilled in this area resulting in 27 dry holes and five discoveries. In addition, two COST (Continental Offshore Stratigraphic Test) wells were drilled. The five discoveries were considered noncommercial and were not developed at that time. All 34 wells have been plugged and abandoned.

Description of the Area

The general area of this Call is offshore the States of Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. The area is shown in detail on the Call map available free from the Regional Supervisor, Leasing and Environment, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, telephone (703) 285-2165. The following list identifies the Official Protraction Diagrams and blocks comprising the Call area. Existing leases are included in the Call since they may expire or be relinquished before the proposed sale. These diagrams may be purchased for $2.00 each from the Regional Supervisor, Leasing and Environment, at the above address (checks or drafts payable to the U.S. Department of the Interior--MMS).

Official Protraction Diagram NK 18-12

429	646-650	761-767	849-856	937-945
470-473	675-677	778-783	865-876	951-966
514-517	690-694	805-812	893-900	980-989
558-562	718-723	821-827	909-922	992-1010
602-606	734-739			

Official Protraction Diagram NK 19-10

507	636-639	765-775	889	977-995
550-551	679-683	807-819	892-907	
593-595	722-727	850-863	933-951	

Official Protraction Diagram NJ 18-2

657	744-745	831-833	916-921	1002-1009
701	787-789	874-877	959-965	

Official Protraction Diagram NJ 18-3

5-35	224-255	442-475	661-695	837-872
49-79	268-299	486-519	705-739	881-916
93-123	312-343	530-563	749-784	925-960

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136-167	355-387	573-607	793-828	969-1004
180-211	399-431	617-651		

Official Protraction Diagram NJ 19-1

10-28	230-248	450-468	670-688	845-864
54-72	274-292	494-512	714-732	889-908
98-116	318-336	538-556	757-776	933-952
142-160	362-380	582-600	801-820	977-996
186-204	406-424	626-644		

Official Protraction Diagram NJ 18-5

34-41	250-261	468-481	688-701	863-877
77-85	293-305	512-525	732-745	906-921
121-129	336-349	556-569	776-789	950-965
164-173	380-393	600-613	819-833	994-1009
207-217	424-437	644-657		

Official Protraction Diagram NJ 18-6

All Federal Blocks

Official Protraction Diagram NJ 19-4

All Federal Blocks

Official Protraction Diagram NJ 19-5

All Federal Blocks

Official Protraction Diagram NJ 19-6

All Federal Blocks

Official Protraction Diagram NJ 18-8

37-41	301-305	*546-548	*677-680	808-833
81-85	345-349	565-569	697-701	853-877
125-129	389-393	*589-592	*721-724	898-921
169-173	433-437	609-613	741-745	942-965
213-217	477-481	*633-636	764-789	986-1009
257-261	521-525	653-657		

Official Protraction Diagram NJ 18-9

All Federal Blocks

* Pursuant to the 5-year program, these 19 blocks are highlighted for special presale consideration.

Official Protraction Diagram NJ 19-7

All Federal Blocks

Official Protraction Diagram NJ 19-8

All Federal Blocks

Official Protraction Diagram NJ 18-11

18-41	237-261	455-481	676-701	897-921
62-85	280-305	499-525	720-745	941-965
106-129	324-349	544-569	765-789	986-1009
150-173	367-393	588-613	809-833	1030-1053
193-217	411-437	632-657	853-877	

Official Protraction Diagram NJ 18-12

All Federal Blocks

Official Protraction Diagram NJ 19-10

All Federal Blocks

Official Protraction Diagram NI 18-2

18-41	240-261	461-481	680-701	855-877
63-85	285-305	504-525	724-745	898-921
107-129	329-349	548-569	767-789	941-965
152-173	373-393	592-613	811-833	985-1009
196-217	417-437	636-657		

Official Protraction Diagram NI 18-3

All Federal Blocks

Official Protraction Diagram NI 19-1

All Federal Blocks

Instructions on Call

Respondents are asked to nominate blocks within the Call area that they would like to see included in proposed OCS Lease Sale 121. Although the identities of those submitting nominations become a matter of public record, the individual indications of interest are considered to be proprietary information. Those indicating such interest are required to do so on the Call map by outlining the area(s) of interest along block lines.

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A detailed list of whole and partial blocks nominated (by Official Protraction Diagram designations) should be submitted to ensure correct interpretation of nominations. The telephone number and name of a person to contact in the respondent's organization for additional information should be included.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). We encourage respondents to be specific in indicating blocks by priority. This information is very helpful in assessing the area to be identified for further study at future sale decision points. Blanket nominations on large areas are not as useful in providing information pertinent to analysis of industry interests. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3. Information concerning both location and priority of interest submitted by individual respondents will be held proprietary. In addition to indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use conditions.

The Call map outlines the MMS interpretation of the area of hydrocarbon potential and identifies the highlighted area that will be subject to special consideration. While primary consideration will be given to the area of hydrocarbon potential (as outlined on the Call map), respondents may nominate and comment on any acreage within the Call area. Commenters who recommend that all or portions of the highlighted area or other parts of the Call area be deferred from Sale 121 should be as specific as possible in describing why they believe those areas are incompatible with offshore oil and gas drilling and production operations. Such information will be helpful in designing and analyzing deferral alternatives.

Comments or suggestions are requested on the following:

- -technology that is presently available or anticipated for exploration and development operations in deepwater areas.
- -procedures which may lead to enhanced understanding of the oil and gas resources of the Mid-Atlantic OCS.
- -particular geologic, environmental, biological, archaeological, or socioeconomic conditions or conflicts or other information which might bear upon potential leasing and development in particular areas.

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-potential conflicts that may result from future oil and gas activities resulting from this sale and approved State and local CMP's. If possible, these comments should identify specific CMP policies, the nature of the conflicts foreseen, and steps that MMS can take to avoid or mitigate potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments should be received within 45 days following publication of this Call in the Federal Register to ensure inclusion in the decision process for Area Identification. Responses should be sent in envelopes labeled "Nominations for Proposed Lease Sale 121, Mid-Atlantic" or "Comments on the Call for Information and Nominations for Proposed Lease Sale 121, Mid-Atlantic," as appropriate.

The original Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under "Description of Area." A copy of the Call map showing interest and any comments should also be sent to the Chief, Offshore Leasing Management Division, U.S. Department of the Interior, MMS, Room 4230, 18th and C Streets, NW., Washington, D.C. 20240.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date and in accordance with established departmental procedures and applicable laws, including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and the OCSLA, as amended. If a decision to offer blocks is made, a notice of Availability of the Proposed Notice of Sale and a final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede the sale:

Milestones	Date
Comments Due on the Call	November 1987
Area Identification	December 1987
Draft EIS Published	September 1988

Public Hearings on Draft EIS	October 1988
Final EIS Published	March 1989
Proposed Notice of Sale Issued	May 1989
Governor's Comments Due on Proposed Notice	July 1989
Final Notice of Sale Published	September 1989
Sale	October 1989

Existing Information

Information already available for the Call area includes the results of studies and EIS analyses conducted in conjunction with previous sales and the results of past exploration activities in this planning area. Also available is information gathered during the EIS and decision processes for the 1980, 1982, and the current 5-Year OCS Oil and Gas Leasing Program. In addition, comments previously received by the Department of Interior (DOI) from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used.

An extensive environmental studies program has been underway in this area since 1973 (see Environmental Studies Program Information in the Atlantic OCS Region, below). Additional information will be available to the DOI for consideration regarding the proposed OCS Lease Sale 121. For example, six Atlantic OCS Indices (1975-1986), eight Summary Reports (1979-1986), and various geology reports have been prepared for this planning area.

Environmental Studies Program Information in the Atlantic OCS Region

The DOI initiated the Environmental Studies Program in 1973. The emphasis has been on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, and ecological effects of oil and gas activities. These studies provide useful information for a number of environmental issues, including topographic features, deepwater biological communities on the continental slope, and major circulation patterns on the continental shelf and slope.

A complete listing of available studies reports and information on ordering copies can be obtained from the Atlantic OCS Region at the address stated under "Description of Area," or by telephone at (703)285-2728. In addition, a status

report for active studies in this area can be obtained from the Chief, Environmental Studies and Leasing Section, Atlantic OCS Region, at this same address.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provision of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the MMS is announcing its intent to prepare an EIS, subsequent to Area Identification, regarding the oil and gas leasing proposal known as Mid-Atlantic OCS Lease Sale 121. The Notice of Intent also serves to announce the scoping process which will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Atlantic OCS Region, at the address stated under Description of Area above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Mid-Atlantic Lease Sale 121." Comments are due no later than 45 days from publication of this notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the

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scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Deputy
Director, Minerals Management Service
D. W. Crow

Approved:

Assistant Secretary - Land and Minerals Management
J. Steven Griles

SEP 25 1987
Date

[FR Doc. 87-22555 Filed 9-29-87; 8:45 am]
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Federal Register

Wednesday
September 30, 1987

Part VII

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 5

Miscellaneous Amendments of Patent Rules; Notice of Proposed Rulemaking

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 5

[Docket No. 70754-7154]

Miscellaneous Amendments of Patent Rules

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes amendments to the rules of practice in patent cases, Parts 1 and 5 of Title 37, Code of Federal Regulations, (1) to bring the rule relating to swearing back of a reference into conformity with current interference practice; (2) to limit the length of the appellant's brief and reply brief in an *ex parte* appeal, and require that the brief contain certain specific items; (3) to reset the time period for requesting an oral hearing in *ex parte* appeals where the examiner's answer states a new ground of rejection; (4) to clarify the procedure following a final rejection after a remand to the examiner under § 1.196(b)(1); (5) to give the examiner-in-chief the authority to decide certain requests for access by an interference party; (6) to clarify the rule relating to access to pending or abandoned applications; (7) to modify the rules concerning requests for interference with an application or patent; (8) to amplify the rule concerning the requirements of a motion to declare an additional interference; (9) to more clearly define the application of interference estoppel; (10) to make more comprehensive the rule concerning the filing of a reissue application by a patentee involved in an interference; and (11) to conform the rule concerning applications under secrecy order to current interference practice.

DATES: Comments and suggestions should be received by December 1, 1987. A public hearing will be held on December 9, 1987, beginning at 9:00 a.m.; requests to make oral presentations at the hearing should be received on or before December 1, 1987.

ADDRESSES: Address written comments to Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231. The public hearing will be held in Room 11C10, Crystal Plaza Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 10C01, Crystal Gateway II, 1225 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Saul I. Serota by telephone at (703) 557-4072 or Ian A. Calvert by telephone at (703) 557-4000 or by mail marked to the attention of either and addresed to Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

(1) Swearing Back of a Reference

The Patent and Trademark Office published its notice of final rule amending the rules of practice in patent interference cases in the **Federal Register** of December 12, 1984 (49 FR 48416 through 48471) and in the Official Gazette of January 29, 1985 (1050 O.G. 385 through 440). Included in the rules adopted was § 1.601(n), which defines "same patentable invention."

Section 1.131(a), if amended as proposed, would insert "the same patentable invention, as defined in § 1.601(n), as" before the phrase "the rejected invention". The amendment does not change the present practice where the inventor of the rejected claim, the owner of a patent under reexamination, or the person qualified under §§ 1.42, 1.43 or 1.47 can swear behind a domestic patent which disclose but does not claim the same invention as the rejected invention, a foreign patent or a printed publication. Rather, the amendment is necessary to define precisely the term "does not claim the rejected invention." See *In re Eickmeyer*, 602 F.2d 974, 202 USPQ 655 at 661 (CCPA 1979) where the Court stated:

> * * * we conclude that the phrase "does not claim the rejected invention" should be construed favorably to an applicant, if possible, so that unless the applicant is clearly *claiming the same invention* as the U.S. patent reference, he will not lose his rights under Rule 131. [Emphasis added.]

and also expressed its dissatisfaction with the PTO for

> * * * leaving an applicant in a position where he cannot overcome the reference claims by a 131 affidavit because the PTO has decided that the reference claims his invention, while at the same time, he is denied an interference because the PTO has decided that the claims of his application and those of the reference are not for substantially the same invention.

Possibly because of this decision, some patent practitioners seem to have been of the opinion that an affidavit under 37 CFR 1.131 can be used to overcome a rejection on a domestic patent so long as there is no verbatim correspondence between the claims of the application or the patent under reexamination rejected on that domestic patent and the claims of the domestic patent.

Such an opinion is not in accord with the law expressed in such cases as *In re Clark*, 53 CCPA 954, 457 F.2d 1004, 173 USPQ 359 (1972); *In re Hidy*, 49 CCPA 1152, 303 F.2d 954, 133 USPQ 650 (1962); *In re Teague*, 45 CCPA 877, 254 F.2d 145, 117 USPQ 284 (1958); and *in re Ward*, 43 CCPA 1007, 236 F.2d 428, 111 USPQ 101 (1956). In *In re Hidy*, supra, 133 USPQ at 652, the Court stated:

> A Rule 131 affidavit is ineffective to overcome a United States patent, not only where there is a verbatim correspondence between claims of the application and of the patent, but also where there is no patentable distinction between the respective claims. *In re Wagenhorst*, 20 CCPA 829, 62 F.2d 831, 16 USPQ 126; *In re Teaque*, 45 CCPA 877, 254 F.2d 145, 117 USPQ 284.

If the application (or patent under reexamination) and the domestic patent contain claims which are identical, or which are not patentably distinct, then the application and patent are claiming the "same patentable invention," defined by § 1.601(n) as follows:

> Invention "A" is the "same patentable invention" as an invention "B" when invention "A" is the same as (35 U.S.C. 102) or is obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A".

As provided in § 1.601(i), an interference may be declared whenever an examiner is of the opinion that an application and a patent contain claims for the "same patentable invention." The purpose of the proposed amendment to § 1.131(a) is to insure that an applicant who is claiming an invention which is identical to, or obvious in view of, the invention claimed in a domestic patent cannot employ an affidavit under § 1.131 as a means for avoiding an interference with the patent. To allow an applicant to do so would result in the issuance of two patents to the same invention.

Section 1.131(b), if amended as proposed, would insert in the first sentence thereof the language, "prior to" before the words "said date". This amendment makes clear that the showing of facts under § 1.131(b) must establish due diligence from a date prior to the effective date of the reference to affiant's subsequent reduction to practice or to the filing of his application as set forth in *In re Mulder*, 716 F.2d 1542, 219 USPQ 189 (Fed. Cir. 1983).

(2) Appellant's Brief and Reply Brief

A. Limitation on Length

Section 1.192(a), if amended as proposed, would delete the last sentence and insert the following sentence after the first sentence: "If the brief exceeds

30 pages, in addition to the appendix required by paragraph (c)(7) of this section, it will be returned to the appellant."

Section 1.193(b), if amended as proposed, would insert the following as the third sentence: "If the reply brief exceeds 15 pages, or the examiner determines that it is not directed only to new points of argument raised in the examiner's answer, the examiner will so notify the appellant and at the same time return the reply brief to the appellant."

The last sentence of § 1.192(a) is proposed to be deleted in view of the proposed addition of paragraph (c), which would impose more specific requirements for the contents of the brief.

The sentences proposed to be added to §§ 1.192(a) and 1.193(b) would limit the length of an appellant's brief and reply brief in an *ex parte* appeal to 30 and 15 pages, respectively, by providing that briefs or reply briefs which exceed these limits will be returned. These numbers of pages are for pages which comply with the requirements of 37 CFR 1.52. In determining whether a brief exceeds the 30-page limit, the pages of the appendix required by proposed § 1.192(c)(7) would not be counted.

While the length of the majority of briefs and reply briefs filed in *ex parte* appeals is substantially less than the 30- and 15-page limits proposed, in some instances briefs and reply briefs greatly exceed these limits. In many instances, these lengthy briefs and reply briefs are unnecessary; rather than focusing upon the issues involved in the appeal, they are verbose and repetitious, beclouding the issues and taking up an inordinate amount of the time spent by the examiner and examiners-in-chief in considering the appeal. The page limits set in proposed §§ 1.192(a) and 1.193(b) are intended to eliminate such lengthy briefs and reply briefs while at the same time giving appellants adequate scope to fully develop their arguments.

The proposed amendment to § 1.193(b) would also provide for return of the reply brief to the appellant if the examiner determines that the reply brief did not comply with the requirement of § 1.193(b) that it be limited to any new points of argument raised in the examiner's answer.

B. Contents of the Main Brief

Section 1.192, if amended as proposed, would add paragraphs (c) and (d). Paragraph (c) lists a number of items which would have to be included in the appellant's brief, while paragraph (d) would permit dismissal of the appeal for failure to include any of the items required by paragraph (c), in the order specified in paragraph (c). Paragraph (d) would also add the following sentence: "Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences." This sentence emphasizes that all arguments and authorities which an appellant wishes the Board to consider must be included in the brief. It should be noted that arguments not presented in the brief and made for the first time at oral hearing are not entitled to consideration. *In re Chiddix*, 209 USPQ 78 (Comr. 1980); *Rosenblum v. Hiroshima*, 220 USPQ 383 (Comr. 1983).

Proposed paragraph (c) would require that the brief contain, in order, seven specific items. This proposed requirement arose from the recommendations of a committee which was appointed by the Commissioner of Patents and Trademarks in 1986 to study and report on alternatives for reducing the backlog of *ex parte* appeals at the Board of Patent Appeals and Interferences. One of the committee's recommendations was the § 1.192 be amended to require that the appellant's brief include certain items. Items (3), (4), (5) and (6) of proposed § 1.192(c) are based upon the committee's recommendations. The committee indicated that the inclusion of those items in the brief would crystallize the issues involved in the appeal. By eliminating inadequate briefs, the Board of Patent Appeals and Interferences would not need to engage in what might be called "*de novo*" examination of a patent application, but rather could confine its activities to review of the appealed rejections.

The committee also recommended that certain items be required to be included in the examiner's answer. It is expected that the Manual of Patent Examining Procedure will be amended to require that the examiner's answer contain these and other items, substantially as indicated in Appendix A.

In addition to the committee's recommendations, some of the proposed items are supported by the evaluation of selected practices conducted as a part of the PTO's Quality Reinforcement Program. A summary of the results of that evaluation is published at 1078 Official Gazette 22 (May 19, 1987).

The specific items required by proposed § 1.192(c) are:

(1) A statement of the status of all the claims in the application, or patent under reexamination, i.e., for each claim in the case, appellant should state whether it is cancelled, allowed, rejected, etc. Each claim on appeal must be identified.

(2) A statement of the status of any amendment filed subsequent to final rejection, i.e., whether or not the amendment has been acted upon by the examiner, and if so, whether it was entered, denied entry, or entered in part.

Items (1) and (2) are included in proposed § 1.192(c) because in the past confusion has sometimes arisen as to which claims are on appeal, and the precise wording of those claims, particularly where the appellant has sought to amend claims after final rejection. The inclusion of items (1) and (2) in the brief would advise the examiner of what the appellant considers the status of the claims and post-final rejection amendments to be, allowing any disagreement on these questions to be resolved before the appeal was taken up for decision by the Board of Patent Appeals and Interferences.

(3) A concise explanation of the invention defined in the claims involved in the appeal. This explanation would be required to refer to the specification by page and line number, and, if there were a drawing, to the drawing by reference characters. Where applicable, it would be preferable to read the appealed claims on the specification and any drawing.

(4) A concise statement of the issues presented for review. Each stated issue would correspond to a separate ground of rejection which appellant wished the Board of Patent Appeals and Interferences to review. While the statement of the issues would have to be concise, it could not be so concise as to omit the basis of each issue. For example, the statement of an issue as "Whether claims 1 and 2 are unpatentable" would not comply with proposed § 1.192(c)(4). Rather, the basis of the alleged unpatentability would have to be stated, e.g., "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones", or "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a non-enabling disclosure." The statement would be limited to the issues presented, and should not include any argument concerning the merits of those issues.

(5) If an appealed ground of rejection applied to more than one claim and appellant considered the rejected claims to be separately patentable, proposed § 1.192(c)(5) would require appellant to state that the claims do not stand or fall together, and the reasons why they were considered separately patentable. The absence of such a statement would be

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taken by the PTO as a concession by the applicant that, if the ground of rejection were sustained as to any one of the rejected claims, it would be equally applicable to all of them. Proposed § 1.192(c)(5) continues the current practice of the Board of Patent Appeals and Interferences, and is consistent with the practice of the Court of Appeals for the Federal Circuit indicated in such cases *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983), and *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

(6) The appellant's contentions with respect to each of the issues presented for review in proposed § 1.192(c)(4), and the basis for those contentions, including citations of authorities, statutes, and parts of the record relied on. Included in this proposed paragraph are five subparagraphs, (i) to (v). Subparagraphs (i) to (iv) concern the grounds of rejection most commonly involved in *ex parte* appeals, namely, 35 U.S.C. 112, first and second paragraphs, 35 U.S.C. 102, and 35 U.S.C. 103. Subparagraph (v) is a general provision concerning grounds of rejection not covered by subparagraphs (i) to (iv).

The purpose of subparagraphs (i) to (iv) is to insure that the appellant's argument concerning each appealed ground of rejection will include a discussion of the questions relevant to that ground. It is believed that compliance with the requirements of the particular subparagraphs which are pertinent to the grounds of rejection involved in an appeal would be beneficial both to the PTO and to appellants. It would not only facilitate a decision by the Board of Patent Appeals and Interferences by enabling the Board to determine more quickly and precisely the appellant's position on the relevant issues but also would help appellants to focus their arguments on those issues.

For each rejection not falling under subparagraphs (i) to (iv), proposed subparagraph (v) provides that the argument should specify the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error. This proposed language recognizes that for some grounds of rejection, it may not be necessary to specify particular claim limitations; for example, a rejection under 35 U.S.C. 101, as in *Ex parte Hibberd*, 227 USPQ 443 (BPAI 1985), or a rejection for violation of the duty of disclosure under 37 CFR 1.56(d), as in *Ex part Harita*, 1 USPQ2d 1887 (BPAI 1986).

(7) An appendix containing a copy of the claims involved in the appeal.

C. Contents of Reply Brief

Section 1.193(b), if amended as proposed, would insert the following as the second sentence: "The new points of argument shall be specifically identified in the reply brief."

Since the reply brief must be limited to any new points of argument raised in the examiner's answer, compliance with the requirement of this proposed sentence would facilitate both preparation of the reply brief by appellant and consideration of the reply brief by the PTO.

The final sentence of § 1.193(b), if amended as proposed, would provide that the reply may be accompanied by, rather than include, any amendment or material appropriate to the new ground of rejection. This proposed change in the rule makes clear that the amendment or other material must be presented in a separate paper, rather than in the reply itself.

(3) Time Period for Requesting an Oral Hearing

Section 1.194(b), if amended as proposed, would add the following sentence after the first sentence: "If the examiner's answer states a new ground of rejection and if appellant files a reply as provided by § 1.193(b), then the written request must be made within three months after the date of the filing of the reply."

The present rule does not provide the appellant an additional time period for requesting an oral hearing in the event that the examiner's answer states a new ground of rejection. If an answer states a new ground of rejection, § 1.193(b) provides that appellant's reply may also include any amendment or material appropriate to the new ground of rejection. However, under § 1.194(b) appellant must file the request for oral hearing within one month after the date of the answer whereas the reply thereto must be filed within two months from the date of the answer. Consequently, appellant must file a request for oral hearing before having the benefit of the examiner's views, if any, with respect to the reply.

Although the examiner does not normally issue a supplemental answer in response to a reply, see Manual of Patent Examining Procedure § 1208.01 (5th Ed., Aug. 1983), the proposed amendment to § 1.194(b) would permit the appellant to postpone filing a request for an oral hearing until three months after the date the reply is filed. This will give the appellant time to receive the examiner's response, if any, to the reply before the appellant has to decide whether to request an oral hearing.

(4) Procedure Following Final Rejection, Remand Under § 1.196(b)

Section 1.196(b)(1), if amended as proposed, would add the following sentence as the penultimate sentence of the section: "Should the examiner make the rejection final the applicant may again appeal to the Board of Patent Appeals and Interferences."

Under § 1.196(b), the Board of Patent Appeals and Interference may, in its decision on an *ex parte* appeal, make a new rejection of one or more appealed claims, in which case the appellant has the option of (1) submitting an appropriate amendment of the rejected claims, and/or a showing of facts, (2) requesting reconsideration, or (3) treating the decision as a final decision. If the appellant elects option (1), the case is remanded to the examiner for consideration. If the examiner does not consider that the amendment and/or showing of facts overcome the rejection, he or she will make the rejection final.

An applicant in whose application such a final rejection has been made may mistakenly believe that he or she is entitled to review of the final rejection by the Board of Patent Appeals and Interferences by virtue of the fact that the application was previously on appeal. The proposed amendment would correct this belief by making clear that after such a final rejection, an applicant who desires further review of the matter must file a new appeal to the Board of Patent Appeals and Interferences. The language of the proposed amendment is similar to the fourth sentence of § 1.196(d).

(5) Request for Access by Interference Party

Section 1.612(a), if amended as proposed, would add the following sentence as the last sentence of the section: "A party seeking access to any abandoned or pending application referred to in the opposing party's involved application or access to any pending application referred to in the opposing party's patent must file a motion under § 1.635." The proposed amendment would require an interference party seeking access either to a pending or abandoned application referred to in an opposing party's involved application or to a pending application referred to in an opposing party's involved patent to file a motion under 37 CFR 1.635. Such a motion is decided by an examiner-in-chief (§ 1.640(b)).

Under the present practice, access can only be obtained by filing an *ex parte* petition to the Commissioner accompanied by the petition fee set forth in § 1.17(i) and normally no decision is rendered on the petition until after the opposing party has had an opportunity to respond to the petition. The proposed amendment would expedite the interference proceeding by eliminating the delays inherent in the petition process. By requiring the party seeking access to file a motion under § 1.635, that party would first have to confer with the opposing party in an effort to resolve the issue of access as required by § 1.637(b). The examiner-in-chief would not have to decide the issue unless it could not be resolved by the parties.

(6) Access to Applications

Section 1.14(e), if amended as proposed, would delete the word "of" from the phrase "or of any papers relating thereto" and would add a reference to § 1.612(a) by adding the following sentence as the last sentence thereof: "See § 1.612(a) for access by an interference party to a pending or an abandoned application."

Section 1.14(e) as presently worded appears to limit a request by a member of the public to copies of, but not access to, any papers relating to any pending or abandoned application. Any such limitation was unintentional. The amended language will permit a member of the public to request both access to and copies of those papers.

(7) Request for Interference with an application or Patent

Sections 1.604(a) and 1.607(a), if amended as proposed, would provide for the situation in which a patent applicant requests an interference with another application or patent, respectively, on the basis of one or more claims which are already present in his or her application. The present rules require that when an applicant seeks an interference with another application or an unexpired patent, he or she must present a claim corresponding to the proposed count. The proposed rules would eliminate this requirement if a claim or claims corresponding to the proposed count are already in the application, and the applicant identifies them as such.

(8) Motion to Declare Additional Interference

Section 1.637(e)(1)(vi), if amended as proposed, would clearly state that a motion to declare an additional interference under 37 CFR 1.633(e)(1) between an additional application not involved in the interference and owned by a party and an opponent's application or patent involved in the interference shall designate the claims of the opponent's application or patent which define the same patentable invention defined by the proposed count or if the opponent's application does not contain any such claim, the moving party shall propose a claim to be added to the opponent's application. The present section states that when the opponent is a patentee, the motion shall designate the patent claims which define the same patentable invention defined by the proposed count. The present section does not require, although such a requirement is inferred from § 1.637(e)(2)(vi), that when the opponent is an applicant, the motion shall designate the application claims which define the same patentable invention defined by the proposed count or, if the opponent's application does not contain any such claim, the moving party shall propose a claim to be added to the opponent's application.

(9) Interference Estoppel

Section 1.658(c), if amended as proposed, would insert in the first sentence the language "by a motion under § 1.633(e)" after the words "(3) could have been properly raised" and substitute the language "on an invention which was claimed during the pendency of the original interference either (i) in the winning party's involved application or patent or (ii) in a noninvolved application owned by a losing party" for the words "with a motion under § 1.633(e)". In the second sentence, the language "who could have properly moved, but failed to move, under §§ 1.633 or 1.634" appearing after the words "losing party" would be deleted. Also in the second sentence, the language "that party's failure to properly move" would be deleted and the language "the issues settled by the judgement" inserted in its place. The proposed amendment incorporates into § 1.658(c) the guidelines set forth in the interference rules correction notice (50 Fed. Reg. 23122, May 31, 1985, 1059 Official Gazette 27, October 22, 1985) for the application of the doctrine of interference estoppel under 37 CFR 1.658(c) with respect to a losing party's failure to move under 37 CFR 1.633(e) to declare an "additional interference" between an additional application not involved in the interference and owned by the party and an opponent's application or patent involved in the interference on a separate patentable invention. The correction notice states that generally a losing party will be estopped for failure to move when the spearate patentable invention (subject matter) which could have been the subject of the "additional interference" as *claimed* (during the pendency of the interference) (1) in the opponent's involved application or patent or (2) in a non-involved application owned by the party during the pendency of the interference. Should a losing party after the termination of the interference acquire an application which discloses or claims the separate patentable invention and which could have been the subject of the "additional interference", estoppel would not apply because the party did not own the application during the pendency of the interference.

The correction notice illustrates the general applicability of interference estoppel in certain situations where a losing party fails to move under § 1.633(e) to declare an "additional interference" on a separate patentable invention as follows:

Losing party's non-involved application	Winning opponent's involved application or patent	Estoppel
Claimed	Claimed	Yes
Disclosed	Claimed	Yes
Claimed	Disclosed (Application).	Yes
	(Patent)	No*
Disclosed	Disclosed	No

* An invention disclosed and not claimed in a winning opponent's *patent* would not form the basis for a count because the patent does not contain a claim which can be designated to correspond to the count. Thus, a motion to declare an additional interference under § 1.633(e) could not have been properly brought, and interference estoppel therefore would not apply.

(10) Filing of Reissue Application During Interference

Section 1.662(b), if amended as proposed, would insert a comma after § 1.633(h)" and add the language "or would not be appropriate" at the end of the last sentence. The present rule contemplates that a reissue application may be filed by a patentee involved in an interference only for one of two reasons: either for the purpose of avoiding the interference, or for some other purpose relating to the interference, e.g., to add claims corresponding to a proposed new count. In the first case, judgment would be entered against the patentee, and in the second case, a motion under § 1.633(h) to add the reissue application to the interference would be appropriate.

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However, it has been found that a patentee involved in an interference may file a reissue application for some other reason not contemplated by the rule, and for which the entry of judgment or a motion under § 1.633(h) would not be appropriate. For example, the patentee might file a reissue application for the purpose of amending claims of the patent which are directed to an invention which is patentably distinct from the issue of the interference and which is not disclosed by the opposing party. In such a situation, addition of the reissue application to the interference would be unnecessary. The proposed amendment of § 1.662(b) would accommodate this third possibility by providing that, instead of filing a motion under § 1.633(h) to add the reissued application to the interference, a patentee could show good cause why such a motion would not be appropriate under the particular circumstances involved.

(11) Applications Under Secrecy Order

Section 5.3(b), if amended as proposed, would delete the language "under secrecy order copies claims from an issued patent" and insert in its place the language "is under secrecy order seeks to provoke an interference with an issued patent" to make the section's language consistent with that of § 1.607(d). In addition, it is proposed to correct the reference to "§ 1.205(c)" to read " § 1.607(d)"

Environmental, Energy and Other Considerations

The proposed rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because it is intended to expedite the disposition of appeals and to simplify by clarification and amplification certain of the rules governing the conduct of an interference. The expedited disposition of appeals will permit the small entity to make earlier business decisions which may be affected by a pending appeal. The effect of the clarification and amplification of the rules relating to interferences will be to reduce the costs associated with involvement in an interference.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no significant additional record keeping or reporting requirements are placed upon the public.

List of Subjects in 37 CFR Parts 1 and 5

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below. It is proposed to amend 37 CFR, Parts 1 and 5, as follows with deletions indicated by brackets and additions by arrows.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.14 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in secrecy pursuant to paragraphs (a) and (b) of this section, or [of] any papers relating thereto, must (1) be in the form of a petition and be accompanied by the petition fee set forth in § 1.17(i) or (2) include written authority granting access to the member of the public in that particular application from the applicant or the applicant's assignee or attorney or agent of record. ►see § 1.612(a) for access by an interference party to a pending or abandoned application.◄

3. Section 1.131 is proposed to be revised to read as follows:

§ 1.131 Affidavit for declaration of prior invention to overcome cited patent or publication.

(a) When any claim of an application or a patent under reexamination is rejected on reference to a domestic patent which substantially shows or describes but does not claim ►the same patentable invention, as defined in § 1.601(n), as◄ the rejected invention, or on reference to a foreign patent or to a printed publication, and the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the person qualified under §§ 1.42, 1.43 or 1.47, shall make oath or declaration as to facts showing a completion of the invention in this country before the filing date of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, then the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from ►prior to◄ said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

4. Section 1.192 is proposed to be amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a

brief in triplicate. ►If the brief exceeds 30 pages, in addition to the appendix required by paragraph (c)(7) of this section, it will be returned to the appellant.◄ The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. [The brief must include a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved.]

* * * * * *

►(c) The brief shall contain the following items under appropriate headings and in the order here indicated:

(1) *Status of claims.* A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.

(2) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(3) *Summary of invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

(4) *Issues.* A concise statement of the issues presented for review.

(5) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to more than one claim, it will be presumed that the rejected claims stand or fall together unless a statement is included that the rejected claims do not stand or fall together, accompanied by reasons as to why appellant considers the rejected claims to be separately patentable.

(6) *Argument.* The contentions of the appellant with respect to each of the issues presented for review in paragraph (c)(4) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including, as appropriate, how the specification and drawings, if any, (A) describe the subject matter defined by each of the rejected claims, (B) enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and (C) set forth the best mode contemplated by the appellant of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(6) (i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

(7) *Claims appealed.* An appendix containing a copy of the claims involved in the appeal.

(d) Failure to comply with any of the requirements of paragraph (c) of this section may result in dismissal of the appeal. Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.◄

5. Section 1.193 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within one month from the date of such answer. ►The new points of argument shall be specifically identified in the reply brief. If the reply brief exceeds 15 pages, or the examiner determines that it is not directed only to new points of argument raised in the examiner's answer, the examiner will so notify the appellant and at the same time return the reply brief to the appellant.◄ [However, if] ►If◄ the examiner's answer states a new ground of rejection appellant may file a reply thereto within two months from the date of such answer; such reply may [include] ►be accompanied by◄ any amendment or material appropriate to the new ground.

6. Section 1.194 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.194 Oral hearing.

* * * * *

(b) If appellant desires an oral hearing, appellant must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within one month after the date of the examiner's answer. ►If the examiner's answer states a new ground of rejection and if appellant files a reply as provided for by § 1.193(b), then the written request must be made within three months after the date of the filing of the reply.◄ If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

* * * * *

7. Section 1.196(b)(1) is proposed to be revised to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

* * * * *

(b) * * *

(1) The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the examiner in which event the application will be remanded to the examiner and the decision of the Board of Patent Appeals and Interferences shall not be considered final for the purpose of judicial review. The statement shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground for rejection stated in the decision. ►Should the examiner make the rejection final the applicant may again appeal to the Board of Patent Appeals and Interferences.◄ When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Patent Appeals

and interferences may enter an order otherwise making its decision final.

* * * * *

8. Section 1.604(a) is proposed to be revised to read as follows:

§ 1.604 Request for interference between applications by an applicant.

(a) An applicant may seek to have an interference declared with an application of another by—

(1) Suggesting a proposed count and presenting [a] ►at least one◄ claim corresponding to the proposed count ► or identifying at least one claim in his or her application that corresponds to the proposed count◄,

(2) Identifying the other application and, if known, a claim in the other application which corresponds to the proposed count, and

(3) Explaining why an interference should be declared.

* * * * *

9. Section 1.607(a) is proposed to be revised to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) An applicant may seek to have an interference declared between an application and an unexpired patent by—

(1) ►Identifying the patent,

(2)◄ Presenting a proposed count ►

(3) identifying at least one claim in the patent corresponding to the proposed count, (4) presenting at least one◄ [and a] claim corresponding to the proposed count ► or identifying at least one claim already pending in his or her application that corresponds to the proposed count,◄ and, if any claim of the patent or application ►identified as corresponding to the proposed count◄ does not correspond exactly to the proposed count, explaining why [an interference should be declared, (2) identifying the patent and indicating which claim in the application and which claim or claims of the patent correspond to the proposed count] ►each such claim corresponds to the proposed count◄, and [3] ►(5)◄ applying the terms of ►and◄ [the] application claim ►(i) identified as ◄ corresponding to the count and (ii) not previously in the application◄ to the disclosure of the application.

* * * * *

10. Section 1.612(a) is proposed to be revised to read as follows:

§ 1.612 Access to applications.

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608 filed separate from an amendment. ►A party seeking access to any abandoned or pending application referred to in the opposing party's involved application or access to any pending application referred to in the opposing party's patent must file a motion under § 1.635.◄

* * * * *

11. Paragraph (e)(1)(vi) of § 1.637 is proposed to be revised to read as follows:

§ 1.637 Content of motions.

* * * * *

(e) * * *

(1) * * *

(vi) [When the opponent is a patentee, designate the claims of the patent which define the same patentable invention defined by the proposed count] ►Identify all claims in the opponent's application or patent which should be designated to correspond to each proposed count; if the opponent's application does not contain any such claim, the motion shall propose a claim to be added to the opponent's application.◄ * * *

* * * * *

12. Paragraph (c) of § 1.658 is proposed to be revised to read as follows:

§ 1.658 Final decision

* * * * *

(c) A judgment in an interference settles all issues which (1) were raised and decided in the interference, (2) could have been properly raised and decided in the interference by a motion under § 1.633 (a) through (d) and (f) through (j) or § 1.634 and (3) could have been properly raised ► by a motion under § 1.633(e) ◄ and decided in an additional interference [with a motion under § 1.633(e)] ► on an invention which was claimed during the pendency of the original interference either (i) in the winning party's involved application or patent or (ii) in a non-involved application owned by a losing party ◄. A losing party [who could have properly moved, but failed to move, under §§ 1.633 or 1.634] shall be estopped to take *ex parte* or *inter partes* action in the Patent and Trademark Office after the interference which is inconsistent with [that party's failure to properly move] ► the issues settled by the judgment ◄, except that a losing party shall not be estopped with respect to any claims which correspond, or properly could have corresponded, to a count as to which that party was awarded a favorable judgment.

13. Paragraph (b) of § 1.662 is proposed to be revised to read as follows:

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

* * * * *

(b) If a patentee involved in an interference files an application for reissue during the interference and omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference, judgment may be entered against the patentee. A patentee who files an application for reissue other than for the purpose of avoiding the interference shall timely file a preliminary motion under §1.633(h)►,◄ or show good cause why the motion could not have been timely filed ► or would not be appropriate ◄.

* * * * *

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

14. The authority citation for 37 CFR Part 5 would continue to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188 and the Export Administration Act of 1979, as amended, the Arms Export Control Act, as amended, the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

15. Paragraph (b) of § 5.3 is proposed to be revised to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(b) An interference will not be declared involving national applications under secrecy order. However, if an applicant whose application [under secrecy order copies claims from] ► is under secrecy order seeks to provoke an interference with ◄ an issued patent, a notice of that fact will be placed in the file wrapper of the patent. (See [§ 1.205(c)] ► § 1.607(d) ◄).

* * * * *

Date: July 16, 1987.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Note: This Appendix A will not appear in the code of Federal Regulations.

Appendix A—Proposed Requirements for Examiner's Answer

Chapter 1200 of the Manual of Patent Examining Procedure would be amended to require that the examiner's answer include, in the order indicated, the following items:

(1) *Status of claims.* A statement of whether the examiner agrees or disagrees

with the statement of the status of claims contained in the brief and a correct statement of the status of all the claims pending or cancelled, if necessary.

(2) *Status of Amendments.* A statement of whether the examiner agrees or disagrees with the statement of the status of amendments contained in the brief, and an explanation of any disagreement.

(3) *Summary of invention.* A statement of whether the examiner agrees or disagrees with the summary of invention contained in the brief, an explanation of why the examiner disagrees, and correct summary of invention, if necessary.

(4) *Issues.* A statement of whether the examiner agrees or disagrees with the statement of the issues in the brief and an explanation of why the examiner disagrees, including:

(i) Identification of any issues which are petitionable rather than appealable, and

(ii) Identification of any issues or grounds of rejection which the examiner no longer considers applicable.

(5) *Grouping of Claims.* A statement of whether the examiner agrees or disagrees with any statement in the brief that certain claims do not stand or fall together, and, if the examiner disagrees, an explanation as to why those claims are not separately patentable.

(6) *Claims appealed.* A statement of whether the copy of the appealed claims contained in the appendix to the brief is correct and if not, a correct copy of any incorrect claim.

(7) *References of record.* A listing of the references of record relied on, including (where appropriate, and especially in the case of non-patent references) the page or pages in each reference relied on.

(8) *New references.* A statement of whether or not any new reference is being applied and a listing of each such reference being cited for a new ground of rejection in the examiner's answer, including (where appropriate, and especially in the case of non-patent references) the page or pages in each reference relied on.

(9) *Grounds of rejection.* For each ground of rejection applicable to the appealed claims, and explanation of the ground of rejection, or reference to a final rejection or other single prior action for clear exposition of the rejection.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the examiner's answer, or the single prior action, shall explain how the first paragraph of 35 U.S.C. 112 is not complied with, including, as appropriate, how the specification and drawings, if any, (a) do not describe the subject matter defined by each of the rejected claims, (b) would not enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and (c) do not set forth the best mode contemplated by the appellant of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the examiner's answer, or single prior action, shall explain how the claims do not particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the examiner's answer, or single prior action, shall explain why the rejected claims are anticipated or not patentable under 35 U.S.C. 102, pointing out where all of the specific limitations recited in the rejected claims are found in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the examiner's answer, or single prior action, shall state the ground of rejection and point out where each of the specific limitations recited in the rejected claims is found in the prior art relied on in the rejection, shall identify any difference between the rejected claims and the prior art relied on and shall explain how the claimed subject matter is rendered unpatentable over the prior art. If the rejection is based upon a combination of references, the examiner's answer, or single prior action, shall explain the rationale for making the combination.

(v) For each rejection under 35 U.S.C. 102 or 103 where there may be questions as to how limitations in the claims corresponds to features in the prior art, the examiner, in addition to the requirements of (9)(iii) and (iv) above, should compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison shall align the language of the claim side by side with a reference to the specific page, line number, drawing reference number and quotation from the prior art, as appropriate.

(vi) For each rejection, other than those referred to in paragraphs (i) to (v) of this section, the examiner's answer, or single prior action, shall specifically explain the basis for the particular rejection.

(10) *New ground of rejection.* A statement of whether or not any new ground of rejection is being made in the examiner's answer and a complete statement and explanation of any such new ground. The requirements of section (9) shall be complied with for any new ground of rejection.

(11) *Response to argument.* A statement of whether the examiner agrees or disagrees with each of the contentions of appellant in the brief with respect to the issues presented and an explanation of the reasons for disagreement with any such contention. If any ground or rejection is not argued and responded to by appellant, the response shall point out each claim affected.

(12) *Period of response to new ground of rejection.* A statement setting the period for appellant to file a reply to any new ground of rejection, if necessary.

[FR Doc. 87-22476 Filed 9-29-87; 8:45am]

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September 30, 1987

Part VIII

Department of Health and Human Services

Health Care Financing Administration

Public Health Service

42 CFR Parts 110 and 417

Medicare and Medicaid Programs; Redesignation of Rules Concerning Federal Requirements for Health Maintenance Organizations; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Health Service

42 CFR Parts 110 and 417

[OPH-2-F]

Medicare and Medicaid Programs; Redesignation of Rules Concerning Federal Requirements for Health Maintenance Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule moves the regulations that implement title XIII of the Public Health Service Act from 42 CFR Part 110 to a new Subpart A of 42 CFR Part 417. We are moving these regulations, which generally govern Federal qualification and Federal aid for health maintenance organizations (HMOs), to HCFA's regulations because the authority to administer these regulations has been transferred from the Public Health Service to HCFA.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Larry Sobel, (202) 245-0197.

SUPPLEMENTARY INFORMATION:

I. Background

Until recently, the authority for determining whether an entity is a Federally qualified health maintenance organization (HMO) within the meaning of section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)) was delegated to the Assistant Secretary for Health of the Department of Health and Human Services (the Department). This delegation was published in the **Federal Register** on April 22, 1983 (48 FR 17395) and is set forth in regulations at 42 CFR 417.406. However, that authority was redelegated to the Administrator of HCFA, as described in the **Federal Register** on March 21, 1986 (51 FR 9894). That document states that the "* * * change in authority for the Federal HMO program was made in order to more closely coordinate the Health Maintenance Organization Program with the Medicare Program and improve the objectives of both programs to improve health care and the use of prepaid health care."

In a proposed rule (51 FR 30520), published on August 27, 1986, concerning charging application fees for Federal qualification of HMOs, we indicated our intention to move the regulations that implement title XIII of the Public Health Service Act from 42 CFR Part 110 to a new Subpart A of 42 CFR Part 417.

II. Redesignation

We are moving these regulations, which govern Federal qualification of, and Federal aid for, HMOs and which complement the regulations implementing the Medicare and Medicaid HMO programs, to HCFA's portion of the Code of Federal Regulations (that is, Title 42, Chapter IV). As explained above, the authority for administering these regulations has been transferred from the Assistant Secretary for Health in the Department to the Administrator of HCFA.

In making this redesignation, we have made some minor editorial changes. For example, references to "the Act" have been appropriately changed throughout the regulations text to read "the Public Health Service Act" to distinguish that Act from the Social Security Act.

Although we are not making any other changes now, we are reviewing these regulations in order to determine which technical changes need to be made (for example, correcting addresses) and whether any substantive changes need to be made. Any such changes will be published later in the **Federal Register**.

III. Regulatory Impact Statement

Since this rule is merely a redesignation and makes no substantive changes in current regulations, there is no need for the analysis required by Executive Order 12291 for rules that have a significant impact on the economy.

In addition, because this rule does not require a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(b)), it is not subject to the requirements for regulatory flexibility analysis imposed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612).

IV. Other Required Information

A. Paperwork Reduction Act

This final rule consists of a redesignation of regulations text and, as such, does not change in any way the requirements reflected in the regulations. Therefore, this rule need not be reviewed by the Executive Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

B. Waiver of Proposed Rulemaking

The changes in regulations text made as part of this redesignation are minor, and of an editorial nature. Because these changes do not alter any policies or procedures, the usual notice and opportunity for prior public comment are unnecessary and we find good cause to waive notice of proposed rulemaking.

C. Waiver of 30-day Delay in the Effective Date

As noted above, these redesignated regulations are effective October 1, 1987. If we were to provide the customary 30-day delay in the effective date, the next updated issue of Title 42 of the CFR, which will be revised as of October 1, 1987, would show two sets of extensive, essentially duplicative regulations text regarding HMOs. One set would continue to be located in 42 CFR Part 110 and would remain in effect through whatever portion of the 30 day period extends past October 1, 1987. The second set would be located in 42 CFR Part 417, which would become effective after the 30-day delay had expired. Such a confusing and perverse effect would be unintended but would result from the interaction of a 30-day delay in the effective date of this final rule and the annual date of revision of 42 CFR. Therefore, the usual delay in effective date is impractical. In addition, because we are not revising the regulations in any substantive way, but merely redesignating them, the delay is unnecessary.

Accordingly, we find good cause to waive the 30-day delay in the effective date of this final rule and to make it effective on October 1, 1987.

List of Subjects in 42 CFR Part 417

Administrative practice and procedures, Health maintenance organization (HMO), Medicare, Grant programs/health, Health care, Health facilities, Health insurance, Loan programs/health.

Title 42 would be amended as set forth below:

TITLE 42—PUBLIC HEALTH

PART 417—[AMENDED]

1. The authority citation for Subpart A of Part 417 is added to read as follows:

Authority: Sections 215 and 1301 through 1318 of the Public Health Service Act, as amended (42 U.S.C. 216 and 300e through 300e-17).

2. Part 110, Health Maintenance Organizations is redesignated as a new Subpart A, Federally Qualified Health Maintenance Organizations, of Part 417 and all internal cross-references are corrected accordingly. All subpart headings in Part 110 are revised to uncoded internal headings in Part 417, Subpart A. All references to "the Act" are revised throughout to read "the Public Health Service Act." All

references to "this part" are revised to read "this subpart." This redesignation is set forth in the table below:

Redesignation Table for 42 CFR Part 417, Subpart A

Old Section	*New Section*
110.101	417.100
110.102	417.101
110.103	417.102
110.104	417.103
110.105	417.104
110.106	417.105
110.107	417.106
110.108	417.107
110.109	417.108
110.110	417.109
110.201	417.110
110.202	417.111
110.203	417.112
110.204	417.113
110.205	417.114
110.206	417.115
110.207	417.116
110.208	417.117
110.209	417.118
110.210	417.119
110.401	417.120
110.402	417.121
110.403	417.122
110.404	417.123
110.405	417.124
110.406	417.125
110.407	417.126
110.501	417.130
110.502	417.131
110.503	417.132
110.504	417.133
110.505	417.134
110.506	417.135
110.507	417.136
110.508	417.137
110.601	417.140
110.602	417.141
110.603	417.142
110.604	417.143
110.605	417.144
110.801	417.150
110.802	417.151
110.803	417.152
110.804	417.153
110.805	417.154
110.806	417.155
110.807	417.156
110.808	417.157
110.809	417.158
110.810	417.159
110.901	417.160
110.902	417.161
110.903	417.162
110.904	417.163
110.905	417.164
110.906	417.165
110.907	417.166
110.1001	417.170
110.1002	417.171
110.1003	417.172
110.1004	417.173
110.1005	417.174
110.1006	417.175
110.1007	417.176
110.1008	417.177
110.1009	417.178
110.1010	417.179
110.1011	417.180

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance; No. 13.714, Medical Assistance Program)

Dated: September 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Dated: September 8, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: September 21, 1987.

Otis R. Bowen,

Secretary.

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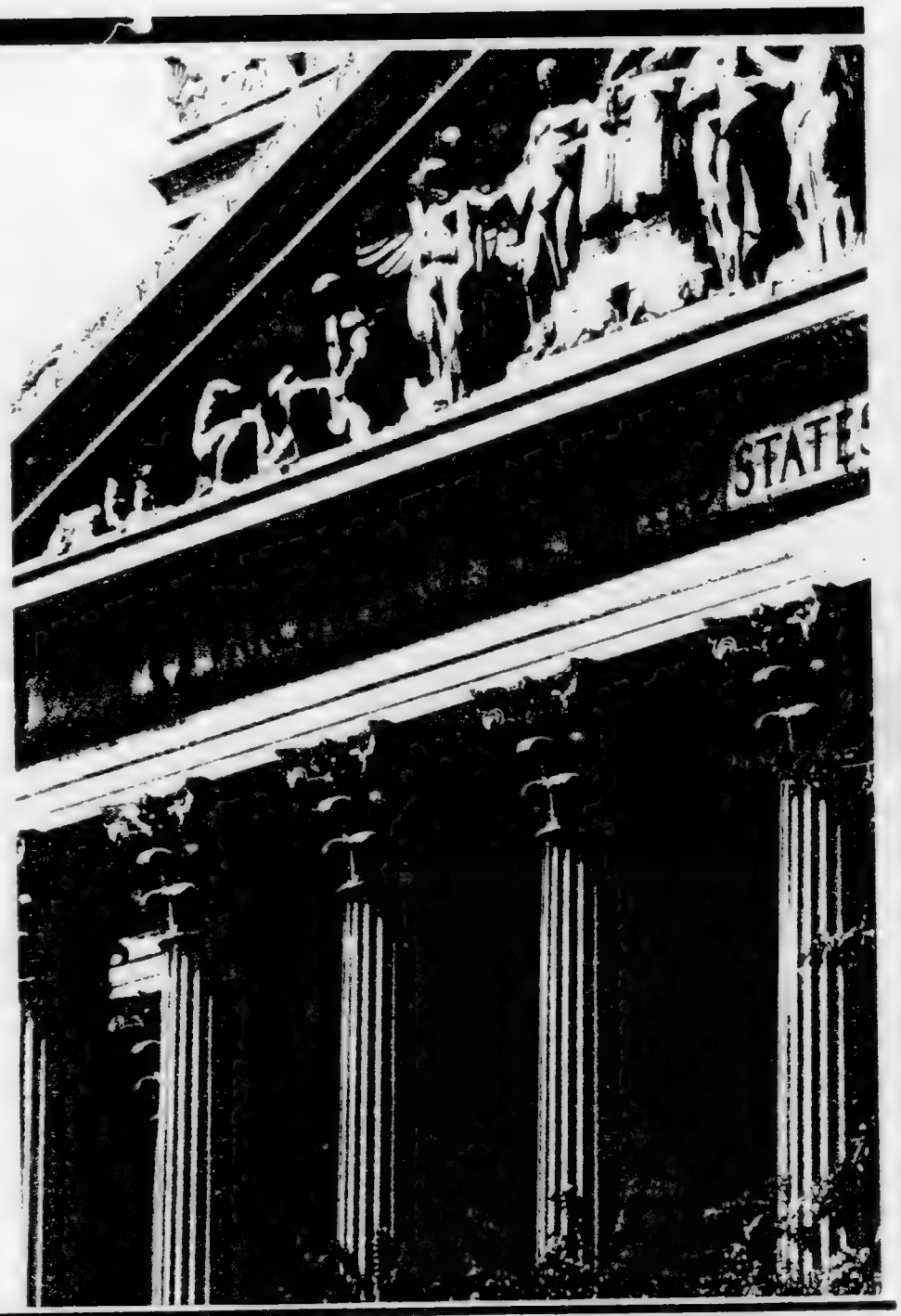

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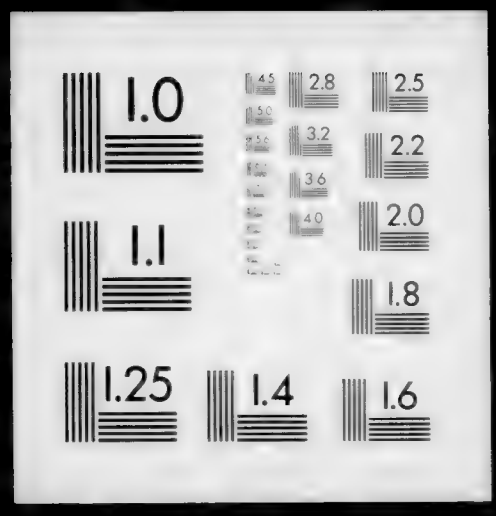
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The President

Presidential Determination No. 87-20 of September 23, 1987

New Foreign Policy Export Controls on Iran

Memorandum for the Secretary of Commerce

Pursuant to Section 6(m) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2405(m)) (the "Act"), I hereby determine and certify that:

a) The Iran/Iraq war, together with Iran's intransigent attitude against peaceful resolution of that conflict and Iran's on-going support of acts of international terrorism, have resulted in a breach of peace posing a serious and direct threat to the strategic interests of the United States. Hostile Iranian policies and actions directed against vessels of neutral nations in the Persian Gulf have heightened the seriousness of that threat;

b) Iran has purchased a large shipment of U.S.-origin SCUBA gear in the United States;

c) Available information indicates that this type of equipment will be diverted to military use by Iran in attacks on oil rigs and possibly shipping or in support of other terrorist or military actions;

d) Prohibition of such shipments of equipment will be instrumental in remedying the direct threat posed by the use of this equipment against U.S. interests in the region and in our effort to persuade other potential sources of similar equipment to likewise prohibit its transfer to Iran; and

e) This export control shall remain in effect only so long as Iranian hostile actions and policy continue to pose a direct threat to U.S. strategic interests in the region.

You are hereby authorized and directed to report to Congress this determination and the report required under Section 6(f) of the Act. Based on the above determination, I am exercising my power under Section 6(m) of the Act to extend foreign policy controls to cover exports or reexports of SCUBA gear to Iran that are either in performance of a contract or agreement entered into prior to the date of the report of the Secretary of Commerce of his intent to impose such control or that are under a validated license or other authorization issued under the Act.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 23, 1987.

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 552, 561, 563, 563b, and 584

[No. 87-1012]

Miscellaneous Technical Amendments

September 24, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; miscellaneous technical amendments.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations in order to remove obsolete and incorrect references within its regulations and to correct typographical and other technical errors contained in the Board's regulations.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Carol J. Rosa, Paralegal Specialist, Regulations and Legislation Division, Office of General Counsel, (202) 377-7037, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of these corrective amendments, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Parts 545, 552, 561, 563, 563b, and 584

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Holding companies, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Parts 545 and 552, Subchapter C, Parts 561, 563 and 563b, Subchapter D, and Part 584, Subchapter F, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec 5, 48 Stat. 132, as amended (12 US.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 545.3 [Reserved]

2. Amend Part 545 by removing § 545.3 and reserving the section designation for future use.

3. In the **Federal Register** of Monday, March 9, 1987, at page 7122, in the second column, remove amendatory instruction #20 which incorrectly amended § 545.74(d)(4).

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

4. The authority citation for Part 552 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

5. In the **Federal Register** of Monday, March 9, 1987, at page 7122, in the second column, remove amendatory instruction #24 which incorrectly amended § 552.2–2(d).

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

6. The authority citation for Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 561.8 [Amended]

7. Amend § 561.8(b) by correcting the reference to "§ 563.13(g)(5)(i)" to read "§ 563.13(b)(4)(ii)(A)".

§ 561.15 [Amended]

8. In the **Federal Register** of Monday, March 9, 1987, at page 7123, in the first column, in amendatory instruction 37, to § 561.15, in the amendment to paragraph (j)(1), in the eighth line, "§ 545.45(a)(1)" (the letter l) should read "§ 545.45(a) (1)" (the number one).

PART 563—OPERATIONS

9. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 563.31 [Amended]

10. Amend § 563.31(b)(1) by adding the word "and" after the semicolon at the end of the paragraph.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

11. The authority citation for Part 563b is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3, 12–14, 23, Stat. 882, 892, 48894–895, 901, as amended (15 U.S.C. 78c, 1–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

12. Amend § 563b.101 Item 7 by revising the first sentence of paragraph (c)(1)(C) to read as follows:

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§ 563b.101 Form PS–Proxy Statements.

* * * * *

Item 7. Business of the applicant

* * * * *

(c) *Management's discussion and analysis of financial condition and results of operation.* (1) * * *

(C) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount or reported income from continuing operations and, in each case, indicate the extent to which income was affected.* * *

* * * * *

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

13. The authority citation for Part 584 continues to reads as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730; sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

14. Amend § 584.1 by revising paragraph (a)(4) to read as follows:

§ 584.1 Registration, examination and reports.

(a) *Filing of registration statements and other reports—** * *

(4) *General.* Registration statements, annual reports, and the H–(b)12 are filed with the Corporation by transmitting the original and requisite number of copies enumerated on the report to the Director, Office of Regulatory Policy, Oversight and Supervision; Federal Home Loan Bank System, 1700 G Street, NW., Washington, DC 20552, and by submitting the requisite number of copies to the Supervisory agent. Copies of forms to be used in submitting registration statements, annual reports, and the H–(b)12 may be obtained from any Supervisory Agent.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–22549 Filed 9–30–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–211–AD; Amdt. 39–5736]

Airworthiness Directives; Airbus Industrie

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, which requires inspections and replacement, if necessary, of certain flap ball screwjack no-back assemblies. This amendment is prompted by reports of excessive wear of the carbon friction discs in the screwjack no-back assemblies. This condition, if not corrected, could result in the screwjack becoming reversible and could lead to an asymmetrical flap condition in the event of a flap transmission shaft failure, which could cause a partial loss of controllability of the airplane.

EFFECTIVE DATE: November 3, 1987.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires a jackhead backlash check to determine no-back condition, and describes procedures for flap screwjack replacement, if necessary, on certain Airbus Model A300 B2 and B4 series airplanes, was published in the **Federal Register** on November 26, 1986 (51 FR 42850).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The Air Transport Association (ATA) of America supported the proposal.

The manufacturer recommended acceleration of the initial compliance time for certain airplanes. The FAA has considered this recommendation, but has determined that such an action would be beyond the scope of this AD. The FAA may consider further rulemaking to address this change in compliance time for certain affected airplanes.

The manufacturer also recommended several editorial changes to clarify the description of the failure mode and certain wording in the preamble to the notice. The FAA concurs with the changes and, where appropriate, the final rule has been revised accordingly.

After careful review of the available data, including the comments listed above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes mentioned above.

It is estimated that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $69,360.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directives:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in any category, equipped with the flap ball screwjack no-back mechanisms, listed in Airbus Industrie Service Bulletin A300–27–172, dated April 10, 1984, which have not been modified in accordance with Modification AI 5240 as described in Airbus Industrie Service Bulletin A300–27–173, dated May 2, 1984. Compliance required as indicated, unless previously accomplished.

To prevent excessive wear of the carbon friction disc of the no-back assemblies which could lead to an asymmetric flap condition in the event of flap transmission shaft failure, accomplish the following:

A. Prior to the accumulation of 13,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, perform a jackhead axial backlash measurement on affected flap ball screwjacks in accordance with the accomplishment instructions of Airbus Industrie Service Bulletin A300–27–172, dated April 10, 1984.

B. Repeat the measurement required by paragraph A., above, at the following intervals:

1. If the backlash is less than or equal to 0.331 mm, prior to 3,000 landings after the last measurement.

2. If the backlash is more than 0.31 mm but less than or equal to 0.407 mm, prior to 2,000 landings after the last measurement.

3. If the backlash is more than 0.407 mm, but less than 0.560 mm, prior to 1,000 landings after the last measurement.

C. Replace the flap ball screwjack within the next 20 landings when a measurement required by paragraph A. or B., above, indicates the backlash is greater than or equal to 0.560 mm.

D. Incorporation of Airbus Industrie Modification 5240, described in Airbus Industrie Service Bulletin A300–27–173, dated May 2, 1984, constitutes terminating action for the requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective: November 3, 1987.

Issued in Seattle, Washington, on September 17, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–22721 Filed 9–30–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–CE–16–AD; Amdt. 39–5739]

Airworthiness Directives; Piper

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31P–350, PA–60–600, PA–60–601, PA–60–601P, PA–60–602P and PA–60–700P airplanes, equipped with reciprocating engines herein referred to a "PA–31 and PA–60 Series" airplanes. This AD requires the modification of the fuel filler ports to prevent inadvertent filling of the fuel tanks with jet fuel. The NTSB has reported eight accidents where airplane misfueling was found to have contributed to the accidents. The modification is necessary to prevent further misfueling and thereby preclude inflight engine failure.

DATES: *Effective Date:* November 2, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Aircraft Corporation Service Bulletin No. 797B, dated September 1, 1987, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (305) 567–4366. This information may be examined in the Rules Docket, Federal Aviation Administration, Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; Telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the modification of the fuel filler ports to prevent inadvertent filling of the fuel tanks with jet fuel on certain Piper "PA–31 and PA–60 Series" airplanes equipped with reciprocating engines was published in the **Federal Register** on June 8, 1987 (52 FR 21575). This proposal resulted from a recommendation by the NTSB reporting that there have been eight accidents as a result of inflight engine failure of Piper Aircraft Corporation Model PA–31 and PA–60 series airplanes with reciprocating engines in which misfueling with jet fuel was the cause. Further, the NTSB indicates that most cases of misfueling occur with light, twin-engine, piston-powered airplanes which are similar in appearance to turbine engine-powered airplanes. In recent years, the frequency of accidents involving misfueling with jet fuel has increased significantly despite efforts of the FAA and other interested parties. On September 17, 1982, and October 5, 1984, the FAA issued two Advisory Circular (AC) Nos. 20–116 and 20–122, "Marking Aircraft Fuel Filler Openings with Color Coded Decals," and "Anti-Misfueling Devices: Their Availability and Uses." Both recommend methods to prevent airplane misfueling. However, the level of response to these AC's appears low considering the nature of the problem and the number of airplanes involved. Therefore, in the interest of aviation safety, the modification of the fuel filler ports, recommended by the NTSB was proposed as a new Airworthiness Directive.

Interested persons have been afforded an opportunity to comment on the proposal. Due consideration has been given to the eleven comments received. Nine comments were in favor of the proposal. Several of these nine commenters suggested that other manufacturers' airplanes be added, which is beyond the scope of this rulemaking action. One additional commenter only concurred with the PA–31 Series airplanes being contained in the AD. He felt that since there are no turbine powered variants of the PA–60 Series airplanes and, according to him, only two misfueling accidents involving this airplane series have occurred since its production in 1969, its inclusion is not warranted. The FAA has determined that the service experience for the PA–60 series has been shown to warrant inclusion of this model airplane. The only commenter that disagreed totally with the proposal suggested that it was his belief that the government cannot legislate safety but that safety can be taught through the use of Fuel Training Seminars which he has developed. The FAA disagrees based on the adverse service experience that indicates

additional positive actions are necessary. Although well trained personnel should be the goal of all fueling facilities, it is not the only avenue to safe fueling that should be pursued. The FAA has determined that it is appropriate to require installation of fuel filler port restrictors on Piper PA-31 and PA-60 series airplanes.

Only one comment was received on the cost determination. In early 1986, the General Aviation Manufacturers Association petitioned the FAA to require that fueling ports in piston powered civil airplanes be restricted to less than 2.5 inches in diameter. In that petition, GAMA estimated the cost of the restrictor kit to be about $35 per fuel filler port. However, Piper's Service Bulletin No. 797A issued in April of 1985 listed the availability of their kits which averaged in cost from $35 to $93 per fuel filler port. Piper has decided to sell all the kits that they have in stock at the price listed on this Service Bulletin. However, as their stock is depleted and Piper must reorder their stock, the FAA has been advised that prices will increase to a range of $37.25 to $103.50 per fuel filler port depending upon the model of airplane. In addition, the FAA has been advised that since the NPRM was issued, the number of Piper airplanes involved has been revised to a lower number. Therefore, the final rule has been changed to reflect these increased costs and the reduction of the number of airplanes involved. However, this has not affected the FAA's certification that this rule is not a major or significant rule nor one which will have a significant economic impact on a substantial number of small entities.

Finally, one editorial change was made by listing the latest revision to the Piper Service Bulletin.

Therefore, after careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted. The FAA has determined there are approximately 5400 airplanes affected by this AD. The estimated cost of modifying these airplanes depends on the number of fuel filler caps on the airplane. PA-31 series airplanes can have either two, four or six fuel ports. The approximate cost per fuel port for these airplanes to comply with this AD is $37.50, except for Model PA-31P-350 airplanes which is $103.50 per port. Most PA-60 series airplanes have three fuel ports but some are equipped with four. The approximate cost per fuel port for these airplanes to comply with this AD is $69. The approximate total cost to modify the fleet would be $894,000. The cost of complying with this AD therefore will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Piper: Applies to Models PA-31, PA-31-300, PA-31-325 (SN 31-1 thru 31-8312019), PA-31-350 (S/N 31-5001 thru 31-8452021), PA-31-350 (T1020) (S/N 31-8253001 thru 31-8553002), PA-31P (S/N 31P-1 thru 31P-7730012), PA-31P-350 (S/N 31P-8414001 thru 31P-8414050), PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, PA-60-700P, (all S/N's) airplanes equipped with reciprocating engines certificated in any category.

Compliance: Required as indicated, unless already accomplished. To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify the fuel filler opening(s) in accordance with the instructions contained in Piper Aircraft Corporation Service Bulletin No. 797B, dated September 1, 1987.

Note.—This AD does not apply to the PA-23-250 (Aztec F) or the PA-36 (Brave) which are also listed in Piper Service Bulletin No. 797B.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) In accordance with FAR Part 43, Appendix A, item (c) 29, the modifications required by this AD are preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him, subject to the limitations of FAR 43.3(g). The maintenance record entries required by FAR 43.9 and FAR 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Altanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine the document(s) referred to herein at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 2, 1987.

Issued in Kansas City, Missouri, on September 17, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-22722 Filed 9-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-22; Amendment 39-5732]

Airworthiness Directives; Teledyne Continental Motors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain TCM IO-520, IO-550, and TSIO-520 series engines by individual priority letters. The AD requires inspection of the starter adapter shaftgear, possible replacement of the starter adapter assembly, and the return to service of the air conditioner in all affected airplanes. The AD is needed to publish as a final rule priority letter AD 87-14-02, which superseded priority letter AD 87-12-12, the combination of which (a) requires the removal of the freon compressor drive belt on Piper PA 46-310P airplanes, (b) includes engines with freon compressors installed in Beech Bonanza and Baron airplanes, (c) replaces the starter adapter assembly in

certain of these airplanes, and (d) allows return of the air conditioner to service in all affected airplanes.

DATES: *Effective Date:* October 5, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 87–14–02, issued July 8, 1987, which contained this amendment.

Compliance schedule: As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601, or may be examined in the Regional Rules Docket, Room 311, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jerry C. Robinette, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, Central Region, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: On July 8, 1987, priority letter AD No. 87–14–02 was issued and made effective immediately as to all known U.S. owners and operators of certain TCM IO–520, IO–550, and TSIO–520 series engines. The AD requires inspection of the starter adapter shaftgear, possible replacement of the starter adapter asembly, and allow the return to service of the air conditioner in all affected airplanes. AD action was necessary to: (a) Supersede priority letter AD 87–12–12 which requires the removal of the freon compressor drive belt on Piper PA–46–310P airplanes, (b) include engines with freon compressors installed in Beech Bonanza and Baron airplanes, (c) replace the starter adapter assembly in certain of these airplanes, and (d) allow return of the air conditioner to service in all affected airplanes

Since it was found that immediate corrective action was necessary, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued July 8, 1987, to all known U.S. owners and operators of certain TCM IO–520, IO–550, and TSIO–520 series engines. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Engines, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106 (g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to IO–520, IO–550, and TSIO–520 series engines with starter adapter shaftgear P/N 649343, a freon compressor, and 25 hours or less time in service installed on the following engines:

	Serial Numbers
New	
IO–520BB	S/N 578239 thru 578250, 578255 thru 578261, 578271, 578272.
IO–550B	S/N 675329, 675330, 675334 thru 675336.
TSIO–520UB	S/N 527091, 527093.
TSIO–520BE	S/N 528383, 528389.
Rebuilt Engines:	
IO–520BA	S/N 249568 thru 249570, 249588 thru 249593.
IO–520BB	S/N 248585, 248586, 274505 thru 274520, 274522 thru 274526, 274529, 274532, 274536, 274537, 274540, 274544, 274545, 274549, 274550, 274552, 274554.
New	
IO–550B	S/N 249124 thru 249130, 249132.
TSIO–520UB	S/N 248867, 248869.
TSIO–520LB	S/N 237242, 237244, 237247, 241909, 241910.
TSIO–520WB	S/N 274004 thru 274008, 274012 thru 274018.
TSIO–520BE	S/N 273505 thru 273510.

Compliance is required before further flight unless already accomplished.

To prevent possible starter adapter shaftgear failure, which could result in loss of lubricating oil and subsequent complete loss of engine power, accomplish the following:

(a) Determine if the installed engine(s) has a freon compressor installed.

(1) If no freon compressor is installed, no further action is required, proceed to Paragraph (f).

(b) Engines in compliance with priority letter AD 87–12–12, but not included in the engine serial numbers listed in this AD, may re-install the air conditioner drive belt. Proceed to Paragraph (f).

(c) Determine the time in service of the starter adapter shaftgear P/N 649343 for each installed engine. If the time in service is greater than 25 hours with the freon compressor drive belt installed, no further action is required. Proceed to Paragraph (f). If the time in service is less than 25 hours, accomplish Paragraphs (d) or (e) as applicable.

(d) If the engine was new when installed, remove the starter adapter assembly P/N 642087, and return to the manufacturer for replacement. Install the replacement assembly, and proceed to Paragraph (f).

(e) If the installed engine is a rebuilt engine, gain access to the drive sheave mounted on the rear of the starter adapter shaftgear. Determine, using a light and mirror, if the drive sheave attaching nut is castellated.

(1) If the nut is castellated with a cotter key installed, no further action is required, proceed to Paragraph (f).

(2) If a steel lock nut is installed, inspect the center of the shaft to determine if the shaft has drilled cotter key holes (see TCM Service Bulletin M87–13, dated 29 June 1987, Figure 1).

(i) If the shaft has drilled holes, no further action is required, proceed to Paragraph (f).

(ii) If the shaft is undrilled, remove the starter adapter assembly P/N 642087 and return to the manufacturer for replacement. Install the replacement assembly.

(f) Make appropriate logbook entry showing compliance with this AD.

Notes: 1. Contact TCM for shipping instructions.

2. When replacing the starter adapter assembly, retain the drive sheave for re-installation on new assembly.

3. TCM Service Bulletin M87–13, dated 29 June 1987, refers to this subject.

Upon request, an equivalent means of compliance with the requirements of this AD

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may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, Central Region, 1669 Phoenix Parkway, Suite 210, Atlanta, Geogria 30349.

This amendment becomes effective October 5, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 87–14–02, issued July 8, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on September 14, 1987.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87–22723 Filed 9–30–87; 8:45 am]

BILLING CODE 4910–13–W

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 385 and 399

[Docket No. 70988–7188]

Foreign Policy Controls on Exports to Iran of Scuba Equipment

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: In light of the threat to U.S. interests from the risk that the Government of Iran will conduct or support underwater attacks against shipping or installations in the Persian Gulf and elsewhere, this rule imposes a validated license requirement on exports to Iran of self-contained underwater breathing apparatus (scuba gear) and related equipment.

This regulation is issued in consultation with the Department of State and in compliance with the requirements of the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401 *et seq.* (the Act). Section 6 of the Act requires that a report be submitted to Congress whenever new foreign policy export controls are imposed; such a report was submitted by the Acting Secretary of Commerce on September 25, 1987. On September 23, 1987, the President made a determination and certification to the Congress under section 6(m) of the Act that permits this new control to be applied to shipments under preexisting contracts and to shipments that had previously been covered by a validated license or other authorization issued under the Act.

EFFECTIVE DATE: This rule is effective October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Joan Sitnik, Country Policy, Office of Technology and Policy Analysis, Telephone: (202) 377–4830.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)) exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to Vincent Greenwald, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Parts 385 and 399

Communist countries, Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PARTS 385 AND 399—[AMENDED]

1. The authority citation for Parts 385 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 385.4 is amended by designating the text following the italic heading as paragraph (e)(1); newly designated paragraph (e)(1) is amended by adding a heading before the first sentence; and adding a paragraph (e)(2), as follows:

§ 385.4 Country Group T and V.

* * * * *

(e) *Iran, Iraq, and Syria.* * * *

(1) *Restrictions on exports of chemicals to Iran, Iraq, and Syria.* * * *

(2) Restrictions on exports of self-contained underwater breathing apparatus to Iran. In support of U.S. foreign policy concerns, a validated license is required for the export to Iran of self-contained underwater breathing apparatus and related equipment, including the equipment listed in CCL entry 5398F, all of which is herein referred to as scuba gear. Applications for export to Iran of commodities subject to these controls will generally be denied.

* * * * *

§ 399.1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), a new ECCN 5398F is added between ECCN 1391A and 6398G, reading as follows:

5398F Self-contained underwater breathing apparatus (scuba gear) and related equipment.

Controls for ECCN 5398F

Unit: Report in "$ value."
Validated License Required: Country Groups S and Z and Iran.
GLV $ Value Limit: $0.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

List of Equipment Controlled by ECCN 5398F Self-contained underwater breathing apparatus (scuba gear) and

related equipment, including, but not limited to, the following:

(a) Self-contained underwater breathing apparatus (scuba gear);

(b) Pressure regulators, air cylinders, hoses, valves and backpacks for the apparatus described in paragraph (a);

(c) Life jackets, inflation cartridges, compasses, wetsuits, masks, fins, weight belts, and dive computers;

(d) Underwater lights and propulsion equipment; and

(e) Air compressors and filtration systems specially designed for filling air cylinders.

Dated: September 28, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-22655 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 87-123]

Consolidation of Cleveland and Akron, OH, Ports of Entry; Designation of Akron, OH, as a Customs Station

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document consolidates the ports of entry of Cleveland and Akron, Ohio, and designates Akron as a Customs station. The consolidated port will be known as the Cleveland port of entry and be within the Cleveland District. The Akron Station will be supervised by the Cleveland Port. These changes will allow more efficient use of Customs personnel, facilities, and resources. This will be accomplished by transferring the administrative functions of the Akron Port to the Cleveland District Office, and by eliminating some positions from the Akron Port. The consolidated port boundaries consist of the total area within the existing boundaries of both ports.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the **Federal Register** on January 14, 1987 (52 FR 1470), requesting public comment on a proposal to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3, 101.4), by consolidating the ports of entry of Cleveland and Akron, Ohio, and by designating Akron as a Customs station.

As explained in the notice, the proposal would permit relocation of the Akron Port administrative functions to the Cleveland District Office. The current Akron Port offices are located less than one hour's drive from the Cleveland District Office. The administrative staff at Akron is not currently fully utilized because of limited workload volume. The consolidated port boundary will consist of the total area within the existing boundaries of both ports. The Cleveland Port consists of all of Cuyahoga County, Ohio. The Akron Port consists of all of Summit County, Ohio, and lake Township in Stark County, Ohio. The port consolidation will result in savings of approximately $110,000 per year.

The staffing at the Akron Station will consist of two Customs inspectors, the same number currently assigned to the port. The positions of Port Director, Customs Aid, and Clerk Typist, will be eliminated. Elimination of these positions will have no immediate impact on any identifiable segment of the public; it is merely an administrative reorganization. Entry releases and entry summaries can still be filed at Akron.

Discussion of Comments

The primary concern raised in the few comments received in response to the notice was that the level of Customs service provided to the Akron area would decrease.

Customs does not agree with this prediction. The Akron workload does not currently justify the size of the assigned staff. Two inspectors will be able to provide an adequate level of service at this time. If the workload significantly increases, the staffing level can be increased.

Several commenters noted that the actions being considerted might hurt Akron's changes in its efforts to obtain a Foreign Trade Zone (FTZ). Also, it was feared the effect of adopting the proposal would generally hurt the reputation of Akron as a business center.

Customs does not believe the consolidation of Akron into the Cleveland Port will hinder Akron's chances of obtaining an FTZ. As for any damage to Akron's reputation in the business community, that is a subjective assessment over which Customs has no control. On Customs behalf, it can be stated that the actions being accomplished by this document in no way reflect any belief on Customs part that Akron is somehow undeserving of a singular port. Customs is merely making administrative changes to its field organization that will save the Federal government money and resources while leading to no decrease in Customs services to the Akron area.

Finally, in response to several comments, it is noted that no additional fees for services to importers at Akron will result from Akron's designation as a station.

Determination

After carefully analyzing the comments received, and further consideration of the matter, if has been determined to adopt the changes to the Customs field organization as proposed. The Cleveland port of entry consisting of all of Cuyahoga County, Ohio, and the Akron port of entry consisting of all of Summit County, Ohio, and Lake Township in Stark County, Ohio, are consolidated. Akron, Ohio, is designated as a Customs station.

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely makes adjustments to its field organization throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the areas affected, it is not expected to be significant because adjusting the field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping or other compliance burdens on a substanial number of small entities.

Authority

These changes are made under the authority vested in the President by section of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II),

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and pursuant to authority provided by Treasury Department Order No. 101–5, dated February 17, 1987 (52 FR 6282).

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties inspection, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. To reflect the consolidation, the list of Customs regions, districts, and ports of entry in § 101.3(b) is amended by removing "77–232" from the "CLEVELAND, OHIO" listing in the "Ports of entry" column in the Cleveland, Ohio, Customs district of the North Central Region, and inserting, in its place "87–123".

3. Section 101.3(b) is further amended by removing the listing, "Akron, Ohio, E.O. 4597, Feb. 25, 1927, including the territory described in T.D. 77–732." from the "Ports of entry" column in the Cleveland, Ohio, Customs District of the North Central Region.

4. To reflect the designation of Akron, Ohio, as a Customs station, the list of Customs stations in § 101.4(c) is amended by inserting, in appropriate alphabetical order, in the listings for "Cleveland, Ohio" under the "District" column, "Akron, Ohio" in the column headed "Customs stations", and on the same line, "Cleveland, Ohio." in the column headed "Port of entry having supervision".

William von Raab,

Commissioner of Customs.

Approved: September 17, 1987.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–22661 Filed 9–30–87; 8:45 am]

BILLING CODE 4820–02–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment notifies the public of a change in the interest rate applicable to late premium payments and employer liability underpayments and overpayments beginning October 1, 1987. The interest rate is established by the Internal Revenue Service and is computed quarterly. This amendment is needed to notify pension plan administrators of the new interest rate.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (2020–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from on-going plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate.

Section 6601(a) of the Code imposes interest on the underpayment of taxes at the "underpayment rate established under section 6621." Section 6621(a)(2) prescribes this rate: the sum of the short-term Federal rate (average interest rate on Federal securities with a maturity of three years or less) plus three percentage points. This rate is computed quarterly by the Internal Revenue Service.

On August 26, 1987, the Internal Revenue Service announced that for the calendar quarter beginning October 1, 1987, the interest charged on the underpayment of taxes will be at the rate of ten percent. Accordingly, Appendix A to 29 CFR Part 2610 and Appendix A to 29 CFR Part 2622 are being amended to set forth this rate for the period beginning on October 1, 1987. This rate will be in effect for at least the three-month period ending on December 31, 1987, and will continue in effect after that time if the Internal Revenue Service, in its next quarterly review, determines that no change is needed.

The appendices to 29 CFR Part 2610 and 29 CFR Part 2622 do not prescribe the interest rates under these regulations; the rates prescribed by those parts are the rates found in Section 6601(a) of the Code. The appendices merely collect and republish the rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that neither of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, Appendix A to Part 2610 and Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 11005, Pub. L. 99–272, 100 Stat. 82, 240.

2. Appendix A to Part 2610 is amended by revising the July 1, 1986, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
July 1, 1986	Sept. 30, 1987	9
Oct. 1, 1987		10

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

3. The authority citation for Part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 11011, 11016, Pub. L. 99–272, 100 Stat. 253, 268.

4. Appendix A to Part 2622 is amended by revising the January 1, 1987, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
Jan. 1, 1987	Sept. 30, 1987	9
Oct. 1, 1987		10

Issued in Washington, DC, the 25th day of September, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–22641 Filed 9–30–87; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1987, to December 31, 1987.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Regulations Division, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects and applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 8¾ percent, which will be effective from October 1, 1987, through December 31, 1987. This rate is ½ percent higher than the rate in effect for the third quarter of 1987. See 52 FR 25007 (July 2, 1987). This rate is based on the prime rate in effect on September 15, 1987.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A—[Amended]

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From	To	Date of quotation	Rate (percent)
•	•	•	•
10/01/87	12/31/87	09/15/87	8 75

Issued at Washington, DC, on this 25th day of September 1987.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 87-22640 Filed 9-30-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 5

[CGD 85-073]

Coast Guard Auxiliary Ensign and Auxiliary Patrol Boat Ensign

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is describing the design of the Coast Guard Auxiliary ensign and the Coast Guard Auxiliary Patrol Boat ensign. Both of these ensigns have been adopted by the Commandant of the Coast Guard and are currently in use. The intended effect of this rulemaking is consistency in the appearance and flying of these ensigns.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Office of Boating, Public, and Consumer Affairs, (202) 267-0979.

SUPPLEMENTARY INFORMATION: In a directive dated July 19, 1984, the Commandant authorized reproduction and use of the Coast Guard Auxiliary emblem on Auxiliary ensigns, flags, pennants, and burgees. This rule expands the provisions of 33 CFR 5.47 concerning the Coast Guard Auxiliary ensign by describing the design of the Coast Guard Auxiliary ensign and adds a new § 5.48 describing the design of the Coast Guard Auxiliary Patrol Boat ensign.

This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days after publication in the **Federal Register**. This rule relates to the Coast Guards's management, procedures and practices, and merely formalizes the design descriptions of the ensigns currently manufactured and used. Nothing in this rulemaking requires the replacement of existing ensigns. Therefore, the Coast Guard has determined that notice and public procedure thereon are unnecessary under 5 U.S.C. 553(b)(3)(B). Since this rule has no substantive effect, good cause exists, under 5 U.S.C. 553(d), for making it effective in less than 30 days after publication in the **Federal Register**.

Drafting Information

The principal persons involved in drafing this rule are: Mr. Carlton Perry, Project Manager and Mrs. Christena Green, Project Attorney, Office of the Chief Counsel.

Regulatory Evaluation: This rulemaking is considered nonmajor under Exeuctive Order No. 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the rulemaking has been found to be so minimal that further evaluation is unnecessary. These amendments merely formalize design descriptions of ensigns currently in use and apply to individuals and manufacturers of flags and pennants. Since the impact of the proposal is expected to be minimal, the Coast Guard certifies that this final rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 5

Volunteers.

In consideration of the foregoing, the Coast Guard is amending Part 5 of Title 33, Code of Federal Regulations as set forth below.

PART 5—COAST GUARD AUXILIARY

1. The authority for Part 5 is revised to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.46.

2. Section 5.47 is revised to read as follows:

§ 5.47 Auxiliary ensign.

(a) The Coast Guard Auxiliary ensign is a distinguishing mark, authorized by the Secretary, and may be displayed by any vessel, aircraft, or radio station at such times and under such circumstances as may be authorized by the Commandant. The penalty for the unauthorized flying of any ensign, flag or pennant of the Auxiliary is set forth in § 5.67 of this part.

(b) The field of the Auxiliary ensign is medium blue (Coast Guard blue) with a board diagonal white slash upon which a matching blue Coast Guard Auxiliary emblem is centered. The while slash shall be at a 70 degree angle, rising away from the hoist.

(c) The Auxiliary emblem consists of a disk with the shield of the Coat of Arms of the United States circumscribed by an annulet edged and inscribed "U.S. COAST GUARD AUXILIARY" all in front of two crossed anchors.

3. Section 5.48 is added to read as follows:

§ 5.48 Auxiliary Patrol Boat ensign.

(a) The Coast Guard Auxiliary Patrol Boat ensign is authorized to be flown on all Auxiliary Operational Facility vessels under orders. The penalty for the unauthorized flying of any ensign, flag or pennant of the Auxiliary is set forth in § 5.67 of this part.

(b) The field of the Auxiliary Patrol Boat ensign is white. A medium blue (Coast Guard blue) Coast Guard Auxiliary emblem is centered on a broad diagonal red (Coast Guard red) slash which is at a 70 degree angle, rising toward the hoist. The red (Coast Guard red) slash is followed, away from the hoist, by two narrow, parallel stripes, first a white stripe and then a medium blue (Coast Guard blue) stripe. The entire design is centered on the ensign.

Dated: September 24, 1987.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 87-22729 Filed 9-30-87; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Combined Presort and ZIP + 4 Presort First-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The rule adopted herein reimposes, effective December 20, 1987, the requirement that at least 85 percent of the pieces in a combined Presort and ZIP + 4 Presort First-Class mailing must bear a ZIP + 4 code. This action will terminate the exemption from the minimum ZIP + 4 coding requirement which has been in effect since the ZIP + 4 conversion transition period was initiated in April, 1985.

EFFECTIVE DATE: December 20, 1987.

FOR FURTHER INFORMATION CONTACT: William T. Alvis, (202) 268-2982.

SUPPLEMENTARY INFORMATION: On April 17, 1987, the Postal Service published in the **Federal Register** a proposal to reimpose the requirement that 85 percent of the pieces in a combined Presort and ZIP + 4 Presort First-Class mailing bear ZIP + 4 codes before the pieces bearing a ZIP + 4 code would be eligible for the ZIP + 4 Presort rate. 52 F.R. 12559. As noted in the proposal, the regulations which first authorized combined Presort and ZIP + 4 Presort mailings had required that at least 85 percent of the pieces in a combined

mailing bear ZIP + 4 codes. Early experience with the ZIP + 4 program indicated that mailers were having more difficulty converting their mailing lists to ZIP + 4 code usage than had been anticipated. In response, the Postal Service adopted a rule temporarily suspending the 85 percent requirement so that mailers could have a reasonable opportunity to convert their operations without losing ZIP + 4 discounts.

The proposal observed that approximately two years had passed since the suspension was adopted. Two years was considered ample time for mailers to convert to ZIP + 4 usage. Further, the proposal observed that combined mailings that have high proportions of mail that do not bear ZIP + 4 codes result in nonproductive handlings of mail that increase postal costs. The proposal concluded that a requirement that at least 85 percent of the pieces in a combined mailing bear ZIP + 4 codes was reasonably achievable by mailers and would hold down nonproductive handling costs. Finally, the proposal noted that there were some mailers who had recently begun the process of converting their mailing lists. To accommodate those mailers, the effective date would be delayed until October 18, 1987, to allow them to complete their conversion without having to face imminent loss of their ZIP + 4 code discounts. May 22, 1987, was set as the deadline for comments on the proposed rule.

Five comments were received by the deadline. Four comments were received late. Acceptance of the late comments would not prejudice the rights of any other commenters, so the late comments will be considered herein.

Six commenters, three presort service bureaus, an association of presort service bureaus, a financial services company, and a letter shop, opposed the reimposition of the 85 percent requirement. The association also urged that the effective date for the reimposition of the 85 percent requirement would not allow mailers who had recently converted to ZIP + 4 usage to recover their costs of conversion through Presort ZIP + 4 rate discounts. One commenter supported the reimposition of the 85 percent rule, but believed that the effective date should be sooner. Two commenters did not oppose the reimposition of the 85 percent requirement, but had other suggestions. One suggested that a lower minimum, 75 or 80 percent, be imposed for an interim period of one year. The second suggested that the proposed rule be amended to provide explicity that all pieces in a mailing which bear a ZIP + 4 code will be counted toward the 85 percent requirements regardless of whether the pieces otherwise qualified for the ZIP + 4 Presort rate.

Presort service bureaus collect unsorted mail, usually from many mailers, combine the mail, sort it to three- or five-digit ZIP Codes, and tender the mail to the Postal Service at Presort First-Class rates. As compensation for the work they do, bureaus typically receive from their customers part of the difference between what their customers would have paid as postage if the mail had been tendered as unsorted mail, and the postage that was paid after presortation by the bureaus. Generally, the bureaus rely on their customers to include ZIP + 4 codes on their mail. Bureaus may share part of any ZIP + 4 presort discounts with customers who put ZIP + 4 codes on their mail, or they may not. The presort service bureaus and the association state that bureaus simply cannot meet the 85 percent requirement. Thus, they say, reimposing the 85 percent requirement would mean that presort service bureaus could not receive the ZIP + 4 discount on the mail that they handle that has ZIP + 4 codes on it. Losing the discount would mean that they would lose the incentive to promote the ZIP + 4 program, so that reimposition of the 85 percent minimum would reduce ZIP + 4 volume. The association also states that the proposed effective date for reimposing the 85 percent requirement would be too soon for their customers who have recently converted to ZIP + 4 usage to recoup their investment by receiving postage savings on ZIP + 4 coded mail tendered for mailing through the facilities of presort service bureaus.

The letter shop commenter stated that it prepares ZIP + 4 mailings for its customers. It says that even after two years of experience it generally cannot achieve an 85 percent ZIP + 4 level for its mailings. Accordingly, this commenter says that if the 85 percent requirement were reimposed, it would not receive a ZIP + 4 discount for many of its pieces. This commenter also stated that it disagreed with the Postal Service's contention that commingling five-digit pieces with presorted ZIP + 4 pieces resulted in nonproductive handlings. This commenter also stated that increasing the requirement for ZIP + 4 coding to eliminate additional handlings of commingled five-digit mail would increase the amount of residual mail and the number of five- and three-digit packages that must be handled.

The financial services company also said that it was not achieving an 85 percent ZIP + 4 code level for its mailings. This mailer urged that the 85 percent requirement not be reimposed.

Another commenter was a large mailer who stated that the 85 percent requirement was acceptable and achievable for it. This commenter said, however, that it considered itself a reasonably sophisticated mailer, and questioned whether many mailers were capable of maintaining an 85 percent ZIP + 4 level. This commenter suggested that the Postal Service adopt a slightly lower requirement, 75 to 80 percent, for an interim period of one year.

The last commenter was also a large mailer who did not oppose the 85 percent requirement in principle. This mailer was concerned, however, that not all the pieces in a combined ZIP + 4 Presort mailing that contained a ZIP + 4 code would count toward the 85 percent requirement. This mailer apparently wants residual pieces on which regular ZIP + 4 postage is paid to count toward the 85 percent requirement the same as pieces which qualify for the ZIP + 4 Presort rate.

After careful consideration of all of the comments, the Postal Service has concluded that it will adopt the rule as proposed. We recognize that, under current operations, some presort service bureaus will no longer be able to obtain the ZIP + 4 discount or all the mail tendered to them that has a ZIP + 4 code on it. We do not believe that this would justify further delay in reimposing the 85 percent requirement, with the additional mail processing costs that delay would entail. Further, if a presort service bureau has sufficient amounts of ZIP + 4 mail, it can separate that mail from mail which bears only a five-digit ZIP Code and tender the ZIP + 4 coded mail as a separate mailing. Presort service bureaus can also take advantage of the provisions in Domestic Mail Manual (DMM) section 336 that permit some ZIP + 4 coded mail to be sorted only to three digits and still qualify for Presorted ZIP + 4 rates. In this regard, our analysis indicates that the cost of the additional handlings of five-digit presort mail commingled with Presort ZIP + 4 mail exceeds the cost of the handlings that would be incurred if that mail were not commingled.

With respect to service bureau customers who have only recently converted to ZIP + 4 usage and have not yet recouped their investment, we believe that the more than two years that the 85 percent requirement will have been suspended has given mailers in general an adequate amount of time to decide on whether to use ZIP + 4

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codes, make their conversion, and recover their investment. While there might be some mailers who, because of the reimposition of the 85 percent requirement, will not recover all of their investment as quickly as they otherwise might have, we believe that they had ample notice that the 85 percent requirement would be reimposed at some time. We further have concluded that the interval between the proposal to reimpose the 85 percent requirement and the effective date of the new regulations is an appropriate period for bringing the suspension to an orderly end, without unduly penalizing mailers who have not already converted to ZIP + 4 usage.

Nonetheless, because of the time required to evaluate the comments and conduct appropriate investigations of some of the assertions made in the comments, and because in the time between the publication of the proposed rule and the decision to adopt the rule as proposed the Postal Service adopted a policy of making most changes in DMM regulations effective with the issuance of a new edition of the DMM each quarter, the Postal Service has decided to postpone the effective date of the new rule. In this instance, the next edition of the DMM is scheduled for December 20, 1987. Accordingly, the effective date for the new rule will be December 20, 1987.

The Postal Service has also decided that it will not adopt a ZIP + 4 qualification level of less than 85 percent. Our analysis in connection with the proposal to permit some ZIP + 4 coded mail to be presorted only to the three-digit level and still qualify for the ZIP + 4 Presort rate showed that the automation equipment operates more efficiently with the 85 percent qualification level than with any lower level. Our experience since then has not altered that conclusion.

In addition, based on the claimed inability of some of the commenters to meet the 85 percent requirement, the Postal Service counsulted with its sales personnel about customers' ability to achieve an 85 percent ZIP + 4 code level for their mailings. The sales personnel reported that the companies with which they spoke expected no difficulty in meeting the 85 percent requirement. The Postal Service's Address Information Center was also consulted because of its experience with ZIP + 4 code conversion and usage, and it confirmed that by using state-of-the-art software and equipment mailers should have no difficulty in meeting the 85 percent requirement. Accordingly, we believe that many mailers can achieve and will maintain a qualification level of 85 percent or greater. We will, however, monitor the situation, and will consider any evidence that shows that the 85 percent level should be changed.

We also reject the proposal to amend the proposed rule so as to state that all pieces in a mailing which bear a ZIP + 4 code will count toward the 85 percent requirement regardless of whether all of those pieces are paid at the ZIP + 4 Presort rate. The rule as proposed was intended to provide that 85 percent of the pieces of a combined mailing bear a ZIP + 4 code for the ZIP + 4 pieces in the mailing to qualify for the additional ZIP + 4 Presort discount. The proposed amendment would change that intent, so that carrier route presort and residual pieces bearing a ZIP + 4 code would also count toward the 85 percent requirement. No data have been presented which would warrant such a departure from the intent of the rule, or which would reliably inform the Postal Service of the possible cost and revenue consequences of such a departure.

The Postal Service hereby adopts the following final regulations on this subject as an amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

Part 365—Combined Presort Mailings

2. In 365, delete current 365.2, renumber 365.3 through 365.5 as 365.2 through 365.4 respectively, then renumber 365.22–.26 as 365.23–.27, and add a new 365.22 to read as follows:

365.2 Requirements for Combined Presort Mailings

* * * * *

.22 At least 85 percent of the pieces in a combined mailing must bear the correct ZIP + 4 code.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–22619 Filed 9–30–87; 8:45 am]

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39 CFR Parts 952 and 964

Disposition of Mail Withheld From Delivery

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Judicial Officer of the Postal Service hereby issues the rules of practice in proceedings for administrative review of cases involving mail withheld from delivery pursuant to 39 U.S.C. 3003 and 3004. Such action is taken pursuant to authority delegated to the Judicial Officer by 39 CFR 224.1(c)(4)(ii)(A).

Present regulations governing rules of practice for mail withheld under section 3003 are contained in 39 CFR Part 952. Those rules of practice also cover false representation and lottery proceedings brought under 39 U.S.C. 3005. There presently are no rules of practice governing proceedings brought under 39 U.S.C. 3004.

It has been determined that a need exists for promulgation of rules of practice governing proceedings under 39 U.S.C. 3004. Due to the similarity of Postal Service enforcement procedures under 39 U.S.C. 3003 and 3004 the rules of practice for those two proceedings will be combined. Accordingly, 39 CFR 952.2 is amended to delete coverage of 39 U.S.C. 3003 proceedings and the new following rules are adopted as Part 964.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: James D. Finn, Jr., 202–268–2133.

List of Subjects in 39 CFR Parts 952 and 964

Administrative practice and procedure, Postal Service, Fraud, Lotteries.

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

1. The authority citation for Part 952 is revised to read as set forth below, and the authority citations following all the sections in Part 952 are removed.

Authority: 39 U.S.C. 204, 401, 3005.

§ 952.2 [Amended]

2. In § 952.2, remove "3003 and".

3. New Part 964 is added to read as follows:

PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

Sec.

964.1 Authority for rules.
964.2 Scope of rules.
964.3 Customer petitions; notice of hearing; answer; summary judgment.
964.4 Hearings.
964.5 Election as to hearing.
964.6 Default.
964.7 Presiding officers.
964.8 Subpoenas and witness fees not authorized.
964.9 Discovery; interrogatories; admission of facts; production; and inspection of documents.
964.10 Evidence.
964.11 Transcript.
964.12 Computation of time.
964.13 Continuances and extensions.
964.14 Proposed findings of fact and conclusions of law.
964.15 Decisions.
964.16 Appeal.
964.17 Final agency decision.
964.18 Compromise and informal disposition.
964.19 Orders.
964.20 Modification or revocation of orders.
964.21 Official record.
964.22 Public information.
964.23 Ex Parte communications.

Authority: 39 U.S.C. 204, 401, 3003, 3004.

§ 964.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the United Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4)).

§ 964.2 Scope of rules.

The rules in this part provide for administrative review of cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3003(a), has withheld from delivery mail which he believes is involved in a scheme described in section 3003(a), and cases in which the Chief Postal Service Inspector or his delegate, acting pursuant to 39 U.S.C. 3004, determines that letters or parcels sent in the mail are addressed to places not the residence or regular business address of the person for whom they are intended to enable the person to escape identification.

§ 964.3 Customer petitions; notice of hearing; answer; summary judgment.

(a) *Petition.* Any addressee who receives notice from the Chief Postal Inspector or his delegate that his mail has been withheld pursuant to 39 U.S.C. 3003(a) or 3004 may oppose such action by filing with the Judicial Officer a written Petition stating the reasons for his or her opposition. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the Recorder, Judicial Officer Department, U.S. Postal Service, Washington, DC 20260–6100. The Petition must be postmarked within 14 days of the date upon which the Petitioner received the notice.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 28 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within 10 days of receipt of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or upon his own initiative, the presiding officer may find that the Petition and Answer present no material issues of fact requiring an evidentiary hearing and thereupon may render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken pursuant to § 964.16 of this part.

§ 964.4 Hearings.

Hearings are held at the Headquarters of the U.S. Postal Service, Washington, DC, or such other location as may be designated by the presiding officer. Not later than 10 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and

(c) The reasons why such evidence cannot be produced at Washington, DC. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered

§ 964.5 Election as to hearing.

If both parties elect, they may waive an oral hearing and submit the matter for decision on the basis of the Petition and Answer, subject to the authority of the presiding officer to require the parties to furnish such further evidence or such briefs as necessary. The request to waive oral hearing should be filed not later than 10 days prior to the date set for hearing.

§ 964.6 Default.

If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may issue an order dismissing the Petition. An order of dismissal issued under this section may be appealed to the Judicial Officer within 10 days from the date of the order.

§ 964.7 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Judicial Officer shall assign cases upon rotation as far as practicable. The Judicial Officer may on his own initiative or for good cause shown, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleadings amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties or for any other purpose he believes will facilitate the processing of the proceeding;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 964.9 of this part.

§ 964.8 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a Petitioner's witnesses or for depositions requested by a Petitioner.

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§ 964.9 Discovery; interrogatories; admission of facts; production and inspection of documents.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the presiding officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting confidential information or documents from unwarranted public disclosure. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a notice of hearing described in § 964.3 of this part, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence, or both.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of the record.

(c) *Interrogatories to parties.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 10 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve upon the other party a request for the admission of specified facts. Within 10 days after receipt of the request for admissions, the party served shall admit or answer each specified fact or file objections thereto. Any factual propositions set out in the request to which a party fails to respond shall be deemed admitted.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents and or objects, provided that such documents and objects are not privileged, their relevance to the cause or causes in issue is explained, and they are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify the terms and conditions for making the inspection and taking the copies and photographs.

§ 964.10 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 964.11 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer orders otherwise. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 964.12 Computation of time.

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

§ 964.13 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

§ 964.14 Proposed findings of fact and conclusions of law.

(a) Each party to a proceeding, except one who fails to answer the Petition or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed finding. Each proposed conclusion shall be separately stated.

§ 964.15 Decisions.

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The initial decision shall become the final agency decision unless an appeal is taken in accordance with § 964.16.

(b) *Tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing he shall issue a final or a tentative decision. Such decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the

appropriate orders or denial thereof. The tentative decision shall become the final agency decision unless exceptions are filed in accordance with § 964.16.

§ 964.16 Appeal.

(a) Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues *de novo*.

(b) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited with page references.

(2) A concise abstract or statement of the case in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of or in opposition to each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

§ 964.17 Final agency decision.

The Judicial Officer renders the final agency decision which will be served upon the parties and upon the postmaster at the office where the mail at issue is being held.

§ 964.18 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 964.19 Orders.

If an order is issued which prohibits delivery of mail to a Petitioner it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

§ 964.20 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply within 10 days after receipt or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 964.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

§ 964.22 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

§ 964.23 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

James A. Cohen,

Judicial Officer.

[FR Doc. 87-22646 Filed 9-30-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC-428-F]

Medicare Program; Payment for Facility Services Related to Ambulatory Surgical Procedures Performed in Hospitals on an Outpatient Basis

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth the methodology that will be used to determine payments for hospital outpatient services furnished to Medicare beneficiaries in connection with ambulatory surgical procedures. This rule implements section 9343(a) of the Omnibus Budget Reconciliation Act of 1986.

EFFECTIVE DATE: This regulation is effective for hospital cost reporting periods beginning on or after October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Janet Wellham, (301) 597-1939.

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 1987, we published in the **Federal Register** (52 FR 20623) a notice of proposed rulemaking (the proposed rule) that solicited public comments on regulations to implement section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), enacted on October 21, 1986. Section 9343(a) of Pub. L. 99-509 set forth specific, new methodology to be used in determining Medicare payment for facility services furnished in a hospital on an outpatient basis in connection with covered ambulatory surgical center (ASC) procedures that have been specified by the Secretary in accordance with section 1833(i)(1)(A) of the Act and 42 CFR 416.65. Section 9343(a) of Pub. L. 99-509 amended section 1833(a)(4) of the Act and added a new section 1833(i)(3) to the Act to provide that, for hospital cost reporting periods beginning on or after October 1, 1987, payment for outpatient facility services in the aggregate is to be based on a comparison between two amounts. The payment is to be the lesser of the following:

The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by deductibles and coinsurance); or

An amount based on a blend of—

The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act (referred to below as the hospital-specific amount); and

The amount that would be paid to a free-standing ASC for the same procedure in the same geographic area, in accordance with section 1833(i)(2)(A) of the Act, which is equal to 80 percent of the standard overhead amount reduced by deductibles (referred to below as the ASC payment amount).

Section 1833(i)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting

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periods beginning on or after October 1, 1988, the blended payment amount is to be based on 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount. In addition, section 1833(i)(3)(A) of the Act, as added by section 9343(a) of Pub. L. 99–509, requires that all covered ASC surgical procedures performed in a hospital on an outpatient basis during a cost reporting period be aggregated for purposes of determining the proper Medicare payment amount.

II. Summary of Provisions

In the proposed rule, we set forth changes to Subparts A and F of 42 CFR Part 413. Because the statute is very specific, we were unable to adopt any of the suggestions made by the commenters concerning the proposal. In section III below, we discuss the comments we received and provide our responses to them.

As proposed, in Subpart A, we are revising § 413.13(c), which provides for the aggregation of charges for purposes of determining the amount of payments to a provider if customary charges for services furnished are less than reasonable costs. As it currently reads, § 413.13(c) specifies that in comparing charges and costs, customary charges for items and services, and the reasonable cost of those items and services are to be aggregated without regard to whether the related services are payable under Part A (Hospital Insurance) or Part B (Supplementary Medical Insurance) of Medicare.

As we noted in the proposed rule, section 2308(a) of the Deficit Reduction Act of 1984 (Pub. L. 98–369), enacted on July 18, 1984, directs the Secretary to issue regulations, applicable to cost reporting periods beginning on or after October 1, 1984, to eliminate the aggregation method of calculating the lower cost or charges (LCC) and to require that LCC be calculated and reported separately for services furnished under Part A or Part B of the Medicare program.

This change was subject of a notice of proposed rulemaking we published on September 18, 1986 in the **Federal Register** (51 FR 33074), and we are in the process of developing a final rule. We expect to publish that rule shortly. However, in order to implement section 9343(a) of Pub. L. 99–509, we found it necessary to make a further refinement to the methodology mandated by section 2308(a) of Pub. L. 98–369 that requires a further disaggregation of customary charges. Effective for cost reporting periods beginning on or after October 1, 1987, it will be necessary that all reasonable costs and customary charges for those services that are subject to the new payment method for covered ASC surgical procedures performed in a hospital on an outpatient basis during a cost reporting period be aggregated and treated separately from the reasonable costs and customary charges for all other services furnished in the cost reporting period.

As also proposed on June 2, 1987, we are adding a new § 413.118 (in 42 CFR Part 413, Subpart F), to describe the payment methodology required by section 1833(i)(3) of the Act (as enacted by section 9343(a) of Pub. L. 99–509) that will be used to determine payment for facility services related to covered ASC surgical procedures performed in a hospital on an outpatient basis. In the new § 413.118, we define the terms "facility services," "blended payment amount" and "standard overhead amount." We define outpatient "facility services" using the same definition as used for facility services for ambulatory surgical centers (as described in § 416.61). We based the definitions of "blended payment amount" on the payment methodology required by section 1833(i)(3)(B) of the Act, as added by section 9343(a) of Pub. L. 99–509, and the definition of "standard overhead amount" on section 1833(i)(2)(A) of the Act, which requires payments to ASCs to be equal to 80 percent of the standard overhead amount (net of the Part B deductible) per procedure (as described in § 416.125).

The aggregate payment for outpatient facility services, as defined above, will be equal to the lesser of: (1) The hospital's reasonable costs or customary charges, as described in § 413.13, reduced by deductibles and coinsurance; or (2) a blended amount based on the lower of a hospital's reasonable cost or customary charges reduced by deductibles and coinsurance and 80 percent of the standard overhead amount (reduced by deductibles) paid to free-standing ASCs for the same procedure in the same geographic area. For cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blend is to be 75 percent hospital-specific (based on the lower of reasonable costs or customary charges reduced by deductibles and coinsurance) and 25 percent of the amount paid to a free-standing ASC for the same procedure in the same geographic area. As discussed in the proposed rule (52 FR 20624), the portion of the blend attributable to the ASC payment amount is determined based on the standard overhead amount (net of deductibles) multiplied by 80 percent. The 80 percent adjustment is in accordance with section 1833(i)(2)(A) of the Act, which requires payments to ASCs to be 80 percent of the standard overhead amount per procedure. For cost reporting periods beginning on or after October 1, 1988, the 75 percent/25 percent blend, discussed above, changes to a 50/50 blend.

As explained in the preamble of the June 2, 1987 proposed rule, in order to make this rule consistent with payment rules for free-standing ASC services, if more than one covered ASC surgical procedure is performed at one time, payment is to be based on the procedure with the highest standard overhead payment amount, and payment for the other procedures is to be based on fifty percent of the applicable standard overhead amounts, as provided in § 416.120. As noted in the proposed rule, ASCs operated by hospitals that have an agreement with HCFA to be paid in accordance with § 416.30(f) are unaffected by this rule. That is, these ASCs will continue to be paid in accordance with § 416.30.

In addition, we note that covered surgical procedures furnished by a hospital on an outpatient basis that are not included on the covered ASC surgical procedure listing, as updated in a final notice in the **Federal Register** on April 21, 1987 (52 FR 13176) and corrected on May 11, 1987 (52 FR 17678), are to be reimbursed under existing regulations without regard to the blended payment amount described in this rule. If any of these covered surgical procedures are subsequently included on the covered ASC surgical procedure listing, then the payment methodology described in this rule would be applied as of the effective date of the addition to the ASC surgical procedure listing.

III. Comments and Responses

We received 12 timely sets of comments concerning our proposal. These comments were from hospitals, hospital associations and others. A summary of the comments we received and our responses to them are presented below.

Comment: Some commenters stated that, since the implementation of the prospective payment system for hospital inpatient services, hospitals have been under extreme pressure to move certain surgical procedures from the inpatient setting to the outpatient setting. These commenters stated that under this new payment methodology hospitals will, in almost all cases, lose money because they will be reimbursed at either cost or less than cost regardless of how low their costs are. The point was also made that, unlike hospitals, most ASCs are physician owned and that their losses

are subsidized by the physician owners. Another statement made by these commenters was that the proposed payment methodology will have very detrimental effects on those hospitals whose outpatient surgery percentage is 25 percent or higher of the total surgical procedures performed in the hospital. These commenters pointed out that there have been no regulations proposed that would help those hospitals that have a disproportionately high share of outpatient surgical procedures to total surgical procedures. According to these commenters, hospitals that have done what HCFA has requested over the past few years (that is, transferred services to the outpatient setting) will now find themselves being forced out of business as the result of this new payment methodology. The commenters used the ASC payment rate for cataract surgery as an example. They stated that the cost for cataract surgery, when provided in a hospital outpatient setting, is substantially more than the amount that was announced for this procedure in the notice of ASC rates published on June 1, 1987 (52 FR 20466).

Response: The payment methodology for ambulatory surgical procedures performed in hospitals on an outpatient basis, as described in the June 2, 1987 proposed rule, is required by section 1833(i)(3) of the Act, as enacted by section 9343(a) of Pub. L. 99–509. We have no authority to provide any relief to hospitals generally or those that perform a disproportionate share of outpatient surgeries. We point out that the payment methodology contained in this rule is only applicable to those procedures that have been specified by the Secretary to be performed by an ambulatory surgical center. Section 1833(i)(3) of the Act specifically requires the use of ASC payment rates along with a hospital's actual cost and charge data for purposes of determining the amount of payment that is to be made for facility services related to ambulatory surgical procedures performed in hospital outpatient departments. Thus, the payment for cataract surgery like any other ASC procedure performed in a hospital on an outpatient basis must be limited to an amount based on the amount that would be paid to a freestanding ASC for the same procedure.

Comment: Two commenters stated that the methodologies implementing Pub. L. 99–509 will result in significantly increased expenses to hospitals because of the need to use the HCFA Common Procedure Coding System (HCPCS) and to make data processing, billing and accounting changes. The commenters stated that the proposed payment methodology will impose more stringent payment requirements on hospitals than are imposed on approved freestanding ASCs. These commenters further stated that, because under the proposed payment methodology hospitals will receive payments based on the lesser of two amounts (that is, the lower of cost or charges or the blended payment), there is no potential for hospitals to make a profit. One of these commenters specifically requested that we change the proposed payment methodology in order to remove the lower of cost or charges provision.

Response: We acknowledge that hospitals may incur increased expenses relating to data processing, billing and accounting changes that must be made in order to comply with this regulation. However, the payment methodology relating to ambulatory surgical procedures performed in hospitals on an outpatient basis was mandated by Congress when it enacted section 9343 of Pub. L. 99–509. Consequently, we have very limited discretion in implementing this methodology. We have no authority to remove the lower of cost or charges provision because section 1833(i)(3) of the Act specifically requires it.

Comment: One hospital maintained that hospital ambulatory surgical units are not the same as ASCs. In hospital outpatient settings, certain operating rooms, staff, supplies, teaching and capital resources are used and, although the end result is less costly than inpatient surgery, hospital outpatient surgery is not comparable to services performed in an ASC.

Response: Congress, in enacting section 1833(i)(3) of the Act, did not intend that hospitals be paid the full ASC amount at this time. The payment methodology required by section 1833(i)(3) of the Act is a temporary payment methodology that is to be used by hospitals until a prospective payment system for ambulatory surgical procedures performed in hospitals is developed. Section 9343(f) of Pub. L. 99–509 requires HCFA to submit an interim report to Congress by April 1, 1988 concerning the development of a prospective payment system for ambulatory surgical procedures performed on an outpatient basis by hospitals. (The final report is due by April 1, 1989.) In the interim report, we will address whether payments to hospitals for these services should be based on hospital costs/charges, or based on ASC payment rates or a blend of the two. Also, in that report we will make recommendations for developing and implementing an all-inclusive payment system for ambulatory surgery encompassing payment for facility services and all medical and other health services commonly furnished in connection with an ambulatory surgical procedure other than the physician's services. The payment methodology described in this rule, which is an interim payment system, attempts to account for the difference between the cost of hospital facility services and ASC services by providing for the use of a phased-in blended payment amount. As discussed earlier, for the first year that the methodology is in effect, that is, Federal fiscal year (FY) 1988, the blended amount is based on 25 percent of the applicable ASC payment rate and 75 percent of the hospital's actual costs or charges. In subsequent years until a prospective payment system is implemented, the amounts change to a 50/50 percent blend.

Comment: Two commenters stated that the payment methodology requires that costs related to ASC procedures performed by a hospital be aggregated and reported on the hospital's cost report. They further stated that, in most cases, the financial detail necessary to comply with this requirement does not exist and that development of aggregate cost data is going to be burdensome on hospitals.

Response: The Medicare intermediaries will accumulate the data needed by the hospital to compute costs related to ASC procedures as bills are processed throughout the year. They will provide hospitals with the data needed to prepare cost reports through the Provider Statistical and Reimbursement Report. Therefore, we do not believe that the requirement that cost/charge data be aggregated will be overly burdensome on hospitals.

Comment: Two commenters stated that as the result of financial losses and paperwork burden imposed by this new payment methodology, hospitals will be forced to scale down their ambulatory services. Five other commenters stated that it is more expensive to provide ambulatory surgery in a hospital than in an ASC because of overhead, back-up staff, latest technologies, and diagnostic/treatment resources. These commenters maintained that back-up resources in a hospital are necessary because the types of patients that hospitals generally treat are more seriously ill than the average ASC patient. Thus, these commenters concluded that, if hospitals find that they cannot compete with ASCs because of higher costs, the availability of hospital ambulatory surgical services

may decrease. This effect would be detrimental to the Medicare population.

Response: We recognize the possibility, as we stated in the proposed rule (52 FR 20626), that beneficiary access to care may be reduced if hospitals decide that they cannot compete effectively with ASCs under the revised payment methodology and discontinue their ambulatory surgical services. However, we made the statement as a practical observation. We have no evidence nor did the commenters offer any evidence that implementation of the payment methodology will actually force hospitals to cease providing ambulatory surgical services. In any case, we are setting forth the methodology in regulations that Congress prescribed in the law.

Comment: Five hospital associations suggested that further analyses of the impact of this provision along with an evaluation of current ambulatory surgery capacity be undertaken before implementation of this new and untested payment methodology. These commenters especially requested that implementation be delayed until the HCFA report to Congress on prospective payment for surgical procedures performed in hospitals on an outpatient basis, which is due April 1, 1988, is presented and studied. Another commenter recommended that HCFA delay implementation for a year in order to allow HCFA sufficient time to analyze ASC data for purposes of establishing fair and adequate payment rates. This commenter stated that a year's delay would allow hospitals adequate time to change data processing, billing and accounting systems and would allow adequate time to train personnel in HCPCS coding procedures.

Response: Section 9343(h)(1) of Pub. L. 99–509 specifically imposes an effective date of October 1, 1987 for implementation of the payment methodology. Therefore, we have no authority to delay the implementation beyond the statutory date.

Comment: One commenter pointed out that in calculating individual ASC payment rates HCFA will apply the wage index currently in use for ASCs, published in the June 30, 1981 **Federal Register**. The commenter objected to the use of an index that has not been updated and recommended that HCFA use the wage index proposed for hospitals under the FY 1988 prospective payment rates.

Response: Payments to ASCs are currently calculated by applying the wage index that was initially published on June 30, 1981 (46 FR 33641) and subsequently republished in the November 26, 1984 **Federal Register** (49 FR 46495). Section 1833(i)(3)(B) of the Act, as enacted by 9343(a) of Pub. L. 99–509, requires that the blended payment amount be based in part on, "the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area. . . ." Therefore, the wage index currently applicable to ASCs located in the same geographic area as the hospital must be used, not the wage index applicable to hospitals.

Comment: One commenter stated that since Medicare beneficiaries pay no deductibles or coinsurance when an ASC performs a procedure, but are liable for deductibles and coinsurance on procedures performed in hospitals, Medicare beneficiaries have an incentive to go to ASCs.

Response: Section 9343(e) of Pub. L. 99–509 repealed the prior law that provided for a waiver of the deductible and coinsurance requirements for procedures performed in ASCs. Thus, Medicare beneficiaries are liable for deductibles and coinsurance regardless of where the ambulatory surgical procedure is performed.

Comment: A hospital association commented that HCFA is not giving adequate recognition to requirements that hospitals install new coding systems, revise patient billing systems, and develop new cost reporting procedures. These new requirements will create problems for most hospitals, the commenter stated, especially hospitals with cost reporting periods that begin on October 1, 1987. The commenter recommended that HCFA adopt a transition period that would permit fiscal intermediaries to exercise substantial flexibility when a hospital makes a "good faith" effort to comply.

Response: As previously stated, the statutory date for implementation of this payment methodology is for hospital cost reporting periods beginning on or after October 1, 1987, and we do not have the authority to postpone the implementation. The most significant change that hospitals will have to make in order to comply with the requirements of section 9343 of Pub. L. 99–509 is the HCPCS requirement, which became effective on July 1, 1987. Thus, those hospitals whose next cost reporting periods begin on October 1, 1987 will have had at least three months to install the necessary coding under HCPCS before the method of payment for ambulatory surgical services will be affected.

Comment: A hospital association made an observation that because a large number of services are provided in hospitals on an outpatient basis, a significant amount of the medical education of interns and residents takes place in outpatient ambulatory settings. The commenter stated that ASC payment rates do not recognize medical education costs and recommends that HCFA treat medical education costs relating to ambulatory surgical procedures as a pass-through cost.

Response: The conference report on section 9343 of Pub. L. 99–509 (H.R. Rep. No. 1012, 99th Cong., 2nd Sess. 355 (1986)) specifically states that, "no 'pass-through' is required for direct medical education costs because of the payment methodology established for these costs under section 1886(h) of the Act." Section 1886(h) of the Act, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), enacted on April 7, 1986, sets forth a specific methodology regarding Medicare's payment for the direct graduate medical education costs of interns and residents. Thus, in the view of the Congress, the services of interns and residents performing services in outpatient ambulatory settings are adequately accounted for under section 1886(h) of the Act. That is, hospitals will be compensated for direct graduate medical education costs over and above the amounts paid for ambulatory surgical procedures under this rule.

Comment: One commenter recommended basing the cost portion of the blended payment amount on the hospital's previous year's costs in order to give hospitals an incentive to cut costs. This commenter believes that the legislative language permits the Secretary the discretion to determine the period on which the cost portion of the blend will be based.

Response: The payment methodology described in section 9343(a) of Pub. L. 99–509 is very specific. The accompanying conference report (H.R. Rep. No. 1012 at page 354) states that "Payments would be based on a comparison between the amount that would be paid to a hospital OPD [that is, an outpatient department] under section 1833(a)(2)(B) and a blended amount based on the amount that would be paid to an OPD under section 1833(a)(2)(B) and the payment that would be made to a free-standing ambulatory surgical center (ASC) under section 1833(i)(2)(A) * * *. Under section 1833(a)(2)(B), services provided by an OPD are paid at the lesser of the reasonable cost for the service or the hospital's customary charge for the service * * *." The reference to the amount that would be paid under section 1833(a)(2)(B) of the

Act can only be interpreted to mean current cost, since that is what "would be paid" absent the provisions of section 9343(a) of Pub. L. 99–509. If Congress had intended that costs other than the current period costs be used, then it could have provided that the hospital-specific portion of the blended payment amount be based on a prior period (base) amount as it did in the methodologies for the prospective payment system (section 1886(d) of the Act) and direct medical education costs (section 1886(h) of the Act).

Comment: A commenter recommended that we change the term "hospital-specific amount" to "current year cost amount" because the commenter concluded that the term "hospital-specific amount" is misleading and that the term is being used in an effort to create the impression that the payment methodology implementing section 9343(a) of the Pub. L. 99–509 is similar in operation to the inpatient hospital prospective payment system.

Response: The term "hospital-specific amount," as used in § 413.118 means the lesser of the hospital's reasonable cost or customary charges reduced by deductibles and coinsurance. This is specifically explained in § 413.118. To adopt the commenters suggestion that we use the term "current year cost amount" in place of "hospital-specific amount" would be inappropriate since we are referring to more than just costs. Furthermore, we intended no comparison with the hospital prospective payment system by use of the term.

Comment: A suggestion was made that the definition of "facility services" in § 413.118(b) should be clarified. The commenter believes that our definition of facility services, which references § 416.61 of the ASC regulations, is inadequate and will result in the improper inclusion of costs for services that are provided by a hospital that are unrelated to the ambulatory surgical procedure.

Response: Section 416.61 of our regulations defines "facility services" as those items and services provided by an ASC that would otherwise be covered under the Medicare program if furnished on an inpatient or outpatient basis in a hospital in connection with covered surgical procedures. We believe this definition is adequate. The Conference Committee report on section 9343 of Pub. L. 99–509 (at page 355) indicates that Congress anticipated that we would define the term "facility services" for purposes of hospital services in a manner that is comparable to the definition of the term in § 416.61. For purposes of § 413.118(b), we adopted the definition contained in § 416.61.

Comment: One commenter suggested that we withdraw the proposed rule because other provisions of section 9343 of Pub. L. 99–509, for example, the requirement for HCPCS coding (section 9343(g)) and the requirement for the bundling of hospital outpatient services (section 9343(c)), which are related to the ASC payment methodolgy, described in the proposed rule, have not been issued in the form of regulations. The commenter noted that HCFA has implemented these other provisions of section 9343 of Pub. L. 99–509 through the issuance of program instructions.

Response: Program instructions were issued to provide program guidance concerning the ASC payment method for hospital outpatient procedures and the outpatient bundling requirements, and to implement the HCPCS coding requirements contained in section 9343 of Pub. L. 99–509. In the case of the instructions for the outpatient bundling requirements, the instructions were issued as an interim measure pending the issuance of regulations. A proposed rule concerning outpatient bundling provisions of section 9343(c) of Pub. L. 99–509 is currently under development and should be published shortly. It was determined that section 9343(g) of Pub. L. 99–509, which requires hospitals to use HCPCS, was self-implementing and, thereofore, did not require implementing regulations. Program instructions were deemed the appropriate means to implement this provision of the law. We believe that implementation of the HCPCS coding requirements of section 9343(g) of Pub. L. 99–509 through program instructions is reasonable and consistent with rulemaking requirements. The use of program instructions provides guidance to hospital providers in order for them to comply with the law. In developing the program instructions for HCPCS, we consulted extensively with members of the hospital industry.

We see no reason to withdraw this rule and emphasize that proper rulemaking procedures have been followed.

The payment methodolgy provided in section 1833(i)(3) of the Act leaves very little room for discretion on our part. We again emphasize that we have no authority to delay implementing the payment methodology required by section 1833(i)(3) of the Act, which is effective for hospital cost reporting periods beginning on or after October 1, 1987.

Comment: One commenter questioned whether States would be required to comply with the proposed rule for purposes of applying the upper payment limits to Medicaid outpatient services. The commenter noted that, if States are required to comply with these requirements for purposes of applying the upper payment limit to outpatient services, formidable system problems could prevent timely compliance and result in some States requesting a waiver from these requirements.

Response: Section 447.321 of the Medicaid regulations provides that the State agency may not pay more for hospital outpatient services than the combined payments the hospital receives from beneficiaries and intermediaries for providing comparable services under comparable circumstances under Medicare. Thus, §§ 413.13 and 413.118, as published in this final rule, will affect the upper payment limit calculations for Medicaid outpatient services.

Comment: One hospital association stated that the definition of "covered ambulatory surgical procedures" adopted in the intermediary instructions issued in July 1987 is not consistent with § 416.65 of our regulations to which the proposed rule refers. The commenter pointed out that § 416.65(b)(3)(iv) specifically states that covered surgical procedures may not be of a type that are generally emergency or life-threatening in nature. Therefore, the commenter expressed an opinion that ASC procedures performed on an emergency basis by hospitals should not be subject to the payment methodology described in this rule.

Response: We agree with the commenter to the extent that surgical procedures included on the list of ASC procedures specified by the Secretary under section 1833(i)(1)(A) of the Act and § 416.16 of the regulations are those procedures that can be performed safely in an ASC. Generally, therefore, ASC procedures, whether performed in an ASC or in a hospital outpatient setting, are not the type that are performed in life-threatening or emergency situations. Furthermore, we have no evidence that indicates that ASC procedures are performed in hospitals on an emergency basis or that, if they are performed in those situations, hospitals incur greater costs. Accordingly, we believe there is no need for an exception at this time. However, if evidence concerning this matter becomes available in the future and indicates that an exception for emergency services would be appropriate, we will propose changes to the regulations.

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IV. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that is likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

Section 9343(a) of Pub. L. 99–509 provides the specific framework regarding payment for facility services related to ambulatory surgical procedures performed in hospitals on an outpatient basis. Accordingly, we did not prepare a regulatory impact analysis for the proposed rule published in the **Federal Register** on June 2, 1987. However, because this rule establishes the precise mechanisms for implementing the payment methodology and because of the substantial amount of money spent for outpatient surgical procedures, we did present an initial regulatory flexibility analysis with the proposed rule. Based on our initial analysis and the comments received in response to that analysis, we have determined and the Secretary certifies that this final rule is likey to have a significant economic impact on a substantial number of small entities. Our discussion below of the likely effects of this rule, together with our responses to comments received on the initial analysis, constitutes a final regulatory flexibility analysis.

B. Responses to Comments

Of the comments we received on the proposed rule, two commenters specifically contended that the initial regulatory flexibility analysis did not fully examine the effect of this rule.

Comment: One commenter stated that the initial regulatory flexibility analysis severely underestimated the magnitude and cost of the changes that hospitals will have to make to their outpatient accounting, billing, and data processing systems in order to conform them to the HCPCS. This commenter argued that hospitals cannot implement these new procedures in the short timeframes allowed without risking significant disruption and cost to their operations.

Response: We disagree with the suggestion that our initial analysis 'glossed over' in any respect the substantial administrative costs that hospitals will incur in implementing HCPCS coding for reporting outpatient services. We devoted an entire section in the initial analysis (at 52 FR 20626), much of which is restated below at D, regarding the impacts of section 9343(g) of Pub. L. 99–509. We presented this discussion even though this rulemaking specifically concerns the implementation of section 9343(a) of Pub. L. 99–509. We did not describe the intricacies of the changes that hospitals will have to make to their systems, because we do not believe that the **Federal Register** is an appropriate forum for presenting that level of detail. Rather, we presented our analysis of the principal likely effects of HCPCS implementation. We also acknowledge that the timeframes that hospitals face in implementing this initiative are tight, although hospitals will have had at least 90 days to make these changes prior to the effective date of these rules. Finally, we believe that we have made a considerable effort to consult with the hospital industry and our intermediaries in order to implement HCPCS coding for outpatient services in the least burdensome manner possible. Our final instructions require no major rewriting of the internal financial accounting systems of hospitals. Nonetheless, we estimate the average implementation cost per hospital for HCPCS coding to be about $21,500, with much smaller ongoing costs.

Comment: One commenter alleged that several possible impacts of this rule were not fully acknowledged in the initial analysis. The commenter identified the following as possible effects of this rule:

- Hospitals (both urban and rural) will discontinue providing the procedures subject to this rule because the payment methodology guarantees that they will lose money;
- Some hospitals will hire surgeons in order to subsidize through collection of surgical professional fees the losses incurred due to HCFA's low facility payment rates;
- Surgeons will relocate to more heavily populated areas where they can set up high-volume, low-cost ASCs;
- The development of advanced medical technology will be stifled; and
- In those instances in which hospitals discontinue providing the outpatient surgical services in question, beneficiaries will have to travel further to ASCs to obtain care and may well opt to not have surgery.

Response: We do not believe that the payment methodology "guarantees" that hospitals will lose money, because these rules allow hospitals to be paid under section 1833(a)(2)(B) of the Act when appropriate. In general, to the extent that hospitals are able to economize and cut unnecessary costs in their outpatient departments, ensuring that their costs are below the blended amount (and thus competitive with ASCs), then hospitals will not lose money under the new methodology; they would in this case be paid in the same manner as before, based on the lower of their costs or charges.

It is possible that some hospitals will scale back their services somewhat, without completely discontinuing all outpatient surgical procedures. While we acknowledge that in some cases hospitals may discontinue providing ambulatory surgical services, we do not believe that this will generally prove to be the case. As noted above, we did state in the initial analysis (at 52 FR 20626) that, in such instances, beneficiaries could experience reduced access to care.

We acknowledge that hospitals may choose to hire surgeons for their outpatient facilities; they may do so already. Hospitals would, however, be compensated for these physicians' services under the regulations governing compensation for hospital-based physicians (§§ 405.550–405.551). In order to avoid that, a hospital might be able to create an ambulatory surgical center as a wholly-owned subsidiary—the facility costs of which might be reimbursed under the rules governing payment to ASCs. In fact, both of these options may currently be pursued by hospitals and, while this final rule may encourage one choice or the other in some instances, we believe these decisions are largely determined by external factors (for example, the availability of surgeons who are willing to work for a salary, etc.). Similarly, we believe that any incentives that physicians have to move to urban areas and set up high-volume ASCs are not the result of these rules.

Finally, we note that the incentives hospitals face to cut their outpatient facilities costs in response to this rule are not inconsistent with using more effective, low-cost alternative technologies in the outpatient setting.

C. Program Payments

The purpose of section 9343(a) of Pub. L. 99–509 is to bring Medicare payments for the facility component of covered ambulatory surgical procedures performed in a hospital on an outpatient basis more in line with facility payments made to freestanding ASCs. Prior to the changes described in this rule, the various providers of ambulatory surgical services have been paid under different methodologies and, consequently, have had different incentives to contain costs. While freestanding ASCs have been paid for their facility costs on the basis of set rates, and have thus had strong financial incentives to economize and cut costs, hospital outpatient departments have been paid based on reasonable costs. These costs have not been subject to any limitations comparable to the cost constraints imposed on services provided by hospital inpatient departments, skilled nursing facilities or home health agencies. Thus, hospitals have had little incentive to contain expenditure relating to outpatient services for the purpose of making improvements in the efficiency of their operations. Implementation of the various provisions of section 9343 of Pub. L. 99–509 should place the sources of ambulatory surgical services on a more equal, competitive footing, and introduce incentives for hospital economy and efficiency for outpatient services just as the prospective payment system did for inpatient hospital services.

Anecdotal evidence indicates that it is reasonable to assume that nearly all of the $1.18 billion expended in 1985 for surgical procedures performed in hospital outpatient departments were for services related to the procedures listed on the recently published list of covered ambulatory surgical procedures. The expanded list has been designed to exclude as much as possible those procedures that are most appropriately performed on an inpatient basis or that are doctors' office procedures.

The initial aggregate effect of this final rule upon hospitals will be a decrease in Medicare program payments. We are, however, not able to quantify this reduction precisely. Since hospital outpatient costs and charges for certain covered ambulatory surgical services will be compared to a blended amount based, in part, on ASC facility rates for the same services, a precise estimate would require an ability to identify existing differences between those rates and hospital costs or charges. However, ASC facility rates are paid only for certain services identified by the Physicians Current Procedural Terminology, Fourth Edition (CPT–4), which is incorporated into the HCFA Common Procedure Coding System code (HCPCS). Hospital outpatient costs and charges have not yet been reported or analyzed under this procedure coding system. Therefore, we cannot determine definitely either the portion of Medicare payments for outpatient hospital services attributable to covered ambulatory surgical procedures, or, more importantly, the difference in level of payment for given services based on site of service. For these same reasons, we cannot specifically identify what the impact of this payment change will be on rural hospitals.

The expected decrease in Medicare program payments will become more pronounced after October 1, 1988, when the increase in the ASC payment amount component of the blended payment amount, mandated by Pub. L. 99–509, takes effect. This change will result in intensified incentives for hospitals to contain costs, and, to the extent that hospitals reduce their costs to greater parity with the ASC facility prospective payment rates, the change should control the rate at which Medicare expenditures for these services are growing.

The reduction in Medicare payments to hospitals for outpatient surgical procedures will be somewhat lessened by the increase in ASC payment rates required by section 9343(b)(1) of Pub. L. 99–509 and published in the Federal Register in a notice with comment period on June 1, 1987 (52 FR 20466). The ASC payment rate updates became effective on July 1, 1987, and the law requires us to update them annually thereafter.

D. Administrative Costs

In order for this final rule to be fully implemented, it is first necessary to have section 9343(g) of Pub. L. 99–509 implemented. That section requires hospitals that report claims for payment for hospital outpatient services to use a HCFA common procedure coding system (HCPCS), which is the coding system in use by ASCs. In fulfilling the requirements set forth in section 9343(g) of Pub. L. 99–509, we will be concurrently fulfilling the requirement set forth in section 9343(a) of Pub. L. 99–509 that all covered ASC surgical procedures performed in a hospital on an outpatient basis during a cost reporting period be aggregated and treated separately from other services. We acknowledge that hospitals that provide surgical services in their outpatient departments and Medicare fiscal intermediaries will incur substantial administrative costs in implementing HCPCS, as noted earlier in our reponses to comments. So as to conform to the requirements of this rule, hospitals will need to make certain changes to their accounting and billing systems. The effect upon an individual hospital will vary depending upon its staff's ability to incorporate these changes into their accounting and outpatient billing systems, the overall adaptability of the hospital's accounting staff and outpatient personnel, and the hospital's size.

It can be reasonably assumed that the larger hospitals will experience a smaller overall administrative expense increase on a per case basis than will their smaller counterparts, because of economies of scale, relative resources, and sophistication of their accounting systems. Accordingly, the effect should be more pronounced among smaller hospitals, because the cost of these administrative changes will be allocated to a smaller number of cases. Similarly, because rural hospitals tend to be smaller hospitals, it may be that the administrative cost per case of these changes will be higher for rural hospitals than the average.

The effect upon an individual intermediary will vary depending on its staff's ability to expeditiously instruct the hospitals within its jurisdiction about these changes and to integrate these changes effectively and efficiently into their own operating environment. Also, the effect of these changes on intermediaries will be mitigated to the extent that HCFA reimburses them for the costs incurred. HCFA normally reimburses intermediaries for changes of this nature on a reasonable cost basis for cost contractors and through the change order process for fixed price contractors.

E. Impact on Beneficiaries

In the past, beneficiaries were not liable for Medicare Part B deductible and coinsurance amounts for ASC facility services, but they were liable for deductible and coinsurance amounts for hospital outpatient services. However, section 9343(e) of Pub. L. 99–509 provides that, effective July 1, 1987, coinsurance and deductibles are to apply to ASC facility services, too. Thus, for services furnished in either an ASC or a hospital outpatient department on or after July 1, 1987, a beneficiary will be liable for up to $75 of any unmet deductible obligation, plus 20 percent of either the applicable ASC facility rate or the hospital's customary charge. (If a hospital meets the collection effort requirements of our regulations at § 413.80, we will reimburse the hospital

for the uncollectible Medicare ban debts it incurs related to provision of covered ambulatory surgical services.)

This payment method reinforces the incentive that hospitals already have to set their charges at levels equal to or greater than costs, so that they do not experience disallowances of a portion of their costs under the LCC principle. However, this rule will introduce a new incentive for hospitals to cut their facility costs per case to a level that is competitive with the ASC facility payment rates. This may in turn lead to lower prices for covered ambulatory surgical procedures performed in hospitals to the benefit of Medicare beneficiaries. In addition, in order to increase their ambulatory surgery market share, hospitals can market their outpatient services effectively, partially competing on a price basis, but also marketing their patient-staff relationship, reputation, and convenience of access, rather than focusing on cost as the sole criterion. If this competition leads to improved levels of service, then beneficiaries will also benefit. However, if a hospital were to determine that it could not compete effectively, possibly causing it to discontinue or reduce its ambulatory surgical services, beneficiaries could experience reduced access to services in the affected locality.

F. Shifted Incentives and Market Effects

Ambulatory surgery is a dynamic and growing market that has grown because often it is more economical to furnish surgical services in settings other than hospital inpatient departments. The main participants in this market are ACSs, doctors' offices where these services are furnished, and hospitals that furnish these services on an outpatient basis. Increasingly, ASCs have been receiving a larger share of this overall market. They have shown explosive growth, beginning in September 1982 with 20 ASCs and growing to 690 ASCs by December 1986. This is a 3,310 percent increase in a four-year period.

Although we do not have systematic program data on comparative costs we believe that ASCs typically have lower fixed costs than do hosptials. The growth of ASCs appears to be partially attributable to this factor. If hospitals' fixed costs continue to rise relative to ASCs, they will be at a greater competitive disadvantage. If, on the other hand, hospitals can cut their fixed costs to a level approximating the facility rates which ASCs are paid when providing the same service, then hospitals may obtain a competitive advantage. This will occur because beneficiaries now have to pay deductibles and coinsurance for surgical services received in an ASC, which was not the case prior to July 1, 1987. Overall, it is difficult to determine how this rule will affect the outcome of this competition between ASCs and hospitals in any given case. Obviously, those hospitals in areas with few or no ASCs will not be subject to the same pressures as hospitals in other areas.

G. Conclusion

Although this final rule could adversely affect most hospitals in their immediate expectations of revenues, it will generally benefit the development of a healthy market for the delivery of ambulatory surgical services. Medicare beneficiaries should benefit as the result of lower prices for covered ASC surgical procedures performed in hospitals on an outpatient basis, although in some instances, beneficiaries may face reduced access to care in the event that some hospitals curtail their outpatient surgical services. The Medicare program itself would benefit as a result of program savings that would enhance the viability of the Medicare trust fund. In addition, we expect to gain additional knowledge regarding actual resource utilization for outpatient surgical services through implementation of this rule. This is a necessary step towards implementation of a prospective payment system for outpatient services performed in hospitals. In sum, we expect the advantages achievable as the result of this rule to outweigh any resulting costs or disadvantages.

V. Other Required Information

A. Paperwork Burden

This rule would not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. Waiver of 30-day Delay in the Effective Date

Generally, we publish rules and notices thirty days prior to their effective date. However, we may waive this procedure if it would be impractical, unnecessary or contrary to the public interest.

In this rule we are implementing section 9343(a) of Pub. L. 99–509, which sets forth the revised methodology that will be used to determine Medicare payment for facility services furnished in a hospital on an outpatient basis in connection with covered ASC surgical procedures. Section 9343(a) of Pub. L. 99–509 is very specific as to the methodology that is to be used to calculate these payments and requires that this methodology be effective for hospital cost reporting periods beginning on or after October 1, 1987. The regulatory changes issued in this final rule in §§ 413.113 and 413.118 conform our regulations to the statute. These changes are the same as those proposed on June 2, 1987. Because of the explicit Congressional direction contained in the statute and the need to implement these changes on October 1, 1987, we believe that a delay in the effective date of this final rule is unnecessary and would be contrary to the public interest. Therefore, we find good cause to waive the normal 30-day delay in the effective date.

List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881 and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f (b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. In § 413.13, paragraph (c) is redesignated as paragraph (c)(1) and a new paragraph (c)(2) is added to read as follows:

Subpart A—Introduction and General Rules

§ 413.13 Amount of payments if customary charges for services furnished are less than reasonable costs.

* * * * *

(c) *Aggregation of charges.*

* * * * *

(2) *Hospital Cost reporting periods beginning on or after October 1, 1987.* Effective for hospitals with cost reporting periods beginning on or after October 1, 1987, reasonable costs and customary charges for those services relating to ambulatory surgical procedures that are subject to the payment methodology described in § 413.118 are aggregated and treated

separately from all other hospital costs and charges incurred during the cost reporting period.

* * * * *

C. Subpart F is amended as follows:

Subpart F—Specific Categories of Costs

1. The table of contents for Subpart F is amended by adding a title for a new § 413.118 to read as follows:

Subpart F—Specific Categories of Costs
Sec.

* * * * *

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

2. A new § 413.118 is added to read as follows:

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

(a) *Basis and Scope.* This section implements section 1833(a)(3) of the Act and establishes the method for determining Medicare payments for services related to covered ambulatory surgical center (ASC) procedures performed in a hospital on an outpatient basis. It does not apply to services furnished by an ASC operated by a hospital that has an agreement with HCFA to be paid in accordance with § 416.30 of this chapter. (For regulations governing ASCs see Part 416 of this chapter.).

(b) *Definitions.* For purposes of this section—

"Facility services" are those items and services, as specified in § 416.61 of this chapter, that are furnished by a hospital on an outpatient basis in connection with covered ASC surgical procedures, as described in § 416.65 of this chapter.

"Standard overhead amount" means an amount equal to the prospectively determined payment rate that would be paid for the procedure if it had been furnished by an ASC in the same geographic area.

(c) *Payment principle.* The aggregate amount of payments for facility services, furnished in a hospital on an outpatient basis, that are related to covered ASC surgical procedures (covered under § 416.65 of this chapter) is equal to the lesser of—

(1) The hospital's reasonable cost or customary charges, as determined in accordance with § 413.13, reduced by deductibles and coinsurance; or

(2) The blended payment amount as described in paragraph (d) of this section, which is based on hospital-specific cost and charge date and rates paid to free-standing ASCs.

(d) *Blended payment amount.* (1) For cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended payment amount is equal to the sum of—

(i) 75 percent of the hospital-specific amount (the lesser of the hospital's reasonble cost or customary charges, reduced by deductibles and coinsurance); and

(ii) 25 percent of the ASC payment amount (that is, 80 percent of the result obtained by subtracting the deductibles from the sum of the standard overhead amounts.)

(2) For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is equal to 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

(e) *Aggregation of cost, charges, and the blended amount.* For purposes of determining the correct payment amount under paragraphs (c) and (d) of this section, all reasonable costs and customary charges attributable to facility services furnished during a cost reporting period are aggregated and treated separately from the reasonable costs and customary charges attributable to all other services furnished in the hospital.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: September 16, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 21, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-22783 Filed 9-29-87; 2:12 pm]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Amendment of Regulations Pertaining to Requests for Copies of Materials Which Are Available

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is acting to administratively amend the regulations pertaining to copying materials which are available, or made available, for public inspection. The revisions correct inconsistencies between the text of the Commission's Rules and the language subsequently adopted in the interagency agreement negotiated with the National Technical Information Service, Department of Commerce, which implements the policy contained in this Rule.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, (202) 634-1535.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of regulations pertaining to requests for copies of materials which are available, or made available, for public inspection.

Adopted: September 28, 1987.
Released: September 30, 1987.

By the Managing Director:

1. Pursuant to authority delegated to him under § 0.231(d) of the Commission's Rules, the Managing Director proposes to make a few nonsubstantive editorial amendments to § 0.465 of the Commission's Rules.

2. Section 0.465(d)(3) is being revised to correct inconsistencies between the text of the Commission's Rules and the language subsequently adopted in the interagency agreement negotiated with the National Technical Information Service, Department of Commerce, which implements the policy contained in this Rule.

3. Accordingly, *it is ordered,* that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 CFR Part 0 is amended as specified in the Appendix attached hereto, effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 0

Freedom of information, Organization and functions.

Alan R. McKie,

Deputy Managing Director.

Appendix

47 CFR Part 0 is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. Section 0.465 is amended by revising the text of paragraph (d)(3) to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

* * * * *

(d)(3) Copies of computer source programs and associated documentation produced by the Commission shall be obtained through the National Technical Information Service (NTIS), Department of Commerce. NTIS will forward each request to the Commission. If it can be determined that the requested program is available, the Commission will distribute the current edition to the requester. NTIS will act as billing agent for the Commission. NTIS will bill the requester for the direct costs of production plus their overhead based on billing information provided by the Commission. Estimates of the total cost may be obtained from NTIS in advance. NTIS will not stock Commission source programs and documentation, nor will they maintain a catalog of Commission computer programs that may be available due to the large volume of programs and the frequency with which they are revised. Requests shall be limited to computer source programs and associated documentation in existence when the request is submitted; requests which require the Commission to produce unique computer programs, data bases and documentation, which are not part of its inventory at the time of the request, will not be honored. Likewise, periodic updates of these materials, as they occur, will not be furnished.

[FR Doc. 87-22755 Filed 9-30-87; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-390; RM-5419]

Radio Broadcasting Services; Northwood, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 274A to Northwood, Iowa as that community's first FM channel in response to a petition filed by Northwood Broadcasting Co., Inc. With this action, this proceeding is terminated.

DATES: Effective November 12, 1987. The window period for filing applications will open on November 13, 1987, and close on December 14, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-390, adopted August 25, 1987, and released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 274A to Northwood, Iowa.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-22680 Filed 9-30-87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 223, and 252

Defense Federal Acquisition Regulation Supplement; Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities

AGENCY: Department of Defene (DoD).

ACTION: Extension of interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has revised and extended the expiration date of the interim rule published in the **Federal Register** on November 21, 1986 (51 FR 42095), presently in effect, which pertains to security of arms, ammunition and explosives at contractor facilities.

DATES: This interim rule is effective October 1, 1987, and expires on September 30, 1988, unless sooner rescinded.

Comments: Interested parties are invited to submit written comments on or before November 30, 1987, to the Executive Secretary, DAR Council, at the address below. Comments received will be considered in revising the interim rule which will be implemented by Departmental guidance. Please cite DAR Case 85-102 in all correspondence related to this subject.

Note.—If commenters choose to hand-carry comments to the DAR Council Office at 1211 South Fern Street, Arlington, VA, arrangements for hand-carried comments must be made with the DAR Council Staff Members. Security Guards at this location are not permitted to accept or sign for hand-delivered comments of any kind.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSD(A)(MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This document extends the expiration date and revises an interim rule published for public comment on November 21, 1986 (51 FR 42095), which requires that the physical security requirements of DoD Instruction 5220.30 be incorporated by reference in contracts involving manufacture or use of arms, ammunition, and explosives (AA&E). This extension is necessary to allow sufficient time to revise and publish a DoD Manual on this subject (DoD 5100.76-M, "Physical Security of Sensitive Conventional AA&E") which will contain AA&E physical security standards applicable to DoD contracts. It is anticipated that the manual will be published in June 1988 and made available to the public through the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Upon publication, this rule will be modified and final DFARS coverage adopted.

In response to a request by the Office of the Inspector General, DoD, the contract clause prescribed by the rule has been revised to permit access by representatives of that office to contractor facilities to review compliance. No other revisions to the rule were suggested by the public or by DOD agencies.

Although Pub. L. 98-577 does not require additional publication for public comment, interested parties may submit comments which will be considered in drafting a final rule.

B. Regulatory Flexibility Act

The interim rule incorporates by reference, in standard contract format, requirements which have been prescribed previously by the Treasury Department and by the DoD pursuant to statutory authority, and which have been applicable to DoD contracts since 23 September, 1980. However, recent investigations by the DoD IG revealed a lack of uniform compliance by DoD contracting officers in incorporating the appropriate physical security standards in contracts. This interim rule establishes uniform procedures for use by Government personnel in implementing these long standing procedures. Accordingly, the Department certifies that this rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. A regulatory flexibility analysis has therefore not been performed. Comments are invited from small entities and other interested parties.

C. Paperwork Reduction Act

The interim rule incorporates previously established information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., as implemented by regulations prescribed within 5 CFR Part 1320, and does not require additional information collection efforts by contractors. Accordingly, the Act is inapplicable and approval by OMB of the interim rule is not required. Notwithstanding the inapplicability of the Act, the interim rule has been adopted in a manner consistent with DoD policy of reducing paperwork burdens on the public by directing that contracting officers provide a copy of DoDI 5220.30 to contractors/offerors upon request. Additionally, the DoDI incorporates BATF standards published in 27 CFR Part 55 which are not otherwise readily available to contractors.

List of Subjects in 48 CFR Parts 204, 223 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 204, 223 and 252 is amended as set forth below.

1. The authority citation for 48 CFR Parts 204, 223 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.202 is amended by adding to paragraph (c), paragraph (6) to read as follows:

204.202 DoD distribution requirements.

* * * * *

(c) * * *

(6) One copy or an extract to the cognizant Defense Investigative Service (DIS) office as listed in DoDI 5220.30, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities whenever the clause prescribed at 223.7103 is included in the contract.

* * * * *

3. Section 204.470 is added to read as follows:

204.470 Physical security of conventional arms, ammunition, and explosives.

Policies and procedures regarding physical security requirements peculiar to selected Conventional Arms, Ammunition, and Explosives are addressed in Subpart 223.71.

PART 223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

4. A new Subpart 223.71, consisting of §§ 223.7100 through 223.7105, is added to read as follows

Subpart 223.71—Safeguarding Conventional Arms, Ammunition, and Explosives Within Industry

Sec.

223.7100 Scope of subpart.
223.7101 Definitions.
223.7102 Policy.
223.7103 Preaward responsibilities.
223.7104 Notification to DIS.
223.7105 Clause.

Subpart 223.71—Safeguarding Conventional Arms, Ammunition, and Explosives Within Industry

223.7100 Scope of subpart.

This subpart prescribes policy, procedures, responsibilities and requirements for safeguarding Conventional Arms, Ammunition, and Explosives (AA&E) located at contractor or subcontractor facilities.

223.7101 Definitions.

Conventional arms, ammunition, and explosives as used in this subpart means only those items covered by DoDI 5220.30, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities. In general, these items include sensitive (attractive to criminal elements), conventional (non-nuclear) material which are man portable and easily employed with little modification, or associated firing components.

223.7102 Policy.

The physical security requirements of DoDI 5220.30, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities," are to be applied to all contracts involving conventional AA&E.

223.7103 Preaward responsibilities.

(a) Technical or requirements organizations initiating purchase requests must identify when AA&E is involved and which physical security requirements in DoDI 5220.30 apply; and

(b) The contracting officer prior to award of a contract involving AA&E shall request the cognizant Defense Investigative Service (DIS) Industrial Security office to evaluate and certify the prospective contractor's ability to safeguard AA&E consistent with DoDI 5220.30. This should be accomplished as part of the normal Preaward Survey process by completing Item "G" Section III and Block 23 of the Standard Form 1403.

223.7104 Notification to DIS.

Whenever the clause at 252.223–7003 is included in a contract, the contracting activity shall provide an extract or a copy of the contract to the cognizant DIS office (see 204.202(c)(6)).

223.7105 Clause.

The contracting officer shall insert the clause at 252.223–7003, Safeguarding Arms, Ammunition, and Explosives in all solicitations and contracts involving an AA&E covered by DoDI 5220.30. The clause need not be included in contracts performed in Government-Owned Contractor Operated ammunition production facilities. The contracting officer shall provide a copy of DoDI 5220.30. to each contractor/offeror upon request.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.223–7003 is added to read as follows:

252.223–7003 Safeguarding arms, ammunition, and explosives.

As prescribed at 223.7105, insert the following clause:

Safeguarding Arms, Ammunition, and Explosives (Oct 1987)

(a) The Contractor shall comply with the applicable requirements of Enclosure (2) to DoDI 5220.30, entitled "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities," in effect on the date of award of this contract. A copy of the DoD Instruction is available from the contrating officer upon request.

(b) The Contractor shall allow representatives of the Defense Investigative Service (DIS) and the Office of the Inspector General, DoD, access, at all reasonable times, into its facilities for purposes of reviewing its compliance with the physical security standard applicable to this contract.

(c) The Contractor shall insert this clause, including this paragraph (c) with appropriate changes in the designation of the parties, in all subcontracts hereunder which involve Conventional Arms, Ammunition, and Explosives (AA&E) as defined in section 223.7101 of the DoD FAR Supplement.

(d) The Contractor shall provide a copy of any subcontract involving AA&E to the cognizant DIS office within ten (10) days after issuance of the subcontract.

(e) Nothing contained herein shall relieve the Contractor from complying with applicable Federal, state and local laws, ordinances, codes and regulations (including the obtaining of licenses and permits) in connection with performance of this contract. Nothing contained herein shall be construed as relieving the Contractor from its responsibilities for the physical security at contractor or subcontractor facilities.

(End of clause)

[FR Doc. 87–22590 Filed 9–30–87; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Correction of Rules for Bay Checkerspot Butterfly and Cape Fear Shiner; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects errors in two recent rules: (1) The Bay Checkerspot Butterfly determination as endangered on September 16, 1987 (52 FR 35366–35378) and (2) the Cape Fear Shiner determination as threatened and of critical habitat on September 25, 1987 (52 FR 36034—36039).

FOR FURTHER INFORMATION CONTACT: Mr. William Knapp, Acting Chief, Office of Endangered Species (500 Broyhill), U.S. Fish and Wildlife Service, Washington, DC 20240 (703–235–2771, FTS 235–2771).

SUPPLEMENTARY INFORMATION: The following corrections are made to these two documents.

1. In rule document 87–21603 at page 35369 in the issue of Friday, September 18, 1987, the first sentence at the top of the page, first column, is correctly amended to read ". . . private property that is mostly closed to trespass . . .".

§ 17.11 [Amended]

2. The scientific name for the § 17.11(h) entry for the "Butterfly, bay checkerspot" is correctly added to read *"Euphydryas editha bayensis"*.

3. The column "Vertebrate population where endangered or threatened" for the § 17.11(h) entry for the "Butterfly, bay checkerspot" is correctly added by the insertion of "NA" for this invertebrate.

4. The map published in rule document 87–22268 in the issue of Friday, September 25, 1987, is correctly revised to appear as follows:

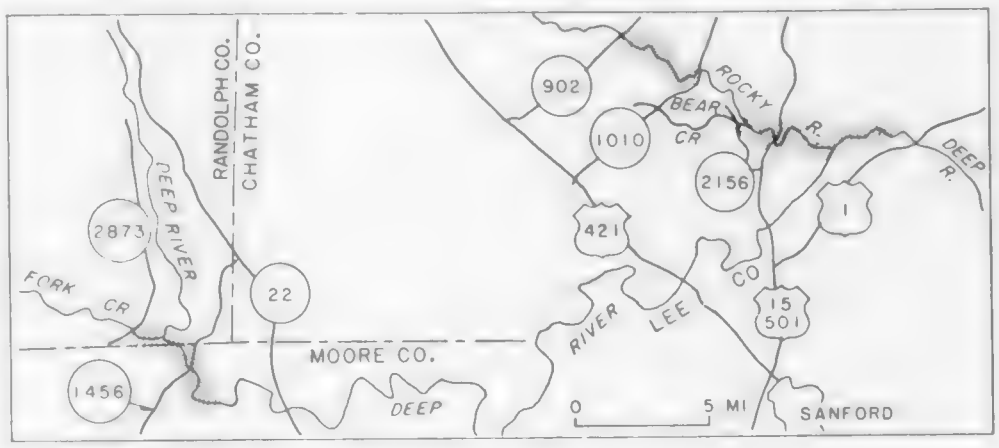

Dated: September 25, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–22692 Filed 9–30–87; 8:45 am]
BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Hualapai Vole

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Hualapai vole (*Microtus mexicanus hualpaiensis*), a small mammal found in northwestern Arizona. It is very rare and occupies small patches of suitable habitat that are threatened by livestock grazing, human recreation, and other problems. This rule implements the protection of the Endangered Species Act of 1973, as amended, for the Hualapai vole.

EFFECTIVE DATE: The effective date of this rule is November 2, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Alisa M. Shull, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The Mexican vole (*Microtus mexicanus)* occurs in Mexico and the southwestern United States; there are 12 subspecies (Hall 1981). It is a small, cinnamon-brown, mouse-sized mammal with a short tail and long fur that nearly covers its small, round ears. There are three subspecies in Arizona, including the Hualapai vole (*M. m. hualpaiensis*), which is the subject of this rule. The Hualapai vole is distinguished from *M. m. mogollonensis,* found to the east, by paler color of the dorsum, a shorter body, a shorter and broader skull, and a longer tail and hind foot. It is distinguished from *M. m. navaho,* found

to the northeast, by generally larger size, a longer and broader skull, and a longer tail, body, and hind foot.

Five adult specimens averaged 5.4 inches (137.2 millimeters) in head and body length, and 1.2 inches (30.2 millimeters) in tail length (Hoffmeister 1986).

Goldman (1938) described *M. m. hualpaiensis* on the basis of 4 specimens collected near the summit of Hualapai Peak in northwestern Arizona on October 1, 1923. Including these 4, a total of 15 individuals of the subspecies are now known to have been captured in the Hualapai Mountains. Nine of these are now preserved specimens. The 15 individauls were found in seven isolated localities over 61 years from 1923 through 1984.

Six voles that might possibly represent *M. m. hualpaiensis* have been collected from outside the Hualapai Mountains. Four were collected in 1981 in the Music Mountains, about 50 miles (80 kilometers) north of Hualapai Peak, but have not yet been subjected to taxonomic evaluation (Spicer *et al.* 1985). The population represented is small, and its habitat is isolated, restricted, and subject to the same degradation as habitat in the Hualapai Mountains. Hoffmeister (1986) tentatively (pending a larger sample size) reassigned two specimens collected in Prospect Valley in 1913, and previously classified as *M. m. mogollonensis*, to *M. m. hualpaiensis*. Prospect Valley is almost 90 miles (145 kilometers) northeast of the Hualapais. Reassignment was based on body and skull measurements that are closer to *M. m. hualpaiensis* than to the geographically closer *M. m. navaho*. Hoffmeister did suggest, however, that a larger sample from Prospect Valley might indicate that the two specimens ". . . are referable to *M. m. navaho* to which on a geographical basis they would seem referable." Due to the taxonomic uncertainty surrounding these two specimens, and their disjunct geographic distribution, their classification as *M. m. hualpaiensis* is tenuous. Even if the specimens are *M. m. hualpaiensis*, over 73 years have passed without additional records from that locality, and any represented population may no longer be extant. The Service will continue to investigate the possibility of additional specimens and localities. If the Music Mountains voles and/or the Prospect Valley voles are determined to be *M. m. hualpaiensis*, they would be covered by this rule determining endangered status for the subspecies.

The lands where *M. m. hualpaiensis* or its sign have been found consist of both publicly and privately owned areas. The Hualapai Mountains locations include Mohave County Parks lands, Santa Fe Pacific Railroad Company land, and other publicly or privately owned land. Except for the Mohave County Parks land, the sites are managed as part of larger grazing allotments by the Bureau of Land Management (BLM). That agency is giving consideration to the welfare of the vole and is attempting to acquire one of the key sites in the Hualapai Mountains that is now privately owned. The sites in the Music Mountains are already owned and managed by BLM.

In the Hualapai Mountains, *M. m. hualpaniensis* has been found between about 5,397 and 8,400 feet (1,645 and 2,560 meters) in elevation. *Microtus mexicanus* in the Southwest is primarily associated with dry, grass/forb habitats in ponderosa pine dominated forest. Although the Hualapai vole is now found only in moist, grass/sedge along permanent or semipermanent waters (such as springs and seeps) it may be capable of occupying drier areas when grass/forb habitats are available there. The populations of *Microtus* in the Hualapai Mountains and the Music Mountains are disjunct relicts from Pleistocene times. The Hualapai vole may have become isolated when North American glaciers were retreating and the climate was becoming warmer and drier (Spicer *et al.* 1985).

In its original Review of Vertebrate Wildlife, published in the **Federal Register** of December 30, 1982 (47 FR 58454–58460), the Service included the Hualapai vole in category 2, meaning that information then available indicated that a proposal to determine endangered or threatened status was possibly appropriate, but was not yet sufficiently substantial to support such a proposal. A subsequent Service-funded status survey (Spicer *et al.* 1985) gathered many new data, and in its revised Vertebrate Review of September 18, 1985 (50 FR 37958–37967), the Service included the Hualapai vole in category 1, meaning that substantial information was on hand to support the biological appropriateness of proposing to list as endangered or threatened. In the **Federal Register** of January 5, 1987 (52 FR 306–309), the Service published a proposed rule to determine endangered status for the Hualapai vole.

Summary of Comments and Recommendations

In the proposed rule of January 5, 1987 (52 FR 306–309), and associated notifications, all interested parties were requested to submit information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Mohave Daily Miner* on January 25, 1987, which invited general public comment.

Three comment letters were received and all supported the proposal; they were from the Bureau of Land Management (BLM), the Arizona Game and Fish Department (AGFD), and the Arizona Chapter of the Wildlife Society. Clarifications of several points were requested and have been incorporated into the final rule. In addition the commenters covered the following:

Comment 1: Several "typographical" errors were noted including an error under factor "A" of the "Summary of Factors Affecting the Species." The proposed rule said that in a Service-funded status survey voles were found in 12 places; this should read "2 places."

Service response: These were printing errors and did not occur in the copy of the proposed rule that was sent to the **Federal Register**.

Comment 2: Additional potential predators on the vole include the zone-tailed, Cooper's, and Sharp-shinned hawks, and the goshawk.

Service response: These species have been added to the list under factor "C" in the "Summary of Factors Affecting the Species."

Comment 3: Under available conservation measures, it should be mentioned that BLM is pursuing water rights acquisition to benefit public lands resources and uses, including the needs of the vole.

Service response: The final rule has been modified accordingly.

Comment 4: An additional vole site, based on sign only, has been located in the Hualapai Mountains by BLM biologists.

Service response: The Service is aware of this location, and this information has been added to the final rule. However, because of the low numbers and small amount of habitat, this information does not change the status of the Hualapai vole.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the Hualapai vole (*Microtus mexicanus hualpaiensis*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR

Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Hualapai vole (*Microtus mexicanus hualpaiensis* are as follows) (information taken from Spicer *et al.* 1985, unless otherwise noted):

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hualapai vole is extremely rare and has among the most restricted habitats of any North American mammal. From 1923 to the present, only 15 specimens are known to have been captured in the Hualapai Mountains. These individuals were taken at 7 localities, and sign alone was found at 3 other sites in that area. In addition, as noted above, 2 other specimens were collected in the Prospect Valley in 1913, but continued existence of any represented population is doubtful, and 4 other specimens were taken in the Music Mountains in 1981, but their identity is uncertain. The recent Service-funded status survey investigated 59 potential sites, but found voles in only 2 places and sign alone in 1 other place. These last 3 sites were characterized by isolated grass-forb vegetation in the immediate vicinity of open water or seeps, surrounded by drier, unsuitable habitat. Each site was only 3–5 yards (3–5 meters) across and 80–450 yards (75–400 meters) long. The total size of suitable vole habitat was estimated at about three-quarters of an acre (0.31 hectare), and this habitat was thought capable of supporting a minimum of 44 voles. Since the Service-funded survey, BLM biologists have located an additional site in the Hualapai Mountains. No voles were found there, but sign occurred intermittently in a drainage measuring about 1,968 feet (600 meters) long and 20 feet (6 meters) wide.

Even the few spots from which the Hualapai vole has been recorded are apparently not consistently or currently occupied. Past incompatible land management practices and periods of drought have combined to cause the deterioration of most of the habitat of the vole. The present main threat to the habitat appears to be the elimination of the ground cover of grasses, sedges, rushes, and forbs around open water and seeps, primarily by grazing and heavy recreational use, including camping and off-road vehicle activity.

Except for the Mohave County Parks land, the sites where the vole sign has been found are managed as part of larger grazing allotments by BLM. Although the Hualapai Mountain Park is not actually part of a BLM grazing allotment, it is adjacent to grazing allotments and is unfenced along part of this boundary. Therefore, cattle from the adjacent lands do heavily graze in the park. Creekbed habitats with their succulent green vegetation are more attractive to livestock than are the drier areas surrounding them. Livestock concentrates in these moist areas, greatly reducing, if not eliminating, ground cover by both grazing and trampling. In addition to causing the loss of food and cover, the reduction of green vegetation could have a negative effect on reproductive potential of the Hualapai vole by reducing breeding stimuli.

Human recreational users are also attracted to spring areas. Due to an increased demand for outdoor recreation, additional areas of the Hualapai Mountain Park will likely be opened up for public use. The Mohave County Parks Department is also exploring the possibility of developing a three-acre lake within historic vole habitat.

In addition, the soil on the slopes of the Hualapai Mountains is mostly shallow and subject to erosion. Locally, the erosional tendencies are exacerbated by many years of heavy land use (historic road construction, heavy long-term livestock overuse, and localized, concentrated recreation) that have contributed to reduced ground cover and concentration of runoff. Water development that pipes all available water to a downstream trough may also lead to the elimination of ground cover in stream bottoms.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Hualapai vole is neither sought for economic or sporting purposes nor persecuted as a pest or collected as a pet. However, because of the low number of animals, the easily accessible population areas, and the developing curiosity regarding the Hualapai vole, vandalism and taking could pose a threat. In addition, it is possible that an intensive snap trapping effort could eliminate a particular population.

C. Disease or Predation

Nothing is known about disease or predation in Hualapai vole populations. However, species of *Microtus* are usually a fundamental part of the base of the food pyramid, and many potential predators occur in the Hualapais. These predators include the coyote, gray fox, ringtail, raccoon, bobcat, striped skunk, hog-nosed skunk, red-tailed hawk, zone-tailed hawk, Cooper's hawk, sharp-shinned hawk, goshawk, great horned owl, screech owl, spotted owl, gopher snake, Arizona black rattlesnake, black-tailed rattlesnake, striped whipsnake, and Sonoran Mountain kingsnake. In addition, predation by domestic cats could be a potential threat in the northeastern part of Hualapai Mountain Park, where a residential area is expanding in and adjacent to potential vole habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

The Hualapai vole is included in Group 2 of "Threatened Native Wildlife in Arizona." Group 2 contains species or subspecies whose continued presence in Arizona is in jeopardy because of substantial population decline (Arizona Game and Fish Commission 1982). However, this listing carries no enforcement authority and provides no protection for habitat. There are no statutes specifically authorizing State conservation of threatened or endangered species, but the State can control scientific and educational collecting, and can buy and manage land.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The areas of habitat supporting the Hualapai vole are relatively small and isolated. This mammal is thus fragmented into tiny populations that are subject to inbreeding and reduced genetic viability. The populations may therefore be particularly vulnerable to artificial or natural disturbances in their habitat.

Drought is an additional threat to the Hualapai vole's habitat. The impacts of drought can include reduced water flow from springs and seeps, reduced new vegetative growth, and decreased ground cover, all of which can cause increased exposure of the soil and erosion. While drought is a natural phenomenon, the effects of drought are intensified by human-caused habitat degradation.

The Service has carefully assessed the best available scientific information regarding the past, present, and probable future threats to the species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Hualapai vole as endangered. A decision to take no action would exclude the Hualapai vole from protection provided by the Endangered Species Act. A decision to propose only threatened status would not adequately reflect the very small

population and habitat sizes of this vole, its history of rarity and vulnerability, and the multiplicity of problems that confront it. For the seasons given below, critical habitat is not being designated.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, critical habitat be designated at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Hualapai vole at this time. Because of the rarity of the animal, its easily accessible populations, and the developing curiosity regarding it, publication of critical habitat descriptions and maps could be detrimental. No benefit can be identified that would outweigh the threats of vandalism or taking that might result from such publication. BLM is aware of the locations of the vole's populations, has acknowledged the threats to these populations, and already is actively considering them during planning. Should the Service receive additional information that would warrant reconsideration of this decision, critical habitat could be proposed in the future.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some actions may be initiated prior to listing, circumstances permitting. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

The Hualapai vole is known to occur primarily on BLM lands. BLM is the surface managing agency and would be subject to section 7 consultation if any of its actions might affect the vole. Such actions include maintenance of existing grazing leases and water rights and developments. BLM would be required to consider protection of the vole's habitat while administering such leases, and to maintain habitat without violating individual water rights that may exist. As noted above under "Critical Habitat," BLM is aware of the situation and is giving consideration to the welfare of the vole. BLM is pursuing water rights acquisition to benefit public lands resources and uses, including the need of the vole. In addition, BLM plans to fence (with Service funding) around an important vole habitat area to exclude cattle grazing. Other measures to protect habitat from grazing and excessive recreational use might also facilitate recovery of the Hualapai vole, as might further investigations of population status and biological needs.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not otherwise available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Arizona Game and Fish Commission. 1982. Threatened native wildlife in Arizona. Arizona Game and Fish Department publication, 12 pp.

Goldman, E.A. 1938. Three new races of *Microtus mexicanus*. Journal of Mammalogy, 19:493.

Hall, E.R. 1981. The mammals of North America. John Wiley and Sons, New York, 2 vols.

Hoffmeister, D.F. 1986. Mammals of Arizona. The University of Arizona Press, Tucson, Arizona.

Spicer, R.B., R.L. Glinski, and J.C. deVos, Jr. 1985. Status of the Hualapai vole (*Microtus mexicanus hualpaiensis* Goldman). Report to U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico, 50 pp.

Author

The primary author of this final rule is Alisa M. Shull, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

List of Subjects in 50 CFR part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

[PART 17—AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Mammals," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Vole, Hualapai	*Microtus mexicanus hualpaiensis*	U.S.A. (AZ)	Entire	E	292	NA	NA

Dated: September 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-22693 Filed 9-30-87; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 604

[Docket No. 60593-6093]

OMB Control Numbers for Information Collection Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this housekeeping amendment which consolidates OMB control numbers for NOAA information collection requirements inadvertently codified at two locations. This should assist the reader, as well as reduce costs to the Federal government.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Schaefer (Director, Fisheries Conservation and Management Office), 202-673-5263.

SUPPLEMENTARY INFORMATION: OMB control numbers for NOAA information collection requirements were inadvertently codified at both 50 CFR Parts 202 and 604. By this rule, Part 604 is removed and Part 204 is revised to add to the table of OMB control numbers those now appearing at Part 604.

This action is taken in compliance with E.O. 12291 and does not conflict with other related laws since neither textual nor number changes are being made.

List of Subjects in 50 CFR Parts 204 and 604

Reporting and recordkeeping requirements.

Dated: September 29, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set out in the preamble, the Administrator, under his authority at Department Organization Order 25-5A, dated August 26, 1985, amends 50 CFR Chapters II and VI as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 204.1 [Amended]

2. Section 204.1(b) is amended by adding sequentially the entries from the table in § 604.1(b).

PART 604—[REMOVED AND RESERVED]

3. Part 604 is removed and reserved.

[FR Doc. 87-22764 Filed 9-29-87; 1:33 pm]

BILLING CODE 3510-22-M

50 CFR Part 254

[Docket No. 70900-7200]

Jellyfish Control

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA removes a part from the Code of Federal Regulations (CFR) pertaining to Federal funding of State projects to control jellyfish. Federal authority of these projects has not been and will not likely be used. The intended effect is to remove extraneous text from the CFR and effect a cost savings for the Agency.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, 202-673-5313.

SUPPLEMENTARY INFORMATION: This final rule removes Part 254 from the CFR which pertains to Federal cooperative grant program to States under the Jellyfish Control or Elimination Act of 1966.

Although the Act, which is implemented by Part 254, has not been repealed, no funds have been allocated since 1977 to assist States for its purposes. It is unlikely that funds will be appropriated in the future. If funds should become available, the regulations would require substantial revision; a new rule would be proposed at that time. Part 254 is obsolete. Removing it from the CFR will save annual publication costs and will have no effect on any person or entity.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is a matter pertaining to grants, benefits and contracts and is therefore exempted from the requirements of the Administrative Procedures Act (APA) to be published in proposed form for public comment with delayed effective date under 5 U.S.C. 553(a)(2).

Notice and comment for this rule are not required by the APA or any other law. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 603).

This rule is not a major rule under Executive Order 12291 requiring a regulatory impact analysis, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects in 50 CFR Part 254

Fish, Grant programs—natural resources.

Dated: September 29, 1987.

Bill Powell,

Executive Director,

National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Chapter II is amended as follows:

PART 254—[REMOVED AND RESERVED]

50 CFR Part 254 is removed and reserved.

[FR Doc. 87–22763 Filed 9–29–87; 1:21 pm]

BILLING CODE 3510–22–M

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50 CFR Parts 638, 641, and 654

[Docket No. 70994–7194]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic, Reef Fish Fishery of the Gulf of Mexico, and Stone Crab Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: NOAA issues technical amendments to make modifications, correct typographical errors to scientific names, clarify text, and correct coordinates in Parts 638, 641, and 654. The intended effect is to assure clarity and consistency in the regulations.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, Southeast Region, 813–826–3722.

SUPPLEMENTARY INFORMATION: Regulations implementing 50 CFR Parts 638, 641, and 654 contain errors that are longstanding. These technical amendments are being promulgated to correct these errors in time to be included in the next edition of the Code of Federal Regulations. They do not introduce new information or deviate from current agency procedure.

Classification

The Assistant Administrator for Fisheries finds that because the changes made by this technical amendment are only minor corrections in which the public is not particularly interested, it is unnecessary to seek prior public comment under 5 U.S.C. 553(b)(B) and there is good cause not to delay the effective date of this rule for 30 days under 5 U.S.C. 553(d). As no notice of proposed rulemaking is required this rule is also exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 603) and no Regulatory Flexibility Analysis has been prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

This rule merely corrects minor errors; therefore it is not a major rule under Executive Order 12291 and its issuance is in compliance with the order. Because this rule will have no substantive effect on any person or fishing practice, there will be no change in the impacts analyzed in the regulatory impact reviews prepared for the implementing regulations.

This action is taken under the authority of 50 CFR Parts 638, 641, and 654.

List of Subjects in 50 CFR Parts 638, 641, and 654

Fisheries.

Dated: September 28, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set forth above, 50 CFR Parts 638, 641, and 654 are amended as follows:

1. The authority citation for Parts 638, 641, and 654 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 638.2 [Amended]

2. In § 638.2, in the definition for *Center Director*, the telephone number is revised to read "305–361–4200"; in the definition for *U.S. fish processors*, the word "processors" is made singular, the word "a" is added after the word "means", the word "facilities" is made singular and in line 3 the word "a" is added after "and", and "vessels" is made singular; and in the definition for *U.S.-harvested fish*, the word "a" is added between "by" and "vessels", and "vessels" is made singular.

§ 638.4 [Amended]

3. In § 638.4, in paragraph (a)(2), the phrase "State of" is removed before "Florida"; and in paragraph (h), the first word, "All" is revised to read "A"; "persons" is made singular; the word "a" is added between "holding" and "permits" which is made singular; the word "an" is added before "annual", the word "reports" is made singular, and the word "their" is revised to read "his or her".

§ 638.5 [Amended]

4. In § 638.5, introductory text, the dash is removed.

§ 638.6 [Amended]

5. In § 638.6(b)(2), after the word "blocks", the phrase "may be dropped" is added.

§ 638.22 [Amended]

6. In § 638.22, in paragraph (a)(2), the phrase "in the area less than 50 fathoms (300 feet) in depth" is removed; and in paragraph (c), the sentence beginning "The area . . ." is designated as "(1)", the phrase, "The following restrictions apply" is removed, the word "within" is capitalized and the sentence is designated as "(2)", and the colon is removed after "HAPC".

§ 641.2 [Amended]

7. In § 641.2, in the definition for *Person*, the word "corporate" is revised to read "corporation"; in the definition for *Reef fish*, in paragraph (a), the species name for Gulf red snapper is revised to read "*Lutjanus campechanus*", the species name for Yellowmouth grouper is revised to read *Mycteroperca interstitialis*", and the species name for Yellowfin grouper is revised to read "*Mycteroperca venenosa*", and in paragraph (b), the family name for Tilefishes is revised to read "*Malaeanthidae Family*", the species name for Tilefish is revised to read "*Caulolatilus* spp.", and the species name for Hogfish is revised to read "*Lachnolaimus maximus*". In § 641.8 (d)(1), in footnote[1], the word "Period" is added before "(.)" and in footnote [2], the word "Dash" is added before "(-)".

§ 654.2 [Amended]

8. In § 654.2 introductory text, the word "shall" is removed, an "s" is added to the word "meaning", and the final sentence (in parentheses) is removed; in the definition for *Center Director*, the telephone number is revised to read "305–361–4200"; in the definition for *Committee*, the words "staff of" are removed before "Florida"; in the definition for *Fishing*, the words "scientific research" are added between "a" and "vessel"; in the definition for *FMP*, the word "the" is added before "Stone Crab Fishery", and "of the Gulf of Mexico" is added after "Stone Crab Fishery"; in the definition for *Owner*, paragraph (3), the word "designation" is revised to read "destination"; in the definition for *State*, the words "the State of" are removed before "Florida".

§ 654.3 [Amended]

9. In § 654.3(b), the words "the State of" are removed before "Florida" in the fourth and eighth lines.

§ 654.4 [Amended]

10. In § 654.4(b)(2), the comma is removed after the word "documentation", and the word "or" is added between "documentation" and

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"registration" and removed before "number".

§ 654.6 [Amended]

11. In § 654.6 (b), "this Act" is revised to read "the Magnuson Act".

§ 654.20 [Amended]

12. In § 654.20(c), the word "this" is added before "section".

§ 654.22 [Amended]

13. In § 6544.22, in paragraph (a)(2), the word "in" in the fifth line is revised to read "is" and the words "the State of" are removed before "Florida"; and in paragraph (b), the phrase "of this section" is added between "(a)" and "will".

§ 654.23 [Amended]

14. In § 654.23(a) the word "to" is removed before "the" in the eleventh line and the words "the State of" are removed before "Florida".

[FR Doc. 87-22636 Filed 9-28-87; 2:40 am]

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Proposed Rules

Federal Register
Vol. 52, No. 190
Thursday, October 1, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Number: 1025–87]

8 CFR Part 214

Nonimmigrant Classes; Special Requirements for Admission, Extension and Maintenance of Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice announces the intent of the Immigration and Naturalization Service ("the Service") to set forth, in regulatory form, the special requirements for admission, extension and maintenance of status of nonimmigrant alien visitors for business and visitors for pleasure. Much of the Service's written policy relating to this subject is now contained in the Service's Operations Instructions at O.I. 214.2(b). Because it is more appropriate for interpretations and rules to be set forth in regulatory form, this information will become part of 8 CFR 214. In addition, the proposed rulemaking will clarify the criteria for according B–1 classification to members of certain occupations (such as participants in religious programs and members of foreign film crews). By issuing this advance notice, the Service is providing an opportunity to the public to submit comments and make suggestions at an earlier stage of the process. This will result in a proposed rule which is more comprehensive in its scope and more understandable to the public.

DATES: Comments on this notice of intent must be received on or before November 16, 1987.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Micheal L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7122, Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: Under the Immigration and Nationality Act ("the Act"), there are 15 major classifications of noimmigrants under which an alien may be temporarily admitted to the United States, one of which deals with temporary visitors under section 101(a)(15)(B) of the Act (8 U.S.C. 1101(a)(15)(B)). This classification is divided by regulation at 8 CFR 214.2(b) into visitors for business ("B–1") and visitors for pleasure ("B–2"). Service policy instructions delineating the conditions under which aliens may qualify for the B–1 classification are listed in the Operations Instructions (O.I.s) of the Service at O.I. 214.2(b). Relating Department of State policy instructions are contained in notes to 22 CFR 41.25 in the Foreign Affairs Manual (FAM). Although the O.I.s and the FAM are generally in accord, there are few discrepancies which should be addressed. Because of the need of the public to have greater access to these instructions and rules, it is appropriate that they be contained in the regulations instead of O.I.s and the FAM. Therefore, the Service intends to move applicable portions of O.I. 214.2(b) to 8 CFR 214 and incorporate relevant items from the FAM.

At the same time, the Service seeks public comments on possible modifications of the instructions contained in the existing O.I.s, including those discussed below, which could be included in the proposed regulations. There are five areas in particular that have caused recurrent problems:

1. The Service has received many requests that B–1 classification be extended to certain members of religious denominations and/or recognized voluntary service programs, especially where the alien has already been employed by an overseas affiliates of the same denomination or service program. Such B–1 nonimmigrants could be admitted for longer periods and under different control procedures than those for other B–1 nonimmigrants.

2. The Service has also received a number of requests for B–1 classification for key personnel of foreign film crews coming to film commercials for foreign use. At the present time, the O.I. is being interpreted to exclude from B–1 classification most aliens connected with the entertainment industry, including those coming to film television commercials destined strictly for foreign consumption. The Service has received representations that this exclusion is too broad and is having an adverse impact on the United States economy and labor market. It is argued that allowing key pesonnel to enter the United States as B–1's under such circumstances would:

(a) Aid our industries related to tourism and film production (hotels, restaurants, equipment rental, motion picture supplies, etc.),

(b) Employ United States workers in support positions, and

(c) Encourage tourism in the United States by exposing foreign television viewers to our scenic attractions.

The Service is soliciting comments as to the criteria and definitions relating to the basis for denying or granting B–1 status to such key personnel. The Service is also seeking information as to the positive or negative impacts on the U.S. economy and labor market envisaged by the proponents or opponents of such a modification.

3. Another possible modification of the current language would allow an entertainer to be classified as a B–1 nonimmigrant if the alien either appears before a nonpaying audience or is an amateur entertainer appearing at an event organized by a nonprofit organization. In the latter case the alien could receive reimbursement for expenses from either the nonprofit organization or from the alien's government, but no other remuneration.

4. The standards may also be modified to allow warranty work to be performed at any time following the purchase of commercial or industrial equipment or machinery, as long as the relevant warranty agreement was completed at or prior to the time of purchase.

5. The current reference in the O.I.s to persons engaged in activities on the outer continent shelf under the jurisdiction of the Coast Guard would be deleted, since the Coast Guard regulations at 33 CFR 141.15 require that persons engaged in such activities be citizens or lawful permanent residents of the United States, or aliens admitted as "H–2" nonimmigrants.

The Service is seeking comments from interested parties as to the standards to be set for classification under each of the areas described in the O.I.s or the FAM. For the convenience of the public, the parts of O.I. 214.2(b) describing aliens eligible for classification as B–1 nonimmigrants are printed below, followed by excerpts from the FAM listing groups not discussed in the O.I.

Operation Instruction 214.2(b)

(b) *Visitors.* If found admissible, a B–2 shall be admitted for 6 months. The district director may delegate individual review of the minimum admission period no lower than a supervisory inspector. Referral of individual cases to the supervisor may occur when it is evident that the alien is admissible, but does not have sufficient resources available to maintain a 6-month visit. The Service does not require that an applicant for admission have with him funds to maintain a 6-month stay, but the applicant must demonstrate that he/she has access to sufficient resources. A B–1 shall be admitted for a period of time which is fair and reasonable for completion of the purpose of the trip. Any decision to reduce a B–1's admission form the time requested shall be authorized by a supervisor.

An alien who is coming temporarily to the United States to fill a position of a permanent nature is generally not admissible as a B or H–2 nonimmigrant. However, personnel of foreign airlines engaged in international transportation of passengers and freight who seek to enter the United States for employment with the airline in an executive, supervisory or highly technical capacity may be admitted as B–1 nonimmigrants, unless a treaty of commerce and navigation is in effect between the United States and the country of the applicant's nationality, in which case the alien should be documented as E–1 if he is otherwise qualified. Such B–1 airline personnel must meet the criteria established for employees of treaty traders as described in 22 CFR 41.40(a)(2). The notes to that regulation in Volume 9—Visas, Foreign Affairs Manual, contain information concerning the various treaties of trade entered into by the United States, and important information concerning certain limitations of treaty provisions. These notes must be consulted in considering matters involving this category of B–1 nonimmigrants.

Personal and domestic servants may be classified as B–1 nonimmigrants if they are accompanying or follows to join:

(1) United States citizen employers who can establish (a) that they are subject of frequent international transfers lasting two years or more as a condition of their employment, and that they are returning to the United States from such an assignment, (b) their current assignment in the United States will not be for over 4 years, (c) the personal or domestic servant has been employed by them abroad for at least six months prior to admission into the United States, (d) the servant will reside in their household and will be provided a private room and board, without cost to the servant, (e) the servant will work only for them; and (f) both the employer and employee have signed a contract which guarantees that the servant will receive at least the prevailing wage for domestics in the area of employment, that all other benefits normally given to U.S. workers in the area of employment will be granted to the servant; that round trip airfare will be provided to the servant; that the servant will not be required to give more than two weeks notice of intent to leave the employment; that the employer will give at least two weeks notice of intent to leave the employment; that the employer will give at least two weeks notice of intent to terminate the employment. Evidence to establish qualifications under this subparagraph may include personnel records and statements from the citizen's employer, and must include a signed and dated copy of the contract between the employer and servant; or,

(2) Nonimmigrant employers who seek admission to, or are already in the United States in B, E, F, H, I, J or L nonimmigrant status, provided the employee can show he has a residence abroad he does not intent to abandon (notwithstanding the employer himself may be in a nonimmigrant status which does not require such a showing), and further provided the employee has been employed abroad by the employer as a personal or household domestic servant for at least one year prior to the date of the employer's admission to the United State, or that the employer-employee relationship has existed prior to the time of application and the employer can demonstrate that he has regularly employed (either year-round or seasonally) a personal or domestic servant over a period of several years immediately preceding the time of application, and the employee can demonstrate at least one year's experience as a personal or domestic servant.

Persons engaged in activities on the *outer continental shelf* are under the jurisdiction of the United States Coast Guard. Any person inquiring about his or her right to engage in employment on the outer continental shelf should be referred to the Coast Guard. Nonimmigrants destined to the outer continental shelf normally will be classified B–1, and consular officers will annotate such visas "OCS" (see 235.1(m)(2)).

Each of the following may also be classified as a B–1 nonimmigrant if he/she is to receive no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expense incidental to the temporary stay):

(1) An alien, otherwise classifiable as an H–1 nonimmigrant, who is coming to perform temporary services in the United States other than as an entertainer; however, an entertainer who is classifiable H–1 may be classified B–1 if coming to participate in a cultural program sponsored by his/her government, will be performing before a nonpaying audience, and all expenses, including per diem, will be paid by his/her government. (See Foreign Affairs Manual, Vol 9 visas, Note 4.2 at 22 CFR 41.25).

(2) An alien entertainer, even though not of H–1 caliber, who is a resident or national of Canada or Mexico and is coming to the border area of the United States to participate in a long-established religious festival or ceremony, or in a long-established bi-national civic celebration.

(3) An alien, otherwise classifiable as an H–3 nonimmigrant who is already employed abroad and will continue to receive his/her salary from the foreign employer on whose behalf he/she is coming to undertake training in the United States.

(4) An alien, otherwise classifiable as an H–3 nonimmigrant, who is a student at a foregn medical school and is coming to take an "elective clerkship" (practical experience and instruction in the various disciplines of the practice of medicine under the supervision and direction of faculty physicians) at a United States medical school's hospital as an approved part of the foreign medical education.

(5) An alien coming to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the U.S. or to train U.S. workers to perform such service, provided: the contract of sale specifically requires the seller to perform such services or training, the alien possesses specialized knowledge essential to the seller's contractual obligation to provide services or training, the alien will receive no remuneration from a U.S. source, and

the trip is to take place within the first year following the purchase.

(6) An alien member of a religious denomination coming temporarily and solely to do missionary work in behalf of that denomination, if such work does not involve the selling of articles or the solicitation or acceptance of donations.

(7) An alien coming temporarily to particpate in a voluntary service program conducted by a recognized religious body. The alien shall present to the examining officer a written statement issued by the appropriate religious organization. The statement must contain the following items of information:

(i) Identity of the volunteer including name, date and place of birth;

(ii) Name and address of initial destination in U.S.;

(iii) Name and address of project in U.S. to which assigned; and

(iv) Anticipated duration of assignment.

(8) An alien, who is coming temporarily to the United States to attend an executive seminar.

(9) An alien, who has been invited to participate in the training of Peace Corps Volunteers or who is coming to the United States under contract pursuant to sections 9 and 10(a)(4) of the Peace Corps Act (75 Stat. 612). Aliens admitted under this provision may be paid a salary for service performed in accordance with the Peace Corps Act.

(10) An alien, coming temporarily to perform service for his foreign employer as a jockey, sulkey driver, trainer or groom. The alien may not work in this country for any other foreign or United States employer.

(11) An alien, who is coming to the United States to seek an investment which would be qualifying for status as an E–2 investor, provided that the alien does not perform productive labor or actively particpate in the management of the business prior to receiving a grant of E–2 status.

(12) An alien, who is coming to the United States to open or be employed in a new branch, subsidiary, or affiliate of the foreign employer, if the alien will become eligible for status as an L–1 upon securing the evidence required in 8 CFR 214.2(1) regarding proof of acquisition of physical premises.

(13) An alien athlete or team member who meets all of the following criteria;

"A" The player seeks to enter the U.S. as a member of a foreign based team in order to compete with another sports team.

"B" The foreign sports team and the foreign athlete have their principal place of business or activity in a foreign country.

"C" The income of the foreign based team and the salary of its players are principally accrued in a foreign country.

"D" The foreign based sports team is a member of an International Sports League or the sporting activities involved have an international dimension.

In all other instances, an alien classified as an H–2 nonimmigrant may not be classified as a B–1 nonimmigrant even if the salary is paid by a source outside the United States. A visa petition must be filed on behalf of such nonimmigrant alien accompanied by a certification from the Secretary of Labor or designated representative or by a notice that such certification cannot be made, to enable the Service to determine among other things whether any unemployed persons capable of performing the same services are available in this country.

Foreign Affairs Manual Notes to 22 CFR 41.25 (excerpts)

(a) Aliens coming to engage in commercial transactions which do not involve gainful employment in the United States (such as a diamond merchant from Amsterdam who takes orders in New York City for rough or cut diamonds available in the Netherlands or a representative of a computer manufacturer located in Japan who takes orders throughout the United States for computers manufactured abroad), to negotiate contracts, to consult with business associates, to litigate, to participate in scientific, educational, professional or business conventions, or conferences, or to undertake independent research.

(e) An alien invited to participate in any program to furnish technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961 (75 Stat. 424).

(f) Ministers of religion who temporarily exchange pulpits with their American counterparts, who continue to be reimbursed by their own church and will draw no salary from the host church in the United States.

(g) A minister of religion desiring to proceed to the United States to engage in an evangelical tour who does not plan to take an appointment with any one church, and who will be supported by offerings contributed at each evangelical meeting.

(k) Professional athletes, such as golfers and race drivers, who receive no salary or payment other than prize money for their participation in a tournment or sporting event.

(m) Members of the crew of a private yacht which will be cruising in United States waters for more than twenty-nine days who are able to establish that they have a residence abroad which they do not intend to abandon.

(o) An alien who is a member of the board of directors of a United States corporation and seeks to enter the United States to attend a meeting of the board or to perform other functions resulting from membership of the board.

(q) Coasting Officers.

(r) Participants in United Nations Institute for Training and Research (UNITAR) internship program who are not employees of foreign governments.

The Service requests that interested persons submit their views and relevant information as comments on this notice. These comments will help the Service to fashion a policy that will correctly interpret the Act and serve the public interest. This rule contains information collection requirements under the Paperwork Reduction Act which will be submitted to the Office of Management and Budget.

Dated: August 31, 1987.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 87–22728 Filed 9–30–87; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–109–AD]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires that the FAA-approved maintenance inspection program include inspections which will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Supplemental Structural Inspection Document (SSID) No. D6–37089. As a result of a structural reassessment of the aft pressure bulkhead, the document has been revised to include some additional SSI's. This proposal would require that operators of the candidate fleet airplanes include in their FAA-approved maintenance program, inspections

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which will give no less than the required DTR's for the additional SSI's listed in Revision B. of the SSID.

DATES: Comments must be received no later than November 2, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–109–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–12OS; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–109–AD, 17900 Pacific Highway South, C—68966, Seattle, Washington 98168.

Discussion

On November 2, 1984, the FAA issued AD 84–21–06, Amendment 39–4933 (49 FR 42445; October 23, 1984), to require incorporation of a revision to the FAA-approved maintenance program for certain Boeing Model 737 series airplanes. The AD requires that Structural Significant Items (SSI) listed in Boeing Supplemental Structure Inspection Document (SSID) No. D6–37089, initial release, be inspected on candidate fleet airplanes so as to render at least a specified damage tolerance rating (DTR). The Boeing document includes instructions on how DTR's are determined. Since issuance of the AD, Boeing has reassessed the aft pressure bulkhead and has revised the document.

The FAA has reviewed and approved Revision B. to Boeing Document No D6–37089, which includes additional SSI's. Since, by definition, failure of an SSI can lead to structural failure, it is necessary that the maintenance program of the airplanes in the candidate fleet include adequate inspections of the SSI's. Other changes included in Revisions A. and B. to Boeing Document No. D6–37089 are basically clarifying or corrective in nature.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would amend AD 84–21–06 to require that the FAA-approved maintenance program include the required DTR's for each SSI, in accordance with the revised Boeing document previously mentioned. The FAA proposes to incorporate by reference in this amendment Boeing Supplemental Structure Inspection Document (SSID) No. D6–37089, Revision B, dated February 18, 1987.

It is estimated that 27 operators have 92 airplanes of U.S. registry that would be affected by this AD, that it would take approximately 50 manhours per airplane to accomplish the required actions, and 100 manhours per operator to update its maintenance program. Estimating the average labor cost to be $40 per manhour, the cost to amend the maintenance program would be $108,000, and the cost to accomplish the inspections would be $184,000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $292,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By amending AD 84–21–06, Amendment 39–4933 (49 FR 42556; October 23, 1984), paragraph A. and paragraph E. to read as follows:

A. Within three months after the effective date of this Amendment, incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document No. D6–37089, Revision B, dated February 18, 1987, or later FAA-approved revisions. The required DTR value for each SSI is listed in the document. The revision to the maintenance program shall include and be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID.

E. Operators who have acceptably incorporated Boeing Document No. D6–37089, Revision B, dated February 18, 1987, or later FAA-approved revisions, into their approved maintenance program are exempt from the provisions of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 26, 1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region.

[FR Doc. 87-22720 Filed 9-30-87; 8:45 am]

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14 CFR Part 39

[Docket No. 87-CE-29-AD]

Airworthiness Directives; SIAI Marchetti S.p.A.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to SIAI Marchetti S.p.A. Models F260, F260B, F260C, and F260D airplanes, which would require initial and recurrent visual or dye-penetrant inspection of the main wing spar root area and, if cracks are found, modification of the main wing spar. Cracks in the main wing spar have been found during inspection of over 38 airplanes. If this condition is left uncorrected, the structural integrity of the wing may be compromised, resulting in loss of the airplane. The inspection and modification will detect cracks and prevent crack growth from compromising the wing structural integrity.

DATES: Comments must be received on or before December 1, 1987.

ADDRESSES: SIAI Marchetti Mandatory Service Bulletin (S/B) No. 260-B50, dated November 12, 1986, applicable to this AD may be obtained from SIAI Marchetti S.p.A. via Indipendenza, 2, 21018 Sesto Calende, Varese, Italy. This information may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-28-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, ACE-109, Aircraft Certification Division, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932; or Mr. Munro Dearing, Aerospace Engineer, AEU-100, Aircraft Certification Office, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone 513.38.30.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain in copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-28-AD, Room 1558, 601 12th Street, Kansas City, Missouri 64106.

Discussion

Inspections of over 70 SIAI Marchetti S.p.A. F260 airplanes having between 1,500 to 5,500 hours time-in-service (TIS) revealed 38 cracks in the main wing spar web root lower side. These cracks originated in the corners of the spar web. If this condition remains uncorrected, structural integrity of the wing will be compromised. As a result, SIAI Marchetti S.p.A. has issued S/B No. 260-B50, dated November 12, 1986, which describes initial and recurring inspection and modification of the main spar web root. The Registro Aeronautico Italiano (RAI), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, has classified this S/B and subsequent issuance of RAI AD 86-199/ F260-32, dated December 22, 1986, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of S/B No. 260-B50, dated November 12, 1986, and the mandatory classification of ths S/B by th RAI. Based on the foregoing, the FAA believes that the condition addressed by SIAI Marchetti S.p.A. S/B No. 260-B50, dated November 12, 1986, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require initial and repetitive visual or dye-penetrant inspection of the main wing spar web root and modification when cracks are detected.

The FAA has determined there are approximately 90 airplanes affected by the proposed AD. The cost of compliance with the proposed Ad is estimated to be an annual cost for inspection of $70 per airplane. The total annual fleet cost is estimated to be $6,300 to the private sector.

The cost of compliance with the proposed Ad is so small that the expense of compliance will not be a significant impact on small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contracting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety. Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

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PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Siai Marchetti S.p.A.: Applies to all Model F260, F260B, F260C, and F260D (all airplanes whose data plate shows manufacture before 1986 serial numbers (S/N) 1 through S/N 735) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the main wing spar, accomplish the following:

(a) Unless modified as described in (b) below, perform visual or dye-penetrant inspection on the main spar web root as described in SIAI Marchetti S/B No. 260–B50, dated November 12, 1986, "Instructions—Inspection Steps 1–5."

(i) Initially within 500 hours time-in-service (TIS) of the effective date of this AD for airplanes (wings) with 1,000 to 3,000 hours TIS.

(ii) Initially within 100 hours TIS of the effective date of this AD for airplanes (wings) with over 3,000 hours TIS.

(iii) Recurring inspection at 500 hours TIS interval, or at each annual inspection thereafter.

(b) If cracks are found in the lower web of the main wing spar as described in SIAI Marchetti S/B No. 260–B50, dated November 12, 1986, prior to further flight, modify the wing structure as described in SIAI Marchetti S/B No. 260–B50, dated November 12, 1986, "Instructions—Modification Steps 1–14."

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone 513.38.30.

All person affected by this directive many obtain copies of the document(s) referred to herein upon request to SIAI Marchetti S.p.A., via Indipendenza, 2, 21018 Sesto Calende, Varese, Italy; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 17, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–22718 Filed 9–30–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Designation of New Hanover County Airport, Wilmington, NC for private aircraft reporting

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document announces a proposal to amend the Customs Regulations by adding New Hanover County Airport, Wilmington, North Carolina, to the list of designated airports at which private aircraft arriving in the U.S. from the southern portion of the Western Hemisphere via the U.S./Mexican border, or via the Atlantic, Pacific or Gulf of Mexico coasts, must land for Customs inspection. This proposal is made to help relieve congested air traffic over southern Florida; a condition which makes it difficult to effectively conduct Customs private aircraft enforcement program. Public comments are invited on the proposal for consideration before a final decision is reached on this matter.

DATE: Comments must be received on or before November 30, 1987.

ADDRESS: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations Control Branch, Room 2324, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Inspection and Control (202–566–5607).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs efforts to combat the problem of drug smuggling by air, in 1975 the Customs Regulations were amended to add a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S./Mexican border must provide a notice of intended arrival with Customs (T.D. 75–201; 40 FR 33203). The section further provides that these private aircraft must land at any one of the designated airports near the U.S./Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

In our diligence to fight the national epidemic of illegal drugs, Customs has amended § 6.14, Customs Regulations, several times since 1975. Amendments have included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83–192; 48 FR 41381); expanding coverage by modifying the definition of private aircraft (T.D. 84–236; 49 46885); extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S. Virgin Islands, increasing from 15 minutes to one hour the minimum time required for notice to be given prior to penetrating U.S. air space, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86–72; 51 FR 11004); and removing San Diego International Airport (Lindbergh Field) from the list of designated airports in § 6.14 because Lindbergh Field's distance from the U.S./Mexican border was permitting smugglers to operate in the area (T.D. 86–146; 51 FR 27836).

Most recently, Customs amended § 6.14(f) concerning the overflight exemption program for private aircraft. If exempted, private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S. may overfly a Customs designated airport along the southern U.S. border and proceed to another, typically more interior, airport where Customs inspectional services are available. The amendments allowed for continuing the overflight program but with more stringent application procedures, and new restrictions on the actual conduct of overflights such as equipment necessary on the aircraft and minimum flying altitudes. These actions were taken to facilitate radar tracking of aircraft using overflight exemptions and thereby enhance narcotics enforcement efforts (T.D. 87–42; 52 FR 10047).

Customs is now proposing to amend § 6.14(g), which lists designated airports at which subject aircraft must land for Customs inspection, by adding New Hanover County Airport, Wilmington, North Carolina, to that list. The congested air traffic presently experienced over southern Florida is making it difficult to effectively monitor the arrival of private aircraft using that airspace. If aircraft needing to land at a designated airport could fly to New Hanover it would lessen the congestion now plaguing more southern designated airports. There is a direct trackable Federal Aviation Administration airway from the Caribbean into New Hanover which should make it a popular destination of pilots, as well as easing the burden on Customs of tracking arrivals from a known drug source area.

This proposed designation is a continuation of Customs recent efforts to improve our private aircraft enforcement program.

Comments

Before making a determination on this matter, consideration will be given to any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2324, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

Because this proposal relates to the organization of Customs it is not a regulation or rule subject to E.O. 12291.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act ("Act") relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this proposal because it will not have a significant economic impact on a substantial number of small entities. Customs routinely makes adjustments to its field organization to accommodate the volume of Customs related activity throughout the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because adjusting the Customs field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

List of Subjects in 19 CFR Part 6

Customs duties and inspection, Imports, Air carriers, Aircraft, Airports.

Proposed Amendment

It is proposed to amend Part 6, Customs Regulations (19 CFR Part 6), as set forth below.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624; 49 U.S.C. 1474, 1509.

§ 6.14 [Amended]

2. It is proposed to amend § 6.14(g) by inserting, in appropriate alphabetical order, "Wilmington, NC," in the column headed "Location", and on the same line, "New Hanover County Airport" in the column headed "Name".

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 17, 1987.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–22659 Filed 9–30–87; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 177

Tariff Classification of Wire Rope With Becket Attachments

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed interpretive rule; Solicitation of public comments.

SUMMARY: Customs is reviewing its position regarding the tariff classification of certain imported wire rope with end attachments. The product in question is wire rope from one to five inches in diameter either in material lengths or in specific cut lengths, sometimes in excess of 500 feet. The wire rope has end preparations, called beckets, on one or both ends. The beckets are used to facilitate installation of wire rope into heavy machinery. Such products are now classified under the tariff provision for wire rope fitted with fittings or made up into articles. Customs is now of the opinion that the beckets are not "fittings" as that word is used in the Tariff Schedules, nor do they "fit" the rope, and the existence of beckets on one or both ends of wire rope does not dedicate that rope to a use or identify it as dedicated to a particular use.

It is proposed to classify the product under the Tariff Schedule item number for wire rope not fitted with fittings and not made up into articles. If reclassified, the wire rope would be subject to a lower rate of duty. However, it would also become subject to Voluntary Restraint Agreements on steel that the U.S. has with a number of countries.

This document invites comments for consideration before any final determination is made.

DATE: Comments (preferably in triplicate) must be received on or before November 30, 1987.

ADDRESSES: Comments should be submitted to and may be inspected at the Regulations Control Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Classification and Value Division (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its position regarding the tariff classification of certain imported wire rope from one to five inches in diameter either in material lengths or in specific cut lengths, sometimes in excess of 500 feet. The wire rope has end preparations, called beckets, on one or both ends. Beckets come in several configurations and are used to allow another rope to be attached to the wire rope so the wire rope may be installed in a piece of heavy machinery. The current tariff classification for such wire rope is under the tariff provision for "ropes * * * of wire * * * fitted with fittings, or made up into articles", in item 642.20, Tariff Schedules of the United States (19 U.S.C. 1202; TSUS). That classification carries a column 1 rate of duty of 5.7% ad valorem, and is not subject to any Voluntary Restraint Agreement (VRA). VRA's are steel arrangements negotiated between the U.S. Trade Representative on behalf of the U.S. and other countries, which dictate that basic steel products from these other countries cannot be entered into the U.S. for consumption unless accompanied by a valid export certificate.

Examples of that classification being applied to imports of wire rope include Customs Ruling 036046, November 1, 1974, holding that wire rope with a pad eye and becket loop attached to the pad eye was classifiable under item 642.20, TSUS, and Customs Ruling 808452, March 23, 1984, holding that wire rope with becket loops attached was classifiable under the same tariff item number.

Customs now believes that these rulings are wrong and should be revoked. The rationale leading to the decision to revoke these previous rulings was articulated in a Customs Service Headquarters decision on Application for Further Review of Protest No. 2304–2–000108, dated April 23, 1984, to the

District Director of Customs, Laredo Texas (file no. 072959). In that instance, some 7-wire prestressed concrete strand with a chuck at each end had been classified under item 642.11, TSUS, as "rope * * * of wire * * * not fitted with fittings and not made up into articles * * * other". The protestant claimed the proper classification was under item 642.20, TSUS, because the chucks were "fittings" "fitted" on the strand.

In denying the protestant's claim, it was stated that the chucks facilitate further processing of the strand but do not dedicate the strand to a specific use. In that sense, the strand was not "fitted" or made suitable for a particular purpose. Also, it was noted that in the heading to item 642.11 and 642.20, TSUS, the fittings mentioned are of a class or kind of functional attachments, not temporary, facilitating attachments like a chuck.

The tariff classification Customs now believes should apply to the wire rope in question is "rope * * * of wire * * * not fitted with fittings and not made up into articles", in item 642.16, TSUS. That classification carries a column 1 rate of duty of 4% ad valorem, and is subject to VRA's. Therefore, even though the proposed change in tariff classification, if adopted, would result in the assessment of a lower rate of duty, it would result in import restrictions on the quantity of wire rope which could be entered into the U.S. for consumption.

In order to assist in our determination of this issue, Customs is requesting the views of the public on the proposed classification of the wire rope in item 642.16, TSUS, as opposed to classification in item 642.20, TSUS. If, after reviewing comments received in response to this notice, Customs decides to adopt this change in position, an effective date for the change must be determined. To assist in determining this date, written comments are also invited regarding an appropriate time frame within which the change in position should occur and reasons why such a time frame is appropriate.

Comments

Before making any determination on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was John Doyle, Regulations, Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 16, 1987.

John P. Simpson,

Acting Assistant Secretary of Treasury.

[FR Doc. 87-22660 Filed 9-30-87; 8:45 am]

BILLING CODE 4820-02-M

RAILROAD RETIREMENT BOARD

20 CFR Part 355

Implementation of Program Fraud Civil Remedies Act of 1986

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: This proposed rule is required under the Program Fraud Civil Remedies Act of 1986 (PFCRA) because the Railroad Retirement Board (Board) is an authority within the meaning of that Act. The PFCRA establishes an administrative remedy against persons who make, submit or present fraudulent claims or statements to various federal authorities. This proposed rule is necessary for the Board to implement the provisions of the PFCRA.

DATE: Comments must be received on or before November 2, 1987.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Stanley Jay Shuman, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4568, FTS 386-4568.

SUPPLEMENTARY INFORMATION: The PFCRA requires the promulgation of regulations by authorities in order to implement its provisions (31 U.S.C. 3809). The Board is an authority within the meaning of the PFCRA. These regulations are adopted from the final model regulations prepared by the President's Council on Integrity and Efficiency.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 355

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government Agencies), Penalties.

For the reasons set out in the Preamble, Chapter II, Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. Subchapter E, consisting of Part 355 is added to read as follows:

Subchapter E—Administrative Remedies for Fraudulent Claims or Statements

PART 355—REGULATIONS UNDER THE PROGRAMS FRAUD CIVIL REMEDIES ACT OF 1986

Sec.

355.1 Basis and purpose.
355.2 Definitions.
355.3 Basis for civil penalties and assessments.
355.4 Investigation.
355.5 Review by the reviewing official.
355.6 Prerequisites for issuing a complaint.
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355.12 Notice of hearing.
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355.17 Rights of parties.
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355.21 Discovery.
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355.25 Fees.
355.26 Form, filing and service of papers.
355.27 Computation of time.
355.28 Motions.
355.29 Sanctions.
355.30 The hearing and burden of proof.
355.31 Determining the amount of penalties and assessments.
355.32 Location of hearing.
355.33 Witnesses.
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355.36 Post-hearing briefs.
355.37 Initial decision.
355.38 Reconsideration of intitial decision.
355.39 Appeal to authority head.
355.40 Stays ordered by the Department of Justice.
355.41 Stay pending appeal.
355.42 Judicial review.
355.43 Collection of civil penalties and assessments.

Sec.
355.44 Right to administrative offset.
355.45 Deposit in Treasury of United States.
355.46 Compromise or settlement.
355.47 Limitations.

Authority: 31 U.S.C. 3809.

§ 355.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 355.2 Definitions.

ALJ means an Administrative Law Judge detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means Railroad Retirement Board.

Authority head means the three-member Railroad Retirement Board.

Benefits means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Board means Railroad Retirement Board.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 355.7.

Defendant means any person alleged in a complaint under § 355.7 to be liable for a civil penalty or assessment under § 355.3.

Government means the United States Government.

Individual means the natural person.

Initial decision means the written decision of the ALJ required by § 355.10 or § 355.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating Official means the Inspector General of the Railroad Retirement Board or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts indeliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made* shall likewise include the corresponding forms of such terms.

Persons means any individual, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

Presiding officer means ALJ.

Representative means an attorney who is a member in good standing of the bar of any state, territory, or possession of the United States or of the District of Columbia.

Reviewing official means the General Counsel of the Board or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official; and

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 355.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on

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behalf of such authority, recipient, or party.

(4) Each claims for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damage sustained by the Government because of such claim. However, such assessment shall not be in lieu of any recovery of erroneous payment as authorized by section 10 of the Railroad Retirement Act or section 2(d) of the Railroad Unemployment Insurance Act.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term "benefits" means—

(i) any annuity or other benefit under the Railroad Retirement Act of 1974;

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 355.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) He or she may designate a person to act on his behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to avoid interference with a criminal investigtion or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 355.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 355.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 355.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 355.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 355.3 this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 355.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 355.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 355.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 355.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 355.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 355.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint may result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 355.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his representative.

§ 355.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 355.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 355.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 355.8, a notice that an intitial decision will be issued under this section.

(c) If the defendant has failed to answer the complaint, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 355.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the intitial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 355.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the intitial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the intitial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 355.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 355.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 355.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 355.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 355.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in

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investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 355.15 Ex parte contracts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 355.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affiavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's discovery of such facts. It shall be accompanined by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 355.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 355.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issued of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes or regulations.

§ 355.19 Prehearing conferences.

(a) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability or amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 355.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 355.4(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that

portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 355.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 355.9.

§ 355.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 355.22 and 355.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 355.24

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 355.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 355.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 355.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 355.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is not prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of the section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 355.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 355.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 355.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

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§ 355.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 355.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner or service, shall be proof of service.

§ 355.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes that last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 355.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 355.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 355.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 355.3 and, if so, the appropriate amount of any such civil penalty or assessment considering and aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 355.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and upon appeal, the authority head, should evaluate and circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, of fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statement;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents in imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 355.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 355.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 355.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 355.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 355.24.

§ 355.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 355.24.

§ 355.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ

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may permit the parties to file reply briefs.

§ 355.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 355.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 355.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 355.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

((b) Every such motion must set forth the matter claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 355.38, and for finality of the initial decision in § 355.36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

§ 355.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 355.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may filed a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head. At the same time authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 355.3 is final and is not subject to judicial review.

§ 355.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 355.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 355.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 355.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 355.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 355.42 or § 355.43, or any amount agreed upon in a compromise or settlement under § 355.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 355.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 355.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 355.42 or during the pendency of any action to collect penalties and assessments under § 355.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 355.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 355.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 355.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 355.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: September 24, 1987.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87-22605 Filed 9-30-87; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5 87-065]

Drawbridge Operation Regulations; Mullica River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Burlington County Board of Chosen Freeholders, and with the concurrence of Atlantic County, the Coast Guard is considering a change to the regulations governing the Lower Bank and Green Bank bridges, at miles 15.0 and 18.0, over the Mullica River at Lower Bank and Green Bank, New Jersey. The proposal requires advance notice for openings during the late evening hours of the boating season, from 1 April through 30 November, and at all times during the winter months. This proposal is based on the relative infrequent requests for bridge openings at night during the boating season and the limited use of the waterway during the winter. This action should relieve bridge owner's burden of having a person constantly available to open the draw at times of limited waterway use. It should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 16, 1987.

ADDRESSES: Comments should be mailed to Commander, Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York 10004-5098. The comments and other material referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information: The drafters of these regulations are Waverly W. Gregory, Jr., project manager, and CDR Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The Mullica River is primarily a recreational waterway. The Lower and Green Bank bridges are presently required to open on signal at all times. The proposed regulations would require at least 4 hours advance notice from 11:00 p.m. to 7:00 a.m. during the boating season and at all times during the winter months.

The Lower and Green Bank bridges have been operating contrary to the published regulations. The bridges have regularly been left unmanned during the night except when opening requests have been received in advance. The drawtender for the Lower Bank Bridge resides less than a mile from the bridge. The Green Bank drawtender resides adjacent to the bridge. Both respond upon telephone requests and vessel whistle signals, when heard. After 11 p.m., openings have only been provided by telephone requests to the drawtenders or New Jersey Department of Transportation. However, the phone numbers for contacting the drawtenders have not been posted at the bridges.

A review of the bridge opening logs for the years 1983, 1984, and 1985 show infrequent openings at night and during the winter. Only 82, 92, and 49 openings were logged during the months of December, January, February, and March of 1983, 1984, 1985. Nighttime transits during the boating seasons comprised less than five per cent of the transits.

However, marine interests indicate that one reason for the reduced openings at night are the past restrictions on openings placed by drawtenders. Visits to the marinas and facilities surrounding Mullica River revealed that the primary reason for the low number of transits at night are the potential hazards of navigating the waterway at night and

during periods of reduced or poor visibility.

Preliminary discussions with habitual users of the waterway revealed that, outside daylight and peak hours during the boating season of 1 April through 30 November, four hours notice for bridge openings would be feasible.

The proposal requires the draws to open on signal, except that the draws need not open unless at least four hours notice is given from 11 p.m. until 7 a.m., from 1 April through 30 November, and at all times from 1 December through 31 March. A sign indicating the operating hours and telephone number for the notice will be prominently displayed on the bridges. The proposal also provides for expeditious openings for public vessels and vessels in distress.

If the proposed regulations are issued, the owner has assured the Coast Guard that the bridges will be manned continuously, except during the periods when advance notice is required.

In conjunction with these proposed regulations, the bridge owner has agreed to install marine radios to facilitate improved communications between the drawtenders and mariners.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

This waterway is used primarily by recreational vessels. Only one facility would be minimally affected by the winter restrictions. The facility works from 7 a.m. to 6 p.m. during the winter months and insisted that openings be provided on signal during this period of time. However, the number of openings that are in fact required by that facility is insignificant. It is the Coast Guard's position that the requirement for four hours advance notice would not impose an unreasonable burden upon that facility.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is proposed to be amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.731a added to read as follows:

§ 117.731a Mullica River.

The draws of the Lower Bank and Green Bank bridges, miles 15.0 and 18.0, at Lower Bank and Green Bank, New Jersey, shall open on signal, except that:

(a) The draws need not open unless at least four hours notice is given—

(1) from 11 p.m. to 7 a.m., from 1 April through 30 November and

(2) at all times from 1 December through 31 March.

(b) The draws shall open as soon as possible during the periods when four hours notice is required for vessels in distress and public vessels of the United States, state, or local vessels used for public safety purposes.

Dated: September 10, 1987.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 87–22732 Filed 9–30–87; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80–286]

Common Carrier Services MTS and WATS Market Structure, Amendment of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: In response to a request this Order extends the time for filing comments, data and reply comments in CC Docket No. 80–286, concerning the separations and cost recovery treatment of marketing expenses.

DATES: Comments are now due by October 13, 1987 and Reply comments by October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Shipley, Accounting and Audits Division, Common Carrier Bureau, (202) 632–7500.

SUPPLEMENTARY INFORMATION: The Commission is responding to a request filed September 4, 1987 from the United States Telephone Association in response to the Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking released August 18, 1987. (52 FR 32937 September 1, 1987).

List of Subjects in 47 CFR Part 67

Communications common carriers, Telephone, Jurisdictional separations procedures.

Carl D. Lawson,

Deputy Chief, Policy Common Carrier Bureau.

[FR Doc. 87–22685 Filed 9–30–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–380; RM–5732]

Radio Broadcasting Services; Thief River Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Northern Minnesota Associates, proposing the allotment of FM Channel 257A to Thief River Falls, Minnesota, as that community third FM broadcast service. Canadian concurrence is necessary for the allotment of Channel 257A at Thief River Falls. Channel 257A was removed from the Table of Allotments in MM Docket 85–370, 51 FR 27552, August 1, 1986, but is still utilized by Station KSNR(FM), Thief River Falls. Station KSNR(FM) has since filed an acceptable application to change its facility to Channel 262C1.

DATES: Comments must be filed on or before November 19, 1987, and reply comments on or before December 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as followers: Eugene T. Smith, 715 G Street SE., Washington, DC 20003, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–380, adopted August 25, 1987, and

released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibted in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–22681 Filed 9–30–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–383, RM–5933]

Radio Broadcasting Services; Crockett, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Norman Fischer, Receiver and B. S. T. Broadcasting, Inc., licensee and proposed assignee, respectively, of Station KCKR(FM), Channel 228A, Crockett, Texas, proposing the substitution of Channel 228C2 for Channel 228A at Crockett and modification of the station license to specify operation on the higher class channel. The proposal could provide that community with its first wide coverage area FM station.

DATES: Comments must be filed on or before November 19, 1987, and reply comments on or before December 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Joseph E. Dunne III, Esquire, May & Dunne, Chartered, 1156 15th Street NW., Suite 515, Washington, DC 20005–1704 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–383, adopted August 25, 1987, and released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–22683 Filed 9–30–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–382, RM–5904]

Radio Broadcasting Services; Colonial Heights, Petersburg, and Charlottesville, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a joint petition by EPVA, Inc., licensee of Station WKHK(FM), Channel 237A, Colonial Heights, Virginia and Chariottesville Broadcasting Corporation, licensee and Station WQMC(FM), Channel 237A, Charlottesville, Virgina, proposing the substitution of Channel 237B1 for Channel 237A at Colonial Heights and modification of the license of Station WKHK(FM) to reflect the higher frequency. In order to accomplish this channel substitution it is necessary to substitute Channel 236A for 237A at Charlottesville, Virginia. The substitution could provide Colonial Heights with its first wide coverage area FM station. We also propose to reallot Channel 237A from Petersburg, Virginia, to reflect is actual usage at Colonial Heights.

DATES: Comments must be filed on or before November 19, 1987, and reply comments on or before December 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, of their counsel or consultant, as follows:

Alan C. Campbell, Esquire, a. Kimberly Mathews, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street NW., Suite 500, Washington, DC 20037 (Counsels for WPVA, Inc.

Benjamin F.P. Ivins, Esquire, Covington & Burling, 1201 Pennsylvania Ave. NW., P.O. Box 7566, Washington, DC 20044, (Counsel for Charlottesville Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–382, adopted August 25, 1987, and released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

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Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-22682 Filed 9-30-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 84-1296; FCC 87-307]

Cable Television; Implementation of Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Court of Appeals for the District of Columbia Circuit decision in *American Civil Liberties Union v. FCC* remanded to the Commission the signal availability standard in the effective competition test for a reasoned explanation of the chosen standard or the development of a new standard. This Further Notice of Proposed Rule Making discusses alternative solutions to the court's concerns with respect to the measures of signal availability, the degree of signal coverage, and the waiver standards.

DATE: Comments due November 4, 1987; replies due November 19, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making in MM Docket No. 84-1296, adopted September 17, 1987, and released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. The Cable Communications Policy Act of 1984 (Cable Act) requires the Commission to define the circumstances and conditions under which franchising authorities are to be permitted to regulate the rates charged by cable operators for "basic cable service." Section 623 of the Cable Act instructs the Commission to permit local rate regulation in those circumstances where cable systems do not face effective competition. In the *Report and Order* in this proceeding (50 FR 18637 (1985)), the Commission determined that effective competition for a cable system would exist where any three "off-the-air" broadcast signals were available in the cable community. The Commission also ruled that a broadcast signal would be deemed available in either of the following circumstances: (1) The signal places a predicted Grade B contour over any portion of the cable community; or, (2) the signal is "significantly viewed."

2. Upon review, the U.S. Court of Appeals for the District of Columbia Circuit concluded that, for the most part, the rules adopted by the Commission are reasonable and consistent with the Cable Act. The court did, however, find several portions of the *Report and Order* to be arbitrary or inconsistent with the Cable Act and remanded these to the Commission for further action. One of these concerns the effective competition test used in determining where local authorities will be permitted to regulate rates for basic cable service. The court remanded to the Commission for a reasoned explanation of the chosen standard or the development of a new standard the issue of how much of a community had to be covered by a broadcast signal for that signal to be considered available for purposes of meeting the effective competition test. The court found unacceptable the Commission's decision to count every signal that covers any portion of the cable community and also indicated that there are potential difficulties with the significant viewing aspect of the standard. In addition, it noted with concern the substantial barrier the current waiver system may place on franchising authorities.

3. In this Further Notice of Proposed Rule Making (Further Notice) the Commission discusses alternative solutions to the court's concerns with respect to the measures of signal availability, the degree of signal coverage, and the waiver standards. The Commission specifically proposes to use its Grade B contour and significant viewing in the cable community standards as the measures of signal availability; to establish that a cable system faces effective competition if at least 75 percent of the cable community is covered by three or more off-the-air signals; and, to modify the field strength measurement requirements and use other factors, such as cable penetration, in the waiver procedure to decrease the burden placed on both franchising authorities and cable operators.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding proposes to revise the signal availability standard in the effective competition test, in accordance with the requirements of the decision in *ACLU*. The rules proposed herein will increase the number of cable systems that could be subject to rate regulation by franchising authorities, relative to the number of cable systems affected by our existing standard.

6. This proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements of burdens on the public. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 4, 1987; and reply comments on or before November 19, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 76

Cable television.

William J. Tricarico,

Secretary.

[FR Doc. 87-22679 Filed 9-30-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket 45162 Notice No. 87-19]

Nondiscrimination on the Basis of Handicap in Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Transportation is considering whether it would be advisable to amend its regulation on nondiscrimination on the basis of handicap in DOT-assisted programs, as that regulation affects mass transit services, to require transit operators to provide additional accommodations or services to persons with developmental disabilities, other mental impairments, or visual impairments on their service for the general public. This Department seeks views and information from interested persons on this matter.

DATES: *Comment closing date:* Comments should be received by December 30, 1987. Late-filed comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to the Docket Clerk, Docket No. 45162, Room 4107, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Commenters wishing the receipt of their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street SW., Room 10424, Washington, DC 20590. (202) 366-9306 (voice); 202-755-7687 (TDD).

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking (ANPRM) concerns accommodations for persons with developmental disabilities or other mental impairments on the mass transit services for the general public operated by recipients of Federal financial assistance from the Urban Mass Transit Administration (UMTA). The notice also seeks comment on accommodations on mainline mass transit services for persons with impaired vision or hearing. This notice concerns ways of assisting persons with these kinds of disabilities who are otherwise able to use mainline transit services. This notice does not focus on special service systems established to provide transportation for persons who, by reason of a disability, are physically incapable of using the mainline services.

If rulemaking is undertaken as a result of this notice, the rulemaking would involve an amendment to the Department's rule on nondiscrimination on the basis of handicap in federally-assisted programs (49 CFR Part 27). Because the issues involved in this notice pertain to individuals who are physically able to use mainline transit systems, the Department does not anticipate that the costs of complying with new regulatory requirements resulting from this section would be eligible expenses in the calculation of the limit on required expenditures under § 27.99 of that rule. Eligible expenses for purposes of § 27.99 are intended to be those specifically incurred for service to persons who, by reason of handicap, are physically unable to use mainline transit systems.

It is likely that there are a number of persons with developmental disabilities or other mental impairments who (1) are not, because of a disability, physically incapable of using mainline mass transit services; (2) function at levels sufficient to make independent travel possible; and (3) may need some accommodations or assistance to make independent travel on mainline transit systems feasible on a regular basis. In the Regulatory Impact Analysis for the Department's May 23, 1986, final rule on mass transit services for persons with disabilities, the Department estimated that there could be up to four million people nationwide in this category. The Department is interested in learning from commenters if there are more precise estimates of this population available.

At the present time, 49 CFR Part 27 does not include any specific provision for special accommodations to assist persons with developmental disabilities or other mental impairments in using mainline transit services. The Department and UMTA have never interpreted any of their regulations as requiring such accommodations. Consequently, it is the Department's view that, in order to impose such requirements, it would be necessary to amend its regulations. This notice seeks comment on whether such an amendment is appropriate and, if so, what it should provide.

There are, in the Department's regulations, some provisions concerning persons with vision and hearing impairments. For example, 49 CFR 27.87(b)(4) requires recipients to make information about routes and schedules available in a form that such persons can use. The Department has also noted that, in some circumstances, the absence of accommodations for blind persons on the regular bus system (e.g., calling out stops on a regular basis), could make blind persons eligible for special service under 49 CFR 27.95(b)(1). However, there are no explicit requirements for special accommodations for persons with vision impairments on mainline transit vehicles.

The first area in which special accommodations might be made is the provision of information to riders. Blind riders, as well as persons with developmental disabilities or other mental impairments whose cognitive ability to recognize stops is limited, may need a reliable, regular system for announcing upcoming stops in order to make regular, independent use of mainline transit service feasible.

For example, often, two or three buses will stop at the same time at the same bus stop. Persons with these disabilities may need assistance in recognizing the proper bus to enter. Announcements, or some other means of letting passengers who, as the result of a disability, cannot see or read the route signs on the bus, may be necessary in order to allow such persons to get on the right bus consistently.

The Department seeks comment on the merits of a requirement for accommodations of this kind. Are accommodations of this sort really needed, or are persons with disabilities of these kinds able (with or without special training) to use regular transit services in the absence of the accommodations? Would announcements of this kind be effective in assisting persons with visual or mental impairments to use regular mainline transit systems? What modifications to existing vehicles and practices would be necessary to make these accommodations? What differences between different types of transit systems (e.g., bus vs. commuter rail) are relevant for this purpose? What are the costs and benefits of various approaches likely to be?

Another area of concern is training. First, it is possible that additional training for vehicle operators and other public contact personnel could be useful in helping the employees recognize the needs of people with visual and mental disabilities and respond appropriately to those needs. Second, it is possible that training for disabled passengers would enable them to use the system more easily.

In both cases, what should the content of the training be? How effective would it be in helping drivers and other public

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contact personnel to assist disabled passengers or helping disabled passengers cope with the system? What benefits could be expected? Who should be trained, for how long, and how often? Are there existing models for such training on which the Department could build in establishing a training requirement? Who should provide and pay for the training and how much would it cost? Should there be Federal standards for such training? Would a brochure or pamphlet designed to assist persons with mental disabilities in using the system be a useful device, either in addition to or in place of training?

With respect to persons with vision impairments, developmental disabilities, or other mental impairments, it is possible that some alteration in the signage or graphics on vehicles or bus and rail stops might be useful in facilitating ridership. The Department has very little information on this point. Are there any studies that indicate what sorts of changes to signage or graphics, if any, would facilitate the use of transportation systems by such persons? What incremental benefits in the use of mainline transportation systems would enhanced signage or graphics have for persons with developmental or other mental disabilities? Are such changes feasible on the scale of an urban mass transit system? What are the likely costs of making them?

The Department is aware that there may be other accommodations which would facilitate the use of mainline transit systems by persons with developmental disabilities, other mental disabilities, or vision impairments. The Department seeks comment on what such other accommodations are, as well as on their necessity, effectiveness, feasibility, benefits and costs. The Department also seeks comment on what accommodations might be needed for persons with other kinds of disabilities (e.g., hearing impairments) who are able to use mainline transit services.

The Department has concluded, tentatively, that a proposed rule resulting from this ANPRM would not be a major rule under Executive Order 12291 or a significant rule under the Department of Transportation's Regulatory Policies and Procedures. Based on comments received, the Department will determine whether the economic impacts of such a proposal would be sufficient to warrant the preparation of a regulatory evaluation or regulatory flexibility analysis, should a notice of proposed rulemaking be issued.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 15th day of September, 1987, at Washington DC.

Elizabeth Dole,

Secretary of Transportation.

[FR Doc. 87-22724 Filed 9-30-87; 8:45 am]

BILLING CODE 4910-62-M

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Notices

Federal Register
Vol. 52, No. 190
Thursday, October 1, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Regulation of the Administrative Conference of the United States, to be held at 2:00 p.m. on Tuesday, October 13, 1987, at the office of Steptoe and Johnson, 4th floor conference room, 1330 Connecticut Avenue, NW., Washington, DC.

The Committee will meet to discuss the report by Professor Eleanor Kinney, "National Coverage Policy Under the Medicare Program: Problems and Proposals for Change."

For further information concerning this meeting, contact Sara Gordon, Office of the Chairman, Adminstrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC. (Telephone: 202–254–7020)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify Ms. Gordon at least one day in advance. The Committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting. Minutes of the meeting will be available on request.

Jeffrey S. Lubbers,
Research Director.
September 29, 1987.

[FR Doc. 87–22802 Filed 9/30/87; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by P.L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lambs, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62) which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1987 by subsection 2(3) as adjusted under subsection 2(d) of the Act.

As published on January 5, 1987 (52 FR 311), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act, for calendar year 1987 is 1,309 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate for 1987 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1987 is 1,439 million pounds.

Done at Washington, DC, this 28th day of September, 1987.

Richard E. Lyng,
Secretary of Agriculture.

[FR Doc. 87–22697 Filed 9–30–87; 8:45 am]
BILLING CODE 3410–10–M

Commodity Credit Corporation

Milk Price Support Program Through December 31, 1987

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of milk price support level and Commodity Credit Corporation purchase prices.

SUMMARY: This notice announces that the support price for milk containing 3.67 percent milkfat shall be $11.10 per hundredweight (cwt.) for the period October 1, 1987, through December 31, 1987. The prices at which butter, cheese and nonfat dry milk will be purchased by the Commodity Credit Corporation (CCC) in order to support the price of milk at that level are also set forth in this notice.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS–USDA, 5747 South Building, P.O. Box 2415, Washington, DC 20013 (202)–447–3385.

The Final Regulatory Impact Analysis regarding the actions of this Notice of Determination will be available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS–USDA, P.O. Box 2415, Washington, DC 20013: (202)–447–7601.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this notice since CCC is not required to publish a notice of proposed rulemaking with respect to level of price support and prices paid to producers of milk. Pursuant to sections 102 and 1017 of the Food Security Act of 1985 (Pub. L. 99–198) (the "1985 Act") the provisions of section 201(d) of the Agricultural Act of 1949, as amended (the "1949 Act"), may be implemented without regard to the provisions requiring notice and other public procedures for public participation in rulemaking as set forth in 5 U.S.C. 553 or in any directive of the Secretary of Agriculture.

It has been determined by an Environmental Evaluation that the determination set forth in this notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will

not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 201(d) of the 1949 Act provides that, effective for the period beginning October 1, 1987, and ending December 31, 1990, the price of milk shall be supported at a rate equal to $11.10 per cwt. for milk containing 3.67 per centum milkfat. This is a reduction in the support price for milk which has been $11.35 per cwt. since January 1, 1987.

Section 201(d) of the 1949 Act also provides for an increase or decrease of 50 cents per cwt. in the price support level for milk from that in effect on January 1, 1988, 1989, and 1990, on the basis of the Secretary of Agriculture's estimates of net surplus purchases of dairy products under the milk price support program for the respective calendar years 1988, 1989, and 1990.

It has been determined that the purchase by CCC of butter, cheese and nonfat dry milk produced on or after October 1, 1987, at the prices set forth in this notice will support the price of milk, during the period October 1, 1987, through December 31, 1987, at a rate equivalent to $11.10 per cwt. for milk containing 3.67 percent milkfat.

Determinations

Accordingly:

(1) The level of price support for the period October 1, 1987, through December 31, 1987, shall be $11.10 per cwt. for milk containing 3.67 percent milkfat.

(2) The purchase of butter, cheese and nonfat dry milk produced on or after October 1, 1987, at the prices set forth below will support the price of milk at a rate equivalent to $11.10 per cwt. for milk containing 3.67 per centum milkfat. Therefore, effective October 1, 1987, through December 31, 1987, Commodity Credit Corporation (CCC) purchase prices for butter, cheese and nonfat dry milk shall be as follows:

[Dollars per pound]

	Products produced before October 1, 1987, and Graded and offered by October 15, 1987	Products produced on or after October 1, 1987, or not graded and offered by October 15, 1987
Butter, 64. & 68-lb. blocks (U.S. Grade A or higher)	1.3775	1.3575
Nonfat dry milk (spray), 50-lb. bags (U.S. Extra Grade, but not more than 3.5 percent moisture):		
Nonfortified	.7875	.7675
Fortified (Vitamins A and D)	.7975	.7775
Cheddar cheese, standard moisture basis:[1]		
40- and 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 38.5 percent moisture)	1.2250	1.2000
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 36.5 percent moisture)	1.1825	1.1575

[1] The cheese price will be adjusted for moisture content, except that the price adjustment for cheese with a moisture content of less than 34 percent will not exceed that for cheese with a moisture content of 34 percent.

(3) Further terms and conditions for CCC price-support purchases of butter, cheese, and nonfat dry milk will be set forth in CCC purchase announcements with respect to such purchases.

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended, 63 State. 1042, as amended (7 U.S.C. 1446(d)); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 62 Stat. 1072 (15 U.S.C. 714b and 714c).

Signed at Washington, DC, on September 15, 1987.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 87-22643 Filed 9-30-87; 8:45 am]

BILLING CODE 3410-05-M

Office of Energy

Change in Date of Meeting; USDA National Panel on Cost Effectiveness of Fuel Ethanol Production

AGENCY: Office of Energy, USDA.

ACTION: Notice of Change in meeting date.

SUMMARY: In accordance with Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Office of Energy, USDA announces a change in the date of a forthcoming meeting of the National Panel on Cost Effectiveness of Fuel Ethanol Production.

The meeting scheduled for October 14, 1987, as previously announced in the **Register Register** (52 FR 32821) has been cancelled. A new date for the meeting has been scheduled

DATE AND TIME: October 22, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: Main Conference Room, 4300 King Street, Alexandria, Va. 22302.

FOR FURTHER INFORMATION CONTACT: Earle E. Gavett, Office of Energy, USDA, Washington, DC 20250-2600, 202-447-2634.

SUPPLEMENTARY INFORMATION: The USDA National Panel on Cost Effectiveness of Fuel Ethanol Production was established under section 13 of the Farm Disaster Assistance Act of 1984 (Pub. L. 100-45) to conduct a study of the cost effectiveness of fuel ethanol production for Congress and the Secretary of Agriculture. The Panel is comprised of seven members representing various agricultural, fuel ethanol and government interests.

The meeting will be open to the public

Agenda: October 22, 1987.

8:30 a.m.—Review and approve Final Report.

4:30 p.m.—Adjourn.

Earle E. Gavett,

Director, Office of Energy.

[FR Doc. 87-22696 Filed 9-30-87; 8:45 am]

BILLING CODE 3410-73-M

National Panel on Cost Effectiveness of Fuel Ethanol Production; Meeting by Conference Call

AGENCY: Office of Energy, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Office of Energy, USDA announces a forthcoming meeting by conference call of the National Panel on Cost Effectiveness of Fuel Ethanol Production.

DATE AND TIME: October 15, 1987, 10:00 a.m. Eastern Daylight Savings Time.

ADDRESS: Main Conference Room, Fourth Floor, 4300 King Street, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Earle E. Gavett, Office of Energy, USDA, Washington, DC 20250–2600, 202–447–2634.

SUPPLEMENTARY INFORMATION: The USDA National Panel on Cost Effectiveness of Fuel Ethanol was established under section 13 of the Farm Disaster Assistance Act of 1987 (Pub. L. 100–45) to conduct a study of the cost effectiveness of fuel ethanol production for Congress and the Secretary of Agriculture. The Panel is comprised of seven members representing various agricultural, fuel ethanol and government interests. The meeting will be open to the public.

Agenda

10:00 a.m. Discussion of revised Chapter 3, Ethanol Fuels and Agriculture, of draft report.

12:00 noon (approximately). Adjourn.

Earle E. Gavett,

Director, Office of Energy.

[FR Doc. 87–22695 Field 9–30–87; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Designation Renewal of the Hastings Agency (NE) and State of New York

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Hastings Grain Inspection, Inc. (Hastings) and New York State Department of Agriculture and Markets (New York), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: November 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Hastings' and New York's designations terminate on October 31, 1987, and requested applications for official agency designation to provide official services within specified geographic areas in the May 1, 1987, **Federal Register** (52 FR 15967). Applications were to be postmarked by June 1, 1987. Hastings and New York were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant names in the July 1, 1987, **Federal Register** (52 FR 24489) and requested comments on the designation renewal of Hastings and New York. Comments were to be postmarked by August 17, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Hastings and New York are able to provide official services in the geographic area for which the Service is renewing their designations. Effective November 1, 1987, and terminating October 31, 1990, Hastings and New York will provide official inspection service in their entire specified geographic area, previously described in the May 1 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agencies at the following addresses: Hastings Grain Inspection, Inc., 306 East Park Street, Hastings, NE 68901, and New York State Department of Agriculture and Markets, State Campus, Building 8, Albany, NY 12235.

(Pub. L. 94–582, 90 Stat. 2867, as amended, 7 U.S.C. 71 et seq.)

Date: September 16, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–22485 Filed 9–30–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the States of California and Washington

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to the California Department of Food and Agriculture (California) and Washington Department of Agriculture (Washington).

DATE: Comments to be postmarked on or before November 16, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken
TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the August 3, 1987, **Federal Register** (52 FR 28738). Applications were to be postmarked by September 2, 1987. California and Washington were the only applicants for designation in their geographic area and

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each applied for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended, 7 U.S.C. 71 *et seq.*)

Date: September 16, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–22486 Filed 9–30–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Gibson City (IL) and Indianapolis (IN) Agencies and State of Wyoming

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and Wyoming Department of Agriculture (Wyoming).

DATE: Applications to be postmarked on or before November 2, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FCIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Gibson City, located at 207 East 8th Street, P.O. Box 20, Gibson City, IL 60936; Indianapolis, located at 4804 East Michigan Street, Indianapolis, IN 46201; and Wyoming, located at 2219 Carey Avenue, Cheyenne, WY 82001–0010, were each designated under the Act as an official agency to provide inspection functions on April 1, 1985.

Each official agency's designation terminates on March 31, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Gibson City, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Livingston County line from the ICG Railroad line;

Bounded on the East by the Livingston County line; the Ford County line; the southern Ford County line west to Interstate 57; Interstate 57 south to State Route 136;

Bounded on the South by State Route 136 west to a point approximately 10 miles west of the eastern McLean County line; and

Bounded on the West from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with the ICG Railroad line northeast to the northern Livingston County line.

The following location, outside of the foregoing contiguous geographic area is presently assigned to Gibson City and is part of this geographic area assignment: Farm Service, Arrowsmith, McLean County.

An exception to the described geographic area is the following location situated inside Gibson City's area which has been and will continue to be serviced by Bloomington Grain Inspection Department: Bunge Corporation, Pontiac, Livingston County.

The geographic area presently assigned to Indianapolis, in the State of Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

The geographic area presently assigned to Wyoming, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Wyoming, except the geographic area assigned to Denver Grain Inspection, which is as follows: Goshen County, Platte County, and these locations in Laramie County: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs.

Interested parties, including Gibson City, Indianapolis, and Wyoming, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning April 1, 1988, and ending March 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended, 7 U.S.C. 71 *et seq.*)

Dated: September 16, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–22488 Filed 9–30–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Kankakee, IL, Geographic Area

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the Kankakee, Illinois, geographic area.

DATE: Comments to be postmarked on or before November 16, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken
TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced the cancellation of designation of Kankakee Grain Inspection Bureau, Inc., effective January 31, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the August 3, 1987, **Federal Register** (52 FR 28739). Applications were to be postmarked by September 2, 1987. There were two applicants for designation in the Kankakee, Illinois, geographic area. Michael J. Fegan, Kankakee, Illinois, proposing to establish a new corporation with the name Kankakee Grain Inspection Bureau, Inc., applied for designation in the entire area available for assignment. Mark A. Beaupre, St. Anne, Illinois, proposing to do business as Illinois Valley Inspection, applied for designation in the entire area available for assignment.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended 7 U.S.C. 71 *et seq.*)

Date: September 16, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–22487 Filed 9–30–87; 8:45 am]

BILLING CODE 3410–EN–M

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department of Agriculture is updating the Thrifty Food Plan which determines the maximum amount of food stamps which participating households receive in the 48 States and DC. The Department is also updating the standard deduction and the maximum amounts for the excess shelter deduction available to certain households. These adjustments, required by law, take into account changes in the cost of living.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3385. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Mr. O'Connor.

SUPPLEMENTARY INFORMATION:

Publication

State agencies must implement this action on October 1, 1987, and need advance notice of the new amounts to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982) annual statutory adjustments to the Thrifty Food Plan and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment, or innovation.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notices(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action

This action is required by sections 3(o) and 5(e) of the Food Stamp Act of 1977, as amended. Section 3(o) requires that the October 1, 1987 change in food stamp allotments be based upon the June 1987 cost of the Thrifty Food Plan for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale, and a requirement to round the final results down to the nearest dollar increments. Section 5(e), as amended by Pub. L. 100–

77, requires that the standard deduction be adjusted on October 1, 1987 to the nearest lower dollar increments to reflect certain changes for the twelve months ending June 30, 1987.

Section 5(e), as amended by Pub. L. 100–77, also requires that the maximum amounts for the maximum excess shelter expense deduction be increased to $164 for households in the 48 States and DC, whose certification periods begin on or after October 1, 1987. Households whose certification periods begin before October 1, 1987 will have their shelter deductions adjusted on October 1, 1987 to the nearest lower dollar increments to reflect certain changes for the twelve months ending June 30, 1987. (This reflects the statutory provisions existing prior to the amendments made by Pub. L. 100–77.) When these households are recertified on or after October 1, 1987, they will have their maximum excess shelter expense deduction increased to $164 in the 48 States and DC. There would be comparable increases for households in Alaska, Hawaii, Guam, and the Virgin Islands.

Benefits

This action increases maximum food stamp allotments and deductions based on the rising cost of living.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $1,210 million in Fiscal Year 1988.

Background

Thrift Food Plan (TFP)

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets all dietary standards. The cost of the TFP is adjusted annually to reflect changes in the costs of the food groups.

The TFP also constitutes the basis for allotments for food stamp households. As such, the cost of the TFP is the maximum benefit level payable to a household of a particular size. The maximum benefit is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the TFP for their household size by 30 percent of the household's net income.

The cost of the TFP is adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended, provides that the next adjustment will take place on October 1, 1987, based upon June 1987 TFP costs for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. In June 1987, this TFP value was $290.40 in the 48 States and DC. June 1987 TFPs and allotments for Alaska, Hawaii, Guam, and the Virgin Islands will be published in a separate Notice in the **Federal Register**.

To obtain the maximum food stamp benefit for each household size, the TFP costs for the four-person household were divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar.

The following table shows the new allotments for the 48 States and DC.

THRIFTY FOOD PLAN AMOUNTS [1]—OCTOBER 1987, AS ADJUSTED

Household size	48 States and District of Columbia
1	$87
2	159
3	228
4	290
5	344
6	413
7	457
8	522
Each additional member	+65

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and rounding.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income. The standard deduction is available to all households. The excess shelter expense deduction is available to those with extremely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly members.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households shall be allowed a standard deduction. The Act also requires that these deductions be adjusted periodically. These deductions were last adjusted effective October 1, 1986. Pub. L. 100–77 provides that the adjustment in the level of the standard deduction shall take into account changes in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics (BLS) for items other than food. The adjustments are, by law, rounded to the nearest lower dollar. The following table shows the deductions resulting from the last adjustment, the unrounded result of updating this adjustment, and the new deduction amounts that go into effect on October 1, 1987.

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous deductions (Effective 10–1–86)	New unrounded Nos. (10–1–87)	Deductions effective 10/1/87
48 States and DC	$99	$102.62	$102
Alaska	169	175.04	175
Hawaii	140	144.88	144
Guam	198	205.22	205
Virgin Islands	87	90.53	90

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain excess shelter expenses. There is a maximum amount for the excess shelter deduction, unless the household has an elderly or disabled member, in which case there is no maximum. Pub. L. 100–77 provides new amounts for the maximum excess shelter expense deductions. According to that statute, these amounts will be phased-in as households' certification periods become effective on or after October 1, 1987. These amounts are $164 a month in the 48 States and DC, $285 in Alaska, $234 in Hawaii, $199 in Guam, and $121 in the Virgin Islands. The statutory provisions existing prior to the amendments made by Pub. L. 100–77 would remain in effect for households whose certification periods begin before October 1, 1987, until the household is recertified. Under that prior existing statutory provision, the maximum amount for the excess shelter expense deduction is adjusted annually each October 1, based on changes in the shelter (exclusive of homeowners' costs and maintenance and repair component of shelter costs), fuel and utilities components of housing costs in the CPI-U published by BLS. Under Pub. L. 100–77, the maximum amount for the excess shelter expense deduction will be adjusted annually beginning October 1, 1988, based on changes in the shelter, fuel, and utilities components of the CPI-U.

The following table shows the shelter deductions resulting from the last adjustment, the shelter deductions for participating households whose certification periods begin before October 1, 1987, and the shelter deductions for new applicants and recertifications on or after October 1, 1987.

SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBERS

	Shelter deductions (Effective 10/1/86)	Shelter deductions for households whose certification periods begin before 10/1/87	Shelter deductions for households whose certification periods begin on or after 10/1/87
48 States and DC	$149	152	164
Alaska	257	261	285
Hawaii	213	217	234
Guam	182	185	199
Virgin Islands	111	112	121

Dependent Care Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain dependent care expenses. The maximum amount for the dependent care deduction is $160 a month. This amount is not adjusted to take into account changes in the cost of living so it will not be affected by this action.

(91 Stat. 958 (7 U.S.C. 2011, et seq.))

Dated: September 25, 1987.

Suzanne S. Harris,

Deputy Assistant Secretary Food and Consumer Services.

[FR Doc. 87–22678 Filed 9–30–87; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Suitability Studies for Twelve Rivers Being Considered for National Wild and Scenic River Status

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to study the suitability or non-suitability of twelve rivers on the Ozark National Forest in Arkansas for inclusion in the National Wild and Scenic Rivers System. The agency invites written comments and suggestions on the suitability of these twelve rivers. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the suitability of these twelve rivers must be received by October 30, 1987.

ADDRESS: Submit written comments and suggestions concerning the suitability of these rivers to Lynn C. Neff, Forest Supervisor, or Jack Fortin, Forest Planner, Ozark-St. Francis National Forest, P.O. Box 1008, Russellville, Arkansas 72801.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Jack Fortin, Forest Planner, Ozark-St. Francis National Forest, P.O. Box 1008, Russellville, Arkansas 72801, phone 501–968–2354.

SUPPLEMENTARY INFORMATION: The Ozark-St. Francis National Forests Land and Resource Management Plan, with amendments, determined the eligibility of segments of these 12 rivers, which were initially identified in the 1982 Nationwide Rivers Inventory, and recommended that suitability studies be conducted later. The planned EIS is in response to this direction.

The suitability study and EIS will consider the following rivers or river segments:

	Miles
Buffalo River (head to Forest boundary)	15.8
East Fork of Little Buffalo River (head to Forest boundary)	6.7
Illinois Bayou (Bayou Bluff to Forest boundary)	4.4
Illinois Bayou, North Fork (entire length)	22.6
Illinois Bayou, East Fork (entire length)	14.9
Illinois Bayou, Middle Fork (entire length)	21.4
Mulberry River (head to Forest boundary)	56.0
Big Piney Creek (head to Forest boundary)	45.2

Richland Creek (head to Forest boundary)	22.7
Falling Water Creek (entire length)	10.6
North Sylamore Creek (entire length)	20.4
Cole Fork Branch (entire length)	5.5

The area of consideration for each stream is a minimum of ¼ mile from each stream bank for the entire length of the stream within the Ozark National Forest boundary.

Donald B. Hurlbut, Forester, will be the interdisciplinary team leader.

Public participation will be especially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement.

Informal public meetings will be held at Russellville and Little Rock, Arkansas, in the early stages of the analysis to inform the public of the analysis process and to provide for public participation and involvement. Additional meetings may be held in other locations. Federal, State, and local agencies, user groups, and other organizations who may be interested in the study will be invited to participate in scoping the issues that should be considered.

Richard E. Lyng, Secretary of Agriculture, is the responsible official.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1988. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on this draft environmental impact statement will be 90 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the suitability of these twelve rivers for inclusion in the National Wild and Scenic River System participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement and the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final Environmental Impact Statement. The final environmental impact statement is scheduled to be completed by June 1989. The Secretary will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of these rivers for inclusion in the National Wild and Scenic Rivers System. The decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: September 23, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 87-22621 Filed 9-30-87; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Dry Creek Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Envrionmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dry Creek Watershed, Marengo County, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821-8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing excessive erosion (45 tons per acre annually) on sloping cropland and reducing flooding on 3,840 acres of agricultural land. The planned works of improvement include land use conversion on 690 acres of marginal cropland, accelerated conservation land treatment on 1,580 acres of cropland, and installation of 8 flood-water retarding structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 24, 1987.

Ernest V. Todd,

State Conservationist.

[FR Doc. 87-22602 Filed 9-30-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 17-87]

Foreign-Trade Zone 50-Long Beach, California Request for Manufacturing for Daihatsu Off-Road Vehicle Assembly

The Port of Long Beach, grantee of FTZ 50, Long Beach, California, has requested manufacturing approval from the Foreign-Trade Zones Board to allow the use of zone procedures within FTZ 50 by Daihatsu America, Inc., for the assembly of off-road passenger vehicles. The request was filed on September 23, 1987.

Daihatsu is planning to assemble a small (1500 lbs., 30 horsepower) off-road "people-mover" passenger vehicle using a foreign-produced, motorized chassis which accounts for some 62 percent of the total material value of the vehicle. All remaining parts and material required to produce the cab and body, and to assemble the vehicle will be purchased domestically, such as fiberglass body panels, body electrical system, canopy, frame, soft top, windshield, seats and trim.

Zone procedures would allow Daihatsu to take advantage of the same duty rate available to importers of finished passenger vehicles. The duty rate on finished vehicles is 2.5 percent, whereas the rate on the motorized chassis is 25.0 percent (light truck rate). The application indicates that zone procedures will encourage Daihatsu to establish the operation in this country rather than import the finished vehicle, which would qualify for the 2.5 percent rate.

Comments on the proposed manufacturing operation are invited in writing from interested persons and organizations. They should be addressed to the Board's executive secretary at the address below and postmarked before October 30, 1987.

A copy of the application is available for public inspection at the office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Constitution Avenue NW., Washington, DC 20230.

Dated: September 28, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-22677 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-401]

Antidumping; Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 11, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period July 10, 1984 through February 28, 1986.

We gave interested parties the opportunity to comment on our preliminary results. In addition, the Department accepted supplementary information from the manufacturer on July 1, 1987. The final results of review are unchanged form those presented in the preliminary results.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 17616) the preliminary results of its administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy (50 FR 8354, March 1, 1985). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain valves and connections, of brass, suitable for use in interior fire protection systems from Italy. This merchandise consists of single and double clapper siamese fire department connections and pressure restricting valves, currently classifiable under items 680.1420 and 680.1440, respectively, of the Tariff Schedules of the United States Annotated ("TSUSA").

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. The petitioner, Badger-Powhatan, submitted comments.

Comment 1: Petitioner requests that the Department determine whether liquidation of entries transshipped by Ganbrook, Ltd. has been suspended and estimated dumping duties have been collected by the Customs Service. Petitioner alleges that merchandise may have been incorrectly classified according to TSUSA classification and/or country of origin.

Department's Position: The Department has contacted Customs to verify that liquidation has been suspended on all entries by Ganbrook of merchandise within the scope of the order. Should Customs determine that liquidation of entries was not suspended because entries were improperly classified, Customs will take appropriate corrective action.

Comment 2: Petition claims that cost of production data submitted by Giacomini, S.p.A. were unreliable and should be rejected in favor of the best information otherwise available for determining foreign market value. Specifically, petitioner claims that transfer prices for forged items from a related firm are suspect; that the transfer prices of stems from another supplier, possibly related to Giacomini, are suspect; that set-up time and idle time were not included in the cost of production; that labor costs were based on the minimum national hourly costs of labor rather than the firm's actual labor costs; and that depreciation and factory overhead were not included in Giacomini's cost data. Petitioner asserts that because of these deficiencies the respondent's data should be dismissed in favor of the petitioner's market research report as the best information available.

Department's Position: We disagree. After examining price and cost data from the respondent and its suppliers we have established that the data are reliable and adequate. In supplemental data submitted, the respondent explained that the price of forged components is established by the forging firm according to standard market prices, and that price is a function of weight. The respondent submitted invoices from the related forging firm and from other unrelated suppliers which showed that the per kilogram prices from the related firm were comparable to those of the unrelated suppliers. There is no evidence of the related firm selling to Giacomini at less than an arm's-length price. The invoices from the related firm reflect actual prices for forged items used in products exported to the U.S. Therefore we conclude that the respondent's transfer price data are reliable and accurate, and we consider these the most appropriate for use as the acquisition cost on a constructed value situation.

We have no evidence that the firm which supplies stems and the respondent are related within the meaning of section 733(e)(3) of the Tariff Act. Therefore we appropriately used the price from the supplier in calculating constructed value.

In supplemental data submitted to the Department, the respondent clarified that costs for setup and idle time, labor, and depreciation and factory overhead were included in its cost of production submission as elements of processing.

Processing costs were examined and verified during the fair value investigation and found to have included the elements in question. Labor costs were based on actual company wage rates. We therefore conclude that Giacomini's submitted cost data are complete, are a reflection of the firm's own costs, and are acceptable.

Final Results of the Review

We invited interested parties to comment on the preliminary results. Based on our analysis of the comments and data received, the final results of review are unchanged from those presented in the preliminary results. We determine that the following weighted-average margins exist for the period July 10, 1984 through February 28, 1986:

Manufacturer/Exporter	Margin (percent)
Rubinetterie A. Giacomini S.p.A.	0.00
Giacomini/Ganbrook Ltd.	85.54

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above for Giacomini/Ganbrook.

The Department will issue appraisement instructions directly to the Customs Service. Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required.

For any future entries of this merchandise from a new exporter not covered in this administrative review, whose first shipments occurred after February 28, 1986 and who is unrelated to either reviewed party, a cash deposit of 85.54 percent shall be required. These deposit requirements are effective for all shipments of certain Italian valves and connections, of brass, for use in fire protection systems, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and 19 CFR 353.53a.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

Date: September 24, 1987.

[FR Doc. 87-22676 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Nos. 7104-01 and 7104-02]

Actions Affecting Export Privileges; Richard P. Boucher

Summary

Pursuant to the consent agreement reached by the Department of Commerce and Richard Paul Boucher in the above captioned proceeding, which agreement was approved by the Administrative Law Judge in his Recommended Decision and Order, Richard Paul Boucher, individually and doing business as Young Sales and Service, Inc., both with addresses at One Cotton Road, Nashua, New Hampshire 03063, is hereby denied all export privileges for a period of five (5) years from the date of this Order.

Order

On August 26, 1987, the Administrative Law Judge (ALJ) entered an order approving the consent proposal submitted by the parties in the above referenced matter. The Recommended Decision and Order was referred to me pursuant to the Export Administrative Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.17(a), for final action.

I hereby modify the second sentence in paragraph two of the ALJ's Decision by deleting that sentence and inserting in lieu thereof the following:

Boucher admits that the facts as stated in the charging letter are true. I find that those allegations, admitted by Boucher to be true, constitute violations of the Export Administration Act of 1979, as amended by the Export Administration Amendments Act of 1985 and the Regulations promulgated thereunder. Boucher wishes to settle and dispose of all matters identified in the charging letter by entering into this consent agreement.

Paragraph II of the ALJ's Order is hereby modified by deleting that paragraph and inserting in lieu thereof the following:

II. All outstanding individual validated export licenses in which Boucher appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Boucher's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Having examined the record and based on the facts adduced in this case, I affirm the Recommended Decision and Order of the ALJ as thus modified.

This constitutes final agency action in this matter.

Date: September 25, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Decision and Order Affirming Settlement Agreement

In the matter of Richard Paul Boucher, individually and doing business as Young sales and Service, Inc. Respondent; Docket Numbers 7104-01 and 7104-02.

An administrative proceeding was initiated against Richard Paul Boucher, individually and doing business as Young Sales and Service, Inc., (hereinafter collectively referred to as "Boucher"), pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985)) (the Act), and the Export Administration Regualtions (currently codified at 15 CFR Parts 368-399 (1986)), (the Regulations). The Office of Export Enforcement issued a charging letter on April 23, 1987, alleging that between May 15, 1981 through May 8, 1982, Boucher violated §§ 387.45, 385.5 and 387.6 of the Regulations, in that:

(a) Between May 15, 1981 and May 8, 1982, Boucher exported U.S.-origin computer equipment from the United States through Canada to Switzerland, as well as directly from the United States to Switzerland, without the validated export licenses which Boucher knew of had reason to know were required by § 372.1 of the Regulations and that Boucher made false and misleading statements of material fact on export control documents;

Pursuant to 15 CFR 388.17, the Agency and Boucher, individually and doing business as Young Sales and Service, Inc. have agreed to and submitted a consent proposal to this office whereby Agency counsel and Respondent have agreed to settle this matter. Respondent Boucher admits that he violated the regulations as alleged in the charging letter and that this matter is being settled by a denial to Boucher of all export privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad for a period of five years following the effective date of this Order.

I find that these terms are sufficient to achieve effective enforcement of the Act and the Regulations. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations,

It is ordered:

I. For a period of 5 years from the date that this Order becomes final,

Respondent Richard Paul Boucher, individually and doing business as Young Sales and Service, Inc., One Cotton Road, Nashua, New Hampshire 03060, any successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating directly or indirectly in any manner of capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations.

II. All outstanding validated export licenses in which Boucher or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation.

III. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or related party may obtain any benefit therefrom or have interest or participation therein, diectly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related party denied export privileges; or (b) order, buy, receive, use sell deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to the Export Administration Act (50 U.S.C.A. app. 2412(c)(1)).

Date: August 26, 1987.

Hugh J. Dolan

Administrative Law Judge.

[FR Doc. 87-22649 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 7689-01 and 7689-02]

Actions Affecting Export Privileges; Klaus Franz Josef Talleur

Summary

Pursuant to the consent agreement reached by the Department of Commerce and Klaus Franz Josef Talleur, in the above captioned proceeding, which agreement was approved by the Administrative Law Judge in his Recommended Decision and Order, Klaus Franz Josef Talleur, individually and doing business as Contacta Project Engineering and Consulting GmbH, both with addresses at Kleiststrausse 29, D-6024 Taunusstein 1, Federal Republic of Germany, is hereby denied all export privileges for two (2) years from the date of this Order. As authorized by § 388.16(c) of the Export Administration Regulations (15 CFR Parts 368-399(1986)) (Regulations), the denial period is suspended for one year from the date of this Order, provided Talleur has provided to the Department of Commerce any and all assistance requested by the Department in connection with any other administrative proceeding initiated by the Department against any other party with respect to the matters identified in the Charging Letter. The denial period will be waived at the end of the one-year suspension period provided that during the period of suspension Talleur has: (1) Complied with the terms of this Order; and (2) committed no violation of the Act or any regulation, order or license issued under the Act.

Order

On August 26, 1987, the Administrative Law Judge (ALJ) issued his Recommended Decision and Order approving the consent proposal submitted by the parties in the above referenced matter. The Recommended Decision and Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.17(a) (the Act), for final action.

I hereby modify paragraph seven of the ALJ's Decision by deleting that paragraph and inserting in lieu thereof the following:

Talleur admits that the facts as stated in the charging letter are true. I find that these allegations, admitted by Talleur, constitute violations of the Act and the Regulations. Talleur wishs to settle and dispose of all matters identified in the charging letter by entering into this consent agreement.

Paragraph VI of the ALJ's Recommended Order is hereby modified by inserting at the end of that paragraph:

The provisions of Paragraph VI of this Order are also suspended during the one year suspension period.

Having examined the record and based on the facts adduced in this case, I affirm the Recommended Decision and Order of the ALJ as thus modified.

This constitutes final agency action in this matter.

Dated: September 25, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Decision and Order Affirming Settlement Agreement

In the matter of Klaus Franz Josef Talleur Contacta Project Engineering and Consulting GmbH, respondent; Docket Nos. 7689-01 and 7689-02.

Appearance for Respondent: Klaus Franz Josef Talleur, Kleiststr. 29, D-6204 Taunusstein 1, Federal Republic of Germany.

Appearance for Agency: Thomas C. Barbour, Esq., Office of Deputy Chief Counsel, Department of Commerce, 14th & Constitution Ave., Washington, DC 20230.

A proceeding was initiated on July 11, 1986 against Klaus Franz Josef Talleur,

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individually and doing business as Contacta Project Engineering and Consulting GmbH (hereinafter collectively referred to as "Talleur"), Kleiststrasse 29 D–6204 Taunusstein 1, Federal Republic of Germany, by the issuance of a charging letter by the Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency). The Respondent was charged with violating the provisions of §§ 387.3, 387.5 and 387.6 of the Export Regulations, codified at 15 CFR Parts 368 through 399 (the Regulations), issued pursuant to 50 U.S.C.A. app. 2401–2402 (the Act).

In the charging letter, OEE alleged that Respondent violated the Act and the Regulations during the period from October 30, 1981 through March 25, 1982, by:

Conspiring with Anna Landau (a/k/a Anna Wellems, a/k/a Anna Wellems-Landau), Jeannette Wellems and Guenther Nachtrab to bring about acts that constitute violations of the Act and the Regulations, misrepresenting material facts on export control documents, and reexporting U.S.-origin commodities from the Federal Republic of Germany to Austria without the required reexport authorizations from the Department.

Implementing the conspiracy through involvement in the following overt acts; Talleur signed a Form ITA–6052P, Statement by Foreign Consignee in Support of Sepcial License Application, which Nachtrab submitted to the Agency in support of Nachtrab's application for a distribution license. The Form ITA–6052P signed by the Respondent contained false and misleading statements of material fact concerning Talleur's prior business relationships with The Electronics Exchange, a company owned by Nachtrab, in violation of § 387.5 of the Regulations.

The Respondent also reexported four shipments of U.S.-origin goods, identified in Schedule A which is attached hereto and incorporated herein by this reference, from the Federal Republic of Germany to Landau and Wellems in Austria, without the required reexport authorization from the Agency, in violation of § 387.6 of the Regulations.

The Agency alleges that the Respondent committed a total of six violations of the Act and the Regulations, each of which involves U.S.-origin commodities controlled under Section 5 of the Act for national security reasons.

Pursuant to 15 CFR 388.17, the Agency and the Respondent have submitted a timely consent proposal to this Office whereby Klaus Franz Josef Talleur, individually and doing business as Contacta Project Engineering and Consulting GmbH, has agreed to settle these matters by admitting the above allegations as true and agreeing to a denial to Talleur of all export privileges for a period of two years following the date of entry of this Order.

I find that these terms are sufficient to achieve effective enforcement of the Act and the Regulations. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, it is ordered:

I. For a period of two years from the date that this Order becomes effective, Respondent Klaus Franz Josef Talleur, individually and doing business as Contacta Project Engineering and Consulting GmbH, Kleiststrasse 29, D–6204 Taunusstein, Federal Republic of Germany, any successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating directly or indirectly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations.

II. The two year denial period set forth above is hereby suspended for 1-year from the date on which this Order becomes final in accordance with § 388.16(c) of the regulations and will be remitted withut further action at the end of that period provided Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the one year suspension period, Respondent may participate in transactions involving the export of the U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and regulations. The provisions of Paragraph III of this Order are also suspended during the 1-year period.

III. All outstanding validated export licenses in which Talleur or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation.

IV. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

V. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. Respondent shall, to the extent he has not already done so, provide to the Agency any and all assistance requested by the Agency in connection with any other administrative proceeding

initiated by the Agency against any other party with respect to the matters indentified in the charging letter.

VIII. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to the Export Administration Act (50 U.S.C.A. app. 2412(c)(1)).

Date: August 26, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 87-22648 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-DT-M

Short-Supply Review on Certain Pipe; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Pipe and Tube Arrangement, Article 8 of the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain seamless hot-finished alloy steel pipe.

DATE: Comments must be submitted no later than October 13, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Pipe and Tube Arrangement, Article 8 of the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for seamless hot-finished alloy steel pipe meeting ASTM specification A335, grades P11, P22, P5 and P9, in wall thicknesses ranging from 0.203 to 1.312 inches and diameters ranging from 2 to 16 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than October 13, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 25, 1987.

[FR Doc. 87-22673 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Steel Plate; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and Request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel plate used in the manufacture of pipe.

DATE: Comments must be submitted on or before October 13, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *"

We have received a short-supply request for structural and API 5LX grades of steel plate, 0.25 to 1.50 inches in thickness, 72 inches or more in width, for use in producing large diameter pipe.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than October 13, 1987.) Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business propriety portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 25, 1987.

[FR Doc. 87-22674 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Meeting; Gulf of Mexico Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Billfish Advisory Panel at the Landmark Motor Hotel, 2601 Severn Avenue, Metairie, LA. The Panel will convene October 27, 1987, at 1 p.m., to review the provisions of the draft billfish plan, and will adjourn October 28 at noon.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard,

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Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: September 22, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–22638 Filed 9–30–87; 8:45 am]

BILLING CODE 3510–22–M

Meeting: New England Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Ramada Inn, Mystic CT, to discuss reports of the groundfish, foreign fishing and scallop oversight committees; the recent public hearings on billfish and Atlantic salmon with pending final approval of the Atlantic Salmon Fishery Management Plan; amendments to the Magnuson Fishery Conservation and Management Act and a revised draft of the Uniform Standards, as well as other fishery management and administrative matters. The public meeting will convene October 7, 1987, at approximately 9 a.m. and will adjourn at approximately 5 p.m.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Dated: September 22, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–22639 Filed 9–30–87; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Meeting; Defense Acquisition Regulatory Council

AGENCIES: Department of Defense (DoD), National Aeronautics and Space Administration (NASA).

ACTION: Notice of meetings.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council will travel to Huntsville, Alabama, and San Francisco, California, during the week of October 26, 1987. The Council will conduct joint Government/Industry meetings at both locations and will discuss acquisition topics of mutual interest. The Council will be available for questions on specific DAR cases and issues.

DATES: October 27, 1987 and October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council.

SUPPLEMENTARY INFORMATION: The U.S. Army Missile Command, RedStone Arsenal, Huntsville, Alabama 35899–5280, will host the Council's meeting on Tuesday, October 27, 1987, from 8 a.m. to 4:30 p.m. The point of contact for additional information is Randy Nevels, (205) 876–5373 (AV 746–5373).

The NASA/Ames Research Center will host the Council's meeting on Thursday, October 29, 1987, from 8 a.m. until 4:30 p.m., at the new Westin Hotel adjacent to the San Francisco airport. Advance registration for the meeting is required. Contact the conference coordinator, (415) 694–5800 on or before close of business on October 15, 1987 to register. The registration fee is $25.00.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 87–22589 Filed 9–30–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Open Meeting; Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of The Committee: Army Science Board (ASB)

Date of Meeting: 18 October 1987

Time: 1600 Hours

Place: Fayetteville, North Carolina

Agenda: The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations will meet to draft the final report on briefings received by the subgroup during the past year. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Richard E. Entlich,

Executive Secretary, Colonel, GS, Army Science Board.

[FR Doc. 87–22647 Filed 9–30–87; 8:45 am]

BILLING CODE 3710–08–M

National Security Agency

Privacy Act of 1974; Amended Record Systems

AGENCY: National Security Agency (NSA), DOD.

ACTION: Notice for public comment of amended record systems subject to the Privacy Act.

SUMMARY: The National Security Agency proposes to amend the systems notices for two systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: These system notices shall be amended as proposed without further notice on or before November 2, 1987, unless comments are received that would result in a contrary determination.

ADDRESS: Send any comments to Patricia Schuyler, Office of Policy, National Security Agency, Fort George G. Meade, MD, 20755–6000. Telephone: 301–688–6527.

FOR FURTHER INFORMATION CONTACT: Vito T Potenza, Assistant General Counsel (Litigation), Office of General Counsel, National Security Agency, Fort George G. Meade, MD, 20755–6000. Telephone 301–688–6054.

SUPPLEMENTARY INFORMATION: The National Security Agency Systems of Records Notices subject to the Privacy Act of 1974 have been published in the **Federal Register** on May 29, 1985, FR Doc. 85–10237 (50 FR 22584) (Compilation).

The specific changes to the record systems being amended are set forth below followed by the system notices, as amended, published in their entirety.

These proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of new or altered systems reports.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 28, 1987.

AMENDMENTS

GNSA 04

System Name:

NSA/CSS Cryptologic Reserve Mobilization Designee List (50 FR 22588) May 29, 1985

Changes:

System Name: Delete entry; substitute therefore: "NSA/CSS Military Reserve Personnel Data Base."

System location: After Decentralized Segments; substitute therefore: "Each staff, line, field element and military service as authorized and appropriate."

Categories of individuals covered by the system: After "duty military"; substitute therefore: "reserve personnel assigned to NSA mobilization billets, requesting to perform on-the-job training in NSA work centers, or scheduled to attend formal and resident courses of instruction under the auspices or sponsorship of NSA."

Categories of records in the system: Delete entry; substitute therefore: "File contains correspondence, papers, and forms relating to individual's service extracted from his/her military personnel records including but not limited to military service, enlistment or related service agreement/extension/orders, active duty records; duty status, reserve status; qualifications for active military duty assignments; clearance data; applications/nominations for assignments; pictures; military check-in/our sheets; military skill specialty evaluation data; active duty training; service record brief, military personnel utilization survey; correspondence courses, educational/academic records; application for ID; efficiency or fitness records; application/prior service enlistment documents; work experiences; professionalization documentation; achievement certificates, suggestions; personnel screening and evaluation records; acknowledgement of service requirements; temporary disability record; change of name; documents relating to promotion or non-selection, transfers, leave, pay entitlements, financial records, awards, health or medical records, reports of proceedings of physical fitness boards, birth certificates, citizenship statements and status; passport, questionaire/records of security clearances, language capability, language proficiency questionaire; flight record, aviator flight record, instrument certification papers; reduction in grade release, retirement, temporary duty, record of retirement points; correspondence and/or orders relating to dependents, service action, federal recognition orders, correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement and discipline."

Purpose(s): Delete entry; substitute therefore: "To maintain current and accurate listings of reserve personnel designated to mobilize with the National Security Agency offered as nominees for NSA Mobilization billets, requesting formal and resident training courses, or seeking on-the-job training in NSA work centers. To determine professional and technical qualifications of reservists to analyze their training needs and to ascertain the eligibility of reservists for promotions, awards, special duty assignments, and similar reasons."

Storage: Delete entry; substitute therefore: "Computer magnetic tapes, discs, electronic files, other automated storage media, computer listings and other paper records."

Retrievability: Delete entry; substitute therefore: "By name, social security numbers, mobilization billet, courses of training, and other professional qualifications."

Retention and Disposal: In second sentence after "They are reviewed," delete remainder of sentence and add: "periodically and updated at least annually for changes and correction."

Record Sources Categories: Delete entry; substitute therefore: "Individual reservists and service reserve personnel files."

GNSA 09

System Name:

NSA/CSS Personnel File (50 FR 22592) May 29, 1985

Change:

Categories of records in the system: After "letters of reprimand," delete "employee record card,"

GNSA 04

SYSTEM NAME:

NSA/CSS Military Reserve Personnel Data Base.

SYSTEM LOCATION:

Primary System-National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755–6000.

Decentralized Segments-Each staff, line, field element and military service as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inactive duty military reserve personnel assigned to NSA mobilization billets, requesting to perform on-the-job training in NSA work centers, or scheduled to attend formal and resident courses of instruction under the auspices or sponsorship of NSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains correspondence, papers, and forms relating to individual's service extracted from his/her military personnel records including but not limited to military service, enlistment or related service agreement/extension/orders, active duty records; duty status, reserve status; qualifications for active military duty assignments; clearance data; applications/nominations for assignments; pictures; military check-in/out sheets; military skill specialty evaluation data; active duty training; service record brief, military personnel utilization survey; correspondence courses, educational/academic records; application for ID; efficiency or fitness records; application/prior service enlistment documents; work experiences; professionalization documentation; achievement certificates, suggestions; personnel screening and evaluation records; acknowledgement of service requirements; temporary disability record; change of name; documents relating to promotion or non-selection, transfers, leave, pay entitlements, financial records, awards, health or medical records, reports of proceedings of physical fitness boards, birth certificates, citizenship statements and status; passport, questionnaire/records of security clearances, language capability, language proficiency questionnaire; flight record, aviator flight record, instrument certification papers; reduction in grade release, retirement, temporary duty, record of retirement points; correspondence and/or orders relating to dependents, service action, federal recognition orders, correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement and discipline."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, 50 U.S.C. section 402 note (Pub. L. 86–36); and Title 10 U.S.C.

PURPOSE(S):

To maintain current and accurate listings of reserve personnel designated to mobilize with the National Security Agency, offered as nominees for NSA Mobilization billets, requesting formal and resident training courses, or seeking on-the-job training in NSA work centers. To determine professional and technical qualifications of reservists to analyze their training needs and to ascertain the eligibility of reservists for promotions, awards, special duty assignments, and similar reasons.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at the beginning of NSA's listing of the record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes, discs, electronic files, other automated storage media, computer listings and other paper records

RETRIEVABILITY:

By name, social security numbers, mobilization billet, courses of training, and other professional qualifications.

SAFEGUARDS:

Secure limited access facilities and within those facilities lockable containers. Records are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are permanent. They are reviewed periodically and updated at least annually for changes and correction. Superseded records are destroyed when no longer useful for reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, FT. George G. Meade, Md. 20755–6000.

RECORD ACCESS PROCEDURE:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, FT. George G. Meade Md. 20755–6000

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755–6000.

RECORD SOURCE CATEGORIES:

Individual reservists and service reserve personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C. section 552a(k)(1) and (k)(5). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA09

SYSTEM NAME:

NSA/CSS Personnel file.

SYSTEM LOCATION:

Primary System-National Security Agency/Central Security Service, FT. George G. Meade, Md. 20755–6000.

Decentralized Segments-Each staff, line, contract and field element and supervisor as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, personnel under contract, military assignees, dependents of NSA/CSS personnel assigned to field elements, individuals integrated into the cryptologic career development program, custodial and commerical services personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains personnel papers and forms including but not limited to applications, transcripts, correspondence, notices of personnel action, performance appraisals, personnel summaries, professionalization documentation and correspondence, training forms, temporary duty, letters of reprimand, special assignment documentation, letters of commendation, promotion documentation, field assignment preference, requests for transfers, permanent change of station, passport, transportation, official orders, awards, suggestions, pictures, complaints separation, retirement, time utilization scholarship/fellowship or other school appointments, military service, reserve status, military check in/out sheets, military orders, security appraisal, career battery and other test results, language capability, military personnel utilization survey, work experience, notes and memoranda on individual aspects of performance, productivity and suitability, information on individual eligibility to serve on various boards and committees, emergency loan records, other information relevant to personnel management, housing information where required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, 50 U.S.C. section 402 note (Pub. L. 86–36); 5 U.S.C. and certain implementing Office of Personnel Management regulations in the Federal Personnel Manual; 10 U.S.C. section 1124; 44 U.S.C. section 3101, and Executive Order 11222.

PURPOSE(S):

To support the personnel management program; personnel training and career development; personnel planning, staffing and counseling; administration and personnel supervision; workforce study and analysis, manpower requirements studies; emergency loan program; and training curricula planning and research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To gaining employers or to financial institutions when individual has applied for credit; to contractor employees to make determinations as noted in the purpose above; to hearing examiners; the judicial branch or to other gaining government organization as required and appropriate; biographical information may be provided to the White House as required in support of the Senior Cryptologic Executive Service awards program. See "Blanket Routine Uses" at the beginning of NSA's listing of the record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, file cards, machine-readable cards, computer printouts, computer magnetic tapes, disks and other computer storage media, and microfilm.

RETRIEVABILITY:

By name, social security number and other items of relevant information.

SAFEGUARDS:

For paper, computer printouts and microfilm-Secure limited access facilities within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to those individuals authorized and responsible for personnel management or supervision. For records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records and delivery granted to authorized persons only. Where data elements are derived from the Personnel File, remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secured, are

available to authorized persons only, and certain password and other identifying information available to authorized users only is required.

RETENTION AND DISPOSAL:

Primary System-Those forms, notices, reports and memoranda considered to be of permanent value or required by law or regulation to be preserved are retained for the period of employment or assignment and then forwarded to the gaining organization or retained indefinitely. If the action is separation or retirement, these items are forwarded to the Office of Personnel Management or retired to the Federal Records Center at St. Louis as appropriate. Those items considered to be relevant for a temporary period only are retained for that period and either transferred with the employee or assignee or destroyed either when they are no longer relevant or at time of separation or retirement. Computerized portion is purged and updated as appropriate. Personnel summary, training, testing and past activity segments retained permanently. All other portions deleted at end of tenure.

Decentralized System-Files are transferred to gaining organization or destroyed upon separation as appropriate. Computer listings of personnel assigned to an organization are destroyed upon receipt of updated listings.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755–6000.

RECORD ACCESS PROCEDURE:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755–6000.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755–6000.

RECORD SOURCES CATEGORIES:

Forms used to collect and process individual for employment, access or assignment, forms and memoranda used to request personnel actions, training awards, professionalization, transfers, promotion, organization and supervisor reports and requests, educational institutions, references, Office of Personnel Management and other governmental entities as appropriate, and other sources as appropriate and required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C. section 552a (k)(1), (k)(4), (k)(5), and (k)(6). For additional information see agency rules contained in 32 CFR Part 299a.

[FR Doc. 87–22694 Filed 9–30–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–47–NG]

Application To Import Natural Gas From Canada; Victoria Gas Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 31, 1987, of an application filed by Victoria Gas Corporation (Victoria) for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 100 MMcf of natural gas per day and maximum of 72 Bcf of natural gas over a two-year term beginning on the date of the first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers, including pipelines, local distribution companies, electric utilities, and commercial and industrial end-users. Victoria, a privately owned corporation of Houston, Texas, would import gas for its own account or act as agent for U.S. purchasers as well as Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. Victoria intends to utilize existing pipeline facilities for transportation of the volumes imported.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of the General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion. All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., November 2, 1987.

The Administrator intends to develop a decisional record on the application

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through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Victoria's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Firday, except Federal holidays.

Issued in Washington, DC, September 23, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-22644 Filed 9-30-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-61-NG]

Order Granting Authorization To Import Natural Gas; Minnegasco, Inc.

AGENCY: Economic regulatory Administration, Department of Energy.

ACTION: Notice of order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Minnegasco, Inc., A Company of Diversified Energies, Inc. (Minnegasco), an authorization to import Canadian natural gas. The import authorization allows Minnegasco to import up to 160,000 Mcf per day of Canadian natural gas over a ten-year term, beginning November 1, 1987, or such later date as the necessary regulatory approvals and required facilities are made available to Minnegasco. Minnegasco, a local distribution company, proposes to purchase the gas on a direct sale basis from TransCanada PipeLines Limited and to import up to 50,000 Mcf per day on a firm basis, and up to 110,000 Mcf per day on an interruptible basis to the extent that such volumes are both needed and available for Minnegasco's Minneapolis, Minnesota, service area.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 22, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-22645 Filed 9-30-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-33-NG]

Order Granting Blanket Authorization To Import Natural Gas; Semco Energy Services, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Semco Energy Services, Inc. (SEMCO), blanket authorization to import natural gas. The order issued in ERA Docket No. 87-33-NG authorizes SEMCO to import up to 400 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 23, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-22698 Filed 9-30-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-639-000 et al.]

Electric Rate and Corporate Regulation Filings; Gulf States Utilities Co. et al.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ER87-639-000]

September 23, 1987.

Take notice that on September 10, 1987, Gulf States Utilities Company tendered for filing, pursuant to Cajun Electric Power Cooperative, Inc.'s (CAJUN's) breach of the terms of Service Schedule CTOC, a Notice of Cancellation of Service Schedule CTOC. Pursuant to § 35.15 of the Commission's regulations, Gulf States requests an order terminating Service Schedule CTOC as of November 1, 1985, consistent with CAJUN's failure in November, 1985, to satisfy Gulf States' demand for payment of all past due amounts under Service Schedule CTOC.

Copies of this filing have been served upon each person designated on the official service list in this proceeding.

Comment date: October 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER87-659-000]

September 25, 1987.

Take notice that on September 18, 1987, Southern California Edison Company (Edison) tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 35.15) under the Federal Power Act a Notice of Cancellation of Rate Schedule FERC No 25.

Copies of this filing were served upon each person designated on the official service list in this proceeding.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ES87–40–000]

September 25, 1987.

Take notice that on September 17, 1987, Idaho Power Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $150,000,000 of short-term debt or other evidence of indebtedness on or before December 31, 1988, with a final maturity no later than December 31, 1989.

Comment date: October 15, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER87–662–000]

September 25, 1987.

Take notice that on September 25, 1987, Boston Edison Company (Boston Edison) tendered for filing its voluntary compliance with Order No. 475, Docket No. RM87–4–000, dated June 26, 1987. These revisions are made pursuant to the abbreviated filing requirements and formula adjustment put forth in Order No. 475. The adjustments reflect the reduction in the federal income tax rate from 46% to 34%, pursuant to the Tax Reform Act of 1986.

Tendered for filing are three revised rate sheets:

(a) The Second Revised Sheet No. 19 of FERC Electric Tariff, Original Volume No. IV, for Firm Transmission Service;
(b) The Third Revised Sheet No. 2 of FPC Rate Schedule No. 46, for 14/24 kV Subtransmission Service to New England Power Company for its Quincy-Weymouth Service Area;
(c) The Eleventh Revised Sheet No. 1 of Exhibit B of FPC Electric Tariff Original Volume I, Contract Demand Service for Resale.

Boston Edison asks that the rate schedule changes be made effective as of July 1, 1987.

The affected customers for each rate are:

(a) Firm Transmission Service:
New England Power Company
Town of Norwood, Massachusetts
Town of Concord, Massachusetts
Town of Wellesley, Massachusetts
Massachusetts Municipal Wholesale Electric Company, Agent for the Towns of Belmont, Braintree, Hingham, Hull and Reading.
(b) 14/24 kV Subtransmission Service to the Quincy-Weymouth Area: New England Power Company
(c) Contract Demand Service for Resale Town of Reading, Massachusetts

Boston Edison states that this filing has been posted and that copies of the filing have been served upon the affected customers and the Massachusetts Department of Public Utilities.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER87–661–000]

September 25, 1987.

Take notice that on September 18, 1987, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during July 1987, along with cost justification for the rate charged. The filing includes the following supplements:

Pacific Power & Light Co.—Supplement No. 21
Utah Power & Light Co.—Supplement No. 68
Montana Power & Light Co.—Supplement No. 53
Washington Water Power Co.—Supplement No. 51
Sierra Pacific Power Co.—Supplement No. 66
Puget Sound Power & Light Co.—Supplement No. 30
Pacific Gas & Electric Co.—Supplement No. 26
Sacramento Municipal Utility Distict—Supplement No. 4
Portland General Electric Co.—Supplement No. 55

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Wisconsin)

[Docket No. ER87–660–000]

September 25, 1987.

Take notice that on September 18, 1987, Northern States Power Company a Wisconsin corporation (NSPW), tendered for filing a new wholesale electric service agreement, dated July 1, 1987, between NSPW and the City of New Richmond, Wisconsin (City). NSPW states that it currently serves the City under a wholesale service agreement dated Ocober 8, 1973, which agreement will be terminated upon the effective date of the July 1, 1987 agreement. NSPW also states that the City has assigned both the October 8, 1973 agreement and the July 1, 1987 agreement to Wisconsin Public Power Inc. SYSTEM (SYSTEM) and that the SYSTEM has consented to the termination of the 1973 agreement and accepted the assignment of the 1987 agreement. NSPW further states that this filing does not propose any changes in rates currently in effect for NSPW's wholesale service to the City.

Finally, NSPW has requested that the new agreement be permitted to become effective on the date on which certain new substation facilities being constructed by the City are placed in service, which date is estimated to be on or about January 1, 1988.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Montana Power Company

[Docket No. EC87–15–000]

September 25, 1987.

Take notice that on September 18, 1987, Montana Power Company tendered for filing an amendment to its application seeking authority to acquire securities of other public utilities as part of a planned program of corporate investments. Montana Power states that it amends its application so as to have a one (1) percent limitation, rather than a five (5) percent limitation on the amount of stock or funded debt outstanding of any other public utility that Montana Power may acquire pursuant to this application.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. EC87–25–000]

September 25, 1987.

Take notice that on September 18, 1987, Northern Indiana Public Service Company (Northern Indiana) tendered for filing an application for an order granting authorization under section 203 of the Federal Power Act to permit a planned corporate restructuring to go forward.

Northern Indiana conducts an electric generation, transmission and distribution business and a gas transmission and distribution business in the northern one third of the State of Indiana. Under the proposed corporate restructuring, Northern Indiana would become a direct wholly owned subsidiary of a newly formed holding company, NIPSCO Industries, Inc., an Indiana corporation (Holding). Holding would own three companies which are currently subsidiaries of Northern Indiana. The restructuring is to be accomplished through a plan of share exchange under the Indiana Business Corporation Law.

Northern Indiana states that the corporate restructuring is consistent with the public interest.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Company

[Docket No. EC87-664-000]

September 25, 1987.

Take notice that on September 21, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to Camden County Energy Recovery Associates (Camden). The Rate Schedule provides for a monthly transmission service charge of $1.08 per kilowatt plus $.00037 per kilowatthour for the delivery of the net electric power output of Camden's qualifying solid waste recovery facility to be located in the City of Camden, Camden County, New Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon the customer and the New Jersey Board of Public Utilities.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22714 Filed 9-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-335-001 et al.]

Natural Gas Certificate Filings; Northwest Pipeline Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP87-335-001]

September 23, 1987.

Take notice that on September 16, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-335-001 an amendment to the pending application for a certificate of public convenience and necessity filed on April 30, 1987, in Docket No. CP87-335-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect a revised facility design and an increase in the proposed level of firm transportation of natural gas for direct sale to Exxon Company U.S.A. (Exxon) for use during emergency shut-downs at Exxon's Black Canyon Dehydration Plant (referred to as the Dry Piney Dehydration Plant in Northwest's initial pleadings) and during facility malfunction at Mountain Fuel Resources, Inc.'s (MFR) Dry Piney Gas Conditioning Plant, both in Sublette County, Wyoming, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

By the pending application in Docket No. CP87-335-000, authorization is requested for the construction and operation of 4.53 miles of 6-inch buried pipeline, one meter station consisting of a 6-inch meter run, a 3-inch meter and a 2-inch meter, and miscellaneous facilities. It is explained that the proposed line would be constructed from the discharge side of Northwest's existing Big Piney compressor station and extend in a southwesterly direction to a point of interconnection with the proposed meter station located adjacent to Exxon's Black Canyon Dehydration Plant. Authorization is also requested for the firm transportation and delivery of up to 29,000 MMBtu per day through the proposed facilities to serve emergency shut down (ESD) requirements in Exxon's Black Canyon dehydration facility.

It is stated that Exxon notified Northwest that it wished to change the proposed pipeline diameter from 6-inch to 8-inch and to increase its maximum purchase volume from 29,000 to 50,000 MMBtu per day in order to provide additional safety and operational flexibility during ESD events. It is further stated that Exxon and Northwest entered into an amendment effective August 20, 1987, to the ESD Agreement whereby Northwest agreed to increase the proposed line size and increase the proposed level of transportation and delivery of the direct sales gas.

It is maintained that under the terms of the amended ESD Agreement, Northwest now proposes to construct and operate 4.35 miles of 8-inch buried pipeline and a meter station consisting of one 6-inch meter run and one 3-inch meter run. It is stated that the location of these facilities would not change from that set forth in the original pleadings. Northwest states that the revised estimated cost of the proposed facilities would be $797,940. Northwest further states that Exxon would reimburse Northwest for all costs associated with the construction of the proposed facilities.

In addition, it is maintained that under the terms of the amended ESD Agreement, Northwest now proposes to transport and deliver, on a firm basis, from its system supply up to 50,000 MMBtu per day of natural gas for direct sale to Exxon.

Comment date: October 8, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Blue Dolphin Pipe Line Company

[Docket No. CP87-537-000]

September 25, 1987.

Take notice that on September 11, 1987, Blue Dolphin Pipe Line Company (BDPL), 11 Greenway Plaza, Suite 3100, Houston, Texas 77046, filed in Docket No. CP87-537-000 a request pursuant to Section 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.221) for authorization to transport natural gas on an interruptible basis for Apache Marketing, Inc., acting as shipper for an end-user in Brazoria County, Texas, under the certificate issued in Docket No. CP87-31-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

BDPL proposes to transport up to 8 MMcf on a peak day, 6 MMcf on an average day and 2,190 MMcf on an annual basis for Apache. It is stated that the gas would be transported approximately 40 miles from a subsea tap in the Galveston Area, Block 273, offshore Texas, to a meter at the Dow Chemical Company Plant A in Freeport, Brazoria County, Texas. It is asserted that BDPL filed an intial report on July 31, 1987, reporting that the service commenced on July 1, 1987, under the automatic authorization provisions of

the Commission's Regulations. BDPL states that no construction of facilities would be required to effect the transportation service. BDPL proposes to charge Apache a transportation rate of 6 cents per Mcf of gas redelivered. It is explained that the transportation service would have a primary term of 2 years with month-to-month extensions thereafter.

Comment date: November 9, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Eastern Shore Natural Gas Company

[Docket No. CP87–520–000]

September 25, 1987.

Take notice that on September 1, 1987, Eastern Shore Natural Gas Company (Eastern Shore), P. O. Box 615, Dover, Delaware 19903–0615, filed in Docket No. CP87–520–000 a request pursuant to §§ 157.205, 157.211(b) and 157.212(a) of the Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for authorization to construct and operate four sales taps for two utilities and to operate a delivery point for one of these customers, under the certificate issued in Docket No. CP83–40–000, pursuant to the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Eastern Shore proposes to operate the existing delivery point for its existing customer, the Citizens Gas Division of Chesapeake Utilities Corporation (Citizens Division) at Federalsburg, Maryland. It is stated that the volumes delivered would be within the certified entitlements of Citizens Division and that there would be minimal impact on Eastern Shore's peak day deliverability.

Eastern Shore proposes to construct and operate two additional sales taps for Citizens Division at Federalsburg Industrial Park, Maryland and at Naylor Mill Road in Wicomico County, Maryland. Eastern Shore further proposes to construct and operate two sales taps for another existing customer the Delaware Division of Chesapeake Utilities Corporation, near Bridgeville in Sussex County, Delaware, and at Salisbury Road in Kent County, Delaware. It is stated that the volumes to be delivered at these proposed delivery points would be within the certified entitlements of these customers and that there would be minimal impact to Eastern Shore's existing customers' annual and peak day deliveries.

Comment date: November 9, 1987, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP87–541–000]

September 25, 1987.

Take notice that on September 16, 1987, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP87–541–000 a request pursuant to §§ 157.205 and 157.211 of the Regualtions under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for the delivery of gas to end-users under the certificate authority granted in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant advises that the intended end-users are located in various counties within Kansas and Nebraska. Applicant states that the gas would be used to fuel irrigation equipment and to provide space heating for certain small commercial and residential structures. Peak day and annual deliveries at the proposed taps are estimated to be 208 Mcf and 6,140 Mcf, respectively (see attachment). Applicant states it does not expect such deliveries to have a significant impact on its total peak day and annual deliveries. The cost of installing the taps is estimated to be $6,200, it is asserted. Finally, Applicant states that the taps are not prohibited by any of its existing tariffs and that the gas would be sold in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: November 9, 1987, in accordance with Standard Paragraph G at the end of this notice.

EXHIBIT A

Customer	Location of tap	Approximate quantity to be sold (MCF)		End use of gas	Est. of cost facilities[1]
		Peak day	Annual		
Resident/Occupant 87–34, C.W. Kettlehut.	SE/4 Sec. 7–T1S–R3W, Republic Co., KS.	24	800	Irrigation	$850
Resident/Occupant 87–35, Bob Husband.	SW/4 Sec. 7–T26S–R30W, Gray Co., KS.	26	920	Domestic & Irrigation	850
Resident/Occupant 87–36, Ellen Kowalewski.	SW/4 Sec. 20–T9N–R16W, Buffalo, Co., NE.	2	120	Domestic	850
Resident/Occupant 87–37, Myron Baumgart.	NE/4 Sec. 1–T20N–R2W, Platte Co., NE.	36	300	Small Commercial	1,150
Resident/Occupant 87–38, Omega Land Company.	NE/4 Sec. 17–T31N–R14W, Holt Co., NE.	120	4,000	Irrigation	2,500

[1] Customers reimburse to K N a portion of these costs through imposition of a connection charge which varies by state as follows: Kansas—$250, Nebraska—$400 Colorado—$400, and Wyoming—$500.

5. Mountain Fuel Resources, Inc.

[Docket No. CP87–530–000]

September 25, 1987.

Take notice that on September 8, 1987, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah, 84147, filed in Docket No. CP87–530–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to (1) abandon one turbine compressor at its Coalville station in Summit County, Utah (Coalville compressor), (2) install the Coalville compressor at MFR's Coleman station to Storage Main Line No. 58, (3) use Coleman station and other facilities to transport and deliver gas to Colorado Interstate Gas Company (CIG) and (4) flexibly use MFR's Nightingale-Kanda-Coleman compressor complex to (a) receive gas from and deliver gas to MFR's transmission system and (b) receive gas from and deliver gas to the transmission systems of CIG and Wyoming Interstate Company, Ltd. (WIC), all as more fully

set forth in the application which is on file with the Commission and open to public inspection.

MFR proposes to abandon its Coalville compressor and relocate it at its Coleman station in order to more efficiently use this existing compressor and improve system deliverability and reliability. MFR also proposes to construct and operate a 20-inch diameter, 750-foot tie-line to connect Coleman station with MFR's Storage Main Line No. 58. This tie-line will permit MFR to use Coleman station to compress gas into its transmission system and increase deliverability to its Clay Basin Storage Field, it is stated.

MFR further proposes to use a soon-to-be installed 12 inch diameter, 3,500-foot tie-line, which will connect the Coleman and Kanda stations and will be constructed as a facility exempt from Commission jurisdiction under 18 CFR 284.3(c), to transport gas other than only under section 311 of the Natural Gas Policy Act of 1978 (NGPA). MFR alleges that this authority is needed to provide it with the flexibility to utilize Coleman station to compress both NGPA section 311 and NGA section 7(c) certificated volumes.

Finally, MFR requests authority to flexibly use its Nightingale-Kanda-Coleman compressor complex to (a) receive gas from and deliver gas to its transmission system and (b) receive gas from and deliver gas to the transmission systems of CIG and WIC. MFR explains that this operational flexibility will allow MFR to improve its ability to meet future demands for sales, transportation and storage services.

MFR estimates the cost to (a) retire, dismantle and remove the Coalville compressor, (b) reinstall the Coalville compressor at Coleman Station and (c) construct and operate the Coleman Station-to-Storage Main Line No. 58 tie-line will be $1,602,700. The Coleman station-to Kanda station tie-line construction is estimated at a cost of $224,600, it is indicated.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP87-538-000]

September 25, 1987.

Take notice that on September 14, 1987, Northern Natural Gas Company, Division of Enron Corporation, (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-538-000, an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization for transportation of natural gas on an interruptible basis for the account of Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated August 14, 1987, Northern seeks authorization to transport up to 7,000 MMBtu of natural gas per day attributable to Amoco's production from Ship Shoal Block 84, offshore Louisiana. Further, if Amoco requests transportation of volumes in excess of 7,000 MMBtu per day, Northern states it has agreed to provide such service to the extent that capacity is available. It is indicated that the gas would be delivered to Northern by Amoco immediately upstream of the measurement facilities on the production platform and Northern would transport and redeliver thermally equivalent volumes for Amoco's account at (1) the existing subsea interconnection between Northern and Transcontinental Gas Pipe Line Corporation (Transco) located in both Ship Shoal Blocks 70 and 72 in Louisiana state waters or (2) at such other point(s) as Northern and Amoco mutually agree. Northern states Transco would provide downstream transportation pursuant to Part 284 of the Commission's Regulations. Northern proposes to initially charge Amoco the effective transportation rate set forth in Northern's Stipulation and Agreement of Settlement in Docket No. RP85-206-000 (S&A). Under the S&A, the maximum transportation rate is 6.43 cents per MMBtu, it is stated. Northern states that it proposes to provide the requested service for a primary term of five years and subsequent two-year terms upon mutual agreements of Amoco and Northern no later than 180 days prior to the expiration of the primary term.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this Notice.

7. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP85-636-005]

September 25, 1987.

Take notice that on September 14, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed at Docket No. CP85-636-005, to petition the Federal Energy Regulatory Commission to amend its order issued February 4, 1987, in Docket No. CP85-636-000, *et al.*, to authorize under section 7(c) of the Natural Gas Act, the implementation of Phase I of Northern's contract demand turnback program (turnback program) retroactively to permit an effective date of March 27, 1985, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northern indicates that Section VII of Northern's Stipulation and Agreement of Settlement at Docket No. RP82-71-000 *et al.*, provided for the turnback program, allowing Northern's firm entitlement customers to reduce firm entitlement by two percent in each of three phases.

Northern indicates that based on the issuance of a final Commission order on such settlement, Northern has accepted the order in Docket No. CP85-636-000, *et al.*, which authorizes Phase I retroactively to permit an effective date of October 27, 1985. Northern states that it is requesting authority granting Phase I retroactively to permit an effective date of March 27, 1985, because it is indicated that such effective date was an integral part of the settlement negotiated by all parties to the Docket No. RP82-71-000 settlement and results in greater benefit to Northern's firm entitlement customers in reduced demand charges.

No other changes are proposed.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP70-7-035]

September 25, 1987.

Take notice that on September 4, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP70-7-035 a petition to amend the order issued in Docket No. CP70-78-000, on October 29, 1969 pursuant to section 7(c) of the Natural Gas Act so as to authorize a decrease in the total contract demand volume of Chattanooga Gas Company (Chattanooga), distribute said decrease in contract demand to its other customers and transfer 200 Mcf of the contract demand of the Polaris Corporation (Polaris) to the contract demand of Atlanta Gas Light Company (Atlanta), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver to Chattanooga an aggregate contract demand of 30,000 Mcf per day. It is said that by letter dated April 15, 1987, Chattanooga formally notified Southern that it desires to reduce its contract

demand to 22,000 Mcf per day as permitted by Southern's FERC Gas Tariff.

Southern states further that it notified its customers, which did not require addition facilities, that they could obtain their pro rata portion of the 8,000 Mcf that Chattanooga made available. The eligible customers acknowledged their acceptance of the additional contract and aaximum delivery obligation, and Southern agreed, upon receipt of the necessary authorization, to make the reallocation of the contract demand, it is stated.

Southern states that is currently provides Polaris with a contract demand of 450 Mcf per day. It is said that by letter, dated February 5, 1987, Polaris informed Southern of its need to reduce its contract demand to 250 Mcf per day. Atlanta, it is asserted, has agreed to accept the additional 200 Mcf per day and has informed Southern of its intentions by letter dated, July 10, 1987.

Southern states that it can deliver the additional quantities of contract demand to all of the participating customers without the construction of additional facilities.

Comment date: October 16, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP82–368–002]

September 25, 1987.

Take notice that on September 14, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP82–368–002 pursuant to section 7(c) of the Natural Gas Act a petition to amend the certificate of public convenience and necessity in Docket No. CP82–368–000, as previously amended, to extend for another five year period United's current authorization which expires April 8, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests that its current authorization be extended for another five year period to permit acquisition, by lease or purchase, and the operation of up to four portable compressor units, not exceeding 1,000 horsepower each, to be installed and moved as needed on United's system in its East Texas and North Louisiana area. United states that such compression is needed to insure a more adequate flow of gas and is the best method economically for solving operating problems which occasionally develop at points on United's East Texas and North Louisiana system.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

10. Southern Natural Gas Company

[Docket No. CP87–531–000]

September 25, 1987.

Take notice that on September 9, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, hereinafter referred to as "Applicants" filed in Docket No. CP87–531–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for ten Georgia municipalities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request limited-term authorization to transport natural gas on behalf of the City of Adel (Adel), the City of Ashburn (Ashburn), the City of Blakely (Blakely), the City of Cairo (Cairo), the City of Cordele (Cordele), the Fitzgerald Water, Light and Bond Commission (Fitzgerald), the City of Montezuma (Montezuma), the City of Moultrie, the City of Nashville (Nashville), and the City of Tifton (Tifton), all Georgia municipalities, hereinafter referree to collectively as the "Municipalities". It is states that the Municipalities have each acquire the right to purchase gas from SNG Trading Inc., Consolidated Fuel Supply, Inc., Texican Natural Gas Company, and Panhandle Trading Company. It is further stated that in order to effectuate delivery of the gas, the Municipalities have entered into individual agreements with South Georgia (South Georgia Agreements), wherein South Georgia has agreed to transport each Municipality's gas and to act as its agent in arranging for the transportation of the gas through Southern's pipleline system. South Georgia, as agent for the Municipalities, and Southern entered into transportation agreements (Southern Agreements), which set forth the terms under which Southern would transport the gas purchase by the Municipalities. A list showing the specific term and dates of the individual Southern and South Georgia Agreements in shown in Appendix A attached hereto.

The Southern Agreements provide that South Georgia would cause gas to be delivered to Southern for transportation at the various existing points of delivery on Southern's contiguous pipeline system specified in Exhibit A to the Southern Agreements. Southern would redeliver to South Georgia at the South Georgia meter station location in Lee County, Alabama (South Georgia redelivery point), an equivalent quantity of gas less 3.25 percent of the volume transported for fuel use.

The South George Agreements provide that the Municipalities would cause gas to be delivered to South Georgia for transportation at the South Georgia redelivery point and would be redelivered to the Municipalities at the meter stations shown in Appendix A attached hereto. South Georgia would redeliver an equivalent volume less 0.5 percent of the volumes transported for fuel use.

The Southern Agreement provide that South Georgia shall pay Southern each month the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas deliverd under Southern's Rate Scheduled OCD of such day to South Georgia does not exceed to daily contract demand of South Georgia, the transportation rate will be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under and and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Georgia exceed the daily contract demand of South Georgia, the transportaton rate for the excess volumes will be 64.9 cents per MMBtu.

The South Georgia Agreements state that each Municipality has agreed to pay South Georgia each month the transportation rate of 28.33 cents per MMBtu redelivered by South Georgia. The Agreements also provide for collection of the applicable GRI surcharge.

Southern states that the transportation arrangement would enable the Municipalities to diversify their natural gas supply sources and to obtain gas at competitive prices. In addition, Southern would obtain take-or-pay relief on the gas the Municipalities may obtain from their suppliers.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

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APPENDIX A

Municipality	Southern agreement date	South Georgia agreement date	Volumes MMBtu's	Location of redelivery point.
Adel	7-23-87	7-17-87	3,000	Adel Meter Station In Cook County, Georgia
Ashburn	7-29-87	7-24-87	1,500	Ashburn Meter Station in Cook County, Georgia
Blakely	7-29-87	7-28-87	2,000	Blakely Meter Stations Nos. 1 and 2 in Early County, Georgia
Cairo	7-29-87	7-28-87	3,000	Cairo Meter Station in Grady County, Georgia
Cordele	7-29-87	7-28-87	4,000	Cordele Meter Station in Crisp County, Georgia
Fitzgerald	7-17-87	7-16-87	3,000	Fitzgerald Meter Station in Ben Hill County, Georgia
Montezuma	7-22-87	7-20-87	4,000	Montezuma Meter Station in Sumter County, Georgia
Moultrie	7-17-87	7-16-87	4,000	Moultrie Meter Stations Nos. 1 and 2 in Colquitt County, Georgia
Nashville	7-29-87	7-28-87	2,000	Nashville Meter Station in Berrien County, Georgia
Tifton	7-17-87	7-16-87	4,000	Tifton Meter Station in Tift County, Georgia

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-22716 Filed 9-30-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-16218-003 et al.]

Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates Chevron U.S.A. Inc., et al.[1]

September 28, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 14, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-16218-003, D, Aug. 31, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Transwestern Pipeline Company, Laverne Field, Beaver County, Oklahoma.	[1]	
C187-846-000, F, Sept. 18, 1987.	Helmerich & Payne, Inc. (Succ. in Interest to Cities Service Oil and Gas Corporation), 1579 E. 21st, Tulsa, Okla. 74114.	El Paso Natural Gas Company, Certain acreage in Reeves County, Texas.	[2]	
C168-894-004, D, Sept. 21, 1987.	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Panhandle Eastern Pipe Line Company, Putnam Field, Dewey County, Oklahoma.	[3]	
C187-914-000, B, Sept. 18, 1987.	Edmiston Oil Company, Inc.	Stranathan Field, Barber County, Kansas.	[4]	
C187-907-000 (C178-1080), B, Sept. 16, 1987.	Enron Oil & Gas Company, P.O. Box 1188, Houston, Texas 77251.	United Gas Pipe Line Company, Billiams Creek Southeast Field, Tyler County, Texas.	[5]	
C187-908-000, B, Sept. 16, 1987.	Bogert Oil Company, 2601 N.W. Expressway—Suite 1000W, Oklahoma City, Okla. 73112.	ANR Pipeline Company, NE/4 SE/4 Sec. 30-23N-16W, Major County, Oklahoma.	[6]	
C187-913-000 (C169-581), B, Sept. 18, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Natural Gas Pipeline Company of America, East Laketon Field, Gray County, Texas.	[7]	
C187-901-000 (C160-330), B, Sept. 11, 1987.	Fina Oil and Chemical Company, P.O. Box 2159, Dallas, Texas 75221.	Glasscock Oil Company, Captain Lucey Field, Jim Wells County, Texas.	[8]	

[1] Acreage has been assigned to CMS Energy.
[2] Effective 1-1-87, Cities Service Oil and Gas Corporation assigned certain acreage to Helmerich & Payne, Inc.
[3] Union Oil Company of California assigned a certain lease under Docket No. CI68-894 to Meadowbrook Oil Corporation of Oklahoma, Inc.
[4] Frieden Lease is not capable of producing gas in commercial quantities.
[5] All wells on contract acreage have been plugged and abandoned.
[6] Applicant is requesting abandonment of NE/4 SE/4 Sec. 30-23N-16W, Major County, Oklahoma which is dedicated to ANR Pipeline under two gas contracts dated 10-23-62 and 8-25-60. The gas is NGPA section 104 flowing gas with the last production occurring in October 1975. The well was plugged and abandoned. The 10-23-62 gas contract has expired and the other contract has production outside the unit which makes up Applicant's drillsite. Applicant obtained new leases for the rest of Sec. 30-23N-16W. ANR is not involved in contracting the rest of this section. No gas was being sold in interstate commerce (or to ANR Pipeline) on 5-31-78, from Sec. 30-23N-16W, Major County, Oklahoma. Applicant is seeking an abandonment regarding these ANR contracts so that they can immediately drill a new well and market the gas to Union Texas Products Corporation through a low pressure gathering system.
[7] All acreage dedicated under contract dated 11-1-68 and Rate Schedule No. 616 was surrendered in February, 1982, due to minimal or unprofitable gas production.
[8] Applicant sold gas to C.V. Lyman, who was succeeded by Glasscock and Petroleum Management, Inc. The contract expired by its own terms in 1973. Glasscock resold the gas to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Beginning in 1975, gas was sold to Nue-Wells Pipe Line Company for lease fuel purposes pursuant to a letter agreement dated March 7, 1975. Nue-Wells could purchase up to 300 Mcf at a price of $1.00 per Mcf. A total of 75,291 Mcf was sold from 1975 until August 15, 1984, when the last well was shut in. Deliveries never exceeded 19,892 Mcf/year. The gas was NGPA Section 104 minimum rate gas. Applicant estimates that approximately $59,316 was collected in excess of the maximum lawful price and is prepared to refund such amount to the proper party.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-22715 Filed 9-30-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-12-20-001]

Proposed Change in FERC Gas Tariff; Algonquin Gas Transmission Co.

September 28, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 23, 1987, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Substitute Revised Thirteenth Revised Sheet No. 204
Substitute Fourteenth Revised Sheet No. 204

Algonquin states that such tariff sheets are being filed to reflect in its Rate Schedule F-3 changes in the underlying rates of National Fuel Gas Supply Corporation ("National Fuel") as set forth in National Fuel's August 31, 1987 compliance filing, proposed to be effective August 1, 1987.

Algonquin proposes the effective dates of Substitute Revised Thirteenth Revised Sheet No. 204 and Substitute Fourteenth Revised Sheet No. 204 to be August 1, 1987 and October 1, 1987, respectively.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-22708 Filed 9-30-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-910-000]

Application of Catamount Natural Gas, Inc. for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting Pre-Granted Abandonment and for Expedited Consideration; Catamount Natural Gas, Inc.

September 28, 1987.

Take notice that on September 18, 1987, Catamount Natural Gas, Inc. (CNGI) pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the regulations of the Federal Energy Regulatory Commission, filed for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by CNGI (2) authorizing sales for resale of natural gas by the producer suppliers from which CNGI purchases natural gas, and (3) authorizing blanket pre-granted abandonment of such sales, all as more fully set forth in the application which is on file with the Commission and open for public inspection. CNGI states that the authority requested in its application is consistent with the Commission's recent holdings in *ANR Gathering Company*, 40 FERC ¶ _____ (September 2, 1987) and *Citizens Energy Corp. et al.*, 39 FERC ¶ 61,106 (1987).

Applicants are seeking authority to purchase and resell, with pre-granted abandonment, natural gas subject to the jurisdiction of the Commission under the NGA. Such authority will allow CNGI to trade in natural gas released under permanent or limited term abandonment authorizations, gas released pursuant to Order No. 451 (Section 270.201 of the Commission's regulations), and other natural gas subject to the Commission's NGA jurisdiction which is not presently required by certificate to be delivered to another purchaser, including contractually uncommitted gas from the Outer Continental Shelf that qualifies under section 102(d) of the Natural Gas Policy Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 382.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules. The applicant has requested treatment of the application pursuant to Rule 802 of the Commission's Rules of Practice and Procedure. Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22709 Filed 9-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-15-032]

Proposed Changes in FERC Gas Tariff, Columbia Gas Transmission Corp.

September 25, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia), on September 21, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1987:

First Revised Sheet No. 22E2
First Revised Sheet No. 22E3
First Revised Sheet No. 22P3
Third Revised Sheet No. 22Q

Columbia states that these changes are being filed in accordance with Ordering Paragraphs (B) and (D) of the Federal Energy Regulatory Commission's (Commission) September 4, 1987 Order Accepting Tariff Sheets for Filing Subject to Conditions in this proceeding.

Columbia states that these tariff sheets clarify that calculation of seasonal imbalances will be based on actual tendered quantities less Daily Scheduled Quantities. Columbia further states that the Daily Scheduled Quantities are those designated by Buyer, in accordance with subsection 6(a) of the appropriate Rate Schedule, but the sum of the Daily Scheduled Quantities can not on a monthly basis exceed the quantities actually delivered by Columbia at the delivery points specified in the service agreement.

Columbia points out that the First Revised Sheet No. 22P3 also contains a new section 6(c)(2)(c), with language identical to the language in section 6(c)(2)(c) of Original Sheet No. 22E3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed on or before October 2 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22703 Filed 9-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-14-032]

Proposed Changes in FERC Gas Tariff; Columbia Gulf Transmission Co.

September 25, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on September 21, 1987, tendered for filing proposed changes listed in the attached Appendix A to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1,1987.

Columbia Gulf states that these changes are being filed in accordance with Ordering Paragraph (C) of the Federal Energy Regulatory Commission's (Commission) September 4, 1987 Order Accepting Tariff Sheets for Filing Subject to Conditions in this proceeding.

Columbia Gulf states that these tariff sheets clarify that calculation of seasonal imbalances will be based on actual tendered quantities less Daily Scheduled Quantities. Columbia Gulf further states the Daily Scheduled Quantities are those designated by Shipper, in accordance with subsection 6(a) of the appropriate Rate Schedule, but the sum of the Daily Scheduled Quantities can not on a monthly basis exceed the quantities actually delivered by Columbia Gulf at the delivery points specified in the service agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before October 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf filing are on file with

the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22704 Filed 9-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-147-000]

Proposed Changes in FERC Gas Tariff; Kentucky West Virginia Gas Co.

September 28, 1987.

Take Notice that on September 23, 1987, Kentucky West Virginia Gas Company ("Kentucky West"), tendered for filing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Volume No. 2, and Volume of Effective Service Agreements, to become effective October 1, 1987.

Kentucky West makes this filing for the purpose of setting forth various minor changes in order to clarify and update Volume Nos. 1 and 2 of Kentucky West's Tariff including substituting FERC for FPC where appropriate. Additionally, the filing includes an Annual Charges Adjustment Clause ("ACA") as permitted by the Commission's Order No. 472 series issued in Docket No. RM87-3-000. Kentucky West states that pursuant to the Order No. 472 series and § 154.38(d)(6) of the Commission's Regulations, Kentucky West proposes an Annual Charge Adjustment Clause to the General Terms and Conditions of Kentucky West's FERC Gas Tariff, Second Revised Volume No. 1.

Kentucky West is also including in this filing several superseding service agreements with various small GSS-1 customers, and in addition, is filing the effective service agreements for service being rendered by Kentucky West pursuant to Rule 284 of the Commission's Regulations. Kentucky West requests that the Commission grant such waivers as may be necessary for acceptance of its filing to become effective October 1, 1987, as previously described.

Copies of this filing were served upon the companies' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before October 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22710 Filed 9-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-22-000]

Complaint Regarding Production-Related Costs, Reading & Bates Petroleum Co. v. Tennessee Gas Pipeline, Co. a Division of Tenneco Inc.

September 28, 1987.

On January 8, 1987, Reading & Bates Petroleum Company (Reading & Bates) filed a complaint pursuant to 18 CFR 271.1105(d)(3)(ii) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Reading & Bates requests the Production-Related Costs Board (Board) to find that Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), is in violation of 18 CFR 271.1104 by refusing to reimburse Reading & Bates for production-related costs incurred under its contract with Tennessee.

Reading & Bates states that the contract, dated December 18, 1979, contains language constituting an area rate clause and therefore evidences Tennessee's agreement to compensate Reading & Bates for the cost of delivering natural gas to Tennessee's system. Reading & Bates indicates that it contacted Tennessee seeking reimbursement for production-related costs and that by letter dated July 23, 1986, Tennessee declined to pay such costs stating that the contract does not contain an area rate clause as defined by the regulations and thus does not satisfy the express contractual authorization provision of 18 CFR 271.1104(a)(3).

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Tennessee must file an answer to Reading & Bates' complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Tennessee shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22713 Filed 9-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-43-000]

Proposed Changes in FERC Gas Tariff; Williams Natural Gas Co.

September 28, 1987.

Take notice that Williams Natural Gas Company (WNG) on September 22, 1987, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 2
Third Revised Sheet No. 6
Second Revised Sheet Nos. 7 and 8
First Revised Sheet Nos. 77-80
First Revised Sheet Nos. 90, 91 and 97
Alternate Third Revised Sheet No. 6

WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to decrease its rates effective October 23, 1987, to reflect:

(1) A 6.14¢ per Mcf decrease in the Cumulative Adjustment due to a decrease in WNG's projected gas purchase costs.

(2) A 3.99¢ per Mcf decrease in the Surcharge Adjustment (to a negative 3.05¢ per Mcf from a positive . 94¢ per Mcf) to amortize the Deferred Purchased Gas Cost Subaccount balance.

First Revised Sheet No. 2, Second Revised Sheet Nos. 7 and 8, First Revised Sheet Nos. 77-80 and First Revised Sheet Nos. 90, 91 and 97 are being filed to eliminate the Incremental Pricing provisions and references contained in WNG's FERC Gas Tariff, Original Volume No. 1. Order No. 478 issued July 27, 1987 in Docket No. RM87-28-000, *et al.*, revoked the Commission's incremental pricing rules effective

January 1, 1988. However, since WNG has no incremental surcharges currently outstanding nor projects any to be effective during the six-month PGA period effective October 23, 1987, WNG is requesting a waiver of the Commission's regulations to make such tariff sheets effective October 23, 1987.

WNG filed on August 31, 1987 in Docket No. RP87–118 to change its accounting and billing period, which starts the 23rd of one month and ends the 22nd of the next month, to a standard calendar month accounting and billing period. WNG asked for an effective date on the proposed tariff sheets of October 1, 1987. If these tariff sheets in Docket No. RP87–118 are accepted for filing to be effective October 1, 1987, WNG requests that Alternate Third Revised Sheet No. 6 be accepted to be effective November 1, 1987.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–22711 Filed 9–30–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88–1–44–000 and RP87–146–000]

Filing; Commercial Pipeline Co., Inc.

September 25, 1987.

Take notice that on September 22, 1987, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its 52nd Revised Sheet No. 3A, superseding 51st Revised Sheet No. 3A reflecting Purchased Gas Adjustment and Total Rate as shown below.

	Current adjustment	Cumulative adjustment	Surcharge adjustment	Total rate
(Base)	$(.6939)	$.6087	$.0777	$4.1568
(Excess)	(.7120)	.6022	.0777	4.2617

The proposed effective date of Commercial's filing is October 23, 1987.

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's sole supplier, Williams Natural Gas Company ("Williams"), which also is proposed to be effective October 23, 1987. Commercial's filing also reflects surcharge adjustments in accordance with its PGA.

Also take notice that Commercial tendered for filing its Second Revised Sheet No. 7B superseding Substitute First Revised Sheet No. 7B and First Revised Sheet No. 7C superseding Corrected Substitute Original Sheet No. 7C. Commercial states that these tariff sheets contain technical changes to Commercial's tariff to permit the effective operation of Commercial's PGA provision in the event Commercial purchases gas from more than one supplier, or from a supplier other than Williams. The proposed effective date of these tariff sheets also is October 23, 1987.

Commercial further states its understanding that Williams, with its PGA adjustment, has filed a second set of tariff sheets which reflect an effective date of November 1, 1987. Commercial understands that this second set of tariff sheets relates to a filing by Williams in another proceeding (Docket No. RP87–118–000) of revised tariff sheets to convert Williams' fisal month accounting and billing period, which starts on the 23rd of one month and ends on the 22nd of the next month, to a standard calendar month accounting and billing. Accordingly, Commercial also submitted to the Commission on September 22, 1987, Alternate 52nd Revised Sheet No. 3A, Alternate Second Revised Sheet No. 7B, and Alternate First Revised Sheet No. 7C, each of which reflect an effective date of November 1, 1987, and which are proposed by Commercial to be accepted should the Commission accept Williams' PGA filing and related tariff sheets effective November 1, 1987. Commercial's alternate tariff sheets also would change the effective dates of its PGA adjustments from October 23 and April 23 to November 1 and May 1 of each year. If needed, Commercial requests waiver of the Commission's Regulations to accept the effective date of November 1, 1987, and permanent waiver of § 154.38(d)(iv)(a) of the Regulations.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 2, 1987. Protestants will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–22705 Filed 9–30–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78–37–019 et al]

Filing of Pipeline Refund Reports; Lawrenceburg Gas Company et al.

September 28, 1987.

Take notice that the pipelines listed in the Apprendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, on or before October 13, 1987. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No
8/28/87	Lawrenceburg Gas Company	RP7–37–019
9/14/87	Northwest Pipeline Corporation	RP81–47–013
9/14/87	Alabama Tennessee Natural Gas Company	RP85–117–010
9/17/87	Natural Gas Pipe Line Company of America.	RP85–99–006

APPENDIX—Continued

Filing date	Company	Docket No.
9/18/87	Florida Gas Transmission Company.	RP85-75-003
9/18/87	Eastern Shore Natural Gas Company.	RP72-134-034

[FR Doc. 87-22712 Filed 9-30-87; 8:45 am]
BILLING CODE 6717-01

[Docket No. RP87-141-000 and RP87-141-001]

Amended Filing; Natural Gas Pipeline Company of America

September 25, 1987.

Take notice that on September 15, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. This filing was noticed on September 17, 1987, with comments due September 24, 1987, in Docket No. RP87-141-000.

On September 21, 1987, Natural filed an amended filing to correct Daily and Monthly Entitlement volumes for several of its customers. These corrections do not change any of the other previously filed information. This amended filing is docketed in RP87-141-001.

Any person desiring to be heard or to protest the amended filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before October 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies for this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22706 Filed 9-30-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-3-17-002]

Proposed Changes in FERC Gas Tariff; Texas Eastern Transmission Corp.

September 25, 1987.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 21, 1987 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Substitute Eighty-fifth Revised Sheet No. 14
Second Substitute Eighty-fifth Revised Sheet No. 14A
Second Substitute Eighty-fifth Revised Sheet No. 14B
Second Substitute Eighty-fifth Revised Sheet No. 14C
Second Substitute Eighty-fifth Revised Sheet No. 14D

Texas Eastern states that the above tariff sheets are being issued in substitution for tariff sheets filed on July 1, 1987 and July 23, 1987 in Docket Nos. TA87-3-17 and TA87-4-17, respectively, consisting of Texas Eastern's Semiannual PGA tracking filing to be effective on August 1, 1987. Texas Eastern further states that the sole change included in these second substitute tariff sheets is a decrease in the cost of gas purchased from ProGas Limited.

In the July 1, 1987 filing Texas Eastern calculated and included total annual demand payments to ProGas Limited of $6,525,000 as being in conformance with Opinion Nos. 256 and 256A. Texas Eastern states that such calculation was based upon data available to Texas Eastern at the time of the filing. In the July 23, 1987 filing, Texas Eastern filed substitute tariff sheets supported by work papers furnished by ProGas Limited showing that the correct calculation of the total annual demand payments to ProGas Limited in conformance with Opinion Nos. 256 and 256A was $8,612,100. The Commission's order dated August 21, 1987 accepted the substitute tariff sheets to be effective August 1, 1987 subject to condition. The Commission deemed the supporting work papers furnished by Texas Eastern on July 23, 1987 to be insufficient to verify conformance to Opinion Nos. 256 and 256A and required Texas Eastern to file such sufficient work papers.

Texas Eastern states that it has been unable to obtain workpapers deemed sufficient to support the $8,612,100 as the Opinion Nos. 256 and 256A conforming annual demand payment. Therefore, Texas Eastern has calculated and the tariff sheets filed in this filing reflects ProGas Limited annual demand charges calculated using Texas Eastern's modified fixed variable factor based upon Texas Eastern's settlement cost of service in Docket No. RP85-177 which conforms with Opinion Nos. 256 and 256A. The above second substitute tariff sheets include total annual demand payments to Progas Limited of $8,013,690, effecting a further decrease in the Demand-1 component of Texas Eastern sales rates of $.016/dth.

The proposed effective date of the above tariff sheets is August 1, 1987.

Texas Eastern has respectfully requested waiver of any of the Commission's Regulations deemed necessary to accept the above second substitute tariff sheets to be effective on August 1, 1987, in substitution for those corresponding substitute tariff sheets filed on July 23, 1987.

Texas Eastern has earlier filed tariff sheets with the Commission proposed to be effective September 15, 1987 (Docket No. CP76-57) and October 1, 1987 (Docket No. RP87-128) which do not reflect the rate impact proposed in this filing. Texas Eastern states that it will refile such tariff sheets to reflect any impact of the Commission's decision in this filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be take, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22707 Filed 9-30-87; 8:45 am]
BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0139
Title: Federal Regional Reconstitution Area (FRRA) Survey

Abstract: Data collectors will perform on-site surveys of potential reconstitution sites in order to confirm, upgrade or expand information now stored in FEMA's data base on Federal Regional Reconstitution Areas.
Type of Respondents:
State or local governments,
Businesses or other for-profit
Federal agencies or employees
Non-profit institutions
Small businesses or organizations
Number of Respondents: 250
Burden Hours: 1,000
Frequency of Recordkeeping or Reporting: Other—One Time Report

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2634, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503, within two weeks of this notice.

Dated: September 28, 1987.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87–22626 Filed 9–30–87; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARTIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Martime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.03 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200040.
Title: Virgin Islands Port Authority Terminal Agreement.
Parties:
Virgin Islands Port Authority (Authority)
TMT Sand Company, Inc. (TMT)

Synopsis: The proposed agreement provides that TMT will lease from the Authority premises, Parcel No. 18 Crown Bay Fill, No. 7B Southside Quarter, St. Thomas, Virgin Islands, consisting of approximately 42,689 square feet. The term of the lease is for a period of ten years.

Agreement No.: 224–200041.
Title: Virgin Islands Port Authority Terminal Agreement.
Parties:
Virgin Islands Port Authority (Authority)
Tropical Shipping and Construction Co., Ltd., (Tropical)

Synopsis: The proposed agreement provides that Tropical will lease from the Authority premises located at THIRD PORT FACILITY, Limetree Bay, St. Croix, Virgin Islands for an initial term of ten years with a 5-year renewal option.

Agreement No.: 224–200039.
Title: Virgin Islands Port Authority Terminal Agreement.
Parties:
Virgin Islands Port Authority
Virgin Islands Maritime Services

Synopsis: The proposed agreement provides for the twenty-year lease of 84,000 square feet of unimproved land located at Crown Bay Fill, St. Thomas Virgin Islands, to be used for a marine terminal facility.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 28, 1987.

[FR Doc. 87–22667 Filed 9–30–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Alabama National Bancorporation, et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 20, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Alabama National Bancorporation, Ashland, Alabama; to acquire 100 percent of the voting shares of Gulf National Bank, Orange Beach, Alabama, a *de novo* bank.

2. Eastern Bankshares Corp., Hialeah, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Eastern National Bank, Miami, Florida.

3. Eastern Overseas Bank, Ltd., Georgetown, Grand Cayman; to become a bank holding company by acquiring 100 percent of the voting shares of Eastern Bankshares Corp., Hialeah, Florida, a *de novo* bank.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. A&P Bank Holding Company, North Branch, Minnesota; to become a bank holding company by acquiring at least 80 percent of the voting shares of Community National Bank, North Branch, Minnesota.

Board of Governors of the Federal Reserve System, September 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22598 Filed 9–30–87; 8:45 am]

BILLING CODE 6210–01–M

Applications To Engage de Novo in Permissible Nonbanking Activities; First Agency of Leoti, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to

banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Agency of Leoti, Inc., Leoti, Kansas; to engage *de novo* through its subsidiary, First Insurance of Leoti, Leoti, Kansas, in the sale of general insurance in a town of less than 5,000 in population pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. This activity will be conducted in Wichita County, Kansas.

Board of Governors of the Federal Reserve System, September 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22589 Filed 9-30-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; First Bancorp of Tonkawa, Inc., et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 19, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Bancrop of Tonkawa, Inc., Tonkawa, Oklahoma; to retain ownership of Burton Insurance Trust, Tonkawa, Oklahoma, and thereby indirectly acquire Burton Insurance Agency, Inc., Tonkawa, Oklahoma, and thereby engage in general insurance agency activities in a town of less than 5,000 in population; and continue to engage in the sale of credit-related life and accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y. The general insurance agency activities will be conducted in the town of Tonkawa, Oklahoma and the immediate vicinity.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Bancrop Hawaii, Inc., Honolulu, Hawaii; to acquire Bancorp Life Insurance Company of Hawaii, Inc., Phoenix, Arizona, and thereby engage in the reinsurance of credit life and credit accident and health insurance issued in connection with mortgage lending pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the Hawaiian Islands, Guam, Yap, Koror, American Samoa, Pohnpei and the Marshall Islands. Comments on this application must be received by October 14, 1987.

Board of Governors of the Federal Reserve System, September 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22600 Filed 9-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENTOF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Epidemiologic and Services Research Review Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986, (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, effective September 25, 1987 of the following committee:

Epidemiologic and Services Research Review Committee, NIMH

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: September 25, 1987.

Donald Ian Macdonald,

Adminstrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-22635 Filed 9-30-87; 8:45 am]

BILLING CODE 4160-20-M

Meeting; Basic Behavioral Processes Research Review Committee

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of one of the agency's initial review committees in the month of October 1987. This committee will be open for discussion of administrative announcements and

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program developments. The Committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2, 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Basic Behavioral Processes Research Review Committee, NIMH
Date and Time: October 22–23: 8:00 a.m.
Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, MD, 20814
Status of Meeting:
Open—8:00–9:00 a.m.
Closed—Otherwise
Contact: Doris East, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and roster of committee members may be obtained from the contract person listed above.

Dated: September 25, 1987.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–22620 Filed 9–30–87; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–07–4333–10; Order WY–031–8701]

Off-Road Vehicle Designations; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation order WY–031–8701.

SUMMARY: Notice is hereby given in relation to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989 and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited or closed to off-road motorized vehicle use.

EFFECTIVE DATE: November 2, 1987, at 4:30 p.m.

FOR FURTHER INFORMATION: Contact either of the following Bureau of Land Management offices: District Manager, Rawlins District Office, P.O. Box 670, 1300 Third St., Rawlins, Wyoming 82301 (307) 324–7171; Area Manager, Lander Resource Area, P.O. Box 589, 125 Sunflower, Lander, Wyoming, 82520, (307) 332–7822.

SUPPLEMENTARY INFORMATION: The 1,400,000-acre area being designated is in the Lander Resource area, which includes most of Fremont County and portions of Natrona, Sweetwater, Hot Springs and Carbon Counties, Wyoming. These designations are a result of land use decisions made in the 1987 Resource Management Plan. Comments received during the planning process have influenced these designation decisions.

The Bureau recognizes the difference between off-road vehicles and over-snow vehicles (in terms of use and impact). Therefore, travel by over-snow vehicles will be permitted off existing routes, as specifically provided, only if they are operated in a responsible manner without damaging the vegetation or harming wildlife.

Designations

1. Open Designation

No areas were identified for open designation.

2. Limited Designation

a. Use is limited to existing roads and vehicle routes on 1,390,000 acres. Use is limited to those roads and vehicle routes in existence as of the date of this publication. Temporary excursions leaving existing vehicular routes are permitted only to accomplish necessary tasks and only if such travel does not result in resource damage. Necessary tasks involve work requiring the use of a motor vehicle. Examples include picking up big game kills, repairing range improvements, managing livestock and locatable mineral operations that are covered under the casual use or the notice levels outlined in the 43 CFR Part 3809 Surface Management Regulations, etc. Resource damage is defined as leaving long-term signs of vehicle use (ruts), causing erosion or water pollution or creating undue degradation of other vegetative or wildlife resources.

Random or unnecessary travel from existing vehicle routes is not allowed. Creation of new routes or extension and/or widening of existing routes is not allowed without prior written agency approval.

This designation is determined to be appropriate for a majority the public lands by accommodating access needs while providing resource protection.

b. Use is limited to designated roads and vehicle routes on 4,500 acres. Vehicle travel is permitted only on roads and vehicle routes designated as open by the BLM. Until final publication of maps and brochures and sign installation is accomplished, vehicular travel is limited to existing roads and vehicle routes as designated under 2a above. Areas where vehicle use is permitted only on roads and vehicle routes designated by the Bureau and identified with signs and on maps are as follows: Whiskey Mountain (4,500 acres) Dubois, Wyoming.

c. Use limited by the number and type of vehicles.

There are several vehicle routes identified by signs and maps as suitable for four-wheel-drive vehicles.

d. Use limited to time or season.

Several roads and vehicle routes are closed seasonally to protect the roadbed and surrounding watershed values (approximate dates of closure are indicated on signs and maps). Where specialized restrictions are necessary to meet other resources management objectives, other limitations may also be developed.

3. Closed Designation

Two areas are identified for ORV closure to protect natural and cultural values. These are:

Castle Gardens (80 acres) east of Riverton, Wyoming.

Dubois Badlands (4,500 acres) east of Dubois, Wyoming.

Access

ORV designations apply to all off-road vehicles regardless of their purpose. However, emergency vehicles in emergency situations are excluded from these designations.

The use of closed roads or areas will be by permit only. Mineral prospectors and explorers under the Mining Law of 1872 must obtain authorization from BLM pursuant to the 43 CFR Part 3809 regulations to operate a motor vehicle on a closed road or in a closed area.

Any person(s) having special access needs may apply to the authorized officer for a permit to enter the area. Any constructed areas will require a right-of-way under 43 CFR Part 2800.

Richard Bastin,

District Manager.

[FR Doc. 87–22615 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–22–M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48538 has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 17 S., R. 1 E.,
Sec. 31.
(605 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this notice have been paid. The required rentals and royalties accruing from April 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48538 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1987, subject to the terms and conditions cited above.

Kay F. Kletka,
Chief, Branch of Mineral Adjudication.

Dated: September 25, 1987.

[FR Doc. 87–22642 Filed 9–30–87; 8:45 am]
BILLING CODE 4310–JA–M

[AZ–940–07–4212–12; A–21081]

Realty Action; Arizona

AGENCY: Bureau of Land Management Interior.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the completion of an exchange of mineral estates between the United States and the State of Arizona that resulted in the consolidation of ownership of the surface and mineral estates by the State and Federal Governments. The United States acquired the mineral estate in 57,980.39 acres of land in Cochise, Graham, Greenlee, Pima and Pinal Counties. The State of Arizona acquired the mineral estate in 57,517.52 acres of land in Cochise, Graham, Greenlee, Pima and Pinal Counties.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: On July 30, 1987, the Bureau of Land Management issued Patent No. 02–87–0038 and Deed No. AZ–87–007 to the State of Arizona transferring ownership of the mineral estate on the following described land pursuant to section 206 of the Federal Land policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 3 S., R. 29 E.,
Sec. 23, N½S½;
Sec. 24, N½S½.
T. 3 S., R. 30 E.,
Sec. 17, SE¼NW¼,N½SW¼,SW¼SW¼;
Sec. 19, lots 1, 2, and 3, NE¼, E½NW¼.
T. 5 S., R. 16 E.,
Sec. 30, lots 1 and 2, E½, E½W½;
Sec. 31, E½E½, NW¼NE¼.
T. 6 S., R. 16 E.,
Sec. 5, lots 1–4, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 6, lot 1;
Sec. 7, lots 1–4, incl., W½E½, E½W½;
Sec. 8, NE¼NE¼;
Sec. 9, N½, E½SW¼, SE¼;
Sec. 33, lots 4, 5, and 6, SE¼SE¼.
T. 6 S., R. 17 E.,
Sec. 7, SE¼SE¼;
Sec. 8, S½SW¼;
Sec. 17, NW¼;
Sec. 19, lots 1–4, incl., NE¼NE¼, W½E½, E½W½, SE¼SE¼;
Sec. 30, lots 1–4, incl., E½, E½W½.
T. 7 S., R. 16 E.,
Sec. 3, lots 6 and 7, S½NW¼;
Sec. 4, Lots 1, 6, 16 and 17.
T. 8 S., R. 30 E.,
Sec. 28, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 29, all.
T. 9 S., R. 17 E.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1, 2 and 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, E½, E½W½;
Sec. 8, N½NE¼, NW¼;
Sec. 14, NE¼, N½NW¼, SE¼NW¼, N½SE¼;
Sec. 18, E½, E½W½.
T. 9 S., R. 29 E.,
Sec. 8, all;
Sec. 17, all;
Sec. 20, N½;
Sec. 29, all.
T. 9 S., R. 30 E.,
Sec. 6, NE¼SW¼.
T. 9 S., R. 31 E.,
Sec. 3, lots 3 and 4, S½NW¼;
Sec. 19, S½SE¼;
Sec. 20, S½S½;
Sec. 21, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, E½, E½W½.
T. 9 S., R. 32 E.,
Sec. 15, lots 1, 2 and 4, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 22, lots 1–4, incl., W½E½, SW¼;
Sec. 31, all.
T. 10 S., R. 17 E.,
Sec. 18, lot 1, N½NE¼, NE¼NW¼.
T. 10 S., R. 18 E.,
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1 and 2, S½NE¼, E½SE¼;
Sec. 7, lots 1–10, incl., NE¼, E½NW¼;
Sec. 8, W½;
Sec. 9, N½, N½SE¼;
Sec. 10, lots 1–4, incl., NW¼, E½SW¼, SE¼;
Sec. 11, all;
Sec. 14, all;
Sec. 15, all;
Sec. 18, lots 1–4, incl., W½E½, W½;
Sec. 20, all;
Sec. 21, W½W½, SE¼NW¼, E½SW¼, SW¼SE¼;
Sec. 23, lots 1–8, incl., W½;
Sec. 24, lot 1, NW¼NE¼, N½NW¼, S½;
Sec. 25, all;
Sec. 26, all;
Sec. 28, W½E½, W½;
Sec. 29, all;
Sec. 31, lots 1–10, incl., E½SW¼, SE¼;
Sec. 33, W½NE¼, NW¼, S½.
T. 10 S., R. 19 E.,
Sec. 19, lot 4;
Sec. 20, S½N½, E½SW¼, SE¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1–4, incl., E½, E½W½;
Sec. 31, lots 1–4, incl., E½, E½W½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 10 S., R. 29 E.,
Sec. 13, S½;
Sec. 14, SE¼;
Sec. 23, E½;
Sec.24, lots 1–4, incl., W½E½, E½NW¼, SW¼.
Sec. 36, S½SW¼.
T. 10 S., R. 32 E.,
Sec. 3, lots 6 and 7, SW¼, W½SE¼;
Sec. 4, S½;
Sec. 5, lots 1–4, incl., S½N½;
Sec. 6, lots 1–4, incl., S½N½.
T. 11 S., R. 17 E.,
Sec. 13, E½;
Sec. 24, NE¼, NE¼SE¼.
T. 11 S., R. 18 E.,
Sec. 3, SW¼SW¼;
Sec. 4, lots 1–13, incl., S½NE¼, SW¼SW¼;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1–4, incl., S½N½, S½;
Sec. 8, all;
Sec. 9, lots 1–4, incl., W½E½, W½;
Sec. 10, NW¼, N½SW¼, SW¼SW¼;
Sec. 15, W½NW¼.
Sec. 17, all;
Sec. 18, E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 19, E½, NW¼, N½SW¼;
Sec. 20, all;
Sec. 21, lots 1, 2 and 4, W½E½, W½;
Sec. 22, W½NW¼;
Sec. 27, NW¼NE¼, NW¼;
Sec. 28, lots 1 and 2, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 29, all;
Sec. 30, S½;
Sec. 31, all;
Sec. 33, lot 8, W½W½, SW¼SE¼.
T. 11 S., R. 19 E.,
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 8, all;
Sec. 9, all;

Sec. 10, N½, W½SW¼, SE¼SW¼;
T. 11 S., R. 29 E.,
Sec. 1, lot 4.
T. 12 S., R. 18 E.,
Sec. 6, lots 2, 3 and 4.
T. 12 S., R. 19 E.,
Sec. 1, lots 3–7, incl., SE¼NW¼, E½SW¼;
Sec. 3, lots 1–12, incl.;
Sec. 4, lots 1–8, incl.;
Sec. 26, all.
T. 12 S., R. 28 E.,
Sec. 21, NW¼;
Sec. 27, NE¼, NE¼NW¼;
Sec. 34, S½SE¼.
T. 13 S., R. 19 E.,
Sec. 3, lots 3 and 4, S½NW¼, S½;
Sec. 5, lots 3–8, incl., W½SW¼;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, incl., E½, E½W½;
Sec. 8, lots 1–4, incl., W½W½, SE¼;
Sec. 10, SE¼NE¼, E½SE¼;
Sec. 11, N½N½, S½NW¼, SW¼;
Sec. 14, N½, N½S½, S½SW¼;
Sec. 15, NE¼NE¼;
Sec. 17, lots 1–7, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 18, lots 1–4, incl., E½, E½W½;
Sec. 21, lot 1 and lots 4–7, incl.
T. 13 S., R. 26 E.,
Sec. 21, SW¼NE¼, W½NW¼, SE¼NW¼.
T. 13 S., R. 27 E.,
Sec. 3, lots 3 and 4, S½NW¼, N½SW¼, SW¼SW¼.
T. 13 S., R. 28 E.,
Sec. 3, S½NE¼;
Sec. 10, NE¼SE¼, S½SE¼.
T. 13 S., R. 29 E.,
Sec. 14, S½SW¼,
Sec. 23, N½NW¼.
T. 13 S., R. 30 E.,
Sec. 33, SW¼.
T. 16 S., R. 20 E.,
Sec. 23, all.

Compromising 57,517.52 acres in Cochise, Graham, Greenlee, Pima and Pinal Counties.

In exchange the United States acquired the mineral estate in the following described land:

Gila and Salt River Meridian, Arizona

T. 4 S., R. 23 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all;
Sec. 36, lots 1–3, incl., N½, SE¼.
T. 4 S., R. 25 E.,
Sec. 17, W½;
Sec. 20, W½;
Sec. 32, all.
T. 5 S., R. 24 E.,
Sec. 2, lots 1–4, incl., E½SW¼, S½SE¼;
Sec. 36, NE¼, W½, E½SE¼.
T. 5 S., R. 25 E.,
Sec. 16, all;
Sec. 32, all.
T. 5 S., R. 27 E.,
Sec. 27, all.
T. 6 S., R. 25 E.,
Sec. 2, lots 3 and 4, S½NW¼, SW¼.
T. 6 S., R. 26 E.,
Sec. 32, lot 5, NE¼, N½S½.
T. 7 S., R. 28 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 32, all;
Sec. 36, N½, N½S½, S½SW¼, SW¼SE¼.
T. 7 S., R. 29 E.,
Sec. 32, all.
T. 8 S., R. 27 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 3, SW¼;
Sec. 36, all.
T. 8 S., R. 28 E.,
Sec. 2, all;
Sec. 13, all;
Sec. 36, lots 1–4, incl., N½, N½S½.
T. 8 S., R. 29 E.,
Sec. 16, all;
Sec. 32, all.
T. 9 S., R. 27 E.,
Sec. 31, lots 3 and 4, E½, E½SW¼;
Sec. 32, all.
T. 9 S., R. 28 E.,
Sec. 2, lots 2, 4–16, incl., S½SW¼;
Sec. 16, all;
Sec. 36, lots 1–4, incl., E½NW¼, SW¼NW¼, S½.
T. 10 S., R. 27 E.,
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, incl., E½, E½W½;
Sec. 16, all;
Sec. 18, lots 1–4, incl., E½, E½W½;
Sec. 19, lots 1–4, incl., E½, E½W½;
Sec. 32, all;
Sec. 36, all.
T. 10 S., R. 28 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all.
T. 10 S., R. 29 E.,
Sec. 16, all;
Sec. 32, all.
T. 10 S., R. 30 E.,
Sec. 33, lots 1–4, incl., N½, N½S½.
T. 11 S., R. 27 E.,
Sec. 2, lots 1, 2, 3, 5, 6 and 7, S½NE¼, S½;
Sec. 13, all;
Sec. 16, all.
T. 11 S., R. 28 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 36, all.
T. 11 S., R. 29 E.,
Sec. 9, all;
Sec. 24, all;
Sec. 25, N½, N½S½;
Sec. 32, all.
T. 11 S., R. 30 E.,
Sec. 1, lots 3 and 4;
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 11 S., R. 31 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 28, S½NW¼, SW¼;
Sec. 32, N½NE¼.
T. 12 S., R. 29 E.,
Sec. 4, lots 1, 3 and 4, SE¼NE¼, S½NW¼, S½;
Sec. 5, lots 1–4, incl., S½N½, SW¼;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, incl., E½, E½W½;
Sec. 8, NW¼;
Sec. 9, W½;
Sec. 10, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, N½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, N½, SE¼;
Sec. 23, all;
Sec. 24, N½, SW¼, W½SE¼;
Sec. 25, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 30, lots 1 and 2, NE¼, E½NW¼;
Sec. 33, N½NE¼;
Sec. 34, E½, S½NW¼;
Sec. 35, E½, SW¼;
Sec. 36, all.
T. 12 S., R. 30 E.,
Sec. 16, all;
Sec. 18, lots 1–4, incl., E½, E½W½;
Sec. 19, lots 1–4, incl., E½, E½W½;
Sec. 20, W½;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1–4, incl., NE¼, E½W½;
Sec. 32, all;
Sec. 33, N½, SW¼;
Sec. 34, W½;
Sec. 36, lots 1 and 2, E½, E½NW¼, SW¼.
T. 12 S., R. 31 E.,
Sec. 1, lots 1 and 2, S½NE¼, S½NW¼, NE¼SW¼, N½SE¼;
Sec. 2, lot 1, SE¼NE¼.
T. 12 S., R. 327 E.,
Sec. 6, lot 4, S½NW¼, SW¼, SW¼SE¼.
T. 13 S., R. 28 E.,
Sec. 29, SE¼.
T. 13 S., R. 29 E.,
Sec. 1, lot 1;
Sec. 2, lots 1–12, incl., S½N½;
Sec. 3, lots 1 and 2, lots 5–14, incl.;
Sec. 10, lots 1–8, incl.;
Sec. 11, lots 3–6, incl.;
Sec. 14, N½NW¼;
Sec. 15, E½NE¼.
T. 13 S., R. 30 E.,
Sec. 1, lot 3, SW¼SW¼, SE¼;
Sec. 2, lots 1, 2, 3 and 5, S½N½ SW¼, W½SE¼, SE¼SE¼;
Sec. 3, lots 2–7, incl., S½SW¼, SE¼;
Sec. 4, lots 3 and 4, S½NW¼, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 15 S., R. 28 E.,
Sec. 2, SW¼NE¼, NW¼NW¼, S½NW¼, SW¼, N½N½SE¼.

Comprising 57,980.39 acres in Cochise, Graham, Greenlee, Pima and Pinal Counties.

The purpose of this notice is to inform the public and interested local government officials of the transfer of Federal minerals and the acquisition of State minerals by the Federal government.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–22608 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–940–07–4212–12; A–22698]

Realty Action; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States acquired 11,747.60 acres of land in the Mohave County and transferred 5,397.62 acres in Pinal County to the State of Arizona.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: On August 31, 1987, the Bureau of Land Management transferred the following described land by Patent No. 02–87–0043, pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 4 S., R. 10 E.,
Sec. 33, SE¼SW¼, SW¼SE¼; E½SE¼.
T. 5 S., R 10 E.,
Sec. 3, lots 1–4 incl., SE½N½, S½;
Sec. 4, lots 1–4 incl., S½N½, S½;
Sec. 8, NE¼;
Sec. 9, N½, SE¼;
Sec. 10 W½NE¼, NW¼, S½;
Sec. 14, all;
Sec. 23, E½, SW¼;
Sec. 26, N½NE¼, SW¼NE¼, NW¼;
T. 6 S., R. 14 E.,
Sec. 5, lots 1–4 incl., N½S½.
T. 7 S., R. 12 E.,
Sec. 14, all.
T. 9 S., R. 11 E.,
Sec. 1, S½.

Comprising 5,397.62 acres in Pinal County.

In exchange the following described land was reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 14 W.,
Sec. 2, lots 1–4 incl., S½N½, S½;
Sec. 4, lots 1–4 incl., S½N½, S½;
Sec. 8, all;
Sec. 10, all;
Sec. 12, all;
Sec. 14, all;
Sec. 16, all;
Sec. 20, N½NE¼, SE¼NE¼, NW¼, NE¼SE¼.
T. 19., R. 15 W.,
Sec. 16, all.
T. 20 N., R. 14 W.,
Sec. 20, all;
Sec. 22, all;
Sec. 24, all;
Sec. 26, W½NW¼, SE¼NW¼, SW¼, W½SE½, SE¼SE¼;
Sec. 28, all;
Sec. 32, all;
Sec. 34, all;
Sec. 36, all.
T. 20 N., R. 15 W.,
Sec. 2, SE¼;
Sec. 12, N½, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼. (surface only)
T. 21 N., R. 15 W.,
Sec. 36, all.

Comprising 11,748.60 acres in Mohave County.

The purpose of this notice is to inform the public and interested Government officials of the exchange of public and State land.

DATE: At 9 a.m. on November 2, 1987 the land acquired by the United States will be open to the operation of the public lands laws, the general mining laws and to applications and offers under the mineral leasing laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local counts.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–22606 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–07–4212–12; A 20346]

Cancellation of Realty Action; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of notice of realty action.

The purpose of this notice is to cancel a notice of realty action published in Vol. 52, No. 59 of the **Federal Register** on March 27, 1987.

A 20346–A affecting Pinal County lands in T. 3 S., R. 7 E., secs. 4, 5, 8, 14, 17, 22, 23, and 24 is hereby cancelled.

Henri R. Bisson,

District Manager, Phoenix District.

Date: September 24, 1987.

[FR Doc. 87–22609 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–07–4212–11; A 20633]

Partial Cancellation of Realty Action; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of notice of realty action.

The purpose of this notice is to cancel a notice of realty action published in Vol. 52, No. 40 of the **Federal Register** on March 2, 1987.

A 20633 is hereby cancelled as it affects Pinal County lands in T. 3 S., R. 7 E., secs. 33, 34, 35 and 36.

Henri R. Bisson,

District Manager, Phoenix District.

Date: September 24, 1987.

[FR Doc. 87–22610 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–32–M

[OR 956–07–4830–11; GP–07–299]

Realty Action; Transfer of Administrative Jurisdiction, Grant County, OR

AGENCY: Bureau of Land Managment, Interior.

ACTION: Notice.

SUMMARY: This notice announces the transfer of public lands and interests in lands from the jurisdiction of the Burns District to the Prineville District.

FOR FURTHER INFORMATION CONTACT: Steve Leroux, BLM Oregon State Office; P.O. Box 2965, Portland, Oregon 97208; (503) 230–5735.

EFFECTIVE DATE: October 1, 1987.

SUPPLEMENTARY INFORMATION: All lands and interests in lands in Grant County, Oregon administered by the Burns District, Bureau of Land Management are transferred to the Prineville District, Bureau of Land Management except for T. 17S., Rs. 31 and 32 E., and T. 18 S., Rs. 31 and 32 E., Willamette Meridian. Lands in Grant County administered by the Vale District will continue to be administered by the Vale District. These lands and interests in lands are those located in T. 15 S., R. 36 E; T. 16 S., R. 36 E.; and T. 17 S., R. 36 E., Willamette Meridian.

Charles W. Luscher,

State Director.

[FR Doc. 87–22613 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–07–4220–10: GP–07–298; OR–21317–A, ORE–013871, ORE–05743, ORE–06585, OR–21598]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of five separate land withdrawals continue for an additional 20 years and requests that the lands

involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Deschutes National Forest

1. OR 21317–A, Secretarial Order of November 17, 1906, Allingham Administrative Site, 65 acres, Located in Jefferson County, approximately 36 miles northwest of Bend,
   T. 13 S., R. 9 E., W.M., sec. 3.

Fremont National Forest

2. ORE 013871, Public Land Order No. 3363 of April 7, 1964, East Bay Recreation Area, 50 acres, Located in Lake County, approximately 64 miles northwest of Lakeview,
   T. 30 S., R. 14 E., W.M., sec. 28.
   Deep Creek Recreation Area, 20 acres, Located in Lake County, approximately 13 miles southeast of Lakeview,
   T. 40 S., R. 22 E., W.M., sec. 31.
   Mud Creek Recreation Area, 10 acres, Located in Lake Country, approximately 10 miles northeast of Lakeview,
   T. 38 S., R. 21 E., W.M., sec. 11.
3. ORE 05743, Public Land Order No. 1787 of February 3, 1959, Shoe String Creek Administrative Site, 33.55 acres, Located in Lake Country, approximately 18 miles northwest of Lakeview,
   T. 37 S., R. 18 E., W.M., sec. 4.
4. ORE 06585, Public Land Order No. 2298 of March 14, 1961, Sprague River Recreation Area, 60 acres, Located in Klamath County, approximately 33 miles northwest of Lakeview,
   T. 37 S., R. 15 E., W.M., sec. 8.
   Warner Canyon Recreation Area, 84.39 acres, Located in Lake County, approximately 5 miles northeast of Lakeview,
   T. 38 S., R. 21 E., W.M., secs. 30 and 31.
   Drews Creek Recreation Area, 30 acres, Located in Lake County, approximately 8 miles southeast of Lakeview,
   T. 40 S., R. 21 E., W.M., sec. 10.
   Loften Lake Recreation Area, 154. 94 acres, Located in Lake County, approximately 25 miles northwest of Lakeview,
   T. 38 S., R. 16 E., W.M., sec. 22.
   Marster Springs Recreation Area, 20 acres, Located in Lake County, approximately 7 miles southwest of Paisley,
   T. 34 S., R. 18 E., W.M., sec. 16.
   Lee Thomas Recreation Area, 40 acres, Located in Lake County, approximately 16 miles southwest of Paisley,
   T. 34 S., R. 16 E., W.M., sec. 28.
   Thompson Reservior Recreation Area, 40 acres, Located in Lake County, approximately 12 miles south of Silver Lake,
   T. 30 S., R. 14 E., W.M., sec. 20.
   Deadhorse and Campbell Lakes Recreation Area, 340.45 acres, Located in Lake County, approximately 17 miles southwest of Paisley,
   T. 35 S., R. 16 E., W.M., sec. 1 and T. 35 S., R. 17 E., W.M., sec. 6.
   Warner Administrative Site, 40 acres, Located in Lake County, approximately 10 miles east of Lakeview,
   T. 39 S., R. 21 E., W.M., sec. 3.
   Aspen Cabin Administrative Site, 10 acres, Located in Lake County, approximately 10 miles northeast of Lakeview,
   T. 38 S., R. 21 E., W.M., sec. 12.
   Willow Creek Administrative Site, 40 acres, Located in Lake County, approximately 10 miles southeast of Lakeview,
   T. 40 S., R. 21 E., W.M., secs. 13 and 14.
   Ingram Administrative Site, 20 acres, Located in Lake County, approximately 12 miles southwest of Paisley,
   T. 34 S., R. 17 E., W.M., sec. 30.
5. OR 21598, Secretarial Order of January 7, 1908, Currier Administrative Site, 10 acres, Located in Klamath County, approximately 20 miles west of Paisley,
   T. 33 S., R. 15 E., W.M., sec. 14.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: September 22, 1987.

[FR Doc. 87–22616 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–07–4220–11: GP–07–300; OR–2031, ORE–015085, ORE–015240, ORE–04043

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of four separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Siuslaw National Forest

1. ORE 04043, Public Land Order No. 1546 of November 7, 1957, Cummins Peak Administrative Site, 80 acres, Located in Lane County, approximately 20 miles northeast of Florence,
   T. 15 S., R. 11 W., W.M.,
   Sec. 27.
   Rock Creek Camp Administrative Site, 160 acres, Located in Lane County, approximately 15 miles north of Florence,
   T. 16 S., R. 12 W., W.M.,
   Sec. 10.

Umpqua National Forest

2. OR 2031, Public Land Order No. 4369 of February 19, 1968, Fairview Mountain Lookout Tract A, 0.22 acres, Located in Lane County, approximately 40 miles southeast of Eugene,
   T. 23 S., R. 1 E., W.M.,
   Sec. 14.

Rogue River National Forest

3. ORE 015085, Public Land Order No. 3497 of December 8, 1964, Beaver Sulphur Campground, 20 acres, Located in Jackson County, approximately 15 miles southwest of Medford.

T. 40 S., R. 3 W., W.M.,
Sec. 3 and 11.

Mill Creek Administrative Site, 20 acres, Located in Jackson County, approximately 40 miles northeast of Medford,
T. 31 S., R. 3 E., W.M.,
Sec. 33.

Bessie Creek Campground, 30 acres, Located in Jackson County, approximately 40 miles northeast of Medford,
T. 32 S., R. 4 E., W.M.,
Sec. 25

Willow Prairie Campground, 30 acres, Located in Jackson County, approximately 25 miles east of Medford,
T. 36 S., R. 4 E., W.M.,
Sec. 30.

4. ORE 015240, Public Land Order No. 3497 of December 2, 1964, Bear Camp Lookout and Campground, 20 acres, Located in Curry and Josephine Counties, approximately 27 miles northwest of Grants Pass,
T. 34 S., R. 10 W., W.M.,
Sec. 12.

Johnson Mountain Lookout, 5 acres, Located in Coos County, approximately 20 miles northeast of Port Orford,
T. 32 S., R. 12 W., W.M.,
Sec. 3.

Wildhorse Lookout, 5 acres, Located in Curry County, approximately 12 miles northeast of Gold Beach,
T. 36 S., R. 12 W., W.M.,
Sec. 7.

Snow Camp Lookout, 20 acres, Located in Curry County, approximately 12 miles southeast of Gold Beach,
T. 37 S., R. 12 W., W.M.,
Sec. 30.

Big Pine Camp Ground, 50 acres, Located in Josephine County, approximately 18 miles west of Grants Pass,
T. 36 S., R. 8 W., W.M.,
Sec. 8

Onion Mountain Lookout, 10 acres, Located in Josephine County, approximately 15 miles west of Grants Pass,
T. 36 S., R. 8 W., W.M.,
Sec. 11.

Elk Lake Campground, 20 acres, Located in Curry County, approximately 15 miles southeast of Port Oxford,
T. 33 S., R. 13 W., W.M.,
Secs. 24 and 25.

Quosatana Archaeological Area, 150 acres, Located in Curry County, approximately 9 miles east of Gold Beach,
T. 36 S., R. 13 W., W.M.,
Secs. 27 and 34.

The withdrawals currently segregate the lands from operation of the mining laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Robert E. Mollohan

Acting Chief, Branch of Lands and Minerals Operations.

Dated: September 22, 1987.

[FR Doc. 87-22617 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-07-4220-11: GP-07-297; OR-22107(WASH), OR-22108(WASH), WASH-01220-A, OR-1295(WASH), OR-5049(WASH), WASH-04290, OR-1293(WASH)]

Proposed Continuation of Withdrawal; Washington

ACTION: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of seven separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Mt. Baker National Forest

1. OR 22107(WASH), Secretarial Order of October 24, 1908. French Creek Administrative Site, 30 acres. Located in Snohomish County, 17 miles northeast of Arlington.
T. 32 N., R. 8 E., W.M.,
24 Sec. 15.

2. OR 22108(WASH), Secretarial Order of November 23, 1906. Station 43, 40 acres. Located in Snohomish County, 20 miles southeast of Arlington.
T. 30 N., R. 8 E., W.M.,
Sec. 23.

Snoqualmie National Forest

3. WASH 01220-A, Public Land Order No. 1710 of August 6, 1958. Snoqualmie Pass-Denny Creek Recreation Areas, 1,322.12 acres. Located in King and Kittitas Counties, 55 miles northeast of Tacoma.
T. 22 N., R. 11 E., W.M.
Sec. 4, 5, and 8 and T. 23 N., R. 11 E., W.M.,
Sec. 34.

4. OR 1295(WASH), Public Land Order No. 4568 of January 16, 1969. South Fork Snoqualmie (Alpental) Recreation Area, 2,679.56 acres. Located in King County, 50 miles northeast of Tacoma.
T. 23 N., R. 10 E., W.M.,
Sec. 24; and T. 23 N., R. 11 E., W.M.,
Secs. 19, 20, 21, and 28 through 33 inclusive.

5. OR 5049(WASH), Public Land Order No. 4840 of June 1, 1970. Snoqualmie Pass-Denny Creek Recreation Area Addition, 264.78 acres. Located in King County, 55 miles northeast of Tacoma.
T. 22 N., R. 11 E., W.M.,
Secs. 5 and 8.

Kaniksu National Forest

6. WASH 04290, Public Land Order No. 3202 of August 19, 1963. South Skookum Lake Campground, 50 acres. Located in Pend Oreille County, 20 miles northwest of Newport.
T. 33 N., R. 44 E., W.M.,
Sec. 1.

7. OR 1293(WASH), Public Land Order No. 4319 of November 14, 1967. Pioneer Park Campground, 37.10 acres. Located in Pend Oreille County, 3 miles north of Newport.
T. 31 N., R. 45 E., W.M.,
Sec. 1.

The withdrawals currently segregate the lands from operation of the mining laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine

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whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: September 18, 1987.

[FR Doc. 87–22618 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–33–M

Meeting; Ukiah, CA, District Advisory Council

AGENCY: Bureau of Land Management. Interior.

ACTION: Notice of meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94–579 and 43 CFR Part 1780, the Ukiah District Advisory Council will meet in Arcata, Monday, October 26, 1987. The meeting will include a field trip to public lands on the Samoa Peninsula.

DATE: The meeting will begin at 9:00 a.m. and adjourn at 4:00 p.m. Monday, October 26, 1987.

ADDRESS: The meeting will be held at the Bureau of Land Management Office, 1125 16th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

SUPPLEMENTARY INFORMATION: The Samoa Peninsula is an area of public land currently being studied by BLM in the Arcata Resource Management Plan. An off-road vehicle use area is proposed within this 300-acre area. Approximately 40 acres of rare plant habitat and 90 acres of wetlands are also found here.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 1:30 p.m. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Date: September 23, 1987.

Alfred W. Wright,

District Manager.

[FR Doc. 87–22607 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–40–M

[AZ–940–07–4212–13; A–22539]

Realty Action; Arizona

September 24, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance.

SUMMARY: This action informs the public of the completion of an exchange between the United States and AMCOR Investments Corporation of California. The United States acquired 27,426.89 acres in Mohave County and AMCOR Investments Corporation of California acquired 1,366.32 acres in Maricopa County.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: On July 16, 1987, the Bureau of Land Management transferred the following described land by Patent No. 02–87–0036 and Deed No. AZ–87–005, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 2 W.,
Sec. 12, lots 13–16, incl.;
Sec. 13, lots 1–3, incl., lots 6–11, incl., lots 15–17, incl., lots 20, 21 and lots 24–26 incl.;
Sec. 24, NE¼, N½N½N½SE¼;
Sec. 25, SE¼;
Sec. 36, NW¼NE¼NW¼NE¼, S½NE¼NW¼NE¼, W½NW¼NE¼, SE¼NW¼NE¼, W½.

Comprising 1,366.32 acres in Maricopa County.

In exchange the surface in the following described land was conveyed to the United States.

Gila and Salt River Meridian, Arizona

T. 25 N., R. 21 W.,
Sec. 1, lot 1, except S½S½SE¼NE¼NE¼, lots 2, 3, 4, N½NE¼NW¼SE¼NE¼, W½NW¼SE¼NE¼, E½SE¼NE¼SE¼NE¼, NE¼SE¼SE¼NE¼, S½NW¼SE¼SE¼NE¼, S½S½SE¼NE¼, N½N½SW¼NE¼, N½SW¼NE¼SW¼NE¼, SE¼NE¼SW¼NE¼, S½S½SW¼NE¼, N½S½NW¼SW¼NE¼, W½SW¼NW¼, W½E½SW¼NW¼, E½SE¼SW¼NW¼, N½NE¼NE¼SW¼NW¼, S½SE¼NE¼SW¼NW¼, N½N½SE¼NW¼, N½SW¼NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NW¼SW¼SE¼NW¼, S½NE¼SW¼SE¼NW¼, S½S½SE¼NW¼,SW¼, S½SE¼;
Sec. 3, lots 1–4, incl., S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 11, SE¼;
Sec. 13, NW¼NE¼, W½, S½SE¼;
Sec. 19, lots 1–4, incl., E½, E½W½;
Sec. 23, N½, N½S½, SW¼SW¼.
T. 25 N., R. 22 W.,
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 11, all;
Sec. 15, all;
Sec. 23, all.
T. 26 N., R. 20 W.,
Sec. 20, N½.
T. 26 N., R. 21 W.,
Sec. 21, N½, SE¼.
T. 28 N., R. 16 W.,
Sec. 3, lots 1–3, incl., S½N½, S½.
Sec. 9, N½, N½SW¼, W½SW¼SW¼, E½SE¼SW¼, NW¼SE¼, S½SE¼.
T. 28 N., R. 17 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 11, all, except the North 50 feet of the West 50 feet as dedicated by instrument recorded in Book 183 Page 561 of Mohave County;
Sec. 13, all;
Sec. 15, all;
T. 29 N., R. 15 W.,
Sec. 5, lots 1, 2, S½NE¼, SE¼;
Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 9, lots 1–4, incl.;
Sec. 19, lots 1–4, incl., E½W½, E½.
T. 29 N., R. 16 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 7, E½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 2–4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 35, all.
T. 29 N., R. 17 W.,
Sec. 35, S½, except Pierce Ferry Road, as dedicated by instrument recorded in Book 283 of Official Records, Page 282 and a strip of land 50 feet in width, lying immediately North of the following described line: Beginning at a point on the South line of Section 35, which is fifty feet East of the Northeast corner of Section 3, T. 28 N., R. 17 W. of the Gila and Salt River Base and Meridian, Mohave County, Arizona. Thence West, along said South line of Section 35, approximately 2000 feet to a point of intersection with the centerline of Pierce Ferry Road as it exists on December 28, 1973, as dedicated by instrument recorded in Book 188 of Official Records, Page 204.
T. 30 N., R. 15 W.,
Sec. 19, lots 1–3, incl., W½ lot 4, SW¼NE¼NE¼,S½NW¼NE¼, S½SE¼NE¼NE¼, NW¼NW¼NE¼, S½NE¼NW¼NE¼, S½NE¼, E½NW¼, E½SE¼SW¼, SE¼;
Sec. 29, E½NE¼, S½;
Sec. 31, lots 1–4, incl., E½, E½W½.
T. 30 N., R. 16 W.,
Sec. 9, all;
Sec. 11, SW¼NW¼NE¼, SW¼SE¼NW¼NE¼, SW¼NE¼, NW¼SW¼SE¼NE¼, S½SW¼SE¼NE¼, W½, NW¼NE¼SE¼, S½NE¼SE¼, NW¼SE¼, S½SE¼, NW¼NE¼N E¼SE¼, S½NE¼NE¼SE¼;

Sec. 15, all;
Sec. 17, all;
Sec. 19, E½;
Sec. 21, all;
Sec. 27, all;
Sec. 33, all;
Sec. 35, all.

Comprising 27,426.89 acres in Mohave County.

The purpose of this notice is to inform the public and interested Government officials of the exchange of public and private land.

The surface of the land acquired by the United States in this exchange will be administered by the Bureau of Land Management. The mineral estate in the reconveyed lands remains out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-22596 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-07-5410-10-ZBJA; CA 20061]

Realty Action; Conveyance of Mineral Interest in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; conveyance of the reserved mineral interest.

SUMMARY: The private lands described in this order were examined for suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, California State Office, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

At 10:00 a.m. on November 2, 1987, the segregative effect imposed by the Notice of Realty Action published in the **Federal Register**, June 9, 1987, Vol. 52, p. 21771, for conveyance of the reserved mineral interest under application CA 20061, will be lifted from the following described lands:

Mount Diablo Meridian

T. 14 N., R. 6 W.,
Sec. 19, Lots 2 and 3
Lot 4, except M&B.
T. 14 N., R. 7 W.,
Sec. 24, SE¼NE¼, except M&B.

Acres—156.13+.
County—Lake.
Reservation—100% All Minerals.

Date: September 23, 1987.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 87-22612 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-5410-10-ZBJF; CA 20375]

Realty Action; Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, California State Office, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

Mount Diablo Meridian

T. 3 S., R. 17 E.,
Sec. 19, Lot 15;
Sec. 20, SW¼SW¼;
Sec. 28, N½SW¼, NW¼SE¼, W½NE¼;
Sec. 29, Lots 1 thru 12, SE¼SW¼, SW¼SE¼.

639.09 acres.
County—Mariposa.
Mineral Reservation—All.

Upon publication of this Notice of Realty Action in the *Federal Register* as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of filing of the application, whichever occurs first.

Date: September 23, 1987.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87-22611 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-40-M

[U-55673; U-61448; UT-040-7-4212-14]

Realty Action; Sale of Public Lands in Beaver County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 USC 1713), two parcels of public land described as S½ SE¼ NW¼ Sec. 23, T. 29 S., R. 8 W., SLM, Utah containing 20 acres more or less (Parcel 1, U-61448) and SW¼ SE¼, SE¼ SW¼, Sec. 14 and NE¼ NW¼, N½ SE¼ NW¼ Sec. 23, T. 29 S. R 8 W., SLM, Utah containing 140 acres more or less (Parcel 2, U-55673) are proposed for sale by competitive bidding at no less than the appraised fair market value of $5,000.00 for Parcel 1 and $21,000.00 for Parcel 2. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted by November 17, 1987. The sale will be held on December 1, 1987 at 10:00 a.m.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Beaver River Resource Area Office, 444 South Main Street, Cedar City, Utah 84720, (801) 586-2458. The Beaver River Resource Area Office is also the location of the sale and the address to which comments should be sent.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The mineral estate shall be retained in Federal ownership, with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary may prescribe.

2. A right-of-way thereon shall be reserved for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. An access right-of-way 66 feet in width shall be reserved along the east boundary of Parcel 1 from the Utah Highway 21 north to Parcel 2.

4. Title transfer will be subject to valid existing rights, including oil and gas lease U-52973 on both parcels and rights-of-way U-0147757 and U-037441 on Parcel 1

Unsold parcels will be offered competitively on a continuing basis until sold or withdrawn from the market at the Beaver River Resource Area Office. Sale will be by sealed bid. Sealed bids will be opened on the first and third Tuesdays of each month at 10:00 a.m. All bids must be received at the office no later than 4:30 p.m. on the day before the sale

Any comments received during the comment period will be evaluated and the State Director may vacate or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Date: September 21, 1987.

Paul W. Swapp,

Acting District Manager

[FR Doc. 87-22614 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-DQ-M

[MT-920-07-4111-11; MTM 64858]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 64858, Petroleum County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: September 24, 1987.

Karen L. Skauge

Acting Chief Fluids Adjudication Section

[FR Doc. 87-22597 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-DN-M

[ID-010-07-4212-14; I-20590, I-20598, I-20599]

Realty Action; Sale of Public Land in the Boise and Gem Counties, ID

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of action—Amendment of the Black Canyon Managment Framework Plan (MFP), and the McCall Unit Resource Analysis (URA)/Notice of Realty Action, Sale of Public Land in Boise and Gem Counties, Idaho.

NOTICE: Notice is hereby given that the BLM has amended the Black Canyon MFP to allow for sale of certain public lands in Gem County, Idaho. Notice is further hereby given that the BLM has amended the McCall Unit Resource Analysis to allow for sale of certain public lands in Boise County, Idaho.

SUMMARY: The following-described parcels have been examined and through the public-supported land use planning process have been determined to be suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value as determine by an appraisal:

Parcel	Legal description	Offered to	Fair market value
I-20590	T. 8 N., R. 4 E., B.M., sec. 15, lot 2. (.03 acres)	Mrs. Virginia Hamilton-Durland	$150.00
I-20598	T. 6 N., R. 3 W., B.M., sec. 14, lots 8, 9. (3.47 acres)	Joseph & Patricia Bennie	1,040.00
I-20599	T. 6 N., R. 3 W., B.M., sec. 10, lot 1. (1.67 acres)	Toivo W. Makela	500.00

DATES: The sale offering will be held on Tuesday, December 1, 1987, at 10:00 a.m.

The previously-described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

ADDRESS: The sale of offering will be held at the BLM Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the conditions of the sale can be obtained by contracting Delores Blom or Dick Geier at (208) 334-1582.

SUPPLEMENTARY INFORMATION: When patented, the lands will be subject to the following reservations:

Parcel and Reservations

I-20590
1. Ditches and canals

I-20598, I-20599
1. Ditches and canals
2. Oil and gas resources.

Sale parcel I-20590 is being offered directly to Mrs. Virginia Hamilton-Durland as a result of inadvertent unauthorized use of public land on which a portion of a cabin sits.

Sale parcel I-20598 is being offered directly to Joseph and Patricia Bennie and sale parcel I-20599 is being offered directly to Toivo W. Makela because of inadvertent unauthorized use of public land between private land and the Black Canyon Canal and also the lack of legal access.

Each bid deposit must be at least 30 percent (30%) of fair market value. Acceptance of the direct sale offer will constitute an application for conveyance of the mineral estate. An additional $50.00 non-returnable mineral conveyance processing fee is required. The filing fee and deposit must be paid by certified check, money order, bank draft, or cashier's check. Offers will be rejected if accompanied by a personal check.

The remainder of the full price shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the purchaser and cause the bid deposit to be forfeited to the BLM.

It has been determined that sale parcel I-20590 contain no known locatable or saleable mineral values The parcel is considered to be potentially valuable for geothermal resources, but due to its small size these resources have no additional value other than that of the land. Conveyance of the mineral estate will occur simultaneously with the sale of the land.

It has been determined that sale parcels I-20598 and I-20599 contain no known locatable or saleable mineral values. Conveyance of the mineral estates of no known value will occur simultaneously with the sale of the land.

Planning Protest

Any party that participated in the plan amendment and is adversely affected by these amendments may protest this action only as it affects issues submitted for the record during

the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240, within 30 days of the date of publication of this notice in the **Federal Register**.

Sale Comment

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the sale to the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the sale, this realty action will become the final determination of the Department of the Interior and the planning amendments will be effective.

Dated: September 16, 1987.

Gene L. Schloemer,

Associate District Manager.

[FR Doc. 87-22021 Filed 9-25-87; 8:45 am]

BILLING CODE 4310-GG-M

[CO-942-06-4520-12]

Filing of Plats of Survey; Colorado

September 24, 1987.

The supplemental plat showing a subdivision of original lots 1 and 2, section 4, T. 40 N., R. 4 W., New Mexico Principal Meridian, Colorado was accepted September 9, 1987.

This supplemental plat was prepared to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat correcting the erroneous lot in the NW¼NE¼NW¼ of section 20, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado was accepted September 9, 1987.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-22595 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-719658

Applicant: Cedar Grove Farm, Stillwater, MN

The applicant requests a permit to import one female snow leopard (*Panthera uncia*) from the Assiniboine Zoo, Winnipeg, Manitoba, Canada, for captive breeding.

PRT-721273

Applicant: National Zoo, Washington, DC

The applicant requests a permit to import one male maned wolf (*Chrysocyon brachyurus*) born in the wild in Brazil and now held in captivity at Curitiba Zoo, Curitiba, Parana, Brazil. The import would introduce a new bloodline into the United States population and enhance the propagation of the species.

PRT-721599

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import two male and three female captive born North China sika deer (*Cervus nippon mandarinus*) from the Chengdu Zoo, People's Republic of China, for the purpose of establishing a captive breeding population in North America.

PRT-721784

Applicant: James R. Grimm, Paradise Valley, AZ

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-721703

Applicant: San Antonio Zoological Gardens and Aquarium, San Antonio, TX

The applicant requests a permit to purchase in interstate commerce one captive born male jaguarundi (*Felis yagouaroundi*) from the Woodland Park Zoological Gardens, Seattle, Washington, for the purpose of captive propagation and exhibition.

PRT-721795

Applicant: Lowery Park Zoological Gardens, Tampa, FL

The applicant requests a permit to import one female captive-born Malayan tapir (*Tapirus indicus*) from the Metropolitan Toronto Zoo, Toronto, Ontario, Canada, for enhancement of the propagation of the species through captive breeding.

PRT-721706

Applicant: Marine World Foundation, Vallejo, CA

The applicant requests a permit to import one male and two female Asian elephants (*Elephas maximus*) from the Timber Corporation, Rangoon, Burma, for the purpose of enhancment of propagation of the species through captive breeding and enhancement of survival of the species through conservaton education. All of these elephants were born in captivity in a Timber Corporation logging camp.

PRT-721707

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to import two female white Bengal tigers (*Panthera tigris tigris*) from the Nandankanan Biological Park, Bhubneshwar, Orissa, India, for the purpose of enhancement of the propagation and survival of the species through captive propagation, public exhibition and education.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 2201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: September 25, 1987.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-22604 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Meeting; Outer Continental Shelf Advisory Board, North Atlantic Regional Technical Working Group

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Meeting of North Atlantic Regional Technical Working Group Committee.

SUMMARY: The Atlantic Outer Continental Shelf (OCS) Region has scheduled a meeting of its North Atlantic Regional Technical Working Group (NARTWG) Committee. The

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committee will provide input to the Regional Director, Atlantic OCS Region on the focus of the draft environmental impact statement (DEIS) for proposed Oil and Gas Lease Sale 96 (North Atlantic). The roundtable discussion will include topics such as area to be analyzed in the DEIS, leasing alternatives, Georges Bank moratorium, Canadian portion of Georges Bank, Fisheries Training Program, and the Environmental Studies Program.

DATE: October 29, 1987.

ADDRESSES: The meeting will begin at 9 a.m. at the following location: Town Room, Holiday Inn—Albany—Central, 1614 Central Avenue, Albany, New York 12205.

The Atlantic OCS Region is at the following location: Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601 Vienna, Virginia 22180.

FOR FURTHER INFORMATION CONTACT: Marsha Polk, RTWG Coordinator, Atlantic OCS Region, at the Virginia address above, telephone (703) 285–2165 or FTS 285–2165.

SUPPLEMENTARY INFORMATION: The NARTWG is part of the OCS Advisory Board and was established to advise the Minerals Management Service Director on technical matters of Regional concern regarding offshore prelease and postlease sale activities in the North Atlantic. The NARTWG membership consists of representatives from Federal Agencies, the Coastal States of Maine through New Jersey, the petroleum industry, and other private interests.

Federal Advisory Committee Act (Public Law 92–463)

Dated: September 25, 1987.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 87–22595 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Odeco Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8749, Block 106, Main Pass Area, offshore Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from and onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on September 22, 1987. Comments must be received within 15 days of the date of this Notice of 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules govering practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 23, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–22594 Filed 9–30–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Availability of Final Environmental Impact Statement; Sequoia-Kings Canyon National Parks, CA and NV

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, the National Park Service, Department of the Interior has prepared a final environmental impact statement for the Development Concept Plan for the Grant Grove and Redwood Mountain areas of Sequoia-Kings Canyon National Parks in Fresno and Tulare Counties, California.

Four alternatives have been examined ranging from no action (health and safety measures only) to developing low-profile units or a hotel or combination of hotel and dispersed units. The proposed action recommends rehabilitation of some existing units, construction of new one and two story units removed from the Grant Grove meadow; relocation of other visitor support facilities away from the meadow; consolidation and upgrading of employee housing; expanding administrative and maintenance space; improving access, circulation and visitor facilities at several critical sites; and leaving Redwood Mountain essentially undeveloped.

DATES: The 30 day no action period following the Environmental Protection Agency's notice of availability of the final EIS will end on or about November 9, 1987.

ADDRESSES: Inquiries on the FEIS should be directed to: Superintendent, Sequoia-Kings Canyon National Parks, Three Rivers, California 93271.

Copies of the FEIS are available for inspection at the park headquarters in Three Rivers, the Grant Grove Visitor Center and in libraries in the park vicinity. Copies are also available at the following addresses: Western Regional Office, National Park Service, Attn: Division of Planning, Grants, and Environmental Quality, P.O. Box 36063, 450 Golden Gate Avenue, Room 14033, San Francisco, California 94102.

Date: September 11, 1987.

Stanley T. Albright,

Regional Director, Western Region, National Park Service.

[FR Doc. 87-21950 Filed 9-30-87; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Marine Mammals; Issuance of Permit

On July 17, 1987, 52 FR 27067 and corrected August 7, 1987, 52 FR 29407 Notice was published in the **Federal Register** that an application had been filed with the National Marine Fisheries Service, and Fish and Wildlife Service by the USSR Ministry of Fisheries, All-Union Scientific Institute of Fisheries and Oceanography, Moscow, USSR, for a permit to take by killing 200 Pacific walrus (*Odobenus rosmarus*) and 200 bearded seal (*Erignathus barbatus*), for the purpose of scientific research.

Notice is hereby given that on September 15, 1987, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service and Fish and Wildlife Service jointly issued a Scientific Research Permit to the USSR Ministry of Fisheries for the above taking subject to certain conditions set forth therein.

The Permit and related documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; and

Director, Fish and Wildlife Service, U.S. Department of the Interior, 18th and C Street NW., Washington, DC 20240.

Dated: September 16, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Dated: September 16, 1987.

Richard K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-22533 Filed 9-30-87; 8:45 am]

BILLING CODE 3510-22-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-343 (Final)]

Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports from Japan of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers, all the foregoing provided for in items 680.3040, 680.3932, 680.3934, 680.3938, 680.3940, 681.1010, or 692.3295 of the Tariff Schedules of the United States annotated, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 23, 1987, following a preliminary determination by the Department of Commerce that imports of the subject merchandise from Japan are being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 8, 1987 (52 FR 11347). The hearing was held in Washington, DC, on May 12, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 23, 1987. The views of the Commission are contained in USITC Publication 2020 (September 1987), entitled "Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Japan: Determination of the Commission in Investigation No. 731-TA-343 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: September 23, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-22650 Filed 9-30-87; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[Investigation No. 337-TA-253]

Import Investigations; Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor

AGENCY: U.S. International Trade Commission.

ACTION: Decision to grant in part a request for an extension of time in which to certify the record in this investigation to the Commission and to file with the Commission an initial determination as to whether there is a violation of section 337 of the Tariff Act of 1930.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant in part a request, made by Order No. 49 of the presiding administrative law judge (ALJ), to extend the deadline for issuance of the ALJ's final initial determination in this investigation. The deadline is extended by 21 days, to November 10, 1987.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: This investigation had previously been declared "more complicated" and the deadline for completion of the investigation extended to the full 18 months permitted by statute. On September 16, 1987, the presiding administrative law judge (ALJ) issued an order, Order No. 49, requesting leave to issue his final initial determination (ID) on November 20, 1987, 31 days after the deadline contemplated by Commission rule 210.53(a), which is October 20, 1987. The bases for the request were essentially that the ALJ had erroneously believed the deadline had been extended by the Commission, and that the investigation had proceeded to a point where it would be virtually impossible to issue a well-reasoned ID by the existing deadline, October 20, 1987. Because the statutory deadline had already been extended to the full 18 months permitted by statute for more complicated cases, any extension of time to issue the ID would come at the expense of the Commission's time to review the ID. The Commission has

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determined to grant the request in part, extending the deadline 21 days to November 10, 1987, for reasons stated in its Action and Order and Opinion.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Part 210 of the Commission rules (19 CFR Part 210).

Copies of the Commission's Action and Order, Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason

Secretary.

Issued: September 25, 1987.

[FR Doc. 87–22622 Filed 9–30–87; 8:45 am]

BILLING CODE 7020–02–M

NATIONAL SCIENCE FOUNDATION

Meeting; Advisory Committee for Astronomical Sciences

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date and Time: October 22, 1987, 9:00 am–5:00 pm; October 23, 1987, 9:00 am–4:00 pm.

Place: National Science Foundation, Room 540.

Type of Meeting: October 22, 1987, 9:00 am–5:00 pm, Open; October 23, 1987, 9:00 am–11:00 am, Closed; 11:00 am–4:00 pm, Open.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities

Agenda:

Thursday, October 22

9:00 am–5:00 pm—Status of FY 88 budget, Report of Subcommittee for Oversight Review of the Astronomy Centers Section, Science and Technology Centers, FY 88 Programs and Impacts for the Research Section and the National Astronomy Centers.

Friday, October 23

9:00 am–11:00 pm—Closed: Review of a Proposal.

11:00 am–4:00 pm—Report on the Status of the Future of NOAO. Continuation of Discussions from Previous Day.

Reason for Closings: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information: financial data, such as salaries: and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 28, 1987.

[FR Doc. 87–22686 Filed 9–30–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry.

Date: Monday and Tuesday, October 19 and 20, 1987 from 9:00 am to 5:00 pm.

Place: St. James Hotel, Washington, DC.

Type of Meeting: Closed.

Contact Person: Harold L. Segal, H. T. Huang, Program Directors and Estella K. Engel, Associate Program Director, Biochemistry Program, Room 325, Telephone (202) 357–7945.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

September 28, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–22689 Filed 9–30–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cellular Physiology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cellular Physiology.

Date and Time: October 19, 20, 21, 1987—8:30 a.m. to 5 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Maryanna P. Henkart, Program Director, Cellular Physiology Program, (202) 357–7377, Room 321, National Science Foundation, Washington, DC 20550.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Rebecca Winkler,

Committee Management Officer.

September 28, 1987.

[FR Doc. 87–22690 Filed 9–30–87; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Date: October 19, 20 and 21, 1987.

Time:

October 19: Subcommittee on Disabled, 1:30–4:30 p.m.

October 20: Subcommittee on Minorities, 9:00–11:30 a.m.

Full Committee Meeting, 1:30–4:30 p.m.

October 21: Full Committee Meeting, 9:00–11:30 a.m.

Subcommittee on Women, 1:30–4:30 p.m.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, Room 635, Telephone: 202/357–7066.

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.

Summary Minutes: May be obtained from Executive Secretary.

Agenda: To review progress by the subcommittees and to meet with the Director and other NSF staff.

September 28, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–22687 Filed 9–30–87; 8:45am]

BILLING CODE 7555–01–M

Advisory Panel for Integrative Neural Systems Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Integrative Neural Systems Program.

Date and Time: October 21–23, 1987, 9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Washington, DC, Room 543.

Type of Meeting: Part Open—Closed 10/21—9:00 a.m. to 5:00 p.m.; Closed 10/22—9:00 a.m. to 5:00 p.m.; Open 10/23—9:00 a.m. to 11:00 a.m.; Closed 10/23—11:00 a.m. to 5:00 p.m.

Contact Person: Dr. Nathaniel G. Pitts, Program Director, Integrative Neural Systems Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7040.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research integrative neural systems.

Agenda: Open—General discussion of the current status and future plans of the Integrative Neural Systems Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government Sunshine Act.

September 28, 1987.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 87–22688 Filed 9–30–87; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and Time: October 19–20, 1987—1:00am to 5:00pm—October 19, 1987; 8:30am to 5:00pm—October 20, 1987.

Place: Main Conference Room—American Institute of Architects, 1735 N.Y. Avenue NW., Washington, DC 20006.

Type of Meeting: Open.

Contact Person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, DC, Telephone: 202/357–9639.

Summary Minutes: May be obtained from the contact person.

Purpose of Committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda: The Committee will hold sessions as noted above. It will hear presentations and status reports on various topics of current interest from officials and representatives from NSF, other Departments and Agencies and, as appropriate, from other organizations active in ocean science research as well as from subcommittees and/or working groups. Topics to be presented and discussed include: Overview and update of FY–87 program activities; Profile of FY–88 Ocean Sciences budget and prospects for FY–89; Global Geosciences and the Global Change Program; Long-Range Planning activities; Reports on other GEO Advisory Committees—by liaison members; GEO Quarterly Review; Oversight Review Schedule for OCE activities; Presentation on TOGA Program activities. The Committee will take appropriate action on these and other matters as may be required and also conduct necessary administrative functions with respect to: approval of minutes of the previous meeting; determination of time and place for the next meeting as well as other appropriate business.

September 28, 1987.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 87–22691 Filed 9–30–87; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272–OLA and 50–323–OLA]

Reconstitution of Atomic Safety and Licensing Appeal Board; Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant Units 1 and 2)

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber.

C. Jean Shoemaker
Secretary to the Appeal Board.

Dated: September 25, 1987.

[FR Doc. 87–22668 Filed 9–30–87; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing; Pennsylvania Power & Light Co. and Allegheny Electric Cooperative Inc.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–14 and NPF–22 issued to Pennsylvania Power and Light Company, and Allegheny Electric Cooperative Inc., for operation of Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendments would revise the SSES Technical Specifications to permit changes to 125 volt dc battery profile contained in the Technical Specifications. The proposed changes were previously published in bi-weekly **Federal Register** Notice dated July 15, 1987 (52 FR 26595), and September 23, 1987 (52 FR 35802) in accordance with the licensee's application for amendment dated June 10, 1987, and as revised by a letter dated September 1, 1987. By a letter dated September 23, 1987, the licensee has again revised its request for an amendment and has confirmed that the required battery load profiles can be met with the existing 125 volt dc batteries. The licensee has had difficulty in obtaining qualified new batteries of a larger capacity and has therefore withdrawn its proposal to install two new batteries.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's revised request and concurs with the following basis and conclusion provided

by the licensee in its September 23, 1987 submittal.

The proposed change does not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated. Final Safety Analysis Report (FSAR) Subsection 8.3.2.1.1.4 states that the station batteries have sufficient capacity without the charger to independently supply the required loads for four hours. The Technical Specifications require that the batteries be surveilled to dummy loads which are greater than the design loads. An assessment has been performed by our engineering department which verifies that the batteries have adequate capacity to power the actual loads on the 125 V DC system. The new load Specifications envelop the actual loads(;)

(2) Create the possibility of a new or different kind of accident from any previously evaluated. As stated in Part (1), the batteries have sufficient capacity to power the actual battery loads thus enabling them to perform their intended function. Any postulated accident resulting from this change is bounded by previous analysis(; and)

(3) Involve a reduction in the margin of safety. IEEE 485 requires that the related battery capacity include a margin for aging of the battery and the temperature of the batteries' environment at the beginning of battery life. This margin allows replacement of the battery when its capacity is decreased to 80% of its rated capacity (100% design load). As * * * if the battery capacity is corrected for a temperature of 65°F (the lowest observed electrolyte temperatures), the batteries currently have at least a 25% margin in accordance with IEEE 485. Also, based upon the vendor's aging curves it is not expected that the batteries will significantly deteriorate during the next 3–4 years. With the increased battery loads and the installation of the ATWS ARI System it can be concluded that the overall margin of safety of the plant is improved.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 2, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to inervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 10, 1987, as amended and supplemented September 1 and 23, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 25th day of September.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 87–22675 Filed 9–30–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962, (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970, (35 FR 10737), the following three sets of rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations) through three separate Federal agencies. These rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. This has been determined as follows:

(a) For the Department of Defense—historical costs and workload data developed through the Medical Expense and Performance Reporting System (MEPR) provide an operating cost base to which are added systemwide costs and allowances for actual inflation and pay raises to obtain the estimates for the fiscal year under review. The costs added are those items required by OMB Circular A–25: (1) Retirement costs for civilian personnel; and (2) an asset charge in lieu of a specific depreciation cost of fixed assets.

(b) For the Veterans Administration—the actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage change to arrive at the estimated rates for the fiscal year under review.

(c) For the Department of Health and Human Services—the sum of obligations for each cost center providing medical services is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculating the rates, the Department's unfunded retirement liability costs, and capital and equipment depreciation costs were incorporated to conform to requirements contained in OBM Circular A–25. In addition, cost centers' obligations include all costs from all accounts—such as Medicare and Medicaid collections, and Contract Health funds used to support direct operations. Inclusion of these funds yields a more accurate indication of the cost of care in HHS facilities.

These rates represent the reasonable cost of hospital, nursing home, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics, administered by any of the three Federal agencies—Department of Defense, Veterans Administration or Department of Health and Human Services.

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be amounts expended by the United States for such care and treatment.

	Effective October 1, 1987 and thereafter		
	DOD	VA	HHS
Hospital care per inpatient day:			
General medical care	$466	$473	$691
Surgical care		611	
Psychiatric care		236	
Intermediate care		190	
Neurology		393	
Rehabilitation medicine		372	
Blind rehabilitation		465	

	Effective October 1, 1987 and thereafter		
	DOD	VA	HHS
Alcohol and drug treatment		197	
Prescription		14	
Nursing home care		168	
Spinal cord injury care		524	
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, Fort Sam Houston, Texas	1,891		
Outpatient medical and dental treatment:			
Outpatient visit	60	127	86

For 1988, the cost of separate clinic stops during the course of a single visit to a VA outpatient facility is consolidated into a single charge. Consistent with previous practice, the Department of Defense and Department of Health and Human Services rates do not consolidate all clinic stops.

For the period beginning October 1, 1987, the rates prescribed herein supersede those established by the Director of the Office of Management and Budget on September 27, 1986 (51 FR 35709).

Date: September 24, 1987.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87-22725 Filed 9-30-87; 8:45 am]

BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Employer's Quarterly or Annual Report of Contributions Under the RUIA
(2) Form(s) submitted: DC-1
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: Quarterly or annually
(5) Respondents: Businesses or other for-profit, Small businesses or organizations
(6) Annual responses: 2,387
(7) Annual reporting hours: 835
(8) Collection description: Railroad employers are required to make contributions to the RUI fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87-22592 Filed 9-30-87; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Application to Act as Representative Payee.
(2) Form(s) submitted: AA-5, G-478.
(3) Type of request: Revision of a currently approved collection.
(4) Frequency of use: On occasion.
(5) Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
(6) Annual responses: 26,500.
(7) Annual reporting hours: 22,167.
(8) Collection description: Section 12 of the Railroad Retirement Act provides for the payment of benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The collection obtains information used by the Board for selection of a representative payee and verification of an annuitant's capability to manage benefit payments.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87-22601 Filed 9-30-87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24943; File No. SR-NASD-87-33]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.;

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 31, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to allow non-member banks to access the Municipal Bond Acceptance and Reconciliation Service ("MBARS"). MBARS, which was approved by the Commission on Jaunary 21, 1987 (Release No, 34–24022), is an extension of the NASD's Trade Acceptance and Reconciliation Service ("TARS") to accommodate over-the-counter ("OTC") transactions in municipal debt instruments that are eligible for processing through a registered national clearing agency. Currently, subscription to MBARS is limited to NASD member firms that are members of a registered clearing agency and have the requisite equipment to access the service.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

The purpose of the proposed rule change is to allow non-member banks to subscribe to MBARS on the same terms currently available to NASD member firms. This proposed rule change will not affect any of the operational features of MBARS which are detailed in the *MBARS User Guide*. That document was previously filed with the Commission as an exhibit to File No. SR–NASD–87–2, which the Commission approved to enable introduction of the MBARS enhancement to TARS.

Presently, member firms subscribing to TARS can receive MBARS at no additional cost. However, subscribers wishing only to receive MBARS must pay the prescribed fees for TARS plus the applicable equipment charges. The service fees for TARS and the relevant equipment charges are contained in Part IX of Schedule D to the NASD By-Laws. This aproach recognizes the fact that MBARS is merely an adaptation of TARS to a different class of securities eligible for processing through a clearing corporation. Hence, banks subscribing to MBARS would pay the same fees as member firms that subscribe exclusively to the MBARS service. As of August 1, 1987, approximately five NASD member firms were utilizing nine terminals as "MBARS-only" subscribers. Banks wishing to subscribe must still satisfy the existing MBARS requirement of membership in a clearing corporation for purposes of clearing municipal bond trades.

It should be recalled that MBARS was designed to support the clearance of municipal bond trades and to assist subscribers by providing on-line entry of trade date respecting transactions cleared through a registered clearing agency. In this way, MBARS introduced a greater degree of automation to the process of clearing OTC transactions in municipal bonds, particularly the process of resolving uncompared trades. Collectively, the various features of MBARS serve to expedite comparison and provide a cost-effective mechanism for processing OTC transactions in municipal bonds eligible for clearance through a clearing agency.

Commission approval of the instant filing will expand the universe of potential MBARS subscribers to non-member banks that are active in municipal bonds. Thus, more entities will be able to realize the efficiencies that result from subscription to MBARS. This serves to advance the public policy goals articulated in the statutory provisions that supported the Commission's approval of MBARS earlier this year. Accordingly, statutory support for the proposed broadening of access to MBARS can be found in sections 17A(a)(1)(A), (B), and (C) of the Act.

These provisions under section 17A contain the Congressional findings respecting a national system for clearance and settlement of securities transactions:

> [that] the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors; [that] inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating tansactions by and acting on behalf of investors; [and that] new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.[1]

Additionally, expanded access to MBARS is supported by Section 15A(b)(6) of the Act and Municipal Securities Rulemaking Board ("MSRB") Rule G–12, subparagraphs (f) and (h). Section 15A(b)(6) requires national securities associations, such as the NASD, to promulgate rules designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, municipal securities. In that connection, subparagraph (f) of MSRB Rule G–12 concerns the use of automated comparison, clearance and settlement systems; subparagraph (h) concerns the resolution of open interdealer transactions.[2] Expanded access to MBARS will foster achievement of the statutory goals expressed in section 15A(b)(6) of the Act[3] and promote compliance with MSRB Rule G–12, particularly subparagraphs (f) and (h). Lastly, the NASD notes that section 19(g)(1)(B) of the Act mandates, among other things, that the NASD enforce compliance by its members with the rules of the MSRB.

The NASD submits that the foregoing provisions constitute adequate statutory bases for Commission approval of this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that no competitive burden will arise from allowing non-member banks to access MBARS. A bank's decision to subscribe will be based upon an assessment of the costs/benefits of MBARS in relatin to the volume of its municipal bond transactions. Banks electing access to MBARS would be subject to the same terms, conditions, and fees that apply to NASD member firms subscribing only to MBARS. Hence, implementation of this

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[1] Section 3(a)(12) of the Act defines the term "exempted securities" to include municipal securities. This provision also specifies that municipal securities shall not be deemed to be "exempted securities" for purposes of section 17A of the Act.

[2] *See, e.g.*, Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531, which approved proposed changes to MSRB Rules G–12 and G–15 establishing a timetable for integrating municipal securities brokers and dealers into the National Clearance and Settlement System.

[3] Section 15B(b)(2)(C) of the Act establishes a parallel requirement respecting the rules promulgated by the MSRB.

proposal would assure fair treatment of all authorized subscribers.

C. Self-Regulatory Oraganization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received respecting this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. This request is grounded upon several factors. First, the NASD desires to expedite realization of the benefits that MBARS will offer to banks that are active in municipal bonds. Second, the filing does not contemplate any modification in operational procedures or in any festures previsously described in the *MBARS User Guide*. Third, the NASD believe that there is no policy question raised by the prospect of expanded access subject to the same terms, conditions and fees that currently apply to NASD member firm subscribers. Fourth, the NASD points out that the Commission has previously reviewed and approved not only MBARS, but the automated comparison services for municipal securities transactions offered by the National Securities Clearing Corporation, Midwest Clearing Corporation, Pacific Clearing Corporation, the Depository Trust Company, and the Stock Clearing Corporation of Philadelphia.[4] In light of the foregoing factors, the NASD believes that accelerated approval is appropriate to promote achievement of the statutory goals articulated in sections 17A(a)(1)(A)-(C), 15A(b)(6), and 19(g)(1)(B) of the Act.

The Commission finds that the proposed rule change is conistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 17A(a)(1)(A)-(C), 15A(b)(6), and 19(g)(1)(B). In addition, the Commission agrees that the proposed rule change promotes compliance with MSRB Rule G–12. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing in the **Federal Register** in that expansion of access to MBARS to non-member banks will allow those banks to realize the benefits of an automated comparison system for municipal securities transactions. The NASD has advised the Commission that 33 non-member banks that are clearing corporation participants are interested in subscribing to MBARS.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and coyping get the principal office of the NASD. All submissions should refer to File No. SR–NASD–87–33 and should be submitted by October 22, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: September 25, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–22628 Filed 9–30–87; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release Nos. 20976 (May 18, 1984), 49 FR 22428; 21120 (July 6, 1984), 49 FR 28490; 21279 (August 31, 1984), 49 FR 35456; and 21315 (September 12, 1984) 49 FR 36726, respectively.

[Rel. No. IC–16005; 812–6769]

Fidelity Deutsche Mark Fund, L.P. et al.

Application;

September 25, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Fidelity Deutsche Mark Fund, L.P., Fidelity Pound Fund, L.P., Fidelity U.S. Investments Bond Fund, L.P., Fidelity U.S. Investments Government Securities Fund, L.P., Fidelity Yen Fund, L.P., Fidelity New Jersey Tax-Free Portfolio, L.P. (the "Funds") and Fidelity Management & Research Company ("FMR") (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of Section 2(a)(19) of the 1940 Act.

Summary of Application: Applicants seek an order exempting the Funds and certain of its proposed general partners (and any person who may become a successor or additional general partner) from the provisions of section 2(a)(19) of the 1940 Act to the extent that those general partners would be deemed "interested persons" of the Funds or their investment advisor, solely because of their status as general partners.

Filing Date: The application was filed on June 24, 1987 and amended on September 25, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 1:00 p.m., on October 16, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Service the Applicants with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 82 Devonshire Street Boston, Massachusetts, 02109.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a free from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Fund is an open-end management investment company registered under the 1940 Act. Each Fund is organized as a limited partnership under the laws of the State of Delaware. Each Fund has filed with the Commission (1) a Notification of Registration on Form N–8A under

section 8(a) of the 1940 Act, and (2) a Registration Statement on Form N–1A under the 1940 Act and the Securities Act of 1933, as amended (the "Registration Statement"). Additional information concerning the Funds is contained in their respective Registration Statements.

2. FMR serves as the Funds' investment advisor and will be primarily responsible for the selection of the Funds' investments and the administration of the Funds. FMR, a wholly-owned subsidiary of FMR Corp., is a Massachusetts corporation and a registered investment advisor with the Securities and Exchange Commission. Fidelity Distributors Corporation, a wholly owned subsidiary of FMR, acts as the distributor of shares representing the Funds' partnership interests ("Shares").

3. Each Fund has two classes of partners: general partners ("General Partners") and limited partners ("Limited Partners"). The General Partners ultimately will include up to twelve individuals (the "Managing General Partners") and one corporate General Partner, FMR (the "Non-Managing General Partner"). At least a majority, except as provided in section 10 of the 1940 Act, anticipated to be nine of twelve (three of four in the case of Fidelity U.S. Investments Bond Fund, L.P. and Fidelity U.S. Investments Government Securities Fund, L.P.), of the Managing General Partners (the "Independent General Partners") will be unaffiiated with the Fund and FMR. Certain provisions of section 10 of the 1940 Act permit a registered investment company to have a board of directors less than a majority of which are not "interested persons" of such company, including section 10(d) of the 1940 Act (relating to certain open-end companies) and section 10(e) of the 1940 Act (relating to temporary vacancies in boards of directors). The Managing General Partners will perform the same directions for the Funds as do the Trustees of other mutual funds managed by FMR organized as Massachusetts business trusts and will consist of the same individuals serving as Trustees of such funds; the Managing General Partners will have complete and exclusive control over the management, conduct and operation of the Funds' business. Under the terms of each Fund's Agreement of Limited Partnership (the "Agreement") FMR, as the Non-Managing General Partner, is permitted to participate in the management of the Fund as a General Partner, only in the event that no Managing General Partner remains to elect to continue the business of the Fund and then only for the limited period of time (not in excess of 90 days) necessary to convene a meeting of the partners for the purpose of making such an election.

4. The Agreement provides that the General Partners shall not be personally liable for the repayment of any amounts standing in the account of a Limited Partner or holder of Shares including, but not limited to, contributions with respect to such Shares. Any such payment shall be solely from the Fund's assets. The General Partners shall not have any personal liability to any holder of Shares or to any Limited Partner for any loss, damage or any other cost incurred by reason of (1) any failure to withhold income tax under Federal or state tax laws with respect to income allocated to Limited Partners, (2) any change in Federal or state income tax laws, or in interpretations thereof, as they apply to the Fund, the holders of Shares or the Limited Partners, whether such change occurs through legislative, judicial or administrative action, (3) any error of judgment or mistake of fact or law, or (4) any other matter, unless the result of willful misfeasance, bad faith, gross negligence or reckless disregard of their duties. Any such loss, damage or other cost shall be satisfied from the Fund's assets.

5. The Agreement's provisions dealing with the liability and indemnification of General Partners will be supplemented by FMR's obtaining a standard, commercially-available, liability insurance policy, which will cover the General Partners, including the Managing General Partners, against liabilities and expenses to which they may be subject in their capacity as General Partners, so long as the General Partners have not engaged in willful misfeasance, bad faith, gross negligence or reckless disregard of their duties and have acted in good faith in the reasonable belief that their actions were in the best interest of the Fund.

6. To preserve each Fund's tax status as a partnership, rather than as an association taxable as a corporation, the Managing General Partners and the Non-Managing General Partner will, as long as current law, regulations, and Internal Revenue Service policy or interpretations thereof, in the opinion of counsel, require, own as a group not less than 1% of the Shares outstanding. The Non-Managing General Partner is obligated to contribute to the Fund through the purchase of Shares from time to time amounts in the aggregate sufficient to enable the General Partners to meet the 1% requirement. Thus, for so long as the Non-Managing General Partner continues to serve in that capacity it may not redeem or assign Shares it holds as the Non-Managing General Partner or otherwise accept distributions in cash or property if that action would result in the failure of the General Partners to maintain such 1% interest in the Fund (provided such ownership is required as described above).

7. Under the Agreement a Managing General Partner may not assign Shares which he holds in his capacity as a General Partner to any party without the consent of a majority of the Managing General Partners (exclusive of such General Partner proposing to assign his Shares). Any assignee of such Managing General Partner for which such consent has been granted may not become a substituted Managing General Partner except if elected as such by the remaining Managing General Partners, and Limited Partners, if required by section 16(a) of the 1940 Act, as provided in the Agreement and shall otherwise hold such Shares as a Limited Partner.

8. The Agreement provides that the Limited Partners do not have the right to and shall not take part in the control of the Funds' business and shall have no right or authority to act for or bind the Funds, but they may exercise the rights and powers of Limited Partners under this Agreement and the Delaware Limited Partnership Act. Each of the Funds has, or will obtain, an opinion of counsel to the effect that exercise by Limited Partners to be liable for the obligations of the Funds by reason of being deemed to participate in the control of the Partnership's business.

9. No Limited Partner shall be liable for the debts or obligations of the Funds, provided, however, that the contribution of a Limited Partner (represented, in the case of the Funds, by the price paid by Limited Partners for their shares) shall be subject to the risks of the business of the Funds and subject to the claims of the Funds' creditors, and provided further that, after any Limited Partner has received the return of any part of his contribution, he will be liable to the Funds to the extent required by the Delaware Uniform Limited Partnership Act.

10. The Delaware Uniform Limited Partnership Act also requires that a limited partner that has received a return of any part of his contribution be liable for the amount of the returned contribution to the extent necessary to discharge the partnership's liabilities to creditors, or for the amount of the contribution wrongfully returned if such

returned contribution was in violation of the partnership agreement or the Delaware Uniform Limited Partnership Act. Each Fund intends to include in its contracts a provision limiting the claims of creditors to the Fund's assets (as permitted by Section XV(g) of the Agreement) and may carry insurance in such amounts as the Managing General Partners, in their judgment, consider reasonable to cover potential liabilities of the Fund. In addition, the Managing General Partners will periodically review the question of the appropriateness of obtaining errors and omissions insurance for each Fund. Thus, the risk of a limited partner incurring financial loss on account of his liability will be limited to circumstances in which the Fund itself would be unable to meet its obligations.

Applicant's Legal Analysis

1. Each of the Managing General Partners is a partner of the Funds and a co-partner of FMR and, thus, under section 2(a)(3), each may be deemed an affiliated person of the Funds and FMR. As an affiliated person of the Funds and FMR, each of the Managing General Partners, including each Independent General Partner, may be an interested person of the Funds and FMR under sections 2(a)(19)(A) and 2(a)(19)(B) of the 1940 Act. If all of the Managing General Partners were deemed interested persons of the Funds and FMR, the Funds would be precluded from meeting a number of requirements imposed on a registered investment company by the 1940 Act and various rules under the 1940 Act.

2. To enable the Funds to comply with the requirements of the 1940 Act relating to an investment company's non-interested directors, Applicants, in accordance with section 6(c), seek an exemption from section 2(a)(19) of the 1940 Act so that the Managing General Partners will not be considered interested persons of the Funds or FMR solely because of their position as General Partners (the "Exemption"). FMR agrees, as long as current law, regulations, and Internal Revenue Service policy or interpretations thereof, in the opinion of counsel requires the General Partners to own as a group not less than 1% of the shares of each Fund outstanding, as a condition of the Exemption, to fulfill its obligation under the Agreement to contribute to each Fund through the purchase of Shares from time to time an aggregate amount sufficient to enable the General Partners to meet such 1% limit.

3. Applicants submit that the Exemption is both in the public interest and consistent with the policies underlying the 1940 Act. The Exemption, if granted, will enable the Funds to operate as limited partnerships and thereby afford the Funds flexibility to meet their investment objectives. It likewise is consistent with the protection of investors because it will assure oversight of the Funds' affairs by the Independent Managing General Partners.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22699 Filed 9-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16004; 812-5940]

Application; 5600, Inc.

September 25, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: 5600, Inc.

Relevant 1940 Act Section: Exemption requested under section 6(c) from all the provisions of the 1940 Act.

Summary of Application: Applicant seeks an order exempting from all the provisions of the 1940 Act certain investment vehicles primarily owned or controlled by the Rockefeller family ("Exclusive Family Investment Vehicle").

Filing Date: The application was filed on September 17, 1984, and amended on October 14, 1986, and September 22, 1987. A letter will be submitted during the notice period the substance of which are contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 19, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Suite 5600, Rockefeller Plaza, New York, New York 10112.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-3026, or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations:

1. Applicant is one of several corporations which were established by the Rockefeller Family (the "Family") in 1979 to provide a more permanent structure for the offering of the various services that had, prior to that time, been provided by an office maintained by the Family. These services include financial planning, asset management, investment advice, trust and estate administration, legal and accounting services and other miscellaneous services. Applicant, directly and through its subsidiaries, is the principal management vehicle for these services. Among the subsidiaries of Applicant is Rockefeller and Co., Inc. ("Rockefeller"), an investment adviser registered under the Investment Advisers Act of 1940. The stock of these corporations is all held, directly or indirectly, by a trust which was established in 1979 by senior Family members (the "Family Trust") and is administered by trustees who are not Family members for the benefit of descendants of the grantors' generation of the Family and their spouses (the beneficiaries of the Family Trust being referred to herein as "Family Trust Beneficiaries").

2. The grandchildren and great grandchildren of John D. Rockefeller, Jr. make up the overwhelming majority of individual adult clients of Rockefeller. Each generation elects representatives to an advisory committee (the "Advisory Committee") which advises the trustees of the Family Trust. The Advisory Committee is charged with the responsibility of advising the trustees with respect to matters affecting the Family Trust and the Family Trust Beneficiaries, but has no power to restrict the discretion granted the trustees by the trust indenture. The Advisory Committee also has the power to set the compensation for the trustees. In addition, nine of the eleven members of the Advisory Committee, currently serve as directors of Applicant, and all

of the directors of Applicant are Family members. Two of the six directors of Rockefeller are Family members. The office maintained by the Family, together with the Family Trust and the corporations owned, directly or indirectly by the Family Trust, are collectively referred to herein as the "Family Office".

3. Clients of the Family Office are comprised principally of the classes of persons listed below and several partnerships whose partners consist of such persons (the "Family Clients"):

A. Rockefeller Family

(1) *Individuals.* Descendants of John D. Rockefeller, Jr. and his cousin Margaret Strong de Larrain and their spouses (including former spouses and adopted children or step children);

(2) *Estates.* Estates of persons described in A(1);

(3) *Trusts.* Trusts created by or for the benefit of persons described in A(1) or A(2).

No Individual Family member shall be considered a Family Client unless such person has a continuing and substantial relationship with the Family and the Family Office, as determined by Applicant's Chief Executive Officer. In determining whether a person has such a relationship, the following factors will be considered:

(1) The extent to which such person regularly uses the services of the Family Office and seeks advice from the Family Office;

(2) Whether such person actively participates in selection of members to the Advisory Committee and in other aspects of control of the various Family organizations;

(3) The proportion of such person's assets available for investment which are under management of the Family Office; and

(4) The degree to which such person is dependent on other members of the Family or the Family Office for such person's financial well being.

If an Individual Family member has under management of the Family Office at least 50% of such person's assets available for investment, it will be conclusively presumed that such person has such a continuing and substantial relationship and is, therefore, a Family Client.

B. Charities

The Rockefeller University and The Colonial Williamsburg Foundation and other charitable or educational institutions which, at the time they make any investment in an Exclusive Family Investment Vehicle (as defined below), are controlled (as defined in Rule 405 under the Securities Act of 1933, as amended) by the Family. A charitable or educational institution which at some time in the future may no longer be controlled (as defined above) by the Family shall continue to be deemed to be a Family Client, but only with respect to its existing investments in Exclusive Family Investment Vehicles (i.e., it may not make any new investments in such vehicles), provided, however, that the Family continue to have an eleemosynary interest in or is represented in the governance of such institution. If at any time the conditions set forth in the immediately preceding proviso are no longer met with respect to an institution, then one year after such institution no longer meets such conditions, such institution shall no longer be deemed to be a Family Client for any purposes hereof, and each Exclusive Family Investment Vehicle in which such institution has invested must redeem the investment interest of such institution unless such institution would otherwise be allowed to invest in such Exclusive Family Investment Vehicle in the absence of its classification as a Family Client.

C. Business

Businesses in which the Family has a significant financial interest, defined as at least a 25% equity interest, and which are controlled (as defined in Rule 405 under the 1933 Act) by the Family.

D. Key Employees

Key managers, supervisors and professionals or former employees of the Family and its Charities, Businesses or Trusts for the benefit of such Key Employees or former Key Employees. The term "Key Employees" shall mean those persons who meet each of the following criteria as determined by Applicant's Chief Executive Officer:

(1) such Key Employee is compensated at a rate in excess of $50,000 per year;

(2) such Key Employee either (i) has a substantial business or professional background and has at least a college or professional degree or (ii) has substantial specific experience in financial matters;

(3) such Key Employee performs significant executive, professional or managerial functions;

(4) such Key Employee is involved with the Family's business and/or philanthropic activities and interrelates personally and directly with Family members and has regular access to Family members; and

(5) such Key Employee is a participant in a Key Employee investment program, under which in its present form Family members or entities affiliated with Family members make or arrange for loans to employees for the purpose of investing such loan proceeds in Exclusive Family Investment Vehicles or other investment vehicles managed by the Family Office.

The estate of a Key Employee who dies after the Key Employee subscribed to purchase an interest in an Exclusive Family Investment Vehicle but before such Investment Vehicle has started to make investments will be returned the money invested by such Key Employee. At present less than 8% of the employees of the Family, and its Charities, Businesses or Trusts are Key Employees. It is anticipated that this percentage will not change substantially.

Applicant's Legal Analysis

1. Several limited partnerships have been established by the Family Office as investment vehicles for the Family Clients. All of these existing investment limited partnerships are advised by Rockefeller except for one which is separately managed by its general partners who are employees of the Family Trust. Several other investment general or limited partnerships, corporations or investment trusts will be established in the future. To the extent each existing and future Exclusive Family Investment Vehicle can no longer avail itself of the exemption for a "private" investment company under section 3(c)(1) of the 1940 Act, Applicant requests that the SEC exempt such existing and future investment vehicles from all provisions of the 1940 Act. Applicant submits that the Exclusive Family Investment Vehicles will be Family-owned and/or controlled investment vehicles and, thus, the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Substantially all of the investors in the Exclusive Family Investment Vehicles will be Family Clients. It is the intention of the Family Office that each existing investment vehicle and each investment vehicle which may be established by the Family Office either (i) will be exempt from registration under the 1940 Act as an investment company by reason of section 3(c)(1) thereof or by reason of some other exemption from registration or (ii) if it is not so exempt (a) will be at least 90% owned by or for the benefit of Family Clients, (b) will be at least 25% owned by or for the benefit of Individuals,

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Estates and Trusts of the Family and (c) any part of any such investment vehicle that is not held by or for the benefit of Family Clients will be held by not more than 35 persons and will not be publicly held. Each existing or future Family investment vehicle established by the Family Office having the characteristics set forth in the foregoing clause (ii) is herein referred to as an "Exclusive Family Investment Vehicle". There are eight investment limited partnerships that are currently managed by the Family Office which qualify as Exclusive Family Investment Vehicles.

3. The Family Office controls, and will continue to control, access to membership in all Exclusive Family Investment Vehicles. The partnership agreement of each existing Exclusive Family Investment Vehicle provides that no person may be admitted as a limited partner without the approval of the general partner. The partnership agreement, charter, by-laws or other organizational documents of each future Exclusive Family Investment Vehicle will obtain a comparable restriction on admission of investors. In each case the general partner, managing partner or other manager with the power to control the admission of investors will consist of one or more corporations or persons affiliated or associated with or employed by the Family Office.

4. In addition, each existing partnership agreement except one provides, and the organizational documents of each future Exclusive Family Investment Vehicle will provide, that no ownership interest in the investment vehicle may be assigned without the approval of the general partner, managing partner or manager. The one existing partnership agreement without this provision is intended to be amended promptly, and in any event prior to the time such partnership would qualify as an Exclusive Family Investment Vehicle under the requested exemptive order, to add such a provision.

Applicant's Conditions

In order to assure that the status of the Exclusive Family Investment Vehicles as Family enterprises will not change prospectively, Applicant agrees to the following undertakings being made conditions to any order granting the requested exemptive relief:

1. That, each Exclusive Family Investment Vehicle will continue to furnish annually to each investor financial statements for such vehicle audited by an accounting firm of recognized national standing.

2. That, each Exclusive Family Investment Vehicle shall neither admit as a new investor, nor permit the assignment or transfer of any interest in such investment vehicle to, any individual or entity if such admission, assignment or transfer would cause such Exclusive Family Investment Vehicle to fail to have the following characteristics: (a) Such Exclusive Family Investment Vehicle will be at least 90% owned by or for the benefit of Family Clients, (b) such Exclusive Family Investment Vehicle will be at least 25% owned by or for the benefit of Individuals, Estates or Trusts of the Family and (c) any part of such Exclusive Investment Family Vehicle that is not held by or for the benefit of Family Clients will be held by not more than 35 persons and will not be publicly held.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-22700 Filed 9-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16003; (812-6844)]

Application; McKinley Allsopp, Inc. et al.

Date: September 25, 1987.

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("1940 Act").

Applicants: McKinley Allsopp, Inc., B.C. Christopher Securities, Co., and Investment Corporation of Virginia.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from the provisions of section 30(f).

Summary of Application: Applicants seek an order pursuant to section 6(c) of the 1940 Act exempting certain transactions from section 30(f) of the 1940 Act to the extent that it incorporates the provisions of Section 16 of the Securities Exchange Act of 1934 ("1934 Act").

Filing Date: The application was filed on August 21, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, c/o McKinley Allsopp, Inc., 780 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033, or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 in Maryland (301) 258-4300.

Applicants' Representations

1. Applicants, broker-dealers registered under the 1934 Act, are the underwriters of a proposed public offering of common stock of PCL Diversifund, Inc. ("Fund"), a registered, closed-end, diversified, management investment company. A registration statement relating to the offering was filed with the SEC on August 12, 1987.

2. In the proposed public offering the Fund will offer 3,000,000 shares of common stock to the public, plus 450,000 shares to cover Applicants' over-allotment option. The Fund shares are to be purchased by Applicants pursuant to an underwriting agreement ("Underwriting Agreement") to be entered into between applicants, the Fund and PCMA, Inc., the Fund's investment adviser ("Adviser"). It is also contemplated that one or more dealers will offer to sell some of the Fund shares, and in connection with such offer and sale, each dealer will execute a Selected Dealer Agreement. It is intended that Applicants will make a public offering of all the Fund shares which Applicants are to purchase under the Underwriting Agreement, at the price specified therein, as soon as or after the effective date of the Fund's registration statement as Applicants deem advisable. Although the Fund's registration statement covers 3,450,000 shares of common stock (including the shares to cover the over-allotment option), the number may be increased or decreased in the Fund's registration statement, as amended at the time it becomes effective, depending on the market conditions and other factors to be considered by Applicants and the Fund at that time.

3. The underwriting commitment of any one or more of the Applicants may exceed 10% of the aggregate number of common shares of the Fund to be outstanding upon completion of its initial public offering. In addition to purchases from the Fund and sales of common shares, Applicants may engage in other purchases or sales of shares incident to a distribution, such as stabilizing purchases, purchases to cover over-allotments, and sales of common shares purchased in stabilization. Because section 30(f) of the 1940 Act subjects every person who is directly or indirectly the beneficial owner of more than 10% of any class of outstanding securities of a registered investment company to the same duties and liabilities as those imposed by section 16 of the 1934 Act, any Applicant owning more than 10% of the Fund's common shares becomes subject to the filing requirements of section 16(a) of the 1934 Act, and upon sale of the shares purchased by them, subject to the liabilities imposed by section 16(b) of the 1934 Act.

4. Some or all of the Applicants may fail to meet the requirement for exemption from section 16(b) as stated in Rule 16b–2(a)(3), because one or more of the Applicants who, pursuant to the Underwriting Agreement, may be obligated to purchase more than 10% of the shares of the Fund, and/or may distribute more than 50% of the shares of the Fund being offered. Moreover, one or more of the Applicants, even though they are initially obligated under the Underwriting Agreement to purchase 10% or less of the aggregate number of shares of the common stock to be outstanding upon completion of the public offering, may, as a consequence of defaults by other Applicants, become obligated to purchase more than 10% of the aggregate number of shares of common stock to be outstanding, and such Applicant may distribute more than 50% of the shares of common stock being offered.

Applicants' Legal Analysis

Section 16 of the 1934 Act was designed essentially to discourage the unfair use by insiders of "inside information" in short-term trading of their company's shares. There is no inside information in existence concerning the Fund. In addition, prior to the initial distribution of the shares, the Fund will have no assets other than cash or cash equivalents, no business of any sort, and all material facts will be set forth in the Fund's registration statement pursuant to which the shares will be offered and sold. No officer or director of any Applicant is an officer or director of either the Fund or the Adviser, or any affiliate of the Adviser, and Applicants do not anticipate that any partner, director, or officer of any other underwriter will be a director or officer of the Fund, the Adviser or any such affiliate. Because there is no possibility of abuse of inside information, Applicants submit that an exemption from section 30(f) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–22701 Filed 9–30–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Informal Airspace Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meetings.

SUMMARY: This notice announces a series of two informal airpace meetings to discuss proposed revocation, realignment, and establishment of restricted areas in the vicinity of Albemarle Sound, Harvey Point, and Long Shoal Point, North Carolina.

DATES: Manteo, North Carolina: 7:00 p.m. on November 3, 1987, Hertford, North Carolina: 7:00 p.m. on November 4, 1987.

ADDRESSES: North Carolina Aquarium, P.O. Box 467, Airport Road, Manteo, North Carolina 27954.

Albermarle Regional Planning and Development Commission, 512 South Main Street, Hertford, North Carolina 27944.

FOR FURTHER INFORMATION CONTACT: Walter E. Denley, Acting Manager, Airspace and Procedures Branch, ASO–530, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320. Telephone: (404) 763–7415.

Issued in Atlanta, Georgia, on September 22, 1987.

Walter E. Denley,

Acting Manager, Airspace and Procedures Branch, Southern Region.

[FR Doc. 87–22471 Filed 9–30–87; 8:45 am]

BILLING CODE 4910–73–M

Federal Highway Administration

Environmental Impact Statement; Jackson County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmenal impact statement will be prepared for a proposed highway project in Jackson County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. James Mullen, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone No. 314–636–7104.

Mr. Jerry A. Page, Director of Public Works, Jackson County Department of Public Works, Courthouse Annex, 308 West Kansas Avenue, Independence, MO 64050, Telephone No. 816–881–4510.

Mr. Norman A. Schemmer, Mid-America Regional Council, 300 Rivergate Center, 600 Broadway, Kansas City, MO 64105–1536 Telephone No. 816–474–4240.

SUPPLEMENTARY INFORMATION:

(1) The South Riverfront Expressway is a proposed 12 mile roadway that passes through Kansas City, Independence, Sugar Creek, and unincorporated Jackson County, Missouri. The proposed expressway begins at the Front Street interchange on I–435 and proceeds easterly along the south side of the Missouri River to a major interchange with M–291. The corridor continues east of M–291 to the vicinity of the Missouri Pacific Railroad then turns south to an interchange with U.S. 24. The expressway is proposed as a four-lane, limited access roadway. The purposes of the proposed project are to remove truck traffic from residential streets, to improve access to the industrial areas and to the Missouri River riverfront, and to support proposed industrial development in the Little Blue River Valley.

(2) Three alternative alignments for the proposed expressway have been identified. A majority of the length of all three alignments is on new location. The alternatives all are routed on the alignment of existing local roads in some locations. However, because of discontinuities in the existing road system, upgrading the existing facilities does not offer a functional alternative to the proposed action. The fourth alternative is the no action alternative.

(3) Preliminary analysis of the proposed expressway has been directed by a project review team consisting of

staff representatives of the Cities of Independence, Kansas City, and Sugar Creek; Jackson County; the Mid-America Regional Council; and the Missouri Highway and Transportation Department. There have been three public meetings held on the proposed project. The first was a pre-location meeting held on December 10, 1986. Meetings were held on June 16 and 18, 1987, to present the alternatives under consideration and the findings of preliminary evaluations and to obtain individuals' view on the project.

(4) A technical memorandum describing the proposed action, alternatives, and a preliminary assessment of impacts will be sent to appropriate Federal, state, and local agencies. Public hearings will be held on dates to be determined.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

James M. Mullen,

District Engineer, Jefferson City.

[FR Doc. 87-22603 Filed 9-30-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87-122]

Cancellation of Approval of Global Consultants, Inc., To Gauge Imported Petroleum and Petroleum Products

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of cancellation of approval.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), Global Consultants, Inc., a commercial gauger approved by Customs on April 16, 1984, under T.D. 84-87, notified Customs that it had transferred its gauging business to Seatran, Inc., of Houston, and requested cancellation of its own Customs gauger approval. Accordingly, the Customs approval of Global Consultants to gauge imported petroleum and petroleum products is hereby cancelled without prejudice.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229, (202-566-2446).

Dated: September 24, 1987.

Roger J. Crain,

Chief, Technical Branch, Office of Technical Services.

[FR Doc. 87-22662 Filed 9-30-87; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 87-119]

Approval of Petrospect To Gauge Imported Petroleum and Petroleum Products

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of approval.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), Petrospect, Inc., 1002 Third Avenue, Honolulu, Hawaii 96816 has applied to Customs for approval to gauge imported petroleum and petroleum products. Customs has determined that Petrospect meets all of the requirements for approval.

Accordingly, Petrospect, Inc., is hereby approved to gauge imported petroleum and petroleum products in the Honolulu Customs District.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, (202-566-2446).

Dated: September 24, 1987.

Roger J. Crain,

Chief, Technical Branch, Office of Technical Services.

[FR Doc. 87-22663 Filed 9-30-87; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 87-121]

Approval of Seatran, Inc., To Gauge Imported Petroleum and Petroleum Products

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of approval.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), Seatran, Inc., 3701 Kirby, Suite 734, Houston, Texas 77098, notified Customs that it had assumed the gauging services of Global Consultants, Inc., a commercial gauger approved by Customs on April 16, 1984, under T.D. 84-87. Seatran then applied to Customs for approval to gauge imported petroleum and petroleum products in its own right. Customs has determined that Seatran, Inc., meets all of the requirements for approval.

Accordingly, Seatran, Inc., is hereby approved to guage imported petroleum and petroleum products in the Houston Customs District.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229, (202-566-2446).

Dated: September 24, 1987.

Roger J. Crain,

Chief, Technical Branch, Office of Technical Services.

[FR Doc. 87-22664 Filed 9-30-87; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 87-120]

Approval of William R. Vaden To Gauge Imported Petroleum and Petroleum Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), William R. Vaden, d/b/a VIP Cargo Surveys Services, 3105 Leopard Street, No. 4, Corpus Christi, Texas 78408, has applied to Customs for approval to gauge imported petroleum and petroleum products. Customs has determined that Mr. Vaden meets all of the requirements for approval.

Accordingly, William R. Vaden, d/b/a VIP Cargo Surveys Service, is hereby approved to guage imported petroleum and petroleum products in the Houston Customs District.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229, (202-566-2446).

Dated: September 24, 1987.

Roger J. Crain,

Chief, Technical Branch, Office of Technical Services.

[FR Doc. 87-22665 Filed 9-30-87; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the

following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 24, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Notice of Intention to Foreclose
3. VA Form 26–6851
4. This information is provided by the holder of a guaranteed/insured VA loan and serves as notification of intent to foreclose. This information is used by VA to provide assistance to the veteran-borrower.
5. On occasion
6. Individuals or households, Small businesses or organizations
7. 23,808 responses
8. 5,952 hours
9. Not applicable.

1. Department of Veterans Benefits
2. Insurance Deduction Authorization
3. VA Form 29–888
4. This information is used by insureds to authorize VA to make deduction payments from insurance benefits.
5. On occasion
6. Individuals or households
7. 3,732 responses
8. 622 hours
9. Not applicable.

1. Department of Veterans Benefits
2. Notice to Veterans Administration of Veteran or Beneficiary Incarcerated in Penal Institution
3. VA Form 21–4193
4. This information is used to determine the necessary adjustment or discontinuance of benefits.
5. On occasion
6. Individuals or households
7. 1,664 responses
8. 416 hours
9. Not applicable.

1. Department of Veterans Benefits
2. Wood Destroying Insect Information—Existing Construction
3. VA Form 26–8850
4. This information is used to determine suitability of property for guaranteed home loan.
5. On occasion
6. Individuals or households, Businesses or other for-profit, Small businesses or organizations
7. 118,691 responses
8. 39,564 hours
9. Not applicable.

Reinstatement

1. Department of Veterans Benefits
2. Farm Survey and Overall Farm and Home Plan Self-Proprietor/Manager—Chapter 31, Title 38, U.S.C.
3. VA Form 28–1905n
4. This information is needed to properly evaluate a veteran's farm for its potential and suitability for use as an on-farm site for vocational rehabilitation.
5. On occasion
6. Individuals or households, Farms
7. 30 responses
8. 60 hours
9. Not applicable.

[FR Doc. 87–22656 Filed 9–30–87; 8:45 am]

BILLING CODE 8320–01–M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and it use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items of the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 28, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Change of Permanent Plan.
3. VA Form 29-1549.
4. This information is used to determine the insured's eligibility to change insurance plans.
5. On occasion.
6. Individuals or households.
7. 28 responses.
8. 42 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Application for Reinstatement.
3. VA For 29–353.
4. This information is used to establish the veteran's eligibility for reinstatement of government life insurance benefits.
5. On occasion.
6. Individuals or households.
7. 1,408 responses.
8. 352 hours.
9. Not applicable.

[FR Doc. 87–22657 Filed 9–30–87; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 190
Thursday, October 1, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

[Federal Register No. 87-22147]

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, September 29, 1987, 10:00 a.m.

CHANGE IN MEETING: The closed meeting scheduled for this date was cancelled.

DATE AND TIME: Tuesday, October 6, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thurday, October 8, 1987, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
FY '88 Management Plan.
1984 Public Financing Reports to the Congress Prepared Pursuant to 26 U.S.C. 9009(a) and 9039(a).
Routine Administrative Matters.

PERSON TO CONTRACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87-22801 Filed 10-29-87; 2:25 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 7, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 29, 1987.

James McAfee

Associate Secretary of the Board.

[FR Doc. 87-22840 Filed 9-29-87; 3:57 pm]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, October 7, 1987.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

(1) Oral Argument in Ticor Title Insurance Company et al., Docket No. 9190.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in Ticor Title Insurance Company et al., Docket No. 9190.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 87-22734 Filed 9-29-87; 9:12 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (52 FR 36494 September 29, 1987).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, September 22, 1987.

CHANGE IN THE MEETING: Addition/Deletion.

The following additional item will be considered at a closed meeting on Wednesday September 30, 1987, following the 10:00 a.m. open meeting.

Litigation matter.

The following item will not be considered at a closed meeting on Wednesday, September 30, 1987, following the 10:00 a.m. open meeting.

Report of investigation.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Jonathan G. Katz,

Secretary.

September 29, 1987.

[FR Doc. 87-22772 Filed 9-29-87; 12:48 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 190
Thursday, October 1, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-120]

Mediterranean Fruit Fly

Correction

In rule document 87-20119 beginning on page 33218 in the issue of Wednesday, September 2, 1987, make the following corrections:

§ 301.78-1 [Corrected]

1. On page 33221, in the third column, in § 301.78-1, in the definition for *Deputy Administrator*, in the third line, insert "Service" after "Inspection".

§ 301.78-6 [Corrected]

2. On page 33223, in the third column, in § 301.78-6(b), in the sixth line, "the" should read "this".

§ 301.78-8 [Corrected]

3. On page 33223, in the third column, in § 301.78-8(a), in the 11th line, insert "or other shipping" after "waybill".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 70616-7183]

Red Drum Fishery of the Gulf of Mexico

Correction

In rule document 87-21388 beginning on page 34918 in the issue of Wednesday, September 16, 1987, make the following correction:

§ 653.23 [Corrected]

On page 34922, in the third column, in § 653.23(a), in the seventh line, "§ 653.2" should read "§ 653.21".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3263-1]

Approval and Promulgation of Implementation Plans; New Hampshire; Particulate Emission Standards and Permit Fees

Correction

In rule document 87-21479 beginning on page 35081 in the issue of Thursday, September 17, 1987, make the following correction:

§ 81.330 [Corrected]

On page 35082, in § 81.330, under "New Hampshire--TSP," under "Better than national standards," remove the X's opposite the entries for Metropolitan Manchester and Metropolitan Berlin.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

[Docket No. 83N-0142]

Good Laboratory Practice Regulations

Correction

In rule document 87-20375 beginning on page 33768 in the issue of Friday, September 4, 1987, make the following corrections:

On page 33775, in the second column, in paragraph number 34., in the 3rd and 18th lines, remove the second "§ ".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F-0075]

Indirect Food Additives; Polymers

Correction

In rule document 87-20374 beginning on page 33574 in the issue of Friday, September 4, 1987, make the following correction:

PART 177—[CORRECTED]

On page 33575, in the second column, in paragraph number 3., remove "to" from the first line, and "Subpart B" from the second line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 78N-3028]

Orthopedic Devices; General Provisions and Classifications of 77 Devices

Correction

In rule document 87-20194 beginning on page 33686 in the issue of Friday, September 4, 1987, make the following correction:

On page 33694, in the first column, in paragraph b., in the third line, "class II" should read "class I".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 87-21425 beginning on page 35144 in the issue of Thursday, September 17, 1987, make the following corrections:

1. On page 35144, in the third column, under **Cardiovascular and Renal Drugs**

Advisory Committee, in the sixth line, "*contract*" should read "*contact*". Make the same correction on page 35145, in the first column, in the fifth line under **Anti-Infective Drugs Advisory Committee**.

2. On page 35145, in the second column, in the third complete paragraph, in the fourth line, "rimantadine" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87M-0271]

Premarket Approval of Aerosol Services, Inc., Sterile Unpreserved Aerosol Pressurized Spray

Correction

In notice document 87-21421 appearing on page 35144 in the issue of Thursday, September 17, 1987, make the following corrections:

1. In the second column, in the second complete paragraph, in the next to last line, "CFRH" should read "CDRH".

2. In the same column, in the third complete paragraph, in the ninth line, after "hearing", insert "under".

BILLING CODE 1505-01-D

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federal register

Thursday
October 1, 1987

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Notice of Proposed Rulemaking

VOL 52 ISS 190 OCT 1 1987 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-26]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Lovell Field, Chattanooga, TN; Monterey Peninsula Airport, CA; Fresno Air Terminal, CA; and Huntsville-Madison County-Carl T. Jones Field, AL. With the exception of Fresno Air Terminal, each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before January 7, 1988. Informal airspace meeting dates are as follows: Lovell Field, Chattanooga, TN—December 3, 1987; Monterey Peninsula Airport, CA—December 3 and 7, 1987; Fresno Air Terminal Airport, CA—December 7, 1987; and Huntsville-Madison County-Carl T. Jones Field, AL—December 2, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-26, 800 Independence Avenue SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Fresno Air Terminal, CA, ARSA
Date: December 7, 1987
Time: 7:00 p.m.
Location: Holiday Inn, 5090 East Clinton Avenue, Fresno, CA

Huntsville-Madison County-Carl T. Jones Field, AL, ARSA
Date: December 2, 1987
Time: 7:00 p.m.
Location: Alabama Space and Rocket Center, Government Drive and Bob Wallace Drive, Huntsville, AL

Lovell Field, Chattanooga, TN, ARSA
Date: December 3, 1987
Time: 7:00 p.m.
Location: Tennessee Air National Guard Building, Lovell Field, Chattanooga, TN

Monterey Peninsula Airport, CA, ARSA
Date: December 3, 1987
Time: 7:00 p.m.
Location: Ingersoll Hall, Room 122, Naval Post Graduate School, Third and Sloat Avenues, Monterey, CA

and

Date: December 7, 1987
Time: 7:00 p.m.
Location: Board of Supervisor's Chambers, Monterey County Court House, Second Floor, East Wing, Church and Alisal Streets, Salinas, CA

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves four locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for the proposed ARSA locations in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 89 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA.

Related Rulemaking

This notice proposes ARSA designation at four locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at three of the locations at which ARSA's are proposed in this notice. Fresno Air Terminal is a radar facility currently providing Stage II service. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR), Stage II service, with the exception of separation provides the same. TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR § 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at Lovell Field, Chattanooga, TN; Monterey Peninsula Airport, CA; Fresno Air Terminal, CA; and Huntsville-Madison County-Carl T. Jones Field, AL, which are public airports, at three of which nonregulatory TRSA's are currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted

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under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of these additional ARSA sites. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within the ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materalize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA sites proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation at these TRSA locations is already quite high, and the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operating and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent.)

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the increased efficiencies due to the implementation of the ARSA. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the

locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures, which should eliminate much of the confusion currently experienced by pilots when operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the air traffic controllers will gain greater flexibility in handling traffic within an ARSA which will enable them to move traffic more efficiently than under the current TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in the notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA locations proposed in this notice will only be temporary, and that once established, the ARSA's will result in an overall improvement in efficiency in terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight shools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an

ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Fresno Air Terminal, CA [New]

That airspace within a 5-mile radius of the Fresno Air Terminal (lat. 36°46'28" N., long. 119°42'58" W.), extending upward from the surface to and including 4,400 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,600 feet MSL to and including 4,400 feet MSL.

Huntsville-Madison County-Carl T. Jones Field, AL [New]

That airspace within a 5-mile radius of the Huntsville-Madison County-Carl T. Jones Field (lat. 34°38'28" N., long. 86°46'26" W.) extending upward from the surface to and including 4,600 feet MSL; and that airspace within a 10-mile radius of the airport from the 315° T (315° M) bearing from the airport clockwise to the 187° T (187° M) bearing from the airport extending upward from 2,000 feet MSL to and including 4,600 feet MSL; and that airspace within a 10-mile radius of the airport from the 187° T (187° M) bearing from the airport clockwise to the 315° T (315° M) bearing from the airport, extending upward from 1,800 feet MSL to and including 4,600 feet MSL.

Lovell Field, Chattanooga, TN [New]

That airspace within a 5-mile radius of Lovell Field (lat. 35°02'07" N., long. 85°12'15" W.), extending upward from the surface to and including 4,700 feet MSL; and that airspace within a 10-mile radius of the airport from the 350° T (351° M) bearing from the airport clockwise to the 058° T (059° M) bearing from the airport extending upward from 2,200 feet MSL to and including 4,700 feet MSL; and that airspace within a 10-mile radius of the airport from the 058° T (059° M) bearing from the airport clockwise to the 234° T (235° M) bearing from the airport extending upward from 2,600 feet MSL to and including 4,700 feet MSL; and that airspace within a 10-mile radius of the airport from the 234° T (235° M) bearing from the airport clockwise to the 350° T (351° M) bearing from the airport extending upward from 3,300 feet MSL to and including 4,700 feet MSL.

Monterey Peninsula Airport, CA [New]

That airspace within a 5-mile radius of the Monterey Peninsula Airport (lat. 36°35'19" N., long. 121°50'52" W.), extending upward from the surface to and including 4,200 feet MSL; and that airspace within a 10-mile radius of the airport beginning at the Pacific Ocean shoreline southwest of the airport clockwise to the 140° T (124° M) bearing from the airport extending upward from 1,500 feet MSL to and including 4,200 feet MSL; and that airspace within a 10-mile radius of the airport beginning at the 140° T (124° M) bearing from the airport clockwise to the Pacific Ocean shoreline, extending upward from 3,200 feet MSL to and including 4,200 feet MSL. The airspace contained within Restricted Area R-2511 is excluded when it is in use.

BILLING CODE 4910-13-M

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

FRESNO, CALIFORNIA
FRESNO AIR TERMINAL
FIELD ELEV. 332' MSL

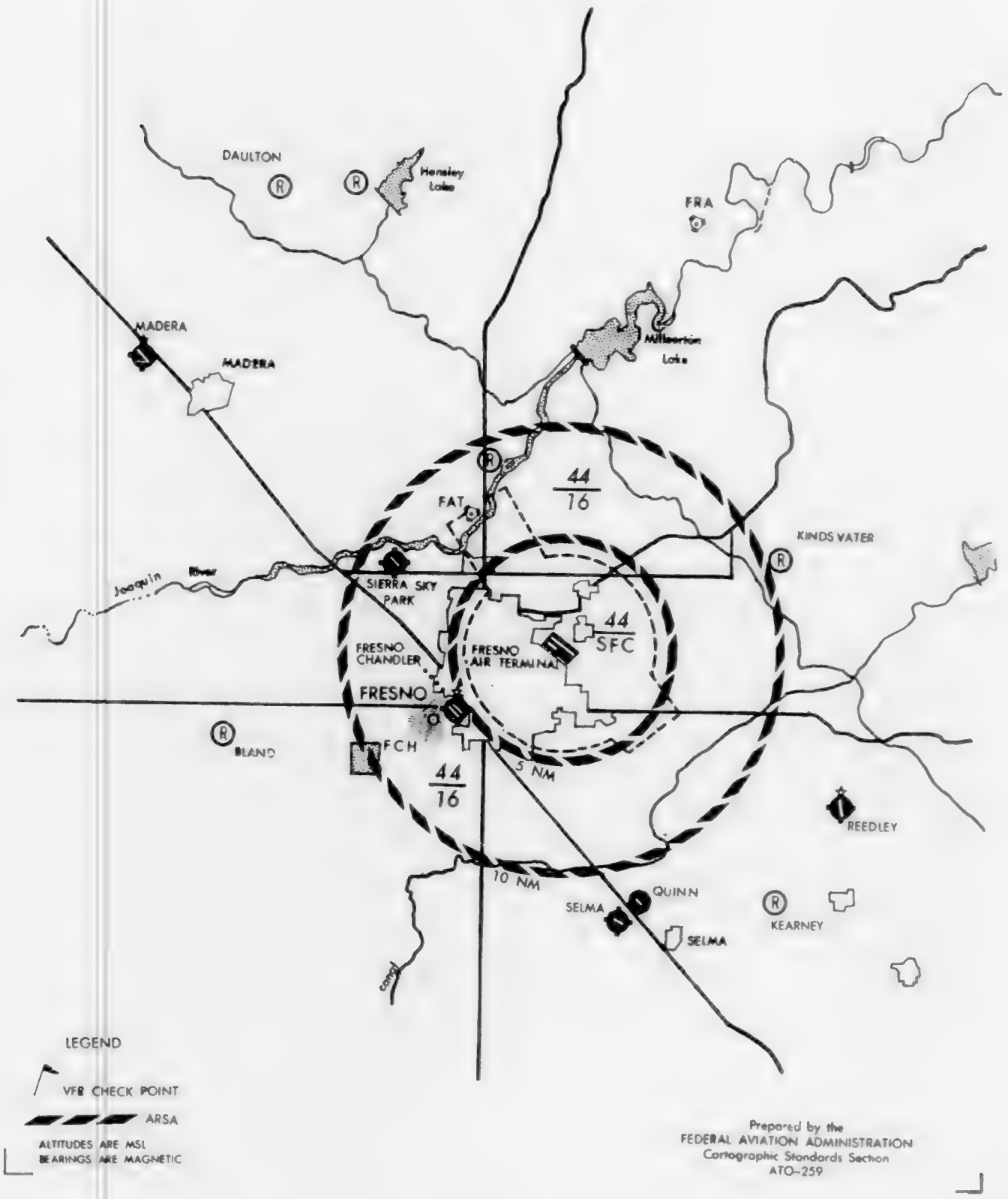

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

HUNTSVILLE, ALABAMA
HUNTSVILLE-MADISON CO-CARL T JONES FLD
FIELD ELEV. 630' MSL

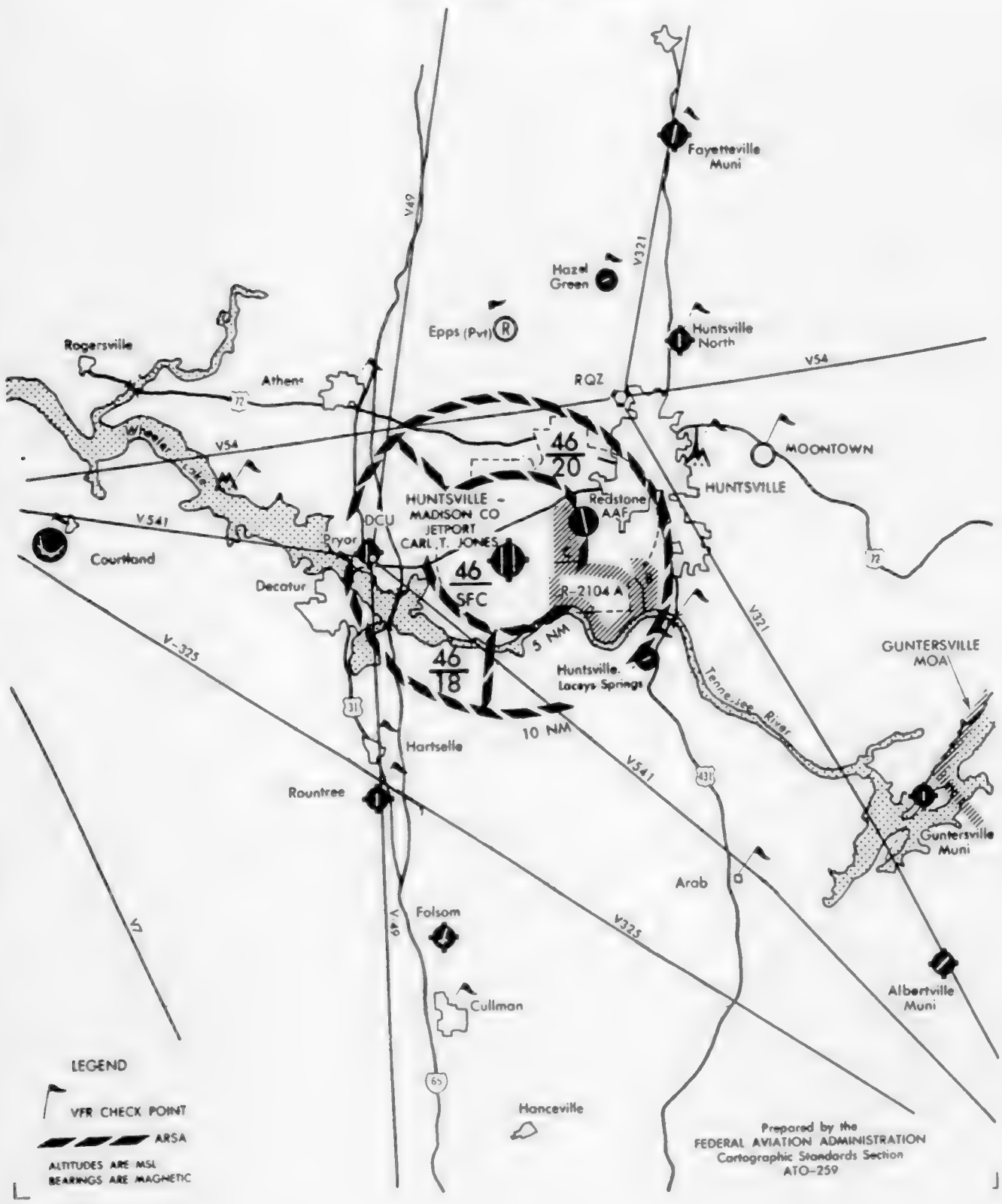

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CHATTANOOGA, TENNESSEE
LOVELL FIELD
FIELD ELEV. 682' MSL

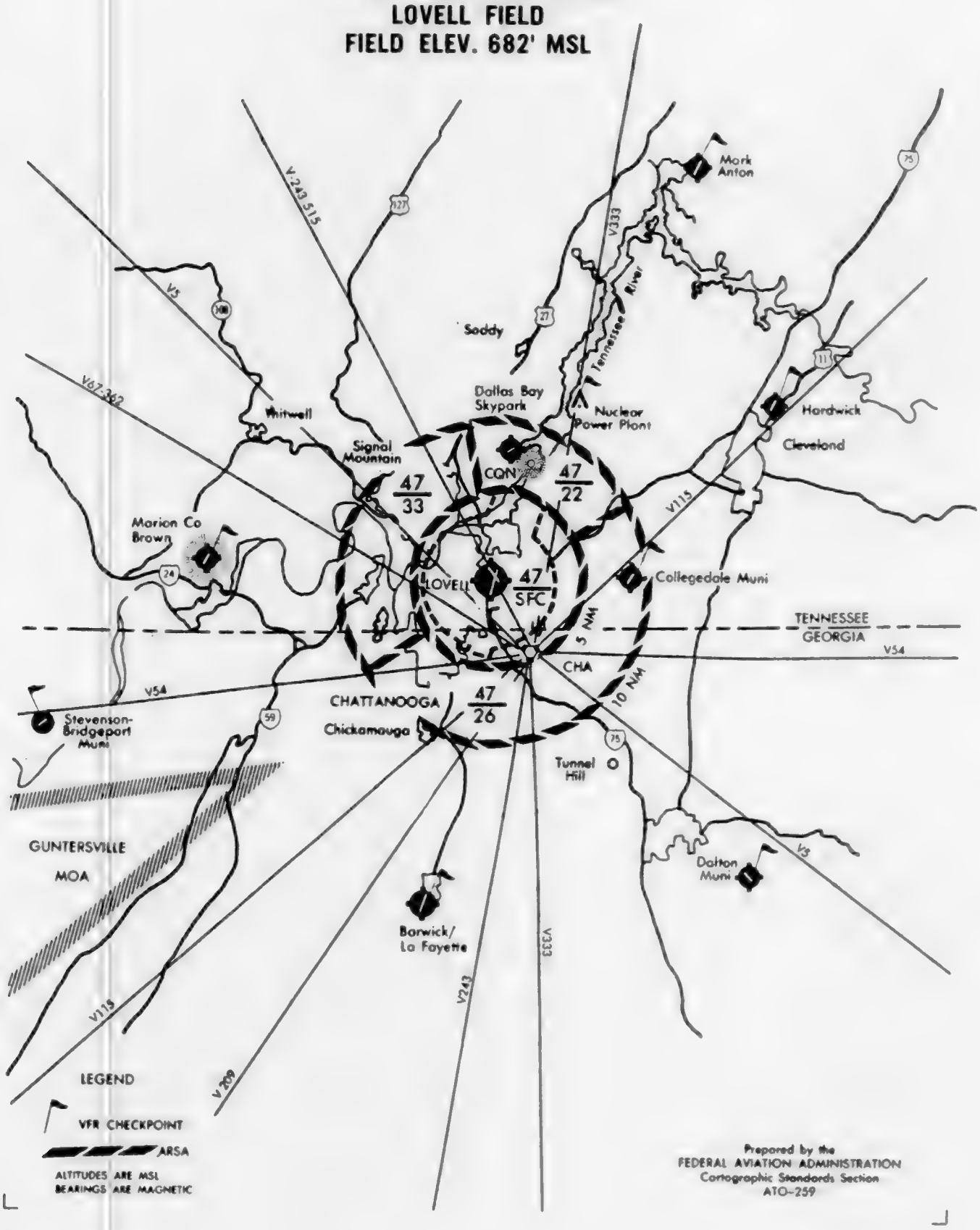

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

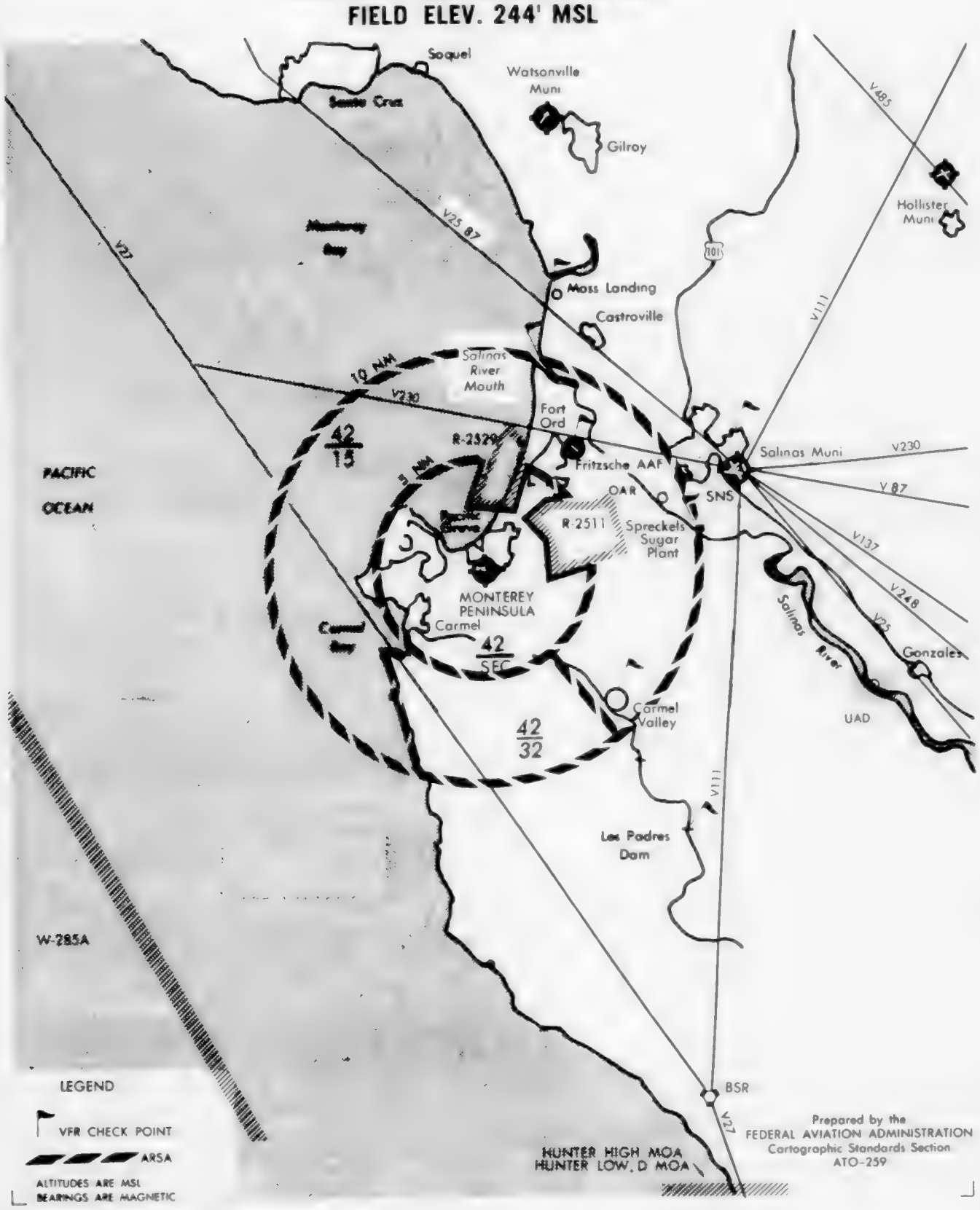

Issued in Washington, DC, on September 25, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-22717 Filed 9-30-87; 8:45 am]

BILLING CODE 4910-13-C

federal register

Thursday
October 1, 1987

Part III

Federal Communications Commission

47 CFR Part 73

Oversight of Radio and TV Rules; Final Rule

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Oversight of Radio and TV Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast regulations in 47 CFR Part 73. Amendments are made to correct, clarify or update certain technical equations, formulas and tables in the broadcast regulations.

EFFECTIVE DATE: October 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 30554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION: In this Order, rule revisions are made to update, clarify and correct regulations in Title 47, Code of Federal Regulations. Adopted September 3, 1987; released September 15, 1987.

Order

Adopted: September 3, 1987.
Released: September 15, 1987.

In the matter of oversight of the Radio and TV Broadcast Rules.

By the Chief, Mass Media Bureau.

1. In this Order, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, clarify or correct certain equations, formulas and tables in the broadcast regulations as described in the following amendment summaries:

(a) In § 73.150, Directional antenna systems, paragraph (b)(1)(i) contains a number of errors and omissions in the equations and definitional text presented there. These discrepancies have been implanted or text has been lost through inadvertence or printing error. Corrections and restorations are made herein via the following amendments:

(i) Revising the incorrectly stated mathematical expressions for the theoretical radiation pattern and the standard radiation pattern;

(ii) Adding the missing definitional text pertaining to the method of computing Q;

(iii) Adding the missing Equation 3; and

(iv) Remedying certain discrepancies such as removing the square brackets in Equation 1 and replacing with vertical lines correctly signifiying "absolute value"; adding the entire horizontal line which establishes the extent of the "angle" portion of the vector in Equation 1; replacing the horizontal line which establishes the extent of the square root in Equation 2; returning the horizontal line to the square root symbol missing in the definition of Q and in Equation 4; and correcting the definition of E_{rss}, just preceding Equation $4E(\Phi,\Theta)_{th}$. (See rule amendment paragraph 2).

(b) There are three equations in paragraph (d) of § 73.184 which are corrected here. The designations Equation 1 and Equation 2 are repositioned to the right of the Equations instead of their present incorrect positioning, and the designation Equation 3, which is missing from the rule, is replaced and appropriately positioned to the right of that equation. Other corrections to this paragraph include adding ⅓ to the mileage formula 50/f, and revising field intensity to read field strength in the instructional text which follows the Equations. (See rule amendment paragraph 3).

(c) In the Report and Order in Mass Media Docket 84–752, Changes in Technical Rules to Reflect New International Agreements, a new paragraph (d) was adopted in § 73.190, Engineering charts and related formulas. In making the transposition from the document, as adopted by the Commission, to the Code of Federal Regulations, several inaccuracies were implanted into the new rule section. Amendments are made herein to correct these errors. (See rule amendment paragraph 4).

(d) Regulations pertaining to prediction of coverage for TV stations, § 73.684, require the use of certain field strength charts in predicting distances to the field strength contours. These charts are designated as Figures 9 and 10 in § 73.699, TV engineering charts. The rule states that "To use the charts for other powers, the sliding scale associated with the charts should be trimmed and used as the ordinate scale."

With the development of contemporary calculation procedures (i.e., calculators and computers), use of the sliding scale to predict TV coverage has come to an end. Also, the sliding scale, sometime in the past several years, has inadvertently been dropped from the Code of Federal Regulations. The lack of comment regarding its disappearance gives further proof that it is no longer used.

In using the charts to predict the distance to a given contour, we have prepared a new procedure to be used in the future. It may be used in place of the missing sliding scale directions.

Two other amendments are made to this rule via this Order: in paragraph (c), two references are made to millivolts per meter which are corrected to read microvolts per meter. And, the equation following paragraph (c)(1) is revised to include the square root sign over the letter H (Height of antenna). (See rule amendment paragraph 5).

(e) In an Order adopted September 10, 1985, the Commission amended its rules to clarify protection provisions for the Commerce Department's Table Mountain Radio Receiving Zone at Boulder County, Colorado. FCC 85–497; 50 FR 39000, September 26, 1985. Amendments were made to paragraph (b) of § 73.1030. This paragraph contains a Table of values of field strength and power flux densities as they pertain to certain frequency ranges. The power flux density values must be expressed in negative term (−), and each value should be shown with a negative sign preceding it. In printing the Order in the **Federal Register**, the negative signs were inadvertently dropped. As consequence, the Table also appeared in the Code of Federal Regulations without the negative signs. Correction is made herein to restore the negative signs to the power flux density values.

Also, in paragraph (c)(1) of this rule section, a parenthetical expression makes reference to "* * * a free space characteristic impedance of 120 Ohms." The symbol pi, which belongs between 120 and Ohms, is missing. It is inserted here so that the impedance is properly stated as "* * * impedance of 120 π Ohms * * *" (See rule amendment paragraph 6).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

(4) Since a general notice of rulemaking is not required, the Regulatory Flexibility Act does not apply.

(5) Accordingly, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Part 73 is amended as set forth in the attached

Appendix, effective on the date of publication in the **Federal Register.**

(6) For further information on this Order, contact Steve Crane, Mass Media Bureau, (202) 632–5414.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

Appendix

Rule Changes

47 CFR is amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.150 (b)(1)(i) is amended by revising introductory text for equation 1 and equation 1, introductory text for equation 2 and equation 2, introductory texts for equations 3 and 4, equations 3 and 4 and definitional terms to read as follows:

§ 73.150 Directional antenna systems.

* * * * *

(b) * * *

(1) * * *

(i) The standard radiation pattern shall be based on the theoretical radiation pattern. The theoretical radiation pattern shall be calculated in accordance with the following mathematical expression:

$$E(\phi,\theta)_{th} = \left| k \sum_{i=1}^{n} F_i f_i(\theta) / S_i \cos\theta \cos(\phi_i - \phi) + \psi_i \right| \quad \text{(Eq. 1)}$$

where: * * *

* * * * *

The standard radiation pattern shall be constructed in accordance with the following mathematical expression:

$$E(\phi,\theta)_{std} = 1.05 \sqrt{[E(\phi,\theta)_{th}]^2 + Q^2} \quad \text{(Eq. 2)}$$

where * * *

* * * * *

The method of computing Q will be by using the metric system. For all situations prior to January 4, 1982, Q is the greater of the following quantities:

$$0.025\ g(\theta)\ E_{rss}$$

or

$$6.0\ g(\theta)\sqrt{P_{kW}}$$

For all situations on or after January 4, 1982, Q is the greater of the following quantities:

$$0.025\ g(\theta)\ E_{rss}$$

or

$$10.0\ g(\theta)\sqrt{P_{kW}}$$

where,

$g(\theta)$ is the vertical plane distribution factor, $f(\theta)$, for the shortest element in the array (see Eq. 2, above; also see § 73.190, Figure 5). If the shortest element has an electrical height in excess of 0.5 wavelength, $g(\theta)$ shall be computed as follows:

$$g(\theta) = \frac{\sqrt{|f(\theta)|^2 + 0.0625}}{1.030776} \qquad \text{(Eq 3)}$$

E_{rss} is the root sum square of the amplitudes of the inverse fields of the elements of the array in the horizontal plane, as used in the expression for $E(\phi,\theta)_{th}$ (see Eq. 1, above), and is computed as follows:

$$E_{rss} = k\sqrt{\sum_{i=1}^{n} F_i^2} \qquad \text{(Eq. 4)}$$

P_{kw} is the nominal station power expressed in kilowatts, see § 73.14. If the nominal power is less than one kilowatt, $P_{kw} = 1$.

(ii) * * *

* * * * *

3. Section 73.184 is amended by revising the text in paragraph (d) to read as follows: (the note to paragraph (d) remains unchanged):

§ 73.184 Groundwave field strength graphs.

* * * * *

(d) Provided the value of the dielectric constant is near 15, the curves of Graphs 1 to 19 may be compared with experimental data to determine the appropriate values of the ground conductivity and of the inverse distance field strength at 1 kilometer. This is accomplished simply by plotting the measured fields on transparent log-log graph paper similar to that used for Graphs 1 to 19 and superimposing this chart over the graph corresponding to the frequency involved. The log-log graph sheet is then shifted vertically until the best fit is obtained with one of the curves on the graph; the intersection of the inverse distance line on the graph with the 1 kilometer abscissa on the chart determines the inverse distance field strength at 1 kilometer. For other values of dielectric constant, the following procedure may be used for a determination of the dielectric constant of the ground, conductivity of the ground and the inverse distance field strength at 1 mile. Before the results of such determinations are submitted to the FCC, they must be converted to equivalent metric units. Graph 20 gives the relative values of groundwave field strength over a plane earth as a function of the numerical distance p and phase angle b. On graph paper with coordinates similar to those of Graph 20, plot the measured values of field strength as ordinates versus the corresponding distances from the antenna in miles as abscissae. The data should be plotted only for distances greater than one wavelength (or, when this is greater, five times the vertical height of the antenna in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna) and for distances of less than $50f^{1/3}/_{mHz}$ miles (i.e., 50 miles at 1 mHz). Then, using a light box, place the sheet with the data plotted on it over the sheet with the curves of Graph 20 and shift the data sheet vertically and horizontally (making sure that the vertical lines on both sheets are parallel) until the best fit with the data is obtained with one of the curves on Graph 20. When the two sheets are properly lined up, the value of the field strength corresponding to the intersection of the inverse distance line of Graph 20 with the 1 mile abscissa on the data sheet is the inverse distance field strength at 1 mile, and the values of the numerical distance at 1 mile p_1, and of b are also determined. Knowing the values of b and p_1 (the numerical distance at one mile), we may substitute in the following approximate values of the ground conductivity and dielectric constant.

$$\chi \cong \frac{\pi}{p} \cdot \left(R/\lambda\right)_1 \cdot \cos b \qquad \text{Eq. 1}$$

$\left(R/\lambda\right)_1 =$ Number of wavelengths in 1 mile.

$$\delta_{e.m.u.} = \frac{\chi f_{mHz}}{17.9731} \cdot 10^{-14} \qquad \text{Eq. 2}$$

$\delta_{e.m.u.}$ = Conductivity of the ground expressed in electromagnetic units.

f_{mHz} = frequency expressed in megahertz.

$$\epsilon \cong \chi \tan b - 1 \qquad \text{Eq 3}$$

ϵ = dielectric constant of the ground referred to air as unity.

First solve for χ by substituting the known values of p_1, $(R/\lambda)_1$ and cos b in Equation 1. Equation 2 may then be solved for δ and Equation 3 for ϵ. At distances greater than $50/f^{1/3}_{mHz}$ miles the curves of Graph 20 do not give the correct relative values of field strength since the curvature of the earth weakens the field more rapidly than these plane earth curves would indicate. Thus, no attempt should be made to fit experimental data to these curves at the larger distances.

$$\theta^{\circ} = \tan^{-1}\left(k_n \cot\frac{d}{444.54}\right) - \frac{d}{444.54}$$

Where:
d = distance in kilometers
n = 1 for 50% field strength values
n = 2 or 3 for 10% field strength values
and where
$K_1 = 0.00752$
$K_2 = 0.00938$
$K_3 = 0.00565$

Note: Computations using these formulas should not be carried beyond 0.1 degree.

* * * * *

5. Section 73.684 is amended by revising paragraphs (c) introductory text and (c)(1) to read as follows:

§ 73.684 Prediction of coverage.

* * * * *

(c) In predicting the distance to the field strength contours, the F (50,50) field strength charts (Figures 9 and 10 of § 73.699) shall be used. If the 50% field strength is defined as that value exceeded for 50% of the time, these F (50,50) charts give the estimated 50% field strengths exceeded at 50% of the locations in dB above 1 uV/m. The charts are based on an effective power of 1 kW radiated form a half-wave dipole in free space, which produces an unattenuated field strength at 1.61 kilometers (1 mile) of about 103 dB above 1 uV/m. To use the charts to predict the distance to a given contour, the following procedure is used: Convert the effective radiated power in kilowatts for the appropriate azimuth into decibel value referenced to 1 kW (dBu). If necessary, convert the selected contour to the decibel value (dBu) above 1 microvolt per meter (1 uV/m). Subtract the power value in dBk from the contour value in dBu. Note that for power less than 1 kW, the difference value will be greater than the contour value because the power in dBk is negative. Locate the difference value obtained on the vertical scale at the left edge of the chart. Follow the horizontal line for that value into the chart to the point of intersection with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. If the point of intersection does not fall exactly on a distance curve, interpolate between the distance curves below and above the intersection point. The distance values for the curves are located along the right edge of the chart.

(1) In predicting the distance to the Grade A and Grade B field strength contours, the effective radiated power to be used is that radiated at the vertical angle corresponding to the depression angle between the transmitting antenna center of radiation and the radio horizon as determined individually for each azimuthal direction concerned. The depression angle is based on the difference in elevation of the antenna center of radiation above the average terrain and the radio horizon, assuming a smooth sperical earth with a radius of 8,495.5 kilometers (5,280 miles) and shall be determined by the following equation:

$$A = 0.0277\sqrt{H}$$

Where:
A is the depression angle in degrees.
H is the height in meters of the transmitting antenna radiation center above average terrain of the 3.2—16.1 kilometers (2–10 miles) sector of the pertinent radial.

This formula is empirically derived for the limited purpose specified here. Its use for any other purpose may be inappropriate.

Note. * * *

* * * * *

4. Section 73.190 is amended by revising paragraph (d) to read as follows:

§ 73.190 Engineering charts and related formulas.

* * * * *

(d) Figure 6a depicts angles of departure versus transmission range. These angles may also be computed using the following formulas:

6. Section 73.1030 is amended by revising paragraphs (b) introductory text and (c) introductory text to read as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

* * * * *

(b) *Radio receiving installations.* Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado: Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this Part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (within the area bounded by 40 09 10 N Latitude on the north, 105 13 31 W Longitude on the east, 40 07 05 N Latitude on the south and 105 15 13 W Longitude on the west) resulting from new assignments (other than mobile stations) or from the modification of relocation of existing facilities do not exceed the following values:

Frequency range	Field strength [1]	Power flux density* [2]
Below 540 kHz	10	−65.8
540 to 1600 kHz..	20	−59.8
1.6 to 470 MHz....	10	**−65.8
470 to 890 MHz...	30	**−56.2
Above 890 MHz...	1	**−85.8

[1] (mV/m) in authorized bandwidth of service.

[2] (dBW/m^2) in authorized bandwidth of service.

*Equivalent values of power flux density are calculated assuming free space characteristic impedance of $376.7 = 120\pi$ ohms.

**Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above

levels in any 4 kHz band for all angles of arrival.

* * * * *

(c) *Protection for Federal Communications Commission monitoring stations.* (1) Applicants in the vicinity of a FCC monitoring station for a radio station authorization to operate new transmitting facilities or changed transmitting facilities which would increase the field strength produced over the monitoring station in excess of that previously authorized are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are listed in § 0.121(c) of the FCC rules. Applications for stations (except mobile stations) which will produce on any frequency a direct wave fundamental field strength of *greater than 10 mV/m* in the authorized bandwidth of service (−65.8 dBW/m² power flux density assuming a free space characteristic impedance of 120 π ohms) at the referenced coordinates, may be examined to determine extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

* * * * *

[FR Doc. 87-22003 Filed 9-30-87; 8:45 am]

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federal register

Thursday
October 1, 1987

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 884

Obstetrical and Gynecological Devices; Contraceptive Tubal Occlusion Device (TOD) and Introducer; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 85N-0223]

Obstetrical and Gynecological Devices; Effective Date of Requirement for Premarket Approval; Contraceptive Tubal Occlusion Device (TOD) and Introducer

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is requiring the filing of a premarket approval application or a notice of completion of a product development protocol for the contraceptive tubal occlusion device (TOD) and introducer, a medical device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: December 30, 1987.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 26, 1980 (45 FR 12712), FDA published a final rule classifying into class III (premarket approval) the TOD and introducer (21 CFR 884.5380). Section 884.5380 applies to any TOD and introducer that was in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) and to any device that FDA has found to be substantially equivalent to the TOD and introducer and that has been marketed on or after May 28, 1976. For the sake of convenience, both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date are referred to as "preamendments devices."

In the **Federal Register** of October 7, 1985 (50 FR 40950), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, and Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the TOD and introducer. In accordance with section 515(b)(2)(H) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and on the benefits to the public from use of the device (50 FR 40951). The agency provided an opportunity for interested persons to submit comments on the proposed rule and on the agency's proposed findings. Under section 515(b)(2)(B) of the act, FDA also provided an opportunity for interested persons to request a change in classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the TOD and introducer was required to be submitted by October 22, 1985. The comment period closed on December 6, 1985.

FDA did not receive any petitions requesting a change in the classification of the device. FDA received two letters of comment on the proposed rule. One comment was from a manufacturer of the device, and the other comment was from a trade association.

Both comments focused on FDA's proposal to require carcinogenicity data for the TOD. In the proposed rule, FDA stated that, because the TOD is intended to be implanted, the long-term material integrity and safety must be established to avoid the potential risk of carcinogenicity.

1. One comment stated that TOD's are made from materials that are generally regarded as nontoxic and nontissue reactive, and that any risk of a TOD as a potential carcinogen is highly speculative and cannot be confirmed or denied. Manufacturers of TOD's should, therefore, be allowed the opportunity to address the issue on a more scientific basis. The comment suggested that a reasonable approach would be the convening of the Obstetrics and Gynecological Devices Panel (the Panel) to discuss the probable risks of TOD's as a carcinogen. If the Panel were to conclude that an unacceptably high risk of carcinogenicity is posed by TOD's, the Panel could address the issue of the proper study design to assess the carcinogenicity risk. The comment also observed that the risks associated with TOD's are no greater than those associated with other tubal sterilization procedures.

FDA disagrees with the comment. Although TOD's are made of materials that are generally thought to be biocompatible, some of the materials used in the various versions of this generic type of device may cause long-term adverse tissue reactions. TOD's are intended to be implanted in young healthy women and remain implanted during their lifetimes. FDA believes that data should be submitted showing the long-term safety of the materials used in the TOD. FDA notes that the Panel has already discussed the overall biocompatibility of TOD's and did not find any conclusive data demonstrating that materials used in preamendments TOD's have no long-term adverse effect, such as an adverse tissue reaction (see 44 FR 19961; April 3, 1979).

2. The other comment stated that FDA's proposal to require data showing that the TOD does not present a potential for carcinogenicity is inconsistent with FDA's decision on similar devices, such as the contraceptive intrauterine device (IUD) (21 CFR 884.5360) (see 50 FR 33500, August 19, 1985; 51 FR 16648, May 5, 1986).

FDA believes that its regulatory decisions are consistent. The preamendments IUD had a material safety history from clinical use greater than 20 years. Thus, the final rule establishing an effective date of the requirement for premarket approval of the IUD (51 FR 16648; May 5, 1986), did not require submission of more data than was already available on the long-term biocompatibility of the IUD. On the other hand, little data on long-term use of the TOD are available. Under the circumstances, manufacturers of the TOD are required to provide data on long-term safety of the device.

FDA has reexamined, and finds appropriate, its proposed findings and conclusions with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the TOD and introducer to meet the act's PMA requirements. Accordingly, FDA is promulgating a final rule requiring premarket approval for the TOD and introducer under section 515(d)(3) of the act and is summarizing its findings with respect to: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the TOD and introducer to have an approved PMA or declared completed PDP, and (2) the benefits to the public from the use of the device.

II. Findings With Respect to Risks and Benefits

A. Degree of Risk Pregnancy—Ectopic Pregnancy

1. *Pregnancy rate.* Failure of the device to close the fallopian tube completely could result in an unwanted pregnancy. The reported data indicate that the overall risk of pregnancy for

TOD's ranges from 1 to 27 pregnancies per 100 women.

2. *Ectopic pregnancy.* The cumulative lifetime risk of ectopic pregnancy for a woman undergoing a tubal sterilization is only 2.1 per 1,000 women (which is less than the risk of ectopic pregnancy for nonsterilized women). However, 16 percent of all pregnancies occurring after tubal sterilization are ectopic.

3. *Abnormal menstrual patterns.* Recently, concern has been expressed that sterilization may be related to disturbances in menstrual patterns requiring hysterectomy or other surgical treatment. However, the published data on this subject are contradictory and inconclusive.

4. *Infections.* Infections appear to be one of the common complications associated with TOD's. Infections occur most often at the incision site and in the pelvis.

5. *Pain.* Pain is one of the most frequent complications of sterilization by TOD's.

6. *Trauma—Bleeding.* Transection of the fallopian tubes associated with mesosalpingeal bleeding is a well-known traumatic complication of female sterilization. The frequency of this complication has not been reported for tubal occlusion clips, but has been reported as 2.6 percent for the Falope Ring.

7. *Tissue toxicity.* Implanted TOD devices may contain materials which are not biocompatible, thereby producing adverse tissue reaction. Although the tubal occlusion bands and clips are made of materials that are generally thought to be biocompatible, it is possible that contaminants may be introduced during the manufacture of the device or that some of the materials may cause adverse tissue reactions that are not recognized immediately after implantation.

FDA concludes that these risks could be eliminated or reduced by requiring the TOD and introducer to undergo premarket approval.

B. Benefits of the Device

Female sterilization is the most popular method of fertility control for women in the United States. Female sterilization by TOD's has been reported to be relatively safe and shown to have failure rates of less than 1 per 100 women. Female sterilization by electrocoagulation, though as effective as female sterilization by TOD's, reportedly presents potential risks to health of skin, bowel, and bladder burns (see 50 FR 40952 and 40953, October 7, 1985). Many women who have completed their desired family size prefer sterilization by TOD's over contraception from use of IUD's, oral contraceptives, or vaginal barrier contraceptives.

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the preamble to the proposed rule and is issuing a final rule to require premarket approval of the generic type of device, the TOD and introducer.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before December 30, 1987, for any TOD and introducer that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before December 30, 1987. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before June 28, 1988. (If FDA finds that continued availability of a device for which a PMA has been timely filed is necessary for the public health, FDA may, under section 515(d)(1)(B)(i) of the act, extend the 180-day period for taking action on the PMA.) Any TOD and introducer that was not in commercial distribution before May 28, 1976, or that has not on or before December 30, 1987, been found by FDA to be substantially equivalent to a TOD and introducer that was in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for a TOD and introducer is not filed on or before December 30, 1987, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR Part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c) (1) and (2) will no longer apply to clinical investigations of the TOD and introducer. Further, FDA concludes that investigational TOD's and introducers are significant risk devices as defined in § 812.3(m), and advises that as of the effective date of § 884.5380(c) the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of a TOD and introducer. For any such device, therefore, an IDE submitted to FDA, under § 812.20, is required to be in effect under § 812.30 before an investigation is initiated or continued on or after December 30, 1987. FDA advises all persons who intend to sponsor any clinical investigation involving the TOD and introducer to submit an IDE application to FDA no later than November 30, 1987, to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

FDA has examined the economic consequences of this final rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule will not be a major rule as specified in the Order. The agency believes that only four or five small firms will be affected by this rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of this final rule has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR Part 884 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. In § 884.5380 by revising paragraph (c), to read as follows:

§ 884.5380 Contraceptive tubal occlusion device (TOD) and introducer.

* * * * *

(c) *Date premarket approval application (PMA) or notice of*

completion of a product development protocol (PDP) is required. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before December 30, 1987, for any TOD and introducer that was in commercial distribution before May 28, 1976, or that has on or before December 30, 1987, been found to be substantially equivalent to a TOD and introducer that was in commercial distribution before May 28, 1976. Any other TOD and introducer shall have an approved PMA or a declared completed PDP in effect before being placed in commerical distribution.

Dated: September 9, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-22651 Filed 9-30-87; 8:45 am]

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federal register

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Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 60

Establishment of Fees and Charges for Cotton Market News Reports; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 60

Establishment of Fees and Charges for Cotton Market News Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) amends 7 CFR Part 60 to add the Cotton Division to the list of Divisions collecting user fees for published market news reports. A final rule, originally published on April 8, 1983 in 48 FR 15222, authorizes the collection of fees for the distribution of copies of market news publications requested by the general public for all AMS Commodity Divisions except the Cotton Division. This rule authorizes the collection of fees from recipients of market news reports issued by the Cotton Division.

DATE: This rule is effective October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Fred S. Mullins, Cotton Division, AMS, USDA, Washington, DC 20250; (202) 447–2145.

SUPPLEMENTARY INFORMATION: The Department implemented a final rule, 7 CFR Part 60 (48 FR 15221–15222, April 8, 1983), which provided for the collection of fees for the printing, handling and mailing of market news reports distributed by AMS pursuant to the authority contained in the Agriculture and Feed Act of 1981 (7 U.S.C. 2242a). Such fees and charges were set at a level which would cover as nearly as practicable the costs of printing, handling and postage of the market reports requested by the general public. The Department's decision to collect fees for market news reports was consistent with the Department's goal of reducing its cost of publishing and distributing publications.

Market news reports published by the Cotton Division of AMS were not included in Part 60. This rule adds the Cotton Division, AMS, to that Part and authorizes the collection of fees and charges, as determined reasonable for reports issued by the Cotton Division, AMS, pursuant to the authority contained in 7 U.S.C. 2242a, as amended by the Food Security Act of 1985, Pub. L. 99–198.

Fees for the publications will vary from time to time due to numerous factors which affect printing, handling and distribution costs. As several of these factors (e.g. number of subscribers, postage, etc.) are not fixed, it is expected that the total costs will fluctuate from time to time. Since fees are only adjusted as necessary to recover expenses of printing, handling and distribution, the fees will be computed and revised when necessary to assure recovery of the Departmental costs and each adjustment will not be published in the **Federal Register**. Subscription renewal notices will be used to specify subscription rates. Based on estimates of current costs and activity level, fees during the initial subscription period for reports published by the Cotton Division will be charged according to the following schedule:

REPORTS ISSUED BY COTTON DIVISION

Report	Frequency	Subscription rate in U.S. Dollars			
		Annual		Single Issue	
		United States, Canada, Mexico	Other Countries (Air Mail)	Daily, Weekly, Bi-Weekly, Monthly [1]	Annual
Daily Spot Cotton Quotations	Daily	115.00	175.00	1.00	
Daily Spot Cotton Quotations (Fri. only)	Weekly	25.00	40.00	1.00	
Weekly Cotton Market Review	Weekly	25.00	50.00	1.00	
Weekly Report of Certificated Stock in Licensed Whses	Weekly	25.00	40.00	1.00	
Quality of Cotton Classed Under Smith-Doxey Act	Weekly [2]	30.00	30.00	1.00	
Cottonseed Review	Weekly [2]	15.00	20.00	1.00	
Cotton Fiber and Processing Test Results	Bi-Weekly [2] (plus annual).	30.00	60.00	1.00	
	Annual only	10.00	15.00		10.00
Cotton Price Statistics	Monthly + Annual	30.00	60.00	1.00	
	Annual only	5.00	8.00		5.00
Long Staple Review	Monthly	12.00	16.00	1.00	
Cotton Linters Review	Monthly	12.00	16.00	1.00	
US Cotton Quality Rpt for Ginnings Prior to ——	Monthly [2]	15.00	30.00	1.00	
Cotton Quality, Crop of ——	Annual	10.00	12.00		10.00
Cotton Quality, Supply-Disappearance-Carryover	Annual	5.00	8.00		5.00
Cotton Varieties Planted, —— Crop	Annual	5.00	8.00		5.00
Cottonseed Quality, Crop of ——	Annual	5.00	8.00		5.00

[1] $5.00 minimum charge.
[2] During harvesting.

In addition, this final rule deletes unnecessary language in § 60.5(a) and amends the authority citation. These changes are effective October 1, 1987.

A proposed rule was published in the July 23 1987 **Federal Register** (52 FR 27685). A 15 day comment period was provided for interested persons to comment on this proposed rule. Comments were received from a cotton exchange and a trade association. Both stated that the cotton exchanges and their members who serve on the Spot Cotton Quotation Committees should receive a copy of the Daily Spot Quotations Report free of charge because the committees donate time to provide the Cotton Division with the necessary price information. The members of the Cotton Exchanges and the Spot Cotton Quotation Committees

are cotton merchants. It has been determined that, in the interest of equity and uniform treatment with all other cotton merchants and with the participants in the other commodity programs which AMS administers, the cotton exchanges and the committees should be required to purchase their subscriptions. In addition, one commenter suggested that AMS issue one yearly order form. Such a procedure will be adopted through the subscription renewal process.

The final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Department's Regulation 1512–1 and has been determined to be a "non-major" rule because it does not meet any of the criteria established for major rules under the executive order. In conformance with the provision of the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business entities. Most producers and dealers fall within the definition of "small business", as defined in the Regulatory Flexibility Act. However, a number of firms who are expected to use the market news reports do not meet the definition of small business because of their individual size. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact upon a substantial number of small entities. This rule would in no way affect normal competition in the marketplace. It merely authorizes the collection of fees and charges for market news reports that are requested on a voluntary basis. The fees established have been set at the lowest possible level. It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because interested persons were apprised of an anticipated October 1, 1987 effective date in the proposed rule which is the beginning of the fiscal year. In addition, subscriptions to the cotton market news reports are available on a voluntary basis.

List of Subjects in 7 CFR Part 60

Government publication, Market news reports, Subscription fees.

Accordingly, for the reasons set forth in the preamble, 7 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 is revised to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 1622(g), 7 U.S.C. 2242a.

2. In § 60.5 the section heading and paragraph (a) are revised to read as follows:

§ 60.5 Market news reports published by the Cotton Division; Dairy Division; Fruit and Vegetable Division; Livestock, Meat, Grain, and Seed Division; and Poultry Division.

* * * * *

(a) Market news reports shall be available on an annual subscription (or seasonal subscription for reports issued by the Fruit and Vegetable Division upon written request and upon payment of a subscription fee, except that no fees will be charged to other government agencies which assist in the collection of market news data for the requested report.

* * * * *

Date: September 30, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87–22909 Filed 9–30–87; 3:31 pm]

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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List September 29, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 224/Pub. L. 100-116

Designating the week of October 18, 1987, through October 24, 1987, as "Benign Essential Blepharospasm Awareness Week." (Sept. 28, 1987; 101 Stat. 750; 1 page) Price: $1.00

S. 1596/Pub. L. 100-117

To extend the period for waivers of State eligibility requirements to enable certain States to qualify for child abuse and neglect assistance. (Sept. 28, 1987; 101 Stat. 751; 1 page) Price: $1.00

S.J. Res. 135/Pub. L. 100-118

To designate October 1987 as "Polish American Heritage Month." (Sept. 28, 1987; 101 Stat. 752; 2 pages) Price: $1.00

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CFR ISSUANCES 1987
January–July 1987 Editions and Projected October, 1987 Editions

This list sets out the CFR issuances for the January–July 1987 editions and projects the publication plans for the **October, 1987** quarter. A projected schedule that will include the **January, 1988** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1986–1987 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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	1 (§§ 1.401–1.500)
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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1987

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
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October 6	October 21	November 5	November 20	December 7	January 4
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October 8	October 23	November 9	November 23	December 7	January 6
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Presidential Documents

Title 3—

The President

Proclamation 5709 of September 29, 1987

AIDS Awareness and Prevention Month, 1987

By the President of the United States of America

A Proclamation

The Human Immunodeficiency Virus (HIV) and the disease AIDS (Acquired Immune Deficiency Syndrome) into which it can develop are a severe public health problem in the United States and elsewhere. HIV destroys the immune system and attacks the central nervous system, leading to devastating physical consequences and then to death. Because the virus has a long incubation period and the progress of the disease varies sharply from individual to individual, people can unwittingly carry and spread it for years.

AIDS afflicts thousands of Americans, and an unknown number are infected with HIV without showing any symptoms. The deadly virus is most commonly spread through sexual contact with an infected person, especially through homosexual practices; through intravenous drug use with contaminated needles; and through other transmissions of infected blood. Our country's huge and vital public health task of AIDS prevention and treatment is underway. Massive public and private efforts have already led to definite advances in research and treatment. Our understanding of AIDS remains incomplete, however, and much remains to be done before any vaccine or cure is found.

A Presidential Commission is studying the public health dangers of the HIV epidemic, including the medical, legal, ethical, social, and economic impact, and will issue a report next year, focusing on Federal, State, and local measures to protect the public from contracting the virus, to help find a cure for AIDS, and to care for those already afflicted.

Both medicine and morality teach the same lesson about prevention of AIDS. The Surgeon General has told all Americans that the best way to prevent AIDS is to abstain from sexual activity until adulthood and then to restrict sex to a monogamous, faithful relationship. This advice and the advice to say no to drugs can, of course, prevent the spread of most AIDS cases. Millions already follow this wise and timeless counsel, and our Nation is the poorer for the lost contributions of those who, in rejecting it, have suffered great pain, sorrow, and even death.

Education is crucial for awareness and prevention of AIDS. Parents have the primary responsibility to help children see the beauty, goodness, and fulfillment of chastity before marriage and fidelity within it; know the blessings of stable family life; and say yes to life and no to drugs. Educational efforts should be locally determined and consistent with parental values. Educators can develop and relay accurate health information about AIDS without mandating a specific curriculum on this subject. Parents and educators should teach children not to engage in premarital sex or to use drugs, and should place sexuality in the context of marriage, fidelity, commitment, and maturity.

Prevention of AIDS also demands responsibility from those who persist in high-risk behavior that is spreading AIDS. While many of these individuals apparently have not been convinced by educational efforts, some have begun to modify their behavior. AIDS is a fatal communicable disease of wide proportions, and all people of goodwill must realize that it is a public health problem whose prevention requires, at minimum, measures of detection, testing, and treatment now routinely taken against less dangerous communica-

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ble diseases. Our goal must be to protect the lives, the health, and the well-being of all our citizens. Public officials are entrusted with and sworn to the sacred duty of such protection. Our country needs wisdom and courage in this effort.

We also need to remember that the battle against AIDS calls for calmness, compassion, and conviction—calmness, to remember that fear is the enemy of just solutions; compassion, for all AIDS victims; and conviction, for the understanding and the willingness to combat this major public health threat effectively.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of October 1987 as AIDS Awareness and Prevention Month, and I call on Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of Sept., in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5710 of September 29, 1987

National Lupus Awareness Month, 1987

By the President of the United States of America

A Proclamation

Systemic lupus erythematosus or lupus is often called "the great impersonator" because it can mimic so many other diseases. A disorder of the body's immune system, lupus may affect the joints, the skin, and one or more internal organs (such as the kidneys, heart, and brain) in varying combinations. As many as 500,000 Americans—mostly women in their childbearing years—may suffer from this autoimmune disorder.

Normally, an individual's immune system protects him or her from infection by producing antibodies that react with and eliminate foreign substances. In autoimmune diseases such as lupus, however, the immune system can harm the individual by making antibodies that react against the person's own tissues.

Scientists are not yet sure why the body's antibody-producing system behaves this way, but they are conducting extensive research seeking the cause of the disease. Their research studies include: investigations on genes that underlie the development of the disease; research on a wide variety of immune system components and chemical messengers; research on initiation of abnormal immune reactivity; and hormonal studies. Such fundamental studies will lead to the design of improved treatments that alleviate the symptoms of lupus, or even better, attack the disease itself.

Thanks to recent research progress, lupus has become more a chronic disease than the acute and often fatal disorder it was decades ago. Nevertheless, deaths do occur, and new research findings and new approaches to diagnosis and treatment are needed to eliminate lupus. A concerted Federal-private research effort is working to ultimately uncover the cause and cure for this distressing disease.

The Congress, by Public Law 100–106, has designated the month of October 1987 as "Lupus Awareness Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1987 as Lupus Awareness Month. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5711 of September 29, 1987

Child Health Day, 1987

By the President of the United States of America

A Proclamation

For nearly 6 decades, Americans have observed Child Health Day in reaffirmation of our private and public national commitment to the good health of every child. During this year's observance, we should resolve to redouble our efforts to ensure that all aspects of health services needed by mothers, babies, and older children are properly identified, provided, and used, when and where needed. Appropriate perinatal, medical, nutritional, and educational services should be made available in accordance with family needs, including specialized services for those at risk for poor pregnancy outcomes such as low birth weight, delivery complications, or developmental problems.

Babies and older children with special health needs such as severe chronic illnesses, birth impairments, and related conditions often require early intervention and highly specialized care. A family-centered, comprehensive program of medical, educational, and social services in the community and in the home may also be needed.

It is vital that approaches such as these be fostered throughout our country. Preventing low birth weights and infant mortality from other causes; reducing disability levels; and increasing the feasibility of home care in cases of severe chronic illness are objectives of high priority. Health professionals and staff members of State and local social service agencies can improve the effectiveness of health care delivery as they cooperate fully in these approaches.

Federal health services, research, and financing agencies continue to focus upon support of such endeavors. For instance, the recently created Bureau of Maternal and Child Health and Resource Development has as a central element of its mission the promotion of case-managed perinatal care as well as care for babies and older children who have special health care needs. Real progress can be made through the combination of State and local action and cooperation and Federal encouragement and support.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution approved on May 18, 1928, as amended (36 U.S.C. 143), do hereby proclaim Monday, October 5, 1987, as Child Health Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5712 of September 30, 1987

Implementation of Agreement Concerning Certain Pasta Articles From the European Community

By the President of the United States of America

A Proclamation

1. On September 15, 1987, the United States and the European Community (EC) entered into an agreement to resolve the long-standing dispute over EC exports of subsidized pasta products to the United States. I have now determined, pursuant to section 301 of the Trade Act of 1974, as amended (Act) (19 U.S.C. 2411), to take action necessary to implement the agreement. In accordance with the agreement, certain pasta articles the product of any member country of the EC, exported on or after October 1, 1987, will be denied entry into the customs territory of the United States unless accompanied by documentation establishing that such imports are receiving reduced refund payments from the EC or are benefitting solely from Inward Processing Relief from the EC.

2. Section 301(a) of the Act (19 U.S.C. 2411(a)) authorizes the President to take all appropriate and feasible action within his power to enforce the rights of the United States under any trade agreement, or to respond to any act, policy, or practice of a foreign country or instrumentality that is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce. Pursuant to section 301(a), such actions can be taken on a nondiscriminatory basis or solely against the foreign government or instrumentality involved. Section 301(d) of the Act (19 U.S.C. 2411(d)) authorizes the President to take action on his own motion and on an expedited basis if required.

3. I have decided, pursuant to section 301(a) and (d) of the Act, to direct the United States Trade Representative to take such actions as he deems necessary and appropriate to enforce the provisions of the agreement. The U.S. Customs Service shall exclude from entry, or withdrawal from warehouse for consumption, into the customs territory of the United States all shipments the product of any member country of the EC, exported on or after October 1, 1987, of macaroni, noodles, vermicelli, and similar alimentary pastes composed primarily of wheat, provided for in items 182.35 and 182.36 part 15B, schedule 1 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), unless accompanied by such documentation as is determined by the USTR to be necessary to ensure compliance with the agreement. The U.S. Customs Service shall collect and assemble such data as are necessary to monitor compliance with the agreement.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to section 301(a) and (d) of the Trade Act of 1974, do proclaim that:

1. The U.S. Customs Service shall exclude from entry, or withdrawal from warehouse for consumption, into the customs territory of the United States all macaroni, noodles, vermicelli, and similar alimentary pastes composed primarily of wheat, provided for in items 182.35 and 182.36, part 15B, schedule 1 of the Tariff Schedules of the United States, the product of any member country of the European Community unless accompanied by such documenta-

tion as the United States Trade Representative determines necessary and appropriate to enforce the agreement.

2. The United States Trade Representative shall determine what actions are necessary to enforce the agreement and shall notify the U.S. Customs Service of the documentary requirements necessary to permit entry, or withdrawal from warehouse for consumption, into the customs territory of the United States of such pasta articles.

3. The U.S. Customs Service shall collect and assemble such data as are necessary to monitor compliance with the agreement.

4. This Proclamation shall be effective with respect to such pasta articles exported from the EC on or after October 1, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-22974
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Memorandum of September 30, 1987

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined to take actions necessary to implement an agreement signed on September 15, 1987, with the European Community (EC) with respect to exports of certain pasta products to the United States. In accordance with the agreement, the U.S. Customs Service shall exclude from entry, or withdrawal from warehouse for consumption, into the customs territory of the United States all shipments the product of any member country of the EC, exported on or after October 1, 1987, of macaroni, noodles, vermicelli, and similar alimentary pastes composed primarily of wheat, provided for in items 182.35 and 182.36 part 15B, schedule 1 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), unless such shipments are accompanied by appropriate documentation establishing that such imports are receiving reduced refund payments from the EC or are benefitting solely from Inward Processing Relief from the EC. The United States Trade Representative (USTR) shall determine what actions are necessary to enforce the agreement and shall notify the U.S. Customs Service of the documentary evidence necessary to permit entry of such pasta articles. The U.S. Customs Service will collect and assemble such data as are necessary to monitor the agreement. I have determined to take this action on my own motion on an expedited basis under the authority of section 301(d)(1) of the Trade Act of 1974 (19 U.S.C. 2411(d)(1)).

Statement of Reasons

The agreement implemented by this determination resolves a long-standing dispute over certain EC subsidy practices I previously determined to be unfair (47 FR 31841). On November 30, 1981, the USTR initiated an investigation of export subsidies on certain pasta products from the EC (46 FR 59675), on the basis of a petition filed by the National Pasta Association under section 301 of the Trade Act of 1974. The United States pursued this matter under the dispute resolution procedures of the Subsidies Code. In 1983, a Subsidies Code panel found, after lengthy and careful examination of the arguments of both sides, that EC export subsidies on pasta products are inconsistent with Article 9 of the Subsidies Code. The EC and certain other countries declined to permit adoption of the panel ruling. Subsequent efforts to achieve a settlement through bilateral negotiations were unsuccessful.

In the context of a separate dispute with the EC concerning tariff preferences granted by the EC on certain citrus products, I imposed increased duties on certain pasta products under Proclamation 5354 of June 21, 1985 (50 FR 26153), as modified by Proclamation 5363 of August 15, 1985 (50 FR 33711). These increased duties on pasta products were withdrawn, effective August 21, 1986, by action of the USTR under authority delegated by Proclamation 5363, as a result of the negotiation of a satisfactory settlement of the dispute concerning citrus preferences (51 FR 30146). One of the terms of that settlement with the EC was that the United States and the EC would negotiate a satisfactory settlement of the dispute over EC pasta subsidies.

The agreement implemented by this determination and accompanying Proclamation is the result of those negotiations. The agreement reasonably restricts the EC subsidies on pasta exported to the United States, and therefore is an appropriate and feasible response to enforce the rights of the United States under the trade agreements of the United States or to respond to EC acts, policies, and practices that are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 30, 1987.

[FR Doc. 87-22975
Filed 10-1-87; 8:51 am]
Billing code 3195-01-M

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Presidential Documents

Memorandum of September 30, 1987

Annual Determination on Steel Industry Modernization

Memorandum for the United States Trade Representative

Section 806 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) requires that I make an annual affirmative determination that specified conditions have been met by the domestic steel industry to justify continuation of authority under section 805 to enforce steel restraint agreements. The attached *Report of the President under the Steel Import Stabilization Act,* and the report prepared at my direction by the United States International Trade Commission, *Annual Survey Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize,* enumerate the actions taken by the domestic industry consistent with an affirmative determination under section 806.

Based upon this information, I hereby make an affirmative determination for the third annual period (October 1, 1986–September 30, 1987) that during such period:

(A) The major companies of the steel industry, taken as a whole, have—

(i) committed substantially all of their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry; and

(ii) taken sufficient action to maintain their international competitiveness;

(B) each of the major companies committed not less than 1 percent of net cash flow to the retraining of workers, except as waived below; and

(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

Moreover, I hereby waive the application of section 806(b)(1)(B) with respect to one major company (Wheeling-Pittsburgh Steel Corporation) now operating under Chapter 11 of the Federal bankruptcy laws; and another major company (Nucor Corporation) not having or reasonably anticipating significant unemployment in steel operations, in light of recent growth in employment.

You are hereby authorized and directed to report this determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, September 30, 1987.

[FR Doc. 87-22978
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Executive Order 12610 of September 30, 1987

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C., App.), it is hereby ordered as follows:

Section 1. Each Advisory Committee listed below is continued until September 30, 1989:

(a) Advisory Committee on Small and Minority Business Ownership; Executive Order No. 12190 (Small Business Administration).

(b) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior).

(c) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as amended (Department of Labor).

(d) President's Committee on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(e) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor).

(f) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services).

(g) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation).

(h) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services).

(i) President's Economic Policy Advisory Board; Executive Order No. 12296 (Office of Policy Development).

(j) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce).

(k) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in Section 1 of this Order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive Orders, which established committees that have terminated or whose work is completed, are revoked:

(a) Executive Order No. 12490, establishing the National Commission on Space.

(b) Executive Order No. 12427, establishing the President's Advisory Council on Private Sector Initiatives.

(c) Executive Order No. 12526, establishing the President's Blue Ribbon Commission on Defense Management.

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(d) Executive Order No. 12511, establishing the President's Child Safety Partnership.

(e) Executive Order No. 12503, as amended by Executive Order No. 12529, establishing the President's Commission on Americans Outdoors.

(f) Executive Order No. 12435, establishing the President's Commission on Organized Crime.

(g) Executive Order No. 12575, establishing the President's Special Review Board.

(h) Executive Order No. 12546, establishing the Presidential Commission on the Space Shuttle Challenger Accident.

Sec. 4. Executive Order No. 12534 is superseded.

Sec. 5. This Order shall be effective September 30, 1987.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 30, 1987.

[FR Doc. 87-23004
Filed 10-1-87; 11:56 am]
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Rules and Regulations

Federal Register
Vol. 52, No. 191
Friday, October 2, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Documentation and Verification of Eligibility

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: On May 22, 1987, the Department published a proposed rule to implement the automatic free meal eligibility and verification provisions mandated by the School Lunch and Child Nutrition Amendments of 1986 (Pub. L. 99–500 and Pub. L. 99–591) in the Child Care Food Program (CCFP). In addition, that rulemaking also proposed several discretionary changes to the procedures governing the application for free or reduced price benefits and the verification of eligibility in the CCFP. This interim rulemaking action: (1) Responds to commenters' views regarding the proposed rulemaking; (2) *requires* the implementation of automatic (or "categorical") eligibility and related verification provisions in the CCFP in Fiscal Year 1988; (3) makes *optional* for Fiscal Year 1988 and *mandatory* for Fiscal Year 1989 the implementation of the discretionary changes which were proposed in the May 22, 1987 rulemaking. The Department is publishing these regulations in interim form in order to allow interested parties an opportunity to submit additional comments based on their experience in implementing categorical eligibility and the related verification procedures mandated by Pub. L. 99–500 and Pub. L. 99–591. In addition, those States choosing to implement immediately the discretionary changes to the application and verification procedures proposed in the May 22, 1987 rulemaking will also have operational experience on which to base additional comments. This rulemaking is intended to simplify eligibility and verification procedures and improve administrative consistency.

DATES: This interim rulemaking is effective October 1, 1987. The section entitled "Implementation", which appears at the end of this preamble, details those changes which must be implemented on October 1, 1987 and those for which implementation may be delayed at State discretion until October 1, 1988. To be assured of consideration, comments must be postmarked on or before December 31, 1987.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this review, Ms. Anna Kondratas, the Administrator of the Food and Nutrition Service, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in §§ 226.9, 226.15, 226.17, 226.19 and 226.23 of this interim rule have been approved by the Office of Management and Budget (OMB) under clearance 0584–0055. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983). This interim regulation implements both nondiscretionary provisions of law and discretionary initiatives of the Department concerning the free and reduced price application and verification process in the Child Care Food Program. Since the large majority of free and reduced price applications are submitted at the beginning of the fiscal year, and since Congress clearly intended that categorical eligibility be available to program participants in a timely manner, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(d), that good cause exists to make this rule effective less than 30 days after publication. Furthermore, with respect to the nondiscretionary provisions of this rule which merely recite statutory requirements, this rule constitutes an interpretative rule for which a 30 day waiting period is not required.

Background

On May 22, 1987, the Department published a proposed rule in the **Federal Register** (52 FR 19354) to: (1) Provide automatic free meal eligibility and simplified verification procedures for children from households receiving food stamps or from "assistance units" receiving Aid to Families with Dependent Children (AFDC) benefits; (2) require additional income information from households applying on behalf of other children (i.e., children who are *not* part of food stamp households or AFDC assistance units); (3) require that CCFP applications include a signed certification that the information being provided by the household on the application is true and correct; and (4) eliminate "institution conferences" as a method of verification in the CCFP. A 60-day comment period was provided during which the Department received 18 comments on the proposed

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regulation. Commenters represented State agencies responsible for administering the CCFP; public and private nonprofit sponsors of child care centers and family day care homes; and child care centers. Many of the comments received dealt with portions of the CCFP regulations which were not part of the proposed rulemaking, and only 8 of the 18 comments concerned the Department's proposal to make several discretionary changes to the CCFP application and verification procedures.

In order to implement the School Lunch and Child Nutrition Amendments of 1986 in a timely manner, this interim rulemaking mandates full implementation of the categorical eligibility and related verification procedures by October 1, 1987. However, implementation of the remaining changes proposed in the May 22, 1987 rulemaking is *optional* in Fiscal Year 1988 and *mandatory* in Fiscal Year 1989. The specific discretionary provisions involved in optional Fiscal Year 1988 implementation are discussed in the section entitled "Implementation" which appears at the end of this preamble.

By promulgating in interim form the nondiscretionary changes mandated in Pub. L. 99–500 and Pub. L. 99–591, the Department wishes to give State agencies and institutions the opportunity to submit additional comments based on their actual experience in implementing automatic free meal eligibility and related verification procedures for the Fiscal Year 1988 Program. In addition, those States choosing to implement immediately the discretionary changes proposed in the May 22, 1987 rulemaking are also encouraged to submit additional comments reflecting their experience with these provisions.

The remainder of this preamble will discuss the views expressed by commenters in relation to each of the provisions discussed in the May 22, 1987 rulemaking. Comments which addressed portions of the 7 CFR Part 226 regulations not substantively affected by the proposed rulemaking are not discussed herein.

General Comments

Of the 18 comments received, 7 expressed agreement with the changes proposed in the May 22, 1987 rulemaking. Most of these commenters, and many of those expressing concern regarding specific provisions of the proposed rulemaking, commended the effort to simplify eligibility and verification procedures and to bring about administrative consistency between the CCFP and the School Programs. Five (5) commenters requested that the Department issue guidance on the revised application and verification procedures. These commenters felt that such guidance was imperative since categorical eligibility requires that eligibility be established for each child, rather than for entire households as in the past. The Department understands that there may be some confusion at the local level, especially in regard to determining eligibility in "mixed households" (i.e., households which include both categorically eligible children and other children who are not categorically eligible). The Department is revising the applicable guidance, but again reiterates the request made in the preamble to the proposed rulemaking that States and institutions submit specific comments and questions concerning the implementation of categorical eligibility. Comments on the interim rule should reflect administering agencies' practical experience in implementing these provisions, and will thus be helpful to the Department in its effort to provide clear and complete guidance materials.

1. Comments on Categorical Eligibility and Related Verification Provisions

In addition to the requests for guidance noted above, two State agencies provided comments on categorical eligibility's impact on the application process. One of these commenters requested that the definition of "household" be expanded to clarify the procedures for processing applications from mixed households and from households which include both a food stamp household and an AFDC assistance unit. Both commenters felt that the regulations should provide more specific language pertaining to processing mixed households. The Department agrees that this information is needed by administering agencies, but believes that it would be more appropriate to address such situations in guidance materials rather than attempting to deal with a large and complex variety of possible circumstances in the regulations themselves. The definition of "household" remains unchanged in § 226.2, as do the definitions of "food stamp household" and "AFDC assistance unit" added to Part 226 in the proposed rulemaking, in order to facilitate reference to requirements which apply to all households and those which apply to specific types or parts of households.

A third comment on the subject of "mixed households" misunderstood the Department's intent in the proposed rulemaking. The commenter believed that since Congress intended to simplify the application process it would not require two different types of eligibility determinations to be made for the same household. Because the commenter believed that using two techniques to determine eligibility in mixed households would be cumbersome and too complicated, she concluded that eligibility for *all* children in a mixed household would have to be based on income and family size. The proposed rule provided that in a mixed household, two types of eligibility determinations are made—the first provides automatic eligibility for children from food stamp households or AFDC assistance units within the mixed household, while the second applies to all other children in the household and is based on total household size and income.

The Department does not believe that this treatment of mixed households adds significantly to the burden or complexity of the eligibility process. Prior to the passage of the School Lunch and Child Nutrition Amendments, the eligibility determination for children in a mixed household would have been based on income alone; now, the only additional step is to review a simple application containing the child's name, a food stamp or AFDC case number and a signature. In addition, a mixed household can always choose to submit income and family size information for all children in the household. Finally, the Department believes strongly that its implementation of categorical eligiblity is consistent with section 323 of Pub. L. 99–591 and section 4203 of Pub. L. 99–500, both of which state that, "A *child* shall be considered automatically eligibile . . . if the *child* is a member of" a food stamp household or an AFDC assistance unit (emphases added). This wording makes clear that congressional intent is to extend categorical eligibility to children receiving benefits under the Food Stamp or AFDC Programs, regardless of whether they reside in a household with other children who are not categorically eligible. Therefore, to require income and family size information for these children would be inconsistent with the statutory requirement concerning categorical eligibility.

The remainder of the comments concerning the nondiscretionary changes mandated by the School Lunch and Child Nutrition Amendments of 1986 involved the implementation of simplified verification procedures for categorically eligible children. With respect to the verification of food stamp or AFDC participation, one commenter noted that the "Notice of Eligibility"

provided to recipients by the food stamp or AFDC office will not necessarily list all the members of the food stamp household or AFDC assistance unit. The commenter suggested that in such cases it might be difficult for households to obtain the appropriate proof of current program certification from their food stamp or AFDC office. This commenter recommended that households be required to provide the case number only at the time of application and be penalized only if the information proved false. A second commenter believed that the Department should accept identification cards or issuance receipts as verification of certification in the Food Stamp or AFDC Programs.

The Department wishes to emphasize that these issues arise only at the time of verification. When making an application, the household need only provide the food stamp or AFDC case number. Only if a household's application is selected for verification will proof of food stamp or AFDC participation be required. In further response to the first commenter, the Department does not wish to place an unreasonable verification burden on those households selected for verification. Consistent with this concern, the definition of "verification" at § 226.23 and the verification procedures set forth at § 226.23 (h)(2)(iv) of the proposed rulemaking permit State agencies to use other sources of information for verification if the written evidence provided by the household is insufficient to establish food stamp or AFDC certification. Thus, if the written evidence submitted by the household is not adequate to verify the current food stamp or AFDC certification of the child(ren) for whom automatic eligibility was claimed, the State agency may then choose to contact the local food stamp or welfare agency to obtain this information. In response to the second commenter, the Department wishes to point out that, in accordance with § 226.23 (h)(2)(iii), the "Notice of Eligibility" is not the only document which households may use to establish their food stamp or AFDC certification. For example, an identification card is acceptable proof of certification *Provided* that it contains an expiration date; in fact, § 226.23 (h)(2)(iii) provides that "equivalent official documentation issued by a food stamp or welfare office", will suffice as long as it establishes the current certification of the children for whom benefits were claimed.

With regard to the proposed change to the definition of "verification", the Department has noticed a point of possible confusion. In this interim rule, the definition is revised to make clear that the only verification which can be required for a child whose eligibility is based on food stamp or AFDC participation is verification that the child is part of a currently certified food stamp household or AFDC assistance unit. In addition, the phrase permitting verification of other application information for children who are not catgorically eligible for the program has been moved to emphasize this State agency option. Section 226.23(h)(2)(i) has also been revised to make this clarification.

11. Comments on Discretionary Changes to Application and Verification Requirements

Eight (8) commenters specifically addressed the discretionary changes proposed in the May 22, 1987 rulemaking. Of these, one (1) commenter expressed agreement with all of the proposed changes; three (3) commenters opposed the requirement to obtain additional income information from households applying for free or reduced price benefits; two (2) commenters made observations relating to the collection of additional income information; and two (2) commenters expressed the opinion that the Department's proposed changes did not establish full consistency between the methods of verification employed in the school programs and the CCFP.

Of the three commenters which disagreed with the proposal to collect information on the source(s) of income for each household member, two were from child care centers. One center operator believed that the collection of additional information would create an added burden for centers and households. The other center operator believed that the added burden on households would discourage households from applying for benefits and would result in lower reimbursement for centers.

The Department does not, of course, wish to impose unnecessary burdens on either local entities or households. Rather, based on its experience in administering the National School Lunch Program, the Department believes that the collection of additional information will lead to the submission of more complete and accurate income statements by households, and will therefore improve program accountability. Similar information is collected in relation to the receipt of means-tested benefits in other Child Nutrition Programs, and that process has not been demonstrated to be excessively burdensome. Finally, it should be reiterated that this change in application requirements will provide greater consistency in the administration of the school programs and the CCFP. Since the same agency often administers all of these programs, the States' burden will be *decreased* by implementing uniform application requirements.

The third commenter objecting to the collection of additional income information stated that such information would only be useful to State agencies which chose to conduct verification in non-pricing programs (verification of income is not required for non-pricing programs, but States may choose to verify this information if they wish). The commenter therefore suggested that collection of income by source be left to State discretion. However, in addition to its usefulness for verification purposes, the Department reiterates that the collection of additional income data is likely to improve the accuracy and completeness of the information submitted by the household. Thus, program accountability should be improved regardless of whether the household participates in a pricing or non-pricing program and regardless of whether the State chooses to verify the income information on the application in a non-pricing program.

Without objecting to the collection of income by source, two commenters provided observations regarding potential problems in implementing this change to the application requirements. One commenter expressed support for greater consistency in application requirements in the school programs and CCFP, but feared that collection of income by source could *increase* the potential for erroneous eligibility determinations. The Department believes that there might be a *very slight* possibility of an increase in errors by centers and day care home sponsors because more numbers would have to be added together to determine overall household income. However, the greater accuracy which results from reminding applicants that wages are not the only type of countable income will far outweigh the small potential for error by administering agencies.

The second commenter requested that the definition of "documentation" be revised to clarify that the income received by a household member should appear next to the member's name on the application. The Department believes that this information should more properly be included in the guidance material being developed on CCFP application and verification procedures.

Finally, in regard to the Department's desire to improve administrative consistency between the school programs and the CCFP, two State agencies suggested that the Department propose additional changes to make verification more uniform across these programs. Specifically, these commenters believed that verification in CCFP pricing programs should be conducted by institutions rather than by State agencies, just as school food authorities conduct income verification in the National School Lunch and School Breakfast Programs.

However, because of the differences between the school programs and the CCFP, it is neither possible nor desirable to perform verification identically in these programs. For example, in the case of non-pricing programs in the CCFP, it would clearly be inappropriate for institutions to perform verification, since the institution will receive greater reimbursement from the Department if it serves more free and reduced price meals. With respect to verification in pricing programs, it must be noted that participating CCFP institutions are, in most cases, small, private entities, with limited access to verification information. In addition, given the small number of pricing programs and the regulatory flexibility to schedule and perform verification on a limited number of applications, this requirement does not impose a significant burden on State agencies. Given these factors, the Department believes that this inconsistency between the school programs and the CCFP is necessary and appropriate and does not conflict with the overall goal of consistency between the programs.

Implementation

This interim rulemaking is effective October 1, 1987. Implementation of the regulation on October 1, 1987 is *mandatory* except for the following requirements for which implementation may be delayed until October 1, 1988: (1) collection of income information from each household member, identified by source of income (see clause (c) under the definition of "Documentation" in §226.2, and §226.23(e)(1)(ii)(D)); (2) certification that the information on the application is true and correct (see §226.23(e)(1)(ii)(G)); and (3) elimination of "institution conferences" (see the introductory sentence to §226.23(h)(2)(iv) and §226.23(h)(2)(iv)(D)). In lieu of the above requirements, during fiscal year 1988: a complete application can provide total household income without identifying income by household member and source; applications need not include the perjury certification; and institution conferences may continue to be used as a source of verification.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, Infants and Children, Surplus agricultural commodities.

Accordingly, for the reasons set forth in the preamble, the Department is amending 7 CFR Part 226 as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows:

Authority: Secs. 323, 326, and 361, Pub. L. 99–500 (42 U.S.C. 1758, 1760, and 1766); secs. 323, 326, and 361 of Pub. L. 99–591 (42 U.S.C. 1758, 1760, and 1766); secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In §226.2:

a. New definitions of "AFDC Assistance Unit" and "Food Stamp Household" are added in alphabetical order.

b. The definitions of "Documentation", "Free Meal", and "Verification" are revised.

The revisions and additions specified above read as follows:

§226.2 Definitions.

* * * * *

"AFDC assistance unit" means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals under this part.

* * * * *

"Documentation" means the completion of the following information on a free and reduced price application: (a) Names of all household members; (b) social security number of each adult household member or an indication that an adult household member does not possess one; (c) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; and (d) the signature of an adult member of the household. However, prior to October 1, 1988, collection of the information specified in clause (c) of this definition may, at the State agency's option, be limited to total household income. Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and the signature of an adult member of the household.

* * * * *

"Food Stamp household" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

"Free meal" means a meal served under the Program to (a) a child from a family which meets the income standards for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp of AFDC recipiency. Regardless of whether the child qualified for free meals by virtue of (a) or (b), neither the child nor any member of his family shall be required to pay or to work in the food service program in order to receive a free meal.

* * * * *

"Verification" means: (a) A review of the information reported by institutions to the State agency regarding the eligibility of enrolled children for free or reduced price meals; and (b) in addition, for a pricing program, confirmation of eligibility for free or reduced price benefits under the Program. Verification for a pricing program shall include confirmation of income eligibility and, at State discretion, any other information required on the application which is defined as documentation in § 226.2. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household or other sources of information as specified in § 226.23(h)(2)(iv). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

§ 226.4 [Amended]

3. In § 226.4, paragraphs (b)(1) through (b)(3) and (b)(5) through (b)(9) are amended by removing the word "income" and adding in its place the word "eligibility".

§ 226.6 [Amended]

4. In § 226.6:

a. Paragraph (b)(2) is amended by removing the words "family size and income" and adding in their place the word "eligibility".

b. Paragraph (e)(7) is amended by removing the words "Secretary's income".

§ 226.9 [Amended]

5. In § 226.9, paragraph (b)(1) is amended by removing the phrase "family-size and income" and adding in its place the word "eligibility" both times the phrase appears.

§ 226.11 [Amended]

6. In § 226.11, paragraph (c)(1) is amended by removing the words "from families meeting the family-size and income standards for" and adding in their place the words "eligible to receive".

7. In § 226.15:

a. Paragraph (e)(2) is amended by adding a third sentence.

b. Paragraph (e)(3) is amended by adding a third sentence.

The additions specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(2) * * * However, when a household applies for free meal eligibility on behalf of a child who is a member of a food stamp household or AFDC assistance unit in accordance with § 226.23(e)(1)(ii), such information shall consist of the food stamp or AFDC case number of the child(ren) for whom free meal benefits are being claimed.

(3) * * * However, when a provider's own child is a member of a food stamp household or an AFDC assistance unit and free meal benefits have been applied for in accordance with § 226.23(e)(1)(iii), such information shall consist of the child(ren)'s food stamp or AFDC case number.

* * * * *

7. In § 226.17, paragraph (b)(7) is amended by adding a second sentence to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(7) * * * However, for households applying for free meal eligibility on behalf of children from food stamp households or AFDC assistance units in accordance with § 226.23(e)(1)(iii), child care centers shall collect and maintain food stamp or AFDC case numbers in lieu of family-size and income information and social security numbers.

* * * * *

§ 226.18 [Amended]

8. In § 226.18, paragraph (e)(3) is amended by removing the words "meet the family-size income standards for" and adding in their place the words "are eligible to receive".

9. In § 226.19, paragraph (b)(9)(i) is revised to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(9) * * *

(i) Documentation of enrollment for all children, including information sufficient to establish the eligibility of children classified as free or reduced price meal recipients;

* * * * *

10. In § 226.23:

a. Paragraph (c)(2) is amended by changing the semi-colon to a period and adding a second sentence.

b. Paragraph (d) is amended by revising the fourth sentence.

c. Paragraph (e)(1)(i) is amended by adding a fifth sentence.

d. Paragraph (e)(1)(ii) is amended by adding the words, "Except as provided in paragraph (e)(1)(iii) of this section," at the beginning of the first sentence.

e. Paragraphs (e)(1)(ii)(D) and (e)(1)(ii)(G) are revised.

f. Paragraph (e)(1)(ii)(F) is amended by revising the first and fifth sentences.

g. Paragraph (e)(1)(iii) is revised.

h. Paragraphs (e)(2)(iii) and (e)(2)(vii) are revised.

i. Paragraph (h)(2) is revised.

j. Paragraph (h)(5) is amended by changing the words "paragraph (h)(2)(i)" to read "paragraph (h)(2)(vii)", and by changing the words "paragraph (h)(2)(ii)" to read "paragraph (h)(2)(viii)".

The revisions and additions specified above read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(c) * * *

(2) * * * Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp households;

* * * * *

(d) * * * The release issued by institutions which charge separately for meals shall announce the availability of free and reduced price meals to children meeting the approved eligibility criteria, and shall also announce that children who are members of AFDC assistance units or food stamp households are automatically eligible to receive free meal benefits.* * *

(e)(1) * * *

(i) * * * However, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free CCFP meal benefits, subject to completion of the application as described in § 226.23(e)(1)(iii) of this part.

(ii) * * * (D) the total current household income, and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources.) However, prior to October 1, 1988, collection of income information may, at the State agency's option, be limited to total household income. * * * (F) a statement which includes substantially the following information: "Section 9 of the National School Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals. * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. * * * (G) the signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes. However, prior to October 1, 1988, the requirement in paragraph (e)(1)(ii)(D) of this section may, at the State agency's option, be limited to the signature of an adult member of the household.

(iii) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for

free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide: (A) The names and food stamp or AFDC case numbers of the child(ren) for whom automatic free meal eligibility is claimed; and (B) the signature of an adult member of the household as provided for in § 226.23(e)(1)(ii)(G). In accordance with § 226.23(e)(1)(ii)(F), if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households apply for benefits for children not receiving food stamp or AFDC benefits, they must apply in accordance with the requirements set forth in § 226.23(e)(1)(ii).

(2) * * *

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete "documentation" as defined in § 226.2.

* * * * *

(vii) An explanation that households receiving free and reduced price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over $50 per month or $600 per year or, in the case of households that provided a food stamp or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp or AFDC Programs.

* * * * *

(h) * * *

(2) *Verification procedures for pricing programs.* (i) For pricing programs, in addition to the verification procedures described in paragraph (h)(1) of this section, State agencies shall also conduct verification of the income information provided on the approved application for free and reduced price meals and, at State agency discretion, verification may also include confirmation of other information required on the application. However, if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

(ii) State agencies shall perform verification on a random sample of no less than 3 percent of the approved free and reduced price applications in an institution which is a pricing program.

(iii) Households shall be informed in writing that they have been selected for verification and that they are required to submit the requested verification information to confirm their eligibility for free or reduced price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Households selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp or AFDC Program, they may submit proof of that certification in lieu of income information. In these cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp or AFDC Programs. An identification card for either program is not acceptable as verification unless it contains an expiration date. All households selected for verificaton shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(iv) Sources of information for verification may include written evidence, collateral contacts, systems of records. In addition, prior to October 1, 1988, institution conferences may, at the State agency's option, be used as a source of information for verification.

(A) *Written evidence* shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and current certification to participate in the Food Stamp or AFDC Program. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

(B) *Collateral contact* is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone and shall be authorized by the household. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. The household shall be informed that its eligibility for free or reduced price meals shall be terminated if it refuses to choose one of these options. Termination shall be made in accordance with paragraph (h)(2)(vii) of this section. Collateral contacts could include employers, social service agencies, and migrant agencies.

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/AFDC certification which is maintained by other government agencies and to which the State agency can legally gain access may be used to confirm a household's eligibility for CCFP meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(D) *Institution conferences.* Prior to October 1, 1988, the adult member(s) of the household may be asked to visit the institution for a discussion of the information on the application. Households shall be provided sufficient opportunity to schedule the conference.

(v) Verification by State agencies of receipt of food stamps or AFDC benefits shall be limited to a review to determine that the period of Food Stamp or AFDC Program eligibility is current. If the food stamp or AFDC certification period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

(vi) The State agency may work with the institution to verify the documentation submitted by the household on the application; however, the responsibility to complete the verification process may not be delegated to the institution.

(vii) If a household refuses to cooperate with efforts to verify, or the verification of income indicates that the household is ineligible to receive benefits or is eligible to receive reduced benefits, the State agency shall require the pricing program institution to terminate or adjust eligibility in accordance with the following procedures. Institution officials shall immediately notify families of the denial

of benefits in accordance with paragraphs (e)(4) and (e)(5) of this section. Advance notification shall be provided to families which receive a reduction or termination of benefits 10 calendar days prior to the actual reduction or termination. The 10-day period shall begin the day the notice is transmitted to the family. The notice shall advise the household of: (A) The change; (B) the reasons for the change; (C) notification of the right to appeal the action and the date by which the appeal must be requested in order to avoid a reduction or termination of benefits; (D) instructions on how to appeal; and (E) the right to reapply at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(viii) When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing:

(A) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the same year shall receive continued benefits if they appeal the adverse action within the 10-day advance notice period; and

(B) Households which are denied benefits upon application shall not received benefits.

* * * * * *

Anna Kondratas,

Administrator.

Date: September 29, 1987.

[FR Doc. 87-22825 Filed 9-30-87; 9:23 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This order amends the Upper Midwest milk order to allow the operator of one or more distributing plants and one or more soft-products plants (processing cream items, cottage cheese and yogurt, but excluding ice cream) located within the marketing area to treat such plants as one plant, or unit, for pooling purposes.

The amendment, which is based on an industry proposal considered at a public hearing held in Minneapolis, Minnesota on July 7-8, 1987, is necessary to reflect current marketing conditions and to assure orderly marketing in the Upper Midwest marketing area. Cooperative associations representing more than the required two-thirds of the producers supplying milk for the market during the representative period of June 1987 have approved issuance of the amended order.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Emergency Partial Final Decision: Issued September 2, 1987; published September 9, 1987 (52 FR 33943).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings Upon the Basis of the Hearing Record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area.

Upon the basis of the evidence introduced as such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary in the public interest to make this order amending the order effective not later than October 1, 1987. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued September 2, 1987 (52 FR 33943). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective October 1, 1987, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551 through 559).

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) or more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and

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conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for CFR Part 1068 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1068.7, Pool plant, add a new paragraph (a)(3) as follows:

§ 1068.7 Pool plant.

* * * * *

(a) * * *

(3) A unit consisting of at least one pool distributing plant and one or more additional plants of a handler shall be considered as one plant for the purpose of meeting the requirements of this paragraph, subject to the following conditions:

(i) For each plant within the unit which does not qualify as a pool distributing plant pursuant to paragraphs (a) (1) and (2) of this section, the combined disposition of skim milk and butterfat in products specified in § 1068.40(a), § 1068.40(b)(1) in packaged form, and § 1068.40(b)(4)(i) is 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator;

(ii) All plants within the unit are located within the marketing area; and

(iii) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

* * * * *

Signed at Washington, DC, on: September 28, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–22771 Filed 10–1–87; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations to provide relief to rural rental housing projects that are experiencing high vacancy rates due to local rental market conditions. Currently, some existing and prospective tenants are not willing to pay 30 percent of adjusted income or market rent because the rental rates would exceed those of other rental properties in the community. The intended effect of this action is to allow borrowers to reduce their "market" or maximum rents, to be comparable with those in the local market, so as to avoid the failure of rural rental housing projects because of extreme unforeseen changes in a local economy.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Laurence R. Anderson or Arlene Halfon, Senior Loan Officers, Multiple Family Housing Servicing and Property Management Division, Room 5321–S Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382–1599.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, 10.415 and 10.427 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Regulatory Flexibility Act

The Adminstrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

General Information

Background and Statutory Authority

The regulation, 7 CFR Part 1930 Subpart C, interprets the authority of The Housing Act of 1949 to establish ranges of rental rates to be paid by eligible tenants in rural rental housing projects. The revision will reduce the maximum rate in those projects experiencing distress from high vacancy due to the local market conditions.

Tenants whose incomes require that they pay more than basic rent would not have to pay higher rents in FmHA projects than they would for comparable housing elsewhere in the community. This should ultimately increase occupancy of FmHA projects and so help to make the project fiscally sound.

The proposed rule published January 5, 1987 (52 FR 296) referred to a Special Servicing Market Rent. This is being changed to read Special Servicing Market Rate Rent (SMR) to make it clear that the interest rate used to compute the market rent is being adjusted to make rent compatible with those in the community. Minor modifications had to be made throughout the proposed procedure to adjust for this change. For the sake of simplicity, the acronym has been changed to SMR.

Another minor change has been made to clarify that in order to qualify for an SMR, a borrower must have obtained approval from FmHA to rent to ineligibles at least 3 months earlier.

A total of 44 comments were received from the public. Thirteen of these were identical sets of comments from local organizations which are members of a national organization. One of these organizations also submitted an additional set of comments. No tenant groups were represented and only one

comment may have been from a tenant. Thirty-eight responses came from project owners, managers, national, and local industry organizations and attorneys representing the housing industry. Five comments were received from FmHA employees. Twenty-four comments expressed favorable opinions of the proposed regulations either as the sole comment or in conjunction with some suggestions. Only two commenters were opposed to the regulations or raised serious concerns. These concerns involved public relations with the community, competition with the private housing industry, encouraging vacancies, and encouraging rentals to ineligible tenants. The Agency feels there are sufficient constraints on the granting of SMR's that these will not be major issues. The Agency feels that large numbers of ineligible tenants would not wish the occupy the project since FmHA regulations do not allow them long term occupancy.

The issue addressed most dealt with the length of time projects had to be in operation in order to receive an SMR without National Office approval. Many felt that the recent change in regulations requiring tenants to pay 30 percent of their adjusted incomes for rent, made projects which would have been feasible under the 25 percent rent formula in effect when the application was made, to not be feasible by the time the project was completed. Suggestions ranged from making SMR's available immediately to making them available after 12 months of operation. It was felt that this argument was valid at this time but would not be valid for projects being developed in the future. In addition, most projects currently eligible for an SMR would have already been in operation more than 24 months. We, therefore, decided to allow projects in operation for over 6 months to receive an SMR during a transition period but to retain the 24-month period for SMR's after the transition. It is incumbent on applicants to be certain that market surveys justifying the projects are accurate. In the event that market conditions do change significantly between application and rentup, a National Office exception can be granted.

Comments suggested that a State Office exception should be allowed. It was determined that the National Office should maintain this control in order to monitor the extent to which these waivers are necessary and to be certain that market surveys are being adequately performed.

The next most commonly addressed issue was that dealing with the vacancy rate and period for which the vacancy rate was maintained in order to qualify for an SMR. The proposed rule stated that the vacancy rate must have been at least 25 percent for the most recent 6-month period. It was felt by all who commented on this issue that the required vacancy rate was too high; at the point at which a project has had a 25 percent vacancy rate for 6 months, it would no longer be salvageable. Several commenters also felt that the length of time for the vacancy rate was too long. Comments ranged from the suggestion that vacancies required should be reduced to "5–10 percent" to "15 percent" and the time period from as low as 2 months to the suggestion of a graduated rate and period of 25 percent for 3 months or 15 percent for 6 months.

The Agency decided to reduce the vacancy rate necessary to qualify for an SMR to 15 percent for each month of the preceding 6-month period. A 10 percent vacancy is normal in many functional projects for the first year and for occasional periods thereafter; in fact, most operating budgets assume a 5 to 10 percent vacancy rate. Setting the vacancy rate for eligibility that low would provide little incentive to borrowers to try to restore the project without these emergency measures. The 15 percent figure was recommended as sufficient in virtually all the independently written comments. This figure would allow the entire vacancy allowance and the owner's return to be exhausted prior to the emergency measure being granted.

The Agency is not changing the length of time for the vacancy rate to be at the set level. We want to be certain that vacancies have not just increased due to temporary market conditions and it would take at least the 6-month period for borrowers to exhaust all efforts to alleviate vacancy problems without this solution.

A number of commenters noted that the plan to cancel an SMR when the vacancy rate dropped below 10 percent did not specify the length of time this condition must exist. Suggestions for this time period ranged from 6 months to 2 years. The duplicated comments also suggested that the SMR remain in place until a 5 percent vacancy is reached and that it not be cancelled if more than 10 percent of the tenants are on SMR's. We also discovered from these comments that the regulation did not provide adequate direction for transitioning out of an SMR.

The Agency decided to have the transition begin when the vacancy rate drops and is sustained at the below-10 percent level for a 6-month period. For simplicity's sake and to keep the rents for new tenants consistent with those of existing tenants, the rent itself and not the individual tenant contribution will be the basis for the increase. It is also made clear that the SMR is not completely terminated until the market rent is again set at the note rate. This is important to know because return to owner is not available to the owner until the SMR is completely terminated. It was felt that following the other suggestions could keep an SMR in place indefinitely even when no longer needed.

A substantial number of commenters suggested that FmHA rents may be inflated. Several commenters sent lists of comparisons showing that FmHA basic rents, in many cases, approached market rents in their communities. Since the major variable in costs between FmHA and non-FmHA projects should be interest rates, the costs for some FmHA projects are apparently inflated. If conventional owners cut costs, forego profit, and/or invest additional funds to keep their units marketable, FmHA borrowers should be willing to do so with FmHA units.

The Agency felt that many commenters thought the maximum rents were set arbitrarily, losing sight of the fact that it was set at the note rate of interest at which loans were made. Proposals included establishing no minimum rent, a minimum rent set at 1 percent interest rate, and charging no overage for any tenant at any FmHA project. Commenters are reminded that the market rent is based on the note rate of interest for the loan that funded the project. This interest rate, although subsidized for needy tenants, should allow for a realistic market rental rate at which projects can operate and the FmHA loan can be repaid, for all but the most distressed projects.

The Agency, therefore, adds the provision that budgeted O&M be set at a minimum before a project qualifies for an SMR. However, the reserve account and FmHA payments, as reduced by the interest credit agreement, should be maintained in accordance with the loan agreement/resolution.

Several of the comments indicated that a brief explanation of how an SMR is established would be helpful. To begin, projects eligible for an SMR have two rents, the minimum, or "basic rent" which pays for project expenses and repays the FmHA loan at a 1 percent subsidized rate; and the maximum or "market rent" which pays project expenses and repays the FmHA loan at its full note or unsubsidized rate. When an SMR is established, the maximum or

market rent is lowered to be comparable to rents in the local community. The basic rent for the project will be calculated in the same manner as when an SMR is not in effect except that operations and maintenance costs will be held to an absolute minimum and no return to owner will be budgeted. Budgeted vacancy rates are to remain unchanged. In accordance, to FmHA policy, the vacancy and contingency allowance on the project budget should generally not exceed 10 percent under any circumstances. In other words, the SMR should anticipate that occupancy rates will be increased to at least 90 percent.

To establish an SMR, three key changes to the budget are required: (a) Market rents are set at the SMR level as determined by comparable rents in the community; (b) the maximum amount of the FmHA payment to be collected at the SMR level is determined as described in item 3 of the example below, and (c) the interest rate that corresponds to the funds available to make the FmHA payment is calculated.

For example:

1. Project with 48 units before an SMR:

Rents	FmHA Payment
Basic (at 1% subsidized rate) $225	$33,840
Market (at 11.875% note rate) $441	$157,772

2. The market rent is set at an SMR level by review and analysis of rents in the community, the SMR in this case is $325.

3. The FmHA payment to be entered on the project budget is determined as follows:

a. Find the difference between SMR and Basic Rent–$100

b. Multiply the difference by the number of units–$4,800

c. Multiply the amount for twelve months–$57,600

d. Add the amount to the FmHA payment at Basic rent–$91,440

4. Using a business calculator, determine the interest rate that supports the SMR rent.

5. Project with an SMR:

Rents	FmHA Payment
Basic (at 1% subsidized rate) $225	$33,840
SMR (at 6.65% SMR rate) $325	$91,440

There were comments that new projects designed for a different market (e.g. elderly vs. family) should continue to be funded in communities in which SMR's are granted. However, attempting to rent to all potential tenants is an avenue that should have been explored in any project with substantial vacancies. One commenter suggested a comment period during which applicants for other housing in the area could comment on a proposed SMR. The Agency does not believe this is necessary since a good market study should reveal these problems. An SMR should only be approved when there is clearly no market for the units at the current rents. The regulation is revised to include a provision that the District Director review any current market studies on file to determine if conflicting evidence is available. Conflicts will lead to close scrutiny of both requests.

Several commentors felt we should state more clearly that tenants already living in the project would receive the benefits of the SMR. The regulations now state that the new rate will be for the entire project.

Several commenters felt that use of the entire 2 percent contribution prior to implementation of the SMR would leave the project in a financially precarious position. In recognition of this comment, we revised this provision, to now allow a balance in the general operating account (which includes any remaining 2 percent initial operating capital) to an amount sufficient to provide for 3 months (25 percent) budgeted O&M expenses; or 1.2 months (10 percent) if no initial operating capital remains. It is important to note that any 2 percent money does not have to be separately identified and is to be included in unrestricted cash on a borrower's annual budget report to FmHA.

There were comments that borrowers should not have to forego their return to owner during an SMR and that they should not be asked to contribute any of their own funds to the project. These are actions that any owner of a distressed conventional project would take. The Agency expects borrowers to take responsbility for financial management of their projects. Incentives such as these are needed to induce borrowers to use innovative approaches other than SMR to increase occupancy. Borrowers agreed in their loan agreement/regulations to forego their return to owner if the project was not providing sufficient funds to pay it. One commenter stated that the SMR costs the Government nothing. This is not true since with an SMR the Government is paying additional subsidy through the interest credit program.

Two commenters, on the other hand, felt that foregone interest should be recaptured at sale of the project. The Agency decided not to require this because the requirements for obtaining SMR's are so restrictive that there would be no alternative left to the borrower. While it's true that an SMR is a potential expense to the Government, an SMR is less expensive than leaving the units vacant. The SMR will bring tenants into otherwise vacant units, who will be paying some overage.

One comment suggested that tenants should be allowed to pay less than 30 percent of income if 30 percent would set the rent too high to qualify for tax credit. The Agency cannot establish regulations to meet the financial needs of borrowers, other than within the program parameters. The SMR is intended to address vacancy problems of troubled projects, not resolve questions of eligibility for tax credits as provided by sec. 42 of the Internal Revenue Code.

We were asked to define "community" and "comparable" as they are not clearly understood. Definitions of "community" and "market area" are referenced to paragraph 2 of Exhibit A–6 of Subpart E of Part 1944. Agency employees would be aware, by virtue of having been trained to make appraisals, that "comparable" means essentially similar or financially adjusted for disimilarities. Exhibit A–2 of Subpart E of Part 1944 of this chapter may be used to organize comparables for obtaining an SMR. If original judgments based on inappropriate comparables do not provide an SMR that correctly reflects the market situation, adjustments can be made to the SMR.

There were other suggestions which we believe did not fall within the scope of this regulation. This included issues dealing with recent tax legislation, providing additional rental assistance, better servicing of projects and changing the 30 percent rule for rent calculations.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing—rental, Reporting and recordkeeping requirements.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Section 1930.138 is added to read as follows:

§ 1930.138 Supervisory actions for distressed projects.

Multiple Family Housing projects experiencing high vacancy rates which could lead to project failure can apply for a special servicing market rate rent (SMR) change in accordance with paragraph X of Exhibit C of this subpart.

3. Exhibit C is amended by redesignating current paragraph X as paragraph XI and adding a new paragraph X to read as follows:

Exhibit C of Subpart C—Rent Changes

* * * * *

X. Special Servicing Market Rate Rent (SMR) Change

When a Plan II or Plan II RA RRH project is experiencing severe vacancies due to poor local market conditions, an SMR change may be implemented to attract and keep tenants who could pay more than basic rent. An SMR addresses the situation where some existing and prospective tenants are not willing to pay 30 percent of adjusted income or market rent because the rental rates would exceed those of other rental properties in the community. This action may only be taken after supervisory efforts by FmHA and management efforts by the borrower have not produced an acceptable level of occupancy. For the purposes of this paragraph, market area and community are used as defined in paragraph 2 of Exhibit A–6 of Subpart E of Part 1944.

A. *Eligibility for SMR.* Based on borrower documentation and FmHA servicing records, the District Director will prepare a written recommendation for borrower eligibility for an SMR.

1. Based on borrower documentation and District Office verification:

a. The vacancy rate was at least 15 percent for each month for the most recent 6 month period.

b. Comparable market rents in the community are lower than the previously approved FmHA market rents. Exhibit A–2 to Subpart E of Part 1944 can be used to document comparable market rents.

c. The borrower has aggressively marketed the project including the following actions:

(i) Significant outreach efforts in the community, including (but not limited to) contacts listed in the Affirmative Fair Housing Marketing Plan (AFHMP).

(ii) The borrower had obtained approval from FmHA at least 3 months earlier to rent to ineligible tenants in accordance with paragraph VI B 6 of Exhibit B of this subpart.

d. The borrower complies with FmHA regulations and encourages occupancy through good maintenance and positive relations with tenants.

e. The borrower has provided a signed statement agreeing to forego, without provision to recoup, the return on initial investment while operating with an SMR.

f. The borrower has submitted a project budget on Form FmHA 1930–7, "Statement of Budget and Cash Flow," with only minimally sufficient operation and maintenance expenses. The project budget should continue to fund other cash expenditures such as FmHA payments and the reserve account, except for the return on initial investment which the borrower has agreed to forego according to paragraph X A 1 e of this exhibit.

2. Based on Distric Office servicing actions and documentation:

a. The project has been operational for at least 24 months, except that projects obligated prior to October 1, 1986, must have been operational for at least 6 months. The National Office may make exceptions to these requirements on a case-by-case basis for extreme hardship.

b. No more than 10 percent of budgeted operation and maintenance expenses are reflected in unrestricted cash, or 25 percent if any funds remain from the 2 percent initial operating capital, and reserve account balances do not exceed required levels minus authorized withdrawals.

c. The District Director has reviewed and discussed with the borrower the feasibility of using borrower contributed funds, including advances, in accordance with paragraph XII C of Exhibit B of this subpart.

d. The District Director has reviewed and approved a project budget with only minimally sufficient operation and maintenance expenses and other expenses as specified in paragraph X A 1 f of this exhibit.

e. The District Director has reviewed any market studies or surveys received from MFH loan applicants for the market area and considered any information that may conflict with the request for an SMR.

B. *Approval of SMR.* 1. The State Director may approve the use of an SMR when the conditions listed above in paragraph X A of this exhibit are met.

2. While an SMR is in effect, no initial RRH loan may be obligated for the same market area if existing units can be used to serve the unmet need.

C. *Implementing an SMR.* 1. After the use of an SMR has been approved by the State Director, the District Director will establish an SMR for the project with the borrower.

a. The SMR will be obtained by adjusting Item 3, "FmHA Payment (Principal and Interest) Including Overage," on column 4 of Form FmHA 1930–7, to reflect a payment to FmHA amortized at an interest rate which is less than the full note rate on the borrower's promissory note. The interest rate chosen may never be less than 2 percent.

b. The interest rate of the SMR budget will be set at a level that will make project market rents comparable with community rental rates. This rate will remain constant except as provided in paragraph D of this exhibit.

2. The initial change to SMR rents or a decrease in SMR rents will be accomplished in accordance with paragraph VI B of this exhibit.

D. *Changing an SMR.* 1. An SMR may be increased or decreased whenever the local market conditions warrant, but must be reviewed at least annually.

2. An SMR must be increased by a minimum of 10 percent per year (or a higher amount if mutually agreed to by the borrower and FmHA) when the:

a. Vacancy rate drops to 10 percent or below for 6 consecutive months, or

b. The borrower does not continue to satisfy the conditions of paragraphs X A 1 c (i) and (ii), d, e, or f of this exhibit.

3. An SMR is completely terminated when the market rent is again based on the note interest rate.

4. An increase in an SMR will be accomplished in accordance with paragraph IV of this exhibit.

* * * * *

Dated: August 10, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–22841 Filed 10–1–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-17-AD; Amdt. 39-5740]

Airworthiness Directives; Cessna Models T303, 310, 320, 335, 340, 401, 402, 404, 411, 414 and 421 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Aircraft Company Models T303, 310, 320, 335, 340, 401, 402, 404, 411, 414 and 421 Series airplanes, equipped with reciprocating engines, herein referred to as 300 and 400 Series airplanes, which requires the modification of the fuel filler ports to prevent inadvertent filling of the fuel tanks with jet fuel. The NTSB has reported six accidents or incidents where airplane misfueling was found to have contributed to these occurrences. The modification is necessary to prevent further misfueling and thereby preclude inflight engine failure.

DATES: *Effective Date:* November 2, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Aircraft Company Service Information Letter ME84–31 dated July 20, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201. This information may be examined in the Rules Docket, Federal

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Aviation Administration, Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Riddle, ACE-140W, Aerospace Engineer, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316-946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the fuel filler port to prevent inadvertant filling of the fuel tanks with jet fuel on certain Cessna 300 and 400 Series airplanes equipped with reciprocating engines was published in the **Federal Register** on June 8, 1987, (52 FR 21572).

This proposal resulted from a recommendation by the NTSB reporting that there have been six accidents or incidents on Cessna 300 and 400 Series airplanes equipped with reciprocating engines in which misfueling with jet fuel was the cause. Further the board indicated that most cases of misfueling occur with light, twin-engine, piston-powered airplanes which are similar in appearance to turbine engine-powered airplanes.

In recent years, the frequency of accidents involving misfueling with jet fuel has increased significantly despite efforts of the FAA and other interested parties. On September 17, 1982, and October 5, 1984, the FAA issued two Advisory Circulars (ACs) Nos. 20-116 and 20-122, "Marking Aircraft Fuel Filler Openings with Color Decals," and "Anti-Misfueling devices: Their Availability and Uses." Both recommend methods to prevent airplane misfueling. However, the level of response to these AC's has been low considering the nature of the problem and the number of airplanes involved. Therefore, in the interest of aviation safety, the modification of the fuel filler port, recommended by the NTSB, was proposed.

Interested persons have been afforded an opportunity to comment on the proposal. Nine commenters responded. Three of these concurred with the proposal. However, one of these commenters stated that the AD should apply to all turbocharged, single engine piston powered airplanes. The FAA does not agree. Including other manufacturer's airplanes is beyond the scope of this rulemaking action. However, the FAA will consider the commenters suggestion and initiate separate rulemaking actions if appropriate.

The remaining six commenters disagreed with the proposed rule. Three of these commenters felt that the Cessna 336, 337 and P337 Models should not be included in the proposed rule since these airplanes do not resemble any other turbine powered airplanes. In addition, one commenter also objected to the inclusion of the Cessna T303, 310 and 320 Models since these models have had no misfueling accidents. The FAA agrees with the comments on the Cessna 336, 337 and P337 airplanes. Therefore, the proposed rule has been changed by removing these airplanes from the list of those affected. The FAA does not agree with the commenter regarding the T303, 310 and 320 airplanes. There has been one instance of a T310Q airplane being misfueled with Jet-A fuel. The FAA has determined that these models could be mistaken for a turbine powered airplane and therefore, the proposed rule has not been changed in this regard.

Another commenter felt that his 310 did not look like a turbo-prop and should not be affected. He also suggested that the filler ports of turbine powered airplanes be changed to unique configuration that only a matching nozzle would fit.

As stated above the Model 310 can be mistaken for a turbine powered airplane and be misfueled. Further, changing the filler ports on turbine powered airplanes and changing the turbine fuel nozzles would still require a change to the fuel filler ports of piston powered airplanes to prevent the redesigned turbine fuel nozzle from fitting into the fuel port of a piston powered airplane. The FAA has determined that proposed rule is the most economical way to prevent airplane misfueling. Two commenters felt that training of the line personnel doing the refueling is the only acceptable method to prevent misfueling. The FAA agrees that education and training would certainly help in preventing misfueling. However, promulgating requirements with respect to those areas is beyond the scope of this rulemaking. The FAA, has determined that the proposed rule is the best means for preventing misfueling at this time.

One commenter questioned the estimated cost to modify the affected airplanes as compared to the benefit obtained from that modification. The estimated cost was based upon the information currently available in the manufacturers service bulletin. The benefits obtained from this modification is a reduction in the number of accidents involving misfueling with jet fuel. The frequency of this type of accident has increased significantly in recent years. Therefore, in the interest of aviation safety the FAA proposed modification of the fuel filler ports.

Accordingly, the proposal is adopted with the changes noted above. The FAA has determined there are approximately 12,112 airplanes affected by the AD. The estimated cost of modifying these airplanes would depend on the number of fuel filler caps on the airplane. Many of the above airplanes have optional wing or wing locker tanks. The estimated cost to modify the Cessna fleet is $4,933,286. This cost assumes that the optional fuel tanks are installed on those airplanes on which they were offered. The average cost per airplane is $350.

The cost of complying with AD therefore will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the following airplanes equipped with reciprocating engines certificated in any category:

Model and Serial Number

T303
T30300001 thru T30300301
310 thru 310R

310–39032 thru 310R2140
320 thru 320F
320–0001 thru 320F0045
335
335–0001 thru 335–0065
340 thru 340A
340–0001 thru 340A1543
401 thru 401B
401–0001 thru 401B0221
402 thru 402C
402–0001 thru 402C0653
404
404–0001 thru 404–0859
411 thru 411A
411–0001 thru 411A0300
414 thru 414A
414–0001 thru 414A0858
421 thru 421C
421–0001 thru 421C1257

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify all fuel filler opening(s) in accordance with the instructions contained in Cessna Service Information Letter ME84–31 dated July 20, 1984.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) In accordance with FAR Part 43, Appendix A, Item (c) 29, the modifications required by this AD (except installation of the SK303–29 kit) are preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him subject to the limitations of FAR 43.3(g). The maintenance record entries required by FAR 43.9 and FAR 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201; or the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 2, 1987.

Issued in Kansas City, Missouri, on September 17, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–22719 Filed 10–1–87; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Rel. No. IA–1083; File No. S7–24–86]

Financial and Disciplinary Information That Investment Advisers Must Disclose to Clients

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule.

SUMMARY: The Commission is adopting a rule under the Investment Advisers Act of 1940 to codify an investment adviser's fiduciary obligation to disclose material financial and disciplinary information to clients. The rule sets forth the general disclosure obligation and provides guidance on disciplinary information required to be disclosed. The rule is intended to help ensure that clients receive information material to their decision whether to hire or continue to engage an adviser.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Debra Kertzman, Attorney, or Robert E. Plaze, Special Counsel, Office of Disclosure and Adviser Regulation, (202) 272–2107, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting Rule 206(4)–4 under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] ("Advisers Act"). The rule, which was proposed for public comment on September 19, 1986,[1] codifies the Commission's interpretation that section 206 of the Advisers Act [15 U.S.C. 80b–6] requires (1) advisers with custody or discretionary authority over client funds or securities or who require substantial prepayment of advisory fees to disclose precarious financial conditions to clients, and (2) all advisers to disclose material disciplinary events to clients. In addition, the rule specifies certain legal or disciplinary events (referred to hereafter as "disciplinary events") involving the adviser or key advisory personnel as presumptively material. While providing guidance on the types of material disciplinary information required to be disclosed, the rule makes clear that additional disclosure may be required under the Advisers Act.

[1] Investment Advisers Act Rel. No. 1035 (September 19, 1986) [51 FR 34229 (September 26, 1986)].

Discussion

Section 206 of the Advisers Act prohibits investment advisers from engaging in fraudulent and deceptive acts and practices and provides the Commission with rulemaking authority to define and prescribe means reasonably designed to prevent such acts and practices.[2] Fraudulent and deceptive acts and practices under section 206 include the failure to disclose certain facts.[3] The Commission proposed Rule 206(4)–4 to remind advisers of their obligation to disclose to clients material facts about precarious financial conditions and certain disciplinary events, and to provide guidance on some of the disciplinary events required to be disclosed.

Thirty-one comments were received on the proposed rule.[4] Most commenters supported the general purpose of the rule. Many, however, suggested modifications to either clarify the disclosure obligation under the rule or narrow its scope. After reviewing the comments, the Commission has decided to adopt the rule with several modifications. Rule 206(4)–4, as adopted: (1) Limits the requirement to disclose precarious financial conditions to advisers with custody or discretionary authority over client funds or securities, or that require substantial prepayment of advisory fees, (2) requires all advisers to disclose material disciplinary events to clients, and (3) sets forth those disciplinary events that are presumptively material.

1. Financial Information

As proposed, paragraph (a)(1) of the rule would require all advisers to disclose to clients material facts with respect to a financial condition of the adviser that is reasonably likely to impair the adviser's ability to meet contractual commitments to clients ("precarious financial conditions").

[2] Section 206 of the Advisers Act, in relevant part, states that: It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; * * * (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

[3] *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 198 (1963).

[4] File No. S7–24–86 contains these public comment letters as well as a summary of comments prepared by the Commission staff.

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Fourteen commenters recommended limiting financial disclosures under the rule to advisers that either have custody of client assets or require substantial prepayment of advisory fees.[5] These commenters stated that an adviser's financial condition is material to a client or prospective client only when client assets or prepaid services may be jeopardized.[6]

The Commission agrees that the financial condition of all advisers may not be material to their clients and has modified the rule accordingly. As adopted, the rule requires only those advisers with custody or discretionary authority [7] over client funds or securities, or that require prepayment of advisory fees of more than $500 per client and six months or more in advance, to disclose a precarious financial condition to clients.[8] Several commenters urged the Commission not to impose this financial disclosure obligation on advisers solely because they have discretionary authority over client assets. They asserted that a client's decision whether to hire an adviser and give it discretionary authority is due primarily to the services the adviser is able to provide, rather than the adviser's financial background. The Commission believes, however, that this information is material to these clients and should be disclosed because of the risk of investment loss resulting from the disruption or discontinuance of active investment management.[9]

[5] These are the circumstances under which an adviser must include a balance sheet in Part II of its Form ADV [17 CFR 279.1]. Form ADV is the registration form for investment advisers. Part II of which specifies disclosures to clients and prospective clients required by Rule 204–3 under the Advisers Act [17 CFR 275.204–3] ("brochure rule")

[6] In addition, several of these commenters requested the Commission to clarify what constitutes a "financial condition reasonably likely to impair the adviser's ability to meet contractual commitments to clients" under the rule. Such a determination is inherently factual in nature but, as noted by two commenters, would generally include insolvency or bankruptcy.

[7] "Discretionary authority" under the rule includes both express and implied discretionary authority. *See Follansbee v. Davis, Skaggs & Co., Inc.*, 681 F.2d 673 (9th Cir. 1982); *Carras v. Burns*, 516 F.2d 215 (4th Cir. 1975).

[8] Under the rule, advisers required to disclose a precarious financial condition need only make such disclosures to those clients over whose securities they have custody or discretionary authority, or from whom they accept substantial prepayment of advisory fees, and not to other clients.

[9] The risk of investment loss is especially acute where the client's portfolio requires constant supervision because it contains volatile, high risk investments, or where clients, such as an investment company or a pension plan, must overcome legal hurdles (shareholder votes, etc.,) to replace the adviser.

2. Material Disciplinary Information

Paragraph (a)(2) of the proposed rule would require an adviser to disclose material facts about any disciplinary event material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. Paragraph (b) of the proposed rule defined certain disciplinary events involving the adviser or its management persons and occurring within the past ten years as material.

A number of commenters urged the Commission to revise this paragraph to narrow the definition of material disciplinary events. They stated that this provision of the rule would require advisers to disclose information that they believed to be immaterial. For example, several commenters argued that the rule would require disclosure of a violation of a technical state insurance regulation by an insurance holding company parent of an adviser, although such a violation might not be material to a client's evaluation of the advisory subsidiary's integrity or ability to meet contractual commitments to clients.

Because of these commenters' concerns, the Commission has decided to substantially modify paragraph (b). As adopted, paragraph (b) creates a rebuttable presumption of materiality rather than a determination of materiality. The Commission acknowledges that there are circumstances where some of the disciplinary events set forth in paragraph (b) may not be material to clients. This may be due to differences in the size and organizational structure of an adviser, the broad range of investment-related laws, and/or the length of time which has passed since the disciplinary event occurred.

One option some commenters suggested, and the Commission considered, would be to simply codify the general duty to disclose material disciplinary events and allow case law to determine which events are material and thus required to be disclosed. However, the Commission believes that it is desirable to provide advisers with guidance in complying with their disciplinary disclosure obligation under Section 206. By creating a presumption of materiality, Rule 206(4)–4 will provide this guidance while preserving flexibility for advisers able to rebut the presumption based upon a particular fact situation. To determine whether a disciplinary event falling within the terms of paragraph (b) overcomes the presumption of materiality, an adviser should carefully weigh each of the following four factors: the distance of the entity or individual involved in the disciplinary event from the advisory function, the nature of the infraction that led to the disciplinary event, the severity of the disciplinary sanction, and the time elapsed since the date of the disciplinary event. While there may be particular instances where a single factor is dispositive, all four factors should be considered because in most instances no single factor will be controlling.

a. Pending Criminal Proceedings

Paragraph (b), as proposed, would define certain civil and criminal court actions, agency proceedings, and self-regulatory organization ("SRO") proceedings as material disciplinary events.[10] Included within the definition of material court actions were pending criminal proceedings relating generally to fraud or theft. Several commenters urged the Commission not to define pending criminal proceedings as material disciplinary events under the rule because this would, in their opinion, have the effect of imposing a penalty on the adviser before a finding of guilt is made or, if the case is ultimately dismissed or a finding of innocence is made, unfairly penalize the adviser. The rule has not been modified in this respect. The Commission believes that a pending criminal proceeding against an adviser or its management person is material and should be disclosed because it reflects upon the degree of trust and confidence clients would place in their adviser. Moreover, the requirement to disclose pending criminal proceedings is no different than the disclosure required of directors and executive officers of companies issuing securities,[11] registrants in their annual

[10] The Commission has modified the definition of "investment-related" in paragraph (d)(3) of the rule to conform to the 1986 amendments to section 203(e)(2)(B) of the Advisers Act [15 U.S.C. 80b-3(e)(2)]. Pub. L. 99–571, section 101, 100 Stat. 3208, 3220 (1986). The amendments expanded the circumstances under which an adviser could be disqualified from registration to include felony or misdemeanor convictions involving government securities brokers or dealers or entities or persons required to register under the Commodity Exchange Act [17 U.S.C. 1 *et seq.*].)

[11] *See* Item 11 of Form S–1 [17 CFR 239.11]; Item 18 of Form S–4 [17 CFR 239.25]; Item 21 of Form S–11 [17 CFR 259.18]; Item 10 of Form S–18 [17 CFR 239.28]; Item 9 of Form N–1A [17 CFR 274.11A]; Item 10 of Form N–2 [17 CFR 274.11a-1]; Item 13 of Form N–3 [17 CFR 274.11b]; Item 13 of Form N–4 [17 CFR 274.11c]; Item 6 of Form N–5 [17 CFR 274.5]; and Item 17 of Form N–8B–4 [17 CFR 274.14].

or semi-annual reports,[12] persons soliciting proxies,[13] or persons making a tender offer.[14]

b. Management Persons

Paragraph (b), as adopted, requires disclosure of disciplinary events involving the adviser or its management persons. As defined in paragraph (d), management persons include any person with the power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser or to determine the general investment advice given to clients. Seven commenters urged the Commission to narrow this definition, asserting it would include too many persons or entities not directly involved in giving investment advice, particularly in the context of a large diversified financial firm. The adoption of the presumptive materiality standard in paragraph (b) effectively limits the breadth of the definition of management person. As discussed above, the distance of the entity or person involved in the disciplinary event from the advisory function is one factor in determining whether the presumption of materiality of a disciplinary event listed under paragraph (b) may be overcome.

One commenter asked the Commission to clarify whether an adviser would have to disclose the disciplinary history of a person no longer employed or affiliated with the investment advisory firm. Under the definition of "management person," an adviser is only required to disclose the disciplinary history of persons currently employed or affiliated with it, regardless of whether the disciplinary event occurred prior to the person's employment or affiliation with the adviser.

c. Time Period

Paragraph (b) of the proposed rule would define certain disciplinary events as material unless more than ten years had elapsed from the time of the event. This ten-year period is based upon the time period specified in section 203(e)(2) of the Advisers Act [15 U.S.C. 80b-3(e)(2)][15] and Item 11 of Form ADV.[16] In the proposing release, the Commission requested comment on whether a different time period should be used, such as the five-year period specified in Item 401(f) of Regulation S-K [17 CFR 229.401(f)].[17]

Several commenters urged the Commission to reduce the time period from ten to five years. According to these commenters, reducing the time period would not eliminate the adviser's obligation to disclose disciplinary events occurring before a five-year period, because paragraph (e) of the rule states that the period specified in paragraph (b) is only a minimum disclosure requirement.

The Commission has decided to adopt the rule with a ten-year period to measure the presumptive materiality of disciplinary events. Because section 203(e)(2) of the Advisers Act reflects a congressional determination that the materiality of disciplinary events involving investment advisers extends back, at a minimum, to events occurring within a ten-year period, a ten-year period is appropriate. The length of this period is mitigated somewhat by the presumptive materiality standard in paragraph (b). As previously discussed, the amount of time that has elapsed is one factor in determining whether the presumption of materiality of a disciplinary event listed under paragraph (b) may be overcome.

Thus, under the rule, disciplinary events involving the adviser or its management person occurring within the ten-year period may, under certain circumstances, not be material to clients and would not have to be disclosed.

3. Integration with Form ADV

Finally, eight commenters recommended that the Commission integrate the disclosure required under Rule 206(4)-4 into Part II of Form ADV (the "brochure"). Use of the brochure to comply with Rule 206(4)-4 would, in their view, make compliance for registered advisers easier and less expensive than a separate disclosure document. The Commission agrees with these commenters and has added a note to Rule 206(4)-4 and an instruction to Form ADV stating that advisers may use their brochure to make the required disclosures,[18] provided that the timing of disclosure provision in paragraph (c) of Rule 206(4)-4 is satisfied.[19]

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Act Analysis, which the Commission prepared in accordance with 15 U.S.C. 603, regarding proposed Rule 206(4)-4 was published in Investment Advisers Act Release No. 1035. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Debra J. Kertzman, Esq., Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 272-2107.

Statutory Authority

The Commission is adopting Rule 206(4)-4 and the instruction of Form ADV under the authority set forth in sections 204, 206(4), and 211(a) of the Advisers Act [15 U.S.C. 80b-4, 80b-6(4) and 80b-11(a)].

List of Subjects in 17 CFR Parts 275 and 279

Investment adviser, Fraud, Securities.

Text of Rule

Parts 275 and 279 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read as follows:

Authority: Sec. 203, 54 Stat. 850, as amended, 15 U.S.C. 80b-3; sec. 204, 54 Stat. 852, as amended, 15 U.S.C. 80b-4; Sec. 206A, 84 Stat. 1433, as added, 15 U.S.C. 80b-6A; sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b-11.

2. By adding § 275.206(4)-4 as follows:

---

[12] *See* 10 of Form 10-K [17 CFR 249.310]; and sub-item 77e of Form N-SAR [17 CFR 274.101]. *Cf.* Item 11 of Form ADV [17 CFR 279.1].

[13] *See* Item 7 of Schedule 14A [17 CFR 240.14a-10]. *See also* Item 1 of Schedule 14C [17 CFR 240.14C-101] with respect to issuers transmitting information statements.

[14] *See* Item 2 of Schedule 14D-1 [17 CFR 240.14d-100].

[15] Section 203(e)(2) sets forth a list of disciplinary events involving an adviser which can be used to deny, suspend, or revoke an adviser's registration. *See also* Rule 206(4)-3(a)(1) [17 CFR 275.206(4)-3(a)(1)] which prohibits registered investment advisers from using solicitors that have been convicted during the previous ten years of any felony or misdemeanor involving conduct described in section 203(e) of the Advisers Act.

[16] The ten-year period is the minimum disclosure period for disciplinary events in Item 11 of Part I of Form ADV.

[17] Item 401(f) requires issuers to disclose material legal proceedings involving management of the issuer.

[18] One commenter suggested that the Commission allow "insolvent" advisers to give clients a balance sheet to comply with the financial disclosure requirements of Rule 206(4)-4. Under the rule, inclusion of an audited balance sheet in the brochure would not be sufficient to disclose a precarious financial condition: an affirmative statement disclosing such a condition is required.

[19] Under Rule 204-3, registered advisers are required only to offer to deliver a brochure to existing clients. In contrast, under Rule 206(4)-4 disclosure of precarious financial conditions and material disciplinary events must be made promptly to clients.

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§ 275.206(4)–4 Financial and disciplinary information that investment advisers must disclose to clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

(1) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than $500 from such client, 6 months or more in advance; or

(2) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of paragraph (a)(2) of the rule for a period of 10 years from the time of the event:

(1) A criminal or civil action in a court of competent jurisdiction in which the person—

(i) Was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

(2) Administrative proceedings before the Securities and Exchange Commission, and other federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as "agency") in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

(3) Self-Regulatory Organization (SRO) proceedings in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than $2,500; or otherwise significantly limiting the person's investment-related activities.

(c) The information required to be disclosed by paragraph (a) shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(d) For purposes of this rule:

(1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(2) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

(3) "Investment-related" means pertaining to securities commodities, banking, insurance, or real estate (including, but not limited to, action as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 *et seq.*], or fiduciary).

(4) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(5) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(e) For purposes of calculating the 10-year period during which events are presumed to be material under paragraph (b), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(f) Compliance with paragraph (b) of this rule shall not relieve any investment adviser from the disclosure obligations of paragraph (a) of the rule; compliance with paragraph (a) of the rule shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

Note: Registered investment advisers may disclose this information to clients and pospective clients in their "brochure," the written disclosure statement to clients under Rule 204–3 [17 CFR 275.204–3]; *provided*, that the delivery of the brochure satisfies the timing of disclosure requirements described in paragraph (c) of this rule.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

2. By amending instruction 1 to Form ADV, which is described in § 279.1, by adding a new sub-paragraph.

§ 279.1 Form ADV, for Application for Registration of Investment Adviser and for Amendment to Such Registration Statement.

Instruction to Form ADV

1. This is a Uniform Form for use by investment advisers to:

* * * * *

• Comply with their obligation under SEC Rule 206(4)–4 to disclose material financial and disciplinary information to clients. When using Part II of this form to disclose this information to clients, advisers must satisfy the timing of disclosure requirements described in paragraph (c) of SEC Rule 206(4)–4. Note that SEC Rule 206(4)–4(c) requires an adviser to disclose this information promptly to clients, while SEC Rule 204–3(b) only requires an adviser to annually offer to deliver its brochure to existing clients.

* * * * *

By the Commission.
September 25, 1987.
Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 87-22702 Filed 10-1-87; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87-34-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: September 28, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule; order granting rehearing solely for purposes of further consideration.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing of Order No. 500 solely for the purpose of affording sufficient time to consider the numerous issues raised in the forty-four requests for rehearing which have been filed. This action does not constitute a grant or denial of rehearing, either in whole or in part.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8274.

SUPPLEMENTARY INFORMATION:

[Docket Nos. RM87-34-001 through RM87-34-045]

Order Granting Rehearing Solely for Purposes of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G Stalon, Charles A. Trabandt and C. M. Naeve.

On August 7, 1987, the Federal Energy Regulatory Commission issued Order No. 500[1] responding on an interim basis to the decision of the United States Court of Appeals for the District of Columbia Circuit concerning Order No. 436 in *Associated Gas Distributors v. FERC.*[2] On August 28 and September 3, 4, and 8, 1987, the Commission received forty-four timely requests for rehearing of Order No. 500.

In order to afford sufficient time to consider the numerous issues raised in the rehearing requests, it is necessary to grant rehearing of Order No. 500 for the limited purpose of further consideration.

The Commission orders:

Rehearing of Order No. 500 is hereby granted for the limited purpose of further consideration. This action does not constitute a grant or denial of rehearing, either in whole or in part. As provided in § 385.713(d) of the Commission's Rules of Practice and Procedure, no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.
Kenneth F. Plumb,
Secretary.
[FR Doc. 87-22819 Filed 10-1-87; 8:45 am]
BILLING CODE 6717-01-M

[1] 52 FR 30334 (August 14, 1987).
[2] No. 85-1811 (D.C. Cir. June 24, 1987).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 230, 633, and 635

Required Contract Provisions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending regulations pertaining to required contract provisions for Federal-aid construction contracts. The purpose of this final rule is to eliminate duplicative provisions of 23 CFR Part 633 that merely restate requirements contained in other existing regulations. This consists of removing the text of Form PR-1273, Required Contract Provisions, from the Appendix to Part 633 and amending Part 635 to include several requirements which were previously addressed only in the Appendix to Part 633. Form PR-1273 is essentially a convenient collection of contract provisions already required by regulations promulgated by the Federal Highway Administration (FHWA) and other Federal agencies. This action is intended to eliminate the need to amend the regulation through repetitive rulemaking procedures each time the form is revised to incorporate a new or amended requirement duly promulgated by the responsible agency.

EFFECTIVE DATE: This final rule is effective October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-0392, or Mr. Paul Brennan, Office of Chief Counsel, (202) 366-1394, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday.

SUPPLEMENTARY INFORMATION: The regulations currently contained in 23 CFR Part 633, Subpart A require certain contract provisions to be incorporated in each highway construction contract that involves the expenditure of Federal funds (other than direct Federal and Appalachian construction contracts). These provisions which are set forth in Appendix A of the regulation, contain the conditions attached to participation of Federal funds and are imposed under authority administered by the FHWA and several other Federal agencies.

Since Appendix A primarly restates requirements contained in regulations promulgated by the Environmental Protection Agency, Department of Labor, Department of Transportation (DOT), or Office of Management and Budget (OMB), the FHWA has determined that it is an unnecessary procedural burden to revise 23 CFR Part 633 by rulemaking whenever the substantive regulations are revised or amended by the responsible agencies. In order to reduce this paperwork burden and to eliminate the redundancy of regulations, Appendix A, Required Contract Provisions, is being removed from Title 23 of the CFR.

To ensure that all conditions of Federal-aid contracts continue to be authorized pursuant to regulation, it is necessary to amend 23 CFR Part 635 to include the following existing requirements which were previously addressed only in 23 CFR Part 633 and Appendix A: provisions for termination of contract, provisions for subcontracting, provisions for final certification of a project concerning wages and labor classifications, and provisions for record of materials, supplies, and labor. Relative to the record of material, supplies, and labor, the FHWA is also increasing the reporting threshold for the submission of Form PR-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds" from $500,000 to $1,000,000 for final construction cost for roadway and bridge projects. This change to the reporting threshold will reduce the burden of data collection on contractors and result in only minor changes in the reported construction usage factors.

In the future, the Required Contract Provisions, presently designated as Form PR-1273, will be redesignated as Form FHWA-1273 and distributed periodically through FHWA's division offices located in each State. This process will keep the contract

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provisions current with the underlying regulatory requirements.

The following table sets forth the source regulation for each provision contained within redesignated Form FHWA–1273.

Provision table	Regulation reference
1. Nondiscrimination	41 CFR Part 60 49 CFR Part 21
2. Nonsegregated Facilities	41 CFR Part 41
3. Payment of Predetermined Minimum Wage	29 CFR Parts 1, 3, and 5
4. Statement and Payrolls	29 CFR Parts 3 and 5
5. Record of Materials, Supplies, and Labor	23 CFR Part 635
6. Subletting or Assigning the Contract	23 CFR Part 635
7. Safety: Accident Prevention	23 CFR Part 635
8. False Statements Concerning Highway Projects	23 CFR Part 635
9. Implementation of Clear Air Act and Federal Water Pollution Control Act	40 CFR Part 15

The FHWA has determined that this action does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal, since the FHWA is merely eliminating duplicative procedures and is making no substantive changes. The procedural and editorial revisions in this document will eliminate repetitive efforts and simplify the contract solicitation and award process. Accordingly, a separate regulatory evaluation is not required.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

With regard to the information collection requirements contained in this regulation, the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq., Pub. L. 96–511) has assigned the control numbers of 1215–0140 and 2125–0033. These recordkeeping requirements are mainly attributable to requirements imposed by regulations issued by the Department of Labor and the Department of Transportation (Office of the Secretary).

The procedural elimination and editorial revisions impose no additional burdens on the States or the construction industry. For these reasons, the FHWA finds good cause to make this regulation effective without prior notice and opportunity for comment and without a 30-day delay in effective date. Furthermore, neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under the Administrative Procedure Act because the matters affected relate to grants, benefits, or contracts pursuant to 5 U.S.C. 553(a)(2). Accordingly, this regulation is effective upon publication.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Parts 230, 633, and 635

Grant programs—transportation, Government contracts, Highways and roads, Reporting requirements.

Issued on: September 18, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA is amending 23 CFR Parts 230, 633, and 635 as follows:

1. In consideration of the foregoing, the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, Part 633, by revising Subpart A, consisting of §§ 633.101–633.104, as set forth below.

PART 633—REQUIRED CONTRACT PROVISIONS

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.

633.101 Purpose.
633.102 Applicability.
633.103 Regulatory authority.
633.104 Availability.

Authority: 23 U.S.C. 114 and 315; 49 CFR 1.48.

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contract)

§ 633.101 Purpose.

To prescribe for Federal-aid highway proposals and construction contracts the method for inclusion of required contract provisions of existing regulations which cover employment, nonsegregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of a contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time-to-time be required by law and regulation as conditions of Federal assistance.

§ 633.102 Applicability.

(a) The required contract provisions and the required proposal notices apply to all Federal-aid construction contracts other than Appalachian construction contracts.

(b) Form FHWA–1273, "Required Contract Provisions, Federal-aid Construction Contracts," contains required contract provisions and required proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions of Form FHWA–1273 shall be physically incorporated in each Federal-aid highway construction contract other than Appalachian construction contracts (see § 633.104 for availability of form).

(c) For contracts authorized under certification acceptance procedures, an alternate format for inclusion of required contract provisions may be used pursuant to 23 CFR Part 640.

(d) The required contract provisions contained in Form FHWA–1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.

(e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA–1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA–1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA–1273.

(f) The State highway agency (SHA) shall include the notices concerning certification of nonsegregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act, pursuant to 40 CFR Part 15, in all bidding proposals for Federal-aid highway construction projects. As the notices are reproduced in Form FHWA–1273, the SHA may include Form FHWA–1273 in its entirety to meet this requirement.

§ 633.103 Regulatory authority.

All required contract provisions contained in Form FHWA–1273 are requirements of regulations promulgated by the FHWA or other Federal agencies. The authority for each provision will be cited in the text of Form FHWA–1273.

§ 633.104 Availability.

(a) Form FHWA–1273 will be maintained by the FHWA and as regulatory revisions occur, the form will be updated.

(b) Current copies of Form FHWA–1273, Required Contract Provisions, will be made available to the SHAs by the FHWA.

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

2. The authority citation for Part 635 is revised to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128 and 135; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

3. Part 635 is amended by revising §§ 635.113 and 635.126 and by adding §§ 635.129 and 635.130 to read as follows:

§ 635.113 Subcontracting.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(1) "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

(2) "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

(b) Upon the request of an SHA, the requirements of paragraph (a) of this section may be modified in whole or in part by the FHWA to such extent as the FHWA determines to be in the public interest.

(c) The SHA shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the SHA in writing. Prior to authorizing a subcontract, the SHA shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

(d) To assure that all work is performed in accordance with the contract requirements, the contractor shall be required to furnish (1) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (2) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

§ 635.126 Termination and default of contract.

(a) All contracts exceeding $10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) When a Federal-aid contract is terminated by the SHA, the extent of Federal-aid participation in the contract costs, including final settlement, will depend upon the merits of the individual case. In no event will Federal funds participate in any allowance for anticipated profit on work not performed.

(c) Normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when an SHA awards the contract for completion of a defaulted or previously terminated Federal-aid contract. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract, whichever amount is the lesser.

(d) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA would then consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

§ 635.129 Record of materials, supplies, and labor.

(a) The provisions in this section are required to facilitate FHWA's efforts to compile data on Federal-aid contracts for the establishment of highway construction usage factors.

(b) On all Federal-aid primary, urban, and Interstate System contracts, except those which provide solely for the installation of protective devices at railroad crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 the SHA's shall require the contractor:

(1) To become familiar with the list of specific materials and supplies contained in Form FHWA–47, "Statement of Materials and Labor Used by Contractors of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract;

(2) To maintain a record of the total cost of all materials and supplies purchased for and incorporate in the work, and also the quantities of those specific materials and supplies listed on Form FHWA–47, and in the units shown;

(3) To furnish, upon the completion of the contract, to the SHA on Form FHWA–47 together with the data required in paragraph (b)(2) of this section relative to materials and supplies a final labor summary for all contract work indicating the total hours worked and the total amount earned.

(c) Upon receipt from the contractor, the SHA shall promptly transmit the Form FHWA–47 to the Division

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Administrator in accordance with the instructions printed in the form.

(Approved by the Office of Management and Budget under control number 2125–0033)

§ 635.130 Payroll, weekly statement, and final labor certificate.

(a) For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the SHA for the period set forth in 23 CFR Part 17 for review as needed by the FHWA, the Department of Labor, the General Accounting Office, or other agencies.

(b) Upon completion of the contract, the contractor shall submit to the SHA contracting officer, for transmission to the FHWA with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen, and guards employed on the project, in the following form:

The undersigned contractor on

_____

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen, and guards directly employed or employed by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice, trainee, watchmen, or guard conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title: _____

(Approved by the Office of Management and Budget under control number 1215–0140)

Technical Amendment

Due to the removal of Form PR–1273 from 23 CFR Part 633, Subpart A, Appendix A, and redesignation of the form as Form FHWA–1273, it is necessary to make a minor technical correction to the footnote in another part of Title 23, CFR, as follows:

PART 230—[AMENDED]

4. The authority citation for 23 CFR Part 230 continues to read as follows:

Authority: 23 U.S.C. 140 and 315; E.O. 11246; 49 CFR 1.48(b)(24), unless otherwise noted.

§ 230.204 [Amended]

5. Part 230, Subpart B is amended by revising footnote number one in § 230.204 to read as follows:

[1] Form FHWA–1273 is available for inspection and copying at the locations given in 49 CFR Part 7, Appendix D, under Document Inspection Facilities and at all State highway agencies.

[FR Doc. 87–22527 Filed 10–1–87; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Surface Mining Control and Reclamation Act; Return of Full Regulatory Authority to the State of Oklahoma

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: In accordance with the provisions of 30 CFR 936.19, OSMRE is announcing the Director's decision to terminate direct Federal enforcement of the Oklahoma permanent regulatory program, hereinafter referred to as the Oklahoma program, and to return full authority to the State of Oklahoma. Since Oklahoma has met the requirements for restoration of full authority, this notice also amends 30 CFR Part 936 to delete those portions which address direct Federal enforcement of parts of the State program, the remedial actions required of the State to regain full authority and the requirements and procedures for terminating direct Federal enforcement.

EFFECTIVE DATE: October 2, 1987.

ADDRESSES: Copies of the Director's decision and the administrative record documents referred to in this notice are available for public inspection and copying during regular business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 "L" Street NW., Washington, DC 20240, Telephone: (202) 343–5492.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430.

Oklahoma Department of Mines, Suite 107, 4040 N. Lincoln, Oklahoma City, OK 73105, Telephone: (405) 521–3659.

FOR FURTHER INFORMATION CONTACT: Jack Carson, (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 1981, the State of Oklahoma received conditional approval of its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On March 10, 1983, the Director of OSMRE notified the Governor of Oklahoma that OSMRE had reason to believe that serious problems existed in the implementation of Oklahoma's approved regulatory program. After a public hearing and opportunity for public comment, the Director found that the Oklahoma Department of Mines (ODM) was not adequately implementing certain aspects of its approved program. On April 12, 1984, the Director of OSMRE, in accordance with the provisions of 30 CFR 733.12(f), announced his decision, effective April 30, 1984, to institute direct Federal enforcement of those parts of Oklahoma's program that the State had not adequately enforced and to restrict funding of the State's abandoned mine lands reclamation (AMLR) program until regulatory program improvements were made (49 FR 14674). The Director also outlined the process by which the State could regain full authority for its inspection and enforcement program.

On May 15, 1985, Oklahoma submitted a permitting plan and inspection and enforcement plan in partial satisfaction of these requirements (Administrative Record No. OK–666). After considering these documents, the progress made by the State in resolving other deficiencies, and accomplishing the remedial measures required in 30 CFR 936.18, and comments received from the public, the Director decided to initiate a phased return of inspection and enforcement authority to the State.

In the December 2, 1985, **Federal Register** announcing this decision, as codified in 30 CFR 936.17, 936.18, and 936.19, the Director established requirements and a schedule for full resumption of program authority by the State of Oklahoma and withdrew restrictions on the AMLR program (50 FR 49376). The Director based his decision, in part, on the agreement of ODM to officially submit detailed information on its policies, procedures, guidelines and forms, and on its plans and commitments to address the backlog of bond forfeiture actions and injunctive relief proceedings. As specified in 30 CFR 936.17(b), upon satisfactory submission of the above items, OSMRE agreed to return inspection and enforcement authority to ODM, for all mines where mining had

been completed or the sites had been abandoned and no further mining was intended.

ODM also agreed to reevaluate and revise permits for active and temporarily closed operations with emphasis on relevant permitting deficiencies identified in the OSMRE 1985 Oklahoma State Program Annual Evaluation Report and on adequancy of bond amounts. OSMRE required ODM to submit quarterly reports updating the State's progress in these and other areas.

As set forth in 30 CFR 936.17(c), OSMRE agreed to return inspection and enforcement authority for active and temporarily inactive operations on an individual permit basis upon ODM's affirmative demonstration that the reevaluated permit, including the reclamation bond, was in compliance with the approved program.

OSMRE continued to be responsible for outstanding Federal enforcement actions, including necessary follow-up inspections on those operations for which inspection and enforcement authority had been returned to ODM.

II. Director's Findings on Current Status of Required Remedial Actions

The regulation at 30 CFR 936.19 requires the Director to return full program authority to Oklahoma and to terminate procedures initiated under 30 CFR 733.12 when he determines that the state has satisfied the remedial action requirements of 30 CFR 936.18(a-f). The Director has reviewed the current status of Oklahoma's remedial actions and makes the following findings.

1. Remedial Action No. 1 (30 CFR 936.18(a))

To minimize the potential for confusion and misunderstanding about ODM's Permitting and Inspection and Enforcemet Plans during the resumption of authority, ODM was required to identify or provide to OSMRE, by December 16, 1985, copies of policy statements, guidelines, procedures, and forms that were then in use; policy statements, guidelines, procedures, and forms that were changed since submission of the plans; and policy statements, guidelines, procedures, and forms that were being proposed, including time frames for projected implementation.

On May 15, 1985, ODM submitted a detailed Permitting Plan consisting of permitting processes, procedural changes relating to permitting and bonding, staff changes, and training procedures (Administrative Record No. OK–666), which it subsequently updated on June 24, 1985 (Administrative Record No. OK–670). ODM simultaneously submitted an Inspection and Enforcement Plan (Administrative Record No. OK–671) with the detailed policy statements, guidelines, procedures, and forms required to implement Oklahoma's program. On December 24, 1985, ODM submitted further information pertaining to plans, policy statements, guidelines, procedures, and forms for permitting, bond forfeiture, and inspection and enforcement activities (Administrative Record No. OK–723).

Following a detailed review, the Director finds the documents submitted to OSMRE on May 15, 1985, June 24, 1985, and December 24, 1985, are sufficiently comprehensive to enable ODM personnel to implement the inspection and enforcement requirements of the approved program, review permit applications in accordance with all approved program procedures, and make calculations of bond amounts and bond release determinations in accordance with approved program procedures.

2. Remedial Action No. 2 (30 CFR 936.18(b))

ODM was required to prepare and provide to OSMRE, by December 16, 1985, lists identifying the current backlog of bond forfeiture actions and of injunctive relief proceedings regarding State-issued violations and a plan including necessary commitments from the Attorney General's office as to how Oklahoma intended to address this backlog.

On December 24, 1985, ODM submitted lists identifying the backlog of bond forfeiture actions and injunctive relief proceedings regarding State-issued violations and plans for reducing the backlog of bond forfeiture and injunctive relief cases (Administrative Record No. OK–723). A revised plan specifying the procedures for ODM and the Attorney General's office to address the backlog of bond forfeiture actions and injunctive relief proceedings was submitted to OSMRE on August 13, 1987 (Administrative Record No. OK–817).

OSMRE's most recent review of State bond forfeiture efforts, as conducted for the 1987 Oklahoma State Program Annual Evaluation Report, found that, although there are forfeited bonds from previous years awaiting collection, the number of bonds collected and forfeiture actions initiated during 1986 and 1987 represents a significant improvement by ODM (Administrative Record No. OK–822).

Therefore, based on the documents provided to OSMRE, the progress made in collection of forfeited bonds and the results of the annual program evaluation, the Director finds that ODM has adequate capability to effectively pursue collection of forfeited bonds and to seek and pursue relief.

3. Remedial Action No. 3 (30 CFR 936.18(c))

ODM was required to carry out permitting and bonding processes in accordance with the Permitting Plan and the approved Oklahoma program. Specifically ODM was required to implement procedures to calculate and set bonds sufficient to cover the cost of third-party reclamation; process bond forfeiture actions in a timely manner; assure against after-the-fact revisions to permits; prevent issuance of permits to operators with outstanding enforcement actions or unpaid Federal reclamation fees; and assure against inappropriate incidental boundary changes.

On December 24, 1985, ODM submitting plans (Administrative Record No. OK–723) that outlined procedures to correct the problems listed above. OSMRE has monitored implementation of the bond calculation procedures and the 1987 data indicate that bond amounts and procedures are adequate. ODM has submitted reports every 90 days outlining the progress in bond forfeitures, which is discussed under Finding No. 2 above. OSMRE reviews conducted for the 1987 Annual Evaulation Report indicate that after-the-fact revisions have been approved by Oklahoma only in cases where the revision was a more appropriate action than on-the-ground correction (Administrative Record No. OK–822). OSMRE has monitored the State's progress in screening applicants for outstanding violations and unpaid Federal reclamation fees, and no permits have been issued to such applicants. ODM has revised its policy and procedures governing incidental boundary revisions to set appropriate limits on incidental boundary changes.

Therefore, the Director finds that the Permitting Plan and the approved State program are being followed, that the specific permitting and bonding problems listed above have been corrected, and that ODM has met the requirements of Remedial Action No. 3.

4. Remedial Action No. 4 (30 CFR 936.18(d))

ODM was required to reevaluate and revise permits for active and temporarily closed operations with emphasis being placed on those relevant permitting deficiencies identified in the 1985 Annual Evaluation Report and those operations that had not received a

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permanent program permit. After reevaluation, ODM was to require additional reclamation bond for those active and temporarily closed operations that were found to be underbonded.

ODM has reevaluated the 40 permitted operations, which OSMRE and ODM agreed were in need of review. ODM required permittees to update the permits and correct the deficiencies identified in the reevaluation. ODM then prepared new written findings for each of the 40 permits. Upon review and acceptance of each reevaluated permit, OSMRE returned inspection and enforcement authority for that particular permit to ODM, as provided in 30 CFR 936.17(c).

Two of the 40 permits were found to have residual reclamation issues sufficiently serious to justify continued OSMRE involvement. However, because mining has been completed on both of these operations, on August 25, 1987, OSMRE and ODM executed a written agreement to return inspection and enforcement authority to ODM and work cooperatively to achieve adequate reclamation (Administrative Record OK–820).

Therefore, the Director finds that the State has corrected or is in the process of correcting the permitting deficiencies on the existing active and temporarily closed operations and that this action satisfies the requirements of Remedial Action No. 4. The State now has resumed inspection and enforcement authority for all individual permits as described in 30 CFR 936.18(c).

5. Remedial Action No. 5 (30 CFR 936.18(e))

ODM was required to conduct joint inspections with OSMRE inspectors on a monthly basis for the first 3 months (one complete inspection and two partial inspections) on those permits described in 30 CFR 936.17(c) for which inspection and enforcement authority had been returned. Beginning August 1, 1986, with the return of authority of the first permits and continuing as permits were returned, ODM has conducted joint inspections with OSMRE inspectors on a monthly basis for the first 3 months.

Therefore, the Director finds that ODM has met the requirements of Remedial Action No. 5.

6. Remedial Action No. 6 (30 CFR 936.18(f))

ODM was required to submit quarterly reports to OSMRE showing State activities in permitting, setting bond amounts, bond releases and processing of petitions to designate lands unsuitable for surface coal mining.

ODM began submitting quarterly reports to OSMRE in November 1984, and has continued to provide an updated report every three months. The reports document the State's progress in (1) reevaluating existing permits, including bond adequacy, (2) reevaluating bond release actions since August 10, 1982, (3) notifying operators of additional permit application and/or bond information requirements, (4) processing applications for new permits or permit revisions, and (5) processing petitions to designate lands as unsuitable for surface coal mining.

Therefore, the Director finds that ODM has satisfied the reporting requirements of Remedial Action No. 6.

III. Director's Decision

After a review of all available information on ODM's implementation of the Oklahoma program, including policies, procedures, guidelines, forms and plans; the results of OSMRE's oversight activities; and ODM's periodic progress reports, the Director has determined that Oklahoma has sufficiently addressed and corrected the problems identified in the State's implementation of its program and has demonstrated that it has resources, capability, policy, procedures and commitment necessary to assure proper implementation of the program. As discussed in the section of this notice entitled "Director's Findings on Current Status of Required Remedial Actions", the State of Oklahoma has met the requirements specified in 30 CFR 936.18. Therefore, in accordance with 30 CFR 936.19, the Director hereby returns full program authority to Oklahoma and terminates the procedures initiated under 30 CFR 733.12 (49 FR 14674). However, as specified by 30 CFR 843.1, OSMRE will continue to be responsible for any outstanding Federal enforcement actions, including any necessary followup inspections.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis statement and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

Date: September 28, 1987.

PART 936—OKLAHOMA

30 CFR Part 936 is amended as follows:

1. The authority citation for Part 936 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§§ 936.17, 936.18 and 936.19 [Removed]

2. In Part 936, §§ 936.17, 936.18, and 936.19 are removed in their entirety.

[FR Doc. 87–22658 Filed 10–1–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Wind-Down of Revenue Sharing Program

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim rule.

SUMMARY: In view of the repeal of the Revenue Sharing Act and the expiration of the one year authorization of funds for the wind-down of the Office of Revenue Sharing, the regulations need amendment to reflect the disestablishment of the Office of Revenue Sharing and the termination of the Revenue Sharing Program.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas P. O'Malley, Director, Office of Procurement, Room 1458, 1500 Pennsylvania Ave., NW., U.S. Treasury, Washington, DC 20220 Tel.: (202) 566–2586.

SUPPLEMENTARY INFORMATION:

Background

Title XIV of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272 (COBRA), provides for the repeal of the Revenue Sharing Act (31 U.S.C. 6701–6724) effective October 18, 1986. An authorization for appropriations to carry out the provisions of COBRA was provided for the fiscal year beginning October 1, 1986 and ending September 30, 1987. Accordingly, the operations of the Office of Revenue Sharing will cease on the last day of that fiscal year. Any remaining activities that need to be taken by the Department of the Treasury will be accomplished under the supervision of the Assistant Secretary of the Treasury (Management) pursuant to Treasury Order No. 101–17 (March 24, 1987).

Special Analysis

No notice of proposed rulemaking is required for interim regulations. Accordingly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply to this regulation. Because the regulation concerns agency organization and management, the provisions of Executive Order 12291 and the notice and delayed effective date provision of the Administrative Procedure Act (5 U.S.C. 553) do not apply.

List of Subjects in 31 CFR Part 51

Accounting, Administrative Practice and Procedure, Civil rights, Handicapped, Aged, Indians, Revenue sharing.

Kent A. Peterson,

Acting Director, Office of Revenue Sharing.

Dated: September 17, 1987.

For the reasons set forth in the preamble, 31 CFR Part 51 is amended as follows:

PART 51–FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

1. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 14001, Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99–272); Treasury Department Order No. 224, dated January 26, 1973, as amended, and Treasury Department Order No. 101–17, dated March 24, 1987.

2. Section 51.0 is hereby revised to read as follows:

§ 51.0 Scope and application of regulations.

The rules and regulations in this subpart are prescribed for carrying into effect the termination of the Revenue Sharing Program as required by Title XIV of Pub. L. 99–272. The provisions of this part are intended to be implemented by the Assistant Secretary of the Treasury (Management) in a manner that most efficiently resolves any remaining issues pertaining to the Revenue Sharing Program. Any obligations under this part of the Department of the Treasury shall be operative after September 30, 1987 only to the extent that the Assistant Secretary deems necessary to carry out the requirements of Title XIV of Pub. L. 99–272.

3. Section 51.1 is hereby revised to read as follows:

§ 51.1 Wind-down authority for revenue sharing.

The Assistant Secretary of the Treasury (Management) shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by Title XIV of Pub. L. 99–272 with regard to the activities necessary for the termination of the Revenue Sharing Program. The authority and duties under this part of the Director of the Office of Revenue Sharing shall cease at the discretion of the Assistant Secretary pursuant to the authority provided by the Secretary of the Treasury for that purpose.

[FR Doc. 87–22823 Filed 10–1–87; 8:45 am]
BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

38 CFR Part 8

National Service Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) is amending its National Service Life Insurance (NSLI) policy loan regulation to provide that the rate of interest on all loans applied for on and after the effective date of this regulation may be periodically adjusted. This is a change from the VA's prior policy of issuing loans with interest rates which are fixed for the term of the loan. The variable loan rate will be based on the level of an economic indicator, and after October 1, 1988, may not be adjusted more frequently than once a year. Notice of the prevailing variable loan rate will be provided at the time a policyholder applies for a loan. Notice of changes to the loan rate will be published in the **Federal Register**, and notice of increases will be provided directly to existing variable loan borrowers. The variable loan rate established as of the effective date of this regulation is 8 percent. The interest rates on United States Government Life Insurance (USGLI) policy loans and existing fixed rate NSLI policy loans will not be changed by this admendment. Policyholders with existing 11 percent fixed rate loans will be offered the opportunity to exchange their 11 percent loans for variable rate loans.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5360.

SUPPLEMENTARY INFORMATION: On pages 22350 and 22351 of the **Federal Register** of June 11, 1987, a proposed regulatory amendment was published providing that the interest rate on NSLI policy loans applied for on and after the effective date of the regulation may be periodically adjusted. Interested parties were given 30 days within which to submit written comments, suggestions, or objections regarding the proposed regulatory amendment.

Two comments to the proposed regulations were filed. The first comment was dated June 26, 1987. The commentator recommended that the ceiling to the variable loan rate be fixed at 11 percent, rather than 12 percent as provided in the regulation. The commentator stated that "this would follow past practice by effectively 'grandfathering' over 81,000 veterans who have National Service Life Insurance policy loans at the 11 percent rate."

The 12 percent variable rate ceiling, which is based on recent interest rate trends in the Federal securities market, will effectively protect borrowers from excessive interest rates during periods of high inflation. Under this proposal, 11 percent borrowers have the option of switching to the variable rate, which is initially set at 8 percent, or retaining the 11 percent fixed rate. We believe that most borrowers will recognize the advantages of the variable rate and will elect this option. Nonetheless, borrowers with 11 percent loans are provided the option of retaining those loans and thus assuring that their loan interest rate will never be increased. In

this way; the interests of existing loan holders are protected under the amended regulation and no modification of the 12 percent interest rate cap is required.

The second comment was dated July 7, 1987, and supports the proposed regulation.

A rate change will be triggered by movement of the economic indicator to a level which is higher or lower than the existing rate. If a rate change is necessary, it will be made effective on the first of October following a determination that a rate change is required. The new rate will be set at the level of the economic indicator rounded down to the next whole number, unless this would result in a rate which is above 12 percent or below 5 percent. In that event, the rate would be set at the closest whole percentage within the permitted range—either 12 or 5 percent—depending on the level of the indicator. The upper and lower level rate limits are provided to protect borrowers from potentially high interest rates, while at the same time ensuring the financial integrity of the NSLI program. By tracking an economic indicator which reflects current economic conditions, the loan rate will remain consistent with other new NSLI trust fund interest earnings, thereby avoiding any significant impact on dividends to policyholders. After October 1, 1988, rate changes may not be made more frequently than once a year.

The Administrator hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this final regulatory amendment is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule will affect only certain NSLI policyholders. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Agency has also determined that this final regulatory amendment is nonmajor in accordance with Executive Order 12291, Federal Regulation. This regulation will not have a large effect on the economy, will not cause an increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program Number is 64.103.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: September 15, 1987.

Thomas K. Turnage,

Administrator.

PART 8—[AMENDED]

In 38 CFR Part 8, National Service Life Insurance, § 8.28 is revised to read as follows:

§ 8.28 Policy loans.

(a) At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the security of his or her National Service Life Insurance policy, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. At any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not make the policy voidable unless the total indebtedness shall equal or exceed the cash value. When the amount of the indebtedness equals or exceeds the cash value, the policy shall become voidable. On loans applied for before the effective date of this regulation (November 2, 1987) and not exchanged pursuant to paragraph (b) of this section, the policy loan interest rate in effect when the loan was applied for shall not be increased for the term of the loan.

(b) Loans applied for or exchanged on and after the effective date of this regulation (November 2, 1987) shall bear interest at a rate which may be varied during the term of the loan, not more frequently than once a year, as provided by paragraphs (c) and (d) of this section. After October 1, 1988, the policy loan rate shall not be varied more frequently than once a year. Notification of the initial rate of interest on new loans will be forwarded at the time the loan is made. Policyholders with existing variable rate loans will be forwarded reasonable advance notice of any increase in the rate. Reasonable advance notice of any change in the variable loan rate will be published in the **Federal Register**. A notice pertaining to variable loans which is sent to the policyholder's last address of record will constitute sufficient evidence of notice.

(c) Subject to the provisions of paragraph (d) of this section, loan rates established pursuant to paragraph (b) of this section shall equal the yield on the Ten-Year Constant Maturities Index for U.S. Treasury Securities for the month of June of the year of calculation rounded down to the next whole percentage. Such loan rate shall be effective on the first day of October following a determination that a rate change is required, and after October 1, 1988, shall remain in effect for not less than one year after the date of establishment. The prevailing variable loan rate shall apply to all loans granted under paragraph (b) of this section.

(d) The variable loan rate is established at the rate of 8 percent percent per annum as of November 2, 1987. This rate is subject to adjustments on and after October 1, 1988, under the provisions of paragraph (b) of this section. Notwithstanding any other provisions of this section, the variable loan rate shall not exceed 12 percent or be lower than 5 percent per annum.

(Authority: 38 U.S.C. 706)

[FR Doc. 87–22653 Filed 10–1–87; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–434–F]

Medicare Program; Standards for the Reuse of Hemodialyzer Filters and Other Dialysis Supplies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule contains standards and conditions for safe and effective hemodialyzer reuse and reprocessing, enforceable as Medicare conditions for coverage. It incorporates by reference voluntary guidelines and standards adopted by the Association for the Advancement of Medical Instrumentation in July 1986 (i.e., "Recommended Practice for Reuse of Hemodialyzers"). In addition, the rule provides standards for reuse of dialyzer caps and prohibits reuse of transducer filters in ESRD facilities. As provided in section 9335(k) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, failure of facilities to comply with these conditions could result in suspension of payment or removal of the facility from coverage under the Medicare program.

EFFECTIVE DATES: With the exception of recordkeeping and reporting requirements listed in §§ 405.2136(b), 405.2138(a), 405.2139(a), and 405.2140 (b) and (c), these regulations are effective October 1, 1987. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Rita McGrath, (301) 594–6719.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description

Section 1881 of the Social Security Act (the Act) authorizes Medicare coverage for the treatment of end-stage renal disease (ESRD) in approved facilities that provide dialysis and transplantation services to ESRD patients. Approval is granted by HCFA after a State survey agency determines that the facility is in compliance with conditions for coverage of suppliers of end-stage renal disease services.

Rules relating to certification of suppliers are found in 42 CFR Part 405, Subpart S. The decision as to whether a facility complies with a particular condition for coverage depends on the manner and degree to which the supplier satisfies the various standards within each condition. A supplier is not in compliance, if, after completion of a survey, a State survey agency determines that the supplier fails to comply with one or more of the standards within the conditions for coverage, and the deficiencies are of such character as to limit substantially the supplier's capacity to furnish adequate care or to affect adversely the health and safety of patients.

Section 1881(b) of the Act authorizes the Secretary to limit Medicare reimbursement for kidney transplantation and dialysis services to facilities meeting such requirements as may be prescribed in regulations. The requirements are set forth at 42 CFR Part 405, Subpart U-Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services. Facility compliance is determined by an on-site facility survey.

The conditions and standards prescribe the services which must be provided and the qualifications of staff who provide those services. The conditions do not specify performance standards for equipment used in dialysis, other than to require its good repair, disinfection, and use in accordance with acceptable medical standards of practice.

In the process of hemodialysis, the patient's blood is cleansed of impurities by passing the blood through the filter (hemodialyzer) of a hemodialysis machine. Although the filter is labeled by manufacturers for single use, techniques exist that allow these devices to be reused. We understand that some manufacturers are modifying their labeling practices to indicate that reuse is permissible if proper procedures are used.

The multiple use of hemodialyzers has had its proponents and practitioners in this country and most parts of Europe for over 20 years. Reuse involves the cleaning, disinfecting and preparation of disposable hemodialysis devices for subsequent use for the same patient. The practice of reuse is estimated to be occurring in about 60 percent of dialysis facilities eligible under Medicare. Studies by the Public Health Service (PHS) and others in the clinical community indicate that, although the potential exists for adverse patient outcomes from reuse, when done properly reprocessing and reuse of dialyzers is safe. The new regulations are intended to provide dialysis personnel with information necessary to perform reuse adequately and to require conformance with these procedures in order to minimize patient risks.

Current regulations at 42 CFR 405.2100 through 405.2171 provide the health and safety requirements that facilities furnishing ESRD services to beneficiaries are required to meet. They do not specifically address the issue of hemodialyzer reuse, nor do they provide criteria relating to the reuse process, namely the cleaning, disinfection and preparation of disposable hemodialysis devices for subsequent use. Under our present requirements, the ESRD facility and the physician determine if devices will be reprocessed and reused by particular patients. Currently, surveyors only verify that facilities that reuse devices have a reprocessing procedure that does not jeopardize the health and safety of patients and staff.

B. New Legislation on Reuse of Dialysis Filters and Other Dialysis Supplies

Section 9335(k) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99–509, amended section 1881(f)(7) of the Act by requiring the Secretary to establish protocols on standards and conditions for reuse of hemodialyzer filters for those facilities that voluntarily elect to reuse such filters. The protocols must be incorporated into the conditions for coverage no later than October 1, 1987. Thereafter, failure of a facility to follow such protocols may result in a finding of noncompliance as described in 42 CFR 405.1905. Consequences of noncompliance are termination of coverage under the Medicare and Medicaid programs or denial of payment for services. Section 9335(k) of OBRA '86 further requires, on or after January 1, 1988, that no dialysis facility may reuse blood lines, transducer filters, caps and other dialysis supplies unless the Secretary has established protocols for their reuse.

C. Proposed Regulations

On June 17, 1987, we published in the **Federal Register**, at 52 FR 23055, a Notice of Proposed Rulemaking to solicit comments on proposed changes to the regulations. We proposed to incorporate the OBRA '86 provisions into several existing conditions and standards in our regulations (requirements for governing body of an ESRD facility, patients' rights and responsibilities, and physical environment) and to add a new condition on requirements for reuse of dialyzers and other dialysis supplies. The new condition incorporates by reference the guidelines on reuse of hemodialyzers adopted by the Association for the Advancement of Medical Instrumentation (AAMI), dated July 1986.

II. Response to Public Comments

In response to our request for public comments in the **Federal Register** on June 17, 1987, we received 204 letters, of which 18 were from organizations representing patients. The remaining comments were from professional organizations, many of which represent dialysis facilities, and from health care providers and patients. The comments ranged from full support for the proposal to strong opposition. Following are a summary of comments received and our responses.

Patient Information Requirements

Comment: Numerous commenters believed that patients should not only be informed that a dialysis facility reuses hemodialyzers and other supplies, but that patients should also have the right to refuse reused supplies.

Response: These comments appear to be based on a lack of confidence in the performance of reused hemodialyzers and established procedures for cleaning and disinfecting them and other supplies for subsequent use by the same patient. As noted in the proposed rule, studies by PHS and others in the clinical community indicate that reprocessing and reuse of hemodialyzers are safe procedures when properly performed by trained staff. We believe that the regulations provide dialysis personnel with the information they need to safely

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reprocess hemodialyzers for reuse. Further, the attending physician and the medical director of the dialysis facility determine whether a reused hemodialyzer may not be in the best interest of an individual patient and take appropriate action. Patients who disagree with that determination, as patients who disagree with other aspects of their treatment, are free to seek services from another provider. Since reuse is a widely chosen option for facilities, we suggest that dialysis facilities assist patients by identifying whether there are nearby facilities that do not practice reuse of dialyzers, if the patient seeks a transfer to avoid reuse of items.

Comment: One commenter suggested that, because the attending physician may not be familiar with dialyzer reprocessing, the interdisciplinary patient care team should advise and discuss with the patient the facility's practice of reusing dialyzers.

Response: Section 405.2138(a)(4) of the proposed regulations requires that the facility fully inform the patient regarding the facility's reuse of dialysis supplies, including hemodialyzers. We do not believe it appropriate to prescribe who in the facility must advise the patient. The informing may be oral or through printed material and should identify components routinely reused. We are not requiring that patient information encompass technical aspects of dialyzer reprocessing or the reuse procedure.

Comment: One commenter objected to what the commenter perceived as regulating the contents of all printed materials issued by a dialysis facility.

Response: As explained above, it is not the intent of these regulations to control the content of printed materials, such as brochures that explain a facility's dialysis program. Facilities have considerable latitude over actual content as long as the patients are informed of reuse practices.

Comment: Commenters suggested that medical records specify whether a patient received treatment with reused dialyzyers.

Response: We agree. We do not believe that it would be an additional burden on the facility to make such an entry into each record for all patients, since facilities routinely either reuse all dialyzers or use only new ones. Further, it is our understanding that it has been accepted general practice to make such entries in the patient's medical record. We have, therefore, revised § 405.2139 to require this documentation.

Comment: Some commenters argued that each patient should receive a copy of, or have an opportunity to review in detail, a facility's hemodialyzer reuse policy and procedures manuals or a summary of policy and procedures.

Response: These regulations require that the patient be fully informed, through brochures or discussions with the physician, about the risks as well as the benefits associated with reuse of hemodialyzers and other dialysis devices. However, we believe that it would be brudensome for facilities to give each patient a copy of its policy and procedure manuals, but manuals should be available for review upon request. For a patient who wants detailed information about his or her specific treatment, including the facility's reuse procedures, we suggest that the patient request this information from his or her physician.

Inspection and Monitoring

Comment: Fifteen commenters recommended that we inspect and monitor all facilities that reuse hemodialyzers to verify that the standards on reuse are followed by the facilities.

Response: State survey agencies perform onsite inspections of dialysis facilities and monitor their compliance with the conditions of participation specified in 42 CFR Part 405 Subpart U. The requirements in these regulations are included in Part 405 Subpart U and will be added to surveys performed beginning on the effective date of these regulations.

Comment: Several commenters suggested alternatives to the requirement in AAMI standard 3.2.1, concerning dialyzer reprocessing training, that the facility's physician director establish a training course. Alternatives suggested include requiring the training be established by a physician, by an interdisciplinary group or by specially trained technical personnel.

Response: We interpret this standard to mean that the facility's physician director must assure that persons performing hemodialyzer reprocessing are adequately trained, not that he or she personally establish the program. The information to be included in the curriculum is set forth in AAMI standard 3.2 and was not questioned by the commenters. Consequently, a facility may establish its own training course or use any other mechanism, such as a cooperative arrangement among facilities or a uniformly developed training course, provided it includes the information required by the AAMI standard.

Comment: Some commenters suggested that we specifically train personnel to survey facilities and enforce the standards.

Response: We believe it is unnecessary to provide extensive training to State surveyors on these guidelines because the AAMI held extensive training sessions after the publication of the guidelines in July 1986. Further, some States have already incorporated the guidelines in their surveys of dialysis facilities. However, arrangements have been made with the U.S. Food and Drug Administration (FDA) to provide technical assistance and training sessions when necessary with respect to the AAMI guidelines and the additional standards specified in these regulations.

Comment: Commenters inquired what violations of the numerous AAMI standards of dialyzer reuse would result in noncompliance with the conditions of participation and result in termination of the facility's option to reuse dialyzers.

Response: If, in the judgment of the State survey agency, a facility violates any aspects of the standard on dialyzer reuse in §405.2150 which adversely affect the health and safety of patients, the survey agency will find that the standard is not met. The facility must then submit a corrective action plan to either correct the deficiencies, or discontinue reuse of dialyzers.

Reuse Procedures

Comment: Several commenters opposed the use of reprocessed dialyzers under any circumstances because they were concerned that the products used to reprocess dialyzers may be hazardous to the health of patients.

Response: As we noted in an earlier response, we are convinced that use of reprocessed hemodialyzers is safe and effective when properly performed. Comprehensive reviews of the available data have been conducted by the AAMI and components of the PHS including the FDA, the National Institutes of Health, the National Center for Health Sciences Research. Congress, after intensive review, chose to require regulation of hemodialyzer reuse, rather than to eliminate the practice.

We believe that these regulations promote the safety of dialyzer reuse procedures by clearly defining the standards of good reuse practice by trained personnel and providing a mechanism for enforcement of those standards through regular facility surveys.

Comment: Several commenters contend that AAMI guidelines have no basis in scientific practice, are inadequate, lack sufficient detail and have not been tested or validated.

Response: The AAMI guidelines were developed through a lengthy process of consultation between all elements of the hemodialysis community including physicians, providers, manufacturers of dialyzers and reprocessing equipment, researchers, patients and government agencies. The final AAMI standards contain only those elements upon which the participants reached consensus and which were believed to have the highest scientific merit. Furthermore, it was not the intent of the AAMI nor the Department's Task Force on Dialyzer Reuse to create uniform universal protocols, but rather a set of procedures that will ensure safe dialyzer reprocessing for patients and a set of procedures that will provide a framework for documentation and validation of the procedures. The AAMI standards contain sufficient detail to ensure safe and effective procedures when properly conducted.

Comment: Some commenters recommended that we strengthen the AAMI guidelines by incorporating in them regulations on good manufacturing practice in 21 CFR Part 820. These regulations apply to the manufacutre of medical devices.

Response: Under Medicare, payment is not made for any medical device that is subject to approval. The FDA has concluded that non-commercial reuse by dialysis facilities is separate and distinct from the manufacture of finished medical devices and is thus outside FDA's legal jurisdiction. Since dialysis facilities are not considered to be manufacturers, they should not be subjected to provisions regarding good manufacturing practices or be responsible for the type of documentation and validation that a manufacturer is responsible for in the production of large lots of sterile items. The FDA has determined that labeling a health care facility, such as a dialysis center, as a manufacturer simply because it cleans and disinfects a medical device that may be labeled "for one-time use" is not valid. We believe that the AAMI guidelines, together with effective review of facilities by the State survey agencies to determine that the facilities are in compliance with conditions for coverage, will provide sufficient guidance to enable a facility to process a device for reuse in a safe and effective manner.

Comment: Commenters noted that AAMI guidelines do not address the issue of how many times a dialyzer can be reused.

Response: The commenters are correct. There are no data upon which a maximum number of reuses can be based. The consensus of the AAMI experts was that the performance testing criteria used to judge properly functioning dialyzers may be applied to both new and reused dialyzers. A dialyzer that does not perform adequately should be discarded, whether it is used once or for multiple dialyses.

Comment: One commenter was concerned that the AAMI guidelines do not specify when reprocession must begin after a dialyzer is used.

Response: We are not aware of any problems that have arisen due to delays in reprocessing dialyzers. The consensus of the AAMI group was that timing of the procedure is not important; hence, there is no particular reason to make a specific recommendation governing the amount of time between the end of dialyzer use on a patient and the initiation of the reprocessing procedure.

Comment: One commenter recommended that in addition to the AAMI guidelines, we include in the regulations modifications recommended by the National Kidney Foundation Report on Dialyzer Reuse of July 11, 1987. (Copies may be obtained from the National Kidney Foundation, Inc., 2 Park Avenue, New York, N.Y., 10016.)

Response: Many of the National Kidney Foundation experts that developed the report were part of the expert group that developed the AAMI guidelines. While we realize that there are some differences in approach, especially with regard to criteria for determining whether a dialyzer is functioning properly, we do not believe that these differences are great and we consider both guidelines to be compatible.

Comment: Commenters stated that the AAMI guidelines were overly specific with regard to staff surveillance of patient reactions to reused dialyzers, and argued that physicians should perform this function.

Response: We do not agree. The AAMI recognizes, and we agree, that the reuse of medical devices is the sole responsibility of the patient's physician and has therefore directed the "Recommended Practice for the Reuse of Hemodialyzers" to the physician responsible for the hemodialyzer reprocessing program. In addition, the AAMI document has suggested that training programs for persons performing hemodialyzer reprocessing be established under the direction of the facility's physician/director and that each person performing procedures for the multiple use of dialyzers satisfactorily complete the appropriate training program. We believe that the physician's delegation of authority to persons adequately trained is consistent with current practice and proper.

Comment: Commenters noted that the AAMI quidelines failed to specify the chemical quality of water.

Response: The chemical quality of water used in reprocessing systems does not appear to play a role in any adverse effects associated with the process. The lack of consensus on this issue, expressed in the AAMI guidelines related more to a practical issue. Some individuals believed that water for reprocessing dialyzers should be the same water that is used to prepare dialysis fluid (see § 405.2140(a)(5)). There are both microbiologic and chemical specifications for water used in dialysis fluid. The majority of the AAMI group, however, believed that, although many facilities do use the same water for dialysis and for reprocessing, some facilities may wish to use only water that is of good microbiologic and endotoxin quality for reprocessing. This type of water is less expensive to produce. We have no basis for differing from this point of view. There is no evidence that the chemical quality of water plays any role in adverse effects on patients who are dialyzed with reprocessed dialyzers.

Comment: Commenters questioned the AAMI recommendation that water used to rinse dialyzers or to prepare dilutions of the chemical germicide (used to disinfect dialyzers) have less than one nanogram per milliliter of endotoxin or less than 200 bacteria per milliliter.

Response: The primary reason for this recommendation is to prevent water with a relatively high level of bacterial endotoxin from reaching membranes of the hemodialyzer during the rinsing period or disinfection period. The PHS advises us that the bacterial endotoxin can attach to the membranes and remain there during the reprocessing cycle and subsequently be relased during dialysis. The PHS also advises us that techniques used to measure bacterial endotoxin in water by means of the Limulus lysate (LAL) test have been shown to be specific and sensitive with very few instances of false positive results. Similarly, techniques for the enumeration of bacteria in water are straightforward, precise and accurate.

Comment: Commenters noted that the AAMI guidelines do not contain standards for automated hemodialyzer reprocessing machines, which are used by 40% of dialysis facilities.

Response: We agree that the AAMI guidelines do not contain specific "standards" for automated reprocessing machines, but point out that automated reprocessing machines are clearly

included in the scope of the document. Specific reference to automated reprocessing machines is made throughout the document (see sections 1.1, 5, 5.2, 5.2.2, 5.2.3, etc.). We believe that facilities that use automated reprocessing machines operate them according to the manufacturer's instructions. When automatic reprocessing machines are used, a copy of the manufacturer's instructions should be included in the master file. As specified in standard 5.2 and 5.2.3 of the AAMI guidelines, if the facility chooses to deviate from those instructions, the reason for that deviation should be supported by expert opinion, documented, and new instructions placed in the master file of the facility. In addition, the new instructions should be attached to, or located near the equipment.

Comment: Commenters observed that the AAMI guidelines contain no requirement that facilities report morbidity and mortality rates associated with reused dialysis filters.

Response: The AAMI guidelines do not contain a specific requirement that facilities report morbidity and mortality rates associated with reused dialyzers. However, they do require a complaint investigation file containing information about failures of reprocessed dialyzers or adverse reactions to reprocessed dialyzers, the results of the investigation, and corrective action taken, if appropriate. It is reviewed periodically for trends that may contribute to patient morbidity and mortality. Further, information relative to reuse morbidity and mortality is obtained by the Department through the HCFA survey process and by the FDA through the medical device reporting system.

Comment: Commenters recommended that State law prevail when there is a conflict between the AAMI guidelines and State law.

Response: The Medicare conditions are merely minimum standards. States may impose more stringent or extensive standards, and, in accordance with 42 CFR 405.2135(c), facilities would be required to meet those standards as well.

Comment: Commenters noted that the AAMI guidelines fail to distinguish between single-use versus multiple-use products.

Response: We agree that the AAMI guidelines do not distinguish between single-use versus multiple-use products. Nevertheless, the document does describe the essential elements of good practices for reprocessing hemodialyzers (regardless of the labeling) that facilities can use in order to help assure that the device processed for reuse is safe and effective. Extensive dialyzer reuse today indicates that those who process medical devices for reuse are influenced little, if at all, by a "single use only" label placed on the device. We understand that two manufacturers are modifying their labeling practice to indicate that reuse is permissible, if proper procedures are used. We therefore believe the AAMI guidelines are adequate for the purposes intended and do not need to be modified.

Comment: One commenter stated that it is not necessary that dialyzer (blood port) caps be disinfected with the same disinfectant used for the hemodialyzer.

Response: The intent of the provision is that dialyzer caps that are exposed to blood (i.e., blood port caps) be disinfected so that they do not contaminate the blood input and output side of the reprocessed dialyzers. Our requirement that the same germicide that is used for dialyzer disinfection also be used for caps was based on the assumption that this coincides with the practice of most dialysis centers. As the commenter points out, this assumption may not be correct.

Because the PHS informs us that there is no known risk to the integrity of the blood port caps by using a different germicide from that used for disinfecting the dialyzer, an alternative disinfecting protocol may be used. We believe that an equally acceptable technique would be to disinfect the dialyzer cap with a chemical germicide that has a high level of activity. In practice, this would include all of the currently available commercial chemical germicides that have been approved by FDA for dialyzer disinfection or chemical germicides approved by the EPA as a sterilant/sporicide. These latter chemical germicides can be used for purposes of high level disinfection specified by the manufacturer of the chemical germicide.

Caps that are used on the dialysate input and output ports can be simply cleaned with soap and water or sanitized and dried. Further, blood port caps that are supplied from the manufacturer can also be used.

Accordingly, we are revising § 405.2150(b) of the regulations to specify, as noted in the AAMI's guidelines, that the ports of hemodialyzers can be capped with new or disinfected caps. If dialyzer blood port caps are reused, they will be disinfected with the chemical germicide that is used for disinfecting the hemodialyzer or any other chemical germicide approved by EPA as a sterilant/sporicide.

Comment: One commenter objected to the recommendation in the AAMI guidelines that the staff note the cosmetic appearance of the dialyzer. The commenter pointed out that cosmetic appearance is a visual reference point and is unimportant in terms of safety and effectiveness of the dialyzer. In addition, the commenter stated that the recommendation is vague and unenforceable.

Response: We agree. We point out, however, that the guidelines recommend a visual inspection be a part of a quick check. Such an inspection should not be considered the definitive measurement of dialyzer performance. The performance measurements listed in section 9.3 of the AAMI document include specific guidelines for additional performance tests.

Comment: One commenter noted that there is not a consensus on what performance tests should be used to determine if a dialyzer is functioning. Some scientists believe that ultrafiltration rate, as well as fiber bundle volume and air pressure leak tests should be performed.

Response: We realize that there is not unanimous agreement on this subject. However, it was the consensus of the experts convened by AAMI that, at a minimum, fiber bundle volume and leak tests of each dialyzer are important criteria to assure function. On advice of the PHS, ultrafiltration rate is not included as a test that needs to be performed after each reprocessing procedure on each dialyzer, although the facility may choose to do so if it wishes.

Comment: Commenters objected to the requirement that transducer filters not be reused because they may be a health hazard.

Response: We are aware that these devices are not actually reused in the sense that they are reprocessed between patient use, but rather are left in place and used from one patient to the next. We also realize that these types of filters function primarily to prevent patients' blood from contaminating the dialysis machine. However, it is the consensus of infection control experts at CDC as well as the American Nephrology Nurses Association that these devices can represent a potential vehicle for cross-contamination for the hepatitis B virus (HBV). Individuals who have hepatitis B infection contain extraordinarily high amounts of the virus, i.e., 10^8–10^9 infectious virus particles per milliliter, in the blood. It is the consensus of these groups that casual visual inspection of these filters is not sufficient to ensure that serum or blood have not contaminated the devices, which in turn, could transmit HBV from one patient to the next.

Therefore, we have provided that transducer filters should be changed between patients.

Chemical Germicides

Comment: Commenters suggested that the AAMI guidelines be revised to include the strength of germicides.

Response: The concentrations of commercially available chemical germicides are not listed in the guidelines because we believe that the user should refer to the manufacturer's recommendations on the use of the chemical germicide. These recommendations and procedures may change periodically.

Comment: One commenter objected to the AAMI guideline concerning formaldehyde concentrations and contact time on the basis that the AAMI guideline lacks specificity and allows the facility to use any kind of germicide it might choose without regard to effectiveness or safety, as long as the facility follows the manufacturer's instructions.

Response: Specific concentrations of formaldehyde are recommended (4 percent), but we recognize that facilities also may achieve an equivalent effect by using lower germicide concentrations at a higher temperature. The PHS informs us that there are valid scientific studies that clearly document the effectiveness of lower concentrations of formaldehyde at higher temperatures during storage. Concentrations of commercially available chemical germicides are specified by the manufacturer.

Comment: One commenter suggested that there is no scientific rationale for the provision in proposed § 405.2150(a)(1) that would prohibit dialyzers disinfected with one generic type of chemical germicide from being reused if a different germicide is introduced as part of the dialysis facility's reprocessing system.

Response: We disagree with the commenter. In 1986, the CDC investigated an outbreak of pyrogenic reactions and found strong epidemiologic evidence that a major factor in the outbreak was the reprocessing of the dialyzers with different types of chemical germicides.

We agree that there are no published reports on this phenomenon, but on the other hand, there are also no evaluations of the combined effect of chemical germicides on certain types of dialyzer membranes. The PHS has clearly demonstrated that minute breaks in dialyzer membranes can be associated with bacteremia in patients and that leaks are not always detected by an air pressure leak test.

Comment: Commenters were concerned that the language of § 405.2150(a)(1), requiring the use of only one chemical germicide in dialyzer reprocessing, is imprecise, confusing, and subject to misinterpretation.

Response: We agree that the language could be misconstrued and should be changed. The requirement that only one type of chemical germicide be used on a hemodialyzer as it is reprocessed multiple times was based on concern that two germicides may have a combined adverse effect on the membranes of the dialyzers. For example, if a dialyzer were reused four times with formaldehyde and then the facility changed its procedure and used glutaraldehyde, the combination may produce an effect on the membrane. This situation does not occur often at a dialysis center. Usually protocols for this type of operation are stable and change very infrequently.

Furthermore, the requirement is intended to focus on those specific chemical germicides that are used by a facility to disinfect the dialyzer and which remain in the dialyzer for relatively long periods of time (1 to 3 days). It was not intended to refer to any chemical germicide that was used by the manufacturer to sterilize the dialyzer originally; thus, the regulation would not require that, if originally ethylene oxide were used to sterilize the dialyzer, that formaldehyde or other chemical germicides cannot be used in a facility's reprocessing program.

In addition, some chemical reagents such as sodium hypochlorite and hydrogen peroxide, which in other settings can be used for the purposes of disinfection, are used as part of a cleaning protocol for the hemodialyzers. For example, if the dialyzer were cleaned with sodium hypochlorite or hydrogen peroxide, disinfection could be accomplished using 4 percent formaldehyde or a glutaraldehyde or peracetic acid-based chemical germicide.

To clarify the regulations, we are revising § 405.2150(a)(1) to specify that dialyzers should be exposed to only one chemical germicide during the reprocessing procedure. If a facility decides to use a different chemical germicide, the reprocessed dialyzer should be discarded rather than be exposed to a second germicide to prevent a hypothetical risk of dialyzer membrane leaks due to the combined action of different chemical germicides. If sodium hypochlorite or hydrogen peroxide are used in the cleaning step of a reprocessing procedure and used for short exposures as cleaners and not chemical germicides, then a chemical germicide of a different generic type could be used for dialyzer disinfection.

Potential Patient Reactions to the Reprocessing Procedure

Comment: A commenter objected to the requirement that blood cultures be taken during a suspected pyrogenic reaction on the basis that a culture does not prove conclusively that patient reactions were a result of facility reprocessing techniques.

Response: Taking blood cultures during a suspected pyrogenic reaction is part of a series of tests meant to differentiate between a pyrogenic reaction and a bacterial infection. We agree that there are a number of factors that may either mimic a pyrogenic reaction or cause occasional pyrogenic reaction or pyrogenic-like reactions to occur in patients. Our intent is that the physician director of the dialysis facility or chief nurse have the responsibility for determining whether pyrogenic reactions are occurring, if they are occurring in clusters and if they are associated with the reprocessing procedures. These are decisions and determinations that are based on the broad medical and clinical experience of the health care professionals, and ones that cannot be listed specifically in any regulation.

In this same context, if the director of a dialysis facility, or that person's designate reaches the conclusion that either a chemical germicide used in reprocessing or a commercially available reprocessing system in any way is associated with pyrogenic reactions, it is the responsibility of that individual to contact the manufacturer of the germicide regarding this problem. It is the responsibility of the manufacturer under FDA regulations to notify the FDA. In addition, reuse of hemodialyzers should be terminated until the problems associated with pyrogenic reactions are solved.

Comment: Commenters questioned the need to terminate dialyzer reuse in the facility when only one individual experiences a pyrogenic reaction, bacteremia, or an unexplained reaction.

Response: We believe that this requirement safeguards all patients by preventing the spread of organisms that could contaminate all dialyzers. Our intent is explained in the previous comment. We would expect that the physician, after analyzing all the evidence associated with untoward reactions in a single patient or in several patients in the facility, would take whatever action is needed, including the termination of reuse, not only to protect the individual patient, but all patients if

it were determined that these reactions resulted from improper processing.

Comment: One group commented that requiring surveillance for bacteremia and unexplained reactions is inadequte because it implies that pyrogenic and bacteremic reactions are the only major complications of exposure to reprocessed hemodialyzers.

Response: We disagree that these regulations imply that pyrogenic reactions and bacteremia as major complications are only associated with hemodialyzer reuse. However, there have been documented instances of pyrogenic reactions and bacteremia due to inadequate dialyzer reuse procedures, and surveillance for them is part of a proper protocol. We have discussed the actions to be taken as a result of surveillance as a response to a previous comment.

Comment: One commenter noted that AIDS and hepatitis are associated with the reuse of hemodialyzers.

Response: The PHS advises us that since 1976 there is no excess risk of hepatitis B infection among patients or staff members in facilities that do and those that do not reuse hemodialyzers. We believe that the same precautions used to prevent the spread of hepatitis B will be effective in reducing the spread of the AIDS virus.

Comment: Commenters suggested that the AAMI guidelines be more specific with regard to the quality of water to prevent pyrogenic reactions in patients.

Response: The AAMI does have standards for water used to prepare dialysis fluid, but we do not believe that the entire set of AAMI standards are necessary for water that is used as part of a reprocessing procedure. The PHS advises us that the endotoxin level in reprocessing water should not exceed one nanogram per milliliter. To accomplish this, the AAMI guidelines include either an endotoxin test or microbiologic assay. We believe that these procedures are sufficient to prevent pyrogenic reactions associated with water used in the reprocessing procedure.

General Comments

Comment: One provider association objected to the AAMI guidelines being incorporated by reference in the regulations. Among the problems they cite are that the guidelines do not mandate specific tasks and, thus, make interpretation and compliance difficult, and that the guidelines provide too much flexibility and an absence of requirements in some areas and too much specificity in other areas in which technological advances may quickly outdate the instructions.

Response: We think that these guidelines constitute a framework for documentation, validation, and surveillance of reprocessing procedures. We believe that if the guidelines are followed and adherence to the guidelines is evaluated by State agency surveyors, they will enhance the quality of practice of dialyzer reuse.

Comment: Commenters noted that AAMI guidelines are not scheduled for revision until 1991 and asked what we would do if revisions are necessary before 1991. One commenter noted that improvements to, or development of new dialysis techniques occur continuously and recommended that we perform an ongoing reevaluation of the guidelines.

Response: The commenters are correct that the AAMI intends to update the voluntary standards every 5 years. If we find that revisions need to be made to the standards regarding dialyzer reuse procedures at that time or at any time, we will propose revisions through the Department's usual rulemaking procedures. With regard to technical modifications and improvements that occur, we believe that State survey agencies are unlikely to find that standards are not met if the equipment, materials and processes used provide health and safety protection that is the same as, or greater than the AAMI recommended practice. For example, if techniques are developed that are more specific or more sensitive than the Limulus amoebocyte lysate assay, with as few instances of false positives, we expect use of such techniques to be interpreted by the State survey agency as meeting or exceeding the standard regarding bacterial lipopolysaccharide concentration in dialyzer rinsing fluid.

Comment: A number of commenters were concerned that the proposed requirement in § 405.2138(a)(5) that patients be fully informed regarding their suitability for transplantation and home dialysis will be burdensome to facilities if we impose rigid implementation and unnecessary and duplicative recordkeeping to establish that information was actually imparted. One commenter, on the other hand, recommended that we specify that the assessment concerning whether a patient is suitable for a transplant be made only by a transplant surgeon.

Response: The requirement that patients be fully informed about their suitability for transplantation and home dialysis does not require a new evaluation by the facility. This requirement already exists as part of the long term care plan specified in § 405.2137(a). We are merely requiring that facilities document in the medical record the fact that they have informed patients about the selection of treatment modality specified in the long term care plan. This requirement does not duplicate any other requirements, and we do not believe that the recordkeeping requirement is unnecessarily burdensome or onerous for facilities.

Regarding the recommendation that only a transplant surgeon conduct the assessment of whether a patient is suitable for a transplant, existing regulations specify that this determination is to be made by a professional team. Section 405.2137(a) specifies that the long term care program representing the selection of dialysis or transplantation is developed by a professional team that includes, but is not limited to the physician director of the facility, a transplant surgeon, a qualified nurse, a qualified dietitian and a qualified social worker.

Comment: Several commenters suggested revisions to the physical environment condition, § 405.2140. Commenters suggested adding provisions to ensure safe reuse of hemodialyzers, sufficient space and storage capacity for processing of hemodialyzers, a definition of "sanitary, comfortable and well-lighted area," and quality assurance with respect to contamination and infection control.

Response: Paragraphs (b)(1) and (c) of proposed § 405.2140 contain cross references to § 405.2150, which is the standard for reuse of hemodialyzers. We believe that the AAMI guidelines referenced in § 405.2150 will ensure safe reuse of dialyzers including contamination and infection control and that no revision to the physical environment condition is necessary.

We have not accepted the suggestion that we define "sanitary, comfortable and well-lighted area" in the regulations. Any clarification or detailed explanation of the term would, instead, be included in survey guidelines.

With regard to space and storage capacity for reprocessing hemodialyzers, we believe existing requirements in § 405.2140(b)(2) with respect to sufficient space for treatment, storage and maintenance of equipment are adequate.

III. Final Rule

After consideration of the public comments, and for the reasons stated in our responses to those comments, we have decided to finalize the regulations as proposed, except for revisions to § 405.2139(a) on documentation of medical records, § 405.2150(a)(1) on

chemical germicides, and § 405.2150(b) on dialyzer caps.

IV. Waiver of 30-Day Delay in Effective Date

Section 9335(k) of OBRA '86 requires that we establish standards for reuse of hemodialyzer filters. Those standards must be incorporated into the conditions for coverage of suppliers of end stage renal disease services no later than October 1, 1987. If regulations containing the standards are not effective by October 1, 1987, we can no longer pay for reused hemodialyzers, a practice that has been an option for facilities for many years. We ordinarily provide a 30-day delay in effective date following publication of a regulation to allow time for affected entities to comply with the new requirements. However, in this case, the usual 30-day delay in effective date would effectively require facilities to temporarily stop reusing hemodialyzers and use only new ones. To suddenly terminate payment for reused dialyzers to allow for a 30-day delay in effective date would be disruptive and administratively burdensome to dialysis facilities, and disruptive to the continuity of patient care. We therefore, find good cause for waiving the 30-day delay in effective date and find that such waiver is in the public interest.

V. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ESRD facilities as small entities.

B. Comments and Responses

In the proposed rule we gave an extended discussion of our reasons for not providing an impact analysis or regulatory flexibility analysis. Various commenters addressed that decision and the issues touched upon in our discussion.

Provider Impact

Comment: One commenter stated that the impact statement failed to analyze the true economic impact of reuse and the implications for dialysis facilities of meeting "an adequate single standard" [sic]. Further, the commenter stated that HCFA's conclusion that there would be a negligible effect was an erroneous conclusion based on inadequate data and improper assumptions and that there should have been a full-fledged analysis.

Response: Even though we had little data, we did provide an estimate of the prevalence of reuse and gave our reasons for believing that the economic impact would be small and that the effects on beneficiaries would be beneficial.

We are uncertain what the commenters meant to imply by referring to "an adequate single standard." The commenter, in referring to the proposed standard as adequate, seems to presume that many facilities now observe only lesser, inadequate, reuse standards. The main point we made is that most facilities have been following reasonable standards for reuse already. If standards were inadequate in a facility, then costs would be incurred to bring the facility into compliance and assure the quality of services to the beneficiary. With regard to the request that we fully analyze the economic impact before adopting a standard, we do not have data or a model to isolate just those reuse-associated costs that may differ from facility to facility, nor to relate costs to facility-specific reuse practices. The commenter did not offer any more data than the data presented in the preamble, nor did anyone contest our estimates of the prevalence of reuse.

Comment: One commenter stated that with the adoption of AAMI standards concerning patient surveillance and reporting to the manufacturer, reuse costs could be affected.

Response: It is likely that some standards and reporting requirements could increase costs for those facilities with reuse practices significantly different from those required by this rule, but aggregate costs for all facilities are not expected to rise. We expect that any rise in cost in a specific facility would be more than offset by the value of establishing additional safeguards to insure the health and safety of the patients.

An increase in dialysis costs, whether for one or many facilities, would not result in increased payments to affected facilities unless those costs increased the average cost per dialysis session in a way that was later reflected in the level at which composite rate payments were set. Because it appears that many facilities are currently following reasonable standards in reuse of dialyzers, similar to the requirements in this regulation, this rule is not expected to result directly in any increases or reductions in Medicare program expenditures in the aggregate.

Comment: One commenter, quoting the regulatory impact statement in the proposed rule, concluded that there are financial incentives for dialysis facilities to practice reuse and a disincentive for a pure medical judgment on the issue of reuse. The commenter further stated that it was not clear whether in promoting reuse the Department was concerned primarily with the financial advantage to the government or savings to dialysis facilities.

Response: First, we wish to state clearly that it is not our policy or intent to promote reuse. The section of the initial regulatory impact statement quoted by the commenter was intended merely to explain the interaction between the proposed standards, facility costs, and Medicare payments. It was not a statement of objectives, but an attempt to help reviewers of the proposed rule assess its consequences. We grant that one major reason facilities elect to encourage reuse is to save money. Our position is not to encourage or discourage reuse, but rather to ensure that patient health and safety are protected when it is practiced.

Beneficiary Impact

Comment: One commenter, expressing concern about the impact on beneficiaries, believed that the rule, if adopted without provisions for informed consent and the right of refusal, will leave the patient unprotected and at unnecessary risk.

Response: We believe that this is a misinterpretation of the regulation. This regulation requires that the patient be fully informed about reuse. In addition, the regulation would require that each patient be fully informed regarding his or her suitability for kidney transplantation and home dialysis. Furthermore, the medical record must contain evidence that each patient was informed regarding his or her suitability for transplantation and home dialysis.

These facts, in combination with the expected benefit to patients of establishing standards for reuse, make it clear that the intended and expected results of this rule are to increase patient protections.

C. Conclusion

Because we are unable to predict the decisions that facilities will make in response to this regulation, we are unable to quantify the potential effect it will have. We continue to believe adoption of these standards for reuse of dialysis supplies will help ensure beneficiary health and safety. In response, we expect some beneficiaries will be reassured that their rights have been safeguarded. However, we expect that there will be a negligible effect on most beneficiaries and facilities, due to the fact that it appears that many facilities are currently following standards for reuse of dialyzers that are similar to those in this final regulation. This final rule is not expected to result directly in any increases or reductions in Medicare program expenditures, nor will it result in a decline nor a deterioration of patient rights or protections.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined and the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

Paperwork Reduction Act of 1980

Sections 405.2136(b), 405.2138(a), 405.2139(a), and 405.2140(b) and (c) of this rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. The recordkeeping and reporting requirements are not effective until they have been approved by OMB under the Paperwork Reduction Act of 1980. The requirements have been submitted to OMB for review. Comments on the requirements should be sent to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron

When clearance is obtained, we will publish a notice in the **Federal Register** announcing that clearance.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Incorporation by reference, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405 Subpart U is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 405 Subpart U continues to read as follows:

Authority: Secs. 1102, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. The table of contents for Subpart U is amended by adding a new § 405.2150 to read as follows:

Subpart U—Conditions for Coverage of Suppliers or End-Stage Renal Disease (ESRD) Services

* * * * *

Sec.

405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies

* * * * *

3. Section 405.2136(b) introductory text is revised to read as follows:

§ 405.2136 Condition: Governing body and management.

* * * * *

(b) *Standard: operational objectives.* The operational objectives of the ESRD facility, including the services that it provides, are established by the governing body and delineated in writing. The governing body adopts effective administrative rules and regulations that are designed to safeguard the health and safety of patients and to govern the general operations of the facility, in accordance with legal requirements. Such rules and regulations are in writing and dated. The governing body ensures that they are operational, and that they are reviewed at least annually and revised as necessary. If the ESRD facility is engaged in the practice of hemodialyzer reuse, the governing body ensures that there are written policies and procedures with respect to reuse, to assure that recommended standards and conditions are being followed, and requires that patients be informed of the policies and procedures.

* * * * *

4. In § 405.2138, paragraph (a) introductory text is republished, paragraph (a)(3) is revised, and new paragraphs (a)(4) and (a)(5) are added, to read as follows:

§ 405.2138 Condition: Patients rights and responsibilities.

* * * * *

(a) *Standard: informed patients.* All patients in the facility:

* * * * *

(3) Are fully informed by a physician of their medical condition unless medically contraindicated (as documented in their medical records);

(4) Are fully informed regarding the facility's reuse of dialysis supplies, including hemodialyzers. If printed materials such as brochures are utilized to describe a facility and its services, they must contain a statement with respect to reuse; and

(5) Are fully informed regarding their suitability for transplantation and home dialysis.

5. Section 405.2139(a) is revised to read as follows:

§ 405.2139 Condition: Medical records.

* * * * *

(a) *Standard: medical record.* Each patient's medical record contains sufficient information to identify the patient clearly, to justify the diagnosis and treatment, and to document the results accurately. All medical records contain the following general categories of information: Documented evidence of assessment of the needs of the patient, whether the patient is treated with a reprocessed hemodialyzer, of establishment of an appropriate plan of treatment, and of the care and services provided (see § 405.2137(a) and (b)); evidence that the patient was informed of the results of the assessment described in § 405.2138(a)(5); identification and social data; signed consent forms referral information with authentication of diagnosis; medical and nursing history of patient; report(s) of physician examination(s); diagnostic and therapeutic orders; observations, and progress notes; reports of treatments and clinical findings; reports of laboratory and other diagnostic tests and procedures; and discharge summary including final diagnosis and prognosis.

* * * * *

6. Section 405.2140(b) introductory text, (b)(1) and (c) are revised to read as follows:

§ 405.2140 Condition: Physical environment.

* * * * * *

(b) *Standard: favorable environment for patients.* The facility is maintained and equipped to provide a functional sanitary, and comfortable environment

with an adequate amount of well-lighted space for the service provided.

(1) There are written policies and procedures in effect for preventing and controlling hepatitis and other infections. These policies include, but are not limited to, appropriate procedures for surveillance and reporting of infections, housekeeping, handling and disposal of waste and contaminants, and sterilization and disinfection, including the sterilization and maintenance of equipment where dialysis supplies are reused, there are written policies and procedures covering the rinsing, cleaning, disinfection, preparation and storage of reused items which conform to requirements for reuse in § 405.2150.

* * * * * *

(c) *Standard contamination prevention.* The facility employs appropriate techniques to prevent cross-contamination between the unit and adjacent hospital or public areas including, but not limited to, food service areas, laundry, disposal of solid waste and blood-contaminated equipment, and disposal of contaminants into sewage systems. Waste storage and disposal are carried out in accordance with applicable local laws and accepted public health procedures. The written patient care policies (see § 405.2136(f)(1)) specify the functions that are carried out by facility personnel and by the self-dialysis patients with respect to contamination prevention. Where dialysis supplies are reused, records are maintained that can be used to determine whether established procedures covering the rinsing, cleaning, disinfection, preparation and storage of reused items, conform to requirements for reuse in § 405.2150.

* * * * * *

7. A new § 405.2150 is added to Subpart V to read as follows:

§ 405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies.

An ESRD facility that reuses hemodialyzers and other dialysis supplies meets the requirements of this section.

(a) *Standard: Hemodialyzers.* If the ESRD facility reuses hemodialyzers, it meets the voluntary guidelines adopted by the Association for the Advancement of Medical Instrumentation (A.A.M.I.) July 1986 (i.e., "Recommended Practice for Reuse of Hemodialyzers") which is incorporated by reference. Incorporation of the Association for the Advancement of Medical Instrumentation 1986 edition of the "Recommended Practice for Reuse of Hemodialyzers" was approved by the Director of the Federal Register in accordance with 5 U.S.C. 562(a) and 1 CFR Part 51 which governs the use of incorporations by reference.[1]

In addition to the A.A.M.I. 1986 edition criteria on hemodialyzer reuse, the ESRD facility conforms to the following procedures:

(1) *Chemical germicides.* To prevent any risk of dialyzer membrane leaks due to the combined action of different chemical germicides, dialyzers are exposed to only one chemical germicide during the reprocessing procedure. If a dialyzer is exposed to a second germicide, the dialyzer must be discarded.

(2) *Staff exposure to chemical germicides.* Chemical germicides are handled in a manner to minimize exposure to staff members who are involved in the reprocessing. The following exposure limits for a number of active ingredients contained in formulations of chemical germicides utilized in dialysis facilities have been set by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) (see 29 CFR 1910.1000). Staff exposure to any material in the table is consistent with these limits.

TABLE

Substance/material	Limits
Formaldehyde	3 ppm TWA. 5 ppm Ceiling. (1 ppm TWA proposed by OSHA).
Glutaraldehyde	None developed.
Phenol	5 ppm TWA.
Glutaraldehyde-Phenol	Individual standards of recommendations should apply.
Peracetic Acid	None developed.
Chlorine Dioxide Syn: Chlorine Oxide.	100 ppb TWA.
Hydrogen Peroxide	1 ppm TWA.
Chlorine	1 ppm Ceiling.

TWA = Time weighted average.
Ceiling = Maximum exposure ceiling.
ppm = Parts per million.
ppb = Parts per billion.

[1] The "Recommended Practice for Reuse of Hemodialyzers" is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC. Copies may be obtained from the Association for the Advancement of Medical Instrumentation, 1901 North Fort Myers Drive, Suite 602, Arlington, Va. 22209–1699.

If any changes in the "Recommended Practice for Reuse of Hemodialyzers" are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register.**

(3) *Surveillance of patient reactions.* In order to detect bacteremia, to maintain patient safety when unexplained events occur, and to provide the manufacturer with information so that prompt remedial action can be taken, the facility—

(i) Takes appropriate blood cultures at the time of a febrile response in a patient;

(ii) If pyrogenic reactions, bacteremia, or unexplained reactions associated with ineffective reprocessing are identified, terminates reuse of hemodialyzers in that setting and does not continue reuse until the entire reprocessing system has been evaluated; and

(iii) Notifies the manufacturer, if these reactions appear to be associated with any commercially available germicide or a reprocessing device.

(b) *Standard: Dialyzer caps.* The ports of hemodialyzers may be capped with new or disinfected caps. If dialyzer blood port caps are reused, they are disinfected with the chemical germicide that is used for disinfecting the hemodialyzer or any other chemical germicide approved by the Environmental Protection Agency as a sterilant/sporicide.

(c) *Standard: Transducer filters.* To control the spread of hepatitis, transducer filters are changed after each dialysis treatment and are not reused.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance.)

Dated: September 21, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 23, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–22938 Filed 9–30–87; 4:32 pm]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6764]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the

program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Texas: Burleson County, unincorporated areas	481169	July 6, 1987, Emerg.	June 17, 1977.
California: San Benito County, unincorporated areas	060267	July 7, 1987, Emerg.	Aug. 2, 1977.
Pennsylvania: *Limeston, township of, Warren County	422547	Feb. 28, 1977, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; July 7, 1987, Rein.	June 1, 1987.
Iowa: *Eldora, city of, Hardin County	190139	Apr. 14, 1975, Emerg.; May 1, 1987, Reg.; May 1, 1987, Susp.; July 8, 1987, Rein.	Do
Ohio: Enon, village of, Clark County	390795	Sept. 12, 1975, Emerg.; Apr. 17, 1987, Reg.; Apr. 17, 1987, Susp.; July 8, 1987, Rein.	Apr. 17, 1987.
North Carolina: Pineville, town of, Mecklenburg County	370160	May 6, 1975, Emerg.; May 18, 1987, Reg.; May 18, 1987, Susp.; July 8, 1987, Rein.	Mar. 18, 1987.
Iowa: *Kellogg, city of, Jasper County	190164	June 3, 1977, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; July 9, 1987, Rein.	June 1, 1987.
New York: Webster, town of, Monroe County	360436	Mar. 9, 1973, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp.; July 9, 1987, Rein.	June 4, 1987
Arkansas: Franklin County, unincorporated areas	050432	July 15, 1987, Emerg.	Do
Michigan: Huron, township of, Huron County	260415	....do....	Do.
Oklahoma: Kay County, unincorporated areas	400477	....do....	Do.
Texas: Nolan County, unincorporated areas	481240	....do....	Do.
Tennessee: Gates, town of, Lauderdale County	470258	Sept. 18, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 10, 1987, Rein.	July 2, 1987.
Kentucky: *Manchester, city of, Clay County	210058	Sept. 2, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 8, 1987, Rein.	Do.
Ohio: Morrow County, unincorporated areas	390868	July 23, 1987, Emerg.	Aug 4, 1978
Georgia: Monroe County, unincorporated areas	130138	July 29, 1987, Emerg.	Apr. 1, 1977
Florida: Calhoun County, unincorporated areas	120403	May 14, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.; July 29, 1987, Rein.	June 18, 1987
Kentucky:			
*Edmonton, city of Metcalfe County	210173	Oct. 24, 1974, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 29, 1987, Rein.	July 1, 1987
*Hindman, city of, Knott County	210130	July 9, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 29, 1987, Rein.	Do
*Jackson County, unincorporated areas	210118	Nov. 25, 1985, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 29, 1987, Rein.	Do.
Missouri: Byrnes Mill, city of, Jefferson County	290891	July 21, 1987, Emerg.	Do.
Alabama: Blount County, unincorporated areas	010230	July 22, 1987, Emerg.	Feb 24, 1978.
Kansas:			
Elk City, city of, Montgomery County	200408	July 23, 1987, Emerg.	Oct. 29, 1976
Neosho Falls, city of Woodson County	200360	July 23, 1987, Emerg.;	Jan. 31, 1975.
Minnesota:			
*Red Lake County, unincorporated areas	270387	Apr. 5, 1974, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 10, 1987, Rein.	July 2, 1987.
*Willow River, city of, Pine County	270353	Apr. 26, 1974, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 15, 1987, Rein	July 1, 1987.
Maine: *Woodstock, town of Oxford County	230344	Aug. 5, 1975, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp.; July 17, 1987, Rein.	Apr. 1, 1987

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Maine: *Upton, town of, Oxford County	230342	Aug. 6, 1975, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp.; July 17, 1987, Rein.	Do
Florida: *Webster, city of, Sumter County	120298	July 10, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 10, 1987, Rein.	July 1, 1987
Iowa: *Colfax, city of, Jasper County	190163	July 11, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; July 20, 1987, Rein.	June 1, 1987
Tennessee: Somerville, town of, Fayette County	470051	Aug. 27, 1975, Emerg.; July 5, 1982, Reg.; July 5, 1982, Susp.; July 20, 1987, Rein.	July 5, 1982
Iowa:			
Bonaparte, city of, Van Buren County	190266	Jan. 14, 1976, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 23, 1987, Rein.	July 2, 1987
Zearing, city of, Story County	190260	Sept. 28, 1976,Emerg.; May 1, 1987, Reg.; May 1, 1987, Susp.; July 23, 1987, Rein.	May 1, 1987
New York:			
Thurman, town of, Warren County	360881	May 24, 1979, Emerg.; Aug. 19, 1986, Reg.; Aug. 19, 1986, Susp.; July 6, 1987 Rein.	Aug. 19, 1986
Fremont, town of, Sullivan County	360821	Apr. 11, 1975, Emerg.; May 25, 1984, Reg.; Apr. 3, 1987, Susp.; July 6, 1987, Rein.	Apr 3, 1987
Region I—Regular Conversions			
Connecticut: Milford, city of, New Haven County	090082	July 2, 1987, suspension withdrawn	July 2, 1987
Massachusetts: Mattapoisett, town of, Plymouth County	255214	do	Do
Vermont:			
Morrisville, village of, Landille County	500065	do	Do
Morrisville, town of, Landille County	500064	do	Do
Region III			
West Virginia: Fairmont, city of, Marion County	540099	do	Do
Region V			
Ohio:			
Clark County, unincorporated areas	390732	do	Do
London, city of, Madison County	390366	do	Do
Region IX			
California:			
Isleton, city of, Sacramento County	060265	do	Do
Pittsburg, city of, Contra Costa County	060033	do	Do
Region II			
New York:			
Amityville, village of Suffolk County	360788	July 16, 1987, suspension withdrawn	July 16, 1987
Babylon, village of Suffolk County	360791	do	Do
Crown Point, town of Essex County	361148	do	Do
Lindenhurst, village of Suffolk County	360798	do	Do
Port Henry, village of Essex County	361493	do	Do
Region III			
Virginia: Alleghany county, unincorporated areas	510009	do	Do
Region V			
Michigan: Niles, city of Cass and Berrien Counties	260040	do	Do
Ohio: Dover, city of Tuscarawas County	390543	do	Do
Region VI			
Arkansas:			
Montgomery County, unincorporated areas	050453	do	Do
Stone County, unincorporated area	050465	do	Do
Oklahoma			
Inola, town of Rogers County	400456	do	Do
Pryor Creek, city of Mayes County	400117	do	Do
Texas			
Highland Village, city of Denton County	481105	do	Do
Plum Grove, city of Liberty County	481269	do	Do
Region IX			
California:			
Contra Costa County, unincorporated area	060025	do	Do
Loma Linda, city of San Bernardino County	065042	do	Do
Region IV: Minimal Conversions			
Kentucky: Hickman, city of Fulton County	210077	do	Do
Region V			
Illinois: Kirkwood, village of Warren County	170675	do	Do.
Michigan: Elsie, village of Clinton County	260725	do	Do
Wisconsin: Nekoosa, city of Wood County	550516	do	Do
Region VII			
Kansas: Norton, city of Norton County	200248	do	Do
Region I			
Massachusetts: Wareham, town of Plymouth County	255223	August 4, 1987, suspension withdrawn	Aug. 4, 1987.
Vermont: Grafton, town of Windham County	500129	do	Do
Region II			
New York: Watertown, city of Jefferson County	360354	do	Do
Region III			
Virginia:			
Gloucester County, unincorporated areas	510071	do	Do
Irvington, town of Lancaster County	510221	do	Do
Tappahannock, town of Essex County	510049	do	Do

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region V			
Illinois: Kirkland, village of DeKalb County	170186	do	Do.
Ohio: Strasburg, village of Tuscarawas County	390631	do	Do.
Sugarcreek, village of Tuscarawas County	390546	do	Do.
Region VI			
Arkansas: Piggott, city of Clay County	050035	do	Do.
Texas: Denton, city of Denton County	480194	do.	Do
Region IX			
California:			
Rio Vista, city of Solano County	060371	do	Do
Madera County, unincorporated areas	060170	do	Do
Region X			
Oregon: Lake Oswego, city of Clackamas County	410018	do	Do
Region II			
New Jersey: Bridgewater, township of Somerset County	340432	August 19, 1987, suspension withdrawn	Aug. 19, 1987.
Region III			
Pennsylvania:			
Conewango, township of Warren County	422117	do	Do
Muncy, township of Lycoming County	421847	do	Do.
North Beaver, township of Lawrence County	421795	do	Do
Pine Grove, township of Warren County	422124	do	Do.
Warren, borough of Warren County	420843	do	Do.
Region VI			
Arkansas: Gould, city of Lincoln County	050127	do	Do.
Oklahoma: Rogers County unincorporated areas	405379	do	Do
Region VIII			
Utah: St. George, city of Washington County	490177	do	Do
Region X			
Washington: Pierce County unincorporated areas	530138	do	Do
Minimal Conversions			
Region III			
Pennsylvania:			
Franklin, township of Lycoming County	420973	do	June 1, 1987.
Howe, township of Forest County	421647	July 1, 1987, suspension withdrawn	Do.
Fox, township of Sullivan County	422063	do	July 1, 1987.
Laporte, township of Sullivan County	422065	do	Do.
Lemon, township of Wyoming County	422200	do	Do.
Nicholson, township of Wyoming County	422202	do	Do.
Northmoreland, township of Wyoming County	422204	do	Do
Nowich, township of McKean County	421859	do	Do.
Ward, township of Tioga County	422101	do	Do
West Virginia:			
Barbour County unincorporated areas	540001	do	Do
Lewis County unincorporated areas	540085	do	Do
Moorefield, town of Hardy County	540052	do	Do.
Morgan County unincorporated areas	540144	do	Do.
Pendleton County unincorporated areas	540153	do	Do.
Taylor County unincorporated areas	540188	do	Do
Upshur County unincorporated areas	540198	do	Do
Region IV			
Florida: Live Oak, city of Suwannee County	120334	do	Do
North Carolina:			
Jonesville, town of Yadkin County	370260	July 1, 1987, suspension withdrawn	Do.
Randleman, city of Randolph County	370199	do	Do.
Region V			
Indiana:			
Clinton, city of Vermillion County	180259	do	Do
New Harmony, town of Posey County	180210	do	Do.
Michigan: Carp Lake, township of Ontonagen County	260548	do	Do
Ohio:			
Ansonia, village of Darke County	390138	do	Do.
Fostoria, city of Hancock County	390245	do	Do.
McConnelsville, town of Morgan County	390422	do	Do
Wisconsin:			
St. Cloud, village of Fond Du Lac County	550142	do	Do.
Wausaukee, village of Marinette County	550264	do	Do.
Weyauwega, city of Waupaca County	550503	do	Do.
Yuba, village of Richland County	550362	do	Do
Region VI			
Arkansas: Dewitt, city of Arkansas County	050001	do	Do.
New Mexico: Red River, town of Taos County	350079	do	Do.
Region VII			
Kansas: Concordia, city of Cloud County	200060	do	Do.
Missouri:			
Barton County, unincorporated areas	290785	do	Do.
Mannes County, unincorporated areas	290816	do	Do

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Senath, city of Dunklin County	290131	do	Do
Nebraska: Leigh, village of Colfax County	310386	do	Do
Region VIII			
Utah: Washington, city of unincorporate areas	490182	do	Do
Minimal Conversions			
Region IV			
North Carolina:			
Hamlet, city of Richmond County	370200	July 16, 1987, suspension withdrawn	July 2, 1987.
Jackson, town of Northampton County	370175	do	Do.
Siler City, town of Chatham County	370058	do	Do
Region V			
Illinois			
Carthage, city of Hancock County	170269	do	Do
Valier, village of Franklin County	170870	do	Do
Washburn, village of Woodford County	170728	do	Do
Michigan:			
Burlington, township of Calhoun County	260651	do	Do.
Vicksburg, village of Kalamazoo County	260578	do	Do
Minnesota			
Crosslake, city of Crow Wing County	270095	do	Do
Wisconsin:			
Dodgeville, city of Iowa County	550177	do	Do.
Lake Mills, city of Jefferson County	550195	do	Do.
Luck, village of Polk County	550335	do	Do
Region VII			
Iowa			
Centerville, city of Appanoose County	190009	do	Do
Region II: Minimal Conversions			
New York			
Schenevus, village of Otsego County	361359	Aug. 1, 1987, suspension withdrawn	Aug. 1, 1987.
Schoharie, village of Schohane County	361061	do	Do
Stamford, village of Delaware County	360213	do	Do
Region III			
Pennsylvania:			
Annin, township of, McKean County	421850	do	Do
Cherry, township of, Sullivan County	422058	do	Do
Forkston, township of, Wyoming County	422199	do	Do
North Branch, township of, Wyoming County	422203	do	Do
Roseville, borough of Tioga County	420826	do	Do
Shrewsbury, township of Sullivan County	422066	do	Do.
West Hemlock, township of Montour County	421925	do	Do
West Virginia			
Albright, town of Preston County	540161	do	Do
Hendricks, town of Tucker County	540193	do	Do.
Region IV			
Alabama			
Pike County, unincorporated areas	010286	do	Do
Sumter County, unincorporated areas	010194	do	Do.
Washington County, unincorporated areas	010302	do	Do.
Florida: Bonifay, city of Holmes County	120116	do	Do
Kentucky: Bath County, unincorporated areas	210008	do	Do
North Carolina: Conway, town of Northampton County	370174	do	Do.
Region V			
Indiana: Petersburg, city of Pike County	180199	do	Do.
Ohio:			
Hicksville, village of Defiance County	390145	do	Do
Huron County, unincorporated areas	390770	do	Do
Loudonville, village of Ashland and Holmes Counties.	390009	do	Do
Monroeville, village of Huron County	390283	do	Do.
Ottoville, village of Putnam County	390473	do	Do
Roswell, village of Tuscarawas County	390813	do	Do
Smithville, village of Wayne County	390629	do	Do
Region VI			
Louisiana: Richland Parish, unincorporated areas	220154	do	Do.
New Mexico: Otero County, unincorporated areas	350044	do	Do
Texas:			
Anthony, town of El Paso County	480804	do	Do
Blum, city of Hill County	480350	do	Do.
Bosque County, unincorporated areas	480051	do	Do.
Childress, city of Childress County	480125	do	Do.
Eastland, city of Eastland County	480204	do	Do
Le Flors, city of Gray County	480256	do	Do
Meridian, city of Bosque County	480053	do	Do.
Seminole, city of Gaines County	480240	do	Do
Toyah, city of Reeves County	480539	do	Do
Region VII			
Kansas: Garnett, city of Anderson County	200005	do	Do
Missouri: Elvins, city of St. Francois County	290322	do	Do
Region IV: Minimal Conversions			
Florida: Century, city of Escambia County	120084	August 4, 1987; suspension withdrawn	Aug. 4, 1987
North Carolina: Henderson, city of Vance County	370367	do	Do

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Tennessee: Portland, city of Sumner County	470187	do.	Do.
Region V			
Illinois: South Jacksonville, village of Morgan County	170519	do.	Do.
Ohio: Russells Point, village of Logan County	390342	do.	Do.
Region VII			
Iowa: Carlisle, city of Warren and Polk Counties	190103	do.	Do.
Missouri: Warsaw, city of Benton County	290030	do.	Do.
Region IV—Minimal Conversions			
Kentucky: Flemmg-Neon, city of, Letcher County	210139	August 19, 1987, suspension withdrawn.	Aug. 19, 1987
North Carolina: Wilhamston, town of, Martin County	370157	do.	Do.
Region V			
Illinois			
Carterville, city of, Wilkamson County	170716	do.	Do.
Chnstopher, city of, Franklin County	170238	do.	Do.
Forreston, village of, Ogle County	170527	do.	Do.
Michigan: Fredonia, township of, Calhoun County	260562	do.	Do.
Minnesota			
Pope County unincorporated areas	270368	do.	Do.
Traverse County unincorporated areas	270621	do.	Do.
Ohio			
Dellroy, village of, Carroll County	390049	do.	Do.
Dexter City, village of, Noble County	390431	do.	Do.
Hemlock, village of Perry County	390708	do.	Do.
Leetonia, village of, Columbiana County	390084	do.	Do.
Mount Gilead, village of, Morrow County	390424	do.	Do.
Region VII			
Iowa. Anamosa, city of, Jones County	190174	do.	Do.
Nebraska. Brock, village of, Nemaha County	310155	do.	Do.

* Minimal conversions.

Note.—The City of South Flomaton; Florida (No. 120084) has recently changed their name to the City of Century, Florida. The City of South Flomaton should be deleted from the Eligibility Status Book as a separate entry. The City of Century should be listed with the footnote "formerly the City of South flomaton". Note that the City of Century is in the conversion process and is scheduled to convert to the Regular Program on August 4, 1987 provided appropnate ordinances are adopted by then.

The City of Ward Ridge (Gulf County), Florida has merged into the City of Port St. Joe. Therefore, the City of Ward Ridge should be deleted from all records as a separate entity. The community number for Ward Ridge is 120622. The City of Port St. Joe has been participating in the Regular Program since June 15, 1983. The City of Port St. Joe's Community number is 120099. The Regular Program conversion scheduled for Ward Ridge on August 4, 1987, should be suspended

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein—Reinstatement

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87–2275 Filed 10–1–87; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 70885–7202]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to allow full harvest, within conservation constraints, of available Pacific halibut stocks in the northern Pacific Ocean.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in Charge, Law Enforcement, Alaska Region, NMFS, P.O. Box 02–1668, Juneau, AK 99802, telephone 907–586–7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, WA 98105, telephone 206–624–1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (signed at Ottawa Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC , on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. These regulations have been approved by the Secretary of State of the United States. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness and to inform persons subject to the regulations of their restrictions and requirements.

The current IPHC regulations (52 FR 16268, May 4, 1987), are amended by establishing a catch limit of 20,000 pounds per vessel for the 24-hour fishing period commencing noon ADT September 30, 1987, in Regulatory Area 3A and Regulatory Area 3B.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, Jensen v. National Marine Fisheries Service, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: September 28, 1987.

Bill Powell,

Executive Director, National Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900, 16 U.S.C. 773–773k.

2. Section 301.9 is amended by adding paragraph (c) to read as follows:

§ 301.9 Trip limits.

* * * * *

(c) Vessels fishing in Regulatory Area 3A of Regulatory Area 3B during the fishing period commencing September 30, 1987 shall be limited to a maximum catch of 20,000 pounds (9.07 mt) of halibut.

[FR Doc. 87-22766 Filed 9-29-87; 1:04 pm]
BILLING CODE 3510-22-M

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50 CFR Part 654

[Docket No. 70995-7195]

Stone Crab Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment revising the definition of stone crab to conform to the recent taxonomic description of a previously unrecognized species and a hybrid. The recognition of this new species and hybrid does not alter any other aspects of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). The intent of this rule is to broaden the definition of stone crab to recognize that two species and their congeneric hybrid now occupy the management area instead of one species as originally believed, thereby closing a potential avenue for evasion of the regulations.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The stone crab fishery is managed under the FMP its implementing regulations at 50 CFR Part 654. At the time the FMP was prepared, fishery scientists recognized a single species of stone crab, *Menippe mercenaria*, occurring in the Gulf of Mexico and in the area managed under the FMP, i.e., the exclusive economic zone seaward of the west coast of Florida and the Florida Keys. It is the inient of the FMP to manage all stone crabs taken in that management area. Recently, taxonomists described a second species of stone crab, *M. adina*, from the northern and western Gulf and ranging into northwest Florida (Williams, A. B., and D. L. Felder, 1986. Analysis of stone crabs: *Menippe mercenaria* (Say), restricted, and a previously unrecognized speices described (Decapoda: Xanthidae). Proc. Biol. Soc. Wash. 99: 517-543). The two species overlap in the Apalachee Bay region of Florida and hybridize. Consequently, the Gulf stone crab population that is managed under the FMP and described there as a single species is now identified as comprising two species and a hybrid: *Menippe mercenaria; M. adina;* and *M. adina* X *M. mercenaria*. Distinguishing characteristics are coloration, carapace morphometry, and differences in striation patterns and teeth on the claws. The differences are subtle and superficial; therefore, the recognition of this additional species and hybrid does not alter the intent of the FMP to manage all stone crabs found in the management area, the definition of optimum yield, or any of the management measures designed to achieve optimum yield from the fishery.

Accordingly, in order to maintain technical consistency between the intent of the FMP and the text of its implementing regulations, § 654.2 is revised to expand the definition of stone crab to include *Menippe adina* and the hybrid *M. adina* X *M. mercenaria*. This will ensure continued enforcement of all management measures with respect to all stone crabs in the management area, as the FMP intends.

Other Matters

This action is taken under the authority of the FMP and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, has determined that it is unnecessary to provide for prior public comment on this rule or to delay for 30 days its effective date. Prior public comment and delay of the effective date are unnecessary because this final rule merely corrects the definition section's scientific description of the population managed under the FMP to incorporate the latest scientific understanding of the composition of that population; it does not increase the population under management, nor have any effect on any fishing practice.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: September 28, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 654 is amended as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 654 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 654.2, the definition for *Stone Crabs* is revised to read as follows:

§ 654.2 Definitions.

* * * * *

Stone crab means *Menippe mercenaria, M. adina,* or the hybrid, *M. adina* X *M. mercenaria.*

* * * * *

[FR Doc. 87-22765 Filed 10-1-87; 8:45 am]
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VOL
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Proposed Rules

Federal Register
Vol. 52, No. 191
Friday, October 2, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Basic Quality Assurance in Radiation Therapy

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning the medical use of byproduct material to require its medical licensees to implement certain quality assurance steps that will reduce the chance of therapy misadministrations. This proposed action is necessary to provide better patient safety and a basis for enforcement action in cases of therapy misadministration. The amendment is intended to reduce the chance and severity of therapy misadministrations. The proposed regulations would primarily affect hospitals, clinics, and individual physicians. In an advance notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, the NRC is also requesting comments on the need for a comprehensive quality assurance program requirement.

Comments: Comments must be received by December 1, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Copies of the regulatory analysis and the comments received on this rule may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies of the regulatory analysis are available from Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4108.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4108.

SUPPLEMENTARY INFORMATION:

I. Byproduct Material in Medicine

Use for Patient Care

Radioactive materials are used in drugs in the field of nuclear medicine. Drugs labeled with radioisotopes are known as radiopharmaceuticals. In diagnostic nuclear medicine, patients receive these materials by injection, inhalation, or oral administration. Physicians use radiation detection equipment to visualize the distribution of a radioactive drug within the patient. Using this technology, it is possible to locate tumors, assess organ function, or monitor the effectiveness of a treatment. An estimated 10 million diagnostic nuclear medicine procedures are performed in this country annually. In therapeutic nuclear medicine, larger quantities of radiopharmaceuticals are administered to treat hyperactive thyroid conditions and certain forms of cancer. An estimated 30,000 procedures are performed each year.

Sealed radioactive sources that produce high radiation fields are used in radiation therapy primarily to treat cancer. A radioactive source in a teletherapy machine can be adjusted to direct a radiation beam to the part of the patient's body to be treated. An estimated 100,000 patients receive cobalt-60 teletherapy treatments from NRC and Agreement State licensees each year. Smaller sealed sources with less radioactivity are designed to be implanted directly into a tumor area or applied on the surface of an area to be treated. This procedure is known as brachytherapy. Licensees perform approximately 50,000 brachytherapy treatments annually.

Sealed radioactive sources can also be used in machines that are used for diagnostic purposes. The source provides a beam of radiation that is projected through the patient. A device on the other side of the patient detects the amount or spatial distribution of radiation that goes through the patient. This can provide information about tissues within the patient. This is a relatively new development in the field of medicine and the NRC has no estimate of the number of these diagnostic procedures performed annually.

State and Federal Regulation

Many states, known as Agreement States, have assumed responsibility for regulating certain radioactive materials within their respective borders by agreement with the NRC. (This kind of agreement is authorized by the Atomic Energy Act.) They issue licenses for the medical use of byproduct material, and currently regulate about 5,000 licensees. In non-Agreement States, the NRC has licensed 2,200 medical institutions (mostly hospitals and clinics) and 300 physicians in private practice. These licenses authorize certain diagnostic and therapeutic uses of radioactive materials.

II. NRC's Regulatory Program

NRC's Policy Regarding the Medical Use of Byproduct Material

In a policy statement published February 9, 1979 (44 FR 8242), the NRC stated:

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.
2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.
3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate the medical use of byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

NRC's Responsibilities in the Medical Use of Byproduct Material

The NRC draws a line between the unavoidable risks attendant to purposefully prescribed and properly performed clinical procedures and the unacceptable risks of improper or careless use of byproduct material in medicine. The NRC is obliged, as part of its public health and safety charge, to establish and enforce regulations that protect the public from the latter.

Reports of Misadministrations in Radiation Therapy

The NRC has published a study of the twenty-seven therapy misadministrations that were reported over the period November 1980 through July 1984.[1] The following NRC analysis of these events provides the basis for determining that a need exists for this rulemaking.

The specific causes of the misadministrations, detailed in Table 1, are, of course, related to the treatment modality. Nonetheless, three basic themes run through the reports: inadequate training, inattention to detail, and lack of redundancy.

Table 1.—Therapy misadministrations reported to NRC from November 1980 to July 1984

Teletherapy

Prescription
- Total daily dose was delivered from each port (2) *
- Oral and written prescriptions were different (1)
- Boost dose of 500 rad/3 da was interpreted as 500 rad x 3 da (1)
- Proper body side was not clear (1)

Treatment planning
- Tumor depth was incorrectly measured (1)
- Tumor depth was incorrectly recorded (1)
- Dosimetrist used wrong computer program (1)
- Dosimetry tables for wrong unit were used (1)
- Arithmetic mistakes were made (3)

Records
- Arithmetic mistakes were made (1)
- Poor handwriting of numerals caused misunderstanding (1)

Physical measurements
- Wedge factors were measured incorrectly (1–53 patients affected)

Application
- Field blocks were not used (1)

Brachytherapy

Treatment planning
- Dose rate was much higher than first estimated (1)

Application
- Wrong sources were loaded in applicator (2)
- Source fell out of applicator (1)
- Source was improperly seated in applicator (1)

Radiopharmaceutical Therapy

- Wrong Radiopharmaceutical was administered (2)
- Assay date on unit dosage was not read (3)
- Patient was improperly identified (1)

Improved training of medical personnel who handle and administer byproduct material can reduce the potential for error. Thorough training should also clearly impress on each individual involved in the medical use of byproduct material that a clear communication of concepts and quantities as well as systematic checks for revealing mistakes early in the process are both essential for the delivery of quality care. All information integral to the process, whether specific to the patient or to the clinic, should be carefully examined for clarity, applicability, and correctness. Each individual involved in the process should be strongly encouraged to ask for clarification if there is any unclear or unexpected step or if an expected step is missing.

Inattention to detail is often the medium in which a misadministration event germinates. NRC recognizes that this problem is not specific to the medical use of byproduct material. Computerized radiation therapy treatment planning may reduce the chance of mistakes in sealed source treatment planning, and "record and verify" systems that check teletherapy unit orientations and settings may reduce the chance of mistakes in teletherapy administration. But even these systems must ultimately rely on quantities that are initially measured, recorded, and entered into memory by individuals.

Lack of redundancy means that there exist no independent mechanism for detecting errors. An independent verification requires examination by a second individual of each data entry, whether a physical measurement or a number copied from a table of values, as well as a check of arithmetic operations for correctness. Redundancy requires that two separate systems produce the same result. For purposes of planning radiation therapy, the best method of early detection of mistakes may be a simple independent check. Independent verification may also need to be incorporated into procedures for measuring radiation parameters, using those measurements for treatment planning, and applying radiation to patients. In radiation therapy or any other endeavor, an independent outside auditor can detect mistakes in both process design and process application as well as cite where a change in the process might reduce the chance for future error.

These observations have led the NRC to some general conclusions regarding quality assurance.

The radiation therapy process should be planned with the realization that individuals are likely to make mistakes. Some simple aids may include using tables and graphs that are clearly titled and easy to read, and use of a uniform written prescription format. NRC inspections have revealed that about ten percent of teletherapy unit calibrations and sopt-checks are incomplete. Checklists could be used to assure completeness.

Independent verification must be made integral to the design of the radiation therapy process. All entries and calculations in a treatment plan should be checked by an individual who did not construct the treatment plan. Each patient's chart should be reviewed weekly to check for accumulated dose and implementation of prescription changes. A quality assurance program for the teletherapy unit should include a periodic check of the teletherapy unit output and an occasional detailed examination of the complete teletherapy process, including physical measurements, by an outside expert with an eye towards systematic errors and system improvements.

A program that requires a physical measurement of the dose or amount of radioactivity actually administered to the individual patient would provide assurance that the given dose is the same as the prescribed dose. Such measurements are now done for radiopharmaceutical therapy and occasionally for some teletherapy cases, but because of expense or unavailability of equipment are not commonplace in sealed source therapy.

Reports of Diagnostic Misadministrations That Result in Doses in the Therapy Range

The NRC has also published a report on misadministrations of diagnostic dosages of iodine-131 that lead to doses in the therapy range.[2] The report was a

[1] For a copy of this report, write to Kathleen M. Black, Office for Analysis and Evaluation of Operational Data, Nuclear Regulatory Commission, Washington, DC 20555. Ask for report AEOD/C505.

* Numbers in parentheses indicate number of events of the type described.

[2] For a single copy, submit a request for report number AEOD/N701 to the address in footnote 1.

review of fourteen recent misadministration events in which patients were administered one to ten millicuries of iodine-131 with a resulting thyroid dose of several thousand rads. Many of the events demonstrated that the physician authorized user failed to review the medical history of the referred patient to determine the suitability of a particular clinical procedure. In many cases the referring physician, who is not a nuclear medicine expert, and the nuclear medicine technologist, who is not a medical expert, determine which radiopharmaceutical should be administered. Furthermore, in some events technologists unfamiliar with the clinical procedure prescribed by the authorized user mistakenly administered a dosage that was not requested. It is apparent, therefore, that whenever radiopharmaceuticals capable of producing therapy doses are used, clear nomenclature, independent verification, and adequate training are essential.

Earlier NRC Efforts

This is not the first time the NRC has examined the matter of quality assurance in the medical use of byproduct material. In 1979 the NRC issued some basic quality assurance requirements for teletherapy (see 44 FR 1722, published January 8, 1979). This rulemaking was precipitated by the inaction of a single licensee. The output of a teletherapy unit was incorrectly calculated and the licensee made no physical measurements to determine whether the calculation was correct. This inaction resulted in cobalt-60 teletherapy being misadministered to 400 patients. The 1979 rule addressed the circumstances surrounding that event but did not critically examine the entire radiation therapy process.

Voluntary Initiatives

The Commission is aware of voluntary initiatives to improve quality assurance. A notable example is the Patterns of Care study managed by the American College of Radiology. In addition to comparing prescriptions, methods of applying radiation, and survival rates for certain diseases at various therapy facilities across the nation, methods of calculating and measuring applied dose rates are examined for accuracy. Such an examination can detect whatever procedural flaws may be present as well as determine the precision and accuracy of day-to-day service.

It is NRC's position that voluntary programs alone may not provide adequate assurance of public health and safety. Serious misadministrations continue to occur. The NRC would be remiss in its responsibilities were it to fail to examine thoroughly all avenues available to reduce unnecessary exposure from licensed material.

Summary

The NRC believes many misadministrations could reasonably be avoided if certain basic quality assurance steps were included in the radiation therapy process.

Other Actions

The NRC recognizes that the medical use of byproduct material is a complex field, and that preparing regulations to reduce the likelihood of misadministrations must be done carefully. However, the NRC cannot allow the complexity of medical use to prevent it from taking regulatory action when patients are harmed by the incorrect application of byproduct material. The NRC has balanced these competing desiderata by preparing two rulemaking actions for contemporary publication.

This Notice of Propose Rulemaking (NRC) will provide the foundation for a basic quality assurance program that addresses some simple sources of error that have come to light under NRC's misadministration reporting program. Elsewhere in this issue of the **Federal Register**, the NRC has published an Advance Notice of Proposed Rulemaking (ANPR) that provides the foundation for a comprehensive quality assurance program requirement that addresses broad areas where error can lead to a misadministration.

The NRC believes this two-pronged approach to the problem of misadministrations provides the best balance between the need to assure public health and safety without inadvertently interfering in the delivery of quality medical care.

III. Discussion of Proposed Regulatory Text

The NRC staff has examined literature on the radiation therapy process and consulted with experts practicing in the field of radiation therapy to discuss these quality assurance steps. The NRC believes that the following steps are basic to the radiation therapy process. The regulations that would require implementation of these steps will provide guidance for improved patient safety and will also provide a basis for NRC enforcement action should these steps not be followed.

Section 35.2 Definitions.

The NRC has added several definitions to the regulations to ensure that the regulatory requirements are clear. The definitions are intended to be similar to those already in use in radiation therapy.

Section 35.39 Ordering, prescribing, and administering certain radiopharmaceuticals.

There have been a number of misadministrations in which an unclear oral prescription by the authorized user resulted in the licensee ordering the wrong radiopharmaceutical. Confusing colloidal and soluble phosphorus-32 is a common mistake. The NRC is particularly concerned with the medical use of iodine-131 because of the high thyroid dose that results when a patient with a normal thyroid is misadministered an iodine-131 dosage intended for a patient whose thyroid has been removed.

These misadministrations appear to be precipitated by unclear instructions. This section would require close participation of the nuclear medicine physician in those cases involving the use of radio-pharmaceuticals that are clearly hazardous to the patient if misadministered.

In drafting this section the Commission considered applying these requirements to all licensees when using any diagnostic radiopharmaceutical. For the following reasons the scope of the section was limited to therapy radiopharmaceuticals and radiopharmaceuticals of iodine.

There is a clear history of misadministration of these two groups of radiopharmaceuticals, and medical experts generally agree that there is clear potential for harm to patients that receive these misadministrations. For the other radiopharmaceuticals identified in 35.100 and 35.200, the record shows that most misadministrations involve either the conventional administration of a radiopharmaceutical to the wrong patient, or the conventional administration of the wrong radiopharmaceutical to the patient (see "NCR Reports on Misadministrations and Unannounced Safety Inspections," Journal of Nuclear Medicine, v27, n7, p1102, July 1986). Neither of these types of misadministration pose a clear hazard to the patient. To misadminister a diagnostic radiopharmaceutical other than iodine in a manner that would pose a hazard to the patient would, in the most likely circumstance, require administration of at least a full day's

inventory of the radiopharmaceutical to the patient.

However, the absence of additional quality assurance requirements for diagnostic radiopharmaceuticals other than iodine should not be interpreted as Commission lack of interest in this matter. The Commission would appreciate public comment on how it might address future diagnostic applications of radioisotopes which, if misadministered, could produce doses in the therapy range.

Section 35.43 Prescriptions and records of medical use for therapy.

The NRC has received one therapy misadministration report in which radiation was administered to a patient who had not been referred for medical use of byproduct material. The NRC believes that a physician with special training and experience is needed to consult with the primary care physician in cases of referral, and make a determination that a clinical procedure that requires radiation dose to the patient is indicated.

When a decision has been made to treat a patient for any malady, whether with radiation, surgery, or drugs, a physician makes a patient chart that includes information about the care provided for the patient. The chart is made for medical and legal reasons. All charts contain the patient's name, the results of laboratory tests and physical examinations, a statement of diagnosis, and a prescription. Charts for teletherapy patients usually indlude: (1) Photographs of the patient's face and the treatment area; (2) the treatment plan (which is comprised of: (a) Diagrams of physical measurements of the patient, portal arrangements used to administer the radiation dose, and devices used to midify the radiation beam, (b) calculations made to determine how long the beam must be applied each day to deliver the prescribed dose, and (c) the number of days radiation is to be administered); (3) a record of each daily application of radiation made at the time of application; and (4) records of any physical measurements of radiation or portal verification films made specifically for the patient. Charts for brachytherapy patients include the same type of information, but the diagrams and calculations refer to implanted radiation sources rather than externally applied radiation beams. Each entry in a chart is dated and signed or initialed.

The NRC considered preparing prescriptive recordkeeping requirements for the application of therapeutic amounts of radiation, but believes that the patient charts and calibration records that licensees make and retain usually contain the information needed to demonstrate that the licensee has implemented a quality assurance program. However, the NRC would appreciate public comment on this matter.

Several therapy misadministrations have been precipitated by unclear prescriptions. In radiation therapy, a different dose is prescribed for each patient, depending on the type and extent of the malady. Therefore, requiring a legible handwritten or typed prescription on the patient's chart appears to be the most efficient way of ensuring clear communication between the prescribing physician and the dosimetrist who makes the calculations to determine how long radiation must be applied to deliver the prescribed dose.

The NRC believes that it is possible that some dosimetrists or technologists may be disinclined to request clarification of instructions and this may lead to misadministrations. Therefore, the NRC would require licensees to specifically instruct workers to request clarification in cases where there may be ambiguity or error.

The NRC is considering prescribing what documentation is needed to demonstrate that an independent check of data transfers and calculations had been made. The NRC has not included such a requirement in the proposed rule, but would appreciate comment on this matter.

Section 35.65 Discrepancies in records and observations.

On occasion licensees have complied with required safety measures, such as performing surveys, yet not taken nitigating or corrective actions that the NRC believes were obviously necessary to assure public health and safety. The purpose of this section is to clearly require licensees to resolve discrepancies in records and observations.

The NRC foresees the possibility of many kinds of discrepancies. The licensee's measurement of the source strength of a brachytherapy source may differ from the manufacturer's reported source strength. A thin patient may present a surface lesion, yet the patient's record may refer to a deep-seated lesion with extensive overlying tissue. A post-mastectomy patient may be referred for a prophylactic treatment with no clear statement prescribing whether the tissue surrounding the site of surgery or the remaining breast tissue is to be treated. The prescription in the chart may not be in accord with the prescription agreed to by the physician, physicist, technologist, and dosimetrist during a treatment planning meeting. Daily tallies of administered dose may not agree with projections made by multiplying the daily dose by the number of treatment days.

If, when faced with an obvious discrepancy, a licensee, physician, physicist, technologist, dosimetrist or other individual fails to take reasonable clarifying, mitigating, or corrective action and the discrepancy results in a misadministration, then a citation will issue under this section.

Section 35.432 Source strength measurements.

The radiation dose rate from a sealed source, which is known as source strength, depends on the amount of radioactivity in the source and the material used to encapsulate it. (See National Council on Radiation Protection and Measurements Report Number 41, "Specification of Gamma-Ray Brachytherapy Sources," Chapter 4.) [3] Manufacturers usually provide source strength information with sources, but the NRC believes that an independent measurement is needed to ensure that the information relates specifically to the source under consideration.

However, the NRC would not require licensees to use these measurements in dose calculations. In some cases, manufacturers are able to provide more accurate measurements of source strength than licensees; the licensee must be free to use the source strength that it believes is the most accurate.

Sections 35.452 and 35.652 Physical measurements of patients.

The NRC knows that does rates depend to some extent on the tissue volume to be treated and its depth within the patient. These parameters may be determined by physical examination or examination of images such as radiographs, or images from computerized tomography, ultrasound, nuclear medicine, or nuclear magnetic resonance. The NRC considered requiring that two individuals independently make the physical measurements of the patient that are needed for dosimetry purposes, and believes that such a requirement may reduce the chance of misadministrations. The NRC would like comment on this matter.

[3] Copies of this report may be purchased by contacting NCRP Publications, P.O. Box 30175, Washington, DC 20014.

Section 35.454 Check of dose calculations, and § 35.654 Checks and measurements of dose.

Dose calculations are made for each teletherapy and brachytherapy patient before radiation is administered to determine how long the source must be used to deliver the prescribed radiation dose to the treatment volume. Several therapy misadministrations have been precipitated by arithmetic mistakes or incorrect assumptions in dose calculations. An independent check will likely uncover many of these mistakes.

Ideally, teletherapy dose calculations should be checked before radiation is administered, and the NRC expects that most licensees already do this. However, a second person may not always be available to check the dose calculations before therapy begins. The NRC believes that requiring the check to be made before 20 percent of the dose has been administered provides a proper balance between patient safety and administrative flexibility for the license.

For most brachytherapy cases, final dose calculations cannot be performed until the sources are implanted in the patient because the exact location of the sources with respect to certain tissues cannot be predetermined. Brachytherapy sources are typically left in place for two to three days. Thus, a 20 percent criterion may be difficult to meet in many cases, because the check would have to be made within hours after the sources are implanted. Thus, the NRC has selected a dose calculation check criterion of 50 percent.

Public comments are invited on the workability of these 20 percent and 50 percent criteria.

There are two usual methods for performing checks of manual dose calculation. Two individuals may independently calculate treatment times and compare results. Alternatively, one individual may make the calculation and then a second individual can examine each entry and arithmetic operation to verify its accuracy.

The NRC considered requiring that licensees perform a manual check of the dose to a single point in the treatment volume predicted by computer-generated dose calculations. However, checks of computer-generated dose calculations pose difficult problems. It is not clear whether nomograms or manual algorithms are available that can be used to check the accuracy of computer-generated dose calculations. Many computer programs that are used contain steps for calculating the effect on the dose caused by tissue density differences, organ and tissue contours, and radiation field contours. The NRC believes that a manual check of a computer calculation with that many physical correction factors may be beyond the reasonably expected means of many licensees, and may adversely affect the delivery of medical care. Therefore, the NRC has only drafted a requirement that a second individual assure that the correct parameters, such as radionuclide, dose, and physical measurements of patients, were used in the computer-generated dose calculation printout to information in the patient's chart, and examining each relevant piece of information on the calculation printout.

The NRC would appreciate comments on the best method for documenting that these checks have been made.

Regarding the concept of "independent check," the NRC would particularly appreciate comments on whether a second individual should begin with only the prescription, independently calculate the dosimetry and treatment plan, and then compare those results with those of the first individual.

In teletherapy, the arithmetic that sums the daily administration of radiation must also be checked. Radiation is usually administered in daily doses over several days or weeks and each dose is recorded in the patient's chart. A weekly check will assure the daily doses have been summed correctly. In contrast, brachytherapy is administered continuously until the prescribed dose has been given; thus, there is no need for a comparable requirement.

One recent teletherapy misadministration occurred in a case in which an unusual treatment configuration of the teletherapy unit, the beam collimators, and the patient was required. Whereas an arithmetic mistake would likely be obvious in a commonly used configuration because certain calculated values for patients usually fall within small ranges, an unexpected treatment time in an uncommon configuration would likely be attributed to the uncommonness of the configuration rather than triggering an examination of calculations for a dosimetry mistake. Therefore, the NRC believes that a physical measurement of the dose rate should be made if the teletherapy unit settings or beam modifying devices used for a patient fall outside the ranges examined during the last set of full calibration measurements.

The NRC considered requiring physical measurements for brachytherapy but believes the methodolgy (comprised of a comparison of calculated and measured dose rates) that is needed to make such measurements has not been fully developed. The NRC also considered requiring that two individuals verify that the correct sources were being implanted. This would clearly add to workers' radiation dose, but it is not clear that this would reduce the number of brachytherapy misadministrations.

The NRC knows that some treatments must be administered within hours after a decision has been made to administer radiation therapy. These cases usually involve compression of the spinal cord or superior vena cava, respiratory distress, brain metastases, or severe vaginal bleeding. In such cases, it may not be possible for the licensee to perform an independent check of calculations.

The NRC believes the prescribing physician is best situated to determine whether the time needed to make normal quality assurance checks might jeopardize the patient's health. This provision is not intended to give licesees a basis for not providing the required quality assurance steps in a timely fashion.

Section 35.632 Full calibration measurements.

In one misadministration event, 53 patients received doses of radiation different from the doses that were prescribed because to mistake was made when measuring the effect of certain bean modifying devices on the teletherapy unit output. The NRC believes the revalidation of the effect of these devices on the output is just as important as the annual full calibration itself.

Section 35.633 Independent check of full calibration measurements.

All teletherapy dose calculations are based on the output of the teletherapy unit, which is measured each year as part of the full calibration. If a mistake were made in that measurement, all dose calculations would be incorrect. Therefore, the NRC believes there should be an independent check of the output that we determined during the full calibration. The check should be made by a teletherapy physicist because that individual has special training and experience in the measurement of therapeutic radiation.

The check should be made using a measuring system other than the system used in the full calibration. This will better assure that any mistake made in the methodolgy or the calibration of dosimetry equipment will not go unnoticed. (The term "measuring system" is used in a broad sense here to

mean not just the dosimetry equipment, but the personnel, records, site-specific methodolgy, and even origin of dosimetry equipment calibration when possible. However, the NRC is not certain that this would be available to all licensees and requests comment on this matter.) The device used to make the output measurement could be one described in § 35.630 "Dosimetry equipment." Alternatively, it could be made using a specialized dosimetry service available by mail. Some organizations supply licensees with precisely calibrated thermoluminescent dosimeters within a device made of "tissue-equivalent" material. The licensee irradiates the device, calculates the given dose, and returns the dosimeters to the organization by mail. By processing the thermoluminescent dosimeters, the organization can measure the given dose and compare that measure to the calculated given dose. This provides assurance that the output has been correctly measured.

IV. Administrative Statements

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3) and (c)(14). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0010.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examine the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies may be obtained from Mr. McElroy (see "FOR FURTHER INFORMATION CONTACT" heading).

Regulatory Flexibility Certification

Based on the information available to date, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The NRC has issued approximately 2,500 medical licenses under 10 CFR Part 35. Of these, approximately 2,200 are held by institutions, and approximately 300 physicians in private practice. Most of the institutional licensees are community hospitals. The size standards adopted by the NRC (50 FR 50241, December 9, 1985) classify a hospital as a small entity if its average gross annual receipts do not exceed $3.5 million, and a private practice physician as a small entity if the physician's annual gross receipts do not exceed $1 million. Under these size standards, some NRC medical licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act.

The number of medical licensees that would fall into the small entity category does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The primary objective of the rule is to require licensees that provide radiation therapy service to implement certain quality assurance steps that will reduce the chance of therapy misadministrations. The NRC believes that most licensees already perform these steps in order to assure the provision of quality medical care. Therefore, there should not be a significant economic impact on these small entities.

The Commission has prepared a preliminary regulatory analysis for this regulation which contains information concerning the anticipated economic effect of this regulation on licensees and presents the basis for the Commission's belief that the regulation will not result in significant additional costs to any licensees. It is available for public inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies are available from Mr. McElroy.

Because of the widely differing conditions under which licensees covered by this proposed regulation operate, the Commission specifically seeks public comment from small entities. Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates: (1) The licensee's size in terms of annual income or revenue, number of employees and, if the licensee is a treatment center, the number of beds and patients treated annually; (2) how the regulation would result in a significant economic burden on the licensee as compared to that on a large licensee; (3) how the regulations could be modified to take into account the licensee's differing needs or capabilities; (4) the benefits that would be gained or the detriments that would be avoided to the licensee, if the regulations were modified as suggested by the Commenter; and (5) how the regulation, as modified, would still adequately protect public health and safety. The Commission is particularly interested in comments on whether individuals with special training and experience (such as treatment technologists, dosimetrists, and radiation therapy physicists) are readily available in the marketplace, either as full-time employees or as a contract service.

Backfit Analysis

The staff has determined that a backfit analysis is not required for this rule because these amendments do not apply to 10 CFR Part 50 licensees.

V. List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health devices, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

VI. Text of Proposed Regulations

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1954, as amended, and 5 U.S.C. 553 the NRC is proposing to adopt the following amendments to 10 CFR Part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31(a), 35.39, 35.43, 35.49, 35.50(a)–(d), 35.51(a)–(c), 35.53 (a) and (b), 35.59 (a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70(a)–(f), 35.75, 35.80(a)–(e), 35.90, 35.92(a), 35.120, 35.200(b), 35.204 (a) and (b), 35.205, 35.220, 35.302, 35.310(a), 35.315, 35.320, 35.400, 35.404(a) 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.432, 35.454, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632(a)–(f), 35 633, 35.634(a)–(i), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.654, 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b., 68 Stat. 948 as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.33(a)–(d), 35.36(b),

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35.39, 35.43 (b) and (d), 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(j), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In Subpart A—General Information, § 35.2, the following terms are added in alphabetical order:

§ 35.2 Definitions.

* * * * *

"Beam modifying devices" means items such as trays, wedges, compensators, boluses, and blocks that are used to change the radiation dose profile within the patient.

* * * * *

"Computer-generated dose calculation" means a dose calculation that has been made by a computer program with no human action necessary other than the input of patient data, selection of a certain computer program, and the instruction to the computer to begin calculation.

* * * * *

"Manual dose calculation" means a calculation made by an individual using patient data, tabulated data or graphs, nomograms, and a calculator that was not specifically designed or programmed for radiation therapy calculations.

* * * * *

"Patient chart" means a record of the diagnosis and radiation treatment applied to a patient. It may be part of the hospital admission chart prepared for each patient and kept with the patient, or a chart prepared primarily as a result of radiation treatment and kept in the clinic.

* * * * *

"Prescription" means the written instruction to make medical use of byproduct material for the benefit of a specific patient.

* * * * *

"Source strength" means the exposure rate at a specified distance from a source (usually expressed as roentgens per hour at one meter), the amount of radioactivity in source (usually expressed as millicuries), or the amount of a different radionuclide that produces the same dose rate (usually expressed as milligrams of radium equivalent).

* * * * *

3. In Subpart B—General Administrative Requirements, § 35.39 is added to read as follows:

§ 35.39 Ordering, prescribing, and administering certain radiopharmaceuticals.

(a) A license may not order any radiopharmaceutical of iodine for diagnosis or therapy or any radiopharmaceutical for therapy without the approval of the authorized user.

(b) A physician may not prescribe administration of a radiopharmaceutical of iodine for diagnosis or therapy or any radiopharmaceutical for therapy without personally examining the patient and the patient's chart, and consulting with the referring physician if reasonably available. Prescriptions for these byproduct materials must be in writing, and must include the patient's name, the radiopharmaceutical, dosage, and route of administration.

(c) A licensee may not administer a radiopharmaceutical of iodine for diagnosis or therapy or any radiopharmaceutical for therapy without comparing the radiopharmaceutical label and dosage on hand with the physician's prescription.

4. In Subpart B—General Administrative Requirements, § 35.43 is added to read as follows:

§ 35.43 Prescriptions, records, and checks of medical use for therapy.

(a) The authorized user or a physician under supervision of the authorized user shall ensure that, if there is a primary care physician, the patient has been referred for a therapeutic clinical procedure that requires the medical use of byproduct material.

(b) Before beginning a patient's treatment, the licensee shall verify that the authorized user or a physician working under supervision of the authorized user has personally made, dated, and signed a written prescription in the patient's chart that identifies the body part to be treated. Any change in the prescription must also be made in writing in the patient's chart, and must be dated and signed.

(1) For radiopharmaceutical therapy, the prescription must also identify the radiopharmaceutical, the amount of activity to be administered, and the route of administration.

(2) For brachytherapy, the prescription must also identify the sources of radiation and the total tumor dose.

(3) For teletherapy, the prescription must also identify the teletherapy unit to be used, the prescribed dose, and the treatment plan.

(c) Prescriptions and other records made regarding the medical use of byproduct material must be legible and unambiguous.

(d) The licensee shall instruct all workers involved in the radiation therapy process orally and in writing to request clarification from the prescribing physician if any element of a prescription or other record is unclear, ambiguous, or apparently erroneous.

5. In Subpart C—General Technical Requirements, § 35.65 is added to read as follows:

§ 35.65 Discrepancies in records and observations.

A licensee may not use byproduct material for medical use on a patient if there is a discrepancy in records, observations, or physical measurements that may result in a misadministration. A licensee may resume use after resolving the discrepancy.

6. In Subpart F—Radiopharmaceuticals for Therapy, § 35.302 is added to read as follows:

§ 35.302 Administration of radiopharmaceutical dosages.

A licensee shall verify that the prescribed radiopharmaceutical is being administered by comparing the written prescription and the container label.

7. In Subpart G—Sources for Brachytherapy, § 35.432 is added to read as follows:

§ 35.432 Source strength measurements.

(a) A licensee shall measure the source strength of sources before first use and annually thereafter. Sources that are in storage and not being used do not have to be measured; they must be measured before they are placed in service again. For sources manufactured and supplied in lots of nominally identical sources, a sample from each lot may be selected rather than measuring each source.

(b) When performing dose calculations, a licensee may use the source strength reported by the manufacturer rather than using the source strength measured by the licensee.

8. In Subpart G—Sources for Brachytherapy, § 35.452 is added to read as follows:

§ 35.452 Physical measurements of patient. [Reserved]

9. In Subpart G—Sources for Brachytherapy, § 35.454 is added to read as follows:

§ 35.454 Check of dose calculations.

A licensee shall check dose calculations for accuracy before 50 percent of the prescribed dose has been administered. The check must provide assurance that the final treatment plan will provide the dose prescribed in the patient's chart.

(a) Manual dose calculations must be checked for accuracy by an individual who did not make the calculations.

(b) Computer-generated dose calculations must be checked by examining the calculation printout to assure that the correct parameters and parameter values were used in the calculation. The check must be made by an individual who did not enter the patient data or prescription into the computer.

(c) If the prescribing physician makes a determination to delay treatment in order to perform the checks of dose calculations required by this section would jeopardize the patient's health because of the emergent nature of the patient's condition, the licensee may provide the prescribed treatment without performing the checks; the prescribing physician shall make a notation of this determination on the patient's chart, and the licensee shall perform the checks as soon as practicable.

10. In Subpart I—Teletherapy, § 35.632, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 35.632 Full calibration measurements.

* * * * *

(b) To satisfy the requirement of paragraph (a) of this section, full calibration measurements must include determination of:

(1) The output within ±3 percent for the range of field sizes, range of distances, and selection of beam modifying devices (for example: trays, wedges, and the stock material that is used for making compensators and boluses) used for medical use;

* * * * *

11. In Subpart I—Teletherapy, § 35.633 is added to read as follows:

§ 35.633 Independent check of full calibration measurements.

(a) A licensee shall have an independent check of the output determined within one month after completion of the full calibration required by § 35.632.

(b) The independent check must be performed by a teletherapy physicist who did not perform the full calibration and made using a dosimetry system other than the one used to measure the output during the full calibration. The teletherapy physicist does not have to be listed as a teletherapy physicist on an NRC or Agreement State license. The dosimetry system may be one described in § 35.360, or it may be another system that provides a similar level of accuracy and precision.

12. In Subpart I—Teletherapy, § 35.652 is added to read as follows:

§ 35.652 Physical measurements of patient. [Reserved]

13. In Subpart I—Teletherapy, § 35.654 is added to read as follows:

35.354 Checks of dose calculations and measurements of dose.

A licensee shall check dose calculations for accuracy before 20 percent of the prescribed dose has been administered. The check must provide assurance that the final treatment plan will provide the dose prescribed in the patient's chart.

(a) Manual dose calculations must be checked for accuracy by an individual who did not make the calculations.

(b) Computer-generated dose calculations must be checked by examining the calculation printout to assure that the correct parameters and parameter values were used in the calculation. The check must be made by an individual who did not enter the patient data or prescription into the computer.

(c) A licensee shall make a weekly accuracy check of daily arithmetic calculations that have been made in patient's charts.

(d) If the patient's dose calculations include parameters or parameter values that fall outside the range of those measured in calibrating the teletherapy unit, the licensee shall make a physical measurement of the dose rate to be administered to the patient. This measurement must be made before 20 percent of the prescribed dose has been administered.

(e) If the prescribing physician makes a determination that to delay treatment in order to perform the checks of dose calculations or physical measurements required by this section would jeopardize the patient's health because of the emergent nature of the patient's condition, the licensee may provide the prescribed treatment without performing the checks of dose calculations or physical measurement; the prescribing physician shall make a notation of this determination on the patient's chart, and the licensee shall perform the checks of calculations or physical measurements as soon as practicable.

Dated at Washington, DC, this 29th day of September, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-22826 Filed 10-1-87; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 35

Comprehensive Quality Assurance in Medical Use and a Standard of Care

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amendment to its regulations that apply to the use of byproduct material for radiation therapy and diagnostic uses involving large radiation dosages. In addition to the current requirements for quality assurance, the contemplated amendments would require licensees that offer teletherapy or brachytherapy services to implement a comprehensive quality assurance program to reduce the chance of misadministrations. The NRC requests public comment on the extent to which additional radiopharmaceutical quality assurance requirements are needed, and invites advice and recommendations on several questions that will have to be addressed in the rulemaking process. The NRC is also requesting comments on some basic quality assurance program requirements set out in a proposed rule published elsewhere in this issue.

DATE: Submit comments by 12/31/87. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 7:30 am and 4:15 pm on Federal workdays.

Examine copies of comments received at: The NRC Public Document Room 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4108.

SUPPLEMENTARY INFORMATION:

Therapy Use of Byproduct Material

Teletherapy is the application of a beam of radiation emanating from a cobalt-60 source to a patient for a therapeutic purpose, usually curative, prophylactic, or palliative cancer therapy. (High energy x-ray machines

are also used for the same purposes.) As an example, a treatment might be comprised of daily treatments of 200 rads to the tumor volume for five weeks, yielding a total tumor dose of 5000 rads.

Brachytherapy is the insertion of small sealed sources such as cesium-137, iridium-192, gold-198, or iodine-125 into the tumor volume for curative or prophylactic cancer therapy. As an example, a treatment might require insertion of 50 millicuries for 48 to 72 hours, resulting in a tumor dose of 5000 rads.

Radiopharmaceutical therapy is the administration of a radioactive drug for therapeutic purposes. The most common clinical proecedure involves the oral administration of liquid or gelatin-capsuled iodine-131 as sodium iodide. For hyperthyroidism, 5 to 30 millicuries might be administered; for thyroid cancer, 70 to 200 millicuries might be administered.

Most diagnostic uses result in whole body doses of about 0.1 rem and target organ doses of about 2.0 rem. Occasionally, however, as much as 5 millicuries of iodine-131 is administered as a diagnostic dosage for patients who have been treated for thyroid cancer. If this dosage were mistakenly administered to a patient who has no thyroid disease, the thyroid dose would be several thousand rads.

NRC's Policy Regarding the Medical Use of Byproduct Material

In a policy statement published February 9, 1979 (44 FR 8242), the NRC stated:

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.
2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.
3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate the medical use of byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

NRC's Responsibilities in the Medical Use of Byproduct Material

The NRC draws a lien between the unavoidable risks attendant to purposefully prescribed and properly performed clinical procedures and the unacceptable risks of improper or careless use of byproduct material in medicine. The NRC is obliged, as part of its public health and safety charge, to establish and enforce regulations that protect the public from the latter.

Reports of Misadministrations in Radiation Therapy

The NRC has published a study of the twenty-seven therapy misadministrations that were reported over the period November 1980 through July 1984.[1] The following NRC analysis for these events provides the basis for determining that a need exists for this rulemaking.

The specific causes of the misadministrations, detailed in Table 1, are, of course, related to the treatment modality. Nonetheless, three basic themes run through the reports: inadequate training, inattention to detail, and lack of redundancy.

Table 1.—Therapy Misadministrations Reported to NRC From November 1980 to July 1984

Teletherapy

Prescription
- Total daily dose was delivered from each port (2)[1]
- Oral and written prescriptions were different (1)
- Boost dose of 500 rad/3 da was interpreted as 500 rad X 3 da (1)
- Proper body side was not clear (1)

Treatment planning
- Tumor depth was incorrectly measured (1)
- Tumor depth was incorrectly recorded (1)
- Dosimetrist used wrong computer program (1)
- Dosimetry tables for wrong unit were used (1)
- Arithmetic mistakes were made (3)

Records
- Arithmetic mistakes were made (1)
- Poor handwriting of numerals caused misunderstanding (1)

Physical measurements
- Wedge factors were measured incorrectly (1–53 patients affected)

Application
- Field blocks were not used (1)

Brachytherapy

Treatment planning
- Dose rate was much higher than first estimated (1)

Application
- Wrong sources were loaded in applicator (2)
- Source fell out of applicator (1)
- Source was improperly seated in applicator (1)

Radiopharmaceutical Therapy

- Wrong radiopharmaceutical was administered (2)
- Assay date on unit dosage was not read (3)
- Patient was improperly identified (1)

[1] Numbers in parentheses indicate number of events of the type described.

Improved training of medical personnel who handled and administer byproduct material can reduce the potential for error. Thorough training should also clearly impress on each individual involved in the medical use of byproduct material that a clear communication of concepts and quantities as well as systematic checks for revealing mistakes early in the process are both essential for the delivery of quality care. All information integral to the process, whether specific to the patient or to the clinic, should be carefully examined for clarity, applicability, and correctness. Each individual involved in the process should be strongly encouraged to ask for clarification if there is any unclear or unexpected step or if an expected step is missing.

Inattention to detail is often the medium in which a misadministration event germinates. NRC recognizes that this problem is not specific to the medial use of byproduct material. Computerized radiation therapy treatment planning may reduce the chance of mistakes in sealed source treatment planning, and "record and verify" systems that check teletherapy unit orientations and settings may reduce the chance of mistakes in teletherapy administration. But even these systems must ultimately rely on quantities that are initially measured, recorded, and entered into memory by individuals.

[1] For a copy of this report, write to Kathleen M. Black, Office for analysis and Evaluation of Operational Data, Nuclear Regulatory Commission, Washington, DC 20555. Ask for report AEOD/C505.

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Lack of redundancy means that there exists no independent mechanism for detecting errors. An independent verification requires examination by a second individual of each data entry, whether a physical measurement or a number copied from a table of values, as well as a check of arithmetic operations for correctness. Redundancy requires that two separate systems produce the same result. For purposes of planning radiation therapy, the best method of early detection of mistakes may be a simple independent check. Independent verification may also need to be incorporated into procedures for measuring radiation parameters, using those measurements for treatment planning, and applying radiation to patients. In radiation therapy or any other endeavor, an independent outside auditor can detect mistakes in both process design and process application as well as cite areas where a change in the process might reduce the chance for future error.

These observations have led the NRC to some general conclusions regarding quality assurance.

The radiation therapy process should be planned with the realization that individuals are likely to make mistakes. Some simple aids may include using tables and graphs that are clearly titled and easy to read, and use of a uniform written prescription format. NRC inspections have revealed that about ten percent of teletherapy unit calibrations and spot-chesks are incomplete. Checklists could be used to assure completeness.

Independent verification must be made integral to the design of the radiation therapy process. All entries and calculations in a treatment plan should be checked by an individual who did not construct the treatment plan. Each patient's chart should be reviewed weekly to check for accumulated dose and implementation of prescription changes. A quality assurance program for the teletherapy unit should include a periodic check of the teletherapy unit output and an occasional detailed examination of the complete teletherapy process, including physical measurements, by an outside expert with an eye towards systematic errors and system improvements.

A program that requiries a physical measurement of the dose or amount of radioactivity actually administered to the individual patient would provide assurance that the given dose is the same as the prescribed dose. Such measurments are now done for radiopharmaceutical therapy and occasionally for some teletherapy cases, but because of expense or unavailability of equipment are not commonplace in sealed source therapy.

Reports of Diagnostic Misadministrations That Result in Doses in the Therapy Range

The NRC has also published a report on misadministrations of diagnostic dosages of iodine-131 that lead to doses in the therapy range.[2] The report was a review of fourteen recent misadministration events in which patients were administered one to ten millicuries of iodine-131 with a resulting thyroid dose of several thousand rads. Many of the events demonstrated that the physician authorized user failed to review the medical history of the referrred patient to determine the suitability of a particular clinical procedure. In many cases the referring physician, who is not a nuclear medicine expert, and the nuclear medicine technologist, who is not a medical expert, determine which radiopharmaceutical should be administered. Furthermore, in some events technologists unfamiliar with the clinical procedure prescribed by the authorized user mistakenly administered a dosage that was not requested. It is apparent, therefore, that whenever radiopharmaceuticals capable of producing therapy doses are used, clear nomenclature, independent verification, and adequate training are essential.

Earlier NRC Efforts

This is not the first time the NRC has examined the matter of quality assurance in the medical use of byproduct material. In 1979 the NRC issued some basic quality assurance requirements for teletherapy (see 10 CFR 35.632 and 10 CFR 35.634). This rulemaking was precipitated by the inaction of a single licensee. The output of a teletherapy unit was incorrectly calculated and the licensee made no physical measurements to determine whether the calculation was correct. This inaction resulted in cobalt-60 teletherapy being misadministered to 400 patients. The 1979 rule addressed the circumstances surrounding that event but did not critically examine the entire radiation therapy process.

Voluntary initiatives

The Commission is aware of voluntary initiatives to improve quality assurance. A notable example is the Patterns of Care study managed by the American College of Radiology. In addition to comparing prescriptions, methods of applying radiation, and survival rates for certain diseases at various therapy facilities across the nation, methods of calculating and measuring applied dose rates are examined for accuracy. Such an examination can detect whatever procedural flaws may be present as well as determine the precision and accuracy of day-to-day service.

It is NRC's position that voluntary programs alone may not provide adequate assurance of public health and safety. Serious misadministrations continue to occur. The NRC would be remiss in its responsibilities were it to fail to thoughly examine all avenues available to reduce unnecessary exposure from licensed material.

Summary

The NRC believes many misadministrations could reasonably be avoided if certain quality assurance steps were included in the radiation therapy process.

Other Actions

The NRC recognizes that the medical use of byproduct material is a complex field, and that preparing regulations to reduce the likelihood of misadministrations must be done carefully. However, the NRC cannot allow the complexity of medical use to prevent it from taking regulatory action when patients are harmed by the incorrect application of byproduct material. The NRC has balanced these competing desiderata by preparing two rulemaking actions for contemporary publication.

This Advance Notice of Proposed Rulemaking (ANPR) will provide the foundation for a comprehensive quality assurance program requirement that will address each source of error that can lead to a misadministration. The NRC elected to prepare the ANPR because of the complexity of medical use. Elsewhere in this issue of the **Federal Register**, the NRC has published a Notice of Proposed Rulemaking (NPR) that provides the foundation for a basic quality assurance program that addresses some simple sources of error that have come to light under NRC's misadministration reporting program.

The NRC believes this two-pronged approach to the problem of misadministrations provides the best balance between the need to assure public health and safety without inadvertently interfering in the delivery of quality medical care.

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[2] For a single copy, submit a request for report number AEOD/N701 to the address in footnote 1.

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Effect on the Agreement States Program

Many States, known as Agreement States, have assumed responsibility for regulating certain radioactive materials within their respective borders by agreement with the NRC. (This kind of agreement is authorized by the Atomic Energy Act.) They issue licenses for the use of byproduct material, and currently regulate about 5,000 medical licensees. Because the NRC will request the Agreement States, as a matter of compatibility, to implement regulations equivalent to those that it implements on this matter, state regulatory agencies are asked to comment.

Request for Comments

The NRC has prepared the following questions to elicit comments on methods of preventing misadministrations. Comments need not be confined to these questions alone, discussion of other related topics or alternatives is welcome if the commenter believes this will help to resolve issues related to this rulemaking.

Quality Assurance

General

The following questions apply to the provision of all types of medical use:

1. How can the Commission most effectively implement requirements for comprehensive quality assurance? The Commission has the authority to adopt existing national standards. The Commission, in concert with medical experts, could identify and adopt by rulemaking the key elements in a quality assurance program. The Commission could impose a performance requirement under which licensees would be required to implement a quality assurance program that would provide absolute assurance that there would be no misadministrations. What other mechanisms should be considered?

2. Should the definition of misadministration in 10 CFR 35.2 be changed? Is it clear and complete? Is the definition sufficiently broad to include all approrpiate activities? Is it so broad as to include inappropriate activities? Is the term "misadministration" appropriately descriptive of the activities? Should some more descriptive term be used?

3. The NRC knows of one instance in which radiation was administered to a patient without a request from the primary care physician. Should the NRC require that the authorized user actively consult with the primary care physician before prescribing radiation or deciding that radiation is not needed? How can the chance of miscommunication be reduced? What improvements can be made in terminology, prescription format, and orders?

4. What methods should be considered to provide assurance that the patient to whom radiation is administered is the patient for whom radiation was intended?

5. What current standards exist to ensure the adequacy and uniformity of training of all individuals who participate in the administration of radiation to patients? Should NRC require certification or prescribe specific training criteria for technologists, dosimetrists, and others who participate in the application of radiation to patients, or should NRC have a performance requirement that requires licensees to provide each individual whatever training is necessary? In either case, how can NRC ensure the adequacy and consistency of this training throughout the radiation therapy community? Should the NRC require licensees to administer written examinations to workers and evaluate them before allowing the workers to participate in radiation therapy? Should periodic retraining and re-examination be required?

6. What other regulatory, certifying, accrediting, or inspecting organizations examine medical quality assurance programs? Describe the purpose, objectives, and rigor of these examinations.

7. Should the NRC require physicians to provide patients, upon request, a record of the radiation dose prescribed and/or given? What information should or should not be provided?

8. Apart from increased NRC oversight, what changes in industry practice or standards could improve the quality of performance and minimize human error?

Teletherapy and Brachytherapy

The following questions apply to the provision of teletherapy and brachytherapy services.

1. What performance criteria could be adopted to assure appropriate care, minimize the chance of human error, and mitigate the consequences of potential error?

2. To assure adequacy of continued experience, some organizations recommend that certain surgical or test-tube procedures only be performed if the practitioner has a sufficient case-load to assure that dexterity and familiarity with the procedure are retained. Should NRC require that licensees have a certain minimum case-load to assure that their employees retain their expertise in performing radiation therapy clinical and quality assurance procedures?

3. What fraction of licensees already have a quality assurance program? What are its key elements?

4. The Regulatory Flexibility Act requires that regulatory agencies examine the cost of compliance with regulations. How much does a quality assurance program cost per patient or per year? What fraction of staff time, including physicians, physicists, dosimetrists, technologists, and nurses, is currently budgeted for quality assurance work?

5. Are there complete model quality assurance programs already available that address every step of the radiation therapy process, or will model programs have to be developed? Should physical measurements, redundant calculations, or both be required to assure that the dose given is the same as the dose prescribed? What other areas are, or should be, covered in a complete quality assurance program?

6. Are the staff and equipment that are needed to implement a complete quality assurance program available in the marketplace, or would new training programs and equipment development be needed?

7. Computers are used in radiation therapy to calculate dose distributions and to control the operation of equipment. How could quality assurance of software accuracy and validity be improved? Should licensees be required to verify them? How can user skill and knowledge of the inherent assumptions and limitations of a computer program be assured? Should additional quality assurance requirements be developed to ensure that users understand the algorithms on which the programs are based?

8. What additional methods are available for reducing the frequency or impact of human error?

Radiopharmaceutical Therapy

The NRC requires that licensees use only certain radiopharmaceuticals for specified therapy clinical procedures, measure the radioactivity in radiopharmaceutical dosages before administration, and have a measurement quality assurance program for the dose calibrator used to make that measurement. These requirements appear to encompass the steps in a radiopharmaceutical therapy physical quality assurance program. However, the NRC invites public comment on this position.

There have been cases in which, due to procedural failure, a radiopharmaceutical other than that

intended has been ordered and administered. Many of these cases began with miscommunication between the referring physician and the licensee. Some began with miscommunication between the physician's authorized user and the nuclear medicine technologist. The NRC expects that all licensees have procedural requirements for clear statements of prescription and verification before administration of any pharmaceutical. The NRC would appreciate suggestions on methods to assure that the clinical procedure (including radiopharmaceutical, dosage, and route of administration) intended by the authorized user is prescribed, and that the prescribed clinical procedure is the clinical procedure that is performed. The NRC has observed several cases of miscommunication of the referring physician's request. What improvements can be made to minimize such errors? Are there special needs regarding patient identification in radiopharmaceutical therapy that go beyond the information regarding patient identification that was requested in question 4 of the *General* subsection?

Standards of Care

The following questions apply to the medical use of byproduct material.

1. Is there a clear, generally accepted standard of care that the NRC can adopt? If yes, please describe it. If not, please describe a standard that NRC could adopt. Is a standard needed if NRC has comprehensive prescriptive requirements?

2. What effect would such a standard or comprehensive, prescriptive requirements have on provisions of radiation therapy care?

3. What kinds of penalties should be imposed on licensees, their employees, or both, if the standard or the comprehensive, prescriptive requirements are not met? Should penalties be imposed on employees? Should NRC's Enforcement Policy (see 10 CFR Part 2, Appendix C) be changed, and if so, how?

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

The authority citation for this document is:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Dated at Washington, DC, this 29th day of September, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-22827 Filed 10-1-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 29, 30, and 34

[Docket No. 87-10]

Adjustable-Rate Mortgages, Real Estate Lending, Due-on-Sale Clauses

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency is publishing for comment amendments to its real estate lending regulations that would consolidate and simplify the Office's rules governing real estate lending by national banks. In particular, important revisions are being proposed for the OCC's adjustable-rate mortgage (ARM) regulation (12 CFR Part 29). This proposed rule would implement recommendations of the Federal Financial Institutions Examination Council to achieve greater uniformity among the regulations of the several depository institution regulatory agencies. The current disclosure provision (12 CFR 29.7) would be rescinded. However, national banks will continue to be subject to the disclosure requirements contained in the Federal Reserve Board's Truth in Lending regulation. In addition, the authority of national banks to deal in ARMs would be broadened to ease the regulatory burden of lenders and eliminate regulatory impediments to the secondary market for ARMs. Certain revisions would be made for greater clarity, and obsolete or unnecessary provisions would be eliminated. Finally, obsolete portions of 12 CFR Part 30, dealing with due-on-sale clauses, would be rescinded and the remaining sections of Part 30 as well as the revised ARM regulation would be transferred to Part 34. This would being all of the Office's substantive real estate regulations together in one place.

DATE: Comments must be received on or before November 2, 1987.

ADDRESSES: Comments should be sent to Docket No. 87-10, Communications Division, Office of the Comptroller of the Currency, 5th Floor, 490 L'Enfant Plaza East SW., Washington, DC 20219. Attention: Lynnette Carter. Comments will be available for inspection and photocopying at the same location.

Pursuant to the Paperwork Reduction Act of 1980, the collection of information requirements in the proposed rule have been submitted to the Office of Management and Budget (OMB). Comments specifically addressing those requirements should be directed to the Comptroller's Office at the above address and should also be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for Comptroller of the Currency.

FOR FURTHER INFORMATION CONTACT: Roland G. Ullrich, Deputy Director, Consumer Activities Division, (202) 287-4265, or Ellen Starr, Attorney, Legal Advisory Services Division, (202) 447-1880.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal drafter of this document was Christopher Manthey, Attorney, Legal Advisory Services Division.

Background and Analysis

An adjustable-rate mortgage is a mortgage loan in which the interest rate is subject to change at agreed intervals according to changes in a designated independent index of market interest rates. Changes in the interest rate on ARM loans may result in changes in monthly payment amounts or changes in the rate of amortization of principal (changes in the maturity of the loan or the amount of the final payment).

Designed in response to the inflation and high interest rates which prevailed in the late 1970s and early 1980s, ARMs came into widespread use after the various federal depository institution regulatory agencies promulgated regulations governing them. This Office's ARM rules, contained in 12 CFR Part 29, were adopted on March 27, 1981. 46 FR 18932. The Federal Home Loan Bank Board and National Credit Union Administration followed suit in April and July 1981, respectively. Because of the disclosure requirements contained in 12 CFR 29.7, national banks have been exempted from compliance with certain disclosure provisions of the Federal Reserve Board's Truth-in-Lending regulation (Regulation Z) dealing with variable-rate, closed-end credit. 12 CFR 226.18(f) n.43.

Some concerns regarding ARMs have developed in recent years. For instance, there has been considerable congressional and industry interest in

developing uniform disclosures for ARM consumers. In particular, members of Congress have urged that such disclosures contain a "worst case" payment scenario, *i.e.*, a provision that spells out the maximum payment for which the borrower may become liable under the adjustable-rate loan to which he or she is agreeing. This is to prevent "payment shock," which can occur when the consumer finds that, following a payment adjustment, the payments are much larger than anticipated.

Another concern has been the secondary market, in which lenders buy and sell ARM contracts. Such a market has arisen, but its development has been hampered in part by the fact that the different agencies' regulations have dissimilar requirements, especially in the content and timing of disclosures that must be made to consumers. National banks that desire to purchase ARMs in the secondary market have been limited to buying loans that conform to the OCC's rules. This is undersirable since limiting the marketability of ARMs limits the incentive to provide residential mortgage loans in the first instance, causing a needless restriction in the availability of consumer credit. ARM originators who wish to have full access to the secondary market must make multiple disclosures to their borrowers to comply with all of the agencies' requirements. However, providing multiple disclosures is both burdensome for lenders and potentially confusing for consumers.

To address these problems, the Federal Financial Institutions Examination Council (FFIEC), composed of representatives of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration, has recommended uniform initial disclosure requirements for ARMs.

In a statement issued August 12, 1986, the FFIEC recommended to the Federal Reserve Board, the Federal Home Loan Bank Board, and the Office of the Comptroller of the Currency that they require the following initial disclosures be given to prospective ARM borrowers: (1) "The Consumer Handbook on Adjustable-Rate Mortgages" (published jointly by the Federal Reserve Board and the Federal Home Loan Bank Board), or a suitable substitute; and (2) disclosures which demonstrate how any particular ARM loan program offered by a creditor may affect borrowers when interest rates change. The later includes up to 14 specific elements, depending upon applicability to the specific loan program involved. The FFIEC's recommendations are similar to the initial disclsoures required by the OCC's current ARM regulation.

The Federal Reserve Board has already moved to implement the FFIEC's recommendations. In a Notice of Proposed Rulemaking published November 24, 1986 at 51 FR 42241, the Board is proposing to amend 12 CFR Part 226 (Regulations Z) to incorporate the FFIEC proposals. At the same time, the Board will add to Regulation Z most of the subsequent disclosure requirements presently contained in the OCC's ARM regulation at 12 CFR 29.7. Since no benefit will be derived from duplicating the rules that the Federal Reserve Board will have in place, the Office believes that it would be more efficient simply to rescind the present disclosure requirements in 12 CFR 29.7. However, to the extent they become incorporated into Regulation Z, the Office will continue to enforce these requirements with respect to national banks.

Beyond the FFIEC recommendations, the Office has concluded that portions of its ARM regulation are no longer necessary and should be rescinded. The regulation has two purposes when originally proposed in 1980. First, it sought to increase the availability of mortgage credit to the public by clarifying that national banks were authorized to make adjustable-rate mortgage loans. In the inflationary environment of the time, it was believed that this would encourage national banks to make and hold residential mortgage loans and promote competition among residential mortgage lenders. Second, it provided protection for consumers by placing restrictions on permissible ARM products and by requiring substantial disclosure. *See generally*, preamble to proposed 12 CFR Part 29, 45 FR 64196, 64198–99, September 29, 1980.

Based on the early experience with ARMs, the regulation was revised substantially in 1983. 48 FR 9506. Implicitly recognizing that market forces were developing products that were prudent for both the lender and the consumer, this revision removed most, but not all, of the original regulation's restrictions on design of the product. It continued to prohibit national banks from purchasing nonconforming loans and retained the disclosure requirements.

The amendments now being proposed would change the types of loans covered, change the disclosure requirements for national banks, and eliminate certain provisions that are believed to be redundant or unnecessary. The revised regulations, together with certain portions of 12 CFR Part 30, would be added to Part 34 so that all of the Office's substantive real estate regulations would be found in one place under the general heading of "Real Estate Lending."

Revisions to 12 CFR Part 30

Another area of concern in the early 1980s was "due-on-sale" clauses in real estate loans. These are clauses that give a lender the right to declare the entire debt payable at once if the property securing the loan is transferred. Many states had restricted or prohibited due-on-sale clauses either by statute or judicial decision. These states reasoned that such provisions discouraged homeowners from selling their property and, therefore, constituted an unreasonable restraint on the sale of housing. The Office, on the other hand, believed that in the volatile interest rate climate of the time, a rule ensuring the enforceability of due-on-sale clauses could encourage banks to offer fixed-rate, long-term mortgage loans with relatively lower interest rates, because of the reduced market risk. *See generally*, 46 FR 46964–65, September 23, 1981.

The debate was resolved with the passage of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469 ("the Garn-St Germain Act" or "the Act"). Section 341 of the Act, codified at 12 U.S.C. 1701j–3, provided generally that, notwithstanding state law, due-on-sale clauses in real estate loans, regardless of when originated, would be enforceable as to transfers occurring after the date the Act became effective (October 15, 1982). However, this general rule was not applicable during the "window period," *i.e.*, the period beginning with the date of a state rule of law restricting the enforceability of due-on-sale clauses and ending with the effective date of the Act. Due-on-sale clauses in window-period loans were to be enforceable only after the passage of three years from the effective date of the Act, unless a different rule was established by the appropriate regulatory authority. (The OCC did, in fact, establish an earlier cutoff date of April 15, 1984. 12 CFR 30.1(b)(1).) In addition, due-on-sale clauses in certain types of transactions were prohibited.

The Office implemented the Garn-St Germain Act by publishing its due-on-sale regulation, 12 CFR Part 30, on November 8, 1983. 48 FR 51283. Major

portions of the regulation are concerned with the so-called window period which, as noted above, ened on April 15, 1984. Since that time, national banks have been free to enforce due-on-sale provisions without restriction, except in the transactions exempted by the Garn-St Germain Act.

Accordingly, the Office believes that it would be beneficial to simplify this regulation by rescinding the obsolete portions dealing with the window period. These are paragraphs (b) and (d) of § 30.1. Since this constitutes the bulk of the regulation, it is proposed to transfer the remaining valid portions, paragraphs (a) and (c) of § 30.1, to Part 34, "Real Estate Lending," where they would become new § 34.4. The present text would remain unchanged except for minor, nonsubstantive revisions.

Effective Date

National banks will have a six-month transition period, beginning with the effective date of the final rules, in which they may choose to follow either the current regulations in Part 29 or the new regulations in Part 34. At the end of the six-month period Part 29 will be rescinded and compliance with the new Part 34 will be mandatory.

Section-by-Section Analysis

Section 34.4 | Due-on-sale clauses.

This section would be drawn from the present paragraphs (a) and (c) of § 30.1, which would remain unchanged except for minor, technical revisions. In the proposed paragraph (a), the cross reference would be changed to conform to the new arrangement of this section; the phrase "the effective date of this part" would be changed to "December 8, 1983" (the effective date of the present Part 30) to avoid confusion; and the reference to the Trust Territory of the Pacific Islands would be eliminated as obsolete. *See* Compact of Free Association Act of 1985, section 201, 48 U.S.C. 1681 note. In paragraph (b), citations to the United States Code would be added for ease of reference.

Section 34.5 | Definition.

This proposal would revise the definition of an adjustable-rate mortgage loan. An ARM is now defined as any loan to finance or refinance the purchase of, and secured by a lien on, a one- to four-family dwelling where the loan agreement permits the lender to adjust the interest rate after consummation. The definition also includes certain fixed-rate mortgage loan agreements that implicitly permit interest rate adjustments by having the note mature on demand or at the end of an interval shorter than the term of the amortization schedule.

This proposal would amend the present definition of "adjustable-rate mortgage" to cover only extensions of consumer credit to natural persons. The phrase "consumer credit" is drawn from Regulation Z (12 CFR Part 226), and is intended to have the same meaning that it has there. Similarly, the exclusions contained in paragraph (b) of the proposed definition are drawn from the exemptions in Regulation Z, 12 CFR 226.3. The Office expects that, to the extent the terms and concepts in this definition are drawn from Regulation Z, relevant portions of the Official Staff Commentary on that regulation would become persuasive authority in its interpretation. See, *e.g.*, paragraph 3(a) of the Commentary concerning loan purposes.

The purpose of this revision is to clarify that the Offices's ARM regulation is not intended to apply to purchase-money mortgage loans for investment, commercial, business or agriculture purposes. Although the purpose of the original regulation was, in part, to promote the availability of mortgage funds for residential purposes, the language used was broad enough to cover those other types of loans. This has caused confusion in the past, and the Office therefore wishes to take this opportunity to sharpen the focus of the definition. The exclusions contained in proposed paragraph (b)(1) of the definition section are intended as further reinforcement of this position.

The Office is also proposing to eliminate the requirement for a disclosure notice for short-term and demand loans, which would, therefore, be excluded from the proposed definition. Henceforth, these loans would be governed by the disclosure requirements of Regulation Z. Regulation Z requires disclosure of the fact that the loan contains a demand feature and a payment schedule that shows a balloon payment when the loan matures prior to the end of the amortization schedule. In most cases, national banks that offer such loans must give both the Part 29 notice and the Regulation Z disclosure. The Office is not aware of any reported dissatisfaction with Regulation Z's simpler disclosure requirement for these loans and believes it should be guided by the Federal Reserve Board's extensive experience with disclosure in this area.

The Office believes that both borrowers and lenders would benefit from making our regulations more consistent with Regulation Z. However, we are especially interested in receiving comments concerning these proposed changes in the scope of the regulation.

One further adjustment to the definition is being proposed, which would substitute the term "residential manufactured home" for "mobile home" in the types of housing units covered. This term includes both mobile homes and prefabricated homes and better describes today's technology.

Section 34.6 General rule.

The general rule would be changed to eliminate the restriction that national banks can make, sell, purchase, participate, or deal in ARM loans "only if they conform to the conditions and limitations in this part." This change is intended to enhance the ability of national banks to participate in the nationwide secondary market in ARM loans by permitting them to purchase or participate in loans that were made in accordance with another regulatory agency's requirements. Since the various financial regulatory agencies have had dissimilar ARM regulations in the past, especially in the area of disclosure requirements, the effect of the present regulation has been that national banks have been prohibited from purchasing ARM loans simply because they were originated by lenders who were governed by less comprehensive regulations. Typically, other lenders who wish to sell their loans to national banks may be forced to make disclosures required by both OCC and another regulatory agency. This is both burdensome to the lender and potentially confusing to the borrower. Either way, these difficulties have impaired the marketability of ARM loans between different types of financial institutions. Ultimately, it is the consumer who has suffered from reduced availability of mortgage credit. Accordingly, the Office believes it desirable to eliminate this restriction.

It should be noted that this change would not mean that national banks would be free to ignore the remaining substantive requirements of this part or the proposed revisions to Regulation Z when they make ARM loans. New §§ 34.7, 34.8, 34.9 and the disclosure requirements in Regulation Z incorporated in new § 34.10, are applicable by their own terms to ARM loans originated by national banks, without the necessity of so stating in this section. However, to prevent evasion through the use of affiliates, the Office is proposed to add that ARM loans or participations purchased from affiliates must comply with this regulation. Also, a reference to the Northern Mariana Islands would be

added to paragraph (a), to make this section consistent with proposed § 34.4.

Section 34.7 Index.

The index section would be reworded in an effort to achieve greater clarity, but no substantive change from the present regulation is intended.

Section 34.8 Rate changes.

The present section on rate changes would be deleted. In its place would be a provision requiring ARM loans originated on or after December 8, 1987 to include a limitation on the maximum interest rate that may apply during the term of the loan. Such an interest rate cap is required by section 1204 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 100 Stat. 552. The present section requires that loan documents contain various rules concerning the implementation of the rate changes. However, this requirement would be superfluous since loan documents would need to contain such provisions if the lender wants to make such changes. Moreover, the FFIEC guidelines, proposed to be incorporated into Regulation Z, will include disclosures for the subjects presently covered in § 29.4. See paragraphs 2 e–g of the FFIEC proposals, above.

The present section also contains a requirement that any interest rate changes must be based on the most recent index value as of the date of the change or the date of notification of the change, whichever is earlier. The purpose of this requirement was to ensure that lenders could not arbitrarily choose an advantageous index value. However, it is the Office's view that if a lender followed such a practice, the interest rate would not truly be tied to the index and the loan would not comply with the requirements of the proposed regulation. Accordingly, it is our view that the loss of index provision, through rescission of §29.4, will not harm consumers. However, the Office desires public comments on this point.

Section 34.9 Prepayment fees.

The present § 29.6 on prepayment fees would be renumbered § 34.8.

Section 34.10 Disclosure.

Under this proposal, the Office's present disclosure section would be deleted. The Federal Reserve Board's proposed amendments to Regulation Z, would implement the FFIEC recommendations. The net result is that the OCC would rescind its present disclosure requirements and adopt the FFIEC recommendations by deferring to Regulation Z.

In its August 1986 proposal, the FFIEC recommended to the regulatory agencies that their regulations be amended to require the following initial disclosures, when applicable:

1. "The Consumer Handbook for Adjustable-Rate Mortgages," prepared by the Federal Reserve Board and the Federal Home Loan Bank Board, or a suitable substitute.

2. A "loan program" disclosure (prepared for each adjustable-rate loan program) containing the following information, if applicable:

a. The fact that the interest rate, payment, or term can change.

b. The index or formula to be used and a source of information about the index.

c. How the interest rate and payment will be determined.

d. A statement that the interest rate will be discounted.

e. How the index is adjusted to determine the interest rate, *i.e.*, the margin—and a statement that the consumer should ask about the current margin value and current interest rate.

f. The frequency of interest rate and payment changes.

g. Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance (for example, interest rate or payment limitations, negative amortization, and interest carryover).

h. A statement of the maximum interest rate and payment amount under the program if a $10,000 loan had originated at the most recent interest rate shown in the hypothetical example in "j". The example should assume that the interest rate increases as rapidly as possible under the program.

i. If there are no limitations on payment or interest rate increases, a statement to that effect.

j. An example, based on a $10,000 loan amount, of how payments and the loan balance would be affected by changes implemented according to the terms of the loan program. The example should be based on index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example should reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as caps, a discounted interest rate, and negative amortization, that are triggered by index movements during the years shown.

k. An explanation of how to calculate the consumer's payment amounts for loans based on multiples of $10,000, with an example using the recent monthly payment shown in the hypothetical example in "j".

l. The fact that a loan program contains a demand feature.

m. What information will be contained in the required notice of an adjustment and how far in advance such notice will be provided.

n. A notice that disclosure forms are available on other ARM loan programs.

In general, the initial disclosure requirements recommended by the FFIEC (and proposed to be adopted by the OCC through reference to the proposed revisions to Regulation Z) are patterned after the OCC's present requirements. The principal differences between the FFIEC proposal and OCC's present requirements include:

- OCC's present disclosure requirements apply to any open-end or closed-end loan to finance or refinance the purchase of a one- to four-family dwelling, including business and agricultural credit. The narrower definition proposed herein would mean that business, investment, and agricultural loans would no longer be subject to comprehensive consumer protection disclosures. Loans to other than a natural person would not be covered.
- The FFIEC proposal would require that a potential borrower be given "The Consumer Handbook for Adjustable-Rate Mortgages," prepared by the Federal Reserve Board and the Federal Home Loan Bank Board, or a suitable substitute. OCC presently requires a brief description of the general nature of ARM loans.
- The FFIEC proposal covers only loans secured by the borrower's principal dwelling. The OCC currently covers any loan to finance or refinance the purchase of a one- to four-family dwelling. (All consumer loans not covered by the FFIEC proposal would continue to be covered by the general requirements of Regulation Z.)
- The FFIEC proposal covers non-purchase-money closed-end credit secured by the borrower's principal dwelling. OCC presently does not unless it is a refinancing of an ARM.
- The FFIEC proposal would require disclosure of the maximum interest rate and payment amount for a $10,000 loan under the bank's program assuming a given interest rate or, if applicable, a statement that there is no limit. OCC presently requires disclosure of the maximum payment assuming a 10 percentage point increase in the index value. If there is no cap, no disclosure of this fact is required.
- The FFIEC proposal woud require disclosure of the effect of historic changes in the interest rate index on a hypothetical $10,000 loan over a 15-year

period. The OCC presently requires disclosure of the effect of increases in the interest rate index on a hypothetical $10,000 loan over a five-year period, with a separate disclosure of a 10-year history of the index.

• The FFIEC proposal would require disclosure of a demand feature, if applicable, but no specific language is mandated. The OCC currently requires a specific bold-face demand/balloon payment notice in addition to the payment schedule presently required by Regulation Z.

• FFIEC items k, m, and n, above, are not currently required by the OCC.

The Offfice solicits comments as to whether or not the FFIEC proposals place an increased disclosure burden on national banks compared to the OCC's present regulation.

The FFIEC recommendations have been incorporated in the proposed revisions to Regulation Z at 12 CFR 226.19(b) (51 FR 42246). Although the Office could amend Part 29 so that it contained the full text of the FFIEC proposals, it believes that it would serve no useful purpose to have duplicate rules and that it would be more convenient for lenders to look only to Regulation Z for disclosure requirements.

The present Regulation Z, unlike the present Part 29, does not contain any subsequent disclosure requirements. The Federal Reserve Board, however, is further proposing to revise Regulation Z to require subsequent ARM disclosures, even though this was not part of the FFIEC proposal. The new subsequent disclosure provisions will be found at 12 CFR 226.20(e) (51 FR 42246). The new provisions resemble this Office's present subsequent disclosure requirements (51 FR 42245). There are some differences between the Federal Reserve's proposals and OCC's present requirements.

Unlike present § 29.7(c), the revised Regulation Z would not require a prompt subsequent disclosure of interest rate changes unless they are coupled with payment changes. Under the amended Regulation Z, notice of interest rate changes that do not result in payment changes would need to be given only once a year instead of at the time of each change. Any negative amortization accruing over a maximum of one year would not be material in relation to the amount of the loan. Notice to the consumer of interest rate changes, accompanied by payment changes, would be increased from 25 days before a payment at the new level is due 30 days before the effective date of the interest rate adjustment. The balance of the proposed subsequent disclosures in Regulation Z are identical to the OCC's present requirements in § 29.7(b). Therefore, the Office believes that it can promote regulatory simplification by rescinding present §29.7(b) and (c) without compromising consumer protection.

Short-term and demand loans, which are defined respectively as mortgage loans that are not fully amortized by the end of the loan term and mortgage loans that are payable on demand, are presently regulated by § 29.7(d). This section requires a standard, boldfaced notice warning of the possibility that such loans may be called or not renewed at maturity of the note. This requirement is in addition to the existing requirements applicable to these loans contained in Regulation Z. *See* 12 CFR 226.18(g) and (i). The Office is not aware of any significant dissatisfaction with Regulation Z's present requirements and believes, particularly in the interests of uniformity, that it should be guided by the Federal Reserve Board's experience in this area. It therefore proposes to eliminate the notice now required for these types of loans. This does not mean that consumers will no longer be placed on notice when they take out such loans. For adjustable-rate short-term and demand loans, a notice requirement is contained in the FFIEC recommendations which are to be incorporated in Regulation Z (see paragraph *1*, above). Accordingly, the Office proposes to eliminate present § 29.7(d).

Section 29.7(e) currently requires lenders to inform borrowers of the initial index value upon which the initial interest rate is based, and to include this index value on the loan note. This requirement is superfluous since this information can be derived from the initial disclosure of the margin or other adjustment mechanism mandated by the proposed revisions to Regulation Z and the initial interest rate. The Office, therefore, proposes to eliminate this requirement. Comment on the desirability of this proposal is requested.

Section 34.11 Nonfederally chartered commercial banks.

Although this section merely repeats authority conferred by statute upon state commercial banks to make ARM loans in accordance with these regulations in lieu of state law, it will be retained for the convenient reference of banks in locating that authority. A citation to the United States Code would be added, and cross references would be changed to conform to the proposed new arrangement.

Section 34.12 Transition rule.

The present transition rule is obsolete and would be replaced with another. As discussed earlier under "Effective Date," national banks will have a 6-month transition period after these proposed rules become final in which they may choose to follow either the current regulations in Part 29 or the new ones in Part 34. At the end of that period, compliance with the new Part 34 will be required. This would mean that for existing adjustable-rate, purchase-money mortgage loans, the subsequent disclosure requirements of revised Regulation Z would apply following the transition period.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposed regulation will not have a significant economic impact on a substantial number of small banks. All banks should benefit from regulatory simplification and the greater secondary market opportunities that will result from the proposal.

Executive Order 12291

The Office has determined that this proposed rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis will not be required on the grounds that this revision: (1) Would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of bank operations or government supervision, nor would it be likely to generate substantially higher payments for borrowers, and (3) would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or competition with foreign-based entities.

Paperwork Reduction Act

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. *1557–0183.*)

List of Subjects

12 CFR Part 29

Mortgages, National banks.

12 CFR Part 30

Due-on-sale clauses, National banks, Real estate loans.

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12 CFR Part 34

Credit, Due-on-sale clauses, Mortgages, National banks, Real estate loans.

For the reasons set forth in the preamble, Title 12, Chapter I, Part 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C. 93a; and 12 U.S.C. 371.

2. Part 29 is amended by adding the following "Effective Date Note:" "Subpart B of Part 34 of this chapter became effective on [insert 45 days after publication of this notice], but national banks have the option of continuing to comply with this Part 29 (in lieu of Part 34) until [insert six months after effective date]."

3. Part 29 is removed effective [insert six months after effective date, above].

For the reasons set forth in the preamble, Title 12, Chapter I, Part 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—[REMOVED]

1. Part 30 is removed.

For the reasons set forth in the preamble, Title 12, Chapter I, Part 34 of the Code of Federal Regulations is proposed to be amended as follows:

PART 34—[AMENDED]

1. The authority citation for Part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j–3.

2. Part 34 is amended by adding the following "Effective Date Note:" "Subpart B effective [insert 45 days after publication of this notice], but national banks have the option of continuing to comply with Part 29 of this chapter until [insert 6 months after effective date]."

3. Part 34 is amended by adding the heading *"Subpart A—General"* immediately before § 34.1.

4. Part 34 is amended by adding § 34.4

§ 34.4 Due-on-sale clauses.

(a) *General rule.* A national bank may make or acquire through purchase, assignment, pledge or otherwise, a loan, secured by a lien on real property, that includes a clause, known as a due-on-sale clause, giving the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise. Except as set forth in paragraph (b) of this section, such clauses in loans, whenever originated, shall be valid and enforceable as to transfers of the secured property occurring after December 8, 1983, notwithstanding any contrary law or judicial decision of any state, including the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Guam, which laws and judicial decisions are hereby expressly preempted. For the purposes of this part, (1) real property shall also include such residential dwellings as condominium units, cooperative housing units, and residential manufactured homes and (2) the term "lender" means a government agency or person, including corporations, partnerships, trusts or associations making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency.

(b) *Exceptions.* Due-on-sale clauses shall not be enforceable according to the terms of the contract in the case of transfers described in subsection (d) of section 341 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320), 12 U.S.C. 1701j–3(d), as interpreted by the Federal Home Loan Bank Board pursuant to the powers granted to it in paragraph (e) of that section, 12 U.S.C. 1701j–3(e).

5. Part 34 is amended by adding Subpart B consisting of §§ 34.5 through 34.12.

Subpart B—Adjustable-Rate Mortgages

Sec.
34.5 Definition.
34.6 General rule.
34.7 Index.
34.8 Rate changes.
34.9 Prepayment fees.
34.10 Disclosure.
34.11 Nonfederally chartered commercial banks.
34.12 Transition rule.

Subpart B—Adjustable-Rate Mortgages

§ 34.5 Definition.

(a)(1) Except as provided in paragraph (b), an adjustable-rate mortgage loan is any extension of consumer credit to a natural person made primarily to finance or refinance the purchase of and secured by a lien on a one-to-four-family dwelling, including a condominium unit, cooperative housing unit or residential manufactured home, where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time. (2) The phrase "consumer credit" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(b) Adjustable-rate mortgage loans do not include:

(1) Extensions of credit primarily for business, commercial, or agricultural purposes;

(2) Fixed-rate extensions of credit that are payable on demand; or

(3) Fixed-rate extensions of credit that are payable either without any interim amortization of the loan, or at the end of a term that, including any terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule.

§ 34.6 General rule.

(a) National banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in adjustable-rate mortgage loans without regard to any limitations imposed on adjustable-rate mortgage lending by the laws of any state, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, or Guam, which limitations are hereby expressly preempted.

(b) National banks are not prohibited from purchasing or participating in adjustable-rate mortgage loans which were not made in accordance with the regulations in this part, except that any such loans originated by and purchased, in whole or in part, from another national bank or an affiliate of a national bank shall comply with the regulations in this part. For purposes of this paragraph, the term "affiliate" shall have the same meaning that it has in 12 U.S.C. 371c.

§ 34.7 Index.

Loan documents shall specify an index to which changes in the interest rate charged on an adjustable-rate mortgage loan shall be linked. The index shall be readily available to and verifiable by the borrower, and beyond the control of the bank. A bank may use as an interest rate index any measure of market rates of interest which meets these requirements. The index for an adjustable-rate mortgage loan shall be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period.

§ 34.8 Rate changes.

All adjustable-rate mortgage loans originated on or after December 8, 1987

shall include a limitation on the maximum interest rate that may apply during the term of the loan.

§ 34.9 Prepayment fees.

Banks offering or purchasing adjustable-rate mortgage loans may impose fees for prepayments regardless of any state law prohibitions of, or limitations on, such fees, which prohibitions or limitations are hereby expressly preempted. For the purpose of this part, prepayments shall not include: (a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or (b) principal payments in excess of those necessary to retire the outstanding debt over the remaining loan term at the then current interest rate that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.10 Disclosure.

A national bank offering adjustable-rate mortgage loans shall make the disclosures required by regulations implementing the Truth in Lending Act as amended, Pub. L. 90–321, 82 Stat. 146 (1968), prescribed by the Board of Governors of the Federal Reserve System and commonly known as "Regulation Z."

§ 34.11 Nonfederally chartered commercial banks.

Under authority granted by section 804(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, codified at 12 U.S.C. 3803(a), nonfederally chartered commercial banks may make adjustable-rate mortgage loans in accordance with the following provisions of this part: §§ 34.5, 34.7, 34.8, and 34.9.

§ 34.12 Transition rule.

If on the effective date of this rule a national bank has already made a loan or a binding commitment to lend under an adjustable-rate mortgage loan program which would violate any of the provisions of this subpart, the national bank may continue until [insert six months from effective date] to make loans or binding commitments to lend under the program before the program must be brought into conformity with all the provisions of this subpart.

Dated: September 29, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 87–22134 Filed 10–1–87; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments are intended to address seven conditions placed upon Virginia's program by the Secretary at 30 CFR 946.16 (a) through (g). These conditions were placed upon Virginia's program at the time of conditional approval of Virginia's regulatory reform effort in the November 25, 1986, **Federal Register** (51 FR 42548–42555).

This notice sets forth the times and locations that the Virginia program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on November 2, 1987, if requested, a public hearing on the proposed amendments will be held on October 27, 1987, and requests to present testimony at the hearing must be received on or before 4:00 p.m. October 19, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303. If a hearing is requested, it will be held at the same address.

Copies of the proposed amendments, the Virginia program, the Administrative Record on the Virginia program, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street NW., Washington, DC 20240; Telephone (202) 343–5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Building 10, Parkway Center, Pittsburgh, PA 15220; Telephone (412) 937–2907.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Box Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219; Telephone (703) 523–2925.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendments

By letter dated September 1, 1987, (Administrative Record No. VA646), Virginia submitted proposed amendments to its permanent regulatory program. These amendments are intended to address seven conditions placed upon the Virginia program in the November 25, 1986, **Federal Regiser** (51 FR 42548–42555) when the Secretary conditionally approved a program amendment submitted by Virginia in response to OSMRE's regulatory reform efforts. The proposed amendments are briefly summarized below:

Condition 946.16(a) required that Virginia amend its coal surface mining reclamation regulations at section 480–

03–19.789.1(e) to provide for the award of appropriate costs and expenses (including attorney's fees) from the Commonwealth to any person who makes a substantial contribution to a full and fair determination of the issue in any administrative proceeding and who at least partially prevails on the merits of the issues. Virginia proposes to add section 480–03–19.789.1(e)(3) to its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(b) required Virginia to revise its ground cover measurement techniques for small areas (as contained in Attachment number 2 of the portion of its August 14, 1986, submission concerning revegetation issues) to specify how many transects must be taken, how this number will be determined, and how the transects will be determined. Virginia proposes to withdraw its proposal for techniques for measuring ground cover on small areas.

Condition 946.16(c) required Virginia to submit materials detailing the sampling techniques to be used to measure the productivity of grazing land, pasture land and crop land. Virginia proposes to adopt those standards contained in OSMRE's "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II".

Condition 946.16(d) required Virginia to amend its coal surface mining reclamation regulations at 480–03–19.842.15 or otherwise amend its program to provide that the Director's decision on citizen requests for review of an inspector's decision not to inspect or take enforcement action with respect to any violation alleged by that citizen is formally appealable in accordance with section 9–6.14:12 of the Virginia Administrative Process Act. Virginia porposes to add section 480–03–19.842.15(d) to its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(e) required Virginia to amend its coal surface mining reclamation regulations at section 480–03–19.843.12 or otherwise amend its program to specify that the Director's decision on whether to allow an extension of the abatement period for a violation beyond 90 days is formally appealable in accordance with the Virginia Administrative Process Act. Virginia proposes to add section 480–03–19.843.12(j) to its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(f) required Virginia to amend its coal surface mining reclamation regulations at section 480–03–19.843.15 or otherwise amend its program to provide that a notice or order ceasing mining shall not expire after 30 days if the permittee or operator waives his or her right to an informal hearing or consents to holding the hearing more than 30 days after the issuance of the notice or order. Virginia proposes to amend section 480–03–19.843.15 of its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(g) required Virginia to amend its coal surface mining reclamation regulations at sections 480–03–19.845.17(b) and 480–03–19.845.15(b)(1) or otherwise amend its program to specify tht the failure of the Division to serve any proposed assessment or to hold any requested assessment conference within the time limits prescribed by the Virginia program shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty is assessed can prove actual prejudice as a result of the delay and unless that person makes a timely objection to the delay. Virginia proposes to amend sections 480–03–19.845.17(b) and 480–03–19.845.18(b)(1) of its coal surface mining reclamation regulations to satisfy this condition.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written Comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on October 19, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requeted as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet this OSMRE representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance with Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

3. Compliance with the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87-22824 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-87-44]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Martin County, the Coast Guard is considering a change to the regulations governing the Jensen Beach and Ernest Lyons drawbridges at Stuart, Florida by limiting the number of times the bridges are opened during certain periods. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 16, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

Both bridges presently open on signal. Martin County has asked that the bridges open only on the hour and half hour from 6 a.m. to 6 p.m. weekdays from December 1 through May 1. The Coast Guard has carefully evaluated information about highway traffic volume, vessel safety, and drawbridge openings for these bridges. Although regulation changes may be needed to help reduce highway traffic delays, the data do not appear to justify a need for regulations before 7 a.m.

Both bridges have high traffic volumes, substandard lane widths, and inadequate lateral clearances all of which contribute to the relatively poor levels of service on both roadways. On the average, neither bridge opens twice an hour during the daytime, but openings sometimes do occur "back to back" within 15 minutes causing traffic delays. The proposed rule would separate openings by thirty minutes giving auto traffic ample time to clear before the next opening. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261 is amended by adding paragraphs (o) and (p) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(o) *Jensen Beach (SR 707a) bridge, mile 981.4 at Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half hour.

(p) *Ernest Lyons (SR A1A) bridge, mile 984.9 Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half hour.

* * * * *

Dated: September 22, 1987.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 87-22730 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-87-37]

Drawbridge Operation Regulations; Okeechobee Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Martin County, the Coast Guard is considering a change to the regulations governing the Evans Crary and Roosevelt drawbridges at Stuart, Florida, by limiting the number of times the bridges are opened during certain periods. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of highway traffic and should still provide for the reasonable needs of navigation.

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VOL 52 ISS 191 OC 2 1987 UMI

DATE: Comments must be received on or before November 16, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130–1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposal regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Evans Crary bridge presently opens on signal except that from November 1 through May 1 weekdays from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. the bridge opens on the quarter and three quarter hour. On weekends from November 1 through May 1 from 8 a.m. to 6 p.m. the bridge opens on the hour, 20 minutes after the hour, and 40 minutes after the hour. Martin County has asked that the bridge be opened only on the hour and half hour from 6 a.m. to 6 p.m. weekdays from December 1 through May 1. The Coast Guard has carefully evaluated information about highway traffic volume, vessel safety and drawbridge openings for this bridge. The data appear to justify restrictions which vary slightly from those requested by Martin County. The Roosevelt bridge presently opens on signal except weekdays from 7 a.m. to 9 a.m., 11 a.m. to 1 p.m., and 4 p.m. to 7 p.m. when it opens only on the hour and half hour. On weekends and holidays from 8 a.m. to 6 p.m. it opens on the hour, 20 minutes after the hour and 40 minutes after the hour. Martin County has asked that the Roosevelt bridge open only on the hour and half hour from 6 a.m. to 6 p.m. weekdays year round with no openings at 8 a.m., 8:30 a.m., 5 p.m. and 5:30 p.m. The Coast Guard has carefully evaluated information about highway traffic volume, vessel safety and drawbridge openings for this bridge. In this case, also, the data appear to justify additional restrictions which vary slightly from those requested by Martin County. Both bridges have high traffic volumes, substandard lane widths, and inadequate lateral clearances all of which contribute to the relatively poor levels of service on both roadways. On the average, neither bridge opens twice an hour during the daytime, but openings sometimes do occur "back to back" within 15 minutes causing major traffic delays. We are proposing that the bridges open at thirty minute intervals from 7 a.m. to 6 p.m. This would separate the openings to reduce the impact to vehicular traffic, while imposing only a slightly greater delay to boat traffic at the Roosevelt bridge than presently exists when the adjacent Florida East Coast Railroad bridge is down. That delay is now about 20 minutes. In addition, we are proposing to allow the Roosevelt bridge to remain in the closed position on weekdays from 7:30 to 9 a.m. and 4 to 5:30 p.m. to allow for uninterrupted flow of commuter traffic. The seasonal weekend regualtions for the Evans Crary bridge would not start until December 1 to coincide with the seasonal start of the proposed weekday rules. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.317 is amended by revising paragraphs (b) and (d) to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(b) *Evans Crary (SR A1 A) bridge, mile 3.4 at Stuart.* The draw shall open on signal; except that, from December 1 through May 1 from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half hour. On Saturdays, Sundays, and federal holidays, December 1 through May 1, from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

* * * * *

(d) *Roosevelt (US 1) bridge, mile 7.4 at Stuart.* The draw shall open on signal; except that, Monday through Friday, except federal holidays, from 7 a.m. to 6 p.m. the draw need open only on the hour and half hour. However, the draw need not open at 8 a.m., 8:30 a.m., 4:30 p.m., and 5 p.m. On Saturdays, Sundays, and federal holidays, from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. When the adjacent Florida East Coast Railways bridge is in the closed position at the time of a scheduled opening, the draw need not open, but it must then open immediately upon the opening of the railroad bridge to pass all accumulated vessels. Exempt vessels shall be passed at any time.

* * * * *

Dated: September 23, 1987.

M. J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 87–22731 Filed 10–1–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3271-7]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this document, EPA proposes to approve a revision to the Kansas state air pollution control regulations as part of the State Implementation Plan (SIP). The purpose of this revision is to require reasonably available control measures by sources which emit ozone precursors in the Kansas City ozone nonattainment area. These state regulations are required by the Clean Air Act. The purpose of this document is to advise the public of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received on or before November 2, 1987. Public comments on this document are requested and will be considered before taking final action of these SIP revisions.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submission is available at the above address and at the Kansas Department of Health and Environment, Bureau of Air Pollution and Radiation Control, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker, (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION: The Clean Air Act requires that all states have plans to implement the National Ambient Air Quality Standards in all areas of their states. These plans must contain control measures adequate to attain and maintain the standards in all areas of the state. In areas where the standards have not yet been attained, Part D of the Act requires states to submit new plan revisions with additional controls that will reduce air pollution to the levels of the air quality standards. These plans are to be evaluated by EPA and approved if they meet the requirements of the Act. Plans, or portions of plans, that are federally approved become enforceable by the federal government as well as by the state.

Background

On September 17, 1979, the state of Kansas submitted a Part D plan describing how the Kansas City ozone nonattainment area would attain the ozone air quality standard by December 31, 1982. This plan was conditionally approved on April 3, 1981 (46 FR 20170), with the last condition removed and full approval given on January 12, 1984 (49 FR 1492).

In spite of the reductions in emissions of the volatile organic compounds (VOC) that react in the atmosphere to form ozone, which were required and obtained by the 1979 plan, air quality monitoring in the Kansas City area continues to record violations of the ozone air quality standard. Therefore, on February 20, 1985, EPA formally notified the Governor of Kansas that the SIP was substantially inadequate to attain the ozone standard in the Kansas City area, and called for revisions to the SIP that would obtain additional emission reductions and demonstrate that the ozone standard would be attained.

On July 2, 1986, the Governor of Kansas officially submitted the revised plan demonstrating that the ozone standard will be attained in the Kansas City area by December 31, 1987, or shortly thereafter. EPA's review of this plan found that it meets all requirements of the Act except that it did not contain regulations requiring all reasonably available control measures as required by section 172(b)(2) of the Act. For a further discussion of the overall plan, the reader is referred to EPA's proposed approval of the remaining elements of the plan published elsewhere in today's **Federal Register.**

Current Submission

On April 22, 1987, the Kansas Department of Health and Environment submitted drafts of regulations that will require reasonably available control technology (RACT) on all VOC sources for which EPA has published a control techniques guideline (CTG) and all major VOC sources for which EPA has not yet published a CTG. (This submission was supplemented with additional revisions received on May 26, 27, and August 21, 1987.) If it is determined that these rules satisfy the requirement of section 172(b)(2) for the Kansas City area, the overall plan can be fully approved as meeting all the requirements of the Act.

The regulations proposed today are in draft form and have yet to be adopted by the state. The state has requested that EPA use parallel processing rulemaking procedures to act on these regulations on the federal level at the same time that action on the rules is taken on the state level. Under the parallel processing procedure, EPA works closely with the state as it develops major regulations and proceeds through the state rulemaking process. Both the state and EPA will provide for public participation by providing public comment periods. EPA will publish a final rulemaking on the rules as drafted if they are finally adopted by the state and submitted to EPA.

The state has evaluated 16 regulations to determine the problems which need to be corrected. There are several categories of potential problems including deviating from recommended applicability limits, deviating from the CTG provisions, or having vague and unenforceable language.

When the Kansas City ozone plan was first developed and approved, EPA policy required RACT only on major (100 tons of VOC emissions per year) CTG sources in areas where the 1979 plan demonstrated attainment of the ozone standard by 1982, as the Kansas City plan did at that time. Because Kansas City did not attain the standard by 1982, additional control measures are needed. In order to be approvable at this time, a state plan must require RACT on all sources for which there is a CTG and for all major non-CTG sources. This provision requires that existing rules be revised to remove 100 ton per year (TPY) applicability cutoffs for CTG sources and that new rules be developed to address major non-CTG sources.

Recently EPA has issued new guidance defining very specifically the kinds of provisions that may or may not be included in state plans. The state has evaluated its proposed rules against the new guidance and developed corrections where needed. The revised rules generally use the RACT cutoffs from the CTGs, correctly define how equivalent controls will be evaluated, have all the correct definitions, specify appropriate compliance averaging times, require source recordkeeping, update the state compliance testing methods, and generally close any previous loopholes and make the rules fully enforceable in ozone nonattainment areas. In the event that such areas were redesignated to attainment, the rules would remain in effect. Each of the state rules is discussed briefly below. For a more detailed evaluation of each rule against the applicable requirements, the reader is referred to the technical support document.

State Rule 28–19–8, Reporting Required, has been revised so that smaller VOC sources will be required to submit information. This is needed because these smaller sources will be subject to the revised control regulations and must be evaluated for compliance with their new limits.

Rule 28–19–61, Definitions, has had a number of definitions added, removed, or revised to ensure that all of the critical terms used in the regulations have the necessary explanations and requirements.

Rule 28–19–62, Testing Procedures, has been totally rewritten to require the most current compliance evaluation methods.

Rule 28–19–63, Automobile and Light-Duty Truck Surface Coating, has been revised to specify testing methods, provide for the consideration of transfer efficiency in coating operations, and require adequate recordkeeping and reporting.

Rule 28–19–64, Bulk Gasoline Terminals; Rule 28–19–70, Leaks from Gasoline Delivery Vessels and Vapor Collection Systems; and Rule 28–19–72, Gasoline Dispensing Facilities; have had extensive revisions in compliance testing and recordkeeping provisions. In Rule 28–19–64 the exemption level of 100 TPY has been removed, but no additional sources are expected to be regulated and no emission reductions are expected to result. However, the emission reductions due to the Stage I vapor recovery requirement of 28–19–72 are a major part of the July 2, 1986, control strategy for the Kansas City area. Unlike the other rules, it has not been approved by EPA previously. EPA's evaluation of the state proposal finds that it meets the criteria for controls on gasoline dispensing facilities.

Rule 28–19–65, Volatile Organic Liquid Storage in Permanent Fixed Roof Type Tanks, and Rule 28–19–66, Volatile Organic Liquid Storage in External Floating Roof Tanks, have been revised to clarify what levels of control are required when storing which liquids and to add current testing and recordkeeping requirements.

Rule 28–19–69, Cutback Asphalt, has been revised to make previously automatic exemptions now subject to state approval.

Rule 28–19–71, Printing Operations, has been extensively revised to address a number of enforcement issues relating to the testing of inks and the keeping of records of ink and solvent use and of control device performance. This rule was originally part of the July 2, 1986, SIP submission. However, this revised version would replace it in the approved SIP upon federal approval.

Rule 28–19–73, Surface Coating of Miscellaneous Metal Parts and Products and Metal Furniture, has been expanded to include furniture, which is a similar process but which was originally written as a separate rule. The rule has been rewritten in terms of solids applied rather than total amount of paint used to aid in calculating compliance when using methods other than compliance coastings. Transfer efficiency (TE) is also addressed and recordkeeping requirements are strengthened. This rule was originally adopted in 1986 with an effective date of May 1, 1987. The original version was not submitted for EPA approval. Today's proposed approval relates to the revised rule, not to the original version. EPA's evaluation of this revised version indicates that it meets all EPA requirements for approval as representing RACT.

Rule 28–19–75, Solvent Metal Cleaning, is another 1986 adoption with an effective date of May 1, 1987. This rule has had a 10 TPY exemption cutoff removed and more complete recordkeeping required. As with the above rule, EPA has evaluated the revised version and found it to meet all requirements. Therefore, the revised draft version of this rule is proposed for approval. The original version has not been submitted for EPA approval.

Also, the state had adopted Rule 28–19–74, Surface Coating of Metal Furniture, with an effective date of May 1, 1987. The state has now included the limits for this category with those for Miscellaneous Metal Coating. Rule 28–19–74 had not been submitted for federal approval and is not part of the SIP. This rule is being redesignated Wool Fiberglass Insulation Manufacturing, and totally rewritten to apply to the fiberglass manufacturing category. Kansas City has two manufacturers of wool fiberglass batt insulation which emit in excess of 100 TPY of VOC. There is no CTG for this industry. The resin used to form the hot glass fibers into the batting is a volatile compound that is driven into the air during the forming operation. The draft state regulation is based on the federal new source performance standard (NSPS) for this category which condenses VOC from the exhaust stream in the sampling equipment and calculates the result as particulate matter. (See 40 CFR 60.680 to 60.685 and Method 5E in Appendix A of Part 40.) This condensable catch has been used in the EPA Emission Factor book (AP–42) as representing VOC emissions, and those emission factors have been used to calculate that emissions from these two plants exceed 100 TPY. Source test results using this method show that, on average, about 47 percent of the total catch is condensed VOC. Thus, of the 11 pounds of particulate matter per ton of glass pulled allowed by the NSPS, approximately 5.15 is condensed VOC. Therefore, the level of control chosen by the state, 5 pounds of VOC per ton of glass pulled, represents very nearly the same level of control as the new source standard, when adjusted to consider only the condensed catch, rather than the total caught in the full particulate testing method. The draft rule also contains reporting and recordkeeping requirements. EPA's evaluation of this draft rule finds that it requires RACT for the two plants in Kansas City and is approvable.

In numerous instances, the rules allow the department to approve alternative compliance plans and test methods which are alternatives to the EPA-reference methods. EPA proposes approval of these rules with the understanding that all such alternative plans and test methods must be submitted and approved by EPA, as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the emission limits or reduction requirements stated in the rules, and compliance would be determined by the methods stated in the rules. Also, the rules contain provisions whereby testing is required when the facility intends to demonstrate compliance by improved operations or new controls, yet there are no test procedures. Examples of such provisions are TE and vapor processing systems. Test methods which are developed by the state must be approved by EPA before sources may demonstrate compliance through alternative control and TE.

The SIP also contains two EPA approved regulations applying to petroleum refinery sources, 28–19–67, Petroleum Refineries, and 28–19–68, Leaks from Petroleum Refinery Equipment. The only source to which these rules applied has been closed. Therefore, the state has not updated these rules.

The state submitted statements on April 16, 1987, and August 18, 1987, which certify that there are no sources in the nonattainment area in the other categories for which EPA has issued CTGs. Other than the two wool fiberglass manufacturers discussed herein, there are no other major non-CTG VOC sources in the nonattainment area. Based on the negative declarations and the rules submitted as discussed herein, EPA believes that the Kansas

City ozone plan will, upon final adoption and submittal of the regulations described above, require all reasonably available control measures, as required by section 172(b)(2) of the Act.

Summary

The draft state submission includes revisions to previously approved regulations, new regulations, and declarations that certain source categories need not be regulated. EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Kansas and submitted to EPA for incorporation into the SIP.

Proposed Approval

This state submission constitutes a proposed revision to the Kansas SIP which EPA is proposing to approve. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of Section 110 and 172 of the Clean Air Act and of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Particulate matter, Hydrocarbons, Intergovernmental relations, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401—7642.

Date: May 29, 1987.

William Rice,

Acting Regional Administrator.

[FR Doc. 87-22787 Filed 10-11-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3271-8]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The Clean Air Act (CAA), as amended, requires that a state revise its state implementation plan (SIP) for all areas for which the SIP has been found substantially inadequate to attain the National Ambient Air Quality Standards (NAAQS).

On February 20, 1985, EPA advised the Governor of Kansas that based upon air quality data, the ozone SIP for the Kansas City Metropolitan Area (KCMA) was substantially inadequate to attain the NAAQS. The call for a SIP revision was made under section 110(a)(2)(H) of the Act, but under section 110(c)(1)(C) of the Act, EPA allowed the state one year to submit the ozone plan revision.

On July 2, 1986, the Governor of Kansas officially submitted a revised ozone SIP for Johnson and Wyandotte Counties, Kansas. On April 22, 1987, Kansas submitted a supplement to the SIP consisting of revised emission control requirements in draft form. For a complete discussion of the April 22 submittal, the reader is referred to EPA's proposed approval published elsewhere in today's **Federal Register.** The July 2 submittal in conjunction with the April 22 submittal comprise the overall ozone SIP package, which EPA is proposing to approve in today's **Federal Register** actions.

DATE: Comments must be received no later than November 2, 1987.

ADDRESSES: Copies of the state submission are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION:

A. Background

Part D of the CAA, as amended in 1977, required that a state revise its SIP for all areas that had not attained NAAQS at that time. Part D includes sections 171 through 178 of the Act. The requirements for an approvable nonattainment plan are listed in section 172. On September 17, 1979, and September 22 and 25, 1980, the state of Kansas submitted to EPA proposed revisions to the SIP for the attainment of the ozone standard in both Johnson and Wyandotte Counties. On April 3, 1981 (46 FR 20170), EPA conditionally approved the ozone SIP revision for Johnson and Wyandotte Counties. The SIP demonstrated attainment of the ozone standard by the end of 1982. From time to time, the state submitted revisions to its ozone SIP to satisfy the conditions of approval. The approval conditions were satisfied by the state and these conditions were subsequently removed. However, the ozone standard was not attained in the Kansas City area by the 1982 attainment date.

In its SIP revision policy for areas which did not attain a standard by the end of 1982 (48 FR 50697), EPA announced that where a fully approved Part D plan failed to bring about attainment, EPA will treat the plan as substantially inadequate to assure attainment under section 110(a)(2)(H) and call for a SIP revision. The November 2, 1983, policy announced that EPA will provide one year for submittal of the new revision under section 110(c)(1)(C). Revisions under this policy must provide for attainment as expeditiously as practicable. These requirements are contained in EPA's "Guidance Document for Correction of Part D SIPs for Nonattainment Areas" dated January 27, 1984.

On February 20, 1985, EPA advised the Governor of Kansas that based upon air quality data, the ozone SIP for the KCMA was substantially inadequate to attain the NAAQS. On July 2, 1986, the Governor of Kansas officially submitted the revised ozone SIP for Johnson and Wyandotte Counties.

B. Post 1982 Ozone SIP Revision Requirements

As explained in a General Preamble that EPA recently published (52 FR 26404), EPA believes that once an area has received full approval of its SIP as meeting the requirements of Part D, it has discharged its Part D planning obligations. This means that if the area's Part D plan subsequently is found substantially inadequate to attain the NAAQS, as in the case of the ozone SIP

for Johnson and Wyandotte Counties, any new plan revision developed to correct the nonattainment problem must meet the basic requirements of the Act contained in section 110. See section 110(a) (2) and (3).

Section 110(a)(2)(B) requires that the plan include "emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard . . ." Although technically the Part D requirements do not govern new planning efforts in an area that once received full approval of its Part D plan, some of those requirements call for provisions that are in turn necessary to meet the requirement that the revision "insure attainment and maintenance". For example, EPA believes that an area cannot truly assure attainment as expeditiously as practicable, as required by sections 110(a)(2) (A) and (B), unless its plan includes all reasonably available control measures (defined as measures available at reasonable cost, considering the extent to which they are necessary to produce timely attainment) and produces enough progress toward attainment in the interim years to assure that attainment will in fact occur by the attainment date. For that reason, EPA's 1984 guidance on what the plan revisions for areas like Johnson and Wyandotte Counties must contain, includes references to several Part D requirements that are relevant to determining compliance with section 110. These requirements, and the extent to which the Kansas plan revision meets them, are summarized below.

The revised SIP must demonstrate attainment as expeditiously as practicable, and provide for the implementation of reasonably available control measures (RACM) needed to attain the NAAQS as expeditiously as practicable and assure reasonable further progress (RFP) toward attainment. The SIP revision must demonstrate that RFP toward attainment will be maintained and reported throughout the period leading to attainment. The plan must identify and quantify the emissions, if any, which will be allowed to result from the construction and operation of new and modified stationary sources in the nonattainment area. States and local agencies must identify to the extent possible the direct and indirect emissions associated with major Federal actions that are anticipated to take place during the period covered by the SIP. The SIP revision must contain the most recent three years of air quality monitoring data which have been reduced, validated, and summarized. The SIP must contain a baseline and projected emission inventories of sufficient accuracy and detail for a sufficient period to provide input to EPA-approved models and comply with EPA modeling guidelines. The SIP revision must contain a contingency plan to ensure continued progress toward attainment in situations where analyses of air quality and control measure effectiveness suggests RFP is not being maintained.

EPA's policy for ozone nonattainment areas having a significant ozone generating potential requires reasonably available control technology (RACT) for all sources of volatile organic compounds (VOC) covered by a control techniques guideline (CTG) document. Controls representing RACT are also required for all major non-CTG VOC sources. Generally, areas having a design value above 0.150 ppm must have a RACT inspection and maintenance (I/M) program. However, the policy states that if a state can demonstrate attainment before an I/M program can be implemented, the program then will not be required. The ozone SIP revisions must implement all reasonably available transportation control measures. The policy guidance requires use of the most recent modeling guidance for determining mobile source emissions and determining the amount of reductions of VOC needed to attain the ozone standard. Specifically, MOBILE3 is recommended for mobile source emissions calculations and level III modeling (city-specific empirical kinetic modeling approach (EKMA)) is the minimum requirement for ozone SIP attainment demonstrations.

C. State Submittal

Section 172 of the Act contains the statutory requirements for nonattainment plan provisions. The following is a listing of section 172 requirements as well as EPA policy requirements for post 1982 ozone plans, and a discussion of how the Kansas ozone SIP revision addresses each issue.

1. Demonstration of Attainment

Section 110(a)(2) requires a plan to provide for attainment of a NAAQS as expeditiously as practicable, but within three years of EPA's approval of the revision. As discussed in a General Preamble that EPA recently published (52 FR 2604, July 14, 1987), it is not clear whether this period applies to post-Part D plan revisions submitted in response to a notice of plan inadequacy under section 110(a)(2)(H). However, the legislative history of the Act does make it clear that any such revision must show attainment by a fixed, near-term date.

The ozone SIP revision of July 2, 1986, contains a demonstration of attainment by December 31, 1987. The attainment demonstration includes a new inventory of VOC emissions for the year 1984, including mobile source emission estimates based on EPA's motor vehicle calculation program, MOBILE3. The inventory was used as input into EKMA, which estimated that a 16.8 percent reduction in VOC emissions was necessary to meet the ozone standard.

The control strategy contained in the SIP revision projects VOC reductions of 9,145 kg/summer day from mobile sources, 3,028 kg/summer day from area sources, and 4,450 kg/summer day from point sources. These reductions total 16,623 kg/summer day; this amounts to a 17.9 percent reduction as compared to the required 16.8 percent. Mobile source reductions arise from emission reductions expected because of the Federal Motor Vehicle Pollution Control Program. Area source reductions are expected to result from the state's Stage I control regulation for gasoline stations (K.A.R. 28–19–72). This regulation requires submerged filling of gasoline storage tanks and a vapor balance system to return vapors to the delivery truck during the filling operation. Point source emissions reduction credits are obtained by offsetting emissions for a new GM plant with closure of an existing GM plant in Kansas City, Kansas. The new plant is to be in operation and the old plant closed by December 31, 1987. The remainder of the point source credits are obtained by applying CTG controls to three previously uncontrolled graphic arts facilities.

Because some of the draft Kansas rules that will produce the projected VOC reductions have not yet been finally adopted by the state, EPA questions whether the Kansas plan will actually produce the reductions necessary to bring about attainment by December 31, 1987. The draft rules on printing operations, in particular, specify that affected sources must comply within a year after final adoption of the rules. That date appears to be well beyond the December 31, 1987, date chosen for attainment in the Kansas plan. Even if the attainment date slips somewhat beyond that date, however, the plan still appears to be capable of producing attainment within the short-term, fixed period described in EPA's General Preamble of July 14, 1987 (52 FR 26404). EPA will monitor the state's

rulemaking process to see whether the required rules are adopted in final form soon enough to produce the required reductions within that timeframe.

2. Public Participation

Section 172(b)(1) requires the plan to be adopted after reasonable notice and a public hearing.

The state submitted evidence that public notice was published in newspapers in the affected areas which provided at least 30 days' notice of the public hearing conducted on June 5, 1986, in Kansas City, Kansas.

3. Reasonably Available Control Measures

Section 172(b)(2) requires implementation of all RACM as expeditiously as practicable.

The July 2, 1986, state submittal did not adequately address these requirements; however, the April 22, 1987, supplement to the SIP contains revised emission control requirements in draft form. This material supercedes all regulatory provisions in the July 2, 1986, submittal; nevertheless, all previously adopted state VOC rules, on which the attainment demonstration is based, remain in effect until such time that these draft revisions are adopted. EPA believes that these requirements, when adopted in final form by the state, will satisfy the requirements of section 172(b)(2). For a complete discussion of the April 22 submittal, the reader is referred to EPA's proposed approval published elsewhere in today's **Federal Register.**

4. Reasonable Further Progress

Section 172(b)(3) requires, in part, that the state demonstrate that it will make reasonable further progress toward attaining the standard by specified dates, including emission reductions which can be achieved by application of RACT. Section 171(1) defines RFP in terms of annual incremental reductions between the period of plan approval and the attainment date. For Kansas, all reductions necessary to attain the standard will occur within the next year. Therefore, the plan substantially meets this requirement.

5. Emission Inventory

Section 172(b)(4) requires the plan to include a comprehensive, accurate, and current inventory of all sources of each pollutant for which an area is nonattainment. It also requires the inventory to be updated as frequently as necessary to assure that RFP is being made and to assure that the standard will be attained.

Included in the plan submittal is an updated mobile source emission inventory using EPA's MOBILE3 model, and current and projected vehicle miles traveled. Also included is a current area and point source inventory with emission projections through the year 2000. The emission inventory is acceptable and satisfies the requirement of section 172(b)(4) of the Act.

6. Emission Growth

Section 172(b)(5) requires the plan to expressly identify and quantify the emissions, if any, which will be allowed to result from the construction and operation of major new or modified stationary sources in a nonattainment area.

The SIP contains an inventory based on 1984 stationary source emission reports, a contractor report of area source emissions, and a mobile source inventory based on the most recent traffic counts, registration data, and other data needed to run the MOBILE3 calculations. Future emission inventory estimates are projected through the year 2000.

Regulations governing construction and operation of new or modified sources in nonattainment areas are contained in K.A.R. 28–19–16 *et seq.* These rules were approved by EPA as part of the Kansas Part D plan for the Kansas City area on April 3, 1981. The ozone SIP contains projected area source VOC emissions. However, the ozone SIP revision contains projected VOC emissions reduction of approximately 1,000 kg/day in addition to that needed to meet the ozone standard, and states that additional new source growth must be accompanied by offsetting emissions. This should assure continued VOC emission reductions beyond the attainment date. The state plan satisfies the requirements of section 172(b)(5) of the Act.

7. Permit Requirements

Section 172(b)(6) requires plans to have a permit program for the construction and operation of new or modified sources in accordance with the permit requirements of section 173. As stated above, EPA approved the Kansas permit regulations that are applicable in nonattainment areas on April 3, 1981. The requirements of section 172(b)(6) are satisfied.

8. Resources

Section 172(b)(7) requires the state to identify and commit to financial and manpower resources necessary to carry out the plan provisions.

The Kansas City ozone plan approved by EPA on April 3, 1981, was found to satisfy the requirements of section 172(b)(7). The SIP revision does not clearly commit to financial and manpower resources, but the state agency has included such resource growth in its annual grant agreement. Thus, EPA believes that resources will be available to carry out the plan commitments.

9. Schedules

Section 172(b)(8) requires emission limitations, schedules of compliance, and other measures as may be necessary to meet the requirements of section 172.

The plan contains three new RACT rules, each of which contains a schedule for compliance.

10. Public, Local Government, and Legislative Involvement

Section 172(b)(9) requires evidence of involvement and consultation of the public, local government, and state legislature in the planning process. The section also requires an identification and analysis of various effects of the plan and a summary of public comments on the analysis.

The plan approved by EPA on April 3, 1981, was found to be consistent with the requirements of section 172(b)(9). Public involvement is documented for the ozone SIP revision by a submittal of the state's hearing officer's report. The hearing officer's report summarizes testimony at the June 5, 1986, hearing and identifies those attending the hearing.

11. Attainment Date Extension

Section 172(b)(11) is applicable to Part D plans which could not demonstrate attainment of ozone or carbon monoxide standards by December 31, 1982. This section establishes requirements for plans requiring an extension of the attainment date. Such extension plans were to include I/M of motor vehicle emission controls, alternate site analysis of new stationary sources, and other activities to insure attainment of the ozone or carbon monoxide standard. This section requires that extension areas attain the applicable standard by December 31, 1987.

The Kansas Ozone SIP for the KCMA as approved by EPA demonstrated attainment by December 31, 1982. Therefore, an extension was not requested. Thus, section 172(b)(11) is not applicable to the revised Kansas Ozone SIP.

12. Planning Procedures

In accordance with section 174 of the Act, the Mid America Regional Council

(MARC) is the designated lead planning agency for the Kansas City area. MARC is primarily responsible for transportation planning, but is active in other SIP elements. MARC developed the forecasts of population change used in the SIP revision to project growth.

13. Contingency Plan

Section 6 of the SIP revision contains the state's contingency plan. The contingency plan provides for consideration of Stage II vapor recovery, an anti-tampering program, an I/M program, and traffic control measures.

D. Conclusions

The Kansas submission of July 2, 1986, is based on a current emission inventory, has an emission reduction requirement developed using current guidance, will reduce actual emissions through implementation of new emission limits, and shows attainment of the ozone NAAQS by a near-term date. These basic requirements, along with the other elements described above, are necessary for a revision to be approved as part of the SIP. The July 2 submittal satisfies all applicable CAA requirements, except that it does not provide for all RACMs as required by section 172(b)(2). The April 22, 1987, submittal (discussed briefly herein and in detail elsewhere in today's **Federal Register**) explicitly addresses the section 172(b)(2) requirements. Thus, the overall SIP addresses all elements of a complete ozone plan.

PROPOSED ACTION: EPA proposes to approve the revised Kansas Ozone SIP for the Kansas metropolitan area as meeting the requirements of the CAA.

EPA intends to propose, in the near future, its policy on how areas that are not currently attaining the ozone and carbon monoxide standards should revise their SIPs after 1987. As a part of that policy, the Agency expects to issue notices under section 110(a)(2)(H) of the Act that the SIPs for various states are substantially inadequate to attain the standards in the near term. EPA will continue to monitor the air quality in Kansas City, as well as the state's progress in implementing the provisions of the Kansas City plan according to the schedule described above. Depending on the outcome of that review, EPA may or may not include Kansas City among the areas receiving section 110(a)(2)(H) notices under the post-1987 policy.

The Administrator's decision to approve or disapprove this proposed SIP revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of sections 110 and 172 of the CAA; of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans; and of the 1982 SIP policy.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a substantial impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Date: December 18, 1986.

Morris Kay,

Regional Administrator.

[FR Doc. 87–22788 Filed 10–1–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen. Docket No. 87–24; and 87–25]

Program Exclusivity in the Cable and Broadcast Industries

AGENCY: Federal Communications Commission.

ACTION: Extensions of Time for Reply Comments.

SUMMARY: On August 21, 1987, in response to a request for extension of time and for good cause shown, the Chief of the Office of Plans and Policy granted extension of time for Reply Comments in GEN. Docket 87–24 (Amendment of Part 73 and 76 of the Commission's Rules relating to program exclusivity in the cable and broadcast industries) and GEN. Docket 87–25 (Compulsory Copyright License for Cable Retransmission).

ADDRESS: Federal Communications Commission, Washington, DC 20554.

DATES: Reply Comments in GEN. Docket 87–24 are extended to September 22, 1987 and in GEN. Docket 87–25 to October 5, 1987, respectively.

FOR FURTHER INFORMATION CONTACT: James A. Hudgens, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION: The Notice of Inquiry and Notice of Proposed Rule Making in GEN. Docket 87–24 was published in the **Federal Register** on April 30, 1987 (52 FR 15738) and the Notice of Inquiry in GEN. Docket 87–25 was published in the **Federal Register** on April 30, 1987 (52 FR 15765), with Comments in both proceedings originally due June 27, 1987 and Reply Comments due August 6, 1987. Extensions of time subsequently had been granted to July 22, 1987 and September 8, 1987, respectively, in GEN. Docket 87–24 and in GEN. Docket No. 87–25 to August 6, 1987 and September 21, 1987, respectively.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–22757 Filed 10–1–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 45164, Notice No. 87–20]

49 CFR Part 31

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, DOT.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would implement the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of Transportation (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against certain persons making false claims or statements.

DATE: To assure consideration, comments must be received on or before November 2, 1987. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to Docket Clerk, Docket 45164, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will date stamp and sign the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: James R. Dann, Deputy Assistant General Counsel, at (202) 366–9154 (FTS 366–9154).

SUPPLEMENTARY INFORMATION:

I. Background

These proposed regulations would implement the Program Fraud Civil

Remedies Act of 1986 (the Act), which was enacted on October 21, 1986 as sections 6101–6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, 100 Stat. 1874), and codified at 31 U.S.C. 3801–3812. The Act establishes an administrative remedy against anyone who makes a false claim or written statement to any of certain Federal agencies, including the Department of Transportation (the Department). In brief, any person who submits a claim or written statement to an affected agency knowing or having reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to $5,000 per false claim or statement and, in addition, with respect to claims, for an assessment of up to double the amount falsely claimed.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantively uniform throughout the government, except as necessary to meet the specific needs of a particular agency or program." S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). In keeping with that expression, in November 1986 the President's Council on Integrity and Efficiency (PCIE) requested the Department of Health and Human Services (HHS) to form a task force to develop model regulations for implementation of the Act by all affected Federal agencies. HHS was asked to lead the task force because it has been administering since 1983 a statute similar to the Act, the Civil Monetary Penalty Law, 42 U.S.C. 1320a–7a. The task force completed a model set of regulations on March 6, 1987, and the PCIE recommended that all affected federal agencies adopt them.

The Department here proposes to adopt the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions specific to the Department's organization and making a small number of minor changes. The more substantive of these are described below in this preamble.

II. General Description of the Statutory Scheme

The Act provides for administrative adjudication of cases where a person makes a claim or written statement to the Department that the person knows, or has reason to know, is false, fictitious, or fraudulent. Liabaility attaches under the Act for any false, fictitious, or fraudulent claim for property, services, or money and for any written statement that is false, fictitious, or fraudulent with respect to any claim, contract, bid, proposal for contract, grant, loan or benefit.

The claim or statement is actionable under the Act if it is submitted to the Department with actual knowledge or deliberate ignorance of its falsity, or with reckless disregard for the truth or falsity of the claim or statement. Where the Act is found to have been violated, each person found to be liable is subject to a penalty of up to $5,000 per claim or statement. In addition, with respect to claims, the person may be subject to an assessment of up to double the amount falsely claimed.

Role of Major Participants in Bringing Cases

The Act prescribes roles for four major participants within the Department in bringing cases under the Act: the investigating official, the reviewing official, the presiding officer, and the authority head.

The *investigating official* is vested with the authority to investigate all allegations of liability under the Act, including the power to subpoena documents and other information. If the investigating official concludes that an action under the Act is warranted, he or she submits a report of the investigation to the reviewing official.

The *reviewing official* must be someone within the Department independent of the investigating official. The reviewing official reviews the investigative report to determine whether there is adequate evidence to believe that the person named in the report is liable under the Act. If so, the reviewing official sends to the Department of Justice a written notice of intent to issue a complaint. The Act then gives the Attorney General, or a designated Assistant Attorney General, 90 days to approve or disapprove the issuance of a complaint.

If the appropriate Justice Department official approves a case, the reviewing official may serve a complaint on the defendant. The defendant may request a hearing by filing an answer within 30 days of receiving the complaint. If the defendant does so, the reviewing official sends the complaint and answer to a presiding officer, who in the Department, as in most affected agencies, will be an administrative law judge (ALJ).

The *presiding officer* serves a notice of hearing upon the defendant, supervises discovery, rules on motions, conducts the hearing, and issues an initial decision. The initial decision will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed. Any defendant who is determined to be liable for a civil penalty or assessment in an initial decision and who has filed a timely answer may appeal that decision to the authority head.

When a defendant files a proper appeal, the *authority head* may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment. Should the authority head determine that the defendant is liable for a penalty or assessment, the defendant may obtain judicial review of such determination in an appropriate United States District Court.

These proposed regulations name as the investigation official the Inspector General of the Department. The Department's Deputy General Counsel will act as the reviewing official. Administrative Law Judges (ALJ) will be presiding officers, and the Department's Assistant Secretary or Deputy Assistant Secretary for Budget and Programs will function as the authority head.

III. Discussion of Major Issues

1. Definitions

Most of the proposed definitions set forth in section 31.2 of the proposed rule come directly from the Act. One exception is the proposed rule come directly from the Act. One exception is the proposed definition of "benefit," which is broad in scope for the purpose of describing "benefit" in the context of false statements. This definition stands in contrast to the "benefits" specifically listed in 31 U.S.C. 3803(c)(2) for the purpose of limiting liability under the Act with respect to recipients of certain Government benefits. (The Department administers none of the benefit programs named in 31 U.S.C. 3803(c)(2).) The proposed definition "person" follows the Act's definition.

2. Basis for Civil Penalties and Assessments

For the most part, proposed language contained in section 31.3 comes directly from the Act or the legislative history. However, the proposed regulation provides that liability for assessments is joint and several among all defendants, whereas each defendant may be held liable separately for a penalty of up to $5,000 per claim or statement.

3. Investigation

Section 31.4 includes the provision that the investigating official must submit a report to the reviewing official only where he or she concludes that action under the Act may be warranted. This section also would prescribe basic procedures for the investigating official

to follow in issuing investigatory subpoenas under the Act for documents or other information. In addition, this section would make it clear that the Act does not prevent the investigating official from exercising the subpoena powers that he or she may have under other authorities or from pursuing other remedies.

4. Review by Reviewing Official

Under 31 U.S.C. 3809, the reviewing official is required to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. Section 31.5 would not interpret this to require the reviewing official to determine that a defendant could pay the statutory maximum, but rather that the defendant could pay an "appropriate amount."

5. Prerequisites for Issuing a Complaint

Most of the proposed language contained in § 31.6 is derived directly from the Act. Under 31 U.S.C. 3803(c)(1), the remedies provided in the Act do not apply with respect to any claim if the amount of money (or value of property or services) falsely demanded or requested in such claim or in a group of related claims submitted at the same time exceeds $150,000. This section interprets the term "related group of claims submitted at the same time" narrowly to prevent attempts to evade liability under the Act.

The proposed regulation also would make it clear that the reviewing official may join in a single complaint claims that are unrelated or that were not submitted at the same time, even if the total amount of money (or value of property or services) falsely claimed exceeds $150,000.

6. Issuance of Complaints

The proposed regulations would specify what must be included in a complaint (§ 31.7) and an answer by which a defendant requests a hearing (§ 31.9). Section 31.8 would specify the means by which service of the complaint is made.

7. Default upon Failure to Answer

Section 31.10 would require the ALJ (after another notice to the defendant) to impose penalties and assessments at the statutory maximum whenever the facts alleged in the complaint establish liability under the Act and the defendant fails to answer within the time prescribed. An initial decision of the ALJ would become the final decision of the Department unless the defendant would demonstrate to the ALJ or on appeal to the authority head that extraordinary circumstances prevented a timely answer.

8. Hearing

Sections 31.14 and 31.15 are designed to ensure the fairness of a hearing by providing for the separation of functions among those within the agency handling these cases, and prohibiting ex parte contacts with the ALJ on any matters at issue. In a slight variation from the model regulation, § 31.16 of the proposed regulation deletes the provision that if a motion for disqualification is made, the ALJ shall proceed no further in the case until the disqualification issue is resolved. The Department believes that permitting a party to stop all proceeding, even on the eve or in the middle of a hearing, by filing a disqualification motion and affidavit is unwise. The purpose of the deletion is merely to afford the ALJ the discretion to handle the matter as he or she deems appropriate in light of all the circumstances present.

9. Rights of Parties; Authority of the ALJ

Sections 31.17 and 31.18 would list the rights of the parties and the authorities of the ALJ not specifically provided in other sections of the regulations. To provide a clearer statement of what the Department perceives as the intent of the model regulation, proposed § 31.18(c), in a slight variation from the language of the model regulation, would read as follows: "The ALJ does not have authority to find Federal statutes or regulations invalid." The purpose of this minor change is to express better the legal principle that an agency and its personnel must presume the validity of the statutes and regulations under which it operates. The Department does not intend by this provision to restrict an ALJ from construing the language of statutes or regulations, or from considering even the constitutional implications of alternate interpretations of statutes and regulations.

10. Prehearing Conferences

Section 31.19 provides that the ALJ may order a prehearing conference at his or her discretion, but must order at least one on the request of either party. Prehearing conferences may be held over the telephone at the ALJ's discretion.

11. Disclosure of Documents

The Act requires the disclosure of certain types of materials to the defendant. 31 U.S.C. 3803(e)(1) and (2). Generally speaking, these materials consist of any relevant and material documents and other materials that relate to the allegations in the complaint and upon which the findings and conclusions of the investigating official under § 31.4(b) are based, unless such materials are subject to a privilege under Federal law. In addition, under § 31.20 the defendant may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint.

12. Discovery

Congress provided for limited discovery in these proceedings. The Act provides only for such discovery as the ALJ determines is "necessary for the expeditious, fair, and reasonable consideration of the issues * * *." 31 U.S.C. 3803(g)(3)(B)(ii). In addition, the Senate Governmental Affairs Committee stated:

> In the ordinary case, the Committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the Committee's hope that this alternative administrative mechanism will not become entangled in the unchecked "discovery wars" that render many court cases excessively costly and time-consuming.

S. Rep. No. 99–212, *supra*, at 15.

In order to ensure that discovery is reasonably controlled, the proposed regulation (§ 31.21) provides that all discovery must be approved by the ALJ unless the parties agree otherwise. The burden of proof with respect to a discovery request is on the proponent of that request. Section 31.21(d)(1) includes some minor editorial changes from the model regulation to improve clarity.

13. Exchange of Witness Lists, Statements, and Exhibits

Section 31.22 would provide for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits. The ALJ would be able to exclude witnesses and documents in instances where a party did not receive such documents before the hearing. In addition, any documents so exchanged would be deemed authentic for purposes of admissibility at the hearing unless a party objected before the hearing.

14. Subpoenas

Section 31.23 would prescribe procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing, as authorized by 31 U.S.C. 3804(b). In a minor addition to the model regulation, the Department's regulation would require requests for the issuance

of a subpoena to be accompanied by a proposed subpoena. Section 31.24 would permit parties and prospective witnesses to seek protective orders to restrict discovery or to limit the disclosure of information at the hearing.

15. Filing Papers

In a minor supplementation of the model regulation, § 31.26(a) would require parties to submit the original and two copies of documents to the Docket Clerk, and two copies simultaneously to the ALJ or, if on appeal, to the authority head.

16. Motions

The Department proposes, in § 31.21(e)(3), 31.23(f), and 31.28(d), to include provisions not in the model regulation on the effect of motions on deadlines and return dates.

17. Sanctions

Section 31.29 would expressly recognize an ALJ's authority to sanction parties and their representatives for failing to comply with regulations or orders of the ALJ. These sanction provisions are modeled on those of the Merit Systems Protection Board at 5 CFR 1201.43. Section 31.29(b) contains a minor wording change from the model regulation to state more clearly that the list of sanctions in the regulation is not exhaustive.

18. The Hearing and Burden of Proof

Section 31.30 would recognize that the Department has the burden of proof on the issues of liability and the existence of any factors that might aggravate or increase the amount of penalties and assessments that may be imposed. Conversely, the defendant has the burden of proof on any affirmative defenses and any factors that might mitigate or reduce the amount of penalties and assessments.

19. Determining the Amount of Penalties and Assessments

The Act authorizes the imposition of penalties ranging up to $5,000 for each false claim or statement, and in addition, with respect to claims, an assessment ranging up to twice the amount falsely claimed. However, the Act is silent on how the appropriate amount of penalties or assessments should be determined. Section 31.31 would provide guidance to the ALJ and the authority head in exercising this discretion. The proposed regulation notes that because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others, a significant penalty and double damage ordinarily should be imposed. It then lists factors that should be considered, but notes that the list is not exhaustive. The ALJ and the authority head remain free to consider other factors that may aggravate or mitigate the amount of penalties and assessments as such factors are presented in particular cases.

20. Location of Hearing

In a minor clarification of the model regulation, § 31.32(b) would permit each party to have the opportunity to present written and oral argument with respect to the location of the hearing. However, if a party desires to present oral argument on the location of the hearing, the Department anticipates that such argument will be presented at the prehearing conference, which may be held by telephone. No separate, in-person hearing is required.

21. Witnesses

Under § 31.33, the ALJ would allow testimony to be admitted in the form of a written statement or deposition so long as the opposing parties have a sufficient opportunity to subpoena the person whose statement is being offered. Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in paragraphs (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

22. Evidence

Paragraphs (a) through (d) of § 31.34 were included to comply with the recommendations of the Administrative Conference of the United States in Recommendation 86–2, 1 CFR 305.86–2, 51 FR 25642 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, generally binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence, for example, to exclude unreliable evidence.

23. Post-Hearing Briefs

Per § 31.36, it is within the ALJ's discretion to order post-hearing briefs, and any party may file one if so desired. The proposed regulation does not include the model regulation's 60-day maximum period for filing post-hearing briefs because the Department believes that the matter should remain subject to the ALJ's discretion and that parties might come to expect 60 days, which would often be too long a period.

24. Initial Decision

Section 31.37 would provide that the ALJ shall serve on the parties an initial decision based solely on the record, which shall contain specific findings of fact and conclusions of law on whether the claims or statements alleged in the complaint violate the Act and the appropriate amount of penalties and assessments considering any aggravating or mitigating factors in the case. The initial decision would become final 30 days after issuance unless an appeal is filed or a motion for reconsideration is made.

25. Reconsideration of Initial Decision

Section 31.38 would permit any party to file with the ALJ a motion to the ALJ for reconsideration of the initial decision, allowing the primary decisionmaker an opportunity to correct any errors in the initial decision. Sections 31.38 (f) and (g) are phrased slightly differently from the model regulation in order to improve clarity.

26. Appeal to Authority Head

Section 31.39 would prescribe procedures for a defendant who has been found liable for penalties and assessments in an initial decision to appeal that decision to the authority head, as guaranteed by 31 U.S.C. 3803(i)(2). The rule would provide that there is no appeal of an ALJ's interlocutory orders.

27. Miscellaneous

Sections 31.40 through 31.46 would largely reiterate statutory provisions, except § 31.41, which would provide that there will be no administrative stay of the authority head's final decision.

28. Limitations

The Act provides that the ALJ must serve a notice of hearing within 6 years of the date the claim or statement is made. The proposed regulation (§ 31.47) would provide that service of a notice of intent to issue an initial decision in the event of default would be deemed to meet this statutory requirement.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the proposed rule would establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements. As such, this proposed rule would have no direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

B. Department of Transportation Regulatory Policies and Procedures

Because this NPRM proposes a rule that would affect all Departmental administrations and would provide important new tools for combating fraud in Departmental programs, it is a significant rule under the Department's regulatory policies and procedures. However, because the rule's economic impacts would be minimal, it has been determined that a regulatory evaluation is not needed.

C. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulaltions unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these proposed regulations would not have a significiant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. The Department has determined that this proposed rulemaking does not contain any information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

V. Other Information

List of Subjects in 49 CFR Part 31

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies) Penalties.

Issued in Washington, DC, on September 29, 1987.

Elizabeth Dole,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation proposes to add a new 49 CFR Part 31 to subtitle A to read as follows:

PART 31—PROGRAM FRAUD CIVIL REMEDIES

Sec.

31.1 Basis and purpose.
31.2 Definitions.
31.3 Basis for civil penalties and assessments.
31.4 Investigation.
31.5 Review by the reviewing official.
31.6 Prerequisites for issuing a complaint.
31.7 Complaint.
31.8 Service of complaint.
31.9 Answer.
31.10 Default upon failure to answer.
31.11 Referral of complaint and answer to the ALJ.
31.12 Notice of hearing.
31.13 Parties to the hearing.
31.14 Separation of functions.
31.15 Ex parte contacts.
31.16 Disqualification of reviewing official or ALJ.
31.17 Rights of parties.
31.18 Authority of the ALJ.
31.19 Prehearing conferences.
31.20 Disclosure of documents.
31.21 Discovery.
31.22 Exchange of witness lists, statements, and exhibits.
31.23 Subpoenas for attendance at hearing.
31.24 Protective order.
31.25 Fees.
31.26 Filing, form, and service of papers.
31.27 Computation of time.
31.28 Motions.
31.29 Sanctions.
31.30 The hearing and burden of proof.
31.31 Determining the amount of penalties and assessments.
31.32 Location of hearing.
31.33 Witnesses.
31.34 Evidence.
31.35 The record.
31.36 Post-hearing briefs.
31.37 Initial decision.
31.38 Reconsideration of initial decision.
31.39 Appeal to authority head.
31.40 Stays ordered by the Department of Justice.
31.41 Stay pending appeal.
31.42 Judicial review.
31.43 Collection of civil penalties and assessments.
31.44 Right to administrative offset.
31.45 Deposit in Treasury of United States.
31.46 Compromise or settlement.
31.47 Limitations.

Authority: 31 U.S.C. 3801–3812.

§ 31.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, Sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* The part—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorties or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 31.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C 3344.

Authority means the Department of Transportation.

Authority head means the Assistant Secretary of Deputy Assistant Secretary for Budget and Programs, Department of Transportation.

Benefit means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United states—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 31.7.

Defendant means any person alleged in a complaint under § 31.7 to be liable for a civil penalty or assessment under § 31.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 31.10 or 31.37 and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Transportation or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or settlement—

(a) Has actual knowledge that the claim or statment is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing official means the Deputy General Counsel of the Department of Transportation, or other officer or employee of the Department who is designated by the Deputy General Counsel and eligible under 31 U.S.C. 3801(a)(8).

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 31.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be presecribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

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§ 31.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official or to report violations of criminal law to the Attorney General.

§ 31.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 31.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 31.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 31.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 31.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 31.6 Prerequisites for issuing a complaint.

(a) The revising official may issue a complaint under § 31.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 31.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims is submitted at the same time such claim is submitted (as defined in paragpraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 31.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simulataneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simulaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 31.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a compliant on the defendant, as provided in § 31.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 31.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his or her representative.

§ 31.9 Answer.

(a) The defendant may request a hearing by serving an answer on the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 31.10 Default upon failure to answer.

(a) If the defendant does not answer within the time prescribed in § 31.9(a), the reviewing official may refer the complaint to an ALJ filing the complaint and a statement that defendant has failed to answer on time.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on

defendant in the manner prescribed in § 31.8, a notice that an initial decision will be issued under this section.

(c) In addition, the ALJ shall assure the facts alleged in the complaint to be true, and, if such facts establish liability under § 31.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to answer on time, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from answering, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to answer on time, the ALJ shall withdraw the intitial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 31.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal in accordance with § 31.26 within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to answer on time based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to answer on time, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to anwswer on time is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 31.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall refer the matter to an ALJ by filing the complaint and answer in accordance with § 31.26.

§ 31.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 31.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government and to the Docket Clerk.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 31.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 31.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 31.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 31.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official of ALJ in a particular case may disquality himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 31.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

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(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 31.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 31.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether the party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 31.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 31.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only the portion containing exclupatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 31.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed following the filing of an answer pursuant to § 31.9.

§ 31.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant documents or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 31.22 and 31.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion. Such a motion shall be accompanied by a copy of the request for production of documents, request for admissions, or interrogatories, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 31.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 31.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 31.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 31.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 31.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 31.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall be accompanied by a proposed subpoena, which shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 31.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

§ 31.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 31.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 31.26 Filing, form, and service of papers.

(a) *Filing and form.* (1) A party filing a document under this part shall submit:

(i) The original and two copies to the Docket Clerk, Documentary Services Division (C–55), Room 4107, Department of Transportation, 400 7th St., SW., Washington, DC 20590; and

(ii) Two copies simultaneously to the ALJ or, if on appeal, to the authority head.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any documen. other than the complaint or noice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 31.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued, by mail, an additional five days will be added to the time permitted for any response.

§ 31.28. Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion.

Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(f) Except as provided by §§ 31.21(e)(3) and 31.23(f), which concern subpoenas, the filing or pendency of a motion shall not automatically alter or extend a deadline or return date.

§ 31.29. Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Sanctions include but are not limited to those specifically set forth in paragraphs (c), (d), and (e) of this section. Any such sanction shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 31.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 31.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 31.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 31.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

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(b) Each party shall have the opportunity to present written and oral argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 31.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 31.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 31.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected at the offices of the Docket Clerk (see § 31.26(a)(1) for address) and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for the filing such briefs. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 31.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 31.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 31.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 31.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the

ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 31.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 31.39.

§ 31.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal in accordance with this section and § 31.26.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 31.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows a good cause.

(c) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority made shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and with a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 31.3 is final and is not subject to judicial review.

§ 31.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 31.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 31.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 31.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 31.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 31.42 or § 31.43, or any amount agreed upon in a compromise or settlement under § 31.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 31.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 31.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 31.42 or during the pendency of any action to collect penalties and assessments under § 31.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 31.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

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§ 31.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 31.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 31.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

[FR Doc. 87-22795 Filed 10-1-87; 8:45 am]
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Notices

Federal Register
Vol. 52, No. 191
Friday, October 2, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1988 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1988 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $66.00 per license.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616-South Building, U.S. Department of Agriculture, Washington, DC 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total costs to the Department of Agriculture of administering the licensing during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

7 CFR 6.33(b) provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the **Federal Register.** Accordingly, this notice sets out the fee for the licenses tos be issued for the 1988 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1987 has been determined to be $230,559. Of this amount, $168.559 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1987 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $141,810; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $26,749); $38,000 represents the cost of the computer on-line entry system used to monitor the use of licenses during 1987; and $24,000 represents other miscellaneous costs, including travel, postage, and an in-house computer system. The average number of licenses issued per year for the three yers immediately preceding 1988 has been determined to be 3,510.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1988 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $66.00 per license.

Issued at Washington, DC, the 5th day of August, 1987.

Phillip J. Christie,

Licensing Authority.

[FR Doc. 87–22842 Filed 10–1–87; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 364]

Resolution and Order Approving The Application of The Massachusetts Port Authority, For a Special-Purpose Subzone For The General Motors Plant in Framingham, MA, Within The Boston Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Massachusetts Port Authority, grantee of FTZ 27, filed with the Foreign-Trade Zones Board (the Board) on October 18, 1985, requesting special-purpose subzone status for the auto manufacturing plant of General Motors Corporation in Framingham, Massachusetts, within the Boston Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

GRANT To Establish a Foreign-Trade Subzone in Framingham, MA, Within The Boston Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation,

and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, has made application (filed October 18, 1985, Docket No. 38–85, 50 FR 45446) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing plant of General Motors Corporation in Framingham, Massachusetts, within the Boston Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed October 18, 1985, the Board hereby authorizes the establishment of a subzone at the General Motors plant in Framingham, Massachusetts, designated on the records of the Board as Foreign-Trade Subzone No. 27D at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 25th day of September 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–22834 Filed 10–1–87; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, and interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than October 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

ANTIDUMPING DUTY PROCEEDING AND PERIOD

Shop Towels of Cotton from the People's Republic of China
10/01/86—09/30/87
Steel Wire Rope from Japan
10/01/86—09/30/87
Barium Chloride from the People's Republic of China
10/01/86—09/30/87
Pressure Sensitive Plastic Tape from Italy
10/01/86—09/30/87

COUNTERVAILING DUTY PROCEEDING AND PERIOD

Agricultural Tillage Tools from Brazil
01/01/86—12/31/86
Certain Iron Metal Castings from India
01/01/86—12/31/86
Certain Carbon Steel Products from Sweden
01/01/86—12/31/86
Canned Tuna from the Philippines
01/01/86—12/31/86
Roasted Pistachios from Iran
08/21/86—12/31/86

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by October 31, 1987.

If the Department does not receive by October 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: September 24, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–22831 Filed 10–1–87; 8:45 am]

BILLING CODE 3510–DS–M

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Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review; Correction

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation, correction.

In notice document 87–20058 beginning on page 32950 in the issue of Tuesday, September 1, 1987, some errors occurred in the table on page 32951. The table is corrected as follows:

1. Within the table under the title *Antidumping Duty Proceeding,* insert the period "09/01/86—08/31/87," opposite the entry for the Greige Polyester/Cotton Printcloth from the People's Republic of China;

2. Within the table under the title of *Countervailing Duty Proceeding:*

Portland Hydraulic Cement and Cement Clinker from Mexico, period "01/01/86—12/31/87," should read "01/01/86—12/31/86";

Fresh Cut Roses from Israel, period "01/01/86—09/30/86" should read "10/01/85—09/30/86."

3. At the bottom of the table add:

	Period
Suspended Investigations	
Steel Sheet Pilings from Canada	09/15/85–08/31/86

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 24, 1987.

[FR Doc. 87–22830 Filed 10–1–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–606]

Antidumping; Final Determination of Sales at Not Less Than Fair Value; Certain Forged Steel Crankshafts From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain forged steel crankshafts (CFSC) from Japan are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Ellie Shea, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0187, 377–0184, or 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of CFSC from Japan are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We have found that the weighted-average margin for the company being investigated is *de minimis.*

Case History

Since the last **Federal Register** publication announcing the postponement of the final determination and the rescheduling of the public hearing (52 FR 23707, June 24, 1987), the following events have occurred. We conducted verification of the questionnaire responses of Sumitomo Metal Industries, Ltd. (SMI) from May 20 through 29, 1987. Petitioner and respondent filed pre-hearing briefs on July 16, 1987, and rebuttal briefs on July 29, 1987. Sumitomo Corporation (Sumitomo Corp.) and Sumitomo Corporation of America (SCOA), interested parties in this investigation, filed a pre-hearing brief on July 16, 1987. A public hearing was held on July 21, 1987.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

Period of Investigation

CFSC are normally sold to the United States on the basis of long-term requirements contracts. Therefore, in order to capture the most recent sales of CFSC to the United States, we extended the period of investigation to encompass the 18 months from May 1, 1985 to October 31, 1985, as permitted by § 353.38(a) of our regulations.

Fair Value Comparisons

To determine whether sales of CFSC to the United States were made at less than fair value, we compared the United States price to the foreign market value for SMI, as specified below. We made comparisons on virtually all sales of CFSC during the period of investigation, May 1, 1985 through October 31, 1986. We divided the 18-month review period into three six-month periods for purposes of making our price to price comparisons.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of CFSC to represent the United States price for sales by SMI, because the merchandise was sold to an unrelated purchaser prior to its importation into the United States. We calculated the purchase price based on the packed FOB (free on board), CFS (container freight station), CY (container yard), or FAS (free alongside ship) price to unrelated purchasers.

All U.S. sales, as well as all home market sales of such or similiar merchandise, were made to Sumitomo Corp., a Japanese trading company. Because SMI knew the product was destined for the United States, and because SMI and Sumitomo Corp. are not related within the meaning of section 771(13) of the Act, we based the United States prices on the price SMI charged to Sumitomo Corp. We made deductions from these prices for inland freight and, where appropriate, other delivery charges. In the response, SMI deducted after-sale warehousing expenses from the gross price that it received from Sumitomo Corp. We consider this to be a circumstance of sale adjustment. Therefore, we have added this charge back into the gross price and made the appropriate adjustment to the foreign market value.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for CFSC on sales in the home market. We made deductions, where appropriate, from the home market price for inland freight. Since no packing costs were incurred on home market sales, we added only U.S. packing costs. We made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses, after-sale warehousing, and sales commissions in the United States and home markets. Pursuant to § 353.16 of our regulations, we made adjustments, where appropriate, to

account for differences in physical characteristics of the merchandise.

Petitioner's Comments

Comment 1: Petitioner contends that Sumitomo Corp. and SCOA, a wholly-owned subsidiary of Sumitomo Corp., are reselling SMI's crankshafts in the United States at below their acquisition cost and selling expenses (*i.e.*, "middleman dumping"), and, therefore, the Department should use end-user prices in the U.S. market and, for comparability's sake, the corresponding end-user prices in the home market. Petitioner cites the *Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Bruzil* (51 FR 5572, Feb. 14, 1986) (*Fuel Ethanol*) which states that "[w]here there is a specific allegation that a trading company is failing to recover its costs in transactions concerning the subject merchandise, we will investigate that allegation to determine whether there is 'middleman dumping'." In support of its middleman dumping allegation, petitioner maintains that the commission paid to Sumitomo Corp. by SMI is not adequate to cover Sumitomo Corp.'s selling expenses. Petitioner maintains also that the low level of Sumitomo Corp.'s reported profits is further indication that Sumitomo Corp. makes a substantial portion of its sales at below its acquisition cost and selling expenses.

DOC Position: Since trading companies typically operate at small mark-ups, and presumably do not take losses, we require timely and convincing evidence that the trading company is in fact dumping before initiating an investigation with respect to the trading company. In *Fuel Ethanol*, the middleman dumping allegation was supported by evidence which warranted an investigation into the pricing practices of the trading company.

In the current case, petitioner made the middleman dumping allegation on May 26, 1987, three months after the response was submitted, approximately three weeks after the preliminary determination was issued, and at the end of the verification in Japan. We will not initiate an investigation of alleged middleman dumping unless the allegation can be supported by pricing or cost data [see, *Final Determination of Sales at Less than Fair Value: Certain Stainless Steel Cooking Ware from Korea* (51 FR 42873, Nov. 26, 1986)]. Petitioner provided no price information or other substantiating evidence that Sumitomo Corp. is selling below its cost of acquisition and related selling expenses. With regard to petitioner's comment concerning Sumitomo Corp.'s low profit levels, we do not consider low profit levels to consititute adequate evidence to support an investigation of middleman dumping. Petitioner also did not provide any information to show that Sumitomo Corp. was not recovering all of its selling expenses.

Comment 2: Petitioner contends that the Department's decision to solicit Sumitomo Corp.'s end-user prices need not be contingent upon its agreement with petitioner's allegation that Sumitomo Corp. is engaging in middleman dumping. Petitioner maintains that Sumitomo Corp. is the actual exporter to the United States and, because it makes sales to end-users in both the U.S. and Japanese markets, it can engage in price discrimination at the end-user level, either in combination with or in lieu of SMI. Petitioner further contends that in *Roller Chain, Other Than Bicycle, from Japan; Final Results of Administative Review of Antidumping Finding* (48 FR 51801, Nov. 14, 1983) (*Roller Chain*), the Department used the middleman's prices when the middleman determined the sales price in both the United States and the home market, regardless of whether the manufacturer knew the destination of the exported merchandise.

DOC Position: We determined that it is appropriate to use the prices at which SMI sells crankshafts to Sumitomo Corp. as the U.S. price because, at the time of such sale, SMI knows that the merchandise is destined for the United States. This is in accordance with the legislative history of the 1979 amendments to section 772 of the Act and the Department's long-standing practice. For example, in the *Roller Chain* case cited by petitioner, for one of the manufacturers, Kaga Kogyo, we used the manufacturer's price to an unrelated exporter since, as here, the manufacturer was aware at the time of the sale to the exporter that those sales were destined for the United States. See also, *Final Determination of Sales at Less than Fair Value: Certain Stainless Steel Cooking Ware from Korea* (51 FR 42873, Nov. 26, 1986).

While for two of the companies in *Roller Chain*, Honda and Toyota, we did use the prices charged by non-producers as the basis of our price comparisons, we did so becasue we determined that they, not the producers controlled the prices at which roller chain was sold in both the U.S. and Japanese markets. In this investigation, by contrast, our extensive review of the correspondence files during the verification showed that Sumitomo Corp.'s price to the end-user is based on the price Sumitomo Corp. pays SMI. We also saw no evidence that would lead us to believe that Sumitomo Corp. is controlling prices.

Comment 3: Petitioner contends that SCOA should be deemed the agent of SMI within the meaning of section 771(13)(A) of the Act because SMI is extensively involved in SCOA's sales negotiations with U.S. customers and because SMI controls the prices charged by SCOA.

DOC Postion: We disagree. We found no evidence during verification that would lead us to conclude that SCOA acts as the agent of SMI. SMI's participation in the actual sales negotiation between SCOA and the U.S. end-user is limited to consultation on technical matters. With regard to petitioner's argument that SMI controls the prices charged by SCOA, during verification we found tht SCOA negotiates the end-user price.

Comment 4: Petitioner contends tht the Department should consider SMI and Sumitomo Corp. to be "related parties" within the meaning of section 771(13)(C) of the Act because SMI has a substantial level of direct ownership in Sumitomo Corp.

DOC Position: The level of ownership between SMI and Sumitomo Corp. is less than five percent. Department policy has been not to consider parties to be related within the meaning of section 771(13)(C) of the Act if the ownership interest of one party in the other is less than five percent [see, *Final Determination of Sales at Less Than Fair Value: Portland Hydraulic Cement from Japan* (48 FR 41059, Sept. 13, 1983)]. Petitioner has not provided convincing evidence to cause us to change this policy for purposes of this investigation.

Comment 5: Petitioner contends that the Department should consider SMI and Sumitomo Corp. to be "related parties" within the meaning of section 771(13)(D) of the Act because well over 20 percent of SMI and Sumitomo Corp. are owned by the same group of corporate entities, the majority of which are members of the Sumitomo Group.

DOC Position: We disagree with petitioner's interpretation of section 771(13)(D). Petitioner contends that SMI and Sumitomo Corp. are related by virtue of the fact that a number of companies, in aggregate, own over 20 percent of the stock of both SMI and Sumitomo Corp. We do not believe this interpretation to be the intent of Congress. The underlying purpose of section 771(13)(D) was to avoid circumvention of the antidumping duty law by foreign manufacturers capable of shifting selling expenses to related parties in the United States, thereby influencing prices. Here there is no

ability for the common shareholders of SMI and Sumitomo Corp. to influence prices. Of the six companies that have common ownership in SMI and Somitomo Corp. that in aggregate reach the level of 20 percent, three are banks and three are insurance companies. These six companies have stock holdings in a multitude of Japanese companies, including SMI and Sumitomo Corp., which touch almost every sector of the Japanese economy. The petitioner's interpretation of section 771(13)(D) would lead to absurd results in this instance where common shareholders are not capable of effecting what the provision intended to prevent—the shifting of selling expenses in order to influence prices. Under petitioner's interpretation, any two publicly traded companies would have to be considered related if any number of individuals or companies that owned shares in both, owned, in the aggregate, 20 percent of each company. Therefore, the Department does not agree that SMI and Sumitomo Corp. are related within the meaning of section 771(13)(D).

Comment 6: Petitioner contends that the Department should base foreign market value on the average home market price of all crankshafts within a 15 percent, plus or minus, weight range rather than comparing each U.S. sale to a single home market sale judged to be "most similar." Petitioner maintains that this "basket" approach to product comparisons offers the greatest potential for ensuring that the Department's final less than fair value calculations are based on comparable products, rather than on products similar only with respect to weight. Petitioner cites the following Department decisions in support of its position: *Preliminary Determination of Sales at Less Than Fair Value: Color Picture Tubes from Korea* (52 FR 24318, June 30, 1986) (*CPTs*); and the *Final Determination of Sales at Less Than Fair Value: Certain Iron Construction Castings from Canada* (51 FR 2412, Jan. 16, 1986) (*Iron Construction Castings*).

DOC Position: Pursuant to section 771(16), it is the Department's policy to use the most similar home market product for comparison purposes and not to average a number of similar home market products. Therefore, we selected the one crankshaft model sold in the home market which is most similar to the U.S. sale. We do not find that the number of adjustments to price resulting from our selection of comparable models in this case is so large as to require an averaging technique such as that proposed by petitioner, nor is there any evidence that petitioner's proposal would lead to a more accurate comparison than the models we have chosen.

In *Iron Construction Castings*, our "similar" model selections were based on the primary product characteristics of weight, shape, overall dimension, and certain production inputs. This is consistent with our "similar" model selections in the current case which are based on the primary product characteristics of weight, number of throws, and steel type. For one company in the above-cited case, we did employ a weight averaging technique to determine the price of value boxes sold in the Canadian market. This was because sales of value boxes were recorded in component form since the company's Canadian customers were invoiced by reference to component parts and prices. Therefore, the Department employed a weight averaging technique to determine the average price per pound for a completed value box sold by its parts.

The facts in *CPTs* differ from those presented in this case. For the preliminary determination in *CPTs*, we compared U.S. sales to home market sales of identical merchandise when there was an adequate number of home market sales. Only when home market sales of identical merchandise were inadequate did we use a basket of similar products sold in the home market. Such a basket was used in order to reach an amount equalling five percent of sales to the United States.

In this investigation of CFSC, sales of the most similar merchandise in the home market chosen for comparison purposes exceeded five percent of sales to the United States.

Comment 7: Petitioner contends that the Department should not employ the standard six-month rule of contemporaneity in comparing U.S. and home market sales. Such a departure from the traditional rule is justified by the prevalence of long-term contracts. In agreeing in advance to set a dollar price for crankshaft shipments to be made over as much as a three-year period, SMI is willing to leave itself open to the risk of exchange rate shifts over the contract period. In order to reflect this aspect of the crankshaft market, petitioner submits that U.S. sales should be compared to the average home market prices of all "similar" crankshafts sold in the 18-month period of investigation.

DOC Position: We disagree. Since crankshafts exported to the United States are sold on the basis of long-term contracts, we extended our period of investigation, normally six months, to 18 months. Because this period is three times longer than our usual period of investigation, we determined that it was not appropriate to follow our usual methodology of averaging home market sales prices over the entire period. Instead, in order to use home market sales prices which are roughly contemporaneous with the U.S. sales, as required by section 773(a)(1) of the Act, we divided the period of investigation into three six-month segments and used those home market sales that occurred during the six-month period of the U.S. sale.

Respondent's Comment

Comment 1: On sales to the United States, SMI receives a prepayment of a portion of the sales price from the trading company before shipment of the crankshaft. SMI pays interest on the prepayment which is based on the prevailing prime rate. SMI states that the interest rate paid to the trading company for the prepayment is less than the nominal interest rate it pays to commercial banks for short-term loans. Therefore, SMI requests that an additional credit adjustment be made to the foreign market value to reflect the benefit earned on the financing of U.S. sales due to the differences in interest paid to the trading company and the interest due to a commercial bank.

DOC Position: During verification, we found that SMI pays the same interest rate for the prepayment and for short-term loans from commercial banks. SMI contended that the effective interest rate on commercial borrowings was higher than the interest paid on the prepayment to the trading company because the banks require compensating balances. However, we could not verify the requirement of compensating balances, and SMI could not provide us with documentation to show that it placed compensating balances with commercial banks in order to secure short-term borrowings. Since we could not verify differences in the interest rate paid to the trading company on the prepayment and the interest SMI would have paid on commercial short-term lending, it is unnecessary to address this issue.

Currency Conversion

When calculating foreign market value, we made currency conversions from Japanese yen to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We verified the information used in making our final determination in

accordance with section 776(a) of the Act and followed standard verification procedures, including examination of relevant sales and financial records of SMI.

Final Results

The final results of our investigation are as follows:

Manufacturer/Producer Exporter	Weighted-average margin percentage
Sumitomo Metal Industries, Ltd.	05

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

September 25, 1987.

[FR Doc. 87-22833 Filed 10-1-87; 8:45 am]

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[C-549-701]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 1.00 *ad valorem* for all manufacturers, producers or exporters in Thailand of certain steel wire nails.

We are directing the U.S. Customs Service to continue suspension of liquidation of all entries of certain steel wire nails from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Investigations, Import Adminstration, International Trade Administration , U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Export Packing Credits
- Tax Certificates for Exports
- Assistance to Trading Companies Under the Investment Promotion Act (Double Deduction of Foreign Marketing Expenses and Foreign Taxes)

We determine the estimated net bounty or grant to be 1.00 percent *ad valorem* for all manufacturers, producers or exporters in Thailand or certain steel wire nails.

Case History

Since the last **Federal Register** publication pertaining to this investigation [*Perliminary Affirmative Countervailing Duty Determination Certain Steel Wire Nails from Thailand* (52 FR 27444, July 21, 1987)], the following events have occurred. We conducted verification in Thailand from July 30 through August 7, 1987, of the questionnaire responses of the Government of Thailand, K.Y. Intertrade Co., Ltd. (KYI), Thai Nail Works Co., Ltd., and Asoke International Trading Co. Ltd. (Asoke), a trading company through which KYI exported steel wire nails to the United States. Respondents submitted a supplemental response to our deficiency questionnaire and an amended response correcting certain errors in the initial response on August 12, 1987.

Respondents filed a case brief on September 9, 1987. Petitioners did not file a case brief. Both petitioners and respondents waived their respective rights to a hearing in this case.

Scope of Investigation

The products covered by this investigation are certain steel wire nails from Thailand. These nails are: One-piece steel nails made of round wire, as currently provided for in *Tariff Schedules of the United States Annotated* item numbers 646.2500, 646.2610-90, and 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and nails with steel wire shanks and lead heads, as currently provided for in item number 646.3600. These products are currently classifiable under *Harmonized System* item numbers 7317.00.55, 7317.00.65, 7317.00.75 and 7616.10.10.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* 49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986, which corresponds to all three companies' most recently completed fiscal year.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments filed by respondents, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers and exporters in Thailand of steel wire nails under the following programs.

A. Export Packing Credits

Export packing credits are short-term loans used for either pre-shipment or post-shipment financing. There have been several changes in this program since the Department's last investigation involving exports from Thailand [See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Rice from Thailand,* (50 FR 12356, April 10, 1986)]. Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B.E. 2528), effective January 2, 1986, the Bank of Thailand will repurchase promissory notes issued by creditworthy exporters through commercial banks. The central

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bank previously rediscounted promissory notes under this program.

Under the new regulations, exporters apply to commercial banks for export packing credits; the banks, in turn, must submit an application to the Bank of Thailand for approval. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for up to 180 days, and interest is paid on the due date of the loan rather than the date of receipt. If the loan is not repaid on time, the commercial bank will automatically charge the exporter a commercial rare of interest on the outstanding principal beginning on the day after the original due date.

From January 2, 1986 to March 26, 1986, commercial banks charged a maximum interest rate of eight percent per annum for export packing credits, and the Bank of Thailand repurchased these loans from commercial banks at five percent per annum. Effective March 27, 1986, the interest rates changed to seven percent and four percent per annum, respectively.

When a company receives an export packing credit, it must present the commercial banks with evidence that the product was exported by the due date of the loan. If such evidence is not presented, the company is charged an 11 percent interest penalty in addition to the interest rate, retroactive to the date of issuance of the loan. If the company can prove the export has been shipped within 60 days after the due date, then the 11 percent interest penalty is refunded. If the company exports a portion of the amount for which the financing was obtained, then the penalty refund will be made in an amount proportionate to the value of the actual export shipment. If the company does not export within the 60 day time period, no refund is given. The purpose of the penalty changes is to ensure that companies only take out packing credits to finance actual export sales.

We verified that only KYI received or paid interest on export packing credit loans for exports of steel wire nails to the United States during the review period. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant commercial interest rate for short-term financing. For purposes of this determination we are using the weighted-average interest rate charged by commercial banks on domestic loans, bills and overdrafts during 1986, and, where loans are issued in 1985 but repaid in 1986, the weighted average interest rate of the same composition for 1985. The data used to calculate these weighted-average interest rates was verified at the Bank of Thailand. Comparing the weighted-average interest rates to the rate charged on export packing credits, we find that the rate on export packing credits is preferential and, therefore, these loans confer bounties or grants on the subject merchandise. Applying the weighted-average commercial bank interest rates as benchmarks, and adjusting the benefit for loans on which penalties were paid but not fully refunded, we calculate an estimated net bounty or grant of 0.43 percent *ad valorem*.

B. Tax Certificates for Exports

The Government of Thailand issues tax certificates to exporters to rebate indirect taxes and import duties on inputs into exported products. This rebate program is provided for in the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (hereinafter the Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of an input/output (I/O) study initially published in 1980, based on 1975 data, and updated in 1982 using 1980 data.

Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. It also calculates the import duties and indirect taxes on each input. The Ministry then calculates two rebate rates. The "A" rate includes both import duties and indirect domestic taxes. The "B" rate includes only indirect domestic taxes. The "B" rate is claimed when firms participate in Thailand's individual customs duty drawback program or duty exemption program on imported raw materials. The "A" or "B" rate, as appropriate, is then applied to the FOB value of the export to detemine the amount of rebate that will be provided.

Under the Tax and Duty Act, the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

The rebate rates in effect from December 1, 1981 to February 4, 1986, were set forth in the Notification of the Ministry of Finance No. Or. 1/2524. These rates were based on the I/O study published in 1980. The "A" and "B" rates for nail exports based on the I/O study published in 1980 were 3.71 percent and 1.96 percent, respectively. A new I/O study based on 1980 data was completed in 1982. Notification of the Committee on Tax Rebates, No. Or. 1/2529 announced new rates effective February 5, 1986, based on the updated study completed in 1982. Since February 1986, the "A" rate is 7.19 percent and the "B" rate is 0.59 percent for nail exports. We verified that Thai Nail Works received tax certificates at the "A" rate and KYI at the "B" rate. We also verified that all certificates earned on nail exports to the United States by Asoke, a trading company used by KYI, on exports on nails produced by KYI, were transferred back to KYI.

To determine whether an indirect tax rebate system, which incorporates rebates of import duties confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the I/O study upon which the indirect tax and import duty rebate system is based meets these conditions, the Department will consider that the system does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs. Based on these tests, we determine the following.

The Tax and Duty Act provides that the taxes and duties eligible for rebate include those on materials, equipment, spare parts, machinery, fuels and other

energy used in the production of exports. Direct taxes such as income tax and taxes which are otherwise refundable or exempt are excluded from the rebate. Thus, the program operates to rebate indirect taxes and import duties.

The eligibility criteria for the rebate program, when considered in conjunction with the government's response and the information obtained during verification on the methodology and sampling used in calculating the rebate rates based on the revised I/O study, lead us to conclude that the government employed an adequate methodology for establishing the rebate levels. Furthermore, after a thorough examination of the methodologies employed in revising the 1975 I/O study and in calculating new rebate rates based on the revised study, we find that the government of Thailand has a system in place to periodically update the rebate schedules.

We have reviewed the documentation submitted by the government in their response and at verification showing their detailed calculation of the rebate rates. Under the Tax and Duty Act, these calculations itemize the inputs and list ex-factory prices, import values, import duties and taxes, and domestic indirect taxes. The inputs itemized in the government's calculations include both physically incorporated items as well as non-physically incorporated items.

Since the indirect tax on non-physically incorporated items is also included in the government's rebate rate calculation, we must determine the extent to which the rebate rates confer an excessive remission of indirect taxes. First, we calculated the indirect tax incidence on physically incorporated inputs at FOB prices according to the most recent government rebate rate calculation. We then subtracted the percentage of indirect tax incidence attributable to physically incorporated inputs from the authorized rebate rate. Using this methodology, the overrebate on the "A" rate is 1.55 percent and the overrebate on the "B" rate is 0.20 percent.

To determine the country-wide estimated net bounty or grant, we weight-averaged the overrebates received by each producer under the current rebate rates by each company's proportion of the value of Thai exports of steel wire nails to the United States during the review period. On this basis, we calculate an estimated net bounty or grant of 0.26 percent *ad valorem*.

C. Assistance to Trading Companies Under the Investment Promotion Act: Double Deduction of Foreign Marketing Expenses and Foreign Taxes

Pursuant to section 16 of the Investment Promotion Act, the Board of Investment issued Announcement No. 40/2521. This announcement designated international trading companies as eligible for promotion through the receipt of an investment incentive license. Although this program was terminated for international trading companies not granted promotion prior to March 2, 1981, companies granted promotion before the termination continued to be eligible for benefits under the program. Asoke received its investment incentive license on February 20, 1980, prior to the termination date. Pursuant to this license, Asoke was eligible to receive each of the benefits listed in the announcement. These benefits include:

- Import duty exemptions for both raw and essential materials used in export production;
- Exemption of certain business taxes;
- Exemption of business taxes for suppliers;
- Exemption of business taxes for subcontractors;
- Permission to maintain foreign currency bank accounts;
- Entitlement to Export Packing Credits;
- A double deduction from taxable income of taxes paid by branch offices outside Thailand; and
- A double deduction from taxable income of foreign marketing expenses.

The first two benefits—import duty exemptions and exemption from certain business taxes—are discussed below under "Programs Determined Not To Confer Bounties or Grants." The next four benefits—exemption of business taxes for suppliers, exemption of business taxes for subcontractors, permission to maintain foreign currency accounts and entitlement to Export Packing Credits—are discussed below under "Programs Determined Not To Be Used."

We verified that Asoke used the two tax deduction sub-programs on its tax return filed during the review period. Because these programs provide a benefit contingent upon export performance, we determine that they both confer a bounty or grant. The benefit is the amount of tax savings realized as a result of the additional tax deductions allowed under the program.

We verified that the deduction for taxes paid by foreign branch offices may also be doubled and subtracted from gross income. Therefore, we included both deductions in the same benefit calculation. To calculate the estimated net bounty or grant, we first determined Asoke's tax savings based on the tax return filed during the review period by multiplying the value of the extra deduction by the corporate tax rate of 40 percent. We then multiplied the tax savings by the proportion of Asoke's steel wire nail exports to the United States (excluding exchange gains) over the invoice value of its total export sales (excluding exchange gains and commission fees charged separately). We divided the resulting amount by total steel wire nail exports to the United States to derive the estimated net bounty or grant of 0.31 percent *ad valorem*.

II. Progam Determined not to Confer Bounties or Grants

We determined that bounties or grants are not being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails under the following program.

Assistance to Trading Companies Under the Investment Promotion Act: Import Duty Exemption and Exemption from Certain Businesss Taxes

Under the Board of Investment Announcement No. 40/2521 discussed above, eligible trading companies are entitled to import duty exemptions for both raw and essential materials used in export production.

We verified that the import duty exemption benefit functions in the same way as the duty drawback program in Thailand which we have determined does not confer a bounty or grant [See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Apparel from Thailand* (50 FR 9818, March 12, 1985)].

Announcement No. 40/2521 also provides business tax exemptions to producers who supply export commodities to promoted trading companies. Additionally, business tax exemptions are provided on the commission fees and export agency fees of promoted trading companies.

We verified that business taxes in Thailand are excise taxes paid on monthly gross receipts by the seller. As such, these taxes are indirect taxes. The taxes exempted under this program are also final stage taxes. Under the act, the non-excessive remission of, or exemption from, indirect taxes levied at the final stage is not considered a subsidy [See *Final Negative Countervailing Duty Determination: Oil Country Tubular Goods from Taiwan*

[51 FR 19583, May 30, 1986)]. Therefore, we determine that the exemptions from the business taxes described above do not confer a bounty or grant.

III. Programs Determined not to be Used

We determine, based on verified information, that the manufacturers, producers and exporters in Thailand of certain steel wire nails did not apply for, claim or receive benefits during the review period for exports of steel wire nails to the United States under the following programs which were listed in the *Initiation of Countervailing Duty Investigation: Certain Steel Wire Nails from Thailand* (52 FR 18591, May 18, 1987).

A. Repurchase of Industrial Bills
B. Electricity Discounts for Exporters
C. Investment Promotion Act (Sections 31, 33, 34 and 36)
D. Export processing Zones
E. International Trade Promotion Fund
F. Assistance to Trading Companies Under the Investment Promotion Act: Exemption of Business Taxes for Suppliers, Exemption of Businesss Taxes for Subcontractors, Export Packing Credits and Foreign Currency Accounts

We verified that under this program, Assistance to Trading Companies Under the Investment Promotion Act, the first three benefits listed were not used by Asoke for exports of steel wire nails to the United States.

With respect to foreign currency accounts, at verification, the government reported that contrary to the initial company response, Asoke did maintain a foreign currency account denominated in U.S. dollars during the review period. However, we verified that the account was not used to conduct transactions involving steel wire nail exports to the United States, nor was it used to import inputs for the production of steel wire nails.

IV. Programs Determined not to Exist

We determined, based on verified information, that the following programs listed in the *Initiation of Countervailing Duty Investigation: Certain Steel Wire Nails from Thailand* (52 FR 18591, May 18, 1987) do not exist.

A. Business Tax Exemption for Manufacturers of Construction Materials
B. Sales Tax Exemption for Promoted Industries

We verified that a sales tax exemption program for promoted industries, other than that provided under the Investment Promotion Act, does not exist (see "Program Determined Not To confer Bounties or Grants" and "Programs Determined Not To Be Used").

Comments

Comment 1: Respondents contend that the Department of Commerce (DOC) should not use a full-year weighted average commercial interest rate as a benchmark for calculating the benefit arising from the export packing credit program. Instead, they argue, six-month average interest rates should be used.

DOC Position: We disagree. We believe the use of a full-year benchmark neither overstates nor understates the benefit, but is the best measure of subsidization during the review period. Respondents have not provided sufficient rationale to convince us to depart from our standard short-term loan methodology. Using six-month benchmark rates, as respondents suggest, is not warranted in this instance, because no major fluctuation in the Thai economy occurred during the time the loans were obtained.

Comment 2: Respondents argue that, in calculating the benefit Asoke received from the double deduction of foreign marketing expenses and payment of foreign taxes, the DOC should not take into account for duty deposit purposes the tax loss carry-forward the company claimed on its 1986 tax return filed in 1987.

DOC Position: We agree. Asoke's tax loss carry-forward was created by the double deduction of foreign marketing expenses in previous tax years. Asoke was able to carry-forward this loss under a standard provision of Thai tax law. Therefore, we do not consider the use of that existing provision to constitute a program-wide change. Consequently, it is inappropriate to take into account the use of the provision for purposes of establishing a duty deposit rate. However, the tax loss carry-forward will be examined in a subsequent administrative review, if requested.

Comment 3: Respondents assert that permission to hold foreign currency accounts should not be considered a countervailable subsidy under U.S. law. Respondents further contend that Asoke's use of the foreign currency account did not confer a benefit on exports of steel wire nails to the United States.

DOC Position: While Asoke does maintain a dollar-denominated foreign currency account, we verified that the account was not used in conjunction with nail exports to the United States during the review period. Based on this information we determine that the program was not used; the question of countervailability is therefore moot.

Comment 4: Respondents argue that it is unnecessary to calculate the incidence of indirect taxes on non-physically incorporated inputs at stages of production prior to the final input stage to determine the benefit received under the tax certificate for export program. They contend that this program intends to rebate only those indirect taxes levied on inputs incorporated into the exported product at the final production stage, and that such a rebate is permissible under U.S. law.

DOC Position: We verified that the tax certificates for exports program only rebates the indirect taxes paid on the final stage inputs. The purpose of the program is not to rebate the amount of taxes paid on inputs at stages of production prior to the final input stage. Therefore, for purposes of our analysis, we have examined the indirect tax incidence only on inputs at the final stage of production.

Comment 5: Respondents point out that, for purposes of the final determination, the figure for total exports of steel wire nails to the United States should be adjusted. In the preliminary calculation, they contend, DOC erroneously used an export value for Asoke, a trading company, based on a cash receipt sales value reported by KYI, its supplier. Instead, Asoke's own records, which are kept on an accrual basis and include any mark-ups passed on to customers, should be used to calculate the export value. In calculating the proportion of KYI's shipments of nails to the United States, respondents suggest that KYI's shipments through Asoke be valued according to Asoke's accrual basis accounting records.

DOC Position: We agree. However, we further revised the figure for total export sales of nails to the United States by subtracting from it one very small export shipment of nails through Asoke produced by a non-responding company. We also subtracted exchange gains Asoke made on shipments of nails to the U.S. Likewise, we excluded these values when calculating the value of KYI's shipments through Asoke.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional

information that we deemed necessary for making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation on all entries of certain steel wire nails from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In accordance with section 706(a) of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit equal to 1.00 percent *ad valorem* for each entry of the subject merchandise. This suspension of liquidation will remain in effect until further notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

September 28, 1987.

[FR Doc. 87-22832 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 3642-05]

Actions Affecting Export Privileges; Joseph Lousky

Summary

In the matter of: Joseph Lousky, Respondent, Docket No. 3642-05.

Pursuant to the consent agreement reached by the Department of Commerce and Joseph Lousky in the above captioned proceeding, which agreement was approved by the Administrative Law Judge in his Recommended Decision and Order, Joseph Lousky, 63 Merton Road, Hampstead, Montreal, Quebec H3X 1M3, Canada is hereby denied all export privileges for three (3) years from the date of this Order and assessed a civil penalty in the amount of $25,000. As authorized by § 388.16(c) of the Export Administration Regulations (15 CFR Parts 368 through 399 (1986)) (Regulations), the last two years of the three year denial period are hereby suspended. The two year suspension will commence one year after entry of this Order. The final two years of the denial period will be waived provided that during the period of suspension Lousky: (1) Complies with the terms set forth in the Consent Agreement and (2) commits no violations of the Act, regulations, order or license issued under the Act.

Order

On August 27, 1987, the Administrative Law Judge (ALJ) issued his Recommended Decision and Order approving the consent proposal dated August 10, 1987 and submitted by the parties in this matter. The Recommended Decision and Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act) and 15 CFR 388.17(a), for final action.

I hereby modify the third sentence in paragraph two of the ALJ's Decision by deleting that sentence and inserting in lieu thereof the following:

Lousky admits that certain of the facts stated in the charging letter are true. I find that those allegations, admitted by Lousky to be true, constitute violations of the Act and the Regulations. Lousky wishes to settle and dispose of all matters identified in the charging letter by entering into this consent agreement.

Paragraph V of the ALJ's Order is hereby modified by deleting that paragraph and inserting in lieu thereof the following:

V. All outstanding individual validated export licenses in which Lousky appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Lousky's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses are hereby revoked.

Paragraph VIII of the ALJ's Order is hereby modified by inserting after the words "specific authorization" the following:

* * * from the Office of Export Licensing * * *.

Having examined the record and based on the facts adduced in this case, I affirm the Recommended Decision and Order of the ALJ as thus modified and incorporate herein by reference the terms of the settlement agreement referred to above.

This constitutes final agency action in this matter.

Dated: September 28, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Decision and Order Affirming Settlement Agreement

In the matter of: Joseph Lousky, Respondent, Docket Number 364-05.

Appearance for Respondent: Mr. Kenneth F. Salomon, Esq., 800 Quest Boulevard, Dorchester, Suite 2890, Montreal, Quebec Canada H 3b 1X9.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, U.S. Department of Commerce, Room H3845, Washington, DC 20230.

An administrative proceeding was initiated against Joseph Lousky (Lousky),[1] pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401 through 2420), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368 through 399 (1986)), (the Regulations). The Office of Export Enforcement issued a charging letter on April 2, 1986, alleging that between April 1, 1981 through November 12, 1982, Lousky violated §§ 387.3, 387.4, 387.5 and 387.6 of the Regulations, in that:

(a) Between April 1, 1981 and November 12, 1982, Lousky conspired with Pierre A. Randin to bring about acts that constituted violations of the Act and the Regulations. The purpose of this conspiracy was to acquire U.S.-origin goods on the representation that Switzerland was the intended ultimate destination when, in fact, Lousky and Randin intended to, and did subsequently, divert the U.S.-origin goods to proscribed destinations without the required reexport authorization from the Department. In accomplishing this conspiracy, Lousky caused false and misleading statements of material fact to be submitted to the Department.

(b) Between April 1, 1981 and November 12, 1982, Lousky and others, in connection with these shipments indirectly caused false and misleading statements of material fact to be made to the Department on export control documents; and

(c) Lousky reexported U.S.-origin computers and computer components from Switzerland to proscribed destinations without obtaining reexport authorization from the Department which Lousky knew or had reason to know was required by § 374.1 of the Regulations.

Pursuant to 15 CFR 388.17, the Agency and Lousky have agreed to and submitted a consent proposal to this office whereby Agency counsel and Respondent have agreed that, although Lousky was charged individually and doing business as Eler Engineering S.A., that entity no longer exists. Therefore,

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[1] The original proceeding was initiated by a Charging Letter addressed to Lousky, individually and doing business as Eler Engineering S.A., with addresses in both France and Switzerland. By letter dated May 26, 1986, the Agency was notified that Eler Engineering S.A. had, in fact, been liquidated. Accordingly, the Order is issued against Lousky only in his individual capacity.

the sanctions imposed shall apply only to Lousky, individually. Respondent Lousky admits that he violated the regulations as alleged in the charging letter and that this matter is being settled by: (1) Lousky's payment to the Agency of a civil penalty in the amount of $25,000; (2) a denial to Lousky of all export privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad for a period of three years following the date of entry of this Order.

I find that these terms are sufficient to achieve effective enforcement of the Act and the Regulations. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, It is ordered:

I. Respondent Joseph Lousky is assessed and shall pay to the Agency a civil penalty in the amount of $25,000. Such civil penalty shall be payable to the Agency in three installments: The first installment of $5,000 will be paid within 30 days from the service of the final Order of the Assistant Secretary; the second installment of $5,000 will be paid to the Agency on or before September 30, 1988; the third and final installment of $15,000 will be paid to the Agency on or before September 30, 1989. Each payment shall be made in accordance with the attached instructions.

II. For a period of 3 years from the date this Order becomes final, Respondent—

Joseph Lousky, 63 Merton Road, Hampstead Montreal, Quebec H3X IM3, Canada,

his successors of assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations.

III. Commencing 1 year from the date on which this Order becomes final, in accordance with § 388.16(c) of the Regulations, the period of denial will be suspended for the balance of the remaining 2 year period and will be remitted without further action at the end of that period provided Respondent has committed no further violations of the Act, the regulations, or the final Order entered in this proceeding. During the 2-year suspension period, Respondent may participate in transactions involving the export of the U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the regulations. The provisions of Paragraph V of the Order are also suspended during the 2-year period.

IV. Respondent Lousky shall, during this suspension period, submit quarterly reports to the Director, Office of Export Enforcement, describing the reexport of U.S.-origin commodities, technical data, or equipment Lousky has made, as provided in the Consent Agreement. Each report shall cover successive quarters following the date of suspension. Lousky shall submit each of these reports after the close of each quarter.

V. All outstanding validated export licenses in which Lousky or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation.

VI. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transportating, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to matters which are subject to the Act and the Regulations.

VII. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection, in the conduct of export trade of related services.

VIII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported, by, to, or for any Respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

IX. By the Order of March 11, 1983 (48 FR 11479, March 18, 1983), Joseph Lousky and others were temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The temporary denial order was to remain in effect until the final disposition of any administrative or judicial proceedings initiated as a result of the ten on-going investigation. Upon approval, this Order will constitute such final disposition of the administrative proceeding initiated by the Agency as a result of its investigation relating to the matters which gave rise to the temporary denial order. The Temporary Denial Order of March 11, 1983 (48 FR 11479–11480, March 11, 1983) will thereby be superceded and revoked. Review of the record relating to the 5 Respondents originally named in that Order reflect that all have now been addressed except Eler Engineering, S.A. and Suzanna Maas who was identified as a related party. As is stated in the footnote on page one, Eler Engineering has been liquidated and no longer exists. Since Suzanna Maas was named as a party related to Eler Engineering by virtue of her employment there, it appears that the basis for her being named no longer exists. The following entries will deleted from the said Table:

Eler Engineering, S.A. a/k/a Eler, S.A., P.O. Box 209, CH–1401 Yverdon, and CH–1040 Echallens, Switzerland

Eler, S.A.

Maas, Suzanna, Manager, Eler Engineering, S.A., P.O. Box 209, CH-1401 Yverdon, Switzerland.

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From the effective date of this Order it alone will be the basis for any entry on the Table of Denial Orders until modified (15 CFR Part 388 (Supp. No. 1 1987)).

X. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to the Export Administration Amendments Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: August 27, 1987.

Hugh J. Dolan,

Administrative Law Judge.

Attachment To Administrative Law Judge Order

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to:

U.S. Department of Commerce

2. The check should be mailed to:

U.S. Department of Commerce, Office of Assistant General Counsel for Export Administration, Room H–3845, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Attn: Pamela P. Breed, Esq.

[FR Doc. 87–22753 Filed 10–1–87; 8:45 am]

BILLIN CODE 3510–DT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustments of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements, (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 5, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the limit for cotton textile products in Category 347/348, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated November 28, 1986 was published in the **Federal Register** (51 FR 43960), as amended on April 7, 1987 (52 FR 12230), which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 347/348 and 647/648, produced or manufactured in Mexico and exported during the current agreement year which began on January 1, 1987 and extends through December 31, 1987. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and the United Mexican States, under the terms of which these limits were established, also includes provisions for special shift between the specific limits for Categories 347/348 and 647/648. Under the foregoing provisions of the bilateral agreement and at the request of the Government of the United Mexican States, the limit established for Catetory 347/348 is being increased by application of special shift for goods exported during the tewlve-month period which began on January 1, 1987 and extends through December 31, 1987. The limit for Category 647/648 is being reduced to account for the special shift applied to Category 347/348.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709, as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

September 29, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

September 29, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on November 28, 1986, as amended on April 7, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 5, 1987, the directive of November 28, 1986, as amended, is hereby further amended to adjust the previously established limits for cotton and man-made fiber textile products in Categories 347/348 and 647/648, as provided under the terms of the bilateral agreement of February 26, 1979, as amended and extended [1]:

Category	*Adjusted 1987 Limit* [1]
347/348	1,571,185 dozen
647/648	1,635,050 dozen

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22804 Filed 10–1–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] The agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same limits may be adjusted for carryforward and carryover up to 11 percent of the applicable category limit or sublimit; (3) special shift of ten percent shall be available between the specific limits for Categories 347/348 and 647/648; an additional five percent special shift shall be available between sublimits 347 and 348 between 647 and 648; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

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Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

September 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 29, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the restraint limit for Category 443 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated March 11, 1987 (52 FR 7918) established limits for certain specified categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including individual specific limits within Group I and a limit for categories in Group II which do not have specific limits, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987. Pursuant to a request from the Government of the Republic of the Philippines and under the terms of the Bilateral Textile Agreement of March 7, 1987, between the Governments of the United States and the Republic of the Philippines, Category 443 is being increased by application of swing and carryforward. The limit for Group II has been reduced to account for the swing applied to Category 443.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions take pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 29, 1987.

Committee for the Implementation of Textile Agreements

September 29, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on March 11, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on September 29, 1987, the directive of March 11, 1987 is amended to include adjustments to the following previously established restraint limits, under the terms of the Bilateral Textile Agreement of March 7, 1987: [1]

Category	Adjusted 12-month limit [1]
443	3,396 dozen.
Group II: 300–320, 330, 332, 349, 350, 353, 354, 359–O [2], 360–363, 369–O [3], 400–429, 432, 434–442, 444, 448–459, 464–469, 600–603, 605–627, 630, 632, 644, 653 654, 659–O [4], 665–670 and 831–859, as a group	67,184,970 square yards.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 359–O, all TSUSA numbers except 384 0439, 384 0441, 384 0442, 384 0444, 384 0805, 384 0810, 384 0815, 384 0820, 384 0825, 384 3451, 384 3452, 384.3453, 384 3454, 384.5162, 384 5163, 384 5167, 384 5169 and 384 5172.

[3] In Category 369–O, all TSUSA numbers except 366 3840

[4] In Category 659–O, all TSUSA numbers except 384 2105, 384 2115, 384 2120, 384 2125, 384 2646, 384 2647, 384 2648, 384 2649, 384 2652, 384 8651, 384 8652, 384 8653, 384 8654, 384 9356, 384 9357, 384 9358, 384 9359, 384 9365, 703 0510, 703 0520, 703 0530, 703 0540, 703 0550, 703 0560, 703 1000, 703 1610, 703.1620, 793.1630, 703.1640 and 703.1650

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22805 Filed 10–1–87; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Northern Mariana Islands (CNMI) from Imported Parts

September 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 5, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the limit for sweaters in Categories 345, 445, 446, 645 and 646 which are assembled in the Commonwealth of the Northern Mariana Islands and exported during the twelve-month period which began on November 1, 1986 and extends through October 31, 1987.

Background

On November 3, 1986 a notice was published in the **Federal Register** (51 FR 39902), which continued and increased the import restraint limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, which were determined by the U.S.

Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI) during the period which began on November 1, 1986 and extends through October 31, 1987. A subsequent notice published on September 10,1987 (52 FR 34271) announced the reduction of this limit.

As an interim measure pending amendment to the existing bilateral agreement regarding sweaters panels assembled in the CNMI, the Commonwealth of the Northern Mariana Islands has requested that the limit for Categories 345, 445, 446, 645 and 646 be increased by application of carryforward for the period which began on November 1, 1986 and extends through October 31, 1987. This action will re-open the limit which is currently embargoed.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 29, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on October 29, 1986, as amended on September 4, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, assembled in the Commonwealth of the Northern Mariana Islands from foreign parts and exported during the twelve-month period which began on November 1, 1986 and extends through October 31, 1987.

Effective on October 5, 1987 the directive of October 29, 1986, as amended, is hereby further amended to adjust the previously established limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, as provided under the terms of the Arrangement of October 17, 1986 to 100,000 dozen.[1]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22806 Filed 10–1–87; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 5, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the restraint limits for Categories 335, 338/339, 340/640, 342/642, 347/348, 359–I, 445/446, 634, 635, 638/639, 645/646 and 659–H for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated March 11, 1987 (52 FR 7918) established limits for certain specified categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including individual specific limits within Group I and a limit for categories in Group II which do not have specific limits, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1987 and extends though December 31, 1987. Pursuant to a request from the Government of the Republic of the Philippines and under the terms of the Bilateral Textile Agreement of March 7, 1987, between the Governments of the United States and the Republic of the Philippines, Categories 355, 338/339, 340/640, 342/642, 347/348, 359–I, 445/446, 634, 635, 638/639, 645/646 and 659–H are being increased by application of swing and carryforward. The 1987 limit for Group II is being reduced to account for the swing applied to these categories. In addition, special carryforward is being granted for Categories 338/339, 340/640, 342/642, 347/348, 359–I, 634, 638/639, and 659–H

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annoated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 29, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on March 11, 1987 by the Chairman, Committee for the Implementation of Textile Agreements,

[1] The limit has not been adjusted to account for any imports exported after October 31, 1986.

concerning imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 5, 1987, the directive of March 11, 1987 is amended to include the following adjusted restraint limits under the terms of the Bilateral Textile Agreement of March 7, 1987: [1]

Category	Adjusted 12-mo limit [1]
335	113,000 dz.
338/339	1,298,000 dz.
340/640	630,000 dz.
342/642	324,500 dz.
347/348	1,180,000 dz.
359-I [2]	819,000 dz.
445/446	27,841 dz.
634	189,000 dz.
635	345,003 dz.
638/639	1,333,400 dz.
645/646	565,000 dz.
659-H [3]	1,260,000 pds.
Group II:	
300-320, 330, 332, 349, 350, 353, 354, 359-0 [4], 360-363, 369-0 [5], 400-429, 432, 434-442, 444, 448-459, 464-469, 600-603, 605-627, 630, 632, 644, 653, 654, 659-0 [6], 665-670, and 831-859, as a group.	61,330,438 sq yds equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 359-I, only TSUSA numbers 384.0439, 384.0441, 384.0442, 384.444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

[3] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 793.1620, 703.1630, 703.1640 and 703.1650.

[4] In Category 359-0, all TSUSA numbers except 384.0439, 384.0441,384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 3894.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

[5] In Category 369-0, all TSUSA numbers except 366.2840.

[6] In Category 659-0, all TSUSA numbers except 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365 (659-I), 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 (659-H).

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22803 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1987 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 2, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 10, 1987, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 29564 of a proposed addition to Procurement List 1987, November 3, 1986 (51 FR 39945).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Janitorial/Custodial
U.S. Department of Justice, Northwestern Bank Building, 1405 Eye Street NW., Washington, DC

C W. Fletcher,

Executive Director.

[FR Doc. 87-22813 Filed 10-1-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions and deletions to Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 commodities and services produced or provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 2, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Service

Assembly of Kit
Camouflage Support System, U.S. Army Troop Support Command, St. Louis, Missouri

Janitorial
Federal Building, 601 East 12th Street, Kansas City, Missouri

Deletions

It is proposed to delete the following commodities from Procurement List 1987, November 3, 1986 (51 FR 39945):

Commodities

Frame, Picture
7105–00–986–7356
7105–00–149–1277
Pencil, Mechanical
7520–00–285–5818

C.W. Fletcher,

Executive Director.

[FR Doc. 87–22814 Filed 10–1–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on November 23–24, 1987 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

September 29, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 87–22770 Filed 10–1–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Qualifications Requirements.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Chester Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

The solicitation provision at FAR 52.209–1, Qualifications Requirements, requires offerors who have met the qualifications requirements to identify the offeror's name, the manufacturer's name, the item name and the test number.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *7,882*; responses per respondent, *100*; total annual responses *788,200*; hours per response, *.084*; and total burden hours, *66,209*.

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0083, Qualifications Requirements.

Dated: September 22, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–22775 Filed 10–1–87; 8:45 am]

BILLING CODE 6820–1–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–614–000 et al.]

Electric Rate and Corporate Regulation Filings; Washington Water Power et al.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power

[Docket No. ER87–614–000]

September 25, 1987.

Take notice that on September 14, 1987, Washington Water Power (WWP) tendered for filing an amendment of a list of customers that have agreed to the settlement offer extended by WWP in the Alternative Fourteenth Revision of Schedule 61. WWP states that wholesale customers, Citizens Utilities Company, the City of Chewelah, and the City of Plummer have signed settlement agreements. WWP requests that the Commission consider these settlement agreements at the time the Commission acts on WWP's rate filing. If the Commission approves the settlement agreements, WWP requests that Alternate Fourteenth Revision of Schedule 61 be approved effective November 1, 1987 applicable to all five of its wholesale electric customers and that the Commission's Order specifically approve the 64.1% level and method of recovery of WWP's investment in BPA Settlement Exchange Power addressed in the settlement agreement.

A copy of this filing is being served on all parties to this proceeding.

Comment date: October 6, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER87–418–000]

September 25, 1987.

Take notice that on September 8, 1987, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment with additional information to the application filed May 1, 1987 in this docket for a change in the rates Niagara Mohawk charges the New York Power Authority (Power Authority) for the transmission and delivery of power and energy under Niagara Mohawk FERC Rate Schedule No. 138. This filing was in response to an August 7, 1987 letter from Mr. Jerry R. Milbourn requesting additional information.

Pursuant to 18 CFR 35.11 (1987), Niagara Mohawk requests that the Commission waive its notice requirements for good cause shown and allow the proposed rates to become effective on July 1, 1987, the effective date requested in the May 1, 1987 application. Niagara Mohawk states the affected customers and the Commission have had notice of the proposed change in rates and the proposed effective date since May 1, 1987, and that this amendment to the filing does not involve revisions to the originally proposed rates. Thus, neither the affected

customers nor the Commission would not be prejudiced by such waiver.

Niagara Mohawk also renews its request, as set forth in its May 1, 1987 transmittal letter, that the Commission suspend the proposed rates, if at all, for no more than one day.

Comment date: October 6, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Pacific Gas and Electric Company

[Docket No. ER87-424-000]

September 28, 1987.

Take notice that on September 24, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing in compliance with Commission Order dated June 26, 1987:

(1) A letter agreement with Western Area Power Administration (WAPA), dated December 21, 1979 (Letter Agreement). This is the amendment to PGandE's agreement with WAPA that clearly sets forth the energy rate methodology.

(2) An explanation of the derivation of all the components of the energy rate.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER87-665-000]

September 28, 1987.

Take notice that on September 24, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing a Revised Letter of Understanding (Letter) Concerning the WSPP Agreement and the Interconnection Agreement between PGandE and the Northern California Power Agency (NCPA).

The Letter defines how PGandE will provide transmission services for NCPA for transactions under the Western Systems Pool (WSPP) experiment. NCPA requires transmission services from PGandE to participate in the WSPP experiment. The Letter specifies which transmission services shall be provided under the Western Systems Power Pool Agreement (Pool Agreement) and which shall be provided under the Interconnection Agreement between PGandE and NCPA.

All firm transmission services will be provided under the Pool Agreement. All non-firm transmission services will be provided under the Interconnection Agreement. WSPP transactions will be billed separately from Interconnection Agreement transactions and compensation for a WSPP transaction will in no way effect either party's obligation for services offered under the Interconnection Agreement.

The Letter is to effective only for the year term of the experiment.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22799 Filed 10-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-67-000]

Regulation of Independent Power Producers; Technical Conference

September 25, 1987.

AGENCY: Federal Energy Regulatory Commision.

ACTION: Notice of Technical Conference.

SUMMARY: This Notice is establishing a schedule for a technical conference conducted by the Staff of the Federal Energy Regulatory Commission (Commission) to allow the public to comment on the Commission's regulation of independent power producers (IPPs) under the Federal Power Act, 16 U.S.C. 791A-825R.

Although written comments may be given regarding any aspect of IPPs regulation, the Staff is particularly interested in receiving comments in five major topic areas:

1. The need for new policies toward IPPs;
2. Identifying and regulating producers lacking market power;
3. Rate regulation of IPPs;
4. Utility ownership of IPPs;
5. FERC/State issues.

In addition, the Staff will make available to the public no later than October 9, 1987 a preliminary working paper exploring the technical and policy issues associated with the regulation of IPPs. The Staff wishes to receive comments from the public on this paper.

DATES: Panels will be created around the five major topics listed above. Each party wishing to speak should file a request to speak, indicating the panels on which it wishes to participate ranked by order of preference. Because of time limitations, parties may not be granted the opportunity to participate on every panel that they request. However, parties may file written comments on as many issues as they wish. The Commission encourages every party who plans to make an oral presentation to file written comments with the Commission in advance of the conference. Every person desiring to make an oral presentation must file a request to speak. An original plus fourteen (14) copies of requests to speak must be received by the Commission's Secretary by 5:00 p.m. EDT on October 16, 1987. An original plus fourteen (14) copies of written comments on the technical conference and working paper must be received by the Commision's Secretary by 5:00 EST on November 6, 1987. The public conference will be held on October 22 and 23, 1987 beginning at 9:00 a.m. each day in Hearing Room A at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC.

ADDRESSES: All filings should refer to Docket No. EL87-67-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

Notice is hereby given that the Staff of the Federal Energy Regulatory Commission will hold a technical conference to receive comments on initiatives involving independent power producers (IPPs) under the Federal Power Act (FPA). This notice is establishing a schedule for this conference and an opportunity to provide written and oral comments on the issues set forth below.

Background

One of the main objectives of poublic utility regulation is to protect the public against the abuses of market power.[1]

[1] See, *e.g., Associated Gas Distributors v. FERC*, D.C. Circuit, No. 85-1811, slip opinion at 20.

Market power is the ability of a seller to raise its prices substantially without substantially losing sales. The Commission has regulatory authority under the FPA to pursue this objective in four broad areas:

(a) Pricing and review of contracts (Sections 205 and 206).

(b) Reporting (Section 301).

(c) Financial and real asset transactions (Sections 203 and 204).

(d) Intercorporate affiliations (section 305).

The Commission's jurisdiction to regulate in these areas extends both to traditional electric utilities and to independent power producers other than qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978. For purposes of this Notice, we define an IPP to be a generating entity (other than a QF) that lacks significant market power and that is independent of any local electric utility where the IPP provides service, i.e., independent of the company possessing the exclusive franchise to sell electricity at retail. This definition could encompass facilities owned by utilities outside their zone of economic influence (i.e., the geographic area where they possess an exclusive franchise or otherwise possess significant market power).

To aid the Commission in fulfilling its statutory responsibilities to promote efficiency and maintain competition in bulk power markets,[2] the Commission Staff is reexamining the Commission's regulatory policies toward IPPs. The Staff wishes to receive comments from the public to assist it in that reexamination. The Staff will hold a technical conference for this purpose on October 22 and 23, 1987 beginning at 9 a.m. each day in Hearing Room A at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC. A transcript of the conference will be taken. The conference will focus on technical and policy issues.

II. Request for Specific Comments

Interested parties may make oral presentations at the technical conference without filing written comments. However, all parties who plan to make an oral presentation are encouraged to file written comments with the Commission's Secretary in advance of the conference. Parties may also choose to file written comments only, without making an oral presentation.

Although written comments may be given on any aspect of the Commission's regulatory policy toward IPPs, the Staff is particularly interested in receiving comments on the following topics:

Topic Area No. 1: The Need for New Policies Toward IPPs

(1) What role should independent or third party generation play in meeting our nation's future energy needs? Should utilities be afforded the opportunity to purchase from third party or independent power producers under rates set through competitive bidding or rate negotiations in workably competitive markets when such sources are less costly than other alternatives available to utilities?

(2) Can third party or independent power production be integrated into the wholesale power market in a fashion consistent with utilities' obligations to provide their customers with adequate, reasonably priced and reliable service?

(3) Do current Commission regulatory policies create barriers to the development of independent power producers? If so, which policies operate to constrain IPPs? What classes of IPPs are constrained?

(4) What problems currently exist that could be alleviated by reducing the Commission's regulation of IPPs? Would greater development of IPPs provide benefits that are not already being provided in sale-leaseback arrangements?

(5) Does the Public Utility Holding Company Act (PUHCA) impede the development of IPPs? If so, how?

Topic Area No. 2: Identifying and Regulating Producers Lacking Market Power

(6) Are there any public policy objectives served by traditional embedded cost regulation of the price of power sold by producers who do not have significant market power? Are any purposes served by the Commission imposing on such producers an obligation to provide service beyond the terms of their contracts? Are any purposes served by regulating the corporate and financial structure and activities of such producers?

(7) Can certain power producers be identified generically as not having significant market power, and thus classified as IPPs? What specific criteria should be used to identify these producers?

Topic Area No. 3: Rate Regulation of IPPs

(8) Which of the following pricing mechanisms should be used for regulating the rates of IPPs in order to promote economic efficiency in the electric industry?

(a) Rates set at or below avoided costs determined administratively;

(b) Rates set through a bidding mechanism;

(c) Rates set through private negotiation;

(d) Rates set through other pricing mechanisms.

(9) What would be the appropriate role, if any, for IPPs in a competitive bidding system that the states might adopt under PURPA?

(10) If the states were to allow IPPs to directly participate in a competitive bidding process, what flexibility should be afforded to the purchasing utilities and state public utility commissions to determine the role of nonprice factors in the bidding evaluation process?

(11) How can concerns about the reliability, dispatchability, and performance of IPPs be adequately addressed?

Topis Area No. 4: Utility Ownership of IPPs

(12) Under what circumstances, if any, should generating facilities be eligible for IPP status if they are owned by utilities possessing a monopoly franchise to serve retail customers?

(a) Should a utility-owned facility be eligible for IPP status only if it is located outside the utility's zone of economic influence? Is so, what factors are relevant to identify a utility's zone of economic influence?

(b) Should utility-owned generating facilities be eligible for IPP status if they are located in the utility's service territory but their power is sold in markets beyond the utility's zone of economic influence?

(c) If utility-owned generating facilities are eligible for IPP status, what steps should FERC take to protect against potential abuses (e.g., self-dealing, daisy chaining, reciprocal dealing, cost misallocation, etc.)?

(d) Should a joint venture be eligible for IPP status if the local utility is a part owner of the venture? If so, what limits should be placed on the ownership share of the utility? What other restrictions, if any, should be placed on the venture or the utility owning a portion of the venture?

Topic Area No. 5: FERC/State Issues

(13) What are the policy ramifications of third party or independent wholesale power producers on the division of jurisdiction between FERC and state commissions?

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[2] Conference on the Public Utility Regulatory Policies Act, H.R. Rep. No. 95–110, 95th Congress, 2nd Session, 70, (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 7797.

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Staff Working Paper

A preliminary Staff working paper exploring the technical policy issues associated with the regulation of IPPs will be made available to the public no later than October 9, 1987. In addition to comments on the above questions, the public may file comments on this working paper.

Ground Rules for the Conference

The issues surrounding IPPs regulation are numerous and complex. The conference will be more productive if detailed and well supported comments, rather than broad generalities, are received. To focus the oral presentations, the conference will be organized around the five major topic areas listed above. Panels will be created for each major topic area. Each party wishing to speak at the conference should file a request to speak with the Commission. The request should indicate the panels on which the party wishes to participate, ranked by order of preference. Because of time limitations, parties may not be allowed to participate on every panel that they request. If parties request to speak on subjects not covered in the 5 topics, listed above, other panels may be created. While parties may not be allowed to spaek on every topic requested, written comments may cover as many areas as the party wishes.

Each speaker may be allowed up to 5 minutes to make his or her presentation. However, this time limit may be modified depending on the number or parties who request to speak. Following the presentation, the Staff may ask questions of the speaker. The conference will be chaired by Dr. Douglas R. Bohi, Director of the Commission's Office of Economic Policy. Dr. Bohi may announce additional ground rules at the beginning of the conference.

III. Comment Procedures

The Commission's Staff invites interested persons to submit written comments, data, and other information concerning the matters set forth in this Notice. Due to the numerous comments that are expected, every person desiring to make an oral presentation must file a request to speak. The Commission Staff urges persons with common points of view to jointly submit their written comments and to appoint a single spokesperson for oral presentations. Requests to speak should be filed with the Secretary of the Commission by 5:00 p.m. EDT on October 16, 1987. Requests to speak should identify the name of the speaker, the group represented, and the major topic areas that the speaker wishes to discuss ranked by order of preference.

Written comments must be received by 5:00 p.m. EST on November 6, 1987. However, as noted earlier, we encourage parties making oral presentations to file written comments in advance of the conference. All filings should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, and should refer to Docket No. EL87–67–000.

All filings will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–22846 Filed 10–1–87; 8:45 am]

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[Docket No. EF87–2011–001]

Order Granting Interim Approval of Rates, Noting and Granting Interventions, Denying Motion for Final Approval, Denying Request for Waiver of Regulations, and Directing the Filing of Supplemental Information; United States Department of Energy-Bonneville Power Administration

Issued: September 29, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On July 31, 1987, the Bonneville Power Administration (BPA) filed with the Commission a proposed surplus firm power rate schedule (SL–87) in Docket No. EF87–2011–001. BPA requests long-term final approval of its proposed SL–87 rate as of October 1, 1987, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning & Conservation Act (Northwest Power Act) [1] and the Commission's regulations for the confirmation and approval of the rates of Federal Power Marketing Administrations,[2] for as long as BPA has surplus firm power available for sale.

BPA also requests waiver of the five year limit on the rate approval period [3] and waiver of the 180-day advance filing requirement for final approval of a rate.[4] The rate schedule was developed as a part of BPA's overall system power and transmission rate filing, Docket Nos. EF87–2011–000 and EF87–2021–000, parts of which are incorporated by reference in this filing.

BPA projects a continued firm capacity surplus of about 2,000 megawatts of power well past the year 2000 and a firm energy surplus of 1,000 average megawatts into the mid-1990s. At the same time, sales to existing customers—principally aluminum smelters and California utilities—have faltered in the recent past. Accordingly, BPA is now attempting to diversify its product and customer mix by marketing some of its surplus firm power on a long-term basis for twenty years.

The proposed rate schedule would only apply to 1,350 megawatts of capacity and 725 average megawatts of energy currently available for sale. This comprises less than seven percent of BPA's total firm obligations. The SL–87 rate schedule does not, however, obligate BPA to acquire any new power resource to meet long-term obligations. When the surplus is gone there will be no firm power to which this schedule might apply and sales will cease. According to BPA, the duration of BPA's surplus is indefinite and cannot be estimated precisely at this time.

BPA claims that regulatory delay is one of the key difficulties it has experienced in the marketing of surplus power. The alternative to long term surplus firm sales, BPA asserts, would be to sell this power through the highly volatile spot market. BPA points out that it is not attempting to structure a transaction that would allow it to sell all of its surplus power to a single buyer, but rather would prefer to have a series of small transactions that would increase its customer diversity and diminish its risk of revenue underrecovery.

In its wholesale power and transmission rate filings in Docket Nos. EF87–2011–000 and EF87–2021–000, BPA has made estimates of the sales it expects to make under the SL–87 rate schedule during Fiscal Years (FY) 1988 and 1989. In FY 1988, BPA estimates that it will sell 1015 average megawatts of surplus firm power, 17 percent through contractual sales and the remainder through sales on the spot market as nonfirm energy. In FY 1989, BPA estimates a total of 1099 average megawatts of surplus firm power sales with 20 percent through contractual

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[1] 16 U.S.C. 839e(a)(2) (1982).

[2] 18 CFR Part 300 (1987).

[3] 18 CFR 300.21(e)(1) (1987).

[4] 18 CFR 300.10(a)(3)(ii) (1987).

sales and the remainder on the spot market as nonfirm energy sales. BPA has assumed that the price of gas which fuels the alternative source during this period will increase from the current price of $1.83 per MMBTU to $2.25 per MMBTU in FY 1988 and to $2.67 per MMBTU in FY 1989.

Notice of the filing was published in the **Federal Register** on August 17, 1987,[5] with comments due on or before August 25, 1987. Fourteen separate motions to intervene were filed by individual petitioners or groups of petitioners.[6] Six of the interventions were timely filed. On August 27, 1987, late motions to intervene were filed by the Pacific Power & Light Company and by the Pacific Northwest Generating Company. On August 28, 1987, late motions to intervene were filed by Dow Corning Corporation and by Cascade Steel Rolling Mills, Inc. Late motions to intervene were filed on August 31, 1987, by the Washington Utilities and Transportation Commission, by the Atlantic Richfield Company, by Portland General Electric Company, and by the Public Generating Pool.

All petitioners have requested party status in these proceedings. Only the Public Power Council (PPC) has raised substantive issues. The PPC asserts that BPA's request for a final decision within 60 days provides insufficient time for comments and adequate Commission review. It also states that the market may be too volatile for a 20-year rate, and alleges that SL–87 is excessively unstructured.

On September 9, 1987, BPA filed an answer to comments of the Public Power Council regarding final approval of the proposed SL–87 surplus power rate. BPA alleges that the PPC believes that BPA should continue to rely exclusively on the spot market. BPA, however, notes that firm power customers, including PPC members, bear all costs of unsold surplus power not recovered through spot-market transactions. BPA alleges that the proposed SL–87 rate schedule would lessen the total amount of its revenues that PPC would view as "at risk." Furthermore, BPA states that the nine months of proceedings before the Administrator have provided the Commission with sufficient information to accomplish a full and deliberate review by October 1, 1987, and have provided any potential intervenors with adequate time to prepare comments.

[5] 52 F.R. 30,721 (1987).

[6] *See* Attachment 1 for a complete list of intervenors.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[7] the timely, unopposed motions to intervene serve to make those movants parties to this proceeding. Given the shortened comment period in this docket, the early stage of this of this proceeding, and the fact that the interventions filed late should not unduly delay the proceeding or prejudice any other party, the late filed motions to intervene of the Pacific Power & Light Company, the Pacific Northwest Generating Company, Dow Corning Corporation, Cascade Steel Rolling Mills, Inc., the Washington Utilities and Transportation Commission, the Atlantic Richfield Company, Portland General Electric Company, and the Public Generating Pool shall be granted.

As noted above, BPA requests approval of these rates as of October 1, 1987. In the alternative, BPA seeks interim approval as of that date. Due to the complexities of the filing, we are unable to make a determination at this time with respect to BPA's request for final approval. Therefore, our current review will be limited to consideration on an interim basis which, necessarily, is a more limited review process than the review of rates for confirmation and approval on a final basis. We note that BPA has also filed its wholesale power rates and its transmission rates to be acted upon within the same 60-day review period, and thus our efforts are also focused on BPA's general rate cases.[8]

BPA also requests waiver of the Commission's regulations governing the final approval of rates, under which the filing entity is required to give the Commission 180 days from the time a rate is filed until the proposed effective date. 18 CFR 300.10 (1987). This time is necessary to weigh the revenue impacts of the proposal, to review the public comments received, and to determine whether the rate is adequate to meet all the financial obligations including the amortization of the Federal investment on a timely basis. We shall deny this request for waiver because 60 days does not allow sufficient time to review and analyze BPA's submittals and does not give the parties an adequate opportunity to intervene and to prepare and submit comments and reply comments for the Commission's consideration and analysis. The 60 days that BPA proposes is an inadequate amount of time to review and analyze such a complex filing

The Commission's regulations set forth the standards to be used in considering appropriate action with respect to a request by the Administrator of BPA for interim approval of rates. The rate schedules proposed in the filing are to be developed at a level which, assuming accurate cost and revenue estimates, and provided that all amortization payments are made on a timely basis, would produce the needed revenues to allow BPA to meet its financial obligations, and to repay deficits incurred in previous years. 18 CFR Part 300 (1987).

BPA's proposal for an open-ended rate approval period is also contrary to the Commission's regulations which limit approval of PMA rates to a maximum of 5 years. 18 CFR 300.1(b)(6) (1987). While there have been instances where longer approval periods have been granted, it has been done only after the Commission has satisfied itself that such a finding can be made after an adequate review of the filing documents and independent studies by the Commission. Time for that level of investigation does not exist to make a final determination by October 1, 1987.

Additional time is also needed because BPA's proposed new SL–87 rate is a new innovation in rate design that has not been reviewed before. Rate schedule SL–87 does not establish a fixed or even a formula-type rate. BPA states that it has concluded from past experience that flexible pricing is a key to successful marketing, and thus the SL–87 rate schedule allows a negotiated rate that may be unique to each contract. At the end of each fiscal year, in order to establish a floor and ceiling level for proposed contracts negotiated during the next fiscal year under the SL–87 rate schedule, BPA will make 21-year projections of the following: (1) BPA's priority firm power rate (an average of 23.9 mills per kWh during the proposed current rate period); (2) the value of surplus firm power in the opportunity market; and (3) the fully allocated cost of BPA's highest-cost power resource (currently Washington Public Power Supply System (WPPSS) Unit No. 2). The floor is the projected priority firm power rate or the projected value of power in the opportunity market, whichever is greater. Similarly, the ceiling will be the projected cost of the expected highest-cost power resource on BPA's system.

Any contract signed during that year must specify rates or rate formulas that, when applied to contract loads, will

[7] 18 CFR 385.214 (1987).

[8] The rates involved there, in Docket Nos. EF87–2011–000 and EF87–2021–000, represent an estimated $5.88 billion in revenues during the rate approval period whereas the SL–87 rate would account for $435 million in revenues during the same period.

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provide a stream of revenues, the present worth of which will lie between the present worths of the forecasted floor and ceiling levels applied to the same loads. The rates or rate formulas specified in each contract will not be revised annually when projections are revised but will be fixed for the duration of the contract.

Before we could approve such a scheme on a final basis, more information from BPA is needed, such as the actual mechanics of its forecasting procedures and an estimate of the downside risks to BPA's cost/revenue situation in the event the forecast should prove to be inaccurate. This type of information and analysis cannot be developed in the review period BPA has proposed. In addition, the PPC states that "[t]he circumstances surrounding the SL–87 rate in fact appear to be precisely those that justify full and deliberate consideration by the Commission; that is, a twenty-year rate with no clearly defined structure, revenue projections, or future safeguards ensuring Commission review." The PPC goes on to recommend that the Commission review the actual rates established for each sale "[r]ather than approve another amorphous rate with unreviewable implementation for twenty years * * * *" In light of the fact that we have had an insufficient amount of time to review and analyze the SL–87 rate, and because of the concerns expressed by the PPC, we shall only grant interim approval of the SL–87 rate schedule at this time.

For the above reasons, final approval of BPA's surplus firm power rate schedule SL–87 shall not be granted now. Because BPA has been negotiating with California parties and appears to be ready to sign some sort of contract with them based on the SL–87 rate schedule, we shall approve the proposed rate schedule on an interim basis at this time, thus preserving any final decisions until a later time.

In light of the limited time in which parties were permitted to file comments on BPA's filing, we shall allow an additional period during which parties may comment on any and all issues related to final confirmation and approval of BPA's rates.

The Commission Orders

(A) The untimely motions to intervene of the Pacific Power & Light Company, the Pacific Northwest Generating Company, Dow Corning Corporation, Cascade Steel Rolling Mills, Inc., the Washington Utilities and Transportation Commission, the Atlantic Richfield Company, Portland General Electric Company, and the Public Generating Pool are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) BPA's request for interim approval of its surplus firm power rate schedule is hereby granted.

(C) BPA's requests for final approval effective October 1, 1987, and the request for waiver of the 180-day filing requirement are hereby denied.

(D) BPA is hereby directed to provide additional information, as needed, to supplement the record and fully define the parameters of the SL–87 rate schedule, as discussed in the body of this order.

(E) Within thirty (30) days of the date of this order, all parties who wish to do so shall file additional comments regarding final confirmation and approval of BPA's rates. All parties who wish to do so shall file cross comments within twenty (20) days thereafter. All timely comments will be considered by the Commission in determining the ultimate disposition of BPA's rate proposals.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Bonneville Power Administration Surplus Firm Power Rate (SL–87)

[Docket No. EF87–2011–001]

Petitions Received

No	Petitioner	Representing
1	California Public Utilities Commission	Same
2	Association of Public Agency Customers	Boise Cascade Corporation, James River Corporation, Georgia Pacific Corporation, International Paper Company, Longview Fiber Company, Occidental Chemical Corporation, Pennwalt Corporation, Scott Paper Company, Simpson Timber Company, and The Boeing Company.
3	Public Power Council	113 members which are publicly or cooperatively-owned electric utilities in the Pacific Northwest
4	The California Utilities	Southern California Edison Company, Dept. of Water And Power of the City of Los Angeles, Public Service Dept. of the City of Glendale, Public Service Dept. of the City of Burbank, and Water and Power Dept. of the City of Pasadena.
5	Puget Sound & Light Company	Same.
6	Portland General Electric Company	Same.
7	Pacific Power & Light Company	Same.
8	Pacific Northwest Generating Company	Same.
9	Dow Corning Corporation	Same.
10	Cascade Steel Rolling Mills, Inc.	Same.
11	Atlantic Richfield Company	Same
12	Public Generating Pool	Chelan County PU Dist. No. 1, Seattle, City Light Dept., Grant County Utility Dist. No. 2, Douglas County PU Dist. No. 1, Tacoma, Dept. of PU, Light Div., Eugene Electric & Water Board.
13	Washington Utilities & Transportation Commission	Same.
14	Direct Service Industrial Customers	Aluminum Company of America, Columbia Falls Aluminum Company, Georgia-Pacific Corporation, Intalco Aluminum Corporation, Kaiser Aluminum & Chemical Corporation, Northwest Aluminum Company, Oregon Metallurgical Corporation, Pennwalt Corporation, and Reynolds Metals Company

[FR Doc. 87–22818 Filed 10–1–87; 8:45 am]

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[Docket Nos. EF87-2011-000 and EF87-2021-000]

Order Granting Interim Approval of Rates, Noting and Granting Interventions, Denying Motions for Final Approval, and Directing Filing of Supplemental Information; United States Department of Energy-Bonneville Power Administration

Issued: September 29, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On July 31, 1987, the Bonneville Power Administration (BPA) filed proposed wholesale power rates and transmission system rates in Docket Nos. EF87-2011-000 and EF87-2021-000, respectively, in accordance with sections 7(a)(2) and 7(i)(6) of the Pacific Northwest Power Planning and Conservation Act (Northwest Power Act) [1] and the Commission's regulations for the confirmation and approval of the rates of Federal Power Marketing Administrations.[2] Final rate approval is requested by October 1, 1987, but, in the alternative, interim approval is requested pending the Commission's review of the request for final approval, pursuant to § 300.20 of the Commission's regulations.[3]

The proposed rates will increase wholesale power revenues by an average of 5.2 percent, and decrease transmission revenues an average of 17.4 percent. The proposed rates would generate an estimated $5.88 billion in revenues for BPA during the proposed 2-year rate approval period.

The wholesale power rate schedules submitted for approval in Docket No. EF87-2011-000 are PF-87 (Priority Firm Power Rate), IP-87 (Industrial Firm Power Rate), VI-87 (Variable Industrial Power Rate), SI-87 (Special Industrial Power Rate), CF-87 (Firm Capacity Rate), CE-87 (Emergency Capacity Rate), NR-87 (New Resource Firm Power Rate), SP-87 (Short Term Surplus Firm Power Rate), NF-87 (Nonfirm Energy Rate), SS-87 (Share-the-Savings Rate), and RP-87 (Reserve Power Rate). In addition to these rate schedules BPA has also requested extension of approval of the Impact Aid Methodology, first approve in a subdocket of the 1985 rate filing.

The transmission rate schedules submitted for approval in Docket No. ER87-2021-000 are FPT-87.1 (Formula Power Transmission), FPT-87.3 (Formula Power Transmission), IR-87 (Integration of Resources), IS-87 (Southern Intertie Transmission), IN-87 (Northern Intertie Transmission), IE-87 (Eastern Intertie Transmission), ET-87 (Energy Transmission), MT-87 (Market Transmision), and extension of the UFT-2 (Use-of-Facilities Transmission).

BPA requests rate approval for the 2-year period from October 1, 1987, through September 30, 1989, for all rate schedules, except for transmission rate schedules UFT-2 and FPT-87.3. BPA requests extension of current rate schedule UFT-2 for the period October 1, 1987, through June 30, 1990. The proposed approval period for schedule FPT-87.3 is October 1, 1987, through September 30, 1990.

BPA also requests approval of the General Rate Schedule Provisions (GRSP) for a 12-year period, from October 1, 1987 through September 30, 1999, and requests wavier of the Commission's regulations [4] which limit the approval period to 5 years.

BPA asserts that the proposed rates would protect against its estimated total annual revenue risk during the rate period of approximately $350 to $400 million. The revenue forecast from nonfirm energy and surplus firm power sales assumes poorer water conditions than average. BPA has increased its revenue requirement to provide an average interest coverage of 1.08 on interest payments to the Federal Treasury. The proposal also contains a provision for a one-time upward or downward adjustment to rates based on the difference between BPA's planned and actual financial performance as of the end of Fiscal Year (FY) 1988. The upward adjustment is for as much as 10 percent for the last nine months of FY 1989.

Concurrent with this filing, on July 31, 1987, in Docket No. EF87-2011-001, BPA filed a proposed surplus firm power rate schedule (SL-87). The SL-87 rate schedule is addressed in a separate order.

Notice of the filing was published in the **Federal Register** on August 17, 1987,[5] with comments due on or before August 25, 1987. Sixteen separate notices of intervention or motions to intervene were filed by individual petitioners or groups of petitioners.[6] Eight of the interventions were timely filed. On August 27, 1987, a late motion to intervene was filed by the Pacific Power and Light Company. On August 28, 1987, late motions to intervene were filed by Cascade Steel Rolling Mills, Inc., and Dow Corning Corporation. Late motions to intervene were filed on August 31, 1987, by the Washington Utilities and Transportation Commission, the Portland General Electric Company, the Atlantic Richfield Company, and the Public Generating Pool. The California Energy Commission (CEC) filed a late motion to intervene on September 3, 1987.

Most of the motions to intervene raised no substantive issues but stated that an additional opportunity should be provided for comments after the interim approval question is resolved. Puget Sound Power and Light Company and the Public Generating Pool allege that the filing contains substantive and procedural errors that should be addressed later in the proceedings. Only the Public Power Council (PPC), the California Utilities, and the CEC raised specific issues.

The PPC alleges that various BPA practices relative to determination of revenue requirements, refinancing bonds, treatment of depreciation and replacements, risk management strategies, design of the nonfirm rate schedule, and the lack of specific guidelines to ensure Federal repayments render the 60-day review time BPA has requested for final approval inadequate for detailed review.

The California Utilities protest even interim approval of certain rate schedules, contending that even refund provisions do not provide a remedy for transactions that do not occur due to excessive BPA pricing. They contend that NF-87, SP-87, and MT-87 were established on a value-based concept which, in conjunction with the Intertie Access Policy (IAP) and the Exportable Energy Agreement (EEA), do not promote economic efficiency. They maintain that BPA should be ordered to explain, at least, how the IAP and the EEA interact with flexible pricing.

The CEC raises issues relative to rate schedules that will affect BPA's customers in California. The CEC opposes adoption of the MT-87 rate schedule; opposes the inclusion of certain BPA costs in the NF-87 rates as contrary to statutory standards; opposes certain costs used to develop a "rate cap" for rate schedules NF-87 and SS-87, and opposes other elements of the design of the nonfirm energy rates.

On September 9, 1987, BPA filed an answer in opposition to the motion to intervene of the California Utilities. BPA points out that the California Utilities chose not to participate in a recent evidentiary hearing on BPA's proposed rates, despite a warning by BPA that failure to attend the hearings could be

[1] 16 U.S.C. 839e(a)(2) and 839e(i)(6) (1982).
[2] 18 CFR Part 300 (1987).
[3] 18 CFR 300.20 (1987).
[4] 18 CFR 300.1(b)(6) (1987).
[5] 52 F.R. 30721 (1987).
[6] *See* Attachment 1 for a complete list of intervenors.

construed as a failure to exhaust remedies.

On September 9, 1987, BPA also filed an answer in opposition to comments of the California Utilities regarding interim approval of proposed rates. BPA maintains that the California Utilities are attempting to hold it to an economic efficiency standard, notwithstanding the fact that none of the statutes or case law governing review contains such a standard. Moreover, BPA alleges that all of the disputed rates are market-based and are, by their very nature, economically efficient.

On September 18, 1987, the California Utilities filed a motion to strike BPA's answer to protest. They assert that BPA's September 9, 1987 answer in opposition to comments is, in fact, an answer to a protest and, thus, specifically disallowed by the Commission's regulations.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[7] the timely, unopposed motions to intervene serve to make those movants parties to this proceeding. Notwithstanding BPA's opposition to the California Utilities' motion to intervene, we find that good cause exists to grant their motion. We are satisfied that the California Utilities have expressed an interest in the outcome of these proceedings that is not represented by another party and that their participation may be in the public interest. Accordingly, we shall grant their motion to intervene. Given the shortened comment period necessitated in these dockets, the early stage of these proceedings, and the fact that the interventions should not unduly delay the proceeding or prejudice any other party, the late-filed motions of the Pacific Power and Light Company, the Cascade Steel Rolling Mills, Inc., the Dow Corning Corporation, the Washington Utilities and Transportation Commission, the Portland General Electyric Company, the Atlantic Richfield Company, the Public Generating Pool, and the California Energy Commission shall also be granted. Given that we are granting the California Utilities' motion to intervene, and are inviting additional comments in these proceedings, for the reasons set forth below, the California Utilities' motion to strike BPA's answer need not be acted upon and will be treated as moot.

In *Central Lincoln Peoples' Utility District* v. *Johnson*,[8] the court interpreted the Northwest Power Act as setting a narrow scope for Commission review of BPA's regional wholesale power and transmission rates. We are to review these rates to determine whether they meet three specific, limited statutory requirements: (1) The rates must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting BPA's other costs; (2) the rates must be based on BPA's total system costs; and (3) the transmission rates must equitably allocate the cost of the Federal transmission system between Federal and non-Federal power using the system.[9] Thus, we are not concerned with rate design or with allocation of costs between customer classes except as they relate to the equitable allocation of transmission cost between Federal and non-Federal users of that system.[10]

However, due to the complexities of the filing, we are unable to make a determination at this time with respect to the BPA's request for final approval. Therefore, our current review will be limited to consideration of approval on an interim basis which, necessarily, is a more limited review process than the review of rates for confirmation and approval on a final basis.

The Commisson's regulations also set forth the standards to be used in considering appropriate action with respect to a request by the Administrator of BPA for interim approval of rates. The rate schedules proposed in the filing are to be developed at a level which, assuming accurate cost and revenue estimates and provided that all amortization payments are made on a timely basis, would produce the needed revenues to allow BPA to meet its financial obligations, and to repay deficits incurred in previous years. 18 CFR Part 300 (1987).

By order of April 29, 1987, we approved BPA's general system power and transmission rates on a final basis, to be effective for the period July 1, 1985 through September 30, 1987,[11] We noted certain deficiencies in the content of BPA's filing, noted that other weaknesses had surfaced in our review, and directed BPA staff to meet with our staff in an effort to improve the content of BPA's future filings. It appears that the Commission's directive and the staff efforts have had salutory effects in some areas but appear to have been less successful in others. For example, BPA has provided, as required by the Commission's and the Department of Energy's regulations, repayment studies which demostrate the long-term effect of continued application of the existing rates. The current repayment study for the generation function demostrates that if BPA were to continue its currently approved rates, repayment of the generation investments would not be accomplished on a timely basis. BPA studies also indicate that the transmission investments, on the other hand, would be repaid ahead of schedule. As the result of this projection of future revenues, BPA has proposed rates which will increase power revenues and reduce wheeling revenues. BPA continues, however, to provide repayment studies in support of the filed rates that do not demonstrate that the proposed rates, if continued over the entire repayment period, will repay the Federal investment in the transmission system in a timely manner as required by law. Therefore, more detailed analysis is required in order to determine whether the revenue deficiency warrants disapproval of the rates.

Another filing improvement relates to the statutory requirement that costs of the transmission system be equitably apportioned between Federal and non-Federal users of the system. BPA has now provided a lengthy analysis of power and wheeling operations from FY 1978 through FY 1986 that, purportedly, demostrates that revenues from Federal and non-Federal users of the transmission system have been applied in conformance with the requirements of the Northwest Power Act.

There has been some failure to follow our staff's suggestion that each filing clearly identify which rate schedules, contract rates, or rate schedule provisions are being submitted for Commission approval, which have already been approved in previous dockets, and which are being filed only for the Commission's information, which has resulted in some confusion.

Furthermore, in Statement A, BPA has identified a source of revenues from a WNP–3 exchange amounting to approximately $24 million annually. We are aware that this is the result of a settlement under which BPA has agreed to sell at negotiated rates a certain block of power to investor-owned-utilities (IOU) that had participated in the financing of the Washington Public Power Supply System (WPPSS) Unit #3. As the $24 million annual revenue would appear to have an effect on BPA's cost or revenue requirements, it would appear that the exchange terms should require Commission confirmation and

[7] 18 CFR 385.214 (1987).

[8] 735 F.2d 1101 (9th Cir. 1984).

[9] Section 7(a)(2) of the Northwest Power Act. 16 U.S.C. 839e(a)(2); *see also* 26 FERC ¶ 61.096 (1984).

[10] 735 F.2d at 1115.

[11] 39 FERC ¶ 61.078 (1987).

approval under the Northwest Power Act. Accordingly, we will direct BPA to show cause why the WNP–3 exchange should not be submitted for approval under the Northwest Power Act. It is noted that the IOU portion of the exchange has already been filed and approved by the Commission under the Federal Power Act.

Based on the data filed by BPA, we are convinced that BPA needs some increase in its power rates. We are less certain, however, that the decrease in transmission rates is appropriate. BPA states that it expects to incur, in the aggregate, an operating loss of over $400 million in FY 1987. It appears possible that BPA, as has happened in previous years, might encounter difficulties in making its scheduled amortization payments toward the Federal transmission investment. Nevertheless, the filed revenue requirement study, the only test prescribed by the Department of Energy for determining the adequacy of revenues, indicates that (assuming all of BPA's data and projections are valid) the proposed rates, if continued over the balance of the repayment periods, would provide revenues reasonably sufficient to repay the investment on a timely basis as required by law.

We agree with the PPC's position that 60 days does not provide adequate time for detailed review of the issues involved in these proceedings. We, therefore, shall not grant final approval of the proposed rates at this time.

We take note of the allegations of the California Utilities that they may never be made whole if the rates in effect on an interim basis should ultimately be disapproved. Nevertheless, the Commission's interim approval option was specifically provided by statute as the best tool available to balance the competing requirements of the parties involved. Accordingly, we will grant interim approval of the proposed rates at this time.

Given that we are only approving these rates on an interim basis, we do not believe that the issues raised by the CEC must be resolved at the present time.

In light of the limited time in which parties were permitted to file comments on BPA's filing, we shall allow an additional period during which parties may comment on any and all issues related to final confirmation and approval of BPA's rates. In particular, the parties are invited to comment on the need for a further hearing before this Commission.

The Commission Orders

(A) The California Utilities motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The untimely motions to intervene of the Pacific Power & Light Company, the Cascade Steel Rolling Mills, Inc., Dow Corning Corporation, the Washington Utilities & Transportation Commission, the Portland General Electric Company, the Atlantic Richfield Company, the Public Generating Pool, and the California Energy Commission are hereby granted, subject to the Commission's Rules of Practice & Procedure.

(C) BPA's request for interim approval of its system wholesale power rates, general rate schedule provisions, and impact aid methodology schedule, in Docket No. EF87–2011–000, is hereby granted, until the Commission takes final action on either their approval or disapproval.

(D) BPA's request for interim approval of its transmission rates, in Docket No. EF87–2021–000, is hereby granted, until the Commission takes final action on either their approval or disapproval.

(E) BPA's request for final approval of the rates in Docket No. EF87–2011–000 is hereby denied.

(F) BPA's request for final approval of the rates in Docket No. EF87–2021–000 is hereby denied.

(G) BPA is hereby directed to show cause within thirty (30) days from the date of the issuance of this order why its rates for the sale of power under the WNP–3 exchange should not be filed for confirmation and approval under the Northwest Power Act.

(H) Within thirty (30) days of the date of this order, all parties who wish to do so shall file additional comments regarding final confirmation and approval of BPA's rates. All parties who wish to do so shall file cross comments within twenty (20) days thereafter. The parties should specifically delineate in their comments any and all issues that they feel should properly be set for hearing under section 7(k) of the Act in light of the Commission's interpretation of the Act as set forth in its September 1, 1982 order resolving the scope of the Commission's jurisdiction (20 FERC ¶ 61,292). All timely comments will be considered by the Commission in determining the ultimate disposition of BPA's rate proposal.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment 1—Bonneville Power Administration 1987 Wholesale Power and Transmission Rate Filing

[Docket Nos. EF87–2011–000 and EF87–2021–000]

PETITIONS RECEIVED

No	Petitioner	Representing
1	California Public Utilities	Same
2	Direct Service Industrial Customers	Aluminum Company of America, Columbia Falls Aluminum Company, Georgia-Pacific Corporation, Intalco Aluminum Corporation, Kaiser Aluminum and Chemical Corporation, Northwest Aluminum Company, Oregon Metallurgical Corporation, Pennwalt Corporation, and Reynolds Metals Company
3	Association of Public Agency Customers	Boise Casase Corporation, James River Corporation, Georgia Pacific Corporation, International Power Company, Longview Fiber Company, Occidental Chemical Corporation, Pennwalt Corporation, Scott Paper Company, Simpson Timber Company, and The Boeing Company
4	Western Public Agencies Group	Public Utilities Districts of Clallam, Clark, Grays Harbor, Klickitat, Lewis, Mason No.1, Mason No. 3, Pacific, Skamania, Snohomish, and Wahkiakum Counties, Washington; Mutuals of Elmhurst and Ohop, Canby Utility Board, Lakeview Light and Power Company, Parkland Light and Water Company, and Peninsula Light Company and Tillamook People's Utility District.
5	Public Power Council	113 members which are publicly or cooperatively-owned electric utilities in the Pacific Northwest
6	The California Utilities	Southern California Edison Company, Dept. of Water And Power of the City of Los Angeles, Public Service Dept. of the City of Glendale, Public Service Dept. of the City of Burbank, and Water and Power Dept. of the City of Pasadena
7	Puget Sound Power and Light Company	Same.
8	The Washington Water Power Company	Same.

No	Petitioner	Representing
9	Portland General Electric Company	Same.
10	Pacific Power and Light Company	Same
11	Dow Corning Corporation	Same
12	Cascade Steel Rolling Mills, Inc.	Same
13	Atlantic Richfield Company	Same
14	Public Generating Pool	Chelan County PU Dist. No 1, Seattle, City Light Dept. Grant County Utility Dist. No. 2, Douglas County PU Dist. No 1, Tacoma, Dept. of PU, Light Div., and Eugene Electric and Water Board
15	Washington Utilities and Transportation Commission	Same
16	California Energy Commission	Same

[FR Doc. 87-22820 Filed 10-1-87; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3272-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: FIFRA Sec. 29 Annual Report on Conditional Registrations.

(EPA ICR #0601) (Renewal)

Abstract: FIFRA Sec. 29 requires that an annual report on Conditional Registrations (registrations for which the submission of some supporting data has been deferred to a future date) be supplied to members of Congress to monitor the Conditional Registration program.

EPA obtains pesticide production data needed to complete the report through this information collection.

Respondents: Pesticides Manufacturers.

Estimated Annual Burden: 350.

Comments on the abstracts in this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460
and
Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503.

Date: September 24, 1987.

Daniel J. Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 87-22790 Filed 10-1-87; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3271-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed September 21, 1987 Through September 25, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870325, Draft, FHW, OH, Trotwood Connector Construction, OH-49 to US 35 and Turner Road Extension, Turner Road/Wolf Road Intersection to the Trotwood Connector, Montgomery County, Due: November 16, 1987, Contact: Fred Hempel, (614) 496-6896

EIS No. 870326, Final, AFS, MT, Gallatin National Forest, Land and Resource Management Plan, Due: November 2, 1987, Contact: Robert Breazeale, (406) 587-6701

EIS No. 870327, Final, AFS, MT, Deerlodge National Forest, Land and Resource Management Plan, Due: November 2, 1987, Contact: Frank Salomonson, (406) 496-3400

Amended Notice:

EIS No. 870280, Draft, Joint Lead, BLM/AFS, WY, Sohare Creek Unit Exploratory Oil Well No. 1-35, Lease and Permit, Bridger-Teton National Forest, Teton County, Due: October 27, 1987, Published FR 8-21-87—Review period extended.

Dated: September 29, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-22796 Filed 10-1-87; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3272-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

This notice announces the Availability of EPA comments prepared September 14, 1987 through September 18, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

DRAFT EISs

ERP No. D-BIA-L35003-WA, Rating EO2, Swinomish Marina and Associated Facilities Development, Lease Approval, Swinomish Channel, WA. SUMMARY: EPA has several major concerns with this project. The draft EIS does not sufficiently address and analyze the relative impacts of potential less environmentally damaging alternatives to the proposed project. The proposed project entails the filling of wetlands for non-water dependent uses and specific mitigation is not proposed to offset losses of wetland and intertidal habitat through the proposed dredge and fill activities. The draft EIS does not sufficiently address both direct and secondary impacts of the marina on the

biota of the adjacent Padilla Bay Estuarine Sanctuary.

ERP No. D–BLM–J61071–WY, Rating EO2, Medicine Bow and Divide Resource Areas, Land and Mineral Mgmt. Plan, Bennett Mtn., Encampment River Canyon, and Prospect Mtn. WSA's, Wilderness Designation, WY. SUMMARY: Although some commendable actions for managing water quality and watershed resources are proposed, EPA expressed concerns regarding the following: insufficient and/or inconsistent information for meeting surface water quality standards, including aquatic life, and for protecting ground water; lack of a framework for Clean Water Act and ground water monitoring; adequacy of grazing management direction; riparian area management objectives and plans; potential impacts to areas of Critical Environmental Concern (ACECs); inconsistent ACEC recommendations; oil, gas, and coal planning; decisions on wilderness designations and management; and the need for a chapter or appendix regarding plan implementation.

ERP No. DS–COE–K35024–CA, Rating EU2, Marathon Industrial/Commercial Business Park Development, Fill Permit, Additional Alternative and Information, 404 and 10 Permits, CA. SUMMARY: EPA rated the supplemental draft EIS environmentally unsatisfactory because the proposed project would cause the unacceptable loss of 90 acres of wetlands that provide valuable wildlife habitat in south San Francisco Bay area. EPA noted that the loss of these wetlands would be severe because they provide important habitat for migratory birds and possibly an endangered species (salt marsh harvest mouse). EPA requested that the final EIS contain an Endangered Species Act Section 7 biological opinion and documentation of California water quality certification. EPA also requested further analysis of air and water quality impacts and commitments to mitigate adverse air and water impacts. EPA stated that the project as proposed fails to comply with three of the four major substantive criteria of the Clean Water Act Sect. 404(b)(1) Guidelines. EPA recommended that the Corps deny the 404 permit. EPA stated that if these issues were not resolved in the final EIS, the project could be a candidate for referral to the Council on Environmental Quality.

ERP No. D–NOA–B90009–NH, Ration LO, New Hampshire Coastal Program, NH. SUMMARY: From the standpoint of EPA's jurisdiction and expertise, EPA believes approval of the program will not result in adverse environmental impacts.

ERP No. DS–USA–L11001–WA, Rating LO, Ft. Lewis Military Installation, Ft. Lewis and Yakima Firing Center, High-Technology Motorized Division Conversion, 9th Infantry Division, Updated Information, WA. SUMMARY: EPA reviewed the project and has no objections to the proposed action as described.

Final EISs

ERP No. F1–BLM–K65068–NV, Wells Resource Areas Wilderness Study Areas, Wilderness Designation, Recommendations, NV. SUMMARY: EPA concurred with BLM's proposed recommendations of four wilderness study areas for inclusion in the National Wilderness System, and noted that air and water quality will be best protected by wilderness designation.

ERP No. F–FHW–K40156–CA, I–680/CA–24 Interchange Reconstruction and Freeway Improvements, Rudgear Rd. in Walnut Creek to Willow Pass Rd. in Pleasant Hill/Concord, 404 Permit, CA. SUMMARY: EPA expressed continuing concerns regarding High Occupancy Vehicle (HOV) lanes and ozone impacts, in particular the effects of transportation projects on continuing violations of ozone standards. EPA recommended that the FHW implement its new procedures on HOV policy to the fullest extent for future I–680 projects.

Dated: September 29, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–22797 Filed 10–1–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00249; FRL–3271–3]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

DATE: The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, October 20 and 21, 1987, and the Working Committee on Registration and Classification will meet on Thursday and Friday, October 22 and 23, 1987. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: The meetings will be held at: Omni San Diego Hotel, 910 Broadway Circle, San Diego, CA 92101, 619–239–2200.

FOR FURTHER INFORMATION CONTACT: By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7096).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Endangered species enforcement policy;
2. Conservation Reserve Programming (CRP) policy;
3. Tracking and reporting of state regulatory actions;
4. Uniform reporting of outputs;
5. Justification for increased grant funding for state enforcement programs;
6. Bulk mixing of pesticides and fertilizers;
7. State regulation of bulk pesticide containers;
8. Priority of Experimental Use Permit monitoring;
9. Chromated copper arsenate: possible problems with use as wood preservative;
10. Office of Compliance Monitoring reports on various topics;
11. Pesticide Certification and Training Office reports on various topics;
12. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Endangered species maps and labeling;
2. Ground water protection strategy: Registration and labeling implications for potential contaminants;
3. Concentrate ground application equipment: Review of need for EPA policy allowing use of aircraft diluent rates;
4. Regulating Pesticides in Food: EPA strategy in response to NAS report;
5. Genetically Engineered Microbial Pesticides: State need for registration and shipping guidelines;
6. Clarification of crop grouping scheme with regard to pesticide use on similar but unlabeled crops;

7. Status of a number of ongoing EPA programs and projects including section 24(c) review criteria, inert ingredients policy, generic labeling, termiticide regulation, farm worker protection, and Statements of Practical Treatment for labels;

8. Other topics as appropriate.

Dated: September 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-22789 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140086; FRL-3271-5]

Access to Confidential Business Information by Planning Research Corporation, Government Information System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Planning Research Corporation, Government Information System (PRC), of McLean, VA, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract No. 68-01-7361, EPA's contractor, PRC, 1500 Planning Research Drive, McLean, VA, will assist the Office of Toxic Substances' Information Management Division in developing a national toxic chemical inventory database under the requirements of section 313 of Title III, of the Emergency Planning and Community Right to Know Act of 1986. In designing this database, it is important that it be compatible with other databases maintained under TSCA so that EPA can use the databases together when assessing chemicals under TSCA. This will require reviewing preent confidential databases and hard copy documents to make comparisons in design, data elements, and data handling to assure consistency. PRC will not conduct substantive review of the CBI.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-01-7361, PRC will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contract. PRC personnel will be given access to all information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide PRC access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1988.

PRC personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures and must pass a test on those security procedures before they are permitted access to TSCA CBI. Access is authorized on a yearly basis.

Dated: September 21, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-22792 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44502; FRL-3271-4]

Diethylenetriamine; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces test data submissions on diethylenetriamine (DETA; CAS No. 111-40-0) received by EPA on September 18, 1987, pursuant to a test rule under the Toxic Substances Control Act (TSCA). This action is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires the EPA to issue a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules or consent orders promulgated under section 4(a). In the **Federal Register** of June 30, 1986 (51 FR 23705), EPA issued procedures for entering into Enforceable Consent Orders (ECO's) under section 4 of TSCA. Those procedures provide that EPA will follow the procedures specified in section 4(d) in providing notice of test data received pursuant to ECO's. In addition, EPA from time to time receives industry submissions of test data developed voluntarily (i.e., not under test rules or ECO's) on chemical substances or mixtures EPA has considered for testing under section 4.

Test Data Submissions

This notice announces the test data submissions received by EPA on September 18, 1987, from the Dow Chemical Company pursuant to a test rule under section 4 of TSCA for the chemical substances DETA which is codified at 40 CFR 799.1575. The test substance is widely used as an hardening agency for epoxy resins.

The submission describes an *in vitro* chromosomal aberration assay utilizing Chinese Hamster Ovary (CHO) cells. The clastogenicity of the test material was assessed in the absence and presence of a metabolic activation system at dose levels of 250, 833, and 2,500 micrograms/ml of culture medium. DETA was reported to be non-clastogenic to the CHO cells in culture. The applicable test standards were revised EPA-approved modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA) and can be found at 40 CFR 799.1575(c)(2)(ii). The final report was required to be submitted to the Agency by September 19, 1987.

EPA has initiated its review and evaluation process for this data submission. At this time the Agency is unable to provide any determination as to the submission's completeness, adequacy or validity.

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44502). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, NE-G004, 401 M St.,

SW., Washington, DC 20460. The rulemaking public record for DETA is assigned docket number [OPTS–42012].

Dated: September 25, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87–22793 Filed 10–1–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–83002E; FRL–3273–2]

Receipt of Request for Exclusion From/Waiver of Testing of Ethyl Corp. and Great Lakes Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Requests for Exclusion/Waiver of Testing Requirements.

SUMMARY: EPA requires testing of specified chemical substances to see if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs) and reporting of the results. However, provisions are made for exclusion from, or waiver of, these requirements if an appropriate application is made to the Agency and is approved. EPA has received such requests for exclusions from and waivers of these requirements from Ethyl Corporation and Great Lakes Chemical Corporation and this document gives notice of their receipt. Comments may be made on these requests.

DATE: Comments should be received by October 19, 1987.

ADDRESS: Submit comments in triplicate, identified with the document control number OPTS–83002E, to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION: EPA under 40 CFR Part 766 (52 FR 21412, June 5, 1987) requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32(a)(1) (i) and (ii), a person may be granted an exclusion from the testing requirements of Part 766 if appropriate testing of the chemical substance has already been done or the process and reaction conditions are such that HDDs/HDFs would not be produced.

A waiver of the testing requirements of Part 766 may be granted under 40 CFR 766.32(a)(2) (i) through (ii) if: (1) 100 kilograms or less of the product are produced annually exclusively for research and development, or (2) the cost of testing would be so high as to prohibit its production and the chemical substance will be produced in such a manner that there will be no unreasonable risk during its manufacture, import, processing, distribution, use, or disposal. Under 40 CFR 766.32(a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for either an exclusion or waiver must be made before September 4, 1987, for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987, or 60 days prior to resumption of manufacture or import of a chemical substance not being manufactured or processed as of June 5, 1987.

The requests from Ethyl Corporation and Great Lakes Chemical Corporation ask that exclusions and waivers of testing be granted with respect to a number of chemicals the companies manufacture. A public file has been established for this proceeding; it is located in Room NE–G004, 401 M St., SW., Washington, DC 20460.

Dated: September 27, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–22910 Filed 10–1–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3271–2]

Sole Source Aquifer Petition; Final Determination; Catawba Island, OH

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the Bass Islands Dolomite Aquifer, which underlies Catawba Island Township in Ottawa County, Ohio, hereafter called the Bass Islands Aquifer, is the sole or principal source of drinking water for Catawba Island Township and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Bass Island Aquifer area and its principal recharge zone will be subject to EPA's review to insure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on October 16, 1987.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG–TUB8, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312–353–1435.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h–3(e), Pub. L. 93–523) states:

"(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into plan or design the project to assure that it will not so contaminate the aquifer."

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On March 17, 1986, EPA received a petition from the Catawba Island Residents Association and the Fairway Association, both of Port Clinton, Ohio, which petitioned EPA to designate the Bass Islands Aquifer as a Sole Source Aquifer. On May 15, 1987, EPA published to announce a public comment period regarding the petition. The public was permitted to submit comments and information on the petition until July 19, 1987. During this

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period a request for a public meeting was received and a notice announcing the meeting was published in the same newspaper. The meeting was held July 6, 1987, and the public comment period was extended to July 19, 1987, to allow for additional written comments subsequent to the meeting.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under section 1424(e) are: (1) Whether the Bass Island Aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The Bass Island Aquifer currently serves as the "sole source" of drinking water for approximately 4,600 permanent residents, 7,100 seasonal residents, and up to 20,000 transient users.

2. Catawba Island Township is a peninsula which extends into Lake Erie. However, due to the absence on the peninsula of a central water distribution system, Lake Erie water is not available for use as a source of drinking water. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available, cost effective potential source capable of replacing the drinking water needs of for the Catawba Township community that are presently supplied by the aquifer.

3. The Bass Islands Aquifer is an unconfined to semi-confined aquifer that transmits water along joints and solution cavities, which are common features in the dolomite bedrock. The majority of the area residents draw their drinking water from private wells which are typically 30 to 60 feet deep. Because of the ease by which water is transmitted through the relatively large conduits in the bedrock, downward migration of surface or near-surface contaminants to the saturated zone could occur in a relatively short time, with little opportunity for attenuation of the contaminants. Sources for such contamination include, but are not limited to: (A) Effluent from residential or commercial sewage disposal sites, (B) use and improper storage of agricultural chemicals, (C) leaking underground storage tanks, (D) leachment of fertilizers associated with golf course maintenance. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality with a consequent adverse effect on public health.

III. Description of the Bass Islands Aquifer, Along With its Recharge Zone

The Bass Islands Aquifer is a bedrock aquifer consisting of jointed and brecciated dolomite (a calcium-magnesium carbonate rock) which also contains many solution cavities. The joints and cavities provide the conduits along which ground water is transmitted to any wells that intersect them. The dolomite formation is approximately 100–120 feet thick, and is underlain by the anhydrite-rich Salina Group. Water wells which penetrate as deep as the Salina Group encounter sulfur-rich water due to the calcium sulfate composition of anhydrite.

Principal recharge of the aquifer is due mainly to infiltration of precipition through soils and unsaturated bedrock. Therefore, the entire surface of the designated area is the effective recharge zone. However, because of the undeveloped nature of the center of the area, and because of the presence of karst sinkholes, ponds and collapse features, this portion of the recharge area not only contributes a larger volume to recharge, it is potentially a more vulnerable location for contaminants to enter the aquifer.

The review area for Federal financially assisted projects will be the entire peninsula north of the 580 foot contour (which marks the contact between the Bass Islands Dolomite and the Salina Group) on the U.S.G.S. 7½ minute topographic map called the *Gypsum Quadrangle, Ohio*.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 230 S. Dearborn (5WG–TUB8), Chicago, Illinois 60604.

V. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments of funding by Federal agencies for projects which could contaminate the Bass Islands Aquifer, upon which Catawba Island Township depends for its sole or principal source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the Bass Islands Aquifer. Included in the review of any Federal financially assisted project will be the coordination with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

The primary issues that came out of the public comment period revolve around a pending sewer project which is being planned for Catawba Island Township by the Ottawa County Commissioners. Catawba Island is number one on the Ohio EPA priority list for funds to unsewered areas. Federal funds have been set aside for, but not yet committed to the project. The county is concerned that Sole Source designation would delay approval of funding and/or necessitate costly modifications to the construction plans. EPA response was that this is a possibility, but that the fact of a pending sewer project was not germaine to a finding as to the eligibility of the aquifer for designation.

The petitioners are concerned about the possible effects that trench blasting for the sewer could have on the quality-quantity of their water. EPA response was that this concern, again, was something to be addressed in a project review, and did not impact on a designation decision.

Neither the County, the public, nor any other entity submitted comments which substantially refuted the data

provided in the petition. Based on this data, and verified thru technical review, the area proposed for designation was determined to be dependent upon one aquifer for its sole or principal drinking water source and which aquifer, if contaminated, would pose a serious threat to the health of the residents of Catawba Island Township.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the Catawba Island Township area. The only affected entities will be those area-based businesses, organizations or governmental jurisdiction that request Federal financial assitance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 431, et seq. Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or dpulication of effort in approving financial assistance thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Bass Islands Aquifer and the Catawba Island Township, Ohio, area. It provides an additional review of ground water protection measures, incorporating State and local measures, whenever possible, for only those projects which request Federal financial assistance.

Dated: September 21, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87-22791 Field 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.:

(1) 202-010636-025
(2) 202-010637-022

Title:

(1) U.S. Atlantic-North Europe Conference
(2) North Europe-U.S. Atlantic Conference

Parties (1) & (2):

Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Gulf Container Line (GCL), B.V.
Trans Freight Lines
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendments would expressly stipulate that the current effective authority of each conference to engage in activities concerning the European inland transportation segment of cargo shipments within its scope, whether or not performed under through bills of lading, and as elsewhere provided thereby, includes determination of prices paid to European inland carriers in connection therewith.

Agreement No.: 212-010746-002.

Title: Columbus/PACE/SCNZ/BSL/PAD Space Charter and Sailing Agreement.

Parties:

Columbus Line
Associated Container Transportation (Australia), Ltd.
The Shipping Corporation of New Zealand, Limited
Blue Star Line, Ltd.
Pacific Australia Direct Line

Synopsis: The proposed amendment would extend the period during which a party may withdraw from the agreement on immediate notice to December 15, 1987 and would delay the implementation of the previous amendment (Agreement No. 212-010746-001) until January 1, 1988.

Agreement No.: 203-011137-001.

Title: Pacific Coast/Australia-New Zealand Discussion Agreement.

Parties:

Pacific Coast/Australia-New Zealand Tariff Bureau
Hong Kong Islands Line America S.A.

Synopsis: The proposed amendment would admit Leif Hoegh & Co., A.S. as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 29, 1987.

[FR Doc. 87-22821 Filed 10-1-87: 8:45 am]

BILLING CODE 6230-01-M

[Docket No. 87-19]

Filing of Complaint and Assignment; Atlantis Lines, Ltd. v. American President Lines, Ltd.

Notice is given that a complaint filed by Atlantis Lines, Ltd. ("Atlantis") against American President Lines, Ltd. ("APL") was served September 28, 1987. Atlantis alleges that APL has violated sections 10(b)(1) and 10(b)(3), Shipping Act of 1984, 46 U.S.C. app. 1709 (b)(1) and (b)(3) by its failure to make available certain tariff rates applicable to cargo tendered by Atlantis.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing

shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by September 28, 1988, and the final decision of the Commission shall be issued by January 28, 1989.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87-22822 Filed 10-1-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 28, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340)

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. *Report title:* Application for Prior Written Consent To Effect a Merger
   Agency form number: FR2070
   OMB Docket number: 7100-0045
   Frequency: on occasion
   Reporters: State chartered banks that are members of the Federal Reserve System
   Annual reporting hours: 1,540
   Significant effect on small businesses is not expected.
   General description of the report: This form provides information on the pro forma financial condition of the applicant, a description of the proposed merger and the advantages it offers to the public's needs and convenience. The form is used by the Federal Reserve to evaluate the proposed merger as to financial soundness, competitive acceptability and consistency with the public interest. The proposed revisions include clarifications, changes to conform with recent revisions of bank holding company application forms (FR Y-1, FR Y-2), and requests for certain financial data in accord with changes in the Board's capital guidelines.
   This report is required by law [12 U.S.C. 1828 (c)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

2. *Report title:* Change in Bank Control Form
   Agency form number: FR 2081
   OMB Docket number: OMB No. 7100-0134
   Frequency: on occasion
   Reporters: Persons proposing to acquire control of a bank holding company or State member bank
   Annual reporting hours: 11,067
   Significant effect on small businesses is not expected.
   General description of report: This form is mandatory under the Change in Bank Control Act, which seeks to maintain public confidence in the banking system by preventing anti-competitive or otherwise adverse combinations of banks. The form requests information regarding the factors that must be considered by the Board under the statute, including a description of the proposal, and financial and employment data concerning the acquiring party. The proposed revisions include certain additional information and publication requirements pursuant to the Anti-Drug Abuse Act of 1986.
   This information collection is required by law [12 U.S.C. 1817(j)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

3. *Report title:* Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer
   Agency form number: FR MSD-4
   OMB Docket number: 7100-0100
   Frequency: on occasion
   Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives
   Annual reporting hours: 773
   Significant effect on small businesses is not expected.
   General description of report: This information collection is mandatory [15 U.S.C. 78o-4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].
   The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with a MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The proposed revisions are deletion of certain spaces for notations by receiving agency personnel, since these items are rarely used; and changing the requested record of residential addresses from the past ten years to the past five, corresponding to changes in MSRB rule G-7.

Proposal To Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Report

1. *Report title:* Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer
   Agency form number: FR MSD-5
   OMB Docket number: 7100-0101
   Frequency: on occasion
   Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives
   Annual reporting hours: 47
   Significant effect on small businesses is not expected.
   General description of report: This information collection is mandatory [15 U.S.C. 78o-4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].
   This notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on interagency computer system of records.

Board of Governors of the Federal Reserve System, September 28, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-22746 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Cook Investment Inc., et al; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-22236) published at page 36301 of the issue for Monday, September 28, 1987.

Under the Federal Reserve Bank of Kansas City, the entry for Cook Investment, Inc. is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cook Investment, Inc.,* Beatrice, Nebraska; to acquire Gage, Inc., Beatrice, Nebraska, and thereby engage in leasing real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Comments on this application must be received by October 13, 1987.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22742 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Equimark Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggreived by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation,* Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of The Liberty Financial Group, Inc., Horsham, Pennsylvania, and thereby indirectly acquire Liberty Savings Bank, Horsham, Pennsylvania. Applicant also proposes to acquire Liberty Service Corporation, Horsham, Pennsylvania, and thereby indirectly acquire Wynnewood Plaza, Inc., Horsham, Pennsylvania, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

In connection with this application, Equimark Acquisition Incorporated, Pittsburgh, Pennsylvania, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Savings Bank, Horsham, Pennsylvania.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22743 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Midwest Financial Group

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their view in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.,* Peoria, Illinois; to acquire Central Computing Company, Decatur, Illinois, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22744 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Application to Engage de Novo in Permissible Nonbanking Activities; The Mitsubishi Bank, Limited

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Limited,* Tokyo, Japan; to engage *de novo* through its subsidiary, Mitsubishi Bank Trust Company of New York, New York, New York, in trading and underwriting obligations of the United States and general obligations of states and their political subdivisions pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22745 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Availability of Environmental Assessment and Finding of No Significant Impact (FONSI) Regarding Construction; Phase II; Paul Laxalt Mineral Engineering Center, Mackay School of Mines, University of Nevada-Reno

AGENCY: General Services Administration, Federal Property Resources Service.

ACTION: Notice of the availability of Environmental Assessment and the Finding of No Significant Impact (FONSI) regarding construction of Phase II of the Paul Laxalt Mineral Engineering Center at the Mackay School of Mines, University of Nevada-Reno.

SUMMARY: The University of Nevada-Reno was awarded Grant No. DN-001 on February 18, 1986, by the General Services Administration, Federal Property Resources Service, Office of National Defense Stockpile for the construction of Phase II, as noted. In developing its proposal to finalize the grant award, the University of Nevada-Reno (UNR) has used the architectural engineering firm of Casazza, Peetz & Hancock Architects, 480 Casazza Drive, Reno, NV 89502, and the consulting engineers (for environmental assessment and historic preservation purposes) of Kennedy/Jenks/Chilton, 160 Hubbard Way, No. 2, Reno, NV 89502. The Environmental Assessment entailed standard indicators of significance. The General Services Administration monitored and reviewed the progress and development of the environmental report including Historic Preservation. An environmental report (final draft, dated 3/12/87) presented a detailed analysis of all indicators of significance. After independent review and assessment of the data and analysis of the final environmental report, dated August 1987, and after execution of a Memorandum of Agreement (dated August 19, 1987) providing for recordation documentation, Earl E. Jones, Commissioner of the Federal Property Resources Service, issued his determination of no significant impact (FONSI) on September 24, 1987. Notice is hereby given pursuant to section 102(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines and 36 CFR 800.15 (Protection of Historic and Cultural Properties-Public Participation) that the proposed construction of Phase II, as noted, will not create any significant adverse impact on the physical environment and that no significant controversy related to the natural or cultural resources environment is associated with this action. As a result of these findings, the Commissioner, FPRS, has determined that the preparation of an Environmental Impact Statement is not required in this case. The Environmental Assessment, the Finding of No Significant Impact and the Memorandum of Agreement are on file and may be viewed by interested parties.

DATE: Administrative action or implementation of the decision will be deferred up to and including November 2, 1987 at which time implementation will begin unless comments are received which result in a contrary determination. For further information contact: Miss Cheryl A. Deister, General Services Administration, FPRS/Office of National Defense Stockpile, 18th & F Streets, NW, Room 5207, Washington, DC 20405, Telephone Number—(202) 535-7234.

Dated: September 24, 1987.

Daniel B. McMorrow,

Contracting Officer.

[FR Doc. 87-22776 Filed 10-1-87; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Public Affairs

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect the transfer of the Freedom of Information Act and Privacy Act appeals for documents denied by officials in the Office of the Secretary from the Office of Administrative and

Management Services to the Office of Public Affairs. Specifically, Chapter AP, Office of Public Affairs, as last published at 51 FR 41158, Nov. 13, 1986 is revised as follows:

1. In Chapter AP, Section AP.20 Functions, paragraph "B.1 FOIA/Privacy Act Division," add as last paragraph, "Analyzes and recommends action on Freedom of Information Act and Privacy Act appeals for documents denied by officials in the Office of the Secretary."

Date: September 25, 1987.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87-22739 Filed 10-1-87; 8:45 am]

BILLING CODE 4150-04-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 28, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Reporting Events—SSI—0960-0128—This form is used by recipients of Supplemental Security Income to report changes which may effect their benefits to the Social Security Administration. Respondents: Individuals or households. Number of Respondents: 100,000; Frequency of Response: Occasionally; Estimated Annual Burden: 8,333 hours.

2. Disabled Beneficiary Add-on to SIPP-Feasibility Study—NEW—SSA needs to have a factual basis upon which to evaluate and implement program incentive to encourage return to work. The survey shall provide data on post-entitlement labor force behavior not available from SSA administrative records. SSA needs to determine if combining a SSA based sampling frame with Survey of Income and Program Participation (SIPP) data is feasible. Respondents: Individuals or households. Number of Respondents: 2310; Frequency of Response: Occasionally; Estimated Annual Burden: 3,580 hours.

3. Application for Child's Insurance Benefits—0960-0010—This form is used to collect information from applicants for child's insurance benefits. The information is needed to determine eligibility of the applicant. Respondents: Individuals or households. Number of Respondents: 1,740,000; Frequency of Response: Occasionally; Estimated Annual Burden: 357,917 hours.

Desk Officer: Elana Norden

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)

1. HHS Acquisition Regulations—HHSAR Part 337 Service Contracting—0990-0132—Contractors are required to furnish information on consultants to the HHS contracting officer for cost-reimbursement contracts. The information is used to monitor the use of consultants. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1,661; Frequency of Response: Occasionally; Estimated Annual Burden: 1,661 hours.

2. HHS Acquisition Regulations—HHSAR Part 352—Solicitation Provisions and Contract Clauses—0990-0130—The Key Personnel Clause requires contractors to justify changes to key personnel which were specified in the contract. The information is used to ascertain the qualifications of substitute personnel. The Publication and Publicity Clause requires contractors to inform the project officer of each publication resulting from the contractual effort. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 3,429; Frequency of Response: Occasionally; Estimated Annual Burden: 2,585 hours.

3. HHS Acquisition Regulations—HHSAR Part 370—Special Programs Affecting Acquisition—0990-0129—Reporting and recordkeeping requirements are established to assure that contractors conducting meetings use facilities which are accessible to disabled individuals, and to assure contractor compliance with the Indian Preference program (Public Law 93-638 Section 7(b)). Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 769; Frequency of Response: Occasionally; Estimated Annual Burden: 12,368 hours.

4. HHS Acquisition Regulations—HHSAR Part 353—Forms—0990-0091—This form is used to monitor contract costs. It is completed by contractors for cost type contracts. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1,000; Frequency of Response: Occasionally; Estimated Annual Burden: 1,500 hours.

5. Acknowledgement of Receipt of Public Service Announcement (PSA)—0991-0001—The acknowledgement card is used when Public Service Announcements are distributed to the media. Respondents are requested to acknowledge receipt, indicate preferences and comment on the quality of the materials, so that the Office of Public Affairs can monitor the distributions of PSAs. Respondents: Businesses or other for-profit. Number of Respondents: 5,000; Frequency of Response: Occasionally; Estimated Annual Burden: 84 hours.

OMB Desk Officer: Shannah Koss-McCallum

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. ICRs is BQC-18-F, CPAS—0938-0431—Purpose is to reduce reporting burden on States under current MQC to consolidate the monitoring of claims processing under the MMIS approval and annual reapproval process. Respondents: State or local governments. Number of Respondents: 1; Frequency of Response: 1; Estimated Annual Burden: 1 hour.

2. Home Health Agency Survey Report Form (Test)—NEW—This is a pilot test of a revised process and test forms for surveying Home Health Agencies for Medicare participation. Respondents: Individuals or households, State or local governments. Number of Respondents: 7; Frequency of Response: One-time; Estimated Annual Burden: 116 hours.

3. Quarterly Periodic Interim Payment (PIP) Report—0938-0384—This form provides HCFA with a current assessment of those providers receiving advanced funding through the PIP program. HCFA needs this data in order to monitor intermediary performance and detect significant trends. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 55; Frequency of Response: Quarterly; Estimated Annual Burden: 220 hours.

OMB Desk Officer: Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Outline for Preparation of the Part IV Narrative of the UAF and Satellite Center for Competing Continuation Application—0980-0016—Legislative requirements found at section 153 (a)

and (b) of the ADD Act and 45 CFR Part 1388 require that University Affiliated Facilities and Satellite Centers must be in compliance with established standards in order to receive a grant. Proposed standards are found in Part 1388. Respondents: Non-profit institutions. Number of Respondents: 42; Frequency of Response: Annual; Estimated Annual Burden: 2,016 hours.

2. Certification of Maintenance of Effort—Administration on Aging—0980–0180—The Department is unable to identify funds solely from State sources because information currently collected on financial reports combines funds from State and local sources. The certification of maintenance of effort form is used to collect data on State sources jointly. Respondents: State or local governments. Number of Respondents: 59; Frequency of Response: Annual; Estimated Annual Burden: 30 hours.

3. Program Performance Report, Title IV of the Older Americans Act, Grants to Indian Tribes for Supportive and Nutritional Services—0980–0120—The Congress has mandated that the Administration on Aging (AoA) and the Secretary provide such information on activities of Older Americans among Indian tribes as necessary in order that AoA can determine the progress of its programs. Both Houses of Congress have indicated their desire for more information. Respondents: Indian Tribes. Number of Respondents: 133; Frequency of Response: Semi-Annually; Estimated Annual Burden: 399 hours.

OMB Desk Officer: Shannah Koss-McCallum

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

2. FY 1988 Winter Grantee Survey of the Low Income Energy Assistance Program—0970–0063—The survey collects FY 1988 Winter fiscal and caseload estimates and updates FY 1987 uses of funds if necessary. The survey results will be displayed in tables for an information memorandum to be sent to Congress, States and other interested parties. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: Annually; Estimated Annual Burden: 117 hours.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

National Institutes of Health

1. Established Populations for Epidemiologic Studies of the Elderly (EPESE) (In-person Follow-up–Year 6)—0925–0271—These large community-based epidemiologic studies of elderly persons will determine the influences of physiological, behavioral, social and environmental forces on the mortality, morbidity, and utilization of health services in the elderly. Eligible respondents are the participants in the three EPESE study sites; East Boston, Iowa, and New Haven. Respondents: Individuals or households. Number of Respondents: 9,410; Frequency of Response: Single-time study; Estimated Annual Burden: 9,410 hours.

Food and Drug Administration

1. Survey to Determine Patient Knowledge and Perceptions on Hemodialysis Reuse—NEW—The PHS Interagency Task Force on Dialysis determined that hemodialysis patients have a need for education on hemodialysis reuse. In order to assure that information prepared is effective and adequate, FDA recommended, and the Task Force agreed, that a patient survey be conducted prior to preparing education material to assess patient's educatonal needs. Respondents: Individuals or households. Number of Respondents: 1,700; Frequency of Response: One-time; Estimated Annual Burden: 379 hours.

2. General Biological Products Standards, Additional Standards for Human Blood and Blood Products Seriologic Test for Human Immunodeficiency Virus (HIV)—0910–0227—FDA is proposing to require that each unit of blood or blood components be tested for HTLV–III. The rules will effect 1400 blood banks and 500 plasma collection centers. The rules would reduce the risk of transmitting Acquired Immune Deficiency Syndrome by the use of blood products. Respondents: Blood Banks and Plasma Collection Centers. Number of Respondents: 1; Frequency of Response: 1; Estimated Annual Burden: 1 hour.

OMB Desk Officer: Shanna Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
SSA: 301–594–5706
OS: 202–245–6511
HDS: 202–472–4415
HCFA: 301–594–1238
FSA: 202–245–0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer)

Date: September 29, 1987.

James F. Trickett,

Deputy Assistant Secretary, Office of Administrative and Management Services.

[FR Doc. 87–22835 Filed 10–1–87; 8:45 am]

BILLING CODE 4150–04–M

Statement of Organization, Functions and Delegations of Authority; Assistant Secretary for Management and Budget

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect the transfer of the Freedom of Information Act appeals for documents denied by officials in the Office of the Secretary function from the Office of Management Programs to the Office of the Assistant Secretary for Public Affairs. Specifically, Chapter AMS, Office of Administrative and Management Services, as last published at 52 FR 25312, July 6, 1987 is revised as follows:

1. In Chapter AMS, Section AMS.20 Functions, paragraph "F. Office of Management Programs," delete item (8); and renumber (9) as item (8).

Dated: September 25, 1987.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87–22740 Filed 10–1–87; 8:45 am]

BILLING CODE 4150–04–M

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Personnel Administration

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect a realignment of functions in the Office of the Assistant Secretary for Personnel Administration. In the Office of Human Resource Information Management, a new Division entitled Systems and Networking Division is established and the existing Systems Design and Analysis Division is restructured.

Specifically, Chapter AH, Office of the Assistant Secretary for Personnel Administration, as last published at 50 FR 20850, May 20, 1985, is revised as follows:

1. In Chapter AH, Section AH.20 Functions, paragraph "B.3 Systems Design and Analysis Division," delete entire paragraph and insert new paragraph as follows:

3. *Systems Design and Analysis Division.* Performs analysis and design for changes, enhancements, and new requirements to the Department's Human Resource Information systems; determines feasibility, benefits, impact, and estimates of staff, hardware, software, and telecommunications required for system development requests; develops prototype systems as needed to assist in the identification of user requirements or for purpose of preliminary design; develops test criteria for evaluating performance, system interfaces, audit checks, security, and other requirements of new software; provides design and analysis support to user requested reporting requirements; serves as Office of Human Resource Information Management (OHRIM) contact with external organizations that are developing requirements or prototypes for DHHS system modernization applications; coordinates user needs, system planning and information management into a consolidated program for the Department's Human Resource Information systems; serves as a representative to internal and external Information Resource Management (IRM) committees and related efforts; develops and maintains long term strategic plans and near term action plans for system change; provides assistance to the OHRIM Director in the structure and application on the principles and procedures of project management and system life cycle management; provides technical assistance to users of DHHS Human Resource Information systems in the development of functional needs statements, operational concept documentation, and acceptance criteria; provides focal point within OHRIM for receiving and responding to requests for system services and resolution of system problems; develops or approves all technical documentation and other literature intended for distribution to the user community; develops or coordinates system training for staff and users of the Department's interactive field system; and participates in the evaluation and selection of hardware and packaged software.

2. In Chapter AH, Section AH.20 Functions, paragraph "B.3. Systems Design and Analysis Division", add new paragraph "7. *Systems and Networking Division*", to read as follows:

7. *Systems and Networking Division.* Provides responsibility for designing, obtaining, installing and maintaining automatic data processing systems required to support the field systems (Regions and OPDIVs) and to support office automation activities of the Assistant Secretary for Personnel Administration (ASPER) at Headquarters. Additionally, provides office automation programmatic support to all sites nationwide outside ASPER Headquarters. The Division provides automated data processing services and distributed configuration management services for computer systems located in the regional offices and the Department's OPDIV level Servicing Personnel Offices. The Division also provides the personnel offices with technical expertise in such areas as data communications, data center hardware and related equipment, data center operating systems, general purpose software and data center management. The Systems and Networking Division staff advise and assist ASPER program offices in related areas and conduct independent research and development studies related to hardware, systems software and data communications. The Division serves as initial contact for ADP hardware, software, and services vendors; provides technical assistance to the development of acquisitions including cost benefit analyses, requirements statements and performance criteria; and participates in the evaluation and selection of vendors and equipment. The Division also maintains coordination with Parklawn Computer Center and Division of Research and Technology telecommunications managers in the areas of networking support for the Department's centralized and distributed data processing facilities. The Systems and Networking Division consists of an Immediate Office, Computer Facilities Group and a Distributed Network Management Group.

Dated: September 25, 1987.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87-22836 Filed 10-1-87; 8:45 am]

BILLING CODE 4150-04-M

Delegation of Authorities to the Commissioner of Social Security for Experimental, Pilot and Demonstration Projects

The Secretary of Health and Human Services (the Secretary) has authority, under section 505(a) of Public Law (Pub. L.) 96-265, to conduct experimental and demonstration projects involving persons who are receiving Disability Insurance benefits under title II of the Social Security Act, as amended (the Act), and authority, under section 505(b) of Pub. L. 96-265, to conduct experimental, pilot and demonstration projects involving persons who are Supplemental Security Income (SSI) recipients under title XVI of the Act.

Section 505(a) of Pub. L. 96-265 also provides the Secretary with authority to waive compliance with benefit requirements of titles II (cash benefits) and XVIII (Medicare) of the Act, to the extent necessary to conduct experimental and demonstration projects under section 505(a) of Pub. L. 96-265 involving Social Security Disability Insurance beneficiaries under title II of the Act.

Section 505(b) of Pub. L. 96-265, which amends section 1110 of the Act and is incorporated in the Act as section 1110(b), also provides the Secretary with authority to waive or add to any of the requirements, conditions or limitations of title XVI of the Act, to the extent necessary to conduct experimental, pilot and demonstration projects under section 505(b) of Pub. L. 96-265 involving SSI recipients under title XVI of the Act.

Under section 505(c) of Pub. L. 96-265, authority to initiate projects under sections 505 (a) and (b) of Pub. L. 96-265 expired as of June 9, 1985. However, this authority was reinstated and extended for an additional period to June 9, 1990, for section 505(a) projects, and reinstated on a permanent basis for section 505(b) projects, by amendments to section 505 of Pub. L. 96-265 contained in section 12101 of Pub. L. 99-272, which was enacted into law on April 7, 1986.

Notice is hereby given that the Secretary has delegated to the Commissioner of Social Security (the Commissioner) the authorities vested in the Secretary under section 505 of Pub. L. 96-265, as amended by section 12101 of Pub. L. 99-272, provided that:

1. The waiver of compliance with benefit requirements under title XVIII of the Act, as authorized under section 505(a)(3) of Pub. L. 96-265, as amended, shall require the concurrence of the Administrator, Health Care Financing

Administration, Department of Health and Human Services (HHS);

2. The functions concerning submission of certain reports to Congress, under sections (a)(3), (a)(4) and (c) of Pub. L. 96–265, as amended, shall be exercised only by the Secretary; and

3. The authorities are exercised in accordance with all pertinent provisions of law, as well as applicable Federal and HHS regulations, policies, procedures, requirements and operating instructions.

This delegation is effective on the date that it is published in the **Federal Register**. The Commissioner may redelegate.

I affirm and ratify any actions by the Commissioner, or by other Social Security Administration officials acting with the Commissioner's approval, which may constitute the exercise of the above delegated authorities before the date that notice of this delegation is published in the **Federal Register**.

Dated: September 24, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–22837 Filed 10–1–87; 8:45 am]

BILLING CODE 4110–12–M

Food and Drug Administration

[Docket No. 87F–0287]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-*s*-triazine-2,4-diyl][2,2,6,6,-tetramethyl-4-piperidyl)imino]hexamethylene[2,2,6,6,-tetramethyl-4-piperidyl)imino]] as a stabilizer for polyethylene and olefin copolymers used in the manufacture of articles or components of articles intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center For Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4021) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-*s*-triazine-2,4-diyl][2,2,6,6,-tetramethyl-4-piperidyl)imino]hexamethylene[2,2,6,6,-tetramethyl-4-piperidyl)imino]] as a stabilizer for polyethylene and olefin copolymers used in the manufacture of articles or components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 25, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–22751 Filed 10–1–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[HSQ–143–FN]

Medicare Program: End-Stage Renal Disease Program; Revised Network Area Designations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice provides for 18 End-Stage Renal Disease (ESRD) network areas and sets forth the geographic areas of the new network organizations and the criteria used to designate the new areas. This notice also sets forth evaluation criteria and performance indicators for monitoring the performance of network organizations.

EFFECTIVE DATE: These regulations are effective on November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Spencer Colburn, (301) 594–3413.

SUPPLEMENTARY INFORMATION:

I. Background

Previous Legislative Activity and Regulations

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end-stage renal disease (ESRD) who require dialysis or transplantation. The End-Stage Renal Disease Amendments of 1978 (Pub. L. 95–292) authorized the establishment of ESRD network areas and network organizations under the Medicare program, consistent with the criteria the Secretary finds appropriate to assure the effective and efficient administration of ESRD program benefits.

In June 1984, Congress (House Report 98–861, p. 1336) directed the Secretary to consider consolidating the existing 32 network areas.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) was enacted. Section 9214 of that law requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act (Act) and not merge the network organizations into other organizations or entities. The Secretary was permitted to consolidate network organizations, but only if such consolidation did not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99–272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and a final rule on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate the ESRD networks and improve their administration. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth the geographic areas of the new network organizations (area designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

Omnibus Budget Reconciliation Act of 1986

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99–509) was enacted. Sections 9335(d) through (h) of Pub. L. 99–509 amend, in several ways, section 1881(c) of the Act. Those sections require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987 (section 9335(d)(1) and (2)).
- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board (section 9335(d)(1) and (2)).
- Consult with profesional and patient organizations regarding the

redesignation of network areas and publish in the **Federal Register** a description of each network area and the criteria on the basis of which network determinations were made (section 9335(d)(1)).

- Publish in the **Federal Register** the criteria, standards and procedures to evaluate an applicant organization's ability to perform or actual performance of required network functions (section 9335(d)(1)).
- Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price (section 9335(d)(1)).
- Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition (section 9335(d)(1)).

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area (section 9335(d)(3)).

Section 9335 of Pub. L. 99–509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. Those provisions require ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient represenative as a member of each network council and each medical review board (section 9335(e)).
- Encourage participation in vocational rehabilitation programs and develop criteria and standards relating to such encouragment (section 9335(f)(1), (2), and (4), and (h)).
- Report on those facilities and providers not providing appropriate medical care (section 9335(f)(3)).
- Implement a procedure for evaluating and resolving patient grievance (section 9335(f)(5)).
- Conduct onsite reviews of individual ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established by the network organization to assure proper medical care (section 9335(f)(5)).
- Collect, validate, and analyze ESRD program data (section 9335(f)(5)).
- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d)(1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

Federal Register Documents

On April 9, 1987, we published a notice in the **Federal Register** (52 FR 11550) that proposed 17 new network areas and designations. In accordance with the provisions of section 9335(d) of Pub. L. 99–509, we invited every national renal professional and patient organization to provide counsel with respect to the network area designations and to submit proposed network area configurations. The April 9, 1987 proposed notice contains a detailed discussion of a proposed configuration of the network areas and our rationale for the proposed network designations.

The April 9, 1987 notice also contains the proposed criteria, standards, and procedures to evaluate the performance of network organizations and the potential capabilities of an applicant organization as required by section 9335(d)(1) of Pub. L. 99–509.

On May 12, 1987, we published a proposed rule (52 FR 17777) that announces the proposed responsibilities of network organizations as required by sections 9335(d) through (h) of Pub. L. 99–509. A final rule addressing those requirements will be forthcoming.

II. Analysis of and Responses to Public Comments

We received 160 timely comments on the proposed notice. Comments were submitted by 16 of the 32 existing ESRD networks, the Renal Physicians Association, the National Renal Administrators Association, the American Nephrology Nurses' Association, the National Association of Patients on Hemodialysis and Transplantation, the Forum of ESRD Networks, 30 hospitals, 12 ESRD facilities, 16 ESRD patients, 2 ESRD facility chain organizations, 4 local chapters of kidney organizations, 1 member of Congress, 1 State health department, and 1 State dialysis organization. The remaining comments were submitted by physicians, nurses, social workers, dieticians, and other interested parties.

The majority of comments related to the proposal to combine the entire State of California into a single network and network assignment for the State of Connecticut. In the case of California, the commenters expressed concern that the dialysis population of the proposed network area would be too large to administer. In the case of Connecticut, the commenters requested that Connecticut be included with New York State. The specific comments and our responses follow.

California

Comment: Approximately half of the commenters suggested that California be divided into network areas. These commenters stated that a single network that would encompass the entire State of California would be too large to accomplish the tasks of the network and that the new network would incur unnecessary costs in consolidating the existing network data systems. The commenters suggested that the success of a network depends upon the communication and the personal relationships that develop between the provider community and the network staff. In an area that includes nearly 200 dialysis facilities and 9,400 dialysis patients, the commenters believe that those personal relationships would be compromised. In addition, some commenters stated that the patient population would permit two independent networks to function successfully. Commenters further stated that driving California into two networks would not interfere with the ability to function with other agencies within the State, such as the State Health Department and the HCFA regional office. Finally, some commenters stated that a number of national organizations, such as the ESRD Network Forum, NAPHT, and RPA also endorse two networks in California.

Other commenters stated that California should be a single network area as proposed. The commenters believe that a single network would allow the organization to relate to the State and Federal governments with one data system, one set of goals and objectives, and one program and one executive director. This would result in cost savings and other efficiencies.

Response: We have accepted the rationale of the majority of commenters that the population of California is large enough to support two networks and

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that designating a single area might compromise the working relationships that have been developed in the past. Therefore, we will establish two networks in California.

Connecticut

Comment: Approximately one third of the commenters recommended that Connecticut be included with New York because of existing patient referral patterns and because the Connecticut network had worked closely with the New York City network in the past. Other commenters recommended that the New England network should be retained as previously configured without Connecticut. Those commenters stated that the population of New England without Connecticut can support a network organization.

Response: Our primary criterion for designating network areas is patient population because that determines the funding for each area. Placing Connecticut (approximately 1,000 patients) with New York would jeopardize the financial soundness of the New England network. In addition, a network consisting of New York and Connecticut would be too large to function adequately. We do not believe that the referral patterns of Connecticut are so interconnected with New York to warrant redesignating those two areas. Connecticut previously stood alone as a network area, and we believe that New England and Connecticut can form a successful network area. Therefore, we have rejected the comments supporting combining Connecticut with New York.

Georgia

Comment: Eight commenters recommended that Georgia be combined with North Carolina and South Carolina rather than with Florida as proposed. These commenters stated that this configuration would allow two areas of equal patient population, would maintain existing referral patterns and relationships, and would not require combining complex data systems. In addition, the commenters state that Florida and Georgia have populations with significant socio-economic differences and that both States would be better served by maintaining separate network areas.

One commenter stated that the interests of patients in Georgia would be best served by combining Georgia and Florida into one network because the Florida network is well organized, active and progressive.

Response: The configuration of Georgia, North Carolina, and South Carolina was previously considered when we prepared the proposed notice and was one proposed option of the Forum of ESRD Networks. This configuration meets all of our criteria for establishing networks and would adequately serve the needs of the patients. Therefore, we have accepted this comment and will include Georgia in the network with North Carolina and South Carolina.

Hawaii

Comment: Several commenters suggested that Hawaii be included with Northern California because it is part of that medical trade area. Other commenters from the northwest suggested that combining Hawaii with the northwest would strain the resources of the area. These commenters suggest that the revenue generated from dialysis treatments of the Hawaii patients would be insufficient to overcome the expenses necessary to administer that area from the northwest.

Response: We initially designated Hawaii as part of the northwest to assure adequate funding for the northwest. However, the patient population of Hawaii is relatively small and commenters from the region believe that combining Hawaii with Northern California would not negatively affect the financial capabilities of the northwest. Therefore, we accept these comments and have designated Hawaii, American Samoa, Guam, and the Trust Territory of the Pacific Islands as part of the Northern California network (Network Area #17).

Michigan

Comment: Two commenters requested that Michigan be retained as a single network area.

Response: Again, we must assure that each network area is comprised of an adequate population base to finance the respective network organizations. Designating Michigan as a single area would jeopardize the financial capabilities of Michigan and the rest of network area #11.

Puerto Rico and the Virgin Islands

Comment: One commenter stated that Puerto Rico and the Virgin Islands should remain a separate network and not be included with New Jersey. The commenter stated that given the growth rate of the patient population, Puerto Rico will soon realize the minimum patient loan requirement. The commenter also stated that communication between Puerto Rico and New Jersey would be difficult because of geographic distance and because most patients from Puerto Rico speak only Spanish. The commenter also stated that there is an existing collaboration among the facilities and the professionals in Puerto Rico and that it would be difficult to interact with New Jersey professionals, because no professional ties exist between the two areas.

Response: We realize that communication between Puerto Rico and any other network area will be difficult and not without problems. However, no geographical area, including Puerto Rico, would be able to accomplish the network requirements unless it is compose of the minimum patient population. Combining Puerto Rico and New Jersey will create a population base to permit adequate network funding and will allow both areas to be better served by the resulting network organization. In addition, that configuration will allow the interchange of medical perspectives between the two areas. Therefore, we reject the comment.

Random Case Reviews

Comment: Several commenters expressed concern over our proposed evaluation criteria relating to the requirement that networks perform medical case reviews. Those commenters believe that networks should gather data and evaluate trend data to identify facility problems. One commenter stated that the networks should create a mini-medical staff organization to participate in a broad-based, team oriented quality assurance effort. In addition, one commenter stated that case review would duplicate the functions of the State agencies, which would result in a waste of financial resources. Other commenters expressed concern over a case review requirement modeled after those reviews performed by Utilization and Quality Control Peer Review Organizations (PROs) for the network organizations. Those commenters state that the PRO-model case review is based upon hospital inpatient experience, will cause problems in record review, and is antagonistic in its relationship with providers.

Response: We believe that case review is the best method to assure that networks perform their statutory responsibility to evaluate the appropriateness of care within the network area. The evaluation of trend data is certainly an acceptable technique but will best be accomplished on a national level by the ESRD Registry. The networks will have the opportunity to evaluate trend data from the national program management and medical information system and to identify local aberrations from the

national data. The strength of the networks will be access to facility records from which to supplement data on specific issues. Therefore, we reject the comment and networks will be required to conduct case reviews.

Demonstrating Contractor Financial Integrity

Comment: Two commenters asked how the current networks interested in bidding on the new contracts can demonstrate financial integrity when they are currently funded solely by HCFA. In addition, one of the commenters asked whether, if a contract is awarded to an existing network, HCFA could advance it three months start-up funding. One commenter stated that every effort should be made to encourage the existing organizations to be primary candidates for the new designations.

Response: It is the responsibility of any potential bidders to demonstrate the financial soundness of their organizations and to acquire independently the necessary financial support. We do not plan to advance any network contract funds. With respect to encouraging the current networks to bid on the new areas, government contract regulations forbid special consideration to any potential bidders. All current networks will be placed on the bidders list for the network contract solicitation and all proposals will be judged on their merits.

Variations in Network Size

Comment: Several commenters noted that the geographic size of the networks will vary considerably and they are concerned that this geographic variance will hinder the performance of the larger geographic networks. The commenters believe that the availability of professionals to serve as "expert" volunteers will be severely hampered due to distance and time commitment. The commenters believe that the access to care and the grievance procedure for patients will also be adversely affected in the large geographic networks. These commenters also believe that in the larger areas the facilities will have less input into the development of network goals and objectives.

Response: We do not believe that a difference in geographic size of the organizations will greatly affect their capabilities. Our proposed network requirements have been designed to be accomplished from the network office and will not require a great amount of travel. In addition, the contracting mechanism will allow the network organizations to reimburse their staff for their activities.

Network Funding

Comment: Several commenters suggested that the funding mechanism be revised to account for transplant patients and include transplant centers in the funding formula. Other commenters suggested that the funding mechanism be revised to distribute the network revenue more equitably.

Response: Section 9335(j) of Pub. L. 99–509 amended section 1881(b)(7) of the Act and specifies the funding mechanism for the network organizations. We have no administrative authority to modify the funding formula. In the request for proposals, we will specify the maximum funding available for each area based upon the current estimates of patient population. Each network contract proposal will be evaluated for technical content and proposed price. Each network business proposal will be assigned point values according to the following formula:

$$20 - \frac{(\text{Price of proposal} - \text{Lowest priced proposal}) \times 20}{\text{Lowest priced proposal}}$$

The points assigned for the price of the proposal will not exceed 20 percent of the total evaluation score. If there are no significant technical or financial and management differences, price alone may be the determining factor for source selection.

Data Collection and Analysis

Comment: One commenter stated that the network role in data collection for the national patient registry should be closely monitored by HCFA and the National Institutes of Health (NIH). Another commenter stated that the regulations should address data system administration through clear statements about the level of data management and analysis skills required of network organizations.

Response: We are working closely with NIH to assure the success of the national patient registry, and we will assure that the networks also cooperate in this effort. We will specify the technical data collection specifications and requirements in the network contracts.

Representation in Network Activities

Comment: One commenter stated that the network contracts specify the role of the patients in the network administration. Other commenters requested that dieticians be included on the medical review boards, that transplant surgeons be required to be members of the board, and that a cross section of the provider community be mandated to participate in the governing body.

Response: The requirement for patient representation on the medical review board and other network committees will provide active patient representation and participation in each network organization. In addition, each network will have the latitude to appoint various professionals to the medical review board. There is nothing that would preclude a dietician, a transplant surgeon, or other professional specialties from being appointed to the medical review board. We will evaluate the proposals of the prospective contractors to determine how the contractor intends to represent the provider community. During this process we will ensure that the contractor develops a plan that fully represents the full spectrum of dialysis professionals.

Sanctions

Comment: One commenter stated that if networks are given the clear ability to sanction ESRD facilities, then we must provide an avenue of administrative redress for the facilities.

Response: The administrative procedures for implementing alternative sanctions against ESRD facilities that fail to participate in network activities and pursue network goals are being prepared in a separate rule. We will apply those sanctions on the basis of recommendations from the network organizations. The final rule implementing the alternative sanctions requirements will be published shortly.

Periodic Adjustments of Network Designations

Comment: One commenter stated that further changes in network designations could be disruptive to network

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operations and should be avoided because networks are small businesses dependent upon relationships with their constituents.

Response: We agree that changes in the network areas disrupt the program and we only intend to revise the areas when a need to change an area is apparent.

Onsite Reviews

Comment: One commenter stated that onsite reviews by the network be conducted only on an as needed basis and only in new facilities.

Response: Section 9335(f) of Pub. L. 99–509 added section 1881(c)(2)(E) to the Act, which gives the networks the responsibility to conduct on-site reviews of facilities and providers as necessary, utilizing standards of care established by the network organization to assure proper medical care. Each network organization will develop criteria and standards for assessing the need for onsite reviews and will conduct onsite reviews in response to those criteria. We do not intend to restrict the authority of the networks in this important area.

Monthly Progress Reporting

Comment: One commenter stated that a quarterly system of progress reporting would be more efficient and more illustrative of acomplishments of the networks than preparing monthly reports.

Response: We will require monthly reports from network organizations so that we can assure that contract requirements are performed satisfactorily. Since many of the network requirements will be performed on a monthly basis, the monthly reports will allow us to assure that the networks will not fall behind in fulfilling these tasks.

Contractor Eligibility

Comment: One commenter stated that we should prohibit two classes of organizations from bidding on network contracts. The commenter stated that providers of kidney dialysis services, manufacturers of dialysis supplies and/or consortia representing or controlled by providers or manufacturers would be unsuitable for obtaining a network contract because of an inherent risk of conflict of interest. In addition, the commenter believes that PROs should not be selected as network contractors because the ESRD program would become secondary to their role of conducting inpatient hospital reviews.

Response: At this time, we have not restricted who may respond to the request for proposals. (See section IV below.) All potential bidders will be required to demonstrate their ability to fulfill the contract requirements in an unbiased manner. All successful bidders will be required to perform the contract requirements in a fully acceptable manner or their contracts will be terminated.

Development of Criteria and Standards to Evaluate Appropriateness of Care

Comment: One commenter is concerned about the development of the criteria and standards of medical care. The commenter is concerned that a wide variety of criteria and standards will be developed nationwide, many of which may not be appropriate. The commenter believes that we should review the standards to assure that minimum requirements are met.

Response: The medical review board of each network will be responsible for developing the criteria and standards for each network area. We expect that the medical experts of the member facilities will participate in this activity to assure that reasonable standards are developed. While we intend to review the standards that are developed, we believe that the medical experts in the networks are qualified to develop reasonable standards for medical care of the patients. Therefore, we do not intend to change or revise the standards that are developed.

Vocational Rehabilitation

Comment: Several commenters are concerned that the term "vocational rehabilitation", as mentioned in the law, is too narrow and should be revised to consider factors such as demographics, age, job skills, and employment history for each patient.

Response: Each network will be responsible for developing the criteria and standards and methods for encouraging vocational rehabilitation within the network area. The networks will have the latitude to define the criteria appropriate for their network area and apply their standards accordingly.

Technical Changes

In the proposed notice, we inadvertently referred to the Trust Territory of the Pacific as the Trust Territories of the Pacific. That error has been corrected in this final notice.

III. Provisions of the Final Notice

This final notice implements new network area designations and sets forth the criteria, standards and procedures we will use to evaluate new network organizataions as required by section 9335(d) of Pub. L. 99–509. As we stated in the April 9, 1987 notice, we will also issue area designations through revisions to the ESRD Facility Manual and the Provider Reimbursement Manual. We will require facilities to notify patients of the area designation changes, and we will notify patient advocacy groups (for example, The National Association of Patients on Hemodialysis and Transplantation and The National Kidney Patients Association) directly.

Network Area Designations

Based on the public comments, we changed the network area designations that we proposed on April 9, 1987 as follows:

- We will designate Florida as a single State network area (Network Area #7).
- We will combine Georgia with North Carolina and South Carolina to form one network area (Network Area #6).
- We will spilt California into two district network areas—Northern California (Network Area #17) and Soutern California (Network Area #18).
- We will combine Hawaii, America Samoa, Guam, and the Trust Territory of the Pacific Islands with Northern California (Network Area #17).

The new network area designations follow:

Network Area #1

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Network Area #2

New York

Network Area #3

New Jersey
Puerto Rico
Virgin Islands

Network Area #4

Delaware
Pennsylvania

Network Area #5

District of Columbia
Maryland
Virginia
West Virginia

Network Area #6

Georgia
South Carolina
North Carolina

Network Area #7

Florida

Network Area #8

Alabama
Mississippi
Tennessee

Network Area #9

Indiana
Kentucky
Ohio

Network Area #10

Illinois

Network Area #11

Michigan
Minnesota
North Dakota
South Dakota
Wisconsin

Network Area #12

Iowa
Kansas
Missouri
Nebraska

Network Area #13

Arkansas
Louisiana
Oklahoma

Network Area #14

Texas

Network Area #15

Arizona
Colorado
Nevada
New Mexico
Utah
Wyoming

Network Area #16

Alaska
Idaho
Montana
Oregon
Washington

Network Area #17

The following counties in Northern California: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba.

Hawaii. American Samoa. Guam. The Trust Territory of the Pacific Islands.

Network Area #18

The following counties in Southern California: Imperial, Inyo, Kern, Kings, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, Ventura.

Evaluation Criteria

We have made no changes to the criteria, standards, and procedures that will be used to evaluate the performance of network organizations and the potential capabilities of an applicant organization with respect to the statutory duties of the network organizations. The evaluation criteria that we will use to assess the capabilities of organizations that submit proposals in response to the request for contract proposals follows:

I. Understanding of Work and Approach
  A. Analysis of scope and purpose
  B. Technical approach
II. Experience
  A. Developing and conducting medical review programs
  B. Managing data and conducting data analysis and studies
  C. Coordinating work groups in the health field
III. Personnel
  A. Project Director
  B. Subordinate staff
IV. Management Plan

We will use the following evaluation criteria and performance indicators to assess the effectiveness or potential effectiveness of network organizations.

Criteria	Evaluation indicator
I. MEDICAL REVIEW	
A. *General*	
The network organization appoints a qualified Medical Review Board	The network demonstrates an ability to appoint a medical review board in accordance with the regulatory requirements.
The network develops and adopts criteria for the evaluation of patient care and for encouraging participation in vocational rehabilitation programs and network goals for placing patients in settings for self care and transplantation	The Network demonstrates an ability to adopt criteria and standards for the evaluation of the quality and appropriateness of patient care.
B. *Case Review*	
The network develops a protocol for the receipt and review of a representative sample of individual patient cases per month	The network proposes a mechanism to identify individual cases for review against criteria and standards established under I.A. above
The review of individual cases includes the evaluation of at least: Individual care plans, Long term and short term plans, Appropriateness of treatment modality, Adverse effects, Incident reports involving the patient, and Patient suitability for home dialysis, transplantation and vocational rehabilitation	The network proposes a mechanism to evaluate these areas.
C. *Systems Assessment*	
The network successfully identifies specific network problems in the delivery of patient care	Proposed studies and a written mechanism to implement corrective actions or suggestions
The organization assists individual facilities and acts to resolve identified problems within the network area	Proposed activities required of facilities to improve care
The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. The network documents these activities.	The network proposes policies and procedures to gain voluntary compliance from facilities in meeting HCFA goals and objectives. Recalcitrant facilities will be reported to HCFA
The network develops a protocol to select a sample of member facilities for evaluation of patient placement.	The network uses established criteria and standards to evaluate the procedures used at each facility in assessing patients for placement in appropriate treatment settings.
The network heightens both patient and physician interest and awareness of alternative treatment modalities and facilitates entry into those treatment modalities when medically indicated.	The Network proposes to initiate patient and professional education and information activities in this area. Other initiatives to increase the percentage of patients or alternative treatments are proposed and implemented
The network objectively assesses and assists facilities efforts to correct problems identified through the network medical review program.	The network proposes to develop a review mechanism to determine if benefits are achieved from the medical review programs.
D. *Patient Services Evaluation*	
The network assists ESRD beneficiaries in obtaining access to all types and levels of care	The network has mechanisms to assist patients in obtaining access to care with respect to proper treatment settings and treatment schedules compatible with patient employment.
The network is responsive to patient concerns and encourages responsible patient participation. Responsiveness is documented	Proposed methods of assuring appropriate consumer representation.
The network provides, maintains, and directs an effective patient grievance mechanism: Standard policies and procedures, Evaluation of complaints legitimacy, Rationale for complaints not pursued is documented, Investigation, Corrective actions, Follow-up of corrective action, Notification of parties concerned and resolution/corrective action is clearly explained, and The network assumes the responsibility of assuring that a result is obtained.	Documented procedures

Criteria	Evaluation indicator
II. DATA ACTIVITIES	
The network maintains a patient and facility specific data system that meets the needs of the network and HCFA requirements.	The proposed data system includes at least the required specific data items as specified by HCFA.
Data handling is physically and administratively structured to assure patient privacy and confidentiality	Information must be released only in accordance with the provisions of the contract or as otherwise specified in writing by HCFA.
The network data management system provides for collection, analysis, verification and reporting on a timely basis	The network proposes to meet its obligation in providing information to HCFA as specified in the provisions of the contract and program instructions
The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. These activities are documented.	The network proposes policies and procedures to gain voluntary compliance from its facilities in meeting data gathering requirements
The network data system is adequate to support current activities, including the activities of the medical review board	The network proposal assures that there will be no curtailment of network activities due to a lack of data or meaningful analysis. A periodic analysis of patient morbidity and mortality trends will be performed. Data findings that may be indicative of inadequate patient care will be tracked and reported to the medical review board.
The network has established a periodic internal audit procedure to assure the effectiveness of its system and its performance in: submitting reports, meeting deadlines, and identifying and correcting errors.	The network proposes procedures to identify and correct problems in its data activities. The network has planning activities to identify and address future data needs
III. PROGRAM ADMINISTRATION AND MANAGEMENT	
The network plans and manages network activities to enhance the achievement of ESRD national priorities.	The network prepares a comprehensive contract proposal, and submits acceptable deliverables.
Record Systems:	
The network maintains all appropriate systems in a standardized manner	Organization's records must be maintained in accordance with sound business practices
The network maintains an effective liaison role to the Federal government	The network proposal clearly indicates that there will be specific individuals in the network organization to coordinate communications with HCFA. The network will adhere to specific reporting mechanisms specified in the contract.
The network arranges, as required, to have audits performed and audit reports sent to HCFA	External (independent) audit.

IV. Request for Proposals

We have developed separately an announcement of a request for proposals (RFP) to solicit prosepective contractors as the new ESRD network organizations for the newly designated areas. We will publish the announcement in the Commerce Business Daily (CBD) for 15 consecutive days. During those 15 days, interested parties can request copies of the RFP. On the fifteenth day that the announcement appears in the CBD, we will distribute copies of the RFP to existing organizations that currently have the expertise to perform network organization functions and any other parties that request copies. We will accept proposals within 45 days from the date that we publish the announcement of the RFP in the CBD.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any notice such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant advere effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final requlatory flexibility analysis that is consistent with the Regulatory Flexibility Act (REA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this will not have a significant economic impact on a substantial number of small entities.

Because ESRD networks are such a small activity, with a total FY 1987 budget of less than $6 million, these changes do not meet any of the criteria for a major rule under Executive Order 12291, and a regulatory impact analysis is not required. However, the planned reductions in numbers of network areas and organizations will clearly affect all or almost all existing network organizations. Since these organization are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are not the kind of small entities to which the Regulatory Flexibility Act is usuallly considered to apply. Nonetheless, they are small organizations and a substantial number of them will experience a significant adverse economic effect as a result of our changes. Therefore, the following discussion, in combination with other sections of this notice, serves as a voluntary regulatory flexibility analysis.

Existing network organizations will be affected only when we actually redesignate network areas and make arrangements with new network organizations. We do not expect the redesignation of network areas to have an adverse affect on ESRD facilities or benefitciaries. Rather, to the extent that network performance relative to available rsources is enhanced, the entire ESRD program will benefit.

The Criteria for the designation of these new network aras will have an impact upon the networks, the beneficiaries, and the facilities. For example, one of the criteria that we will use as a basis for area designation is patient population. This criterion will determine the funding level of each network organization because the network funding mechanism is based on the number of treatments provided within the network area. (Section 1881(b)(7) of the Act, as amended by section 9335(j) of Pub. L. 99–509 requires the Secretary to reduce the amount of each composite rate payment for each treatment by $0.50 and provide for the payment of such amount to meet the necessary and proper administrative costs of the network organization in the area where the treatment is provided.)

The area designations and the total number of patients per area follow:

Network area:	Number of patients
1	3,917
2	7,641
3	4,436
4	4,914
5	5,273
6	6,674
7	4,625
8	4,935
9	5,743
10	3,733
11	5,113
12	3,497
13	3,277
14	5,785
15	2,977
16	2,354
17	3,954
18	5,934

For purposes of estimating revenue, we have assumed that the average number of dialysis treatments per week

is 2.6 at $.50 per treatment. We assume an allocation of $67.60 per patient per year. The smallest area will thus be allocated about $185,000 and the largest area will be allocated approximately $520,000.

The patient population criterion should ensure that there is a sufficient level of funding to ensure the survival of small network organizations and ensure a bssic level of services provided to the beneficiaries and the providers. Appropriate application of this factor could prevent the growth of disparities among the services provided to the ESRD beneficiaries throughout the country.

We intend to replace existing network organizations with a more effective and efficient system. As a desirable by-product, these changes will reduce the regulartory burden on the suppliers of ESRD services, while continuing to assure the health and safety of Medicare beneficiaries. Also, these criteria should result in a good management information system defining partients' treatment modalities and a quality control system that justify the costs and burden imposed on the networks and which are expected to benefit the beneficiary and society.

In conclusion, although our evaluation criteria may appear to be burdensome, we have made an effort to assure that network areas of sufficient size will perform these functions. We believe that the adverse economic impact of this notice will be limited to the affected entities and their immediate employees. Such adverse consequences as may be anticipated will not be of sufficient magnitude to offset the advantages to be gained by anticipated improvements in efficiency, effectiveness, economy, and quality of care.

VI. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

(Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr))

(Catalong of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: August 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 14, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-22738 Filed 10-1-87; 8:45 am]

BILLING CODE 4120-010-M

Office of Human Development Services

Meeting of the Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Administration for Children, Youth and Families.

Times and Dates: 9:00 a.m. November 4, 1987 to 12:00 a.m. November 6, 1987.

Place: DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Status: Advisory Board meetings are open for public observation.

Matters to be Considered: At this meeting, the Advisory Board will discuss: The National Symposium on Child Victimization, FY'88 Child abuse and Neglect priorities, interagency agreements, future efforts of the Advisory Board and other matters of importance.

Contact Person for More Information: Jan Kirby-Gell, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013; 202/245-2856.

Date: September 28, 1987.

Carolyn Garnett,

HDS Committee Management Officer.

[FR Doc. 87-22768 Filed 10-1-87; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA-650-07-4121-09]

Establishment of the Fort Union Regional Coal Team

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is establishing a regional coal team (RCT) for the Fort Union (Montana and North Dakota) Federal coal production region. The RCT is an independent subcommittee of the Federal-State Coal Advisory Board renewed by the Secretary on October 3, 1986. As such, the RCT will guide all phases of coal activity planning in the region and will specifically provide advice to the Secretary, through the Director, Bureau of Land Management, on regional coal leasing levels and on Federal coal lease sale schedules and the tracts to be offered.

Further information regarding the committee may be obtained from the Director, Bureau of Land Management (650), U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20240.

The certification of establishment is published below.

Certification

I hereby certify that the establishment of the Fort Union Regional Coal Team is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 Code of Federal Regulations 3400.0-3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Donald Paul Hodel,

Secretary of the Interior.

September 17, 1987.

[FR Doc. 87-22800 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[AA820-07-4830-14]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Payments in Lieu of Taxes, 43 CFR Part 1881.

Abstract: The information requested is statutorily required to compute payments due units of local government under the Payments in Lieu of Taxes Act (31 U.S.C. 6901 through 6907). The Act requires that the Governor of each State

furnish a statement as to the amounts paid to units of local government under 11 receipt sharing statutes in the prior fiscal year. CFDA Number 15.216.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: States supplying Federal land payment information to the Bureau of Land Management.

Annual Response: 50.

Annual Burden Hours: 1,000.

Bureau Clearance Officer (alternate): Rick Iovaine (202) 653–8853.

Dated: July 15, 1987.

Andrew J. Ondrof,

Deputy Assistant Director, Management Services.

[FR Doc. 87–22777 Filed 10–1–87; 8:45 am]

BILLING CODE 4310–84–M

[AA320–07–4212–2]

Bureau Form Submitted For Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone number (202) 395–7340.

Title: Desert Land Entry Application, 43 CFR Part 2520.

Abstract: To initiate and process a desert land entry application with the Bureau of Land Management. The information aids the Bureau in determining the application's eligibility and whether certain statutory requirements have been met.

Bureau Form Number: 2520–1.

Frequency: Once.

Description of Respondents: Any citizen of the United States subject to the laws of any State of the United States desiring to apply for a desert land entry.

Annual Responses: 20.

Annual Burden House: 30.

Bureau Clearance Officer: Rick Iovaine at (202) 653–8853.

July 2, 1987.

Guy E. Baier,

Acting Assistant Director for Land and Renewable Resources.

[FR Doc. 87–22778 Filed 10–1–87; 8:45 am]

BILLING CODE 4310–84–M

[ES–970–4121–12–2410; ES 36413]

Competitive Coal Lease Offering By Sealed Bid, Fayette and Tuscaloosa Counties, AL

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that certain coal resources in the Sandy Point Tract, Fayette and Tuscaloosa Counties, Alabama, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). The Sandy Point Tract is being offered for lease as the result of Emergency Coal Lease Application ES 36413, filed by Chevron U.S.A. Inc. The applicant has satisfactorily demonstrated under the Emergency Coal Leasing Regulation 43 CFR 3425.1–4, that if these coal deposits are not leased, they will be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for would be used within 3 years.

DATES: The lease sale will be held at 10:30 a.m., Thursday, October 29, 1987. Sealed bids must be submitted on or before 4:00 p.m., Wednesday, October 28, 1987.

ADDRESS: The lease sale will be held in the Public Room of the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. Sealed bids should be sent by certified mail, return receipt or hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Ivy J. Garcia, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274–0151.

SUPPLEMENTARY INFORMATION: The Sandy Point Tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for this tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value of this tract will be determined by the authorized office after the sale.

The lands included in Emergency Coal Lease Application ES 36413 are described as follows:

Sandy Point Tract

T. 17S., R. 11–W., Huntsville Meridian, Alabama.
Sec. 12, SE¼SW¼, Fayette County.
Sec. 13, E½NW¼, Tuscaloosa County.
Containing approximately 120 acres.

The Sandy Point Tract represents the continuation of an existing underground mining operation. The primary group and bed of interest is the Pratt. This tract is to be mined from the existing underground mine.

The proximate analysis of the Pratt Tract is:

1. Moisture (%)—2.5
2. Ash (%)—8.2
3. Sulfur (%)—1.8
4. BTU/lb.—13,833
5. Approx. tons in place—1.2 million
6. Medium-Volatile B bituminous in rank.

Rental and Royalty

A lease issued as the result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8.0 percent of the value of the coal produced by underground mining methods. The value of the coal shall be determined in accordance with 30 CFR 203.200.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 87–22773 Filed 10–1–87; 8:45 am]

BILLING CODE 4310–GJ–M

[NV–030–07–4212–21; N–47283]

Realty Action; Noncompetitive Lease of Public Land in Douglas County, NV

The following described parcel of public land is being considered for lease under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732), at not less than fair market value:

Mount Diablo Meridian, NV

T. 14 N., R. 20 E.,
Sec. 8, N½NW¼.
The parcel comprises 80 acres.

Seniors' Mobilehome Village, Inc., has requested a lease authorizing construction of a mobilehome park to benefit low income senior citizens. The proposal is consistent with land use planning for the site and the land is considered generally suitable for the proposed use. The development proposal will be evaluated in accordance with the National Environmental Policy Act to assess

impacts upon the filing of an application.

Information regarding the proposal can be reviewed at the Bureau of Land Management, Carson City District office. Environmental Assessments concerning the physical capabilities of the land are also available for review.

For a period of 45 days from the date of publication of this Notice in the **Federal Register** interested parties may submit comments to the District Manager, Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be evaluated and the Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this Notice will become the final determination of the Department of the Interior.

Norman L. Murray,

Acting District Manager, Carson City District.

Dated this 23rd day of September 1987.

[FR Doc. 87-22733 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-HC-M

[CA-060-07-4410-04]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally Thursday, October 29, 1987, beginning at 9 a.m. and Friday, October 30, 1987, beginning at 8 a.m., at the Carriage Inn, 901 China Lake Boulevard, Ridgecrest, California. A field trip to Short Canyon and Homewood Canyon will be conducted for Council members Thursday, October 29, from 1 p.m. to 5 p.m. Any members of the public wishing to participate in the field trip must provide their own transportation, food and beverages.

Agenda items will include a review and recommendations on the 1987 proposed amendments to the California Desert Plan; recommendations from the Council on the East Mojave National Scenic Area Management Plan; Council review and recommendations on the joint Draft Environmental Impact Statement/Environmental Impact Report on the Western Mojave Land Tenure Adjustment Project; and, staff reports on the status of plans for Afton Canyon, Desert Tortoise Natural Area and other ACEC plans scheduled for FY 1988; discussion of status of FY 1988 budget allocations (appropriations, State OHV and other sources); pipeline and utility right of way updates; and, briefings on current issues such as wilderness reclamation, Prado Basin oil and gas leases and El Mirage OHV project.

All formal Council meetings are open to the public, with time allocated for public comments and time for comment made available by the Council Chairman during the presentation of various agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Dr. Loren Lutz, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507 (714) 351-6383.

Dated: September 25, 1987.

Wesley T. Chambers,

Acting, District Manager.

[FR Doc. 87-22928 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet during the period 8:30 a.m. to 4:45 p.m., November 4, 1987, and 8:30 a.m. to 5 p.m., November 5, 1987, at the Holiday Inn—Emerald Beach to Corpus Cristi, Texas (512-883-5731).

The agenda for the meeting will cover the following principal subjects:

November 4

- EPA Report to Congress
  Impact of considering drilling muds, cuttings, and produced waters as toxic waste
- Impact of dredging on organisms and water quality
- Changes in agreements with coastal States regarding access to privileged and proprietary G&G data

November 5

- What constitutes an adequate biological/water quality monitoring program
- Effect of seismic activity on fish and fishing
- Gulf States perspective

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Committee. Such requests should be made no later than October 16, 1987, to the OSC Policy Committee, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington DC 20240

Requests to make oral statements should be accompaned by a summary of the statement to be made. For more information, contact the Executive Secretary, John B. Rigg, at 202-343-3530.

Minutes of the meeting will be available for public inspection and copying at the Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Dated: September 29, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-22838 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Notice and Agenda Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

Subcommittees of the OCS Advisory Board Scientific Committee will meet at the Holiday Inn—Emerald Beach, 1102 South Shoreline Blvd., Corpus Christi, Texas 78401 (telephone 512-882-5731), from 8 a.m. to 5 p.m. on November 4, 1987, from 2:30 p.m. to 5:30 p.m. on November 5, 1987, and from 8 a.m. to 5 p.m. on November 6, 1987.

The agenda for the meetings will include the following subjects:

- Discussion of Proposed Fiscal Year 1989 Studies;
- Update on Status of Fiscal Year 1988 Program;
- Update on Status of Long Range Study Plan; and
- Update on Status of GAO Audit.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning

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these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Room 4230 (MS–644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone (202)–343–7744.

Dated: September 29, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87–22839 Filed 10–1–87; 8:45 am]

BILLING CODE 4310–MH–M

National Park Service

Women's Rights National Historical Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 US.C. App. 1 section 10) that a meeting of the Women's Rights National Historical Park Advisory Commission will be held October 21, 1987.

The Commission was established pursuant to Public Law 96–607. The purpose of the Commission is to advise the Secretary of the Interior, or his designee, with respect to matters relating to the administration of Women's Rights National Historical Park.

The meeting will convene at the Park Visitors Center, 116 Fall Street, Seneca Falls, New York, from 7 a.m. to 8 a.m. and then move to the Old Village Hall, 136 Fall Street, Seneca Falls, New York, from 8 a.m. to 3 p.m.

The topic of discussion will be Funding Strategies for the Chapel Block.

The meeting is open to the public.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Women's Rights National Historical Park, P. O. Box 70, Seneca Falls, New York 13148.

Dated: September 23, 1987.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 87–22815 Filed 10–1–87; 8:45 am]

BILLING CODE 4310–70–M

Intent To Negotiate Concession Contract; West Park Hospital

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that ninety (90) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with West Park Hospital, authorizing it to provide medical services for the public at Yellowstone National Park, Wyoming for a period of seven (7) years from November 1, 1985, through October 31, 1992.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired October 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposal received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado, 80225, for information as to the requirements of the proposed contract.

Richard A. Strait,

Acting Regional Director, Rocky Mountain Region.

Dated: August 11, 1987.

[FR Doc. 87–22816 Filed 10–1–87; 8:45 am]

BILLING CODE 4310–67–M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Tuesday, November 10, 1987 at the Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret.)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item will be a joint presentation by the staffs of Golden Gate National Recreation Area and the Presidio of San Francisco on plans for development of Crissy Field in San Francisco. The plans for those Crissy Field lands under U.S. Army management were developed by the Directorate of Engineering and Housing at the Presidio of San Francisco. Plans for the Golden Gate National Recreation Area portions of Crissy Field were developed with the assistance of John Northmore Roberts Landscape Architects and Land Planners of Berkeley, California, under the auspices of the Golden Gate National Park Association. The San Francisco City Planning Commission staff has also participated in the formulation of this plan. The joint U.S. Army/National Park Service planning effort has been undertaken to assure that the requirements of both the Army and the National Park Service are addressed in development of this critical urban shoreline.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after December 4, 1987. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National

Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: September 25, 1987.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 87-22817 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-18 (Sub-No. 108X]

Exemption: The Chesapeake and Ohio Railway Co.; Abandonment in Ross County, OH

CXS Transportation (CSX) [1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between valuation station 4395+00 (milepost 83.33) near Scioto Junction and valuation station 4528+11 (milepost 85.85) near VA Junction, in Ross County, OH a distance of approximately 2.52 miles.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).[2]

Grand Trunk Western Railroad Company has trackage rights over this line, and applicant acknowledges that discontinuance of trackage rights must be granted before this line can be abandoned. This notice of exemption is conditioned upon receipt of authority to discontinue Grand Trunk Western Railroad Company's trackage rights over the line in Docket No. AB-31 (Sub-No. 25X), *The Grand Trunk Western Railroad Co.—Exemption Abandonment—In Fayette, Ross and Pike Counties, OH,* filed August 10, 1987.

This exemption will be effective on October 30, 1987 (unless stayed pending reconsideration) or on the effective date of our decision in Docket No. AB-31 (Sub-No. 25X), whichever occurs later. Petitions to stay must be filed by October 12, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 22, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22669 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 212 X)]

Exemption: CSX Transportation, Inc.; Abandonment of Service in Perry County, KY

Applicant has filed a notice of exemption under 49 C.F.R. 1152 Subpart F—*Exempt Abandonments* to abandon its 2.63-mile line of railroad between milepost VO-266.37 and milepost VO-269 in Perry County, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of a rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective November 2, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 13, 1987, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by October 22, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St., Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 18, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22389 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-244 (Sub-No. 2X]

Abandonment Exemption in Comanche and Cotton Counties, OK; The Oklahoma, Kansas and Texas Railroad Co.

The Oklahoma, Kansas and Texas Railroad Company has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 15.5-mile line of railroad between milepost L-498.0 and milepost L-513.5 in Comanche and Cotton Counties, OK.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service

[1] Preliminary notice of the exemption was given by The Chesapeake and Ohio Railway Company (C&O) which was subsequently merged into CSXT. The docket number used by C&O is used here for continuity and to avoid confusion.

[2] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

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over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 2, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 13, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 22, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael E. Roper, Oklahoma, Kansas and Texas Railroad Company, 701 Commerce Street, Dallas, TX 75202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 18, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22390 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

[No. 40154 [1]]

Extension of Expiration Date of Master Tariff Increases; Amendments No. 5 and 12 To Special Tariff Authority

Decided: September 25, 1987.

AGENCY: Interstate Commerce Commission.

ACTION: Date for filing comments extended 45 days and formal docket number assigned.

SUMMARY: On August 27, 1987 a notice was served requesting comments on a proposal for incorporation of master tariff increases in basic tariffs. (Published in the **Federal Register** at 52 FR 32611, August 28, 1987.) Comments on the proposal were due September 28, 1987. Based upon the requests received, I will extend the date comments are due for 45 days. I am also assigning the formal docket No. 40154 to this proceeding to facilitate processing.

DATES: Comments are due on November 12, 1987.

ADDRESSES: Please refer to docket No. 40154, and send (an original and 10 copies if possible) to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Elaine A. Sehrt, (202) 275-7899

or

Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: In this proceeding, the Commission has proposed an alternative approach for incorporation of master tariff increases in basic tariffs. Comments on this proposal were due September 28th. Eight requests for extensions of time to file comments have been filed.[2] Generally, the parties contend that the Commission's proposal requires analysis which cannot be completed within the 30 days allowed. They contend that time is needed to complete studies on the feasibility and effects of the proposal. I will grant an extension so that parties will have an opportunity to submit meaningful comments. However, the parties have not shown that 90 days are needed to prepare their analysis; accordingly, I will grant a 45-day extension. I would also assure the parties that this Commission is sensitive to shippers' concerns and will consider the issues they raise in this proceeding.[3]

Finally, to facilitate processing, this proceeding has been assigned a formal docket No. 40154.

This action will not significantly affect either the quality of the human environment or energy conservation, and will not have an impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321 and 10762.

By the Commission, Chairman Heather Gradison.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22670 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decree Pursuant To The Clean Air Act; Atlantic Marine and Industrial Services, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Atlantic Marine & Industrial Services, Inc.; John E. Snyder, Inc.; and the Franklin Borough Board of Education* was lodged with the United States District Court for the District of New Jersey on September 24, 1987. This agreement resolves a judicial enforcement action brought by the United States against the defendants which alleged violations of the Clean Air Act and the asbestos National Emission Standard For Hazardous Air Pollutants (NESHAP) at the Franklin Elementary School in Franklin, New Jersey.

The consent decree provides for compliance with the Clean Air Act and NESHAP and payment of $40,000 in settlement of the action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to "*United States* v. *Atlantic Marine & Industrial Services, Inc.; John E. Snyder, Inc; and the Franklin Borough Board of Education*, D.J. Ref. 90-5-2-1-900."

The proposed consent decree may be examined at the office of the United States Attorney for the District of New Jersey or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, District of New Jersey,

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[1] This proceeding was originally numbered: Amendment No. 12 to Special Tariff Authority No. 80-1748 and Amendment No. 5 to Special Tariff Authority No. 84-8933.

[2] Requests were filed by: Rail Publication Services (Southern Freight Association and Traffic Executive Association—Eastern Railroad Agents); the Society of the Plastics Industry, Inc.; Himont U.S.A., Inc.; Hercules Incorporated and Aqualon Company; Dow Chemical U.S.A.; the National Industrial Transportation League; Chevron Chemical Company; and the Board of Trade of the City of Chicago.

[3] The request for a separate rulemaking proceeding should be addressed in the comments.

502 Federal Building, 970 Broad Street, Newark, New Jersey 07102

EPA

Office of Regional Counsel, Region II, 26 Federal Plaza, New York, New York 10278

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at the address above. In requesting a copy of the decree, please enclose a check payable to the Treasurer of the United States in the amount of $1.90 ($.10 per page reproduction cost).

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-22779 Filed 10-1-87; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notification Pursuant to National Cooperative Research Act; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Vitesse Semiconducter Corporation, ("Vitesse") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

Vitesse is a Delaware corporation with its principal place of business at 741 Calle Plano, Camarillo, California 93010.

Bellcore and Vitesse entered into an agreement effective June 16, 1987 to collaborate on research to better understand the applications for exchange and exchange access services of technology related to monolithic integrated circuits utilizing Gallium Arsenide substrates.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-22784 Filed 10-1-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be requred to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 534-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Connecticut Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics
Work Injury Report
1220-0047; BLS 980
Non-recurring
Selected injured workers
2,100 responses; 350 hours; 1 form

The Work Injury Report program examines selected types of work injuries/illnesses to develop information based on the data needs of the Occupational Safety and Health Administration. The current survey will focus on inhalation of toxic substances and assist in the development of safety standards, compliance and training programs.

Extension

Mine Safety and Health Administration
Radiation Sampling and Exposure Records
1219-0003
Weekly; annually
Businesses or other for profit; small businesses or organizations
35 respondents; 13,563 hours

Requires underground uranium mine operators and underground non-uranium mine operators, where concentrations of radon daughters exceed 0.3 WL, to calculate, record, and report to MSHA individual miner's exposures to concentrations of radon daughters.

Extension

Occupational Safety and Health Administration
Powered Platforms for Exterior Maintenance
1218-0121;
On occasion
Businesses and other for-profit;
19,500 respondents; 243,750 burden hours; no forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a powered platform and for taking the necessary preventive action to assure employee safety.

Signed at Washington, DC, this 29th day of September, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-22843 Filed 10-1-87; 8:45 am]

BILLING CODE 4510-43-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled, "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled, "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," being modified are listed by Volume, State, and page number (s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida
- FL87-17 (January 2, 1987)—p. 154

New Jersey
- NJ87-2 (January 2, 1987)—p. 617, pp. 619-620
- NJ87-3 (January 2, 1987)—pp. 637-639
- NJ87-4 (January 2, 1987)—p. 661

New York
- NY87-5 (January 2, 1987)—p. 721

Pennsylvania
- PA87-4 (January 2, 1987)—pp. 874-875

Virginia
- VA87-5 (January 2, 1987)—pp. 1134-1135

Volume II

Illinois
- IL87-2 (January 2, 1987)—pp. 96-99
- IL87-3 (January 2, 1987)—p. 114
- IL87-4 (January 2, 1987)—p. 120
- IL87-5 (January 2, 1987)—p. 126
- IL87-6 (January 2, 1987)—p. 132
- IL87-7 (January 2, 1987)—pp. 136, 138
- IL87-8 (January 2, 1987)—pp. 143-146
- IL87-9 (January 2, 1987)—pp. 148-149
- IL87-11 (January 2, 1987)—pp. 158-160
- IL87-12 (January 2, 1987)—pp. 164-165
- IL87-13 (January 2, 1987)—pp. 176-178
- IL87-14 (January 2, 1987)—pp. 186, 188
- IL87-15 (January 2, 1987)—pp. 196-198
- IL87-16 (January 2, 1987)—pp. 206-208
- IL87-17 (January 2, 1987)—p. 216

Indiana
- IN87-2 (January 2, 1987)—pp. 250-254, pp. 259-264
- IN87-3 (January 2, 1987)—pp. 268-270, pp. 272-275
- IN87-5 (January 2, 1987)—pp. 292-300
- IN87-6 (January 2, 1987)—pp. 305-306

Michigan
- MI87-2 (January 2, 1987)—pp. 426-428, pp. 432-434

Ohio
- OH87-2 (January 2, 1987)—p. 743

Texas
- TX87-7 (January 2, 1987)—pp. 936-938

Volume III

California
- CA87-2 (January 2, 1987)—pp. 46-48, 50, pp. 52-62d

Colorado
- CO87-2 (January 2, 1987)—p. 112

Nevada
- NV87-5 (July 10, 1987)—pp. 276b-276s

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled, "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest,

since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th day of September 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-22581 Filed 10-1-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on November 6, 1987. The business session of the meeting will be held at Kennedy Space Center, Florida. An executive session of the meeting will be held at the Operation and Check Out Building.

Business Session

—Call to Order
—Welcome from Kennedy Space Center
—Government response to NSTAC VII Recommendations
—Report from Industry
—NSTAC VIII Deliberation
—Closing Remarks
—Adjournment

Executive Session

—Call to Order
—Discussion with Government Officials
—NSTAC Closing Discussion
—Adjournment

Due to the requirment to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Robert V. Downey

Captain, U.S. Navy, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 87-22794 Filed 10-1-87; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the task force followed by a public hearing on October 29, 1987.

Meeting

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: October 29, 1987.

Time: 7:30 am—9:15 am.

Place: 35th Floor Conference Room, 300 South Wacker Drive, Chicago, Illinois 60606.

Type of meeting: Open.

Purpose: The purpose of the task force on Women, Minorities, and the Handicapped is to: examine the current status of women, minorities and the disabled in science and engineering positions in the federal government and in federally assisted research programs; coordinate existing Federal programs designed to promote the employment of women, minorities and physically disabled scientists and engineers; suggest cooperative interagency programs for promoting such employment; identify exemplary programs in the state, local or private sectors; and develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

Agenda: Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education, and Social Aspects, as well as other business of the task force.

Public Hearing

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: October 29, 1987.

Time: 9:30 am—4:45 pm.

Place: 35th Floor Conference Room, 300 Wacker Drive, Chicago, Illinois 60606.

Type of meeting: Open.

Purpose: The task force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment, research, higher education, precollege education, and social aspects.

Testimony will be heard in three ways: 1) Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; 2) summary statements from the floor of 3-minute duration accompanied by any longer written statements or materials for the record; and 3) written testimony submitted to the task force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task Force on Women, Minorities, and the Handicapped in Science and Technology; 330 C Street, SW; Washington, DC 20201.

All meetings and public hearings of the task force are open to the public and all proceedings will be recorded and will be available at the task force offices.

September 25, 1987.

Sue Kemnitzer,

Executive Director, (202) 245-7477.

[FR Doc. 87-22852 Filed 10-1-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published October 20, 1986 (51 FR 37241), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a nuclear power reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those pertaining to radiological safety. ACRS full Committee and Subcommittee meetings are conducted in accordance with sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.).

General Rules Regard ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and for each Subcommittee meeting which is partially or fully open to public

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attendance. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** notice for the individual meeting in care of the ACRS, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone: 202–634–3265, ATTN: the Designated Federal Official specified in the **Federal Register** Notice for the meeting) between 8:15 a.m. and 5:00 p.m., Washington, DC time.

(d) Questions may be asked only by ACRS Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: September 29, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–22828 Filed 10–1–87; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0503]

Issuance of a Small Business Investment Company License; Bishop Capital, L.P.

On June 26, 1987, a notice was published in the **Federal Register** (52 FR 24083) stating that an application has been filed by Bishop Capital, L.P., Newark, New Jersey, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until close of business July 30, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0503 on August 27, 1987, to Bishop Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 22, 1987.

[FR Doc. 87–22735 Filed 10–1–87; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates; Quarterly Determinations

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is nine and five-eighths (9⅝) percent for the fiscal quarter beginning October 1, 1987.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of 1987,

this rate will be eight and one-half (8½) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 87-22736 Filed 10-1-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1028]

Designation of Palestine Information Office as a Foreign Mission

Pursuant to the authority vested in me by the Foreign Missions Act, 22 U.S.C. 4301–4314 (hereinafter referred to as "the Act"), I hereby designate the Palestine Information Office ("PIO") as a "foreign mission" within the meaning of section 202 (a)(4) of the Act (22 U.S.C. 4302(a)(4)), in that the Palestine Information Office is a foreign mission as defined by that section.

Designation of the Palestine Information Office as a foreign mission is based on the following:

—It is an entity.

—It is substantially owned and/or effectively controlled by the PLO.

—The PIO conducts its functions on behalf of an organization which has received privileges and immunities under U.S. law. The PLO is accorded certain privileges and immunities by virtue of its status as an observer to the United Nations. Further, the PLO clearly engages in "some aspect of the conduct of international affairs," as evidenced by, for example, its membership in the League of Arab States and its status at the United Nations.

—It is involved in "other activities." The PIO registration statement under the Foreign Agents Registration Act indicates that the PIO engages in political activity and political propaganda on behalf of the PLO.

Dated: Septembe 15, 1987.

John C. Whitehead,

Deputy Secretary of State.

[FR Doc. 87-22781 Filed 10-1-87; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 1029]

Determination and Designation of Benefits Concerning Palestine Information Office

Pursuant to the authority of the President of the United States to conduct foreign affairs under Atricle II of the United States Constitution, including his authority to recieve ambassadors, and the authority vested in me by the Foreign Missions Act, 22 U.S.C. 4301–4314 (hereinafter referred to as "the Act"), I hereby determine that it is reasonably necessary to protect the interests of the United States to require that the Palestine Information Office cease operation as a mission representing the Palestine Liberation Organization.

The Palestine Information Office is being required to cease operation as a mission representing the PLO because of U.S. concern over terrorism committed and supported by individuals and organizations affiliated with the PLO, and as an expression of our overall policy condemning terrorism. The organizations and individuals associated with the PLO who support terrorism include, among others, Abu Al-Abbas, recently retained as a member of the PLO Executive Committee, who was responsible for the Achille Lauro hijacking, which included the murder of an American citizen, Leon Klinghoffer. At the Palestine National Congress meeting in April, 1987 other groups which have been responsible for terrorist acts in recent years against many peoples, including Palestinians, were reunited with the PLO. The United States supports the legitimate rights of the Palestinian people. It acknowledges and respects the right of the Palestinian people to achieve their legitimate rights through a process of peaceful negotiations designed to achieve a resolution of the Arab-Israeli conflict and the Palestinian issue. It is important that Palestinian representatives participate in all stages of that process However, the U.S. believes that acts of terrorism, committed purportedly on behalf of the Palestinian people by some groups and individuals associated with the PLO and others, have done grievous damage to the achievement of legitimate Palestinian rights which are broadly supported by individuals and states opposed to terrorism, but which support instead the peaceful settlement of disputes. Terrorism by this minority of Palestinians and their supporters has been a serious obstacle to the realization of a peaceful settlement of the Arab-Israeli conflict, and an accommodation between Israelis and Palestinians.

In order to achieve the objective of terminating operation of the Palestine Information Office as a foreign mission, I hereby also determine that it is reasonably necessary to protect the interests of the United States to require that the Palestine Information Office divest itself of all real property which it currently occupies or in which it has a real property interest (through ownership, lease or otherwise) in the United States, pursuant to 22 U.S.C. 4305(b)(3). I also hereby determine that it is reasonably necessary to protect the interests of the United States to require that the Palestine Information Office and its employees and agents acting on its behalf acquire and dispose of real property (by purchase, lease, exchange, construction or otherwise) from or through the Office of Foreign Missions under such terms and conditions as may be established by the Driector of the Office of Foreign Missions, pursuant to 22 U.S.C. 4304(b). In addition, and for the same purpose, under the authority of section 4303(b)(2) to protect the interests of the United States, I hereby designate as benefits for the purposes of the Act the acquisition from any person or entity subject to the jursidiction of the United States or use in the United States by the Palestine Information Office and its agents or employees acting on its behalf of the following services and goods:

Services

(1) Public utilities and services, including telephone and telegraph, mail, public transportation and sanitation services; and

(2) Personal services of individuals engaged within the United States for whatever purposes, whether on a temporary or regular basis. Such personal services include:

(a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;

(b) Plumbing, electrical, construction, maintenance, engineering, architectural or related services;

(c) Packing, shipping, cartage and related services, including provision of packing materials; and

(d) Financial services.

Goods

(1) Motor vehicles;

(2) Construction equipment and materials;

(3) Equipment and materials for the maintenance of the mission, including typewriters, telephones, xerox machines and related materials;

(4) Computers and automated data processing equipment; and

(5) Furnishings for offices.

I hereby determine that it is reasonably necessary to protect the interests of the United States to require that the palestine Information Office and its agents or employees acting on its behalf discontinue use and dispose of all benefits defined in the Act and this Determination and Designation of Benefits which it currently owns or uses.

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I also hereby require that the Palestine Information Office and its employees and agents acting on its behalf acquire and dispose of all benefits defined in the Act or this Determination and Designation of Benefits from or through the Office of Foreign Missions under such terms and conditions as the Director of the Office of Foreign Missions may specify. 22 U.S.C. 4304(b).

The Palestine Information Office must comply with the terms of this Determination and Designation of Benefits within thirty days, unless further time is extended upon a showing of good cause.

It shall be unlawful for any person subject to the jurisdiction of the United States directly to supply, or contract to supply, the aforementioned benefits to the Palestine Information Office, or to any agent or employee thereof acting on its behalf, other than in accordance with section 4311(a) of the Act, this determination and any subsequent determination.

Persons wishing clarification as to the applicability of this determination or information on subsequent determinations may contact the Office of Foreign Missions, U.S. Department of State, Washington, DC 20520; or by telephone: (202) 647–3416.

Dated: September 15, 1987.

John C. Whitehead,

Deputy Secretary of State.

[FR Doc. 87–22780 Filed 10–1–87; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice CM–8/1123]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radio Communications; Meeting Change

The October 15, 1987 meeting of the Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea has been changed to October 22, 1987 at 0930 in room 9230 of the Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. The Working Group will discuss the following topic:

Global Maritime Distress Safety System (GMDSS). Members of the Public may attend the meeting up to the seating capacity of the room.

For further information contact LT McDannold, U.S. Coast Guard Headquarters (G–TTS–1/63), 2100 Second Street SW., Washington, DC 20593–0001. Telephone: (202) 267–1354.

Date: September 24, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–22747 Filed 10–1–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1121]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment; Notice of Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on November 5, 1987 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be to discuss the activities of the 30th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), held June 1 to 5, 1987, and to prepare for the 31st Session of IMO DE, tentatively scheduled for March 7 to 11, 1988.

The major items of discussion will include the following:

1. Review of the Mobile Offshore Drilling Unit (MODU) Code—At the 30th Session of IMO DE, the MODU and Machinery and Electrical Installations ad hoc working groups, due to time limitations, were only able to consider Chapters 1 & 3–11 of the MODU Code with the following results: accepting in principle the proposed changes to Chapters 4 & 10, using the U.S. position as the base document for revision of Surveys and Certification, forwarding ongoing stability studies for consideration by the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety at its 32nd Session, recommending that the MODU Code be considered as equivalent to rather than duplicative of SOLAS, urging the Subcommittee on Fire Protection to finalize its review of Chapter 9 at its 33rd Session, and proposing numerous amendments covering Chapters 5–8.

2. Materials other than steel for pipes—The Maritime Safety Committee (MSC) at its 53rd Session instructed the DE Subcommittee, in cooperation with the Subcommittee on Fire Protection, to consider a new agenda item covering materials other than steel for pipes. The DE Subcommittee agreed to establish a working group at its 31st Session with the goal of initially defining basic design parameters for various shipboard piping systems.

Other items of discussion include:

3. Maneuverability of ships, maneuvering standards.

4. Helicopter facilities offshore.

5. Operating mechanisms for watertight doors.

6. Below deck openings into cargo tanks.

7. Design and construction of sea inlets under slush ice conditions.

8. Requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel.

9. Comprehensive Code on Alarms.

10. Amendments of regulations II–1/41, 42, and 43 of SOLAS, as amended.

11. Ventilation of vehicle decks during loading and unloading, surveillance of vehicle spaces, warning lights and operational procedures covering vehicle spaces.

12. Review of sections of the International Maritime Dangerous Goods (IMDG) Code.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain G. G. Piche, or Commander C. E. Bills, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001; Telephone: (202) 267–2967.

Date: September 23, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87– Filed 10–1–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

[Docket No. 45163, Order 87–9–62]

Aviation Proceedings; Order Instituting Spokane-Vancouver Service Case

AGENCY: Department of Transportation.

ACTION: Institution of *Spokane-Vancouver Service Case*, Docket 45163, Order 87–9–62.

SUMMARY: The Department has decided to institute the *Spokane-Vancouver Service Case*, Docket 45163, to select one primary and one backup carrier to provide scheduled foreign air transportation of persons, property, and mail between Spokane, Washington, and Vancouver, British Columbia, Canada. The proceeding will be set for an oral evidentiary hearing before an Administrative Law Judge. The Department is inviting interested air carriers to file applications for certificate authority to serve the route at issue.

DATES: Applications for Spokane-Vancouver certificate authority, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration of Order 87–9–62, should be filed by October 23, 1987. Answers shall be due 7 calendar days thereafter. Parties to the docket listed above may obtain a service copy of the order by calling the Documentary Services Division, (202) 366–9329, or by writing to the address below.

ADDRESS: Applications (Spokane-Vancouver), motions to consolidate, petitions for leave to intervene and petitions for reconsideration of Order 87–9–62, should be filed in Docket 45163, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45163.

Dated: September 28, 1987.

Philip Haseltine,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–22761 Filed 10–1–87; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ending September 25, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45159 R–1 & R–2

Parties: Members of International Air Transport Association
Date Filed: September 25, 1987
Subject: Within Eruopean Fares
Proposed Effective Date: November 1, 1987

Docket No. 45160 R–1 – R–7

Parties: Members of International Air Transport Association
Date Filed: September 25, 1987
Subject: Composite Resolutions—Recommended Practice
Proposed Effective Date: August 22, 1987 and April 1, 1988

Docket No. 45161

Parties: Members of International Air Transport Association
Date Filed: September 25, 1987
Subject: PEX Fares—Within So. America
Proposed Effective Date: November 1, 1987

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–22847 Filed 10–1–87; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended September 25, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were file under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45148

Date Filed: September 22, 1987
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 20, 1987

Description: Application of America West Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled foreign air transportation of persons, property, and mail between the terminal point San Francisco, California and the coterminal points Calgary and Edmonton, Alberta, Canada and pursuant to section 401(g) (1) and (3) of the Act, to suspend or revoke the existing authority of United Air Lines, Inc. for that route.

Docket No. 45154

Date Filed: September 23, 1987
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 21, 1987

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity which will authorize Continental to provide foreign air transportation of persons, property and mail between Cleveland, Ohio, on the one hand, and Merida, Cancun, and Cozumel, Mexico, on the other hand.

Docket No. 45155

Date Filed: September 24, 1987
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 1987

Description: Joint Application of Blue Bell, Inc., Wrangler Aviation, Inc. and W.A. Services, Inc. pursuant to section 401(h) of the Act and Subpart Q of the Regulations, requests the Department to disclaim jurisdiction over the transfer of certificate authority from Blue Bell to Wrangler as such a transfer is independent of any other subsequent proposed transactions and is a corporate reorganization which will result in a change of form, not substance.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–22848 Filed 10–1–87; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications to Become Party to an Exemption; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications of renewal or modification of exemptions or application to become a party to an exemption; correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on Thursday, September 17, 1987 on Page 35181. The comment period should have been October 6, 1987.

Issued in Washington, DC, on September 28, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation

[FR Doc. 87–22849 Filed 10–1–87; 8:45 am]

BILLING CODE 4910–60–M

Applications for Exemptions; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for Exemptions; Correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on Thursday, September 17, 1987 on Page 35183. The comment period should have been October 20, 1987.

Issued in Washington, DC, on September 28, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-22850 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0095
Form Number: MSD, MSD-W, MSD-4, MSD-5
Type of Review: Extension
Title: Registration and Withdrawal of Municipal Bond Securities Brokers, Dealers and Associated Individuals

Description: The Government Securities Act of 1986 requires all financial institutions that act as municipal securities brokers and dealers and associated individuals, to notify designated Federal regulatory agencies of their broker/dealer activities.

Respondents: Businesses or other for-profit
Estimated Burden: 1,787 hours

Clearance Officer: Eric Thompson, (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Fishman, (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-22749 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: September 28, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW, DC 20220.

Internal Revenue Service

OMB number: 1545-0227
Form Number: 6251
Type of Review: Resubmission
Title: Alternative Minimum Tax-Individuals

Description: Form 6251 is used by individuals having adjustments or tax preference items or a taxable income above certain exemption amounts together with credits against their regular tax. The form provides a computation of the alternative minimum tax which is added to tax liability. The information is needed to see whether taxpayers are complying with the law.

Repondents: Individuals or households
Estimated Burden: 346,616 hours

OMB Number: 1545-0865
Form Number: 8264
Type of Review: Resubmissioni15Title: Application for Tax Shelter Registration Number

Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. (Other persons may have to register the tax shelter if the organizer doesn't.) We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number to invetors who report the number on their tax returns.

Respondents: Individuals or households, Business or other for-profit, Small businesses or organizations
OMB Number: 1545-1009
Form Number 8798
Type of Reviews: Resumbmission
Title: Computation of Deductible Home Mortgage Interests.

Description: Internal Revenue Code section 163(h) disallows personal interest as a deduction. Qualified residence interest paid on mortgage loans or residences is not treated as personal interest. The form is needed to determine the amount of qualified residence interest. The data is used to help verify that the deduction claimed is proper.

Respondents: Individuals or households
Estimated Burden: 8,533,264 hours

Clearance Officer: Garrick Shear (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-22750 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-25-M

Senior Executive Service; Departmental Performance Review Board

ACTION: This notice lists the membership of the Departmental Performance Review Board (PRB), superseding the list published in 52 FR 19793, May 27, 1987, in accordance with 5 U.S.C. 4313(c)(4).

Scope: This notice applies to all components within the Department of the Treasury.

Purpose: The purpose of the Board is to review proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of non-delegated SES positions. These positions include SES bureau heads, deputy bureau heads, bureau chief inspectors, and certain other positions. The Board makes recommendations to the Secretary or his designee as Apppointing Authority. The Board will perform PRB functions for other top bureau positions if requested. In addition, the Board will review proposed SES bonus distributions and Presidential Rank nominations from the bureaus upon request.

Composition of PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members of the PRB shall consist of career appointees. The names and titles of the PRB members are as follows:

Chairperson, John F. W. Rogers, Assistant Secretary of the Treasury (Management)
Paul W. Bateman, Deputy Treasurer
Thomas J. Berger, Deputy Assistant Secretary (International Monetary Affairs)
William J. Bremner, Deputy Assistant Secretary (Federal Finance)
O. Donald Chapoton, Acting Assistant Secretary (Tax Policy)
James W. Conrow, Deputy Assistant Secretary (Developing Nations)
Roger M. Cooper, Deputy Assistant Secretary (Information Systems)

Robert A. Cornell, Deputy Assistant Secretary (Trade and Investment Policy)
William E. Douglas, Commissioner, Financial Management Service
Stephen J. Entin, Deputy Assistant Secretary (Economic Forecasting)
Eugene H. Essner, Deputy Director, U.S. Mint
Richard L. Gregg, Commissioner, Bureau of Public Debt
Stephen E. Higgins, Director, Alcohol, Tobacco and Firearms
Michael R. Hill, Inspector General
Francis A. Keating, II, Assistant Secretary (Enforcement)
Jill E. Kent, Deputy Assistant for Departmental Finance and Management
Robert J. Leuver, Director, Bureau of Engraving and Printing
Samuel T. Mok, Comptroller
Gerald Murphy, Fiscal Assistant Secretary
Michael J. Murphy, Senior Deputy Commissioner, Internal Revenue Service
Howard W. Nester, Deputy Director (Revenue Estimating)
Thomas P. O'Malley, Director, Office of Procurement
Katherine D. Ortega, Treasurer of the United States
Marcus W. Page, Deputy Fiscal Assistant Secretary
Charles B. Respass, Director, Facilities Management Division
Charles Schotta, Deputy Assistant Secretary (Arabian Peninsula Affairs)
Charles O. Sethness, Assistant Secretary (Domestic Finance)
John P. Simpson, Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement)
Edward T. Stevenson, Special Assistant to the Assistant Secretary (Legislative Affairs)
Margaret D. Tutwiler, Assistant Secretary of the Treasury (Public Affairs and Public Liaison)
D. Edward Wilson, Jr., Deputy General Counsel
Gregory P. Wilson, Deputy Assistant Secretary (Financial Institutions Policy)
Robert B. Zoellick, Executive Secretary

FOR FURTHER INFORMATION CONTACT: Stephen C. Benowitz, Director of Personnel, Room 7115, ICC Building, 1201 Constitution Avenue, NW., Washington, DC 20220, Telephone: (202) 566–2701.

This notice does not meet the Department's criteria for significant regulations.

Dated: September 25, 1987.

John F. W. Rogers,

Assistant Secretary of the Treasury (Management)

[FR Doc. 87–22748 Filed 10–1–87; 8:45 am]

BILLING CODE 4810–05–M

Intent to Examine Depreciation of Scientific Instruments, Rental Clothing, Horses, and Assets Used in the Manufacture of Electronic Components, Products, and Systems and Notice of Public Meetings

The Office of Depreciation Analysis intends to initiate studies of the depreciation of four classes of assets:

Scientific Instruments
Rental Clothing
Horses
Assets used in the manufacture of electronic components, products, and systems (Asset guideline class 36.0)

Pursuant to the mandates of the Tax Reform Act of 1986 (Pub. L. 99–514), the Office of Depreciation Analysis will solicit information relating to the anticipated useful life and anticipated decline in economic value of the above noted assets from the owners and users of these assets. This information, together with additional information such as the depreciation methods used in accounting for such assets in the taxpayer's financial reports, and the terms under which such assets are financed or leased, will be used to determine appropriate class lives for these assets.

The Office of Depreciation Analysis will hold public meetings with all interested parties to discuss the precise definition of the assets to be included in these studies, the specific nature of the information sought, and other related issues. The schedule for these meetings is as follows:

Scientific instruments, Friday, October 16, at 10:00–12:00 a.m.
Horses, Monday, October 19, at 2:00–4:00 p.m.
Assets used in the manufacture of electronic components, products, and systems, Friday, October 23, at 10:00–12:00 a.m.
Rental clothing, Monday, October 26, at 2:00–4:00 p.m.

All meetings will be held in Room 4121, Main Treasury Building, 15th Street and Pennsylvania Avenue, Washington, DC. Names of those wishing to attend these meetings, and any inquiries, comments, or other materials relating to these studies should be sent to: The Office of Depreciation Analysis, Room 4217, Main Treasury, Washington, DC 20220.

O. Donaldson Chapoton,

Acting Assistant Secretary (Tax Policy).

September 21, 1987.

[FR Doc. 87–22829 Filed 10–1–87; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 29, 1987.
By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Survivors' and Dependents' Educational Assistance (Under Chapter 35, Title 38, U.S.C.).
3. VA Form 22–5490.
4. This information is used to determine eligibility and entitlement to educational benefits.
5. On occasion.

6. Individuals or households.
7. 12,672 responses.
8. 6,336 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Compliance Inspection Report.
3. VA Form 26–1839.
4. This information is used by fee compliance inspectors to report acceptability of new home residential construction for guaranteed home loans.
5. On occasion.
6. Individuals or households, Small businesses or organizations.
7. 350,000 responses.
8. 87,500 hours.
9. Not applicable.

[FR Doc. 87–22812 Filed 10–01–87; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 191
Friday, October 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 2, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22863 Filed 9–30–87; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 9, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22864 Filed 9–30–87; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 2, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22865 Filed 9–30–87; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., October 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Final rulemaking on Federal Speculative Limit Rules and related petitions.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22866 Filed 9–30–87; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., October 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22867 Filed 9–30–87; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3:00 a.m., October 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22868 Filed 9–30–87; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 16, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22869 Filed 9–30–87; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 23, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22870 Filed 9–30–87; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., October 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Final rulemaking on Rule 4.6-relief from Regulation as a Commodity Trading Advisor for Certain Persons.

Application of the Commodity Exchange, Inc. as a contract market in Moody's Investment Grade Corporate Bond Index.

Application of the Chicago Board of Trade as a contract market in Long-Term Corporate Bond Index.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22871 Filed 9–30–87; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 27, 1987.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Financial Rule Enforcement review.

BEST COPY AVAILABLE

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22872 Filed 9–30–87; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22873 Filed 9–30–87; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 30, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22874 Filed 9–30–87; 11:37 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, October 7, 1987, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 1. *Bunk Bed Petition: CP 86–2.* The staff will brief the Commission on Petition CP 86–2, which requests the Commission to issue a consumer product safety standard for bunk beds.

2. *FY 88 Operating Plan.* The Commission will consider the Fiscal Year 1988 Operating Plan.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

September 30, 1987.

[FR Doc. 87–22905 Filed 9–30–87; 2:41 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Thursday, September 24, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider (1) the application of Commonwealth Thrift and Loan, an operating noninsured industrial bank located near the intersection of Hawthorne and Sepulveda Boulevards, Torrance, California, for Federal deposit insurance; (2) a recommendation regarding an administrative enforcement proceeding initiated against an insured bank; and (3) matters relating to the possible failure of an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 29, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–22906 Filed 9–30–87; 2:42 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:40 p.m. on Friday, September 25, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of an insured bank: Name and location of bank authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 29, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–22907 Filed 9–30–87; 2:42 pm]

BILLING CODE 6714–01–M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Tuesday, October 6, 1987, 10:00 a.m.

PLACE: 1776 G Street, NW., Washington, DC, Conference Room 8C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013 (202) 789–5097.

MATTERS TO BE CONSIDERED:

Closed—Minutes of September 8, 1987 Board of Directors' Meeting
Closed—Business Operations Report
Closed—Status of 1988 Plan and Budget
Closed—Multifamily Financing
Closed—Financial Report

Date sent to **Federal Register:** September 30, 1987.

Alan Hausman,

Assistant Secretary.

[FR Doc. 87–22892 Filed 9–30–87; 11:41 am]

BILLING CODE 6719–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 7, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Section 19 Review: Restrictive Practices Concerning Dockside Facilities and Equipment/Container Terminals in Taiwan.
2. Docket No. 87-6—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade—Consideration of Comments.
3. Docket No. 86-7—The Secretary of the Army on Behalf of the Department of Defense v. The Port of Seattle—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87-22877 Filed 9-30-87; 11:38 am]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 35992, September 24, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Thursday, October 1, 1987.

CHANGES IN THE MEETING:

1. Addition of the following closed item to the meeting: Proposed statement to be presented to the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce on the role of financial institutions in the economy.
2. Change in the time of the above meeting to 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22857 Filed 9:30-87; 11:35 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10:00 a.m., Tuesday, October 6, 1987.

PLACE: 1776 G Street, NW., Board Conference Room, 6th Floor, Washington, DC 20456 (202) 357-1100.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Personnel Action. Closed pursuant to exemptions (2) and (6).

TIME AND DATE: 1:30 p.m., Thursday, October 8, 1987.

PLACE: Charleston Marriott Town Center, 200 Lee Street, Charleston West Virginia 25301 (304) 345-6500.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Overhead Transfer Rate for FY 88.
6. Request for Comment; Definition of Risk Assets.
7. Board Briefing: Community Development Revolving Loan Program for Credit Unions.
8. Guidelines on Bank Bribery Law.
9. Field of Membership Expansion Requests: Citadel Federal Credit Union and First Financial of Maryland Federal Credit Union.
10. Proposed Amendments to Part 792, Employee Conduct and Responsibilities.
11. Proposed Community Charter Application: Austin/West Garfield Federal. CU.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 87-22908 Filed 9-30-87; 2:43 pm]

BILLING CODE 7535-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME: October 16, 1987, 8:35 a.m., Closed Session; 8:45 a.m., Open Session.

PLACE: National Science Foundation, Washington, DC.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED OCTOBER 16:

Closed Session (8:35 a.m. to 8:45 a.m.)

1. Minutes—August 1987 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs

Open Session (8:45 a.m.—12:00 noon)

4. Chairman's Report
5. Minutes—August 1987 Meeting
6. Director's Report
7. Proposed 1988 Award Review Exemptions
8. Presentation of Biodiversity
9. Report of the Committee on Centers and Individual Investigator Awards
10. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 87-22924 Filed 9-30-87; 2:57 pm]

BILLING CODE 7555-01-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.-5:00 p.m., Thursday, October 8, 1987.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue NW., Washington, DC 20035.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act. Pub. L. 98-525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the sixteenth meeting. Report on Grants Program Changes. Update on National Peace Essay Contest. Consideration of grant applications and individual personnel matters.

CONTACT: Mrs. Olympia Diniak. Telephone (202) 789-5700.

Dated: September 30, 1987.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 87-22896 Filed 9-30-87; 12:10 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 52, No. 191
Friday, October 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement The International Energy Program; Meeting

Correction

In the issue of Wednesday, September 23, 1987, in the document beginning on page 35756 in the third column, make the following correction:

On page 35757, in the first column, in the file line at the end of the document, "FR Doc. 87-21754" should read "FR Doc. 87-21954".

BILLING CODE 1505-01-D

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Correction

In notice document 87-22260 appearing on page 36303 in the issue of Monday, September 28, 1987, make the following corrections:

1. In the second column, the heading should read as set forth above.

2. In the table, in the heading the dates should read "September 1, 1987 and September 16, 1987".

3. In the first column, in the last line, the FR Doc. "Filed" date should read "9-25-87".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Proposed Customs Regulations Amendments Relating to Sureties

Correction

In proposed rule document 87-21497 beginning on page 35274 in the issue of Friday, September 18, 1987, make the following corrections:

PART 113—[CORRECTED]

1. On page 35277, in the first column, the line before paragraph number 6. should read:

§ 113.23 [Amended]

§ 113.38 [Corrected]

2. On the same page, in the third column, in § 113.38(c)(1), in the eighth line, "case" should read "cause".

§ 113.39 [Corrected]

3. On page 35278, in § 113.39, in the second column, in the sixth line, "filed" should read "failed".

BILLING CODE 1505-01-D

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federal register

Friday
October 2, 1987

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 291

National Institute on Drug Abuse; Methadone in Maintenance and Detoxification; Joint Proposed Revision of Conditions for Use; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 83N-0249]

National Institute on Drug Abuse; Methadone in Maintenance and Detoxification; Joint Proposed Revision of Conditions for Use

AGENCY: Food and Drug Administration and National Institute on Drug Abuse.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) are proposing to revise the conditions for the use of methadone in maintenance and detoxification treatment. One revision would provide standards for long-term detoxification. This change is necessary because Pub. L. 98–509 revised the statutory definition of detoxification treatment from 21 days up to 180 days. Other proposed revisions do not involve major substantive changes but rather are designed to streamline the regulation, to delete the requirement that treatment programs using methadone submit annual reports to FDA, and to promote more efficient operation of methadone treatment programs. Another revision would convert to guidelines the provisions in the current regulation that do not impose specific requirements.

DATE: Comments by December 1, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION:

Background

The conditions for the use of methadone in the maintenance and detoxification treatment of narcotic addicts are provided for in 21 CFR Part 291 (the methadone regulation). The methadone regulation also delineates the appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of addicts (see 21 CFR 291.505). The methadone regulation was last reviewed, evaluated, and substantially revised in the **Federal Register** of September 19, 1980 (45 FR 62694).

Under the Regulatory Flexibility Act, the Paperwork Reduction Act of 1980, and Executive Order 12291, FDA is conducting a retrospective review of its existing regulations. The purpose of the review is to identify regulations that should be revised or revoked. FDA encouraged public participation in this process by publishing a notice in the **Federal Register** of July 14, 1981 (46 FR 36333) seeking public comment on which regulations are burdensome, and by establishing agencywide review priorities including incorporation of retrospective review status reports into the agency's regulation planning process. Also, by notice published in the **Federal Register** of August 5, 1983 (48 FR 35668), FDA, at the request of the Office of Management and Budget (OMB), announced its intention to propose changes with regard to the collection of information requirements in the methadone regulation.

Accordingly, in the **Federal Register** of September 13, 1983 (48 FR 41049), FDA and NIDA published a notice of intent and request for comments. The September 13, 1983, notice focused on whether FDA and NIDA should make portions of the methadone regulation into guidelines and whether the agencies should modify the recordkeeping and reporting requirements. An additional issue involved whether revising the requirements would impair enforcement and compliance with the regulation, affect the quality of patient care, and increase the likelihood of the diversion of methadone for illicit use.

Summary of the Proposal

The methadone regulation has, in general, facilitated the efficient and safe management and rehabilitation of narcotic addicts. According to most of the comments received on the September 1983 notice, the requirements of the methadone regulation are generally neither unreasonable nor burdensome. In fact, most comments argued that the methadone regulation should not be substantially revised. FDA and NIDA agree, and the proposed rule generally retains current requirements necessary to achieve the goals of the 1974 Narcotic Addict Treatment Act (NATA) (21 U.S.C. 823(g)) without substantial change, except for the proposed revision regarding the length of time allowed for detoxification treatment. This change is necessary in light of a recent amendment to the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) that now allows detoxification treatment to extend up to 180 days, as opposed to the 21 days provided formerly in the law and currently in the regulation. The recent amendment requires that this change be implemented through regulation; during the interim period before the new rule implementing the 180-day period becomes final, FDA will not take enforcement action against treatment centers that are otherwise in compliance with the existing regulations, but that provide detoxification treatment for periods up to 180 days as provided in the proposed rule.

FDA and NIDA are proposing many revisions that are designed to streamline the regulation and to promote more efficient operation of methadone treatment programs. The responses to the comments that follow discuss in detail the proposed revisions. The most significant of the revisions involves the development of separate guidelines consisting of those provisions of the current regulation that are not legal requirements. Although these provisions are, in effect, already guidelines, their inclusion in the Code of Federal Regulations makes it difficult to distinguish them from other provisions that are legal requirements. Accordingly, the paragraphs in the current regulation that begin with the phrase: "It is recommended practice that * * *" are not contained in the proposed regulation and will be incorporated into guidelines that FDA and NIDA will make available at the time a final rule resulting from the proposal is published in the **Federal Register**.

Comments

In response to the September 13, 1983, notice, the agencies received 47 comments. Government authorities and agencies, including Federal agencies (Drug Enforcement Administration and Veterans' Administration), State agencies (Single-State Authorities, Departments of Health, and a Department of Correction), and county and city health or "substance abuse" agencies submitted most of the comments (about 60 percent). Many privately operated treatment programs and three private physicians also submitted comments. The American Medical Association also commented.

1. One comment favored any change in the regulation that would emphasize the rehabilitation aspects of treatment.

The methadone regulation already emphasizes the rehabilitation aspects of treatment. For example, several paragraphs of the regulation are devoted to the development of an initial treatment plan and periodic treatment plan evaluations. These plans help to ensure that patients receive the necessary psychosocial, economic, legal, and other supportive services available

at the program and in the community. The current regulation also already requires that a comprehensive range of medical and rehabilitation services be provided to patients. Counselors are assigned to each patient to help ensure that patients participate, for example, in educational or job training programs or obtain gainful employment. Accordingly, FDA and NIDA believe that no major or substantive revisions in this area are necessary.

2. Several comments stated that the statutory requirement that detoxification be completed within 21 days is unrealistic. The comments suggested that the regulation allow a longer time period for detoxification or that the time frames should be within the treating physician's discretion.

The statutory definition of detoxification treatment in the CSA has been revised and now allows detoxification treatment to extend up to 180 days. See Pub. L. 98–509, enacted on October 19, 1984, which amends 21 U.S.C. 802(28). The legislative history to Pub. L. 98–509 provides that, "* * * it would appear to be more efficacious to permit, *when appropriate,* a long-term detoxification period which is more humane and increases client retention, * * *" (emphasis supplied). FDA and NIDA agree that for some patients (not all patients) a detoxification period in excess of 21 days is appropriate. Accordingly, the agencies are proposing two types of detoxification treatment: short-term detoxification treatment and long-term detoxification treatment (see proposed § 291.505(a)(1) for the definitions of the two terms). The agencies are soliciting comments on the usefulness of these two definitions, and on whether it is appropriate to provide separately for short-term and long-term treatment as outlined below.

The agencies are proposing that short-term detoxification treatment would have essentially the same requirements as the current detoxification requirements except that treatment may last 30 days. The agencies believe that the 30-day period, for those for whom detoxification is the treatment of choice, would lessen the chance that a patient would suffer from withdrawal. This would be the case, for example, for a patient whose initial or stabilizing dosing requirements are relatively high (more than 40 milligrams of methadone). The agencies believe that 30 days instead of the 21 days previously allowed is more consistent with normal recordkeeping, reporting, accounting practices, and available clinical data.

The agencies are proposing that long-term detoxification treatment require, among other things, that a program physician document that short-term detoxification is not a sufficiently long enough treatment course for rehabilitation and that the services supplied during long-term detoxification treatment (e.g., employment or educational counseling, monthly testing for drug use, treatment plans and treatment plan evaluations, and the full range of medical and rehabilitative services required for maintenance patients) would benefit the patient. The proposed long-term detoxification regulation would also allow no more than a 1-day supply of take-home medication, whereas no take-home medication is permitted in short-term detoxification treatment.

The requirement that the program physician document that long-term detoxification is necessary for rehabilitation is designed to ensure that not all detoxification patients are indiscriminantly placed in longer-term treatment. The agencies believe that the requirement is necessary because clinical experience shows that short-term detoxification does work for some patients. The requirement reflects the fact that the goal of detoxification treatment is to help a patient achieve a drug-free existence in as short a time as is consistent with effective treatment.

The agencies are proposing to permit that programs may issue a 1-day take-home supply of methadone to a patient assigned to long-term detoxification treatment. The agencies recognize that many programs offering long-term treatment are not in operation 7 days a week and that it may not be a feasible for a patient to come to the program facility 7 days a week over a period of 6 months. Also, the agencies believe that there may be some patients receiving long-term treatment who exhibit greater responsibility in handling methadone than patients receiving short-term detoxification treatment. FDA and NIDA are especially interested in receiving comments on this aspect of the proposed regulation (see proposed § 291.505(d)(8)).

3. A few comments suggested that all Federal involvement concerning methadone should end because States are already responsible for licensing, monitoring, and implementing the prescribing of methadone and because each State could regulate the area according to its own specific needs.

States are responsible for many of the aspects of regulating the use of methadone. The involvement of Federal agencies in the regulation of the use of methadone in the treatment of addicts, however, is required by NATA. Congress enacted NATA to ensure that only bona fide narcotic addicts are admitted to maintenance or detoxification treatment and that they receive quality care. Another reason for NATA was to limit the potential for illicit diversion of addictive substances used in the treatment of narcotic addition. NATA also sets out minimum standards for the treatment of narcotic addicts with methadone.

4. One comment called for the elimination of the minimum staffing ratio of 1 counselor to 50 patients (current § 291.505(d)(7)(iii)) because, although patients recently admitted to treatment may need counseling, those patients who have been in treatment for some time (e.g., those who have made progress in rehabilitation, working, or in school) need less intensive counseling. Another comment wanted the patient to counselor ratio changed from 1 to 50 to 1 to 30 so that effective clinical intervention can take place.

While the agencies believe that a 1 to 50 counselor/patient ratio is generally reasonable, the agencies have decided that there may be circumstances in which greater flexibility is required. For example, some methadone treatment programs that have been in operation a number of years may have a considerable number of patients who have been treated for 3 years or more and have made considerable progress in rehabilitation; in such circumstances, the need for counselors could be much less than for programs with proportionately greater numbers of "new" patients. The agencies have, therefore, decided to eliminate the requirement for a minimum of 1 counselor for every 50 patients, and to rely on the principles expressed in proposed § 291.505(d)(5) to provide flexibility and an adequate framework for determining staffing requirements. This would not prohibit a finding that the circumstances of a particular program required a counselor to patient ratio as low as the 1 to 30 sought by 1 comment.

5. One comment asked that the take-home requirements be revised to allow a program the flexibility to provide for more than a 2-week supply of medication for a patient on maintenance treatment who desires to or must travel. Another comment requested that the take-home requirements be revised to provide the treating physician with the discretion to determine how much take-home medication a program can provide. Another comment asked that the take-home requirements be liberalized to reduce the required number of visits to or contacts with the clinic or program. The comment reasoned that such a modification would

help reduce the crowding at programs and the opportunities for illicit dealings. Another comment suggested that the limit of 1-day take-home for patients during the first 3 months of treatment be removed because it was inconvenient for some patients, especially those living far away from their programs. Other comments asked that the regulation be revised to permit programs to limit or restrict take-home medication to a 2-day supply.

In adopting the requirements in the current regulation concerning take-home medication, the agencies recognized that regular attendance at a treatment program may not always be compatible with a patient's employment, family responsibilities, and other obligations. At the same time, however, the agencies recognized that illicit diversion may occur when patients take medication from the treatment program for self administration. FDA and NIDA believe that the current requirements strike a necessary balance between the risk of diversion and the benefit of enhancing a patient's progress toward rehabilitation and, therefore, should not be substantively revised. The comments that requested stricter take-home rules overlook the fact that the methadone regulation does not mandate that take-home privileges be made available. In fact, the regulation provides that any treatment program may choose not to allow take-home medication at all or may choose to impose stricter requirements than the minimum Federal requirements contained in the regulation.

6. One comment requested the revocation of all the requirements that may limit a program's capacity to treat patients, e.g., minimum staffing requirements.

As explained in comment 4 above, the minimum staffing requirement of 1 counselor for every 50 patients is proposed to be eliminated. In addition, the agencies are proposing to delete the requirement at current § 291.505(b)(2)(i) that the number of patients treated at a methadone treatment medication unit may not exceed 30 patients. The agencies believe that the requirements for program approval by the State authority and the Drug Enforcement Administration are sufficient to ensure that medication units are of appropriate size.

7. Comments requested the deletion of the 2-year limitation in current § 291.505(d)(3)(iii)(C) concerning the 2-year time limit on the readmission of previously treated patients without evidence of current physiologic addiction.

As is discussed above, Congress enacted NATA to ensure, among other things, that only narcotic addicts are admitted to maintenance or detoxification treatment. FDA and NIDA believe that some minimum admission criteria are necessary to ensure that only those who need treatment are admitted. The 2-year limit on readmission is necessary and reasonable because over 90 percent of patients who return to drug use after detoxification do so within the first 2 years (see 45 FR 62697; September 19, 1980).

8. One comment stated that "longtime, well-established" patients do not need many, if any, rehabilitation services, do not need treatment plans, and do not need treatment plan evaluations or updates. Another comment added that the regulation should be revised to require counseling for patients who have been in treatment for 2 years or more only on an as needed schedule. Other comments stated, however, that the treatment plan requirements including periodic evaluations must be kept as regulations because they are the key to successful treatment.

Rehabilitation services included in treatment plans and treatment plan evaluations and updates are important to successful treatment because they are part of the remedial approach that will be used to address the medical, psychosocial, economic, legal, and other problems a patient may have. The agencies agree that newly admitted patients are more likely to need and benefit from these types of requirements than patients who have been in treatment for some time and who show good progress towards rehabilitation. Therefore, the agencies are proposing to revise these requirements to allow treatment programs to focus the resources for these types of services on those patients who need them the most. The proposed changes make clear that these services would be discretionary for patients either who are not ready for such services or who show substantial progress in rehabilitation, i.e., the program physician can decide if the services are needed for such patients (see proposed § 291.505(d)(3)(v)(D) and current § 291.505(d)(6)(v)(B)).

9. Two comments asked that the minimum urine testing requirements be eliminated and left entirely to the physicians' discretion. Another comment suggested that all the urine testing requirements be made guidelines. Another comment suggested that the urine testing requirements be revised so that only the type of drugs prominent in the particular program area be tested for, i.e., that not every program be required to test patient's urine for drugs that may not affect a patient's treatment progress. Other comments stated that urine testing was one area that should not be converted to guidelines because it would have negative consequences on treatment programs, and that more, not less, urine testing should be required.

An objective evaluation (by someone other than the program staff or the patient) is necessary to determine whether there is diversion of take-home medication and whether there is risk of the patient suffering a drug overdose. The agencies also believe that it is important to the patient as well as to the program to require a minimum drug-screening testing because it is an important way to objectively monitor and assess a patient's clinical course. Monitoring is especially important because certain patient benefits (e.g., take-home privileges and reduced attendance at programs) are determined in large part by a patient's progress in rehabilitation, including the absence of diversion and abuse by the patient.

Therefore, FDA and NIDA are not proposing any changes in the existing regulation concerning the initial drug-screening testing requirements and the existing requirements for a monthly test for 6-day take-home patients. The agencies do propose, however, to revise current § 291.505(d)(4) to allow for different testing or analyses to meet these minimum requirements, e.g., blood testing. FDA and NIDA welcome comments suggesting other appropriate objective analyses methods. FDA and NIDA also recommend that programs require more analyses if they deem them necessary or useful. Finally, the agencies believe that each program must test for opiates, methadone, cocaine, amphetamines, and barbiturates. The agencies are unaware of any data that would merit deleting the testing requirement for any of these substances. Therefore, the agencies have retained the requirement in the proposed regulation. The requirement, however, does not preclude the testing for other substances if the testing is desired by the program physician or required by the State authority (see proposed § 291.505(d)(2)).

10. One comment requested the agencies to amend the regulations to require or recommend "ongoing psychotherapy."

Any treatment program or State authority in its discretion may require "ongoing psychotherapy." FDA and NIDA do not believe it is necessary to require it for all patients in all programs

and are, therefore, not proposing to modify the regulation as requested.

11. One comment suggested eliminating the requirement that methadone be dispensed in liquid form only. The comment stated that no diversion would result if this were done.

FDA and NIDA believe that diversion would increase if methadone were dispensed in nonliquid form, e.g., tablets. Tablets would be very easy to hide, hard to detect, and, thus, could easily be diverted.

12. One comment suggested that the Federal regulation be made stricter concerning screening of applicants for program sponsorship.

FDA and NIDA do not conduct investigations concerning the character of applicants who apply to sponsor a narcotic treatment program. The State and local authorities are in a better position to have knowledge of the character of the sponsor. However, the application submitted by a sponsor to FDA is scrutinized closely to ensure that appropriate protocol, facilities, personnel, including physicians, nurses, and counselors, are part of the program. FDA grants program approval only after receipt of the recommendations for approval from (1) the State methadone authority that the applicant meets the State's standards and (2) the Drug Enforcement Administration (DEA) that the applicant meets DEA's security and recordkeeping requirements. Therefore, FDA and NIDA believe that it is not necessary to propose the requirements suggested in the comment.

13. One comment suggested that the current regulation is too flexible and that, therefore, the standards from the Joint Commission of Hospital Accreditation Consolidated Standards for Alcoholism and Drug Abuse Facilities (Joint Commission) should be adopted.

FDA and NIDA are proposing changes to the current methadone regulation to increase, not decrease, the flexibility of the clinical standards. Furthermore, FDA and NIDA believe that the Joint Commission's standards are inappropriate for the methadone regulation. For example, the Joint Commission's standards are not specific to drug abuse, i.e., they are intended also to apply to alcohol abuse. The agencies believe, therefore, that Federal regulation provides more meaningful guidance concerning the appropriate methods of professional practice for medical treatment of narcotic addiction than will the Joint Commission's standards.

14. One comment suggested that the regulation be revised to provide that no Federal inspection of treatment programs should be conducted if State inspections are conducted and conducted well.

The regulation does not need to be revised to implement this suggestion. The regulation has not prevented FDA from entering into contracts with States to conduct inspections of treatment programs. Several such contracts were in effect between 1975 and 1981. Under these contracts, State agencies inspected treatment programs to determine compliance with both State and Federal requirements. No separate or additional FDA inspection was necessary after a State inspection, conducted pursuant to contract, resulted in the finding that a program was operating in compliance with Federal requirements.

15. One comment said that the requirement for keeping records of batch or code marks is unnecessary and should be eliminated.

The requirement for keeping batch and code mark records (current § 291.505(d)(15)(ii)) is in keeping with the more extensive recordkeeping and reporting regulations of DEA regarding security of drug supplies. See, for example, 21 CFR 1304.28 and 1304.29. The requirements provide important checks on the illicit diversion of stocks of narcotic drugs. Batch and code mark records are also important in carrying out efficient recalls of defective drug stocks. The records are also invaluable in those rare, but critical situations where patients who have received drugs from a particular batch or drug must be identified.

16. One comment requested that the regulation be revised to permit the administration of more than 100 milligrams (mg) of methadone to patients who need it.

The regulation does not require preapproval of the administration of doses of more than 100 mg of methadone, but it does require, at current § 291.505(d)(8)(i)(*d*), notification to FDA and the State authority within 72 hours when a patient is administered such a dose. The proposed regulation deletes this notification requirement because the agencies believe that the purposes of the regulation are adequately achieved by the provision that a licensed physician shall ensure that a daily dose greater than 100 mg is justified in the patient's record. The regulation also provides that the program physician who administers a dose of more than 100 mg of methadone must ensure that the dose is justified. An additional provision (current § 291.505(a)(8)(v)(D)) requires that patients receiving more than 100 mg of methadone must be kept under regular observation. These requirements help protect against the illicit diversion of methadone and also ensure that patients will be observed for signs of overdose.

17. One comment said that the reporting requirements concerning (1) patient deaths and (2) newborns of patients showing adverse reactions are not clear. The comment recommended eliminating the requirements unless more specific reporting standards are developed and more in depth analyses are required in evaluating the data received.

Because of the novelty involved in using an addictive drug to treat addiction, FDA and NIDA in promulgating the regulations required that specific information concerning adverse reactions to methadone be reported in addition to the adverse reaction information already specifically required under § 314.80 (21 CFR 314.80). These specific reporting requirements are contained in current § 291.505(d)(13)(i) and (ii). In light of the experience the agencies have gained over the years in this area, the agencies now believe that there is no longer a need for the special reporting requirements and are proposing to delete them from the regulation.

18. One comment suggested that the regulation be revised to include a definition (and presumably specific regulations) for "iatrogenic treatment."

Patients with iatrogenic addiction (medically related addiction) are not excluded from treatment by the existing regulatory scheme. Any practitioner who wishes to treat an iatrogenically addicted patient may apply for a one-patient program approval. Also, a treatment program may, on a case-by-case basis, follow the exemption procedure under current § 291.505(d)(12) to treat such patients separately. The agencies, therefore, do not believe it is necessary to issue any additional regulations for such patients.

19. One comment requested that the regulation include specific criteria for dealing with maintenance patients who have been arrested and are expected to be incarcerated. The comment suggested that the regulation require that patients be detoxified prior to trial, and if that is not possible, to require that patients be detoxified during any subsequent incarceration (assuming incarceration is to exceed 3 weeks). The comment mentioned that the American Medical Association in its "Standards for Health Services in Jails" has specified suitable detoxification schedules.

FDA and NIDA believe that the issues raised by this comment are best dealt

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with by the State and/or local jurisdictions involved.

20. One comment suggested that new treatment programs not be approved by FDA and that existing programs not be allowed to expand unless the new program can show that there is a need in the area for additional treatment facilities.

The State and local entities are in the best position to determine whether new programs or expanded treatment program facilities are needed in a given jurisdiction. The agencies do not believe that it is appropriate to prescribe the extent to which State and local entities should document the need for additional treatment facilities.

21. One comment suggested that all Federal regulations dealing with methadone be placed in one document so that it would be easy for an affected party to comply.

All of the regulations issued jointly by FDA and NIDA on drugs used in the treatment of narcotic addiction are included in 21 CFR Part 291. In addition, DEA's regulations in this area are included in 21 CFR Part 1300 to end. Copies of these volumes are available in most major libraries or may be obtained from the Government Printing Office, Washington, DC 20402.

22. One comment requested that the regulation be revised to require that a patient be ineligible for treatment if the patient misses appointments for 1 month without notifying the program. The current regulation (§ 291.505(d)(15)(iii)) provides for a 2-week period, which the comment believes is too strict.

In FDA's and NIDA's view, the current requirement is not too strict. A patient who misses appointments may be demonstrating that he or she does not need his or her usual stabilization dose, is abusing other narcotic drugs, or is not committed to treatment. Therefore, upon return to the program, the patient is considered to be readmitted and must be stabilized to protect against the danger of overmedication and the possibility of illicit drug diversion.

23. One comment wanted the word "physician" changed throughout the regulations to "program director" or a similar phrase except where purely medical areas and decisions are involved. The reason for the request, the comment said, is to make it clear that the person who is required to monitor, evaluate, and be responsible for the services of the entire methadone treatment program need not be a physician.

Current § 291.505(c)(1) already states that the program sponsor is responsible for the operation of a treatment program and that the sponsor need not be a licensed practitioner (physician). A medical director, however, licensed to practice medicine in the jurisdiction in which the program is located, must direct the medical affairs of the program (see current § 291.505(d)(6)(ii)). Also, the agencies are unaware of the use of the word "physician" in places other than where medical areas or decisions are involved. Accordingly, the agencies do not believe that the requested revisions are necessary.

24. A comment submitted by two treatment programs objected to the requirement that the program physician review and countersign the patient's treatment plan at least annually and suggested that the supervisory counselor could conduct the annual review and also countersign the plan. Another comment stated, however, that the requirement should remain unchanged.

As discussed above, FDA and NIDA believe that counseling, rehabilitative services, and treatment plans, including periodic treatment plan evaluations, are important tools that treatment programs need to use to help ensure quality patient care. The agencies also believe, however, that these tools may be generally more beneficial to newer patients than to "older" patients who have demonstrated good, steady, and substantial progress towards rehabilitation. (See discussion under comment 8 above.) Thus, FDA and NIDA are proposing to revise current §§ 291.505(d) (5)(vi) and (6)(ii)(E) so that it is clear that the supervisory counselor—instead of a program physician—may conduct the annual review and sign the treatment plan but only for certain qualified patients who have been in treatment for 3 years or more. For patients in treatment for less than 3 years, no rule changes are proposed. The agencies believe that during the first 3 years of maintenance treatment it is important to have the treating physician closely involved in the treatment plan procedures. See proposed §§ 291.505(d) (3)(v) and (4)(ii)(E).

25. One comment suggested the establishment of a pilot program to determine whether maintenance treatment should be expanded beyond formal treatment programs, i.e., to allow physicians in the private practice setting to offer maintenance treatment.

Although approximately 95 percent of applications for narcotic treatment programs involve fairly large patient populations, the current regulation already provides for much smaller programs, i.e., one or two patient programs in a private practice setting. Because smaller "programs" already exist under the current regulation, there is no need to establish new or additional Federal regulations for a pilot program as requested.

26. The proposed rule contains editorial revisions to the current regulation. These revisions include moving sections or subsections of the existing regulation that are definitional in nature into the definition section of the regulation (current § 291.505(a)) and deleting the word "methadone" where it is not necessary and adding the word "narcotic" in its place where appropriate, e.g., methadone treatment program would become narcotic treatment program and methadone maintenance treatment would become maintenance treatment. These minor changes are not substantive and would not affect the substantive requirements of the existing rule. Simply stated, the changes would make the existing regulation clearer and more easily understood.

27. The proposed rule eliminates the requirement at current § 291.505(c)(4)(iii) for submission of Form FDA–2634 "Annual Report for Treatment Program Using Methadone." FDA is proposing to eliminate this requirement because data from the report are not routinely utilized for any specific purpose and are considered to be of very little value, particularly as compared with the burden of preparing, assembling, and reviewing the data. FDA believes that the information collected on the form has no practical utility, as the term is used in the Paperwork Reduction Act of 1980, and that continued use of the form is thus not allowable under that Act.

Environmental Impact

The agency has determined under 21 CFR 25.24(a) (8) and (11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency finds that the proposed rule is not a major rule inasmuch as the revisions proposed would not result in any increase in cost (significant or otherwise) to narcotic treatment programs or to the State and local authorities that would enforce the proposed rule. Moreover, this proposed rule would provide treatment programs with more flexibility than exists under

the current regulation and thus allow such programs alternative and presumably more cost efficient means to comply with the proposed requirements. For these reasons, therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 291.505 of this proposed rule contains collection of information requirements. In addition, this proposed rule would delete the information collection requirement at current § 291.505(c)(4)(iii) for submission of Form FDA-2634 "Annual Report for Treatment Program Using Methadone." As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

Request for Comments

Interested persons may, on or before December 1, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 291

Health professions, Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Narcotic Addict Treatment Act of 1974, and applicable delegations of authority thereunder, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 291 be amended as follows:

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

1. The authority citation for Part 291 is revised to read as follows:

Authority: Secs. 505, 701(a), 52 Stat. 1052–1053 as amended, 1055 (21 U.S.C. 355, 371(a)); sec. 303(a), 70 Stat. 929 as amended (42 U.S.C. 242a(a)); sec. 4, 84 Stat. 1241 (42 U.S.C. 257a); sec. 3, 88 Stat. 124–125 (21 U.S.C. 823(g)); 21 CFR 5.10.

2. By revising § 291.505 to read as follows:

§ 291.505 Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

(a) *Definitions.* As used in this part:

(1) "Detoxification treatment" means the dispensing of a narcotic drug in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period. There are two types of detoxification treatment: short-term detoxification treatment and long-term detoxification treatment.

(i) "Short-term detoxification treatment" is for a period not in excess of 30 days.

(ii) "Long-term detoxification treatment" is for a period more than 30 days but not in excess of 180 days.

(2) "Maintenance treatment" means the dispensing of a narcotic drug in the treatment of an individual for dependence on heroin or other morphine-like drugs.

(3) A "medical director" is a physician, licensed to practice medicine in the jurisdiction in which the program is located, who assumes responsibility for the administration of all medical services performed by the narcotic treatment program including ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding the medical treatment of narcotic addiction with a narcotic drug.

(4) A "medication unit" is a facility established as part of but geographically dispersed, i.e., separate from a narcotic treatment program from which licensed private practitioners and community pharmacists—

(i) Are permitted to administer and dispense a narcotic drug and

(ii) Are authorized to conduct drug testing or analysis for narcotic drugs.

(5) "Narcotic dependent" means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

(6) A "narcotic treatment program" is an organization (or a person, including a private physician) that administers or dispenses a narcotic drug to a narcotic addict for maintenance or detoxification treatment, provides, when appropriate or necessary, a comprehensive range of medical and rehabilitative services, is approved by the State authority and the Food and Drug Administration, and that is registered with the Drug Enforcement Administration to use a narcotic drug for the treatment of narcotic addiction.

(7) A "program sponsor" is a person (or representative of an organization) who is responsible for the operation of a narcotic treatment program and who assumes responsibility for all its employees including any practitioners, agents, or other persons providing services at the program (including its medication units).

(8) The term "services," as used in this part, includes medical evaluations, counseling, rehabilitative and other social programs (e.g., vocational and educational guidance, employment placement), which will help the patient become a productive member of society.

(9) A "State authority" is the agency designated by the Governor or other appropriate official to exercise the responsibility and authority within the State or Territory for governing the treatment of narcotic addiction with a narcotic drug.

(b) *Organizational structure and approval requirements*—(1) *Organizational structure.* (i) A narcotic treatment program may be an independent organization or part of a centralized organization. For example, if a centralized organizational structure consists of a primary facility and other outpatient facilities, all of which conduct initial evaluation of patients and administer or dispense medication, the primary facility and each outpatient facility are separate programs, even though some services (e.g., the same hospital or rehabilitative services) are shared.

(ii) The program sponsor shall submit to the Food and Drug Administration and the State authority a description of the organizational structure of the program, the name of the persons responsible for the program, the address of the program, and the responsibilities of each facility or medication unit. The sources of funding for each program shall be listed and the name and

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address of each governmental agency providing funding shall be stated.

(iii) Where two or more programs share a central administration (e.g., a city or State-wide organization), the person responsible for the organization (administrator or program sponsor) is required to be listed as the program sponsor for each separate participating program. An individual program shall indicate its participation in the central organization at the time of its application. The administrator or sponsor may fulfill all recordkeeping and reporting requirements for these programs, but each program must continue to receive separate approval.

(iv) One physician may assume primary medical responsibility for more than one program and be listed as medical director. If a physician assumes medical responsibility for more than one program, a statement documenting the feasibility of the arrangement is required to be attached to the application.

(2)(i) *Program approval.* Before a narcotic treatment program may be lawfully operated, the program, whether an outpatient facility or a private practitioner, shall submit the applications specified in this section simultaneously to the Food and Drug Administration and the State authority and must receive the approval of both, except as provided for in paragraph (h)(5) of this section. Before granting approval, the Food and Drug Administration will consult with the Drug Enforcement Administration, Department of Justice, to ascertain if the program is in compliance with Federal controlled substances laws. Each physical location within any program is required to be identified and listed in the approval application. At the time of application for approval, the program sponsor shall indicate whether medication will be administered or dispensed at the facility. Before medication may be administered or dispensed at a location not previously approved for this purpose, the program is required to obtain approval from FDA and the State agency. However, no approval is necessary, but notification is required when a facility in which medication is administered or dispensed is deleted by a program; the program shall notify the Food and Drug Administration and the State authority within 3 weeks of the deletion. Similarly, addition or deletion of facilities which provide services other than administering or dispensing medication is also permitted without approval, but notification must be made within 3 weeks to the Food and Drug Administration and the State authority about the addition and/or deletion.

(ii) *Exemption of Federal programs.* The provisions of this section requiring approval (or permitting disapproval or revocation of approval) by the State authority, compliance with requirements imposed by State law, or the submission of applications or reports required by the State authority do not apply to programs operated directly by the Veterans' Administration or any other department or agency of the United States. Federal agencies operating narcotic treatment programs have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State respresentatives to visit Federal narcotic treatment programs and by furnishing a copy of Federal reports to the State authority, including the reports required under this section.

(iii) *Services.* Each narcotic treatment program shall provide medical and rehabilitative services and programs. (See paragraph (d)(4) of this section.) These services should normally be made available at the primary facility, but the program sponsor may enter into a formal documented agreement with private or public agencies, organizations, or institutions for these services, if they are available elsewhere. The program sponsor, in any event, must be able to document that medical and rehabilitative services are fully available to patients.

(iv) *Prohibition against unapproved use of narcotic drugs.* No prescribing, administering, or dispensing of a narcotic drug for the treatment of narcotic addiction may occur without prior approval by the Food and Drug Administration and the State authority, except as provided for in paragraph (h)(5) of this section, unless specifically exempted by this section.

(v) *Approved narcotic drugs for use in treatment programs.* The following narcotic drug has been approved for use in the treatment of narcotic addiction: Methadone.

(3)(i) *Medication unit.* A program may establish a medication unit to facilitate the needs of patients who are stabilized on an optimal dosage level. To lawfully operate a medication unit, the program shall, for each separate unit, obtain approval from both the Food and Drug Administration and the State authority, except as provided for in paragraph (h)(5) of this section. The Food and Drug Administration, in determining whether to approve a medication unit, will consider the distribution of units within a particular geographic area. Any new medication unit is required to receive approval before it may lawfully commence operation.

(ii) *Narcotic drug supply.* A medication unit must receive its supply of the narcotic drug directly from the stocks of the primary facility. Only persons permitted to administer or dispense the drug or security personnel licensed or otherwise authorized by State law to do so may deliver the drug to a medication unit.

(iii) *Revocation of approval.* If the Food and Drug Administration revokes the primary program's approval, the approval for any medication unit associated with the program is deemed to be automatically revoked. The Food and Drug Administration's revocation of the approval of a particular medication unit, will not, in and of itself, affect the approval of the primary program.

(iv) *Referral.* The patient shall be stabilized at his or her optimal dosage level before he or she may be referred to a medication unit. Since the medication unit does not provide a range of services, the program sponsor shall determine that the patient to be referred is not in need of frequent counseling, rehabilitative, and other services which are only available at the primary program facility.

(v) *Responsibility for patient.* After a patient is referred to a medication unit, the program sponsor retains continuing responsibility for the patient's care. The program sponsor shall ensure that the patient receives needed medical and rehabilitative services at the primary facility.

(c) *Conditions for approval of the use of a narcotic drug in a treatment program*—(1) *Applicants.* An individual listed as program sponsor for a treatment program using a narcotic drug need not personally be a licensed practitioner but shall employ a licensed physician for the position of medical director. Persons responsible for administering or dispensing the narcotic drug shall be practitioners as defined by section 102(20) of the Controlled Substances Act (21 U.S.C. 802(20)) licensed to practice by the State in which the program is to be established.

(2)(i) *Assent to regulation.* A person who sponsors a narcotic treatment program, and any persons responsible for a particular program, shall agree to adhere to all the rules, directives, and procedures, set forth in this section, and any regulation regarding the use of narcotic drugs in the treatment of narcotic addiction which may be promulgated in the future. The program sponsor has responsibility for all personnel and individuals providing services, who work in the program at the

primary facility or at other facilities or medication units. The program sponsors shall agree to inform all personnel and individuals providing services of the provisions of this section and to monitor their activities to assure compliance with the provisions.

(ii) The Food and Drug Administration and the State authority are required to be notified within 3 weeks of any replacement of the program sponsor or medical director. Activities in violation of this regulation may give rise to the sanctions set forth in paragraph (i) of this section.

(3) *Description of facilities.* Only program site(s) approved by Federal, State, and local authorities may treat narcotic addicts with a narcotic drug. To obtain program approval, the applicant shall demonstrate that he or she will have access to adequate physical facilities to provide all necessary services. A program must have ready access to a comprehensive range of medical and rehabilitative services so that the services may be provided when necessary. The name, address, and description of each hospital, institution, clinical laboratory, or other facility available to provide the necessary services are required to be included in the application submitted to the Food and Drug Administration and the State authority. The application is also required to include the name and address of each medication unit.

(4) *Submission of proper applications.* The following applications shall be filed simultaneously with both the Food and Drug Administration and the State authority:

(i) Form FDA–2632 "Application of Approval of Use of a Narcotic Drug in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by the program sponsor and submitted in duplicate to the Food and Drug Administration and the State authority.

(ii) Form FDA–2633 "Medical Responsibility Statement for Use of a Narcotic Drug in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by each licensed physician authorized to administer or dispense narcotic drugs and submitted in duplicate to the Food and Drug Administration and the State authority. The names of any other persons licensed by law to administer or dispense narcotic drugs working in the program shall be listed even if they are not at present responsible for administering or dispensing the drug.

(5) *State and Federal approval, denial, and revocation of approval of narcotic treatment programs.* (i) The Food and Drug Administration may grant approval to a program only after FDA has received notification from both the State authority and the Drug Enforcement Administration that the program conforms to all pertinent State and Federal requirements.

(ii) The Food and Drug Administration will revoke the approval of a narcotic treatment program if so requested by the State authority or the Drug Enforcement Administration. If approval of a program is denied or revoked by the State or the Drug Enforcement Administration, the program shall have a right to appeal to the Commissioner, as provided for in paragraph (h)(5) of this section.

(iii) No shipment of a narcotic drug may lawfully be made to any program which does not have current approval from the Food and Drug Administration. Within 60 days after receipt of the application from the program sponsor for approval, the Food and Drug Administration will notify the sponsor whether the application is approved or denied.

(d)(1) *Minimum standards for admission*—(i) *History of addiction and current physiologic dependence.* (A) A person may be admitted as a patient for a maintenance program only if a program physician determines that the person is currently physiologically dependent upon a narcotic drug and became physiologically dependent at least 1 year before admission for maintenance treatment. A 1-year history of addiction means that an applicant for admission to a maintenance program was physiologically addicted to a narcotic at a time at least 1 year before admission to a program and was addicted, continuously or episodically, for most of the year immediately before admission to a program. In the case of a person for whom the exact date on which physiological addiction began cannot be ascertained, the admitting program physician may, in his or her reasonable clinical judgment, admit the person to maintenance treatment, if from the evidence presented, observed, and recorded in the patient's record, it is reasonable to conclude that there was physiologic dependence at a time approximately 1 year before admission.

(B) The program physician or an appropriately trained staff member designated and supervised by the physician shall record in the patient's record the criteria used to determine the patient's current physiologic dependence and history of addiction. In the latter circumstance, the program physician shall review, date, and countersign the supervised staff member's evaluation to demonstrate his or her agreement with the evaluation. The program physician shall make the final determination concerning a patient's physiologic dependence and history of addiction. The program physician shall sign, date, and record a statement that he or she has reviewed all the documented evidence to support a 1-year history of addiction and the current physiologic dependence and that in his or her reasonable clinical judgment the patient fulfills the requirements for admission to maintenance treatment. The program physician shall complete and record the statement before the program administers any methadone to the patient.

(ii) *Voluntary participation, informed consent.* The person responsible for the program shall ensure that: A patient voluntarily chooses to participate in a program; all relevant facts concerning the use of the narcotic drug used by the program are clearly and adequately explained to the patient; all patients, with full knowledge and understanding of its contents, sign the "Consent to Methadone Treatment" Form (FDA–2635) (see paragraph (k) of this section); a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) sign for patients under the age of 18 the second part of Form FDA–2635 "Consent to Methadone Treatment."

(iii) *Exceptions to minimum admission criteria*—(A) *Penal or chronic care.* A person who has resided in a penal or chronic care institution for 1 month or longer may be admitted to maintenance treatment within 14 days before release or discharge or within 6 months after release from such an institution without documented evidence to support findings of physiological dependence provided the person would have been eligible for admission before he or she was incarcerated or institutionalized and, in the reasonable clinical judgment of a program physician, treatment is medically justified. Documented evidence of the prior residence in a penal or chronic care institution and evidence of all other findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional

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within 72 hours of administration of the initial dose to the patient.

(B) *Pregnant patients.* (*1*) Pregnant patients, regardless of age, who have had a documented narcotic dependency in the past and who may be in direct jeopardy of returning to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a maintenance regimen. For such patients, evidence of current physiological dependence on narcotic drugs is not needed if a program physician certifies the pregnancy and, in his or her reasonable clinical judgment, finds treatment to be medically justified. Evidence of all findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. Pregnant patients are required to be given the opportunity for prenatal care either by the program or by referral to appropriate health care providers.

(*2*) If a program cannot provide direct prenatal care for pregnant patients in treatment, the program shall establish a system for informing the patients of the publicly or privately funded prenatal care opportunities available. If there are no publicly funded prenatal referral opportunities and the program cannot provide such services or the patient cannot afford them or refuses them, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as part of its counseling service.

(*3*) Counseling records and/or other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the patient is referred for prenatal services, the physician to whom she is referred is required to be notified that she is in maintenance treatment, provided that notification is in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct treatment or appropriate referral for treatment, the treating program physician should consider using informed consent procedures, e.g., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician, consistent with the confidentiality regulations, shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. If the program physician does not receive a response to the request, he or she shall document in the record that such a request was made.

(*4*) Within 3 months after termination of pregnancy, the program physician shall enter an evaluation of the patient's treatment state into her record and state whether she should remain in the maintenance program or be detoxified.

(*5*) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if treatment is deemed necessary. The program sponsor shall ensure that each female patient is fully informed of the possible risks to her or to her unborn child from the use of a narcotic drug administered or dispensed by the program.

(C) *Previously treated patients.* Under certain circumstances a patient who has been treated and later voluntarily detoxified from maintenance treatment may be readmitted to maintenance treatment, without evidence to support findings of current physiologic dependence, up to 2 years after discharge if the program attended is able to document prior narcotic drug maintenance treatment of 6 months or more, and the admitting program physician, in his or her reasonable clinical judgment, finds readmission to maintenance treatment to be medically justified. For patients meeting these criteria, the quantity of take-home medication will be determined in the reasonable clinical judgment of the program physician, but in no case may the quantity of take-home medication be greater than would have been allowed at the time the patient voluntarily terminated previous treatment. The admitting program physician or a program employee under supervision of the admitting program physician must enter in the patient's record documented evidence of the patient's prior treatment and evidence of all decisions and criteria used relating to the admission of the patient and the quantity of take-home medication permitted. The admitting program physician shall date and sign these entries in the patient's record or review the health-care professional's entries therein before the program administers any medication to the patient. In the latter case, the admitting program physician shall date and sign the entries in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(iv) *Special limitation; treatment of patients under 18 years of age.* A person under 18 is required to have had two documented attempts at short-term detoxification or drug-free treatment to be eligible for maintenance treatment. A 1-week waiting period is required after such a detoxification attempt, however, before an attempt is repeated. The program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. No person under 18 years of age may be admitted to a maintenance treatment program unless a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) completes and signs consent form, Form FDA–2635 "Consent to Methadone Treatment."

(v) *Denial of admission.* If in the reasonable clinical judgment of the medical director a particular patient would not benefit from treatment with a narcotic drug, the patient may be refused such treatment even if the patient meets the admission standards.

(2) *Minimum testing or analysis for drugs: Uses and frequency.* (i) The person(s) responsible for a program shall ensure that: An initial drug-screening test or analysis is completed for each prospective patient; at least eight additional random tests or analyses are performed on each patient during the first year in maintenance treatment; and at least quarterly random tests or analyses are performed on each patient in maintenance treatment for more than 1 year, except that a random test or analysis is performed monthly on each patient who receives a 6-day supply of take-home medication. When such test or analysis is done for each patient it must be done in a manner that minimizes falsification. Each test or analysis must be analyzed for opiates, methadone, amphetamines, cocaine, barbiturates, as well as other drugs as indicated. Any laboratory that performs the testing required under these regulations shall be in compliance with all applicable Federal proficiency testing and licensing standards and all applicable State standards. Any time a program desires to change a laboratory used for such testing or analysis., the program shall approve the change with the Food and Drug Administration.

(ii) The person responsible for a program shall ensure that test results are not used as the sole criterion to force a patient out of treatment but are used as a guide to change treatment approaches. The person responsible for a program shall also ensure that when test results are used, presumptive laboratory results are distinguished from results that are definitive.

(3) *Patient evaluation; minimum admission and periodic requirements*—(i) *Minimum contents of medical evaluation.* Each patient is required to have a medical evaluation by a program physician or an authorized health-care professional under the supervision of a program physician on admission to a program. At a minimum, this evaluation is required to consist of a medical history which includes the required history of narcotic dependence, evidence of current physiologic dependence unless excepted by the regulations, and a physical examination, and includes the following laboratory examinations: Serological test for syphilis, a tuberculin skin test, and a test or analysis for drug determination. The physical examination is required to consist of an investigation of the organ systems for possibilities of infectious disease, pulmonary, liver, and cardiac abnormalities, and dermatologic sequelae of addiction. In addition, the physical examination is required to include a determination of the patient's vital signs (temperature, pulse, and blood pressure and respiratory rate); an examination of the patient's general appearance, head, ears, eyes, nose, throat (thyroid), chest (including heart, lungs, and breasts), abdomen, extremities, skin, and neurological assessment; and the program physician's overall impression of the patient.

(ii) *Recordings of findings.* The admitting program physician or an appropriately trained health-care professional supervised by the admitting program physician shall record in the patient's record all findings from the admission medical evaluation. In each case the admitting program physician shall date and sign these entries, or date, review, and countersign these recordings in the patient's record to signify his or her review of and concurrence with the history and physical findings.

(iii) *Admission evaluation.* (A) Each patient seeking admission or readmission for treatment services is required to be interviewed by a well-trained program counselor, qualified by virtue of education, training, or experience to assess the psychological and sociological background of drug abusers, to determine the appropriate treatment plan for the patient. To determine the most appropriate treatment plan for a patient, the interviewer shall obtain and document in the patient's record the patient's history.

(B) A patient's history includes information relating to his or her educational and vocational achievements. If a patient has no such history, i.e., he or she has no formal education or has never had an occupation, this requirement is met by writing this information in the patient's history.

(iv) *Initial treatment plan.* (A)(*1*) The initial treatment plan is required to contain a statement that outlines realistic short-term treatment goals which are mutually acceptable to the patient and the program. The initial treatment plan is also required to spell out the behavioral tasks a patient must perform to complete each short-term goal and the medical, psychosocial, economic, legal, or other supportive services that a patient needs immediately. The plan is also required to identify the frequency with which these services are likely to be provided.

(*2*) A primary counselor is one who is assigned by the program to develop, implement, and evaluate the patient's initial and periodic treatment plan and to monitor a patient's progress in treatment. The primary counselor shall enter in the patient's record the counselor's name, the contents of a patient's initial assessment, and the initial treatment plan. The primary counselor shall make these entries immediately after the patient is stabilized on a dose or within 4 weeks after admission, whichever is sooner.

(B) It is recognized that patients need varying degrees of treatment and rehabilitative services which are often dependent on or limited by a number of variables, e.g., patient resources, available program, and community services. It is not the intent of this regulation to prescribe a particular treatment and rehabilitative service or the frequency at which a service should be offered.

(C) The program supervisory counselor or other appropriate program personnel so designated by the program physician shall review and countersign all the information and findings required by this paragraph (d)(3)(iv) to be recorded in each patient's record.

(v) *Periodic treatment plan evaluation.* (A) The program physician or the primary counselor shall review, reevaluate, and alter where necessary each patient's treatment plan at least once each 90 days during the first year of treatment, and then at least twice a year after the first year of continuous treatment.

(B) The program physician shall ensure that the periodic treatment plan becomes part of each patient's record and that it is signed and dated in the patient's record by the primary counselor and is countersigned and dated by the supervisory counselor.

(C) At least once a year, the program physician shall date, review, and countersign the treatment plan recorded in each patient's record and ensure that each patient's progress or lack of progress in achieving the treatment goals is entered in the patient's record by the primary counselor. When appropriate, the treatment plan and progress notes should deal with the patient's mental and physical problems, apart from drug abuse. The treatment plan is required to include the name of and the reasons for prescribing any medication for emotional or physical problems.

(D) The requirement for annual physician review and signature by the program physician in paragraph (d)(3)(v)(C) of this section is discretionary, however, as it applies to a patient who has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program and who has made substantial progress in rehabilitation.

(4) *Minimum program services*—(i) *Access to a range of services.* (A) A treatment program shall provide a comprehensive range of medical and rehabilitative services to its patients especially during the first 3 years of treatment. Also, for pregnant patients in a treatment program who were not admitted under paragraph (d)(1)(iii)(B) of this section, a treatment program shall give them the opportunity for prenatal care either by the narcotic treatment program or by referral to appropriate health-care providers. If a program cannot provide direct prenatal care for pregnant patients in treatment, it shall establish a system of referring them for prenatal care which may be either publicly or privately funded. If there is no publicly funded prenatal care available to which a patient may be referred, and the program cannot provide such services, or the patient cannot afford or refuses prenatal care services, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as a part of its counseling service.

(B) Counseling records and other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the program refers a patient for prenatal services, it shall inform the physician to whom she is referred that the patient is in maintenance treatment, provided such notification is in accordance with the Department of Health and Human

Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct prenatal services or appropriate referral for prenatal services, the treating program physician should consider using informed consent procedures, i.e., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. The information should be obtained in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If no response is received, the program physician shall document in the record that such a request was made and no response was received.

(C) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if continued treatment is deemed necessary. It is the responsibility of the program sponsor to ensure that each female patient is fully informed of the possible risks to a pregnant woman and her unborn child from the use of a narcotic drug.

(D) Any service not furnished at the primary facility is required to be listed in any application for approval submitted to the Food and Drug Administration or to the State authority. The addition, modification, or deletion of any program services is required to be reported immediately to the Food and Drug Administration.

(ii) *Minimum medical services: designation of medical director and responsibilities.* Each program shall have a designated medical director who assumes responsibility for administering all medical services performed by the program. The medical director and other authorized program physicians are required to be licensed to practice medicine in the jurisdiction in which the program is located. The medical director is responsible for ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding medical treatment of narcotic addiction. In addition, the medical director or other authorized physicians shall:

(A) Ensure that evidence of current physiologic dependence, length of history of addiction, or exceptions to criteria for admission are documented in the patient's record before the patient receives the initial dose.

(B) Ensure that a medical evaluation including a medical history has been taken, and physical examination has been done before the patient receives the initial dose (except that in an emergency situation, the initial dose may be given before the physical examination).

(C) Ensure that appropriate laboratory studies have been performed and reviewed.

(D) Sign or countersign all medical orders as required by Federal or State law. (Such medical orders include but are not limited to the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home medication for an emergency situation.)

(E) Review and countersign treatment plans at least annually as qualified by paragraph (d)(3)(v)(D) of this section.

(F) Ensure that justification is recorded in the patient's record for reducing the frequency of clinic visits for observed drug ingesting, providing additional take-home medication under exceptional circumstances or when there is physical disability, or prescribing any medication for physical or emotional problems.

(iii) *Use of health-care professionals.* Although the final decision to accept a patient for treatment may be made only by the medical director or other designated program physician, it is recognized that physicians can train program personnel to detect and document narcotic abstinence symptoms and that some jurisdictions allow State-licensed or certified health-care professionals, e.g., physician's assistants, nurse practitioners, to perform certain functions—record medical histories, perform physical examinations, and prescribe, administer, or dispense certain medications—that are ordinarily performed by a licensed physician. These regulations do not prohibit licensed or certified health-care professionals from performing those functions in narcotic treatment programs if it is authorized by Federal, State, and local laws and regulations, and if those functions are delegated to them by the medical director, and records are properly countersigned by the medical director or a licensed physician.

(iv) *Vocational rehabilitation, education, and employment.* (A) Each program shall provide opportunities directly, or through referral to community resources, for patients who either desire or have been deemed by the program staff to be ready to participate in educational job-training programs or to obtain gainful employment as soon as possible.

(B) The patient's needs and readiness for vocational rehabilitation, education, and employment should be evaluated and recorded in the patient's records during the preparation of the initial treatment plan and reviewed and updated as appropriate in subsequent periodic treatment plan evaluations.

(5) *Staffing patterns*—(i) *Program personnel.* The person(s) responsible for a program shall determine program personnel requirements after considering the number of patients who are vocationally and educationally impaired; the number of patients with significant psychopathology; the number of patients who are also nonnarcotic drug or alcohol abusers; the number of patients with behavioral problems in the program; and the number of patients with serious medical problems.

(ii) *Supportive services.* The person(s) responsible for the program shall take notice, when considering the staffing pattern, that maintenance treatment programs need to establish supportive services in accordance with the varying characteristics and needs of their patient populations. The person(s) responsible for a program shall also take notice of the availability of existing community resources which may complement or enhance the program's delivery of supportive services and then establish a staffing pattern based on a combination of patient needs and available, accessible community resources.

(6) *Frequency of attendance; quantity of take-home medication; dosage of methadone; initial and stabilization*—(i) *Dosage and responsibility for administration.* (A) The person(s) responsible for the program shall ensure that the initial dose of methadone does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms.

(B) A licensed physician shall assume responsibility for the amounts of the narcotic drug administered or dispensed and shall record, date, and sign in each patient's record each change in the dosage schedule.

(C) The administering licensed physician shall ensure that a daily dose greater than 100 milligrams is justified in the patient's record.

(ii) *Authorized dispensers of narcotic drugs; responsibility.* A narcotic drug may be administered or dispensed only by a practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the

practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health-care professional authorized by the Federal and State law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedule.

(iii) *Form.* Methadone may be administered or dispensed in oral form only when used in a treatment program. Hospitalized patients under care for a medical or surgical condition are permitted to receive methadone in parenteral form when the attending physician judges it advisable. Although tablet, syrup concentrate, or other formulations may be distributed to the program, all oral medication is required to be administered or dispensed in a liquid formulation. The oral dosage form is required to be formulated in such a way as to reduce its potential for parenteral abuse. Take-home medication is required to be labeled with the treatment center's name, address, and telephone number and must be packaged in special packaging as required by 16 CFR 1700.14 in accordance with the Poison Prevention Packaging Act (Pub. L. 91–601, 15 U.S.C. 1471 et seq.) to reduce the chances of accidental ingestion. Exceptions may be granted when these provisions conflict with State law with regard to the administering or dispensing of drugs.

(iv) *Take-home medication.* (A) Take-home medication may be given only to a patient who, in the reasonable clinical judgment of the program physician, is responsible in handling narcotic drugs. Before the program physician reduces the frequency of a patient's clinical visits, she or he or a designated staff member shall record the rationale for the decision in the patient's clinical record. If this is done by a designated staff member, a program physician shall review, countersign, and date the patient's record where this information is recorded.

(B) The program physician shall consider the following in determining whether, in his or her reasonable clinical judgment, a patient is responsible in handling narcotic drugs:

(*1*) Absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;

(*2*) Regularity of clinic attendance;

(*3*) Absence of serious behavioral problems at the clinic;

(*4*) Absence of known recent criminal activity, e.g., drug dealing;

(*5*) Stability of the patient's home environment and social relationships;

(*6*) Length of time in maintenance treatment;

(*7*) Assurance that take-home medication can be safely stored within the patient's home; and

(*8*) Whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.

(v) *Take-home requirements.* The requirement of time in treatment is a minimum reference point after which a patient may be eligible for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to take-home medication. Thus, regardless of time in treatment, a program physician may, in his or her reasonable judgment, deny or rescind the take-home medication privileges of a patient.

(A)(*1*) In maintenance treatment it is required that a patient come to the clinic for observation daily or at least 6 days a week. If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 months, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her attendance at the clinic for observation to three times weekly. The patient may receive no more than a 2-day take-home supply of medication.

(*2*) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 2 years from his or her entrance into the program, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her clinic attendance at the clinic for observation to twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication.

(*3*) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program, has made substantial progress in rehabilitation, has no major behavioral problems, is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of his or her clinic attendance for observation, the patient may be permitted to reduce clinic attendance for observation to once weekly, provided that the following additional criteria are met: The program physician has written into the patient's record an evaluation that the patient is responsible in handling narcotic drugs (paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section); the patient is employed (or actively seeking employment), attends school, is a homemaker, or is considered unemployable for mental or physical reasons by a program physician; the patient is not known to have abused drugs including alcohol in the last year; and the patient is not known to have engaged in criminal activity, e.g., drug dealing, in the last year. A patient permitted to reduce clinic attendance for observation to once weekly may receive no more than a 6-day take-home supply of medication.

(B)(*1*) If a patient, after receiving a supply of take-home medication, is inexcusably absent from or misses a scheduled appointment with a treatment program without authorization from the program staff, the program physician shall increase the frequency of the patient's clinic attendance for drug ingestion under observation. For such a patient, the program physician shall not reduce the frequency of the patient's clinic attendance for drug ingestion under observation until she or he has had at least three consecutive monthly tests or analyses that are neither positive for morphinelike drugs (except from the narcotic drug administered or dispensed by the program) or other drugs of abuse nor negative for the narcotic drug administered or dispensed by the program, and until she or he is again determined by a program physician to be responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section) and to meet the criteria in paragraph (d)(6)(v)(A) of this section).

(*2*) If a patient, after receiving a 6-day supply of take-home medication, has a test or analysis which is confirmed to be positive for morphinelike drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse or negative for the narcotic drug administered or dispensed by the program, the program physician shall place the patient on probation for 3 months. If, during this probation, the

patient has a test or analysis either positive for morphinelike drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse or negative for the narcotic drug administered or dispensed by the program, the program physician shall increase the frequency of the patient's clinic attendance for observation to at least twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication until she or he has had at least three consecutive monthly tests or analyses which are neither positive for morphinelike drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse nor negative for the narcotic drug administered or dispensed by the program, and the program physician again determines that the patient is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section) and meets the criteria contained in paragraph (d)(6)(v)(A) of this section.

(C) In calculating the number of years of maintenance treatment, the period is considered to begin on the first day the medication is administered, or on readmission if a patient has had a continuous absence of 90 days or more. Cumulative time spent by the patient in more than one program is counted toward the number of years of treatment, provided there has not been a continuous absence of 90 days or more.

(D) Each patient whose daily dose is above 100 milligrams is required to be under observation while ingesting the drug at least 6 days per week irrespective of the length of time in treatment, unless the program has received prior approval from the State authority and the Food and Drug Administration.

(vi) *Exceptions to take-home requirements.* If, in the reasonable clinical judgment of the program physician:

(A) A patient is found to have a physical disability which interferes with his or her ability to conform to the applicable mandatory schedule, she or he may be permitted a temporarily or permanently reduced schedule provided she or he is also found to be responsible in handling narcotic drugs.

(B) A patient, because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, is unable to conform to the applicable mandatory schedule she or he may be permitted a temporarily reduced schedule provided she or he is also found to be responsible in handling narcotic drugs. The rationale for an exception to a mandatory schedule is to be based on the reasonable clinical judgment of the program physician and shall be recorded in the patient's record by the program physician or by program personnel supervised by the program physician. In the latter situation, the physician shall review, countersign, and date the patient's record where this rationale is recorded. In any event, a patient may not be given more than a 2-week supply of narcotic drugs at one time.

(7) *Minimum standards for short-term detoxification treatment.* (i) For short-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered daily, under close observation, in reducing dosages over a period not to exceed 30 days. All requirements for maintenance treatment apply to short-term detoxification treatment with the following exceptions:

(A) Take-home medication is not allowed during short-term detoxification.

(B) A history of 1 year physiologic dependence is not required for admission to short-term detoxification.

(C) Patients who have been determined by the program physician to be currently physiologically narcotic dependent may be placed in short-term detoxification treatment, regardless of age.

(D) No test or analysis is required except for the initial drug screening test or analysis.

(E) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are not necessary for short-term detoxification patients. However, a primary counselor must be assigned by the program to monitor a patient's progress toward the goal of short-term detoxification and possible drug-free treatment referral.

(F) The requirements of paragraph (d)(4) of this section, except paragraphs (d)(4)(ii) (A) through (D) and (iii) of this section, do not apply to short-term detoxification treatment.

(ii) A patient is required to wait at least 7 days between concluding a short-term detoxification treatment episode and beginning another. Before a short-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. The provisions of these requirements, except as noted in paragraph (d)(7)(i) of this section, apply to both inpatient and ambulatory short-term detoxification treatment.

(iii) Short-term detoxification treatment is not recommended for a pregnant patient.

(8) *Minimum standards for long-term detoxification treatment.* (i) For long-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered on a regimen designed to reach a drug-free state and to make progress in rehabilitation in 180 days or less. All requirements for maintenance treatment apply to long-term detoxification treatment with the following exceptions:

(A) In long-term detoxification treatment it is required that the patient be under observation while ingesting the drug daily or at least 6 days a week, for the duration of the long-term detoxification treatment.

(B) A history of 1 year physiologic dependence is not required for admission to long-term detoxification.

(C) The program physician shall document in the patient's record that short-term detoxification is not a sufficiently long enough treatment course to provide the patient with the additional program services he or she deems necessary for the patient's rehabilitation. The program physician shall document this information in the patient's record before long-term detoxification may begin.

(D) Patients who have been determined by the program physician to be currently physiologically dependent on narcotics may be placed in long-term detoxification treatment, regardless of age.

(E) An initial drug screening test or analysis is required for each patient. And at least one additional random test or analysis must be performed monthly on each patient during long-term detoxification.

(F) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are also required for long-term detoxification patients except that the required periodic treatment plan evaluation is required to occur monthly.

(ii) A patient is required to wait at least 7 days between concluding a long-term treatment episode and beginning another. Before a long-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic

drugs. The provisions of these requirements apply to both inpatient and ambulatory long-term detoxification treatment.

(iii) Long-term detoxification is not recommended for a pregnant patient.

(9) *Inspections of programs; patient confidentiality.* A program shall allow inspections by duly authorized employees of the State authority, and in accordance with Federal controlled substances laws and Federal confidentiality laws, by duly authorized employees of the Food and Drug Administration, the Drug Enforcement Administration of the Department of Justice, and the National Institute on Drug Abuse.

(10) *Exemptions from specific program standards.* (i) A program is permitted, at the time of application or any time thereafter, to request exemption from or revision of specific program standards. The rationale for an exemption or revision shall be thoroughly documented in an appendix to be submitted with the application or at some later time. The Food and Drug Administration will approve such exemptions or revisions of program standards at the time of application with the concurrence of the State authority.

(ii) The Food and Drug Administration has the right to withhold the granting of an exemption until such time as a program is in actual operation in order to assess if the exemption is necessary. If periodic inspections of the program reveal that discrepancies or adverse conditions exist, the Food and Drug Administration shall reserve the right to revoke any or all exemptions previously granted.

(11) *Research.* When a program conducts research on human subjects or provides subjects for research, there must be written policies and written review to assure the rights of the patients involved. Appropriate informed consent forms are required to be signed by the patient and to be retained in his or her patient record at the program. All research, development, and related activities which involve human subjects and which are funded by grants from or contracts with the Department of Health and Human Services are required to comply with the Department of Health and Human Services' regulations on the protection of human subjects, 45 CFR Part 46, and confidentiality of information, 42 CFR Part 2. All investigational research involving human subjects conducted for submission to the Food and Drug Administration must be conducted in compliance with 21 CFR Part 312.

(12) *Patient record system*—(i) *Patient care.* The person(s) responsible for a program shall establish a record system to document and monitor patient care. This system is required to comply with all Federal and State reporting requirements relevant to methadone. All records are required to be kept confidential and in accordance with all applicable Federal and State regulations regarding confidentiality.

(ii) *Drug dispensing.* The person(s) responsible for a program shall ensure that accurate records traceable to specific patients are maintained showing dates, quantity, and batch or code marks of the drug dispensed. These records must be retained for a period of 3 years from the date of dispensing.

(iii) *Patient's record.* An adequate record must be maintained for each patient. The record is required to contain a copy of the signed consent form(s), the date of each visit, the amount of drug administered or dispensed, the results of each test or analysis for drugs, any significant physical or psychological disability, the type of rehabilitative and counseling efforts employed, an account of the patient's progress, and other relevant aspects of the treatment program. For recordkeeping purposes, if a patient misses appointments for 2 weeks or more without notifying the program, the episode of care is considered terminated and is to be so noted in the patient's record. This does not mean that the patient cannot return for care. If the patient does return for care and is accepted into the program, this is considered a readmission and is to be so noted in the patient's record. This method of recordkeeping helps assure the easy detection of sporadic attendance and decreases the possibility of administering inappropriate doses of narcotic drugs (e.g., the patient who has received no medication for several days or more and upon return receives the usual stabilization dose). An annual evaluation of the patient's progress must be entered in the patient's record.

(13) *Security of drug stocks.* Adequate security is required to be maintained over drug stocks, over the manner in which it is administered or dispensed, over the manner in which it is distributed to medication units, and over the manner in which it is stored to guard against theft and diversion of the drug. The program is required to meet the security standards for the distribution and storage of controlled substances as required by the Drug Enforcement Administration, Department of Justice (21 CFR 1301.72–1301.76).

(e) *Multiple enrollments*—(1) *Administering or dispensing to patients enrolled in other programs.* There is a danger of drug dependent persons attempting to enroll in more than one narcotic treatment program to obtain quantities of drugs for the purpose of self-administration or illicit marketing. Therefore, except in an emergency situation, drugs shall not be provided to a patient who is known to be currently receiving drugs from another treatment program.

(2) *Patient attendance requirements.* The patient shall always report to the same treatment facility unless prior approval is obtained from the program sponsor for treatment at another program. Permission to report for treatment at the facility of another program shall be granted only in exceptional circumstances and shall be noted on the patient's clinical record.

(f) *Conditions for use of narcotic drugs in hospitals for detoxification treatment*—(1) *Form.* The drug may be administered or dispensed in either oral or parenteral form (see paragraph (d)(6)(iii) of this section).

(2) *Use of narcotic drugs in hospitals*—(i) *Approved uses.* For hospitalized patients, the use of a narcotic drug for narcotic addict treatment may be administered or dispensed only for detoxification treatment. If a narcotic drug is administered for treatment of narcotic dependence for more than 180 days, the procedure is no longer considered detoxification but is, rather, considered maintenance treatment. Only approved narcotic treatment programs may undertake maintenance treatment. This does not preclude the maintenance treatment of a patient who is hospitalized for treatment of medical conditions other than addiction and who requires temporary maintenance treatment during the critical period of his or her stay or whose enrollment in a program which has approval for maintenance treatment using narcotic drugs has been verified (see 21 CFR 1306.07(c)). Any hospital which already has received approval under this paragraph (f) may serve as a temporary narcotic treatment program when an approved treatment program has been terminated and there is no other facility immediately available in the area to provide narcotic drug treatment for the patients. The Food and Drug Administration may give this approval upon the request of the State authority or the hospital, when no State authority has been established.

(ii) *Individuals responsible for supplies.* Hospitals shall submit to the Food and Drug Administration and the State authority the name of the individual (e.g., pharmacist) responsible for receiving and securing supplies of

narcotic drugs for the treatment of narcotic addicts. The individual responsible for supplies shall ensure that the only persons who receive supplies of narcotic drugs are those who are authorized to do so by Federal or State law.

(iii) *General description.* The hospital shall submit to the Food and Drug Administration and the State authority a general description of the hospital including the number of beds, specialized treatment facilities for drug dependence, and nature of patient care undertaken.

(iv) *Anticipated quantity of drug needed.* The hospital shall submit to the Food and Drug Administration and the State authority the anticipated quantity of narcotic drugs for narcotic addict treatment needed per year.

(v) *Records.* The hospital shall maintain accurate records showing dates, quantity, and batch or code marks of the drug used for inpatient treatment. The hospital shall retain the records for at least a period of 3 years.

(vi) *Inspection.* The hospital shall permit the Food and Drug Administration and the State authority to inspect supplies of the drug at the hospital and evaluate the uses to which the drug is being put. The Food and Drug Administration and the State authority will keep the identity of the patients confidential in accordance with confidentiality requirements of 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws; but use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(vii) *Approval of hospital pharmacy.* Application for a hospital pharmacy to provide narcotic drugs for detoxification treatment must be submitted to the Food and Drug Administration and the State authority and approval from both is required, except as provided for in paragraph (h)(5) of this section. Within 60 days after the Food and Drug Administration receives the application, it will notify the applicant of approval or denial or will request additional information, when necessary.

(viii) *Approval of shipments to hospital pharmacies.* Before a hospital pharmacy may lawfully receive shipments of narcotic drugs for detoxification treatment, a responsible official shall complete, sign, and file in duplicate with the Food and Drug Administration and the State authority Form FDA–2636 "Hospital Request for Narcotic Drugs for Detoxification Treatment" (see paragraph (k) of this section) and must have received from the Food and Drug Administration a notice that the request has been approved.

(ix) *Sanctions.* Failure to abide by the requirements described in this section may result in revocation of approval to receive shipments of narcotic drugs for narcotic addict treatment, seizure of the drug supply on hand, injunction, and criminal prosecution.

(g) *Confidentiality of patient records.* (1) Except as provided in paragraph (g)(2) of this section, disclosure of patient records maintained by any program is governed by the provisions of 42 CFR Part 2, and every program must comply with that part. Records on the receipt, storage, and distribution of narcotic medication are also subject to inspection under Federal controlled substances laws: But use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel. In addition to the restrictions upon disclosure in 42 CFR Part 2, and in accordance with the authority conferred by section 303(a) of the Public Health Service Act (42 U.S.C. 242(a)), every program is authorized to protect the privacy of patients therein by withholding from all persons not employed by such program or otherwise connected with the conduct of its operations the names or other identifying characteristics of such patients under any circumstances under which such program has reasonable grounds to believe that such information may be used to conduct any criminal investigation or prosecution of a patient. Programs may not be compelled in any Federal, State, or local civil, criminal, administrative, or other proceedings to furnish such information, but this paragraph does not authorize withholding information authorized to be furnished under 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws: But use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(2) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of the Food and Drug Administration to have access to and to copy all records on the use of narcotic drugs in accordance with the provisions of 42 CFR Part 2. A treatment program may reveal such records only when necessary in a related administrative or court proceeding.

(h) *Denial or revocation of approval.* (1) Complete or partial denial or revocation of approval of an application to receive shipments of narcotic drugs (Forms FDA–2632 "Application for Approval of Use of Narcotic Drugs in a Treatment Program" and FDA–2636 "Hospital Request for Narcotic Drugs for Detoxification and Maintenance Treatment") may be proposed to the Commissioner of Food and Drugs by the Director of the Food and Drug Administration's Center for Drugs and Biologics, on his or her own initiative or at the request of representatives of the Drug Enforcement Administration, Department of Justice, National Institute of Drug Abuse, the State authority, or any other interested person.

(2) Before presenting such a proposal to the Commissioner, the Director of the Center for Drugs and Biologics or his or her representative will notify the applicant in writing of the proposed action and the reasons therefor and will offer the applicant an opportunity to explain the matters in question in an informal conference and/or in writing within 10 days after receipt of such notification. The applicant shall have the right to hear and to question the information on which the proposal to deny or revoke approval is based, and may present any oral or written information and views.

(3) If the explanation offered by the applicant is not accepted by the Center for Drugs and Biologics as sufficient to justify approval of the application, and denial or revocation of approval is therefore proposed, the Commissioner will evaluate information obtained in the informal hearing before the Director of the Center for Drugs and Biologics. If the Commissioner finds that the applicant has failed to submit adequate assurance justifying approval of the application, the Commissioner shall issue a notice of opportunity for hearing with respect to the matter pursuant to § 314.200 of this chapter and the matter shall thereafter be handled in accordance with established procedures for denial or revocation of approval of a new drug application. If the Secretary determines that there is an imminent hazard to health, revocation of approval will become effective immediately and any administrative procedure will be expedited. Upon revocation of approval of an application, the Commissioner will notify the applicant, the State authority, the Drug Enforcement Administration, Department of Justice, and all other appropriate persons that the applicant may no longer receive shipments of narcotic drugs, and will require the recall of all of the drugs from the applicant. Revocation of approval may also result in criminal prosecution.

(4) Denial or revocation of approval may be reversed when the

Commissioner determines that the applicant has justified approval of the application.

(5) A treatment program or medication unit or any part thereof, including any facility or any individual, may appeal to the Food and Drug Administration a complete or partial denial or revocation of approval by the State authority unless the denial or revocation is based upon a State law or regulation. The appeal shall first be made to the Director of the Center for Drugs and Biologics, who shall hold an informal conference on the matter in accordance with paragraph (h)(2) of this section. The State authority may participate in the conference. The appellant or the State authority may appeal the Director's decision to the Commissioner, who shall decide the matter in accordance with paragraph (h)(3) of this section. If the Commissioner denies or revokes approval, such action shall be handled in accordance with paragraph (h)(3) of this section. The Commissioner may not grant or retain Food and Drug Administration approval if the Commissioner finds that the appellant is not in compliance with all applicable State laws and regulations and with this section.

(i) *Sanctions*—(1) *Program sponsor or individual responsible for a particular program.* If the program sponsor or the person responsible for a particular program fails to abide by all the requirements set forth in these regulations, or fails to adequately monitor the activities of those employed in the program, he or she may have the approval of his or her application revoked, his or her narcotic drug supply seized, an injunction granted precluding operation of his or her program, and criminal prosecution instituted against him or her.

(2) *Persons responsible for administering or dispensing narcotic drugs.* If a person responsible for administering or dispensing narcotic drugs for narcotic addict treatment fails to abide by all the requirements set forth in this regulation, criminal prosecution may be instituted against him or her, his or her drug supply may be seized, the approval of the program may be revoked, and an injunction may be granted precluding operation of the program.

(j) *Requirements for distribution by manufacturers of narcotic drugs for narcotic addict treatment*—(1) *Distribution requirements.* Shipments of narcotic drugs for narcotic addict treatment are restricted to direct shipments by manufacturers of the drugs to approved treatment programs using the narcotic drugs and to approved hospital pharmacies. If requested by a manufacturer or State authority, wholesale pharmacy outlets in some regions or States may be authorized to stock narcotic drugs for narcotic addict treatment for that area and then transship the drug to approved narcotic treatment programs and approved hospital pharmacies. Alternative methods of distribution will be permitted if they are approved by the Food and Drug Administration and the State authority. Prior to any approval of an alternative method of distribution there will be consultation with the Drug Enforcement Administration, Department of Justice, to assure compliance with its regulations regarding controlled substance distribution.

(2) *Information regarding approved programs and hospitals.* The Food and Drug Administration will provide manufacturers and the public with names and locations of programs and hospitals that have been approved to receive shipments of narcotic drugs for narcotic addiction treatment. All information contained in the forms required by paragraph (k) of this section is available for public disclosure except for names or other identifying information with respect to patients.

(3) *Acceptance of delivery.* Delivery shall only be made to a licensed practitioner employed at the facility. At the time of delivery the licensed practitioner shall sign for the drugs and place his or her specific title and identification number on any invoice. Copies of these signed invoices shall be kept by the manufacturer.

(k) *Program forms.* The program sponsor must ensure that the following forms are completed by the proper program staff and submitted to the appropriate State authority and the Division of Scientific Investigations, Regulatory Management Branch (HFN–342), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Forms are available upon request from the Regulatory Management Branch (HFN–342), at the same address.

Form

FDA–2632—Application for Use of Narcotic Drugs in a Treatment Program.
FDA–2633—Medical Responsibility Statement.
FDA–2635—Consent to Methadone Treatment.
FDA–2636—Hospital Application.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

Frank E. Young,

Commissioner of Food and Drugs, Food and Drug Administration.

Dated: May 1, 1987.

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Part III

Department of Education

Office of Postsecondary Education

34 CFR Parts 656 and 657

National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies Fellowships Program; Notices of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 656

National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the National Resource Centers Program. The amendments are needed to implement changes made in Title VI of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99–498. The major statutory change requires separate criteria for evaluating applications for comprehensive and undergraduate Centers. The proposed regulations implement that statutory change.

DATE: Comments must be received on or before November 2, 1987.

ADDRESS: All comments concerning these proposed regulations should be addressed to: Joseph F. Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, Room 3054, ROB–3, 400 Maryland Avenue SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Section of this preamble.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION: The National Resource Centers Program is authorized by section 602(a) of the HEA and is designed to provide grants to institutions of higher education and combinations of those institutions to establish, operate, and strengthen national resource centers for the teaching of modern foreign languages plus area studies, international studies, and the international and foreign language aspects of professional studies. Before section 602(a) was amended by the Higher Education Amendments of 1986, it referred to graduate and undergraduate centers. After the amendments it specifically defined each type of Center and required separate evaluate criteria for comprehensive and undergraduate Center applications. Before the amendments, the same criteria were used to evaluate both types of Centers. The major regulatory change in these proposed regulations is therefore the separate listing of these funding criteria.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Respondents to this program are major higher education institutions with enrollments of well over 500 students. They are not defined as small entities.

Paperwork Reduction Act of 1980

Sections 656.20, 656.21, and 656.22 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, ROB–3, 7th and D Streets SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 656

Colleges and universities, Education, Educational study programs, Fellowship, Foreign Languages, Grant programs—education, Resource center, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.015A)

Dated: September 9, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to revise Part 656 of Title 34 of the Code of Federal Regulations to read as follows:

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

Sec.

656.1 What is the National Resource Centers Program?
656.2 Who is eligible to receive a grant?
656.3 What activities define a comprehensive or undergraduate National Resource Center?
656.4 What types of Centers receive grants?
656.5 What activities may be carried out?
656.6 What regulations apply?
656.7 What definitions apply?

Subpart B—How Does One Apply for a Grant?

656.10 What combined application may an institution submit?

Subpart C—How Does the Secretary Make a Grant?

656.20 How does the Secretary evaluate an application?
656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?
656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?
656.23 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

656.30 What are allowable costs and what are the limitations on allowable costs?

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 656.1 What is the National Resource Centers Program?

Under the National Resource Centers Program For Foreign Language and Area Studies or Foreign Language and International Studies (National Resource Centers Program), the Secretary awards

grants to institutions of higher education and combinations of institutions to establish, strengthen, and operate comprehensive and undergraduate Centers that will be national resources for—

(a) Stimulating the attainment of foreign language acquisition and fluency;

(b) Instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the foreign language is commonly used;

(c) Research and training in international studies and the international and foreign language aspects of professional and other fields of study; and

(d) Instruction and research on issues in world affairs which concern one or more countries.

(Authority: 20 U.S.C 1122)

§ 656.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education is eligible to receive a grant under this part.

(Authority: 20 U.S.C 1122)

§ 656.3 What activities define a comprehensive or undergraduate National Resource Center?

A comprehensive or undergraduate National Resource Center—

(a) Teaches modern foreign languages;

(b) Provides—

(1) Instruction in fields necessary to provide a full understanding of the areas, regions, or countries in which the languages taught are commonly used;

(2) Resources for training and research in international and foreign language aspects of professional and other fields of study; or

(3) Opportunities for training and research on issues in world affairs that concern one or more countries;

(c) Provides outreach and consultative services on a national, regional, and local basis;

(d) In the case of a comprehensive Center—

(1) Maintains specialized library collections; and

(2) Employs scholars engaged in research which relates to the subject area of the center; and

(e) In the case of an undergraduate Center—

(1) Maintains library holdings, basic reference works, journals, and works in translation; and

(2) Employs faculty with strong credentials in language area, and international studies.

(Authority: 20 U.S.C 1122)

§ 656.4 What types of Centers receive grants?

The Secretary awards grants to Centers that—

(a) Focus on—

(1) A single country or on a world area (such as East Asia, Africa, or the Middle East) and offer instruction in the principal language or languages of that country or area and those disciplinary fields necessary to provide a full understanding of the country or area; or

(2) International studies or the international aspects of contemporary issues or topics (such as international business or energy) while providing instruction in modern foreign languages; and

(b) Provide training at the—

(1) Graduate, professional, and undergraduate levels, as a comprehensive center; or

(2) Undergraduate level only, as an undergraduate center.

(Authority: 20 U.S.C 1122)

§ 656.5 What activities may be carried out?

A Center may carry out any of the activities described in § 656.3 under a grant received under this part.

(Authority: 20 U.S.C 1122)

§ 656.6 What regulations apply?

The following regulations apply to this part:

(a) 34 CFR Part 655.

(b) The regulations in this Part 656.

(c) The Education Department General Administrative Regulations [EDGAR] in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C 1122)

§ 656.7 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR Part 655.

(b) "Area studies" means a program of comprehensive study of the aspects of a world area's society or societies, including study of history, culture, economy, politics, international relations, and languages.

(c) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational resources, including language training and various academic disciplines, in the area and subject matters described in § 656.3.

(d) "Comprehensive Center" means a Center that—

(1) Contributes significantly to the national interest in advanced research and scholarship;

(2) Offers intensive language instruction;

(3) Maintains important library collections related to the area of its specialization; and

(4) Makes training available to a graduate, professional, and undergraduate clientele.

(e) For purposes of this section, "intensive language instruction" means instruction of at least 5 contact hours per week during the academic year.

(f) "Undergraduate Center" means an administrative unit of an institution of higher education that—

(1) Contributes significantly to the national interest through the education of students who matriculate into advanced language and area studies programs or professional school programs;

(2) Incorporates substantial international and foreign language content into baccalaureate degree programs;

(3) Makes training available predominantly to undergraduate students; and

(4) Engages in research, curriculum development, and community outreach.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does One Apply for a Grant?

§ 656.10 What combined application may an institution submit?

An institution that wishes to apply for a grant under this part and for an allocation of fellowships under 34 CFR Part 657 may submit one application for both.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Make a Grant?

§ 656.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a comprehensive Center under the criteria contained in § 656.21, and for an undergraduate Center under the criteria contained in § 656.22.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if the criterion in § 656.21(1) or § 656.22(1) is used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

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§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary uses the following criteria in evaluating an application for a comprehensive Center:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a)).

(b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).

(c) *Budget and cost effectiveness.* (5) (See 34 CFR 655.31(c)).

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).

(e) *Commitment to the subject area on which the center focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution will provide financial and other support to the Center, faculty members, and qualified students in fields related to the Center.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area and the educational levels (graduate, professional, undergraduate) on which the Center focuses; and

(2) The extent to which the institution will provide financial support for the acquisition of library materials and for library staff in the subject area of the Center.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality and extent of the Center's language training program including the adequacy of its instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the Center to carry out its purposes.

(h) *Quality of the Center's relationships within the institution.* (10) The Secretary reviews each application to determine the extent to which the Center—

(1) Provides multi- and interdisciplinary instruction; and

(2) Has entered into cooperative arrangements with departments, schools, and professional programs of the institution.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, organizations, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(3) The potential impact of the proposed project in improving the knowledge of languages, areas, issues in world affairs which concern one or more countries, or international studies at the national level and in providing a national example of excellence and innovation in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

(1) The quality and extent of the services the Center will provide to persons and organizations outside the Center at national, regional, and local levels; and

(2) The contribution of these outreach services to activities such as curriculum development, professional training, and public understanding.

(l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1122)

§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary uses the following criteria in evaluating an application for an undergraduate Center:

(a) *Plan of operation.* (10) [See 34 CFR 655.31(a)].

(b) *Quality of key personnel.* (15) [See 34 CFR 655.31(b)].

(c) *Budget and cost effectiveness.* (5) [See 34 CFR 655.31(c)].

(d) *Evaluation plan.* (5) [See 34 CFR 655.31(d)].

(e) *Commitment to the subject area on which the Center focuses.* (10) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area;

(2) The extent to which the institution is committed to the center by providing financial and other support to the Center and to tenured faculty members of the Center; and

(3) The extent to which students matriculate into advanced language and area or international studies programs or related professional programs.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area on which the Center focuses; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality of the Center's language training program, including the adequacy of instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the center to carry out its purposes.

(h) *Quality of the center's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which the Center provides multi- and interdisciplinary instruction;

(2) The extent to which the Center has entered into cooperative arrangements with departments, schools, and professional programs of the institution; and

(3) The extent to which substantial instruction in the subject area and languages on which the Center focuses have been incorporated into baccalaureate degree programs.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(3) The potential impact of the proposed project—those activities for which funding is requested—in improving the knowledge of languages, areas, or international studies at the national level and in providing a national example of excellence and innovation for undergraduate education in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

(1) The quality and extent of the services the Center provides to persons and organizations outside the Center as these services relate to the provision of information and training primarily for national groups, but, also, for regional and local groups; and

(2) The contribution of these outreach services to curriculum development, faculty development, pre-professional training, and public understanding.

(l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1122)

§ 656.23 What priorities may the Secretary establish?

(a) The Secretary may select one or more of the following funding priorities:

(1) Specific countries or world areas, such as, for example, East Asia, Africa, or the Middle East.

(2) Specific focus of a center, such as, for example, a single world area; international studies; a particular issue or topic, e.g., business, development issues, or energy; or any combination.

(3) Level or intensiveness of language instruction, such as intermediate or advanced language instruction, or instruction at an intensity of 10 contact hours per week.

(4) Types of activities to be carried out, for example, cooperative summer intensive language programs or teacher training activities.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 656.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided under paragraph (b) of this section, a grant awarded under this part may be used to pay all or part of the cost of establishing, strengthening, or operating a comprehensive or undergraduate Center including, but not limited to, the cost of—

(1) Faculty and staff salaries and travel;

(2) Library acquisitions;

(3) Teaching and research materials;

(4) Curriculum planning and development; and

(5) Bringing visiting scholars and faculty to the Center to teach, conduct research, or participate in conferences or workshops.

(b) *Limitations on allowable costs.* The following are limitations on allowable costs:

(1) Equipment costs exceeding ten percent of the grant are not allowable.

(2) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center focuses.

(3) Grant funds may not be used to supplant funds normally used by applicants for purposes of this part.

(Authority: 20 U.S.C. 1122)

[FR Doc. 87–22624 Filed 10–1–87; 8:45 am]
BILLING CODE 4000–01–M

Office of Postsecondary Education

34 CFR Part 657

Foreign Language and Area Studies Fellowships Program

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Foreign Language and Area Studies Fellowships Program. These amendments are needed to implement changes made in Title VI of the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1986, Public Law 99–498. The statute and the proposed regulations increase the program's emphasis on language training and permit awards only to students taking languages for which their institution has developed or is developing competency-based instruction. The Higher Education Amendments of 1986 also authorized a new Direct Individual Foreign Language and Area Studies fellowship program for which regulations will be developed in another Part.

DATE: Comments must be received on or before November 2, 1987.

ADDRESS: All comments concerning these proposed regulations should be addressed to Joseph F. Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3054, ROB–3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction section of this preamble.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte; Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION: The Foreign Language and Area Studies Fellowships Program was originally established under the National Defense Education Act of 1958 and has been included in the Higher Education Act authorization since 1980. Under this program institutions of higher education apply to the Secretary for allocations of fellowship funds which are in turn awarded to students undergoing advanced training in study of a modern foreign language in combination with either area studies, international studies, or international aspects of professional fields.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Respondents to this program are major higher education institutions with enrollments of well over 500 students. They are not small entities.

Paperwork Reduction Act of 1980

Sections 657.3, 657.20, and 657.21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations, and in particular, the proposed definition of competency-based language training in § 657.5(f).

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, 7th & D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays. To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 657

Colleges and universities, Education, Educational study program, Fellowships, Foreign languages, Grant program—Education, Reporting and recordkeeping requirements.

Dated: August 24, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.015, Foreign Language and Area Studies Fellowships Program)

The Secretary proposes to revise Part 657 of Title 34 of the Code of Federal Regulations to read as follows:

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

657.1 What is the Foreign Language and Area Studies Fellowships Program?
657.2 Who is eligible to receive an allocation of fellowships?
657.3 Who is eligible to receive a fellowship?
657.4 What regulations apply?
657.5 What definitions apply?

Subpart B—How Does an Institution or a Student Submit and Application?

657.10 What combined application may an institution submit?
657.11 How does a student apply for a fellowship?

Subpart C—How Does the Secretary Select An Institution for an Allocation of Fellowships?

657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?
657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?
657.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met By a Grantee and a Fellow?

657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?
657.31 What is the amount of a fellowship?
657.32 What is the payment procedure for fellowships?
657.33 What are the limitations on the use of funds for overseas fellowships?
657.34 Under what circumstances must an institution terminate a fellowship?

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowship Program?

Under the Foreign Language and Area Studies Program, the Secretary awards fellowships, through institutions of higher education, to students who are—

(a) Enrolled for advanced training in a center or program approved by the Secretary under this part; and

(b) Undergoing competency-based modern foreign language training or training in a program for which competency-based modern foreign language instruction is being developed, in combination with area studies, international studies, or the international aspects of professional studies.

(Authority: 20 U.S.C. 1122)

§ 657.2 Who is eligible to receive an allocation of Fellowships?

(a) The Secretary awards an allocation of fellowships to an institution of higher education or to a combination of institutions of higher education that—

(1) Operates a center or program approved by the Secretary under this part;

(2) Teaches modern foreign languages under a program described in paragraph (b) of this section; and

(3) In combination with the teaching described in paragraph (a)(2) of this section—

(i) Provides instruction in the disciplines needed for a full understanding of the area, regions, or countries in which the foreign languages are commonly used; or

(ii) Conducts training and research in international studies, the international aspects of professional and other fields of study, or issues in world affairs that concern one or more countries.

(b) In teaching those modern foreign languages for which an allocation of fellowships is made available, the institution must be either using a program of competency-based training or developing a competency-based training program.

(c) The Secretary uses the criteria in § 657.21 both to approve centers and programs for the purpose of receiving an allocation of fellowships and to evaluate applications for an allocation of fellowships.

(d) An institution does not need to receive a grant under the National Resource Center Program 34 CFR Part 656, or the Undergraduate International Studies and Foreign Language Program, 34 CFR Part 658, to receive an allocation of fellowships under this Part.

(Authority: 20 U.S.C. 1122)

§ 657.3 Who is eligible to receive a fellowship?

A student is eligible to receive a fellowship if the student—

(a) (1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is accepted for enrollment or is enrolled—

(1) In an institution receiving an allocation of fellowships; and

(2) In a program that combines modern foreign language training with—

(i) Area or international studies; or

(ii) Research and training in the international aspects of professional and other fields of study;

(c) Shows potential for high academic achievement, based on such indices as grade point average, class ranking, or similar measures that the institution may determine; and

(d) Is enrolled in modern foreign language training in a language for which the institution has developed or is developing competency-based instruction.

(Authority: 20 U.S.C. 1122)

§ 657.4 What regulations apply?

The following regulations apply to the program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 657.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply To Department Regulations), and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1122)

§ 657.5 What definitions apply?

The following definitions apply to this Part:

(a) The definitions in 34 CFR 655.4.

(b) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational activities, including training in modern foreign languages and various academic disciplines, in its subject area.

(c) "Fellow" means a person who receives a fellowship under this Part.

(d) "Fellowship" means the payment a fellow receives under this Part.

(e) "Program" means a concentration of educational resources and activities in modern foreign language training and related studies.

(f) "Competency-based language training" means a training program which has defined functional language use objectives and whose evaluation measures for students can be linked to established national standards.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does an Institution or a Student Submit an Application?

§ 657.10 What combined application may an institution submit?

An institution that wishes to apply for an allocation of fellowships and for a grant to operate a Center under 34 CFR Part 656 may submit a combined application for both grants to the Secretary.

(Authority: 20 U.S.C. 1122)

§ 657.11 How does a student apply for a fellowship?

(a) A student shall apply for a fellowship directly to an institution of higher education that has received an allocation of fellowships.

(b) The applicant shall provide sufficient information to enable the institution to determine whether he or she is eligible to receive a fellowship and whether he or she should be selected to receive a fellowship.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

§ 657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?

(a) The Secretary evaluates an application for an allocation of fellowships on the basis of the quality of the applicant's center or program. The applicant's center or program is evaluated and approved under the criteria in § 657.21.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

The Secretary selects applicants for an allocation of fellowships on the basis of the quality of the applicant's center or program. The Secretary uses the following criteria in evaluating the applicant's center or program:

(a) *Plan of operation.* (5) (See 34 CFR 655.31(a)).

(b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).

(c) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).

(d) *Commitment to the subject area on which the center or program focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area of the center or program as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution provides financial and other support to the center or program, to faculty members of the center or program, and to qualified students in fields related to the center or program.

(e) *Strength of library.* (15) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area of the center or program; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(f) *Quality of the center's or program's instructional program.* (40) The Secretary reviews each application to determine—

(1) The quality and extent of the course offerings (15);

(2) The quality of the modern foreign language training program, as measured by the scope of the competency-based language instruction which is being used or developed, the adequate of instructional resources, and the nature of language proficiency requirements (15);

(3) The extent to which a sufficient number of scholars or teaching faculty are employed to enable the center or program to carry out its purposes (5); and

(4) The relationship of the language program to area studies, international studies, or international aspects of professional studies (5).

(g) *Quality of the center's or program's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which multi- and interdisciplinary instruction is included; and

(2) The extent to which cooperative arrangements with departments, schools, and professional programs of the institution exist.

(h) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(i) *Need and potential impact.* (5) The Secretary reviews each application to determine—

(1) The extent to which the center or program supports training that is needed nationwide;

(2) The extent to which the center or program's plans for selection and training of fellows in language and area studies or language and international studies will foster an improved supply of specialists in the subject area of the center or program.

(j) *Priorities.* (20) If one or more priorities have been established under § 657.22, the Secretary reviews each application for information that shows the extent to which the center or program meets these priorities.

(Authority: 20 U.S.C. 1122)

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§ 657.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for the allocation of fellowships—

(1) Specific world areas, or countries, such as East Asia or Mexico;

(2) Languages, such as Chinese;

(3) Levels of language offerings;

(4) Academic disciplines, such as linguistics or sociology;

(5) Professional studies, such as business, law, or education;

(6) Particular subjects, such as population growth and planning, or international trade and business; or

(7) A combination of any of these categories.

(b) The Secretary announces any priorities in the application notice published in the Federal Register.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met by a Grantee and a Fellow?

§ 657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?

(a) *Duration.* An institution may award a fellowship to a student for—

(1) One academic year; or

(2) One summer session if the summer session provides the fellow with the equivalent of one academic year of modern foreign language study.

(b) *Vacancies.* If a fellow vacates a fellowship before the end of an award period, the institution to which the fellowship is allocated may reaward the balance of the fellowship to another student if—

(1) The student meets the eligibility requirements in § 657.3; and

(2) The remaining fellowship period comprises at least one full academic quarter, semester, trimester or summer session as described in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1122)

§ 657.31 What is the amount of a fellowship?

(a)(1) An institution shall award a fellowship in an amount that covers the cost of the fellow's tuition and fees and an allowance for subsistence.

(2) If permitted by the Secretary, the institution may include an allowance for travel and an allowance for dependents.

(b) The Secretary announces in the annual application notice published in the Federal Register—

(1) The amount of subsistence allowances which may range from $5,000 to $8,000 for an academic year and from $1,250 to $2,000 for a summer session;

(2) Whether dependents' and travel allowances will be permitted; and

(3) The amount of dependents' and travel allowances which may be up to $500 per dependent for the dependency allowance and up to the lesser of $750 or the actual travel cost for the travel allowance.

(c) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center or program focuses.

(Authority: 20 U.S.C. 1122)

§ 657.32 What is the payment procedure for fellowships?

(a) An institution shall pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is in good standing and is making satisfactory progress.

(c) The institution shall make appropriate adjustments of any overpayment or underpayment to a fellow.

(Authority: 20 U.S.C. 1122)

§657.33 What are the limitations on the use of funds for overseas fellowships?

(a) Before awarding a fellowship for use outside the United States, an institution shall obtain the approval of the Secretary.

(b) The Secretary may approve the use of a fellowship outside the United States if the student is—

(1) Enrolled in an advanced overseas modern foreign language program approved by the institution at which the student is enrolled in the United States; or

(2) Engaged in research that cannot be done effectively in the United States and is affilated with an institution of higher education or other appropriate organization in the host country.

(Authority: 20 U.S.C. 1122)

§657.34 Under what circumstances must an institution terminate a Fellowship?

An institution shall terminate a fellowship if—

(a) The fellow is not making satisfactory progress, is no longer enrolled, or is no longer in good standing at the institution; or

(b) The fellow fails to follow the course of study, including modern foreign language study, for which he or she applied, unless a revised course of study is otherwise approvable under this part.

(Authority: 20 U.S.C. 1122)

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Research and Special Programs Administration

Connecticut Statute and Regulations Governing Transportation of Radioactive Materials; Notice

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DEPARTMENT OF TRANSPORTATION

[Inconsistency Ruling No. IR-21; Docket IRA-38]

Connecticut Statute and Regulations Governing Transportation of Radioactive Materials

Applicant: Citizens Against Nuclear Trucking.

State Regulations Affected: Sections 16a–106 (a) and (b) of the Connecticut General Statutes and sections 19–409d–51, 53, 54, and 55 of the Connecticut Regulations governing transportation of certain radioactive materials.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93–633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 170 through 179) issued thereunder.

Mode Affected: Highway.

Issue Date: September 28, 1987.

Ruling: Connecticut General Statutes sections 16a–106 (a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54 and 55 are inconsistent with the HMTA and the HMR.

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Connecticut General Statutes sections 16a–106 (a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54, and 55 are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201 through 107.209.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366–4362].

I. Background

A. Chronology

On July 16, 1986, Citizens Against Nuclear Trucking (CANT) filed an application for an administrative ruling seeking a determination that certain portions of Connecticut General Statutes (CGS) sections 16a–106 (a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54, and 55 regulating the transport from, into and through Connecticut of certain radioactive materials are inconsistent with the HMTA and the HMR. These statutory and regulatory provisions contain notice, routing, permit, information, documentation and time requirements.

CANT alleges that its members live and work near, and utilize, a highway (Interstate 84) affected by the cited provisions, and thus are affected by the Connecticut provisions.

CANT specifically requested that the Connecticut provisions be tested for inconsistency with Appendix A to 49 CFR Part 177 and with 49 CFR 177.825. However, as indicated in the Public Notice and Invitation To Comment (51 (FR) 34524, September 29, 1986), comparison with Appendix A will not be undertaken because Appendix A is not a law or regulation, but merely a statement of DOT policy. Thus, comparison of the Connecticut provisions will be made only with 49 CFR 177.825 and any necessarily-related HMTA or HMR provisions and in accordance with relevant prior inconsistency rulings.

CANT asserts that the Connecticut provisions are inconsistent for three general reasons:

(1) They impose routing and filing requirements for shipments of materials that are exempted from such requirements under Federal rules;

(2) They require filing of additional documents beyond those required by Federal rules; and

(3) They create time and escort restrictions in conflict with Federal rules.

In response to the previously cited Public Notice and Invitation To Comment, the State of Connecticut (the State) filed comments opposing CANT's application. The State contends that CANT's application fails to demonstrate that CANT has the requisite standing to challenge the State's provisions. It also argues that the application fails to articulate how or in what manner the Connecticut provisions are inconsistent with Federal law and thus fails to provide an adequate basis for an informed decision.

B. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any State or local action. The HMTA preempts only those State and local requirements that are "inconsistent."

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a State or political subdivision. If a State or political subdivision requirement is found to be inconsistent, the State or local government may apply to the Administrator of the Research and Special Programs Administration (RSPA) of DOT for a waiver of Preemption. (49 App. U.S.C. 1811(b); 49 CFR 107.215 through 107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A Federal court might find a non-Federal requirement statutorily preempted under another statute or preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following case law criteria for determining whether a State or local requirement is consistent:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a)

"in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude State or local action in this area, Congress apparently intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

II. CANT's Standing To Apply For Inconsistency Ruling

Connecticut contends that CANT has not demonstrated that it has the requisite standing to request an inconsistency ruling and that the application should be dismissed on that basis. The State cites the language of 49 CFR 107.203 providing that "* * * any *person affected by a requirement of a State* * * *" may apply to OHMT for an administrative ruling as to whether a particular existing requirement of the State * * * is inconsistent with a requirement of the Act or the regulations issued under the Act." (Connecticut's emphasis added.)

The State contends that CANT has failed to demonstrate how the Connecticut statute and regulations affect CANT itself. It adds that the application is silent as to how the Connecticut provisions jeopardize the safety of CANT's members.

The State says that standing must be considered "within the context of administrative proceedings and in light of the purpose of the Federal law and regulations under which the Application is filed." It further argues that, in view of the "judicial character of the inconsistency ruling proceeding" (49 FR 46633, November 27, 1984), CANT must meet the judicial standard for standing. Connecticut cites numerous court decisions on judicial standing and explains why it believes CANT does not meet the applicable tests.

Finally, the State contends that CANT also fails to allege a sufficient interest to establish standing under nonjudicial standards applicable to administrative proceedings. It cites *Koniag, Inc. v. Andrus*, 580 F.2d 601 (D.C. Cir. 1978) for the proposition that administrative standing should be tailored to the concerned agency's functions. It then argues that the HMR are aimed at shippers and carriers of hazardous materials, that CANT and its members are neither, and that CANT's application fails to show any relationship between CANT and its members and the Connecticut regulatory scheme.

On the issue of standing, CANT states the following in its original application:

> CANT members live and work near the Interstate 84 portion of the designated route used by shippers of irradiated nuclear fuel from nuclear power plants in New England and are thus in the zone considered at risk by such shipments according to "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" (DOT Guidelines), page 18 Members also utilize the route during the hours required by the Connecticut regulation. CANT members are therefore affected in several ways by Connecticut's rules restricting commercial shipments of irradiated nuclear fuel.

In response to Connecticut's objections to its standing in this matter, CANT responds that judicial standing requirements do not apply in administrative proceedings and that it meets the requirements for standing in such proceedings. It cites *Ingalls Shipbuilding Division v. White*, 681 F.2d 275, 285 (5th Cir. 1982), for the proposition that:

> * * * administrative proceedings * * * are not Article III proceedings to ► which either the "case or controversy" or judicial standing requirements apply. Within their legislative mandates, agencies are free to hear actions brought by parties who might be without standing if the same issues happened to be before a federal court.

CANT contends that its standing should be evaluated under the following five-point functional test of administrative standing set forth by Judge Bazelon in a concurring opinion in *Koniag, Inc. v. Andrus, supra*, at 816:

> (1) The nature of the interest asserted by the potential participant.
> (2) The relevance of this interest to the goals and purposes of the agency.
> (3) The qualifications of the potential participant to represent this interest.
> (4) Whether other persons could be expected to represent adequately this interest.
> (5) Whether special considerations indicate that an award of standing would not be in the public interest.

CANT indicates that it is a person or organization speaking for the affected public as were the plaintiffs in *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966), and *National Welfare Rights Organization v. Finch*, 429 F.2d (D.C. Cir. 1970). It asserts:

> CANT is uniquely qualified to represent the interests of those persons in the tri-state New York metropolitan area because of the professional qualifications of many of its key members * * * and because it is the only organization in that metropolitan area which has safe transportation of nuclear materials as its sole objective.

Finally, CANT attaches an affidavit of its member and Technical Director Lindsay Audin in which he asserts that he is a frequent user of I–84 in both New York and Connecticut.

Through its inconsistency ruling process, the Research and Special Programs Administration (RSPA) provides a means of resolving, through non-binding, advisory opinions, preemption issues arising under the HMTA. The process may alleviate expensive and time-consuming litigation of such issues and may produce an inherently consistent body of interpretations. It also enables RSPA to advise State and local governments concerning what types of requirements are consistent or inconsistent with the HMTA and the HMR, thereby possibly assisting in the avoidance of inconsistent enactments.

This RSPA function is prompted by broad construction of the "person affected" test contained in § 107.203 of the HMR. RSPA has considerable discretion to adopt such a broad construction of its administrative standing regulation. *Koniag, Inc. v. Andrus, supra; American Trucking Associations v. U.S.*, 627 F.2d 1313 (D.C. Cir. 1980).

In fact, the issue of standing is rendered moot if the Director, OHMT, decides to address the preemption of a particular state or local requirement. This is because § 107.209(b) of the HMR authorizes the Director, *sua sponte*, to issue inconsistency rulings. In fact, five inconsistency rulings have been issued under this authority. IR–11 (49 FR 46647), IR–12 (49 FR 46650), IR–13 (49 FR 46653), IR–14 (FR 46656), IR–15 (49 FR 46660) (all November 27, 1984).

OHMT encourages use of its inconsistency ruling process to resolve preemption issues under the HMTA in as expeditious and inexpensive a manner as possible. Thus, OHMT will apply a broad interpretation of the "person affected" standard in this and future inconsistency proceedings. In the case at hand, therefore, CANT does have standing to apply for an inconsistency ruling, and an inconsistency ruling is being issued concerning the Connecticut statutory and regulatory provisions challenged by CANT.

III. Connecticut Statutory and Regulatory Provisions

A. Overview

Connecticut General Statutes (CGS) section 16a–106(a) prohibits transportation in Connecticut without a permit of certain radioactive wastes, "large quantity" radioactive materials, and radioactive materials and wastes which are required to be placarded. CGS section 16a–106(b) specifies information which must be submitted to the Commissioner of the Department of Transportation (the Commissioner) to obtain a permit; sets a standard for permit issuance; provides time requirements for permit processing; authorizes the Commissioner to require date, time and route changes or the use of escorts; and requires the Commissioner of Public Safety to establish inspection procedures to ensure compliance with permit conditions and the Commissioner's regulations.

The Commissioner's implementing regulations are in Connecticut Regulations sections 19–409d–51, 53, 54 and 55. Those sections, respectively, address the purpose of the regulations, definitions, permit application requirements, and permit conditions.

B. Statutory Provisions

CGS sections 16a–106(a) provides:

> No person shall transport into or through the state any of the following materials: (1) Any quantity of radioactive material specified as a "large quantity" by the Nuclear Regulatory Commission in 10 CFR, Part 71, entitled "Packaging of Radioactive Material for Transport", (2) any quantity of radioactive waste which has been produced as part of the nuclear fuel cycle and which is being shipped from or through the state to a waste disposal site or facility or (3) any shipment of radioactive material or waste which is carried by commercial carrier and which is required in 10 CFR or 49 CFR to have a placard unless such person has been granted a permit to transport such material from the commissioner of transportation.

In general, hazardous materials transportation permits are not inconsistent *per se*, and their consistency depends upon their specific requirements. IR–2 (44 FR 75566, Dec. 20, 1979); IR–3 (46 FR 18198, March 26, 1981); IR–20 (52 FR 24396, June 30, 1987). However, the field of radioactive materials transportation safety is unique. Because the HMTA and HMR have almost completely occupied the field of radioactive materials transportation safety, state and local transportation requirements relating thereto are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of alternative preferred routes under 49 CFR 177.825(b), (3) adoption of Federal or consistent requirements or those for which preemption has been waived, (4) enforcement of the requirements described in (3), and (5) imposition of transit fees to finance the enforcement described in (4) as well as emergency response. IR–8 (Appeal) (52 FR 13000, April 20, 1987); IR–10 through IR–15 (49 FR 46645 to 46660, November 27, 1984); IR–15 (Appeal) (52 FR 13062, April 20, 1987); IR–17 (51 FR 20925, June 9, 1986); IR–17 (Appeal) (52 FR 36200, September 25, 1987); IR–18 (52 FR 200, January 2, 1987), IR–19 (52 FR 24404, June 30, 1987); IR–20, *supra*. RSPA's Administrator discussed this issue in rejecting Vermont's appeal of the OHMT Director's decision in IR–15, *supra*. In IR–15 (Appeal), the Administrator said:

> In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR. IR–8 (49 FR 46637), IR–10 (49 FR 46645), IR–11 (49 FR 46647), IR–12 (49 FR 46650), IR–13 (49 FR 46653) (all Nov. 27, 1984). Vermont's Rule V purports to authorize state approvals, conditions, and limitations in this field and thus is inconsistent.

52 FR 13063.

In light of this broad preemption of radioactive materials transportation permitting, CGS section 16a–106(a) is inconsistant with the HMTA and the HMR and, therefore, is preempted.

The other statutory provision at issue, CGS section 16a–106(b), provides:

> Prior to the transporting of such materials, such person shall apply to the commissioner of transportation for a permit and provide said commissioner with the following information: (1) Name of shipper, (2) name of carrier, (3) type and quantity of radioactive material or waste, (4) proposed date and time of shipment, (5) starting point, scheduled route, and destination and (6) any other information required by the commissioner. Said commissioner shall grant such permit upon a finding that the transporting of such material shall be accomplished in a manner necessary to protect public health and safety of the citizens of the state. Such permit shall be granted or denied not later than three days, Saturdays and Sundays excluded, after such person has applied for such permit, except that if the commissioner determines that such additional time is required to evaluate such application, the commissioner shall notify such person not later than such three-day period that additional time is required. Said commissioner may require changes in dates, routes or time for the transporting of such material or the use of escorts in the transporting of such material or waste if necessary to protect the public health and safety. The commissioner may consult with the commissioner of environmental protection and the commissioner of public safety prior to the granting of any permit and of the terms and conditions of such permit. The commissioner of public safety shall establish an inspection procedure along scheduled routes to ensure compliance with permit conditions and with regulations adopted by the commissioner of transportation pursuant to subsection (c).

Because this section is inextricably related to, and "fleshes out," the inconsistent permitting requirements of CGS section 16a–106(a), it also is inconsistent with the HMTA and the HMR and thus preempted.

There are several additional reasons that this section is inconsistent with the HMTA and the HMR. First, it contains radioactive materials transportation information requirements exceeding those in the HMR. In the Action on Appeal concerning IR–15, *supra*, RSPA's Administrator addressed the consistency of such requirements:

> It is clear that DOT and NRC have determined what information and documentation requirements should be imposed on carriers for the safe transportation of radioactive materials, including information needed for emergency response. Therefore, state and local requirements applicable to carriers going beyond the Federal requirements create confusion for transporters, are obstacles to the accomplishment of the objectives of the HMTA and the HMR, and thus are inconsistent with them. (IR–2 (44 FR 75566, Dec. 20, 1979); IR–6 (48 FR 760, Jan. 6, 1983); IR–8 (49 FR 46637, Nov. 27, 1984).

52 FR at 13062. The Connecticut information requirements go beyond those in the HMR, and, therefore, are inconsistent with the HMTA and the HMR.

Second, although CGS section 16a–106(b), unlike the Nevada PSC regulations in IR–19, *supra*, does contain a standard for issuance or denial of a permit, it shares with those regulations a fatal propensity to cause delay in the transportation of hazardous materials. RSPA's concerns about delays in such transportation are long-standing. This issue was addressed in an early ruling: "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with such transportation." IR–2, *supra*, at 75571. Section 177.853 of the HMR directs that highway shipments proceed without unnecessary delay. The Connecticut statute at issue

here provides three working days for a decision and further allows additional time if the Commissioner determines it is required to evaluate the application. Unnecessary delay is inherent in such a provision; therefore, it is inconsistent with the HMTA and the HMR. IR–6, 48 FR 760 (January 6, 1983); IR–16, 50 FR 20872 (May 20, 1985); IR–19, *supra.*

Third, CGS section 16a–106(b) authorizes the Commissioner to require date, time or route changes or the use of escorts for transport of radioactive materials or wastes. The time issues are discussed below under "Regulatory Provisions." However, discretionary state routing requirements for the transportation of radioactive materials are inconsistent with § 177.825 of the HMR because they are neither identical to that section nor state-designated alternative routes authorized by that section. IR–8 (Appeal), IR–16, IR–18, IR–20, all *supra; Jersey Central Power & Light Co. v. State of New Jersey,* Civil No. 84–5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot,* 772 F.2d 35 (3rd Cir. 1985). In addition, requirements to provide escorts for radioactive materials shipments beyond those escorts required by the HMR (including Nuclear Regulatory Commission (NRC) requirements incorporated therein) are inconsistent with the HMR. IR–11, IR–13, IR–15 (Appeal), IR–18, all *supra.* Thus, the Connecticut routing and escort provisions both are inconsistent with the HMR.

Fourth, CGS section 16a–106(b) authorizes the establishment of inspection procedures to ensure compliance with permit conditions and the Commissioner's regulations. Although inspection requirements relating to Federal and consistent requirements are encouraged by RSPA and are themselves consistent (IR–2, IR–15, IR–20, all *supra;* IR–8, 49 FR 46637 (November 27, 1984); IR–17, 51 FR 20925 (June 9, 1986)), inspection requirements, such as this one, relating to inconsistent permitting requirements are themselves inconsistent, IR–20, *supra.*

In summary, for the foregoing reasons, CGS sections 16a–106 (a) and (b) are inconsistent with the HMTA and the HMR.

Regulatory Provisions

The challenged Commissioner's regulations, Connecticut Regulations sections 19–409d–51, –53, –54 and –55 (printed in Appendix A to the Public Notice and Invitation to Comment concerning this inconsistency ruling application, 51 FR 34526–7, September 29, 1986) merely implement the State's inconsistent statutory permitting system and, therefore, are themselves inconsistent with the HMTA and the HMR. In addition, they contain several independently inconsistent provisions, which are discussed in the following paragraphs.

Section 19–409d–51 states that the regulations relate to the transport of, among others, "large quantities of radioactive materials." Section 19–409d–53 defines "large quantity" as the same definition in the NRC regulations at 10 CFR Part 71. The HMR previously contained a similar definition. However, in a final rule issued on July 1, 1983 (Docket No. HM–169, 48 FR 10218), the term "highway route controlled quantity" replaced "large quantity radioactive materials." Continued use of this superseded terminology over four years later could cause confusion and undermine compliance with the HMTA and the HMR. In light of the exclusive Federal role in defining hazardous materials (IR–5, 47 FR 51991 (November 18, 1982); IR–6, IR–8, IR–12, IR–15, IR–16, all *supra*) and of a finding in IR–18, *supra,* that a similar provision is inconsistent, the Connecticut definition is inconsistent with the HMR.

Section 19–409d–54 contains the following sentence regarding time requirements:

> No applications will be processed without a two-hour advance notice nor will an application be accepted more than one working day in advance of the scheduled move except that the Commissioner reserves the right to waive the advance requirement notice when it is in the best interest of public health and safety.

A similar two-hour advance notice requirement with no stated purpose was found inconsistent in IR–20, *supra.* The prohibition on applications more than one working day in advance of each scheduled shipment, combined with the statutory provision for three or more days to act on the application, tends to ensure delays in hazardous materials transportation. As indicated above in the discussion of delays under "Statutory Provisions," this prohibition, therefore, is inconsistent with the HMTA and the HMR. IR–2, IR–3, IR–8 (Appeal), IR–18, IR–19, IR–20, all *supra.* That same section requires two extensive certificates, one from the shipper concerning compliance with NRC and DOT regulations and another from the carrier concerning proper loading, blocking and securing and compliance with DOT regulations. These certification/documentation requirements are similar to the statutory information requirements discussed above. Requirements for information or documentation in excess of the HMR requirements create an additional burden or delay and are inconsistent with the HMTA and the HMR. IR–2, IR–6, IR–8, IR–8 (Appeal), IR–15, IR–15 (Appeal), IR–18, IR–19, all *supra.* Specifically, requirements for certification to a state of a shipment's compliance with law are redundant, constitute obstacles to the HMTA, and thus are inconsistent. IR–8, IR–15, both *supra.* For all these reasons, the Connecticut regulatory certification/documentation requirements are inconsistent with the HMTA and the HMR.

The final provision at issue is Connecticut Regulations section 19–409d–55, which states:

> In the interest of public health and safety, the following requirements are to be considered a condition of the permit.
>
> 1. All routes will be determined by the Connecticut department of energy.
>
> 2. All shipments are to be made during daylight hours between the hours of 9:00 a.m. thru 4:00 p.m.
>
> 3. The permit is void on Saturdays, Sundays, and holidays.
>
> 4. The permit or a confirmation of it must be in the possession of the operator of the vehicle while transporting the radioactive materials over Connecticut state highways.

Paragraph 1. is inconsistent with the HMTA and the HMR because, as indicated above, discretionary state routing requirements for the transportation of radioactive materials have been preempted by RSPA's total occupation of the field of radioactive materials transportation through the promulgation of the HMR. Transportation of radioactive materials in accordance with the HMR, including the routing requirements thereof, are presumptively safe, and, therefore, state and local routing requirements applicable to them (except for state designation of alternative preferred routes under § 177.825b) are inconsistent.

Paragraphs 2. and 3. are inconsistent statewide delay-inducing restraints on the transportation of certain radioactive materials. Cumulatively they would restrict that transportation anywhere in Connecticut to 9 a.m. to 4 p.m. on non-holiday weekdays. On the one hand, limited citywide rush-hour or weekday time restrictions may be consistent with the HMTA and the HMR. *National Tank Truck Carriers, Inc. v. City of New York,* 677 F.2d 270 (2nd Cir. 1982), *affirming City of New York v. Ritter Transportation Co.,* 515 F. Supp. 663 (S.D.N.Y. 1981); IR–3, *supra.* However, statewide time restrictions are of much greater concern because of their greater tendency to redirect and delay hazardous materials transportation. For example, Rhode Island's statewide

prohibition on hazardous materials transportation between 7–9 a.m. and 4–6 p.m. on weekdays was held inconsistent in IR–12, *supra*, and *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983).

Although those inconsistent Rhode Island provisions prohibited hazardous materials transportation during only 20 of the 168 hours in a week, the Connecticut regulatory provisions at issue here prohibit certain radioactive materials transportation during 133 of the 168 hours in a week (or 140 of the 168 hours when a holiday occurs on a weekday).

Connecticut supports its weekday hours time restrictions with the following data:

[In percent]

Time period	Total daily traffic on highways statewide	Total daily accidents on highways statewide
9 am to 4 pm	41	34
7 pm to 6 am	20	36
4 pm to 7 pm	21	23
6 am to 9 am	18	[illegible]

CANT responds that this data supports CANT's contention that the State creates a safety hazard by restricting shipments to the busiest traffic period. It says that the data shows that the State restricts shipments to the seven hours a day when 41% of the traffic is on its highways and over one-third of the accidents occur.

The State's data indicates that a total of 41% of its traffic moves and that 34% of its accidents occur during the 7 daily hours (29% of each day) when it allows this radioactive materials transportation, and that 59% of its traffic moves and that 66% of its accidents occur during the 17 daily hours (71% of each day) when it prohibits this transportation. The data thus indicates that both traffic and accidents are proportionately *less* during the hours when radioactive materials transportation is prohibited than when such transportation is authorized. That data does not provide adequate justification for Connecticut's burdensome and delay-inducing statewide weekday restrictions, let alone its weekend and holiday transportation prohibition. As in IR–14, *supra*, the term "holiday" is not defined; it is unclear whether it includes Federal, state or local holidays.

Paragraph 4., which is essentially identical to a provision in Connecticut Regulations 19–409d–54, is an additional inconsistent documentation requirement. Requirements for carriage of documents additional to those required by the HMR for radioactive materials transportation are inconsistent with the HMTA and the HMR. IR–2, IR–8 (Appeal), IR–15, IR–15 (Appeal), all *supra*.

IV. Summary

Connecticut's statutory and regulatory permitting system for the transportation of certain radioactive materials contains information, documentation, certification and operational requirements exceeding those of the HMTA and the HMR. It also contains burdensome time of application requirements and time of transport restrictions which are likely to cause delays in hazardous materials transportation. For these reasons, the State's statutory and regulatory provisions constitute an obstacle to the accomplishment and execution of the HMTA and the HMR and, therefore, are inconsistent with them.

V. Ruling

For the foregoing reasons, I find Connecticut General Statutes sections 16a–106 (a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54, and 55, inconsistent with the HMTA and the HMR and, therefore, preempted under 49 App. U.S.C. 1811(a).

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on September 28, 1987.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87–22851 Filed 10–1–87; 8:45 am]

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Friday
October 2, 1987

Part V

Department of Education

Educational Grant Research Program; Proposed Funding Priority and Invitation of Applications for New Awards for Fiscal Years 1988 and 1989; Notices

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DEPARTMENT OF EDUCATION

Educational Research Grant Program; Proposed Funding Priority for Fiscal Years 1988 and 1989

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for Fiscal Years 1988 and 1989.

SUMMARY: The Secretary proposes to establish a funding priority by reserving a portion of the funds available for the Educational Research Grant Program, for Fiscal Years 1988 and 1989, to support research projects led by teachers in public and private elementary and secondary schools.

DATE: Comments must be received on or before November 2, 1987.

ADDRESS: Comments should be addressed to Joseph C. Vaughan, Research Applications Division, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., (Room 504C—M/S 1508), Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Joseph C. Vaughan Telephone: (202) 357–6193.

SUPPLEMENTARY INFORMATION: The purpose of the Educational Research Grant Program (ERGP) is to support scientific inquiry designed to provide more dependable knowledge about the processes of learning and education.

Proposed Absolute Priority

The Secretary proposes to give an absolute priority under the ERGP for Fiscal Years 1988 and 1989, for a portion of the total funds to be appropriated for the ERGP during Fiscal years 1988 and 1989, to applications that respond to the priority described below. Only applications which meet this priority will be considered under this competition.

Teacher-Led Research Projects Endorsed by Appropriate Education Officials and Addressing One or More Selected Topics

The Secretary proposes to support only those applications which are for teacher-led research projects. Teacher-led research projects are those in which one or more classroom teachers serve as principal investigators for the project, although involvement of other personnel such as school administrators, supervisors of teachers, curriculum specialists, and staff developers may also be appropriate.

Under this proposed priority, each application must also be endorsed by appropriate education officials. An application for a teacher-led research project at a public school must include an endorsement from appropriate officials of the local educational agency (LEA). An application for a teacher-led research project at a private school must include an endorsement from the leadership of that school if the school is not a part of a larger local organization of private schools. If the application is for a teacher-led research project in a private school that is a member of a larger local organization of private schools, the endorsement must come from appropriate officials of the larger local organization of schools. To satisfy the requirement for an endorsement, an application must contain assurances from the entity providing the endorsement that the proposed project addresses issues important to local educational improvement, that the appropriate education officials will provide the project participants with adequate time, facilities and support to conduct the project, and that the appropriate education officials will give the results of the project the fullest possible consideration in addressing related improvements.

The Secretary also proposes that each grantee, in carrying out its teacher-led project, must address one or more of the following topics. Following each topic are examples, illustrative only, of specific study emphases which might be included under that topic.

1. Teachers' roles and teaching functions (e.g., instructional roles, roles as a professional educator, parent-teacher interactions in teaching).
2. Specific instructional processes and materials (e.g., effective teaching techniques, classroom management strategies, organizing learning groups).
3. Effective teaching of subject matter content (e.g., subject specific approaches, interdisciplinary strategies, examining appropriateness of content).
4. Approaches to professional development of educational personnel (e.g., inservice education, induction of beginning teachers, school-based preservice initiatives).
5. Alternative patterns of school management and organization (e.g., administrator-teacher shared decision-making, differentiated staffing, career ladder programs).
6. Ways for schools to find, understand, and use research and practice-based knowledge more effectively in local improvement initiatives (e.g., development of local problem-solving capacity, diagnosing readiness for change, implementing and assessing research-based improvements).
7. More effective strategies to assess student, teacher or school indicators of excellence (e.g., student testing strategies, measurement of achievement of school-wide objectives, teacher performance assessment).

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 504C, 555 New Jersey Avenue, NW., Washington, DC 20208 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1221e)

(Catalog of Federal Domestic Assistance No. 84.117J; Educational Research Grant Program)

Dated: September 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–22844 Filed 10–1–87; 8:45 am]

BILLING CODE 4000–01–M

[#84.117K]

Education Grant Research Program; Invitation of Applications for New Awards for Fiscal Years 1988 and 1989

Purpose: To invite applications for research projects led by teachers in public and private elementary and secondary schools.

Deadline for Transmittal of Applications: December 4, 1987.

Applications Available: October 9, 1987.

Estimated Available Funds for FY 1988 and 1989: $150,000 in Fiscal Year 1988 and $250,000 in Fiscal Year 1989. Both Fiscal Year 1988 and Fiscal Year 1989 awards for this competition are subject to availability of funds in those fiscal years.

While this notice describes a single grant competition, it is the intent of the U.S. Department of Education's Office of Educational Research and Improvement (OERI) to make two sets of awards from this competition. Applicants should indicate proposed start and end dates for their projects. Pending availability of funds for Fiscal Year 1988, OERI intends to make approximately 30 awards for projects that may begin as early as April 1, 1988. If funds are available for Fiscal Year 1989, OERI also intends to make approximately 50 additional awards for projects that would have start dates no earlier than October 1, 1988. For this reason, applicants who propose a start date prior to October 1, 1988, should also indicate if they would be willing to negotiate a later start date.

Estimated Maximum Size of Award: $5,000.

Estimated Number of Awards: 30 in Fiscal Year 1988 and 50 in Fiscal Year 1989.

Project Period: Up to 12 months.

Priorities

Proposed Absolute Priority: The Secretary has proposed, in a notice in this issue of the **Federal Register**, an absolute priority for research projects led by teachers in public and private elementary and secondary schools. Subject to the Secretary's adoption of a final priority after consideration of public comments, applications must meet this proposed absolute priority in order to be eligible to be considered for an award.

Weighting for Selection Criteria

The program regulations at 34 CFR 700.30(d) authorize the Secretary to distribute an additional 25 points among the criteria described in the regulations at § 700.31 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 25 points as follows:

Plan of Operation (§ 700.31(a)): Five (5) additional points will be assigned to the criterion, bringing the possible total for this criterion to 15 points;

Adequacy of Resources (§ 700.31(e)): Five (5) additional points will be assigned to the criterion, bringing the possible total for this criterion to 10 points;

Technical Soundness (§ 700.31(g)): Five (5) additional points will be assigned to the criterion, bringing the possible total for this criterion to 20 points;

Applicant's Commitment and Capacity (§ 700.31(h)): Ten (10) additional points will be assigned to the criterion, bringing the possible total for this criterion to 10 points.

Applicable Regulations

(a) The Educational Research Grant Program Regulations, in 34 CFR Part 700, (b) when adopted in final form, the Notice of Proposed Funding Priority for Fiscal Year 1988 and 1989, published in this issue of the **Federal Register**, and (c) the Education Department General Administrative Regulations, in 34 CFR Parts 74, 75, 77 and 78. Applicants should prepare their applications based on the regulations, the Notice of Proposed Funding Priority for Fiscal Years 1988 and 1989 and this application notice. If there are any substantive changes made in the Notice of Proposed Funding Priority for Fiscal Years 1988 and 1989 when it is published in final form, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Joseph Vaughan, OERI, Programs for the Improvement of Practice, Research Applications Division, Room 504C, 555 New Jersey Avenue, NW., Washington, DC 20208–1430, (202) 357–6193.

Program Authority: 20 U.S.C. 1221e.

Dated: September 29, 1987.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–22845 Filed 10–1–87; 8:45 am]

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Part VI

Office of Personnel Management

Personnel Management Demonstration Project; Alternative Personnel Management System at the National Bureau of Standards; Notice of Approval

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OFFICE OF PERSONNEL MANAGEMENT

Personnel Management Demonstration Project; Alternative Personnel Management System at the National Bureau of Standards

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: The National Bureau of Standards Authorization Act For Fiscal Year 1987 (Pub. L. 99–574) directed the Office of Personnel Management (OPM) and the National Bureau of Standards (NBS) to "jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards." Section 10 of the Act, which covers the project, further provides that "The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code . . ." Section 4703 requires the Office of Personnel Management to publish the final project plan in the **Federal Register.** This notice meets that requirement.

DATES: *Approval date:* The demonstration project plan was approved by the Office of Personnel Management on September 29, 1987. *Project implementation date:* January 1, 1988.

FOR FURTHER INFORMATION CONTACT:

NBS: Allen Cassady, (301) 975–3031. Mailing address: U.S. Department of Commerce, National Bureau of Standards, Room A–123, Administration Bldg., Gaithersburg, Maryland 20899.

OPM: Paul Thompson, (202) 632–6164. Mailing address: U.S. Office of Personnel Management, Room 7H34, Washington, DC 20415.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management published the proposed project plan in the **Federal Register** on July 1, 1987 (52 FR 24906). Copies of the proposed plan were transmitted to both Houses of Congress, as required by 5 U.S.C. 4703(b)(4). The period for public comment on the proposal continued through August 31, 1987. The notice of the proposed plan also announced the times and locations of public hearings during which interested persons or organizations could present their written or oral views on the proposed demonstration project plan. The Office held the public hearings as scheduled at the two NBS sites: in Gaithersburg, Maryland, on August 10, 1987, and in Boulder, Colorado, on August 18, 1987. The hearing record was left open for additional data, views, and arguments until September 1, 1987.

2. Summary of Comments

Six letters were received commenting on the **Federal Register** notice. In addition, three individuals made statements at the public hearings. The following is a summary by general topic of these written and oral comments.

(1) *Conversion to project pay system.* Objections were raised to the manner in which NBS employees are to be compensated for foregone within-grade pay increases. The project plan stipulates (in accordance with Pub. L. 99–574) that they receive a pro rata share of their next within-grade increase as of the day before they enter the project, to be paid in a lump sum. It was proposed that the share be paid instead as an addition to base pay, on the grounds that the lump sum payment would result in a short-term (and in some cases long-term) loss of salary for many employees.

(2) *Cost neutrality.* Opinions were expressed that the project could not achieve some of its objectives—i.e., competing more effectively for highly qualified employees, motivating and retaining those on board—if personnel costs are maintained at the levels they would have reached were the project not implemented.

(3) *Performance appraisal.* Concerns were voiced that a quota would be placed on favorable performance ratings under the project, and that persistent differences among supervisors in the severity of the ratings they give would produce inequitable results for employees working under a strict supervisor.

One respondent also urged that peer ratings be introduced, that is, peers *rate* each other's performance. The project plan calls instead for subordinate peers to be *ranked* by their supervisors in order of the quality of their performance.

(4) *Classification system changes.* It was argued that the banding of adjacent grades would result in the loss of status for employees formerly in the upper of the two grades and that these employees would also be disadvantaged in a RIF situation. Concern was also expressed that movement of qualified employees between career paths be encouraged, and that the delegation of classification authority to line managers be accompanied by extensive training. Finally, a question was raised regarding how employees would be converted back to the General Schedule system if they leave the project or at its termination.

(5) *Probationary periods.* The observation was made that the provision for probationary periods of up to three years for new hires in the scientist and engineering career path is too open-ended. This could make for excessive uncertainty among employees regarding when their probation might be ended.

(6) *Promotion.* The suggestion was received that employees be included on promotion panels for their peers.

Demonstration Project Changes

Only a few comments were received on the preliminary project plan, especially considering that about 3000 employees will come under the project at implementation. Of those received, only a few were critical of the content of the substance of the plan. Most were cautionary in nature, urging that certain steps be taken to ensure success in applying the planned provisions.

Some of the provisions whose contents were directly challenged, such as payment of the lump sum pro rata share at conversion and pay banding, were mandated by Congress in the act authorizing the project and are not open to change. Others—extended probationary periods and the requirement of cost neutrality—were not mandated but have been retained in the final plan. The probationary period provision was modified to establish points in time at which supervisors must decide whether the probationary period will be ended. This provides a regular schedule under which each employee's probation is reviewed. In the case of cost neutrality, no substantive changes were made in the final project plan. Basic project objectives can be met within these constraints, which will also make the experiment more applicable to other government agencies.

Additional changes were made to the final version in order to clarify and expand on its provisions. A few editorial changes were also made. The substantive changes, by section, are: (1) Position Classification: further explanation of the process of generating position descriptions, (2) Total Compensation Comparability: more information on the method of measuring benefits, (3) Staffing: More information on the applications of direct hire, the extended probationary period, recruitment and retention allowances, travel expenses, and the link between promotion and performance ratings (the promotion subsection was moved from the classification section to the staffing section), (4) Pay Administration:

expanded explanation of the linkage between performance ratings and pay increases, the criteria for supervisory differentials, pay setting for new hires, and prorating lump sum payouts upon conversion, and (5) Implementation: more detailed criteria on determining grades if the project terminates and employees must be converted back to the General Schedule System.

Public Law 99–574, National Bureau of Standards Authorization Act For Fiscal Year 1987:

Because many elements of the proposed demonstration plan are required by section 10 of Pub. L. 99–574, the complete text of section 10 is presented here.

Section 10, "Demonstration Project Relating to Personnel Management"

Sec. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) Subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) Subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) Chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) The rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph (3)) within which such position has been placed;

(2) The minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) Positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) Employees shall be evaluated under a performance appraisal system which—

(A) Uses peer comparison and ranking wherever appropriate; and

(B) Affords appeal rights comparable to those afforded under chapter 43 of title 5, United State Code;

(5)(A) The rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) Subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) Appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) Performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances, (but shall not be considered a part of basic pay);

(8) There shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) Payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) The methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) Basic pay;

(B) Bonuses;

(C) Allowances;

(D) Retirement benefits;

(E) Health insurance benefits;

(F) Life insurance benefits; and

(G) Leave benefits.

(2) The director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) Shall include findings as to—

(i) The extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(iii) With respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) Shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) Shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) The percentage recommended; or

(ii) The overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) If and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) To make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) After making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) The maximum rate of basic pay payable under any pay band may not

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exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) The amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) In the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rate share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) In the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) The Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) The Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

Office of Personnel Management.

Constance Horner,

Director.

Project Plan

The demonstration project plan reads as follows:

An Alternative Personnel Management System to Improve the Ability of the National Bureau of Standards to Attract Highly Qualified Candidates, Motivate Employees, and Retain Successful Performers.

Executive Summary

The project was designed by the National Bureau of Standards, with participation of and review by the U.S. Department of Commerce (DoC) and the Office of Personnel Management (OPM). The Bureau will conduct the project over a 5-year period beginning January 1, 1988. The Office of Personnel Management will evaluate the project annually through contract; the Comptroller General will make a final report to Congress that will make any recommendations for legislation or other action which the Comptroller General considers appropriate.

The project is built upon the concepts of (1) total compensation comparability, rather than pay comparability only; (2) market sensitivity, by surveying compensation for private sector positions similar to NBS positions, linking entry salary to market forces by occupation, and selectively granting recruiting and retention allowances; (3) performance, by linking performance to pay for all covered positions; (4) administrative simplicity, by simplifying paperwork and processing in classification and other personnel systems; (5) management flexibility and accountability, through the delegation of classification and other authorities to line managers; and (6) Government-wide applicability, by designing an alternative system not just for NBS but for use by any agency.

The demonstration system is designed to (1) improve hiring and allow NBS to compete more effectively for high-quality researchers, through direct hiring, selective use of higher entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff, through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role in personnel management, through delegation of personnel authorities; and (4) increase the efficiency of personnel systems, through installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

The Director of the National Bureau of Standards will conduct the project through a Personnel Management Board (PMB) under the chairmanship of the NBS Deputy Director, with the directors

of the six NBS major organizational units (MOUs) as voting members and the NBS Personnel Officer and NBS EEO Officer as non-voting members. A Project Office within the Personnel Division will provide administrative support, communicate with individuals and groups outside NBS, and oversee NBS evaluations of the project.

In presenting the FY 1987 NBS Authorization bill to the Senate, Senator Slade Gorton stated that the bill "creates a National Bureau of Standards demonstration project relating to personnel compensation and management. The demonstration project enhances the Bureau's ability to recruit and retain capable employees by giving the Bureau flexibility in setting salaries competitive with those available outside the Government and in adjusting compensation on the basis of merit. The project addresses the Government's problem attracting and keeping qualified personnel especially in high-technology fields."

Participating Organizations

Both sites of the National Bureau of Standards will participate in the project. The two sites are located at Gaithersburg, Maryland, which is also the headquarters of NBS, and at Boulder, Colorado. The two sites are similar in employment profiles, with the following exceptions: (1) Of the approximately 3050 positions covered by the project, about 85 percent are in Gaithersburg; (2) all heads of major organizational units and all but one center head are located in Gaithersburg; and (3) certain administrative services at the Boulder facility, such as personnel administration and procurement, are provided by the DoC administrative support center in Boulder, which is not covered by the project and which services other DoC organizations also not covered by the project; in Gaithersburg those services are provided by NBS positions under the coverage of the project.

Types and Numbers of Participating Employees

The project will cover approximately 3050 NBS employees. By pay category, the coverage is 87.5 percent General Schedule (GS) positions, 9 percent Performance Management and Recognition System (PMRS) positions, percent 5 U.S.C. 3104 positions, and 3 percent Senior Executive Service (SES) positions. Under the PATCO categories, the coverage is 51 percent "professional," 12 percent "administrative," 18 percent "technician," 16 percent "clerical," and 3 percent "other." The professional category is 98 percent scientists, engineers, and mathematicians.

The ten most populous occupations are Physicist (427), Chemist (258), Secretary (249), Engineering Technician (170), Electronics Engineer (155), Physical Science Technician (152), General Physical Scientist (146), Computer Scientist (134), Computer Specialist (110), and Mechanical Engineer (93).

Of the approximately 3050 covered employees, 78 percent are full-time permanent (FTP), 5 percent are part-time permanent (PTP) and 17 percent are "other" than FTP or PTP. The "other" category, made up of such categories as student, post-doctoral, temporary, and intermittent, shifts significantly during the year, particularly in the summer when many students are hired.

Labor Participation

A few General Schedule employees are represented by labor unions. These employees at the Gaithersburg site are represented by the International Association of Firefighters (IAFF), and at the Boulder site by the American Federation of Government Employees (AFGE). Union representatives have been separately notified about the project. NBS is proceeding to fulfill its obligation to consult or negotiate with them, as appropriate, in accordance with 5 U.S.C. 4703(f).

Project Implementation Date

January 1, 1988.

Project Ending Date

In accordance with section 4703 of title 5, United States Code, the project shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond that period to the extent necessary to validate the results of the project. The Comptroller General is required to submit a final report to Congress not later than 4 years after the date on which the project commences, including any recommendations for legislation or other action.

Methodology

This proposal explains the methodology for introducing the following innovations in personnel management and demonstrating their results over a 5-year period: (1) Simplified position classification through pay banding, occupational groupings by career paths, and delegation of classification authority to managers; (2) compensation comparability based on total compensation; (3) improved staffing through direct examination and hiring, extended probation, qualification standards more in line with private sector practice, more flexible use of recruiting tools such as paid advertising and retention allowances, travel expenses, and competitive areas based on career paths; (4) pay-for-performance, supervisory and managerial pay differentials, and market-based entry salaries; and (5) sabbaticals.

Senior Executive Service and 5 U.S.C. 3104 Positions

The personnel systems for SES positions will not change for the project. SES classification, staffing, compensation, performance appraisal, awards, and reduction in force will be based on current methods.

The personnel systems for 5 U.S.C. 3104 positions will change only to the extent that 3104 positions are in the same performance appraisal, awards, and reduction in force systems as General Schedule positions. Classification, staffing, and compensation, however, will not change.

Neither SES nor 5 U.S.C. 3104 employees will be subject to the pro rata share payouts upon conversion to the demonstration system. Pay adjustments for their positions under the project will be carried out in accordance with existing Federal rules pertaining to SES and 3104 pay adjustments.

Performance Management and Recognition System (PMRS) and General Schedule (GS) Positions

The PMRS and GS categories will no longer exist as identified categories under the project. Both will be incorporated in the new career-path/pay-band system. The step increases of the General Schedule and the merit increases of the PMRS system will be replaced by the annual performance pay increases described under "Pay Administration". Laws and regulations pertaining to the General Schedule that have not been waived for this project, however, such as those pertaining to overtime pay, will continue in force for all covered positions to which they now apply.

Position Classification

Introduction

The objectives of the new classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers.

Coverage

All positions listed under "Types and Numbers of Participating Employees" above will be accounted for in the classification structure. All General Schedule occupations currently respresented at NBS will be included. Provisions will be made for including others as employment requirements change in response to changing technical programs.

Career Paths

Occupations at NBS which can be treated in a similar fashion will be aggregated into career paths. Occupations will be grouped according to similarities in type of work and customary requirements for formal training or credentials. The common patterns of advancement within the occupations as practiced at NBS and in the private sector will also be considered. The current occupations and grades at NBS have been examined, and their characteristics and distribution have served as guidelines to the development of career paths.

Four career paths will be established:

(a) *Scientific and Engineering.* This path will include all technical professional positions, such as physical, biological, and social scientists, engineers, computer scientists, mathematicians, and computer specialists. Ordinarily, specific course work or educational degrees are required for these occupations.

(b) *Scientific and Engineering Technician.* This path consists of the jobs that support the various scientific and engineering activities. Employees in these jobs are not required to have college course work. However, training and skills in the various electrical, mechanical, chemical, or computer crafts and techniques are required.

(c) *Administrative.* This career path contains specialized functions in such fields as finance, procurement, personnel, public information, technical information, accounting, administrative computing, and management analysis. Special skills in administrative fields or special degrees are involved.

(d) *Support.* This career path is composed of positions for which an minimal formal education is needed, but for which special skills and knowledge, such as typing or shorthand, are usually required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, guards, firefighters, and mail clerks.

Pay Bands

Each career path will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all career paths. Each career path will be divided into either five or six pay bands, each pay band covering the same pay range now covered by one or more grades. The maximum rate of a pay band will be the highest rate possible for positions within that career path and band, including any position with a special pay rate. A salary overlap, similar to the current overlap between grades, will be maintained.

Ordinarily an individual will be hired at the lowest salary in a pay band. Superior qualifications may lead to a higher entrance level within a band.

For each pay band, a corresponding band will be established for employees qualifying for supervisory/managerial differentials. The supervisory pay band will have the same minimum rate as the non-supervisory band, but its maximum rate will be 6 percent higher than the maximum rate of the non-supervisory band. Positions in the supervisory pay bands will include division chiefs and group leaders in the Scientific and Engineer Career Path, positions with formal supervisory authority over at least three positions (excluding support positions), and other positions approved by the PMB on a case-by-case basis.

The proposed pay bands for the four career paths appear in Chart I. The General Schedule (GS) grades being replaced appear at the bottom of the figure.

The pay band concept has the following advantages:

Reduces the number of classification decisions required during an employee's career: In the current system a classification action is required for each promotion to a higher grade, while in the new system a classification action is required for promotion to a higher band. Because there will be fewer bands than grades, there will be fewer classification decisions.

Simplifies the classification decision-making process and paperwork: A pay band is a larger target than a grade, and thus may be defined in shorter and simpler language. At the same time the definition for one band can be made more distinct from the definition for adjacent bands, reducing the potential for disagreement.

Supports delegation of classification authority to line managers with review or post-audit by personnel specialists.

Provides a broader range of performance-related pay for each level: In many cases, employees whose pay would have been frozen at the top step or a grade will now have more potential for upward movement in the broader pay band.

The chart below shows all four proposed career paths and how their pay bands relate to the current General Schedule grades. Each regular pay band is considered to have a corresponding pay band for supervisors and managers who qualify for the supervisory/managerial differential, though it is unlikely that the lower bands will ever be filled by supervisory positions.

CHART I: CAREER PATHS AND PAY BANDS

Career Path	Levels (or Bands)														
Scientific and Engineering	I						II			III		IV		V	3104/SES
Scientific and Engineering Technician	I					II			III	IV		V			
Administrative	I						II			III		IV		V	3104/SES
Support	I		II		III		IV		V						
GS Grade	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	3104/SES

Occupational Series

The present General Schedule classification system has 434 occupations (also called series) which are divided into 22 groups. NBS has positions in 115 occupations and in 16 groups. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. New series may be added as physical, chemical, and biological sciences, engineering, and computer science change in other career paths, such as a new series in the Support Career Path to describe clerical and assistant support of the internal administrative functions of an organizational unit. Chart II lists the occupations currently represented at NBS by career path. This arrangement may be modified from time to time as experience is gained in applying it.

Classification Standards

The present system of classification standards will be simplified for routine use by NBS managers. The objective is to record the essential criteria for each pay level within each career path by stating the general duties and responsibilities and the knowledges, skills, and abilities required. Each pay band or level of each standard is described in two categories or factors: (1) General duties and responsibilities, and (2) knowledges, skills, and abilities. These two categories complement each other at each level and may not be separated in classifying a position.

Position Descriptions

New position descriptions will emphasize the knowledges, skills, and abilities required. Line managers will follow an automated menu-driven process to classify positions and produce position descriptions. The objectives in developing these new descriptions are to:

—Simplify the description by using short standard-format descriptors rather than long narrative descriptions and by holding the length of a position description to no more than two pages;

—Allow supervisors to prepare descriptions on a personal computer; and

—Make the position description a more useful and accurate tool for other functions of personnel management, such as recruiting, reduction in force, performance appraisal, and employee development.

Classification and Position Description Process

Part 1 of the position description corresponds to the following steps by the supervisor:

1. *Statement* of Position Objective (a supervisor creates a "statement" by typing free-form at appropriate points in the menu-driven system).

2. *Selection* of Career Path, Occupational Series, Function, Pay Band or Level, Specialty Areas, Supervision Exercised, FLSA Status, and Minimum Qualifications Required (a supervisor makes a "selection" by selecting from options in the menu).

3. *Statement* of Position Title, Organizational Location, and Supervisor.

Part 2 of the position description is the supervisor's *statement* of position-specific duties and responsibilities and position-specific knowledges, skills, and abilities.

In producing a position description the supervisor first states the general purpose to be met, or mission objective

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to be accomplished, by the position (position objective). The supervisor then selects from the menu a career path, an occupational series, a functional code, and a level description (see level descriptions under "Classification Standards") commensurate with the position objective. When producing part 2 of the position description, the supervisor will confirm the selections and classification against the position-specific duties and responsibilities and the position-specific knowledges, skills, and abilities.

The menu-driven system incorporates the four career paths and the occupational series listed below. Descriptors of these occupations are available in the program if needed. The "functions" are those currently used by OPM for science and engineering positions, including research, development, planning, etc., as well as functional descriptions associated with maintaining and servicing the facilities and providing technical and administrative services and support to the scientific and engineering staff.

"Specialty Areas" are subdisciplines or subsets of the disciplines as practiced at NBS. Descriptors of these specialties have been prepared by NBS staff and are available in the program. Selection of the appropriate supervisory responsibilities automatically determines the appropriate affirmative action obligations. The FLSA status can generally be matched to Career Path and Level, but a selection of FLSA "exempt" or "non-exempt" must be consistent with OPM guidance. Minimum qualifications are determined by the selection of career path, occupation, and level, and appear automatically after these three items have been selected.

Delegation of Classification Authority

Line managers will have classification authority. Supervisors at the lowest levels will have recommendation authority only. Higher-level managers will have approval authority, the level of approval depending on the proposed career path and pay band. The current system of approval of SES and 5 U.S.C. 3104 positions will be maintained. Classification actions will receive post audits by the personnel office. Periodic audit reports will be made to the NBS Director. Errors in classification will be corrected when discovered.

Chart II: Occupational Series by Career Path

I. Scientific and Engineering

101—Social Scientist
110—Economist
180—Psychologist
185—Social Worker
334—Computer Specialist
401—Biologist
403—Microbiologist
690—Industrial Hygienist
801—General Engineer
804—Fire Prevention Engineer
806—Materials Engineer
808—Architect
810—Civil Engineer
830—Mechanical Engineer
840—Nuclear Engineer
850—Electrical Engineer
855—Electronics Engineer
858—Biomedical Engineer
892—Ceramic Engineer
893—Chemical Engineer
896—Industrial Engineer
899—Engineering Student
1301—General Physical Scientist
1306—Health Physicist
1310—Physicist
1320—Chemist
1321—Metallurgist
1330—Astronomer
1360—Oceanographer
1372—Geodesist
1384—Textile Technologist
1399—Physical Science Student
1515—Operations Research Analyst
1520—Mathematician
1529—Mathematical Statistician
1530—Statistician
1550—Computer Scientist
1599—Mathematics Student

II. Scientific and Engineering Technicians

332—Computer Operator
404—Biology Technician
462—Forestry Technician
802—Engineering Technician
809—Construction Inspector
856—Electronics Technician
1311—Physical Science Technician
1521—Mathematics Technician

III. Administrative

018—Safety Specialist
080—Security Officer
099—Student Trainee
201—Personnel Management Specialist
221—Position Classification Specialist
230—Employee Relations Specialist
235—Employee Development Specialist
260—Equal Employment Specialist
301—Miscellaneous Administration and Program
340—Program Manager
341—Administrative Officer
343—Management Analyst
345—Program Analyst
393—Communication Specialist
501—Financial Administrator
510—Accountant
511—Auditor
560—Budget Analyst
1001—General Arts and Information
1020—Illustrator
1035—Public Affairs Specialist
1060—Photographer
1071—Audio-Visual Production Specialist
1082—Writer/Editor
1083—Technical Writer/Editor
1084—Visual Information Specialist
1101—General Business Specialist
1102—Contracts Specialist
1410—Librarian
1412—Technical Information Specialist
1420—Archivist
1601—General Facilities Manager
1640—Facility Manager
1654—Printing Manager
2001—General Supply Specialist
2003—Supply Manager
2010—Inventory Manager
2050—Supply Cataloger
2130—Traffic Manager
2150—Transportation Operator

IV. Administrative Support

081—Firefighter
085—Guard
203—Personnel Clerk/Assistant
303—Miscellaneous Clerk/Assistant
304—Information Receptionist
305—Mail and File Clerk
309—Correspondence Clerk
312—Clerk-Stenographer
318—Secretary
322—Clerk-Typist
335—Computer Clerk/Assistant
344—Management Clerk/Assistant
350—Equipment Operator
351—Printing Clerk
357—Coding Clerk
382—Telephone Operator
392—General Communications Assistant
394—Communications Clerk
525—Accounting Technician
544—Payroll Clerk/Technician
561—Budget Clerk/Assistant
1021—Office Draftman
1087—Editorial Clerk/Assistant
1105—Purchasing Agent
1106—Procurement Clerk/Assistant
1152—Production Controller
1411—Library Technician
2005—Supply Clerk/Assistant
2102—Transportation Clerk/Assistant
2132—Travel Clerk/Assistant

Total Compensation Comparability

Introduction

An objective of the demonstration project is to improve the quality of NBS by making compensation more competitive. The Bureau will provide for the preparation of reports, by contract or otherwise, that include findings as to the extent to which the overall average level of total compensation for covered NBS positions is deficient in comparison

with the overall average level of total compensation for similar positions in the private sector. Annually thereafter during the project, the Bureau will determine the change in the deficiency.

Definition of Total Compensation

The legislation defines compensation as the total value of the various forms of compensation, including:

(A) Basic pay;
(B) Bonuses;
(C) Allowances;
(D) Retirement benefits;
(E) Health insurance benefits;
(F) Life insurance benefits; and
(G) Leave benefits.

NBS will develop a comparability measurement system, with contractor assistance, based on calculations and comparisons of the costs of compensation to the private sector and to the Federal Government.

NBS will use the "level-of-benefits" or "standardized" cost approach to measure benefits. This approach estimates what it would cost to provide private sector and Federal Government benefit plans to a standard workforce. By determining the cost of the various benefits to a workforce with constant demographic characteristics and using a constant set of actuarial and economic assumptions, cost data can be generated that reflect the difference in the benefit plan provisions. The NBS workforce covered by the demonstration project will be the standard workforce population used in the benefit comparisons.

Process To Determine Overall Deficiency and Net Changes in the Deficiency

The NBS Director is authorized to adjust the ranges of pay bands based on surveys conducted of total compensation paid to individuals in positions in private sector firms and universities that are similar in levels of work and responsibility to NBS positions. The Director will determine the criteria for selecting private sector organizations to be surveyed. The first survey will establish the extent to which compensation for covered NBS positions is deficient in comparison with compensation for comparable positions in the private sector prior to the start of the project, thus setting a baseline. Additional surveys will be conducted annually to determine the change occurring from year to year in private sector total compensation.

NBS will select a representative sample of private sector firms to be used in the surveys on the following basis:

(A) National coverage for scientists and engineers based on peer groups of private sector firms and universities that perform R&D work similar to that performed at NBS;

(B) Regional coverage for administrative positions; and

(C) Local coverage (Gaithersburg, Maryland, and Boulder, Colorado) for science and engineering technicians, and for administrative support positions.

To the extent possible NBS will use available data and will participate in existing compensation surveys. As an example, NBS is participating in the Department of Energy's National Compensation Survey of Research and Development Scientists and Engineers. NBS, using contractor support, will devise ways to build hybrid queries to access various compensation data bases in order to match the pay and benefits components of compensation of individual private sector positions in a mix of occupations similar to those at NBS. The nation's leading actuarial and compensation consulting firms have developed and tested costing models for the various benefit plans. NBS will use one or more of these models to generate total compensation values.

Comparability Decision by the Director

Each year, the NBS Director will receive three comparability figures: (1) The annual percentage pay increase for General Schedule employees (General Federal Increase); (2) the net percentage by which the overall average level of compensation for NBS positions covered by the project has fallen behind the overall average level of compensation for similar private sector positions over the past year (Net Increase in the Deficiency); and (3) the overall percentage by which the average level of compensation for NBS positions covered by the project was deficient, as of the commencement of the project, as compared with the average level of compensation for similar private sector positions (Overall Deficiency). The Director must select at least the lesser of the first two figures as the annual NBS comparability percentage increase. If the Net Increase in the Deficiency is larger than the General Federal Increase, the Director may increase the comparability percentage by some or all of the difference, if budget considerations permit. If the Director makes up all of the Net Increase in the Deficiency, he may, if budget considerations permit, authorize an additional adjustment to further decrease the Overall Deficiency.

The percentage comparability increase selected by the Director will apply directly to: (1) The minimum and maximum rates of basic pay for each pay band (the same percentage increase will apply to all pay bands), and (2) the basic pay of each employee receiving a fully successful or higher performance rating. An employee receiving a rating of less than fully successful will not receive an increase in basic pay.

Staffing

Introduction

New examining and hiring procedures coupled with simplified classification procedures will shorten the hiring process. Other features, such as payment of recruiting allowances, will help attract candidates in essential occupations. Retention allowances will be used to retain highly skilled and productive employees. Line managers will work with the personnel offices to develop hiring strategies. Priority placement, reemployment priority, and the merit assignment process will be addressed in developing these strategies. The personnel offices will ensure that proper procedures are followed. Line managers will participate actively in the examining and hiring process.

NBS will use a full range of staffing options. These options are Direct Hire (shortage occupations and shortage highly-qualified candidates), Agency-Based Staffing, Merit Assignment, Reinstatement, and Reassignment. All vacancies will be treated on a case-by-case basis and managers will have the option of choosing one or a combination of the applicable staffing options. The necessary examination and hiring procedures will be administered by NBS. NBS will not rate applicants for non-NBS positions. This will be made clear to all applicants.

NBS will use two options for candidates not employed by the government (non-status candidates): Direct Examination and Hiring and Agency-Based Staffing. Direct Examination and Hiring will be used for shortage categories. Agency-Based Staffing will be used for shortage categories. Agency-Based Staffing will be used for non-shortage categories to provide NBS with applicants who are specifically interested in, and available for, positions at NBS. Managers working with personnel office staff will determine the appropriate hiring strategy in each case.

Direct Examination and Hiring: Critical Shortage Occupations

NBS will use direct examination and hiring procedures for occupations defined as critical shortage occupations. Critical shortage occupations will be defined as hard-to-fill occupational series which have special pay rates or

require essential job-specific skills that are in short supply. Shortage occupations with special pay rates now include all Engineers, Mathematical Statisticians, Computer Scientists, and Metallurgists in the Scientific and Engineering Career Path, and Clerk-Typists, Clerk-Stenographers, Dictating Machine Transcribers, and all clerical and secretarial positions requiring typing, stenography, or dictating machine transcribing skills in Levels I through IV of the Support Career Path. In addition, all occupations in the Scientific and Engineering Career Path at Level III and above and Nuclear Engineering Technicians (Nuclear Reactor Operators) at Level III in the Scientific and Engineering Technician Career Path are in short supply and are shortage occupations.

NBS will recruit and make immediate offers of appointment to qualified candidates for critical shortage occupations without further competitive steps or procedures. Applications will be solicited through various recruitment activities, and applicants will be asked to submit a Personal Qualifications Statement (SF–171). A completed copy of the Federal Automated Examining System (FAES), Key Entry Examination System (KEES), or other appropriate appointment package will be provided to OPM's Office of Examining Services for all individuals appointed. All applications must be signed and contain information on citizenship, date of birth, removals, and convictions. Candidates who apply pending completion of education must submit verification that they meet all requirements prior to entering on duty.

Appropriate staff of the personnel offices and some non-personnel staff will be trained to rate applicants. Examiners will also be trained to review applications for completeness and to determine whether all legal and suitability requirements have been met. Examiners will not rate the applications of personal acquaintances or relatives. The basis for rating applicants will be documented on the OPM rating sheet. Examiners will initial and date each rating sheet and the front of the corresponding application. NBS will submit monthly reports to OPM showing the previous month's appointment activity. The report will include the name, date of birth, enter-on-duty, pay band, and job series for each appointee.

Each applicant will be rated only for the level and occupational series for which the applicant is being considered for employment. No numerical ratings will be assigned. Applicants will be determined eligible or ineligible only. *OPM Handbook X–118: Qualifications Standards for Positions Under the General Schedule* will be used to determine an applicant's basic qualifications, except that NBS will not use the testing requirements. Selective or special qualification factors will be considered where warranted.

NBS may appoint any individual who is certified eligible. Although no registers will be maintained, NBS will accept applications on an open-continuous basis for all direct hire categories.

All selections will be subject to the Department of Commerce Priority Placement and Reemployment Priority Programs, the OPM Displaced Employees Program, and the Interagency Placement Assistance Program. If there are available priority placement candidates, NBS will appoint a priority candidate or justify why priority candidates were not appointed.

Direct Examination and Hiring: Critical Shortage Highly-Qualified Candidates

Candidates who meet high academic and training standards are also a critical shortage category. Critical shortage highly qualified candidates may be directly hired for entry level positions in the Scientific and Engineering, Scientific and Engineering Technician, and Support Career Paths.

Under the Demonstration Project, quality candidates (those with bachelors degrees with a 2.9 GPA, out of 4.0, or masters degrees) may be directly hired at Level I or II of the Scientific and Engineering path. Quality candidates for Level I or II Technicians positions must have a 2.9 GPA, out of 4.0, in 2 or 4 years of study in an accredited college, junior college, or technical institute. Candidates who apply on the basis of superior academic achievement must submit verification that they meet all requirements prior to entering on duty.

The procedures for recruiting and examining critical shortage highly qualified candidates will be the same as those used above for critical shortage occupations, except that veteran preference candidates who meet the minimum quality-candidate standard will be given priority consideration. NBS will justify the nonselection of any quality candidate with veteran preference.

If any of these categories of critical shortage occupations or critical shortage highly-qualified candidates cease to be shortage categories, NBS will place them in the agency-based hiring system. If additional shortage categories arise, they will be negotiated with OPM before being included for direct hire.

Agency-Based Staffing

NBS will carry out the examination and certification of applicants in the agency-based system. Agency-Based Staffing will follow competitive principles, requiring that each position be advertised within NBS, at OPM Federal Job Information Center(s), and at State Employment Services. Each selection will be subject to the Department of Commerce Priority Placement and Reemployment Priority Programs, the OPM Displaced Employees Program, and the Interagency Placement Assistant Program.

NBS will publicize each vacancy, examine and certify applicants (except that tests will not be used), develop rating schedules where needed, evaluate and rank applicants, issue lists of best qualified candidates, and select candidates in accordance with applicable regulations. NBS will adjudicate rating appeals, act on objections to eligibles or passover of veterans with less than 30 percent disability, answer inquiries from applicants for the posted vacancy, and maintain records of all applicants.

When a position is announced under Agency-Based Staffing, all applications from non-status candidates will be received and rated. All applications must be signed and contain information on citizenship, date of birth, removals, and convictions. A rating plan will be established for each case. Selective factors may be used as discussion above. Applicants will be given numerical scores which will be placed in rank order. Ten and five-point veteran preference will be applied. Current procedures for the rule of three will be followed. All non-selected candidates will be notified of the outcome of their application with a statement that the NBS rating is not applicable for other Federal government positions and does not place the applicant on any competitive register. NBS will maintain case records for two years from the date of selection.

Merit Assignment, Reassignment, and Reinstatement

NBS will use its current Merit Assignment Plan (MAP). This plan allows managers to select status candidates for positions with greater known promotion potential than the position the selectee currently holds. This plan will be followed for status applicants requiring MAP competition for promotion, reassignment, or other competitive personnel actions. Appropriate changes will be made to the

plan to convert GS-grades to pay levels. There will be no change in current reassignment and reinstatement procedures, except for the appropriate changes converting GS-grades to pay levels. The reassignment and reinstatement procedures also allow managers to select status candidates for positions which have no promotion potential beyond that which the selectee currently holds (or held) in the Federal Government.

Paid Advertising and Recruiting Services

NBS will continue to recruit at colleges and universities and will make greater use of paid advertisements in journals, professional magazines, and newspapers to expand recruiting sources and attract the best candidates. Advertising will become one of the first steps in recruitment. Procedures will also be developed for using private sector employment services.

Probation Period

The hiring system will include a flexible probation period for all Scientific and Engineering Career Path hires. A formal process will be developed and put in place under which the probation period may be extended up to 3 years for employees on career conditional appointments in this career path. Employees appointed prior to the implementation of the project will not be affected.

The 3-year probation will apply to non-status hires after January 1, 1988. That is, it will apply only to new employees hired after that date who do not come from another Federal Government position or do not have reemployment or reinstatement rights. At designated points in the service of the employee, the responsible manager will be asked to decide whether to:

(a) End probation (change the employee from probationary to nonprobationary status);

(b) Continue the employee on probation; or

(c) Terminate the employee.

These automatic requests for a decision will come at month 9, month 21, and month 33, so that decisions can be made by months 12, 24, and 36, respectively. The manager may, however, decide to terminate an employee at any time during probation, or end probation at any time after month 12. The manager must make a decision to terminate the employee or change the employee from probationary to nonprobationary status before the end of month 36. Other aspects of probation will not change, including the limited notice and appeal rights granted to probationary employees under law and regulation.

Qualification Standards

The qualifications required for placement within a pay band and within a career path will be based on present qualifications found in *OPM Handbook X–118*, except that testing requirements will not be used. The minimum qualifications for the occupation and for the General Schedule grade corresponding to the lowest grade incorporated in the pay band will apply. In a few cases NBS will update these standards to reflect current practices in the scientific, engineering, and computer science fields and to reflect modern curricula in recognized degree programs. Where new occupational series are defined, new minimum qualification standards will be written following the pattern of *OPM Handbook X–118*.

Recruitment and Retention Allowances

Recruitment and Retention Allowances will be established to provide incentives for individuals to enter or remain in Federal service. Allowances may be provided in appropriate circumstances, not to exceed $10,000. Decisions on allowances will be based on market factors such as salary comparability and salary offer issues; relocation/dislocation issues; programmatic urgency; emerging technologies; turnover rates; special qualifications; and shortage categories or scarcity positions unique to NBS as defined by the PMB.

All professional and hard-to-fill positions are eligible. Based on the determination factors above, Recruitment Allowances will be paid by authority of the appropriate MOU Director, and Retention Allowances will be paid by authority of the PMB.

Receipt of a Recruitment Allowance represents a commitment by the employee to remain in Federal service for a specified time period of from 6 to 36 months, to be determined between the individual and the hiring official or supervisor. The service agreement will outline amount of allowance, time requirements of agreement, payment schedule, and repayment requirements if the individual separates from Federal service before the end of the agreed period, other than having been involuntarily separated from Federal service by reason of reduction-in-force. Actions to collect repayment may be terminated under appropriate circumstances and in accordance with generally applicable standards for termination. A Retention Allowance does not require a continued service agreement.

A Recruitment Allowance may be paid in a lump sum at or soon after entry on duty or may be paid in increments over a period of time determined by the PMB, not to exceed 36 months. A Retention Allowance may not be paid in a lump sum but must be paid in increments over a period of time determined by the MOU Director, not to exceed 36 months.

Recruitment and Retention Allowances will not be considered part of an individual's basic pay.

Travel Expenses

At the discretion of the NBS Director, travel and transportation expenses, reimbursement of expenses, and advancement of funds may be provided to new hires in the same manner as is authorized in sections 5723 and 5724 of title 5, U.S. Code. The selecting official, with approval of the MOU Director or the MOU Director's designee, will make application decisions. Recipients must sign service agreements indicating commitment of at least 12 months continued service. Service agreements will contain provisions for repayment in the event the recipient separates from Federal service before the end of the agreement. Actions to collect repayment may be terminated under appropriate circumstances and in accordance with generally applicable standards for termination.

Affirmative Action/Equal Employment Opportunity

NBS is committed to positive affirmative action/equal employment opportunity goals. Line managers will be accountable for understanding and implementing policies designed to meet these goals.

Promotion

A promotion is a move from one level (pay band) to a higher level within a career path, or a move from a level in one career path to a level with a higher pay range in another career path. Promotions will follow basic Federal merit promotion practices. In the scientific and engineering fields the qualifications for promotions will rest largely upon the qualifications of the individual. Some of this emphasis on individual knowledges, skills, and abilities will be applied to other career paths. Each position will have promotion potential to a specific level within a career path, but not all positions in a career path will have promotion potential to the same level. Movement from one career path to another will depend upon individual knowledges, skills, and abilities and

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upon the availability of positions requiring them.

Link Between Promotion and Performance

Non-competitive promotions will be linked to current performance ratings and the locations of current salaries in pay bands. The salary range of each pay band is divided into three intervals (see "Pay for Performance" for a description of the pay band matrix). To be promoted noncompetitively, an employee in the bottom interval must have a performance rating of outstanding, an employee in the middle interval must have a rating of at least commendable, and an employee in the top interval must have a rating of at least fully successful.

Reduction in Force

Introduction

The current NBS process for reduction in force will be essentially maintained. Current reduction-in-force procedures will be adjusted in the context of the career path and pay band classification system. Retention registers will maintain the elements of career status, veteran preference, length of service, and service computation date adjustments based on performance ratings. Position descriptions will become a better tool for reduction in force by focusing on specific knowledges, skills, and abilities required.

Competitive Areas

Each of the four career paths will be a separate competitive area. This will place employees with similar knowledges, skills, abilities and in similar occupations together. It will also eliminate the disruptions caused by scientists or engineers displacing administration or support staff. Displacements, bumps, and retreats will occur only within career paths. Current reduction-in-force regulations will be modified by substituting "same level" for "same grade" and "one level lower" for "three grades lower". Whereas in the current system an employee may bump another employee in a lower retention subgroup and at the same grade or up three grades below the bumping employee, in the demonstration system an employee may bump another employee in a lower retention subgroup and at the same level or up to one level below the bumping employee.

Saved Grade and Pay

Saved grade and pay will follow current regulations, except that career path "level" will substitute for "grade."

Pay Administration

Introduction

The objective is to establish a pay system that will improve the ability of NBS to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of current pay resources based upon individual performance. The authorizing legislation states that "the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee."

The first decision in the annual pay-setting process is the Director's selection of the percentage comparability increase that must be given to all covered employees rated fully successful or higher (see "Comparability Decision by the Director" above). The minimum and maximum rates of each pay band must also be increased by this percentage.

Pay for Performance

Pay increases will be allocated to employees through organizational pay pools. These pools will have three components: (A) Comparability increases; (B) performance increases; and (C) bonuses and awards. The first component, comparability increases, will consist of the percentages selected by the Director in the comparability process, and will be given as a minimum pay increase to all covered employees rated fully successful or higher. The second component, performance increases, will be made up of money previously available for within-grade increases, quality step increases, merit pay increases, and promotions from one grade to another where both grades will now be in the same pay band. Decisions on these pay increases will take into account all of the following: (1) The employee's performance; (2) the salary range of the employee's pay band; and (3) the employee's current salary in that range. The third and final component will be bonuses and awards, composed of former cash awards.

A matrix will be developed for each pay band of each career path. The vertical component of the matrix will be salary. The salary range of a pay band will be divided into three intervals, from the minimum rate to the maximum rate of the band. Employees will then be placed in an interval according to their salary. The percentage of performance-related salary increase will be highest for those in the bottom interval. Those employees in the middle interval will receive a smaller percentage increase than those in the bottom interval, and those in the top interval will receive a smaller percentage increase than those in the other two intervals.

The horizontal component of the matrix is organized by performance rating. The performance ratings are Outstanding, Commendable, Fully Successful, Marginal, and Unsatisfactory. No employees receiving a rating below fully successful will receive a performance-related pay increase. This increase, as a percentage of current base salary, will be higher for each successive rating. The highest percentage increases, therefore, will be given to employees who are in the bottom intervals of their pay ranges and who have outstanding ratings.

Placement in a Lower Pay Band

An employee whose performance rating is less than fully successful will not receive the comparability increase. Because the minimum pay rate for each pay band will be increased each year by at least the amount of the comparability increase, it is possible that the new minimum rate of a pay band will exceed the basic pay of an employee in that pay band who did not receive the comparability increase. When this happens, the employee will be placed in the next lower pay band. The legislation specifically allows for this and provides that it will not be considered an adverse action.

Supervisory and Managerial Pay Differentials

The legislation provides that "appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided." The differential will not apply to SES and 5 U.S.C. 3104 positions.

The managers and supervisors who qualify for the differential include division chiefs and group leaders in the Scientific and Engineering Career Path, supervisors who formally supervise three or more subordinates doing the substantive work of the unit, and others with supervisory responsibilities as approved case-by-case by the PMB. The amounts of the differentials will be up to 6 percent of base salary (see "Pay Bands" above for a description of the supervisory pay bands and their maximum rates). The total basic pay for an employee receiving a supervisory/managerial differential, including the differential, may not exceed the prevailing basic pay for pay level 3 of the SES.

Upon conversion to the project, all eligible positions wil be placed in the supervisory pay bands. The incumbents

of these positions will be converted at their basic pay at the time of conversion, except that division chiefs and group leaders, who are not now compensated for supervision, will begin receiving the added differential upon conversion. New hires into eligible positions after the date of conversion will have their pay set at the supervisor's discretion within the pay range of the applicable pay band.

Pay and Compensation Ceilings

The legislation specifies the following two overall pay ceilings: (1) The basic pay under any pay band may not exceed the basic pay of Executive Level IV. (2) An employee's total monetary compensation for a fiscal year may not exceed the basic pay of Executive Level I. Any amount that cannot be paid to an employee in a given fiscal year because of the ceiling on total monetary compensation shall be paid in the following fiscal year.

In addition, each pay band will have its own pay ceiling, just as do grades in the current system. Pay rates for the various pay levels will be directly keyed to the General Schedule rates with consideration given to the special pay rates. Basic pay will be limited to the maximum rates payable for each pay band. In the case of the special pay bands established for individuals receiving the supervisory/managerial pay differential, the top of the band will not exceed pay level 3 of the Senior Executive Service.

Pay Setting for New Hires

The setting of initial salaries within pay bands for new appointees will be flexible, particularly for hard-to-fill positions in the scientific and engineering career path. Determinations on setting pay will be based on the same factors applicable to granting recruitment and retention allowances (see "Recruitment and Retention Allowances" above).

Pay Setting for Promotion

The minimum basic pay increase upon promotion to a higher level will be 6 percent.

Conversion of Employees to the Demonstration System

Current grades will translate directly to the new career-path and pay-band structure. Employees will be converted at their current salaries at the time of conversion, except for the non-SES and non-3104 division chiefs and group leaders in the Scientific and Engineering Career Path who qualify for a supervisory/managerial pay differential upon conversion. No one's salary will be reduced as a result of the conversion. At the time of conversion each converted employee will be given a lump sum cash payment for the time credited to the employee toward what would have been the employee's next within-grade (step) increase or PMRS merit increase.

The payment for a General Schedule employee will be computed by (1) calculating the ratio of the number of days the employee will have spent in the employee's current step through the day prior to the day of conversion, to the total number of days in the employee's current waiting period for a regular within-grade increase (365, 730, or 1,095 days), and (2) multiplying that ratio by the dollar value of the employee's next within-grade increase, using the GS pay scale effective the first pay period of 1988.

The payment for a PMRS employee will be computed by multiplying (1) the percentage increase of the employee's last merit increase by (2) the employee's basic pay to be effective the first pay period of 1988 by (3) 30 percent (the proportion of a full year to the credit of the employee), or a lesser percentage for an employee who has entered on duty since October 1, 1987.

Performance Evaluation

Introduction

The Performance Appraisal System will link pay and promotions to performance through annual performance evaluations and performance ratings. Individual performance objectives will be tied to organizational goals and objectives. The proposed performance appraisal system will use peer comparison and ranking wherever appropriate.

Process

The current Department of Commerce (DoC) Performance Management Recognition System (PMRS) will be the model for the project performance appraisal system. Performance plans will be developed each year by the employee and supervisor to clarify NBS and DoC goals and objectives and identify individual accountability for their accomplishment. Critical elements for each position will be established and weighted on the basis of importance. Performance standards developed by DoC will be used along with specific supplemental performance standards developed by the supervisor to evaluate levels of accomplishment for each critical element. A mid-year review will determine whether objectives are being met and whether critical elements should be modified to reflect changes in planning, work-load, and resource allocation. Additional reviews may be held if needed. There are five rating categories: Outstanding, Commendable, Fully Successful, Marginal, and Unsatisfactory.

After the initial rating is given, an employee's performance will, if appropriate, be reviewed at higher levels and ranked in relation to the employee's peers (all other employees in the same pay band and career path). This peer ranking process may take place at divison, center, and MOU level, and will result in assignment of a final rating. Pay adjustments will be based on employee ratings. The performance appraisal cycle for all covered employees will begin October 1 and end September 30 of the following year.

All performance plans and appraisals will be reviewed by at least the next higher level of management. A written performance review at the end of the rating period will be required.

An employee who disagrees with the rating received may comment in writing to the approving official. The approving official makes the final decision and must document any changes in the rating.

Senior Executive Service

Members of the Senior Executive Service will remain under the current DoC/NBS SES performance appraisal system. 5 U.S.C. 3104 employees will be under the structure of the project performance evaluation system, but will not be in the project pay-for-performance pay system.

Awards

Introduction

NBS currently has an extensive awards program consisting of both internal and external awards. Performance recognition bonuses will replace current performance recognition awards (Quality Step Increases, Sustained Superior Performance Awards, and PMRS Performance Awards). The Special Act or Service Awards (SAS), internal NBS awards, and suggestion awards will continue. Department of Commerce Medal Awards and other honorary non-cash awards will also be retained.

Performance Bonuses

Bonuses are cash awards to recognize and encourage special contributions. Bonuses must be supported by a total summary rating of at least Fully Successful. They must be approved at a managerial level at least one level higher than the official who recommended the bonus. Cash bonuses

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will not become a party of employee base pay.

Senior Executive Service and 5 U.S.C. 3104 Employees

Members of the Senior Executive Service (SES) will remain under their current awards system and will not participate in the project performance recognition bonus awards program. SES members will continue to be eligible for the SES bonus awards and the Presidential Rank Awards.

5 U.S.C. 3104 employees will be eligible for cash awards.

Employee Development

Introduction

The objective of NBS's Employee Development Program is to develop the competence of employees for maximum achievement of Bureau goals and objectives. The legislation mandates the continuation of an employee development program including, in appropriate circumstances, a sabbatical program. The legislation requires that any sabbatical program be consistent with the terms and conditions of the sabbatical program currently applicable to members of the Senior Executive Service.

Sabbaticals

The proposed NBS Sabbatical Program under the Project will cover all career appointees whose current performance is above the fully successful level. Employees will be eligible after completion of seven years of Federal service. One sabbatical of 3 to 11 months may be granted to an employee in any 10-year period. Each sabbatical should benefit NBS, as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered for purposes of granting a sabbatical, such as advanced academic teaching or research, or on-the-job work experience with public, private, or non-profit organizations.

Final approval authority for all training during the project will be the major organizational unit (MOU) director or designated management level. The personnel offices will provide policy guidance, training design, evaluation, information, scheduling, and administrative processing.

Employee Relations

Introduction

The legislation mandates that employees covered by the project are to be evaluated under a performance evaluation system that affords appeal rights comparable to those provided currently under chapter 43 of title 5, United States Code., NBS will maintain, under the project, the substantive and procedural appeal rights that employees now have.

Placement in a Lower Pay Band

Employees whose ratings are marginal or unsatisfactory will receive no pay increase and may move to a lower pay band as the minimum rates of basic pay in a pay band increase (as the result of comparability increases). Such placement in a lower pay band, with no decrease in pay, and due to a failure to attain a performance rating of fully successful, will not be considered an adverse action.

Safeguards for Employees

Employees may be removed from their positions or reduced to a lower level for unacceptable performance. These performance-based actions will follow the same procedures and allow the same appeal rights as current performance-related removals and reductions in grade.

Evaluation

Introduction

The Demonstration Project legislation mandates evaluations and reports by organizations external to NBS.

The Office of Personnel Management is to have the Project evaluated annually by a contractor. The contractor must be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation. The contractor is to report the findings to OPM in writing. After reviewing the report, OPM is to transmit the report, along with comments by OPM, the Department of Commerce, and NBS, to Congress.

The Comptroller General must submit a final report to Congress no later than 4 years after the commencement of the project. This report is to include any recommendations for legislation or other action which the Comptroller General considers appropriate.

The Evaluation Plan incorporates both internal and external evaluation efforts. Elements of the plan are outlined below.

Evaluation Methodology

The evaluation effort will be carried out in four phases. The *design phase* is intended to aid in the structuring of the demonstration project and is primarily an internal NBS effort.

Baseline data will be collected prior to implementation of the demonstration scheduled for January 1988. These data will be made available to the OPM contract evaluator.

Following the implementation of the project, the monitoring of the *implementation* phase begins. An evaluation of this phase is necessary to determine whether the project is implemented as designed and whether the stated processes are stable and operational.

The *formative evaluation phase* begins once it has been determined that the project is stable and operational. This phase will extend over the full 5-year experimental period. Data will be collected annually and periodic reports will be issued. The *summative phase* will assess the overall impact of the project upon conclusion of the experiment.

The evaluation will focus on overall personnel management issues and will be based on before-and-after comparisons of the personnel management data, using both quantitative and qualitative criteria. Personnel records and reports, as well as previously validated survey instruments, will be used to develop appropriate measures. New data collection methods and measures, or modifications to existing instruments, may be required for some criteria. A private research firm will design, conduct, and analyze the results of employee attitude surveys in order to ensure the validity of results and to protect the confidentiality of individual employee responses. In addition to the specific requirements, as mandated by the legislation, the design of the survey will benefit from the experience of the Office of Personnel Management, the Department of Commerce, the National Bureau of Standards, and other organizations. The first survey is scheduled for the fall of 1987.

Evaluation criteria will be derived from the following Demonstration Project goal and objectives:

Goal: Demonstrate improved personnel management by tying pay more closely to the job market, linking pay increases to performance, and introducing efficient personnel structures and processes.

Objectives: Compete more effectively for high-quality staff; motivate staff and retain key employees; increase management responsibility and accountability; remain budget neutral; and create a model that could be adopted by other government agencies.

Project Training

One of the keys to the success or failure of the project will be the training provided to all participants. Training

will not only provide the necessary knowledge and skills to carry out the proposed changes, but will also promote a commitment to the program on the part of all participants.

Training will be structured to meet the specific needs of:

1. Supervisors 2. Administrative Staff: generally personnel specialists, personnel assistants, and administrative officers
3. Employees.

Training will also include orientation and periodic status updates. This training will focus on overviews and in-depth descriptions of all elements of the demonstration project, including:

1. Objectives
2. Implementation plan and timetable
3. Organization for the demonstration project
4. How employees will enter the project
5. Pay adjustment process
6. Position classification/position description preparation
7. Promotion
8. Staffing
9. Performance evaluation
10. Bonuses
11. Link between management accountability and personnel office oversight
12. Automation
13. Internal and external evaluation processes

Supervisors

The focus of the demonstration project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledges and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in classification, position description preparation, and performance evaluation using peer comparison and ranking.

Administrative Staff

The administrative staff, generally personnel specialists, technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will also need training in the procedural and technical aspects of the project. They will undergo at least the same block of training provided to all supervisors.

Employees

NBS will train employees for the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

Costs

Although the project legislation does not require budget neutrality, NBS has set for itself an objective to control total compensation costs associated with the project. NBS programs must have the flexibility to respond to emerging technologies and to industry and other agency demands. Nearly half of NBS resources come from government and private sector customers. The proposed measures will allow NBS to meet these demands and yet control total compensation costs.

NBS intends to maintain total compensation during the project at the level it would have reached under the current Government-wide system. The proposed procedure will permit changes in NBS expenditures which result from legislatively mandated program changes and changes in Federal pay and benefits. NBS may offset selected salary increases with savings by reducing turnover, eliminating unnecessary overhead, and cutting other personnel costs. NBS will measure its adherence to cost control by preparing budget estimates which are based on prescribed Federal Budget processes and monitor actual spending under the Demonstration Project against this budget estimate.

Implementation

NBS intends to strike an appropriate balance between supervisors' personnel management authority and accountability and personnel office oversight responsibility. Supervisors will be thoroughly trained for exercising their delegated authorities in accordance with demonstration procedures and safeguards.

Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate career path and pay band without loss of pay (see "Conversion of Employees to the New System" under "Pay Administration" above).

Personnel Administration

All personnel laws, regulations, and guidelines not superseded by Pub. L. 99–574 authorizing the project or waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. The personnel offices will oversee the personnel management decisions made by supervisors, and will continue to process all personnel and payroll actions.

Automation

NBS will continue using the U.S. Department of Agriculture's National Finance Center automated personnel/payroll processing system. NBS will automate internal personnel processes and systems associated with the demonstration project wherever proper and appropriate, and will design a personal computer system to handle the production of position descriptions.

Conversion Back to the Former System

In the event the project ends and the demonstration system is not made permanent, a conversion back to the former (regular) Federal civil service system will be required for positions equivalent to GS/GM–15 and below (SES and 3104 position classification will not change under the project).

The conversion will be conducted according to the following steps:

1. All employees will be converted at their current base pay at the time of conversion, except where a General Schedule employee's base pay falls between two steps of a grade and must be raised to the higher step.

2. All employees in a pay band corresponding to a single General Schedule (GS) grade will be converted to that grade.

3. Employees in a pay band corresponding to two or more GS grades will be converted to one of those grades according to the following procedures:

a. A mid-point will be calculated for each GS grade, which will be the dollar figure half-way between the minimum rate and maximum rate of the grade in the current GS pay schedule at the time of conversion.

b. An employee's basic pay at the time of conversion will be compared to the GS grade mid-points to establish the grade mid-point that is closest, whether higher or lower, to the employee's basic pay.

c. The employee will be converted to the GS grade whose mid-point is closest to the employee's basic pay, except that an employee converting to a two-grade-interval occupational series will be converted to an appropriate grade for that series whose mid-point is closest to the employee's basic pay. If the employee's basic pay is equally distant from the mid-points of two appropriate

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grades, the employee will be converted to the higher grade.

4. Employees will be placed in GS or GM (PMRS) categories according to coverage criteria that exist at the time of conversion.

5. Once these conversions have taken place, evaluations will be conducted to ensure proper classification.

Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications must be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The Bureau, with DoC and OPM approval, will make minor modifications, such as changes in the occupational series in a career path, without further notice. Major changes, such as a change in the number of career paths, will be published in the **Federal Register.**

Project Management and Oversight

In accordance with the project legislation, the project will be "conducted by the Director of the National Bureau of Standards." The Director will delegate management and oversight of the project to the Personnel Management Board (PMB) under the chairmanship of the NBS Deputy Director. The directors of the major organizational units will be voting members and the Personnel Officer and EEO Officer will be non-voting members. The PMB will be the NBS body to manage, evaluate, and make policy and procedural changes to project systems when needed. When necessary, the PMB will interpret and clarify project policy. The PMB will establish the management and administrative structure for running and evaluating the project and will oversee the delegations of authorities to managers, supervisors, and management bodies, including the withdrawal of authority when warranted. The PMB will have the authority to make exceptions to normal project procedures on a case-by-case basis when it believes an exception is warranted. The PMB will also have the authority to establish itself as the approving body for any type of project personnel action for which NBS has authority.

Authorities and Waiver of Laws and Regulations Required

Public Law 99–574 gave the National Bureau of Standards the authority to experiment with several specific personnel system innovations which are otherwise prohibited by law and regulations. In addition to the authorities granted by act, the following waivers of law and regulation are necessary:

Title 5, U.S. Code

Section 5333(a) Minimum rate for new appointments

Title 5, Code of Federal Regulations

Section 315.801 Requirement for one-year probationary period

Section 315.802 Length of probationary period

Section 351.401 Scope of competition in RIF

Section 351.402 Competitive area in RIF

Section 351.403 Competitive level in RIF

Section 351.701 Assignment involving displacement

Section 531.203 Minimum rate for new appointments

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Part VII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs; Final Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-354-N]

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice of schedule of limits.

SUMMARY: This notice sets forth a revised schedule of limits on skilled nursing facility inpatient routine service costs that are paid for under Medicare. This schedule applies to cost reporting periods beginning on or after October 1, 1987.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Steve Kirsh, (301) 597–1803.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1) and 1888 of the Social Security Act (the Act) authorize the Secretary to set prospective limits on allowable costs incurred by a provider of services that will be paid for under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 413.30. Section 1888 of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding skilled nursing facilities (SNFs) by urban or rural area location.

Under the authority of section 1888 of the Act, we published a final notice on April 1, 1986 (51 FR 11253) announcing a schedule of limits for freestanding and hospital-based SNFs, for cost reporting periods beginning on or after May 1, 1986.

That final notice contained provisions relating to: (1) Limits on adjusted SNF per diem inpatient routine service costs; (2) a "market basket" index developed to reflect changes in the price of goods and services purchased by SNFs; (3) adjustments to the cost limits by an area wage index developed from hospital industry wages; (4) a classification system based on whether the SNF is hospital-based or freestanding and whether it is located in an urban or rural area; (5) a cost-of-living adjustment for the nonlabor portion of the limits for SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; (6) freestanding SNF cost limits set at 112 percent of the average per diem labor-related and nonlabor costs; (7) hospital-based SNF cost limits set at the limit for freestanding SNFs, plus 50 percent of the difference between the freestanding limit and 112 percent of the average per diem routine service costs of hospital-based SNFs; and (8) an administrative and general (A&G) add-on for hospital-based SNFs.

II. Summary of Provisions

In developing the limits set forth in this notice, we have retained the same provisions as in the current limits and the same methodology. We have, however, used the most recent SNF cost data for calculating the limits, as well as the most recent projections of the rates of increases in the costs included in the SNF market basket.

This new schedule of cost limits applies to all SNFs including those low Medicare volume SNFs that are eligible to receive the optional prospective payment rate for routine services. Under section 1888(d) of the Act, an SNF's prospective payment rate excluding capital-related costs cannot exceed its routine service cost limits. The prospective payment system is described in section 2820 of the Provider Reimbursement Manual (HCFA Pub. 15–1).

This schedule of cost limits is effective with cost reporting periods beginning on or after October 1, 1987. We are using the same updated SNF data base for these cost limits as that used to develop the inpatient prospective payment rates for low Medicare volume SNFs, to be effective October 1, 1987. The updated data base reflects, to the best possible extent, current economic conditions affecting the operation of an SNF. We believe that by not publishing updated cost limits, the current lower cost limits would create a disincentive for SNFs to participate in the Medicare program, thus reducing the availability of SNF services to Medicare beneficiaries. In addition, we believe that using a comparable data base would allow eligible SNFs to make a more informed decision regarding the election of prospective payment.

Due to the length of time involved in receiving audited cost report data, the 1984 data base, as in prior cost limit data bases, includes data from unaudited cost reports. Many of these unaudited cost reports include unallowable Medicare costs. Basing the cost limits on these data causes the limits to be higher than they would be if we were to use audited data. This results in higher reimbursement to those SNFs that have costs at or above the cost limits. At this time, we have not quantified the amount by which the costs should be reduced to reflect only allowable Medicare costs. However, we are in the process of developing a methodology that will approximate the amount of allowable Medicare costs in the data base. When the methodology is developed, we will incorporate it into the next revision of the SNF cost limits.

The schedule provides for the following:

A. Separate Group Limits for Labor-Related and Nonlabor Components of Per Diem Routine Service Costs

We are retaining separate group limits for the labor-related and nonlabor components of per diem routine service cost. We calculate these separate limits as follows:

1. Actual SNF per diem inpatient routine service cost data are obtained for each SNF.

2. To make the data reflect current conditions more accurately, the data are adjusted from the midpoints of the cost reporting periods represented in the data collection to the midpoint of the initial cost reporting period to which the limits apply.

3. Each SNF's per diem cost is separated into labor-related and nonlabor portions. The labor-related portion is divided by the wage index for the SNF's location (see Tables II and III).

4. Finally, separate group means are computed for the labor-related and nonlabor components. Each group mean is multiplied by 112 percent.

B. Adjustment of SNF Cost Data by Wage Index

We are continuing use of the HCFA survey-based hospital wage index to account for area wage differences. This is necessary because industry-specific data are not available on SNF wages. Since hospitals and SNFs generally compete in essentially the same labor market for employees, we believe an index based on geographic variations in hospital wages provides an accurate measure of geographic variations in wages paid by SNFs. The wage index is unchanged from the wage index effective for cost reporting periods beginning on or after May 1, 1986. For an explanation of how we developed the wage index, see 51 FR 11253.

C. Use of SNF Market Basket

We are continuing to base the cost limits on reported costs, adjusted for actual and projected cost increases by applying the SNF market basket index. This market basket index is used to adjust the SNF cost data to reflect cost

increases occurring between the cost reporting periods represented in the data collection to the midpoints of the cost reporting periods to which the limits apply.

The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories we are using are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine services costs attributable to each category (see the Appendix to this notice). The weights for all major categories of SNF costs are based on the National Nursing Home Surveys of 1973/1974 and 1977, conducted by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Service. (As noted in footnote 1 at the end of the appendix, the 1973/1974 survey obtained 1972 cost data and the 1977 survey obtained 1976 cost data.) These are the most current and comprehensive sources of national data on the distribution of costs in SNFs. (The second column of the appendix specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the price of goods and services in each category. The market basket index table, in the third and fourth columns, identifies the price variables used and the source of the forecast for calendar years 1982 through 1988 (Appendix).

The market basket index also provides for adjustments in the limits if our forecasts of economic trends prove erroneous. If the final rate of change in the market basket index for a year differs from the estimated rate of change by at least .3 of one percentage point, we would adjust the limits. We will advise the Medicare intermediaries to use the actual rate to adjust each SNF's limit retroactively at final settlement of the SNF's cost report. This approach is the same as that used for the current limits.

D. Application of the Hospital Wage Index to Employee Benefits, Health Service Costs, Costs of Business Services, and Other Miscellaneous Expenses

In developing the current schedule of limits (published April 1, 1986 (51 FR 11253)), we applied the wage index discussed above to five categories of labor-related costs; wages, employee benefits, health service costs, business service costs, and other miscellaneous costs. We retained that method in developing this schedule of limits. The proportion of adjusted routine service costs that we adjust by the wage index is 82.150 percent for cost reporting periods beginning on or after October 1, 1987.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report.

Health services costs is a category used by the National Nursing Home Survey conducted in 1977, noted above. This category includes the costs of routine services that are purchased under arrangement from outside sources.

Business services costs include costs of banking, contract laundry, telephone, and other services that SNFs purchase at retail from outside suppliers.

Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we are continuing to apply the wage index to the total portion of cost (82.150 percent attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses) rather than to the wage portion (61.903 percent for cost reporting periods beginning on or after October 1, 1987) only. We are continuing to use this method because our analysis of the data shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment.

E. Freestanding SNF Limits Set at 112 Percent of Mean

For cost reporting periods beginning on or after October 1, 1987, we will continue to maintain the revised limits at 112 percent of the average labor-related and average nonlabor-related costs of each group. We will continue to use the same methodology for freestanding SNFs as described in the April 1, 1986 notice (51 FR 11253) and in September 29, 1982 SNF cost limits notice (47 FR 42894).

F. Hospital Based SNF Limits

For cost reporting periods beginning on or after October 1, 1987, the revised hospital-based limit will continue to equal the revised freestanding limit plus 50 percent of the difference between the revised freestanding limit and 112 percent of the mean per diem routine service costs of hospital based SNFs. The methodology for hospital-based SNFs will be the same as that used for current hospital-based SNF limits, as described in the April 1, 1986 notice (51 FR 11253). We are continuing to provide an add-on adjustment for A&G costs. The purpose of this add-on is to make an adjustment for the allocation of costs in the A&G cost center for hospital-based SNFs.

G. Cost of Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we are continuing to provide a cost-of-living adjustment for these areas. This is an adjustment of the nonlabor component of the limit that applies to these areas based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index, this cost-of-living adjustment applies only to the nonlabor component.

H. Exception to Cost Limits

A provider may request an exception to the cost limits under the provisions of § 413.30(f). The request must be made to HCFA central office through the appropriate Medicare fiscal intermediary.

I. Classification System

We are retaining the classification system based on whether an SNF is located within a metropolitan statistical area (MSA), as defined by the Office of Management and Budget (OMB).

III. Methodology for Determining Per Diem Routine Service Cost Limit

A. Development of Published Limits

1. Data

As previously mentioned, we are using actual freestanding and hospital-based SNF inpatient routine service cost data, less capital-related costs allocated to general inpatient routine services, obtained from Worksheet D–1 of the latest Medicare cost reports available as of June 1984. The data have been adjusted to exclude the inpatient routine nursing salary cost differential.

We adjusted these data using the market basket index discussed above, to inflate costs from the cost reporting

periods in the data base to the midpoint of the first cost reporting period to which the limits apply. The annual percentage increases in the market basket over the previous year that we used for this projection are:

1982	7.3
1983	5.5
1984	4.3
1985	3.1
1986	[1] 2.6
1987	[1] 2.5
1988	[1] 3.9
1989	[1] 3.8

[1] Forecasted increase.

An adjustment will be made to the limits if the forecasted market basket rate differs from the actual rate by at least .3 of one percentage point. Following the end of each year that the limits are in effect, we determine the actual rate of increase or decrease in the market basket for that year. The data necessary to make this determination are usually available in the second quarter of the following year. This allows us to make the determination of the actual rate by June 30 of each year.

If the forecasted market basket rate differs from the actual rate by at least .3 of one percentage point, we will notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust each SNF cost limit at the time of final settlement.

2. Use of Wage Index to Adjust Cost Data

We divided each SNF's adjusted per diem routine service costs into labor-related and nonlabor portions. We determined the labor-related portion by multiplying each SNF s adjusted per diem routine service cost by 82.150 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index value applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. Group Means

We calculated separate means of labor-related and nonlabor adjusted routine service costs for each SNF group established in accordance with the SNF's MSA or non-MSA location.

4. Components of Limit

For each freestanding group, we multiplied the mean labor-related and mean nonlabor costs by 112 percent to arrive at the freestanding limits (Table I).

We then subtracted the freestanding limit for each group from 112 percent of the hospital-based mean for each group and multiplied the result by 50 percent. To arrive at the hospital based limit (Table I), the 50 percent described above is added to the appropriate freestanding limit.

COST LIMIT DATA—HOSPITAL-BASED SNFS

[Effective 10/1/87]

112 percent of hospital-based mean cost	Urban (MSA)	Rural (non MSA)
Labor	$97.25	$83.11
Non-Labor	23.81	15.72
Total	121.06	98.83

CALCULATION OF 50 PERCENT DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT

	Labor	Non-Labor
Urban (MSA)		
112 percent of Hospital-Based Mean Cost	$97.25	$23.81
Freestanding Limit (Table I)	49.47	11.94
Difference	$47.78	$11.87
50 percent of Difference	$23.89	$5.94
Plus Freestanding Limit	49.47	11.94
Hospital-Based Limit (MSA)	$73.36	$17.88
Rural (Non-MSA)		
112 percent of Hospital-Based Mean Cost	$83.11	$15.72
Freestanding Limit (Table I)	51.50	9.95
Difference	$31.61	$5.77
50 percent of Difference	$15.81	$2.89
Plus Freestanding Limit	51.50	9.95
Hospital-Based Limit (Non-MSA)	$67.31	$12.84
A & G Difference	**Urban**	**Rural**
1. Hospital-Based SNF A & G Mean [1]	$8.09	$6.49
2. Freestanding SNF A & G Mean [1]	−3.99	−4.03
3. Difference	$4.10	$2.46
Amount of A & G Included in the 50-percent Difference between 112 percent of the Hospital-Based Mean Costs and the Freestanding Limit:		
4. A & G Difference (line 3)	$4.10	$2.46
5. 112 percent of Hospital-Based Mean Cost (Total)	$121.06	$98.83
6. Average Routine Cost (line 5 Divided by 112percent)	$108.09	$88.24
7. Percent of A & G Difference to Average Routine Cost (line 4 divided by line 6)	3.79%	2.79%
8. 50 percent of Difference between 112 percent of Hospital-Based SNF Mean Cost and Freestanding SNF Limit	$29.83	$18.70
9. Amount of A & G Difference Included on line 8 (line 7 times line 8)	$1.13	$0.52
A & G ADD-ON:		
10. A & G Difference from line 3	$4.10	$2.46
11. Less Amount from line 9	$1.13	$0.52
12. A & G Add on (line 10 less 11)	$2.97	$1.94
13. Labor-Related Component of A & G Add-on (line 12 times 82.150 percent)	$2.44	$1.59

CALCULATION OF 50 PERCENT DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT—Continued

	Labor	Non-Labor
14. Nonlabor Component of A & G Add-on (line 12 times 17.850 percent)	$0.53	$0.35

[1] Wage Deflated Means.

B. Adjustment of Published Limits

1. Adjustment of Labor-Related Component by Wage Index

a. *Freestanding SNFs.* To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located (see Tables II and III). The adjusted limit that applies to an SNF is the sum of the nonlabor component, plus the adjusted labor-related component, unless the SNF qualifies for the cost reporting year adjustment discussed in paragraph 2, below.

EXAMPLE—CALCULATION OF ADJUSTED LIMIT FOR FREESTANDING SNF (A) LOCATED IN DALLAS, TEXAS

Labor-Related Component.	$49.47	(Table I)
Nonlabor Component.	$11.94	(Table I)
MSA Wage Index Value.	1.0733	(Table II)

Computation of Adjusted Limit

Labor-related component	$49.47
Wage index value	×1.0733
Adjusted Labor component	$53.10
Nonlabor component	+11.94
Adjusted limit	$65.04

b. *Hospital-Based SNFs.* To arrive at a labor-adjusted limit for each hospital-based SNF, we add the labor-related component of the limit and the labor-related component of the A&G add-on for the hospital-based SNF's group and multiply the sum by the wage index developed from wage levels for hospital workers in the area in which the hospital-based SNF is located (see Tables II and III). We then add the nonlabor component of the limit and the nonlabor component of the A&G add-on. The adjusted limit that applies to a hospital-based SNF is the sum of the adjusted labor component and add-on and the nonlabor component and add on unless the facility qualifies for the cost reporting year adjustment discussed in paragraph 2, below.

EXAMPLE.—CALCULATION OF ADJUSTED LIMIT FOR HOSPITAL-BASED SNF (B) LOCATED IN SCRANTON, PENNSYLVANIA

Labor Related Component:		
Limit	$73.36	(Table I)
Add-on	$2.44	(Table I)
Nonlabor Component:		
Limit	$17.88	(Table I)
Add-on	$0.53	(Table I)
MSA Wage Index Value.	0.9982	(Table II)

COMPUTATION OF ADJUSTED LIMIT

Labor-related component:	
Limit	$73.36
Add-on	+2.44
	$75.80
Wage index value	×.9982
Adjusted Labor Component	$75.66
Nonlabor Component:	
Limit	+17.88
Add-on	+0.53
Adjusted limit:	$94.07

2. *Adjustment for Cost Reporting Year.* If a facility has a cost reporting period beginninq after October l, 1987 and before October l, 1988, the intermediary will increase the limit that otherwise would apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that would occur after the date on which the limits are effective.

Example: The following is a computation of a revised hospital-based limit for previously cited SNF (B). Hospital-based SNF (B) has a cost reporting period that begins November 1, 1987. The base adjusted limit for SNF (B) is $94.07. The revised limit for SNF (B) applicable to the cost reporting period is $94.38.

Individual SNF adjusted limit	$94.07
Adjustment factor from Table IV	×1.00325
Revised Limit	$94.38

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor must be calculated. This is necessary because projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary would obtain this adjustment factor from our central office.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any document that is likely to—

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that the revised limits will result in a loss of savings to the Medicare program of approximately $20 million in FY 1988 and $35 million in FY 1989, compared to expenditures under the prior limits. This loss of savings is applicable for cost reporting periods beginning on or after October l, 1987 and before October 1, 1988.

Because the impact does not exceed $100 million annually, or any other threshold criterion under Executive Order 12291, we have determined that this is not a major rule and a regulatory impact analysis is not required.

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B. Regulatory Flexibility Act

For notices such at this, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the notice does not have a significant economic impact on a substantial number of small entities. We consider all SNFs to be small entities under the RFA.

A substantial number of SNFs are affected by this rule. However, it is our practice not to consider an economic impact on small entities to be significant unless the annual total costs or revenues of a substantial number of entities would be increased or decreased by at least three percent. The revised limits will not result in facility total revenues being reduced by three percent or more over the limits that would otherwise apply. Medicare does not account for a high proportion of SNF utilization or revenue. In 1983, for example, Medicare SNF expenditures accounted for only 1.8 percent of total national nursing home expenditures. Therefore, we have determined, and the Secretary certifies, that this notice does not have a significant economic impact on a substantial number of small entities.Thus, we have not prepared a regulatory flexibility analysis.

V. Paperwork Burden

This notice does not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

VI. Waiver of Proposed Rulemaking

Generally, we issue notices of changes in SNF limits in proposed form to provide a period for public comment. Also, we normally publish notices of this kind thirty days before the effective date. However, if adherence to these procedures would be impractical, unnecessary, or contrary to the public interest, we may waive the procedures.

As explained previously, we developed the revised limits set forth below by using the same basic methodology that we used to develop the current SNF cost limits, which were published on April 1, 1986 (51 FR 11253). On November 22, 1985, we published a proposed notice that described in detail our methodology for developing and applying those limits, and provided a 30-day period for public comment (50 FR 48304). In developing the schedule of limits now in effect, we considered all comments received in response to the November 22, 1985 notice. These comments, and our responses to them, are described in the April 1, 1986 notice.

Because the methodology used for the revised schedule has previously been published for public comment, and because the updating of the cost data and SNF market basket projections are in the nature of routine and minor technical changes, we do not believe it would be either necessary or useful to request comment on that methodology again. Moreover, without publication of this notice, the current limits would remain in effect using adjustment factors based upon earlier and less accurate estimates of the rates of inflation than those contained in this notice. We believe it would be contrary to the public interest to permit this to occur.

In addition, we are updating the limits to be effective for cost reporting periods beginning on or after October 1, 1987 so that the update will occur concurrently with the updates of the SNF inpatient prospective payment rates, established under section 1888(d) of the Act, to be effective on October 1, 1987. Concurrent updating is necessary in order to provide SNFs eligible for prospective payment a comparison as a basis on which to make a decision as to whether to elect prospective payment. If we were to provide a 30-day delay in the effective date of these limits, those SNFs whose next cost reporting periods begin before that effective date (which would be in early October 1987 but, in any case, later than October 1, 1987) would be deprived of a comparison to cost limits that are based on the same data base and adjustment factors for rates of inflation. Thus, a 30-day delay in the effective date would be impractical and contrary to the public interest.

For these reasons, we find good cause to waive publication of a proposed notice and the normal 30-day delay in the effective date, and to publish this notice of updated limits in final form.

VII. Schedule of Limits

Under the authority of sections 1861(v) and 1888 of the Act, the following group per diem limits apply to the adjusted SNF inpatient routine service costs paid for under Medicare for cost reporting periods beginning on or after October 1, 1987. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice and will notify each SNF of its applicable limit. These limits, as adjusted by the wage indexes in Tables II and III, and the cost reporting year adjustment in Table IV, will remain in effect for cost reporting periods beginning on or after October 1, 1987.

TABLE I.—SNF GROUP LIMITS

[Cost Reporting Periods Beginning on or after 10/1/87]

Location	Labor related component	Nonlabor component [1]
Freestanding:		
MSA	$49.47	$11.94
Non-MSA	51.50	9.95
Hospital-Based MSA:		
Limit	73.36	17.88
Add-on	2.44	0.53
Non-MSA:		
Limit	67.31	12.84
Add-on	1.59	0.35

[1] The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii, the commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

	Adjustment factor
Alaska	1.250
Hawaii	
Oahu	1.225
Kauai	1.175
Maui, Lanai and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	.9003
Taylor,TX	
Aguadilla, PR	[1].5581
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.1080
Portage, OH	
Summit, OH	
Albany, GA	.8183
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9248
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.1078
Bernalillo, NM	
Alexandria, LA	.9169
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0454
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.0022

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Blair, PA	
Amarillo, TX	.9595
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2616
Orange, CA	
Anchorage, AK	1.5849
Anchorage, AK	
Anderson, IN	.9882
Madison, IN	
Anderson, SC	.8369
Anderson, SC	
Ann Arbor, MI	1.2607
Washtenaw, MI	
Anniston, AL	.8519
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0666
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	[1].6081
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.8844
Buncombe, NC	
Athens, GA	.8179
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9663
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0566
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9602
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.1015
Kane, IL	
Kendall, IL	
Austin, TX	1.1177
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.2059

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Kern, CA	
Baltimore, MD	1.1150
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9285
Penobscot, ME	
Baton Rouge, LA	.9825
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0302
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0082
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0919
Beaver, PA	
Bellingham, WA	1.1471
Whatcom, WA	
Benton Harbor, MI	.8911
Berrien, MI	
Bergen-Passaic, NJ	1.0748
Bergen, NJ	
Passaic, NJ	
Billings, MT	I.0226
Yellowstone, MT	
Biloxi-Gulfport, MS	.8489
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9558
Broome, NY	
Tioga, NY	
Birmingham, AL	.9663
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9943
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9899
Monroe, IN	
Bloomington-Normal, IL	.9844
McLean, IL	
Boise City, ID	1.0584
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1560
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.1326
Boulder, CO	
Bradenton, FL	.9196
Manatee, FL	
Brazoria, TX	.8742
Brazoria, TX	
Bremerton, WA	.9813

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1846
Fairfield, CT	
Brownsville-Harlingen, TX	.8977
Cameron, TX	
Bryan-College Station, TX	.9569
Brazos, TX	
Buffalo, NY	1.0687
Erie, NY	
Burlington, NC	.7926
Alamance, NC	
Burlington, VT	1.0131
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	[1].6279
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	1.0080
Carroll, OH	
Stark, OH	
Casper, WY	1.1063
Natrona, WY	
Cedar Rapids, IA	1.0174
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9965
Champaign, IL	
Charleston, SC	.8912
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0482
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8991
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9345
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	1.0041
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.9702
Laramie, WY	
Chicago, IL	1.2351
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.2463
Butte, CA	
Cincinnati, OH KY-IN	1.1050

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8183
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1565
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0439
El Paso, CO	
Columbia, MO	1.1022
Boone, MO	
Columbia, SC	.9168
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.7929
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.9684
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9899
Nueces, TX	
San Patricio, TX	
Cumberland, MD–WV	.8996
Allegeny, MD	
Mineral, WV	
Dallas, TX	1.0733
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8087
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA–IL	1.0660
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0939
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9139
Volusia, FL	
Decatur, IL	.9592
Macon, IL	
Denver, CO	1.2865
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0556
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1725
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.8457
Dale, AL	
Houston, AL	
Dubuque, IA	1.0590
Dubuque, IA	
Duluth, MN-WI	.9930
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9498
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9437
El Paso, TX	
Elkhart Goshen, IN	.9650
Elkhart, IN	
Elmira, NY	.9741
Chemung, NY	
Enid, OK	.9626
Garfield, OK	
Erie, PA	.9991
Erie, PA	
Eugene-Springfield, OR	1.1163
Lane, OR	
Evansville, IN-KY	1.0217
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0644
Clay, MN	
Cass, ND	
Fayetteville, NC	.8330
Cumberland, NC	
Fayetteville Springdale, AR	.8078
Washington, AR	
Flint, MI	1.2104
Genesee, MI	
Florence, AL	.7889
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7686
Florence, SC	
Fort Collins-Loveland, CO	1.0846
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1249
Broward, FL	
Fort Myers–Cape Coral, FL	.9533
Lee, FL	
Fort Pierce, FL	1.0215
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9243
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8751
Okaloosa, FL	
Fort Wayne, IN	.9568
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9998
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1490
Fresno, CA	
Gadsden, AL	.8777
Etowah, AL	
Gainesville, FL	.9642
Alachua, FL	
Bradford, FL	
Galveston Texas City, TX	1.1412
Galveston, TX	
Gary-Hammond, IN	1.0978
Lake, IN	
Porter, IN	
Glens Falls, NY	.9607
Warren, NY	
Washington, NY	
Grand Forks, ND	.9871
Grand Forks, ND	
Grand Rapids, MI	1.0663
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0722
Cascade, MT	
Greeley, CO	1.0763
Weld, CO	
Green Bay, WI	1.0326
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9388
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9130
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9585
Washington, MD	
Hamilton-Middletown, OH	1.0214
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9868
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1486

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8982
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.2022
Honolulu, HI	
Houma-Thibodaux, LA	.9229
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0668
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9509
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8661
Madison, AL	
Indianapolis, IN	1.0594
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City IA	1.3084
Johnson, IA	
Jackson, MI	1.0206
Jackson, MI	
Jackson, MS	.9354
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7916
Madison, TN	
Jacksonville, FL	.9481
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7966
Onslow, NC	
Janesville-Beloit, WI	.9422
Rock, WI	
Jersey City, NJ	1.1108
Hudson, NJ	
Johnson City-Kingsport Bristol, TN-VA	.8617
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9526

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1253
Grundy, IL	
Will, IL	
Joplin, MO	.9202
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2341
Kalamazoo, MI	
Kankakee, IL	.9510
Kankakee, IL	
Kansas City, KS-MO	1.0660
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0875
Kenosha, WI	
Killeen-Temple, TX	.8849
Bell, TX	
Coryell, TX	
Knoxville, TN	.8996
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9870
Howard, IN	
Tipton, IN	
LaCrosse, WI	1.0167
LaCrosse, WI	
Lafayette, LA	1.0114
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9163
Tippecanoe, IN	
Lake Charles, LA	1.0036
Calcasieu, LA	
Lake County, IL	1.1637
Lake, IL	
Lakeland-Winter Haven, FL	.8851
Polk, FL	
Lancaster, PA	1.0396
Lancaster, PA	
Lansing-East Lansing, MI	1.0769
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8163
Webb, TX	
Las Cruces, NM	.8767
Dona Ana, NM	
Las Vegas, NV	1.1254
Clark, NV	
Lawrence, KS	1.0180
Douglas, KS	
Lawton, OK	.9469

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Comanche, OK	
Lewiston-Auburn, ME	.9426
Androscoggin, ME	
Lexington-Fayette, KY	.9873
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9866
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9710
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1135
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8410
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0280
Lorain, OH	
Los Angeles-Long Beach, CA	1.3290
Los Angeles, CA	
Louisville, KY-IN	1.0081
Clark, IN	
Floyd, IN	
Harrison,IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0128
Lubbock, TX	
Lynchburg, VA	.9215
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9325
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0902
Dane, WI	
Manchester-Nashua, NH	.9724
Hillsborough, NH	
Mansfield, OH	.9919
Richland, OH	
Mayaguez, PR	.5732
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg Mission, TX	.8105
Hidalgo, TX	
Medford, OR	1.0356
Jackson, OR	
Melbourne-Titusville, FL	.9378
Brevard, FL	
Memphis, TN-AR-MS	1.0494

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.2134
Merced, CA	
Miami-Hialeah, FL	1.0703
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0349
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1305
Midland, TX	
Milwaukee, WI	1.1411
Milwaukee, WI	
Ozaukee, WI,	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1772
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8927
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2103
Stanislaus, CA	
Monmouth-Ocean, NJ	.9924
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9343
Ouachita, LA	
Montgomery, AL	.8876
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.0065
Delaware, IN	
Muskegon, MI	.9912
Muskegon, MI	
Naples, FL	1.0448
Collier, FL	
Nashville, TN	.9414
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	I3399
Nassau, NY	
Suffolk, NY	
New Bedford-Fall-River-Attleboro, MA	.9795

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.1276
New Haven, CT	
New London-Norwich, CT	1.1103
New London, CT	
New Orleans, LA	.9344
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammny, LA	
New York, NY	1.3809
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.I404
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8963
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9692
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co, VA	
Newport News City, VA	
Norfolk City, VA	
Poguoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4893
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8735
Marion, FL	
Odessa, TX	.9619
Ector, TX	
Oklahoma City, OK	1.0930
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0787
Thurston, WA	
Omaha, NE-IA	1.0509
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9299
Orange, NY	
Orlando, FL	1.0188

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8243
Daviess, KY	
Oxnard-Ventura, CA	1.2851
Ventura, CA	
Panama City, FL	.8354
Bay, FL	
Parkersburg-Marietta, WV-OH	.9121
Washington, OH	
Wood, WV	
Pascagoula, MS	.9678
Jackson, MS	
Pensacola, FL	.8742
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0584
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1783
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0801
Maricopa, AZ	
Pine Bluff, AR	.8009
Jefferson, AR	
Pittsburge, PA	1.1011
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0246
Berkshire, MA	
Ponce, PR	.6935 [1]
Juana Diaz, PR	
Ponce, PR	
Portland, ME	1.0114
Cumberland, ME	
Portland, OR	1.2074
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth Dover-Rochester, NH	.9373
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0052
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0553
Bristol, RI	
Kent, ,T	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.9858
Utah, UT	
Pueblo, CO	1.1210
Pueblo, CO	
Racine, WI	1.0002

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Racine, WI	
Raleigh-Durham, NC	.9720
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9623
Pennington, SD	
Reading, PA	1.0248
Berks, PA	
Redding, CA	1.2396
Shasta, CA	
Reno, NV	1.1839
Washoe, NV	
Richland Kennewick, WA	1.0256
Benton, WA	
Franklin, WA	
Richmond Petersburg, VA	.9564
Charles City Co, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2517
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8997
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	!0284
Olmsted, MN	
Rochester, NY	1.0226
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.1354
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2969
Eldorado CA	
Placer, LA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City Midland, MI	1.1070
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	1.0018
Benton, MN	
Sherburne, MN	
Steams, MN	
St Joseph, MO	.9487
Buchanan, MO	
St. Louis, MO-IL	1.0827

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0971
Marion, OR	
Polk, OR	
Salinas-Seaside Monterey, CA	1.2571
Monterey, CA	
Salt Lake City-Ogden, UT	1.0354
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8719
Tom Green, TX	
San Antonio, TX	.8943
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego CA	1.3104
San Diego, CA	
San Francisco, CA	I6517
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose CA	1.4805
Santa Llara, CA	
San Juan, PR	.6197 [1]
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta PR	
Vega Baja, PR	
Santa Barbara-Santa Maria Lompoc, CA	1.1822
Santa Barbara, CA	
Santa Cruz, CA	1.2432
Santa Cruz, CA	
Santa Fe, NM	.9809
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3112

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Sonoma, CA	
Sarasota, FL	.9639
Sarasota, FL	
Savannah, GA	.8917
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9982
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1579
King, WA	
Snohomish, WA	
Sharon, PA	.9757
Mercer, PA	
Sheboygan, WI	.9885
Sheboygan, WI	
Sherman-Denison, TX	.8619
Grayson, TX	
Shreveport, LA	.9613
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	1.0062
Woodbury, IA	
Dakota NE	
Sioux Falls, SD	1.0211
Minnehaha SD	
South Bend-Mishawaka, IN	1.0087
St Joseph, IN	
Spokane, WA	1.1559
Spokane, WA	
Springfield IL	1.0664
Menard, IL	
Sangamon, IL	
Springfield, MO	.9863
Christian, MO	
Greene, MO	
Springfield, MA	1.0060
Hampden, MA	
Hampshire, MA	
State College, PA	1.0772
Centre, PA	
Steubenville-Weirton, OH-WV	.9655
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2871
San Joaguin, CA	
Syracuse, NY	1.0301
Madison, NY	
Onondaga NY	
Oswego, NY	
Tacoma, WA	1.1052
Pierce, WA	
Tallahassee, FL	.9509
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg Clearwater, FL	.9830
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8456

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Clay, IN	
Vigo IN	
Texarkana-TX-Texarkana, AR	8650
Miller, AR	
Bowie, TX	
Toledo, OH	1.2267
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka KS	1.0632
Shawnee, KS	
Trenton, NJ	1.0317
Mercer, NJ	
Tucson, AZ	1.0090
Pima, AZ	
Tulsa, OK	1.0131
Creeks, OK	
Osage OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0172
Tuscaloosa, AL	
Tyler, TX	1.0035
Smith, TX	
Utica-Rome, NY	.8840
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3397
Napa, CA	
Solano, CA	
Vancouver, WA	1.1659
Clark, WA	
Victoria, TX	.8205
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9929
Cumberland, NJ	
Visalia-Tulare Porterville, CA	1.0643
Tulare, CA	
Waco, TX	.9117
McLennan, TX	
Washington, DC.-MD-VA	1.1965
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9993
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9871
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9972
Palm Beach, FL	
Wheeling, WV-OH	.9771
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1589
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.8776
Wichita, TX	
Williamsport, PA	.9048
Lycoming, PA	
Wilmington, DE-NJ MD	1.0588
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9591
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0094
Worcester, MA	
Yakima, WA	1.0389
Yakima, WA	
York, PA	.9853
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0480
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0460
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE III.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7466
Alaska	1.4989
Arizona	.9323
Arkansas	.7703
California	1.1385
Colorado	.9326
Connecticut	1.0880
Delaware	.8645
Florida	.8815
Georgia	.7779
Hawaii	1.0157
Idaho	.9130
Illinois	.8917
Indiana	.8685
Iowa	.8719
Kansas	.8481
Kentucky	.8036
Louisiana	.8605
Maine	.8701
Maryland	.8773
Massachusetts	1.0548
Michigan	.9589
Minnesota	.8788
Mississippi	.7705
Missouri	.8325
Montana	.9154
Nebraska	.8310
Nevada	1.0799
New Hampshire	.9234
New Jersey [2]	
New Mexico	.9213
New York	.8730
North Carolina	.8130
North Dakota	.9061
Ohio	.9100
Oklahoma	.8462
Oregon	1.0782
Pennsylvania	.9427
Puerto Rico	[1].5736
Rhode Island	.9553
South Carolina	.7827
South Dakota	.8263
Tennessee	.7733
Texas	.8180
Utah	.9505
Vermont	.8888
Virginia	.8194
Virgin Islands	[1]1.0000
Washington	1.0273
West Virginia	.8816
Wisconsin	.8995
Wyoming	.9745

[1] Approximate value for area.
[2] All counties within the State are classified urban.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If a SNF cost reporting period begins	The Adjustment Factor is—
November 1, 1987	1.00325
December 1, 1987	1.00641
January 1, 1988	1.00969
February 1, 1988	1.01289
March 1, 1988	1.01590
April 1, 1988	1.01912
May 1, 1988	1.02225
June 1, 1988	1.02549
July 1, 1988	1.02864
August 1, 1988	1.03191
September 1, 1988	1.03518

[1] Based on compounded projected market basket inflation rates of 3.9 percent for 1988 and 3.8 percent for 1989. These adjustment factors are subject to change based on later estimates of cost increases or decreases.

If, for any reason, we do not publish a new schedule of limits to be effective on October 1, 1988 or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.00317 once for each month between September 1, 1988 and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued. For example, if a cost reporting period begins on November 1, 1988, 1.03518 would be multiplied by 1.00317 twice and the resulting factor would equal 1.04175 (1.03518×1.00317×1.00317=1.04175).

APPENDIX—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS COST LIMITS EFFECTIVE OCTOBER 1, 1987

Category of costs	Relative [1] importance 1988	Forecaster percent changes (1982–1988)	Price variable used
Payroll Expenses	61.903	DRI–CFS [2]	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table C–2.
Employee Benefits	8.453	DRI–MM [3]	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages. Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Table 1.11. For total employment. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table B–4.
Food	8.184	DRI–MM	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
		DRI–MM	Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 22.
Other business services	5.367	DRI–MM	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Fuel and other utilities	4.337	DRI–MM	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (*monthly*), Table 7.11.
		DRI–MM	B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		DRI–MM	C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above.
		DRI–CFS	D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Supplies	3.366	DRI–MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	1.963	DRI–CFS	Pharmaceutical perparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes*, (monthly), Table 6.
Health services	1.511	DRI–CFS	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.916	DRI–MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for homes certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973—April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] DRI–CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS 871), 1750 K Street, N.W., Washington, D.C. 20006.

[3] DRI–MM refers to Data Resources, Inc., Trendlong (0187), 29 Hartwell Avenue, Lexington, Massachusetts 02713.

(Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 17, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 7, 1987.

Don M. Newman,

Secretary.

[FR Doc. 87-22853 Filed 9-30-87; 10:09 am]

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Part VIII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 24

Debarment, Suspension and Limited Denial of Participation; Contractors and Participants; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 24

[Docket No. R-87-831; FR-1676]

Debarment, Suspension and Limited Denial of Participation; Contractors and Participants

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule improves and clarifies the procedural guarantees afforded under existing regulations governing debarment, suspension and ineligibility of HUD contractors and participants (including grantees and loan recipients). It also incorporates provisions contained in the Office of Federal Procurement Policy's (OFPP) Policy Letter 82-1 concerning Government-wide debarment, suspension and ineligibility of contractors, and amends HUD's existing regulations to conform to provisions of the OFPP Policy Letter, the Federal Acquisition Regulation, and to certain provisions contained in the OMB final Guidelines for Nonprocurement Debarment and Suspension (Guidelines) promulgated pursuant to Executive Order 12549.

DATES: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this interim rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

Comments due December 1, 1987.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Assistant General Counsel for Inspector General and Administrative Proceedings, Department of Housing and Urban Development, Room 10266, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-7200. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: 24 CFR Part 24 sets forth procedures relating to debarment, suspension and ineligibility of contractors and grantees with respect to participation in programs administered by the Department of Housing and Urban Development. HUD's procedures cover exclusion from both procurement and nonprocurement activities of the Department. A proposed comprehensive revision of Part 24 was published on July 8, 1980 (45 FR 46012). On July 1, 1982, the Office of Federal Procurement Policy of the Office of Management and Budget (OFPP) published Policy Letter 82-1, establishing criteria for suspension and debarment of Government contractors and subcontractors throughout the Executive Branch (47 FR 28854). Based on a review of the public comments received on the proposed rule published in December 1980 and on the OFPP Policy Letter, HUD published a revised proposed rule on October 11, 1983 (48 FR 46072). The revised rule:

1. Replaced the term "contractor or grantee" in the present regulations with the terms "contractor" and "participant" in order to distinguish between procurement contractors and all others with whom the Department does business.

2. Included definitions to specify the level of proof necessary to establish "adequate evidence" and "preponderance of the evidence." Adequate evidence is comparable to the probable cause necessary for an arrest, a search warrant or a preliminary hearing in a criminal matter and is the standard used in suspensions, while the greater burden of preponderance is applied to debarments.

3. Amended the definition of "affiliate" to include individuals and to emphasize the control aspect of the relationship.

4. Combined the sanctions of "Temporary Denial of Participation" and "Conditional Denial of Participation" into a single sanction entitled "Limited Denial of Participation" which includes the causes available under the prior sanctions.

5. clarified that a debarment includes all divisions or organizational elements of a participant or contractor unless the debarment is, by its terms, limited to specific divisions or elements.

6. Provided that the debarment or suspension of a contractor is effective throughout the Executive Branch of Government unless an agency head makes a written finding of compelling reasons for doing business with the contractor.

7. Limited the time period in which HUD may impose a debarment or suspension.

8. Provided for Department-wide exclusion of a participant or contractor found to be in violation of section 109 of the Housing and Community Development Act of 1974, section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, in addition to Title VI of the Civil Rights Act of 1954, as currently provided.

9. Authorized HUD to debar a participant or contractor who knowingly does business with a person named on the Consolidated List or the HUD List (but see section B of preamble regarding proposed conforming changes to OMB final Guidelines).

10. Authorized debarment, suspension or limited denials of participation based on a similar action by another Federal agency for any reason sufficient to justify a debarment, suspension, or limited denial of participation under this part.

11. Prescribed the contents of the notice of imposition of sanction.

12. Limited appeal rights to the written record in those cases where the suspension or debarment is based on an indictment, a conviction, or a sanction by another agency.

13. Generally reduced the period of debarment to a term not to exceed three years (including any period of suspension).

HUD received four public comments, along with comments from within the Department, on the proposed revised rule. In addition to changes made in response to these comments, this rule also includes changes based on the "Debarment, Suspension and Ineligibility" procedures of the Federal Acquisition Regulation, 48 CFR Subpart 9.4, the Office of Management and Budget's final Guidelines for Nonprocurement Debarment and Suspension (Guidelines), 52 FR. 20360 (issued May 29, 1987 pursuant to Executive Order 12549), and organizational changes within the Department.

The Department had reviewed this rule in light of the recently published final Guidelines and has identified nonsubstantive as well as substantive differences between these two documents. These differences are discussed in Section B of the preamble. The Department has incorporated the nonsubstantive, technical provisons into this rule and will publish a proposed rule to seek prior public comment on the substantive provisions needed to

conform to the Guidelines. The Department believes that the public has had a fair opportunity to comment on the substance of this rule through HUD's October, 1983 proposed rule on debarment, and OMB's publication of proposed Guidelines in February, 1986 (51 FR 6372) on which 60 public comments were received. The Department believes that it would be contrary to the public interest to further delay the effectiveness of this rule. Given the amount of time since the last proposed rule was published and the issuance of the final Guidelines, however, the Department is publishing this rule for effect as an interim rule that solicits public comment. Comments received on both this interim rule and the proposed rule to be published will be considered in developing the final rule on Part 24.

Public Comments

Three commenters stated that a hearing should be granted before imposition of a suspension or a limited denial of participation. The courts have held, however, that appropriate pre-hearing sanctions do not violate due process (*see Horne Bros., Inc. v. Laird,* 463 F.2d 1268 (D.C. Cir. 1972). The Existing Part 24 contains these same provisions and the record shows no history of abuse. Furthermore, pre-termination hearings would defeat the purpose of providing immediate public protection.

The regulations provide for a hearing to be scheduled promptly under § 24.13. In the case of a limited denial of participation, § 24.29 gives the sanctioned participant or contractor a right to a prompt conference with the official actually imposing the sanction or his or her designee. This procedure, which is also contained in existing Part 24, has resulted in rapid resolution of most such sanctions at the local level without recourse to the formal hearing process. These provisions protect the public interest by ensuring speedy resolution of the issues. Consequently, this comment was not adopted.

Two commenters stated that the name of a sanctioned person should be kept confidential until the action has been upheld by a hearing officer and a final determination has been made. A debarment, in fact, is not included on the HUD List until a final determination has been issued. However, suspensions and limited denials of participation by their very nature require immediate publication to assure that the person is excluded pending the appeal. This is necessary to protect the Department and the public. Moreover, under the Government-wide system of debarment of procurement contractors (published by the OFPP), HUD is required to inform other agencies of the suspension or debarment of any contractor. In addition, under 24 CFR Part 26, these hearings are public. Finally, letters of sanctions must be made available under the Freedom of Information Act and are frequently released by HUD under that Act. Thus, confidentiality would be contrary to law.

One commenter was critical of § 24.6(c)(13) which authorizes the imposition of sanctions for "any other cause . . . of so serious or compelling a nature that it affects the present responsibility of a contractor or participant." The commenter found this provision to be too vague. Unfortunately, it is impossible to specify in our regulations every conceivable situation involving nonresponsibility, and an "omnibus" provision is required to protect the public interest. However, this provision is limited specifically to violations which seriously or directly affect the responsibility of a participant on contractor.

Several commenters requested that we change the standard under § 24.11(b), which currently permits the imputation of conduct to a principal, to one requiring actual knowledge of the conduct. This requested change would permit, for example, a corporate officer to avoid responsibility for the conduct of employees merely by claiming that he or she was unaware of the conduct. While this comment has not been adopted, we have modified the provision to apply only where the principal knew or should have known of the conduct or approved or acquiesced in the conduct. In addition, under our regulations the decision to sanction an affiliate is discretionary and is made on an *ad hoc* basis. It should be noted that this imputation may only be made where fraudulent, criminal or other seriously improper conduct is involved. If an entity determined to be irresponsible can exercise control over another entity, the Department may properly act to protect the public interest by excluding the controlled entity (see Section B of preamble).

One commemter requested that we abolish "failure to honor contractual obligations" from the causes for sanction under § 24.26(4) because of the availability of contractual remedies. However, the purpose of a limited denial of participation is not to punish or to remedy past wrongs, but to protect the public and HUD from future harm—an area not addressed by contractual remedies. Therefore, we did not adopt this comment.

One commenter requested that the violation of a contract between one participant and another be included as a basis for imposing a limited denial of participation under § 24.26. This comment drew the Department's attention to an oversight in the proposed rule. Under HUD's current rule, violations of both private contracts and public agreements constitute grounds for debarment under § 24.6. This provision was unintentionally limited in the proposed rule to only those violations involving public agreements. In this interim rule, the Department is retaining its practice of imposing debarment for contractual violations that are so serious as to affect the present responsibility of a contractor or participant, or that result in a conviction or civil judgment under circumstances indicating a lack of business integrity or honesty, regardless of whether the violation relates to a private contract or to a public agreement.

A commenter also urged that we include, as a basis for imposing a limited denial of participation under § 24.26, the making of false certifications to another participant. We agree that a false certification made in connection with a HUD program should be a cause for imposing a limited denial of participation, whether the certification is made to HUD or to a participant, and have so provided at § 24.26(a)(7).

Some commenters expressed confusion as to whether the subject of a limited denial of participation is entitled to a formal hearing. We have modified the language of § 24.28(c) to clarify that a limited denial of participation gives rise to the same right to a formal appeal before an impartial hearing officer as in suspension and debarment cases. We have also retained the right to a conference with the original decision maker, as provided under the existing Part 24. In practice, this provision has enabled the Department quickly to resolve causes for local sanction.

Finally, one commenter objected to giving a limited denial of participation program-wide effect under § 24.27 whenever the participant has been indicted, convicted, or suspended or debarred by another agency—regardless of whether the offense was HUD-related. This provision was adopted to enable local HUD officials to take immediate action to exclude those who are already subject to criminal actions or exclusion by another agency. In such cases, due process has already been accorded, and the person's rights have been safeguarded. For example, to require local HUD offices to continue to do business with a person who has been

convicted of submitting false statements in veteran housing programs, merely because the offense was not HUD-related, would insufficiently protect the public interest. Nor would it be reasonable to exclude from one program a person convicted of submitting false statements to HUD, while permitting that person to do business in another program.

Internal Comments and Organizational Changes

The interim rule contains the following changes in response to internal comments and organizational changes within the Department:

(1) The designation "Area Manager" no longer exists within HUD. Therefore, the authority to impose a limited denial of participation sanction has been given to HUD Office Managers and to Directors of Indian Housing Programs.

(2) The renewability provision for limited denials of participation has been removed. Limited denials of participation are now limited to one year under § 24.27.

(3) Imposition of a limited denial of participation by one HUD field office has been added as a cause for imposing a limited denial of participation by other field offices under § 24.26(a)(11), as provided in the existing Part 24.

(4) The Department has added a provision at § 24.26(a)(12) which clarifies that a limited denial of participation may be imposed whenever a contractor or participant has been debarred or suspended by another Federal agency for any cause substantially the same as provided in § 24.6, "causes for debarment".

(5) This interim rule retains the exception under § 24.3 that permits contractors and participants to purchase HUD-owned housing units offered for all-cash sale, even though sanctions under this part have been imposed. However, because of significant abuse of this exception, the Department has determined that a separate rulemaking proceeding is needed to deal with the all-cash sale exception. The forthcoming regulation will supersede relevant language contained in § 24.3 of this interim rule.

Section A: Federal Acquisition Regulation

The model debarment and suspension procedures contained in Appendix A to Policy Letter 82–1 were incorporated into Subpart 9.4, captioned "Debarment, Suspension, and Ineligibility," of the Federal Acquisition Regulation (FAR) published on September 19, 1983 (48 FR 42103). In the proposed rule published in October 1983, HUD generally conformed its defintions of key terms to those contained in Policy Letter 82–1. In the interim rule published herein, other segments of the rule are revised to conform to provisions of Subpart 9.4 of the FAR (48 CFR 9.400–407.5). These conforming changes generally are nonsubstantive and are intended to promote uniformity in the debarment and suspension procedures of Federal agencies.

However, the Department does intend to solicit public comment in its forthcoming proposed rule on substantive modifications to the government-wide effect of procurement sanctions. These revisions would reflect proposed changes to the FAR that were published on July 31, 1987 (52 FR 28642), including expansion of the government-wide effect of procurement sanctions by extending debarment and suspension ineligibility to subcontracts exceeding $25,000. Under current practice, government-wide effect of procurement sanctions is limited to contractors and federally approved subcontractors.

Section B: OMB Guidelines for Nonprocurement Debarment and Suspension

The OMB final Guidelines for Nonprocurement Debarment and Suspension (Guidelines) published on May 29, 1987 (52 FR 20360) provide a minimum model rule for the development of a government-wide nonprocurement debarment and suspension system mandated by Executive Order 12549. The Guidelines prescribe government-wide criteria and minimum due process procedures in order to "curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs" (51 FR 6370). Executive agencies and departments are required to conform to these minimum agency requirements, although it is anticipated that agencies may elaborate upon the basic model in order to accommodate differing substantive programs.

The Guidelines anticipate that the government-wide nonprocurement system will be implemented by agencies publishing proposed rules that seek prior public participation. As discussed above, the Department believes that it is in the public interest to make this rule effective. The Department has incorporated in this interim rule several nonsubstantive, technical provisions to conform to the Guidelines, which include:

1. Section 24.4 contains the Guidelines' definitions of "proposal", "subsidiary", "agency", and "notice".

2. Section 24.7(c) requires that the grounds for debarment be specified in the notice of sanction.

3. The notice to a participant or contractor under § 24.19(b) must state that the suspension is for a temporary period pending the completion of an investigation, debarment, or legal proceedings.

4. Section 24.21(b) provides for notification of the Department of Justice of an impending termination of suspension.

5. Sections 24.8(c) and 24.20(c) adopt the Guidelines' standard for continuation of agreements that are in existence at the time a person is suspended, debarred, declared ineligible or voluntarily excluded. In addition, § 24.34(b) incorporates the Guidelines' standard for granting an exception to participants and contractors that are included on the HUD List. Such an exception would permit a debarred, suspended or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reasons for deviating from the Presidential policy established by Executive Order 12549. These modifications, however, are nonsubstantive since the Guidelines' standards are no more stringent than those previously promulgated by HUD under existing Part 24 or the October 1983 proposed rule.

6. Sections 24.11 and 24.27 adopt the Guidelines' standard on the scope of debarments, suspensions and limited denials of participation, providing that such sanctions may include "any other affiliate of the participant or contractor that is specifically named and given written notice . . . and an opportunity to respond". This interim rule provides further that "[T]he burden of proving that a particular affiliate or organizational element is currently responsible and is not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is placed on the affiliate or organizational element". The Department considers this language to be appropriately included in this interim rule since it merely makes explicit that which is implicit under the Guidelines. Moreover, the Department included closely analogous language in its October 1983 proposed rule, so that the public has had ample opportunity to comment on this provision.

In addition to these changes, the Department intends to publish a

proposed rule that will invite public comment on the revisions necessary to implement substantive provisions contained in the Guidelines, as well modifications based on proposed changes to the FAR. These include:

1. Implementing the government-wide provisions of the Guidelines. It should be noted that under current practice, Subpart 9.4 of the FAR provides for government-wide effect only as to procurement contractors and federally approved subcontractors (but see item (10) below concerning proposed changes to the FAR), whereas the Guidelines would extend government-wide effect of sanctions to all tiers of nonprocurement participants. HUD intends to carve an exception for agency-specific sanctions (such as § 24.6(c)(6) which provides that the material violation of a limited denial of participation constitutes grounds for imposing a debarment) which would have a purely intra-Departmental effect.

2. Establishing a comprehensive reporting system to the General Services Administration of participants who have been debarred, suspended, declared ineligible, or subjected to limited denials of participation. In addition, any exception granted by the Department under § 24.34 that would allow a sanctioned participant to continue business dealings with HUD shall be reported to GSA. The Department is also considering whether to retain the current HUD List at § 24.32 or to replace it with a more comprehensive Consolidated List of Sanctioned Nonprocurement Participants.

3. Developing a participant certification process that would require certain participants to verify that they (or any person in specified capacities with respect to the participant or the particular covered transaction) have not in the preceding three years been: (a) Debarred, suspended or declared ineligible; (b) formally proposed for debarment, with a final determination still pending; (c) voluntarily excluded from participation; or (d) indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 24.6(a). Other participants would be required to conform to the FAR standard of checking the Consolidated List to verify that participants with whom they have dealings in covered transactions are not listed.

4. Abolishing the time limitation on the decision to order a debarment or suspension at §§ 24.5(b) and 24.17(b). The Department believes this three-year limitation to be inimical to the mandate of Executive Order 12549 and intends to adopt the Guidelines' approach which does not include any such time limitation.

5. Expanding the definition of "legal proceedings" at § 24.4(r) to include proceedings by Federal, state, local or quasi-governments. This will increase the instances in which the Department can suspend an individual "pending the completion of . . . legal proceedings" under § 24.21. HUD currently defines this term to include only civil or criminal judicial proceedings in which the Federal government is a party. However, in order to carry out the strict mandate of Executive Order 12549, HUD will adopt the expanded definition.

6. Modifying the language of § 24.6(c)(2) under causes for debarment from "doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is know that the person is debarred, suspended or otherwise excluded from participation in such transactions" to "where it is known or reasonably should have been known." This will enable the Department to debar an individual under this subsection who could otherwise merely allege a lack of such knowledge.

7. Abolishing the requirement that a shareholder have a 10% or greater equity interest before his or her seriously improper conduct can be imputed to a participant or contractor under § 24.11(b).

8. Permitting conduct to be imputed to a contractor or participant under § 24.11(b) either when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or participant OR when the participant or contractor knew, or should have know, or approved or acquiesced in, the conduct. Under this interim rule, conduct may be imputed only when both factors are satisfied, making it more difficult for the Department to curb fraud and waste in HUD programs.

9. Specifying that debarred and suspended individuals are also excluded from participation in covered transactions in various capacities such as: (1) An owner or partner holding a controlling interest; (2) a director or officer of the participant; (3) a principal investigator, project director, or other position involved in the management of covered transactions; (4) a provider of federally-required audit services; or (5) in any other position to the extent that the incumbent is responsible for the administration of Federal funds, or in any other position charged as a direct cost under the covered transaction.

10. Expanding the government-wide effect of procurement sanctions based on proposed changes to the FAR that were published on July 31, 1987 (52 FR 28642). This would include extending debarment and suspension ineligibility to those subcontracts that exceed $25,000.

Other Matters. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since it will have applicability only to a very small percentage of the total number of entities which have dealings with the Department.

This rule was listed as Item 888 in the Department's Semi-Annual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14363) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

This rule impacts upon the full range of loan, loan guarantee, grant, insurance, interstate land sales, and manufactured housing programs administered by the Department and that are designated Catalog of Federal Domestic Assistance program numbers 14.103–14.852.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies), Government procurement, Grant programs: housing and community development, Loan

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programs: housing and community development.

Accordingly, the Department revises 24 CFR Part 24 as follows:

PART 24—DEBARMENT, SUSPENSION AND LIMITED DENIAL OF PARTICIPATION

Subpart A—General

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24.1 Policy.
24.2 Scope.
24.3 Applicability.
24.4 Definitions.

Subpart B—Debarment

Sec.
24.5 General.
24.6 Causes for debarment.
24.7 Debarment procedures.
24.8 Effect of debarment.
24.9 Voluntary exclusion.
24.10 Period of debarment.
24.11 Scope of debarment.
24.12 Appeal procedures.
24.13 Hearing procedures.
24.14 Determination of Hearing Officer; review of determination.
24.15 Requests for reinstatement.
24.16 Settlement.

Subpart C—Suspension

Sec.
24.17 General.
24.18 Causes for suspension.
24.19 Procedures.
24.20 Effect of suspension.
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Subpart D—Limited Denial of Participation

Sec.
24.25 General.
24.26 Causes for a Limited Denial of Participation.
24.27 Period and scope of a Limited Denial of Participation.
24.28 Notice.
24.29 Conference.
24.30 Appeal.

Subpart E—Lists of Excluded Participants and Contractors

Sec.
24.31 The Consolidated List of Debarred, Suspended, or Ineligible Contractors.
24.32 Establishment and Maintenance of the HUD List of Debarred, Suspended and Ineligible Participants.
24.33 Classifications for entry on the HUD List.
24.34 Effect of sanctions.
24.35 Retroactivity.

Authority: Section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 24.1 Policy.

It is essential to the accomplishment of the Department's mission that grants, loans and contracts are awarded or insured by the Department and by those entities with whom it does business, and that participation in HUD financial assistance programs is limited, only to responsible contractors, grantees, and other participants. Accordingly, for the protection of the public interest, including the deterrence of irresponsible conduct in Department programs, and not for punitive purposes, persons, firms, and other entities may be excluded from participation in HUD programs, and from contracts and subcontracts throughout the Executive Branch, in accordance with this part.

§ 24.2 Scope.

(a) This part—

(1) Prescribes policies and procedures governing the debarment, suspension and limited denial of participation of contractors and participants for the causes given in §§ 24.6, 24.18 and 24.26.

(2) Provides for the listing of debarred and suspended contractors and participants and of contractors and participants declared ineligible; and

(3) Sets forth the consequences of this listing.

(b) Although this part does cover the listing of ineligible contractors (§ 24.31) and the effect of this listing (§ 24.34), it does not prescribe policies and procedures governing declarations of ineligibility.

§ 24.3 Applicability.

(a) The sanctions set forth in this part apply to participation in Departmental programs as described in paragraphs (a)(1), (2) and (3) of this section.

(1) *Covered program transactions.* Covered transactions (whether involvement is as a contractor or participant or as one receiving HUD funds directly or indirectly from a contractor or participant) include all programs funded or administered by this Department, except as noted in paragraph (a)(3) of this section. These transactions include, but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees, subsidies, insurance, payments for specified use, donation agreements; awards, subawards, contracts, subcontracts and transactions at any tier that are charged as direct costs, regardless of type (including subtier awards under awards that are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section. Persons may be subject to sanctions whether or not they were engaged in a HUD program at the time of the conduct on which the sanction is based, or whether they acted individually, on behalf of others, or in a private or public capacity. Sanctions against ultimate beneficiaries such as subsidized tenants and subsidized mortgagors may be taken only upon evidence of fraud or serious program abuse.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, or insurance programs of the Department or in the interstate land sales or manufactured housing programs of the Department and those in business relationships with such participants in connection with such programs are also subject to the provisions of this part, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* Sanctions taken under this part shall not preclude: receipt of statutory entitlement or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including but not limited to contracts with, or grants made to, owners or occupants of real property in connection with eminent domain proceedings and relocation payments made to eligible displaced parties; benefits from the sale of the personal residence of an excluded individual; purchase of HUD-owned housing units offered for all-cash sale without qualification at public sales; incidental benefits derived from ordinary governmental operations; and participation in or benefits from other transactions where the application of this part would be prohibited by law.

(b) *Relationship to other Federal administrative sanction procedures*—(1) *Sanctions provided pursuant to contract provisions.* Nothing in this part shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

(2) *Other departmental sanctions.* Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation or Executive Order shall take precedence. These alternate procedures include, but are not limited to: Part 200 Previous Participation Review and Clearance procedures, Part 25 Mortgagee Review Board administrative actions, and Part 570 Community Development Block Grant corrective and remedial actions.

§ 24.4 Definitions.

The following terms are used in this part:

(a) "Adequate evidence". Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) "Affiliates". Individuals or business concerns are affiliates if, directly or indirectly: (1) Either one controls or can control the other; or (2) a third individual or concern controls or can control both.

(c) "Agency". Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies

(d) "Assistance transactions". Those covered departmental assistance transactions denoted by § 24.3 (a)(1) and (a)(2).

(e) "Benefits." Money or any other thing of value provided by, or realized because of, the Department. "Thing of value" includes insurance or guarantees of any kind.

(f) "Consolidated List of Debarred, Suspended, and Ineligible Contractors." A list compiled, maintained, and distributed by the General Services Administration (GSA) (see § 24.31) containing the names of contractors debarred or suspended by agencies under the procedures of this part as well as contractors declared ineligible under other statutory or regulatory authority.

(g) "Contractor." Any individual or other legal entity that:

(1) Submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or a subcontract under a Government contract; or

(2) Conducts business with the Government as an agent or representative of another contractor.

(h) "Control." The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or by other means. For purposes of actions under this part, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. This presumption may be rebutted by evidence.

(i) "Conviction." A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(j) "Debarment." An action taken by a Debarring Official in accordance with Subpart B of this part to exclude a Contractor from Government contracts or federally approved subcontracts under contracts, or to exclude a person from directly or indirectly participating in assistance transactions. "Debarment" also includes an action taken by any other Federal agency (as defined in 48 CFR 9.403) in accordance with agency regulations to exclude a Contractor from Government contracts or federally approved subcontracts under contracts for a reasonable, specified period. A Contractor or other person so excluded is "debarred."

(k) "Debarring Official." Any Assistant Secretary of HUD, the General Counsel of HUD or the President of the Government National Mortgage Association.

(l) "Grant." An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

(m) "Grantee." The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

(n) "Hearing Officer." An Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary, or by the Secretary's designee, to conduct proceedings under this part.

(o) "HUD List of Debarred, Suspended or Ineligible Participants." A list compiled, maintained and distributed by the HUD Inspector General in accordance with § 24.32 containing the names of all participants and contractors debarred, suspended or determined to be ineligible in accordance with this part.

(p) "Indictment." Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(q) "Ineligible." Excluded from participation in Departmental programs or Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority other than the Department's debarment, suspension or limited denial of participation procedures, such as the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Opportunity Acts and Executive Orders, the Walsh-Healey Public Contracts Act, the Buy American Act, and the Environmental Protection Acts and Executive Orders.

(r) "Legal proceedings." Any civil judicial proceedings to which the Government is a party, or any criminal proceeding. The term includes appeals from such proceedings.

(s) "Limited denial of participation." An action taken to exclude immediately from direct or indirect participation, or immediately to impose conditions on the direct or indirect participation, of any person in a program of the Department within a limited geographical area.

(t) "Notice." A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(u) "Participant." Any person who directly or indirectly participates, or who may reasonably be expected to participate in HUD programs. (For example, a participant in housing programs of another Federal agency or State government is a participant.) "Participant" encompasses any recipient of HUD benefits, either directly or indirectly, through non-Federal sources or other recipients, and includes grantees and subgrantees as well as loan recipients. No sanction shall be imposed against a direct recipient of Community Development Block grant funds, however, except as provided by 24 CFR Part 570.

"Participant" includes, but is not limited to, State and local governments, bonding companies, borrowers, builders, HUD contractors, principals in multifamily projects (as defined in 24 CFR Part 200 Subpart G), purchasers at sales of HUD-owned housing units offered with conditions for sale, purchasers of a property with a HUD-insured or Secretary-held mortgage, recipients under assistance agreements, ultimate beneficiaries of HUD programs, mortgagees, fee appraisers and inspectors, real estate agents and brokers, area management brokers, management and marketing agents, or

persons employed by or in a business relationship with participants, such as accountants, consultants, investment bankers, architects, engineers, contractors with participants, and attorneys.

(v) "Person." Any individual, corporation, partnership, association, unit of government or legal entity, however organized, including any subsidiary of any of the foregoing.

(w) "Preponderance of the evidence." Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(x) "Proposal." A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

(y) "Respondent". A person against whom a debarment, suspension, or limited denial of participation action has been initiated.

(z) "Subsidiary". Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

(aa) "Suspending Official". Any Assistant Secretary of HUD, the General Counsel of HUD, or the President of the Government National Mortgage Association.

(bb) "Suspension". An action taken by a Suspending Official in accordance with Subpart C of this part immediately to exclude a Contractor from Government contracts or federally approved subcontracts under contracts, or immediately to exclude a person from directly or indirectly participating in assistance transactions for a temporary period, pending completion of an investigation or administrative or legal proceedings. A person so excluded is suspended.

(cc) "Ultimate beneficiaries". Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors such as those assisted under Section 8 Housing Assistance Payments Contracts, Section 236 Rental Assistance, or by Rent Supplement payments. Sanctions may be taken against ultimate beneficiaries only upon evidence of fraud or serious program abuse.

(dd) "Voluntary exclusion". A status of nonparticipation or limited participation in assistance transactions assumed by a person under the terms of a settlement.

Subpart B—Debarment

§ 24.5 General.

(a) *Officials who may initiate debarment.* Any Debarring Official may initiate debarments. No debarment may be initiated against HUD–FHA approved mortgagees, however, without approval of the Mortgagee Review Board. A Debarring Official, acting in the public interest, may debar a participant or contractor for any cause set forth in § 24.6. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to initiate debarment shall be within the discretion of the Debarring Official and in the best interests of the Government.

(b) *Time limitations on decision to debar.* The notice of proposed debarment shall be issued within three years of—

(i) A criminal conviction;

(ii) Completion of an investigation or audit which is a basis for the debarment action; or

(iii) Discovery of the cause on which the debarment action is based, whichever event is later.

§ 24.6 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 24.5 and 24.7 for:

(a) *Conviction.* Conviction of, or civil judgment for, any offense indicating a lack of business integrity or honesty which affects the present responsibility of a contractor or participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of a contract or the terms of a public agreement so serious as to affect the present responsibility of a contractor or participant, including but not limited to:

(1) A willful or material failure to perform under one or more contracts or agreements; or

(2) A history of substantial noncompliance with the terms of one or more contracts or agreements.

(c) *Other Causes.* Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in § 24.6;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a contractor or participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a contractor or participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment, suspension or limited denial of participation action;

(7) Failure to comply with Title VIII of the Civil Rights Act of 1968 or Executive Order 11063, HUD's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan;

(8) Violation of Title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1973, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975;

(9) Violation of any law, regulation, or agreement relating to conflict of interest;

(10) Violation of any nondiscrimination provisions included in any agreement or contract;

(11) Violation of any law, regulation, or obligation relating to applications for financial assistance, insurance, or guarantees, or to the performance of obligations under an assistance award or conditional or final commitment to insure or guarantee;

(12) Making or causing to be made any false statement for the purpose of influencing in any way an action of the Government; or

(13) Any other cause determined by a Debarring Official to be of so serious or compelling a nature that it affects the present responsibility of a contractor or participant.

§ 24.7 Debarment procedures.

(a) *Decision-making process.* The debarment decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness.

(b) *Notice of proposal to debar.* Debarment shall be initiated by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being proposed;

(2) Of the reasons for the proposed debarment in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.6 for proposing debarment;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a hearing purusant to § 24.13;

(5) Of the following potential effects of debarment:

(i) For a participant, that the participant will be excluded from all participation, direct or indirect, in any HUD program, including any program funded, guaranteed or insured by HUD;

(ii) For a contractor, that in addition to exclusion from direct or indirect participation in HUD programs, the contractor will be excluded from receiving any Federal Government contract, and Federal agencies shall not solicit offers from, or award contracts or subcontracts to, the contractor unless the acquiring agency's head or designee determines that there is a compelling reason for such action.

(6) Of HUD's procedures governing debarment decision-making, including a statement that, if no response is made within 30 days, the decision will be made final.

(c) Notice of Debarring Official's final decision. If no request for hearing is received within 30 days, the Debarring Official, or designee, shall give the participant or contractor and any affiliates prompt notice of the final decision to debar by certified mail, return receipt requested—

(1) Referring to the notice of proposed debarment;

(2) Specifying the reasons for debarment;

(3) Stating that the debarment is effective immediately; and

(4) Stating the period of debarment, including effective dates.

§ 24.8 Effect of debarment.

a. *Contractors.* In addition to exclusion from direct or indirect participation in HUD programs, a contractor's debarment from procurement shall be effective throughout the Executive Branch of the Government, in accordance with 48 CFR 9.406–1(c), unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

b. *Participants.* A participant's debarment is limited to direct or indirect participation in HUD programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangments; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return.

c. Notwithstanding the debarment, voluntary exclusion, or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, declared ineligible or under a voluntary exclusion, except as provided under § 24.34.

§ 24.9 Voluntary exclusion.

A contractor or participant and an agency may enter into a settlement agreement providing for the exclusion of the contractor or participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

§ 24.10 Period of debarment.

Debarment shall be for a period commensurate with the seriousness of the cause(s), generally not to exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Where the offense is willful or egregious, a longer term of debarment may be imposed, up to an indefinite period.

§ 24.11 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person or affiliate under this part constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of agreements.

(2) The debarment action may include any other affiliate of the participant or contractor that is—

(i) Specifically named; and

(ii) Given written notice of the proposed debarment and an opportunity to respond as set forth in § 24.7(b).

An affiliate may be included in a debarment solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts. The burden of proving that a particular affiliate or organizational element is currently responsible and is not controlled by the primary debarred party (or by an entity that itself is controlled by the primary debarred party) is placed on the affiliate or organizational element.

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to contractor or participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder having a 10 percent or greater interest, partner, employee, or other individual associated in a business context with a contractor or participant may be imputed to the contractor or participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or participant, and the participant or contractor knew, or should have known of, or approved or acquiesced in, the conduct.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a contractor or participant may be imputed to any officer, director, shareholder having a 10 percent or greater interest, partner, employee, or other individual associated in a business context with the contractor or participant who participated in, knew of, or had reason to know of the contractor's or participant's conduct.

(3) *Conduct of one contractor or participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one contractor or participant in a joint venture or similar arrangement may be imputed to other participating parties if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the contractors or participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

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§24.12 Appeal procedures.

Within 30 days of receipt of a notice of proposed debarment, any participant or contractor including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. If no appeal is filed within the time limit, the proposed decision to debar shall be final.

§ 24.13 Hearing procedures.

(a) *General.* Hearings shall be governed by the procedures set forth at 24 CFR Part 26, except as provided herein.

(b) *Right to hearing.* A participant or contractor, including any affiliate, that has requested a hearing has the right to be heard before a Hearing Officer and to be represented by counsel as follows:

(1) Except as provided in paragraphs (b) (2) and (3) of this section, the participant or contractor may request an oral hearing before a Hearing Officer. Where debarment is based on a finding of civil rights noncompliance after a hearing, however, the hearing officer is bound by the finding of noncompliance reached in the prior hearing.

(2) Where the Department of Justice advises, in writing, and a Suspending Official determines that a suspension is based on the same facts as pending or contemplated legal proceedings; and that substantial interests of the Government in those proceedings would be prejudiced by a hearing, there shall be no right to a hearing under this part. However, the participant may submit documentary evidence and written briefs for consideration by the Suspending Official;

(3) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal Government agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a Hearing Officer;

(c) *Standard of proof.* The cause for debarment must be established by a preponderance of the evidence. If the proposed debarment is based upon a conviction, a civil judgment, or debarment by another Federal Government agency, the standard shall be deemed to have been met. The cause for suspension and Limited Denial of Participation must be established by adequate evidence. If the action is based upon an indictment or suspension by another Federal Government agency, the standard shall be deemed to have been met. If the Limited Denial of Participation is based upon a Limited Denial of Participation by another HUD regional or field office, the standard shall be deemed to have been met.

(d) *Consolidation of hearing.* Where a sanction under this part is accompanied or followed by another sanction under this part, the hearings may be consolidated.

§ 24.14 Determination of Hearing Officer; review of determination.

(a) *Written determination.* After the participant or contractor has been afforded an opportunity to be heard, the Hearing Officer shall make a written determination on the evidence presented, including any evidence of mitigating circumstances. The Hearing Officer may issue a determination in accordance with Part 26. If it is proposed that the sanction include an affiliate, the Hearing Officer shall rule specifically whether, and to what extent, the determination applies to the affiliate. The Hearing Officer's determination shall be transmitted to all appealing parties by certified mail, return receipt requested.

(b) *Transmission of determination.* The Hearing Officer's determination also shall be transmitted promptly to the HUD official who invoked the administrative sanction, and to the Office of the General Counsel.

(c) *Finality and Secretarial Review.* The Hearing Officer's determination shall be final unless, pursuant to 24 CFR Part 26, the Secretary, or designee, decides as a matter of discretion to review the finding of the Hearing Officer. Any party may request such a review in writing within 15 days of receipt of the Hearing Officer's determination.

§ 24.15 Requests for reinstatement.

(a) *Grounds.* Requests for reinstatement shall be made in writing, addressed to the official imposing the sanction, as follows:

(1) Immediately upon proof of:

(i) Discovery of new and material evidence not previously available;

(ii) Dismissal of the indictment or reversal of the conviction or judgment, or reversal of the suspension or debarment by another agency upon which HUD's sanction was based; or

(iii) Bona fide change in ownership or management sufficient to justify a finding of present responsibility.

(2) Not less than six months after the final determination of debarment or imposition or affirmation of the suspension or Limited Denial of Participation, upon proof that the causes for the sanction have been eliminated and upon certification that the requirements of applicable statutes and administrative rules and regulations are understood by the participant or contractor and will be followed in the future.

(b) *Procedures.* The request for reinstatement shall be forwarded by the official imposing the sanction to a Hearing Officer for a recommendation on reinstatement. The determination whether to reinstate shall be based on the written submission of evidence, without a further hearing. Upon consideration of the written submission and any departmental response, the Hearing Officer shall recommend to the official imposing the sanction whether or not reinstatement is warranted under the standards of paragraph (a) of this section.

§ 24.16 Settlement.

A Debarring Official may settle an administrative action under this part in the interest of the Government at any time.

Subpart C—Suspension

§ 24.17 General

(a) *Officials who may initiate suspensions.* Any Suspending Official may issue suspensions. No suspension may be issued against a HUD–FHA approved mortgagee, however, without approval of the Mortgagee Review Board. A Suspending Official, acting in the public interest, may suspend a participant or contractor for any cause set forth in § 24.18. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to suspend shall be within the discretion of the Suspending Official and in the best interests of the Government.

(b) *Time limitations on decision to suspend.* The notice of suspension shall be issued within three years of—

(1) A criminal conviction;

(2) Completion of an investigation or audit which is a basis for suspension; or

(3) HUD's discovery of the cause on which the suspension is based, whichever event is later.

§ 24.18 Causes for suspension.

(a) *Causes.* Suspension may be imposed in accordance with the provisions of §§ 24.17 and 24.19 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 24.6(a); or

(2) That a cause for debarment under § 24.6 may exist.

(b) *Indictment.* Indictment shall constitute adequate evidence for the purpose of suspension actions.

(c) *Suspension.* Suspension by another Federal agency for any cause specified

in paragraph (a) of this section shall constitute adequate evidence for a concurrent suspension.

§ 24.19 Procedures.

(a) *Decision-making process.* The supension decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness. Suspension is a serious action to be imposed on the basis of adquate evidence, pending the completion of an investigation, administrative proceedings or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, the Suspending Official shall consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) *Notice of suspension.* Suspension shall be made effective by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That suspension is being imposed;

(2) That suspension is based on an indictment or other adequate evidence that the participant or contractor has committed irregularities: (i) Of a serious nature in business dealings with the Government; or (ii) seriously reflecting on the propriety of further Government dealings with the participant or contractor. Any such irregularities shall be described in terms sufficient to place the participant or contractor on notice without disclosing the Government's evidence;

(3) Of the cause(s) relied upon under § 24.18 for imposing suspension;

(4) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(5) Of the right to request within 30 days, in writing, a hearing pursuant to § 24.13;

(6) Of the following potential effect(s) of suspension:

(i) For a participant, that the participant is excluded from all participation, direct or indirect, in any HUD program, including any program funded, guaranteed or insured by HUD; and

(ii) For a contractor, that in addition to being excluded from direct or indirect participation in HUD programs, the contractor is excluded from receiving any Federal Government contract, and Federal agencies shall not solicit offers from, or award contracts or subcontracts to, the contractor unless the contracting agency's head or designee determines that there is a compelling reason for such action.

(7) Of HUD's procedures governing suspension decision-making, including the right to request a hearing within 30 days of receipt of the notice of suspension.

§ 24.20 Effect of suspension.

(a) *Contractors.* In addition to exclusion from direct or indirect participation in HUD programs, a contractor's suspension from procurement shall be effective throughout the Executive Branch of the Government in accordance with 48 CFR 9.407–1(d), unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(b) *Participants.* A participant's suspension extends to both direct and indirect participation in HUD programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return.

(c) Notwithstanding the suspension, voluntary exclusion, or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

Agencies and participants shall not renew or extend the duration of current agreements with any person who is suspended, declared ineligible or under a voluntary exclusion, except as provided in § 24.34.

§ 24.21 Period of suspension.

(a) All suspensions shall be for a temporary period pending the completion of an investigation or administrative or legal proceedings. A suspension shall become effective immediately upon issuance of the notice specified in § 24.19(b). In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests, in writing, a continuance for an additional six months. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. The time limitations for suspension contained in this section may be waived by the affected party.

(b) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 24.22 Scope of suspension.

The scope of a suspension shall be the same as the scope of a debarment (see § 24.11), except that the procedures of § 24.19 shall be used in imposing a suspension.

§ 24.23 Appeal procedures.

Within 30 days of receipt of a notice of suspension, a participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. If a hearing is requested, it shall be held in accordance with sections §§ 24.12 through 24.14.

§ 24.24 Settlements.

A Suspending Official may settle an administrative action under this part in the interest of the Government at any time.

Subpart D—Limited Denial of Participation

§ 24.25 General.

Officials who may order a Limited Denial of Participation. A Regional Administrator, Office Manager, or Director of an Office of Indian Programs is authorized to order a Limited Denial of Participation affecting any participant or contactor and its affiliates except HUD–FHA approved mortgagees. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a Limited Denial of Participation shall be discretionary and in the best interests of the Government.

§ 24.26 Causes for a Limited Denial of Participation.

(a) *Causes.* A Limited Denial of Participation shall be based upon adequate evidence of any of the following causes:

(1) That approval of an applicant for insurance would constitute an unsatisfactory risk;

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(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(3) Failure of a participant or contractor to maintain prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) That requirements of an assistance agreement or contract will not be satisfied upon completion;

(6) Construction deficiencies in ongoing projects;

(7) Making a false certification in connection with any HUD Program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.6(a);

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or a conditional or final commitment to insure or guarantee.

(10) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

(11) Imposition of a Limited Denial of Participation by any other HUD regional or field office.

(12) Debarment or suspension by another Federal agency for any cause substantially the same as provided in § 24.6.

(b) *Indictment.* Indictment shall constitute adequate evidence for the purpose of Limited Denial of Participation actions.

(c) *Limited Denial of Participation.* Imposition of a Limited Denial of Participation by any other HUD regional or field office shall constitute adequate evidence for a concurrent Limited Denial of Participation.

§ 24.27 Period and scope of a Limited Denial of Participation.

(a) *Generally.* A Limited Denial of Participation extends to both direct and indirect participation in the program under which the cause arose, except that where it is based on an indictment, conviction or suspension or debarment by another agency it need not be based on offenses against HUD and it may apply to all programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return. The sanction may be imposed for a period not to exceed 12 months and is effective only within the geographic jurisdiction of the office imposing it. For the purpose of this subpart, the term "program" may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary.

(b) *Effectiveness.* This sanction shall be effective immediately upon being signed by the authorized official and shall remain effective up to 12 months. However, if the cause for the Limited Denial of Participation is resolved before the expiration of the 12-month period, the authorized official may terminate the sanction. The imposition of a Limited Denial of Participation shall not affect the right of the Department to suspend or debar any party under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a Limited Denial of Participation solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 24.28 Notice.

(a) *Generally.* A Limited Denial of Participation shall be initiated by advising a participant or contractor and any specifically named affiliate, by certified mail, return receipt requested—

(1) That the sanction is imposed on the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.26 for imposing the sanction;

(4) Of the right to request in writing within 30 days of receipt of the notice, a conference on the sanction;

(5) Of the Department's procedures governing Limited Denial of Participation; and

(6) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, the official imposing the Limited Denial of Participation shall notify the Participation and Compliance Officer for Housing Programs if no conference has been requested. If a conference is requested within the 30-day period, no notice shall be given unless a decision to affirm all or a portion of the remaining period of exclusion is issued. The Participation and Compliance Officer will be responsible for notifying all HUD field offices of sanctions imposed.

§ 24.29 Conference.

Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 24.30. Although the formal rules of procedure contained in 24 CFR Part 26 do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official, or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the Limited Denial of Participation. If the decision is to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request in writing, within 30 days of receipt of notice of the decision, a formal hearing. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

§ 24.30 Appeal.

Where the decision is to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. This request shall be filed within 15 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at §§ 24.12 through 24.14.

Subpart E—Lists of Excluded Participants and Contractors

§ 24.31 The Consolidated List of Debarred, Suspended, or Ineligible Contractors.

(a) The Inspector General shall compile and transmit to the General Services Administration (GSA) a list of

all contractors debarred, suspended, or declared ineligible by the Department. The list shall indicate:

(1) The names and addresses of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross references when more than one name is involved in a single action;

(2) The cause of the action or other statutory or regulatory authority;

(3) The effect of the action;

(4) The termination date for each listing;

(5) The name and telephone number of the point of contact for the action; and

(6) The DUNS No. for the contractor.

(b) The Inspector General shall:

(1) Notify GSA of the information required by paragraph (a) of this section within five working days after the action becomes effective;

(2) Notify GSA within five working days after modifying or rescinding an action; and

(3) Notify GSA of the names and addresses of offices within HUD that are to receive the Consolidated List and the number of copies to be furnished to each.

(4) In accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the Department;

(5) Establish procedures to provide for the effective use of the List, to ensure that the Department does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as provided in § 24.34;

(6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

§ 24.32 Establishment and Maintenance of the HUD List of Debarred, Suspended and Ineligible Participants.

(a) *Maintenance of HUD Lists.* The HUD Inspector General shall maintain and consolidate lists relating to the debarment, suspension or ineligibility of participants and contractors. All lists shall be kept current. Procedures for issuance of notices of additions and deletions shall be established by the Inspector General. Each Suspending or Debarring Official under this part shall appoint a liaison officer responsible for providing the Office of Inspector General with current information. The Office of Inspector General shall, in cooperation with other offices of HUD, establish procedures for assuring the timely receipt of information relevant to updating the lists.

(b) *Information in the List.* The HUD List shall contain, at a minimum, the following information:

(1) An alphabetical listing of those persons against whom HUD has invoked administrative sanctions of debarment or suspension, and those persons voluntarily excluded, with appropriate cross-references where more than one name is involved in a single action.

(2) The basis of authority for such action;

(3) The extent of the restrictions imposed, including their expiration date;

(4) the name of the office initiating the action; and

(5) designation of whether debarred as a participant or contractor.

(c) *Distribution of the HUD List.* The Inspector General shall arrange for reproduction and distribution of the HUD List. The List shall be distributed among HUD employees and to others outside HUD whose duties require access to the List, as authorized by the Assistant Secretaries, Office Managers, Directors of Indian Housing Programs, and Regional Administrators. Distribution shall also be made upon request. Procedures for submitting requests for information contained in the HUD List and distribution of such information shall be established by the Office of Inspector General. Names of persons on the HUD List shall be available upon request to that office.

§ 24.33 Classifications for entry on the HUD List.

Persons may be listed on the HUD List in accordance with the following classifications:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healy Public Contracts Act (41 U.S.C. 35, *et seq.*), or the Service Contract Act (41 U.S.C. 351, *et seq.*) as found by the Secretary of Labor to have violated any of the agreements or representations required by those Acts.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a–2(a)), as found by the Comptroller General to have violated that Act.

(c) Those listed by the Comptroller General as found by the Department of Labor to have failed to satisfy obligations arising out of a contract incorporating the nondiscrimination and affirmative action provisions of Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended (12 U.S.C. 793), or the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012), implementing regulations (41 CFR Chapter 60), and orders issued in connection therewith.

(d) Those listed by the Comptroller General in accordance with the provisions of 29 CFR 5.6(b) of the regulations of the Secretary of Labor as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or work hour provisions of the applicable statutes listed in 29 CFR 5.1.

(e) Those listed by the Director of the Office of Federal Contract Compliance on the Contract Ineligibility List because of noncompliance with the equal opportunity clause (41 CFR 60–1.3) or affirmative action clauses (41 CFR 60–250.4 and 60–741.4).

(f) Those persons debarred, suspended or voluntarily excluded by HUD in accordance with this part.

(g) Those determined by an Executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under a contract containing the specific provisions required by section 3(a) and made by the agency for the construction, alteration, or repair of any public building or public work.

§ 24.34 Effect of sanctions.

(a) *Consolidated list*—(1) *Debarred or suspended contractor.* Debarred or suspended contractors who are included on the Consolidated List are excluded from receiving contracts, and HUD shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors, unless the Secretary or designee determines in writing that there is a compelling reason for such action.

(2) *Contractors listed as ineligible.* Contractors listed on the Consolidated List as ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors except under the conditions and for the duration specified in the statute or regulation.

(b) *HUD List.* The Department may grant an exception permitting a debarred, suspended or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently

Exceptions shall be reported in accordance with § 24.31.

§ 24.35 Retroactivity.

Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of these regulations regardless of the date of the cause giving rise to the sanction.

Authority: Section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: August 21, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-22726 Filed 10-1-87; 8:45 am]

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 736

[Amdt. No. 3]

Grain Warehouses; Definitions, Financial Requirements and Warehouse Bonds

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR Part 736 relating to grain warehouses licensed under the United States Warehouse Act to: (1) Add definitions; (2) increase the total net asset requirements; (3) require warehousemen to have and maintain total current assets equal to or exceeding total current liabilities; (4) allow the Secretary to accept a letter of credit for a deficiency in total net assets above the minimum requirement; (5) permit a warehouseman to deposit with the Secretary for the protection of depositors, United States public debt obligations as security in lieu of a bond furnished by a corporate surety; (6) allow a waiver of the requirements for an individual financial statement from a warehouseman wholly-owned by another business entity which other entity is willing to furnish an acceptable financial statement and guarantee the storage obligations of the licensed warehouseman; (7) accept certain appraisals of real and personal property to supplement financial statements; and (8) provide for the acceptance of a continuous form of bond.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: R. Ford Lanterman, 202–475–4032.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "non-major." This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Milton J. Hertz, Administrator, ASCS, has determined that this action is not a major rule since implementation will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographic region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements proposed by this rule will not become effective until they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

Comments concerning the information collection requirements contained in these rules may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer ASCS/USDA, Washington, DC 20503. Telephone (202) 395–7340.

Milton J. Hertz, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities because: (1) This action imposes only moderate economic costs on small entities; and (2) the use of the service is voluntary. Therefore, no regulatory flexibililty analysis was prepared.

This rule is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water qualilty, or land use and appearance. Accordingly, neither an environmental assessment nor an environmental impact statement is required and none was prepared.

This action will not have a significant impact specifically upon area and community development, therefore review as established by Executive Order 12291 (February 17, 1981) was not used to assure that units of local government are informed of this action.

Background

The U.S. Warehouse Act [7 U.S.C. 241 *et seq.*] [the "Act"] provides that warehousemen who apply to the Secretary of Agriculture and who meet certain statutory and regulatory standards may be federally licensed. The primary objectives of the Act are to: (a) Protect producers and others who store their property in public warehouses; (b) assure the integrity of warehouse receipts as documents of title, thereby facilitating trading of agricultural commodities in interstate commerce; and (c) set and maintain a standard for sound warehouse operations.

The Department of Agriculture has sought to attain these objectives by: Research and development of basic standards for good warehousing practices; requiring original and continuing examinations of applicants and licensees; establishing financial and bonding requirements; and establishing licensing and regulatory requirements. Rules and regulations have been promulgated by the Department from time to time, under authority of section 7 U.S.C. 268.

Changes in the economy, governmental administrative policy, grain warehousing industry, and needs of grain warehousemen have necessitated continuous Departmental review of operations and requirements under the Act. A notice of proposed rulemaking was published by the Department on Monday, March 30, 1987 in the **Federal Register** at 52 FR 10104 requesting comments with respect to several proposed changes in the regulations for grain warehouses. The comment period ended on April 29, 1987.

Amendments were proposed which would (1) add definitions, (2) increase the net asset requirements for licensing and continuation of licensing, (3) accept deposit of United States Bonds, Treasury Notes or other public debt obligations in lieu of surety bonds and to accept a continuous form of surety bond, (4) permit acceptance of letters of credit for a deficiency in net assets above the minimum required, (5) accept financial statements of a parent entity for a wholly owned subsidiary under certain conditions, (6) accept appraisals

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of land, building and equipment under specified conditions and (7) provide for a continuous license and bond.

Comments were received from five entities. One comment was from a large multi-state grain warehouseman expressing approval of all the proposed changes. The remainder of the comments were from trade associations. Three comments concerned the proposed use of letters of credit and stated that letters of credit are not recognized as insured deposits by the Federal Deposit Insurance Corporation (FDIC). One commentator also stated that the use of the term "unconditional" as used in the proposed regulation is incorrect.

Contrary to the opinion expressed however, letters of credit may be insured by the FDIC if they are the result of a deposit as opposed to a loan. The original intent of the proposed rule was to require that a letter of credit be backed by a deposit of funds and therefore be insured. The final rule is clarified.

One comment addressed the proposed change in the surety bond from a cumulative to a non-cumulative, continuous form. The comment agreed with the need to change this regulation but stated that the proposed bond language did not place the bond and the deposit of government securities on an equal basis. Therefore, the bond language has been clarified to define the surety's maximum and aggregate liability for any and all claims no matter how many years the bond remains in force.

Another trade association expressed approval of the proposal to accept Government Securities in lieu of a surety bond but requested that consideration be given to including the Government Securities as a net asset in the analysis of the financial statement. After due consideration it has been determined that these funds are committed, are not available as working capital and are only available for payment of any indebtedness in the case of failure by the warehouseman.

These securities may also be provided by a third party, therefore, they would not be available to the warehouseman. Generally accepted accounting principles also preclude their usage for the purpose of determining net assets. Accordingly, it has been determined that the bonding provisions of the proposed rule should be adopted. A comment also disagreed with the proposal to increase the net worth requirements. In view of the increasing losses being suffered by depositors in warehouse insolvencies, the Department has determined that the increase in net worth requirements is prudent for the protection of all depositors. The net asset requirements for Uniform Grain Storage Agreement Warehouses were increased on April 1, 1987, to 25 cents per bushel, $50,000 minimum with no maximum. Since most Federally licensed warehousemen are approved under the Uniform Grain Storage Agreement they are currently required to meet this requirement. Therefore, it has been determined that this provision of the proposed rule should be adopted as a final rule.

In review of the proposed rule, it was determined that the effect paragraph of the bond had been omitted. That paragraph has been reinstated in the final rule.

List of Subjects in 7 CFR Part 736

Definitions, Warehouse licenses, Financial requirements, Warehouse bonds.

Final Rule

Accordingly the regulations for grain warehouses, 7 CFR Part 736, are amended as follows:

PART 736—GRAIN WAREHOUSES

1. The authority citation for 7 CFR Part 736 continues to read as follows:

Authority: Sec. 28, 39 Stat. 490 (7 U.S.C. 268).

2. Section 736.2 is amended by adding paragraphs (w), (x), (y), and (z) as follows:

§ 736.2 Terms defined.

* * * * *

(w) *Net assets.* The difference remaining when liabilities are subtracted from allowable assets as determined by the Secretary after review of the warehouseman's financial statement. In determining total net assets, credit may be given for insurable property such as buildings, machinery, equipment, and merchandise inventory only to the extent that such property is protected by insurance against loss or damage by fire, lightning, and tornado. Such insurance shall be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in suits brought in the State in which the warehouse is located.

(x) *Warehouse capacity.* Warehouse capacity is defined as the maximum number of bushels of grain that the warehouse could accommodate when stored in the manner customary to the grain for the warehouse, as determined by the Secretary.

(y) *Current assets.* Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

(z) *Current liabilities.* Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

3. Section 736.6 is amended by revising paragraphs (d) and (f) and by adding a paragraph (i) to read as follows:

§ 736.6 Financial requirements.

* * * * *

(d) Each warehouseman conducting a warehouse which is licensed under the regulations in this part, or for which application for such a license has been made, shall have and maintain:

(1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least 25 cents multiplied by the warehouse capacity in bushels, however, no person may be licensed or remain licensed as a warehouseman under this part unless that person has allowable net assets of at least $50,000. (Any deficiency in net assets above the $50,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 736.14(c) of this part.); and

(2) Total current assets equal to or exceeding total current liabilities or assurance that funds will be available to meet current obligations.

* * * * *

(f) Subject to such terms and conditions as the Secretary may prescribe and for the purposes of determining allowable assets and liabilities under paragraphs (d) and (e) of this section:

(1) Capital stock shall not be considered a liability;

(2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by warehousemen to conform with paragraphs (b) and (c) of this section may be allowed by the Secretary if prepared by independent appraisers acceptable to the Secretary;

(3) Financial statements of a parent company which separately identifies the financial position of a wholly owned subsidiary and which meets the requirements of paragraphs (b), (c), and (d) of this section may be accepted by the Secretary in lieu of the warehouseman meeting such requirements; and

(4) Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Secretary as meeting the requirements of paragraphs (b), (c), and (d) of this section, if the parent company submits a financial statement which qualifies under this section.

* * * * *

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States as provided for in § 736.13(c):

(1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of § 736.6(d), (1) and (2);

(2) A deficiency in total allowable net and current assets as computed for § 736.6(d), (1) and (2) may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;

(3) The deposit may be replaced or continued in the required amount from year to year; and

(4) The deposit shall not be released until one year after termination (cancellation or revocation) of the license which it supports or until satisfaction of any claim against the deposit, whichever is later.

Nothing in these regulations shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf of and in the name of the licensed warehouseman subject to provisions of § 736.13(c).

* * * * *

§ 736.7 [Amended]

4. Section 736.7 is amended by changing "$25,000" to "$50,000."

5. Section 736.9(a) is amended by changing "$25,000" to "$50,000."

6. Section 736.13 is revised to read as follows:

§ 736.13 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his disignated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall faithfully perform during the period of this bond all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products;

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

This obligation shall be and remain in full force and effect for a minimum of one year beginning with the effective date and shall be considered a continuous bond thereafter until terminated as herein provided. The total liability of the surety is limited to the penal amount hereof, for liabilities that accure during the term hereof.

This obligation shall be and remain in full force and effect from date of issue until one hundred twenty (120) days after notice in writing of cancellation shall have been received by the Secretary from the principal or surety. If said notice shall be given by the surety, a copy thereof shall be mailed on the same day to the principal. Cancellation of this bond and cancellation of any of its provisions shall not affect any liability accrued thereon at the time of said notice or which may accrue thereon during the one hundred twenty (120) days after such notice.

A bond in this form shall be subject to 7 CFR 736.6, and 736.14 through 736.17, and 31 CFR Part 225, or (b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraph (a). Such certificate of participation shall not be subject to §§ 736.14 and 736.15, or

(c) In the form of a deposit with the Secretary as security, United States, bonds, Treasury notes, or other public debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the penal bond required to be furnished, together with an irrevocable power of attorney and agreement in the form prescribed, authorizing the Secretary to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Obligations posted in accordance with this paragraph may not be withdrawn by the warehouseman until one year after license termination or until satisfaction of any claims against the obligations whichever is later. A bond in this form shall be subject to 7 CFR 736.6 and 736.14 through 736.17 and 31 CFR Part 225.

7. Section 736.14 is amended by revising paragraph (c) to read as follows:

§ 736.14 Amount of bond; additional amounts.

* * * * *

(c) In case of a deficiency in net assets above the $50,000 minimum required under § 736.6(d), (1), there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency or a letter of credit in the amount of the deficiency issued to the Secretary for a period of not less than two years to coincide with the period of any deposit of obligation under 7 CFR 736.13(c). Any letter of credit must be clean, irrevocable, issued by a commerical bank, payable to the Secretary by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation. If the Secretary, or his designated representative, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this section, a further amount to meet such conditions.

8. Section 736.16 is revised to read as follows:

§ 736.16 New bond required each year.

A continuous form of license shall remain in force for more than one year from its effective date or any subsequent extension thereof, provided that the warehouseman has on file with the Secretary a bond meeting the terms and conditions as outlined in 7 CFR 736.13. Such bond must be in the amount required by the Secretary and approved by him or his designated representative. Failure to provide or renew a bond shall result in immediate and automatic termination of the warehouseman's license.

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Signed at Washington, DC, September 29, 1987.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87-22951 Filed 10-2-87; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 581]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 581 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 265,000 cartons during the period October 4 through October 10, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 581 (§ 910.881) is effective for the period October 4 through October 10, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (REA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on September 29, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a unanimous vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for large sized lemons, poor for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.881 is added to read as follows:

§ 910.881 Lemon regulation 581.

The quantity of lemons grown in California and Arizona which may be handled during the period October 4 through October 10, 1987, is established at 265,000 cartons.

Dated: September 30, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-22949 Filed 10-2-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 920

Kiwifruit Grown in California; Changes in Quality and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action, unanimously recommended by the California Kiwifruit Administrative Committee (the committee), tightens the minimum quality requirements for kiwifruit to provide better quality fruit to the marketplace and help improve sales and returns to growers. Export markets are particularly sensitive to lower quality fruit. In order to facilitate compliance with order provisions this action requires handlers to inform the committee whenever fruit is returned to growers. The committee needs to be able to identify sources of cull fruit to prevent its being sold in established markets. These actions are not expected to short the market, as ample supplies of good quality. Kiwifruit are expected to be available from the 1987 crop to meet market needs. The committee works with the USDA in administering the marketing order program for California kiwifruit.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V Division, AMS, USDA, P.O. Box 96458, Room 2523-S, Washington, DC 20090-6456; telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: This rule is issued under Order No. 920 (7 CFR Part 920), regulating the handling of kiwifruit grown in California.

This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507,) the information collection requirements included in this rule were submitted for approval to the Office of Management and Budget (OMB). The requirements

have been approved by OMB and assigned OMB No. 0581–0149.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of kiwifruit subject to regulation under the California kiwifruit marketing order and approximately 1,100 producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of these handlers and producers may be classified as small entities.

California kiwifruit are grown throughout the entire State of California. Kiwifruit shipments in 1986–87 totaled 6,525,000 trays and tray equivalents. Shipments in 1987–88 are expected to be 10 to 20 percent greater. Most of the crop is marketed fresh.

A proposed rule inviting comments on this action was published in the August 3, 1987, **Federal Register** (52 FR 28725). Interested persons were given until August 18, 1987, to file written comments. One comment, endorsing the proposal and urging its swift approval, was received from the committee.

The regulatory action in this instance will up-grade the quality requirements for kiwifruit and develop a way for the committee to gather information on the movement of fruit within the production area. Current quality requirements specify that California kiwifruit must grade at least 85 percent U.S. No. 2 provided that no more than 8 percent be allowed for defects other than badly misshapen fruit. Under the standards for U.S. No. 2 fruit, such defects may constitute "serious damage." U.S. No. 2 fruit must contain at least 6.5 percent soluble solids, unless otherwise specified. Since, under current regulations, kiwifruit must grade at least 85 percent U.S. No. 2, badly misshapen fruit is limited to 15 percent. Included in the 8 percent allowed for serious damage defects under the standards for U.S. No. 2 fruit is not more than 4 percent for sunscald, insects, internal breakdown or decay, and in this latter amount not more than 1 percent for fruit affected by internal breakdown or decay.

Export markets demand high quality fruit, although lower grade shape requirements are acceptable. However, the existing tolerances for defects have led to problems involving the breakdown of fruit both in storage and during shipment to export markets. This has caused some domestic marketing problems and aggravated the existing image problem for California kiwifruit in certain countries, notably Japan. This action will require that a lot of kiwifruit contain not more than 8 percent defects causing "damage" other than shape, and will result in requiring U.S. No. 1 grade fruit except for the shape requirement which will continue to be that specified for U.S. No. 2 grade. This is because, under the grading standards, No. 2 grade allows for "serious damage". Since the U.S. No. 2 shape requirements have not been a problem in domestic and export markets, tightening the grade requirements for shape to U.S. No. 1 is not necessary at this time. Tightening the requirements to permit only those defects causing damage will serve to help provide better quality fruit and thus enhance the image of California kiwifruit. This will tend to increase domestic and export sales, thus helping growers to move their crop at a profit.

This action also establishes a committee recommendation to require a mandatory 6.5 percent soluble solids content. The current grading standards require 6.5 percent "unless otherwise specified." Fruit harvested when the sugar (soluble solids) content is below 6.5 percent indicates a less mature product, and the fruit may not ripen properly. Because some packers are harvesting and packing fruit below the 6.5 percent level, the committee believes this action is necessary to maintain a high quality product. Requiring a 6.5 percent soluble solids content in kiwifruit will assure a sweet, mature product that should prompt repeat sales by consumers.

The committee also recommended that a form be sent to the committee office by handlers returning fruit to their growers. This will enable the committee to gather information on the movement of cull fruit in the production area.

The committee believes that peddlers of cull fruit are buying the culls and selling them in established markets. This is a very disruptive practice that adversely affects the markets for all kiwifruit. When cull fruit is sold in established markets, it puts downward pressure on growers prices for all fruit, including that of good quality, and tends to bring about disorderly maketing conditions. Requiring handlers to report returned fruit should help compliance by pinpointing potential sources of cull fruit entering established markets. The necessary information will be minimal and will be recorded on a new committee form. The total time required to fill out the form should not exceed five minutes per form.

Although this action will upgrade the quality and increase the reporting requirements for kiwifruit shipped from the production area, regulatory exemptions will continue in effect. For example, any handler may handle, other than for resale, up to, but not to exceed 200 pounds net weight of kiwifruit per day without regard to the requirements of the handling regulation. In addition, shipments for charity, relief, and commercial processing are exempt from the grade, size, container, and inspection requirements of the order and the handling regulation. Reporting provisions of the handling regulation apply to such shipments.

The actual cost to handlers for complying with these changes cannot be precisely determined, but it is expected to be minimal. On the other hand, the increased returns expected from both domestic and export sales of better quality kiwifruit and better compliance controls on cull fruit movement should more than offset the anticipated slight increase in handler costs in meeting the requirements. On the basis of the foregoing, the impact of these changes on growers and handlers is expected to be beneficial, and the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Therefore, after consideration of the information and recommendation submitted by the committee, the information in the proposal, and other information, it is hereby found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The harvest, packing, grading, and shipping

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of the 1987 crop is expected to start in early October, and it is important that this action be effective as soon as possible; (2) this action is based upon the unanimous recommendation of the committee at a public meeting; (3) the provisions in this final rule are the same as those contained in the proposal (except for a minor clarification) which was published in the **Federal Register** on August 3, 1987; and (4) handlers are prepared to conduct their operations in accordance with this rule and do not require any additional time for preparation.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.302 is amended by revising paragraph (a)(1); redesignation (a)(4) as (a)(5), redesignating (a)(3) as (a)(4), and adding a new (a)(3) to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(1) *Grade requirements.* Fresh shipments of kiwifruit shall grade at least 85 percent U.S. No. 2: *Provided,* That not more than 8 percent shall be allowed for defects other than shape causing damage, including not more than 4 percent for defects other than shape causing serious damage, and including in this latter amount not more than 1 percent shall be allowed for fruit affected by internal breakdown or decay.

* * * * *

(3) *Maturity requirements.* Such kiwifruit shall have a minimum of 6.5 percent soluble solids at the time of inspection.

* * * * *

3. Section 920.160 is amended by adding a new § 920.160(c) as follows:

§ 920.160 Reports.

* * * * *

(c) *Handler report of returned fruit.* After fruit is returned to a grower, each handler shall file with the committee, no later than five days from the date the fruit is returned, or such other time as the committee may establish, a Return Receipt of Kiwifruit to Grower Form.

Dated: September 30, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-22973 Filed 10-2-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 967

Celery Grown in Florida; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of Florida celery which handlers may market fresh during the 1987–88 season at 6,789,738 crates or 100 percent of producers' Base Quantities. The action is intended to provide consumers with adequate supplies and lend stability to the industry.

EFFECTIVE DATES: August 1, 1987, through July 31, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202/447–5697 .

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601 through 674), as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that seven handlers of celery under the marketing order for Florida celery will be subject to regulation during the course of the current season. There are 13 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000, and small agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. Some handlers and producers of Florida celery may be classified as small entities.

The final rule limits the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1987–88 season to 6,789,738 crates. This Marketable Quantity is about 18 percent more than the approximately 5.75 million crates expected to be marketed fresh during the 1986–87 season and about 25 percent more than the average number of crates marketed fresh during the 1981–82 through 1985–86 seasons. It is expected that the 6,789,738-crate Marketable Quantity will be above actual production and shipments for the 1987–88 season. Thus, the 6,789,738-crate Marketable Quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on July 20, 1987 (FR 52 27205). Written comments were invited until August 19, 1987. None were received.

This final rule is issued under Marketing Agreement No. 149 and Marketing Order No. 967, both as amended, regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Act. The action is based upon the recommendation and information submitted by the Florida Celery Committee and upon other available information.

The committee met on May 20, 1987, and recommended a Marketable Quantity of 6,789,738 crates of fresh celery for the 1987–88 marketing year beginning August 1, 1987. Additionally, a Uniform Percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's Base Quantity. These recommendations were based on an appraisal of expected supply and prospective market demand.

This recommendation encourages Florida celery growers to assume the risks of planting celery by placing a ceiling on the amount of Florida celery which may be shipped to fresh markets and helps to provide consumers with an adequate supply. However, as in past seasons, the limitation on the quantity of

Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent of the 1986–87 total Base Quantities is authorized for new producers and for increases by existing producers for the 1987–88 season. However, there were no applications for new or additional base submitted for the 1987–88 season.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action applies to all Florida celery handled by handlers during the 1987–88 crop year, which began August 1, 1987, and (2) handlers are aware of this action, which was recommended by the Committee at a public meeting, and need no additional time to comply with the requirements.

List of Subjects in 7 CFR Part 967

Marketing agreements and orders, Celery, Florida.

For the reasons set forth in the preamble, 7 CFR Part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Rules and Regulations

2. Add a new § 967.323 under Subpart—Rules and Regulations to read as follows:

§ 967.323 Handling regulation, Marketable Quantity, and Uniform Percentage for the 1987–88 season beginning August 1, 1987.

(a) The Marketable Quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the Uniform Percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the Marketable Allotment of a producer who has a Base Quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) a reserve of 6 percent of the total Base Quantities is hereby authorized for:

(1) New producers and

(2) Increases for existing Base Quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: September 30, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–22950 Filed 10–2–87; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 624

Farm Credit System Regulatory Accounting Practices; Temporary Regulations

AGENCY: Farm Credit Administration.

ACTION: Final rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA), by the FCA Board, adopts a final regulation relating to the retirement of stock of Farm Credit System (System) institutions operating under regulatory accounting practices (RAP). The final regulation prohibits a System institution from retiring stock or participation certificates in accordance with RAP when the net worth of such institution reaches zero in accordance with generally accepted accounting principles (GAAP) and/or, in the case of a System bank, when that bank is unable to meet its statutory and regulatory requirements to have sufficient collateral on hand at the time of issuance of any consolidated or Systemwide securities in the national money markets.

DATES: The final regulation was effective September 22, 1987. Written comments must be received on or before November 2, 1987.

ADDRESS: Submit comments on the final regulation in writing (in triplicate) to Anne E. Dewey, Acting General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of the General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: John Barkell, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4495.

SUPPLEMENTARY INFORMATION: At a special meeting on September 22, 1987, the FCA Board adopted an amendment to the FCA regulations implementing the Farm Credit Act Amendments of 1986 (1986 Amendments), Pub. L. 99–509, relating to the use of RAP by System institutions and the reporting and disclosure requirements in accordance with RAP.

The RAP regulations were published in the **Federal Register** on December 24, 1986 (51 FR 46597), and amended on January 26, 1987 (52 FR 2670). The public was given until February 24, 1987, to submit comments on the regulations. A public hearing on the regulations was held at FCA offices in McLean, Virginia on February 27, 1987. The FCA Board responded to one matter raised by the comments relating to use of RAP by Federal land bank associations (FLBA) and adopted an amendment to the RAP regulations at its special meeting on April 17, 1987. The amendment was published in the **Federal Register** on April 23, 1987 (52 FR 13428). The FCA is in the process of reviewing the remainder of the comments and will act on and publish responses to those comments shortly. Due to the financial condition of certain System institutions, the FCA Board at its special meeting of September 22, 1987, concluded that it must take immediate action relating to the retirement of stock and participation certificates by institutions using RAP.

The current RAP regulations authorize System banks and production credit associations (PCAs) to use RAP to amortize a portion of their provisions for loan losses and banks to amortize a portion of their interest costs over a period not to exceed 20 years, provided the institutions meet the conditions set forth in the regulations. The existing regulation authorizes System banks and PCAs which have stock and participation certificates with a book value less than par or face amount in accordance with GAAP to retire such equities at par or face amount as long as the book value is equal to our greater than par or face amount in accordance with RAP and other regulatory criteria are satisfied. 12 CFR 624.105. In addition, if a Federal land bank (FLB) is retiring its stock at par in accordance with RAP, the FLBAs which own the FLB may use RAP to value their investment in the FLB as necessary to maintain the book value of the FLBA's stock or participation certificates at par or face amount. 12 CFR 624.104.

Generally, a financially deteriorating System bank would exhaust its collateral available for supporting the issuance of consolidated or Systemwide

obligations and be precluded from issuing securities in the national money markets before its net worth reached zero under GAAP or through the use of RAP. However, several System banks have recently adopted collateral sharing agreements which enable them to continue to issue securities in the national money markets and to continue operations, including retiring borrower stock and participation certificates in the normal course of business. Because a bank may continue issuing securities based on collateral transferred from other banks under such agreements, it is possible for an institution to reach the point of operating with zero or less net worth under GAAP and have positive net worth under RAP. This condition and the financial condition of certain System institutions requires that the FCA must now consider whether an institution should be permitted to continue to retire stock or participation certificates when its net worth reaches zero under GAAP. To address this issue, the FCA Board amends the regulation at 12 CFR 624.105 relating to stock retirement to make clear that an institution may not use RAP to retire stock or participation certificates at par or face amount when its net worth reaches zero in accordance with GAAP.

The primary purpose of RAP was to enable a System institution to spread its high financing costs and/or loan losses over a longer period (up to 20 years) in order to give the institution time to correct its financial problems. By amortizing these costs, the institution would be paying for part of these costs from future earnings. However, in order for an institution to accomplish this process successfully it must operate in a manner that preserves its viability in order to achieve those future earnings.

The FCA Board determined that retiring stock or participation certificates when an institution reaches zero net worth under GAAP threatens the viability of that and other System institutions, constitutes an unsafe and unsound practice, and is a result not intended by the 1986 Amendments. The FCA Board reasoned that if an institution continues to dissipate its assets through stock retirement when its net worth has reached zero under GAAP, that action increases the likelihood that the institution will not be able to meet its obligations as they become due and increases the need for the institution to call on other System institutions under loss-sharing arrangements or statutory provisions to meet such obligations. The eventual consequences could have a negative impact on the ability of the System as a whole to continue to obtain funds in the national money markets.

The FCA Board concluded that the 1986 Amendments did not intend to authorize the use of RAP by System institutions in a manner that may endanger the financial viability of the institution. H.R. Rep. No. 967, 99th Cong., 2d Sess. 6–8 (1986). The 1986 Amendments did not alter an institution's responsibility to conduct operations in a safe and sound manner nor authorize the use of RAP to the detriment of the institution's viability. Congress made clear that System institutions should follow GAAP and only use RAP for a limited period to lessen the impact of high borrowing costs and loan losses. Id. at 6–8. The FCA must continue to take appropriate regulatory and enforcement actions to insure that an institution does not use RAP in a manner that threatens the institution's financial viability. H.R. Rep. No. 1012, 99th Cong., 2d Sess. 230 (1986).

The amendment is issued with an immediate effective date. Because of the financial condition of certain System institutions, the FCA Board has determined that the Board must take immediate action.

Therefore, for good cause and in accordance with 5 U.S.C. 553 (b) and (d), prior public comment and a delay in the effective date are impracticable, unnecessary, and contrary to the public interest. For the same reasons, the FCA Board has determined, in accordance with 12 U.S.C. 2252(b), that an emergency exists that justifies publication of this amendment to the regulations without prior review by the appropriate congressional committees. As noted above, the public will have 30 days to submit written comments to the FCA after publication of the final regulation.

List of Subjects in 12 CFR Part 624

Accounting, Agricultural, Banks, Banking, Credit, Rural areas.

As stated in the preamble, Chapter VI, Title 12, Code of Federal Regulations is amended as follows:

PART 624—[AMENDED]

1. The authority citation for Part 624 continues to read as follows:

Authority: 12 U.S.C. 2001, 2014, 2073, 2093, 2122, 2159, 2205, 2254, Pub. L. 99–509.

2. Section 624.105 is amended by adding the following to the end of the section to read as follows:

§ 624.105 Retirement of equities.

* * * * *

Notwithstanding the provisions of paragraph (a) or (b), an institution shall cease retirement of stock and participation certificates when the net worth of the institution is zero or less as determined in accordance with GAAP. In addition to the requirements of the preceding sentence, a System bank shall cease such equity retirements when the bank is unable to meet statutory collateral requirements established in section 4.3(c) of the Act and regulatory requirements of Part 615, Subpart B—Collateral.

David A. Hall,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–23026 Filed 10–1–87; 2:30 pm]

BILLING CODE 6705–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

[T.D. 87–124]

Customs Regulations Amendment Relating to Carrier Liabilities for Unlawful Lading, Exportation or Disposition of Export-Controlled Merchandise

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the assessment of liquidated damages under the international carrier's bond for unlawfully lading, exporting, or disposing of merchandise which is subject to the export control laws. Under the new bond provision, Customs would demand the redelivery of merchandise which has been seized or detained for violations of export control laws. Customs woud also demand the redelivery of merchandise where reasonable cause exists to believe it was exported in violation of the export control laws, but which is still in the carrier's possession on the date of the demand for redelivery. Failure to comply with these demands would result in the assessment of liquidated damages in an amount equal to three times the value of the merchandise that is not redelivered. This amendment is necessary for more effective enforcement of the export control laws.

EFFECTIVE DATE: November 4, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Terranova, Entry Procedures and Penalties Division (202–566–8317), or for bond information, William Lawlor,

Carriers Drawback and Bonds Division (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

The Export Administration Regulations continued in title 15, Code of Federal Regulations, Parts 368 through 399 (15 CFR Parts 368 through 399), and the International Traffic in Arms Regulations found in Title 22, Code of Federal Regulations, Parts 120 through 130 (22 CFR Parts 120 through 130), provide for sanctions in the event that export-controlled merchandise is exported or attempted to be exported without a valid license issued by either the Department of Commerce or the Department of State. Among these sanctions are the issuance of monetary penalties against those responsible for the illegal attempted or completed exportation, seizure and forfeiture of the merchandise involved, and subsequent denial of export privileges. In addition, Title 22, United States Code, section 401 (22 U.S.C. 401), provides for the seizure and detention of any vessel, vehicle or aircraft which has been or is being used in exporting or attempting to export munitions of war or other export-controlled merchandise. Also, Title 18, United States Code, section 549 (18 U.S.C. 549), provides for ciminal penalties for unlawfully removing any merchandise from Customs custody.

Customs has been delegated the authority to enforce the Export Administration Regulations and the International Traffic in Arms Regulations pursuant to 15 CFR 386.8 and 22 CFR 127.4, respectively. Under this authority Customs may demand, pursuant to 15 CFR 386.9, the redelivery or retention of merchandise which is known or suspected to be in violation of the export control regulations.

Customs also has the authority to enforce the export control regulations by virtue of the authority granted the Secretary of the Treasury, pursuant to 22 U.S.C. 401, to seize and forfeit illegal exportations of war materials and other articles, as well as the conveyances used to export the articles. Also, under section 113 of the Export Administration Amendments Act of 1985 (Pub. L. 99–64), effective July 12, 1985, Customs was given additional authority to enforce the export control regulations.

Customs has been enforcing the export control laws and regulations under its Operation Exodus program. During the past two years, however, Customs has become aware that some carriers are exporting detained or seized merchandise, despite the presence of warning labels on the merchandise indicating that it is under Customs seizure or detention, and despite notification to the carrier management of the detention or seizure. There have also been instances where carriers have not complied with Customs demand to redeliver or retain already exported merchandise subsequently found or suspected to be in violation of the export control laws, even though it is still in the carriers' possession.

Although the carriers' action may subject the conveyance to seizure and forfeiture under 22 U.S.C. 401 for its use in the illegal exportation, Customs views this as a drastic remedy which would entail much time and resources expended in effecting the seizure. Instead, it is believed that seeking liquidated damages under the international carrier's bond for exportations in violation of the export control laws would be more expeditious, effective, and less of a drain upon Customs resources. Also, this sanction is within Customs control and can be used for every transgression, whereas a seizure action would require the U.S. Attorney to institute legal proceedings, which is very time-consuming.

The provisions of the international carrier's bond are contained in § 113.64, Customs Regulations (19 CFR 113.64). In § 113.64, however, there is no existing provision setting forth liquidated damages for illegal exportations of export-controlled merchandise. Customs has the authority to enact such a provision by virtue of section 623(a), Tariff Act of 1930, as amended (19 U.S.C. 1623(a)), which provides that "In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce." Pursuant to 15 CFR 386.8 and 22 CFR 127.4, Customs is authorized to enforce the export control laws and regulations. Under the authority of 19 U.S.C. 1623(a), Customs may therefore require a bond to assure compliance with these laws and regulations.

In response to this situation Customs published a notice in the **Federal Register** on May 22, 1986 (51 FR 18801), proposing to amend Part 113, Customs Regulations (19 CFR Part 113), by adding a provision to the international carrier's bond that would provide for the assessment of liquidated damages for illegal exportations under the export control laws. This would be accomplished by adding a paragraph to § 113.64 that would require the carrier to redeliver to Customs, within 30 days after a demand for redelivery: (1) Illegally disposed of, laded or exported merchandise that has been placed under seizure or detention; and/or (2) merchandise which has been exported and is subsequently found or suspected to be in violation of the export control laws, but which is still in the carrier's possession. Under the proposal, demand for redelivery would be made within 20 days of Customs discovery of the unlawful or suspected unlawful disposition or exportation. Any demand under this proposed paragraph would specify the terms and conditions of compliance. If the carrier fails to comply with the redelivery notice, it would be liable for liquidated damages in an amount equal to three times the value of the merchandise that is not redelivered.

Discussion of Comments

A discussion of the comments received in response to the proposal follows:

Comment: A demand for redelivery issued 20 days after discovery of export control law violations would be received by the carrier after the merchandise had left its possession. Also, the carrier would have difficulty redelivering merchandise within 30 days because of distances to be covered or possibly because of conflicting laws in a foreign country.

Response: We agree that the 20-day period in which Customs would notify the carrier to redeliver the merchandise is too long and could result in notification to the carrier after the merchandise has been released into the foreign commerce. The final rule has been modified to allow only a 10-day period in which Customs must issue the demand for redelivery. This 10-day period is necessary for Customs to investigate the matter to determine whether an export violation has occurred and that a notice of redelivery should be issued.

With respect to the comments opposing the 30-day redelivery period as insufficient to allow for the redelivery in many cases, we note that, as in other violations in which redelivery is ordered, the district director may grant an extension of the redelivery period upon the petitioner's request if warranted. In most cases, however, we believe the 30-day period is sufficient to allow for redelivery.

As to the comments noting that in certain cases timely redelivery may not be possible due to foreign or

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international laws which prevent the removal of the merchandise from the carrier or from the foreign jurisdiction, we note that in this situation the petitioner would have to satisfy Customs that the failure to redeliver was beyond its control. This would be a factor Customs would consider in deciding whether to grant relief from a liquidated damages claim.

Comment: Allowing Customs to order redelivery of merchandise that "may have been" exported in violation of export control laws is too lenient a standard and may result in redelivery of merchandise exported legally.

Response: Because of these comments, proposed § 113.64(e)(2) has been modified to make the basis of a demand for redelivery a reasonable cause to believe that the export control laws have been violated. That will clarify the limits of Customs authority and will bring the regulation into conformity with 15 CFR 386.9(b) and with general customs law.

Comment: This proposal would impose burdens on carriers without statutory authority.

Response: We disagree. As stated in the preamble to this document, 19 U.S.C. 1623(a) provides that "In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation, or specific instruction require, or authorize customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce." The Secretary of the Treasury and Customs have been authorized to enforce the export control laws and regulations pursuant to 22 U.S.C. 401. Included among the Export Administration Regulations which Customs is authorized to enforce is 15 CFR 386.9, which provides for the return or unloading and holding of merchandise where there is reasonable ground to believe that a violation has occurred or will occur. Customs may therefore institute a bonding program to assure compliance with this regulation as well as to protect its forfeiture under 22 U.S.C. 401.

Comment: This amendment is unnecessary because illegal exportation of export-controlled merchandise is not a problem. If the problem does exist, it is because Customs allows seized merchandise to remain on the carrier's premises.

Response: Customs officers have determined that the problem is prevalent among air carriers in the New York and Los Angeles areas and that instances have occurred at other ports. The frequency of occurrences is apparently increasing.

Merchandise is left at the carrier's premises to avoid the costs and delay that removing it to Customs seizure facilities would entail. Seized export-controlled merchandise is frequently released upon the obtaining of a proper license and payment of an amount demanded in mitigation of the forfeiture. Movement of the merchandise after release is both easier and quicker if the merchandise has not been removed to a Customs seizure facility. The costs of the seizure to the shipper are also likely to be less.

Comment: Requiring a carrier to redeliver merchandise will force it to use space on its conveyance that otherwise could have been used to transport something for a paying customer. This lost business amounts to an unconstitutional taking of property from the carrier without compensation. This is particularly onerous where there may be no fault on the carrier's part for the export control law violation.

Response: Loss of profits which may result from a carrier using space on a conveyance to redeliver merchandise is not a "taking of property" as that term is used in constitutional law. (See *Briggs & Stratton Corp. v. Baldrige*, 539 F. Supp. 1307 (1982), where a taking argument under the Export Administration Act was rejected by the court on the grounds that a loss of profits unaccompanied by any physical restriction on property is not a taking). Assuming arguendo that expectation of profits from the operation of a conveyance is property, requiring a carrier to redeliver merchandise is not a taking of that property. As to the argument that requiring a carrier to redeliver merchandise is unfair when the carrier is not at fault, Customs cannot allow any party to an export control law violation to relieve itself of liability by claiming it was not its responsibility to see that laws were upheld. To accept such a claim would make enforcement impossible. Carriers can conduct their business relationships in such a way as to reduce the chance of participating in an export control law violation, and we do not believe it is unfair to expect them to do so.

Comment: The proposed rule should not be aimed at carriers because it is not the carrier that is responsible for obtaining export licensing or for giving an accurate shipper's export declaration.

Response: We do not believe that export control laws are confined to regulating the shipper. Carriers are also subject to the statutory and regulatory schemes in place; i.e.: 22 U.S.C. 401 which provides for the forfeiture of transporting conveyances and 15 CFR 386.8 which provides for the search, seizure and unloading of conveyances and for the return by the carrier of shipments that have been exported despite notice that an inspection is to be made. Likewise, 15 CFR 386.9 provides for the redelivery of merchandise by an exporting carrier or any person in possession or control of the merchandise when there exist reasonable grounds to believe that a violation of the Export Administration Regulations has occurred or will occur. These provisions are not gratuitous. Carriers are as legitimate a target of export control enforcement as shippers of the merchandise.

Comment: Carriers may not be adequately warned of seized merchandise if notice of the seizure is limited to labels on the merchandise.

Response: In addition to placing seizure labels on the violative merchandise, Customs notifies the carrier management that the merchandise is under seizure and may not be removed from the carrier. This notification is most often telephonic, given the fact that time is of the essence in many of these cases since the carrier may depart at any point. We believe that the notification provided the carriers is appropriate.

It also should be noted that the notification to the carrier provided by Customs is, in most cases, in addition to the notification the carrier receives from the exporter of record. Customs notifies the carrier as an added precaution against its removal of the merchandise under seizure or detention. Thus, in most cases the carrier receives ample notification of the seizure or detention.

Comment: The liquidated damages provision is in essence a penalty and should be treated as such. The primary function of a customs bond is to protect the revenue, and liquidated damages serve no punitive or deterrent effect. Also, there are other Customs Regulations available for amendment to correct any perceived problems with violations of export control laws.

Response: We disagree that the liquidated damages provision in the carrier's bond is in essence a penalty and that liquidated damages are intended to protect the revenue only, rather than serving a deterrent effect. The carrier's bond is a contract between the carrier and the Customs. As with any other contract, damages will result for any violation of the contract. The damages set under the contract are

designed to both ensure compliance with its terms and to compensate the aggrieved party for any violation. The amendment to the carrier's bond providing for liquidated damages for violations concerning export-controlled merchandise accomplishes both of these objectives.

We also disagree with the comment that it would be more appropriate to amend Parts 4, 18 and 113, Customs Regulations, rather than the carrier's bond to ensure the carrier's compliance with the export control laws. It is administratively easier for Customs to have the new liquidated damages provision in one place—the bond—rather than to amend different Customs Regulations to provide for the same thing. Also having the provision in the bond itself would enhance enforcement efforts since it makes compliance with the export control regulations by the carrier a condition of the bond and therefore enforceable under the bond contract without having to resort to Customs or other agencies' regulations. Furthermore, it should be noted that Parts 4 and 18, Customs Regulations, for the most part concern importations into the U.S. It would be confusing to include this one provision dealing with exportations in these regulations.

Amending the international carrier's bond is also easier for the carriers since, to understand their obligations with respect to export-controlled merchandise, they would have to refer only to the provisions of their own bond, rather than to an agency's regulations.

Comment: Liquidated damages in an amount three times the value of the merchandise not redelivered is excessive. Damages should be assessed in an amount based on what the carrier receives in payment for transporting the merchandise. Also, the amendment should provide for mitigation.

Response: The purpose of liquidated damages under bonds is to recompense the Government for the damage it has suffered through failures to meet the obligations of the bonds. The measure of liquidated damages to be assessed for a failure to redeliver export-controlled merchandise is the damage suffered by the Government and the interest of the carrier in the cargo or the fault behind the failure to redeliver. We find that three times the value of merchandise not returned is not excessive for the damage that the Government would suffer to its export control program by a failure to redeliver.

Inasmuch as 19 U.S.C. 1623 allows for the cancellation of charges against a bond caused by breach of a condition upon payment of a lesser sum deemed sufficient, it is not necessary to provide for mitigation in the rule. It is to be expected that guidelines will be formulated and implemented for these liquidated damages as they have been for other liquidated damages provisions.

After careful analysis of all the comments and further review of the matter, it has been decided to adopt the proposal with the modifications discussed. This amendment is necessary for more effective enforcement of the export control laws.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 113

Carriers, Exports, Bonds.

Amendment to the Regulations

Part 113, Customs Regulations (19 CFR Part 113), is amended as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484.

2. Section 113.64 is amended by adding a new paragraph (e) to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(e) *Unlawful disposition.* (1) Principal agrees that it will not allow seized or detained merchandise, marked with warning labels of the fact of seizure or detention, to be placed on board a vessel, vehicle, or aircraft for exportation or to be otherwise disposed of without written permission from Customs, and that if it fails to prevent such placement or other disposition, it will redeliver the merchandise to Customs within 30 days, upon demand made within 10 days of Customs discovery of the unlawful placement or other disposition.

(2) Principal agrees that it will act, in regard to merchandise in its possession on the date the redelivery demand is issued, in accordance with any Customs demand for redelivery made within 10 days of Customs discovery that there is reasonable cause to believe that the merchandise was exported in violation of the export control laws.

(3) Obligors agree that if the principal defaults in either of these obligations, they will pay, as liquidated damages, an amount equal to three times the value of the merchandise which was not redelivered.

William von Raab,

Commissioner of Customs.

Approved: September 17, 1987.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87-22934 Filed 10-2-87; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-258; Ref. Notice No. 628]

Establishment of Viticultural Area; San Benito

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in San Benito County, California, to be known as "San Benito." This decision is the result of a petition submitted by Almaden Vineyards, a winery and grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: November 4, 1987.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also

allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Almaden Vineyards, proposing that a portion of San Benito County, California, be established as a viticultural area to be known as "San Benito." The area is located along and near the San Benito River, approximately two miles south of Hollister, California.

The area contains about 45,000 acres of land, of which approximately 2,500 are planted to grapes. The petitioner stated that at least three major wineries are operating within the area, and that approximately 23 different varieties of winegrapes are grown there.

The area is located inside the approved "Central Coast" viticultural area, and contains within it the approved "Paicines," "Cienega Valley," and "Lime Kiln Valley" areas. (See the discussion of overlapping viticultural areas below, under "Boundaries of the Area.")

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 628, in the **Federal Register** on Friday, April 10, 1987 (52 FR 11689). That notice proposed establishment of the "San Benito" viticultural area and solicited public comment concerning the proposal.

Public Comment

No comments were received in response to the notice of proposed rulemaking. Accordingly, this Treasury decision establishes the "San Benito" viticultural area exactly as proposed in Notice No. 628.

Name of the Area

The association of the name "San Benito" with the new viticultural area goes back far into history. The San Benito River flows through the area, and one of the principal streets of nearby Hollister was already called "San Benito Street" in 1874, when the surrounding territory, including the viticultural area, was organized as "San Benito County." (See *Crimes and Career of Tiburcio Vasquez*, San Benito County Historical Society, pp. nine and seventeen.) The town of San Benito is about 15 miles southeast of the area, and San Benito Mountain is about 30 miles farther southeast, near the source of the San Benito River and the eastern boundary of San Benito County.

The history of viticulture in the area was described by John P. Ohrwall in a talk given to the San Benito County Historical Society on July 29, 1965. A copy of the talk was submitted to ATF by the petitioner. In that talk, Mr. Ohrwall related that the first vineyard in San Benito County was planted near the new viticultural area by Theophile Vache in the early 1850's. Other vineyards were planted too, and the area where vineyards were sited became known locally as the "Vineyard District." Before the end of the nineteenth century, the vineyard planted by Vache had been named "San Benito Vineyard," and, under that name, wines made in the area "were said to have won prizes at various expositions and fairs, including some held in France and Italy" (quote from Ohrwall). Gradually, additional vineyards and wineries were established. In the 1950's, Almaden Vineyards arrived and began greatly expanding the area's grape acreage. Almaden soon became the dominant grape grower in the area.

Unfortunately, the original vineyard planted by Theophile Vache is no longer in production, because the soil in that vicinity has become permeated with boron salts. (See the discussion of boron below, under "Geography of the Area.") Thus, the original "San Benito Vineyard" is excluded from the new viticultural area for a geographical reason, but the name that this vineyard gave to the area remains.

Although there are some scattered grape plantings elsewhere is San Benito County, by far the preponderance of viticulture in that county is practiced in the viticultural area established by this Treasury decision. According to the petitioner, 95 percent of the vinifera grapes from San Benito County are grown in this area. The other 5 percent are grown in other areas with different climates, according to the petitioner, who declared, "We are not aware of any other area within San Benito County that could be known as 'San Benito' or that would have comparable climatic and growing conditions." ATF agrees with these assertions, since it appears likely that much of the other 5 percent of the vinifera in San Benito County is planted in the already-established "Pacheco Pass" viticultural area (located north of Hollister, straddling the border of San Benito and Santa Clara Counties).

Further evidence was offered by the petitioner, concerning its use of the name "San Benito" on wine labels. Since 1959, labels have appeared on wines of the petitioner, made from grapes from the viticultural area, indicating "San Benito" or "San Benito County" as the appellation of origin.

Geography of the Area

The petitioner presented evidence that the viticultural area is distinguished geographically from the surrounding areas, as follows:

(a) To the north, the area is distinguished from the Hollister Valley by a relative absence of fog. There are presently few or no grapes grown in the Hollister Valley, but if there were, according to the petitioner, they would be of different character from grapes grown in the "San Benito" area. According to the petitioner, "Even an extra hour of fog daily, which is the situation around Hollister, can create a different characteristic in the wine. The grapes would be slower ripening and would result in higher acid."

(b) Additionally, the viticultural area is distinguished from certain areas to its north and northeast which are burdened, to quote the petitioner, with "a high amount of boron in the water which deforms and destroys the leaves; the vines cannot grow properly and the grapes cannot ripen." This area of boron contamination includes the site of the original "San Benito Vineyard," discussed above.

Boron contamination is a natural feature of the subsoil north of the "San Benito" viticultural area. Groundwater percolating through this subsoil dissolves some of the boron salts. If such groundwater is later drawn up through wells and used for irrigation, boron contaimination begins to build up in the topsoil. This apparently is what happened over a period of years in the original "San Benito Vineyard" land. Although famous for grapes for over 50 years, that land today is unsuitable for viticulture.

By contrast, vineyards located inside the new viticultural area are irrigated by water from "deep wells with an extremely low level of boron. There is no toxicity and this condition is monitored on a yearly basis," the petitioner stated.

(c) The eastern, southern, and western boundaries of the area correspond closely to a climatic change as indicated

in *Western Garden Book*, published by Sunset Books.

According to this book, the area inside the viticultural area is an "inland area with some ocean influence" which moderates the climate. By contrast, the surrounding areas to the east, south, and west are designated in the book as areas with more "sharply defined seasons," due to their higher elevations.

(d) Distinctions to the east and west, and to a lesser extent to the south as well, exist on the basis of topography. Those neighboring areas are, for the most part, too steep to be suitable for viticulture. This topographic distinction is apparent from examination of the applicable U.S.G.S. maps.

(e) Finally, the mountain areas to the east and west of the viticultural area would generally be too cold for viticulture, according to a statement made to ATF by the University of California Farm Advisor for San Benito County.

Boundaries of the Area

The boundaries of the new viticultural area may be found on six U.S.G.S. maps of the 7.5 minute series, titled Hollister Quadrangle, Tres Pinos Quadrangle, Quien Sabe Valley Quadrangle, Mt. Harlan Quadrangle, Paicines Quadrangle, and Cherry Peak Quadrangle. The boundaries are described in § 9.110, as added to regulations by this Treasury decision. These boundaries are slightly altered from the boundaries that were originally proposed in the petition, so that the San Benito viticultural area, as established by this document, would completely encompass the following approved viticultural areas: "Lime Kiln Valley" (§ 9.27), "Cienega Valley" (§ 9.38), and "Paicines" (§ 9.39). Further, the "San Benito" viticultural area would lie entirely within the approved "Central Coast" area (§ 9.75).

In establishing a viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Miscellaneous

ATF does not want to give the impression, by approving "San Benito" as a viticultural area, that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct, but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "San Benito" wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this final rule is not a major rule, since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.110, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.110 San Benito.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.110, which reads as follows:

§ 9.110 San Benito.

(a) *Name.* The name of the viticultural area described in this section is "San Benito."

(b) *Approved maps.* The appropriate maps for determining the boundaries of San Benito viticultural area are six U.S.G.S. maps. They are titled:

(1) Hollister Quadrangle, 7.5 minute series, 1955 (photorevised 1971).

(2) Tres Pinos Quadrangle, 7.5 minute series, 1955 (photorevised 1971).

(3) Quien Sabe Valley Quadrangle, 7.5 minute series, 1968.

(4) Mt. Harlan Quadrangle, 7.5 minute series, 1968.

(5) Paicines Quadrangle, 7.5 minute series, 1968.

(6) Cherry Peak Quadrangle, 7.5 minute series, 1968.

(c) *Boundary*—(1) *General.* The San Benito viticultural area is located in San Benito County, California. The starting point of the following boundary description is the point where the eastern border of Section 17 of Township 15 South, Range 7 East, crosses the latitude 36°37'30" (on the Cherry Peak map).

(2) *Boundary Description*—(i) From the starting point, westward along latitude 36°37'30" to the Range Line R.6E./R.7E. (on the Paicines map).

(ii) Then northward along that range line to the southern border of Section 1, Township 15 South, Range 6 East.

(iii) Then westward along that southern border to the western border of the same section.

(iv) Then northward along that western border to the 800-foot contour line.

(v) Then northwestward along that contour line to the Township Line T.14S./T.15S.

(vi) Then westward along that township line to the southern border of Section 34, Township 15 South, Range 6 East.

(vii) Then continuing westward along that southern border to the 1200-foot contour line.

(viii) Then generally northwestward along that contour line until it crosses for the second time the southern border of Section 28, Township 14 South, Range 6 East.

(ix) Then westward along that southern border to the 1400-foot contour line.

(x) Then following the 1400-foot contour line through the folloowing sections: Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East; to the point where the 1400-foot contour line intersects the section line between Sections 19 and 18, Township 14 South, Range 6 East.

(xi) From there in a straight line due northward to the 1200-foot contour line in Section 18, Township 14 South, Range 6 East.

(xii) Then following the 1200-foot contour line generally northwestward to the northern border of Section 10, Township 14 South, Range 5 East (on the Mt. Harlan map).

(xiii) Then following that northern border northwestward to the 1600-foot contour line.

(xiv) Then following the 1600-foot contour line generally northward to an unimproved road.

(xv) Then looping southward along the unimproved road and continuing eastward past the designated "Spring" and then northward parallel with Bonanza Gulch to the Vineyard School on Cienega Road (on the Hollister map).

(xvi) From there in a straight line northeastward, crossing Bird Creek and the San Benito River, to the northwestern corner of Section 19, Township 13 South, Range 6 East (on the Tres Pinos map).

(xvii) From there following the northern border of Sections 19 and 20, Township 13 South, Range 6 East, to the northeastern corner of Section 20.

(xviii) From there in a straight line due eastward to the Range line R.6E./R7E.

(xix) Then southward along that Range line to the Township line T.13S./T.14S.

(xx) Then eastward along that Township line to the eastern border of Section 6, Township 14 South, Range 7 East (on the Quien Sabe Valley map).

(xxi) Then southward along the eastern border of Sections 6, 7, and 18, Township 14 South, Range 7 East, to the northern border of Section 20, Township 14 South, Range 7 East (on the Cherry Peak map).

(xxii) Then eastward along that northern border to the eastern border of Section 20.

(xxiii) Then southward along the eastern border of Sections 20, 29, and 32, Township 14 South, Range 7 East, and continuing southward along the eastern border of Sections 5, 8, and 17, Township 15 South, Range 7 East, to the starting point.

Signed: September 8, 1987.

Stephen E. Higgins,

Director.

Approved: September 17, 1987.

John P. Simpson,

Deputy Assistant Secretary Regulatory, Trade and Tariff Enforcement).

[FR Doc. 87-22939 Filed 10-2-87; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42043C; FRL-3273-3]

Testing Requirement; Final Test Standards and Reporting Requirements; 1,2-Dichloropropane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) that requires manufacturers and processors of 1,2-dichloropropane (DCP; CAS Number 78-87-5) to: (1) Conduct pharmacokinetic (absorption, distribution, metabolism, and excretion) testing with this chemical substance, (2) utilize certain TSCA test guidelines as the test standards for previously and currently required studies for DCP, and (3) submit test data within specified timeframes.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ("daylight" or "standard" as appropriate) time on October 19, 1987.

This rule shall become effective on November 18, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: This document promulgates a final single-phase test requirement for pharmacokinetic testing of DCP, and a final Phase II rule specifying the test standards and reporting requirements for the testing required in the September 9, 1986 (51 FR 32079) final Phase I test rule.

I. Background

On September 9, 1986 (51 FR 32079), EPA issued a final Phase I rule under TSCA section 4 that established testing requirements for manufacturers and processors of DCP. This Phase I rule specified the following testing requirements for DCP: (1) Neurotoxicity, (2) mutagenicity (chromosomal aberrations), (3) reproductive effects, (4) developmental toxicity, (5) acute toxicity to marine and freshwater algal and mysid shrimp, and (6) chronic toxicity to mysid shrimp and *Daphnia magna*.

Also on September 9, 1986 (51 FR 32107), EPA proposed applicable TSCA guidelines as test standards. Since TSCA test guidelines were available for all the testing requirements included in the final Phase I rule, they were proposed as the test standards. A 45-day comment period was provided to allow the public, including the manufacturers and processors subject to the Phase I rule, to comment on the use of the TSCA guidelines.

As discussed in the September 9, 1986 proposal, under the two-phase process, persons subject to a final Phase I rule are normally required to submit proposed study plans after the effective date of the Phase I rule. However, because EPA proposed applicable TSCA test guidelines as the test standards for the studies required by the final DCP Phase I rule, persons subject to the rule, i.e., manufacturers and processors of DCP, were exempted from this requirement Persons subject to the rule, however, were still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. For the DCP Phase I rule, Dow Chemical Company notified EPA of its intent to sponsor all the required testing (Ref. 6). The responsibilities of manufacturers and processors of DCP for testing or requesting exemption from testing responsibilities were discussed in the DCP Phase I final rule (51 FR 32079).

After review of the public comments, EPA is now promulgating a final Phase II rule requiring the manufacturers and processors of DCP to conduct the health and environmental effects studies contained in the final Phase I test rule in

accordance with the test standards for DCP proposed in 51 FR 32107. Persons who notified EPA of their intent to test must now submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test.

Also proposed in 51 FR 32107 was a single-phase test rule for pharmacokinetic (absorption, distribution, metabolism, and excretion) testing with DCP, including test standards and reporting requirements. After review of public comments, EPA is now promulgating a final single-phase rule requiring the manufacturers and processors of DCP to conduct the pharmacokinetic testing. As stated in Unit IV.D. of this preamble, manufacturers and processors of DCP are now required to submit notices of intent to conduct pharmacokinetic testing or exemption applications in accordance with 40 CFR 790.45.

II. Proposed Rule

A. Proposed Pharmacokinetic Testing

In the September 9, 1986 proposed rule, EPA proposed oral-inhalation comparative pharmacokinetic testing for DCP based on the authority of section 4(a)(1)(B) of TSCA. EPA found that DCP is produced and released to the environment in substantial quantities, and that its manufacture, processing, and use may result in substantial human exposure to this substance. The detailed basis for this finding is found in Unit IV.A. of the final Phase I test rule for DCP (51 FR 32079).

EPA also found that there are insufficient data to reasonably predict and compare the distribution and metabolism of DCP in the body as a result of oral or inhalation exposure due to DCP's manufacture, processing, and use, and that an oral-inhalation comparative pharmacokinetic study of DCP is necessary to develop such data.

B. Proposed Test Standards

In the final Phase I test rule for DCP, the required testing included neurotoxicity, mutagenic effects (chromosomal aberrations), developmental effects, reproductive effects, mysid shrimp acute toxicity, algal acute toxicity, and daphnid and mysid chronic toxicity.

In the September 9, 1986 proposed rule, EPA proposed that: (1) The tests for neurotoxicity, i.e., neuropathology, motor activity, and functional observational battery, be conducted according to 40 CFR 798.6400, 798.6200, and 798.6050, respectively; (2) the dominant lethal assay be conducted according to 40 CFR 798.5450; (3) the developmental toxicity study be conducted according to 40 CFR 798.4900; (4) the reproductive effects test be conducted according to 40 CFR 798.4700; and (5) the oral-inhalation comparative pharmacokinetic test (absorption, distribution, metabolism, and excretion) be conducted according to the guideline proposed in the **Federal Register** of November 6, 1985 (50 FR 46104) as § 798.7475 (codified as § 795.230 in this final rule).

With regard to environmental effects testing, EPA proposed that: (1) The algal acute tests with marine and freshwater algae be conducted according to 40 CFR 797.1050 using systems that control for DCP evaporation; (2) the acute toxicity test with mysid shrimp be conducted according to 40 CFR 797.1930 using flow-through systems and measured concentrations; and (3) the chronic toxicity tests with *Daphnia magna* and mysid shrimp be conducted according to 40 CFR 797.1330 and 797.1950, respectively, using flow-through systems and measured concentrations.

C. Proposed Reporting Requirements

The Agency proposed the following specific reporting requirements:

1. The pharmacokinetic, neurotoxicity, dominant lethal assay, and all environmental effects tests would be completed and the final reports submitted to the Agency within 1 year of the effective date of the final Phase II test rule. A progress report on each study would be provided 6 months after the effective date of the final single-phase test rule or final Phase II test rule, whichever is applicable.

2. The developmental toxicity test would be completed and the final report submitted to the Agency within 18 months of the effective date of the final Phase II test rule. Interim progress reports would be provided every 6 months.

3. The two-generation reproductive effects test would be completed and the final report submitted to the Agency within 29 months of the effective date of the final Phase II test rule. Interim progress reports would be provided every 6 months.

III. Response to Public Comments

In the September 9, 1986 proposed rule, EPA invited comments on the following topics:

1. The proposed testing requirement for an oral-inhalation comparative pharmacokinetic study with DCP.

2. Requiring the oral, rather than inhalation, route of administration in conducting health effects tests with DCP.

3. The proposed use of the TSCA test guidelines as the test standards for the required testing of DCP.

4. The proposed schedule for the required testing.

The Agency received written comments (Ref. 1) from Dow Chemical Company (also referred to in this document as "Dow"). A public meeting was not requested. Dow Incorporated by appendix their previous comments on all of the guidelines proposed as standards for the DCP required testing: (1) Comments submitted on October 12, 1979, and March 11, 1981, when the guidelines were first proposed, and (2) comments submitted on March 20, 1986, in response to revisions of some of the guidelines proposed in the **Federal Register** of January 14, 1986 (51 FR 1522). The revisions have been modified and finalized (52 FR 19056; May 20, 1987) after careful consideration of all industry comments, including those of Dow. The Agency believes that all of the revisions to the test standards required in this document are appropriate as test standards for DCP. The remainder of Dow's comments are discussed below.

A. Pharmacokinetic Testing

1. *General comments.* Dow agrees that pharmacokinetic studies can be useful in hazard evaluation, but only when these studies are designed to answer specific questions posed by data generated from toxicity tests. Dow maintains that pharmacokinetic data that cannot be related to specific aspects of toxicity are difficult to interpret and have little value. Since pharmacokinetic data should answer specific questions related to toxicity, Dow believes that these studies are not suited for standard protocols and should be custom-designed for each chemical substance. Dow further commented that if the Agency mandates the use of standard protocols, these protocols should be highly flexible. This flexibility is needed to allow the use of new approaches and to make appropriate chemical-specific adaptations where necessary.

EPA does not agree with Dow that pharmacokinetic data have little value unless they are related to a specific toxicity question. Some aspects of the pharmacokinetic test, such as absorption kinetics, produce data that will help the regulatory toxicologist perform route-to-route extrapolations. Other aspects, such as tissue distribution, may indicate the need for further toxicity testing as a result of the sequestering of the chemical substance or the detection of high levels in non-target tissues. The Agency agrees with Dow that, at times, these data will be

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difficult to interpret, as in the hypothetical case proposed by Dow in which sex-related differences in metabolism are observed but no sex-related differences in toxicity are detected. The Agency does not believe that the potential for generating data that is difficult to interpret is a sound rationale for determining that a given test should not be conducted. In the above example, the results of the pharmacokinetic study would have raised concern about the adequacy of the available data to support an evaluation of potential human risk from exposure.

EPA also believes that standard protocols are advantageous from a regulatory standpoint. The use of standard protocols provides a consistent body of data from which regulatory decisions can be made. Because this data set is consistent, comparisons between chemical substances can be made more easily and the historical results of regulatory decisions on substances that have been determined to be similar can be used to provide confidence in present and future decisionmaking processes.

Moreover, the Agency considers the standard protocols as used by the Agency to be highly flexible. As has occurred with many test rules, the standard protocol may be modified as a result of the chemical-specific needs of testing. This ability to modify a standard protocol provides the flexibility needed to address the special characteristics of a substance, or in the absence of such characteristics, allows the Agency to invoke the standard protocol.

2. *Specific comments.* Dow submitted specific written comments on several aspects of the proposed pharmacokinetic test procedure: Animal selection (required species, weight ranges, animal care, and testing of both sexes); administration of test substance (determinations of high dosage and manner of dosing); determination of bioavailability (time intervals for collection of excreta, measuring the concentration of test substance in expired air, and meaning of the term "saturability"); and observation of animals (time intervals for collection of blood). Comments were also submitted on proposed data analysis and reporting requirements, evaluation of results (use of statistics vs. a kinetic model), and the test report (tissue distribution and biotransformation pathways).

The Agency disagrees with some of the points raised by Dow, and a detailed explanation of the Agency's position may be found in the support document (Ref. 2) prepared for EPA by Syracuse Research Corporation (SRC) and a memorandum written by EPA's Health and Environmental Review Division of the Office of Toxic Substances (Ref. 3). Other Dow comments have resulted in guideline modifications and are described below.

a. Dow objected to the designation of specific weight ranges for the Fischer 344 rats to be used in the proposed pharamacokinetic test. In the proposed test guideline, a range of 125 to 175 grams was specified for males while a range of 110 to 150 grams was specified for females. Dow contends that these ranges are needlessly restrictive and will result in the pointless sacrifice of otherwise useful animals. Dow further maintains that the weight ranges are too low, and that the use of such small animals will hinder blood collection from both a technical consideration in obtaining samples and as a result of the relatively small blood volume. Dow recommends that the reference to specific animal weights either be eliminated from the proposed rule or the acceptable weight ranges be increased to 180 to 250 grams for males and 130 to 160 grams for females.

The Agency objective in specifying animal weights was to obtain data on young adult male and female animals. The ages of animals in each group should be close and the range should be comparable from group to group, even when sex differs. Otherwise, age differences may complicate the interpretation of experimental data (Refs. 4 and 5). Consequently, the specified weight ranges have been deleted from 40 CFR 795.230(c)(1)(ii), and instead it is specified that all animals used in the test must be 7 to 9 weeks old. This requirement will ensure that age differences do not affect test results.

b. Dow contended that the specific environmental conditions proposed for animal maintenace are too restrictive and are not consistent with the guidelines in the *Guide for the Care and Use of Laboratory Animals* (Publication No. (NIH)–7–23, 1978). The guide recommends the use of room temperatures between 18 and 26° C and humidity of 40 to 70 percent. In the proposed test guideline, the temperature and humidity are specified as 25 ± 2° C and 50 ± 10 percent, respectively.

EPA believes the range of temperatures and humidity suggested by Dow for animal care is too great because broader ranges of temperature and humidity create more variables in the study and the greater ranges could stress the animals. The NIH guide is a general guide for care of laboratory animals, and not necessarily a standard for changing the temperature requirement of 25 ± 2° C as proposed in §798.7475(c)(1)(iii) (November 6, 1985; 50 FR 46104) to 24 ± 2° C in §795.230(c)(1)(iii) of this final rule to avoid the use of 27° C a temperature above the range recommended in the guide. The Agency believes that a humidity requirement of 50 ± 10 percent is not unduly restrictive and is unchanged in the final test guideline.

c. Dow maintained that methods are not available to distinguish between concentrations of test substance in the inspired and expired air, and stated that the term "saturability" as used in the proposed test guideline is unclear.

The Agency agrees with this comment and has modified § 795.230(c)(2)(iii)(D) to eliminate the measurement of the concentration of test substance in expired air. The concentration of test substance in inspired air does not need to be "measured," since it is equal to the administered dose level (concentration in the test chamber). The calculation of percentage test substance retention, body burden, and "saturability" has also been deleted, along with the test report requirement for these values.

d. Dow objected to the proposed requirement that all results be subjected to statistical analysis. Dow maintains that statistical analysis requires the generation of hypotheses and that the proposed test rule does not provide guidance as to what hypotheses should be tested. Dow contends that there is little value in identifying statistically significant differences, since these differences are usually meaningless for pharmacokinetic studies. Dow recommends that instead of statistical analysis, the data be described using appropriate kinetic models. In addition, the proposed test guideline requires that all results, both quantitative and incidental, shall be analyzed, and Dow is unclear as to what is meant by "incidental results."

The Agency does not agree that statistical analysis is not useful for pharmacokinetic data. Data are statistically analyzed not only to test hypotheses, but also to provide a measure of the amount of variability associated with reported pharmacokinetic parameters. These parameters, such as Km or Vmax, are usually reported along with a standard error or standard deviation that is calculated using the results from a number of experimental determinations This statistical analysis is needed to ensure that the study has been conducted in a competent manner and that results presented are not meaningless random values. For this reason, the Agency believes that

statistical analysis of pharmacokinetic data does provide useful and necessary information.

The Agency does agree, however, with Dow that pharmacokinetic and metabolism data should be described by an appropriate kinetic model. These models provide descriptions of pharmacokinetic processes and assist in the prediction of such values as body burden and elimination half-life, which are useful in assessing the hazard associated with exposure to a chemical substance. Pharmacokinetic models, however, should be employed in addition to, and not in place of, the statistical analyses of the data. Therefore, the test report section of the pharmacokinetic guideline in § 795.230(d)(3) is modified to ask for any pharmacokinetic model(s) developed from the experimental data.

With regard to Dow's comment on the meaning of the term "incidental" in § 795.230(d)(2), the phrase "quantitative or incidental" has been deleted to reduce any possible confusion. The section now reads, "All observed results shall be evaluated by an appropriate statistical method."

e. The language of proposed § 795.230(c)(2)(iii)(C), (3)(i)(B), (ii), and (iii) have been modified slightly in this final rule for the purpose of clarification. Collection of excreta from 0 to 24 hours and then from 24 to 48 hours is more accurate than "*at* 24 and 48 hours." EPA believes that terminating collection when 90 percent of the dose has been excreted will yield adequate information, and eliminate the possible situation of collecting for additional days only to account for 1 to 2 percent more of the administered dose.

B. Environmental Effects Testing

Dow raised issues concerning the availability of facilities to perform the proposed testing of DCP with mysid shrimp and algae during the proposed time frames.

With regard to algal toxicity testing, Dow believes that stoppering the test vessel, as recommended when testing volatile chemical substances such as DCP, will result in invalid results because decreased CO_2 levels will limit algal growth. Dow recommends that EPA withdraw the proposed test requirement until suitable methodology is developed. The Agency agrees that algal growth will be limited by the decreased CO_2 level in the test vessel; however, the growth will be limited in both control and treatment test vessels, allowing a comparison to be made. Due to this limitation effect, EPA is withdrawing the proposed requirement of § 797.1050(c)(4)(iv) that algal growth in controls reach the logarithmic growth phase by 96 hours.

Dow also raised concern about the availability of suitable cultures to use in conducting the proposed acute and chronic mysid shrimp toxicity tests. Laboratories that have been conducting mysid testing have experienced upsets in the rearing of mysids or have had difficulty in obtaining suitable cultures for testing, e.g., cultures may suffer excessive (greater than 10 percent) mortality. The upsets may be due to poor viability of the young organisms and may be related to nutrient balance.

While EPA acknowledges that some laboratories have had this problem, the Agency believes that it is not insurmountable with regard to the mysid shrimp testing requirements for DCP. The Agency believes that adequate mysid cultures will be available to conduct the acute and chronic toxicity testing within the time alloted by this test rule (1 year).

IV. Final Test Rule

A. Pharmacokinetics

1. Findings

EPA is basing its oral-inhalation comparative pharmacokinetic testing requirement on the authority of section 4(a)(1)(B) of TSCA. EPA finds that DCP is produced and released to the environment in substantial quantities, and that its manufacture, processing, and use may result in substantial human exposure to this chemical substance. The detailed basis for this finding is found in Unit IV.A. of the final Phase I test rule for DCP (51 FR 32079; September 9, 1986).

EPA also finds that there are insufficient data to reasonably predict and compare the absorption, distribution, metabolism, and excretion of DCP in the body as a result of oral or inhalation exposure due to DCP's manufacture, processing, and use, and that an oral-inhalation comparative pharmacokinetic study of DCP is necessary to develop such data. EPA believes that the data resulting from this testing will be relevant to a determination as to whether the manufacture, processing, and use of DCP does or does not present an unreasonable risk of injury to health.

2. Required Testing

EPA is requiring that an oral-inhalation pharmacokinetic study be conducted with DCP.

3. Other Provisions

Test substance specification, persons required to test (as amended in Unit IV.D. of this document), and enforcement provisions presented in the final Phase I rule for DCP (51 FR 32079) are applicable to the pharmacokinetic testing of DCP.

B. Final Test Standards

The TSCA test guidelines (40 CFR Parts 797 and 798) specified in Unit II.B. for neurotoxicity, mutagenicity (chromosomal aberrations), reproductive effects, developmental toxicity, acute toxicity to marine and freshwater algae and mysid shrimp, chronic toxicity to mysid shrimp and *Daphnia magna*, and oral and inhalation pharmacokinetics, as modified in this rule, shall be the test standards for the testing of DCP required under 40 CFR 799.1550. The Agency believes that the conduct of the required studies in accordance with these test standards is necessary to ensure that the results are reliable and adequate.

C. Final Reporting Requirements

EPA requires that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) Standards, which appear in 40 CFR Part 792.

Test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study in accordance with 40 CFR 790.50.

The Agency is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of its experience with health and environmental effects testing, EPA is adopting the proposed schedule for the submission of final test results as the final schedule (see Unit II.C.).

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

D. Persons Required To Test

EPA does not intend for any persons who manufacture or process DCP solely as an impurity to be subject to the DCP Phase I test rule or this rule for pharmacokinetic testing of DCP. The phrase "other than as an impurity" was inadvertently omitted from § 799.1550(b)(1) in the final Phase I rule (51 FR 32079) and from § 799.1550(b)(5) in the proposed rule for pharmacokinetic testing (51 FR 32107). Therefore, those paragraphs are revised in this final rule to reflect the Agency's intention.

E. Conditional Exemptions Granted

The test rule development and exemption procedures (40 CFR 790.87) indicate that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if the testing has not been conducted in accordance with the test rule.

Since a sponsor has indicated to EPA by letter of intent (Ref. 6) its agreement to sponsor all of the tests required for DCP in the final Phase I test rule for this substance (51 FR 32079; September 9, 1986) and EPA has adopted test standards and reporting requirements in this final Phase II test rule for DCP, the Agency is hereby granting conditional exemptions to all exemption applicants for all of the testing required for DCP in 40 CFR 799.1550 by the final Phase I test rule. However, manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rule and exemption procedures in 40 CFR Part 790 with regard to pharmacokinetic testing. Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform the pharmacokinetic testing or an exemption application on or before 30 days after the effective date of this final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790. A detailed discussion of persons required to test and procedures to be followed are presented in Unit IV.D. of the final Phase I rule for DCP (51 FR 32079).

F. Judicial Review

The promulgation date for the DCP final Phase I rule was established as 1 p.m. eastern standard time on September 23, 1986. To EPA's knowledge, no petitions for judicial review of that final Phase I rule were filed. Any petition for judicial review of this final rule will be limited to a review of the test standards and reporting requirements for the Phase II rule and to the pharmacokinetic test requirement, standards, and reporting requirements established in this rule.

V. Economic Analysis of Final Rule

To assess the economic impact of this final rule, EPA has prepared an economic evaluation (Ref. 7) that examines the cost of the required testing, both for pharmacokinetic testing alone and in conjunction with testing required in the DCP final rule, and analyzes four market characteristics of DCP: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The economic evaluation for the DCP final test rule, which estimates a testing cost of $144,610 to $191,680 for pharmacokinetic testing, and a total testing cost of $470,230 to $608,350 for both the tests required in the final Phase I rule and the pharmacokinetic testing, indicates that the potential for adverse economic effects due to the estimated cost of testing is low. The annualized total test costs for DCP range from $121,855 to $157,648. This conclusion is based on the following observations (Ref. 7):

1. Propylene oxide (PO), the main product in DCP production, is used mainly as a captive intermediate and has a relatively inelastic demand.
2. The market expectations for PO and many of its derivatives are favorable.
3. Dow manufacturers DCP and PO at two highly integrated plants where minor cost increases can be dispersed over numerous end products.
4. The estimated total unit test costs (i.e., the test costs for DCP and PO) are negligible, or less than 0.02 cent per pound or 0.04 percent of PO price in the upper-bound case.

Refer to the economic analysis (Ref. 7) for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry; Profile of Toxicological Testing," October, 1981, can be obtained through the National Technical Information Service, 5285 Port Royal Road, Springfield, Va., 22161, under publication number PB 82-140773. On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this final rule.

VII. Rulemaking Record

EPA has established a record for this rulemaking, [docket number OPTS-42043C]. This record includes basic information considered by the Agency in developing this final rule, and appropriate **Federal Register** notices. This record includes the following information:

A. Supporting Documentation

The supporting documents for this rulemaking consist of the **Federal Register** documents containing the proposed and final Phase I and proposed Phase II and single-phase test rules on DCP.

B. References

(1) *Dow.* The Dow Chemical Company. Comments on 1,2-dichloropropane proposed test rule and proposed test standards, 51 FR 32107. Submitted to TSCA Public Information Office (TS-793). Office of Pesticides and Toxic Substances, USEPA. Washington, DC. Document Control Number OPTS-42043. (October 24, 1986)

(2) *Syracuse Research Corporation.* Response to general comments on the oral and inhalation pharmacokinetics tests. Prepared for Test Rules Development Branch, Existing Chemical Assessment Division, Office of Toxic Substances, USEPA. (January 22, 1987)

(3) *USEPA.* U.S. Environmental Protection Agency. Response to TRDB request on review of SRC response to comments on pharmacokinetic guidelines. Intraagency memorandum to Gary E. Timm, Existing Chemical Assessment Division, from the Health and Environmental Review Division. (April 10, 1987)

(4) *Calabrese, E.J. "Toxic Susceptibility: Male/Female Differences."* New York: John Wiley & Sons. (1985)

(5) *Calabrese, E.J. "Age and Susceptibility to Toxic Substances."* New York: John Wiley & Sons. (1986)

(6) *Dow.* The Dow Chemical Company. Letter of intent to conduct testing with 1,2-dichloropropane. Submitted to TSCA Public Information Office (TS-793). Office of Pesticides and Toxic Substances, USEPA. Washington, DC. Control Number OPTS 42043. (November 14, 1986)

(7) *EPA.* Economic Impact Analysis of Final Test Rule for 1,2-Dichloropropane. U.S. Environmental Protection Agency, Washington, DC. (1986)

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for

inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Room NE–G004, 401 M Street SW., Washington, DC.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of DCP is discussed in Unit V of this notice.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are no small manufacturers of 1,2-dichloropropane.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing efforts.

(3) Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96–511, December 11, 1980), and has assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Recordkeeping and reporting requirements.

Dated: September 25, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I, is amended as follows:

PART 795—[AMENDED]

1. In Part 795:

a. The authority citation for Part 795 is revised to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 795.230 is added, to read as follows:

§ 795.230 Oral and inhalation pharmacokinetic test.

(a) *Purpose.* The purpose of these studies is to determine:

(1) Bioavailability of test substance after oral and inhalation exposure.

(2) Whether or not the biotransformation of the test substance is qualitatively and quantitatively the same after oral and inhalation exposure.

(3) Whether or not the biotransformation of the test substance is changed qualitatively or quantitatively by repeated dosing.

(b) *Definitions.* Bioavailability refers to the rate and extent to which an administered chemical substance compound is absorbed, i.e., reaches the systemic circulation.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The preferred species is the rat for which extensive data on the toxicity and carcinogenicity of numerous chemical substances are available.

(ii) *Animals.* Adult male and female Fischer 344 rats shall be used. The rats shall be 7 to 9 weeks old. Prior to testing, the animals are selected at random for each group. Animals showing signs of ill health shall not be used.

(iii) *Animal care.* Animals shall be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms shall be maintained at a temperature of 24 ±2 °C and humidity 50 ± 10 percent with a 12-hour light/dark cycle per day. The rats shall be isolated for at least 7 days prior to use, and their health status shall then be evaluated. The animals shall be acclimated to the experimental environment for a minimum of 48 hours prior to treatment. Certified feed and water shall be provided *ad libitum.*

(iv) *Numbers.*—(A) At least 8 animals (4 males and 4 females) shall be used at each dose level.

(B) Females shall be nulliparous and nonpregnant.

(2) *Administration of the test substance*—(i) *Test substance.* The test substance shall be at least 99 percent pure. The studies require the use of both nonradioactive and ^{14}C-labeled test substance. Both preparations are needed to investigate the provisions of paragraph (a)(2) of this section. The use of ^{14}C-test substance is recommended for the provisions in paragraphs (a)(1), (a)(2), and (a)(3) of this section in order to facilitate the work, improve the reliability of quantitative determinations, and increase the probability of observing previously unidentified metabolites.

(ii) *Dosage and treatment*—(A) *Oral study.* At least two doses shall be used in the study, a "low" and "high" dose. When administered orally, the "high" dose should induce some overt toxicity such as weight loss. The "low" dose shall not induce observable effects attributable to the test substance. Oral dosing shall be performed by gavage using an appropriate vehicle.

(B) *Inhalation study.* Three concentrations shall be used in the study. Upon exposure, the two higher concentrations should ideally induce some overt symptoms of toxicity, although the intermediate concentration may be excluded from this condition. The lowest concentration shall not induce observable effects attributable to the test substance.

(iii) *Determination of bioavailability*—(A) *Oral studies.* (*1*) Group A (a minimum of 8 animals, 4 males and 4 females) shall be dosed once *per os* with the low dose of ^{14}C-labeled test substance.

(*2*) Group B (a minimum of 8 animals, 4 males and 4 females) shall be dosed once *per os* with the high dose of ^{14}C-labeled test substance.

(B) *Inhalation studies.* (*1*) Group C (a minimum of 8 animals, 4 males and 4 females) shall be exposed (6 hours) to a mixture of non-radioactive test substance in air at the prescribed low test substance concentration.

(*2*) Group D (a minimum of 8 animals, 4 males and 4 females) shall be exposed (6 hours) to a mixture of non-radioactive test substance in air at the prescribed intermediate test substance concentration.

(*3*) Group E (a minimum of 8 animals, 4 males and 4 females) shall be exposed (6 hours) to a mixture of non-radioactive test substance in air at the prescribed high concentration.

(*4*) Group F (a minimum of 8 animals, 4 males and 4 females) shall be exposed (6 hours) to a mixture of ^{14}C-labeled test substance in air at the prescribed low test substance concentration.

(*5*) Group G (a minimum of 8 animals, 4 males and 4 females) shall be exposed (6 hours) to a mixture of ^{14}C–labeled test substance in air at the prescribed intermediate test substance concentration.

(*6*) Group H (a minimum of 8 animals, 4 males and 4 females) shall be exposed (6 hours) to a mixture of ^{14}C-labeled test

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substance in air at the prescribed high test substance concentration.

(C) *Collection of excreta.* After oral administration (Groups A and B) and inhalation exposure (Groups F through H) the rats shall be placed in individual metabolic cages and excreta (urine, feces and expired air) shall be collected from 0 to 24 hours and then from 24 to 48 hours post-treatment, or until 90 percent of the dose has been excreted, whichever occurs first.

(D) *Kinetic studies.* Groups C through E shall be used to determine the concentration of the test substance in blood at 0, 5, 10, 15, and 30 minutes, and at 1, 2, 4, 8, 16, 24, and 48 hours after initiation of inhalation exposure.

(E) *Repeated dosing study.* Rats (a minimum of 8 animals, 4 males and 4 females) shall receive a series of single daily oral doses of non-radioactive test substance over a period of at least 7 days, followed at 24 hours after the last dose by a single oral dose of ^{14}C-labeled test substance. Each dose shall be at the low-dose level. Urine shall be collected from 0 to 24 hours and then 24 to 48 hours after administering the ^{14}C-labeled test substance.

(3) *Observation of animals*—(i) *Bioavailability*—(A) *Blood levels.* The levels of total ^{14}C-label shall be determined in whole blood, blood plasma, or blood serum of each rat at 0, 4, 8, 16, 24, and 48 hours after dosing rats in Groups A–B and F–H.

(B) *Expired air, urinary and fecal excretion.* The quantities of total ^{14}C-label eliminated in expired air, urine, and feces by each rat in Groups A and B and F through H shall be determined in collections made from 0 to 24 hours and then 24 to 48 hours after dosing and, if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing, whichever occurs first.

(C) *Tissue distribution.* The concentration and quantity of ^{14}C-label in tissue and organs shall be determined at the time of sacrifice for each rat in Groups A and B, F through H, and the repeated-dosing group.

(ii) *Biotransformation after oral and inhalation exposure.* Appropriate qualitative and quantitative methods shall be used to assay urine specimens collected from each rat in groups A and B and F through H. Suitable enzymatic steps should be used to distinguish, characterize, and quantify conjugated and unconjugated metabolites of the test substance.

(iii) *Change(s) in biotransformation.* Appropriate qualitative and quantitative assay methodologies shall be used to compare the composition of ^{14}C-labeled components of urine collected from 0 to 24 and then from 24 to 48 hours after dosing rat Group A with those components in the urine collected over the same intervals after administering the radioactive dose in the repeated dosing study.

(d) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form.

(2) *Evaluation of results.* All observed results shall be evaluated by an appropriate statistical method.

(3) *Test report.* In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards (Subpart J, Part 792 of this chapter) the following specific information should be reported:

(i) Labeling site of the test substance.

(ii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iii) Quantity of isotope, together with percent recovery of the administered dose in feces, urine, expired air, and blood for both routes of administration.

(iv) Quantity and distribution of ^{14}C-test substance in bone, brain, fat, gonads, heart, kidney, liver, lung, muscle, spleen, tissue which displayed pathology, and residual carcass.

(v) Biotransformation pathways and quantities of test substance and its metabolites in urine, feces, and expired air collected after oral administration (single low and high doses) and inhalation exposure (low, intermediate, and high concentrations).

(vi) Biotransformation pathways and quantities of the test substance and its metabolites in urine collected after repeated administration of test substance to rats.

(vii) Pharmacokinetic model(s), if any, developed from the experimental data.

(4) *Counting efficiency.* Data should be made available to the Agency upon request.

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 799.1550 is amended by revising paragraph (b)(1) and adding paragraphs (b)(5), (c)(1)(ii) and (iii), (2)(ii) and (iii), (3)(ii) and (iii), (4)(ii) and (iii) and (5), and (d)(1)(ii) and (iii), (2)(ii) and (iii), (3)(ii) and (iii), and (4)(ii) and (iii), and (e) to read as follows:

§ 799.1550 1,2-Dichloropropane.

* * * * *

(b) * * *

(1) All persons who manufacture or process 1,2-dichloropropane, other than as an impurity, from October 23, 1986 to the end of the reimbursement period, shall submit letters of intent to conduct testing or exemption applications, conduct tests, and submit data as specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4), and (d) of this section, Subpart A of this Part, and Parts 790 and 792 of this chapter for two-phase rulemaking.

* * * * *

(5) All persons who manufacture or process 1,2-dichloropropane, other than as an impurity, from November 18, 1987 to the end of the reimbursement period, shall submit letters of intent to conduct testing or submit exemption applications, conduct tests, and submit data as specified in paragraph (c)(5) of this section, Subpart A of this part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) * * *

(1) * * *

(ii) *Test standards.* The neurotoxicity testing with 1,2-dichloropropane, consisting of a neuropathology test, a motor activity test, and a functional observational battery, shall be conducted in accordance with §§ 798.6400, 798.6200, and 798.6050 of this chapter, respectively, using the oral route of exposure. The animals shall be dosed with DCP for a minimum of 5 days per week, over a period of at least 90 days.

(iii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and the final reports submitted to EPA within 1 year of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(2) * * *

(ii) *Test standards.* The dominant lethal assay with 1,2-dichloropropane shall be conducted in accordance with § 798.5450 of this chapter

(iii) *Reporting requirements.* (A) The dominant lethal assay shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(3) * * *

(ii) *Test standard.* The developmental toxicity test with 1,2-dichloropropane shall be conducted in accordance with § 798.4900 of this chapter, using the oral route of exposure.

(iii) *Reporting requirements.* (A) The developmental toxicity test shall be completed and the final report submitted to EPA within 18 months of the effective date of the final Phase II rule.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the effective date of the final Phase II rule and ending with the submission of the Final Test Report.

(4) * * *

(ii) *Test standard.* The two-generation reproductive effects testing with 1,2-dichloropropane shall be conducted in accordance with § 798.4700 of this chapter, using the oral route of exposure.

(iii) *Reporting requirement* (A) The two-generation reproductive effects test shall be completed and the final report submitted to EPA within 29 months of the effective date of the final Phase II rule.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the effective date of the final Phase II rule and ending with the submission of the Final Test Report.

(5) *Pharmacokinetic studies*—(i) *Required testing.* An oral and inhalation pharmacokinetic test shall be conducted with 1,2-dichloropropane.

(ii) *Test standard.* The oral and inhalation pharmacokinetic testing with 1,2-dichloropropane shall be conducted in accordance with § 795.230 of this chapter.

(iii) *Reporting requirements.* (A) The pharmacokinetic test shall be completed and the final report submitted to EPA within 1 year of the effective date of the final single-phase pharmacokinetics rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final single-phase rule.

(d) * * *

(1) * * *

(ii) *Test standard.* The mysid shrimp acute toxicity test with 1,2-dichloropropane shall be conducted as a flow-through test with measured concentrations using *Mysidopsis bahia* in accordance with § 797.1930 of this chapter.

(iii) *Reporting requirements.* (A) The mysid acute toxicity test shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(2) * * *

(ii) *Test standard.* (A) The algal acute toxicity tests with 1,2-dichloropropane shall be conducted with marine and freshwater algae using systems that control for 1,2-dichloropropane evaporation in accordance with § 797.1050 of this chapter, except for the provisions in § 797.1050(c)(4)(iv).

(B) For the purpose of this section, the following provisions also apply to the algal acute toxicity tests:

(*1*) *Definitive test.* The test begins when algae from 7 to 10-day-old stock cultures are placed in the test chambers containing test solutions having the appropriate concentrations of the test substance. At the end of 96 hours the algal growth response (number or weight of algal cells/ml) in all test containers and controls should be determined by an indirect (spectrophotometry, electronic cell counters, dry weight, etc.) or a direct (actual microscopic cell count) method. Indirect methods should be calibrated by a direct microscopic count. The percentage inhibition or stimulation of growth for each concentration, EC_{10}, EC_{50}, EC_{90}, and the concentration-response curves are determined from these counts.

(*2*) [Reserved]

(iii) *Reporting requirements.* (A) The algal acute toxicity tests shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(3) * * *

(ii) *Test standard.* The daphnid chronic toxicity test with 1,2-dichloropropane shall be conducted as a flowthrough test using *Daphnia magna* in accordance with § 797.1330 of this chapter.

(iii) *Reporting requirements.* (A) The daphnid chronic toxicity test shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(4) * * *

(ii) *Test standard.* The mysid shrimp chronic toxicity test with 1,2-dichloropropane shall be conducted as a flowthrough test using *Mysidopsis bahia* in accordance with § 797.1950 of this chapter.

(iii) *Reporting requirements.* (A) The mysid chronic toxicity test shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(e) *Effective date.* The effective date of the final Phase II rule and the final single-phase pharmacokinetics rule for 1,2-dichloropropane is November 18, 1987.

[FR Doc. 87–22914 Filed 10–2–87; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 2

Testimony by Employees and the Production of Documents in Proceedings Where the United States is Not a Party

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule adds a new Part 2 to Title 45 of the Code of Federal Regulations. It generally provides that Department of Health and Human Services employees may not give testimony as part of their official duties without the approval of the head of their agency in litigation where the United States or other federal agencies are not parties. The purpose of this regulation is to maintain the Department of Health and Human Services policy of strict impartiality with respect to private litigants and to minimize the disruption of official duties. This regulation is also intended to provide for the orderly and efficient processing of all written requests for documents.

EFFECTIVE DATE: November 4, 1987.

FOR FURTHER INFORMATION CONTACT: Darrel J. Grinstead, Associate General Counsel, Business and Administrative Law Division, Office of the General Counsel, Room 5362 HHS North Buliding, 330 Independence Avenue SW., Washington, DC 20201 (202) 475–0150.

SUPPLEMENTARY INFORMATION: With increasing frequency, Department of Health and Human Services employees are requested or subpoenaed to give testimony or provide documents in litigation in which the United States is not a party. This regulation is intended to address this problem by prohibiting both voluntary appearances and compliance by employees with subpoenas for testimony as part of their official duties except where the agency head determines that the appearance would promote the objectives of the Department of Health and Human Services. In addition, this housekeeping regulation provides for the orderly handling of subpoenas duces tecum by treating these as requests for documents under the Freedom of Information Act (5 U.S.C. 552).

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Subpoenas to testify concerning information which employees have acquired in the course of performing their official duties, or to produce documents, are essentially legal actions against the United States as to which there has been no statutory waiver of sovereign immunity. The courts have recognized the authority of federal agencies to limit compliance with such subpoenas. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951); *Swett* v. *Schenk*, 792 F.2d 1447 (9th Cir. 1986); *Giza* v. *Secretary of HEW*, 626 F.2d 748 (1st Cir. 1980); *Reynolds Metals Co.* v. *Crowther*, 572 F. Supp. 288 (D. Mass. 1982).

Accordingly, this regulation prohibits Department of Health and Human Services employees from complying with requests or subpoenas for testimony in private litigation or other proceedings without the approval of the agency head. In addition, the regulation provides that a subpoena duces tecum directed to a Department employee will be handled as a request for documents under the Freedom of Information Act.

This regulation does not apply to situations where an employee serves as an expert witness in connection with professional and consultative services performed as non-official activities; in situations where an employee makes an appearance in a legal or administrative proceeding (such as cases arising out of traffic accidents, crimes, domestic relations, etc.) that does not relate to the Department of Health and Human Services and does not involve the employee's professional and consultative services; or to consultative services and technical assistance provided by the Department of Health and Human Services in carrying out its normal program activities. Also, this regulation is not applicable to Congressional subpoenas or requests for information. The Food and Drug Administration, a component of this Department, has promulgated its own regulations on this subject (21 CFR Part 20, Subpart A). This part does not apply to employees of that agency. This part also does not apply to the handling of subpoenas directed to the Social Security Administration which are covered under regulations found at 20 CFR Part 401.

The regulation does not specifically address situations in which Department of Health and Human Services health care personnel in the Public Health Service are asked to participate in legal proceedings in connection with the health care actually provided by them directly to individual patients as a part of their official duties. However, the Assistant Secretary for Health intends to make appropriate delegations of authority so that, in such circumstances, lower level Public Health Service officials will be able to permit participation by these employees in appropriate cases without the Assistant Secretary's involvement.

These regulations would apply where a state or local government, but not the United States or a Federal agency, is a party in litigation.

The Freedom of Information Act requires agencies to provide nonexempt documents in response to written request, and a subpoena duces tecum amounts to a written request for documents. Accordingly, subpoenas duces tecum except as otherwise specified will be handled as Freedom of Information Act requests under Department of Health and Human Services' regulations, 45 CFR Part 5, unless the agency head or designee has granted approval to respond in strict accordance with the terms of the subpoena.

Finally, Department of Health and Human Services agencies are sometimes asked to certify the authenticity of copies of official documents. Provisions of such services is addressed in the regulations implementing the Freedom of Information Act, 45 CFR Part 5.

Paperwork Reduction Act

This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal rules governing Department of Health and Human Services personnel.

Cost/Regulatory Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule will not constitute a "major" rule and therefore is not subject to the regulatory impact and analysis requirements of the Order. Major rules are those which impose a cost on the economy of $100 million or more a year and have certain other economic impacts.

The rule will not have a significant impact on small businesses; therefore, preparation of a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 2

Administrative practice and procedure, Freedom of Information, Government employees.

Dated: September 4, 1987.

Otis R. Bowen,

Secretary.

For reasons stated in the preamble, Part 2 is added, as set forth below, to Title 45 of the Code of Federal Regulations.

PART 2—TESTIMONY BY EMPLOYEES AND PRODUCTION OF DOCUMENTS IN PROCEEDINGS WHERE THE UNITED STATES IS NOT A PARTY

Sec.

2.1 Scope, purpose, and applicability.
2.2 Definitions.
2.3 Policy on presentation of testimony and production of documents.
2.4 Procedures when voluntary testimony is requested or when an employee is subpoenaed.
2.5 Subpoenas duces tecum.
2.6 Certification and authentication of records.

Authority: 5 U.S.C. 301, 5 U.S.C. 552.

§ 2.1 Scope, purpose, and applicability.

(a) This part sets forth rules to be followed when a Department of Health and Human Services employee, other than an employee of the Food and Drug Administration or the Social Security Administration, is requested or subpoenaed to provide testimony, in a deposition, trial, or other similar proceeding, concerning information acquired in the course of performing official duties or because of the employee's official capacity. This part also sets forth procedures for the handling of subpoenas duces tecum for any document in the possession of the Department of Health and Human Services other than the Food and Drug Administration and the Social Security Administration, and to requests for certification of copies of documents. Separate regulations, 21 CFR Part 20 and 20 CFR Part 401, govern the Food and Drug Administration and the Social Security Administration and those regulations will not be affected by this part.

(b) It is the policy of the Department of Health and Human Services to provide information, data, and records to non-federal litigants to the same extent and in the same manner that they are available to the general public. The availability of Department of Health and Human Services' employees to testify in litigation not involving Federal parties is governed by the Department of Health and Human Services' policy on maintaining strict impartiality with respect to private litigants and to minimize the disruption of official duties.

(c) This part applies to state and local court, administrative, and legislative proceedings and Federal court and administrative proceedings.

(d) These procedures do not apply to:

(1) Any civil proceedings where the United States, the Department of Health

and Human Services, and agency thereof, or any other Federal agency is a party.

(2) Congressional requests or subpoenas for testimony or documents.

(3) Consultative services and technical assistance provided by the Department of Health and Human Services, or any agency thereof, in carrying out its normal program activities.

(4) Employees serving as expert witnesses in connection with professional and consultative services as approved outside activities in accordance with 45 CFR 73.735–704 and 73.735–708. (In cases where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of the Department of Health and Human Services.)

(5) Employees making appearances in their private capacity in legal or administrative proceedings that do not relate to the Department of Health and Human Services (such as cases arising out of traffic accidents, crimes, domestic relations, etc.) and not involving professional and consultative services.

§ 2.2 Definitions.

Agency Head refers to the head of the relevant operating division or other major component of the Deparment of Health and Human Services, or his or her delegatees. For each component of the Department, the Agency Head for the purposes of this part is as follows:

(1) Office of the Secretary—Assistant Secretary for Management and Budget;

(2) Office of Human Development Services—Assistant Secretary for Human Development Services;

(3) Public Health Service—Assistant Secretary for Health;

(4) Health Care Financing Administration—Administrator;

(5) Family Support Administration—Administrator; and

(6) Social Security Administration—Commissioner.

Employee includes commissioned officers in the Public Health Service Commissioned Corps, as well as regular and special Department of Health and Human Services employees (except employees of the Food and Drug Administration).

Testify and testimony includes both in-person, oral statements before a court, legislative or administrative body and statements made pursuant to depositions, interrogatories, declarations, affidavits, or other formal participation.

§ 2.3 Policy on presentation of testimony and production of documents

(a) No Department of Health and Human Services employee may provide testimony or produce documents in any proceedings to which this part applies concerning information acquired in the course of performing official duties or because of the employee's official relationship with the Department of Health and Human Services unless authorized by the Agency head pursuant to this part based on a determination by the Agency head, after consultation with the Office of the General Counsel, that compliance with the request would promote the objectives of the Department of Health and Human Services.

(b) The Office of the General Counsel will request the assistance of the Department of Justice where necessary to represent the interests of the Department of Health and Human Services and its employees under this part.

§ 2.4 Procedures when voluntary testimony is requested or when an employee is subpoenaed.

(a) All requests for testimony by a Department of Health and Human Services employee in his or her official capacity and not subject to the exceptions set forth in § 2.1(d), of this part, must be in writing and must state the nature of the requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interests of the Department of Health and Human Services or the Fedeal Government.

(b) If the Agency head denies approval to comply with a subpoena for testimony, or if the Agency head has not acted by the return date, the employee will appear at the stated time and place, unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate (in such circumstances as, for example, an instance where the subpoena was not validly issued or served, where the subpoena has been withdrawn, or where discovery has been stayed), produce a copy of these regulations, and respectfully decline to testify or produce any documents on the basis of these regulations.

§ 2.5 Subpoenas duces tecum.

(a) Subpoenas duces tecum for records of the Department of Health and Human Services shall be deemed a request for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure established in 45 CFR Part 5.

(b) Whenever a subpoena duces tecum, in appropriate form, has been lawfully served upon a Department of Health and Human Services' employee commanding the production of any record, such employee, after consultation with the Office of the General Counsel, shall appear in response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section, and state that the production of the record(s) involved will be handled by the procedures and disclosure rules established in 45 CFR Part 5.

§ 2.6 Certification and authentication of records.

Upon request, Department of Health and Human Services' agencies will certify the authenticity of copies of records that are to be disclosed pursuant to 45 CFR Part 5 and will authenticate copies of records previously disclosed. Fees for such certification are set forth in 45 CFR 5.43.(e)(5).

[FR Doc. 87–22741 Filed 10–2–87; 8:45 am]
BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late Season Migratory Bird Hunting Regulations; California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which California may select season dates, limits and other options for the 1987–88 migratory bird hunting seasons in those areas of the State designated for nontoxic shot use, as described in the July 21, 1987, **Federal Register** (52 FR 27368).

The U.S. Fish and Wildlife Service (hereinafter the Service) annually prescribes hunting regulations frameworks to the States to facilitate their selection of hunting seasons and to further the establishment of the late-season migratory bird hunting regulations. Final late-season frameworks for the States (including California) were published in the September 18, 1987, **Federal Register** (52 FR 35248). However, in the absence of California's approval for the

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implementation and enforcement of nontoxic shot regulations in those areas described in the July 21, 1987, **Federal Register** the final frameworks specific to California did not authorize the hunting of waterfowl and coots in those nontoxic shot use areas. On September 29, 1987, California gave its approval for the implementation and enforcement of those nontoxic shot use areas.

EFFECTIVE DATE: This rule takes effect on October 5, 1987.

ADDRESS: Comments received on the proposed late-season frameworks are available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zone of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On January 15, 1987, and July 21, 1987, the Service published proposed and final rules, respectively, in the **Federal Register** (52 FR 1636 and 27352, respectively) describing zones in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 season. In both documents the Service gave notice that if States do not approve nontoxic shot zones when current Service guidelines and criteria indicate that such zones are necessary to protect migratory birds, the Service will not open the areas to waterfowl and coot hunting.

On September 18, 1987, the Service published final late-season frameworks from which States may select season dates, limits and other options for the 1987–88 migratory bird hunting season. However, because California had withdrawn it approval of the nontoxic shot ares, as described in the July 21, 1987, **Federal Register**, the final frameworks did not authorize the hunting of waterfowl and coots in those areas.

Subsequently, on September 29, 1987, California approved the nontoxic shot areas. Therefore, this rulemaking document establishes the final frameworks for late-season migratory bird hunting regulations for the 1987–88 season in California's nontoxic shot zones. The final frameworks for the late-season migratory bird hunting regulations for California, as published in the September 18, 1987, **Federal Register** (52 FR 35248) are applicable to California's nontoxic shot zones and are repeated in their entirety in this document.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service at the address indicated under the caption **ADDRESS.** As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. A draft SEIS will be available in early October.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Office of Endangered Species gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, DC.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987, (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. These final regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28717).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed late hunting season rulemakings were published on March 13, June 3, and August 14, 1987, the Service established what it believed

were the longest periods possible for public comment. In doing this, the Service recognized that at the close of each period time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates, shooting hours and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR Part 20 (§§ 20.104 through 20.107 and 20.109) to reflect seasons, limits and shooting hours for the conterminous United States for the 1987–88 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1987–88 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739; as amended, 54 Stat. 1103–04).

Final Regulations Frameworks for 1987–88 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved final frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which California may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, Common Moorhens, and Common Snipe

Outside dates: Between October 3, 1987, and January 10, 1988.

Hunting seasons: Seasons may be split into two segments. Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted.

Duck limits: The basic daily bag limit is 5 ducks, including no more than 4 mallards but only 1 female mallard, 4 pintails but only 1 female pintail, and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and common moorhen (gallinule) limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

Common snipe limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—waterfowl zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Geese (Including Brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between October 3, 1987, and January 17, 1988, a 93-day season on geese (except brant) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). Between October 3, 1987, and January 10, 1988, California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively. The brant season may not exceed 30 consecutive days in California and must run concurrent with the duck season.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

California—cackling Canada goose closure: There will be no open season on the cackling Canada geese in California.

California—Canada goose and dark goose closures: Three areas in California, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then Southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly agross the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese. In this area, the season on dark geese must end on or before November 30, 1987.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23, 1987.

California (Northeastern Zone)—geese: In the Northeastern Zone of California the season may be from October 10, 1987, to January 10, 1988, except that white-fronted geese may be taken only during October 10 to

November 1, 1987. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

California (balance of the state zone)—geese: In the Balance of the State Zone the season may be from October 31, 1987, through January 17, 1988, except that white-fronted geese may be taken only during October 31, 1987, to January 3, 1988. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

California: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone, the season for Canada may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Date: September 30, 1987.

William P. Horn.

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-22936 Filed 10-2-87; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Birds in the United States; California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule amendment.

SUMMARY: This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl and coot hunting seasons in those areas of California designated for nontoxic shot use as described in the July 21, 1987, **Federal Register** (52 FR 27368).

DATE: Effective on October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Phone (202) 254-3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zone of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On January 15, 1987, and July 21, 1987, the U.S. Fish and Wildife Service (hereinafter the Service) published purposed and final rules, respectively, in the **Federal Register** (52 FR 1636 and 27352, respectively) describing zones in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 season. In both documents the Service gave notice that if States do not approve nontoxic shot zones when current Service guidelines and criteria indicate that such zones are necessary to protect migratory birds, the Service will not open the areas to waterfowl and coot hunting.

On September 18, 1987, the Service published final late-season frameworks in the **Federal Register** (52 FR 35248) from which States may select season dates, limits and other options for the 1987–88 migratory bird hunting season. However, because California had withdrawn its approval of the nontoxic shot areas, as described in the July 21, 1987, **Federal Register**, the final frameworks did not authorize the hunting of waterfowl and coots in those areas.

On September 29, 1987, the Service published in the **Federal Register** (52 FR 36496) seasons, limits and shooting hours for waterfowl and certain other migratory game birds. In § 20.105 (at 52 FR 36530) the entry for seasons, limits and shooting hours for waterfowl and coots in California was accompanied by a footnote (i.e., footnote (2)) that indicated no hunting of waterfowl and coots is authorized in those areas of California designated for nontoxic shot use as described in the July 21, 1987, **Federal Register** (52 FR 27368).

On September 29, 1987, California approved the areas designated for nontoxic shot use. The Service therefore has published a final rule elsewhere in this issue of the **Federal Register** that establishes final frameworks for waterfowl and coot hunting regulations for the 1987–88 season in those areas of California.

This document serves to establish the open seasons, hunting hours, hunting areas, and daily bag and possession limits for waterfowl and coot hunting in those areas of California designated for nontoxic shot use as described in the July 21, 1987, **Federal Register** (52 FR 27368). The entry for seasons, limits and shooting hours for waterfowl and coots in California in § 20.105 of the September 29, 1987, **Federal Register** (at 52 FR 36496) is now applicable to the areas of California designated for nontoxic shot use, and the accompanying footnote is removed.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service at the address indicated under the caption ADDRESS. As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. A draft SEIS will be available in early October.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Office of Endangered Species gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, DC.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987, (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. These final regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28717).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

PART 20—[AMENDED]

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, § 20.105 is amended as follows:

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04.

Note: The annual hunting regulations provided for in § 20.104, 20.105, 20.106, 20.107 and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

§ 20.105 [Amended]

2. The Service amends § 20.105 of 50 CFR Part 20 at 52 FR 35248 and 52 FR 36496 by removing footnote (2) for California.

Date: September 30, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–22937 Filed 10–2–87; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 20

Migratory Bird Hunting: Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1987–88 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule amendment.

SUMMARY: This final rule amendment describes zones, in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 season, that were omitted from the rulemaking dated Tuesday, July 21, 1987 (52 FR 27352). The zones described below for the State of Washington consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1986–87 hunting season and (2) the added counties identified for 1987–88 in Appendix N of the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in 52 FR 27352 Supplementary Information).

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION: Since 1978, the Fish and Wildlife Service (FWS) has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the appropriations act for the Department of the Interior each year since 1978 (see, e.g., Pub. L. 98–473, sec. 305; Pub. L. 99–190, sec. 313; Pub. L. 99–591, sec. 317). As a consequence of this restriction, the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755) and, in the case of zones established for bald eagle protection, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 through 1543; 87 Stat. 884), the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668 through 668d; 54 Stat. 250).

At the time that the parent rule for this amendment was published (referenced above) the State of Washington had not yet responded positively to the proposed rulemaking published Thursday, January 15, 1987 (52 FR 1636). This proposed rulemaking requested consent for the Service to implement and enforce nontoxic shot zones in Washington. (The background for this issue is given at 52 FR 27362.) Thus, in compliance with the Stevens amendment requirements and the Migratory Bird Treaty Act, the FWS advised the State of Washington in the July 21, 1987, final rule that "* * * nontoxic shot zones described for the State of Washington * * * will not be opened to waterfowl hunting in the 1987–88 waterfowl hunting season, barring timely consent to implement and enforce steel shot regulations." Subsequently, the Washington Department of Game was able to provide the required consent and the FWS is in this rulemaking, publishing the descriptions of Washington nontoxic shot zones. This consent serves to have nullified the FWS' intent to not open Washington waterfowl seasons in nontoxic shot zones as stated in the proposed rulemaking on frameworks for late season migratory bird hunting regulations published on Friday, August 14, 1987 (52 FR 30395), and allows opening those nontoxic shot areas to waterfowl hunting in the 1987–88 season. The final rule on late season frameworks that will effect an open season for Washington in these nontoxic shot zones and elsewhere is expected to

be published in mid- to late-September 1987.

Economic Effect

Executive Order 12291, "Federal Regulations," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or government jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle.

Authorship

The primary author of this rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subpart B, Chapter I of Title 50 of the *Code of Federal Regulations* is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04, unless otherwise noted.

2. Section 20.108 is amended by adding the Washington description under the Pacific Flyway to read as follows (the introductory paragraph is being republished):

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

* * * * *

Pacific Flyway

* * * * *

Washington

1. Clark County, that portion north and/or east of State Highway 14 and I–5.
2. Franklin County, that portion east of State Highway 17.
3. Grant County, that portion east and/or south of State Highway 17 and US–2.
4. Skagit County, that portion east of I–5.
5. Southwestern Zone—Those portions of Skamania, Clark, Cowlitz, Wahkiakum, Grays Harbor and Pacific Counties south and west of the following line: Beginning at the Bonneville Dam, westerly on State Highway 14 to Vancouver, thence northerly on I–5 to Kelso, thence westerly on State Highway 4 to US 101, thence northerly on US 101 to Aberdeen, thence westerly on State Highway 109 to Ocean City, thence due west to the Pacific Ocean.
6. Puget Sound Zone—Those portions of Whatcom, Skagit, San Juan Island, Clallam, Jefferson, Kitsap, Mason, Thurston, Pierce, King and Snohomish Counties bounded by the following line: Beginning at I–5 on the Washington-British Columbia, Canada border, thence west, southerly and westerly along said border to a point due north of Neah Bay, thence due south to Neah Bay, thence easterly on State Highway 112 to US–101, thence easterly and southerly on US–101 to I–5, thence northerly on I–5 to State Highway 538 near Mt. Vernon, thence easterly on State Highway 538 to State Highway 9, thence northerly on State Highway 9 to State Highway 20, thence westerly on State Highway 20 to I–5, thence northerly on I–5 to point of origin.
7. Columbia Basin Zone—Those portions of Benton, Klickitat, Franklin, Adams, Grant, Yakima, Chelan, Kittitas, Douglas, Lincoln, Okanogan and Walla Walla Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo 1 ridge on US–97, thence northerly on US–97 to State Highway 14, thence easterly on State Highway 14 to US–395/I–82, thence northerly on US–395/I–82 (formerly a continuation of State Highway 14) to Kennewick, thence westerly on State Highway 240, thence northerly on State Highway 240 to State Highway 24, thence westerly on State Highway 24 to US–97, thence northerly on US–97 to State Highway 155 at Omach, thence easterly and southerly on State Highway 155 to State Highway 174 at Grand Coulee, thence southeasterly on State Highway 174 to US–2, thence westerly on US–2 to State Highway 17, thence southerly on State Highway 17 to US–395, thence southerly on US–395 to US–12, thence southerly on US–12 and US–730 to the Oregon border (including the entire McNary National Wildlife Refuge), thence westerly along the Columbia River and the Washington-Oregon border to the point of origin.

Date: September 16, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–22935 Filed 10–2–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 70227–7207]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule to implement a technical amendment to the regulations requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the Southeastern United States to use measures to reduce the incidental catch and mortality of sea turtles in shrimp trawls. This rule changes the definitions of "inshore" and "offshore" to more

clearly delineate the two areas, and adds an additional "soft" turtle excluder device (TED) to the approved TEDs. The intended effect is to clarify the regulations and to increase the options of fishermen required to use TEDs.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–893–3366, Charles Karnella, 202–673–5349, or David Cottingham, 202–377–5181.

SUPPLEMENTARY INFORMATION:

a. Background

The Secretary of Commerce issued a final rule on June 29, 1987 (52 FR 24244) which requires shrimp trawlers 25 feet and longer to use qualified turtle excluder devices (TEDs) in certain offshore waters of the Southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

The final rule was designed to reduce the incidental catch and mortality of sea turtles in shrimp trawls. The rule allows the use of four types of TEDs. It also contains a provision for qualification of new TEDs if these TEDs are tested according to procedures specified in the rule and found to be 97 percent effective in releasing sea turtles from trawls.

b. Soft TED Testing

In June 1987, the University of Georgia Sea Grant program tested three soft (i.e., made of flexible material) TEDs in the Cape Canaveral, Florida, Navigation Channel. The tests were conducted under NMFS supervision according to a research protocol developed by the NMFS. Of the three soft TEDs tested, one was found to effectively release sea turtles.

This TED, commonly called the Morrison soft TED or the Morrison TED, is a one or three piece webbing panel that is inserted inside a shrimp trawl at approximately a 25 degree angle from the horizontal when the trawl is deployed. One or three panels are used depending on the configuration of the trawl. Turtles are released through a 56–60 inch long opening in the top of the trawl. The Morrison TED is constructed of number 42 (3 millimeters) polypropylene webbing with 8 inch meshes (stretched measure). The main panel and side panels (jibs) can be modified in size depending on the size and design of the trawl used.

During the Canaveral testing in 15 forty-five minute tows, the trawl equipped with the Morrison soft TED did not catch any turtles but the control trawl (without a TED) caught 42 turtles. These catch rates satisfied the requirements for a 97 percent turtle exclusion rate at the 90 percent confidence level.

Based on the performance at Canaveral, Georgia Sea Grant and NMFS gear specialists believe the reason that the Morrison soft TED worked while other very similar devices did not work well is that the exit opening for the Morrison TED is an open slit in the webbing whereas the opening for other TEDs was covered by a webbing flap. Additionally, the arrangement of the meshes in a diamond pattern and at a shallow angle reduces the likelihood of turtles becoming entangled in the webbing.

Shrimp trawls are generally constructed of nylon twine and dipped in a preservative to prolong life. Net dips are usually green, black or blue in color. The polypropylene used in the Morrison TED is colored blue, light green or orange. If the Morrison TED is installed in the trawl before dipping it will to some degree take on the same color as the trawl and be difficult to distinguish from the trawl.

These rules require that the Morrison soft TED be constructed of untreated number 42 (3 millimeters thick) or larger braided or heat-set knotted polypropylene of a different color from the trawl, e.g., orange/green; green/black; blue/green; orange/blue; green/blue.

c. Inshore and Offshore Definition

In the final rule, "Inshore" was defined as marine or tidal waters landward of the baseline from which the territorial sea of the United States is measured and marine or tidal waters on the mainland side of any baseline on offshore islands. "Offshore" was defined as waters seaward of the baseline from which the territorial sea of the United States is measured.

These definitions left doubt as to the closing lines across passes such as at Mississippi, Breton, and Chandeleur Sounds in the northern Gulf of Mexico. To eliminate this confusion this rule defines Offshore and Inshore using the 72 COLREGS (International Regulations for Preventing Collisions at Sea, 1972) demarcation line. This line is depicted or noted on NOAA Coast Charts of 1:80.000 scale for the Atlantic and Gulf of Mexico and is described in 33 CFR Part 80. Most shrimpers affected by these regulations use NOAA nautical charts for navigation. The 72 COLREGS demarcation line is slightly less restrictive than the baseline demarcation and will assist shrimpers in more readily identifying areas where restrictions apply.

Classification

This action is in compliance with Executive Order 12291. Notice and comment on this final rule are unnecessary and contrary to the public interest because it makes no significant change in the boundaries of "inshore" and "offshore", but it merely reduces slightly the area where TEDs are required and provides more convenient delineation. It would be contrary to the public interest to delay the effect of this technical amendment beyond the effective date of the rule it amends (52 FR 24244). Delayed effectiveness is not required because this technical amendment relieves a restriction.

Addition of the Morrison soft TED gives the public notice that it has passed the test and may be used lawfully.

As no statute requires notice and comment on this final rule, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

The rule does not contain a collection-of-information requirement for purpose of the Paperwork Reduction Act.

List of Subjects in 50 CFR Parts 217 and 227

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: Sepember 30, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the the reasons set out in the preamble, 50 CFR Parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543 and 16 U.S.C. 742a *et seq.*

2. In § 217.12, the definitions for *"Inshore"* and *"Offshore"* are revised to read as follows:

§ 217.12 Definitions.

* * * * *

"Inshore" means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80.000 scale) and as described in 33 CFR Part 80.

* * * * *

"Offshore" means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR Part 80.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, a new paragraph (e)(4)(ii)(E) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(E) *Morrison TED (Figure 5).* In the Morrison TED, webbing is substituted for the rigid deflector grids used in the TEDs described above. The webbing consists of number 42 (3 millimeters thick) or larger polypropylene, heat-set knotted or braided. The polypropylene must be untreated and of a color easily distinguished from the trawl net. The stretched opening of the mesh may not exceed 8". Depending on the trawl net type, the webbing may be installed as one panel or as a main and two side (jib) panels (Figure 6). In either case, the webbing must form a complete barrier to large objects inside the trawl net forward of the cod end. The base of the webbing must be attached to the trawl net not less than 16'8" forward of the point at which the cod end is attached to the trawl net. The apex of the webbing must be attached to the top center of the trawl net not more than 20" forward of the point at which the cod end is attached to the trawl net. Each point on the circumference of the webbing must be attached to the trawl net. The meshes of the webbing must be under tension when the cod end is pulled aft thus forming diamond patterns pointing toward the top of the trawl net. As an escape hole, a slit at least 4'8" in length must be cut in a fore and aft direction at the top of the trawl net immediately forward of the apex of the webbing. The slit may not be covered or closed in any manner.

* * * * *

BILLING CODE 3510-22-M

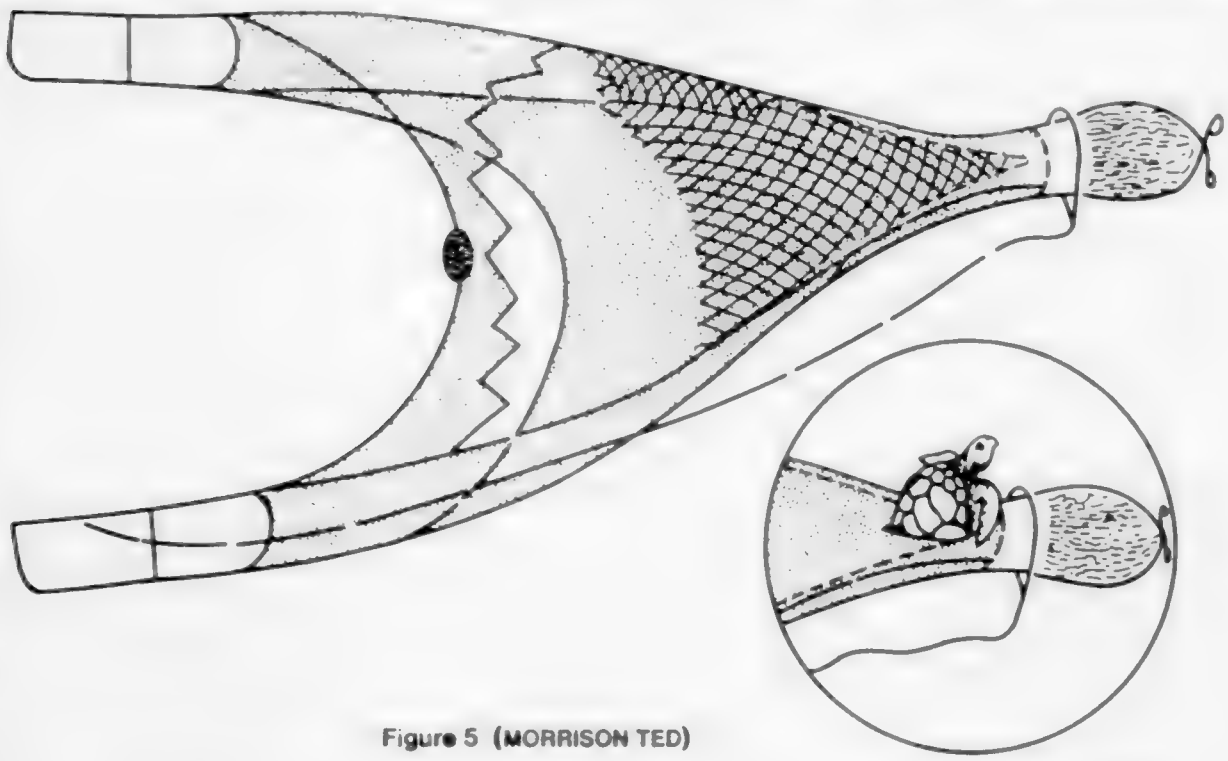

Figure 5 (MORRISON TED)

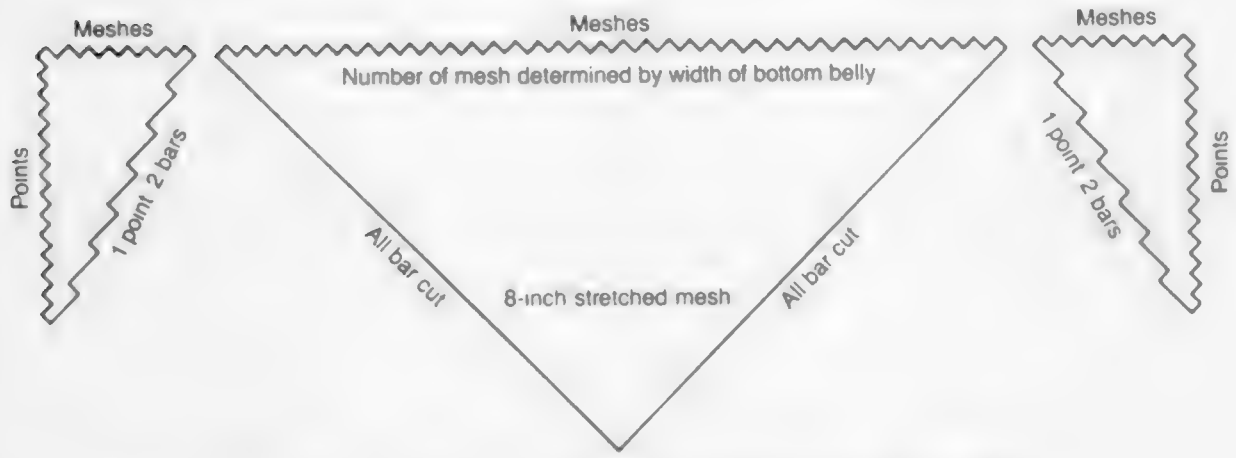

Figure 6 SCHEMATIC EXAMPLE OF MORRISON TED'S MAIN PANEL & JIBS

[FR Doc. 87-22971 Filed 10-1-87; 10:08 am]

BILLING CODE 3510-22-C

50 CFR Part 267

[Docket No. 40556-7063]

United States Standards for Grades of North American Freshwater Catfish and Products Made Therefrom

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to establish grading standards for North American catfish and products made therefrom. These Standards for Grades provide a system to classify North American catfish and products made therefrom by quality into three U.S. Grade categories, A, B, and C. The intended effect is to permit identification of such quality levels on the product or product label for the benefit of the consumer and the industry. These Standards for Grades are intended to be used in a voluntary program of fishery products inspection and certification by NMFS.

EFFECTIVE DATES: The regulation is effective November 4, 1987. The incorporation by reference of the publications listed in the regulation is approved by the Director of the Federal Register as of November 4, 1987.

FOR FURTHER INFORMATION CONTACT: Tom Moreau, Technical Services Unit, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Emerson Avenue, Jones-Hunt Building, Gloucester, MA 01930, Phone 617-281-3600, ext. 319.

SUPPLEMENTARY INFORMATION: These Standards for Grades provide a system for Federal and State inspectors to classify North American catfish and products made therefrom by quality into three U.S. Grade categories (i.e., A, B, and C) and allow identification of the product quality level for the benefit of the consumer and the industry.

These Standards for Grades are expected to facilitate trade in North American freshwater catfish and products made therefrom. They will allow consumers to select purchases of a greater variety of products on the basis of identified quality.

These Standards for Grades were published as an interim rule with request for comments in the **Federal Register**, Thursday, July 5, 1984, 49 FR 27514. Two corrections were published September 24, 1984, 49 FR 37423. No formal comments were received in response to these notices. These Standards for Grades were used to examine over 2,000 sample units of various catfish products before August 1985. The results indicate that these Standards for Grades are workable without major alteration. Some editorial changes have been made to increase their readability. For example, reference is made to the Fourteenth edition (1984) of "Official Methods of Analysis" of the Association of Official Analytical Chemists instead of the Thirteenth edition (1980).

Because of the high level of interest expressed for the availability of these standards, the NMFS intends to use them in its voluntary program of fishery products inspection and certification.

Classification

The NOAA Administrator has reviewed this final rule in accordance with Executive Order 12291 and has determined that it is not a "major rule" since promulgation of these voluntary Standards for Grades will have no significant adverse effect on the economy, costs or prices, and no impact on competition, employment, investment or productivity. Accordingly, a regulatory impact analysis is not required.

The General Counsel certified that this rule will not have a significant economic impact on a substantial number of small entities because this rule applies to voluntary participants in the seafood inspection and grading program. As a result, a regulatory flexibility analysis was not prepared.

This contains no information collection requirements as defined by the Paperwork Reduction Act.

The Department has determined that this regulation will not significantly affect the quality of the human environment so therefore no draft or final Environmental Impact Statement was prepared.

The Department has determined that this final rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 267

Food grades and standards, Seafood, Incorporation by Reference.

Dated: September 29, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, a new Part 267 is added to Chapter II of 50 CFR as follows:

PART 267—UNITED STATES STANDARDS FOR GRADES OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

Sec.

267.101 Scope and product description.
267.102 Product presentation.
267.103 Grades.
267.104 Grade determination.
267.105 Tolerances for lot certification.
267.106 Hygiene.
267.107 Methods of analysis.
Table 1—Defect Table

Authority: 16 U.S.C. 742e; 7 U.S.C. 1622, 1624

§ 267.101 Scope and product description.

(a) These U.S. Standards for Grades apply to products derived from farm-raised, or from rivers and lakes, North American freshwater catfish of the following common commercial species and hybrids thereof:

(1) Channel catfish (*Ictalurus punctatus*)
(2) White catfish (*Ictalurus catus*)
(3) Blue catfish (*Ictalurus furcatus*)
(4) Flathead catfish (*Pylodictis olivaris*)

(b) Fresh products will be packaged in accordance with good commercial practices and maintained at temperatures necessary for the preservation of the product. Frozen products will be frozen to 0°F (−18°C) at their center (thermal core) in accordance with good commercial practices and maintained at termperatures of ° F (−18° C) or less.

(c) These Standards for Grades will be implemented in accordance with the guidance set forth in Part II of NOAA Handbook 25, "Inspectors Instructions for Grading North American Freshwater Catfish and Products Made Therefrom".

§ 267.102 Product presentation.

Catfish products may be presented and labeled as follows:

(a) Types;
(1) Fresh, or
(2) Frozen.
(b) Styles;
(1) Skin on, or
(2) Skinless.

(c) Market forms include but are not limited to the following:

(1) Headed and gutted.

(2) Headed and dressed are headed and gutted usually with fins removed. This form may be presented with or without the dorsal spine and with or without the collar bone.

(3) Whole fillets are practically boneless pieces of fish cut parallel to the entire length of the backbone with the belly flaps and with or without the black membrane.

(4) Trimmed fillets are whole fillets without belly flaps.

(5) Fillet strips are strips of fillets weighing not less than ¾ ounce.

(6) Steaks are units of fish not less than 1½ ounces in weight which are sawn or cut approximately perpendicular (30 degrees to 90 degrees) to the axial length or backbone. They have two reasonably parallel surfaces. The number of tail sections that may be included in the package must not exceed the number of fish cut per package).

(7) Nuggets are pieces of belly flaps with or without black membrane and weighing not less than ¾ ounce.

§ 267.103 Grades.

(a) U.S. Grade A fresh or frozen products will possess good flavor and odor and be within the limits specified for defects for U.S. Grade A quality in § 267.104 of this part.

(b) U.S. Grade B fresh or frozen products will possess reasonably good flavor and odor and be within the limits specified for defects for U.S. Grade B quality in § 267.104 of this part.

(c) U.S. Grade C fresh or frozen products will possess reasonably good flavor and odor and be within the limits specified for defects for U.S Grade C quality in § 267.104 of this part.

§ 267.104 Grade determination.

(a) *Procedures for grade determination.* The grade will be determined by evaluating the fresh product in the fresh and cooked states or the frozen product in the frozen, thawed, and cooked states in accordance with applicable paragraphs in this section.

(b) *Sampling.* Lot size, number of sample units, and acceptance numbers will be selected in accordance with § 260.61 of this chapter, Tables II, V, or VI as applicable. A sample unit consists of 10 "portions" for market forms (1) and (2) as defined in § 267.102(c) of this part, or at least 2 pounds of "portions" for market forms (3) through (7). "Portion" is one unit of any of the market forms.

(c) *Evaluation of flavor and odor.*—(1) *Definition of flavor and odor* (i) Good flavor and odor (minimum requirements for a Grade A product) mean that the product has the normal, pleasant flavor and odor characteristics of the species, and it is free from off-odors and off-flavors of any kind.

(ii) Reasonably good flavor and odor (minimum requirements of Grade B and Grade C products) mean that the product may be somewhat lacking in good flavor and odor characteristics of the species but it is free from objectionable off-odors and off-flavors of any kind.

(2) *Procedure.* For raw odor evaluation, frozen portions are thawed. Fresh or thawed portions are broken apart and the exposed flesh immediately held close to the nose to detect any off-odors. To evaluate cooked flavor and odor, cook the sample units using the procedure referenced in § 267.107 of this part.

(d) *Examination for physical defects.* Each sample unit will be examined for physical defects using the defect definitions that follow. Deduction points are assigned in accordance with Table I.

(1) *Dehydration* applies to all frozen market forms. It refers to the loss of moisture from the surface resulting in a whitish, dry, or porous condition:

(i) *Slight:* surface dehydration which is not color masking (readily removed by scraping) and affecting 3 to 10 percent of the surface area.

(ii) *Moderate*: deep dehydration which is color masking, cannot be scraped off easily with a sharp instrument, and affects more than one percent but not more than 10 percent of the surface area.

(iii) *Excessive*: deep dehydration which is color masking, and cannot be easily scraped off with a sharp instrument and affects more than 10 percent of the surface area.

(2) *Condition of the product* applies to all market forms. It refers to freedom from packaging defects, cracks in the surface of a frozen product, and excess moisture (drip) or blood inside the package. Deduction points are based on the degree of this defect.

(i) Slight refers to a condition that is scarcely noticeable but that does not affect the appearance, desirability or eating quality of the product.

(ii) Moderate refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, or eating quality of the product.

(iii) Excessive refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability or eating quality of the product.

(3) *Discoloration* applies to all market forms. It refers to colors not normal to the species. This may be due to mishandling or the presence of blood, bile, or other substances.

(i) *Slight:* 1/16 square inch up to and including one square inch in aggregate area.

(ii) *Moderate:* greater than one square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(4) *Uniformity* applies to size or weight controlled products. It refers to the degree of uniformity of the weights of the portions in the container. It is obtained by weighing individual portions to determine their conformity to declared weights. Uniformity will be assigned in accordance with weight tolerances as follows:

Weight of portion
0.75 to 4.16 ounces
Moderate: Over ⅛ ounce but not over ¼ ounce above or below declared weight of portion
Excessive: In excess of ¼ ounce above or below declared weight of portion
4.17 to 11.20 ounces
Moderate: Over ⅛ ounce but not over ½ ounce above or below declared weight of portion
Excessive: In excess of ½ ounce above or below declared weight of portion
11.21 to 17.30 ounces
Moderate: Over ⅛ ounce but not over ¾ ounce above or below declared weight of portion
Excessive: In excess of ¾ ounce above or below declared weight of portion

(5) *Skinning cuts* apply to skinless market forms. It refers to improper cuts made during the skinning operation as evidenced by torn or ragged surfaces or edges, or gouges in the flesh which detract from a good appearance of the product.

(i) *Slight:* 1/16 square inch up to and including 1 square inch in aggregate area.

(ii) *Moderate:* Over one square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(6) *Heading* applies to market forms (1) and (2) is defined in § 267.102(c) of this part. It refers to the presence of ragged cuts or pieces of gills, gill cover, pectoral fins or collar bone after heading. Deduction points also will be assigned when the product is presented with the collar bone and it has been completely or partially removed.

(i) *Slight:* 1/16 square inch up to and including one square inch in aggregate area.

(ii) *Moderate:* Over one square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(7) *Evisceration* applies to all market forms. It refers to the proper removal of viscera, kidney, spawn, blood, reproductive organs, and abnormal fat

(leaf). The evisceration cut should be smooth and clean. Deduction points are based on the degree of defect.

(i) *Slight:* 1/16 square inch up to and including 1 square inch in aggregate area.

(ii) *Moderate:* Over 1 square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(8) *Fins* refer to the presence of fins, pieces of fins or dorsal spines. It applies to all market forms except headed and gutted or headed and dressed catfish or catfish steaks. Deduction points also will be assigned when the product is intended to have the dorsal spine but it has been completely or partially removed.

(i) *Slight:* Aggregage area up to including one square inch.

(ii) *Moderate:* Over one square inch area up to and including 2 square inches.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(9) *Bones* (including pin bone) apply to all fillet and nugget market forms. Each bone defect is a bone or part of a bone that is 3/16 inch or more at its maximum length *or* 1/32 inch or more at its maximum shaft width, or for bone chips, a length of at least 1/16 inch. An excessive bone defect is any bone which *cannot* be fitted into a rectangle, which has a length of 1 9/16 inch and a width of 3/8 inch.

(10) *Skin* refers to the presence of skin on skinless market forms. For semi-skinned forms, a skin defect is the presence of the darkly pigmented outside layers. Points will be assessed for each aggregate area greater than 1/2 square inch up to and including one square inch.

(11) *Bloodspots* refer to the presence of coagulated blood. *Bruises* refer to softening and discoloration of the flesh. Both bloodspots and bruises apply to all market forms. Points will be assessed for each aggregate area of bloodspots or bruises greater than 1/2 square inch up to and including one square inch.

(12) *Foreign material* refers to any extraneous material, including packaging material, not derived from the fish that is found on or in the sample. Each occurrence will be assessed.

(13) *Texture* applies to all market forms and refers to the presence of normal texture properties of the cooked fish flesh, i.e., tender, firm, and moist without excess water. Texture defects are described as dry, tough, mushy, rubbery, watery, and stringy.

(i) *Moderate:* Noticeably dry, tough, mushy, rubbery, watery, stringy.

(ii) *Excessive:* Markedly dry, tough, mushy, rubbery, watery, stringy.

(e) *Listing defect points.* Each sample unit is examined for physical defects, using the list of definitions given in this section. The point deductions for defects are listed for each sample unit, and the point values totaled. The total of the defect points determines the sample unit grade. The scoring system is based on a perfect score of zero.

(f) *Grade assignment.* Each sample unit will be assigned a grade in accordance with the limits for defects summarized as follows:

Grade assignment	Flavor and odor	Maximum number of defect points
U.S. Grade A	Good	15
U.S. Grade B	Reasonably Good	30
U.S. Grade C	Reasonably Good	40

If a sample unit has been assigned a grade for flavor and odor different than the grade indicated by the number of defect points, the sample unit grade will be the lower grade.

TABLE I.—DEFECT TABLE SCHEDULE OF POINT DEDUCTIONS OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

[Per sample unit unless otherwise indicated]

Scored factors	Degree of quality variation	Point value
Frozen Products		
(1) Dehydration:		
Each occurrence affecting 3 to 10% of surface area but readily removed by scraping.	Slight	5
Affecting more than 1% but not more than 10% of surface area and cannot be easily removed by scraping	Moderate	16
Affecting more than 10% of surface area and cannot be easily removed by scraping.	Excessive	30
Fresh or Frozen Products		
(2) Condition of product (pertains to the entire package or container)	Slight	1
	Moderate	3
	Excessive	5
(3) Discoloration:		
1/16 sq. in. to 1 sq. in.	Slight	4
Over 1 sq. in. to 2 sq. in.	Moderate	9
Over 2 sq. in. and each additional complete 1 sq. in.	Excessive	15
(4) Uniformity: Deviation above or below declared weight of portion—		
Weight of portion—Moderate:		
0.75 to 4.16 oz	Over 1/8 but not over 1/4 oz	5
4.17 to 11.20 oz	Over 1/8 but not over 1/2 oz	5
11.21 to 17.30 oz	Over 1/8 but not over 3/4 oz	5
Weight of portion—Excessive		
0.75 to 4.16 oz	Over 1/4 oz	10
4.17 to 11.20 oz	Over 1/2 oz	10
11.21 to 17.30 oz	Over 3/4 oz	10

TABLE I.—DEFECT TABLE SCHEDULE OF POINT DEDUCTIONS OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM—Continued

[Per sample unit unless otherwise indicated]

Scored factors	Degree of quality variation	Point value
Fresh or thawed products		
(5) Skinning cuts [skinless market forms only]:		
1/16 sq. in. to 1 sq. in.	Slight	1
Over 1 sq. in. to 2 sq. in.	Moderate	3
Over 2 sq. in. and each additional complete 1 sq. in.	Excessive	1
(6) Heading (H&G or H&D fish only):		
1/16 sq. in. to 1 sq. in.	Slight	5
Over 1 sq. in. to 2 sq. in.	Moderate	16
Over 2 sq. in. and each additional complete 1 sq. in.	Excessive	30
(7) Evisceration:		
1/16 sq. in. to 1 sq. in.	Slight	5
Over 1 sq. in. to 2 sq. in.	Moderate	16
2 sq. in. or over	Excessive	30
(8) Fins:		
Up to 1 sq. in.	Slight	1
Over 1 sq. in. to 2 sq. in.	Moderate	5
Over 2 sq. in.	Excessive	10
(9) Bones (including pin bone) :		
Bones: 3/16 in. long or 1/32 in. wide	Each occurrence	5
Bone chip: 1/16 in. long	Each occurrence	5
Excessive: 1 9/16 in. long by 3/8 in. wide rectangle	Each occurrence	10
(10) Skin (skinless market forms only): Over 1/2 sq. in. to 1 sq. in.	Each occurrence	5
(11) Bloodspots, bruises: Over 1/2 sq. in. to 1 sq. in.	Each occurrence	5
(12) Foreign matter: Harmless material	Each occurrence	4
Cooked products		
(13) Texture	Moderate	5
	Excessive	16

§ 267.105 Tolerances for lot certification.

(a) The grade assigned to a lot is the grade indicated by the majority of the sample unit grades provided that the number of sample units in the next lower grade does not exceed the acceptance number as given in the sampling plans contained in § 260.61 of this chapter. All of the sample units must meet the provisions of § 260.21 of this chapter. In § 260.21, the 4 score points are additive, not subtractive.

(b) The grade assigned to a lot is one grade below the majority of all the sample unit grades if either:

(1) The number of sample units in the next lower grade does exceed the acceptance number as given in the sampling plans contained in § 260.61 of this chapter, or

(2) The grade of any one of the sample units is more than one grade below the majority of all the sample unit grades.

§ 267.106 Hygiene.

Products will be processed in official establishments as defined in § 260.6 of this chapter and maintained in accordance with §§ 267.101 to 267.107 of this part and of the good manufacturing practice regulations contained in 21 CFR Part 110.

§ 267.107 Methods of analysis.

Product samples will be analyzed in accordance with the "Official Methods of Analysis of the Association of Official Analytical Chemists", (AOAC), Fourteenth Edition (1984), section 18.004 (page 331) and sections 32.059 and 32.060 (page 613) which are incorporated by reference. Copies of the AOAC methods may be obtained from AOAC, 1111 North Nineteenth Street, Arlington, VA 22209 and are available for inspection at the Office of the Federal Register, 1100 L Street, Room 8401 Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on November 4, 1987. These methods are incorporated as they exist on the date of this approval. A notice of any change in the sections of the AOAC methods cited herein will be published in the **Federal Register.**

[FR Doc. 87-22888 Filed 10-2-87; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 70620-7184]

Northeast Multispecies Fishery; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document corrects several typographical errors in the regulatory text of the final rule to implement Amendment 1 to the Fishery Management Plan for the Northeast Multispecies Fishery. This rule was published September 17, 1987 (52 FR 35093).

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr. (Multispecies Plan Coordinator), 617-281-3600, ext. 252.

PART 651—[AMENDED]

In rule document 87-21389 beginning on page 35093 in the issue of September 17, 1987, make the following corrections:

§ 651.3 [Corrected]

1. In § 651.3, paragraph (c), line 2, remove "or local" after "State".

§ 651.23 [Corrected]

2. In § 651.23, paragraph (a)(1), in the small table, line 1, remove "Beyond" before "Cod".

§ 651.25 [Corrected]

3. In § 651.25, paragraph (a), line 6, "bouys" is corrected to read "buoys".

4. In the same section, paragraph (b), line 9, "eastern most" is corrected to be one word reading "easternmost".

Authority: 16 U.S.C. 1801 et seq.

Dated: September 30, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-22972 Filed 10-2-87; 8:45 am]

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Proposed Rules

Federal Register
Vol. 52, No. 192
Monday, October 5, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1405

Loans, Purchases and Other Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 7 CFR Part 1405 to set forth the manner in which the rate of interest that is generally applicable to Commodity Credit Corporation (CCC) loans will be determined and announced. This proposed rule would also delete obsolete references to the ability of trustees to pledge commodities as collateral for CCC loans or to sell such commodities to CCC.

DATE: Comments must be received on or before November 4, 1987, in order to be assured of consideration.

ADDRESS: Send comments to David Nichols, Supervisory Systems Account, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013 447–6616.

FOR FURTHER INFORMATION CONTACT: David Nichols, Supervisory Systems Account, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013 (202) 447–6616.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformance with Executive Order 12291 and the Secretary's Memorandum 1521–1 and has been classifield as "not major." It has been determined that the provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprise to compete with foreign-based enterprise in domestic or export markets.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 291115 (June 29, 1983).

The titles and numbers of the Federal Domestic Assistance Programs that this notice applies to are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.055; Storage Facilities and Equipment Loans—10.056; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065 as found in the Catalog of Federal Domestic Assistance.

Background

A large portion of CCC's activities involves the making of loans to eligible program participants. Most significantly, these loans include nonrecourse price support loans made to producers in accordance with the Agricultural Act of 1949, as amended, and the CCC Charter Act, as amended. With respect to CCC loans, CCC assesses interest from the date of disbursement until repayment by the borrower. The rate of interest is the rate charged CCC by the U.S. Treasury for funds borrowed by CCC on the date a loan is disbursed by CCC. This rate is applicable to the loan until the following January 1. If the loan is outstanding as of the following January 1, the rate of interest is ajusted to the rate that is charged by the U.S. Treasury on CCC borrowings as of that date.

7 CFR 1405.1 provides that program provisions which require that the beneficial interest in a commodity must be in the producer offering the commodity for sale or as loan collateral shall not be interpreted as excluding a trustee from participating in a price support program. Since this is the longstanding position of CCC and is reflected in program contracts and regulations, it has been determined that this provision is no longer necessary. Accordingly, this proposed rule would delete this provision.

Accordingly, it is proposed that 7 CFR Part 1405 be revised as follows:

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

Sec.
1405.1 Interest.
1405.2 Basic rule of fractions.

Authority: Secs. 4 and 5 of the Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c).

§ 1405.1 Interest.

(a) *General.* Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC, interest shall be assessed as provided in this Part with respect to loans disbursed by CCC.

(b) *Rate in effect on disbursement.* The rate of interest that is applicable to CCC loans shall be equal to the rate charged by the U.S. Treasury for funds borrowed by CCC on the date the loan is disbursed by CCC. This rate of interest shall be in effect until the earlier of maturity of the loan or the next January 1.

(c) *Rate in effect as of January 1.* The rate of interest applicable to all CCC loans that are outstanding as of January 1 of any year shall be adjusted as of such date to equal the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on such date. This rate shall be in effect until the earlier of the maturity of the loan or the next January 1. The rate of interest applicable to CCC loans as of January 1 of any year shall be announced by CCC by press release or other means.

§ 1405.2 Basic rule of fractions.

Fractions shall be rounded in accordance with the provisions of 7 CFR Part 793.

Signed at Washington, DC on September 29, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–22953 Filed 10–2–87; 6.45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability; Determining Disability and Blindness Down Syndrome Evaluation

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed revisions to the medical critieria in the Listing of Impairments in Appendix 1 of Subpart P add a new Listing 110.06 to the Multiple Body Systems in Part B to provide for evaluation of Down syndrome claims according to the impairment criteria for the major system affected. These proposed changes also revise the introductory material in Listing section 110.00 to better identify what is meant by the term catastrophic congenital abnormalities or disease and to describe a level of severity which is considered sufficient to find a person disabled by these abnormalities or diseases.

DATE: Comments must be received on or before December 4, 1987.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 594–7337.

SUPPLEMENTARY INFORMATION:

Throughout this preamble and the regulatory text we refer to the subject impairment as "Down syndrome" rather than "Down's syndrome." "Down" without the apostrophe "s" is the term currently being used by the National Down Syndrome Congress and the National Down Syndrome Society and is used in several major texts on childhood disability. We proposes to provide for the evaluation of Down syndrome in the multiple body system category of impairments in Part B of the Listing of Impairments. The purpose of establishing a listing is to simplify the evaluation process, not to change how disability is determined for Down syndrome claims. Part A of the Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity, absent evidence to the contrary. Part B contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Some children with Down syndrome may be evaluated under the criteria of Listing 112.05-Mental retardation-of Part B of the Listing of Impairments. However, when mental retardation is the only impairment, we are often unable to determine the severity of Down syndrome in infants and very young children since there are no psychometric instruments which accurately measure their intellectual functioning. Consideration of the extent of the attainment of developmental milestones is generally of limited value because the attainment of milestones by severely retarded and less retarded young infants shows wide variation.

Almost all children with Down syndrome have moderate to severe neuromusculosketal abnormalities, and many have other malformations such as cardiac, gastrointestinal, oral/facial, skeletal. These abnormalities are usually less problematical than mental and developmental impairments and we believe it is more appropriate to evaluate those abnormalities under the criteria of the affected body system(s). We, therefore, propose to add a new Listing 110.06 under the Multiple Body Systems Listing § 110.00 to provide for evaluation of Down syndrome claims according to the impairment criteria for the major system affected.

We also propose to revise the introductory material in Listing section 110.00 to better identify what is meant by catastrophic congenital abnormalities or diseases and describe a level of severity which is considered sufficient to find a person disabled by these abnormalities or diseases. We have expanded the introduction by including several major congenital abnormalities that do not fall into the "catastrophic" category described in Listing 110.06. The purpose of this expansion is to simplify the evaluation process, not to change how disabilities are determined. We believe these changes will help assure greater uniformity and equity in the adjudicative process for children with conditions that usually affect more than one body system. We do not propose similar changes to Part A of the Listing of Impairments. Part A contains medical criteria generally applied to persons age 18 or over. We have experienced little difficulty evaluating claims involving Down syndrome and other congenital abnormalities or disease in adults (age 18 and over) since these claims may be readily evaluated under the criteria of the affected body system(s), e.g. mental, musculoskeletal, cardiac.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the proposed changes will have little, if any, impact on costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these proposed regulations, it promulgated, will not have a signficant economic impact on a substantial number of small entities because they primarily affect only disabled individuals who are applying for Title II or Title XVI benefits because of disability.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance

Dated: March 16, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: May 1, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 404 of Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart P of Part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), (5), (6)

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and (15) of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Listing 110.00, Multiple Body Systems, of Part B of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising the text of paragraphs A and B, by adding new paragraphs C and D by adding new Listing 110.06 to read as follows:

110.00 Multiple Body Systems

A. *The impairments included* in this section usually involve more than a single body system.

B. *Hereditary disorders* and congenital or acquired abnormalities or disease include but are not limited to conditions such as anencephaly, Tay-Sachs, phenylketonuria (PKU), Down syndrome, fetal alcohol syndrome, and severe chronic neonatal infection, as described in 110.06. This listing refers to those life-threatening and other serious hereditary, congenital, or acquired disorders that usually affect two or more body systems and are expected to be incompatible with life and result in early death or produce long-term, if not lifelong, significant interference with age-appropriate major daily or personal care activities. (Significant interference with age-appropriate activities in an infant would be considered to exist where the developmental milestone age did not exceed two-thirds of the chronological age at the time of evaluation and such interference could be expected to last at least 12 months.)

C. *Documentation* must include confirmation of a positive diagnosis by definitive laboratory tests, including chromosomal analysis where appropriate (e.g., Down syndrome), and a clinical description of the condition and the usual associated morphological features. Documentation of immune deficiency disease must be submitted and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measures of cellular immunity mediators.

D. *When multiple body system manifestations* do not meet one of the established criteria in this section, the combined impairments must be evaluated together to determine if they are equal in severity to a listed impairment.

* * * * *

110.06 *Multiple body dysfunction* due to any confirmed (see 110.00C) hereditary, congenital, or acquired condition with one of the following:

A. Persistent motor dysfunction as a result of hypotonia and/or musculoskeletal weakness and manifested by significant interference with age-appropriate major daily activities or personal care needs (in an infant such activities as head control, turning, sitting, crawling, walking, taking solids, feeding self); or

B. Mental impairment with one of the following:

1. Mental retardation as described in 112.05A or B; or

2. Resulting in the following:

a. IQ not greater than 69; or

b. Developmental milestones of not greater than two-thirds of chronological age; and

c. A physical or other mental impairment imposing additional and significant restrictions of function or development; or

C. Growth failure as described under the criteria in 100.02A or B; or

D. Significant interference with communication due to speech, hearing, or visual defect as described under the criteria in 102.00; or

E. Cardiovascular impairments as described under the criteria in 104.00; or

F. Other impairments such as, but not limited to, malnutrition, hypothyroidism, or seizures should be evaluated under the criteria in 105.08, 109.02 or 111.02 or the criteria for the affected body system.

* * * * *

[FR Doc. 87–22933 Filed 10–2–87; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–87–1341; FR–2164]

Community Development Block Grant Program; Escrow Accounts

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Department proposes to add a new section titled "Use of escrow accounts for rehabilitation of privately-owned residential propoety" to Subpart J of the Community Development Block Grant (CDBG) regulations at 24 CFR Part 570. The proposed rule would allow program recipients to use escrow accounts under certain circumstances in connection with CDBG-assisted residential rehabilitation programs.

DATES: Comments Due: December 4, 1987.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, 20410 Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul D. Webster, Director, financial Management Division, Office of Block Grant Assistance, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–1817. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Except as otherwise specifically indicated in the department's regulations in 24 CFR 570.513 (Lump sum drawdown for property rehabilitation financing), cash withdrawals by letter of credit or electronic funds transfer from the U.S. Treasury by a CDBG program recipient are required to be in accordance with U.S. Department of Treasury regulations on advances under Federal Programs (31 CFR Part 205) and OMB Circular A–102, Attachments G and J. In a recent audit, HUD's Office of Inspector General determined that some CDBG recipients may have violated U.S. Treasury Department regulations by maintaining in escrow accounts for extended time periods unnecessarily large amounts of program funds advanced from the Treasury before a real need existed to use the funds. The HUD Office of Community Planning and Development believes that the currently unregulated use of escrow accounts for residential rehabilitation is widespread among grantees.

This proposed rule is designed to ensure that where CDBG recipients use escrow accounts to fund residential rehabilitation loans and grants, the accounts are established and used in accordance with both the spirit and the letter of the above-mentioned Treasury and OMB requirements. Under these requirements—particularly 31 CFR 205.4—cash withdrawals must be timed to coincide with the actual immediate cash requirements *of the recipient* in carrying out the approved program or project. The timing of the withdrawals must be as close as is administratively feasible to actual disbursement *by the recipient* for program costs. Under the letter of these issuances, therefore, when the CDBG-assisted activity takes the form of a loan or grant by the recipient to a private property owner for rehabilitation of property by a private contractor, compliance with the Treasury/OMB cash withdrawal requirements is not to be judged in terms of when the property owner incurs costs under the rehabilitation contract, but when *the recipient* incurs the program cost for the eligible activity (the loan or grant). In this regard, the program cost is incurred by the recipient at the point that CDBG funds are required to be paid under the terms of the loan or grant agreement between the block grant recipient and the property owner.

Frequently, even typically, these rehabilitation loan or grant agreements

call for payment to the owner by means of the deposit of some or all of the loan or grant proceeds into an escrow account administered by the CDBG recipient or its agent in a private bank, to be disbursed from escrow when both the owner and the recipient are satisfied that work has been properly completed under the rehabilitation contract. Both rehabilitation contractors and property owners are pleased with this arrangement—contractors because they are assured that the money is available for payment upon the satisfactory completion of their work, and owners because they do not have to advance funds to the contractor to get the work underway, or pay a premium to a contractor who can afford to wait for payment for a longer period.

HUD recognizes that administrative convenience and cost savings to the owner, contractor, or CDBG recipient are not really material to the issue of whether Treasury/OMB grant drawdown requirements are being met, and that these requirements demand that there be an immediate cash need for each grant drawdown. Additionally, HUD recognizes that the mere inclusion of a provision regarding drawdown in the terms of a rehabilitation loan or grant contract is not sufficient, in and of itself, to justify the drawdown, since the grantee has the ability to control the terms governing the loan or grant and could use this procedure to circumvent grant drawdown requirements. Nonetheless, the Department is convinced that deposits into escrow accounts or payments to contractors of advances are necessary in many cases in order for owners of small residential properties to procure the services of rehabilitation contractors consistent with HUD or local program objectives (including the provision of opportunities for minority contractors). However, for HUD to make case-by-case determinations of need for an escrow account would be extremely time-consuming. Instead, the Department has developed criteria in this rule both to establish when escrow accounts may be regarded as necessary, consistent with Treasury-OMB guidelines, and to regulate escrow accounts to prevent unnecesary accumulation of funds.

Small, and often minority, contractors constitute a large majority of the firms that participate in CDBG-funded rehabilitation programs, and they are essential to the effective operation of these programs. The rehabilitation industry is, in fact, largely composed of such small contractors. These firms, generally operated personally by their owners as sole proprietorships, are characterized by a small number of full-time employees and an annual dollar volume of under $250,000. Generally, these are cash-basis operations working on many individual contracts averaging $15,000 or less. These firms usually do not have sufficient financial resources to carry receivables for the period of the local government's normal payment cycle. They often are either unable to obtain working capital financing or can do so only at prohibitive rates. These contractors require the timely progress essential to the operation of a CDBG rehabilitation program, particularly for smaller projects involving rehabilitation of primarily residential properties containing no more than four dwelling units, and since small contractors require very prompt payment, the use of escrow accounts in such cases serves a legitimate program need. In addition, it enhances program access by such contractors in accordance with OMB A-102, Attachment O, paragraph 9, which encourages grantor agencies to take "affirmative steps to assure that small and minority businesses are utilized when possible".

Under the proposed rule, a recipient would be permitted initially to withdraw funds from its letter of credit for deposit into an escrow account only after the property owner has executed the contract with the contractor selected to perform rehabilitation work. The terms of the rehabilitation contract between the owner and the contractor must provide expressly for payments through the escrow account. The amount of funds in the escrow account at any time must not exceed the amount the recipient expects to disturse from the account within 10 working days from the date of deposit. If the grantee has, for whatever reason, drawn down more than ten days cash needs, it shall immediately return the excess funds to its program account. In the program account, the excess funds would then be subject to the Treasury's usual rules governing erroneous drawdowns.

The rule would prohibit the use of escrowed amounts for noncontractual eligible costs, such as the recipient's administrative costs under § 570.206 or rehabilitation services under § 570.202(b)(9). The rule also would provide that interest credited to the escrow account, after deducting any service charges, will be remitted to HUD. Upon completion of the rehabilitation activities, unused funds would be required to be withdrawn from the escrow account and deposited into the recipient's program account, or, in the case of amounts over $10,000 which will not be disbursed within seven calendar days, remitted to HUD and restored to the recipient's letter of credit. Finally, the rule indicates that where a recipient fails to comply with these limitations, HUD may require the recipient to discontinue the use of escrow accounts, in addition to taking any other corrective and remedial actions that HUD may impose.

Note—The references in this preamble to OMB Circular A-102 and its attachments may be changed upon publication of a final rule because the A-102 Common Rule is currently being developed based on a revised circular. Also, references in this preamble and the rule text to other provisions of 24 CFR Part 570 may be changed upon publication of a final rule because of the pending, more comprehensive revision of Part 570 being developed. (Proposed rule published October 31, 1984, 49 FR 43852.)

Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspecion during regular business hours in the Office of Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substnatial number of small entities. The rule reflects and clarifies existing Federal requirements that govern the disbursement of funds from the U.S. Treasury advanced to recipients in this CDBG program. Accordingly, the rule would not alter contract amounts, or

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significantly affect current contracting practices relating to the use of small businesses in performing rehabilitation work.

This rule is listed as item number 1004 in the Department's Semiannual Agenda of Regulations published April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance number is 14.1218—Community Development Block Grants/Entitlement Grants.

List of Subjects in 24 CFR Part 570

Community Development block grants, Grant programs: housig and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of proverty, Small cities.

Accordingly, the Department proposes to amend 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR Part 570 would continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.511, the heading is revised and text is added to read as follows:

§ 570.511 Use of escrow accounts for rehabilitation of privatelfy owned residential property.

(a) *Limitations.* A recipient may withdraw funds from its letter of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under § 570.202(a)(1). The following additional limitations apply to the use of escrow accounts:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale commercial space within the same structure, if any, *e.g.*, a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account maintained by the recipient or its agent. No deposit to the escrow account shall be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(3) All funds withdrawn pursuant to this section by a CDBG recipient shall be deposited into one interest earning escrow account with a financial institution. The recipient shall not establish separate bank accounts for individual loans and grants. Interest shall be treated as provided for in paragraph (b) of this section.

(4) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed for all contracts for which the account has been established within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days immediate cash needs, the grantee immediately shall transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Fiscal Requirements Manual, paragraph 6–2080.30.

(5) Funds deposited into an escrow account shall not be used to pay any eligible costs related to the rehabilitation loan or grant other than actual costs of rehabilitation incurred by the owner under contract with a private contractor. For example, the recipient's administrative costs under § 570.206 or rehabilitation services costs under § 570.202(b)(9) are not permissible uses of escrowed funds, whether or not they may be related to the administration of the rehabilitation activities covered by the contracts.

(b) *Interest.* Interest earned on escrow accounts established in accordance with this section, less any service charges for the account, shall be remitted to HUD at least quarterly but not more frequently than monthly.

(c) *Remedies of noncompliance.* If HUD determines that a recipient has failed to use an escrow account in accordance with this section, HUD may, in addition to imposing any other sanctions provided for under this part, require the recipient to discontinue the use of escrow accounts.

Dated: August 7, 1987.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 87–22727 Filed 10–2–87; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) previously has published a proposed rule which would amend its regulations dealing with the permit approval provisions of the Surface Mining Control and Reclamation Act of 1977. The proposed rule would define the terms "ownership" and "control," and would change the compliance review which regulatory authorities are required to make prior to permit approval. OSMRE is now reopening and extending the comment period for the proposed rule.

DATE: The comment period on the proposed rule is reopened and extended until November 4, 1987.

ADDRESSES: Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSMRE previously has published a proposed rule which would amend its regulations dealing with the permit approval process by (1) defining the terms "ownership" and "control" as those concepts are used in the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq;* and (2) amending the scope of the compliance review which regulatory authorities are required to make prior to permit approval. The proposed rule was published in the **Federal Register** on April 5, 1985 (50 FR 13724).

The comment period for the proposed rule was reopened and extended on April 16, 1986 (51 FR 12879), and again on May 4, 1987 (52 FR 16275). Both of those notices described options being considered for the final rule that would determine the scope of the compliance review that is required to be made prior to permit issuance. OSMRE is now considering another option for the final rule for which further notice and public comment is appropriate.

OSMRE also is drafting guidelines for rebutting the presumptions contained in the options being considered and has received a request to make the current draft of the guidelines available for public comment.

In response to OSMRE's May 4, 1987 notice, a number of interesting and useful comments were received which the agency is considering for the final rule. OSMRE is therefore reopening the public comment period until November 4, 1987, to allow the commenters to see how their suggestions would be reflected in the final draft. Accordingly, OSMRE solicits comments on the option discussed below and on the draft guidelines for rebutting the presumptions contained in the definitions of "owned or controlled" and "owns or controls."

List of Subjects in 30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

OSMRE is considering adopting as the final rule the following definitions and compliance review provisions:

PART 73—[AMENDED]

1. The authority citation for Part 773 would continue to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, 16 U.S.C. 470aa *et seq.*

2. Section 773.5 would be added and § 773.15(b)(1) introductory text would be revised to read as follows:

§ 773.5 Definitions.

Owned or controlled and *owns or controls mean*—

(a)(1) Being a permittee of a surface coal mining operation;

(2) Based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

(3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership; or

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity.

§ 773.15 Review of permit applications.

* * * * *

(b) * * *

(1) Based on available information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to section 518(h) of the Act, bond forfeitures, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the regulatory authority shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or such other law, rule or regulation referred to in this paragraph. In the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to § 843.12 of this chapter or under a Federal or State program, except a notice of violation issued for nonpayment of abandoned mine reclamation fees or civil penalties, is being corrected to the satisfaction of the agency with jurisdiction over the violation. If a current violation exists, the regulatory authority shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either—

* * * * *

The above definitions and compliance review provision will not result in a substantial increase in the amount of information concerning owners and controllers that must be submitted to a regulatory authority by a permit applicant. If the option discussed in this notice is adopted as the final rule, then the information collection requirements proposed on May 28, 1987 (52 FR 20032) may be substantially reduced when that rule is promulgated.

Discussion of Rule Language

Definitions

The present option like the May 4, 1987 option contains a definition of the terms "owned or controlled" and "owns or controls" which focuses on those relationships which allow one person or entity to influence or compel compliance with the Act by another person or entity

Paragraph (a)(1) of the definition expressly includes the permittee as a controller of a surface coal mining operation. This was implicit in the two previous options but never stated.

Paragraph (a)(2) includes ownership of record in excess of 50 percent of an entity. This paragraph would cover direct owners only.

Paragraph (a)(3) includes in the definition any other relationship which gives one person authority directly or indirecly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations. This paragraph would include persons who exercise control over a surface coal mining and reclamation operation even though they may have no official title, or direct authority over a particular entity. "Any relationship" can include one between family members, a lessor and a lessee, an owner of coal and a contract miner, as well as others. Whether such relationships actually give a person authority to determine the manner in which an applicant or an operator, if other than an applicant, conducts surface coal mining operations will be determined on a case-by-case basis. In particular, OSMRE intends to scrutinize the relationships of persons who are linked to violators of the Act and to determine the persons who actually control such violators if any. Under paragraph (a)(3), no limit exists on the examination of corporate structures or the manner in which control may be established.

Paragraph (b) of the definition lists certain relationships which OSMRE will presume to constitute ownership or control unless some person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted. Under paragraph (b)(1) all officers and directors are included in this category. This is different from the May 4, 1987 option which only the chief executive officer, chief operating officer and chairman of the board were

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automatically considered to be controllers. OSMRE is proposing to allow officers to rebut the presumption of control because there may be a situation where an officer or chairman of the board does not in fact exercise control.

Paragraph (b)(2) establishes a presumption of control for the operator of a surface coal mining operation. The presumption was included because in some instances, a person other than the operator could possibly be exercising control over the surface coal mining operation.

Paragraph (b)(3) establishes a presumption of control for anyone having the ability to commit the financial or real property assets or working resources of an entity. OSMRE considers such an ability a sufficient indication to imply control.

Paragraph (b)(4) establishes a presumption of control for a general partner in a partnership. OSMRE proposes to establish a presumption of control for general partners because in most instances a general partner is authorized to cause the partnership to act. However, in certain cases, it is possible that an individual partner may not control the partnership.

Paragraph (b)(5) of the definition contains presumptions of control for owners of less than a majority interest. Ownership of record of 10 through 50 percent would result in a presumption of control unless some person can demonstrate that the person to whom the definition applies cannot exercise control. Setting 10 percent as the minimum level for the presumption would be consistent with section 507(b)(4) of the Act which requires permit applicants to submit information on all record owners of greater than 10 percent. The Act does not require regulatory authorities to consider persons owning of record less than 10 percent of the applicant when reviewing the permit application.

The proposed definition reflects the purpose for which the Congress enacted section 510(c). Where an applicant has a current violation, under section 510(c) the regulatory authority cannot approve a permit unless the applicant takes remedial action and then "submits proof that such violation has been corrected or is in the process of being corrected * * *." Thus, by its own terms the purpose of section 510(c) is to prevent the issuance of new permits to parties ultimately responsible for operations currently in violation of the Act or a wide range of other environmental requirements. The proposed definitions would provide an effective inducement to permit applicants and their owners and controllers to correct violations by including within the permit review persons in a position to have such violations corrected.

In order to speed decisions on permit applications, OSMRE intends to establish guidelines by which OSMRE and State regulatory authorities can make determinations on whether individuals who seeks to rebut the presumption of control contained in paragraph (b) have done so adequately. These guidelines will not be a part of the final rule because OSMRE expects them to undergo continual refinement as OSMRE and the State Regulatory authorities gain experience in applying the definitions during the permit approval process.

Section 773.15(b)(1) Compliance Review Provision

As originally proposed, this option would have required that the regulatory authority make a finding that any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant is not currently in violation of the Act or in violation of any Federal law, rule or regulation pertaining to air or water environmental protection. To assist the regulatory authority, proposed § 773.15(b)(1) would include a list of the violations upon which the regulatory authority would base its compliance review. The list includes Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to section 518(h) of the Act, bond forfeitures, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules and regulations pertaining to air or water environmental protection related to surface coal mining operations. The proposed provision would track section 510(c) of the Act by preventing issuance of permits when violations currently exist, but would no longer require a finding by the regulatory authority.

OSMRE is proposing to block issuance of permits on the basis of all bond forfeitures, both interim and permanent program. OSMRE specifically seeks comments on the equity of this proposal, particularly in instances where reclamation of the site on which the bond was forfeited has been completed.

The proposed rule also contains a presumption concerning notices of violations. It states that in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation, except for a notice of violation issued for nonpayment of abandoned mine reclamation fees or civil penalties, is being corrected to the satisfaction of the agency with jurisdiction over the violation. The intent of this provision is to provide a more accurate description of the stage at which a violation is considered unabated when performing the review required by section 510(c), while still requiring that money owed the government is paid in a timely fashion.

Until such time as OSMRE adopts final definitions for "ownership" and "control" and revises 30 CFR 773.15(b)(1), OSMRE will continue to process permit applications according to the requirements set out in paragraphs 1 through 3 of the Court Order issued in the case of *Save Our Cumberland Mountains, Inc., et al v. Clark,* Civil Action No. 81–2134 (D.D.C. 1985). Those are the criteria OSMRE has been following since the Court Order was issued on January 31, 1985.

Guidelines for Rebutting Presumptions

Under the proposed definition of "owned or controlled" and "owns or controls," certain relationships would be presumed to constitute ownership or control. To rebut the presumptions, a person in such a relationship would have to submit to the regulatory authority clear and convincing evidence to the contrary. While the content and form of this evidence would depend on the particular circumstances in each case, OSMRE is considering the adoption of advisory guidelines for use by regulatory authorities and affected persons on the type of evidence that in most instances would be sufficient to rebut the presumptions.

The draft guidelines OSMRE currently is considering specify the following circumstances as evidence to rebut the presumtion:

(a) The corporate charter, bylaws, articles of incorporation, or other legal instrumentalities establishing the mechanisms or processes by which the entity carries out its business, specifically prohibits by name or title the individual from compelling action to abate the violation or pay penalties or other financial assessments remaining unpaid and no evidence exists to the contrary.

(b) That the ability of the individual seeking to rebut control is legally prohibited from undertaking any or all of the actions indicated above and in fact cannot do so.

(c) Based on other evidence, the individual cannot, or could not at the

time the violation occurred, cause the entity to perform the actions mentioned above.

To document this evidence, the draft guidelines provide that the individual seeking to rebut the presumption should submit to the regulatory authority the following information:

(1) Copies of the charter, bylaws, articles of incorporation or other legal instruments which clearly establish that the individual is not a controller of the entity. Specific citations and reference should be made and a legal opinion of the corporation counsel or legal advisor attesting to the legal sufficiency of the claim of non-control should accompany the documentation.

(2) If non-control is being attributed to a legal prohibition, copies of the statute or statutes cited together with a copy of a legal opinion from the corporation counsel or other legal advisor attesting to the legal sufficiency of the statute or statutes for establishing a position of non-control.

(3) Affidavits or notarized personal statements describing actions taken by the individual or group of individuals seeking to rebut the presumption of control which clearly indicate what action the individual has taken to compel the entity to correct the violation or pay the debt owed. The affidavit or personal statement should be specific as to times, places and actions taken.

As these guidelines are only at a draft stage, OSMRE solicits comments on alternative or additional guidelines that might be adopted for rebutting the presumptions established by the definition. For example, the assets of a corporate parent and its subsidiary may be relevant in determining whether a parent or its officers lacks control of the subsidiary. Or publicly held entities might be evaluated differently from those which are privtely held.

As noted previously, the guidelines will be advisory only. They will not be adopted as regulations or otherwise be included in the final rule. OSMRE has decided no this approach to give regulatory authorities adequate discretion to evaluate the presumptions in each case in a way that best will achieve the purposes of the Act.

Date: October 1, 1987.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-23039 Filed 10-2-87; 8:45 am]

BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM85-4A]

Registration of Claims to Copyright; Registration and Deposit of Databases Proposed Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed regulations.

SUMMARY: The Copyright Office of the Library of Congress issues this notice to advise the public that it is considering adopting a new regulation that would permit group registration of an automated database, including revisions and updates, 37 CFR 202.3(b)(4), and would make changes in existing regulations for the registration and deposit of databases. The proposed amendments would implement a portion of section 408 of the Copyright Act of 1976, title 17 of the U.S. Code. This section embodies the deposit requirements for copyright registration. These amendments would not only formalize the procedure now being used by the Copyright Office for the deposit and registration of databases but would also permit the group registration of a single database and revisions and updates of the database, even though published at different times.

DATES: All comments should be received on or before December 4, 1987.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Under the Copyright Act of 1976, Title 17, U.S. Code, copyright may ordinarily subsist in an automated database either as an original compilation or as some other original work of authorship. Databases provide special problems for copyright deposit and examination, however, because many of them are constantly changing or the updates may consist of small increments of information. To the extent the basic database and the updates are copyrightable, questions arise as to how best to register the claims.

Under current practice, the Office essentially allows the claimant to determine how frequently to register updates of a database, but does not allow grouping of separately published updates on a single registration. Special relief provisions already provide some flexibility in deposit requirements. *See* H.R. Rep. 94-1476, 94th Cong., 2d Sess. 151 (1976). The specific provision relating to the registration of machine-readable databases is found in 37 CFR 202.20(c)(2)(vii)(B), while the special relief provision is § 202.20(d).

Pursuant to 17 U.S.C. 103, "copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material."

The Copyright Act of 1976 encourages registration by conferring special benefits on the registrant. Registration is a prerequisite to suit, 17 U.S.C. 411(a); if the registration is made before publication or within five years of first publication, the certificate of registration is *prima facie* evidence of the facts it states and of the validity of the copyright, 17 U.S.C. 410(c); and by registering the work within three months of the publication, the copyright owner preserves the right to claim statutory damages and discretionary counsel fees. 17 U.S.C. 412.

Section 408 of the statute requires deposit of material in connection with applications for copyright registration of unpublished and published works. Subsection 408(c)(1) authorizes the Register of Copyrights to specify classes into which works may be placed for purposes of deposit and registration. One of the alternatives is "a single registration for a group of related works."

When the Copyright Office issued its 1978 deposit regulations, several comments requested special provisions for group registration of revisions and updates of automated databases. 43 FR 763 (Janaury 4, 1978). At that time the Office invited further comments and suggestions as to the type of related works that could be covered by group registration and the deposit and registration requirements applicable in those cases. The possibility of providing for "a single registration for a group of related works," however, was "reserved for implementation in a separate proceeding," if any. 43 FR 965 (Janaury 5, 1978). Whether to allow any group registrations is discretionary with the Copyright Office except in the case of certain published contributions to

periodicals, 17 U.S.C. 408(c), and the Office has elected not to exercise this discretionary authority to date.

On February 14, 1985 (50 FR 6208), the Copyright Office requested public comment on proposed amendments to the regulations governing deposit. In their response to this request, the Association of American Publishers (AAP) and the Information Industry Association (IIA) commented specifically on the deposit and registration of databases. AAP stated that the Copyright Office should develop regulations to meet the problems of deposit for dynamic databases subject to regular revision, expansion, or other change. AAP proposed regulations that would permit a single "group" registration for varying versions (enhancements, updates, and other modifications) of a database, and related databases, published within a twelve-month period, or any lesser period within twelve months, on the basis of a single deposit and application. AAP also urged that deposit material reflect reasonable portions of output, rather than "raw data" or the like, and that the Office should relax deposit requirements in the case of successively ("group") registered revisions.

IIA also proposed the addition of a new regulation that would permit group registration of databases if certain conditions are met. The group registration would require that works have the same copyright claimant, the same general title, and similar general content, including subject and organization. If the works are published, each must bear a separate copyright notice as first published and have the same copyright owner, and the work or works must be first published within three months prior to registration.

IIA suggested that the deposit for databases cannot serve as documentation of the complete identity of the work's content, either to show the extent of registration or the entirety of the work. IIA recommended that relevant evidence in the examination of authorship would be documentary evidence of the continuing process of creation, hard copy extracts (for example, the first and last 25 pages), and the same direct online access as is offered the customer.

IIA also advocated the use of special relief that would allow the Register of Copyrights to "permit the deposit of identifying material which does not comply with § 202.21 of these regulations."

On June 10, 1985 (50 FR 24240), the Copyright Office published a Notice of Inquiry inviting public comment on the depo it requirements for machine-readable databases including revisions and derivative works based upon previously registered databases.

In response to this Notice of Inquiry, seven commentators submitted letters to the Copyright Office. Having reviewed both the original proposals and the comments, the Copyright Office has decided to propose group registration of certain databases and their updates. It invites comments on the details of the registration and deposit proposals.

1. Group Registration for Automated Databases

As noted in the original IIA proposal, 17 U.S.C. 408(c)(1) authorizes the Register of Copyrights "to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration * * *. The regulations may require or permit * * * a single registration for a group of related works." Five of the commentators supported the group registration of databases; three emphasized the burden of registering under the present regulations, which require multiple registrations for dynamic databases. One commentator noted the virtual impossibility of registering their daily updates under the present regulations. The attorney for the Online Computer Library Center (OCLC) emphasized the uncertainty of what is covered in the OCLC registrations, which are currently made on a monthly basis.

Three responses addressed what the minimum frequency period should be for the registration of group works. Initially IIA had supported a three month period on the grounds that it would "(1) spur claimants to register as soon as possible, so as to retain all of the remedies provided by the statute and (2) avoid unnecessary confusion, because three months is a period already of significance under the Act as the grace period under Section 412(2) for preserving all remedies for published works." AAP maintained its earlier position that called for a twelve-month registration period but noted that those who wished to register at three-month intervals should be permitted to do so. Dunn and Bradstreet also endorsed the twelve-month registration period.

On the basis of the comments received and its own analysis of the issues, the Copyright Office has concluded that it should permit a single group registration for varying updates of a database over a three month period of time. This group registration would be limited to a single automated database and its updates. The Copyright Office finds that sufficient factors such as size, complexity and technological characteristics, exist to distinguish the automated database from other groups of related works and that these factors justify group registration for automated databases under a certain set of facts, at least on an experimental basis. The Office has selected the three month registration period to encourage earlier registration, to be consistent with other statutory provisions in the nature of a grace period, and to keep the scope of the registration within manageable proportions for purposes of judicial review. Of course, claimants may elect to apply for group registration of databases more frequently than at three-month intervals. However, if claimants seek registration of updates covering more than a three-month period, then they cannot avail themselves of the group registration option, although they could register as a single work a particular version of a database on a given day.

The Copyright Office remains concerned about the administrative costs of processing and examining related works for a single fee. It will monitor the experience with database registrations under any final regulations and revisit the issue as necessary. Because of the serious concerns about processing costs and administrative burdens in the case of group registrations, the Office will apply the database regulation narrowly and will not now apply its discretionary authority to other related works.

The Office does not propose a special fee for group registration of a database and its updates. The normal $10 application filing fee applies.

2. Deposit Based on Reasonable Portions of Output

Under current regulations governing registration for a single-file database, applicants deposit "one copy of identifying portions of the work reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform." In practice, "identifying portions" is equivalent to the first and last 25 pages.

Deposit for a multi-file database calls for representative portions of each file—50 data records or the entire file, whichever is less, plus a descriptive statement containing: The title of the database; the name and address of the copyright claimant; the name and content of each separate file within the database, including subject matter, origin of data and number of separate records within each file; for published databases, a description of the exact contents of any machine-readable

copyright notice used in or with the database (plus manner and frequency of display) and a sample of any visually perceptible copyright notice affixed to the copies or container. In the case of registration for revisions of a previously registered database, the required representative portions shall reflect the copyrightable changes.

The commentators urged that the Office not require the database deposit to serve as documentation of the complete identity of the work's content, either to show the extent of registration or the entirety of the work. Three commentators agreed with the IIA position that the focus of the deposit requirements should be on a deposit that would enable the Copyright Office to determine copyrightability. They agreed that a simplified deposit of identifying portions, *e.g.*, the first and last 25 pages of a printout, should be sufficient.

The commentators did not agree, however, whether the deposit of identifying portions should disclose the raw data itself, or should reflect the "output" of the database.

With respect to updates, three commentators urged that the deposit should consist of a "descriptive statement" which incorporates by reference the material representations made to the Office at the time of the original registration. Then these commentators suggested that subsequent deposits should consist of new identifying material or a statement that the prior material is still representative of the database.

The Copyright Office has concluded, however, that the existing requirements for single, multi-file, and revised databases should not be reduced in the case of group registration of databases. The Office finds that, in order to determine copyrightability and develop an adequate administrative record for judicial review, it needs as much deposit material for the group registration of a database and its updates as it now receives for individual registration of databases. In summary these deposit materials are: (1) For a single-file database, one copy of identifying portions of the work reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform; (2) for a multiple-file database or revised database, representative portions showing copyrightable content, accompanied by the requisite descriptive statement.

The Office therefore proposes to establish essentially a unform set of deposit requirements, whether database registration is sought on a group basis, pursuant to the proposed new regulations, or is sought only for a given day's verision of the database. The Office proposes to maintain the existing regulations, recast in form and modified as follows:

(1) For a revised database, the deposit material would be marked to show representative copyrightable changes and the descriptive statement would show the location generally of the remaining copyrightable changes, not disclosed in the deposit;

(2) For group registrations, the claimant would select a representative creation or publication date, depending on whether the work is unpublished or published, and deposit accordingly.

Current practice permits registration of encoded databases without a key or explanation of the code under the rule of doubt upon receipt of the copyright owner's written confirmation that the work as deposited represents copyrightable authorship. This practice will be maintained.

If an applicant is unable or unwilling to meet the deposit requirements because if trade secrets contained in the work, the applicant can request special relief from these requirements.

Those who responded to the Notice of Inquiry did not address the special relief issue. In its original proposal of March 29, 1985, IIA supported adding an amendment to § 202.20 stating that the Register may "permit the deposit of identifying material which does not comply with § 202.21 of these regulations."

Section 202.21 establishes the general requirements for the deposit of identifying material instead of copies. In 1986, the special relief provision, § 202.20(d), was amended to allow waiver of the identifying material standards. 51 FR 6402. The special relief regulation provides sufficient recourse or those who are unable or unwilling to meet the deposit requirements. The Copyright Office will continue to consider special relief for databases that cannot meet the ordinary deposit requirements.

3. Copyrightability of Database Updates

For the typical automated database, consisting of a large volume of information or data, the Copyright Office can generally determine without much difficulty that the initial form or version of the database is a copyrightable work of original authorship. The determination that subsequent updates are also original works of authorship cannot be so readily made. Several different types of databases exist. Updates vary in content, nature, and frequency. In *Financial Information, Inc. v. Moody's Investor Service, Inc.*, 751 F.2d 501 (2d Cir 1984), 808 F.2d 204 (2d Cir. 1986), the Second Circuit held that the daily updates of bond rating information were not copyrightable.

In proposing group registration of automated databases and their copyrightable updates, the Copyright Office recognizes that it cannot determine by examination that each update in the group of upates registered at three months intervals is copyrightable at every point in time when information is added to the basic database. The Office seeks, however, to assure that *representative* portions of the changing database are deposited which disclose adequately the copyrightable content of the changes. The Office also provides in this proposal that the updates occurring within the three month period should be submitted for group registration only if they are individually copyrightable, that is, if each daily or less frequent update meets the statutory standard of original work of authorship.

Undoubtedly, this first administrative regulation of group registration is experimental. The Office will continue to monitor the emerging decisional law with respect to automated databases, will evaluate the administrative experience under any final regulation, and will reconsider the proper scope of, and conditions for, group registration of databases as appropriate.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

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[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]." except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

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List of Subjects in 37 CFR Part 202

Registration of claims to copyright. Claims to copyright, Copyright registration.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 202 of 37 CFR, Chapter II.

PART 202—[AMENDED]

1. The authority citation for Part 202 would continue to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.19, 202.20 and 202.21 are also issued under 17 U.S.C. 407 and 408.

2. Section 202.3(b)(4) would be revised to read as follows:

§ 202.3 [Amended]

* * * * *

(b) * * *

(4) Group registration of automated databases.

(i) Pursuant to the authority granted by section 408(c)(1) of Title 17 of the United States Code, the Register of Copyrights has determined that a single registration, on the basis of a single application, deposit, and registration fee, may be made for automated databases and their updated, copyrightable versions if all of the following conditions are met:

(A) In cases where a database (or updates thereof), if unpublished, are fixed, or if published are published only in the form of machine-readable copies:

(*1*) All of the updates are owned by the same copyright claimant;

(*2*) All of the updates have the same collective title;

(*3*) All of the updates are similar in their general content, including their subject;

(*4*) All of the updates are similar in their organization;

(*5*) Each of the updates, if published, bore a separate copyright notice as first published and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice;

(*6*) Each of the updates, if published, was first published within a three-month period;

(*7*) Each of the updates, if unpublished, was created within a three-month period;

(*8*) The deposit accompanying the application complies with § 202.20(c)(2)(vii)(B).

(*B*) [Reserved for works other than automated databases].

(ii) Registration may be made for both a database published on a single date and for subsequent copyrightable updates of the earlier material, including added, incremental updates. An application for group registration of automated databases under section 408(c)(1) of Title 17 and this subsection shall consist of:

(A) A basic initial application for registration of an automated database on Form TX, which shall contain the information required by the form and its accompanying instructions;

(B) In the case of updates of a previously registered automated database, an adjunct form prescribed by the Copyright Office and designated "Adjunct Application for Registration of Updates of Automated Databases" (Form GR/DB), which shall contain the information required by the form and its accompanying instructions and shall comply with all the conditions of this subsection;

(C) A filing fee of $10; and

(D) The deposit required by § 202.20(c)(2)(vii)(B).

3. Section 202.20(c)(2)(vii)(B) would be revised to read as follows:

§ 202.20 [Amended]

* * * * *

(c) *Nature of required deposit.*

(1) * * *

(2) * * *

(vii) * * *

(B) For published and unpublished automated databases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes:

(*1*) "Identifying portions" shall generally mean either the first and last 25 pages or equivalent units of the work if reproduced on paper or in microform.

(*2*) "Data file" and "file" shall mean a group of data records pertaining to a common subject matter regardless of their size or the number of data items in them.

(*3*) If the work is an automated database comprising separate or distinct data files, "identifying portions" shall instead consist of 50 complete data records from each data file or the entire data file, whichever is less, and the descriptive statement required by paragraph (c)(2)(vii)(B)(*4*).

(*4*) In the case of a revised or updated version of a database, the claimant shall deposit identifying portions that contain 50 representative pages or equivalent units, or representative data records, which have been marked to disclose the copyrightable revisions added on at least one representative publication date if published or one representative creation date, if unpublished, and shall also deposit a brief typed or printed descriptive statement containing the notice of copyright information required under "(5)" or "(6)" immediately below and:

(*i*) The title of the database;

(*ii*) A subtitle, date of creation or publication, or other information, to distinguish any separate or distinct data files for cataloging purposes;

(*iii*) The name and address of the copyright claimant;

(*iv*) For each separate file, its name and content, including its subject, the origin(s) of the data, and the approximate number of data records it contains; and

(*v*) In the case of a revised or updated version of an automated database, information as to the nature and frequency of changes in the database and some identification of the location within the database or the separate data files of the copyrightable changes.

(*5*) For a copyright notice embodied in machine-readable form, the statement shall describe exactly the visually perceptible content of the notice which appears in or with the database, and the manner and frequency with which it is displayed (*e.g.*, at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.).

(*6*) If a visually perceptible copyright notice is placed on any copies of the work (or on magnetic tape reels or containers therefor), a sample of such notice must also accompany the statement.

* * * * *

Dated: September 17, 1987.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 87-22958 Filed 10-2-87; 8:45 am]

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VETERANS ADMINISTRATION

38 CFR Part 3

Improvements in Veterans' Benefits

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations to improve and extend eligibility for certain veterans' benefits. These amendments are necessary because the Veterans'

Benefits Improvement and Health-Care Authorization Act of 1986 changed the eligibility and entitlement criteria for those benefits. The effect of these amendments will be the addition of new presumptively service-connected disabilities for former prisoners of war, improvement in compensation payable for certain multiple disabilities, exclusion of certain income in computing pension entitlement, extension of eligibility for special home adaptation grants and a change in the effective date of reduction for certain hospitalized incompetent veterans. Additional amendments are also proposed to implement opinions of the VA General Counsel and a settlement agreement.

DATES: Comments must be received on or before November 4, 1987. Comments will be available for public inspection until November 18, 1987. It is proposed to make these amendments effective October 28, 1986, with the exception of the amendments to 38 CFR 3.309(c) which are proposed to be effective October 1, 1986, as provided by law, and the amendments to 38 CFR 3.22, 3.23, 3.271, 3.272 (h) and (m), and 3.557(c) and 3.800 which are proposed to be effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, Room 132 at the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until November 18, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99–576) made several changes in eligibility and entitlement criteria for certain veterans' benefits. The changes made by the law are set forth below, together with the proposed regulatory amendments implementing those changes.

Section 108 of the law added two disabilities to the list of conditions in 38 U.S.C. 312(b) presumed to be service-connected for former prisoners of war in the absence of affirmative evidence of some other post-service cause. Those disabilities are post-traumatic osteoarthritis and organic residuals of frostbite. The latter disability may be service-connected only if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite. We propose to add these two disabilities to the list of presumptively service-connected diseases for former prisoners of war contained in 38 CFR 3.309(c).

Section 109 of the law amended 38 U.S.C. 360 to provide for special consideration in certain cases of loss of paired organs or extremities. This change authorizes the payment of compensation for five specific combinations of service-connected and nonservice-connected disabilities in the same manner as if both disabilities were service-connected, as long as the nonservice-connected disability was not the result of the veteran's own willful misconduct. The disability combinations are (1) service-connected blindness of one eye and nonservice-connected blindness of the other eye; (2) service-connected loss or loss of use of one kidney and nonservice-connected involvement of the other kidney; (3) service-connected total deafness in one ear and nonservice-connected total deafness in the other ear; (4) service-connected loss or loss of use of one hand or foot and nonservice-connected loss or loss of use of the other hand or foot; and, (5) permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung. The fourth disability combination noted above previously afforded entitlement to special monthly compensation under 38 U.S.C. 314(t) which has been repealed.

Section 109 also amended 38 U.S.C. 360 to include an offset provision whereby an award of money or property of value pursuant to a judicial proceeding based on, or a settlement or compromise of, any cause of action for damages for the entitling nonservice-connected disability would be recovered through withholding of compensation. A similar offset provision was in effect for entitlement under 38 U.S.C. 314(t) and is being continued with respect to the fourth disability combination under 38 U.S.C. 360. For the remaining disability combinations the offset provisions apply only with respect to awards of compensation made on or after October 28, 1986.

We propose to implement the provisions of section 109 of the law by appropriately amending 38 CFR 3.383 to incorporate the new entitlement criteria and offset provisions. We are also adding, as we have with other offset provisions, separate paragraphs providing an exemption from offset for social security and workers' compensation, and an affirmative duty for veterans to report the receipt of money or property resulting from judgments, settlements or compromises involving the entitling nonservice-connected disabilities. We also propose to delete 38 CFR 3.384 because the statutory authority for that section has been repealed, and veterans entitled under that section will now be entitled under § 3.383.

In an opinion on a related matter, the VA General Counsel has held that the offset provisions applicable to compensation awards under 38 U.S.C. 351 do not apply to any portion of such benefits that represent payment for periods prior to the month following the date on which a separate judgment, settlement or compromise became final. Since the offset provisions of 38 U.S.C. 351 are similar to those under 38 U.S.C. 360 (as amended) and 410(b), we propose to amend 38 CFR 3.22, 3.383 and 3.800 to include clarifying language that retroactive benefits for periods prior to the month following the date of receipt of money or property pursuant to an applicable judgment, settlement or compromise are not subject to offset.

Section 205 of the law amended 38 U.S.C. 618 to recharacterize monies received as a result of participation in a therapeutic or rehabilitation activity as a distribution of funds rather than as payment or remuneration. Section 205 also excluded such distributions of funds from inclusion as income in determining pension entitlement. To implement these changes we propose to amend 38 CFR 3.342(b)(4)(ii) and 3.343(c) to incorporate the recharacterization of monies received, and we propose to provide for the income exclusion by adding a new paragraph (l) to 38 CFR 3.272.

Section 401 of the law amended 38 U.S.C. 801(b)(1) to provide eligibility for special home adaptation grants to assist certain severely disabled veterans in acquiring residences that were already adapted with special features determined to be necessary because of disability. These grants were previously available only for adding special features to a previously unadapted residence. We propose to implement this extension of eligibility by amending 38 CFR 3.809a.

Section 503 of the law amended 38 U.S.C. 3012 to provide a new effective date for discontinuance of benefits to certain incompetent veterans. Under 38 U.S.C. 3203, benefits must be

discontinued when an institutionalized incompetent veteran, without dependents, has an estate which equals or exceeds $1,500. The new law establishes the effective date of such discontinuance as the last day of the month of admission or the last day of the month in which the veteran's estate equals or exceeds $1,500, whichever is later. To implement this change we propose to amend 38 CFR 3.557(d) and 3.501(i).

We are also proposing to amend 38 CFR 3.557(c) to indicate that the value of an incompetent veteran's estate will be computed under the provisions of 38 CFR 13.109. This change will place all of the factors to be considered in estate computation into one regulation for ease of administration.

As part of a stipulation for dismissal in the case of *United States* v. *Harriet Hawk*, the VA agreed to initiate rulemaking procedures to define the term "hardship" as used in 38 U.S.C. 541(g). That section of law provides for exclusion of a child's available income in determining a surviving spouse's pension entitlement if the inclusion of the income would work a hardship on the surviving spouse. A similar exclusion is available under 38 U.S.C. 521(h) in determining pension entitlement for a disabled veteran.

To implement this agreement we propose to amend 38 CFR 3.23(d) to define the term "hardship" as existing when annual expenses for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement. Guidance is also provided with respect to the terms "expenses for reasonable family maintenance" and "reasonable availability" of a child's income. We also propose to amend 38 CFR 3.272 by adding a new paragraph (m) to provide for exclusion from a child's available income an amount sufficient to meet that hardship.

In another opinion the VA General Counsel has held that where a surviving spouse's claim for death pension is received more than 45 days after the date of the veteran's death, thus limiting the effective date of an award to date of claim, expenses of the veteran's last illness, burial and just debts which were paid by the surviving spouse after the date of death but before the date of entitlement are not deductible from the surviving spouse's annual income for pension purposes. We propose to implement this opinion by amending § 3.272(h) to state that expenses paid during such period are not deductible in computing pension entitlement. We are also taking this opportunity to revise the language of that section and also § 3.271 to substitute the term "12-month annualization period" for the term "calendar year" since income determinations for improved pension are not on a calendar year basis.

In reviewing § 3.272 for the above opinion, the VA General Counsel also noted that paragraph (h)(1)(i) incorrectly, and in excess of statutory authority, provided that the expenses of a veteran's last illness which were paid by a veteran's child prior to the death of the veteran could be deducted from the income of the child for death pension purposes. Under 38 U.S.C. 503(a)(3) that deduction is available only for a surviving spouse. Accordingly, we propose to amend § 3.272(h)(1)(i) to delete the words "or child" each place they appear.

Executive Order 12291

In accordance with Executive Order 12291, Federal Regulation, we have determined that these regulatory amendments are nonmajor for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act (RFA)

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance program numbers are 64.100 through 64.110)

Approved: September 2, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, ADJUDICATION, is proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.22 paragraph (b) is revised by adding a sentence and an authority citation at the end to read as follows:

§ 3.22 Benefits at DIC rates in certain cases when death is not service-connected.

* * * * *

(b) * * * The provisions of this paragraph do not apply, however, to any portion of such benefits payable for any period preceding the end of the month in which such money or property of value is received.

(Authority: 38 U.S.C. 210(c))

* * * * *

2. In § 3.23, new paragraph (d)(6) is added to read as follows:

§ 3.23 Improved pension rates—Veterans and surviving spouses.

* * * * *

(d) * * *

(6) *Reasonable availability and hardship.* For the purposes of paragraphs (d)(4) and (d)(5) of this section, a child's income shall be considered "reasonably available" when it can be readily applied to meet the veteran's or surviving spouse's expenses necessary for reasonable family maintenance, and "hardship" shall be held to exist when annual expenses necessary for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement. "Expenses necessary for reasonable family maintenance" include expenses for basic necessities (such as food, clothing, shelter, etc.) and other expenses, determined on a case-by-case basis, which are necessary to support a reasonable quality of life.

(Authority: 38 U.S.C. 210(c))

3. In § 3.271, paragraphs (a), (e) and (f) are revised to read as follows:

§ 3.271 Computation of income.

(a) *General.* Payments of any kind from any source shall be counted as income during the 12-month annualization period in which received unless specifically excluded under § 3.272.

(Authority: 38 U.S.C. 210(c))

* * * * *

(e) Installments. Income shall be determined by the total amount received

or anticipated during a 12-month annualization period.

(Authority: 38 U.S.C. 210(c))

(f) *Deferred determinations.* When an individual is unable to predict with certainty the amount of countable annual income, the annual rate of improved pension shall be reduced by the greatest amount of anticipated countable income until the end of the 12-month annualization period, when total income received during that period will be determined and adjustments in pension payable made accordingly.

Authority: 38 U.S.C. 210(c))

4. In § 3.272 the introductory text, paragraphs (g) introductory text, (g)(1)(iii), (g)(2)(iii), (g)(3), (h) introductory text, and (h)(1)(i) are revised, and paragraphs (l) and (m) are added to read as follows:

§ 3.272 Exclusions from income.

The following shall be excluded from countable income for the purpose of determining entitlement to improved pension. Unless otherwise provided, expenses deductible under this section are deductible only during the 12-month annualization period in which they were paid.

(Authority: 38 U.S.C. 210(c))

* * * * *

(g) *Medical expenses.* Within the provisions of the following paragraphs, there will be excluded from the amount of an individual's annual income any unreimbursed amounts which have been paid within the 12-month annualization period for medical expenses regardless of when the indebtedness was incurred. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate, or after the end of the 12-month annualization period upon receipt of an eligibility verification report.

(Authority: 38 U.S.C. 210(c))

(1) * * *

(iii) They were or will be in excess of 5 percent of the applicable maximum annual pension rate or rates for the veteran (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid.

(2) * * *

(iii) They were or will be in excess of the applicable maximum annual pension rate or rates for the spouse (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid.

(Authority: 38 U.S.C. 210(c))

(3) *Children's income.* Unreimbursed amounts paid by a child for medical expenses of self, parent, brothers and sisters, to the extent that such amounts exceed 5 percent of the maximum annual pension rate or rates payable to the child during the 12-month annualization period in which the medical expenses were paid.

(Authority: 38 U.S.C. 210(c))

(h) *Expenses of last illnesses, burials and just debts.* Expenses specified in paragraphs (h)(1) and (h)(2) of this section which are paid during the calendar year following that in which death occurred may be deducted from annual income for the 12-month annualization period in which they were paid or from annual income for any 12-month annualization period which begins during the calendar year of death, whichever is to the claimant's advantage. Otherwise, such expenses are deductible only for the 12-month annualization period in which they were paid. Any such expenses paid subsequent to death but prior to date of entitlement are not deductible.

(Authority: 38 U.S.C. 210(c))

(1) * * *

(i) Amounts paid by a spouse before a veteran's death for expenses of the veteran's last illness will be deducted from the income of the surviving spouse.

(Authority: 38 U.S.C. 503(a)(3))

* * * * *

(l) *Distributions of funds under 38 U.S.C. 618.* Distributions from the Veterans Administration Special Therapeutic and Rehabilitation Activities Fund as a result of participation in a therapeutic or rehabilitation activity under 38 U.S.C. 618 shall be considered donations from a public or private relief or welfare organization and shall not be countable as income for pension purposes.

(Authority: 38 U.S.C. 618(f))

(m) *Hardship exclusion of child's available income.* When hardship is established under the provisions of § 3.23(d)(6) of this part, there shall be excluded from the available income of any child or children an amount equal to the amount by which annual expenses necessary for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement computed without consideration of this exclusion. The amount of this exclusion shall not exceed the available income of any child or children, and annual expenses necessary for reasonable family maintenance shall not include any expenses which were considered in determining the available income of the child or children or the countable annual income of the veteran or surviving spouse.

(Authority: 38 U.S.C. 521(h), 541(g))

5. In § 3.309, the list in paragraph (c) and the authority citation for the section is revised to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(c) *Diseases specific as to former prisoners of war.*

* * * * *

Avitaminosis
Beriberi (including beriberi heart disease)
Chronic dysentery
Helminthiasis
Malnutrition (including optic atrophy associated with malnutrition)
Pellagra
Any other nutritional deficiency
Psychosis
Any of the anxiety states
Dysthmic disorder (or depressive neurosis)
Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite
Post-traumatic osteoarthritis

(Authority: 38 U.S.C. 210(c))

6. In § 3.342, paragraph (b)(4)(ii) is revised to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(b) * * *

(4) * * *

(ii) Participation in, or the receipt of a distribution of funds as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618.

(Authority: 38 U.S.C. 618(f))

* * * * *

7. In § 3.343, the last sentence in paragraph (c)(1) is revised to read as follows:

§ 3.343 Continuance of total disability ratings.

* * * * *

(c) Individual unemployability. (1) * * * Neither participation in, nor the receipt of a distribution of funds as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C.

618 shall be considered evidence of employability.

(Authority: 38 U.S.C. 618(f))

* * * * *

8. Section 3.383 is revised to read as follows:

§ 3.383 Special consideration for paired organs and extremities.

(a) Entitlement criteria. Compensation is payable for the combinations of service-connected and nonservice-connected disabilities specified in paragraphs (a)(1) through (a)(5) of this section as if both disabilities were service-connected, provided the nonservice-connected disability is not the result of the veteran's own willful misconduct.

(1) Blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of nonservice-connected disability.

(2) Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.

(3) Total deafness in one ear as a result of service-connected disability and total deafness in the other ear as a result of nonservice-connected disability.

(4) Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.

(5) Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

(b) *Effect of judgment or settlement.* (1) If a veteran receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the nonservice-connected disability which established entitlement under this section, the increased compensation payable by reason of this section shall not be paid for any month following the month in which an such money or property is received until such time as the total amount of such increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received. The provisions of this paragraph do not apply, however, to any portion of such increased compensation payable for any period preceding the end of the month in which such money or property of value was received.

(2) With respect to the disability combinations specified in paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of this section, the provisions of this paragraph apply only to awards of increased compensation made on or after October 28, 1986.

(c) *Social security and workers' compensation.* Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) *Veteran's duty to report.* Any person entitled to increased compensation under this section shall promptly report to the VA the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the nonservice-connected loss or loss of use of the paired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorneys' fees, may not be deducted from the amount to be reported.

(Authority: 38 U.S.C. 360)

§ 3.384 [Removed]

9. Section 3.384 is removed.

10. In § 3.501, paragraph (i)(3) is revised to read as follows:

§ 3.501 Veterans.

* * * * *

(i) * * *

(3) *Section 3.557.* Incompetent veteran, admitted for hospital, institutional or domiciliary care, without dependents, whose estate equals or exceeds $1,500: Last day of the month of admission or the last day of the month in which the veteran's estate equals or exceeds $1,500, whichever is later. If the veteran was hospitalized for observation and examination, the date treatment began will be considered the date of admission.

(Authority: 38 U.S.C. 3012(c))

11. In § 3.502, the heading, introductory text and paragraph (c) are revised to read as follows:

§ 3.502 Surviving spouses.

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 210(c))

* * * * *

(c) *Legal surviving spouse entitled.* Date of last payment on award to another person as surviving spouse. See § 3.657.

(Authority: 38 U.S.C. 210(c))

* * * * *

12. In § 3.503, the introductory text and paragraphs (b) and (i) are revised as follows:

§ 3.503 Children.

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 210(c))

* * * * *

(b) *Enters service.* Date of last payment of apportioned disability benefits for child not in custody of estranged spouse. Full rate payable to veteran. No change where payments are being made for the child to the veteran, his (her) estranged spouse, his (her) surviving spouse, or to the fiduciary of a child not in the surviving spouse's custody.

(Authority: 38 U.S.C. 210(c))

* * * * *

(i) *Surviving spouse becomes entitled.* Date of last payment. See § 3.657.

(Authority: 38 U.S.C. 210(c))

13. In § 3.557, the first sentence of paragraphs (b)(4) and (d), and all of paragraph (c) are revised to read as follows:

§ 3.557 Incompetents; estate over $1,500 and institutionalized.

* * * * *

(b) * * *

(4) Has an estate, derived from any source, which equals or exceeds $1,500, further payments of pension, compensation or emergency officer's retirement pay will not be made, except as provided in paragraph (d) of this section, until the estate is reduced to $500.

* * * * *

(c) For veterans subject to paragraph (b) of this section, the value of the veteran's estate shall be computed

under the provisions of § 13.109 of this title.

(Authority: 38 U.S.C. 210(c))

(d) Payment of pension, compensation or emergency officers' retirement pay to a veteran subject to the provisions of paragraph (b) of this section will he discontinued the last day of the month of admission or the last day of the month in which the veteran's estate equals or exceeds $1,500, whichever is later. * * *

(Authority: 38 U.S.C. 3203)

* * * * * *

14. In § 3.800, paragraph (a)(2) is amended by adding a sentence at the end and revising the authority citation to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

(a) * * *

(2) * * * The provisions of this paragraph do not apply, however, to any portion of such compensation or dependency and indemnity compensation payable for any period preceding the end of the month in which such judgment, settlement or compromise becomes final.

(Authority: 38 U.S.C. 210(c))

* * * * * *

15. In § 3.809a, the introductory text is revised to read as follows:

§ 3.809a Special home adaptation grants under 38 U.S.C. 801(b).

A certificate of eligibility for assistance in acquiring necessary special home adaptations, or, on or after October 28, 1986, for assistance in acquiring a residence already adapted with necessary special features, under 38 U.S.C. 801(b) may be issued to a veteran who served after April 20, 1898, if the following requirements are met:

(Authority: 38 U.S.C. 801(b))

* * * * *

[FR Doc. 87-22854 Filed 10-2-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3272-8]

Approval and Promulgation of Implementation Plans; California; Ozone and Carbon Monoxide Attainment Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: In two separate notices published on July 14, 1987 (52 FR 26428 and 52 FR 26431) EPA proposed disapproval of the ozone and carbon monoxide (CO) State Implementation Plans for five areas in California. The areas are Kern (ozone), Sacramento (ozone), Ventura (ozone), Fresno (ozone and CO), and South Coast (ozone and CO). The public comment period for these notices began on the date of publication and ended September 14, 1987 (60 days). EPA has received four written requests for an extension of time for public comment. EPA has evaluated these requests and is hereby granting a thirty (30) day extension of the public comment period for these two notices.

DATES: Comments may now be submitted up to October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Wally Woo, Chief, State Liaison Section, EPA, Region 9 (A-2), Air Management Division, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634; FTS 454-7634.

Authority: 42 U.S.C. 7401-7642.

Date: September 23, 1987.

John Wise,

Acting Regional Administrator.

[FR Doc. 87-22915 Filed 10-2-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[PRL-3272-9; NC-034]

Approval and Promulgation of Implementation Plans; North Carolina; Miscellaneous Regulatory Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 14, 1987, North Carolina Division of Environmental Management submitted regulatory amendments for incorporation into their federally approved State implementation plan (SIP). The submittal included changes to eight different regulations Three of these regulatory amendments are being processed in other **Federal Register** notices. In this notice, EPA proposes to approve the other five amendments.

The changes to regulations 2D.0103 and 2H.0607 correct an address which indicates where information can be obtained. The change to 2D.0501, Compliance with Emission Control Standards, updates and replaces outdated ASTM methods. The amendment to 2D.0505, Control of Particulates from Incinerators, offers an alternative particulate emission level. Finally the addition to 2D.0533, Stack Height, adds the definition of emission limitation, as requested by EPA.

DATES: To be considered, comments must be received on or before November 4, 1987.

ADDRESSES: Comments should be addressed to Bob Peddicord at the Region IV EPA address below. Copies of the State's submittal are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

Air Programs Branch, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Bob Peddicord of the Region IV EPA Air Programs Branch, at the above address and the following phone: (404) 347-2864, or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On April 14, 1987, the State of North Carolina submitted eight revisions to their State Implementation Plan (SIP). The revisions were adopted by the Environmental Management Commission on April 9, 1987, after a public hearing held on January 20, 1987. Changes to three regulations, 2D.0524—New Source Performance Standards, 2D.0525—National Emission Standards for Hazardous Air Pollutants, and 2D.0528—Total Reduced Sulfur from Kraft Pulp Mills are all being processed in separate notices.

Amendments to regulations 2D.0103, .0501, .0505, .0533 and 2H.0607 are being proposed for approval here. The amendments are described below.

2D.0103—Copies of Referenced Federal Regulations

The change in this regulation is to correct the address of the recently moved Winston-Salem regional office.

2D.0501—Compliance With Emission Control Standards

The amendments here clarify the ASTM methods used. The State is specifying the years that the ASTM methods were last certified. The State is also replacing ASTM D270, which has been withdrawn by ASTM, with a sampling method of their own. The new method is at least as restrictive as the old ASTM method. It should be noted

that these fuel sampling methods will be the subject of a future SIP revision where the sampling frequency will be specified to ensure the short-term SO_2 emission limits can be adequately checked for compliance.

2D.0505—Control on Particulates From Incinerators

The proposed changes to this regulation would allow an operator to choose a new emission limit of 0.08 grains per dry standard cubic foot, which is the federal new source performance standard. The current federally approved limit is a pounds per hour standard. If this option is chosen, a demonstration that the use of the new limit will not cause an ambient air quality standard violation will be required. The option of using the new standard represents a relaxation to three sources in the State. EPA has indicated to the State, and the State has agreed, that any new permits associated with the action need not be part of a SIP revision, but the sources, prior to adopting the new limit, should submit to EPA for approval, an air quality demonstration. If EPA does not approve the demonstration the source may revert to the original emission limit or the State may model rework the demonstration and submit it at a later date as a single source SIP revision. The three sources to which this option represents a relaxation are Rocky Mount Waste Water Treatment PLant, Mitchell Systems, and City of Greensboro, North Buffalo Plant.

On July 1, 1987 (52 FR 24646) EPA promulgated a new particulate National Ambient Air Quality Standard (NAAQS) to regulate particles that are 10 micrometers or less in diameter. This standard becomes effective July 31 and replaces the total suspended particulate standard. The air quality demonstrations required prior to adopting the proposed 0.08 grains per day standard cubic foot limit will need to include demonstrations that the new particulate standard will not be violated.

2D.0533—Stack Height

The definition of emission limitation is being added to this rule. EPA, when proposing to approve the original North Carolina stack height regulation, requested that this be added. North Carolina is complying with that request.

2H.0607—Copies of Referenced Documents

Here as in 2D.0103 the address of the Winston-Salem regional office is being changed.

Proposed Action

EPA is proposing to approve the revisions to North Carolina's regulations 2D.0103, 2D.0501, 2D.0505, 2D.0533 and 2H.0607, submitted to EPA on April 14, 1987. The changes in the regulations are consistent with EPA policy and requirements.

All interested persons are invited to comment on this action. Comments received within 30 days of the publication of this notice will be considered by EPA in the final rulemaking.

Under 5 U.S.C. section 605(b), I certify that this action will not have a significant impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Exeuctive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Date: July 21, 1987.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 87–22916 Filed 10–2–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 413

[BERC–381–P]

Medicare Program; Payment for Physicians' Outpatient Maintenance Dialysis Services and Other Physicians' Services for ESRD Patients

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reinstate a modified version of the initial method of payment for physicians' dialysis services, and clarify and modify some of the principles of the monthly capitation payment method. Under both the initial method and the monthly capitation payment, we would specify that, to be payable, physicians' services must meet certain requirements for services furnished to individual patients, as distinguished from services furnished to the facilities. The reinstatement of a modified version of the initial method is necessitated by a court decision.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on December 4, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–381–P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please address a copy of comments on information collection requirements to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for HCFA

In commenting, please refer to file code BERC–381–P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Robert Niemann, (301) 597–1810.

SUPPLEMENTARY INFORMATION:

I. Background—Physicians' Outpatient Maintenance Dialysis Services

Physicians' services to End-Stage Renal Disease (ESRD) patients undergoing dialysis in a facility approved to furnish outpatient maintenance dialysis (ESRD facility) are payable if the services are otherwise covered by the Medicare program and if they are reasonable and medically necessary. Before August 1, 1983, the Medicare program paid for physicians' outpatient maintenance dialysis services under one of two methods—the "initial method" or the "alternative reimbursement method" (ARM). Section 1881(b)(3) of the Social Security Act (the Act) confirmed our authority to establish those methods of reimbursement.

Under the ARM, all physicians' outpatient maintenance dialysis services (except declotting of shunts) were paid

through a single monthly payment to the physician. Under the initial method, the payment for physicians' "supervisory services" was made to the dialysis facility as part of the facility's dialysis treatment payment rate. (Physicians' supervisory services are listed in the regulations located at 42 CFR 405.542(b)(1) and include monitoring and evaluating the patient during dialysis, reviewing psychosocial and dietary issues, etc.) This payment was made in the form of a higher facility payment rate (the usual facility rate plus an add-on amount) than the rate the facility received when the physicians' services were paid under the ARM. The physician then negotiated his/her compensation with the facility. The physician's other professional services to dialysis patients (that is, services not included under the initial method payment, such as monthly examinations and emergency services) were paid on a fee for service, reasonable charge basis by the Medicare Part B carrier.

In the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) Congress amended section 1881(b)(3) of the Act to require that physician reimbursement be made in a way that promotes the increased use of home dialysis. To accomplish this, on May 11, 1983, under the authority of section 1881(b)(3)(B), we published in the **Federal Register** final regulations located at 42 CFR 413.170 and 42 CFR 405.542 (48 FR 21254) that were effective on August 1, 1983. These regulations changed the payment system for outpatient maintenance dialysis and related physician and laboratory services. They also established a prospective method of payment for maintenance dialysis, whether furnished at home or in a hospital-based or independent dialysis facility, and revised other aspects of the payment system to encourage home dialysis and provide incentives for economy and efficiency in furnishing dialysis services. In those regulations, we eliminated the initial method and modified the ARM to create the monthly capitation payment (MCP) method.

The main difference between the ARM and the MCP is that, under the ARM, the monthly payment for home patients had been set at 70 percent of the payment for infacility patients, whereas, under the MCP, monthly payments for services to home and infacility patients are equal. This creates a substantial incentive for physicians to accept and encourage home dialysis. The initial method did not promote the use of home dialysis because physicians do not furnish "routine physicians' services" to home patients (since the dialysis takes place at home) and rarely furnish services to home dialysis patients at other times for which physicians may be paid. Furthermore, the General Accounting Office had found problems with duplicate payments under both the initial method and ARM (GAO Report GAO/HRD–85–14; February 1, 1985); that is, in some cases the Medicare program apparently was being billed under both the initial method and the ARM. Thus, we expected to solve several problems by establishing a single payment method with substantial incentives for home treatment.

II. Basis For Reinstating a Modified Version of the Initial Method

On June 11, 1984, the U.S. District Court for the District of Columbia, in *National Association of Patients on Hemodialysis and Transplantation Inc. et al. (NAPHT), v. Heckler,* 558 F. Supp. 1108 (D.D.C. 1984), ordered the Secretary to reinstate a modified version of the initial method designed to advance the congressional purpose of encouraging home dialysis, any administrative inconvenience notwithstanding. The plaintiffs in that case suggested two ways to accomplish this:

(1) Confine the initial method to physicians' services rendered to infacility patients; or

(2) Extended the initial method to cover both infacility and home dialysis in the same manner.

Plaintiffs had offered these same suggestions during the comment period following our February 12, 1982 notice of proposed rulemaking (47 FR 6566–6567). Either of these suggestions would promote home dialysis to a greater extent than the original initial method because in either case physicians would be paid for their home patients without regard to the nature of the specific services furnished to each individual patient.

In view of the plaintiffs' suggestions, we considered paying the initial method add-on only for the physician's infacility patients and paying for the physician's home dialysis patients under the MCP method. We rejected this option because it would be difficult for carriers to track whether a particular home dialysis patient was dialyzed at home for an entire month. If a patient were dialyzed in the facility for any part of the month, it would be necessary to pay a prorated portion of the MCP to the physician while the patient was home, and to pay the add-on-amount to the facility while the patient was in the facility.

We rejected the option to reinstate the priro add-on of $12 because we have reduced the MCP rates from the previous ARM rates based on a lower estimate of physician involvement in both infacility and home services. It would be inconsistent not to apply the same reduction to the initial method.

We also rejected the option to pay a physician for home dialysis services using the prevailing charge for a physician's brief followup office visit because the MCP rate is based in part on a physician's brief followup office visit times the average number of dialysis treatments per month, and this includes services that are furnished at times other than during a dialysis. It would be inappropriate to pay the same amount under the initial method for a narrower range of services.

We propose to adjust the initial method add-on in the same manner as we adjusted the previous ARM payment (in effect for services furnished prior to August 1, 1983) to compute the present MCP payment amounts (in effect for services furnished on or after August 1, 1983).

This adjustment is done by first revising the estimate of the amount of physician involvement in treating maintenance dialysis outpatients; and then combining into one composite payment a monthly amount that is paid for infacility and home dialysis. The additional payment would be added to the labor portion of the composite rate and multiplied by the hospital wage index to account for geographic variations in physicians' renumeration. (As data become available on the nature of the physicians' services furnished and the value of those services, we will examine the appropriateness of using the hospital wage index to measure variations in physician charges.)

The specific methodology for setting rates under the initial method is described in detail in section IV, below. Section V.A. clarifies which physicians' services would be included under the intital method add-on payment.

For administrative purposes, we would require, as was required previously under the initial method, that physicians could be paid under the initial method only if all of the ESRD physicians in the ESRD facility who furnish services to patients on maintenance dialysis or undergoing self-dialysis training elect the initial method. The election of this method of payment covers all infacility and home dialysis patients the physician attends in or through that facility. Physicians must submit a statement of agreement concerning their election of the initial method; in the absence of an election the carrier will assume that the

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physician intends to accept payment under the MCP method.

III. Principles for Determining Which Physicians' Services are Services for Individual Patients

Extending the initial method to include payment related to services in the home would encourage home dialysis and thus conform to congressional intent. However, in considering the problems attendant to reinstatement of the initial method, we concluded that merely making this modification would not adequately address other problems we have encountered concerning payment for services physicians furnish for ESRD patients. One of these problems is making a consistent and proper distinction between services a physician furnishes to individual patients and those other services the physician performs for the facility, which certainly are of general benefit to the facility's patients, but which we would not consider to be physicians' services reimbursable on a reasonable charge basis.

We have experienced this problem since the beginning of the Medicare program, particularly in regard to physicians' services for patients in hospitals and other providers. From the beginning of the program we have held that, to be paid on a reasonable charge or other related basis, a physician's services must be personally furnished to an individual patient. This distinction between physicians' services to individual patients and physicians' services that benefit patients generally has been expressed in our regulations since the beginning of the Medicare program in 1966. Our payment principles require that payment for physicians' services to the provider should be made to the provider, and that compensation to the physician for those services should come from the provider, rather than be paid for as if the services were services to individual patients.

Our initial regulations regarding this distinction were not sufficiently detailed and explicit to be fully and consistently administrable. In response to problems that arose in our long-standing effort to implement this basic principle, section 108 of Pub. L. 97–248 (the Tax Equity and Fiscal Responsibility Act of 1982, enacted September 3, 1982) provided for the addition of a new section 1887 of the Act dealing explicitly with distinguishing between physicians' professional services to patients and services to providers. Thus, the statute now affirms the distinction we had been making. Regulations implementing section 1887 of the Act are located at 42 CFR 405.480 to 405.482, and 405.550 to 405.557 (published 48 FR 8902; on March 2, 1983).

However, independent ESRD facilities are not providers, and are not subject to the requirements of section 1887 of the Act. Further, we have, as a matter of policy, been paying hospital-based and independent ESRD facilities for their ESRD services in basically the same way, with only minor necessary differences. Therefore, we have not applied the final regulations implementing section 1887 of the Act either to the hospital-based or the independent ESRD facility setting.

We have, however, continued to experience some of the same problems with regard to physicians' services furnished in ESRD facilities as we had experienced with regard to services in hospitals, skilled nursing facilities (SNFs), and comprehensive outpatient rehabilitiation facilities (CORFs) prior to issuance of the March 2, 1983 final rules. That is, we have not always been able to distinguish consistently and accurately those physicians' services that are services to the facility, rather than services to individual patients, and for which payment should flow through the facility. We are concerned that the costs taken into account under section 1881(b)(2) of the Act, for purposes of establishing facility composite rates under section 1881(b)(7) of the Act, be determined in a manner that appropriately reflects the costs to ESRD facilities for physicians' services to the facilities. In order to ensure that payments are accurate and accomplish the objectives of the statute, we are also concerned to ensure that payments made to physicians for services to individual patients are not also inadvertently compensating physicians for services furnished to ESRD facilities.

Accordingly, we are proposing to establish rules governing payment for physicians' services furnished in ESRD facilities that are consistent with the rules for physicians services furnished in hospitals, SNFs, and CORFs. We recognize that the authority established under section 1887 of the Act does not extend to independent ESRD facilities, since they are not providers (although, under section 1881(b)(2)(D) of the Act and 42 CFR 413.170(h), ESRD facilities are treated as providers for some purposes). Responsible management of the program requires that we make some distinction between services covered under two different payment mechanisms (for example, under the composite rate paid to facilities and the MCP paid to physicians), and ensure that the program does not pay twice for the same services. We believe that it is reasonable to make this distinction for ESRD services on the same basis as that which is historically established and already implemented for analogous services paid for by Medicare.

For these reasons we would define "physicians' services to an ESRD facility" in the same terms as are used for "physicians' services to a provider". Accordingly, consistent with our regulations at 42 CFR 405.480 to 405.482, physicians' services to an ESRD facility would include, but would not be limited to, teaching or supervision of professional or technical personnel, administration or management of a facility or department, quality control activities, and work schedule planning. The costs of physicians' services to the facility would be allowable (and included under the prospectively set composite rates) if—

- The services do not meet the criteria for reasonable charge reimbursement;
- The services do not include physician availability services;
- The facility has incurred a cost for the services; and
- The costs of the services meet the requirements in 42 CFR 413.9 regarding costs related to patient care.

The criteria for determining whether physicians' services furnished to a facility patient would be reimbursable on a reasonable charge basis or under the MCP or initial method, consistent with our regulations at 42 CFR 405.550(b), would be that:

- The services must be personally furnished for an individual patient by a physician;
- The services must contribute directly to the diagnosis or treatment of an individual patient; and
- The services ordinarily require performance by a physician.

We believe these same distinctions are applicable to hospital-based and freestanding ESRD facilities, which are both paid under prospectively determined composite rates. By applying these principles to ESRD facilities, whether provider-based or not we would be able to distinguish, in a manner consistent with principles and practices established in other parts of the Medicare program, between those physicians' services that should be included in payments to the facility, as part of the facility's composite rate, and those to be paid on a basis related to reasonable charges, including either the MCP or the initial method.

IV. Ratesetting Under the Proposed Initial Method

The proposed initial method (IM) add-on amount would be calculated as follows:

1. Start with the original $12 IM add-on.

2. Calculate the average ARM infacility rate:

[$260 (max.) + $180 (min.)] divided by 2 = $220.

3. Calculate the average MCP rate:

[$203 (max.) + $132 (min.)] divided by 2 = $167.50.

4. Calculate the ratio between steps 3 and 2.

$167.50 / $220 = .7614.

5. Multiply $12 (step 1) by ratio in step 4:

$12 × .7614 = $9.14 (new IM add-on amount).

In the final notice published in the **Federal Register** on August 15, 1986 (51 FR 29404) we continued the lower and upper limits on the facility ESRD composite rate originally provided in the preamble to the final regulation published May 11, 1983 (48 FR 21254). This was to limit the effect of the wage index, which otherwise would have caused a great variation in the composite rates. The lower limit was set by using a minimum wage index of 0.9. The upper limit was set at the previous ESRD facility payment screen of $138 per treatment. Under the reinstated initial physician reimbursement method we propose that the same minimum wage index of 0.9 be used, resulting in a minimum add-on of $8.23 (0.9 × $9.14). We propose to set the revised upper limit at the previous initial physician reimbursement method ESRD facility payment screen of $150 per treatment (that is $138 plus the $12 IM add-on).

V. Summary of Proposed Changes to the Regulations

A. Section 405.542—Criteria For Determination of Reasonable Charges For Physicians' Services Furnished to Renal Dialysis Patients

1. We are proposing to clarify in § 405.542(a) that physicians' services to dialysis patients include physicians' routine professional services, administrative services, and other physicians' services. We are proposing to amend the regulations to indicate that physicians may be paid under the "Initial Method" after the effective date of these regulations. This section would also provide that physicians' services furnished on or after August 1, 1983 and before the effective date of this proposed regulation are reimbursed only under the monthly capitation method.

2. We propose to add a new § 405.542(a)(2)(i) to list physicians' routine professional services and require that the services be furnished during a visit to the patient where the physician is physicially present with the patient, examines the patient or reviews the patient's medical record, and in response to this examination or review, furnishes whatever physicians' services are medically necessary. This section would specify the conditions under which services would be paid under the initial method add-on to the facility's rate. If these criteria are not met, the physician's services could only be paid by the facility, and the costs of those services would be included in the facility's dialysis treatment costs used to set the ESRD facility composite rate.

The payment to the facility under the initial method covers all physicians' non-surgical services furnished during the outpatient maintenance dialysis session, including non-renal-related physicians' services; that is, services not related to the patient's ESRD. The only surgical service covered by the initial method payment is insertion of a catheter for patients on peritoneal dialysis who do not have an indwelling catheter. If separate payment were permitted for non-renal-related physicians' services furnished during the dialysis session, Medicare carriers would be required to decide which services are renal-related and which are not, a distinction that is extremely difficult to make and one upon which experts could disagree. Also, we do not believe dialysis physicians commonly furnish non-renal-related services during the dialysis session. This policy is consistent with the monthly capitation payment (MCP) system; non-renal-related physicians' services are included under the MCP unless a separate visit, not necessitated by the patient's renal condition, is required. While we are now including services under the initial method add-on payment to the facility that were not previously included (for example, physicians' non-surgical non-renal-related services furnished during a dialysis session), this added obligation is balanced by the additional payment that would be made for home dialysis treatments.

Section 1881(b)(1)(A) of the Act provides that payments for "routine professional services performed by a physician during a maintenance dialysis episode" be made to the dialysis facility and not to the physician. Section 1881(b)(3)(A) reaffirms this provision by effectively stating that under the initial method payment for physicians' routine service furnished during a maintenance dialysis episode may not be made on a reasonable charge basis. Therefore, for purposes of distinguishing the services furnished during a dialysis session, which under the initial method are payable only to the dialysis facility, from other physicians' services, which are payable on a reasonable charge basis, we propose to define the term "during a dialysis session". In the context of infacility dialysis, it means the period of time beginning with the patient's arrival at the dialysis facility and ending with the patient's departure from the facility. In the case of home dialysis, it means the period beginning when the patient prepares for dialysis until the session ends (this is generally when the patient is disconnected from the machine).

3. We propose to add a new § 405.542(a)(2)(ii), clarifying that administrative services are services provided to the facility and not to an individual patient. As such they are reimbursable to the facility under the composite payment rate described in § 413.170, and not to the physician by the Medicare carrier under either the initial method or the MCP. (We would also continue to apply this principle as it has always been applied when we review facility costs for purposes of setting the facility composite rate.) Administrative services are differentiated from routine professional services and other physicians' services related directly to an individual patient's care because they are of benefit to all of the patients as a whole as well as to the facility. We have deleted as an example of such services "supervising staff for other than direct patient care services" and retained "supervising staff" because all staff supervision would be defined as administrative services.

4. We also propose to add a new § 405.542(a)(2)(iii) and (iv), clarifying the difference between a physician's service that is "supervision" and one that is "direction". This distinction applies to all physicians' ESRD services (including services under both the initial method and the MCP method). The carrier will pay for services of physicians to facility patients on a reasonable charge-related basis only if the following requirements are met:

- The services are personally furnished for an individual patient by a physician;
- The services contribute directly to the diagnosis or treatment of an individual patient; and
- The services ordinarily require performance by a physician.

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"Supervision" refers to a general activity primarily concerned with monitoring the performance of and giving guidance to medical staff (for example, nurses, dialysis technicians) with significantly diminished direct involvement in delivering services to the patient (for example, when the physician is not physically present with the patient). "Direction", on the other hand, includes substantial direct involvement and physical presence of the physician in delivering services directly to the patient.

5. We propose to revise § 405.542(b)(1) to eliminate any reference to availability of physicians, since Medicare does not cover "availability", in itself, because it is not a service. We are also proposing to revise the effective date so that the paragraph applies to payment for services furnished after the effective date of these regulations. The reference to "supervisory services" would be changed to "routine professional services", for the reasons stated in paragraph 4, above. Previously, services rendered during dialysis which are nonroutine, for example, declotting of shunts, needle insertions into fistulae, supervision of blood transfusions, care during immediately life-threatening complications related to the dialysis procedure, and care of nonrenal conditions were not covered under the initial method add-on and, therefore, were payable directly to the physician by the carrier. This would be changed so that the only physicians' services furnished during the dialysis that would be separately payable would be surgical services. We are including all non-surgical services for the reasons stated above. We are excluding surgical services from the list of services covered under the initial method because:

- Usually, surgical services are furnished to dialysis patients at a time other than during a maintenance dialysis, and usually by a physician other than the physician responsible for the patient's dialysis care; and
- Carriers can easily distinguish between surgical and non-surgical services for purposes of determining physicians' services that are paid in addition to the initial method add-on payment.

6. We propose to add a new paragraph 405.542(b)(2), requiring that, for administrative purposes, physicians may be paid under the initial physician reimbursement method only if all of the ESRD physicians in the ESRD facility who furnish services to patients on maintenance dialysis or undergoing self-dialysis training elect the same method of reimbursement. The election of this method of reimbursement covers all infacility and home dialysis patients the physician attends in or through that facility. Physicians will submit a statement of agreement concerning their election of the initial method of reimbursement. In the absence of an election the carrier will assume that the physician intends to accept payment under the MCP method.

7. We propose to add a new paragraph to § 405.542(b)(3) to clarify that the factors used in determining the amounts payable under the initial method will be related to program experience, will be reevaluated periodically, and may be adjusted as HCFA determines necessary.

8. We propose to revise § 405.542(c) to require that the physicians' services reimbursable under the MCP must meet requirements specified, which are consistent with those for Part B reimbursable physicians' services listed in 42 CFR 405.550(b)(1) through (b)(3).

We propose to specify in § 405.542(c) that payment for the administration of Hepatitis B vaccine is made in addition to the MCP. This is required by section 1881(b)(11) of the Act.

We also propose to clarify that physicians' services that are not furnished during a dialysis session or a home or office visit necessitated by the renal condition are not included in the MCP, but may be paid in accordance with the usual reasonable charge rules. The physician would have to provide documentation that the services are not related to the treatment of the patient's renal condition and that added visits are required. The carrier's medical staff would determine whether additional payment is warranted for the additional physicians' services.

9. We propose to add § 405.542(c)(1)(v) and (vi) to provide that most surgical services are not covered under the MCP. We would continue to allow additional payment for declotting of shunts and explicitly list it as a surgical service under this paragraph. The only exception to this rule (that is, the only surgical service that is included under the MCP) is insertion of a catheter for a patient on peritoneal dialysis who does not have an indwelling catheter. This is consistent with the prior policy under the initial method.

B. Section 413.170—Payments for Covered Outpatient Maintenance Dialysis Treatments

We are proposing that, if a physician furnishing services to patients dialyzing in an ESRD facility or at home elects the initial method of reimbursement, the prospective payment rate paid to that facility will be increased by an add-on amount as described in § 405.542(b).

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E. O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographicl regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The payments to physicians under either the initial method of reimbursement or the monthly capitation payment method would be similar. We do not expect physicians to make major changes in their charging practices as a result of this proposed rule. We expect few physicians to change to the initial physician reimbursement method described in this proposed regulation. We do not expect this proposed regulation to cost or save money. Therefore, it would be considered to be budget neutral. Since we expect no significant economic impact to result from publishing this proposed regulation, we have not prepared an initial regulatory impact analysis.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians to be small entities. However, as explained with reference to E.O. 12291, we expect no significant economic impact from this proposed rule. Therefore, the Secretary certifies that this proposal would not have a significant impact on a substantial number of small entities. And initial regulatory flexibility analysis is not required.

C. Paperwork Reduction Act of 1980

Section 405.542(b)(2) of this proposed rule contains information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork

Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Building, Washington, DC 20503, ATTN: Allison Herron, Desk Officer for HCFA.

VII. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

VIII. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are proposing to amend 42 CFR Part 405 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart E is amended as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842(b), and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395(b), 1395k, 1395l(a), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395m, 1395ww and 1395xx).

2. Section 495. 542 is amended by revising the title and paragraphs (a) through (c) to read as follows:

§ 405.542 Criteria for determination of reasonable charges for physicians' services furnished to renal dialysis patients.

(a) *General requirements.*—(1) *Principle.* Physicians' services to renal dialysis patients are reimbursable if the services are otherwise covered by the Medicare program and if they are reasonable and medically necessary. This section applies to all physicians' services furnished to outpatient maintenance dialysis patients in a hospital-based or an independent ESRD facility, or to patients dialyzing at home. For purposes of this section, a dialysis session is the period of time beginning with the patient's arrival at the dialysis facility and ending with the patient's departure from the dialysis facility, or, in the case of home dialysis, it means the period beginning when the patient prepares for dialysis until the session ends (generally when the patient is disconnected from the machine).

(2) *Types of physicians' services.* Physicians' services include:

(i) *Routine professional services.* (A) Routine professional services for patients who are receiving maintenance dialysis in a facility or at home, or self dialysis training in a facility, are those physicians' services, including medical direction as described in paragraph (a)(2)(ii) of this section, that are furnished during a dialysis session and meet the following criteria:

(*1*) The services are personally furnished for an individual patient by a physician;

(*2*) The services contribute directly to the diagnosis or treatment of an individual patient; and

(*3*) The services ordinarily require performance by a physician.

(B) Routine professional services include at least all of the following when medically appropriate:

(*1*) Visiting the patient during dialysis, reviewing laboratory test results, nurses' notes and any other medical documentation, and in response to this review:

(*i*) Adjusting medication, the dialysis procedure, the patient's diet;

(*ii*) Prescribing medical supplies; and

(*iii*) Evaluating the patient's psychosocial status and the appropriateness of the patient's treatment modality.

(*2*) Directing staff (as described in paragraph (a)(2)(ii) of this section) in delivering services to the patient during a dialysis session;

(*3*) Making pre- and post-dialysis examinations where medically appropriate; and

(*4*) Inserting catheters for patients on maintenance peritoneal dialysis who do not have an indwelling catheter.

(ii) *Medical direction.* In contrast to supervision, as described in paragraph (a)(2)(iv) of this section, medical direction is a professional service, not an administrative service. It entails substantial direct involvement and physical presence of the physician in delivering services directly to the patient.

(iii) *Administrative services.* Administrative services are those services that are furnished by physicians and that are directly related to the support of the facility. They are not reimbursable under this subpart, but are paid for as part of the facility's prospective payment for dialysis services as described in § 413.170. These services are differentiated from routine professional services and other physicians' services because they are not related directly to an individual patient's care, but are of benefit to all of the patients as a whole as well as to the facility. Examples of such services include staff training, participating in the management of the facility, advising on procurement of facility supplies, supervision of staff, and staff conferences.

(iv) *Supervision.* Supervision is an administrative service and is therefore not reimbursable under this Subpart. It is a general activity primarily concerned with monitoring performance of and giving guidance to other health care personnel (for example, nurses, dialysis technicians) with significantly diminished direct involvement (for example, when the physician is not physically present with the patient) in delivering services to the patient.

(3) *Payment for physicians' routine professional services.* Physicians' routine professional services furnished after [*the effective date of these regulations*] may be reimbursed under either the "Initial Method" described in paragraph (b) of this section, (if all of the physicians at the facility elect the initial method) or under the "Physician Monthly Capitation Payment Method" described in paragraph (c) of this section. Physicians' services furnished on or after August 1, 1983 and before [*the effective date of these regulations*] are reimbursable only under the monthly capitation method as described in paragraph (c) of this section.

(b) *Initial method of payment for physicians' services furnished after [the effective date of these regulations].* Under this method, payments for routine professional services and medical direction, as described in paragraphs

(a)(2)(i) and (ii) of this section, provided by physicians to outpatient maintenance dialysis patients are paid to the facility by the intermediary. The reimbursement is made in the form of an add-on amount to the facility's composite rate payment, which is described in 42 CFR 413.170.

(1) *Services not included under payment.* Physicians' administrative services, including supervision of staff, are considered to be facility services (see paragraphs (a)(2)(iii) and (iv) of this section) and are paid for under the facility's composite rate. Physicians' services that must be furnished at a time other than during the dialysis procedure (for example, monthly and semi-annual examinations to review health status and treatment) and most physician's surgical services (see paragraph (c)(2)(v) of this section) are reimbursable to the physician (or to the beneficiary) by the carrier in accordance with the reasonable charge criteria set forth in § 405.502. Physicians' services furnished to hospital inpatients who were not admitted solely to receive maintenance dialysis or the administration of hepatitis B vaccine are also reimbursable under those reasonable charge criteria.

(2) *Physician election.* A physician may elect this initial method of reimbursement only if all of the ESRD physicians in the ESRD facility who furnish services to patients on maintenance dialysis or undergoing self-dialysis training elect this method with respect to that facility. The election of this method of reimbursement covers all dialysis patients (including patients dialyzed in the facility and at home) supported by the facility that the physician attends. Physicians must submit a written statement of agreement concerning their election of the initial method of reimbursement to the carrier and intermediary serving the facility. This payment method will be applied to dialysis services furnished in the second calendar month following the month in which all physicians in the facility elect it. Physicians may terminate this payment method by written notice to the servicing carrier and the intermediary servicing the facility at least 60 days before the first day of the calendar month in which the termination is to take effect.

(3) *Determination of payment amount.* The factors used in determining the payment amount under the initial reimbursement method (that is, the initial method add-on amount) will be related to program experience, will be reevaluated periodically, and may be adjusted as determined necessary by HCFA to maintain the payment for the average initial method physician's services to be commensurate with the prevailing charges of other physicians for comparable services.

(4) *Publication of payment amount.* Revisions to the add-on amounts will be published in the **Federal Register** in accordance with the Department's established rulemaking procedures.

(c) *Physician monthly capitation payment method.* (1) *Services included in monthly payment.* Under this method, all physicians' services, other than those specified in paragraph (c)(2) of this section, furnished to each outpatient maintenance dialysis patient (regardless of the patient's mode of or setting for dialysis) is reimbursed by the carrier on a monthly capitation basis. Services are included in the monthly payment only if the services are personally furnished for an individual patient by a physician: the services contribute directly to the diagnosis or treatment of an individual patient; and the services ordinarily require performance by a physician. Payment of the monthly amount, subject to the deductible and coinsurance, for all such services provided for that month is made by the carrier either to the physician, if the physician accepts assignment, or to the patient, if the physician does not accept assignment. This reimbursement method recognizes the need of patients on maintenance renal dialysis for physicians' services furnished periodically over relatively long periods of time, and is responsive to physicians' charging patterns in their localities. The physician must provide to a patient all physicians' services not listed in paragraph (c)(2) of this section that are required by the patient in a month to qualify for this reimbursement in that month.

(2) *Services not included in monthly payment.* Physicians' services not covered by the monthly payment, which may be reimbursed in accordance with the usual reasonable charge rules, are limited to:

(i) Administration of hepatitis B vaccine.

(ii) Covered physicians' services furnished by another physician during periods when the patient or his attending physician is not available for outpatient services as set out in paragraph (c)(2) of this sections.

(iii) Needed physicians services which are rendered either by the physician providing renal care or by another physician and which are beyond those related to the treatment of the patient's renal condition and which are not furnished during a dialysis session or office visit necessitated by the renal condition. The physician must provide documentation that the services are not related to treatment of the patients renal condition and that added visits are required. The carrier's medical staff, acting also on the basis of medical consultation obtained by the carrier as may be appropriate, determines whether additional reimbursement is warranted for the additional physicians' services.

(iv) Covered physicians' services furnished to hospital inpatients, including physicians' services related to inpatient dialysis, by a physician who elects not to continue the capitation payment method through the period of the impatient stay.

(v) Surgical services (including declotting of shunts) other than insertion of catheters for patients on maintenance peritoneal dialysis who do not have an indwelling catheter.

* * * * *

We are proposing to amend 42 CFR Part 413 as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT: PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

B. Subpart H is amended as follows:

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395l(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. In § 413.170, the introductory text of paragraph (c) is revised and a new paragraph (c)(5) is added to read as follows:

§ 413.170 Payments for covered outpatient maintenance dialysis treatments.

* * * * *

(c) *Prospective rates for hospital-based and independent ESRD facilities.* (1) In accordance with section 1881(b)(7) of the Act, HCFA establishes prospective rates by a methodology that:

* * * * *

(5) If all the physicians furnishing services to patients in an ESRD facility elect the initial method of reimbursement, as described in § 405.542(b), the prospective rate (as described in paragraph (c)(1) of this section) paid to that facility will be increased by an add-on amount as described in § 405.542(b).

(Catalog of Federal Domestic Assistance Program No. 13.744, Medicare-Supplementary Medical Insurance Program)

Dated: June 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 28, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-22930 Filed 10-2-87; 8:45 am]

BILLING CODE 4120-01-M

Family Support Administration

45 CFR Part 233

Aid to Families With Dependent Children; Essential Persons

AGENCY: Family Support Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would preclude States from considering individuals who do not provide an essential benefit or service to a family from being considered to be essential persons under the Aid to Families with Dependent Children (AFDC) program. Current regulations do not limit the individuals whom States may include as "essential persons" in payments under the AFDC program. This clarification would ensure that only those individuals who are actually providing an essential benefit or service to the family could receive AFDC payments, if not otherwise eligible.

DATE: Interested persons and agencies are invited to submit written comments concerning these regulations no later than November 19, 1987.

ADDRESSES: Comments should be submitted in writing to the Administrator of the Family Support Administration, Attention: Mark Ragan, Acting Director, Division of Policy, Office of Family Assistance, 2100 Second Street SW., Washington, DC 20201, or delivered to the Office of Family Assistance, Family Support Administration, Room B-428, Transpoint Building, 2100 Second Street SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ragan, Room B-428, Transpoint Building, 2100 Second Street SW., Washington, DC 20201, telephone 202-245-3290.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Act at sections 402 and 406 and the implementing regulation at § 233.20(a)(2)(vi) permit States, at their option, to include in the AFDC grant benefits for "essential persons." Such individuals are not eligible for AFDC in their own right, but their needs are taken into account in determining the benefits payable to the AFDC family because they are considered "essential to the well-being" of an AFDC recipient in the family.

Twenty-five States currently include the option as part of their respective State Plans. A wide variety of individuals are included as essential persons. The definition and categories of essential persons. The definition and categories of essential persons vary from State to State, including the following:

—Unemployed or incapacitated stepparents living in the home with eligible children and the natural parent;
—Individuals age 18–21 who are not attending school;
—A relative necessary to provide child care or other services because the caretaker is incapacitated or employed;
—A second natural or adoptive parent living in the home;
—The needy spouse of the caretaker relative;
—Stepparents who work fewer than 100 hours per month;
—An unmarried individual who has a child in common with the caretaker relative.

Since 1943, Federal policy has recognized the concept of essential person in the AFDC program. Such benefit or service may be provided directly to a recipient, or provided to someone else in the home so long as the well-being of the recipient is thereby provided.

The Social Security Amendments of 1967 (Pub. L. 90–248) amended sections 402 and 406 of the Act to provide a specific statutory base for an essential person policy. The implementing regulations permit States to specify those individuals considered essential. States are also required to provide recipients with the final decision as to whether individuals are in fact essential. Accordingly, in implementing this provision, the Department has allowed States to simply identify the categories of individuals considered to to essential in their State plans without requiring them to identify the benefits or services that such individuals specifically have to provide in order to be essential.

In light of recent Congressional amendments to title IV–A of the Act, and subsequent changes which States have made in their State plans, we have reevaluated the current regulation. For example: In 1981, Congress amended section 406(a)(2) of the Act to exclude students age 19 to 21 from the definition of a dependent child. Some States then included such children categorically as essential persons, without regard to such individual's provision of an essential benefit or service. This is an indication that some States are using the essential person provision to circumvent and/or avoid Congressional intent.

Three States, in particular, seem to be using the essential person provision to extend benefits to 19 and 20 year-olds. These States account for an estimated 55 percent of all essential persons in the country, but 72 percent of all essential persons aged 19 and 20.

From another perspective, in these three States, we estimate that 45 percent of the 19 and 20 year-olds in the household who are not otherwise receiving benefits as eligible adults, are included as essential persons. In 5 States that explicitly require the provision of essential services, we estimate that only 3 percent of 19 and 20 year-olds are included as essential persons.

Data from the years 1981 and 1982 very strongly suggest that States did in fact shift older children made ineligible by the Omnibus Budget Reconciliation Act of 1981 (OBRA) onto the AFDC rolls as essential persons. In 1981, our data showed 4500 cases with individuals over the age limit (for a dependent child) who were not classified as adult recipients. In 1982, this figure was 23,000 cases—or four times higher. Further evidence comes from examining data from two large States in which 18 to 21-year old recipients previously considered dependent children were apparently converted to essential persons for purposes of Federal matching. There, the 1982 figure for total number of individuals over 18 who were not adult recipients was suspiciously similar to the 1981 number of 18 to 21-year old dependent children. These two States accounted for about 18,000 of the 23,000 cases nationwide.

Today they continue to carry a large number of 18 to 21-year olds as essential persons.

These same two States are using the essential person provision to directly shift the financial burden of State assistance programs to the Federal government. For example, one State specifies that a minor child ineligible for AFDC in his own right, but who is

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eligible for General Assistance, may be considered to be essential. The other State includes eligibility for public assistance other than AFDC as a factor in determining essential person status. These two States account for approximately 45% of the total expenditures for essential persons.

In addition to the problems which we identified regarding the categorical inclusion of broad groups of individuals, the Office of Inspector General, in a recent review, discovered other individual situations where persons who were in no position to provide essential benefits or services to an AFDC family were classified as essential. These individuals included a two-year-old and a drug addict. In another case, seven individuals were classified as essential persons for a single AFDC household.

Based on such experience, we are proposing to amend the regulation to emphasize that in order to be considered an essential person, an individual must provide an essential benefit or service. Such essential benefits or services clearly include the provision of child care which enables a caretaker relative to work on a full-time paid basis outside the home, and care for an incapacitated family member in the home. Accordingly, we are including these benefits and services in the proposed regulation. In this connection, we note that the proposed requirements for determining incapacity are similar to those set out at § 233.90(c)(1)(iv) for a State to find that a parent is incapacitated for AFDC purposes. Thus, we expect that States would have little difficulty in making incapacity determinations.

While we are not proposing any additional reporting or recordkeeping requirements, we would expect States, pursuant to 45 CFR 205.60(a) and 206.10(a)(9)(iii), to continue to make periodic determinations that individuals included as essential persons meet the definitional requirements for an essential person and maintain appropriate written documentation in the AFDC case record of the essential person determination. Appropriate documents might include items such as the recipient's request that the individual be included as an essential person, the basis under which the individual was determined to be an essential person, and information necessary to support the determination (such as information on the nature, regularity, and length of service and on the capacity of the individual to provide such an essential benefit or service). In a case where more than one individual was to be classified as an essential person, such as a case of severe incapacity, the documentation would probably need to include justification of the need for more than one essential person. We invite comment as to whether a specific regulatory change to further clarify this policy would be of value.

Finally, States would still be free to limit essential person status to categories of individuals, such as grandparents, but only if such individuals are actually providing an essential benefit or service. Likewise, States may specify a minimum age for classification of an individual as an essential person.

Since States may have ideas as to additional types of benefits or services that should be considered to be essential, we request suggestions for possible inclusion in the final rule.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. A regulatory impact analysis is not required because the regulation will not:

(1) Have an annual effect on the economy of $100 million or more; (The Federal annual savings of these regulatory provisions are estimated to be up to $41 million a year.)

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant impact ona substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required. This regulation is issued under the authority of section 1102 of the Social Security Act.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant program-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: July 24, 1987.

Wayne A. Stanton,

Administrator of Family Support Administration.

Approved: August 10, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY

1. The authority citation for Part 233 is revised to read as follows and all other authority citations which appear throughout Part 233 are removed:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and sec. 6 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324.

2. Section 233.20 is amended by revising paragraph (a)(2)(vi) and adding paragraph (a)(2)(vii) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(2) * * *

(vi) For OAA, AB, APTD, or AABD, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipient.

(vii) For AFDC, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals,

(*a*) Specify the persons whose needs will be included in the individual's need, but limited to those individuals who regularly provide personal services to an incapacitated family member, or who provide child care service which permits a caretaker relative to work on a "full time" paid basis, outside of the home and

(*b*) Provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipinet.

A person will be considered incapacitated for purposes of paragraph (a)(2)(vii)(*a*) of this section, when he has a physical or mental defect, illness, or impairment. The incapacity shall be supported by medical evidence and/or recorded testimony of a licensed health care professional, and must be of such a debilitating nature as to reduce substantially or eliminate his ability to support or care for himself and be expected to last for a period of at least thirty (30) days. A finding of eligibility for OASDI or SSI benefits, based on disability or blindness, is acceptable proof of incapacity.

* * * * *

[FR Doc. 87-22769 Filed 10-2-87; 8:45 am]
BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Gen. Docket No. 87-387; FCC 87-292]

Freedom of Information Reform Act of 1986; Fee Schedule and Administrative Procedures; Amending Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend its Freedom of Information Act (FOIA) regulations to incorporate recent changes to the FOIA regarding establishment of fees to be charged for search, review and duplication of documents. These proposed rules follow the guidelines established by the Office of Management and Budget.

DATE: Comments are due on or before November 9, 1987. Reply comments are due on or before November 24, 1987.

ADDRESS: Secretary's Office, Room 222, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon Diskin or Lawrence S. Schaffner, 1919 M Street NW., Washington, DC (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice and comment in Gen. Docket No. 87-387, adopted September 10, 1987, and released September 9, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. The Federal Communications Commission proposes to amend its Freedom of Information Act (FOIA) regulations to incorporate the recent changes to the FOIA regarding establishment of fees to be charged for search, review and duplication of records in response to FOIA requests. The proposed rules follow the guidelines established by the Office of Management and Budget, (OMB).

2. The proposed rules would implement the statutory amendments contained in the Freedom of Information Reform Act (Reform Act) and the administrative procedures set forth in the OMB Guidelines. The most significant revision contained in the proposed rules is the establishment of a multi-tiered structure for the assessment of FOIA charges. The Reform Act establishes several categories of FOIA requesters with separate fee provisions applicable to each category. For example, whenever records are sought for "commercial use," agencies are permitted to charge not only for search and reproduction costs, but for the costs of reviewing documents for the purpose of applying FOIA exemptions. When educational, noncommercial scientific institutions or news media requesters seek records, they will be charged only for duplication costs, after receiving the first 100 pages free. All other non-commercial use requesters will receive the first 100 pages of documents free of copying charges and two hours of search without charge.

3. Further, Reform Act permits agencies to recover only the direct costs of search, duplication or review. The Commission has determined that the direct cost of duplicating is 17 cents per page. This charge is based on the most recent estimates of costs to the Commission. As under its existing rules, the Commission's charges for search and review will be based on the grade level of the employee performing the search plus an allowance for benefits. In addition, the proposed rules provide that requesters will have the option of obtaining routinely available information from the copy contractor rather than filing a FOIA request with the Commission. Materials obtained from the contractor will be available at the contract rate and reduced assessment of fees because of the category in which he or she falls may receive such a reduced assessment only if the information request is filed with the Commission.

4. Other significant reform features include the following: (1) A provision stating that the Commission will not be authorized to require advance payment of a fee unless the requester's prior failure to pay a fee warrants such a deposit or the estimated cost of processing is $250 or more; (2) a provision that fee waiver issues will be adjudicated in court proceedings according to a *de novo* standard of review; and (3) a general fee waiver standard which provides for waivers where disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Other noteworthy features contained in the OMB Guidelines and the proposed rules include provisions for charging for unsuccessful searches and for assessing interest for late payments.

5. The Commission is also taking this opportunity to add a new provision establishing that only those records within the Commission's possession and control as of the date a FOIA request is received are subject to the request. By this rule, we will establish a uniform benchmark for determining which documents should be considered in responding to a request.

6. Finally, the proposed rules update the charge for certification of documents. To cover the agency's administrative costs, including the time needed to verify that the document is a true copy of the original document in the Commission's record and to bind and seal the material, we are proposing to charge $10 for each certification. Copies of certified documents, if requested, will be charged at the rate of 17 cents per copy. We do not, however, propose any charge for the additional search time that may be required to find the original document in the Commission's records. The fee for certification must be paid before the certified document is released by the Commission.

7. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

8. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is hereby certified that the proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed amendments are not designed to alter the fees charged small entities for document production. To the extent

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small entities may be among the categories of information requesters specified in the fee provisions, the rules will affect only small entities who file FOIA requests.

9. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), any reporting and recordkeeping provisions that are included in the rules will be submitted for approval to the Office of Management and Budget (OMB).

10. Under the procedures set forth in § 1.415 of the Commission's Rules, 47 CFR 1.415, interested persons may file comments or before November 24, 1987. As reflected above, this proceeding on or before November 9, 1987 and reply comments on is being conducted on an expedited basis.

11. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

12. The proposed amendments to the Commission's Rules are issued pursuant to the authority contained in section 4(i) of the Communications Act, 47 U.S.C. 154(i) and section 552(a)(4)(A)(i) of the Freedom of Information Act, as amended, 5 U.S.C. 552(a)(4)(A)(i).

Federal Communications Commission.

William J. Tricarico,

Secretary.

List of Subjects in 47 CFR Part 0

Commission organization.

[FR Doc. 87–22684 Filed 10–2–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) would amend certain regulations in 50 CFR Part 33 that pertain to fishing on individual national wildlife refuges (NWR). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications would ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established, and to the extent practical, make refuge fishing programs consistent with State regulations.

DATE: Comments must be received on or before November 4, 1987.

ADDRESS: Send comments to: Assistant Director, Refuges and Wildlife, Fish and Wildlife Service, Room 2348, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240; Telephone 202–343–3922.

SUPPLEMENTARY INFORMATION: 50 CFR Part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service previously issued refuge-specific fishing regulations in 50 CFR Part 33.

This proposed rule would amend and supplement certain refuge-specific regulations in 50 CFR Part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed State.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the proposed amendments to refuge-specific fishing regulations. Accordingly, interested persons may submit written comments, suggestions or objections concerning this proposal to the Assistant Director, Refuges and Wildlife (address above), by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and the public use of NWRs. Specifically, section 4(d)(l)(A) of the Refuge System Administration Act authorizes the Secretary of the Interior (Secretary) under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act authorizes the Secretary to administer the refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to the opening of the refuge to fishing. In many cases, refuge-specific fishing regulations are included as a part of the fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and Refuge Recreation Act is ensured when the fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost of prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will

have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific fishing regulations would make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular NWR. The changes proposed in this rulemaking would not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the regional offices of the Service at the addresses listed below.

Region 1—California, Hawaii, Idaho, Oregon and Washington:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–2324.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303; Telephone (404) 221–3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80255; Telephone (303) 236–4608.

Region 7—Alaska:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3542.

Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, Washington, DC, is primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, it is proposed to amend Part 33 of Chapter I of Title 50 of the *Code of Federal Regulations* as set forth below:

1. The authority citation for Part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd and 715i.

2. Section 33.5 would be amended by revising (a)(i), (b) and (c)(2) as follows:

§ 33.5 Alabama.

(a) *Bon Secour National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(b) *Choctaw National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted only from sunrise to sunset.

(c) *Eufaula National Wildlife Refuge.* * * *

(2) Fishing, including bowfishing, is permitted from March 1 through October 31 only from sunrise to sunset on all refuge impoundments and waters other than the Walter F. George Reservoir.

* * * * *

2. Section 33.8 would be amended by revising (a)(1), (b) introductory text and (d)(1); adding (d)(5) and (6) and revising (e)(1) as follows:

§ 33.8 Arkansas.

(a) *Big Lake National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 only from sunrise to sunset with the following exceptions: Bank fishing is permitted at any time in the area around Floodway Dam south of the Highway 18 bridge, and fishing only for sunrise to sunset from nonmotorized boats and boats with electric motors is permitted in the Sand Slough-Mud Slough Area from November 1 through the end of February.

* * * * *

(b) *Felsenthal National Wildlife Refuge.* Fishing, frogging and the taking of turtles and crawfish are permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(d) *Wapanocca National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 15 through September 30 only from sunrise to sunset.

* * * * *

(5) Big Creek and Ditch 8 are closed to fishing.

(6) Length limits for largemouth bass are required as posted.

(3) *White River National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 except as posted and as follows: Fishing is permitted year-round in LaGrue, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake next to Highway 1, the portion of Indiana Bay south of Highway 1, and those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way.

* * * * *

3. Section 33.13 would be amended by revising (a)(1); redesignating (b) through (l) as (c) through (m); adding (b); revising newly redesignated (c)(1), (d), (f)(1), (g)(1), (h)(1) and (i)(1); adding (i)(4); revising newly redesignated (l) introductory text and (l)(1); adding (l)(3); revising newly redesignated (m)(1) and adding (m)(4) as follows:

§ 33.13 Florida.

(a) *Cedar Keys National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(b) *Chassahowitzka National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition; Fishing is permitted year-round, except in a designated sanctuary that is closed to all public entry from October 15 to February 15.

(c) *Egmont Key National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(d) *Hobe Sound National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round only from sunrise to sunset.

* * * * *

(f) *Lake Woodruff National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(g) *Lower Suwannee National Wildlife Refuge.* * * *

(1) Bank fishing is permitted in interior refuge creeks, borrow pits and canals from March 15 to September 30 only from sunrise to sunset.

* * * * *

(h) *Loxahatchee National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset on all areas of the refuge except the management impoundments and those areas marked by signs as closed to public entry or fishing.

* * * * *

(i) *Merritt Island National Wildlife Refuge.* * * *

(1) Night fishing is permitted from a boat only. A permit is required.

* * * * *

(4) Air thrust boats are prohibited.

* * * * *

(l) *St. Marks National Wildlife Refuge.* Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

(1) Freshwater fishing and crabbing are permitted only from sunrise to sunset.

* * * * *

(3) Launching of commercial or sport net boats at the saltwater boat ramp on C.R 59 is prohibited.

(m) *St. Vincent National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(4) Fishing seasons and largemouth bass length limits are as posted.

4. Section 33.14 would be amended by revising (a)(1), (d)(2), (f)(1), (h)(2) and (i)(3) as follows:

§ 33.14 Georgia.

(a) *Banks Lake National Wildlife Refuge.* * * *

(1) Fishing is permitted year-round only from sunrise to sunset.

* * * * *

(d) *Harris Neck National Wildlife Refuge.* * * *

(2) Bank fishing into estuarine waters is permitted only from sunrise to sunset.

* * * * *

(f) *Piedmont National Wildlife Refuge.* * * *

(1) Fishing is permitted from May 1 through September 30 only from sunrise to sunset.

* * * * *

(h) *Wassaw National Wildlife Refuge.* * * *

(2) Bank fishing into estuarine waters is permitted only from sunrise to sunset.

(i) *Wolf Island National Wildlife Refuge.* * * *

(3) Bank fishing into enstuarine waters is permitted only from sunrise to sunset.

5. Section 33.19 would be amended by revising (a)(7) and removing (a)(8) as follows:

§ 33.19 Iowa.

(a) *De Soto National Wildlife Refuge.* * * *

(7) Minimum length and creel limits are required as posted.

6. Section 33.22 would be amended by revising (b)(1) and (2), (d)(1), (e)(1), and (f)(7) as follows:

§ 33.22 Louisiana.

(b) *Catahoula National Wildlife Refuge.* * * *

(1) Fishing is permitted in Cowpen Bayou year-round only from sunrise to sunset.

(2) Fishing is permitted in the Duck Lake impoundment and discharge waters from March 1 through October 31 only from sunrise to sunset.

* * * * *

(d) *Delta National Wildlife Refuge.* * * *

(1) Fishing, shrimping and crabbing are permitted only from sunrise to sunset.

* * * * *

(e) *Lacassine National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 15 only from sunrise to sunset.

* * * * *

(f) *Sabine National Wildlife Refuge.* * * *

(7) Daily shrimp (heads on) take and/or possession limit is 5 gallons or 20 quarts per vehicle during the State inside water shrimp season; and 5 quarts take and/or possession limit per vehicle during the rest of the year.

* * * * *

7. Section 33.25 would be amended by revising (a)(1) as follows:

§ 33.25 Massachusetts.

(a) *Great Meadows National Wildlife Refuge.* * * *

(1) Fishing is permitted along the main channel of the Sudbury River, Concord River and along designated banks of Heard Pond with the following exception: Fishing is not permitted within refuge impoundments.

* * * *

8. Section 33.27 would be amended by revising (a)(1) as follows:

§ 33.27 Minnesota.

(a) *Big Stone National Wildlife Refuge.* * * *

(1) Nonmotorized boats or boats with electric motors are permitted in the Minnesota River channel only.

* * * * *

§ 33.28 [Amended]

9. Section 33.28 would be amended by revising (b) as follows:

* * * * *

(b) *Noxubee National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted from March 1 through October 31, except for the Noxubee River and the borrow pits along Highway 25 which are open year-round.

(2) Fishing is permitted only from sunrise to sunset. Boats may not be left on the refuge overnight.

(3) Limb lines, snag lines and hand grappling are prohibited in the Bluff and Loakfoma Lakes. Only nongame fish may be taken with a bow.

(4) All trotline material must be cotton twine. One trotline per person, and no more than two per boat.

(5) The length limit for largemouth bass taken from Loakfoma and Ross Branch Lakes is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be released unharmed.

(6) Boats are restricted to no-wake speeds on all refuge waters.

10. Section 33.37 would be amended by redesignating (a) and (b) as (b) and (c), and (c) as (e); adding (a) and (d) and revising newly redesignated (b)(1), (c)(1) and (3) and (e)(2) as follows:

§ 33.37 North Carolina.

(a) *Alligator River National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round only from sunrise to sunset.

(2) Only the use of pole and line, rod and reel or cast net is permitted.

(3) A permit is required for night fishing.

(4) Frogs may be taken by the use of frog gigs only. A permit is required.

(b) *MacKay Island National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset from March 15 through October 15 with the exception that bank fishing is permitted in Corey's Ditch and the canal adjacent to the Knotts Island Causeway year-round.

* * * * *

(c) *Mattamuskeet National Wildlife Refuge.* * * *

(1) Fishing and crabbing are permitted from March 1 through November 1 from one-half hourbefore sunrise to one-half hour after sunset or as posted.

* * * * *

(3) Herring (alewife) dipping is permitted from March 1 to May 15 only from sunrise to sunset or as posted.

* * * * *

(d) *Pea Island National Wildlife Refuge.* Fishing and crabbing are permitted on designated areas of the refuge subject to the following condition: Fishing and crabbing are prohibited in North Pond, South Pond and Newfield impoundments.

(e) *Pee Dee National Wildlife Refuge.* * * *

(2) Fishing is permitted only from sunrise to sunset.

* * * * *

§ 33.41 [Amended]

(11.) Section 33.41 would be amended by revising (g)(1) as follows:

* * * * *

(g) *Umatilla National Wildlife Refuge.* * * *

(1) Fishing is permitted on refuge impoundments and ponds from February 1 through September 30. Other refuge waters (Columbia River and its backwaters) are open in accordance with State regulations.

* * * * *

12. Section 33.44 would be amended by revising (a)(1) and (d)(1) as follows:

§ 33.44 South Carolina.

(a) *Cape Romain National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through September 30 only from sunrise to sunset.

* * * * *

(d) *Santee National Wildlife Refuge.* * * *

(1) Fishing is permitted on inland ponds only from sunrise to sunset or as posted.

* * * * *

13. Section 33.46 would be amended by revising (a)(1), (b)(1), (c)(1) and (e)(2) and adding (a)(7) as follows:

§ 33.46 Tennessee.

(a) *Cross Creeks National Wildlife Refuge.* * * *

(1) Fishing is permitted in refuge pools and reservoirs from March 1 through October 31 only from sunrise to sunset.

* * * * *

(7) The length limit for largemouth bass taken from Elk and South Cross Creeks reservoirs is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be released unharmed.

(b) *Hatchie National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(c) *Lake Isom National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 15 through October 15 only from sunrise to sunset.

* * * * *

(e) *Reelfoot National Wildlife Refuge.* * * *

(2) Fishing is permitted only from sunrise to sunset.

* * * * *

14. Section 33.51 would be amended by revising (a)(1) and (2) and adding (a)(3) and (4) as follows:

§ 33.51 Washington.

(a) *Columbia National Wildlife Refuge.* * * *

(1) Nonmotorized boats and boats with electric motors are permitted on Upper and Lower Hampton, Hutchinson, Royal and Shiner Lakes.

(2) Motorized and nonmotorized boats are permitted on all other refuge waters open to fishing except in March Units I and II.

(3) Marsh Units I and II are restricted to shoreline fishing only.

(4) The taking of bullfrogs is prohibited.

* * * * *

15. Section 33.53 would be amended by redesignating (c) as (d) and adding (c) as follows:

§ 33.53 Wisconsin.

* * * * *

(c) *Trempealeau National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Only hand-powered craft and boats using electric trolling motors are permitted.

(2) Fishing from boats is not permitted from October 10 through November 30.

(3) Ice fishing is permitted only when ice conditions are safe.

* * * * *

16. Section 33.55 would be amended by revising (a)(1) and (2) as follows:

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§ 33.55 Pacific Islands Territory.

(a) *Johnston Atoll National Wildlife Refuge.* * * *

(1) Lobsters of 3¼ inch carapace length or more may be taken from the lagoon area from September 1 through May 31, but not by spearing; no female lobsters bearing eggs may be taken at any time.

(2) The use of nets, except throw nets, is prohibited.

* * * * *

Date: September 3, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-22767 Filed 10-2-87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 192
Monday, October 5, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Conservation Review Group; Meeting

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The National Conservation Review Group will meet to consider recommendations from State and County Conservation Review Groups with respect to the operational features of the Agricultural Conservation Program (ACP), the Emergency Conservation Program (ECP), and the Forestry Incentives Program (FIP). Comments and suggestions will be received from the public concerning these conservation and environmental programs administered by the Agricultural Stabilization and Conservation Service (ASCS).

DATE: *Meeting Date:* October 30, 1987.

DATES: *Meeting Location:* Room 4960 South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4723, South Building, Washington, DC 20013, 202–447–7333.

SUPPLEMENTARY INFORMATION: The National Conservation Review Group meeting is scheduled to be held from 9:00 a.m. to 12:00 noon on October 30, 1987, in Room 4960, South Building, U.S. Department of Agriculture, Washington, DC. Meeting sessions will be open to the public. The agenda will include consideration of State and County Review Group recommendations for changes in the administrative procedures and policy guidelines of the ACP, ECP, and FIP. An opportunity will be provided for the public to present comments at the meeting on these conservation and environmental programs administered by ASCS. Because of time constraints and anticipated participation from interested individuals and groups, comments will be limited to not more than 5 minutes. Individuals or groups interested in making recommendations may also make them in writing and submit them to Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4723–S, Washington, DC 20013. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of these programs.

Because of the limitations of space available, persons desiring to attend the meeting should call Mr. Vincent Grimes (202) 447–7333 to make reservations.

Singed at Washington, DC, on September 29, 1987.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–22952 Filed 10–2–87; 8:45 am]

BILLING CODE 3410–05–M

Commodity Credit Corporation

Price Support Levels; 1987 Crop Soybeans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determinations with respect to 1987 Crop of Soybeans.

SUMMARY: The purpose of this notice is to set forth the final announcement that the level of price support for the 1987 crop of soybean is $4.77 per bushel. This announcement is made pursuant to section 201(i) of the Argicultural Act of 1949, as amended (the "1949 Act"). In accordance with section 1009 of the Food Security Act of 1985, as amended, any determinations with respect to implementation of cost reduction options will be made at a laterdate.

EFFECTIVE DATE: September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Commodity Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202) 447–4417.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

Section 1017 of the Food Security Act of 1985 provides that the Secretary of Agriculture shall determine the rate of loans, payments and purchases under a program established under the Agricultural Act of 1949 ("the 1949 Act") for any of the 1986 through 1990 crops without regard to the requirements for notice and public participation. Accordingly, public comments were not requested with respect to the level of price support for the 1987 crop of soybeans.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. A final impact analysis has been prepared and is available from the above named individual.

Section 201(i)(1)(A) of the 1949 Act provides that the price of soybeans for each of the 1986 through 1990 marketing years shall be supported through loans and purchases. Section 201(i)(1)(B) provides that the support price for the 1986 and 1987 crops of soybeans shall be $5.02 per bushel. However, if the Secretary of Agriculture determines in accordance with section 201(i)(2) that the level of loans or purchases determined for a marketing year would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the loan and purchase level for soybeans by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 5 percent in any year nor below $4.50 per bushel. Any reduction made in accordance with section 201(i)(2) in the loan and purchase level for soybeans shall not be considered in determining

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the loan and purchase level for soybeans for subsequent years.

Section 201(i)(5) of the 1949 Act provides that the Secretary shall make a preliminary announcement of the level of price support for a crop of soybeans not earlier than 30 days prior to September 1, the beginning of the soybean marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available. The final announcement of the level of price support must be made no later than October 1 of the marketing year to which the announcement is applicable and cannot be less than the level set forth in the preliminary announcement. The level announced in the preliminary announcement was $4.77 per bushel.

Ending stocks of soybeans for the 1986–87 marketing year are expected to be approximately 480 million bushels, an amount considered to be excessive. Maintaining the price support level for the 1987 crop of soybeans at $5.02 per bushel would likely result in ending stocks of approximately 507 million bushels for the 1987–88 marketing year since such a support level would discourage the exportation of soybeans and to a lesser degree, result in lower domestic use of soybeans. Based upon the 1987 estimated production of soybeans, a $4.77 per bushel price support level would likely result in ending stocks of approximately 480 million bushels for the 1987–1988 marketing year.

As compared to a $5.02 per bushel price support level, a $4.77 per bushel price support level would increase the export of soybeans about 3 percent and also increase slightly the domestic use of soybeans. The price support level for the 1987 crop of corn has been established at $1.82 per bushel. Establishing a 1987 soybean price support level of $5.02 per bushel, with a $1.82 per bushel price support level for corn, would result in an adverse distortion of the historical corn/soybean price relationship and result in an adverse impact on the use of soybeans. However, a 1987 soybean price support level of $4.77 per bushel would better maintain this normal corn/soybean price relationship. Accordingly, the 1987-crop soybean price support level is $4.77 per bushel, the same as the price support level for the 1986 crop.

Section 201(i)(3) of the 1949 Act provides that, if the Secretary determines that such action will assist in maintaining the competitive relationship of soybeans in domestic and export markets after taking into consideration the cost of producing soybeans, supply and demand conditions, and world prices for soybeans, the Secretary may permit a producer to repay a loan for a crop at a level that is the lesser of (1) the announced loan level for such crop or (2) the prevailing world market price for soybeans, as determined by the Secretary. If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation (1) a formula to define the prevailing world market price for soybeans and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for soybeans.

Section 1009(a) of the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by section 1009(c), (d) or (e) will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium sized producers participating in such programs, the Secretary shall take such action with respect to that commodity program. These actions include: (1) The commercial purchases of commodities by the Secretary; (2) the settlement of nonrecourse loans at an amount less than the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest; (B) avoidance of default of the loan; and (C) elimination of storage, handling and carrying charges on the forfeited loan collateral; and (3) the reopening of a production control or loan program established for a crop at any time prior to harvest of such crop for the purpose of accepting bids from producers for the conversion of acreage planted to a program crop to diverted acreage in return for in-kind payments if the Secretary has determined that: (1) Changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for that crop and (2) without action to further adjust production, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments are not subject to the maximum payment limitation provision of section 1001 of the Food Security Act of 1985 but are limited to $20,000 per year per producer for any one commodity.

Accordingly, the following determinations have been made.

Determinations

A. Price Support Level

The price support level for the 1987 crop of soybeans shall be $4.77 per bushel.

B. Marketing Loan

A marketing loan will not be implemented with respect to the 1987 crop of soybeans.

C. Cost Reduction Options

The decision to implement any cost reduction option will be made at a later date.

(Sec. 201(i), Agricultural Act of 1949, as amended, 63 Stat. 1052, as amended (7 U.S.C. 1446(i)))

Signed at Washington, DC, on September 24, 1987.

Richard E. Lying,

Secretary.

[FR Doc. 87–22955 Filed 10–2–87; 8:45 am]

BILLING CODE 3410–05–M

Packers and Stockyards Administration

Certification of Central Filing System; New Hampshire

The Statewide central filing system of New Hampshire is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Christopher Morgan, Assistant Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: September 29, 1987.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 87–22956 Filed 10–2–87; 8:45 am]

BILLING CODE 3410–KD–M

Certification of Central Filing System; South Dakota

The Statewide central filing system of South Dakota is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Thomas G. Leckey, Deputy Secretary of State, for all farm products produced in that State except timber to be cut.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: September 29, 1987.

B.H. (BILL) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 87–22957 Filed 10–2–87; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-607]

Fabric and Expanded Neoprene Laminate From Taiwan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that fabric and expanded neoprene laminate (FENL) from Taiwan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4136 or 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that FENL from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The margin found for the company investigated is listed in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On May 8, 1987, we made an affirmative preliminary determination (52 FR 18258, May 14, 1987).

On May 18, 1987, we received a request from Shei Chung Hsin Co., Ltd. (SHEICO), sole respondent in this investigation, to extend the period for the final determination to no later than 135 days after publication of our "Preliminary Determination" notice in the **Federal Register**, in accordance with section 735(a)(2)(A) of the Act. We granted this request and postponed the final determination until no later than September 28, 1987 (52 FR 21339, June 5, 1987).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments. Since no requests were received for a public hearing, written comments on the issues arising in this investigation were submitted between July 23 and August 31, 1987, in lieu of the public hearing.

Scope of Investigation

The product covered by this investigation is fabric and expanded neoprene laminate, as provided for in items 355.8100, 355.8210, 355.8220, 359.5000 and 359.6000 of the *Tariff Schedules of the United States Annotated* (TSUSA). This material is used primarily in the manufacture of wet suits and similar products for the scuba diving and recreational markets.

Fair Value Comparisons

We made comparisons on approximately 97 percent of the sales by SHEICO of FENL to the United States during the period of investigation (P.O.I.), July 1 through December 31, 1986. Because SHEICO accounted for over 70 percent of all sales of this merchandise from Taiwan, we limited our investigation to this company.

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value for the company under investigation using data provided in the responses.

United States Price

For certain sales by SHEICO, we based United States prices on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the sale to the first unrelated purchaser took place after importation into the United States. For those sales by SHEICO made directly to unrelated parties in the United States prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Act.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For thse sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being inttroduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as the processor of sale-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the rountine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or aboard does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, it commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and exporter's sale price based on the packed, f.o.b., c&i., c.&f. duty unpaid, or c.i.f. duty paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, U.S. duty and U.S. inland freight. Where we used exporter's sales price, we made additional deductions for credit expenses, other U.S. selling expenses, and commissions. We made additions to both purchase price and exporter's sale price for duty drawback (i.e., import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States) pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we calculated foreign market value based on sales for export to a country other than the United States (a "third country"), since SHEICO had insufficient home market sales of FENL. We calculated foreign market value based on the packed, c.i.f., f.o.b., c&f., or c.&i., duty unpaid prices to unrelated purchasers in Australia. We selected Australia because it is the largest third country market and sales were made in similar quantities to that of the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, marine insurance, and ocean freight.

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When we compared foreign market value to purchase price sales, we adjusted foreign market value for differences in credit expenses between the two markets, in accordance with § 353.15 of the Department's regulations (19 CFR 353.15). When we compared foreign market value with exporter's sales price, we deducted credit expenses in Australia from foreign market value. We also used indirect selling expenses in the Australian market to offset United States selling expenses and commissions, in accordance with § 353.15(c) of our regulations.

SHEICO's claim for warranty expenses in the Australian market was disallowed since this information could not be verified.

In order to adjust for differences in packing between the two markets, we deducted Australian packing costs from foreign market value and added U.S. packing costs.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16) of the Act, on the basis of thickness, fabric type and foam type. Where there were no identical products in the Australian market with which to compare products sold to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, labor and directly related factory overhead.

Interested Parties' Comments

Comment 1: Petitioner asserts that the Department should base its final determination exclusively on verified information and should reject information submitted after the verification, including the amended computer tape. Petitioner also urges the Department to assign zero sales prices to the six unreported U.S. sales found during verification.

Respondent disagrees with petitioner's suggested that the Department should reject the amended computer tape submitted by SHEICO since all data in the amended tape have been verified. Respondent further contends that the tape was submitted in accordance with the Department's request that SHEICO amend its sales listing. Respondent also explains that the six sales reported at verification were not, as petitioner suggests, intentionally omitted from SHEICO's original response. Therefore, no adverse action should be taken against SHEICO with respect to these sales.

DOC Position: We agree with petitioner that the final determination should be based exclusively on verified information. We have used information contained in SHEICO'S amended computer tape since it was verified and was submitted in response to a request from the Department. Additionally, we have excluded in our fair value comparisons the six transactions unreported prior to verification for the reasons discussed in the Department's response to Comment 2.

Comment 2: Respondent urges the Department not to consider in its calculations certain U.S. sales made to a customer who has yet to pay Go-Sport, SHEICO's U.S. subsidiary. Respondent claims that these sales were not made in the ordinary course of trade and, because payment for the goods was never made, that a basic component of the sales transaction has not yet taken place. Respondent also contends that if these transactions are not deferred until an annual review, it would punish respondent unfairly with dumping duties simply because it is involved in litigation to recoup all monies owed, plus interest and punitive damages.

Respondent further argues that if the Department decides to use these transactions for the final determination, then the entire one-year period of non-payment should not be considered a credit expense since Go-Sport has no control over the payment time. Instead, respondent claims that credit expenses should be imputed based on the terms of each invoice. Respondent also urges the Department to impute indirect selling expenses based on the "bad debt" from the date on which payment was due on each invoice to the date of the final determination in this investigation.

DOC Position: We agree with respondent that all sales where the customer has yet to pay respondent's U.S. subsidiary should not be included in our fair value comparisons. This includes the six transactions unreported prior to verification. We have not included these sales because we were not able to calculate an accurate credit adjustment for them at this time. Moreover, they comprise less than one percent of the total value of FENL sold to the United States during the P.O.I. and the unusual circumstances surrounding these sales indicate that they are not representative of the respondent's selling practices in the U.S. market.

Comment 3: Petitioner claims that the Department should either correct errors found at verification on the reported credit expenses of Go-Sport on exporter's sales price transactions or apply the highest verified credit expense to those U.S. sales where respondent understated its credit costs.

Respondent, however, claims that Go-Sport did not understate certain credit expenses, as claimed by petitioner. Respondent explains that the credit expenses associated with those sales where the customer never paid were intentionally left blank because of SHEICO's argument that credit expenses could not be calculated on these sales. Therefore, respondent states that use of best information available to calculate credit expenses on these sales is inappropriate.

DOC Position: We agree with petitioner that these errors should be corrected for the final determination, and the Department has done so. However, the Department disagrees with petitioner's contention that it should apply, as best information otherwise available, the highest verified credit expense where errors were found since most of these discrepanices occurred on sales which we excluded from our final calculations as described above. Errors found on other U.S. sales were not of the type or magnitude that would cause the Department to use best information available.

Comment 4: Petitioner claims that brokerage and handling expenses and certain claims related to U.S. inland freight charges on exporter's sales price transactions could not be verified. Consequently, petitioner states that the Department should adjust U.S. prices.

Respondent counters that, contrary to petitioner's assertions, brokerage and handling on the Go-Sport sales was verified by the Department, and should, therefore, be used in the final determination.

DOC Position: We disagree with petitioner that U.S. brokerage and handling could not be verified. Although some discrepancies were found, they were not of a magnitude to consider the use of best information available. As for U.S. inland freight, the reported amounts were verified, with the exception of two invoices. For these two sales, we have applied the highest verified U.S. inland freight charge as the best information otherwise available.

Comment 5: Petitioner assert that the Department must disallow SHEICO's claim for warranty expenses in the Australian market since it could not be verified. Respondent, however, claims that warrant expenses were verified and should be allowed.

DOC Position: Since warranty expenses claimed on Australian sales was not verified to the satisfaction of the Department, we have disallowed warranty expenses on those Australian sales where SHEICO made this claim.

Comment 6: Petitioner urges the Department to base credit expenses for Australian and U.S. purchase price sales on verified data because respondent

inaccurately reported credit on some sales.

DOC Position: We agree and have based credit expenses claimed on Australian and U.S. purchase price sales on verified information. Credit expenses on most purchase price sales were under-reported because respondent made a mathematical error in failing to convert one component of the credit expense from U.S. dollars to New Taiwan dollars before totalling credit charges. This has been corrected in respondent's revised sales listing.

Comment 7: Petitioner contends that reported quantity discounts in both markets should be disallowed since this claim could not be verified.

DOC Position: We agree. No documentation could be produced at verification showing quantity discounts.

Comment 8: Petitioner claims that fumigation charges associated with Australian packing costs contain errors, which must be corrected in the final determination.

DOC Position: We agree that packing was understated on Australian sales because SHEICO made a mathematical error in calculating fumigation expenses. We have used the verified amounts in the final determination.

Comment 9: Petitioner claims that the verification report shows that duty drawback was overstated on four Australian sales. Therefore, these discrepancies should be corrected for the final determination.

DOC Position: We disagree. The calculations in the verification report only included drawback associated with the chemical blowing agent, and do not include the second component of drawback for nylon jersey. Therefore, we find no discrepancies in the reported drawback amounts when both components are added together. Respondent confirmed that the drawback amounts reported in the response are correct.

Comment 10: Respondent claims that virtually all of Go-Sport's operating expenses are not related to FENL sales and are not indirect selling expenses. Respondent argues that the indirect selling expenses properly allocable to Go-Sport's U.S. sales are only those indirect selling expenses incurred on the sales of FENL sheets, and should not include expenses related to wet suits and other accessories as well as those expenses not related to the selling function. Respondent further explains that the corporate officer's salary should be excluded to be consistent with the Department's policy in past investigations.

DOC Response: Since no assembly or further manufacturing took place during the review period, we have considered all of Go-Sport's operating expenses, with the exception of those allocated to repair and maintenance, to be selling expenses. We agree with respondent that those selling expenses found at verification to be directly related to products other than FENL sheets should not be included as indirect selling expenses. These include show costs, advertising, commissions, sales promotion, travel expenses, and sample costs. We also disregarded bad debt expenses since these expenses relate to sales of products other than FENL.

The Department considered all remaining operating expenses of Go-Sport to be indirect selling expenses including portions of rent and supplies allocated to the selling, warehouse and office administration categories. We also allocated a portion of the president's salary to repair and maintenance, but included the remaining portion in the pool of indirect selling expenses. Total indirect selling expenses were allocated over sales of all products.

Comment 11: Respondent contends that the total amount claimed by SHEICO for indirect selling expenses on Australian sales was verified and should be used by the Department as an offset to U.S. selling expenses on exporter's sales price transactions. This includes rental on SHEICO's Lo Tung sales office and any expenses put on the books during the P.O.I., even if paid outside the P.O.I.

Petitioner counters by requesting that the Department correct discrepancies found at verification on Australian indirect selling expenses.

DOC Position: As petitioner suggests, Australian indirect selling expenses used in our final calculations are based on verified data. Furthermore, we agree with respondent that indirect selling expenses should include rent on the Lo Tung sales office and other indirect selling expenses accrued during the P.O.I., even if paid outside the P.O.I. since SHEICO uses the accrual method of accounting. The Department has, however, disallowed (1) the portion of the interest expense attributable to the claimed credit expenses on Australian and U.S. sales, because credit expenses have already been claimed as a circumstance-of-sale adjustment; and (2) expenses associated with a trip to Taiwan by the president of Go-Sport, because this did not relate to Australian sales.

Currency Conversion

For exporter's sales price comparisons, we used the official exchange rate in effect on the date of sale, in accordance with section 773 (a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984 (1984 Act). For purchase price comparisions, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we verified all information relied upon in making this final determination. We used standard verification procedures, including examination of all relevant accounting records and original source documents provided by the respondent on relevant sales and financial records.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entires of FENL from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 0.80 percent of the entered value of the merchandise. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on FENL from Taiwan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

September 28, 1987.

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 87-22943 Filed 10-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-701]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in New Zealand of certain steel wire nails as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant and duty deposit rates are indicated in the "Suspension of Liquidation" section of this notice.

We are directing the U.S. Customs Service to continue suspension of liquidation of all entries of steel wire nails from New Zealand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in an amount equal to the duty deposit rates.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mark Linscott, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2438 (Tillman) or 377-8330 (Linscott).

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in New Zealand of steel wire nails. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Export Performance Taxation Incentive (EPTI).
- Sales Tax Exemptions or Refunds on Machinery and Equipment Used in the Production of Goods for Export.
- Export Suspensory Loan Scheme (ESLS).
- South Island Electricity Concession Scheme (SIECS).

Due to the termination of EPTI, the SIECS, and sales tax exemptions or refunds on machinery and equipment used in the production of goods for export, we have also determined that separate duty deposit rates are warranted, as set forth in the "Suspension of Liquidation" section of this notice.

Case History

Since the last **Federal Register** publication pertaining to this investigation [the *Preliminary Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from New Zealand* (52 FR 27441, July 21, 1987)], the following events have occurred. We conducted verification in New Zealand from August 3 through 13, 1987, of the questionnaire responses of the Government of New Zealand, Consolidated Metal Industries (South Island) Ltd. (CMI), Auto Machine Manufacturing Co., Ltd. (AM), and Pearson, Knowles & Rylands Brothers (NZ) Ltd. (PKR). Supplementary responses from the Government of New Zealand were received on August 3 and 26, 1987. AM and CMI submitted supplementary responses on August 5 and 27, 1987, and September 11, 1987. A supplementary response from PKR was also received on September 11, 1987.

Respondents filed a brief on September 1, 1987, and comments on the verification reports on September 11, 1987. Petitioners filed no comments during the course of the investigation. Both petitioners and respondents waived their respective rights to a hearing in this case.

Scope of Investigation

The products covered by this investigation are certain steel wire nails from New Zealand. These nails are: one-piece steel nails made of round wire, as currently provided for in *Tariff Schedules of the United States Annotated* item numbers 646.2500, 646.2610-90, and 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and nails with steel wire shanks and lead heads, as currently provided for in item number 646.3600. These products are currently classifiable under *Harmonized System* item numbers 7317.00.55, 7317.00.65, 7317.00.75 and 7616.10.10.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986. Each company has recently modified its fiscal year, and, currently, each operates on the same fiscal year. However, the companies will not complete identical fiscal years until June 30, 1988. In accordance with our practice in such situations, we have chosen the most recently completed calendar year as our review period.

We have calculated a company-specific estimated net bounty or grant in the review period for purposes of this final determination for CMI because its estimated net bounty or grant is significantly different from the country-wide rate. As set forth in § 355.20(d) of our proposed regulations (50 FR 24207, June 10, 1985):

A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

Since the differential between CMI's estimated net bounty or grant and the country-wide rate meets this requirement, we have calculated a separate estimated net bounty or grant under each program for CMI.

Due to the termination of EPTI, the SIECS, and sales tax exemptions or refunds on machinery and equipment used in the production of goods for export, all of which were verified, we also calculated separate duty deposit rates. PKR's and CMI's duty deposit rates are zero and, as such, are significantly different from the duty deposit rate for AM and all others.

Because the net bounty or grant calculated for all respondent companies during the review period was above *de minimis* and because the zero rate for PKR and CMI reflects program-wide changes which occurred after our review period but prior to our preliminary determination, we also determine that the zero duty deposit rate does not warrant a negative determination and exclusion from the order for those

companies. We are, therefore, requiring suspension of liquidation for all entries of the subject merchandise from PKR and CMI, but no collection of duties. Entries of the subject merchandise from AM and all others will be assessed at the duty deposit rate set forth in the "Suspension of Liquidation" section of this notice.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments filed by respondents, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers or exporters in New Zealand of steel wire nails under the following programs:

A. *Export Performance Taxation Incentive* (EPTI) Exporters in New Zealand are entitiled to receive a tax credit based on the f.o.b. value of qualifying goods exported under section 156A of the Income Tax Act of 1976, as amended. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the remainder is paid to the taxpayer in cash. A credit cannot be carried forward and claimed on future tax returns.

The rate of the tax credit is dependent upon the government's predetermined value-added categories into which the exported products of a taxpayer fall. The amount of the tax credit is calculated by multiplying the rates corresponding to the value-added categories by the f.o.b. value of export sales. We verified that steel wire nails fall into value-added category B, for which the corresponding rate was 10.5 percent for fiscal years ending in 1985 and in earlier years, 5.25 percent for fiscal years ending in 1986, 2.625 percent for fiscal years ending in 1987, and zero thereafter. All three respondent companies claimed EPTI credits on their tax returns for the fiscal year ending in 1986.

Because only exporters are eligible for this program, we determine that it provides a bounty or grant to manufacturers, producers or exporters of steel wire nails within the meaning of the countervailing duty law.

In previous New Zealand cases, we looked to when tax returns were actually filed in order to assess when the EPTI tax benefits are received. Our rationale throughout has been that, for income tax programs, the benefits are received when the tax return is filed because only then "can a company truly discern the ultimate benefit, and its effects, derived from any tax program." *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Steel Wire from New Zealand* (51 FR 31156, 31160, September 2, 1986).

After conducting a number of investigations during which we documented and verified the operation of EPTI, we now conclude that EPTI is different from most income tax programs in that it offers a definite percentage of the f.o.b. export sales value as a credit or cash rebate, received each year with no uncertainty as to eligibility, no need for complex tax accounting, and no dependence on ultimate tax liability.

We now believe that our standard lag methodology for income tax programs should not be used to measure the benefits under EPTI. Because a firm can precisely calculate an associated EPTI benefit for each export transaction at the moment the transaction is made and because this credit is not subject to alteration depending on them ultimate tax liability, we are able to calculate benefits on a credits-as-earned basis, looking to the percentage rate which applies to exports shipped during the review period.

To calculate the benefit under EPTI during the review period, we used the EPTI rates earned on exports made during this period. Because each company completed a fiscal year and began a new fiscal year during the review period, two EPTI rates applied during this period. We weight-averaged these rates based on associated export sales of steel wire nails to the United States and calculated a net bounty or grant of 3.87 percent *ad valorem* for CMI andm 3.62 percent *ad valorem* for all others.

We verified in this investigation and in past investigations that the phase-our of EPTI benefits is proceeding as scheduled, as set forth in sections 156A(3A) through (3B) of the Income Tax Act. Each of the companies under investigation completed a fiscal year on June 30, 1987, which was prior to the publication of our preliminary determination. The EPTI rate earned on exports shipped by these companies after July 1, 1987, is zero. We have consistently taken into account program-wide changes which are implemented subsequent to our review period but prior to a preliminary determination, when the effect of the change is measurable and verifiable, by adjusting the duty deposit rate which applies to suspension of liquidation.

Because the termination affects all New Zealand exporters and is decreed by the Income Tax Act itself and because we have verified by examining tax returns that the phase-out is proceeding as scheduled, we are satisfied that a program-wide change has been implemented and are setting the duty deposit rate at zero.

B. Sales Tax Exemptions or Refunds on Machinery and Equipment Used in the Production of Goods for Export Under Item 136 IV of the Sales Tax Exemption Order of 1979, enacted pursuant to Part VII of the Sales Tax Act of 1974, machinery used in the production of goods for export may be exempt from the ten percent sales tax. According to verified information, PKR received a sales tax exemption and CMI received a sales tax refund under Item 136 IV during the review period. Both related to the purchase of machines to be used in the production of nails.

Because the sales tax exemption received by PKR and the sales tax refund received by CMI during the review period under Item 136 IV were provided only if the machinery and equipment purchased were to be used for export production, we determine that this program provided a bounty or grant to manufacturers, producers or exporters of steel wire nails within the meaning of the countervailing duty law.

Therefore, to calculate the benefit for CMI, we divided the refund received by CMI during the review period by CMI's export sales of steel wire nails during the review period. On this basis, we calculate an estimated net bounty or grant of 41.03 percent *ad valorem* for CMI. To calculate the estimated net bounty or grant for all others, we divided the value of the exemption received by PKR during the review period by PKR's and AM's exports of steel wire nails during the review period. On this basis, we calculate an estimated net bounty or grant for all others of 1.20 percent *ad valorem*.

We verified that all leigislation and regulations associated with the Sales Tax Act were repealed upon the imposition of the Goods and Services Tax (GST) on October 1, 1986. No applications for exemption could be accepted after this date. Due to delays in processing refund claims and further delays on the part of some companies in filing refund claims for machinery purchased prior to the date, the New Zealand Customs Department was still approving and disbursing outstanding claims after October 1, 1986. We verified that the New Zealand Customs Department continued to disburse sales tax refund checks through June 1987, but that no refunds have been disbursed since then. We also verified that the respondent companies received all of

the exemptions and refunds for which they were eligible no later than the end of 1986.

The GST which replaced the sales tax is a value-added tax regime. It is designed to impose the tax only on the final consumer of goods and services in the New Zealand economy. For this reason, we determine that no countervailable benefits are conferred under the GST.

Since the imposition of the GST on October 1, 1986, effectively repealed the Sales Tax Act and we verified that no exemptions or refunds have been received since 1986 by the companies under investigation, we consider this termination to be a program-wide change which occurred prior to the preliminary determination and are, therefore, calculating a duty deposit rate of zero.

C. Export Suspensory Loan Scheme (ESLS)

According to verified information, exporters may receive loans from the Development Finance Corporation (DFC) for the purchase of equipment used to expand production of exportable goods. If an exporter meets predetermined export sales targets for three consecutive years, its loans are converted to grants.

The term for a loan is five years.

We verified that AM received a loan in 1982, which was converted to a grant in 1986, a second loan in 1984, and a third loan in 1985. In addition, we verified that CMI and PKR have not received ESIS loans or grants.

Because the suspensory loans under this program are made available only for purchasing equipment used in producing export goods, we determine that this program provides a bounty or grant to manufactures, producers or exporters of steel wire nails within the meaning of the countervailing duty law.

To calculate the benefit, we allocated the loan that was converted to a grant during the review period over 15 years, the average useful life of equipment used in the steel industry. Our preferred methodology is to allocate benefits over time using as our discount rate a weighted average of the firm's marginal costs of debt and equity for the year in which the grant was made. Because AM assumed no new long-term debt in 1986, when the first loan was converted to a grant, nor did it have any long-term debt outstanding during this period, other than export suspensory loans, we used as our discount factor New Zealand's national average cost of debt in 1986, as published in the bulletin of the Reserve Bank of New Zealand.

For the two loans which have not been converted, we compared the variable rates in force for each during the review period to New Zealand's national average short-term rate during the same period and expensed the differential in payment as a benefit received during the review period. We used the national average short-term rate in lieu of a national average or company-specific variable rate or a company-specific short-term rate because these preferred alternatives were unavailable for the review period. The interest rates on one of the loans were above the benchmark for the entire review period, therefore, we calculated no benefits associated with this loans.

The loan converted to a grant and the loan that was below the benchmark were tied specifically to nail production. Since CMI has received no ESLS loans or grants, the estimated net bounty or grant is zero for CMI. To calculate the country-wide rate, we added the benefit allocated to the review period for the grant to the benefit expensed to the review period for the loan and divided by AM's and RKR's export sales of steel wire nails during the review period. On this basis, we calculate an estimated net bounty or grant of 0.43 percent *ad valorem* for all others.

D. South Island Electricity Concession Scheme (SIECS)

Under the SIECS, established in 1979, the Department of Trade and Industry (DTI) offered select industrial users with operations on the South Island a 25 percent rebate on electricity consumption costs. The scheme's stated objectives were to stimulate growth and development in the South Island and to take into account the generous hydro-electricity supplies and the scarcity of natural gas deposits on the South Island. DTI limited rebate benefits to specified manufacturing industries, hotels and motels of five or more bedrooms and electricity-intensive agricultural activities.

From 1984 to March 31, 1986, DTI gradually phased-out the rebate scheme and implemented in its place a price differential in the bulk tariff rates (the supply rates charged to municipal distributors) between the South Island and North Island. In contrast to the SIECS, the new price differential was calculated based on government studies which documented that costs of electricity supply were lower on the South Island than on the North Island and that bulk tariff rates should reflect this differential. Moreover, while the SIECS was a direct rebate to designated industrial users, the price differential system applies to rates charged to municipal distributors and not to end-users and is in no way limited to specific industries on the South Island.

Because the SIECS applied to only designated activities within a certain region, the South Island, we determine that it is limited to a specific enterprise or industry, or group thereof, within the meaning of the Act. Moreover, because the SIECS offered rebates that were not clearly related to cost differentials between specific end-users, we determine that this program provided goods or services on preferential terms within the meaning of the Act. To calculate the benefit under this program, we divided the amount of rebates received during the review period by CMI, the only company under investigation which is located on the South Island and, therefore, eligible under this program, by CMI's total sales during the review period. The estimated net bounty or grant is 0.11 percent *ad valorem* for CMI and zero for all others.

We verified that DTI formally terminated the SIECS in March 1986 and that it has no funds budgeted to the SIECS and has made no expenditures under the program in 1987. We also verified that CMI reveived its last electricity rebate in November 1986. Accordingly, we consider this termination to be a program-wide change and are, therefore, calculating a duty deposit rate of zero.

II. Program Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in New Zealand of steel wire nails under the following program:

Unit Rate Freight Rebate Scheme (URFRS)

During verification, we found that CMI received rebates under this program during the review period for goods shipped to the North Island. We verified that manufacturers or producers on the South Island are entitled to a nine to ten percent rebate of freight costs for goods shipped to the North Island, depending on whether the goods are shipped depot-to-depot or door-to-door. CMI is the only company under investigation located on the South Island, and is therefore the only such company eligible to receive benefits under this program.

We verified that the rebate applies only to goods sold for domestic consumption and consigned to points on the North Island north of Porirua and Upper Hutt. Goods intended for export are not eligible for the rebate.

Furthermore, we verified that all of CMI's exports are made directly from the South Island and are not shipped to the North Island and then exported from North Island ports. We therefore determine that rebates under this program do not confer a countervailable benefit on exports of steel wire nails to the United States.

III. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers or exporters in New Zealand of steel wire nails did not apply for, claim or receive benefits during the review period for exports of steel wire nails to the United States under the following programs which were listed in the *Initiation of Countervailing Duty Investigation: Certain Steel Wire Nails from New Zealand* (52 FR 18590, May 18, 1987).

A. Export Marketing and Technical Assistance from the New Zealand Export-Import Corporation, DTI, the Building Research Association of New Zealand and the Standards Association of New Zealand
B. Export Credits and Development Financing from the DFC
C. Export Programme Grant Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS)
D. Preferential Treatment to Exporters in Granting Import Licenses under the Export Production Assistance Scheme (EPAS)
E. Export Manufacturing Investment Allowance (EMIA)
F. Supplementary Investment Allowances for Plants and Machinery under sections 121 and 121A of the Income Tax Act of 1976
G. Research and Development Incentives under the Applied Technology Program (ATP)
H. Export Market Development Taxation Incentive (EMDTI) Although EMDTI credits were claimed by PKR on the tax return for its fiscal year ending in 1986, filed during the review period, and by AM on the tax return for its fiscal year ending in 1986, filed in February 1987, we verified that these credits were not related, in any way, to exports to the United States.
I. Regional Development Incentives other than SIECS and URFRS

We verified that all regional development incentives other than SIECS and URFRS were terminated as of April 21, 1986, and replaced by a single new program, the Regional Development Investigation Grants Scheme. We verified that none of the companies under investigation received benefits under this new scheme.

Comments

Comment 1: Respondents argue that the Department should not calculate benefits under EPTI by using its tax lag methodology. They contend that the Department has been inconsistent in the application of the tax lag methodology, citing as examples the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Low-Fuming Brazing Copper Rod and Wire from New Zealand* (50 FR 31638, August 5, 1985), in which the Department calculated the estimated net bounty or grant rate based on the applicable EPTI rate for the company's fiscal year ending July 31, 1984, which corresponded to the end of the review period, rather than on the tax return filed during this period, and the preliminary determination in the present investigation, in which it treated the tax return filed by AM in February 1987 as if it had been filed during the review period.

Respondents believe that this approach contradicts our determination in *Lime from Mexico. Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico* (49 FR 35672, September 11, 1984). Respondents contend that EPTI is distinct from other countervailable tax programs because the benefits of EPTI can be assessed prior to the filing of a tax return. Respondents conclude that the Department should modify its review period to correspond to the companies' fiscal years ending June 30, 1987, and should calculate the estimated net bounty or grant as 2.625 percent, the EPTI rate that applied to exports made during this period, or alternatively, should exclude AM from the EPTI calculation if it continues with calendar year 1986 as the review period.

DOC Position: We agree that we should no longer use the tax lag methodology to calculate benefits under EPTI, and instead, should calculate benefits on a credits-as-earned basis. See section I.A. of this notice. However, we believe that our review period should remain calendar year 1986. Our usual practice is to choose the calendar year as our review period when the fiscal years of the respondent companies are not coincident. In this investigation, PKR's last completed fiscal year ran from April 1, 1986 to June 30, 1987, while AM and CMI operated on a July 1, 1986 to June 30, 1987 fiscal year. If we were to honor respondent's request, our review period would run to June 30, 1987, only a few weeks prior to our preliminary determination and verification. Each company's financial statements for this period are unaudited and, as such, are not completely reliable for purposes of verification and the final determination.

Comment 2: Respondents argue that the estimated net bounty or grant should be calculated as 2.625 percent, the rate applied to exports over the fiscal year ending June 30, 1987, because the level of EPTI is known in advance of the filing of a company's tax return. They argue further that the Department should consider the phase-out of EPTI as a program-wide change and should find that EPTI has been terminated as of July 1, 1987, for AM, CMI and PKR. Respondents identify 2.625 percent as the applicable EPTI rate for the fiscal year ending June 30, 1988 (although we verified that the EPTI rate earned for each export shipment made after June 30, 1987, is zero), and request that the duty deposit rate be set at 2.625 percent.

DOC Position: As explained in section I.A. of the notice, because our review period remains calendar year 1986, we have calculated the net bounty or grant under EPTI by weight-averaging 5.25 and 2.625 percent, the rates at which each company earned credits during the review period. We agree that we should consider the phase-out of EPTI as a program-wide change and have set the duty deposit rate at zero to reflect termination of this program, which was effective before our preliminary determination and was verified.

Comment 3: Respondents argue that benefits arising from sales tax exemptions or refunds should be excluded from the duty deposit rate, as the sales tax legislation under which these exemptions or refunds were granted was repealed with the imposition of the GST Act on October 1, 1986.

DOC Position: We agree. Because the sales tax legislation under which refunds or exemptions were granted was repealed prior to our preliminary determination and no exemptions or refunds were provided under the program prior to our preliminary determination, we determine that no countervailable benefits are conferred under the GST (see section I.B. of this notice). Therefore, the duty deposit rate for benefits due to sales tax exemptions or refunds is zero.

Comment 4: Respondents argue that the sales tax refund received by CMI during the review period should not be countervailed because it related to the purchase of a nail machine in January 1985 and was only received during the review period due to excessive delays on the part of the New Zealand Customs Department.

DOC Position: We disagree. The Department has consistently ruled that

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such delays have no bearing on the countervailability of a given benefit, unless the delay is mandated by the government. Due to the termination of the program, however, the duty deposit rate for benefits due to sales tax exemptions or refunds is zero (see DOC Position on Comment 3).

Comment 5: Respondents claim that the ESLS loan of NZ 30,000, which was converted to a grant during the review period, was used to purchase a nail packaging machine that is used entirely for the domestic market and is unable to pack nails in the pack sizes sold on the U.S. market. Respondents argue that the grant is not applicable to exports of nails and should therefore be found to be not countervailable.

DOC Position: We disagree. During verification, respondents were unable to provide us with evidence showing that this machine can never be used for packaging exports to the United States or that the package sizes for the U.S. market can never vary.

Comment 6: Respondents argue that AM's EMDTI claim on its 1986 tax return was directed at exports destined for the South Pacific and was unrelated to exports to the United States. They therefore conclude that EMDTI benefits should be excluded from the final determination.

DOC Position: We verified that, although both AM and PKR claimed and received EMDTI credits on their 1986 tax returns, these credits were specifically tied to non-U.S. exports. We have therefore determined that credits under EMDTI were not used with respect to exports to the United States.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation on all entries of steel wire nails from New Zealand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In accordance with section 706(a) of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit for each entry of steel wire nails according to the duty deposit rates listed below:

Manufacturer/producer/exporter	Estimated net bounty or grant	Duty deposit rate
Consolidated Metal Industries (South Island) Ltd.	45.01 (percent)	zero
Pearson Knowles & Rylands Brothers (NZ) Ltd.	5.25 (percent)	zero
All Others	5.25 (percent)	1.52 (percent)

This suspension will remain in effect until further notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

September 28, 1987.

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 87-22944 Filed 10-2-87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

September 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 30, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established restraint limits for man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 634 and 847, produced or manufactured in the People's Republic of China and exported during 1987.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 331 and 634, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through december 31, 1987. A subsequent directive dated April 17, 1987 (52 FR 13115) established import limits for Category 659-S, among others, for the same twelve-month period. In addition, 1987 restraint limits were established for silk blend and other vegetable fiber textile products in Categories 847 and 831, in CITA directives dated June 26, 1987 and September 21, 1987, respectively (52 FR 24503 and 52 FR 35939).

Under the terms of the bilateral textile agreement of August 19, 1983, as amended, and the bilateral textile agreement, effected by exchange of letters dated September 11 and 14, 1967, and at the request of the Government of the People's Republic of China, the limits for Categories 331, 634, 659-S, 831 and 847 are being adjusted. The limit for Category 634 is being increased by application of swing and Categories 331 and 659-S are being reduced to account for the swing being applied. These reductions also include swing applied to Categories 434 and 645/646 in a separate directive. Category 847 is being increased by application of swing and Category 831 is being reduced to account for such swing.

Merchandise shipped in Category 634, amounting to 13,000 dozen, which was exported in 1986, but charged to the 1987 limit for Category 634, will be deducted and charged back to the limit established for 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768), and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commodity Code (HCC)

may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel the directives of December 23, 1986, April 17, 1987, June 26, 1987 and September 21, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on September 30, 1987, the directives of December 23, 1986, April 17, 1987, June 26, 1987 and September 21, 1987 are amended to include adjustments to the previously established restraint limits for the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended, and the bilateral agreement, effected by exchange of letters dated September 11 and 14, 1987: [1]

Category	Adjusted 12-month limit [1]
331	3,561,213 dozen pairs.
634	447,383 dozen.
659–S [2]	850,000 pounds.
831	117,071 dozen pairs.
847	1,023,750 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 659–S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353.

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; and (3) administrative arrangement or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Also effective on September 30, 1987, you are directed to deduct import charges amounting to 13,000 dozen from the 1987 limit established for Category 634. This same amount is to be charged to the limit established for 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22923 Filed 10–2–87; 8:45 am]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 87–C0004]

McCrory Corp., a Corporation; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptence of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement agreement with McCrory Corporation, a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 20, 1987.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION:

Date: September 30, 1987.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between McCrory Corporation, a corporation (hereinafter, "McCrory"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. McCrory is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at 2955 East Market Street, York, Pennsylvania 17402.

3. McCrory has imported certain baby walkers indentified further in paragraphs 6 and 7 below (hereinafter, "baby walkers" or "walkers"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary houshold or residence. These baby walkers are "consumer products" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

4. McCrory imported and sold these baby walkers at McCrory Company stores throughout the United States. The product was also sold to other retail stores nationwide. McCrory, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a) (1), (4) and (11) of the CPSC, 15 U.S.C. 2052(a) (1), (4) and (11).

5. The "Staff" is the staff of the Consumer Product Safety Commission, an independent regulatory agency established by Congress pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

II. The Product

6. Between 1983 and 1986, McCrory imported nationwide approximately 103,000 baby walkers, Reference No. PHT 417.

7. The subject walkers are circular in design with a silver metal frame and yellow tray, padded vinyl seat, and six yellow plastic wheels.

III. Staff Allegations Concerning Baby Walkers and of a Failure By McCrory To Comply With the Reporting Requirements of Section 15(b) of the CPSA

8. The defect is in the buckle of the crotch strap and allows slippage or disengagement under normal use. This defect can result in an infant falling through the seat of the walker to the floor or becoming entrapped in an enlarged leg hole.

9. Unless there is adult intervention to extricate the child, such entrapment could lead to positional asphyxia.

10. By mid-January 1985, McCrory had received three complaints stating that infants had fallen through the seat of the walker. One child sustained a fractured clavicle as the result of a fall.

11. In January 1985, McCrory officials met and decided to stop shipment of the baby walkers from their warehouses to their stores.

12. In March 1985, McCrory received three additional complaints regarding the baby walkers and decided to implement a redesign of the product.

13. In April 1985, McCrory engaged in a stop sale and repair program at the retail level.

14. McCrory knew or should have known by March 1985 that the buckle of the walker's crotch strap allows for slippage or disengagement under normal use, and that an infant could fall through the seat of the walker to the floor or become entrapped in an enlarged leg hole with resulting injuries.

15. McCrory had received sufficient information by March 1985 to reasonably support the conclusion that the baby walkers, described in paragraphs 6 and 7 thereof, contained a defect which could create a substantial product hazard, but the company failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). Section 15(b) requires a manufacturer of consumer products who obtains information that reasonably supports the conclusion that its product contains a defect which could create a substantial product hazard to immediately inform the Commission of the defect.

IV. Response of McCrory Corporation

16. McCrory denies that its baby walkers contain a defect which creates or which could create a substantial product hazard within the meaning of Section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies an obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b) with respect to these baby walkers.

V. Agreement of the Parties

17. McCrory and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

18. McCrory agrees to settle the Commission's claim for a civil penalty by payment of the amount of $33.000 within 10 days of final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on McCrory. This payment is made in settlement of allegations by the staff, disputed by McCrory, that McCrory failed to report to the Commission pursuant to the requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to Reference No. PHT 417 baby walkers imported and sold by McCrory between 1983 and 1986. McCrory makes no admission of any fault, liability or statutory violation and expressly denies any fault, liability or statutory violation. The Commission does not make any determination that Reference No. PHT 417 baby walkers contain a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

19. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint been issued.

20. Upon final acceptance of this Settlement Agreement by the Commission, McCrory knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

21. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the $33,000 settlement amount by McCrory, the Commission agrees to waive its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the matters encompassed by this Settlement Agreement and Order.

22. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

23. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject McCrory to appropriate legal action.

24. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Dated: August 10, 1987

McCrory Corporation,

David H. Lissy,

Vice President, McCrory Corporation.

The Consumer Product Safety Commission

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Dated: August 24, 1987.

Ronald G. Yelenik,

Counsel for the staff of the Consumer Product Safety Commission.

ORDER

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered that McCrory Corporation shall pay within 10 days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of $33,000 to the Consumer Product Safety Commission.

Provisionally accepted on the 29th day of September 1987.

By Order of the Commission.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-22904 Filed 10-2-87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursement Rates for Fiscal Year 1988

Notice is hereby given that the Assistant Secretary of Defense (Comptroller) in a September 24, 1987, memorandum to the Assistant Secretary of Defense (Health Affairs), Assistant Secretaries of the Army and Navy (Financial Management), and Comptroller of the Air Force established reimbursement rates for inpatient and outpatient medical and dental care provided during fiscal year 1988 as follows:

	IMET[1]	Inter-agency[2]	Other
Per Inpatient Day:			
—Burn Unit	$1086	$1762	$1891
—General Medical and Dental Care	179	432	466
Per Outpatient Visit	21	56	60
Per FAA Air Traffic Controller Examination		89	

[1] International Military Education and Training students.
[2] Other Federal Agency-sponsored patients and Government civilian employees and their dependents outside the United States.

The per diem rate (supplies and subsistence) charged to dependents of military personnel in Federal medical facilities shall become $7.85 per day beginning January 1, 1988.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1987.

[FR Doc. 87-22898 Filed 10-2-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.044 and 84.066]

Applications for New Awards Under Talent Search and Educational Opportunity Centers Programs for Fiscal Year 1988

Purpose: Provide grant awards under both the Talent Search (TS) and Educational Opportunity Centers Programs (EOC) to permit applicants to carry out projects designed to identify qualified individuals from disadvantaged backgrounds and to assist them in preparing for programs in postsecondary education.

Deadline for Transmittal or Applications: December 15, 1987.

Applications Available: October 15, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for either program. However, applications are invited to allow for sufficient time to evaluate applications complete the grant process before the end of the fiscal year, should the Congress appropriate funds for either or both of these programs. The following estimates are based upon Fiscal Year 1987 appropriations:

Estimated Range of Awards: $70,000–225,000 (TS); $100,000–500,000 (EOC).

Estimated Average Size of Awards: $112,000 (TS); $238,000 (EOC).

Estimated Number of Awards: 175 (TS); 37 (EOC).

Project Period: 36 months.

Applicable Regulations: Regulations applicable to this program are:

(a) The Education Deparment General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, and

(b) Regulations governing the Talent Search and Educational Opportunity Centers Programs, 34 CFR 643 and 34 CFR 644 respectively.

Application Preparation Workshops: The Department of Education will conduct Application Preparation Workshops to assist prospective applicants in developing applications for the Talent Search and Education Opportunity Centers Programs. The Scheduled dates and locations are as follows:

October 13 (8:30 a.m.–4:00 p.m.), Washington, DC., G.S.A. Auditorium, R.O.B. #3, 7th and D Streets, SW. (Use "D" St. Entrance)
Host Persons: Mr. Walter Lewis, Chief, Education Outreach Branch, Division of Student Services, (202) 732–4804

October 16 (8:30 a.m.–4:00 p.m.), Chicago, Illinois, Roosevelt University, Room 306, 430 S. Michigan Avenue
Hose Person: Dr. Clifton Washington, Roosevelt University (312) 341–3877

October 19 (8:30 a.m.–4:00 p.m.), San Freancisco, California, University of San Francisco, Parina Lounge, University Center, Main Entrance, Golden Gate Avenue & Kitteridge
Host Person: Ms. Janice D. Cook, Director, Upward Bound Project (415) 666–6476

For Applications or Information Contact: For further information contact Walter Lewis, Chief Education Outreach Branch, Division of Student Services, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue SW., Washington, DC 20202. Telephone number: (202) 732–4804.

Authority: 20 U.S.C. 1070d–1b, and 1070d–1c.

(Catalog of Federal Domestic Assistance Number: 84.044 and 84.066, Talent Search and Educational Opportunity Centers Programs, respectively)

Dated: September 24, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-23102 Filed 10-2-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by October 2, 1987. Last notice published Wednesday, September 23, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

For Further Information and Copies of Relevant Materials Contact: Carol Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586–2222.

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SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible.

The energy information collection submitted to OMB for review was:

1. Economic Regulatory Administration.
2. ERA–766R.
3. 1903–0073.
4. Recordkeeping Requirements of DOE's Allocation and Price Rules.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 819 recordkeepers.
10. N.A. (Recordkeeping Requirements).
11. 8,190 recordkeeping hours.
12. The ERA–766R requires firms in all segments of the oil industry to maintain only those records essential to the orderly and timely completion of the oil pricing enforcement program. Firms not having such records would be exempt from the recordkeeping requirements of 10 CFR 210.1.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a).

Issued in Washington, DC, September 29, 1987.

Yvonne M. Bishop.

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–22889 Filed 10–2–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Diamond Shamrock R and M, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed Consent Order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Diamond Shamrock R and M, Inc. (Diamond). This Consent Order would resolve Diamond's potential liability for DOE regulatory violations based on an audit which tentatively concluded that Diamond had overcharged in linked crude oil transactions during the period January 1, 1980, through January 27, 1981. Diamond has disputed ERA's audit findings and denies any overcharge liability. No formal allegations of violations have been issued against Diamond.

ERA proposes that Diamond's liability for potential overcharges and interest be settled by payment of $15 million over a period of three years, plus interest on any unpaid balances. This proposed settlement reflects negotiated compromises present in every settlement, including assessments of litigation risks in significant areas of dispute between ERA and Diamond. ERA will direct that these monies be deposited in a suitable account for appropriate distribution by DOE.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice. Comments should be addressed to: Diamond Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585.

ERA will consider the comments received from the public in determining whether to make final the proposed settlement. This will result in one of the following courses of action: Rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8900.

Diamond is a refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order, Diamond engaged in, among other things, the production, gathering, transporting, refining and marketing of crude oil and refined petroleum products.

In addition to earlier audits of Diamond which resulted in no allegations of violation, and audits in 1977 and 1979 which resulted in settlements of $10,301 and $380,198, respectively, ERA conducted an audit of Diamond's crude oil transactions for the period January 1, 1980, to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). As a result of this audit, disputes arose between ERA and Diamond concerning Diamond's compliance with the federal petroleum price and allocation regulations which pertain to the sale of lower or upper tier crude oil in transactions which were related to transactions involving Diamond's acquisition of price-exempt crude oil.

During the audit period from January 1, 1980 through January 27, 1981, Diamond entered into contingent contracts with a crude oil reseller to sell a significant quantity of price-controlled crude oil, certified as lower and upper tier, in return for which the crude oil reseller agreed to sell Diamond equivalent quantities of crude oil certified as stripper crude oil at substantial discounts from market prices. As a result, the audit findings indicate Diamond received prices in excess of those permitted in its sales of controlled crude oil. The total excess consideration, or premiums, alleged to have been unlawfully received by Diamond from the reseller for the barrels of domestic price-controlled crude oil was $22.5 million.

In its consideration of settlement, ERA reviewed the revenues Diamond received in the sales of price-controlled oil, the costs it incurred in the purchases of price-exempt oil, and the additional entitlements benefits it received. In addition, ERA considered Diamond's contentions that: (1) The linked crude oil transactions reduced Diamond's increased costs which could be recovered in its sales of refined products; (2) the firm lacked banked costs to apply to the pricing of its refined products during the period the linked crude oil transactions occurred; (3) it had an historic mid-range pricing position for refined products among its various competitors; and (4) Diamond significantly lowered its sales prices for those products to below those of its lowest priced competitor in contrast to its historic pricing position. In the context of a negotiated settlement ERA considered it appropriate to give some consideration to these circumstances.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the audit findings in litigation, and considering the asserted facts and legal issues underlying the audit, and appropriate settlement compromises related to those issues.

In addition to the analysis of potential litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the legal and factual issues, and the time and expense required for the government to fully litigate every

issue. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $15 million is an appropriate settlement. Given all these factors, ERA has made a preliminary determination that this settlement is in the public interest.

The settlement calls for Diamond to make $15 million (plus interest from the date of execution of the proposed Order by DOE) in restitutionary payments to discharge in full all of Diamond's obligations under the price and allocation regulations. The restitutionary sum would be paid to DOE for appropriate distribution.

Within thirty days of the effective date of the Consent Order, Diamond will pay DOE the principal restitutionary amount of $5 million, $5 million within eighteen (18) months of the effective date of the Consent Order, and $5 million within thirty-six (36) months of the effective date of the Consent Order, plus accrued interest on the unpaid balances, for appropriate distribution by DOE.

Pursuant to the proposed Consent Order, Diamond and DOE mutually release each other from issues and claims regarding Diamond's compliance with the federal petroleum price and allocation regulations which pertain to the sale of price-controlled crude oil in transactions which were linked to, and contingent upon, transactions involving Diamond's acquisition of other crude oil. The proposed Consent Order would also release Diamond from any other potential civil claims arising under the federal petroleum price and allocation regulations.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review' process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above. All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington DC, on September 28, 1987.

Milton C. Lorenz,

Special Council, Economic Regulatory Administration.

I. Introduction

101. This Consent Order is entered into between Diamond Shamrock R & M, Inc. ("Diamond") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Diamond, as hereinafter defined, relating to Diamond's compliance with the Federal petroleum price and allocation regulations during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority, and Definitions

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This Consent Order is entered into by the DOE pursuant to the authority conferred by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order 12009, 42 FR 46267 (1977); Executive Order 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

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The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation Order 0204–4, the Secretary of Energy delegated responsibility for the administration of the Federal petroleum price and allocation regulations to the Administrator of the ERA. Authority to enter into this Consent Order on behalf of the DOE has been delegated by the Administrator of the ERA to the Special Counsel by Delegation Order 0204–4A dated December 14, 1981.

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The following definitions apply for purposes of this Consent Order.

a. "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including (without limitation) the entitlements and mandatory oil imports programs and the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J, and the definitions under the Federal petroleum price and allocation regulations, shall apply to this Consent Order, except to the extent inconsistent herewith.

b. "DOE" includes not only the Department of Energy but also the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel ("OSC"), the ERA and all predecessor and successor agencies.

c. "Diamond" includes (1) Diamond Shamrock R & M, Inc., its successors in interest, and its predecessor in interest Diamond Shamrock Corporation and its predecessors in interest, and the subsidiaries and affiliates of the foregoing firms, including Diamond Shamrock Refining and Marketing Company, and their predecessors and successors in interest (but only for the acts of such subsidiaries and affiliates while they were subsidiaries or affiliates of Diamond Shamrock Corporation or one of its predecessors in interest); (2) all of the petroleum-related activities of each of the foregoing firms, including the subsidiaries and affiliates, as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise; and (3), except for purposes of Article IV, *Infra*, the directors, officers, and employees of each of the foregoing firms including the subsidiaries and affiliates.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

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During the period covered by this Consent Order, Diamond was a "refiner" and "producer" of crude oil as those terms are defined in the Federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. During the

period covered by this Consent Order, Diamond engaged in, among other things, the production, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined Petroleum Products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302

In 1973, the DOE began an audit to determine Diamond's compliance with the Federal petroleum Price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, the ERA continued the audit. The audit encompassed an examination of Diamond's policies and procedures pertaining to, and Diamond's compliance with, the Federal petroleum price and allocation regulations.

303

As part of its audit, the DOE examined Diamond's books and records relating to Diamond's compliance with the Federal petroleum price and allocation regulations and the reporting requirements imposed by those regulations. At the DOE's request, Diamond prepared and submitted to the auditors a number of responses to audit inquiries.

304

During the course of the DOE's audit and the negotiations that led to this Consent Order, the DOE identified certain issues with respect to Diamond's application of the Federal petroleum price and allocation regulations. Diamond maintains that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the Federal petroleum price and allocation regulations. The DOE and Diamond disagree concerning the proper application of the Federal petroleum price and allocation regulations to Diamond's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and during the subsequent negotiation process. However, in order to avoid the expense of protracted and complex litigation and the distruption of its orderly business functions, Diamond has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401.

In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might have been sought by the DOE against Diamond for such matters under 10 CFR 205.1991 or otherwise, Diamond shall pay a total of fifteen million dollars ($15,000,000) Plus interest to DOE in the manner specified in paragraph 402. OSC and Diamond agree that OSC will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute the amount so paid.

402

Within thirty (30) days of the effective date of this Consent Order, Diamond shall pay five million dollars ($5,000,000) to DOE. Within eighteen (18) months of the effective date of this Consent Order, Diamond shall make a second payment of five million dollars ($5,000,000) to DOE. Within thirty-six months of the effective date of this Consent Order, Diamond shall make a third payment of five million dollars ($5,000,000) to DOE. Diamond may, at its option, combine and accelerate any or all of these payments. Each payment shall be accompanied by a payment of interest in an amount computed in accordance with paragraph 403.

403

Interest shall be computed at the rate of 7.80% per annum, compounded quarterly, on any unpaid principal amount, from the date of execution of this Consent Order by DOE.

404

The payments made pursuant to paragraph 402 of this Consent Order shall be by certified or cashier's check, made payable to the Department of Energy, and delivered to the Office of the Controller, Office of Washington Financial Services, Cash Management Division, Post Office Box 500, Germantown, Maryland 20874–0500.

405

If any payment provided for above becomes more than thirty days overdue, then the entire balance of the settlement amount with interest to the date of payment shall become immediately due and payable at DOE's option. Between the time that any payment or portion thereof is required to be paid under this Consent Order and the time the full payment is completed, interest shall accrue at the rate prescribed in this Order. Such interest shall be paid to DOE with such overdue payment(s).

406

In the attribution of payments made pursuant to paragraph 402, interest shall be deemed earned before reduction of principal.

407

Concurrent with each payment made pursuant to this Consent Order, Diamond shall send a verification of the payment to: Jay Thompson, Director, Office of Administrator & Financial Management, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

V. Issues Resolved

501

All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Diamond regarding Diamond's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise are resolved and extinguished as to Diamond by this Consent Order, except that this Consent Order does not cover or affect Diamond's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the Federal petroleum price and allocation regulations by third parties.

502(a)

Except as otherwise provided herein, compliance by Diamond with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all Federal petroleum price and allocation regulations for the matters covered by this Consent Order. In consideration for Diamond's performance as required under this Consent Order, except as to those matters excluded by paragraph 501, the DOE hereby releases Diamond completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has

asserted or might otherwise be able to assert against Diamond before or after the date of this Consent Order for alleged violations of the Federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Diamond or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Diamond or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Diamond has violated the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Diamond in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the Federal petroleum price and allocation regulations.

502(b)

Except for the matters excluded by this paragraph and paragraph 501, the DOE agrees that this Consent Order settles and finally resolves all aspects of Diamond's liability to the DOE under the Federal petroleum price and allocation regulations including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. However, if Diamond was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the Federal petroleum price and allocation regulations during such period relative to such property, except to the extent such person received its interest from such property in kind. The DOE also reserves the right to initiate and prosecute enforcement actions against any person other than Diamond for noncompliance with the Federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when Diamond is a working interest or royalty interest owner in such crude oil production. Diamond and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Diamond's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, Diamond and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Diamond is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Diamond and such working interest or royalty interest owners.

502(c)

The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the Federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Diamond in any private action, including an action for contribution by or against Diamond.

502(d)

With respect to matters not excluded from this Consent Order, Diamond releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Diamond has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the Federal petroleum price and allocation regulations. This release, however, does not preclude Diamond from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

503

Execution of this Consent Order constitutes neither an admission by Diamond nor a finding by the DOE of any violation by Diamond of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties.

None of the payments or expenditures made by Diamond pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

504

Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Diamond, but only if Diamond has concealed facts relating to such violations. The DOE and Diamond also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting, and Confidentiality

601

Diamond shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist the DOE in the distribution of the funds paid pursuant to this Consent Order, Diamond also shall maintain, until thirty (30) days after the DOE's final distribution of those funds, sales volume data and customers' names and addresses regarding its sales of crude oil for the period from January 1, 1979, through January 27, 1981. If requested, Diamond shall make such information available to DOE. Except as otherwise provided in this paragraph, upon Diamond's completion of payment to DOE of the amount set forth in paragraph 401 of this Consent Order, Diamond is relieved of its obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters covered by this Consent Order.

602

Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Diamond will not be subject to any audit

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requests, report orders, subpoenas, or other administrative discovery by DOE relating to Diamond's compliance with the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603

The DOE will treat the sensitive commercial and financial information provided by Diamond pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Diamond and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Diamond with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Diamond's compliance with the Federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Diamond may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701

It is the understanding and express intention of Diamond and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Diamond (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Diamond agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801

Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Diamond hereby waives its right to administrative or judicial review of this Order, but Diamond reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901

This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register.** Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments in determining whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902

Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Diamond, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Diamond, Diamond may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Diamond Shamrock R & M, Inc., hereby agree to and accept the foregoing Consent Order on its behalf.

Roger R. Hemminghaus,

President, Diamond Shamrock R & M, Inc.

Dated: September 18, 1987.

I, the undersigned, a duly authorized representative of the Department of Energy hereby agree to and accept the foregoing Consent Order on its behalf.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration, Department of Energy.

Dated: August 19, 1987.

[FR Doc. 87-22890 Filed 10-02-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87-545-000 et al.]

Natural Gas Certificate Filings; Trunkline Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket No. CP87-545-000]

September 25, 1987.

Take notice that on September 17, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001 filed in Docket No. CP87-545-000 an application pursuant to section 7(b) of the Natural Gas Act and the regulations thereunder for an order permitting and approving abandonment of service provided pursuant to a certificate of public convenience and necessity which authorized the receipt, transportation and redelivery of natural gas on behalf of Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission (Commission) and open for public inspection.

Trunkline states that it was authorized in Docket No. CP77-651, dated January 9, 1978, to receive, transport and redeliver natural gas on behalf of Amoco pursuant to, and in accordance with a transportation agreement between Trunkline and Amoco dated August 11, 1977.

Trunkline also states that the authorization in Docket No. CP77-651 provided for the transportation of up to 2,900 Mcf of gas per day for Amoco's account from a portion of receipt in the North Bon Air Field, Jefferson Davis Parish, Louisiana to the interconnection between the facilities of Florida Gas Transmission Corporation and Trunkline in Calcasieu Parish, Louisiana. Trunkline states that it

constructed 50 feet of pipeline and appurtenant facilities to facilitate the receipt of that gas.

Trunkline further states that Amoco has advised that the reserves transported under Docket No. CP77–651 have been depleted, and the transportation service is no longer required by Amoco.

It is stated that Trunkline specifically requests Commission authorization to abandon service provided under Trunkline's Rate Schedule T–39 and to cancel such Rate Schedule effective December 1, 1987, pursuant to a termination letter dated August 7, 1987.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP87–552–000]

September 28, 1987.

Take notice that on September 22, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–552–000 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act to abandon firm direct sales service and substitute new firm and interruptible sales services to various customers, as more fully set forth in the application which is on file with the Commission and open to public inspection.

United seeks authority to provide continued service to various direct sales customers as listed below:

Customer	Old firm CDQ (Mcf)	New CDQ
New Firm Contract:		
Stauffer Chemical Co.[1]	8,000	100 MMBtu
New Interruptible Contracts:		
Stauffer Chemical Co.[1]	8,000	7,000 Mcf
E.P. Operating Co. (formerly Enserch Exp.).	3,000	3,000 Mcf
MOEPSI	500	500 Mcf
Texaco Inc	300	300 Mcf

[1] Stauffer previously had one contract for 8,000 MMBtu which has been replaced with new firm and interruptible contracts.

United States that it would use existing facilities to provide these services.

Comment date: October 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Bayou Interstate Pipeline System Pelican Interstate Gas System

[Docket No. CP87–534–000]

September 25, 1987.

Take notice that on September 10, 1987, Bayou Interstate Pipeline System (Bayou) and Pelican Interstate Gas System (Pelican), (Applicants), 1600 Smith Street Suite 3075, Houston, Texas 77002, filed in Docket No. CP87–534–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing interruptible transportation of natural gas for the account of Pontchartrain Natural Gas System (Pontchartrain) and the construction and operation of facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Bayou seeks authorization to utilize 3.3 miles of existing offshore pipeline to transport up to 100,000 MMBtu of natural gas per day, on an interruptible basis, for the account of Pontchartrain pursuant to its December 1, 1986 gas transportation agreement for a primary term of one year and then month to month thereafter. Bayou states that it would have to construct metering, tap, and appurtenant facilities, estimated to cost $569,000, in order to provide the proposed transportation. Pelican seeks authorization to transport up to 140,000 MMBtu of natural gas per day on an interruptible basis for system supply of Pontchartrain pursuant to its December 1, 1986 gas transportation agreement for a primary term of one year and then month to month thereafter.

Bayou states that it would receive volumes of gas for the account of Pontchartrain at the proposed interconnection of its facilities and those of Amoco Production Company in West Cameron Block 294, offshore Louisiana and redeliver the gas to the proposed interconnection of its facilities and those of Pelican in West Cameron Block 289, offshore Louisiana. Pelican states that it would receive volumes of gas for the account of Pontchartrain at the existing interconnection of its facilities and those of Atlantic Richfield Company in West Cameron Block 211 offshore Louisiana, and at the proposed interconnections of its facilities and (1) those of Santa Fe Mineral's Inc. in High Island Block 129, offshore Texas, (2) those of Bayou in West Cameron Block 289, offshore Louisiana, and (3) those of Samedan Oil Corporation in West Cameron Block 290, offshore Louisiana. Pelican states that it would deliver this gas for the account of Pontchartrain to Natural Gas Pipeline Company of America at the Mobile Cameron Meadows plant located in Cameron Parish, Louisiana.

Bayou proposes to charge Pontchartrain a transportation fee of $0.0955 per MMBtu of gas received. Pelican proposes to charge Pontchartrain a transportation fee of $0.033 per MMBtu of gas received.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Granite State Gas Transmission, Inc.

[Docket No. CP87–550–000]

September 28, 1987.

Take notice that on September 21, 1987, Granite State Gas Transmission, Inc. (Applicant), 120 Royal Street, Canton, Massachusetts 02021, filed in Docket No. CP87–550–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate a new delivery point in Plaistow, New Hampshire to its affiliated distributor, Northern Utilities, Inc. (Northern) under the certificate issued in Docket No. CP82–515–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public insepction.

Applicant proposes to add a new delivery point to Northern at its Plaistow, New Hampshire, compressor station through which Northern would serve a new customer with an estimated annual consumption of 2,378 Mcf of natural gas. Applicant states that the new customer could not be economically served from Northern's current distribution system. Applicant indicates that the total volumes delivered to Northern would not exceed the presently authorized volumes.

The total estimated cost of the proposed facilities is $6,440 which would be reimbursed to Applicant by Northern, it is explained.

Comment date: November 12, 1987, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP87–533–000]

September 28, 1987

Take notice that on September 9, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–533–000, a request pursuant to section 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate one small volume

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measurement station to accommodate gas sales deliveries for residential use to the Hiview Acres Subdivision (Hiview Acres), a non-right-of-way grantor in Finney County, Kansas, who would be served through K N Energy, Inc. (K N Energy), a local distributor, under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

The volumes proposed to be delivered to K N Energy would be within its currently authorized firm entitlement and are estimated to be 8,640 Mcf annually, it is stated. It is further stated that sales to be made at the proposed station would be under Rate Schedule PL–1.

The total estimated cost to construct and operate the sales tap is $4,500, and K N Engergy would not be required to contribute any aid to the construction, it is asserted.

Comment date: November 12, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87–103–001]

September 25, 1987.

Take notice that on September 15, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 7701, filed in Docket No. CP87–103–001 an amendment to its application filed in Docket No. CP87–103–000 pursuant to section 7(c) of the National Gas Act so as to clarify and update the original application, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP87–103–000, Applicant requested authority to permit its Rate Schedule SS–E and SS–NE customers to use up to one-third of its total authorized winter storage quantity for gas purchased from third-parties. Applicant proposes in Docket No. CP87–103–001 to clarify that the opportunity provided to Rate Schedule SS–E and SS–NE customers to inject third-party gas into Storage is solely at the customer's option. Applicant also proposes to eliminate certain dates in the original application that are now obsolete and modify the pro forma SS–E and SS–NE Rate Schedules in response to various technical questions raised in discussion with Applicant's customers. Applicant states that copies of the filing have been mailed to all parties in Docket No. CP87–103–000.

Comment date: October 16, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87–543–000]

September 25, 1987.

Take notice that on September 17, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon 1.95 miles of 10-inch pipeline located in the South Timbalier Block 54 Field, offshore Louisiana (Tennessee's Line No. 524–C–1100), as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that line No. 524–C–1100 was installed in 1976 under budget-type certificate authorization at Docket No. CP76–151–000 and connects the South Timbalier 54–F and 54–D Platforms. The line would be transferred to Exxon Company USA (Exxon) to assist Exxon in the consolidation of facilities and operational revisions in its production operations in the South Timbalier Block 54 Field. Tennessee would continue to purchase natural gas from the South Timbalier Block 54 Field via its 12-inch line which runs from the South Timbalier E platform to the onshore Shell-owned Yscloskey Processing Plant in St. Bernard Parish, Louisiana.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Co.

[Docket No. CP87–548–000]

September 28, 1987.

Take notice that on September 21, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–548–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale of gas to Atlas Processing Company (Atlas), at a point near Shreveport, Caddo Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it notified Atlas by letter dated August 4, 1986, that the 1981 operating agreement between United and Atlas was cancelled effective September 4, 1986. It is stated that Atlas acknowledged receipt of the notice of cancellation by letter dated December 19, 1986. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

9. Arkla Energy Resources a Division of Arkla, Inc.

[Docket No. CP87–551–000]

September 28, 1987.

Take notice that on September 22, 1987, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87–551–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to undertake certain actions and activities necessary to effect the abandonment and transfer to Arkansas Louisiana Gas Company (ALG), also a division of Arkla, Inc., of certain certificated facilities in Oklahoma and Kansas, under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

It is stated that AER has concluded that in the area of Hominy and Altus, Oklahoma, and Sterling, Kansas, it is operating facilities under a certificate issued in Docket No. CP60–79 which are used exclusively for retail sales of natural gas, rather than for transmission functions. AER states that at Hominy, Oklahoma, the facilities in question are used solely for ALG's receipt of gas from another pipeline supplier. AER further states that, in the other two locations, the facilities in question are lines from which service is provided to rural domestic customers of ALG. AER requests authority to abandon these facilities and, in one instance, it requests a certificate to construct at an estimated cost of $4,612 a new 1-inch tap and appurtenant facilities in Jackson County, Oklahoma, to serve Lines 8–G–2 and 8–G–3 which are proposed to be

abandoned. AER represents that granting its application will have no effect on the level of its deliveries or on service to existing customers.

Comment date: November 12, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22887 Filed 10-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-150-000]

Change in Sale Rates and Adoption of ACA Clause; Pacific Interstate Offshore Co.

September 29, 1987.

Take notice that on September 25, 1987, Pacific Interstate Offshore Company ("PIOC") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Original Volume No. 1

Sixth Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 20
First Revised Sheet No. 35

PIOC states the purpose of this filing is to establish an Annual Charge Adjustment Clause ("ACA" Clause) in PIOC's tariff as appropriate and to set forth the applicable surcharge in its sales rate schedule as required by Order No. 472.

PIOC requests an effective date of October 1, 1987.

A copy of the filing has been served on PIOC's sole customer, Southern California Gas Company and the Public Utilities Commission of the State of California.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE. Washington DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22946 Filed 10-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-148-000]

Change in Rates and Tariff Revisions; Sea Robin Pipeline Co.

September 29, 1987.

Take notice that on September 25, 1987, Sea Robin Pipeline Company (Sea Robin), tendered for filing with the Commission to be effective October 1, 1987 the following tariff sheets to be included in Sea Robin's FERC Gas Tariff:

Original Volume No. 1

Forty-Eighth Revised Sheet No. 4
Twenty-Sixth Revised Sheet No. 4-A
Third Revised Sheet No. 4-A1
Third Revised Sheet No. 4-A2
Original Sheet No. 22-A
Original Revised Sheet No. 22-B

Original Volume No. 2

Thirty-First Revised Sheet No. 127-D
Thirty-First Revised Sheet No. 135-C

Sea Robin states that the Commission by Order No. 472 issued May 29, 1987 implemented procedures providing of the assessment and collection from interstate pipelines, of annual charges as required by the Omnibus Budget Reconciliation Act of 1986. Pursuant to Order No. 472, the Commission authorized the tracking for automatic pass through to pipeline customers fo the annual charges under an Annual Charge Adjustment ("ACA") clause. Sea Robin states that it is making this filing pursuant to § 154.38 (d)(6) of the Commission's Regulations in order to include in its FERC Gas Tariff the procedure for collecting its assessed amount from its customers.

To the extent required, if any, Sea Robin requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective October 1, 1987.

Copies of this letter and enclosures are being served on jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are avaialble for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22947 Filed 10-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-149-000]

Change in Rates and Tariff Revisions; United Gas Pipe Line Co.

September 29, 1987.

Take notice that on September 25, 1987, United Gas Pipe Line Company (United), tendered for filing with the Commission to be effective October 1, 1987 the following tariff sheets to be included in United's First Revised Volume No. 1 of United's FERC Gas Tariff:

Seventy-Eighth Revised Sheet No. 4
Twenty-Second Revised Sheet No. 4-C
Eight Revised Sheet No. 4-D
Seventh Revised Sheet No. 4-E
Original Sheet No. 74-K1
Original Sheet No. 74-K2

Seventyz/Eighth Revised Sheet No. 4Twentyz/Second Revised Sheet No. 4-CEighth Revised Sheet No. 4-DSeventh Revised Sheet No. 4-EOriginal Sheet No. 74-K1Original Sheet No. 74-K2

United states that the Commission by Order No. 472 issued May 29, 1987, implemented procedures providing for the assessment and collection from interstate pipelines, of annual charges as required by the Omnibus Budget Reconciliation Act of 1986. Pursuant to Order No. 472, the Commission authorized the tracking for automatic pass through to pipeline customers of the annual charges under an Annual Charge Adjustment ("ACA") clause. United states that it is making this filing pursuant to § 154.38 (d)(6) of the Commission's Regulations in order to include in its FERC Gas Tariff the procedure for collecting its asessed amount from its customers.

To the extent required, if any, United requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective October 1, 1987.

Copies of this letter and enclosures are being served on jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22948 Filed 10-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-644-000]

Small Power Production; Application for Commission Certification of Qualifying Status of a Cogeneration Facility; Arrowhead Cogeneration Co. Limited Partnership

September 25, 1987.

On September 8, 1987, Arrowhead Cogeneration Company Limited Partnership (Applicant), of 3003 Summer Street, Stamford, Connecticut 06905, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located in Milton, Vermont and will consist of a combustion turbine generator, a heat recovery steam generator equipped with a supplementary firing burner, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility in the form of steam will be utilized by the Wyeth Nutritionals Inc. Plant. The electric power production capacity of the facility will be 27,880 KW. The primary source of energy will be natural gas. Construction of the facility is expected to begin in October, 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22945 Filed 10-2-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3272-7]

Air Pollution Control; Motor Vehicle Emission Factors; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a public workshop which the Environmental Protection Agency will hold regarding the Agency's motor vehicle emission factors. The emission factors are used by States in preparing State Implementation Plan revisions and by others engaged in determining the air quality impact of motor vehicles. The Agency's purpose in holding this workshop is to meet with those parties potentially possessing information which would be of use in evaluating the emission factors and to allow all interested parties to participate informally in the review of the EPA information.

DATE: The workshop is being held on Tuesday, November 10, 1987, at 9:00 a.m.

ADDRESS: The workshop will be held at EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Lois Platte (313) 668-4306, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 38105.

SUPPLEMENTARY INFORMATION: EPA's current estimates of emission factors are contained in the computer program MOBILE3, and have been published in the report entitled, "Compilation of Air Pollutant Emission Factors: Mobile Sources", Vol. II, Fourth Edition. MOBILE3 was released in mid-1984, and since that time much additional in-use vehicle emission data have been collected and evaluated. EPA believes that incorporating this data into a new model, MOBILE4, would be beneficial to

States and local agencies using the model for long term attainment plannning.

The current timetable calls for release of MOBILE4 by December 30, 1987. EPA held the first public workshop on the subject of MOBILE4 in April 1987. At that workshop, EPA presented various proposals for the MOBILE4 emission factors. The purpose of the October 14 workshop is to provide information on the development and results of the draft version of MOBILE4. Following the October workshop, a brief comment period will be scheduled. It will be the last opportunity for comment prior to release of the final version of MOBILE4.

Specific topics that will be discussed in the October 14 workshop include:

Registration and vehicle miles traveled distributions
Heavy-duty vehicle emission factors
Inspection and maintenance credits
Tampering rates
Emission rates for 1981 and newer cars

Information on items for which there is not sufficient time to make a formal presentation will be disseminated through handouts made available at the workshop.

Because of the technical nature of the agenda, participants should be familiar with the existing emission factors and MOBILE3 to most fully contribute to the discussions.

This workshop will not discuss the programming aspects of the MOBILE3 computer program, such as its interface with other programs used in preparing emission inventories and air quality plans, and the language and equipment requirements of the program.

The workshop is intended to be a forum for exchange of information and has no direct connection to any rulemaking action. Consequently, the workshop will be very informal. There will be no opportunity for prepared statements in general, although prepared remarks will be welcome on specific issues as those are brought up for discussion. Although no public docket will be kept, written submissions are welcome at any time and may be brought to the workshop or mailed to Lois Platte, at the address set out above.

Date: September 14, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-22917 Filed 10-2-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3272-6]

Science Advisory Board, Environmental Engineering Committee; Open Meeting October 22 and 23, 1987

Under Pub. L. 92-463, notice is hereby given that the Environmental Engineering Committee's Mine Waste Risk Screening Subcommittee of the Science Advisory Board will meet from 9:00 a.m. to 12:00 noon on Thursday, October 22, 1987 in the Administrator's Conference Room 1101 West Tower, 401 M Street SW., Washington, DC. The Subcommittee will complete the preparation of its report on the Office of Solid Waste's technical support document entitled: "Draft Risk Screening Analysis of Mining Wastes," dated September 21, 1987.

The Environmental Engineering Committee will meet at 1:30 p.m. till 5:00 p.m. on Thursday, October 22nd and from 9:00 a.m. till 4:00 p.m. on Friday, October 23rd at the same location. The Committee will hear the report of the Mine Waste Risk Screening Subcommittee and be briefed by the Agency on a variety of Environmental Protection Agency's engineering activities.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Mrs. Kathleen Conway, Deputy Director, Science Advisory Board, at 202-382-2552 or Joanna Foellmer at 202-382-4126 by October 16, 1987.

Date: September 28, 1987.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 87-22918 Filed 10-2-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3272-4]

Walter Pollution Control; Highlands Aquifer System in Passaic, Morris and Sussex Counties, and Orange County NY, Sole Aquifer Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Adminstrator of the U.S. Environmental Protection Agency (EPA) Region II has determined that the Highlands Aquifer System, underlying portions of Passaic, Morris and Sussex Counties, New Jersey and Orange County, New York, is the sole or principal source of drinking water for portions of the Town ships of West Milford, Jefferson, Rockaway, Vernon, and Hardyston, and a portion of the Borough of Pampton Lakes, the entire Boroughs of Bloomingdale, Ringwood, Wanaque, Butler and Riverdale, New Jersey; and portions of the Townships of Warwick and Tuxedo, and the entire Village of Greenwood Lake, New York. This aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the designated Highlands Aquifer Area will be subject to EPA review to ensure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern Daylight time on October 19, 1987.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water Management, Room 805, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: John S. Malleck, Chief, Office of Ground Water Management, Room 805, Environmental Protection Agency, Region II at (212) 264-5635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h-3(e), Pub. L. 93-523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the FEDERAL REGISTER. After the publication of any such notice, no commitment for Federal financial assistance (through) a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On March 9, 1987, the Administrator duly delegated to the Regional Administrator the authority to determine, under section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h-3(e), that an area has an aquifer which is the sole or principal source of drinking water for the area and which, if

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contaminated, would create a significant hazard to public health.

On March 14, 1985, EPA received a petition from Mr. Charles Slawinski, Mayor of the Township of West Milford and Dr. Ella F. Filippone, Executive Administrator of the Passaic River Coalition, which asked EPA to designate the Highlands Aquifer System as a sole or principal source aquifer. A public hearing was conducted on December 9, 1986 and the public was permitted to submit written comments on the petition request until January 9, 1987.

The petition submitted to EPA encompassed the Pochuck, Wanaque and Pequannock River drainage basins. However, based on EPA's review of the hydrogeologic information, the Pochuck River drainage basin has been deleted from the final sole source designation area. A major basin divide exists between the Pochuck River which runs west and north, and the Pequannock and Wanaque Rivers which run south and east. This basin divide, in conjunction with the lack of evidence to support a statement to the contrary, lead EPA to conclude that the Pochuck River drainage basin is not part of the same aquifer system as the Wanaque and Pequannock. Available information indicates that the Pochuck could meet Sole Source Aquifer criteria; however, more information is needed.

II. Basis for Determination

Among the factors to be considered by the Agency in connection with the designation of a sole source aquifer area under section 1424(e) are: (1) Whether the Highlands Aquifer System is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the following are the findings, which are the basis for the determination noted above:

1. The Highlands Aquifer System as defined by the EPA currently serves as the "Sole or Principal Source" of drinking water for approximately 89,121 persons in the service area, representing 85 percent of the population.

2. There is no existing or potential alternative drinking water source or combination of sources capable of replacing the Highlands Aquifer System should it become contaminated.

3. The Highlands Aquifer System consists of Quaternary glacial drift, Paleozoic sedimentary formations, and Pre-cambrian permeable soil characteristics. This aquifer system is susceptible to contamination through its recharge zone from a number of sources, including, but not limited to, chemical spills, high way and urban area runoff, septic systems, leaking storage tanks (above and underground), and landfill leachate. Since ground water contamination can be difficult or sometimes impossible to remediate and since the aforementioned communities rely on the Highlands Aquifer System for drinking water purposes, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the Highlands Aquifer System of Passaic, Morris and Sussex Counties, New Jersey, and Orange County, New York Area, its Recharge Zone and Streamflow Source Zone

The Highlands Aquifer System is composed of permeable glacial drift overlying permeable sedimentary and fractured igneous and metamorphic formations.

For the purpose of this designation, the Highlands Aquifer System is considered to include the entirety of the Wanaque and Pequannock River basins in New Jersey and New York. The aquifer system covers approximately 195 square miles and includes portions of the Townships of West Milford, Jefferson, Rockaway, Vernon and Hardyston, and portions of the Borough of Pompton Lakes, the entire Boroughs of Bloomingdale, Ringwood, Wanaque, Butler and Riverdale, New Jersey; portions of the Townships of Warwick and Tuxedo, and the entire Village of Greenwood Lake, New York.

Because the Wanaque and Pequannock River basins are covered with permeable sediments, the recharge zone, where water percolates directly to the aquifer, includes the entire areal extent of the Highlands Aquifer Area. Since no streams flow into the Wanaque and Pequannock River basins, there is no streamflow source zone for the aquifer.

The boundary of both the designated area and aquifer service area are the boundaries of the Wanaque and Pequannock River basins. Thus, the designated area in which Federal financially assisted projects will be subject to review is the Wanaque and Pequannock River basins which include portions of Passaic, Morris and Sussex, Counties New Jersey, and Orange County, New York.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, various technical publications and verbal communication with various departments in the affected municipalities. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Office of Ground Water Management, Room 805, 26 Federal Plaza, New York, New York 10278.

V. Project Review

EPA Region II is working with the Federal agencies that may provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by Federal agencies for projects which could potentially contaminate the Highlands Aquifer System, upon which portions of the Townships of West Milford, Jefferson, Rockaway, Vernon, Hardyston, and a portion of the Borough of Pompton Lakes, the entire Boroughs of Bloomingdale, Ringwood, Wanaque, Butler and Riverdale, New Jersey; portions of the Townships of Warwick and Tuxedo, and the entire Village of Greenwood Lake, New York are dependent for their sole or principal source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate.

In many cases, these Federally assisted projects may also be analyzed in an "Environmental Impact Statement" (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C). All EIS, as well as any other proposed Federal actions affecting an EPA program or responsibility, are required by Federal law (under the "NEPA/309" process) to be reviewed and commented upon by the EPA Administrator (42 U.S.C. 7609 requires EPA to conduct this review). The "309" in a "NEPA/309" derives from the original source of this general requirement, section 309 of the Clean Air Act.

Therefore, in order to streamline EPA's review of the possible environmental impacts on designated aquifers, when an action is analyzed in an EIS, the two reviews will be consolidated and both authorities will be cited. The EPA review (under the Safe Drinking Water Act) of Federally-assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review (under the "NEPA/309" process) of any EIS accompanying the same Federally-assisted project. The letter transmitting EPA's comments on the final EIS to the lead agency will be the vehicle for

informing the lead agency of EPA's actions under section 1424(e)

Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

The U.S. Environmental Protection Agency will rely to the maximum extent possible on any existing or future State and local control mechanisms in protecting the ground water quality of the Highlands Aquifer System. EPA review of any Federally financially assisted project will be coordinated with the State and local agencies and their comments will be given full consideraton. The Federal review process will attempt to complement and support State and local ground water protection mechanisms.

IV. Summary and Discussion of Public Comments.

The majority of verbal and written comments received on the petition were in favor of designating the Highlands Aquifer System as a sole or principal source aquifer. A public hearing was held on December 9, 1986. The New Jersey Department of Environmental Protection (NJDEP) presented the only statement in opposition to the designation at the hearing. The only letter received in opposition was from the New York State Department of Environmental Conservation (NYSDEC).

The NJDEP questioned the boundaries of the aquifer. They also urged EPA to act on New Jersey's statewide petition in lieu of designating the Highlands Aquifer System which is only a small portion of the State.

The boundaries of the Highlands Aquifer System are based on a USGS report (Carswell and Rooney, 1976), which state that the aquifer boundaries in this area follow the surface water divides. It is EPA's general policy to act on petitions in the order in which they are submitted. The statewide petition is currently being revised; therefore, EPA is not in a position to make a determination on it.

NYSDEC contends that the Highlands Aquifer System is not of national or statewide significance for public water supply. They believe sole source designation of this area would require the diversion of limited program funds away from "primary public water supply aquifers" which have been targeted in the New York Upstate Ground Water Management Program as priority management areas.

NYSDEC did not give their definition of "national or statewide significance". The sole source aquifer program criteria requires that the aquifer be needed to supply 50 percent or more of the drinking water in the aquifer service area. The Region has found that the Highlands Aquifer System meets this criteria, and, therefore, it is of national and statewide significance. This criteria differs from that of NYSDEC's primary public water supply aquifer program, and it does not require consideration of individual state priorities basins.

NYSDEC also questioned the petitions population statistics for people in the New York Area served by ground water. None of the areas in which NYSDEC questioned is included in the designated area.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to portions of Passaic, Morris, and Sussex Counties, New Jersey, and Orange County, New York. The only affected entities will be those area-based businesses, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, because their potential for contaminating the aquifer is remote. Accordingly, the number of affected small entities will be minimal. However, if the Region anticipates that a cumulative impact on the aquifer will occur, small isolated commitments will be reviewed.

For those small entities which are subject to review, the impact from today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Highlands Aquifer System which underlies portions of Passaic, Morris, and Sussex Counties, New Jersey, and a portion of Orange County, New York.

It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request Federal financial assistance.

Dated: September 25, 1987.

Christopher J. Daggett

Regional Administrator.

[FR Doc. 87-22920 Filed 10-2-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3272-5]

Sole Source Designation of the Newberg Area Aquifer; Snohomish County, WA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency has determined that the Newberg Area Aquifer in Snohomish County, Washington is the sole source of drinking water for the Newberg Road-Lake Bosworth area and that the aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, federal financially assisted projects constructed in the designated area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on October 19, 1987.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington or any of the following city libraries: Granite Falls, Washington; Lake Stevens, Washington; Everett, Washington; Marysville, Washington.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams at (206) 442–1541 or FTS 399–1541.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300–3(e), Pub. L. 93–523) the Administrator of the U.S. Environmental Protection Agency has determined that the Newberg Area Aquifer located in Snohomish County, Washington is a sole or principal source of drinking water for much of the aquifer service area. Pursuant to section 1424(e), federal financially assisted projects constructed in this designated area will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states: "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of such notice, no commitment for federal financial assistance [through a grant, contract, loan guarantee, or otherwise] may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or designate the project to assure that it will not so contaminate the aquifer."

On January, 16, 1984, the Region 10 Office of the Environmental Protection Agency (EPA) received a petition from the Newberg Organization, Inc., a group composed mostly of property owners in the Lake Bosworth area of Snohomish County, Washington. The petitioners requested that the EPA designate an area traversed by Newberg Road and including Lake Bosworth (the Newberg Road—Lake Bosworth Area) as a sole source aquifer and recharge area. A **Federal Register** notice announcing receipt of the petition and requesting public comment was published on March 8, 1984 (Vl. 49, No. 47). The petitioners submitted additional data to the EPA in support of their petition in October 1985 and June 1987.

After analyzing additional information, the EPA regional office adjusted the boundary of the designated area to coincide with the aquifer and recharge area boundaries. A resource document which delineated the aquifer and recharge area boundaries and summarized available information about the geology and hydrology of the area was distributed on July 23, 1987. On that same date, EPA issued a press release announcing the availability of the resource document and requesting public comment. In addition to the press release, information was made available through a legal notice which was printed in the "Everett Herald" on July 26, 1987 and sent to area post offices the week before. The public meeting scheduled for August 20, 1987 was cancelled due to a lack of public interest. No written comments were received before the public comment period expired on September 4, 1987.

II. Basis For Determination

Among the determinations which the Administrator must make in connection with the designation of an area under Section 1424(e) are: (1) Whether the aquifer is the sole or principal source of drinking water in the area, and (2) whether, if contaminated, a significant hazard to public health would result.

Based on the information available to this Agency, the Administrator has made the following findings, which are the bases for the determination noted above:

1. The Newberg Area Aquifer is the principal source of drinking water for of the Newberg Road-Lake Bosworth area in Snohomish County, Washington. The aquifer supplies about 84 percent of the drinking water used by the 2,700 residents of the area. No feasible alternative drinking water source or combination of sources could repalce the aquifer should it become contaminated.

2. Because ground-water contamination can be difficult or impossible to reverse and because the aquifer in this area is the principal source of drinking water for the area's residents, contamination of the aquifer could pose a significant hazard to public health.

III. Description of The Newberg Area Aquifer

[Information in this section represents an unfootnoted summary of material from: *Resource Document for the Consideration of the Newberg Area Aquifer as a Sole Source Aquifer,* published in July of 1987 by the Region 10 Office of Ground Water.]

The Newberg Road-Lake Bosworth Area, hereafter referred to as the "Newberg Area," is located in west-central Snohomish County, Washington. The designated area is approximately 37 square miles in area and is located approximately 15 miles east of the cities of Everett and Marysville, and immediately south of the Town of Granite Falls. It is an area of high ground bounded by the valley of the Pilchuck River on the east, north and west sides. The downstream segment of Dubuque Creek and the upstream segment of Carpenter Creek form the southern boundary. Land surface elevations range from 120 feet at the junction of the Pilchuck River and Dubuque Creek to a maximum of 800 feet near the center of the designated area.

The geology of the sole source aquifer area is described on four recently produced geologic maps. These maps depict the nature and distribution of surficial materials and bedrock within and near the area, and provide a synopsis of regional stratigraphic relationships. Copies of these maps are available for perusal by the public at the library of the U.S. Environmental Protection Agency Region 10 office, Seattle, Washington. These maps can also be purchased directly from the U.S. Geological Survey.

The designated area is characterized by a thick accumulation of heterogeneous, unconsolidated glacial sediments overlying assorted bedrock units of varied origins. Only isolated bedrock outcrops occur within or immediately adjacent to the petitioned area; areally extensive bedrock exposures occur only in the more rugged areas to the east and southeast.

Unconsolidated glacial and other surficial deposits cover the surface of the Newberg area to a thickness of more than 300 feet in places. Glacial sediments were deposited approximately 15,000 years ago during what has been termed the Vashon Stade of the Fraser Glaciation. These unconsolidated materials, when saturated, provide the primary source of ground water used for drinking water purposes in the Newberg area and vicinity.

The surficial deposits in the Newberg area include, in order of deposition, pre-Vashon or early Vashon deposits, glacial advance outwash sediments, glacial till, and recessional outwash material of the vashon age glaciation. More recent alluvial deposits are found along river and stream courses.

Wells in the Newberg area and vicinity tap all of the types of unconsolidated (glacial) materials and, at some localities, two types of bedrock: Teritary volcanic and Tertiary sediment rocks. Bedrock wells provide only small quantities of water, nominally sufficient for domestic consumption. Wells installed in unconsolidated glacial deposits provide most of the ground water used in the area.

The majority of ground water users in the proposed sole source aquifer area utilize deeper ground water in unconsolidated deposits. About 200 wells tap ground water occurring under apparently semi-confined conditions at depths of approximately 50 to 400 feet below the land surface. (Because of the relief of the area, actual well bottom or screen elevations range from 32 to 610 feet above sea level). These wells are completed in various glacial units. Many wells are completed in sand lenses occurring within the Vashon till. Yields are somewhat limited but sufficient for domestic consumption. Wells are also completed in advance outwash deposits. which provide high yields to wells. In the areas where recessional outwash overlies till, such as near the Town of Granite Falls, wells are generally drilled no deeper than the bottom of the recessional outwash, not into underlying till. Recessional outwash deposits typically provide high yields to wells.

In general, there is no single continuous aquifer unit that supplies all ground water users in the proposed sole source aquifer area. Wells are usually completed in the first water producing zone encountered during drilling. All of the different types of glacial materials appear to contain at least some ground-water producing zones, and can supply water in varying quantities to varying numbers of wells. The occurrence of water-bearing zones is unsystematic, laterally and vertically, but there is no evidence that lower-permeability materials provide complete hydrologic separation between water bearing zones. Therefore, the entire thickness of unconsolidated glacial materials must be considered as a complex regional aquifer system.

Water obtained from the unconsolidated materials tends to be of satisfactory quality. In some instances, iron and manganese are found in elevated levels. Recently, naturally occurring arsenic in the drinking water has shown up at elevated levels in several private wells completed in Tertiary volcanic bedrock, just west of Granite Falls. Wells that are completed in bedrock have probably drilled into a mineralized vein contining arsenic-bearing minerals, thereby showing elevated arsenic levels in the water.

Recharge of the proposed sole source aquifer area occurs largely through downward percolation of precipitation on the surface. Therefore, contamination from any source can enter the aquifer by the same route. Ground water is vulnerable to contamination from a wide variety of sources, such as pesticide application, leaking fuel or chemical storage tanks, agricultural runoff, animal wastes, septic systems, landfill leachate, and accidental spills of hazardous materials. Once the ground water becomes contaminated, its usefulness as a source of drinking water could be impaired or destroyed. Assuming that the technology to remove the contaminant, or contaminants, exists and is readily available, an increased expenditure of energy and funds could still be required to make the water useable again. If the technology is not available, or if the expense for decontamination is too high, the contaminated aquifer could become practically useless as a drinking water supply, and its usefulness for other purposes could be greatly impaired.

Should contamination of ground water of the Newberg Area occur, the only feasible water supply for about 2,450 people using ground water in the area would be lost. Existing wells could not be relocated because of probable interconnection between the ground-water producing zones in the various types of unconsolidated deposits. Deepening the wells would not provide an alternative source as the underlying bedrock yields limited quantities of usable water. Financial and institutional factors render development of all potential surface water sources of drinking water infeasible. Therefore, if ground water of the Newberg Area were to become contaminated, there would be no feasible alternative sources of drinking water available that could provide sufficient quantities of drinking water to all residents.

IV. Project Review

When the EPA Administrator published this determination for a sole or principal drinking water source, the consequence is that no commitment for federal financial assistance may be made if the Administrator finds that the federal financially assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health (Safe Drinking Water Act Section 1424(e), 42 U.S.C. 300h–3(e)). In many cases, these federal financially assisted projects may also be analyzed in a National Environmental Policy Act (NEPA) document, 42 U.S.C. 4332 (2)(c). All NEPA documents, as well as any other proposed Federal actions affecting an EPA program or responsibility, are required by Federal law to be reviewed and commented upon by the EPA Administrator.

To streamline EPA's review of the possible environmental impacts upon designated aquifers, when an action is analyzed in a NEPA document, the two reviews will be consolidated, and both authorities will be cited. The EPA review under the Safe Drinking Water Act of Federal financially assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review of any NEPA document accompanying the same federally-assisted project Statement to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

V. Discussion of Public Comments

During the initial comment period, the Environmental Health Division of the Snohomish County Health District objected to sole source aquifer designation on technical grounds. The county agency charged that the original boundaries, as submitted by the petitioners, had no hydrogeological basis. Accordingly, the Environmental Health Division recommended that EPA conduct additional study to delineate the boundaries on a hydrogeological basis before taking further steps toward sole source designation. Shortly afterward, the Snohomish County Department of Public Works submitted a report on landfill siting criteria in an attempt to help EPA with its technical review process.

The EPA Region 10 Office of Ground Water agreed with Snohomish County that the designated area boundaries needed to coincide with the actual aquifer and recharge area boundaries. Accordingly, additional information was analyzed to detemine the nature and extent of ground water resources within the Newberg area. This effort resulted in publishing a resource document which delineated the aquifer and recharge area boundaries based upon available hydrogeological information.

Upon distribution of the resource document, another public comment period was opened to provide an opportunity for comments on the revised

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boundaries between July 23, 1987, and September 4, 1987. However, no public comments were received and a scheduled public meeting was cancelled due to a lack of interest.

VI. Summary

Today's action only affects the Newberg Area Aquifer in Snohomish County, Washington. This action provides a review process to insure that necessary ground-water protection measures are incorporated into federal financially-assisted projects.

Dated: September 21, 1987.

Ron Kreizenbeck,

Acting

[FR Doc. 87-22921 Filed 10-2-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 18, 1987

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 18, 1987.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests on balance that economic activity is expanding at a moderate pace in the current quarter. In July, total nonfarm payroll employment rose considerable further; the increase included continuing large gains in the service-producing sector and a sizable advance in manufacturing. The civilian unemployment rate fell slightly further to 6.0 percent. Industrial production increased strongly in July after rising moderately on balance in the first half of the year. Consumer spending grew at a reduced pace earlier in the year but retail sales posted large increases in June and July. Housing starts were unchanged in July and remained at their reduced second-quarter level. Recent indicators of business capital spending point to some strength, particularly in equipment outlays. The rise in consumer and producer prices has been moderate in recent months, but for the year to date prices generally have risen more rapidly than in 1986, primarily reflecting sizable increases in prices of energy and non-oil imports. Wage increases have remained relatively moderate in recent months.

In foreign exchange markets, the trade-weighed value of the dollar in terms of the other G–10 currencies was unchanged on balance since the meeting of the Committee on July 7. In the second quarter the merchandise trade deficit in current dollars was about the same as in the first quarter.

The monetary aggregates grew slowly in July. For 1987 through July, expansion of both M2 and M3 has been below the lower ends of the ranges established by the Committee for the year, while growth in M1 has been well below its pace in 1986. Expansion in total domestic nonfinancial debt has moderated this year. Most long-term interest rates have risen somewhat since that July meeting; in short-term markets, Treasury bill rates also have increased somewhat while private rates are little changed. Stock prices have risen substantially since the latest meeting.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promot growth in output on a sustainable basis, and contribute to an imporved pattern of international transactions. In furtherance of these objectives the Committee agreed at its meeting in July ro reaffirm the ranges established in February for growth of 5½ to 8½ percent for both M2 and M3, measured from the fourth quarter of 1986 to the fourth quarter of 1987. The Committee agreed that growth in these aggregates around the lower ends of their ranges may be appropriate in light of developments with respect to velocity and signs of the potential for some strengthening in underlying inflationary pressures, provided that economic activity is expanding at an acceptable pace. The monitoring range for growth in total domestic nonfinancial debt set in February for the year was left unchanged at 8 to 11 percent.

For 1988, the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1987 to the fourth quarter of 1988, of 5 to 8 percent for both M2 and M3. The Committee provisionally set the associated range for growth in total domestic nonfinancial debt at 7½ to 10½ percent.

With respect to M1, the Committee recognized that, based on experience, the behavior of that aggregate must be judged in the light of other evidence relating to economic activity and prices; fluctuations in M1 have become much more sensitive in recent years to changes in interest rates, among other factors. Because of this sensitivity, which has been reflected in a sharp slowing of the decline in M1 velocity over the first half of the year, the Committee again decided at the July meeting not to establish a specifid target for growth in M1 over the remainder of 1987 and no tentative range was set for 1988. The appropriateness of changes in M1 this year will continue to be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressures. the Committee welcomes substantially slower growth of M1 in 1987 than in 1986 in the context of continuing economic expansion and some evidence of greater inflationary pressures. The Committe in reaching operational decision over the balance of the year will take account of growth in M1 in the light of circumstances then prevailing. The issues involved with establishing a target for M1 will be carefully reappraised at the beginning of 1988.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Somewhat greater reserve restraint would, or slightly lesser reserve restraint might, be accepatable depending on indications of inflationary pressures, the strength of the business expansion, developments in foreign exchange markets, as well as the behavior of the aggregates. This approach is expected to be consistent with growth in M2 and M3 over the period from June through September at annual rates of around 5 percent. Growth in M1, while picking up from recent levels, is expected to remain well below its pace during 1986. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, September 28, 1987.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 87-22858 Filed 10-2-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of; Acquisitions by; and Mergers of Bank Holding Companies; AmeriTrust Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12

[1] Copies of the Record of policy actions of the Committee for the meeting of August 18, 1987, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 22, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AmeriTrust Corporation,* Cleveland, Ohio; to acquire 100 percent of the voting shares of Midwest National Bank, Indianapolis, Indiana. In connection with this application, A T Acquisition Corporation, Cleveland, Ohio, has applied to become a bank holding company by merging with AmeriTrust Indiana Corporation, Indianapolis, Indiana, and thereby indirectly acquiring Midwest National Bank, Indianapolis, Indiana.

2. *Cardinal Bancshares, Inc.,* Lexington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Union Bank and Trust Company, Irvine, Kentucky.

3. *Fifth Third Bancorp,* Cincinnati, Ohio; to merge with First Bancorporation of Batesville, Batesville, Indiana.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Sun Capital Corporation,* Columbia, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Columbia Bancorp, Inc., Columbia, South Carolina, and thereby indirectly acquire Republic National Bank, Columbia, South Carolina.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Alabama National Bancorporation,* Ashland, Alabama; to acquire 100 percent of the voting shares of Gulf National Bank, Orange Beach, Alabama, a *de novo* bank.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincoln Financial Corporation,* Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Harbor County Banking Corporation, Three Oakes, Michigan, and thereby indirectly acquire Heritage Bank, Oronko Township, Michigan, and Bank of Three Oakes, Three Oakes, Michigan.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22859 Filed 10-2-87; 8:45 am]

BILLING CODE 6210-01-M

Applications to Engage de Novo in Permissible Nonbanking Activities; Beverly Bancorporation, Inc., et al.

The companies listed in this notice have filed an application under § 225.33(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to comment or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beverly Bancorporation, Inc.,* Chicago, Illinois; to engage *de novo* in making and servicing of loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dunn County Bankshares, Inc.,* Menomonie, Wisconsin; to engage *de novo* through its subsidiary, Premium Finance Corporation, Eau Claire, Wisconsin, in providing funds to persons, organizations and businesses in the form of loans to pay their insurance premiums pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in State of Wisconsin.

Board of Governors of the Federal Reserve System, September 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22860 Filed 10-2-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; First Peoples Financial Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a

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written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 21, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Peoples Financial Corporation,* Haddon Township, New Jersey; to acquire up to 24.81 percent of the voting shares of First Bank of Philadelphia, Philadelphia, Pennsylvania. Comments on this application must be received by October 26, 1987.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Financial Corporation,* Terre Haute, Indiana; to merge with FSB Corporation, Sullivan, Indiana, and thereby indirectly acquire Farmer State Bank of Sullivan, Sullivan, Indiana.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *North Arkansas Bancshares, Inc.,* Jonesboro, Arkansas; to acquire 100 percent of the voting shares of First State Bank of Newport, Arkansas.

Board of Governors of the Federal Reserve System, September 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22861 Filed 10-2-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Reallotment of Funds for FY 1986; Low Income Energy Assistance Program (LIHEAP)

AGENCY: Family Support Administration, HHS.

ACTION: Notice.

SUMMARY: Notice of Determination of Funds Available for Reallotment. In accordance with section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981, (42 U.S.C. 8621), as amended, a notice was published in the **Federal Register** on July 1, 1987 announcing the Secretary's preliminary determination that $16,706, in FY 1986 LIHEAP funds may be reallotted. After further evaluation, the Secretary has determined that no funds from FY 1986 would be reallotted. This determination was based on the fact that a large number of grantees would receive grant awards of less than one dollar ($1.00). Other grantees would receive grant awards of less than one hundred dollars ($100.00). It would not be cost effective to reallot these small amounts of funds.

FOR FURTHER INFORMATION CONTACT: H. Gray Mounts, Deputy Associate Administrator for Grants Management, Family Support Administration, Mary E. Switzer Building, Room 2220, 330 C Street SW, Washington, DC 20201; telephone (202) 245-0906.

Wayne A. Stanton,

Administrator

Date: September 29, 1987.

[FR Doc. 87-22931 Filed 10-2-87; 8:45 am]

BILLING CODE 4150-04-M

Public Health Service

Intent To Grant an Exclusive Patent License Extension; Medpacific Corp.

Pursuant to § 6.3 of 45 CFR Part 6 and 37 CFR Part 404, the Assistant Secretary for Health of the Department of Health and Human Services hereby gives notice of intent to grant an extension of an exclusive license for the life of the patent issued to Medpacific Corporation to make, use, and sell an invention of Drs. Michael D. Stern and Donald L. Lappe entitled, "Method of and Apparatus for Measurement of Blood Flow Using Coherent Light," for which United States Patent No. 4,109,647 issued August 9, 1978. A copy of the patent may be obtained upon written request submitted to Mr. Leroy B. Randall, Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A03, Westwood Building, Bethesda, Maryland 20892.

The Department of Health and Human Services will grant an extension of the exclusive license on the basis of information already submitted to the Department, unless information submitted by interested parties to the above address within sixty (60) days of this Notice indicates that the grant is not in the public interest. Any such submittals may include license applications and development plans indicating how the submitter proposes to develop and market the product should it be granted a nonexclusive license.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 37 CFR 404.7

Robert E. Windom,

Assistant Secretary for Health.

Dated: September 23, 1987.

[FR Doc. 87-22932 Filed 10-2-87; 8:45 am]

BILLING CODE 4160-17-M

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: October 15, 1987, 9:00 a.m. to 2:00 p.m.

ADDRESS: Rayburn House Office Building, Room 2253, Independence Avenue & South Capitol Street, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ash Hayes, Ed.D., Executive Director, President's Council on Physical Fitness and Sports, 450 Fifth Street, NW., Suite 7103, Washington, DC 20001, Telephone: (202) 272-3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, as amended, extended by Executive Order #12534 dated September 30, 1985, further amended by Executive Order #12539 dated December 3, 1985. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provision of the Executive Order and recommending to the President and Secretary, as necessary actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities; (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the Council members of the national program of physical fitness and sports, to report on on-going Council programs, and to plan for future directions.

Date: September 29, 1987.

Ash Hayes,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 87-22922 Filed 10-2-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Permits; Receipt of Application

The public is invited to comment on the following application for renewal of a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant Name: Chief, Marine Mammal Section, U.S. Fish & Wildlife Service, National Ecology Center, San Simeon, California 93452.

File No. PRT-684532.

Type of Permit: Scientific Research.

Name of Animals: West Indian manatee (Trichechus manatus) about 100 from the wild and about 15 in captivity annually.

Type of Activity to be Authorized: (a) Radio tag, using either VHF or PTT tags, and/or tetracycline mark; (b) attach peduncle tags or free-floating tether tags; (c) tail-notch free ranging, human-accustomed manatees; (d) freeze-brand injured and rescued manatees; (e) carry out nonharmful studies on rehabilitation; (f) collect dead and injured animals; and (g) export parts of salvaged dead mamatees.

The purpose of this application is to continue to conduct research to secure information on manatee movements and reproductive biology. This information is important in developing sound management plans necessary to help recover the species. The permittee has been conducting the discribed research activities since October of 1981, and all techniques have proven safe for the manatee.

Location of Activity: Southeastern U.S. and Puerto Rico.

Period of Activity: November 1987 through November 1990.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: September 30, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-22942 Filed 10-2-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AK-919-08-4213-02]

General Meeting of the Northern Alaska Advisory Council; Fairbanks Support Center

A general meeting of the Northern Alaska Advisory Council, open to the public, will be held to discuss the following topics:

1. Utility Corridor Draft Resource Management Plan/Enrivonmental Impact Statement.

2. Cumulative environmental impact statements on the effects of placer mining on the watersheds of the Fortymile, Tolovana and Chatanika Rivers and Birch, Beaver and Goldstream Creeks.

3. Briefings on current local BLM programs.

The meeting will be from 8:30 a.m to 5 p.m. on Thursday, November 5, 1987, at BLM's Fairbanks Support Center, 1541 Gaffney Road, on Fort Wainwright.

Public comments on the agenda items will be received by the Council from 3 to 4 p.m. Oral comments may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

For further information contact the Public Affairs Office, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, telephone (907) 356-2345.

John R. Barnes,

Acting Designated District Manager, Northern Alaska/Kobuk District.

September 25, 1987.

[FR Doc. 87-22752 Filed 10-2-87; 8:45 am]

BILLING CODE 4310-84-M

[UT 080-07-4830-12]

Utah Vernal District Advisory Council; Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Vernal District Advisory Council will be held on Thursday, November 5, 1987.

The meeting will begin at 6:30 p.m. and will be held in the conference room of the BLM Office located at 170 South 500 East, Vernal, Utah.

Agenda items shall include:

—Update on Brown's Park/Little Hole Road
—Proposed Cooperative Horse Management Plan with the Ute Tribe
—Inspection & Enforcement Oil & Gas Cooperative Agreement with the Ute Tribe
—Potential Resource Management Plan for the Diamond Mountain Resource Area
—Feedback on Draft Off-Road Vehicle Environmental Assessment
—Update on Jarvie Site Plan
—Brown's Park Deer Study Surprises
—Feedback on the District's Demonstration Riparian Management Plan
—Agricultural Trespass
—Items At Large From Council Members
—Public Comments or Reading of Public Comments, if any.

Advisory Board Meetings are open to the public. Interested persons desiring to make comments must notify the District Manager no later than close of business Tuesday, November 3rd. In the event of several commenters, the District Manager or Council Chairperson may establish a per person comment time limit.

Date: September 24, 1987.

David E. Little,

Vernal District Manager.

[FR Doc. 87-22894 Filed 10-2-87; 8:45 am]

BILLING CODE 4310-DQ-M

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National Park Service

Information Collection Submitted for OMB Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, Telephone 202–395–7340.

Title: Land and Water Conservation Fund-On-Site Inspection Report.

Abstract: These reports are used to determine project eligibility for funding and insure compliance by grantees with all applicable laws and regulations.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: State and local governments.

Annual Responses: 940.

Annual Burden Hours: 470.

Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 87–22899 Filed 10–2–87; 8:45 am]

BILLING CODE 4310–70–M

Information Collection Submitted for OMB Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, Telephone 202–395–7340.

Title: Land and Water Conservation Fund—Program Performance Report.

Abstract: Grantees are required to submit performance reports which describes the status of the work required under the project scope.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: State or local governments.

Annual Responses: 2,030.

Annual Burden Hours: 2,030.

Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 87–22900 Filed 10–2–87; 8:45 am]

BILLING CODE 4310–70–M

Information Collection Submitted for OMB Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copier of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, Telephone 202–395–7340.

Title: Land and Water Conservation Fund—Description and Notification Form.

Abstract: Data is used to Monitor Project Progress and Analyze trends in L&WCF Assistance.

Bureau Form Number: 10–903.

Frequency: On Occasion.

Description of Respondents: State or local governments.

Annual Responses: 1,880.

Annual Burden Hours: 470.

Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 87–22901 Filed 10–2–87; 8:45 am]

BILLING CODE 4310–70–M

Information Collection Submitted for OMB Review Under the Paperwork Reduction Act

The Proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory materials may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, Telephone 202–395–7340.

Title: Land and Water Conservation Fund—Project Agreement.

Abstract: Sets forth the obligations assumed by the State through its acceptance of Federal assistance including the rules and regulations applicable to the conduct of a project under the L&WCF Act.

Bureau Form Number: 10–902.

Frequency: On Occasion.

Description of Respondents: State and local governments.

Annual Responses: 1,880.

Annual Burden Hours: 1,880.

Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,

Information Collection Clearance.

[FR Doc. 87–22902 Filed 10–2–87; 8:45 am]

BILLING CODE 4310–70–M

Information Collection Submitted for OMB Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, Telephone 202–395–7340.

Title: Land and Water Conservation Fund—State Annual Report.

Abstract: The State Annual Report is used to fulfill the L&WCF Act requirement that each State evaluate its program annually.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: State or local governments.

Annual Responses: 55.

Annual Burden Hours: 1,750.

Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 87–22903 Filed 10–2–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty-Fourth Meeting of the Board for International Food and Agricultural Development (BIFAD) on October 8 and 9, 1987.

The purposes of the Meeting are: (1) To discuss the trends and issues that affect Participant Training; (2) to hear a report based on a survey of project records maintained by universities; (3) to receive a Budget Panel report; (4) to hear an overview on the status of Title XII Support Grants Programs, including responses from Title XII representatives on universities' perceptions and concerns.

The October 8, 1987 portion of the Meeting will be held from 1:15 p.m. until 4:30 p.m. and October 9 continuation of the Meeting will be held from 8:30 a.m. until 11:45 a.m. The October 8th portion of the Meeting will be held in Room 1205 New State and the October 9th portion of the Meeting will be held in Room 1406 New State, 2201 C Street, Washington, DC 20523. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Room 309, Washington, DC 20523, or telephone him on (703) 235–8929.

Date: September 28, 1987

Charles D. Ward,

Deputy Director, BIFAD.

[FR Doc. 87–23096 Filed 10–2–87; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31113]

Acquisition and Operation Exemption; Certain Lines of the Atchison, Topeka and Santa Fe Railway Co. and TP&W Acquisition Corp.

TP&W Acquisition Corporation, a noncarrier, has filed a notice of exemption to acquire and operate certain properties of The Atchison, Topeka and Santa Fe Railway Company (ATSF). The properties consist of ATSF's line between Lomax, IL (milepost 206.1L), and Logansport, IN (milepost 0.0), including ATSF's connecting line between East Peoria, IL (NW milepost 410.5), and Morton, IL (milepost 48.30), a total distance of 281.5 miles, together with ancillary overhead trackage rights over ATSF's connecting line between Lomax, IL (milepost 218.5), and Fort Madison, IA (milepost 234.0), a total distance of 15.5 miles. Any comments must be filed with the Commission and served on Frank H. Blatz, Jr., Abrams Blatz, Dalto, Gran, Kendricks and Reina, 1550 Park Avenue, Post Office Drawer D, South Plainfield, NJ 07080, and Dennis W. Wilson, the Atchison, Topeak and Santa Fe Railway Company, 80 E. Jackson Blvd., Chicago, IL 60604.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[1]

Decided: September 18, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22809 Filed 10–2–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31088]

Purchase; Illinois Central Gulf Railroad Co. Line—Between Fulton, KY and Haleyville, AL; Southern Railway Co. and Norfolk Southern Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments.

SUMMARY: Southern Railway Company (Southern), Norfolk Southern Corporation (NS), and Illinois Central Gulf Railroad Company (ICG) have notified the Commission of their intent to file an application seeking Commission approval and authorization, under 49 U.S.C. 11343 *et seq.*, for Southern to acquire ICG's line of railroad between Fulton, KY and Haleyville, AL, a distance of approximately 199 miles. A related application will be filed seeking approval and authorization for Southern to acquire trackage rights over ICG between Fulton, KY, and Centralia, IL, a distance of approximately 154 miles. We acknowledged their notice of intent in our decision served August 25, 1987 and published in the **Federal Register** on August 26, 1987, at 52 FR 32184. Applicants plan to file their applications on or about October 1, 1987.

Applicants have requested the Commission to adopt an expedited schedule in this proceeding. Under that schedule, any and all responsive evidence and verified statements would be filed within 45 days of acceptance of the primary application, applicants' reply evidence and supporting verified statements would be filed 15 days thereafter (at which time the evidentiary proceeding is completed), and a final decision will be issued by the 45th day after the evidentiary proceeding is completed.

Applicants' proposed schedule contains substantially shorter time periods than those provided in the Commission's rules at 49 CFR 1180.4 (d) and (e). The rules provide, among other things, after the Commission accepts the primary application in a significant transaction, (1) all responsive applications must be filed within 60 days of that acceptance, (2) the evidentiary proceeding must be completed within 180 days of acceptance, and (3) a final decision must be issued 90 days after conclusion of the evidentiary phase. In support of their proposal, applicants assert that the expeditious filing of evidence is encouraged by 49 U.S.C. 11345(c) and that their "case in chief" approach where all parties would file evidence at the close of the comment period has been adopted by the Commission in its motor carrier consolidation rules and has received judicial approval.

As yet, we have no indication of the response to this procedural request. Moreover, respondents should be able to review the application before taking a position on a schedule. Therefore, we will invite interested parties to comment on the merits of applicants' proposal.

DATES: Comments on applicants' proposed schedule must be submitted by

[1] By decision entered September 16, 1987, the Commission denied a petition, filed by Local 1815 of the United Transportation Union, requesting a stay of the effective date of the notice of exemption.

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15 days after filing of the application. Applicants' comments are due 10 days thereafter.

ADDRESSES: An original and 15 copies of comments must refer to Finance Docket No. 31088 and should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Paul Nishimoto, (202) 275–7888

or

Joseph H. Detttmar, (202) 275–7245

TDD for hearing imparied: (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing imparied is available through TDD services (202) 275–1721) or by pickup from Dynamic Concepts in Room 2229 at Commission headquarters.

Decided: September 21, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simons. Vice Chairman Lamboley, joined by Commissioner Simmons, concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22807 Filed 10–2–87; 8:45 am]

BILLING CODE 7035–01–M

[Amdt. No. 9]

Section 5a Application No. 45;[1] Niagara Frontier Tariff Bureau, Inc. Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Niagara Frontier Tariff Bureau, Inc. (Niagara), has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement[2] under 49 U.S.C. 10706(b). Since several modifications are required before the agreement receives final approval, and because of the new and complex questions involved in determining whether the agreement is consistent with the 1980 Act and the devision implementing it, the Commission has decided to solicit public comment on its interpretation and application of specific rate bureau provisions. Copies of Niagara's proposed amended agreements are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, and from Niagara's representative: Robert G. Gawley, Attorney, P.O. Box 184, Buffalo, NY 14221.

Additional information is in the Commission decision. Copies may be obtained from Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impared is available through TDD services (202) 275–1721) or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters.

DATE: Comments from interested persons are due November 4, 1987. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 45 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Paul Grossman, (202) 275–7976, or Andrew Lyon, (202) 275–7691, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: We have provisionally approved Niagara's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: Identification and description of member-carriers; right of independent action; employee docketing; open meetings; quorum standards; final disposition of cases; single-line rates; general increases and decreases; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. Niagara has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MAC and the *Rate Bureau* case, *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria and their application to Niagara's agreement. In addition, comments may be filed on our previous determination that the interbureau agreement between Niagara and Southern Motor Carriers Rate Conference, Inc., contained in the agreement is not a separate collective ratemaking agreement subject to the terms of the *Rate Bureau* case, *supra*.

A copy of any comments filed with the Commission must also be served on Niagara, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that Niagara must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: September 25, 1987.

By the Commission. Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22925 Filed 10–2–87; 8:45 am]

BILLING CODE 7035–01–M

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[1] Section 5 was recodified as Section 10706.

[2] Niagara's agreement contains a separate agreement between Niagara and Southern Motor Carriers Rate Conference, Inc. (SMCRC) which contains provisions corresponding to those in Niagara's main amended agreement. In Section 5a Application No. 46 (Amendment No. 15), *Southern Motor Carriers Rate Conference, Inc., Agreement* (not printed), served February 12, 1985, and May 27, 1987, the Commission concluded that an identical interbureau agreement submitted by SMCRC as part of its application was not a separate collective ratemaking agreement subject to the terms of Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96–296*, 364 I.C.C. 464 (1980).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86–91]

Revocation of Registration; Cumberland Prescription Center, Inc.

On November 7, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Cumberland Prescription Center, Inc. (Respondent) of 1000 Mendon Road, Cumberland, Rhode Island 02864 proposing to revoke the pharmacy's DEA Certificate of Registration AC6283193 and to deny any pending applications for the renewal of such registration. The Order to Show Cause alleged that the continued

registration of the pharmacy would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). Subsequent to the initiation of proceedings to revoke the pharmacy's DEA Certificate of Registration, Respondent pharmacy submitted a new application for registration on March 27, 1987. The Order to Show Cause was amended to include the proposed denial of this application.

By letter dated December 8, 1986, Responsent's counsel requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing proceedings, a hearing was held in Boston, Massachusetts on April 30, 1987. On July 8, 1987, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, Government counsel filed exceptions to the Administrative Law Judge's recommended ruling. On August 17, 1987, Judge Bittner transmitted the record in this proceeding, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of Law as hereinafter set forth.

The Administrative Law Judge found that Respondent pharmacy has been in existence since about 1975. Until March of 1987, Michael Arouth was the president, 50% shareholder and managing pharmacist of Respondent pharmacy. His wife, Phyllis has been a 50% shareholder of the pharmacy since its inception.

In 1964, while working as a pharmacist at another pharmacy, Michael Arouth pled guilty in a Rhode Island court to two counts of delivery of barbiturates. As a result of this conviction, the Rhode Island Board of Pharmacy placed Michael Arouth's pharmacist license on probation for a period of five years.

Beginning in 1985, the Cumberland Police Department received information that individuals, including drug addicts, were obtaining drugs from Respondent pharmacy without presenting a prescription to the pharmacist. On August 5, 1986, a cooperating individual contacted a detective of the Cumberland Policy Department and indicated that for 10 years, beginning when she was 16 or 17, Michael Arouth provided her with controlled substances, in exchange for sexual favors, including posing nude for photographs. She never presented Michael Arouth with a prescription for these drugs. The cooperating individual told the detective that Michael Arouth had similar arrangements with other women. She further stated that Arouth told her that in order to account for the drugs he was illegitimately dispensing, he received more controlled substances than he ordered from salesmen of drug distributors and then recorded only the amounts he had ordered. In addition, when filling orders for nursing homes, Michael Arouth would take some of the medication from the vials and replace it with water.

On August 5, 1986, the cooperating individual telephoned Michael Arouth from the Cumberland Police Department and indicated to him that she wanted some controlled substances, needles and syringes. She then went to Respondent pharmacy, at which time Michael Arouth gave her various controlled substances in an unmarked vial and an envelope, two needles and syringes. She did not present Michael Arouth with a prescription for the controlled substances nor did she pay him for the drugs. The Administrative Law Judge concluded that these substances were not dispensed for a legitimate medical purpose.

The next day, August 6, 1986, the cooperating individual again telephone Michael Arouth to arrange another meeting at the pharmacy. During the conversation, Michael Arouth told the cooperating individual that the "heat was on" and therefore, he would not give her any more drugs, but would give here money so she could obtain drugs elsewhere. The cooperating individual then went to Respondent pharmacy and Michael Arouth gave her $20.00 or $25.00, but did not give her any controlled substances on this occasion.

On August 8, 1986, officers of the Cumberland Police Department executed a serach warrant at Respondent pharmacy. During the course of the search, the officers seized a large quantity of assorted controlled substances located throughout the pharmacy. These drugs were in unlabelled vials with three or four different types of drugs in one vial. In addition, the officers found large quantities of drugs obtained from various nursing homes and pharmacies in Rhode Island, as shown by the labels on the vials containing the drugs and by documents accompanying them. The officers also seized photographs of women posing nude throughout the pharmacy. One of the women appearing in the photographs was the cooperating individual. During a subsequent search of the pharmacy, officers seized the contents of a safe located in the pharmacy. Among other things, there was a tablet of Quaalude, a Schedule I controlled substance.

During the search, the officers looked at Respondent's prescription files, but were unable to locate any prescriptions written for the cooperating individual. The prescriptions revealed that certain individuals were regularly having prescriptions for controlled substances filled at Respondent pharmacy.

On August 8, 1986, Michael Arouth was arrested by the Cumberland Police Department and charged with four felony counts of delivery of phentermine, diazepam, oxycodone, and delivery of needles and syringes in violation of the laws of the State of Rohode Island.

On October 22, 1987, DEA investigators conducted an inspection of Respondent to insure that required records relating to controlled substances were being maintained and to conduct an accountability audit. Two audits were conducted of selected Schedule II controlled substances, one covering the period February 6, 1985, through October 22, 1986, and the other covering the period October 2, 1984, through October 22, 1986. These audits revealed coverages of the majority of the substances auditied; in other words, Respondent could account for more of the controlled substances than it was held accountable for.

DEA investigators also conducted an audit of selected Schedules III, IV and V controlled substances for the period October 22, 1985, through October 22, 1986, which revealed significant shortages of all but one of the substances audited. It is likely that the shortages of the Schedules III, IV, and V substances were even greater than the audit reflected since a zero inventory balance, which assumes that no drugs were on hand at the beginning of the audit period, was used. Respondent was not held accountable for any substances in stock on October 22, 1985. The shortages and overages revealed by the adults indicate a violation of 21 U.S.C. 842(a)(5).

On March 9, 1987, the State of Rhode Island Board of Pharmacy entered into a Consent Agreement with Michael Arouth pursuant to which, the latter agreed not to practice pharmacy pending the disposition of the criminal charges against him. The Consent Agreement specifically stated that the pharmacy could remain open under a new registrant, required to be registered as a pharmacist in Rhode Island and approved by the Pharmacy Board to serve as store registrant. The agreement further required that Michael Arouth disassociate himself from the daily

operation of the pharmacy, and provided that if he engaged in the practice of pharmacy during the term of the agreement, his registration as a pharmacist would be automatically suspended. The agreement does not, however, provide any sanctions against Respondent pharmacy should Michael Arouth fail to comply with its terms.

On March 13, 1987, Michael Arouth transferred his fifty percent share of the corporation to his daughter, with no consideration being given for such shares. His daughter is not a registered pharmacist and she rarely goes into the pharmacy.

The Administrative Law Judge found that Michael Arouth still works as a clerk in the store and has no other employment. In addition, the new managing pharmacist was hired by Michael Arouth.

The Administrative Law Judge concluded that the continued registration of Respondent pharmacy would be inconsistent with the public interest. Michael Arouth's conduct in dispensing controlled substances in exchange for sexual favors and the pharmacy's failure to keep accurate records clearly support such a conclusion.

The Administrator of the Drug Enforcement Administration has consistently, revoked, suspended or denied the registration of pharmacies based upon the controlled substance handling practices of the pharmacy's owner, majority shareholder, officer, managing pharmacist or other key employee. See *Unarex of Plymouth Road, d.b.a. Motor City Prescription and Unarex of Dearborn, d.b.a. Motor City Prescription Center*, Docket Nos. 84–1 and 84–2, 50 Fed. Reg. 7077 (1985); *Bourne Pharmacy, Inc.*, Docket No. 83–22, 49 FR 32816 (1984); *Big T Pharmacy*, Docket No. 80–34, 48 FR 51830 (1982), and cases cited therein.

Respondent contends that Michael Arouth is no longer a corporate owner of the pharmacy and no longer has anything to do with the handling of controlled substances at the pharmacy; therefore, Respondent's DEA Certificate of Registration should not be revoked. As stated in *Big T Pharmacy*, supra, "[t]he law will not be read so as to permit corporate registrants to evade a congressionally mandated sanction by permitting convicted felons to shed their various interests and offices * * * thus leaving the pharmacy to escape its responsibility." The Administrative Law Judge concluded that Michael Arouth is still very much a part of the operation of Respondent. He continues to work on Respondent's premises and has no other employment. Neither of the two current owners of the corporation works in the Pharmacy full-time. Further, Michael Arouth continues to benefit financially from any profits from the business through his wife's ownership interest.

The Administrative Law Judge further concluded that the loss of Respondent's DEA registration will work a hardship on Michael Arouth's family. However, his wife owned fifth percent of the stock of the corporation during the period when Michael Arouth was diverting controlled substances from the pharmacy. Judge Bittner was not convinced that Mrs. Arouth would be able to prevent a recurrence of her husband's behavior. Accordingly Judge Bittner recommended that Respondent's DEA Certificate of Registration be revoked. The Administrative Law Judge further recommended that such revocation be effective 90 days from the issuance of the Administrator's order to enable Michael Arouth's wife and daughter to sell the pharmacy. The Government filed exceptions to this recommendation stating that the Arouths have had ample opportunity to sell Respondent pharmacy and therefore the order should be effective 60 days after its issuance.

The Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge in their entirety. The Administrator further adopts the recommendation of Judge Bittner to revoke Respondent's DEA Certificate of Registration.

The Administrator concludes that the actions of Michael Arouth were so egregious, that Respondent pharmacy, as it presently exists, cannot be entrusted with a DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate or Registration AC6283193, previously issued to Cumberland Prescription Center, be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. In addition, the Administrator orders that the application for a new DEA Certificate of Registration, submitted on behalf of Respondent on March 27, 1987, be, and it hereby is, denied. This order is effective December 4, 1987.

Date: September 29, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87–22856 Filed 10–2–87; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Board and Committees; Meetings and Agenda

The regular fall meetings of the Board and Committees of the Business Research Advisory Council will be held on October 20 and 21, and November 19, 1987. All of the meetings will be held in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Tuesday, October 20, 1987

10:00 a.m.—Committee on Economic Growth; Room S4215 A & B

1. New Projections
2. Increases in Defense Spending and the Impact on Production and Employment
3. The Rapid Growth in Producer Services
4. Other Business

2 p.m.—Committee on Price Indexes; Room S4215 A & B

1. Status Reports:
   a. Consumer Price Index
   b. Producer Price Index
   c. International Price Indexes
   d. Consumer Expenditure Surveys
2. Other Business

2 p.m.—Committee on Employment and Unemployment Statistics; Room C5315 (Seminar Room #6)

1. CPS Issues
   a. Long-Range Plans
   b. Proposed Supplements
2. LAUS Regression Research
   a. Current Status
   b. ICESA Recommendations
3. 790 Survey Issues
   a. Service Sector Initiatives
   b. CATI Operational Tests
   c. Sampling and Estimation Work
4. Report on International Conferences on Business Survey Frames
5. Other business

Wednesday, October 21, 1987

9:30 a.m.—Committee on Wages and Industrial Relations; Room S4215 A, B & C

1. Review of Wages and Industrial Relations 1988 Budget
2. Temporary Help Survey Update
3. Progress on the White-Collar Pay and Benefits Survey and the Professional, Administrative, Technical and Clerical Pay Survey
4. New Developments in the Area Wage Program
5. Introduction of Cost Level Data from the Employment Cost Index
6. Chairman's Summary of the Joint BRAC and LRAC Subcommittee Meetings
7. Other Business

1:30 p.m.—BRAC Board; Room S4215 A, B, & C

1. Chairperson's Opening Remarks
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   a. Economic Growth
   b. Price Indexes
   c. Employment and Unemployment Statistics
   d. Wages and Industrial Relations
4. Other Business
5. Chairperson's Closing Remarks

Thursday, November 19, 1987

10 a.m.—Committee on Occupational Safety and Health Statistics; Room N3437 A & B

1. 1986 Annual Survey Results
2. Report of the Committee on National Statistics, National Academy of Sciences
3. Keystone Recordkeeping Project
4. On-site Records Check Pilot Project
5. Work Injury Reports—Inhalation Study
6. Supplementary Data System (SDS) Update
7. BLS-State Health Department Committee Activities
8. Investigating Alternative Fatality Data Sources
9. Other Business

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523–1347.

Signed at Washington, DC this 25th day of September 1987.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 87–22891 Filed 10–2–87; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishments; Advisory Panels for Archaeology and Physical Anthropology

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Advisory Panels listed below are necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, general Services Administration.

Name of Committee: Advisory Panel for Archaeology

Purpose: Primarily, to advise on the merit of proposals for research-related purposes submitted to the NSF for financial support. Additionally, the Panel provides oversight, general advice, and policy guidance in the area of Archaeology.

Name of Committee: Advisory Panel for Physical Anthropology

Purpose: Primarily, to advise on the merit of proposals for research-related purposes submitted to the NSF for financial support. Additionally, the Panel provides oversight, general advice, and policy guidance in the area of Physical Anthropology.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1987.

[FR Doc. 87–22875 Filed 10–2–87; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Renewals; Advisory Committee for Engineering Science in Mechanics, Structures, and Materials Engineering, et al.

The Advisory Committees listed below are being renewed until September 30, 1989.

The Assistant Director for Engineering has determined that the renewal of these Committees is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat. General Services Administration:

—Advisory Committee for Engineering Science in Mechanics, Structures, and Materials Engineering
—Advisory Committee for Engineering Science in Electrical, Communications, and Systems Engineering
—Advisory Committee for Engineering Science in Chemical, Biochemical, and Thermal Engineering
—Advisory Committee for Critical Engineering Systems (formerly called the Advisory Committee for Critical Engineering Systems Section)
—Advisory Committee for Emerging Engineering Technologies (formerly called the Advisory Committee for Emerging Engineering Systems Section)

M. Rebecca Winker,

Committee Management Officer.

September 30, 1987.

[FR Doc. 87–22876 Filed 10–2–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–12910 Licensee No. 24–17529–01 EA 87–84]

Order Imposing Civil Monetary Penalty; Aztec Laboratories

I

Aztec Laboratories Post Office Box 31044, Kansas City, MO 64129, is the holder of Byproduct Materials License No. 24–17529–01 issued by the Nuclear Regulatory Commission (Commission or NRC) on June 22, 1977. The license authorizes the licensee to possess and use nickel-63 gas chromatographs for sample analysis in accordance with the conditions specified therein.

II

An inspection of the licensee's activities was conducted during the period March 25 through May 15, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated June 30, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated July 21, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation

and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of Five Hundred Dollars ($500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of General Counsel. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation I.A of the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

For The Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Bethesda, Maryland this 28th day of September 1987.

Appendix—Evaluations and Conclusions

On June 30, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. By letters dated July 21, 1987, Aztec Laboratories (licensee) responded to the Notice. In its response, the licensee admits certain violations occurred as described in the Notice, denies other violations, and provides reasons why it believes that mitigation of the proposed civil penalty is appropriate. Provided below are: (1) A restatement of each violation; (2) a summary of the licensee's response regarding each violation; (3) NRC's evaluation of the licensee's response; (4) the licensee's arguments in support of mitigation of the proposed civil penalty, and (5) NRC's conclusions regarding the violations and the proposed civil penalty.

I. Licensee's Arguments Regarding Violations Assessed Civil Penalty

A. Violation IA

Restatement of Violation. 10 CFR 20.403(b)(4) requires each licensee to, within 24 hours of discovery of the event, report any event involving licensed material possessed by the licensee that may have caused or threatens to cause damage to property in excess of $2.000.00.

Contrary to the above, from March 1984 until the date of inspection, the licensee failed to notify the NRC of a March 1984 fire which involved a gas chromatograph unit containing a nominal 14.5 millicuries of nickel-63, and which caused in excess of $40,000 damage to both the facility and licensed material. Further decontamination costs including consultant fees, decontamination, and waste disposal exceeded $2,000.

Summary of Licensee's Response. The licensee argues that a violation did not occur since the initial cost of the chromatograph device was less than $2,000 and the damage to the building was caused primarily by the fire of March 1984 and not from the contamination resulting from the chromatograph device.

NRC Evaluation of Licensee's Response. 10 CFR 20.403(b)(4) explicitly requires the reporting of "*any event involving licensed material*" that may have caused or threatens to cause damage to property in excess of $2.000. The event in this case was the fire which involved the chromatograph device containing licensed material. The cost of the chromatograph device is not determinative. The intent of the reporting requirement described in 10 CFR 20.403(b)(4) is to afford the NRC the opportunity to review all circumstances surrounding incidents similar to the 1984 fire and perform radiological assessments of hazards that may be present. In this case, if the NRC had been notified of the 1984 event, involving licensed material an adequate evaluation of the device would have been performed and contamination would not have gone undetected for three years. A license amendment describing the approved location for storage of devices would also have been required.

B. Violation IB

Restatement of Violation. 10 CFR 20.201(b) requires each licensee to make or cause to be made such surveys as are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined by 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials. When appropriate, such evaluation includes a physical survey of the location of materials and equipment, and measurements of levels of radiation or concentrations of radioactive material present.

Contrary to the above, from March 1984 until the date of the inspection, the licensee failed to make a reasonable survey to evaluate the extent of radiation hazards present as a result of the March 1984 fire. Although a visual check of the source holder was made after the fire, radiation surveys and wipe tests for leakage were not performed. As a result between March 1984 and March 26, 1987, leakage from the nickel-63 source went undetected.

Summary of Licensee's Response. The licensee argues that surveys and wipe tests were not required because the nickel-63 source was in storage and never used.

NRC Evaluation of Licensee's Response. NRC expects licensees to perform wipe tests and surveys of sources whenever sources may be damaged. Since the licensee's source was in a fire, wipe tests and surveys should have been performed. This is evident since the nickel-63 source was severely damaged and was leaking radioactive material.

II. Licensee's Arguments Regarding Violations Not Assessed Civil Penalty

A. Violation IIA

Restatement of the Violation. 10 CFR 20.207(a) states that licensed materials stored in an unrestricted area shall be secured from unauthorized removal from the place of storage.

Contrary to the above, from March 1984 until the date of inspection, a nickel-63 source containing 14.5 millicuries was stored at the licensee's Arlington Street facility and was not secured from unauthorized removal.

This is a Severity Level IV violation (Supplement IV).

Summary of Licensee's Response. Although the licensee admits that the actual structure was open, the licensee

argues that the location of the building, partial fencing, and large size of the property effectively secured the device and prevented unauthorized removal.

NRC Evaluation of Licensee's Response. On March 26, 1987, the inspector went to the licensee's residence and found no one at home. The inspector then walked over to the burned facility and immediately viewed the device on the porch. The inspector found the nickel-63 source housing laying loose on top of the chromatograph device. While it is true that the licensee's property is large and partially fenced, the burned building was visible from the street and the entrance to the property was not fenced.

There were no caution signs, ropes or any other obstructions to keep an individual from becoming contaminated or even removing the source. During the inspection, the licensee admitted that the facility was not restricted for the purpose of radiation protection.

B. Violation IIB

Restatement of Violation. License Condition No. 17 requires each chromatograph detector cell containing nickel-63 to be tested for leakage and/or contamination at intervals not to exceed six (6) months. In the absence of a certificate from a transferor indicating that a test has been made within six (6) months prior to the transfer, a detector cell received from another person shall not be put into use until tested.

Contrary to the above, each chromatograph detector cell containing nickel-63 has not been tested for leakage and/or contamination every six (6) months as required. Specifically, as of the day of this inspection, one detector cell at the Arlington facility had not been tested for leakage since at least September 1982 and two detector cells, located at the Stadium Drive facility, had not been tested since at least February 1986. Furthermore, the two detector cells at the Stadium Drive facility were received in February 1986 in the absence of a certificate from the transferor indicating that a test had been made within six (6) months prior to transfer and one detector was put into use.

This is a Severity Level IV violation (Supplement VI).

Summary of Licensee's Response. The licensee does not contest the violation.

C. Violation IIC

Restatement of Violation. License Condition No. 18 requires the licensee to conduct a physical inventory every six (6) months to account for all files received and possessed under the license. The records of the inventories shall be maintained for two (2) years from the date of the inventory for inspection by the Commission, and shall include the quantities and kinds of byproduct material, location of files, and the date of the inventory.

Contrary to the above, as of the date of inspection, records of inventories have not been maintained as required since September 1982.

This is a Severity Level V violation (Supplement VI).

Summary of Licensee's Response. The licensee states that all records were lost in the fire and while filed inventories were not available, the licensee was able at the time of the inspection to immediately point out to the inspector where the detectors were in the stadium drive location.

NRC Evaluation of Licensee's Response. At the time of the inspection, the licensee stated that visual inventories were performed more often than six months; however, records of inventories were not made. Since records of inventories, even after the fire in 1984, were not maintained as required, the violation remains as stated in the Notice of Violation.

D. Violation IID

Restatement of Violation. License Condition No. 10 states licensed material shall be used only at the licensee's facilities located at 3933 Arlington Street, Kansas City, Missouri.

Contrary to the above, in February 1986, two detector cells containing licensed material were received at a facility not authorized by this license where one detector cell was placed in storage and one detector cell was put into use.

This is a Severity Level IV violation (Supplement VI).

Summary of Licensee's Response. The licensee does not contest the violation.

III. Licensee's Arguments for Mitigation of Civil Penalty

In requesting mitigation of the proposed civil penalty, the licensee points out three reasons why the civil penalty should not be imposed. The licensee states that once it became aware of the errors, actions were taken in an expeditious manner to correct the problem. The licensee also states that it does not have a prior history of similar events and that imposition of a civil penalty at this time would present a financial hardship on the licensee.

NRC's Evaluation of Licensee's Arguments for Mitigation of Civil Penalty. It is important to establish that the event was discovered by the NRC. As a result, a Confirmatory Action Letter was issued on April 10, 1987 to the licensee outlining several actions which needed immediate attention. The NRC agrees that the licensee dealt with those actions within the timeframe specified in the letter. NRC Enforcement Policy 10, CFR Part 2, Appendix C, Section V.B.2 states, "Unusually prompt and extensive corrective action may result in reducing the proposed civil penalty as much as 50 percent of the base value." The fire occurred in March 1984 and contamination of the facility went undetected until the March 26, 1987 inspection by the NRC. Once the problem was identified, the NRC provided guidance to the licensee on what actions were needed to assure the contamination was not widespread and how to properly decontaminate the facility and properly dispose of the radioactive waste. While the NRC agrees that the licensee complied with the actions contained in the Confirmatory Action Letter, NRC does not consider these actions unusually prompt or extensive.

Since the licensee had never been inspected prior to the March 25 through May 15, 1987 inspection, no basis to determine the licensee's inspection history exists. The violations identified during the inspection would indicate that the violations have been ongoing for a number of years.

In reviewing the licensee's argument that the proposed civil penalty of Five Hundred Dollars ($500) would impose a significant financial hardship on the larboratory, the licensee has not provided sufficient information to warrant mitigation of the proposed civil penalty.

NRC Conclusion. The NRC staff has concluded that all violations did occur as originally stated in the June 30, 1987 Notice of Violation and Proposed Imposition of Civil Penalties. These violations collectively show the licensee's failure to fully understand NRC requirements and the significance of the March 1984 event. A sufficient basis was not provided for mitigation of the proposed civil penalty. Therefore, the NRC staff has concluded that a $500 civil penalty should be imposed.

[FR Doc. 87-22940 Filed 10-2-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-237 and 50-249]

Exemption; Commonwealth Edison Co., Dresden Nuclear Power Station Units 2 and 3

I

The Commonwealth Edison Company (CECo, the licensee) is the holder of

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Provisional Operating License No. DPR-19, which authorizes operation of Dresden Station Unit 2, and Facility Operating License No. DPR-25, which authorizes operation of Unit 3. These licenses provide, among other things, that Dresden Units 2 and 3 are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station comprises two boiling water reactors at the licensee's site located in Grundy County, Illinois.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G, is the subject of the licensee's exemption request.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

c. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area

Subsection III.G.3 of Appendix R requires that where Subsection III.G.2 cannot be met, alternative or dedicated shutdown capability should be provided. Also, for areas, rooms, or zones where alternative or dedicated shutdown is provided, fire detection and a fixed-fire suppression system shall be installed.

III

By letter dated June 5, 1986, the licensee requested an exemption from Section III.G.3 of Appendix R to the extent that it requires the installation of automatic fire detection and fixed-fire suppression systems in the drywell expansion gap.

The drywell is constructed of a steel containment shell that is surrounded by a concrete shield structure. The steel containment shell is spherical on the bottom and cylindrical at the top. The normal operation of the reactor (or accidents) will cause the steel shell to expand in all directions. This expansion is accommodated by providing a 2-inch gap. During construction, polyurethane foam sheets were installed over the exterior of the steel shell. An epoxy impregnated fiberglass tape was used over the joints and then ¼- and ⅜-inch thick fiberglass-epoxy prefabricated cover panels were installed over the foam sheets. Concrete was placed over this material and, when hardened, the sandwiched materials provide the 2-inch gap because they are crushable as the steel containment shell expands. The foam materials serve no other purpose.

No fire protection is provided within the 2-inch gap. However, fire detectors are located in the reactor building fire zones adjacent to the electrical and mechanical drywell penetrations. Manual fire fighting equipment is available throughout the reactor building.

The only safe shutdown components located in the expansion gap are electrical conductors inside the electrical penetration assembly canisters and instrumentation taps in mechanical penetrations. These electrical conductors are associated with valves required for hot and cold shutdown and associated cables for automatic RHR system functions. The taps for reactor level indicating switches and pressure indicators are routed in mechanical penetrations.

The fire load in the 2-inch gap is composed of the polyurethane sheets and fiberglass cover panels, both combustible. The 2-inch gap is bounded on one side by the steel shell and on the other side by a 4-foot thick reinforced concrete shield/wall.

The electrical penetrations all have the same basic configuration. An electrical assembly is sized so that it can be inserted into the electrical penetration nozzle. The nozzles are 12-inch, schedule 80 steel pipe, with wall thickness of 0.688 inches. Each assembly is in conformance with the ASME Boiler and Pressure Code, Section III, for Class B Vessels. The penetrations extend 1 foot beyond the drywell wall on both sides. The drywell wall in the vacinity of the penetrations is about 6 feet thick.

The machanical penetrations are of two types, viz., hot and cold., The hot ones are designed to accommodate thermal expansion and have guard pipes between the line and the penetration nozzle. The machanical penetrations are also constructed of thick walled steel pipes and plates. The penetration nozzles conform to the ASME Pressure Vessel Code, Section VIII. The nozzle walls are welded to the steel shell containment structure.

The fire protection in the drywell expansion gap does not comply with the technical requirements of Section III.G.3 of Appendix R because a fixed-fire suppression system and a fire detection system have not been installed in an area for which an alternative shutdown system has been provided.

There was a concern that a fire within the drywell expansion gap could damage safe shutdown related penetrations (electrical and/or machanical). Because of the combustible material sandwiched within the 2-inch expansion gap, it is possible that a fire could develop and spread through the gap.

There are two fire protection concerns for the drywell expansion gap. The first concern is whether or not a fire in the gap can spread out of the gap and into other fire ares of fire zones. The second concern revolves around whether or not a fire in the 2-inch gap proper can affect the safe shutdown capability by damaging the penetrations directly.

With respect to a fire in the drywell expansion gap spreading into other areas, the concern is mitigated by the fact that the 2-inch gap is sandwiched between the steel shell containment structure and the 4 to 6 foot thick reinforced concrete shield wall. The total mass of these two boundaries would serve as a heat sink and dissipate most of the energy of a fire in the drywell gap. The penetrations consist of steel penetration nozzles that are welded firmly in place and surrounded by the concrete wall. This forms a complete enclosure of the gap except for a 2-inch annulus around each penetration. The drywell is inerted and the spread of fire into the drywell is, therefore, not possible during operation Should a fire in the drywell gap spread into the reactor building, it would effect only one fire area of one unit and, therefore, an independent safe shutdown path would be available.

With respect to the effects of a drywell gap fire on the penetrations and the possible degradation of safe shutdown capability, it is unlikely that the electrical and mechanical penetrations would be damaged by an

expansion gap fire to the extent that their function would be impaired, because of the schedule 80 steel pipe, heavy metal plates, and their weld attachment to the steel containment shell. However, the licensee did consider this possibility. In Table 11.2–3 and 11.2–4 of their June 5, 1986 submittal, the licensee listed all of the safe shutdown functions that they had identified as being contained within the penetrations. As a result of that evaluation, the licensee concluded that a fire in the drywell gap would not result in any impairment of safe shutdown capability in either unit for the following reasons:

1. Some electrical penetrations contain power cables to individual safe shutdown valves that are normally open and that must remain open for hot shutdown. A fault in, or loss of, these cables will not change the position of the valves.

2. Other penetrations contain cables which could disable the Target Rock valve if they were damaged. However, the mechanical function of the Target Rock and other safety relief valves will not be affected by a fire in the expansion gap, thus assuring availability of Reactor Pressure Vessel pressure control capability.

3. Instruments are available to monitor reactor vessel level that have their essential and associated circuits routed independent of the expansion gap, and

4. Munual actions can be performed to open valves required for cold shutdown or to close valves in lines that are not used as fluid paths for hot shutdown.

A fire could cause a spurious readout of reactor water level indicator instruments located in the expension gap. Correct readings could still be obtained from other redundant division instruments because the spacing between the redundant divisions routed through the gap is 45 feet. The amount of urethane is limited and a fire would involve only one division at a time. Once the material burned away from a penetration, the temperature would return to ambient level quickly. In the Dersden Unit 3 gap fire investigative report dated May 6, 1986, this was found to be the case, and, further, it was also concluded that plant safe shutdown capability is still maintained given a drywell expansion gap fire.

A final reason that a fire detection and a fixed-fire suppression system should not be required for the drywell expansion gap space is that it would be physicially impossible to remove the existing foam and install the fire protection systems. In any event, the installation of a fire detection system and a fixed-fire suppression would not significantly upgrade the level of fire protection for either Unit 2 or Unit 3.

Based on the above evaluation, the staff concluded that the existing fire protection features and physical characteristics of the drywell expansion gap and its boundaries provide a level of fire protection equivalent to the technical requirements of Section III.G.3 of Appendix R.

The licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a). The licensee stated that existing and proposed fire protection features at Dresden Nuclear Power Station Units 2 and 3 accomplish the underlying purpose of the rule. Implementing modifications to provide additional suppression systems and detection systems would require the expenditure of engineering and construction resources, as well as the associated capital costs, which would represent an unwarranted burden on the licensee's resources.

The licensee also stated that these costs are significantly in excess of those required to meet the underlying purpose of the rule. The staff concludes that "special circumstances" exist for the licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in Section III are authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security, and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the aforementioned exemptions from the requirements of Section III.G of Appendix R to 10 CFR Part 50 as described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (52 FR 35978 dated September 24, 1987).

This Exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 28th day of September 1987.

[FR Doc. 87–22941 Filed 10–2–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 7–0498 and 7–0499]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 29, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

CML Group, Inc.
Common Stock, $.10 Par Value (File No. 7–0498)

Financial News Composite Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–0499

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 20, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22884 Filed 10–2–87; 8:45 am]

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[File Nos. 7-0493 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 29, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

New York Tax Exempt Income Fund, Inc. (The)
Common Stock, $.01 Par Value (File No. 7-0493)
Americus Trust for Sears Shares Scores (File No. 7-0494)
General Electric Credit Corp.
Currency Exchangeable Warrants, Expiring July 1, 1992 (File No. 7-0495)
Tacoma Boatbuilding Co.
Common Stock, $.01 Par Value (File No. 7-0496)
Wean Incorporated (Pennsylvania)
Common Stock, $1.00 Par Value (File No. 7-0497)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 20, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-22885 Filed 10-2-87; 8:45 am]
BILLING CODE 8010-01-M

[File No. 7-0488 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 29, 1987

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

PHLCORP, Inc.
Common Stock, $1.00 Par Value (File No. 7-0488)
Telesphere International, Inc.
Common Stock, $0.01 Par Value (File No. 7-0489)
Varity Corporation
$1.30 Sr. Red. Conv. Pfd., Class 1 Shares, Series A (File No. 7-0490)
UNC Incorporated
Common Stock $0.20 Par Value (File No. 7-0491)
Fairchild Industries, Inc.
Common Stock, $0.01 Par Value (File No. 7-0492)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 20, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-22886 Filed 10-2-87; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16008; 812-6859]

Application; AIG Life Insurance Co. et al.

September 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: AIG Insurance Company (the "Company"); Variable Account I (the "Separate Account"); American International Fund Distributors, Inc. ("Distributors").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue deferred annuity contracts (the "Contracts") which will permit a deduction of Mortality and Expense Risk Charges.

Filing Date: The Application was filed on August 31, 1987.

Hearing or Notification of Hearings: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Company and the Seperate Account One Alico Plaza, Wilmington, Delaware 19894 and the Distributors, 70 Pine Street, New York, New York 10270.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney (202) 272-2026 or Lewis B. Reich, Special Counsel, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Company is a stock life insurance company organized under the

laws of the State of Pennsylvania in 1962. The ultimate parent of the company is American International Group, Inc.

2. The Company established the Separate Account on June 5, 1986, pursuant to the provisions of Pennsylvania Insurance law, to act as the funding entity for the Contracts to be issued by the Company. The Separate Account is a segregated investment account of the Company and is registered with the SEC as a unit investment trust.

3. The net purchase payments under the Contracts are allocated to the Separate Account. (Net purchase payments are the purchase payments less any premium tax). The Separate Account is divided into Sub-accounts, with the assets of each Sub-account invested in one Series of Delaware Group Premium Fund, Inc. (the "Fund").

4. The Fund is a Maryland Corporation registered under the Act as a diversified open-end management investment company of the series type. It currently comprises four portfolios: Equity-Income Series, High Yield Series, Capital Reserves Series and Multiple Strategy Series. The Company may, from time to time, add additional Series to the Fund, and, when appropriate, additional mutual funds to act as funding vehicles for the Contracts. Delaware Management Company, Inc., manages the Fund. The Contracts will be distributed through American International Fund Distributors, Inc.

5. The Contracts are individual single purchase payment deferred variable annuity contracts which provide for accumulation of contract values on a variable basis and payment of monthly annuity payments on a fixed and/or variable basis. The Contracts are designed for use by individuals for retirement planning. The Contracts may or may not qualify for any special tax treatment afforded qualified plans under the Internal Revenue Code. The minimum purchase payment the Company will accept is $10,000.

6. The Company assumes mortality and expense risks under the Contracts. The mortality risks assumed by the Company arise from its contractual obligations to make annuity payments after the Annuity Date for the life of Annuitant, to waive the Deferred Sales Charge in the event of the death of the Annuitant and to provide the death benefit prior to the Annuity Date. The expense risk assumed by the Company is that the costs of administering the Contracts and the Separate Account will exceed the amount received from the Administrative Charge.

7. The Company will assess the Separate Account with a daily asset charge for mortality and expense risks which amounts to an aggregate, on an annual basis, of 1.25% of the average daily net asset value of the Separate Account (consisting of approximately .90% for mortality risks and approximately .35% for expense risks). This charge is guaranteed by the Company and cannot be increased. If the Mortality and Expense Risk Charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be profit to the Company. The Company expects a profit from this charge. Applicants represent that the 1.25% total for these charges, which it currently proposes to charge, is reasonable in relation to the risks assumed and guarantees provided in the Contract. This representation is based upon a analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges for other than mortality and expense risks and the estimated costs, now and in the future, for certain product features. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail this analysis.

8. In the event that a contractowner withdraws all or a portion of the contract value in excess of the Free Withdrawal Amount for the first withdrawal in a contract year, a Deferred Sales Charge may be imposed. The Free Withdrawal Amount is equal to ten percent (10%) of the contract value at the time of withdrawal. The Deferred Sales Charge, which will vary in amount depending upon when the Purchase Payment was made, is calculated against the amount withdrawn. The amount of any withdrawal which exceeds the Free Withdrawal Amount will be subject to the following charge:

Contract year	Applicable deferred sales charge percentage
1	■
2	5
3	■
4	3
5	■
6	1
7 and thereafter	■

The Deferred Sales Charge will not exceed 9% of purchase payments. In the event that the contractowner selects an annuity date within six (6) years from the date of issue, the Company will assess a Deferred Sales Charge, on the annuity date, as if a withdrawal had taken place. The Deferred Sales Charge is intended to reimburse the Company for expenses incurred which are related to Contract sales such as sales commissions, promotional expenses associated with the marketing of the Contracts, including costs associated with the printing and distribution of the prospectus, the Contracts, sales materials and any other relevant information concerning the Contracts. To the extent the charge is insufficient to cover all distribution costs, the Company may use any of its corporate assets, to make up any differences. The corporate assets may include potential profit which may arise from the Mortality and Expense Risk Charge. Applicants acknowledge that the Deferred Sales Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Deferred Sales Charge. In such circumstances a portion of the Mortality and Expense Risk Charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company as its principal office and will be available to the Commission. Moreover, the Company represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

9. The Company deducts an annual Administrative Charge, which is currently $30 per year, from the contract value to reimburse it for administrative expenses relating to maintenance of the Contract and the Separate Account. The Company may increase this charge to an amount not to exceed $100 per year. Prior to the annuity date, the Administrative Charge is deducted from the contract value on each contract

anniversary. If the annuity date is a date other than a contract anniversary, the Company will also deduct a pro-rata portion of the Administrative Charge from the contract value for the fraction of the contract year preceding the annuity date. This charge is also deducted on the date of any total withdrawal. After the annuity date, this charge is deducted on a pro-rata basis from each annuity payment.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22880 Filed 10-2-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6000]

Issuer Delisting; Application to Withdraw From Listing and Registration; CJI Industries, Inc. (Class A Common Stock)

September 29, 1987.

CJI Industries, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing this security from listing and registration on the Phlx include the following:

On March 16, 1987, the Company requested delisting of the Class A Common Stock from the Phlx because (i) dual trading of the Class A Common Stock on the Phlx and in the National Market System of NASDAQ had resulted in confusion and complaints by security holders and (ii) national over-the-counter market listing provided more competitive brokers and therefore more competitive stock prices and liquidity to stockholders.

Any interested person may, on or before October 20, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22882 Filed 10-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—16009; 812-6809]

Application, Criterion Special Series, Inc., et al.

September 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Criterion Special Series, Inc. ("CSS"), Criterion Bond Fund, Criterion Income Trust, Criterion Special Equity Portfolios, Criterion Technology Fund, Current Interest, Inc., Pilot Fund, Inc., Sunbelt Growth Fund, Inc., The Tax Free Fund, Inc. ("Funds"), and Criterion Distributors, Inc. ("CDI" collectively with the Funds, "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder. Approval of exchange offers requested under section 11(a).

Summary of Application: Applicants seek an order to permit CSS and CDI to impose a contingent deferred sales charge ("CDSC") on certain redemptions of CSS's shares and to permit the waiver of such charge in certain circumstances described in the application. Applicants also seek an order which will permit certain exchanges of shares among registered investment companies for which CDI or an affiliated person of Criterion Group, Inc. may serve as principal underwriter.

Filing Date: The application was filed on August 4, 1987. An amendment, the substance of which has been set forth in a letter to the staff of the Commission dated September 25, 1987, and thus is included herein, will be filed during the notice period.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 21, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1000 Louisiana, Houston, Texas 77002 (Attention: Thomas J. Press, Esq.)

FOR FURTHER INFORMATION CONTACT: Cecilia Cantrill, Staff Attorney (202) 272-3037, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. CSS, a series company which is a Maryland corporation, and each of the other Funds, are or will be registered under the 1940 Act as open-end, management investment companies. CDI is a registered broker-dealer and presently serves as principal underwriter of each of the Funds. Criterion Funds, Inc. ("CFI"), the parent of CDI, is the investment adviser of each of the Funds.

2. Shares of each series of CSS ("Portfolios") may currently be sold to the public at their current net asset value per share plus a front-end sales charge ("FESC"). CSS and CDI propose to offer shares of each portfolio of CSS to the public with a CDSC under which the CDSC will be deducted from the proceeds of certain redemptions of shares. The aggregate amount of the CDSC to a shareholder will not exceed 6% of the original value of shares in the share-holder's account. The CDSC would be imposed on any redemption of shares, the dollar amount of which exceeds the aggregate of: (a) The value at the time of purchase of all shares in the account purchased more than six years prior to the redemption (with shares outstanding on the date of implementation of the CDSC arrangement being treated as having been held for more than six years and having been purchased at the net asset value in effect on such date), plus (b) the value at the time of reinvestment of all shares in the account acquired through reinvestment of all shares in the account acquired through reinvestment of dividends or capital gains distributions, plus (c) the increase, if any, in the value

of all shares in the account (including those acquired through reinvestment) over the purchase price (or deemed purchase price, in the case of shares held on the date the CDSC is implemented) of all such shares. Redemptions will be processed in a manner so as to maximize the dollar amount of the redemption proceeds which will not be subject to a CDSC. Accordingly, each redemption of shares will be assumed to have been made first from the exempt amounts referred to in clauses (a), (b) and (c) above, and second through liquidation of those shares in the account purchased within the six years preceding the redemption on a first-in-first-out basis.

3. Where a CDSC is imposed, the amount of charge will depend upon the number of years since the investor purchased the shares which are being redeemed. The CDSC imposed will be 6% during the first year following the purchase and will decrease 1% per year through the sixth year with no charge imposed in the seventh and subsequent years. For purposes of computing the number of years during which shares were held prior to redemption, all purchases during a month will be aggregated and deemed to have been made on the first day of the month. On each succeeding anniversary of such date, the shares so purchased will be treated as having been held an additional year prior to redemption.

4. It is proposed that the CDSC will be waived with respect to certain types of redemptions of shares, pursuant to waivers adopted and applied in accordance with Rule 22d–1. Presently proposed waivers would include, and be applicable to redemptions of shares: (a) By persons and companies affiliated with any of the Funds, Criterion Group, Inc. and its subsidiaries, and broker-dealers which distribute shares of the Funds, clients of any investment advisory subsidiary of Criterion Group, Inc. (or by affiliated persons or the sponsoring companies of such clients) and clients of nationally recognized consulting firms which provide consulting services to pension funds or major corporations, state and local governments, Taft-Hartley Plans and foundations and endowments, which have contacted the Fund, the Investment Advisor, the Fund's principal underwriter or any other operating subsidiary of Criterion Group, Inc. with respect to furnishing advice to such client of such consulting firm or with respect to distribution of securities of a Fund by or purchase of securities of a Fund by such client (the "Criterion Redemption"); (b) resulting from the mandatory redemption of shares of accounts of $500 or less; and (c) which represent the proceeds of a prior redemption pursuant to a one-time reinstatement privilege (the "Reinstatement Privilege").

5. CSS proposes to finance distribution expenses pursuant to a plan of distribution adopted pursuant to Rule 12b–1 (the "Plan"). The Plan provides that each portfolio of CSS will pay compensation to CDI for its distribution services consisting of up to 5% of the amount received by the portfolio for each share sold on or after the effective date of the Plan (excluding reinvestment shares and shares eligible for the Criterion Redemption), plus a separate distribution fee approximately calculated by applying the rate of 1% over the prevailing prime rate to the outstanding balance of uncovered distribution charges. CDI will use its own funds to pay to each authorized dealer selling shares up to 5% of the purchase price of shares sold through such dealer. Payments of such compensation will be spread over time so that the aggregate amount of such payments during any fiscal year shall not exceed .90% of the portfolio's average daily net assets represented by shares issued after implementation of the CDSC arrangement. Such compensation payments by each portfolio ("Dealer Compensation Payments") will be payable monthly, but will be automatically discontinued during any period in which there are no outstanding uncovered distribution charges under such Plan. Uncovered distribution charges are approximately equivalent to all amounts due to CDI under the above formula less payments made with respect thereto under the Plan and CDSC received by CDI. Although CDI will normally receive the CDSC, the CDSC will be retained by the portfolio during any period in which there are no uncovered distribution charges.

6. It is expected that whenever there is an exchange of shares from one portfolio of CSS to another portfolio (or an exchange among CDSC Funds), as described below, CDI will waive a portion of the Dealer Compensation Payments payable by the first portfolio by reducing that portfolio's uncovered distribution charges to reflect the fact that such charges of the first portfolio will not be offset in the future by 12b–1 payments or CDSC on those shares. The uncovered distribution charges of the second portfolio will be increased by the amount of such reduction.

7. The Plan also authorizes each portfolio of CSS to make monthly payments to reimburse CDI for, or to bear directly the costs of, actual distribution-related or administrative expenditures incurred in the distribution of shares, including: Incentive compensation to organizations which sell shares; advertising costs; the costs of preparing and distributing sales literature, prospectuses and statements of additional information for prospectuses and statements of additional information for prospective investors; and the costs of implementing and operating the Plan. The total of payments by a portfolio to CDI for reimbursement for the above and direct costs of the portfolio for such sales literature, prospectuses and statements of additional information may not exceed an amount computed at the annual rate of .35% of the portfolio's average daily net assets during the preceding month. These payments are distinct from the Dealer Compensation Payments described above and, as such, are not subject to automatic discontinuance when there are no outstanding uncovered distribution charges under the Plan.

8. The Funds also propose to make available certain exchange privileges to shareholders of the CDSC Funds, FESC Funds and the Funds which are sold without any sales charges ("NL Funds"). Under this proposal, shareholders of any CDSC Fund (or portfolio thereof) could exchange shares for another CDSC Fund or CDSC portfolio without imposition of any CDSC on such exchanges. In the absence of an applicable waiver, the CDSC would be determined upon the ultimate redemption of shares, using the date of original purchase of the shares that were exchanged to measure the holding period of the redeemed shares. Of the shares being exchanged in such an exchange a pro-rata portion of the original purchase amount of the investor's shares purchased (or deemed purchased): (a) More than six years prior to the exchange; (b) through dividend reinvestment; and (c) less than six years prior to the exchange, would be deemed to be the shares exchanged in the transaction. In this way any CDSC liability will be spread ratably among the shares of the CDSC Fund originally purchased and the CDSC shares acquired in the exchange.

9. It is also proposed that shareholders of a CDSC Fund be given the opportunity to exchange their shares for shares of any NL Fund without imposition of any CDSC on such exchange and to exchange the shares so acquired for shares of any NL Fund or CDSC Fund. Any applicable CDSC would be imposed only upon the

redemption of shares for cash, using only the periods in which shares of a CDSC Fund were held for purposes of computing the holding period of the redeemed shares. On an exchange from a CDSC Fund to an NL Fund, of the dollar amount being exchanged, the amount which represents the current net asset value of the investor's shares which (a) were originally purchased (regardless of intervening exchanges among CDSC Funds) more than six years prior to the exchange (and, as a result, on which no CDSC is payable) or (b) represent reinvestment shares (despite intervening exchanges) (and, as a result, on which no CDSC is payable) (all such shares described in clauses (i) and (ii) hereof and elsewhere are hereinafter referred to as "Free Shares") would be deemed exchanged first. If the dollar amount of the shares exchanged exceeds the value of the investor's Free Shares, the exchange will next be deemed to have been made of shares held (or deemed to have been held, if there were prior exchanges) by the investor for the longest period of time within the applicable six-year period. The amount of the investor's deemed purchase value for the shares acquired in exchange for the non-Free Shares will thereafter be deemed to be equal to the actual (or, if there have been prior exchanges, the deemed) purchase value of the exchanged non-Free Shares.

10. It is further proposed that shares of an NL Fund acquired through reinvestment after an exchange into such NL Fund or through reinvestment of distributions received from a direct investment in an NL Fund would also be treated as Free Shares and would, in each case, be eligible for exchange into a CDSC Fund or into an FESC Fund without any sales charge or into an NL Fund. Shares of an NL Fund purchased directly will be eligible for exchange only for shares of another NL Fund.

11. Applicants propose to permit shareholders of any FESC Fund to exchange their shares for shares of any CDSC Fund or FESC Fund, either directly or with one or more intervening exchanges through an NL Fund, CDSC Fund or FESC Fund. Because an FESC will already have been paid with respect to these shares or such shares will be reinvestment shares, no CDSC would be payable on the ultimate redemption of amounts acquired in exchange for FESC shares, regardless of the Fund redeemed from. (Upon their exchange, FESC Fund shares would thus be included within the definition of "Free Shares").

12. Finally, it is proposed that shareholders of a CDSC Fund be offered the privilege of exchanging their shares for shares of any FESC Fund, either directly or with one or more intervening exchanges through an NL Fund. Any applicable CDSC (but not an FESC) will be imposed at the time of exchange. In computing such charge, amounts will be deemed exchanged in the same sequence and priority utilized for redemptions of shares of an NL Fund acquired in exchange for shares of a CDSC Fund. Shares of an FESC Fund acquired in this manner will be treated as Free Shares.

13. The exchange offers proposed may be subject to various conditions described in the application. Although an administrative fee may be imposed on exchanges, in no event will such fee exceed the amount of such fee as would be permitted under proposed Rule 11a–3 when adopted. Applicants reserve the right to commence, suspend or otherwise restrict operation of any or all of the foregoing exchange privileges.

Applicants' Legal Conclusions

Applicants submit that the requested exemptions and orders are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The CDSC permits shareholders to have the advantage of more investment dollars working for them at the time of their purchase than with a traditional front-end sales charge of comparable amount. The CDSC and the Plan are fair to CSS and its shareholders, and would similarly be fair to the shareholders of any of the Funds which may in the future impose a CDSC, because they are designed to achieve parity between those shareholders electing to hold their shares and continue as shareholders and those shareholders electing early redemption of their shares. In each situation in which the CDSC is presently proposed to be waived or deferred, the redeeming shareholder (a) would have purchased shares under circumstances that did not require the principal underwriter to incur substantial additional distribution expenses, or (b) have had no control over the timing of such redemption. In addition, because all waivers would be affected in accordance with Rule 22d–1 under the 1940 Act, any waivers of the CDSC would by definition have to be consistent with Rule 22d–1, which permits scheduled variations in or eliminations of sales charges for particular classes of investors and requires appropriate disclosure. In addition, Applicants submit that the proposed exchange offers are fair and in the best interests of shareholders of the Funds because of the manner in which they will operate and because they afford shareholders flexibility in their financial planning.

Applicants' Conditions

If the requested orders are issued, Applicants have agreed to the imposition of the following conditions:

1. In connection with any waivers or deferrals of the CDSC, each CDSC Fund and principal underwriter of such fund will comply with all of the conditions set forth in Rule 22–1 (or any successor rule) under the 1940 Act.

2. Each CDSC Fund, NL Fund and FESC Fund, and the principal underwriters thereof, in connection with any offers of exchange of shares, will comply with the provisions of proposed Rule 11a–3 (or any similar rule) under the 1940 Act when and if such rule is adopted by the SEC.

3. Each CDSC Fund and its principal underwriter will comply with the provisions of Rule 12b–1 (or any successor rule) under the 1940 Act, as such Rule may be amended from time to time.

4. To the extent that the CSS or CDI has imposed any CDSC, waived such sales charges or made offers of exchange, as described herein, prior to the date of receiving the order requested in the application, each is relying upon its own interpretation of the 1940 Act and the Rules thereunder, and understands that any such order will be effective and apply prospectively on and after the date of such order.

5. In evaluating the continued appropriateness of the 12b–1 plan adopted by any CDSC Fund and in making a determination of whether to continue or modify the plan, the Board of Directors (or Trustees) of each CDSC Fund will consider, among other things, the direct and indirect expenses that CFI and the fund's principal underwriter have incurred in promoting sales of shares and, in this regard, will review the extent to which such expenses have, in effect, been offset through the payment of compensation under such plan and receipt of CDSC.

6. The CDSC Funds will fully disclose the CDSC, and such funds and the NL Funds and FESC Funds will fully disclose the terms and conditions of any applicable exchange privileges, in their respective prospectuses and statements of additional information.

7. No CDSC Fund which is not a party to the application nor its principal underwriter shall rely upon any order granted upon the application permitting imposition of the CDSC and waivers thereof unless shares of such funds are offered and sold on substantially the

same basis as shares of CSS are proposed to be sold.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22878 Filed 10-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16010; 812-6860]

Application; Empire Life Insurance Co. et al.

September 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Empire Life Insurance Company (facilities Empire"); Composit Deferred Variable Account (the "Variable Account"); and Murphey Favre, Inc. ("MFI")

Relevant 1940 Act Sections: Exemption requested under sections 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue flexible premium deferred variable annuity contracts (the"Contracts") that permit a deduction of mortality and expense risk charges.

Filing Date: September 2, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask ot be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants' addresses: Empire and the Variable Account, 1000 Second Avenue, Seattle, Washington 98104, MFI, 601 Riverside Avenue Spokane, Washington 99201.

FOR FURTHER INFORMATION CONTACT: Jeffery M. Ulness, Attorney, (202) 272-2026 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Empire is a stock life insurance company that was incorporated under the laws of Nebraska in 1962. It is principally engaged in the sale of individual annuities and individual life insurance. Empire is a wholly-owned subsidiary of WM Life Insurance Company, which is as wholly-owned subsidiary of WM Financial, Inc., which in turn is wholly-owned by Washington Mutual Savings Bank.

2. The Variable Account was established by Empire as a separate account under the laws of Nebraska on July 23, 1987 and registered under the 1940 Act as a unit investment trust. The Variable Account was established in connection with the proposed issuance of certain individual flexable premium deferred variable annuity contracts ("Contracts").

3. The Variable Account will invest in shares of one or more of the investment portfolios of the Composite Deferred Series, Inc. (the "Fund"). The Fund, a diversified open-end management investment company, organized as a Washington corporation on December 8, 1986, has three portfolios: the Money Market portfolio, the Growth Portfolio, and the Income Portfolio. The Variable Account has three subaccounts, each of which invests in a corresponding portfolio of the Fund, MIF will serve as the distributor and Principal underwriter of the Contracts.

4. The Contracts are individual flexible premium deferred variable annuity contracts. The Contracts may be purchased with a first purchase payment of at least $1,000. Subsequent purchase payments must be at least $100. The contract owner can allocate purchase payments to one or more sub-accounts of the Variable Account, each of which will invest in a corresponding portfolio of the Fund. Purchase payments will be credited with the investment experience of the selected sub-account(s). Empire may establish new sub-accounts at its discretion. Each additional sub-account(s). Empire may establish new sub-accounts at its discretion, each additional sub-account will purchase shares in a portfolio of the Fund or in another mutual fund. Any new sub-account would be made available to existing contract owners on a basis to be determined by Empire. Empire may eliminate one or more sub-accounts if, in its sole discretion, conditions so warrant. Prior to the income starting date, a contract holder may surrender the Contract in its entirety or withdraw a portion of the contract value. Transfers between sub-accounts of the Variable Account generally are permitted both prior to and subsequent to the income starting date

5. An amount will be deducted from the daily net asset value of the Variable Account to reimburse Empire for certain mortality and expense risks assumed under the Contracts. The mortality risk born by Empire under the Contracts is the guarantee that the variable annuity payments made to contract owners will not be affected by the mortality experience (life span) of persons receiving such payments or of the general population. The expense risk undertaken by Empire is that the deductions for actual maintenance and distribution costs under the Contracts may be insufficient to cover the actual future costs incurred by Empire. This asset charge will be deducted from the contract value of each Contract daily in an amount equal to an effective annual rate of 1.20%. Of that amount, approximately .80 is allocable to the mortality risks, and .40 is allocable to the administrative and distribution expense risks. The rate of this charge is guaranteed and will not change.

6. Empire represents that the mortality and expense risk charge is a reasonable charge to compensate Empire for the risk that annuitants under the Contracts will live longer as group that has been anticipated in setting the annuity rates guranteed in the Contracts for the risk that administrative expenses will be greater than the amounts derived from the administration charges and for the risk that the amounts realized from the surrender charge will be insufficient to cover actual sales and distribution expenses. Empire further represents that the charge of 1.20% for mortality and expense risks assumed by Empire is within the range of industry practice with respect to comparable annuity products. This representation is based upon Empire's analysis of publicly available information about similiar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Empire represents that it will maintain at its administrative offices, and make available to the SEC, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey made to support this representation.

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7. In certain cases a contingent deferred sales charge will be assessed upon surrender of a Contract or withdrawal of part of the contract value prior to the income starting date. The charge will be based on the elapsed time between the date of the purchase payment and the date of the surrender or partial withdrawal. For purposes of calculating the charge, Empire assumes that the purchase payments are withdrawn on a first-in, first-out basis, and that all purchase payments are withdrawn before any earnings are withdrawn.

The following surrender charges apply:

Elapsed time since date of purchase payment	Applicable surrender charge percentage
Less than 1 year	6
1 year, but less than 2 years	5
2 years, but less than 3 years	4
3 years, but less than 4 years	3
4 years, but less than 5 years	2
5 years, but less than 6 years	1
6 years or more	0

In no event, however, will the total sales charges for a particular Contract exceed 9% of the purchase payments for that Contract. Surrender charges will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts. Applicants acknowledge that the surrender charge may be insufficient to cover all distribution expenses in connection with the Contract. Applicants also acknowledge that if a profit is realized from the mortality and expense risks charge, any such profit, as well as any of the profit realized by Empire and held in its general account, would be a variable for any proper Corporate purpose, including, but not limited to payment of distribution expenses.

8. In the event that a portion of the mortality and expense risk charge might be viewed as providing for a protion of the costs relating to the distribution of the Contracts. Empire has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and the contract owners. A memorandum setting forth the basis for this representation will be maintained by Empire at its administrative offices and will be available to the SEC. Furthermore, applicants also represent that the Variable Account will invest only in management investment companies which undertake, in the event that it should adopt any plan under Rule 12b–l to finance distribution expenses, to have their board of directors (or trustees), a majority of whom are not "interested persons" of the company, approve any plan under Rule 12b–l to finance distribution expenses.

9. Empire will deduct a contract maintenance charge of $2.50 per month. Prior to the income starting date, this charge will be deducted from the contract value on each contract monthly anniversary to compensate Empire for the administrative services provided to contract owners. After the income starting date, a contract maintenance charge of $2.50 will be deducted from each income payment. Empire does not intend to profit from the contract maintenance charge.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22881 Filed 10–2–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16007; 812–6716]

Application; Shearson Lehman Special Equity Portfolios

September 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Shearson Lehman Special Equity Portfolios.

Relevant 1940 Act Sections: Amended Exemptive Order requested under section 6(c) exempting Applicant from the provisions of section 22(d) and Rule 22d–1.

Summary of Application: Applicant seeks an amended exemptive order to permit it to waive a contingent deferred sales charge currently assessed pursuant to an order granted to Applicant on March 18, 1986 (Investment Company Act Release No. 14999, the "1986 Order").

Filing Date: The application was filed on May 11, 1987 and amended on July 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant(s), Two World Trade Center, New York, NY 10048.

FOR FURTHER INFOMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272–3046, or Curtis R. Hilliard, Special Counsel, (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on January 8, 1986. Applicant is a series company that is currently offering shares of four portfolios (the "Portfolios"). Shares of all of the Portfolios are distributed by Shearson Lehman Brothers Inc. ("Shearson Lehman"), and affiliates of Shearson Lehman serve as the investment advisors to the various Portfolios.

2. The 1986 Order exempted Applicant from (1) the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 under the Act to the extent necessary to permit Applicant to assess a contingent deferred sales charge (the "CDSC") on redemptions of the initial and future series of its shares to permit Applicant under certain circumstances to waive or apply credits against the CDSC, and (2) the provisions of section 11(a) of the Act of permit Applicant to offer to exchange shares of each of Applicant's series for shares of any other of Applicant's series or shares of any series of Shearson Lehman Special Income Portfolios, on the basis of relative net asset values per share of the relevant series at the time of the exchange, subject to a $5.00 service charge on each exchange, which service charge is no longer assessed.

3. Applicant now proposes to waive the CDSC on redemptions affected by any shareholder who is a client of a Shearson Lehman Financial Consultant ("Financial Consultant") and who purchased shares of Applicant with the

redemption proceeds of shares of a registered investment company sponsored by the Financial Consultant's previous employer. Under Applicant's proposal, the CDSC would be waived only if (1) the shareholder's purchase of shares of a Portfolio was made within 90 days of the commencement of the Financial Consultant's employment with Shearson Lehman; (2) the purchase was made with proceeds of a redemption of shares of an investment company registered under the Act that was sponsored by the Financial Consultant's previous employer (the "Previous Fund"); (3) the Financial Consultant served as the shareholder's broker on the purchase of the shares of the Previous Fund; and (4) the shares of the Previous Fund were subject to a sales or redemption charge. To ensure that the shares of a Portfolio are purchased with the proceeds of a redemption of shares of a Previous Fund, the shareholder would be required to provide Shearson Lehman with a copy of a confirmation slip or customer statement evidencing the redemption.

4. Applicant requests that any exemption the Commission may grant cover not only Portfolios, but also any additional series or classes of shares Applicant may offer in the future on substantially the same basis as Applicant offers the shares of the Portfolios.

5. Shearson Lehman believes that the purchase of shares of a Shearson Lehman fund by a client of a Financial Consultant with the redemption proceeds of a fund sponsored by the Financial Consultant's previous employer typically involves little or no selling effort by the Financial Consultant, and as a result, under Shearson Lehman's internal policies, the Financial Consultant receives no compensation with respect to the purchase.

Applicant's Legal Conclusions

1. Applicant submits that the waiver of the CDSC is consistent with the policies underlying section 22(d) of the Act, which prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Applicant also believes that the waivers from the CDSC will not harm Applicant or its shareholders or unfairly discriminate among shareholders or purchasers. In light of the lack of selling effort involved, Applicant believes it appropriate to waive the CDSC on a redemption by a client of a Shearson Lehman Financial Consultant of shares of a Portfolio purchased with the redemption proceeds of a fund sponsored by the Financial Consultant's previous employer.

Applicant's Conditions

Applicant expressly agrees that the proposed transactions will conform to the following conditions.

1. Applicant will implement the waiver of the CDSC in accordance with the terms of Rule 22d–1 under the 1940 Act.

2. Applicant will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the Commission.

3. Applicant will comply with the provisions of Rule 12b–1 under the 1940 Act in its present form and as it may be revised in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–228 Filed 10–2–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6761]

Issuer Delisting; Application To Withdraw From Listing and Registration; Wickes Companies, Inc. (Common Stock, Par Value $0.10 Per Share, $2.50 Convertible Preferred Stock, Series A, Par Value $0.10 per Share, and Warrants To Purchase Common Stock, Par Value $0.10 Per Warrant)

September 29, 1987.

Wickes Companies, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The $.10 par value common stock, $.10 par value preferred stock and common stock purchase warrants of the Company (the "Equity Securities") have been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on August 11, 1987, the NYSE. Trading in the Company's Equity Securities on the NYSE commenced at the opening of business on August 12, 1987, and concurrently therewith the Equity Securities were suspended from trading on the Amex.

In making the decision to withdraw its Equity Securities from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of said securities on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Equity Securities.

Any interested person may, on or before October 20, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22883 Filed 10–2–87; 8:45 am]

BILLING CODE 1010–01–M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time five additional Small Business Development Centers (SBDCs) during fiscal year 1988, subject to availability of funds. Currenily, there are 49 SBDCs operating in the SBDC program. The following SBDCs are intended to be funded: Arizona, Colorado, Maryland, Montana, and New Mexico. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the proposal developers for the SBDCs expected to be funded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other

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interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through December 4, 1987.

ADDRESS: Comments should be addressed to Ms. Janice E. Wolfe, Deputy Associate Administrator for Business Development for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Janice E. Wolfe, (202) 634–1805. C.T

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending applications for funding of five proposed Small Business Development Centers (SBDCs). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDCs will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying the five proposed SBDCs and providing the mailing address of the proposal developers is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each of the affected State single points of contact which have been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. An SBDC proposal cannot be inconsistent with an area-wide plan to provide assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe, Deputy Associate Administrator for Business Development for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416. Comments will be accepted by the proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposal developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained to the commentor prior to funding the proposed SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In States where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed toward specific areas of assistance is determined by local community needs, SBA priorities, and

SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. this is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings.

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Date: September 21, 1987.

James Abdnor,

Administrator.

Address of Proposed SBDCs and Proposal Developers

Dr. Robert Huddleston, Dean of Instructions, Gateway Community College, 108 N. 40th Street, Phoenix, AZ 85034, (602) 275–8500

Mr. Richard E. Wilson, Special Assistant to the President, Colorado Community College and Occupational Education System, 1313 Sherman Street, #221, Denver, CO 80203, (303) 866–3151

Ms. Jean F. Duley, Administrator, Office of Business and Industrial Development, 45 Calvert Street, Annapolis, MD 21401, (301) 974–2945

Ms. Carol Daily, Administrator, Business Assistance Division, Montana Department of Commerce, Capital Station, 1424 9th Avenue, Helena, MT 59620, (406) 444–4380

Mr. Nick Jenkins, Secretary, New Mexico Department of Economic Development and Tourism, Joseph Montoya Building, 1100 St. Francis, Santa Fe, NM 87503, (505) 827–0305.

[FR Doc. 87–22574 Filed 10–2–87; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency had made such a submission.

DATE: Comments should be submitted by November 4, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Buillding, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Disaster Home Loan Interview and Referral Request.

Frequency: On occasion.

Description of Respondents: Information is collected at the time of a request for assistance from a victim.

Annual Responses: 2,178.

Annual Burden Hours: 545.

Type of Request: Extension.

September 28, 1987.

William Cline,

Chief, Administrative Information Branch, Small Business Administration.

[FR Doc. 87–22960 Filed 10–2–87; 8:45 am]

BILLING CODE 8025–01–M

Application No. 02/02/0510

Application for a License to Operate as a Small Business Investment Company; Diamond Capital Corp.

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)), by Diamond Capital Corporation (the Applicant), 805 Third Avenue, Suite 1100, New York, New York 10017, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers and directors and principle stockholders of the Applicant are as follows:

Name	Title or relationship	(Percent)
Lawrence M. Goodman, 219 East 69th Street, New York, New York 10021.	Chairman of the Board, Director.	25.5

Name	Title or relationship	(Percent)
Martin S. Levine, 1365 York Avenue, New York, New York 10021.	Vice Chairman Director.	12.75
Cynthia G. Levine, 1365 York Avenue, New York, New York 10021.	Vice Chairman, Director.	12.75
Steven D. Kravitz, 353 East 83rd Street, New York, New York 10028.	President, Treasurer, and Director.	12.25
Diana T. Ortado, 2686 Ocean Avenue, Brooklyn, New York 11229.	Executive Vice President, Secretary, and Director.	12.25
Jeffery C. Stern, 171 East 84th Street, New York, New York 10028.	Director	6.125
Henry F. Hewes, 1601 Third Avenue, New York, New York 10128	Director	6.125
Pietro Ferrara, 2064 West 6th Street, Brooklyn, New York 11223.	Director	6.125
Gregory G. Brown, 345 East 80th Street, New York, New York 10021.	Director	6.125

The Applicant, a corporation organized under the laws of the State of New York, will begin operations with approximately $2,000,000 of paid-in capital and paid-in surplus to be obtained through a private placement.

The applicant will conduct its activities in the State of New York and will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 28, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 87-22970 Filed 10-2-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5437]

License Surrender; Fans Capital Corp.

Notice is hereby given that Fans Capital Corporation, 136-40 39 Avenue, Flushing, New York 11354, has surrendered its license to operate as a small business investment company under section 301(d) the Small Business Investment Act of 1958, as amended (the Act). Fans Capital Corporation was licensed by the Small Business Administration on September 26, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on August 19, 1987, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 28, 1987.

[FR Doc. 87-22961 Filed 10-2-87; 8:45 am]

BILLING CODE 8025-01-M

Las Vegas District Advisory Council; Public Meeting

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting Thursday, October 22, 1987, at the Small Business Administration Office, located at 301 East Stewart Ave., Downtown Station, Post Office, 3rd Floor, Las Vegas, Nevada, from 10:00 a.m. to 12:00 noon to discuss such matters as may be presented by Council members, staff of the Small Business Administration, or others present.

For further information, write Elizabeth Sutton, Secretary for the Advisory Council, U.S. Small Business Administration, 301 East Stewart, Post Office Box 7527, Las Vegas, Nevada 89125, or call (702) 388-6616.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 24, 1987.

[FR Doc. 87-22965 Filed 10-2-87; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting on Tuesday, October 20, 1987 at 11:30 a.m. at Winklers' Steak House, Washington Street, Providence, Rhode Island to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the District Director, Providence District Office, 380 Westminster Mall, Providence, Rhode Island 02903, (401) 528-4580.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 25, 1987.

[FR Doc. 87-22968 Filed 10-2-87; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 1:00 p.m. on Thursday, October 22, 1987 at the Thomas P. O'Neil, Jr., Federal Building, Room 265, 10 Causeway Street, Boston, MA. 02222-1093, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information call John J. McNally, Jr., District Director, U.S. Small Business Administration, 10 Causeway Street, Room 265, Boston Massachusetts 02222-1093. (617) 565-5561.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 24, 1987.

[FR Doc. 87-22964 Filed 10-2-87; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration, Region II Advisory Council, located in the georgaphical area of Newark, New Jersey, will hold a public meeting at 8:30 a.m., on Monday, November 9, 1987, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey to discuss such matters as may be presented by members, and the staff of the U.S. Small Business Administration, or others present.

For further information write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey, 07102, (201) 645–3580.

Jean M. Nowak,

Director, Office of Advisory Council.

September 25, 1987.

[FR Doc. 87–22966 Filed 10–2–87; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of North Carolina, will hold a public meeting at 2:00 p.m. on Thursday, October 22, 1987, at the Charlotte Chamber of Commerce, 129 West Trade Street, Charlotte, NC 28202, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 S. Church St., Suite 300, Charlotte, NC 28202, (704) 371–6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 24, 1987.

[FR Doc. 87–22967 Filed 10–2–87; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Adivory Council, located in the geographical area of Chicago, will hold a public meeting at 10:00 a.m., Friday, October 23, 1987, at 219 South Dearborn, Dirksen Federal Building, Room 1220, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

Further information may be obtained by writing or calling John L. Smith, District Director, U.S. Small Business Administration, 219 South Dearborn, St., Room 437, Chicago, Illinois, 312/353–4508.

Jean M. Nowak,

Dirctor, Office of Advisory Councils

September 24, 1987.

[FR Doc. 87–22963 Filed 10–2–87; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Fresno, will hold a public meeting at 9:00 a.m. on October 28, 1987, at the Fresno District Office, 2202 Monterey Street, Suite 108 Fresno, California to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Peter J. Bergin, District Director, U.S. Small Business Administration, 2202 Monterey Street, Suite 108, Fresno, California, 93721, (209) 487–5791

Jean M. Nowak,

Dirctor, Office of Advisory Councils.

September 25, 1987.

[FR Doc. 87–22962 Filed 10–2–87; 8:45 am]

BILLING CODE 8025–01–M

Maximum Annual Cost of Money to Small Business Concerns; Debenture Rate

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate" which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 10.35% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investiment Act, as further amended by section 1 of Pub. L. 99–226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: September 29, 1987.

Robert G. Lineberry,

Deputy Associate Administrotor for Investment.

[FR Doc. 87–22969 Filed 10–2–87; 8:45 am]

BILLING CODE 8025–01–M

UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments in Connection With Presidential Review of Exclusion Order Under Section 337

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments on a limited exclusion order issued by the U.S. International Trade Commission (ITC) in *Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same*, Inv. No. 337–TA–242.

SUMMARY: On September 28, 1987, the Commission referred to the President for review its determination in the above-referenced investigation that there is a violation of section 337 of the Tariff Act of 1930, in the unauthorized importation into the United States, and in their sale, of dynamic random access memories (DRAMs) which infringe patents owned by Texas Instruments, Inc. (TI) of Dallas, Texas.

The ITC has issued a limited exclusion order prohibiting the unauthorized entry of infringing DRAMs of 64 and 256 kilobits (and any combination thereof such as 128 kilobits) manufactured by Samsung Co., Ltd., and/or Samsung Semiconductor & Telecommunications Co., Ltd., (Samsung) whether assembled or unassembled. The exclusion order also prohibits the entry, except under license, of the specified DRAMs incorporated into a carrier of any form, including Single-Inline-Packages and Single-Inline-Modules, or assembled onto circuit boards of any configuration including memory expansion boards.

Computers such as mainframe, personal, and small business computers, facsimile machines, telecommunications switching equipment, and printers containing any 64 or 256 kilobit (or any combination thereof such as 128 kilobits) DRAMs manufactured by

Samsung are excluded from entry into the United States except under license from TI.

Finally, the ITC order provides that the U.S. Customs Service may specify procedures to be used by persons seeking to import products identified in the order to certify that importers "have made appropriate inquiry and thereupon state that to the best of their knowledge and belief any DRAMs incorporated into, assembled onto, or contained in such products are not covered by this Order." For example, importers of personal computers must certify that the imported computer does not to the best of their knowledge and belief contain any DRAMs manufactured by Samsung.

Under section 337(g), the President, for policy reasons, may disapprove the ITC's determination within 60 days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the ITC's determination rendering the determination and order final on the date that the ITC receives notice of the approval. If the President takes no action to approve or disapprove the determination and order, they become final automatically following the 60-day review period.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding the ITC order. In particular, we invite parties to address the scope and enforceability of the order and the effect of the order on legitimate trade. Parties commenting on domestic policy issues should specifically refer to the portion of the Commission's record related to that issue. If the domestic policy issue was not raised before the Commission, parties should provide a rationale for that omission.

Comments may not exceed 15 letter-sized pages, including attachments. Parties must provide twenty copies of the submission to the Secretary, Trade Policy Staff Committee, Room 521, 600 17th Street, NW., Washington, DC 20506. All submissions must be received by close of business, October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Assistant General Counsel, Office of the U.S. Trade Representative, (202) 395–3432.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 87–23154 Filed 10–2–87; 12:39 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Philadelphia County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Philadelphia County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108, Telephone: (717) 782–4422,

or

Timothy R. O'Brien, Project Manager, Pennsylvania Department of Transportation, 200 Radnor-Chester Road, St. Davids, Pennsylvania 19087, Telephone: (215) 964–6611.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will prepare an Environmental Impact Statement on a proposal to extend Woodhaven Road (Legislative Route 1029, State Route 0063) from its present terminus at an intersection with Roosevelt Boulevard (Legislative Route 67009, State Route 0001) to an intersection with Philmont Avenue (Legislative Route 198, State Route 2013). The proposed 1.5 mile extension project involves studying a three staged construction: (I) Byberry Road Bridge replacement and relocated Byberry Road; (II) Woodhaven Road from Roosevelt Boulevard to Bustleton Avenue; and (III) Woodhaven Road from Bustleton Avenue to Philmont Avenue. This proposed project will reduce congestion as well as provide better access for the surrounding businesses.

There will be three (3) alternatives studied: (1) No Build; (2) Limited Access Facility; and (3) At-Grade Arterial.

The various alternatives and their impacts to the environment will be assessed in detail as they relate to the areas of air quality, noise pollution, historical and archaeological resources, traffic/transportation/energy, water resources, social and economic considerations, land use, and terrestrial ecology. In addition, the E.I.S. will contain a cost analysis of the various alternatives, preliminary engineering information and documentation of the public and agency consultation and coordination process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and Local agencies, and to private organizations and citizens who express interest in the proposal. Scoping meetings are planned with the agencies between October 1987 and December 1987. Public meetings will be held in the project area during the fall of 1987 and spring of 1988. Public notices of the time and place of these meetings, and any required public hearings, will be given. Public involvement and interagency coordination will be maintained throughout the development of the Environmental Impact Statement.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to the FHWA or PennDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: September 28, 1987.

Manuel A. Marks,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 87–22895 Filed 10–2–87; 8:45 am]

BILLING CODE 4910–22–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 192
Monday, October 5, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COUNCIL ON ENVIRONMENTAL QUALITY

DATE, TIME, PLACE: Thursday, October 22, 1987, 2:00 pm, Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. The Council on Environmental Quality has held a series of public meetings on the issues of stratospheric ozone depletion and global warming. The Council has heard and will hear from experts concerning the scientific aspects of the problem and the human health impacts.

At this meeting, the Council will be hearing a presentation by Dr. Alan Teramura, Department of Botany, University of Maryland. Dr. Teramura will address the biological and terrestrial impacts of stratospheric ozone depletion.

The discussion will be limited to Dr. Teramura, the Council, and Council staff. Questions from the public will not be entertained.

2. Other matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395–5754.

Date: September 28, 1987.

A. Alan Hill,

Chairman.

[FR Doc. 87–23007 Filed 10–1–87; 12:48 pm]

BILLING CODE 3125–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Federal Reg. No. 36493, Vol. 52, No. 18, Dated: Tuesday, September 29, 1987.

Correction of Time of Meeting

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Tuesday, October 6, 1987.

CHANGE IN THE MEETING: Correct Time: 9:30 a.m. (Eastern Time), Tuesday, October 6, 1987.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer (Acting), Executive Secretariat, (202) 634–6748.

Date: October 1, 1987.

Cynthia C. Matthews

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 87–23042 Filed 10–1–87; 3:04 pm]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

The regular meeting of the Board is scheduled for October 6, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 6, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Summary Prior Approval Items.
2. Consideration of the FCA Budget for Fiscal Years 1988 and 1989.
3. Effects of Districtwide Merger Activities on Farm Credit System Institutions and Election Procedures.
*4. Certification Under Section 4.28(J) of the Farm Credit Act of 1971, as amended.
*5. Examination and Enforcement Matters.

Dated: September 30, 1987.

David A. Hill,

Secretary, Farm Credit Administration.

*Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

[FR Doc. 87–22959 Filed 9–30–87; 4:38 pm]

BILLING CODE 6705–01–M

Corrections

Federal Register
Vol. 52, No. 192
Monday, October 5, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In notice document 87-18957 beginning on page 31056 in the issue of Wednesday, August 19, 1987, make the following correction:

On page 31057, in the first column, in the table, in the entry for "Leather wearing apparel from Uruguay", in the right hand column, "06/30/87" should read "12/31/86".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3508/R903; FRL-3252-9]

Tolerance Exemption; Monourea Sulfuric Acid Adduct

Correction

In rule document 87-19647 beginning on page 32305 in the issue of Thursday, August 27, 1987, make the following corrections:

On page 32306, in the first column—

§ 180.1084 [Corrected]

1. In the section heading, in the second line, "requirements" should read "requirement".

2. In § 180.1084, in the third line, "as herbicide or" should read "as a herbicide or".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42061A; FRL-3130-8(a)]

Oleylamine; Testing Requirements

Correction

In rule document 87-19309 beginning on page 31962 in the issue of Monday, August 24, 1987, make the following correction:

On page 31962, in the third column, in the second line, "0.5x^{-4} mm Hg" should read "0.5x10^{-4} mm Hg".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7E3482, 7E3483, 7E3484/P425; FRL-3252-4]

Pesticide Tolerance for Malathion

Correction

In proposed rule document 87-19652 beginning on page 32322 in the issue of Thursday, August 27, 1987, make the following correction:

§ 180.111 [Corrected]

On page 32323, in the second column, in § 180.111, in the last line of the table, under "Parts per million", insert "8".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59249; FRL-3254-8]

Acrylic Acid, 2-Allylphenol Polymer, Sodium Salt; Test Market Exemption Application

Correction

In notice document 87-20136 appearing on page 33638 in the issue of Friday, September 4, 1987, make the following corrections:

1. In the first column, in **ADDRESS**, in the fifth line, "(TS-794)" should read "(TS-790)".

2. In the second column, in the second line, "(TS-790)" should read "(TS-794)".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180742; FRL-3253-3]

Emergency Exemptions

Correction

In notice document 87-19655 beginning on page 32341 in the issue of Thursday, August 27, 1987, make the following corrections:

1. On page 32341, in the third column, in paragraph 19., in the 14th line, "is" should read "in".

2. On page 32342, in the first column, in paragraph 34., in the second line, "craneberries" should read "caneberries".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-07-4212-13; M-72221]

Realty Action; Exchange of Public and Private Lands, Valley and Phillips Counties, MT

Correction

In notice document 87-16230 beginning on page 27065 in the issue of Friday, July 17, 1987, make the following land description correction:

On page 27066, in the first column, under the first **Principal Meridian Montana**, under "T. 31 N., R. 40 E.", the second line should read: "Sec. 5, SE¼NE¼;".

BILLING CODE 1505-01-D

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federal register

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Part II

Environmental Protection Agency

Initiation of Special Review; Oxydemeton-methyl

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/55; FRL-3273-1]

Initiation of Special Review; Oxydemeton-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of initiation of special review.

SUMMARY: This Notice announces that EPA is initiating a Special Review on all pesticide products containing oxydemeton-methyl (ODM). Oxydemeton-methyl is the common, chemical name for S-[2-(ethylsulfinyl)ethyl] o,o-dimethyl phosphorothioate, an insecticide and acaricide of the organophosphate class, commonly used on alfalfa (seed), citrus, cole crops, cotton, and sugar beets. EPA has concluded that ODM has the potential to adversely affect reproduction and has determined that exposure to ODM may pose risks of concern to applicators and mixers/loaders who use products containing ODM. Accordingly, the Agency has concluded that products containing ODM meet or exceed the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2) and that a Special Review of these products is appropriate to determine whether additional regulatory actions are required.

DATE: Comments, evidence to rebut the presumptions in this Notice, and other relevant information must be received on or before January 4, 1987.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP *30000/55*," by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All non-CBI written comments, will be available for public inspection in Room 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanna J. Dizikes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 1006, CM #2 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5096).

For a copy of documents in the public docket, to request information concerning the Special Review, or to request indices to the Special Review public docket, contact Frances Mann (703-557-2805)

SUPPLEMENTARY INFORMATION:

This Notice is organized into the following units. Unit I is a description of the Agency's Special Review process. Unit II sets forth the regulatory history, to date, of pesticide products containing ODM and describes the basis of the Agency's decision to initiate this Special Review. Unit III provides a use profile and solicits benefit information for products containing ODM. Unit IV sets forth the duty to submit information on adverse effects. Unit V describes the public comment opportunity and the procedures for submission of public comments to the Agency. Unit VI describes the contents of the public docket for this Notice. Unit VII lists the references in support of this action.

During the Special Review, EPA will carefully examine the risks and benefits of using pesticides containing ODM as compared to the risks from alternative pesticides and will determine whether such uses should be cancelled or otherwise regulated. The documents cited as references to Unit VII of this Notice constitute the technical documents in support of this action.

I. Background

A. Special Review Process

This Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process is described in 40 CFR Part 154, published in the **Federal Register** of November 27, 1985 (50 FR 49015). During the Special Review process the Agency: (1) Announces and describes the basis for the Agency's finding that use of the pesticide meets one or more of the risk criteria set forth in § 154.7; (2) establishes a public docket; (3) solicits comments from the public regarding whether the use of a pesticide product, as currently registered or as it is proposed to be registered, satisfies any of the risk criteria for initiation of Special Review set forth at 40 CFR 154.7, whether any risks posed by the use of proposed use of the product that satisfy the risk criteria at 40 CFR 154.7 are unreasonable, taking into account the economic, social, and environmental costs and benefits of the use of the product, and what regulatory action, if any, the Agency should take with respect to the use of the product; and (4) solicits comment from the Secretary of Agriculture and the Scientific Advisory Panel if the Administrator proposes to cancel, deny, or change the classification of the registration of a pesticide product which is the subject of Special Review, or to hold a hearing under FIFRA section 6(b)(2) on whether to take any of those actions. Issuance of this Notice means that potential adverse effects, associated with the use of pesticide products containing ODM, have been identified and will be examined further to determine their extent and whether, when considered together with the benefits of these pesticides, such risks are unreasonable.

B. Legal Standard and Description

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" [FIFRA section 3(c)(5)], that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" [FIFRA section 2(bb)]. The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

C. Preliminary Notification

Prior to the public announcement of initiation of a Special Review, pursuant to 40 CFR 154.21, registrants of the affected pesticide are given preliminary notification that the Agency is considering initiating a Special Review. Registrants are given 30 days to respond in writing to dispute the validity of the Agency's conclusions or to present any information in response to the Agency's

risk concerns included in this notification.

Registrants of pesticide products containing ODM were notified by letter, dated July 21, 1987, under 40 CFR 154.21(a), that the Agency was considering initiation of a Special Review on these pesticides (Ref. 1).

II. Determination to Initiate a Special Review

A. Regulatory Background of ODM Pesticides

ODM was first registered by Mobay Chemical Corporation in 1961 under the trade name of Metasystox-R. There are 30 registrants of products containing ODM, either as a sole active ingredient or in combination with other chemicals. Currently, there are approximately 38 federally registered products.

1. *Data Call-In Requirements.*

The Agency has issued five Data Call-In (DCI) Notices on ODM. The first notice was issued in July 1984 to Mobay and Aceto Chemical Company, Inc. and required additional information on existing rat and rabbit teratology and rat reproduction studies (Ref. 2). In response, the Agency received the additional information from Mobay.

The second DCI Notice was issued in February 1985 and required reentry data (Ref. 3). Prior to 1985, a 48-hour reentry interval had been imposed for ODM use, under 40 CFR 170.3(b). Reentry data have been required to determine whether a 48-hour reentry interval is adequate. A protocol for gathering new reentry data has been submitted to the Agency and approved. The reentry data are due in December 1987.

The third DCI Notice, dated April 1986, was sent to Mobay and Aceto. That DCI Notice required exposure data to assess potential exposure to mixers, loaders, and applicators from current, registered ornamental (non-injection) uses (Ref. 4). In that DCI, the Agency also required most of the section 158 data requirements for product, residue, and environmental chemistry, and ecological effects. Mutagenicity and dermal penetration data were also required. In response to the DCI, Mobay chose to delete the ornamental uses from its registrations and conduct the rest of the studies. These data are due from January 1987 (acute LC_{50} fresh water invertebrates, submitted) to June 1990. Subsequently, Aceto's ODM registrations were suspended for failure to comply to the DCI.

A dominant lethal mutagenicity test which had been required through the April 1986 DCI Notice was due in April 1987. Mobay did not submit the required data, and on May 26, 1987, the Agency issued a Notice of Intent To Suspend for non-compliance with the requirements presented in the April 1986 DCI Notice (Ref. 5). Mobay requested a hearing on the suspension notice (Ref. 6). At the time of preparation of this document, the hearing had been stayed, pending settlement negotiations between Mobay and EPA.

The fourth DCI Notice, dated September 1986, was sent to all end-use registrants other than Mobay, requiring the exposure data for ornamental uses (Ref. 7). No end-use registrants have agreed to submit the exposure data. All end-use registrants have either voluntarily cancelled their registrations for non-injection ornamental uses or have allowed them to be suspended for not responding to the DCI Notice.

The fifth DCI Notice, dated June 1987, was sent to all ODM registrants (Ref. 8). Two animal studies on toxicity to the male reproductive system were required by that DCI Notice, one using short-term (acute) dosing and the other using longterm (chronic) dosing. According to that DCI Notice, these data are due October 1988 and December 1987 or October 1988,[1] respectively.

2. Interim Risk Reduction Measures

The Agency is issuing a Registration Standard for all pesticide products containing ODM concurrent with this Notice (Ref. 15). In that Registration Standard, the Agency is announcing that in order to comply with the statutory standard for registration all ODM labels must contain language requiring, among other things, the use of maximum, full body protective methods and that all products containing ODM must be classified for Restricted Use. ODM is being classified for Restricted Use to provide greater assurance that the required label language to mitigate risks is followed. Under the Registration Standard, all ODM product labels must be amended by April 15, 1988, to incorporate these risk reduction measures in order for the registrations to be in compliance with the statutory standard.

3. Regulatory Action by the State of California

A. two-generation reproduction study was submitted by the Agency in December 1985 (Ref. 9). In the Spring of 1986, the California Department of Food and Agriculture (CDFA) notified EPA of its concerns and that it was considering taking further regulatory action on ODM. EPA has questions regarding that reproduction study, and decided not to take any action at that time. (Afterwards, the Agency's questions were resolved, and the study was upgraded to Core Minimum Data in December 1986; see the discussion in Unit II. B. of this Notice.)

CDFA then took action to regulate ODM in the State of California (Ref. 10). On December 16, 1986, CDFA imposed a number of restrictions on the agricultural uses of ODM, and on December 23, 1986, CDFA suspended all home use products. Restrictions imposed by CDFA for the agricultural uses include: (a) Use only pursuant to a use permit; (b) use only by licensed pest control operators; (c) closed systems; (d) full body protection; (e) enclosed vehicles required for flaggers or, if outside an enclosed vehicle, must have full body protection; (f) no aerial application within 100 ft of flaggers; (g) no greenhouse use; (h) required distribution of an information document to users; and (i) requirements for cleaning or discarding protective equipment.

In addition, CDFA required Mobay to develop four additional studies. These studies and the dates they are due to be submitted to CDFA are: (i) A male rat reproductive system toxicity study,[2] due December 1987 (Ref. 11); (ii) a repeat two-generation rat reproduction study, due Fall 1988 (Ref. 12); (iii) a comparison between oral and dermal cholinesterase dose responses, due December 1987 (Ref. 13); and (iv) a monkey dermal absorption study, due September 1987 (Ref. 14).

The risk reduction measures included in EPA's Registration Standard are similar to those imposed by California, and the classification of ODM as a Restricted Use pesticide will make ODM products unavailable for home use by applicators who have not received training in the proper handling of pesticides.

B. Initiation of Special Review on ODM Pesticides

Based on a review and evaluation of the available data, the Agency is initiating a Special Review on all uses of pesticide products containing ODM, primarily based on concerns regarding reproductive effects. The Agency has

[1] The male reproductive system toxicity study was already being conducted by Mobay for CDFA when the Agency required that study in its June 1987 DCI Notice. If that on-going study is used to fulfill the requirement, the final report must be submitted to the Agency by December 1987. If a new study is undertaken, the final report must be submitted to the Agency by October 1988.

[2] This long-term dosing study can be used to fulfill the requirement imposed by the Agency in its June 1987 Data Call-In Notice.

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determined that exposure to ODM may result in adverse reproductive effects in humans, and that these effects are of concern because of the potential exposures to applicators, mixers, loaders, and fieldworkers, resulting from the use of products containing ODM.

The Agency believes that currently registered uses of ODM may result in human exposure at levels equating to risks that meet or exceed the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2). That criterion states, in part, that "The Administrator may conduct a Special Review of a pesticide use if he determines, based on a validated test or other significant evidence, that the use of the pesticide * * * may pose a risk of inducing in humans * * * heritable genetic, * * * fetotoxic, reproductive effect, or a chronic or delayed toxic effect, which risk is of concern in terms of either the degree of risk to individual humans or the number of humans at some risk * * *."

1. Toxicity—a. Reproductive Effects

The Agency reviewed data primarily from two studies that raised substantial concerns regarding potential reproductive effects resulting from exposure to ODM. The data, submitted by Mobay Chemical Corporation, include the two-generation rat reproduction study, received in December 1985 and later classified by the Agency as Core Minimum (Ref. 9), and interim progress reports of the on-going male rat reproductive toxicity study originally required by CDFA (Ref. 11). The observed effects include decreases in the female fertility index, testicular weight, litter size, pup weight, and pup survivability. Also, histopathologic changes in the epididymis and alterations in sperm morphology and motility have been found.

i. *Two-Generation Reproduction Study (Ref. 9).* In this two-generation (2 litters in each generation) reproduction study, rats were fed with 0, 1, 10, or 50 parts per million (ppm) of ODM in the diet. At the 50 ppm dosage level, decreases were noted in parental body weight, fertility index, litter size, parental testis weights, and pup weight, as well as increased pup mortality. Further, vacuolization of the epithelial cells in the corpus area of the epididymis was noted in 10/10 males examined.

At the 10 ppm dosage level, decreased parental body weights and testis weight, and increased pup mortality were demostrated. Vacuolization of the epithelial cells in the corpus area of the epididymis were observed in 1/10 males exmained.

At the 1 ppm dosage level, no effects or fertility, pup body weight, and pup survivability were found. A significant decrease in absolute testis weight was noted in F_1 parental animals. The biological significance of that finding is not known because the testis weight in this group was higher than that of the historical control range and approximated that of the F_0 parental control group. Histopathologic changes of the epididymis were not found.

Based upon these findings, a reproductive no-observed-effect-level (NOEL) was established at 1 ppm, and the lowest-observed-effect-level (LOEL) was established at 10 ppm. However, after 2 days in the diet, approximately 20 percent of the ODM degraded; therefore, the NOEL and LOEL may be somewhat lower.

ii. *Male Reproductive System Toxicity Study (Ref. 11).* Mobay has submitted three of four progress reports on the male reproductive system toxicity study (male fertility study) in rats exposed to 3, 9, and 50 ppm of ODM in the diet. The Agency has reviewed three reports (exposure to ODM for 2, 4, and 6 months.

In the 2-month interim report, vacuolization of the epididymis was reported in 10/10 males exposed to 50 ppm of ODM in the diet. After 4 months of exposure, vacuolization of the epididymis was still evident in all animals of the 50 ppm dose group with a higher grading of severity. Further, 5/9 animals in the 9 ppm group were described with minimal or slight vacuolization in the body of the epididymis after being treated for 4 months. Some animals in the 50 ppm dose group were put on the control diet after being treated for 4 months. In that recovery group, vacuolization was still present in all animals, but the investigators reported that "the severity of the vacuolization was decreased in the mid and distal portion of the body of the epididymis".

After being exposed to ODM in the diet for 2 months, male rats in all dosage groups showed significant increases in the percent of sperm with bent flagella. Significant differences were not found after 4 months, but a higher incidence was still evident in the 3 ppm, 9 ppm, and recovery group.

Vacuolization of the corpus epididymis was previously observed in the two-generation rat reproduction study (Ref. 9), affecting 1/10 and 10/10 animals fed with 10 and 50 ppm, respectively. The same finding was observed in the male reproductive study at the 2-month interval and affecting 10/10 animals in the 50 ppm group. After 4 months of exposure, there was an increase in the severity of the vacuolization in all 50 ppm males. Further, vacuolization was also observed in 5/9 males in the 9 ppm group. These findings confirmed that vacuolization of the epididymis was compound-related and the severity of the lesion was a function of the length of exposure. In the recovery group, vacuolization was still evident in all animals. The latter suggested that, at least at the 50 ppm dosage level, the epididymal lesion induced by ODM did not reverse completely after 2 weeks of recovery.

The 6-month progress report also confirmed that vacuolization of the corpus epididymis was treatment-related. The severity of the lesion may be a function of the length of exposure, as evidenced by the presence of unilateral or bilateral fine vacuolization in the epididymal head observed in 7/9 animals in the 50 ppm dose group. One animal in the 9 ppm dose group had epididymal lesion after 6 months of exposure to ODM, a finding similar to that found in the 50 ppm dose group. The 6-month recovery group (aninmals treated with ODM for 4 months at 50 ppm, followed by 2 months on the control diet) still exhibited lesions in the proximal epididymes. Thus, complete reversibility of the epididymal lesions has not been demonstrated in any of the recovery groups (4 and 6-months interim reports).

iii. *Response to the preliminary notification (Ref. 19).* The only comments received by the Agency in response to its preliminary notification of possible Special Review action, were from Mobay Chemical Corporation, presently the sole manufacturer in the United States. Mobay indicated that, based on a new, ongoing, two generation rat reproduction study, the NOEL should be 9 ppm, instead of 1 ppm. [The NOEL of 1 ppm was previously established by the Agency, based on the two-generation rat reproduction study (Core Minimum) completed in 1985, Ref. 9.] The decision to establish a new NOEL, however, must await the completion of this two-generation rat reproduction study currently in progress. Moreover, histopathologic changes in the epididymis, which were found at 10 and 50 ppm in the 1985 two-generation study, have been confirmed at 9 and 50 ppm by interim results from the ongoing, male rat reproductive system toxicity study (Ref. 11).

b. Other Toxicological Effects of Concern—i. Oncogenicity and Mutagenicity

The submitted oncogenicity data are inadequate and preclude assessment of the oncogenic potential of ODM. However, the possible mutagenic potential of ODM may contribute to the observed reproductive effects because there may be a relationship between mutagenicity and adverse reproductive effects. The Agency emphasizes that the potential for mutagenesis in the male reproductive system to produce reproductive effects may range from reduced normal sperm production to paternally-mediated effects on offspring. A positive mutagenic effect of ODM has been demonstrated in gene mutation assays; sufficient data are available to indicate that ODM produces a dose-dependent increase in mutation frequency in Salmonella in the presence and absence of metabolic activation. In the mouse lymphoma forward mutation assay, a concentration-dependent increase in mutation frequency is also observed in both the presence and absence of metabolic activation. The effects of ODM on chromosomal aberration and DNA damage are inconclusive.

ii. *Toxicity and poisoning incidents.* ODM is a potent cholinesterase inhibitor. The effects of ODM on human cholinesterase activity were investigated by the University of Kansas (Ref. 16). Human volunteers were exposed to either a single, oral dose or repeated oral doses for 60 days. The dosage levels for the single oral dose ranged from 0.0125 to 1.5 mg/kg (one volunteer per dose level), and the dosage levels for repeated exposure were from 0.05 to 0.4 mg/kg (one volunteer per dose level).

Single, oral doses of ODM up to and including 0.5 mg/kg did not produce any change in either the plasma or red blood cell (RBC) cholinesterase activity. At 1.0 and 1.5 mg/kg, plasma and RBC cholinesterase activities were decreased.

Oral administration of a dosage level of 0.05 mg/kg/day for up to 60 days were without noticeable effects on human blood cholinesterase activities. Inhibition of plasma and RBC cholinesterase activities were found in individuals administered any dose higher than 0.05 mg/kg/day.

In humans, the cholinesterase NOEL's after single and repeated oral administration were established at 0.5 mg/kg/day and 0.05 mg/kg/day, respectively.

In a 90-day feeding study in rats, the cholinesterase and systemic NOELs were found to be 1 ppm (0.05 mg/kg/day) (Ref. 17). Administration of 10 ppm (0.5 mg/kg/day) in the diet resulted in a significant decrease in the mean corpuscular volume (females) and a significant increased incidence of histopathologic changes in the lungs of males. At the 100 ppm dosage level, significant alterations in hemnatology, clinical chemistry parameters, absolute and relative organ weights, as well as histopathologic changes in the lungs of both males and females were found. Plasma, erythrocyte, and brain cholinesterase activities were significantly and biologically decreased at the 10 and 100 ppm dosage levels.

The Pesticide Incident Monitoring System (PIMS) files show 67 incident reports involving ODM from 1966 to August 1978, the period for which records are available (Ref 18). The effects include fifteen reports that cite the involvement of ODM alone. Fifty-two reports cite ODM in combination with other pesticides.

Based on data obtained from California, the only State which enforces mandatory reporting of occupational pesticide incidents, 14 illnesses involving ODM were reported for the period 1981 through 1985. During that time, physicians treated an average of 1.8 ODM poisonings per year, and an additional one case per year was reported from either skin or eye injury. Of these 14 illnesses, 7 occurred to applicators, 3 were from exposure to residues or drift, 2 occurred to mixer/loaders, and 2 were from "other causes." In addition, between 1981 and 1985 four people were reported hospitalized for occupational ODM poisoning for a total of 10 days, and 11 workers were off work for a total of 54 days. No accidental deaths from ODM were reported in California from 1965 to 1977 or from 1981 to 1985 when all accidental deaths from pesticides were reported.

2. Worker Exposure—a. Surrogate Data

The Agency estimated the exposure to individuals using ODM with various application equipment. These estimates were based on surrogate exposure data where "normal" work attire was worn (short or long sleeved shirt and long pants) and the only protective clothes/equipment used were protective gloves during mixing and loading. However, it should be noted that the Registration Standard now being issued lists as a requirement for compliance with the statutory standard the use of full body protective clothing. ODM labels have not, up to now, required specific protective clothing or equipment to be worn. Currently, the labels only require "appropriate" protective clothing for early reentry.

Using that surrogate exposure data, daily dermal exposure estimates are highest for combined mixing, loading, and applying ODM by airblast to citrus 2.6 mg/kg/day. It was assumed that ODM is applied to citrus for 8.5 hours/day, one application/year over 2 consecutive days.

Ground boom applications to representative vegetable, field crops, and grapes result in generally the same estimated daily exposures, about 0.5 to 2.0 mg/kg/day, when the surrogate exposure data are used. For these calculations, it was assumed that ODM is applied to:

i. Broccoli and cauliflower for 6.7 hours/day, one day/application, usually two applications/yr.

ii. Cabbage for 3.7 hours/day, one application/yr. for one day outside CA (average of 2 applications/yr. in CA).

iii. Sugar beets for 8 hours/day, one day/application, usually two applications/yr.

iv. Grapes for 6.2 hours/day, one day/application, usually two applications/yr

v. Cotton for 6.6 hours/day, four days/application, usually two applications/yr (i.e. 8 days/yr.).

For those crops where an average of two applications are made per year, the label permits these applications to occur as necessary or in some cases the intervals are specified as 10 to 14 days apart; however, these applications may occur at greater intervals.

Exposure estimates for pilots from aerial application to some of these same representative crops are lower, about 0.02 to 0.09 mg/kg/day (assuming approx. 2 to 2.3 hours/day, two applications/yr.).

The ornamental uses may result in exposure estimates from about 0.04 to 0.6 mg/kg/day (commercial: 1 hour/day, 2 applications/yr., 1 day/application; domestic: 10 to 30 min./day, six applications/yr.).

b. ODM-Specific Data.

The CDFA (California Department of Food and Agriculture) provided the Agency with exposure estimates, specific for use of ODM in California on cole crops (broccoli, cauliflower, cabbage, and Brussels sprouts) (Ref. 18). CDFA has conducted an exposure study to determine the effectiveness of the measures taken independently by California to regulate ODM [requiring the use of full body protection ("rainsuits") and closed mixing/loading systems]. According to CDFA, these measures may result in dermal exposure of 1 to 2 mg per tractor driver per seven-

hour shift, for treatment to cole crops. However, these dermal exposure estimates may apply only to California because the climate in the ODM use areas of California is conducive to such protective measures, and California has a more comprehensive surveillance program, compared to other states.

Although most users are probably exposed to ODM a few days per year, CDFA cites that in California, professional applicators may perform repeated applications of ODM. Therefore, those users could have very frequent exposures to ODM.

3. Dietary Exposure

There are 38 tolerances for ODM, ranging from 0.01 to 12.5 ppm, as shown in the following Table 1:

TABLE 1.—TOLERANCES FOR OXYDEMETON-METHYL

Crop	Tolerance (ppm)
Apples	1.00
Apricots	0.50
Beans, lima	0.50
Beans, snap	0.50
Blackberries	2.00
Broccoli	1.00
Brussels sprouts	1.00
Cabbage, sauerkraut	1.00
Cauliflower	1.00
Corn, all types	0.50
Cottonseed (oil)	0.10
Cucumbers, including pickles	1.00
Filberts	0.05
Grapefruit	1.00
Grapes, including raisins	0.10
Lemons	1.00
Lettuce	2.00
Meat, red	0.01
Melons	0.30
Milk and dairy products	0.01
Onions, dry bulb	0.05
Oranges	1.00
Pears	0.30
Peas	0.30
Peppers	0.75
Plums, including prunes	1.00
Potatoes	0.10
Pumpkin, including squash	0.30
Raspberries	2.00
Safflower	1.00
Sorghum	0.75
Strawberries	2.00
Sugar, cane and beet	0.30
Summer squash	1.00
Turnips	0.30
Turnip greens	2.00
Walnuts	0.30
Mint	12.50

A comparison of published tolerances to the Reference Dose (RfD) was conducted using the TAS Routine Chronic Analysis. Based on a reproductive NOEL of 1 ppm (0.05 mg/kg/day), from the rat two-generation reproduction study, the RfD is calculated to be 0.0005 mg/kg/day with a safety factor of 100. The Theoretical Maximum Residue Contribution (TMRC) for the U.S. population is 0.005 mg/kg/day. Therefore, existing published tolerances occupy 1010 percent of the RfD. The majority of the TMRC was contributed by fresh apples and juice, orange juice, stone fruits, cereal grains, legume vegetables, and milk.

Because the TMRC was calculated on the basis of tolerance levels, the exposure estimates provided by the TMRC may greatly overestimate dietary exposure. Data reflecting actual residues may result in a lower estimate of dietary exposure.

Furthermore, the residue data submitted to support the tolerances may not reflect registered use. For apples, apricots, grapes, and plums, ODM is registered for use only on trees that will not bear fruit within the following 12 months. However, residue data submitted to support the tolerance for apples does not reflect that restriction on use. Therefore, the residue data used for apples, a great contributor to the TMRC, does not reflect the fact that ODM is not used on apples in a way that would result in such high residues. (Tolerance data are insufficient for apricots and plums/prunes.) Data are not available on any carryover of residues in trees to its fruit.

In addition, the percentage of the commodity that is treated is not factored into the TMRC, and the effect of processing on residues is not considered. Processing may further reduce estimated residue levels.

Actual crop residue data and processing studies for potatoes, sugar beets, grapes, corn, and cottonseed are required to be submitted by April 1988. Also, metabolism studies in plants, ruminants, and poultry are required (due October 1987).

4. Mixer/Loader and Applicator Risks

Margins-of-safety (MOSs) were calculated for worker exposure using both the Agency's surrogate exposure estimates and the ODM exposure estimates given to the Agency by CDFA. All MOSs resulting from both the surrogate exposure data and the ODM exposure data assume a reproductive effects NOEL = 0.05 mg/kg/day, a 70 kg person, and 50 percent dermal absorption. (Dermal absorption data indicate that absorption of ODM is approximately 50 percent.)

The surrogate exposure data were used to calculate MOSs two different ways under the following Table 2:

TABLE 2.—WORKER DERMAL EXPOSURE TO ODM AND MARGIN-OF-SAFETY (MOS) [1] USING BOTH DAILY SURROGATE EXPOSURE ESTIMATES AND AVERAGING SURROGATE EXPOSURE ESTIMATES OVER A YEAR

Method of application	Crop	Daily exposure [2] (mg/kg/day)	MOS [3]	Ave. exposure [2] (mg/kg/day)	MOS [4]
Airblast					
Mixer/Loader	Citrus	0.10	<1		
Applicator		2.5	<1		
Combined		2.6	<1	.014	8
Ground Boom					
Mixer/Loader	Broccoli/cauliflower	0.59–0.83	<1		
Applicator		0.27–0.35	<1		
Combined		0.86–1.2	<1	.005–.007	12–18
Ground Boom					
Mixer/Loader	Cabbage	0.44	<1		
Applicator		0.19	<1		
Combined		0.63	<1	.002	45

TABLE 2.—WORKER DERMAL EXPOSURE TO ODM AND MARGIN-OF-SAFETY (MOS) [1] USING BOTH DAILY SURROGATE EXPOSURE ESTIMATES AND AVERAGING SURROGATE EXPOSURE ESTIMATES OVER A YEAR—Continued

Method of application	Crop	Daily exposure [2] (mg/kg/day)	MOS [3]	Ave. exposure [2] (mg/kg/day)	MOS [4]
Ground Boom					
Mixer/Loader	Sugar Beets	0.71–1.4	<1		
Applicator		0.32–0.63	<1		
Combined		1.0–2.0	<1	.005–.010	8–18
Ground Boom					
Mixer/Loader	Grapes	0.29–0.43	<1		
Applicator		0.17–0.25	<1		
Combined		0.46–0.68	<1	.002–.004	23–45
Ground Boom					
Mixer/Loader	Cotton	0.65–0.87	<1		
Applicator		0.26–0.35	<1		
Combined		0.91–1.2	<1	.020–.027	4–5
Aerial					
Mixer/Loader	Broccoli	0.029–0.038	2.6–3.4		
Pilot		0.008–0.011	9–13		
Aerial					
Mixer/Loader	Cauliflower	0.017–0.023	4–6	.0005 [5]–.00003	2975 [5]–179
Pilot		0.005–0.007	14–20		
Aerial					
Mixer/Loader	Cotton	0.063–0.084	1–2		
Pilot		0.010–0.013	8–10		
Hand-Held Sprayers—Domestic/Commercial	Ornamentals	0.04–0.56	<3	.001–.003	30–89

[1] All MOS reflect the NOEL=0.05 mg/kg/day for reproductive effects and a dermal absorption rate of approximately 50 percent (These MOSs might increase, roughly 10-fold, if maximum, full body protective clothing and/or equipment could be used.)

[2] All surrogate exposure estimates assume the use of protective gloves only during mixing/loading (normal work attire) and, approximately, a 70 kg body weight.

[3] These MOSs were calculated by comparing the exposure from a single day to the NOEL.

[4] These MOSs were calculated by comparing the average daily exposure over a year to the NOEL.

[5] Daily exposures from aerial applications to broccoli, cauliflower, and cotton were combined and averaged over a year, and that number was compared to the NOEL to give the resulting MOSs.

Daily exposure, expressed as mean or range, was compared directly to the NOEL (in mg/kg/day) observed in the two-generation rat reproduction study to derive MOSs, and average exposure was calculated by multiplying daily exposure by the number of days per year of use and then dividing that number by 365. This number was then compared to the NOEL from the two-generation rat reproduction study to calculate the MOSs. The MOSs given in Table 2 might increase, roughly 10-fold, if maximum, full body protective clothing and/or equipment is used to reduce exposure.

Two methods for calculating MOSs were used because the two-generation rat reproduction study (from which the NOEL=0.05 mg/kg/day was derived) used a longer term dosing regimen, and ODM is applied only a few times per year in the majority of cases. Therefore, most users of ODM have acute, not chronic, exposures. As a result, the MOSs given in Tables 2 and 3 for daily exposures (which result when the daily exposure is compared directly to the NOEL) may overestimate risks for acute exposures. However, the MOSs which result when exposure is averaged over a year do not necessarily represent the MOSs that might result from actual studies of short-term exposure. Both sets of MOSs are presented here in order to give a general picture of the uncertainty involved in comparing short-term exposures to results of longer term studies. The Agency recognizes that neither set of MOSs may actually represent the risks being encountered by mixers, loaders, and applicators.

At this time, the Agency does not have appropriate data to characterize the risks associates with short-term exposure. In its June 1987 DCI Notice, the Agency required a study to be generated and submitted to the Agency which is designed to evaluate the toxic effects resulting from short-term exposure to ODM. That study is required to be submitted to the Agency by October 1988.

As cited in Unit II. A. 2. of this Notice, the ODM Registration Standard states that in order for a product to comply with the statutory standard for registerability, its label must require that maximum, full body protective methods be employed when using ODM. Use of such methods may reduce risks up to 10-fold. Adoption of these measures is prudent given the potentially low MOSs which may be inherent in the use of this chemical. These measures provide the maximum practical amount of protection while information addressing the uncertainties in the risk characterization is being developed. Analysis following receipt of the additional required data may indicate that the MOSs resulting from the adoption of these risk reduction measures are acceptable and that no further regulatory action is warranted. However, because data needed to refine the risk assessment are currently being developed, the Agency may not be able to issue a preliminary regulatory decision on ODM before June 1989.

The Agency is concerned that multiple exposures to ODM do occur to some mixers/loaders/applicators, as has been reported to occur in California. However, the Agency needs more definitive information on the length of time each day and the number of days per year that mixers/loaders/applicators are exposed. Assuming the exposure is best modelled by chronic toxicity studies, the MOSs given in the first column (daily exposure) of Table 2 and those shown in Table 3 may best reflect the risks posed to these applicators.

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TABLE 3.—WORKER DERMAL EXPOSURE TO ODM AND MARGIN-OF-SAFETY (MOS) [1] USING ODM-SPECIFIC EXPOSURE ESTIMATES FROM CALIFORNIA FOR APPLICATION TO COLE CROPS

Method of Application	Crop	Daily exposure [2] mg/kg/day	MOS [3]
Ground Boom—Mixer/Loader Applicator	Cole crops	0.014 to .028	4–8

[1] MOSs reflect the NOEL=0.05 mg/kg/day for reproductive effects and a dermal absorption rate of 50 percent.
[2] Assuming CDFA's dermal exposure estimate of 1 to 2 mg/tractor driver/seven-hour shift, resulting from those restrictions which are currently required by California (maximum, full body protection, including closed loading systems), and a 70 kg body weight, daily exposure would be 0.014 to 0.028 mg/kg/day.
[3] MOSs were calculated by comparing the exposure from a single day to the NOEL.

The Agency is seeking better information on these exposure patterns in order to better characterize the risks to this group of workers.

Potential reversibility of the reproductive effects is an issue in assessing the risk from toxic effects of ODM. Pertinent aspects include whether or not the effects observed are fully reversible and the time required for complete reversal of effects.

Reversibility of effects on the male reproductive system depends on whether the affected cell type(s) are replaceable. Effects on spermatogenesis or epididymal function may be reversible, but damage to spermatogonial stem cells or Sertoli cells may prolong or preclude recovery. Also, with a mutagenic agent, a paternally-mediated effect on offspring is possible. Demonstration of full reversibility should not be a factor with longer-term exposures or with intermittent exposures when the interval between exposures is insufficient for full recovery.

The question of whether any adverse effects to the male reproductive system are reversible may be answered when the completed male reproductive system toxicity study (male fertility study, Ref. 11) is submitted. That study is also required through the June 1987 DCI Notice, and it is due to be submitted to the Agency by either December 1987 or October 1988. (The male reproductive system toxicity study was already being conducted by Mobay for CDFA when the Agency required that study in its June 1987 DCI Notice. If that on-going study is used to fulfill the requirement, the final report must be submitted to the Agency by December 1987. If a new study is undertaken, the final report must be submitted to the Agency by October 1988.)

III. Use Profile and Benefits Information

The benefits which may result from the use of a pesticide are not considered when the Agency is determining whether to initiate a Special Review on a pesticide. The criteria for initiating a Special Review, set forth in 40 CFR 154.7, are based on the determination of possible risk to health and/or the environment, resulting from the use of a pesticide. However, in the Special Review, the Agency conducts a thorough assessment of both risks and benefits. The following use profile was prepared for ODM pesticides to aid the Agency in conducting any necessary benefits analysis and to give commenters an overview of the ODM use patterns under review.

A. Use Profile of ODM Pesticides

Approximately two-thirds of all the ODM used in the United States, about 165,500 lbs. active ingredient (a.i.), were used in California in 1985 (the first year that reporting was mandatory), and about 132,000 lbs. a.i. were used in California in 1984. CDFA reported that ODM was applied to 46 crops in California in 1984. Major uses of ODM in California are on broccoli, cauliflower, and sugar beets. Outside California, the major uses include cotton, citrus, and alfalfa (seed crop). The following Table 4 shows the estimated acre treatments in the United States by site in 1984, both in California and outside California.

TABLE 4.—ESTIMATED ACRES TREATED BY CROP WITH OXYDEMETON-METHYL IN CALIFORNIA AND ALL OTHER STATES (1984)

Site	Acre treatments
	California (1984)
Alfalfa	906
Apples	615
Beans	4,509
Beets	474
Broccoli	69,698
Brussel sprouts	9,872
Cabbage	13,643
Cauliflower	59,286
Cherries	26
Clover	1,644
Conifers	15,128
Corn	1,305
Cotton	10,350
Cucumber	4,336
Deciduous ornamentals	91
Eggplant	60
Flowers	170
Forest	294
Grapes	16,601
Lettuce	3,617
Melons	16,918
Nectarines	38
Onions	330
Oranges	17
Ornamentals	1,313
Peppers:	
Bell	3,946
Chili	1,218
Plums	19
Potato	366
Prune	10
Pumpkin	443
Sorghum	2,308
Squash	2,358
Strawberries	2,429
Sugar beets	21,813
Turf	4,343
Walnut	1,167
Watermelons	5,616
Other	NA
Total California	277,835
All other states (1984)	
Sorghum	5,000–8,000
Corn	5,000–10,000
Cotton	10,000–12,000
Alfalfa	5,000–10,000
Sugar beets	2,000–4,000
Citrus	10,000–25,000
Ornamentals	NA
Tree fruits	2,000–4,000
Nuts	2,000–4,000
Strawberries	2,000–4,000
Assorted vegetables	2,000
Home & Garden	NA
	45,000–83,000
Grand total of acre treatments in the U.S.	322,835–360,835

The Agency briefly reviewed the seven major agricultural crops treated with ODM: Broccoli, cauliflower; Brussels sprouts; cabbage, sugar beets;

grapes; and cottom. The percentage of the crop treated was calculated for these seven crops and for the commodities which contribute the most to the TMRC. (See Unit II.B.3 of this Notice.) That information is presented in the following Table 5:

TABLE 5.—SELECTED CROP SITES TREATED WITH OXYDEMETON-METHYL (1983/1984)

	lb ai	Acre treatments	Number of application	Acres treated	Acres grown	Percent crop treated
Broccoli:						
CA	34,826	69,698	2(1–3)	34,849	95,700	36
Other States	<1,000	<2,000	2(1–3)	<1,000	<10.100	<10
Total US	<35,826	<71,698	2(1–3)	<35,849	<105,800	34
Cauliflower:						
CA	28,594	59,286	2(1–3)	29,643	46,200	64
Other States	<1,000	<2,000	2(1–3)	<1,000	14,800	<7
Total US	<29,594	<61,286	2(1–3)	<30,643	61,000	50
Brussels Sprouts [1]*:*						
CA	5,409	9,872	2(1–3)	4,936	5,936	83
Total US					6,134	
Cabbage [1]*:*						
CA	7,862	13,643	2(1–3)	6,822	7,118	96
Other States	<1,000	<2,000	1(1–3)	<2,000	83,242	<2.4
Total US	<8,862	<15,643	....	<8,822	90,360	<9.8
Sugar Beets:						
CA	13,107	21,813	2(1–6)	10,907	211x10³	5
Other States	1,500 (1–2000)	3,000 (2–4000)	2(1–6)	1,500	911x10³	<1
Total US	14,607	24,813	2(1–6)	12,407	1122x10³	<1
Grapes [1]*:*						
CA	11,154	16,601	2(1–2)	8,301	756,720	1.1
Other States					118,276	
Total US					874,996	0.9
Cotton:						
CA	3,975	10,350	2(1–3)	5,175	1,410x10³	<1
Other States	11,000	11,000	2	5,500	9,735x10³	<0.1
Total US	14,975	21,350	....	10,675	11,145x10³	<0.1
Corn:						
CA	500	1,305	1	1,305	570x10³	0.2
Other States	3,750	7,500	1	7,500	79,864x10³	0.01
Total US	4,250	8,805	1	8,805	80,434x10³	0.01
Cucumbers [1]*:*						
CA	1,951	4,336	1(1–2)	4,336	7,179	[illegible]0
Other States	<1,000	<2,000	1(1–2)	<2,000	106,670	<2
Total US	<2,951	<6,336	1(1–2)	<6,336	113,849	<6
Citrus:						
Grapefruit/Oranges						
CA (oranges)	4	17	1(1–2)	17	172,192	
Other States (citrus)	7,500	17,500	1(1–2)	17,500	1,159,896	
Total USA	7,504	17,517	1(1–2)	17,517	1,332,088	2
Lettuce:						
CA	1,597	3,617	1(1–3)	3,617	154,500	2
Other States	<1,000	<2,000	1(1–3)	<2,000	74,680	<3
Total USA	<2,597	<5,617	1(1–3)	<5,617	229,180	<3
Apples—Information not available.						
Sugarcane—Not Registered.						

[1] 1982 Census data of acreage grown.

NOTE (1): Numbers in ( ) indicate ranges.

NOTE (2): The symbol .... indicates that the information is not available.

The figures given in Tables 4 and 5 reflect usage prior to 1985 and, therefore, do not reflect effects from any regulatory actions that have been taken on ODM since then.

For broccoli, Brussels sprouts, cabbage, and cauliflower, ODM is registered to control aphids. For all four crops, state recommendations included multiple alternative insecticides, including mevinphos (an alternative which is more acutely toxic than ODM). These four crops require extensive hand labor.

Of the fourteen major cotton producing states, only one, Arizona, lists ODM for use on cotton for aphid control. Arizona also lists five alternative insecticides.

Seven states produce 99 percent of the grape harvest. ODM is registered to control aphids and mites on grapes with a one year pre-harvest interval. None of these seven states recommends ODM use on grapes.

ODM is registered for aphid, leafhopper, and mite control on sugarbeets. Eight states produce 97 percent of the Nation's sugarbeets. Three states make no recommendations for the control of aphids, leafhoppers, or mites. Of those states which recommend a pesticide to control aphids and

leafhoppers on sugarbeets, ODM is recommended most frequently, followed by the alternatives phorate, aldicarb, parathion, diazinon, carbaryl, and naled (in descending order of frequency). None of the states recommends ODM for mite control.

B. Benefits/Use Information

The Agency is soliciting the information described below to support its assessment of the benefits of ODM and the economic impact of regulatory action on ODM. The Agency also encourages the submission of benefits data on all registered agricultural and non-agricultural uses. However, the Agency especially encourages the submission of benefits data on those selected crop sites presented in Table 5. In the absence of benefits information for a use site, the Agency may conclude that the benefits are negligible for that site.

The user community, other government agencies, and the interested public are encouraged to submit data to support any benefits claims on all registered uses. Persons who desire to submit benefits information should provide any or all of the following kinds of information for each use addressed, along with any other information they believe relevant and desire to include.

1. Repeated Annual Use Information

The Agency is particularly soliciting any information regarding the repeated use of ODM (i.e. users who may use ODM more than a few days a year, either on a single crop or multiple crops). The following data should be included for each applicator: (a) The range of days and average number of days per year spraying ODM (include mixing and loading time); (b) the range of days and average number of days per year applying ODM; and (c) the largest, smallest, and average interval between applications of ODM.

2. Comparative Efficacy Reports

The Agency is requesting all relevant field test results comparing ODM with possible chemical and nonchemical alternatives at recommended or reduced dosage rates and methods of application or implementation. All data will be accepted. However, field tests, in order to be useful, should preferably not be over ten years old and include:

a. In the case of agricultural uses, data relating to evaluation of pest population reduction, reduction of damage or injury, and impact on yield and/or quality (using current agricultural practices, plot designs, and statistical analyses) that compare ODM with possible alternatives.

b. Growing conditions and other pertinent factors that impact on the results of agricultural use.

c. Data on nontarget organisms (e.g., predators, parasites, pathogens, etc., including introduced or endemic species) that are affected by ODM and other pesticides or pest management programs being tested (e.g., integrated pest management data [IPM]).

d. Information on the development of resistance by target pests to ODM or its alternatives.

e. Information of the pest spectrum controlled by ODM and its alternatives, including identification of primary and secondary pests. Also, information is needed on pest biology, ecology, and relationship to crop development and relationship to the spray schedule, as well as information on survey and detection methods and economic threshold.

f. Data on methods and equipment used for pesticide application.

3. Pesticide Profile and Economics Information

The Agency is requesting additional information concerning pesticide use practices, including the following:

a. Data on pesticide or pest management program characteristics that determine the choice of pesticides or other control strategies including their restrictions, limitations, and benefits in agricultural and industrial uses.

b. Pest management programs currently used by growers (or other users) and any other research programs which could modify pest management practices within the next several years.

c. For each use site addressed, discuss representative use patterns of ODM and any alternatives, preferably by target pest(s). Relate this to the particular use pattern or site in terms of acres treated, number of applications per season, formulations, pounds of active ingredient (quantities expressed by State or region are preferable to national totals). Indicate application intervals and any State re-entry intervals which differ from the label.

d. Actual application rate(s) (individual amount or a range where appropriate) in terms of active ingredient per acre or unit in agricultural or industrial uses.

e. Retail cost of ODM and alternatives in terms of dollars per pound of active ingredient or dollars per unit of formulated product.

f. Economic profile of current users of ODM and of "downstream" processors potentially affected by price or supply shifts of the crop or manufactured product or commodity in question.

g. Enterprise or crop budget data (costs and returns) for the typical user.

h. Price elasticity of demand (raw commodity and at the retail/consumer level) for the crop or manufactured product or commodity in question.

i. Information on crop or manufactured product or commodity exports and imports that has a bearing on the regulatory decision.

IV. Duty to Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. For further information on this requirement consult the Agency's enforcement policy for section 6(a)(2), published in the **Federal Register** of July 12, 1979 (44 FR 40716). The registrants of ODM pesticide products must submit immediately published or unpublished information, studies, reports, analyses, or reanalyses regarding adverse effects associated with these pesticides, their impurities, metabolites and degradation products in humans or animal species, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data must be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. In light of this Special Review and the requirements of FIFRA section 6(a)(2), the registrants must notify EPA of the results of any studies on ODM pesticides currently in progress to the extent specified in the section 6(a)(2) enforcement policy cited above. Specifically, information on any adverse toxicological effects of ODM pesticides, their impurities, metabolites, and degradation products must be submitted.

V. Public Comment Opportunity

All registrants and applicants for registration have been notified by certified mail of the Special Review being initiated on their ODM pesticide products. The Agency is providing a 90-day period to comment on this Notice. Comments must be submitted by January 4, 1987. The Agency invites all interested persons to submit further information concerning the risks and benefits associated with the use of ODM, as discussed in this Notice. All interested persons are also invited to comment on whether the use of ODM satisfies any of the risk criteria listed at 40 CFR 154.7, whether risks posed by the use of ODM are unreasonable, and

what, if any, regulatory action should be taken by the Agency. All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESS to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP–*30000/55*.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding ODM. Persons interested in arranging such meeting should contact the person listed in this Notice under **FOR FURTHER INFORMATION CONTACT.**

VI. Public Docket

The Agency has established a public docket [OPP–*30000/55*] for the Special Review on ODM. This public docket includes or will include: (1) The preliminary notification to the registrants concerning the ODM Special Review; (2) all written comments and materials (other than claimed confidential business information) submitted to the Agency in response to the preliminary notification; (3) this Notice of Special Review and all documents specifically referenced herein; (4) the Notice of Preliminary Determination and Notice of Final Determination concerning the ODM Special Review and all documents specifically referenced therein; (5) all written comments or other materials (other than claimed confidential business information) concerning the ODM Special Review submitted to the Agency by any person or party outside of government; (6) all documents or other written materials concerning the ODM Special Review provided by the Agency to any person or party outside of government; (7) a memorandum describing each meeting concerning the ODM Special Review between Agency personnel and any person or party outside of government; (8) any written response to the Notice of Preliminary Determination by the Secretary of Agriculture or the FIFRA Scientific Advisory Panel; (9) a transcript of all public meetings held by the Scientific Advisory Panel or the Agency concerning the ODM Special Review; and (10) a current index of all materials in the docket. All such materials will be available for public inspection and copying at Room 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA. from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The Agency will also distribute a compendium of indices for new materials in Special Review dockets by mail, on a monthly basis, to those members of the public who have specifically requested such material. To request inclusion on this mailing list, contact Frances Mann, (703–557–2805).

VII. References

The following list of references includes all documents cited in this Notice. These documents are part of the public docket for this Special Review (docket number OPP–30000/55). The Agency will continue to supplement the public docket with additional information as it is received.

The record includes the following information:

(1) *EPA.* Preliminary Notification Letter (July 21, 1987).

(2) *EPA.* Data-Call-In Notice for Oxydemeton-methyl (July 1984).

(3) *EPA.* Data-Call-In Notice for Oxydemeton-methyl (February 1985).

(4) *EPA.* Data-Call-In Notice for Oxydemeton-methyl (April 1986).

(5) *EPA.* Notice of Intent to Suspend (May 26, 1987).

(6) *Mobay Chemical Corp.* Letter to Bessie Hammiel, Hearing Clerk; Request for a Hearing (June 30, 1987).

(7) *EPA.* Data-Call-In Notice for Oxydemeton-methyl (September 1986).

(8) *EPA.* Data-Call-In Notice for Oxydemeton-methyl (June 1987).

(9) *Kroetlinger, F., Kaliner, G., "Two-Generation Study with Rats: R2170 (c.n. Oxydemeton-methyl)".* Unpublished report prepared by Bayer AG (1985).

(10) *California Department of Food and Agriculture.* Notice of action on oxydemeton-methyl (December 1986).

(11) *Mobay Chemical Corp.* Male Rat Reproductive System Toxicity Study (due December 1987).

(12) *Mobay Chemical Corp.* Repeat Two-Generation Rat Reproduction Study (due Fall 1988).

(13) *Mobay Chemical Corp.* Comparison between oral and dermal cholinesterase dose responses (due December 1987).

(14) *Mobay Chemical Corp.* Monkey dermal absorption study (due September 1987).

(15) *EPA.* Registration Standard for pesticide products containing oxydemeton-methyl (1987).

(16) *Doull, J., Cross, R., Arnold, J., et al., "Effects of Metasystox-®* on Human Plasma and RBC Cholinesterase Activity", Report No. 35525 (1947). Unpublished study received June 18, 1975 under 5F1644; prepared by the University of Kansas Medical Center and Truman Medical Research Laboratory, submitted by Mobay Chemical Corp., Kansas City, Mo., CDL: 094451–Z.

(17) *Kroetlinger, Janda. "Subchronic Toxicity Study on Rats (3-month feeding experiment): (Oxydemeton-methyl, the Active Ingredient of R Metasystox-R®)",* Report No. 12797. Unpublished study prepared by Bayer AG.

(18) *EPA.* Pesticide incident monitoring report on oxydemeton-methyl (1987).

(19) *Mobay Chemical Corp.* Response to Preliminary Notification of Possible Special Review (August 1987).

Dated: September 30, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–22919 Filed 10–2–87; 8:45 am]

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Part III

Department of Education

34 CFR Part 251

Formula Grants; Local Educational Agencies and Tribal Schools; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 251

Formula Grants; Local Educational Agencies and Tribal Schools

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations to govern the eligibility of school children to be counted as "Indian" or "Alaska Native" under the Part A Formula Grants Program of the Indian Education Act. The proposed amendments are designed to clarify what documentation is necessary to establish eligibility and what effect failure to collect and maintain that documentation has on the grantee.

DATE: Comments must be received on or before November 19, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Hakim Khan, Acting Director, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177 (Mail Stop 6267), Washington, DC 20202. Telephone (202) 732–1887.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Hakim Khan. Telephone (202) 732–1887.

SUPPLEMENTARY INFORMATION: Under Part A of the Indian Education Act (the Act), Congress has made provision for local educational agencies and tribal schools to receive formula grant payments to support supplemental educational programs for "Indian" school children. The clear intent of Congress is that a local educational agency or a tribal school should be able to receive Part A funds for any Indian child who meets the statutory definition of "Indian." (section 453(a) of the Act). Under section 453(c) of the Act, Congress has charged the Department of Education with the responsibility of ensuring that there is documentation that children are eligible to be counted to generate funds under this program, before payment is made to the participating school districts. Currently, this documentation is provided through completion of ED Form 506, which must be kept on file by the school district for each student counted to generate funds under Part A. Under section 1149(a) of the Education Amendments of 1978, the Department of Education must review annually no less than one-third of the recipient school districts for compliance with Part A requirements, including the requirement that a certification form be maintained for each child counted under Part A.

Declining Documentation

Recent program review reports have shown a significant and continuing decline, as reflected on ED Form 506, in the extent to which school districts maintain complete documentation on students counted by the school districts under Part A. Forty percent of the projects reviewed and funded for the fiscal year 1982 grant period maintained complete eligibility information, while 23 percent and 15 percent, respectively, of the projects for fiscal year 1983 and fiscal year 1984 maintained complete eligibility information. Consequently, the Department is issuing these proposed regulations to assist school districts in meeting the Part A requirements.

Intent of Rulemaking

The intent of these proposed amendments to the regulations is not to restrict or eliminate any eligible Indian child from being counted to generate funds under this program. On the contrary, the proposed changes are designed to assist school districts in meeting the Part A requirements by clarifying and simplifying the steps the school district must take to complete the documentation process. The Department proposes to accomplish this by including as many valid forms of documentation as are possible within the statutory requirements and based upon commonly accepted sources of historical identification, tribal and governmental recognition, and official validation of Indian ancestry. See § 251.51. The notable exception is the absence of documentation such as a birth certificate which of itself does not prove a child's status as Indian.

The result of these amendments would be to provide a broad range of sources of documentation that should meet not only the letter, but also the spirit of the law. ED Form 506 would be revised to reflect these amendments. The proposed revised form, which is published as Appendix A to this proposed regulation, is included to illustrate the intent of the proposed regulations and to elicit suggestions for further improvements in the form. The revised form will not be codified in the Code of Federal Regulations when the final regulations are published.

Effective Timetable

The Department has sent letters to all school district superintendents regarding the Department's intent to publish these regulations. It is expected that final regulations will be in place in time to be applicable for fiscal year 1989 awards, for use in the 1989–1990 academic year. The revised ED Form 506 will also be used for the 1989–1990 academic year. Therefore, in the 1989–1990 academic year, completed student certification forms for each child counted in the grantee's application for funds for that academic year will be required, regardless of whether a child is enrolled in the school district at the time of the Department's review of a school district's compliance with the requirements of the Act and its implementing regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small school districts or tribal schools receiving Federal financial assistance under this program. The regulations clarify current recordkeeping requirements by listing the types of documentation required to establish eligibility for payments under the law. The regulations also impose penalties for failure to maintain proper records. The recordkeeping requirements are not excessively burdensome or expensive, and the penalties will affect only the limited number of entities found not to be in compliance with the regulations.

Paperwork Reduction Act of 1980

Sections 251.50, 251.51, and 251.53(a)(2) contain information collection requirements, and § 251.22 adds a new assurance to the application form. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs,

OMB, Room 3208, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Department is particularly interested in learning about actual situations where the commenter believes that a child currently eligible to be counted under Part A would be excluded from being counted under Part A were these regulations, as currently proposed, to become final.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2177, FOB–6, (Mail Stop 6267), 400 Maryland Avenue, SW., Washington, DC 20202 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 251

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.060, Formula Grants—Local Educational Agencies and Tribal Schools)

Dated: September 30, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 251 of Title 34 of the Code of Federal Regulations as follows:

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

1. The authority citation for Part 251 is revised to read as follows:

Authority: 20 U.S.C. 241aa–241ff, unless otherwise noted.

2. Section 251.22 is amended by deleting "and" after paragraph (b)(3)(ix), adding "and" after paragraph (b)(3)(x)(B), and adding a new paragraph (b)(3)(xi) and revising the authority to read as follows:

§ 251.22 What must an application include?

* * * * *

(b) * * *

(3) * * *

(xi) Prior to the LEA's inclusion of a child in a count to generate funds under this part, the LEA has determined that the child is eligible in accordance with § 251.51;

* * * * *

(Authority: 20 U.S.C. 241dd, 1221h)

3. Section 251.50 is revised to read as follows:

§ 251.50 What are the responsibilities of a grantee regarding student certification?

Before including a student in the count of Indian children to generate funds under this part, a grantee shall determine, at the time the application is submitted to the Secretary—

(a) That the child is enrolled in and receiving free public education in the school district; and

(b) That a completed student certification form that meets the requirements of section 453 of the Indian Education Act and establishes eligibility under § 251.51 is on file for the child.

(Authority: 20 U.S.C. 241bb–241dd, 1221h)

4. A new § 251.51 is added to read as follows:

§ 251.51 How does a child establish eligibility?

(a) To establish eligibility as an Indian, as defined in 34 CFR 250.4(b), a child must have one of the following:

(1) If applicable, an enrollment number of the child or the parent or grandparent through whom the child claims membership.

(2) If an enrollment number is not applicable, one of the following:

(i) A written certification of membership of the child or the child's parent or grandparent by an authorized representative of the tribe, band, or other organized group of Indians.

(ii) A copy of a tribal voter registration card assigned to the child or the child's parent or grandparent.

(iii) A copy of a tribal membership card assigned to the child or the child's parent or grandparent.

(iv) The tribal census number for the child or the child's parent or grandparent.

(v) A copy of an Indian Health Service Beneficiary Identification Card assigned to the child or the child's parent or grandparent.

(vi) A Certificate of Degree of Indian Blood, issued by the Department of the Interior, that contains information documenting that the child or the child's parent or grandparent is a member of an eligible tribe, band, or other organized group of Indians.

(vii) A certification of an authorized representative of an adoption or foster care agency that, based upon records available to that agency, an adopted or foster child meets the definition of "Indian" in § 250.4(b).

(viii) Evidence that the child or the child's parent or grandparent receives benefits from the State in which that individual resides, based upon the State's determination that that individual is a member of a tribe, band, or other organized group of Indians as the term "Indian" is defined in 34 CFR 250.4(b).

(ix) For a child claiming eligibility as an Eskimo, Aleut, or other Alaska Native, a certification by an authorized official of an Alaskan Native village group (including a regional corporation or village corporation) that the child is a member of the entity in which the child claims membership.

(b) For a child claiming eligibility as an individual recognized to be an Indian by the Secretary of the Interior, the child's eligibility must be established through membership in an Indian tribal entity recognized and eligible to receive services from the United States Bureau of Indian Affairs. A list of Indian tribal entities is published annually by the Department of the Interior in the **Federal Register** (Indian Tribal Entities Recognized and Eligible to Receive Services).

(c)(1) For a child claiming eligibility as an individual who is Eskimo, Aleut, or other Alaska Native, the child's eligibility must be established through membership in a Native entity within the State of Alaska recognized by and eligible to receive services from the United States Bureau of Indian Affairs. A list of Native entities is published annually by the Department of the Interior in the **Federal Register** (Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs).

(2) For the purposes of this paragraph, references in paragraph (a)(2) of this section to "tribe, band, or other organized group of Indians" are to be read as "Eskimo entity, Aleut entity, or other Alaska Native entity."

(Authority: 20 U.S.C. 241bb–241dd, 1221h)

5. A new § 251.52 is added to read as follows:

§ 251.52 How does the Secretary determine a grantee's compliance with § 251.50?

Periodically, the Secretary reviews a grantee's records to determine if a student certification form that meets the requirements of section 453 of the Indian Education Act and establishes eligibility under § 251.51 is on file for each child included by the grantee in the count of children to generate funds under this part for the current fiscal year and for prior fiscal years for which the grantee is required to maintain records.

(Authority: 20 U.S.C. 241bb–241dd, 1221h)

6. A new § 251.53 is added to read as follows:

§ 251.53 What action does the Secretary take if a grantee fails to meet the requirements of § 251.50?

(a) If the Secretary determines under § 251.52 that a grantee does not have a completed student certification form for each child counted by the grantee to generate funds under this part for the current fiscal year or prior fiscal years for which the grantee is required to maintain records, the grantee must repay to the Department the amount of funds improperly generated. The Secretary may—

(1) Collect the funds awarded for each such child in the fiscal year or years at issue by—

(i) Demanding direct repayment from the grantee;

(ii) Reducing the grantee's current grant award where the Secretary's determination under paragraph (a) of the section concerns the current fiscal year; or

(iii) Offsetting the equivalent amount from the grantee's award for a fiscal year following the determination; and

(2) For one to three years following that determination, require the grantee to submit with its application for funds under this part a verification by an independent auditor that student certification forms have been completed and maintained by the grantee for each child included in the count in the aplication.

(b) In applying an administrative offset under § 251.53(a)(1)(iii), the Secretary uses the procedures contained in 34 CFR Part 30.

(Authority: 20 U.S.C. 241bb–241dd; 1221h)

Appendix A

Note: This from will not be codified in the Code of Federal Regulations.

Department of Education, Office of Elementary and Secondary Education

Indian Education Programs

Washington, DC 20202

Indian Student Certification

See instructions on reverse side.

1. Name of Eligible Child
Address (Include number, street, city, State and ZIP code).

Part I—Membership Information

2. Name of the tribe, band or other organized group of Indians.

3. Who is a member of the tribe, band or other organized group of Indians? Check only one of the boxes and answer the remaining questions for that person.

(a) / / child (b) / / natural parent (c) / / natural grandparent

If you checked box b or c, enter the name and address of the parent or grandparent:

Name:_____
Address:_____

4. The tribe, band or other organized group is (Check only one box):

(a) — Federally recognized (other than Alaska Native)

(b) — Eskimo, Aleut or other Alaska Native

(c) — State and Federally recognized (other than Alaska Native)

(d) — State recognized (indicate State):

(e) — Terminated

(f) — Other than the categories listed in paragraph 4 (a)–(e) of this form. (Explain).

_____

5. Complete "a" or "b".

(a) Where applicable, enter the individual's enrollment number:

_____

(b) Where "a" is not applicable, attach copy of other document(s) verifying membership. (See reverse side for a list of other documents that can be used to verify membership).

6. Name of the organization which maintains membership information:

Address of organization:

Part II—School Information

7. Name of Child's School
School Address Child's Grade

Part III—Parent Information

I certify that this information is correct, and I understand that this form may be provided to the Title IV, Part A parent committee.

8. Parent Signature Date
Address, if different from Child.

Instructions

In order to receive funds under the formula grant program of Part A of the Indian Education Act, your school district must determine the number of Indian children enrolled in its schools who are eligible to be counted as "Indian" under that Act.

Any child who meets the following definition from the Indian Education Act and for whom the school district has collected this completed form may be counted for this purpose.

"Indian" means "any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native".

You are not required to submit this form to the local educational agency. If you choose not to submit a completed form, however, your school district may not count your child to generate funds under Part A of the Indian Education Act.

Item 5b. Where the enrollment number is not applicable, *one* of the following documents must be provided:

- A written certification of membership of the child or the child's parent or grandparent by an authorized representative of the tribe, band, or other organized group of Indians.
- A copy of a tribal voter registration card assigned to the child or the child's parent or grandparent.
- A copy of a tribal membership card assigned to the child or the child's parent or grandparent.
- The tribal census number for the child or the child's parent or grandparent.
- A copy of an Indian Health Service Beneficiary Identification Card assigned to the child or the child's parent or grandparent.
- A Certificate of Degree of Indian Blood, issued by the Department of the Interior, that contains information documenting that the child or the child's parent or grandparent is a member of an eligible tribe, band, or other organized group of Indians.
- A certificate of an authorized representative of an adoption or foster care agency that, based upon records

available to that agency, an adopted or foster child meets the definition of "Indian" in 34 CFR 250.4(b).

• Evidence that the child or the child's parent or grandparent receives benefits from the State in which that individual resides, based upon the State's determination that that individual is a member of a tribe, band, or other organized group of Indians as the term "Indian" is defined in 34 CFR 250.4(b).

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H.J. Res. 362/Pub. L. 100-120

Making continuing appropriations for fiscal year 1988, and for other purposes. (Sept. 30, 1987; 101 Stat. 789; 3 pages) Price: $1.00

H.R. 1163/Pub. L. 100-121

To amend section 902(e) of the Federal Aviation Act of 1958 to revise criminal penalties relating to certain aviation reports and records offenses. (Sept. 30, 1987; 101 Stat. 792; 1 page) Price: $1.00

S.J. Res. 191/Pub. L. 100-122

To provide for the extension of certain programs relating to housing and community development, and for other purposes. (Sept. 30, 1987; 101 Stat. 793; 1 page) Price: $1.00

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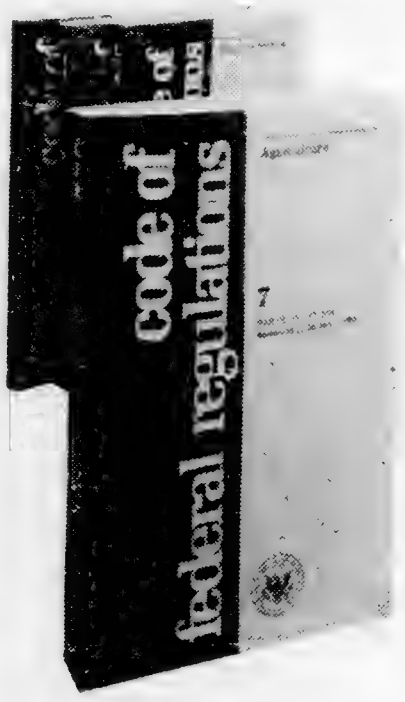

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Title 3—

The President

Proclamation 5713 of October 1, 1987

National Poison Prevention Week, 1988

By the President of the United States of America

A Proclamation

In the 27 years our Nation has observed National Poison Prevention Week, thousands of children under age five have been saved from accidental poisonings thanks to greater public awareness of poison prevention and the use of child-resistant bottle and container closures. This success story is due to the combined efforts of consumers, health professionals, and government and industry. All these groups are represented on the Poison Prevention Week Council. Through the annual observance of National Poison Prevention Week, parents have been urged to keep household chemicals and medicines out of the reach of young children. Poison control centers have helped save lives by offering emergency advice to consumers who call when a poisoning occurs. The United States Consumer Product Safety Commission (CPSC) has required that potentially hazardous household chemicals and medicines be packaged with effective child-resistant closures.

Data recently compiled by CPSC show that the number of child poisonings has decreased since child-resistant packaging began to be used. In 1972, when the first drugs were required to have child-resistant packaging, 96 children died from accidental drug ingestion. By 1974, the first year in which child-resistant packaging was required for most prescription drugs, there were 57 fatalities. In subsequent years, other products were required to have child-resistant packaging, and the number of deaths due to ingestion of these drugs continued to decline. In 1984, the last full year for which we have received information on drug ingestion fatalities, there were 31 deaths.

Child-resistant packaging has saved many lives, but there is more to do. We must remind new parents and grandparents of the need to keep medicines and household chemicals out of the reach of children. Underlying our poison prevention program is the assumption that virtually all childhood poisonings are preventable.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by a joint resolution approved September 26, 1961 (75 Stat. 681), authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning March 20, 1988, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and events and by learning how to prevent childhood poisonings.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5714 of October 1, 1987

National Medical Research Day, 1987

By the President of the United States of America

A Proclamation

Once, childhood diseases such as diphtheria, polio, and tetanus claimed the lives of thousands of American youngsters each year. Now, vaccines developed through biomedical research have virtually eliminated these killers from the United States. In addition to their contributions to the creation of these and many other vaccines, U.S. medical researchers have designed new drugs and surgical techniques and identified environmental and life-style factors that lead to illness. All of these advances have helped to bring American's death rate to an all-time low and its life expectancy rates to all-time highs.

America is an acknowledged world leader in promoting health and preventing disease and disability. Research conducted in this country has contributed enormously to the worldwide control of epidemic diseases such as cholera, smallpox, yellow fever, and bubonic plague. The common goal of better health for all has helped to foster a productive research partnership among government, academia, industry, and voluntary organizations.

America's preeminence in biomedical and behavioral medical research is greatly encouraged by more than a century of continuing commitment by the Government of the United States. For example, this year marks the 100th anniversary of the National Institutes of Health, our Nation's largest biomedical research agency. The returns from the cooperative efforts of the Federal government and the private sector in medical research—in terms of reduced illness and improved individual productivity for many Americans—are immense. More than 90 Americans have been rewarded with international recognition in the form of the award of Nobel Prizes for work in physiology, medicine, and chemistry.

Today, America's medical researchers are studying the basic workings of cells and organisms in ever finer detail. Someday, these inquiries into the fundamental aspects of life may unravel the mysteries of cancer, AIDS, Alzheimer's disease, heart and lung diseases, mental illnesses, and many other diseases that claim or severely impair the lives of Americans. To fulfill the promise of current investigations and to ensure that the caliber of American medical research remains high, it is imperative that the United States continue to foster the training of the scientists of the future.

We all acknowledge with pride the accomplishments of America's medical researchers and look to them for continued progress in relieving human suffering. In recognition of the many successes of the American medical research enterprise, the Congress, by Senate Joint Resolution 142, has designated October 1, 1987, as "National Medical Research Day" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1, 1987, as National Medical Research Day, and I call upon the people of the United States and all Federal, State, and local government officials to observe the day with appropriate events and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Proclamation 5715 of October 1, 1987

General Pulaski Memorial Day, 1987

By the President of the United States of America

A Proclamation

The American people proudly and gratefully observe every October 11 in memory of General Casimir Pulaski, because on that date in 1779 this young Polish count and cavalry officer, wounded two days before while leading a charge during the siege of Savannah, gave his life for our country.

Before casting his lot with America, Casimir Pulaski had fought bravely against tyranny and foreign domination in his beloved Poland and had been forced into exile. He and other Polish freedom fighters well understood that humanity's battle for liberty and self-government is indivisible around the world; with the immortal cry, "For Your Freedom and Ours," they went forth to many nations in support of freedom, justice, independence, and individual rights. These ideals are forever part of Poland's heritage; they are dear to the Polish people, and this devotion continues to inspire America and the rest of the world.

The freedoms for which General Pulaski fought and died—the freedoms he helped America win—have not yet been realized in many parts of the globe. The United States of America will always champion religious, political and economic liberty, tolerance, and human rights around the world. Wherever mankind's fight for freedom continues, there stands the spirit of Pulaski and there stands the hope, the commitment, and the help of the United States—"For Your Freedom and Ours."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, October 11, 1987, as General Pulaski Memorial Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. In addition, I encourage the people of the United States to commemorate this occasion as appropriate throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5716 of October 1, 1987

Columbus Day, 1987

By the President of the United States of America

A Proclamation

Every October the people of the United States celebrate the day nearly 500 autumns ago when Christopher Columbus and the crews of the *Nina*, the *Pinta*, and the *Santa Maria* found a New World. That world is our Western Hemisphere, and we in the United States trace the history and development of our country and our culture back to Columbus and his daring exploration, his initiative, his faith, and his courage.

Columbus continues to inspire the United States and the rest of the world for almost half a thousand years because of his great understanding and vision and because of his single-minded determination to let no disappointment, ridicule, or risk keep him from a goal he knew to be sensible, feasible, and of great promise. He viewed the unknown as an opportunity, not as a danger.

The Admiral of the Ocean Seas is remembered as well for challenging the horizons of his time and place, for his spirit of reaching beyond the obvious, for defying the pessimists and expanding the frontiers of knowledge. That spirit animated those who followed him to the New World through the centuries and brought untold energy, boldness, and ingenuity with them. We Americans are risk-takers; like Columbus, we have a vision of the world as it can be, and of the future as an opportunity and a challenge.

Italian Americans have special reason to celebrate Columbus Day with great pride. Columbus was the first of many Italian travelers who have made contributions to the New World. Columbus is one of many links binding the United States and Italy in a special relationship.

This tribute also has special meaning for Americans of Spanish descent. Without Spanish support, Columbus's voyage of discovery would not have been possible. Spain's contribution to the New World and to its cultural and economic heritage went on to be even larger, as the recent visit by Their Majesties King Juan Carlos and Queen Sofia of Spain to the American Southwest reminded us.

The year 1992 will be the 500th anniversary of Columbus's first voyage to the Americas. The Christopher Columbus Quincentenary Jubilee Commission, a distinguished group of Americans aided by representatives from Spain and Italy, prepared a report that I transmitted to the Congress in September of this year, making recommendations for our Nation's observance of the Quincentenary, including themes that embody the broad significance of this anniversary and suggestions for Quincentenary programs that will extend to communities, organizations, and institutions around the United States.

In tribute to Christopher Columbus, the Congress of the United States, by joint resolution approved April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Monday, October 12, 1987, as Columbus Day. I invite the people of this Nation to observe that day with appropriate ceremonies in honor of this great explorer. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Proclamation 5717 of October 1, 1987

United Nations Day, 1987

By the President of the United States of America

A Proclamation

United Nations Day is an opportunity for us to reemphasize the principles upon which the United Nations was founded. The framers of the United Nations Charter envisioned a world where nations live together in freedom, justice, and peace, a world with universal and reciprocal respect for human rights and human dignity.

The United Nations General Assembly took a historic first step last year by adopting reforms aimed at strengthening the organization's effectiveness and efficiency. The ideals of the United Nations are important to the United States. We are committed to working closely with other member states and with the Secretary General to see that the reforms are faithfully implemented and to secure the organization's future.

We are pleased that reform efforts are extending to the specialized and technical agencies of the United Nations. These agencies are not well-known, but do affect us directly and on a daily basis. For instance, the Weather Watch of the World Meteorological Organization helps us know when and where storms will hit American cities. The International Maritime Organization and International Civil Aviation Organization work for safety on the seas and in the skies for American travelers. The Food and Agricultural Organization saves U.S. farmers, foresters, and fishermen countless dollars in damage every year. The International Atomic Energy Agency helps promote international cooperation and safeguards regarding nuclear technology, and the World Health Organization coordinates global efforts against AIDS.

One of the youngest specialized agencies, the International Fund for Agricultural Development (IFAD), was established to mobilize financial resources and make them available for agricultural projects specifically designed to improve food production systems in the poorest food-deficient regions of the world. In just 10 years, IFAD has financed more than 200 projects in developing countries that, when fully implemented, will boost food production by more than 22 million tons a year.

Our world—every nation, every people, every individual—can know the blessings of peace and see the light of freedom and justice in the future if we have the courage to build on the hope of the past—the hope upon which the United Nations was built.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Saturday, October 24, 1987, as United Nations Day. I urge all Americans to acquaint themselves with the activities and accomplishments of the United Nations. I have appointed J. Willard Marriott, Jr., to serve as 1987 United States Chairman for United Nations Day, and I welcome the role of the United Nations Association of the United States of America in working with him to celebrate this special day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Proclamation 5718 of October 2, 1987

Implementation of an Orderly Marketing Agreement on Ammonium Paratungstate and Tungstic Acid

By the President of the United States of America

A Proclamation

1. On June 5, 1987, the United States International Trade Commission (USITC) reported to the President the results of its investigation under section 406 of the Trade Act of 1974 (19 U.S.C. 2436) (the Trade Act) with respect to imports from the People's Republic of China (the PRC) of ammonium paratungstate (APT) and tungstic acid provided for in items 417.40 and 416.40, respectively, of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). The USITC determined that market disruption within the meaning of section 406 of the Trade Act exists with respect to imports from the PRC of APT and tungstic acid. To remedy this market disruption, the USITC recommended that, for the next 5 years, the combined volume of imports of APT and tungstic acid from the PRC be limited to the larger of 1.116 million pounds of tungsten content per year or 7.5 percent of U.S. consumption.

2. On August 5, 1987, pursuant to sections 406, 202, and 203 of the Act (19 U.S.C. 2436, 2252, and 2253), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to provide import relief for the domestic industry in the form of a negotiated orderly marketing agreement. To this end, I directed the United States Trade Representative (the USTR) to negotiate and conclude an orderly marketing agreement with the PRC and to report the results of such negotiations to me within 50 days.

3. Section 406(b)(2) of the Trade Act (19 U.S.C. 2436(b)(2)) requires that if import relief consists of, or includes, an orderly marketing agreement, then such agreement shall be entered into within 60 days after a presidential determination to provide relief.

4. Pursuant to the authority vested in the President by the Constitution and the statutes of the United States, including section 203(a)(4) of the Trade Act (19 U.S.C. 2253(a)(4)), an agreement for orderly trade was signed on September 28, 1987, between the Government of the United States of America and the Government of the People's Republic of China limiting the export from the PRC, and the import into the United States, of APT and tungstic acid provided for in items 417.40 and 416.40, respectively, of the TSUS.

5. Pursuant to section 203(k)(1) of the Trade Act (19 U.S.C. 2253(k)(1)), I have considered the relation of such action to the international obligations of the United States. Since February 1, 1980, the United States and the PRC have had in effect a bilateral trade agreement under which I have determined, pursuant to section 405 of the Trade Act (19 U.S.C. 2435), a satisfactory balance of concessions has been maintained during the life of such agreement, and for which I reconfirm that actual or foreseeable reductions in U.S. tariffs and nontariff barriers to trade resulting from multilateral negotiations are, and continuously have been, satisfactorily reciprocated by the PRC. The present agreement for orderly trade is within the parameters of the safeguard measures envisioned by the bilateral trade agreement.

6. In accordance with section 203(d)(2) of the Trade Act (19 U.S.C. 2253(d)(2)), I have determined that the level of import relief hereinafter proclaimed permits the importation into the United States of a quantity or value of articles that is not less than the average annual quantity or value of such articles imported into the United States from the PRC in the 1982–1984 period, which I have determined to be the most recent representative period for imports of such articles.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sections 203, 406, and 604 of the Trade Act (19 U.S.C. 2253, 2436, and 2483), section 332 of the Tariff Act of 1930, and section 301 of title 3, United States Code, do proclaim that—

(1) An orderly marketing agreement was entered into on September 28, 1987, between the Government of the United States of America and the Government of the People's Republic of China, with respect to trade in APT and tungstic acid, effective October 1, 1987. The agreement for orderly trade is to be implemented according to its terms and as directed in this Proclamation, including the Annex thereto.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex of this Proclamation.

(3) The President's authority under section 203(e)(3) of the Trade Act (19 U.S.C. 2253(e)(3)) to determine that the agreement is no longer effective is hereby delegated to the USTR. In the event of such a determination, the USTR shall prepare such **Federal Register** notice as may be appropriate to implement import relief authorized by section 203(e)(3) of the Trade Act.

(4) The USTR shall take such actions and perform such functions for the United States as may be necessary concerning the administration, implementation, modification, amendment or termination of the agreement described in paragraph (1) of this Proclamation, and any action that may be subsequently required to implement paragraph (3) of this Proclamation. In carrying out his responsibilities under this paragraph, the USTR is authorized to direct and delegate to appropriate officials or agencies of the United States, authority to perform any functions necessary for the administration and implementation of the agreement, or in the event he determines the agreement to be no longer effective, such further action as he deems necessary and appropriate consistent with this Proclamation. The USTR is authorized to make any changes in part 2 of the Appendix to the TSUS that may be necessary to carry out the agreement or such other action as may be required should he determine the agreement to be no longer effective. Any such changes in the agreement shall be effective after their publication in the **Federal Register**.

(5) The U.S. Customs Service shall take such actions as the USTR shall determine are necessary to carry out the agreement described in paragraph (1) of this Proclamation, or to implement any import relief implemented pursuant to paragraphs (3) and (4) of this Proclamation, or any modification thereof, with respect to the entry, or withdrawal from warehouse for consumption, into the United States of products covered by such agreement or by such other import relief.

(6) The U.S. Customs Service shall collect and assemble such data as are necessary to monitor compliance with the agreement. Such data shall include import statistics with respect to tungsten oxide, provided for in item 422.42, part 2C, schedule 4 of the TSUSA, as well as data for APT and tungstic acid.

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IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc 87-23205
filed 10-2-87; 3:36 pm]
Billing code 3195-01-M

ANNEX

Subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified—

(a0 by adding in numerical sequence the following new headnote 11:

"11. *Quantitative limitations on certain tungsten articles.*—The provisions of this headnote apply to items 926.30 through 926.34, inclusive, of this subpart. The limitations imposed are in addition to the duties provided for the restrained articles in schedule 4, part 2B and part 2C, respectively, or in schedule 8, where applicable. The quantitative limitations shall include imports entered, or withdrawn from warehouse for consumption, informal entries, temporary imports under bond, and imports under schedule 8 of the TSUS.

(a) *Definitions.*—For purposes of this subpart—

(i) the term "tungsten articles" means ammonium paratungstate provided for in item 417.40 in schedule 4, part 2C and tungstic acid provided for in item 416.40, schedule 4, part 2B;

(b) *Export certificate.*—Effective January 1, 1988, none of the tungsten articles provided for herein that are exported from the People's Republic of China (the PRC) shall be entered, or withdrawn from warehouse for consumption, unless such tungsten articles are accompanied by a validated export certificate issued by the competent authority of the Government of the People's Republic of China;

(c) *Carryover.*—Whenever the specified limit of imports has not be entered during a period, an amount not to exceed 5 percent (except that the United States Trade Representative may by prior determination permit a carryover of greater than 5 percent) of the limit specified in the period in which the shortfall occurred may be entered in the subsequent period.

(d) *Exceeding restraint levels.*—The USTR may by **Federal Register** notice authorize an increase in the specified limits of imports by not more than 10 percent during any period, except that the USTR may by prior determination permit an increase of greater than 10 percent. If a specified limit of imports is exceeded during a period, there shall be a downward adjustment of the specified limit for the next period in the amount the preceding specified limit was exceeded. To the extent that imports of the tungsten articles provided for herein exceed 1.7 million pounds tungsten content for calendar year 1987, the specified limits for subsequent periods will be reduced according to the following schedule: the 1988 calendar year specified limit shall be reduced by 50 percent of the excess; the specified limit of 1989 shall each be reduced by 30 percent of the excess; and the specified limit of 1990 shall be reduced by 20 percent of the excess.

(e) *United States International Trade Commission (USITC) surveys.*—The USITC shall conduct annual surveys (pursuant to section 332 of the Tariff Act of 1930) to obtain data on ammonium paratungstate, tungstic acid and tungsten oxide (provided for in item 422.42, part 2C, schedule 4 of the TSUSA) from the producers in the United States by calendar quarter on shipments, profits, capacity and capacity utilization, and annual data on capital expenditures and research and development expenditures; and to obtain data on such products from importers by calendar quarter on prices, orders, and inventories. The initial survey shall cover calendar year 1987 and shall be published by March 31, 1988, and the results of subsequent annual surveys shall be published on March 31 of each year thereafter as long as the agreement is in effect.

(f) *Administration of import limitations.*—Imports accounting for no more than 65 percent of each annual specified limit may be entered in any two consecutive quarters in that year unless authorized by a determination of the USTR."

(b) by inserting in numerical sequence the following new provisions:

"Item	Articles	Specified Limit (in million pounds tungsten content)
	Whenever the respective aggregate quantity of articles, the product of the People's Republic of China, has been entered in any period specified in any item below (whether, for tariff purposes, in schedule 4 or in schedule 8), no article in such items may be entered during the remainder of such period, except as provided in headnote 11:	
	Tungstic acid provided for in item 416.40, part 2B, schedule 4, and ammonium paratungstate provided for in item 417.40, part 2C, schedule 4:	

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"Item	Articles	Specified Limit (in million pounds tungsten content)
926.30	If entered during the period from October 1, 1987, through December 31, 1987, inclusive.	0.425
926.31	If entered during the period from January 1, 1988, through December 31, 1988, inclusive.	1.81
926.32	If entered during the period from January 1, 1989, through December 31, 1989, inclusive.	1.94
926.33	If entered during the period from January 1, 1990, through December 31, 1990, inclusive.	2.05
926.34	If entered during the period from January 1, 1991, through September 30, 1991, inclusive.	1.50"

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Presidential Documents

Proclamation 5719 of October 2, 1987

German-American Day, 1987

By the President of the United States of America

A Proclamation

More Americans trace their heritage back to German ancestry than to any other nationality. More than seven million Germans have come to our shores through the years, and today some 60 million Americans—one in four—are of German descent. Few people have blended so completely into the multicultural tapestry of American society and yet have made such singular economic, political, social, scientific, and cultural contributions to the growth and success of these United States as have Americans of German extraction.

The United States has embraced a vast array of German traditions, institutions, and influences. Many of these have become so accepted as parts of our way of life that their ethnic origin has been obscured. For instance, Christmas trees and Broadway musicals are familiar features of American society. Our kindergartens, graduate schools, the social security system, and labor unions are all based on models derived from Germany.

German teachers, musicians, and enthusiastic amateurs have left an indelible imprint on classical music, hymns, choral singing, and marching bands in our country. In architecture and design, German contributions include the modern suspension bridge, Bauhaus, and Jugendstil. German-American scientists have helped make the United States the world's pioneer in research and technology. The American work ethic, a major factor in the rapid rise of the United States to preeminence in agriculture and industry, owes much to German-Americans' commitment to excellence.

For more than 3 centuries, Germans have helped build, invigorate, and strengthen this country. But the United States has given as well as received. Just a generation ago, America conceived of and swiftly implemented the Marshall Plan, which helped the new German democracy rise from the rubble of war to become a beacon of democracy in Central Europe. The Berlin Airlift demonstrated the American commitment to the defense of freedom when, still recovering from war, Berlin was threatened by strangulation from the Soviets.

Today, the Federal Republic of Germany is a bulwark of democracy in the heart of a divided Europe. Germans and Americans are rightfully proud of our common values as well as our shared heritage. For more than 3 decades the German-American partnership has been a linchpin in the Western Alliance. Thanks to it, a whole generation of Americans and Europeans has grown up free to enjoy the fruits of liberty.

Our histories are thus intertwined. We now contribute to each other's trade, enjoy each other's cultures, and learn from each other's experiences. The German-American Friendship Garden, which will be dedicated in the District of Columbia in the near future, is symbolic of the close and amicable relations between West Germany and the United States.

The Congress, by Public Law 100–104, has designated October 6, 1987, the 304th anniversary of the arrival of the first German immigrants in Philadelphia, as "German-American Day" and has authorized and requested the President to issue a proclamation in observance of that day.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Tuesday, October 6, 1987, as German-American Day. I urge all Americans to learn more about the contributions of German immigrants to the life and culture of the United States and to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of Oct., in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-23258
Filed 10-5-87; 10:12 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of October 2 on signing Proclamation 5719, see the *Weekly Compilation of Presidential Documents* (vol. 23, p. 1118).

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9 CFR Pa

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Rules and Regulations

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-107]

Import Permits for Birds, Poultry, or Pigeons Transiting the Port of Anchorage, AK

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to provide that importers can obtain and use—under certain circumstances—a single import permit for more than one shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska. This will help reduce paperwork and resulting expenditures.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Ritchie, Import-Export Operations Staff, VS, APHIS, USDA, Room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 contain provisions concerning the importation of certain animals, birds, poultry, and pigeons.

On March 27, 1987, we published in the **Federal Register** (52 FR 9871–9873, Docket No. 85–084) a document proposing to allow importers to obtain and use—under certain circumstances—a single import permit or more than one shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska.

We proposed that the permit be valid only during the calendar year in which it was issued. We also proposed to prohibit the off-loading of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, under a permit issued for multiple shipments.

Our proposal invited the submission of written comments on or before May 26, 1987. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the proposed rule as a final rule.

Miscellaneous

As stated above, we proposed that an import permit issued for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, be valid only during the calendar year in which it was issued. We discussed this provision in the supplementary information to the proposed rule but inadvertently left it out of the proposed regulatory text. We have added this provision to § 92.4(e) in the regulatory text of the final rule.

We have made a nonsubstantive change to the proposed rule to correct a typographical error.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that fewer than one percent of shipments of birds, poultry, or pigeons transiting the United States will be affected by this rule, as compared with the number of all shipments of birds, poultry, or pigeons transiting or entering the United States through all ports of entry.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control numbers 0579–0040 and 0579–0060.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (see 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended to read as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, in the first sentence of paragraph (a)(1) "§§ 92.2(b) and (c), 92.19, 92.27, and 92.31" is revised to read "§§ 92.2(b) and (c), 92.4(e), 92.19, 92.27, and 92.31".

3. In § 92.4, a new paragraph (e) is added to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes;[1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

* * * * *

[1] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (Part 17, Title 50, Code of Federal Regulations) and the regulations issued by the U.S. Department of Health and Human Services (Subpart J–1 of Part 71, Title 42, Code of Federal Regulations) should be consulted.

(e) Notwithstanding any other provisions in this part, importers are not required to obtain in import permit and provide the shipper with an original import permit for each individual shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, if the following conditions are met:

(1) The importer applies for and obtains an import permit for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, in accordance with the provisions of this section and related requirements concerning application for the permit. However, the following information is not required on the application:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification;

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(2) The importer completes a copy of the import permit obtained under paragraph (e)(1) of this section for each separate shipment of birds, poultry, or pigeons intended to transit the port of Anchorage, Alaska, by inserting the following information on a copy of the permit:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification (except poultry);

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(3) The importer, not less than 2 weeks prior to the anticipated date of arrival of each separate intransit shipment of birds, poultry, or pigeons at the port of Anchorage, Alaska, provides the port veterinarian with a copy of the completed import permit;

(4) A copy of the completed import permit accompanies each separate intransit shipment of birds, poultry, or pigeons to the port of Anchorage, Alaska;

(5) Import permits issued for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, will be valid only during the calendar year in which they are issued.

§ 92.2 [Amended]

4. In § 92.2, the first sentence in paragraph (d)(1)(ii) is amended by adding the following phrase before "They are unloaded, . . ." to read "Except for birds, poultry, or pigeons in transit through Anchorage, Alaska, under § 92.4(e) of this part, which are not allowed to be unloaded . . ."

Done at Washington, DC, this 1st day of October, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-23107 Filed 10-5-87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 166

[Docket No. 87-121]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Swine Health Protection regulations by adding Minnesota to the list of states that have primary enforcement responsibility under the Swine Health Protection Act (Act). Minnesota now meets the requirements for enforcing laws and regulations concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. Only in certain emergencies would the Secretary of Agriculture enforce in Minnesota the provisions of the Act and the Federal regulations.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Dale C. Gigstad, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 850, Federal Building, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection" regulations (contained in 9 CFR Part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.*, and referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

On July 21, 1987, we published in the **Federal Register** (52 FR 27413-27414, Docket Number 87-048) a document proposing to amend the regulations by adding Minnesota to the list of states that have primary enforcement responsibility under the Act, and by removing it from the list of states that do not have this responsibility. We did not receive any comments, which were required to be postmarked or received on or before August 20, 1987. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Almost all persons who operate facilities for the treatment of garbage to be fed to swine or who feed or permit the feeding of garbage to swine are considered small entities. However, the amendments made by this document will affect less than one percent of those persons who operate facilities for the treatment of garbage to be fed to swine and less than one percent of those persons who feed, or permit the feeding of, garbage to swine. These amendments will not cause significant changes in the requirements for affected persons.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have

a significant economic impact on a substantial number of small entities.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

Accordingly, 9 CFR Part 166 is amended as follows:

PART 166—SWINE HEALTH PROTECTION

1. The authority citation for Part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (c) of § 166.15 is amended by adding "Minnesota," immediately after "Michigan,".

3. Paragraph (d) of § 166.15 is amended by removing "Minnesota,".

Done in Washington, DC, this 1st day of October, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-23109 Filed 10-5-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9194]

Prohibited Trade Practices, and Affirmative Corrective Actions; Buckingham Productions, Inc. et al.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Furlong, Pa. marketers of mail-order weight reduction or weight control products, programs or services to cease falsely representing the effectiveness of its programs, products or services without competent and reliable evidence supporting such claims.

DATE: Complaint issued June 24, 1985. Amended Complaint and Order issued July 30, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580, (202) 326-3158.

SUPPLEMENTARY INFORMATION: On Friday, August 15, 1986, there was published in the **Federal Register**, 51 FR 29265, a proposed consent agreement with analysis In the Matter of Buckingham Productions, Inc., dba Rotation Diet Center; Furlong-Elliot Corp., Freedom Center, Inc., Plaza Business Services, Inc., N.F. Rotation, Inc., Rotation-Freedom Diet, Inc., Health and Diet Corp., Inc., and Howard Elliot, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding as to the above noted respondents.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: Section 13.10 Advertising falsely or misleadingly; S.13.170-74 Reducing, non-fattening, low-calorie, etc.; S.13.190 Results; S.13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533-20 Disclosures; S.13.533-45 Maintain records; S.13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself And Goods-Goods: S.13.1730 Results.

List of Subjects in 16 CFR Part 13

Mail order diets, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,

Secretary.

[FR Doc. 87-23016 Filed 10-5-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Compliant and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

16 CFR Part 13

[Dkt. 9190]

Prohibited Trade Practices, and Affirmative Corrective Actions; Ticor Title Insurance Co.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Santa Ana, Calif-based respondent, First American Title Insurance Co., from setting any rates for title search and examination and settlement services through any rating bureau in six states. Additionally, First American Title Insurance Co. agreed to withdraw from the law suit filed by the title insurance companies named in the 1985 complaint and requires the respondent to notify the Commission at least thirty days prior to any change in the corporate respondent.

DATE: Complaint issued January 7, 1985. Order issued July 30, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/S-2308, Michael Antalics, Washington, DC 20580, (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Monday, May 11, 1987, there was published in the **Federal Register**, 52 FR 17602, a proposed consent agreement with analysis In the Matter of Ticor Title Insurance Company, Chicago Title Insurance Company, Safeco Title Insurance Company, First American Title Insurance Company, Lawyers Title Insurance Corporation, and Stewart Title Guaranty Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding as to respondent First American Title Insurance Company.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting And Abetting Unfair Or Unlawful Act Or Practice: Section

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

13.290 Aiding, assisting and abetting unfair or unlawful act or practice. Subpart—Combining Or Conspiring: S.13.384 Combining or conspiring; S.13.433 To fix prices; S.13.470 To restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–25 Displays, in house; S.13.533–50 Maintain means of communication. Subpart—Discriminating In Price Under Section 5, Federal Trade Commission Act: S.13.870 Charges and prices.

List of Subjects in 16 CFR Part 13

Title insurance, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87–23015 Filed 10–5–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87–34–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: October 2, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of local seminars.

SUMMARY: The Federal Energy Regulatory Commission is announcing that it is sponsoring a series of local seminars on the implementation of Order No. 500 in Oklahoma City, OK, New Orleans, LA, Houston and Lubbock, TX, from October 19 to 22, 1987. Order No. 500 was issued by the Commission on August 7, 1987, in response to the U.S. Court of Appeals for the D.C. Circuit remand of Order No. 436, a rule which established an open-access transportation program. Order No. 500 was designed to keep gas flowing under transportation arrangements while mitigating the impact of take-or-pay liability that the Court found could occur under Order No. 436.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, (202) 357–8400, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Captiol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission is sponsoring a series of local seminars on the implementation of Order No. 500. The seminars are to be held in Oklahoma City, OK, New Orleans, LA, Houston and Lubbock, TX. The purpose of these seminars is to offer technical guidance to those responsible for their company's implementation of Order No. 500. Commission representatives will clarify the scope of the rule and will explain the operation of its provisions. There will be no charge for the seminars, and no prior registration will be required.

The Commission issued Order No. 500 on August 7, 1987, (52 FR 30334, August 14, 1987) in response to the U.S. Court of Appeals for the D.C. Circuit remand of Order No. 436, a rule which established an open-access transportation program. Order No. 500 was designed to keep gas flowing under transportation arrangements while mitigating the impact of take-or-pay liability that the Court found could occur under Order No. 436.

Order No. 500 became effective with the issuance of the Court's mandate on September 15, 1987. Requirements that producers credit transported volumes against take-or-pay liability are in effect now for new arrangements, and will take effect November 1, 1987, for existing arrangements.

Following are the dates, times, and locations of these seminars:

Monday, October 19, 1987, at 2:00 p.m
Holiday Inn West, 801 South Meridian, Oklahoma City, Oklahoma 73108
Tuesday, October 20, 1987, at 2:00 p.m.
Downtown Howard Johnsons, 330 Loyola Avenue, New Orleans, Louisiana 70112
Wednesday, October 21, 1987, at 1:00 p.m.
Marriott Astrodome Hotel, 2100 South Braeswood, Houston, Texas 77030
Thursday, October 22, 1987, at 9:00 a.m.
Days Inn Civic Center, 500 Avenue Q, Lubbock, Texas 79401

Kenneth F. Plumb,

Secretary.

FR Doc. 87–23220 Filed 10–5–87; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 4

[Docket No. RM87–32–000; Order No. 480]

Requirements of Landowner Notification Under Section 14 of the Electric Consumers Protection Act

Issued: September 30, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to implement the landowner notification requirements contained in section 14 of the Electric Consumers Protection Act (Act). The Act requires an applicant for a hydroelectric license (other than a new license under section 15 of the Federal Power Act) to make a good faith effort to notify by certfified mail certain property owners and government entities.

EFFECTIVE DATE: Effective November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 16, 1986, the President signed the Electric Consumers Protection Act of 1986 (ECPA).[1] Section 14 of the Act amends section 9 of the Federal Power Act (FPA)[2] to require an applicant for a hydroelectric license (other than a new license under section 15 of the FPA)[3] to make a good faith effort to notify by certified mail "(1) [a]ny person who is an owner of record of any interest in the property within the bounds of the project, [and] (2) [a]ny Federal, State, municipal or other local governmental agency likely to be interested in or affected by such application." The Commission is amending Part 4 of its regulations to implement this requirement.

II. Background

Under current Commission regulations, an applicant for a preliminary permit or hydroelectric license is required only to identify in the application certain individuals or government entities that might be affected by the project.[4] Once the Commission accepts an application, notice of the proposed project is published once each week for four weeks in a local newspaper.[5]

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[1] Pub. L. No. 99–495, 100 Stat. 1243 (1986).
[2] 16 U.S.C. 802 (1982).
[3] 16 U.S.C. 808 (1982).
[4] 18 CFR 4.32(a)(2) (1987).
[5] 16 U.S.C. 797(f) (1982).

Additionally, the Commission notifies in writing any State or municipality likely to be interested in or affected by the application.[6]

Concern that publication in a local newspaper sometimes did not notify absent landowners of the proposed project led Congress to add a landowner notification provision to ECPA.[7]

III. Discussion

The Commission is amending its regulations to implement the notification requirements contained in section 14 of ECPA. The new regulations require applicants for licenses other than FPA section 15 licenses to make a good effort to notify by certified mail certain property owners and government entities. An application for such a license must contain a statement that the applicant has made this effort either at the time of or before the filing of the application.

Under the new regulations a good faith effort must be made to so notify every property owner of record of any interest in the property within the bounds of the project. For projects without a specified boundary, this effort must be made to notify any owner of property which would underlie or be adjacent to the project works including any impoundments.

Additionally, the applicant must make this effort to notify the following:

(1) Every county in which any part of the project, and any Federal facilities that would be used by the project, would be located;

(2) Every city, town, or similar local political subdivision:

(a) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(b) That has a population of 5,000 or more people and is located within 15 miles of the project dam;

(3) Every irrigation district, drainage district, or similar special purpose political subdivision:

(a) In which any part of the project and any Federal facilities that would be used by the project, would be located; or

(b) That owns, operates, maintains, or uses any project facilities or any Federal facilities that would be used by the project; and

(4) Every other political subdivision or Federal, state, municipal or other local government agency in the general area of the project that there is reason to believe would be interested in, or affected by, the application.[8]

Notification must contain the name, business address, and telephone number of the applicant and a copy of Exhibit G as contained in the application. Exhibit G is a map of the project. The notice must also state that a license application is being filed with the Commission.

IV. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [9] and OMB's regulations.[10] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (Attention: Ellen Brown, Division of Organization and Management Analysis, (202) 357-5311). Comments on the information collection provisions in this rule may be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Administrative Findings and Effective Date

The Administrative Procedure Act exempts interpretative rules from both the notice and comment requirements of section 4(b) of the Administrative Procedure Act [11] and the requirement that publication be made thirty days before the effective date of the rule.[12] Since this rule merely implements the notification requirements contained in ECPA it is properly characterized as an interpretative rule. In order to allow OMB sufficient time to review the reporting requirements in this final rule, however, it will become effective November 5, 1987. If OMB has not approved this rule by that date, the Commission will issue a notice temporarily suspending the effective date until OMB has approved the requirements.

List of Subjects in 18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 4, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142, unless otherwise noted.

2. In § 4.32 paragraphs (a)(3) and (a)(4) are redesignated as (a)(4) and (a)(5), paragraph (a)(2)(iv) is revised and a new paragraph (a)(3) is added to read as follows:

§ 4.32 Acceptance for filing or rejection.

(a) * * *

(2) * * *

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application.

(3)(i) For a license (other than a license under section 15 of the Federal Power Act) state that the applicant has made, either at the time of or before filing the application, a good faith effort to give notification by certified mail of the filing of the application to:

(A) Every property owner of record of any interest in the property within the bounds of the project, or in the case of the project without a specific boundary, each such owner of property which would underlie or be adjacent to any project works including any impoundments; and

(B) The entities identified in paragraph (a)(2) of this section, as well as any other Federal, state, municipal or other local government agencies that there is reason to believe would likely be interested in or affected by such application.

(ii) Such notification must contain the name, business address, and telephone number of the applicant and a copy of the Exhibit G contained in the application, and must state that a

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[6] *Id.* For purposes of the FPA, a municipality means "a city, county, irrigation district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power". 16 U.S.C. 796(7) (1982).

[7] 132 Cong. Rec. S4138–4140 (daily ed. April 11, 1986) (Statement of Senator Humphrey).

[8] These government entities are generally the ones that an applicant for a preliminary permit or license is required to identify in its application, 18 CFR 4.32(a)(2) (1987), *supra*, note 4. The language "that there is reason to believe" is designed to establish a standard for determining whether an applicant has met the notification requirements contained in ECPA.

[9] 44 U.S.C. 3501–3520 (1982).

[10] 5 CFR 1320.12 (1987).

[11] 5 U.S.C. 553(b) (1982).

[12] 5 U.S.C. 553(d) (1982).

license application is being filed with the Commission.

* * * * *

[FR Doc. 87-23044 Filed 10-5-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 85C-0283]

Confirmation of Effective Date for D&C Violet No. 2

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 29, 1987, for the final rule that amended the color additive regulations to provide for the safe use of D&C Violet No. 2 for coloring contact lenses.

EFFECTIVE DATE: Effective date confirmed: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 27, 1987 (52 FR 19719), FDA amended the color additive regulations by adding § 74.3602 (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 for coloring contact lenses.

FDA gave interested persons until June 26, 1987, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of May 27, 1987, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the May 27, 1987, final rule. Accordingly, the regulation promulgated thereby became effective June 29, 1987.

Dated: September 29, 1987.

John M. Taylor,

Asssociate Commissioner for Regulatory Affairs.

[FR Doc. 87-23037 Filed 10-5-87; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. R-87-1296; FR-2197]

Refinancing of FHA Insured Single Family Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as final (without change) an earlier interim rule revising HUD regulations concerning the refinancing of FHA-insured single family mortgages. The rule: (1) Extends the maximum term allowable on a refinancing mortgage to the unexpired term of the existing mortgage plus twelve years, but not exceeding thirty years and (2) extends the authority to insure refinancing mortgages to FHA-insured mortgages covering units in condominium projects.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The recent trend toward lower mortgage interest rates made it advantageous for many FHA mortgagors who purchased their homes when interest rates were higher to refinance their mortgage loans. Such refinancings are also advantageous to HUD, since a lowering of monthly mortgage payments based on lower interest charges decreases the risk of default and, consequently, the risk exposure of the FHA insurance funds. In order to take better advantage of this situation HUD published an interim rule in the **Federal Register** on February 10, 1987 (52 FR 4138). The interim rule revised HUD's single family refinancing policies in an effort to make it possible for a larger number of FHA mortgagors to take advantage of current market conditions. This rule adopts as final, without change, the earlier interim rule.

Background and Description of Rule

HUD's authority to insure mortgages given to refinance single family insured mortgages, where the refinancing mortgage does not meet all eligibility requirements, is derived from section 223(a)(7) of the National Housing Act. The refinancing provisions in section 223(a)(7) were enacted to authorize the Department to insure mortgages given to refinance existing FHA insured mortgages, when the refinancing mortgages do not meet all of the requirements of the section of the National Housing Act under which the mortgages were originally insured. After enactment of section 223(a)(7), HUD issued a regulation (24 CFR 203.43(b)(7)), the refinancing provisions of which provide that the Department may accept a mortgage for insurance if—

> Given to refinance an existing mortgage insured under the (National Housing) Act. The amount of the refinancing mortgage shall not exceed the original principal amount of the existing mortgage. It shall have a maturity limited to the unexpired term of the existing mortgage.

The basic statute, section 223(a)(7) of the National Housing Act, also provided that—

> In any case involving the refinancing of a loan in which the Secretary determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, such refinancing mortgage may have a term not more than twelve years in excess of the unexpired term of such existing insured mortgage.

This provision for an increased mortgage term was not incorporated in the HUD regulation—24 CFR 203.43(b)(7). In the interim rule, the Department did incorporate the statutory provision—with the addition of safeguards relating to review of the mortgagor's prior payment record and assurances that the refinancing will result in lower monthly payments. The

change was based upon HUD's findings, stated earlier, concerning current mortgage market trends and their probable impact upon FHA mortgagors and the FHA insurance funds.

The interim rule also changed the maximum mortgage amount of the refinancing mortgage so that it is the lesser of the original principal amount for the existing mortgage or the unpaid principal balance of such mortgage plus closing costs as approved by the Commissioner. Previously, 24 CFR 203.43(b)(7) provided that the mortgage amount of the refinancing mortgage shall not exceed the original principal amount of the existing mortgage.

In the interim rule; previous § 203.43(b)(7) was removed and a new § 203.43(c), containing the provisions referred to above, was substituted. In addition, the rule amended 24 CFR Part 234 (Condominium Ownership Mortgage Insurance) to authorize the refinancing of insured condominium unit mortgages under the same terms and conditions. With respect to the other large category of FHA single family mortgages that falls outside Part 203—namely section 221(d)(2) mortgages covering low-cost homes—it should be noted that 24 CFR 221.1 incorporated by reference the refinancing provisions contained in 24 CFR 203.43 as revised by the interim rule. Through similar incorporations by reference, other miscellaneous single family programs are also covered. It should be noted, however, that the rule was *not* made applicable to mortgages insured under section 235 of the National Housing Act (see 24 CFR 235.1).

The Department recognizes that the rule will not be capable of being applied to Graduated Payment Mortgages and Modified Graduated Payment Mortgages until their negative amortization has been paid down to the original principal amount. "Original principal amount" is not to be equated with the "maximum principal amount" permitted in the GPM and modified GPM programs.

Also, the rule makes clear that any refund of a one-time MIP which was included in the amount of an existing mortgage shall be deducted in determining that mortgage's original principal amount and unpaid principal balance, but the amount of one-time MIP (if any) associated with the refinancing mortgage may be included in that mortgage.

Public Comments on Interim Rule

At the time of publication, the Department solicited public comments for a 60-day period on the interim rule. Three public comments were received—National Association of Homebuilders, United States League of Savings Institutions and The Mortgage Bankers Association of America. All commenters approved on the rule as drafted and had no recommendations for changes in the regulatory text.

The National Association of Homebuilders, did, however, express some disappointment over a current HUD policy which disallows financing of Commissioner-approved closing costs under the new regulation. The Department has determined that since there is no appraisal/underwriting performed which would serve to support an increased mortgage amount, the Government's interests are better served by not increasing the basic mortgage amount in cases where such underwriting is not carried out.

The U.S. League of Savings Institutions noted that there was some confusion within its membership concerning the coverage of the interim rule. Some mortgagees did not realize that the interim rule only addressed refinancings that do not require a new appraisal and new underwriting. In other words, the mortgage term and mortgage amount limitations of the interim rule do not apply to FHA refinancings where a new appraisal and underwriting are utilized. Such loans can usually be processed to higher loan-to-value ratios with the closing costs and discounts being included in the mortgage.

At present, the Department provides for two types of mortgage refinancing transactions that do not require regular mortgage credit underwriting. They are frequently referred to as "streamlined refinancings". These two types of streamlined finance transactions involve the refinancing of an FHA insured mortgage either *without* an appraisal (as under the interim rule) or *with* an appraisal but no full underwriting. In neither case may the mortgagor take "cash out" as a part of the refinancing.

In addition, HUD insures mortgages on other refinance transactions where there is an appraisal and full underwriting of the mortgagor. In such cases owner-occupant mortgages may take cash from the transaction, provided the mortgage amount does not exceed 85 percent of the value of the property.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the rule will have some impact on those mortgagors who choose to refinance their existing FHA-insured mortgages, and on their mortgagees, the rule's impact on individual borrowers and lenders should not be economically substantive, and in all instances its impact will be in accord with existing contractual rights reflected in these parties' mortgage loan contracts.

This rule was listed as item H–8–86 [Sequence Number 922] under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14380) under Executive Order 12291 and the Regulatory Flexibility Act.

The FHA home mortgage insurance and condominium unit mortgage insurance programs are listed in the Catalog of Federal Domestic Assistance as 14.117, Mortgage Insurance—Homes and 14.133 Mortgage Insurance—Purchase of Units in Condominiums.

List of Subjects

24 CFR Part 203

Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, the interim rule on Refinancing of FHA Insured Single Family Housing promulgated on February 10, 1987 (52 FR 4138) is adopted as final without change.

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Dated: September 28, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-22980 Filed 10-5-87; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 221, 234, and 251

[Docket No. R-87-1339; FR-2222]

Multifamily Leasehold Projects; Minimum Lease Term Eligibility

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the 1980 statutory change which lowers the minimum lease term for certain multifamily leaseholds projects to permit HUD-insured mortgages on leasehold with leases having a period of not less than 10 years to run beyond the maturity date of the mortgage. Before the statutory change, a first mortgage on real estate with a leasehold could be insured under the National Housing Act only if the lease has a period of *not less than* 50 years to run from the date that the mortgage was executed. (For administrative reasons, the Department set the limit generally at not less than 75 years.)

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Frank Brown, Deputy Director, Office of Multifamily Housing Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-6500. (This is not a toll-free number.) Morris Bourne, Director, Office of Multifamily Housing Management, Room 6158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426-3968. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule permits HUD-insured mortgages on leaseholds with leases having a period of not less than 10 years to run beyond the maturity date of the mortgage. Current regulations require that such leaseholds have a period of not less than 75 years to run from the date the mortgage was executed.

Section 306 of the Housing and Community Development Act of 1980, Pub. L. 96-399, amended the definition of "mortgage" in section 201(a) of the National Housing Act, 12 U.S.C. 1707, by inserting, in lieu of "having a period of not less than fifty years to run from the date the mortgage was executed", the language "having a period of not less than ten years to run beyond the maturity date of the mortgage". Because of the discretion afforded the Department under the terminology "not less than" and for administrative reasons concerning such problems as financing and mortgage extensions, the regulations published by the Department before the 1980 amendment required a lease term of not less than 75-years from the date of mortgage execution. The 75-year term was also set because of the Department's assessment that value often is a direct function of the remaining term of the lease. The Department has determined, however, that the 75-year restriction set because of the aforementioned underwriting concerns is no longer needed. Experience has shown that the greatest risk of foreclosure is during the early years of a mortgage and that there have been very few incidences of failure in the later years of a mortgage.

This regulatory change to reduce the required leasehold period will make insured mortgage financing more readily available in areas where leaseholds are prevalent. Renegotiations of leases solely to comply with the 50-year (or 75-year) requirement will be unnecessary. The change also provides the Department with some flexibility in disposing of Secretary-held properties. For example, ground leases will not have to be renegotiated before the property's sale. This amendment also makes HUD's program consistent with those of the VA and FNMA, whose policies require the term of a lease to exceed the mortgage term by 14 and 10 years, respectively.

This rule amends Part 221—Low Cost and Moderate Income Mortgage Insurance, Part 234—Condominium Ownership Mortgage Insurance (Projects-Conversion Individual Sales Units), and Part 251—Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects. Corresponding regulations changes were made to the single family mortgage insurance program—Parts 203, 213 (Individual Properties), and 234 (Individually Owned Units)—on May 21, 1984 (49 FR 21317). The May 21, 1984 change to Part 203 affected a number of other mortgage insurance programs because of their adoption of Part 203 definitions or eligibility requirements (e.g., Parts 220 (Homes), 222, 226,228, 233, 235, and 237). The majority of the remaining mortgage insurance programs (e.g., Parts 207, 213 (Projects), 220 (Projects), 224, 225, 227, 229, 231, 232, 238, 240, 241, 242, 244, and 255) are not affected by the 1980 statutory change to the definition of "mortgage" because they either adopt the definition of "mortgage" as stated in section 207 of the National Housing Act, which has not been amended, or they establish their own specific eligibility requirements.

Sections 221.544(a)(3), 234.520(a)(2)(ii), and 251.501(a)(3) are amended to permit HUD-insured mortgages on leaseholds with leases having a period of not less than 10 years to run beyond the maturity date of the mortgage. To make necessary conforming changes and to avoid subjecting leases executed by government agencies, Indians or Indian Tribes to more stringent insurance requirements than leases contemplated in the amended sections, §§ 221.544(a)(4), 234.520(a)(2)(iii) and 251.501(a)(4) are removed by this rule.

The Secretary has determined that notice and prior public procedure are unnecessary and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible because this rule conforms with a statutory change, the legislative history clearly reflects the Congress' wish that the Department's programs be made consistent with those of VA and FNMA, and the effect of the rule will be to make the Department's insurance programs available for use with a wider range of mortgaged properties.

Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section

1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the changes made by this rule affect mortgagors and owners of leased fees, some of whom may constitute small entities, there is not likely to be any significant economic impact on them. By reducing HUD requirements regarding lease terms, the rule makes it easier, and perhaps less costly, for mortgagors to negotiate lease terms.

This rule was listed as item number 961 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.112, 14.124, 14.126, 14.133, 14.134, 14.135, 14.137, 14.138, and 14.139.

List of Subjects

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, Chapter II of Title 24 of the Code of Federal Regulations is amended as follows:

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

1. The authority citation for Part 221 is revised to read as follows:

Authority: Secs. 211 and 221, National Housing Act, 12 U.S.C. 1715b, 1715*l*; section 221.544(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

2. Section 221.544 is amended by removing paragraph (a)(4), and by revising paragraph (a)(3) to read as follows:

§ 221.544 Eligibility of property.

(a) * * *

(3) Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for Part 234 is revised to read as follows:

Authority: Secs. 211 and 234, National Housing Act, 12 U.S.C. 1715b, 1715y; section 234.520(a)(2)(ii) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

4. Section 234.520 is amended by removing paragraph (a)(2)(iii) and by revising paragraph (a)(2)(ii) to read as follows:

§ 234.520 Eligibility of property.

(a) * * *

(2) * * *

(ii) A period of not less than 10 years to run beyond the maturity date of the mortgage.

* * * * *

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

5. The authority citation for Part 251 is revised to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 244, National Housing Act, 12 U.S.C. 1715z(9); section 251.501(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

6. Section 251.501 is amended by removing paragraph (a)(4) and by revising paragraphs (a)(2) and (3) to read as follows:

§ 251.501 Mortgage requirements—real estate.

(a) * * *

(2) Under a renewable lease for not less than 99 years; or

(3) Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

* * * * *

Dated: September 28, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87-22979 Filed 10-5-87; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. N-87-1729; FR-2392]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation; Consolidation of Flint and Saginaw Market Areas

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: This Notice established that Flint and Saginaw, Michigan, shall be consolidated into one market area known as "Flint" because of the historical duplication of the Fair Market Rents (FMRs) for these two areas. It also establishes that the FMRs that were set forth in the August 7, 1986 final notice for the Flint market area shall be the FMRs for the newly consolidated Flint market area.

EFFECTIVE DATE: October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In researching previous Fair Market Rents (FMRs) for the Flint and Saginaw market areas, the Department has discovered that for several years prior to 1985 the FMRs have been the same for both areas. The published FMRs for the Flint market area, effective October 3, 1985, reflected a special request by HUD's Detroit Office to increase the Flint market area rents; however, the Saginaw market was inadvertently overlooked at that time. Therefore, this Notice established that because of the historical coinciding of the FMRs for the two market areas, the two market areas designated as Flint and Saginaw shall be consolidated and known as the "Flint" market area for purposes of establishing FMRs.

In keeping with section 8(c)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f), which requires the Secretary to establish FMRs periodically, but not less frequently than annually, a final notice

announcing Fiscal Year 1986 FMRs for the Section 8 Substantial Rehabilitation Program was published on August 7, 1986, at 51 FR 28486. The August 7, 1986 final notice was issued following publication of the Department's proposed FMRs on April 22, 1986, at 51 FR 15174.

As a follow-up to the consolidation of the Flint and Saginaw market areas, below is the schedule of FMRs for Fiscal Year 1986 for the newly designated "Flint" area. It reiterates the schedule as set forth in the August 7, 1986 final notice for the Flint area with only a minor deviation for an "elevator 2–4 sty, O bedroom" unit which is being raised from $321 to $326. This five dollar raise for this category is being made to conform with the logical progression of FMRs from a "walkup" to an "elevator" type unit.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs announced in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Dated: September 28, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

OFFICE: DETROIT; REGION V: CHICAGO COMBINED MARKET AREAS OF SAGINAW & FLINT

Market area and structure type	Number of bedrooms				
	0	1	2	3	4 or more
Flint:					
Detached			555	638	758
Semi-detached/row	344	374	467	597	634
Walkup	321	361	421	552	626
Elevator 2–4 STY	326	379	445		
Elevator 5+	333	440	523		

[FR Doc. 87–22978 Filed 10–5–87; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 351 and 382

[DoD Directive 5134.1]

Under Secretary of Defense (Acquisition)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule removes 32 CFR Part 351 (DoD Directive 5129.1) in its entirety. It assigns responsibilities, functions, relationships, and authorizes to the Under Secretary of Defense for Acquisition because of an agency reorganization.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Office of the Assistant Secretary of Defense (Comptroller), Pentagon, Washington, DC 20301, telephone (202) 697–0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 382

Organization and functions (Government agencies).

PART 351—[REMOVED]

Accordingly, 32 CFR Part 351 is removed in its entirety.

Accordingly, Title 32 is amended to add Part 382 to Subchapter R as follows:

PART 382—UNDER SECRETARY OF DEFENSE (ACQUISITION)

Sec.
382.1 Purpose.
382.2 Definitions.
382.3 Responsibilities.
382.4 Functions.
382.5 Authorities and relationships.

Appendix A—Delegations of Authorities

Authority: 10 U.S.C. 133.

§ 382.1 Purpose.

Pursuant to title 10, United States Code this part assigns responsibilities, functions, relationships, and authorities as prescribed herein, to the Under Secretary of Defense (Acquisition) (USD(A)).

§ 382.2 Definitions.

(a) *Department of Defense Acquisition System.* A single uniform system whereby all equipment, facilities, and services are planned, designed, developed, acquired, maintained, and disposed of within the Department of Defense. The system entails establishing policies and practices that govern acquisitions, determining and prioritizing resource requirements, directing and controlling the process, contracting, and reporting to Congress.

(b) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); Defense Agencies; and DoD Field Activities.

§ 382.3 Responsibilities.

The *Under Secretary of Defense for Acquisition* (USD(A)) is the principal staff assistant and advisor to the Secretary of Defense for all matters relating to the acquisition system; research and development; production; logistics; command, control, communications, and intelligence activities related to acquisition; military construction; and procurement.

(a) The *USD(A)* shall:

(1) Serve as the Defense Acquisition Executive with responsibility for supervising the performance of the entire DoD acquisitions system in accordance with the policies, provisions, and authorities contained in DoD Directive 5000.1[1] and Office of Management and Budget (OMB) Circular No. A–109.

[1] Copies may be obtained if needed from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

(2) Develop policy for acquisition plans and strategies, validate program acquisition requirements, and develop acquisition program guidance;

(3) Set policy for acquisition matters, including contracting, research and development, production, construction, logistics, developmental testing, procurement, and training and career development of acquisition personnel;

(4) Set policy for administrative oversight of defense contractors;

(5) Serve as the DoD Procurement Executive, with responsibilities as prescribed in Executive Order (E.O.) 12352 and 41 U.S.C. 401–419;

(6) The IC, DoD shall coordinate audit and oversight of contractor activities with the USD(A) to prevent duplication of effort within the Department and unnecessary duplicative oversight of contractors.

(7) Serve as the National Armaments Director and Secretary of Defense representative to the Four Power Conference. Develop memoranda of agreements and memoranda of understandings with friendly and allied nations relating to acquisition matters; and

(8) Chair the Defense Acquisition Board (DAB) assisted by an integrated structure of councils and committees that relate to the acquisition process.

(b) For each assigned area, the *USD(A)* shall:

(1) Direct planning and special studies to analyze and evaluate the technical, economic, and military worth of programs in the acquisition system;

(2) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans and programs;

(3) Develop systems and standards for the administration and management of approved DoD acquisition plans and programs;

(4) Develop plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, and to ensure that programs and systems are designed to accommodate cross-Service operational requirements and promote modernization, consistent with the readiness, sustainability, and efficiency of the Armed Forces of the United States and its allies;

(5) Review and evaluate recommendations on requirements and priorities;

(6) Review and evaluate DoD Component plans and programs to ensure adherence to approved policies, standards, and resource planning guidance;

(7) In conjunction with the Assistant Secretary of Defense (Comptroller) ASD(C)) and Director of Program Analysis and Evaluation, review proposed resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved resource programs;

(8) Fulfill planning, programming, and budgeting activities relating to USD(A) responsibilities;

(9) Promote coordination, cooperation, and mutual understanding of all matters related to assigned activities, both inside and outside the Department of Defense;

(10) Serve as primary focal point and principal spokesman for the Department of Defense and serve on boards, committees, and other groups pertaining to assigned functional areas, and represent the Secretary of Defense on USD(A) matters outside the Department of Defense;

(11) Develop and maintain information management and reporting systems; and

(12) Perform such other duties as the Secretary of Defense may prescribe.

§ 382.4 Functions.

The USD(A) shall carry out the responsibilities described in § 382.3, for the following functional areas:

(a) Acquisition management.

(b) Basic and applied research, design and engineering, and the development of weapon systems.

(c) Command, control, communications, and intelligence programs, systems, and activities related to acquisition.

(d) Logistics management, to include supply systems, spares program management, items standardization, transportation, energy, warehousing, distribution, and related activities.

(e) Procurement activities.

(f) Scientific and technical information.

(g) Production and manufacturing.

(h) Industrial base resources and productivity.

(i) Force modernization.

(j) Developmental test and evaluation, as defined in DoD Directive 5000.2,[2] and review and approval of the Test and Evaluation Master Plan.

(k) Environmental services.

(l) Assignment and reassignment of research and engineering and acquisition responsibility for programs, systems, and activities.

(m) Codevelopment, coproduction, logistics support, and research interchange with friendly and allied nations, in coordination with the Under Secretary of Defense for Policy.

(n) Installation management.

(o) Construction, including construction funded by host nations under the North Atlantic Treaty Organization (NATO) Infrastructure program.

§ 382.5 Authorities and relationships.

(a) The USD(A) shall take precedence in the Department of Defense on acquisition matters after the Secretary and Deputy Secretary of Defense. On all other matters, the USD(A) shall take precedence after the Secretary and Deputy Secretary of Defense and the Secretaries of the Military Departments.

(b) The USD(A) shall direct the Secretaries of the Military Departments and Heads of other DoD Components on policy, procedure, and execution of the acquisition system. This includes responsibility for the development, management, supervision, and evaluation of acquisition systems and processes.

(c) The Secretary/Deputy Secretary of Defense shall make decisions on Acquisition milestones and resource matters, based on recommendations by the USD(A). The USD(A) shall prepare the documentation that reflects the Secretary/Deputy Secretary of Defense milestone decisions. These decisions shall be executed through the USD(A) for implementation by the Heads of DoD Components.

(d) In the performance of assigned functions, the USD(A) shall:

(1) Exercise direction, authority, and control over activities reporting directly to that official. These include:

(i) The Director of Defense Research and Engineering;

(ii) The Assistant Secretary of Defense (Research and Technology);

(iii) The Assistant Secretary of Defense (Production and Logistics);

(iv) Acquisition-related activities of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence);

(v) The Assistant to the Secretary of Defense (Atomic Energy);

(vi) The Director of Small and Disadvantaged Business Utilization; and

(vii) The Defense Advanced Research Projects Agency, the Defense Communications Agency, the Defense Logistics Agency, the Defense Mapping Agency, the Defense Nuclear Agency, and the Defense System Management College.

(2) Provide technical guidance for utilization of the Electromagnetic Compatibility Analysis Center.

(3) Provide policy guidance, goal setting, and management supervision for the Logistics Systems Analysis Office,

[2] See footnote 1 to § 382.3(a)(1).

Defense Logistics Studies Information Exchange, Defense Management Journal, Defense Materiel Specifications and Standards Office, Product Engineering Service Office, Weapon Support Improvement and Analysis Office, Defense Housing Management Systems Office, Defense Base Operations Analysis Office, and utilization of Federally Funded Research and Development Centers (FFRDCs).

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate balance among modernization, readiness, sustainability, efficiency, and economy.

(e) The USD(A) shall also:

(1) Issue DOD Instruction DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1-M,[3] that implement policies approved by the Secretary of Defense in the functions assigned to the USD(A). Instructions to Unified and Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff (CJCS).

(2) Obtain reports, information, advice, and assistance, consistent with DOD Directive 7750.5,[4] as necessary in carrying out assigned functions.

(3) Communicate directly with the Heads of DOD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated through the CJCS.

(4) Establish arrangements for DOD participation in nondefense governmental programs for which the USD(A) is assigned primary DOD cognizance.

(5) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(6) Coordinate and exchange information with other OSD and DOD officials exercising collateral or related responsibilities.

(7) Exercise the delegations of authority contained in the Appendix of this part.

(f) Other OSD officials and Heads of DOD Components shall coordinate with the USD(A) on all matters related to authorities, responsibilities, and functions assigned in this part.

Appendix A—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DOD policies, Directives, and Instructions, the USD(A), or in the absence of the USD(A), the person acting for the USD(A) is hereby delegated authority to exercise, within his assigned responsibilities and functional areas, all authority of the Secretary of Defense derived from statute, executive order, and interagency agreement, except where specifically limited by statute or executive order to the Secretary of Defense, to include but not limited to:

1. Exercise all authorities delegated to the Secretary of Defense by the International Trade Commission, Department of Commerce BDSA Del. No. 1, as amended (DOD Directive 4405.6,[5] July 8, 1986).

2. Act for the Secretary of Defense in the exercise of extraordinary contractual action authority under Pub. L. 85-804—an Act to authorize the making, amendment, and modification of contracts to facilitate the national defense, August 28, 1958, in accordance with E.O. 10789, November 14, 1958, as amended, and Part 50 of the Federal Acquisition Regulation.

3. Make Secretarial determinations, justifications, and approvals on behalf of the Defense Advanced Research Projects Agency (DARPA), Defense Communications Agency (DCA), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), and the Defense Nuclear Agency (DNA) under Title 10, United States Code, with the authority to redelegate to the Directors of those Agencies as appropriate.

4. Act for The Secretary of Defense in the establishment and granting of waivers under the Buy American Act (41 U.S.C. 10a-10b).

5. Act for the Secretary of Defense on delegations of authority to him by the U.S. Trade Representative to waive the prohibition against procurement from certain countries, pursuant to Title 3, Pub. L. 96-39, Trade Agreements Act of 1979 (19 U.S.C. 2511 *et. seq.*), and E.O. 12260, July 26, 1979.

6. Act for the Secretary of Defense in the exercise of authority delegated by the Administrator of General Services to dispose of surplus personal property and to waive prescribed demilitarization requirements under DoD Directive 4160.21,[6] December 5, 1980.

7. Make determinations with respect to the donation of surplus personal property to educational activities of special interest to the Armed Forces of the United States as prescribed in DoD Directive 4160.25,[7] April 30, 1984.

8. Act for, and exercise the powers of, the Secretary of Defense concerning requests for waiver of the navigation and vessel inspection laws of the United States under Pub. L. 891, 81st Congress, 2nd Session, December 27, 1950, (64 Stat. 1120), except on those matters that have been delegated by the Secretary of Defense to the Secretary of the Army.

9. Make recommendations to the Department of Energy in connection with facilities for transmission of electric energy and natural gas across borders of the United States, pursuant to the authority given the Secretary of Defense in E.O. 10485, September 3, 1953, as amended by E.O. 12038, February 3, 1978.

10. Act for the Secretary of Defense in the field of transportation and traffic management under section 201(a), Title 11, of the Federal Property and Administrative Services Act of 1949, June 30, 1949, as amended (40 U.S.C. 481(a)) (DoD Directive 5126.9,[8] June 18, 1979).

11. Act for the Secretary of Defense as the DoD claimant to other designated Executive Departments and Agencies for petroleum requirements and allocations in an emergency (DoD Directive 4140.25,[9] May 15, 1980).

12. Exercise all responsibilities and authorities of the Secretary of Defense under Title 10, United States Code, section 2404 with respect to the acquisition of petroleum.

13. Act for the Secretary of Defense in the implementation of OMB Circular No. A-109, "Major System Acquisitions," April 5, 1976.

14. Make the determination required by Title 50, United States Code, section 1512(1), concerning transportation or testing of any lethal chemical or any biological warfare agent.

15. Submit the annual report to Congress on funds obligated in the chemical warfare and biological defense research programs, required by Title 50, United States Code, section 1511.

16. Act for the Secretary of Defense for ensuring compliance with Pub. L. 92-463, the Federal Advisory Committee Act (5 U.S.C. Appendix), and make written determinations for conduct of all closed meetings of Federal Advisory Committees under his cognizance as prescribed by section 10(d) of the Act, (5 U.S.C. Appendix, 10(d)).

17. Act for the Secretary of Defense as the primary OSD interface with the Defense Policy Advisory Committee on Trade.

18. Act for the Secretary of Defense to make appropriate supporting determinations execute leases under title 10, United States Code, section 2667.

19. Act for the Secretary of Defense in the implementation of OMB Circular A-76, "Performance of Commercial Activities," as revised, August 4, 1983.

The USD(A) may redelegate these authorities, as appropriate, except as otherwise specifically indicated above or prohibited by law or regulation.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1987.

[FR Doc. 87-22897 Filed 10-5-87; 8:45 am]

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[3] Copies may be obtained, if needed, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[4] See footnote 1 to § 382.3(a)(1).

[5] See footnote 1 to § 382.3(a)(1).

[6] See footnote 1 to § 382.3(a)(1).

[7] See footnote 1 to § 382.3(a)(1).

[8] See footnote 1 to § 382.3(a)(1).

[9] See footnote 1 to § 382.3(a)(1).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 250

[SWH-FRL 3089-7]

Guideline for Recovered Materials Content in Paper Products Procured by the Federal Government

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is issuing a guideline for Federal procurement of paper and paper products containing postconsumer recovered materials. The guideline implements section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). Section 6002 states that if an agency uses appropriated Federal funds to purchase certain designated items, such items must contain the highest percentage of recovered materials practicable, and in the case of paper, postconsumer recovered materials. EPA is required to designate items for procurement and to issue guidelines to assist procuring agencies in complying with the section 6002 procurement provisions.

This guideline designates paper and paper products as items for which the procurement requirements of RCRA section 6002 apply. The guideline also presents recommendations for carrying out these procurement requirements, as well as the requirements to revise specifications to allow use of post consumer recovered materials to the maximum extent possible.

Elsewhere in today's **Federal Register**, EPA is proposing amendments to this guideline to recommend specific minimum content standards, a definition of "waste paper," and recommendations regarding data gathering to meet the annual review and monitoring requirement. These proposed amendments respond to comments received by EPA on the paper guideline proposed on April 9, 1985 (50 FR 14076).

DATE: The effective date of the guideline is November 5, 1987.

ADDRESS: The public docket for this guideline may be inspected in Room MLG-100, U.S. EPA, 401 M Street SW., Washington, DC from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

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  B. Requirements of Section 6002
  C. Rationale for Selecting Paper and Paper Products Containing Recovered Materials for a Procurement Guideline
III. Background Information on Using Recovered Materials in Paper and Paper Products
  A. Introduction
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  D. Major Federal Purchasers
IV. Discussion of Guideline
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I. Authority

This guideline is being issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A. Purpose and Scope

The Environmental Protection Agency (EPA) today is issuing the second of a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA" or "Act"), 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to purchase certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate such items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230). A second guideline, for paper and paper products containing recovered materials, was proposed on April 9, 1985 (50 FR 14076). A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). EPA also is preparing guidelines for re-refined lubricating oils and for retread tires.

Today EPA is issuing the final guideline for paper and paper products. Elsewhere in today's **Federal Register**, EPA is proposing to amend the guideline in response to certain comments.

B. Requirements of Section 6002

Section 6002 of the Act, titled Federal Procurement, directs all procuring agencies that use appropriated Federal funds to procure items that contain the highest percentage of recovered materials practicable, and in the case of paper, postconsumer recovered materials, provided that reasonable levels of competition, cost, availability, and technical performance are maintained. This requirement applies only to those items (or products) that are designated by EPA under section 6002(e). Further, the requirement applies only when the purchase price of the item exceeds $10,000 or when the cost of such items purchased during the preceding year exceeded $10,000.

Federal agencies responsible for drafting or reviewing specifications are required to review and revise their specifications for items designated by EPA in order to remove requirements that items be manufactured from virgin materials and remove prohibitions against the use of recovered materials,

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including, in the case of paper, postconsumer recovered materials.

Vendors are required to estimate the percentage of postconsumer recovered materials utilized for the performance of any contract and to certify that the percentage of postconsumer recovered material content to be utilized is at least the amount called for by the specifications or other contractual requirements.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must be consistent with Federal procurement requirements and must contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Section 6002(e) requires EPA to prepare guidelines to assist procuring agencies in carrying out these requirements. The guidelines must designate those products that can be produced with recovered materials and whose procurement by procuring agencies will fulfill RCRA objectives. The EPA guidelines also must provide specific recommendations with respect to the procurement of products containing recovered materials.

Federal procurement of products made from recovered materials can increase recovery of materials from the solid waste stream, and use of such products by Federal, state, and local agencies can demonstrate their technical and economic viability to others. The use of recovered materials in paper and paper products will materially reduce the quantity of paper that must be landfilled. In addition, the Federal government's commitment to increase purchases of paper and paper products containing postconsumer recovered materials may encourage manufacturers to increase the amount of other recovered materials in their products. The Federal government accounts for the purchase of about two percent of all paper consumed in the United States. For some types of paper, such as tissue and printing/writing papers, the percentage is higher than this and therefore is significant. Thus, this guideline could have a positive effect on public attitudes and on consumers' acceptance of paper and paper products containing postconsumer recovered materials.

C. Rationale for Selecting Paper and Paper Products Containing Recovered Materials for a Procurement Guideline

As indicated in the preamble to the fly ash guideline, EPA prepares guidelines for items containing recovered materials that have been designated by the Administrator under section 6002(e) after consideration of certain factors.

Section 6002(e) of RCRA specifically directs the EPA Administrator to issue a procurement guideline for paper. The term "paper" is construed by EPA to include paperboard and paper products also. Since Congress already has designated this product as an appropriate subject for a procurement guideline, it is not necessary for EPA to demonstrate further in this preamble that paper satisfies the statutory criteria for designating a procurement item.

III. Background Information on Using Recovered Materials in Paper and Paper Products

A. Introduction

In 1984, about 77 million tons of paper and paper products were consumed in the U.S.A., of which about 21 million tons were recovered for recycling and about 50 million tons of paper and paper products were disposed of, primarily in municipal solid waste landfills. This is about half of all manufactured product waste appearing in municipal solid waste and about 35 percent of all municipal solid waste discarded (principally from households, commercial businesses, and institutions). By any measure, paper and paper products constitute a major portion of solid waste in this country.

The nation spends more than $9 billion annually on solid waste disposal. Most communities are running out of landfill capacity, and the siting of new landfills has become very difficult. Thus, activity to promote recovery and reuse of paper and paper products is a matter of national priority both to reduce the cost of disposal and to extend the life of existing landfills.

It should be noted, however, that paper and paper product disposal is not known to be a significant threat to human health or the environment as the wastes are generally nonhazardous in character. Thus, while the disposal of paper does not present an urgent need for immediate solution from the health and environment viewpoint, it is being addressed because many areas of the U.S. are running out of disposal options for all wastes and face serious crises unless the solid waste streams can be reduced and/or disposed of in an acceptable manner.

B. Use of Recovered Materials in Paper and Paper Products

Within the paper industry and its suppliers, discarded paper recovered for use in manufacturing processes is called waste paper, recyclable paper, or paper stock. It is often kept separate from mixed refuse at the businesses and residences where it is discarded. For example, businesses may separate and bale used corrugated containers to be picked up by a waste paper dealer, and people may separate newspapers in their homes to be donated to a local paper drive for a charity. Some businesses and institutions practice the separate recovery of office papers in office buildings by means of a desk top sorting container or other ways. Waste paper that is separated and collected is then customarily transferred to a waste paper dealer, who prepares the paper for shipment by baling or other means, and sells the waste paper to a paper mill.

At the paper mill, waste paper is mixed with water in a large vessel with rotating beaters at the bottom similar to a kitchen blender, but much larger. The beating process separates the paper fibers and forms a slurry pulp. This recycled pulp is similar in appearance to virgin pulp prepared from wood. Recycled pulp is then cleaned and washed as necessary. In some recycling processes, the recycled pulp is washed with chemicals to remove inks, adhesives, and other contaminants. This process is referred to within the paper industry as "deinking." After deinking, the recycled pulp is equivalent to virgin pulp. Both recycled and virgin pulps are formed into paper and paper products in a similar fashion.

Paper products are manufactured from either virgin or recovered materials, or combinations of the two, by various manufacturers. Tests have shown that for a given product grade there is a wide variation in all measurable characteristics depending on particular manufacturers or particular production runs at a given mill. Products from both virgin and recovered materials generally fall into the same range of variability and frequently, they cannot be distinguished by the typical end user.

However, recycled paper fibers do tend to be shorter than virgin fibers because of the recycling process. The short fibers may cause recycled paper to be weaker than an otherwise equivalent virgin sheet, but the sheet will also have a higher opacity. In paperboard products, the recycled grade is

sometimes produced at a somewhat higher caliper (thickness) than the equivalent virgin fiber product to ensure similar performance characteristics. Paper and paperboard manufacturers can generally manufacture products that meet customer specifications by taking into account the characteristics of paper made from recovered material. For some products the recycled fiber characteristics are preferred; for most there need not be any differences distinguishable by the end user.

Some recycled fiber is derived from paper containing printing, or from paper that has other materials such as coatings or adhesives on it. Paper made from these recovered materials sometimes does not have quite the same appearance as virgin paper. It is not quite as bright, or as white, or has a grayish or bluish tint, and it is sometimes speckled in appearance. Recycled paper manufacturers can bleach and brighten the paper and clean contaminants from the pulp. Coatings can also be added to the paper surface to enhance its "whiteness" and "brightness." These processes allow paper made from recovered materials to meet customer specifications.

EPA concludes that as a general rule, paper containing recovered materials can be manufactured to meet customer specifications. However, some of the commenters on the proposd paper guideline questioned whether paper made from recovered materials is always available at all locations at a reasonable price. This concern is addressed later in this preamble.

C. "Postconsumer Recovered Materials"

RCRA Section 6002(h) provides that, in the case of paper products, the term "recovered materials" includes: (1) Postconsumer materials; and (2) manufacturing, forest residues, and other wastes. The Hazardous and Solid Waste Amendments of 1984, in revising section 6002, uses the specific term "postconsumer recovered materials" in describing the material whose use is to be maximized by the guideline for paper and paper products. For this reason, the guideline refers to paper and paper products containing postconsumer recovered materials, rather than to "recycled paper."

The general category of waste paper includes all types of postconsumer recovered materials such as old newspaper, used corrugated containers, and office waste paper. It also includes preconsumer wastes from manufacturing processes, distributors, printers and paper converting operations such as white trimmings (called pulp substitutes) or printed paper which has never reached the consumer. The use of preconsumer waste paper (or "recovered materials") is already at a high level. Increasing the demand for paper products containing recovered materials therefore requires that postconsumer waste paper be used. While the use of postconsumer recovered materials is emphasized in RCRA section 6002, increased usage of preconsumer waste materials in paper and paper products should also be addressed. As demand increases for a wider range of paper and paper products containing recovered materials, manufacturers of products that are currently made with preconsumer materials will have to use larger quantities of postconsumer recovered materials to meet their raw materials (i.e., waste paper) supply needs.

D. Major Federal Purchasers

The major Federal purchasers of paper, and, therefore, the agencies most likely to be affected by this guideline are: The Government Printing Office (GPO), which operates under the direction of the Congressional Joint Committee on Printing (JCP); the General Services Administration (GSA); and the Department of Defense (DOD). On advice of its Committee on Paper Specifications, which includes representatives from GPO, JCP adopts specifications and standards for printing and writing grades of paper. GSA adopts specifications for all other paper and paper products. DOD further reviews these standards and drafts additional specifications, as necessary, to establish military standards for some of the items it procures.

IV. Discussion of Guideline

This section of the preamble summarizes and explains the basis for each section of the final guideline. Section V discusses recommendations as to price, competition, availability, and performance, while section VI discusses implementation of the guideline.

A. Scope

This guideline applies to the use of postconsumer recovered materials in paper and paper products purchased by procuring agencies using Federal funds. Included are all paper and paperboard categories except building and construction paper grades. The Agency believes that by including as many items as possible within the scope of the guideline, the paper industry will be encouraged to increase and to improve the production of paper and paper products containing postconsumer recovered materials.

The following list of major paper and paperboard purchase categories is included as an illustration. However, the list is not intended to be all-inclusive.

High Grade Bleached Papers
- Printing and writing papers, including mimeo and duplicator papers
- Mailing envelopes
- Memo pads
- Form bond and manifold business forms
- Computer paper
- Xerographic/copy paper

Newsprint

Tissue Products
- Sanitary products, e.g., toilet tissue, paper towels, facial tissue, paper napkins
- Industrial wipers

Unbleached Paper and Paperboard

Coarse paper

Linerboard and corrugating medium

Corrugated boxes

Fiber sheets and boxes

In making its decision regarding the scope of this guideline, the Agency considered suggestions from the Government Printing Office and representatives of the printing industry to the effect that performance standards for certain grades of printing and writing paper can currently be met only by virgin paper. It was suggested that EPA exclude these papers on an item-by-item basis. It was also suggested that certain items that must meet stringent standards of noncontamination, such as surgical masks and items coming in contact with wet or oily foods, should be individually identified for exclusion.

EPA has concluded that the language of section 6002(d)(2) of RCRA requiring the "use of recovered materials to the maximum extent possible without jeopardizing the intended use of the item" effectively allows the exclusion of an item when performance standards cannot be met if postconsumer recovered materials are included in the content. None of the commenters indicated why the statutory limitation is inadequate to accommodate the concerns of agencies that draft and review specifications. A determination to exclude a specific item from a recovered materials content requirement may be made by the agency in drafting and reviewing specifications based on standards related to performance. EPA suggests a procedure for establishing such an exclusion in § 250.13 of this guideline. It is further suggested that performance tests be cited and that test results be included in records for the annual review process and in any reporting on the effectiveness of this guideline implementation.

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EPA decided not to include building and construction grades of paper based on several considerations. In reviewing the variety of paper and paper products that are or may be manufactured with a percentage of postconsumer recovered materials, it became apparent that building and construction grades constitute a significant and distinct industry unrelated to the manufacturing of virtually all other grades of paper and paperboard. The manufacturing, marketing, standards, and testing mechanisms for building and construction grades are different from those for other grades of paper. Any evaluation of the feasibility and potential effectiveness of a Federal procurement program for these grades would require extensive additional information; in addition, different procurement offices and procedures are involved in the procurement of construction categories. For these reasons, EPA believes that it would be more appropriate to consider building and construction grades of paper in a separate context.

B. Applicability

The requirements of section 6002 generally apply to"procuring agencies" which are defined in section 1004 as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency exceeding $10,000 or to purchases where the quantity of "functionally equivalent" items purchased in the preceding fiscal year exceeded $10,000. EPA believes that its interpretation of this requirement, which is described in more detail below, will provide an effective program without imposing an unreasonable bookkeeping burden on the purchasers and users of paper and paper products.

1. *Direct Purchases.* For the purpose of this guideline, purchases made as a result of a solicitation by a procuring agency for its own general use or that of other agencies (for example, GSA purchases) are considered "direct." EPA believes that a contract for printing is, in part, a paper procurement action because the type of paper to be used is explicitly stated in the contract. (Labor and overhead expenses involved in printing would be considered a service.) Therefore, a Federal agency that provides printing services to other governmental agencies would be subject to this guideline. The guideline leaves the method of calculating the value of paper used in performing a printing contract to the discretion of the agency awarding that contract. This provides wide latitude. GPO has stated that the value of the paper may be as low as 20 percent or as high as 80 percent of the contract. The value allocated to the paper used in the performance of the printing contract would determine the applicability of the guideline: If that value is $10,000 or more, the guideline would apply.

2. *Indirect Purchases.* As stated previously, section 6002 of RCRA and the guideline apply to procurement actions by non-Federal agencies if they expend appropriated Federal funds. Thus, if Federal funds are used to establish or maintain a program or activity by a State, local government, contractor, or grantee and if accounts of Federal monies are kept separately from other accounts, the requirements of section 6002 and the provisions of the guideline would apply to any procurement of paper or paper products for that program or activity if it meets the $10,000 threshold. If, however, Federal funds are used to support continuing programs and activities, and it is not possible to separate such funds from other receipts, these requirements would not apply. For example, if a city Housing Authority receives a Federal grant to build and maintain a housing project and uses $10,000 of the funds for stationery, leases, or brochures, the provisions of the guideline would apply. On the other hand, if the Housing Authority receives a disbursement of Federal funds from a block grant for general support of its continuing program, and the disbursement includes other sources of funding and/or no separate accounting for specific items is maintained, the provisions of the guideline would not apply.

3. *The $10,000 Threshold.* The procurement requirements of section 6002(a) apply to any purchase of a "procurement item" or "functionally equivalent" procurement item costing $10,000 or more. In common usage, terms such as "paper" and "boxes" include many items manufactured to meet different performance standards. They may not, therefore, technically be "functionally equivalent." (For instance, offset printing paper should not be used for high-speed office copiers.) The variations in grades and types of paper products are numerous. The JCP has specifications for over 50 grades of all types of paper, 23 for printing alone, while GSA estimates that it providesspecifications for about 300 paper products. Because few procuring agencies, as defined in the Act, purchase $10,000 worth of any one grade of paper or any one paper product, restricting the applicability of section 6002 to purchases based on a very technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of the Act.

The Agency has concluded that, in the case of paper and paper products, "functionally equivalent" items should be defined as a category of items having the same or substantially similar end use. EPA has developed a categorization based on this concept of similar end use. For procuring agencies making many purchases, the categorization will extend the applicability ofthe guideline beyond a technically defined "functional equivalency" so that a greater number of procurement actions are affected. The categorization will, on the other hand, reduce the number of small entities affected because the categories represent a more limited concept of functional equivalency than the inclusive term "paper."

Under § 250.3 of the guideline, each of the following groups of items are "functionally equivalent":

—All grades and types of xerographic/copy paper;
—Newsprint;
—All grades and types of printing and writing paper;
—Corrugated boxes and fiberboard boxes;
—Folding boxboard and cartons;
—Stationery, office papers (memo pads, scratch pads, etc.), envelopes, and manifold business forms including computer paper;
—Toilet tissue, paper towels, facial tissue, paper napkins, doilies, and industrial wipers;
—Brown papers and coarse papers.

Note that some of these categories have been revised slightly from the proposed guideline in response to comments.

C. Requirements vs. Recommendations

Commenters stated that the proposed preamble and guideline did not clearly define what was required of procuring agencies. In particular, commenters found EPA's use of the verbs "shall," "must," "recommend," "should," and "suggest" to be confusing.

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. The guidelines refer to the section

6002 requirements and contain two types of provisions: Requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). The verbs "shall" and "must" indicate requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations.

Procuring agencies must comply with the requirements of section 6002, whereas EPA's recommendations are only advisory. Procuring agencies may use a different approach to meeting the section 6002 requirements. EPA believes, however, that compliance with its recommendations constitutes compliance with the section 6002 requirements.

D. Definitions

Most of the definitions in this guideline are the same definitions used in RCRA and therefore do not require further explanation. Other definitions, such as "paper," incorporate standard industry definitions. A few definitions are further discussed in this section of the preamble.

1. *"Paperboard."* One common term used by the industry is "paperboard." This term is used to describe thick paper used in the manufacture of products such as tablet backs, folding boxes, and corrugated boxes. Paperboard is similar in composition and form to paper, but generally refers to sheet that is 0.012 inch thick or thicker. Thus, the term "paper," which is used in the Act, is construed to include paperboard and paperboard products.

2. *"Practicable."* Section 6002 requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). Commenters asked EPA to define the term "practicable" as used in section 6002. In response, EPA has added a definition of "practicable" in the final guideline.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: Competition, availability, performance, and price. EPA's definition of "practicable" incorporates these criteria.

3. *"Mill Broke."* EPA has determined that the definition of dry paper and paperboard waste in "recoverable materials" (section 6002(h)(2)(A)) specifically excludes mill broke, which is any paper waste generated before completion of the papermaking process. Mill broke is commonly returned to the pulping process and is composed of whatever the pulp is derived from, e.g., wood pulp, waste paper, etc. In the final guideline, the definition of "mill broke" makes clear that it is excluded from the term "recovered materials."

E. Specifications

1. *General.* Section 6002(d)(1) required that, no later than May 8, 1988, Federal agencies that draft and review specifications for procurement items procured by Federal agencies eliminate specifications that prohibit the use of recovered materials or that require that items be manufactured from virgin materials only. Section 6002(d)(2) requires that within one year after publication of this guideline, procuring agencies must assure that "such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended use of the item."

Since passage of the 1980 Amendments to section 6002(d) of RCRA, some agencies have moved to require the use of recovered materials; others have felt it sufficient to "permit" and/or "encourage" the use of "reclaimed fibers" or "recovered materials." By adding the requirements that procuring agencies establish affirmative procurement programs for items containing postconsumer recovered materials or other recovered materials, the 1984 Amendments make it clear that simply "permitting" or "encouraging" the use of such materials is not sufficient to assure that specifications require the maximum use of postconsumer recovered materials "without jeopardizing the intended use of the item." Federal agencies must take affirmative steps to encourage their use.

Section 250.12(b) of the guideline presents recommendations for specification revisions to implement the statutory requirements. Unnecessarily stringent specifications must be revised to allow for a higher postconsumer recovered materials content. Specifications need not be revised, however, "if it can be technically determined that for a particular end use a product containing such materials will not meet reasonable performance standards." (§ 250.13.)

Commenters stated that specifications sometimes do not clearly state the intended end use of products. For example, paper purchased as printing paper is sometimes used in high-speed copiers with unfortunate results simply because the user did not properly recognize a difference in paper characteristics. In such cases, product specifications should be revised to clearly state an intended end use for a product(s). When using postconsumer recovered materials, it is important that the correct grades be supplied for the intended end use. EPA recommends that specifications clearly identify both the expected performance and the specific intended use, especially when the paper is to be used in high-speed copiers.

The proposed guideline contained a recommendation that procuring agencies insert a clause in specifications to indicate that paper and paper products containing postconsumer recovered materials were preferred over those without such content. (See § 250.12(b)). Commenters pointed out that this clause was vague, ill-defined, and possibly counter-productive. EPA agrees and has deleted this paragraph from the final guideline.

2. *Specifications Related to Performance.* Certain paper items may not meet the standards of performance necessary for their intended end use if they contain any percentage of postconsumer recovered materials. Examples of such items are paper which comes into contact with wet or oily food, archival papers, certain map papers, deed papers, and face masks for use in "clean rooms." EPA considered removing these paper items from its designation of items to be covered by the guideline. Unlike construction grade papers, which are excluded on a categorical basis, these papers would have to be excluded on an item-by-item basis. EPA concluded that it does not have the expertise to make such a technical determination, and that such determinations are best left to procuring agencies.

Section 250.13 of the guideline recommends that an agency document any finding that, for a particular end use, an item containing postconsumer recovered materials will not meet reasonable performance standards and reference the documentation in subsequent solicitations for bids for that item. The documentation should clearly show that the unacceptable performance is caused by the properties of the paper itself and not by the equipment with which the paper is used. The documentation should reference specific tests used to judge performance.

Commenters raised questions relating to the performance of products containing postconsumer recovered materials in the printing/writing and fiber box categories. As a result, EPA

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reviewed information about the technical performance of these products.

a. *Printing/Writing Papers.* Performance testing of paper containing postconsumer recovered materials is a continuing activity of paper manufacturers. In some instances, the evaluation of the reports of these organizations was complicated by the fact that the recovered materials used were not precisely identified as either postconsumer or other recovered materials. The reports of these organizations indicate, however, that acceptable performance is possible in most grades of paper and paper products made from recovered materials. The use of preconsumer recovered materials is common in printing and writing papers, although the use of postconsumer recovered materials is more limited.

Commenters also stated that paper containing postconsumer recovered materials causes difficulty in printing and high-speed copier machines. EPA has reviewed documentation from State printing agencies and private sector printers and has found that this is a common reaction by pressmen. In many States, printers have refused to use paper made from recovered materials. However, several States have had many years of experience in printing with such paper, after having first overcome adverse reactions by pressmen. These States report that while there is some difficulty in using printing paper made from postconsumer recovered materials, it is no more than with other economy grades of printing paper. Therefore, procuring agencies and agencies that revise and write specifications should carefully identify the performance expected of the product so that acceptance or rejection is based on verifiable tests rather than preconceived perceptions.

EPA has obtained results of laboratory tests for both virgin paper and paper made from postconsumer recovered materials.[1] These test results provide additional verification that paper made from recovered materials can and does meet the same standards as virgin paper for many categories of printing/writing papers. This is especially true in the economy grades typically purchased in competitive bids by public agencies.

b. *Fiber Boxes.* The primary standards for linerboard (the facing material of corrugated containers) and fiber boxes are set by the Uniform Freight Regulations and are measures of basis weight and mullen (burst strength). As noted below under "New Specifications," these standards are currently under review. The contemplated changes would replace the mullen test with a "crush" test that would enable linerboard manufacturers to use a percentage of postconsumer recovered materials. (In fact, there are already a few mills that produce linerboard made of 100 percent postconsumer waste paper.) Federal procurement of linerboard containing postconsumer recovered materials could then be practicable.

c. *Other Performance Issues.* Commenters recommended that the Agency develop its own tests or testing procedures. However, the Agency does not have the expertise to do so. Moreover, EPA believes that analysis of product characteristics, including conducting tests and/or analyzing test results, is a responsibility of the procuring agency. EPA also believes that procuring agencies should maintain data on such test results. In the companion action in today's **Federal Register**, EPA is proposing that procuring agencies maintain such test results.

3. *Specifications Related to Aesthetics.* Some commenters stated that specifications related to aesthetics, such as whiteness, brightness, color, and dirt count, serve as impediments to the use of paper containing postconsumer recovered materials. The American Society for Testing and Materials (ASTM) and the Technical Association of the Pulp and Paper Industry (TAPPI) have established standards for brightness and dirt counts which paper and paper products made from postconsumer recovered materials can meet. Using these established standards as a reference, EPA recommends that agencies that draft specifications conduct a careful review of existing specifications related to aesthetics to determine whether they are overly stringent for the product's intended end use, and if so, amend them.

4. *New Specifications.* Considerable technological advances are occurring in the paper and paperboard manufacturing industry. These advances are leading to increased utilization of postconsumer recovered materials in many products and the introduction of the use of preconsumer materials in other products, e.g., pulp substitutes and deinking grades of waste paper and sawdust and other forest residues. For instance, the Railway Association is currently considering a performance test change that would effectively allow more use of recovered materials in fiber (corrugated) boxes. In recent years, the process of manufacturing newsprint with nearly 100 percent postconsumer recovered materials has become common. In § 250.14 of the guideline, EPA recommends that procuring agencies monitor new developments and use them to increase the use of postconsumer and other recovered materials.

F. Affirmative Procurement Program

Section 6002(i) of RCRA requires procuring agencies to adopt an affirmative procurement program to ensure that paper and paper products containing postconsumer recovered materials are purchased to the maximum extent practicable. As discussed previously, RCRA section 6002(h) provides that "postconsumer recovered materials" are a specific subset of "recovered materials." The definition of "postconsumer recovered materials" includes paper, paperboard, and fibrous wastes that have passed through their end usage as a consumer item or that enter and are collected from municipal solid waste. "Recovered materials" is a broader term, including postconsumer recovered materials as well as such widely-used wastes as manufacturing wastes, forest residue, and other wastes. Because the intent of this guideline is to reduce the municipal solid waste stream, the focus of this guideline is postconsumer recovered materials, which are not used as widely.

EPA received comments that the proposed guideline did not make the specific requirements of an affirmative procurement program clear. In response, EPA has devoted this section of the preamble to clarifying these requirements. The affirmative procurement program must contain four elements: (1) A preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification; and (4) procedures for annual review and monitoring of the program's effectiveness.

1. *Preference Program.* The first of the four requirements of the affirmative procurement program is a recovered materials preference program to maximize the use of postconsumer recovered materials. The procuring agency may implement the preference program by employing a case-by-case approach, by adopting minimum content standards, or by choosing a substantially equivalent alternative.

Section 6002(i) also requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals.

[1] See docket materials dated October 9, 1985 submitted by an EPA contractor.

Among these are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-asides are currently being used in some State programs for the procurement of paper and paper products containing recovered materials. Four States are currently using price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two States have set-aside programs for paper and paper products. These States report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. However, in the case of existing Federal preferential procurement programs that allow a price preference or a set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of section 6002 seems, however, to contemplate the adoption of either price preferences or set-asides, and doing so would conflict with existing Federal procurement regulations. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that agencies use either a case-by-case approach, minimum content standards, or a substantially equivalent alternative, as provided in RCRA section 6002(i)(3).

In the proposed guideline, EPA recommended case-by-case procurement as the preferred approach, although other approaches could be used. In response to comments, the final rule leaves the choice of approach for procurement of each paper or paper product to the individual procurement agencies. However, after careful consideration of all available data—including data submitted with the comments—EPA has concluded that agencies which elect to use reasonable minimum content standards will be in compliance with the statutory requirements, but agencies using the case-by-case approach or a substantially equivalent approach will not necessarily meet these requirements.

The strongest reason supporting this conclusion is the fact that tie bids are rare in government procurements. Consequently, wide use of the case-by-case approach may not result in agencies buying paper and paper products with postconsumer recovered materials to the maximum extent practicable. Therefore, an agency that selects the case-by-case or a substantially equivalent method will be expected to justify how its approach meets the statutory requirements.

a. *Case-by-Case Approach.* The case-by-case approach is defined in section 6002(i)(3)(A) as a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials (and in the case of paper, postconsumer recovered materials) practicable, when all other factors, such as price, availability within a reasonable period of time, and ability to meet performance standards, are equal. Under the case-by-case approach, if there is a tie bid, then the procurement *must* be awarded to the vendor who offers the highest postconsumer recovered materials content.

Procuring agencies need accurate information to evaluate bids when postconsumer recovered materials content is a factor. Because an estimate of postconsumer recovered materials content to be used is not binding, it is not reliable for evaluating tie bids. By contrast, a certification becomes part of the contract and is binding. These terms are explained below in section IV.F.3 of the preamble.

Therefore, EPA recommends that procuring agencies require all vendors of paper and paper products to certify to the minimum percentage of postconsumer recovered materials in items they offer when submitting bids. Vendors should also be advised that such percentage will be the deciding factor in the event of a tie bid. Those vendors unfamiliar with the content of their products or offering products made entirely from virgin materials could easily meet the requirement by certifying a minimum percentage of 0 percent. The winning vendor that actually supplies the product *must* estimate the postconsumer recovered materials content of the paper actually supplied and the procuring agency must have a program to verify such estimates. This is true regardless of whether the selection was made on the basis of postconsumer recovered materials content.

If a paper or paper product containing postconsumer recovered materials is consistently offered at a competitive rate, EPA recommends that the procuring agency consider adopting a minimum postconsumer recovered materials content standard for that item. Through this solicitation process, the procuring agency would be assured of the lowest possible price, the maximum level of competition, and availability of the product. Several commenters voiced the opinion that a case-by-case approach would not be effective and urged EPA to eliminate that option. However, both RCRA and the Congressional colloquy show clearly that Congress intended that the case-by-case approach be an option. Therefore, EPA has no grounds to eliminate the case-by-case option.

b. *Minimum Content Standards.* Under the final guideline issued today, agencies may also adopt a program of minimum content standards for any of the items procured, as described in RCRA section 6002(i)(3)(B). Under this approach, procuring agencies would decide on minimum levels of postconsumer recovered materials, and these levels would be included in the specifications for the paper or paper products.

When using this approach, procuring agencies also need assurance from vendors that at least the minimum recovered content required in the specification will be contained in the products offered, and vendors must be required to provide estimates of the actual content in the goods supplied under contract.

EPA recommends that procuring agencies use the same certification and estimation procedure outlined in the case-by-case approach. Vendors should be required to certify to the mimimum postconsumer recovered content (which could, but would not have to be, higher than the minimum standard in the specification) when responding to bids. Vendors should also be required to provide an estimate of the actual percentage of postconsumer recovered content in the product that is shipped in fulfillment of the contract.

Comments have been received by EPA that a minimum content standards program may not be consistent with Federal procurement regulations. However, EPA has determined that since RCRA expressly authorizes specifications that include minimum content standards, such standards do not conflict with current Federal procurement regulations, if carried out under a competitive bid process. That is, full and open competition must exist, and after specifying the minimum content standard, all responsible sources that can meet the standard must be allowed to compete. The Competition

in Contracting Act of 1984 (CICA) (Pub. L. 98–369) permits agencies to use restrictive procurement procedures authorized by law, and RCRA creates the authorization for minimum content standards. In all other respects, full and open competition is necessary.

EPA believes that minimum content standards better achieve the legislative goal of procuring items containing the highest percentage of recovered materials practicable. As discussed above, today's final guideline leaves it to procuring agencies to establish minimum content standards. In response to comments, EPA is also proposing recommended minimum content standards elsewhere in today's **Federal Register**.

c. *Substantially Equivalent Approach.* Procuring agencies also can adopt a procurement approach that is substantially equivalent to the case-by-case approach and minimum content standards. Like the other two approaches, the substantially equivalent approach must assure that paper and paper products containing postconsumer recovered materials will be purchased to the maximum extent practicable. The approach also must be consistent with applicable provisions of Federal procurement law.

2. *Agency Promotion Program.* The second requirement of the affirmative procurement program is an effort by procuring agencies to promote procurement of paper and paper products containing postconsumer recovered materials. The proposed guideline made several suggestions for procuring agencies to consider for disseminating information about their preference program, such as placing notations in solicitations for bids and conducting discussions about the program at bidders' conferences and meetings. The proposed guideline also suggested that agencies such as GSA that procure paper and paper products for use by other agencies consider noting in their catalogs those papers or paper products that contain postconsumer recovered materials. These recommendations have been retained in the final guideline.

Some commenters felt that EPA should be actively involved in promotional programs. However, RCRA section 6002(1) specifies that the promotion program is an integral part of the affirmative procurement program, and therefore is the responsibility of each procuring agency, not EPA.

3. *Estimation, Certification, and Verification.* The third requirement of the affirmative procurement program set forth in section 6002(i) covers estimation, certification, and verification of postconsumer recovered material content in procurements. Estimates and certifications of content in an item are most easily expressed as a percentage of total content and can range from 0 percent to 100 percent, depending on the type of product or the feedstocks used in manufacturing the item. Many issues have been raised about these requirements, such as when the information should be provided, who is to provide it, and how it is to be obtained. To clarify this subject, it is necessary to review the requirements of the statute.

a. *Estimation.* RCRA section 6002(c)(3)(B) and section 6002(i)(2)(C) require that, after the effective date of this guideline, vendors that supply Federal procuring agencies with paper or paper products covered by this guideline must provide an *estimate* (emphasis added) of the total percentage of postconsumer recovered materials utilized in the performance of the contract. Furthermore, contracting officers must require that this information be provided.

EPA believes that this requirement is for the purpose of gathering statistical information on price, quantity, availability, and performance of paper and paper products made from postconsumer recovered materials. EPA further believes that this requirement applies regardless of the reasons why a contract is awarded. Estimates may differ from percentages of minimum postconsumer recovered content in certifications, and will provide up-to-date information for the annual review which is required of procuring agencies.

Therefore, EPA recommends that procuring agencies use the same procedure to require vendors to provide estimates of actual postconsumer recovered content in products shipped in fullfillment of contracts, no matter which approach is used.

b. *Certification.* The use of certification is common in government procurement. It is written assurance that goods or services delivered will fulfill requirements. Failure to meet conditions which have been certified can result in penalties to a vendor. RCRA section 6002(c)(3)(A) requires that after the effective date of this guideline, vendors must "certify that the percentage of postconsumer recovered materials *to be used* in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements". In other words, vendors must certify that a minimum percentage of postconsumer recovered material will be contained in products to be supplied. RCRA section 6002(i)(2)(C) requires "certification of minimum postconsumer recovered materials content *actually utilized*".

Together, these sections could be interpreted to mean that multiple certifications will be required: One when bids are offered, and another with each shipment. EPA is concerned that this interpretation could create unnecessary burdens for vendors and procuring agencies, and thus work against the intent of section 6002. States which purchase paper and paper products with recovered material content have found one certification sufficient. As an example, New York State requires certification of the content from vendors within six days of a bid opening. Vendors commonly discuss product specifications and availability with manufacturers prior to submitting a bid, so information for certification can be obtained at that time. A vendor can easily certify to a minimum of 0 percent if it does not wish postconsumer recovered material content to be a factor in its bids. The certification then becomes part of the contract awarded to the successful vendor. In the case-by-case approach, procuring agencies would have the assurance of a certification, rather than an estimate which must be confirmed, of postconsumer recovered content when bid awards are determined. Such assurance would be equally useful in the minimum content standards approach. EPA has concluded that one certification will fulfill both statutory requirements and, by using it in all instances, procuring agencies can adapt their purchasing programs most easily.

Accordingly, EPA recommends procuring agencies require certification as a condition of a responsive bid when bids are offered, regardless of whether the case-by-case, minimum content standard, or a substantially equivalent approach is used. Also, as previously stated, the successful vendor must estimate the actual postconsumer recovered content in products that are supplied. The estimate may or may not be different than the minimum percentage that is certified.

EPA understands that for both estimation and certification, the vendor will not have direct knowledge of postconsumer recovered content. Only the mill that produces the paper will have that information. However, there is no direct authority in RCRA section 6002 for the Federal government to require this information from anyone but the vendor. Therefore, the vendor must make its own arrangements for obtaining this information from the mill operator. The legislative history suggests the approach intended, as

shown by the following excerpt from the Conference Committee Report on the Hazardous and Solid Waste Amendments of 1984:

"In obtaining certification of the percentage of postconsumer materials and the percentage of manufacturing forest residues and other wastes, it is the intent of Section 6002 as amended by this Act that vendors supply the procuring agency with a statement *from the mill* indicating the percentages used *by the mill* in producing the paper and their sources of raw material." (H.R. Rep. No. 98–1133, 98th Cong. 2nd Sess. 121 (1984) [emphasis added].

c. *Verification.* Procuring agencies also are required to establish "reasonable verification procedures for estimates and certifications." See RCRA section 6002(i)(2)(C). If these verification procedures include access to mill operators' records, then the procuring agency must use some authority other than RCRA to inspect these records or must require vendors to have an agreement with the mill operator to supply such information or access to the procuring agency.

In general, paper manufacturers maintain records of the feedstocks used in each "run" or "lot" of paper for their own internal quality and specification controls. The optimum mix of recovered and virgin fiber often remains the same for each grade of paper, though variations may occur in individual runs.

In most cases manufacturers will be able to provide a certification to vendors as to the specific fiber content of the product shipped to a customer. It is not intended that the guideline require any additional records to be kept by the mills; records normally kept should be complete enough to estimate or certify to postconsumer recovered materials content accurately. However, to simplify the verification procedure and accommodate variations dictated by quality control and supply, the average amount of postconsumer materials used in each specific product over a one-month period may be used, if necessary, to meet the requirement for verification of estimates. Since mills commonly keep accounting and record summaries on a monthly basis, EPA recommends that the one-month figures be used for estimates of fiber percentages. Should it be necessary to verify the exact content of a specific lot or run of paper, the mill records for that lot or run can then be consulted.

However, if the vendor knows that that the postconsumer recovered materials content of paper or paper products supplied to procuring agencies differs from the monthly average, then the average cannot be used. For example, if the monthly average is 30 percent recovered materials content but the paper or paper product supplied contains no recovered materials or conversely contains 60 percent recovered content, then the vendor cannot use the monthly average. Use of the average in such instances will be viewed as an attempt to circumvent the requirements of RCRA in supplying paper or paper products to the procuring agency.

Monthly *averages* cannot be used for certification. Every shipment may not contain postconsumer recovered content equal to or greater than the average. However, the *minimum* percentage of postconsumer recovered materials used in recycled paper and paper products by the mill can be determined from monthly records for certification purposes.

Some comments have been made that mills cannot always distinguish postconsumer recovered materials from other recovered materials, thus making estimation and certification difficult if not impossible. EPA has verified that this is sometimes true for the printing and writing grades, but this is not generally the case. In most cases, mills have detailed knowledge of their raw materials. While postconsumer recovered materials content of every bale of waste paper may not be known to a certainty, mills can make reasonable estimates based on their extensive knowledge of their raw materials. In the companion action in today's **Federal Register**, EPA is proposing "waste paper" content standards to resolve inherent fiber identification problems with the printing and writing grades of paper.

4. *Annual Review and Monitoring.* The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. The review should include an estimate of the quantity of paper and paper products containing postconsumer recovered materials purchased during the year.

EPA believes that procuring agencies should review the range of estimates and certifications of postconsumer recovered content provided by vendors during the year. Significant and repeated variations between standards, certifications, and estimates would signal whether changes in approach (e.g., from case-by-case to minimum content standards) or specific minimum content standards are warranted. EPA further believes that information provided by the estimation requirement will be particularly helpful to procuring agencies when they review their compliance with the requirement to purchase paper and paper products with the highest percentage of postconsumer recovered materials practicable. Therefore, EPA is proposing additional annual review procedures and related recordkeeping recommendations in the companion action published in the **Federal Register** today.

V. Recommendations as to Price, Competition, Availability, and Performance

Section 6002(c)(1) provides that the affirmative procurement requirement is subject to four limitations. First, the price of the item must not be unreasonable. Second, a satisfactory level of competition must be maintained. Third, the item must be reasonably available. Fourth, the item must meet the specifications established by the procuring agency.

Commenters stated that EPA is required under section 6002(e) to provide detailed information about the availability, price, and performance of paper and paper products containing postconsumer recovered materials. EPA has determined that such information varies significantly over short periods of time. Paper and paper products are made from virgin and recovered commodities which fluctuate in value according to supply and demand within the national and international economies. Even relative prices between paper products made with virgin or recovered fibers are subject to short-term fluctuation. Also, availability of paper and paper products made from recovered materials is a result of demand. Recent consolidation within the paper industry, the development of this guideline, and current activity to legislate preferences for recycled products at the State and local level, can all affect availability. Therefore, specific information about price and availability would not remain accurate long enough, at this point in time, to be useful in a guideline. General information is presented in this section. Information about performance has been obtained and is discussed in section III of the preamble.

A. Price

Section 6002 provides that a procuring agency can decide not to purchase a designated item, i.e., paper or a paper product containing postconsumer recovered materials, if the price is "unreasonable." EPA recommends that for the purpose of this guideline, when considering bids, "unreasonable price" is any price other than the price offered in the lowest responsive bid by a responsible bidder.

Several factors, other than those mentioned above, affect the market

price, or bid price, of paper and paper products containing postconsumer recovered materials in relation to the prices of products manufactured from other fibers, including the percentage of postconsumer recovered materials used, the degree of decontamination and deinking required to meet the performance standards for a specific product, and the proximity of the mill to (1) the supply of postconsumer recovered materials; and (2) the prospective customer. In many instances, mills bid for government procurements to "fill in" for capacity at a mill not already committed to other customers. Because, at a given point in time, there is no uniform method of determining the relative price of these items other than through the competitive bidding process, this final guideline recommends that procuring agencies use an "open-bid" process, allowing vendors of paper and paper products containing postconsumer recovered materials to compete for government contracts. For the case-by-case approach, this would include competition between vendors of products containing postconsumer recovered materials, as well as those which do not. If the minimum content standards approach is chosen, competition would be restricted to those products meeting the minimum content standards. However, open bidding would exist between vendors of those products.

States currently procuring paper or paper products containing postconsumer recovered materials have not been required to pay unreasonable prices for these products. Data on the recent experience of these State agencies show that virgin products and products containing postconsumer recovered materials compete in the open marketplace and are sold at competitive prices. Thus, unreasonable price should not be an issue in affirmative procurement programs, especially when open bidding will take place. Documentation of recent price comparisons in States with affirmative procurement programs can be found in the record for this guideline.

EPA does not expect that an affirmative procurement program will result in the government paying a higher price for its paper or paper products. In fact, some representatives of the paper recycling industry claim that affirmative procurement will lower the price, but this claim has not been documented by EPA.

Using the case-by-case approach, as defined in the guideline, there is no difficulty achieving price equality. However, EPA believes that approach will not usually achieve the legislative mandate of procuring "the highest percentage of recovered materials practicable." Therefore, it will usually be necessary to use a minimum content standard. But in setting such standards, it is EPA's position that "practicable" includes the concept of price equality.

In setting minimum content standards, procuring agencies must attempt to set levels of postconsumer recovered materials that are high, but not so high as to drive out competition to the point of increasing the price. But since, under this scheme, the agency would be buying only paper or paper products containing postconsumer recovered materials, it may not know if it is paying too much. Under this scheme, there is no way to guarantee that every sheet of paper procured was procured at a price no greater than the price for paper that would be procured if the policy were not in place. On the contrary, EPA expects that there will be fluctuations in price in both directions. EPA therefore is recommending that procuring agencies interpret the reasonable price provision of RCRA section 6002(c)(1)(C) to mean that, for paper or paper products containing postconsumer recovered materials, there is no long-term or average increase over the price of comparable virgin paper or paper products.

EPA also recommends that if procuring agencies using minimum content standards find over the course of several months to a year that they are paying a higher price for paper or paper products containing postconsumer recovered materials than they would have paid for comparable virgin paper or paper products, they should adjust the minimum content levels so as to try to bring the price in line. On the other hand, if they find they can raise the levels without causing a long term-increase in price, they must do so. In either case, procuring agencies must be governed by the statutory requirement to procure designated items with the highest percentage of postconsumer recovered materials practicable.

B. Competition

The existing level of competition for paper and paper products containing postconsumer recovered materials varies depending on the product. The case-by-case, open bid approach in which bids are solicited for paper and paper products composed of virgin fibers as well as those containing postconsumer recovered materials will assure competition for all potential vendors while encouraging the maximum utilization of postconsumer recovered materials by offering a preference in the bidding process for products with such materials in case of a tie bid.

The other recommended approach is to set minimum content standards. For a large majority of products, both virgin and recycled products coexist in the marketplace, with some manufacturers producing products from all-virgin materials, some using only recovered materials, and others using both. Thus, a minimum content standard will automatically exclude many potential bidders that market only virgin products. The percentage of bidders excluded depends on how high the minimum content standards are set. EPA knows of no analytical method of accurately setting minimum content standards that are low enough to assure adequate competition, and yet high enough to maximize the use of postconsumer recovered materials, except through experience. Thus, procuring agencies must learn through trial and error how best to insure competition while fulfilling the primary goals of this guideline.

C. Availability and Delays

The Agency does not believe that procuring agencies should have to tolerate any unusual or unreasonable delays in obtaining paper or paper products containing postconsumer recovered materials. The experiences of GSA and of States with affirmative procurement programs have shown that these products are generally available at all locations. One possible exception mentioned by some States is printing and writing paper. In some cases, delays have been incurred because of low levels of storage or warehousing in the vicinity of the procurement depot. However, as affirmative procurement programs prove effective, printing and writing papers containing recovered materials should become more widely and consistently available, as are other paper and paper products containing postconsumer recovered materials.

Some commenters have suggested that EPA should provide assistance to procuring agencies in determining availability by identifying potential suppliers and by encouraging these suppliers to bid on government contracts. EPA has placed in the record lists of mills that manufacture paper or paper products using postconsumer recovered materials, especially printing and writing paper and tissue products. Procuring agencies also are in direct contact with paper vendors on a regular basis and can seek this information directly.

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D. Performance

Product performance is discussed in Section III.E of the preamble.

VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986 (i.e., 18 months after enactment of HSWA); (2) one year after the date of publication of an EPA guideline; and (3) the date specified in EPA guidelines. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these requirements.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items must eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was required to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (Section 6002(d)(2)). In addition, procuring agencies must develop an affirmative procurement program for purchasing items designated by EPA, in this instance, paper and paper products containing postconsumer recovered materials (Section 6002(i)(1)). Both of these activities must be completed within *one year after the date of publication of this final guideline* [emphasis added].

Third, after the date specified by EPA in the applicable guideline, procuring agencies that procure items designated by EPA must begin procurement of such items containing the highest percentage of recovered materials practicable (Section 6002(c)(1)). In addition, contracting officers must require vendors to submit estimates and certifications of recovered materials content (Section 6002(c)(3)).

With respect to this third set of requirements, EPA believes that procuring agencies should begin to procure paper and paper products containing postconsumer recovered materials as soon as the specification revisions have been completed and the affirmative procurement programs have been developed. As stated, these latter activities must be completed within one year after publication of this final guideline. The proposed guideline did not clearly specify the date on which affirmative procurement, including a program for obtaining estimates and certifications, must begin. Therefore, to be consistent with the statutory requirements, EPA has specified that affirmative procurement should begin in one year.

To clarify this point, EPA has added § 250.22 to the final guideline which states procuring agencies must begin procurement of paper and paper products containing postconsumer recovered materials one year from the date of publication of this guideline as a final rule.

VII. Summary of Supporting Analyses

A. General

There are three major studies on the effects of a Federal policy for the procurement of paper containing recovered materials: *Can Federal Procurement Practices be Used to Reduce Solid Waste?* (Arthur D. Little, Inc., 1973); *Collection of Data Pertinent to Paper Products Containing Recycled Materials* (Franklin Associates, Ltd., 1979); and *Evaluation of Federal Paper Procurement Practices* (Gershman, Brickner and Bratton, Inc., 1981). These studies appear in the public record for this rulemaking. In addition, an economic analysis, a background document, and other pertinent information are included in the record.

B. Environmental and Energy Effects

Several commenters pointed out that the notice of proposed rulemaking contained no discussion of the environmental impact of using paper and paper products containing postconsumer recovered materials, although no such information was submitted with these comments. As stated earlier, concerns about the high cost of solid waste disposal and the difficulty many communities are having in locating new disposal sites, as well as Congressional mandate, are the chief reasons for this guideline. Published reports discussing the environmental impacts of using paper and paper products containing postconsumer recovered materials describe the impact on natural resources and air, surface water, and ground-water pollution.[2] [3] [4]

However, based on information in its possession, EPA is unable to conclude that there will be any significant environmental impact, positive or negative, from the Federal procurement of paper and paper products containing postconsumer recovered materials (or waste paper).

Several commenters took exception to the statements in the notice of proposed rulemaking regarding the contamination of recycled paper by polychlorinated biphenyls (PCBs), although, again, no contradictory data were submitted. However, upon reconsideration, EPA notes that the PCB content of paper and paper products is already regulated by the Agency under the Toxic Substances Control Act and that, therefore, no special restriction or provision is necessary in this procurement guideline.

Background information placed in the record indicates that production of recycled newsprint and semichemical medium used in fiber boxes require somewhat less fossil energy than comparable products manufactured of 100 percent virgin fiber. Other paper products vary considerably as to energy use with no clear pattern. The energy efficiency of mills depends on a number of factors, including the age and configuration of the mills. Modern mills are likely to be more energy efficient than older mills, and larger mills are likely to be more energy efficient than smaller mills. The energy advantage varies from product to product and mill to mill as well as between users of virgin and recovered materials. Recycled feedstocks seem to be a minor factor.

In any event, the variability in energy efficiency between mills, be they virgin or recycling, is greater than the difference in energy efficiency between the two types of mills, which tends to reduce the importance of this issue.

C. Volume Reduction and Cost Impacts of Reducing Paper Disposal in Landfills

Paper is the largest single component of municipal solid waste both on the basis of weight and volume. As a consequence, any reduction of the volume of paper to be disposed will have a favorable impact on both the cost of disposal and on the space devoted to landfilling.

Based on the paper consumption statistics and reported utilization rates of waste paper, EPA estimates that 50 million tons of paper entered the municipal solid waste stream in 1984 that had to be disposed of by landfill and other means. This estimate assumes a 10 percent allowance for paper that is temporarily or permanently retained

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[2] Churney, K.L., et al, The Chlorine Content of Municipal Solid Waste from Baltimore County, MD, and Brooklyn, NY, April 1985, Issued October 1985, NBSIR 85–3213.

[3] Golueke, C.G., Comprehensive Studies of Solid Waste Management, Third Annual Report, Public Health Service Pub. No. 1959, SW–10rg, 1971.

[4] Metzler, S.C., Sanitary Landfill Management for Groundwater Quality Protection, Master's Thesis, University of Kansas, 1981.

(books, business records, etc.), or otherwise diverted (toilet tissue, building products, etc.). The Resource Conservation Committee report to the President and Congress [5] estimated average disposal costs for municipal solid waste at $43 per ton. Savings through diversion and/or recovery were estimated to be at least $15 per ton. Therefore, any reduction in this volume of postconsumer solid waste should be economically beneficial to the municipalities disposing of the waste.

D. Executive Order No. 12291

Under Executive Order (E.O.) No. 12291, regulations must be classified as major or nonmajor. E.O. No. 12291 establishes the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal purchases of paper and paper products do not constitute a large enough share of these markets for industry to make manufacturing decisions that are not otherwise economically feasible in order to meet Federal procurement requirements. In fact, some Federal procurement policies have been modified in recent years to conform more closely to common commercial standards for some paper products, e.g., toilet tissue. The granting of a price preference is not recommended in the final guideline; therefore, product costs should not increase. Furthermore, the flexibility allowed to the procuring agencies in implementing an affirmative procurement program should make it possible to make adjustments if any adverse market dislocation or decrease in competition should occur.

Because of the number of items included in the paper and paper product categories and the number of procurement actions taken by procuring agencies each year, some agencies may find it necessary to initially allocate additional resources to implement this guideline. However, the flexibility allowed and the practices recommended in this guideline are intended to avoid on-going increased expenditures by procuring agencies. For example, EPA has recommended that the procedure for estimating and certifying postconsumer recovered materials content be simple and that it be consistent with the procuring agency's usual contracting procedure.

On the basis of the above information and on more extensive data in the rulemaking docket, the Agency has concluded that this guideline is a nonmajor rule.

This document has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. No. 12291.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities.

Because of the $10,000 threshold, EPA does not expect a substantial number of small entities to be affected by this guideline. The Agency also believes that the flexible approach to procurement of paper and paper products containing postconsumer recovered materials provided for in this guideline will not impose a significant regulatory or economic burden on small procuring agencies, manufacturers, vendors, or contract printers. Detailed information on this assessment can be found in the RCRA docket for this guideline.

For the above reasons, EPA certifies that this guideline will not have a significant economic impact on a substantial number of small entities. Therefore, this guideline does not require a regulatory flexibility analysis.

F. Paperwork Reduction Act

The information collection requirements contained in the final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2050–0045.

List of Subjects in 40 CFR Part 250

Forest and forest products, Government contracts, Government procurement, Packaging and containers, Paper, Recycling, Resource recovery.

Dated: September 18, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Part 250 is added to Chapter I of Title 40 of the CFR to read as follows:

PART 250—GUIDELINE FOR FEDERAL PROCUREMENT OF PAPER AND PAPER PRODUCTS CONTAINING RECOVERED MATERIALS

Subpart A—General

Sec.
250.1 Purpose.
250.2 Designation.
250.3 Applicability.
250.4 Definitions.

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

250.10 Introduction.
250.11 Elimination of recovered materials exclusion.
250.12 Requirement of postconsumer recovered materials content.
250.13 Exclusion for products containing postconsumer recovered materials that do not meet reasonable performance standards.
250.14 New specifications.

Subpart C—Affirmative Procurement Program for Paper Containing Postconsumer Recovered Materials

250.20 Elements of affirmative procurement program.
250.21 Limitations to affirmative procurement program.
250.22 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 250.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, as that section applies to paper and paper products.

(b) This guideline contains recommendations for implementing the requirements of section 6002 of RCRA, including the revision of specifications and the establishment of an affirmative program for the procurement of paper and paper products containing postconsumer recovered materials. The guideline also makes recommendations concerning solicitations for bids and estimation, certification, and verification procedures. In addition, the guideline sets dates for implementation.

(c) The Agency believes that adherence to the practices recommended in the guideline constitutes compliance with section 6002

[5] Choices for Conservation. SW–779. Resource Conservation Committee Final Report to the President and Congress, July 1979.

of RCRA, as it relates to the purchase of paper and paper products containing postconsumer recovered materials.

§ 250.2 Designation.

Under section 6002(e)(1) of RCRA, paper and paper products are designated as items which can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA.

§ 250.3 Applicability.

(a) This guideline applies to all paper and paper products purchased with appropriated Federal funds.

(b) This guideline applies to all procuring agencies and to all procurement actions when (1) the agency purchases a procurement item, as defined in § 250.4, with appropriated Federal funds; and (2) the purchase price of the item exceeds $10,000, or the quantity of such items or of functionally equivalent items purchased with appropriated Federal funds during the preceding fiscal year was $10,000 or more. For purposes of this guideline, each item listed in each category below is considered functionally equivalent to every other item in the category: All grades and types of xerographic/copy paper; newsprint; all grades and types of printing and writing paper; corrugated and fiberboard boxes; folding boxboard and cartons; stationery, office papers (e.g., memo pads, scratch pads), envelopes, and manifold business forms including computer paper; toilet tissue, paper towels, facial tissue, paper napkins, doilies, and industrial wipers; and brown papers and coarse papers.

(c) Procurement actions covered by this guideline include:

(1) All purchases of paper or paper products made directly by a procuring agency or by any person contracting with any such agency with respect to work being performed under such contract, for example, contract printing; and

(2) Indirect purchases of paper and paper products made by a procuring agency, such as purchasing resulting from Federal grants, loans, and similar forms of disbursements of monies that the procuring agency intended to be used for the procurement of paper or paper products, except in cases where funds are designated for continuing programs or activities and no separate accounting is made.

(d) Purchases of paper and paper products that are unrelated or incidental to Federal funding, i.e., not the direct result of a Federal contract, grant, loan, funds disbursement, or agreement with a procuring agency, are not covered by this guideline.

§ 250.4 Definitions.

As used in this guideline, the following terms shall have the meaning indicated below:

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended;

"Bleached papers" means paper made of pulp that has been treated with bleaching agents;

"Bond paper" means a generic category of paper used in a variety of end use applications such as forms (see "form bond"), offset printing, copy paper, stationery, etc. In the paper industry, the term was originally very specific but is now very general.

"Book paper" means a generic category of papers produced in a variety of forms, weights, and finishes for use in books and other graphic arts applications, and related grades such as tablet, envelope, and converting papers;

"Brown papers" means papers usually made from unbleached kraft pulp and used for bags, sacks, wrapping paper, and so forth;

"Coarse papers" means papers used for industrial purposes, as distinguished from those used for cultural or sanitary purposes;

"Computer paper" means a type of paper used in manifold business forms produced in rolls and/or fan folded. It is used with computers and word processors to print out data, information, letters, advertising, etc. It is commonly called computer printout;

"Corrugated boxes" means boxes made of corrugated paperboard, which, in turn, is made from a fluted corrugating medium pasted to a flat sheet of paperboard (linerboard); multiple layers may be used;

"Cover stock" or "Cover paper" means a heavyweight paper commonly used for covers, books, brochures, pamphlets, and the like;

"Doilies" means paper place mats used on food service trays in hospitals and other institutions;

"Duplicator paper" means writing papers used for masters or copy sheets in the aniline ink or hectograph process of reproduction (commonly called spirit machines);

"Envelopes" means brown, manila, padded, or other mailing envelopes not included with "stationery";

"Facial tissue" means a class of soft absorbent papers in the sanitary tissue group;

"Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including a government corporation, and the Government Printing Office;

"Fiber or fiberboard boxes" means boxes made from containerboard, either solid fiber or corrugated paperboard (general term); or boxes made from solid paperboard of the same material throughout (specific term);

"Folding boxboard" means a paperboard suitable for the manufacture of folding cartons;

"Form bond" means a lightweight commodity paper designed primarily for business forms including computer printout and carbonless paper forms. (See manifold business forms);

"Industrial wipers" means paper towels especially made for industrial cleaning and wiping;

"Ledger paper" means a type of paper generally used in a broad variety of recordkeeping type applications such as in accounting machines.

"Manifold business forms" means a type of product manufactured by business forms manufacturers that is commonly produced as marginally punched continuous forms in small rolls or fan folded sets with or without carbon paper interleaving. It has a wide variety of uses such as invoices, purchase orders, office memoranda, shipping orders, and computer printout;

"Mill broke" means any paper waste generated in a paper mill prior to completion of the papermaking process. It is usually returned directly to the pulping process. Mill broke is excluded from the definition of "recovered materials";

"Mimeo paper" means a grade of writing paper used for making copies on stencil duplicating machines;

"Newsprint" means paper of the type generally used in the publication of newspapers or special publications like the *Congressional Record*. It is made primarily from mechanical wood pulps combined with some chemical wood pulp;

"Office papers" means note pads, loose-leaf fillers, tablets, and other papers commonly used in offices, but not defined elsewhere;

"Offset printing paper" means an uncoated or coated paper designed for offset lithography;

"Paper" means one of two broad subdivisions of paper products, the other being paperboard. Paper is generally lighter in basis weight, thinner, and more flexible than paperboard. Sheets 0.012 inch or less in thickness are generally classified as paper. Its primary uses are for printing, writing, wrapping,

and sanitary purposes. However, in this guideline, the term paper is also used as a generic term that includes both paper and paperboard. It includes the following types of papers: Bleached paper, bond paper, book paper, brown paper, coarse paper, computer paper, cover stock or cover paper, duplicator paper, form bond, ledger paper, manifold business forms, mimeo paper, newsprint, office papers, offset printing paper, printing paper, stationery, tabulating paper, unbleached papers, writing paper, and xerographic/copy paper;

"Paper napkins" means special tissues, white or colored, plain or printed, usually folded, and made in a variety of sizes for use during meals or with beverages;

"Paper product" means any item manufactured from paper or paperboard. The term "paper product" is used in this guideline to distinguish such items as boxes, doilies, and paper towels from printing and writing papers. It includes the following types of products: Corrugated boxes, doilies, envelopes, facial tissue, fiber of fiberboard boxes, folding boxboard, industrial wipers, paper napkins, paper towels, tabulating cards, and toilet tissue;

"Paper towels" means paper toweling in folded sheets, or in raw form, for use in drying or cleaning, or where quick absorption is required;

"Paperboard" means one of the two broad subdivisions of paper, the other being paper itself. Paperboard is usually heavier in basis weight and thicker than paper. Sheets 0.012 inch or more in thickness are generally classified as paperboard. The broad classes of paperboard are containerboard, which is used for corrugated boxes; boxboard, which is principally used to make cartons; and all other paperboard;

"Practicable" means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition;

"Printing paper" means paper designed for printing, other than newsprint, such as offset and book paper;

"Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, that is the subject of any purchase, barter, or other exchange made to procure such item;

"Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State that is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract;

"Recovered materials" means waste material and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term "recovered materials" includes:

(a) Postconsumer materials such as:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: Used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste; and

(b) Manufacturing, forest residues, and other wastes such as:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(3) Fibrous by-products of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(4) Wastes generated by the conversion of goods made from fibrous material (e.g., waste rope from cordage manufacture, textile mill waste, and cuttings); and

(5) Fibers recovered from waste water that otherwise would enter the waste stream;

"Recyclable paper" means any paper separated at its point of discard or from the solid waste stream for utilization as a raw material in the manufacture of a new product. It is often called "waste paper" or "paper stock." Not all paper in the waste stream is recyclable; it may be heavily contaminated or otherwise unusable.

"Specification" means a detailed description of the technical requirements for materials, products, or services that specifies the minimum requirement for quality and construction of materials and equipment necessary for an acceptable product. Specifications are generally in the form of a written description, drawings, prints, commercial designations, industry standards, and other descriptive references;

"State" means any of the several States, the District .of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

"Stationery" means writing paper suitable for pen and ink, pencil, or typing. Matching envelopes are included in this definition;

"Tabulating cards" means cards used in automatic tabulating machines;

"Tabulating paper" means paper used in tabulating forms for use on automatic data processing equipment;

"Toilet tissue" means a sanitary tissue paper. The principal characteristics are softness, absorbency, cleanliness, and adequate strength (considering easy disposability). It is marketed in rolls of varying sizes or in interleaved packages;

"Unbleached papers" means papers made of pulp that has not been treated with bleaching agents;

"Writing paper" means a paper suitable for pen and ink, pencil, typewriter or printing.

"Xerographic/copy paper" means any grade of paper suitable for copying by the xerographic process (a dry method of reproduction).

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

§ 250.10 Introduction.

This subpart offers guidance to Federal agencies that draft or review specifications for paper and paper products.

§ 250.11 Elimination of recovered materials exclusion.

By May 8, 1986, each Federal agency was required to assure that its specifications do not unfairly discriminate against the use of recovered materials. At a minimum, except as provided in § 250.13 of this Part, each Federal agency was required to:

(a) Revise those specifications, standards, and procedures that require that paper and paper products contain

only virgin materials to eliminate this restriction; and

(b) Revise those specifications, standards, and procedures that prohibit using recovered materials in paper and paper products to eliminate this restriction.

§ 250.12 Requirement of postconsumer recovered materials content.

(a) Within one year of publication of this guideline, paper and paper product specifications must require the use of postconsumer recovered materials to the maximum extent possible without jeopardizing the intended end use of the paper or paper product.

(b) Specifications that are unnecessarily stringent for a particular end use and that bear no relation to function, such as brightness and whiteness for copy paper, should be revised in order to allow for a higher postconsumer recovered materials content. Specifications that bear no relation to function should be revised according to the agency's established review procedure. In determining the relationship to function of existing specifications, Federal agencies should make maximum use of existing voluntary standards and research by organizations such as the American Society for Testing and Materials' Committees D6, D10, and F5; the Technical Association of the Pulp and Paper Industry; and the American Institute of Paper Chemistry.

§ 250.13 Exclusion for products containing postconsumer recovered materials that do not meet reasonable performance standards.

(a) Notwithstanding the requirements of §§ 250.11 and 250.12 of this Part, Federal agencies need not revise specifications to allow or require the use of postconsumer recovered materials if it can be technically determined that for a particular end use a product containing such materials will not meet reasonable performance standards.

(b) Any determination under this section should be documented by the drafting and reviewing agency and be based on technical performance information related to a specific item, not a grade of paper or type of product. Agencies should reference such documentation in subsequent solicitations for the specific item in order to avoid repetition of previously documented points.

§ 250.14 New specifications.

When paper or a paper product containing postconsumer recovered materials is produced in types and grades not previously available, specifications should be revised to allow use of such type or grade or new specifications should be developed for such type or grade. EPA recommends that procuring agencies monitor new developments and use them to increase the use of postconsumer recovered materials as appropriate.

Subpart C—Affirmative Procurement Program for Paper Containing Postconsumer Recovered Materials

§ 250.20 Elements of affirmative procurement program.

Within one year after the publication of the final guideline, procuring agencies must establish an affirmative procurement program consisting of the following elements:

(a) A preference program for procurement of paper and paper products containing postconsumer recovered materials consisting of one of the following:

(1) A policy of awarding contracts, on a case-by-case basis (where competing bids for individual items are otherwise equal), to the vendor offering an item composed of the highest percentage of postconsumer recovered materials practicable, subject to the limitations based on competition, availability, performance, and price described in section 6002(c)(1) (A)–(C) of the Act and § 250.21 of this Part, or

(2) Minimum recovered materials content standards that assure that the postconsumer recovered materials content is the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1) (A)–(C) of the Act and § 250.21 of this Part, or

(3) A substantially equivalent alternative to paragraph (a)(1) or (a)(2) of this section.

(b) A promotion program to promote the preference program adopted under paragraph (a) of this section. Under the program, procuring agencies should consider all possible promotional methods including the following:

(1) A special notation prominently displayed in any paper or paper product procurement solicitation or invitation to bid.

(2) A statement in each paper or paper products specification defining "postconsumer recovered materials" as they are defined in § 250.4 of this Part.

(3) A brief statement in advertisements of bids describing the preference program. Such advertisements should be placed in the *Commerce Business Daily* and periodicals commonly read by vendors of paper and paper products containing postconsumer recovered materials.

(4) Catalog listings of available products (such as GSA's Office Supplies) indicating which paper or paper product contains postconsumer recovered materials.

(5) Discussion of the preference program at prebidders' conferences or similar meetings of potential bidders.

(c) A program for estimates, certification, and verification.

(1) Agencies must require vendors to estimate the total percentage of postconsumer recovered materials in paper and paper products supplied to them.

(2) Agencies must require vendors to certify the minimum postconsumer recovered materials to be used in the performance of a contract.

(3) There must be reasonable verification procedures for estimates and certifications, e.g., the procuring agency may state in solicitations for bids that, in the case of a bidder's protest, all estimates and certifications will be subject to audits of mill records.

(d) A program for review and monitoring.

(1) Each agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(2) The annual review should include an estimate of the quantity of paper and paper products purchased containing postconsumer recovered materials.

§ 250.21 Limitations to affirmative procurement program.

A decision not to procure paper or paper products containing postconsumer recovered materials may be based only on one or more of the following factors: lack of competition among vendors; lack of reasonable availability within a reasonable time period; failure to meet the performance standards in the solicitation for bids or in the reasonable performance standards of the agency; or unreasonable price. For purposes of this guideline when considering bids, "unreasonable price" is any price other than the price offered in the lowest responsive bid by a responsible bidder.

§ 250.22 Implementation.

Procuring agencies must begin procurement of paper and paper products containing postconsumer recovered materials as required by Section 6002 and this guideline one year from the date of publication of this guideline as a final rule.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 87-113; FCC 87-271]

Jurisdictional Separations Procedures

AGENCY: Federal Communications Commission; Federal-State Joint Board.

ACTION: Final rule.

SUMMARY: The Commission adopted revisions to the Access Charge Rules. Since there is a close relationship between these rules and the jurisdictional separations rules, and since the jurisdictional separations rules were also recently revised, it was necessary to conform the Access Charge Rules to the new separations rules.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilson or Charles Needy, Audits Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket No. 87-113, adopted August 14, 1987, and released August 18, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On May 1, 1987, the Commission released Notice of Proposed Rulemaking (Notice), CC Docket No. 87-113, 2 FCC Rcd 2673, published in the **Federal Register** May 6, 1987 (52 FR 17252), seeking comment on proposed amendments to Part 69 of its Rules. The Commission stated that its primary objective was to conform these Access Charge Rules to the recently revised jurisdictional separations rules. Accordingly, it proposed numerous conformance changes that, with only two exceptions, related to the apportionment of costs among the existing access cost elements. The two exceptions were a proposal to eliminate the Local Switching subelements and a proposal to consolidate the Line Termination, Local Switching and Intercept costs elements into a single cost element called Switching. In addition to proposing conformance changes, the Commission also proposed several minor changes to enhance its ability to review annual access tariff filings. Specifically, the Notice included a proposal to limit the annual October filings to rate level changes and it discouraged filings during the three-month period following the October filings. Finally, the Commission encouraged interested parties to provide data identifying any revenue requirement shifts expected to result from implementation of the proposed revisions.

2. The majority of the parties commenting in this proceeding were supportive of the proposed revisions on the whole. Moreover, based on its analysis of test data submitted by twelve parties, the Commission determined that the proposed revisions would result in only minimal industry revenue requirement shifts among the access cost elements. Consequently, on August 14, 1987, the Commission adopted, with modifications and minor corrections, all but one of its proposed amendments to the Access Charge Rules. The rejected amendment was the proposal to assign all interstate Marketing Expense to the interexchange cost category. The Commission decided that, in view of its decision in a separate proceeding to revise the jurisdictional separations procedures for Marketing Expense, it would retain the current Part 69 procedures for apportioning this expense to maintain consistency between these two procedures.

3. Further, the Commission substantially modified four of the proposed revisions before adopting them. One of these was the proposal to eliminate the Local Switching subelements. The Commission decided that these subelements should not be eliminated on a flash cut basis but, rather, should be phased out over a five-year period in a manner that parallels the formula for phasing in the new jurisdictional separations allocation factor for the same Central Office Equipment (COE). Another revision that was substantially modified was the proposal to allocate service observation board equipment on the basis of the remaining combined investment in COE Category 2 and Category 3. The Commission decided that this apportionment basis should include COE Category 1 as well as COE Category 2 and Category 3 to maintain consistency between Part 69 and Part 36 of its Rules. In addition, the Commission substantially modified its proposal to allocate the interstate expenses in Accounts 6210, 6220 and 6230 on the basis of the associated COE investment. The Commission found that, by changing this basis to "total COE investment," the allocation procedure would not only be more consistent with the Part 36 procedure but would also result in a significant reduction of the industry revenue requirement shift between the Switching and Special Access elements. Finally, the proposal to allocate Telephone Operator Services Expense on the basis of the relative number of weighted standard work seconds was substantially changed. Because some carriers purchase such services and therefore do not know the relative number of weighted standard work seconds, the Commission modified this proposal to allow such carriers to directly assign contracted operation services to the appropriate cost element.

4. The Commission rejected the suggestion of six commenting parties that different apportionment rules be prescribed for Class A and Class B carriers. It acknowledged that, under its adopted revisions to Part 69, some shifts in revenue requirements will occur among the access cost elements for individual companies and for the industry as a whole. The Commission concluded, however, that these shifts will not be large enough for the Class B carriers as a group to merit the increased administrative costs that would result from the inconsistent treatment of Class A and Class B carriers. It further concluded that these shifts will not be large enough to produce adverse consequences. Finally, the Commission decided to make the revisions effective on January 1, 1988, to coincide with the effective date of the revised jurisdictional separations rules and the revised accounting rules.

Ordering Clause

5. Accordingly, it is ordered, that the amendments to Part 69 contained herein are adopted effective January 1, 1988. This action is taken pursuant to sections 1, 4 (i) and (j), 205, 221(c), 403, and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

List of Subjects in 47 CFR Part 69

Access charge rules, Communications common carriers, Telephone, Uniform system of accounts.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Rules Changes

PART 69—[AMENDED]

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 is revised to read as follows:

§ 69.2 Definitions.

For purposes of the part:

(a) "Access Minutes" or "Access Minutes of Use" is that usage of exchange facilities in interstate or foreign service for the purpose of calculating chargeable usage. On the orginating end of an interstate or foreign call, usage is to be measured from the time the originating end user's call is delivered by the telephone company and acknowledged as received by the interexchange carrier's facilities connected with the originating exchange. On the terminating end of an interstate or foreign call, usage is to be measured from the time the call is received by the end user in the terminating exchange. Timing of usage at both the orginating and terminating end of an interstate or foreign call shall terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating end exchanges, as applicable;

(b) "Access Service" includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication;

(c) "Annual revenue requirement" means the sum of the return component and the expense component;

(d) "Association" means the telephone company association described in Subpart G of this Part;

(e) "Big Three Expenses" are the combined expense groups comprising: Plant Specific Operations Expense, Accounts 6110, 6120, 6210, 6220, 6230, 6310 and 6410; Plant Nonspecific Operations Expenses, Accounts 6510, 6530 and 6540, and Customer Operations Expenses, Accounts 6610 and 6620;

(f) "Big Three Expense Factors" are the ratios of the sum of Big Three Expenses apportioned to each element or category to the combined Big Three Expenses.

(g) "Cable and Wire Facilities" includes all equipment or facilities that are described as cable and wire facilities in the *Separations Manual;*

(h) "Carrier Cable and Wire Facilities" means all cable and wire facilities that are not subscriber line cable and wire facilities;

(i) "Central Office Equipment" or "COE" includes all equipment or facilities that are described as Central Office Equipment in the *Separations Manual;*

(j) "Corporate Operations Expenses" include Executive and Planning Expenses (Account 6710) and General and Administrative Expenses (Account 6720);

(k) "Customer Operations Expenses" include Marketing and Services expenses in Accounts 6610 and 6620, respectively;

(l) "Direct Expense" means expenses that are attributable to a particular category or categories of tangible investment described in Subpart D of this Part and includes:

(1) Plant Specific Operations expenses in Accounts 6110, 6120, 6210, 6220, 6223, 6310 and 6410; and

(2) Plant Nonspecific Operations Expenses in Accounts 6510, 6530, 6540 and 6560;

(m) "End User" means any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone compauy shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

(n) "Entry Switch" means the telephone company switch in which a transport line or trunk terminates;

(o) "Expense Component" means the total expenses and income charges for an annual period that are attributable to a particular element or category;

(p) "Expenses" include allowable expenses in the Uniform System of Accounts, Part 32, apportioned to interstate or international services pursuant to the *Separations Manual* and allowable income charges apportioned to interstate and international services pursuant to the *Separations Manual;*

(q) "General Support Facilities" include buildings, land, vehicles, aircraft, work equipment, furniture, office equipment and general purpose computers as described in the *Separations Manual;*

(r) "Information Origination/Termination Equipment" includes all equipment or facilities that are described as information origination/termination equipment in the *Separations Manual* except information origination/termination equipment that is used by telephone companies in their own operations;

(s) "Interexchange" or the "interexchange category" includes services or facilities provided as an integral part of interstate or foreign telecommunications that is not described as "access service" for purposes of this Part;

(t) "Level I Contributors" are telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a lower than average Common Line revenue requirement per minute of use in 1988 and thus were net contributors (i.e. had a negative net balance) to the association Common Line pool in 1988;

(u) "Level I Receivers" are telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a higher than average Common Line revenue requirement per minute of use in 1988 and thus were net receivers (i.e. had a positive net balance) from the association Common Line pool in 1988;

(v) "Level II Contributor" is a telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a lower than average Common Line revenue requirement per minute of use in 1988 and thus was a net contributor (i.e., had a negative net balance) to the association Common Line pool in 1988;

(w) "Level II Receiver" is a telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a higher than average Common Line revenue requirement per minute of use in 1988 and thus was a net receiver (i.e., had a positive net balance) from the association Common Line pool in 1988;

(x) "Line" or "Trunk" includes, but is not limited to, transmission media such as radio, satellite, wire, cable and fiber optic cable means of transmission;

(y) "Long Term Support" (LTS) means funds provided by telephone companies that are not association Common Line tariff participants to association Common Line tariff participants. LTS enables association Common Line tariff

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participants to charge a Common Line (CL) rate equivalent to the CL rate that would result if all telephone companies participated in the association Common Line tariff;

(z) "Net Investment" means allowable original cost investment in Accounts 2001 through 2003, 1220 and 1402 that has been apportioned to interstate and foreign services pursuant to the *Separations Manual* from which depreciation, amortization and other reserves attributable to such investment that has been apportioned to interstate and foreign services pursuant to the *Separations Manual* have been subtracted and to which working capital that is attributable to interstate and foreign services has been added;

(aa) "Operating Taxes" include all taxes in Account 7200;

(bb) "Origination" of a service that is switched in a Class 4 switch or an interexchange switch that performs an equivalent function ends when the transmission enters such switch and "termination" of such a service begins when the transmission leaves such a switch, except that;

(1) Switching in a Class 4 switch or transmission between Class 4 switches that is not deemed to be interexchange for purposes of the Modified Final Judgement entered August 24, 1982, in *United States v Western Electric Co.*, D.C. Civil Action No. 82–0192, will be "origination" or "termination" for purposes of this Part; and

(2) "Origination" and "Termination" does not include the use of any part of a line, trunk or switch that is not owned or leased by a telephone company;

(cc) "Origination" of any service other than a service that is switched in a Class 4 switch or a switch that performs an equivalent function ends and "termination" of any such service begins at a point of demarcation that corresponds with the point of demarcation that is used for a service that is switched in a Class 4 switch or a switch that performs an equivalent function;

(dd) "Private Line" means a line that is used exclusively for an interexchange service other than MTS, WATS or an MTS–WATS equivalent service, including a line that is used at the closed end of an FX or CCSA service or any service that is substantially equivalent to a CCSA service;

(ee) "Public Telephone" is a telephone provided by a telephone company through which an end user may originate interstate or foreign telecommunications for which he pays with coins or by credit card, collect or third number billing procedures;

(ff) "Return Component" means net investment attributable to a particular element or category multiplied by the authorized annual rate of return;

(gg) "Subscriber Line Cable and Wire Facilities" means all lines or trunks on the subscriber side of a Class 5 or end office switch, including lines or trunks that do not terminate in such a switch, except lines or trunks that connect an interexchange carrier;

(hh) "Telephone Company" means a carrier that provides telephone exchange service as defined in section 3(r) of the Communications Act of 1934;

(ii) "Transitional Support" (TRS) means funds provided by telephone companies that are not association Common Line tariff participants, but were net contributors to the association Common Line pool in 1988, to telephone companies that are not association Common Line tariff participants and were net receivers from the association Common Line pool in 1988;

(jj) "Unit of Capacity" means the capability to transmit one conversation;

(kk) "WATS Access Line" means a line or trunk that is used exclusively for WATS service.

3. Section 69.3 is amended by revising paragraph (a) and by adding paragraph (e)(10) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) A tariff for access service shall be filed with this Commission for an annual period. Such tariff shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of January 1. Such tariff filings shall be limited to rate level changes.

* * * * *

(e) * * *

(10) Any data supporting a tariff that is not an association tariff shall be consistent with any data that the filing carrier submitted to the association.

* * * * *

4. In § 69.4, paragraph (b) is revised to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in subpart C of this Part and in § 69.4(c), the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Limited pay telephone;
(2) Carrier common line;
(3) Local switching;
(4) Information;
(5) Common transport;
(6) Dedicated transport; and
(7) Special access.

* * * * *

5. Section 69.103 is revised to read as follows:

§ 69.103 Limited pay telephone (public telephones that can access the services of only one interexchange carrier).

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon an interexchange carrier for each line terminating in a public telephone which can be used to originate any of its interstate or foreign telecommunications services, but not such services of other interexchange carriers.

(b) The per line charge shall be computed by dividing one-twelfth of the projected annual revenue requirement for the Limited Pay Telephone element by the projected average number of public telephones which can access the services of only one interexchange carrier.

6. Section 69.106 is revised to read as follows:

§ 69.106 Local switching.

(a) Charges that are expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services.

(b) A per minute charge shall be computed by dividing the projected annual revenue requirement for the Local Switching element by the projected annual access minutes of use for all interstate or foreign services that use local exchange switching facilities.

(c) If end users of an interstate or foreign service that uses local switching facilities pay message unit charges for such calls in a particular exchange, a credit shall be deducted from the Local Switching element charges to such carrier for access service in such exchange. The per minute credit for each such exchange shall be multiplied by the monthly access minutes for such service to compute the monthly credit to such a carrier.

(d) If all local exchange subscribers in such exchange pay message unit charges, the per minute credit described in paragraph (c) of this section shall be computed by dividing total message unit charges to all subscribers in a particular exchange in a representative month by the total minutes of use that were measured for purposes of computing message unit charges in such month.

(e) If some local exchange subscribers pay message unit charges and some do not, a per minute credit described in paragraph (c) of this section shall be computed by multiplying a credit

computed pursuant to paragraph (d) of this section by a factor that is equal to total minutes measured in such month for purposes of computing message unit charges divided by the total local exchange minutes in such month.

§ 69.107 [Removed]

7. Section 69.107 is removed.

§ 69.108 [Removed]

8. Section 69.108 is removed.

9. Section 69.201 is revised to read as follows:

§ 69.201 General.

Notwithstanding §§ 69.4, 69.104 through 69.106, and 69.111 through 69.112, charges for the access elements described in this Subpart shall be computed in accordance with this Subpart during the period commencing January 1, 1984 and ending December 31, 1992. This subpart does not supersede §§ 69.106(c) through 69.106(e).

10. Section 69.205 is revised to read as follows:

§ 69.205 Transitional premium charges.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive premium access in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.111 and 69.112 of this Part if any carrier or other person does not receive premium access. For purposes of this subpart, a carrier or other person shall be deemed to receive premium access if access is provided through a local exchange switch that has the capability to provide access for an MTS–WATS equivalent service that is substantially equivalent to the access provided for MTS or WATS, except that access provided for an MTS–WATS equivalent service that does not use such capability shall not be deemed to be premium access until six months after the carrier that provides such MTS–WATS equivalent service receives actual notice that such equivalent access is or will be available at such switch.

(b) The transitional premium charge for the Carrier Common Line element shall be expressed in dollars and cents per access minute. Such charge shall be computed by dividing the revenue requirement for such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium access minutes for such element for such period by .45.

(c) Separate Local Switching transitional premium charges that are expressed in dollars and cents per access minute shall be computed for the LS1 and LS2 categories. The LS1 category shall consist of local dial switching for services other than MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS. The LS2 category shall consist of local dial switching for MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS.

(d) The charge for an LS2 premium access minute shall be computed by dividing the premium Local Switching revenue requirement by the sum of the projected LS2 premium access minutes and a number that is computed by multiplying the projected LS1 premium access minutes by the applicable LS1 transition factor. The charge for an LS1 premium access minute shall be computed by multiplying the charge for an LS2 premium access minute by the applicable LS1 transition factor. The premium Local Switching revenue requirement shall be computed by subtracting the projected revenues from non-premium charges attributable to the Local Switching element from the revenue requirement for such element.

(e) During each of the following years the LS1 transition factor shall be:

(1) 1988—.78;
(2) 1989—.83;
(3) 1990—.88;
(4) 1991—.93; and
(5) 1992—.98.

(f) Transitional premium charges that are computed in accordance with applicable requirements shall be assessed for the Transport element or elements. Such premium charges shall be designed to produce total annual revenue that is equal to the premium transport revenue requirement. The premium transport revenue requirement shall be computed by subtracting projected revenues from non-premium charges attributable to the Transport element or elements from the revenue requirement for such element or elements.

11. Section 69.206 is revised as follows:

§ 69.206 Transitional non-premium charges for MTS–WATS equivalent services.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is not deemed to be premium access in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.111 and 69.112.

(b) The transitional non-premium charge for the Carrier Common Line element shall be computed by multiplying the premium charge for such element by .45.

(c) The transitional non-premium charge for the Local Switching element shall be computed by multiplying a hypothetical premium charge for such element by .45. The hypothetical premium charge for such element shall be computed by dividing the annual revenue requirement for such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium minutes for such element for such period by .45.

(d) The transitional non-premium charge or charges for the Transport element or elements shall be computed by multiplying the corresponding premium charge or charges by .45.

§ 69.208 [Removed]

12. Section 69.208 is removed.

13. Subparts D and E of Part 69 are revised as follows:

Subpart D—Apportionment of Net Investment

Sec.
69.301 General.
69.302 Net investment.
69.303 Information origination/termination equipment (IOT).
69.304 Subscriber line cable and wire facilities.
69.305 Carrier cable and wire facilities (C&WF).
69.306 Central office equipment (COE).
69.307 General support facilities.
69.308 Equal access equipment.
69.309 Other investment.
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Subpart E—Apportionment of Expenses

69.401 Direct expenses.
69.402 Operating taxes (Account 7200).
69.403 Marketing expenses (Account 6610).
69.404 Telephone operator services expenses in Account 6620.
69.405 Published directory expenses in Account 6620.
69.406 Local business office expenses in Account 6620.
69.407 Revenue accounting expenses in Account 6620.
69.408 All other customer services expenses in Account 6620.
69.409 Corporate operations expenses (Account 6710 and 6720).
69.410 Equal access expenses.
69.411 Other expenses.
69.412 Non participating company payments/receipts.
69.413 Universal service fund expenses.
69.414 Lifeline assistance expenses.

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Subpart D—Apportionment of Net Investment

§ 69.301 General.

(a) For purposes of computing annual revenue requirements for access elements net investment as defined in § 69.2(z) shall be apportioned among the interexchange category, the billing and collection category and access elements as provided in this subpart. Expenses shall be apportioned as provided in Subpart E of this part.

(b) The End User Common Line and Carrier Common Line elements shall be combined for purposes of this subpart and subpart E of this part. Those elements shall be described collectively as the Common Line element. The Common Line element revenue requirement shall be segregated in accordance with subpart F of this part.

§ 69.302 Net investment.

(a) Investment in Accounts 2001, 1220 and Class B Rural Telephone Bank Stock booked in Account 1402 shall be apportioned among the interexchange category, billing and collection category and appropriate access elements as provided in §§ 69.303 through 69.309.

(b) Investment in Accounts 2002 and 2003 shall be apportioned in the following manner:

(1) Central Office Equipment (COE) investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Accounts 2210, 2220, and 2230 COE Assets combined;

(2) Cable and Wire Facilities (C&WF) investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Account 2410 C&WF Assets;

(3) General Support Facilities investment shall be apportioned among the interexchange category, the billing and collection category, and appropriate access elements on the basis of General Support Facilities Investment in Account 2001.

(4) Investment that is not COE, C&WF or General Support Facilities shall be apportioned among the interexchange category, the billing and collection category, and appropriate access elements in the same proportions as the associated investment in Account 2001, Telecommunications Plant in Service.

§ 69.303 Information origination/termination equipment (IOT).

(a) Investment in public telephones and appurtenances shall be assigned to the Common Line element, if capable of use with the services of more than one interexchange carrier, or the Limited Pay Telephone element, if capable of use with the services of only one interexchange carrier.

(b) Investment in all other IOT shall be apportioned between the Special Access and Common Line elements on the basis of the relative number of equivalent lines in use, as provided herein. Each interstate or foreign Special Access Line, excluding lines designated in § 69.115(e), shall be counted as one or more equivalent lines where channels are of higher than voice bandwidth, and the number of equivalent lines shall equal the number of voice capacity analog or digital channels to which the higher capacity is equivalent. Local exchange subscriber lines shall be multiplied by the interstate Subscriber Plant Factor to determine the number of equivalent local exchange subscriber lines.

§ 69.304 Subscriber line cable and wire facilities.

(a) Investment in local exchange subscriber lines shall be assigned to the Common Line element.

(b) Investment in interstate and foreign private lines and interstate WATS access lines shall be assigned to the Special access element.

(c) Investment in lines terminating in public telephones which may only access the services of one interexchange carrier (or partnership) shall be assigned to the Limited Pay Telephone element. Investment in all other lines terminating in public telephones shall be assigned to the Common Line element.

§ 69.305 Carrier cable and wire facilities (C&WF).

(a) Carrier C&WF that is not used for "origination" or "termination" as defined in § 69.2(bb) and § 69.2(cc) shall be assigned to the interexchange category.

(b) Carrier C&WF, other than WATS access lines, not assigned pursuant to paragraph (a) of this section that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned between the Dedicated Transport and Common Transport elements. Such C&WF shall be assigned to the Dedicated Transport element if it is used exclusively for the interexchange services of a particular carrier.

(c) All Carrier C&WF that is not apportioned pursuant to paragraphs (a) and (b) of this section shall be assigned to the Special Access element.

§ 69.306 Central office equipment (COE).

(a) The Separations Manual categories shall be used for purposes of apportioning investment in such equipment except that any Central office equipment attributable to a Dedicated transport subelement shall be assigned to the Dedicated transport element.

(b) COE Category 1 (Operator Systems Equipment) shall be apportioned among the interexchange category and the access elements as follows: Category 1 that is used for intercept services shall be assigned to the Local Switching element. Category 1 that is used for directory assistance shall be assigned to the Information element. Category 1 other than service observation boards that is not assigned to the Information element and is not used for intercept services shall be assigned to the interexchange category. Service observation boards shall be apportioned among the interexchange category and the Information, Common Transport and Local Switching access elements based on the remaining combined investment in COE Category 1, Category 2 and Category 3.

(c) COE Category 2 (Tandem Switching Equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States* v. *Western Electric Co.* shall be assigned to the Common Transport element. All other COE Category 2 shall be assigned to the interexchange category.

(d) COE Category 3 (Local Switching Equipment) shall be assigned to the Local Switching element except as provided in paragraph (a) of this Section.

(e) COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Limited Pay Telephone, Dedicated Transport, Common Transport and Special Access elements. COE Category 4 shall be apportioned in the same proportions as the associated Cable and Wire Facilities.

§ 69.307 General support facilities.

General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Dedicated Transport, Common Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities excluding Category 1.3, combined.

§ 69.308 Equal access equipment.

Equal Access investment shall be assigned to the Local Switching element.

§ 69.309 Other investment.

Investment that is not apportioned pursuant to §§ 69.302 through 69.308 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportions as the combined investment that is apportioned pursuant to §§ 69.303 through 69.308.

§ 69.310 Capital leases.

Capital Leases in Account 2680 shall be directly assigned to the appropriate interexchange category or access elements consistent with the treatment prescribed for similar plant costs or shall be apportioned in the same manner as Account 2001.

Subpart E—Apportionment of Expenses

§ 69.401 Direct expenses.

(a) Plant Specific Operations Expenses in Accounts 6110 and 6120 shall be apportioned among the interexchange category, the billing and collection category and appropriate access elements on the following basis:

(1) Account 6110—Apportion on the basis of other investment apportioned pursuant to § 69.309.

(2) Account 6120—Apportion on the basis of General and Support Facilities investment pursuant to § 69.307.

(b) Plant Specific Operations Expenses in Accounts 6210, 6220 and 6230 shall be apportioned among the interchange category and access elements on the basis of the apportionment of the total COE investment.

(c) Plant Specific Operations Expenses in Accounts 6310 and 6410 shall be assigned to the appropriate investment category and shall be apportioned among the interexchange category and access elements in the same proportions as the total associated investment.

(d) Plant Non Specific Operations Expenses in Accounts 6510 and 6530 shall be apportioned among the interchange category, the billing and collection category, and access elements in the same proportions as the combined investment in COE, IOT, and C&WF apportioned to each element and category.

(e) Plant Non Specific Operations Expenses in Account 6540 shall be assigned to the interexchange category.

(f) Plant Non Specific Operations Expenses in Account 6560 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportion as the associated investment.

(g) Amortization of embedded customer premises wiring investment shall be deemed to be associated with § 69.303(b) IOT investment for purposes of the apportionment described in paragraph (c) of this section.

§ 69.402 Operating taxes (Account 7200).

(a) Federal income taxes, state and local income taxes, and state and local gross receipts or gross earnings taxes that are collected in lieu of a corporate income tax shall be apportioned among the interexchange category, the billing and collection category and all access elements based on the approximate net taxable income on which the tax is levied (positive or negative) applicable to each element and category.

(b) All other operating taxes shall be apportioned among the interexchange category, the billing and collection category and all access elements in the same manner as the investment apportioned to each element and category pursuant to § 69.309 Other Investment.

§ 69.403 Marketing expense (Account 6610).

Marketing expense shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment that is apportioned pursuant to § 69.309.

§ 69.404 Telephone operator services expenses in Account 6620.

Telephone Operator Services expenses shall be apportioned among the interexchange category, and the Local Switching and Information elements based on the relative number of weighted standard work seconds. For those companies who contract with another company for the provision of these services, the expenses incurred shall be directly assigned among the interexchange category and the Local Switching and Information elements on the basis of the bill rendered for the services provided.

§ 69.405 Published directory expenses in Account 6620.

Published Directory expenses shall be assigned to the Information element.

§ 69.406 Local business office expenses in Account 6620.

(a) Local business office expenses shall be assigned as follows:

(1) End user service order processing expenses attributable to presubscription shall be apportioned among the Common Line, Switching, and Transport elements in the same proportion as the investment apportioned to those elements pursuant to § 69.309.

(2) End user service order processing, payment and collection, and billing inquiry expenses attributable to the company's own interstate private line and special access service shall be assigned to the Special Access element.

(3) End user service order processing, payment and collection, and billing inquiry expenses attributable to interstate private line service offered by an interexchange carrier shall be assigned to the billing and collection category.

(4) End user service order processing, payment and collection, and billing inquiry expenses attributable to the company's own interstate message toll service shall be assigned to the interexchange category. End user service order processing, payment and collection, and billing inquiry expenses attributable to interstate message toll service offered by an interexchange carrier shall be assigned to the billing and collection category. End user payment and collection and billing inquiry expenses attributable to End User Common Line access billing shall be assigned to the Common Line element.

(5) End user service order processing, payment and collection, and billing inquiry expenses attributable to TWX service shall be assigned to the Special Access element.

(6) Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to private lines and special access shall be assigned to the Special Access element.

(7) Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to interstate switched access and message toll, shall be apportioned among the Common Line, Local Switching and Transport elements in the same proportion as the investment apportioned to those elements pursuant to § 69.309.

(8) Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to billing and collection service shall be assigned to the billing and collection category.

(9) Coin collection and administration expenses shall be divided between limited and non-limited public telephones. Coin collection and administration expenses attributable to limited public telephones shall be assigned to the Limited Pay Telephone element. Coin collection and administration expenses attributable to non-limited public telephone shall be assigned to the Common Line element.

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§ 69.407 Revenue accounting expenses in Account 6620.

(a) Revenue accounting expenses that are attributable to End User Common Line access billings shall be assigned to the Common Line element.

(b) Revenue Accounting Expenses that are attributable to carrier's carrier access billing and collecting expense shall be apportioned among all carrier's carrier access elements except the Common Line element. Such expenses shall be apportioned in the same proportion as the combined investment in COE, C&WF and IOT apportioned to those elements.

(c) All other Revenue Accounting Expenses shall be assigned to the billing and collection category.

§ 69.408 All other customer services expense in Account 6620.

All other customer services expenses shall be apportioned among the Interexchange category, the billing and collection category and all access elements based on the combined expenses in §§ 69.403 through 69.407.

§ 69.409 Corporate operations expenses (Accounts 6710 and 6720).

All corporate operations expenses shall be apportioned among the interexchange category, the billing and collection category and all access elements in accordance with the Big 3 Expense Factor as defined in § 69.2(f).

§ 69.410 Equal access expenses.

Equal Access expenses shall be assigned to the Local Switching element.

§ 69.411 Other expenses.

Except as provided §§ 69.412, 69.413, and 69.414, expenses that are not apportioned pursuant to §§ 69.401 through 69.410 shall be apportioned among the interexchange category and all access elements in the same manner as § 69.309 Other investment.

§ 69.412 Non participating company payments/receipts.

For telephone companies that are not association Common Line tariff participants, the payment or receipt of funds described in § 69.612(a) and (b) shall be apportioned, respectively, as an addition to or a deduction from their common line revenue requirement.

§ 69.413 Universal service fund expenses.

Expenses allocated to the interstate jurisdiction pursuant to §§ 36.631 and 36.641 shall be assigned to the Carrier Common Line Element until March 31, 1989. Beginning April 1, 1989, such expenses shall be assigned to the Universal Service Fund Element.

§ 69.414 Lifeline assistance expenses.

Expenses allocated to the interstate jurisdiction pursuant to § 36.741 shall be assigned to the Carrier Common Line element until March 31, 1989. Beginning April 1, 1989, such expenses shall be assigned to the Lifeline Assistance element.

14. Section 69.501 is amended by revising paragraphs (c) and (d) to read as follows:

§ 69.501 General.

* * * * *

(c) Any portion of the Common Line element annual revenue requirement that is attributable to customer premises wiring included in IOT investment or expense shall be assigned to the Carrier Common Line element or elements.

(d) Any portion of the Common Line element revenue requirement that is attributable to public telephone investment or expense shall be assigned to the Carrier Common Line element or elements.

* * * * *

15. Section 69.603 is revised to read as follows:

§ 69.603 Association functions.

(a) The Association shall not engage in any activity that is not related to the preparation of access charge tariffs or the collection and distribution of access charge revenues or the operation of a billing and collection pool on an untariffed basis unless such activity is expressly authorized by order of the Commission.

(b) Participation in Commission or court proceedings relating to access charge tariffs, the billing and collection of access charges, the distribution of access charge revenues, or the operation of a billing and collection pool on an untariffed basis shall be deemed to be authorized association activities.

[FR Doc. 87-22999 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-429; RM-5336]

Radio Broadcasting Services; Kaplan, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 247C2 for Channel 249A at Kaplan, Louisiana, at the request of Mid-Arcadiana Broadcasting, Inc. and modifies the license of Station KMDL(FM), Kaplan, to specify the new channel. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 13, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-429, adopted August 25, 1987, and released September 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by substituting Channel 247C2 for Channel 249A at the entry for Kaplan, Louisiana.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23056 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-156; RM-4938; RM-5403; RM-5808]

Radio Broadcasting Services; Claremore and Locust Grove, OK; Barling, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mike Warren, allocates Channel 233A to Claremore, Oklahoma, at the community's first local FM service. At the request of Doyal Hoover, Channel 264A is allocated to Locust Grove, Oklahoma, as the community's first local FM service. Additionally, at the request of Teresa Brown, Channel 233C2 is substituted for Channel 233A at Barling, Arkansas, and her construction permit for Station KPHN is modified to

specify the higher powered channel. The allocation of Channel 233A at Claremore requires a site restriction of 11.6 kilometers (7.2 miles) south and Channel 233C2 at Barling requires a site restriction of 11.4 kilometers (7.1 miles) south. The allocation at Locust Grove requires no site restriction. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987. The window period for filing applications for the Claremore and Locust Grove, Oklahoma, allotments will open on November 16, 1987, and close on December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–156, adopted September 4, 1987, and released September 30, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by adding Claremore, Channel 233A, and Locust Grove, Channel 264A. The FM Table of Allotments for Barling, Arkansas, is amended by adding Channel 233C2 and removing Channel 233A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23063 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–21, RM–5623]

Radio Broadcasting Services; Diamondville, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287C2 to Diamondville, Wyoming, as that community's first FM service, at the request of Four Seasons, Inc. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987; The window period for filing applications will open on November 16, 1987, and close on December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–21, adopted August 25, 1987, and released September 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Diamondville, Wyoming, Channel 287C2 is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23058 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 73, 74 and 76

Oversight of the Radio and TV Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the Alphabetical Indexes in Parts 73, 74 and 76 by updating and correcting them as needed.

EFFECTIVE DATE: October 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION: In this Order, the Alphabetical Indexes are amended by removing listings of rules removed during the past year, adding listings of newly adopted rules and correcting listings as needed. Adopted September 15, 1987; released September 30, 1987.

Order

Adopted: September 15, 1987.

Released: September 30, 1987.

By the Chief, Mass Media Bureau.

1. In this Order, the Commission adds or deletes listings in the alphabetical indexes of Parts 73, 74, and 76 (no modifications in Part 78), pursuant to changes adopted in Commission rule makings in the past 12 months. These corrections are made in September of each year for inclusion in the upcoming October edition of Title 47 of the Code of Federal Regulations.

2. Our experience in alphabetically indexing the broadcast rules clearly indicates that this data makes possible the location of regulations quickly and easily. This fast access has brought about a better understanding of our rules by broadcasters and practitioners. Providing easy access to the rules has reduced considerably the number of letters and phone calls to the FCC requesting help in rule location, thereby minimizing paperwork and administrative workload on the FCC staff, broadcasters and their legal and engineering advisors.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions to Parts 73, 74, and 76 will serve the public interest.

4. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure act. 5 U.S.C. 553(b)(3)(B).

5. Since general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, that pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73, 74 and 76 of the FCC Rules and Regulations

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are amended as set forth below, effective October 1, 1987.

7. For further information on this Order, contact Steve Crane, Mass Media Bureau, (202) 632–5414.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

List of Subjects in 47 CFR Parts 73, 74, and 76.

Radio broadcasting.

Rule Changes

47 CFR is amended to read as follows:

1. The authority citations for Parts 73, 74, and 76 continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

PART 73—[AMENDED]

2. The alphabetical index of 47 CFR Part 73 is amended by removing the following index entries:

Channels, Classes of Commercial, and stations operating thereon (FM).....73.206
Classes of stations and permissible channels (FM).....73.206
Origination, Program.....73.1130
Station program origination.....73.1130

3. The alphabetical index of 47 CFR Part 73 is amended by adding the following index entries:

[Following "FM subsidiary communications services".....73.295]
FM transmitter site map submissions...73.4108
[Following "Multiple" under Applications–]
Mutually exclusive applications for LPTV and TV translator and booster stations.....73.3521

4. The alphabetical index of 47 CFR Part 73 is amended by making the following corrections:

(a) Correcting the section number for the listing "Foreign broadcast stations—Permits to furnish programs" from 73.3543 to 73.3545;

(b) Correcting the section title for § 73.3572 (under Applications) which currently reads "TV, LPTV, TV translator processing" to correctly state "TV, LPTV, translator and TV booster processing".

PART 74—[AMENDED]

5. The alphabetical index of 47 CFR Part 74 is amended by adding the following index entry:

[Following "Translators, TV, Purpose of (LPTV/TV Translators)."....74.731]
TV boosters, Broadcast rules applicable to (LPTV/TV Translators/TV Boosters.....74.780

6. The alphabetical index of 47 CFR Part 74 is amended by correcting the entry of § 74.780, Broadcast regulations applicable to LPTV and TV translators, to correctly read, Broadcast regulations applicable to LPTV, TV translators and TV boosters.

PART 76—[AMENDED]

7. The alphabetical index of 47 CFR Part 76 is amended by removing the following index entries:

Carriage services on vertical blanking interval.....76.64
Carriage, Subscription TV programs.....76.64
Carriage, TV broadcast signals.....76.55
Contours, signal, Determination of.....76.65
Determination, Signal contour.....76.65
Market size operation provisions—
Major TV markets.....76.61
Small TV markets.....76.59
Markets outside major/smaller.....76.57
Must Carry requirements.....76.7
Operating provisions by market size—
Major TV markets.....76.61
Smaller TV markets.....76.59
Markets outside major/smaller.....76.57
Provisions to operate by market size—
Major TV markets.....76.61
Smaller TV markets.....76.59
Markets outside major/smaller.....76.57
Signal Carriage, Manner of.....76.55
Signal contour determination.....76.65
Smaller TV markets.....76.5
Subscription TV program carriage.....76.64
TV broadcast signals, Carriage of.....76.51
TV markets, Smaller.....76.51

8. The alphabetical index of 47 CFR Part 76 is amended by adding the following index entries:

[Preceding "Broadcast station, TV".....76.5]
Broadcast, Sports.....76.67
[Following "Candidates for public office, Cablecast by".....76.205]
Carriage disputes.....76.58
Carriage, mandatory, Expiration of.....76.64
Carriage, Manner of.....76.62
Carriage of other TV signals.....76.60
Carriage of TV stations, Mandatory.....76.56
Carriage of TV stations, Mandatory, Exemption from.....76.70
[Following "Community Unit".....76.5]
Consumer education-selector switches.....76.66
[Following "Dismissal: Special relief petitions".....76.8]
Disputes concerning carriage.....76.58
[Following "Independent station".....76.5]
Input selector switches.....76.66
Input selector switches, consumer education.....76.66
Input selector switches, Exemption.....76.70
[Preceding "Marine and aeronautical emergency frequencies, Operation near".....76.616]
Mandatory carriage of TV stations.....76.56
Mandatory carriage of TV stations, Exemption from.....76.70
Manner of carriage.....76.62
[Under "Q"]—
Qualified TV station, Showing.....76.55
[Preceding "Show cause order".....76.9]
Selector switches, Input.....76.66
Selector switches, input, Exemption.....76.70
[Following "TV markets, Major".....76.51]
TV signals, Carriage non-mandatory.....76.60

§ 76.53 [Amended]

9. The alphabetical index of 47 CFR Part 76 is amended by correcting the entry for § 76.53, Boundaries, TV worksheets, to correctly read Boundaries, TV markets.

[FR Doc. 87–23057 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–01–M

VETERANS ADMINISTRATION

48 CFR Part 819

Small Business and Small Disadvantaged Business Concerns

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the VA Acquisition Regulation (VAAR) to make it consistent with the provisions in the National Defense Authorization Act for FY 1987.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Policy and Interagency Service (91A), Office of Procurement and Supply, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2334.

SUPPLEMENTARY INFORMATION:

I. Program Information

VAAR §§ 819.806–2 and 819.806–4 were published as deviations to the Federal Acquisition Regulation (FAR). The deviation provided a different definition of fair market price from that contained in the FAR. The VAAR definition allowed the award of 8(a) contracts if the price was determined to be fair and reasonable. Pub. L. 99–661 relies upon the FAR definition of fair market price and the VAAR is made consistent with that definition by this amendment. This amendment emphasizes steps to ensure that all appropriate actions are considered in determining the fair market price.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this final rule does not come within the term rule as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a

substantial number of small entities because the VAAR subpart will primarily implement the regulations set forth in FAR Subpart 8.4.

IV. Paperwork Reduction Act

This final rule requires no additional information collection or recordkeeping requirement upon the public.

List of Subjects in 48 CFR Part 819

Government procurement.

Approved: September 28, 1987.

Thomas K. Turnage,

Administrator.

Part 819 of Title 48 Code of Federal Regulations is amended as follows:

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for Part 819 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. In 48 CFR Part 819, all references to "Office of Construction" are revised to read "Office of Facilities."

Subpart 819.8—Contracting with the Small Business Administration (The 8(a) Program)

3. Sections 819.806–2 and 819.806–4 are revised, and section 819.806–3 is added to read as follows:

819.806–2 Estimating the current fair market price.

(a) Estimating the fair market price is a crucial initial step in determining what is a reasonable price for a negotiated 8(a) contract. For supplies and equipment, previous prices paid under competitive conditions, adjusted for inflation, may provide necessary data to make such an estimate.

(b) Estimating fair market price for such services as architect-engineer and construction may be accomplished through independent cost estimates and other pertinent data obtained from SBA when the estimated fair market price is not fully supportable from available documentation (see FAR 19.806–2(a)).

819.806–3 Pricing review by the Small Business Administration.

In order to expedite the 8(a) process, SBA should be informed as soon as a disparity between the 8(a) offered price and the estimated fair market price is determined. The SBA and the VA contracting office should collaborate to determine if the disparity is:

(a) A result of deficiencies in developing the fair market price, thereby requiring revision to the estimate;

(b) A result of overpricing by the 8(a) company, thereby requiring further efforts to negotiate a decrease in the offered price; or

(c) A legitimate differential which should be funded through the SBA business development expense.

819.806–4 Funding business development expense.

If SBA declines to fund the business development expense, it will be reported in accordance with 819.870.

819.7004 [Amended]

4. Section 819.7004 is amended by removing the words "07–2268 or."

[FR Doc. 87–22984 Filed 10–5–87; 8:45 am]

BILLING CODE 6320–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160 and 1165

[Ex Parte No. MC–142 (Sub-No. 4)]

Revision of Licensing Procedures To Include Applications for Removal of Restrictions From Authorities of Motor Carriers of Property and Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission eliminates the restriction removal rules at 49 CFR Part 1165 and substitutes a new Subpart G to the licensing rules at 49 CFR Part 1160 to allow carriers to remove operating restrictions from their authorities by using conventional application procedures. This action unifies and simplifies the application and restriction removal guidelines, and preserves the procedural requirements for restriction removal applications of 49 U.S.C. 10922(i).

EFFECTIVE DATE: This action will be effective November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley (202) 275–7181 or Andrew L. Lyon, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Environmental and Energy Considerations

The rules adopted here will not affect significantly the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We confirm our preliminary assessment and certify that the revised approach to restriction removal adopted here will not have a significant economic impact on the substantial number of small entities because the new Subpart G does not alter the licensing and restriction removal options presently available. Carriers are not required to take action in response to these rule revisions. When such carriers do institute an application pursuant to the rules, they need only refer to a simplified set of guidelines. Small shipper entities will continue to benefit from the resulting expanded service options.

List of Subjects in 49 CFR Parts 1160 and 1165

Administrative practice and procedure, Buses, Motor carriers.

Decided: September 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1165—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS, AND FREIGHT FORWARDERS [REMOVED]

1. Part 1165 of the Code of Federal Regulations, Title 49, is removed.

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

2. The authority citation for 49 CFR Part 1160 is revised to read as follows:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559; and 16 U.S.C. 1456.

3. Part 1160 of the Code of Federal Regulations, Title 49, is amended by adding a new Subparagraph G as follows:

Subpart G—Rules for Removing Restrictions from Operating Authority; Motor Carriers of Property and Passengers

Sec.

1160.107 Requests for restriction removal.
1160.108 Procedural guidelines.

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Sec.
1160.109 Information which shall accompany the application.
1160.110 Participation of interested persons.
1160.111 Notice.
1160.112 Furnishing a copy of the application package to interested persons.
1160.113 Disposition of the application.
1160.114 Compliance.

Subpart G—Rules for Removing Restrictions from Operating Authority; Motor Carriers of Property and Passengers

§ 1160.107 Requests for restriction removal.

Form OP–1 (an original and 1 copy) is to be filed by:

(a) Motor carriers of property seeking to remove operating restrictions from their certificates or permits in accordance with 49 U.S.C. 10922(i)(1); and

(b) Motor carriers of passengers seeking to remove operating restrictions from their certificates in order to authorize interstate transportation or service to intermediate points on any authorized route in accordance with 49 U.S.C. 10922(i)(4).

§ 1160.108 Procedural guidelines.

(a) Carriers seeking to relieve their existing authorities of operating restrictions as provided should distinguish their application forms by including at the top of page one the designation "Restriction Removal Application."

(b) The Commission will assign applications identified in this manner an "X" suffix on the docket number. Applications so designated will be processed within the expedited statutory time limitations provided at 49 U.S.C. 10922(i)

§ 1160.109 Information which shall accompany the application.

In addition to the pertinent information requested in the body of Form OP–1, restriction removal applicants shall submit the following information (an original and 1 copy) in the order set forth below:

(a) A copy of the certificate or permit from which applicant seeks to have restrictions removed or which it proposes be broadened.

(b) A proposed draft of the certificate or permit (commodity and territorial descriptions) with the restrictions removed or the authority broadened as proposed, together with sufficient information for the Commission to determine readily the precise portions of the existing authority to be modified. The redrafted certificate or permit shall be in the same format as the original so that, if the application is granted, it can be issued promptly without further redrafting by the Commission.

(c) A caption summary (an original and 1 copy) of the modifications proposed, suitable for publication in the ICC Register. The caption summary shall include an accurate summary of the restrictions applicant seeks removed, the authority applicant seeks broadened under these rules, or the authority applicant would hold if its application were granted. It shall also include the authority (including specific sub-numbers) which would be superseded by a grant of the application.

(d) Where the applicant is a motor carrier of property,

(1) A brief statement affirmatively indicating that it is fit, willing, and able to perform the broader service to be authorized; and

(2) A statement describing the effect of the proposal upon one or more of the following factors:

(i) The consumption of energy resources;

(ii) Potential cost savings and improved efficiency;

(iii) The provisions of the transportation policy set forth in 49 U.S.C. 10101(a); or

(iv) The provision and maintenance of service to small and rural communities and small shippers.

§ 1160.110 Participation of interested persons.

Comments (an original and 1 copy) shall be filed with the Commission within 25 days of the date of publication in the *ICC Register*. The envelope containing the comments and the comments shall be clearly marked "Restriction Removal Comments."

(a) Comments on applications filed by motor carriers of property. Any interested persons may comment on the applicant's proposal. Comments may address either or both:

(1) The merits of the particular proposal, including the reasonableness of the sought commodity expansion, and applicant's fitness, willingness, and ability to perform operations under the broadened authority, or

(2) Whether the proposal properly should be considered under these rules.

(b) Comments on applications filed by motor carriers of passengers. No common carrier of passengers may protest an application to remove an operating restriction under 49 U.S.C. 10922(i)(4) unless:

(1)(i) It possesses authority to handle, in whole or in part, the traffic for which authority is applied;

(ii) It is willing and able to provide service that meets the reasonable needs of the traveling public; and

(iii) It has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited traffic within the scope of the application during such period;

(2) It has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

(3) The Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in 49 U.S.C. 10101(a).

(c) Protests for motor carriers of passengers must address:

(1) Whether the proposed interstate transportation directly competes with a commuter bus operation; and

(2) Whether the resulting interstate transportation would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(3) Protests also may address whether the proposal should properly be considered under these rules.

§ 1160.111 Notice.

Notice to the public of the filing of an application under these rules will be given by the Commission through publication of a caption summary in the *ICC Register*. Applicant shall comply with the requirements at 49 CFR 1160.9 (property carriers) or 1160.77 (passenger carriers) concerning filing copies of the application or caption summary with the Commission and State regulatory bodies.

§ 1160.112 Furnishing a copy of the application to interested persons.

Applicant's representative is required to furnish a copy of the application package to interested persons in accordance with the regulations at 49 CFR 1160.13(a) (property carriers) or 1160.81 (passenger carriers).

§ 1160.113 Disposition of the application.

(a) *Basis for determining the application.* Except in extraordinary circumstances, applications will be determined solely on the basis of the application itself and any comments that are received. There will be neither oral hearings nor the opportunity for the submission of evidence under modified procedure.

(b) *The Commission's decision.* Applications will be published in the *ICC Register* in the form of tentative decisions granting the authority

requested. If no comments are filed, the application will stand granted at the conclusion of the 25-day comment period, unless the Commission, prior to that time, stays the effectiveness of the tentative decision.

(c) *Administrative finality and appeals.* A decision disposing of an application subject to these rules is a final action of the Commission. Review of such an action on appeal is discretionary and is governed by the Commission's appeal regulations at 49 CFR Part 1115. Any party seeking review should specify the "extraordinary circumstances" involved in the proceeding to enable the Commission to extend the deadline for final Commission action an additional 90 days

§ 1160.114 Compliance.

A reformed certificate or permit will be issued upon a grant of an application. Prior to beginning operations under the newly issued authority, compliance must be made as described at 49 CFR 1160.19 (property carriers) or 1160.86 (passenger carriers).

[FR Doc. 87-23012 Filed 10-5-87; 8:45 am]
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Proposed Rules

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-086]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add Montana to the list of states approved to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because Montana has entered into an agreement with the Deputy Administrator, Veterinary Services, to enforce its state laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by federal regulations, to further ensure the horses' freedom from CEM. This action will relieve unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATE: Consideration will be given to comments postmarked or received on or before December 7, 1987.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-086. Comments received may be inspected in Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92, §§ 92.2(i)(2), 92.4(a)(5) and 92.4(a)(8), allow certain horses (mares and stallions over 731 days old) to be imported into the United States from certain countries where contagious equine metritis (CEM) exists if specific requirements to prevent their introducing CEM into the United States are met and the horses are consigned to approved states for further inspection, treatment, and testing.

Mares and stallions over 731 days old must be consigned to states which have been approved by the Deputy Administrator, Veterinary Services (VS), as meeting conditions necessary to ensure that the horses are free of CEM. These conditions, which concern inspection, treatment, and testing of the horses, are contained in § 92.4(a)(6) of the regulations for stallions and § 92.4(a)(9) of the regulations for mares.

Montana has agreed to abide by the regulations concerning horses imported from countries where CEM exists, and to enter into a written agreement with the Deputy Administrator, VS, to enforce its state laws and regulations to control CEM. Therefore, we propose to add Montana to the list of states approved to receive mares and stallions that are over 731 days old and imported into the United States from certain countries where CEM exists.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

We anticipate that fewer than 25 mares and stallions over 731 days old will be imported into the state of Montana annually from countries where CEM exists. Approximately 2,400 mares and stallions over 731 days old and from countries where CEM exists were imported into the entire United States in Fiscal Year 1986. During this same period, approximately 26,000 horses of all classes were imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this section would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 9.24 [Amended]

2. In § 92.4, paragraphs (a)(5)(ii) and (a)(8)(ii) would be amended by adding

"The State of Montana." in alphabetical order.

Done in Washington, DC, on this 1st day of October, 1987.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-23108 Filed 10-5-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-44]

Committee To Bridge the GAP; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Committee To Bridge the Gap. The petitioner requested that the Commission amend its regulations to require all licensees whose reactors employ graphite as a neutron moderator or reflector and whose licensed power is greater than 100 W to: (1) Formulate and submit for NRC approval fire response plans for combating a reactor fire involving graphite and other constituent reactor parts (e.g., fuel); (2) formulate and submit for NRC approval evacuation plans in case of a reactor fire; and (3) perform measurements of the Wigner energy stored in the graphite of their reactors and submit these measurements to the NRC for review, together with a revised safety analysis that shall address the risks and consequences of a reactor fire.

The petitioner believes these requirements are necessary because the previous NRC safety evaluations of these reactors allegedly were based on a belief that graphite fires were not credible and on an inability of the NRC and its contractors to properly calculate Wigner energy in the graphite. The Commission is denying the petition because Fort St. Vrain Nuclear Generating Station and all NRC-licensed research and test (non-power) reactors have approved plans for dealing with emergencies in accordance with existing regulations. The protective actions are based on conservative dose calculations consistent with those proposed by the petitioner.

Graphite burning is a very low-probability (i.e., noncredible) event and its potential is essentially independent of stored energy in graphite. Empirical measurements of stored energy in graphite are not needed to perform an evaluation of the releasable stored energy. Furthermore, the requirement for such measurements could result in personnel exposures that would be inconsistent with NRC's as low as is reasonably achievable (ALARA) principle.

ADDRESSES: Copies of the petition, public comments and abstracts of the comments received on the petition, and the Brookhaven National Laboratory Report NUREG/CR-4981 are available for inspection and copying under Docket No. PRM-50-44 in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Copies of NUREG/CR-4981 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Theodore S. Michaels, Standardization and Non-Power Reactor Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-8251.

SUPPLEMENTARY INFORMATION:

The Petition

A petition for rulemaking was filed by the Committee To Bridge the GAP (CBG) on July 7, 1986. The petition was docketed by the Commission on July 7, 1986 and was assigned Docket No. PRM-50-44. A notice requesting comments on the petition was printed in the **Federal Register** on September 3, 1986 (51 FR 31341). The petition requests that the Commission amend its regulations.

Basis for the Request

The petitioner offered the following justification for the proposeod revision of the regulations:

- The occurrence of a graphite fire at the Chernobyl plant in the Soviet Union demonstrates that such fires are credible events. The NRC and its licensees have mistakenly dismissed graphite fires as noncredible events.
- New experimental data show that NRC's generic analysis of stored energy in research reactor graphite significantly underestimates the actual amount of stored energy, and thus underestimates the associated risk of graphite fire.
- The NRC failed to required basic safety measures that could help to reduce the threat of such a fire. Licensees whose reactors use graphite, including dozens of non-power reactors and one commercial power reactor, have no fire response plans for combating graphite fires in their reactors. Non-power reactor licensees do not have adequate emergency plans to evacuate members of the public in the event of a graphite fire or other severe accident.

For these reasons, the petitioner would require all licensees whose reactors employ graphite as a neutron moderator or reflector and whose licensed power is greater than 100 W to:

(a) Formulate and submit for NRC approval fire response plans for combating a reactor fire involving graphite and other constituent reactor parts (e.g., fuel) which might be involved in such a fire, taking into consideration the potential for explosive reactions. Response plans shall identify precisely which materials will be used to suppress a fire without increasing the risk of explosion, and shall indicate where and in what quantities these materials will be stored.

(b) Formulate and submit for NRC approval evacuation plans for a reactor fire. Plans should include evacuation out to a sufficient distance from the reactor such that no member of the public receives a dose to the thyroid greater than 5 rem, assuming a release to the environment of 25% of the equilibrium radioactive iodine inventory.

(c) Perform measurements of the "Wigner energy" stored in the graphite of their reactor, and submit these measurements to NRC for review together with a revised safety analysis, which shall address the risks and consequences of a reactor fire. A sufficient number of graphite samples shall be measured to identify the location of maximum stored energy, and to determine the maximum quantity of stored energy within ±10%.

Public Comments on the Petition

On September 3, 1986, the Commission published a notice in the **Federal Register** (51 FR 31341) requesting comments on the petition. The NRC received nine requests for an extension of the comment period. An extension of the comment period was granted, changing the closing date for the comments from November 3, 1986, to February 2, 1987. A total of 27 comments were received, six of which supported the petition and 21 of which opposed the petition. Of the six commenters supporting the petition, two were individual citizens and four were from

citizen's groups. Of the 21 commenters opposed to the petition, 15 were universities or university-related organizations, four were companies involved with the nuclear industry, one was a state government agency, and one was an individual citizen.

Of the comments in support of the petition, none offered any specific technical insights but rather simply endorsed the information and basis of the petition. These comments covered general concerns that include:

- The potential for graphite fires,
- Training of firefighters to manage graphite fires,
- Evacuation of persons on-site and in nearby areas in the event of an accident.

Highlights from the comments opposing the petition are as follows:

- CBG's comparison of research reactors to the Chernobyl-4 (RBMK) reactor ignores the extreme differences in power level, core size, fission product inventory, operating temperature, reactor control systems, and inherent design characteristics.
- CBG's inference that graphite fires were the initiating events in both the Chernobyl and Windscale accidents cannot be substantiated.
- The operating temperature of the Chernobyl graphite (700°C) dismisses CBG's contention that stored energy in the irradiated graphite played any role in the Chernobyl accident.
- CBG ignores the necessity for an initiating event to raise the graphite temperature 50C°-100C° above its normal operating temperature before any Wigner (stored) energy in graphite can be released.
- CBG ignores the fact that only the releasable stored energy, not the total stored energy, in graphite, in accordance with the annealing temperature, can contribute to a graphite temperature increase.
- The conditions necessary for graphite burning do not exist nor can they be created by random events in non-power reactors.
- The conditions necessary for graphite burning do not exist in the Fort St. Vrain reactor.
- Operating temperatures of the graphite in the Fort St. Vrain reactor preclude the accumulation of any significant quantity of stored energy (i.e., the graphite is self-annealing).
- NRC-approved emergency plans (required by 10 CFR Part 50, Appendix E) are in place at all NRC-licensed reactors and are adequate and acceptable.
- Measurement of stored energy is not consistent with the ALARA philosophy, since it requires the unnecessary exposure of reactor personnel.
- CBG fails to provide a technical basis for any of the petition's proposed requirements.

The comments opposing the petititon are too numerous to address individually. However, each comment has been considered by the staff and its contractors in analyzing the petition and in developing the NRC position. Abstracts of all comments received and the full text are available at the NRC Public Document Room in the Docket file PRM–50–44, as noted in the address section above.

Analysis of the Petition

(1) The petitioner asserts that "the occurrence of a graphite fire at the Chernobyl plant demonstrates that such fires are indeed credible events."

CBG filed its petition on July 7, 1986. Consequently, only fragmentary information, mostly conjecture, was available before the petition was filed. More detailed and definitive information was first made available, outside the Soviet Union, during a meeting held by the International Atomic Energy Agency (IAEA) in Vienna, Austria, on August 25 to 29, 1986. Without the benefit of the detailed Soviet report, the basis of the petititon is seriously flawed.

In response to the CBG assertion regarding the Chernobyl event, the NRC selected Brookhaven National Laboratory (BNL), operator of the Brookhaven Graphite Research Reactor, whose staff is recognized internationally for its research on reactor-grade graphite and its properties, to review the published information and determine its relevancy to the use of graphite in NRC-licensed reactors. In addition, BNL personnel reviewed the Chernobyl and Windscale accidents and the role, if any, of the graphite moderator in these events. The results of this review are contained in NUREG/CR-4981, "A Safety Assessment of the Use of Graphite in Nuclear Reactors Licensed by the U.S. NRC," July 1987. This report is available as noted in the address section above.

The staff has used the BNL report, comments received from the public, and its own understanding of and expertise relevant to the use of graphite in non-power reactors and Fort St. Vrain to evaluate and respond to the assertions and proposed requirements of the CGB petition (PRM–50–44).

In their evaluations of the Chernobyl accident, both Soviet and international scientists argee that graphite burning did occur during this accident. However, most of the experts, including the scientists at BNL, consider the graphite burning a secondary or corollary event resulting from the explosions that occurred as a result of a very rapid reactivity insertion that overheated the fuel and cladding. The explosion created the conditions necessary to initiate and sustain graphite burning (e.g., fragmentation of fuel and graphite, rupture of the moderator inert gas boundary, admission of air, a favorable ratio of graphite volume-to-surface area, sustained heat input from asphalt fires, and decay heat). Although the petition considers the Chernobyl accident a demonstration of graphite fire credibility, the accident confirms that initiation and sustained burning of graphite require the existence of a complex combination of ideal conditions, which are extremely difficult to achieve in any real situation and are virtually incredible in the reactors being considered under this petition. The words "credible" and "incredible" have been used in many AEC/NRC safety analyses. As used by the staff, these words have always been a qualitative statement of the likelihood or probability of an event or condition occurring. Accordingly, the staff's conclusion that sustained or self-sustained graphite burning is not a credible event in NRC-licensed reactors is still valid (i.e., the random simultaneous occurrence of the several conditions necessary for sustained graphite burning or self-sustained graphite burning is an event with a very small probability of occurring). The staff thus concurs in the conclusion reached in the BNL report: "There is no new evidence associated with the analyses of either the Windscale accident or the Chernobyl accident that indicates a credible potential for a graphite burning accident in any of the reactors considered in this review. Nor is there any new evidence that detailed case-by-case safety analysis of the role of graphite in NRC-licensed reactors are warranted." Accordingly, there has been no change in the staff's assessment of graphite burning, the Chernobyl accident notwithstanding, in NRC-licensed reactors, and no changes are required in the staff's previous findings in the safety evaluation reports prepared for these reactors.

(2) The petitioner states that "the NRC has failed to require basic safety measures to reduce the threat of a graphite fire."

The petitioner did not identify the "basic measures" the NRC has failed to require and provided no basis for this statement. The staff considers that the

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elements of the NRC regulatory and licensing process represent the basic safety measures required of licensees to ensure the safe design and operation of their reactors as well as to provide specific plans and procedures for managing and responding to off-normal conditions and accidents. Some examples that are relevant to fire [1] detection, protection, and mitigation are listed below:

- Safety reviews of non-power reactors include an assessment of the fire protection systems at each facility. Fire detection, fire extinguishers, fire alarms, fire prevention, fire fighting training of facility personnel, and onsite and offsite response to fire alarms are typical areas included in the safety review. Inadequacies identified during the review must be corrected before a license is granted.
- Each non-power reactor licensee is required by conditions of the license (Technical Specifications) to provide a safety review for experiments to be inserted in their reactors and for changes in reactor operation. Among many other safety considerations, an assessment of fire potential (e.g., flammable materials) is included.
- Each non-power reactor licensee has responded to the requirements of 10 CFR 50.54(q) and 10 CFR Part 50, Appendix E, in submitting an emergency plan for NRC review and approval. All licensed non-power reactors now have approved emergency plans and the necessary implementing procedures. These plans were reviewed against ANSI/ANS–15.16–1982 and Regulatory Guide 2.6, proposed Revision 1, as outlined in NUREG–0849, "Standard Review Plan for the Review and Evaluation of Emergency Plans for Research and Test Reactors."

Examples of the evaluation items that are relevant to "basic safety measures to reduce the threat of . . . fire" are listed below:

(a) The [emergency] plan should also describe non-radiological monitors or indicators * * * (2) Fire detectors * * *

(b) The emergency plan should describe an initial training and periodic retraining program designed to maintain the ability of emergency response personnel to perform assigned functions for the following:

* * * f. Police security, ambulance, and fire fighting personnel * * * (NUREG–0849, Sections 8.0 and 10.0)

The licensee for Fort St. Vrain has satisfactorily met the requirements of 10 CFR Part 50.48 and 10 CFR Part 50, Appendix R. Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," sets forth fire protection features required to satisfy Criterion 3 of Appendix A to 10 CFR Part 50. These NRC requirements include the "basic safety measures to reduce the threat of a . . . fire."

It is the staff's judgment that the NRC has required adequate basic safety measures to reduce the threat of fire as well as to mitigate the consequences of any fires that do occur. These measures have been reviewed, approved, and implemented for all licensed reactors. They generally apply to all fires and have been found to provide acceptable protection for the health and safety of the public.

(3) The petitioner alleges that "licensees have no fire response plans for graphite fires."

As discussed in item 2, above, all licensees have NRC-approved emergency plans in accordance with 10 CFR 50.54(q) and 10 CFR Part 50, Appendix E. These plans provide for response to fires, for training of fire fighting personnel, and for periodic drills to demonstrate proper operation of the plan in accordance with procedures developed for each facility. One commenter opposing the petition reported that the offsite fire fighters and their supervisors were regularly trained in fire fighting procedures for their facilities and that the fire fighters were confident that they were prepared to deal with the type of fires they could encounter, including a fire involving graphite. This is consistent with BNL research,[2] which recommends a basic fire fighting technique for graphite fires, that is, exclude air or oxygen and cool the graphite. Success in using this basic "cool-and-smother" technique was demonstrated during the Chernobyl accident. Gold nitrogen gas was pumped into the bottom of the reactor to successfully cool the graphite and fuel debris while excluding oxygen to smother any burning. Also at Chernobly, graphite blocks were successfully quenched using water (NUREG–1250, pp. 4–12, 4–21, and 7–23). Since this basic cool-and-smother technique is effective for most fires, the staff has concluded that the licensee' existing emergency plans provide an adquate response for graphite fires as well as any other type of fire.

(4) The petitioner asserts that "non-power reactors do not have adequate emergency plans to evacuate members of the public in the event of a graphite fire."

Neither the petitioner nor any of the citizens' groups or individuals supporting the petition provided a basis in support of this assertion. The staff has reconsidered the need to provide a plan to evacuate members of the public located off site in the very unlikely event of a graphite fire and, in the course of evaluating this petition, has not identified any such need.

As stated in Regulatory Guide 2.6, Revision 1:

> In the judgment of the NRC staff, the potential radiological hazards to the public associated with the operation of research and test reactors are considerably less than those involved with nuclear power plants. In addition, because there are many different kinds of non-power reactors, the potential for emergency situations arising and the consequences thereof vary from facility to facility. These differences and variations are expected to be reflected realistically in the emergency plans and procedures developed for each research and test reactor facility.

Accordingly, each non-power reactor licensee has developed an emergency plant based on the identified characteristics of its reactor facility. To assist licensees in meeting the requirements of 10 CFR Part 50, Appendix E, Regulatory Guide 2.6 (ANSI/ANS–15.16–1982, Table 2) provides an "Alternate Method for Determining the Size of an Emergency Planning Zone (EPZ)." Table 2 is based on highly conservative does calculations that are generically applicable to non-power reactors. These calculations include the very conservative assumption for non-power reactors that 25% of the equilibrium radioactive iodine is gaseous and will escape from the reactor building into the environment. It is the current and standard practice of the NRC staff to use the 25% iodine source term with regard to 10 CFR Part 20 recommended dose considerations in its safety evaluations of non-power reactors. Table 2, which is based on power level, recommends that reactors with power levels less than or equal to 2 MW use their "operations boundry" for their EPZs, which essentially recognizes that a reactor of this power level will only need to initiate protective actions for members of the general public on site and will not pose an unacceptable radiological hazard to members of the public off site. There are only five licensed non-power reactors containing graphite that have power levels greater than 2 MW. Three

[1] Covers all types of fires, including graphite fires.

[2] R.W. Powell, R.A. Meyer, and R.G. Bourdeau, "Control Radiation Effects in a Graphite Reactor Structure," *Proceedings of the Second United Nations International Conference on the Peaceful Uses of Atomic Energy*, Vol. 7, 1958, p. 293.

of the reactors have power levels less than 10 MW, one has a power level of 10 MW, and one has a power level of 20 MW. Table 2 recommends an EPZ of 100 meters of non-power reactors with power levels greater than 2 MW and equal to or less than 10 MW, and 400 meters for those with power levels greater than 10 MW and equal to or less than 20 MW. The licensee for each of these reactors has an NRC-approved emergency plan that takes into consideration the specific characteristics of each reactor (e.g., fision product inventory and engineered safety features) in the development of the action levels, procedures, and protective actions necessary to protect all members of the public within its EPZ. Regulatory Guides 1.3 and 1.4 recommend the use of the 25% radioactive iodine source term in determining the compliance of power reactors with the siting, containment, and dose guidelines of 10 CFR Part 100. The staff believes the current regulatory practices are suitable to ensure that the basic statutory requirement, for adequate protection of public health and safety, is met.

These emergency planning considerations are appropriate for reactors utilizing graphite components. Because the graphite contains no fission products and very few activation products, even the remote possibility of the graphite burning would not contribute to the radiological source term. Therefore, a graphite fire in and of itself presents essentially no radiological hazard to the public.

Because of the major differences in design, power level, core size, fission product inventory, reactor control systems, and inherent reactor neutronics, comparison of the Chernobyl accident and its consequences with accidents and the resulting consequences for non-power reactors is not appropriate, nor is it meaningful. Many of the comments received in opposition to the petition speak of the impropriety of comparing NRC-licensed non-power reactors with the Chernobyl RBMK–1000 reactor.

The petitioner has not provided any proof of inadequacy in the emergency plans for non-power reactors. On the basis of a review of the guidance for emergency planning contained in Regulatory Guide 2.6 and ANSI/ANS 15.16–1982 and the requirements of 10 CFR Part 50, Appendix E, the staff has concluded that the emergency plans previously approved by NRC are still appropriate and adequate. Neither the petitioner nor the commenters supporting the petition hve supplied information that demonstrates that, even in the remote case of graphite burning, there is a need to modify any existing emergency plans.

(5) The petitioner states that "NRC's generic analysis of stored energy in research reactor graphite significantly underestimates the actual amount of stored energy and thus underestimates the associated risk of graphite fire."

The conditions necessary for stored energy releases in graphite are described in section 3 of the BNL report. The staff agrees with the methodology derived for estimating the stored energy that can be released from graphite and in the analysis applied to the estimation of stored energy releases in Section 6 of the BNL report.

In section 2 of the BNL report, the necessary conditions for graphite to burn are discussed in detail. A reassessment of the literature on the experiments previously performed at BNL and the reported details of the Windscale and Chernobyl accidents are included in the BNL study. The conclusions reached as a result of these analyses are:

> [T]he potential to initiate or maintain a graphite burning incident is essentially independent of the stored energy in the graphite, and depends on other factors that are unique for each research reactor and for Fort St. Vrain. In order to have self-sustained rapid graphite oxidation in any of these reactors, certain necessary conditions of geometry, temperature, oxygen supply, reaction product removal and a favorable heat balance must be maintained. There is no new evidence associated with either the Windscale Accident or the Chernobyl Accident that indicates a credible potential for a graphite burning accident in any of the reactors considered in this review.

On the basis of its review of the BNL report, the literature on BNL experiments, and the information on the Windscale and Chernobyl events, the staff finds that the conclusions reached by BNL are correct and adopts them as its own.

(6) The petitioner asserts that "actual empirical measurements of Wigner energy will be required to assess the magnitude of the energy stored in research reactor graphite."

Measurements of stored energy in its research reactor graphite were made by the University of California, Los Angeles, in the course of decommissioning its Argonaut research reactor. Several things learned from its program of sampling and measuring stored energy were reported by a commenter who opposed the petition. This information was also reported in a paper by Ashbaugh, Ostrander, and Pearlman [3] at the American Nuclear Society annual meeting in June 1986.

- Stored energy decreases with increasing distance from the fuel region (e.g., 5.61 cal/gm at 18 inches, 1.34 cal/gm at 22 inches, and an unmeasurable amount at 26 inches).
- Within the graphite island, stored energy decreases from 33.3 cal/gm at the fuel box graphite interface to 19.2 cal/gm about 3 inches from the fuel box toward the center of the graphite island.

These results illustrate the principles associated with the proposed requirement to measure the Wigner energy stored in the research and test reactor graphite. The significant changes in stored energy with relatively small differences in location demonstrate the difficulty in selecting the locations and the number of samples needed to characterize the "maximum stored energy and to determine the maximum quantity of stored energy to within ±10%."

The bases fore storage and release of Wigner energy in graphite are delineated in the BNL report, which shows that there is no unique connection between total stored energy and the releasable energy. Thus, establishing the magnitude of the stored energy in non-power reactor graphite by empirical measurements would not provide the information needed to evaluate this potential. Because the releasable stored energy saturates, an upper bound on the stored energy that can be released to 700°C can be determined from existing data. Therefore, no measurement of stored energy is required.

Also, because of the several conditions required to initiate graphite burning in addition to a graphite temperature of 650°C, the potential to initiate or maintain a graphite-burning incident is esentially independent of stored energy in the graphite. This further supports the conclusion that no measurement of stored energy is needed.

Many of the commenters who opposed the petition cited a violation of ALARA considerations because stored energy measurements would not provide needed information, but would incur radiological exposures. The impracticality of taking the samples and making the measurements was also pointed out. For example, sampling the graphite reflector pieces in the ends of a

[3] C.E. Ashbaugh, N.C. Ostrander, and H. Perlman, "Graphite Stored Energy in the UCLA Research Reactor," *Transactions of the ANS*, Vol. 52, 1986, p 372.

TRIGA fuel pin would require breaching the fuel pin cladding as well as providing shielding against the fuel pin's radioactivity. Similar challenges would be associated in taking a sample from graphite reflector components clad with metal. In addition, it was pointed out that numerous samples would be required to establish the true magnitude of stored energy in the various graphite components.

The staff has considered the relevant BNL findings and the comments received and has concluded that empirical measurement of stored energy in non-power reactor graphite components is not practical nor is it necessary to ensure the health and safety of the public.

(7) The petitioner refers to "one commercial power reactor," indicating that it has no fire response plans for combating graphite fires. The petitioner also states that "graphite is used as a moderator in the Fort St. Vrain nuclear power plant in Colorado."

Other than the lack of graphite fire response plans, the petitioner does not identify specific concerns related to Fort St. Vrain. However, it is implied that all reactors using graphite components are subject to CBG's concerns and assertions. In reality, the petition and requirements are really directed at NRC-licensed non-power reactors.

Fort St. Vrain is a high-temperature gas-cooled reactor (HTGR) owned and operated by Public Service Company of Colorado. Its design capacity is 330 MWe. It uses a ceramic fuel particle (uranium and thorium carbide) clad with silicon carbide and multiple layers of pyrolytic carbon. The fuel particles are compacted into small rods and installed in fuel holes in the hexagonal graphite fuel blocks. Including the reflectors there are 500 tons of reactor graphite in the core. The reactor coolant is helium with an average inlet temperature of 762° F (405°C) and an outlet temperature of 1445°F (785°C). The average graphite moderator temperature is 1380°F (749°C). These characteristics are far different than those of the non-power reactors. BNL has reviewed Fort St. Vrain parameters in relation to graphite stored energy and concludes in section 7 of its report, "Fort St. Vrain operates at temperatures that preclude accumulation of stored energy. There are no know problems associated with stored energy in graphite for operating temperatures associated with HTGRs." The staff agrees with BNL's conclusion and can find no reason to empirically measure the stored energy in Fort St. Vrain's graphite components.

In response to an NRC request, Public Service Company of Colorado addressed the implications of the Chernobyl accident for the Fort St. Vrain. The licensee submitted a final report entitled "Design Differences, Air Ingress and Graphite Oxidation, and Steam Ingress and Water Gas Generation" (P–86641, December 4, 1986). The staff has reviewed the report and concludes that the only significant similarity between Chernobyl and Fort St. Vrain reactors is that they both contain a large amount of graphite moderator. There are design differences between these reactors that preclude an accident similar to the Chernobyl accident at Fort St. Vrain.

Furthermore, on the basis of its reviews, the staff concluded that the structural integrity of the Fort St. Vrain prestressed concrete reactor vessel would be maintained during and after the assumed accident scenarios. Although the initiating events are beyond the plant's original design basis, the plant design appears to have an adequate margin of safety to withstand these events.

The staff's comments and conclusions can be found in the NRC Public Document Room under Docket No. 50–267, in a letter dated April 1, 1987, Accession No. 8704090248.

The petitioner's assertion that graphite burning and oxidation were not included in the staff's evaluation for Fort St. Vrain is in error. This subject was thoroughly reviewed in both the construction permit and operating license safety evaluations. These staff evaluations may be found in the Public Document Room in the 50–267 docket file. The licensee's updated Fort St. Vrain Final Safety Analysis Report, section 14, contains much of the information and analyses submitted for NRC review. The staff concluded that significant graphite oxidation at Fort St. Vrain was not credible. (Note: In addition to the previously discussed conditions necessary for graphite burning, Fort St. Vrain must suffer simultaneous independent structural failures resulting in the release of the inert helium and the subsequent supply of an adequate air/oxygen flow). The staff finds no basis for changing its previous conclusions. The licensee for Fort St. Vrain has met the requirements of 10 CFR Part 50, Appendix R (which sets forth fire protection features required to satisfy Criterion 3 of 10 CFR Part 50, Appendix A) and has an NRC-approved emergency plan that meets to 10 CFR Part 50, Appendix E. The Fort St. Vrain fire protection program and emergency plan specify the necessary organization, plans, and procedures to privide the necessary protection of the health and safety of the public even in the very unlikely event of a graphite fire.

Basis for Denial

The NRC denies the petitioner's request to amend 10 CFR Part 50 to require licensees whose reactors employ graphite as a neutron moderator or reflector and whose licensed power is greater than 100 W to:

(1) Formulate and submit for NRC approval fire response plans for combating a reactor fire involving graphite and other constitutent reactor parts (e.g., fuel);

(2) Formulate and submit for NRC approval evacuation plans in case of a reactor fire; and

(3) Perform measurements of the Wigner energy stored in the graphite of their reactors, and submit these measurements to the NRC for review together with a revised safety analysis that shall address the risk and consequences of a reactor fire.

This denial is a based on the following:

(1) Each licensee of a non-power reactor has submitted an emergency plan that has been approved as meeting the requirements of 10 CFR Part 50, Appendix E. The petitioner has not demonstrated that these plans do not provided an appropriate level of protection of the health and safety of the public.

(2) The licensee for Fort St. Vrain has an approved emergency plan that meets the requirements of 10 CFR Part 50, Appendix E, as well as an approved fire protection program that meets the requirements of 10 CFR Part 50, Appendix R. In addition, at the request of the NRC, the licensee has submitted a report addressing the implications of the Chernobyl accident for Fort St. Vrain. The report has been reviewed and approved by the staff. The petitioner has not provided a technical basis that would show that an additional fire response plan would enhance the protection provided for the health and safety of the public by the existing emergency plan and fire protection program.

(3) Measurement of maximum stored energy in non-power reactors are not necessary to ascertain the releasable stored energy in graphite components below 650°C. Existing knowledge provides this information which is adequate for a safety evaluation of the effect of stored energy on the potential for graphite burning and the associated danger to the health and safety of the public. Additionally, such measurements

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are contrary to the NRC's ALARA principle, since unneeded knowledge would be sought at the expense of unnecessary personnel exposure.

Accordingly, the Commission denies the petition.

Dateds at Bethesda, Maryland, this 23 day of September 1987.

For the Nuclear Regulatory Commission

Victor Stelle, Jr.

Executive Director for Operations.

[FR Doc. 87-23073 Filed 10-5-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket D-8908]

Prohibited Trade Practices; Encyclopaedia Britannica, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen the proceeding and modify the order.

SUMMARY: Encyclopaedia Britannica, a corporate respondent in the order in Docket No. D-8908, is prohibited from making misrepresentations while recruiting sales representatives, promoting merchandise or services, or attempting to collect debts, and filed a petition on April 2, 1987 requesting that the Commission reopen the proceeding and either set aside the order, now or at a fixed future date, or modify the order. A supplemental request to reopen the proceeding has been filed on September 22, 1987. This document announces the public comment period on the supplemental petition.

DATE: The deadline for filing comments on this matter is October 31, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Jock K. Chung, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION: The order in Docket No. D-8908 was published at 41 FR 17884 on April 29, 1976. A correction to the order was published at 41 FR 19301 on May 12, 1976. The original request to reopen the proceeding was published at 52 FR 12430 on April 16, 1987. The petitioner, Encyclopaedia Britannica, sells encyclopedias and related products and services direct to the consumer by means of in-home, over-the-counter, direct mail and telephone sales solicitation. The order modification request is based on claimed changes of fact and law. The supplemental petition was placed on the public record on September 22, 1987.

List of Subjects in 16 CFR Part 13

Encyclopedia sales, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 87-23014 Filed 10-15-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued: September 30, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission hereby institutes a proceeding under Part 37 of its regulations. The purpose of this proceeding is to determine an estimate of the average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1987 and a quarterly indexing procedure to establish benchmark rates of return on common equity for use in individual rate cases. It is proposed that these benchmark rates of return remain advisory only. These benchmark rates of return on equity established as the result of this proceeding, should be used as a guide to companies and intervenors in individual rate cases and as a reference point for the Commission in its deliberations. The Commission may take official notice of them in individual rate proceedings.

DATE: Comments addressing the issues in this proceeding are due on November 5, 1987.

ADDRESS: All filings should reference Docket No. RM87-35-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8293.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Part 37 of its regulations, the Federal Energy Regulatory Commission (Commission) hereby institutes its fourth annual proceeding to determine: (1) An estimate of the average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1987; and (2) a quarterly indexing procedure to establish benchmark rates of return on common equity for use in individual rate cases.

The benchmark rates of return resulting from the first three annual proceedings were advisory.[1] The Commission proposes to make the benchmark rates of return established by this proceeding advisory also.

II. Discussion

A. Base Year Average Cost of Common Equity: Market Required Rate of Return

The Commission proposes to adopt the same method of analysis used in Order Nos. 420, 442-A, and 461.[2] The Commission believes that the method adopted in those prior orders has received a full airing of the issues and represents the most reasonable way to determine the benchmark rate of return. Therefore, the Commission proposes to rely on the following constant growth discounted cash flow (DCF) model to determine the average market required rate of return for electric utilities for the year ending June 30, 1987:

$$k = (1 + .5g)\, y + g$$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = dividend growth rate

[1] In the third annual benchmark rate proceeding the NOPR proposed to presumptively set the allowed rate of return on common equity for individual utilities at the benchmark rate of return in effect at the time a company filed. *See* Notice of Proposed Rulemaking, Generic Determination of Rate of Return on Common Equity for Public Utilities, Docket No. RM86-12-000, 51 FR 27050 (July 21, 1986). The final rule, after consideration of comments filed, allowed the benchmark rates of return to remain advisory only. *See* Order No. 461, Generic Determination of Rate of Return on Common Equity for Public Utilities, 52 FR 11 at 12 (January 2, 1986).

[2] Order No. 420, Generic Determination of Rate of Return on Common Equity for Public Utilities, 50 FR 21802 (May 20, 1985). Order No. 442-A, Generic Determination of Rate of Return on Common Equity for Public Utilities, 51 FR 22505 (June 20, 1986). Order No. 461, see *supra* fn. 1.

(1+.5g)=dividend adjustment factor for quarterly dividend payments

Because this model was first adopted in Order No. 420, the Commission will refer to it hereafter on occasion as the "420 Model."

The Commission proposes that the following procedures be used to compute the dividend yield for the base year estimate of the market required rate of return as well as for the quarterly indexing procedure.

First, the Commission proposes to use a sample of 100 electric utilities based on the standards adopted in the prior annual proceedings. The sample consists essentially of those publicly traded electric utilities or combination companies that meet explicit standards; these are that the utility: [3]

(1) Is predominantly electric;

(2) Has its stock traded on either New York or American Stock Exchanges;

(3) Is included in the Utility Compustat II data base; and

(4) Is not excluded by the Commission on a case-by-case basis, based on unique circumstances.[4]

Second, the Commission proposes to continue screening the companies in the sample each quarter. The following criteria will be used in each quarterly calculation to ensure that the data for each company is available and that the data can be mechanically employed without producing distorted or unreasonable statistics. That is, a company will be dropped from the sample if:

(i) The company's common stock, through merger or other action, no longer is publicly traded;

(ii) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(iii) The Commission determines on a case-by-case basis that some other occurrence causes the dividend yield for that company to be substantially misleading and would therefore bias the resulting quarterly average.

The Commission further proposes to use the median dividend yield for the 100 company sample as the industry average dividend yield.[5] In computing the dividend yield for each company, the Commission proposes that the dividend rate be the "indicated dividend rate," which is the last declared quarterly dividend times four. The price used in the calculation would be the simple average of the three monthly high and low prices for the quarter. The Commission proposes that the average of the quarterly median dividend yields for the sample utilities calculated in this manner be used for the base year cost determination and for the quarterly indexing procedure. The base year cost would use the average of four quarterly median dividend yields. The quarterly indexing procedure would use the average of two quarterly median dividend yields.

In estimating the (constant) growth rate that would apply to the base year determination of the cost of common equity and serve as a basis for the fixed parameters in the quarterly indexing procedure, the Commission proposes to rely on both a fundamental analysis approach and a two-stage growth model. That is, it intends to examine and evaluate the two underlying components of dividend growth: growth from retention of earnings (br) and growth from sales of new common stock (sv).[6] The Commission also intends to evaluate past and forecast data within the context of a two-state growth DCF model. The Commission will also look at other data and methods for estimating the expected growth, but primarily as a check on the reasonableness of its determination from fundamental and non-constant growth analyses.

The Commission requests that commenters provide estimates of the above-referenced model parameters applicable to determining the market required rate of return on common equity for the (base) year ending June 30, 1987.

B. Flotation Costs

The Commission proposes to estimate the adjustment to the required rate of return for flotation costs using the following formula:

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common equity expected to be issued annually to total common equity

This formula estimates an adjustment that reflects the average annualized amount of flotation costs incurred by utilities. The resulting adjustment factor would be added to the required rate of return as determined above.

The Commission requests that commenters submit estimates of the parameters in the above formula for estimating the appropriate flotation cost adjustment to the market required rate of return for the base year ending June 30, 1987.

C. Quarterly Indexing Procedure

In Order No. 461, the Commission amended § 37.9 of its regulations and adopted a quarterly indexing procedure for determining benchmark rates of return on common equity for the jurrisdictional operations of electric utilities. The Commission proposes to adopt the same procedure for the current proceeding.

In summary, the adopted indexing procedure ties the cost of common equity to changes in utility dividend yields. The dividend yield index is set as the average of the median dividend yields for the 100 company sample for the two most recent calendar quarters prior to the period to which the benchmark is intended to apply. The procedures for determining the median dividend yield are the same as those described above with reference to the estimation of the base year cost of common equity. This dividend yield will be used in a formula whose parameters are determined through the base year determination. The formula is essentially the DCF model referred to above, adjusted for flotation costs.

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[3] Operationally, the Commission has selected all companies classified in the industry groupings "Electric Service" or "Electric and Other Services Combined" by Standard and Poor's Compustat Services, Inc. These industry groupings are supposed to conform as nearly as possible to the Office of Management and Budget Standard Industry Classification Codes. The Compustat "Electric Services" (Industry Classification Number 4911) is defined as establishments engaged in the generation, transmission and/or distribution of electric energy for sale where these services constitute 90% or more of revenues. "Electric and Other Services Combined" (Industry Classification Number 4931) is defined as establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part, though less than 90% of revenues. (Standard and Poor's Compustat Services, Inc., Utility Compustat II User Manual (1985)).

[4] These companies which meet the first three standards are eliminated from the sample. Southwestern Public Service Company is eliminated because it is the only utility which uses a non-standard fiscal year which does not end at the end of a calendar quarter. This causes its dividend yields to be out of time with the rest of the companies. CP National is deleted because, in spite of its being listed as a predominately electric company, only 18 percent of its revenues in 1986 were derived from electric sales and only 13 percent of its assets as of the end of 1986 were electric. Finally, Catalyst Energy Development Corporation is omitted because it has never paid common stock dividends.

[5] In Order Nos. 420, 442–A, and 461, the Commission estimated the median dividend yield for each of the four quarters of the base year and then averaged them for the year. The Commission proposes to adopt the same procedure in this proceeding.

[6] Growth from retained earnings, or internal growth, is a function of the expected return on common equity (r) and the expected retention ratio (b). Growth from common stock sales, or external growth, is a function of how much stock is expected to be sold (s) and at what price relative to book value (v).

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$k = a(y) + b$

where:

k = average cost of common equity
y = current dividend yield (current dividend rate divided by current market price)
a = 1 + .5g = dividend adjustment factor for quarterly dividend payments and
b = the expected dividend growth rate (g, assumed constant between proceedings) plus adjustment for flotation costs.

D. Request for Comments

The Commission has not decided a section 205 case filed since July 1985 (when the first benchmark went into effect) in which the rate of return issue was litigated. Furthermore, the issue of the appropriateness of the benchmark rates of return has not been considered in any Initial Decision by an administrative law judge. The Commission is concerned that despite numerous urgings, in the previous rulemaking proceedings, parties are not giving due consideration to the benchmark rate of return. In this proceeding, the Commission reiterates its request that all rate case participants (including staff) evaluate the reasonableness of the applicable benchmark rate of return, in light of the special circumstances of the subject utility.[7] Specifically, the Commission requests that litigants submit substantive analyses of the risks of individual utilities *vis-a-vis* the average utility represented through the benchmark rates of return. The Commission believes that such evidence will enable it to use the benchmark rates of return as points of departure in setting allowed rates of return.

In addition to requesting comments on the base year cost of common equity and the quarterly indexing procedure, the Commission requests comments on the following three proposals:

(1) Currently, the rule applies only to filling for initial or changed rates under section 205 of the Federal Power Act (FPA). The Commission is proposing that the rule also apply to complaints which arise pursuant to section 206 of the FPA. Any Commission decision in a section 206 proceeding has prospective application only. Therefore, the Commission is proposing that the applicable benchmark rate of return be the one in effect at the time the order concluding the proceeding is issued.

(2) The existing regulation requires that the Commission institute annual proceedings. The Commission is proposing to amend that regulations to require that the proceedings be periodic, but not more often than annually. The Commission believes that it is not necessary to institute a yearly proceedings since industry average growth rates and flotation cost adjustments appear to fluctuate over a very small range. However, the Commission is proposing to initiate a proceeding on its own motion or upon a motion by any person that shows changed circumstances sufficient to warrant modification of one or more parameters of the quarterly indexing procedure in effect.

(3) In the last three proceedings, the Commission found growth rates ranging from 4.30 to 4.60 percent. In the last two proceedings, the Commission found the range of plausible growth rates to be from 4.30 to 4.70 percent. The Commission also found flotation costs adjustments in the range of 0.03 to 0.07 percent in the last three proceedings. The effect of these findings has been that one parameter, a, in the quarterly indexing procedure has remained unchanged at 1.02 for the last three years and the second parameter, b,[8] has varied from 4.37 to 4.63. The Commission considers these variations to be so small that they do not justify the costs of a full blown rulemaking proceeding, especially while the benchmark remains advisory. The Commission therefore is proposing that the parameters of the quarterly indexing procedure be set based on a combined finding of an industry average growth rate and flotation cost adjustment of 4.6 percent. However, the Commission is proposing that if the combination of growth rate and flotation cost adjustment appears to move outside the range of 4.3 to 4.8 percent, it may institute a new proceeding.

Although the Commission will give consideration to all comments filed in response to this notice, the Commission expects that issues previously resolved in earlier proceedings will not be revisited.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act) requires Federal agencies to consider whether the rule, if promulgated, will have a "significant economic impact on a substantial number of small entities." Nearly all of the jurisdictional utilities which must comply with the rule proposed here are too large to be considered "small entities" within the meaning of the Act.[9] The Commission certifies, therefore, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA),[10] and the Office of Management and Budget's (OMB) regulations,[11] require that OMB approve certain information collection requirements imposed by an agency. The information collection requirements provided for in this rulemaking do not require OMB approval because these requirements have not been changed from the previous generic rate of return rulemaking. Therefore, the information collection requirements imposed by this rule are not being submitted to OMB for review or approval.

V. Comment Procedure

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

The original and 14 copies of such comments must received by the Commission before 5:00 p.m., November 5, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. RM87–35–000.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 37, Chapter I, Title 18, Code of Federal Regulations.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

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[7] *See e.g.*, 52 FR at 12.

[8] *Supra*, Discussion, Section C, which contains the definition for parameter a and parameter b.

[9] The Act defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. 5 U.S.C. 601(6) (1982). A "small business" is defined, by reference to Section 3 of the Smalll Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

[10] 44 U.S.C. 3501–3520 (1982).

[11] 5 CFR 1320.12 (1987).

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982).

2. In § 37.3, paragraphs (a) and (c) are revised to read as follows:

§ 37.3 Definitions.

(a) "Benchmark rate of return" means the rate of return on common equity that is determined each quarter based on the findings made in the most recently concluded proceeding regarding the indexing procedure and the average cost of common equity for the jurisdictional operations of public utilities.

* * * * *

(c) "Indexing procedure" means the method by which the average cost of common equity under this part is updated quarterly between periodic proceedings to determine benchmark rates of return.

3. Section 37.4 is revised to read as follows:

§ 37.4 Periodic proceedings.

An estimate of the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to establish the initial benchmark rate of return and quarterly updates will be determined periodically, but not more often than annually through informal rulemaking proceedings under 5 U.S.C. 553 upon the *prima facie* showing by an interested person or the Commission that the combination of growth rate and flotation cost adjustment is outside the range of 4.3 to 4.8 percent.

4. In § 37.6, paragraph (a) is revised to read as follows:

§ 37.6 Application of benchmark rate of return in individual rate proceedings.

(a) *General rule.* Except as provided in § 37.8 and paragraph (b) of this section, it will be presumed that the allowed rate of return on common equity in an individual rate proceeding is the benchmark rate of return in effect at the time a rate schedule is filed or in effect at the time the Commission issues its order concluding a complaint proceeding brought pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (1982).

* * * * *

5. Section 37.8 is revised to read as follows:

§ 37.8 Transitional provision.

The benchmark rates of return resulting from the first four proceedings under this part will be advisory only. During the advisory period, the Commission may take official notice of the benchmark rates of return in individual rate proceedings if they are not otherwise made a part of the record.

6. In § 37.9, paragraphs (a)(1), (a)(2), and (c)(1) are revised to read as follows:

§ 37.9 Quarterly indexing procedure.

(a) * * *

(1) For purposes of establishing the benchmark rate of return on common equity for period t, the average cost of common equity for the jurisdictional operations of public utilities will be calculated as follows:

$K_t = A(Y_t) + b$

Where:

K_t = average cost of common equity for the jurisdictional operations of public utilities for period t;

a = adjustment factor to account for the timing of dividend increases (determined in annual proceeding);

Y_t = average current dividend yield applicable to period t determined under paragraph (b) of this section;

b = adjusted factor to account for expected growth, new common stock flotation costs and jurisdictional risk difference (determined in annual proceeding); and

t = successive three month time periods: February 1 through April 30, May 1 through July 31, August 1 through October 31, and November 1 through January 31.

(2) The benchmark rate of return on common equity for each quarter to which an periodic proceeding is applicable will be set equal to the average cost of common equity for the jurisdictional operations of public utilities as determined by the formula of paragraph (a)(1) of this section.

* * * * *

(c) *Sample of Companies Used to Calculate Quarterly Dividend Yields.* (1) Except as provided in paragraph (c)(2) of this section, the sample of companies used to calculate the average current dividend yield for the purpose of this section will be specified in the final order of each proceeding.

* * * * *

[FR Doc. 87-23045 Filed 10-5-87; 8:45 am]
BILLING CODE 6717-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2640 and 2649

Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to establish rules for adjusting the statutory credit against partial or complete withdrawal liability of an employer that had previously partially withdrawn from the same multiemployer pension plan. This proposed regulation is required by the Employee Retirement Income Security Act, as amended. The purpose of the statutory credit is to avoid double-charging an employer for the same unfunded vested benefits upon which its liability for the prior partial withdrawal was based. However, in certain cases, this credit must be reduced to ensure that the employer does not avoid its fair share of liability based on plan experience and its participation in the plan subsequent to the prior partial withdrawal. The effect of this regulation, if adopted, would be to establish rules for computing the adjusted credit.

DATE: Comments must be received on or before December 7, 1987.

ADDRESSES: Comments may be mailed to the Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006. Comments may be hand-delivered to Suite 7300 at the above address between 9:00 a.m. and 5:00 p.m. Written comments will be available for inspection at the above address, Suite 7100, between 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Manager, Regulations Division, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; (202) 778-8850 (202) 778-8859 for TTY and TDD). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Under section 4205 of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), an employer is deemed to have partially withdrawn from a multiemployer pension plan under three circumstances. First, there is a partial withdrawal if the employer's contributions decline by 70-percent, as measured under section 4205(b)(1). There is also a partial withdrawal if the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer had been obligated to contribute under the plan, but the employer continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such

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work to another location section (4205(b)(2)(A)(i)). If the employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but the employer continues to perform work at the facility of the type for which the obligation to contribute ceased, it is also deemed to have partially withdrawn (section 4205(b)(2)(A)(ii)).

Section 4205(c) provides a special partial withdrawal rule for the retail food industry. Section 4208(d) also provides special partial withdrawal rules for the construction and entertainment industries. All of the withdrawal liability rules apply to withdrawals after September 25, 1980 (except the 70-percent rule, which applies to partial withdrawals in plan years beginning after September 26, 1982).

The amount of an employer's liability for a partial withdrawal is calculated under section 4206(a). That section provides that partial withdrawal liability is equal to the unfunded vested benefits allocable to the employer for a complete withdrawal, adjusted under section 4209, if applicable, and multiplied by a fraction that measures the extent of the decrease in the employer's contribution base units.

Under section 4219(c)(1)(E), the annual payment for partial withdrawal liability is calculated by multiplying the annual payment that would have been required for a complete withdrawal by the same fraction used in section 4206(a) to determine partial withdrawal liability.

Section 4206(b) provides special rules for adjusting the liability of an employer that partially or completely withdraws from a plan after an earlier partial withdrawal from that plan. Under section 4206(b)(1), an employer's liability for the subsequent withdrawal is reduced by the amount of any liability for the earlier partial withdrawal, less any waiver or reduction of the earlier liability. Section 4206(b)(2) requires the PBGC to issue regulations adjusting the reduction prescribed by section 4206(b)(1) as may be necessary to ensure that the employer's liability for the subsequent withdrawal properly reflects its share of liability to the plan. Section 4206(b)(2) explicitly recognizes that such adjustments might be necessary to provide for changes in unfunded vested benefits or contribution base units after the original partial withdrawal, and it also authorizes the PBGC to provide adjustments for any other factors for which it determines adjustment to be appropriate.

The PBGC has tentatively determined that no adjustments are necessary to account for changes in unfunded vested benefits or contribution base units. Both of these factors are automatically taken into account in determining the employer's liability for a subsequent withdrawal. The proposed rule, therefore, does not contain any adjustments for these factors. After thorough consideration, the PBGC believes that there is only one factor that requires adjustment of the reduction in the subsequent liability: The length of time between the initial partial withdrawal and the subsequent withdrawal.

The purpose of the section 4206(b)(1) credit is to avoid double-charging an employer for the same plan unfunded vested benefits. However, depending on when the two withdrawals occur and the allocation method used by the plan, there may be little or no overlap in the unfunded vested benefits and contributions used to calculate the employer's initial partial withdrawal liability and its liability for the subsequent withdrawal. In that event, providing a full credit for the earlier partial withdrawal liability would relieve the employer of some or all of the liability properly allocable to it for its participation in the plan after the earlier partial withdrawal. Consequently, that liability would be unfairly shifted to the other employers remaining in the plan. This proposed regulation would avoid this result by reducing the employer's credit against its subsequent withdrawal liability to the extent that that liability is based on plan experience and the employer's participation in the plan subsequent to the initial partial withdrawal.

This regulation does not provide any adjustments to the payment schedules determined under section 4219(c) of the Act for either an employer's initial partial withdrawal or subsequent withdrawal. The PBGC recognizes that it would be possible under section 4219(c) for an employer that has incurred several partial withdrawals from the same plan to owe total annual payments in excess of the annual payment amount that the employer would have owed if it had completely withdrawn. The PBGC considered including a provision in this regulation dealing with this issue. The PBGC has tentatively concluded, however, that ERISA does not authorize it to alter the rules under section 4219(c) for determining payment schedules. Plans, themselves, may provide employers relief in these cases by adopting rules pursuant to section 4224 providing for other terms and conditions for the satisfaction of an employer's withdrawal liability.

The Regulation

Section 2649.1 of the proposed regulation describes the purpose and scope of the regulation. Section 2649.1(b) provides that the regulation shall apply to employers that have partially withdrawn from multiemployer plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan after the effective date of this regulation. The PBGC contemplates making this regulation effective 30 days after publication of the final rule.

Section 2649.2 provides that whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit, calculated pursuant to this regulation, against the new withdrawal liability. Section 2649.2 also provides that if the amount of the credit calculated in accordance with this regulation is less than zero, the amount of the credit shall equal zero. This provision is necessary to ensure that an employer's liability for its subsequent withdrawal is never increased as a result of its previous partial withdrawal.

Sections 2649.3–2649.6 provide separate calculations for determining the amount of the credit under each of the statutory allocation methods; § 2649.7 provides the rule for determining the credit in a plan that uses a modification of one of the statutory allocation methods. Each calculation is designed to make the credit equal to the amount of the original partial withdrawal liability, reduced as if that liability were being amortized in a manner consistent with the plan's allocation method. This approach ties the credit to the degree to which the elements used to calculate the initial partial withdrawal liability phase out of the calculation of liability for a subsequent withdrawal. In this manner the regulation assures that the employer's subsequent withdrawal liability is not reduced by an amount greater than is necessary to avoid charging the employer twice for the same unfunded vested benefits.

Section 2649.3 prescribes the calculation of the credit in plans using the presumptive allocation method (described in section 4211(b) of the Act). The presumptive method allocates unfunded vested benefits based on the employer's proportional share of three elements: the unamortized amount of the plan's unfunded vested benefits at the

end of the last plan year ending before September 26, 1980; the unamortized amount of the change in the plan's unfunded vested benefits for each plan year ending after September 25, 1980; and the unamortized amount of unfunded vested benefits reallocated under section 4211(b)(4). Each element is amortized at the rate of 5 percent of the original amount for each succeeding plan year. The employer's proportional share of each element is the ratio of its required contributions for the five plan years ending with the year in which the element arose to total plan contributions in that period (excluding the contributions of previously withdrawn employers).

In the event of a subsequent withdrawal, only the unamortized balances of those elements used to calculate the initial partial withdrawal liability enter into the calculation of the new withdrawal liability. The proper credit to the employer is thus the sum of the unamortized balances of the three elements, rather than the full amount of liability for the prior partial withdrawal. Under § 2649.3 the employer's credit would equal the sum of the unamortized amounts of the three elements used to determine the employer's withdrawal liability for the previous partial withdrawal, multiplied by two fractions. The first is the fraction determined under section 4206(a)(2) for the prior partial withdrawal. The second fraction takes into account the fact that the employer's assessment for its prior partial withdrawal might have been less than its allocable liability for that withdrawal because of the *de minimis* rule or the 20-year payment cap (sections 4209 and 4219(c)(1)(B) of the Act). Accordingly, the numerator of this fraction is the liability assessed for the prior partial withdrawal and the denominator is the amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by the fraction determined under section 4206(a)(2) for the prior partial withdrawal. Finally, if the employer's prior partial withdrawal liability was abated pursuant to section 4208, § 2649.3(d) provides that the credit shall be prorated to account for the lesser amount of withdrawal liability actually paid by the employer.

Section 2649.4 applies to plans using the modified presumptive allocation method (section 4211(c)(2) of the Act). The modified presumptive method uses the employer's share of two elements to determine its withdrawal liability. The first is the plan's unfunded vested benefits as of the last plan year ending before September 26, 1980, reduced as if those obligations were being amortized in level annual installments over fifteen years beginning with the first plan year beginning on or after that date. The second element reflects changes in the plan's unfunded vested benefits after September 26, 1980, and the employer's allocable share of this element is based on contributions during the most recent five plan years ending prior to the employer's withdrawal. Thus, the contributions used to calculate the employer's share of the second element for its initial partial withdrawal liability effectively phase out over a five-year period.

In the event of a subsequent complete or partial withdrawal, only the unamortized balances of these two elements enter into the calculation of withdrawal liability. The proper credit to the employer is, therefore, the sum of the unamortized balance of the two elements rather than the full amount of liability for the prior partial withdrawal. This is the rule set forth in § 2649.4. If the employer's prior partial withdrawal liability was abated, § 2649.4(d) provides that the credit shall be prorated to reflect the lesser amount of withdrawal liability actually paid by the employer.

Section 2649.5 prescribes the calculation of the credit in plans using the rolling-5 allocation method (section 4211(c)(3) of the Act). The rolling-5 method is nothing more than the second element of withdrawal liability under the modified presumptive method. Under § 2649.5, therefore, the credit simply equals the unamortized balance of that element. (Since that element is the entire liability under the rolling-5 method, the calculation under proposed § 2649.5 uses the assessed liability for the prior partial withdrawal.)

Section 2649.6 applies to plans using the direct attribution allocation method (section 4211(c)(4) of the Act). The direct attribution method uses the employer's share of two elements to determine its withdrawal liability. The first element is the unfunded vested benefits attributable to service with the employer. The second element is the employer's proportional share of unfunded vested benefits that are not attributable to service with employers that were obligated to contribute under the plan in the plan year prior to that employer's withdrawal.

In the event of a subsequent complete or partial withdrawal, the employer would be charged again for benefits included in the earlier partial withdrawal liability calculation only to the extent that they remain unfunded. Because of the different methods used by plans to determine an employer's allocable share of unfunded vested benefits, there will not necessarily be a one-to-one relationship between overall plan funding and the amount allocable to an individual employer.

To compensate for the unpredictability of the recurrence of unfunded vested benefits from the prior withdrawal in the calculation of liability for the subsequent withdrawal, under § 2649.6 the credit equals the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount were being fully amortized in level annual installments. The PBGC has chosen uniform amortization of the old unfunded vested benefits as the best approximation of the extent to which unfunded vested benefits from the previous partial withdrawal will be used in the calculation of liability for the subsequent withdrawal. The amortization period begins with the plan year in which the prior partial withdrawal occurred and is the greater of 10 years or the number of years remaining on the plan's amortization schedule for the unfunded vested benefits used to determine the employer's liability for the prior partial withdrawal.

The latter amortization period reflects the plan's actual schedule for retiring unfunded vested benefits. It thus parallels the rules proposed for the other allocation methods in attempting to limit the amount of the employer's credit under § 2649.2 to the amount of unfunded vested benefits that would otherwise be included in both the prior and subsequent calculations of withdrawal liability.

The PBGC is concerned, however, that this approach will not afford employers the benefit of the credit when the plan's unfunded vested benefits are small. For that reason, the proposed regulation establishes a minimum amortization period of ten years. The PBGC recognizes that there may be other minimum amortization periods that would be reasonable and specifically invites comments on this issue.

Section 2649.7 is applicable to plans that have adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and 29 CFR Part 2642. All of the alternative allocation methods approved to date by the PBGC are modified versions of one of the statutory methods. The proposed regulation, therefore, requires these plans to adopt, by plan amendment, a method of calculating the

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employer's credit that is consistent with the applicable method prescribed in §§ 2649.3–2649.6 for the statutory allocation method most similar to the plan's alternative allocation method. This approach should provide plans the flexibility needed to fashion adjustments to the credit that are suited to their unique allocation method, while also assuring that employers are treated equitably.

Finally, § 2649.8 modifies the rules in §§ 2649.3–2649.6 to cover those situations in which either the initial or a subsequent partial withdrawal resulted from a 70-percent contribution decline. When that is the case, for purposes of computing the credits under §§ 2649.3–2649.6, the year in which the partial withdrawal occurred shall be deemed to be the first plan year in the 3-year testing period.

Executive Order 12291 and Regulatory Flexibility Act

The PBGC has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will result in some shifting of costs among employers that contribute to multiemployer plans, but will not in the aggregate, increase costs.

Under section 605(b) of the Regulatory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, they represent less than 14 percent of all multiemployer plans covered by the PBGC (346 out of 84,288). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). The PBGC estimates that fewer than 10,000 (2 percent) of these employers will be required to pay partial withdrawal liability in any year, and an even smaller percentage will subsequently completely or partially withdraw from the same plan and thereby become subject to these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

Public Comments

The PBGC invites interested parties to submit comments on this proposed regulation. Comments should be addressed to the Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The PBGC will make written comments available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m.. Each comment should include the commenter's name and address, identify this proposed regulation, and give reasons for any recommendation. The PBGC may change this proposal in light of the comments it receives.

List of Subjects in 29 CFR Parts 2640 and 2649

Employee benefit plans, Pensions.

In consideration of the foregoing, the PBGC proposes to amend subchapter F of Chapter XXVI, Title 29, Code of Federal Regulations as follows:

PART 2640—DEFINITIONS

1. The authority for Part 2640 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Part 2640 is amended by adding a new § 2640.8 to read as follows:

§ 2640.8 Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal.

For purposes of Part 2649—

"Complete withdrawal" means a complete withdrawal as described in section 4203 of the Act.

"Partial withdrawal" means a partial withdrawal as described in section 4205 of the Act.

3. A new Part 2649 is added to read as follows:

PART 2649—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.

2649.1 Purpose and scope.
2649.2 Credit against liability for subsequent withdrawal.
2649.3 Amount of credit in plans using the presumptive method.
2649.4 Amount of credit in plans using the modified presumptive method.
2649.5 Amount of credit in plans using the rolling-5 method.
2649.6 Amount of credit in plans using the direct attribution method.
2649.7 Amount of credit in plans using alternative allocation methods.
2649.8 Special rule for 70-percent decline partial withdrawals.

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 2649.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4206(b) of the Act, for adjusting the partial or complete withdrawal liability of an employer that previously partially withdrew from the same multiemployer plan. Section 4206(b)(1) provides that when an employer that has partially withdrawn from a plan subsequently incurs liability for another partial or a complete withdrawal from that plan, the employer's liability for the subsequent withdrawal is to be reduced by the amount of its liability for the prior partial withdrawal (less any waiver or reduction of that prior liability). Section 4206(b)(2) requires the PBGC to prescribe regulations adjusting the amount of this credit to ensure that the liability for the subsequent withdrawal properly reflects the employer's share of liability with respect to the plan. The purpose of the credit is to protect a withdrawing employer from being charged twice for the same unfunded vested benefits of the plan. The reduction in the credit protects the other employers in the plan from becoming responsible for unfunded vested benefits properly allocable to the withdrawing employer. In the interests of simplicity, the rules in this part provide for a one-step calculation of the adjusted credit against the subsequent liability, rather than for separate calculations first of the credit and then of the reduction in the credit.

(b) *Scope.* This part applies to multiemployer plans covered under section 4021(a) of the Act and not excluded by section 4021(b) and to employers that have partially withdrawn from such plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan after the effective date of this part.

§ 2649.2 Credit against liability for a subsequent withdrawal.

Whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit against the new withdrawal liability in an amount determined in accordance with this part. If the credit determined under §§ 2649.3–2649.7 is less than zero, the amount of the credit shall equal zero.

§ 2649.3 Amount of credit in plans using the presumptive method.

(a) *General.* In a plan that uses the presumptive allocation method described in section 4211(b) of the Act, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with paragraph (d) of this section.

(b) *Unamortized old liabilities.* The amounts determined under this paragraph are the employer's proportional shares, if any, of the unamortized amounts as of the end of the plan year preceeding the withdrawal for which the credit is being calculated, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980;

(2) The annual changes in the plan's unfunded vested benefits for plan years ending after September 25, 1980, and before the year of the prior partial withdrawal; and

(3) The reallocated unfunded vested benefits (if any), as determined under section 4211(b)(4), for plan years ending before the year of the prior partial withdrawal.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) of this section are multiplied by the two fractions described in this paragraph in order to determine the amount of the old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of the Act for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) for the prior partial withdrawal.

(d) *Special rule when prior liability abated.* If an employer's withdrawal liability for a previous partial withdrawal has been abated pursuant to section 4208 of the Act, the credit determined pursuant to paragraph (a) of this section shall be adjusted in accordance with this paragraph. The credit shall be multiplied by a fraction—

(1) The numerator of which shall equal the excess of the total partial withdrawal liability of the employer for all partial withdrawals of prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero) over the present value of each waiver or reduction of that prior withdrawal liability, calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) The denominator of which shall equal the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero).

§ 2649.4 Amount of credit in plans using the modified presumptive method.

(a) *General.* In a plan that uses the modified presumptive method described in section 4211(c)(2) of the Act, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with paragraph (d) of this section.

(b) *Unamortized old liabilities.* The amounts described in this paragraph shall be determined as of the end of the plan year preceeding the withdrawal for which the credit is being calculated, and are the employer's proportional shares, if any, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; and

(2) The aggregate post-1980 change amount determined under section 4211(c)(2)(C) as if the employer had completely withdrawn in the year of the prior partial withdrawal (determined without regard to any adjustments), reduced as if those obligations were being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) of this section are multiplied by the two fractions described in this paragraph in order to determine the amount of old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of the Act for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) for the prior partial withdrawal.

(d) *Special rule when prior liability abated.* If an employer's withdrawal liability for a previous partial withdrawal has been abated pursuant to section 4208 of the Act, the credit determined pursuant to paragraph (a) of this section shall be adjusted in accordance with this paragraph. The credit shall be multiplied by a fraction—

(1) The numerator of which shall equal the excess of the total partial withdrawal liability of the employer for all partial withdrawals of prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero) over the present value of each waiver or reduction of that prior withdrawal liability, calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) The denominator of which shall equal the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero).

§ 2649.5 Amount of credit in plans using the rolling-5 method.

In a plan that uses the rolling-5 allocation method described in section 4211(c)(3) of the Act, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

§ 2649.6 Amount of credit in plans using the direct attribution method.

In a plan that uses the direct attribution allocation method described in section 4211(c)(4) of the Act, the

credit shall equal the amount of the liability assessed for the prior partial withdrawal (less any waiver or reduction of that liability pursuant to section 4208 of the Act), reduced as if that amount was being fully amortized in level annual installments beginning with the plan year in which the prior partial withdrawal occurred, over the greater of 10 years or the amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Internal Revenue Code.

§ 2649.7 Amount of credit in plans using alternative allocation methods.

A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of the Act and Part 2642 of this subchapter shall adopt, by plan amendment, a method of calculating the credit provided by § 2649.2 that is consistent with the rules in §§ 2649.3–2649.6 for plans using the statutory allocation method most similar to the plan's alternative allocation method.

§ 2649.8 Special rule for 70-percent decline partial withdrawals.

For the purposes of applying the rules in §§ 2649.3–2649.6 in any case in which either the prior or subsequent partial withdrawal resulted from a 70-percent contribution decline (or a 35-percent decline in the case of certain retail food industry plans), the first year of the 3-year testing period shall be deemed to be the plan year in which the partial withdrawal occurred.

Issued in Washington, DC, this 29th day of September, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–23104 Filed 10–5–87; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Reopening and Extension of Public Comment Period; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Revegetation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening and extension of public comment period.

SUMMARY: On July 27, 1987, the Office of Surface Mining Reclamation and Enforcement (OSMRE) published a proposed rule which would amend its regulations dealing with revegetation requirements for the repair of rills and gullies, replanting of trees and the time for measuring revegetation success. The comment period closed on October 5, 1987. OSMRE is now reopening and extending the comment period for the proposed rule until October 21, 1987.

DATE: The comment period on the proposed rule is extended until October 21, 1987.

ADDRESSES: Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSMRE previously published the proposed rule on July 27, 1987. 52 FR 28012. The comment period was open until October 5, 1987. OSMRE received a request to extend the comment period and is hereby granting the request by reopening and extending the comment period for 15 days.

The proposed rule would amend OSMRE's regulations dealing with the repair of rills and guillies, replanting of trees and the time period for measuring revegetation success. This action is necessary because the previous rules were found in Federal district court to have been promulgated without sufficient supporting evidence in the record. The proposed rule would allow State regulatory authorities to demonstrate that the repair of rills and gullies is a normal husbandry practice in their State that may occur without restarting the operator's period of responsibility. The proposed rule also would allow certain trees planted during the operator's responsibility period to be counted in the measurement of revegetation success if State forestry and wildlife agencies approved the practice.

This proposed rule would also base the determination of whether revegetation has been achieved on a minimum two-year time period where the postmining land use is grazing land, pasture land or cropland. For further information, consult the preamble to the proposed rule, cited above.

Date: September 30, 1987.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–22986 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Regulations Governing Surety Companies Doing Business With the United States

AGENCY: Financial Management Service, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of the Treasury published a notice of proposed rulemaking on August 5, 1987, at 52 FR 29039. The comment deadline on the rulemaking was October 4, 1987.

The Department of the Treasury has received a request to extend this comment period. In order to ensure that Treasury is able to consider comments from all interested parties, the comment deadline is being extended to October 19, 1987.

DATES: The proposed revision would become effective December 31, 1987.

Comment Deadline: All comments or inquiries received on or before October 19, 1987, will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept. FMS, 1725 I St. NW., Rm. 1008A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone (202) 634–2214.

Dated: October 1, 1987.

Thomas F. Meade,

Acting Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87–23019 Filed 10–1–87; 12:46 pm]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3273-4]

Assessment of Municipal Waste Combustor Emissions Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of public comment period.

SUMMARY: On July 7, 1987, EPA published the results of a preliminary assessment of air emissions from municipal waste combustors (MWC) (52 FR 25399). The action also constituted advance notice of EPA's intent to regulate new and existing MWC under section 111 of the Clean Air Act (CAA).

The July 7, notice requested public comment on EPA's determination by September 8, 1987. In response to requests for an extensin of this deadline, this notice reopens the period for receiving written comments until November 7, 1987.

DATES: Written comments to be included in the record on the subject notice must be postmarked no later than November 7, 1987.

ADDRESSES: Comments on the notice of the assessment of MWC emissions under the CAA should be submitted in (in duplicate if possible) to: Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Docket No. A–86–16. The Central Docket Section is located at the offices of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 am and 4:30 pm on weekdays.

FOR FURTHER INFORMATION CONTACT: Robert G. Kellam, Pollutant Assessment Branch (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (Telephone: Commercial (919) 541–5646/FTS 629–5646).

SUPPLEMENTARY INFORMATION: In the course of the public commment period attendant to the July 7, 1987 notice which ended September 8, 1987, the EPA received requests for an extension of the public comment period to provide additional time to submit comments on the advance notice of proposed rulemaking. In response to this request EPA is reopening the public comment period until November 7, 1987. The additional time will permit interested parties to review the MWC determination and the background information in support of the proposed action.

Date: September 29, 1987.

W. Ray Cunningham,

Assistant Administrator for Air and Radiation.

[FR Doc. 87–23027 Filed 10–5–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 250

[SWH–FRL 3089–8]

Minimum Recovered Materials Content in Paper and Paper Products Procured by the Federal Government

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA is promulgating a final guideline for Federal procurement of paper and paper products containing recovered materials. This notice proposes to amend that guideline. Many commenters stated that EPA is required to recommend minimum recovered materials content standards for paper and paper products and, having determined that such recommendations are appropriate under section 6002(e), EPA today is proposing minimum content standards.

For most grades of paper and paper products, EPA is proposing minimum postconsumer recovered materials content standards. In the case of printing/writing grades, EPA is proposing minimum "waste paper" content standards. EPA also is proposing a definition of "waste paper"; it includes both postconsumer recovered materials and other, non-postconsumer, wastes.

EPA also is proposing recommendations for data-gathering. These are intended to provide procuring agencies with on-going information on price, availability, and performance of paper and paper products containing recovered materials.

DATE: EPA will accept public comments on this proposed rule until December 7, 1987.

ADDRESS: Comments on the proposed amendments to the paper guideline should be mailed to the Docket Clerk [Docket No. 6002, Minimum Content Standards for Paper], Office of Solid Waste, WH–565A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments received by EPA may be inspected in Room MLG–100, U.S. EPA, 401 M Street, SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline, toll-free at (800) 424–9346 or at (202) 382–3000. For technical information, contact William Sanjour, Office of Solid Waste, WH–563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382–4502.

SUPPLEMENTARY INFORMATION:

I. Authority

The proposed amendments to the Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials are authorized by sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Proposed Revisions to the Paper Guideline

Many commenters on the paper guideline suggested that minimum content standards be established for procurement of paper and paper products containing postconsumer recovered materials. While EPA does not have authority under section 6002 to require procuring agencies to use specific minimum content standards, EPA today is proposing revisions to the paper guideline that recommend such standards as guidance to those agencies which elect to use the minimum content standards option.

As discussed in the preamble to the final rule published elsewhere in today's **Federal Register**, EPA believes that agencies which elect to use reasonable minimum content standards for applicable paper and paper products will be in compliance with the statutory obligation to procure items with the highest level of recovered materials practicable. Any agency choosing to use the case-by-case approach or a substantially equivalent approach is expected to justify how it meets the statutory requirements for each applicable procurement item.

A. Minimum Content Standards

1. *Methods for Establishing Minimum Content Standards.* Under the minimum content standards approach, procuring agencies would establish specific postconsumer recovered materials or

"waste paper" percentages in their specifications. EPA is proposing some standards as general guidance to procuring agencies. EPA notes that these proposed minimum content standards would be *recommendations*, not requirements. Procuring agencies could adopt other standards as long as the statutory requirements are met. These proposed standards include a "waste paper" category of recovered materials content for fine and printing papers. This term is discussed in section A.2.a of the preamble.

Information in the docket shows the average level of postconsumer recovered materials in common paper and paper product grades: agencies could set their minimum content standards at these levels. Agencies may instead use experience already gained by State procuring agencies, some of which have already set minimum content standards. These range from a low of 10 percent postconsumer recovered materials (within an overall 50 percent requirement for recovered materials) in California to a high of 80 percent postconsumer recovered materials in Maryland. Other State minimum content standards include 40 percent recovered materials in New York and 25 percent postconsumer recovered materials (or 50 percent recovered materials) in Oregon. All of these States reported to EPA that hte levels used have been satisfactory and no significant procurement problems have occurred. More specific information on individual state programs is included in the docket. Procuring agencies may want to use one of these alternatives or select some other reasonable basis to develop minimum content standards.

A document entitled *Background Documentation for Minimum Content Standards* has been placed in the docket and explains the basis for EPA's recommended minimum content standards. It identifies mills producing newsprint or fine papers with postconsumer or waste paper recovered content, respectively. The percentages of both types of recovered materials content in product also have been been identified.

Several commenters recommended other approaches to setting minimum content standards. These included soliciting letters of intent from purchasers including levels of postconsumer recovered materials, using trial bids, or using multiple procurements with different levels of postconsumer recovered material standards. While each of these approaches has some merit, EPA believes they are inappropriate for Federal procurement agencies, which already have experience in setting minimum content standards. However, these approaches might be suitable for agencies making small procurements, or for agencies without prior experience in procuring paper and paper products with postconsumer recovered materials.

No matter which alternative to setting standards is selected, the specific minimum content standards used should be included in the annual review process. If information from estimates received or other data reveal that sufficient bids would have been received using standards which set higher minimum content levels, then the standards must be revised accordingly. If there was a lack of competition, then the standards must be lowered. This would satisfy the statutory requirements for procuring agencies in RCRA section 6002(c)(1) and those specific to the minimum content standards approach in RCRA section 6002(i)(3)(B). EPA recommends that procuring agencies which adopt minimum content standards for paper and paper products monitor the variations between estimates and certifications of postconsumer recovered materials or waste paper content as one source of data for the annual review. This information is required from vendors, as explained in the final rule published elsewhere in today's **Federal Register**.

2. *Basis of Proposed Minimum Content Standards.* The United States General Services Administration (GSA) already has experience with minimum content standards. Beginning in 1971, minimum content standards were established for several types of paper and paper products. The GSA specifications established minimum levels for "reclaimed material" content and for "postconsumer waste" content which was a sub-set of "reclaimed material." In other words, a two-tiered approach was used. A list of those standards appear in Table 1. The "reclaimed material" and "postconsumer waste" categories correspond to the terms "recovered materials" and "postconsumer recovered materials", respectively, as used in this guideline.

TABLE 1.—GAS'S MINIMUM CONTENT STANDARDS

Product	Reclaimed material	Postconsumer waste
Newsprint	NA	NA
Offset printing	NA	NA
Mimeo and duplicator paper	NA	NA
Writing (stationery)	30	0
Office paper (note pads, etc.)	20	0
Copy paper for high-speed copiers	NA	NA
Envelopes	20–30	0
Pad backing	100	50
Form Bond including computer paper and carbonless	NA	NA
Toilet tissue	50	20
Paper towels	95	40
Paper napkins	60	30
Facial tissue	20	5
Doilies	50	40
Industrial wipers	20	0
Corrugated boxes	35	10
Fiber boxes	[1] 25–35	[1] 5–10
Brown papers (bags, etc.)	[1] 10–40	[1] 0–10
Recycled paperboard products including folding Cartons	100	50
Bond papers	NA	NA
Ledger	NA	NA
Cover stock	NA	NA

TABLE 1.—GAS'S MINIMUM CONTENT STANDARDS—Continued

Product	Reclaimed material	Postconsumer waste
Book papers	NA	NA

[1] Amounts vary depending on the specific product.

Comments have been received by EPA that very few manufacturers of printing/writing papers would be willing or able to meet a minimum content standard for postconsumer recovered materials. Thus an alternative was sought for this category. Some background information follows based upon EPA's evaluation of this subject.

First, it is important to compare and contrast the current recycling of paper in the two principal types of paper products purchased directly by Federal agencies—printing/writing papers and tissue papers. Some statistics for 1985 as reported by the American Paper Institute for these products are presented in Table 2.

TABLE 2.—API STATISTICS ON PRINTING/WRITING AND TISSUE PAPER MANUFACTURE (1985)

Category	Printing/writing and related papers [1]		Tissue Papers [1]	
	Tons	Percent of total	Tons	Percent of total
Waste paper consumed in manufacturing:				
Mixed Papers		0	72	3.5
Newspapers		D	182	8.9
Corrugated	14	1.4	200	9.8
Pulp substitute	702	68.9	654	31.9
High grade deinking	304	29.7	942	45.9
Total	1,019	100.0	2,049	100.0
Total production of finished product	18,450		4,941	
Waste paper as percent of production		5.5		41.5

[1] (In 1,000 short tons and percent).

These statistics reveal that 1.03 million tons more waste paper is recycled into tissue products than into printing/writing paper, even though total production of printing/writing grades is over four times greater than tissue. Put another way, waste paper is 5.5 percent of the raw material for printing/writing paper manufacture while waste paper is 41.5 percent of the feedstock for tissue paper manufacture.

A further contrast can be made on the source of the recovered paper that is used. Pulp substitute is a manufacturing waste, virtually all of which is derived from businesses that convert paper stock into finished products such as books or envelopes. Pulp substitute, as the name suggests, can be used instead of virgin pulp. The quantity of postconsumer recovered materials in pulp substitute is essentially zero. "High grade deinking" is printing scrap, which can include items such as missprinted forms that never reach the ultimate user. The high grade deinking category also includes a significant amount of postconsumer recovered materials, such as office waste paper. However, the paper mill does not always know whether the material is preconsumer or postconsumer because both types of material may be contained in the same bales. Tissue products use most of the postconsumer recovered materials consumed in the high grade deinking category while printing/writing paper producers use much less; many manufacturers of printing/writing papers avoid postconsumer recovered materials altogether. In other words, manufacturers of printing/writing papers tend to use preconsumer waste paper (manufacturing by-products such as pulp substitutes), whereas manufacturers of tissue papers are willing to use postconsumer waste. Tissue products do not have to meet the demands that printing and writing papers do. The contrast between the strength and color requirements for institutional paper towels and offset paper running through a high speed press illustrates this difference.

EPA contacted virtually every mill known to make printing/writing papers using recovered materials. Almost universally they stated that they preferred not to deal with postconsumer recovered materials under a minimum content standard. Some of the reasons cited were:

- Postconsumer recovered materials are not as predictable in fiber composition or content as other types, so it is difficult to assure that specifications can be met.
- A mill essentially needs deinking capability to use postconsumer recovered materials (whereas pulp substitutes are not normally cleaned in deinking systems).
- Contaminants cannot be controlled as well, and "off spec" products are much more likely to be produced using postconsumer recovered materials.
- Only a few mills handle postconsumer recovered materials successfully enough to overcome these problems consistently.

For these reasons, EPA finds that it is not advisable to set minimum postconsumer recovered materials content standards for printing/writing grades. EPA is, therefore, proposing a category of recovered materials called "waste paper" for the printing and writing paper grades only.

a. *Proposed Definition of Waste Paper.* This category includes all postconsumer recovered materials as defined in section 6002(h)(1) of RCRA, plus the first two categories of

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"manufacturing, forest residues, and other wastes" as defined in section 6002(h)(2). (As discussed in the final rule published elsewhere in today's **Federal Register**, EPA has determined that mill broke is specifically excluded from the definition of recovered materials because it is waste generated *before* completion of the papermaking process.) These two non-postconsumer categories are:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

EPA concludes that increasing the use of waste paper, as defined above, in the manufacturing of printing and writing papers will in fact allow maximum use of postconsumer recovered materials in those products while it increases the use of postconsumer recovered materials in others, thereby satisfying the intent of RCRA. As more preconsumer waste paper is used for printing and writing papers, there will be less available as a raw material for tissue products. As a result, manufacturers of tissue will use more postconsumer recovered materials as a raw material. Therefore, for printing and writing papers, EPA is proposing that for estimates of content, certification, minimum content standards, and any other instance where postconsumer wastes are to be quantified, information on *waste paper* content be supplied, instead of information on postconsumer recovered materials. For all other categories of paper and paper products, postconsumer recovered materials content should be used.

b. *Recommended Minimum Content Standards.* Several commenters have recommended that EPA adopt the GSA standards shown in Table 1 as minimum content standards. EPA has used these standards as a reasonable starting place for establishing recommended minimum content standards. However, because of the successful experience by several States in procuring printing and writing paper with recovered materials, EPA has determined that those grades of paper are available with a minimum of 50 percent waste paper content.

Therefore, EPA is today proposing a set of recommended minimum content standards as shown in Tabe 3 and invites comments on those standards. The previously referenced document in the docket explains how these recommended minimum content standards for each paper and paper product category were derived. EPA is proposing these standards as an amendment to the final guideline promulgated today. Following the public comment period, these or revised recommended standards would be included in the guideline for two reasons: To provide guidance for agencies that adopt a minimum content standards approach in their affirmative procurement programs (RCRA Section 6002(i)(3)(B)), and to satisfy EPA's obligations to recommend levels of recovered materials to be contained in paper products (RCRA Section 6002(e)).

TABLE 3.—EPA RECOMMENDED MINIMUM CONTENT STANDARDS FOR SELECTED PAPERS AND PAPER PRODUCTS

Product	Minimum percentage of postconsumer recovered materials	Minimum percentage of waste paper [1]
Newsprint	40	
High grade bleached printing and writing paper:		
Offset printing		50
Mimeo and duplicator paper		50
Writing (stationery)		50
Office paper (note pads, etc.)		50
Copy paper for high-speed copiers		0
Envelopes		50
Form bond including computer paper and carbonless		[2]
Book papers		50
Bond papers		50
Ledger		50
Cover stock		50
Tissue products:		
Toilet tissue	20	
Paper towels	40	
Paper napkins	30	
Facial tissue	5	
Doilies	40	
Industrial wipers	0	
Unbleached packaging:		
Corrugated boxes	40	
Fiber boxes	10	
Brown paper (bags, etc.)	5	
Recycled paperboard:		
Recycled paperboard products including folding cartons	80	
Pad backing	90	

[1] "Waste paper" is defined in § 250.4 and refers to specified postconsumer materials and other recovered materials.
[2] EPA found insufficient production of these papers with recycled content to assure adequate competition.

B. Recordkeeping Recommendations

In this notice, EPA is proposing additional recordkeeping recommendations. EPA has concluded that one purpose of the requirement that vendors estimate the total percentage of postconsumer recovered materials or (waste paper) is to provide information to procuring agencies that can be used in future procurements. Further, procuring agencies need to keep up-to-date on changes in recycling practices and availability of products containing postconsumer recovered materials or waste paper. (As explained above, in the case of printing/writing grades, waste paper content should be documented in the same way as postconsumer recovered materials content.)

For these reasons, EPA believes that agencies should keep statistical records of paper and paper products procurements to properly implement the intent of Congress in requiring an affirmative procurement program. A summary of these records should be included in the annual review and monitoring of the effectiveness of the program.

A program for gathering statistics need not be elaborated to be effective. However, agencies should monitor their procurements to provide data on the following:

(a) The percentage of postconsumer recovered materials (or waste paper) in the products procured or offered;

(b) Comparative price information on competitive procurements;

(c) The quantity of each item procured over a fiscal year;

(d) The availability of the paper and paper products to procuring agencies;

(e) Type of performance tests conducted, together with the categories of paper or paper products containing postconsumer recovered materials (or waste paper) that failed the tests, the percentage of total virgin products and products containing postconsumer or other recovered materials supplied that failed each test, and the nature of the failure;

(f) Agency experience with the performance of the procured products.

The Government Printing Office has informed EPA that every shipment of paper or paper products is tested. Because of the number of shipments received (shipments are received on a daily basis, with multiple shipments often being received on any given day), it would be a burden for procuring agencies to retain the results of each of these tests. Instead, procuring agencies should identify the performance tests used and maintain records, by test, on the percentage of failures by paper and paper products containing postconsumer recovered materials (or waste paper) and on the nature of these failures.

The Office of Procurement Policy (OFPP), in the Executive Office of the President, is required under section 6002(g) to report to Congress every two years on actions taken by Federal agencies and the progress made in implementing section 6002.

Accordingly, EPA recommends that each agency that is required to comply with section 6002(i)(2)(D) send a report on its annual review and monitoring of the effectiveness of its procurement program to OFPP. If the agency is using the case-by-case approach or a substantially equivalent approach, it should justify how that approach is maximizing the use of postconsumer recovered materials (or waste paper), and why the use of a minimum content approach is not justified. If the minimum content standard approach is used, the agency should justify whether the standard should be raised, lowered, or remain constant for each item. The justification should be based on reasonable determinations of price, quality, and availability as well as a comparison of estimates and certifications provided by the vendors. Agencies should also document their review of specifications and list those which are revised each year.

EPA notes that this guideline will apply to state and local procuring agencies, as explained under "Applicability" in the final rule published elsewhere in today's **Federal Register**. Information drawn from the experience of Federal procuring agencies about purchases of paper and paper products containing postconsumer recovered materials (or waste paper) would therefore be useful to state and local purchasing officials. Accordingly, EPA encourages Federal procuring agencies to make their reports available.

III. Regulatory Impact

Under Executive Order (E.O.) No. 12291, regulations must be classified as major or nonmajor. E.O. No 12291 establishes the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

3. Significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal purchases of paper and paper products do not constitute a large enough share of those markets for industry to make manufacturing decisions that are not otherwise enconomically feasible in order to meet Federal procurement requirements. In fact, some Federal procurement policies have been modified in recent years to conform more closely to common commercial standards for some paper products, e.g., toilet tissue. The granting of a price preference is not recommended in the proposed guideline and methods to prevent long-term increases in price have been suggested for the minimum content standard approach; therefore, product costs should not increase. Furthermore, the flexibility allowed to the procuring agencies in implementing minimum content standards should make it possible to make adjustments if any adverse market dislocation or decrease in competition should occur.

Because of the number of items included in the paper and paper product categories and the number of procurement actions taken by procuring agencies each year, some agencies may find it necessary to initially allocate additional resources to implement this guideline. However, the flexibility allowed and the practices recommended in this guideline are intented to avoid on-going increased expenditures by procuring agencies. For example, EPA has recommended that the procedure for estimating and certifying postconsumer recovered materials content be simple and that it be consistent with the procuring agency's usual contracting procedures.

On the basis of the above information and on more extensive data in the rulemaking docket, the Agency has concluded that this guideline is a nonmajor rule.

This document has been submitted to the Office of Management and Budget for review as required by E.O. No. 12291.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have significant

economic impact on a substantial number of small entities.

As described in the final rule published elsewhere in today's **Federal Register**, there is a $10,000 threshold governing applicability of the recovered materials procurement requirement. Because of this threshold, EPA does not expect a substantial number of small entities to be affected by the proposed amendments to the paper guideline. The Agency also believes that the flexible approach to procurement of paper and paper products containing postconsumer recovered materials provided for in this guideline will not impose a significant regulatory or economic burden on small procuring agencies, manufacturers, vendors, or contract printers. Detailed information on this assessment can be found in the RCRA docket for this guideline.

For the above reasons, EPA certifies that this guideline will not have a significant economic impact on a substantial number of small entities. Therefore, the proposed amendments to the paper guideline do not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 250

Forest and forest products, Government contracts, Government procurement, Packaging and containers, Paper, Recycling, Resource recovery.

Dated: September 18, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend 40 CFR 250.4 and 250.20 as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962.

2. In § 250.4, a definition of "waste paper" is added in alphabetical order to read as follows:

§ 250.4 Definitions.

* * * * *

"Waste paper" means any of the following "recovered materials":

(a) Postconsumer materials such as:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: Used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste; and

(b) Manufacturing, forest residues, and other wastes such as:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(3) In § 250.20, paragraphs (a)(2), (b)(2), (c)(1) and (c)(2) are revised and paragraphs (c)(4), (d)(3), and (d)(4) are added to read as follows:

§ 250.20 Elements of affirmative procurement program.

* * * * *

(a) * * *

(2)(i) Minimum recovered materials content standards that assure that the postconsumer recovered materials or waste paper content required is the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1)(A) through (C) of the Act and § 250.21 of this part. EPA recommends that procuring agencies use minimum content standards, rather than the case-by-case approach or a substantially equivalent approach, wherever possible.

(ii) A procuring agency that uses minimum content standards may use the minimum levels in Table 1 or may establish its own minimum content standards. Minimum content standards should be revised annually based on procurement experiences, including data collected from postconsumer recovered materials or waste paper content estimates submitted by all vendors as required under § 250.20(c)(1) of this Part.

* * * * *

(b) * * *

(2) A statement in each paper specification defining "postconsumer recovered materials" or "wastepaper," as applicable, as they are defined in § 250.4 of this Part.

* * * * *

(c) * * *

(1) Agencies must require vendors to estimate the total percentage of postconsumer recovered materials or waste paper in paper and paper products supplied to them.

(2) Agencies must require vendors to certify the minimum postconsumer recovered materials or waste paper to be used in the performance of a contract.

* * * * *

(4) For each paper or paper product procured, agencies should maintain the following records:

(i) The percentage of postconsumer recovered materials or waste paper in the products procured or offered;

(ii) Comparative price information on competitive procurements;

(iii) The quantity of each item procured over a fiscal year;

(iv) The availability of the paper and paper products to procuring agencies;

(v) Type of performance tests conducted, together with the categories of paper or paper products containing postconsumer recovered materials or waste paper that failed the tests, the percentage of total virgin products and products containing postconsumer recovered materials or waste paper supplied that failed each test, and the nature of the failure;

(vi) Agency experience with the performance of the procured products.

(d) * * *

(3) Procuring agencies should monitor the variation between estimates and certifications of postconsumer recovered materials or waste paper in paper and paper products purchased during the year. If the variations are significant, procuring agencies should determine whether minimum content standards can be introduced or raised without causing a long-term increase in price.

(4) It is recommended that each procuring agency make its information available to the Office of Federal Procurement Policy. This information should include a summary of the records recommended in § 250.20(c)(4) of this part and the results of the annual review and monitoring of the effectiveness of the program.

* * * * *

4. Table 1 is added to the end of § 250.20 to read as follows:

TABLE 1.—EPA RECOMMENDED MINIMUM CONTENT STANDARDS FOR SELECTED PAPERS AND PAPER PRODUCTS

Product	Minimum percentage of postconsumer recovered material	Minimum percentage of waste paper [1]
Newsprint	40	—
High grade bleached printing and writing papers:		
Offset printing	—	50
Mimeo and duplicator paper	—	50
Writing (stationery)	—	50
Office paper (note pads, etc.)	—	50
Paper for high-speed copiers	—	0
Envelopes	—	50
Form bond including computer paper and carbonless	—	[2]
Book papers	—	50
Bond papers	—	50
Ledger	—	50
Cover Stock	—	50
Tissue products:		
Toilet tissue	20	—
Paper towels	40	—
Paper napkins	30	—
Facial tissue	5	—
Doilies	40	—
Industrial wipers	0	—
Unbleached packaging:		
Corrugated boxes	40	—
Fiber boxes	10	—
Brown papers (bags, etc.)	5	—
Recycled paperboard:		
Recycled paperboard products including folding cartons	80	—
Pad backing	90	—

[1] Waste paper is defined in § 250.4 and refers to specified postconsumer and other recovered materials.
[2] EPA found insufficient production of these papers with recycled content to assure adequate competition.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibilities and Conduct

AGENCY: Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: Regulations governing the conduct and responsibilities of regular and special government employees of the Department of the Interior are proposed to be revised. This revision proposes to:

(1) Incorporate statutory requirements and Department policy decisions not previously pubished as regulations;

(2) Add new rules to correspond to rules recently established by the Office of Personnel Management's Office of Government Ethics;

(3) Update specific rules which are affected by changes in rules established and maintained by other Federal agencies;

(4) Explain existing rules and definitions which are vague or misleading; and

(5) Delete obsolete rules.

DATE: To be considered, comments must be received by November 20, 1987. All comments will receve full consideration.

ADDRESS: Comments concerning these proposed regulations should be sent to: Designated Agency Ethics Official, U.S. Department of the Interior, Mail Stop 5119, 18th & C Streets NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Gabriele J. Paone or Mason Tsai on (202) 343-5916.

SUPPLEMENTARY INFORMATION: The reasons for the principal proposed additions, delections and changes are explained below:

Section 20.735-2(h)(4)(i) is proposed to be amended to state that on —— the Designated Agency Ethics Official approved a special code of conduct for all employees having duties and responsibilities involving the acquisition of property and sevices for the Department.

We propose to revise § 20.735-7 by adding a Note at the end of (b)(2)(i) which will advise employees holding acquisition duties and responsibilities that the exception on accepting gifts in (b)(2)(i) does not apply to them.

We propose to revise § 20.735-7(b)(2)(iii) to more accurately address the original intent of this provision. Gifts from Indians and Indian Tribes are commonly offered to employees who are on assignment at Bureau of Indian Affairs field locations or attending Indian program events. For cultural reasons, refusal to accept such gifts would be likely to cause offense or embarrassment or otherwise adversely affect relations with the United States. The provisions in 25 U.S.C. 451 authorize the Secretary to accept gifts for the advancement of the American Indian. Use of this authority is delegated to all employees and the proposed revision explains how this authority can be used as an exception to the policies in § 20.735-7(a).

It is also proposed to add a new paragraph § 20.735-7(b)(3) that informs the user that other statutory authorities exist that may provide an alternative to the policy in § 20.735-7(a). The proposal makes such use conditional on a determination that use will not create a conflict or apparent conflict of interest.

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The proposal to revise the definition of "Minimal Value" in § 20.735–8(b)(5) is made to update the value to the current General Services Administration regulation. Refer to GSA Bulletin FPMR H–49 dated March 2, 1987.

An explanation of penalties for violations of the honorarium provisions in § 20.735–11 is proposed. The explanation is intended to provide employees with the proper legal citations and a clarification that only knowing and willful violations of the $2,000 limitation for honorariums need to be reported to the Federal Election Commission.

A proposal for changes to § 20.735–15(b) on misuse of Government motor vehicles or aircraft is made to update the U.S. Code citations. The addition, in this same section, of a paragraph on misuse of official information for private gain, provides employees with an explanation of the kind of information and situations that are of concern.

Section 20.735–17(r) proposes to add a paragraph on acceptance of commercial discounts. This proposal is based on a March 19, 1985 memorandum from the Counsel to the President to all General Counsels of Executive Departments and Agencies. The proposed addition incorporates the policies advocated by the Director, Office of Government Ethics.

In response to several suggestions received from Bureau ethics counselors and employees, § 20.735–23 would be amended by the proposal to remove the words "outside work" and add in their place, the words "outside work or outside activity". This proposal does not change the extent of the current prohibitions. The current prohibitions do cover outside work and other outside activities. However, the wording of the current section does not specifically state outside activity throughout the text of the section and this has raised questions from the counselors charged with implementing the rules. The proposal is intended to eliminate these questions and more accurately express the intent of the prohibitions in the section.

It is proposed that Indian trust, allotted or restricted lands be added to the definition of Federal lands in § 20.735–24. The purpose for this amendment is to make clear the original intention that Indian lands for which the Secretary is trustee are included in the definition of "Federal lands".

In § 20.735–24(b)(1) and (b)(3) it is proposed to remove the word "acquire" in order to clarify the Department's policy that a waiver will not be issued to allow an employee to acquire an interest in Federal lands. A waiver may only be issued to allow an employee to retain an interest in Federal lands.

It is proposed to add to § 20.735–24(e)(1)(iv)(2) rules that will allow the Designated Agency Ethics Official to approve the retention of an outside employment interest with a sole proprietor, partnership or corporation that has interests in Federal lands. Without a waiver, an employment interest in such a business could result in a financial interest in Federal lands which may be a violation of Department regulation. Rules establishing the criteria for allowing such outside employment are necessary to ensure that employees are not unduly restricted from outside employment opportunities. The rules being proposed are intended to provide reasonable standards for allowing such outside work while maintaining the spirit and purpose of the statutory requirements.

A similar proposal is added in § 20.735–27(e)(1)(iv)(2), concerning outside employment in private mining activities.

Section 20.735–30 proposes that all Executive Order financial disclosure statements be retained for six years and longer if needed for an ongoing investigation. This proposal incorporates a directive received from the Director, Office of Government Ethics on July 23, 1985.

The revisions proposed for § 20.735–31 incorporate the provisions of Pub. L. 98–150 that was signed into law by the President on November 11, 1983. Another proposed revision in this section is the addition of information about the authority to grant time extensions for the filing requirements. The proposed information about time extensions is taken from Office of Government Ethics regulations in 5 CFR Part 734.

The Department has determined that this document is not a rule as defined by Executive Order 12291 because this proposed rule is related solely to agency management and personnel. For the same reason it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*

List of Subjects in 43 CFR Part 20

Conflicts of interests, Government employees.

Date: September 29, 1987.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration, U.S. Department of the Interior.

Accordingly, 43 CFR Part 20 is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for 43 CFR Part 20 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 207(j)(Supp. V 1981); sec. 12, Ch. 576, 48 Stat. 986 (25 U.S.C. 472); sec. 201(f), Pub. L. 95–87, 91 Stat. 450–51 (30 U.S.C. 1211 (Supp. V 1981)); E.O. 11222, E.O. 12565, 30 FR 6469, 3 CFR 1964–65 (Comp.), as amended (18 U.S.C. 201–209); 18 U.S.C. 437; 30 U.S.C. 6; 43 U.S.C. 11; 43 U.S.C. 31(a); 5 CFR 735.104; 5 CFR 734.103; 5 CFR 737.1(c)(7).

2. Section 20.735–1 is amended by revising paragraph (a)(9) to read:

§ 20.735–1 Definitions.

* * * * *

(a) * * *

(9) "Designated Agency Ethics Official" means the Assistant Secretary-Policy, Budget and Administration. The Deputy Agency Ethics Official shall serve as alternate agency ethics official.

* * * * *

3. Section 20.735–2 is amended by revising paragraphs (d)(2), (g), and (h)(4)(i) introductory text, and by adding a new paragraph (h)(4)(i)(C) to read:

§ 20.735–2 Purpose, policy and general responsibilities.

* * * * *

(d) * * *

(2) Obey the proper requests of his or her supervisors.

* * * * *

(g) *Employee responsibilities.* (1) It is the responsibility of employees to be familiar with and to comply with the

regulations in this Part. Employees are expected to consult with their supervisors and personnel officers on general questions they may have regarding the applicability of the regulations in this Part. For guidance on specific matters or questions concerning conflicts of interest, employees may obtain advice and guidance from their Ethics Counselors, Deputy Ethics Counselors, Associate or Assistant Ethics Counselors, the Designated Agency Ethics Official, or appropriate officials within the Office of the Solicitor.

(2) To be cautious in dealing with the general public with representatives of private industry so as not to give an opinion or decision contrary to expressed Departmental or bureau policy.

(3) To avoid expressing personal opinions or making unauthorized decisions about work situations where those opinions or decisions may be mistakenly taken to be the opinion or decision of the bureau or Department.

(4) To report directly or through appropriate channels to the Office of Inspector General matters coming to their attention which involve or may involve violations or law or rule by employees, contractors, sub-contractors, grantees, lessees, licensees or other persons having official business with the Department.

(h) * * *

(4)(i) Special codes of conduct have been approved in accordance with this paragraph (h) for the following groups of employees:

* * * * * *

(C) Department employees having duties and responsibilities involving the acquisition of property and services for the Department. The special code of conduct covering these employees is set forth in 48 CFR 1403.101 and 1415.608—approved ____ 1987.

* * * * * *

§ 20.735–3 [Amended]

4. In § 20.735–3(a)(2)(iv) and (b)(1) it is proposed to remove the words "Assistant Ethics Counselors" and add, in their place, the words "Assistant or Associate Ethics Counselors.".

§ 20.735–6 [Amended]

5. In § 20.735–6(b)(3) it is proposed to remove the citation "(41 CFR 1–1.302–3)" and add, in its place, the citation "(48 CFR 3.601)".

6. In § 20.735–6(b)(4) it is proposed to remove the citation "(41 CFR 1–1.302–3)" and add, in its place, the citation "(48 CFR 1403.602)".

§ 20.735–7 [Amended]

7. In § 20.735–7(a) introductory text it is proposed to remove the words "an employee shall not" and add, in their place, the words "an employee, whether on or off duty, shall not".

8. It is proposed that § 20.735–7 be amended by revising paragraph (b)(2)(i) and (b)(2)(iii) to read:

§ 20.735–7 Gifts, entertainment, and favors from domestic sources.

* * * * * *

(b) * * *

(2) * * *

(i) Food and refreshments or other tangible gifts of nominal value on infrequent occasions in the ordinary course of an official luncheon or dinner meeting or other official or professional function or on an inspection tour when an employee may properly be in attendance;

Note: The exclusion in paragraph (b)(2)(i) of this section does not apply to employees having duties and responsibilities involving the acquisition of property and services for the Department. The special code of conduct for these employees is set forth in 48 CFR 1403.101 and 1415.608.

* * * * * *

(iii) Gifts, on behalf of this Department, which are offered for the advancement of the American Indian can be accepted in circumstances where declining the gifts may cause offense or embarrassment or otherwise adversely affect relations with this Department; such gifts shall be deposited with the bureau property officer within 60 days of the date of acceptance.

* * * * * *

9. It is also proposed that § 20.735–7 be amended by redesignating (b)(3) as (b)(4). Then it is proposed to add a new paragraph (b)(3) to read:

§ 20.735–7 Gifts, entertainment, and favors from domestic sources.

* * * * * *

(b) * * *

(3) Separate statutory gift authorities may be used to provide an exclusion to the prohibitions in paragraph (a) of this section, so long as such use creates no conflict or apparent conflict of interest. Use of such statutory gift authorities should be well documented and gifts other than food or refreshments accepted under such authorities shall be deposited with the bureau property officer within 60 days of the date of acceptance. Notwithstanding paragraphs (b)(2)(iii) and (b)(3), see 48 CFR 1403.101 for special rules governing the acceptance on behalf of the Department of donated property or services including Automated Data Processing Services which are subject to the Department of the Interior Acquisition Regulation.

* * * * * *

10. It is proposed that § 20.735–8 be amended by revising paragraph (b)(5) to read:

§ 20.735–8 Gifts and decorations from foreign governments.

* * * * * *

(b) * * *

(5) "Minimal Value" means a retail value in the United States at the time of acceptance of $180.00 or less. Refer to 41 CFR Part 101–49.

* * * * * *

§ 20.735–8 [Amended]

11. In § 20.735–8(d)(2)(ii) it is proposed to remove the words "Assistant Secretary—Policy, Budget and Administration" and add, in their place, the words "Ethics Counselor".

12. It is proposed that § 20.735–9 be amended by revising paragraph (a)(4) to read (the Example Following (a)(4) remains unchanged):

§ 20.735–9 Reimbursement of travel and related expenses.

(a) * * *

(4) When participation at a function is not in an official capacity, an employee may accept reimbursement of travel and accommodation expenses from a private source, provided that such acceptance creates no conflict or appearance of a conflict of interest with one's official duties and is not in violation of other applicable statutory or regulatory prohibition. Refer to § 20.735–7 of this part. Participation as a private citizen must occur on one's own time, such as while on annual leave or leave without pay. If participation should occur during the course of official travel (i.e., evening or weekend hours during official travel status), the travel voucher submitted for Government reimbursement of official duty expenses must be adjusted to claim only that per diem and travel attributable to official duty. Employees who are appointed by the President and paid at a rate higher than the highest rate for GS–18 are on 24 hour duty and determinations of what constitutes official duty and what is private participation should be carefully made. In making such a determination, consultation with the Deputy Agency Ethics Official or the Associate Solicitor—Division of General Law is advisable.

* * * * * *

13. It is proposed that § 20.735–11 be amended by revising paragraph (f) to read:

§ 20.735–11 Honorariums and outside earned income.

* * * * *

(f) *Violation.* In addition to the potential sanctions in § 20.735–4, any employee who knowingly and willfully violates the $2,000 limitation on the amount of an honorarium that may be accepted in § 20.735–11(b)(4) shall be reported to the Federal Election Committee in accordance with the Commission's compliance procedures in 11 CFR Part 111. The employee may be subject to civil and criminal penalties as provided for by 2 U.S.C. 437g (Pub. L. 96–187, section 108).

14. It is proposed that § 20.735–15 be amended by revising paragraphs (b), (c), and adding paragraphs (d) and (e) to read:

§ 20.735–15 Government property.

* * * * *

(b) *Misuse of Government motor vehicles or aircraft.* Employees shall not willfully use or authorize the use of a Government-owned or leased passenger motor vehicle or aircraft for other than official purposes. Violation of this provision shall automatically result in suspension from duty without compensation, for not less than one month. See 31 U.S.C. 1344(a) and 31 U.S.C. 1349(b) for additional interpretation and guidance on official use of motor vehicles or aircraft.

(c) *Misuse of information.* Except as may be provided by regulation, an employee shall not, for the purpose of furthering private interests, directly or indirectly use or allow the use of official information obtained through or in connection with his Government employment. Information that is available to the general public on request is not covered by this prohibition unless its use creates a conflict or a substantial appearance of misusing public office for private gain.

(d) *Embezzlement of Government property.* Employees shall not convert, even temporarily on loan, for personal use, any Government property or equipment nor use Government authority, even though reimbursement is made, for personal acquisitions (18 U.S.C. 641, 643 and 654).

(e) *Unauthorized use of official mail.* Mail such as personal letters and Christmas cards, job resumes and applications, Freedom of Information and Privacy Act requests and appeals, complaints, grievances, and all similar materials which do not relate exclusively to the business of the Government may not be sent as penalty or postage and fees paid mail. An employee is prohibited from using official Government envelopes, with or without applied postage, or official letterhead stationery for personal business (18 U.S.C. 1719 and 39 U.S.C. 3201 *et seq.*). These statutory requirements prohibit employees from using Government envelopes to mail their own personal job applications.

15. It is proposed that § 20.735–17 be amended by revising paragraph (m) to read:

§ 20.735–17 Other conduct.

* * * * *

(m) *Commercial Discounts.* The acceptance by an employee of any special rate or commercial discount is governed generally by the rules and prohibitions related to the acceptance of gifts except that employees may accept special rates or commercial discounts that are offered to members of the public generally. An employee may not accept a special rate or commercial discount when:

(1) It is offered only to Department or bureau employees;

(2) The person or entity offering the rate or discount:

(i) Has exclusive interests that may be directly affected by the performane or non-performance of the employee's official duties,

(ii) Has or is seeking business directly with the Department, or

(iii) Appears to be offering the rate or discount with the hope or expectation of obtaining an advantage or preferment in dealing with the Department; or when

(3) Acceptance of the rate or discount creates a conflict or an appearance of conflict of interest or would otherwise adversely affect the public's confidence in the integrity of the government.

Employees are also prohibited from using any special rate or commercial discount related to government service to obtain any item for the purpose of resale at a profit. The provisions of this paragraph do not prohibit the acceptance of discounts offered on a geographical basis (for example, a specific city or municipality) or discounts offered to non-government groups to which an employee may belong such as the American Automobile Association, etc. Employees are restricted from accepting discounts from groups that are regulated by this Department, except where the groups are required by law, regulation or contract to offer discounts to everyone. The provisions of this paragraph also do not prohibit employees from accepting discounts from Department authorized operations.

16. It is proposed that § 20.735–20 be amended by revising paragraph (c) to read:

§ 20.735–20 Scope of subpart.

* * * * *

(c) For the purpose of applying the prohibitions in § 20.735–24 Interests in Federal lands, § 20.735–27 Interested in mining activities, and § 20.735–28 Interests in trading with Indians, of this subpart, the term "Office of the Secretary and other Departmental Offices reporting directly to a Secretarial Officer" means the following offices:

(1) The Immediate Office of the Secretary;
(2) The Immediate Office of the Under Secretary;
(3) Solicitor;
(4) Inspector General;
(5) Hearings and Appeals;
(6) Congressional and Legislative Affairs;
(7) Public Affairs;
(8) All Assistant Secretaries and their immediate Office Staffs and heads of bureaus or offices;
(9) The following offices under the Assistant Secretary-Policy, Budget, and Administration:
(i) Acquisition and Property Management;
(ii) Budget
(iii) Environmental Project Review;
(iv) Policy Analysis;

* * * * *

§ 20.735–21 [Amended]

17. In § 20.735–21(b)(4)(iv) **Note**, it is proposed to remove the words "Interests in mining activities, and § 20.735–27-Interests in trading with Indians" and add, in their place, the words "Interests in underground or surface coal mining operations, or § 20.735–27-Interests in mining activities.".

18. It is proposed that § 20.735–21 be amended by revising the **Example** following (b)(5)(ii) to read:

§ 20.735–21 General conflict of interest prohibitions.

* * * * *

(b) * * *
(5) * * *
(ii) * * *

Example: An employee who works as a contracting officer owns $5,000 worth of stock in a computer company. This employee has a substantial relationship between that financial interest and the computer company if either of the following situations exists: (1) He or she is required to deal directly with, render advice about, make recommendations or decisions concerning the company, or (2) he or she may be required to deal with or

make decisions concerning the company and it is reasonable for members of the public to perceive such potential activity as being a conflict of interest. In the first instance there is a substantial conflict. In the second instance there is a substantial apparent conflict. It is important to understand that if this employee were a Personnel Officer, a $5,000 interest in a particular computer company might not create a substantial conflict or apparent conflict, but for the Contracting Officer, even a small interest in that particular computer company may be considered substantial.

* * * * *

§ 20.735–22 [Amended]

19. In § 20.735–22(c)(3) it is proposed to revise the last two sentences to read as follows: "Except for the prohibition on executing surveys or examinations for private parties or corporations, these statutory restrictions are by this sentence, extended to the Director and all members of the Minerals Management Service. Refer to § 20.735–24 for prohibitions on interests in Federal lands and resources by employees of the Department generally."

§ 20.735–23 [Amended]

20. In § 20.735–23 it is proposed to remove the words "outside work" and add, in their place, the words "outside work or outside activity" in the following paragraph:

(b) (1) ("outside work" appears twice)
(b)(3)(i)
(c)(1)(iv)
(c)(1)(v)
(g)(2)(i)
(g)(2)(ii)
(g)(3)(i)
(h)(1)

21. It is proposed that § 20.735–23 be amended by revising paragraph (a)(2) to read:

§ 20.735–23 Outside work and interests.

* * * * *

(a) * * *

(2) "Outside activity" means volunteer services, lectures, consultations, discussions, writings, appearances and other similar activities.

* * * * *

22. In § 20.735–23(b)(3)(ii) it is proposed to remove the words "any work assignment or employment affiliation" and add, in their place, the words "any outside work or activity".

23. In § 20.735–23(c)(2) it is proposed to remove the words "may not perform outside work if:" and add, in their place, the words "may not perform outside work or an outside activity if:".

24. In § 20.735–23(c)(2)(i), (ii) and (iii) it is proposed to remove the words "The work" and add, in their place, the words "The work or activity".

25. It is proposed that § 20.735–23 be amended by revising paragraphs (d)(2), (e)(1) introductory text, (e)(1)(i) Note, (g)(1), and (g)(2)(iii) to read:

§ 20.735–23 Outside work and interests.

* * * * *

(d) * * *

(2) While a special government employee is not prohibited from performing outside work or other outside activity solely because the work or activity is of the same general nature as the work he or she performs for the Department, such an employee may not perform outside work or activity if (i) The work or activity is such that the employee would be expected to do it as a part of his or her regular duties; or

(ii) The work or activity would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of his or her official duties.

* * * * *

(e) * * *

(1) A regular employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government (18 U.S.C. 209). This statute does not cover outside work performed for no compensation, nor does it prevent an employee from:

(i) * * *

Note: Continued participation in stock options or profit sharing benefit plans maintained by a former employer may be prohibited by other statutory requirements.

(ii) * * *

(g) * * *

(1) Except for U.S. Mineral Surveyors, a regular or special government employee engaged in outside work or outside activity shall report that work or activity to his or her immediate supervisor if the work or activity is to be performed frequently or on a standardized schedule.

(2) * * *

(iii) A statement of the employee's opinion of any apparent or potential conflict of interest between the work or activity and his or her official duties.

* * * * *

26. It is proposed that § 20.735–24 be amended by revising paragraph (a)(1) to read:

§ 20.735–24 Interests in Federal lands.

* * * * *

(a) * * *

(1) "Federal lands" means lands or resources or an interest in lands or resources which are administered or controlled by the Department of the Interior, including, but not limited to, the Outer Continental Shelf and Indian trust or restricted lands.

* * * * *

27. It is proposed that § 20.735–24 be amended by adding a sentence after paragraph (a)(4)(ii) to read:

§ 20.735–24 Interests in Federal lands.

* * * * *

(a) * * *
(4) * * *
(ii) * * *

Refer to Note in § 20.735–21(b)(4) for examples of the kinds of interests that are not covered.

* * * * *

28. In § 20.735–24(b)(1)(ii) it is proposed to remove the words "except that they may acquire or retain such interests" and add, in their place, the words "except that they may retain such interests".

29. In § 20.735–24(b)(2) introductory text it is proposed to remove the words "to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)," and add, in their place, the words "to GS–16 and above or who are in positions covered by the Performance Management and Recognition System as described in 5 U.S.C. 5402(a),".

30. In § 20.735–24(b)(3) it is proposed to remove the words "except that they may acquire or retain such interests" and add, in their place, the words "except that they may retain such interests".

31. It is proposed that § 20.735–24 be amended by redesignating paragraphs (e)(2) as (e)(3), (e)(3) as (e)(4), and (e)(4) as (e)(5). Then it is proposed to add a new paragraph (e)(2) to read:

§ 20.735–24 Interests in Federal lands.

* * * * *

(e) * * *

(2) For employees identified in § 20.735–24(b), the Designated Agency Ethics Official may appprove the retention of an outside employment interest with an entity that has an interest in Federal lands when the general provisions on outside work and interests in § 20.735–23 are met and when:

(i) The outside employment is not prohibited by 43 U.S.C. 31(a), and

(ii) There is little or no relationship or appearance of conflict of interest between the employee's outside employment interest and the employee's official duties and responsibilities, and;

(iii) Any related commercial permit, lease or other right in Federal land is not directly held by the employee, and

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(iv) The outside employment interest does not result in a direct or indirect equity interest in an organization that has rights to Federal lands, and

(v) The outside employment interest of a Department employee is equally available to any member of the general public.

* * * * *

32. In newly redesignated § 20.735–24(e)(4)(i) it is proposed to remove the words "Designated Agency Ethics Official within 90 days from the effective date of these regulations, within 60 days of employment by the Department" and add, in their place, the words "Designated Agency Ethics Official within 60 days of employment by the Department".

33. In newly redesignated § 20.735–24(e)(4)(iv) it is proposed to remove the words "An explanation of why denial of the right" and add, in their place, the words "If applicable, an explanation of why denial of the right".

§ 20.735–26 [Amended]

34. In § 20.735–26(b)(1) it is proposed to remove the words "Assistant Secretary—Energy and Minerals," and add in their place, the words "Assistant Secretary—Land and Minerals Management,".

35. In § 20.735–27(b)(3) introductory text it is proposed to remove the words "to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)," and add, in their place, the words "to GS–16 and above or who are in positions covered by the Performance Management and Recognition System as described in 5 U.S.C. 5402(a),".

36. It is proposed that § 20.735–27 be amended by redesignating paragraphs (e)(2) as (e)(3), and (e)(3) as (e)(4). Then it is proposed to add a new paragraph (e)(2) to read:

§ 20.735–27 Interests in mining activities.

* * * * *

(e) * * *

(2) For employees identified in § 20.735–27(b), the Designated Agency Ethics Official may approve the retention of an outside employment interest in a mining activity that is under investigation or in a mining enterprise conducting mining activities that are under investigation, when the general provisions on outside work and interests in § 20.735–23 are met and when:

(i) The outside employment is not prohibited by 30 U.S.C. 6, and

(ii) There is little or no relationship or appearance of conflict of interest between the employee's outside employment interest and the employee's official duties and responsibilities, and

(iii) The outside employment interest does not result in a direct or indirect equity interest in an organization that has rights to mining activities, and

(iv) The outside employment interest of a Department employee is equally available to any member of the general public.

* * * * *

37. In newly redesignated § 20.735–27(e)(3)(i) remove the words "Designated Agency Ethics Official within 90 days from the effective date of these regulations, within 60 days of employment by the Department" and add, in their place, the words "Designated Agency Ethics Official within 60 days of employment by the Department".

38. In § 20.735–28(c)(1) introductory text it is proposed to remove the words "to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)" and add in their place, the words "to GS–16 and above or who are in positions covered by the Performance Management and Recognition System as described in 5 U.S.C. 5402(a)".

39. It is proposed that § 20.735–28 be amended by revising paragraph (e)(2) to read:

§ 20.735–28 Interests in trading with Indians.

* * * * *

(e) * * *

(2) Employees in Indian Affairs, the Office of the Secretary and Other Departmental Offices may be permitted to trade with Indians or Indian Organizations under regulations prescribed in 25 CFR Part 140.

* * * * *

40. It is proposed that § 20.735–29 be amended by revising paragraph (c)(1) to read:

§ 20.735–29 Indian and Alaska Native Organizations.

* * * * *

(c) * * *

(1) No person employed in Indian Affairs may hold a position on a tribal election board or on a tribal school board which oversees Bureau of Indian Affairs ept for line officers, personnel officers, contracting officers and contracting specialists, an eligile person employed in Indian Affairs, with the approval of the Deputy to the Assistant Secretary—Indian Affairs (Operations), for Central Office employees, or the appropriate Area Director for field employees, may become a condidate for office in his or her local tribe or may be appointed as a representative of his or her local tribe, if in the judgement of the Deputy to the Assistant Secretary, Area Directors or Assistant Directors, no real or apparent conflict of interest is created. The decisions of the above named officials are final and no further appeal is permitted.

* * * * *

41. In § 20.735–29 it is proposed to remove the words "Deputy Assistant Secretary—Indian Affairs" and add, in their place, the words "Deputy to the Assistant Secretary—Indian Affairs" in the following paragraphs:

(c)(2) introductory text

(c)(2)(i)

(c)(2)(ii)

42. In § 20.735–30(c) introductory text it is proposed to remove the words "the necessary form or forms to the employee" and add in their place, the words "the necessary form to the employee".

43. In § 20.735–30(d)(1) introductory text and (d)(2) it is proposed to remove the word "full-time".

44. It is proposed that § 20.735–30 be amended by revising paragraph (h) to read:

§ 20.735–30 Executive Order filing requirements.

* * * * *

(h) *Retention and disposal of statements.* All statements shall be destroyed six years from the date of filing unless the statement is needed in an ongoing investigation.

* * * * *

45. It is proposed that § 20.735–31 be amended by revising paragraphs (c)(2), (c)(3)(i) and (c)(3)(ii) to read:

§ 20.735–31 Ethics in Government Act filing requirements.

* * * * *

(c) * * *

(2) Within five days of the transmittal by the President to the Senate of the nomination of an individual to a position, appointment to which requires the advice and consent of the Senate, such individual shall file the required report in accordance with instructions received from the Executive Office of the President. The report shall be reviewed by the Designated Agency Ethics Official who shall sign approval or comment on the contents of the form before it is forwarded to the Office of Government Ethics. Also, such individual shall, not later than the first hearing to consider the nomination of such individual, make current the report filed pursuant to this section by filing the information required by section 202(a)(1)(A) of the Ethics in Government Act with respect to outside earned income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in these

regulations shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(3) * * *

(i) The Deputy Ethics Counselor will grant an extension of time, not to exceed May 15, for filing the annual SF–278 form.

(ii) The Designated Agency Ethics Official may, for good cause shown, grant to any employee, an extension of time of up to 45 days beyond the May 15 deadline for the annual filing of the SF–278. This filing extension will only be considered in cases where the affected employee needs additional time to obtain tax, trust or investment information to complete his or her SF–278 form. Requests for such an extension shall be in writing to the Designated Agency Ethics Official through the employee's Deputy Ethics Counselor. Such requests must be filed no later than May 1st of the reporting year.

* * * * *

46. In § 20.735–31(e)(6) it is proposed to revise the second sentence to read as follows: "Incumbent employees shall report all positions held at any time during the applicable reporting period. *Refer to 5 CFR 734.301(f).*".

47. It is proposed that § 20.735–31 be amended by revising paragraphs (g)(1)(ii) through (vi) to read:

§ 20.735–31 Ethics in Government Act filing requirements.

* * * * *

(g) * * *

(1) * * *

(ii) Determine which, if any, conflict of interest prohibitions, in addition to Executive Order 11222 prohibitions, apply to each position (e.g., organic act prohibitions);

(iii) Review each SF–278 report for completeness and determine if any information disclosed reveals any conflict or appearance of a conflict of interest with the employee's official duties and whether any reported interest violates any applicable prohibition. For employees given filing extensions or being processed for remedial action, all SF–278's filed to satisfy the annual disclosure requirement must be submitted to the Department Ethics Office by the first Monday in April. For employees filing SF–278 new entrant or termination reports, these reports shall be reviewed and submitted to the Designated Agency Ethics Official within 15 working days after receipt by the respective bureau or office;

(iv) Sign the report indicating that the report has been reviewed and is recommended for certification. In cases where a SF–278 report is not recommended for certification, the bureau or office deputy ethics counselor shall not sign the report. The SF–278 report shall be filed with the Designated Agency Ethics Official along with a statement as to why the SF–278 should not be certified. For the submission of the SF–278's to satisfy the annual disclosure requirement, the bureau or office deputy ethics counselor shall also send a report to the Designated Agency Ethics Official listing the names of employees who were granted the May 15th filing extension.

(v) Take prompt action to resolve informally any potential conflicts, actual conflicts or apparent conflicts that exist; and

(vi) Take remedial action if informal resolution fails.

* * * * *

48. It is proposed that § 20.735–35 be amended by removing paragraph (b), redesignating paragraphs (c) and (d) as (b) and (c), and revising paragraphs (a)(1) through (3) and newly redesignated (b)(1) to read as follows:

§ 20.735–35 How to file.

* * * * *

(a)(1) Employees who are subject only to Executive Order 11222 filing requirements shall report all information required on form DI–212, Confidential Statement of Employment and Financial Interest.

(2) Employees who are in positions subject to Executive Order 11222 filing requirements and to the Surface Mining Control and Reclamation Act filing requirements shall report all information requirement on form DI–212A, Confidential Statement of Employment and Financial Interests for use by Federal employees who perform functions or duties under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1211(f).

(3) Employees who are in positions subject only to the Ethics in Government Act of 1978 filing requirements shall report all information required on the Standard Form 278. Employees filing reports under the Ethics in Government Act will also satisfy the filing requirement of Executive Order 11222 or the Surface Mining Control and Reclamation Act by filing Form DI–278. Form DI–278 is an approved Departmental supplement to SF–278 and requests only that additional information required by Executive Order 11222 or the Surface Mining Act that is not requested on the SF–278. Newly appointed or elected officials and Presidential nominees to positions requiring the advice and consent of the Senate shall also file Standard Form 278.

(b) *Where to file.* (1) The Designated Agency Ethics Official and the Deputy Agency Ethics Official shall file statements with the Under Secretary.

* * * * *

49. In newly redesignated § 20.735–35(b)(2) it is proposed to remove the words "Assistants to the Secretary; Solicitor and Deputy Solicitors;" and add in their place, the words "Assistants to the Secretary; Inspector General; Solicitor and Deputy Solicitors;".

50. It is proposed that § 20.735–35 be amended by revising newly redesignated paragraphs (b)(4) and (b)(5) to read:

§ 20.735–35 How to file.

* * * * *

(b) * * *

(4) Covered employees in the Office of Inspector General (except for the Inspector General) shall file their statements with the Inspector General of the Deputy Ethics Counselor for the Office of Inspector General, as the Inspector General may direct.

(5) Covered employees in the Office of the Secretary and in Other Departmental Offices, except those employees mentioned in paragraphs (b)(1) through (b)(4) of this section shall file their statements with the Personnel Officer, Division of Personnel Services.

* * * * *

51. It is proposed that § 20.735–36 be amended by revising paragraph (b) introductory text to read:

§ 20.735–36 Certificates of disclaimer.

* * * * *

(b) Each employee covered by one or more of these restrictions shall sign a certificate of disclaimer upon entrance to or upon transfer to these bureaus or offices. Employees may also be required to periodically renew their certificate of disclaimer. The employee's signature will indicate that he or she:

* * * * *

52. It is proposed that § 20.735–37 be amended by revising paragraph (b)(1) to read:

§ 20.735–37 Review and analysis of statements.

* * * * *

(b) * * *

(1) Ensure that all necessary financial disclosure reports are filed in accordance with Department regulations.

* * * * *

53. It is proposed that § 20.735–37 be amended by revising paragraphs (c) and (e) to read:

* * * * *

(c) Each employee's annual statement shall be reviewed by the ethics counselor with whom it is filed to ensure that the employee is in compliance with these regulations. The ethics counselor may consult with the approriate Regional Solicitor, or the Associate Solicitor—General Law, in the conduct of the review.

* * * * *

(e) All DI–212 and DI–212A financial disclosure statements filed to satisfy the annual financial disclosure filing requirements shall be reviewed and certified by the bureau ethics counselor or his or her designee by July 31 of each year. With the exceptions noted in § 20.735–31(g)(1)(iv), all SF-278 financial disclosure reports filed to satisfy the annual financial disclosure requirements shall be reviewed and submitted to the Designated Agency Ethics Official by the first Monday in April of each year for certification or appropriate action.

54. It is proposed that § 20.735–43 be amended by revising paragraphs (a) and (c)(1) to read:

§ 20.735–43 Appeal procedures.

(a) *When and how to appeal.* An employee has the right to appeal an order for remedial action under § 20.735–40. In addition, an employee may appeal the decision of his or her bureau ethics counselor to require that employee to file a financial disclosure statement as provided under 43 CFR 20.735–30(b)(5) or 30 CFR 706.11. An employee shall have 30 days from the date of the remedial action order, or from the date on which he or she was notified of the filing requirement in 43 CFR 20.735–30(b)(5) or 30 CFR 706.11, to exercise this appeal right before any administrative action may be initiated. For appeals under this section the procedures described in 370 DM 771 may not be used in lieu of or in addition to those of this section. Each appeal shall be made in writing and shall contain:

(1) The basis for appeal,

(2) Facts supporting the basis, and

(3) The appellant's current duty station and telephone number.

* * * * *

(c) * * *

(1) Each appeal shall be considered by an Appeal Review Board consisting of a program Assistant Secretary selected by the Designated Agency Ethics Official, the Associate Solicitor—Division of General Law, and the Director or Deputy Director of the Office of Personnel. Assistant Secretaries may delegate authority to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action. The Designated Agency Ethics Official shall serve as an alternate member of the Appeal Review Board in the event that an appeal case involves a member of the Appeal Review Board.

* * * * *

55. It is proposed that § 20.735–61 be amended by adding a new paragraph (d) to read:

§ 20.735–61 Post-employment restrictions.

* * * * *

(d) *Measurement of the two and one-year restriction periods.* (1) For 18 U.S.C. 207(b)(i), the statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

(2) For 18 U.S.C. 207(c), the statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously.

[FR Doc. 87–22862 Filed 10–5–87 8:45 am]
BILLING CODE 4310–RK–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87–266; FCC 87–243]

Telephone Company; Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission adopted a Notice of Inquiry on the possibility of presenting to the Congress proposals for modification of the Communications Act and Commission's Rules governing the provision of video programming by telephone common carriers within their operating areas. One party has filed a motion for 30 additional days in which to file comments and reply comments. Support of that request was filed by seven parties in the form of a joint filing and by one other party. Another party wishes to place restrictions on any extension of time the Commission may grant.

DATES: The motion was granted in an Order released under delegated authority by the Deputy Chief (Operations), Common Carrier Bureau, on September 22, 1987. Therefore, the final date for filing comments has been extended to November 2, 1987 and reply comments to December 2, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James F. Ferris, (202) 634–1830.

SUPPLEMENTARY INFORMATION: This is a summary of a Motion for Extension of Time and other related filings pertaining to the Commission's Notice of Inquiry (NOI) in CC Docket No. 87–266, released August 18, 1987. A summary of that NOI was published in the **Federal Register** on September 15, 1987 (52 FR 34818).

Summary of Motion for Extension of Time and Related Filings

The NOI required that comments filed by interested parties be received at the Commission on or before October 2, 1987. Reply comments could be filed no later than November 2, 1987. On September 4, Centel Corporation (Centel) filed a motion for a 30-day extension of the comment and reply comment dates. Centel states that the massive information requested by the Commission in this major proceeding will take substantial time to obtain from its numerous jurisdictions and to then collate into a coherent and comprehensive policy position. Subsequently, support of Centel's motion was filed by seven parties in a joint pleading, and further support was filed by the National Cable Television Association, Inc. The United States Telephone Association (USTA) recommends that any extension in this proceeding granted by the Commission carry certain limitations. By Order released September 22, 1987, the Commission grants Centel's motion and denies the recommendation of USTA. Accordingly, parties interested in the NOI now have until November 2, 1987 to file comments, and December 2, 1987 to file reply comments.

Gerald Vaughan,

Deputy Chief (Operations), Common Carrier Bureau, Federal Communications Commission.

[FR Doc. 87–23061 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-385, RM-5804]

Radio Broadcasting Services; West Lafayette, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Purdue University proposing the allotment of Channel *267A to West Lafayette, Indiana and its reservation for noncommercial use, as that community's second FM service.

DATES: Comments must be filed on or before November 19, 1987, and reply comments on or before December 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David E. Hilliard, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-385, adopted August 25, 1987, and released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23060 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-71; RM-5677]

Radio Broadcasting Services; Hartford, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Timothy Dodge, proposing the allotment of Channel 282A to Hartford, Vermont, as that community's first FM service, at the request of the petitioner. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-71, adopted September 4, 1987, and released September 30, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23065 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-384, RM-5903]

Radio Broadcasting Services; Hot Springs, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Koinonia Broadcasting Company, licensee of AM Station WWES, Hot Springs, Virginia, proposing the allotment of Channel 296A to Hot Springs, Virginia, as that community's first FM service.

DATES: Comments must be filed on or before November 19, 1987, and reply comments on or before December 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Don Werlinger, Champion Broadcasters, Inc., P.O. Box 1516, Burlington, NJ 08016 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-384, adopted August 25, 1987, and released September 28, 1987. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch,

[FR Doc. 87-23059 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392; (Sub-No. 1)]

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed reopening and modification of final rules.

SUMMARY: The Commission seeks comments on whether and, if so, how the class exemption rules filed in 49 CFR Part 1150, Subpart D, should be modified. While the agency believes the rules have worked very well, there has been concern in a limited number of cases that the rules do not allow sufficient opportunity for public comment. Issues of special concern—for which new rules are being considered—are whether the 7-day notice period should be lengthened for some or all transactions and whether more detailed information should be required.

DATE: Comments are due by November 5, 1987.

ADDRESS: Send comments to Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission Building, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: The Commission has not proposed specific implementing rules. However, parties are here put on notice that, following comments, final rules may be adopted.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428, assistance for the hearing impaired is available through TDD services (202) 275–1721.

This action will not significantly affect either the quality of the human environment or energy conservation. This modification should not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

Authority: 49 U.S.C. 10321, 10505, and 10901; and 5 U.S.C. 553.

Decided: September 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23013 Filed 10–5–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Cattle Grazing Rates on Privately Owned Nonirrigated Land

Notice is hereby given that in response to data user requests, effective September 30, 1987, the National Agricultural Statistics Service (NASS) changed the publication date for cattle grazing rates on privately owned nonirrigated land.

The cattle grazing rates on privately owned nonirrigated land for 1986 and earlier years were published in the December 1986 issue of *Agricultural Prices*. The 1987 rates are published in the September 1987 issue of *Agricultural Prices* released September 30, 1987. The 1987 data will also be published in the December 1987 issue of *Agricultural Prices*.

For 1988 and succeeding years, NASS plans to publish the grazing rates in the July and December issues of *Agricultural Prices*.

For further information, contact Fred Thorp, Chief, Economic Statistics Branch, Estimates Division, NASS/USDA, Room 5912–S, Washington, DC 20250–2000; telephone (202) 447–3570.

Done at Washington, DC, this 1st day of October 1987.

Charles E. Caudill,

Administrator.

[FR Doc. 87–23020 Filed 10–5–87; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Benchmark Survey of Foreign Direct Investment in the United States
Form Number: Agency—BE–12; OMB—NA
Type of Request: New collection
Burden: 12,000 respondents; 120,000 reporting hours
Needs and Uses: This survey is needed to collect data on foreign investment in the U.S. to be used in the formulation of Government policy and will serve as a base from which balance of payments and financial and operating data collected in sample surveys can be expanded to universe estimates. Required for balance of payments, international investment, and gross national product accounts of the U.S.
Affected Public: Farms, businesses or other for-profit institutions, small business or organizations
Frequency: Quinquennially
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: September 29, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–23035 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–CW–M

[Docket No. 3640–60]

Order Restoring Export Privileges; Hi-Tech Air Transport Corp., Respondent

The Order of July 14, 1986 (51 FR 26030, July 18, 1986) affirmed the June 12, 1986 Decision and Order that terminated the February 28, 1983 Temporary Denial Order (48 FR 10108, March 10, 1983). Nevertheless, one Related Person has still been denied U.S. export privileges pursuant to that Temporary Denial Order, in consequence of an August 3, 1984 Amendment (49 FR 31933, August 9, 1984). Those U.S. export privileges are hereby restored to: Hi-Tech Air Transport Corporation, 110 Standard Street, El Segundo, California.

This restoration of U.S. export privileges to Hi-Tech Air Transport Corporation is effective immediately, and this Order Restoring export privileges shall be published in the **Federal Register**.

Hugh J. Dolan,

Administrative Law Judge.

Date: September 29, 1987.

[FR Doc. 87–23094 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–BP–M

[Docket No. 4652–52]

Order Denying Temporary Denial Order; Nancy P. King, Respondent

Because each of the Principal Respondent's named in the Temporary Denial Order issued February 3, 1984 (49 FR 4958, February 9, 1984) have been deleted therefrom, that Temporary Denial Order is hereby terminated.

The single Related Person for whom U.S. export privileges are still being denied pursuant to that Temporary Denial Order hereby has these U.S. export privileges restored. That person is: Nancy P. King, 5122 Grandview Avenue, Yorba Linda, CA.

This termination of the February 3, 1984 Temporary Denial Order and this restoration of U.S. export privileges to Nancy P. King are effective immediately, and this Order terminating the Temporary Denial Order shall be published in the **Federal Register**.

Hugh J. Dolan,

Administrative Law Judge.

Date: September 29, 1987.

[FR Doc. 87–23095 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–BP–M

International Trade Administration

[A–549–601]

Amended Antidumping Duty Order; Malleable Cast Iron Pipe Fittings From Thailand

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

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SUMMARY: As a result of correcting a typographical error in the Department's antidumping duty order on malleable cast iron pipe fittings from Thailand (52 FR 31440, August 20, 1987), we are hereby amending the antidumping duty order and correcting the antidumping duty rate from 2.75 percent to 1.70 percent, the rate of our final determination (52 FR 29282, July 7, 1987). **Federal Register.**

EFFECTIVE DATE: October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Wilson (202) 377–5288 or James Riggs (202) 377–1766, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are malleable cast iron pipe fittings advanced in condition by operations or processes subsequent to the casting process other than with grooves, or not advanced, of cast iron other than alloy cast iron, as provided for in items 601.7000 and 610.7400 of the *Tariff Schedules of the United States Annotated (TSUSA).*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on February 5, 1987, the Department made its preliminary determination that there was reason to believe or suspect that pipe fittings from Thailand were being sold at less than fair value (52 FR 4837, February 13, 1987). On June 29, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 29282, July 7, 1987) and published a rate of 1.70 percent.

On August 12, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

On August 20, the Department published an antidumping duty order with respect to pipe fittings from Thailand (52 FR 31440) which erroneously reported a weighted-average antidumping duty margin of 2.75 percent instead of the 1.70 percent established in the final determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 1.70 percent.

This determination constitutes an antidumping duty order with respect to pipe fittings from Thailand, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

October 1, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–23081 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–604]

Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning tapered roller bearings and parts thereof, finished and unfinished (tapered roller bearings), from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that tapered roller bearings from Japan are being sold at less than fair value and that sales of tapered roller bearings from Japan are materially injuring a United States industry.

Suspension of liquidation will begin for all unliquidated entries, or warehouse withdrawals, for consumption of tapered roller bearings from Japan made on or after March 27, 1987, the date on which the Department published its preliminary determination notice in the **Federal Register.** These entries will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp (202) 377–1769, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are tapered roller bearings and parts thereof, currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS. Products subject to the outstanding antidumping duty order covering certain tapered roller bearings from Japan (T.D. 76–227, 41 FR 34974) were not included within the scope of this investigation. This order does, however, include all tapered roller bearings and parts thereof, as described above, that are manufactured by NTN.

If the Department's recission of its revocation of the above cited antidumping duty order with respect to NTN is affirmed by final judicial order, this order would not apply to any bearings manufactured by NTN that would be covered by the outstanding antidumping duty order. This issue is being litigated in the Court of International Trade in *The Timken Co. v. United States,* Court No. 82–6–00890.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on March 23, 1987, the Department made its preliminary determination that there was reason to believe or suspect that tapered roller bearings from Japan were being sold at less than fair value (52 FR 9905, March 27, 1987). On August 10, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 30700, August 17, 1987).

On September 23, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of tapered roller bearings from Japan not covered by antidumping duty order T.D.

76–227. These antidumping duties will be assessed on all unliquidated entries of tapered roller bearings entered, or withdrawn from warehouse, for consumption on or after March 27, 1987, the date on which the Department published its preliminary determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Manufacturers/producers/exporters	Average margin percentage
Koyo Seiko Co., Ltd.	70.44
NTN Toyo Bearing Co., Ltd.	47.05
All Others	47.57

This determination constitutes an antidumping duty order with respect to tapered roller bearings from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48).

September 30, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–23082 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; U.S. Department of Commerce, NOAA, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–280. Applicant: U.S. Department of Commerce, NOAA, La Jolla, CA 92038. Instrument: Pitch-roll Sensor, Model PIRO–120. Manufacturer: Datawell B.V., The Netherlands. Intended Use: See notice at 51 FR 29149, August 14, 1986. Reasons for this Decision: The foreign article is an accessory providing pitch and roll information into a Computer Automated Measurement and Control Center.

Docket No.: 87–011R. Applicant: VA Medical Center, Baltimore, MD 21218. Instrument: Electron Microscope, Model JEM–1200 EX/SEG.

Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 52 FR 7917, March 13, 1987. Reasons for this Decision: The foreign instrument provides a point-to-point resolution of 0.3 nanometers and an accelerating potential up to 120 kV.

Docket No.: 87–039R. Applicant: Colorado State University, Fort Collins, CO 80523. Instrument: Stopped-Flow UV-VIS Spectrophotometer, Model SF–41S/SU–40A. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended Use: See notice at 52 FR 12220, April 15, 1987. Reasons for this Decision: The foreign instrument provides a temperature range of −40°C through +50°C and two cell pathlengths (2 and 10mm).

Docket No.: 87–072. Applicant: University of Colorado, Boulder, CO 80309. Instrument: Ultra-High Vacuum Freeze-Etching Unit, Model BAF 500-K. Manufacturer: Balzers Union, Liechtenstein. Intended Use: See notice at 52 FR 2126, January 20, 1987. Reasons for this Decision: The foreign article is capable of an ultimate vacuum of $5x10^{-10}$ mbar and a temperature range from ambient to −265°C.

Docket No.: 87–086. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Gas Isotope Ratio Mass Spectrometer, Model 251 EM with Accessories. Manufacturer: Finnigan MAT, West Germany.

Intended Use: See notice at 52 FR 5325, February 20, 1987. Reasons for this Decision: The foreign instrument provides a multi-element/multiple Faraday collector system, sample size capabity of 0.03 micro-mole and a precision of 0.002°/oo.

Docket No.: 87–089. Applicant: University of Rochester, Rochester, NY 14627. Instrument: Pulfrich Refractometer, Model PR2. Manufacturer: Jenoptik Jena GmbH, East Germany. Intended Use: See notice at 52 FR 5810, February 26, 1987. Reasons for this Decision: The foreign instrument provides a measurement sensitivity of $5x10^{-6}$ per 0.05′.

Docket No.: 87–096.Applicant: Department of the Interior, Menlo Park, CA 95025. Instrument: Borehole Tensor Strainmeter. Manufacturer: University of Queensland, Australia. Intended Use: See notice at 52 FR 7917, March 13, 1987. Reasons for this Decision: The foreign instrument is capable of strain measurements at depths to 300m and can resolve the components of plain strain at a sensitivity of 0.3 nanostrains while simultaneously providing tile at 0.3 nanoradius.

Docket No.: 87–117. Applicant: The Johns Hopkins University, Baltimore, MD 21218. Instrument: Electron Probe X-ray Microanalyzer, Model JXA–8600/3. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987. Reasons for this Decision: The foreign instrument provides the capability of x-ray analysis of material surfaces and scanning electron microscope (SEM) with a SEM spatial resolution of 6.0 nanometers.

Docket No.: 87–130. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: FTI Spectrophotometer, Model DA3.26. Manufacturer: Bomem, Inc., Canada. Intended Use: See notice at 52 FR 12221, April 15, 1987. Reasons for This Decision: The foreign instrument provides an unapodized resolution of 0.002 cm^{-1}.

Docket No.: 87–167. Applicant: Miami University, Oxford, OH 45056. Instrument: Portable Ultraviolet Radiometer, Model UV 103. Manufacturer: Macam Photometrics, United Kingdom. Intended Use: See notice at 52 FR 18262, May 14, 1987. Reasons for This Decision: The foreign article can be used for measurement of ultraviolet radiation above and below water surface.

Docket No.: 87–170. Applicant: University of Chicago, Chicago, IL 60637. Instrument: FTI Spectrophotometer, Model DA2. Manufacturer: Bomem, Inc., Canada. Intended Use: See notice at 52 FR 18262, May 14, 1987. Reasons for This Decision: The foreign instrument provides an unapodized resolution of 0.013 cm^{-1}.

Docket No.: 87–172. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Spectroscopic Ellipsometer with Optical Multichannel Detection, Model ES2G. Manufacturer: SOPRA, France. Intended Use: See notice at 52 FR 18262, May 14, 1987. Reasons for This Decision: The foreign instrument provides an optical multi-channel analyzer for simultaneous measurement of wavelengths over the UV-visible and IR spectral range.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign

instruments described above is pertinent to each applicant's intended purposes.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23086 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; U.S. Department of Commerce, NOAA, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 85-274R. Applicant: National Oceanic and Atmospheric Administration, Miami, FL 33149. Instrument: Mass Spectrometer System, Model MS 80 with Accessories. Manufacturer: Kratos Analytical, United Kingdom. Intended Use: See notice at 50 FR 36128, September 5, 1985. Reasons for This Decision: The foreign instrument provides (1) scan speeds to 0.1 second per decade, (2) metastable ion acquisition and processing and (3) chromatograph-driving software. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 86-135R. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: GC/Mass Spectrometer/Data System, Model 8230C. Manufacturer: Finnigan Corporation, West Germany. Intended Use: See notice at 51 FR 9500, March 19, 1986. Reasons for This Decision: The foreign instrument provides (1) resolution to 50,000, (2) rapid switching to positive/negative ion mode, (3) linked scanning to monitor neutral ion loss and (4) FAB and HPLC ion sources. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 86-251. Applicant: North Carolina State University, Raleigh, NC 27695. Instrument: Optical Furnace. Manufacturer: Leisk Engineering Ltd., United Kingdom. Intended Use: See notice at 51 FR 33282, September 19, 1986. Reasons for This Decision: The foreign article permits the use of highly toxic and volatile materials at elevated temperatures (1400°C). Advice Submitted by: Naval Research Laboratory, January 30, 1987.

Docket No.: 86-319R. Applicant: Yale University School of Medicine, New Haven, CT 06510. Instrument: Inverted Microscope with Attachments. Manufacturer: Zeiss Optical, West Germany. Intended Use: See notice at 51 FR 36738, October 15, 1986. Reasons for This Decision: The foreign instrument provides differential interference contrast optics and minimal electrical interference. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-073. Applicant: University of Alabama at Birmingham, Birmingham, AL 35294. Instrument: Motorized In Vitro Perfusion System. Manufacturer: Luigs & Neumann, West Germany. Intended Use: See notice at 52 FR 2126, January 20, 1987. Reasons for This Decision: The foreign instrument provides motorized advancement of four independent concentric pipettes for resistance and intracellular electrical measurements. Advice Submitted by: National Institutes of Health, May 8, 1987.

Docket No.: 87-076. Applicant: Boston University, Boston, MA 02215. Instrument: Three-Dimensional Digitizing System, Model WATSMART. Manufacturer: Northern Digital, Inc., Canada. Intended Use: See 52 FR 2250, January 21, 1987. Reasons for This Decision: The foreign instrument provides 3-dimensional digital recordings for motion analysis with a sampling rate up to 8000 markers per second per camera. Advice Submitted by: National Institutes of Health, May 8, 1987.

Docket No.: 87-090. Applicant: California State University, Long Beach, CA 90840. Instrument: Inductively Coupled Plasma/Mass Spectrometer, Model PlasmaQuad. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: See 52 FR 5810, February 26, 1987. Reasons for This Decision: The foreign instrument provides a detection limit to 0.1 nanogram per milliliter and an isotope ratio precision of 0.5 percent for silver. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-100. Applicant: Thomas Jefferson University, Philadelphia, PA 19107. Instrument: Genetic Analyzer, Model Cytoscan 110. Manufacturer: Shandon Southern Products, United Kingdom. Intended Use: See notice at 52 FR 7918, March 13, 1987. Reasons for This Decision: The foreign instrument can search microscopic slides to identify chromosomal metaphase and stores this information for electronic analysis. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-106. Applicant: Woods Hole Oceanographic Institution, Woods Hole, MA 02543. Instrument: Deep-Towed Pressure Compensated Boomer Seismic System. Manufacturer: Huntec 70 Ltd., Canada. Intended Use: See notice at 52 FR 7917, March 13, 1987. Reasons for This Decision: The foreign instrument provides (1) an acoustic projector with a pressure compensated boomer to produce an output pulse with a broad frequency bandwith (1400 to 5200 hertz between −3dB points) and (2) deep towing capability. Advice Submitted by: National Oceanic and Atmospheric Administration, June 23, 1987.

Docket No.: 87-107. Applicant: Goucher College, Towson, MD 21204. Instrument: Circular Dichroism Spectropolarimeter, Model J-600A with Accessories. Manufacturer: JASCO International Co. Ltd., Japan. Intended Use: See notice at 52 FR 7917. Reasons for This Decision: The foreign instrument provides rapid kinetics capabilities with circular dichroism measurements using a stopped-flow attachment. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-111. Applicant: University of Houston, Houston, TX 77004. Instrument: Mass Spectrometer System, Model 70SQ/11-250J. Manufacturer: VG Instruments Inc., United Kingdom. Intended Use: See notice at 52 FR 8495, March 18, 1987. Reasons for this decision: The foreign instrument provides (1) resolution to 40,000, (2) mass range to 4000 at 4kV, (3) tandem (MS/MS) operation and (4) FAB and HPLC ion sources. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-152. Applicant: University of Alaska, Fairbanks, AK 99775-0800. Instrument: Magnetic Susceptibility/Temperature System, Model M.S.2. Manufacturer: Bartington Instruments, United Kingdom. Intended Use: See notice at 52 FR 15527, April 29, 1987. Reasons For This Decision: The foreign instrument provides the capability of measuring magnetic susceptibility over a temperature range of −200 °C to +900 °C. Advice Submitted by: National Bureau of Standards, May 27, 1987.

Docket No.: 87-161. Applicant: Good Samaritan Hospital and Medical Center, Portland, OR 97209. Instrument: Micromanipulator, Model PM20H. Manufacturer: Biomedizinische Instrumente, West Germany. Intended Use: See notice at 52 FR 15528, April 29, 1987. Reasons For This Decision: The foreign instrument provides

piezoelectric step velocities greater than 4.0 micrometers per millisecond, lateral stabilization, and direct mounting on a microscope. Advice Submitted by: National Institutes of Health, July 9, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health, National Bureau of Standards, National Oceanic and Atmospheric Administration, and Naval Research Laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23085 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; U.S. Department of Energy, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-133. Applicant: U.S. Department of Energy, Argonne, IL 60439. Instrument: Oscilloscope, Model #7250. Manufacturer: Intertecnique, France. Intended Use: See notice at 52 FR 12221, April 15, 1987. Reasons for this Decision: The foreign instrument can digitize and display transient waveforms with a risetime down to 50 picoseconds. Advice Submitted By: National Institutes of Health, June 25, 1987. Instrument Ordered: January 9, 1987.

Docket No.: 86-297R. Applicant: Northwestern University, Evanston, IL 60201. Instrument: Circular Dichroism Spectropolarimeter, Model J-600. Manufacturer: Jasco, Japan. Intended Use: See notice at 51 FR 29954, August 21, 1986. Reasons for this Decision: The foreign instrument provides a wavelength scanning range to 1000 nanometers. Advice Submitted by: National Institutes of Health, May 8, 1987. Instrument Ordered: June 18, 1986.

Docket No.: 86-312R. Applicant: Harbor Branch Foundation, Inc., Fort Pierce, FL 33450. Instrument: Remotely Operated Vehicle System, HYSUB-40. Manufacturer: I.S.E. Gulf Inc., Canada. Intended Use: See notice at 51 FR 34679, September 30, 1986. Reasons for this Decision: The foreign instrument employs fiber-optic telemetry to provide high quality video signals (300 lines resolution; 35 lux sensitivity; 41 dB signal/noise ratio; and 525/60 H_z scan), and to handle several cameras simultaneously. Advice Submitted by: National Oceanic and Atmospheric Administration. Instrument Ordered: May 2, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

Reasons: The National Oceanic and Atmospheric Administration and National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to any of the foreign instruments for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the any of the foreign instruments being manufactured at the time it was ordered.

Leonard E. Mallus,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 87-23083 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Midwest Stone Institute

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 85-281R. Applicant: Midwest Stone Institute, St. Louis, MO 63110. Instrument: Extracorporeal Shock Wave Lithotripter (ESWL). Manufacturer: Dornier System GmbH, West Germany. Intended Use: See notice at 52 FR 27040, July 17, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: There is no domestic manufacturer of lithotripters or of comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to this application that there are no known domestic instruments now available which are equivalent to the Dornier ESWL.

We know of no equivalent instrument that is being manufactured in the United States which is of equivalent scientific value to the foreign instrument for the purposes for which the instrument is intended to be used. (See also 52 FR 22512, June 12, 1987.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23084 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Shadyside Hospital, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e) (4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 87-022. Applicant: Shadyside Hospital, Pittsburgh, PA 15232. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Denial Without Prejudice to Resubmission: February 5, 1987.

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Docket No.: 87–078. Applicant: National Oceanic & Atmospheric Administration, Boulder, CO 80303. Instrument: Ionosonde-Digital Unit, Model DBD–43. Manufacturer: KEL Aerospace, Australia. Denial Without Prejudice to Resubmission: February 20, 1987.

Docket No.: 87–006. Applicant: St. Jude Children's Research Hospital, Memphis, TN 38101. Instrument: Stopped-flow Apparatus. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Docket No.: 87–014. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Rapid Kinetics Accessory for Spectrophotometers, Model SFA–11. Manufacturer: Hi-Tech Ltd., United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Docket No.: 87–024. Applicant: Albion College, Albion, MI 49224. Instrument: Rapid Kinetics Accessory of UV/Vis Spectrophotometers, Model SFA–11. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Docket No.: 87–055. Applicant: Bates College, Lewiston, ME 04240. Instrument: Rapid Kinetics Accessory of UV/Vis Spectrophotometers, Model SFA–11. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Frank W. Creel,

Statutory Import Programs Staff.

[FR Doc. 87–23087 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; Shriners Hospital for Crippled Children, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–248. Applicant: Shriners Hospital for Crippled Children, Shriners Burn Institue, Boston Unit, 51 Blossom Street, Boston, MA 02114. Instrument: Mass Spectrometer, SIRA 10. Manufacturer: VG Isogas, United Kingdom. Intended Use: The article will be used to further: (1) Studies of energy substrate, especially glucose and fatty acid metabolism to elucidate the responses of the metabolism of these substrates to burn injury in animals and human patients; (2) studies of nitrogen and amino acid metabolism in healthy adults and in burn patients; (3) methods for measuring the turnover of skin protein, collagen, and factors that modulate collagen turnover. Application Received by Commissioner of Customs: July 9, 1987.

Docket No.: 87–278. Applicant: George Mason University, Purchasing Office, 4400 University Drive, Fairfax, VA 22030. Instrument: Rapid Kinetics Accessory for UV/Vis Specrophotometer, Model SFA–11. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: The instrument is an accessory for existing uv-visible spectrophotometers used in undergraduate chemistry instructional laboratory classes, Chem 445, Inorganic Preparations and Techniques; Chem 463–464, Biochemistry Laboratory; Chem 336–337, Physical Chemistry Laboratory; Chem 451–452, Undergraduate Research. The instrument will be used for the rapid mixing of solutions in a spectrophotometric cell, so that the progress of rapid reactions can be monitored, particularly when used in conjunction with a diode-array spectrophotometer. Application Received by Commissioner of Customs: August 26, 1987.

Docket No.: 87–279. Applicant: University of Washington, Nuclear Physics Laboratory, Seattle, WA 98195. Instrument: Emittance Monitor. Manufacturer: Danfysik A/S, Denmark. Intended Use: The instrument will be used to measure the emittance of the beams of particles accelerated by the University's accelerator. Knowledge of the emittance will aid in troubleshooting the accelerator and ascertaining that the beam quality meets specifications for use in nuclear experiments. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–280. Applicant: The Regents of the University of California, Material Management Department, Riverside, CA 92521. Instrument: Electron Microscope, Model EM 10CA/CR/C. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used in the following research programs:

A. Proteins involved in force transmission at cell membranes.

B. Use of thin protein sections in studies of crustacean and mammalian reproductive biology.

C. Post-translational modification, storage and secretion of prolactin.

D. Cellular interactions influencing B cell differentiation.

E. Localization of T cell adhesion proteins by immunoelectron microscopy.

F. Controls of protein synthesis in early development.

G. Excitation-contraction coupling in the heart.

Application Received by Commissioner of Customs: September 4, 1987.

Docket No.: 87–281. Applicant: University of Pennsylvania, Biochemistry/Biophysics Department, D501 Richards Building/6089, Philadelphia, PA 19104. Instrument: Room Temperature Bore Cargo Magnet System. Manufacturer: Magnex Scientific, Ltd., United Kingdom. Intended Use: The instrument will be used for investigations of animal models to evaluate the effect of various strengths of magnetic field, 0.5 T, 1 T, 2 T, 3 T, 4 T and 5 T on metabolic and behavioral changes. The objective of this research is to investigate the effect of high magnetic fields on intact living systems. In addition, the instrument will be used in the course Biophysics 601 to explain the theory and use of magnet systems and electromagnetic effects. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–282. Applicant: Michigan State University, Crop and Soil Sciences Department, 540–B Plant and Soil Science Building, East Lansing, MI 48824–1325. Instrument: CN Analyzer-Isotope Ratio Mass Spectrometer, TRACERMASS. Manufacturer: Europa Scientific Ltd., United Kingdom. Intended Use: The instrument will be used to service the stable isotope analysis requirements of studies in the pathways, mechanisms and kinetics of carbon and nitrogen transformations in various biological systems (14 and 15N and 12 and 13). Application Received by Commission of Customs: September 8, 1987.

Docket No.: 87–284. Applicant: Naval Hospital San Diego, Park Boulevard, San Diego, CA 92134–5000. Instrument: Electron Microscope with Integrated Imaging Spectrometer CEM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument is intended to be used for the advanced high magnification ultrastructural studies and elemental analysis of biological tissues. The primary mission

is to support medical research on primarily non-human tissues. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–285. Applicant: St. Joseph's Hospital, 3301 W. Buffalo Ave., Tampa, FL 33607. Instrument: Electron Microscope, H–300. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: The instrument will be used for the study of the abnormality of cellular structure. Tumor cells will be investigated for cancer classification and interpretation of pathological tissue diagnosis. In addition, the instrument will be used as a training tool for medical students in their pathology residency and also for surgical diagnosis. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–286 Applicant: Georgia Institute of Technology, School of Civil Engineering, Atlanta, GA 30332. Instrument: GDS Stress Path Triaxial Testing System. Manufacturer: GDS Instruments, Inc., United Kingdom. Intended Use: Studies of soil, crushed stone aggregates, asphalt concrete and gravels to determine the effect of different stress paths (i.e., combinations of axial and lateral pressure during the test) on the physical properties of a wide variety of soils and aggregates. The instrument will also be used in the course CE (Civil Engineering) 6172, Soil Testing to give graduate level students a firm understanding of the state-of-the-art methods for determining physical properties of soils. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–288. Applicant: University of Alabama at Birmingham, University Station, Birmingham, AL 35294. Instrument: Nuclear Magnetic Resonance Spectrometer System, Biospec 4.2/400. Manufacturer: Bruker, West Germany. Intended Use: Studies of the living heart in both a clinical and experimental environment to obtain more noninvasive and nondestructive information on cardiovascular disease processes. The primary experiments will involve NMR multi-nuclear spectroscopy studies of cardiac metabolism in acute and chronic stages of cardiovascular diseases. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–290. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Dilution Refrigerator. Manufacturer: Oxford Instruments, United Kingdom. Intended Use: The instrument will be used in the research project Experimental Study of Quantum Chaos and Magnetic Solidification in a 2-dimensional Electron System which involves studies of microwave liberation of electrons bound to the liquid helium surface and studies of the magnetically induced Wigner transition in a 2–D electron system. Application Received by Commissioner of Customs: September 8, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–23088 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; The University of Oklahoma, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–010R. Applicant: The University of Oklahoma, Norman, OK 73019. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 52 FR 10395, April 1, 1987. Reasons for this Decision: The foreign instrument provides guaranteed internal precision of 0.01% for 10.0 microliter samples (STP) of carbon dioxide. Advice Submitted By: National Bureau of Standards, May 6, 1987.

Docket No.: 87–053. Applicant: University of Pennsylvania, Philadelphia, PA 19104. Instrument: 3-Dimensional Hydraulic Micromanipulator, Model MO–103M–R. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended Use: See notice at 51 FR 45792, December 22, 1986. Reason for this Decision: The foreign instrument provides precise and smooth movements in increments of 2.0 micrometers on any of three axes with a singly controlled variable-ratio hydraulic mechanism. Advice Submitted By: National Institutes of Health, April 9, 1987.

Docket No.: 87–063. Applicant: University of California, Berkeley, CA 94720. Instrument: Filter Photometer (Dual Wavelength), Model ZFP–22. Manufacturer: Sigma Instrumente, West Germany. Intended Use: See notice at 52 FR 1648, January 15, 1987. Reasons for this Decision: The foreign instrument provides different wavelength filtering capabilities at 336 and 405 nanometers. Advice Submitted By: National Institutes of Health, April 23, 1987.

Docket No.: 87–065. Applicant: University of California, Berkeley, CA 94720. Instrument: Cell Analyzer, Model DMIPS. Manufacturer: British Columbia Cancer Research Institute, Canada. Intended Use: See notice at 52 FR 1648, January 15, 1987. Reasons for this Decision: The foreign instrument provides periodic measurements of living cell characteristics in a prescribed region of a culture with a resolution of 1.0 micrometer and a scan rate of 1.0 square centimeter per minute. Advice Submitted By: National Institutes of Health, April 23, 1987.

Docket No.: 87–081. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Precision Isotope Ratio Mass Spectrometer, Model PRISM. Manufacturer: VG Isogas Ltd., United Kingdom. Intended Use: See notice at 52 FR 4164, February 10, 1987. Reasons for this Decision: The foreign instrument can automatically treat small (milligram) samples of carbonate for direct introduction of carbon dioxide to the spectrometer inlet. Advice Submitted By: National Bureau of Standards, March 17, 1987.

Docket No.: 87–084. Applicant: University of Hawaii, Kaneohe, HI 96744. Instrument: Ultrasonic Transmitters for Monitoring Animal Movements, Model V3P–XX. Manufacturer: VEMCO, Canada. Intended Use: See notice at 52 FR 4164, February 10, 1987. Reasons for this Decision: The foreign instrument provides underwater acoustic telemetry of movement patterns from sensors attached to research animals. Advice Submitted By: National Oceanic and Atmospheric Administration, March 30, 1987.

Docket No.: 87–087. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Materials Preparation System for Top Seeded Flux Growth, Model MCGS3. Manufacturer: Crystalox Ltd., United Kingdom. Intended Use: See notice at 52 FR 5326, February 20, 1987. Reasons for this Decision: The foreign instrument provides an angular resolution of 10 000 steps per resolution for precise translation of crystal seed and slow growth rates. Advice Submitted By: Naval Research Laboratory, March 26, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is

BEST COPY AVAILABLE

intended to be used, is being manufactured in the United States. The National Institutes of Health, National Oceanic and Atmospheric Administration, National Research Laboratory and National Bureau of Standards advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23089 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Wright State University, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-185. Applicant: Wright State University, Dayton, OH 45435. Instrument: Toroidal electrostatic analyzer. Manufacturer: High Voltage Engineering, the Netherlands. Intended Use: See Notice at 52 FR 27040, July 17, 1987. Reasons for this Decision: The foreign article provides for simultaneous detection of energy and angular distribution over a 30° angle in the energy range between 50 and 350 keV

Docket No.: 87-186. Applicant: Virginia Polytechnic and State University, Blacksburg, VA 24061 Instrument: Surface analysis System for X-ray Photoelectron Spectroscopy, Model LHS-12. Manufacturer: Leybold-Heraeus Vacuum Products, West Germany. Intended Use: See notice at 52 FR 27040, July 17, 1987. Reasons for this Decision: The foreign article provides a high pressure reactor for treating samples up to a pressure of 10 bar and a hot/cold sample probe with a temperature range from −196° C to 800°C.

Docket No.: 87-187. Applicant: University of Tennessee, Knoxville, TN 37996-1410. Instrument: Electron Microprobe. Manufacturer: Cameca Instruments Inc., France. Intended Use: See notice at 52 FR 27041, July 17, 1987. Reasons for this Decision: The foreign instrument is capable of simultaneous analysis of EDS and WOS signals and permits real time display of a spectral acquisition.

Docket No.: 87-189. Applicant: Washington State University, Pullman, WA 99164-4630. Instrument: High Pressure Stopped Flow Spectrometer. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended Use: See notice at 52 FR 27041, July 17, 1987. Reasons for this Decision: The foreign article provides a rapid mixing time and operation to 2000 atmospheres.

Docket No.: 87-190. Applicant: University of Montana, Missoula, MT 59812. Instrument: Magnetic Susceptibility Meter System, Model M.S.2. Manufacturer: Bartington Instruments, United Kingdom. Intended Use: See notice at 52 FR 27041, July 17, 1987. Reasons for this Decision: The foreign article is capable of providing susceptibility measurements over a temperature range −200°C to +900°C.

Docket No.: 87-196. Applicant: University of California, Santa Barbara, CA 93106. Instrument: FTI Spectrometer, Model DA3. Manufacturer: Bomem, Canada. Intended Use: See notice at 52 FR 27038, July 17, 1987. Reasons for this Decision: The foreign article provides an unapodized resolution of 0.013cm^{-1}.

Docket No.: 87-203. Applicant: Indiana University, Bloomington, IN 47042. Instrument: Surface Analysis System, Model LHS-12. Manufacturer: Leybold-Heraeus, West Germany. Intended Use: See notice at 52 FR 27039, July 17, 1987. Reasons for this Decision: The foreign article provides combined UHV surface analytical chambers with a microreactor capable of a high pressure (>20 bar) for rapid transient measurements while maintaining constant sample temperature between −170°C to 1400°C.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23090 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Business Development Center Program Applications; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at *$260,000* for the project performance of *February 1, 1988 to January 31, 1989*. The MBDC will operate in the *New York City (Manhattan)* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$260,000* in Federal funds and a minimum of *$45,882* in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is *November 6, 1987.* Applications must be postmarked on or before *November 6, 1987.*

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information copies of application kits and applicable regulations can be obtained at the above address.

Date: September 30, 1987.

Gina A. Snachez,

Regional Director, New York Regional Office.

[FR Doc. 87–22998 Filed 10–5–87;8:45am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Withdrawal of Permit Application; National Marine Fisheries Service, Southeast Fisheries Center (P77#30)

On August 17, 1987, notice was published in the **Federal Register** (52 FR 30710) that a permit application had been received from the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149–1099 for a Permit to take loggerhead sea turtles (*Caretta caretta*).

Notice is hereby given that this permit application was withdrawn, and the withdrawal request has been acknowledged and accepted.

Documents submitted in connection with the above permit application are available for review by interested persons in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW., Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: October 1, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–23040 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Receipt of Modification Request; Gerald G. Joyce (P385)

Notice is hereby given that Mr. Gerald G. Joyce, 826 NE. 80th Street, Seattle, Washington, 98115 requested a modification of Permit No. 570 issued on November 14, 1986 (51 FR 42127), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Permit No. 570 authorized harassment up to 100 minke whales (*Balaenoptera acutorostrata*) while attempting to tag up to 20 in Antarctic waters.

The Modification requests an additional 200 minke whales to be harrassed while attempting to radio tag up to 20 in Antarctic waters; and to extend the Permit until March 1988. Data will be collected on minke whale behavior in the Antarctic during the 1987/88 IWC/IDCR Southern Hemisphere minke whale assessment cruise.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator of Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: September 30, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–23041 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in People's Republic of China

September 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 7, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established restraint limits for wool and man-made fiber textile products in Categories 434 and 645/646, produced or manufactured in the People's Republic of China and exported during 1987. As a result, the limits for Categories 434 and 645/646, which are currently filled, will re-open.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 434 and 645/646, produced or manufactured in the People's Republic of China and exported during the twelve-month period which

began on January 1, 1987 and extends through December 31, 1987.

Under terms of the bilateral textile agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, the limits for Categories 434 and 645/646 are being increased by application of swing. An adjustment was made in a previous directive in Categories 331 and 659–S to account for swing.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commonity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986 concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 7, 1987, the directive of December 23, 1986 is amended to include adjustments to the previously established restraint limits for the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12-mo. limit [1]
434	12,532 dozen.
645/646	710,253 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22996 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board; Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada [1] Board will be held Tuesday, 27 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose: To inform Ada Board Members of the status of Ada projects sponsored by the AJPO, through oral presentations by project managers.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Ofc of the Secy of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23031 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Insertion and Management Panel; Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Insertion and Management Panel will be held Monday, 26 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose of the Meeting: To review, modify and approve charter; to develop recommendations.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23028 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Insertion and Management Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Insertion and Management Panel will be held Wednesday, 28 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose of the Meeting: To respond to requests to develop recommendations.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard. Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23033 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Language Maintenance Panel; Meeting

AGENCY: Notice of Meeting.

SUMMARY: A meeting of the Ada [1] Language Maintenance Panel will be held Monday, 26 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

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[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; and (3) administrative arrangement or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] Ada is a registered trademark of the U.S Government (Ada Joint Program Office).

[1] Ada is a registered trademark of the U.S Government (Ada Joint Program Office).

Purpose: To discuss the goals of the Ada Language Maintenance Panel and the procedures it should follow to achieve these goals; and to develop recommendations concerning the goals and procedures for consideration by the Ada Board.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23030 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Technology and Standards Panel; Meeting

AGENCY: Notice of meeting.

SUMMARY: A meeting of the Ada Technology and Standards Panel will be held Monday, 26 October 1987 from 8:00 p.m. to 10:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose of the meeting: Organizational Meeting of the Ada Technology and Standards Panel.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23029 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Technology and Standards Panel; Meeting

AGENCY: Notice of Meeting.

SUMMARY: A meeting of the Ada Technology and Standards Panel will be held Wednesday, 28 October 1987 from 8:30 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program Office).

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program Office).

Purpose of the Meeting: To discuss issues related to Ada Technology and Standards.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23032 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Economic Purchase Quantities—Supplies.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781, or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

The provision at 52.207–4, Economic Purchase Quantities—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (a) recommend an economic purchase quantity, showing a recommended unit and total price, and (b) identify the different quantity points where significant price breaks occur. This information is required by Pub. L. 98–577 and Pub. L. 98–525.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *2,252;* responses per respondent, *35;* total annual responses *78,820;* hours per response, *.83;* and total burden hours, *65,421.*

OBTAINING COPIES OF PROPOSALS: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantity—Supplies.

Dated: September 24, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–22992 Filed 10–5–87; 8:45 a.m.]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Acquisition Guide (BAG)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BAG which establishes the procedures BPA uses in the solicitation, award, and administration of procurement contracts, and the Bonneville Power Assistance Instructions (BPAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $20 and $10 each, respectively. The 1987 edition of the BAG will be available October 15, 1987.

ADDRESSES: Copies of the BAG or BPAI may be obtained by sending a check for the proper amount to the General Accounting Section—DTKC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Norman L. Linscott, Contracts Manager, at (503) 230–4513.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power

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Marketing Agency in the Pacific Northwest. BPA is a nonappropriated fund entity which finances its operations from power revenues. Its procurement operations are conducted under 16 U.S.C. 832 et seq. as well as 16 U.S.C. 474(d)(20). Pursuant to these special authorities, the BAG is promulgated as a statement of procurement policy and as a body of interpretative regulations governing the conduct of BPA procurement activities. It follows the format of the Federal Acquisition Regulations to assist offerors in locating pertinent policies. BPA's financial assistance operations are conducted under 16 U.S.C. 832 et seq. as well as 16 U.S.C. 839 et seq. The BPAI utilizes the special authorities referred to in the preceding sentence as a basis for establishing BPA's financial assistance policy. The BPAI also contains BPA's implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements with institutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local Governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments.

A–110 Grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

A–122 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–128 Audits of State and local governments.

All BPA solicitations include notice of applicability and availability of the BAG and the BPAI as appropriate for the information of offerors on particular procurements or financial assistance transactions.

Issued in Portland, Oregon, on September 24, 1987.

James J. Jura,

Administrator.

[FR Doc. 87–23105 Filed 10–5–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–49–NG]

Application To Import Natural Gas From Canada; Associated Natural Gas, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 8, 1987, of an application from Associated Natural Gas, Inc. (ANGI), for blanket authorization to import, for its own account or for the account of others, Canadian natural gas for short-term and spot market sales to purchasers in the United States. Authorization is requested to import 100,000 Mcf per day of natural gas up to a maximum of 18 Bcf annually for a two-year period beginning on the date of the first delivery. ANGI is a Colorado corporation with its principal place of business in Denver, Colorado. ANGI states that it intends to use existing pipeline facilities for the transportation of the proposed imports.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 5, 1987.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8162, and

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ANGI has requested that the authorization be granted on an expedited basis in as much as its authorization request incorprorates all terms and conditions imposed by the ERA on existing blanket import authorizations.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total authorized volume for the term without fixing a daily or annual limit that can be imported in order to provide the applicant with maximum flexibility of operation.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protest and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., November 5, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comment, an oral presentation, a conference, or trail-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, and show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that

are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316. A copy of ANGI's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 29, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–23006 Filed 10–5–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Continuation of Solicitation for Special Research Grants and Program Announcement for Basic Research Contracts, No. 88–1

AGENCY: Department of Energy.

ACTION: Notice of Continuation of Availability of Research Grants and Contracts.

SUMMARY: The Office of Energy Research of the Department of Energy hereby announces its continuing interest in receiving applications/proposals for Special Research Grants or Basic Research Contracts supporting work in the following program areas: Basic Energy Sciences, Biological and Environmental Research, High Energy and Nuclear Physics, and Fusion Energy. The Catalog of Federal Domestic Assistance number is 81.049. Information about submission of applications/proposals, eligibility, limitations, evaluation and selection processes, and other policies and procedures are specified, for grants, in 10 CFR Part 605 which was published in the **Federal Register** on April 15, 1985 (50 FR 14856) and, for contracts, in the Program Announcement also published on April 15, 1985 at 50 FR 14865.

DATES: Applications and proposals may be submitted at any time. Generally, those applications and proposals received prior to April 1, 1988 will be considered for FY 1988 funding; those received on or after April 1, 1988, will generally be considered for future fiscal year funding.

ADDRESSES: Applicants/proposers may obtain forms and additional information from Director, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, U.S. Department of Energy, Washington, DC 20545, (301) 353–5544. Completed applications or proposals must be sent to this same address.

SUPPLEMENTARY INFORMATION: As mentioned above, the solicitations for Special Research Grants and the Program Announcement for basic research contracts were published in the **Federal Register** on April 15, 1985. Those solicitations specify the policies and procedures which govern the application, evaluation, and selection processes for research grants and contracts. It is anticipated that approximately 332 million dollars will be available in FY 1988. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications/proposals submitted in response to this notice.

Issued in Washington, DC, on October 1, 1987.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 87–23005 Filed 10–5–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. EL87–43–000 and EL87–59–000]

Electric Rates; Sale and Leaseback of Qualifying Facilities; Baltimore Refuse Energy System Co. and Wheelabrator Millbury, Inc.

September 30, 1987.

Before Commissioners: Martha O. Hesse, Chairman, Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On June 8, 1987, and August 20, 1987, respectively, Baltimore Refuse Energy Systems Company (BRESCO) and Wheelabrator Millbury, Inc. (WMI) (together, referred to as Petitioners) filed separate petitions for declaratory orders with the Commission. BRESCO's petition, filed in Docket No. EL87–43–000, involves the proposed sale and leaseback of a solid waste disposal and electric power generation facility certified by the Commission as a qualified small power production facility in Docket No. QF82–97–000. The petition filed by WMI in Docket No. EL87–59–000 [1] involves a transaction similar to the BRESCO proposal, covering a facility certified by the Commission as a qualified small power production facility in Docket No. QF86–175–000. Each petition seeks the following relief: (1) An order disclaiming Commission jurisdiction over the participants and the financing arrangements of a proposed sale and leaseback transaction of the electric generating facilities which constitute the qualifying facility (QF); (2) An order confirming the continued applicability of the rate schedule on file with the Commission covering sales of electricity to the electric utility from the QF; and (3) a determination that the contemplated change in ownership of the facility will not result in a loss QF status.

BRESCO states that its certified QF facility, located in Baltimore, Maryland, is operated as a solid waste disposal and electric power generation facility with a net power production capacity of 55 MW.[2] The facility was certified as a QF on June 7, 1982, and by letter order dated March 14, 1983, in Docket No. ER83–267–000, the Commission accepted for filing an initial rate schedule for electricity sales by BRESCO to Baltimore Gas & Electric Company (BG&E), designated as BRESCO Rate Schedule FERC No. 1. The filed rate is based upon BG&E's avoided cost.

In its petition, BRESCO states that the proposed sale and leaseback transaction will involve a sale of the facility and a sublease of the facility site to a trust to be established for the benefit of Ford Motor Credit Company (FMCC) (Owner Participant) by a bank or trust company (Owner Trustee) acting as trustee for the Owner Participant. Simultaneously with the sale and sublease, BRESCO will lease the entire facility back from the Owner Trustee for a term of approximately 19.5 years. At the conclusion of the lease term, BRESCO has the option to purchase the facility back from FMCC. BRESCO will make rent payments sufficient to enable the Owner Trustee to pay, when due, the principal, redemption price or sinking fund installments and interest on certain bonds,[3] and to provide a positive cash

[1] BRESCO and WMI filed additional information on September 29, 1987.

[2] This is an increase from the 47 MW originally certified by the Commission.

[3] BRESCO received a loan from the Northeast Maryland Waste Disposal Authority (Authority) in the amount of $190,765,000 provided in part by the issuance of certain tax-exempt bonds. BRESCO agreed to repay the loan in installments of principal

Continued

flow [4] to the Owner Participant. BRESCO will remain fully liable for the performance of existing and future waste disposal agreements, steam sales agreements and electric energy sales agreements.[5]

BRESCO states that the property to be transferred pursuant to its proposed transaction consists of three refuse combustion furnaces, three boilers, an approximately 62 MW turbine generator, the transformer switchyard (*i.e.*, related switch gear duct and substation equipment necessary for connection to BG&E's transmission system) [6] and air pollution control equipment.

WMI states in its petition that it is the successor in interest and ownership to a proposed solid waste small power production facility from S.E.S. Millbury Company, L.P.[7] The facility is located in Millbury, Massachusetts and will have a net power production capacity of 41 MW.[8] The Commission certified the facility as a QF on January 24, 1986, and in Docket No. ER87–372–000, the Commission accepted for filing the initial rate schedule for electricity sales by WMI to the New England Power Company (NEP), which is designated as SES Millbury Company, L.P. Rate Schedule FERC No. 1.[9] The filed rate is based upon NEP's avoided cost.

WMI states that the property to be transferred consists of waste receiving facilities, waste combustion facilities, two steam boilers, a steam turbine and electric generator, related pollution control and ash handling facilities, and the transformer switchyard which steps up the voltage from the electric generator to the voltage required by the NEP transmission lines.

WMI describes the proposed transaction as a sale of the facility and sublease of the facility's site [10] to Connecticut Bank and Trust Company (CBTC) (Owner Trustee) in trust for the benefit of FMCC (Owner Participant) with a subsequent leaseback of the facilities by WMI. The purchase price payable by CBTC to WMI will be funded by equity contributions from FMCC (in the amount of $60 million) and by the issuance of secured notes by CBTC (in the amount of $100 million) to certain loan participants, currently expected to be John Hancock Mutual Life Insurance Company and other lenders. WMI will make rent payments to CBTC over the term of the lease, and will remain fully liable for performance under existing and future waste disposal and energy sale agreements. In addition, as security for payment of lease rents, WMI will pledge to CBTC pursuant to a security agreement (Lessee Security Agreement) its rights under the waste disposal and energy sale agreements.[11]

WMI will hold an option to purchase the facility at the conclusion of the lease.

Notice of BRESCO's and WMI's petitions were published in the **Federal Register**, with comments due on or before June 29, 1987 [12] and September 9, 1987,[13] respectively. No comments have been received.

Discussion

The Requests for an Order Disclaiming Commission Jurisdiction

BRESCO and WMI request an order from the Commission finding that the proposed sale and leaseback transactions of the QF facilities and the Owner Participant and Owner Trustee are not subject to the Commission's jurisdiction pursuant to section 203 of the Federal Power Act (FPA).[14] Because these facilities are small power QFs over 30 MW, they ae subject to the Commission's jurisdiction under the Federal Power Act. *See*, 18 CFR 292.601 (1987). This case therefore is the first opportunity for the Commission to determine whether the disposition of a QF that is subject to FPA jurisdiction requires section 203 authorization.[15] We find that the instant transactions do require our authorization pursuant to section 203 and for the reasons set forth below we grant that authorization.

Section 203 states in pertinent part:

> No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so.

Section 201(e) defines a public utility as "any person who owns or operates facilities subject to the jurisdiction of the Commission" under Part II of the FPA.[16] Facilities over which the Commission has jurisdiction under Part II is defined in section 201 of the FPA as facilities used for the transmission of electric energy in interstate commerce or

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and interest payments to the Bond Trustee. The Authority took back security for the loan covering BRESCO's receipts from its various service agreements.

[4] The term "provide a positive cash flow" as used here refers to the requirement in section 4(6) of IRS Revenue Procedure 75–21 that a lessor show that it expects to receive a profit from the lease transaction in order that the transaction be considered a lease for Federal income tax purposes The Revenue Procedure is generally followed in instances where no advance ruling is requested from IRS. Under section 4(6), the lessor must show that the aggregate amount to be paid by the lessee over the leave term plus the value of the residual investment exceeds by a reasonable amount of aggregate disbursements required to be paid by the lessor in connection with the ownership of the leased property. In other words, for the lease to qualify as a lease for tax purposes, the lessor must show that the revenues it will receive provide a profit, apart from the value or benefits obtained from tax deductions, allowances, credits and other tax attributes arising from the transaction.

[5] BRESCO is under contract with the Authority to dispose of waste for the City of Baltimore and Baltimore County. Additionally, BRESCO has agreements to service other municipalities and private waste haulers. BRESCO also sells steam to Thermal Resources of Baltimore, Inc.

[6] *See* BRECSO's petition at page 13.

[7] Concurrent with the filing of the instant petition for declaratory order, WMI filed a Notice of Succession in Ownership pursuant to § 35.16 of the Commission's regulations. By letter dated September 15, 1987, in Docket No. ER87–592–000, WMI's Notice of Succession was accepted for filing

[8] The facility was still under construction at the time the petition was filed. WMI expected to begin the generation of electricity for test and shakedown purposes on September 15, 1987.

[9] WMI's request that the filed rate be redesignated as Wheelabrator Millbury, Inc./Rate Schedule FERC No. 1 was granted. However, as the facility had yet to be completed when the sales contract was submitted for filing with the Commission by SES Millbury, the letter accepting the rate schedule for filing stated that the rates would become effective upon commencement of service.

[10] WMI currently owns the site upon which the facility is located. WMI intends to refinance the site through an issue of bonds by Millbury Industrial Development Finance Authority (MIDFA). In connection with that refinancing, WMI will sell the site to MIDFA and lease the site back from MIDFA WMI will then sublease the site to the Owner Trustee for a term equal to the estimated useful life to the facility. Therefore, the subject sale/leaseback transaction involves a sub-sublease of the facility site by the Owner Trustee to WMI.

[11] In its September 29, 1987 pleading, WMI stated that although under the granting clause of the Lessee Security Agreement an "assignment" of the power sales agreement is made, the intention of the parties is that such provision does not operate to create a present assignment of the contract. Actual transfer of the rights of WMI under the contract to the Owner Trustee or a third party will require foreclosure or similar proceedings under Article 9 of the Uniform Commercial Code, and would be subject to the receipt of any necessary governmental approvals. (A similar provision is expected to be part of the security agreement associated with the BRESCO transaction). Therefore, based upon WMI's representations, we conclude that the pledge currently does not constitute an action requiring oru approval; however, if and when WMI should default on its lease payments, invocation of the granting clause and subsequent action regarding the power sales agreement by the Owner Trustee may require Commission authorization.

[12] 52 FR 23339 (1987).

[13] 52 FR 32835 (1987).

[14] 16 U.S.C. 824b (1982).

[15] Although a sale of QF facilities was involved in *Resources Recovery (Dade County), Inc.*, 25 FERC ¶ 62,191 (1983), the applicant acquiesced to section 203 jurisdiction over the transaction. *See also Resources Recovery (Dade County), Inc.*, 31 FERC ¶ 62,356 (1985). In those applications, the applicant requested Commission authorization pursuant to section 203 to transfer ownership of the 240 kV switchyard which was part of the QF facility

[16] 16 U.S.C. 824(e) (1982).

the sale of electric energy at wholesale in interstate commerce. Our review indicates that both BRESCO's facility and WMI's facility include step-up transformers, which the Commission has held perform a transmission function, and therefore constitute transmission facilities,[17] subject to the Commission's Part II jurisdiction. Thus, both BRESCO and WMI are public utilities.[18] Since the subject QF facilities include transmission facilities, the disposition of the QFs by the Petitioners would therefore require section 203 approval to the extent that the step-up transformer facilities have a value in excess of $50,000.[19]

Having determined that the sale and leaseback transactions require section 203 authorization, the question arises whether authorization of such sales is consistent with the public interest. In order to minimize the burden on QFs subject to FPA jurisdiction, the Commission has granted waiver of the filing requirements under Part 33 of the Commission's regulations to permit QFs to file only minimal information in support of any transaction subject to Commission authorization pursuant to section 203. In *Resources Recovery, supra,* we granted section 203 authorization upon the filing of such minimal information. In our order ruling on the waiver requests in *Resources Recovery,* we stated:

> Congress has directed this Commission to provide rules which encourage the development of this industry. We therefore recognize the need to present as few regulatory impediments as possible. Congress has also specifically stated, however, that we may not exempt 30 to 80 megawatt qualifying small power production facilities from the provisions of the Federal Power Act.
>
> Section 203 of the FPA requires that the Commission issue notice and provide an opportunity for hearing before it may approve any of the subject transactions. These statutory requirements may not be waived. We do not believe, however, that it is necessary to impose the full filing requirements of Part 33 of our Regulations on RRD. Rather, we shall only require RRD to file such information as will satisfy the minimum requirements of Section 203 of the FPA. In this manner, we may balance the dual directives of Congress noted above.[20] We believe that the instant pleadings satisfy the minimal filing requirements granted by such waivers. Therefore, consistent with our order in *Resources Recovery,* we shall authorize the transactions as in the public interest pursuant to section 203 of the FPA.

We next turn to the requests in the petitions that the participants in the lease financing be found not subject to the Commission's section 203 jurisdiction because they will not become public utilities as a result of their participation in the transactions. In *Pacific Power & Light Co.,*[21] the Commission found that the owner participant and the owner trustee of a leveraged lease transaction were not to be considered public utilities. Our decision was based primarily on two factors. First, the financial institutions were not operating the facility, nor did they have any voice in or dominion over such operations. Second, none of the parties actually taking title was in the business of producing or selling electric power, and all had a principal business other than that of a public utility. They were involved in the transaction to obtain the tax benefits accruing from the transaction. The Commission stated that it would be inconsistent with the intent of the FPA to lable the parties public utilities and include them within the Commission's jurisdiction because the parties merely held either equitable or legal title to the subject facilities and were clearly removed from the actual operation of the facilities and the sale of power.[22]

In the instant transactions, the Owner Participant and the Owner Trustees are participating in roles similar to those found not to confer public utility status in *Pacific Power & Light.* Although the Owner Participant and Owner Trustees will hold either legal or equitable title to the facilities through their respective interests in the trust estates, the parties will not operate or have any control over the operation of the facilities. Furthermore, based on the representations contained in the petitions, neither the Owner Participant nor the Owner Trustees will be in the business of producing or selling electric power. The Owner Participant is merely a passive investor seeking a return on investment and certain tax benefits as a result of the transactions. The Owner Trustees are simply receiving a few for acting as trustee for the Owner Participant and have no individual interest in the transactions. Therefore, we find that the Owner Participant and Owner Trustees will not, as a result of their participation in the transactions, be deemed to be public utilities subject to the Commission's jurisdiction.

The Requests for an Order Confirming Continued Applicability of the Rate Schedules Presently on File

The Petitioners next request that the Commission find that the respective rate schedules on file with the Commission will remain effective following completion of the proposed transactions. The original rate schedules were accepted and made effective based upon the QF status of the facilities at the time of the applications. The proposed transactions should not affect the facilities' QF status. Further, the proposed changes in ownership do not appear to alter the rates, terms, or conditions of the electric power sale agreements or the principals to those agreements. BRESCO and WMI (as successor to SES Millbury) will continue to sell power to BG&E and NEP, respectively, at each utility's avoided cost. Accordinly, the Commission finds that the proposed transactions will not affect the applicability of the filed rate schedules.

The Requests for an Order Finding That the Change in Ownership Will Not Result in Loss of QF Status

The final issue raised is whether the facilities will retain their QF status following the transfer of ownership. Based on the representations of the parties, the Commission finds that the change of ownership as discussed above, does not make the Owner Trustees or Owner Participant public utilities. Thus, there are no utility ownership problems with the transactions. Also, it appears based upon the information submitted that both facilities will continue to satisfy the size, fuel-use and ownership criteria of Part 292. Thus, the change in ownership will not result in the loss of QF status.

The Commission Orders

(A) The Petitions for Declaratory Order filed in Docket Nos. EL87–43–000 and EL87–59–000 are hereby granted in part and denied in part to the extent discussed above.

(B) The requests for a disclaimer of jurisdiction over the Owner Participant and Owner Trustees are hereby granted.

(C) The proposed transactions are hereby authorized and approved upon

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[17] *Otter Tail Power Co.,* 12 FERC ¶ 61,169 (1980).

[18] *See* section 210(e)(2) of the Public Utility Regulatory Policies Act of 1978 and § 292.601 of the Commission's regulations, 18 CFR 292.601 (1987).

[19] The finding of section 203 jurisdiction over these facilities does not affect the Commission's past determination that a QF facility may include transmission facilities where the facilities are used solely to transmit the QF energy to the purchasing utility and/or to transmit supplementary, back-up, maintenance or interruptible power from the purchasing utility to the QF. *See Kern River Corporation Co.,* 31 FERC ¶ 61,183 (1985) and *Clarion Power Company,* 39 FERC ¶ 61,317 (1987). We note that the subject step-up transformers will be used for identical transmission purposes by the Petitioners.

[20] *Resources Recovery (Dade County), Inc.,* 20 FERC ¶ 61,138 at 61,303 (1982).

[21] 3 FERC ¶ 61,119 (1978).

[22] *Id.* at 61,337.

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the terms and conditions and for the purposes set forth in the Petitioners' filings. This authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before the Commission. Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) Docket No. EL87–43–000 is hereby terminated.

(E) Docket No. EL87–59–000 is hereby terminated.

(F) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23043 Filed 10–5–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3267–4]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 as amended on July 1, 1987 (52 FR 24727), has designated a new reference method for the determination of ambient concentrations of particulate matter measured as PM_{10}. The new reference method is a gravimetric manual method which utilizes a specially-designed PM_{10} sampler for particle collection. The new designated method is identified as follows:

RFPS–1087–062, "Wedding & Associates' PM_{10} Critical Flow High-Volume Sampler", consisting of the following components:

- Wedding PM_{10} Inlet
- Wedding & Associates' Critical Flow Device
- Wedding & Associates' Anodized Aluminum Shelter
- 115, 220 or 240 VAC Motor Blower Assembly
- Mechanical Timer or optional Digital Timer
- Elapsed Time Indicator
- Filter Cartridge/Cassette

This method is available from Wedding & Associates, Inc., P.O., Box 1756, Fort Collins, Colorado 80522. A notice or receipt of application for this method appeared in the **Federal Register**, Volume 52, August 6, 1987, page 29254.

Test samplers representative of this method have been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

In general, the designation applies to any Wedding & Associates' PM_{10} sampler that is identical to the sampler described in the designation. Similar Wedding-designed PM_{10} samplers (or PM_{10} inlets) manufactured prior to the designation may be readily upgraded to be covered under this designation. Earlier versions of the Wedding PM_{10} inlet were not equipped with an easy-access port for inlet maintenance, and some used a different perfect absorber surface than that used in the current sampler. Owners of earlier versions of Wedding-designed samplers (or inlets) should contact Wedding & Associates, Inc., to determine the specific requirements of upgrading the samplers to be covered under this designation.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53–9 and are summarized below:

(1) A copy of the approved operation or instructional manual must accompany the PM_{10} sampler when it is delivered to the ultimate purchaser.

(2) The PM_{10} sampler must not generate any unreasonable hazard to operators or to the environment.

(3) The PM_{10} sampler must function within the limits of the performance specifications given in Table D–1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM_{10} sampler offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) An applicant who offers PM_{10} sampler for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such samplers and to notify them within 30 days if a reference or equivalent method designation applicable to the sampler has been cancelled or if adjustment of the samplers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(6) An applicant who modifies a PM_{10} sampler previously designated as a reference or equivalent method is not permitted to sell the sampler (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), not to attach a label or sticker to the sampler (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Erich Bretthaur,

Acting Assistant Administrator for Research and Development.

[FR Doc. 87–22150 Filed 10–5–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 29, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0020
Title: Application for Ground Station Authorization in the Aviation Services
Form No.: FCC 406
Action: Revision
Respondents: Individuals, State or local governments, Business, Small Business, Non-profit Institutions
Frequency of Response: On occasion
Estimated Annual Burden: 3,225 Responses; 4,031 Hours.
Needs and Uses: Filing is required to apply for a new, modified, or renewal of a ground station authorization. The data is used to update the database, determine eligibility, and issue licenses.

OMB No.: 3060–0034
Title: Application for Construction Permit for Noncommercial Educational Broadcast Station
Form No.: FCC 340
Action: Revision
Respondents: Non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 263 Responses; 20,468 Hours.
Needs and Uses: Filing is required to apply for authority to construct a new noncommercial educational FM or TV broadcast station, or to make changes in the existing facilities of such a station. The data is used to determine whether the applicant meets basic statutory requirements to become a Commission licensee.

William J. Tricarico,
Secretary.

[FR Doc. 87–23001 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–1–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 30, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0165
Title: Part 41 Franks, § 41.31, Records to be maintained and reports to be filed
Action: Extension
Respondents: Business
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 68 Recordkeepers; 408 hours
Needs and Uses: Subject carriers are required to maintain records in such manner so that if ordered by the FCC the carriers could furnish a report showing every person holding a telephone or telegraph frank. This data reports every person who has received free service. This information helps too ensure that franks are being addressed fairly. Failure to have the information recorded would prohibit the Commission from being able to respond to complaints and from generally being able to police activities. The regulated carriers are the affected public.

OMB Number: 3060–0147
Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications to Candidates for Federal Office
Action: Extension
Respondents: Business
Frequency of Response: On occasion
Estimated Annual Burden: 26 responses; 208 hours
Needs and Uses: Section 64.804 requires communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report to the FCC, twice a year, data including dues and outstanding balances. This information is used by the FCC to monitor the extent of credit extended to candidates for Federal office.

William J. Tricarico,
Secretary.

[FR Doc. 87–23002 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–01–M

Information Collection Requirement Approval by Office of Management and Budget

September 29, 1987.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 634–1535.

OMB No.: 3060–0391
Title: Monitoring Program for Impact of Federal State Joint Board Decisions
OMB Approval Expiration Date: July 31, 1990

The text of this information collection requirement may be found in the following document: MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72 and 80–286, Establishment of a Program to Monitor the Impact on Joint Board Decisions, FCC87J–5, released May 28, 1987 (Monitoring Recommended Decision and Order).

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87–23066 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1681]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

September 25, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full texts of these documents are available for viewing and

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copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed by October 22, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Brewer, Skowhegan, and Old Town, Maine) (MM Docket No. 86–314, RM's 5030 & 5586) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Hormigueros, Puerto Rico) (MM Docket No. 86–433, RM–5477) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Marietta, Ohio and Ravenswood, West Virginia) (MM Docket No. 86–474, RM–5438) Number of petitions received: 1.

Subject: Amendment of § 73.504(a), Table of Allotments, Noncommercial Educational FM Broadcast Stations. (Las Cruces and Deming, New Mexico) (MM Docket No. 86–475, RM–5572) number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Los Ranchos de Albuquerque, Los Alamos and Corrales, New Mexico) (MM Docket No. 87–81, RM's 5558, 5610, 5558) Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–23067 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–422; File Nos. BPH–851223MV, et al]

Applications For Consolidated Hearing; A.W. Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No	MM Docket No
A. A. W. Communications, Inc., Spotsylvania, VA	BPH–851223MU	87–422
B. Richard J. Hayes and Associates, Inc., Spotsylvania, VA	BPH–851223MZ	
C. Spot Radio, Limited Partnership, Spotsylvania, VA	BPH–860122MM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose heading are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–23051 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 81–423; File Nos. BPCT–870331LI, et al.]

Applications for Consolidated Hearing; Magara Communications Corp., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No
A. Magara Communications Corp, Florence, SC.	BPCT–870331LI	87–423
B. Albert D. Ervin and Hughey P. Walker, A General Partnership, Florence, SC	BPCT–870331PS	
C. Island Television, Inc., Florence, SC	BPCT–870616KI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Air Hazard, A, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC. 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Service Division, Mass Media Bureau.

[FR Doc. 87–23052 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–420; File Nos. BPH–850710MP, et al.]

Applications For Consolidated Hearing; William Hayden Payne, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No	MM Docket No.
A. William Haydon Payne, Rapid City, SD	BPH–850710MP	87–420
B. Lenn R. Pruitt, Rapid City, SD.	BPH–850712GY	
C. William Howard Payne, Rapid City, SD	BPH–850712SV	
D. Tom-Tom Communications, Inc., Rapid City, SD	BPH–850712SW	
E. William L. and Jean M. Spitzer d/b/a Spitzer Communications Inc., Rapid City, SD.	BPH–850712E6 (DISMISSED).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify

whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. City Coverage—FM, D
2. Environmental Impact, A, C
3. Air Hazard, B, D
4. Comparative, A, B, C, D
5. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan. Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 87–23053 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–421; File No. BPH–851025MG, et al.]

Applications for Consolidated Proceeding; Taylor Communications, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Taylor Communications, Inc., Cambridge, MD.	BPH–851028MG	87–421
B. Robert L. Purcell d/b/a Big Bay Broadcasting, Cambridge, MD.	BPH–851028MI	
C. CWA Broadcasting, Inc., Cambridge, MD	BPH–851028MJ	
D. Shore Broadcasting, Inc., Cambridge, MD.	BPH–851028MK	
E. Philip & Eleanor D'Adamo d/b/a D'Adamo Communications Cambridge, MD.	BPH–851028ML	
F. Eastern Shore Broadcasting, Limited Partnership, Cambridge, MD.	BPH–851028NG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues have been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Environmental, A,B,F
2. Air Hazard, D,E
3. Comparative, All
4. Ultimate, All

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC.The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037, (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–23054 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–001839–C.

Title: South Louisiana Port Commission Lease Agreement.

Parties:

South Louisiana Port Commission (Lessor)

Louis Dreyfus Corporation (Dreyfus)

Synopsis: The proposed agreement (1) provides that 75% of all vessel fees shall be the property of, and shall inure to the benefit of Dreyfus, its successors and assigns; and (2) authorizes Dreyfus, its successors and assigns to collect all vessel fees in respect to all vessels, ships and other water vehicles docking at or along the real property covered by the Lease, except bulk-grain carrying barges (approximately 35 feet in width) on the Mississippi River.

By Order of the Federal Maritime Commission.

Dated: October 1, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–23046 Filed 10–5–87; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 87–20]

Filing of Complaint and Assignment; Delaware River Port Authority v. The 8900 Lines

Notice is given that a complaint filed by the Delaware River Port Authority ("Port") against a conference of water carriers operating under FMC Agreement No. 8900 (hereinafter "The 8900 Lines") was served October 1, 1987. The Port alleges that The 8900 Lines, through the publication of certain "Arbitrary Rates" in the conference Freight Tariff No. 14, and more particularly, 2nd Revised Page 45, has violated various sections of the Shipping Act of 1984 by applying a rate which is unfairly and/or unjustly discriminatory and which "[s]ubjects the Port of Philadelphia and all persons within it to undue and unreasonable prejudice or disadvantage with respect to cargo comprehended in said tariff."

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 3, 1988, and the final decision of the Commission shall be issued by February 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 87–23091 Filed 10–5–87; 8:45 am]

BILLING CODE 6730–01–M

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by the Federal Mine Safety and Health Review Commission

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of self-evaluation; request for comments.

SUMMARY: The Federal Mine Safety and Health Review Commission is evaluating its current policies and practices to ensure that discrimination against handicapped persons does not occur in its programs and activities. This evaluation is being conducted to comply with the Commission's regulations concerning Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Mine Safety and Health Review Commission, 29 CFR Part 2706, which requires the Commission to perform this self-evaluation and to permit interested parties to participate in the project. Accordingly, this notice summarizes the results of the Commission's self-evaluation to date and requests public comment from interested parties concerning that evaluation or any aspect of Commission policies and practices with respect to handicapped persons.

DATE: Comments must be received on or before November 5, 1987.

ADDRESSES: Written comments should be addressed to Richard Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW, 6th Floor, Washington, DC 20006. The Commission's self-evaluation to date and all comments received will be available for public inspection in the Commission's Office of General Counsel, Room 630, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara, General Counsel, Office of the General Counsel, 1730 K Street NW, 6th Floor, Washington, DC 20006, 202–653–5610 (202 566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Commission's regulations concerning Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs are found at 29 CFR Part 2706 and were issued pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in executive agency programs. Section 2706.110(a) requires the Commission to evaluate its current policies and practices, and the effects thereof, in order to ensure that they do not result in discrimination against handicapped persons in employment, accessibility to facilities, communication, or otherwise. Section 2706.110(b) requires that the Commission "provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in this self-evaluation process by submitting comments (both oral and written)."

The Commission conducts all adjudicative proceedings and hearings required by the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 801 *et seq.*). Cases are assigned for hearing before a Commission administrative law judge. Decisions by Commission administrative law judges are subject to review by the full Commission.

The Commission currently has 53 employees. With regard to the Commission's employment practices, during the last two years the Commission has not received any requests for accommodation nor has it received any complaints from its employees on the basis of handicap. Likewise, during the same period there have been no requests for accommodation and no complaints from applicants for employment. Concerning the accessibility of the Commission's programs and activities, during the past two years there have been no requests for accommodation and no complaints from parties, participants, or the public on the basis of handicap, involving participation in the Commission's proceedings or otherwise.

Facilities

The Commission leases three facilities from the General Services Administration (GSA): (1) 1730 K Street, NW, 6th Floor, Washington, DC 20006, where the Commissioners meet, and where most of the Commission's employees are stationed; (2) 5203 Leesburg Pike, Falls Church, VA 22041, where most of the Commission's administrative law judges are located; and (3) 333 W. Colfax Avenue, Suite 400, Denver, CO 80204, where the remainder of the Commission's administrative law judges are located. Each of these facilities has been examined for physical barriers and impediments. The Commission believes there are some impediments to some handicapped persons at the Washington, DC, facility. As a result, the Commission is requesting that GSA take appropriate action in order to assure full compliance with the requirements of section 504 and the Commission's regulations.

Commission notices of public Commission meetings request that any person who intends to attend, and who requires special accessibility features, inform the Commission in advance so that appropriate arrangements may be made. The Commission also includes in the announcement of any administrative law judge hearing a notice that persons desiring to attend should notify the agency in advance of any accessibility features they may require. In the past two years there have been no requests for accommodation or complaints from parties, participants, or the public on the basis of handicap about the accessibility of the Commission's facilities or hearing facilities.

Communication

Commission notices of public Commission meetings also indicate that any person who intends to attend and who requires special auxiliary aids, such as sign language interpreters, should inform the Commission in advance. Commission notices of administrative law judge hearings have similar language. The Commission does not have a telecommunication device for the deaf (TDD). However, it has obtained access to a TDD relay service provided by the Architectural and Transportation Barriers Compliance Board. In the past two years there have been no requests for accommodation and no complaints involving auxiliary aids for purposes of communication.

Compliance

The Commission's compliance procedures have not been utilized because, to date, there have been no complaints. The Commission assumes the effectiveness of its compliance procedures until experience shows otherwise.

In sum, the Commission believes that it has been operating its programs and activities so that, when viewed in their entirety, such programs and activities are in general readily accessible to and usable by handicapped persons.

Comments on the Commission's programs and policies as they affect handicapped persons or on the Commission's self-evaluation, a summary of which is set forth above, are invited. Please send written comments to Richard Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006. Oral comments may be submitted to

Executive Director Baker at 202–653–5625 (202–566–2673 for TDD Relay). These are not toll-free numbers.

Upon completion of the comment period, the Commission will review all comments and take appropriate steps to address matters brought to the Commission's attention to the extent warranted. In addition, the Commission will maintain on file its self-evaluation, comments received, a description of any areas examined and any problems identified, and a description of any modifications made. This file will be maintained for a period of three years following the completion of this evaluation, and will be made available for public inspection upon request.

Dated: September 22, 1987.

Ford B. Ford,

Chairman of the Federal Mine Safety and Health Review Commission.

[FR Doc. 87–22991 Filed 10–5–87; 8:45 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; First Missouri Bancorporation, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 26, 1987.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Missouri Bancoporation, Inc., Columbia, Missouri; to acquire at least 50 percent of the voting shares of Montgomery Bancshares, Inc., Columbia Missouri, and thereby indirectly acquire Jonesburg State Bank, Jonesburg, Missouri.

2. Golden Bancshares, Inc., Golden, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of Golden State Bank, Golden, Illinois.

3. Shelby Bancshares, Inc., Bartlett, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Shelby Bank, Bartlett, Tennessee, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22987 Filed 10–5–87; 8:45 am]

BILLING CODE 6210–01–M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; First National Agency, Inc. of Cold Spring

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1987.

A. Federal Reserve Bank of Minneapolis James (Mr. Lyon, Vice President) 250 Marquettes Avenue, Minneapolis, Minnesota 55480:

1. First National Agency, Inc. of Cold Spring, Cold Spring, Minnesota; to become a bank holding company by acquiring 37.64 percent of the voting shares of First BancShares, Inc. of Cold Spring, Cold Spring, Minnesota, and thereby indirectly acquire First National Bank of Cold Spring, Cold Spring, Minnesota. Applicant also proposes to engage directly in general insurance agency activities in a place with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in townships of Rockville and Wakefield, Minnesota.

In connection with this application First Banchshares, Inc. of Cold Spring, Cold Spring, Minnesota, has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Cold Spring, Cold Spring, Minnesota.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22988 Filed 10–5–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisitions of Shares of Banks or Bank Holding Companies; Change in Bank Control Notices; Dennis I. Meyer et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Dennis I. Meyer, Washington, DC; to acquire an additional 4.6 percent of the voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire The Business Bank, Vienna, Virginia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Howard W. Sharp, Sweet Springs, Missouri; to acquire 5.72 percent of the voting shares of Sweet Springs Bancshares, Inc., Sweet Springs, Missouri, and thereby indirectly acquire Chemical Bank, Sweet Springs, Missouri.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22989 Filed 10-5-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Northwest Corporation

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1987.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its wholly-owned subsidiary, Norwest Mortgage, Inc., certain assets of American First Mortgage Corporation, and thereby engage in general mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted through offices of American First Mortgage Corporation located in Birmingham, Alabama; Atlanta, Georgia; Asheville, North Carolina; and Charleston, South Carolina.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22990 Filed 10-5-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87D-0187]

Environmental Assessment Technical Handbook; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the Environmental Assessment Technical Handbook. The handbook was prepared to provide a central source of information to persons gathering environmental data and preparing environmental assessments for proposed actions which would result in the marketing of chemical entities regulated by FDA. The handbook was prepared by the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM).

ADDRESSES: Copies of the handbook may be obtained from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161 (703-487-4650). The handbook is available for public examination at, and written comments should be addressed to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Buzz L. Hoffmann, Center for Food Safety and Applied Nutrition (HFF-304), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0277,

or

John C. Matheson III, Center for Veterinary Medicine (HFV-152), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1880.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and FDA's regulations implementing NEPA (21 CFR Part 25) require that Federal decisionmaking include an objective consideration of the environmental impacts expected from proposed actions. The public participates in the decisionmaking by reviewing NEPA documents and providing comments, information, and analysis concerning environmental impacts overlooked, inadequately defined, or not properly considered in the decisionmaking.

Persons submitting applications and petitions to the agency requesting actions, such as the approval of a food additive or new animal drug, must also submit environmental information sufficient for the agency to determine whether an environmental impact statement will be required. The CEQ regulations, 40 CFR 1506.5, state that, in such cases, "the agency should assist the applicant by outlining the types of information required." The purpose of the Environmental Assessment Technical Handbook is to provide such assistance and to improve the quality and consistency of NEPA documents submitted to the agency. In addition, the

handbook should save time and resources for preparers of environmental documents and for agency personnel reviewing the information submitted.

The handbook has been developed over the past 7 years. Peer review was provided by numerous outside scientists with specific subject expertise, representing industry, academia, and government agencies. Due to demand for test protocol assistance, drafts of the handbook have been in circulation and use by applicants and petitioners over the past few years. Their experiences with these drafts have served to improve the reliability of the test methods described in the handbook. The updated handbook supersedes any previous drafts.

The handbook is organized into four sections consisting of individual technical assistance documents. Section 2.00 describes a strategy for the efficient use of FDA's policies and procedures implementing NEPA and for the collection of information to establish an adequate environmental record for FDA actions. Section 3.00 contains 12 documents which provide methods useful in predicting the environmental fate of a chemical, i.e., the persistence, mobility, and exposure levels of a chemical. Section 4.00 contains nine documents which provide methods useful in estimating the sensitivity of representative species of organisms to chemicals. These environmental effects tests are used to determine chemical levels which would or, by extrapolation, might significantly affect organisms in the environment. The last section, 5.00, consists of two documents which describe methods commonly used for data analysis of environmental effects tests.

The technical assistance documents in sections 3.00 and 4.00 include information on the appropriate methods for specific cases and the features of test design to be considered in planning and conducting tests. In some cases the documents provide sufficient detail to serve as test instructions. In all cases, however, comprehensive protocols published by other organizations or individuals are cited for further reference.

Environmental test protocols other than those described in the handbook may also be acceptable, provided they are based upon scientifically valid methodology. Applicants and petitioners are urged to confer with agency personnel when any testing is anticipated in order to develop a suitable and acceptable environmental testing plan. For proposed actions requiring the collection of environmental information through experimental studies, no individual action is expected to require all the environmental tests contained in the handbook.

Because methods for assessing the environmental fate and effects of chemicals are under continuous development and refinement, CFSAN and CVM intend to make revisions or supplements to the technical assistance documents, as appropriate. Comments on individual technical assistance documents will be welcomed and carefully considered. CFSAN and CVM will provide copies of any revised technical assistance document to any person who requests an updated version. Requests for revised copies should be made to the offices identified above under the section entitled "**FOR FURTHER INFORMATION CONTACT.**" At a future date, when sufficient revisions have been made in each of the various technical assistance documents, CFSAN and CVM will revise the entire handbook and a notice will be published in the **Federal Register** announcing the availability of the revised handbook.

The handbook is available for purchase from the National Technical Information Service (NTIS) (address above). The NTIS Order number is PB 87–175345/AS. The price codes are: A17 for paper copy ($30.95) and A01 for microfiche ($6.50).

Interested persons may submit written comments on the handbook to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 29, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–23036 Filed 10–5–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87D–0275]

Import Alert Detention of Noncertified Television Receivers Labeled for Export (Revised); Availability of Import Alert

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an Import Alert 94–01 entitled "Detention of Noncertified Television Receivers Labeled for Export." The alert, which was prepared by FDA's Center for Devices and Radiological Health (CDRH), addresses the requirement of certification for television receivers for exportation purposes as regulated by the Federal Performance Standard for Television Receivers. This guidance does not limit the agency's enforcement discretion to refuse or permit admission of a particular lot offered for import after an evaluation of the relevant facts.

ADDRESS: Single copies of the alert are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed labels to assist in processing your requests.).

FOR FURTHER INFORMATION CONTACT: Edwin A. Miller, Center for Devices and Radiological Health (HFZ–310), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7175.

SUPPLEMENTARY INFORMATION: Until recently, importers have been permitted to import noncertified Consultative Committee for International Radio (CCIR) standard 220-volt television receivers for exportation purposes when the requirements as stated in section 358(a)(3) of the Radiation Control for Health and Safety Act (42 U.S.C. 263f(a)(3)) and FDA Compliance Program Circular 7382.007A were met. These receivers were not originally designed to receive television signals from within the United States or operate on standard 60 HZ, 110–120 VAC power sources unless extensive reconditioning was performed. Thus, these receivers were permitted to enter the United States without certification.

Now, however, the television industry has made it possible for most sets designed for CCIR broadcast standard to be capable of operation within the United States. FDA considers these receivers to be subject to the Federal Performance Standard for Television Receivers (21 CFR 1020.10), and they must be certified before admission into the United States.

FDA has become aware of widespread abuse of the for-exportation exemption in that importers have been claiming this exemption from certification for products which were adaptable to receipt of United States television signals. Due to the unlawful diversion of some such receivers into the United States market, FDA field personnel have been given discretion to detain all shipments of uncertified receivers until the importer establishes

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that the product in question has been labeled for export only and cannot receive the NTSC 3.58 broadcast signal. Prior to importation for any purpose, receivers which can receive the NTSC 3.58 broadcast signal and are thus capable of use in the United States must be certified and properly labeled in accordance with FDA's television performance standard.

The authority for FDA's detention of all shipments of noncertified receivers which are capable of use within the United States is section 360B(a)(1) of the Radiation Control for Health and Safety Act (the act) (42 U.S.C. 263j (a)(1)), which makes it unlawful for any manufacturer to introduce or deliver for introduction into commerce or to import into the United States any electronic product which does not comply with an applicable standard prescribed pursuant to the Radiation Control for Health and Safety Act. Also, under section 360B(a)(5)(A) of the act (42 U.S.C. 263j (a)(5)(A)), it is unlawful for any person to fail to issue a certification as required by section 358(h) of the act (42 U.S.C. 263f(h)).

Requests for single copies of the import alert should refer to the docket number found in brackets in the heading of this notice and should be addressed to the Dockets Management Branch (address above).

Dated: September 29, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23034 Filed 10-5-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Two New York State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 4, 1987 in New York, New York to reconsider our decision to disapprove New York State Plan Amendments 86-6 and 86-23.

DATES: Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove two New York State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that information in a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether the malpractice costs included in New York's proposed plan amendments are reimbursable as inpatient hospital services under section 1902(a)(13)(A) of the Act and Federal regulations at 42 CFR Part 447, Subpart C.

The State of New York has proposed two plan amendments, 86-6 and 86-23, which revise its plan for Medicaid reimbursement of inpatient hospital services. Transmittal 86-6 covers the period January 1, 1986 to June 30, 1986, and transmittal 86-23 covers the period July 1, 1986 to June 30, 1987. These amendments allow a component to be added to each hospital's inpatient rate to reflect the cost of providing excess medical malpractice coverage for physicians affiliated with that hospital and who provide emergency care in the institution.

HCFA has determined the malpractice costs included in these amendments are not reimbursable as an inpatient hospital cost under section 1902(a)(13)(A) of the Act and the regulations set forth at 42 CFR Part 447, Subpart C. The costs included in these amendments are for physicians' services, which are governed by section 1902(a)(30) of the Act and regulations set forth at 42 CFR Part 447, Subparts A, B, and D. HCFA believes costs should be claimed and included under the appropriate program and not under 42 CFR Part 447, Subpart C.

HCFA believes the State's administrative decision to add the malpractice costs for physicians as allowable costs in determining inpatient hospital rates does not alter the fundamental nature of the costs or the Federal rules governing this reimbursement. The payments that the hospital makes for excess malpractice coverage are solely for the benefit of the physician. In the event of a malpractice recovery pursuant to a suit or claim of a patient, the subsequent insurance company payments protect the liability of the physician and not the hospital. Therefore, the insurance premiums are clearly a physician and not a hospital cost. Therefore, HCFA has determined the amendment violates section 1902(a)(13)(A) and Federal regulations at 42 CFR Part 447, Subpart C since the costs are an inappropriate component of an inpatient hospital rate in the context of the statutory requirements.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its State plan amendments reads as follows:

Mr. David Emil,

Deputy Commissioner and General Counsel, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243.

Dear Mr. Emil: This is to advise you that your request for reconsideration of the decision to disapprove New York State Plan Amendments 86-6 and 86-23 was received on September 2, 1987.

New York State Plan Amendments 86-6 and 86-23 would amend the New York reimbursement plan for payment of inpatient hospital services. You have requested a reconsideration of whether the malpractice costs included in these amendments are reimbursable as inpatient hospital costs under section 1902(a)(13)(A) of the Social Security Act and regulations at 42 CFR Part 447, Subpart C.

I am scheduling a hearing on your request to be held on November 4, 1987 at 10:00 a.m. in Room 2226, 26 Federal Plaza, New York, New York. If this date if not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,
William L. Roper, M.D.,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 29, 1987.

William L. Roper, M.D.,
Administor, Health Care Financing Administration.

[FR Doc. 87-23093 Filed 10-5-87; 8:45 am]
BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-87-1742]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirements; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Application for Approval as a Coinsuring Lender—Category A Documentation.

Office: Housing.

Description of the Need For the Information and Its Proposed Use: Under Section 221 Coinsurance Program, HUD must review lender's financial, technical, and organizational capacity to be approved as a coinsuring lender. This information is needed to review the lender's capacity to carry out the functions of the program.

Form Number: Various.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Response: On Occasion.

Estimated Burden Hours: 6,400.

Status: Reinstatement.

Contact: James L. Hamernick, HUD, (202) 755-6500 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Proposal: Financial Statement (Claims collection).

Office: Administration.

Description of the Need for the Information and Its Proposed Use: Each office of HUD is authorized to have a claims collection officer to establish and maintain a file regarding each claim for which collection activities are undertaken. This information is needed by the claims collection officer to make judgments concerning the likelihood of being able to collect a claim.

Form Number: HUD-27041.

Respondents: Individuals or Households.

Frequency of Response: On Occasion.

Estimated Burden Hours: 300.

Status: New.

Contact: Ronald A. Nelson, HUD, (202) 755-1446 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Project Applications and Review of Application-Category B Documentation.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Under Section 221 Coinsurance Program, HUD must review approved coinsuring lender's processing of applications. This must be done to ensure adherence to underwriting and processing guidelines and also to monitor compliance with program standards.

Form Number: Various.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Response: On Occasion.

Estimated Burden Hours: 92,000.

Status: Reinstatement.

Contact: James L. Hamernick, HUD, (202) 755-6500 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Property Survey Instructions and Certificate.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: A survey and surveyor's certificate are required to assure uniformity of certification and the exact description of the property to be mortgaged. The information is provided by a private registered civil engineer or land surveyor before initial and final endorsement and is essential to both conventional mortgages and federally assisted mortgage insurance.

Form Number: FHA-2457.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Response: On Occasion.

Estimated Burden Hours: 1,000.

Status: Reinstatement.

Contact: Richard E. Murray, HUD (202) 755-5743 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Emergency Shelter Grants Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The Emergency Shelter Grants Program provides grants to cities, counties, and states for renovation, rehabilitation, or conversion of buildings; supportive

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services; and maintenance, operation, insurance, utilities, and furnishings in relation to emergency shelter for the homeless. Information collected will be used to ensure grantees comply with the program's statutory and regulatory requirements.

Form Number: SF–424 and SF–269.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Response: On Occasion and Annually.

Estimated Burden Hours: 14,000.

Status: Revision.

Contact: James R. Broughman, (202) 755–5977 or John Allison, OMB (202) 395–6880

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Rent Increase Worksheet.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Owners of certain subsidized, cooperative, and Section 202 projects submit this form annually when requesting an adjustment to project rents. HUD uses the form to evaluate owners' expense estimates and to calculate allowable rents and utility allowances.

Form Number: HUD–92547B.

Respondents: Business or Other For-Profit and Federal Agencies or Employees.

Frequency of Response: Annually.

Estimated Burden Hours: 50,000.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 426–3970 or John Allison, OMB, (202) 395–6880

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 28, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–22981 Filed 10–5–87; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–87–863]

Order of Successions; Office of the Manager, Baltimore Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392. Phone number (215) 597–2655 (This is not a toll-free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager; Provided: that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Management Division.
3. Director, Community Planning and Development Division.
4. Chief Counsel.

This designation supersedes the designation effective May 1, 1981.

Authority: Delegation of Authority by the Secretary, 50 FR 18742, May 2, 1985.

Dated: September 15, 1987.

St. George I.B. Crosse,

Manager, Baltimore Field Office.

[FR Doc. 87–22982 Filed 10–5–87; 8:45 am]

BILLING CODE 4210–32–M

Designation and Order to Succession; Office of the Manager, Honolulu Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation and order of succession.

SUMMARY: The Manager of the Honolulu Office in Region IX is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Francisco, CA 94102. Telephone (415) 556–6110. This is not a toll-free number.

Designation of Acting Manager

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: *Provided:* That no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unable to act by reason of absence, disability, or vacancy in said position:

1. Director, Housing Division.
2. Chief Counsel.
3. Director, CPD Division.
4. Chief, Housing Development Branch.
5. Chief, Housing Management Branch.

This delegation supersedes and cancels any previous designation, published or unpublished, that may be in effect prior to the effective date of this document.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development, 50 FR 18742, May 2, 1985.

Dated: September 14, 1987.

Gordan Y. Furutani,

Manager, Honolulu Office, Department of Housing and Urban Development, Region IX.

Concur:

William Y. Nishimura,

Acting Regional Administrator—Regional Housing Commissioner, Region IX.

[FR Doc. 87–22983 Filed 10–5–87; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA320–07–4212–02]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Color-of-Title Application, 43 CFR Part 2540

Abstract: Any eligible individual or group making a color-of-title claim to public lands must file an application to settle the claim. The information is the basis for determining the validity of the claim.

Bureau Form Number: 2540–1
Frequency: Occasionally
Description of Respondents: Applicants seeking prior title to public lands.
Annual Responses: 50
Annual Burden Hours: 25
Bureau Clearance Officer: Rick Iovaine, 202–653–8853

Guy E. Baier,

Acting Assistant Director, Land and Renewable Resources.

Date: July 17, 1987.

[FR Doc. 87–23097 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–84–M

[AA320–07–4212–02]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer to the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Conveyances Affecting Color or Claim of Title, 43 CFR Part 2540

Abstract: Any eligible individual or group making a color-of-title claim to public lands must file an application to settle the claim. The information is the basis for determining the validity of the claim.

Bureau Form Number: 2540–2
Frequency: Occasionally
Description of Respondents: Applicants seeking proper title to public lands.
Annual Response: 50
Annual Burden Hours: 50
Bureau Clearnace Officer: Rick Iovaine, 202–653–8853

Guy E. Baier,

Acting Assistant Director, Land and Renewable Resources

Date July 17, 1987.

[FR Doc. 87–23098 Filed 10–5–87; 8:45am]

BILLING CODE 4310–84–M

[AA320–07–4212–2]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Color-of-Title Tax Levy and Payment Record, 43 CFR Part 2540

Abstract: Establish a procedure to support a claim under the Color-of-Title Act of December 22, 1928, as amended by the Act of July 28, 1953, where the applicant can provide a record of paying State and county taxes. Tax payment record is submitted with the Color-of-Title Application and may be used by any individual, group, or corporation authorized to hold title to land.

Bureau Form Number: 2540–3
Frequency: Occasionally
Description of Respondents: Applicants authorized to hold title to land.
Annual Responses: 50
Annual Burden Hours: 25
Bureau Clearance Office: Rick Iovaine, (202) 653–8853

Guy E. Baier,

Acting Assistant director, Land and Renewable Resources.

Date: July 17, 1987.

[FR Doc. 87–23099 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–84–M

[OR–114–84–6310–11: GP7–304]

Oregon, Medford District Office; Off-Highway Vehicle Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Medford District Office; Notice given relating to off-highway motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-highway vehicles on certain public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

The following lands under the administration of the Bureau of Land Management are changed from the existing open designation and are hereby redesignated as limited, under Interim Management Policy and Guidelines for Lands under Wilderness Review, or closed to off-highway motor vehicle use.

The areas affected by the designations are managed by the Medford District and are located in Jackson, Josephine, and Klamath Counties, Oregon.

These designations are published as final until such time that changes in resource management warrant modifications.

FOR FURTHER INFORMATION CONTACT: Fred Tomlins, Outdoor Recreation Planner, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, telephone (503) 776–3767, FTS 424–3767.

A. Limited Designations

Two Wilderness Study Areas (WSAs), comprising 5,974 acres, will be managed in accordance with the nonimpairment criteria of the Wilderness Interim Management Policy which allows off-highway vehicle use to continue in the manner and degree on ways and trails where such use was occurring on October 21, 1976.

WSA Unit No.	WSA Name	Acres
11–1	Mountain Lakes	334
11–17	Soda Mountain	5,640

These limited vehicle use designations will remain in effect until Congressional release of WSAs, or if actual or unforeseeable use levels cause the nonimpairment criteria to be violated, in which case more restrictive designations may be made.

B. Closed Designations

The Eight Dollar Mountain Area of Critical Environmental Concern, comprising 1,240.6 acres is designated closed to motorized vehicle use to protect resource values.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Medford District Manager. Information and maps of the above areas are available at the Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, Telephone (503) 776–4174.

David A. Jones,

District Manager.

Date Signed: September 28, 1987.

[FR Doc. 87–23100 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–33–M

BEST COPY AVAILABLE

National Park Service

Availability of Approved Upper Delaware River Management Plan and Decision; New York and Pennsylvania

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the approved Final Upper Delaware River Management Plan and the approved record of decision, New York and Pennsylvania.

This notice announces the availability of the approved river management plan required by section 704 of Pub. L. 95–625 and the approved record of decision for the Delaware Scenic and Recreational River. The approved plan has been transmitted to the Chairman, Committee on Interior and Insular Affairs, House of Representatives and Chairman, Committee on Energy and Natural Resources, United States Senate.

DATES: The plan will become effective January 4, 1988.

ADDRESSES: Copies of the approved river management plan and the approved record of decision are available from the National Park Service (Mid-Atlantic Regional Office, 143 South Third Street, Philadelphia, Pennsylvania 19106 and Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, New York 12764–0159).

FOR FURTHER INFORMATION CONTACT: Michael H. Gordon, Mid-Atlantic Regional Office, 143 South Third Street, Philadelphia, Pennsylvania 19106, (215) 597–9195.

Donald Paul Hodel,

Secretary of the Interior.

Date: September 29, 1987.

[FR Doc. 87–23079 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations; Kentucky, et al

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 26, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 21, 1987.

Carol D. Shull,

Chief of Registration, National Register.

KENTUCKY

Fayette County

Lexington, Basye, T. D., House, 3501 Georgetown Rd.

MAINE

Washington County

Milbridge, Petit Manan Light Station, Petit Manan Island

MASSACHUSETTS

Franklin County

Charlemont, Charlemont Village Historic District, MA 2 (Main St.) between South St. & Harmont St.

Suffolk County

Boston, Sumner Hill Historic District, Roughly bounded by Seaverns Ave., Everett St., Carolina Ave., & Newbern St.

OHIO

Montgomery County

Dayton, Sacred Heart Church, 217 W. Fourth St.

TENNESSEE

Giles County

Pulaski, *White,* Newton, House, Old Pigeon Roost Rd.

Haywood County

Stanton, Stanton Masonic Lodge and School, W. Main St.

Knox County

Concord, Concord Village Historic District, Roughly bounded by Lakeridge & Third Drs., Spring St., and the Masonic Hall & Cemetery

Wayne County

Waynesboro, Waynesboro Cumberland Presbyterian Church, High St.

TEXAS

McLennan County

McGregor, Brown-Mann House, 725 W. Sixth St.

VIRGINIA

Clarke County

Berryvile, Berryville Historic District, Jct. of US 7 & 340, Main, Church, & Buckmarsh St.

[FR Doc. 87–23080 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[TA–503(a)–15 and 332–249]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Change in scope of investigation.

EFFECTIVE DATE: September 30, 1987.

SUMMARY: Following receipt of a request from the Office of the U.S. Trade Representative (USTR) dated September 16, 1987, the Commission has expanded the scope of the above referenced investigation to include examination of the probable effect on U.S. industries producing like or directly competitive articles and on consumers of (1) the complete removal of Generalized System of Preferences (GSP) duty-free status for leather cut into soles for footwear, classified in item 791.28 of the Tariff Schedules of the United States (TSUS), and in item 6406.99.60 of the proposed Harmonized Tariff Schedule (HS) of the United States and (2) the removal only of these products of Argentina from GSP duty-free treatment.

Background

The Commission published the initial notice of institution of its investigation in the **Federal Register** of August 26, 1987 (52 FR 32179).

Public Hearing

A public hearing in connection with the investigation is already scheduled to be held in the Commission Hearing Room, 701 E Street NW., Washington, DC 20436, beginning at 9:30 a.m. on October 7, 1987, and continuing as required on October 8 and 9. Persons wishing to appear at the public hearing in connection with the product being added to the investigation should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436, not later than noon, October 2, 1987. Post-hearing briefs are required by October 16, 1987.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit

written statements concerning the investigation. Written statements for the product being added to this investigation must be received by the close of business on October 20, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 30, 1987.

[FR Doc. 87–23003 Filed 10–5–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31111]

Exemption; Joint Project for Relocation of a Line of Railroad; Burlington Northern Railroad Co. and Southern Pacific Transportation Co.

On September 18, 1987, Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1180.2(d)(5) for a joint project with the Southern Pacific Transportation Company (SP) to relocate a line of railroad.

BN and SP both own lines of railroad in Washington County, OR. The joint project involves: (1) BN's acquisition of overhead trackage rights from SP between SP milepost 756.94 at St. Marys and SP milepost 765.71 at Hillsboro; and (2) the discontinuance of BN's overhead trackage rights over SP between SP milepost 774.77 at Banks and SP milepost 765.50 at Hillsboro.

SP had previously granted bridge trackage rights to Oregon Electric Railway Company (OE) between the above-mentioned SP mileposts at Banks and Hillsboro. BN has since succeeded OE as the grantee of those trackage rights.

Now, BN and SP intend to substitute the new overhead trackage rights between St. Marys and Hillsboro for the existing overhead trackage rights between Banks and Hillsboro. The trackage rights granted to BN between St. Marys and Hillsboro and BN's discontinuance of service between Banks and Hillsboro are effective on September 28, 1987.

SP service is not affected by the transaction. The relocation will provide BN with a shorter route to and from Hillsboro, and will result in more efficient and economical operations. BN has filed a petition for waiver of the environmental reporting requirements since the subject transaction will have no significant physical impact on the environment. The waiver request has been granted by decision served October 6, 1987.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). Any employees affected by the discontinuance will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: September 28, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22927 Filed 10–5–87; 8:45 am]

BILLING CODE 7035–01–M

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, whereby the imposition of labor protective conditions is mandatory, labor protective conditions have been imposed.

[Finance Docket No. 31110]

Exemption, Acquisition and Operation—Rail Line of Chicago and North Western Transportation Co. Between Harvard and Chemung in McHenry County, IL; Chicago-Chemung Railroad Corp.

Chicago-Chemung Railroad Corporation (CCRC) has filed a notice of exemption to acquire and operate a 3.5-mile line of the Chicago and North Western Transportation Company (CNW) between milepost 64.0 near Harvard, IL, and milepost 67.5 near Chemung, IL, and 0.5 miles of incidental trackage rights between milepost 64.0 and milepost 63.5. The trackage rights are to enable CCRC to use the CNW passing track for interchanging trainloads of grain. Comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 North Wacker Drive, Chicago, IL 60606, (312) 236–0204.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[1] The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 23, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22808 Filed 10–5–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 294X)]

Exemption; Abandonment in King and Kittitas Counties, WA; Burlington Northern Railroad Co.

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 36.56-mile line of railroad between milepost 2137.25 near Cedar Falls and milepost 2100.69 near Cabin Creek, in King and Kittitas Counties, WA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that any overhead traffic may be rerouted; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local

[1] On September 22, 1987, the Commission denied a petition for stay filed by Patrick W. Simmons, Illinois Legislative Director for the United Transportation Union.

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governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 5, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 16, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 1987, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Peter M. Lee, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22810 Filed 10-5-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 1X)]

Exemption; Abandonment of Service in York County, SC; Carolina and Northwestern Railway Co.

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 3.8-mile line of railroad between milepost HG-32.0 and milepost HG-35.8 in York County, SC.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 5, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 16, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 1987, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Angelica D. Lloyd, Norfolk Southern Corporation, 8 N. Jefferson Street, Roanoke, VA 24042-0041.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22811 Filed 10-5-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19, 958 et al.]

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Kimberly Clark Corp.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 21, 1987—September 25, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,958; Kimberly Clark Corp., Spotswood, NJ

TA-W-19,906; Texas Industries, Inc., Midlothian, TX

TA-W-19,871; Deena Products Co., Arlington, KY

TA-W-19,918; Precise Metals & Plastic, Inc., Cumberland Div., Cumberland, MD

TA-W-19,932; General Motors Corp., Central Foundry, Saginaw, MI

TA-W-19,933; General Motors Corp., Central Foundry, Pontiac, MI

TA-W-19,935; General Motors Corp., CPC Grand Rapids, Grand Rapids, MI

TA-W-19,936; General Motors Corp., CPC Marion, Marion, IN

TA-W-19,940; General Motors Corp., Fisher Guide Div., Flint, MI

TA-W-19,941; General Motors Corp., Hydramatic Div., Muncie, IN

TA-W-19,942; General Motors Corp., Inland Div., Euclid, OH

TA-W-19,943; General Motors Corp., Inland Div., Livonia, MI

TA-W-19,945; General Motors Corp., Saginaw Div., Athens, AL

TA-W-19,946; General Motors Corp., Saginaw Div., Buffalo, NY

TA-W-19,947; General Motors Corp., Saginaw Div., Detroit Gear & Axle, Detroit, MI

TA–W–19,937; General Motors Corp., Detriot Diesel-Allison Div., Indianapolis, IN

TA–W–19,938; General Motors Corp., Electro-Motive Div., La Grange, IL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–19,927; General Motors Corp., CPC Bowling Green, Bowling Green, KY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,957; General Motors Corp., BOC Leeds, Kansas City, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,924; General Motors Corp., BOC Lansing, Lansing, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,999; R.E., Schall Mining Co., Inc., Raymond Schall Trucking, Kittaning, PA

Imports of coal are negligible.

TA–W–20,025; Vandrill, Inc., Edmond, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,994; Daco, Inc., Borger, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,923; General Motors Corp., BOC Hamtramck, Detroit, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,926; General Motors Corp., BOC Wentzville Assembly Center, Wentzville, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,925; General Motors Corp., BOC Orion Assembly, Orion Township, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,944; General Motors Corp., Rochester Products Grand Rapids, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,948; General Motors Corp., Saginaw Div., Saginaw, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,922; General Motors Corp., BOC Buick Assembly, Flint, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–19,928; General Motors Corp., CPC Pontiac Fiero, Pontiac, MI

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–20,026; Al Tech Specialty Steel Corp., Toledo Tool Steel Depot, Walbridge, OH

A certification was issued covering all workers of the firm separated on or after July 29, 1986.

TA–W–19,955; Finkel Outdoor Products, Garfield, NJ

A certification was issued covering all workers of the firm separated on or after June 17, 1986.

TA–W–19,909; A & L Seaman, Bayshore, NY

A certification was issued covering all workers of the firm separated on or after July 1, 1986.

TA–W–19,953; Everything is Jake, Inc., Allentown, PA

A certification was issued covering all workers of the firm separated on or after July 13, 1986.

TA–W–19,949; Ajax Frock, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–19,018; Moseley Petroleum Corp., Dallas, TX

A certification was issued covering all workers of the firm separated on or after August 6, 1986.

TA–W–19,931; General Motors Corp., Central Foundry-Defiance, Defiance, OH

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–19,934; General Motors Corp., CPC Flint Engine, Flint MI

A certification was issued covering all workers of the firm separated on or after July 16, 1986 and before September 1, 1987.

TA–W–19,939; General Motors Corp., Fisher Guide Div., Anderson, IN

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–19,991; Barad & Company, Thayer, MO

A certification was issued covering all workers of the firm separated on or after July 29, 1986 and before September 7, 1987.

I hereby certify that the aforementioned determinations were issued during September 21, 1987–September 25, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustemnt Assistance.

Dated: September 29, 1987.

[FR Doc. 87–23075 Filed 10–5–87; 8:45am]

BILING CODE 4510–30–M

Mine Safety and Health Administration

Establishment of Advisory Committee

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Establishment of Advisory Committee.

SUMMARY: The Secretary of Labor has determined that it is in the public interest to establish an Advisory Committee to review standards and regulations related to the approval and use of diesel-powered equipment in underground coal mines. The Committee would provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved. The Secretary is considering promulgation of diesel standards and regulations for underground coal mines under sections 101 and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

DATE: Comments must be received on or before October 21, 1987.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; Mine Safety and Health Administration; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvery, Acting Associate Assistant Secretary for Mine Safety and Health, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: Over the past decade, diesel-powered equipment has been introduced into the underground coal mining industry in increasing numbers. MSHA does not have standards or regulations applicable

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to diesel-powered equipment in underground coal mines. MSHA's existing regulations (30 CFR Part 36) address diesel-powered equipment for noncoal mines. MSHA encourages underground coal mine operators to use equipment approved under Part 36; however, equipment without explosion-proof features is being used.

The internal-combustion engines of diesel-powered equipment present potentially serious fire and explosion hazards from, for example, the escape of flame and high surface temperatures. To be safe in the potentially explosive atmosphere of underground coal mines, this equipment needs to be specially designed to protet against these hazards. In addition, the combustion products of diesel engines may contain potentially harmful airborne contaminants which when released into the mine atmosphere could endanger the health of miners.

In accordance with the provisions of the Federal Advisory Committee Act and after consultation with the General Services Administration; the Secretary of Labor has determined that the establishment of the Advisory Committee on Standards and Regulations for Diesel-Powered Equyipment in Underground Coal Mines is in the public interest in connection with performance of the duties imposed on the Department by section 101 of the Mine Act.

The Committee will advise the Secretary of Labor on safety and health standards related to the use of diesel-powered equipment in underground coal mines. It will also review related data and information and make recommendations to the Secretary of Labor regarding regulations. The appropriateness of diesel equipment use in underground coal mines will not be an issue to be addressed by the Committee.

As required by section 102(c) of the Mine Act, the majority of the Committee will be composed of individuals who have no economic interests in the mining industry and who are not operators, miners, or officers or employees of the Federal Government or any State, or local government. There will be nine committee members: Two representing labor, two representing industry, and five persons with no economic interests in the industry.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under that Act fifteen days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines to Patricia W. Silvey, Acting Associate Assistant Secretary for Mine Safety and Health, at the aforementioned address.

Date: October 1, 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-23076 Filed 10-5-87; 8:45 am]

BILLING CODE 9510-43-M

[Docket No. M-87-16-M]

Petition for Modification of Application of Mandatory Safety Standard; Van Dyke Minerals, Ltd.

Van Dyke Minerals, Ltd., 17233 East Kenyon Drive, Aurora, Colorado 80013 has filed a petition to modify the application of 30 CFR 57.4533 (mine opening vicinity)— to its Bueno Mine (I.D. No. 05-02404) located in Boulder County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that surface buildings or other similar structures within 100 feet of mine openings used for intake air or within 100 feet of mine opoenings that are designated escapeways in exhaust air be constructed of noncombustible materials; or constructed to meet a fire resistance rating of no less than one hour; or provided with an automatic fire suppression system; or covered on all combustible interior and exterior structural surfaces with noncombustible material, such as five-eighth inch, type "X" gypsum wall-board.

2. As an alternate method, petitioner proposes to locate the shed 85 feet from the portal in lieu of the 100 feet as required.

3. In support of this request, petitioner states that the portal is covered with fire retardant paint, there is virtually no flammable vegetation between the portal and the shed, the air flows out of the portal, and there is a secondary exit.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 5, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 22, 1987.

[FR Doc. 87-23074 Filed 10-5-87; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Stock Ownership Plans (ESOP) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:30 a.m., Tuesday, October 27, 1987, in Room N-3437B,C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine-member work group was formed by the Advisory Council to study various ERISA issues relating to employee stock ownership plans (ESOP's).

The purpose of the October 27 meeting is to review and consider a draft report on the use of ESOPs in conjunction with leveraged buyouts involving multiple investors.

Individuals, or representatives or organizations, wishing to address the work group should submit written requests on or before October 22, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1987.

Signed at Washington, DC, this 1st day of October, 1987.

David M. Walker,

Assistant Secretary-Designate for Pension and Welfare Benefits Administration.

[FR Doc. 87-23011 Filed 10-5-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel (Challenge III Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on October 20, 1987, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of Feburary 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

September 25, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–22993 Filed 10–5–87; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel (Challenge III Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on October 16, 1987, from 9:00 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

September 25, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–22994 Filed 10–5–87; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Romulus, MI; Aircraft Accident

In connection with its investigation of the accident involving Northwest Airlines, Inc., DC–9–82, of U.S. Registry N312RC, at the Detroit-Metro Wayne County International Airport, Detroit (Romulus), Michigan, on August 16, 1987, the National Transportation Safety Board will convene a public hearing at 9:30 a.m. (local time), on November 16, 1987, in the Michigan Ballroom of the Ramada Inn-Detroit Metropolitan Airport, located at 8270 Wickham Road, Romulus, Michigan. For more information contact Alan Pollock, Office of Government and Public Affairs National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202 382–6606.

Bea Hardesty,

Federal Register Liaison Officer.

September 30, 1987.

[FR Doc. 87–23101 Filed 10–5–87; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Byproduct Material License No. 34–19089–01; Docket No. 30–16055–SP; ASLBP No. 87–545–01–SP]

Reconstitution of Board; Advanced Medical Systems, Inc.

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Advanced Medical Systems, Inc.*, Docket No. 30–16055–SP, is hereby reconstituted by appointing Administrative Judges Robert M. Lazo, Ernest E. Hill and Harry Foreman in place of Administrative Law Judge Ivan W. Smith, who is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Dr. Robert M. Lazo, Chairman; Mr. Ernest E. Hill; Dr. Harry Foreman.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701(1980). The addresses of the new Board members are:

Administrative Judge Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555

Administrative Judge Ernest E. Hill, Hill Associates, 210 Montego Drive, Danville, California 94526

Administrative Judge Harry Foreman, 1564, Burton Avenue, ST. Paul, Minnesota 55108

Issued at Bethesda, Maryland, this 29th day of September 1987.

Robert M. Lazo

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87–23070 Filed 10–5–87; 8:45 am]

BILLING CODE 7590–01–M

[Byproduct Material License No. 34–19089–01; E. A. 87–139; Docket No. 30–16055–0M; ASLBP No. 87–555–01–0M

Reconstitution of Board; Advanced Medical Systems, Inc.

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Advanced Medical Systems, Inc.*, Docket No. 30–16055–0M, is hereby reconstituted by appointing Administrative Judges Robert M. Lazo, Ernest E. Hill and Harry Foreman in place of Administrative Law Judge Ivan W. Smith, who is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Dr. Robert M. Lazo, Chairman; Mr. Ernest E. Hill; Dr Harry Foreman.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The addresses of the new Board members are:

Administrative Judge Dr. Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Ernest E. Hill, Hill Associates, 210 Montego Drive, Danville, California 94526.

Administrative Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108

Issued at Bethesda, Maryland, this 29th day of September 1987.

Robert M. Lazo

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-23071 Filed 10-5-87; 8:45 am]

BILLING CODE 7590-01-M

[Source Material License No. SUA-917; Docket No. 40-3453-SP; ASLBP No. 87-557-05-SP]

Designation of Presiding Officer; Atlas Minerals Division of Atlas Corp.

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding:

Atlas Mineral Division of Atlas Corp.

Source Material License No. SUA-917

The presiding officer is being designated pursuant to an Order of the Commission, dated September 25, 1987, granting a request for a hearing by Atlas Minerals Division of Atlas Corporation regarding the Regional Administrator's denial of its application to renew Source Material License No. SUA-917.

The presiding officer in this proceeding is Administrative Judge John H Frye.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge James H. Carpenter to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Frye and Judge Carpenter in accordance with 10 CFR 2.701. There addresses are:

Administrative Judge John H Frye, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge James H Carpenter, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 29th day of September 1987.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-23072 Filed 10-5-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Forms Submitted to OMB for Clearance

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35), this notice announces a proposed extension of forms which collect information from the public. The Establishment Information Form, the Wage Data Collection Form, and the Continuation Form are wage survey forms developed by the Office of Personnel Management and used by three lead agencies, the Department of Defense, the Veterans Administration, and the National Aeronautics and Space Administration, to survey private sector business establishments. The surveys are conducted annually to determine the level of wages paid by private enterprise establishments for representative jobs which are common to both private industry and Government. The lead agencies use this information to establish rates of pay for Federal Wage System employees, competitive with the private sector. For copies of this proposal, call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before October 20, 1987.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: William C. Duffy, (202) 632-7714.

U.S. Office of Personnel Management.

James Colvard,

Deputy Director.

[FR Doc. 87-23068 Filed 10-5-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

New File No. 270-313, Rule 10b-6

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance on an emergency basis a proposal to require certain members of the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited ("ISE") to notify the ISE and the Commission and retain certain transaction information for two years as conditions to relying on an exemption from Rule 10b-6 under the Securities Exchange Act of 1934. The exemption would allow an ISE member firm to engage in "passive market making" transactions whenever it is participating in a multinational offering of a security designated 'alpha" or "beta" by the ISE, with a portion to be distributed in the U.S., or whenever the ISE firm's U.S. affiliates are participating in a distribution in the U.S. of such security. Rule 10b-6 prohibits persons participating in a distribution from bidding for or purchasing the security being distributed, or a related security, during the distribution. Rule 10b-6(h) permits the Commission to exempt transactions from Rule 10b-6 either unconditionally or on specified terms or conditions. The omnibus exemption should result in considerable cost savings to affected ISE member firms and to Commission staff, since a written exemption request will not have to be made by individual firms, and reviewed and responded to by the staff, each time a multinational offering of a U.K. security occurs. It is estimated that approximately 15 broker-dealers will rely on the exemption during FY 1988 at an estimated annual average of 26.4 hours.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and

Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

September 29, 1987.

[FR Doc. 87-23111 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34—24948; File No. SR-AMEX-87-22]

Self-Regulatory Organization's; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Long-term Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1987 the American Stock Exhange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Rule 903C as set forth below. *Underlining* indicates material proposed to be added; [brackets] indicate material proposed to be deleted.

Rule 903C—Series of Stock Index Options

(a) After a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange may open for trading series of options expiring in consecutive calendar months ("consecutive month series"), as provided in subparagraph (i) of this paragraph (a), [and/or] series of options expiring at three-month intervals ("cycle month series"), as provided in subparagraph (ii) of this paragraph (a)[.] *and/or series of options having up to thirty-six months to expiration ("long-term options series") as provided in subparagraph (iii) of this paragraph (a).* Prior to the opeining of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

(i) No change.

(ii) No change.

(iii) Long-term Option Series—The Exchange may list, with respect to any class of stock index options, series of opitons having up to thirty-six months to expiration. Such series of options may be opened for trading simultaneously with series of options trading consecutive month series (as provided in subparagraph (i)) and/or with series of options trading on the cycle month series (as provided in subparagraph (ii)).

(b) No change.

(c) No Change.

The Exchange has indicated by letter that the listing of these long term stock index opitons will affect normal trading rules [1] and for that reason, clarifications will be made to the rules before their adoption.

The Exchange states that such long term series—series longer than current "normal" expirations—will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such long term option series until they are opened for trading. When these option series come within the "normal expiration series", they will be treated like any other non-long term option for all trading procedures, including opening rotations.

The Exchange states that with respect to strike price intervals, bid/ask differentials and continuity rules, such rules will not apply to long term option series until the time to expiration "normalizes". However, such waiver will not prevent the potential of an Exchange finding of inadequate market-maker performance should a specialist and/or registered trader enter into transactions or make bids of offers in long term opitons that are inconsistent with the maintenance or a fair and orderly market.

The Exchange intends to monitor the trading in long term options closely and will re-examine the applicability of these rules to such options in one year's time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list long-term options on its broad-based indices. These long-term options would expire in either one, two or three years, however, the Exchange seeks to retain the right to also list options with intervening six month expirations (e.g. 1½, 2½ years). Initially, the Exchange plans to list long term options on only the Institutional Index ("XII") with initial long term expirations in December. In addition, strike price intervals may be wide than those currently being used and may be as wide as twenty five or fifty points.

For example, upon approval of this rule change and assuming an index level of 350, XII long term options could be introduced with expirations of December 1988, 1989 and/or 1990 with strike prices of 300 and/or 325; 350; and/or 375/400. Intervening expirations of June 1989 and/or June 1990 could also be listed.

Portfolio managers and other institutional customers have expressed a need for longer-term portfolio hedges. Currently, institutional investors can insure their portfolios with either futures positions or off-exchange customized options. Long-term options, as proposed by the Exchange, will give institutional investors an alternative by providing standardized options that have the benefit of issuance and clearance by the Options Clearing Corporation and a centralized, regulated secondary market on the Exchange.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange since it will add liquidity to the market by allowing institutional investors to hedge the risks of their stock portfolios over a longer period of time and with a known and limited cost.

Therefore, the proposed rule change is also consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

[1] Letter from Howard A. Baker, Senior Vice President, American Stock Exchange to Joseph Furey, Division of Market Regulation, SEC, dated September 21, 1987.

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D. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 29, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23112 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 30, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (1) (B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Income Trust
Shares of Beneficial Interest (File No. 7-0502)
Firstfed Financial Corp.
Common Stock, $.01 Par Value (File No. 7-0503)
Dixons Group PLC
American Depositary Shares Each Representing 3 Ordinary Shares of 10P Each (File No. 7-0504)
Dreyfus Strategic Municipals Inc.
Common Stock, $.001 Par Value (File No. 7-0505)
Charles Schwab Corporation (The)
Common Stock, $.01 Par Value (File No. 7-0506)
Union Texas Petroleum Holdings Inc.
Common Stock, $.01 Par Value (File No. 7-0507)
Champion Enterprises Inc.
Common Stock, $1.00 Par Value (File No. 7-0508)
Battle Mountain Gold Co.
Common Stock, $.10 Par Value (File No. 7-0509)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 21, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23113 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 30, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ALZA Corporation (Delaware;)
Class A Common Stock, $1.00 Par Value (File No. 7-0500)
Ideal Basic Industries, Inc. (Delaware)
Common Stock, $0.01 Par Value (File No. 7-0501)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 21, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23114 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16016; File No. 812-6777]

Application for Exemption; Delaware Group Premium Fund, Inc.

September 29, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Delaware Group Premium Fund, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 9(a), 13(a), 15(a), and 15(b) and Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

Summary of Application: Applicant requests an exemption permitting it to offer its shares to a class of life insurers ("Participating Insurance Companies") in connection with variable annuity contracts and variable life insurance policies offered by the Participating Insurance Companies. Such Participating Insurance Companies may or may not be affiliated with each other.

Filing Date: The application was filed on June 26, 1987 and amended on September 2, 1987.

Hearing or Notification: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Applicant should be served with a copy of the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESS: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Delaware Group Premium Fund, Inc., 10 Penn Center Plaza, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026, or Lewis B. Reich, Special Counsel, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open end diversified management investment company of the series type. It currently has four Portfolios (Series): Equity/Income Series, High Yield Series, Capitol Reserves Series and Multiple Strategy Series.

2. Applicant proposes to offer its shares to the separate accounts of Participating Insurance Companies which issue either variable annuity contracts or scheduled or flexible premium variable life insurance contracts (together, "variable life insurance"). The use of a common investment management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common investment management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

3. Rules 6e-2 and 6e-3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b)(15), however, precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. Applicant has requested exemptive relief to the extent necessary to permit shares of the Applicant to be sold for mixed funding and shared funding. Applicant proposes that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in Applicant (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in Applicant by virtue of Applicant offering its shares to variable annuity separate accounts or unaffiliated separate accounts.

4. Applicant asserts that granting the request for relief to engage in mixed and shared funding will benefit variable contract owners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicant asserts that the Portfolios will not be managed to favor or disfavor any particular insurer or type of insurance product.

Disqualification

5. Applicant requests relief from section 9(a) and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) to the extent necessary to permit mixed and shared funding. Applicant proposes that the relief granted by paragraph (b)(15) of Rules 6e-2 and 6e-3(T) from section 9(a) be extended to Participating Insurance Companies and variable life separate accounts which may use Applicant as an investment medium to fund variable life insurance contracts, subject to the conditions regarding conflicts set out below.

6. In support of this request for relief, Applicant asserts that the same policies that led the Commission to limit the provisions of section 9(a) to those employees of an insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicant argues that it would serve no regulatory purpose to apply the provisions of section 9(a) to the many employees of the Participating Insurance Companies whose separate accounts may utilize Applicant as a funding medium for variable life insurance contracts. Moreover, Applicant submits that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates of return realized by contractowners. Under the relief requested, section 9 would still be in effect and would insulate Applicant from those individuals who are disqualified under the Act.

Voting

7. Applicant requests relief from sections 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding: i.e., Applicant proposes that the relief granted by paragraph (b)(15) of Rules 6e-2 and 6e-3(T) from sections 13(a), 15(a) and 15(b) be extended to the Participating Insurance Companies and their variable life separate accounts which use Applicant as an investment medium to fund variable life contracts subject to the conditions regarding conflicts set out below.

8. In support of this request for relief, Applicant states that all variable annuity and variable life contractowners will be provided pass-through voting rights with respect to shares of the Applicant. Because paragraphs (b)15) of both Rule 6e-2 and

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Rule 6e–3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances. Applicant acknowledges that this may cause an irreconcilable conflict to develop among the separate accounts. Applicant proposes to resolve these potential conflicts through certain undertakings it propose as conditions to receipt of exemptive relief set out below. Thus, according to Applicant, if a particular Participating Insurance Company's disregard of voting instructions conflicted with the voting instructions of a majority of the contractowners, or precluded a majority vote, the insurer may be required, at Applicant's election, to withdraw its separate account's investment in Applicant. The Participating Insurance Companies will vote shares for which they have not received voting instructions, as well as shares attributable to them, in the same proportion as they vote shares for which they have received instructions.

Applicant's Conditions

Applicant states that it will comply with the following conditions:

1. A majority of the Board of Directors of Applicant ("Board") shall consist of persons who are not interested persons of Applicant, as defined by the 1940 Act.

2. The Board will monitor Applicant for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in Applicant.

An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance tax, or securities law or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners or by contractowners of different Participating Insurance Companies; or (f) a decision by an insurer to disregard the voting instructions of contractowners.

3. Participating Insurance Companies and the Investment Adviser will report any potential or existing conflicts to Applicant's Board. Participating Insurance Companies will be responsible for assisting the Board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to consider any issues raised including information as to a decision by an insurer to disregard voting instructions of contractowners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all insurers investing in Applicant under their agreements governing participation in Applicant.

4. If it is determined by a majority of the Board of Applicant or a majority of its disinterested trustees that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from Applicant or any Series (Portfolio) and reinvesting such assets in a different investment medium, including another Portfolio of Applicant, or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any particular group (i.e., annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at Applicant's election, to withdraw its separate account's investment in Applicant, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in Applicant and those responsibilities will be carried out with a view only to the interests of their contractowners. For purposes of this condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable conflict, but in no event will Applicant be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of affected contractowners.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all Participating Insurance Compnies.

6. Participating Insurance Companies shall provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Paticipating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in Applicant calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in Applicant shall be contractual obligation of all present and future Participating Insurance Companies under their agreements governing participation in Applicant. Participating Insurance Companies will vote shares for which they have not received voting instructions, as well as shares attributable to them, in the same proportion as they vote shares for which they have received instructions.

7. All reports received by the Board of potential or existing conflicts, determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedied a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23115 Filed 10–5–87; 8:45 am]

BILLING CODE 8010–15–M

[Rel. No. IC-16015; 812-6802]

Application for Exemption; ICN Pharmaceuticals, Inc.

September 29, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: ICN Pharmaceuticals, Inc.

Relevant 1940 Act Section: Exemption requested under section 3(b)(2) or, alternatively, under section 6(c) of the 1940 Act.

Summary of Application: Applicant is seeking an order declaring that it is not an investment company under the 1940 Act or, in the alternative, an order exempting Applicant from all provisions of the 1940 Act until July 23, 1988. Applicant further requests a temporary order exempting Applicant from all provisions of the 1940 Act until a final determination is made on the application.

Filing Date: The application was filed on July 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 375 Park Avenue, New York 10152, Attention: Lawrence H. Penitz, Esq.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney, (202) 272–3026, or Brion R. Thompson, Special Counsel, (202) 272–3016 (Division of Investment Management.)

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 in Maryland (301) 358–4300).

Applicant's Representations

1. Applicant is a pharmaceutical and biomedical company primarily engaged, through majority-owned subsidiaries, in the development, manufacture, distribution and sale of pharmaceutical and biomedical products and services in the United States and several foreign countries. Applicant's pharmaceuticals group manufactures, distributes and sells over 300 pharmaceutical products in the United States and abroad. Through a joint venture, Applicant also conducts research and development on compounds derived from nucleic acids. Applicant's biomedical subsidiary manufactures and distributes research chemicals and radioactive and stable isotape labelled products and biochemicals and offers radiation monitoring services.

2. Applicant was incorporated in 1960 and engaged initially in the marketing and thereafter in the production of research chemicals. In 1968, Applicant began to carry out research into drugs for the treatment of viral diseases. By the early 1970's, this research had led to the synthesis of between 5,000 and 6,000 chemical compounds. A decision was made to concentrate further research and development on one of those compounds, ribavirin.

3. Since 1982, Applicant has pursued a program of acquiring compatible pharmaceutical and biomedical companies in order to expand its pharmaceutical and biomedical businesses. During this five-year period, Applicant acquired 13 pharmaceutical or biomedical companies at an aggregate cost of approximately $58,394,000. Ten of these acquisitions, with an aggregate purchase price of approximately $56,219,000, occurred within the last three and one-half years, with the latest aquisition having been completed in June, 1987. Additionally, Applicant currently is engaged in negotiations for the acquisition of additional pharmaceutical and biomedical companies. Applicant has retained the services of the investment banking firm of PaineWebber Incorporated ("PaineWebber") to assist Applicant in its efforts to acquire compatible companies.

4. Applicant's acquisition program is financed primarily through offerings of its equity and debt securities. In July 1986, Applicant sold 2,330,000 shares of its common stock and $115,000,000 principal amount of its debentures (the "Debentures") in simultaneous underwritten public offerings (the "1986' Offerings") from which it received aggregate net proceeds of approximately $148,000,000 on July 24, 1986. Additional issuances of Applicant's equity and debt securities during the period from 1983 through March 1987 in the United States and abroad resulted in additional net proceeds to Applicant of approximately $342,585,000. The stated used of proceeds of the 1986 Offerings focused on the acquisition of compatible pharmaceutical or biomedical companies by Applicant.

5. In order to preserve the value of the proceeds from the 1986 Offerings and to offset the debt service costs resulting from the issuance of the Debentures, Applicant purchased interest-bearing obligations with the proceeds of the 1986 offerings, pending application of those funds to the acquisition of pharmaceutical or biomedical companies. Approximately three weeks after the receipt of the proceeds of the 1986 Offerings, more than 40% of the value of Applicant's total assets (on an unconsolidated basis and exclusive of government securities and cash items) were comprised of positions in "investment securities" as defined in section 3(a)(3) of the 1940 Act. At May 31, 1987, the date of the last fiscal quarter for which financial statements are available, Applicant's positions in investment securities approximated 55.8% of the value of its total unconsolidated assets and 52.6% of the value of its total consolidated assets. This contrasts with the very substantial percentage of Applicant's total assets (excluding cash items and government securities), which historically has been represented by property, plant, equipment, inventory, receivables and other non-investment securities assets essential to its pharmaceutical and biomedical businesses as soon as reasonably practicable.

6. Applicant states that a substantial portion of its assets continue to be comprised of property, plant and equipment essential to its pharmaceutical and biomedical businesses. Applicant has represented in its Annual Reports to Shareholders, press releases and other public documents that it is engaged in the pharmaceutical and biomedical businesses. Applicant's eight directors and twelve elected officers dedicate substantially all of their working time in operational and administrative activities related to its pharmaceutical and biomedical businesses. Applicant's Board of Directors adopted a resolution declaring Applicant's continuing intention to be engaged primarily in noninvestment company businesses.

7. A very substantial portion of Applicant's consolidated reserve and income for recent periods has been

derived from its operations in the pharmaceutical and biomedical businesses. From November 30, 1984 through August 31, 1986, Applicant did not derive any net income from its securities positions. However, for the six months ended May 31, 1987, Applicant realized net income of $10,720,000, primarily from disposition of equity positions in former acquisition candidates, representing 20.7% of total revenue and 272.6% of total income. Further, its securities positions were assumed to, among other things, facilitate the expansion of its operating businesses.

8. From July 24, 1986, Applicant relied on the one year exemption provided by Rule 3a–2 under the 1940 Act for transient investment companies. Applicant's inability to expend substantially all of the funds from its 1986 Offerings within one year was in large measure due to factors beyond Applicant's control. The continued acquisition of pharmaceutical and biomedical businesses companies, the retention of PaineWebber to provide advice concerning acquisition candidates, the time managements spends on decisions relating to its acquisition program and the resolution adopted by Applicant's Board of Directors reflect Applicant's good faith efforts to primarily be engaged in noninvestment company business as soon as practicable.

Applicant's Legal Analysis

1. Applicant submits that its historical development, the nature of its assets, its public representations of policy, the activities of its officers and directors and the sources of its income demonstrate that Applicant is primarily engaged in the pharmaceutical and biomedical businesses and is not primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities within the meaning of section 3(b)(2) of the 1940 Act and, therefore, is entitled to an order of the SEC under that provision.

2. In the alternative, Applicant submits that an order pursuant to section 6(c) of the 1940 Act exempting Applicant until July 23, 1988 is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicant maintains that its contemplated operations are not susceptible to abuses of the sort that the 1940 Act was designed to remedy.

3. Applicant further submits that a temporary order exempting Applicant from all provisions of the 1940 Act pursuant to section 6(c) until a final determination is made on the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

Applicant's Conditions

Applicant undertakes that during the period for which an exemption is provided.

1. Applicant will not engage in trading in securities for short-term speculative purposes, and

2. Applicant will continue to seek to acquire, as soon as reasonably possible, compatible pharmaceutical and biomedical businesses companies.

Temporary Order

The request for temporary exemptive relief pending a final determination on the application by the SEC has been considered, and its is found that, in view of the circumstances set forth above and in the application, that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to grant an immediate temporary order as requested by Applicant. Accordingly.

It is ordered, pursuant to section 6(c) of the 1940 Act, that the application for a temporary order exempting Applicant from all provisions of the 1940 Act, be and hereby is, granted, during the period from September 21, 1987 until the SEC shall make a final determination upon the application, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

For the SEC, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23116 Filed 10–5–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16017; (812–6168)]

Application for Exemption: Morgan Guaranty Trust Co. of New York

DATE: September 29, 1987.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of amended application for exemption under the Investment Company Act of 1940. ("1940 Act").

Applicant: Morgan Guaranty Trust Company of New York.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 17(f).

Summary of Application: Applicant seeks an order to permit maintenance of securities and other assets of investment companies registered under the 1940 Act other than an investment company registered under section 7(d) of the 1940 Act ("Investment Companies") for which Applicant serves as custodian or subcustodian with (i) Morgan Bank Nederland ("MBN"), Morgan Guaranty Australia Limited ("MGAL") or MGAL's nominee J.P. Morgan Nominees Pty. Limited ("JPMN"), all of which are indirect wholly-owned subsidiaries of J.P. Morgan & Co. Incorporated ("Foreign Subsidiaries") and (ii) Frankfurter Kassenverein, one of the central systems for the handling of securities in West Germany.

Filing Dates: Applicant's original application was filed on July 31, 1985, and amended on August 14, 1985, and an order granting that application was issued on September 11, 1985 (Investment Company Act Release No. 14713). The amendments to which this notice relates were filed on September 2 and 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reasons for your request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for in the case of an atorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Morgan Guaranty Trust Company of New York, Margaret M. Foran, Assistant Resident Counsel, 23 Wall Street, New York, NY 10015.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney, (202) 272–3033, or Brion R. Thompson, Special Counsel, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. MBN is an indirect wholly-owned subsidiary of J.P. Morgan & Co.

Incorporated ("J.P. Morgan") and is regulated as a banking institution by the Central Bank of the Netherlands. MBN has been providing custody services for over 55 years and currently serves as subcustodian for Applicant's New York and European branches.

2. MGAL is an indirect wholly-owned subsidiary of J.P. Morgan and is an Australian merchant bank. As such, MGAL provides traditional merchant bank services to its clients including domestic short term money market operations, foreign exchange trading, international finance transactions and portfolio investment management.

3. JPMN is an indirect wholly-owned subsidiary of J.P. Morgan and is MGAL's nominee. Under this arrangement all securities purchased for MGAL or its clients are held by, and in the name of, JPMN. MGAL and JPMN have been providing custody services for over 30 years.

4. Frankfurter Kassenverein is one of the central systems for the handling of securities or equivalent book-entries in West Germany. It is the depository and clearing agency which services the Frankfurt Stock Exchange.

Applicant's Legal Analysis

1. MBN, MGAL and JPMN each do not have shareholders' equity in excess of U.S. $100 million and thus, Applicant may not rely upon the exemption from section 17(f) afforded by Rule 17f–5 in connection with the proposed foreign custody arrangements. Applicant submits that the Foreign Subsidiaries are experienced, capable and well qualified to provide custody services to Investment Companies, and that under the proposed foreign custody arrangements, the protection of investors will not be diminished.

2. With respect to the deposit of securities with Frankfurter Kassenverein, Applicant notes that it cannot rely upon the exemption afforded by provision (c)(2)(iii) of Rule 17f–5 because there is no single central system for handling securities in West Germany as contemplated by that provision. Applicant asserts that similar relief has been granted to other major U.S. banks and, for the same reasons described in those applications, Applicant seeks the same exemptive relief. Accordingly, Applicant submits that permitting the deposit of securities with Frankfurter Kassenverein and the Foreign Subsidiaries is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicant expressly consents to the following conditions:

1. The foreign custody arrangements proposed with respect to MBN, MGAL and JPMN will satisfy the requirements of Rule 17f–5 in all respects except the shareholders' equity requirement.

2. The foreign custody arrangements proposed with respect to Frankfurter Kassenverein will satisfy the requirements of Rule 17f–5 in all respects other than the requirement that securities depositors, to be eligible foreign custodians, must be the central system or a transnational system for the handling of securities or equivalent book-entries in the relevant country.

3. Securities of Investment Companies will be maintained with MBN, MGAL or JPMN, as the case may be, only in accordance with an agreement, required to remain in effect at all times during which each of the Foreign Subsidiaries fails to satisfy all the shareholders' equity requirement of Rule 17f–5, among the Investment Companies or custodians for which Applicant serves as custodian or subcustodian, Applicant, and the Foreign Subsidiaries, pursuant to the terms of which, (i) Applicant would act as the custodian or subcustodian of the securities of the Investment Company, (ii) Applicant would delegate to the Foreign Subsidiaries such of Applicant's duties and obligations as would be necessary to permit the Foreign Subsidiaries to hold in custody, in the country in which they operate, the securities of the Investment Company or custodian. The agreement would further provide that Applicant's delegation of duties to the Foreign Subsidiaries would not relieve Applicant of any responsibility to the Investment Company or custodian for any loss due to such delegation, except such loss as may result from (i) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities), and (ii) other risks of loss (excluding bankruptcy or insolvency of MBN, MGAL or JPMN) for which neither Applicant nor MBN, MGAL, or JPMN would be liable under Rule 17f–5 (*e.g.*, despite the exercise of reasonable care, loss due to acts of God, nuclear incident and the like).

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23117 Filed 10–5–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2291]

Declaration of Disaster Loan Area; Virginia

Henry County in the State of Virginia constitutes a disaster loan area because of damage from severe flooding which occurred September 5–7, 1987. Applications for loans for physical damage may be filed until the close of business on November 27, 1987, and for economic injury until the close of business on June 28, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administrtion, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308; or other locally announced locations.

The interest rates are:

Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Businesses Without Credit Available Elsewhere	4.000%
Businesses (EIDL) Without Credit Available Elsewhere	4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.500%

The number assigned to this disaster is 229106 for physical damage and for economic injury the number is 655800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: September 28, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–23021 Filed 10–5–87; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 03/03–0185]

Application for License To Operate as a Small Business Investment Company; Morgan Investment Corp.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing

small business investment companies (13 CFR 107.102 (1985)) by Morgan Investment Corporation, 902 Market Street, Wilmington, Delaware 19801 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The officers, directors and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
William Edward Pike, 4 Carnage Road, Greenville, Delaware 19807.	Chairman of the Board of Directors and President.	
Rushton Leigh Ardrey, Jr., 70 East 96th Street, New York, New York 10028.	Director	
Donald Richard Brunner, 614 Black Gates Road, Wilmington, Delaware 19803.	Director	
Miriam Raney, 424 West End Avenue, Apartment 20E, New York, New York 10024.	Director	
Frank John Corrado, Jr., 21 Hillstream Road, Newark, Delaware 19711.	Treasurer	
James Dale Goodpasture, 117 Montchan Drive, Greenville, Delaware 19807	Secretary	
Morgan Holdings Corporation, 902 Market Street, Wilmington, Delaware 19801.		100

Morgan Holdings Corporation is a Delaware bank holding company which is wholly owned by J.P. Morgan & Co. Incorporated, 23 Wall Street, New York, New York 10015.

The Applicant, a Delaware Corporation, will begin operations with $30,000,000 paid in capital and paid in surplus. The Applicant will conduct its activities primarily in the State of Delaware but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Wilmington, Delaware.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 28, 1987.

[FR Doc. 87-23022 Filed 10-5-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1124]

Study Groups A and C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 5, 1987 beginning at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

Study Group A deals with international telecommunications policy and services; Study Group C will deal with CCITT structure, Special "S" and Study Group II issues.

The purpose of the meeting will be a debriefing of recent meetings of CCITT Study Groups/Working Parties I, III and preparation for the upcoming meeting of CCITT Study Groups, Special "S" and III.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Date: September 21, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U. S. CCITT National Committee.

[FR Doc. 87-22995 Filed 10-5-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-10-3; Dockets 42263, 42187 and 42667]

Aviation Proceedings; Proposed Revocation of the Section 401 Certificates of Aerostar Airlines, Inc., d/b/a Flight International Airlines, Inc., and Flight International Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders revoking the certificates of Aerostar Airlines, Inc. d/b/a Flight International Airlines Inc., and Flight International Airlines, Inc., issue under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than October 16, 1987.

ADDRESSES: Responses should be filed in Dockets 42263, 42187, and 42667 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2337.

Dated: October 1, 1987.

Patrick V. Murphy,

Director of Special Programs.

[FR Doc. 87-23106 Filed 10-5-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 87-9-66; Docket 45165]

Aviation Proceedings; Institution of the Seattle/Portland-Japan Service Proceeding

AGENCY: Department of Transportation.

ACTION: Order Instituting Investigation, (Order 87-9-66), docket 45165.

SUMMARY: The Department of Transportation is instituting the *Seattle/Portland-Japan Service Proceeding* to examine through oral evidentiary procedures whether a carrier should be chosen to replace United Air Lines, Inc. on the Seattle/Portland-Tokyo/Osaka route. The proceeding shall include consideration of the following issues: (a) Which primary carrier and which backup carrier, if any, should be authorized to engage in foreign air

transportation of persons, property and mail between the coterminal points Seattle, Washington and Portland, Oregon, on the one hand, and the coterminal points Tokyo and Osaka, Japan, on the other; (b) what terms, conditions, or limitations, if any, should be placed on any authority awarded in this proceeding; and (c) whether the certificate authority of United Air Lines, Inc., for segment 3 of Route 57 should be deleted under section 401(g) of the Federal Aviation Act.

DATES: Applications, motions to consolidate, and petitions for leave to intervene should be filed by October 21, 1987. Answers to such application and/or petitions shall be filed by October 28, 1987.

ADDRESSES: Documents should be filed with the Docket Section, Docket 45165 Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Warren L. Dean, Assistant General Counsel for International Law, C–20, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2972.

Dated: September 30, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–23008 Filed 10–5–87; 8:45 am]

BILLING CODE 4910–62–M

[Docket 45165]

Aviation Proceedings; Assignment of Seattle/Portland-Japan Service Proceeding

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 87–23009 Filed 10–5–87; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 87–074]

Towing Safety Advisory Committee, Subcommittee on Personnel Manning and Licensing; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The Subcommittee on Personnel Manning and Licensing will meet on 27 October 1987 in Room 1105 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will commence at 3:00 p.m. and end prior to 5:00 p.m. The agenda for the meeting will be the following discussion item:

(a) Issues involving the local knowledge requirements for the licensing of pilots on tankbarges.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Captain J. J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593–0001 or by calling (202) 267–1477.

Dated: September 30, 1987.

B. P. Novak,

Acting Executive Director, Towing Safety Advisory Committee.

[FR Doc. 87–22997 Filed 10–5–87; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Proposed Advisory Circular on Modified Seats and Berths Initially Approved Under a Technical Standard Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration has proposed an advisory circular to provide information and procedural guidance for the approval and installation of modified seats and berths initially approved under a technical standard order in the U.S. type certificated aircraft. The Federal Aviation Regulations require design and installation approval of modifications to each seat or berth. The proposed advisory circular will provide information and procedural guidance concerning the approval and installation of modified technical standard order (TSO) seats and berths in U.S. type certificated aircraft.

DATE: Commenters must identify File AC No. 21– (AWS–120/ASW–150) and submit comments in duplicate on or before November 20, 1987.

ADDRESSES: Send all comments on the proposed advisory circular (AC) to: Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, File AC No. 21– (AWS–120/ASW–150), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments to: Room 335D, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur J. Hayes, Technical Analysis Branch, AWS–120, Telephone (202) 267–9937.

SUPPLEMENTARY INFORMATION: Any interested person not receiving copies of this proposed AC should contact the person named under **"FOR FURTHER INFORMATION CONTACT."**

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. All comments received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final AC. The proposed AC and comments received may be examined in Room 335D, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m. weekdays, except Federal holidays.

Issued in Washington, DC, on September 28, 1987.

M.C. Beard,

Director of Airworthiness.

Modified Seats and Berths Initially Approved Under A Technical Standard Order

1. Purpose.

This advisory circular provides information and procedural guidance concerning the approval and installation of modified technical standard order (TSO) seats and berths in U.S. type certificated aircraft.

2. Related Federal, Aviation Regulations (FAR) Sections

Sections 21.101, 21.305, 21.601, 21.611, 23.785 (former CAR 3.390), 23.853, 25.785 (former CAR 4b.358), 25.853, 27.785, 27.853, 29.785, 29.853, and 43.13 and Part 25, Appendix F, Parts I and II.

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3. Background

Minimum performance standards for aircraft seats and berths are established by TSO-C39b in conjunction with National Aircraft Standards (NAS) Specification NAS 809. Because owners or operators of air carriers, air taxi, and general aviation aircraft often prefer use of different features (such as their own upholstery), seats and berths approved under TSO procedures may be modified prior to installation. The FAR require FAA approval of each seat or berth after any design change. Therefore, the installer has the responsibility to assure that the modified seat or berth is approved prior to installation in an aircraft. FAR 21.305 states that whenever a material, part, process, or appliance is required to be approved, it may be done under a parts manufacturer approval, under a TSO, in conjunction with type certification procedures, or in any other manner approved by the Administrator.

4. Discussion

a. Approval Considerations

1. (1) *Applicable Regulations.* Each applicant seeking approval of a modified TSO seat or berth for installation in an aircraft must show that the article meets the design alteration requirements of FAR Part 43, the applicable airworthiness requirements for that aircraft as specified in paragraphs (a) and (b) of FAR 21.101, or the requirements of FAR 21.305(b) if the applicant is the seat or berth manufacturer and elects to show that the modified article still meets the TSO standards.

(2) *General Design.* The modified seat or berth, as installed, should not have design features or details that experience has shown to be hazardous.

(3) *Material and Workmanship.* The materials used on the modified seat or berth should continue to be of a quality that meets the TSO standards. Workmanship also should be consistent with high-grade aircraft manufacturing practice. In addition, all material contained in the article should be protected against deterioration or loss of strength that may result in service from weather, corrosion, abrasion, or other causes.

(4) *Structural Tests.* For each seat or berth previously produced, tested, and certified to structural specifications (i.e., NAS 809), the effect of the modification on the validity of those tests should be addressed. For example, in NAS 809, subparagraph 4.3.1, side-load and up-load tests assume seat and back cushions are in place and the seat cushion is compressed 2 inches for the location of the load application. Modification of a seat cushion may necessitate an analysis to verify that the NAS 809 specifications are still met. If the specifications are not met, additional tests or analysis will be necessary.

(5) *Fire and Flammability Tests.* The modified seat or berth assembly should be demonstrated to meet the fire and flammability requirements for the aircraft for which installation approval is desired. In addition, consideration should be given to the flammability requirements that may be applicable, based on the type of operations (i.e., FAR 91, 121, or 135).

(6) *Marking.* (i) If the modified seat or berth incorporates only a minor change by the manufacturer holding the TSO authorization, the provisions of FAR 21.611(a) apply, and the TSO marking need not be changed, except as the manufacturer elects with respect to changed part numbers.

(ii) If the modified seat or berth incorporates a major change by the manufacturer holding the TSO authorization and if the modified seat or berth continues to meet the TSO requirements, the provisions of FAR 21.611(b) apply. The manufacturer must re-mark the modified article to show the new type or model designation and must obtain a new TSO authorization.

(iii) If a person other than the original manufacturer incorporates any design change in a previously TSO'd seat or berth, the provisions of FAR 21.611(c) apply. If that person is a manufacturer, that manufacturer must apply for a separate TSO authorization to obtain TSO approval under FAR Part 21. Marking of the modified article would be the same as for any other newly-authorized TSO article, with all previous markings deleted. Persons, other than manufacturers seeking TSO authorization, may obtain approval for design changes under Part 43 or under the applicable airworthiness regulations (Parts 23, 25, 27, 29, etc.), in which case, articles for which approval is obtained will have no TSO markings.

(iv) If a modified seat or berth does not continue to meet TSO standards, the TSO identification on the original manufacturer's nameplate should be permanently removed in a manner such that it cannot be restored. A seat or berth so modified and installed in an aircraft should be approved as part of the aircraft type design in conjunction with the type certification procedures of FAR Part 21.

b. Documentation

After successfully showing compliance with the applicable regulations, the installer should receive approval from the FAA for the design change and receive manufacturing authorization under one of the methods specified in FAR 21.305.

[FR Doc. 87-22977 Filed 10-5-87; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP 87-12; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; General Motors Corp.

General Motors Corporation of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," on the basis that it is inconsequential as it related to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 101 specifies individual identifying symbols for the windshield washer control and the windshield washer and wiper combined control. These controls are required by Standard No. 101 to be capable of being illuminated whenever the headlights are activated. General Motors has determined that a total of forty-eight 1987 Brigadier trucks were manufactured with the windshield washer controls incorrectly identified. The symbol for windshield washer and wiper combined was used instead of the identifying symbol for windshield washer. General Motors supports its petition with the following:

1. "The washer control in question is properly identified on the control itself with the symbol specified in FMVSS 101. The incorrect symbol usage is limited to an adjacent identification which is present for purposes of meeting the illumination requirement of FMVSS 101.

2. The Owner's Manual clearly illustrates and describes the washer control and its function.

3. A driver will easily and readily recognize this control, especially the skilled professional driver of heavy duty commercial vehicles such as the Brigadier."

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corporation described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below:

Comment Closing date: November 5, 1987.

(Sec. 102, Pub. L. 83-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 1, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-23078 Filed 10-5-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 29, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0274.
Form Number: 2163(c).
Type of Review: Extension.
Title: Employment—Reference Inquiry.
Description: Form 2163 is used by IRS to verify past employment history and to question listed and developed references as to the character and integrity of current or potential IRS employees. The information received is incorporated into a report on which a security determination is based.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Burden: 4,000 hours.
OMB Number: 1545-0491.
Form Number: 6243.
Type of Review: Extension.
Title: Small Business Tax Workshop Registration Form.
Description: The forms are necessary for the promotion of the SBW Program. Form 6243 is prepared mainly to record walk-in and telephone inquiries or for taxpayers to mail in to District Offices.
Respondents: Individuals or households, Federal agencies or employees, Small businesses or organizations.
Estimated Burden: 20,000 hours.
OMB Number: 1545-0805.
Form Number: 5472.
Type of Review: Revision.
Title: Information Return of a Foreign Owned Corporation.
Description: Form 5472 is used to report the activities between domestic corporations and foreign corporations that have a trade or business in the U.S. and that are owned by foreign persons. The form is used to report the activities between the foreign owned foreign corporation and foreign persons related to the activities. The IRS uses Form 5472 to determine if there are any income tax liabilities for the persons related to the activity.
Respondents: Businesses or other for-profit.
Estimated Burden: 337,554 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Comptroller of the Currency

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Regional Bank Fact Book Questionnaire.
Description: This information is needed to insure and evaluate the safety and soundness and to identify trends concerning the financial condition of regional national banks. It is a pilot program. This voluntary information collection is sent to the 20 largest regional banking companies in OCC's Northeastern District.
Respondents: Businesses or other for-profit.
Estimated Burden: 160 hours.
Clearance Officer: Eric Thompson, (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Robert Fishman, (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Financial Management Service

OMB Number: 1510-0006.
Form Number: TFS 6312.
Type of Review: Extension.
Title: Current Federal Process Agent Appointments.
Description: Information is collected from Treasury certified insurance companies to provide Treasury with a listing of judicial districts in which a process agent has been appointed for service of process for a civil action by a Federal agency.
Respondents: Businesses or other for-profit.
Estimated Burden: 306 hours.
Clearance Officer: Hector Leyva, (301) 436-5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-23069 Filed 10-5-87; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Financial Guidelines for Qualification of Surety Companies

AGENCY: Financial Management Service, Treasury.

ACTION: Proposed guideline; extension of comment period.

SUMMARY: The Department of the Treasury published a notice of proposed financial guideline on August 5, 1987, at 52 FR 29115. The comment deadline on the financial guideline was October 4, 1987.

The Department of the Treasury has received a request to extend this comment period. In order to ensure that Treasury is able to consider comments form all interested parties, the comment deadline is being extended to October 19, 1987.

DATES: The proposed additional financial guideline for companies seeking or holding Treasury Authority is

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proposed to become effective December 31, 1987. Under the proposed guideline, companies holding a Treasury Certificate of Authority at December 31, 1987, will have until December 31, 1990, to meet the additional financial standard.

Comment Deadline: All comments or inquiries received on or before October 19, 1987, will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept.-FMS, 1725 I St., NW., Rm. 1008A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone-(202) 634–2214.

Dated: October 1, 1987.

Thomas F. Meade,

Acting Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87–23018 Filed 10–1–87; 12:46 pm]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) a description of the need and its use, (5) how often the form letter must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form letter, and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 30, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Office of Personnel and Labor Relations.
2. Inquiry Concerning Applicant for Employment.
3. VA Form Letter 5–127.
4. This information is used to determine fitness and qualifications for employment.
5. On occasion.
6. Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees.
7. 12,500 responses.
8. 3,125 hours.
9. Not applicable.

[FR Doc. 87–22985 Filed 10–5–87; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 52, P. 37042.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 7, 1987.

Changes: Item Concerning Bunk Beds deleted. Item concerning 16 CFR 1015.12 added.

Listed below is the Revised Agenda:

Commission Meeting, Wednesday, October 7, 1987, 10:00 a.m., Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Open to the Public

1. *FY 88 Operating Plan.* The Commission will consider the Fiscal Year 1988 Operating Plan.

2. *16 CFR 1015.12:* The Commission will discuss the prvisions of CPSC's Freedom of Information Act regulation concerning Congressional requests for Commission documents.

Agenda revised 10/1/87 to delete previous item 1 concerning bunk beds and add present item 2 concerning 16 CFR 1015.12.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
October 2, 1987.
[FR Doc. 87–23166 Filed 10–2–87; 1:56 pm]
BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Notice.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on September 18, 1987 (52 FR 35349) of a special meeting of the Farm Credit Administration Board (Board) which was held on September 22, 1987. This notice is to reflect a revision to the agenda for that meeting to include two additional items to the closed portion.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 833–4010.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: The following portions of the meeting were closed to the public:

1. Litigative Strategy; [1] and

2. Prior Approval Matters Relating to Farm Credit System Employee Programs and Policies.[2]

Dated: October 2, 1987.

David A. Hill,
Secretary, Farm Credit Administration Board.
[FR Doc. 87–23168 Filed 10–2–87; 1:57 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, September 29, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the applications of Northwest Florida State Bank, Pensacola, Florida, a proposed State nonmember bank, which it to be a successor institution to First Mutual Savings and Loan Association, a Stock Corporation, Pensacola, Florida, for Federal deposit insurance; for consent to merge with First Mutual Bank, Pensacola, Florida, a State nonmember bank, in organization, under the charter and title of First Mutual Bank; and for consent to establish the fifteen branches of Northwest Florida State Bank as branches of the resultant bank.

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(10).

[2] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4) and (6).

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: October 1, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87–23195 Filed 10–2–87; 3:04 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 29, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Matters relating to certain financial institutions.

Memorandum regarding the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 1, 1987.

Federal Deposit Insurance Corporation.

Hoyle R. Robinson,
Executive Secretary.
[FR Doc. 87–23196 Filed 10–2–87; 3:04 pm]
BILLING CODE 6714–01–M

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 35992, September 24, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Thursday, October 1, 1987.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Preliminary consideration of testimony on banking issues. (This item was originally announced for a closed meeting on September 21, 1987.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: October 1, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–23160 Filed 10–2–87; 8:45 am]

BILLING CODE 6210–01–M

PAROLE COMMISSION

DATE AND TIME: Thursday, October 1, 1987—1:30 p.m. Eastern Daylight-Savings Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, by conference telephone call.

STATUS: Closed pursuant to vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Record review on an application for a certificate of exemption under 29 U.S.C. section 504(a).

CONTACT PERSON FOR MORE INFORMATION: Rockne Chickinell, Attorney, Office of General Counsel, United States Parole Commission, (301) 492–5959.

Date: September 30, 1987.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 87–23134 Filed 10–2–87; 11:08 am]

BILLING CODE 4410–01–M

PAROLE COMMISSION

Record of Vote of Meeting Closure

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at 1:40 p.m. (EDT) on Thursday, October 1, 1987, by conference telephone call initiated at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 2:00 p.m. (EDT). The purpose of the meeting was to decide an application for a certificate of exemption under 29 U.S.C. section 504(a). Six Commissioners were present, constituting a quorum, when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and a certification of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Saundra Brown Armstrong (Belmont, California); Vincent J. Fechtel (Chevy Chase, Maryland); Daniel R. Lopez (Philadelphia, Pennsylvania); G. MacKenzie Rast (Atlanta, Georgia); Cameron M. Batjer (Chevy Chase, Maryland) and Benjamin F. Baer (Chevy Chase, Maryland). The Commissioners and two attorneys from the Commission's legal staff attended.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: October 1, 1987.

Benjamin F. Baer,

Chairman, United States Parole Commission.

[FR Doc. 87–23135 Filed 10–5–87; 11:08 am]

BILLING CODE 4410–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 5, 1987:

Closed meetings will be held on Thursday, October 8, 1987, at 10:30 a.m. and following the 2:30 p.m. open meeting. An open meeting will be held on Thursday, October 8, 1987, at 2:30 p.m., Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9) (A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Thursday, October 8, 1987, at 10:30 a.m., will be:

Application for Commission order involving commencement of administrative proceeding.

Subpoena enforcement action.

Institution of injunctive actions.

Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, October 8, 1987, at 2:30 p.m., will be:

Oral argument on an appeal by RFG Options Co., a registered broker-dealer, and Eugene V. Rintels, Andor A. Fleischman, and Dennis G. Guy, the firm's general partners, from an administrative law judge's initial decision. For further information, please contact Daniel J. Savitsky at (202) 272–7400.

The subject matter of the closed meeting scheduled for Thursday, October 8, 1987, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

Jonathan G. Katz,

Secretary.

September 29, 1987.

[FR Doc. 87–23110 Filed 10–1–87; 4:50 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

Correction

In proposed rule document 87-22515 beginning on page 36589 in the issue of Wednesday, September 30, 1987, make the following correction:

On page 36589, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, the telephone number should read "(202) 254-9430."

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2290]

Declaration of Disaster Loan Area, Pennsylvania

Correction

In notice document 87-22255 appearing on page 36325 in the issue of Monday, September 28, 1987, make the following correction:

In the third column, under *Percent*, in the sixth line, "9.000" should read "9.500".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-34]

State of Illinois Fee on Transportation of Spent Nuclear Fuel; Inconsistency Ruling; Wisconsin Electric Power Co. et al.

Correction

In notice document 87-22128 beginning on page 36200 in the issue of Friday, September 25, 1987, make the following corrections:

1. On page 36200, in the first column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the 8th line, "HHMR" should read "HMR", and in the 11th line, "set" should read "sets".

2. On the same page, in the second column, in designated paragraph 1, in the sixth line, "fee" should read "fees".

3. On page 36201, in the second column, in the third paragraph, in the 12th line, "HMNTA" should read "HMTA".

4. On page 36202, in the third column, in the second complete paragraph, in the fifth line, delete "to".

5. On page 36204, in the second column, in the first complete paragraph, in the eighth line, "Surrey" was misspelled.

6. In the same column, in the second complete paragraph, in the 16th line, "licenses" should read "licensees".

7. In the same column, in the fourth complete paragraph, in the eighth line, "prenotification" was misspelled.

8. On page 36205, in the first column, in the fifth complete paragraph, in the 16th line, the second "of" should read "or".

9. On page 36206, in the first column, in the last line, "cite" should read "cites".

10. On the same page, in the second column, in the second line, insert a comma after "Co."

11. In the same column, in the first complete paragraph, in the 17th line, "accomplished" should read "accomplish".

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28 CFR Part 44

Unfair Immigration-Related Employment Practices; Final Rule

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DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1225–87]

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule establishes standards and procedures for the enforcement of section 102 of the Immigration Reform and Control Act of 1986 (IRCA), which prohibits certain unfair immigration-related employment practices.

EFFECTIVE DATE: November 5, 1987.

ADDRESS: Comments received on the Notice of Proposed Rulemaking will remain available for public inspection in the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, 1100 Connecticut Avenue, NW., Suite 800, Washington, DC 20036, from 9:00 A.M to 5:00 P.M., Monday through Friday, except legal holidays, until December 7, 1987.

FOR FURTHER INFORMATION CONTACT: Mary E. Mann, Acting Special Counsel for Immigration-Related Unfair Employment Practices, Office of the Special Counsel, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490; (202) 653–8121 (Voice) or (202) 724–7678 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (Pub. L. 99–603, 100 Stat. 3359), prohibits employers from knowingly hiring, or recruiting or referring for a fee, any alien not authorized to work in the United States. Out of concern that this prohibition and the sanctions created by the Act to enforce it might lead to employment discrimination against "foreign looking" or "foreign sounding" persons or against persons who, although not citizens, are legally in the United States, Congress in section 102 of the Act (8 U.S.C. 1324b) outlawed certain unfair immigration-related employment practices and established enforcement procedures to enforce these prohibitions.

Section 102 of the Act, with specified exceptions, makes it an unfair immigration-related employment practice to discriminate against an individual in hiring, discharging, or recruiting or referring for a fee because of an individual's national origin or, in the case of a citizen or intending citizen, because of that individual's citizenship status.

In order to prevent the occurrence of these practices and to provide redress for persons injured by them, section 102 establishes enforcement measures and provides for appointment of a "Special Counsel for Immigration-Related Unfair Employment Practices" within the Department of Justice. Among the Special Counsel's statutory responsibilities is the investigation of unfair immigration-related employment practices either on his or her own initiative or in response to charges filed with the Office of the Special Counsel by aggrieved individuals, their representatives, or officers of the Immigration and Naturalization Service (INS).

Where there is reasonable cause to believe that such practices have occurred, the Special Counsel may file a complaint with an administrative law judge. The Special Counsel may also seek to intervene in proceedings involving complaints brought directly before administrative law judges. (The statute provides that a charge filed with the Special Counsel may be brought directly before an administrative law judge by a private party, if the Special Counsel fails to file a complaint with an administrative law judge within 120 days of receipt of the charge.) Once the administrative law judge issues an order, the Special Counsel may seek judicial enforcement of the judge's order in the appropriate Federal district court or judicial review of the order in the appropriate Federal court of appeals.

This final rule in three subparts implements section 102 of the Act. Subpart A states the purpose of the regulation and defines certain key terms; Subpart B provides substantive guidance as to the meaning of the term, "unfair immigration-related employment practices;" and Subpart C establishes procedures specifying how private individuals may file charges with the Special Counsel and the manner in which the Special Counsel will proceed to investigate these charges.

On March 23, 1987, the Department of Justice published a Notice of Proposed Rulemaking (NPRM). In response to this NPRM the Department received 66 comments, some signed by more than one individual or organization. Twenty-two of these comments came from persons or organizations in the District of Columbia, 23 from California, 7 from New York, and the remaining 14 comments came from 11 other States. Of the 66 comments, 19 came from civil rights groups, church organizations, or associations representing the interests of aliens; 16 came from employers or organizations representing the interests of employers; 19 came from individual members of the general public; 8 came from Federal, State, or local governments; and 4 came from members of the United States Congress.

The Department read and considered each comment. The decisions that the Department made in response to these comments were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments.

The purposes of this preamble are to highlight key features of the final rule, indicate changes from the NPRM, and address various issues raised in the comments.

I. Counting Employees for Jurisdictional Purposes

Section 44.200 of the rule prohibits unfair immigration-related employment practices in accordance with the terms of the statute. Paragraph (b) of § 44.200 codifies the Act's exceptions to this general prohibition. Among the exceptions is an exclusion from coverage of employers with three or fewer employees (§ 44.200(b)(1)(i)). In addition, if the national origin discrimination is covered under section 703 of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2), there is no overlapping jurisdiction under the Immigration Reform and Control Act (§ 44.200(b)(1)(ii)). In this regard, it is noted that section 703 of title VII only applies to employers with 15 or more employees "for each working day in each of twenty or more calendar weeks in the current or preceding calendar year" (42 U.S.C. 2000e(b))

Unlike title VII, section 102 does not contain the 20 calendar week durational minimum. In light of the language and legislative history of the IRCA antidiscrimination provisions, the Special Counsel will calculate the number of employees referred to in paragraph (b)(1)(i) of § 44.200 by counting all part-time and full-time employees employed on the date that the alleged discrimination occurred. The Department, therefore, will not use the 20 calendar week requirement contained in title VII in counting employees for purposes of determining coverage by section 102. The Department will, however, use the 20 calendar week requirement for purposes of determining whether the exception of paragraph (b)(1)(ii) of § 44.200 applies, and will refer to EEOC charges of national origin discrimination that the Special Counsel determines are covered by section 703 of title VII. This is the same position that the Department took in its NPRM.

Another exception to the citizenship discrimination prohibitions of section 102 is codified in § 44.200(b)(1)(iii). Under that exception, an employer is permitted to discriminate on the basis of citizenship status if such discrimination (a) is required to comply with law, regulation, or executive order, or (b) is required by Federal, State, or local government contract, or (c) if it is determined by the Attorney General to be essential for an employer to do business with an agency or department of the Federal, State, or local government. Therefore, an employer may not impose a blanket citizenship requirement for all jobs in its workforce unless such a requirement can be justified for each job under this exception.

II. Standard of Proof

The general rule prohibiting unfair immigration-related employment practices in section 102 of the Act is codified in § 44.200(a) of the final rule.

Most of the comments that the Department received concerned the proposed standard of proof in § 44.200(a). These comments were provided by civil rights groups, Members of Congress, employer representatives, and others. The Department has reviewed these comments carefully. The Department concludes that its original determination that the statute prohibits intentional discrimination rather than neutral conduct with an unintended disparate impact is sound.

Commenters made several points in setting forth the case for a disparate impact standard in this area that should be addressed.

Some commenters stated that section 102, containing the antidiscrimination provisions, was intended to fill gaps in coverage under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e to 2000e–16) and that section 102 was intended to broaden title VII. Indeed, some commenters made reference to a remark in the House Conference Report: "The bill broadens the title VII protections against national origin discrimination * * *." H.R. Rep. No. 99–1000, 99th Cong., 2d Sess. 87 (1986). This remark in full context, however, obviously has no reference to the standard of proof to be satisfied under the new statute. Rather, the "broadened" protections in the national origin area refer to the increase in the number of employers subject to a ban on national origin discrimination (i.e., those who have 4 employees to 14 employees and employers who may have 15 or more employees, but for less than 20 weeks in a calendar year) and to the coverage of certain employers not covered by title VII, such as certain businesses located on or near Indian reservations (42 U.S.C. 2000e–2(i)) (thus expanding the scope of the ban on national origin discrimination).

With respect to the substantive standards of the antidiscrimination provisions, they, in turn, are discerned from the operative portions of IRCA's antidiscrimination provisions themselves, 8 U.S.C. 1324b(a), and, to the extent necessary, resort to the legislative history. That history reflects that the concern giving rise to the adoption of the antidiscrimination provisions was the fear that employers seeking to avoid sanctions would simply refuse to hire, or would fire, persons who look or sound foreign. Such practices are necessarily reflective of intentional discrimination. By tying the antidiscrimination provisions of the bill closely to the sanctions provisions and in identifying the concerns that underlie the antidiscrimination provisions in the Act, as is reflected throughout the legislative history, it is quite clear that Congress was attempting to reach intentional discrimination and was expanding the scope of such an existing ban in the national origin context. Indeed, as mentioned earlier, the Conference Report notes that the bill only provides such protection while sanctions are in effect. H.R. Rep. No. 99–1000, *supra*, at 87 (1986).

It is also anomalous to claim that Congress intended to expand broadly the substantive standards of title VII rather than the scope of coverage of one form of discrimination prohibited by title VII. Not only did Congress not amend title VII itself, but also Congress did not go as far as title VII in substance when it banned national origin discrimination in IRCA: Section 102 of this Act does not prohibit discrimination in compensation, promotions, or any other term or condition of employment other than hiring, firing, and recruitment or referral for a fee. This difference in the types of employment practices covered buttresses the view that references to "broadening" the scope of title VII reflects the increase in the number of employers subject to a ban on intentional national origin discrimination, rather than the incorporation of a substantive disparate impact standard.

Some commenters have taken out of context statements in the legislative record that Members of Congress were concerned that the sanctions provisions would "result" in discrimination. For example, the Conference Report notes that the anti-discrimination provisions would be repealed if Congress adopts a joint resolution approving a GAO finding "that the sanctions had resulted in no significant discrimination * * *." *Id.* Congressman Rodino said, following the Report of the Conference, "[the anti-discrimination] provision is a direct response to the fears and concerns expressed by many Hispanic organizations that sanctions would automatically result in discrimination based on national origins." 131 Cong. Rec. H10,584 (daily ed. Oct. 15, 1986).

Some commenters noted, in addition, the following comments: "Conferees wish to emphasize that the anti-discrimination provision has been included in order to respond to the fears and concerns expressed by many that the sanctions will result in employment discrimination based on national origin or citizenship status." H.R. Rep. No. 99–1000, *supra*, at 87–88. The report of the House Committee on Education and Laobr "strongly endorses this [antidiscrimination] provision and * * * expresse[s] its fear that the imposition of employer sanctions will give rise to employment discrimination against Hispanic Americans and other minority group members. It is the committee's view that if there is to be sanctions enforcement and liability there must be an equally strong and readily available remedy if resulting employment discrimination occurs. In the last Congress, the full House of Representatives recognized the potential for this unfortunate cause and effect relationship between sanctions enforcement and resulting employment discrimination * * *" and adopted the "so-called 'Frank Anti-discrimination' amendment." H.R. Rep. No. 99–682, 99th Cong., 2d Sess., pt. 2, at 12.

These excerpts from the legislative history reflect the concern of some members of Congress that IRCA's sanctions provisions could lead to (or "result in") discrimination—not what some might call statistical discrimination or numerical imbalances, but intentional discrimination. The term "result," as used in the referenced colloquies or passages, was never offered as a legislative standard of proof, but was only mentioned to express possible consequences that might flow from the imposition of sanctions. The post hoc suggestion that the word should be wrenched from the context in which it was obviously used, and recast in terms of a legal standard that tolerates a finding of wrongdoing on less than a demonstration of intentional discrimination, cannot be accomplished grammatically, let alone legally.

Some commenters have suggested that the disjunctive use of the phrase

"pattern or practice of discriminatory activity" (8 U.S.C. 1324b(d)(2)) as an alternative to "knowing and intentional discrimination" provides sufficient latitude to read into the "pattern or practice" phrase activity having an unintended disparate impact. But, as discussed in the preamble to the NPRM (52 FR 9275), Congress unambiguously expressed its view that the phrase "pattern or practice" embraced only intentional discrimination. The House Judiciary Committee in its section-by-section analysis of section 274B(d) (8 U.S.C. 1324b(d)) noted that it "[a]uthorizes private action where the Special Counsel has not filed a complaint within 120 days based on a charge alleging knowing and intentional discriminatory activity or a pattern or practice of *such* activity." H.R. Rep. No. 99-682, 99th Cong., 2d Sess., pt. 1 at 93 (1986) (emphasis added). Moreover, in explaining its use of the term "pattern or practice" in a different portion of the Act dealing with criminal sanctions against employers, the House Judiciary Committee emphasized that "pattern or practice" refers to intentional activities and noted that this interpretation should apply in the unfair immigration-related employment practices context as well.

> [T]he term "pattern or practice" has its generic meaning and shall apply to regular, regular, repeated and intentional activities, but does not include isolated, sporadic or accidental acts. The same interpretation of "pattern or practice" shall apply when that term is used in this bill with regard to the injunctive remedy that may be sought by the Attorney General for recruitment, referral or employment violations, as well as for certain unfair immigration-related employment practices.

Id. at 59. By including this phrase in 8 U.S.C. 1324b (d) (2) Congress undertook to make plain that a private party could not only bring a case alleging isolated or sporadic acts of intentional discriminatory discrimination but could also bring a case of repeated, intentionally activities with many victims.

Some commenters responded to the analogy drawn between section 102 of the Act and section 703(a)(1) of title VII. They noted that some courts, *e.g., Wambheim* v. *J.C. Penney Co., Inc.*, 705 F.2d 1492 (9th Cir. 1983), *Colby* v. *J.C. Penney Co., Inc.*, 811 F.2d 1119 (7th Cir. 1987), have indicated that a case of disparate impact can be brought under section 703(a)(1), and, therefore, assert that our analogy to title VII is faulty. These comments misconstrue the point made in the Notice of Proposed Rulemaking. The NPRM stated that the language of section 102 is analogous to language in section 703(a)(1) upon which the disparate treatment prong of title VII is generally based. Section 703(a)(2), which speaks of "adversely affecting" employees, is generally the basis for the impact standard. That a minuscule number of cases (*Colby* is inapt as an indicator of congressional intent since it was decided after IRCA's enactment) suggest section 703(a)(1) may support use of a disparate impact standard when the overwhelming number of intent cases under title VII at the time of IRCA's enactment are premised on section 703(a)(1), *see, e.g., McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973); *City of Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702 (1977), and the overwhelming number of title VII impact cases are premised on section 703(a)(2), *see, e.g., Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), *Connecticut* v. *Teal*, 457 U.S. 440 (1982), does not suggest the analogy is invalid in discerning the meaning of these IRCA provisions, as intended by Congress.

Because Congress did not amend title VII itself to encompass alienage discrimination and a broader range of employers engaging in national origin discrimination, and in light of Congress' general purposes in enacting section 102, Congress' reliance on language analogous to section 703(a)(1), from which the intent standard is generally derived, rather then section 703(a)(2), from which the impact standard is generally derived, amply supports the position taken by the Department in the NPRM.

If Congress had wanted to use an "effects" standard, it certainly could have done so, either directly or by incorporating language analogous to section 703(a)(2), which has been repeatedly construed in title VII discrimination law to provide for such a standard. It chose not to do so and all of the relevant indicators in the legislative history reinforce the conclusion that the reason rested on a considered legislative judgement to prohibit only intentional discrimination.

Some commenters have erroneously asserted that, while a refusal to hire anyone with accented speech or dark skin, hair and eyes falls within the intentional discrimination prong of employment discrimination law, facially neutral policies, such as "English-only" rules, lengthy residence requirements, or a hierarchy of preferred documents for employee verification can only be challenged under the disparate impact theory. This is untrue. The intent standard makes illegal facially neutral policies which are intended to discriminate on prohibited bases and have that effect. Indeed, this has been true in American jurisprudence since at least the case of *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886), wherein the Supreme Court ruled that the discriminatory application of a facially neutral policy requiring special approval for the operation of laundries made of a material other than brick or stone was illegal under the 14th Amendment because those who enforced it applied it deliberately to put only Chinese-owned laundries operating in buildings of wood out of business while similarly situated laundries owned by non-Chinese were not denied the right to continue to conduct business. Further, a facially neutral policy neutrally applied, but adopted for the purpose of discriminating on a prohibited basis and having that effect, is similarly prohibited. Indeed, this misconception of the intent standard may be a substantial part of the reason for concern over the use of this standard in the context of the immigration reform effort.

While the preamble to the Notice of Proposed Rulemaking touched upon the operation of the intent standard, further elaboration on that discussion would be useful. Discriminatory intent may be shown by both direct and circumstantial evidence. Thus, the discriminatory intent standard encompasses more than just cases where employers have made bigoted remarks or openly engage in facilally disparate treatment. In order for an individual to prevail in a case of disparate treatment, the model of proof in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), and *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981), is applicable. Thus, an individual would make a *prima facie* showing by proving that he or she is part of a national origin or citizenship status group, that he or she applied for a job and was rejected, that the job was kept open and given to another individual of similar qualifications. At this point, the burden of production shifts to the employer to come forward with a nondiscriminatory explanation for the rejection of the charging party. If an explanation is produced, the charging party then has the opportunity to show that this reason was a pretext and that the employer's refusal to hire him or her is because of national origin or citizenship status. Moreover, while under this standard it is not sufficient to allege that an action results in disproportionate impact, statistics may be used in appropriate cases to aid in proving discriminatory intent. Courts and administrative

agencies at all levels of government routinely infer intentional discrimination in employment, as well as in other areas of discrimination law.

Indeed, without suggesting how individual cases will be handled by the Special Counsel, an example concerning an "English-only" rule is instructive. If an employer who has been in business for several years and has successfully obtained satisfactory employees without the use of an "English-only" rule, adopts such a rule after November 6, 1986, when this Act became law, and if the adoption of that rule falls with disproportionate impact on a particular citizenship stastus group or national origin group, the Special Counsel is well justified under the intent standard in pursuing an investigation to seek an explanation for the adoption of such a rule. While it is feasible that an employer will have a legitimate, nondiscriminatory reason for the adoption of an English language rule during this particular period, the circumstances surrounding the adoption of this new rule may well give rise to a determination by the Special Counsel of a violation of the anti-discrimination provisions in a number of cases.

At least one commenter suggested that it was irrational and illogical to subject employers to different liability standards based solely on their size. The Department disagrees with this observation. Congress clearly desired to prevent employers from protecting themselves from sanctions by refusing to hire persons who look and sound foreign, i.e., from engaging in intentional discrimination. Congress also wished to reach employers with four or more employees. It was not irrational or illogical for Congress to rely upon an existing enforcement mechanism for employers already prohibited from intentional national origin discrimiantion i.e., title VII, even through title VII also proscribes additional conduct, and to create a new mechanism, under section 102 of IRCA, to cover those additional employers and the citizenship discrimination claims it sought to reach.

One commenter suggested that there is an inconsistency in the Department's supposedly taking the position that Congress only prohibited intentional discrimination flowing from fear of sanctions yet covering all intentional discrimination under section 102, whether or not flowing from an employer's desire to avoid sanctions, but refusing to extend the antidiscrimination provisions to disparate impact discrimination. The Department believes there is no inconsistency at all in Congress' banning all intentional discrimination because of its fear that employers desire to avoid sanctions would lead to intentional discrimination in light of the likely difficulty for a charging party or the Special Counsel to prove that such discrimination stemmed directly from an employer's desire to avoid sanctions. It is substantively far different, however, to expand the provisions of the Act through administrative action to a wholly different theory of discrimination, i.e., disparate impact.

Moreover, the preamble to the NPRM did not state that Congress only wished to prohibit international discrimination flowing from sanctions. Rather it said: "Congress' purposes in enacting section 102 is clearly to address intentional discrimination" (52 FR 9275). It then went on to note that the legislative history clearly reflected Congress' desire to prohibit intentional discrimination flowing from sanctions, but it did not state that that was the only species of intentional discrimination prohibited by the Act. The language of section 102 is broad enough to cover all intentional discrimination because of national origin or citizenship status.

The legislative history is also replete with the close connection between the sanctions provisions and the antidiscrimination provisions. Indeed, as mentioned earlier, the sunset provision in the antidiscrimination provisions is also tied to the sunset of the sanctions provisions. Congress' purpose in enacting section 102 was to address employer discrimination caused by the Act, i.e., employer efforts to avoid sanctions by refusing to hire, recruit or refer for a fee, or firing someone because the person looked or sounded "foreign." Congress was not talking about antidiscrimination provisions based on a past history of discrimination. Indeed, Congressman Rodino stated: "Antidiscrimination legislation of this nature is unprecedented in that it is based upon anticipated discrimination, rather than an historical pattern of past discrimination." 131 Cong. Rec. H10, 584 (daily ed. Oct. 15, 1986).

The Department reiterates that, with the easy means available to verify both identity and authorization to work, there is no excuse for any employer to discriminate on the basis of appearance or accent in a misguided effort to avoid sanctions. Indeed, INS rules reflect the statute's clear provision that, so long as the documentation appears reasonable on its face, and the employer does not knowingly hire a person not authorized to work, no sanctions will be imposed if an individual is later determined to be an alien unauthorized to work.

III. Procedures

Section 102 of the Act provides procedures for enforcement of its provisions. The final rule implements the statutory requirements and provides supplemental material where necessary.

Section 44.300 Filing a charge.

In accordance with the statute, charges of unfair immigration-related employment practices may be filed with the Special Counsel by aggrieved individuals, their authorized representatives, or by officers of the Immigration and Naturalization Service (§ 44.300(a)). A charge may be filed against any "person or entity" that engages in an unfair immigration-related employment practice. The regulation uses the statutory phrase "person or entity" in the definition of respondent in § 44.101(f), rather than "employer" because the statute covers practices by entities that may not be in an employment relationship to the aggrieved individual, e.g., recruitment or referral agencies, or unions or other organizations performing I–9 employment verification functions for employers.

One commenter indicated that the definition of charging party in the NPRM implied that only individuals, and not organizations, could file a charge on behalf of an injured party. The definition and related sections (§§ 44.101(b), 44.300(a)(1)) have been revised to clarify that private organizations may file on behalf of individuals. State or local government agencies or organizations, however, are not authorized to be complainants before administrative law judges because the statute speaks only of "private actions" (8 U.S.C. 1324b(d)(2)). Accordingly, they are also not included in the definition of charging party. Information provided to the Special Counsel by Federal, State, or local government organizations, of course, can form the basis of an investigation on the Special Counsel's own initiative. Federal officials, other than officers of the Immigration and Naturalization Service (who are authorized by statute to file charges), may not be charging parties. To permit other Federal officials to file charges would undermine the central Federal enforcement role contemplated by Congress for the Special Counsel.

The NPRM specified that the filing of a charge on another person's behalf must be authorized in writing. Some commenters urged that the injured party

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not be required to sign the charge in cases where he or she has authorized another individual or an organization to be the charging party. The Department agrees that it is not necessary to have the injured party's written authorization or signature on the charge, so long as the charging party affirms that he or she is authorized to file a charge on the injured party's behalf. The signature requirement of § 44.101(a) (10)(ii), therefore, has been deleted.

If a charging party is alleging the occurrence of an unfair immigration-related employment practice adversely affecting directly more than one person, only one injured person need be identified in the charge. As required by the statute, the regulation mandates that charges be filed within 180 days of the alleged discrimination. Thus, in the case of charges where more than one person has arguably been subjected to discrimination, only those persons who have been discriminated against within 180 days of the filing of the charge will be entitled to be protected by the anti-discrimination provisions.

Several commenters urged that the 180-day filing requirement not be made effective until the Office of Special Counsel is fully operational. We believe it would be illegal to toll the running of the 180-day period for this reason. Even though Congress made section 102 effective immediately upon its enactment and knew that an administrative enforcement structure could not be established immediately, it nevertheless established an unqualified 180-day filing requirement. It should be noted that an Acting Special Counsel was named by President Reagan on April 16, 1987. Further, a postal address was established for the receipt of charges within 180 days of the effective date of the statute. Charges should be sent to: Office of the Special Counsel for Immigration-Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490.

Section 44.300(d) of the final rule, which was not included in the NPRM, delineates the exclusive spheres of jurisdiction of the Office of the Special Counsel and EEOC over charges of unfair immigration-related employment practices in accordance with 8 U.S.C. 1324(b)(2).

The definition of "charge" lists information that the Special Counsel must have before proceeding with an investigation. The definition of charge as amended in the final rule requires an alien to disclose his or her alien registration number and date of birth. This information will enable the Special Counsel to verify whether an alien is authorized to work and, thus, protected by section 102.

If the injured party is an alien authorized to work, the regulation also requires the charging party to provide information concerning whether the alien: Is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or has been granted asylum under 8 U.S.C. 1158; has applied for naturalization and the date of such application; and has completed a declaration of intention to become a citizen and the date of such declaration. This information is required in order for the Special Counsel to determine whether the alien meets the statutory definition of "intending citizen" protected by the antidiscrimination provisions of the Act where the charge is based on citizenship status. (Authorized aliens need not establish "intending citizen" status in order to file a charge alleging national origin discrimination.) This information, which is required for a non-citizen or non-national injured party to assert a citizenship discrimination claim under the Act, should be within the injured party's knowledge and its disclosure will save time in the Special Counsel's investigations. Such information will also be useful even in cases where an alien alleges only national origin discrimination because the Special Counsel may determine that there has been discrimination on the basis of citizenship. However, if the charging party alleges only national origin discrimination, the omission of this information will not render the charge incomplete.

The definition of "citizen or intending citizen" requires that aliens make timely application for naturalization in order to acquire "intending citizen" status. We wish to emphasize that this requirement does not bar aliens who are not yet eligible to apply for naturalization, but who otherwise satisfy the requirements of the definition, from achieving "intending citizen" status and, thus, protection from citizenship discrimination under the statute.

The Department received a number of specific comments on the definition of "charge." One commenter argued that it is unreasonable to require injured parties or their representatives, particularly when they are not attorneys, to identify the alleged discrimination as citizenship or national origin discrimination. We believe that this information is important for the Special Counsel to be able to determine whether it has jurisdiction over part or all of the charge and, thus, whether to refer to the charge to EEOC for investigation under title VI when appropriate. Nothing in the rule forecloses a charging party from identifying the discrimination as both citizenship and national origin discrimination. A charging party, however, before he or she has filed a charge, must believe some form of prohibited discrimination occurred or the charge would not have been filed.

Several commenters urged that the definition of "citizen or intending citizen" in § 44.101(c) and the charge form be expanded to include aliens granted temporary resident status under the Special Agricultural Worker Program or the Replenishment Agricultural Worker Program. Expanding the definition, however, would contravene the express language of the statute. Of the myriad categories of aliens in the United States, Congress specifically chose to confer protection only on those four categories mentioned in the statute.

Aliens who are authorized to work by INS as a result of the amnesty application process may assert national origin discrimination claims and, upon meeting criteria for the status of "intending citizen," may file citizenship claims as well. In the case of an alien not authorized to work, but who indicates he or she intends to apply for amnesty, such an alien is regarded as authorized to work through September 1, 1987, and is protected by section 102 through September 1, 1987. Such an individual who, by September 1, 1987, has applied for amnesty and is authorized by INS to work during the pendency of the application will continue to be protected under relevant provisions of section 102. Of course, if authorization to work is withdrawn, the protections of section 102 cease.

One commenter queried whether the charge requirements would be satisfied if the declaration of intention to become a citizen were completed at some point after the occurrence of the alleged discrimination. In addition, several commenters urged that the declaration of intention requirement not become effective until a form evidencing this intent becomes widely available. It was asserted that the form currently used for this purpose (INS Form N–315, "Declaration of Intention") has fallen into disuse and that it could be executed only by legal permanent resident aliens.

We believe that the statute affords protection from citizenship discrimination only to those individuals who meet the statutory definition of "citizen or intending citizen" at the time

of the alleged discriminatory acts. Therefore, the written declaration of intention must be completed prior to the occurrence of the alleged discrimination acts. However, because of the initial unavailability of the new INS Form I–772, "Declaration of Intending Citizen," this requirement will not apply to acts of discrimination occurring prior to December 1, 1987. Therefore, for purposes of determining whether individuals are "intending citizens," the Special Counsel will deem them to have completed the new INS Form I–772 prior to any discriminatory act occurring between November 6, 1986, and December 1, 1987, if such individuals: (1) Complete the new INS Form I–772 on or before December 1, 1987, and (2) assert in a charge that, prior to the alleged act of discrimination, they intended to become U.S. citizens, and would have completed this form had it been available. "Completion" of a declaration of intention to become a citizen means that an INS Form N–315, "Declaration of Intention," has been filed with any court exercising naturalization jurisdiction (8 CFR 334a.1) or that an INS Form I–772, "Declaration of Intending Citizen," has been filed with the Immigration and Naturalization Service.

An alien authorized to work in the United States who is not an intending citizen can, of course, avail himself of the Act's protections against national origin discrimination.

In order to conform the regulation to the statute, the final rule contains a technical amendment to § 44.101(a)(6) that requires that a charge indicate whether the injured party is an alien "authorized to work in the United States." The proposed rule merely required the injured party to indicate whether he or she is an alien.

To facilitiate the filing of charges, the Department has prepared the following charge form that, if completed, would provide the Special Counsel with the information necessary to proceed with an investigation of the charge.

Department of Justice Office of the Special Counsel for Immigration-Related Unfair Employment Practices

Post Office Box 65490, Washington, DC 20035–5490

Charge Form for Unfair Immigration-Related Employment Practices

(1) Charging Party:

Full Name:_____
Other Names Ever Used: _____
Address: _____
City, State and Zip Code: _____
Telephone Number:_____
(Area Code)

Injured Party (if injured party is same as charging party, write "same")

Full Name:_____
Other Names Ever Used: _____
Address: _____
City, State and Zip Code: _____
Telephone Number:_____
(Area Code)

(2) Individual, business, or organization which you believe has discriminated:

Full Name:_____
Address: _____
City, State and Zip Code: _____
Telephone Number:_____
(if known) (Area Code)

(3) Individual, business, or organization has (check one):

____ Less than 15 employees, but more than 3 employees.
____ 15 or more employees.
____ Unable to estimate number of employees

(4) Injured party was discriminated against because of (check one or both):

____ National Origin
____ Citizenship

(5) Injured party is:

____ Citizen or national of the United States
____ Alien authorized to work in the United States
(Date of birth: _____)
(Alien registration number(s): _____)

If an alien authorized to work in the United States, injured party (check one, if applicable):

____ Is lawfully admitted for permanent residence
____ Has status of alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1)
____ Is admitted as a refugee under 8 U.S.C. 1157
____ Has been granted asylum under 8 U.S.C. 1158.

If an alien authorized to work in the United States, injured party:

____Has applied for naturalization
Date of Application: _____
____Has not applied for naturalization

If an alien authorized to work in the United States, injured party:

____Has completed a declaration of intention to become a citizen
Date of Declaration: _____

(6) When did the discrimination occur:

_____
(Date)

(7) Where did the discrimination occur:

_____
(Place)

(8) Describe the discrimination:

(Use additional sheets if necessary)

_____
_____
_____

(9) Has a charge based on this set of facts been filed with EEOC?

____ Yes
____No

If yes, which office?

Address: _____
City, State and Zip Code: _____
Telephone: _____
(Area Code)
Contact Person (if known): _____
Date filed: _____

(10) Affirmation and Signature of Charging Party:

(a) If this charge is being filed by the injured party:

As a person alleging that I have been injured by an unfair immigration-related employment practice, I understand that the Office of the Special Counsel may find it necessary to reveal my identity and other information during the conduct of the investigation of my charge, during any hearing or other proceeding as a result of my charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent. I affirm that, to the best of my knowledge, the information provided on this form is true.

_____
(Signature of injured Party)

_____
(Date)

(b) If this charge is being filed by an authorized representative of the injured party:

I affirm that, to the best of my knowledge, the information provided on this form is true and that I am authorized to file this charge on behalf of the injured party. I understand that the Office of the Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquires under the Freedom of Information Act. I give my consent.

_____
(Signature of Authorized Representative)

_____
(Date)

(c) If this charge is being filed by an INS officer:

I affirm that, to the best of my knowledge, the information provided on this form is true. I understand that the Office of the Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquires under the Freedom of Information Act. I give my consent.

_____
(Signature of INS Officer)

_____
(Date)

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Although the Department encourages use of the form, its use is optional. The Department intends to have copies of this form made available across the United States—at Offices of the Immigration and Naturalization Service, at Offices of the United States Attorneys, and at district, area, and local offices of the Equal Employment Opportunity Commission. This charge form will be available in both English and Spanish. If used, responsibility for filing it with the Office of the Special Counsel rests with the charging party.

Section 44.301 Acceptance of charge.

As required by the Act, the regulation requires that respondents be notified of charges against them filed with the Special Counsel (§ 44.301(a),(e)). In addition, it supplements the Act by requiring notice to the charging party upon receipt of his or her charge by the Special Counsel (§ 44.301(a),(b)). If the charging party's submission lacks information necessary for it to constitute a "charge" as defined in § 44.101(a), the regulation requires the Special Counsel to notify the charging party that the submission is inadequate and to specify the additional information that is needed for it to be considered a complete charge (§ 44.301(c)). In the final rule, however, § 44.301 has been revised to make clear that if a written submission does not contain all of the information necessary to constitute a charge, the Special Counsel may in his or her discretion treat it as a filed charge and collect the rest of the needed information during his or her investigation. The Department does not intend through its charge requirement to erect technical barriers to the filing of charges. Nevertheless, charging parties should include all of the information specified in the definition of charge to the best of their abilities. Indeed, the rule retains the authority of the Special Counsel to request in writing the additional information necessary to constitute a charge. This flexible approach best serves the interest of effective enforcement of section 102.

The 120-day statutory period in which the Special Counsel must undertake to investigate the charge and determine whether or not to file a complaint with an administrative law judge does not begin to run until a "charge," as defined by the regulation (§ 44.101(a)), or a submission deemed to be a filed charge under § 44.301(c)(2), has been received by the Special Counsel. In the case of inadequate submissions that are later deemed charges upon the receipt of additional information requested by the Special Counsel, the date from which the 120-day period begins to run is the date when the Special Counsel receives the additional information (§ 44.301(c)(1)). A submission deemed to be a charge under § 44.301(c)(1) meets the 180-day filing requirement of § 44.300(b) so long as the original submission is filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice, and any additional information is provided either within the 180-day period or within 45 days of the date on which the charging party receives the Special Counsel's request for additional information, whichever is later.

The Special Counsel's notice to the charging party will specify the date on which the charge was received and inform the charging party, other than an officer of the Immigration and Naturalization Service, that he or she has the right to file a compliant directly before an administrative law judge if the Special Counsel does not do so within 120 days of the date of the Special Counsel's receipt of the charge (§ 44.301(b)). As required by the statute, notice of the charge will also be served by certified mail on the respondent within 10 days of the Special Counsel's receipt of the charge (§ 44.301(e)).

Section 44.302 Investigation.

In accordance with the statute, the Special Counsel must, within 120 days of receipt of a charge, undertake an investigation of the charge and determine whether a complaint with respect to the charge will be brought before an administrative law judge (§ 44.303(a)). Section 44.302(b) specifies that any person or entity being investigated shall permit access to its books, records, accounts, and other pertinent information during normal business hours. The authority for this provision can be found in 8 U.S.C. 1324b(f)(2), which specifies that the Special Counsel must be provided reasonable access to examine the evidence of any person or entity being investigated (§ 44.302(b)). On-site investigations may be conducted at the discretion of the Special Counsel.

One commenter urged that respondents be permitted to engage in discovery upon acceptance of a charge by the Special Counsel. We believe, however, that such discovery would be inappropriate while the Special Counsel is discharging his or her investigatory responsibilities under the Act. Respondents, of course, may be entitled to discovery once a complaint is filed with an administrative law judge.

Section 44.303 Determination.

As provided in the statute, the regulation allows the charging party, other than an officer of the Immigration and Naturalization Service, to file a complaint with an administrative law judge if the Special Counsel fails to do so within 120 days (§ 44.303)c)). We emphasize that, although the complaint must allege the same unfair immigration-related employment practice as alleged in the charge, complete identity of facts between the charge and the complaint is not required and new information may be added. Section 44.101(d), defining "complaint" has been reworded to clarify this point.

The statute sets no limitation on the period of time that the complainant has to file his or her own action. It is reasonable, however, to limit this time period in some way in order to avoid the filing of stale complaints. Consequently, the regulation gives the complainant 90 days from the end of the 120-day period to bring an action directly (§ 44.303(c)). This 90-day limit is analogous to the statutory 90-day period provided under section 706 of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) during which a charging party may file a civil action against the respondent after receipt of a right to sue letter. The period of time in which the Special Counsel may file a complaint in the absence of a filing by the charging party is similarly limited to 90 days from the end of the 120-day period (§ 44.303(d)(1)).

The regulation also allows the Special Counsel, if he or she desires to notify the charging party even before the end of the 120-day period that a complaint will not be brought before an administrative law judge (§ 44.303(b)). If such a letter of determination is issued, the final rule allows the charging party, other than an officer of the Immigration and Naturalization Service, 90 days from the end of the 120-day period to file his or her own complaint directly with an administrative law judge (§ 44.303(c)). The NPRM had only permitted the charging party 90 days from the issuance of the letter to file a complaint.

Even after the expiration of the 120-day period, the regulation permits the Special Counsel to file a complaint within 90 days so long as the individual has not yet filed his or her own complaint (§ 44.303(d)(1)). The reference to a "letter of determination" in § 44.303(d)(1), which appeared in the NPRM, has been deleted from the final rule. The Special Counsel also remains free at any time to seek intervention in any proceeding brought before an administrative law judge by the charging party (§ 44.303(d)(2)).

Section 44.304 Special Counsel acting on own initiative.

Section 44.304(b) has been amended in the final rule to limit the period of time in which the Special Counsel on his or her own initiative may investigate and file a complaint of an unfair immigration-related employment practice. We believe that requiring a complaint to be filed within 180 days of the occurrence of an unfair immigration-related employment practice is a reasonable implementation of the desire of Congress reflected in 8 U.S.C. 1324b(d)(1), (3), to place a time limit on the actions of the Special Counsel.

IV. Deletion of Administrative Law Judge Procedures

The Executive Office of Immigration Review is issuing a detailed procedural regulation to govern hearings by administrative law judges under both the antidiscrimination and employer sanctions provisions of IRCA. This regulation, which will be codified as 28 CFR Part 68, will include provisions covering the same procedural issues addressed in the Department's proposed rule. In order to avoid duplication, those sections of the proposed rule containing procedures relating to the conduct of administrative enforcement proceedings (§§ 44.306–44.310) have been deleted from this final rule. The Executive Office of Immigration Review procedural rule will be published as an interim final rule. Thus, the public will be given another chance to comment on the procedures that will be used to conduct hearings and, at the same time, the Department will have in place a functioning set of procedures so that there will be no delay in enforcing section 102 of the Act.

V. New Provision Prohibiting Intimidation or Retaliation

The final rule includes a new § 44.201 which prohibits certain acts of interference with rights secured by this part and intimidation or retaliation against persons seeking vindication or their rights under this part. Although the statute does not include such a provision, we believe that § 44.201 is reasonably related to the purposes of the Act and that its absence could eviscerate the effectiveness of section 102. The prohibitions contained in this section are not limited to persons or entities against whom a charge has been filed. They would also apply, for example, to an employer who refuses to hire an applicant because that individual has filed a charge against another employer.

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601-612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 44

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Investigations, Law enforcement officers, Minority groups, Nationality, Naturalization, Nondiscrimination, Refugees.

For the reasons set forth in the preamble, Chapter I of Title 28 of the Code of Federal Regulations is amended by adding Part 44 to read as follows:

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Subpart A—General

Sec.
44.100 Purpose.
44.101 Definitions.
44.102–44.199 [Reserved].

Subpart B—Prohibited Practices

44.200 Unfair immigration-related employment practices.
44.201 Intimidation or retaliation prohibited.
44.202–44.299 [Reserved].

Subpart C—Enforcement Procedures

44.300 Filing a charge.
44.301 Acceptance of charge.
44.302 Investigation.
44.303 Determination.
44.304 Special Counsel acting on own initiative.
44.305 Regional offices.

Authority: 8 U.S.C. 1324b

Subpart A—General

§ 44.100 Purpose.

The purpose of this part is to effectuate section 102 of the Immigration Reform and Control Act of 1986, which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

(a) "Charge" means a written statement under oath or affirmation that—

(1) Identifies the charging party's name, address, and telephone number;

(2) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(3) Identifies the name and address of the person or entity against whom the charge is being made;

(4) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(5) Indicates whether the basis of the alleged discrimination is national origin, citizenship status, or both;

(6) Indicates whether the injured party is a U.S. citizen, U.S. national, or alien authorized to work in the United States;

(7) Indicates, if the injured party is an alien authorized to work, whether the injured party—

(i) Has been—

(A) Lawfully admitted for permanent residence;

(B) Granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1);

(C) Admitted as a refugee under 8 U.S.C. 1157; or

(D) Granted asylum under 8 U.S.C. 1158; and

(ii) Has completed a declaration of intention to become a citizen (INS Form N–315, "Declaration of Intention"; or INS Form I–772, "Declaration of Intending Citizen") and, if so, indicates the date of the declaration; and

(iii) Has applied for naturalization (and if so, indicates the date of the application);

(8) Identifies, if the injured party is an alien authorized to work, the injured party's alien registration number and date of birth.

(9) Indicates, if possible, the number of persons employed on the date of the alleged discrimination by the person or entity against whom the charge is being made;

(10) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Immigration and Naturalization Service, indicates that the charging party has the authorization of the injured party to file the charge.

(11) Indicates whether a charge based on the same set of facts has been filed with the Equal Employment Opportunity Commission, and if so, the specific office, and contact person (if known); and

(12) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) "Charging party" means—

(1) An individual who files a charge with the Special Counsel that alleges that he or she has been adversely affected directly by an unfair immigration-related employment practice;

(2) An individual or private organization who is authorized by an individual to file a charge with the

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Special Counsel that alleges that the individual has been adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Immigration and Naturalization Service who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred.

(c) "Citizen or intending citizen" means an individual who—

(1) Is a citizen or national of the United States; or

(2) Is an alien who—

(i) Is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or is granted asylum under 8 U.S.C. 1158; and

(ii) Evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen (INS Form N–315, "Declaration of Intention"; or INS Form I–772, "Declaration of Intending Citizen"). As used in this definition it does not include an alien who—

(3) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, by May 6, 1987; or

(4) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Immigration and Naturalization Service's processing of the application shall not be counted toward the two-year period.

(d) "Complaint" means a written submission filed with an administrative law judge by the Special Counsel or the charging party, other than an officer of the Immigration and Naturalization Service, that is based on the same charge filed with the Special Counsel.

(e) "Injured party" means a person who claims to have been adversely affected directly by an unfair immigration-related employment practice or, in the case of a charge filed by an officer of the Immigration and Naturalization Service or by a charging party other than the injured party, is alleged to be so affected.

(f) "Respondent" means a person or entity against whom a charge of an unfair immigration-related employment practice has been filed.

(g) "Special Counsel" means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 102 of the Immigration Reform and Control Act of 1986, or his or her designee.

Subpart B–Prohibited Practices

§ 44.200 Unfair immigration-related employment practices.

(a) *General.* It is an unfair immigration-related employment practice for a person or other entity to knowingly and intentionally discriminate or engage in a pattern of practice of knowing and intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(1) Because of such individual's national origin; or

(2) In the case of a citizen or intending citizen, because of such individual's citizenship status.

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship which—

(A) Is otherwise required in order to comply with law, regulation, or Executive order; or

(B) Is required by Federal, State, or local government contract; or

(C) Which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit or refer for a fee an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

§ 44.201 Intimidation or retaliation prohibited.

No person or other entity subject to § 44.200(a) shall intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured by this part or because he or she intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

Subpart C—Enforcement Procedures

§ 44.300 Filing a charge.

(a) *Who may file.* (1) Any individual who believes that he or she has been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized to act on such person's behalf, may file a charge with the Special Counsel.

(2) Any officer of the Immigration and Naturalization Service who believes that an unfair immigration-related employment practice has occurred or is occurring may file a charge with the Special Counsel.

(b) *When to file.* Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. For purposes of determining when a charge is timely under this paragraph, a charge mailed to the Special Counsel shall be deemed filed on the date it is postmarked.

(c) *How to file.* Charges may be (1) mailed to: Office of the Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 65490, Washington, DC 20035–5490 or (2) delivered to the Office of the Special Counsel at 1100 Connecticut Avenue, NW., Suite 800, Washington, DC 20036.

(d) *No overlap with EEOC complaints.* No charge may be filed respecting an unfair immigration-related employment practice described in § 44.200(a)(1) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this section, unless the charge is dismissed by the Special Counsel as being outside the scope of this part.

§ 44.301 Acceptance of charge.

(a) The Special Counsel shall notify the charging party of receipt of a charge as defined in § 44.101(a) or receipt of a submission deemed to be a charge under paragraph (c)(2) of this section.

(b) The notice to the charging party shall specify the date on which the charge was received, state that the charging party, other than an officer of the Immigration and Naturalization Service, may file a complaint before an administrative law judge if the Special Counsel does not do so within 120 days

of receipt of the charge, and state the last date on which such a complaint may be filed.

(c)(1) Subject to paragraph (c)(2) of this section, if a charging party's submission is inadequate to constitute a charge as defined in § 44.101(a), the Special Counsel shall notify the charging party that specified additional information is needed. As of the date that adequate information is received in writing by the Special Counsel, the charging party's submission shall be deemed a filed charge and the Special Counsel shall issue the notices required by paragraphs (b) and (e) of this section.

(2) In the Special Counsel's discretion, the Special Counsel may deem a submission to be a filed charge as of the date of its receipt even though it is inadequate to constitute a charge as defined in § 44.101(a). The Special Counsel may then obtain the additional information specified in §44.101(a) in the course of investigating the charge.

(d)(1) If the Special Counsel receives a charge after 180 days of the alleged occurrence of an unfair immigration-related employment practice, the Special Counsel shall dismiss the charge with prejudice.

(2) In adequate submissions that are later deemed charges under paragraph (c)(1) of this section are timely filed as long as—

(i) The original submission is filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice; and

(ii) Any additional information requested by the Special Counsel pursuant to paragraph (c)(1) of this section is provided in writing to the Special Counsel within the 180-day period or within 45 days of the date on which the charging party received the Special Counsel's notification pursuant to paragraph (c) of this section, whichever is later.

(e) The Special Counsel shall serve notice of the charge on the respondent by certified mail within 10 days of receipt of the charge. The notice shall include the date, place, and circumstances of the alleged unfair immigration-related employment practice.

§ 44.302 Investigation.

(a) The Special Counsel may propound interrogatories, requests for production of documents, and requests for admissions.

(b) The Special Counsel shall have reasonable access to examine the evidence of any person or entity being investigated. The respondent shall permit access by the Special Counsel during normal business hours to such of its books, records, accounts, and other sources of information, as the Special Counsel may deem pertinent to ascertain compliance with this part.

§ 44.303 Determination.

(a) Within 120 days of the receipt of a charge, the Special Counsel shall undertake an investigation of the charge and determine whether a complaint with respect to the charge will be brought before an administrative law judge specially designated by the Attorney General to hear cases under section 102 of the Act.

(b) The Special Counsel may, within the 120-day period, issue a letter of determination notifying the charging party and respondent of the Special Counsel's determination that there is no reasonable cause to believe that the charge is true and that a complaint will not be brought by the Special Counsel before an administrative law judge.

(c)(1) If the Special Counsel does not issue a letter of determination pursuant to § 44.303(b) and fails to bring a complaint before an administrative law judge within 120 days of the date specified in the notice provided under § 44.301(b), the charging party, other than an officer of the Immigration and Naturalization Service, may bring his or her complaint directly before an administrative law judge within 90 days of the end of the 120-day period.

(2) If the Special Counsel issues a letter of determination indicating there is no reasonable cause to believe that the charge is true, pursuant to § 44.303(b), the charging party, other than an officer of the Immigration and Naturalization Service, may immediately, or any time within 90 days of the end of the 120-day period, file a complaint directly before an administrative law judge.

(d) The Special Counsel's failure to bring a complaint before an administrative law judge within 120 days shall not affect the right of the Special Counsel—

(1) At any time during the 90-day period defined in paragraph (c)(1) of this section, but before the charging party files a complaint of his or her own, to bring the complaint before an administrative law judge; or

(2) To seek to intervene at any time in any proceeding before an administrative law judge brought by the charging party.

§ 44.304 Special Counsel acting on own initiative.

(a) The Special Counsel may, on his or her own initiative, conduct investigations respecting unfair immigration-related employment practices when there is reason to believe that a person or entity has engaged or is engaging in such practices.

(b) The Special Counsel may file a complaint with an administrative law judge where there is reasonable cause to believe that an unfair immigration-related employment practice has occurred within 180 days from the date of the filing of the complaint.

§ 44.305 Regional offices.

The Special Counsel, in consultation with the Attorney General, shall establish such regional offices as may be necessary to carry out his or her duties.

Edwin Meese III,

Attorney General.

Date: September 30, 1987.

[FR Doc. 87-23047 Filed 10-5-87; 8:45 am]

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Part III

Department of Education

Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant Programs; Notice of Closing Date for Institutions To File "Request for Institutional Eligibility for Programs"

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DEPARTMENT OF EDUCATION

Perkins Loan (formerly National Direct Student Loan) College Work-Study, and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions To File "Request for Institutional Eligibility for Programs"

AGENCY: Department of Education.
ACTION: Notice of closing date for Institutions to file "Request for Institutional Eligibility for Programs" to participate in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for the 1988–89 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that wish to participate in the "campus-based programs" in the 1988–89 award year to submit to the Secretary an institutional eligibility application form.

The campus-based programs are the Perkins Loan Program, the College Work-Study Program, and the Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965. The 1988–89 award year is July 1, 1988 through June 30, 1989.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

Closing Date For Filing Application. To participate in a campus-based program in the 1988–89 award year, an institution must mail or hand deliver its "Request for Institutional Eligibility for Programs" form to the address indicated below on or before January 15, 1988.

Applications Delivered by Mail. An institutional eligibility application delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEC/DCMAS/OPE, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions which submit eligibility applications that are received after the closing date will not be considered for funding under the campus-based programs for award year 1988–89.

Applications Delivered by Hand. An institutional eligibility application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center (ACC), Room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays, and Federal holidays. An application for the 1988–89 award year eligibility that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Supplementary Information

Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1988–89 to any currently ineligible institution unless the institution files its "Request for Institutional Eligibility for Programs" form (ED Form 1059) by the closing date. If the institution submits its institutional eligibility application after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1989–90 award year.

Ineligible institutions include:

(1) An institution that has not been designated as an eligible institution by the Secretary.

(2) A location of an eligible institution that is currently not included in the Department's eligibility certification but has been included in the institution's Fiscal-Operations Report and Application to Participate (FISAP).

(3) A branch campus that is currently part of an eligible institution but has filed its own FISAP and is seeking eligibility as a separate institution of higher education. (ED Form 1059, OMB #1840–0098 approved through August 31, 1987).

The Secretary wishes to advise institutions that the institutional eligibility form "Request for Institutional Eligibility for Programs" (ED Form 1059) should not be confused with the FISAP (ED Form 646–1) that institutions were required to submit by September 25, 1987, in order to receive funds under the campus-based programs for the 1988–89 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) National Direct Student Loan Program, 34 CFR Part 674.

(3) College Work-Study Program, 34 CFR Part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

For Further Information Contact. For information concerning designation of eligibility, contact: Dr. Joan E. Duval, Director, Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Mail Stop 3329, ROB–3), Washington, DC 20202. Telephone (202) 732–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations, 400 Maryland Avenue, SW., (Mail Stop 4621, ROB–3), Washington, DC 20202. Telephone: (202) 732–3715.

(20 U.S.C. 1087 *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loans; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grants)

Dated: September 29, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–23103 Filed 10–5–87; 8:45 am]
BILLING CODE 4000–01–M

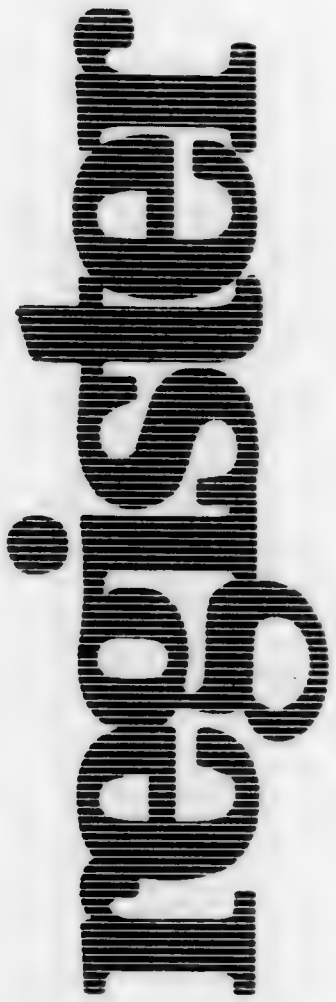

Tuesday
October 6, 1987

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rules and Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule to Determine Glaucocarpum suffrutescens (Toad-flax Cress) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Glaucocarpum suffrutescens* (toad-flax cress), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. It is endemic in the Uinta Basin of northeastern Utah on shale barrens of the Green River Formation, in or adjacent to the Hill Creek drainage in southern Uintah County, and at the base of the Badland Cliffs in adjacent Duchesne County. The nine known populations of the species total about 3,000 individuals and have experienced a range and population decline since its discovery 50 years ago. The reasons for the decline are not fully understood, and may be due to habitat alteration, possibly from building stone removal, localized historic overgrazing and oil and gas development. Oil, gas, and oil shale development could significantly jeopardize the species in the future. This rule implements protection provided by the Endangered Species Act of 1973, as amended. A proposal to designate critical habitat for this species is withdrawn.

DATE: The effective date of this rule is November 5, 1987.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's Regional Office, 134 Union Boulevard, 4th floor, Lakewood, Colorado; or Salt Lake City Field Office, Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Mr. John L. England, Botanist, at the Salt Lake City address above, (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Glaucocarpum suffrutescens was first discovered in 1935 by Edward Graham and described by Reed Rollins as *Thelypodium suffrutescens* (Graham 1937). Following further research, Dr. Rollins erected the monotypic genus *Glaucocarpum* for this species (Rollins 1938). The species has also been treated in the genus *Schoenocrambe* (Welsh and Chatterley 1985). The toad-flax cress is a member of the mustard family (Brassicaceae); it is a perennial herb from a deep woody root and forms a clump of several slender simple stems, with elongated loose inflorescence and yellow flowers.

Glaucocarpum suffrutescens is one of several endemics limited to the Green River Formation in the Uinta Basin of eastern Utah. It survives with a few other species primarily on one calcareous shale stratum strongly resistant to erosion. The habitat of this plant is disjunct knolls and benches resembling small extremely dry desert islands surrounded by sagebrush or pinyon-juniper woodland. *Cryptantha barnebyi* (Barneby cat's-eye), another candidate plant under review for threatened or endangered status (50 FR 39526), occurs, at least in part, in the habitat of *Glaucocarpum*.

Glaucocarpum occurs in two main population groups near each other in Uintah County. One group is centered in the Gray Knolls between the Green River and Hill Creek, with 800–1,000 plants in 3 populations. The other group is centered on Little Pack Mountain and along the flanks of Big Pack Mountain between Hill Creek and Willow Creek, with about 2,000 individuals in 5 populations. A small third population center, about 20 miles to the west in Duchesne County, has 107 known plants. The individual populations range in size from 3 to perhaps 1,000 plants. Most of the populations occur on Federal land under the jurisdiction of the Bureau of Land Management (BLM) and the Department of Energy (DOE) and on Indian land under the jurisdiction of the Bureau of Indian Affairs (BIA) and the Ute Indian tribe.

From 1977 to 1986, field work was undertaken on this species by Karl Wright, Larry England, Kathy Mutz, Elizabeth Neese, Scott Peterson, and John and Leila Shultz. This work documented range, specific occurrences, approximate number of individuals, and recommended areas of critical habitat for *Glaucocarpum* (Shultz and Mutz 1979, England 1982).

The toad-flax cress habitat is underlain by oil shale deposits. Building stone collecting may have significantly altered the habitat of the species and decreased its range and population. Historic heavy grazing may also have had an impact on some of the species' populations. Oil shale and oil and gas development without adequate provision for the species could destroy it in the future.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition to list the taxa named therein under section 4(c)(2) of the 1973 Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention to review the status of those plants. *Glaucocarpum suffrutescens* was included in the July 1, 1975, notice and was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn; proposals already over 2 years old were subject to a 1-year grace period. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796). The July 1975, notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82480) of a new notice of review for plants, which included *Glaucocarpum suffrutescens* as a category 1 species. Category 1 comprises taxa for which the Service presently has significant biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on such petitions, including that for *Glaucocarpum suffrutescens*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, a petition finding was made that listing this species was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. The Service published a proposed rule to list *Glaucocarpum suffrutescens* as an endangered species on September 5, 1985, constituting the next 1-year finding that would have been required on or before October 13, 1985.

Summary of Comments and Recommendations

In the September 5, 1985, proposed rule (50 FR 36118) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The Service extended the initial comment period on November 4, 1985 (50 FR 45846), to accommodate a requested public hearing. In addition, the Service reopened the comment period on December 11, 1985 (50 FR 50646), at the request of a private landowner whose property had been proposed as critical habitat. The reopening of the comment period was needed to provide additional time for the private landowner and others to formulate recommendations concerning the listing of the species and its critical habitat designation. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Vernal Express*, *The Uintah Basin Standard*, *The Deseret News*, and *The Salt Lake Tribune* during the period of September 27 to October 23, 1985. Fifteen written comments were received and are discussed below. A public hearing was held on November 21, 1985, in Vernal, Utah. Thirteen verbal comments were received at that hearing. The public hearing is summarized with the written comments below.

Four comments, one from the BLM, one from the Utah State University Cooperative Extension Service (USU Extension Service), one from the Uinta Basin Association of Governments, and one from the agent of the private landowner whose property had been proposed as critical habitat, stated that the Service has not proven that grazing and building stone removal have caused the decline in the range and abundance of *Glaucocarpum suffrutescens*.

The Service believes that the causes of the decline of the range and abundance of the *Glaucocarpum* are not understood and probably are a complex interaction of various factors affecting the species' habitat and populations. Observations by E.H. Graham and R.C. Rollins indicate that the population of *Glaucocarpum* along the east flank of Big Pack Mountain was essentially continuous on a narrow band about 20 feet wide on one stratum of highly calcareous soil for the entire distance of their initial survey (over 3 miles). Extrapolating from the densities observed by Graham and Rollins and corroborated with recent observations by Shultz and Mutz (1979) and England (1982), it appears that the population along the east flank of Big Pack Mountain harbored in excess of 3,000 individuals in 1935. This population now comprises fewer than 1,000 individuals. Currently, in habitat similar to the east Big Pack Mountain habitat, the west flank of Big Pack Mountain supports a *Glaucocarpum* population of fewer than 200 individuals. Populations at Little Pack Mountain and in the Gray Knolls total no more than 1,600 plants between them. The Service, in an effort to determine what factors may have caused such a population decline, looked for human-induced changes in the habitat of *Glaucocarpum* since the first observation of the species 50 years ago. Heavy grazing and removal of the surface stone peculiar to the calcareous outcrops to which *Glaucocarpum* is endemic occurred concurrently with the decline of the species. While neither of these factors may have been solely responsible for the species' decline, there is a distinct possibility of their effect having led to the current endangered status of *Glaucocarpum*.

Three comments, one from the BLM, one from the USU Extension Service and one from the private landowner stated that listing of *Glaucocarpum suffrutescens* should be deferred until the reasons causing the decline of the species are known.

Service data indicate that the decline of the population and range of *Glaucocarpum suffrutescens* in absolute terms is well established as described above. Given the rarity of *Glaucocarpum suffrutescens*, its consequent vulnerability to even trivial disturbance of its habitat, and the potential for that habitat disturbance, the Fish and Wildlife Service believes it is appropriate to protect *Glaucocarpum suffrutescens* under the Endangered Species Act despite uncertainty as to the reasons for its decline.

Two comments, one from the BLM and one from the private landowner, stated that oil and gas and oil shale development are not likely to be threats to *Glaucocarpum suffrutescens* under current energy market conditions. The Service acknowledges that apparent fact. The future development of oil and gas and oil shale energy resources on the habitat of *Glaucocarpum suffrutescens*, however, does remain a potential threat to the species and its habitat. Recently portions of two populations of *Glaucocarpum* have been lost directly to energy development activity. Private land on which the species occurs was patented from the public domain to private ownership because of its oil shale value; other land supporting the species was set aside as a portion of the DOE's Naval Oil Shale Reserve No. II; and the entire area of the population under Federal jurisdiction is under executive withdrawal for mineral entry because of its oil shale value (Executive Order 5327). The Service continues to believe that some potential for oil, gas, and shale development exists and that this potential is properly considered as a contributing basis for listing the species.

The BLM commented that *Glaucocarpum suffrutescens* is receiving consideration as a sensitive plant species in the BLM's environmental planning documents (BLM 1984) and that the BLM will protect it under its land management authority as long as the species is under review by the Service for official status under the Endangered Species Act. The Service acknowledges the conservation measures the BLM has extended the *Glaucocarpum* and other rare and sensitive species within the Vernal BLM District.

Six written comments and eight oral comments from the public hearing—one from the private landowner, three from regional economic development agencies, eight from private individuals, one from a county commissioner, and one from a livestock production group—stated that listing *Glaucocarpum suffrutescens* would adversely affect economic development of energy resources in Duchesne and Uintah Counties, Utah. The Service expects that from time to time *Glaucocarpum suffrutescens* may be the subject of interagency consultations regarding such development. The Service is confident that the species can be conserved and that energy development with proper safeguards for the species may also take place. The Act, through the section 7 interagency consultation provision is designed to address and resolve such conflicts between listed threatened and endangered species and actions that may adversely affect them.

Two comments—one written and one oral—stated that *Glaucocarpum suffrutescens* is a weed common in Utah. The Service disagrees; the species' localized area is in the southern Uinta Basin in Utah, and based on best current knowledge it is found nowhere else in the world.

Four written comments—two from conservation organizations, one from a professional botanist, and one from a private citizen—supported the proposal of endangered status and stated that *Glaucocarpum suffrutescens* is a very rare, narrowly distributed species that is highly vulnerable to habitat disturbance.

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Three comments—one from the State of Utah, one from a conservation organization and one from a private citizen—were in general agreement with the Service's position in the proposed rule.

Additional comments relating solely to the proposed designation of critical habitat are noted below in the Critical Habitat section of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Glaucocarpum suffrutescens* (toad-flax cress) should be classified as an endangered species. Procedures found in section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Glaucocarpum suffrutescens* (Rollins) Rollins (toad-flax cress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Over the 50 years since its original discovery, there has been a decline in the population and range of this species. During repeated fieldwork at the type locality, the most recent by Karl Wright and Larry England in 1987, no individuals have been found (England 1982; Rollins, Harvard University, pers. comm., 1983, 1986). A population between the type locality and the Little Pack Mountain population has been found (BLM, pers. comm., 1987). Removal of building stone and localized heavy grazing in a portion of the species' range are possible factors that may have contributed to the extirpation of this population (England 1982). Current livestock grazing, as now managed by the BLM in the habitat area of *Glaucocarpum suffrutescens,* is not expected to adversely affect the species. Any grazing threat would be a consequence of localized uncontrolled use by insects, rodents, rabbits, and wild horses.

The entire range of this monotypic genus is underlain by oil shale, which may be mined when economic conditions favor it, and by conventional oil and gas deposits that have begun to be developed. The largest population is partly on Naval Oil Shale Reserve No. II of the DOE, and partly on the Uintah and Ouray Indian Reservation, which is held in trust by the U.S. Department of the Interior for the Ute Indian tribe. The other four populations with 70 or more plants are partly under BLM, private, State, or Indian tribal management, while the three smallest populations are solely managed by one of the above entities. Portions of the species habitat are also now under lease by an oil shale development company. Without a concerted effort and coordinated planning to provide for its conservation during any energy development that may take place, this monotypic genus could inadvertently be brought to extinction (England 1982).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known.

C. *Disease or predation.* Sheep and cattle grazing may have had an impact on this species historically, but, with current levels of grazing management by BLM, domestic livestock are not expected to further impact the species. Grazing by wildlife, particularly rabbits and wild horses, may adversely affect some populations of this species.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations that address this species specifically or directly provide for protection of its habitat. The BLM is aware of this plant and has considered it in its environmental planning of the resource area on which it occurs (BLM 1984). No Federal agencies are under current legal obligation for the conservation of *Glaucocarpum.* The Act offers possibilities for additional protection of this species through section 7 (interagency cooperation) and section 9 (prohibiting removal and reduction to possession of a listed plant from an area under Federal jurisdiction).

E. *Other natural or manmade factors affecting its continued existence.* The estimated total number of individuals of toad-flax cress that currently exist is fewer than 3,000. Only 5 of the 9 populations consist of 170 individuals or more, and 3 consist of fewer than 30 plants each. Only the largest populations may have sufficient genetic variability to provide for long-term adaptation to natural changes in environmental conditions.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Glaucocarpum suffrutescens* as endangered. With fewer than 3,000 individuals known in nine populations and the risk of damage to the toad-flax cress and its habitat, endangered status seems an accurate assessment of the plant's condition. For reasons explained below, the proposal to designate critical habitat for this species is withdrawn.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat was proposed to be designated for *Glaucocarpum suffrutescens.* However, the Service no longer believes such designation would be prudent. The area originally proposed as critical habitat was quite large (over 7,000 acres) in relation to the number of individual plants known. Several comments noted this fact and recommended that the extent of critical habitat be reduced or that critical habitat not be designated. While the Service could designate inclusive boundaries for critical habitat that would encompass several scattered small populations or individuals of the species, it no longer finds that the entire area proposed can be supported as critical habitat. At the same time, designating more narrowly focused areas surrounding individual local populations of the species could expose these populations to a significant risk of vandalism. The proposed designation is therefore withdrawn because no benefit to this species has been identified that would be provided by the designation and that would overbalance the inherent risk of precisely identifying its location. Careful coordination with the other involved Federal agencies will be no less feasible in the absence of designated critical habitat, and will be equally effective in the conservation of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for

Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Bureau of Land Management, the Department of Energy, and the Bureau of Indian Affairs have jurisdiction over portions of the habitat of the toad-flax cress. If resident and transient human populations in the Uintah Basin increase as a consequence of energy development, these agencies may find it necessary, in order to comply with section 7, to increase regulation of activities that could have detrimental effects on the species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These probibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove it and reduce it to possession from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in *Glaucocarpum suffrutescens* is known. It is anticipated that few trade permits would ever be sought or issued, since this species is not common in the wild or in cultivation and is of no known commercial interest. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wild Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bureau of Land Management. 1983. Environmental Impact Statement. Uinta Basin Synfuels Development, Vernal, Utah. 2 Vols., 1,019 pp.

Bureau of Land Management. 1984. Environmental Impact Statement. Book Cliffs Resource Management Plan, Vernal, Utah. 519 pp.

England, J.L. 1982. Status report on *Glaucocarpum suffrutescens* (Rollins) Rollins. Office of Endangered Species, U.S. Fish and Wildlife Service, Region 6, Denver, Colorado. 39 pp.

Graham, E.H. 1937. Botanical studies in the Uinta Basis of Utah and Colorado. Annals of the Carnegie Museum 26:1–432.

Rollins, R.C. 1938. *Glaucocarpum*, a new genus in the Cruciferae. Madrono 4:232–235.

Shultz, L.M. and K.M. Mutz. 1979. Threatened and Endangered Plants of the Willow Creek Drainage. Vernal District, Bureau of Land Management, Vernal, Utah. 74 pp.

Welsh, S.L. and L.M. Chatterley. 1985. Utah's rare plants revisited. Great Basin Naturalist 45:173–230.

Authors

The primary author of this rule is John L. England of the Service's Salt Lake City Field Office (801/524–4430 or FTS 588–4430). Dr. James L. Miller of the Service's Denver Office served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family:						
Glaucocarpum suffrutescens	Toad-flax cress	U.S.A. (UT)	E	295	NA	NA

Dated: September 18, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-23023 Filed 10-5-87; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of the Black-capped Vireo To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the black-capped vireo (*Vireo atricapillus*) to be an endangered species. This bird formerly bred from Kansas through Oklahoma and Texas to central Coahuila, Mexico. The vireo no longer occurs in Kansas, is gravely endangered in Oklahoma, and is no longer found in several parts of its formerly extensive range in Texas. The black-capped vireo is threatened by brown-headed cowbird (*Molothrus ater*) nest parasitism and loss of habitat due to such factors as urbanization, grazing, range improvement, and succession. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Vireo atricapillus*.

DATES: The effective date of this rule is November 5, 1987.

ADDRESSES: The complete file for this rule is available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: J. Allen Ratzlaff, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

The black-capped vireo is a 4½ inch (11 centimeter), insectivorous bird. Woodhouse (1852) discovered the species when he collected two specimens on May 26, 1851, along the Rio San Pedro (now called Devil's River) in Sutton County, Texas (Deignan 1961).

Adult male black-capped vireos are olive green on the upper surface and white beneath and have faintly yellowish green flanks. The crown and upper half of the head is black with a partial white eye-ring and lores; this pattern is unique in the family Vireonidae. The iris is brownish red, the bill black. Adult females are duller colored, with the crown slate gray instead of black and the underparts washed with greenish yellow (Marshall *et al.* 1985).

The black-capped vireo formerly bred from Kansas through Oklahoma and Texas to central Coahuila, Mexico with an outlying, possibly temporary, colony in Nuevo Leon, Mexico. Winter residents ranged from Sonora to Oaxaca, Mexico, but occurred mostly in Sinaloa and Nayarit. The species disappeared from Kansas after 1953 (Grzybowski *et al.* 1984, Marshall *et al.* 1985). Graber (1961) believed that land use (grazing) and climatic conditions (drought) had made former habitat in southern Kansas unsuitable. The northernmost breeding areas found by Graber, from 1954 to 1956, were in northern Oklahoma. The present breeding range is from Blaine County, central Oklahoma south through Dallas, the Edwards Plateau, and Big Bend National Park, Texas to at least Sierra Madera in Central Coahuila, Mexico (Marshall *et al.* 1985).

In 1986, only 44–51 adult birds were located in Oklahoma and were limited to three small areas (Grzybowski 1987). Only 35–39 birds were found at these sites in 1985 when limited cowbird control measures were initiated (Grzybowski 1985a). A total of 280 adults were found at 33 sites in Texas in 1985. Though several Texas sites had slightly higher numbers of vireos in 1986, some sites experienced notable decreases (Grzybowski 1986). An estimated 24 adults were found in breeding areas in Mexico in 1983–1984 (Marshall *et al. 1985).*

Black-capped vireos and their habitat in the U.S. occur on Federal, State, and private land. The vireo's habitat consists of scattered trees and brushy areas. Woody vegetation occurs in clumps and is separated by bare ground, rocks, grasses, or wildflowers (Marshall *et al.* 1985); over 55 percent of black-capped vireo habitat is composed of non-woody elements (Grzybowski 1986). Foliage that extends to ground level is the most important requirement for nests. Most nests (90%) are found 16 to 49 inches (0.4 to 1.25 meters) above ground (Grzybowski 1986) and are screened from view by foliage (Grzybowski *et al.* 1984). Marshall *et al.* (1985) summarized known nest sites and found that 63 percent of all 164 documented nests were located in four species of woody vegetation: *Quercus marilandica, Q. shumardii texana, Q. stellata,* and *Rhus virens.* The remaining 37 percent were found in some 20 other species of plants. Grzybowski (1986) noted similar preferences but also noted variation between sites that depended on woody plant species availability.

Many black-capped vireo territories are located on steep slopes, such as the heads of ravines or along the sides of arroyos. On such areas, the shallow soils slow succession, and the microclimates provided by the rugged terrain perpetuate clumping of vegetation, thus sustaining an area suitable for the vireo (Graber 1961). On level terrain, vireo habitat tends to change through succession to prairie-grass, closed-canopy hardwood forest, or cedar brakes so dense that the necessary understory is suppressed (Grzybowski *et al.* 1984). Black-capped vireo habitat, under natural conditions, was maintained by wildfires and wildlife grazing that kept the vegetation in an early successional stage.

The black-capped vireo was included as a category 2 species on the Service's December 30, 1982, Notice of Review (47 FR 58454), but was changed to a category 1 species in the September 18, 1985, Notice of Review (50 FR 37958). Category 1 includes those species for which the Service currently has substantial information to support the biological appropriateness of proposing to list the species. In the December 12, 1986, **Federal Register** (51 FR 44808–44812), the Service published a proposed rule to determine endangered status for this species.

Summary of Comments and Recommendations

In the December 12, 1986, proposed rule and associated notifications, all interested parties were requested to

submit factual information that might contribute to the final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting general public comment, were published in the *Express-News* in San Antonio, Texas on January 13, 1987; the *American-Statesman* in Austin, Texas on January 20, 1987; the *Oklahoman* in Oklahoma City on January 10, 1987; and the *Pioneer* in Fort Stockton, Texas on January 11, 1987. Seventeen responses were received in support of the proposal and six responses expressed neither support nor opposition. Summaries of the comments follow:

The National Wildlife Federation, the Sportsmen's Clubs of Texas, Inc., the Bureau of Economic Geology (University of Texas, Austin), the City of Austin, the Texas Natural Heritage Program, the Oklahoma Department of Wildlife Conservation, the Oklahoma City Audubon Society, Dr. Keith Arnold (Curator of Birds, Texas A & M University), Dr. Frederick Gehlbach (Dept. of Biology, Baylor University), Col. L.R. Wolfe, Richard Spotts (Defenders of Wildlife), and seven private individuals supported the proposal. The Texas Parks and Wildlife Department did not respond to the proposed rule. In response to a pre-proposal notification letter, that agency supported listing the black-capped vireo, though only as threatened. Letters that expressed neither support nor opposition were received from Big Bend National Park, Texas, the editor of *American Birds*, the Texas Air Control Board, Dr. F. Bryant (Texas Tech University, Lubbock, Texas), and Dr. A.R. Phillips.

Issue 1: Commentors recommended critical habitat be designated. *Service response:* Because the black-capped vireo occurs in scattered, small areas, critical habitat would be difficult to delineate and would offer no benefit to its recovery. Furthermore, due to the dynamic nature of its habitat (changes through succession), the location of the patches of optimal habitat will not necessarily be the same from year to year or decade to decade. The Service also believes that, due to the popularity of the bird, publication of critical habitat maps in the **Federal Register** would increase the likelihood of harassment that could affect reproductive success. In the future the Service could publish a proposal in the **Federal Register** to designate critical habitat.

Issue 2: Dr. W. M. Pulich (Associate Professor of Biology, University of Dallas Station, Texas) though not opposed to listing, questioned the extent of previous black-capped vireo status work. The Texas Parks and Wildlife Department also suggested that more habitat for the vireo likely exists on private land. *Service response:* Though it is impossible to search everywhere, over 700 areas of "suitable" black-capped vireo habitat have been surveyed over the last several years. Almost all private range lands are presently being grazed by introduced herbivores (e.g., goats, cattle), and thus the bulk of any remaining vireo habitat is not very likely to continue in suitable condition. The number of vireos on private range land (which represents the vast majority of its historic habitat) is expected to be relatively low. Undoubtedly more vireos exist than have been noted, but the marked decline and/or complete absence of the black-capped vireo over the majority of its historic range warrants the actions being taken.

Issue 3: The Texas Parks and Wildlife Department also suggested that the Service has the technology and personnel to manage cowbirds over the range of the vireo. *Service response:* Cowbird control is very labor intensive and can only offer relief to the vireos in a very limited area. Further research is needed to find more efficient and effective long term management techniques. The Animal Damage Control Program was transferred to the Department of Agriculture about 2 years ago.

Issue 4: In response to a pre-proposal notification letter, the Texas Parks and Wildlife Department thought the vireo only warranted threatened status, as the State of Texas was then proposing to add to its own list of endangered and threatened species. *Service response:* The Service has reviewed the status of the vireo throughout its range, not just Texas, and finds that the species does warrant endangered status because it is in danger of extinction over a significant portion of its range in the next several decades, unless appropriate management occurs.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the black-capped vireo (*Vireo atricapillus*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.)* and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the black-capped vireo are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Major threats to black-capped vireo habitat include possible development; grazing by sheep, goats, and other exotic herbivores (which remove vegetative cover near ground level that is necessary for vireo nesting); and range improvement that involves the removal of broad-leaved, low woody vegetation (Marshall *et al.* 1985). In addition, any activity that divides habitat into narrow strips can make vireo nests more vulnerable to cowbird parasitism (Grzybowski *et al.* 1984).

In the Austin area, which contains the largest known concentration of black-capped vireos, 88 percent of the vireo population is presently threatened with extirpation because of development activity and road construction (J. Carrasco, City Manager of Austin, *in litt.*). The City of Austin's Department of Planning and Growth Management estimates that most of the habitat for this population will be lost in less than 10 years, if the anticipated rate of development is realized. The Austin City Manager further states that "Proposed development plans and roadway improvement *presently* before the City of Austin for consideration could eliminate 20 pairs in the immediate (1 to 5 years) future" (J. Carrasco *in litt.*).

In addition, extensive evidence of heavy grazing, trampling and browsing exists on the Edwards Plateau. Besides a substantial Angora goat enterprise, the Plateau contains a variety of herbivorous, exotic game species (Marshall *et al.* 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The black-capped vireo is especially attractive to ornithologists and amateur birders. Nests have failed or been abandoned due to excessive activities of photographers; one territory was possibly abandoned because of frequent harassment from tape-recorded songs (Marshall *et al.* 1985).

C. *Disease or predation.* Black-capped vireos are remarkably free of disease and ectoparasites (Graber 1961). However, eggs and young vireos are subject to some predation. Of 134 eggs lost, Graber (1961) found 12 (9 percent) lost to predators, including snakes and a fox squirrel. Graber also found 16 of 95 hatchlings (17 percent) lost to predators, including snakes and ants. Grzybowski

(1986) also noted that scrub jays (*Aphelocoma coerulescens*) may be depredating vireo nests. Little evidence of predation on adults exists. The first known instance of predation on an adult occurred in 1985: A female brooding young on a low nest was eaten during the night by an unknown predator (Marshall *et al.* 1985).

D. *The inadequacy of existing regulatory mechanisms.* The Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) protects this species from being killed or taken captive. However, this Act does not provide any protection to the species' habitat. The state of Texas listed the black-capped vireo as a threatened species on March 1, 1987, but this action provides no protection to the habitat of the vireo.

E. *Other natural or manmade factors affecting its continued existence.* Graber (1961) found that 55.1 percent of all black-capped vireo eggs laid were lost before hatching and, of this loss, 72.3 percent was due to brown-headed cowbird (*Molothrus ater*) nest parasitism. During the nestling period, the major loss was also due to cowbird activity. Cowbirds lay their eggs in vireo nests before the vireo clutch is complete. Cowbird eggs hatch 2–4 days before vireo eggs, and, by the time the vireos hatch, the cowbird nestlings outweigh them tenfold. In all cases where a cowbird occupied the nest, no vireo chicks survived (Graber 1961). Grzybowski (1986) summarized cowbird nest parasitism from 1983 to 1986 and found that overall cowbird nest parasitism on black-capped vireos was 80 percent in study areas in Texas and Oklahoma. However, when cowbird trapping was initiated in those same areas, nest parasitism dropped to as low as 22 percent (Grzybowski 1985b).

Manmade changes in landscape and land use patterns, in particular the opening up of forested areas and the spred of cattle over the past 150 years or so, have apparently favored the brown-headed cowbird. The brown-headed cowbird is an "edge species" and appears to have increased in abundance, range, and the number of species it parasitizes. Cowbirds feed near cattle and agricultural areas and commute daily to areas where they search for nests; therefore, host populations nesting in extensive unbroken tracts may escape parasitism entirely (May and Robinson 1985). Because of brush clearing and the consequent interspersion of scrub habitats with potentially more suitable cowbird feeding habitats, the vireos may be more accessible to cowbirds than in the past (Grzybowski 1985b).

Vegetational succession may also lead to a reduction in vireo habitat. On level terrain with good soil, succession will convert vireo habitat either to prairie grass, closed-canopy hardwood forest, or cedar brakes so dense that the necessary understory is suppressed (Grzybowski *et al.* 1984).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the black-capped vireo (*Vireo atricapillus*) as endangered. A decision to take no action would exclude it from protection provided by the Endangered Species Act. A decision to list as threatened would not adequately reflect the severity of the threats facing this species throughout a significant portion of its range and the resulting danger of this species becoming extinct. For the reasons given below, no critical habitat has been designated for this species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. For this particular situation, however, the Service has concluded that there is no demonstrable benefit to the vireo in designating critical habitat and therefore such an action is not prudent. The habitat of the black-capped vireo occurs in scattered, small patches; occupied habitat would be difficult to delineate and may vary over time due to succession. Service recovery actions will continuously update and address the vireo's habitat management needs. In addition, as mentioned under "B" in "Summary of Factors Affecting the Species", the black-capped vireo is popular among bird-watchers. Possible increased harassment could occur due to the publication of critical habitat maps. Should that Service receive additional information on this subject, which would warrant reconsideration of this decision, the Service could propose critical habitat in the furture. Future proposal of critical habitat would require an additional **Federal Register** publication.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species.

These recovery actions are initiated by the Service following listing. Such actions may also be initiated prior to listing if circumstances permit. Probable recovery actions will likely include continued monitoring of known populations, additional work to locate other populations, cowbird trapping in nesting areas, and land management practices to maintain black-capped vireo habitat in a suitable successional stage. Also, additional information will likely be collected on the ecology of the species to further identify possible life history parameters that can be enhanced to aid in the species' recovery.

The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal lands on which vireos have been reported recently include the National Park Service (NPS), the Fish and Wildlife Service, and two military installations (Fort Hood and Fort Sill). Fort Hood and Fort Sill personnel have expressed an interest in protecting this species, and NPS and refuges are responsible for protecting natural resources; therefore, little adverse Federal involvement is expected. Kerr State Wildlife Management Area, Kerrville, Texas, was purchased partially with Federal Aid monies and State and Federal Aid monies are used in the management of the area. Current management plans for the area are under review. Federally supported highway improvement in the Austin, Texas area, and proposed actions by the Navarro County Electric Cooperative, Inc. have potential to affect black-

capped vireo habitat. Should it be determined that the above proposed actions "may affect" the black-capped vireo, section 7 consultation, as described above, will be required. No other Federal activities are known to be presently occurring on State and private lands containing black-capped vireos.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is J. Allen Ratzlaff, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	* *	*	*	*	*		
Vireo, black-capped	*Vireo atricapillus*	U.S.A. (KS, LA, NE, OK, TX), Mexico.	Entire	E	294	NA	NA
*	* *	*	*	*	*		

Dated: September 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–23024 Filed 10–5–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Gila Trout (Salmo gilae) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to reclassify the Gila trout (*Salmo gilae*), a species endemic to New Mexico and Arizona, from endangered to threatened under provisions of the Endangered Species Act (Act) of 1973, as amended. *Salmo gilae* was originally listed as endangered on March 11, 1967 (32 FR 4001). Based on a 1986 review of status information, the Service has determined that reclassification of the Gila trout to threatened status is warranted because the five original populations have been restored, replicated, and biologically secured, and because seven additional populations have been established within the historic range of this fish. These accomplishments also fulfill criteria for reclassification as given in the species' recovery plan. Included with this proposal is a special rule, which, if made final, will enable the New Mexico Department of Game and Fish to promulgate special regulations allowing public sport fishing for the species. The Service is requesting comments and information pertaining to this proposed reclassification.

DATES: Comments from all interested parties must be received by December 7, 1987. Public hearing requests must be received by November 20, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Gerald Burton, Endangered Species Biologist, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION: .

Background

The Gila trout (*Salmo gilae*) is native to relatively undisturbed, high altitude mountain streams in Arizona and New Mexico. Historically, Gila trout occurred in the Verde and Agua Fria drainages, Arizona, and in the upper Gila drainage in New Mexico. Gila trout may also have been indigenous to Eagle Creek, Arizona, and some tributaries of the San Francisco River, New Mexico.

When the Gila trout was listed as endangered (March 11, 1967; 32 FR 4001), its range had been reduced to five streams within the Gila National Forest, New Mexico. These five streams were Iron, McKenna, and Spruce Creeks in the Gila Wilderness Area, and Main Diamond and South Diamond Creeks in the Aldo Leopold Wilderness Area. Reasons for the drastic decline of the species included hybridization and competition with and/or predation by non-native rainbow trout (*Salmo gairdneri*), cutthroat trout (*Salmo clarki*), and brown trout (*Salmo trutta*).

Recovery actions initiated after listing have included chemically treating streams within the historic range of the species to remove exotic competitive and predatory fish species, and constructing physical barriers to prevent reinvasion of exotics. The five indigenous populations were thus secured, and seven additional populations were established by replicating these populations. Replication involved moving adults from each successfully reproducing indigenous population and releasing them into the closest suitable renovated stream. The seven populations established in this manner occur in Gap Creek, Prescott National Forest, Arizona; and Trail Canyon, Little, McKnight, Big Dry, Iron, and Sheep Corral Creeks in the Gila National Forest, New Mexico. The populations in Sheep Corral, McKnight, and Gap Creeks represent replications of the morphotype in Main Diamond Creek. The South Diamond Creek population has been replicated in Trail Canyon Creek, and Spruce Creek has been replicated in Big Dry Creek. The Little Creek population is a replication of McKenna Creek. The Iron Creek population has been essentially replicated (or expanded) in Iron Creek by renovating a reach of the creek downstream from the indigenous population and establishing a population there. In summary, twelve secure populations presently exist, including five indigenous and seven reintroduced populations. These stream renovation and transplantation efforts have been accomplished jointly by the Service, U.S. Forest Service, New Mexico Department of Game and Fish, and New Mexico State University.

Surveys of the twelve existing populations indicate that the recovery efforts have been successful. Presently, all five indigenous populations are secure and occupy their habitat to its maximum carrying capacity. Reintroduced populations that have been surveyed are successfully reproducing and will soon fill their habitat to carrying capacity (Turner 1986).

By replicating the five indigenous populations to establish seven additional populations, the Service has fulfilled criteria for reclassifying the Gila trout as threatened as outlined by the Gila Trout Recovery Plan (USFWS 1984). The Plan states that "the species could be considered for downlisting from its present endangered status to a threatened status when survival of the five original ancestral populations is secured and when all morphotypes are successfully replicated or their status is otherwise appreciably improved." The Service has determined that the recovery efforts have improved the status of the Gila trout such that the species is no longer "in danger of extinction throughout all or a significant portion of its range" (i.e., endangered), but that hybridization and/or competition with non-native salmonids still threatens this fish below stream barriers (see Factors "C" and "E" in the "Summary of Factors Affecting the Species" section). Therefore, the Service believes that reclassification to a threatened status is appropriate.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for reclassifying species on the Federal Lists. A species may be listed or reclassified as threatened or endangered due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Gila trout (*Salmo gilae* Miller) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the past, Gila trout populations were threatened by habitat destruction due to timber harvesting, mining, and other watershed disturbances. These factors compounded the threats posed by non-native salmonids (see Factors "C" and "E" in the "Summary of Factors Affecting the Species" section for discussions on non-native salmonids). Presently, ten of the eleven creeks that

contain Gila trout occur in Forest Service Wilderness Areas within the Gila National Forest, New Mexico, or the Prescott National Forest, Arizona. The Gila Wilderness Area contains Sheep Corral, Big Dry, Little, McKenna, Spruce, Trail Canyon and Iron Creeks, and the Aldo Leopold Wilderness Area contains South Diamond and Main Diamond Creeks. Gap Creek is within the Cedar Bench Wilderness Area in the Prescott National Forest, Arizona. Habitat protection provided by Wilderness Area regulations will prevent or minimize future habitat destruction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Presently all stream reaches that contain Gila trout are closed to sport fishing. While some illegal fishing takes place, the Service believes that the amount of take is small and has a minimal effect on populations. Most illegal fishing is done by backpackers who are unaware the stream is closed to fishing and who only take a few fish.

Some Gila trout are taken for scientific or educational proposes, but the take is small and controlled through the Federal and State permitting processes.

C. *Disease and predation.* Gila trout are not known to be impacted by various disease and parasites that affect other trout species. The species' lack of parasitism is probably the result of extreme isolation and pristine habitat conditions.

Predation of Gila trout by brown trout has been a serious problem, and continues to be a problem for fish below stream barriers. The brown trout, a non-native salmonid, preys on small Gila trout and is able to severely depress Gila trout populations. In Gila trout streams that were restored, the predation threat was eliminated by chemically removing all fish and reintroducing only native species. Physical stream barriers constructed by the U.S. Forest Service prevent brown trout from moving upstream and preying on Gila trout. However, downstream from these barriers, brown trout and other non-native species remain a threat.

D. *The inadequacy of existing regulatory mechanisms.* Prior to 1967, when the Gila trout was Federally listed as endangered, the species had no legal protection. Listing the species provided recognition, protection, and prohibitions against certain practices (such as take), and also stimulated recovery actions. In response to the Federal listing action, the States of New Mexico and Arizona officially recognized the declining status of the species. Arizona designated the Gila trout as a threatened species (Group 1), which includes species that are known or suspected to have been extirpated from Arizona but that still exist elsewhere. New Mexico designated the Gila trout as an endangered species (Group 1) on January 24, 1975 (NM State Game Commission Regulation No. 563). Group 1 species are those whose prospects of survival or recruitment in New Mexico are in jeopardy. The designation provides the protection of the New Mexico Wildlife Conservation Act (Sections 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under a scientific collecting permit. New Mexico also has a limited ability to protect the habitat of the species through the Habitat Protection Act (Sections 17–6–1 through 17–6–11), through water pollution legislation, and tangentially through a provision which makes it illegal to dewater areas used by game fish (Section 17–4–14).

E. *Other natural or manmade factors affecting its continued existence.* When the Gila trout was listed as endangered, the most important reason for the species' decline was hybridization and competition with and/or predation by non-native salmonids. Due to declining native fish populations, the New Mexico Department of Game and Fish maintained propagation and stocking programs of Gila trout, rainbow trout, cutthroat trout, and brown trout during the early 1900's to improve fishing success. Gila trout were propagated from 1923 to 1935 (USFWS 1984) at the Jenks Cabin Hatchery in the Gila Wilderness, but the program was abandoned because of the hatchery's poor accessibility and low productivity. After early stocking programs were discontinued, the non-native trout species persisted and seriously threatened the genetic purity and survival of the few remaining populations of Gila trout. Recent efforts to recover the species have included eliminating non-native salmonids from the species' historic habitat and building barriers to prevent their reinvasion. Presently, twelve viable populations of Gila trout exist in the absence of non-native salmonids.

Other factors that will continue to affect the Gila trout and its habitat include forest fires, flash floods, and droughts. Flash floods can displace the trout and alter its habitat. A particularly severe flash flood has the potential to displace fifty percent or more of an existing trout population. In the process, many fish are killed or injured and those that do survive are often swept downstream into areas occupied by rainbow and brown trout with which they are unable to compete. Low water conditions caused by droughts reduce the amount of available habitat and increase the trout's susceptibility to predators such as birds and racoons. Forest fires have affected and continue to threaten the habitat by causing removal of vegetative cover and declines in water quality due to siltation.

Prior to the introduction of non-native salmonids, forest fires, droughts, and floods probably were not major threats to the species. However, these factors presently are threats because the Gila trout's reduced range and abundance and presumably lowered genetic potential makes the species more vulnerable to catastrophes.

The Service believes that reclassifying the Gila trout from endangered to threatened status is consistent with the Act and that the action will further the conservation and recovery of this species. Threatened status seems appropriate because the number of populations has increased from five to twelve since recovery efforts began. Ten of these populations occur on Forest Service Wilderness Areas, which have regulations providing habitat protection and which are relatively remote from human disturbance. Threatened status also seems appropriate for the Gila trout because the major threats have been reduced by recovery efforts and by the legal protection given under State laws and the Act. Non-native salmonids, which were the major threat to the species, have been removed from the eleven streams that currently support Gila trout. However, non-native trout species remain a threat because the majority of historic Gila trout habitat remains dominated by these species. State and Federal regulations limit the take of Gila trout. Currently, few Gila trout are taken for scientific or educational purposes, and this take is controlled through the State and Federal permitting process. Current State and Federal regulations prohibit taking this species for commercial or sporting purposes. Threats due to natural disasters remain, but are unavoidable risks. Therefore, the Service believes that, given continued careful management, reclassification to a threatened status is appropriate.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Gila trout, however,

was listed as endangered (32 FR 4001), prior to passage of the Act. Subsequently, no critical habitat was designated because the habitat was included in Forest Service Wilderness Areas and was believed to be adequately protected. Because the same protection remains, the Service finds that no net benefit to the conservation of this species would accrue from designating critical habitat at this time.

Effects of Rule

This rule, if made final, would change the status of the Gila trout from endangered to threatened. The final rule would formally recognize that this species is no longer in danger of extinction in the foreseeable future. Reclassifying the species will have no effect on regulations regarding protection and recovery of the species. Protection given to threatened species under sections 7 and 9 of the Act is essentially the same as that given to endangered species. Recovery provisions are the same for threatened species as for endangered species.

An important effect of reclassifying the Gila trout as threatened is that the Secretary would then have the option of promulgating a special rule under section 4(d) of the Act, an option not available for species listed as endangered. The special rule included with this proposal would enable the New Mexico Department of Game and Fish to promulgate special regulations allowing sport fishing for Gila trout. This action has been determined to be necessary and advisable to provide for the conservation of the species, and has been identified in the Gila trout recovery plan as an important recovery effort. Developing a sport fishery for Gila trout will help to reduce the number of fish in streams that have reached or are near carrying capacity. By allowing regulated take, the Service hopes to garner public support for species recovery by showing that Gila trout can provide the same quality of sport fishing as non-native trouts. A sport fishery for Gila trout will be combined with an angler education program and will instruct the public about the value and identifying features of this native species of trout. After a more favorable public impression of Gila trout as a sport fish is attained, the Service hopes to renovate larger streams and establish more populations. The Service believes there will be no adverse effects of sport fishing on Gila trout because the restored populations are reproducing successfully and are near carrying capacity.

This action will not be an irreversible commitment on the part of the Service. The action is reversible, and reclassifying the Gila trout to endangered would be possible should changes occur in management, habitat, or other factors which alter the present threats to the species' survival and recovery.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning any aspect of this proposal are hereby solicited. Comments are particularly sought regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Gila trout;

(2) Information on environmental impacts that would result from the rule; and

(3) Possible alternatives to this proposed rule.

Final promulgation of the regulations on Gila trout will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Turner, P.R. 1986. Restoration of the Endangered Gila Trout. Typed script of paper presented to Annual Meeting of the Western Division, American Fisheries Society, Portland, Oregon. 12 pp.

U.S. Fish and Wildlife Service. 1984. Gila Trout Recovery Plan. Endangered Species Office, Albuquerque, NM. 52 pp.

Author

This proposed rule was prepared by Sue Rutman, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for Gila trout under "Fishes" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Trout, Gila	*Salmo gilae*	U.S.A. (NM,AZ)	Entire	T	1, ___	N/A	17.44(u)

3. It is further proposed to add the following new paragraph (u) as a special rule to § 17.44:

§ 17.44 Special rules—fishes.

* * * * *

(u) Gila trout, *Salmo gilae.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act, (ii) during a designated open season, or (iii) incidental to State permitted recreational fishing activities for other species or for Gila trout outside the permitted season, provided that the individual Gila trout taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (u)(1) through (u)(3) of this section.

Dated: September 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–23025 Filed 10–5–87; 8:45 am]

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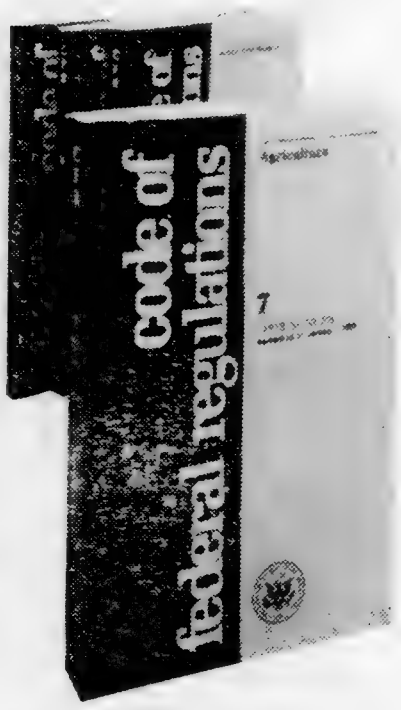

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Presidential Documents

Title 3—

The President

Proclamation 5720 of October 5, 1987

Polish American Heritage Month, 1987

By the President of the United States of America

A Proclamation

During October the people of the United States recognize and rejoice in the many accomplishments of generations of Polish Americans. From the founding of our Republic to the present day, Poles have enriched, strengthened, and defended our Nation. Millions of Polish Americans have attained great success in the arts, sciences, scholarship, and every other field of endeavor, but perhaps their most special gifts to America have been the faith and love of liberty Poles have cherished through the centuries.

That Polish love of liberty manifested itself in the hard, early days of the American Revolution when Polish freedom fighters such as Kosciuszko and Pulaski stood with us for independence. They knew the profound truth that freedom's cause is universal, that in struggling for our freedom they were working for Poland's freedom and for all mankind's. They knew that once America had fired "the shot heard 'round the world" no tyrant could ever again rest easy.

Today, as always, Americans stand in solidarity with the continuing Polish struggle for political, religious, and economic liberty. By advocating these precious freedoms so eloquently and forthrightly, His Holiness John Paul II and Lech Walesa have come to symbolize hope, justice, and human dignity to all Americans and to countless millions around the world. Their idealism, self-sacrifice, and devotion inspire us as we express our thanks to Polish Americans and our pride in our country's Polish heritage.

The Congress, by Senate Joint Resolution 135, has designated the month of October 1987 as "Polish American Heritage Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1987 as Polish American Heritage Month. I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5721 of October 5, 1987

Benign Essential Blepharospasm Awareness Week, 1987

By the President of the United States of America

A Proclamation

A little-known but debilitating neuromuscular disease produces functional blindness in thousands of Americans. The disorder, benign essential blepharospasm, causes involuntary and usually uncontrollable spasms of the muscles around the eyes that force the eyelids shut. As the disease progresses, the spasms become almost continuous.

Approximately 30,000 Americans suffer from benign essential blepharospasm. Most of them first experience symptoms in their fifth or sixth decade, although younger people are also affected. In the early stages of the disease, when the patient experiences an occasional extra wink or blink, there is only a slight impact on the quality of life. But when the spasms are more frequent, the patient cannot perform simple tasks such as reading or cooking, and ordinary activities such as driving a car become dangerous.

Treatment with drugs or surgery can temporarily relieve the symptoms of benign essential blepharospasm, but as yet there is no cure. Scientists are attempting to find improved treatments and to learn more about the causes of this condition. Three biomedical research agencies—the National Institute of Neurological and Communicative Disorders and Stroke, the National Eye Institute, and the National Institute of Mental Health—lead the Federal research attack. Support for research is also provided by the Benign Essential Blepharospasm Research Foundation, Inc., a voluntary agency known for its efforts to assist patients and their families.

To increase public awareness of benign essential blepharospasm, the Congress, by House Joint Resolution 224, has designated the week of October 18 through October 24, 1987, as "Benign Essential Blepharospasm Awareness Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 18, 1987, as Benign Essential Blepharospasm Awareness Week, and I call upon the people of the United States to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5722 of October 5, 1987

Leif Erikson Day, 1987

By the President of the United States of America

A Proclamation

Our Nation sets aside October 9 each year to honor Leif Erikson and to celebrate our country's Nordic heritage. Almost a thousand years ago this young Viking explorer set out from Norway to convert Greenlanders to Christianity. He eventually reached North America and brought back reports of places he called Helluland, Markland, and Vinland. The explorers, missionaries, settlers, and adventurers who followed him in later centuries shared his bold spirit. The memory of Leif Erikson continues to inspire all who would chart new territory for the good of mankind.

Many who settled in North America were Nordics. Like "Leif the Lucky" they displayed great determination and courage as they came to a new world. They and their descendants have truly contributed much to our national heritage; the strength of character and spirit of adventure they trace to their ancestors, including Leif Erikson, are traits Americans will always revere as quintessentially American.

In honor of Leif Erikson and our Nordic American heritage, the Congress, by a joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), has authorized the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 9, 1987, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. I also invite the people of the United States to honor Leif Erikson and our Nordic American heritage by holding appropriate exercises and ceremonies in suitable places throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Rules and Regulations

Federal Register
Vol. 52, No. 194
Wednesday, October 7, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the U.S. Department of Agriculture (USDA) to designate the Assistant Secretary for Governmental and Public Affairs as the central printing authority and the central public information authority in the USDA.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, USDA, Washington, DC, (202) 447–6035.

SUPPLEMENTARY INFORMATION: In 1977, the Secretary of Agriculture designated the Assistant Secretary for Governmental and Public Affairs as the central printing authority in the USDA. In addition, the Assistant Secretary by virtue of his responsibilities is the central public information authority in the USDA. The purpose of this document is to reflect those responsibilities in the delegations made to the Assistant Secretary.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.29 is amended by revising paragraphs (c)(4) and (c)(5) to read as follows:

§ 2.29 Delegations of authority to the Assistant Secretary for Governmental and Public Affairs.

* * * * *

(c) * * *

(4) Serve as the central public information authority in the USDA, with the authority to determine policy for all USDA communication activities and agency information activities in order to provide leadership and centralized operational direction for USDA and agency information activities so that all material shall effectively support USDA policies and programs, including the defense program.

(5) Serve as the central printing authority in the USDA, with authority to represent the USDA with Joint Committee on Printing of the Congress, the Government Printing Office, and other Federal and State agencies on information matters.

* * * * *

For Subpart C:

Date: October 2, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87–23167 Filed 10–6–87; 8:45 am]
BILLING CODE 3410–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has ameded its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of increasing discount rates.

The action reflects the intent of the Federal Reserve to deal effectively and in a timely way with potential inflationary pressure.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452–3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A to incorporate changes in discount rates on Reserve Bank extensions of credit. Further, under the authority of 5 U.S.C. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations require that these amendments be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR Part 201 as set forth below:

PART 201—[AMENDED]

1. The authority citation for 12 CFR Part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 et seq., 347c, 348 et seq., 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6	Sept. 9, 1987.
New York	[illegible]	Sept. 4, 1987.
Philadelphia	[illegible]	Do.
Cleveland	6	Do.
Richmond	6	Sept. 5, 1987.
Atlanta	[illegible]	Sept. 4, 1987.
Chicago	6	Do
St. Louis	[illegible]	Sept. 9, 1987.
Minneapolis	[illegible]	Sept. 8, 1987.
Kansas City	6	Sept. 4, 1987
Dallas	[illegible]	Sept. 11, 1987.
San Francisco	[illegible]	Sept. 9, 1987.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) Seasonal credit. The rates for regular seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6	Sept. 9, 1987.
New York	6	Sept. 4, 1987.
Philadelphia	6	Do.
Cleveland	6	Do.
Richmond	6	Sept. 5, 1987.
Atlanta	6	Sept. 4, 1987.
Chicago	6	Do.
St. Louis	6	Sept. 9, 1987.
Minneapolis	6	Sept. 8, 1987.
Kansas City	6	Sept. 4, 1987.
Dallas	6	Sept. 11, 1987.
San Francisco	6	Sept. 9, 1987.

(b) Temporary seasonal credit program. At the option of the borrower, interest on credit advanced under the temporary simplified seasonal credit program as revised on February 18, 1986, can be either at the basic discount rate (see § 201.51) or at a rate that is one-half percentage point above the basic rate and that will remain fixed during the time the credit is outstanding. The fixed rate for new loans may be changed as the basic discount rate and extended credit rates are changed. In no case should such borrowing, including renewals, be outstanding beyond February 1988.

(c) Other extended credit. The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	[illegible]	Sept. 9, 1987.
New York	[illegible]	Sept. 4, 1987.
Philadelphia	[illegible]	Do.
Cleveland	6	Do.
Richmond	[illegible]	Sept. 5, 1987.
Atlanta	[illegible]	Sept. 4, 1987.
Chicago	6	Do.
St. Louis	6	Sept. 9, 1987.
Minneapolis	[illegible]	Sept. 8, 1987.
Kansas City	6	Sept. 4, 1987.
Dallas	[illegible]	Sept. 11, 1987.
San Francisco	[illegible]	Sept. 9, 1987.

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, October 1, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23155 Filed 10-6-87; 8:45 am]

BILLING CODE 6210-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 404

Freedom of Information Reform Act of 1986; Revision of Fees, Fee Waiver Policy and Other Changes

AGENCY: Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: The Export-Import Bank of the United States (Eximbank) is amending and updating its regulations which govern the processing of requests under the Freedom of Information Act, as amended (FOIA). These changes are necessary to implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). Pursuant to Pub. L. 99-570, these amendments are written to follow the Uniform Freedom of Information Act Fee Schedule and Guidelines, published in the **Federal Register** in final form by the Office of Management and Budget on March 27, 1987.

DATE: Effective date: November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Gregory Beams, (202) 566-8194 or Steven E. Hendrix, (202) 566-4784, Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 ("Reform Act") required the Office of Management and Budget to develop and issue a schedule of fees and guidelines applicable to the processing of FOIA requests. After publication of the proposed schedule and guidelines in the **Federal Register** on January 16, 1987, and consideration of numerous comments received, OMB issued its final rule regarding fees and relevant guidelines in the **Federal Register** on March 27, 1987. The Department of Justice provided agencies with advisory fee waiver policy guidance in a Memorandum dated April 2, 1987, issued by the Assistant Attorney General. The following amendments to 12 CFR Part 404 conform to OMB's schedule and guidelines, and utilize the Department of Justice guidance respecting fee waiver policy. Technical changes have also been made to reflect changess in the titles of Eximbank officers, and requirements for the use of specific forms have been deleted.

Eximbank published notice of these amendments to its regulations regarding Disclosure of Information on June 8, 1987, (52 FR 21569). Eximbank received comments from two organizations on the proposed rules. One organization submitted its comments after the comment period had closed. Eximbank fully considered the comments submitted by the organization despite the fact that they were submitted after the comment period had closed. Responses to the comments are provided on a section-by-section basis as follows:

Responses to Comments

Section 404.6(a)(8) Definitions: Representatives of the News Media.

Both commenters requested Eximbank to reexamine and change its definition of "representative of the news media." Eximbank, following OMB's guidelines, proposed to define "a representative of the news media" as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the

public," with "news" defined pursuant to the OMB guidelines as information that is about current events or that would be of current interest to the public. The commenters felt the definition of news should be dropped to preclude determinations by agency officials of what is news.

OMB concluded in the Sectional analysis to its final guidelines that it is reasonable to give some weight to the term "news" when developing the definition of a representative of the news media. Eximbank agrees with OMB's conclusion on this point. Therefore, in the final rule, "news media" is limited to those persons or organizations who disseminate information that is about current events or would be of current interest to the public.

Section 404.6(a)(8) Definitions: Freelance Journalist.

One commeter asked that the proposed definition of "freelance journalist" be deleted. The commenter suggested that the criterion in Eximbank's proposed rule for freelancer eligibility—i.e., "demonstrates a solid basis for expecting publication"—is at variance with the way many freelancers work in selling their project only after completion. Further, the commenter asserted that the criterion would work against first-time freelancers.

Eximbank's criteria for freelancer eligibility are taken directly from OMB's final guidelines to the agencies. OMB addressed the issues raised by the commenter in the supplementary information section and sectional analysis accompanying its final guidelines.

Eximbank believes that the OMB concept strikes a workable balance in expanding the "news media" to include freelance journalists but not just anyone calling himself or herself a freelance journalist. For these reasons, Eximbank is retaining the definition of "freelance journalist."

Section 404.6(e) Charges for Unsuccessful Search.

One commenter stated that this section omitted the opportunity for the requester to consult with the agency with the object of reformulating the request to meet his or her needs at a lower cost, as provided in the OMB guidelines. Eximbank agrees with this suggestion and has modified its rule accordingly.

Section 404.6(f) Aggregating Requests.

One commenter claimed that the proposed rule failed to note the presumption against aggregation when the requests have been made more than 30 days apart as noted in the OMB guidelines. The presumption described by the commenter is different from the presumption in the OMB guidelines, which contain a presumption in favor of aggregation when requests have been made less than 30 days apart. For requests made more than 30 days apart, the OMB guidelines state that "For requests made over a longer period, however, such a presumption becomes harder to sustain and agencies should have a solid basis for determining that aggregation is warranted in such cases." The only presumption noted in the OMB guidelines is in favor of aggregation and consequently, Eximbank does not believe that any presumption against aggregation need be incorporated into its final rule.

Section 404.6(i) Fee Waivers and Appeals.

The Freedom of Information Reform Act requires that individual agency regulations set forth procedures and guidelines for determining when FOIA fees should be waived or reduced. Both commenters objected to Eximbank's provision to implement this requirement, which Eximbank based upon the policy guidelines for fee waiver standards issued by the Department of Justice on April 2, 1987. The OMB Guidelines do not provide guidance on when fees should be waived, or address the statutory standard governing the waiver of FOIA fees, 5 U.S.C. 552(a)(4)(A)(iii).

The commenters felt that the Department of Justice guidance restricts the granting of fee waivers beyond what Congress intended in enacting the statute. One commenter recommended that Eximbank simply reiterate the language of the statute regarding waiver of fees, and the other commenter recommended that the fee waiver section be revised relying exclusively on original intent rather than on the Justice Department policy guidance. The commenters also suggested that the Justice guidance requires an agency to judge the newsworthiness of the requested material, or required an agency to assess the intentions of the requester.

Eximbank does not regard the Department of Justice guidance as expanding or restricting the availability of waivers under the statute. In the words of the Memorandum, "The Department of Justice stands committed to encouraging agencies to waive fees under the FOIA whenever the statutory fee waiver standard is met. By the same token, of course, agencies also are expected to respect the balance drawn in the statute, safeguarding federal funds by granting waivers or reductions only where it is determined that the statutory standard is satisfied."

The Department of Justice guidance as incorporated in Eximbank's regulations provides for a consistent analysis of fee waiver requests by breaking down the statutory standard (5 U.S.C. 552(a)(4)(A)(iii)) into a logical sequence of steps. The information requested as well as the requester's intentions must be considered in determining whether disclosure of the information is or is not, in the words of the Reform Act, "primarily in the commercial interest of the requester." For these reasons, Eximbank believes that its provisions regarding fee waiver are appropriate and consistent with the legislative intent and purpose, and that substantive changes in its fee waiver provisions are not warranted. The language has been slightly modified to clarify the manner in which the provisions will be applied to an individual fee waiver request.

Eximbank has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Eximbank has certified that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation—i.e., those entities that choose to submit requests for records under the Freedom of Information Act, 5 U.S.C. 552. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 404

Disclosure of information.

For the reasons set forth in the preamble, 12 CFR Part 404 is amended as set forth below:

PART 404—[AMENDED]

1. The authority citation for Part 404 is revised to read as follows:

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Authority: 5 U.S.C. 552; 12 U.S.C. 635; Freedom of Information Reform Act of 1986, Pub. L. 99–570; Debt Collection Act of 1982, Pub. L. No. 97–365.

§ 404.3 [Amended]

2. Amend 12 CFR 404.3(d) by removing "Public Affairs Office in Room 1267" and adding in lieu thereof "Office of the Secretary in Room 933".

§ 404.4 [Amended]

3. Amend 12 CFR 404.4(c)(1) by removing "Senior Vice President-Research and Communications" wherever it appears and adding in lieu thereof "Office of the General Counsel".

4. Amend 12 CFR Part 404.4(c)(1) by removing "EIB Form 73–5, described in paragraph (d) of this section, may be used in lieu of a letter for purposes of making the request."

5. Amend 12 CFR 404.4(c)(3) by removing "Senior Vice President-General Counsel" and adding in lieu thereof "General Counsel".

6. Amend 12 CFR Part 404.4(c)(4) by removing "Senior Vice President-General Counsel" and adding in lieu thereof "General Counsel".

7. Remove § 404.4(c)(6) and § 404.4(c)(7) in their entirety, and amend § 404.4(c)(8) by renumbering it as § 404.4(c)(6).

8. Remove 12 CFR 404.4(d).

9. Revise § 404.6 to read as follows:

§ 404.6 Schedule of fees.

(a) *Definitions.* (1) The term "direct costs" means those expenditures which Eximbank actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is usable by requesters.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commericial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term " 'commercial' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester belongs in this category, Eximbank must determine the use to which a requester will put the documents requested. Where Eximbank has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Eximbank may seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Eximbank may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged—general.* Eximbank will charge fees that recoup the full allowable direct costs it incurs, and will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. Eximbank may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method, and does not result in an ultimate cost to the requester greater than it would be if Eximbank had performed these tasks. Eximbank will not contract out responsibilities which the FOIA provides that it alone may discharge, such as determining applicability of an exemption, or determining whether to waive or reduce fees. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as the Government Printing Office or the National Technical Information Service, Eximbank will inform requesters of the steps necessary to obtain records from those sources.

(1) *Manual searches for records.* Eximbank will charge for search and review work performed by its employees according to the following fee schedule:

Clerical, hourly rate—$12.00
Professional, hourly rate—$24.00

(2) *Computer searches for records.* Eximbank will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. Operator/programmer salary will be calculated at basic pay plus 16 percent. Average rates for CPU operating costs and operator-programmer salaries involved in FOIA searches will be established and periodically revised to reflect actual direct costs. These rates will be available upon request.

(3) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time

Eximbank spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review, i.e., the review undertaken the first time Eximbank analyzes the applicability of a specific exemption to a particular record or portion of a record. Eximbank will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review may be assessed. Eximbank will charge for employee time spent in review according to the rates set forth in paragraph (b)(1) of this section.

(4) *Duplication of records.* The per page charge for paper copy reproduction of documents is $.25. For copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication, Eximbank will charge according to their actual direct cost. If Eximbank estimates that duplication charges are likely to exceed $25.00, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such notice will offer a requester the opportunity to confer with Eximbank personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) *Other charges.* Complying with requests for special services such as those listed below is entirely at the discretion of Eximbank. Eximbank will recover the full costs of providing services such as those enumerated below to the extent that it elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc. (Charges will not be made for ordinary packaging and mailing.)

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, Eximbank will provide the first 100 pages of duplication and the first two hours of search time without charge. Except for commercial use requesters, Eximbank will not begin to assess fees until after it has provided the free search and reproduction, and will not charge a fee in any case of $6.00 or less. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, Eximbank would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than $6.00, no charges would result. For searches made by computer, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, Eximbank will begin to assess charges for computer search.

(c) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters, with specific levels of fees for each category prescribed by law. Requesters in each category must reasonably describe the records sought.

(1) *Commercial use requesters.* When Eximbank receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Inclusion in this fee category is determined not by the identity of the requester, but by the use to which the information will be put. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Eximbank will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* Eximbank will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. To be included in this category it must be apparent from the nature of the request that the request serves a scholarly research goal of the institution, rather than an individual goal.

(3) *Requesters who are representatives of the news media.* Eximbank will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. A reqeust for records supporting the news dissemination function of the requester will not be considered to be a request that is for a commercial use.

(4) *All other requesters.* Eximbank will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Requests from record subjects for records about themselves filed in Eximbank systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(d) *Charging interest—notice and rate.* Eximbank will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Receipt of the fee at Eximbank will stay the accrual of interest. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) *Charges for unsuccessful search.* Eximbank will assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. Prior to undertaking a search, if Eximbank estimates that search fees are likely to exceed $25.00, it will notify the requester of the estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The notice will offer the requester the opportunity to consult with agency personnel with the object of reformulating the request to meet the requester's needs at lower cost.

(f) *Aggregating requests.* A requester may not file multiple requests at the same time each seeking a portion of a document or documents, solely in order to avoid payment of fees. When Eximbank reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, Eximbank may aggregate any such requests and charge accordingly. In no case will Eximbank aggregate multiple requests on unrelated subjects from one requester.

(g) *Method of payment and advance payments.* All payments to Eximbank shall be in the form of cash, check, or money order payable to the Export-Import Bank of the United States. Eximbank will not require a requester to make an advance payment—i.e., payment before work is commenced or continued on a request, unless:

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(1) Eximbank estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, in which case Eximbank will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment or;

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case Eximbank will require the requester to pay the full amount owed plus any applicable interest or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before Eximbank begins to process a new request or a pending request from the requester. The administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after Eximbank has received fee payments described above.

(h) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* In accordance with the provisions and authorities of the Debt Collection Act of 1982, Eximbank reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage payment of fees.

(i) *Fee waivers and appeals.* (1) Eximbank will waive or reduce applicable fees upon request, only if it determines that in the particular instance, disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and the disclosure is not primarily in the commercial interest of the requester.

(i) In determining whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, Eximbank will consider the following factors:

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding and;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(ii) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, Eximbank will consider the following factors:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) The requester in all cases has the burden of presenting sufficient evidence or information to justify the requested waiver or reduction. The requester may use the procedures set forth in § 404.5 to appeal the denial of a waiver request under this section.

Hart Fessenden,

General Counsel.

[FR Doc. 87–23176 Filed 10–6–87; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ACE–09]

Alteration of Control Zone; Hutchinson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: The nature of this action is to correct the legal description of the Hutchinson, Kansas, Municipal Airport control zone. The latitude coordinates contain an error and should read "lat. 38°03'56" N." This action will not increase the size of the existing airspace.

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: The FAA has determined that the latitude coordinates for the Hutchinson, Kansas, Municipal Airport control zone are incorrectly cited in the published description. Action is taken herein to correct this error. The latitude coordinates cited as "lat. 38°06'56" N." should be changed to read "lat. 38°03'56" N." Since this action does not increase the size of the Hutchinson control zone and only corrects a typographical error, notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than thirty (30) days. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Hutchinson, Kansas [Revised]

Within a 5-mile radius of Hutchinson Municipal Airport (lat. 38°03'56" N., long.

97°51'37" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

This amendment becomes effective 0901 U.t.c. October 14, 1987.

Issued in Kansas City, Missouri, on September 22, 1987.

Clarence E. Newbern,

Assistant Manager, Air Traffic Division.

[FR Doc. 87-23121 Filed 10-6-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ACE-05]

Designation of Control Zone; Fort Leavenworth, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to designate a part-time control zone at the Sherman Army Airfield, Fort Leavenworth, Kansas, based on a request from the Department of the Army. The effective dates and times of the control zone, when established, will be published in the Airport/Facility Directory.

EFFECTIVE DATE: 0901 U.t.c., January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: The Department of the Army has requested that a part-time control zone be established for the Sherman Army Airfield, Fort Leavenworth, Kansas. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen and will be continuously published in the Airport/Facility Directory. Control zones are designed to contain IFR operations in controlled airspace to the surface around airports within a specified radius and along the final approach course to the IAP. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

Discussion of Comments

On page 27824 of the **Federal Register** dated July 24, 1987, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a control zone at Fort Leavenworth, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. The Aircraft Owners and Pilots Association (AOPA) stated that although they did not specifically object to the proposal, they had concerns about access problems pilots would experience when operating to/from the Elton Airport. AOPA advised that they had determined that the Elton Airport would be encompassed by the control zone. The FAA has determined that the Elton Airport is over 5.9 statute miles from the Sherman Army Airfield and is therefore outside of the existing airport traffic area and control zone. Accordingly, the FAA has determined that this action will not place any additional burden on the users of the Elton Airport and the rule is hereby adopted as proposed.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federa1 Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Fort Leavenworth, Sherman Army Airfield, Kansas [New]

Within a five mile radius of Sherman Army Airfield (latitude 39°22'06" N., longitude 94°54'52" W.), excluding that portion which overlies the Kansas City, Missouri International Airport Control Zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/facility directory.

Issued in Kansas City, Missouri, on September 23, 1987.

Clarence E. Newbern,

Assistant Manager, Air Traffic Division.

[FR Doc. 87-23122 Filed 10-6-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-20]

Establishment of a Transition Area at Herlong, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a new transition area at Herlong, CA. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to Amedee Army Airfield (Amedee AAF), CA.

EFFECTIVE DATE: 0901 Ut.c., January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On July 21, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new transition area at Herlong, CA, (52 FR 27416). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a new transition area at Herlong, CA. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to Amedee AAF, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854, 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Herlong, CA. [NEW]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 40°20'15" N., long. 119°48'23" W., to lat. 40°07'58" N., long. 119°51'43" W., to lat. 40°11'30" N., long. 120°16'43" W., to lat. 40°20'32" N., long. 120°14'30" W., thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within an area bounded by the 23 mile and 12 mile arcs northeast of the Amedee VOR (lat. 40°16'05" N., long. 120°09'03" W.) and the Amedee 039° and 179° radials; and that airspace extending upward from 9,500 feet MSL within an area bounded by a line beginning at lat. 40°20'15" N. long. 119°48'23" W., to lat. 40°16'52" N., long. 119°26'00" W., to lat. 40°04'25" N., long. 119°29'20" W., to lat. 40°07'58" N., long. 119°51'43" W., thence to the point of beginning.

Issued in Los Angeles, California, on September 23, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87–23120 Filed 10–6–87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 87–125]

Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning Classification of Fiber Reinforced Cellulosic Plastic Sausage Casings

AGENCY: Customs Service, Treasury.

ACTION: Notice of petitioner's desire to contest decision on domestic interested party petition.

SUMMARY: This document advises the public of the desire of a domestic interested party to judicially contest Customs decision denying its petition requesting the reclassification of certain imported fiber reinforced cellulosic plastic sausage casings composed of paper, regenerated cellulose and glycerin. Based upon the product's component material in chief value, it has been held that the correct classification of the product is under item 790.47, Tariff Schedules of the United States (TSUS), as sausage casings not specifically provided for, whether or not cut to length, other. The petitioner contests this decision, contending that all cellulosic plastic sausage casings are to be classified under item 790.45, TSUS, as sausage casings, not specifically provided for, whether or not cut to length, of cellulosic plastics materials. This classification would subject the product to a higher rate of duty. The petitioner has advised Customs that it intends to pursue this matter through appropriate court proceedings.

FOR FURTHER INFORMATION CONTACT: Sheila Murphy, Classification and Value Division (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

In Internal Advice (IA) 162/79, file 061462, dated May 27, 1983, Customs determined that the component materials in certain imported fiber reinforced cellulosic plastic sausage casings were paper, regenerated cellulose and glycerin. In this ruling, Customs described the nine-step process for producing the casings and specified the points in the process at which the value of each of the component materials was to be computed. In accordance with this ruling, Customs determined that the casings were not in chief value of cellulosic plastics materials and were to be classified under item 790.47, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), as sausage casings, not specially provided for, whether or not cut to length, other. On January 12, 1984, Customs issued ruling 073604, which reaffirmed the conclusions reached in IA 162/79.

On September 30, 1985, a petition challenging Customs classification of the product was filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175), on behalf of a domestic company which manufactures and wholesales a product similar to that classified in IA 162/79. A notice of receipt of the petition was published in the **Federal Register** on October 15, 1986 (51 FR 36703), advising the public of the petitioner's contentions and requesting comments on the petition.

Three major arguments were set forth in the petition against Customs classification of the product and in favor of the petitioner's view that the product should be classified under item 790.45, TSUS, as sausage casings, not specially provided for, whether or not cut to length, of cellulosic plastics materials. This classification would subject the product to a higher rate of duty than that of item 790.47, TSUS.

First, it was argued that IA 162/79 was issued in disregard of section 502(b), Tariff Act of 1930, as amended (19 U.S.C. 1502(b)), which bars Customs from reversing or modifying a prior interpretation of the TSUS without the concurrence of the Attorney General or the Court of International Trade. By issuing the 1983 ruling, the petitioner stated, Customs reversed rulings made on October 31, 1975 (038749) and May 12, 1977 (051718), without seeking such concurrence. In those rulings Customs held that fiber reinforced cellulosic plastic sausage casings were classifiable under item 790.45, TSUS. Because Customs did not seek concurrence, the petitioner argued, the IA is void.

The petitioner also argued that the legislative history of the Tariff Schedules Technical Amendments Act of 1965 (Pub. L. 89–241, 79 Stat. 933, amending 19 U.S.C. 1202), reveals a Congressional intent to provide special protection for manufacturers of sausage casings of cellulosic plastic origins

whether or not that material is the component material in chief value.

Finally, the petitioner argued that the method set out in IA 162/79 for determining the component material in chief value of fiber reinforced cellulosic plastic sausage casings was incorrect, and that if correct cost allocations were used, the casings would be classifiable as in chief value of cellulosic plastic materials. The petitioner maintained that certain costs were incorrectly attributed to the paper and to the glycerin rather than to the regenerated cellulose.

Three comments were received in response to the October 15, 1986, notice. As only one of these comments supported the petitioner's viewpoint, and this comment made arguments similar to petitioner's, the following discussion will address these points raised by the petitioner.

Discussion of Comments

It is Customs position that IA 162/79, setting out a new method for determining the component material in chief value of the casings, was not issued in violation of 19 U.S.C. 1502(b). In the principal case construing this section, *Joanna Western Mills Co.* v. *United States*, 64 Cust. Ct. 218, C.D. 3983 (1970), a petitioner under 19 U.S.C. 1516 claimed that a previously issued abstracted decision should have been followed. The Customs Court held that the provisions for the concurrence of the Attorney General in 19 U.S.C. 1502(b) were of a directory nature only, and that failure to comply did not render void the official actions taken. The court also determined that 19 U.S.C. 1502(b) was enacted solely for the protection of the United States, and was not intended to benefit any designated class of persons. The Court further found that the petitioner had ample means available to contest the classification.

In Customs view, the legislative history does not support petitioner's claim that the description of sausage casings to be classified under item 790.45, TSUS, of "Of cellulosic plastics material," should be interpreted to read "Almost wholly of cellulosic plastics materials." Before the enactment of the TSUS, sausage casings not provided for as intestines or other prepared animal parts were classified according to component material in chief value. Both the legislative history and the provision in the TSUS use the term "of," defined as naming a component material in chief value. We find no intent to classify the casings, instead, according to essential character.

Finally, we do not agree with the petitioner's method for determining the component material in chief value of the casings, assuming component material in chief value to be the correct standard We find no justification for breaking down the paper, one of the component materials, into its most basic substances, nor in failing to allocate to the paper the costs of bringing it into a condition where nothing remains to be done to it but to unite it with the other component materials in the finished product. Nor do we agree that the costs of the glycerin, another component material of the casings, should be attributed to the cost of the regenerated cellulose rather than attributed to the glycerin itself. The glycerin in the casings affects both the regenerated cellulose and the paper component materials. It does not become a permanent ingredient in the casings, as it is washed out before the casing is used.

Decision on Petition

After careful analysis of the petition and the comments received in response to the notice, and further review of the matter, including review of materials submitted by importers and the petitioner during the development of our position in IA 162/79, Customs decided to continue to classify the casings under item 790.47, TSUS. Customs determined that IA 162/79 was properly issued, that the casings are properly classifiable according to their component material in chief value, and that the current method of determining the component material in chief value of the casings is correct. The petitioner was informed of this decision by letter to their counsel dated June 8, 1987 (CLA-2 CO:R:CV:G 079612 SM).

Notice of Petitioner's Desire To Contest

In response to Customs decision to deny the petition, on June 29, 1987, the Petitioner filed notice of its intention to judicially contest the decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Customs has reconsidered the matter in light of the petitioner's letter, but remains of the opinion that its June 8, 1987, decision is correct. That decision will stand in the absence of a contrary judgment by the U.S. Court of International Trade of the U.S. Court of Appeals for the Federal Circuit.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William Von Raab,

Commissioner of Customs

Approved: September 23, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87-23182 Filed 10-6-87; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 175

[T.D. 87-126]

Decision on Domestic Interested Party Petition Concerning Classification of Orange Juice Concentrate-Based Product

AGENCY: Customs Service, Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice of a change in the tariff classification of an orange juice concentrate-based product consisting of orange juice concentrated to 65° Brix to which certain ingredients were added. The product was classified under item 183.05, Tariff Schedules of the United States (TSUS), as other edible preparations, not specifically provided for. After review and analysis of comments received in response to publication of a notice of a domestic interested party petition challenging that classification, Customs has determined that the product is properly classifiable as concentrated orange juice or orange juice made from concentrated orange juice under item 165.29, TSUS. The duty rate for item 165.29, TSUS, is higher than the duty rate for item 183.05, TSUS.

EFFECTIVE DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division, U.S. Customs Service (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1984, Customs issued ruling 553167 (C.S.D. 84-117, 18 Cust. B and Dec. No. 49 at 43, December 5, 1984), which stated that a product consisting of 87 percent orange juice concentrate (65° Brix), 10.5 percent orange peel extract, 2.25 percent citrus acid and less than one percent total of sodium benzoate,

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orange oil and artificial color, was properly classifiable under the provision for other edible preparations, not specifically provided for, in item 183.05, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202).

In this ruling, Customs dismissed classification under item 166.40, TSUS, as beverages, not specifically provided for, and item 165.35, TSUS, as any other citrus fruit juice concentrate (now item 165.36, TSUS). Item 166.40, TSUS, was not applicable because Headnote 1, Schedule 1, Part 12, Subpart B, TSUS, indicates that item 166.40, TSUS, only covers products fit for use as beverages, and the subject product is not, in its condition as imported, potable and ready to consume. Classification under item 165.35, TSUS, was precluded because the subject product was not within the common or commercial understanding of orange juice concentrate, having been processed beyond the scope thereof by the addition of significant and substantial "foreign" or excess ingredients.

On October 17, 1985, a petition was submitted on behalf of a domestic interested party representing domestic citrus growers, pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175). The petitioner challenged the tariff classification holding in C.S.D. 84–117. The petitioner stated that the tariff provision relating to fruit juices was amended by section 117, Trade and Tariff Act of 1984 (Pub. L. 98–753), to include in new items 165.27 and 165.29, TSUS, an *eo nomine* provision for orange juices, both in natural and in all forms. The duty rates for items 165.27 and 165.29, TSUS, are higher than the duty rate for item 183.05, TSUS.

The petitioner argued that the basic principles of tariff classification require that the subject product be classified under item 165.29, TSUS, because an *eo nomine* designation such as item 165.29, TSUS, without limitation or shown contrary legislative intent, judicial decision or administrative practice, and without proof of commercial designation, will include all forms of the article. The mere fact that there may be some added ingredients does not preclude its classification in the *eo nomine* provision. It argued that the added ingredients do not alter the subject product's essential character as orange juice concentrate.

The petitioner also argued that Customs definition of orange juice, which is adopted from the Food and Drug Administration (FDA's) standards of identity, is questionable inasmuch as FDA regulations (21 CFR Part 146) should not define or determine the common meaning of the term for tariff purposes.

A notice inviting the public to comment on the petition was published in the **Federal Register** on July 30, 1986 (51 FR 27196). The period of time within which comments could be submitted on the petition was extended by notice published in the **Federal Register** on October 2, 1986 (51 FR 35240). Of the nine comments received, seven supported revocation of C.S.D. 84–117 and two favored Customs affirming its decision.

Discussion of Comments

One commenter questioned whether the petitioner qualified as an "interested party" within the meaning of 19 U.S.C. 1677(9) (C), (D), or (E), qualified to submit a petition under 19 U.S.C. 1516.

Under 19 U.S.C. 1677(9)(E), an interested party includes "a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States". This provision, which was promulgated in Title X of the Trade Agreements Act of 1979 (Pub. L. 96–39), represents an expansion of the types of entities which are now eligible to file a domestic interested party petition under 19 U.S.C. 1516. Counsel for petitioners submitted a letter that the petitioner qualified as a domestic interested party and, in the absence of information to the contrary, Customs has no reason to doubt or question this statement.

The substantive comments urging revocation of C.S.D. 84–117 supported the analysis submitted in the petition. In addition, one commenter argued that if an orange juice concentrate-based product with certain additives was entitled to a lower duty rate than concentrated orange juice, importers would be encouraged to include the additives. This would result in the manufacture of more adulterated orange juice products. Another commenter stated that permitting the product with additives to have a lower duty rate could encourage importers of products without additives to claim the product has additives in order to obtain the lower rate. The commenter notes that the presence of added ingredients would be difficult to detect by Customs.

Customs understands and sympathizes with the enforcement and marketing problems inherent in C.S.D. 84–117 that these commenters note. However, the decision on the correct classification must rest on legal analysis of the issues rather than on enforcement or marketing problems that may occur.

The two commenters who believe that Customs should affirm the position in C.S.D. 84–117 set forth the following arguments:

(1) In C.S.D. 84–117, Customs did not use the FDA regulations to limit the provisions for citrus juice and control the classification of orange juice under the TSUS. Customs was correct in accepting the logical proposition that inasmuch as the orange juice concentrate-based product could not be bought or sold in the U.S. as orange juice, it could not be either commercially or commonly known as orange juice in the U.S.

(2) The amendments made by Pub. L. 98–573 with respect to orange juice are of no consequence in the classification of the product at issue. Under General Headnote 10(c)(i), TSUS, a superior heading cannot be enlarged by inferior headings indented under it, but can be limited thereby. The superior heading in this case is citrus juice. Accordingly, if the product could not be classified *eo nomine* as citrus juice, it cannot be classified *eo nomine* as orange juice.

(3) Contrary to the assertions of the petitioner, there are not sufficient amounts of the subject product being imported to seriously disrupt the market for domestic and imported concentrated and unconcentrated orange juice.

Regarding the first argument, the commenter is correct that Customs did not use the FDA regulations to limit the provisions for citrus juice and control the classification of orange juice under the TSUS, but had decided that the product could not be either commercially or commonly known as orange juice in the U.S. However, after careful analysis and review, Customs has concluded that notwithstanding the presence of additives to the orange juice-concentrate based product, the essential character of the product is orange juice concentrate and this product is now covered by the *eo nomine* provision for other orange juice in item 165.29, TSUS.

Regarding the consequences of the amendments to the TSUS made by section 117 of Pub. L. 98–573, Customs has been convinced that the amendments created an *eo nomine* designation in item 165.29, TSUS, under which the subject product falls.

Customs finds support for this view in *Robert Bosch Corp. et al.* v. *United States*, 63 Cust. Ct. 96, 103–104, C.D. 3881 (1969) in which the Court states:

> The principle is well settled that where an article is in character or function something other than as described by a specific statutory provision—either more limited or more diversified—and the difference is significant, it cannot find classification within such provision. . . . By contrast, where the

difference is in the nature of improvement or amplification, and the essential character is preserved or only incidentally altered, the applicable rule is as expressed in *Nootka Packing Co., et al.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935), that an unlimited *eo nomine* statutory designation includes all forms of the article in the absence of a contrary legislative intent or commercial designation. *United States* v. *National Carloading Corp. et al.*, 48 CCPA 70 C.A.D. 767 (1961); *United Carr Fastener Corporation* v. *United States* (Northern Screw Corp., Party in Interest), 54 CCPA 89, C.A.D. 913 (1967).

Regarding the comment concerning the volume of the subject product being imported, any classification or change in classification is not made on the basis of volume of importations, but rather on legal analysis of the issues.

C.S.D. 84–117 Revoked

After careful consideration of all the comments received and further review of the matter, Customs has concluded that C.S.D. 84–117 should be revoked. An orange-juice concentrate-based product consisting of orange juice concentrate to 65° Brix to which certain ingredients were added is to be classified as concentrated orange juice or orange juice made from concentrated orange juice, under item 165.29, TSUS.

Authority

This notice is published under the authority of section 516(b), Tariff Act of 1930, amended (19 U.S.C. 1516(b), and § 175.22, Customs Regulations (19 CFR 175.22).

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: September 25, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87–23183 Filed 10–6–87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F–0494]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a light stabilizer for polycarbonate resins and polyethylene phthalate polymers. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective October 7, 1987; objections by November 6, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1987 (52 FR 3350), FDA announced that a petition (FAP 7B3976) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) of the food additive regulations be amended to provide for the safe use of 2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a light stabilizer for polycarbonate resins and polyethylene phthalate polymers complying with 21 CFR 177.1580 and 177.1630, respectively.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive is safe, and that the regulations should be amended in 21 CFR 178.2010(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required.The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before November 6, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by alphabetically inserting a new item under "Substances," to read as follows:

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§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol (CAS Reg. No. 70321-86-7).	For use only at levels not to exceed 0.5 percent by weight of polycarbonate resins complying with § 177.1580 of this chapter and polyethylene phthalate polymers complying with § 177.1630 of this chapter.

* * * * *

Dated: September 29, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23189 Filed 10-6-87; 8:45 am]

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21 CFR Parts 610 and 660

[Docket No. 84N-0205]

Additional Standards for Diagnostic Substances for Laboratory Tests; Amendment of Additional Standards for Reagent Red Blood Cells

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its additional standards for Reagent Red Blood Cells as part of the agency's retrospective review of current regulations. FDA is making the standards more flexible and is revising the regulations to reflect recent scientific knowledge and experience in the use of Reagent Red Blood Cells.

DATES: Effective November 6, 1987, except for § 660.35. Amendments to labeling requirements in § 660.35 become effective October 7, 1988, for all affected products initially delivered for introduction into interstate commerce.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1985 (50 FR 24542), FDA proposed to amend the additional standards for Reagent Red Blood Cells. As defined in the proposal, Reagent Red Blood Cells is a licensed biological product prepared from human red blood cells and is used to detect or identify human blood group antibodies.

Under section 351 of the Public Health Service Act (42 U.S.C. 262), biological products, including Reagent Red Blood Cells, offered for sale in interstate commerce must be licensed and meet certain standards that ensure their continued safety, purity, and potency.

FDA proposed to amend the additional standards in 21 CFR Parts 610 and 660 for Reagent Red Blood Cells to reflect recent experience and scientific knowledge in the use of these products, and to continue an ongoing retrospective review program of FDA regulations. FDA has reviewed the Reagent Red Blood Cell regulations and has proposed amendments to relieve unnecessary regulatory burdens and to increase flexibility in the regulations without compromising consumer protection.

FDA provided interested persons 60 days to submit written comments on the proposal. In response, FDA received seven letters of comment. One letter of comment fully supported the proposed rule. A summary of other comments and FDA's responses follow:

1. One comment on paragraph (b) of proposed § 660.30 *Reagent Red Blood Cells* asked whether or not FDA will require human umbilical cord blood to be tested for hepatitis B surface antigen (HBsAg) and human immunodeficiency virus (HIV) (formerly human T-cell lymphotropic virus type III (HTLV-III)).

FDA believes that testing umbilical cord blood for HBsAg and HIV is an essential procedure for assuring the safety of Reagent Red Blood Cells manufactured from umbilical cord blood. Accordingly, FDA will continue to require that manufacturers specify in their product license applications that HBsAg testing be done on umbilical cord blood. In the **Federal Register** of February 21, 1986 (51 FR 6362), FDA proposed to amend the biologics regulations to require that blood and blood products be tested by a serologic test for HIV. Until the proposed rule becomes final, FDA strongly recommends that HIV testing be added as an amendment to each manufacturer's product license to assure the safety of the Reagent Red Blood Cell product.

2. One comment pointed out that proposed § 660.31 *Suitability of the donor* was incorrectly designated as § 660.331.

FDA agrees with the comment and is correcting this typographical error in the final rule.

3. Four comments were received on proposed § 660.33 *Testing of source material.*

(a) FDA proposed to amend § 660.33 to permit testing of reagent red blood cell source material with a single donor source of specific antibody if approved by the Director, Office of Biologics Research and Review. One comment stated that the Director, Office of Biologics Research and Review, in evaluating a manufacturer's request to use a single donor source of specific antibody, should be guided by the importance and availability of the particular reagent red blood cell antigen.

FDA agrees with the comment and advises that permission to test a Reagent Red Blood Cell product for a specific antigen with a single donor source will likely be granted where only one source of antibody is available.

(b) One comment questioned the requirement in proposed § 660.33 that "any discrepancy between the results of these two tests shall be resolved by testing at least one additional antiserum before concluding that the antigen is present or absent." The comment stated that manufacturers could not meet the proposed requirement in cases where only one or two sources of rare antibody are available. The comment suggested that discrepancies be resolved in accordance with the manufacturer's product license application. If the comment's suggestion were adopted, license applications might provide for the use of alternative methods such as repeat tests with different personnel or for the use of the antiserum in a different manner, e.g., different concentrations in the assay.

FDA agrees with the comment to allow for alternative methods to resolve test discrepancies in situations where fewer than three donor sources of an antibody specificity are available. FDA is amending § 660.33 by inserting the following sentence: "Where fewer than three donor sources of an antibody specificity are available, test discrepancies shall be resolved in accordance with the manufacturer's product license application." This revision will permit manufacturers greater flexibility in testing reagent red blood cell source material when test discrepancies occur.

(c) One comment recommended that the last sentence in proposed § 660.33 be revised to read "shall include at least the following common antigens * * *." The comment suggested the addition of the words "at least" to identify the listed antigens as minimum criteria for evaluating Group O Reagent Red Blood Cells.

FDA agrees with the comment and is amending the final rule to include the words "at least" in the last sentence of § 660.33 to more accurately define the specificity of Group O Reagent Red Blood Cells used in the detection or identification of unexpected antibodies.

(d) One comment on proposed § 660.33 suggested that the phrase "detection and identification" be revised

to read "detection or identification" to be consistent with similar proposed changes in §§ 660.34(b) and 660.35 (e) and (i).

FDA agrees with the comment. In the final rule, FDA is revising § 660.33 as suggested.

4. Two comments were received on proposed § 660.34(a) *Processing method.*

(a) One comment stated that the word "consistently" incorrectly modifies the verb "shown" rather than the words "to yield." The comment also stated that the phrase "throughout the dating period" is similarly misplaced, and should immediately follow the word "detecting."

FDA agrees with the comment and is amending proposed § 660.34(a) as suggested for clarity.

(b) A second comment on proposed § 660.34(a) suggested deleting the word "all" in the phrase "capable of detecting all alloantibodies." The comment pointed out that the word "all" is unnecessary and should be avoided because of its rigid implications.

FDA agrees with the comment and is deleting the word "all" in the final rule from the phrase "capable of detecting all alloantibodies."

5. Three comments were received on proposed § 660.34(b) *Products prepared from pooled red blood cells.*

(a) One comment suggested that products prepared from pooled red blood cells should not be recommended for the identification of unexpected antibodies, except in the case of umbilical cord cells which serve only as an aid in antibody identification. The comment also suggested that the last sentence of the paragraph is misplaced and should immediately follow the first sentence of the paragraph.

FDA agrees with the comment and is revising § 660.34(b) as suggested. As described in detail in paragraph 6 of this preamble, FDA believes that pooled red blood cells may not detect a weakly reacting antibody in the patient's serum sample. Therefore, FDA believes that single donor cell samples should be used in screening a patient's serum.

(b) FDA proposed to remove the requirement in existing § 660.34(b) *Red blood cell concentration* that each lot of final product have a red blood cell concentration of no less than 2 percent. One comment suggested that the current requirement should be retained. The comment indicated that transfusion service personnel may not perceive significant reactions in pretransfusion testing when using Reagent Red Blood Cell products containing less than 2 percent red blood cells, thereby potentially compromising patient care.

FDA disagrees with the comment. As stated in the proposed rule, FDA believes that recent advances in biotechnology, such as changes in testing methodology, may result in the use of Reagent Red Blood Cell products that are safe, reactive, and effective in concentrations of less than 2 percent. Through the licensing requirements of the Public Health Service Act and 21 CFR Parts 600 and 601, FDA will continue to require provisions in manufacturers' license applications that assure the safety, reactivity, and effectiveness of Reagent Red Blood Cells at appropriate concentrations. Accordingly, FDA rejects the comment. For further discussion, see also paragraph 13 of this preamble.

6. One comment on proposed § 660.34(b) objected to the requirement of limiting the use of pooled Reagent Red Blood Cells to tests that do not determine transfusion compatibility. The comment disagreed with the implication of the proposed amendment, namely that individual donor cells will, by the virtue of their individuality, comprise a more sensitive antibody detection system than pooled reagent red blood cells. The comment submitted limited data, performed in-house, that supported the contention that pooled red blood cells are not less sensitive than individual donor cells in detecting antibodies in the serum of a patient who may require a blood transfusion. The comment also pointed out that the proposed requirement would have a significant economic impact on a substantial number of small business entities by affecting every transfusion service in the United States which currently uses pooled Reagent Red Blood Cells for the detection of antibodies in pretransfusion patient sera. The proposed rule would require transfusion services to use paired Reagent Red Blood Cells because commercially available single donor/single vial red blood cell reagents containing all appropriate antigens do not exist. The comment stated that the use of paired instead of pooled Reagent Red Blood Cells would result in additional workload and increased expenses for these transfusion services.

FDA disagrees with the comment. FDA believes that single donor cell samples are preferable to pooled cell preparations for screening the serum of patients when maximum sensitivity is required. Only half of the cells in a pooled cell preparation will contain a given antigen if one of the donors contributing to the pool lacks that antigen. Thus, a pooled cell preparation may not detect a weakly reacting antibody in a patient's serum sample. These weakly reactive antibodies may cause premature destruction of transfused incompatible red cells.

The agency finds that the data submitted are unacceptable because of a design flaw in the experiment. The paired and pooled Reagent Red Blood Cells used in the comparision testing were purchased from different manufacturers with different expiration dates and likely different antigenic compositions. The agency believes that the paired screening cells used in the study should have been tested separately and then pooled and retested to determine if the pooled cells were of comparable sensitivity in detecting weakly reacting antibodies instead of using pooled cells of unspecified composition from a different manufacturer. Accordingly, the agency does not concur with the conclusion base on submitted data.

The agency disagrees with the comment's suggestion that the requirement that pooled reagent red blood cells shall not be recommended for pretransfusion tests done in lieu of a major crossmatch will have a significant economic impact on transfusion services. The antibody screening procedure often replaces the antiglobulin major crossmatch in pretransfusion compatibility tests, and the agency believes that the use of paired cells for the antibody screening procedure is merited to protect patients from potential delayed hemolytic transfusion reactions and will not have a significant economic impact on a substantial number of small businesses. A further discussion of the economic impact of this rule is contained below in the section titled "Environmental and Economic Assessments."

7. Two comments on proposed § 660.34(c) *Absence of antibodies* observed that the new name for anti-human serum products is anti-human globulin.

FDA agrees with the comments and is amending this inadvertent error in the final rule.

8. Two comments on proposed § 660.34(d) *Final container* suggested that empty final containers used to hold Reagent Red Blood Cell products need not be sterile, consistent with the additional standards for Anti-Human Globulin (21 CFR 660.51(b)). The comments stated that Reagent Red Blood Cells and Anti-Human Globulin are similar type in vitro diagnostic reagents, and the final containers for Anti-Human Globulin are required to be "clean," not "sterile."

FDA agrees with the comments and notes that there is no final product

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sterility testing requirement for Reagent Red Blood Cell products because there is no practical way to ensure sterility without damaging the product. The final product, however, contains bacteriostatic preservatives such as neomycin and chloramphenicol to reduce the likelihood of significant microbial growth during the storage period. To provide increased assurance that the product is safe and effective at time of use, FDA also requires that blood banks perform checks for reactivity and specificity of Reagent Red Blood Cells on a regularly scheduled basis, under FDA's current good manufacturing practice regulations for blood and blood components (21 CFR 606.65(c)). For these reasons, FDA believes that the use of "clean" final containers will not diminish the safety, purity, or potency of the products and therefore the word "sterile" can be deleted in proposed § 660.34(d) without compromising consumer protection.

9. One comment on proposed § 660.34(d) concerned color coding of final product labels, container caps, and dropper labels of reagent red blood cell products. The comment requested that FDA provide for uniform color coding so that manufacturers would not use different colors for the same reagent.

FDA agrees with the comment that the color-coding for Reagent Red Blood Cell products should be uniform. Because the proposed regulation requires that specific colors be approved by the Director, Office of Biologics Research and Review, FDA believes that no further amendment to this paragraph is needed.

10 One comment on proposed § 660.34(e) *Date of manufacture* asked for a clarification of the word "immediately" used in the preamble of the proposed rule. Section § 660.34(e) would permit indefinite storage of reagent red blood cell source material at −65° C or colder before manufacture into a final product, provided that the cells are immediately frozen after collection. The comment stated that some time delay before freezing should be permitted, depending on factors such as the type of anticoagulant used.

To assure the continued purity, specificity, and effectiveness of the final product, FDA believes that reagent red blood cell source material should be frozen within 6 days of collection at −65° C or colder. This time interval allows a blood collection center enough time to ship the reagent red blood cell source material to an in vitro manufacturer for further processing and freezing of the cells. For clarity, FDA is amending the dating period information in § 610.53(c) to state that reagent red blood cell source material may be stored at −65° C or colder rather than at −65° C as stated in the proposed rule. Because a manufacturer can submit supporting data and request a different period of time to freeze reagent red blood cell source material, FDA believes that the time interval for freezing cells after collection should not be codified in the additional standards, but rather be specified in the manufacturer's product license application.

11. Two comments on proposed § 660.34(f) *Retention samples* requested that retention of samples should be maintained throughout the dating period of the product without reference to § 610.53(c) which lists minimum dating periods for licensed biological products. One comment stated that because some manufacturers have been granted extended dating periods for their products, the wording of the proposed rule would allow retention samples to be discarded before the actual expiration date of the product.

FDA agrees with the comments that the proposed wording is confusing, and is amending the final rule in § 660.34(f) by removing the reference to § 610.53(c).

12. One comment on proposed § 660.35 *Labeling* requested that manufacturers be permitted to identify their products by using a distinctive logo on the container label outside of the main panel. The comment noted that this revision is similar to an existing provision in the additional standards for Anti-Human Globulin in § 660.55(a)(1).

FDA agrees that manufacturers may use a distinctive logo on the container label provided that the logo is placed outside of the main panel and the product complies with all other applicable labeling requirements. Accordingly, in proposed § 660.35, FDA is redesignating paragraph (a) as (a)(2), and adding paragraph(a)(1) to restrict the use of logos or company names to the bottom or end of the label outside the main panel of final container labels for Reagent Red Blood Cells.

13. One comment on proposed § 660.35(c) stated that the proposed removal of the lowest permissible reagent red blood cell concentration of 2 percent in § 660.34(b) of the existing regulations requires that a more narrowly defined concentration range for Reagent Red Blood Cells be given. The comment noted that a variance of ±1 percentage unit would not be appropriate for a product having a declared concentration of 1 percent. The comment also pointed out that accurate measurement of reagent red blood cell concentration is difficult to perform for products containing less than a 2 percent concentration of cells.

FDA agrees with the comment that a more narrowly defined concentration range is needed and believes that a practical limit in determining reagent red blood cell concentration for products containing less than a 2 percent concentration is ±0.5 percentage units. Reagent red blood cell manufacturers should be able to achieve this accuracy in measurement by using a red blood cell counting procedure. Accordingly, FDA is revising § 660.35(c) to include a provision that if the red blood cell concentration is less than 2 percent, the variance in actual cell concentrations must be within 0.5 percentage units of the stated concentration on the container and package labels.

14. One comment on proposed § 660.35(d) stated that the cautionary labeling statement concerning pooled cells is not restrictive enough. The comment asked that the package label or package insert be revised to state that pooled cells shall not be used for pretransfusion tests to detect unexpected antibodies in patients' samples.

The agency agrees with the comments. The agency believes, as stated in paragraph 6 above, the weak antibodies may not be detected with pooled reagent red blood cells. Accordingly, the agency is amending the final rule in accordance with the comment's suggestion by rewording the second sentence to require that the package labeling state that pooled cells are not recommended for pretransfusion tests, done in lieu of a major crossmatch, to detect unexpected antibodies in patients' samples.

15. Four comments on proposed § 660.35(i) objected to the proposed requirement that manufacturers list in the package insert those antigens that are most likely to decrease in reactivity during storage. One comment stated that listing specific "labile" antigens in reagent red blood cell circulars may be confusing and misleading while another comment pointed out that the decrease in reactivity of certain antigens is largly anecdotal and not supported by hard scientific data. One comment also requested that FDA delete the proposed requirement to note in the package insert that the rate at which reactivity (agglutinability) is lost is partially dependent upon individual donor charactistics that are neither controlled nor predicted by the manufacturer. The comment stated that this cautionary statement seemed excessive.

FDA agrees in part with the comments. FDA agrees that listing antigens in the package insert that are likely to decrease in reactivity during

storage may be confusing and misleading to users of the reagents. FDA is therefore removing this proposed requirement from the final rule. FDA disagrees, however, with the suggestion that the cautionary labeling statement concerning potential variation in loss of antigen reactivity be deleted from the package insert. FDA believes that this cautionary labeling statement is informative in alerting users of the product that reagent red blood cell antigens may lose reactivity at variable rates that can be neither controlled nor predicted by the manufacturer. Accordingly, FDA rejects the latter comment.

16. Two comments on proposed § 660.35(k) suggested a more general wording of the cautionary labeling statement directed towards HBsAg testing. The comments asked for more general wording to encompass serological testing for HIV.

FDA agrees with the comments and is revising the cautionary labeling statement as suggested to apply to hepatitis as well as other infectious agents for which the agency may require a warning statement in the future, such as a codified requirement for testing serologically for HIV (see 51 FR 6362). The general wording of § 660.35(k) will eliminate the need for FDA to propose new labeling regulations and the need for blood establishments to revise their product package inserts if FDA requires tests for other infectious agents in the future.

17. Two comments were received on proposed § 660.36 *Samples and protocols*, which would require that manufacturers submit to FDA selected protocols and samples within 30 days after each routine FDA establishment inspection. One comment considered this information confidential and proprietary, and stated that it should not be made available in response to requests under the Freedom of Information Act. The second comment stated that protocol records are available for review during routine inspections and can be reviewed most efficiently by FDA inspectors on-site at a manufacturing facility.

To the extent the information is protected from disclosure under the Freedom of Information Act, FDA agrees with the first comment that proprietary information found in protocol records is not available for public disclosure as specified in 21 CFR 20.61, which precludes disclosure of trade secret or confidential commercial or financial information. FDA disagrees with the second comment that manufacturing protocols can be reviewed most efficiently on-site at the manufacturing facility. An FDA inspector may not have enough time to thoroughly review all manufacturing protocols during an inspection. For this reason, FDA will continue to require the submission to FDA of selected manufacturing protocols and samples after each routine inspection for review and evaluation. Accordingly, the latter comment is rejected.

18. One comment on proposed § 660.36(c) stated that the term "cell panel" does not specify whether the Reagent Red Blood Cells from a new donor are for use in the detection or the identification of unexpected antibodies. The comment assumed that the term "cell panel" referred to Reagent Red Blood Cells intended for the identification of unexpected antibodies.

FDA agrees with the comment and is amending the final rule in § 660.36(c) to clarify that the term "cell panel" refers to those products intended for the identification of unexpected antibodies. The agency is also amending this paragraph to clarify that umbilical cord samples are not subject to the submission requirements stated in this paragraph because umbilical cord cells serve only as an aid in identification of unexpected antibodies.

Accordingly, FDA is amending the additional standards for Reagent Red Blood Cells with the changes described above and other minor clarifying changes.

Environmental and Economic Assessments

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic consequences of this rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The amendments to the additional standards are expected to benefit manufacturers of Reagent Red Blood Cells because the amendments relieve certain burdens on the industry, such as removing restrictions on color coding of products, allowing use of company logos and trademarks, and removing the requirement that final containers be sterile.

Other amendments to current biologic regulations are intended to allow more flexibility and discretion in marketing manufacturers' products while maintaining the same level of consumer protection. These changes include removing a minimum concentration requirement for Reagent Red Blood Cells and allowing manufacturers the option of listing either the date of manufacture or length of the dating period in the accompanying package insert or constitution matrix for Reagent Red Blood Cell products.

There are five licensed manufacturers of Reagent Red Blood Cells. Very few blood banks and transfusion services will be required to perform any additional testing when determining transfusion compatibility in patients' blood samples. The American Red Cross, the American Association of Blood Banks, and the Council of Community Blood Centers use paired rather than pooled Reagent Red Blood Cells for pretransfusion testing. These blood banking organizations represent an overwhelming majority of the approximately 7,200 transfusion services in the United States. FDA believes that any additional testing by the few transfusion services not affiliated with these organizations is warranted to protect patients from possible transfusion reactions caused by unexpected antibodies. The agency concludes that the rule is not a major rule as defined by Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 660.34, 660.35 and 660.36 of this final rule contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0073.

Effective Dates

This regulation is effective November 6, 1987, except § 660.35. Labeling requirements in § 660.35 will become effective October 7, 1988 for all affected products initially introduced or initially delivered for introduction into interstate commerce.

List of Subjects

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 660

Biologics, Labeling.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, Parts 610 and 660 are amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR Part 610 is revised to read as follows:

Authority: Secs. 201, 501, 502, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4 and 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

2. In § 610.53 in the table in paragraph (c) is amended by revising the item "Reagent Red Blood Cells" to read as follows:

§ 610.53 Dating periods for licensed biological products.

* * * * *

(c) * * *

Product	Manufacturer's storage period 1 to 5 °C (unless otherwise stated)	Manufacturer's storage period 0 °C or colder (unless otherwise stated)	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated)
A	B	C	D
Reagent red blood cells	Not applicable	Not applicable	Thirty-five days from earliest date of collection if kept in liquid form (indefinite storage of reagent red blood cell source material at −65 °C or colder).

* * * * *

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

3. The authority citation for 21 CFR Part 660 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

4. In Part 660, by revising Subpart D, consisting of §§ 660.30 through 660.36, to read as follows:

Subpart D—Reagent Red Blood Cells

Sec.
660.30 Reagent Red Blood Cells.
660.31 Suitability of the donor.
660.32 Collection of source material.
660.33 Testing of source material.
660.34 Processing.
660.35 Labeling.
660.36 Samples and protocols.

Subpart D—Reagent Red Blood Cells

§ 660.30 Reagent Red Blood Cells.

(a) *Proper name and definition.* The proper name of the product shall be Reagent Red Blood Cells, which shall consist of a preparation of human red blood cells used to detect or identify human blood-group antibodies.

(b) *Source.* Reagent Red Blood Cells shall be prepared from human peripheral blood meeting the criteria of §§ 660.31 and 660.32, or from umbilical cord cells which shall be collected and prepared according to the manufacturer's product license application.

§ 660.31 Suitability of the donor.

Donors of peripheral blood for Reagent Red Blood Cells shall meet the criteria for donor suitability under § 640.3 of this chapter, except that paragraphs (b)(5) and (6), (d), and (e) of § 640.3 shall not apply.

§ 660.32 Collection of source material.

Blood for Reagent Red Blood Cells from donors of peripheral blood shall be collected as prescribed under § 640.4 of this chapter, except that paragraphs (c), (d), (g), and (h) of § 640.4 shall not apply.

§ 660.33 Testing of source material.

Except as provided in this section, a sample of each blood incorporated into the Reagent Red Blood Cell product shall be individually tested, with no fewer than two donor sources of each antibody specificity employed, to confirm the identification of all blood group antigens specified in the labeling as present or absent. The manufacturer shall perform at least one of the required tests for each factor. The Reagent Red Blood Cell product may be tested with a single donor source of antibody specificity if only one source of antibody is available, and the Director, Office of Biologics Research and Review, has approved the use of a single donor source of antiserum. Each of these tests shall be conducted and interpreted independently, and any discrepancy between the results of these two tests shall be resolved by testing with at least one additional antiserum before concluding that the antigen is present or absent. Where fewer than three donor sources of an antibody specificity are available, test discrepancies shall be resolved in accordance with the manufacturer's product license application. Group O Reagent Red Blood Cells used in the detection or identification of unexpected antibodies shall include at least the following common antigens in each lot of the product: D, C, E, c, e, K, k, Fy^a, Fy^b, Jk^a, Jk^b, Le^a, Le^b, P_1, M, N, S, and s.

§ 660.34 Processing.

(a) *Processing method.* The processing method shall be one that has been shown to yield consistently a product that is capable of detecting, throughout the dating period, alloantibodies corresponding to all required blood group antigens specified in the labeling as present.

(b) *Products prepared from pooled red blood cells.* If the product is recommended for the detection of unexpected antibodies, the pool shall be prepared by combining equal amounts of cells from no more than two donors. Umbilical cord cells are exempt from this requirement. Pooled cells shall not be recommended for pretransfusion tests, done in lieu of a major crossmatch, to detect unexpected antibodies in patients' samples.

(c) *Absence of antibodies.* Each lot of final product shall be free of demonstrable antibodies, including anti-A and anti-B, unless the package insert and container lable include instructions to wash the cells before use. The final product shall also be direct antiglobulin test negative when tested with polyspecific anti-human globulin.

(d) *Final container.* The final containers used for each lot of product shall be clean and shall permit observation of the contents for hemolysis or a change in color. The final container label, container cap, and dropper bulb of a Reagent Red Blood Cell product may be color-coded with a visual match to a specific color approved by the Director, Office of Biologics Research and Review.

(e) *Date of manufacture.* The date of manufacture of the product shall be the date that the blood is withdrawn from the donor or obtained from umbilical cords. The period during which the reagent red blood cell source material is kept by the manufacturer in storage in a frozen state at −65 °C or colder is excluded from the dating period. If the product consists of red blood cells from two or more donors, the date of manufacture of the final product shall be the date of withdrawal of blood from the donor of the oldest constituent blood. When a product consists of more than one container, e.g., cell panel, the date of manufacture of each container of the product shall be the earliest date that blood was withdrawn from a donor for any container of the product.

(f) *Retention samples.* Retention samples shall be maintained as required by § 600.13 of this chapter, except that samples must be retained only throughout the dating period of the product.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910–0073.)

§ 660.35 Labeling.

In addition to the items required by § 809.10 of this chapter and other applicable labeling provisions of this chapter, the following information shall be included in the labeling:

(a)(1) A logo or company name may be placed on the final container label, however, the logo or company name shall be located along the bottom or end of the label, oustide of the main panel.

(2) If washing the cells is required by the manufacturer, the container label shall include appropriate instructions; if the cells should not be washed before use, e.g., if washing will adversely affect the product, the package insert shall explain.

(b) The container label of Group O cells shall state: "FOR USE IN DETECTION OF UNEXPECTED ANTIBODIES" or "FOR USE IN IDENTIFICATION OF UNEXPECTED ANTIBODIES" or "NOT FOR USE IN DETECTION OR IDENTIFICATION OF UNEXPECTED ANTIBODIES".

(c) Except as provided in this section, the container and package labels shall state the percentage of red blood cells in the suspension either as a discrete figure with a variance of more than ±1 percentage unit or as a range the extremes of which differ by no more than 2 percentage units. If the stated red blood cell concentration is less than 2 percent, the variance shall be no more than ±0.5 percentage unit.

(d) The words "pooled cells" shall appear on the container and package labels of products prepared from pooled cells. The package label or package insert shall state that pooled cells are not recommended for pretransfusion tests, done in lieu of a major crossmatch, to detect unexpected antibodies in patients' samples.

(e) The package insert of a pooled product intended for detection of unexpected antibodies shall identify the number of donors contributing to the pool. Products designed exclusively for ABO Serum Grouping and umbilical cord cells need not identify the number of donors in the pool.

(f) When the product is a multicontainer product, e.g., a cell panel, the container label and package label shall be assigned the same identifying lot number, and shall also bear a number or symbol to distinguish one container from another. Such number or symbol shall also appear on the antigenic constitution matrix.

(g) The package label or package insert shall state the blood group antigens that have been tested for and found present or absent on the cells of each donor, or refer to such information in an accompanying antigenic constitution matrix. Cells for ABO Serum Grouping are exempt from this requirement. The package insert or antigen constitution matrix shall list each of the antigens tested with only one source of antibody.

(h) The package label or package insert shall bear the cautionary statement: "The reactivity of the product may decrease during the dating period."

(i) The package insert of a product intended for the detection or identification of unexpected antibodies shall note that the rate at which antigen reactivity (e.g., agglutinability) is lost is partially dependent upon individual donor characteristics that are neither controlled nor predicted by the manufacturer.

(j) The package insert shall provide adequate directions for use.

(k) The package insert shall bear the statement: "CAUTION: ALL BLOOD PRODUCTS SHOULD BE TREATED AS POTENTIALLY INFECTIOUS. SOURCE MATERIAL FROM WHICH THIS PRODUCT WAS DERIVED WAS FOUND NEGATIVE WHEN TESTED IN ACCORDANCE WITH CURRENT FDA REQUIRED TESTS. NO KNOWN TEST METHODS CAN OFFER ASSURANCE THAT PRODUCTS DERIVED FROM HUMAN BLOOD WILL NOT TRANSMIT INFECTIOUS AGENTS."

(l) The package insert or the antigenic constitution matrix for each lot of product shall specify the date of manufacture or the length of the dating period.

(m) Manufacturers shall identify with a permanent donor code in the product labeling each donor of peripheral blood used for detection or identification of unexpected antibodies.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910–0073.)

§ 660.36 Samples and protocols.

(a) The following shall be submitted to the Office of Biologics Research and Review Sample Custodian (ATTN: HFN–895), Bldg. 29A, Rm. 1C02, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, within 30 days after each routine establishment inspection by FDA.

(1) From a lot of final product, samples from a cell panel intended for identification of unexpected antibodies. The sample shall be packaged as for distribution and shall have at least 14 days remaining in the dating period when shipped to the Office of Biologics Research and Review.

(2) A protocol which shall include the following:

(i) Complete test records of at least two donors of the samples submitted, including original and confirmation phenotyping records.

(ii) Bleeding records or receipt records which indicate collection date, volume, and HBsAg test results.

(iii) Manufacturing records which document all steps involved in the preparation of the product.

(iv) Test results which verify that the final product meets specifications.

(v) Identity test results.

(b) A copy of the antigenic constitution matrix specifying the antigens present or absent shall be submitted to the Director, Office of Biologics Research and Review, at the time of initial distribution of each lot of Reagent Red Blood Cells for detection or identification of unexpected antibodies. Products designed exclusively to identify Anti-A, Anti-A_1, and Anti-B, as well as products composed entirely of umbilical cord cells, are excluded from this requirement.

(c) Except for umbjlical cord samples, whenever a new donor is used, a sample of red blood cells from each new donor used in a cell panel intended for the identification of unexpected antibodies shall be submitted by the manufacturer to the Director, Office of Biologics Research and Review. The sample should contain a minimum volume of 0.5 milliliter of red blood cells.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910–0073.)

Dated: September 15, 1987.

Richard J. Davis,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23038 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Assessments for Incorrect or Late Reports and Failure To Report

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; correction.

SUMMARY: The Minerals Management Service (MMS) is correcting an error which appeared in the **Federal Register** on July 22, 1987 (52 FR 27545). That **Federal Register** Notice amended 30 CFR 216.40 and 218.40 which provide for assessments against lessees, operators, and other reporters who report incorrectly, late, or fail to report under the MMS Auditing and Financial System (AFS) and the Production Accounting and Auditing System (PAAS).

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures, (303) 231-3432, Lakewood, Colorado.

SUPPLEMENTARY INFORMATION: The MMS amended 30 CFR 216.40 and 218.40 to provide more flexibility in establishing the amount of assessments against lessees, operators, and other reporters who report incorrectly, late, or fail to report to the AFS and the PAAS. The amendment to § 218.40 contained a clerical error which is corrected by this Notice.

Dated: September 23, 1987.

Jerry D. Hill,

Associate Director for Royalty Management.

The following correction is made to the amendment to 30 CFR 218.40 which was published in the **Federal Register** on July 22, 1987 (52 FR 27545):

§ 218.40 [Corrected]

On page 27547 in the issue of July 22, 1987, in the first column, the designation pargraph "(g)" is corrected to read paragraph "(e)".

[FR Doc. 87-23136 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Approval of Amendment to Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is a modification of Iowa statute concerning permanent program performance standards. This final rule will allow Iowa to bring its program into conformance with the Federal standards. Iowa will now be able to respond to OSMRE requirements for regulatory reform due to Federal regulation changes under SMCRA promulgated after March 13, 1979. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background of the Iowa Program

On February 28, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Iowa. On April 10, 1981, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Iowa program (46 FR 5885).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Iowa program, can be found in the April 10, 1981 **Federal Register** (46 FR 5885). Subsequent actions concerning the Iowa program are identified in 30 CFR 915.15 and 915.20.

II. Submission of Proposed Amendment

On August 1, 1986, OSMRE notified the State of Iowa that the State needed to remove the phrase "on or before March 13, 1979" from Chapter 83-7 of the Iowa Code, pursuant to 30 CFR 732.17(f)(1). Prior to this amendment, Iowa statute only required that rules should be consistent with the environmental performance standards of SMCRA and the permanent regulations issued pursuant to it on or before March 13, 1979. The above language precluded Iowa from consistency with regulation changes promulgated after March 13, 1979. In order for Iowa to respond to OSMRE requirements for regulatory reform after March 13, 1979, this language had to be revised.

On April 28, 1987, the State of Iowa submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consisted of signed legislation amending Iowa's Coal Mining Statute, Chapter 83. Section 83.7, Code 1987 is amended by strking the section and inserting the following in its place:

83.7 Environmental Protection Performance Standards

The division shall adopt rules for environmental protection performance standards that are consistent with Federal regulations authorized under the Federal Surface Mining Control and Reclamation Act and amendments to that Act.

On July 9, 1987, the Director announced receipt of the proposed amendment and opened the public comment period (52 FR 25888). Since no one requested a public hearing, none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17(h)(6), are the Director's findings concerning the proposed amendment.

Because of the language "on or before March 13, 1979" from Chapter 83-7 of the Iowa Code, the State of Iowa could not maintain its regulations in a manner no less effective than the Federal regulations. This is a requirement of 30 CFR 732.17(h)(9), 732.15 (a) and (b) and 730.5 (a) and (b).

Iowa has striken the language "on or before March 13, 1979" from the Iowa statute. The replacement language allows the State of Iowa to keep its environmental protection performance standards consistent with Federal regulations under SMCRA and amendments to SMCRA.

Therefore, the Director finds that the amendment to the Iowa program as proposed is consistent with the Federal requirements.

IV. Public Comment

The Director solicited public comments on the proposed amendment by **Federal Register** notice on July 9,

1987 (52 FR 25888), that specified August 10, 1987, as the closing date of the comment period. No public comments were received. No one made a request to present testimony at a public hearing; therefore, the hearing scheduled for August 3, 1987 was canceled.

Various State and Federal agencies were also invited to comment on the proposed amendment. The Iowa State Historical Department supported adoption of the amendment. The Soil Conservation Service recommended approval of the amendment. The Mine Safety and Health Administration had no objections to the amendment. The U.S. Environmental Protection Agency, Office of Water Enforcement and Permits and the Regional Administrator for Region VII, responded that they had no comment on the amendment.

V. Director's Decision

Based on the findings, the Director is approving the amendment to the Iowa program as submitted April 28, 1987. The Federal regulations at 30 CFR Part 915 are being amended to implement this decision.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal Rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 30, 1987.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

30 CFR Part 915 is amended as follows:

PART 915—IOWA

1. The authority citation for Part 915 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 915.15 is amended by adding paragraph (g) as follows:

§ 915.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendment submitted to OSMRE on April 28, 1987, is approved effective October 7, 1987. Code of Iowa, 1987, Chapter 83, Section 83.7.

[FR Doc. 87–23191 Filed 10–6–87; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3414, 6E3325/R886 (FRL–3272–2)]

Pesticide Tolerances for Paraquat and Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the desiccant, defoliant, and herbicide paraquat and the fungicide benomyl and its metabolites in or on certain raw agricultural commodities (RAC). These rules to establish maximum permissible levels for residues of the pesticides in or on the RAC were requested by the Interregional Research Project No. 4 (IR–4).

DATE: Effective on October 7, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6E3414, 6E3325/R886], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:
Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street, SW Washington, DC 20460.
Office location and telephone number Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 557–1806.

SUPPLEMENTARY INFORMATION: EPA issued proposed rules for paraquat and benomyl and its metabolites, published in the **Federal Register** of April 8, 1987 (52 FR 11292 and 11293, respectively), which announced that the Interregional Research Project No. 4, New Jersey Agricultural Experiment Station, P.O Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) as follows to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the following agricultural experiment stations:

1. *PP 6E3414.* Petition submitted on behalf of Agricultural Experiment Station of New Hampshire for paraquat on tyfon (a cross between Chinese cabbage and turnips that is grown for animal feeding purposes) at 0.05 part per million (ppm).

2. *PP 6E3325.* Petition submitted on behalf of Agricultural Experiment Station of Florida for benomyl and its metabolites on watercress at 10.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

The data submitted and relevant information have been evaluated and discussed in the proposed rules. Based on the data and information considered the Agency concludes that the tolerances will protect the public health Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M Street, SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation

from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.205(b) table is amended by adding and alphabetically inserting the raw agricultural commodity tyfon to read as follows:

§ 180.205 Paraquat; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Tyfon	0.05

3. Section 180.294 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues on the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities:

Commodities	Parts per million
Watercress	10.0

[FR Doc. 87-22786 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 466 and 476

[HSQ-145-FC]

Medicare and Medicaid Programs; Entities Performing Quality of Care Review of Services Provided by Risk-Basis Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule provides for review by Utilization and Quality Control Peer Review Organizations (PROs) of the quality of care furnished by risk-basis health maintenance organizations and competitive medical plans under 42 CFR Part 417, Subpart C. It also provides for this same review by non-PRO entities and identifies the requirements that these non-PRO entities must meet. This rule is necessary for the timely implementation of section 1154(a)(4) of the Social Security Act, as amended by section 9353(a)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509).

Additionally, this rule corrects a technical error in the PRO regulations governing disclosure of confidential information to State agencies.

DATES: *Effective date:* These regulations are effective on October 7, 1987. They are being issued in final for reasons explained in the Waiver of Proposed Rulemaking section under Supplementary Information below.

Comment period: We will consider any comments we receive at the appropriate address, as provided below, no later than 5:00 p.m. on December 7, 1987, and revise the regulations as necessary.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-145-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-145-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Kay Terry, (301) 594-7909.

SUPPLEMENTARY INFORMATION:

I. Background

A. Utilization and Quality Control Peer Review Organizations (PROs): General

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibilities that previously had been assigned to Professional Standard Review Organizations. Those responsibilities include the review of health care services funded under Medicare (Title XVIII of the Act) to determine whether those services are medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by providers to fiscal intermediaries regarding prospective payments to hospitals.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health institutions, practitioners and claims payment agencies. In addition, they generate information regarding the quality and appropriateness of health care services. PROs use this information to develop and review profiles (patterns of utilization and practice) and to assess the quality of care being furnished. PROs transmit their determinations to intermediaries responsible for making payments under the Act.

The PROs legislation contained several provisions affecting data collection and disclosure. Under section 1154(a)(7)(C) of the Act, PROs have the authority to examine pertinent records of any practitioner or provider of health care services for which the PROs has review responsibility. Section 1154(a)(9) of the Act requires that a PRO "collect

such information relevant to its functions and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1160 of the Act." Other relevant language in section 1154(a)(10) of the Act authorizes PROs to exchange information with claims payment agencies, other PROs, and other public or private review organizations as may be appropriate. Section 1160 of the Act contains the majority of a PRO's satutory responsibilities concerning the disclosure of information. This section recognizes both the need to protect the interests of patients, health care practitioners and providers of health care in the confidentiality of their medical records and the need to disclose certain information.

On April 17, 1985, we published in the **Federal Register** several final rules that implemented the PRO program (50 FR 15312–15374). The PRO regulations are located in various parts of title 42 of the CFR (that is, Part 405, 462, 466, 473, 476, 489, and 1004).

B. Quality of Care Review of Risk-Basis HMOs and CMPs

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Section 9353(a)(2)(B) of Pub. L. 99–509) added section 1154(a)(4)(B) to the Act to provide that inpatient services and outpatient services furnished to Medicare enrollees by eligible organizations (that is, risk-basis health maintenance organizations (HMOs) and competitive medical plans (CMPs)) in accordance with a contract under section 1876 of the Act be reviewed for the quality of care provided. Based on this review, a determination must be made as to whether the quality of those services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. Section 9353(a)(6)(B) of Pub. L. 99–509 specifies that section 9353(a)(2)(B) shall apply to contracts as of April 1, 1987.

Section 9353(a)(2)(D) of Pub. L. 99–509 added section 1154(a)(4)(C) to the Act to require that the Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described above to be performed by either a Utilization and Quality Control Peer Review Organization (PRO) or an organization that is not a PRO but which meets the requirements for PROs set forth in sections 1152 and 1153(b) of the Act.

Section 9353(a)(6)(C) of Pub. L. 99–509 specifies that section 9353(a)(2)(D) shall apply to contracts awarded as of January 1, 1987. On January 5, 1987, we published a notice (52 FR 362) to solicit comments on a tentative list of 25 States in which we intend to provide for competitive contracting for the review of HMO and CMP services.

Section 1154(a)(4)(B) of the Act provides that if an entity other than the current PRO wins the contract to preform quality of care reviews of risk-basis HMOs and CMPs, as allowed under section 1154(a)(4)(C) of the Act, the requirement for such reviews will not apply to affected PROs for affected contract periods.

II. Provisions of the Regulations

Quality of Care Review of Risk-Basis HMOs and CMPs

This interim final rule is necessary to implement section 1154(a)(4) of the Act as established by section 9353(a)(2) of Pub. L. 99–509. The statutory requirements regarding the quality of care review of HMO and CMP services by PROs are sufficiently clear to be self-implementing. The statute is also explicit in its intent to permit entities other than PROs to perform quality of care reviews of services provided by risk-basis HMOs and CMPs. Furthermore, as discussed above, certain PRO statutory requirements are likewise applicable to these other non-PRO entities.

Accordingly, we are amending the introductory sections of Part 466, Subpart C of 42 CFR to incorporate the statutory additions to PRO review responsibilities, and to specify the extent to which the PRO regulations will apply to non-PRO entities that win contracts under section 1154(a)(4)(C) of the Act. In particular, we are adding a new § 466.72, which provides that, under section 1154(a)(4) of the Act, a PRO must determine whether the quality of services (including both inpatient and outpatient services) provided by an HMO or CMP (under a risk-basis contract under section 1876 of the Act) meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. Section 466.72 also provides that, for purposes of review under that section, non-PRO entities will be subject to the PRO rules regarding acquisition, protection, and disclosure of peer review information (42 CFR Part 476), and the rules regarding sanctions on health care practitioners and providers (42 CFR Part 1004 (formerly designated as Part 474)). Thus, any entity that enters into a contract to perform quality of care reviews of services furnished by risk-basis HMOs and CMPs under 42 CFR Part 417, Subpart C, will be considered to be a PRO for purposes of those reviews, and only for those reviews, and will have the same authorities, protections, and responsibilities as a PRO regarding that limited function. (While the PRO regulations do not address the provisions of section 1157 of the Act regarding limitations on liability of individuals involved in the peer review process, those provisions apply to all contracts made under title XI of the Act, including those with non-PRO entities.)

Without amendment, our regulations governing the review responsibilities of PROs will not apply to any other entities performing reviews. With the amendments, non-PROs that perform these reviews will be governed by requirements comparable to those that apply to PROs.

Technical Correction

Due to a technical oversight on our part, our current regulations at 42 CFR 476.133 and 476.137 require PROs to disclose confidential information only to State agencies responsible for the investigation of fraud and abuse of the Medicare program. Section 1160(b)(1)(A) of the Act provides for the release of confidential information "as may be necessary to assist Federal and State agencies . . . ." This section of the Act does not limit the release of this information to agencies investigating fraud and abuse of the Medicare program. The inclusion of language so limiting release in the current regulation has been confusing and has led to the impression among some parties that release of information to other agencies, such as those that investigate Medicaid fraud and abuse, is prohibited. Therefore, we are revising §§ 476.133 and 476.137 to refer to both the Medicare and Medicaid programs.

III. Regulatory Impact Statement

Executive Order 12291 (E.O.) requires us to prepare and publish a regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In additon, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all PROs and other potential review entities as small entities.

The provisions on review of quality of care of risk-basis HMOs and CMPs merely will ensure that any non-PRO entity that contracts to review risk-basis HMO and CMP services must meet the same review responsibilities that a PRO must meet in performing the same reviews. We are not adding any review requirements beyond those explicit in the statute.

For these reasons, the Secretary has determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

IV. Waiver of Proposed Rulemaking and 30-Day Delay of Effective Date

A. Proposed Rulemaking Requirement

We generally publish notice of proposed rulemaking in the **Federal Register** and afford prior public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of finding and its reasons in the rules issued.

The final rule is necessary for the timely implementation of sections 9353(a)(2)(D) and 9353(d) of Pub. L. 99–509. The rule revises the relevant PRO regulations in order to largely reiterate the statutory requirements imposed by these amendments and clarifies which existing PRO statutory provisions and regulations apply to organizations other than PROs that will be conducting the review of HMO and CMP services. (While the PRO regulations do not address the provisions of section 1157 of the Act regarding limitations on liability of individuals involved in the peer review process, those provisions apply to all contracts made under title XI of the Act, including those with non-PRO entities). Peer review of the care provided to Medicare patients by HMOs and CMPs is an essential element in ensuring that the care given to these primarily elderly patients meets professionally recognized standards. Because Congress clearly intended, through the passage of these amendments, to authorize non-PRO organizations to conduct quality of care reviews in certain situations, it is in the public interest to ensure that current regulations are amended as quickly as possible to clarify that the authorities, protections, and responsibilities of those entities are comparable to those of PROs. Furthermore, section 9353(a)(2)(B) of Pub. L. 99–509 applies to contracts as of April 1, 1987, and section 9353(d)(1) is effective for requests for data and information made on or after April 21, 1987. As a result of these statutory deadlines, publising a proposed rule is impracticable. Therefore, we find good cause to waive proposed rulemaking for the implementation of these provisions.

Regarding the correction of our rule concerning disclosure to State Medicaid programs, we have determined that it is not in the public interest to delay publication of this clarification that PROs must disclose to State Medicaid agencies (or other State agencies with appropriate responsibilities concerning State Medicaid programs) peer review information germane to the investigation of fraud and abuse. We therefore find good cause to waive proposed rulemaking for the implementation of these provisions.

B. Requirement for 30-Day Delay of Effective Date

We usually publish our rules not less than 30 days before their effective dates unless we find good cause and publish that rationale with the rule. For the reasons discussed above with reference to waiving the proposed rulemaking requirement, we find that it is impracticable and not in the public interest to provide for a 30-day delay in the effective date of this final rule with comment period. Therefore, we find good cause to waive that delay.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments received timely and, if we decide to change the regulations, we will publish an additional **Federal Register** document and respond to the major issues raised by commenters in the preamble to the subsequent **Federal Register** document.

VI. Collection of Information Requirements

Section 466.71(a) of this final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under authority of the Paperwork Reduction Act of 1980. The information collection requirements contained in this section have been previously approved under OMB control number 0938–0445. However, because these requirements now apply to the review of additional organizations, namely risk-basis HMOs and CMPs, we are interested in receiving further public comments. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Allison Herron, Desk Officer for HCFA.

Also, it should be noted that in accordance with the Paperwork Reduction Act of 1980, we will be submitting for OMB review a new package of PRO reporting forms (HCFA Forms 567 through 575). These forms will be used for quality of care reviews of HMOs and CMPs. Notification of the submission of these revisions for OMB approval will be published in the **Federal Register**.

List of Subjects

42 CFR Part 466

Competitive medical plans (CMPs), Grant programs-health, Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Peer Review Organizations.

42 CFR Part 476

Health care, Health professions, Health records, Peer Review Organizations, Penalties, Privacy.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as follows:

A. Part 466, Subpart C is amended to read as follows:

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1. The table of contents for Part 466, Subpart C, is amended to read as follows:

PART—466 UTILIZATION AND QUALITY CONTROL REVIEW

* * * * *

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

General Provisions

Sec.

466.70 Statutory bases and applicability.
466.71 PRO review requirements.
466.72 Review of the quality of care of risk-basis HMOs and CMPs.
466.73 Notification of PRO designation and implementation of review.

* * * * *

1a. The authority citation for Part 466 continues to read as follows.

Authority: Sec. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3, and 1395hh).

2. Section 466.70 is amended by revising the section heading, paragraphs (a) and (b), and redesignating paragraphs (c), (d) and (e) as paragraphs (a), (b) and (c), respectively, of new § 466.71, which is added to read as follows:

§ 466.70 Statutory bases and applicability.

(a) *Statutory basis.* Sections 1154, 1866(a)(1)(F) and 1886(f)(2) of the Act require that a PRO review those services furnished by physicians, other health care professionals, providers and suppliers as specified in its contract with the Secretary. Section 1154(a)(4) of the Act requires PROs, or, in certain circumstances, non-PRO entities, to perform quality of care reviews of services furnished under risk-basis contracts by health maintenance organizations (HMOs) and competitive medical plans (CMPs) that are covered under Subpart C of Part 417 of this chapter.

(b) *Applicability.* The regulations in this subpart apply to review conducted by a PRO and its subcontractors. Section 466.72 of this part also applies, for purposes of quality of care reviews under section 1154(a)(4) of the Act, to non-PRO entities that enter into contracts to perform reviews of services furnished under risk-basis contracts by HMOs and CMPs under Subpart C of Part 417 of this chapter.

§ 466.71 PRO review requirements.

(a) *Scope of PRO review.* In its review, the PRO must determine (in accordance with the terms of its contract)—

(1) Whether the services are or were reasonable and medically necessary for the diagnosis and treatment of illness or injury or to improve functioning of a malformed body member, or (with respect to pneumococcal vaccine) for prevention of illness or (in the case of hospice care) for the palliation and management of terminal illness;

(2) Whether the quality of the services meets professionally recognized standards of health care;

(3) Whether those services furnished or proposed to be furnished on an inpatient basis could, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient health care facility of a different type;

(4) Through DRG validation, the validity of diagnostic and procedural information supplied by the hospital;

(5) The completeness, adequacy and quality of hospital care provided;

(6) The medical necessity, reasonableness and appropriateness of hospital admissions and discharges;

(7) The medical necessity, reasonableness and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.82 and 412.84 of this chapter; and

(8) Whether a hospital has misrepresented admission or discharge information or has taken an action that results in—

(i) The unnecessary admission of an individual entitled to benefits under Part A;

(ii) Unnecessary multiple admissions of an individual; or

(iii) Other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(b) *Payment determinations.* On the basis of the review specified under paragraphs (c) (1), (3), (6), and (7), and (8) of this section, the PRO must determine whether payment may be made for these services. A PRO may grant a period of not more than two days (grace days) for the purpose of arranging post discharge care when the provider did not know or could not reasonably be expected to have known that payment for the service(s) would not be made under the Medicare program as specified in § 405.330(b).

(c) *Other duties and functions.* (1) The PRO must review at least a random sample of hospital discharges each quarter and submit new diagnostic and procedural information to the Medicare fiscal intermediary or carrier if it determines that the information submitted by the hospital was incorrect.

(2) The PRO must also perform other duties, functions, and responsibilities as required by HCFA.

§ 466.72 [Redesignated as § 466.73]

3. Section 466.72 is redesignated as § 466.73.

4. A new § 466.72 is added to read as follows:

§ 466.72 Review of the quality of care of risk-basis health maintenance organizations and competitive medical plans.

(a) (1) For purposes of a review under section 1154(a)(4) of the Act, a PRO must determine whether the quality of services (including both inpatient and outpatient services) provided by an HMO or CMP meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.

(2) Paragraph (a)(1) of this section will not apply with respect to a contract year if another entity has been awarded a contract to perform those reviews under section 1154(a)(4)(C) of the Act.

(b) For purposes of reviews under this section, non-PRO entities selected to perform these reviews under section 1154(a)(4)(C) of the Act are subject to the requirements of paragraph (a)(1) of this section and—

(1) Part 476 of this chapter regarding acquisition, protection, and disclosure of peer review information; and

(2) Part 1004 of Chapter V regarding a PRO's responsibilities, and sanctions on health care practitioners and providers.

B. Part 476, Subpart B is amended as follows:

1. The table of contents of Part 476 is amended by revising the title of § 476.137 to read as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

* * * * *

Subpart B—Utilization and Quality Control Peer Review Organizations (PROs)

* * * * *

§ 476.137 Disclosure to Federal and State enforcement agencies responsible for the investigation or identification of fraud or abuse of the Medicare or Medicaid programs.

* * * * *

1a. The authority citation for Part 476 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302). Subpart A is also issued under sec. 150 of Pub. L. 97-248 (42 U.S.C. 1320c note). Subpart B is also issued under secs. 1154(a), 1156(a), and 1160 of the Social Security Act (42 U.S.C. 1320c-3(a), 1320c-5(a), and 1320c-9).

2. In § 476.133, the introductory text of paragraph (a) is republished and paragraph (a)(2)(ii) is revised to read as follows:

§ 476.133 Disclosure of information about practitioners, reviewers and institutions.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

* * * * *

(2) * * *

(ii) *Disclosure to others.*

In accordance with section 1160 of the Act, a PRO must disclose information that displays practice or performance patterns of a practitioner or institution in accordance with the procedures for disclosures specified in §§ 476.137 and 476.138 to—

(A) Federal and State agencies that are responsible for the investigation of fraud and abuse of the Medicare and or Medicaid programs, and

(B) Federal and State agencies that are responsible for licensing and certification of practitioners and providers.

* * * * *

§ 476.137 [Amended]

3. In § 476.137, including the section heading, remove the phrase "Medicare program" and add, in its place, "Medicare or Medicaid programs."

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; and No. 13.774, Medicare—Supplemental Medical Insurance Program)

Dated: September 21, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 30, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-23092 Filed 10-6-87; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 86-225; FCC 87-303]

Ex Parte Communications and Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: FCC adopts a Memorandum Opinion and Order to reconsider and revise certain aspects of Subpart H, Part 1 of the Commission's Rules and Regulations relating to ex parte communications and presentations governing Commission proceedings in order to serve the public interest better.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Steve Bailey, Administrative Law Division, Office of General Counsel, Washington, DC 20554, (202) 254-6530.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Subpart H, Part 1 of the Commission's rules and regulations concerning ex parte communications and presentations in Commission proceedings.

This is a summary of the Commission's Memorandum Opinion and Order in Gen. Docket No. 86-225, adopted September 17, 1987, and released October 7, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On May 22, 1987, the Commission released a Report and Order adopting new ex parte rules to simplify and clarify its policies in this area. FCC 87-94, 2 FCC Rcd 3011, 52 FR 21051 (June 4, 1987). On July 2, 1987, it received a letter from Honorable Edward J. Markey, Chairman of the Subcommittee on Telecommunications and Finance, Committee on Commerce and Energy, House of Representatives, stating that the Commission-imposed Sunshine prohibition should not be applied to members of Congress. Attached to the letter was a memorandum from the General Counsel to the Clerk of the House of Representatives in support of the views expressed by Chairman Markey.

2. The Commission subsequently decided to treat this letter as a petition for reconsideration of the new ex parte rules and stated that it might possibly reconsider other aspects of the rules. Order, FCC 87-228, 2 FCC Rcd 4264 (July 14, 1987). "Comments on Petition for Reconsideration" were received from BellSouth Corporation, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company (BellSouth).

3. In its Report and Order, the Commission retained and clarified the regulatory prohibition against presentations during the "Sunshine Agenda period," which, as revised herein, is now defined as the period from the time that a matter is listed on a Commission meeting agenda until release of the text of a decision or order relating to the matter or release of a notice that the matter has been deleted from the agenda or returned to the staff. In reconsidering the applicability of the prohibition to Congress, the Commission noted that Congress has a special responsibility to ensure that the powers it has entrusted to it are exercised wisely in accordance with its statutory mandate and, therefore, the Commission has an obligation to craft its rules to avoid imposing handicaps that may needlessly interfere with or impede that congressional function. In light of this and other factors, it found that the benefits of the "period of repose" intended by this prohibition are outweighed by the greater overall public interest of flexibility in exchanging information among policy-makers. Hence, the Commission concluded that the Sunshine prohibition should be revised to exempt contacts from members of Congress in non-restricted proceedings and certain otherwise proceedings during the Sunshine period.

4. Similarly, it recognized that other agencies and branches of the Federal Government, even if they do not formally share jurisdiction with this agency, may have relevant information

concerning non-restricted or certain other proceedings otherwise exempt. Because they may not be aware of the pendency of a particular non-restricted or exempt proceeding prior to publication of the Sunshine Notice, they would be precluded from communicating such information to the Commission absent exemption from the Sunshine prohibition. As with Congressional contacts, it found that the need for flexibility conducive to the wide exchange of information at the federal level among policy-makers outweighs the benefits of the Sunshine prohibition. Similarly, it concluded that other federal governmental contacts should be exempted from the Sunshine prohibition in non-restricted and certain other proceedings that are otherwise exempt under the rules.

5. In permitting these exceptions from the Sunshine prohibition, the Commission stated that those presentations that are of substantial significance and clearly intended to affect the ultimate decision would be subject to disclosure by Commission staff or in accordance with the "permit but disclose" procedures set forth in § 1.1206(a). However, it stated that no responses to such statements will ordinarily be accepted during the Sunshine period.

6. In addition, the rules were amended to provide an exemption for information obtained on an ex parte basis in the course of an investigation in order to ensure that the Commission's ability to obtain such information during an investigation is not impaired. The Commission also clarified the rules to provide that waiver or special permission requests that are formally opposed would generally be treated as restricted proceedings unless the Commission specified otherwise. However, waiver requests raised in the context of an individual tariff filing that are part and parcel of the tariff review and screening process would continue to be exempt unless they implicated issues of broader significance and impact.

7. In addition, the rules were clarified to indicate that order to show cause proceedings would be treated as restricted adjudications and that non-restricted ex parte rules will generally be followed in Joint Board proceedings under section 410(c) of the Communications Act unless otherwise stated. The Commission also amended the rules to provide that where a very significant adjudicative decision is perceived by the public as a major statement of Commission policy, the Managing Director is not required to follow the procedures under § 1.1212 (a) through (g) of the Rules with respect to general correspondence received in the proceeding; instead, a public file of such correspondence will be maintained.

8. The Commission also amended the rules to clarify that Bureau staff involved in the routine handling of complaints should not be considered decision-making personnel in a restricted proceeding merely because the person against whom a complaint is filed is also a party to a restricted proceeding. It also declined to eliminate the Sunshine period prohibition as suggested by BellSouth. Other changes, essentially minor in nature, were also made. These changes to the rules are reflected in the Appendix.

9. The Commission adopts these changes to clarify points left ambiguous in its recent rulemaking, and to modify the new rules where warranted, upon further reflection, to best serve the public interest. Because they concern Commission practice and procedure and establish standards of fairness governing Commission proceedings, the Commission finds that good cause exists and, accordingly, the changes herein shall become immediately effective upon publication in the **Federal Register.** See 5 U.S.C. 553 (b) and (d)(3).

10. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burdens on the public and, accordingly, their implementation is not subject to approval by the Office of Management and Budget under that Act.

11. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated below.

12. It is further ordered that the amendments to the Commission's Rules shall become immediately effective upon publication in the **Federal Register.**

13. It is further ordered that this proceeding is terminated.

14. Authority for this action is contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 154(j), and 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 1 (Practice and Procedure) of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read:

Authority: Sections 4, 303, 409, 48 Stat. 1066, 1082, 1096, as amended; 47 U.S.C. 66, 154, 303, 309.

2. The table of contents for Subpart H which was published at 52 FR 21052, June 4, 1987, is corrected by adding "Section 1.1214 Disclosure of Information Concerning Violations of this Subpart." and by changing the section number immediately following the undesignated center heading "SANCTIONS" to read "Section 1.1216".

3. Section 1.1202 is amended by adding a note to paragraph (c), removing the words "as between" in paragraph (d) and replacing them with the word "of"correctly designating paragraphs (f)(i), (ii), and (iii), as paragraphs (f)(1), (2), and (3), and revising paragraph (f)(1) to read as follows:

§ 1.1202 Definitions.

* * * * *

(c) * * *

Note to paragraph(c): The application of this definition under this subpart is not intended to preclude the routine handling by Commission staff of complaints that would otherwise be technically considered ex parte because the person against whom the complaint is directed is also a party in a restricted proceeding.

* * * * *

(f) * * *

(1) Releases the text of a decision or order relating to the matter, or

* * * * *

4. Section 1.1203 is amended by adding a new paragraph (c) with a note to read as follows:

§ 1.1203 Sunshine period prohibition.

* * * * *

(c) The prohibition in § 1.1203(a) above shall not apply to presentations (not otherwise exempted under § 1.1204(b)) made by members of Congress or their staff or by other agencies or branches of the Federal Government or their staff in non-restricted proceedings under § 1.1206(b), exempt proceedings under § 1.1204(a)(2) (not involving the allotment of a channel in the radio broadcast or television broadcast services, or exempt proceedings under § 1.1204(a) (4)–(6).

Note: to paragraph (c): Unless otherwise exempted under § 1.1204, presentations under § 1.1203(c) that are of substantial significance and clearly intended to affect the ultimate decision, shall be placed (if oral, a written summary of the presentation) in the record of the proceeding by Commission staff or in accordance with the procedures set forth in § 1.1206(a)(1)–(3).

5. Section 1.1204 is amended by removing in the note following paragraph (a)(3) the language "§ 1.1204 (a)(1)–(3)" and replacing it with the language § 1.1204(a)(1), (a)(2)(i), or (a)(3)".

6. Section 1.1204 is further amended by adding a new sentence in paragraph (a)(6) after the sentence ending with "unless it has been set for investigation, (*See* § 1.1206(b)(6))" to read as follows:

§ 1.1204 General exemptions.

* * * * *

(a) * * *

(6) * * * This exemption from the ex parte requirements shall also extend to requests for waiver or for special permission directly associated with a particular tariff filing made pursuant to these Sections of the the Act, unless the Commission states otherwise.

* * * * *

7. Section 1.1204 is further amended by adding in the note after paragraph (b)(7), a new sentence after the sentence ending with "record of the proceeding" and before the sentence beginning with "In a non-restricted proceeding," to read "Where the Commission determines that such service of public notice, prior to designation of a matter for hearing, would interfere with the effective conduct of an investigation, it may dispense with such service or public notice" and by adding the language "Except as otherwise provided above," before the word "Any" in the last sentence and changing the capital "A" in "Any" to a small "a".

8. Section 1.1206 is amended by adding a note after paragraph (a)(3) and by adding paragraphs (a)(5), and (b)(10), with a note to read as follows:

§ 1.1206 Non-restricted proceedings; ex parte presentations generally permissible but subject to disclosure.

(a) * * *

(3) * * *

Note: Unless otherwise exempted under § 1.1204, presentations from members of Congress or their staff or from other agencies or branches of the Federal Government or their staff that are of substantial significance and clearly intended to affect the ultimate decision, shall be placed (if oral, a written summary of the presentation) in the record of the proceeding by Commission staff or in accordance with the procedures set forth in § 1.1206(a)(1)–(3).

* * * * *

(5) The procedures outlined above continue in effect (except as otherwise provided under § 1.1204) until the proceeding has been decided by the Commission and is no longer subject to reconsideration by the Commission or review by any court.

(b) * * *

(10) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board unless the proceeding is specifically classified as an adjudicative proceeding.

Note: Unless otherwise ordered by the Commission, Joint Boards shall have the authority to modify the *ex parte* rules as necessary in a particular proceeding to promote fair and efficient decisionmaking.

9. Section 1.1208 is amended by:

(a) Redesignating paragraphs (c)(1)(i), (ii) and (iii), as (c)(1)(ii) (A), (B), and (C);

(b) Redesignating paragraphs (c)(1)(iv) (A), (B), and (C), as (c)(1)(i) (A), (B), and (C);

(c) Revising paragraph (c)(1)(i) introductory text;

(d) Adding paragraph (c)(1)(ii) introductory text;

(e) Amending paragraph (c)(1)(ii)(A) by removing the language "special relief or waiver proceedings under the above sections; or cable television special relief or waiver proceedings";

(f) Redesignating paragraph (c)(4) as (c)(5); and

(g) Adding a new paragraph (c)(4).

9a. The revised and added portions of § 1.1208 read as follows:

§ 1.1208 Restricted proceedings.

* * * * *

(c) * * *

(1)(i) Any proceeding specified in paragraph (c)(1)(ii) of this section is restricted from the day on which any of the following has occurred:

* * * * *

(ii) A proceeding is restricted as provided in paragraph (c)(1)(i) of this section if it is:

* * * * *

(D) Any request for an order to show cause, any special relief or waiver proceeding conducted pursuant to or under any of the provisions listed in paragraphs (c)(1)(ii) (A), (B), or (C) of this section or any cable television special relief or waiver proceeding.

Note: See § 1.1204(a)(6) regarding the ex parte treatment of requests for waiver or for special permission made in the context of a particular tariff filing as part of the tariff review process.

* * * * *

(4) A proceeding in which an order to show cause has been released.

* * * * *

10. The undesignated center hearing before § 1.1210 is amended by removing "EX PARTE".

§ 1.1210 [Amended]

11. Section 1.1210 is amended by removing in the caption and in the sentence of that section the words "ex parte".

12. Section 1.1212 is amended by adding a new paragraph (h) as follows:

§ 1.1212 Procedures for handling of prohibited ex parte presentations.

* * * * *

(h) Where a restricted proceeding is perceived by the public as involving a major statement of Commission policy and precipitates a substantial amount of correspondence from the general public, the above procedures with respect to such correspondence will not be following; however, such correspondence and materials related thereto shall be placed in a public file and made available for inspection.

13. The note to § 1.415(d) of the Commission's Rules is revised by removing "1.1201 *et seq.*" and replacing it with "1.1200 *et seq.*".

[FR Doc. 87-23050 Filed 10-6-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-23; RMs-5289; 5458; 5863]

Radio Broadcasting Services; Cazenovia, Manlius, Rome, Schoharie, Voorheesville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates: (1) Channel 247A to Schoharie, NY, as the commuunity' first local FM service, at the request of Harvest Broadcasting Services; (2) Channel 242A to Voorheesville, New York, as the community's first local FM service, at the request of Peter Morton; and (3) substitutes Channel 239B1 for Channel 237A at Manlius, New York, and substitutes Channel 241B1 for Channel 240A at Rome, New York, at the joint request of AGK Communications and WENY, Inc. This document also modifies the license of AGK Communications, Inc. for Station WAQX–FM at Manlius to specify operation on Channel 239B1 and modifies the license of WENY, Inc. for Station WKAL–FM at Rome to specify operation on Channel 241B1. In addition, the Table of Allotments is amended by deleting Channel 237A from Cazenovia to reflect its use at Manlius. Channel 247A can be allocated to Schoharie in compliance with the Commission's minimum distance separation requirements without a site restriction. Channel 242A at Voorheesville requires

a site restriction of 1.32 kilometers (.82 miles) south to avoid a short-spacing to the construction permit and application of Station WCSF, Channel 244A, Clifton Park, New York. The allotment of Channel 239B1 at Manlius and Channel 241B1 at Rome comply with the Commission's minimum distance separation requirements to all domestic allotments. The short-spacings to Canadian stations at Belleville, Ontario (Station CJBC–1) and Kingston, Ontario (CFMK–FM) have been approved as "specially negotiated" allotments by the Canadian government. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987. The window period for filing applications for Channel 247A at Schoharie and Channel 242A at Voorheesville, will open on November 16, 1987, and close on December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 8723, adopted September 9, 1987, and released September 30, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73. 202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for New York is amended by adding Schoharie, Channel 247A, Voorheesville, Channel 242A, and Manlius, Channel 238B1; removing Cazenovia, Channel 237A. The Table is also amended by adding Channel 241B1 to Rome, and removing Channel 240A from Rome.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23064 Filed 10–6–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–513; RM–5568]

Radio Broadcasting Services; Mirando City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 265A to Mirando City, Texas, as that community's first FM service, at the request of Alderete Communications. Mexican concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987. The window period for filing applications will open on November 16, 1987, and close on December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–513, adopted August 25, 1987, and released September 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended by adding Channel 265A under Mirando City, Texas.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23055 Filed 10–6–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 84–1296; FCC 87–306]

Cable Television; Amendment of the Commission's Rules To Implement the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The U.S. Court of Appeals for the District of Columbia Circuit decision in *American Civil Liberties Union* v. *FCC* vacated certain sections of the Commission's rules implementing the Cable Communications Policy Act of 1984. This Memorandum Opinion and Order resolves the court's objections to our rules concerning the definition of basic cable service, the automatic pass through to subscribers of certain costs, and the requirement for providing lock boxes capable of blocking incoming channels.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 84–1296, adopted September 17, 1987, and released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. The Cable Communications Policy Act of 1984 (Cable Act) instructs the Commission to establish the circumstances and manner in which a local franchising authority may regulate the basic cable service rates of a cable system. Upon review, the U.S. Court of Appeals for the District of Columbia Circuit concluded that, for the most part, the rules adopted by the Commission are reasonable and consistent with the Cable Act. The court did, however, vacate certain portions of the *Report and Order*. In this Memorandum Opinion and Order, the Commission resolves the court's objections to our rules concerning the definition of basic

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cable service, the automatic pass through to subscribers of certain costs, and the requirement for providing lock boxes capable of blocking incoming channels.

2. The Cable Act defines basic cable service as "any service tier which includes the retransmission of local television broadcast signals." The Commission adopted a revised definition of basic cable service so as to permit only one service tier of a cable system to be regulated. The court determined that the Commission does not have the discretion to adopt a definition of basic cable service that is at odds with the definition of that term in the Cable Act. The Commission is revising the definition of basic cable service in its rules so that it conforms with the definition in the Cable Act.

3. The Cable Act also specifies that the Commission establish standards by which local franchising authorities may regulate basic cable service rates. In carrying out this mandate, the Commission stated that cable systems will be permitted to automatically pass through any readily identifiable increase in cost which is entirely attributable to the provision of basic service. The court ruled that the Commission exceeded its authority in establishing the cost pass through mechanism. The Commission is eliminating this provision from its rules.

4. The Cable Act also requires that cable operators provide to their subscribers upon request, by sale or lease, a lock box for restricting the viewing of programming which is obscene or indecent. The Commission interpreted this provision to require cable operators to provide lock boxes for only those channels over which they had editorial control. The court stated that the Commission had no basis in the statute or the legislative history upon which to limit the lock box requirement in this way. The Commission is deleting the suggestion that lock boxes need not be capable of blocking selected channels.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission considered all the alternatives presented in the *Notice*, comments in this proceeding, and the ruling by the court in *ACLU*. After full consideration of all aspects of these issues, the Commission is adopting revised rules consistent with the mandate of the Cable Act as interpreted by the court.

6. The final rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified forms, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours on the public.

List of Subjects in 47 CFR Part 76

Cable Television.

Rule Changes

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 76.5 is amended by revising paragraph (ii) introductory text to read as follows:

§ 76.5 Definitions.

* * * * *

(ii) *Basic cable service.* For purposes of regulating the rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition, basic cable service is any service tier which includes the retransmission of any broadcast television signals in the following categories:

* * * * *

§ 76.33 [Amended]

3. 47 CFR 76.33(a)(4) is removed.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-23062 Filed 10-6-87; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 86-207; FCC 87-298]

Amateur Radio Service; Emission F8E on Frequency Band 0.35 Meters (1240 MHz) and Above)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The petitioner believed that the wording of the rule amendment adopted in the Report and Order in this proceeding, which specified the spectrum where emission F8E could be transmitted, might confuse amateur operators. The FCC agreed that the wording of the rule lacked precision and ordered that it be clarified.

EFFECTIVE DATE: December 7, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: September 10, 1987.
Released: September 25, 1987.
By the Commission:

1. On January 28, 1987, we adopted a Report and Order (2 FCC Rcd 803 (1987)) authorizing the transmission of emission F8E on all amateur service frequencies "0.35 meters and above." On March 13, 1987, David B. Popkin filed a petition for reconsideration in this proceeding, requesting an editorial change in the rule amended, Section 97.61(c). Popkin is concerned that the wording of the last sentence of the rule, "Emission F8E may be transmitted on all amateur frequencies 0.35 meters and above" is ambiguous as to whether "and above" means longer wavelengths or higher frequencies.

2. The issue is whether the wording might result in confusion among the amateur operators subject to the amateur service rules. Amateur service rule section 97.7 utilizes the term "meter band", expressed in wavelengths, as a means to simplify references to particular frequency bands in other sections in Part 97. Since a higher frequency has a shorter wavelength,[1] it would be more precise to state, ". . . on the 0.35 meter and shorter wavelength amateur service bands."

3. In view of the foregoing, it is ordered, pursuant to the authority contained in 47 U.S.C. 303(r), that Part 97 is amended as set forth in the Appendix below.

4. It is further ordered, pursuant to the authority contained in 47 U.S.C. 154(i), That the petition for reconsideration of David B. Popkin is granted insofar as it is consistent with this Memorandum Opinion and Order and is denied in all other respects.

5. It is further ordered, that the rule amendment shall become effective December 7, 1987.

6. It is further ordered, that this proceeding is terminated.

7. Information in this matter may be obtained by contacting Maurice J. DePont, Private Radio Bureau, Federal Communications Commission (202) 632-4964.

[1] Wavelength in meters is determined by dividing the approximate speed of light (300,000,000 meters per second) by the frequency in hertz.

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. The last sentence of § 97.61(c) is revised to read as follows:

§ 97.61 Authorized emissions.

* * * * *

(c) * * * Emission F8E may be transmitted on the 0.35 meter and shorter wavelength amateur service bands.

* * * * *

[FR Doc. 87-23000 Filed 10-6-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 61220-7033]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment action.

SUMMARY: This action reapportions DAP (domestic annual processing) amounts to JVP (joint venture processing) based on an analysis of DAP needs for the remainder of 1987 by NMFS. This action is intended as a conservation and management measure that provides for full utilization of available groundfish resources off Alaska during 1987.

EFFECTIVE DATE: This notice is effective on October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, National Marine Fisheries Service, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The Regional Director has conducted several analysis of DAP needs during 1987 and has determined, based on these analyses and DAP catch to date, that certain DAP amounts are excess to DAP needs. The issue of how much pollock might be taken in DAP fisheries was reevaluated by the Council at its May 20–22, 1987, meeting and its September 1, 1987, conference call. The Council voted not to reapportion amounts of pollock in the Gulf of Alaska to JVP.

Reapportionment

To the GOA JVP

The Secretary of Commerce (Secretary) disagrees with the Council recommendation not to reapportion pollock to JVP in the Gulf of Alaska. The Secretary has considered the NMFS processor surveys, the DAP pollock catch as of September 19 (11,400 mt), and the likelihood that DAP fishermen would catch and sell 84,000 mt of pollock by the end of the year. He has determined that 16,500 mt of pollock is surplus to DAP needs and apportions that amount to JVP in the Western/Central Area. Should the Secretary's current assessment prove to overestimate the 1987 DAP fishery, he is authorized to reapportion to JVP later in the year any amounts of pollock he finds will not be harvested in the DAP fishery.

The Secretary also apportions amounts of other species unneeded by DAP for bycatch in the JVP pollock fisheries as indicated in Table 1.

TABLE 1.—1987 CURRENT AND REVISED TARGET QUOTA (TQ), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP) AND RESERVE IN THE GULF OF ALASKA, IN METRIC TONS

Species	Area	TQ	DAH	DAP	JVP	Reserve
Pollock	Western/Central:					
	(Current)	84,000	84,000	83,700	300	0
	(Change)			−16,500	+16,500	
	(Revised)			67,200	16,800	
Pacific cod	Western:					
	(Current)	15,000	15,000	15,000	[redacted]	0
	(Change)			−300	+300	
	(Revised)			14,700	300	
Flounders	Western:					
	(Current)	3,000	3,000	3,000	300	0
	(Change)			−450	+450	
	(Revised)			2,550	450	
Pacific ocean perch	Western:					
	(Current)	1,500	1,500	1,500	0	0
	(Change)				20 [1]	
	(Revised)				20 [1]	
Sablefish	Western:					
	(Current)	3,000	3,000	3,000	0	0
	(Change)				30 [1]	
	(Revised)				30 [1]	
Atka mackerel	Western:					
	(Current)	100	100	100	0	0
	(Change)			−20	+20	0
	(Revised)			80	+20	0

[1] These numbers are prohibited species catch limits for JVP fisheries as indicated. However, these numbers are not to be added to DAP for calculating DAH totals.

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Classification

This action is taken under the authority of 50 CFR 611.92, 611.93, and 672.20 and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit fishermen who otherwise would have to forego substantial amounts of groundfish species if those amounts remained indefinitely in categories in which these species could not be used and would suffer substantial financial loss if a hiatus occurred in their ongoing fisheries. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-23222 Filed 10-2-87; 4:58 pm]

BILLING CODE 3510-22-M

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50 CFR Parts 611 and 675

[Docket No. 61113-7210]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of 1987 initial specifications for groundfish and reapportionment of reserves and domestic annual harvest (DAH).

SUMMARY: NOAA announces 1987 initial specifications and initial apportionments of total allowable catches (TACs) for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) Areas. The interim initial apportionments and a reserve apportionment were made January 9, 1987 (52 FR 785). Several reapportionments have been made-to-date: See 52 FR 18367, May 15; 52 FR 21958, June 10; 52 FR 24297, June 30; and 52 FR 29021, August 5, 1987. This action also apportions reserves and reapportions DAP (domestic annual processing) amounts to JVP (joint venture processing) and TALFF (total allowable level of foreign fishing), based on recommendations of the North Pacific Fishery Management Council (Council) following its May 20–22, 1987, meeting and its September 1, 1987, conference call. This action is intended as a conservation and management measure that provides for full utilization of available groundfish resources off Alaska during 1987.

EFFECTIVE DATE: This notice is effective on October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker Resources Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

This action establishes 1987 TACs for each groundfish category and apportions available TACs among DAP, JVP, TALFF, and reserves. Procedures for establishing these values were reviewed in an interim notice published in the **Federal Register** on January 9, 1987 (52 FR 785). The interim notice also apportioned part of the BSAI reserve to DAP, JVP, and TALFF. Comments on the interim apportionments of TAC and reserve apportionments among DAP, JVP, and TALFF were requested until January 18, 1987.

One letter of comment was received that pertained to the proposed notice of 1987 initial specifications published on December 2, 1986 (51 FR 43397). The comment on the proposed notice pertained to 70,000 metric tons (mt) of rock sole proposed for a DAP rock sole fishery in the BSAI. It is summarized and responded to below. No comments were received on the January interim notice.

After considering the recommendations of the Council and comments received during the comment periods, the Secretary has approved initial TACs and their apportionments as shown in Table 1. Initial amounts in Table 1 for the BSAI are the same as those shown in the interim notice of January 9, 1987 (52 FR 785).

Reapportionment

The issue of how much pollock, Pacific cod, Greenland turbot and "other flatfish" might be taken in DAP fisheries in the BSAI was reevaluated by the Council at its May 20–22, 1987, meeting and its September 1, 1987, conference call. At the latter, the Council found that certain DAP amounts were excess to DAP needs and recommended that amounts of DAP be reapportioned to JVP. In addition, the Council recommended that the Regional Director reallocate amounts of groundfish to TALFF, taking into account views expressed by the Council during the meeting. The Regional Director finds that certain amounts of groundfish are surplus to the needs of domestic fisheries and are therefore apportioned to TALFF as shown in Table 2.

To the BSAI JVP

The Bering Sea subarea was closed to JVP directed fishing for pollock on June 6 and reopened on September 8 to take the remaining pollock JVP. The BSAI was closed to JVP fishing for yellowfin sole on June 29. These are the two principal JVP fisheries in the Bering Sea area and in 1987 about one hundred U.S. catcher boats participated in them. Only about forty U.S. boats have participated in BSAI joint ventures since June. In order to provide for late summer and fall joint venture operations, the Council recommended that 4,000 mt of Bering Sea pollock which is excess to the needs of DAP fisheries be reapportioned to JVP. Similarly, in the Aleutian Islands area, 50,000 mt of DAP pollock is reapportioned to JVP.

In the Aleutian Islands area, JVP fisheries are continuing to take Atka mackerel and pollock, but the current JVP for Pacific ocean perch (POP) is insufficient to provide necessary by catch for continued fishing. To allow continued JVP fishing in the Aleutian Islands subarea without the wastage of resource which would occur if POP were made a prohibited species, 150 mt of POP is apportioned to JVP from the non-specific reserve.

To the BSAI TALFF

The Council found that the current DAH amounts for Pacific cod and "other flatfish" are in excess of DAH needs for the remainder of the year. It also recommended that in view of their cooperation in various activities beneficial to the U.S. fishing industry in 1987 the Japanese longliners should receive an additional directed fishery tonnage of 6,000 mt of Pacific cod. The Japanese industry has also requested additional amounts of "other flatfish" and Pacific cod for their trawl fisheries in view of their good performance under the "industry-to-industry" cooperative agreement.

The following amounts are apportioned to TALFF: from DAP, 20,000 mt of Pacific cod; and from DAP and JVP, 22,560 mt of "other flatfish". The remaining DAP amount of Pacific cod (91,767 mt) and DAP and JVP amounts of "other flatfish" (17,043 mt and 71,972 mt, respectively) are adequate for those fisheries for the remainder of 1987. To provide bycatch, 20 mt of squid, 2 mt of

Bering Sea area POP, 1,369 mt of arrowtooth flounder and 750 mt of "other species", all amounts excess to DAH needs, are transferred to TALFF from the non-specific reserve.

These apportionments do not result in overfishing of any of the stocks, as the resulting TACs for each species are equal to or less than the original TACs.

Comments and Responses

One letter of comment was received which pertained to the proposed notice; it is summarized and responded to as follows:

Comment: The commentator questioned the appropriateness of permitting the development of a potential 70,000 mt DAP bottom trawl fishery for rock sole in an area that is a known habitat area for king crab, Tanner crab, and halibut. The commentator supported the Council's December 1986 action to recommend that the Secretary use discretionary authority to provide for an additional bycatch of crabs.

Response: The Secretary has approved the Council's recommended DAP apportionment for "other flatfish" of 23,103 mt. This apportionment included the entire amount (14,000 mt) requested by domestic processors for a rock sole fishery. NOAA notes that the commentator's concern about potential effects of bottom trawling on crab and halibut habitat has been addressed by the Council Advisory Panel By catch Subcommittee through reaching an agreement between groundfish fishermen and crab fishermen to allow development of the rock sole fishery if bycatches of king and Tanner crab remain within specific guidelines. That agreement, which was endorsed by the Council, recommended that the Secretary use the discretionary authority contained in Amendment 10 to allow continued fishing after the prohibited species catch (PSC) limits for *C. bairdi* Tanner crab and red king crab in zone 1 are reached. Specifically, for DAP vessels participating in the newly developing fishery for rock sole in Zone 1, the Secretary would allow fishing to continue until an additional catch of 10,000 *C. bairdi* Tanner crabs or 10,000 red king crabs had been taken. Amendment 10 has been approved by the Secretary. Regulations implementing Amendment 10 are at 52 FR 8592 (March 19, 1987) from February 8 to March 3, NMFS monitored the fishery in Zone 1 with the objective of allowing its development consistent with the intent of the Council to conserve king and Tanner crabs. NMFS observers estimated that only 4,573 *C. bairdi* Tanner crabs and 794 red king crabs were taken in the fishery.

Classification

This action is taken under the authority of 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291.

For the reserve and DAP reapportionment part of this notice, the Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provided prior notice and comment. Immediate effectiveness of this notice is necessary to benefit fishermen who otherwise would have to forego substantial amounts of groundfish species if those amounts remained indefinitely in categories in which these species could not be used. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

TABLE 1.—1987 ORIGINAL TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE,[1] AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), IN THE BERING SEA (BS), AND ALEUTIAN ISLANDS AREA (AI), OR BOTH, ALL IN METRIC TONS. TAC RESERVE + DAP + JVP + TALFF; INITIAL TAC 0.85 TAC; DAH DAP + JVP

Species	Area	Original[2] TAC	DAH	DAP	JVP	TALFF
Pollock	BS	1,200,000	1,020,000	189,987	830,013	5,000
	AI	88,000	88,000	57,210	30,790	0
Pacific ocean perch	BS	2,850	2,543	2,423	120	12
	AI	8,175	6,949	6,786	163	0
Rockfish	BS	450	441	382	59	9
	AI	1,430	1,215	1,001	214	0
Sablefish	BS	3,700	3,495	3,145	350	40
	AI	4,000	3,400	3,317	83	0
Pacific cod	BS/AI	280,000	206,705	111,767	94,938	31,295
Yellowfin sole	BS/AI	187,000	158,950	100	158,850	5,000
Greenland turbot	BS/AI	20,000	15,250	15,213	37	1,750
Arrowtooth flounder	BS/AI	9,795	4,193	830	3,363	4,133
Other flatfish	BS/AI	148,300	111,575	23,103	88,472	14,480
Atka mackerel	BS/AI	30,800	30,790	250	30,540	10
Squid	BS/AI	500	52	4	48	373
Other	BS/AI	15,000	10,500	500	10,000	2,250

[1] Fifteen percent of the TAC, or 300,000 mt, is apportioned to the non-specific reserve; of this 28,410 mt was apportioned to JVP and TALFF, effective with the date of filing of the interim notice. The remaining reserve was 271,590 mt.

[2] Eighty-five percent of the original TAC is established as the initial TAC, which may be augmented from the reserve during the fishing year.

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TABLE 2.—1987 CURRENT AND REVISED TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP) RESERVE [1], AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), IN THE BERING SEA (BS), and Aleutian Islands Area (AI), OR BOTH, ALL IN METRIC TONS. TAC RESERVE + DAP + JVP + TALFF

Species	Area	TAC	DAH	DAP	JVP	TALFF
Pollock	BS:					
	(Current)	1,200,000	1,195,000	189,987	1,005,013	5,000
	(Change)			−4,000	+4,000	
	(Revised)			185,987	1,009,013	
	AI:					
	(Current)	88,000	88,000	57,210	30,790	0
	(Change)			−50,000	+50,000	
	(Revised)			7,210	80,790	
Pacific ocean perch	BS:					
	(Current)	2,850	2,543	2,423	120	15
	(Change)					+2
	(Revised)					17
	AI:					
	(Current)	8,175	7,199	6,786	413	0
	(Change)		+150		+150	
	(Revised)		7,349		563	
Rockfish	BS	450	441	382	59	[illegible]
	AI	1,430	1,305	1,001	304	0
Sablefish	BS	3,700	3,660	3,310	350	40
	AI	4,000	3,400	3,317	83	[illegible]
Pacific cod	BS/AI:					
	(Current)	280,000	206,705	111,767	94,938	53,295
	(Change)		−20,000	−20,000		+20,000
	(Revised)		186,705	91,767		73,295
Yellowfin sole	BS/AI	187,000	182,000	100	181,900	5,000
Greenland turbot	BS/AI	20,000	15,280	15,213	67	1,750
Arrowtooth flounder	BS/AI:					
	(Current)	9,795	4,193	830	3,363	4,233
	(Change)					+1,369
	(Revised)					5,602
Other flatfish	BS/AI;					
	(Current)	148,300	111,575	23,103	88,472	14,520
	(Change)		−22,560	−6,060	−16,500	+22,560
	(Revised)		89,015	17,043	71,972	37,080
Atka mackerel	BS/AI	30,800	30,790	250	30,540	10
Squid	BS/AI:					
	(Current)	500	52	4	48	373
	(Change)					+20
	(Revised)					393
Other species	BS/AI:					
	(Current)	15,000	10,500	500	10,000	3,750
	(Change)					+750
	(Revised)					4,500

[1] The remaining reserve prior to this action was 49,362 mt. This action reduces the reserve by 2,291 mt to 47,071 mt.

[FR Doc. 87-23221 Filed 10-2-87; 4:57 pm]
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50 CFR Part 663

[Docket No. 70101-7001]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice modifying earlier restrictions to limit the levels of fishing for widow rockfish and trawl-caught sablefish taken in the groundfish fishery off the coasts of Washington, Oregon, and California in 1987, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and are necessary because biological stress to these stocks has been identified or is expected to occur if landings are not restricted. These actions are intended to further lower fishing rates, reduce or prevent biological stress while allowing for unavoidable incidental catches in other fisheries, and avoid or reduce the probability of a fishery closure before the end of the year. This action modifies the fishing restrictions previously imposed for these species.

DATES: New restrictions for trawl-caught sablefish are effective 0001 hours Pacific Daylight Time (PDT), October 2, 1987, until modified, superseded, or rescinded. Comments will be accepted through October 19, 1987.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115; or E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E.C. Fullerton at 213-514-6196, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: This action (1) modifies the fishing restrictions for trawl-caught sablefish imposed at the beginning of 1987 (52 FR 790, January 9, 1987; modified at 52 FR 11473, April 9, 1987); and (2) announces a change to the trip limit for widow rockfish that will be imposed when 95 percent of the optimum yield (OY) quota is reached.

The regulations implementing the FMP at 50 CFR Part 663 allow the Secretary of Commerce (Secretary) to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Pacific Fishery Management Council (Council) has endorsed the determination of its Groundfish Management Team that if landings of widow rockfish and sablefish are not further restricted, the likelihood of biological stress on those stocks is increased because current fishing mortality rates exceed the rates which would take the acceptable biological catch (ABC) of each species for the calendar year. The ABC for these species is equal to OY in 1987.

At its September 16–18, 1987, meeting, the Council reviewed the latest data presented by the Groundfish Management Team and developed management recommendations intended to further limit landings on trawl-caught sablefish and widow rockfish in 1987, thereby minimizing the likelihood and intensity of biological stress on these stocks, and reducing the probability of having to close fisheries for these species before the end of the year due to premature achievement of their OYs.

In its deliberations, the Council considered advice from its Groundfish Management Team, Scientific and Statistical Committee, the public, and a Groundfish Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, and the Groundfish Management Team.

Widow Rockfish

Council Recommendation: In January 1987, a trip limit of 30,000 pounds of widow rockfish was imposed, limited to no more than one landing above 3,000 pounds per week. Landings of less than 3,000 pounds were not limited.

The most recent catch data indicate that 8,869 mt of widow rockfish have been landed through August 8, 1987. If landings are not curtailed further, the OY of 12,500 mt is expected to be reached in mid- to late November. Once the OY is reached, further landings of widow rockfish are prohibited. The Groundfish Management Team estimated that a 20 to 37 percent reduction in landings for the remainder of the year is needed to avoid reaching OY prematurely.

After considering the testimony of its advisory bodies and the public, the Council recommended that the fishery for widow rockfish be extended as long as possible during the year. The Council accepted the recommendation of its Groundfish Select Group that, when 95 percent of OY is reached, a trip limit of 5,000 pounds, limited to no more than one landing a week above 3,000 pounds, be imposed to reduce the probability of premature closure of the fishery. If this action does not sufficiently curtail landings, additional restrictions may be necessary, and if OY is reached, all further landings of widow rockfish will be prohibited until the end of the year. However, the 5,000-pound trip limit is intended to allow most incidental catches to be landed, while greatly reducing target fishing on this species.

Secretarial Action: The Secretary concurs with the Council's recommendation and announces that when 95 percent of the 12,500-mt OY for widow rockfish is projected to be reached, the weekly trip limit will be lowered from 30,000 pounds to 5,000 pounds per vessel per trip. All other provisions of the trip limit for widow rockfish announced at 52 FR 790 and modified at 52 FR 15727 (April 30, 1987), which changes the fishing week from Sunday-Saturday to Wednesday-Tuesday, will remain in effect. This reduction to the trip limit will be announced by a separate notice in the **Federal Register**.

Sablefish

Council Recommendation: In January 1987, the 12,000 mt OY for sablefish was allocated 52 percent (6,200 mt) for trawl gear and 48 percent (5,800 mt) for fixed (nontrawl) gear (52 FR 790, January 9, 1987). The purpose of the allocation provision was to slow the trawl catch of sablefish by minimizing targeted effort on sablefish, thus prolonging the trawl season and avoiding the waste of incidentally caught sablefish which must be discarded after the quota is reached. In contrast with the fixed gear (mostly pot and longline) fishery, which predominantly targets on sablefish with little bycatch, the trawl fishery catches much of its sablefish incidental to other operations.

The most recent catch data, provided by the Groundfish Management Team at the September Council meeting, projected that the trawl quota would be reached between November 2 and December 7 if landings were not lowered by 14 to 34 percent for the rest of the year. Thus, the Council recommended a trip limit on trawl-caught sablefish of 6,000 pounds, or 20 percent of all legal fish on board (including sablefish), whichever is greater, which is intended to lower trawl landings of sablefish by 15 to 20 percent.

In no event may more than 5,000 pounds (round weight) of trawl-caught sablefish smaller than 22 inches (total length) be on board.

Secretarial Action: The Secretary concurs with the Council's recommendation and announces the following restrictions for sablefish caught with trawl gear:

For trawl-caught sablefish no more than 6,000 pounds or 20 percent of all legal fish on board, including sablefish (round weights), whichever is greater, may be taken, retained, possessed or landed per vessel per fishing trip.

Note: Twenty percent of all legal fish on board including sablefish is equivalent to 25 percent of all legal fish on board other than sablefish, in round weights.

All other provisions set forth in the **Federal Register** that pertain to trawl-caught sablefish in 1987 (52 FR 790, January 9, 1987; 52 FR 11473, April 9, 1987), including the prohibition against landing more than 5,000 pounds of trawl-caught sablefish smaller than 22 inches, still apply as long as they are within this limit.

If necessary, the Council may recommend further adjustments to reduce sablefish landings in 1987 in order to avoid overfishing and to extend the landings of sablefish as long as possible throughout the year.

Other Fisheries

These limits apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign fishing or processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot, and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

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Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 states that the Secretary will publish a notice of any action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If landings of trawl-caught sablefish are not immediately restricted, premature closure of the sablefish trawl fishery will result. Accordingly, further delay of these actions is impracticable and contrary to the public interest, and these actions are published in final form effective October 2, 1987.

The public has had the opportunity to comment on these management measures. The public participated in the Select Group, Groundfish Management Team, and Council meetings in August and September 1987 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after this notice is filed for publication in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries.

(16 U.S.C. 1801 *et seq*)

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-23171 Filed 10-2-87; 2:49 pm]

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AGENCY: F
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ACTION: P

SUMMARY:
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Proposed Rules

Federal Register
Vol. 52, No. 194
Wednesday, October 7, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, "Pub. L. 480" (7 U.S.C. 1701 *et seq.*), appearing at Part 17 of Title 7 of the Code of Federal Regulations. The proposed rule would accommodate the financing of commodities moved under intermodal freight contracts. Financing of intermodal movements for Title I, Pub. L. 480 exports is deemed desirable because of the increased use of such movements for agricultural commodities and because such movements could result in lower overall program expenditures.

DATES: Comments on this proposed rule must be received by December 7, 1987, in order to be assured of consideration.

ADDRESS: Comments should be submitted to: Melvin E. Sims, General Sales Manager, Foreign Agricultural Service, Room 4073–South, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert S. Simpson, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. In accordance with the Regulatory Flexibility Act, a copy of this rule has been submitted to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Record keeping requirements and information collection requirements contained in 7 CFR Part 17 have been assigned OMB Control No. 0551–0005.

I. Background

Section 102 of the Agricultural Trade Development and Assistance Act of 1954, as amended ("the Act"), authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities purchased by friendly countries under the authority of Title I of the Act.

The Title I, Pub. L. 480 regulations (7 CFR Part 17) were originally adopted with traditional bulk and break bulk ocean shipping concepts in mind. As a consequence, the regulations have, as a practical matter, precluded the movement of Title I commodities to foreign destinations under intermodal freight contracts. For example, under current regulations, commodity suppliers must submit on-board vessel bills of lading before they are entitled to receive payment for the sales of commodities. This requirement effectively excludes any intermodal shipments because, with intermodal shipments, the commodities are delivered to the custody of an ocean carrier at a point other than the port of export. Such delivery may be at a commodity supplier's plant or bridge-port location. The commodities are then moved to the port of export and to final destination under a single intermodal through export bill of lading.

In recognition of the increased commercial use of intermodal shipments, the successful experience gained in the use of intermodal shipments in the Title II, P.L. 480 donation program, and the possibility that the availability of the intermodal option could result in lower program costs, this Department published in the **Federal Register** on September 13, 1978, 43 FR 40872, an advance notice of proposed rule-making requesting suggestions for changes in the Title I regulations to accommodate a certain type of intermodal movement—i.e., minibridge movements. Comments were received and evaluated, but no further action was taken. On May 29, 1985, a meeting was held in the Department to solicit views from representatives of U.S. flag carriers, associations of U.S. commodity producers and exporters, and U.S. government agencies concerning the desirability of utilizing intermodal movements. Copies of comments received from the advance notice of proposed rule-making and a tape transcript of the above meeting are available for inspection at the address indicated in this preamble.

After considerable review and analysis, it has been determined that the Title I regulations should be amended to accommodate the movement of commodities under intermodal freight contracts because of the increased use of such movements for agricultural commodities and because such movements could result in lower overall program expenditures.

If every provision in the Title I regulations which had to be changed to incorporate the use of intermodal shipments were to be amended, this rule change would be quite extensive. In order to avoid such a rule change, it has been determined that the definition of a number of terms related to the transportation of commodities and used throughout the regulations would be broadened to make them applicable to intermodal shipments. Therefore, it is proposed that the definition of a number of terms in the regulations would be amended to state that terms such as "ocean bill of lading", "delivery", "load port", "vessel approval", "ocean freight" etc. would have specified intermodal interpretations when commodities are moved on an intermodal basis.

II. Changes in Definitions of Terms

The key changes to the regulations involve revising the definitions of "delivery" of commodities and "ocean

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bill of lading". The current definition of delivery relates specifically to the transfer of custody and right of possession of the commodity to the importer at U.S. ports or Canadian transshipment points. It is proposed that the definition of "delivery" be expanded to refer to "designated U.S. locations" which would include ports, a supplier's plant, a bridge-port or any location as delineated in the importer's commodity and freight invitation for bids (IFB). The new definition would also state that delivery to an intermodal carrier would be deemed to occur as of the issuance date of the intermodal through export bill of lading. The definition of "ocean bill of lading" would be expanded to include intermodal through export bills of lading. Thus, commodity suppliers would be entitled to receive financing, in the case of intermodal movements, upon receipt of an intermodal through export bill of lading from the ocean carrier.

The Department recognizes that, prior to implementation of this rule change, the Title I, Pub. L. 480 government-to-government agreement format must be changed to complement this new shipment option. Currently, these agreements define delivery as occurring on the on-board vessel date. This definition of delivery in country agreements is significant in that it determines the time period of an importing country's usual marketing, and export limitation obligations, and also determines the time at which interest begins to accrue on the importing country's repayment obligation.

III. IFB Provisions for Intermodal Offers

A. Requirement for Intermodal Offers

It is proposed to amend § 17.6(b)(3) of the regulations to provide that the General Sales Manager can require the importing country to solicit offers which would include intermodal shipments when a purchase authorization permits contracting on an intermodal basis. Without such a requirement, it is believed that some importing countries may be reluctant to utilize the option simply because of its unfamiliarity notwithstanding the potential for cost-savings. On the other hand, there may be valid reasons why an importing country opposes shipping on an intermodal basis, e.g., where container handling facilities are not available in the country of destination. In such circumstances, the importing country would be free to contract solely on traditional shipment terms.

B. Restricted Intermodal Offers

Given the large number of offers that may be received for different grades and types of commodities or products, different coastal ranges, delivery periods, and contract terms, there is concern that it would not be advisable to further complicate the Title I tendering process by permitting intermodal offers at unlimited number of locations. It has been suggested, for example, that intermodal offers could be restricted to railroad locations or bridge-ports thereby excluding deliveries at supplier's plants or elsewhere.

This issue does entail serious operational concerns. The degree to which it may be a problem must, however, await actual experience with the new procedure. Should it be necessary, limitations on intermodal delivery locations could be set forth in the applicable purchase authorization. IFB's must comply with any limitations established in a purchase authorization.

Also, for perishable commodities, the intermodal option may raise valid concerns on the part of importing countries relating to the degree of risk of infestation and timeliness of delivery for the relatively large tonnages normally shipped in the Title I program. Previous comments have indicated the need for re-inspection of intermodal shipments after the railcar or truck leg of shipment or even after containers are stuffed at a supplier's plant because of the extra time during which buyers have risk of loss. Further, under traditional f.a.s. exports, suppliers can spread deliveries of packaged commodities to dockside warehouses over a period of time to accumulate relatively large quantities, e.g. 20–30,000 tons at port. This results in the likelihood that all Title I cargo will be placed on the ocean vessel when it arrives, which is significant considering the large quantities of commodities moving under Title I. The risk of cargo being left behind would be appear to be greater in intermodal movements of this magnitude if a large number of ocean containers, each carrying a relatively small amount of cargo, are involved. Examples of the types of problems that this may entail are described below.

The Department is therefore proposing to authorize the use of intermodal movement in the Title I program but will control its actual use on a procurement-by-procurement basis through the purchase authorizations and the IFB's.

C. Special IFB Provisions for Intermodal Shipments

Although not a part of proposed regulations, it is believed that the following discussion of how the Title I commodity and freight tendering process could be affected by the intermodal option may aid interested parties in formulating comments.

In traditional break bulk shipments, the contract contains the delivery dates at port, and the arrival of the vessel usually creates the obligation of the commodity supplier to make bagged or drummed cargo available for loading at the vessel's call, or at a minimum amount per day per available, workable hatch. For intermodal deliveries, a commodity supplier would be required to deliver the commodities at the intermodal point during a specified period. To prevent commodity suppliers from delaying deliveries until the end of such a delivery period, or bunching deliveries in such a way that the intermodal carrier cannot efficiently deliver the cargo to port, special IFB provisions may be approved which contain a financial disincentive for such actions.

Also, IFB's may contain provisions that specify the carrier's responsibility for detention, demurrage, or carrying charges if the carrier is unable to promptly accept for shipment all cargo arriving at U.S. ports.

Finally, given past problems in the Title II, Pub. L. 480 program with ocean container deliveries being spread over extended periods of time—a practice that could be exacerbated by the increasing practice of relaying containers through foreign transshipment points—the buyer of relatively large quantities of Title I commodities may be protected, for example, by stipulating in the freight contract specific delivery periods that carriers must meet for all containers shipped intermodally.

Further comments focusing on these specific concerns would be welcome.

IV. Release of Bill of Lading

Another proposed change would affect when the supplier of ocean transportation must release the bill of lading to the commodity supplier. A revision of § 17.14(a)(3) would state that through export bills of lading would be issued at the time of delivery of the commodity to the locations designated in the Form 359, "Declaration of Sale", which constitutes the Department's written approval of the sale.

V. Ocean Freight Differential

With respect to ocean freight differential on intermodal shipments, the Department would compute and pay ocean freight differential on the same basis as under current procedures, without distinguishing the type of

movement, i.e., the entire intermodal rate will be deemed to be an ocean freight rate. (It is the Department's intention to separately designate ocean freight differentials paid on intermodal movements when reporting cargo preference information to the Maritime Administration.)

Computing OFD on this basis could have the effect of transferring some internal transport costs from commodity prices to ocean freight rates. Since the Department extends credit to the importing country for commodities, but pays OFD without an obligation from the importing country to reimburse the Department, it may appear that payment of OFD on the basis of an intermodal rate would be disadvantageous to the Department. However, the Department believes that the potential reduction in U.S. flag rates that can be realized by permitting increased competition will reduce overall OFD expenditures substantially. Thus, both commodity financing and OFD expenditures should decline per ton of commodity shipped.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 17, Subpart A, be amended as follows:

PART 17—SALES OF AGRICULTURAL COMMODITIES MADE AVAILABLE UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954 AS AMENDED

1. The authority citation for Part 17 reads as follows:

Authority: Secs. 101–115, Pub. L. 480, 83rd Cong., as amended, 68 Stat. 455 (7 U.S.C. 1701, *et seq.*); E.O. 12220, 45 FR 44245.

2. Section 17.1(a) is amended by adding a new sentence at the end thereof to read as follows:

§ 17.1 General.

(a) * * * Participants and potential suppliers are cautioned to carefully read the definitional section of this subpart since certain terms have special meanings applicable to intermodal shipments.

* * * * *

3. In § 17.2(b), the definition of "Ocean bill of lading" and "Ocean transportation" are revised, and new definitional terms "Intermodal shipment," "Load port," "Ocean freight rate," "Through export bill of lading" and "Vessel approval" are added, in appropriate alphabetical order, and in paragraph (c), the definition of "Delivery" is revised as follows:

§ 17.2 Definition of terms.

* * * * *

(b) *Terms relating to ocean transportation.*

* * * * *

Intermodal shipment means a shipment whereby commodities are delivered into the care and custody of the ocean carrier at a location other than the port at which such commodities are loaded into the carrier's ocean going vessel.

Load port or *Loading port* shall mean the location, including inland point, designated for delivery of the commodities to an ocean carrier in the Declaration of Sale Form 359.

* * * * *

Ocean bill of lading means

(1) *In the case of cargo carried on a vessel in other than LASH or Seabee barge:* An "on-board" bill of lading, or a bill of lading with an "on-board" endorsement, which is dated and signed or initialed on behalf of the carrier; or an intermodal through export bill of lading; or

(2) *In the case of cargo carried in a LASH or Seabee barge:* (i) For the purpose of financing the commodity price, an "on-board" barge bill of lading showing the date the commodity was loaded on board barges, which is dated and signed or initialed on behalf of the carrier, or a bill of lading or a LASH or Seabee barge bill of lading with an "on-board barge" endorsement which is dated and signed or initialed on behalf of the carrier.

(ii) For the purpose of financing ocean freight or ocean freight differential or any portion thereof:

(A) an "on-board" bill of lading which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight (8) running days after the latest LASH or Seabee barge loading date (contract layday) specified in the Form CCC–106, or

(B) A bill of lading or a LASH or Seabee barge bill of lading with an "on-board ocean vessel" endorsement which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight (8) running days after the latest LASH or Seabee barge loading date (contract layday) specified in the Form CCC–106.

(3) Documentary requirements for a copy of an "ocean bill of lading" refer to a non-negotiable copy thereof.

Ocean freight rate is the freight rate charged by an ocean carrier for the carriage of commodities and shall be deemed to include the rate charged for an intermodal shipment.

Ocean transportation means and is interchangeable with the term "ocean freight", and shall be deemed to include transportation from intermodal delivery point to a foreign destination.

* * * * *

Through export bill of lading means an intermodal or other bill of lading that constitutes an ocean carrier's obligation to deliver cargo from a designated point in the United States to a designated foreign destination.

Vessel approval is the approval by CCC of the vessel or vessels to carry the commodities and shall be deemed to include approval of intermodal shipments.

(c) *Other terms.*

* * * * *

Delivery means the transfer to or, for the account of, an importer of custody and right of possession of the commodity at U.S. ports or other designated U.S. locations, or at Canadian transshipment points, in accordance with the delivery terms of the contract and purchase authorization. For purposes of financing, delivery shall be deemed to occur as of the on-board date shown on the ocean bill of lading, or in the case of an intermodal shipment, as of the issuance date on the intermodal through export bill of lading.

* * * * *

4. Section 17.6(b)(3)(vii) is added to read as follows:

§ 17.6 Contracts between commodity suppliers and importers.

* * * * *

(b) * * *

(3) * * *

(vii) Whenever the purchase authorization specifies that commodities may be delivered on an intermodal hasis, the General Sales Manager may require that the IFB invite offers for intermodal shipments in addition to any other terms of delivery.

* * * * *

5. In § 17.14, paragraph (a)(3) is revised to read as follows:

§ 17.14 Ocean transportation.

(a) * * *

(3) The supplier of ocean transportation shall release copies of the ocean bills of lading to the supplier of the commodity promptly upon completion of loading of the vessel, or in the case of intermodal shipments, upon receipt of the commodity at the location

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designated in the Declaration of Sale Form CCC–359 or Form FAS–359 and completion of any inspection required by these regulations or the Purchase Authorization.

* * * * *

Signed at Washington, DC, on June 10, 1987.

Melvin E. Sims,

General Sales Manager.

[FR Doc. 87–23017 Filed 10–6–87; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ACE–11]

Proposed Designation of Transition Area; Grinnell, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Grinnell, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Grinnell, Iowa Airport, utilizing the Newton, Iowa VORTAC as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before November 9, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181), by designating a 700-foot transition area at Grinnell, Iowa. To enhance airport usage, a new instrument approach procedure is being developed for the Grinnell, Iowa Airport, utilizing the Newton VORTAC as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure, based on this navigational aid, entails designation of a transition area at Grinnell, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations and controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Grinnell, IA [New]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Grinnell Airport (Lat. 41°42'18" N., Long. 92°43'45" W°); and within 2.5 miles each side of the 105° radial from the Newton VORTAC, extending from the 5-mile radius area to 26 miles east of the VORTAC.

Issued in Kansas City, Missouri on September 23, 1987.

Clarence E. Newbern,

Assistant Manager, Air Traffic Division.

[FR Doc. 87–23124 Filed 10–6–87; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–24976; File No. S7–33–87]

Acquisitions of Substantial Amounts of Securities and Related Activities Undertaken During and Following a Tender Offer for Those Securities.

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed rules that would govern certain acquisitions

of securities undertaken during and shortly after a conventional tender offer for securities of the same class and related activities. The proposed rules would require that all purchases, offers to purchase, arrangements or understandings to purchase and solicitations of offers to sell securities undertaken during and shortly after a tender offer that would increase any person's ownership of the class of securities subject to the tender offer by 10 percent or more of the class be made in compliance with the statutory provisions and rules applicable to tender offers. Exceptions would be provided for purchases of blocks which had been reported to the Commission for one year; purchases from the issuer; purchases pursuant to a preexisting written agreement; issuer transactions approved by securityholder vote, including recapitalizations and reorganizations; and purchases in connection with mergers approved by the issuer's securityholders. The provisions would apply to all persons from the formal commencement of a tender offer until 10 business days after the scheduled expiration date. A proposed rule also would subject a bidder to the same requirements from the time it commenced a tender offer by public announcement until it either formally commenced a tender offer by some other means or 30 business days after it made a subsequent public announcement stating that it had determined not to continue with the tender offer.

DATE: Comments should be received on or before December 7, 1987.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–33–87. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano (202) 272–3097, Jonathan E. Gottlieb (202) 272–2607, Office of Tender Offers, Division of Corporation Finance, or Larry E. Bergmann (202) 272–2874, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed Rules 13e–2 and 14d–11.

I. Executive Summary

The Commission is proposing rules that expressly would include within the scope of its tender offer regulations acquisitions of substantial amounts of securities and related activity undertaken during and for a limited period following the scheduled expiration of a tender offer for that class of securities. The proposal follows a July 31, 1986 Concept Release in which the Commission sought public comment on whether the Williams Act amendments to the Securities Exchange Act of 1934 ("Exchange Act"),[1] Governing corporate tender offers and other major acquisitions of securities, should apply to acquisitions of a substantial percentage of a target's securities during and immediately after a tender offer for those securities.[2] The Commission sought comment on the need to amend the tender offer rules to ensure that the Williams Act protections apply in those circumstances.

As noted in the Concept Release, commencement of a tender offer often results in a concentration of blocks of stock among market professionals and others. Issuers, bidders and others have acquired control or substantial amounts of securities by purchasing stock from such block holders without complying with the Williams Act and rules applicable to tender offers. Securityholders of the target company have thereby been deprived of adequate information deemed necessary under such circumstances and the minimum time needed to act upon such information, and denied withdrawal and proration rights and even the opportunity to participate in the acquisition program. In the absence of Commission rulemaking, the courts that have addressed the issue have been unwilling to apply the procedural and substantive protections of the Williams Act and rules to such acquisition programs.[3]

The Commission solicited comment on a variety of issues relating to this topic, including: (1) Whether securityholders have adequate time and information upon which to act during these acquisition programs; (2) whether some groups of securityholders are unfairly disadvantaged in these transactions because of the speed with which the transactions occur, the lack of adequate information concerning the transaction, or the inability to participate on the same basis as other securityholders; and (3) whether the possibility of an unregulated competing acquisition by the target or a third party deters or disadvantages the initial bidder or encourages initial takeover attempts to proceed other than by way of conventional tender offers.

In the Concept Release, the Commission also outlined one possible approach to applying the protections of the Williams Act to substantial acquisitions undertaken during or shortly after tender offers. Under that approach, the tender offer rules would be amended to provide that substantial acquisitions of a target company's securities by any person after commencement of a tender offer for such securities, and until the expiration of a specified period after termination of the tender offer, would be deemed a "tender offer" required to be made in compliance with the tender offer rules.[4]

Many of the commentators responding to the Concept Release on this issue favored applying Williams Act protections to accumulations of substantial amounts of securities during or shortly after a tender offer.[5] Members

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[1] Pub. L. No. 91–567, 84 Stat. 1497, 15 U.S.C. 78m(d) and 78m(e), 78n(d)–78n(f).

[2] *See* Release No. 34–23486 (July 31, 1986) [51 FR 28096]. The Concept Release also sought comment as to whether the federal government should regulate "poison pill" plans and whether the Commission should adopt a self-governance exception to tender offer rules. The Commission does not believe that federal regulation of poison pills is appropriate at this time. *See* Testimony of David S. Ruder, Chairman of the Securities and Exchange Commission, Before the Subscommittee on Telecommunications and Finance of the House Committee on Energy and Commerce (September 17, 1987). With regard to the self governance exception to tender offer rules, the Commission is seeking comment on a self-governance approach to the rules proposed herein.

[3] *See Hanson Trust plc* v. *SCM Corp.*, 774 F.2d 47 (2d Cir. 1985) and *SEC* v. *Carter Hawley Hale Stores, Inc.*, 760 F.2d 945 (9th Cir. 1985).

[4] The Commission suggested 10 percent as a possible acquisition threshold under this approach.

[5] Twenty-three commentators responding to the Concept Release addressed this topic. Of the 23, 13 favored application of the Williams Act to substantial acquisitions of securities during or shortly after a tender offer for the class of securities. Two commentators, including the American Bar Association, Section of Corporation, Banking and Business Law, Subcommittee on Proxy Solicitations and Tender Offers, expressed concern regarding the impact of such acquisitions on shareholders, but suggested approaches different from that suggested by the Commission. Two other commentators expressed concern but did not take a specific position. The remaining six commentators, including the United States Department of Justice, Antitrust Division, opposed application of the Williams Act to such acquisitions.

Suggestions regarding the length of a "cooling off" period following termination of a tender offer, during which substantial acquisitions could only take place by tender offer, ranged from 10 days to six months. Suggestions regarding the appropriate level of purchases during the restricted period to which such a rule would apply ranged from a low of two percent of the outstanding class of securities once a purchaser owns 10 percent, to a high of 20 percent regardless of the purchaser's previous

Continued

of Congress also have found a need for Williams Act protections in such situations. Bills have been introduced in Congress that would amend the Exchange Act to prohibit a bidder from terminating a tender offer and immediately acquiring securities of the same class.[6] Since the Concept Release was issued, there have been additional incidents in which parties to a takeover contest and other persons have taken advantage of the market dynamics put into play when a conventional tender offer is commenced, by "sweeping the street" during and immediately after such a tender offer.[7] The Commission believes that such practices will continue and may become more common.

Since market sweeps pose the same investor protection concerns that Congress sought to curb when it enacted the Williams Act, the Commission has viewed such activity as a form of unconventional tender offer subject to the same strictures as other tender offers under the Williams Act and the regulations promulgated thereunder. Yet, two courts have found that the Commission's rules, as currently promulgated,[8] did not afford securityholders the protections of the Williams Act regulatory scheme in the context of substantial acquisitions that occurred during or immediately after termination of a tender offer. Accordingly, the Commission is proposing Rules 13e–2 and 14d–11 to subject these acquisitions and related market activity during or shortly after a tender offer for the same class of securities to the statutory provisions and regulations applicable to all tender offers.

Proposed Rules 13e–2 and 14d–11(a) would require, with certain exceptions compliance with the Williams Act and rules applicable to tender offers from dissemination and publication of a tender offer until the expiration of 10 business days following its scheduled expiration (including any extensions), by any person that seeks to increase its beneficial ownership of the class of securities subject to the tender offer by 10 percent or more of the class or who solicits offers to sell those securities that would increase any person's beneficial ownership by 10 percent of the class or more. Proposed Rule 14d–11(b) would further require, with certain exceptions, that a bidder's acquisition activities with respect to 10 percent or more of the class be conducted in compliance with the Williams Act and rules thereunder from commencement of a tender offer by public announcement until dissemination and publication of the offer or the expiration of 30 business days following withdrawal of the announcement. The proposed rules would provide exceptions for a purchase of a block of securities where the beneficial ownership of the securities had been reported for at least one year; purchases from the issuer; purchases pursuant to a preexisting and binding written agreement; purchases by the issuer pursuant to specific securityholder approval; and purchases in connection with a merger or consolidation of the issuer that had previously been approved by the issuer's securityholders.

II. Discussion

A. Background

When a tender offer is pending, has just expired or has just been terminated, purchases of substantial amounts of securities can have the same effect and present the same investor protection issues as the initial tender offer itself. Accordingly proposed Rules 13e–2 and 14d–11 are intended to insure that investors confronted with the same pressured investment decision engendered by a conventional tender offer are afforded the same protections.

After the bidder or the issuer commences a tender offer, the market reaction is swift and profound. The price of the stock usually jumps to reflect the value of the bid and may rise above that price in anticipation of a possible increase in the bid or a higher competing offer. While many securityholder tender their shares, others sell their holdings to take immediate advantage of the increase in the stock price and to avoid the risks of proration or failure of the bid. Speed is essential since an effective defensive measure or other development may prevent successful completion of the tender offer; in that event, the stock price usually drops immediately and in many cases dramatically.

While some securityholders may sell to realize an immediate profit, others—usually market professionals—buy large amounts of stock in order to secure the higher premium. Once a substantial portion of the class of securities becomes concentrated among a relatively small number of market professionals and others, a person can dramatically increase its ownership with extraordinary speed and ease by acquiring the securities from such holders. The practice of purchasing a sizeable position in a security during or shortly after a tender offer through a series of coordinated, often simultaneous, purchases from holders of recently-acquired blocks of stock is known as a "market sweep." Through a market sweep, a person can quickly obtain control, or at least a blocking position to deter competing bids, while avoiding the competitive risks and financial costs of a formal tender offer.

Bidders, targets and third parties alike can engage in market sweeps. In some instances, bidders have terminated their tender offers prior to the scheduled expiration data and purchased substantial amounts of the same class of securities within hours or even minutes of such termination.[9] Such purchases are made from a relatively small number of securityholders without any of the safeguards of the Williams Act. In such cases, the tender offer process is a vehicle for consolidation of stock distribution, which enables a bidder to purchase the securities eventually without compliance with the Williams Act. The bidder buys securities from a few persons, avoiding the all holders

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holdings. The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (see File No. S7–18–86).

[6] *See* S. 1324, Corporate Takeover and Insider Abuse Reform Act, section 9(a); H.R. 2172, Tender Offer Reform Act of 1987, Section 11; H.R. 2668, Securities Trading Reform Act of 1987, section 105. The proposed statutory amendments are narrower in scope than the rule proposed today, as they apply only to a bidder's termination of its bid. These bills as well as others contain additional provisions that would require all acquisitions above a certain threshold of ownership to proceed by way of conventional tender offer. While these provisions would address the concerns of the proposed rules, they would go far beyond regulating these unconventional tender offers. These bills essentially would alter the thrust of the Williams Act to regulation of transfers of control, regardless of whether a tender offer, conventional or unconventional, is involved. *See, e.g.*, S. 1323, Tender Offer Disclosure and Fairness Act of 1987, section 7(b); S. 1324, *supra*, section 9(a); H.R. 2102, *supra*, section 13. *See also* S. 227, Tender Offer Reform Act of 1987, section 4(a).

[7] For example, in 1986 Campeau Corporation purchased 48 percent of Allied Stores Corporation's stock within minutes after terminating its tender offer for that company, thereby defeating a friendly bid for the company by a third party. In early 1987, Dixons Group plc purchased 60 percent of the subject securities in a single transaction on the day following the expiration of its tender offer for Cyclops Corporation, thereby defeating a competing bid.

[8] *See Hanson Trust, supra*, 774 F.2d at 60 ("Neither the Act nor any SEC rule promulgated thereunder prohibits a former tender offeror from purchasing stock of a target through privately negotiated transactions immediately after a tender offer has been terminated. * * * We believe it would be unwise for courts judicially to usurp that is a legislative or regulatory function by substituting our judgment for that of Congress or the SEC."); *Carter Hawley Hale Stores, supra*, 760 F.2d at 949 ("The regulations do not specify when a repurchase by an issuer amounts to a tender offer governed by Rule 13e–4 rather than 13–1.").

[9] See, e.g., *Hanson Trust*, supra. 770 F.2d 47.

rule (thus alleviating the proration risk of those who sell). The bidder is able to buy immediately, without holding its offer open for the minimum offering period. Securityholders outside this small group of smellers (including securityholders who have tendered into the bid) are denied their proration right and the right to participate assured by the all holders rule. Those whose securities are purchased likewise are compelled to forego informational, best price and withdrawal rights.

In other instances, bidders have made purchases shortly after the scheduled expiration of the offer.[10] Even where tendered shares are purchased, this device deprives tendering securityholders of the right to the best price paid to other securityholders and the right to withdraw their shares in order to sell at the better price.

The potential for abuse may be even greater. Certain securityholders may withhold tendering to avoid prorationing risks and to obtain a higher price outside the offer; where these securityholders hold an amount of stock material to the success of the bid and can count on immediate acquisition by the bidder following expiration of the offer, they can compel an acquiror to buy outside the terms of the conventional bid. If the bidder fails to meet the minimum share condition because of the withholding of shares, the subsequent purchase could be effected without any of the tendering securityholders' shares being bought at all.

Targets of tender offers also have engaged in market sweeps to defeat hostile bids. In one case, while a bidder's tender offer was pending, the target publicly announced a defensive program that included its intention to purchase significant amounts of securities.[11] The terms of the announcement placed the same pressure on securityholders to sell as the tender offer, since securityholders recognized that the defensive program could defeat the bid; that the market price, which had been raised to reflect the premium offered in the tender offer, could fall to prebid levels; and that to obtain a higher price, they had to sell immediately into the market while it was still supported by the target's massive purchases. The pressure was all the greater because the target, avoiding the proration requirements of the Williams Act, could buy on a first-come, first-serve basis and could buy immediately without complying with the minimum offering period. Those selling shares to the target did so without the information required by the Williams Act and without best price protection or withdrawal rights.

The potential for a market sweep is particularly high in the case of competing tender offers. The bidders, target and securityholders must constantly be wary that one of the bidders will abruptly terminate its offer and quickly obtain control in the market, thereby circumventing the tender offer process. A bidder may be prompted to commence a preemptive market sweep in order to prevent competing bidders or the issuer from doing so. Under such circumstances, securityholders who have tendered into one of the offers, rather than selling into the market, lose an opportunity to obtain the premium.

Market sweeps also can be conducted by third parties who have not commenced a tender offer or even disclosed their interest in the target.[12] Such an acquisition has the same effect and poses the same investor protection concerns as market sweeps conducted by issuers and bidders.

Market sweeps are fostered by brokers, dealers and other market professionals assembling blocks of stock, which they then market to bidders, targets and third parties. By soliciting a number of clients or substantial shareholders they can assemble a sufficiently large block of stock which could frustrate a minimum share condition of a tender offer or otherwise affect the success of an offer. Accordingly, they may leave the bidder with no choice but to deal with them.[13] This practice can create tremendous pressure on bidders to terminate their offers in order to purchase the block from the brokers or dealers before the block is sold to the target or another party.

These rapid accumulations or attempts to accumulate a substantial percentage of securities during, or shortly after termination of, a tender offer, but outside the tender offer process, create the same pressures on, and unfair treatment of, shareholders that the Williams Act was adopted to prevent. These acquisition programs differ from a conventional tender offer in purpose and effect only by the absence of the procedures—the dissemination of required information, a minimum offering period to consider the information, and equal treatment of shareholders under the proration, best price and all holders rules—that the Williams Act and related rules mandate for the protection of investors.

The term "tender offer" is not defined by the Williams Act or Commission rules; Congress left to the Commission and the courts the flexibility to define the term in light of ever-evolving tender offer practices.[14] The Commission consistently has interpreted the term to go beyond the conventional tender offer to include acquisition programs that present the type of abuses that Congress intended to eliminate.[15]

To assist in the determination whether certain substantial purchases constitute tender offers, the Commission has suggested, and the Courts have employed, an eight-factor test.[16] The

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[10] For example, in 1987, Dixons Group plc acquired control of Cyclops Corporation by making purchases within two days after the scheduled expiration of its tender offer. In 1986, Amalgamated Sugar Company acquired sufficient additional shares to give it control of NL Industries, Inc. by making purchases the day after the scheduled expiration of its tender offer.

[11] *See Carter Hawley Hale Stores, supra,* 760 F.2d 945.

[12] For example, on September 8, 1987, a group led by T. Boone Pickens commenced a tender offer for 28 million shares of Newmont Mining Corporation ("Newmont") for $95 per share in cash. On September 21, 1987, Newmont announced a restructuring plan that would result in shareholders receiving a dividend of $33 per share. On the same date, Consolidated Gold Fields PLC ("CGF") announced that it intended to increase its holdings of Newmont stock from 26 percent to just under 50 percent through negotiated and open market purchases. CGF purchased 191,000 shares on September 21, and 15.6 million shares on September 22 mostly through open market purchases at prices ranging from $93 to $99 per share. As of September 22, CGF held 49.67 percent of the outstanding shares of Newmont. As of the date of this release, however, the purchases are the subject of litigation.

In July 1987, Paul Bilzerian attempted to purchase 41 percent of the shares of Pay 'N' Pak Stores, Inc. in one day during a tender offer by a group that included company management. Bilzerian's purchases were cancelled by Morgan Stanley & Company, Inc., however, because it believed that 'the trade raised significant legal questions under the tender offer rules." *The Wall Street Journal,* July 10, 1987, at 2 (Eastern ed.).

[13] *See The Wall Street Journal,* Campeau's Takeover Victory Signals Change in Tactics, Nov. 4, 1986, at 2 (Eastern ed.).

[14] *Smallwood v. Pearl Brewing Co.,* 489 F.2d. 579, 598 (5th Cir.), *cert. denied,* 419 U.S. 873 (1974).

[15] Exchange Act Release No. 16385 (Nov. 29, 1979) [44 FR 70349. *See also* SEC briefs filed in *Carter Hawley Hale Stores, supra,* 760 F.2d 945; *Brascan Ltd., v. Edper Equities, Ltd,* 477 F. Supp. 773 (S.D.N.Y. 1979), *Wellman v. Dickinson,* 475 F. Supp. 783 (S.D.N.Y. 1979) *aff'd on other grounds,* 682 F.2d 355 (2d Cir. 1982); *cert. denied,* 460 U.S. 1069 (1983).

[16] *See Wellman, supra,* 475 F. Supp. 783. *See also Carter Hawley Hale Stores, supra,* 760 F.2d at 950–52. Those eight factors are: (1) Active and widespread solicitation of shareholders for the shares of an issuer; (2) solicitation made for a substantial percentage of the issuer's stock; (3) offer to purchase made at a premium over the prevailing market price; (4) terms of the offer are firm rather than negotiable; (5) offer contingent on the tender of a fixed number of shares, often subject to a fixed maximum number to be purchased; (6) offer open only for a limited period of time; (7) offeree subjected to pressure to sell his stock; and (8) public announcement of a purchasing program concerning the target company precedes or accompanies rapid accumulation of a large amount of target company's securities. *Wellman, supra,* 475 F. Supp. at 823–24.

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Commission repeatedly has cautioned that not all eight factors are entitled to equal weight and that neither all, nor even a majority, of the eight factors need be present. As noted in the Commission's brief in *SEC v. Carter Hawley Hale Stores, Inc.* (brief at 39):

> The various factors really serve one ultimate purpose—to identify whether a purchase program places pressure on shareholders to respond hastily before having a chance to consider material information.

Market sweep programs, often for less than all of the target's shares, require securityholders to react immediately without the benefit of information about the bidder and its plans for the target. Securityholders must assess the likelihood of the tender offer's success, an auction developing, or a successful target company defense. Withdrawal rights, which protect the securityholder's ability to react to new information throughout the pendency of a tender offer, are not available. A market sweep defeats all the intended benefits of Williams Act protections; a sweep can change control or defeat a bid without notice, information to the market, time to react, and the opportunity to participate.

In applying the eight-factor test to market sweeps, courts have been troubled by the fact that the pressure on securityholders and other indicia of a tender offer were as much the result of the market forces accompanying the conventional tender offer as any conduct by the purchaser.[17] The charged environment of a tender offer heightens the pressure on securityholders to make rapid investment decisions; the market price of the securities after the conventional bid is made includes a premium; that premium will exist so long as the market perceives that the bid or other acquisition effort is ongoing. The public announcement and offer of a premium provided by the conventional bid serves not only the initial bidder but each person seeking to acquire a substantial block in a short period of time. Securityholders face the same pressures and are in equal need of the Williams Act protections regardless of who initially sets these market forces in motion.[18]

A bidder, target or third party should not be permitted to use the market dynamics resulting from commencement of a tender offer in this manner. Once the dynamic market conditions resulting from a tender offer are in play, persons engaged in contests for corporate control should not be able to treat the Williams Act as an optional set of procedures to be followed only when it is to their advantage to do so. Rather, they should be requried to provide securityholders and the market with the type of information and substantive protections mandated by the Williams Act for tender offers. The rules proposed today are intended to ensure that result.

B. Persons Subject to the Proposed Rules

As noted above, the proposed rules would require acquisition programs involving an increase in beneficial ownership of 10 percent or more of the class during and shortly after a tender offer for securities of the class to proceed in compliance with the Williams Act and rules applicable to tender offers. Under proposed Rules 13e–2 and 14d–11(a), these requirements would apply to all persons once a conventional tender offer has formally commenced.[19] The proposed rules would apply to target, bidder and third party acquisitions because they have the same effect on securityholders.[20]

There is, however, one exception to this uniform application. When a bidder commences a tender offer through a public announcement under Rule 14d–2(b),[21] proposed Rule 14d–11(b) would restrict the activities of that bidder, but not those of the issuer or any other person. However, once a bidder commences a tender offer by any means other than a Rule 14d–2(b) announcement, all persons would be subject to proposed Rules 13e–2 or 14d–11(a).

While a public announcement can have an immediate and significant effect on the market for the subject securities and the target's shareholders, restricting the activities of all persons following the announcement of a tender offer could increase, rather than reduce, the potential for abuse and market disruption. An across-the-board application of the tender offer rules to acquisition activity by any person following a Rule 14d–2(b) announcement could create confusion and make it difficult to administer the proposed rules. Certain announcements may not be immediately identified as a Rule 14d–2(b) announcement. Moreover, since such an announcement can be made by press release, newspaper advertisement or public statement, notice of such an announcement may not be universally available.

Since Rule 13e–4 does not contain a parallel to Rule 14d–2(b), proposed Rule 13e–2 does not include a provision comparable to proposed Rule 14d–11(b). In the past, public announcements by issuers prior to the commencement of a conventional third-party bid have not proven to be a problem.[22] The Commission solicits comment on whether this differential treatment continues to be appropriate.

C. Nature of Activity Affected

The proposed rules would cover offers to purchase, arrangements or understandings to purchase or solicitations of offers to sell, as well as purchases of securities which are the subject of a tender offer. The Commission believes that each of these

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[17] *See Carter Hawley Hale Stores, supra*, 760 F.2d at 952 ("The shareholder pressure in this case did not result from any untoward action on the part of CHH. Rather, it resulted from market forces, the third-party offer, and the fear that at the expiration of the offer the price of CHH shares would decrease").

[18] *See Carter Hawley Hale Stores, supra*, 760 F.2d at 950; *In re Paine Webber Jackson & Curtis, Inc.*, [1982–83] Fed. Sec. L. Rep. (CCH) para. 83,310 at 85,714 (Dec. 30, 1982) ("[T]he circumstance that the Paine Webber offer occurred in the context of the outstanding (conventional) Cavenham tender offer presents an additional and separate reason for concluding that the Paine Webber offer was a tender offer subject to section 14(d) of the Exchange Act").

[19] Tender offers by affiliates for the issuer's equity securities registered under section 12 of the Exchange Act [15 U.S.C. 781] or otherwise included within Section 14(d) of the Exchange Act [15 U.S.C. 78m(d)], which if successful would result in the affiliate becoming the beneficial owner of more than five percent of the class of such securities, are governed by Regulation 14D [17 CFR 240.14d–1–240.14d–101]. Purchases of those securities by affiliates would therefore be restricted by proposed Rule 14d–11. All other tender offers by affiliates for an issuer's equity securities are governed by Rule 13e–4 [17 CFR 240.13e–4] and purchases of those securities would be subject to proposed Rule 13e–2.

[20] The broad applicability of these proposed rules to all persons also is consistent with the Williams Act principle of neutrality among bidders, target companies and third parties. Senator Williams, in introducing the bill which became the Williams Act, stated: "I have taken extreme care with this legislation to balance the scales to protect the legitimate interests of the corporation, management and shareholders without unduly impeding cash takeover bids." 113 Cong. Rec. 354–55 (1967). *See also* S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967) and H.R. Rep. No. 1711, 90th Cong., 2d Sess. 4 (1968).

[21] 17 CFR 240.14d–2(b). Under Rule 14d–2(b), a public announcement that includes information on the identity of the bidder and subject company, the amount and class of securities sought and the price or price range, and in which the consideration is cash or securities exempt from registration under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, is deemed to constitute the commencement of a tender offer.

[22] In any event, an issuer announcing an intention to make a tender offer would be subject to Rule 10b–13 [17 CFR 240.10b–13], and thus prohibited from making any purchases otherwise than through the tender offer until the offer terminates.

activities poses the same investor protection concerns, and failure to include them in the rule would allow easy evasion of the purpose of the proposed rules. When undertaken during or shortly after a tender offer, these activities enable a person to acquire securities, whether such acquisitions are consummated immediately or are delayed until after the proposed rules would cease to apply. The Commission solicits comment as to whether the proposed rules should apply to each of the aforementioned activities, in particular, to solicitations of offers to sell, and whether the proposed rules should apply to any other activities.

With respect to bidders, affiliates and third parties, the proposed rules would apply only to the extent that a person's activity results or would result in an increase in any person's beneficial ownership or securities of the same class which is or was the subject of the tender offer by 10 percent or more of the class. The proposed rules would not turn on the extent of a person's total beneficial ownership of such securities; only the extent to which such beneficial ownership is increased or would be increased during the applicable period is relevant. The proposed rules also would cover solicitations of offers to sell, whether the buyer would be the person conducting the solicitation or another person. Accordingly, the threshold would apply to an increase in anyone's beneficial ownership, not just the person engaged in the solicitation.

Focusing on the increase in ownership avoids interfering with normal brokerage activity during a tender offer. Given the high volume of trading in securities subject to a tender offer, a broker could be considered to have engaged in solicitations of offers to sell more than an aggregate of 10 percent or more of the subject securities during that period.[23] Similarly, dealers and market-makers might otherwise cross the acquisition threshold during the restrictive period. Accordingly, the rule will prohibit only activity that results or would result in any person achieving a net 10 percent or greater increase in its beneficial ownership of the subject class. The Commission solicits comment on whether the ability to offset sales of securities against purchases in determining the net increase in beneficial ownership should be limited to registered broker-dealer firms, or should extend to all bidders, affiliates and third parties as presently proposed.

Rule 131d–3(a)[24] defines "beneficial owner" of a security to include any person who has voting power and/or investment power with respect to the security. Under Rule 13d–3(b),[25] a person is deemed to be a beneficial owner of a security if he has the right to acquire beneficial ownership within 60 days. Thus, the proposed rules would encompass acquisition of the right to acquire beneficial ownership of a security, including options, warrants, rights, exchange or conversion privileges that enable the holder to acquire such securities within 60 days. Comment is requested on whether this 60 day period is too limited and whether the proposed rules should encompass all such related securities.

Proposed Rule 13e–2 does not use the concept of beneficial ownership with respect to issuers. The concept does not lend itself to issuer purchases; for example, an issuer cannot vote treasury shares. Rule 13e–2 therefore focuses instead solely on the amount of securities of the subject class acquired by the issuer during the restricted period.

The 10 percent threshold for application of the proposed rules is intended to minimize their impact on normal arbitrage activity. In the ordinary course of business, an arbitrageur normally does not acquire beneficical ownership of 10 percent or more of a class of securities. For instance, a 10 percent position could require compliance with the reporting requirements of the Hart Scott Rodino Antitrust Improvements Act of 1976.[26] Commentators are requested to address whether 10 percent is an appropriate threshold for permitting normal arbitrage activity to continue. Would the purpose of the rules be equally well served by a threshold of 15 or 20 percent; would a 5 percent level be unduly restrictive?

D. Period of Applicability

As noted above, proposed Rules 13e–2 and 14d–11(a) would apply as soon as an issuer or bidder commences a tender offer, other than by public announcement pursuant to Rule 14d–2(b).[27]

Proposed Rules 13e–2 and 14d–11(a) would apply while the tender offer is pending and until 10 business days after the tender offer is scheduled to expire as set forth by the issuer or bidder in the applicable schedule and any amendments to that schedule filed with the Commission.[28] Thus, upon any voluntary or mandatory extension, a new expiration date would be scheduled and the proposed rules would apply until 10 business days after the extended expiration date. Because the applicable time periods are calculated from the scheduled expiration date, terminating a tender offer prior to the scheduled expiration date would not reduce the applicable time period of Rules 13e–2 or 14d–11(a) to the advantage of the bidder. The proposed Rules thus would apply a uniform period of time regardless of whether a tender offer is terminated prematurely or expires by its terms.

Proposed Rules 13e–2 and 14d–11 would continue to apply for 10 business days after the scheduled expiration date, because the market dynamics created by a tender offer continue for a period of time following the expiration of a tender offer. The proposed rules incorporate the period currently applicable to issuers after the termination of issuer tender offers.[29] The Commission invites comment as to whether 10 business days after the scheduled expiration date is an appropriate cooling off period.[30] Comment is also requested as to whether the cooling off period should be the later of (i) ten business days after the actual termination date; or (ii) the scheduled expiration date. Commentators are requested to provide empirical evidence of the market

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[23] In agency transactions where the broker does not have discretionary authority, the broker's principal, not the broker, purchases or offers to purchase securities.

[24] 17 CFR 240.13d–3(a).

[25] 17 CFR 240.13d–3(b).

[26] *See* 15 U.S.C. 18a; 16 CFR 802.9.

[27] Since application of the proposed Rule would be triggered by commencement of an tender offer within the meaning of Rule 14d–2 [17 CFR 240.14d–2] or, in the case of issuer tender offers, Rule 13e–4(a)(4) [17 CFR 240.13e–4(a)(4)], other parties, including the target, would not be subject to Rule 13e–2 or 14d–11 as a result of a on-complying unconventional tender offer. The proposed rules do not, however, exempt these tender offers from Section 14(d) of the Exchange Act and Rule 13e–4. *See, e.g., Hoover Co.* v. *Fuqua Industries, Inc.*, [1979–80] Fed. Sec. L. Rep. (CCH) 97,107 (N.D. Ohio 1979); *S.G. Securities, Inc.* v. *Fuqua Industries, Inc.*, 466 F. Supp. 1114 (D. Mass. 1978). Persons engaging in unconventional tender offers without complying with the Williams Act tender offer rules would continue to violate Section 14(d) of the Exchange Act, Regulations 14D and E, or Rule 13e–4.

[28] Rules 13e–4(d) [17 CFR 240.13e–4(d)] and 14d–6(e) [17 CFR 240.14d–6(e)] require that upon commencement, an issuer or a bidder disclose the scheduled date on which the tender offer will expire. The rules require an amendment upon any change in that information. Rule 13e–4(d)(2) and (e)(2) [17 CFR 240.13e–4(d)(2) and (e)(2)]; Rule 14d–4(a) and 14d–6(d) [17 CFR 240.14d4(a) and 14d–6(d)].

[29] Under Rule 13e–4(f)(6) [17 CFR 240.13e–4(f)(6)], the cooling off period runs from the termination date, which may be earlier than the scheduled expiration date.

[30] Commentators responding to the Concept Release suggested cooling off periods ranging from 10 days to six months after termination.

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dynamics following termination of a tender offer, including the amount of time necessary for stock distribution to return to normal, and the length of time a person holding a sizeable block would be willing to maintain its position following an expiration of a tender offer in anticipation of an acquisition once the restrictions on purchases cease to apply.

Proposed Rule 14d–11(b) would apply from the time a person makes a public announcement of a tender offer either until that person commences a tender offer by means other than announcement, thereby triggering application of proposed Rule 14d–11(a), or until 30 business days after it withdraws the announcement. Accordingly, the activities of a person who first announces a tender offer and subsequently commences a tender offer by other means, would be restricted from the time the public announcement is made. A person who elects to discontinue a tender offer after a public announcement, and makes a subsequent announcement with-drawing the offer within the five business day period prescribed by Rule 14d–2(b), would be restricted until the expiration of 30 business days after the withdrawal announcement.[31] The person's acquisition activity thus would be affected for a period equal to the 20 business day minimum offering period applicable to tender offers plus the 10 business day cooling off period imposed by proposed Rule 14d–11(a).

E. Exceptions to the Proposed Rules

Proposed Rules 13e–2, 14d–11(a) and 14d–11(b) have three similar exceptions. To the extent that, during the applicable period, any person purchases, offers to purchase, makes any arrangement to purchase or solicits any offer to sell securities subject to the proposed rules under circumstances which fall under any of the exceptions, those securities would be excluded from the calculations as to whether the person exceeded the ten percent threshold during the period. First, for purposes of each of the proposed rules, purchases of, offers to purchase, arrangements or understandings to purchase, or solicitations of offers to sell blocks of more than five percent of the subject class of securities would be excluded from any determination of a person's increase in beneficial ownership, if the seller had reported beneficial ownership of the securities pursuant to section 13(d) or 13(g) of the Exchange Act[32] for at least one year prior to such purchase, offer, arrangement, understanding, or solicitation. Under these circumstances, the block was not assembled as a reaction to or in anticipation of a tender offer, and the transaction would not pose the same investor protection concerns as transactions which are made possible by the reaction of many shareholders to a tender offer. The Commission solicits comments as to whether the requisite reporting period for these exceptions should be one year or whether a shorter period (e.g. nine, six or three months) would be appropriate.

This exception, as well as the others provided by the proposed rules, is relevant only to the operation of Rule 13e–2 and 14d–11, and would not exempt from the Williams Act and other tender offer rules purchases made in a conventional tender offer or an unconventional tender offer. Similarly, purchases subject to an exception from the proposed rules must be conducted in compliance with Rule 10b–13, if applicable.[33]

Second, the proposed rules would not apply to purchases pursuant to a binding contract between the purchaser and owner of the securities entered into prior to the announcement of a tender offer.[34] A contract to purchase securities that was not executed in reaction to a tender offer likewise does not pose the investor protection concerns the proposed rules are intended to address. Significant limitations on the availability of this exception are that the seller must own the subject securities at the time the agreement is entered into and that the terms of the agreement be fixed at that time.

Finally, proposed Rules 14d–11 and 13e–2 would not apply to issuer purchases and related activity where securityholders of the issuer have specifically approved the particular action. This exception would cover, among other transactions, issuer repurchase plans, reorganizations, and recapitalizations not constituting a tender offer. A similar exception is provided in Rules 13e–2 and 14d–11 for third parties and affiliates with respect to mergers and consolidations of the issuer. The process of securing securityholders' approval for a particular purchase affords securityholders many of the same protections that the proposed rules seek to provide. Moreover, the commencement of a tender offer should not interfere with the execution of existing plans which have been duly authorized by securityholders.

Proposed Rule 14d–11 also excludes from its provisions purchases of the subject securities from the issuer. Purchases from an issuer do not have the effect on the market and securityholders caused by a rapid accumulation of a substantial amount of securities in response to a tender offer.

The Commission seeks comment as the appropriateness, adequacy, and scope of the exceptions to the proposed rules.

F. Interaction of the Proposed Rules with Current Rules 10b–13 and 13e–4(f)(6)

Rule 10b–13[35] prohibits an issuer or bidder that has made a tender offer from purchasing or making any arrangement to purchase subject securities except pursuant to the offer during the term of the offer. The rule is intended to prevent transactions which would disadvantage securityholders tendering into the offer. The rule thereby helps to ensure that all tendering securityholders will be treated equally.

Proposed Rules 13e–2 and 14d–11 would supplement Rule 10b–13, by applying similar restrictions on purchases outside the tender offer to persons other than the person making the conventional tender offer. In effect, the proposed rules would extend the proscriptions of Rule 10b–13 to persons who have reached the acquisition threshold level during the restrictive period. Comment is requested as to the advisability of integrating Rule 10b–13 with proposed Rules 13e–2 and 14d–11.

Rule 13e–4(f)(6) currently prohibits an issuer from purchasing the securities subject to its issuer tender offer for 10 business days following termination of the offer. The Commission plans to repeal Rule 13e–4(f)(6), if the proposed rules are adopted. Issuers would thus receive the same treatment as bidders; only substantial acquisitions during the 10 business day period following expiration of the tender offer would be prohibited. Comment is requested on the

[31] If a person neither makes a subsequent announcement discontinuing its tender offer nor formally commences within the five day period, that person would violate section 14(d) and the rules thereunder and would continue to be subject to the restrictions of proposed Rule 14d–11(b) until the expiration of the applicable time periods following an announcement withdrawing the offer or a formal commencement.

[32] 15 U.S.C. 78m(d), 78m(g).

[33] 17 CFR 240.10b–13.

[34] 17 Rule 14d–2(b) would provide interpretive guidance in determining what type of statements constitute an "announcement" for the purposes of this exception. Once an announcement of a tender offer is made by an issuer or third party that indicates the bidder, target, shares sought and price, the exception would not be available for subsequent purchase agreements.

[35] 17 CFR 240.10b–13.

desirability of repealing Rule 13e–4(f)(6).[36]

G. Self Governance Approach [37]

The Commission seeks public comment on the consequences of the proposed rules to shareholders. The effect of the proposed rules on shareholders of an individual corporation may depend on a wide range of legal and economic considerations. These considerations include, but are not limited to, the existence of a fair price provision in the corporate charter, the presence of a poison pill, state law provisions regulating takeover activity, and management's anticipated response to future acquisition proposals. They may also depend on the corporation's historic stock price performance, the expected time lag between a street sweep and a "clean up" acquisition, if any, and the price difference, if any, between the street sweep price and the price paid in the clean up transaction. Accordingly, the effect of the proposed rules on shareholders may vary across corporations and over time as the surrounding legal environment evolves and economic conditions change.

The Commission therefore seeks comment on approaches to the street sweep rule that would increase the probability that the rule is applied only in those instances, if any, where it is most likely to have a beneficial effect. A rule with the ability to distinguish among issuers subject to different legal regimes and economic forces may generate greater benefits than a rule of general application that indiscriminately applies with equal force to all corporations in all circumstances.

One approach that may lead to such an outcome, and on which the Commission specifically seeks comment, relies on the use of an enabling provision similar to those commonly found in state corporation law.[38] Under an enabling approach, proposed Rules 13e–2 and 14d–11 would apply to purchase of a company's securities and related activity if and when those rules are adopted by the affirmative vote of shareholders holding a majority of the outstanding shares (weighted by the number of votes they carry), generally entitled to vote on matters submitted to the company's shareholders for a vote. To be effective, the vote would have to be taken pursuant to the Commission's rules governing solicitation of proxies or written consents, if applicable, and in accordance with state law and the company's charter and bylaws. The vote could be taken pursuant to either a recommendation of the company's board of directors or a shareholder initiative proposed under Rule 14a–8.[39] Once adopted by a company's shareholders, the proposed rules could be retracted in a similar manner. A company would be permitted to adopt both proposed Rules 13e–2 and 14d–11 but would not be permitted to adopt only one.

Variations on this approach, on which comment is also solicited, include: (i) Instead of applying only if adopted through an enabling provision, the proposed rules could take effect immediately upon their adoption by the Commission, and remain in force until retracted by an appropriate vote; (ii) instead of a majority of the outstanding shares being required for approval, a majority of a quorum or the vote required for a charter amendment under state corporate law could be the threshold for adopting or retracting the proposed rules; (iii) shareholder adoption or retraction of the proposed rules could require board concurrence; (iv) shareholder adoption or retraction or the proposed rules could be by class of security, thereby allowing the holders of individual classes to determine the operation of the street sweep rule with respect to their individual class; and (v) a company could adopt some but not all of the provisions of the proposed rules, within parameters to be set forth in the rules.

H. Economic Analysis

Since the stated rationale of the Williams Act is protection of target shareholders, the Commission's economics staff (the Office of the Chief Economist and the Directorate of Economic and Policy Analysis) empirically examined the effect of market sweeps on nonprofessional shareholders who did not sell into the sweep. OCE and DEPA determined that during the past few years there have been only a few cases of market sweeps that might have violated the proposed rules. The table below lists these cases, along with the stock price of the target company 20 business days prior to the first announcement of the offer, the price received by the arbitrageurs or others who sold into the sweep, and the "back-end" price received by other shareholders. In the four cases (SCM, NL Inds., Allied Stores, and Cyclops) where the market sweep was initiated by a hostile bidder, OCE and DEPA found that the back-end price was at least as great as the price received by the arbitrageurs. In addition they found that the back-end price in these four transactions represented premiums of 55% (SCM), 11% (NL Inds.), 41% (Allied Stores), and 43% (Cyclops) over the pre-announcement stock price of the target company. They determined that these premiums compare favorably with average tender offer premiums during the corresponding period; an earlier OCE analysis revealed that average tender offer premiums were 37% in 1985 and 33.6% in 1986. The only case they found in which a market sweep was accompanied by harm to target shareholders was the Carter Hawley Hale case, where target management adopted a series of defensive tactics, including a large repurchase program, in order to defeat a hostile bid. However, OCE and DEPA concluded that even in this case it is not clear whether it was the market sweep, or the other defensive tactics, which caused harm to target shareholders. In short, OCE and DEPA concluded that the evidence indicates that nonprofessional shareholders generally have not been harmed in the few market sweeps that have been initiated by hostile bidders during the past three years. The Commission invites the submission of any additional empirical data on the effects of market

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[36] Rule 13e–1 [17 CFR 240.13e–1] prohibits an issuer whose equity securities are the subject of a tender offer by another person, from repurchasing any of its equity securities until it has filed with the Commission a statement disclosing the amount of securities to be repurchased, the purpose for the acquisition, and the source of funds. Rule 13e–1 would not be affected by the proposed rules, since the rule applies regardless of whether the repurchases are conducted through privately negotiated transactions, open market purchases, or an issuer tender offer.

[37] This section seeks comments on the concept of an enabling approach to the proposed rules. The Commission does not intend that any request for comments on such an approach be deemed to give notice of a proposed rule using such an enabling approach. Before seeking to adopt such a rule, the Commission would publish the proposal for notice and comment.

[38] In its Concept Release of July 31, 1986, the Commission sought public comment on a rule that would permit stockholders and directors to determine whether certain protections of the Williams Act would apply to their corporation. In particular, the Commission sought comment on a self-governance exemption to the "all holders" rule and to the tender offer rules generally. The comments in response were mixed. Of the 26 commentators that addressed this issue, 20, including the American Bar Association, Section of Corporation, Banking and Business Law, Subcommittee on Proxy Solicitations and Tender Offers, expressed opposition to, or criticism of, the concept of adopting self-governance exemptions to tender offer rules. Four commentators, inlcuding the United States Department of Justice, Antitrust Division, expressed support for the concept. In addition, The Business Roundtable expressed support for the concept of self-governance generally but expressed reservations regarding self-governance exemptions from disclosure provisions of the Williams Act. The National Association of Manufacturers, while failing to express a position on the concept, expressed support for further consideration.

[39] 17 CFR 240.14a–8.

sweeps and solicits comments on the interpretation of the data presented herein.

TABLE 1.—STOCK PRICE 20DAYS BEFORE TENDER OFFER, STOCK PRICE PAID IN OPEN MARKET TRANSACTIONS, AND BACK-END PRICE

[premiums in parentheses]

Target firm	Stock price 20 days before tender offer	Stock price paid in open market	Backend price
SCM	$48.50	$73.50	$75.000 (55%)
NL Inds.	14.25	15.50	[1]15.875 (11%)
Allied stores	49.00	67.00	69.00 (41%)
Cyclops	66.375	95.00	95.00 (43%)
Carter Hawley Hale	21.50	25.88	21.625 (0.63)

[1] Value at the time Simmons took control of NL board of directors.

III. Cost Benefit Analysis

To fully evaluate the costs and benefits that would result from the proposed rules, the Commission invites commentators to provide views and data as to the costs and benefits associated with the proposed rules. One effect of the proposed rules is to require persons to comply with the rules and procedures mandated by sections 13(e) and 14(d) of the Exchange Act. Such compliance may incrase the expenses incurred by a person in making a tender offer. Moreover, as a result of the operation of the proposed rules, persons may find it difficult to sell significant amounts of stock a class during the period that the proposed rules apply. It is anticipated, however, that the proposed rules will provide significant benefits to securityholders and the marketplace by requiring full disclosure by persons involved in activity relating to 10 percent or more of a class of equity securities and by providing procedural and substantive protections for securityholders. The Commission requests comment on how the costs and benefits of the proposed rule would be expected to increase or decrease if the "enabling" approach described above were adopted.

IV. Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rules 13e–2 and 14d–11 and has been prepared in accordance with the Regulatory Flexibility Act ("FRA").[40]

A. Objectives of the Proposal

The proposed rules would require certain substantial acquisitions of a target company's securities that are the subject of a tender offer to proceed in compliance with the statute and rules governing tender offers to ensure that shareholders receive the protections of those provisions regardless of whether their shares are purchased by a person conducting the initial tender offer, the issuer or another party.

B. Statutory Authority

The Commission is proposing to adopt proposed Rules 13e–2 and 14d–11 pursuant to sections 3(b), 13(e), 14(d), 14(e), 15(c), 20(b) and 23(a) of the Exchange Act.

Small Entities Subject to the Rules

If the proposed rules were adopted, certain small entities would become subject to their requirements. When used with reference to an "issuer" or a "person" other than an investment company, the term "small business" or "small organization" is defined by Rule 0–10(a) under the Exchange Act [41] to mean an issuer or person that on the last day of its most recent fiscal year had total assets of $5 million or less. When used with reference to an "issuer" or a "person" that is an investment company, the term "small business" is defined by Rule 0–10(b) under the Exchange Act[42] to mean an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.

When used with reference to a broker or dealer, the term "small business" is defined by Rule 0–10(c) of the Exchange Act [43] to mean a broker or dealer that had total capital of less than $500,000 on the last business day of the preceding fiscal year and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined by Rule 0–10. As many as 5,000 brokers and dealers may be considered small entities under this definition.

Proposed Rule 13e–2 would require, subject to certain exceptions, all issuers with a class of securities registered under Section 12 of the Exchange Act or which are required to file reports with the Commission pursuant to section 15(d), to conduct any purchases of 10 percent or more of its equity securities during the shortly after a tender offer for those securities, in compliance with Rule 13e–4 governing issuer tender offers. These issuers include companies who have publicly traded securities not registered with the Commission as well as issuers whose securities are not publicly traded. An unknow portion of these classes of issuers are small entities.

Proposed Rule 14d–11 would require, subject to certain exceptions, all persons who seek to engage in conduct which would increase any person's beneficial ownership of equity securities subject to a tender offer during that period by 10 percent or more of the class, to comply with the tender offer rules, if those securities are registered under section 12 of the Act, are issued by an insurance company which wuld have been required to be registered but for the section 12(g)(2)(G) exception, or are issued by a closed-end registered investment company. An unknown portion of these persons could be small entities.

At this time the Commission is unable to determine the costs to small entities of compliance with the proposed rules. The Commission estimates, however, that because the proposed rules are limited in application to transactions occurring during and shortly after a tender offer for the subject securities, and because the rules only apply to extraordinary transactions which would increase a person's beneficial ownership by 10 percent or more of the class, the rules would not affect a significant number of small entities.

C. Reporting, Recordkeeping and other Compliance Requirements

Persons engaging in activities subject to the rules would be required to comply with existing Commission rules governing tender offers. These rules require filing and dissemination of information, a minimum offering period, and other procedural requirements.

D. Overlapping or Conflicting Federal Rules

If adopted, Proposed Rule 13e-2 would overlap with Rule 13e-4(f)(6) in that both would restrict purchases of securities by an issuer during ten business days following termination of an issuer tender offer for the securities. The Commission plans to repeal Rule 13e-4(f)(6) if the Proposed rules are adopted. The Commission does not believe that the proposed rules duplicate, overlap or

[40] 5 U.S.C. 601 *et seq.*
[41] 17 CFR 240.0–10(a).
[42] 17 CFR 240.0–10(b).
[43] 17 CFR 240.0–10(c).

conflict with any other existing rule provisions.

E. Significant Alternatives

Alternatives to the rule proposals under consideration by the Commission include the use of different threshold levels and different periods of applicability. The proposed rule also could be limited in applicability to securities registered under section 12 of the Act. The Commission is soliciting comment on these alternatives. The proposals as formulated are presently considered to be the least intrusive means of serving the Commission's mandate of investor protection with respect to market sweeps.

F. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposal is adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. S7–33–87 and will be available for public inspection and copying at the Commission's Public Reference Room.

V. Requests for Comments

Any interested person wishing to submit written comments on the proposed revisions to the tender offer rules, as well as on other matters that might have an impact on the proposals contained herein are requested to do so. The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rules are adopted.

The Commission also requests comments on whether the proposals and alternatives, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[44]

VI. Statutory Basis

The rules are being proposed pursuant to section 3(b), 13(e), 14(d), 14(e), 15(c), 20(b) and 23(a) of the Securities Exchange Act of 1934.[45]

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Test of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 420—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations: [Citations before * * * indicate general rulemaking authority].

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78W) * * * Section 240.13e-2 and 240.14d–11 also issued under sec. 15 U.S.C. 78c(b), 78m(e), 78n(d), 78n(e), 78o)c), 78t(b) and 78w(a).

2. By adding § 240.13e-2 to read as follows:

§ 240.13e-2 Acquisitions and related activities by an issuer involving substantial amounts of securities during or following a tender offer.

(a) Acquisitions and related activities by the issuer after commencement of a tender offer. Upon commencement of an issuer tender offer pursuant to Rule 13e-4(a)(4) [§ 240.13e-4(a)(4)] or tender offer by a bidder pursuant to Rule 14d-2 [§ 240.14d-2] (other than commencement solely by public announcement pursuant to Rule 14d-2(b) [§ 240.14d-2(b)]) until the expiration of ten business days after the scheduled expiration date of such tender offer, including any extensions thereof, the issuer shall not, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell either an aggregate of ten percent or more of securities of a class that is or was subject to such tender offer or securities of a class which are convertible into, exchangable for, or otherwise give any right or privilege to, an aggregate of ten percent or more of securities of a class that is or was subject to such tender offer unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to Rule 13e-4 [§ 240.13e-4].

(b) *Acquisitions and related activities by any affiliate of the issuer after commencement of a tender offer.* Upon commencement of an issuer tender offer pursuant to Rule 13e–4(a)(4) [§ 240.13e–4(a)(4)] or tender offer by a bidder pursuant to Rule 14d–2 [§ 240.14d–2] (other than commencement solely by public announcement pursuant to Rule 14d–2(b) [§ 240.14d–2(b)]) until the expiration of ten business days after the scheduled expiration date of such tender offer, including any extensions thereof, no affiliate of the issuer shall, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell any security that would increase any person's beneficial ownership of securities of a class that is or was subject to the tender offer by an aggregate of ten percent or more of that class, unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to Rule 13e–4 [§ 240.13e–4].

(c) *Acquisitions and related activities not subject to this section.* This section shall not apply to any purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell that:

(1) Is undertaken by the issuer and is specifically approved in advance by the holders of the requisite number of securities of the issuer entitled to vote for such action under the bylaws of the issuer and in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated;

(2) Is undertaken by an affiliate and relates to a merger or consolidation of the issuer with or into the affiliate that has been approved by the holders of the requisite number of securities of the issuer entitled to vote for such action under the bylaws of the issuer and in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated;

(3) Relates to more than five percent of such class of securities held by a person who has reported beneficial ownership thereof pursuant to sections 13(d) or 13(g) of the Act for at least one year preceding any such purchase, offer to purchase, arrangement or understanding to purchase or solicitation of offer to sell such securities; or

(4) Is undertaken pursuant to a written agreement to purchase such securities entered into before the earlier of either the public announcement of information specified in Rule 14d–2(c) [§ 240.14d–2(c)] or the occurrence of any of the events specified in Rule 14d–2(a) [§ 240.14d–2(a)] which agreement is with a person or persons who, at the time, own the securities to be sold, provided

[44] 15 U.S.C. 78w(a)

[45] 15 U.S.C. 78c(b), 78m(e), 78n(d), 78n(d), 78o(c), 78t(b) and 78w(a).

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that the agreement, at the time entered into, constituted a binding obligation of all parties and specified the exact price and amount of securities to be sold.

3. By adding § 240.14d–11 to read as follows:

§ 240.14d–11 Acquisitions and related activities involving substantial amounts of securities during or following a tender offer.

(a) *Acquisitions and related activities by any person after commencement of a tender offer.* Upon commencement of an issuer tender offer pursuant to Rule 13e–4(a)(4) [§ 240.13e–4(a)(4)] or tender offer by a bidder pursuant to Rule 14d–2 [§ 240.14d–2] (other than commencement solely by public announcement pursuant to Rule 14d–2(b) [§ 240.14d–2(b)]) until the expiration of ten business days after the scheduled expiration date of such tender offer, including any extension thereof, no person shall, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell any security that would increase any person's beneficial ownership of securities of a class that is or was subject to the tender offer by an aggregate of ten percent or more of that class, unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to section 14(d) of the Act and the rules promulgated thereunder.

(b) *Acquisitions and related activities by the bidder after commencement of a tender offer by public announcement.* Upon commencement of a tender offer by public announcement pursuant to Rule 14d–2(b) [§ 240.14d–2(b)] and until either—

(1) The bidder commences the tender offer by means other than such public announcement or

(2) The expiration of 30 business days after the date that the bidder makes a public announcement pursuant to Rule 14d–2(b)(1) [§ 240.14d–2(b)(1)] that it will not continue with such tender offer, whichever occurs first, the bidder shall not, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell any security that would increase any person's beneficial ownership of securities of a class that is or was subject to the tender offer by an aggregate of ten percent or more of that class, unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to section 14(d) of the Act and the rules promulgated thereunder.

(c) *Acquisitions and related activities not subject to this section.* This section shall not apply to any purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell that:

(1) Relates to a purchase or potential purchase from the issuer;

(2) Relates to a merger or consolidation of the issuer with or into such person or an affiliate of such person that has been approved by the holders of the requisite number of securities entitled to vote for such action under the bylaws of the issuer and in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated;

(3) Relates to more than five percent of such class of securities held by a person who has reported beneficial ownership thereof pursuant to sections 13(d) or 13(g) of the Act for at least one year preceding any such purchase, offer to purchase, arrangement or understanding to purchase or solicitation of offer to sell such securities; or

(4) Is undertaken pursuant to a written agreement to purchase such securities entered into before the earlier of either the public announcement of information specified in Rule 14d–2(c) [§ 240.14d–2(c)] or the occurrence of any of the events specified in Rule 14d–2(a) [§ 240.14d–2(a)] which agreement is with a person or persons who, at the time, own the securities to be sold, provided that the agreement, at the time entered into, constituted a binding obligation of all parties and specified the exact price and amount of securities to be sold.

By the Commission.
October 1, 1987.

Shirley E. Hollis,

Assistant Secretary.

Separate Statement of Commissioner Grundfest

I write separately to describe specific rule language that would implement the enabling approach described in the Commission's release.[1] To implement the enabling approach described in the Commission's release, a new subsection (d) could be added to proposed Rules 13e–2 and 14d–11, to read as set forth below. In the interest of brevity, I set forth language for Rule 13e–2 only. The changes necessary for application of this proposal in Rule 14d–11 parallel the changes to 13e–2 and are apparent from the context. An amendment to Form 8–K to require prompt reporting of shareholder action may also be appropriate. Persons who respond to the Commission's request for comments regarding an enabling approach may further wish to address the specific rule language of this proposal.

"(d) *Adoption by shareholder vote.* (1) This section shall be effective with respect to any purchase of securities of an issuer, and/or offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell such securities, that takes place on or after the first business day after the following steps have been completed:

(i) The holders of voting securities representing a majority of the votes entitled to be cast by the holders of all outstanding voting securities of the issuer entitled to vote generally on matters submitted to holders of the issuer's voting securities for a vote, voting together as a single class, shall have approved a proposal to adopt this section and Rule 14d–11;

(ii) Such approval shall have been solicited or otherwise obtained in compliance with Regulation 14A or 14C, if applicable, and with any procedures for shareholder action prescribed by the law of the issuer's jurisdiction of incorporation, and the issuer's certificate of incorporation, bylaws, or other governing documents; and

(iii) The issuer shall have reported such action to the Commission on Form 8–K or any other appropriate form.

(2) Notwithstanding subsection (d)(1), this section shall cease to be effective with respect to any purchase of securities of an issuer, and/or offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell such securities, that takes place on or after the first business day after the following steps have been completed:

(i) The holders of voting securities representing a majority of the votes entitled to be cast by the holders of all outstanding voting securities of the issuer entitled to vote generally on matters submitted to holders of the issuer's voting securities for a vote, voting together as a single class, shall have approved a proposal to rescind the adoption of this section and Rule 14d–11;

(ii) Such approval shall have been solicited or otherwise obtained in compliance with Regulation 14A or 14C, if applicable, and with any procedures for shareholder action prescribed by the law of the issuer's jurisdiction of incorporation and the issuer's certificate of incorporation, bylaws or other governing documents; and

[1] The Commission seeks comment on an enabling approach in section II.G of the accompanying release.

(iii) The issuer shall have reported such action to the Commission on Form 8–K or any other appropriate form."

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing Fees on National Forests in the 16 Western States

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule outlines the formula for annually determining fees for livestock grazing and use on National Forest and Land Utilization Project lands in the 16 Western States after 1987. The proposal would adopt the fee formula prescribed in Executive Order No. 12548 of February 14, 1986, and, in most respects, is the same grazing fee formula as that enacted by Congress in 1978 under the Public Rangelands Improvement Act. Under the proposed rule, grazing fees would be based on a rate per head month starting in 1988.

DATES: Public comment on adoption of the proposed formula is encouraged. Comments must be received in writing November 23, 1987.

ADDRESSES: Send written comments to F. Dale Robertson, Chief, (2200) Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the office of the Director, Range Management Staff, Room 601, Rosslyn Plaza East, 1621 North Kent Street, Arlington, Virginia, between the hours of 8:30 a.m. and 4:30 p.m. Copies of the environmental assessment accompanying the rule may also be obtained from this office.

In addition, the public may review the environmental assessment on this rulemaking at the following Forest Service Regional Offices:

Northern Region, Federal Building, Missoula, MT 59807
Southwestern Region, Federal Building, 517 Gold Avenue, Albuquerque, NM 87102
Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111
Southern Region, 1720 Peachtree Road NW., Atlanta, GA 30367
Rocky Mountain Region, 11177 West Eight Avenue, Lakewood, CO 80225
Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84401
Pacific Northwest Region, 319 SW Pine Street, Portland, OR 97208
Eastern Region, 310 West Wisconsin Avenue, Milwaukee, WI 53203.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director, (703) 235–8139, or Edward R. Frandsen, Range Economist (703) 235–8139.

SUPPLEMENTARY INFORMATION:

Background

Except in limited circumstances, fees are charged for all livestock grazing use or occupancy of National Forest System lands, or other lands under the control of the Forest Service. In 1978, with enactment of the Public Rangelands Improvement Act (PRIA), 43 U.S.C. 1752—1753, 1901, 1908; U.S.C. 1333(b), Congress created a new grazing fee formula to be used on a trial basis. The formula sought to base public land grazing fees on the cost of livestock production and the public land grazer's ability to pay. The objective was to prevent crippling economic impacts on the public land grazer and dependent rural communities in the Western States. The Act required the Secretaries of Agriculture and the Interior to present to Congress an evaluation of the trial formula as well as an analysis of alternative grazing fee systems.

Pursuant to the sunset provisions in the Act, the trial grazing fee formula expired on December 31, 1985. Shortly before expiration of the formula, Congressional delegations from many of the Western states appealed to the President to extend the PRIA fee formula. On February 14, 1986, in the absence of Congressional action to establish a grazing fee system for 1986 and subsequent grazing years, the President, through Executive Order No. 12548, extended the PRIA fee formula indefinitely. The Executive Order also directed how the formula indexes would be calculated by specifying that: (1) The Forage Value Index shall be based on 11 Western States data, and use "the weighted average estimate of the annual rental charge per head per month", rather than "animal unit month"; (2) the Beef Cattle Price Index "means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States", and (3) the Prices Paid Index would reflect selected livestock production costs in 13 Western States. In addition, the Executive Order specified that the fee "shall not be less than $1.35 per Animal Unit Month." The Executive Order retained the PRIA formula provision that annual adjustments would not exceed plus or minus 25 percent of the previous year's grazing fee. Accordingly, the Secretaries of the Interior and Agriculture calculated the 1986 and 1987 grazing fee, using 11 Western States data, for application to the public lands in the 16 Western States using the formula prescribed in the Executive Order.

In 1986, in *Natural Resources Defense Council, et.al.*, v. *Lyng, Hodel*, plaintiffs filed suit in the United States District Court for the Eastern District of California, Civil No. 86–0548, alleging that the Secretaries of Agriculture and the Interior lacked statutory and regulatory authority to implement the prescribed fee formula, and, further, they had failed to engage in the formal rulemaking requirements of the Administrative Procedures Act (APA) (5 U.S.C. 553) and, in the case of the Secretary of Agriculture, the public participation requirements of the National Forest Management Act (NFMA) (16 U.S.C. 1621(A)). On August 13, 1987, the Court issued a bench opinion. It determined, first, that both Secretaries had discretion under their respective governing statutes to consider factors other than market value in determining a grazing fee. Second, it determined that the affected Departments had not complied with the APA and the public participation requirements of NFMA and other applicable statutes in establishing the grazing fee formula. The Court ordered the agencies to follow formal APA rulemaking procedures to establish a fee formula with full opportunity for public participation.

Proposed Rule

In compliance with the District Court ruling, the Department of Agriculture proposes to amend its rules governing grazing fees at 36 CFR 222.50 and .51 to establish the fee formula prescribed by Executive Order No. 12548. Under the proposed rule, the fee for grazing livestock on National Forest and Land Utilization Project lands in the 16 Western States would be calculated annually for 1988 and subsequent grazing years. The formula would apply to designated lands in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. National Grasslands are excluded.

The proposed rule is consistent with Congressional policy for grazing fees on Federal rangelands established in the Public Rangelands Improvement Act. This policy was designed to prevent economic disruption and harm to the public lands sector of the western

livestock industry. Toward that end, Congress deemed it in the public interest to charge a fee for livestock grazing permits on National Forest lands in the 16 Western States based on a formula reflecting annual changes in the costs of production and livestock prices.

Under the proposed rule, the annual grazing fee represents the economic value of the use of the land to the user rather than market value or value in exchange. The annual calculated fee equals the $1.23 base value established by the 1966 Western Livestock Grazing Survey, multiplied by the result of the Forage Value Index (FVI), added to the Beef Cattle Price Index (BCPI), less the Prices Paid Index (PPI) or the cost of livestock production index, and divided by 100. However, the proposed rule provides that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and that the fee shall not be less than $1.35 per Head Month.

In equation format the formula would be:

$$\text{Economic value per head month} = \$1.23 \times \frac{\text{FVI} + \text{BCPI} - \text{PPI}}{100}$$

The $1.23 in the formula is the base fair market value in 1966. This value is based on the principle that the value of public range forage used for grazing is equal to the rental value of private rangelands leased for grazing after adjusting for differences in the costs of services routinely provided on private lands that are not provided on public rangelands.

"Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per Head Month and multiplied by 100;

"Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100;

"Prices Paid Index" means the following selected components from the Statistical Reporting Service's (now National Agricultural Statistics Service) Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5), 2. Farm and Motor Supplies (12.0), 3. Autos and Trucks (4.5), 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0), 6. Building and Fencing Materials (14.5), 7. Interest (6.0), 8. Farm Wage Rates (14.0), 9. Farm Services (18.0).

As set forth at § 222.50, the Forest Service shall charge a monthly grazing fee for each head of livestock grazing use, or occupancy by one adult animal. The grazing fee, then, is equal to the use fee per Head Month multiplied by the number of months the grazing animal will be on National Forest or Land Utilization Project (LUP) ranges during the grazing fee year.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and has been determined not to be a major rule. While there will be a monetary difference between the market value of public land grazing and the rate per head under the concept of the economic value in use or value to the user, the actual monetary difference will be available for direct expenditure by the grazing permittee in local, rural communities throughout the Western States. Thus, little or no effect on the National economy will result from this regulation. The Department of Agriculture has further determined that this proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The provisions of this proposed rulemaking are applicable to all persons or entities who possess a grazing permit on National Forest or LUP lands in the 16 Western States, without regard to the size of the operation.

An environmental analysis has been conducted on this proposed rulemaking. The analysis addresses issues discussed in the Grazing Fee Review and Evaluation: A Report From the Secretary of Agriculture and the Secretary of the Interior, February, 1986, Washington, DC, 99 pp., and specifically addresses the following:

1. Questions concerning the formula's methodology;
2. Effects on government revenues for range improvements;
3. Cost of the grazing program;
4. Equitability between permittees and nonpermittees; and
5. Potential environmental effects.

Based on the environmental assessment, it has been determined that the proposed rule will not have a significant effect on the human environment; therefore, an environmental impact statement will not be prepared. Copies of the environmental assessment ("Environmental Assessment, Grazing Fee Formula for Livestock Grazing, National Forests in the 16 Western States"), and Finding of No Significant Impact are available as indicated at the addresses listed.

Information Collection Requirements

There are no additional information collection requirements because of the proposed rulemaking.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, Range management, Wildlife.

Therefore, for the reasons set forth above, it is proposed to amend Title 36 of the Code of Federal Regulations, Part 222, Subpart C—Grazing Fees, as follows:

1. Revise the authority citation for Subpart C to read as follows:

Authority: 16 U.S.C. 551; 31 U.S.C. 483A; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

2. Revise paragraph (c) of § 222.50 to read as follows:

§ 222.50 General procedures.

* * * * *

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and

occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

3. Amend § 222.51 by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 222.51 National Forests in 16 Western States.

* * * * *

(b) Notwithstanding the provisions of § 222.50, paragraph (b), the calculated grazing fee represents the economic value of the use of the land to the user and is the product of multiplying $1.23 by the result of the annual Forage Value Index, added to the sum of the Beef Cattle Price Index minus the Prices Paid Index and divided by 100; provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per head per month. The indexes used in this formula are as follows:

(1) Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per head month and multiplied by 100;

(2) Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100; and

(3) Prices Paid Index means the following selected components from the National Agricultural Statistics Service "Annual National Index of Prices Paid by Farmers for Goods and Services" adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5), 2. Farm and Motor Supplies (12.0), 3. Autos and Trucks (4.5), 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0), 6. Building and Fencing Materials (14.5), 7. Interest (6.0), 8. Farm Wage Rates (14.0), 9. Farm Services (18.0).

* * * * *

Date: September 30, 1987.

George S. Dunlop,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 87-23125 Filed 10-6-87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[AA-220-87-4322-02]

Grazing Administration—Exclusive of Alaska; Grazing Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations in 43 CFR Part 4100 Subpart 4130.7 by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management (BLM) for 1988 and subsequent years would be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, fees established under the formula for years after 1988 will be published as a **Federal Register** notice.

Publication of the proposed rulemaking with an opportunity for public comment meets the requirement for public participation in the establishment of grazing fees required by the decision of the United States Court for the Eastern District of California in the case of *Natural Resources Defense Council, Inc. (NRDC)* v. *Lyng, Hodel.* Prior to preparation of the proposed rulemaking, an environmental analysis was prepared which determined that the rulemaking would not have a significant impact on the environment.

DATE: The public is invited to comment on the proposed rulemaking. Comments should be submitted by November 23, 1987. Comments postmarked or received after the above date may not be considered in the decisionmaking process for the development of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton or Donald Waite. (202) 653-9193.

SUPPLEMENTARY INFORMATION: Fees to graze domestic livestock on public land administered by the BLM are paid by an animal unit month (AUM) measure. For billing purposes, an AUM is the forage consumed by one adult cow or horse or five adult sheep or goats for 1 month. Any animal over 6 months of age is considered an adult animal for billing purposes. The grazing fee, therefore, is equal to the value as computed by the formula described herein per AUM times the number of months the animals will be on public land during the grazing fee year. The Bureau of Land Management determines grazing fees under the authorities granted by the Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901 *et seq.*). The Taylor Grazing Act provided for "use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time" by the Secretary of the Interior. The Federal Land Policy and Management Act amended the Taylor Grazing Act to state that fees should be established "in accordance with governing law." Finally, the Public Rangelands Improvement Act set forth the policy that the grazing fee should be based on a formula which prevents economic disruption and harm to the western livestock industry, reflects annual changes in the costs of production and is equitable.

From 1979 to 1986, the fee, per AUM, was computed by a formula adopted in the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901 *et seq.*). The provision in PRIA setting forth the formula terminated in 1985.

The Congress, in the Public Rangelands Improvement Act, called for a study to evaluate the performance of the formula and to explore alternative fee systems by the end of 1985. The study was produced too late for

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deliberation by the Congress in 1985. Therefore, to establish a fee for the 1986 grazing season and to give the Congress adequate time to consider the fee issue, the President of the United States, acting on advice from the affected Federal agencies and a number of Members of Congress, issued Executive Order 12548 on February 14, 1986.

The Executive Order (12548) directed the Secretaries of Agriculture and the Interior to exercise their authority, to the extent permitted by law under the various statues they administer, to estabish a fee for domestic livestock grazing on the public rangelands which annually equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; and provided that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per animal unit month.

The Executive Order defined the terms used in this manner:

(a) "Public rangelands" has the same meaning as in the Public Rangelands Improvement Act of 1978 (Pub. L. 95–514);

(b) "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (compared by the Statistical Reporting Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

(c) "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service) divided by $22.04 per hundred weight and multiplied by 100; and "(d) "Prices Paid Index" means the following selected components from the Statistical Reporting Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0) 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

The calculation of fees under the Executive Order differs from the procedure that has been followed in recent years in that it provides that the Forage Value Index shall be based on the weighted average estimate of the annual rental charge per head per month for pasturing animals on private rangeland in the 11 western states, rather than on the AUM's.

In 1986, the Natural Resources Defense Council (NRDC) in the case *NRDC* v. *Lyng, Hodel,* sued in the United States Court for the Eastern District of California, challenging the authority of the Secretaries of the Interior and Agriculture to use the formula and the procedures followed to establish the 1986 grazing fee. On August 13, 1987, the court issued a ruling from the bench on motions for summary judgment. The court held that the fee formula was within the scope of discretion accorded to the Secretary of the Interior under the Public Rangelands Improvement Act, Federal Land Policy and Management Act and Taylor Grazing Act, noting that these authorities contemplated the consideration of factors other than market value in the establishment of fees. However, the court decided that the agencies had not complied with rulemaking provisions of the Administrative Procedures Act (APA) (5 U.S.C. 553) and other pertinent public participation statutes. The court also stated that implementation of Executive Order 12548 through a rulemaking process, with the opportunity for public participation, would constitute compliance with the APA and the other pertinent statutes.

An environmental analysis (EA) has been prepared on the effects of the rulemaking. The issues discussed include: the methodology of the formula as compared to other fee alternatives; the impact of the fee on revenue to the government and associated appropriations for range improvements; the effect of the fee on public land grazing levels; the equity of the fee to ranchers who graze on public rangelands and those grazing only on private land; the impacts of fee changes on permittee asset values; the effects of fee changes on state and county payments; and the impact of the fee on state personal income and employment. These issues have been analyzed previously in the Grazing Fee Review and Evaluation Study issued in 1986. It was determined in the EA that there were no adverse socio-economic impacts. BLM also determined that the grazing fee has little effect on grazing levels on public land and a negligible effect on the public rangelands. Grazing fees determine the cost of resource use, but not the amount of resources used. Levels of resource use are established by BLM on the basis of resource conditions and mangement objectives. Copies of this EA and the Grazing Fee Review and Evaluation Study may be reviewed by the public in the BLM Division of Rangeland Resources, Room 909—Premier Building, 1725 I Street NW., Washington, DC.

The purpose of this proposed rulemaking is to meet the policy objectives set forth in the Taylor Grazing Act, the Federal Land Policy and Management Act, and the Public Rangelands Improvement Act, which remain vital. The objectives include achieving a fee level that is reasonable and promotes stability in the western livestock industry. The fee is intended to reflect annual changes in costs of production and to be equitable to both grazing permit holders and to the government. Finally, the fee formula is intended to have no negative environmental impacts.

This proposed rulemaking would provide that the fee for grazing livestock on public rangeland would be calculated for the grazing fee year 1988, and subsequent years, by the formula set out by the President of the United States in Executive Order 12548 of February 14, 1986. Unless the formula established by the rulemaking is changed, no additional rulemaking will be needed or published to establish the grazing fee for years subsequent to 1988 because this rulemaking addresses that matter. However, the amount of the fee will be announced each year in a **Federal Register** notice published in advance of the grazing fee year.

The principal author of this proposed rulemaking is Billy R. Templeton, Chief, Division of Rangeland Resources, Bureau of Land Management, assisted by staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

Based upon an environmental assessment and a finding of no significant impact, it is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this

proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*). The provisions of this proposed rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.),* the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.),* and Executive Order 12548 of February 1986, it is proposed to amend Section 4130.7, Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Livestock, Penalties, Range management.

PART 4100—[AMENDED]

1. The authority citation for 43 CFR Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.,* 1181d, and 98 Stat. 1837.

2. Section 4130.7–1 is amended by adding paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 4130.7–1 Payment of fees.

(a) * * *

(1) Except as provided in paragraphs (a)(2 and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage.

$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey.

FVI = "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the Statistical Reporting Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

BCPI = "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service) divided by $22.04 per hundred weight and multiplied by 100; and

PPI = "Prices Paid Index" means the following selected components from the Statistical Reporting Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than $1.35 per animal unit month.

* * * * *

October 1, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–23149 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of notice of availability of an amendment to the fishery management plan.

SUMMARY: NOAA announces that Amendment 2 to the Fishery Management Plan for Atlantic Sea Scallops (FMP) has been returned by the Secretary of Commerce to the New England Fishery Management Council, because it did not meet all legal requirements of the Magnuson Fishery Conservation and Management Act, as amended. If the Council resubmits the amendment, another notice of availability will be published and the public will be given 30 days to comment.

DATE: Amendment 2 was returned on September 29, 1987. The Council may resubmit this amendment at any time.

ADDRESS: A copy of Amendment 2 and its proposed regulations may be requested from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Sontaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Atlantic Sea Scallop FMP Coordinator, 617–281–3600.

SUPPLEMENTARY INFORMATION: The Council submitted Amendment 2 to the Secretary on September 15, 1987. It was returned on September 29, 1987, because it did not meet all legal requirements of the Magnuson Act. The Council may revise and resubmit this amendment at any time.

NOAA published a notice of availability (52 FR 35464, September 21, 1987) which outlined the purpose of the amendment, i.e., to provide for adjusting the meat count standard for Atlantic sea scallops during October through January to allow for weight loss during their spawning period. The public is invited to comment to the Council while it is revising Amendment 2. When the amendment is resubmitted, another notice of availability of the amendment will be published (followed within two weeks by its proposed implementing regulations). Under section 304(b)(3)(B)(ii) of the Magnuson Act, the public will have only 30 days to obtain and comment on the resubmitted amendment.

(16 U.S.C. 1801 *et seq.*)

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–23173 Filed 10–6–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 194
Wednesday, October 7, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 2, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W, Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

EXTENSION

- Animal Plant and Health Inspection Service

Record of Acquisition, Disposition, or Transport of Animals and Continuation Sheet
VS 18–20 and VS 18–20A
Recordkeeping
Businesses or other for-profit; Small business or organizations; 4,800 recordkeepers; 8,160 hours; not applicable under 3504(h)
Dr. W.C. Stewart, (301) 436–7833.

REVISION

- Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children—Reporting Participation and Priority Data
FNS-654
Quarterly
State or local governments; 560 responses; 5,776 hours; not applicable under 3504(h)
Chris Lipsey, ((703) 756–3710.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 87–23209 Filed 10–6–87; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") require the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our July 1, 1987 quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

Date: October 1, 1987.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments	21.4	21.4
Canada	Export Assistance on Certain Types of Cheese	26.3	26.3
Denmark	EC Restitution Payments	25.0	25 0
Finland	Export Subsidy	103.9	103.9
	Indirect Subsides	18.9	18.9
France	EC Restitution Payments	122.8	122.8
Ireland	EC Restitution Payments	20.1	20.1
Italy	EC Restitution Payments	17.1	17.1
Netherlands	EC Restitution Payments	43.4	43.4
Luxembourg	EC Restitution Payments	14.8	14.8
Norway	Indirect (Milk) Subsidy	21.4	21.4
	Consumer Subsidy	18.2.3	18.2
		40.3	40.3
Spain	EC Restitution Payments	58.5	58.5
Switzerland	Deficiency Payments	17.3	17.3
U.K.	EC Restitution Payments	96.1	96.1
W. Germany	EC Restitution Payments	17.7	17.7
		17.0	17.0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6)

[FR Doc. 87-23211 Filed 10-6-87; 8:45 am]
BILLING CODE 3510-DS-M

[C-475-702 and C-469-702]

Postponement of Preliminary Countervailing Duty Determinations; Certain Granite Products From Italy and Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Ad Hoc Granite Trade Group, the Department of Commerce is postponing its preliminary determinations in the countervailing duty investigations of certain granite products from Italy and Spain. The preliminary determinations will be made on or before November 12, 1987.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Lori Cooper or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0167, 377-8320 or 377-2438.

SUPPLEMENTARY INFORMATION: On August 17, 1987, the Department initiated countervailing duty investigations on certain granite products from Italy and Spain. In our notices of initiation we stated that we would issue our preliminary determinations on or before October 21, 1987 (52 FR 31651-31653, August 21, 1987).

On September 23, 1987, the petitioner filed a request that the preliminary determinations in these investigations be postponed for 21 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in these investigations, the Department is postponing its preliminary determinations to no later than November 12, 1987.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 1, 1987.

[FR Doc. 87-23212 Filed 10-6-87; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Atlantic Billfish Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings and provide a comment period to solicit public input into the development of a Fishery Management Plan for Billfish. This plan is being developed jointly between the South Atlantic, New England, Gulf of Mexico, Mid-Atlantic and the Caribbean Fishery Management Councils. Interested persons are invited to attend the hearings and participate. Copies of documents pertaining to the hearings will be available from the Council upon request.

DATE: Written comments on the proposed plan must be received on or before November 2, 1987. The hearings are scheduled as follows:

U.S. Virgin Islands

1. Wednesday, October 14, 1987, 7:30 p.m., Christiansted, St. Croix.

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2. Thursday, October 15, 1987, 7:30 p.m., Charlotte Amalie, St. Thomas.

Puerto Rico

3. Tuesday, October 20, 1987, 7:30 p.m., Hato Rey, Puerto Rico.

4. Wednesday, October 21, 1987, 2:00 p.m., Lajas, Puerto Rico.

ADDRESSES: Written comments should be mailed or delivered to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918. The hearings will be held at the following locations:

U.S. Virgin Islands

1. Christiansted—Conference Room, Legislature Building, Christiansted, St. Croix.

2. Charlotte Amalie—Conference Room, Legislature Building, Charlotte Amalie, St. Thomas.

Puerto Rico

3. Hato Rey—Colegio de Ingenieros y Agrimensores, Roosevelt Development, Hato Rey, Puerto Rico.

4. Lajas—La Parguera Hotel, La Parguera, Lajas, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, 809–753–4926.

Dated: October 2, 1987.

Richard H. Schaefer,

Acting Director for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–23174 Filed 10–6–87; 8:45 am]

BILLING CODE 3510–22–M

Deep Seabed Mining; Proposed Revisions to Mine Site Areas

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Notice of proposed amendments to Deep Seabed Mining Exploration Licenses and request for comments.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283) and 15 CFR Part 970, the National Oceanic and Atmospheric Administration (NOAA) published notice on September 13, 1984, at 49 FR 35973, of issuance of licenses to Ocean Minerals Company (OMCO), Ocean Management, Inc. (OMI), and Ocean Mining Associates (OMA), to engage in deep seabed mining exploration activities, subject to terms, conditions, and restrictions. These license sites, designated USA–1, USA–2 and USA–3, respectively, are located in the Clarion-Clipperton Fracture Zone of the North-eastern Equatorial Pacific Ocean. At the request of the deep seabed mining consortia, and pursuant to 15 CFR 970.902(d)(5), NOAA published the precise locations of the licensed areas on November 13 and 30, 1984, at 49 FR 44938 and 49 FR 47081, December 11, 1984, at 49 FR 48205, and January 8, 1985 at 50 FR 994.

The above U.S. licensees have sgreed recently to several small adjustments to their respective boundaries in order to resole conflicts with foreign mining interests. Each of these licensees has requested that NOAA approve proposed modifications to its exploration are and otherwise revise its license in order to carry out the conflict resolution. Under the provisions of 15 CFR 970.512 through 970.514, NOAA has determined, as to each license, that the proposed modifications are not significant changes and that the procedures in 15 CFR 970.514(b) apply. Accordingly, NOAA gives notice of its intention to accommodate these area adjustments by means of modifications of license terms, conditions and restrictions (TCRs), as well as relinquishment and revision as appropriate.

Each proposed exploration plan revision conists of boundary changes. Exploration strategies, the proposed schedule of activities, and other basic plan elements generally are not affected. The revision to license USA–1 includes the addition of new area to compensate for agreed-to adjustments in the original area. The revision to license USA–2 includes relinquishment of a small area which is proposed to be added to the area covered by the license designated USA–1. NOAA proposes to accomplish other area adjustments by means of modification of license TCRs to restrict exploration actiities in area to be used by another operator, and to establish measures to oversee, and to provide for contingencies relating to, implementation of conflict resolution. All existing license TCRs would remain in effect.

USA–1, Issued to Ocean Minearals Company

The license would be amended, resulting in a change in operating area from approximately 165,533 square kilometers to approximately 168.841 square kilometers; an addition of approximately 3,308 square kilometers.

USA–2, Issued to Ocean Management, Inc.

The license would be amended, resulting in a change in operating area from approximately 135,100 square kilometers to aproximately 112,500 squate kilometers; a reduction of approximately 22,600 square kilometers.

USA–3 Issued to Ocean Mining Associates.

The license would be amended, resulting in a change in operating area from approximately 156,060 square kilometers to approximately 150,310 square kilometers; a reduction of approximately 5,750 square kilometers.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons are permitted to examine the materials relevant to these revisions. Comments on this notice should be received on or before December 7, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Padan, Ocean Minerals and Energy Division, Ofice of Ocean and Coastal Resource Management, National Ocean Servcie, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC. 20235. (202) 673–5117.

Dated: October 1, 1987.

James P. Lawless,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–23152 Filed 10–6–87; 8:45 am]

BILLING CODE 3510–12–M

Public Meeting on Final Management Plan For the Proposed Waquoit Bay National Estuarine Research Reserve

AGENCY: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Department of Environmental Management, Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, will hold a public meeting to present and discuss the proposed final management plan for the proposed Waquoit Bay National Estuarine Research Reserve. The purpose of the meeting is to receive the views of interested parties on the final management plan.

As part of the procedures leading to the designation of the reserve, the State of Massachusetts must submit the proposed final management plan to NOAA for its review and approval. Copies of the plan will be made

available for review before the meeting by Friday, October 2, 1987 at the East Falmouth Library, the Mashpee Library, and the Mashpee and Falmouth Town Halls.

The meeting will be held on Thursday, October 8, 1987 at 8:00 p.m. in the Falmouth High School Auditorium, Gifford Street, Falmouth, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Art Jeffers, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue NW., Washington, DC, 202/673–5126.

(Federal Domestic Assistance Catalog Number 11.420 National Estuarine Reserve Research System)

Date: September 30, 1987.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–23151 Filed 10–6–87; 8:45 am]

BILLING CODE 3510–08–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustacean Plan Monitoring Team will convene a public meeting, October 9, 1987, at 10:30 a.m., at 1164 Bishop Street, Room 602, Honolulu, HI. The public meeting will focus on the fishery management plan for spiny lobsters in the Western Pacific Region. Topics of discussion are: (1) Preliminary results of this year's stock assessment cruise, (2) reports 3 and 4 from Phase I research of the Northwestern Hawaiian Islands (NWHI) lobster fishery, (3) how different management measures affect the NWHI lobster fishery, (4) year-to-date catch, effort, and activity data, (5) the status of Amendment 5, and (6) an informational workshop for fishermen on how different management measures will affect the NWHI lobster fishery.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: October 2, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–23175 Filed 10–6–87; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Final Supplemental Environmental Impact Statement for Binary Chemical Munitions Project, QL and DC Production Facilities

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability of the Final Supplemental Environmental Impact Statement for the Binary Chemical Munitions Project, QL and DC Production Facilities. QL is a nonlethal chemical component used in the VX2 family of binary munitions. DC is a feedstock chemical used to manufacture DF. DF is a nonlethal chemical component used in the G-agent family of binary munitions.

1. Summary: The Original Notice of Intent (51 FR 26291–26292, July 17, 1986) provided notice that the Army, pursuant to the National Environmental Policy Act (NEPA), and its implementing regulations, was to prepare a Supplemental Environmental Impact Statement (SEIS) tiered to the Final Programmatic Environmental Impact Statement, Binary Chemical Munitions Program (47 FR 6318). The SEIS analyzes the potential environmental impacts associated with alternatives for providing production facilities to manufacture phosphorus chemical precursors for binary chemical munitions. A combined acquisition strategy is being pursued in support of the Department of Defense's Binary Munitions Project. This includes production of QL, a nonlethal binary precursor chemical, and DC, a feedstock intermediate chemical used to manufacture DF, another nonlethal binary precursor chemical.

2. The draft SEIS covered five sites under consideration as production alternatives for the intermediate chemical DC. The draft SEIS was published in 52 FR 15366. The sites are the U.S. Army Newport Army Ammunition Plant, Newport, Indiana; U.S. Army Pine Bluff Arsenal, Pine Bluff, Arkansas; U.S. Army Phosphate Development Works, Muscle Shoals, Alabama; a commercial site in West Helena, Arkansas; and a commercial site in Lake Charles, Louisiana. Three of the sites, Newport Army Ammunition Plant, Pine Bluff Arsenal, and West Helena, are also under consideration as production alternatives for the precursor chemical, QL, and as candidates for dual QL and DC production.

3. The Draft SEIS combined the analysis for QL and DC in one document and supersedes prior notices 50 FR 12853 (QL) and 50 FR 21916 (DC) which announced separate analyses for the production of these chemicals.

4. The FSEIS designates Pine Bluff Arsenal as the preferred alternative for the production of DC and QL.

5. The Final SEIS for the Binary Munitions Project, QL and DC Production Facilities, is available for public review and comment. A copy of the document may be obtained from the Office of the Program Manager by contacting Ms. Marilyn Tischbin at commercial telephone (301) 671–3629, or by writing to the following address: Office of the Program Manager for Binary Munitions, ATTN: AMCPM, Aberdeen Proving Ground, MD 21010–5410. Written comments and any request for a public meeting should be submitted to the same address.

6. The time period for providing written comments on preparing the final SEIS will end 30 days from the date the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register.**

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 87–23197 Filed 10–6–87; 8:45 am]

BILLING CODE 3710–08–M

Availability of the Draft Supplemental Environmental Impact Statement for the Johnston Atoll Chemical Agent Disposal System (JACADS)

October 2, 1987.

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability of the Draft Supplemental Environmental Impact Statement (DSEIS) covering the disposal of process wastes generated from the operation of the Johnston Atoll Chemical Agent Disposal System (JACADS).

1. In 1983, the Army issued a Final EIS for the JACADS project. The Final EIS identified the process (incineration) and the location on Johnston Island for the JACADS facility, which will demilitarize obsolete/unserviceable chemical munitions containing the chemical agents VX, GB, and HD, beginning in 1989. The ultimate disposition of JACADS process wastes was not determined in 1983, pending further study. These process wastes contain no chemical agent.

2. The DEIS explores alternatives for final disposition of JACADS process wastes. This DSEIS does not indicate a Preferred Alternative for waste disposal. The analysis of public comments will

aid in selecting the preferred disposal alternative.

3. Waste disposition alternatives that are considered in the DSEIS for JACADS process wastes include the following:

(a) Liquid scrubber waste disposal—
(1) Ocean discharge of brine by surface vessel
(2) Ocean discharge of brine through an outfall
(3) Dry the brine to salts, drum, store temporarily at Johnston Atoll (JA) and ship to US landfill
(4) Dry the brine to salts and store at JA (no action)

(b) Solid waste disposal—
(1) Off-island shipment and/or sale of scrap metal
(2) Ocean disposal of scrap metal
(3) Land filling of scrap metal
(4) On-island use of encapsulated waste
(5) Ocean disposal of encapsulated waste
(6) Shipment of ash, fiberglass, and non-saleable metal/mixed waste to a US landfill
(7) On-site storage of ash, fiberglass, and non-saleable metal/mixed waste (no action)

4. The DSEIS is now available for comment. Copies can be obtained by writing (1) Program Executive Officer-Program Manager for Chemical Demilitarization, ATTN: SAPEO-CDT-A/Mr. Richard Rife, Building E4585, Aberdeen Proving Ground, MD 21010–5401, or (2) Commander, U.S. Army Engineer Division, Pacific Ocean, ATTN: PODED-PV, Ft. Shafter, HI 96858–5440. Comments for consideration by the Army in the final document should be provided in writing to Mr. Richard Rife, at the first address given above. The DSEIS will have a 60 day comment period.

5. The Environmental Protection Agency (EPA) will also publish a Notice of Availability for this Draft Supplemental Environmental Impact Statement in the **Federal Register**.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 87–23198 Filed 10–6–87; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; New System of Records Established for Computer Matching Purposes to Implement Debt Collection Actions Under the Debt Collection Act of 1982; Republication

[**Editorial Note**: The following document was originaly published at page 36606 in the issue of Wednesday, September 30, 1987. The document is being republished in its entirety to correct footnotes 1 and 2.]

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency, DoD.

ACTION: This action constitutes notice for public comment of a new system of records established for computer matching purposes by interagency agreement to assist Federal creditor agencies implement debt collection actions under the Debt Collection Act of 1982.

SUMMARY: The Defense Manpower Data Center, Defense Logistics Agency, Department of Defense, is proposing a new record system established under an interagency agreement, devoted exclusively for debt collection efforts under the Debt Collection Act of 1982, in order to conduct computer matching with Federal creditor agencies for the purpose of identifying and locating individuals receiving Federal salaries or other Federal benefit payments and indebted to the U.S. Government. This new record system will identify delinquent debtors and allow Federal creditor agencies to initiate prompt collection action by contacting the debtors for voluntary repayment or pursue involuntary offset procedures against the employees' wages.

DATES: This proposed action shall be effective on or before October 30, 1987, unless comments are received that would result in a contrary determination.

ADDRESS: Send any comments to Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202. Telephone: (202) 694–3027, Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: The establishment of this new system of records was accomplished after study, planning and coordination of an interagency working group and resulted in an interagency agreement for the Federal Salary Offset Initiative to improve and implement debt collection efforts by Federal agencies. The interagency agreement, with attachments, is published in full text below and proposes a central location for records to be matched. This central focus on the use of computer matching techniques as a tool will permit any Federal creditor agency that may wish to avail itself of this opportunity in its efforts on collection of delinquent debts. Federal creditor agencies interested in participating should contact the record system manager reflected in the system notice and should strictly follow the guidelines set forth in the attachments of the interagency agreement.

The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22897) May 29, 1985 (Compilation)
FR Doc. 85–30123 (50 FR 51898) December 20, 1985
FR Doc. 86–17259 (51 FR 27443) July 31, 1986
FR Doc. 86–19035 (51 FR 30104) August 22, 1986
FR Doc. 87–21654 (52 FR 35304) September 18, 1987

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on September 18, 1987 to the Administrator, Office of Information and Regulatory Affairs, OMB, the President of the Senate, and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985) and paragraph 5.f.(1) of the OMB "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982 (47 FR 21656, May 19, 1982).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 24, 1987.

Interagency Agreement for Federal Salary Offset Initiative Implementation of the Debt Collection Act of 1982

The Office of Management and Budget (OMB) has established an Interagency Working Group for the Federal Employee Salary Offset Initiative. It is to assist Federal agencies in identifying Federal employees and others receiving Federal compensation who are delinquent debtors to such agencies. It has been established as a mechanism to enforce the provisions of the Debt Collection Act of 1982.

The Interagency Working Group shall consist of the following agencies: The Financial Management Service, the Office of Management and Budget, the Department of Defense (DoD), and the Office of Personnel Management (OPM). The Department of the Treasury shall serve as lead agency.

The OPM shall provide the DoD with current automated files on all personnel employed or compensated by the Federal Government. The Department of Transportation and the U.S. Postal Service may in the near future provide DoD with similar files of all employed

personnel at the U.S. Coast Guard and the Postal Service.

The DoD, Defense Manpower Data Center (DMDC) shall use the above separate data bases on Federal employment and Federally compensated persons. They shall establish and maintain the capability to respond to inquiries from Federal creditor agencies about identifying data about persons who are delinquent in a debt to the Federal Government.

The agencies who are members of the Group in coordination with OMB, shall develop and publish operating procedures. These procedures will include strict compliance with the Debt Collection Act of 1982 and the Privacy Act of 1974.

When the Working Group becomes operational, all creditor agencies will be requested to submit to the Group names of persons against whom they have determined to have a clear valid claim.

Interagency Agreement for Federal Salary Offset Initiative

Background

The Debt Collection Act of 1982, (Pub. L. 97–365), provided an administrative mechanism for Federal Agencies to collect delinquent debts owed by individuals receiving salary or similar compensation from the Federal Government. Delinquent debts can be collected via an involuntary offset to salaries and pensions of fifteen percent disposable income. It is clearly the policy of the Administration that Federal employees should honor their just debts and that the provisions of the Debt Collection Act be used where voluntary compliance is not forthcoming. The utilization of computer matching programs is key to the ability of various Federal agencies to identify and locate delinquent debtors receiving offsetable payments from various Federal sources. Efforts to date under the Debt Collection Act have for the most part been bilateral between selected agencies having delinquent debtors and other agencies having records on large numbers of individals receiving various forms of Federal compensation.

Purpose

The purpose of this agreement is to bring a central focus on the use of computer matching techniques as a tool for the collection of delinquent debts. While it is clearly preferable to receive voluntary repayment of such debts from individuals who may be identified through computer matching, it is recognized that involuntary offset procedures under the provisions of the Debt Collection Act will be utilized when voluntary repayment is not forthcoming. The Office of Management and Budget (OMB) has designated the Department of the Treasury, Financial Management Service, as the Lead Agency to coordinate and monitor the implementation of the government's Federal Salary Offset program.

This agreement, restricted exclusively to the implementation of the Debt Collection Act, is intended to establish an Interagency Working Group to facilitate computer matching and subsequent salary offset throughout the Federal government under the auspices and oversight of the Office of Management and Budget (OMB). The Interagency Working Group will be chaired by Treasury and will consist of those agencies having records on individuals receiving Federal compensation offsetable under the Debt Collection Act. At the outset, the members of the Interagency Working Group will consist of the Department of Treasury, Office of Personnel Management (OMB), and the Department of Defense (DoD).

Objectives

It is recognized at the outset that computer matching can be conducted most efficiently if there is central location for records to be matched. Such centralization will eliminate duplication in data processing, in the negotiation of required Memoranda of Understanding between agencies, and in the publication of various announcements in the **Federal Register** which are required by the Privacy Act of 1974, as amended, and by the OMB Guidelines on Computer Matching. It is further recognized and agreed upon that no data base will be used for any other purposes other than that authorized by the Debt Collection Act. No single agency (e.g. DoD) maintaining the data bases as the matching agency shall have sole responsibility for determining what other uses shall be made of records in its custody received from another source agency. These activities shall be controlled as a policy matter by the Interagency Working Group, with each of the member agencies retaining control of the uses made of its own records.

An additional objective of this agreement is to establish procedures for sharing the work load and financial burden associated with computer matching subsequent salary offset among those members of the Interagency Working Group as well as among those other Federal creditor agencies who will utilize the resources of the Interagency Working Group to recover funds owed them. Attachment A, Roles and Responsibilities, and Attachment B, Example of Interagency Memorandum of Understanding (MOU) to Perform a Debt Collection Computer Matching Program, establish the procedures to be utilized to ensure a sharing of this burden.

It is a basic tenant of this effort that all matching activities, access to and disclosure of records, and efforts to recover funds owed will be undertaken in strict compliance with the Privacy Act, the OMB publications "Revised Supplemental Guidance for Conducting Matching Programs" and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," and the due process and other provisions of the Debt Collection Act and applicable regulations.

Reporting Relationships

In its role as both the designated Lead Agency and the Chair of the Interagency Working Group, the Department of the Treasury will be responsible for establishing reporting requirements for the Interagency Working Group, for those Federal agencies which utilize the services of the group, and also, for reporting periodically to OMB on progress made and problems encountered in administering this program.

For Department of the Treasury,

W.E. Douglas,

Commissioner, Financial Management Service.

Dated: April 10, 1987.

For Office of Management and Budget,

Gerald R. Riso,

Associate Director for Management.

Dated: April 14, 1987.

For Department of Defense,

H.H. Kraft, Jr.,

Deputy Assistant Secretary of Defense (Management Systems).

Dated: April 24, 1987.

For Defense Manpower Data Center,

Kenneth C. Scheflen,

Director, DMDC.

Dated: April 16, 1987.

For the U.S. Office of Personnel Management.

Central Personnel Data File,

Phillip A.D. Schneider,

Assistant Director for Work Force Information.

Dated: April 23, 1987.

Civil Service Retired File,

Jerome D. Julius,

Deputy Associate Retirement & Insurance.

Dated: April 15, 1987.

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Attachment A—Roles and Responsibilities

Agency roles and responsibilities are as follows:

Treasury Financial Management Service (FMS), lead agency, will

coordinate and monitor the implementation of the government's Federal Salary Offset program. FMS will:

- Chair the Interagency Working Group.
- Establish reporting requirements for the Interagency Working Group, agencies submitting delinquent debtor files for matching, and employing agencies.
- Report periodically to OMB and Treasury management regarding the progress of this initiative.
- Coordinate with participating agencies processing for all phases of the matching and offset procedures to ensure timely completion.
- Assist OMB in monitoring compliance with Privacy Act requirements and OMB published guidance.
- Assure agency compliance with reporting requirements on collection activity.
- Assist agencies in resolving any problems which might otherwise impede implementation of this initiative.

The Department of Defense (DoD) will:

- Negotiate the Memoranda of Understanding (example shown as Attachment B) for the matches with each agency providing the delinquent debtor file. DOD will receive and approve a Memorandum of Understanding from each creditor agency for the conduct of the match. It is in these agreements that specifics for reimbursement of DoD for costs related to the match will be contained.
- Publish a notice to match in the **Federal Register** on or about the time of the match in conformance with OMB matching guidelines.
- Perform the computer matching runs as matching agency, utilizing delinquent debtor files provided by, but not limited to, the Departments of Agriculture, Education, Housing and Urban Development, and by the Veterans Administration and Small Business Administration. DoD will match these files against civilian and retired employment files provided by the Office of Personnel Management, as well as, DoD civilian and active, retired and reserve military personnel files.
- Report the volume and dollar total of raw hits for each creditor agency match by employing agency of record to the Financial Management Service, Department of the Treasury.
- Provide a quarterly schedule of when creditor agencies are to be matched to the agencies providing the employment files.

The Office of Personnel Management will provide updated active and retired employment files on a recurring basis for matching in accordance with its agreed upon schedule with DoD.

The Office of Management and Budget will monitor privacy act compliance as a part of its ongoing oversight review responsibility.

Each creditor agency participating in the salary offset program and providing files for matching will:

- Enter into a reimbursable agreement with DoD for matching. The Agencies will draft Memorandum of Understanding for DoD approval.
- Transmit to DoD only the delinquent debtor file to be matched containing the agreed upon record fields to be matched, accompanied by format specifications enabling the match.

Each agency will designate a primary and alternate point of contact for this initiative.

Attachment B.—Example of Inter-Agency Memorandum of Understanding (MOU) To Perform a Debt Collection Computer Matching Program

Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish, before any matching takes place, administrative procedures and assign responsibility for a government-wide debt collection computer matching program. The matches will be performed at the Defense Manpower Data Center (DMDC) utilizing employment records provided by the Department of Defense and the Office of Personnel Management. The employment records will be matched with records of individuals delinquent in their debt to the Federal government as supplied by the signatory creditor agency to this MOU.

General

Under authority of the Debt Collection Act of 1982, and other applicable regulations, the head of a Federal agency may request that deductions be made from the pay of an employee or member delinquent in his/her debt to the United States. This matching program will facilitate the identification of the delinquent debtor employees and members by the employment records at one location (DMDC). The matches will be performed to allow the creditor agency to receive a current home or work address in order to issue the required due process notice. The creditor agency will be responsible for sending the request for offset to the employing agency. These procedures are expected to shorten the collection agency timeframes and reduce confusion due to utilizing standard formats and procedures.

Responsibilities

Defense Manpower Data Center shall:

- Establish and maintain a system of records (S322.11 DLA–LZ, Federal Creditor Agency Debt Collection Data Base) devoted exclusively for Federal debt collection efforts containing, at the onset, a data bank record of DoD active and retired military members, including the Reserve, National Guard, and the OPM Government-wide Federal civilian and retired civilian records for computer matching purposes with any Federal creditor agency that may wish to avail itself of this opportunity to utilize this resource.
- Assure before any matching takes place that the participating creditor agency has published a system of records notice in the **Federal Register** with an adequate routine use permitting disclosure of delinquent debtor records for computer matching purposes and that DMDC publishes a proper notice of the proposed match for public comment, including the starting date, as required by the OMB Computer Matching Guidelines.
- Provide name, social security number, demographic information and current address based on a match of social security number to the creditor agency within thirty (30) days of the start of the match.
- Bill the creditor agency for match reimbursement.

The Federal Creditor Agency shall:

- Provide to DMDC before any matching occurs a copy of the full text notice of the record system(s), and any amendments thereto, originally published in the **Federal Register** (not from Privacy Act Issuances Compilation) containing an appropriate routine use authorizing the disclosure of debtor records to DMDC(DoD) for the purpose of conducting a computer matching program.[1]
- Provide only delinquent debtor records to DMDC in an agreed upon format with any specific instructions as to the control and final disposition of the creditor agency records upon completion of the match.[2]

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[1] *Model "Routine Use" for record system notice of creditor agency to disclose records of debtors to DMDC for conducting computer matching programs.*

To the Defense Manpower Data Center, Department of Defense, to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the * * * (insert Federal creditor agency name) * * * in order to collect the debts under the provisions of the Debt Collection Act of 1982, (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

[2] *Procedures for participation in matching program.*

General

All computer matches are performed at the Defense Manpower Data Center (DMDC) in Monterey, CA using an IBM computer system located at the Naval Postgraduate School (NPS) in Monterey, CA. Computer files of Active Duty, Retired and Reserve members, Federal Civil Service employees and retirees are maintained at the NPS Computer Center and are updated on a quarterly (for DoD files) or semiannual (for other files) basis. All file matching is performed using the full nine (9) digit social security number as the determinate.

Participation and Contract Point

All Federal agencies are eligible to participate in the matching program after entering into a written memorandum of understanding (MOU) with DMDC. A sample MOU is included in this notice. Signed agreements should be sent to: Kenneth C. Scheflen, Director, Defense Manpower Data Center, 1600 N. Wilson Blvd., Suite 400, Arlington, VA 22209–2593, Telephone (202) 696–5816.

Technical inquiries can be directed to Debt Collection Project Leader, Stewart Reiman, telephone (408) 646–2951.

Legal or policy questions can be directed to Don Rouse, Treasury FMS—telephone (202) 634–2031.

Data Information

All data submitted for a match must consist only of delinquent debts of individuals indebted under a Federal Program. At a minimum, the data must contain: Social Security Number, Name of Debtor (Last, First, MI), Amount of Delinquent Debt.

—The matching agency will provide to the creditor agency summary totals and dollar amounts of raw hits.

—Matching will be on SSN, and validated using the name. The natching agency will identify for the

Continued

• Assure by proper certification or statement that due process has been, or shall be, given upon locating the debtor prior to requesting any administrative or salary offset procedures according to the Debt Collection Act of 1982, 4 CFR Chapter II, 5 CFR 550.1101–.1108, and any other applicable regulations of the creditor agency.

• Provide quarterly reports to DMDC on collection activity resulting from hits of the matches in a format and content as agreed upon jointly by DMDC and the creditor agency.

• Assure that proper reimbursement is made to DoD in accordance with schedule of charges.

• Designate a primary and an alternate contact point with full name, title, address and telephone number.

Reimbursement for Match

Costs of the file maintenance, computer time and staff time for the matching effort will be reimbursed by the creditor agency to DMDC according to the following schedule of charges:

Schedule of Charges

$500 flat fee per match plus $.25 per "hit" record.

Data Security

Both the creditor agency and DMDC will safeguard individual data as required by the Privacy Act of 1974 and the OMB computer matching guidelines. Data security extends to non-hit records which will not be used for any purpose. Hard copy records will be stored in lockable desks or file cabinets and automated records will be stored in limited access computer facilities.

Duration of Agreement

This MOU will remain in force unless notified or terminated in writing by both agencies.

For
(Creditor Agency)

(Responsible Official)

Date

For
Defense Manpower Data Center

Kenneth C. Scheflen, Director

Date

creditor agency invalid hits because of garbled data, incorrect SSN, same SSN, different name, etc.

—The matching agency will transmit to the creditor agency the matched records containing the following data elements from the employment records:

—Agency where employed and location.

—Address of employment and home address or latest address of record.

—The matching agency, within 30 days after the match, will as standard practice either erase or return to the creditor agency the file of delinquent debt records unless contrary specific instructions are furnished by the creditor agency.

—The creditor agency will reimburse the matching agency for the cost of operations according to a schedule of charges set forth in the MOU.

Tape Specifications

IBM compatible, unlabled, 6250 (or 1600) BPI, fixed block, 9 track, odd parity, EBCDIC, character data. Tape(s) should be sent to: Defense Manpower Data Center, ATTN: Debt Collection Project, 550 Camino El Estero, Suite 200, Monterey, CA 93940–3231.

S322.11 DLA–LZ

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base.

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000 Decentralized segments: Military and civilian payment and personnel centers of the military services, the Office of Personnel Management, and Federal creditor agencies. Backup location: Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940–3231

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officers and enlisted personnel, members of reserve and guard components, retired military personnel. All Federal-wide civilian employees and retirees. Individuals identified by Federal creditor agencies as delinquent in repayment of debts owed to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Account Number, debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, duty and home address, and various dates identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514 "Installment deduction of indebtedness"; 5 U.S.C. 552a "Privacy Act of 1974"; 10 U.S.C. 136; 4 CFR Chapter II "Federal Claims Collection Standards"; 5 CFR 550.1101–.1108 "Collection by Offset from Indebted Government Employees"; Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987).

PURPOSE(S):

The primary purpose for the establishment of this system of records is to maintain a computer data base permitting computer matching to assist and implement debt collection efforts by Federal creditor agencies under the Debt Collection Act of 1982 to identify and locate individual debtors. To increase the efficiency of U.S. Government-wide efforts to collect debts owed the U.S. Government. To provide a centralized Federal data bank for computer matching of Federal employment records with delinquent debt records furnished by Federal creditor agencies under an interagency agreement sponsored and monitored by the Department of the Treasury and the Office of Management and Budget. To identify and locate employees or beneficiaries who are receiving Federal salaries or other benefit payments and indebted to the creditor agency in order to recoup the debt either through voluntary repayment or by administrative or salary offset procedures established by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Individual's name, SSN, Federal agency or military service, category of employee, Federal salary or benefit payments, records of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose contacting the debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

The DoD Blanket Routine Uses do not apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic computer tape.

RETRIEVABILITY:

Records are retrieved by social security number and name from a computerized index.

SAFEGUARDS:

Primary location at the W.R. Church Computer Center, Monterey, CA, tapes are stored in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At the back-up location in Monterey, CA tapes are stored in rooms protected with cypher locks, the building is locked up after hours, and only property cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Records are erased within six months after each match cycle.

SYSTEM MANAGER AND ADDRESS:

Deputy Director, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940–3231

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager.

RECORDS ACCESS PROCEDURE:

Requests from individuals should be addressed to the system manager. Written requests for information should contain the full name, social security number, current address and telephone number of the individual requesting information.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the system manager and are contained in Defense Logistics Agency Regulation 5400.21 (32 CFR Part 1286).

RECORD SOURCE CATEGORIES:

Federal creditor agencies, the Office of Personnel Management and DoD personnel and finance centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 87–22481 Filed 9–29–87; 8:45 am]

BILLING CODE 3810–01–T

Department of The Navy

Performance of Commercial Activities; Announcement of Program Cost Studies

The Department of the Navy intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at the listed activities, commencing September 14, 1987. The cost study process is a rigorous, time-consuming procedure and, depending upon the size of the functions involved, can take several months to several years to complete. Since the studies have not yet begun, specifications have not yet been prepared. When bids/proposals are desired, appropriate advertisements will be placed. No consolidated bidders' list is being maintained since the solicitations will be processed by various contracting offices throughout the U.S.

USNS MERCURY, Oakland, CA

Water Transportation

Naval Station, San Diego, CA

Other Intermediate, Direct, of General Repair and Maintenance of Equipment

Naval Station, Treasure Island, CA

Other Intermediate, Direct, or General Repair and Maintenance of Equipment

Naval Weapons Center, China Lake, CA

Personnel Movement

Naval Submarine School, Groton, CT

Training Devices and Simulators

Naval Air Facility, Washington, DC

Buildings and Structures Maintenance
Grounds and Surfaced Areas Maintenance

Naval Air Station, Key West, FL

Motor Vehicle Operation
Motor Vehicle Maintenance

Naval Coastal System Center, Panama City, FL

Motor Vehicle Operation
Crane Operations
Heavy Truck Operations
Other Vehicle Operations
Motor Vehicle General Repair
Improved Grounds

Naval Station, Pearl Harbor, HI

Magnetic Silencing Facility

Naval Medical Command National Capital Region, Bethesda, MD

Grounds and Surfaced Areas
Motor Vehicle Maintenance
Air Conditioning & Refrigeration Plants
Pest Management
Heating Plants and Systems
Other Maintenance/Repair Real Property
Motor Vehicle Operations
Motor Pool Operations

Naval Hospital, Beaufort, SC

Grounds and Surface Areas
Motor Vehicle Maintenance
Air Conditioning and Refrigeration Plants
Pest Management
Medical Records Transcription
Motor Vehicle Operations
Heating Plants and System
Building and Structure (Other Than Family Housing)

Submarine Training Facility, Charleston, SC

Training Devices and Simulators

Naval Air Station, Corpus Christi, TX

Aircraft

Naval Guided Missiles School Detactment, Norfolk, VA

Training Devices and Simulators

Naval Medical Clinic, Quantico, VA

Grounds and Surfaced Areas

Naval Supply Center, Norfolk, VA

SERVMART (Receipt and Acquisition)

TRIDENT Refit Facility, Bangor, Bremerton, WA

Test, Measurement, and Diagnostic Equipment

Date: October 2, 1987.

D.A. Guy,

Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison, and Certifying Officer (202) 325–9860.

[FR Doc. 87–23190 Filed 10–6–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.133C]

Notice Inviting Applications for Innovation Grants Under the National Institute on Disability and Rehabilitation Research for Fiscal Year 1988

PURPOSE: Provides support to public and private agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations, to support timely and innovative research, demonstrations, evaluations of techniques or devices, or unique methods to disseminate the results of research that will improve the rehabilitation of individuals with disabilities. Historically Black Colleges and Universities are encouraged to apply. NIDRR may fund projects from time to time during the year.

DEALINE FOR TRANSMITTAL OF APPLICATIONS: June 1, 1988.

APPLICATIONS AVAILABLE: November 9, 1987.

AVAILABLE FUNDS: $1,000,000.

ESTIMATED RANGE OF AWARDS: Awards are limited to $50,000 by statute.

ESTIMATED AVERAGE SIZE OF AWARDS: $50,000.

PROJECT PERIOD: 12 months.

APPLICABLE REGULATIONS: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (b) National Institute on Disability and Rehabilitation Research Regulations, 34 CFR Parts 350 and 358.

FOR APPLICATIONS OR INFORMATION CONTACT: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue SW, Switzer Building, Room 3070, Washington, DC 20202. Telephone: (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TDD services.

Program Authority: 29 U.S.C. 760–762.

Dated: October 2, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87–23172 Filed 10–6–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangements; EURATOM and Austria

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Austria concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers: RTD/AT(EU)-66, for the transfer from the Federal Republic of Germany to Austria of silicide fuel elements containing 37 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235 for use in the ASTRA research reactor. RTD/AT(EU)-67, for the transfer from the Federal Republic of Germany to Austria of 5 fuel spheres containing 29.8 grams of uranium enriched to 16.8 percent in the isotope uranium-235 for nuclide inventory measurements.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: September 30, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–23224 Filed 10–6–87; 8:45 am]

BILLING CODE 6450–01–M

Cooperative Agreements; Industrial Heat Pump Design and Installation

September 29, 1987.

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Porposals (SCAP) No. DE–SC07–87ID12706 for the development of an industrial heat pump design and installation.

SUMMARY: The Idaho Operations Office of the U.S. Department of Energy is seeking support for the design and installation of heat pumps in industrial processes for heat recovery (industrial refrigeration and space heating are excluded). It is intended that projects include three phases: (I) Heat pump/process assessment, (II) implementation, and (III) operation. About $650,000 is now available for Phase I, and multiple awards are anticipated. It is intended that the Phase I heat pump and process assessment will involve thermodynamically consistent methods of analyzing processes to determine the optimum heat pump placement, the type of heat pump, the size and lift of the heat pump, the effect of the heat pump on the overall process, and the economics of the proposed heat pump installation. The analyses in Phase I must be for specific operating industrial process plants, into which the heat pump will be installed during Phase II. Phase II will involve final design of the heat pump, final design of any required process modifications, modification of the process, and installation of the heat pump. During Phase III, the heat pump will be operated. Operating characteristics of the heat pump and overall impact of the heat pump on the process will be measured and reported. Proposers will be expected to have the capability to complete the entire project from design through operation, as well as to be able to obtain, during Phase I, a commitment from the industrial plant operator responsible for the process into which the heat pump will actually be installed. Cost-type cooperative agreements are anticipate, and Phase I is expected to take approximately one year.

DATES: SCAP No. DE–SC07–87ID12706 is expected to be issued during early November 1987 with a closing date approximately 45 days from the issue date.

CONTACTS: Potential proposers desiring to receive a copy of the SCAP should request it in writing within 10 calendar days from the date of this notice from: Dallas L. Hoffer, Contracts Management Division, U.S. Department of energy, Idaho Operations Office 785 DOE Place, Idaho Falls, ID 83402, Telephone No.: (208) 526–0014.

Issued at Idaho Falls, Idaho, on September 29, 1987.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 87–23225 Filed 10–6–87; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date: October 28, 1987—9:00 a.m.

Place: Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

Call to order by Edwin L. Cox, Chairman, National Petroleum Council.

Remarks by the Honorable John S. Herrington, Secretary of Energy.

Guest speaker.

Progress report on the NPC Committee on Petroleum Storage & Transportation.

Consideration of administrative matters.

Discussion of any other business properly brought before the National Petroleum Council.

Public comment (10-minute rule).

Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at

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least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 2, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–23226 Filed 10–6–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–48–NG]

Application to Export Natural Gas to Canada; Victoria Gas Corp.

AGENCY: Economic Regulatory Administation, DOE.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 31, 1987, of an application; from Victoria Gas Corporation (Victoria) for blanket authorization to export natural gas to Canada for sale to spot market purchasers, including gas distribution companies, and industrial and commerical end users.

Authorization is requested to export up to 100 MMcf of United States natural gas per day and a maximum of 72 Bcf of natural gas over a two-year period beginning on the date of first delivery. Victoria is a corporation registered in the State of Texas and operates solely as a natural gas marketing company.

Victoria intends to use existing facilities at the border and within the United States for the transportation of the proposed exports. Victoria will advise the ERA of the date of first delivery of the export and submit quarterly reports giving details of individual transactions.The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence SW., Washington, DC 20585, (202) 586–8233, or

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Ave SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the requested authorization would promote competition and, in light of the continuing "gas bubble", would benefit the public interest. Parties especially those that may oppose this application, should comment in their responses on these matters.

All parties should be aware that if the EPA approves this requested blanket export, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

Public Comment Procedures:

In responses to his notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specfied by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., November 6, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Victoria's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–23227 Filed 10–6–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order; Tampimex Oil International, Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tampimex Oil International, Ltd.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Tampimex Oil International, Ltd. (Tampimex), c/o 4100 One Shell Square, New Orleans, Louisiana 70139. This Proposed Remedial Order alleges violations of 10 CFR 212.186, 210.62(c) and 205.202 of the petroleum price regulations during the period January 1979 through December 1980 in the amount of $3,669,009.81. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The notice shall be filed in duplicate, shall briefly describe how the person would be aggreived by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC, on the 24th day of September, 1987.

Marshall Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87–23126 Filed 10–6–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board, Research & Technology Utilization Panel; Meeting

Notice is hereby given of the following meeting:

Name: Research and Technology Utilization Panel of the Energy Research Advisory Board (ERAB).

Date and Time: October 21, 1987—8:30 am–5:00 pm; October 22, 1987—8:30 am–12:00 Noon.

Place: Department of Energy, 1000 Independence Ave. SW., Room 4A–110, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–2263.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Research and Technology Utilization Panel is a subgroup of ERAB and reports to the parent Board. The Research and Technology Utilization Panel will: Review the process and effectiveness of the movement of scientific research and technology from DOE and its contractors to industry, universities, and state and local governments; review the technology transfer objectives and efforts of the major Departmental programs; evaluate the significance of past activities in this area; and make recommendations to improve the activities.

Tentative Agenda: The agenda for this meeting will be to hear presentations from DOE multiprogram and single program laboratories. These will include presentations from Oak Ridge National Laboratory, Fermi National Accelerator Laboratory, and Stanford Linear Accelerator Center, among others.

Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Ave. SW., Washington, DC, between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 30, 1987.

Charles E. Cathey,

Deputy Director, Science & Technology Affairs, Office of Energy Research.

[FR Doc. 87–23127 Filed 10–6–87; 8:45 am]

BILLING CODE 6450–01–M

Grants; University Research Instrumentation Program

AGENCY: Department of Energy.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) program solicitation, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328–26331), (2) October 18, 1983, DOE changes to the program (48 FR 48277–48281); and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774–55775).

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: Ms. Susan G. Hiser, Procurement and Contracts Division, Oak Ridge Operations Office, Department of Energy, Oak Ridge, TN 37831, Telephone Number: (615) 576–6367.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the University Research Instrumentation program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. This program is consistent with, and part of, a government-wide effort to increase the availability of advanced research instrumentation in universities and colleges. Although no final congressional action for Fiscal Year 1988 has yet been approved for this program, the Presidential budget request to Congress for this program for FY 1988 is $5.0 million. In anticipation of Congressional support for the program, DOE invites all qualified universities to write for a copy of its University Research Instrumentation program solicitation, DOE–ER–0184/3, Notice of Program Announcement Number DE–PS01–87ER75385. Selection for award under this solicitation is subject to the availability of funds.

Principal Research Areas

While all areas of energy research are eligible, in FY 1988 the URI program's funds will be concerned primarily with capital equipment (costing $100,000 or more) needed for on-campus research in one of five specific energy areas (listed below in alphabetical order). In order to indicate the potential breadth of the research in each area, a number of examples of related research topics are given. Within each topic area no

preference is given to any of the examples.

1. Biological Energy Conversion

a. Early events in photosynthesis; b. biochemical and enzymatic reactions involved in key metabolic steps in carbon compound conversions in plants and microbes, and in the characterization of micro-organisms involved in carbon compound conversion to fuels; c. structures of protein, carbohydrates and lipids involved in recognition and catalytic, regulatory or storage functions; d. physiological control of growth and development of plants under optimal or suboptimal condition; e. measurement and control systems for experimental research of biological effects of carbon dioxide, including those from coal fired power plants; f. studies of energy conversion in microalgal systems; g. research on biological coal conversion and coal cleaning.

2. Biomedical and Environmental Research

a. Nuclear Medicine: (1) Research on the applications of radiation, radioisotopes and stable isotopes in the diagnosis and treatment of human diseases; (2) production of radionuclides, new radiopharmaceuticals, automated chemical synthesis systems, studies of biodistribution and pharmacokinetics of radiolabeled compounds; (3) improvement of biomedical imaging techniques (SPECT, PET, and NMR spectroscopy) for physiologic and metabolic studies; (4) development of optimal antibody species for cancer screening, detection, localization, monitoring, and therapy; (5) development of boronated compounds with higher selectivity for tumor tissue to ascertain clinical merit of boron neutron capture therapy.

b. Molecular Genetics/Structural Biology: (1) Characterization of genetic structure ranging from chromosomes to DNA structure; (2) characterization of damage to DNA and other biological macromolecules by radiation and energy-related chemicals; (3) separation of biological macromolecules and organelles; (4) characterization of protein and other macromolecules fine structure and correlation of structure with biological function; (5) computer networks, data acquisition and analysis of molecular biological and structural data.

c. Environmental Processes and Effects: (1) Subsurface characterization of biota, contaminants, and factors affecting mobility of mixed wastes in soils and subsurface systems, including those from emerging coal technologies; (2) determination of the movement and fate of materials introduced along U.S. ocean margins; (3) influence of environmental factors on gene expression and regulation in plants; (4) development of integrated ecological studies, focusing on water relations in arid lands and large-scale ecosystem experiments that will contribute to global research activities.

3. Energy Resource Geoscience

a. Fluid Interaction with the Natural Environment: (1) Rockwater interactions in fractured hosts; (2) mineral-hydrocarbon surface reactions; (3) hydrogeology.

b. Generation and Migration of Petroleum: (1) Control of source rock; (2) time-temperature reaction paths; (3) multiphase flow; (4) reservoir dynamics.

c. Remote Sensing: (1) Of the solid earth through enhanced seismic studies; (2) of the earth's surface through interpretation of high altitude data; (3) of strain both at laboratory and earth scales; (4) geological interpretation of satellite data.

d. Fracture Processes: (1) In natural media, particularly shales, sandstones, limestones, tuffs, and granite; (2) on the crustal scale; (3) in heterogeneous media.

4. Nuclear Physics

Understanding of the interactions, properties, and structure of atomic nuclei using probes of light ions, heavy ions, electrons, and other nuclear particles for research in:

a. Nuclear collision dynamics via detection of nuclear reaction products;
b. Polarization effects in the collision of nuclear systems;
c. Nuclear structure and nuclear spectroscopy;
d. Giant resonances and other mechanisms of gamma-ray emission;
e. Probing fundamental symmetries and interactions;
f. Neutron scattering physics;
g. Radiative capture reactions; and
h. Properties of hot nuclear matter.

5. Photochemical Energy Conversion

a. Inorganic and organic photochemistry;
b. Excited-state electron transfer;
c. Photoelectrochemistry;
d. Photo-induced charge separation in microheterogenous environments;
e. Artificial photosynthesis; and
f. Picosecond spectroscopy;
g. Synthesis and catalysis as it relates to the photoconversion of various substrates into fuels and chemicals.

While the equipment requested will be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility is advancing other areas of scientific or technical research is of peripheral interest during the application's review procedure.

Eligibility and Limitations

Participation in the URI program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific area for which the equipment is requested during the past two fiscal years (October 1, 1985, to September 30, 1987).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expand the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of Energy Research believes that restricting eligibility to institutions which have performed $150,000 of DOE supported research over a two-year period will limit eligibility in this grant program to those institutions which, becuse of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCU's) which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area.

DOE will consider only requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated area. Smaller research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the instrument(s) requested (or for use with existing research instrument(s) in the selected area) may be considered.

Application Forms

Program solicitations are expected to be ready for mailing by October 9, 1987. Applications must be prepared and submitted in accordance with the instruments and forms included in the

program solicitation. Copies may be obtained by writing to: Division of University and Industry Programs, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone Number: (202)586–8910.

Closing Date for Transmittal of Applications

To be eligible, applications must be received by the Oak Ridge Operations Office by 4:30 p.m., December 11, 1987.

Authority for the University Research Instrumentation Program is contained in section 31(a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

(Catalog of Federal Domestic Assistance No. 81.077, University Research Instrumentation Program)

Issued in Washington, DC, on September 30, 1987.

David B. Nelson,

Executive Director, Office of Energy Research.

[FR Doc. 87–23228 Filed 10–6–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–519–000, et al.]

Electric rate and Corporate Regulation Filings; Commonwealth Edison Co. et al.

September 30, 1987.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER87–519–000]

Take notice that on September 24, 1987, Commonwealth Edison Company (Edison) tendered for filing additional information with respect to Amendment No. 5 to the Interconnection Agreement between Edison and Wisconsin Power and Light Company (Wisconsin Power).

This amended filing is in response to a request by the Federal Energy Regulatory Commission to provide an explanation of the circumstances which led to the agreement, Amendment No. 5, to return the $739,710 paid by Wisconsin Power over the last ten years.

Copies of the filing were served upon Wisconsin Power and Light Company, Madison, Wisconsin, the Illinois Commerce Commission, Springfield, Illinois, and the Public Service Commission of Wisconsin, Madison, Wisconsin.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Glen Park Associates Limited Partnership

[Docket No. ER87–668–000]

Take notice that on September 24, 1987, Glen Park Associates Limited Partnership (Glen Park), a New York limited partnership, tendered for filing a power sale agreement pursuant to which Glen Park is to Niagara Mohawk Power Corporation all of the power and energy to be produced at the 32.6 MW Glen Park Project (FERC Project No. 4769). The rates set forth in the power sale agreement have been negotiated, and the agreement has been approved by the New York Public Service Commission. Glen Park requests waiver of the Commission's Regulations with respect to the filing of cost support information and with respect to all or a portion of the Commission's accounting, reporting, securities, property transfer, interlocking director and annual charge regulation. Glen Park requested that the filing be allowed to become effective on September 1, 1987, the date on which the power production capacity of the project first exceeded 30 MW.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ER87–667–000]

Take notice that on September 24, 1987, Gulf States Utilities Company (GSU) tendered for filing a contract for purchases of economic energy by Jacksonville Electric Authority from GSU.

GSU requests an effective date of September 23, 1987, for the contract.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

[Docket No. ER87–666–000]

Take notice that on September 24, 1987, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated September 1, 1987, with the City of St. Marys, St. Marys, Kansas for wholesale service to that community. KPL states that this contract permits the City of St. Marys to receive service under rate schedule WSM–12/83 designated Supplement No. 9 to R.S. FERC No. 195. The proposed effective date is November 1, 1987. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of St. Marys and the State Corporate Commission.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER87–669–000]

Take notice that on September 24, 1987, Northern States Power Company (Minnesota) tendered for filing the Transmission Service Agreement and Supplement Nos. 1 and 2 between Northern States Power Company and the City of Sauk Centre.

The Transmission Service Agreement and Supplement Nos. 1 and 2 supersede the Municipal Resale Transmission and Transformation Service Agreement, FERC Rate Schedule No. 389, between Northern States Power Company and the City of Sauk Centre, which expires by its own terms on October 20, 1987.

The Transmission Service Agreement and Supplement Nos. 1 and 2 essentially provide transmission service associated with the delivery of power and energy purchased by Sauk Centre from the Western Area Power Administration and other power suppliers. The rates and charges for this service are on file with the Commission for similar agreements with other municipalities.

Northern States Power Company requests that the filing have an effective date of October 20, 1987, and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23219 Filed 10-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-20-000]

Proposed Change in FERC Gas Tariff; Algonquin Gas Transmission Co.

September 30, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 25, 1987, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Twenty-second Revised Sheet No. 201
Twenty-second Revised Sheet No. 203
Fifteenth Revised Sheet No. 204
Fifteenth Revised Sheet No. 205
Substitute Fifteenth Revised Sheet No. 204

Algonquin states that above-mentioned tariff sheets are being filed pursuant to the provisions of its tariff to flow through its rates the approved ACA unit surcharges imposed upon Algonquin by its upstream pipeline suppliers, Consolidated Gas Transmission Corporation, National Fuel Gas Supply Corporation, Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation as established by Commission Order No. 472 in Docket No. RM87-3-000.

The proposed effective date of the above-mentioned tariff sheets is October 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23131 Filed 10-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-48-009]

PGA Rate Change Filing; ANR Pipeline Co.

September 30, 1987.

Take notice that on September 25, 1987, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Substitute Tenth Revised Sheet No. 18
Substitute Alternate Twelfth Revised Sheet No. 18

Substitute Tenth Revised Sheet No. 18 and Substitute Alternate Twelfth Revised Sheet No. 18 reflect a 13.64¢ per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD-1 and MC-1 Rate Schedules, a decrease of $0.682 in the monthly demand rate of CD-1 and MC-1 Rate Schedules and an increase in ANR's one-part rates applicable to Rate Schedules SGS-1 and LVS-1 of 2.82¢ and 10.36¢ respectively, per dth.

In this tariff filing, ANR is revising its demand and commodity rates to reflect cost functionalization and classification consistent with Opinion Nos. 256 and 256A with respect to ANR's Canadian gas costs. ANR has designed its rates based upon its existing Atlantic Seaboard rate design methodology.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 7, 1987. Protects will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23132 Filed 10-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST87-3449-000, et al.]

Self-Implementing Transactions; ANR Pipeline Co., et al.

September 30, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate

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[1] Notice of transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before October 21, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST–3499	ANR Pipeline Co	Wisconsin Fuel and Light Co	08–3–87	B		
ST–3500	ANR Pipeline Co	Wisconsin Natural Gas Co	08–3–87	B		
ST–3501	ANR Pipeline Co	Michigan Consolidated Gas Co	08–3–87	B		
ST–3502	ANR Pipeline Co	Consumers Power Co	08–3–87	B		
ST–3503	ANR Pipeline Co	Michigan Consolidated Gas Co	08–3–87	B		
ST–3504	ANR Pipeline Co	Bishop Pipeline Corp	08–3–87	B		
ST–3505	ANR Pipeline Co	Michigan Gas Utilities Co	08–03–87	B		
ST–3506	ANR Pipeline Co	Wisconsin Power and Light Co	08–03–87	B		
ST–3507	ANR Pipeline Co	Iowa Southern Utilities Co	08–03–87	B		
ST–3508	ANR Pipeline Co	Wisconsin Fuel and Light Co	08–03–87	B		
ST–3509	ANR Pipeline Co	Wisconsin Natural Gas Co	08–03–87	B		
ST–3510	ANR Pipeline Co	Wisconsin Public Service Co	08–03–87	B		
ST–3511	ARKLA Energy Resources	Arnoco Gas Co	08–03–87	B		
ST–3512	Panhandle Eastern Pipe Line Co	Washington Gas Light Co., et al	08–03–87	B		
ST–3513	Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	08–03–87	B		
ST–3514	Panhandle Eastern Pipe Line Co	Eastex Gas Transmission Co	08–03–87	B		
ST–3515	Tennessee Gas Pipeline Co	Phillips Petroleum Co	08–03–87	G–EU		
ST–3516	Tennessee Gas Pipeline Co	Mountaineer Gas Co	08–03–87	B		
ST–3517	Tennessee Gas Pipeline Co	Western Kentucky Gas Co	08–03–87	B		
ST–3518	Trunkline Gas Co	South Carolina Pipeline Corp	08–03–87	B		
ST–3519	Western Gas Supply Co	Northwest Pipeline Corp	08–03–87	C		
ST–3520	Williams Natural Gas Co	Peoples Natural Gas Co	08–03–87	B		
ST–3521	Williams Natural Gas Co	Llano, Inc	08–03–87	B		
ST–3522	ANR Pipeline Co	Wisconsin Public Service Co	08–04–87	B		
ST–3523	ANR Pipeline Co	Peoples Gas Light & Coke Co	08–04–87	B		
ST–3524	ANR Pipeline Co	Consumers Power Co	08–04–87	B		
ST–3525	ANR Pipeline Co	Michigan Consolidated Gas Co	08–04–87	B		
ST–3526	ANR Pipeline Co	Wisconsin Public Service Co	08–04–87	B		
ST–3527	ANR Pipeline Co	Madison Gas & Electric Co	08–04–87	B		
ST–3528	ANR Pipeline Co	Wisconsin Natural Gas Co	08–04–87	B		
ST–3529	ANR Pipeline Co	Delhi Gas Pipeline Corp	08–04–87	B		
ST–3530	ANR Pipeline Co	Coastal States Gas Transmission Co	08–04–87	B		
ST–3531	ANR Pipeline Co	Wisconsin Natural Gas Co	08–04–87	B		
ST–3532	ANR Pipeline Co	Columbia Gas of Pennsylvania, Inc	08–04–87	B		
ST–3533	ANR Pipeline Co	Michigan Gas Utilities Co	08–04–87	B		
ST–3534	ANR Pipeline Co	Michigan Consolidated Gas Co	08–04–87	B		
ST–3535	ANR Pipeline Co	Michigan Colsolidated Gas Co	08–04–87	B		
ST–3536	ANR Pipeline Co	Wisconsin Power and Light Co	08–04–87	B		
ST–3537	Channel Industries Gas Co	Tennessee Gas Pipeline Co	08–04–87	C		
ST–3538	Channel Industries Gas Co	Transcontinental Gas Pipe Line Corp	08–04–87	C		
ST–3539	Enogex Inc	Arkla Energy Resources	08–04–87	C	1–01–88	28 50
ST–3540	Natural Gas Pipeline Co. of America	Winnie Pipeline Co	08–04–87	B		
ST–3541	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	08–04–87	B		
ST–3542	Tennessee Gas Pipeline Co	Peoples Gas Light and Coke Co., et al	08–04–87	B		
ST–3543	Tennessee Gas Pipeline Co	Texas Gas Transmission Corp	08–04–87	B		
ST–3544	Tennessee Gas Pipeline Co	Western Kentucky Gas Co	08–04–87	B		
ST–3545	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	08–04–87	B		
ST–3546	Tennessee Gas Pipeline Co	Valley Resources, Inc	08–04–87	B		
ST–3547	Texas Eastern Transmission Corp	Bay State Gas Co., et al	08–04–87	B		
ST–3548	Texas Eastern Transmission Corp	Town of Middleborough, et al	08–04–87	B		
ST–3549	Texas Eastern Transmission Corp	Boston Gas Co	08–04–87	B		
ST–3550	Texas Eastern Transmission Corp	Connecticut Light & Power Co	08–04–87	B		
ST–3551	Texas Eastern Transmission Corp	Connecticut Natural Gas Corp	08–04–87	B		
ST–3552	Texas Eastern Transmission Corp	Boston Gas Co	08–04–87	B		
ST–3553	Texas Eastern Transmission Corp	Bay State Gas Co	08–04–87	B		
ST–3554	Texas Eastern Transmission Corp	Providence Gas Co	08–04–87	B		
ST–3555	Texas Eastern Transmission Corp	Allied Gas Co	08–04–87	B		
ST–3556	Texas Eastern Transmission Corp	City of Bernie	08–04–87	B		
ST–3557	Texas Eastern Transmission Corp	Connecticut Light & Power Co	08–04–87	B		
ST–3558	Texas Eastern Transmission Corp	Philadelphia Gas Works	08–04–87	B		
ST–3559	United Gas Pipe Line Co	Mobile Gas Service Corp	08–04–87	B		
ST–3560	Northern Natural Gas Co	Iowa Electric Light & Power Co	08–05–87	B		
ST–3561	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	08–05–87	B		
ST–3562	Phillips Gas Pipeline Co	Phillips Natural Gas Co	08–05–87	B		
ST–3563	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	08–05–87	B		

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST-3564	Texas Gas Transmission Corp	Indiana Gas Co., Inc	08-05-87	B		
ST-3565	Texas Gas Transmission Corp	Indiana Gas Co., Inc	08-05-87	B		
ST-3566	Trunkline Gas Co	Consumers Power Co	08-05-87	B		
ST-3567	Trunkline Gas Co	Consumers Power Co	08-05-87	B		
ST-3568	Trunkline Gas Co	United Cities Gas Co., et al	08-05-87	B		
ST-3569	Williams Natural Gas Co	KPL Gas Service Co	08-05-87	B		
ST-3570	Williams Natural Gas Co	Kansas Gas Supply Corp	08-05-87	B		
ST-3571	ANR Pipeline Co	Michigan Gas Utilities Co	08-06-87	B		
ST-3572	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3573	ANR Pipeline Co	Michigan Consolidated Gas Co	08-06-87	B		
ST-3574	ANR Pipeline Co	Wisconsin Public Service Co	08-06-87	B		
ST-3575	ANR Pipeline Co	Northern Indiana Public Service Co	08-06-87	B		
ST-3576	ANR Pipeline Co	Michigan Gas Utilities Co	08-06-87	B		
ST-3577	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3578	ANR Pipeline Co	Wisconsin Public Service Co	08-06-87	B		
ST-3579	ANR Pipeline Co	Llano, Inc	08-06-87	B		
ST-3580	ANR Pipeline Co	Southeastern Michigan Gas Co	08-06-87	B		
ST-3581	ANR Pipeline Co	Wisconsin Public Service Co	08-06-87	B		
ST-3582	ANR Pipeline Co	South Jersey Gas Co	08-06-87	B		
ST-3583	ANR Pipeline Co	Michigan Consolidated Gas Co	08-06-87	B		
ST-3584	ANR Pipeline Co	Southeastern Michigan Gas Co	08-06-87	B		
ST-3585	ANR Pipeline Co	Consumers Power Co	08-06-87	B		
ST-3586	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3587	ANR Pipeline Co	Michigan Gas Utilities Co	08-06-87	B		
ST-3588	ANR Pipeline Co	Madison Gas & Electric Co	08-06-87	B		
ST-3589	ANR Pipeline Co	Excel Intrastate Pipeline Co	08-06-87	B		
ST-3590	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3591	Mountain Fuel Resources, Inc	Mountain Fuel Resources, Inc	08-06-87	B		
ST-3592	Tennessee Gas Pipeline Co	Cranberry Gas Pipeline	08-06-87	B		
ST-3593	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc	08-06-87	B		
ST-3594	Tennessee Gas Pipeline Co	Yankee Pipeline Co	08-06-87	B		
ST-3595	Tennessee Gas Pipeline Co	Commonwealth Gas Co	08-06-87	B		
ST-3596	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	08-06-37	B		
ST87-3597	Tennessee Gas Pipeline Co	Cabot Corp	08-06-87	B		
ST87-3598	Texas Eastern Transmission Corp	Indiana Natural Gas Co	08-06-87	B		
ST87-3599	Texas Eastern Transmission Corp	Mississippi Valley Gas Co	08-06-87	B		
ST87-3600	Texas Eastern Transmission Corp	Southern Connecticut Gas Co	08-06-87	B		
ST87-3601	Texas Eastern Transmission Corp	New Jersey Natural Gas Co., et al	08-06-87	B		
ST87-3602	Texas Eastern Transmission Corp	Elizabethtown Gas Co	08-06-87	B		
ST87-3603	Texas Eastern Transmission Corp	Philadelphia Electric Co	08-06-87	B		
ST87-3604	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	08-06-87	B		
ST87-3605	Transok, Inc	Natural Gas Pipeline Co. of America	08-06-87	C	1-03-88	26.25
ST87-3606	Natural Gas Pipeline Co. of America	Illinois Power Co	08-07-87	B		
ST87-3607	Natural Gas Pipeline Co. of America	City of Richmond	08-07-87	B		
ST87-3608	Natural Gas Pipeline Co. of America	Virginia Natural Gas Co	08-07-87	B		
ST87-3609	Natural Gas Pipeline Co. of America	Mountaineer Gas Co	08-07-87	B		
ST87-3610	Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	08-07-87	B		
ST87-3611	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3612	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-07-87	B		
ST87-3613	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3614	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3615	Algonquin Gas Transmission Co	Fall River Gas Co	08-07-87	B		
ST87-3616	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3617	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3618	Algonquin Gas Transmission Co	Bay State Gas Co	08-07-87	B		
ST87-3619	Algonquin Gas Transmission Co	City of Norwich	08-07-87	B		
ST87-3620	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc	08-07-87	B		
ST87-3621	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-07-87	B		
ST87-3622	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-07-87	B		
ST87-3623	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-07-87	B		
ST87-3624	Algonquin Gas Transmission Co	Town of Middleborough	08-07-87	B		
ST87-3625	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3626	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-07-87	B		
ST87-3627	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3628	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-07-87	B		
ST87-3629	Algonquin Gas Transmission Co	Colonial Gas Company	08-07-87	B		
ST87-3630	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-07-87	B		
ST87-3631	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3632	Algonquin Gas Transmission Co	Bay State Gas Co	08-07-87	B		
ST87-3633	Algonquin Gas Transmission Co	Providence Gas Co	08-07-87	B		
ST87-3634	Algonquin Gas Transmission Co	Bay State Gas Co	08-07-87	B		
ST87-3635	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3636	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc	08-07-87	B		
ST87-3637	Algonquin Gas Transmission Co	Consolidated Edison Co. of NY, Inc	08-07-87	B		
ST87-3638	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-06-87	B		
ST87-3639	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3640	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3641	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3642	Algonquin Gas Transmission Co	City of Norwich	08-07-87	B		
ST87-3643	ANR Pipeline Co	Northwestern Indian Public Service Co	08-07-87	B		
ST87-3644	ANR Pipeline Co	Southeastern Michigan Gas Co	08-07-87	B		
ST87-3645	ANR Pipeline Co	Iowa Electric Light & Power Co	08-07-87	B		
ST87-3646	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		
ST87-3647	ANR Pipeline Co	Wisconsin Natural Gas Co	08-07-87	B		
ST87-3648	ANR Pipeline Co	Northern Intrastate Pipeline Co	08-07-87	B		
ST87-3649	ANR Pipeline Co	Michigan Consolidated Gas Co	08-07-87	B		
ST87-3650	ANR Pipeline Co	South Carolina Pipeline Corp	08-07-87	B		
ST87-3651	ANR Pipeline Co	Consumers Power Co	08-07-87	B		
ST87-3652	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		
ST87-3653	ANR Pipeline Co	Long Island Lighting Co	08-07-87	B		
ST87-3654	ANR Pipeline Co	Wisconsin Natural Gas Co	08-07-87	B		
ST87-3655	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		

Docket No [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3656	ANR Pipeline Co	Central Illinois Light Co	08-07-87	E		
ST87-3657	ANR Pipeline Co	NGC Intrastate Pipeline Co	08-07-87	B		
ST87-3658	ANR Pipeline Co	Wisconsin Natural Gas Co	08-07-87	B		
ST87-3659	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		
ST87-3660	ANR Pipeline Co	Wisconsin Power and Light Co	08-07-87	B		
ST87-3661	ANR Pipeline Co	Michigan Consolidated Gas Co	08-07-87	E		
ST87-3662	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	E		
ST87-3663	Colorado Interstate Gas Co	Quivira Gas Co	08-07-87	B		
ST87-3664	Colorado Interstate Gas Co	Quivira Gas Co	08-07-87	E		
ST87-3665	Colorado Interstate Gas Co	Southern California Gas Co	08-07-87	B		
ST87-3666	Colorado Interstate Gas Co	Southern California Gas Co	08-07-87	B		
ST87-3667	Columbia Gas Transmission Corp	Gas Transport, Inc	08-07-87	E		
ST87-3668	Columbia Gas Transmission Corp	Claysville Natural Gas Company	08-07-87	B		
ST87-3669	Columbia Gas Transmission Corp	Johnson County Gas Co., Inc	08-07-87	B		
ST87-3670	Columbia Gas Transmission Corp	Nycotex Gas Transport	08-07-87	E		
ST87-3671	Columbia Gulf Transmission Co	Nashville Gas Co	08-07-87	B		
ST87-3672	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-07-87	B		
ST87-3673	El Paso Natural Gas Co	Southern California Gas Co	08-07-87	E		
ST87-3674	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-07-87	E		
ST87-3675	El Paso Natural Gas Co	Southwest Gas Corp	08-07-87	E		
ST87-3676	Gas Transport, Inc	Parkersburg Sanitary Bd, Parkersburg	08-07-87	G-EU		
ST87-3677	Northern Natural Gas Co	Southern California Gas Co	08-07-87	E		
ST87-3678	Northern Natural Gas Co	Houston Pipe Line Co	08-07-87	E		
ST87-3679	Washington Gas Light Co		08-07-87	C	1-04-88	21.70
ST87-3680	Washington Gas Light Co		08-07-87	C	1-04-88	21.10
ST87-3681	Williams Natural Gas Co	Kansas Power and Light Co	08-07-87	E		
ST87-3682	ANR Pipeline Co	City of New Boston	08-10-87	E		
ST87-3683	ANR Pipeline Co	Columbia Gas of Pennsylvania, Inc	08-10-87	B		
ST87-3684	ANR Pipeline Co	Wisconsin Gas Co	08-10-87	B		
ST87-3685	ANR Pipeline Co	Michigan Gas Utilities Co	08-10-87	E		
ST87-3686	ANR Pipeline Co	North Central Public Service Co	08-10-87	B		
ST87-3687	ANR Pipeline Co	Northern Indiana Fuel & Light Co	08-10-87	B		
ST87-3688	ANR Pipeline Co	Wisconsin Natural Gas Co	08-10-87	B		
ST87-3689	ANR Pipeline Co	Consumers Power Co	08-10-87	B		
ST87-3690	ANR Pipeline Co	City of Unionville	08-10-87	B		
ST87-3691	ANR Pipeline Co	Central Illinois Light Co	08-10-87	E		
ST87-3692	ANR Pipeline Co	City of Milan	08-10-87	E		
ST87-3693	ANR Pipeline Co	Consumers Power Co	08-10-87	B		
ST87-3694	ANR Pipeline Co	Wisconsin Public Service Co	08-10-87	E		
ST87-3695	ANR Pipeline Co	Wisconsin Natural Gas Co	008-10-87	E		
ST87-3696	ANR Pipeline Co	Wisconsin Natural Gas Co	08-10-87	B		
ST87-3697	ANR Pipeline Co	Michigan Power Co	08-10-87	B		
ST87-3698	Blue Dolphin Pipe Line Co	Dow Chemical Co	08-10-87	G-EU		
ST87-3699	Columbia Gulf Transmission Co	Monterey Pipeline Co	08-10-87	B		
ST87-3700	Gas Gathering Corp	Southern Natural Gas Co	08-10-87	G		
ST87-3701	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	08-10-87	B		
ST87-3702	Sea Robin Pipeline Co	Columbia Gas of Pennsylvania, Inc	08-10-87	B		
ST87-3703	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	08-10-87	B		
ST87-3704	United Gas Pipe Line Co	South Carolina Pipeline Corp	08-10-87	B		
ST87-3705	United Gas Pipe Line Co	Boston Gas Co., et al	08-10-87	B		
ST87-3706	United Gas Pipe Line Co	Alabama Gas Corp., et al	08-10-87	B		
ST87-3707	United Gas Pipe Line Co	Pine Pipeline Co	08-10-87	B		
ST87-3708	Acadian Gas Pipeline System	Transcontinental Gas Pipe Line Corp	08-11-87	C	01-08-88	15.50
ST87-3709	Acadian Gas Pipeline System	Transcontinental Gas Pipe Line Corp	08-11-87	C	01-08-88	15.50
ST87-3710	Acadian Gas Pipeline System	Florida Gas Transmission Co	08-11-87	C	01-08-88	15.50
ST87-3711	Acadian Gas Pipeline System	Piedmont Natural Gas Co	08-11-87	C	01-08-88	15.50
ST87-3712	Natural Gas Pipeline Co. of America	Central Illinois Light Co	08-11-87	E		
ST87-3713	Natural Gas Pipeline Co. of America	Iowa Southern Utilities Co	08-11-87	E		
ST87-3714	Michigan Gas Storage Co	Michigan Gas Utilities Co	08-11-87	E		
ST87-3715	Tennessee Gas Pipeline Co	Washington Gas Light Co., et al	08-11-87	B		
ST87-3716	Williams Natural Gas Co	Louisiana Gas Marketing Co	08-11-87	E		
ST87-3717	El Paso Natural Gas Co	El Paso Gas Transportation Co	08-12-87	E		
ST87-3718	Natural Gas Pipeline Co. of America	Midwest Gas Co., et al	08-12-87	B		
ST87-3719	Natural Gas Pipeline Co. of America	North Shore Gas Co	08-12-87	E		
ST87-3720	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co., et al	08-12-87	B		
ST87-3721	Tennessee Gas Pipeline Co	Valley Gas Co	08-12-87	D		
ST87-3722	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	08-12-87	B		
ST87-3723	Valero Transmission, L.P	Texas Eastern Transmission Co	08-12-87	C		
ST87-3724	Valero Transmission, L.P	El Paso Natural Gas Co	08-12-87	C		
ST87-3725	Taft Pipeline Co	Yankee Pipeline Co	08-12-87	C	01-09-88	20.60
ST87-3726	Taft Pipeline Co	Northern Natural Gas Co	08-12-87	C	01-09-88	20.60
ST87-3727	Somerset Gas Service	Columbia Gulf Transmission Co	07-28-87	C		
ST87-3728	Somerset Gas Service	Texas Eastern Transmission Corp	07-28-87	C		
ST87-3729	Arkla Energy Resources	New York State Electric and Gas Co	08-13-87	E		
ST87-3730	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	08-13-87	B		
ST87-3731	Panhandle Eastern Pipe Line Co	Consumers Powr Co	08-13-87	B		
ST87-3732	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	08-13-87	E		
ST87-3733	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-14-87	B		
ST87-3734	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-14-87	B		
ST87-3735	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-14-87	E		
ST87-3736	El Paso Natural Gas Co	Llano, Inc	08-14-87	B		
ST87-3737	El Paso Natural Gas Co	Southern California Gas Co	08-14-87	B		
ST87-3738	El Paso Natural Gas Co	Westar Transmission Co	08-14-87	B		
ST87-3739	Northern Natural Gas Co	Westar Transmission Co	08-14-87	B		
ST87-3740	Ong Transmission Co	ANR Pipeline Co	08-14-87	C	01-11-88	10.00
ST87-3741	Texas Gas Transmission Corp	Neches Gas Distribution Co	08-14-87	E		
ST87-3742	Texas Gas Transmission Corp	Northern Intrastate Pipeline Co	08-14-87	B		
ST87-3743	Texas Gas Transmission Corp	Northern Indiana Fuel & Light Co	08-14-87	B		
ST87-3744	Williams Natural Gas Co	Kansas Power and Light Co	08-14-87	B		
ST87-3745	Williams Natrual Gas Co	Associated Intrastate Pipeline Co	08-14-87	B		
ST87-3746	Tennessee Gas Pipeline Co	Connecticut Natural Gas Co., et al	08-14-87	E		
ST87-3747	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al	08-14-87	B		

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ST87-3748	ANR Pipeline Co	Associated Natrual Gas Co	08-14-87	B		
ST87-3749	ANR Pipeline Co	Wisconsin Public Service Co	08-14-87	B		
ST87-3750	ANR Pipeline Co	Northern Indiana Public Service Co	08-14-87	B		
ST87-3751	ANR Pipeline Co	Northern Indiana Public Service Co	08-14-87	B		
ST87-3752	Colorado Interstate Gas Co	Pacific Gas and Electric Co	08-14-87	B		
ST87-3753	ANR Pipeline Co	Wisconsin Public Service Co	08-14-87	B		
ST87-3754	ANR Pipeline Co	Columbia Gas of Ohio, Inc.	08-14-87	B		
ST87-3755	ANR Pipeline Co	Fountaintown Gas Co	08-14-87	B		
ST87-3756	ANR Pipeline Co	Yankee Pipeline Co	08-14-87	B		
ST87-3757	ANR Pipeline Co	Madison Gas & Electric Co	08-14-87	B		
ST87-3758	ANR Pipeline Co	St. Joseph Light & Power Co	08-14-87	B		
ST87-3759	ANR Pipeline Co	Michigan Power Co	08-14-87	B		
ST87-3760	ANR Pipeline Co	Iowa Southern Utilities Co	08-14-87	B		
ST87-3761	ANR Pipeline Co	Lamoni Municipal Utilities	08-14-87	B		
ST87-3762	ANR Pipeline Co	Michigan Consolidated Gas Co	08-14-87	B		
ST87-3763	ANR Pipeline Co	Columbia Gas of Pennsylvania, Inc.	08-14-87	B		
ST87-3764	ANR Pipeline Co	Ohio Gas Co	08-14-87	B		
ST87-3765	ANR Pipeline Co	Louisiana Gas Marketing Co	08-14-87	B		
ST87-3766	ANR Pipeline Co	Michigan Consolidated Gas Co	08-14-87	B		
ST87-3767	Columbia Gulf Transmission Co	Northern Natural Gas Co	08-17-87	G		
ST87-3768	Mid Louisiana Gas Co	Excel Intrastate Pipeline Co	08-17-87	B		
ST87-3769	Northern Natural Gas Co	Houston Pipe Line Co	08-17-87	B		
ST87-3770	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3771	ANR Pipeline Co	Wisconsin Gas Co	08-17-87	B		
ST87-3772	ANR Pipeline Co	City of Aledo	08-17-87	B		
ST87-3773	ANR Pipeline Co	Pans Henry Co. Public Utility Dist.	08-17-87	B		
ST87-3774	ANR Pipeline Co	City of Princeton	08-17-87	B		
ST87-3775	ANR Pipeline Co	Northern Indiana Public Service Co	08-17-87	B		
ST87-3776	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3777	ANR Pipeline Co	Michigan Consolidated Gas Co	08-17-87	B		
ST87-3778	ANR Pipeline Co	Northern Indiana Public Service Co	08-17-87	B		
ST87-3779	ANR Pipeline Co	Wicsonsin Natural Gas Co	08-17-87	B		
ST87-3780	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3781	ANR Pipeline Co	Wisconsin Fuel and Light Co	08-17-87	B		
ST87-3782	ANR Pipeline Co	Northern Illinois Gas Co	08-17-87	B		
ST87-3783	ANR Pipeline Co	Michigan Power Co	08-17-87	B		
ST87-3784	ANR Pipeline Co	West Ohio Gas Co	08-17-87	B		
ST87-3785	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3786	ANR Pipeline Co	Lousiana Industrial Gas Supply System	08-17-87	B		
ST87-3787	ANR Pipeline Co	Bridgeline Gas Distribution Co	08-17-87	B		
ST87-3788	ANR Pipeline Co	Great River Gas Co	08-17-87	B		
ST87-3789	ANR Pipeline Co	Missouri Valley Natural Gas Co	08-17-87	B		
ST87-3790	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	08-17-87	B		
ST87-3791	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al.	08-17-87	B		
ST87-3792	Tennessee Gas Pipeline Co	Mountaineer Gas Co., et al.	08-17-87	B		
ST87-3793	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	08-17-87	B		
ST87-3794	Tennessee Gas Pipeline Co	Berkshire Gas Co	08-17-87	B		
ST87-3795	Williams Natural Gas Co	Associated Intrastate Pipeline Co	08-17-87	B		
ST87-3796	Williams Natural Gas Co	Kansas Power and Light Co	08-17-87	B		
ST87-3797	Williams Natural Gas Co	Peoples Natural Gas Co	08-17-87	B		
ST87-3798	Williams Natural Gas Co	City of Osage City	08-18-87	B		
ST87-3799	Arkla Energy Resources	Southern Connecticut Gas Co	08-18-87	B		
ST87-3800	Arkla Energy Resources	Arkansas Louisiana Gas Co	08-18-87	B		
ST87-3801	Arkla Energy Resources	Neches Gas Distribution Co	08-18-87	B		
ST87-3802	Texas Eastern Transmission Corp	City of Norwich	08-19-87	B		
ST87-3803	Texas Eastern Transmission Corp	National Fuel Gas Distribution Corp	08-19-87	B		
ST87-3804	Tennessee Gas Pipeline Co	Connecticut Light & Power Co	08-19-87	B		
ST87-3805	El Paso Natural Gas Co	Southern California Gas Co	08-19-87	B		
ST87-3806	Williams Natural Gas Co	Taft Pipeline Co	08-19-87	B		
ST87-3807	Panhandle Eastern Pipe Line Co	Columbia Gas of Va, Inc., et al.	08-19-87	B		
ST87-3808	Panhandle Eastern Pipe Line Co	Union Electric Co	08-19-87	B		
ST87-3809	Panhandle Eastern Pipe Line Co	Ohio Gas Co	08-19-87	B		
ST87-3810	Panhandle Eastern Pipe Line Co	Bishop Pipeline Corp	08-19-87	B		
ST87-3811	Panhandle Eastern Pipe Line Co	Miami Pipeline Co	08-19-87	B		
ST87-3812	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	08-19-87	B		
ST87-3813	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	08-19-87	B		
ST87-3814	Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	08-19-87	B		
ST87-3815	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	08-19-87	B		
ST87-3816	ANR Pipeline Co	Consumers Power Co	08-19-87	B		
ST87-3817	ANR Pipeline Co	Great River Gas Co	08-19-87	B		
ST87-3818	ANR Pipeline Co	City of Albany	08-19-87	B		
ST87-3819	ANR Pipeline Co	Wisconsin Natural Gas Co	08-19-87	B		
ST87-3820	ANR Pipeline Co	Wisconsin Public Service Co	08-19-87	B		
ST87-3821	ANR Pipeline Co	Columbia Gas of Ohio, Inc	08-19-87	B		
ST87-3822	ANR Pipeline Co	Consumers Power Co	08-19-87	B		
ST87-3823	ANR Pipeline Co	Llano, Inc.	08-19-87	B		
ST87-3824	ANR Pipeline Co	Consumers Power Co	08-19-87	B		
ST87-3825	ANR Pipeline Co	Wisconsin Public Service Co	08-19-87	B		
ST87-3826	ANR Pipeline Co	Ohio Gas Co	08-19-87	B		
ST87-3827	Louisiana Intrastate Gas Corp	Southern Natural Gas Co	08-20-87	C	1-17-88	27.40
ST87-3828	Trunkline Gas Co	Consumers Power Co	08-20-87	B		
ST87-3829	Houston Pipe Line Co	Texas Estern Transmission Corp	08-20-87	C		
ST87-3830	Houston Pipe Line Co	Southern Natural Gas Co	08-20-87	C		
ST87-3831	Houston Pipe Line Co	Public Service Electric and Gas Co	08-20-87	C		
ST87-3832	Houston Pipe Line Co	El Paso Natural Gas Co	08-20-87	C		
ST87-3833	Oasis Pipe Line Co	El Paso Natural Gas Co	08-20-87	C		
ST87-3834	Tennessee Gas pipeline Co	Pontchartrain Natural Gas System	08-20-87	B		
ST87-3835	Panhandle Eastern Pipe Line Co	Columbia Gas of Ohio, Inc	08-20-87	B		
ST87-3836	Tennessee Gas Pipeline Co	Ouvra Gas Co	08-21-87	B		
ST87-3837	Sea Robin Pipeline Co	Washington Gas Light Co., et al.	08-21-87	B		
ST87-3838	United Gas Pipe Line Co	Clajon Gas Co	08-21-87	B		
ST87-3839	United Gas Pipe Line Co	Supenn Pipeline Co	08-21-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST87-3840	United Gas Pipe Line Co	Clajon Gas Co	08-21-87	B		
ST87-3841	Tennessee Gas Pipeline Co	Southern Natural Gas Co	08-24-87	G		
ST87-3842	Tennessee Gas Pipeline Co	Peoples Gas Light and Coke Co., et al	08-24-87	B		
ST87-3843	Valley Gas Transmission, Inc	Southern Connecticut Gas Co., et al	08-24-87	B		
ST87-3844	Trunkline Gas Co	Consumers Power Co	08-24-87	B		
ST87-3845	Trunkline Gas Co	Consumers Power Co	08-24-87	B		
ST87-3846	Panhandle Eastern Pipe Line Co	Columbia Gas of Pa., Inc., et al	08-24-87	B		
ST87-3847	Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	08-24-87	B		
ST87-3848	Texas Eastern Tmsmission Corp	Pulic Service Electric and Gas Co	08-24-87	B		
ST87-3849	Texas Eastern Transmission Corp	Boston Gas Co	08-24-87	B		
ST87-3850	Texas Eastern Transmission Corp	Connecticut Natural Gas Corp	08-24-87	B		
ST87-3851	Texas Eastern Transmission Corp	Colonial Gas Company	08-24-87	B		
ST87-3852	ANR Pipeline Co	SoutheasternMichigan Gas Co	08-24-87	B		
ST87-3853	Trunkline Gas Co	Consumers Power Co	08-24-87	B		
ST87-3854	ANR Pipeline Co	Michigan Consolidated Gas Co	08-24-87	B		
ST87-3855	ANR Pipeline Co	Wisconsin Power and Light Co	08-24-87	B		
ST87-3856	ANR Pipeline Co	Madison Gas & Electric Co	08-24-87	B		
ST87-3857	ANR Pipeline Co	Wisconsin Public Service Co	08-24-87	B		
ST87-3858	ANR Pipeline Co	Wisconsin Public Service Co	08-24-87	B		
ST87-3859	ANR Pipeline Co	Peoples Natural Gas Co	08-24-87	B		
ST87-3860	ANR Pipeline Co	Acadian Gas Pipeline System	08-24-87	B		
ST87-3861	ANR Pipeline Co	Michigan Consolidated Gas Co	08-24-87	B		
ST87-3862	ANR Pipeline Co	Michigan Gas Utilities Co	08-24-87	B		
ST87-3863	ANR Pipeline Co	Northern Indiana Public Service Co	08-24-87	B		
ST87-3864	ANR Pipeline Co	Madison Gas & Electric Co	08-24-87	B		
ST87-3865	ANR Pipeline Co	Michigan Consolidated Gas Co	08-24-87	B		
ST87-3866	ANR Pipeline Co	Llano, Inc	08-24-87	B		
ST87-3867	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3868	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3869	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3870	ANR Pipeline Co	Coastal States Gas Transmission Co	08-24-87	B		
ST87-3871	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3872	ANR Pipeline Co	Michigan Gas Utilities Co	08-24-87	B		
ST87-3873	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3874	Acadian Gas Pipeline System	ANR Pipeline Co	08-25-87	C	01-22-88	15.50
ST87-3875	Panhandle Eastern Pipe Line Co	Columbia Gas of Pa, Inc., et al	08-25-87	B		
ST87-3876	Tennessee Gas Pipeline Co	Alabama Gas Corp., et al	08-25-87	B		
ST87-3877	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al	08-25-87	B		
ST87-3878	Trunkline Gas Co	Consumers Power Co	08-25-87	B		
ST87-3879	Trunkline Gas Co	Consumers Power Co	08-25-87	B		
ST87-3880	Trunkline Gas Co	Consumers Power Co	08-25-87	B		
ST87-3881	United Gas Pipe Line Co	Eastex Gas Transmission Co	08-25-87	B		
ST87-3882	Williams Natural Gas Co	Yankee Pipeline Co	08-25-87	B		
ST87-3883	Williams Natural Gas Co	KPL Gas Service Co	08-25-87	B		
ST87-3884	Williams Natural Gas Co	Golden Gas Energies, Inc	08-25-87	B		
ST87-3885	ANR Pipeline Co	Ohio Gas Co	08-25-87	B		
ST87-3886	ANR Pipeline Co	Michigan Consolidated Gas Co	08-25-87	B		
ST87-3887	ANR Pipeline Co	Michigan Consolidated Gas Co	08-25-87	B		
ST87-3888	El Paso Natural Gas Co	Southern California Gas Co	08-25-87	B		
ST87-3889	El Paso Natural Gas Co	Battle Creek Gas Co., et al	08-25-87	B		
ST87-3890	El Paso Natural Gas Co	Southern California Gas Co	08-25-87	B		
ST87-3891	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3892	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3893	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	08-26-87	B		
ST87-3894	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	08-26-87	B		
ST87-3895	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3896	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3897	Consolidated Gas Transmission Corp	North Penn Gas Co	08-26-87	B		
ST87-3898	Consolidated Gas Transmission Corp	Hope Gas, Inc.	08-26-87	B		
ST87-3899	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3900	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3901	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3902	Consolidated Gas Transmission Corp	Niagara Mohawk power Corp	08-26-87	B		
ST87-3903	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3904	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3905	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3906	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3907	Northern Natural Gas Co	Panhandle Gas Co	08-26-87	B		
ST87-3908	Tennessee Gas Pipeline Co	Commonwealth Gas Co	08-26-87	B		
ST87-3909	Tennessee Gas Pipeline Co	Quivira Gas Co	08-26-87	B		
ST87-3910	Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	08-26-87	B		
ST87-3911	Tennessee Gas Pipeline Co	UGI Corp	08-26-87	B		
ST87-3912	Texas Eastern Transmission Corp	Southern Connecticut Gas Co	08-26-87	B		
ST87-3913	Texas Eastern Transmission Corp	Providence Gas Co., et al	08-26-87	B		
ST87-3914	Texas Eastern Transmission Corp	Connecticut Natural Gas Corp	08-26-87	B		
ST87-3915	Trunkline Gas Co	Consumers Power Co	08-26-87	B		
ST87-3916	Trunkline Gas Co	Southeastern Michigan Gas Co	08-26-87	B		
ST87-3917	Trunkline Gas Co	Consumers Power Co	08-26-87	B		
ST87-3918	Trunkline Gas Co	Consumers Power Co	08-26-87	B		
ST87-3919	Williams Natural Gas Co	City of Humboldt	08-26-87	B		
ST87-3920	Arkla Energy Resources	Phillips Natural Gas. Co	08-27-87	B		
ST87-3921	Arkla Energy Resources	Connecticut Natural Gas Corp	08-27-87	B		
ST87-3922	Equitable Gas Co	Columbia Gas Transmission Corp	08-27-87	B		
ST87-3923	Tennessee Gas Pipeline Co	City of Richmond, et al	08-27-87	B		
ST87-3924	Tennessee Gas Pipeline Co	West Tennessee Public Utility Dist	08-27-87	B		
ST87-3925	Texas Gas Transmission Corp	City of Linton	08-27-87	B		
ST87-3926	Texas Gas Transmission Corp	CSX Intrastate Gas Co	08-27-87	B		
ST87-3927	Texas Gas Transmission Corp	Western Kentucky Gas Co	08-27-87	B		
ST87-3928	Texas Gas Transmission Corp	Western Kentucky Gas Co	08-27-87	B		
ST87-3929	Texas Gas Transmission Corp	Memphis Light, Gas & Water Div., et al	08-27-87	B		
ST87-3930	Texas Gas Transmission Corp	Western Kentucky Gas Co	08-27-87	B		
ST87-3931	Texas Gas Transmission Corp	Indiana Gas Co. Inc	08-27-87	B		

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ST87-3932	Texas Gas Transmission Corp	Hoosier Gas Corp	08-27-87	B		
ST87-3933	Texas Gas Transmission Corp	Baltimore Gas & Electric Co., et al.	08-27-87	B		
ST87-3934	Texas Gas Transmission Corp	Hoosier Gas Corp	08-27-87	B		
ST87-3935	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3936	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3937	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3938	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-28-87	B		
ST87-3939	Algonquin Gas Transmission Co	North Attleboro Gas Co	08-28-87	B		
ST87-3940	Algonquin Gas Transmission Co	Fall River Gas Co	08-28-87	B		
ST87-3941	Algonquin Gas Transmission Co	Providence Gas Co	08-28-87	B		
ST87-3942	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3943	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3944	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-28-87	B		
ST87-3945	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-28-87	B		
ST87-3946	Algonquin Gas Transmission Co	Colonial Gas Company	08-28-87	B		
ST87-3947	Algonquin Gas Transmission Co	Town of Middleborough	08-2-87	B		
ST87-3948	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc.	08-28-87	B		
ST87-3949	Algonquin Gas Transmission Co	Bay State Gas Co	08-28-87	B		
ST87-3950	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3951	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-28-87	B		
ST87-3952	Algonquin Gas Transmission Co	Connecticut Light & Power co.	08-28-87	B		
ST87-3953	Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	08-28-87	B		
ST87-3954	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc.	08-28-87	B		
ST87-3955	Algonquin Gas Transmission Co	Providence Gas Co	08-28-87	B		
ST87-3956	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-28-87	B		
ST87-3957	Algonquin Gas Transmission Co	Providence Gas	08-28-87	B		
ST87-3958	Algonquin Gas Transmission Co	North Attleboro Gas Co	08-28-87	B		
ST87-3959	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3960	Algonquin Gas Transmission Co	Colonial Gas Company	08-28-87	B		
ST87-3961	Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	08-28-87	B		
ST87-3962	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-28-87	B		
ST87-3963	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-28-87	B		
ST87-3964	El Paso Natural Gas Co	Southern California Gas Co	08-28-87	B		
ST87-3965	Northern Natural Gas Co	Peoples Natural Gas Co	08-28-87	B		
ST87-3966	Seagull Energy Corp	Transcontinental Gas Pipe Line Corp	08-28-87	C		
ST87-3967	Superior Offshore Pipeline Co	Tennessee River Intra. Gas Co., et al.	08-28-87	B		
ST87-3968	Transcontinental Gas Pipe Line Corp	Yankee Taft Co	08-28-87	B		
ST87-3969	Transcontinental Gas Pipe Line Corp	Rockland Corp	08-28-87	B		
ST87-3970	Columbia Gulf Transmission Co	Southern Natural Gas Co	08-31-87	G		
ST87-3971	Columbia Gulf Transmission Co	Florida Gas Transmission Co	08-31-87	G		
ST87-3972	Delhi Gas Pipeline Corp	Texas Gas Transmission Corp	08-31-87	C		
ST87-3973	Enogex Inc.		08-31-87	C	1-26-88	28.50
ST87-3974	Enogex Inc.		08-31-87	C	1-26-88	28.50
ST87-3975	Northern Natural Gas Co	Northern Illinois Gas Co	08-31-87	B		
ST87-3976	Northern Natural Gas Co	Iowa Electric Light & Power Co	08-31-87	B		
ST87-3977	Northern Natural Gas Co	City of Freemont NE	08-31-87	B		
ST87-3978	Northern Natural Gas Co	Enron Industrial Natural Gas Co	08-31-87	B		
ST87-3979	Mississippi River Transmission Corp	Laclede Gas Co	08-31-87	B		
ST87-3980	ONG Transmission Co	Phillips Gas Pipeline Co	08-31-87	C	1-26-88	10.00
ST87-3981	Sabine Pipe Line Co	Longhorn Pipeline Co	08-31-87	B		
ST87-3982	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	08-31-87	G		
ST87-3983	Tennessee Gas Pipeline Co	Commonwealth Gas Co	08-31-87	B		
ST87-3984	Tennessee Gas Pipeline Co	Wellhead Ventures Corp	08-31-87	B		
ST87-3985	Transwestern Pipeline Co	Southern California Gas Co	08-31-87	B		
ST87-3986	Transwestern Pipeline Co	Southern California Gas Co	08-31-87	B		
ST87-3987	Transwestern Pipeline Co	Canadian River Gas Co	08-31-87	B		
ST87-3988	Transwestern Pipeline Co	Southern California Gas Co	08-31-87	B		
ST87-3989	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3990	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3991	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3992	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3993	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3994	Trunkline Gas Co	Northern Indiana Fuel & Light Co., et al.	08-31-87	B		
ST87-3995	Seagull Energy Corp	Florida Gas Transmission Co	08-31-87	C		
ST87-3996	Northern Natural Gas Co	Amoco Gas Co	08-28-87	B		
ST87-3997	Northern Natural Gas Co	Yankee Pipeline Co	08-28-87	B		
ST87-3998	Northern Natural Gas Co	Rockland Pipeline System	08-28-87	B		

Below are eleven revised petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period.

ST86-1010	Acadian Gas Pipeline System	Columbia Gas Transmission Corp	08-11-87	C	01-06-88	15.50
ST86-1702	Acadian Gas Pipeline System	Columbia Gas Transmission Corp	08-11-87	C	01-06-88	15.50
ST86-2505	Acadian Gas Pipeline System	Louisiana Industrial Gas Supply System	08-11-87	C	01-06-88	15.50
ST87-0430	Acadian Gas Pipeline System	Bridgeline Gas Distribution Co	08-11-87	C	01-06-88	15.50
ST87-0566	Acadian Gas Pipeline System	Tennessee Gas Pipeline Co	08-11-87	C	01-06-88	15.50
ST87-0569	Acadian Gas Pipeline System	Pontchartrain Natural Gas Co	08-11-87	C	01-06-88	15.50
ST87-1126	Acadian Gas Pipeline System	Columbia Gas Transmission Corp	08-11-87	C	01-06-88	15.50
ST87-1525	Acadian Gas Pipeline System	Spindletop Gas Distribution System	08-11-87	C	01-06-88	15.50
ST87-1526	Acadian Gas Pipeline System	Columbia Gas of Ohio, Inc., et al.	08-11-87	C	01-06-88	15.50
ST87-1527	Acadian Gas Pipeline System	Florida Gas Transmission Co	08-11-87	C	01-06-88	15.50
ST87-1974	Acadian Gas Pipeline System	Columbia Gas of Ohio, Inc	08-11-87	C	01-06-88	15.50

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42372, October 18, 1985).

[2] The intrastate Pipeline has sought commission approval of its transportation rate pursuant to § 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 87-23129 Filed 10-6-87; 8:45 am]
BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

October 2, 1987.

The Federal Energy Regulatory Commission by order issued February 10, 1987, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that tentative valuations are under consideration for the common carrier by pipeline listed below:

1982, 1983 Consolidated Reports Valuation Docket No. PV-1475-000 Sonat Oil Transmission Inc., P.O. Box 2563, Birmingham, Alabama 35202

On or before November 9, 1987, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in these valuations may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in these proceedings.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 87-23130 Filed 10-6-87; 8:45 am]
BILLING CODE 6717-01-M

Western Area Power Administration

Central Valley Project; Proposed Power and Transmission Rates Adjustments, Revenue Adjustment Clause Evidentiary Hearing

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Hearing Procedures on Revenue Adjustment Clause, Western File No. 1988 CVP RAC Hearing; and Extension of the Consultation and Comment Period for the Central Valley Project Proposed Power and Transmission Rates Adjustments.

SUMMARY: On August 4, 1987 (52 FR 28864), the Western Area Power Administration (Western) proposed a power rate decrease and a transmission rate increase for the Central Valley Project (CVP), a multipurpose Federal water project located in northern California. The CVP power rates are set as low as practicable consistent with sound business principles and must, by law, also be sufficient to recover the annual power expenses plus repay the power and certain nonpower investments of the CVP within the prescribed time periods.

Unlike other Western projects, the CVP power marketing program is significantly supported by power purchases made from various sources including utilities in the Pacific Northwest and the Pacific Gas and Electric Company.

As part of the proposed CVP rates for firm power sales, Western has proposed the use of a revenue adjustment clause (RAC) that would periodically adjust for differences between estimated and actual purchased power expenses and, at the same time, adjust for differences between estimated and actual revenue from capacity and energy sales. The net result of these adjustments would be surcharged or credited to the CVP customers' subsequent bills. Adjustments would occur on a 6-month cycle. The limit to any 6-month adjustment would be $15 million overall.

In addition to the basic RAC, Western is proposing an automatic capacity rate adjustment provision. This provision is proposed as a subsection of the RAC and would provide for a specific adjustment to the adopted CVP capacity rate for each megawatt of contract dependable capacity credit received or lost (pursuant to Western's Integration Agreement with the Pacific Gas and Electric Company) for firm power purchases made by Western; provided that such credit had not already been considered in the development of the adopted capacity rate.

The CVP annually sells over 500 million kilowatthours of electric energy for purposes other than resale. Because of the CVP's volume of this type of sale, Western is required to comply with certain provisions of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. sections 2601-2645. PURPA sections 2623 and 2625(e) require the nonregulated electric utility to give public notice and conduct an evidentiary hearing, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. sections 500-576, prior to adopting any PURPA standard such as the RAC.

Western will conduct a hearing under PURPA section 2602(6)(B) and the APA, 5 U.S.C. sections 554 and 556-557, in establishing the RAC. Opportunities will be available for interested persons to review the proposed RAC, to participate in the hearing, and to submit written testimony. During the development of the record for the RAC, the Hearing Officer will evaluate all written and oral testimony submitted during the hearing. The Hearing Officer will issue findings of fact and law after all testimony and briefs are submitted.

The document titled "Western Area Power Administration United States Department of Energy Rules of Procedure Governing Public Utility Regulatory Policies Act Hearing" (Procedures) has been prepared specifically for this RAC evidentiary hearing and has been mailed to all CVP customers. A copy of the Procedures will be provided to anyone upon request directed to the Area Manager or the General Counsel listed below.

ADDRESS: All notices of participation or intervention, motions, written testimony, comments, data requests, briefs, letters, or other documents related to the hearing should be addressed to: Hearing Officer, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825.

Western requests that all comments and documents submitted as part of the Official Record compiled in the process of developing the revenue adjustment clause contain the file number designation: 1988 CVP RAC Hearing.

FOR FURTHER INFORMATION CONTACT:

Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 978-4418

or

Mr. Michael S. Hacskaylo, General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1534.

DATES: A prehearing conference to organize the hearing presentations will be held at 9 a.m. on November 4, 1987, at the Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento,

California. Registration for the prehearing conference will begin at 8:30 a.m. The evidentiary hearing will be held at 10 a.m. on November 10, 1987, at the same location.

Evidentiary Hearing: A verbatim transcript will be made of both the prehearing conference and the evidentiary hearing.

The discovery period will begin with the issuance of this notice and end on November 6, 1987. Any CVP customer or interested person may make a written request for data from Western in accordance with section 8(a) of the Procedures. Pursuant to the Procedures, Western will provide the requested data within 5 working days.

Notices of participation must be received by the Hearing Officer at or before the prehearing conference on November 4, 1987. Participants may make oral comments at the evidentiary hearing and/or submit written comments. Such written comments must be submitted at or before the date of the evidentiary hearing, to be assured of consideration in the findings of facts and law. Any person filing comments at or before the prehearing conference on November 4, 1987, shall be deemed a participant whether or not such person has filed a notice of participation.

All persons desiring to be a party with full procedural rights at the evidentiary hearing (right to cross-examine, etc.), must file a notice of intervention which must be received by the Hearing Officer at or before the prehearing conference on November 4, 1987. Any person filing a notice of intervention who does not file timely written testimony shall be deemed to be a participant. All parties must file written testimony which must be received by the Hearing Officer at or before the prehearing conference on November 4, 1987.

Western's written testimony on the RAC will be available on or before October 14, 1987, to all CVP customers, previously identified parties, and such other interested parties who request such testimony from the Area Manager, Sacramento Area Office at the address shown above during the discovery period.

When the evidentiary hearing has concluded, parties will be allowed to submit briefs to the Hearing Officer. Briefs should be submitted on or before November 20, 1987, to be considered in the findings of fact and law. Briefs on the RAC shall be based on the written testimony and on the record of the evidentiary hearing.

The Hearing Officer will issue a findings of fact and law on or before December 10, 1987.

Rate Adjustment Consultation and Comment Period: Upon publication of the **Federal Register** notice on August 4, 1987, the consultation and comment period for the CVP proposed power and transmission rates adjustments began, and would end November 2, 1987. However, in order to incorporate the activities associated with the revenue adjustment clause evidentiary hearing, the end of the consultation and comment period has been extended to November 25, 1987.

Schedule of Events

Discovery period begins—October 7, 1987

Sacramento Area Office testimony becomes available—October 14, 1987**

Prehearing conference—November 4, 1987

Notice of participation—November 4, 1987*

Filing of a notice of intervention—November 4, 1987*

Filing of written testimony—November 4, 1987*

Discovery period ends—November 6, 1987

Evidentiary hearing—November 10, 1987

Submittal of briefs—November 20, 1987**

CVP rate adjustment consultation and comment period ends—November 25, 1987

Finding of fact and law issued by the Hearing Officer—December 10, 1987**

*At or before the prehearing conference.
** On or before.

SUPPLEMENTARY INFORMATION: Under section 553(b)(3)(A) of the APA, rules of agency organization, procedure, or practice are exempt from notice and comment rulemaking procedures (5 U.S.C. 553(b)(3)(A)). In *Southern California Edison* v. *FERC*, 770 F. 2d 779 (9th Cir. 1985), the court held that the procedural rules of agency organization, procedure, or practice are exempt from the notice and comment requirement of the APA. Western finds that these rules are procedural, and therefore are exempt from notice and comment rulemaking procedures. Accordingly, the procedures are effective upon publication of this notice.

Issued in Golden, Colorado, September 29, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87-23128 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/49A; FRL-3273-9]

Preliminary Determination To Cancel Certain Registrations of Tributyltin Products Used as Antifoulants; Availability of Technical Support Document and Draft Notice of Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination.

SUMMARY: EPA issued a Notice of Initiation of a Special Review of Certain Pesticide Products Containing Tributyltins (TBT) Used as Antifoulants. This Notice sets forth EPA's preliminary determination regarding the continued registration of these products and EPA's assessment of the risks and benefits associated with the use of tributyltin antifouling paint products, and announces EPA's proposed decision to allow continued registration of TBT pesticide products only if registrants modify certain terms and conditions of registration as noted herein. This Notice also announces availability of the Tributyltin Special Review Technical Support Document and a Draft Notice of Intent to Cancel. The Technical Support Document and accompanying scientific reviews constitute the technical documents in support of the action.

DATE: Written comments must be received on or before January 5, 1988.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/49A" by mail to.

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment with the CBI portions deleted must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The tributyltin public docket, which contains all non-

CBI written comments and the correspondence index, will be available for public inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail: Janet L. Andersen, Special Review Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006F, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–0276).

Copies of the Tributyltin Technical Support Document and draft Notice of Intent to Cancel are available from the contact person at the address given above. To request information pertaining to the Tributyltin Special Review public docket or indices to the Tributyltin Special Review public docket, contact Bruce Hoak (703–557–2805).

SUPPLEMENTARY INFORMATION: This Notice is organized in the following units. Unit I provides the background on tributyltin (TBT) and the initiation of the Special Review. Unit II provides the legal background. Unit III provides a summary of the risk and benefit determinations and proposed regulatory actions. Unit IV sets forth procedural matters. Unit V discusses the opportunity for public comment. Unit VI includes information on the public docket.

I. Background

There are nine TBT compounds registered for use as antifoulants. These are: bis(tributyltin) adipate, bis(tributyltin) dodecenyl succinate, bis(tributyltin) oxide, bis(tributyltin) sulfide, tributyltin acetate, tributyltin acrylate, tributyltin fluoride, tributyltin methacrylate, and tributyltin resinate.

TBT compounds are registered for use in paint formulations as antifoulants on vessel hulls and other marine structures to inhibit the growth of certain aquatic organisms such as barnacles and algae which cause fouling. The major use of TBT paints is on ship and boat hulls with less than four percent of the use on docks, buoys, crab pots, fish nets, etc. Approximately 624,000 gallons of TBT antifouling paint are sold annually which uses approximately one million pounds of TBT compounds. When the TBT Special Review was initiated in 1986, there were a total of 61 registrants with 364 registered TBT antifouling paints and 20 formulating intermediate products.

The Special Review of TBT antifouling paints was published in the **Federal Register** of January 8, 1986 (51 FR 778) because the pesticidal use of TBT antifouling paints met or exceeded EPA's then applicable adverse effects to nontarget organisms criterion under 40 CFR 162.11. Subsequently, the risk criteria in 40 CFR 162.11 were superseded by new criteria set forth in 40 CFR 154.7(a)(3). EPA has determined that TBT compounds used in antifouling paints exceed the new criterion for exposure of nontarget aquatic organisms to concentrations which are acutely or chronically toxic to such organisms.

At the initiation of the TBT Special Review, the Agency determined that it needed certain additional data for use in characterizing the toxicity, exposure, and benefits of TBT antifouling paints. EPA, using its authority under section 3(c)(2)(B) of FIFRA, issued a Data Call In Notice (DCI) to all registrants of TBT antifouling paints and the producers of the TBT active ingredients. The DCI required product chemistry data, ecological effects data, environmental fate data, TBT paint release rate and cumulative release rate data, worker exposure data, quantitative usage and application data, and efficacy data. Ecological effects data are due into the Agency in one to four years; environmental fate data are due in one to two years; worker exposure data are due in early 1988; and other data have already been submitted to the Agency or the registrant has been suspended or requested a suspension hearing.

Based on information received in public comments to the initiation of the TBT Special Review, the data submitted to the Agency in response to the DCI, and on additional analyses performed since the initiation of the TBT Special Review, EPA has made a preliminary determination to propose (1) cancellation of TBT antifouling paint products with short term cumulative release (first 14 days of release) exceeding 168 μg organotin (calculated as TBT cation)/cm^2 or average daily release rates exceeding 4 μg organotin (calculated as TBT cation)/cm^2/day; (2) prohibition of use of TBT antifouling paints on non-aluminum hulled vessels less than 65 feet in length; (3) classification of TBT antifouling paints as restricted use pesticides and restriction of their sale to certified commercial applicators and their use to persons under the direct supervision of an on-site certified commercial applicator; and (4) require compliance with certain requirements pertaining to removal and disposal of old paint prior to application of new paints, and/or application of new TBT paints. EPA's position and a summary of the rationale underlying that position are set forth in summary in this Notice. The basis for EPA's proposed action is explained more fully in the Tributyltin Antifouling Paint Technical Support Document. Copies of the Technical Support Document are available upon request from the contact person listed at the beginning of this Notice.

In accordance with the Federal Insecticide, Fungicide and Rodenticide Act, EPA is sending a copy of this Notice, the Technical Support Document, and the draft Notice of Intent to Cancel to the Secretary of Agriculture and the Scientific Advisory Panel for the required 30-day review. EPA is also providing a 90-day public comment period on these documents. After reviewing any comments received within the applicable time limits, EPA will determine what final regulatory actions are appropriate.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2 (bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time EPA determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which EPA collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review process is currently governed by 40 CFR Part 154.

Through the Special Review process EPA: (1) Announces and describes the Agency's findings that use of a pesticide meets one or more of the risk criteria, (2) establishes a public docket, (3) solicits

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comments from the public and, under certain circumstances, from the Secretary of Agriculture and the Scientific Advisory Panel regarding the Agency's analysis and proposed regulatory decisions; (4) reviews and responds to all significant comments submitted in a timely manner; and (5) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that EPA has assessed the potential adverse effects and benefits associated with the use of antifouling paints containing TBT and that EPA has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from TBT exposure outweigh the benefits of its use. The Agency proposes that the terms and conditions of TBT registration be modified so that (1) all TBT antifouling paint products with short term release (first 14 days) exceeding 168 μg organotin/cm² or with average daily release rates exceeding 4 μg/cm²/day will be cancelled, (2) no TBT antifouling paint may be used on a non-aluminum vessel under 65 feet in length, and (3) TBT antifouling paints will be classified as restricted use pesticides, their sales will be restricted to certified commercial applicators, their use to persons under the direct supervision of an on-site certified commercial applicator, and that users comply with certain requirements pertaining to removal and disposal of old paint prior to application of new paints, and/or application of new TBT paints.

As noted in the section of this Notice entitled **FOR FURTHER INFORMATION CONTACT**, a document entitled "Tributyltin Technical Support Document" (Technical Support Document) has been developed and is available to the public. The Technical Support Document provides a detailed explanation of the basis for EPA's preliminary decision and also contains references, background information, and other information pertinent to the registration of antifouling paints containing TBT.

In addition, copies of a draft Notice of Intent to Cancel TBT products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). This draft Notice is being forwarded to the Scientific Advisory Panel (SAP) and the Secretary of Agriculture to permit their review of EPA's action. The draft Notice of Intent to Cancel, along with the Tributyltin Technical Support Document and this Notice prepared pursuant to 40 CFR 154.31 are being sent to all registrants and applicants for registration of antifouling paints containing TBT. The draft Notice contains the draft provisions regarding disposition of existing stocks and procedures for requesting a cancellation or denial hearing after issuance of a final notice of intent to cancel.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

A. Determinations on Risk

Laboratory testing and field trials have established that TBT can be toxic at low levels to fish (0.2 ppb), bivalves (0.02 to 0.05 ppb), gastropods (0.002 to 0.02 ppb, lowest value an extrapolation), crustaceans (0.09 to 0.14 ppb), and algae (0.1 to 0.35 ppb). TBT concentrations at or above 0.02 ppb have been reported for at least 30 sites in the United States, predominantly in areas with heavy boating and shipping activity.

Harbors and boating activity are usually concentrated in relatively shallow (< 30 ft) coastal waters. These areas also coincide with many estuaries or ecologically dynamic environments that tend to support larage fisheries populations and are important nursery areas. The toxicity of TBT to nontraget aquatic organisms reportedly has caused adverse population effects in France and England. While there are limited reports of TBT effects in the U.S., actual impacts have been observed in Coos Bay, Oregon.

1. *Toxicity to nontarget aquatic organisms.* The full extent of the risks of TBT to nontarget aquatic organisms is unknown at this time. While observable effects under field conditions have not been determined for many aquatic species, TBT toxicity studies have been conducted on algae, fish, crustaceans, and molluscs (both bivalves and gastropods). Although short term acute studies have demonstrated that TBT is highly toxic to certain aquatic organisms (LC_{50} >0.1 ppb), larger chronic testing revealed a degree of toxicity effects that were one to three orders of magnitude greater (>0.002 ppb extrapolated value). For most organisms, the process of development from fertilized eggs through various larval stages is most sensitive to TBT toxicity. In addition to reproductive effects, the sublethal toxicity of TBT may be of sufficient magnitude to gradually alter aquatic populations by changing their size or composition (individual year class strength), metabolism (TBT is a membrane effector), behavior (competition abilities, defense mechanisms, feeding strategies), and/or result in deterioration of environmental conditions through physical, chemical, or biotic factors.

The Agency's Office of Water plans to issue its draft Tributyltin Water Quality Advisory in the near future. The Advisory will be a guideline to EPA Regional Offices suggesting maximum TBT concentrations which would protect fresh and salt water organisms. The values in the Advisory are subject to change depending upon new scientific data made available to the Agency. Further data have been required of TBT registrants; however, thte data are not expected to be submitted to the Agency for one to four years. In the meantime, there are sufficient laboratory and field data to indicate that certain harbor and estuarine areas have TBT residues above levels which may be safe to certain aquatic organisms. The Agency has determined that some action is necessary at this time to protect nontarget aquatic organisms from the adverse effects of TBT contamination.

a. *Fish.* Acute toxicity to both fresh and marine fish species have been reported with values as low as 1.5 ppb, 96-hour LC_{50} for chinook salmon *(Oncorhynchus tshawytscha).* Researchers at the Alaskan National Marine Fisheries Service have observed several incidents of high mortality after transfer of juvenile salmon to newly TBT-treated marine net pens.

Chronic exposure of TBT to fish has been found to result in physiological alterations in growth rate and in histological damage to rainbow trout *(Salmo gairdneri)* at concentrations as low as 0.2 ppb TBT. Prolonged exposure to sublethal doses of TBT could result in growth retardation or lowered disease resistance. Chronic exposure of parent sheepshead minnow *(Cyprinodon variegatus)* to TBT for over 121 days at 0.24 ppb resulted in a high progeny morality.

Bioaccumulation (accumulation in the body of an organism of concentrations higher than in surrounding water) of TBT has been reported for sheepshead minnow where an equilibrium was not reached during a 58-day test period. With exposures of 0.96 to 2.07 ppb, residues were as high as 4.19 ppb in the whole body. When transferred to clean water, depuration (loss of the toxicant from the organism) was rapid for the first 7 days, but slowed over the next 21 days. Also chinook salmon were reported to bioaccumulate TBT by a factor 200 to 4300 times greater than the TBT concentration in the water column.

b. *Bivalves.* Larval stages are more sensitive to TBT than adults. Acute

toxicity to bivalve larvae (48-hour LC_{50}) has been reported to be 1.6 ppb for Pacific oyster larvae *(Crassostrea gigas)* and 0.1 to 2.3 ppb for mussel larvae *(Mytilus edulis)*.

Chronic effects of TBT exposure are reported to cause growth retardation at 0.02 to 0.05 ppb in European oyster *(Ostrea edulis)* and clams *(Venerupis decussata)*, shell thickening at 0.15 ppb in Pacific oyster, and reproductive aberrations (predominance of males in the hermaphroditic European oyster) at 0.24 ppb.

Bivalves rapidly bioaccumulate and slowly depurate TBT. Bioaccumulation factors of 2000- to 6000-fold for Pacific oyster and 1000- to 1500-fold for European oyster have been recorded. In mussels, TBT accumulates in lipid-rich tissue, especially in gonadal tissue.

c. *Gastropods.* Mud snails (specifically *Nassarius obsoletus* and *Nucella lapillus)* are reported to develop a condition termed "imposex" as a result of TBT exposure. Imposex is the superimposition of male characters (penis and vas deferens) on female organisms. A high frequency of imposex has been observed in areas with heavy boating and shipping activities and high levels of TBT in the water column. Imposex is infrequent in more pristine areas. Also a relationship with TBT antifouling paints has been demonstrated in the laboratory at 0.02 ppb for 120 days (extrapolation of data has been used to predict effects at 0.002 ppb).

d. *Crustaceans.* Acute toxicity of TBT to tested crustacean species ranges from 0.42 ppb for a 96-hour LC_{50} for juvenile mysid shrimp *(Acanthomysis sculpta)* to 41 ppb for a 96-hour LC_{50} for adult shrimp *(Crangon crangon)*.

The sublethal chronic effects of TBT to crustaceans have involved growth retardation in mysid shrimp (0.31 to 0.45 ppb), delayed metamorphosis in mysid shrimp (10 to 20 ppb), delayed limb regeneration in fiddler crabs *(Uca pugilator)* (0.5 ppb), reproductive effects in adult female mysid shrimp (0.25 ppb), and behavioral changes in daphnids *(Daphnia magna)* (0.5 ppb).

e. *Algae.* A limited number of marine diatoms and fresh water algae have been examined for toxic effects from TBT compounds. In laboratory studies, an EC_{50} for growth inhibition of the marine diatoms *Skeletonema costatum* and *Thalassiosira pseudonana* was observed after 75 hours exposure at 0.33 ppb and 1.33 ppb, respectively. Growth reduction was reported for *S. costatum, Pavlova lutheri,* and *Dunaliella tertiolecta* at 0.1 ppb and death at 5 ppb after 2 days.

2. *Comparative toxicities of tributyltin, triphenyltin, and copper.* Copper based antifouling paints are the major alternative to TBT paints. Although copper can be highly toxic to aquatic organisms, it appears to be less toxic than TBT by one to three orders of magnitude. Copper toxicity and bioavailability are reduced in the marine environment because the toxicity unit, the free cupric ion, is absorbed by and forms complexes with organic and inorganic ligands.

Also, triphenyltin (TPT) could be used as a substitute antifouling compound in paints. Therefore, the use of TPT could be expected to increase. The Agency has a limited set of data on TPT (based on nominal concentrations) which indicates that TPT causes chronic effects on fish at 2.0 ppb and effects on crustaceans at >0.27 ppb. TBT effect levels for these organisms are >0.2 ppb and 0.09 ppb, respectively. The Agency issued a DCI on TPT antifoulant uses on August 26, 1987, which will require ecological effects data along with other data. The information obtained from this DCI will be useful to the Agency in assessing the risks of TPT to nontarget aquatic organisms.

3. *International reports of TBT contamination and population effects*—a. *France.* In France, a correlation has been found between TBT residual levels in certain estuaries and gross malformations in Pacific oysters grown in commercial oyster *(C. gigas)* beds in and adjacent to areas of heavy boating activity. These deformities are characterized by the production of a series of cavities within the shell causing extreme thickening of the valves. The oyster tissue has a higher proportion of amino acids such as threonine, but a smaller amount of serine, glycine, and asparatic acid compared to normal unaffected oysters. Environmental concentrations of organotin in the water column were measured at 0.2 to 0.3 ppb in Arcachon Bay during 1982 and appeared to have caused shell deformities in seventy to 100 percent of the 2-year old oysters. Following a ban on TBT antifouling paints on vessels less than 25 meters (82 feet) in length, the degree of shell deformities has decreased and the regeneration rate of juvenile oysters (spat) has improved.

b. *England.* In England similar shell deformities were found for Pacific oysters (*C. gigas*) exposed to 0.15 ppb TBT. Reproductive abnormalities (imposex) have been observed in a type of mud snail called dogwelk snails (*Nucella lapillus*) and may be responsible for the observed decline in the snail populations. Researchers established that this reproductive failure can occur in snails when TBT tissue concentrations exceed 0.1 ppb. Laboratory testing demonstrated that tissue levels of 1.65 ppb have been found to induce imposex after snails were exposed to 0.02 ppb TBT for four months. Therefore, researchers extrapolated that imposex could occur after a longer period of exposure to 0.002 ppb TBT because the effects had been seen at tissue concentrations an order of magnitude (0.1 ppb) below that observed in the laboratory (1.65 ppb).

c. *Canada.* In Canada, organotin residues have been found in several fresh water locations including lakes, rivers, and harbors. Several sample stations had TBT levels (0.22 to 2.34 ppb) that were comparable to the chronic level (>0.2 ppb) associated with growth retardation in rainbow trout larvae. High levels of TBT residues at these sample stations were associated with heavy boating or shipping activity.

d. *United States.* Reports on the effects of TBT on aquatic populations in the United States have been limited because the environmental impact of tin-based antifoulant paints has only been studied for a few years. However, from the information that is available, it appears that adverse effects to nontarget aquatic organisms may have occurred. Insufficient data are available to define the full extent of the problem.

The Department of Fish and Wildlife of Oregon recently found shell deformities in oysters from Coos Bay, and have attributed these abnormalities to TBT residues from paint chips coming from a nearby shipyard. Researchers at California Department of Fish and Game demonstrated that oysters (*C. gigas*) and mussels (*M. edulis* and *M. californianus*) transplanted along a known gradient of TBT concentations in San Diego Bay exhibited shell thickening and growth effects similar to laboratory and field findings documented in France and England. The observed shell thickening and decreased growth correspond to increased concentrations of TBT in the water column. These values were comparable to environmental concentrations observed in France and England (0.24 ppb). Imposex in female mud snails has been reported in the U.S. along the East Coast and in California in close proximity to yacht harbors and marinas. In marinas and areas of high boating activity of the southern Chesapeake Bay TBT concentrations are reported to be at 0.014 to 0.1 ppb, levels that laboratory tests indicate cause reproductive effects in molluscs and snails.

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4. *Endangered species.* There are approximately 90 endangered species in fresh water lakes and streams and in marine estuaries and harbors of the U.S. There are no available organotin toxicity data for these species; however, EPA has asked the Office of Endangered Species of the Fish and Wildlife Service, Department of the Interior and the Marine and Estuaries Fisheries Service in the Department of Commerce to determine if organotin compounds would jeopardize any endangered species.

5. *Exposure*—a. Environmental fate. The environmental chemistry and fate of tributyltin in estuaries are complex and not completely understood. Studies indicate that photolysis and microbial action are potential mechanisms of degradation from tri- to di- to monobutyltin and finally to inorganic tin. Studies indicate the half-life of TBT may be 116 days in aerobic soils, 815 days in anaerobic soils, 6 to 12 days in seawater, and up to 238 days in fresh water. TBT is readily sorbed to soils and sediments. Sediment-water partition coefficients of 300 and 700 μg/kg/mg/L have been reported for sediment loadings of 10 and 100,000 mg/kg, respectively. Thus, newly deposited sediments would have TBT concentration when the solid concentration was 10 mg/L in the water column. As the amount of solid in the water column increased, the difference between the ambient water column concentrations and the sediment concentration would decrease. Data from monitoring studies has consistently indicated that TBT and its di- and monobutyltin degradates concentrate in bottom sediments. Sediment-bound residues appear to contain proportionally higher concentrations of the degradates than is found in the water column. The means of TBT deposition in the sediments and the relative strength of TBT adsorption versus adsorption of the degradates are not known. The overall partitioning of TBT among water, biota, sediment, surface microlayer, and atmosphere has not been experimentally investigated.

b. *Bioavailability.* Although a small amount of dissolved TBT appears to be bound to suspended particulate, TBT does accumulate in sediment at levels that are one to four orders of magnitude greater than the concentration found in the respective water column. This amassing of toxicant can have serious consequences for organisms living and feeding in the benthos (bottom of the body of water). For example, it has been found in laboratory experiments and field trials that TBT in combination with sediment can affect growth in Pacific oyster (*C. gigas*) at 0.15 ppb. In addition, the results of a laboratory study indicate that mud crabs (*Rhithropanopeus harrissi*) accumulate TBT from food as well as water exposure.

In estuarine environments, 95 percent of the particulate-bound TBT may be associated with bacterial cell walls (dead and alive cells). The adsorption of TBT to bacteria is a significant exposure component that can affect aquatic organisms that feed on detritus (organic matter) and suspended particulate. These organisms include species of polychaetes, snails, amphipods, sponges, bivalve molluscs, and arthropods.

c. *Environmental monitoring.* Monitoring studies have been carried out to determine the extent of TBT contamination in the water column of marine and fresh waters. Sampling was designed to compare levels of contamination in areas of varying boating activity (recreational and commercial). The seasonal, tidal, and spatial flux of TBT and its degradates were examined in some cases. Limited analyses of sediment and aquatic biota also have been performed.

TBT levels in tested areas of the Chesapeake Bay and San Diego Bay ranged from ND (nondetectable, meaning below the level of detection for the analytical method used) to 0.8 ppb and ND to 1 ppb, respectively. Other reported water column concentrations were: San Francisco Bay ND to 0.16 ppb, Honolulu Harbor 0.045 to 0.27 ppb, Los Angeles/Long Beach Harbor ND to 0.12 ppb, Narragansett Bay ND to 0.13 ppb, Thames River (CT) ND to 0.009 ppb, and Mayport, Florida ND to 0.016 ppb. Fresh water samples from 265 locations across Canada were analyzed for TBT. In 10 percent of the water samples, TBT was found at levels >0.2 ppb. Consistently, TBT concentrations were highest in areas of heavy boating activity. A montoring study in the Chesapeake Bay during the summer of 1986 showed a strong correlation between boat density and observed TBT concentrations in four harbors.

TBT concentrations have been shown to vary seasonally. In areas of moderate to high TBT loading, the water column levels of TBT appear to correlate to seasonal boating activity and boat maintenance activities. Seasonal variation in temperature may also influence the leaching of TBT from paints and/or the mobility and persistence of TBT in the marine environment.

Tidal flow and other hydrolic activities also have been shown to influence TBT concentrations. Flushing has a major impact on TBT concentrations. Sites with a fresh water influx into a large body of seawater and no significant backwater areas or recirculating currents, generally have very low concentrations of TBT regardless of loading rates. In areas where water residence times are relatively long, TBT levels increase in proportion to the loading. Accumulation of TBT degradates have been oberved in locations where water movement is very slow (i.e., southern end of San Diego Bay).

d. *Environmental modeling.* The Agency is engaged in modeling Norfolk Harbor in Virginia. Norfolk Harbor is a major fishery with large populations of hard clams and Eastern oyster and is a nursery for spot, Atlantic crocker, Atlantic menhaden, striped bass, black sea bass, and summer flounder. The area is also an active boating and shipping area with recreational, commercial, and military use and contains large and small boat/shipyards. The Agency model will examine environmental concentrations under several loading levels and attempt to estimate the impact of possible regulatory approaches on TBT concentrations. The information may be useful to the Agency in making future regulatory decisions.

6. *Risk assessment summary.* As explained in the Technical Support Document, laboratory and field studies have demonstrated that low concentrations of TBT can cause irreversible chronic effects to a broad spectrum of nontarget aquatic organisms. At a concentration of approximately 0.02 ppb, TBT has caused a reduction in growth to commercially important bivalves and imposex in ecologically significant gastropods in laboratory studies. Monitoring studies which are further discussed in the Technical Support Document have demonstrated that TBT is moderately persistent in the marine environment and that the observed levels of TBT in the water column in and adjacent to marinas, dry dock areas, and poorly flushed harbors exceed concentrations that have been demonstrated to cause adverse effects in molluscs, gastropods, and other nontarget aquatic organisms. TBT levels in the water column are strongly influenced by currents and tides. It is believed that biologically significant levels of TBT may be transported to sensitive ecologically productive areas. The Agency also is concerned about the potential accumulation of TBT in aquatic sediments and in the tissue of aquatic

organisms; however, insufficient data are available to determine the extent and significance of these events.

C. Determination of Benefits

The benefits of TBT antifouling paints were analyzed for the boat and shipyard industry and three user groups: recreational, commercial, and military. As explained in the Technical Support Document, analysis was performed for three possible regulatory options: (1) Total ban of TBT antifouling paints, (2) restriction of TBT paints by release rate, and (3) restriction by release rate, size of vessel, and classification as a restricted use pesticide. Other regulatory options were not analyzed because it was determined that they were not feasible options to reduce the risks from TBT exposure to nontarget aquatic organisms.

Comparisons were made for TBT copolymer/ablative, TBT free association, copper conventional, and copper ablative paint systems. For each user group and each paint system, the impact of regulation was determined by subtracting the cost of hull maintenance using a particular paint system from the operational benefits gained from that system (i.e., fuel efficiency, time between dry dockings). The different paint systems were then compared for each user group. Hull preparation costs are lower when ablative paints are used, and vessel operators also can achieve extended dry docking intervals; the longer a vessel can stay in service between dry dockings or hull cleanings, the less expensive a vessel is to operate. The Navy plans to convert its entire fleet to certain organotin copolymer/ablative paints which it expects will enable it to operate vessels on a 5 to 7 year dry docking schedule.

The major currently available alternatives to TBT antifouling paints are copper compounds, chiefly cuprous oxide. There are copper ablatives which like TBT copolymer/ablatives do not require hull cleaning or frequent dry docking. There are currently only three registered copper ablative paints. More years of testing are needed to determine if they can give the 5 to 7 years of service noted for certain TBT copolymer/ablative paints. Testing now being conducted indicates copper ablatives give acceptable control of fouling for 3 to 4 years. The conventional copper paints require frequent hull cleanings (every 9 to 18 months) to remove fouling organisms and the layer of insoluble copper compounds that precipitate near the paint surface and block release of the toxicant. However, there is published research indicating the copper conventional paints may last over three years with several hull cleanings. The major disadvantage of copper is that it may cause galvanic corrosion to aluminum vessel hulls. Even with high quality anticorrosive primers, there may be small flaws in the primer coat that could allow copper corrosion to an aluminum hull, especially on vessels with long dry docking intervals.

Commercial vessels use approximately 60 percent of the TBT antifouling paints. For ocean going vessels, long periods between dry dockings and reduced fuel consumption are important considerations. Although many commercial vessels are dry docked and inspected every two years, TBT copolymer/ablative paints provide an estimated $318 million per year savings to U.S. commercial vessels over copper conventional paints and an estimated $143 million savings over copper ablative paints.

There are approximately 5 million recreational vessels in the U.S. Most recreational vessels are removed from the water after every use and do not antifouling paint. However, 14 percent of these vessels use some type of antifouling paint, of which about 30 percent use organotin antifouling paints (approximately 208,000 recreational vessels). It is estimated that 60,000 recreational vessels are painted with TBT copolymer/ablative paints, but of these, only some 21 percent of those using TBT copolymer/ablative paints take advantage of the extended dry docking intervals that can be achieved through use of these paints. The loss of TBT paints would cost recreational boaters currently using TBT copolymer/ablative paints an estimated $0.85 million per year. Recreational vessel owners who currently use free association TBT paints would incur an estimated additional cost of $0.28 million per year over using less expensive copper based paints which will give one to two seasons of protection. Therefore, in terms of antifouling use, there appears to be an economic benefit only to recreational boat owners using TBT copolymer/ablative paints who take advantage of the extended dry docking intervals. However, TBT compounds are colorless and offer recreational boat owners more choice of paint colors than copper based paints.

The impact of a total ban of TBT antifouling paints was calculated for the U.S. Coast Guard, Navy Sealift Command, and U.S. Navy assuming implementation of the proposed Navy fleetwide conversion to organotin antifouling paints. The estimated average annual net benefit of using TBT copolymer/ablative paints versus copper ablative paints is $35.3 million and $142 million over using copper conventional paints. Estimates for loss of fleet readiness were not quantified.

The total annual benefits (including commercial and recreational vessels) of an estimated $179 million would be lost if all users of TBT paints switched to copper based paints (copper ablatives substituted for TBT copolymer/ablative and conventional coppers substituted for TBT free association paints). If all users substituted conventional copper paints for all TBT paint use, the loss would be an estimated $460.8 million annually.

The foregone benefit (i.e., additional expense) of using copper ablatives may be reduced if copper ablatives can be shown to have service lives comparable to TBT copolymer/ablative paints. Since it has been shown that existing copper ablative paint formulations have in-service lives of at least 3 years, dry docking on a three year schedule was used for all copper ablative paint calculations.

There are approximately 6000 boat and shipyards in the U.S., 44 percent of which use antifouling paint. Approximately 48 percent of the antifouling paints used by these firms are TBT products; this accounts for about 70 percent of the gallons of TBT antifouling paints used in boat/shipyards. U.S. shipyards compete with foreign countries as well as domestically for business. Many U.S. flag (ocean going) vessels are currently docked and painted abroad because foreign labor and materials in this sector are generally less expensive despite a substantial ad valorem tax on these services. A ban on the use of TBT paints would encourage more vessels to be painted abroad, possibly having a substantial impact on domestic shipyards. However, boat and shipyards serving vessels too small to go abroad may have more business if conventional copper paint systems are used that require frequent hull cleaning and more frequent painting than TBT copolymer/ablative paints.

Under the option to restrict release rates, there would be TBT paints (both copolymer/ablative and free association) available for all user groups and for aluminum hulled vessels as well. An initial short supply of acceptable paints is likely and prices may be elevated in the short term until new paints with acceptable release rates are formulated or paints with unacceptably high release rates are reformulated and registered.

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The last option included the following elements: (1) Release rate restrictions, (2) limiting the size of vessel treated, and (3) classifying TBT antifouling paints as restricted use pesticides. Restricting the size of vessel to be treated with TBT should have a minor economic impact on users because most non-aluminum hulled vessels under 65 feet in length do not gain an economic benefit from the use of TBT antifouling paints because vessels are painted frequently and there are effective alternatives. Making TBT antifouling paint a restricted use pesticide would cost users an estimated $600,000 in lost opportunity costs the first year and $150,000 in subsequent years. There would also be an estimated cost of $25,000 to $30,000 incurred by affected states each year to establish and maintain the required training programs. Estimated cost of required compliance with application, removal, and/or disposal directions is unknown at this time.

New technologies for controlling antifouling may be implemented that could reduce the impact of TBT restrictions. For example, the U.S. Navy is testing fluorocarbon coatings that contain no toxicant. The coating surface must be cleaned regularly (once a month in the summer and once every 3 months in the winter). A tug boat painted with the fluorocarbon coating has reformed well since 1977 without repainting. Also the antibiotic terramycin has recently been registered as an additive to antifouling paints; it must be incorporated with paints containing other toxicants and cannot be considered a direct substitute. Control of fouling organisms is an active area of research, especially in the U.S. Navy which conducts testing of promising new compounds for their overall performance.

In conclusion, it appears that the major benefits from the use of TBT antifouling paints are gained by those vessels taking advantage of the extended dry docking intervals. Because of the higher costs of TBT paints versus copper paints, most recreational boaters appear to lose money by using TBT paints, because they do not take advantage of the extended dry docking intervals. The U.S. Navy claims that the use of TBT paints will provide improved fleet readiness in addition to economic benefits. TBT antifouling paints appear to give large economic benefits to commercial vessel owners who take advantage of the extended dry docking schedule. Copper based paints are the major alternatives to TBT paints and for some users the copper ablative paints may prove to be equally effective. Further research is being conducted on other alternatives.

D. Analysis of Release Rates

The Tributyltin Data Call In Notice (TBT DCI) required all registrants of TBT antifouling paints to measure TBT release from registered paints following a test method developed in cooperation with the American Society for Testing and Materials (ASTM). In addition, each laboratory conducting the TBT release test was required to test a standard copolymer test paint provided by EPA as a means of assuring that the test method was consistent among testing facilities.

Results for the standard test paint varied substantially. All data were reviewed by the Agency and a value of 90 $\mu g/cm^2$ was assigned to the short term cumulative release (cumulative for the first 14 days of the test) and a value of 5 $\mu g/cm^2$/day was assigned to the average daily release rate (average of weeks 3 to 5 of the test) for the standard test paint. Each laboratory's standard test paint data were normalized to these assigned values. This enabled the Agency to make comparable adjustments in the test results of the various TBT paints as noted below.

Release rate data were reviewed for the 96 TBT antifouling paint products submitting data to the Agency. It was determined that at least 57 of the tests were conducted satisfactorily and all data were normalized according to adjustments made to the standard test paint results. Details of release rate data are available in the Tributyltin Technical Support Document.

Generally the release rates start high and gradually decrease over the course of the test period. Some paints with a high percentage of TBT have a much higher short term cumulative release rate than other paints tested. It was concluded that while there was a strong statistical correlation between the percent active ingredient and the average daily release rate, the data points were too scattered (rather than concentrated around the regression line) for the data to be useful for regulating TBT paints. The scattered data points indicated that other factors, such as the type and quality of the inert ingredients (resins, rosins, binders, etc.) may be important in determining the release rate of a paint and that regulating on percent active ingredient would not necessarily reduce environmental loading of TBT.

Results of the release rate tests show that some TBT ablative and free association paints have lower release rates than many TBT copolymer paints. Using the normalized data for the satisfactory release rate tests, it was found that neither the type of TBT paint formulation (free association or copolymer) nor the percentage of TBT in the formulation could be used to predict the average release rate. Average release rates from TBT free association paints were not consistently higher or lower than release rate from the TBT copolymer paints; however, generally paints with a high percentage of TBT in the formulation had higher average release rates than paints with low TBT content.

An estimate of the average daily release rate prior to the initiation of the Special Review was made using all available release rate data. Based on the type of TBT compound(s), the percent active ingredient in each paint, and the release rates of similar paints, an estimated release rate was calculated for each paint where the release rate was unknown (data not submitted to the Agency). Then using the release rate data on hand and the estimated release rates, a mean of all release rates was determined. This mean was 19.7 or about $\mu g/cm^2$/day.

E. Risk/Benefit Analysis

FIFRA requires EPA to weigh the risks against the benefits of the use of pesticides to determine whether continued registration would cause unreasonable adverse effects on man and the environment. This section reviews EPA's conclusions concerning the risks and benefits of TBT antifoulants and their alternatives in order to determine whether continued registration of TBT antifoulants is appropriate. The Agency has determined that with current label restrictions, the risks posed to nontarget organisms from the use of TBT antifouling paints outweigh its benefits. Detailed discussion of the risk/benefit analysis appear in the Technical Support Document.

TBT has been shown to be highly toxic to aquatic organisms at or near 0.20 ppb. In particular, TBT has been shown to be somewhat persistent in the environment and may bioaccumulate in animal and plant tissue without complete degradation. Potential exposure to nontarget organisms is high in areas of boating and shipping activity, and TBT may be transferred to sensitive ecologically productive areas via currents and tides. TBT binding to sediments and particulate, suggests the potential for bioavailability to filter and deposit feeding organisms. TBT residues have been found in U.S. waters at levels comparable to the values that have

caused population effects in Europe and comparable to the values that have been shown to cause effects to nontarget organisms during laboratory experiments. Recent reports in the U.S. link TBT exposure to adversely affected oyster beds in Coos Bay, Oregon. The Agency believes that there is adequate information available to propose the set of regulatory actions designed to reduce environmental loading of TBT as presented here and in the Technical Support Document.

The total annual benefits of TBT antifoulant use are estimated to be $179 million compared with using the next best alternative, either copper ablative or copper conventional paint depending upon what the user is currently applying. However, the benefits are highest for those users taking advantage of the extended dry docking schedule offered by TBT copolymer/ablative paints. In most cases, recreational boat owners using TBT paints incur an additional cost from which they appear not to benefit compared to using less expensive copper based paints, because they generally do not take advantage of the extended dry docking schedule.

The Agency believes the risks posed from the use of TBT antifouling paints can be reduced without losing benefits for most commercial and military users through the use of TBT antifouling paints which release less TBT into the aquatic environment, while complying with the other elements of the proposed action. It is believed that many recreational vessel owners will save money by use of non-TBT alternatives. While there will be costs to states for training certified applicators and costs to user groups who must become certified under restricted use and comply with certain application, disposal, and removal requirements, the Agency believes that the benefits of reducing the environmental loading of TBT outweigh the costs.

F. Development of Regulatory Options

This section identifies the regulatory options available to EPA to reduce the risks from TBT antifoulants. Each option has been evaluated for its impact on the risks and benefits of TBT as antifoulants and the most appropriate regulatory options have been proposed.

The Agency considered three regulatory options: continued registration without changes, continued registration with modifications of the conditions of registration, and cancellation of all registrations.

1. *Continued registration without changes.* The Agency has concluded that, although further data will be used to refine our assessment of the risks posed by the use of TBT antifouling paints, there are sufficient data to conclude that some action should be taken to reduce the environmental loading of TBT in order to protect nontarget aquatic organisms from adverse effects due to exposure to residues from TBT antifoulants.

2. *Continuation of registration with changes.* The Agency believes that the risks posed by the use of TBT antifouling paints can be lowered by modifying the terms and conditions of registration. Although it is unknown at this time if such modifications will be adequate to reduce the risks to acceptable levels, the Agency is proposing a number of actions at this time designed to reduce environmental loading of TBT. Any action included in the Agency's final decision will be reviewed when the Agency receives additional data. The following actions were considered by the Agency:

a. *Limitation on percent active ingredient.* The Agency considered restricting the concentration of TBT in antifouling paints as done by Great Britain. However, from information obtained from the release rate testing, the Agency has determined that restrictions on the percent active ingredient would not assure a lowering of TBT environmental loading because the type and quality of the inert ingredients (resins, rosins, binders, etc.) are also important in determining the release rate of a paint. The inert ingredients could be changed by a registrant so as to alter the release rate of the paint product, without altering the percentage of active ingredient.

By regulating on release rate rather than on percent active ingredient, the Agency can be better assured that the environmental levels of TBT will be reduced.

b. *Regulation by paint formulation.* Another option considered by the Agency was to regulate by type of paint formulation. Early in the Special Review process, it was suspected that copolymer paints released TBT at a much slower rate than other formulations. However, as the release rate data became available to the Agency, it became obvious that there were free association paints with release rates both higher and lower than those of copolymer paints.

The complication of having free association paints with both lower and higher release rates than copolymer paints makes it difficult to regulate on the basis of paint formulation.

c. *Release rate restrictions.* The Agency considered an option requiring that TBT paints meet both the maximum short term cumulative release and the average daily release rate and examined the role that a dual rate restriction would have on protecting the shell fish beds and fish nursery grounds in shallow estuarine water where vessels are typically moored. A maximum short term cumulative release rate would be designed to limit TBT release from large vessels which are moored in estuary water after painting while additional maintenance is being done. For most paint formulations, freshly painted surfaces release TBT at much faster rates that surfaces seasoned for even three or four weeks in the water.

A maximum average daily release rate will help reduce the environmental loading of TBT by removing paints with high release rates from the market. The long term use of paints with medium or high average daily release rates could result in levels of TBT in the water column over time at chronic effects levels. Concentrations at such levels have been reported for at least thirty sites around the U.S. Therefore, regulatory measures are needed to reduce those concentrations and to prevent such concentrations in other areas.

This option provides that no TBT antifouling paint can be sold or distributed which exceeds either a short term cumulative release (cumulatively released over the first 14 days of the test) of 168 μg organotin (calculated as TBT cation) /cm^2 or an average daily release rate (average of weeks 3 to 5) of 4.0 μg organotin (calculated as TBT cation)/cm^2/day. The proposed average daily release rate would be a five-fold reduction over the estimated 20 μg/cm^2/day average daily release rate prior to initiation of the Special Review and would allow formulations to remain on the market which provide extended periods between dry dockings and high fuel efficiency. For a full discussion of release rates see the Technical Support Document.

Of the 57 registered products with satisfactory release rate test data, 29 products would meet the proposed standard. Assuming those paints remained marketed, there would be paint products available for all market sectors. In the future, the Agency may register additional products with acceptable release rates.

Cancellation of high release rate paints would initially decrease the supply of TBT antifouling paint products (less than 30 percent of the current market has acceptable release rates), which may result in a temporary increase in the price of antifouling paints. As users switched to non-TBT alternatives, or as more paints with

acceptable release rates enter the market (either through increased production, new products, or reformulated old products), the price should steadily approach the current price structure.

d. *Prohibition of use on certain vessels.* This option provides for a label restriction prohibiting the use of TBT antifouling paints on non-aluminum hulled vessels less than 65 feet in length. Copper paints may cause galvanic corrosion, even with the use of high quality primers and frequent repainting. The size limit of 65 feet was chosen because: (i) This size distinguishes between most vessels which the Agency believes either gain an economic benefit from the use of TBT antifouling paints or do not gain a benefit from the use of these paints; and (ii) most vessels of less than 65 feet in length are predominantly used in ecologically important, shallow estuary waters.

Approximately 37 percent of current TBT antifouling paint use would be eliminated under this option, primarily by recreational users. Vessels in this size class tend to be used as well as moored in shallow waters. Additionally, these craft are often painted yearly in the spring which is believed to result in elevated TBT levels during the reproductive period of many nontarget organisms. Therefore, the Agency believes that elimination of TBT paints from these numerous craft would significantly reduce the loading and concentration of TBT into these aquatic environments, and, in particular, into the most sensitive shallow waters.

e. *Restricted use.* This option includes classification of the TBT antifouling paints as restricted use pesticides. Under this option, TBT antifouling paint products would only be sold to certified commercial applicators and would only be applied, removed, and disposed of by these applicators or persons working in their physical presence. Certified applicators would be trained in proper application and disposal techniques in the aquatic pest control category of 40 CFR 171.3(b)(5). Practicing proper application, removal, and disposal techniques should significantly reduce the volume of TBT waste residues entering aquatic environments. Also, certified commercial applicators will be in position to assure compliance with any vessel size restriction.

TBT contamination has been found to occur around marinas, shipyards, and dry docks due to paint chips and dust being washed into the water. Labels would require compliance with the following directions for use: (1) During and after paint removal and/or application of new TBT paint, employ methods designed to prevent introduction of TBT paints into the aquatic environment; and (2) following removal of TBT paint and/or application of new TBT paint, all paint chips and spent abrasives, paint containers, unused paint, and any other waste products from paint removal or application must be disposed of in a sanitary landfill.

3. *Cancellation of registration.* A total ban would cost users an estimated $179 million a year as well as adversely affect shipyards servicing at least the large vessels. Even if EPA cancelled the registrations of TBT antifouling paints, ships treated in foreign countries which come into U.S. waters would release TBT into U.S. marine environments. Full cancellation of TBT antifouling paints is not being proposed at this time, because on the basis of what the Agency knows now, it does not appear warranted. The Agency believes it can accomplish reductions in environmental loading of TBT by means short of a full ban. The Agency may determine later, following receipt of new data or upon showing that any restrictions which are implemented do not adequately protect nontarget aquatic organisms, that cancellation of all TBT antifouling paints may need to be considered.

G. Proposed Regulatory Decision

In order to reduce the concentrations of TBT in the aquatic environment, the Agency proposes to (1) cancel all TBT antifouling paint registrations which exceed a short term cumulative release of 168 μg organotin/cm^2 14 days or exceed an average daily release rate of 4.0 μg organotin/cm^2 day; (2) prohibit the use of TBT antifouling paints on all non-aluminum vessels under 65 feet in length and require appropriate label language; (3) classify TBT antifouling paints as restricted use pesticides, restrict their sale to certified commercial applicators and their use to persons under the direct supervision of an on-site certified commercial applicator, and (4) require compliance with the following directions for use: (a) During and after paint removal and/or application of new TBT paint, employ methods designed to prevent introduction of TBT paints into aquatic environments; and (b) following removal of TBT paint and/or application of new TBT paint, all paint chips and spent abrasives, paint containers, unused paint, and any other waste products from paint removal or application must be disposed of in a sanitary landfill. The Agency proposes that TBT antifouling paint product labels include language requiring compliance with these actions as part of proper use of the TBT antifoulant product.

IV. Procedural Matters

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA will transmit copies of this Notice, a draft Notice of Intent to Cancel and the support document, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the draft Notice and support documents, the Agency must publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

B. Procedures for Responding to Notice of Final Determination

1. *Hearing request.* Registrants, applicants, and other interested parties who would be adversely affected by any decision to cancel or deny applications for the registration of TBT antifouling paint products would be entitled to request a hearing in which to contest EPA's final decision to cancel registrations and deny applications for failure to comply with the modifications to registration listed in any final Notice of Intent to Cancel. Under FIFRA, such persons must submit their requests for a hearing within 30 days either following receipt of any final Notice of Intent to Cancel or Notice of Denial or following its publication in the **Federal Register**, whichever is later. As EPA will explain in detail in any final Notice of Intent to Cancel or Notice of Denial, a hearing request must contain information concerning the basis of the request. If a timely, properly formulated hearing request is submitted and a hearing is initiated, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications for registration with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled. A final cancellation or denial would have the effect of prohibiting further sale and distribution, except as specified in any existing stocks provision included in the final notice.

2. *Amendment of registration or application.* Registrants who would be affected by any final decision to cancel the registrations of TBT antifouling paint products unless the terms and conditions of the registrations are modified may avoid cancellation, without requesting a hearing, by filing an application for an amended registration that contains release rate levels, which comply with the release rate standard detailed in any final Notice of Intent to Cancel, and the label modifications detailed in the Notice of Intent to Cancel. This application must be filed within 30 days of receipt of the final notice, or within 30 days of publication of the final notice, whichever occurs later. Similarly, applicants for a registration that would be subject to the final notice would have to file an amended application for registration within the applicable 30-day period to avoid denial of the application.

Applications which conform to the terms and conditions included in the Notice of Intent to Cancel which are found by the Agency to be acceptable will be granted conditional registrations. A condition of such registration will be that acceptable studies using the ASTM/EPA release rate method supporting the release rate included in the application will be submitted to the Agency within 120 days of the grant of conditional registration. The Agency believes this time period for submitting the supporting data is reasonable, particularly since the registrants are now on notice, well in advance of such a deadline.

It should be noted that registrants (and applicants) are not required to request a hearing or to amend their registrations (or applications) at this time in order to be allowed to continue to sell and distribute their products within this period.

V. Public Comment Opportunity

The Agency is providing a 90-day period to comment on this Notice and on the TBT Technical Support Document. The Agency is particularly soliciting comments on the issues discussed in Unit III above. Comments must be submitted by January 5, 1988. All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESS, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP–30000/49A. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding TBT antifouling paint products. Persons interested in arranging such meetings should contact the Review Manager listed in this Notice under **FOR FURTHER INFORMATION CONTACT.**

VI. Public Docket

Pursuant to 40 CFR 154.15, the Agency, has established a public docket (OPP–30000/49A) for the Tributyltin Special Review. The public docket includes (1) this Notice; (2) any other notices pertinent to the TBT Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other Notice, regarding TBT submitted at any time during the Special Review process by any person outside government; (4) a transcript of any public meeting held by the Agency for the purpose of gathering information on TBT; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government pertaining to TBT; and (6) a current index of materials in the TBT public docket.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

Dated: September 30, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

FR Doc. 87–23177 Filed 10–6–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3273–7]

Sole Source Designation of the North Florence Dunal Aquifer Lane County, OR

AGENCY: Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency has determined that the North Florence Dunal Aquifer in Lane County, Oregon is the sole source of drinking water for the Florence area and that the aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, federal financially-assisted projects constructed in the designated area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on October 21, 1987.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the Siuslaw Public Library, 250 Highway 101, North Florence, Oregon; Eugene Public Library, 100 W. 13th Avenue; EPA Oregon Operations Office, 811 SW. Sixth Avenue, Portland, Oregon; and EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams at (206) 442–1541 or FTS 399–1541.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act [42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523] the Administrator of the U.S. Environmental Protection Agency has determined that the North Florence Dunal Aquifer located in Lane County, Oregon is a sole or principal source of drinking water for much of the aquifer service area. Pursuant to section 1424(e), federal financially-assisted projects constructed in this designated area will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states: "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register.** After the publication of such notice, no commitment for federal financial assistance [through a grant, contract, loan guarantee, or otherwise] may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under

another provision of the law, be entered into to plan or designate the project to assure that it will not so contaminate the aquifer."

On June 2, 1985, Shirlee J. Gardinier of Florence, Oregon submitted a petition requesting that the Administrator of EPA designate the aquifer underlying the City of Florence and the Heceta Water District service area as the sole drinking water source for the area. Notice of this petition and a request for public comment was published in the **Federal Register** on November 13, 1985. Another **Federal Register** notice was published on March 3, 1986, stating the (1) The EPA Regional Office was proposing to recommend to the Administrator that the North Florence Dunal Aquifer be designated as a sole source aquifer, (2) a support document summarizing the bases for this recommendation was available for review, (3) public comments were being requested, and (4) a hearing was to be held if interest was expressed by the public. The hearing was cancelled because of insufficient public interest. The public comment period remained open until August 1, 1986.

Further technical evaluation resulted in adjusting the proposed designated area boundaries to coincide with published information which characterizes the geology and hydrology of the area. Accordingly, EPA prepared a revised document entitled *Resource Document for Consideration of the North Florence Dunal Aquifer as a Sole Source Aquifer*. Legal notices, announcing distribution of the document and requesting public comment until September 21, 1987, were printed in the Siuslaw News on August 26, 1987, and the Eugene Register Guard on August 27, 1987. Legal notices were sent to area post offices on August 21, 1987, and the Region 10 office issued a press release on August 25, 1987.

II. Basis for Determination

Among the determinations which the Administrator must make in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer is the sole or principal source of drinking water in the area, and (2) whether, if contaminated, a significant hazard to public health would result.

Based on the information available to this Agency, the Administrator has made the following findings, which are the bases for the determination noted above:

1. The North Florence Dunal Aquifer directly supplies 68 percent of the drinking water used in the area. Furthermore, the aquifer partly recharges Clear Lake, the only supply of surface water presently used for drinking water in the area.

2. No economically feasible alternative drinking water sources exist within the area or nearby.

3. Ground-water contamination can be difficult or impossible to reverse. Therefore, since the aquifer system represents the sole source of drinking water for the area, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the North Florence Dunal Aquifer

[Information in this section represents an unfootnoted summary of material from: *Support Document for Designation of the North Florence Dunal Aquifer as a Sole Source Aquifer*, published in September of 1987 by the Region 10 Office of Ground Water.]

The North Florence Dunal Aquifer represents a hydrologically isolated portion of an extensive dunal aquifer located along the south-central Oregon coastline. The entire dunal aquifer, whose width ranges from less than one mile to over three miles, extends almost 60 miles from Coos Bay north to Heceta Head. The dunal area north of the Siuslaw River, referred to as the North Florence Dunal Aquifer, represents about 15 percent of the total aquifer length and covers roughly 19 square miles.

The area originally petitioned for sole source aquifer status included only the unconsolidated sand deposits between the Siuslaw River and Sutton Creek. However, available information suggests that the sand dune area north of Sutton Creek is not hydrologically separate from the rest of the aquifer. Also, part of the bedrock surface east of the dunes supplies runoff into lakes which are hydrologically connected to the aquifer. Therefore, these areas have also been included in the sole source aquifer area.

The North Floence Dunal Aquifer encompasses the entire continuous body of sand located north of the Siuslaw River and east of the Pacific Ocean. The surface contact between bedrock and the unconsolidated sand forms the northern and eastern boundary of the designated area as far south as Mercer Lake. The boundary between bedrock and the dunal aquifer has been drawn on the basis of a surface geological map published in 1974 by the Oregon Department of Geology and Mineral Industries. In addition to the dunal sand area itself, steep drainage areas east of Collard, Clear, Ackerley, and Munsel Lakes have been included in the designated area because published information strongly suggests that those lakes are hydrologically connected to the aquifer. Therefore, the surface drainage divided located just east of the lakes forms the eastern boundary of the designated area from Mercer Lake south to the Siuslaw River.

Rainfall in the area averages 65 inches per year, and approximately 85 percent of the rain which falls upon the sand-covered surface percolates into the water table. Locally, discontinuous buried soil layers and peat beds, both partly cemented by iron oxides, act to retard vertical movement. However, on a large scale, ground water moves rapidly and almost uniformly towards a discharge point. In fact, tritium age dating indicates that water in the aquifer replaces itself at least every 30 years.

The North Florence Dunal Aquifer discharges principally into the Pacific Ocean and Siuslaw River. Multiple seeps and springs occur along the coastline and riverbank, although areas of quicksand indicate that the aquifer discharges mostly as underflow. The water table slopes westward at about 10 feet per 1,000 feet and southward at about 5 feet per 1,000 feet from its highest portion, located west of Mercer, Collard, and Clear Lakes. Munsel Creek intercepts some of the ground water flowing towards the Siuslaw River. Likewise, Sutton Creek and Berry Creek intercept some of the westward moving ground water before it discharges into the Pacific.

The string of lakes along the eastern boundary of the acquifer are a minor discharge area. However, the aquifer supplies a significant amount of water to the lakes, especially during the summer months when surface water inflow decreases and withdrawals from Clear Lake are increased. Hydrographs comparing lake levels with aquifer levels strongly suggest a hydrologic connection between the surface and ground water supplies. More refined studies estimate that the aquifer supplies at least 27 percent of Clear Lake's annual water supply and a much higher proportion during the dry season.

Few streams cross the dunal area since most rainfall quickly infiltrates to the water table. Those streams which do flow across the area (Munsel Creek, Sutton Creek, and Berry Creek) originate in upland ares of relatively impermeable bedrock. Where streams flow across the sand they are hydrologically connected with the ground-water system. In fact, effluent ground water provides most of the flow of Sutton and Munsel Creeks at their points of discharge.

From a human health standpoint, the aquifer provides water of good quality.

However, naturally high concentrations of dissolved iron require treating the water for aesthetic reasons. The naturally high dissolved iron content apparently results from weakly acidic ground water (pH of 5.6 to 6.2) reacting with the iron-rich minerals found in some sand grains.

Rapid infiltration rates into the sand cover combined with a shallow water table make the North Florence Dunal Aquifer highly susceptible to contamination from surface activity. Despite the relatively rapid flow of ground water through the aquifer, water soluble contaminants introduced near the surface may remain in the ground water system for nearly 60 years. Immiscible contaminants, such as petroleum distillates, would spread rapidly if spilled onto the permeable sand cover but would resist flushing by natural ground water flow.

Possible sources of aquifer contamination include fuel storage tank failure, accidental spills of hazardous material transported across the aquifer, improper storing or handling of hazardous materials, spetic tank effluent, storm runoff, pesticides, and chemical fertilizers. The lakes located along the eastern margin of the dunal area would suffer from any contaminants introduced into that portion of the aquifer which recharges the lakes. Direct leaching from septic tanks located in sand-covered areas adjacent to the lakes could seriously downgrade the quality of Clear Lake—the only surface source of drinking water presently used in the area.

Localized overpumping of the aquifer near the ocean could result in saltwater intrusion. However, population projections by the Lane County Planning Staff suggest that such overdrafts are unlikely.

Drinking water for the proposed sole source area comes almost exclusively from two water districts. The City of Florence serves areas within the city limits whereas the Heceta Water District serves residents outside of Florence. Florence produces most of the water it consumes from two city owned and operated wells. A treatment plant near the wells precipitates and filters out the iron in additon to providing chlorination. The city purchases supplemental water from the Heceta Water District during seasonal periods of increased demand. The Heceta Water District pumps water from Clear Lake and distributes it after chlorination. As of 1985, withdrawals from Clear Lake by the water district accounted for about 18 percent of annual outflow from the lake. Although the Heceta Water District has only a few hundred connections fewer than Florence, a much higher percentage of its customers are seasonal residents. Accordingly, annual production by the Heceta Water District averages less thanb half that of the City of Florence.

Locally available surface water cannot qualify as a truly alternative source because of the hydrologic connection between surface water and ground water across the dunal surface. For instance, aquifer recharge to Clear Lake during the summer months, when surface inflow drops sharply and water consumption raises dramatically, already represents a significant part of the lake's inflow. Therefore, additional pumping from Clear Lake would, in essence, simply represent additional pumping from the aquifer.

Coastal lakes south of the Siuslaw River, such as Woahink Lake, have been suggested as an alternative water source. However, installing pumping stations, filtration equimpment, storage facilities, and transmission lines would significantly increase consumer costs. Furthermore, the coastal lakes south of the Siuslaw River are hydrologically connected to a dunal aquifer which is just as vulnerable to contamination as the North Florence Dunal Aquifer.

Streams which originate in the bedrock uplands east of the aquifer lack the year-around flow needed to meet water consumption in the area. Original studies of the dunal acquifer at Florence were conducted over 25 years ago because surface streams and wells drilled into bedrock could not meet the growing water needs of the area. Any reservoir construction projects designed to provide a steady supply of surface water would face serious obstacles which include: (1) Steep topography susceptible to landslides; (2) bedrock units which present engineering difficulties; and (3) silting problems associated with runoff from heavily logged slopes. These obstacles alone would raise costs to prohibitive levels.

IV. Project Review

When the EPA Administrator publishes this determination for a sole or principal drinking water source, the consequence is that no commitment for federal financial assistance may be made if the Administrator finds that the federal financially-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health [Safe Drinking Water Act section 1424(e), 42 U.S.C. 300h(e)]. In many cases, these federal financially-assisted projects may also be analyzed in a National Environmental Policy Act (NEPA) document, 42 U.S.C. 4332 (2)(c). All NEPA documents, as well as any other proposed federal actions affecting an EPA program or responsibility, are required by federal law to be reviewed and commented upon by the EPA Administrator.

To streamline EPA's review of the possible environmental impacts upon designated aquifers, when an action is analyzed in a NEPA document, the two reviews will be consolidated, and both authorities will be cited. The EPA review under the Safe Drinking Water Act of federal financially-assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review of any NEPA document accompanying the same federal financially-assisted project. The letter transmitting EPA's comments on the final Environmental Impact Statement to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

V. Discussion of Public Comment

Most of the comments received from the public were supportive of the designation. However, one commenter requested additional information; one commenter requested an emergency determination for designation of the aquifer as a sole source aquifer; one commenter suggested Woahink Lake as an alternative source of drinking water; and several commenters felt EPA project review would create another layer of government that wasn't needed.

In review and response to the public comments, EPA believes it to be inappropriate to designate the aquifer under emergency powers because it has not been demonstrated that a threat of "an imminent and substantial endangerment to the health of persons" is present. Woahink Lake cannot be considered an alternative source of drinking water for the following reasons: (1) 100 percent of allowable withdrawals are reserved for Dunes City municipal use by the Oregon Water Resources Commission; (2) installing a water treatment plant, pumping stations, storage facilities, and transmission lines would significantly increase consumer costs; and (3) the lakes south of the Siuslaw River are hydrologically connected to a dunal aquifer which is as vulnerable to contamination as the North Florence Dunal Aquifer.

EPA project review will be streamlined and will not result in government redundancy. To date, no federal financially-assisted projects within a Region 10 designated sole source aquifer have required cancellation. The proponents of projects which were determined to represent a threat to the aquifer have either

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willingly modified their plans to minimize the danger of aquifer contamination or sought a private source of financial backing.

VI. Summary

Today's action only affects the North Florence Dunal Aquifer in Lane County, Oregon. This action provides a review process to ensure that necessary ground-water protection measures are incorporated into federal financially-assisted projects.

Date: September 28, 1987.

Robie G. Russell,

Regional Administrator.

[FR Doc. 87-23179 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3274-6]

Water Quality Act Steering Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reschedule of public meeting.

SUMMARY: This notice is a revision to the notice of public meeting of the Water Quality Act Steering Committee which appeared in the September 10, 1987 **Federal Register** under the heading "Water Quality Act Steering Commitee: Meeting." (52 FR 34294) The date and location of this meeting have been changed. The meeting is now scheduled to be held at Hall of the States, 444 North Capitol Street, NW., Washington, DC 20001, in Room 237-239 beginning at 10:00 a.m. on October 22, 1987 and ending at about 4:00 p.m. on the same day (with a break for lunch). All other information on this meeting which was provided in the September 10, 1987 notice of public meeting mentioned above is accuracte.

SUPPLEMENTARY INFORMATION: In a related activity to the Water Quality Act Meeting, the Environmental Protection Agency Management Advisory Group (MAG) is holding a public meeting on October 15 and 16 at Loew's L'Enfant Plaza, 480 L'Enfant Plaza, SW., Washington, DC 20024. A notice of the MAG meeting appeared in the **Federal Register** on September 29, 1987. The Draft State Water Pollution Revolving Fund (SRF) Guidance will be a major topic of discussion at this meeting.

The Draft SRF Guidance will, however, be one of several topics of discussion at the Water Quality Act Steering Committee Meeting which this notice addresses. Individuals interested in more than a cursory discussion of the Draft SRF Guidance should therefore attend the MAG meeting on October 15 and 16.

Dated: October 5, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 87-23342 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

October 1, 1987.

Background: Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

For Further Information Contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Request for OMB Approval To Extend Without Revision

1. Report title: Quarterly Country Exposure Report for U.S. Branches and Agencies of Foreign Banks
Agency form number: FFIEC 019
OMB Docket number: 7100-0213
Frequency: Quarterly
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 14,400
Small businesses are not affected.
General description of report: This information collection is mandatory [12 U.S.C. 248] and is given confidential treatment [5 U.S.C. 552(b)(4) and (b)(8)], except for one item, i.e., column 4, line 1, "Total adjusted claims" on home country.

Each quarter, every U.S. branch or agency (of a foreign bank) with more than $30 million in total direct claims on foreign residents is required to report information on its exposure to its home country and to the five other countries to which its exposure is largest and is at least $5 million for an individual country. The data are used for supervisory and regulatory purposes.

Board of Governors of the Federal Reserve System, October 1, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-23156 Filed 10-6-87; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

October 1, 1987.

Background: Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340)

Proposal to Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Reports

1. Report title: Officer's Questionnaire
Agency form number: FR 2410
OMB Docket number: 7100-0050
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 70
Small businesses are affected.
General description of report: This information collection is mandatory [12 U.S.C. 325] and is given confidential treatment [5 U.S.C. 552(b)(8)].

The Federal Reserve requests a senior bank officer to complete this questionnaire, which provides information regarding past, present, and potential lawsuits in which the bank has been or may become involved concerning consumer credit compliance.

2. Report title: Consumer Satisfaction Questionnaire
Agency form number: FR 1379
OMB Docket number: 7100–0135
Frequency: On occasion
Reporters: Consumers who have filed consumer complaints concerning state member banks
Annual reporting hours: 9
Small businesses are affected.
General description of report: This information collection is voluntary [15 U.S.C. 57(a)(f)(1)] and is not given confidential treatment.

This questionnaire is sent by the Federal Reserve system to people who have filed a consumer complaint with a Federal Reserve Bank concerning a state member bank. Ccmplainants are requested to answer questions voluntarily about the effectiveness of the Reserve Bank's effort in handling the consumer complaint.

3. Report title: Uniform Form for Registration as a Transfer Agent and for Amendment to Registration
Agency form number: FR TA–1
OMB Docket number: 7100–0099
Frequency: On occasion
Reporters: State member banks, bank holding companies, and nondeposit trust company subsidiaries of bank holding companies.
Annual reporting hours: 80
Significant effect on small businesses is not expected.
General description of report: This information collection is mandatory [Section 17A(c) of the Securities Exchange Act of 1934; and 12 CFR 208.8(f)(2)] and is not given confidential treatment.

This interagency form fulfills the statutory registration requirements for entities acting as transfer agents and enables certain basic information changes concerning the transfer agents to become known by the supervisory agencies.

4. Report title: Notice Claiming Status as an Exempt Transfer Agent
Agency form number: FR 4013
OMB Docket number: 7100–0137
Frequency: On occasion
Reporters: Banks, bank holding companies, and trust companies
Annual reporting hours: 16
Significant effect on small businesses is not expected.
General description of report: This information collection is mandatory [15 U.S.C. 78q–1(c)(1)] and is not given confidential treatment.

This notice provides a method for banks, bank holding companies, and trust companies who are subject to Federal Reserve Board supervision and who are engaged as a transfer agent on behalf of an issuer of securities to claim exemption from several of the Securities and Exchange Commission's rules applicable to registered transfer agents.

Board of Governors of the Federal Reserve System, October 1, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–23157 Filed 10–6–87; 8:45 am]
BILLING CODE 6210–01–M

Agency Forms Under Review

October 1, 1987.

Background: Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:
Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)
OMB Desk Office—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340)

Proposal to Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. Report title: Applications for Membership in the Federal Reserve System
Agency form number: FR 2083, 2083A–2083E
OMB Docket number: 7100–0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual reporting hours: 3,071
Significant effect on small businesses is not expected.
General description of the report: This application provides managerial, financial and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H). The revisions would standardize the format of certain information and request certain additional information usually developed in the normal course of business in opening a new bank.

This information collection is authorized by law [12 U.S.C. 321–328]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

2. Report title: Report of Selected Deposits in Foreign Branches Held by U.S. Addressees
Agency form number: FR 2050
OMB Docket number: 7100–0068
Frequency: Weekly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations
Annual reporting hours: 9009
Small businesses are not affected.
General description of report: This information collection is authorized by law [12 U.S.C 248(a), 355, 461. Individual respondent data are exempt from disclosure under the Freedom of Information Act [5 U.S.C. 552 (b)(4), (b)(8)].

This report collects data from a selection of foreign branches of U.S. banks on overnight Eurodollar deposits held by U.S. nonbank residents. Data are used in construction of the monetary aggregates and analysis of liability management. A revision in the panel selection criteria will reduce the size of the panel by approximately 18 percent.

3. Report title: Monthly Report of Large International Banking Facility Accounts
Agency form number: FR 2072
OMB Docket number: 7100–0158
Frequency: Monthly
Reporters: International Banking Facilities (IBFs) of large U.S.-chartered banks and large U.S. branches and agencies of foreign banks
Reporting hours: 1187
Small businesses are not affected.
General description of report: This information collection is required by law [12 U.S.C. 248(a), 602, 625, and 3105(b)]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects data on assets and liabilities of International Banking Facility (IBF) accounts. Data are used to assist in interpreting the monetary aggregates and to monitor IBF activities. The revisions include an increase in the reporting threshold which would reduce the panel; minor changes in report items; and a change in report date to the last day of the month.

4. Report title: Monthly Report of Foreign Branch Assets and Liabilities
Agency form number: FR 2502
OMB Docket number: 7100–0078
Frequency: Monthly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations

Reporting hours: 15,756
Small businesses are not affected.
General description of report: This report is required by law [12 U.S.C. 248(a)(2), 353 et seq., 602 and 625]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides a breakdown of foreign branch assets and liabilities by category of customer and between dollars and foreign currencies. Data are used for supervisory purposes, in construction of the monetary aggregates, and to monitor U.S. banks' foreign activities. The revisions include minor changes in reporting instructions and in form items.

5. Report title: Quarterly Report of Foreign Branch Assets and Liabilities
Agency form number: FR 2502S
OMB Docket number: 7100–0079
Frequency: Quarterly
Reporters: Foreign branches of U.S. banks and Edge and Agreement corporations
Reporting hours: 7070
Small businesses are not affected.
General description of report: This report is required by law [12 U.S.C. 248(a)(2), 353 et seq., 602 and 625]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides a geographic breakdown of assets and liabilities of foreign branch offices of U.S. banks. It is used to monitor U.S. banks' claims on and liabilities to individual foreign countries by particular branch offices and to monitor countries' indebtedness to U.S. banks. The revisions include minor changes in instructions and country names on the form.

6. Report title: Community Reinvestment Act Questionnaire
Agency form number: FR 1283
OMB Docket number: 7100–0052
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 521
Small businesses are affected.
General description of report: This information collection is mandatory [12 U.S.C. 325 and 12 U.S.C. 2901(b) and is given confidential treatment [5 U.S.C. 552(b)(8)].

The Federal Reserve requests a senior bank officer to complete this form, which is called the Community Reinvestment Act Questionnaire. The form provides information needed to make an assessment, as mandated by the Community Reinvestment Act, regarding the bank's effort to serve the credit needs of its local community. The revisions are minor wording changes to clarify the information being requested.

Board of Governors of the Federal Reserve System, October 1, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–23158 Filed 10–6–87; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 14.25% for the quarter ended September 30, 1987. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Date: October 2, 1987.
Dennis J. Fischer,
Deputy Assistant Secretary, Finance.
[FR Doc. 87–23199 Filed 10–6–87; 8:45 am]
BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 87F–0300]

Betz Laboratories, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betz Laboratories, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydroquinone as an additive in boilers producing steam that may come in contact with food.

FOR FURTHER INFORMATION CONTACT: Eric Flamm, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A4031) has been filed by Betz Laboratories, Inc., 4636 Somerton Rd., Trevose, PA 19047, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of hydroquinone as an additive in boilers producing steam that may come in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Reister** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.
Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 87–23186 Filed 10–6–87; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 87F–0302]

E.I. du Pont De Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polymer manufactured by the condensation of hexamethylenediamine, terephthalic acid, and isophthalic acid for contact with all types of food, except beverages containing more than 8 percent alcohol.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAB 7B4001) has been filed by E.I. du Pont de Nemours & Co., Wilmington, DE 19898, proposing that § 177.1500 *Nylon resins* (21 CFR 177.1500) be amended to provide for the safe use of a polymer manufactured by the condensation of hexamethylenediamine, terephthalic

acid, and sophthaic acid for contact with all types of food, except beverages containing more than 8 percent alcohol.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23187 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0309]

Sherex Chemical Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sherex Chemical Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of dodecyltin tri(isooctylmercaptoacetate) and di(dodecyl)tin di(isooctylmercaptoacetate) as a thermal stabilizer for polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3873) has been filed by Sherex Chemical Co., Inc., P.O. Box 646, Dublin, OH 43017, proposing that § 178.2650 *Organotin stabilizers in vinyl chloride plastics* (21 CFR 178.2650) be amended to provide for the safe use of a mixture of dodecyltin tri(isooctylmercaptoacetate) and di(dodecyl)tin di(isooctylmercaptoacetate) as a thermal stabilizer for polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23188 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0294]

Sumitomo Chemical Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyvinylcyclohexane as a clarifying agent for polypropylene and olefin copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4032) has been filed by Sumitomo Chemical Co., Ltd., 7-9 Nihonbashi, 2-Chome, Chuo-ku, Tokyo, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of polyvinylcyclohexane as a clarifying in polypropylene complying with § 177.1520(c), item 1.1, and olefin copolymers complying with § 177.1520(c), items 3.1 and 3.2, for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23185 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 87N-0337]

Drug Export; Carbicarb Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that International Medication Systems, Ltd. (IMS), has filed an application requesting approval for the export of the human drug Carbicarb Injection to Canada and the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that they agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that International Medication Systems, Ltd. (IMS), 1886 Santa Anita Ave., South El Monte, CA 91733, has filed an application requesting approval for the export of the drug Carbicarb Injection to Canada and the United Kingdom. This drug is indicated for use when correction of the pH is required in conditions of metabolic acidosis such as that related to cardiopulmonary bypass, renal disease, circulation insufficiency due to shock or dehydration, cardiac arrest and primary lactic acidosis. The application was received and filed in the Center for Drugs and Biologics on September 17, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4.pm., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 19, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: September 25, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-23184 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPO-070-GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1988

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice With comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program for the fiscal year beginning October 1, 1987. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary or carrier contract or take other contract actions; assign or reassign providers of services to an intermediary; or designate regional or national intermediaries. In addition, this notice describes the methodology used for identifying contractors for competitive replacement under section 2326 of the Deficit Reduction Act of 1984.

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act, which requires us to publish for public comment in the **Federal Register**, those criteria and standards against which we evaluate intermediaries and carriers.

DATE: The criteria and standards are effective October 1, 1987. We will consider revising the criteria and standards based on public comments. To assure consideration, comments must be sent to the appropriate address and received by December 7, 1987.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-070-GNC, P.O. Box 26676, Baltimore, Maryland.

In commenting, please refer to file code BPO-070-GNC.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, generally beginning approximately three weeks after publication, in Room 309–G of the Department's office at 200 Independence Avenue, SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. We will, however, accept the timely comments, consider them, and publish the comments and our responses to them in a subsequent Federal Register if we modify the FY 1988 criteria and standards as announced.

FOR FURTHER INFORMATION CONTACT: John Barton, (301) 594–8502.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the reimbursable amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

Under section 1816(f) of the Act, we are required to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement with us. We evaluate intermediary performance through the Contractor Performance Evaluation Program (CPEP). Our regulations at 42 CFR 421.120 provide for publication of **Federal Register** notices to announce criteria and standards applicable during each fiscal year.

Under section 1842(b)(2) of the Act allows us to evaluate the performance of Medicare carriers. Since 1981, we have evaluated carrier performance under CPEP using criteria and standards similar to those used for intermediaries. When a fiscal intermediary exercises functions which are Part B functions, technically it does so as a Part B carrier under section 1842 of the Act. Under section 1842(a) of the Act, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, to perform some or all of the Medicare Part B functions.

As a result of section 2326(c) of Pub. L. 98–369, the Deficit Reduction Act of 1984 (DEFRA), we publish in the **Federal Register** the criteria and standards used to evaluate both intermediaries and carriers in order to allow the public an opportunity to comment before implementing them. This notice announces the FY 1988 criteria and standards to be used to measure the effectiveness and efficiency of both intermediaries and carriers.

In addition, section 2326(a) of DEFRA, as amended by Section 9321 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, established the Secretary's statutory authority to replace up to two Part A and up to two Part B contractors which, over a period of time, have been in the lowest 20th percentile of Medicare contractors, as measured by performance criteria and standards. The contractor community has played a significant role in developing the DEFRA methodology and the ongoing revisions necessitated each year since legislated. However, this is the first time that the methodology for applying the DEFRA requirements is being published for comment in the **Federal Register**. It is HCFA's intention to afford this formal comment opportunity each year in the notice which conveys the performance criteria and standards. The ongoing exchange of ideas and comments which occurs through interaction between HCFA and its contractors will also continue, as in the past.

B. Fiscal Year 1988 Criteria and Standards—General

For FY 1988, we have redesigned CPEP to focus on more results- and output-oriented measures in an effort to create a more enhanced measurement tool. This redesign was accomplished as a result of a joint effort on the part of HCFA and representatives of the contractor community.

In redesignating CPEP we first identified the main functional responsibilities which are performed by the intermediaries and carriers (e.g., claims processing, medical review/utilization review, financial management, etc.) and these responsibilities have been termed "Functional Criteria." For intermediaries, we identified eleven separate criteria and, for carriers, we have identified ten. Next we identified how to measure performance for each criterion. We decided that appropriate measurement should fall into three basic key indicators or categories; cost, quality (accuracy), and timeliness. As appropriate, each key indicator contains one or more standards which measures contractor performance for that indicator within the functional criterion. Please note that not all three of the performance indicators may be necessarily appropriate to a functional criterion. That is, some functional criteria may only contain standards which measure one or two of the performance indicators.

The primary difference between the 1988 CPEP and the program for 1987 is the scoring and weighting structure. The actual performance standards/measurements used for the two years are very similar. Where differences exist in the standards from FY 1987 they are due to our intention that the FY 1988 CPEP be more results- and output-oriented. The FY 1988 CPEP's scoring and weighting structure moves away from the FY 1987 approach of equally weighted criteria and using uniform weights of 5, 3, or 1 for the standards within the criteria. To more effectively recognize the differences in the relative importance of functional requirements, the FY 1988 CPEP assigns points ranging from 60 to 160 to each functional criterion and, similarly, assigns points ranging from one to 100 to each standard within a functional criterion. This new weighting scheme provides HCFA with greater flexibility and contractor management with a clearer understanding of program emphases for the evaluation period. The scoring system for FY 1988 is discussed in greater detail in Section C of this notice. We are implementing, on a test basis, a standard to measure a carrier's timeliness in completion of hearings.

Action Based on Performance Evaluations

We may, as in previous years, initiate administrative actions as a result of the evaluation of intermediary and carrier performance based on these performance criteria and standards.

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Under sections 1816 and 1842 of the Social Security Act, we consider the results of the evaluation in our determination on:

1. Entering into, renewing, or terminating agreements with contractors; and

2. Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

a. Relative overall performance compared to other contractors;

b. Number of standards in which superior, average, or deficient performance occurs;

c. Extent of each failure; and

d. Relative significance of the standards for which superior or deficient performance occurs within the overall CPEP.

In addition, we consider the results of intermediary evaluation in determinations we make concerning assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individuals contract action decisions after considering these factors in terms of their reactive significance and impact on the efficient administration of the Medicare Program.

Replacement of Contractors Through Competitive Bidding

Section 2326(a) of Pub. L. 98–369 (DEFRA) allows HCFA to use competitive bidding to replace a contractor whose performance over a period of time has been in the lowest 20th percentile as measured by performance criteria and standards. In FY 1985 and FY 1986, section 2326(a) of DEFRA authorized HCFA to enter into two intermediary agreements and two carrier contracts based on competitive bidding, without regard to provider nomination rights, in order to replace poor performing intermediaries and carriers. The authority to replace poor performers under provisions of section 2326(a) was extended through the end of FY 1989 by section 9321(b) of Pub. L. 99–509. Section F of this notice outlines the methodology for complying with section 2326(a) of DEFRA for FY 1988.

C. Scoring System

For both intermediaries and carriers, the maximum score attainable is 1000 points. Each of the CPEP's functional criterion is assigned a given portion of the 1000 available points. There are two requirements for passing CPEP. One of the requirements is that 70 percent of the available points for each criterion must be attained. Each functional criterion contains one or more standards categorized as either a cost, quality, or timeliness measure. Each of the standards is assigned a portion of the total points for that functional criterion. Each standard has a method of evaluation that is used to calculate a rating based on a contractor's performance in that standard. The second requirement for passing CPEP is that 70 percent of the total available points for each category of standards, i.e., cost, quality/accuracy, and timeliness, must also be attained.

A contractor's performance is evaluated against each applicable standard. In general, if a contractor exactly meets the requirements for a standard, it achieves 70 percent of the points allocated to that standard, to which we refer as the threshold score. Any rating below that threshold (i.e., less than 70 percent) constitutes a deficiency requiring correction or improvement.

D. Criteria and Standards for Intermediaries

We will use 11 criteria to evaluate the overall performance of an intermediary in FY 1988. They are: (1) Unit Cost; (2) Process Claims; (3) Auditing; (4) Medical Review; (5) Medicare Secondary Payer; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; (10) Reimbursement; and (11) Management of Change. The eleven criteria contain a total of 60 standards. There are two for unit cost, nine for process claims, seven for auditing, three for medical review, one for Medicare secondary payer, five for financial management, four for beneficiary and provider services, 15 for reporting, three for fraud and abuse, six for reimbursement, and five for management of change.

1. Unit Cost Criterion (Total Points=95)

An intermediary must process all bills at an acceptable unit cost.

- Process bills at an acceptable unit cost (Standard 1=75 points) (Cost).
- Process appeals at an acceptable unit cost (Standard 2=20 points) (Cost).

2. Process Claims Criterion (Total Points=135)

An intermediary must properly control and process bills from providers, and transmit accurate bill information to HCFA. The intermediary is required to meet the following standards:

- Pay clean non-Periodic Interim Payment (PIP) bills within mandated timeframes (Standard 1=35 points) (Timeliness).
- Pay all bills within 60 days (Standard 2=5 points) (Timeliness).
- Pay all bills within 90 days (Standard 3=5 points) (Timeliness).
- Control payment of interest on clean bills (Standard 4=15 points) (Timeliness).
- Process adjustment records timely, and return the adjusted records to the PRO (Standard 5=10 points) (Timeliness).
- Assure that all Part A bills pass HCFA utilization and consistency edits (Standard 6=10 points) (Quality).
- Process Returns to Intermediaries (RTIs) in a timely manner (Standard 7=7 points) (Timeliness).
- Process Returns to Intermediaries (RTIs) accurately (Standard 8=3 points) (Quality).
- Process bills accurately (Standard 9=45 points) (Quality).

3. Auditing Criterion (Total Points=100)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for Medicare trust funds. We will use the standards below to evaluate the criterion for FY 1988. The intermediary is required to:

- Administer a cost-effective provider audit program (Standard 1=36 points) Cost).
- Perform properly when reviewing, auditing, adjusting, settling, and completing cost reports/statements (Standard 2=34 points) (Quality).
- Settle Hospital Cost reports timely (Standard 3=9 points) (Timeliness).
- Settle cost reports with malpractice and labor delivery room adjustments timely (Standard 4=9 points), (Timeliness).
- Issue Notices of Program Reimbursement (NPRs) on freestanding Home Health Agencies (HHA) cost reports timely (Standard 5=3 points) (Timeliness).
- Issue Notices of Program Reimbursement (NPRs) on freestanding SNF cost reports timely (Standard 6=3 points) (Timeliness).
- Complete Special Situations Audits timely (Standard 7=6 points) (Timeliness).

4. Medical Review Criterion (Total Points=125)

- An intermediary must perform medical review activities as required by HCFA instructions in a timely, accurate and cost effective manner. We will use the following standards to evalute this criterion in FY 1988. The intermediary is required to:

- Make accurate coverage determinations (Standard 1=75 points) (Quality).
- Administer a cost effective Medical Review (MR) program (Standard 2=25 points) (Cost).
- Apply appropriate HCFA MR policies (Standard 3=25 points) (Quality).

5. Medicare Secondary Payer Criterion (Total Points=80)

- An intermediary must administer the program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standard below to evaluate an intermediary's administration of the Medicare Secondary Payer provisions. The intermediary is required to:
- Achieve the Medicare Secondary Payer (MSP) savings goal (Standard 1=80 points) (Cost).

6. Financial Management Criterion (Total Points=65)

- An intermediary must take measures to trust the Medicare program and the public interest. It must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations (Title 48, Chapter 1), the HHS Acquisition Regulations (Title 48, Chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion in FY 1988. The intermediary is required to:
- Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationships (Standard 1=15 points) (Quality).
- Control administrative funds drawn to the quarterly limit on the Notice of Budget Approval (NOBA) and in line with actual expenditures (Standard 2=15 points) (Quality).
- Control actual expenditures to the latest approved budget (Standard 3=13 points) (Quality).
- Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement (Standard 4=8 points) (Quality).
- Ensure proper expenditure of Payment Safeguards Funds (Standard 5=14 points) (Quality).

7. Beneficiary and Provider Services Criterion (Total Points=100)

An intermediary must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering such areas as responding to correspondence and processing reconsiderations timely and accurately. We will use the standards below to evaluate beneficiary and provider services for FY 1988. The intermediary is required to:

- Process reconsiderations accurately (Standard 1=25 points) (Quality).
- Process reconsiderations timely (Standard 2=15 points) (Timeliness).
- Process correspondence accurately (Standard 3=40 points) (Quality).
- Process correspondence timely (Standard 4=20 points) (Timeliness).

8. Reporting Criterion (Total Points=60)

An intermediary must manage Federal funds for both program payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the standards below to evaluate an intermediary's reporting function in FY 1988. The intermediary is required to:

- Submit accurate Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 1=6 points) (Quality).
- Submit timely Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 2=6 points) (Timeliness).
- Submit accurate Interim Expenditure Reports (IERs) (Standard 3=5 points) (Quality).
- Submit Interim Expenditure Reports (IERs) timely (Standard 4=5 points) (Timeliness).
- Submit the Final Administrative Cost Proposal (FACP) accurately (Standard 5=2 points) (Quality).
- Submit the Final Administrative Cost Proposal (FACP) timely (Standard 6=2 points) (Timeliness).
- Submit an accurate budget request (Standard 7=2 points) (Quality).
- Submit the budget request timely (Standard 8=2 points) (Timeliness).
- Submit the Contractor Audit and Settlement Report (CASR) timely (Standard 9=7 points) (Timeliness).
- Submit an accurate Provider Overpayment Report (POR) (Standard 10=5 points) (Quality).
- Submit the Provider Overpayment Report (POR) timely (Standard 11=5 points) (Timeliness).
- Submit Intermediary Workload Report (HCFA–1566) and Quarterly Supplement (HCFA–1566A) timely (Standard 12=8 points) (Timeliness).
- Submit accurate Reports of Benefit Savings (Standard 13=2 points) (Quality).
- Submit Reports of Benefit Savings timely (Standard 14=1 point) (Timeliness).
- Enter appeals data timely (Standard 15=2 points) (Timeliness).

9. Fraud and Abuse Criterion (Total Points=70)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the three standards below to evaluate an intermediary's efforts to identify and develop fraud and abuse situations. The intermediary is required to:

- Detect fraud and abuse situations (Standard 1=35 points) (Quality).
- Develop potential fraud and abuse cases (Standard 2=25 points) (Quality).
- Ensure that no payments are made to excluded providers and physicians (Standard 3=10 points) (Quality).

10. Reimbursement Criterion (Total Points=75)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to assess the intermediary's reimbursement activity. The intermediary is required to:

- Establish interim payments for hospitals to approximate reimbursable costs (Standard 1=20 points) (Quality).
- Establish interim payments for freestanding Skilled Nursing Facilities (SNFs) to approximate reimbursable costs (Standard 2=10 points) (Quality).
- Establish interim payments for freestanding HHAs to approximate reimbursable costs (Standard 3=15 points) (Quality).
- Collect Provider Overpayments timely (Standard 4=22 points) (Timeliness).
- Submit timely cost report data for the Hospital Cost Report Information System (HCRIS) (Standard 5=5 points) (Timeliness).
- Submit accurate cost report data for HCRIS (Standard 6=3 points) (Quality).

11. Management of Change Criterion (Total Points=95)

An intermediary must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both program payments and cost of administration in accordance with HCFA instructions. We will evaluate an intermediary's management of change with the following FY 1988 standards:

- Implement Priority I critical tasks accurately (Standard 1=25 points) (Quality).
- Implement Priority I critical tasks timely (Standard 2=35 points) (Timeliness).
- Implement "other tasks" from the Contractor Workload Management

Report accurately (Standard 3=10 points) (Quality).

• Implement "other tasks" from the Contractor Workload Management Report timely (Standard 4=10 points) (Timeliness).

• Comply with RO requests and instructions timely (Standard 5=15 points) (Timeliness).

E. Criteria and Standards for Carriers

We will use ten criteria to evaluate overall carrier performance during FY 1988. They are: (1) Unit Cost; (2) Process Claims; (3) Medical Review; (4) Medicare Secondary Payer; (5) Pricing and Coding; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; and (10) Management of Change. The ten criteria contain a total of 69 standards. There are three for unit cost, 12 for processing claims, four for medical review, one for Medicare secondary payer, eight for pricing and coding, five for financial management, 12 for beneficiary and provider services, 14 for reporting, five for fraud and abuse, and five for management of change.

1. Unit Cost Criterion (Total Points=95)

A carrier must process all claims at an acceptable unit cost.

• Process claims at an acceptable unit cost (Standard 1=75 points) (Cost).

• Process reviews, reopenings, and inquiries at an acceptable unit cost (Standard 2=10 points) (Cost).

• Process hearings at an acceptable unit cost (Standard 3=10) (Cost).

2. Process Claims Criterion (Total Points=160)

A carrier must process Part B Medicare claims to determine allowance or disallowance in accordance with general instructions. For FY 1988 we will use the following 12 standards to assess carriers' claim processing performance. The carrier is required to:

• Pay clean participating physician claims within mandated timeframes (Standard 1=25 points) (Timeliness).

• Pay other clean claims within mandated timeframes (Standard 2=25 points) (Timeliness).

• Pay all claims within 60 days (Standard 3=12 points) (Timeliness).

• Pay all claims within 90 days (Standard 4=8 points) Timeliness).

• Control payment of interest on clean claims (Standard 5=20 points) (Timeliness).

• Maintain satisfactory underpayment deductible error rate (Standard 6=25 points) (Quality).

• Maintain satisfactory overpayment deductible error rate (Standard 7=25 points) (Quality).

• Prepare payment record tapes accurately (Standard 8=5 points) (Quality).

• Submit payment records in accordance with HCFA requirements (Standard 9=3 points) (Timeliness).

• Correct payment record rejects timely (Standard 10=2 points) (Timeliness).

• Generate Explanation of Medicare Benefits (EOMBs) properly (Standard 11=5 points) (Quality).

• Ensure Regional Office (RO) approval of special messages (Standard 12=5 points) (Quality).

3. Medical Review Criterion (Total Points=125)

A carrier must perform necessary medical review activities in accordance with HCFA instructions accurately, timely, and in a cost-effective manner. The carrier is required to:

• Make accurate coverage decisions based on Carriers' Guidelines (Standard 1=60 points) (Quality).

• Administer a cost effective Medical Review (MR) program (Standard 2=30 points) (Cost).

• Conduct an effective postpayment program (Standard 3=20 points) (Quality).

• Apply appropriate HCFA MR policies (Standard 4=15 points) (Quality).

4. Medicare Secondary Payer Criterion (Total Points=80)

A carrier must administer the Medicare program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standards below to evaluate a carrier's administration of the Medicare Secondary Payer provisions. The carrier is required to:

• Achieve Medicare Secondary Payer (MSP) savings goal (Standard 1=80 points) (Cost).

5. Pricing and Coding Criterion (Total Points=100)

A carrier must accurately determine the amount of program payments allowed for covered services. For FY 1988 we will use the following eight standards to assess a carrier's pricing and coding performance. The carrier is required to:

• Install and implement appropriate pricing accurately for Medicare covered new and cross referenced HCFA's Common Procedure Coding System (HCPCS) codes (Standard 1=10 points) (Quality).

• Implement HCFA's Common Procedure Coding System (HCPCS) annual update timely (Standard 2=10 points) (Timeliness).

• Perform reasonable charge determinations accurately (Standard 3=15 points) (Quality).

• Update reasonable charges and install by due date (Standard 4=20 points) (Timeliness).

• Install correction of reasonable charge screens by RO due date (Standard 5=15 points) (Timeliness).

• Comply with manual requirements on inherent reasonableness accurately (Standard 6=10 points) (Quality).

• Compute Maximum Allowable Actual Charges (MAACs) accurately (Standard 7=10 points) (Quality).

• Make MAACs available to providers by due date (Standard 8=10 points) (Timeliness).

6. Financial Management Criterion (Total Points=65)

A carrier must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both program payments and the cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations (Title 48, Chapter 1), the HHS Acquisition Regulations (Title 48, Chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion in FY 1988. The carrier is required to:

• Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship (Standard 1=15 points) (Quality).

• Control administrative funds drawn to the quarterly limit on the Notice of Budget Approval (NOBA) and in line with actual expenditures (Standard 2=15 points) (Quality).

• Control actual expenditures to the latest approved budget (Standard 3=13 points) (Quality).

• Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement (Standard 4=8 points) (Quality).

• Ensure proper expenditure of Payment Safeguard Funds (Standard 5=14 points) (Quality).

7. Beneficiary and Provider Services Criterion (Total Points=150)

A carrier must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering areas such as responding to correspondence, issuing notices of determinations, and providing impartial

reviews. The carrier is responsible to meet the following standards:

- Maintain proper level of telephone service (Standard 1=25 points) (Timeliness).
- Respond timely to telephone inquiries (Standard 2=5 points) (Timeliness).
- Complete reviews accurately (Standard 3=30 points) (Quality).
- Furnish readable notice to beneficiary of review determinations (Standard 4=10 points) (Quality).
- Complete reviews timely (Standard 5=20 points) (Timeliness).
- Respond accurately to correspondence (Standard 6=25 points) (Quality).
- Furnish readable response to beneficiary correspondence (Standard 7=10 points (Quality).
- Respond timely to all correspondence (Standard 8=10 points) (Timeliness).
- Sent out letters timely to physicians and suppliers offering them the opportunity to become a Medicare participant (Standard 9=5 points) (Timeliness).
- Prepare MEDPARD timely (Standard 10=5 points) (Timeliness).
- Determine liability and properly dispose of beneficiary overpayment cases (Standard 11=5 points) (Quality).
- Complete carrier hearings timely (Standard 12=0 points) (Timeliness).

8. Reporting Criterion (Total Points=60)

A carrier must manage Federal funds for both program payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the 14 standards below to assess a carrier's reporting function in FY 1988. The carrier is required to:

- Submit accurate Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 1=6 points) (Quality).
- Submit timely Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 2=6 points) (Timeliness).
- Submit accurate Interim Expenditure Reports (IERs) (Standard 3=5 points) (Quality).
- Submit Interim Expenditure Reports (IERs) timely (Standard 4=5 points) (Timeliness).
- Submit the Final Administrative Cost Proposal (FACP) accurately (Standard 5=2 points) (Quality).
- Submit the Final Administrative Cost Proposal (FACP) timely (Standard 6=2 points) (Timeliness).
- Submit an accurate budget request (Standard 7=2 points) (Quality).
- Submit the budget request timely (Standard 8=2 points) (Timeliness).
- Submit Carrier Performance Report (HCFA-1565) and Quarterly Supplement (HCFA-1565A) timely (Standard 9=9 points) (Timeliness).
- Submit accurate Quarterly Medical Review Reports (Standard 10=2 points) (Quality).
- Submit Quarterly Medical Review Reports timely (Standard 11=1 points). (Timeliness).
- Submit Quality Assurance Program (QAP) Reports timely (Standard 12=7 points) (Timeliness).
- Submit timely physician/supplier overpayment data (Standard 13=4 points) (Timeliness).
- Submit Part B Medicare (BMAD) files timely (Standard 14=7 points) (Timeliness).

9. Fraud and Abuse Criterion (Total Points=70)

A carrier must administer the program in a manner that achieves maximum savings and cost avoidance for Medicare trust funds. We will use the following standards to evaluate a carrier's efforts to identify and develop fraud and abuse situations. The carrier is required to:

- Detect fraud and abuse situations (Standard 1=20 points) (Quality).
- Develop potential fraud and abuse cases (Standard 2=20 points) (Quality).
- Ensure that no payments are made to excluded physicians/suppliers (Standard 3=10 points) (Quality).
- Monitor Participating Physician Agreement violations (Standard 4=10 points) (Quality).
- Monitor nonparticipating physician Minimum Allowable Actual Charge (MAAC) violations (Standard 5=10 points) (Quality).

10. Management of Change Criterion (Total Points=95)

A carrier must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both program payments and cost of administration in accordance with HCFA instructions. We will evaluate a carrier's management of change with the following FY 1988 standards:

- Implement Priority I critical tasks accurately (Standard 1=25 points) (Quality).
- Implement Priority I critical tasks timely (Standard 2=35 points) (Timeliness).
- Implement "other tasks" from the Contractor Workload Management Report accurately (Standard 3=10 points) (Quality).
- Implement "other tasks" from the Contractor Workload Management Report timely (Standard 4=10 points) (Timeliness).
- Comply with RO requests and instructions timely (Standard 5=15 points) (Timeliness).

F. DEFRA Methodology

For FY 1988, the methodology for separately identifying Part A and Part B contractors for replacement under section 2326 of DEFRA will be as follows:

- Performance, as measured by the Secretary's criteria and standards, will be considered for the 3 fiscal years 1986, 1987, and 1988.
- Each year's overall performance will be captured in the form of an unweighted, base efficiency rating—points earned as a percentage of points available, as determined by the performance criteria and standards.
- Each year's efficiency rating will be weighted to provide extra emphasis for the most recent performance. The weights, to be multiplied by each year's efficiency rating, are:

Year	Weight
1988	3
1987	2
1986	1

- Each year's weighted efficiency rating will be summed and the contractors ranked (Part A and Part B separately) from highest points to lowest points.
- Careful study of the bottom 20th percentile of contractors will be undertaken to fully assess considerations such as performance that is improving/deteriorating, factors beyond the contractor's control, and other factors pertinent to a particular territory.

G. Regulatory Impact Statement

1. Executive Order 12291

Executive Order 12291 (E. O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice such as that that meets one of the E. O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

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based enterprises in domestic or export markets.

We do not expect this notice to meet any of these criteria. Preliminary analyses reveal that the FY 1988 CPEP may reduce, by almost 30 percent, the Federal resources required to administer these criteria and standards. These resource savings are primarily a result of increased focus on results and output-oriented measures. Further, more efficient evaluation methodologies are being used. We expect little, if any, impact on contractor costs since the criteria and standards measure functional responsibilities that the contractor must be performing anyway as a Medicare contractor.

We also expect the effects on both competition and productivity to be favorable, not adverse, and the effects, if any, on employment, investment, and innovation to be negligible. For these reasons, we have determined that a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, intermediaries and carriers are not small entities, although we treat all providers and suppliers as small entities.

The direct effect of this notice is on our intermediaries and carriers. Since they are not small entities, even though we expect this notice to have an effect on contractor operations, an analysis of that impact is not required. However, it is clear that many standards, such as those governing bill processing, beneficiary services, and provider services, will have indirect effects on a substantial number of providers and suppliers. Therefore, in order to verify that a regulatory flexibility analysis is not required, we assessed whether the indirect impact on those small entities will be significant.

Generally, the operations to which the standards of the intermediary and carrier performance criteria refer are required by law, other regulations, contract, or other program instructions. These criteria provide an evaluation process and do not in themselves require the performance of the operations they evaluate. The most important indirect effect on providers and suppliers is to ensure that they are paid timely and accurately. We do not expect these criteria and standards to have any indirect adverse effects on them. Therefore, we have determined that the evaluation process in and of itself will not have a significant impact on providers and suppliers.

For these reasons, we have determined, and the Secretary certifies, that this notice would not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

3. Paperwork Reduction Act

This notice contains no information collection requirements subject to EOMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(Sec. 1102, 1816, 1842, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: August 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-23231 Filed 10-5-87; 8:53 am]
BILLING CODE 4120-01-M

Medicaid Program; Hearing; Reconsideration of Disapproval of Two Illinois State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 18, 1987 in Chicago, Illinois to reconsider our decision to disapprove Illinois State Plan Amendments 86-15, 87-12.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider our decision to disapprove two Illinois State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that information in a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether the two Illinois State plan amendments (SPAs) violate the requirements of sections 1905(a)(16) and 1905(h), section 1905(a)(14), and paragraph (B) following 1905(a)(21) of the Social Security Act and Federal regulations at 42 CFR Parts 440 and 441 and 42 CFR 440.140.

The State of Illinois submitted SPA 86-15 which would allow coverage of substance and alcohol abuse treatment services under the optional rehabilitative services benefit. These services would be provided in licensed freestanding alcohol and drug abuse treatment centers and would include short-term inpatient residential services for detoxification and rehabilitation for individuals up to age 21 and over 64; short-term rehabilitation in an intensive outpatient setting; other outpatient services, and psychiatric diagnostic services. Illinois 87-12 is identical in substance to SPA 86-15 except that it would expand eligibility for short-term residential recipients between the ages of 21 and 65.

HCFA disapproved those portions of Illinois SPA 86-15 and 87-12 which relate to short-term residential rehabilitation services because they would involve the provision of inpatient care not covered under the Medicaid statute. Medicaid payment can only be made for services provided in facilities which meet the Medicaid definition of hospitals, skilled nursing facilities, and intermediate care facilities. Moreover, in order for services for individuals up to age 21 and over 64 to be covered they must meet the statutory and regulatory requirements relating to inpatient psychiatric services for individuals under age 22 (sections 1905(a)(16) and 1905(h) of the law and regulations at 42 CFR Parts 440 and 441) and IMD

services for individuals over age 65 (section 1905(a)(14) of the law and regulations at 42 CFR 440.140. These provisions of law require, inter alia, that services to individuals under age 22 must be provided in a facility which is a psychiatric hospital as defined in section 1861(f) (section 1905(h)(1)(A) of the Act); that services to individuals over age 65 must provided in facilities which meet the requirements for psychiatric hospitals at 42 CFR 482.60.

Also, HCFA has determined that the inpatient services the additional individuals (i.e., individuals between the ages of 22 and 65) would receive under proposed Illinois SPA 87–12, could not be covered under Medicaid for another reason. HCFA has determined Illinois SPA 87–12 violates the Medicaid statutory prohibition (in paragraph (B) following section 1905(a)(21) of the Social Security Act) against payment on behalf of individuals between the ages of 22 and 65 who are in institutions for mental diseases (IMDs). HCFA has determined that the inpatient facilities described in the SPA are institutions "primarily engaged in providing diagnosis, treatments, or care of individuals with mental diseases, including medical care, nursing care and related services" (42 CFR 440.140(a)(2)). Thus, they meet the Medicaid definition of institutions for mental diseases.

The notice to Illinois announcing an administrative hearing to reconsider the disapproval of its State plan amendments reads as follows:

Mr. Edward L. Duffy
Director, Illinois Department of Public Aid, Jesse B. Harris Building, 100 South Grand Avenue East, Springfield, Illinois 62762

Dear Mr. Duffy: This is to advise you that your request for reconsideration of the decision to disapprove Illinois State Plan Amendment (SPA) 86–15 and 87–12 was received on August 27, 1987.

Illinois SPAs 86–15 and 87–12 propose to offer, as rehabilitative services under the State plan, inpatient and outpatient treatment for alcohol and substance abuse patients. Illinois SPA 87–12 alters that proposal by including in it inpatient residential services for individuals from the ages of 21 to 65.

There are two issues in this matter. The first issue concerns the need to determine whether Illinois' proposed amendments are consistent with the law and regulations governing inpatient care (section 1905(a)(16) and 1905(h) and section 1905(a)(14) of the Social Security Act and Federal regulations at 42 CFR Parts 440 and 441). Specifically, a determination needs to be made as to whether Illinois' proposed amendments are consistent with those provisions of law which require, inter alia, that services to individuals under age 22 be provided in a facility which is a psychiatric hospital as defined in section 1861(f) of the Act (section 1905(h)(1)(A)); and that services to individuals over age 65 must be provided in facilities which meet requirements for psychiatric hospitals at 42 CFR 482.60. The second issue concerns the need to determine whether the inpatient facilities described in Illinois 87–12 meet the definition of institutions for mental diseases in 42 CFR 440.140(a)(2) therefore violating the statutory prohibition in paragraph B following section 1905(a)(21) of the Social Security Act against payment on behalf of individuals between the ages of 22 and 65 who are in institutions.

I am scheduling a hearing on your request to be held on November 18, 1987 at 10:00 a.m. in Suite 835–A Conference Room, 175 W. Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. I order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Roper,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 25, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 87–23200 Filed 10–6–87; 8:45 am]
BILLING CODE 4120–03–M

National Institutes of Health

National Institute on Aging; Board of Scientific Counselors; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute on Aging (NIA), October 26–28, 1987, which was published in the **Federal Register** on Thursday, September 3, (52 FR 33476).

The Board was to have convened for three days on October 26, 27 and 28, but has been rescheduled to meet on Monday, October 26, and Tuesday, October 27, at the Gerontology Research Center, Baltimore, Maryland.

The meeting will be open to the public on October 26 and 27 from 9:30 a.m. until approximately 4:00 p.m. The meeting will be closed to the public on October 26 and 27 from 4:00 p.m. until adjournment each day.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496–9322) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: September 30, 1987.

Betty J. Beveridge,
Committee Management Officer, National Institutes of Health.

[FR Doc. 87–23197 Filed 10–6–87; 8:45 am]
BILLING CODE 4140–01–M

Advisory Committee to Director; Meeting

Notice is hereby given that the National Institutes of Health (NIH) will hold the third and fourth meetings of a series of seven regional public briefing meetings to be conducted under the auspices of the Advisory Committee to the Director, NIH, on "The Health of Biomedical Research Institutions." The purpose of the meetings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing the broad political context in which the NIH operates, discussing the Federal budget process as it affects the formulation of the NIH budget, demonstrating recent trends in the funding of NIH programs, discussing the broad strategies adopted by NIH to meet emerging needs, and describing new NIH policies and programs designed to achieve program objectives; and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, representatives of professional societies, and other interested parties concerning the impact of the Federal system of sponsored research on the health of biomedical research institutions.

The third meeting will be held on Thursday, December 3, 1987, from 8:30 a.m. to 5:00 p.m. at New York University. The fourth will be held on December 4, 1987, from 8:30 a.m. to 5:00 p.m. at the Forsyth Dental Center, Boston, Massachusetts. Notice of the time and location of additional meetings will be published later.

Following presentations by the Director, NIH, and his senior staff, a panel comprised of members of the Advisory Committee to the Director, NIH; representatives of NIH national advisory councils; and senior NIH staff will spend the remainder of the day

receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at this public meeting should notify, in writing, Jay Moskowitz, Ph.D., Executive Secretary, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Moskowitz by October 30, 1987; a copy of the full text of these remarks should be submitted for the record at the time of the meeting. Please indicate which of the two meetings you plan to attend. Additional information may be obtained by calling Mr. Edward Lynch, Division of Program Analysis, Office of Program Planning and Evaluation, National Institutes of Health, at (301) 496–1454.

Dated: September 29, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87–23148 Filed 10–6–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYO60–07–4322–12]

Casper District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board meeting.

SUMMARY: The Casper District Grazing Advisory Board will meet at 10:00 a.m. on November 9, 1987. The meeting will convene at the BLM Casper District Office, 1701 East "E" Street, Casper, Wyoming. The agenda will include: (1) Discussion of past resolutions; (2) range improvement projects and allotment management plans; (3) new business; and (4) a public comment period.

DATE: November 9, 1987; 10:00 a.m.

ADDRESS: To request summary minutes or time on the agenda, contact: Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public. Time will be available for public statements to the Board. Interested persons may testify or submit written statements for Board consideration. Anyone wishing to make an oral statement should notify the district manager by November 9, 1987. Depending on the number of persons wishing to make statements, a per-person time limit may be imposed by the district manager.

Summary minutes of the Board meeting will be maintained in the district office and be available for public inspection within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Kate DuPont, (307) 261–5557.

James W. Monroe,

District Manager

September 29, 1987.

[FR Doc. 87–23140 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–22–M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on November 13, 1987, at 9:00 a.m., Pacific Standard Time, in room 227, Federal Building, 211 E. 7th, Eugene, Oregon.

The main agenda item will be an update on the Eugene District's progress in completing its 10-year management plan.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written satements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, Oregon 97401, by November 12, 1987. A per-person time limit may be established by the District Manager, depending on the number of persons wanting to address the Council.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Melvin D. Clausen,

District Manager.

[FR Doc. 87–23141 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–33–M

[CA–940–07–4220–10; CA 20624]

California; Filing of Withdrawal Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of withdrawal application.

SUMMARY: On July 23, 1987, the Regional Forester, Pacific Southwest Region, Forest Service, U.S. Department of Agriculture, filed an application under the provisions of section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) to withdraw the following described national forest land from appropriation under the general mining laws (30 U.S.C., Ch. 2), subject to valid existing rights:

Mount Diablo Meridian, California

Plumas County

Plumas National Forest

T. 25, N., R. 9 E.,
Sec. 15, W½NE¼SW¼, NE¼SW¼SW¼, NW¼SE¼SW¼, W½NE¼SE¼SW¼, E½NW¼SW¼, W½E½NE¼SW¼, S½SE¼SW¼, and SE¼SW¼ SW¼NW¼.

Containing 82.50 acres.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978–4815.

The purpose of the withdrawal application is for the development of a 39-unit campground, group camp, day use area, and amphitheater. During the segregation period the land will be managed for dispersed recreation uses.

The application and the case file pertaining to it are available for public inspection at the California State Office, Bureau of Land Management, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections concerning the proposed withdrawal may present their views, in writing, to the undersigned officer, at the above address.

Notice is hereby given that all persons who desire that a public meeting be held must submit a written request to the undersigned officer at the above address within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in Part 2300 of Title 43, Code of Federal Regulations.

The publication of this notice in the **Federal Register** shall segregate the lands described in the application to the extent that they shall not be subject to

appropriation under the general mining laws (30 U.S.C., Ch. 2), for a period of 2 years from the date of publication in the **Federal Register**, unless the application is allowed or denied or cancelled, in whole or in part, prior to the expiration of the 2-year period. The 2-year segregative period does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

Inquiries concerning the land should be addressed to the Forest Supervisor, Plumas National Forest, 159 Lawrence Street, Quincy, California 95971.

Dated: September 28, 1987.

Nancy J. Alex,

Acting Chief, Branch of Adjudication & Records.

[FR Doc. 87-23142 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

[FES 87-44]

Availability of Final Environmental Impact Statement; Tetlin National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of a final environmental impact statement for the proposed Comprehensive Conservation Plan and Wilderness Review for Tetlin National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (plan) for the Tetlin National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The final plan describes five alternatives for managing the refuge and the environmental consequences of implementing each alternative. The document also reviews the suitability of all the federal lands in the refuge for possible wilderness designation and inclusion in the National Wilderness Preservation System.

DATE: A Record of Decision will be issued no sooner than November 15, 1987.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A summary of the final plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete final plan will be sent to federal and state agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the complete final plan are available at the office of the Regional Director, at the above address; at the Tetlin National Wildlife Refuge Office, P.O. Box 155, Tok, Alaska 99780, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 70, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Date: September 29, 1987.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 87-23118 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Kerr-McGee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4412, Block 2, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Chenier, Louisiana.

DATE: The subject DOCD was deemed submitted on September 29, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Date: September 30, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-23137 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on

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Lease OCS–G 5726, Block 243' Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on September 28, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m.. Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487. Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie O. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Date: September 29, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23138 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1189, Block 29, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 28, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Date: September 29, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23139 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5426, Block 223, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the

Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 28, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-23146 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: 30 CFR Part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan

Abstract: This information is needed to fulfill the requirements of sections 507, 508 and 515 of Pub. L. 95-87 and is used by the regulatory authority in determining whether the applicant can meet the performance standards of the regulations and the environment protection standards of the regulatory program.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Mining Operators.

Annual Responses: 2,000.

Annual Burden Hours: 790,360.

Bureau clearance officer: Darlene Grose-Boyd, (202) 343-5447.

Date: September 15, 1987.

Donald Hinderliter,

Acting Assistant Director, Budget and Administration.

[FR Doc. 87-2319 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-242]

Import Investigation; Errata To Commission Action and Order; Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same

On September 21, 1987, the Commission issued an Action and Order in the above-captioned investigation, disposing of the issues on review and issuing a limited exclusion order prohibiting the entry of infringing DRAMs of 64 and 256 kilobits (and any combination thereof such as 128 kilobits) manufactured by Samsung Company, Ltd. and/or Samsung Semiconductor & Telecommunications Co., Ltd., whether assembled or unassembled. The Commission's order also prohibits the entry of infringing DRAMs of 64 or 256 kilobits (and any combination thereof such as 128 kilobits) manufactured by Samsung Company, Ltd., and/or Samsung Semiconductor & Telecommunications Co., Ltd., incorporated into a carrier of any form, including Single-Inline-Packages and Single-Inline-Modules, or assembled onto circuit boards of any configuration. The Commission has also determined to prohibit the entry of computers (such as mainframe, personal, and small business computers), facsimile equipment, telecommunications switching equipment, and printers containing infringing DRAMs of 64 or 256 kilobits (and any combination thereof such as 128 kilobits) manufactured by Samsung Company, Ltd. and/or Samsung Semiconductor & Telecommunications Co., Ltd.

It has come to the Commission's attention that there is a typographical error in paragraph 8 of the Commission's Order, which may lead to confusion in the application of the bonding provision of the Order, since it refers to the wrong paragraph of the Order (i.e., paragraph 6 rather than paragraph 7) in establishing the amount of the bond. Therefore, the Commission is issuing this errata. Paragraph 8 of the Commission's September 21, 1987, Order is corrected to read as follows:

8. Products identified in paragraphs (2), (3), (4), or (5) of this Order are entitled to entry into the United States from the day after this Order is received by the President, pursuant to subsection (g) of section 337 of the Tariff Act of 1930, until such time as the President notifies the Commission that he approves or disapproves this action, but no later than 60 days after the date of receipt of this Order by the President, under bond in the amounts identified in paragraph (7) of this Order. Persons importing such products shall certify to the best of their knowledge the number of DRAMs subject to this Order contained in such products, pursuant to procedures to be specified by the U.S. Customs Service;

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 1, 1987.

[FR Doc. 87-23206 Filed 10-6-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-272]

Import Investigation; Commission Decision to Review and Affirm With Modification an Initial Determination Terminating Two Respondents and Adding One Respondent; Certain Electronic Crime Modules

AGENCY: International Trade Commission.

ACTION: Determination to review and affirm with modification an initial determination terminating two respondents and adding one respondents.

SUMMARY: Notice is hereby given that the Commission has determined to review and affirm with modification an initial determination (ID) (Order No. 1) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID granted the motion (Motion No. 272-1) of respondents Invotec Instrument, Inc. (Invotec) and Invotec Instruments, Inc., Invotronics Division (Division) to dismiss them as respondents and add Aimco, Inc. (Aimco) as a proper respondent.

SUPPLEMENTARY INFORMATION: On July 30, 1987, the Commission voted to institute this investigation and named as respondents Modu-Tronics, Inc., Invotec, and Division. On August 20, 1987, respondents Invotec and Division moved to be dismissed from the investigation because they were improperly named as respondents.

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Invotec and Division also moved to have Aimco substituted for them as the proper respondent. The motion was unopposed by complainant Lectron Products, Inc.

On August 31, 1987, the presiding ALJ issued an ID granting the respondent's motion. No petitions for review of the ID or Government agency comments were received. As Order No. 1 did not state that the complaint and notice of investigation were amended to reflect the termination of Invotec and Division as respondents and the addition of Aimco as a respondent, the Commission has ordered that the ID be amended to include such amendment.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53, 210.55, and 210.56 of the Commission's rules (19 CFR 210.53, 210.55, and 210.56).

Copies of the ID and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 29, 1987.

[FR Doc. 87–23207 Filed 10–6–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–254]

Decision To Review Initial Determination and To Extend Deadline for Completion of Investigation; Certain Small Aluminum Flashlights and Components Thereof

AGENCY: International Trade Commission.

ACTION: Review of initial determination (ID) and extension of deadline for completion of the investigation.

SUMMARY: Notice is given that the Commission has determined to review the ID of the presiding administrative law judge (ALJ) that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation. Further, the Commission has determined to extend the deadline for completion of the investigation until December 10, 1987. These actions are taken pursuant to Commission rules 210.53–210.56, 210.59 (19 CFR §§ 210.53–210.56, 210.59).

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons III, Esq., Office of the General Counsel, telephone 202–523–0493. Hearing-impaired persons may contact the Commission's TDD terminal at 202–724–0002.

SUPPLEMENTARY INFORMATION: On August 11, 1987, the ALJ issued an ID finding no violation of section 337 on the grounds, *inter alia,* that the patent in controversy was invalid and unenforceable and that the asserted common-law trademark had not been established.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has concluded that review of the ID is warranted. Specifically, the Commission will review the issues of patent validity, patent enforceability, patent infringement, trademark infringement, and injury. The Commission does not require further written submissions from the parties regarding the merits of the ID and the determination of whether there is a violation of section 337.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy on the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of the articles that are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission finds that a violation of section 337 has occurred and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions

While the Commission has determined that no hearing will be held in this investigation and no written submissions are ncessary regarding the ID, the parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding, must be filed by October 16, 1987, and shall not exceed 20 pages. Reply submissions on remedy, the public interest, and bonding, must be filed by October 23, 1987, and shall not exceed 10 pages. All submissions shall be double-spaced and shall otherwise conform with all applicable rules.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for

inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 2, 1987.

[FR Doc. 87–23208 Filed 10–6–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–18 (Sub-95X)]

Railroad Operations; Abandonment Exemption in Miami County, IN; Chesapeake and Ohio Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts The Chesapeake and Ohio Railway Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon an 8.42-mile line of railroad in Miami County, IN, subject to: (1) The standard employee protective conditions; and (2) the condition that prior to salvage operations applicant consult with (a) the United States Army Corps of Engineers for construction permits under 33 U.S.C. 403 and 33 U.S.C. 11344, and (b) the Indiana Departments of Environmental Management and Natural Resources to ensure compliance with Indiana statutes.

DATES: This exemption will be effective on November 5, 1987. Petitions to stay must be filed by October 21, 1987, and petitions for reconsideration must be filed by November 2, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–18 (Sub-No. 95X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commiasion, Washington, DC 20423

and

(2) Petitioner's representatives: Lawrence H. Richmond, Peter J. Studtz, 100 North Charles Street, Baltimore, MD 21201

Patrica Vail, Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 202–289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: September 22, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression. Commissioner Simmons would have set this exemption request for notice and comments.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22926 Filed 10–6–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

The National Cooperative Research Act of 1984—Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on July 23, 1987 disclosing a joint development agreement between COS and the National Computing Centre Limited of Manchester, England. The additional written notification was filed for the purpose of exending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, and June 12, 1987, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), on October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), and on July 21, 1987 (52 FR 27473), respectively.

On May 19, 1987, The Corporation for Open Systems International entered into a written joint development agreement with the National Computing Centre Limited, a United Kingdom company, the purpose of which is to jointly develop a File Transfer Access Management test system.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–23210 Filed 10–6–87; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 86–77]

Denial of Application; Kasparian Pharmacy

On September 19, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Kasparian Pharmacy (Respondent) of 196 South Yonge Street, Ormond Beach, Florida 32074, an Order to Show Cause proposing to deny the Respondent's application, executed on March 1, 1986, for registration as a retail pharmacy under 21 U.S.C. 823(f). The basis for the proposed denial was that such registration would be inconsistent with the public interest as evidenced by, but not limited to, the following: (1) Kasparian Pharmacy was previously registered by the Drug Enforcement Administration under DEA Certificate of Registration AKO188703. Nazar Kasparian was then the owner and registered pharmacist at Kasparian Pharmacy; (2) in and about March 1983, Investigators of the Florida Department of Professional Regulation, having received information indicating excessive purchases of controlled substances by Kasparian Pharmacy, conducted an in-depth investigation of the pharmacy's dispensing of controlled substances.

An audit of Kasparian Pharmacy's prescription files revealed that the pharmacy had filled 224 prescriptions pursuant to which it had dispensed over 22,000 dosage units of Schedule III and IV controlled substances and almost 200 ounces of a Schedule V preparation containing codeine. Each of the aforementioned prescriptions was allegedly authorized by one of four physicians. The investigation revealed that none of the physicians had authorized any of the prescriptions attributed to him and that under the circumstances, Nazar Kasparian knew, or should have known, that he was not

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filling the legitimate orders of registered practitioners; (3) on March 8, 1984, the Florida Board of Pharmacy revoked Kasparian Pharmacy's permit for one year and, on May 26, 1984, Nazar Kasparian surrenedered the pharmacy's DEA registration; and (4) Nazar Kasparian's conduct, as owner and managing pharmacist of Kasparian Pharmacy, evidences a disregard for the public health and safety, and for the responsibilities imposed by DEA registration.

On October 20, 1986, Respondent, proceeding through counsel, timely filed a request for a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. On February 10, 1987, following prehearing procedures, a hearing was held before Judge Young in Miami, Florida. On May 22, 1987, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law, and decision. On June 11, 1987, Respondent filed exceptions to the Administrative Law Judge's recommended decision and, on June 29, 1987, the Administrative Law Judge transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entiretly and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in March 1983, the Florida Department of Professional Regulation (DPR) received information that Kasparian Pharmacy was ordering what appeared to be excessive quantities of controlled substances, taking into consideration the size of the pharmacy and the community it served. Kasparian Pharmacy is located in the Daytona Beach suburb of Ormond Beach, Florida. On March 14, 1983, two DPR investigators conducted an audit of controlled substances purchased by Respondent for the period July 1, 1982, to March 14, 1983. Due to Respondent's lack of a current biennial inventory, a zero beginning balance was used for substances audited although Respondent may actually have had quantities on hand on that date. Of the eighteen substances audited, shortages were found in Respondent's accountability for eight drugs.

The shortages were as follows: Valium, 5 mg. tables-718 tablets (6.6%); Phenergan w/codeine-23.5 pints (24%); Tylenol #3 tablets-3,211 tablets (11.7%); Librium, 10 mg. tablets-2,800 tablets (50.9); Phentermine, 30 mg. tablets-478 tablets (6.4%); Restorial, 30 mg. tablets-265 tablets (13.25%); Tylenol #4 tablets-244 tablets (3.4%); Dexedrine, 10 mg. spansules-241 spansules (48%).

The remaining ten substances showed overages. Use of a zero figure for a starting inventory will result in an overage if there was stock on hand. Use of a zero inventory will make shortages that much more significant.

While conducting the audit, the investigators noticed that Respondent's prescription files contained what appeared to be an excessive number of telephone, or "callin" prescriptions for Schedule III and IV drugs, when viewed in comparison with other pharmacies of similar size. Mr. Kasparian told investigators that each of those prescriptions had been phoned in by a physician and reduced to writing by Mr. Kasparian. However, when investigators removed 350 of the telephoned prescriptions from the files and questioned four physicians who purportedly authorized them, Mr. Kasparian's story proved to be false. A total of 224 of the prescriptions were shown to the physicians and, in each case, the physician stated, and executed a sworn statement to the effect that he had not authorized the prescriptions attributed to him.

The information revealed by the DPR investigation resulted in the filing of separate administrative complaints against Nazar Kasparian and Kasparian Pharmacy by the Florida Department of Professional Regulation. The Pharmacy Board found that, in addition to several prescriptions found to have been lacking one or more elements of required information, approximately 224 "call-in" prescriptions for controlled substances in Schedules III and IV had, in fact, not been called in or authorized by the physician. The Board revoked the permit of Nazar Kasparian to operate a pharmacy in the State of Florida and suspended Mr. Kasparian's personal license to practice pharmacy for a period of two years. The suspension of Mr. Kasparian's license to practice was held in abeyance subject to certain conditions, one of which was that he not act as a managing pharmacist during the period of his suspension.

On May 26, 1984, Mr. Kasparian surrendered DEA Certificate of Registration AK0188703. On or about March 1, 1986, as the two-year state-ordered ban on his being a managing pharmacist drew to an end, Nazar Kasparian submitted the application for DEA registration that is the subject of this final order.

Judge Young found that Respondent failed to maintain a complete and accurate record of all controlled substances he received, sold, delivered or otherwise disposed of in violation of 21 CFR 1304.21(a), 21 U.S.C. 827(a)(3). 21 U.S.C. 842(a)(5) and section 893.07(1)(b), Florida statutes. Mr. Kasparian did not contest that his pharmacy's record showed in 1984 that he had unlawfully dispensed hundreds of dosage units of controlled substances over a period of many months. Furthermore, Respondent failed to make and keep a biennial inventory of controlled substances on hand as required by 21 U.S.C. 827(a)(1), 21 CFR 1304.12(b) and section 893(1)(a), Florida statutes. The maintenace of reasonably accurate records of these drugs is essential for the prevention of their diversion into illicit channels. The Administrative Law Judge concluded that Mr. Kasparian has shown that he was unable or unwilling to keep the required records. Furthermore, the Administrator concludes that all of the drugs dispensed other than pursuant to a physican's lawful prescription were illegally distributed.

The Administrative Law Judge found that the record did not permit a conclusion that Mr. Kasparian is fit to handle controlled dangerous drugs as the unsupervised proprietor of an independent pharmacy. To grant Kasparian Pharmacy a DEA registration would be inconsistent with the public interest. 21 U.S.C. 823 (f) (2), (4), and (5). Accordingly, Judge Young concluded that there is a lawful basis for the denial of Respondent's application and recommended that the application for registration executed by Respondent be denied.

The Administrator has considered the entire record in this matter, and hereby adopts the Administrative Law Judge's recommended findings of fact and conclusions of law in their entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration executed by Nazar Kasparian on behalf of Kasparian Pharmacy be, and it hereby is, denied. The Administrator further orders that any other pending applications for registration be, and they hereby are, denied. This order is effective November 6, 1987.

Date: October 2, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-23194 Filed 10-6-87; 8:45 am]

BILLING CODE 4410-09-M

Revocation of Registration; Everette L. Taylor, M.D.

On July 6, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Everette L. Taylor, M.D. of P.O. Box 129, Sparta, North Carolina, immediately suspending DEA Certificate of Registration AT3180635, and proposing to revoke the same registration on the ground that his continued registration was inconsistent with the public interest, as evidenced by, but not limited to, the following: (1) Between January 1986 and June 1987, Dr. Taylor ordered and received excessive quantities of controlled substances; these controlled substances were received by Dr. Taylor at an unregistered location; (2) in June 1987, an audit of Dr. Taylor's controlled substance stock revealed a shortage of more than 480,000 dosage units; (3) after the audit was conducted, Dr. Taylor attempted to acquire additional controlled substances; and (4) on numerous occasions, Dr. Taylor dispensed controlled substances to himself, friends and family members for other than accepted medical use outside the scope of his professional practice.

The Order to Show Cause was personally served on Dr. Taylor on July 8, 1987. At that time, DEA Diversion Investigators and North Carolina State Bureau of Investigation (SBI) Agents seized Dr. Taylor's DEA Certificate of Registration, unused order forms and all controlled substances remaining in Dr. Taylor's possession. Dr. Taylor has not responded to the Order to Show Cause. Therefore, the Administrator concludes that Dr. Taylor has waived his opportunity for a hearing on the issues raised in the Order to show Cause, and enters this final order based upon the record as it now appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that between January 1986 and June 1987, Dr. Taylor ordered excessive quantities of various controlled substances, including approximately 110,000 dosage units of diazepam products, 423,000 dosage units of phentermine products and 28,000 dosage units of codeine-based products. The ordering of such large quantities of controlled substances would be considered excessive even for a practitioner operating a busy practice. Dr. Taylor admitted that he did not maintain a medical practice during the period of time he ordered such large quantities of controlled substances. Based upon the fact that Dr. Taylor was not operating a medical practice, there is no justification for ordering excessive quantities of controlled substances. Dr. Taylor's controlled substance ordering patterns raise serious concerns about his intended use of the drugs.

The Administrator also finds that Dr. Taylor was receiving, storing and dispensing controlled substances at an unregistered location in violation of 21 CFR 1301.23(a).

The Administrator futher finds that during an interview on June 19, 1987, with DEA Diversion Investigators and North Carolina SBI Agents, Dr. Taylor admitted that he ordered large quantities of hydrocodone products and other controlled substances for his own personal use. He also claimed that he was stockpiling anorectic drugs, such as phentermine, for a future bariatric practice. In addition, he admitted to supplying friends and relatives with various controlled substances. During the interview, Dr. Taylor also stated he did not maintain an active medical practice. Further, he explained that he did not maintain dispensing records for the large quantities of controlled substances he ordered and received.

On June 22, 1987, North Carolina SBI Agents and DEA Diversion Investigators seized approximately 80,000 dosage units of controlled substances from Dr. Taylor's residence. At that time, Dr. Taylor claimed he did not possess any other controlled substances. During the Seizure, Dr. Taylor also alleged that he had stored the controlled substances in the basement of his residence and that sometime between March 29, 1987, and May 30, 1987, some of the drugs were stolen from that location. Dr. Taylor failed to provide any substantial information regarding the alleged theft, nor did he report any such theft to any police agency or to the Drug Enforcement Administration. Based upon Dr. Taylor's failure to report the alleged theft of controlled substances from his basement and his failure to provide sufficient information regarding the incident, the Administrator doubts seriously that any such theft occurred. Instead, it appears that Dr. Taylor attempted to justify the obvious shortages of controlled substances by fabricating a theft story.

A cursory audit of Dr. Taylor's purchase records and the controlled substances seized from him on June 22, 1987, revealed an unexplained shortage of more than 480,000 dosage units of controlled substances from Dr. Taylor's controlled substance stock. Almost immediately after controlled substances were seized from Dr. Taylor, he attempted to order additional controlled substances from a registered distributor.

Based upon Dr. Taylor's controlled substance ordering and dispensing practices, on July 2, 1987, the North Carolina Board of Medical Examiners recommended that the Drug Enforcement Administration immediately suspend Dr. Taylor's controlled substance handling privileges.

On July 8, 1987, when DEA Diversion Investigators and North Carolina SBI Agents seized Dr. Taylor's DEA Certificate of Registration, they also discovered and seized an additional 1,200 dosage units of controlled substances which Dr. Taylor presumably obtained following the earlier seizure of controlled substances from his residence.

After control consideration of the information described above, the Administrator can only conclude that Dr. Taylor willfully diverted almost one-half million dosage units of controlled substances for other than legitimate medical purposes; and that even after he became aware that his controlled substance handling practices were being scrutinized by the Drug Enforcement Administration and the North Carolina State Police, he continued to order additional quantities of controlled substances. The Administrator also concludes that there is no evidence that Dr. Taylor maintained a legitimate medical practice during the entire investigation period. Dr. Taylor deliberately violated Federal and State controlled substances laws and regulations by ordering and dispensing excessive quantities of controlled substances for other than legitimate medical purposes. This behavior constituted an imminent threat to the public health and safety.

Therefore, the Administrator finds that Dr. Taylor can no longer be entrusted with the controlled substance privileges and responsibilities bestowed upon DEA registrants. Thus, his DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3180635, previously issued to Everette L. Taylor, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said

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registration be, and they hereby are, denied.

This order is effective, November 6, 1987.

John C. Lawn,

Administrator.

Dated: October 2, 1987.

[FR Doc. 87-23193 Filed 10-6-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, November 12, 1987, in Room S-4215C U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. General business of the Advisory Council.

2. Status report and recommendations for continuing work by the various Council work groups as follows:

(i) Retiree Health.
(ii) Fiduciary Liability
(iii) Employee Stock Option Plans (ESOP)

3. Presentation and consideration of recommendations by the Work Group on ESOP participation in leveraged buyouts involving multiple investors, including statements from the public.[1]

4. Other statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before November 6, 1987, to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Signed at Washington, DC, this 1st day of October 1987.

David M. Walker,

CPA, Assistant Secretary-Designate for Pension and Welfare Benefit Programs.

[FR Doc. 87-23150 Filed 10-6-87; 8:45 am]

BILLING CODE 4510-29-M

[1] Interested parties should contact the Executive Secretary of the ERISA Advisory Council on or after November 6, 1987 for confirmation of this agenda item.

NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 14, 1987, through September 25, 1987. The last biweekly notice was published on September 23, 1987 (52 FR 35784).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Unit Nos. 1 and 2, La Salle County, Illinois

Date of application for amendments: July 28, 1987

Description of amendments request: The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle Units 1 and 2 Technical Specifications to clarify the requirements for the frequency of fast starting and loading of the diesel generators from ambient conditions. Technical Specifications 4.8.1.1.2.a.4 and 4.8.1.1.2.a.5 require a fast start and loading of the diesel generators on a monthly basis. A footnote was added to the Unit 1 Technical Specifications (Amendment 16) and to the Unit 2 Technical Specifications (prior to licensing) to relax these requirements so that a fast start would only be required once every 6 months (184 days). The balance of the monthly tests would include a warmup period, as recommended by the manufacturer, to minimize the mechanical stress and wear caused by fast starting and loading of the diesel generators. The concern is with the ambiguity in the wording of the footnote which could be interpreted to apply the relaxation to the 13 second start requirement in Technical Specification 4.8.1.1.2.a.4 only, and not to the 60 second load requirement in Technical Specification 4.8.1.1.2.a.5. The station has always applied the footnote to both surveillance requirements.

On December 9, 1983, Commonwealth Edison requested that the Unit 1 Technical Specifications be amended to allow a relaxation of the diesel generator fast start requirements. This proposed amendment was based on the investigation and analysis performed by the NRC. The submittal stated that it was the intention of LaSalle Station to apply the footnote to both the 13 second start requirement and the 60 second load requirement. The proposed amendment was approved by the NRC in Amendment 16 to the Unit 1 Technical Specifications and the amendment was also mentioned in the LaSalle SSER 7. The amendment to the Unit 2 Technical Specifications was approved prior to licensing. Based on this discussion, it is proposed that the Unit 1 (NPF-11) and Unit 2 (NPF-18) Technical Specifications be revised to clarify the intent of the footnote as follows:

- Revise the footnote so that it is clear that it applies to the requirements of both Technical Specifications 4.8.1.1.2.a.4 and 4.8.1.1.2.a.5.
- Revise the Technical Specification Bases to more accurately describe the intent of the footnote.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed

amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of accident previously evaluated because this proposed amendment is an administrative change intended to clarify the requirements for fast start of the diesel generators. This proposal does not change the intent of the Technical Specifications, as defined in the Bases and in LaSalle SSER 7 (NUREG-0519) page 16-1.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because this proposed amendment is an administrative change intended to clarify the requirements for fast start of the diesel generators. This proposal does not change the intent of the Technical Specifications as defined in the Bases and in LaSalle SSER 7 (NUREG-0519) page 16-1.

3. Involve a significant reduction in the margin of safety because this proposed amendment is an administrative change intended to clarify the requirements for fast start of the diesel generators. This proposal does not change the intent of the Technical Specifications as defined in the Bases and in LaSalle SSER 7 (NUREG-0519) page 16-1.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 17, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications to permit an Integrated Leakage Rate Test (ILRT) duration of less than 24 hours in accordance with an NRC approved methodology. An ILRT is performed periodically to provide a current assessment of potential leakage from the containment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis:

... consistent with the Commission's criteria in 10 CFR 50.92, we have determined that the proposed change does not involve a significant hazards consideration because the operation of Indian Point Unit No. 2 (IP-2) in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated, since the acceptance values for containment leakage under the reduced duration methodology remain unchanged. The proposed amendment will allow use of the NRC approved Bechtel Topical Report, BN-TOP-1, or other NRC accepted methods which demonstrate that sufficient data can be collected during the ILRT to permit performance of a reliable test in less than 24 hours. Maintaining containment leakage within acceptable limits provides assurance that the consequences of a potential accident can be effectively mitigated.

(2) create the possibility of a new or different kind of accident from any previously evaluated, since ILRT methods and results relate to accident mitigation, event sequences and accident analyses are not affected. The proposed amendment involves more realistic methods for testing potential containment leakage. Maintaining containment leakage within acceptable limits provides assurance that the consequences of a potential accident can be effectively mitigated. Therefore, the possibility of a new or different kind of accident is not created.

(3) involve a significant reduction in the margin of safety, since the proposed change allows use of a methodology for conducting an ILRT with reduced duration that is equivalent to the 24 hour duration test. Under the new methodology, acceptance values for containment leakage remain unchanged and therefore do not significantly reduce the margin of safety.

Based upon the above considerations, the staff proposes to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 1, 1987

Description of amendment request: This amendment would revise the Technical Specifications to permit movement of heavy loads into the cask laydown area of the spent fuel pool, consolidate Technical Specification requirements regarding heavy loads and require compliance with the guidelines of NUREG-0612.

Basis for proposed no significant hazards consideration determination: The licensee has performed an analysis regarding the issue of no significant hazards consideration using the standards of 10 CFR 50.92 as follows:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The only accident involved is that of a load drop. Since the load drops postulated in accidents previously evaluated have not changed, the consequences of a previously evaluated accident have not increased. The probability of a load drop is decreased when the guidelines of NUREG-0612 are followed.

(2) Create the possibilty of a new or different kind of accident from any accident previously evaluated.

The changes proposed in this change request do not introduce the use of different load handling equipment than previously evaluated. The only types of accident involved are those of heavy load drops.

They have been evaluated against applicable existing criteria. Thus, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety.

The proposed changes decrease the probability of an accident by requiring compliance with the intent of the guidelines of NUREG-0612 and by prohibiting the movement of heavy loads over fuel stored in the main pool zone. Thus, the margin of safety would not be reduced.

The Commission's staff agrees with this analysis and therefore proposes to determine that the proposed amendment

involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 11, 1987

Description of amendment request: This amendment request involves the correction of a Technical Specification by deleting a footnote from Table 4.2.1 involving sampling frequency of a Safety Injection Tank that pertained to Cycle 5 operation which ended a few years ago.

Basis for proposed no significant hazards consideration determination: The licensee has provided an analysis on the issue of no significant hazards consideration using the standards of 10 CFR 50.92 as follows:

This change is administrative. It deletes an out-of-date footnote that provided an alternative action for one of four similar components during a previous operating cycle. The proposed administrative change does not impact on plant design or operation in a manner different than previously evaluated; hence the probability or consequences of previously evaluated accidents are unaltered. Because this change does not introduce any new equipment or modes of operation, it will not create the possibility of a new or different kind of accident from that which was previously evaluated. The margin of safety is not being compromised because the original Technical Specification surveillance interval is being maintained. The deletion of a more frequent surveillance interval for one specific component was established by previous Amendment as a result of reduced concentration limits which are no longer applicable to the operation of the plant. Therefore, this administrative change involves no significant hazards consideration. Furthermore, this change fits example (i) of the types of amendments that are considered not likely to involve significant hazards considerations published in the Federal Register on March 6, 1986 (51FR7751), in that it represents a purely administrative change, i.e., a correction of an error since the footnote no longer applies to current operating cycles.

The Commission's staff agrees with this analysis and therefore proposes to determine that this amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: August 25, 1987

Description of amendment request: The amendment would revise several valve tag numbers, penetration numbers, and valve types in the St. Lucie Unit 1 Technical Specification Table 3.6-1, "Containment Leakage Path" and Table 3.6-2, "Containment Isolation Valves." Certain valve tag numbers are currently listed with generic valve numbers, not the actual valve tag numbers. The proposed amendment would change the generic valve numbers to the actual valve numbers. Also, several valve tag numbers do not include the seismic qualification identifier or are shown as incorrect valve types. The seismic qualification identifier will be added where necessary, and the correct type of valve will be listed. Lastly, the penetration numbers for several penetrations are missing the alphabetic identification; this will also be corrected.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change corrects valve tag and penetration numbers found to be incorrectly or incompletely listed in the St. Lucie Unit 1 Technical Specifications Table 3.6-1[,] "Containment Leakage Paths" and Table 3.6-2[,] "Containment Isolation Valves". Since no change to the facility is proposed, the probability or consequences of an accident previously evaluated would not increase.

In connection with the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change corrects incorrectly or incompletely listed valve and penetration numbers in Table 3.6-1[,] "Containment Leakage Paths" and Table 3.6-2[,] "Containment Isolation Valves". This administrative/editorial change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to the third standard, the licensee provided the following rationale:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed change involves correcting valve tag and penetration numbers which are currently incorrectly or incompletely listed in Table 3.6-1[,] "Containment Leakage Paths" and Table 3.6-2[,] "Containment Isolation Valves" of the St. Lucie Unit 1 Technical Specifications and will not reduce [a] margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards. However, it should be noted that there are four cases in which a gate valve is being relisted as a globe valve. These valves are associated with penetrations 52d and 52e, which are Integrated Leak Rate Test (ILRT) penetrations. These four cases are not strictly administrative/editorial changes, as specified by the licensee. However, the staff believes that this proposed change meets the three standards of 10 CFR 50.92(c) as discussed above.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: May 4, 1984 as revised September 12, 1984, and further revised August 19, 1987

Description of amendment request: The amendment would change the Technical Specifications to expand the present definition of operability to explicitly include functionality of support equipment, redundant trains and electric power supplies. The amendment would also add provisions to the Technical Specifications to allow a system, subsystem, train, component or device to be considered Operable under certain conditions when the normal or emergency power source providing power to the system, subsystem, etc. is Inoperable.

The present definition of operable requires only that a system or component be capable of performing its intended function in its required manner in order to be considered operable.

The proposed change was submitted in response to an April 10, 1980, NRC request that the licensees submit proposed Technical Specifications concerning the definition of the term "Operable" that conform with Model Technical Specifications included with the April 10, 1980 request. A notice of the receipt of this amendment request was previously published in the **Federal Register** on November 21, 1984 (49 FR 45951).

Basis for proposed no significant hazards consideration determination: he Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples of actions involving no significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently in the Technical Specifications (Example (ii)).

The proposed change would add additional limitations and is, therefore, similar to this example.

The Commission, therefore, proposes to determine that this action involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Kahtan N. Jabbour, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: August 26, 1987

Description of amendment request: The proposed amendment would revise the action requirement for inoperable Fuel Handling Building Post-Accident Ventilation System (FHBPAVS) actuation instrumentation. Specifically, the action requirement for Functional Unit 11 of Table 3.3-2 will be revised by removing the reference to the 7-day period for restoration of the inoperable channel. The action requirement will be changed to refer directly to specification 3.9.12 whereby operations within or over the storage pool must be suspended until at least one Fuel Handling Building Post-Accident Ventilation System is returned to operable status.

Basis for proposed no significant hazards consideration determination: he Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change achieves consistency within the Technical Specifications between Table 3.3-2 and specification 3.9.12 and does so in a conservative manner by deleting the option of potentially performing operations involving movement of fuel within the storage pool or crane operations with loads over the storage pool for up to 7 days with either no manual or automatic actuation of the FHBPAVS. The proposed change modifies the action statement to directly invoke specification 3.9.12 thereby prohibiting such operations until at least one FHBPAVS is operable.

Also, the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new or novel features would be added to plant design. Finally, the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because the revised action requirement achieves consistency with specification 3.9.12.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 4th Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043

NRC Project Director: Kahtan N. Jabbour, Acting

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: December 8, 1986 supplemental on August 7, 1987.

Description of amendments request: The proposed amendment would revise the Technical Specifications by replacing the liquid radwaste effluent line monitor designated as R-18 with a new monitor designated as RRS-1001. The amendment also would add periodic Channel Functional Tests as a surveillance requirement and a footnote to allow R-18 to meet the Technical Specification requirements until the new monitor, RRS-1001, is operable.

Basis for proposed no significant hazards consideration determination: he Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The new monitor will be able to support current requirements and includes several enhancements over the old monitor. Design of the new monitor provides solutions to difficulties encountered with the old monitor. An additional surveillance is proposed and is commensurate with the design of the new monitor. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change will not place the plant in a new or unanalyzed condition; therefore, it will not create

the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Since the new monitor is a better design, solves difficulties with the old monitor, and new surveillance requirements are added, the proposed change will not involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Description of amendment request: The proposed changes would revise Technical Specification Limiting Condition for Operation (LCO) 3.7.10.2 and its associated Surveillance Requirement 4.7.10.2. The reason for these changes is to implement operability and surveillance requirements for the newly-installed fire suppression equipment in Waterford 3's charcoal filtration systems.

LCO 3.7.10.2 currently specifies the number and location of fire protection sprinkler and spray systems that must be maintained in an operable condition. The proposed changes would add the newly installed charcoal filter spray systems to the LCO. In addition, the proposed changes would add surveillance requirement 4.7.10.2d, which requires an air flow test through each open head spray or sprinkler system every three years to verify that the spray nozzles are unobstructed. A provision has been made for an equivalent demonstration that the spray nozzles are unobstructed by conducting a visual inspection. However, since the spray nozzles in charcoal filter units can be accessed only when the charcoal has been removed, a note has been added to the proposed surveillance requirement indicating that for open nozzles in charcoal filter units, the surveillance will be performed each time the charcoal is changed.

Basis for proposed no significant hazards consideration determination: he NRC staff proposes that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The charcoal filter units in the Shield Building Ventilation System (SBVS) are used to adsorb iodine and other radionuclides that leak into the reactor annulus building following a LOCA. Similarly, the charcoal filter units in the Controlled Ventilation Area System (CVAS) are used to adsorb iodine and other radionuclides that leak from the safety-related equipment used to mitigate the consequences of a LOCA (primarily high pressure safety injection (HPSI) pumps during the recirculation phase). The operability of at least one SBVS train and one CVAS train is required to meet the offsite dose criteria established by 10 CFR Part 100. The addition of fire suppression equipment specifically designed to extinguish fires in these two filtration systems increases the probability that the SBVS and CVAS will be able to perform their design function following a LOCA. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) New fire suppression equipment has been added to increase the overall level of fire protection at Waterford 3 and the proposed change implements the operability and surveillance requirements necessary to ensure the equipment remains functional. Since the new equipment is designed to protect portions of the SBVS and CVAS and these systems are required only during post accident conditions, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of these Technical Specifications is to ensure that adequate fire suppression capability is available to confine and extinguish fires occurring in any portion of the facility where safety-related equipment is located. Since the addition of fire suppression equipment in the charcoal filtration systems will add to the capability of extinguishing fires in the SBVS and CVAS, the proposed changes will result in an increase in the margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. Example (ii) relates to a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications (e.g., a more stringent surveillance requirement).

In this case the proposed changes are similar to Example (ii) in that they impose additional operability and surveillance requirements for the newly-installed fire suppression equipment which is not now a part of the Technical Specifications.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Description of amendment request: The proposed change would revise Technical Specification 3.2.7, Power Distribution Limits - Axial Shape Index (ASI). The reason for this change is to clarify the relationship between the axial shape monitoring limits described in the Technical Specifications and the axial shape assumptions that were used in the Cycle 2 safety analysis. In addition, the proposed change will provide increased ASI operating space at lower core power levels.

Technical Specification 3.2.7 currently states that the ASI shall be maintained between -0.23 and +0.22 when Core Operating Limits Supervisory System (COLSS) is out of service and the Core Protection Calculators (CPCs) are used for ASI monitoring. These limits were based on the non-LOCA safety analysis which assumed an ASI range of -0.30 to +0.30, the LOCA safety analysis which assumed an ASI range of -0.25 to +0.30, and estimated ASI monitoring

uncertainties of ±0.02 for COLSS and ±0.08 for the CPCs.

Although the current Technical Specification is based on the Cycle 2 safety analyses, it does not reflect a re-evaluation of the LOCA that was performed at initial core power levels below 70% nor the actual ASI monitoring uncertainty associated with COLSS. (It should be noted, however, that the COLSS software was changed prior to the Cycle 2 startup to ensure that the actual COLSS ASI monitoring uncertainty (±0.026) was properly accounted for.) In order to restore a more direct relationship between the ASI limits assumed in the safety analyses and the ASI monitoring limits in the Technical Specifications (and to provide additional ASI operating space at lower core power levels), LCO 3.2.7 is being revised to be power dependent and to account for the actual COLSS ASI monitoring uncertainty.

The proposed change would revise LCO 3.2.7a (COLSS operable) to impose ASI limits of -0.22 and +0.27 for the core power levels equal to or greater than 70% and ASI limits of -0.27 and +0.27 for core power levels less than 70%. The proposed change would also revise LCO 3.2.7b (COLSS out of service) to impose ASI limits of -0.17 and +0.22 for core power levels equal to or greater than 70% and ASI limits of -0.22 and +0.22 for core power levels less than 70%. Although this change is being proposed to clarify the relationship between Technical Specification 3.2.7 and the Cycle 2 safety analyses, it is anticipated that the proposed change will remain bounding for Cycle 3 and subsequent cycles as well.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The Cycle 2 non-LOCA safety analysis was performed assuming an ASI range of -0.30 to +0.30 while the Cycle 2 LOCA safety analysis was performed assuming an ASI range of -0.25 to +0.30. In order to translate these safety analysis assumptions on ASI into an actual range of values that can be monitored by the plant operators, the ASI range assumed in the safety analyses must be narrowed to account for uncertainties in the ASI monitoring instrumentation. For Waterford 3 both the COLSS and the CPCs can be used for ASI monitoring. An uncertainty analysis performed concurrent with the Cycle 2 safety analyses determined that the COLSS ASI monitoring uncertainty was less than ±0.03 and the CPC ASI monitoring uncertainty was less than ±0.08. Thus, in order to ensure that the Cycle 2 safety analyses remain bounding, the proposed change will require the COLSS-indicated ASI to be maintained between -0.22 and ±0.27 and, if COLSS is out of service, the CPC-indicated ASI be maintained between -0.17 and -0.22. The range of acceptable ASI values discussed above is based on the LOCA safety analysis since these events are analyzed over a more narrow ASI range than the non-LOCA events. However, an evaluation of the LOCA events has determined that if the core power level is less than 70%, the beneficial effects of the lower initial core power level will compensate for the potentially more severe axial power shapes that could result from the wider ASI range assumed for the non-LOCA events; i.e., if the core power is less than 70% both the LOCA and non-LOCA events have been shown to have acceptable consequences over an ASI range of +0.30 to -0.30. Thus, when core power is less than 70%, the COLSS-indicated ASI must be maintained between -0.27 and +0.27 and, if COLSS is out of service, the CPC-indicated ASI must be maintained between -0.22 and +0.22. These ASI limits plus maintaining the core power below 70% ensure that the Cycle 2 safety analysis will remain bounding. Therefore, since the proposed change imposes ASI limits that are directly related to the Cycle 2 safety analyses and the results of safety analyses are acceptable, the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

(2) The spectrum of axial shapes that was considered during the Cycle 2 safety analysis envelopes the range of ASI values that is allowed by the proposed change. There has been no physical change to plant systems, structures or components nor has there been any change in the manner in which the plant is operated. The only change to plant procedures will be to reflect the new ASI limits in the routine daily logs recorded by the plant operators. Thus, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of Technical Specification 3.2.7 is to ensure that the actual value of ASI is maintained within the range of values that was assumed in the Cycle 2 safety analysis. The ASI is one of several parameters that must be within a specified range in order to ensure that the peak linear heat rate and minimum DNBR remain within their respective safety limits during an anticipated operational occurrence. Since the range of values that is being proposed by this change has been used as a direct input to the Cycle 2 safety analysis and since the Cycle 2 safety analysis has shown acceptable results for all events, the proposed change will not result in a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: E. L. Blake, Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 10, 1987

Description of amendment request: The amendment would change the System Energy Resources, Inc. (SERI) offsite organization, which is included in the Technical Specifications (TSs), by transferring administrative support functions to a new support services group.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards consideration in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee's analysis is reproduced below.

1. The proposed organization changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they involve only a shift in the responsibility for administrative support services within the SERI corporate offices. Because of the administrative nature of the proposed changes[,] the probability or consequence[s] of an accident are not affected.

2. The proposed organization changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed shift in administrative responsibility will have no affect on the design, construction, or operation of safety[-]related systems or components.

3. The proposed organization changes do not involve a reduction in a margin of safety because they involve only the realignment of administrative responsibilities. The proposed changes [will] more effectively and efficiently utilize existing administrative resources within the SERI corporate offices.

The NRC staff has made a preliminary review of the licensee's analysis and agrees with the licensee's conclusions that the three standards in 10 CFR 50.92 are met for the proposed changes in the TSs for the Grand Gulf Nuclear Station, Unit 1.

Accordingly, the Commission proposes to determine that the requested changes to the TSs do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: August 17, 1987

Description of amendment request: This amendment would revise the Technical Specifications by increasing minimum required condensate storage tank volume from 225,000 gallons of water to 250,000 gallons to provide a ten hour source of water for decay removal.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence of the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Final Safety Analysis Report have not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the FSAR has not been created. There has not been a reduction in the margin of safety as defined in the basis for any Technical Specification. The increased minimum condensate storage tank (CST) water inventory level will not affect the operability of existing plant systems.

The licensee reviewed the proposed changes, in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration in that these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed change will ensure that more water is available for core cooling via feedwater coolant injection (FWCI) than was previously required. Therefore, the impact of this change on accidents mitigated by FWCI operating would be favorable.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The increased minimum water volume is well within the total holding capacity of the CST (approximately 460,000 gallons). Thus, no new failure modes or accidents are introduced by this change.

(3) Involve a significant reduction in a margin of safety. The effects of these changes will not impact plant protective boundaries. Also, the proposed basis revision represents additional conservatism.

The Commission has provided guidance concerning the applications of standards in 10 CFR 50.92 by providing examples (51 FR 7751, March 6, 1986). The changes proposed herein most closely resemble example (ii), a change that constitutes an additional control not presently included in the Technical Specifications, e.g., a more stringent requirement. The increase in minimum CST inventory represents a more stringent condition of operation.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 20, 1987, as supplemented July 2, 1987

Description of amendment request: This amendment proposes to revise Trojan Technical Specification (TS) Section 4.5.1.C, Emergency Core Cooling System Accumulators, to permit verification that power to the isolation valves operators is disconnected without requiring the removal of the breaker from the circuit. The current TS surveillance requirement states that the breaker must be removed from the circuit. It is proposed that power to these valves be removed by the use of a lockout switch.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The Licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92 as follows:

1. Does the proposed license change involve a significant increase in the probability or consequences of an accident?

This proposed change does not involve a significant increase in the probability or consequences of an accident.

The surveillance requirement for the safety injection accumulator isolation valves ensures the operability of the accumulators in the event of an accident. As part of the Emergency Core Cooling System, the function of the accumulators is to mitigate the consequences of an accident. Thus, the operability of the accumulators does not affect the probability of an accident.

The accumulators mitigate the consequences of an accident by delivering a specified volume of borated water into the Reactor Coolant System. As long as the volume of water delivered to the Reactor Coolant System is unchanged and the time for delivery is not increased, then the consequences of an accident are not affected.

Surveillance Requirement 4.5.1.c prevents the undesired mechanical motion of the accumulator isolation valves by disconnecting power to the electrical control

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system for the valve operators while in Modes 1, 2, or 3*. This action ensures the availability of a flowpath from the accumulators to the Reactor Coolant System and conforms with guidance provided in Branch Technical Position Instrumentation and Control Systems Branch (ICSB) 18 [Power Systems Branch (PSB)], "Application of the Single Failure Criterion to Manually Controlled Electrically Operated Valves." The proposed change to Technical Specification 4.5.1.c does not alter this requirement for disconnecting power, only the requirement that this be accomplished by removal of the breaker from the circuit.

An alternative method is to disconnect power to the valve operator control circuit through a lockout feature on the control switch. Lockout is achieved by pulling out on the switch handle while in the "normal" (12 o'clock) position. In this position, all rotary action of the switch is inhibited, and both the hot and neutral leads of the control circuit are opened. This halts any valve action in progress and precludes any manual or automatic valve actuation. Inadvertent pushing of the handle is prevented by placing a blocking collar over the switch operating shaft when it is pulled out.

Use of a lockout feature on the control switch of these valves does not affect the operation of any other system. Similarly, none of the existing interlocks, setpoints, alarms or operating parameters associated with the valves are changed. Conformance with guidance provided in Branch Technical Position ICSB-4 (PSB), "Requirements on Motor-Operated Valves in the ECCS Accumulator Lines" remains unchanged.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

Changing this surveillance requirement for accumulator isolation valves to allow use of the lockout feature does not create the possibility of a new or different kind of accident. Demonstration of operability for each accumulator remains a requirement.

The control/lockout switches are fully qualified for Nuclear Class 1E applications and preclude any manual or automatic actuation of the valves when placed in lockout. No other system is affected by the change.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Since the requirement to demonstrate operability of each accumulator remains, there is no significant reduction in the margin of safety. Use of the lockout feature may actually increase the margin of safety since valve position indication is retained and remote valve control can be returned more expeditiously. The volume of water provided by the accumulators and the time for delivery is not affected by this change.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 731 S. W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: J. W. Durham, Esq., Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: June 22, 1987

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.3-1, "Reactor Trip System Instrumentation" and Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements" regarding the operability requirements for the reactor trip breakers (RTBs) and the surveillance requirements for the manual reactor trip, reactor trip breakers, and reactor trip bypass breakers. More specifically:

a. Table 3.3-1 will reference a new Action Statement 12 to Item 21, "Reactor Trip Breakers." The new Action Statement 12 clarifies the operability status of the RTBs with either the undervoltage or shunt trip attachment inoperable.

b. Table 4.3-1 will reference a new Note 13 to Item 1, "Manual Reactor Trip," and a new Note 14 to Item 21, "Reactor Trip Breaker." A new Item 23, "Reactor Trip Bypass Breaker" will be added to the Table, and will reference new Notes 15 and 16.

New Notes 13 through 16 prescribe requirements for the testing of the RTBs, bypass breakers, and manual reactor trip function.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve significant hazards considerations is Example (ii) A change which constitutes an additional limitation, restriction or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

The proposed revisions follow the sample TS changes included with Generic Letter 85-09, with one exception. The testing required for the reactor trip bypass breakers will be performed on the same frequency as the reactor trip breakers, ie, each train tested every other month (Table 4.3-1, Note 7). Testing each train every 62 days on a staggered test basis is consistent with recommendations in the Westinghouse Standard Technical Specifications (NUREG-0452, Revision 4) for reactor trip breaker testing.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident. The proposed change adds new testing requirements to help ensure the functioning of the reactor trip system when needed. The change is intended to reduce the frequency of postulated Anticipated Transients Without Scram (ATWS) events.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change adds new testing requirements intended to reduce the frequency of postulated ATWS events.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes add additional testing requirements which effect an increase in the margin of safety.

The proposed changes are similar in nature to the Example (ii) provided by the Commission. The changes to the TS add a new TS requiring that: (1) an inoperable undervoltage or shunt trip attachment of the reactor trip breaker shall be restored to operability within 48 hours, (2) the channel functional test shall independently verify the operability of the undervoltage and shunt trip circuits for the manual reactor trip function, and (3) the undervoltage and shunt trip attachments of the reactor trip breakers shall be independently verified for operability. These proposed changes introduce additional controls not presently in the TS and, therefore, involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library,

Portland State University, 731 S. W. Harrison Street, Portland Oregon 97207

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: July 14, 1987

Description of amendment request: The proposed amendment would revise Section 3.11.3.2.b of Technical Specification (TS) 3/4.11.3, "Solid Radioactive Waste," by deleting the reference to a nonexistent TS Section 6.9.1.9.b.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The removal of a nonexisting reference in the TS is a correction of an error, and is considered an editorial change which falls within the scope of the above cited Example. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 731 S. W. Harrison St., Portland Oregon 97207

Attorney for licensee: J. W. Durham, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 12, 1987

Description of amendment request: The current Technical Specification requires an emergency diesel generator starting air receiver minimum pressure of 380 psig. The proposed amendment would change this minimum required pressure to 325 psig. The licensee states in its request:

The present Technical Specification Section 4.8.1.1.2.a.7 minimum value of 380 PSIG was erroneously selected as the minimum air start receiver pressure. The limit selected should have been the low pressure alarm setpoint of 325 PSIG, as described in the FSAR, not the compressor normal cycling setpoint of 380 PSIG.

It also states:

FSAR Section 9.5.6 (Reference 2) describes the Starting Air System as capable of performing its function (in conformance with Standard Review Plan Section 9.5.6 and IEEE Standard 387 criteria) when the starting air receiver pressure is at the low pressure alarm setpoint of 325 PSIG. The FSAR statements pertaining to the Starting Air System were verified during the Hope Creek Preoperational Test Program.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7744). An example of an amendment that is not likely to involve a significant hazards consideration is "(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan..." The acceptance criteria related to the minimum required pressure of the starting air receivers are stated in items 4g and 4h of Standard Review Plan Section 9.5.6 "Emergency Diesel Engine Starting System." These are:

g. As a minimum, the air starting system should be capable of cranking a cold diesel engine five times without recharging the receiver(s). The air starting system capacity should be determined as follows: (1) each cranking cycle duration should be approximately 3 seconds; (2) consist of two to three engine revolutions; or (3) air start requirements per engine start provided by the engine manufacturer; whichever air start requirement is larger.

h. Alarms should be provided which alert operating personnel if the air receiver pressure falls below the minimum allowable value.

The licensee states in its request:

The margin of safety which forms the basis for this technical specification is the ability to provide sufficient air pressure for Emergency Diesel Generator starting as described in FSAR Section 9.5.6.2 and in PSE&G's response to FSAR Question 430.122. The proposed correction to the Technical Specification limit agrees with FSAR statements regarding system design which have been demonstrated during preoperational testing. Therefore, no reduction in the margin of safety which forms the basis for the technical specification is involved in this proposed change.

Hope Creek FSAR Section 9.5.6.2 states:

Each air receiver can supply starting air for a minimum of five consecutive engine starts with a beginning receiver pressure at the low pressure alarm setpoint.

The starting air low pressure alarm is set at 325 psig.

On the basis of the above information, we conclude that the proposed change meets the acceptance criteria of Section 9.5.6 of the Standard Review Plan and is similar to example (vi) as stated above.

Therefore, the staff has made a proposed determination that the application for amendment involves no significant hazard considerations.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 18, 1987

Description of amendment request: The proposed amendment would revise License Condition 2.C(13) to extend the required date for adding four parameters to the Safety Parameter Display System (SPDS) and having them operational from "prior to restart following the first refueling outage" to "prior to the earlier of 90 days after restart from the first refueling outage or July 12, 1988." Plant shutdown for the first refueling is currently scheduled to begin on February 1, 1988.

The licensee plans to meet this requirement for adding parameters by replacing the existing system with a new computer system that, in addition to meeting this requirement for providing the four additional parameters, will have additional capacity for future needs. It is necessary to perform some tests on the new system while the plant

is shutdown and others while the plant is in operation after the outage. Therefore, the licensee has requested the schedular extension in order to perform the tests that must be conducted following restart.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has stated that it has determined that the proposed change does not constitute a significant hazards consideration and has addressed each of the above three standards as follows:

The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. The SPDS system is not a control system and serves only in an advisory capacity to the Operations staff. Additionally, the existing system will be operational until the new system is fully checked out and operational. Therefore, the proposed change does not affect the probability or consequences of previously evaluated accidents.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Although a new system is being installed, it is similar in design to the existing system. As stated before, the SPDS does not control operation in the reactor in any way and serves only as a source of information. The system is designed to be isolated from any safety related system. The isolation system for the new SPDS system will use appropriately qualified optical isolation devices. The existing system will be functional during the schedular extension necessary to make the new system operational. Therefore, the proposed change does not create a new or different kind of accident.

The proposed change does not significantly reduce the margin of safety. The schedular extension will not reduce the margin of safety in that the existing SPDS will remain operational during installation of the new system. The new system represents an improvement in the margin of safety by providing increased capabilities over the old system and is necessary to install the additional parameters as required by License Condition 2.C.(13). The extension does not represent a significant reduction in the margin of safety since the existing SPDS system was found to not constitute a safety concern as stated in Section 18.2 of Supplement 5 to NUREG-1048. The extension is necessary to upgrade to fully meet the guidance of Supplement 1, to NUREG-0737. Thus, the proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the proposed amendment and agrees with the licensees' evaluation and determination. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 2, 1987

Description of amendment request: The proposed amendment would revise the Technical Specification requirement for channel functional tests of the rod block monitor (RBM) to require that the tests be performed prior to exceeding 30% of rated thermal power.

The current Technical Specification requires that the RBM be operable when thermal power is greater than or equal to 30% of rated thermal power; it also requires that the channel functional tests for the RBM be performed within 24 hours prior to startup. These two differing requirements are confusing. The proposed change will eliminate this confusion by making the requirement for performing the functional tests consistent with the requirement for operability. The change will also provide greater operational flexibility by allowing the additional time between startup and reaching 30% power to perform the test.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed change and has concluded that they do not involve a significant hazards consideration in that the change:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed. Technical Specification 3/4.1.4.3 specifies that the RBM shall be Operable whenever Thermal Power is greater than or equal to 30% of Rated Thermal Power. Below 30% of Rated Thermal Power the RBM system is automatically bypassed; therefore, whether or not the system has a Channel Functional Test performed prior to startup is immaterial so long as Thermal Power is below 30% of Rated Thermal Power. Hence, it can be concluded that the proposed change does not significantly increase the probability or consequences of an accident previously analyzed because the change only revises when a test for Operability is to be performed, not the fact that such a test will be performed.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a modification to the RBM system, including when the system is required to be functional. The proposed change only involves planning considerations and hence it can be concluded that the proposed change does not create the possibility of a new or different kind of accident than any previously analyzed.

(3) Does not involve a significant reduction in a margin of safety. Once again the Technical Specification power limit of 30% of Rated Thermal Power for Operability of the RBM is not changing, nor is the actual requirement to perform a Channel Functional Test prior to reaching 30% of Rated Thermal Power. Therefore the safety margins for the RBM are still maintained and it can be concluded that the proposed change does not involve a reduction in the margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 24, 1987

Description of amendment request: The proposed amendment request would revise the Technical Specification Bases, Section 2.2.1 Limiting Safety System Settings, "Reactor Coolant Pump Breaker Position Trip", and Table 3.3-1, Reactor Trip System Instrumentation, Functional Unit 20 "Reactor Coolant Pump Breaker Position Trip" to change the (1/4) RCP breaker open position anticipatory reactor trip logic above power level P-8 into (2/4) RCP breaker open position reactor trip logic above power level P-7. This modification removes a potential source of single failure unit trips and provides a reduction in challenges (e.g. spurious trips) to the Reactor Protection System. This modification is provided as a standard feature or as a retrofit option for all Westinghouse PWR units. All domestic Westinghouse PWR units supplied subsequent to Three Mile Island (TMI) incorporate this change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its July 24, 1987 submittal.

The proposed changes to the Salem Technical Specifications do not significantly increase the probability or consequences of a previously evaluated accident. UFSAR Section 15.2.5, "Partial Loss of Forced Reactor Coolant Flow" describes the low primary coolant flow reactor trip as providing the required protection against a partial loss of coolant flow accident. Three redundant flow channels are provided in each loop for the low flow reactor trip. Above power level P-8, the loss of flow in any one loop, as sensed by two of the three channels will actuate the low flow reactor trip. The existing (1/4) RCP breaker open position anticipatory reactor trip functions to backup the low flow reactor trip. This same analysis assumes a worst case scenario (e.g. four loops initially operating, two pumps coasting down). UFSAR Section 15.2.5.5 concludes that the DNBR will not decrease below the limiting value of 1.30 at any time during such a transient thus the core safety limit is not breeched. The anticipatory time delay (e.g. the time difference between the initiations of an RCP breaker open position reactor trip and a low primary coolant flow reactor trip) is not significant since the original transient analysis is based on low primary coolant flow. Therefore, the UFSAR Section 15.2.5.5 "Conclusions" bounds the consequences of deleting the (1/4) RCP breaker open position anticipatory reactor trip above power level P-8 and hence the proposed modification does not increase the probability or consequences of this previously evaluated accident scenario.

The proposed changes to the Salem Technical Specifications do not create the possibility of a new or different kind of accident than any previously evaluated. In the event of a single loop loss of flow, the low primary coolant flow reactor trip is the design protection and it meets the design requirement of maintaining the minimum DNBR above the 1.30 limiting value. If credit is not taken for the low primary coolant flow reactor trip, then a reactor trip on either overtemperature or overpower Delta-T will terminate the accident before DNB occurs in the core (UFSAR Section 7.2.3.1). Westinghouse analysis indicates that the hot spot clad temperature (on the inner clad surface) will remain well below the melting point (reference Attachment 2). For all non-LOCA safety analyses, the logic change which results in the deletion of a reactor trip on a single RCP breaker open position above power level P-8 is acceptable since UFSAR Sections 15.2.5.5 and 15.3.4.4 "Conclusions" bound the consequences. The diversity and redundancy of the Reactor Protection System are maintained for a single loop loss of flow.

The proposed changes to the Salem GS Technical Specifications do not involve a significant reduction in the margin of safety. The RCP breaker position reactor trip is modified to actuate on the opening of any two breakers above the P-7 interlock setpoint. This modification only affects the coincidence logic of the Solid State Protection System (SSPS). The existing (2/4) coincident reactor trip logic functions (e.g. the opening of an RCP breaker in any one loop coincident with low flow in a second loop or low flow in any two loops simultaneously) will remain unchanged. This specific modification has undergone Westinghouse analysis and review in accordance with the general requirements of 10 CFR Part 50 Appendix B and the specific requirements of IEEE-279-1971 and does not degrade either its performance or conformance to system design requirements. Two independent RCP breaker open position interlocks are provided to the SSPS logic cabinets to develop the RCP breaker position reactor trip logic (independent interlocks for trains "A" and "B"). The single failure criterion requirement for independence and redundancy of the (2/4) RCP breaker open position reactor trip above power level P-7 is not changed as a result of this modification thus UFSAR Section 7.2.2.2 "Design Basis for Protection Circuits" is not changed and the existing margins of safety are retained. Based on the preceding evaluations, PSE&G concludes that the proposed change to the Salem Technical Specifications does not involve a significant hazards consideration.

Therefore, on the basis of the licensee's evaluations and conclusions with which the staff agrees, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006

NRC Project Director: Walter R. Butler

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: July 3, 1987 (Reference PCN-236)

Description of amendment request: The proposed change would revise Technical Specification (TS) 6.9.1.14, "Hazardous Cargo Traffic Report". The existing reporting requirements in this TS specify that the hazardous cargo traffic on Interstate 5 (I-5) and the AT&SF railway shall be monitored and the results submitted to the NRC Regional Administrator once every three years. The origin of these requirements is the San Onofre Units 2 and 3 Safety Evaluation Report (SER), NUREG-0712. In the SER, the NRC staff concluded that the risks due to potential explosions or toxic gas releases (with the provisions for protecting against the specific toxic gases described) are acceptably low and meet the criteria described in the Standard Review Plan (SRP), Section 2.2.3. [The toxic gas isolation system (TGIS) currently is designed to isolate the control room air intake upon detection of the presence of Ammonia, Chlorine, Butane and Propane]. The SER conclusion was based in part on the knowledge of present sizes and frequencies of hazardous cargo shipments going past the San Onofre site. However, it was noted by the NRC Staff that significant changes over the lifetime of the plant in traffic density, transportation conditions, cargo composition, size and frequency could have a significant effect on the risk estimates. Therefore, the staff required that the hazardous cargo traffic on I-5 and the AT&SF railway be monitored and the results periodically reported to the staff.

The proposed change would remove from TS 6.9.1.14 the requirement to monitor and report the toxic gas cargo

traffic on I-5. The requirement to monitor and report explosive and flammability hazard cargo on Interstate Route 5 and hazardous cargo traffic on the AT&SF railway would remain in effect.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following is a discussion of these three criteria and how the proposed change meets each criterion.

1. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated for the reasons given below.

Previously analyzed accidents include the release of toxic gases from an accident on Interstate Route 5 (I-5) which would potentially cause the San Onofre Units 2 and 3 control room to become uninhabitable. In the SER, the NRC staff concluded (based upon prior analyses performed by the licensee) that the risks due to toxic gas releases, when coupled with the provisions for control room isolation, were acceptably low. However, the NRC staff required that hazardous cargo traffic (explosive hazards and hazards from toxic gases) be monitored and the results periodically reported.

The licensee has performed an additional analysis of the toxic gas hazard shipments along I-5. This analysis demonstrates that the combined risk associated with the composite toxic gas hazard from shipments on I-5 is acceptably low and meets the acceptance criteria of Standard Review Plan (SRP) Section 2.2.3. The analysis further demonstrates that this risk will remain acceptably low throughout the time period prior to expiration of the operating licenses for San Onofre Units 2 and 3 (the operating licenses expire on October 18, 2013).

The proposed change does not alter the configuration of the plant or its operation. The proposed change, based upon the results of the analysis, deletes the requirement to monitor toxic gas hazardous cargo along I-5 and report the results to the NRC. Since the risk from toxic gas shipments along I-5 has been demonstrated to be and to remain acceptably low, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of accidents previously evaluated.

2. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment would not change the configuration of the plant, or its manner of operation. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

Based upon the licensee's analysis, the risk to control room habitability from toxic gas shipments along I-5 has been demonstrated to be and to remain acceptably low for the duration of the operating licenses for San Onofre Units 2 and 3. Elimination of the requirements to monitor and periodically report this traffic is not needed to assure the habitability of the San Onofre Units 2 and 3 control room. Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713

Attorneys for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P. O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111

NRC Project Director: George W. Knighton

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 5, 1987 and September 18, 1987 (Reference PCN-237)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.2.7, "Axial Shape Index" and its associated basis. Notice of this action was previously published in the **Federal Register** on September 23, 1987 (52 FR 35807). The licensee has revised the original submittal. This notice supersedes the previous notice.

Technical Specification 3.2.7 is provided to ensure that the actual value of the axial shape index (ASI) is maintained within the range assumed as an initial condition in the safety analyses. The safety analyses assume that ASI is between -0.3 and +0.3. ASI is the power generated in the lower half of the core less the power generated in the upper half of the core divided by the sum of these powers. The ASI can be calculated utilizing either the Core Operating Limit Supervisory System (COLSS) or any operable Core Protection Calculator (CPC) channel. The real time monitoring capability and accuracy of COLSS allows COLSS to monitor power limit margins closely (using incore, self-powered, rhodium detectors).

The proposed change to this specification is required to support Cycle 4 operation (24 month cycle versus the current 18 month cycle). Analysis of COLSS uncertainties has shown that the axial shape uncertainty for Cycle 4 increases from ±0.02 ±0.03. This is due primarily to the effect of increased cycle length on the measurement uncertainties associated with the incore detectors.

Technical Specification 3.2.7 currently requires that the ASI be maintained within the COLSS Operable limits (ASI between -0.28 and +0.28) or the COLSS Out Of Service (CPC) limits (ASI between -0.20 and +0.20). The current COLSS Operable limits for the ASI are based on the value assumed in the safety analyses (ASI between -0.30 and +0.30) taking into account the axial shape uncertainty (±0.02). For Cycle 4 operation, the axial shape uncertainty increases to ±0.03. Therefore, the COLSS ASI alarm limit will be changed from ASI between -0.28 and +0.28 to ASI between -0.27 and +0.27.

Surveillance Requirement 4.2.7 will also be revised. Currently, Section 4.2.7 only requires that ASI be determined to be within its limits once per 12 hours when COLSS is in service or out of service. The proposed change will take advantage of the fact that COLSS continuously monitors ASI when it is in service. Specifically, ASI will be required to be continuously monitored and determined to be within its limit with COLSS in service. With COLSS out of service, the surveillance requirement

will be unchanged. That is, ASI will be required to be verified to be within its limit at least once every 12 hours using any operable CPC channel.

The basis for this specification will be expanded to include discussions of the 20% minimum power limitation in Mode 1, what ASI is and the two methods by which this parameter is calculated. The basis currently states that this specification ensures that the actual value of the ASI is maintained within the range of values used in the safety analyses.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following is a discussion of these three criteria and how the proposed change meets each criterion.

1. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated for the reasons given below. The proposed change would decrease the range of the ASI limits from ±0.28 to ±0.27, due to an increase in uncertainty factor from ±0.02 to ±0.03. Thus, the proposed change still requires that ASI be maintained within the ASI range assumed in the safety analyses, ±0.30. Further, the proposed change requires continuous monitoring of ASI when COLSS is in service. This is more restrictive than the current TS which requires monitoring once every 12 hours. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment would not change the configuration of the plant, or its manner of operation. The LCO for ASI will be changed from ±0.28 to ±0.27 when COLSS is in service. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. The proposed change will would revise the range of the ASI limit to be more restrictive when COLSS is in service. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P. O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: July 31, 1987

Description of amendment request: The proposed amendment would revise the plant heatup and cooldown curves, revise the maximum allowable power operated relief valve (PORV) setpoint curve, and revise the reactor vessel surveillance capsule removal schedule.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations, using the Commission's standards.

This Technical Specification change is being requested to incorporate information gained from surveillance capsule U which was removed during first refueling. These curves also incorporate the effects of a low leakage fuel and plant uprated conditions. The modifications of the plant heatup, cooldown and PORV setpoint curves (Figures 3.4-2, 3.4-3, and 3.4-4) are to incorporate the reference nil-ductility temperature (RT_{NDT}). Table 4.4-5 is being modified to incorporate the new recommended withdrawal schedule. The changes being made are jointly considered in this evaluation for significant hazards.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The revision being made is to merely ensure that the acceptable range of operation is clearly defined using conservative and validated data obtained from the analysis of surveillance capsule U which was withdrawn during the first refueling.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation are unchanged.

The proposed change does not involve a significant reduction in a margin of safety. This is based on the fact that the change only revises the heatup and cooldown limitation curves and surveillance program table to reflect operational parameters based on surveillance capsule data as applied to Vantage 5 fuel and uprated conditions. The recalculated limit curves have the same degree of conservatism as the original curves, since they are based on the most limiting values of the nil-ductility reference temperature which includes the radiation induced shift (delta RT_{NDT}) as determined by the surveillance capsule analysis.

Based on the above discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no-significant-hazards-consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker

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NRC Project Director: David L. Wigginton, Acting.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D. C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit 1 and 2, Houston County, Alabama.

Dates of application for amendments: December 19, 1986, supplemented May 4, July 10, and August 25, 1987.

Description of amendments: Technical Specification (TS) 3/4.4.6 is revised to allow the use of an approved steam generator tube sleeving technique in lieu of plugging defective tubes. The Safety Evaluation that was issued with this amendment is proprietary. A non-proprietary version is being prepared.

Date of issuance: September 18, 1987

Effective date: September 18, 1987

Amendment Nos.: 72 and 63

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23094). The July 10, and August 25, 1987 supplements made clarifying statements, but did not change the findings in the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit 1 and 2, Houston County, Alabama.

Dates of application for amendments: December 19, 1986, supplemented May 4, July 10, and August 25, 1987.

Description of amendments: Technical Specification (TS) 3/4.4.6 is revised to allow the use of an approved steam generator tube sleeving technique in lieu of plugging defective tubes. The Safety Evaluation that was issued with this amendment is proprietary. A non-proprietary version is being prepared.

Date of issuance: September 18, 1987

Effective date: September 18, 1987

Amendment Nos.: 72 and 63

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23094) The July 10, and August 25, 1987 supplements made clarifying statements, but did not change the findings of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Alabama Power Company, Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama.

Date of application for amendment: May 4, 1987

Brief description of amendment: Technical Specifications 3/4.4.6 were modified for surveillance and reporting requirements for testing of the steam generator tubes in the tubesheet region. Plugging or repairing of tubes in the tubesheet region below F* (F-star) are deleted, but reporting indications in the F* region is required.

Date of issuance: September 21, 1987

Effective date: September 21, 1987

Amendment No. 64

Facility Operating License No. NPF-8. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23093) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: August 28, 1985, as supplemented May 15, 1987.

Description of amendments: Amends the Technical Specifications for Brunswick, Units 1 and 2, by changing the required power level for rod block monitor operation.

Date of issuance: September 24, 1987

Effective date: September 24, 1987

Amendments Nos.: 112 and 139

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28373) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall

Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 1, 1987

Brief description of amendment: During the 1987 outage, new motor-operated valves were installed into the existing emergency core cooling systems (ECCS) to assure the capability of adequate core cooling over the entire spectrum of postulated pipe breaks. This license amendment provides (1) new periodic surveillance requirements to ensure correct valve position, (2) post-maintenance surveillance requirements for throttle valves, and (3) new valve and ECCS retest requirements following modifications to any ECCS subsystem that would alter ECCS flow characteristics.

Date of issuance: September 9, 1987

Effective date: September 9, 1987

Amendment No. 93.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24545). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 1, 1987

Brief description of amendment: The license amendment revises the heat-up rate curve (Figure 3.4-8) and also provides a larger interval for which the low-temperature pressurization protection system (LTOPS) must be placed into operation. More specifically, the proposed heat-up rate change results in a pressure/temperature limit curve shift. This shift increases the temperature range over which the LTOPS can effectively be placed into operation and decreases the probability of operator error during plant heat-up and cooldown operations.

Date of issuance: September 10, 1987

Effective date: September 10, 1987

Amendment No. 94.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24545). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 1, 1987

Brief description of amendment: This license amendment revises Technical Specifications (TS) 3.19 and 4.13 pertaining to snubbers by replacing the existing TS with technical specifications which are largely consistent with the NRC model standard technical specifications (STS) and which are more consistent with current industry guidelines such as NRC Generic Letter 84-13.

Date of issuance: September 23, 1987

Effective date: September 23, 1987

Amendment No. 95.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28373). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of application for amendment: June 19, 1987

Brief description of amendment: This amendment: (1) revises the Technical Specifications (TS) to state that the reactor will not be operated; (2) deletes TS requirements for reactor nuclear instrumentation channels to be in operation; and (3) deletes TS requirements to perform inservice inspection of high pressure primary systems and the TS requirements to use NUREG-0313, Revision 1, to govern repair and replacement of piping.

Date of issuance: September 15, 1987

Effective Date: September 15, 1987

Amendment No.: 57

Provisional Operating License No. DPR-7. This amendment revises the license.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29913). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: July 14, 16, 22, 31, September 14 (3 letters), 17 and 18, 1987.

Brief description of amendment: The amendment changed the license for Beaver Valley Unit 2 to allow sale and leaseback transactions by each of the four owners (Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company).

Date of issuance: September 23, 1987

Effective date: September 23, 1987

Amendment No. 1

Facility Operating License No. NPF-73. Amendment revised the license.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29915) The September 14 (3 letters), 17 and 18, 1987 letters provided additional clarifying information and did not change the findings of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: October 10, 1986, as supplemented January 9, 1987.

Brief description of amendment: The amendment revised the Unit No. 1 technical specifications that deal with containment air locks, and made them consistent with the Unit No. 2 technical specifications. The associated exemption to 10 CFR Part 50, Appendix J was issued on August 19, 1987.

Date of Issuance: September 15, 1987

Effective Date: September 15, 1987

Amendment No.: 85

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9567). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application of amendment: December 2, 1986, as supplemented February 3, 1987

Brief description of amendment: The amendment reduced the steam generator water level setpoints for reactor trip and auxiliary feedwater initiation. The water level for reactor trip was reduced from 39.5% to 20.5%. The water level for auxiliary feedwater initiation was reduced from 20.6% to 19.0%.

Date of Issuance: September 24, 1987

Effective Date: September 24, 1987

Amendment No.: 23

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4407) Additional information was provided by the licensee by letter dated February 3, 1987. The additional information did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: September 12, 1986.

Brief description of amendment: The amendment changes the trip setpoints, allowable values, and footnotes for the main steam line flow-high and the reactor core isolation cooling (RCIC) steam line flow-high; and changes a footnote for the residual heat removal (RHR)/RCIC steam line flow-high.

Date of issuance: September 23, 1987.

Effective date: September 23, 1987.

Amendment No. 11

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28377). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 26, 1987, as supplemented by letters dated May 15, July 24 and August 24, 1987.

Brief description of amendment: The amendment changed the Technical Specifications by revising the surveillance requirements associated with demonstrating operability of the emergency diesel generators in order to minimize engine stress and wear in response to Generic Letter 84-15.

Date of issuance: September 22, 1987.

Effective date: September 22, 1987.

Amendment No.: 23

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23100) The July 24 and August 24, 1987 submittals provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 3, 1987, as supplemented June 22, 1987

Brief description of amendment: This amendment changed the definition of core alteration in the TSs to include certain exceptions and changed footnotes in the TSs to be consistent with the new definition. This amendment also changed a snubber surveillance test sample plan in the TS by decreasing the number of additional snubbers required to be tested from 10% to 5% for each snubber in the initial test sample that failed to meet specified functional test criteria.

Date of issuance: September 10, 1987

Effective date: September 10, 1987

Amendment No. 35

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26589) and July 29, 1987 (52 FR 28380) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 9, 1987.

Brief description of amendment: The amendment changes the Technical Specifications to include local leak rate test acceptance criteria for primary containment airlock doors.

Date of issuance: September 9, 1987.

Effective date: September 9, 1987.

Amendment No.: 110

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 11, 1987 (52 FR 29922).

The amendment was inadvertently issued two days prior to expiration of the 30-day comment period specified by 10 CFR 50.91(a)(2)(iii). However, due to the fact that no comments or requests for hearing have been received as of September 15, 1987, the staff has determined that the amendment need not be reissued with a revised date.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 17, 1987, as revised by letters dated April 6, May 4 and August 3, 1987.

Brief description of amendment: The amendment changes the Physical

Security Plan to reflect changes to the intrusion detection system.

Date of issuance: September 17, 1987.
Effective date: September 17, 1987.
Amendment No.: 111
Facility Operating License No. DPR-62. Amendment revised the license.
Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23103). The Commission's related evaluation of the amendment is contained in a letter dated September 17, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: January 21, 1987
Brief Description of amendment: The amendment deletes the limiting conditions for operation (LCO) and the surveillance requirements for the switchyard batteries from the technical specifications since the maintenance responsibility belongs with the New London Substation Maintenance Department.
Date of issuance: September 1, 1987
Effective date: September 1, 1987
Amendment No. 10.
Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 26, 1987 (52 FR 5863). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: April 28, 1987.
Brief description of amendment: This amendment revises technical specification Table 3.7.1, Primary Containment Isolation, to reflect plant modifications and to increase the scope of the table to include not only valves which receive a containment isolation signal, but also check valves and valves open during power operation for testing and/or sampling purposes.
Date of issuance: September 8, 1987
Effective date: September 8, 1987
Amendment No.: 11.
Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20802). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 28, 1986 as supplemented April 9, 1986, March 13 and June 22, 1987.
Brief description of amendment: The amendment incorporates revised Surveillance Requirements for the diesel generators in accordance with Generic Letter 84-15 entitled, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability."
Date of issuance: September 24, 1987.
Effective date: 30 days from the date of issuance.
Amendment No.: 111
Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18689). Since the date of initial notice, the licensee submitted additional information dated April 9, 1986, March 13 and June 22, 1987. This information was substantial enough to warrant renoticing of the requested amendment on August 12, 1987 (52 FR 29924). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 25, 1985
Brief description of amendments: The amendments require a program to ensure that (1) the position of the containment polar cranes will preclude jet impingement from a postulated pipe rupture and (2) the operation of the turbine building cranes is consistent with the seismic analysis of the turbine building.
Date of Issuance: September 18, 1987
Effective date: September 18, 1987
Amendment Nos: 21 and 20
Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 12, 1986 (51 FR 8598) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 13, 1987
Brief description of amendments: These amendments revised the Susquehanna Steam Electric Station Units 1 and 2 Technical Specifications for surveillance of the Standby Gas Treatment System Exhaust Radiation-High instrumentation.
Date of issuance: September 14, 1987
Effective date: September 14, 1987
Amendment Nos.: 70 and 39

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26594) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 14, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendments: January 9, 1987, as supplemented by letters dated February 6, March 24, and May 13, 1987
Brief description of amendments: This amendment revised the Technical

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Specifications (TSs) to: (1) incorporate the operating limits for all fuel types for Cycle 8 operation, (2) incorporate a change in slope of the flow biased Average Power Range Monitor (APRM) scram and rod block setpoints for extended power-flow operating regions, (3) correct five typographical errors, (4) clarify a definition of Average Planar Linear Heat Generation Rate (5) clarify several notes in the TSs and (6) make various changes to the Bases discussing core reloads.

Date of issuance: September 11, 1987
Effective date: Prior to startup of Unit 2 in Cycle 8.
Amendment No.: 123
Facility Operating License No. DPR-44: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** (52 FR 7693) March 12, 1987
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1987.

No significant hazards consideration comments received: No
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 17, 1986
Brief description of amendments: These amendments made changes to Technical Specification page 207 to reflect the addition of a radwaste treatment sub-system to treat and filter chemical and oily wastes and also to make related editorial and format changes.
Date of issuance: September 22, 1987
Effective date: September 22, 1987
Amendments Nos.: 124 and 127
Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23105) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1987.

No significant hazards consideration comments received: In response to the NRC staff's consultation with the Commonwealth of Pennsylvania several potential concerns were identified. These concerns, as discussed in the Commission's Safety evaluation, were discussed with the Commonwealth representative, the licensee and the NRC staff. The Commonwealth representative found the information supporting the amendment application to be acceptable and indicated that there were no further concerns with the amendment. The staff did not identify any information which impacts its previous proposed determination of no significant hazards consideration.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: October 3, 1986
Brief description of amendment: The amendment replaced the Fxy limits in the Technical Specifications with statements referring to the Radial Peaking Factor Limit Report.
Date of issuance: September 23, 1987
Effective date: September 23, 1987
Amendment No.: 82
Facility Operating License No. DPR-70. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24558) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 18, 1987, as supplemented on June 4, 1987
Brief description of amendments: The amendment revises Section 6 - Administrative Controls to reflect the new plant organization, a restructuring of the Independent Safety Engineering Group, and change to the Plant Organization Review Committee responsibilities. The proposed changes to the existing requirements for Temporary Changes to Procedures in which the intent of the procedure is changed have been denied. A separate notice of denial will be published in the **Federal Register.** Minor changes were made to proposed Specifications 6.5.1.7.a and 6.5.1A.1.b for consistency to clarify these Specifications.
Date of issuance: September 10, 1987
Effective date: September 10, 1987, and shall be fully implemented within 60 days
Amendment Nos.: 58, 50

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24561). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1987.

No significant hazards consideration comments received: No
Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 17, 1986 (TS 76)
Brief description of amendments: The amendments change the Technical Specifications to increase the loading sequence delay for the containment spray pumps by 150 seconds.
Date of issuance: September 18, 1987
Effective date: September 18, 1987
Amendment Nos.: 59, 51

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24559) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No
Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 30, 1987.
Brief description of amendment: The amendment revised the requirements for reporting iodine spiking from a short-term report to an item which is to be included in the Annual Report, and eliminated the requirement to shut down the plant after 800 hours of operation with a dose equivalent I-131 valve of 1 microcurie/gram or greater.
Date of issuance: September 21, 1987
Effective date: September 21, 1987

Amendment No.: 27

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18970 at 18989). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 24, 1987, as supplemented by letter dated August 11, 1987.

Brief description of amendment: The amendment revises the Technical Specifications for Cycle 13 operation of the nuclear reactor.

Date of issuance: September 18, 1987

Effective date: September 18, 1987

Amendment No.: 100

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29934). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Bethesda, Maryland this 1st day of October, 1987.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects - III, IV, V & Special Projects

Office of Nuclear Reactor Regulation

[FR Doc. 87–23048 Filed 10–6–87; 8:45 am]

BILLING CODE 7590-01-D

POSTAL SERVICE

Stamps By Phone Program

AGENCY: Postal Service.

ACTION: Notice of stamps by phone program with request for comments.

SUMMARY: On September 1, 1987, the Postal Service initiated a test of a Stamps By Phone program at selected cities. This program will permit postal customers to purchase stamps by telephone, with payment made by credit card. Comments are requested concerning this program.

DATE: The Stamps By Phone program began on September 1, 1987. Comments must be received on or before January 31, 1988.

ADDRESS: Written comments should be directed to the General Manager, Retail and Customer Services Clerical Operations Division, United States Postal Service, Room 7226, 475 L'Enfant Plaza West SW., Washington, DC 20260–7225. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday at room 7226 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hughes, (202) 268–3547.

SUPPLEMENTARY INFORMATION: Under 39 U.S.C. 404(a)(4), the Postal Service is directed "to provide and sell postage stamps and other stamped paper, cards, and envelops * * * as may be necessary or desirable." Consistent with this responsibility, the Postal Service employs a wide variety of means to sell postage to its customers, including sales at postal facilities, operation of vending machines, sales through rural carriers, a stamps by mail program, and consignment of stamps for sale by private parties.

For the further convenience of its customers, the Postal Service has initiated a test of a new means to distribute postage, a Stamps By Phone program. Under this new program, customers may use a toll-free "800" telephone number to order postage, with payment to be made by either a VISA or Mastercard credit card. Others may be placed 24 hours per day, seven days per week. The following products will be offered:

Three books (20 stamps to a book) of 22¢ stamps	$13.20
Sheet (50 stamps) of 22¢ stamps	$11.00
Roll (100 stamps) of 17¢ stamps	$17.00
Roll (100 stamps) of 22¢ stamps	$22.00
Roll (500 stamps) of 22¢ stamps	$110.00
Book (3 stamps) of $10.75 Express mailstamps	$32.25
Package (50 envelops) of size 6¾ stamped envelops	$13.50
Package (50 envelopes) of size 10 stamped envelopes	$13.50

A two dollar handling charge will be assessed for each order to defray Postal Service costs. Customers will be permitted to purchase an unlimited amount of these postage products in each order. Orders will be mailed from a central location, and should be delivered within five days from the date the order is placed.

The test as described above will be conducted in the following seven cities, with scheduled starting dates ranging from September 1, 1987, through October 27, 1987. These cities, and the implementation date of the program in each city are: Sacramento, California (September 1, 1987); Miami, Florida (September 15, 1987); New York, New York (September 29, 1987); Boston Massachusetts (October 13, 1987); Baltimore, Maryland (October 20, 1987); Minneapolis, Minnesota (October 27, 1987); and San Diego, California (October 27, 1987).

In two additional cities, Norfolk, Virginia (starting September 12, 1987) and Dallas, Texas (starting September 26, 1987), customers will be able to purchase stamps through telephone calls to a local telephone number. These order, which will be fulfilled locally, may also be charged to VISA and Mastercard credit cards. However, no handling charges will be assessed on these orders.

After the completion of the test in all nine cities on April 30, 1988, the Postal Service will evaluate the Stamps By Phone program and determine whether it should be continued and expanded.

The Postal Service invites comments concerning any aspect of this program.

Fred Eggleston.

Assistant General Counsel, Legislative Division.

[FR Doc. 87–23133 Filed 10–6–87; 8:45 am]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980. (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Supplemental Information on Accident and Insurance

(2) *Form(s) submitted:* SI–1c, SI–5 and ID–30K(1)

(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(4) *Frequency of use:* On occasion

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(5) *Respondents:* Individuals or households, Businesses or other for-profit
(6) *Annual responses:* 25,600
(7) *Annual reporting hours:* 2,134
(8) *Collection description:* The RUIA provides for recovery of sickness benefits paid if the employee receives a settlement for the same injury for which benefits were paid. The collection obtains identifying information about the person or company responsible for such payments and information needed for determining the amount of the Board's entitlement.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316), Office of Management and Budget, Room 3002, New Executive Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87–23145 Filed 10–6–87; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24978; File No. SR–MSTC–87–6]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Changes to MSTC's Fee Schedule Effective August 1, 1987; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1987, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Securities Trust Company hereby amends its fee schedule, effective August 1, 1987, as follows:

	New fee	Old fee
Monthly Account Service		
Account Maintenance	$250	$175
Equity/Corp. Service	75	105
Municipal Bond Service	75	105
Total	$325 or $400	$280 or $385
Depository Delivery Instructions (Book-Entry Movements)		
Registered Securities	$0.65	[illegible]
Bearer Securities	0.65	1.50
Safekeeping		
Registered Securities Position.	$0.58	[illegible]
Thinly Held Issue Surcharge:		
Equity (5 or less Participants).	$0.22 (total $0.80).	–0–
Corp/Muni Bond (2 or less Participants).	$0.42 (total $1.00).	–0–
Bearer Securities Position.	$1.10	$1.25
Thinly Held Issue Surcharge:		
2 or less Participants	$0.65 (total $1.75).	$0.25 (total $1.50)
1 Participant	$0.09 (total $2.00).	$0.85 (total $2.10)
Dividend/Interest Collection Processing		
Cash Dividend Credit	$1.40	$1.00
Stock Dividend Credit	4.00	1.00
Registered Bond Interest Credit.	1.50	1.00
Bearer Bond Interest Credit.	3.00	1.50
Deposits		
Registered Securities	$1.00	$0.95
Next Day	$1.50	$1.40
Same Day (7:30–11:00)	15.00	12.00
Last Minute (11:00–11:30).	9.00	7.50
Communications (Rebilled Expense)		
Participants Using Shared Leased Lines.	$0.40/mi	$0.18/mi

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the changes to MSTC's fee schedule is to more accurately cover the cost of providing the various services to MSTC Participants.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees, and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In response to an MSTC Administrative Bulletin dated August 5, 1987, which described the proposed fee changes, MSTC received four comment letters and approximately ten telephone calls. This represents approximately 4% of all MSTC Participants. In most instances the Participant requested clarification on the fee changes. Each letter and call was replied to by phone and through letters. Each Participant was advised why the increases were recommended and was further provided with an analysis of the overall effect on the individual firm's total costs for depository services. In all cases, once the total cost effect was understood and an explanation of the reasons for the increases were discussed, the Participants indicated that the fee changes were acceptable. The cost effect for most Participants was to increase total depository costs between 1.5% to approximately 3%.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number (File No. SR–MSTC–87–6) and should be submitted by October 28, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 1, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23213 Filed 10–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24971; File No. PHLX 87–32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; to its Options Position Limit Rule Providing for a Hedge Exemption

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1987 the Philadelphia Stock Exchange, Inc. filed with Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" of the "Exchange") submits as a proposed rule change an amendment to its options position limit rule providing for a hedge exemptions for options positions that are offset by positions in the underlying stock. The following is the full text of the proposed rule change (additions italicized; deletions bracketed).

OPTIONS RULES

* * * * *

Position Limits

Rule 1001. No change.

* * * Commentary

.01 through .06 No change.

.07 For purposes of position limits for stock options only, the following positions, where each options contract is "hedged" by 100 shares of stock or, in the case of an adjusted option, the same number of shares at options, shall be exempted from established limits: (i) long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock. In no event may position limits for any call of stock options exceed twice the limits established under Rule 1001 and Commentary .05 above.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Position limits circumscribe the amount of options on the same side of the market (*i.e.*, short calls and long puts or long calls and short puts) that an investor may control. Position limits for equity options are determined in accordance with a three-tiered system (*i.e.*, 3,000, 5,500, or 8,000 contracts) based on the underlying stock's trading volume and/or the number of outstanding shares that are publicly held.

The proposed amendment is designed to allow a limited, automatic exemption from equity option *position and exercise limits* for accounts that have established one of the four most commonly used hedged positions consisting of stock and equity options on a 1-for-1 basis, i.e., 100 shares of stock for each option contract.

The exemption is to be automatic and no request or application need be made by a market participant to utilize the exemption. The exemption is intended to apply to exercise limits as well as position limits.[1] Therefore, accounts will be allowed to exercise, during any five consecutive business days, the same number of contracts set forth as the position limit for that option, including those that are hedged. The exempted hedged positions are: (i) long call and short stock, (ii) short call and long stock, (iii) long put and long stock and (iv) short put and short stock. In no event, however, would the maximum position limit (including the allowed exemptions) exceed twice the present position limit.

Utilizing the proposed exemption would afford investors the opportunity to hedge twice the amount of underlying shares of stock without increasing the possibility for manipulation in such securities.

The Exchange believes that this proposal will increase the depth and liquidity of equity options trading. Therefore, the proposed amendment is consistent with the provisions of the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, with section 6(b)(5) of the Act. By limiting the exemption to hedged positions, the proposal is designed to prevent fraudulent and manipulative acts and practices by enhancing the ability of investors to use options for investment and particularly for hedging purposes. It is designed to protect investors and promote the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the PHLX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change. No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[1] PHLX Rule 1002 relating to exercise limits incorporates the position limits rule by reference, so this proposal also would result in the doubling of exercise limits.

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arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 30, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23214 Filed 10-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16025; 811-3471 and 811-3598]

Declaration of Deregistration; American Money Plan, Inc.

October 1, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Delcaration of Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Registrant: American Money Plan Inc. ("Registrant")

Relevant 1940 Act Section: Section 8(f).

Summary of Notice: The SEC proposes to declare by order on its own motion that Registrant has ceased to be an investment company.

Hearing on Notification of Hearing: If no hearing is ordered, the motion will be granted. Any interested person may request a hearing on this motion, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Registrant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Registrant, 1939A Berryman Street, Berkely, CA 94709.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

Statement of Facts

1. Registrant is an open-end, non-diversified management investment company which filed a Form N-8A to register under the 1940 Act on May 25, 1982; Form N-1 was filed on November 12, 1982 but no additional filings have been made with the SEC since that date. Efforts made to contact Registrant and its principals have been unsuccessful.

2. Information contained in the files of the SEC indicate that Registrant has never made a public offering of its securities, has not more than 100 securityholders, has no assets, and is not a party to any litigation or administrative proceeding. Thus it appears that Registrant is not currently engaged in the business of an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23215 Filed 10-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16024; File No. 812-6855]

Application for Exemption; FBL Variable Insurance Series Fund

October 1, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: FBL Variable Insurance Series Funds ("Fund" or "Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicant seeks an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affilitated and unfaffiliated life insurance companies.

Filing Date: August 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. FBL Variable Insurance Series Fund, 5400 University Avenue, West Des Moines, Iowa 50265.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026 or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Fund is a Massachusetts business trust seeking registration under the 1940 Act as an open-end diversified investment company. The Fund currently consists of six Portfolios: the Money Market Portfolio, the Growth Common Stock Portfolio, the Aggressive Growth Common Stock Portfolio, the High Quality Bond Portfolio, the High Yield Bond Portfolio, and the Managed Portfolio. Additional Portfolios may be created in the future.

2. The Fund intends to offer shares of its existing and future Series to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to herein as "variable contracts"). Insurance companies whose separate account(s) owns shares of the Fund are referred to herein as "participating insurance companies." It is anticipated that participating insurance companies will rely on Rules 6e-2 or 6e-3(T) under the Act, Although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The

use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companes is referred to herein as "shared funding."

3. Rules 6e-2 and 6e-3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b)(15), however, precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. Applicant has requested exemptive relief to the extend necessary to permit shares of the Applicant to be sold for mixed funding and shared funding. Applicant proposes that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in Applicant (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in Applicant by virtue of Applicant offering its shares to variable annuity separate accounts or unaffiliaged separate accounts.

4. Applicants state that permitting mixed and shared funding will facilitate the establishment of additional portfolios serving diverse goals. The applicant also states that the broader base of contract owners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies. Further, use of the Fund as a common investment medium for variable contracts would encourage more insurance companies to offer variable contracts. Applicant believes that this will result in increased competition with respect to both variable contract design and pricing, and that this can be expected to result in more product variation and lower charges. Applicant also believes that mixed and shared funding should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds and that granting the requested relief should result in an increased amount of assets available for investment by the Fund which in turn may benefit variable contract owners by promoting economies of scale, by permitting greater safety through greater diversification, or by making the addition of new Portfolios of the Fund more feasible. Applicant represents that the Fund will not be managed to favor or disfavor any particular insurer of type of insurance product. Applicant believes that mixed and shared funding will have no adverse federal income tax consequences.

Disqualification

5. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e-2(b)(15) (i) and (ii), and 6e-3(T)(b)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

6. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of section 9 in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicant believes that it is necessary to apply section 9(a) to the many thousands of individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts, and alleges that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding. Applicant states that, on the other hand, the increased monitoring costs would reduce the net rates of return realized by contract owners.

Voting

7. The language of Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) assumes the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicant states that pass-through voting privileges will be provided with respect to all variable contract owners.

8. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). According to Applicants, if a particular state insurance regulatory's decision conflicts with the majority of other state regulators, the affected insurer will be required to withdraw its separate account's investment in the Fund. This requirement will be provided for in agreements that will be entered into by participating insurers with respect to participation in the Fund.

Applicant's Conditions

Applicant has consented to the following conditions:

1. A majority of the Board of Trustees of the fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board of Trustees" (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy of vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in section 16(c) of the Act) as well as with sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

3. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-

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action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

4. Participating insurance companies and the Fund's investment adviser, FBL Investment Advisory Services, Inc. ("Adviser"), will report any potential or existing conflicts to the Board of Trustees of the Fund. Participating insurance companies and the Advisers will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract owners.

5. If it is determined by a majority of the Board of Trustees of the Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners. For purposes of this condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all participating insurance companies.

7. Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

8. The Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. All reports received by the Board of Trustees of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23216 Filed 10–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24469]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 1, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 26, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or,

in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southern Electric International, Inc.; The Southern Company (70–7150)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned marketing subsidiary, Southern Electric International, Inc. ("SEI"), 100 Ashford Center North, Atlanta, Georgia 30338, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By order dated November 18, 1985 (HCAR No. 23911), SEI was authorized to issue and sell from time to time through October 1, 1987, pursuant to an exception from the competitive bidding requirements of Rule 50, its long-term unsecured promissory notes in an aggregate principal amount not exceeding $75 million at any one time outstanding, and Southern was authorized to acquire and/or guarantee same or all of the notes. SEI and Southern now propose to extend through December 31, 1992 the period during which the authorized transactions may occur.

Eastern Utilities Associates (70–7426)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 43(a), 45(a), 86, 87, 90 and 91 promulgated thereunder.

EUA proposes to: (1) Organize a new subsidiary corporation ("NewCo") under the laws of the Commonwealth of Massachusetts; (2) subscribe initially to 100 shares of NewCo's initial authorized capital of 300,000 shares of common stock, $0.01 per share par value, at $10.00 per share; and (3) fund NewCo from time-to-time, directly or indirectly, by means of stock purchases, capital contributions and interest-bearing loans and open account advances, in a maximum aggregate amount of $25 million outstanding at any one time. NewCo's capitalization may also include borrowings by NewCo from third party lenders. The aggregate amount of EUA's investments in NewCo together with NewCo's borrowings from third party lenders will not exceed a maximum amount at any one time outstanding of $25 million. EUA will not guarantee any indebteness of NewCo.

NewCo proposes to participate, directly and indirectly, through transactions with affiliates or nonaffiliates, in: (1) Qualifying cogeneration facilities, as defined in the Public Utility Regulatory Policies Act of 1978, located throughout the United States; and (2) qualifying small power production facilities and nonqualifying cogeneration and small power production facilities located within (a) the service territories of EUA's two retail electric subsidiaries, Blackstone Valley Electric Company and Eastern Edison, both members of the New England Power Pool ("NEPOOL"), and (b) the service areas of other members of NEPOOL, or (c) such additional areas as may hereafter be allowed by law or applicable regulation, (collectively, "NewCo Facilities"). NewCo proposes to invest up to a maximum aggregate amount at any one time outstanding of $25 million in NewCo Facilities through the purchase of shares or other acquisitions of interests, loans, guarantee of indebtedness or other contractual arrangements. NewCo also proposes to conduct certain energy or energy conservation research and to invest, directly or indirectly, up to an aggregate of $2 million of the $25 million in such activities.

EUA Service Corporation will provide services to NewCo at cost under a service contract. Employees of other EUA system companies may be used by NewCo from time-to-time, with the cost of these services charged to NewCo.

Gulf Power Company, et al. (70–7430)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, and Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32501, a subsidiary of Southern, a registered holding company, have filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act, and Rules 45, 50, and 50(a)(5) thereunder.

Gulf proposes to enter into a new coal supply contract to replace an existing contract. In connection therewith an initial payment of approximately $60 million will be required for the termination of the earlier agreement and for certain costs under a new agreement. In order to provide funds to finance the initial payment, or for other general corporate purposes including Gulf's construction program, Gulf contemplates that some combination (not to exceed $60 million) of the following will be used on or before December 31, 1992: (i) Up to $10 million in capital contributions from Southern, (ii) up to $15 million from the issuance and sale of its preferred stock, (iii) up to $60 million from the issuance of notes with maturities of up to 30 years, and (iv) up to $60 million from the issuance and sale of first mortgage bonds.

Gulf proposes to issue and sell the first mortgage bonds and/or preferred stock by competitive bidding in compliance with Rule 50. Gulf may later amend the application to seek an exception from Rule 50 pursuant to subsection 50(a)(5) for a negotiated public offering.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23217 Filed 10–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16020; (812–6715)]

Application; Shearson Lehman Special Income Portfolios

September 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Shearson Lehman Special Income Portfolios.

Relevant 1940 Act Sections: Amended Exemptive Order requested under section 6(c) exempting Applicant from the provisions of section 22(d) and Rule 22d–1.

Summary of Application: Applicant seeks an amended exemptive order to permit it to waive a contingent deferred sales charge currently assessed pursuant to an order granted to Applicant on September 5, 1985 (Investment Company Act Release No. 14706, amended by Investment Company Act Release No. 15005, March 19, 1986, the "1985 Order").

Filing Date: The application was filed on May 12, 1987 and amended on July 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your

interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272–3046, or Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on March 12, 1985. Applicant is a series company that is currently offering shares of nine portfolios (the "Portfolios"). Shares of all of the Portfolios are distributed by Shearson Lehman Brothers, Inc. ("Shearson Lehman"), and affiliates of Shearson Lehman serve as the investment advisers to the various Portfolios.

2. The 1985 Order exempted Applicant from (1) the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 under the Act to the extent necessary to permit Applicant to assess a contingent deferred sales charge (the "CDSC") on redemptions of the initial and future series of its shares and to permit Applicant under certain circumstances to waive or apply credits against the CDSC, and (2) the provisions of section 11(a) of the Act to permit Applicant to offer to exchange shares of each of Applicant's series for shares of any other of Applicant's series or shares of any series of Shearson Lehman Special Income Portfolios, on the basis of relative net asset values per share of the relevant series at the time of the exchange, subject to a $5.00 service charge on each exchange, which service charge is no longer assessed.

3. Applicant now proposes to waive the CDSC on redemptions effective by any shareholder who is a client of a Shearson Lehman Finanical Consultant and who purchased shares of Applicant with the redemption proceeds of shares of a registered investment company sponsored by the Financial Consultant's previous employer. Under Applicant's proposal, the CDSC would be waived only if (1) the shareholder's purchase of shares of a Portfolio was made within 90 days of the commencement of the Financial Consultant's employment with Shearson Lehman; (2) the purchase was made with proceeds of a redemption of shares of an investment company registered under the Act that was sponsored by the Financial Consultant's previous employer (the "Previous Fund"); (3) the Financial Consultant served as the shareholder's broker on the purchase of the shares of the Previous Fund; and (4) the shares of the Previous Fund were subject to a sales or redemption charge. To ensure that the shares of a Portfolio are purchased with the proceeds of a redemption of shares of a Previous Fund, the shareholder would be required to provide Shearson Lehman with a copy of a confirmation slip or customer statement evidencing the redemption.

4. Applicant requests that any exemption the Commission may grant cover not only the Portfolios, but also any additional series or classes of shares Applicant may offer in the future on substantially the same basis as Applicant offers the shares of the Portfolios.

5. Shearson Lehman believes that the purchase of shares of a Shearson Lehman fund by a client of a Financial Consultant with the redemption proceeds of a fund sponsored by the Financial Consultant's previous employer typically involves little or no selling effort by the Financial Consultant, and as a result, under Shearson Lehman's internal policies, the Financial Consultant receives no compensation with respect to the purchase.

Applicant's Legal Conclusions

1. Applicant submits that the waiver of the CDSC is consistent with the policies underlying section 22(d) of the Act, which prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Applicant also believes that the waivers from the CDSC will not harm Applicant or its shareholders or unfairly discriminate among shareholders or purchasers. In light of the lack of selling effort involved, Applicant believes it appropriate to waive the CDSC on a redemption by a client of a Shearson Lehman Financial Consultant of shares of a Portfolio purchased with the redemption proceeds of a fund sponsored by the Financial Consultant's previous employer.

Applicant's Conditions

Applicant expressly agrees that the proposed transactions will conform to the following conditions.

1. Applicant will implement the waiver of the CDSC in accordance with the terms of Rule 22d–1 under the 1940 Act.

2. Applicant will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the Commission.

3. Applicant will comply with the provisions of Rule 12b–1 under the 1940 Act in its present form and as it may be revised in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23143 Filed 10–6–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0294]

Application for a Small Business Investment Company License; Revelation Resources, Ltd.

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Revelation Resources, Ltd., (Applicant), 2929 Allen Parkway, Suite 1705, Houston, Texas 77019, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The management and control of the Applicant are the officers and directors of Revelation Resources Management Corporation, Corporate General Partner, as follows:

Name and address	*Position*
Michael R. Walker, 15502 Congo Lane, Houston, Texas 77040.	President, Director and General Partner of Applicant.
Christopher J. Matthews, 3820 Lake Street, Houston, Texas 77098.	Vice President and Director.
Robert S. Oliver, 11827 Longleaf Lane, Houston, Texas 77024.	Vice President and Director.

The limited Partner, Darryl K. Anderson, 12 East Rivercrest, Houston, Texas 77042, will contribute approximately $900,000 and the Corporate General Partner will contribute $1,000 to the partnership capital. The Corporate General Partner

is 100 percent owned by Darryl K. Anderson.

The Applicant, Revelation Resources, Ltd., a Texas Limited Partnership, is expected to begin operations with $1,025,000 net partnership private capital. The Applicant will conduct its activities primarily in the State of Texas but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Houston, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 2, 1987.

[FR Doc. 87-23223 Filed 10-6-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment, TCAS II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C119 prescribes the minimum performance standards that a traffic alert and collision avoidance system (TCAS) airborne equipment, TCAS II, must meet to be identified with the marking "TSO-C119."

DATE: Comments must identify the TSO file number and be received on or before January 15, 1988.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, ASW-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C119, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administation, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO-C119 may be obtained by contacting the person under "For Further Information Contact." TSO-C119 references RTCA/DO-185, dated September 1983 (and MITRE Report MTR-87W00157, Reference 10), for minimum performance standards, RTCA/DO-178A for the computer software requirements, and RTCA/DO-160B for the environmental standards. RTCA/DO-185, DO-178A, and DO-160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005. MITRE Report MTR-87W00157 may be purchased from the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, VA 20005.

Issued in Washington, DC, on September 29, 1987.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87-23123 Filed 10-6-87; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

The Veterans' Advisory Committee on Environmental Hazards; Notice of Change of Meeting Location

The meeting of the Advisory Committee on Environmental Hazards which is scheduled for October 15 and 16, 1987, as set forth in **Federal Register** of August 27, 1987, (52 FR 32392) is being relocated and will convene in Room 119, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC at 9:00 a.m. instead of Room 442 of the Lafayette Building, 811 Vermont Avenue NW., Washington, DC at 9:00 a.m.

Dated: September 30, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-23153 Filed 10-6-87; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 194
Wednesday, October 7, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, October 14, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED

1. Aircraft Accident Report: Midair Collision Involving a Sachs Electric Company Piper PA-31 and a U.S. Army Beech U-21, Lake City Army Ammunition Plant, Independence, Missouri, January 20, 1987.
2. Marine Accident Report—Grounding of the Panamanian Tankship GRAND EAGLE in the Delaware River, Marcus Hook, Pennsylvania, September 28, 1985.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,
Federal Register Liaison Officer.
October 2, 1987.

[FR Doc. 87-23237 Filed 10-5-87; 10:31 am]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 5, 12, 19, and 26, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 5

Friday, October 9

10:00 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of October 12—Tentative

Friday, October 16

10:00 a.m.
Briefing on Status of Rancho Seco (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 19—Tentative

Wednesday, October 21

10:00 a.m.
Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting)
2:00 p.m.
Briefing on the Federally Funded Research Development Center (FFRDC) (Public Meeting)

Thursday, October 22

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 26—Tentative

Thursday, October 29

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634-1410.

Andrew L. Bates,
Office of the Secretary.
October 1, 1987.

[FR Doc. 87-23338 Filed 10-5-87; 3:23 pm]
BILLING CODE 7590-01-M

Wednesday
October 7, 1987

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Fiscal Year 1988 Proposed Funding Priorities and Invitation of Applications for New Awards Under the Program of Rehabilitation Research and Training Centers; Notices

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Year 1988

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal year 1988.

SUMMARY: The Secretary of Education proposes funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1988.

On June 5, 1987, NIDRR published in the **Federal Register** (FR 21350) those areas of physical restoration in which it proposes to support RRTCs in fiscal year 1988. This second notice includes other areas, such as vocational rehabilitation, community integration for individuals with developmental disabilities, rehabilitation of special populations and elderly disabled persons, research on families with disabled members, and research to make housing more accessible, that NIDRR proposes to approach through RRTCs in fiscal year 1988.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before November 6, 1987.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., Room 3070, Switzer Building, Mailstop 2305, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the research program of NIDRR, formerly NIHR, is contained in section 204 of the Rehabilitation Act of 1973. Under this program, awards are made to public and private agencies and organizations including institutions of higher education, Indian tribes, and tribal organizations. NIDRR can make awards for up to sixty months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities that have a direct bearing on the development of methods, procedures, and devices to assist in providing vocational and other rehabilitation services to individuals with handicaps, especially those with the most severe handicaps. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32).

NIDRR supports a program of Rehabilitation Research and Training Centers to conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. The following proposed priorities represent areas of research in a variety of rehabilitation areas which the Secretary believes are high priorities for RRTCs for this fiscal year. The priority may be determined on the basis of the extent and severity of the problem; the need for new knowledge to advance solutions to the problem; the appropriateness of the programmatic approach to the issues at this time; the resources and capacity of the field to provide a coordinated research approach to the problem; the level of other resources available for the problem; and other factors.

NIDRR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Interested respondents also are invited to suggest the types of expertise which would be needed for independent experts to review and evaluate applications under these proposed priorities.

The final priorities will be established on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in a notice in the **Federal Register**. A closing date notice will be published at that time, after which application packages will be available. This Notice of Proposed Priorities does not solicit applications, and Department of Education staff will not review concept papers or other types of pre-applications. The publication of these proposed priorities does not bind the Federal Government to fund projects in any of these areas. Funding of particular projects depends on final priorities, the availability of funds, and on the quality of the applications that are received.

The following twelve proposed priorities represent areas in which NIDRR proposes to support research and related activities through cooperative agreements for one or more Rehabilitation Research and Training Centers. Rehabilitation Research and Training Centers have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings as well as for related findings of other studies. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be appropriately accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC will conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers will also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC will also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center, to include review by peers. Continued funding depends at all times on satisfactory performance and accomplishment. Each Center will be expected to provide appropriate attendees for a general grants management meeting in Washington, D.C., to be arranged by NIDRR shortly after the Center grant has been awarded.

Proposed Priorities (12)

New Directions for Rehabilitation Facilities

There are approximately 5,500 rehabilitation facilities in the United States. Facilities have traditionally served as settings for vocational training and evaluation, medical rehabilitation,

and long-term employment for individuals with disabilities. State vocational rehabilitation agencies often use contracts and service agreements with facilities for the purchase of vocational rehabilitation services. The Federal Government has provided fiscal incentives for facility expansion and guidelines for the purchase of facility-based services by agencies using Federal grant monies. Rehabilitation services are rapidly shifting from providing evaluation and training in facilities toward providing these services in regular integrated job sites. State rehabilitation agencies may use vendor payments or grant arrangements to obtain transitional employment services that provide training and follow-along services in competitive job sites. Rehabilitation facilities are the most frequent suppliers of these transitional services. At the same time, facilities are also establishing programs for public schools, for post-employment and job retention services, and to train nondisabled persons.

However, many facilities face significant challenges in expanding their expertise and redirecting their services. They are particularly likely to have difficulties organizing programs and services for "new" groups such as persons with traumatic brain injuries, severe learning disabilities, and chronic mental illness in community-based settings.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of selecting work sites and consumer-oriented performance criteria.

An absolute priority is proposed for an RRTC to:

- Develop and evaluate model transitional employment programs, or program components, that assist vocationally limited disabled individuals to acquire and maintain competitive employment;
- Identify, assess, and disseminate new models of enclave and subcontract arrangements that can provide employment for small groups of disabled persons in integrated work settings;
- Develop, based on studies of the direct placement of disabled individuals in competitive jobs, improved techniques and related services to assist disabled individuals to obtain and maintain employment;
- Develop and disseminate new models that facilities can use to provide supportive networks for disabled persons in competitive employment;
- Develop research-based training programs to train staff of rehabilitation facilities to provide services in regular employment settings;
- Develop procedures to assess the needs of disabled youth exiting public schools, to enable communities to develop responsive employment programs;
- Assist facilities that have limited data gathering and research capacities to develop appropriate data and information systems and to participate in research efforts to improve their community-based employment programs;
- Identify and evaluate new technologies such as laser discs, computers, and robotics and provide guidelines and training for the use of such innovations by community employment programs to increase their effectiveness and efficiency in assisting disabled individuals to gain and maintain employment;
- Assess the employment-related needs of special populations of disabled individuals and identify methods by which such groups may be served more effectively by community-based employment services programs;
- Organize and direct an annual study institute on a rehabilitation topic, publish the results in a resource manual, and distribute the manual to State vocational rehabilitation programs; and
- Conduct at least one research dissemination conference to communicate the results of Center projects to rehabilitation consumers and professionals.

Enhancing Employability of Individuals with Handicaps

Approximately thirteen million people between sixteen and sixty-four years of age are work-disabled. Of the disabled population not employed, (9.5 million) an estimated 8.7 million are not seeking employment. Disabled persons, particularly persons with severe disabilities, are far more likely than nondisabled persons to be out of work. Persons with disabilities who are employed tend to work fewer hours, fewer weeks in the year, and earn less than nondisabled persons. A research and training effort is needed to develop capabilities at the national, state, and local levels to enhance employment potentials for all persons with disabilities.

Research at this Center will be concerned with both the enhancement of individual employability and the enhancement of job opportunities. Services to individuals typically include skills training, employment readiness training, and job placement. Services to employers may include increasing awareness of disability, job development, technical assistance on job modifications, and other disability services. The Center will address employability problems of disabled individuals in preparing for, obtaining, maintaining, and advancing in employment. This area of research will focus on career preparation, career initiation, and career enhancement for disabled individuals. The objective of this research will be the development of techniques whereby disabled individuals can improve their work-related skills and general employability.

A second emphasis of the research and training activities will be the development of more and better employment opportunities, primarily through enhancing employer knowledge of disability, and assisting employers to locate and hire qualified disabled workers. The Center will conduct research which will improve work settings and employer practices for workers who experience the onset of disabilities while employed. The RRTC will assist rehabilitation service delivery systems to adapt to the changing employability needs of persons with disabilities, whether by restructuring services programs, retraining staff, or adopting new service techniques.

NIDRR intends to establish one or more Centers that will be national resources for research and training to assist rehabilitation facilities to establish exemplary community-based employment programs. A critical element of any Center to be supported in response to this priority will be the involvement of individuals with disabilities in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for one or more RRTCs to:

- Develop research and training models to enhance the capabilities of disabled individuals to develop rehabilitation plans, select career goals, and match personal abilities and expectations to available vocational opportunities;
- Conduct research and training to improve the use of vocational evaluations and assessments, and develop reliable and valid assessment measures that will optimize personal choice and the range of employment opportunities for disabled individuals;
- Develop strategies and techniques that will enable special and vocational education and vocational rehabilitation agencies to work together to assist both employers and disabled youth in the transition from school to work;

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• Develop technical assistance and training to enable rehabilitation agencies, business and labor associations, and consumer groups to assist employers to hire, retain, or return to work persons with disabilities;

• Investigate the efficacy of a system to facilitate contacts between disabled people seeking jobs and disabled persons who are employed in order to increase the likelihood that the former will obtain and maintain employment;

• Develop and test new approaches for consumer organizations and independent living programs to enhance employment of persons with disabilities;

• Implement and expand computer-assisted vocational rehabilitation techniques to improve the access of rehabilitation counselors to current job data and expedite employment;

• Organize and direct an annual study institute on a rehabilitation topic, publish the results, and distribute the manual to state vocational rehabilitation agencies; and

• Conduct at least one state-of-the-art study to identify current knowledge and recommend future research, and organize research and training conferences and short-term institutes to disseminate the results of Center projects to rehabilitation consumers and professionals.

Improving Supported Employment Outcomes for Developmentally and Other Severely Disabled Individuals

During the past several years, Federal legislation and various employment programs for developmentally and other severely disabled individuals have incorporated the concept of supported employment (Developmental Disabilities Act of 1984, Pub. L. 98–527, the Education of the Handicapped Act Amendments of 1986, Pub. L. 99–457, and the Rehabilitation Act Amendments of 1986, Pub. L. 99–506). Supported employment is defined as, "competitive work in integrated work settings for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of their handicaps, need ongoing support services to perform such work." There is now substantial agreement on many of the issues involved in the administration of supported employment programs, including training needs for direct service and leadership personnel, standards for performance, and measures for the evaluation of outcomes. Preliminary indications from studies of exemplary programs illustrate that these programs can provide significant benefits for program participants at reasonable costs. Other studies have evaluated the role of specific components of supported work, such as paid work in jobs with nondisabled coworkers, behavioral techniques to teach job duties, and the involvement of parents and advocates. The rapid growth in the number and size of supported employment programs has exceeded the capacity of the resource base of trained personnel and established program operating procedures to meet the needs of those persons with more severe disabilities who require ongoing support to maintain regular employment.

Recent research efforts have examined strategies for interagency coordination to promote long-term support for persons with severe disabilities who are employed. Current activities focus on technical assistance, development of information systems, and networks to share information among supported employment programs.

The success of supported employment with developmentally and severely disabled persons has led to replications and expansions to other disability groups. Consequently, NIDRR anticipates there will be a variety of supported employment research and service activities taking place during the period of performance of this RRTC. Although the RRTC to be established under this priority will focus primarily on developmentally disabled persons, the Center will be encouraged to identify methods, techniques and models of value for other efforts in supported employment.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of selecting work sites and consumer-oriented performance criteria. The Center will be an essential component of a national information system on supported employment. It will be expected to share reports, research findings, and program models with other programs on supported employment identified by NIDRR.

An absolute priority is proposed for an RRTC to:

• Analyze vocational assessment techniques, training methods, placement strategies, integration with nondisabled persons, followup and employer assistance, and techniques of imparting job-related social skills, in order to improve supported employment for persons with developmental and other severe disabilities;

• Identify costs and benefits of alternative supported employment models, including time-limited and long-term support programs, for various populations of disabled persons, in order to provide better estimates for planning supported employment opportunities;

• Develop new, and validate existing, approaches to enhancing productivity, wages and benefits, job security, job advancement, and career transitions to increase employment satisfaction for employees and employers in supported work settings;

• Develop and provide training to severely disabled persons, family members, counselors, and peers, to increase their awareness of supported work and to integrate supported employment with other major components of independent living, including transportation, recreation, and residing in the community;

• Analyze and organize training on regulations, employer incentives, standards, contracts, job agreements, economic development factors, and related issues to increase organizational capacities;

• Identify best practices and most effective methods including staffing requirements for large organizations to set up small supported employment units in dispersed locations;

• Conduct research on transition from school to supported employment to improve linkages among programs and to identify issues, methods, and models for both school and adult programs;

• Develop technical assistance and training to ensure that developmentally and other severely disabled youth exiting public school programs will have well-defined pathways for entry into supported employment;

• Analyze long-term funding options for supported employment for individuals who have exhausted the time-limited services provided by the vocational rehabilitation system;

• Analyze the relationship of supported employment to eligibility for income and health insurance benefits in order to inform prospective employers and disabled individuals on financial consequences of supported work;

• Conduct at least one comprehensive study of the state-of-the-art in an important area of supported employment, and serve as a national resource to disseminate information on supported employment programs;

• Provide opportunities for professional development through the temporary exchange of staff with other RRTC's, Federal, State, or local

agencies, private industry, or other relevant organizations;

• Identify and assess methods to use technology to improve supported employment; and

• Develop, evaluate, and disseminate materials to provide information, technical assistance, and motivation for supported employment programs, using various media and assuring that all materials are accessible to various persons with disabilities, and are distributed to businesses that may be interested in supported employment programs.

Improving the Management of Rehabilitation Information Systems

Access to specialized information is an essential element of all rehabilitation activities. Major strides in research and training on such severe, but low-incidence, disabilities as spina bifida, spinal cord injury, and deaf-blindness have come through the establishment of specialized information systems and data linkages among programs. Independent living and vocational and other rehabilitation programs generate and use large amounts of information. Eligibility determinations, case management requirements, organizational structures, decisions of rehabilitation professionals and clients, and client or program evaluations all require complex information systems.

In addition, broad and rapid dissemination of new knowledge requires central data depositories with access through on-line data retrieval at the point of use. The implementation and improvement of rehabilitation information systems have substantial program implications; these systems generate needs for staff competent in the use of computers, for interagency and intra-agency coordinating agreements, and for continuous review and revision of the system. Rehabilitation agencies are increasingly using information technology and various databases in all aspects of their rehabilitation programs. As a result of past research and development efforts in this area, several significant rehabilitation information bases and automated information systems are in place or under development, including Spinal Cord Injury Data Systems, Traumatic Brain Injury Systems, Independent Living Systems, the State-Federal Vocational Rehabilitation System, and the databases on the demographics of disability.

At this time, it is important to assure that current and future databases are properly integrated, maintained, and used to enhance rehabilitation practices and results. A Center working in this area must identify model linkages and other arrangements through which the operators of these information systems can cooperate on mutual program goals; develop and test methods to use specific information system components in planning, delivering, and evaluating rehabilitation services; and provide training and information exchange to improve the management of rehabilitation information systems.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of increasing consumer access to information on rehabilitation program processes and outcomes.

An absolute priority is proposed for an RRTC to:

• Develop specific procedures and methods to enhance access to, and effective use of, disability-related information systems by rehabilitation agencies, consumers, and related organizations;

• Identify program needs, including staffing, system design, and organizational development components, and develop training programs to promote improved rehabilitation information management;

• Evaluate existing computer programs, and develop new programs where needed, to improve rehabilitation use of information systems in such areas as functional assessment, development of service plans, case management, and evaluation of rehabilitation processes and outcomes;

• Provide technical assistance to professional and consumer groups on issues related to rehabilitation information systems, with particular attention to availability of resources, avoidance of duplication of data components, methods of data analysis, and cooperation among information sources;

• Facilitate communication between research and model demonstration systems and rehabilitation service delivery agencies on issues in the management of service programs;

• Conduct conferences, presentations, short-term institutes, and other training activities to facilitate linkages among rehabilitation information systems, particularly those organized as a result of research support from NIDRR; and

• Organize at least two national state-of-the-art conferences on information management for rehabilitation research and service delivery during the period of the project.

Improving Community Integration for Persons with Mental Retardation

A basic tenet of the concept of community integration of people with mental retardation is that they live and work in non-restrictive community environments. The expressed preferences of disabled individuals and their families favor maximum community integration, living in typical residences, working in regular jobs, and using community facilities for daily living activities and recreation. Most States have closed institutions, or parts of institutions, where people with mental retardation had resided in the past, and have discharged their clients into a variety of community settings. One of the major challenges to successful deinstitutionalization is that of developing local community capacity to provide appropriate options in residences, work, education, and recreation for individuals with mental retardation. It is important to support rather than supplant families so that citizens with disabilities are not forced into institutions or other out-of-home settings. Results of previous research indicate that small-scale, normalized living arrangements are most effective in promoting successful integration into the community for most disabled populations.

Social relationships and support systems are an integral part of successful integration into community living. People with disabilities need opportunities and social skills to interact with a range of nondisabled persons in the community, including family members, neighbors, merchants and providers of community services, and other participants in job, school, or recreational settings. The involvement of parents and consumers in all aspects of the design, operation, and monitoring of community services to persons with mental retardation has increased the sensitivity of service providers.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches that improve the social and community living skills of persons with mental retardation; enhance the available residential options; and increase the capacities of consumers, parents, and professionals to operate a program of community integration that is guided by the needs and preferences of individuals with mental retardation and their families. A critical element of any Center to be supported in response to this priority will be the involvement of disabled persons and their families in the design,

implementation, and evaluation of Center activities.

A Center in this area must serve as a national resource for information on the community integration of persons with mental retardation and maintain a database on the results of research in this area. The Center must also make a particular effort to establish linkages with other RRTC's on community integration, mental retardation, and independent living; national disability organizations; parent training projects; University Affiliated Facilities; and Developmental Disability Councils.

An absolute priority is proposed for an RRTC to:

- Identify existing housing options and document best practices to enable persons with mental retardation to reside with their families, in foster-care homes, or in other small-scale residences, and develop guidelines for effectively matching the living arrangements to the needs of the individual;
- Identify options for long-term financing of housing accommodations, recreational opportunities, health services, respite care, and other support needed by mentally retarded persons and their families, and develop and disseminate information on these options;
- Develop and evaluate new options for living arrangements, recreational activities, health services, and other community programs and services that will improve the integration of persons with mental retardation into their communities;
- Develop and evaluate strategies that will train families and service providers to help persons with mental retardation establish and maintain supportive social relationships in the community;
- Develop and evaluate strategies to train persons with mental retardation to determine their own vocational, recreational, housing, and independent living choices, and to train service providers to respond in positive ways to the choices made by persons with mental retardation; and
- Conduct at least one state-of-the-art conference on improving the community integration of persons with mental retardation in order to disseminate the research findings and to provide guidance for future research.

Access to Community Living Environments

Providing appropriate housing for severely disabled people is a major undertaking involving a complex array of individuals with various types and degrees of disability and housing needs on the one hand, and a variety of housing types and options, design challenges, financial issues, technology requirements, and statutory and administrative authorities on the other.

It is an area in which millions of dollars are spent annually, research is minimal, and useful information is difficult to find. These problems extend beyond housing alone to encompass recreational, educational, vocational, commercial, and transportation barriers that are encountered in the course of daily living.

An immediate objective is to make better use of the information that is available, including research data, models of accessible housing, and standards and guidelines that have been developed for housing construction. Over the longer term, it is important to develop better housing designs, based on field and laboratory research, and tested by disabled persons in regular use. One prerequisite to improving housing design in a permanent and comprehensive way is to make those who design, build, adapt, maintain, manage, and finance housing aware of the potential for creating more accessible environments.

A convergence of knowledge from the fields of architecture, engineering, construction, rehabilitation, independent living, and related areas is required to create appropriate housing, recreational facilities, and other environments in which disabled persons can live independently. The knowledge base must include information about modifications to existing structures and equipment, as well as design concepts that can be used to build facilities to benefit all citizens. The knowledge base must be developed from the results of research, needs assessments, and analysis of the physical capabilities of individuals with disabilities.

A Center to be funded in response to this priority must maintain liaison with the Accessibility Subcommittee of the Interagency Committee on Handicapped Research and the Architectural and Transportation Barriers Compliance Board, as well as with NIDRR-supported research projects and Centers in such areas as housing, independent living, and community integration. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities. The Center must form a National Advisory Committee composed of individuals with disabilities and representatives of disability-focused organizations, architects, designers, engineers, planners, builders, manufacturers, and housing providers to provide input on needs and to facilitate the evaluation and dissemination of Center products.

An absolute priority is proposed for an RRTC to:

- Analyze legal, regulatory, commercial, and financial disincentives to the development of suitable living environments for severely disabled persons and develop strategies to address those problems;
- Develop recommendations for housing adaptations appropriate for persons with hearing and vision impairments;
- Develop models of accessible environments and provide for their evaluation by disabled individuals;
- Develop, acquire, and maintain both graphic and text databases and serve as a national resource for information on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing, providing information and referral;
- Conduct training programs to increase awareness of the concepts of accessibility and availability of adaptive environmental design for the full range of audiences concerned with accessible housing;
- Promote the concepts of accessible housing and universal adaptable design, including ideas from abroad, among schools of architecture and urban planning; and
- Conduct at least one state-of-the art study on a significant aspect of accessibility.

Improving the Community Integration of Elderly Persons with Mental Retardation and Other Developmental Disabilities

Demographers and gerontologists estimate that the population of persons over sixty-five years of age in the United States will grow from 27 million in 1983 to 67 million in 2040. In addition, they estimate that by the year 2040, twelve percent of the population will be over seventy-five years of age. The population of elderly persons with mental retardation and other developmental disabilities is of particular concern to NIDRR. There may be more than 150,000 persons over sixty years of age who have mental retardation and other developmental disabilities, and predictions are that this number will approach 600,000 within forty years.

A review of the relevant current literature reveals that services to this specific aging population, and consequently the research and training

to support such services, are very sparse. One reason for this is that neither the public nor private sectors has addressed adequately the needs of the elderly population in general or the problems of this subpopulation in particular. Although some programs have been adopted in an effort to assist elderly citizens to improve their lives, it is difficult for individuals with mental retardation and other developmental disabilities to use the generic service systems.

Only in the last twenty years has living outside of institutions, in normal community settings, been a viable option for older persons with mental retardation. Thus, any existing data about the effects of aging with mental retardation and other developmental disabilities are based on individuals residing in institutions. These data are inadequate to assess the needs of this aging subpopulation living in regular community settings. A third reason for the dearth of programs is that funds for services and research in the area of mental retardation and other developmental disabilities have been directed toward children and young people. Recent legislation pertaining to persons with these disabilities did not anticipate that improved health care, the growth of early intervention programs, improved living arrangements, and improved community-based resources would result in significantly extended lifespans for this population. There has been no organized planning to meet the current and future needs of this aging population.

Older people with and without developmental disabilities share many needs that are not now being met in their communities, and which frequently lead unnecessarily to institutionalization. Both groups require improved home care and supportive living arrangements, and often need mental health services, nutritional guidance, recreational and transportation services, legal assistance, and opportunities to socialize, as well.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to maintaining physical, psychological, family, and vocational functioning for aging persons who have mental retardation and other developmental disabilities. A critical element of any Center to be funded under this priority will be the involvement of individuals with developmental disabilities and their families in the planning, conduct, and review of the research and related activities.

A Center in this area must serve as a national resource for information on aging persons who have mental retardation and other developmental disabilities, and maintain information on the results of research in this area. The Center also must make particular effort to establish linkages with other Research and Training Centers focusing on community integration, mental retardation, and independent living; Centers on Aging and University Affiliated Facilities; and organizations representing disabled individuals and their families. This Center must also disseminate its research findings to a broad target audience of service providers, including health care professionals, social workers and gerontologists, attorneys and insurance carriers, rehabilitation professionals, and others.

An absolute priority is proposed for an RRTC to:

- Analyze existing services for noninstitutionalized mentally retarded and other developmentally disabled aging persons, identify those generic services that may be appropriate for this population and barriers to the use of those services, and develop strategies for more effective collaboration between Developmental Disabilities service agencies and those responsible for services to elderly persons;
- Develop and evaluate programs that will enable families and other caregivers to detect declines in behavioral and functional levels of aging persons with mental retardation and other developmental disabilities, with particular attention to persons with Down Syndrome, and to intercede to maintain maximum functional ability;
- Investigate the reactions of this population to transitional periods, such as deaths of family and friends, retirement, change in residence, and changes in physical and mental functioning, and develop effective counseling techniques matched to individual needs;
- Develop and evaluate innovative models using long-term funding streams for small-scale community living arrangements that will allow older people with mental retardation and other developmental disabilities to remain in nonrestrictive settings after their families and other primary caregivers may be unable to care for them;
- Develop and evaluate innovative strategies to provide families and other full-time caregivers with needed respite and support, in order to prevent institutionalization;
- Develop and evaluate materials to increase the awareness of individuals providing services to the general aging population about the needs of individuals with developmental disabilities;
- Conduct at least one state-of-the-art study on improving the functioning of aging persons who have developmental disabilities, to focus attention on the research findings and to provide guidance for future research.

Improving the Functioning of Families Whose Members Have Disabilities

Many of the recently acquired characteristics of American families—single parents, two working parents, geographic mobility, separation from the extended family, economic pressures, lack of leisure time, and increased stress—have particularly severe consequences for families with disabled members. Families with disabled members have the additional pressures of identifying, accessing, arranging, managing, and financing a wide range of medical, educational, rehabilitative, employment, recreation, transportation, and housing services. Families with disabled children, parents, or grandparents must also attend to the social and emotional needs of all members of the family.

Despite the magnitude of these challenges, there are many special needs families who have learned to master these complex tasks and at the same time to assist other disabled persons, raise other children, and engage in a variety of community and leisure time activities. There remain many other special needs families who have not been successful in attaining their goals of creating a balanced and rewarding family life.

The current literature, including a report from an NIDRR-sponsored conference on special needs families, indicates that one cause of inadequate family coping may be that family members, and the professionals on whom they rely, expect disability to have a negative impact on family functioning. This expectation may become a self-fulfilling prophecy which diminishes the self-esteem of the disabled person and adds unnecessary stress to the family unit. Professionals working with special needs families often approach them from a perspective of pathology, which again may undermine the ability of these families to cope constructively. The end product may be a family with low expectations, lacking a support system, unable to cope, and regarding institutionalization

of the disabled member as the only viable option.

The attitudes of society in general also affect the functioning of a family unit and the member who is disabled. Too often, society in general tends to have negative conceptions and low expectations concerning persons with disabilities. People often regard disabled persons as incapable of making decisions or as not sharing wishes, values, and goals typical of the broader society. They are often unaware of the positive contributions that disabled individuals make to their families and to society as a whole. These negative biases make it very difficult for families to find integrated schools, housing, worksites, and recreation programs, or to assist all members of the family to achieve maximum levels of functioning.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation strategies and information to assist families with disabled members to improve their coping skills, attitudes, and general knowledge about services. The Center must include research and training to address the needs of families whose disabled members are of various ages and have various family roles, including children disabled at birth or who incur disability later, and parents who incur disability as well as disabled persons who become parents. A critical element of any Center funded under this priority will be the involvement of individuals with disabilities and their close relatives in the planning, conduct, and review of the Center's program. These programs must be open to the involvement of diverse groups, such as single parents, members of ethnic and racial minorities, and traditionally underserved families such as those whose members have mental health impairments or are dependent on respirators.

A Center in this area must serve as a national resource for information on families whose members have disabilities and maintain a database on the results of research in this area. The Center must also make particular effort to establish linkages with other NIDRR-supported RRTCs, organizations representing disabled members and their families, independent living centers, and other agencies serving disabled people. The Center must conduct training and other activities to disseminate the results of its research to a wide range of target audiences, including disabled individuals and their families, health care professionals, educators, rehabilitation service providers, communications media, and those who provide social and community services to the general population.

An absolute priority is proposed for an RRTC to:

- Study successful family coping and develop and evaluate individualized interventions that could assist families to improve their functioning;
- Conduct research and training to enable families and their disabled members to become involved in the development, provision, and evaluation of integrated, age-appropriate, community-based services;
- Assess the impact of the attitudes of disabled individuals, the members of their families, and the general public on the functioning of the family unit;
- Evaluate the impact of the availability/unavailability of support services on family functioning, and the disincentives to raising children and maintaining adults at home;
- Develop and disseminate criteria to match disabled individuals and foster-care families, in order to promote maintenance in least restrictive environments; and
- Conduct at least two state-of-the-art studies on improving functioning in special needs families in order to focus attention on the Center's findings and to provide guidance for future research.

Rehabilitation of Economically Disadvantaged Individuals with Disabilities

While the demographic data are inadequate to make precise comparisons of the amount of disability in economically disadvantaged populations, including minorities, one general finding is that the incidence and prevalence of disability is greater in those populations. Furthermore, there is evidence that economically disadvantaged individuals are less likely than other disabled individuals to use vocational rehabilitation services. Indications are that the distribution of rehabilitation facilities and trained personnel does not meet the needs of economically disadvantaged individuals with disabilities, and there are few models of effective rehabilitation service delivery for these special populations.

Different cultures have different attitudes toward disability and different expectations for rehabilitation of persons with disabilities. There are differences in the structure and functioning of disadvantaged Asian, black, Hispanic, and white families. Support systems that often assist middle-class disabled individuals during rehabilitation may be quite different in disadvantaged communities. The willingness of the poor disabled individual to seek and accept rehabilitation differs as a function of the mores of his/her culture. Despite some efforts, the rehabilitation community has conducted insufficient research to illuminate and address effectively the rehabilitation needs of disabled economically disadvantaged individuals. There are many psychological, social, and financial barriers to the optimal rehabilitation of disadvantaged individuals. There are insufficient trained personnel working with these populations; and there is a lack of research on effective rehabilitation techniques and technology applicable to the special problems of disadvantaged disabled individuals.

NIDRR intends to initiate a program of coordinated, inter-disciplinary research and training to develop and disseminate behavioral, medical, and technological rehabilitation approaches to maximizing functional capacity of disadvantaged individuals with disabilities. This Center will serve as a national information resource on issues relating to rehabilitation of economically disadvantaged and create an accessible data base for clinicians, researchers and disabled individuals. The Center will provide, prior to the end of its period of performance, documentation of one or more rehabilitation techniques suitable for consideration for an NIDRR-sponsored consensus conference.

A critical element of any Center to be funded under this priority will be the involvement of economically disadvantaged individuals, with disabilities and their families in the planning, conduct, and review of the research and related activities. Universities and affiliated organizations with particular familiarity with problems of disabled disadvantaged and minority individuals, including historically black colleges and Universities, are encouraged to submit applications under this priority.

An absolute priority is proposed for an RRTC to:

- Conduct research on the incidence and prevalence of disabilities among economically disadvantaged populations, including minorities, to provide an information base for developing services for those populations;
- Identify the factors contributing to unemployment among disabled economically disadvantaged individuals and develop model programs to increase the rate of employment;
- Assess the availability of various technological aids and devices currently

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commercially available for the purpose of improving the access of economically disadvantaged to appropriate technology;

• Conduct research on attitudinal barriers to the rehabilitation of disadvantaged individuals in order to improve rehabilitation services available for these populations;

• Identify and develop formal and informal support systems that assist economically disadvantaged disabled individuals to obtain rehabilitation services and disseminate information on ways to develop optimal systems; and

• Conduct a state-of-the-art conference on rehabilitation techniques that are effective in addressing the special problems of economically disadvantaged individuals with disabilities.

Rehabilitation of Older Persons with Disabilities

Older persons who experienced onset of disability early in life, as well as persons who incurred their disability after they became elderly, have very specific rehabilitation problems that need to be addressed through research. At least eighty percent of individuals over sixty-five years of age have one or more identifiable chronic diseases. The most common of these include arthritis, reported in more than forty percent of older people; impaired vision or hearing (twenty to thirty percent); diabetes (ten to fifteen percent); chronic heart conditions (fifteen to twenty percent); or a diminution of mental function (five percent or more). These conditions often lead to functional losses that interfere with the ordinary activities of daily living. About one-fifth of persons over seventy years of age report that they need the help of another person for at least some part of every day; this figure rises to forty percent for persons over the age of eighty. The number of older Americans with pre-geriatric onset of disability is increasing, and their number is likely to continue to increase as the life expectancies of disabled persons rise.

There are many psychological, social and financial barriers to the optimal rehabilitation of older disabled individuals. The wide range of individual differences within categories of disabling conditions makes the development of individualized treatment a difficult challenge for professionals, disabled individuals, and society. Presently, financial assistance programs facilitate institutionalization of elderly persons with disabilities, there is a lack of well-trained personnel to work in the rehabilitation of older disabled persons, and there is a paucity of research on effective rehabilitation techniques and technology applicable to elderly disabled individuals. Older disabled individuals and their families, as well as those who provide services to them, are expressing a growing preference for the development of options for older disabled persons to participate in the full range of community activities as an alternative to segregated services or institutions. At present, there are insufficient models for rehabilitation services to promote maximum independence and community-based services for older persons with disabilities.

A special emphasis of this project will be the physical and psychosocial functioning of persons with pre-geriatric onset of physical disability, such as persons with spinal cord injury, post-polio syndrome, and cerebral palsy. It is of critical importance to determine their unique rehabilitation needs in order to formulate optimum strategies for supporting individuals with these disabilities in the community. A comparative analysis should be performed on support systems needed by aging persons with both pre- and post-geriatric onset of disability.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate behavioral, medical, and technological rehabilitation approaches to maximizing the functional capacity of elderly individuals with disabilities. The Center must have a national scope, and must involve all investigators in the development of training programs that will be provided at various sites throughout the country. A critical element of any Center to be funded under this priority will be the involvement of older individuals with disabilities and their families in the planning, conduct, and review of the research and related activities. The Center will provide, prior to the end of its period of performance, documentation of one or more rehabilitation techniques suitable for consideration for an NIDRR sponsored consensus conference.

An absolute priority is proposed for an RRTC to:

• Investigate alternative methods of financing home support and community services for disabled elderly individuals in rehabilitation programs to prevent premature placement of those individuals in domiciliary care;

• Assess the effectiveness of existing rehabilitation techniques and technology in reducing such secondary complications as pressure ulcers, incontinence, depression, and memory loss among older persons;

• Conduct research comparing older disabled individuals with a pre-geriatric onset of disability and individuals who become disabled late in life in order to develop effective rehabilitation programs for both groups;

• Identify, develop, and test models that integrate long-term care facilities for older disabled individuals into community environments to improve existing facilities and develop options for new, integrated community care facilities;

• Assess the availability and effectiveness of various commercially available technological aids and devices in improving the rehabilitation of older disabled individuals;

• Study the special rehabilitation and socio-economic problems of individuals with early onset of physical disabilities, such as spinal cord injury, post-polio syndrome and cerebral palsy.

• Determine the impact, if any, of Independent Living services in providing older severely disabled individuals with the least restrictive environment and the maximum level of independence within their community.

• Develop public education materials outlining strategies for reducing secondary complications of disability.

• Conduct research on attitudinal barriers to the rehabilitation of older disabled individuals and disseminate information to reduce those barriers;

• Identify and develop formal and informal support systems to assist older disabled individuals to obtain and use rehabilitation services and disseminate information to develop effective models; and

• Conduct one state-of-the-art study on rehabilitation and community integration techniques that are effective for older individuals who were disabled early in life and one state-of-the-art study on techniques appropriate to the needs of older persons who become disabled.

Improving Rehabilitation of American Indians

American Indians are often isolated from rehabilitation services by linguistic, attitudinal, cultural, and geographic barriers which may not be evident either to the person who is disabled or to the service provider. The American Indian population with disabilities may require specialized rehabilitation services and a unique service delivery system to meet certain needs that often differ from those of other populations.

Information presently available on the incidence and prevalence of disability among American Indians is based upon

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secondary analysis of data on the general population. The representation of American Indians in any general sample is inadequate to reflect accurately the presence and distribution of specific types of disabling conditions among that subgroup. There is not sufficient data on the employment histories or patterns of service use in this population to plan appropriate rehabilitation services for American Indians. However, it is known that there is a high rate of disabling conditions among American Indians and that the distribution is different from that in the general population, and that disabled American Indians are less likely than other disabled people to receive effective rehabilitation services.

A Center to address these problems must involve American Indians with disabilities in various capacities in all facets of the development and operation of the Center, and applicants must include evidence of involvement of disabled American Indians in policymaking and administration of the RRTC. The Center also must form linkages with the various service delivery systems serving American Indians, both on and off reservations. These systems should include Federal, State, regional, tribal, local, and private agencies in order to demonstrate methods for disseminating findings and for utilizing existing resources to improve service delivery.

Such a Center must provide training to rehabilitation service providers, researchers, and managers to increase their awareness of the unique rehabilitation needs of American Indians and of innovative approaches to meet these needs. This training should involve collaborative sponsorship with other Rehabilitation Research and Training Centers, as well as with public, private, and tribal rehabilitation, health, and human services agencies.

An absolute priority is proposed for an RRTC to:

- Survey American Indian populations to determine the incidence, prevalence, and demographic distribution of disability among American Indians, estimate levels of employment and unemployment for Indians with disabilities, and identify patterns of service use;
- Analyze labor market conditions on and around Indian reservations and develop model job training programs that take into account these labor market conditions;
- Develop and evaluate culturally sensitive methods for assessing rehabilitation needs of American Indians;
- Develop methods to evaluate attitudinal barriers to service delivery as a basis for designing improved models of rehabilitation service delivery;
- Identify the rehabilitation training needs and provide training to rehabilitation service providers, researchers, managers, policymakers, and American Indians with disabilities;
- Design appropriate models for career development, job enhancement, and job retention in order to improve employment opportunities and rehabilitation outcomes;
- Develop and disseminate culturally relevant informational materials to increase use of rehabilitation services by American Indians;
- Develop strategies to ensure optimal use of available rehabilitative technology by American Indians; and
- Conduct at least one state-of-the-art study in some significant aspect for improving rehabilitation services to American Indians with disabilities.

Mental Health Rehabilitation of Individuals with Deafness

An estimated fourteen million Americans, or 66 in every 1000, have significant hearing impairment. At least two million—9 in 1000—are profoundly deaf. About half a million persons became deaf before they reached age nineteen, that is, before they had established vocations. About 200,000 persons, one of every thousand Americans, became deaf before the age of three, that is, before they developed effective language. This last group, the prelingually deaf, though a small minority, requires separate attention from those deafened after the acquisition of language. This segment of the population presents a major challenge to public and private mental health rehabilitation efforts. Few skilled professionals and service programs are available to provide timely, expert mental health rehabilitation interventions. For many, satisfactory adjustment is further complicated by the presence of additional disabilities, lower levels of educational attainment, underemployment, and reduced earnings.

Research in this area is needed to identify the characteristics of effective counseling strategies and interventions matched to the characteristics of deaf individuals; to refine the quantitative and qualitative methods for assessing psychological, social, and emotional adjustment and performance; and to develop models for effective delivery of coordinated programs of mental health rehabilitation services.

A critical element of any Center to be supported under this priority will be the involvement of individuals who are deaf in the planning, conduct, and review of all Center activities. All assessment instruments, training materials and courses, databases, and technical assistance developed by the Center must be provided in formats that are fully accessible to individuals with various types of hearing impairments. This Center will develop a national data base in this field of activity and serve as a central repository of information on mental health illness of individuals with deafness.

An absolute priority is proposed for an RRTC to:

- Investigate the causes of abnormal social, emotional, linguistic, and cognitive development of people with deafness or severe hearing impairment;
- Develop assessment techniques, rehabilitation interventions, and training approaches, including interpreter training, to benefit this population;
- Develop models for clinical interventions and service delivery to improve the availability and effectiveness of mental health rehabilitation services for individuals with deafness;
- Develop and evaluate models of technical assistance to state rehabilitation agencies to improve the development and implementation of mental health rehabilitation services for deaf individuals;
- Provide advanced training in research for professional practitioners in mental health rehabilitation of persons who are deaf and hearing impaired, with an emphasis on recruiting individuals with deafness for that training;
- Explore and develop suitable visual media, appropriately captioned, to enhance the dissemination of new knowledge in this area to appropriate audiences;
- Serve as a resource for information on mental health and deafness and maintain a database on the results of research in this area; and
- Conduct at least one state-of-the art study on a significant aspect of mental health rehabilitation of individuals with deafness.

Invitation to Comment

Interested parties are invited to submit comments and recommendations regarding these priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and

4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

Dated: September 15, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-23169 Filed 10-6-87; 8:45 am]

BILLING CODE 4001-01-M

[CFDA No. 84.133B]

Invitation of Applications for New Awards Under the National Institute on Disability and Rehabilitation Research (NIDRR) Program of Rehabilitation Research and Training Centers for Fiscal Year 1988

Purpose: Provides funding through grants or cooperative agreements to institutions of higher education or to public or private agencies or organizations, including Indian tribes or tribal organizations, in affiliation with institutions of higher education, to conduct programs that meet the specifications in the proposed priorities published in this issue of the **Federal Register**.

Deadline for transmittal of applications: December 15, 1987.

Applications available: October 9, 1987.

Available funds: $7,200,000.

Estimated range of awards: $400,000–700,000 per year.

Estimated average award: $600,000 per year.

Estimated number of awards: 12.

Project period: Up to 60 months.

Applicable regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, (b) NIDRR regulations at 34 CFR 350 and 352, and (c) when adopted in final form, the annual funding priorities for this program. A notice of Proposed Annual Funding Priorities is published in this issue of the **Federal Register**. Applicants should prepare their applications on the basis of the proposed priorities. If there are significant changes in the final priorities, applicants will be given the opportunity to amend or resubmit their applications.

For applications or information contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC, 20202. Telephone: (202) 732–1207, or (202) 732–1198 for TDD service.

Program authority: 29 U.S.C. 762(b)(1).

Dated: October 2, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87-23170 Filed 10-6-87; 8:45 am]

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Federal Register

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October 7, 1987

Part III

Department of the Interior

National Park Service

36 CFR Part 28

Fire Island National Seashore, New York; Federal Zoning Regulations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 28

Fire Island National Seashore, New York; Federal Zoning Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking is a revision of the special regulations pertaining to federal zoning standards and the development of local zoning ordinances by local authorities for land within the boundaries of the Fire Island National Seashore. The revision is necessary to comply with changes in the Seashore's enabling legislation and in response to policies developed since the existing rule was issued. The regulations provide for the protection of Seashore resources through limitations on use, location, and size of structure on public and private property; emphasize the primary role of the local governments for zoning and zoning enforcement; and lay out guidelines and procedures for application and issuance of Certificates of Exemption from Federal Condemnation. They also provide the Seashore and Fire Island residents and property owners a clear set of standards and procedures for maintenance, renovation, repair, and development of property within the Seashore.

DATE: Written comments will be accepted through November 6, 1987.

ADDRESS: Comments should be addressed to: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772.

FOR FURTHER INFORMATION CONTACT: Christopher Soller, Management Assistant, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, Telephone (516) 289–4810.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior is directed by the Fire Island National Seashore Act (16 U.S.C. 459e) to issue regulations, which may be amended, pertaining to federal zoning standards and the development of local zoning ordinances for local authorities within the boundaries of the Seashore. Once issued, the local authorities may submit their zoning ordinances to the Secretary for review and determination of conformity with the federal standards. If the local ordinances conform to the federal standards and are approved by the Secretary, the Secretary's authority to condemn certain property within the Seashore is suspended for property in accord with the standards.

Since the issuance of the 1980 regulations, the Seashore prepared and had approved (September 1984) a Land Protection Plan. A major plan recommendation called for review of the federal standards, and revision of certain sections. In October 1984, Congress amended the Fire Island National Seashore Act, requiring the federal standards to be based on limitations or restrictions on the size, location, or use of any structures, reconciling population density and protection of the Seashore's natural resources. The Act had previously required the standards to be based on acreage, frontage, and setback requirements. In January 1985, the Secretary approved the four local authorities' ordinances finding them in conformity with the federal standards. Two of the ordinances were approved with exceptions. With approval of the ordinances, property owners whose property conformed to the standards were eligible to receive a Certificate of Suspension of Authority for Acquisition by Condemnation for which there were no guidelines or procedures.

This proposed rule has been developed in response to the policies and directions of the Land Protection Plan and the new requirements developed by Congress and outlined in the 1984 amendment to the Seashore Act; to resolve some of the conflicts between the existing rule and the local ordinances; and to provide guidelines and procedures for application and issuance of Certificates of Suspension from Condemnation. The majority of the provisions of this rulemaking have been in effect since 1980 and are being retained with editorial changes made for the purpose of clarification.

Changes in the Secretarial Standards

The Proposed Rule contains seven changes to the existing standards which concern the scale or manner of residential construction. These proposed revisions reflect the Congressional mandate to use population density as the determining factor in regulating development. The goal of these revisions is to permit the landowner greater flexibility in determining siting, configuration, interior arrangement, and design of a structure while maintaining single-family use.

1. The requirement in § 28.6(a)(1) that maximum plot occupancy not exceed 25% for principal structures and 10% for accessory structures has been revised in the new § 28.6(d) to permit 35% lot occupancy, without regard to principal or accessory structures. This will permit the landowner more freedom to determine whether to construct decks, guest houses, etc. or a larger main structure with no difference in environmental impact.

2. The maximum height limitation of 28 feet has been revised to use either the average ground elevation (as in the existing § 28.6(a)(3) or the minimum elevation established for the federal flood insurance program. Under the current regulations, when the maximum height limitation and minimum floor elevation are applied on some lots, only a single-story house may be built. This change will mean that a building of the same volume will be permitted on all similar-sized lots although the buildings can be taller in low-lying areas. While this change may result in more massive structures, it is the view of the National Park Service that this change is consistent with the Congressional goal of using population density as the guiding criterion for the zoning standards.

3. Section 28.6(a)(4) currently limits a building lot to one kitchen and two and one half bathrooms. The single kitchen or cooking facility requirement is retained in the proposed rule. (See the definition of "single-family home" in § 28.2.) No restrictions are proposed on the number of bathrooms as it is the judgment of the National Park Service that a limitation on the number of kitchens will adequately preserve single-family density without unduly interfering with a landowner's chosen lifestyle.

4. Since Congress eliminated the language calling for acreage, frontage, and setback requirements and instructed the National Park Service to utilize population density (see 16 U.S.C. 459e–2[b]), the proposed rule eliminates § 28.6(a)(5) which incorporated local acreage, frontage, and setback requirements into the Secretarial standards. However, to ensure the protection of the resources of the Seashore, the proposed rule now establishes a minimum lot size of 4,000 square feet, see § 28.6(c). If the zoning authority has established a higher minimum, then the higher standard will apply. The impact of this revision is that the federal government will not be restricting the configuration or placement of structures on lots but will ensure that development does not exceed ten units per acre.

5. Swimming polls, both in-ground and above-ground, are permitted in the proposed rule, and a swimming pool is considered to be an accessory structure counted in calculating lot occupancy, see subsection (g). The current rule only

permits above-ground pools. (See § 28.4(a)(2)(iii)).

6. In the Seashore District, the current § 28.4(c)(1)(i) does not permit any alterations to existing "improved property" (pre-1963 residences) which would increase lot coverage. This has led to the anomalous result that a homeowner can add a complete second story on a house but cannot put on a deck. Therefore, new § 28.6(e) will permit lot occupancy up to 35% on a lot of 7500 square feet or less or up to 2625 square feet for larger lots.

7. The provisions in § 28.6(a)(6) concerning signs (size, number, location, and illumination) have been dropped because signs are effectively being regulated at the local level.

"In Support of Community Living"

The proposed standards retain the language in the present rule, (see § 28.4(a)(1)(ii) and § 28.4(a)(2)(v), numbered as § 28.4(a)(1)(iii) in the proposed rule) which permits commercial and industrial uses if the Superintendent has found that the use provides "a service to the community in support of community living." This phrase has been borrowed from a local zoning ordinance in one of the communities. The National Park Service is aware of the vagueness of this standard. However, given the diversity of community character among the 17 Fire Island communities, the Service has been unable to develop a phrase, or a list of permitted and prohibited commercial uses, which could be uniformly applied, without being insensitive to the varied needs of the different communities. The Service welcomes public comment and suggestions on this issue.

Condemnation Authority

The original language in the Act provided that if a community had an approved zoning ordinance but an individual property failed to conform to the federal standards, that property was subject to condemnation and ineligible for a Certificate of Suspension of Authority for Acquisition by Condemnation. By statutory amendment in October 1984, Congress revised the language of section 3(e) of the Act and established October 11, 1984 as the date after which any property which was exempt from condemnation could lose its exemption if thereafter converted or used in a manner inconsistent with the standards.

However, Congress did not alter the status of properties which were not exempt from condemnation as of October 11, 1984; i.e., they continue, according to the law, to be subject to condemnation.

During 1984, the Service was publicly discussing certain changes in the standards which are proposed here. Since the legislative history reflects a desire to expand the number of properties which are exempt from condemnation and eligible for Certificates, the Service has decided, by administrative interpretation, to expand the language in the Act to also exempt those properties which did not conform to the federal standards as of October 11, 1984 but do conform to the standards proposed here. Again, for administrative consistency, and not because it is statutorily compelled, the Service has determined that property developed after October 11, 1984 which is consistent with these standards will not be subject to condemnation. (See § 28.8 (a) and (b) and § 28.21 (a)(4–7) and (c).

The most significant of the above changes are:

1. The reduction in minimum lot size to 4000 square feet for existing lots, which will mean that many property owners who have variances solely for insufficient lot size will now conform to the federal standards;

2. The elimination of a maximum number of bathrooms, which does not affect population density as much as the number of kitchens does;

3. The change in minimum elevation to conform to the FEMA standards; and

4. The revision of lot occupancy minimums for the Seashore District. Therefore, properties which were previously subject to condemnation solely because of deviations such as these will now be eligible for Certificates. However, properties which were subject to condemnation prior to October 11, 1984 either due to their failure to conform to local law or conform to *both* the pre-1984 federal standards and these standards, will continue to be subject to condemnation.

The substantive changes between the 1980 standards and the proposed rule represents adjustments made due to legislative amendments and agency commitments made in the Land Protection Plan and the zoning ordinance approval process. They are drafted to make the regulation of development, in terms of siting, design, aesthetics, etc., primarily a matter of local regulation. The federal interest is limited to ensuring that the Seashore's resources are managed through limitations on population. Therefore, landowners who were previously subject to condemnation for a "technical" violation of the standards, such as houses built on lots plotted prior to upzoning by the local government will be immune from condemnation. However, the Seashore will continue to vigorously enforce such prohibitions as those on multiple-family uses, excessive lot coverage, inconsistent commercial uses and dune-front development, because these uses have an impact on Seashore resources.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

The Fire Island National Seashore staff has worked and consulted with the Fire Island Association and other groups on Fire Island in development of these regulations.

A copy of the proposed rule and a Determination of Consistency with New York State's Coastal Zone Management Plan have been sent to New York State's Coastal Management Program Office. The consistency determination has been prepared by the Seashore and covers Coastal Zone Management including the State's Tidal Wetlands Program.

Drafting Information

The primary authors of this rulemaking are Jack Hauptman, Superintendent, and Christopher Soller, Management Assistant, both of Fire Island National Seashore.

Paperwork Reduction Act

The information collection requirements contained in sections 28.8 and 28.22 have been submitted to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until approved by the Office of Management and Budget.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking has no economic effect since it neither removes existing restrictions nor imposes new ones.

The National Park Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

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(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 28

Seashores, Zoning.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I by revising Part 28 to read as follows:

PART 28—FIRE ISLAND NATIONAL SEASHORE; ZONING STANDARDS

Subpart A—Federal Standards

Sec.

28.1 Purpose.
28.2 Definitions.
28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.
28.4 Permitted and prohibited uses.
28.5 Nonconforming uses.
28.6 Federal standards.
28.7 Approval of local zoning ordinances.
28.8 Variance procedures.
28.9 Emergency action.

Subpart B—Condemnation Authority

28.20 Suspension of condemnation authority in the communities.
28.21 Condemnation authority of the Secretary.
28.22 Certificates of suspension of authority for acquisition by condemnation.
28.23 Severability.

Authority: 16 U.S.C.: 1,3,459e–2.

Subpart A—Federal Standards

§ 28.1 Purpose.

(a) The enabling legislation for Fire Island National Seashore (the Seashore) mandated the Secretary of the Interior (the Secretary) to issue regulations which provide standards for local zoning in order to protect and conserve Fire Island. The regulations in this part set forth federal standards to which local ordinances for Fire Island must conform to enable private property within the Seashore to be exempt from federal condemnation. The standards also apply to use and development of public property. From time to time these standards may be reviewed and revised. These standards are intended:

(1) To promote the protection and development of the land within the Seashore for the purposes of the Act by means of size, location, or use limitations or restrictions on commercial, residential, or other structures with the objective of controlling population density and to protect the island's natural resources;

(2) To limit development and use of land to single-family homes, to prohibit development and use of multiple family homes, and to prohibit the conversion of structures to multiple family homes;

(3) To prohibit commercial or industrial uses initiated after September 11, 1964 or the expansion of existing commercial or industrial uses on any property within the Seashore which is inconsistent with approved local ordinances or the purposes of the Act;

(4) To recognize that the zoning authorities have the primary responsibility for zoning enforcement within the Seashore;

(5) To provide that private property within the Community Development District may be retained by its owner as long as it is maintained in accordance with approved local ordinances;

(6) To provide that, within the Seashore District, private "improved property" may be retained by its owner as long as it is maintained in accordance with approved local ordinances; and

(7) To provide that, in the Dune District, private undeveloped property, if otherwise subject to condemnation, may be retained by its owner as long as it is maintained in its natural state.

(b) The Secretary may utilize any other statutory authority available to the Secretary for the conservation and development of natural resources to the extent the Secretary finds that such authority will further the purpose of the Act.

§ 28.2 Definitions.

"Accessory structure" means any development which is located on the same lot as the principal building or use and is customarily incidental and subordinate to the principal building or use. Accessory structure may include a storage shed, dock, deck, patio, swimming pool, or tennis court but does not include a garbage or bicycle rack and the single primary access walk. Accessory structure includes a guest house without cooking facilities used for overnight habitation.

"Act" means the Act of September 11, 1964, Pub. L. 88–587 (78 Stat. 928, 16 U.S.C. 459e), as amended, as further amended by Section 322 of the Act of November 10, 1978, Pub. L. 95–625 (92 Stat. 3488), and as further amended by Pub. L. 98–482 of October 17, 1984 (98 Stat. 2256).

"Building" means an enclosed structure having a roof supported by columns, walls, or cantilevers. (If a structure is separated by a party wall without openings, it is considered two separate "buildings.")

"Developed property" means any property which has been altered from its natural state by the construction or erection of materials located in, upon, or attached to something located in or upon the ground. Such alterations may include a building, deck, swimming pool, storage shed, patio, dock, tennis court, septic system or leaching field, walkway, groin, fence or sign (except dune protection fences and signs), road, retaining wall, grading, artificial fill, or other structure or material excluding live vegetation.

"Development" means any activity, action, alteration, structure or use which changes undeveloped property into developed property.

"Exception to a zoning ordinance" means any development or change in use of developed property which is not authorized by the zoning ordinance or the variance procedures of the zoning authority or, if authorized by the zoning authority, fails to conform to the approved ordinance or the standards of the Secretary.

"Guest house" means an accessory structure on the same lot as the principal building and that is used for the temporary accommodation of guests of a resident living in the principal building, and that does not contain cooking facilities.

"Improved property" is developed property defined by the Act to mean any building, the construction of which was begun prior to July 1, 1963, together with such amount of land on which said building is situated as the Secretary considers reasonably necessary to the use of said building not, however, to exceed 2 acres in the case of a residence and 10 acres in the case of a commercial use. The Secretary may exclude from such "improved property" any beach or waters, as well as land adjoining such beach or waters, which the Secretary deems necessary for public access thereto.

"Local ordinance" means a state, town, or village law applicable to the development or use of real property.

"Lot" means a parcel of land which meets the minimum acreage and frontage requirements of the zoning authority and is occupied or capable of

being legally occupied by one (1) principal building or main building, and the accessory structures or uses including such open spaces as are required by these standards, but in no case does a lot include lands below the toe of the natural foredune line.

"Non-conforming use" means any use of development that, if commenced after the effective date of these standards, fails to conform to these standards; or, if commenced prior to October 17, 1984, failed to conform to standards previously promulgated and fails to conform to these standards, whether or not the use or development was first commenced in compliance with the local ordinance.

"Single-family home" means a building which contains no more than one kitchen or cooking facility.

"Undeveloped property" means property which has not been altered from its natural state with the exception of dune protection measures such as snow fencing, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stablization nethods.

"Zoning authority" means the Town of Brookhaven, the Town of Islip, the Village of Saltaire, the Village of Ocean Beach and/or any other legally incorporated village or political subdivision hereafter created and the officials authorized by local ordinance to make rulings and determinations on zoning in said towns and villages.

§ 28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.

(a) *Generally.* The boundaries of the Seashore are described in the Act, as amended, and are delineated on the official boundary maps OGP–0002, dated June 1964, and amended by OGP–0004, dated May 1978. The maps are available for inspection at the Seashore headquarters. There are three districts: the Community Development District, the Seashore District, and the Dune District.

(b) *The Community Development District.* (1) The seventeen communities which comprise the Community Development District are set out below with their respective west/east boundaries:

(i) Lighthouse Shores—Kismet Park Unit:

West Boundary: 100 feet west of the west line of West Lighthouse Walk.
East Boundary: 80 feet east of the east line of Pine Street.

(ii) Seabay Beach Unit:

West Boundary: Approximately 94 feet west of the west line of Seabay Walk.
East Boundary: Approximately 94 feet east of the east line of Seabay Walk.

(iii) Saltaire:

West Boundary: 185 feet west of the west line of West Walk.
East Boundary: 85 feet east of the east line of East Walk.

(iv) Fair Harbor:

West Boundary: The east line of Broadway Walk.
East Boundary: The east line of Spruce Walk.

(v) Dunewood:

West Boundary: The east line of Spruce Walk.
East Boundary: 85 feet east of the east line of East Walk.

(vi) Lonelyville:

West Boundary: 85 feet east of the east line of East Walk.
East Boundary: 100 feet east of the east line of Raven Walk.

(vii) Atlantique:

West Boundary: 80 feet west of the west line of Sea Breeze Walk.
East Boundary: 80 feet east of the east line of East End Walk.

(viii) Robbins Rest:

West Boundary: The west line of Broadway Walk.
East Boundary: 113 feet east of the east line of Ocean Pathway.

(ix) Fire Island Summer Club—Corneille Estates:

West Boundary: 100 feet west of west line of Second Walk.
East Boundary: 100 feet east of east line of Ocean Roadway.

(x) Ocean Beach:

West Boundary: 7 feet west of the west line of Surf Road.
East Boundary: 2 feet east of the east line of Surf View Walk.

(xi) Seaview:

West Boundary: East line of Surf View Walk.
East Boundary: 200 feet east of Laurel Avenue.

(xii) Ocean bay Park:

West Boundary: 90 feet west of Superior Street.
East Boundary: 100 feet East of Cayuga Street.

(xiii) Point O'Woods:

West Boundary: 100 feet East of Cayuga Street.
East Boundary: Western boundary of Sunken Forest Preserve.

(xiv) Cherry Grove:

West Boundary: The west line of West Walk.
East Boundary: Approximately 100 feet east of the east line of Ivy Walk.

(xv) Fire Island Pines:

West Boundary: Approximately 150 feet west of the west line of Sandy Walk.
East Boundary: Approximately 120 feet east of Sail Walk.

(xvi) Water Island:

West Boundary: The west line of Charach Walk.
East Boundary: Approximately 100 feet east of the east line of East Walk.

(xvii) Davis Park:

West Boundary: 90 feet west of the west line of Eider Duck Walk.
East Boundary: 90 feet east of east line of Whalebone Walk.

(2) The northern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of the Great South Bay.

(3) The southern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of Fire Island.

(c) *The Seashore District.* The Seashore District is comprised of all portions of the lands and waters within the boundary of the Seashore which are not included in the Community Development District with the exception of the headquarters facilities at Patchogue and the William Floyd Estate at Mastic.

(d) *The Dune District.* The Dune District extends from the mean high water line to 40 feet landward of the primary natural high dune crest, as defined on Fire Island National Seashore Map #OGP–0004 and on Suffolk County Property Maps, section numbers 491–498 (Islip), 002 (Ocean Beach), 022–004 (Saltaire), and 985.70–987 (Brookhaven), as mapped in November 1976 or as subsequently amended. Map overlays of the Dune District are available for inspection in the Superintendent's Office. The Dune District overlaps portions of the Community Development District and the Seashore District.

§ 28.4 Permitted and prohibited uses.

(a) *The Community Development District*—(1) *Permitted uses:* (i) The construction, alteration, expansion, movement, and maintenance of a detached building which is used principally as a single-family home, church, school, or community facility; as an accessory structure; or as an office for a professional occupation, as defined in approved local ordinances is permitted. A professional office may be maintained only incidental to a residential use and shall be utilized by a person residing on the premises.

(ii) A commercial or industrial use in continuous and unchanged operation since September 11, 1964 is permitted. Any change is use of a commerical or

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industrial use since September 11, 1964 including construction, expansion, or conversion of an existing structure or a change in type, mode or manner of operation constitutes a new commerical or industrial use.

(iii) A commercial or industrial use initiated after September 11, 1964 constitutes a new commerical or industrial use and is permitted with the approval of the zoning authority and the Superintendent. The Superintendent's approval is contingent upon his/her finding that the use provides a service to the community in support of community living and is consistent with the purposes of the Act. Any change in use of a commercial or industrial use including construction, expansion, or conversion of an existing structure, or change in type, location, mode, or manner of operation, constitutes a new commercial or industrial use and requires approval of the zoning authority and the Superintendent.

(2) *Prohibitied uses:* (i) The construction or expansion of an apartment building or other building with multiple dwelling units or conversion of an existing building into a multiple family home is prohibited.

(ii) The construction or expansion of a guest house with cooking facilities, or conversion of an existing structure to a guest house with cooking facilities is prohibited.

(iii) The subdivision of land into lots which are less than 4000 square feet, or that do not meet the requirements of the applicable approved zoning ordinance is prohibited.

(iv) The rezoning of an area zoned residential to commercial or business without approval of the Secretary is prohibited.

(b) *The Seashore District.*—(1) *Permitted uses:* (i) The alteration, expansion, movement, and maintenance of privately-held "improved property" used as a single-family home or as an accessory structure is permitted.

(ii) Any use consistent with the purposes of the Act and authorized by the Superintendent on any lands, whether publicly or privately held, which lie below mean high water in either the Atlantic Ocean or the Great South Bay is permitted.

(iii) General recreation, environmental and historic preservation and education, and natural resource protection uses and facilities consistent with the uses and facilities appropriate for each zone as set forth in the General Management Plan and Final Environmental Impact Statement are permitted on publicly-held property.

(2) *Prohibited uses:* Development or expansion of any property other than "improved property" is prohibited. The provisions of paragraph (a)(2) of this section apply to all privately-held property in the Seashore District.

(c) *The Dune District*—(1) *Permitted Uses:* (i) A community vehicular and private or community pedestrian dune crossing permitted by the zoning authority and approved by the Superintendent as necessary for access to areas behind the dune and such dune protection measures as snow fencing, poles, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stabilization methods are permitted.

(ii) Residential use and maintenance of an existing structure or reconstruction in accordance with § 28.5 of this chapter is permitted.

(2) *Prohibited Uses:* (i) Any development subsequent to November 10, 1978 including construction of a new structure or expansion of an existing structure, such as a building, bulkhead, pile, septic system, revetment, deck, swimming pool, or other structure or man-made dune stabilization device (except one permitted under paragraph (c)(1) of this section) is prohibited.

(ii) Any use of the dune, other than those outlined in paragraph (c)(1)(i) of this section, including recreational use is prohibited.

(3) *Conflict with other provisions.* If a development or lot lies partially within the Dune District and partially in the Community Development District, or partially within the Dune District and partially within the Seashore District, and the standards applicable to the development, lot, or use are in conflict, the standards for the Dune District prevail for the portion of the development, lot, or use which lies within the Dune District.

§ 28.5 Nonconforming uses.

(a) Any use or structure lawfully existing under local law as of October 17, 1984 and rendered nonconforming by the Act or federal standards may continue, subject to the provisions of this section, and will not lose its exemption from condemnation, if otherwise eligible.

(b) *Change in Nonconforming Uses.* (1) No nonconforming development or use may be altered, intensified, enlarged, extended, or moved except to bring the use or structure into conformity with the regulations in Part 28 of this chapter.

(2) A nonconforming use which has been abandoned for more than one (1) year may not be resumed or replaced by another nonconforming use or structure.

(3) A nonconforming use in the Dune District may be moved to bring it into conformity with the regulations in Part 28 of this chapter.

(c) *Reconstruction of Nonconforming Uses.* If a nonconforming use or structure is severely damaged (as determined by fair professional insurance practices), destroyed or rendered a hazard, whether by fire, natural disaster, abandonment or neglect, no alteration, intensification, enlargement, reconstruction, extension, or movement is permitted without compliance with the following conditions:

(1) No use or structure within the Seashore built in violation of a local ordinance when constructed may be reconstructed except in compliance with the regulations in Part 28 of this chapter and the approved local ordinance.

(2) Local building permit applications for reconstruction shall be filed with the appropriate zoning authority within one (1) year of the damage, destruction, or abandonment.

(3) A commercial or industrial use may not be reconstructed without the approval of the zoning authority and the Superintendent.

(4) A nonconforming use in the Community Development District or on improved property in the Seashore District may be reconstructed to previous dimensions. It may not be altered, enlarged, intensified, extended, or moved except to bring the use of structure into conformity with the regulations in Part 28 of this chapter.

(5) A nonconforming use in the Dune District may be reconstructed if it can conform to the regulation in Part 28 of this chapter and lie north of the crest of the dune at the time of reconstruction.

§ 28.6 Federal standards.

No use permitted under § 28.4 of this chapter may be developed, constructed, altered, or conducted unless it complies with the following:

(a) A single-family home is the only type of development permitted in a residential district defined by a zoning authority.

(b) Commercial development is limited to commercial or business districts within the communities defined by a zoning authority and must supply a service in support of community living.

(c) Minimum lot size is 4000 square feet. A subdivision must comply with the subdivision requirements of the applicable zoning authority and may not result in development of any lot which is less than 4000 square feet.

(d) Maximum lot occupancy for all development may not exceed 35% of the lot. Lot occupancy is calculated to include any extension of the upper

floors beyond the developed area on the ground level.

(e) Lot coverage of all privately-held improved property in the Seashore District is limited to 35% of the square footage of a lot that is less than 7500 square feet, and to 2625 square feet for a lot 7500 square feet or greater. Lot coverage is calculated to include all buildings and structure on the property.

(f) No building or structure may be erected to a height in excess of 28 feet as measured from the average existing ground elevation but not less than the minimum elevation necessary to meet the prerequisites for Federal flood insurance as determined by the National Flood Insurance Program/FEMA shown on Flood Insurance Rate Maps for Fire Island communities.

(g) A swimming pool is a permitted accessory structure and is calculated in measuring lot occupancy.

(h) No sign may be self-illuminated.

(i) A zoning authority shall have in effect limitations, requirements, or restrictions on the burning of cover and trash, excavation, displacement or removal of sand or vegetation, and the dumping, storing, or piling of refuse materials, equipment or other unsightly objects which would pose safety hazards and/or detract from the natural or cultural scene. A violation of a local ordinance constitutes a use or development inconsistent with these standards.

(j) A zoning authority shall have in place ordinances to lessen the potential for flood and related erosion and property losses consistent with the Federal Insurance Administration's National Flood Insurance Program criteria for "Land Management and Use," as set forth in 24 CFR Part 1910, subpart A, as it may from time to time be amended. A violation of a local ordinance constitutes a use or development inconsistent with these standards.

§ 28.7 Approval of local zoning ordinances.

(a) The Secretary shall approve local ordinance or amendments to approved ordinances which conform to these regulations. The Secretary may not, however, approve an ordinance or amendment thereto which:

(1) Contains a provision that the Secretary considers adverse to the protection and development of the Seashore;

(2) Does not comply with the uses and federal standards set out in § 28.4, 28.5, and 28.6 of this chapter; or

(3) Fails to provide for the variance procedures of § 28.8 of this chapter.

(b) A zoning authority from time to time may amend its ordinance. At such time the Secretary may revoke the approval of any ordinance or portion of an ordinance which fails to conform to these regulations. Upon resubmission by the zoning authority of an amended ordinance, the Secretary shall approve the ordinance, if it conforms with the requirements of paragraph (a) of this section.

(c) Secretarial approval of a local ordinance will be withdrawn if the Secretary finds that a zoning authority is not enforcing its ordinance.

§ 28.8 Variance procedures.

(a) An alteration after October 17, 1984 to property developed prior to that date renders the property subject to acquisition by condemnation if a variance is required that causes the property to fail to conform to these federal standards.

(b) Property developed after October 17, 1984 shall be constructed in conformity with these federal standards and approved local zoning ordinances. A variance granted that would cause the use or development to violate these standards renders the property subject to acquisition by condemnation.

(c) The zoning authority shall send the Superintendent a copy of all applications for variances, exceptions, special permits and certified-as-completed surveys submitted to the zoning authority within five calendar days of their submission of the completed application by the applicant.

(d) The zoning authority shall send the Superintendent a copy of the written notice of the dates and times of any public hearing to be held concerning an application no less than 10 days prior to the date of the hearing.

(e) The zoning authority shall send the Superintendent a copy of the written notice within the fifteen calender days of the approval or disapproval of any application for a variance, exeception, special permit or certified-as-completed survey and copies of any variance, exception, special permit, or certificate which has been granted.

(f) The Superintendent, within 15 working days of the receipt of a copy of an application for a variance, exception, or special permit submitted by the zoning authority, shall inform the applicant and the appropriate zoning authority whether or not the proposed use or development will be subject to potential acquisition by condemnation. If the application does not conform to the standards, the Superintendent shall also inform the applicant that, should the application be granted, the Park Service may seek to enjoin the development and acquire the property by condemnation, subject to available funds.

(g) The Superintendent may also appeal the decision of the zoning authority pursuant to procedures of local law.

(h) The zoning authority shall send copies of all correspondence referred to in this section to: The Superintendent, Special Attention: Zoning, Fire Island National Seashore, 120 Laurel St., Patchogue, New York 11772.

§ 28.9 Emergency action.

If permitted by local law and if immediate action is essential to avoid or eliminate an immediate threat to the public health or safety or a serious and immediate threat to private property or natural resources, an agency or person may commence a temporary use without a permit from the zoning authority, provided that the agency or person obtains the prior approval of the Superintendent. In all cases, the agency or person shall send an application for a permit to the zoning authority and a copy to the Superintendent within 10 days after the commencement of the use and the applicant shall proceed in full compliance with the provisions of these regulations. When the reasons for undertaking the emergency action no longer exist, the agency or person shall cease an emergency action taken under this section until the provisions of these regulations have been complied with.

Subpart B—Condemnation Authority

§ 28.20 Suspension of condemnation authority in the communities.

The Secretary has the authority to acquire land by condemnation. Upon Secretarial approval of local ordinances, Secretarial authority to acquire by condemnation private property within the communities and improved property in the Seashore District that conform to the Federal Standards and the provisions of the Act is suspended.

§ 28.21 Condemnation authority of the Secretary.

(a) The Secretary has the authority to exercise powers of condemnation with respect to:

(1) Private property within the 8-mile area between the eastern boundary of Davis Park and the westerly boundary of the Smith Point County Park;

(2) Any beach or water and such adjoining land as the Secretary determines is necessary for access to the beach or water;

(3) Any property for which the Certificate of Suspension of Authority

for Acquisition by Condemnation has been revoked;

(4) Any property, if the approval of the ordinance of the zoning authority has been revoked, partially revoked, or an exception was made to the Secretarial approval and such property fails to conform to these standards, or any property where the appropriate local zoning authority does not have an ordinance approved by the Secretary;

(5) Any property built or altered after October 17, 1984 that does not conform to the regulations in Part 28 of this chapter;

(6) Any property which has been granted a variance, exception, or special use permit after October 17, 1984 that fails to conform to the regulations in Part 28 of this chapter; and

(7) Any property with respect to which the Secretary's authority to condemn was not suspended because the property failed to conform to the federal standards existing at the time of construction, modification, or commencement of a use, unless such construction, modification, or use conforms to the regulations found in Part 28 of this chapter.

(b) Undeveloped property which is otherwise subject to condemnation under the Act is not subject to condemnation if it is located in the Dune District and is maintained in its natural state.

(c) The Secretarial authority to condemn any property in the Seashore is suspended for any structure or use constructed, modified, or commenced prior to October 17, 1984 if:

(1) It was built or conducted in conformity with local zoning ordinances and procedures in effect at the time of such construction or commencement or had been issued a variance under local law;

(2) It was built or conducted in conformity to the federal standards existing at the time of such construction or commencement or to these standards; and

(3) The local zoning ordinance is approved by the Secretary without exceptions, or if approved by the Secretary with exceptions, such exceptions are not pertinent or applicable to the property.

(d) The above provisions shall not be interpreted to otherwise limit or circumscribe the authority of the Secretary to condemn property as provided by the Act, or other provisions of law.

§ 28.22 Certificates of suspension of authority for acquisition by condemnation.

Upon approval of a local zoning ordinance, a private property owner may apply to the Superintendent for a Certificate of Suspension of Authority for Acquisition by Condemnation. Procedures for obtaining a certificate are as follows:

(a) An application for a certificate shall contain:

(1) A current survey of the lot showing the dimension of all buildings, accessory structures, garbage and bicycle racks, all access walks, and any extensions of the upper floors beyond the developed area on the ground level;

(2) On the survey, the line of mean high water, the toe of the dune, and the crest of the dune shall be identified if they traverse the lot;

(3) A floor plan of each floor of each building showing the configuration of all rooms and cooking facilities;

(4) A vertical drawing of the structure showing actual ground level and building height; and

(5) Copies of the original and all subsequent building permit applications and permits, certificates of occupancy, certified-as-completed surveys, variances, special use permits, certificates of pre-existing use, or other documents relating to local authorization to develop or use the property. The burden rests on the applicant to show that the structure conformed to local law at the time of construction and at the time of each subsequent alteration and that the structure conforms to current federal standards.

(b) Upon receipt of the application, the Superintendent shall conduct a site inspection of both the interior and exterior of the property.

(c) After review of the materials submitted by the applicant and other pertinent information, and completion of the site inspection, the Superintendent shall determine whether or not the Secretary's authority to acquire by condemnation is suspended, and if so, shall furnish to any eligible party in interest a Certificate of Suspension of Authority for Acquisition by Condemnation.

(d) A Certificate of Suspension of Authority for Acquisition by Condemnation may be revoked at any time that the Secretary's authority to condemn is reinstated or that it becomes evident to the Superintendent that the Certificate was initially issued by mistake or on misinformation.

§ 28.23 Severability.

The invalidation of any provision of this Part 28 by any court of competent jurisdiction shall not invalidate any other provision hereof.

Dated: February 11, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-23119 Filed 10-6-87; 8:45 am]

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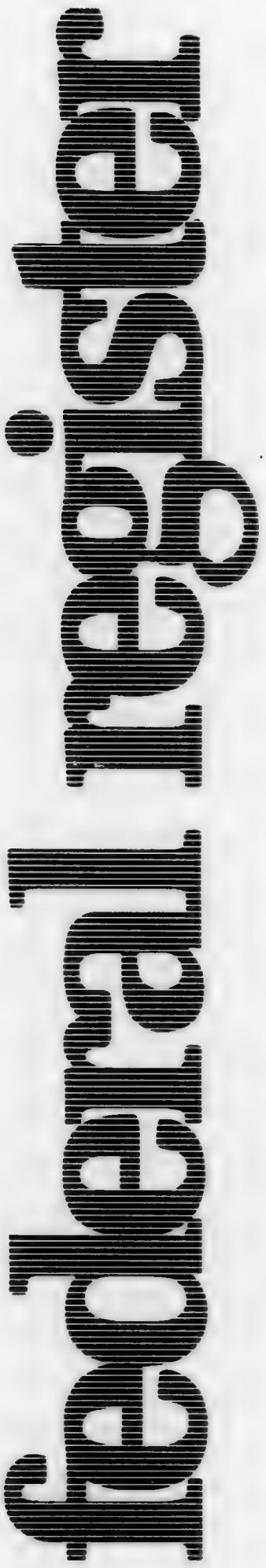

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 45

Federal Acquisition Regulation (FAR); Accountability for Government Property In Possession of Contractors; Proposed Rule

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DEPARTMENT OF DEFENSE

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48 CFR Part 45

Federal Acquisition Regulation (FAR); Accountability for Government Property in Possession of Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to FAR 45.505 to clarify the property records maintenance responsibilities of contractors in possession of Government property.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 7, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–36 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. However, the current FAR procedures do not specify how or in what format these records are to be maintained. Some contractors are unable to provide current, auditable information with respect to Government property because their systems of records maintenance for Government property are not equivalent to their systems for maintaining records of contractor-owned property. The Councils have examined the language of existing FAR coverage in light of the above noted problem and propose revisions which clarify the present FAR coverage on records and reports of Government property.

B. Regulatory Flexibility Act

The proposed rule will apply to all small businesses which are performing under Government contracts which provide for the furnishing of Government property. Approximately fifty thousand small businesses hold Government contracts. However, the number of small businesses being furnished Government property under these contracts is unknown. Nevertheless, the ultimate impact on small businesses should be minimal because it is believed that most small businesses having such contracts already comply with the proposed rule. The problem with dual property systems exists primarily with large contractors. Small businesses normally maintain only one property control system for their own and Government property. An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the time and financial resources necessary to comply with a collection of information would be incurred by persons in the normal course of their business activities. The proposed revision does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*, and requires only that contractors maintain Government property records via a system that is equivalent to their system for maintaining records of their own property. The time and financial resources required to maintain property records are considered normal business activities.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: September 29, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 45 be amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for Part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.505 is amended by revising paragraph (c) to read as follows:

§ 45.505 Records and reports of Government property.

* * * * *

(c) Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Government property as required by this section and, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government personnel.

* * * * *

[FR Doc. 87–23010 Filed 10–6–87; 8:45 am]

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Presidential Documents

Title 3—

The President

Notice of October 6, 1987

Intention To Enter Into a Trade Agreement With Canada

On October 3, 1987, under section 102(e)(1) of the Trade Act of 1974, as amended, I notified the Congress of my intention to enter into a trade agreement with the Government of Canada on January 2, 1988, contingent upon a successful completion of negotiations.

Pursuant to section 102(e)(1) of that Act, this notice shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
October 6, 1987.

[FR Doc. 87-23438
Filed 10-6-87; 2:38 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 034CE, Special Conditions No. 23-ACE-31]

Special Conditions; Fairchild Model SA227-AC Airplanes [Type Certificate No. A8SW], Incorporating Emergency Lighting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for the Fairchild Aircraft Corporation Model SA227–AC Airplanes incorporating an emergency lighting system as an aid for emergency evacuation. The applicable requirements for these airplanes do not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1986, Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, made application to the FAA for approval of type design changes necessary to incorporate an emergency lighting system on the Fairchild Aircraft Corporation Model SA227 Series Airplane.

Fairchild Aircraft Corporation has certified a 19-place airplane which complies with SFAR 41 and incorporates three window exits and a main cabin door for egress from the airplane. Their proposal is to change the interior configuration such that one window emergency exit is eliminated, to decrease the passenger capacity from 19 to 10–12, and to install an emergency lighting system for use during emergency evacuation. Since the airplane type certification basis includes SFAR–41, an emergency evacuation demonstration is required, but an emergency lighting system is not required.

Past emergency evacuation demonstrations on these airplanes have shown that the most critical aspect of the evacuation is for the passengers to find the location of emergency exits. The passenger cabin length is approximately 25 feet with the entrance door at one end of the cabin and the window exits about in the middle of the cabin.

Since the installation of emergency lighting systems was not envisioned when the applicable requirements for the subject airplanes were promulgated, special conditions are being issued. Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

For the affected airplane, an emergency evacuation demonstration is required by the applicable regulations, but it does not contain a requirement or design criteria for emergency lighting systems to aid in emergency evacuation. If Fairchild Aircraft Corporation chooses to install and to use emergency lighting system in the Model SA227 Series Airplane to aid the required emergency evacuation demonstration, these appropriate standards must be adopted to assure that the lighting used to qualify the airplane design during certification testing is available in survivable crashes and that future changes to the airplane design do not adversely affect the emergency lighting system.

Because the emergency lighting is not required, when an applicant chooses to provide such lighting, the FAA must evaluate such lighting relative to its intended function. If that intended function would affect the showing of compliance with an existing requirement, the FAA must assure that the additional system performs its intended function when the critical event occurs, in this case, an actual emergency evacuation. The FAA concluded that specific criteria is necessary.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227–AC Airplane is as follows: Part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by Amendments 23–1 through 23–6; § 23.175(d) as amended by Amendment 23–14, effective December 20, 1973; special conditions outlined in FAA letters dated November 19, 1965, August 19, 1967, February 5, 1968, and April 4, 1968; SFAR 23; Amendment C of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b–1), (b–2), and (b–3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36–1 through 36–6; special conditions number 23–ACE–15, effective October 1, 1986, and these special conditions.

Discussion of Comments

There were two sets of comments received by FAA in response to Notice No. 23–ACE–31, which were published in the **Federal Register** on March 30, 1987 [52 FR 10111]. The comment period closed April 30, 1987. Comments were received from Fairchild Aircraft Corporation and the Aerospatiale Helicopter Corporation.

The first comments being discussed are those comments that did not address specific proposed special conditions, but were of a general nature. Comments discussed later are those comments directed toward specific proposed special conditions.

One of the commenters stated that instead of issuing special conditions for

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the emergency lighting systems, an applicant should be able to elect the appropriate section(s) of Part 25 for compliance which would become part of the type certification basis for an airplane even if it was certified under Part 23. The requirements for designating applicable regulations are in Part 21. As established under the provisions of § 21.101 an applicant must comply with either the regulations incorporated by reference in the type certificate or with the applicable regulations in effect on the date of the application, plus any other amendments. If the regulations incorporated by reference in the type certificate do not provide adequate standards with respect to the proposed change, the applicant must comply with the applicable provisions of this subchapter and any special conditions, and amendments to those special conditions, which the Administrator finds necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certification basis.

The words "the applicable provisions of this subchapter" in § 21.101 came from the recodifications of the predecessor Civil Air Regulations (CAR) wording which was "with the provisions of this *Part*." To consolidate the procedural requirements into one Part (Part 21) during the recodification from separate Parts of the CARs, the wording was changed to "applicable provisions of this subchapter", which intends to mean the applicable Part. The applicability section in each Part prescribes the airworthiness standards for the issue of type certificates, and changes to those certificates, for a specified category of airplane; i.e., normal, utility, commuter, transport, etc. For an affected product category, the prescribed airworthiness standards are the regulations in the same Part and not in another Part for a different product category. For this case, special conditions are appropriate for the type certification basis since the airplane has novel or unusual design features not envisaged in the applicable airworthiness standards and the applicable standards do not contain adequate or appropriate airworthiness standards.

One commenter requested that these special conditions be applicable to the Fairchild Model SA227–CC Airplanes and subsequent similar models added to the same type certificate. The Model SA227–CC series is planned to be approved under the recent new airworthiness standards for commuter category airplanes in Part 23. Certification basis for the commuter category will be different from that identified herein; therefore, separate special conditions will be necessary for the Model SA227–CC series.

One commenter questioned listing a specific special condition as part of an airplane model's certification basis when the special condition was not issued in response to an application by the airplane manufacturer, but was instead issued in response to an application by an airplane modifier. The special condition of concern was issued to become part of the type certification basis for the Fairchild Model SA227 Series Airplanes in response to an application by King Radio Corporation to install an Electronic Flight Instrument System (EFIS). Although the STC issued to King Radio is proprietary, the criteria for certification is not proprietary, and therefore the FAA issued the special conditions for any EFIS installed in any affected airplane by any applicant. This is consistent with the practice of special conditions issued in response to applications from airplane manufacturers being applicable to all modifications of the affected airplane, regardless of who modifies the airplane.

The type certification basis for each affected product is included when special conditions are proposed or issued in the **Federal Register** for public information. The type certification basis identifies not only the applicable regulations, but also includes special conditions, all exemptions pursuant to Part 11, together with "equivalent safety findings" made in accordance with § 21.21(b)(1). Regardless of this inclusion of the certification basis in the preamble to special conditions, the controlling document for a product's type certification basis remains the product's type certificate data sheet.

One commenter suggested that the emergency lights be automatically activated upon interruption of the airplane's normal electric power rather than the loss of engine-driven electrical generator power, as proposed. The justification given was that in case of a failure in-flight of the engine-driven electrical generator, the emergency power source could be depleted during flight. The proposal contained a requirement that the emergency lights would be automatically activated in a survivable crash in case the cockpit crew may be disabled and unable to turn on the emergency lights. The FAA agrees with this comment that the system should be configured to reduce the possibilities of the emergency lights draining the emergency battery during flight. Therefore, paragraph (c)(1) is revised to require automatic activation to occur upon interruption of the airplane's normal electric power and paragraph (c) is revised so the emergency lights are armed or turned on during taxiing, takeoff, and landing.

One commenter stated that proposed paragraph 1.(g) should be deleted because an airplane of this size would not break up in a survivable crash, especially for the Fairchild Model SA227 Series Airplanes. Regardless of the commenter's contention, the FAA considers an accident severe enough to cause a single transverse vertical separation of a fuselage to be survivable. After a survivable crash, it is not desirable to have the entire emergency lighting system inoperative.

Conclusion

This action affects only the Fairchild Model SA227–AC Airplanes incorporating emergency lighting system as an aid for emergency evacuation. It is not a rule of general applicability and applies only to the series and model of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Fairchild Aircraft Corporation Model SA227–AC Airplanes when equipped with an emergency lighting system intended for use during emergency evacuation of the affected airplanes.

PARTS 21 AND 23—[AMENDED]

Emergency Lighting

1. If an emergency lighting system is installed and used as an aid in showing compliance with any applicable regulatory requirement, including emergency evacuation demonstrations, the following special conditions apply:

(a) The source of illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system

is independent of the power supply to the main lighting system.

(b) There must be a caution light which illuminates in the cockpit when power is on in the airplane and the emergency lighting control device is not armed.

(c) The emergency lights must be operable manually from the flightcrew station and be provided with automatic activation. The cockpit control device must have an "on", "off", and "armed" position so that, when armed in the cockpit, the lights will operate by automatic activation. The emergency light must be armed or turned on during taxiing, takeoff, and landing. For automatic activation of the system, the sensor must—

(1) Activate when airplane's normal electrical power is lost, or

(2) Activate when subjected to a force of 5.0, +2, −0 g. and greater for a duration of 11, +5, −0 milliseconds and greater in the direction of the longitudinal axis of the airplane; must not be activated under conditions less severe; and, after activation, must remain activated when subsequently subjected to shock forces in any direction of up to 50 g and having durations up to 11, +5, −0 milliseconds; or

(3) Activate when subjected to alternate crash forces approved by the FAA; and

(4) Regardless of sensor type, must be capable of being reset by the flightcrew if activated by any occurrence other than a survivable crash.

(d) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient condition after emergency landing.

(e) If rechargeable batteries are used as the energy supply for the emergency lighting system, the charging circuit must be designed to preclude inadvertent battery discharge into charging circuit faults. If the emergency lighting system does not include a charging circuit, then battery condition monitors are required.

(f) Components of the emergency lighting system, including batteries, wiring relays, lamps, and switches must be capable of normal operation after having been subjected to the inertia forces listed in § 23.561(b).

(g) The emergency lighting system must be designed so that a single probable failure, or probable system damage following a survivable crash, will not render the entire emergency lighting system inoperative. Single transverse vertical separation of the fuselage is considered a probable event during a survivable crash. The minimum emergency illumination, after a single probable failure, must be specified by the applicant and during an emergency evacuation demonstration, the maximum emergency illumination must be equal to or less than the specified level.

Issued in Kansas City, Missouri, on September 14, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-23249 Filed 10-7-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3218]

Alleghany Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order allows, among other things, a New York City title insurance company to acquire Safeco Title Insurance Co. by requiring respondent to divest two title plants to alleviate concerns that the acquisition could reduce competition in the production and sale of title information in Cook County, Ill. and Los Angeles County, Calif. Respondent is also required to continue to honor all Chicago Title and Trust Company and Safeco plant access contracts that expire pending divestiture.

DATE: Complaint and Order issued September 9, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/A-2308, Michael E. Aptalics, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Tuesday, February 3, 1987, there was published in the **Federal Register**, 52 FR 3252, a proposed consent agreement with analysis In the Matter of Alleghany Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the modified agreement, made its jurisdictional findings and entered its order to divest in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.5-20 Federal Trade Commission Act. Subpart—Combining Or Conspiring: S.13.470 To Restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533-50 Maintain means of communication.

List of Subjects in 16 CFR Part 13

Title insurance, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 87-23316 Filed 10-7-87; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-3217]

Puritan-Bennett Aero Systems Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an El Segundo, California seller of fire and smoke protection masks from making deceptive advertising claims that any emergency escape mask or hood can absorb, remove or filter out any hazardous gas association with fire, or that any mask or hood can protect users from any fire hazards, unless the claim is substantiated and supported by a scientific test. Respondent is required to retain for three years all test reports or materials it uses as substantiation for claims and is also required to make specified disclosures on its packaging and in advertisements.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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DATE: Complaint and Order issued August 25, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/S–4002, Joel Winston, Washington, DC 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: On Wednesday, June 3, 1987, there was published in the **Federal Register**, 52 FR 20723, a proposed consent agreement with analysis In the Matter of Puritan-Bennett Aero Systems Company, for the purposes of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: Section 13.10 Advertising falsely or misleadingly; S.13.170 Qualities or properties of product or service; S.13.170–40 Fire-extinguishing or fire-resistant; S.13.190 Results; S.13.195 Safety; S.13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements; S.13.533 Corrective actions and/or requirements; S.13.533–10 Corrective advertising; S.13.533–20 Disclosures; S. 13.533–45 Maintain records; S.13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself And Goods—Goods: S.13.1590–20 Federal Trade Commission Act; S.13.1730 Results; S.13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly Or Deceptively, To Make Material Disclosure: S.13.1863 Limitations of product; S.13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Fire and smoke protection masks, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily M. Rock,

Secretary.

[FR Doc. 87–23317 Filed 10–7–87; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendments to the Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final Rule.

SUMMARY: At its September 22, 1987 business meeting the Delaware River Basin Commission amended its Administrative Manual, *Rules of Practice and Procedure*, in relation to penalties and settlements in lieu of penalties. The amendment addresses notice to possible violators, records for decision-making, adjudicatory hearings, factors to be applied in assessing the amounts of penalties, enforcement, settlement by agreement in lieu of penalty and penalty suspension or modification.

EFFECTIVE DATE: September 22, 1987.

ADDRESS: Copies of the Commission's Administrative Manual, *Rules of Practice and Procedure*, are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on these amendments on August 5, 1987 as noticed in the June 30, 1987 and July 29, 1987 issues of the **Federal Register** (52 FR 24307 and 52 FR 28327). Based upon testimony received and further deliberation, the Commission has amended its Administrative Manual, *Rules of Practice and Procedure*.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

The Commission's Administrative Manual, 18 CFR Subchapter A, Part 401, *Rules of Practice and Procedure* is amended as follows:

PART 401—[AMENDED]

1. The authority citation for Part 401 is revised to read as follows:

Authority: Delaware River Basin Compact (75 Stat. 688).

Subpart H (§§ 401.111—401.114) [Redesignated as Subpart I (§§ 401.121—401.124)]

2. Subpart H, consisting of §§ 401.111—401.114 is redesignated as Subpart I, §§ 401.121—401.124.

Subpart G (§§ 401.91—401.109) [Redesignated as Subpart H (§§ 401.101—401.119)]

3. Subpart G, consisting of §§ 401.91—401.109, is redesignated as Subpart H, §§ 401.101—401.119.

4. New Subpart G is added to read as follows:

Subpart G—Penalties and Settlements in Lieu of Penalties

Sec.
401.91 Scope of subpart.
401.92 Notice to possible violators.
401.93 The record for decision-making.
401.94 Adjudicatory hearings.
401.95 Assessment of a penalty.
401.96 Factors to be applied in fixing penalty amount.
401.97 Enforcement of penalties.
401.98 Settlement by agreement in lieu of penalty.
401.99 Suspension or modification of penalty.

Subpart G—Penalties and Settlements in Lieu of Penalties

§ 401.91 Scope of subpart.

This subpart shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this Subpart, person shall include person, partnership, corporation, business association, governmental agency or authority.

§ 401.92 Notice to possible violators.

Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these Rules and Section 14.17 of the Compact. The notice to the possible violator shall:

(a) Set forth the date on which the possible violator shall respond; and

(b) Set forth any information to be submitted or produced by the possible violator.

§ 401.93 The record for decision-making.

(a) *Written submission.* In addition to the information required by the Commission, any possible violator shall

be entitled to submit in writing any other information that it desires to make available to the Commission before it shall act. The Executive Director may require documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the Commission's Compact or its rules, regulations and orders.

(b) *Presentation to the Commission.* At the date set in the Notice, the possible violator shall have the opportunity to supplement its written presentation before the Commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the Commission or its staff or to the statements submitted by persons affected by the possible violation.

§ 401.94 Adjudicatory hearings.

(a) An adjudicatory hearing, which may be in lieu of or in addition to proceedings pursuant to § 401.93 at which testimony may be presented and documents received shall not be scheduled unless:

(1) The Executive Director determines that a hearing is required to have an adequate record for the Commission; or

(2) The Commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the possible violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in Section 14.4(b) of the Compact but may be waived by the Executive Director.

(c) Except to the extent inconsistent with the provisions of this Subpart adjudicatory hearings shall be conducted in accordance with the provisions of §§ 491.83 through 401.88 (including § 401.86 *et seq.*).

§ 401.95 Assessment of a penalty.

The Executive Director may recommend to the Commission the amount of the penalty to be imposed. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the Commission, the Commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to § 14.17 of the Compact. If it is found that such a violation has occurred, the Commission shall determine the amount of the penalty to be paid.

§ 401.96 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement in lieu of penalty:

(1) Previous violation, if any, of the Commission's Compact and regulations;

(2) Whether the violation was unintentional or willful and deliberate;

(3) Whether the violation caused adverse environmental consequences and the extent of any harm;

(4) The costs incurred by the Commission or any signatory party relating to the failure to comply with the Commission's Compact and regulations;

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that resulted therefrom; and

(6) Whether the failure to comply with the Commission's Compact and regulations was economically beneficial to the violator.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

§ 401.97 Enforcement of penalties.

Any penalty imposed by the Commission shall be paid within 30 days or such further time period as shall be fixed by the Commission. The Executive Director and Commission counsel are authorized to take such action as may be necessary to assure enforcement of this Subpart. If a proceeding before a court becomes necessary, the action of the Commission in determining a penalty amount shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to § 14.17 of the Compact.

§ 401.98 Settlement by agreement in lieu of penalty.

A possible violator may request settlement of a penalty proceeding by agreement. If the Executive Director determines that settlement by agreement in lieu of a penalty is in the best interest of the Commission, he may submit to the Commission a proposed settlement agreement in lieu of a penalty. No settlement will be considered by the Commission unless the possible violator has indicated to the Commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount within the time period provided. If the Commission determines not to approve a settlement agreement, the Commission may proceed with a penalty action in accordance with this Subpart.

§ 401.99 Suspension or modification of penalty.

The Commission may postpone the imposition of a penalty or provide for reconsideration of the penalty amount imposed pending correction of the condition that gave rise to the violation or pending a satisfactory resolution of any adverse consequences that resulted from the violation.

(Delaware River Basin Compact, 75 Stat. 688)

Susan M. Weisman,

Secretary, September 28, 1987.

[FR Doc. 87-22893 Filed 10-7-87; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Application of Dependency Test to Adopted Great-Grandchildren and Demonstration Projects Under the Disability Insurance and Supplemental Security Income Programs

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: The Social Security Administration (SSA) is amending its regulations to implement sections 12101 and 12104 of Pub. L. 99–272 (the Consolidated Omnibus Budget Reconciliation Act of 1985). Section 12101 of Pub. L. 99–272 extends the Secretary's waiver authority on demonstration projects in the title II disability insurance program which was originally provided for by section 505(a)(3) of the Social Security Disability Amendments of 1980 (Pub. L. 96–265). Section 12101 also effectively makes the waiver authority for title XVI demonstration projects permanent. Section 12104 of Pub. L. 99–272 amends section 202(d)(8)(D)(ii)(III) of the Social Security Act (the Act) to provide that great-grandchildren of a Social Security beneficiary or his or her spouse may be entitled to child's insurance benefits as grandchildren currently are, applying the dependency test for legally adopted children.

DATES: These regulations are effective October 8, 1987. The statutory change regarding great-grandchildren which

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these regulations reflect is effective with respect to benefits for which applications for child's insurance benefits are filed April 8, 1986 or later. We will consider any comments concerning these rules that we receive on or before December 7, 1987 and will revise such rules if public comments warrant.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION: We published final regulations covering the rules on demonstration projects in the disability insurance and Supplemental Security Income (SSI) programs on February 23, 1983 (48 FR 7573). The rules implemented section 505 of the Social Security Disability Amendments of 1980 (Pub. L. 96–265). Section 505 directed the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects to test the advantages of various ways to facilitate and encourage the return to employment of individuals who would otherwise remain dependent on disability benefits. A key element in conducting these demonstration projects is the authority for the Secretary to waive requirements of the Act related to the subject matter of the projects. A provision of the 1980 amendments calling for a final report within 5 years of the enactment of that statute (no later than June 9, 1985) was interpreted as terminating the Secretary's authority to initiate projects for which such waivers could be made. Without this waiver authority the Secretary was unable to carry out demonstration projects that had not been implemented when the authority expired.

Section 12101 of Pub. L. 99–272 amends section 505(a)(3) of Pub. L. 96–265 by extending the Secretary's waiver authority for 5 years. The deadline for a final report on the disability insurance projects is extended to June 9, 1990. This requirement is made applicable only to the disability program under title II of the Act (section 505(a) of Pub. L. 96–265). Section 12101 effectively grants a permanent extension of the authority to waive the SSI program rules under title XVI which had been provided by section 505(b) of Pub. L. 96–265.

Section 12104 of Pub. L. 99–272 amends section 202(d)(8)(D)(ii)(III) of the Act to provide that great-grandchildren of a Social Security beneficiary or the beneficiary's spouse may be entitled to child's insurance benefits, as grandchildren currently are, applying the dependency test for legally adopted children. Effective for applications filed on April 8, 1986, or later, a great-grandchild may be entitled to benefits if the child is adopted by and lives with the great-grandparent in the United States for at least 1 year before applying for benefits and received at least one-half of his or her support from the beneficiary for at least 1 year; if the child is born within this 1-year period the child must have lived with the beneficiary and received at least one-half of his or her support from the beneficiary for substantially all of the period that begins on the date of the child's birth.

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) Notice of Proposed Rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of Notice of Proposed Rulemaking and public comment procedures on this regulation since opportunity for public comment is unnecessary in this case because the statutory provisions upon which the regulations are based simply extend the Secretary's waiver authority on demonstration projects and entitlement to child's insurance benefits to certain great-grandchildren of Social Security beneficiaries. The title II and XVI provisions on demonstration projects and the title II great-grandchildren provisions reflect the statute, are technical in nature and do not provide additional implementing rules. Therefore, these rules will become effective on the date they are published in the **Federal Register.**

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 13802, Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance; No. 13807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: February 27, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 9, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Subparts D and P of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart D of Part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

§ 404.362 [Amended]

2. In § 404.362, paragraph (b)(2) is amended by inserting "or great-grandchild" after "grandchild" in the title and introductory sentence.

3. The authority citation for Subpart P of Part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225 and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425 and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), (5), (6), and (15) of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

§ 404.1599 [Amended]

4. In § 404.1599, the third sentence of paragraph (e) is amended by removing "1985" and adding "1990".

Subpart B of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

5. The authority citation for Subpart B of Part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

§ 416.250 [Amended]

6. In § 416.250, paragraph (e) is amended by removing the second and third sentences.

[FR Doc. 87–23296 Filed 10–7–87; 8:45 am]
BILLING CODE 4160–11–M

Food and Drug Administration

21 CFR Part 680

[Docket No. 84N–0349]

Additional Standards for Miscellaneous Products; Allergenic Products; Potency Tests

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the additional standards for allergenic products by adding a reference to the potency test requirement applicable to all biological products under the general biological products standards. The amendment is consistent with the reference in the additional standards for allergenic products to other testing requirements in the general biological regulations, such as identity, safety, and sterility testing. The amendment also provides by regulation for the use of potency testing of allergenic products by methods that measure the allergenic activity of the products. FDA is also removing from its regulations the specific potency test procedure for short ragweed pollen extracts.

DATE: This regulation becomes effective on November 9, 1987.

FOR FURTHER INFORMATION CONTACT: M. Christine Anderson, Center for Drugs and Biologics (HFN–853), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–4204.

SUPPLEMENTARY INFORMATION:

I. Background

The additional standards for specific biological products are prescribed under 21 CFR Parts 620 through 680. The additional standards for allergenic products under 21 CFR Part 680 contain specific requirements that supplement the general requirements for all biological products under 21 CFR Part 610 and the current good manufacturing practice requirements under 21 CFR Parts 210 and 211. Sections 610.1 and 610.10 of the general biological regulations require that manufacturers perform a potency test on each lot of licensed biological product before it is released for commercial distribution.

Historically, FDA has permitted manufacturers to label allergenic products with an unstandardized potency level based on a simple weight of allergen to volume of extracting fluid ratio (W/V) or a determination of the protein nitrogen units (PNU) in each lot of manufactured product. Those allergenic products that have potency levels based on W/V or PNU must include the phrase "No U.S. Standard of Potency" on the label. The uncodified procedures for determining W/V or PNU do not result in reliable measures of biological or allergenic activity. FDA believes, consistent with the recommendations of the Panel on Review of Allergenic Extracts (50 FR 3112; January 23, 1985), that these designations should be replaced as soon as practicable by a designation that reflects allergenic activity. FDA recognizes that test methods for measuring the potency of allergenic products are analytical test methods, which may be lengthy, complex, and subject to frequent amendment. See 21 CFR 10.90(b).

Thus far, only extracts of several hymenoptera venoms and short ragweed pollen extracts have been standardized for potency and have had their allergenic activity determined by all manufacturers of the products. In addition, FDA has approved five standardized cat extracts, two species of standardized mite extracts, two standardized extracts of alternaria, and several standardized grass pollen extracts. FDA is reviewing other amendments to manufacturers' license applications for standardized allergenic extracts. Because approximately 1,800 to 2,000 generic allergenic products are marketed, FDA believes that it is impractical to codify a description of each new specific potency test procedure for a product as the procedure is developed, such as the procedure in § 680.4 for short ragweed pollen extract.

In the past, FDA has conducted workshops on standardization to assist manufacturers in the development of potency procedures for their allergenic products (see 45 FR 76251, November 18, 1980; 48 FR 52772, November 22, 1983; and 50 FR 52562, December 24, 1985). Those workshops have included discussion of methods of protein measurements, radial immunodiffusion test, radioallergosorbent tests (RAST), isoelectric focusing, and skin testing. FDA will consider conducting more workshops as needed to assist manufacturers in performing specific potency tests for allergenic products.

II. Proposed Rule

In the **Federal Register** of July 24, 1985 (50 FR 30211), FDA proposed to amend 21 CFR Part 680 concerning the additional standards for allergenic products by adding to § 680.3 *Tests* a new paragraph (e) *Potency*. Section 680.3 already requires that allergenic products meet the general biological testing provisions of 21 CFR Part 610 as those provisions concern identity, safety, and sterility testing. For consistency, § 680.3(e) refers to the general potency requirements under § 610.10. A new § 680.3(f) references the recordkeeping requirements related to the tests performed under § 680.3.

Under new § 680.3(e), the test methods used to measure the potency of allergenic products are required to measure the allergenic activity of the product. FDA will recommend potency test methods to manufacturers when FDA believes that the method results in a reliable measure of biologic or allergenic activity. To facilitate the transition from W/V or PNU to a potency method that measures allergenic activity, FDA will recommend a specific potency test method only after the method has been shown to be effective and has been discussed or demonstrated in one or more public workshops, has appeared in scientific publications, or has been discussed with individual manufacturers. The Director, Office of Biologics Research and Review, Center for Drugs and Biologics, will notify each affected manufacturer in writing of the recommended procedure. This notification will allow a reasonable

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time period for manufacturers to begin potency testing based on the recommended procedure or another potency test method that also results in a reliable measure of the potency of the product. Manufacturers will be required to submit amendments to the product license application and to obtain FDA's approval of the amendments, including appropriate potency labeling and lot release requirements. On or after the date established by FDA for implementation of a potency test method that reflects allergenic activity, the agency will consider new lots of that product that are introduced initially into interstate commerce by the licensee to be safe and effective and not misbranded only if the product's potency has been measured under FDA approved procedures. The agency intends to initiate license revocation proceedings or other enforcement actions for any such product for which the potency is not measured in terms of allergenic activity.

As discussed above, when FDA recommends a potency test method for an allergenic product, each licensed manufacturer must submit to FDA and receive approval from FDA within a specified time period appropriate amendments to its license application showing that the recommended method (or an approved alternative method) is used and that labeling is revised if necessary. FDA analytical methods are available for public disclosure under 21 CFR Part 20 (see 21 CFR 10.90(b)(10)).

III. Antigen E Requirements

Section 680.4 has required the standardization of short ragweed pollen extracts based on a determination of the quantity of the major allergen (antigen E) that is present in each lot of the product. The method for performing antigen E testing is included in each manufacturer's license application. Section 680.4 has been the only codified requirement for a specific standardized potency test for an allergenic product. Because FDA is publishing new § 680.3(e) and (f), FDA is removing § 680.4 *Short ragweed pollen extracts.* This codified requirement for one product is unnecessary, because the antigen E requirement for short ragweed pollen extracts is replaced by the requirements in new § 680.3(e).

FDA is making available its recommended test procedures for short ragweed pollen extracts as authorized in 21 CFR 10.90(b)(10) of its administrative practices and procedures regulations. The recommended test procedures are described in a document entitled "Recommended Methods for Short Ragweed Pollen Extracts," Docket No. 84S-0344, available for public examination at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. FDA also advises that short ragweed pollen extracts, or any mixed product containing short ragweed pollen extract as a component, continue to be subject to the antigen E method, as set forth in the license applications. The antigen E method is FDA's recommended test method for short ragweed pollen extracts.

IV. Comments

In response to the published proposal of July 24, 1985 (50 FR 30211), FDA received two letters of comment. The comments opposed the proposed rule on the basis that any required new standardized test methods that are not codified as step-by-step procedures may not benefit sufficiently from inputs of the industry, health professionals, scientific societies, researchers, and the general public. One of the comments stated that the promulgation of new specific potency test procedures falls within the scope of the rulemaking provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) and the Administrative Procedure Act (5 U.S.C. 553). One of the comments said that the proposed standardization process could result in a substantial economic and administrative impact on manufacturers. The comments recommended, therefore, that FDA continue the antigen E requirements under § 680.4 and that all future individual official potency standards be codified.

FDA believes the comments misconstrued the intent of the rule. As stated in the preamble to the proposed rule and elsewhere in the preamble to this final rule, the agency believes that the traditional units used as an indicator of a product's potency (i.e., PNU and W/V) do not result in reliable measures of biological or allergenic activity and should be replaced by a designation that reflects allergenic activity. FDA recognizes that the comments may have misinterpreted the proposed rule as requiring manufacturers to adopt whatever particular test method the agency recommends for a specific product. The agency is therefore changing the language of § 680.3(e) to clarify that the rule does not require that manufacturers incorporate a specific test method recommended by FDA into the manufacturer's license application. Rather, the intent of the rule is to provide that the potency of allergenic products be measured by test methods that result in reliable measures of the products' potency. Neither comment objected to the measurement of allergenic activity as the means by which the potency of allergenic products is determined.

With regard to manufacturers' concerns that they be involved in the implementation of potency test methods for specific allergenic products, FDA notes that manufacturers will have an opportunity to participate in any workshop conducted by FDA and may submit their views at any time on any potency test method including methods discussed in scientific publications.

FDA will not recommend a test method until the method has been shown to be effective and has been discussed or demonstrated in public workshops, has appeared in scientific publications, or has been discussed with individual manufacturers.

Although the comments suggested that FDA promulgate specific potency test methods that apply to individual allergenic products, the codification of such methods is unnecessary, and could involve methods that are lengthy, complex, and subject to frequent changes so that their codification could interfere with timely amendments by manufacturers to their license applications to incorporate new advances in scientific procedures. FDA recognizes that more than one appropriate measurement of allergenic activity may exist for a specific allergenic product, and this rule provides flexibility so that more than one method may be used provided any methods used results in reliable measurements of a product's potency.

FDA recognizes that for the vast majority of allergenic products potency test methods have not yet been developed. Therefore, an exception has been built into the final rule to allow the continued use of the traditional units applied to allergenic extracts (i.e., PNU or W/V) until a potency test method that measures allergenic activity exists and FDA notifies manufacturers of the existence of such a test method.

FDA disagrees with the comment suggesting that standardization of allergenic extracts could result in a substantial economic impact on manufacturers. This comment was not accompanied by any data to support the comment. In the economic assessment of the final rule for short ragweed pollen extract, FDA concluded that the standardization of short ragweed pollen extract would not result in a significant adverse economic impact and, indeed, would provide an economic benefit to users of the product (see 46 FR 39131, item number 11, July 31, 1981). Since that

time, several manufacturers of other allergenic products have amended their license applications to include potency test methods which result in reliable measures of the allergenic activity of the products. The allergenic extracts which have been standardized by some manufacturers include, but are not limited to, cat extract, mite extract, purified hymenoptera venom extracts, and several pollen extracts, including extracts of orchard, red top, june, rye, and meadow fescue grasses. The well-established methods that are being used or are being considered for use as approved potency test procedures include radial immunodiffusion, isoelectric focusing, RAST inhibition, and for extracts of purified hymenoptera venoms, a hyaluranidase enzyme assay. FDA believes that testing by these potency procedures would result in better products and would not create a significant economic impact on manufacturers.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act

Section 680.3 contains collection of information requirements already submitted to and approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. The requirements of § 680.3 express the requirements of 21 CFR 211.165, 211.167, 211.188, and 211.194 (OMB control number 0910–0139), as those requirements apply to allergenic products tests.

VII. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of the regulation in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the regulation identifies in the additional standards for allergenic products the potency test requirement under § 610.10 and the requirements in various sections in Parts 210 and 211 that apply to all licensed biological products.

The regulation provides for the eventual standardization of allergenic extracts by well-established methods that will measure the quantity of allergenic activity in specific allergenic extracts. About 15 manufacturers of allergenic extracts, approximately half of which are small establishments, will be affected by this rule. As technology for a new method is developed and the method becomes well-established, the new method or another reliable method would replace the weight-to-volume designation of potency or the PNU potency method as the acceptable potency test for a specific product. The costs to a manufacturer for standardizing a lot of a specific allergenic extract when standardization is required will vary from zero to several hundred dollars depending on whether the manufacturer produces that product and, if so, has already standardized the product or is in the process of standardizing it. A limited number of allergenic extracts produced by several manufacturers have already been standardized. The standardization of these allergenic extracts has not resulted in significant changes in manufacturing procedures or in the costs and availability of the products. Indeed, certain standardized allergenic extracts are sold at the same price as the corresponding unstandardized extracts. Therefore, the agency has concluded that any anticipated costs resulting from this rule are insufficient to warrant designation as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 680

Biologics, Allergenic products.

Therefore, under the Public Health Service Act and under the authority delegated to the Commissioner of Food and Drugs, Part 680 is amended as follows:

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

1. The authority citation for 21 CFR Part 680 continues to read as follows:

Authority: Sec. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

2. In § 680.3 by reserving paragraph (d) and adding new paragraphs (e) and (f) and a parenthetical statement at the end of the section to read as follows:

§ 680.3 Tests.

* * * * *

(d) [Reserved]

(e) *Potency.* The potency of each lot of each Allergenic Product shall be determined as prescribed in § 610.10 of this chapter. Except as provided in this section, the potency test methods shall measure the allergenic activity of the product. Until manufacturers are notified by the Director, Office of Biologics Research and Review, of the existence of a potency test that measures the allergenic activity of an allergenic product, manufacturers may continue to use unstandardized potency designations.

(f) *Records.* The records related to the testing requirements of this section shall be prepared and maintained as required by §§ 211.165, 211.167, 211.188, and 211.194 of this chapter.

(Collection of information requirements in this section were approved by the Office of Management and Budget under OMB control number 0910–0139.)

§ 680.4 [Removed]

3. By removing § 680.4 *Short ragweed pollen extracts.*

Dated: July 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–23256 Filed 10–7–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N–87–1738; FR–2111]

Mortgage Insurance; Changes to Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by (1) revising the mortgage limits for Windham County, Connecticut; (2) adding "high-cost" mortgage limits for Cheshire County, New Hampshire; and (3) increasing the mortgage limits for Allentown-Bethlehem, Pennsylvania, MSA. Mortgage limits are adjusted in the area when the Secretary determines that middle- and moderate-income persons

have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: October 8, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158; telephone (202) 755–5210; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710–1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On October 1, 1986 (51 FR 34961), the Department published its most recent annual complete lising of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and their applicable limits for each area.

This Document

Today's document (1) revises the high-cost mortgage amounts for Windham County, Connecticut; (2) adds high-cost mortgage limits for Cheshire County, New Hampshire; and (3) increases the mortgage limits for Allentown-Bethlehem, Pennsylvania, MSA.

These amendments to the high-cost areas appeal in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii).* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Windham County (New London-Norwich, Connecticut-Rhode Island, MSA) has a one-family limit of $90,000. The combination home and lot loan limit for Windham County is $90,000 × .80, or $72,000.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii).* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Windham County (New London-Norwich, Connecticut-Rhode Island, MSA) has a one-family limit of $90,000. The lot-only loan limit for Windham County is $90,000 × .20, or $18,000.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits.* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii area as follows:

1. For manufactured homes: $56,700. (40,500×140%).

2. For combination manufactured homes and lots: $75,600. ($54,00×140%).

3. For lots only: $18,900. (13,500×140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

REGION I.—HUD FIELD OFFICE—HARTFORD, CT

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
New London-Norwich CT-RI MSA	$90,000	$101,300	$122,650	$142,650
New London County				
Windham County				

REGION II.—HUD FIELD OFFICE—MANCHESTER OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Cheshire County	$81,700	$92,000	$111,800	$129,000

REGION III.—HUD FIELD OFFICE—PHILADELPHIA OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Allentown-Bethlehem, PA MSA	$76,000	$85,600	$104,000	$120,000
Carbon County				
Lehigh County				
Northampton County				
Warren County				

Dated: October 1, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87–23360 Filed 10–7–87; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 390

[Docket No. R–87–1271; FR–2135]

Government National Mortgage Association; Guaranty of Mortgage-Backed Securities

AGENCY: Office of the President of the Government National Mortgage Association, HUD.

ACTION: Final rule; notice of effective date.

SUMMARY: On September 29, 1986, the Department published a final rule (51 FR 34465) which revised the regulations governing the date for the first scheduled monthly payment of principal and interest for a mortgage in a pool backing mortgage-backed securities. The rule made a technical revision to help implement GNMA's Commitment Line System, an automated system for handling the issuance of commitments for mortgage-backed securities, which was then being developed. The effective date note in that rule indicated that the Department would not make the rule effective until the Commitment Line System was operational. This notice announces the effective date of that rule.

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert P. Kalish, Acting Vice President, Office of Mortgage-Backed Securities, Government National Mortgage Association, Room 6204, 451 Seventh Street SW., Washington, D.C. 20410–9000. Telephone: (202) 755–5593. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The final rule published on September 29, 1986

amended 24 CFR 390.7, 390.27, and 390.43 to require that a mortgage in a pool backing mortgage-backed securities have a date of first scheduled monthly payment that is no more than 24 months before the issue date of the securities. This revision was made to help implement the Commitment Line System, an automated system for handling the issuance of commitments for mortgage-backed securities, but its effectiveness was delayed pending completion of the System.

The Commitment Line System is ready for operation, and the Department, accordingly, is making this rule effective on November 1, 1987.

Authority: Secs. 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1723a(a); sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: October 1, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-23235 Filed 10-7-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 251

[DOD Directive 4175.1]

Sale of Government-Furnished Equipment or Materiel and Services to U.S. Companies; Correction

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; correction.

SUMMARY: Published in the Federal Register on Friday, September 25, 1987, FR Doc. 87-22191, page 36030, the last sentence of the summary is corrected to read: "Articles manufactured by the arsenals and related services may now be sold to an authorized purchaser outside the Department of Defense provided specific requirements are met."

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Wise, Defense Security Assistance Agency, the Pentagon, telephone (202) 697-8108.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense October 2, 1987

[FR Doc. 87-23355 Filed 10-7-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

32 CFR Part 861

Military Airlift Command (MAC) and Military Traffic Management Command (MTMC) Commercial Airlift Safety Review Procedures

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: This part describes the operating procedures of the Joint Transportation Operating Agency (TOA) Commercial Airlift Review Board. The Board reviews commercial carriers providing airlift services to the Department of Defense and has the authority to suspend DOD use or take other actions against carriers when issues of air safety arise. This serves to inform members of the general public, particularly affected air carriers not contracting directly with Military Airlift Command (MAC) and Military Traffic Management Command (MTMC), of the procedures for dealing with and responding to actions by the Joint Transportation Operating Agency (TOA) Commercial Airlift Review Board.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Colonel John R. Dumbroski, Director, DOD Air Carrier Survey and Analysis Office, DCS/Air Transportation, Headquarters Military Airlift Command (HQ MAC/TRL), Scott AFB IL 62225-5001. Telephone (618) 256-3115.

SUPPLEMENTARY INFORMATION: The Joint Transportation Operating Agency (TOA) Commercial Airlift Review Board was established by Pub. L. 99-661 (FY 87 National Defense Authorization Act), November 14, 1986, section 1204 (Requirements Concerning Transportation of Members of the Armed Forces by Chartered Aircraft), and Department of Defense Directive 4500.53, May 15, 1987 (Commercial Passenger Airlift Management and Quality Control). Because this part concerns agency management and public contracts and implements a public law and a Department of Defense directive, it is published as a final rule.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

List of Subjects in 32 CFR Part 861

Air carriers, Aviation safety

Therefore, 32 CFR, Subchapter F, is amended by adding Part 861 to read as follows:

PART 861—MILITARY AIRLIFT COMMAND (MAC) AND MILITARY TRAFFIC MANAGEMENT COMMAND (MTMC) COMMERCIAL AIRLIFT SAFETY REVIEW PROCEDURES

Sec.

861.1 References.
861.2 Purpose.
861.3 Definitions.
861.4 Causes and conditions for suspension.
861.5 Reinstatement considerations.
861.6 Board procedures.
861.7 Decision by others.
861.8 Appeal of a determination.
861.9 DOD commercial airlift review procedures.

Authority: 10 U.S.C. 8013; 10 U.S.C. 2640.

§ 861.1 References.

(a) Section 1204, Pub. L. 99-661; 10 U.S.C. 2640, Charter Air Transportation of Members of the Armed Forces.

(b) DOD Directive 4500.53, Commercial Passenger Airlift Management and Quality Control.

(c) MACR 70-1, Contract Airlift Management, Civil Air Carriers.

(d) MTMCR 15-1, Procedure for Disqualifying and Placing Carriers in Nonuse.

§ 861.2 Purpose.

(a) This document establishes the procedures to be used by the United States Air Force Military Airlift Command (MAC) and the United States Army Military Traffic Management Command (MTMC) when, in accordance with references § 861.1 (a) through (d):

(1) A commercial air carrier is subject to review or other action by the Joint Transportation Operating Agency (TOA) Commercial Airlift Review Board (hereinafter referred to as the Board),

(2) A warning, suspension, or reinstatement action is taken against a carrier by the Board, or

(3) Review or other Board action is escalated to a higher authority.

These procedures apply to all commercial air carriers providing DOD passenger or cargo airlift through charter, individual ticket movements, contracts, tariffs, or other transportation agreements. They also apply to carriers providing air transportation purchased by DOD individuals for which

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government reimbursement will be made in whole or in part.

(b) Safety or airworthiness issues, per reference § 861.1(b) must be referred to the Board. MAC and MTMC may each take independent corrective action in accordance with their respective procedures on standards of service issues when safety and airworthiness issues are not involved. The DOD Air Carrier Survey and Analysis Office will be informed of all actions taken independently by a Transportation Operating Agency (TOA).

(c) Except as otherwise provided herein, the rights and remedies of the government and commercial air carriers outlined in these procedures are not exclusive and are in addition to any other rights and remedies provided for by law, regulation, contract, or agreement.

(d) Section 861.9 provides a diagram of actions contemplated by these procedures and the respective references listed in § 861.1.

§ 861.3 Definitions.

(a) Letter of Warning is a notice to a carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension. The issuance of a Letter of Warning is not a prerequisite to a suspension or other action.

(b) Suspension is the exclusion of an air carrier from participating in the DOD airlift transportation program. The period of suspension will normally:

(1) Remain in effect until the carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied, or

(2) Be for a fixed period of time as determined at the discretion of the Board.

(c) Temporary Nonuse is the immediate exclusion of a carrier from any flight activities in the DOD airlift transportation program, pending a decision on suspension, taken under the conditions outlined in § 861.6(a).

(d) The procedures for commercial airlift safety review are illustrated in § 861.9 and include five possible levels with increasing authority:

(1) DOD Air Carrier Survey and Analysis Office.

(2) DOD Air Carrier Review Committee.

(3) Joint TOA Commercial Airlift Review Board.

(4) Commanders MTMC and MAC (Joint TOA Commanders).

(5) DOD Commercial Airlift Review Authority.

These levels are described in reference § 861.1(b), with the exception of the DOD Air Carrier Review Committee, which is the successor to the Contract Airlift Capability Survey Committee described in reference § 861.1(c). The Committee provides multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Office and offers advice and recommendations to the higher authorities when appropriate.

§ 861.4 Causes and conditions for suspension.

(a) Carrier shall be subject to suspension for good cause, including:

(1) Failing to comply with generally accepted standards of airmanship, training, and maintenance practices and procedures.

(2) Failing to comply with all provisions of applicable statutes, tenders of service, and contract terms, as such may affect flight safety, as well as with all applicable Federal Aviation Administration regulations, airworthiness directives, orders, rules, and standards promulgated under the Federal Aviation Act of 1958 as amended.

(3) Failing to keep and maintain all components and surfaces, including all visible components and surfaces, of the aircraft used in performance of service clean, orderly, and in a good state of repair.

(4) Involvement of one of carrier's aircraft in a serious or fatal accident, incident, or operational occurrence (regardless of whether or not such aircraft is being used in the performance of government procured transportation).

(5) Any other condition which affects the safe operation of carrier's flights hereunder.

(b) Compliance with published standards does not, standing alone, constitute compliance with generally accepted standards of airmanship, training, or maintenance practices.

§ 861.5 Reinstatement considerations.

In no event shall reinstatement occur prior to the date set out in the suspension notice, if such date was set as a part of the original such suspension, or unless and until the carrier shows to the satisfaction of the Board that deficiencies that led to suspension have been corrected and that actions have been implemented to preclude the recurrence of similar deficiences.

§ 861.6 Board procedures.

(a) *Temporary nonuse.* (1) In case of a fatal aircraft accident or for other good cause, the two senior members of the Board (see § 861.6(d)(1)) will jointly make an immediate determination whether to place the carrier involved in a temporary nonuse status pending suspension proceedings. Prior notice to the carrier is not required.

(2) Such determination shall include consideration of the advice of the DOD Air Carrier Review Committee, if reasonably available, but will not await such advice.

(3) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(4) Temporary nonuse status terminates automatically if suspension proceedings are not commenced as set out in § 861.6(b)(2), within 30 days of inception.

(b) *Suspension.* (1) On a recommendation of the DOD Air Carrier Survey and Analysis Office, the DOD Air Carrier Review Committee, or any individual member of the Board, the Board shall consider whether or not to suspend a carrier.

(2) If the Board determines that suspension may be appropriate, it shall notify the carrier that suspension action is under consideration and of the basis for such consideration and offer the carrier a hearing thereon within 15 days of the date of the notice, or such other period as granted by the Board, at which the carrier may be present and may offer evidence. The presiding member of the Board shall establish procedures for such hearing as may be appropriate which shall be as informal as practicable consistent with administrative due process.

(3) Types of evidence which may be considered, if appropriate, shall include, but not be limited to, the following:

(i) Information and analysis provided by the DOD Air Carrier Survey and Analysis Office.

(ii) Carrier's written/oral evidence, if any.

(iii) Corrective actions that may have been taken by the carrier to:

(A) Correct the specific deficiencies that have led the Board to consider suspension, and

(B) Preclude recurring similar deficiencies.

(iv) Such other matters as the Board deems relevant.

(v) The Board's decisions on the reception or exclusion of evidence shall be final.

(4) Carriers shall have the burden of proving their suitability to safely perform DOD airlift services by clear and convincing evidence.

(5) After the conclusion of such hearing, or if no hearing is requested and attended by the carrier within the time specified by the Board, the Board shall consider the matter and make a final decision whether or not to suspend the carrier or to impose such lesser sanction as is appropriate. The carrier shall be notified of the Board's decision.

(c) *Reinstatement.* (1) The Board may consider reinstating a suspended carrier on either Board motion of carrier motion, unless such carrier has become ineligible in the interim.

(2) The carrier has the burden of proving by clear and convincing evidence that the reinstatement considerations in § 861.5 have been satisfied.

(3) Carrier evidence in support of reinstatement will be timely provided to the Board for its review. The Board may independently corroborate the carrier-provided evidence and may, at its option, convene a hearing and request the participation of the carrier.

(d) *Board membership and operating procedures.* (1) The Board shall be composed of:

(i) Vice Commander, HQ MTMC—senior member and voting member.

(ii) Chief of Staff, HQ MAC—senior member and voting member.

(iii) Director of Passenger Traffic, HQ MTMC—voting member.

(iv) Deputy Chief of Staff, Air Transportation, HQ MAC—voting member.

(v) Chief, Passenger Services Division, HQ MTMC—voting member.

(vi) Director, Passenger and Traffic Management, HQ MAC—voting member.

(vii) Legal Representative, HQ MTMC—nonvoting advisor.

(viii) Legal Representative, HQ MAC—nonvoting advisor.

(ix) Air Carrier Survey and Analysis Office Representative—nonvoting advisor/recorder.

(x) Contract Representative, HQ MAC—nonvoting advisor.

(xi) Other additional advisors necessary to the Board's deliberation process—nonvoting members.

(2) The presiding member at a meeting of the Board shall be the senior voting member or alternate present. A voting member, who will not be present at any meeting of the Board, may be represented by an alternate recognized in the normal course as authorized to act on behalf of the absent official, who will attend in his stead and will have power to vote. Four voting members present shall constitute a quorum. Decisions shall be by majority vote.

(3) The meeting date, time, and site of the Board will be determined at the time of the decision to convene the Board.

(4) Minutes of Board hearings may be summarized and will be maintained with all other records pertaining to the Board proceeding.

(5) The Board Recorder shall ensure that the TOAs and the air carrier are notified of the Board's decision and reasons therefor.

§ 861.7 Decision by others.

In the event the Board is unable to decide an issue properly before it, or if the issue in the judgment of the Board requires review at a DOD organizational level higher than the Board, the issue will be referred to the joint TOA commanders for appropriate disposition. In such event, the decision will be made upon the written record only, no hearing will be held.

§ 861.8 Appeal of a determination.

(a) A carrier placed in suspension may administratively appeal this action to the authorities shown in § 861.8(c). An appeal, if any, must be filed within 15 work days after receipt of the decision of the Board or joint TOA commanders. The suspension will not be stayed pending appeal unless for good cause, as determined by the Board. The decision of the appellate authority designated herein is final and is not subject to further administrative review or appeal.

(b) An appeal will be in writing only and carriers shall not be entitled to a de novo hearing before the administrative appellate authorities.

(c) The following administrative appellate authorities will review and make decisions on appeals:

(1) When the decision being appealed was made by the Board, the appellate authorities are the Commander in Chief, MAC, and Commander, MTMC. They will jointly decide the appeal.

(2) When the Commander in Chief, MAC, and Commander, HQ MTMC, are unable to jointly agree on an appeal, they shall refer the matter to the DOD Commercial Airlift Review Authority for its decision.

(3) When the decision being appealed was made by the joint TOA commanders, the appellate authority is the DOD Commercial Airlift Review Authority.

§ 861.9 DOD commercial aircraft review procedures.

BILLING CODE 3910-01-M

§861.9 DOD COMMERCIAL AIRLIFT REVIEW PROCEDURES

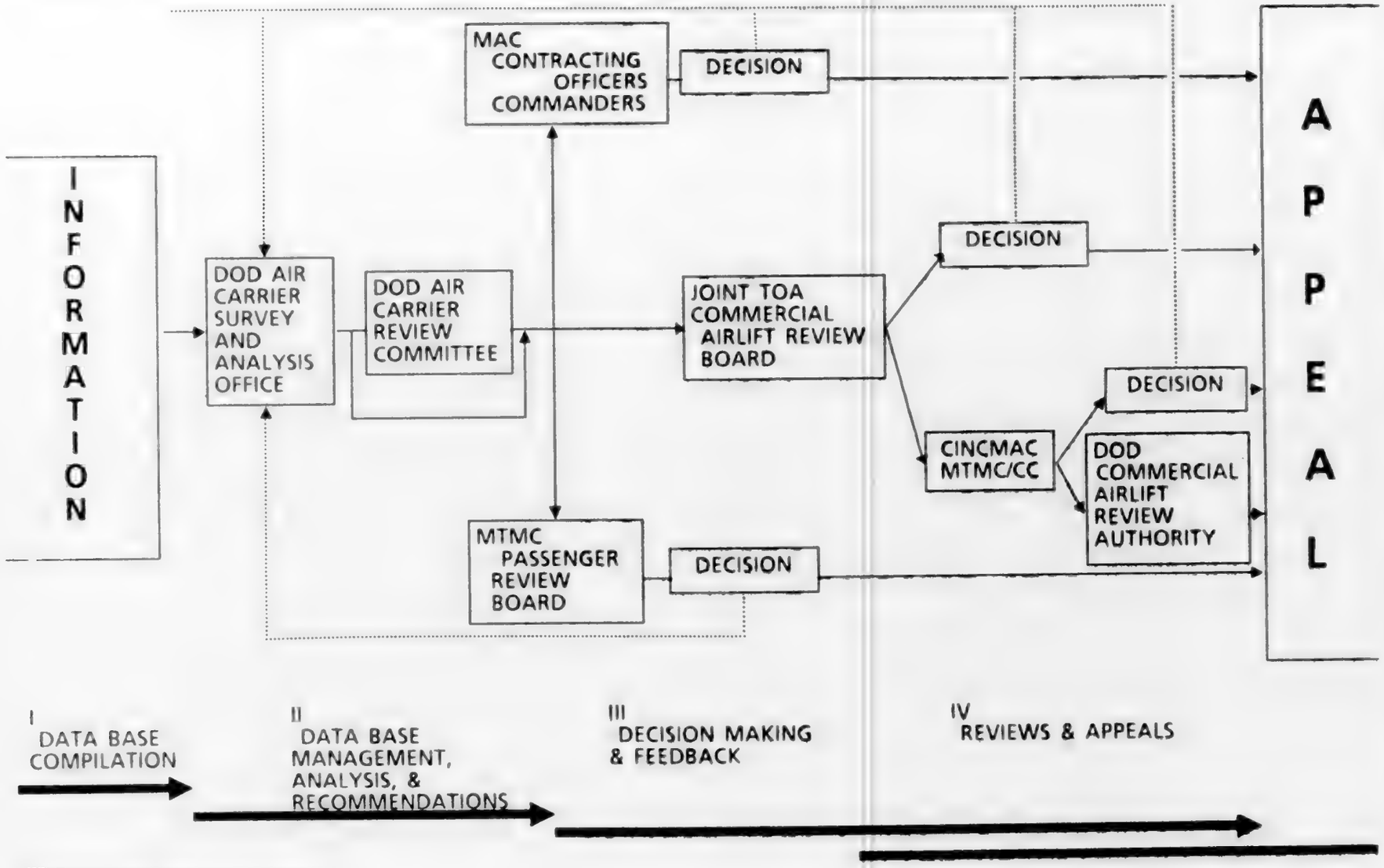

[FR Doc. 87-23279 Filed 10-7-87; 8:45 am]
BILLING CODE 3910-01-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 67

[CGD11-86-02]

Lines of Demarcation for Classification of Structures; Eleventh Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing lines of demarcation for the classification of structures in the waters of the Eleventh Coast Guard District. Classification of structures is currently determined at the time an application for a permit to establish and operate lights and fog signals is received. The implementation of lines of demarcation establishes clearly defined boundaries for classifying structures.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael J. Lodge, Eleventh Coast Guard District, at (213) 499-5410.

SUPPLEMENTARY INFORMATION: On December 11, 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 44642). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are Mr. Mike Van Houten, Aids to Navigation Specialist, Eleventh Coast Guard District, project officer, and Lieutenant Commander Arthur E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Only five structures are affected and the costs of compliance are not significant. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 67

Continental shelf, Navigation (water), Reporting and recordkeeping requirements.

Final Regulations

In considering the foregoing, Part 67 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 67 continues to read as follows:

Authority: Secs. 83, 85, 92, 633, 63 Stat. 500, 503, 545; sec. 4, 67 Stat. 462; sec. 6(b)(1), 80 Stat. 938 (14 U.S.C. 83, 85, 92, 633; 43 U.S.C. 1333); 49 U.S.C. 1655(b), 1657(e); 49 CFR 1.4(a)(2), (f), (g), unless otherwise noted.

2. Section 67.50-35 is revised to read as follows:

§ 67.50-35 Eleventh Coast Guard District.

(a) *Description.* See § 3.55-1 of this chapter.

(b) *Line of Demarcation.* The line of demarcation described in this section is for adminstrative purposes to distinguish between the areas in which structures shall be subject to Class "A", "B", or "C" requirements. The line delimits the areas to seaward of which class "A" requirements are imposed. The line of demarcation within the jurisdiction of the District Commander is defined as follows:

(1) Commencing at a point of latitude 41°59.8'N., longitude 124°19.5'W., thence southward along the seaward limit of the territorial sea to;

(2) A point at latitude 32°32.0'N, longitude 117°11.0'W.

(c) Structures located within a half nautical mile of Traffic Separation Scheme Los Angeles/Long Beach will also be subject to class "A" requirements. The traffic separation scheme is depicted on National Ocean Service Charts 18740, 18720, 18725, 18746, 18721.

Dated: September 25, 1987.

A. Bruce Beran,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 87-23347 Filed 10-7-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD8-87-06]

Anchorage Ground; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Lower Mississippi River anchorage regulations by decreasing the size of the New Orleans General Anchorage. This action is necessary to provide space for a mid-stream transfer and barge fleeting operation at about mile 89.7 above Head of Passes (AHP), on the Left Descending Bank (LDB).

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Lt. Edwin M. Stanton, project officer, Commander, Eighth Coast Guard District (merps), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396; or by telephone at (504) 589-6901.

SUPPLEMENTARY INFORMATION: On 23 July 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (CGD8-87-06). Interested persons were requested to submit comments.

Drafting Information

The drafters of these regulations are Lt. Edwin M. Stanton, project officer, Eighth Coast Guard District Marine Safety Division, and LCDR James J. Vallone, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments

The Board of Commissioners of the Port of New Orleans and the St. Bernard Port District favored the proposal to eliminate the lower mile of the New Orleans General Anchorage based on the potential economic benefits of the proposed barge fleet and mid-stream cargo operations. The Crescent River Port Pilots Association favored elimination of the lower mile of the anchorage for safety reasons. This comment stated that vessels anchored in the lower end of the anchorage restrict the visibility of downbound vessels causing near misses with the Chalmette passenger ferry; and that vessels at anchor in the lower portion of the anchorage leave insufficient room for vessels to pass safely between them and the Tenneco Oil docks. Sea Group, Inc. and the New Orleans Steamship Association, both representing vessels calling in New Orleans objected to the proposal. Both groups stated that loss of the lower end of the New Orleans General Anchorage would result in increased operating costs for their clients. A study commissioned by NOSA and the St. Bernard Port, Harbor and Terminal District did not support this objection. The Louisiana State University Ports and Waterways Management Institute concluded that the negative economic impact on shipping would be negligible. The Louisiana Department of Transportation, the New Orleans-Baton

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Rouge Steamship Pilots Association, and the Associated Federal Coast Pilots of Louisiana offered statements of no objection.

The Coast Guard presented the proposal to the Lower Mississippi River Waterway Safety Advisory Committee at its 18 August 1987 meeting. A representative of the Crescent River Port Pilots Association reiterated that groups support of the proposal.

This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignficant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This finding is based upon a study entitled "The Effect of the St. Bernard Midstream Mooring Facility on Anchorages at the Port of New Orleans" by The Ports and Waterways Institute, Center for Wetland Resources, Louisiana State University, Baton Rouge, Louisiana. This study concluded that the economic impact on shipping of reducng the size of the anchorage would be negligible. The study showed that, at present traffic loads, costs for vessels using anchorages in the area would increase 0.4%. This was considered the most likely case. At worst, if shipping were to increase dramatically and, if other nearby anchorages were closed, the additional cost to shipping would not exceed $90,000 per year (a 2.7% increase). The study further stated that the direct economic benefit from fees to the Ports of St. Bernard and New Orleans would equal $150,000 per year.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 110.195, paragraph (a)(15) is revised to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA including South and Southwest Passes.

(a) * * *

(15) New Orleans General Anchorage. An area .4 of a mile in length along the right descending bank of the river extending from mile 90.5 to mile 90.9 above Head of Passes. The area's width is 800 feet measured from the shore.

* * * * * *

Dated: September 29, 1987.

J. D. Sipes,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 87–23346 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans' Education; Nonpunitive Grades

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: A veteran's award of educational assistance allowance must be reduced when he or she withdraws from a course or when he or she receives a nonpunitive grade for a course. Regulations exist for determining the effective date of the reduction. Some readers of the regulations have been uncertain as to which of the pertinent regulations apply when a veteran withdraws from a course and, as a result of that withdrawal, receives a nonpunitive grade for it. This regulation eliminates this problem. It addresses this situation by expanding the regulation which deals with the effective date of reduction and termination of educational assistance allowance.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 18400 and 18401 of the **Federal Register** of May 15, 1987, there was published a notice of proposed rulemaking to amend Part 21 of title 38 Code of Federal Regulations to clarify the effective dates of discontinuance or reduction when a veteran withdraws from a course and receives a nonpunitive grade as a result of the withdrawal. Interested people were given 30 days to submit comments, suggestions or objections. The VA received one telephone call concerning the proposal.

The caller expressed concern because he was unable to determine from reading the proposal what a veteran's reduction or discontinuance date would be if he or she dropped a course during a school's official drop-add period. He stated that if the VA considered such a reduction in training to have occurred with mitigating circumstances, the VA should state this in the final amendment to § 21.4135.

After careful consideration the VA has decided not to adopt this proposal. A discussion of mitigating circumstances appears in sections other than § 21.4135. The Agency does not think that it would be appropriate to repeat the discussion in § 21.4135. However, the suggestion appears to have merit. The VA will consider making the changes in the appropriate regulations, and proposing these changes at a later date. For now, the Agency is making the proposal published May 15, 1987, final.

The VA has determined that this amended final regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 14, 1987.

Thomas K. Turnage,

Administrator.

In 38 CFR Part 21, *Vocational Rehabilitation and Education,* § 21.4135 is amended by revising paragraphs (e)(1), (s), and (w) to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from §§ 21.4136 and 21.4137.* (1) If the individual withdraws from all courses; receives all nonpunitive grades; and there are no mitigating circumstances as provided in § 21.4136(k) or § 21.4137(h), the VA will terminate the individual's education assistance allowance effective the later of the following:

(i) The first date of the term in which the withdrawal occurs, or

(ii) December 1, 1976.

* * * * *

(s) *Reduction in rate of pursuit of course (§ 21.4270).*

(1) The VA will reduce an individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term.

(2) The VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when:

(i) The reduction does not occur at the beginning of the term; and

(ii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(3) If the individual reduces training by withdrawing from a part of a course; there are no mitigating circumstances; and the individual receives a nonpunitive grade from that portion of the course from which he or she withdrew; the VA will reduce the individual's educational assistance allowance effective the later of the following:

(i) The first date of enrollment of the term in which the reduction occurs; or

(ii) December 1, 1976. See paragraphs (e) and (w) of this section also.

(4) An individual, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects completed, if the requirements of § 21.4138(f) are met. If those requirements are not met, the VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 1780; Pub. L. 98-466)

* * * * *

(w) *Nonpunitive grade assigned without a withdrawal from courses.* (1) If an individual receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, the VA will reduce the individual's educational assistance allowance effective the last date of attendance when mitigating circumstances are found.

(2) If an individual receives a nonpunitive grade in a particular course for any reason other than a withdrawal from it, and there are no mitigating circumstances, the VA will reduce his or her educational assistance effective the later of the following:

(i) The first date of enrollment for the term in which the grade applies, or

(ii) December 1, 1976. See paragraphs (e) and (s) of this section.

(Authority: 38 U.S.C. 1780(a)(4))

* * * * *

[FR Doc. 87-23323 Filed 10-7-87; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-233-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is

necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publicaiton date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers 64.113, 64.114, and 64.119).

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1), and 1819 (f) and (g) of title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a) (b), and (c), and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: October 2, 1987.

By Direction of the Administrator.

James E. DeWire,

Chief of Staff.

PART 36—[AMENDED]

38 CFR Part 36, *Loan Guaranty*, is amended as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(Authority: 38 U.S.C. 1819(f))

(1) Effective October 5, 1987, 13–½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective October 5, 1987, 13 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective October 5, 1987, 13 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 11 per centum per annum, effective October 5, 1987, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 11¼ per centum per annum, effective October 5, 1987, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 11¼ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective October 5, 1987, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 11 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12½ percent per annum.

(Authority: 38 U.S.C. 1811(d) (1) and (2)(A))

* * * * *

[FR Doc. 87–23292 Filed 10–7–87; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3274-2]

National Emission Standards for Hazardous Air Pollutants; Amendments to General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) amended Subpart A, the General Provisions for national emission standards for hazardous air pollutants (NESHAPS), on November 7, 1985 (50 FR 46284) and April 1, 1986 (51 FR 11021). The promulgated amendments included a list of substances for which EPA has published a notice that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance. This notice amends this list to include additional substances.

DATE: Effective October 8, 1987.

FOR FURTHER INFORMATION CONTACT: Beth M. Hassett, Pollutant Assessment Branch, Strategies and Air Standards Division (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; FTS 629–5346 or (919) 541–5346.

SUPPLEMENTARY INFORMATION: On November 7, 1985 (50 FR 46284) and April 1, 1986 (51 FR 11201), EPA promulgated amendments to subpart A of Part 61. These amendments included the publication of a list of substances for which the Agency has published a **Federal Register** notice which included consideration of serious health effects, including cancer, from ambient exposure to the substance. This list was published for informational purposes only. Publication of this list serves to inform the public as to the status of EPA's program for assessing potentially toxic air pollutants as well as to provide a useful reference for those **Federal Register** notices that EPA has published on potentially toxic air pollutants. This notice amends the previously published list to include recent notices which EPA has published for additional substances.

Paperwork Reduction Act

These amendments do not add any information collection burden for sources subject to standards currently in Part 61. Thus, this action is not an informational collection request under the Paperwork Reduction Act of 1980, 44 U.S.C., *et seq.*

Regulatory Flexibility Analysis Certification

Pursuant to the provisions of 5 U.S.C. 615(b), I hereby certify that these amendments to Part 61 will not have a significant economic impact on a substantial number of small entities. The amendments will not add any new regulatory requirements to Part 61; consequently, they will not add significant costs.

List of Subjects in 40 CFR Part 61

Arsenic, Asbestos, Beryllium, Benzene, Hazardous substances, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride.

Dated: October 2, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

2. Section 61.01 paragraph (b) is amended by adding the following entries alphabetically in the list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

(b) * * *

Copper (52 FR 5496; February 23, 1987)
Nickel (51 FR 34135; September 25, 1986)
Phenol (51 FR 22854; June 23, 1986)
Zinc and Zinc Oxide (52 FR 32597, August, 28, 1987)

* * * * *

[FR Doc. 87–23301 Filed 10–7–87; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[FCC 87–293]

Requirement for Submission of Circuit Diagrams for Computing Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 15.45 of the Commission's Rules to delete the requirement for submission of circuit diagrams for computing devices when applying for an equipment authorization.

This action is taken to reduce the collection of unnecessary information during the equipment authorization process.

This action will reduce the amount of technical information manufacturers are required to file at the FCC.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Rose, Authorization and Evaluation Division, Office of Engineering and Technology, (202) 653–6288.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of Part 15, § 15.45(e), to modify the requirement for submission of circuit diagrams for computing devices.

Adopted: September 10, 1987.
Released: September 24, 1987.
By the Commission.

1. By this Order, the Commission is deleting the requirement of § 15.45 of the Rules for submission of circuit diagrams for computing devices when applying for an equipment authorization under Part 15 of the Rules.

2. Circuit diagrams can be an aid in identifying a device for which an equipment authorization is requested. In addition, they can help determine if a particular device being marketed is the same as the device for which an equipment authorization was granted. In the case of computing devices, however, circuit diagrams have lost their utility. Indeed, the staff reports that circuit diagrams submitted with applications for certification of computing devices are, in almost all cases, unused. Because of the use of multilayer boards and integrated circuits in the design and assembly of computing devices, circuit diagrams bear little or no resemblance to what is observable on the circuit boards themselves. Photographs of the interiors of computing devices, as required pursuant to § 15.46 of the Rules, are sufficient for purposes of identification. In light of the Commission's limited need for circuit diagrams with computing devices, we are modifying § 15.45(e) to exclude computing devices from the requirement of § 15.45 that circuit diagrams be submitted.

3. We find that good cause exists to dispense with the notice and comment procedures of the Administrative Procedure Act. Good cause exists when, among other things, notice and comment is unnecessary, 5 U.S.C., section 553(b)(B). In this instance, we find that notice and comment rule making procedures are unnecessary for eliminating computing devices from the requirements of § 15.45. The subject

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data is only submitted for the benefit of the Commission. Yet the Commission's staff has no use for the data. Furthermore, there has never been any regulatory purpose for collecting such data for the public generally. Thus, the elimination of the rule should be non-controversial and is unlikely to elicit any adverse comments. Indeed, serious discourse on this subject is not anticipated.

4. Accordingly, it is ordered, that under the authority contained in section 4(i), 302 and 303(r) of the Commissions Act of 1934, as amended, Part 15 of the Commission's Rules is amended as set forth below. This action is effective November 9, 1987.

5. Further information on this action may be obtained from Frank Rose at 653–6288.

Federal Communications Commission.

William J. Tricarico,

Secretary.

List of Subjects in 47 CFR Part 15

Communications equipment.

Rule Change

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—[AMENDED]

1. The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. Section 15.45, paragraph (e) is amended by adding the following text after the last sentence:

§ 15.45 Expository statement required.

* * * * *

(e) * * * For computing devices, as defined § 15.4, the submission of a circuit diagram is not normally required, and need only be supplied upon specific request by the Commission.

* * * * *

[FR Doc. 87–23300 Filed 10–7–87; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522 and 552

[Acquisition Circular AC–87–2, Supplement 1]

Annual Report From Federal Contractors

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC–87–2 extends the expiration date to April 1, 1988. The intended effect is to extend the policies and procedures established in AC–87–2, which revised Parts 522 and 552 of the regulation to implement the Department of Labor (DOL) regulations that require Federal contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans.

DATES:

Effective date: October 1, 1987.

Expiration date: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Office of GSA Acquisition Policy and Regulations, (VP), (202) 523–4916.

SUPPLEMENTARY INFORMATION: This temporary rule was not published for public comment because it merely implements the Department of Labor regulations which have already undergone the public comment process. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The Secretary of Labor certified to the Chief Counsel for Advocacy, Small Business Administration, that the annual reporting requirement would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no regulatory flexibility analysis has been prepared. The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB Control No. 1293–0005.

List of Subjects in 48 CFR Parts 522 and 552

Government procurement.

PARTS 522 AND 552—[AMENDED]

1. The authority citation for 48 CFR Parts 522 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 522 and 552 are amended by the following supplement to Acquisition Circular AC–87–2.

General Services Administration Acquisition Regulation, Acquisition Circular AC–87–2; Supplement 1

To: All GSA contracting activities.

Subject: Annual Report from Federal Contractors.

1. *Purpose.* This supplement extends the expiration date of the General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC–87–2.

2. *Effective date.* October 1, 1987.

3. *Expiration date.* Acquisition Circular AC–87–2 and this supplement will expire on April 1, 1988, unless canceled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 87–23269 Filed 10–7–87; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 52, No. 195
Thursday, October 8, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule would: (1) Require bonding from warehousemen in any State where the State law does not guarantee very depositor a pro rata share of the commodities or proceeds from warehouse liquidation or bankruptcy; (2) provide that CCC would charge a fee for voluntary examinations requested by a warehouseman; and, (3) provide that CCC would publish in the **Federal Register** a Schedule of Contract Fees only when there is a change in the amount of annual contract fees to be collected.

DATE: Comments must be received on or before November 9, 1987 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W King, Director, Warehouse Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–4018 or 447–7433.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5647.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment investment, productivity, inovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S,C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or adding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, financial institution requirements, State warehousing laws, and federal contracting requirements during the past few years require revision of the Standards for Approval of Warehouses for Grain, Rice Dry Edible Beans, and Seed.

The number of grain warehouse bankruptcies over the past few years has steadily increased with 67 grain warehouse bankruptcies recorded in 1985. These bankruptcies have increased the risk of loss to CCC and other depositors and in some cases caused serious financial losses. These warehouse bankruptcies have occurred in several different States with the legal prcceedings to satisfy claims against a warehouse varying from State to State. Some State laws governing warehouse bankrupticies do not specifically state that every depositor will receive a pro rata share of the commodities remaining in storage or guarantee to every grain depositor a pro rata share of bonding or other deposits posted by the warehouseman to assure compliance with the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. Other State laws set a maximum monetary amount or a maximum percentage amount that each grain depositor can receive against a total claim. Since CCC is often the largest grain depositor in a warehouse, these State laws adversely affect CCC's chances of receiving a fair settlement.

In order to reduce the vulnerability of losses to CCC and other grain depositors as a result of warehouse failures, it is propsed that a bond or other security be required for all CCC approved grain warehouses licensed in

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those States where existing laws governing warehouse bankruptcies do not guarantee to each depositor: (1) A pro rata share of the commodities remaining in storage; (2) a pro rata share of the bonding or other deposits posted by the warehouseman as required by any State licensing authority and any deficiency bonds or other security required to be in compliance with this subpart; and (3) that the full pro rata share will not be reduced because the State law sets a maximum dollar or percentage limit that any creditor may receive. The amount of bond required will not exeed the amount grain warehousemen must obtain to be licensed under the United States Warehouse Act. CCC also proposes to assess a fee for all warehouse examinations that CCC conducts solely for the benefit of a warehouseman. Some warehousemen request that CCC conduct a warehouse examination of the facility in order to enable them to: (1) Meet requests or requirements of depositors or lending agencies; (2) determine the quantity and quality of grain in storage; (3) determine whether the quantity and quality of grain in storage is sufficient to meet outstanding storage obligations; or (4) have an independent physical inventory coinciding with an end of fiscal year audit.

Under this proposal, CCC contemplates that a warehouseman would submit a written request for such an examination stating the purposes of the examination and agreeing to pay the prescribed fee.

The warehouse contract fees are calculated at ½ of the actual cost of conducting a warehouse examination, administering the storage contract, and determining the net worth. Since a requested examination does not require a net worth determination and certain other administrative procedures, the actual cost of such examinations is calculated at 1½ times the annual contract fee.

It is also proposed that CCC publish the contract fee schedule in the **Federal Register** only when there is a change in the amount of contract fee to be collected. Presently, CCC publishes the contract fee schedule in the **Federal Register** each year prior to the annual contract renewal date even when there are no changes in the fee schedule. This practice is time consuming and increases the costs to CCC. It is therefore proposed that the contract fee schedule be published only when there are changes in the amount of contract fee to be collected from CCC approved warehousemen.

List of Subjects in 7 CFR Part 1421

Grain, Loan programs, Agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, and Warehouses.

Proposed Rule

PART 1421—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

1. The authority citation for 7 CFR Part 1421, Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 State. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99–198, unless otherwise noted.

2. In § 1421.5552, a new paragraph (a)(10) is added to read as follows:

§ 1421.5552 Basic standards

* * * * *

(a) * * *

(10) Furnish a warehouse bond, payable to CCC, if the warehouse is located in a State where laws governing warehouse liquidations in case of shortages in quality or quantity do not guarantee to each depositor:

(i) A pro rata share of the commodities remaining in storage;

(ii) A pro rata share of the bonding or other deposits posted by the warehouseman as required by any State licensing authority and any deficiency bond or other security required to be posted by the warehouseman; and

(iii) That the full pro rata share of proceeds available to depositors will not be reduced by a maximum dollar or percentage limit posted by the State. The amount of bond required will not exceed the amount a grain warehouseman must obtain to be licensed under the United States Warehouse Act at 7 CFR 736.

3. In § 1421.5558, a new paragraph (a)(4) is added and paragraph (b) is revised to read as follows:

§ 1421.5558 Contract and application and inspection fees.

(a) * * *

(4) CCC may, upon the request of a warehouseman, conduct an examination of a warehouse for the sole benefit of the warehouseman and such warehouseman shall pay to CCC a fee equal to 1½ times the amount of the warehouseman's annual contract fee for such examination.

(b) Any subsequent changes in the contract and application fees shall be announced in the **Federal Register**.

Signed at Washington, DC on September 29, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–22954 Filed 10–7–87; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–118–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing 757 series airplanes, which would require modification of the hydraulic power auxiliary ram air turbine deploy mode wiring. This proposal is prompted by reports of inadvertent ram air turbine deployment on the ground while parked, due to false actuation of the airspeed switch, and inhibition of deployment during flight at low airspeeds. This condition, if not corrected, could lead to injury of ground personnel or loss of hydraulic flight controls during low speed operations following loss of two engines.

DATE: Comments must be received no later than November 10, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–118–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Systems and

Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–118–AD, 17900 Pacific Highway South, C–68966, Washington 98168.

Discussion

One operator of a Boeing Model 757 airplane has reported two occurrences of inadvertent ram air turbine deployment on the ground while parked, due to false actuation of the airspeed switch by taxing aircraft jet blast. Additionally, three operators have reported eleven occurances of contaminated airspeed switches resulting in ram air turbine deploy inhibition at lower airspeeds up to as high as 210 knots. Inadvertent actuation on the ground could result in injury to personnel. Failure to deploy at low airspeeds when needed could result in loss of hydraulic power for the flight controls and inability to control the airplane following loss of two engines.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–29A0032, dated July 9, 1987, which describes modifications to the ram air turbine manual and automatic deploy circuits. Addition of an air/ground input to the automatic deploy circuit removes power from the airspeed switch during actuation, which will improve airspeed switch reliability and inhibit deployment on the ground. Removal of the airspeed switch from the manual deploy circuit will improve overall deploy reliabilty.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the ram air turbine electrical circuitry in accordance with the service bulletin previously mentioned.

It is estimated that 81 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $97,200.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Alert Service Bulletin 757–29A0032, dated July 9, 1987, certificated in any category. Compliance required within the next six months after the effective date of this AD, unless previously accomplished.

To prevent inadvertent ram air turbine deployment on the ground while parked, and to ensure proper deployment in flight, accomplish the following:

A. Modify the ram air turbine wiring in accordance with Boeing Alert Service Bulletin 757–29A0032, dated July 9, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 11, 1987.

Wayne J. Barlow,

Director Northwest Mountain Region.

[FR Doc. 87–23250 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–115–AD]

Airworthiness Directives; Shorts Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that would require modification of an aileron control lever and bracket. This action is necessary to prevent incorrect installation of an aileron control lever and attaching rods. Improper installation of the lever and rods would cause an increase in aileron control forces and improper control surface travel.

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DATE: Comments must be received no later than November 9, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-115-AD), 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-115-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist or develop on certain Short Brothers Model SD3-60 series airplanes. It has been reported that improper installation of an aileron control level could occur which would result in increased aileron control system forces and improper aileron travel. Short Brothers issued Service Bulletin SD360-27-09, Revision 3, dated November 1986, which describes a modification that would prevent this from occurring. The CAA has declared Short Brothers service bulletin as mandatory.

The re-assembling of the aileron rods to the lever normally occurs during maintenance operations, but the SD3-60 maintenance manual does not highlight the possibility of incorrect installation of the aileron rods. Therefore, the FAA is proposing to require installation of modification kit No. SD360-27-09, in accordance with the Short Brothers service bulletin described previously, which would prevent incorrect installation of the aileron rods.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the aileron controls in accordance with the previously mentioned service bulletin.

It is estimated that 42 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Estimated cost of parts is $50.00 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $25,620.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($610). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Shorts Brothers PLC: Applies to Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3676, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent incorrect installation of aileron control levers and rods, which would result in increased aileron control forces and improper aileron travel, accomplish the following:

A. Within the next 4,800 flight hours after the effective date of this AD or at the next time the aileron control system is disassembled following 90 days after the effective date of this AD, whichever occurs first, install the guards (plates) in the aileron control system, as described in the Accomplishment Instructions of Shorts Service Bulletin No. SD360-27-09, Revision No. 3, dated November 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Shorts Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft

Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 21, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-23248 Filed 10-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-83-AD]

Airworthiness Directives; British Aerospace (BAe) 125-800 Model Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to all BAe 125-800 series airplanes, that would require inspection of the plumbing near the ventral fuel tank, and repair, if necessary. This action is prompted by a report of chafing between fuel, oxygen and hydraulic lines. This condition, if not corrected, could result in a fire hazard due to subsequent system leakage.

DATE: Comments must be received no later than November 9, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-83-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, Seattle Aircraft Certification Office, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-83-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of a potential for interference between fuel, oxygen and hydraulic piping in an area near the ventral fuel tank. The resultant chafing, if not corrected, could cause a fire hazard due to system leaks. British Aerospace (BAe) issued Service Bulletin 53-60, dated November 8, 1985, which describes procedures for inspection of the piping and repair, if necessary. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the fuel, oxygen, and hydraulic lines, and repair, as necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 420 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $8,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125-800 airplanes certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To reduce the risk of leakage from fuel, oxygen, and hydraulic systems and the fire and functional risks such leaks could present, accomplish the following:

A. Inspect the plumbing in the area of the ventral fuel tanks, and repair as necessary, in accordance with British Aerospace Service Bulletin 53-60, dated November 8, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modification required by this AD.

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All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 21, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-23251 Filed 10-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-111-AD]

Airworthiness Directives; Shorts Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to all Shorts Model SD3-60 series airplanes, that would require inspection of interference bushings for looseness in each of four fittings on the rear fuselage used for attachment of the horizontal stabilizer. This proposal is prompted by a report of an interference fit bushing that was found to be loose in its fitting on the forward right stabilizer attachment located on the rear fuselage cant frame. This condition, if not corrected, could lead to failure of the horizontal stabilizer attachment fittings.

DATE: Comments must be received no later than November 9, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-111-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-111-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, has notified the FAA of an unsafe condition which may exist on Shorts Model SD3-60 series airplanes. There has been a report of an interference fit bushing that was found to be loose. This bushing was located on one of four fittings on the rear fuselage cant frame used for the attachment of the horizontal stabilizer. This condition, if not corrected, could lead to failure of the horizontal stabilizer attachment fittings.

Shorts has issued Service Bulletin Number SD360-55-10, dated November 1985, which describes procedures for inspection and replacement of the interference fit bushings in each of the four horizontal stabilizer attachment fittings. The British CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the horizontal stabilizer attachment fittings in accordance with the service bulletin previously mentioned. Fittings found with a loose bushing that exceeds 0.005 inches movement would be required to be replaced prior to further flight. Fittings with a loose bushing that does not exceed 0.005 inches movement would be required to be replaced within 56 days.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $10,560.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($160). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of

the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers: Applies to Model SD3–60 series airplanes, as listed in Shorts Service Bulletin Number SD360–55–10, dated November 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the horizontal stabilizer attach fittings, accomplish the following:

A. Within the next 3 months after the effective date of this AD, inspect the interference fit bushings in each of the four horizontal stabilizer attach fittings in accordance with Shorts Service Bulletin Number SD360–55–10, dated November 1985.

B. If the bushing is found to be loose in its fitting and the movement exceeds 0.005 inches, replace the fitting before further flight.

C. If the bushing is found to be loose in its fitting and the movement does not exceed 0.005 inches, replace the fitting within the next 56 days.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington Virginia 22202–3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 21, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–23247 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplementary Security Income for the Aged, Blind, and Disabled; Definition of Resources

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to amend our regulations to exclude from the definition of resources in the Supplemental Security Income (SSI) Program, for one calendar month following their receipt, certain cash payments for medical or social services.

DATE: To be sure that your comments are considered, we must receive them no later than December 7, 1987.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION: Certain cash payments intended specifically to enable people to pay for medical or social services (20 CFR 416.1103 (a) and (b)) are not income for SSI purposes because they are assumed not to be available for support and maintenance. However, the recipient is not always able to use the cash for payment of medical or social services in the month of receipt. Lacking a regulatory resource provision for medical or social services comparable to that for income, the cash is a countable resource as of the first moment of the month following receipt and may cause ineligibility for SSI benefits.

Resources are defined in regulations (20 CFR 416. 1201(a)) as including cash or other liquid assets that an individual owns and can use for support and maintenance. Thus, even though intended for the purchase of medical or social services, cash meets the definition of a resource unless its use is legally restricted.

We propose to amend 20 CFR 416.1201(a) so that, for one calendar month following its receipt, cash which is not income under 20 CFR 416.1103 (a) or (b) because it is payment for medical or social services is not a resource. If the cash is still being held at the beginning of the second calendar month following its receipt, it will be a resource. This proposal does not extend to cash received as reimbursement for medical or social services bills the individual has already paid. Even though such reimbursement is not income by operation of 20 CFR 416.1103 (a) or (b), it serves only to replace the individual's previously countable resources that have been used to pay for medical or social services prior to receipt of the reimbursement. Since the individual has already paid for the medical or social services, there is no reason for extending to the reimbursement the one-month disbursement period during which cash received for medical or social services is not a resource. Thus, if retained, the cash is included in countable resources beginning with the first month following receipt.

This proposal recognizes that it is not reasonable to expect an individual to use certain funds for support and maintenance. To use these funds for support and maintenance tends to thwart the purpose of the payor program and could result in individuals having to do without needed services that the payor program intended to provide. The proposal allows a reasonable period for individuals to make disbursement, but if they do not do so, the money becomes a resource.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the program and administrative costs of this proposed regulation will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed regulation imposes no additional reporting and recordkeeping requirement requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities because this rule affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplementary Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: August 3, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: September 4, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Subpart L of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1201 is amended by revising paragraph (a) to read as follows:

§ 416.1201 Resources; general.

(a) *Resources; defined.* For purposes of this Subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

(1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

(2) Support and maintenance assistance not counted as income under § 416.1157(c) will not be considered a resource.

(3) Except for cash reimbursement of medical or social services expenses already paid for by the individual, cash received for medical or social services that is not income under § 416.1103 (a) or (b) is not a resource for the calendar month following the month of its receipt. However, cash retained until the first moment of the second calendar month following its receipt is a resource at that time.

* * * * *

[FR Doc. 87–23297 Filed 10–7–87; 8:45 am]

BILLING CODE 4190–11–M

INTER-AMERICAN FOUNDATION

22 CFR Part 1001

Employee Responsibilities and Conduct

AGENCY: Inter-American Foundation.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on the Inter-American Foundation's proposal to amend and clarify its Employee Responsibilities and Conduct. The Inter-American Foundation proposes to take this action so that employees of the Foundation will have a clear understanding of their responsibilities with respect to federal ethics laws and regulations. The Inter-American Foundation finds and determines that publication of these regulations in the Code of Federal Regulations is necessary for the effective discharge of its functions and activities.

DATE: Comments must be received on or before November 9, 1987.

ADDRESS: Comments may be mailed to the General Counsel, 5th Floor, Inter-American Foundation, 1515 Wilson Boulevard, Arlington, VA 22209, or delivered to the same address between the hours of 8:30 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Charles M. Berk, General Counsel, (703) 841–3812.

SUPPLEMENTARY INFORMATION: The Inter-American Foundation is proposing to revise its current Employee Responsibilities and Conduct regulations to conform with the requirements of E.O. 11222 (3 CFR 1964–1965 Comp.; 5 CFR 735.104); Title 18, U.S.C. 203, 205, 207, 208, 209; and Title II of the Ethics in Government Act of 1978, as amended (Pub. L. 96–19 and 96–28). The intended result of this action is to avoid employee conflicts of interest and to assure impartiality on the part of employees by doing the following:

1. Clarifying existing regulations regarding the standards of conduct required of Government employees and special Government employees associated with Foundation contractors or potential contractors.

2. Establishing regulations to guide employees in determining whether it is permissible for them to participate in conferences or accept speaking engagements.

3. Establishing regulations which specifically prohibit certain economic and financial activities of employees abroad.

4. Establishing regulations prohibiting discrimination by any employee of the Foundation against any other employee or applicant due to race, political affiliation, or religious belief.

5. Establishing regulations modifying and enlarging the number of employees required to submit Executive Personnel Financial Disclosure Reports.

6. Establishing regulations requiring the President or his or her designee to follow the administrative enforcement procedures set forth in 5 CFR 737.27 in the event that the Foundation receives information that there has been a possible violation of restrictions against post-employment activities contained in section 207 (a), (b), or (c) of Title 18 United States Code.

The proposed rule is patterned after similar ethics regulations adopted by other federal agencies following enactment of the Ethics in Government Act in 1978. The proposed rule is patterned most closely after the rule implemented in 1986 by the African Development Foundation (ADF). The ADF is an independent federal agency whose mandate and program objectives are similar to those of the Inter-American Foundation.

The penalties prescribed by the proposed rule are those provided for in the applicable laws, regulations, and executive orders cited herein.

The public is invited to submit their comments to the Foundation for review. These should be forwarded to Charles M. Berk, General Counsel, The Foundation does not intend to hold hearings on the proposed rule.

Regulatory Flexibility Act of 1980

Generally, these proposed regulations do not contain substantive new material. It is, therefore, certified that they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Executive Order 12291

The Inter-American Foundation has determined that this rule is not a major rule for purposes of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the general public.

List of Subjects in 22 CFR Part 1001

Conflicts of Interest.

Accordingly, it is proposed to amend 22 CFR Part 1001 as follows:

1. The authority citation for Part 1001 continues to read as follows:

Authority: E.O. 11222, 3 CFR, 1964–1965/comp.; 5 CFR 735.104.

2. Part 1001 is amended by redesignating the sections shown in the following table. For the convenience of the reader the new table of contents for Part 1001 is set out below:

Subpart A—General Provisions

Old section	New section
1001.735–1	1001.1
1001.735–2	1001.2

Subpart B—Standards of Conduct

Old section	New section
1001.735–10	1001.3
1001.735–11	1001.4
1001.735–12	1001.5
1001.735–13	1001.7
1001.735–14	1001.8
1001.735–15	1001.9
1001.735–16	1001.10
1001.735–17	1001.11
1001.735–18	1001.12
1001.735–19	1001.17

Subpart C—Procedures

Old section	New section
1001.735–20	1001.18
1001.735–21	1001.19
1001.735–22	1001.21
1001.735–23	1001.22
1001.735–24	1001.23
1001.735–25	1001.24
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1001.13 Association with potential contractor prior to employment.
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1001.15 Economic and financial activities of employees abroad.
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1001.28 Penalties for violation.
1001.29 Administrative enforcement proceedings.
1001.30 Confidentiality of employees' statements.
1001.31 Effect of employees' statements on other requirements.

Subpart A—General Provisions

3. Section 1001.2 is amended by removing the paragraph designations and alphabetizing the definitions, revising the definition of "Counselor" and adding the definitions of "is associated with", "organization", and "potential contractor", as follows:

§ 1001.2 Definitions.

"Counselor" means the Foundation's Counselor on Ethical Conduct and Conflicts of Interest. The Counselor for the Foundation will be the General Counsel of the Foundation. The Deputy General Counsel will serve as Deputy Counselor.

* * * * *

"Is associated with" as used in §§ 1001.13 and 1001.14 means:

(1) Is a director of an organization or is a member of a board or committee which exercises a recommending or supervisory function in an organization; or

(2) Serves as an employee, officer, owner, trustee, partner, consultant, or paid advisor in an organization; or

(3) Owns (or his or her spouse, minor child, or other member of his or her immediate household owns) individually or collectively, 1 percent or more of the voting shares of an organization; or

(4) Owns (or his or her spouse, minor child, or other member of his or her immediate household owns), individually or collectively, either beneficially or as a trustee, a direct financial interest in an organization through stock, stock options, bonds, or other securities, or obligations; or

(5) Has a continuing financial interest in an organization, such as participation in or entitlement under a bona fide pension plan, through an arrangement resulting from prior employment or business or professional association.

* * * * *

"Organization" as used herein includes profit and non-profit corporations, associations, partnerships, trusts, sole proprietorships, foundations, and foreign, State and local government units.

"Potential contractor" means any organization or individual that has submitted a proposal, application, or otherwise indicated in writing its intent to apply for or seek from the Foundation a specific contract or other agreement, including a grant, loan or loan guarantee.

* * * * *

Subpart B—Standards of Conduct

4. Section 1001.5 (c) is revised to read:

§ 1001.5 Outside employment and other activities.

* * * * *

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or regulations upon prior approval of the Counselor. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing (including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) that depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request, or when the President gives written authorization for use of nonpublic

information on the basis that the use is in the public interest.

* * * * *

5. Section 1001.6 is added to read:

§ 1001.6 Speeches and participation in conferences.

(a) *Fees and expenses.* An employee may not accept a fee for his or her own use or benefit for making a speech, delivering a lecture, or participating in a discussion if the subject is the Foundation or Foundation programs or if such services are part of the employee's official Foundation duties.

(b) When a meeting, discussion, or other gathering to which paragraph (a) of this section refers takes place at a substantial distance from the employee's home, he or she may accept such reimbursement, upon prior approval of the Counselor, for the actual cost of transportation and necessary subsistence or expenses, as is compatible with this Part and for which no Government payment or reimbursement is made. If an employee receives accommodations, goods, or services in-kind from a non-Government source while on official travel, such items will be treated as a donation to the Foundation and an appropriate reduction will be made in per diem or other travel expenses payable.

(c) Upon prior approval of the Counselor, an employee may accept fees for speeches, etc., dealing with subjects other than Foundation programs when no official funds have been used in connection with his or her appearance and such activities do not interfere with the efficient performance of his or her duties, and for which leave of absence, where necessary, is obtained.

(d) No employee may participate for the Foundation in a conference or speak for the Foundation before audiences when he or she has reason to believe that any racial, ethnic, religious, or minority group has been segregated or excluded from the meeting, from any of the facilities or conferences, or from membership in the organization sponsoring the conference or meeting.

§ 1001.7 [Amended]

6. Section 1001.7 (d) is amended by changing the reference to "§ 1001.735–12" to "§ 1001.5".

7. Section 1001.10 *Misuse of information* is revised to read:

§ 1001.10 Misuse of information.

(a) For the purpose of furthering a private interest, an employee shall not, except as provided in § 1001.5, directly or indirectly, use, or allow the use of, official information obtained through or in connection with Government employment which has not been made available to the general public.

(b) This section is not intended to discourage disclosure through proper channels of information which has been or should be made available to the public by law.

8. Section 1001.13 is added to read:

§ 1001.13 Association with potential contractor prior to employment.

(a) No employee, or any person subject to his or her supervision, may participate in the decision to award a contract to any organization with which that employee has been associated in the past two years. When an employee becomes aware that such an organization is under consideration for or has applied for a contract with the Foundation, the employee shall notify his or her immediate supervisor in writing. The supervisor shall take whatever steps are necessary to exclude the employee from all aspects of the decision-making process regarding the contract or agreement.

(b) When an employee becomes aware that an organization with which he or she has been associated in the past two years is under consideration for or has applied for a contract with the Foundation, he or she shall refrain from participating in the decision process.

9. Section 1001.14 is added to read:

§ 1001.14 Association with Foundation contractor, potential contractor, grantee or potential grantee while an employee.

(a) No regular employee may be associated financially with any Foundation contractor, potential contractor, grantee, or potential grantee. Any organization that is associated with a regular employee shall be suspended from consideration as a contractor or grantee.

(b) No regular or special employee, except in his or her official capacity as a Foundation employee, shall participate in any way on behalf of any organization in the preparation or development of a contract or grant proposal involving the Foundation, or represent any other organization in a matter pending before the Foundation when such participation or representation would result in or create the appearance of the use of public office for private gain. In such cases, if a regular or special employee participates, while an employee of the Foundation, in any aspect of the development of a contract, grant, or other agreement proposal on behalf of an organization, or represents another organization in a matter pending before the Foundation, that organization shall be suspended from consideration for the contract, grant, or other agreement.

(c) No regular or special employee who, prior to his or her employment at the Foundation, participated in the development of a contract, grant, or other agreement proposal on behalf of another organization, shall participate in any aspect of the decision process regarding that contract, grant, or other agreement, or, if the contract, grant, or other agreement is awarded, in any oversight or management capacity in relation to that contract, grant, or other agreement. In the event a regular or special employee who participated in the development of the contract, grant, or other agreement proposal prior to being employed at the Foundation does participate as a Foundation employee in the decision process for such contract, grant, or other agreement, the organization shall be suspended from consideration.

10. Section 1001.15 is added to read:

§ 1001.15 Economic and financial activities of employees abroad.

(a) Foundation employees are specifically prohibited from engaging in the activities listed below in any foreign country:

(1) Speculation in currency exchange;

(2) Transactions at exchange rates differing from local legally allowable rates, unless such transactions are duly authorized in advance by the Foundation;

(3) Sales to unauthorized persons, whether at cost or for profit, of currency acquired at preferential rates through diplomatic or other restricted arrangements;

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch;

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control;

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments;

(7) Acting as an intermediary in the transfer of private funds for persons in one country to persons in another country, including the United States; and

(8) Permitting use of his or her official title in any private business transactions or in advertisements for business purposes.

(b) U.S. citizen-Foundation employees on official travel or assignment abroad are prohibited from engaging in the activities listed below:

(1) Transacting or having an interest in any business or engaging for profit in any profession or undertaking or other gainful employment in any country or countries in which he or she is on official travel assignment in his or her own name or through the agency of any other person.

(2) Investing in real estate or mortgages on properties located in his or her country of assignment. (The purchase of a house and land for personal occupancy is not considered a violation of this subparagraph);

(3) Investing money in bonds, shares, or stocks of commercial concerns headquartered in his or her country of assignment or conducting a substantial portion of business in such country. (Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail); and

(4) Selling or disposing of personal property, including automobiles, at prices producing profits which result primarily from import privileges derived from his or her officials status as an employee of the U.S. Government.

11. Section 1001.16 is added to read:

§ 1001.16 Discrimination.

No employee may make inquiry concerning the race, political affiliation, or religious beliefs of any employee or applicant in connection with any personnel action, and may not practice, threaten, or promise any action against or in favor of any employee or applicant for employment because of race, color, religion, sex, age or national origin, and in the competitive service, on the basis of politics, marital status, or physical handicap.

Subpart C—Procedures

12. Section 1001.20 is added to read:

§ 1001.20 Executive personnel financial disclosure.

(a) The following employees of the Foundation shall submit completed Executive Personnel Financial Disclosure Reports (SF278) containing information required in accordance with 5 CFR Part 734, Subpart C:

(1) Within five days after transmittal by the President to the Senate of their nomination, each member of the Board of Directors of the Foundation.

(2) Within 30 days, after assuming the position, any newly appointed employee of the Foundation whose position is classified at GS–16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS–16 (Step 1).

(3) Within 30 days after designation, the designated Foundation Counselor on Ethical Conduct and Conflicts of Interest and the Deputy Counselor.

(b) Employees, who perform the duties of a position or office described in this section in excess of sixty days in any calendar year, must submit annual statements as of May 15 of each year containing the information described in 5 CFR Part 734, Subpart C.

(c) Executive Personnel Financial Disclosure Statements filed pursuant to this section shall be made available to the public in accordance with the provisions of 5 CFR 734.603.

13. In § 1001.21 the heading is revised, paragraph (a) is removed, paragraph (b) is redesignated as paragraph (a) and paragraph (c) is redesignated as paragraph (b) and revised to read:

§ 1001.21 Confidential statements of employment and financial interests.

* * * * *

(b) Other employees, including those classified at GS–13 through GS–15, whose submission of confidential statements of employment and financial interest has been approved by the Office of Government Ethics, whose duties and responsibilities require them to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and to carry out the purposes of the law, Executive Order 11222, and the Foundation's regulations.

14. Section 1001.22(a) introductory text is amended by changing the reference to "§ 1001.735–22" to "§ 1001.21" and paragraph (b) is revised to read:

§ 1001.22 Employees not required to submit confidential statements.

* * * * *

(b) A confidential statement of employment and financial interests is not required by these regulations from employees of GS–16 and above or the Foundation's Counselor on Ethical Conduct and Conflicts of Interests, who file Executive Personnel Financial Disclosure Reports required by Section 1001.20.

* * * * *

§ 1001.23 [Amended]

15. Section 1001.23 is amended by changing the reference to "§ 1001.735–22" to "§ 1001.21" and the reference to "§ 1001.735–21" to "§ 1001.19".

16. Section 1001.25(b) is amended by changing the reference to "§ 1001.735.2" to "§ 1001.2" and adding (e) to read:

§ 1001.25 Information required.

* * * * *

(e) *Indirect interest.* An indirect interest, such as ownership of shares in a mutual fund, which in turn owns an interest in other organizations, unless such mutual fund is substantially involved in ventures in Latin America or the Caribbean. Such an "indirect" interest is hereby determined pursuant to 18 U.S.C. 208(b)(2) to be too remote to affect the integrity of employees' services.

17. Section 1001.26 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b):

§ 1001.26 Supplementary statements.

(a) Employees, other than those occupying positions requiring the filing of Executive Personnel Financial Disclosure statements, who perform the duties of a position or office for a period in excess of sixty days in any calendar year, including special government employees, must submit annual statements as of May 15 of each year.

* * * * *

§ 1001.27 [Amended]

18. Section 1001.27 (c) and (d) are amended by changing the references to "§ 1001.735–29" to "§ 1001.28".

19. Section 1001.29 is added to read:

§ 1001.29 Administrative enforcement proceedings.

In the event that the Foundation receives information that there has been a possible violation involving the Foundation of the restrictions against post-employment activities contained in section 207 (a), (b), or (c) of Title 18 U.S.C., the President or his designee shall follow the procedures set forth in 5 CFR 737.27 with respect to the initiation and conduct of an administrative disciplinary hearing.

20. § 1001.30 is revised to read:

§ 1001.30 Confidentiality of employees' statements.

The Foundation shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality only the Counselor and Deputy Counselor are authorized to review and retain the statements. The Counselor is responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part. The Foundation may not disclose information from a statement except as the Office of Personnel Management or the President of the Foundation may determine for good cause shown.

21. Section 1001.31 is revised to read:

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§ 1001.31 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required for employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit participation in a matter in which such participation is prohibited by law, order, or regulation.

Charles M. Berk,

General Counsel, Inter-American Foundation.

[FR Doc. 87-23387 Filed 10-7-87; 8:45 am]

BILLING CODE 7025-01-M

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 50

[Order No. 1226-87]

Procedures Governing the Destruction of Contraband Drug Evidence in the Custody of Federal Law Enforcement Authorities

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed drug destruction policy is being published by the Attorney General of the Department of Justice (DOJ) to solicit comments on the best way to provide for the timely destruction of unnecessary seized contraband drugs. This proposed regulation is intended to prevent the warehousing of large quantities of seized contraband drugs which are unnecessary for due process in criminal cases. Such stockpiling of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States. It is necessary since the retention of controlled substances and the continuing acquisition of additional amounts pose increased storage problems and will result in the elimination of unnecessary seized controlled substances, while retaining an amount that will provide sufficient documentary evidence.

DATE: Comments should be received on or before November 9, 1987.

ADDRESSES: Comments should be addressed to: Dennis F. Hoffman, Chief Counsel, Office of the Chief Counsel, Drug Enforcement Administration, Room 1112, Eye Street Building, 1405 Eye Street NW., Washington, DC 20537, Telephone (202) 633-1276.

FOR FURTHER INFORMATION CONTACT: Dennis F. Hoffman, 202-633-1276.

List of Subjects in 28 CFR Part 50

Drugs, Drug traffic control, Law enforcement.

SUPPLEMENTARY INFORMATION: This is not a major rule within the meaning of Executive Order 12291. This will not have a substantial impact on a significant number of small businesses within the meaning of the Regulatory Flexibility Act. 5 U.S.C. 605.

Under the authority vested in the Attorney General, including 28 U.S.C. 509, 510, 3 U.S.C. 301, and 21 U.S.C. 811(a), and for the reasons set forth in the preamble, it is proposed to amend 28 CFR Part 50 as follows:

1. The authority citation for Part 50 is revised to read as follows:

Authority: 28 U.S.C. 508, 509, 510; 5 U.S.C. 301, 552, 552a, 15 U.S.C. 16(d); 21 U.S.C. 881(f)(2).

PART 50—[AMENDED]

2. Part 50 is amended by a new § 50.21 to read as follows:

§ 50.21 Procdures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.

(a) *General.* The procedures set forth below are intended as a statement of policy of the Department of Justice and will be applied by the Department in exercising its responsibilities under federal law relating to the destruction of seized contraband drugs.

(b) *Purpose.* This policy implements the authority of the Attorney General under Title I, section 1006(c)(3) of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 which is codified at 21 U.S.C. 881(f)(2), to direct the destruction, as necessary, of Schedule I and II contraband substances.

(c) *Policy.* This regulation is intended to prevent the warehousing of large quantities of seized contraband drugs which are unnecessary for due process in criminal cases. Such stockpiling of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States.

(d) *Definitions.* As used in this subpart, the following terms shall have the meanings specified.

(1) The term "Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(2) The term "Contraband drugs" are those controlled substances listed in Schedules I and II of the Controlled Substances Act seized for violation of that Act.

(3) The term "Marijuana" is as defined in 21 U.S.C. 802(15) but does not include for the purposes of this regulation, the derivatives hashish or hashish oil for purposes of destruction.

(4) The term "Representative sample" means the exemplar for testing and a sample aggregate portion of the whole amount seized sufficient for current criminal evidentiary practice.

(5) The term "Threshold amount" means:

(i) Two kilograms of a mixture or substance containing a detectable amount of heroin;

(ii) Ten kilograms of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers and salts of isomers; or

(D) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraph (d)(5)(ii) (A) through (C) of ths section;

(iii) Ten kilograms of a mixture or substance described in paragraph (d)(5)(ii)(B) which contains cocaine base;

(iv) Two hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) Twenty grams of a mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD);

(vi) Eight hundred grams of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4-piperidinyl] propanamide [commonly known as fentanyl] or two hundred grams of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(vii) Twenty kilograms of hashish or two kilograms of hashish oil [21 U.S.C. 841(b)(1)(D), 960(b)(4)];

(viii) In the event of any change to section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) as amended occurring after the date of these regulations, the threshold amount

of any substance therein listed, except marijuana, shall be twice the minimum amount requested for the most severe mandatory minimum sentence .

(e) *Procedures. Responsibilities of the Federal Bureau of Investigation and Drug Enforcement Administration.* When contraband drug substance in excess of the threshold amount or in case of marijuana a quantity in excess of the representative sample are seized pursuant to a criminal investigation and retained in the custody of the Federal Bureau of Investigation or Drug Enforcement Administration, the Agency having custody shall:

(1) Immediately notify the appropriate United States Attorney, Assistant United States Attorney, or the responsible State/local prosecutor that the amount of seized contraband drug exceeding the threshold amount and its packaging, will be destroyed after sixty days from the date notice is provided of the seizures, unless the agency providing notice is requested in writing by the authority receiving notice not to destroy the excess contraband drug; and

(2) Assure that appropriate tests of samples of the drug are conducted to determine the chemical nature of the contraband substance and its weight sufficient to serve as evidence before the trial courts of that jurisdiction; and

(3) Photographically depict, and if requested by the appropriate prosecutorial authority, videotape, the contraband drugs as originally packaged or an appropriate display of the seized contraband drugs so as to create evidentiary exhibits for use at trial; and

(4) Isolate and retain the appropriate threshold amounts of contraband drug evidence when an amount greater than the appropriate threshold amounts has been seized, or when less than the appropriate threshold amounts of contraband drugs has been seized, the entire amount of the seizure, with the exception of marijuana, for which a representative sample shall be retained; and

(5) Maintain the retained portions of the contraband drugs in appropriate laboratory or division vaults until the evidence is no longer required for legal proceedings, at which time it may be destroyed, first having obtained consent of the United States Attorney, an Assistant United States Attorney, or the responsible state/local prosecutor;

(6) Notify the appropriate United States Attorney, Assistant United States Attorney, or the responsible State/local prosecutor to obtain consent to destroy the retained amount or representative sample whenever the related suspect(s) has been a fugitive from justice for a period of five years. An exemplar sufficient for testing will be retained consistent with this section.

(f) *Procedures. Responsibilities of the United States Attorney or the District Attorney (or equivalent State/local prosecutorial authority).* When so notified by the Federal Bureau of Investigation or the Drug Enforcement Administration of an intent to destroy excess contraband drug, the United States Attorney or the District Attorney (or equivalent) may:

(1) Agree to the destruction of the contraband drug evidence in excess of the threshold amount, or for marijuana in excess of the representative sample prior to the normal sixty day period. The United States Attorney, or the District Attorney (or equivalent) may delegate to his/her assistants authority to enter into such agreement; or

(2) Request an exception to the destruction policy in writing to the Special Agent in Charge of the responsible division prior to the end of the sixty day period when retaining only the threshold amount of representative sample will significantly affect any legal proceedings; and, in the event of a denial of the request may appeal the denial to the Assistant Attorney General, Criminal Division. Such authority may not be redelegated. Appeal shall stay the destruction until the appeal is complete.

(g) *Supplementing regulations.* The Federal Bureau of Investigation and the Drug Enforcement Administration are authorized to issue regulations and establish procedures consistent with this section.

Date: September 21, 1987.

Edwin Meese III,

Attorney General

[FR Doc. 87–23306 Filed 10–7–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 811

Release, Dissemination, and Sale of Visual Information Materials

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising the regulation to establish policy on the release, dissemination, and sale of Air Force visual information (VI) materials. It explains how reproductions may be sold, distributed, or released. This revision incorporates DOD Instruction 7230.7 which updates the schedule of fees. It also updates terminology, functional addresses and information on requesting visual material.

DATE: Comments must be submitted on or before November 9, 1987.

ADDRESS: HQ USAF/SCV, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Major Cultice, HQ USAF/SCV, Washington, DC 20330, telephone (202) 695–9610.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

List of Subjects in 32 CFR Part 811

Classified information, Motion pictures, Television.

Therefore, 32 CFR 811 is revised to read as follows:

PART 811—RELEASE, DISSEMINATION, AND SALE OF VISUAL INFORMATION MATERIALS

Sec.

811.0 Purpose.
811.1 Exclusions.
811.2 Agencies authorized to release VI materials.
811.3 Policy on the dissemination and sale of VI products.
811.4 Restrictions on the use of government VI records.
811.5 Procedures for requesting VI materials.
811.6 How to collect fees.
811.7 Schedule of fees.
811.8 Requests for motion media.
811.9 Requests for still VI media.

Authority: 10 U.S.C. 8013.

Note: Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 811.0 Purpose.

This part establishes policy on the release, dissemination, and sale of Air Force visual information (VI) materials. It explains how reproductions may be sold, distributed, or released. It implements 32 CFR Part 288 (Department of Defense (DOD) Instruction 7230.7), DOD Directive 4000.19, DOD Directive 7290.3–M, and

DOD Directive 5040.2. It should be used with Part 806 (AFR 12–30, Air Force Freedom of Information Act Program); Part 812 (AFR 12–32, Schedule of Fees for Copying, Certifying, and Searching Records and Other Documentary Material); AFR 177–108, Paying and Collecting Transactions at Base Level; Part 837 (AFR 190–1, Public Affairs Policies and Procedures); and AFR 205–1, Information Security Program. It applies to all Air Force personnel including United States Air Force Reserve and Air National Guard units and members. The term major command (MAJCOM), when used in this part, includes separate operating agencies and direct reporting units.

§ 811.1 Exclusions.

This volume does not apply to:

(a) The sale of aerial reconnaissance or cartographic type photography. Request this photography from the Defense Mapping Agency/ODS, ATTN: DDCP, Washington, DC 20315–0020.

(b) The sale of completed productions. Requests for purchase of completed Air Force productions should be sent to the National Archives and records Administration, National Audiovisual Center, Information Office, 8700 Edgeworth Drive, Capitol Heights, MD 20722–3701.

(c) VI materials made for the Air Force Office of Special Investigations (AFOSI) for use in an investigation or a counterintelligence report. Part 806 and AFR 124–4, Requesting AFOSI Investigations and Safeguarding, Handling and Releasing Information from AFOSI Reports, show who may use these VI materials.

(d) VI materials made for aircraft and missile mishap investigators for investigations of Air Force aircraft and missile mishaps per AFR 127–4. Part 806 and AFR 124–4 show who may use these materials.

§ 811.2 Agencies authorized to release VI materials.

(a) The Secretary of the Air Force, Office of Public Affairs (SAF/PA), per Part 837, may release VI materials to:

(1) News media, commerical publications, or electronic mail.

(2) Film companies.

(3) Industries.

(4) Nonprofit organizations.

(5) Agencies outside the federal government.

(6) The general public (not associated with the news media).

(b) The Secretary of the Air Force, Office of Legislative Liaison (SAF/LL), arranges for the release of VI material through SAF/PA upon request from members of Congress and provides such material for official use.

(c) The International Affairs Division (HQ USAF/CVAII) (or, in some cases, MAJCOM Foreign Disclosure Office) authorization is required to release classified and unclassified materials for use by foreign governments and international organizations or their representatives.

§ 811.3 Policy on the dissemination and sale of VI products.

(a) Sale of VI material. Although copies of Air Force VI products may be sold, Air Force policy is to not compete with commercial industry. When VI materials are sold to persons or organizations outside the federal government, charges and fees must be assessed according to Part 812.

(b) Dissemination of VI material to state and local governments. Copies of VI material that meet the requirements of this part may be loaned or sold to state and local governments, or any tax exempt organization, under Title III of the 1968 Intergovernmental Cooperation Act. The requester must certify that such materials are not available from commercial sources. The only Air Force organization authorized to loan copies of VI materials is the United States Air Force Central Visual Information Library (AFCVIL), managed by 1352d Audiovisual Squadron, Norton AFB CA.

(c) Disseminating and Selling Activities. Dissemination and sale of Air Force VI documentation is accomplished by the DOD Motion Media Records Center, operated by the 1352d Audiovisual Squadron (AAVS) (MAC), Norton AFB CA and the DOD Still Media Records Center, operated by the US Navy at the Anacostia Naval Station, Washington, DC.

(d) Sale of original VI material. Original VI material is not for sale. Reproductions of the original may be sold. HQ USAF/SCV may authorize the loan of copies or duplicates of original material for federal government use. SAF/PA may lend copies or duplicates of original material to agencies outside the federal government and to the public.

(1) DOD VI records centers use only government-owned VI material in servicing approved requests for dissemination and sale. The use of nongovernment VI material must be with the written permission of the owner.

(2) Production of material for sale must not stop or slow official Air Force work or be used to justify facility expansion or additional manpower.

(e) Requests and services exempt from fees. In accordance with Part 813, requests received from the sources below are exempt from paying fees if funds are available for producing the material, production does not impair the mission of the furnishing agency, all clearances and releases specified by this part have been obtained, and the work can be done during normal duty hours. When requests cannot be accomplished within the above criteria, the request will be processed only when fees are paid by the requester.

(1) DOD and other government agencies requesting VI materials for official activities (DOD Directive 4000.19 and DOD Directive 5040.2).

(2) Members of Congress requesting VI materials for use in official activities.

(3) VI records center materials or services furnished according to law or Executive order.

(4) Federal, state, territorial, county, or municipal governments, or their agencies, for functions related to or furthering an Air Force or other DOD objective.

(5) Nonprofit organizations for functions related to public health, education, or welfare.

(6) Members of the Armed Forces in a casualty status, their next of kin, or authorized representative, when the requested VI material relates to the member and does not compromise classified information or the work of an accident investigation board.

(7) The general public, to further the Armed Forces recruiting program or public understanding of the Armed Forces, when such VI materials or services are determined by SAF/PAM to be in the best interest of the Air Force.

(8) Incidental or occasional requests for VI records center materials or services (including requests from residents of foreign countries) when it is determined that fees would be inappropriate. (For the distribution of VI materials to foreign nations, see Part 837 of this chapter).

§ 811.4 Restrictions on the use of government VI records.

Activities sending materials to the DOD VI records centers must ensure that any limitation on their use is noted on the materials. The following restrictions on VI material disseminated or sold from the records centers must also be observed:

(a) Materials must not be used to promote or endorse a commercial service or product (see Part 837).

(b) Rights to official Air Force VI material may not be claimed by any other agency or person.

(c) The waiver of propriety and privacy rights cannot be granted with

the sale or release of VI materials unless these rights and the rights of transfer are owned by the Air Force.

(d) VI materials received from Air Force contractors may be released, disseminated, or sold if not identified as properietary material in the applicable contract.

(e) When provisions of formal agreements between the Air Force and other government agencies on release of VI materials differ from this part, the provisions of the formal agreement apply.

§ 811.5 Procedures for requesting VI materials.

(a) Informal inquiries may be made to the appropriate DOD records center on VI materials available in broad subject areas. Such inquiries are not formal requests. Research of, or access to, materials are provided only by submission of a formal request. Inquiries regarding motion picture or television materials should be sent to the DOD Central Motion Media Records Center (1352d AVS/AVOS, Norton AFB CA 92409–5996). Inquiries regarding still photo materials should be sent to the DOD Still Media Records Center, ATTN: Code LGP–R, Bldg 168, Anacostia Naval Station, Washington, DC 20374–1681.

(b) Submit formal requests according to § 811.8 and § 811.9. When advised that the request has been approved, the requester may communicate directly with the records center about the selection of materials.

§ 811.6 How to collect fees.

(a) The Air Force or DOD activity making the sale collects the funds in advance.

(b) The fees due the United States must be paid by cash, United States Treasury check, certified check, cashiers check, bank draft, or postal money order (AFM 177–108). Personnel checks may not be used.

§ 811.7 Schedule of fees.

Fees are established by the Department of Defense and are listed as follows:

(a) Still Photography. Still pictorial or documentary photographic prints.

Unlisted standard sizes of prints may be furnished, if available, at prevailing contract or activity rates.

Price Per Print	Quantity	1–9		
		10–20	21–50	50+
8" x 10" single weight (RC) type) paper	$4.50	$3.25	$2.50	$1.75
11" x 14" single weight (RC) type) paper	9.00	7.00	5.00	4.00
16" x 20" single weight (RC) type) paper	19.00	15.00	12.00	9.50
20" x 24" single weight (RC) type) paper	30.00	25.00	20.00	15.00
8" x 10" single weight color paper	11.00	7.50	3.50	3.00
11" x 14" single weight color paper	17.00	9.00	6.50	5.50
16" x 20" single weight color paper	35.00	25.00	14.00	11.50
35mm color transparency slide made from color negative	5.00	3.50	3.00	3.00
35mm duplicate from 35mm slide	1.00	.60	.50	.45
Print mounted on 16" x 20" cardboard	8.00	(1)		
Print mounted on 20" x 24" cardboard	8.00	(1)		
8"x10" color transparencies	[2]20.00	[3]16.00		
4"x5" transparencies	4.50			
4"x5" B&W negative	2.00			
70mm color negative	7.50			

[1] Unit price of print.
[2] First.
[3] Each additional.

Note: DOD Still Records Center photographic services are not normally done in-house by DOD. Charges for the above processing and services will be at prevailing contract rates on a case-by-case basis. All prices are subject to change without notice. Fees for copies of photographs which are part of a patient's medical record should be coordinated with the Patient Affairs Officer at the medical treatment facility.

(b) Motion Picture.

	Price Per Foot Contact
Color:	
16mm work print (positive) work print from an original negative	$.20
16mm reversal work print	.20
16mm color master ("A" roll)	.60
16mm duplicate negative (from master positive)	.60
16mm reversal duplicate negative	.85
16mm internegative (from reversal original)	.70
16mm short rolls (under 100 ft)	[1].10
16mm tab-to-tab printing	[1].10
Black and White:	
16mm work print (negative/positive)	.10
16mm master positive (fine grain)	.25
16mm duplicate negative	.25
16mm short rolls (under 200 ft)	[1].10
16mm tab-to-tab printing	[1].10
Miscellaneous:	
Magnetic tape—dub from 16mm film	$65.00
Searching (per hour or fraction thereof)	18.00
Minimum charge per film order (including search)	35.00
16mm film to videotape (broadcast quality tape format per hour)	[2] 275.00
Minimum charge for film to videotape transfer	[2] 140.00

[1] Plus basic price.
[2] Plus raw stock.

Note: 35mm film processing for motion pictures and some motion picture services are not done in-house by the DOD. Charges for these types of processing and services will be at prevailing contract rates on a case-by-case basis. Prices are subject to change without notice.

§ 811.8 Requests for motion media.

Rules	A	A	B	D	E
	If the requester is	And material requested is		Then furnish in writing the	And send the request to
		Unclassified	Classified		
1	News media	X			SAF/PA, Wash DC 20330-5000 for regional, national or international release; servicing PA for local release.
2	The general public including entertainment, documentary, advertisers, industrial media producers, editors & writers.	X		Film sequence outline of script: intended use of the film/video; type of film stock needed (neg, interneg, print, ¾" video tape) approx number of screen feet.	SAF/PAMB, Wash DC 20330-5000
3	An Air Force or other federal government agency.	X		Intended use of the film/video type stock needed (neg, interneg, print, ¾" video tape); approx number of screen feet/minutes.	1352 AVS/AVOS, Norton AFB CA 92409-5996
4	A federal government contractor (to meet USAF requirements specified in federal contract).	X			USAF plant representative
5	An Air Force contractor (to meet VI requirements specified in a USAF contract).		X	Intended use of the material; type of material needed (print, neg, interneg, video); required number of prints, slides, negs, etc.; a full justification for access to classified material.	USAF plant representative
6	A federal government contractor (to provide material for public release).	X			
7	USAF plant representative (to provide material to federal government contractor that is specified in federal contract).	X			1352 AVS/AVOS Norton AFB, CA 92409-5996
8	USAF plant representative (to provide material to federal government contractor for release to public).	X			SAF/PA, 1352 AVS/AVOS IN TURN
9	USAF plant representative (to provide material to an Air Force contractor that was specified in USAF contract).		X		MAJCOM (CC), 1352 AVS/AVOS IN TURN
10	A nonfederal government agency (state, county, territorial, municipal).	X		Intended use of VI materials; type of film, video tape stock needed (neg, interneg, print, ¾", 1", etc.); approx number of screenfeet/minutes; a certification that requested material cannot be procured reasonably and expeditiously through normal business channels.	SAF-PAMB, Wash DC 20330-5000
11	Member of Congress	X	X	Intended use of VI products; type of film/video stock needed (neg, interneg, print, 3/4", 1", etc.); approx number of screen feet: full justification for access to classified material.	SAF-LL, Wash DC 20330-5000
12	Foreign governments, international organizations or their representatives.	X	X		HQ USAF/CVAII or MAJCOM (if delegated authority)
13	Foreign nationals or foreign industries (other than representatives of foreign governments or international organizations).	X			ICA office serving the foreign country (see note)
14	Same as 13		X		HQ USAF/CVAII or MAJCOM (if delegated authority)
15	An Air Force activity		X		MAJCOM (CC) 1352 AVS/AVOS IN TURN

Rules	A	A B		D	E
	If the requester is	And material requested is		Then furnish in writing the	And send the request to
		Unclassified	Classified		
16	Other non-Air Force activities		X	Intended use of VI product; type of film stock/video tape needed (neg, interneg, print, ¾", 1", tape, etc.); approx number of screen feet; full justification for access to classified material; a statement describing the measures to be taken—at least equal to those in DOD 5200.1R/AFR 205-1, to safeguard and protect the material against unauthorized disclosure.	HQ USAF/SCV, Wash DC 20330-5190

Note: Requests originating within the United States may be sent to SAF/PA, Wash DC 20330-5000, for coordination with HQ USAF/CVAI(S) and ICA clearance.

§ 811.9 Requests for still VI media.

Rule	A	B C		D	E
	If the requester is	And material requested is		Then furnish in writing the	And send the request to
		Unclassified	Classified		
1	News media	X			SAF/PAMB, Wash DC 20330-5000 for regional, national or international release; servicing PA, for local release.
2	The general public including entertainment, documentary, advertisers, industrial media producers, editors & writers.	X		Story outline or ad copy; intended use of the material; type of material needed (neg, print, interneg); required number of prints, slides, negs, etc..	SAF/PAMB, Wash DC 20330-5000
3	An Air Force or other federal government agency.	X			DOD Still Media Records Center, ATTN: Code LGP-R, Bldg 168, Anacostia Naval Station, Wash DC 20374-1681
4	A federal government contractor (to meet VI requirements specified in federal contract).	X			USAF plant representative
5	An Air Force plant representative (to meet a federal government contractor's needs specified in federal contract).	X			SAF/PA, Wash DC 20330-5000
6	An Air Force contractor (to meet VI requirements specified in a USAF contract).		X	Intended use of the material, type of material needed (print, neg, interneg);.	AF plant representative
7	An Air Force plant representative (to meet a federal government contractor's needs specified in a USAF contract).		X	Required number of prints, slides, negs, etc.; a full justification for access to classified material.	MAJCOM (CC). DOD Central Still Media Records Center
8	A nonfederal government agency (state, county, territorial, municipal).	X		Intended use of the material; type of material needed (neg, print, interneg); required number of prints, slides, negs, etc; a certification that the requested material cannot be procured reasonably and expeditiously through ordinary business channels.	SAF/PA, Wash DC 20330-5000
9	Members of Congress	X	X		SAF/LL, Wash DC 20330-5000

Rule	A	B	C	D	E
	If the requester is	And material requested is		Then furnish in writing the	And send the request to
		Unclassified	Classified		
10	Foreign governments, international organizations or their representatives.	X	X	Intended use of the material; type of material needed (print, neg, interneg); required number of prints, slides, negs, etc.; a full justification for access to classified material.	HQ USAF/CVAII or MAJCOM (if delegated authority)
11	Foreign nationals or foreign industries other than representatives of foreign governments or international organizations.	X			Central Still Media Records Center
12	Foreign nationals or foreign industries other than representatives of foreign governments or international organizations.		X		HQ USAF/CVAII or MAJCOM (if delegated authority)
13	An Air Force activity		X		MAJCOM (CC), DOD Central Still Media Records Center. IN TURN HQ USAF/SCV, Wash DC 20330–5000
14	A non-Air Force activity		X	Intended use of the material; type of material needed (neg, print, interneg); required number of prints, slides, negs, etc.; a full justification for access to classified material; a statement describing the measures taken—at least equal to those in DOD 5200.1–R/AFR205–1, to safeguard and protect the material against unauthorized disclosure.	

Note: Requests originating within the United States may be sent to SAF/PA, Wash DC 20330–5000 for coordination with HQ USAF/CVAII and PA clearance.

[FR Doc. 87–23281 Filed 10–7–87; 8:45 am]
BILLING CODE 3910–01–M

32 CFR Part 811a

Visual Information Documentation (VIDOC) Program

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This part is being revised to update functional address symbols and implement new terminology. This part establishes policy for the management of the Air Force visual information documentation (VIDOC) program. It implements Department of Defense (DOD) Directive 5040.2, and describes how the program is accomplished.

DATE: Comments must be submitted on or before November 9, 1987.

ADDRESS: HQ USAF/SCV, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Major Cultice, HQ USAF/SCV, Washington, DC 20330, telephone (202) 695–9610.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 32 CFR Part 811a

Archives and records, Motion pictures.

Therefore, 32 CFR Part 811a is revised to read as follows:

PART 811a—VISUAL INFORMATION DOCUMENTATION (VIDOC) PROGRAM

Sec.

811a.1 Purpose.
811a.2 Material sources for the VIDOC program.
811a.3 Disposition of VI documentation materials.

Authority: 10 U.S.C. 8013.

§ 811a.1 Purpose.

This part establishes policy for the management of the Air Force visual information documentation (VIDOC) program. It implements Department of Defense (DOD) Director 5040.2 and describes how the program is accomplished. It applies to all Air Force personnel including United States Air Force Reserve and Air National Guard units and members. The term major command (MAJCOM), when used in this part includes separate operating agencies and direct reporting units. The Air Force VIDOC program:

(a) Records, through visual information (VI) means (still photographs, motion pictures, video, audio tape, and so forth) imagery of significant Air Force events that document the employment, growth, progress, and exercise of Air Force resources during peacetime and in combat.

(b) Collects and preserves visual imagery of significant Air Force events with known or potential historical or archival value.

(c) Ensures imagery which depicts the prime mission, support activities, and significant events of key Air Force organizations is available. VIDOC imagery or products are used for many purposes, at all levels, in the Air Force. Examples are:

(1) *Immediate use.* Documentation used to help analyze and evaluate concepts and results of deployments, contingencies, tests, exercises, and so forth, during peacetime and in combat to support Air Force, DOD, and national objectives. VIDOC provides source material for slides, motion picture clips, video tapes, multimedia products, and

so forth; used for training, management, information, and briefing purposes. In wartime, products are used to support theater commanders psychological operations objectives, operational briefings, status reports, public affairs requirements, collateral intelligence, and the historical record.

(2) *Future use.* VIDOC materials with long-term or permanent value are retained in DOD central record centers, the National Air and Space Museum, and the National Archives. These make up the pictorial records of development, growth, and progress of air power and provide a continued resource for VI productions and other media presentations.

§ 811a.2 Material sources for the VIDOC program.

(a) The primary sources of VI documentation materials are:

(1) Aerospace Audiovisual Service (AAVS) documentation crews, both ground and aerial, whose primary mission is to acquire Air Force imagery in peacetime and in combat.

(2) Base VI support centers (VISC).

(3) Optical instrumentation and engineering imagery of Air Force research, development, test, and evaluation (RDT&E) projects, including that material originated by defense and aerospace contractors.

(4) Armament delivery recording (ADR) imagery.

(b) Although the imagery may not originate from a documentation requirement, when properly processed, indexed, and stored, it serves as a valuable source of VI documentation.

§ 811a.3 Desposition of VI documentation materials.

(a) VI materials generated or acquired by Air Force members, employees, or contractors in conducting official duties are the property of the United States Air Force. Personal use of VI material for sale or any other reason not directly related to an official Air Force activity is prohibited. Any deviation from this policy must be approved by HQ USAF/SCV. This policy also applies when Air Force members or employees, by choice or agreement, occasionally use personally owned equipment or supplies in conducting official duties.

(b) Photographs, motion picture films, transparencies, video tapes, audio recordings, and other VI products are subject to safeguards and release requirements when released outside the Department of Defense (see Part 806 and Part 837 of this chapter).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-23280 Filed 10-7-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8-86-12]

Regulated Navigation Area in Houston Ship Channel

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of rulemaking.

SUMMARY: The Coast Guard withdraws the proposed rule to establish a Regulated Navigation Area in the Houston Ship Channel that appeared at page 42595 in the **Federal Register** of Tuesday, November 25, 1986 (51 FR 42595) due to adverse public comment.

EFFECTIVE DATE: October 8, 1987.

FOR FURTHER INFORMATION CONTACT: LT Edwin M. Stanton, project officer, Commander (merps), Eighth Coast Guard District, Rm. 1341, Hale Boggs Federal Bldg., 500 Camp St., New Orleans, LA 70130-3396, (504) 589-6901.

SUPPLEMENTARY INFORMATION: On 25 November, 1986, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (CGD8-86-12). Interested persons were asked to submit comments and five comments were received.

Drafting Information

The drafters of these regulations are CDR Al Dujenski, project officer, Coast Guard Port Safety Station Houston; and LCDR J.J. Vallone, project attorney, Eight Coast Guard District Legal Office.

Discussion of Comments

Five comments were received. All five comments noted that the present system of voluntary cooperation is working well and that the regulations are unnecessary. All five comments also stated that the proposed regulations would have a direct negative economic impact on marine commerce in the Port of Houston, by placing unrealistic time and reporting requirements on bunkering and breasted-up cargo operations. One of the five commented that the requirement to clear the channel in 30 minutes would provide sufficient time to safely shut down and survey a bunker or liquid cargo operation.

Conclusion

The Coast Guard concludes that the imposition of restrictions on vessels mooring abreast in the Houston Ship Channel is unnecessary and not conducive to the facilitation of maritime commerce.

Notice of Proposed Rulemaking CGD8-86-12 (51 FR 42595) is cancelled.

No further rulemaking on this subject is being considered.

Dated: September 25, 1987.

J.D. Sipes,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 87-23348 Filed 10-7-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 82; FRL-3274-4]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces that the Environmental Protection Agency is proposing approval of a revision to the New Jersey State Implementation Plan (SIP) for lead. This revision consists of material prepared by the New Jersey Department of Environmental Protection pursuant to a SIP commitment to conduct studies and implement appropriate actions in order to provide for attainment and maintenance of the ambient air quality standard for lead in the vicinity of the United States Metals Refining Company (USMR) in the Borough of Carteret. Among the actions proposed are specific measures to control fugitive dust emissions from the USMR plant property due to the demolition of buildings at the site and to continue ambient air monitoring for lead in the vicinity of the facility until at least August 1989.

DATE: Comments must be received by November 9, 1987. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

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Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

New Jersey Department of Environmental Protection, Division of Environmental Quality, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1986 [51 FR 42565] The Environmental Protection Agency (EPA) approved, with the exception of the Borough of Carteret, the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS) for lead. As described in that notice, EPA was unable to take final action with respect to the Borough of Carteret because of the need for a revised control plan for United States Metals Refining Company (USMR), a smelting facility located in the area. Even though the State had issued an Administrative Consent Order requiring specific control measures to result in 90 percent control efficiency of fugitive process emissions at the USMR facility and modeling of air emissions at the facility had shown that implementation of the measures contained in this order should have provided for the attainment of the lead standards in its vicinity, violations of the lead NAAQS continued to be monitored.

On March 4, 1986, the New Jersey Department of Environmental Protection (NJDEP) issued an Administrative Order requiring the development and implementation of a compliance plan for the facility. This new order includes air quality modeling analysis and an extension of the requirements for ambient sampling. USMR submitted the compliance plan on August 11, 1986. This plan demonstrates that the principal contributors of lead to the ambient air were baghouse dust piles and stockpile and process fugitive emissions. In September of 1986, USMR shut down operations at all lead emitting sources on the site (except the laboratory which is permitted to emit 0.015 tons per year of lead) and announced plans for the development of the property for other uses. As a consequence of this shut down, the facility's air pollution control permits were terminated by the State. The subsequent demolition of the plant raised the question of what control measures, if any, were needed to attain and maintain the ambient standard for lead.

The State Submittal

On July 23, 1987 the State of New Jersey sent EPA a SIP revision for USMR. The primary purpose of this submittal was to fulfill requirements necessary to complete the State's SIP for lead. Today's action only discusses the adequacy and approvability of revisions to the New Jersey SIP for lead as they relate to the USMR facility. A public announcement requesting comments on this SIP submittal was made in the *New Jersey Register* on July 20, 1987. At the request of the State, EPA is proposing approval of this revision concurrently with New Jersey and will take final action only after New Jersey completes its review and adoption process.

This specific SIP revision addresses those violations of the lead standard which were recorded from late 1984 through mid-1986. It includes a modeling demonstration which shows that these monitored violations resulted from both stack and fugitive process emissions during plant operations. It is important to note that there are some minor technical deficiencies in the modeling and air quality demonstration that were performed to assess the impact of the facility. However, it is clear that, because the source is shut down, and its major emission points eliminated, the U.S. Metals facility will no longer cause violations of the lead standard. However, it also shows that wind-blown dust from piles of baghouse dust which had accumulated were a significant contributor to the high ambient concentration of lead and that operations at the Anchor Abrasives plant (which processes slag that was generated by USMR), located in Carteret adjacent to the USMR facility, have no significant effect on the ambient lead concentrations ($<.001$ ton/year).

Operations at the USMR facility have now been permanently terminated and the piles of dust which contributed to the ambient concentration have been removed. Therefore, the control strategy needed for the attainment and maintenance of the NAAQS includes the permanent shutdown of the plant's significant lead emitting operations, the removal of loose piles of baghouse dust, and other measures, such as wetting down and vacuum sweeping, to prevent any lead contaminated dust from being blown away. Similar dust control measures will be implemented during the dismantling of the plant and monitoring will be continued until attainment of the standard has been demonstrated for two consecutive years. NJDEP will be notified in advance by USMR of each phase of the demolition and dismantling of the facility.

Finding

EPA finds that the measures being carried out by USMR to end operations, remove the dust piles, and control wind-blown dust will provide for the attainment and continued maintenance of the lead standard at this location.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

The revisions are being proposed under a procedure called "parallel processing" (June 23, 1982, 47 FR 27073). If the proposed revision is substantially changed by the State from that specified in today's notice, EPA may request additional public comment. Otherwise, EPA proposes to take final rulemaking action. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New Jersey and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time necessary for final approval of this SIP revision.

Conclusions

EPA is proposing to approve the revision pertaining to the Borough of Carteret as a part of the New Jersey lead SIP. EPA is proposing expressly to incorporate the strategy for the USMR facility into the SIP for the State of New Jersey. This revision has been found to fulfill the commitment made by New Jersey in its lead SIP to study the facility and implement appropriate control measures.

This notice is issued as required by Section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Date: August 25, 1987.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 87–23302 Filed 10–7–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 84

Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Proposed rule; extension of comment period, change in address and notice of meetings.

SUMMARY: On August 27, 1987, the National Institute for Occupational Safety and Health published in the **Federal Register** (52 FR 32401) a proposed rule for certification of respiratory protective devices. Due to requests from the public, this Notice announces that NIOSH is extending the period for public comment on its proposed rule. The close of the comment period has been changed from October 26, 1987, to December 28, 1987.

The administrative record for this rulemaking may be viewed in the NIOSH Docket Office in Atlanta, Georgia, during normal business hours of 8 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays. Due to requests from the public, this Notice further announces informal public meetings on that proposed rule in San Francisco, California, and Washington, DC, on the dates and at the addresses listed below.

DATES: Written comments on the proposed rule must be received at the NIOSH Docket Office before the close of business on December 28, 1987. Informal public meetings on the proposed rule are scheduled to begin at 9 a.m. on January 20, 1988, in San Francisco, California, and at 9 a.m. on January 27, 1988, in Washington, DC. The San Francisco meeting is scheduled for 1 day and the Washington meeting is scheduled for 2 days. Interested persons wishing to provide oral comments at one of the informal public meetings should file a request for appearance with the NIOSH Docket Office no later than the close of business January 5, 1988, for the San Francisco meeting and no later than the close of business January 12, 1988, for the Washington meeting. The record of the informal public meetings will remain open for 30 days following the close of the Washington meeting to allow interested persons to submit written statements or comments regarding oral presentations made at either public meeting.

ADDRESSES: Comments on the proposed rule should be mailed in triplicate to the NIOSH Docket Office, Mail Stop E–23, 1600 Clifton Road, NE, Atlanta, Georgia 30333. The Docket Office is now located at Room 506, 255 East Paces Ferry Road, NE, Atlanta, Georgia, telephone (404) 264–6890. These are changes from the address listed in the proposed rule. However, comments received at the address listed in the proposed rule will be forwarded to Atlanta.

Requests to participate in the public meetings should be mailed in duplicate to the NIOSH Docket Officer, Mail Stop E–23, 1600 Clifton Road, NE, Atlanta, Georgia 30333. The public meeting in San Francisco, California, on January 20, 1988, will be held at Room 300, City and County of San Francisco Public Health Building, 101 Grove Street, San Francisco. The public meeting in Washington, DC, on January 27–28, 1988, will be held at the First Floor Auditorium, back of the Great Hall, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Dr. Nelson Leidel, Docket Officer, National Institute for Occupational Safety and Health, Mail Stop D–37, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 264–6890 or (404) 329–3901

SUPPLEMENTARY INFORMATION: The administrative record of this rulemaking will consist of the August 28, 1987, Notice of Proposed Rulemaking, all other relevant **Federal Register** notices, agency records on this subject, all written submissions made in response to the Notices, and the record of the informal public meetings. The record of the informal public meetings will consist of the meeting schedules, transcripts made by NIOSH of the oral comments at the meetings, any written comments submitted by presenters at the meetings, and statements or comments regarding oral presentations made at either public meeting submitted by interested persons within 30 days following the close of the Washington public meeting. No written submission, or any portion thereof, made in response to this Notice will be received or held in confidence. The administrative record of the rulemaking will be made available for viewing and copying in the NIOSH Docket Office. All requests for any portion of the administrative record must be submitted in writing.

To facilitate computer entry of written comments into the administrative record, parties are encouraged, but not required, to submit all written comments in a format meeting the following guidelines: each of the three copies should be on paper measuring 8½-inch by 11-inch paper; with double-spaced text having top, bottom, and side margins of at least 1-inch width; and typed with a Courier 10, Courier 12, Courier 72, Elite 12, Letter Gothic, Prestige Pica 10, or Prestige Elite 12 typeface.

All interested persons are encouraged to submit written comments to assure receipt on or before the close of business December 28, 1987, and to advise the NIOSH Docket Office by the necessary date of their intent to participate in one of the informal public meetings. All requests for appearance at one of the informal public meetings should contain the name, address, and telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. NIOSH requests that oral presentations be limited to 15 minutes, if possible. Groups having similar interests are requested to combine their comments and present them through a single representative. NIOSH will assign the time available for each meeting among the persons who properly file a request for appearance.

After reviewing the submitted summaries and the requests for appearance, NIOSH will schedule each appearance and notify each participant by mail or telephone of the time assigned to the person and the approximate time the person's oral presentation is scheduled to begin. The meeting schedules will be placed on file in the NIOSH Docket Office.

The proceedings of the meetings will be transcribed. Any interested person may, consistent with the orderly conduct of each meeting, record or otherwise make a transcript of each meeting. Each participant may present relevant written information, data, or views for inclusion in the record of the meetings.

Any person who desires to submit an advance written statement may file three copies with the NIOSH Docket Office. A participant may be accompanied by a reasonable number of additional persons, space permitting.

If a participant is not present when his or her presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of a meeting, an attempt will be made to hear any scheduled participants who missed his or her assigned time. Interested persons attending a meeting who did not request an opportunity to make an oral presentation may be given an opportunity to do so at the conclusion of each meeting, at the discretion of the presiding officer.

Dated: October 2, 1987.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87-23240 Filed 10-7-87; 8:45 am]

BILLING CODE 4160-19-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposal to Reclassify Wild Nile Crocodile Populations in Zimbabwe From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment peirod.

SUMMARY: The Service extends the comment period on a proposed rule to reclassify wild Nile crocodile populations in Zimbabwe from endangered to threatened.

DATE: Comments on this proposal must be received by November 1, 1987.

ADDRESS: Comments and other information concerning the proposal should be sent to the Director (OES), Broyhill 500, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Nile crocodile occurs along the lower Nile, in parts of tropical and southern Africa, and in Madagascar. In 1983, the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora moved Nile Crocodile populations in Zimbabwe from Appendix I to II. This change in status recognized that Zimbabwe populations are not in immediate danger of extinction, but that certain threats still exist to the species, and prompted the Service to reclassify Zimbabwe's ranched Nile crocodiles from endangered to threatened (52 FR 23148).

On June 17, 1987 (52 FR 23152), the Service published a proposed rule to reclassify wild Nile crocodiles in Zimbabwe from endangered to threatened under section 4 of the Endangered Species Act of 1973. Because the Government of Zimbabwe did not have enough time to comment on the proposed rule, and because the Service desires to avail itself of the most complete and current information available in diciding a final course action, the period for comment on this proposal is extended to November 1, 1987. All information received by November 1, 1987, will be considered. The Service hereby requests all interested parties to provide any additional information regarding wild populations of the Nile crocodile in Zimbabwe

Authority

The authority citation for Part 17 continues to read as follows: 16 U.S.C. *et seq.;* Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1255; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 99-625, 100 Stat. 3500.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 29, 1987.

Frank Dunkle,

Director.

[FR Doc. 87-23294 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 195
Thursday, October 8, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87-112]

Genetically Engineered Tobacco Plant; Determination of Plant Pest Risk Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has reviewed a protocol submitted by Calgene, Inc., Davis, California, for the field testing of genetically engineered herbicide resistant tobacco plants. Based upon the data submitted in the protocol, APHIS has made a determination of the plant pest risk of the genetically engineered tobacco plants. APHIS has concluded that the field testing of the genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination.

ADDRESS: Copies of the APHIS opinion latter may be obtained by contacting Shirley Ingebritsen, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Sercice, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7907.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Medley, Director, Biotechnology Environmental and Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

SUPPLEMENTARY INFORMATION: On April 16, 1987, Calgene Inc., of Davis, California, submitted to the Animal and Plant Health Inspection Service (APHIS) a protocol for the field testing of genetically engineered tobacco plants in Yolo County, California. The genetically engineered tobacco plants were altered by the addition of a single gene, from the bacterium *Salmonella typhimurium*, for the purpose of making the plants resistant to glyphosate herbicide. The field testing is designed to evaluate the performance of the tobacco plants against glyphosate under field conditions.

The Federal Plant Pest Act, as amended (7 U.S.C. 150aa through 150jj), and regulations issued thereunder, requires APHIS to prevent the introduction and dissemination of plant pests in the United States. Pursuant to the Calgene, Inc. request, APHIS has reviewed the Calgene protocol to determine the plant pest risk of the proposed field trial of the genetically engineered tobacco plants. APHIS has determined that the proposed field trial of the genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination. The APHIS determination is not in the form of a "permit," but rather is an opinion letter, dated June 10, 1987, which concludes that the genetically engineered tobacco plants do not present a risk of plant pest introduction or dissemination.

The basis for this determination was as follows:

1. The plasmid of *Agrobacterium tumefaciens* used to infect and transform the subject tobacco plants was biologically "disarmed" and the transformed tobacco cells were tested and shown to be free of *A. tumefaciens*. Therefore, it is extremely unlikely that the plasmid used to transfer to the tobacco plants, the gene *aroA* for 5-enopyruvl shikimate-3-phosphate (EPSP) synthase, which is the glyphosate resistance gene, and the antibiotic marker would be able to incite disease in the recipient plant or to escape and infect other plants in the environment.

2. Both the Kanamycin (antibiotic marker) and the herbicide resistance genes have been stably incorporated into the genome of the recipient tobacco plants. The risk of horizontal movement of these genetic traits from the experimental tobacco plants into the genetic environment is negligible because of their stable incorporation and the complete lack of a suitable mechanism to vector the genetic material.

3. The donor organism used to supply the glyphosate resistance gene (*aro*A) was the bacterium *Salmonella typhimurium*. The modified *aro*A gene codes for an enzyme (EPSP synthase) that is less sensitive to glyphosate than its wild-type counterpart. A complete description of the modified *aro*A gene, including the method of isolation and complete gene sequence, is contained in two papers published in refereed journals. Data is provided to show that the modified *aro*A gene is stably integrated in these tobacco lines and spread of the genetic determinant will be prevented by rigorous monitoring and prevention of flowering and concomitant pollen production. Therefore, spread of the gene does not pose a risk of plant pest introduction or dissemination. The other gene, Kanamycin resistance, which is also involved in the transformation of the tobacco, has no inherent plant pest characteristics, and functions only as a genetic marker in the initial cell selection process following transformation. Therefore, it poses no plant pest risk.

4. It appears that the field test is to be conducted in such a way to insure that there will be no significant risk of plant material from field testing surviving in the environment beyond the termination of the experiment, or becoming mixed with the genetic material of other tobacco populations outside of the test site at the Yolo County, California, facility.

Done in Washington, DC, this 5th day of October, 1987.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–23344 Filed 10–7–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Participation Agreement

Form Numbers: Agency—ITA 4008P and 4008P(a); OMB—0625–0147
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 3,000 respondents; 1,000 reporting hours
Needs and Uses: The International Trade Administration sponsors up to 200 overseas trade promotion events each fiscal year. These events include trade fairs, trade and seminar missions, and catalogue or video-catalogue shows in which U.S. companies display, demonstrate, and promote their goods and services in foreign markets. The Participation Agreement is the vehicle by which individual firms agree to participate in ITA's trade promotion program, identify the products or services they intend to sell or promote, and record their required financial contribution to the Department of Commerce.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: October 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–23345 Filed 10–7–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85–A0015."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #85–00015, which was issued on January 27, 1986 (51 FR 3996, January 31, 1986)

Applicant: California Dried Fruit Export Trading Company, 64 North Fulton Street; P.O. Box 12148, Fresno, California 93776, Contact: Mr. Kermit W. Almstedt, Legal Counsel, Telephone: (202) 383–5367.
Application #: 85–A0015
Date Deemed Submitted: September 28, 1987

Current Members (in addition to applicant): A & M Farms, Inc.; American Raisin Packers; Boghosian Raisin Packing Co., Inc.; Bonner Packing Company; California Prune Packing Co.; Caruthers Raisin Packing Company; Central California Raisin Packing Company; Champion Raisin International; Chooljian & Sons dba Del Rey Packing Company; Choolijian Bros. Packing Co., Inc.; Enoch Packing Co., Inc.; Lion Enterprises, Inc. (d/b/a Lion Dehydrator; Lion Packing Company, Lion Ranches); Lion Packing Company; National Raisin Company; Prize Exports, Inc.; Sun-Diamond Growers of California; Sun-Maid Growers of California; Sunsweet Growers Inc.; Tagus Ranch Packing; and Victor Packing, Inc.

Summary of the Application

California Dried Fruit Export Trading Company seeks to add the following entities as "Members" of the certificate:

1. Fresno Cooperative Raisin Growers, Inc. of Fresno, California.
2. Madera Raisin Sales Co. of Madera, California.
3. West Coast Growers and Packers, Inc. of Selma, California (controlling entity: Commercial International Corporation).

Dated: October 5, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–23418 Filed 10–7–87; 8:45 am]

BILLING CODE 3510–DR–M

Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held October 28, 1987, 9:30 a.m., Room 3708, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of sensitivity hierarchy of technical data transfer for switching.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the

extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Date: October 2, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87–23272 Filed 10–7–87; 8:45 am]

BILLING CODE 3510–DT–M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held October 27, 1987, 9:30 a.m. Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

1. Opening remarks by the Chairperson.
2. Review and approval of the minutes of August 11, 1987, meeting.
3. Presentation of papers or comments by the public.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Date: October 2, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87–23273 Filed 10–7–87; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 606]

Marine Mammals; Modifications of Permit Issued to the Naval Ocean Systems Center (P8F)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 606 issued to the Naval Ocean Systems Center, P.O Box 997, Kailua, Hawaii 96734, on August 28, 1987, (52 FR 33615) is corrected in the following manner:

Section B.6 is replaced by:

"6. This Permit is valid with respect to the importation authorized herein until December 31, 1992."

This modification becomes effective October 2, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: October 2, 1987.

[FR Doc. 87–23318 Filed 10–7–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition; Correction

In FR Doc. 87–22139 appearing on page 36084 in the issue of Friday, September 25, 1987, make the following correction:

On page 36084, under the listing for Screwdriver, Flat Tip, the four-digit numbers reading "5210–" should read "5120–".

C.W. Fletcher,

Executive Director.

[FR Doc. 87–23288 Filed 10–7–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 29, 1987.

The USAF Scientific Advisory Board Armament Division Advisory Group will meet on November 18, 1987, from 8:00 a.m. to 5:00 p.m. and on November 19, 1987, from 8:00 a.m. to 3:00 p.m. at Armament Division Headquarters, Building 1, Eglin Air Force Base, Florida.

The purpose of this meeting is to receive briefings on and to advise the Commander, Armament Division, on the sensor fuzed weapon full-scale development program.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

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For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–23271 Filed 10–7–87; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers; Department of the Army

Intent To Prepare a Joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the Proposed San Pedro Bay Ports 2020 Plan; Phase I/Los Angeles; Long Beach Harbors Feasibility Study, Los Angeles County, CA

AGENCY: Los Angeles District, U.S. Army Corps of Engineers, Department of Defense and the Port of Los Angeles and the Port of Long Beach.

ACTION: Notice of intent to prepare a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR).

SUMMARY:

1. Proposed Action

A joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) will be prepared to evaluate alternatives to the proposed San Pedro Bay Ports 2020 Plan Phase I/ Los Angeles—Long Beach Harbors Feasibility Study. This EIS/EIR is being prepared for two purposes. The first is to satisfy the Corps of Engineers regulatory requirements for evaluation of permit applications for dredging and landfilling activities associated with Phase I projects pursuant to section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. These projects include Pier K in the Port of Long Beach, the South landfill (Pier 400) in the Port of Los Angeles, and a joint transportation corridor. In addition, the Port of Long Beach Pier J landfill and the Port of Los Angeles Pactex Project are considered part of the Phase I of the 2020 Plan for the purposes of the Federal Feasibility Study. The environmental documents already published for these two projects shall be incorporated by reference. The second purpose for preparation of the EIS/EIR is to satisfy requirements for environmental review of the proposed Corps of Engineers' Feasibility Study for channel improvements.

2. Alternatives

The proposed project consists of creating landfill in the outer portion of San Pedro Bay within both the Port of Los Angeles and the Port of Long Beach, creation of landfill to support a joint transportation corridor to Terminal Island, and dredging navigation channels to planned and existing landfills. Approximately 1200 acres of landfill may be created. Alternatives to be evaluated will include, but not necessarily be limited to, no project, other landfill configurations, other nonlandfill alternatives which could accommodate projected increases in cargo, and ocean disposal of material dredged from the navigation channels.

3. Scoping Process

An extensive mailing list is being developed which includes Federal, state, and local agencies and other interested public and private organizations and parties. Each entity on the mailing list will receive a copy of the scoping public notice which will have details of the proposed studies and dates of public scoping meetings. Formal coordination with appropriate Federal, state, and local agencies has begun. Public meetings will be held during the review period of the draft EIS/EIR. Specific meeting dates, times, and places will be published in local newspapers.

4. Potentially Significant Issues

Potentially significant issues identified include impacts to water quality and circulation, biological resources, endangered species, land and water use, transportation, recreation, and cultural resources.

5. Availability of Joint EIS/EIR

The draft EIS/EIR is expected to be available to the public in early 1989.

6. Comments

Comments and questions regarding the project may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Attn: Ms. Shannon Cunniff, CESPL–PD–RP, P.O. Box 2711, Los Angeles, CA 90053–2325, (213) 894–0239.

Tadahiko Ono,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–23270 Filed 10–7–87; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 87–60; Certification Notice-5]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants; Texas-New Mexico Power Co. et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certificaiton has been filed. Three owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Texas-New Mexico Power Company, Robertson County, TX	8–24–87	Combined Cycle	600	Robertson County, Texas
Ada Cogeneration, Walnut Creek, CA	9–9–87	Combined Cycle	29.5	Ada, MI
Enserch Development Corp., Houston, TX	9–16–87	Combined Cycle	255	Sweetwater, TX

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certificaiton procedure.

Issued in Washington, DC, on September 24, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-23356 Filed 10-7-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-670-000 et al.]

Montana Power Company et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Montana Power Edison

[Docket No. ER87-670-000]

October 1, 1987.

Take notice that on September 25, 1987, Montana Power Company (Montana Power) tendered for filing Notice of Cancellation of Montana Power Rate Schedules FERC Nos. 154, 155, 156, 157 (and Supplement No. 1), 158 (and Supplement No. 1), 159 (and Supplement No. 1), 160, 161 and 162. Montana Power states that the short term power sales agreements have expired and are to be cancelled in accordance with their own terms. Montana Power states that Notice of Cancellation have been submitted to the participating parties.

Comment date: October 15, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Co.

[Docket No. ER87-676-000]

October 2, 1987.

Take notice that on September 28, 1987, Carolina Power & Light Company tendered for filing proposed changes in its Service Agreement FPC No. T1R1.S18. with the Wake Electric Membership Corporation (EMC). This filing reflects the installation of Wake EMC's new point of delivery, Pocomoke 115 kV, with an in-service date of early November 1987. The Pocomoke 115 kV point of delivery will have special metering facilities to provide metering pulse information as provided under Carolina Power & Light Company's additional facilities plan.

Comment date: October 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Co.

[Docket No. ES87-41-000]

October 2, 1987.

Take notice that on September 24, 1987, Central Illinois Public Service Company (Applicant), filed an Application with the Commission. pursuant to section 204 of the Federal Power Act, seeking authorization to issue from time to time, short-term debt obligations in the aggregate maximum principal amount not exceeding $120,000,000 outstanding at any time with final maturities not later than December 31, 1989.

Comment date: October 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Cliffs Electric Service Co., Upper Peninsula Generating Co., Upper Peninsula Power Co.

[Docket No. ER87-632-000]

October 2, 1987.

Take notice that on September 28, 1987, Cliffs Electric Service Company, Upper Peninsula Generating Company, and Upper Peninsula Power Company tendered for filing additional information to the 1978 Basic Agreement (FERC Rate Schedule No. 22). The information is a three page exhibit which sets forth the basis upon which the parties to the 1978 Basic Agreement negotiated a revision to the procedure by which costs associated with the new dispatch center will be shared.

Comment date: October 19, 1987, in accordance with Standard Paragraph E at the end of this document.

5. Gulf Power Co.

[Docket No. ER87-671-000]

Take notice that on September 28, 1987, Gulf Power Company (Gulf) tendered for filing revised sheets to the AEC-Gulf Power Company Interconnection Agreement. These revised sheets, consisting of Informational Schedules A, B, T (for Levels B-2, C, D, E), P-11 of Exhibit A, and M-14 of Exhibit T, reflect a reduction in rates for transmission service under Service Schedules A, B, and T resulting from a negotiated reduction in the return on common equity component of the formulary rates from 15.25% to 14.00%. These revisions are proposed to become effective for service on September 1, 1987; and Gulf, therefore, requests waiver of the Commission's notice requirements to allow such effective dates.

The customer has consented to the proposed tariff change as evidenced by the executed letter of consent submitted with the filing.

Comment date: October 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Co.

[Docket No. ER87-675-000]

October 2, 1987.

Take notice that on September 28, 1987, Idaho Power Company (IPCo) of Boise, Idaho, tendered for filing rate reductions in compliance with the Federal Energy Regulatory Commission Order No. 475 in Docket No. 87-4-000 re Rate Changes Relating to Corporate Income Tax Rates for Public Utilities.

This filing regards rate reductions in wholesale contracts with the City of Weiser, Idaho, CP National Company and Sierra Pacific Power Company and transmission service agreements with Utah Power & Light Company and Pacific Power & Light Company (June 1, 1974), Pacific Power & Light Company (September 10, 1980), Sierra Pacific Power Company (May 29, 1981) and Utah Power & Light Company (March 19, 1982).

IPCo states that it has served copies of its filing on all parties who purchase wholesale or firm transmission service from IPCo.

Comment date: October 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Electric Light and Power Co.

[Docket No. ES87-42-000]

October 2, 1987.

Take notice that on September 25, 1987, the Iowa Electric Light and Power Company (Applicant) filed an Application pursuant to section 204 of the Federal Power Act with the Federal Energy Regulatory Commission (Commission) seeking authority to issue short-term notes in the aggregate principal amount of $75,000,000 with a final maturity date no later than December 31, 1990.

Comment date: October 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Co.

[Docket No. ER87-672-000]

October 2, 1987.

Take notice that on September 28, 1987, Kentucky Utilities Company (KU) tendered for filing an agreement for electric service to the City of Nicholasville (City) at the delivery point of the City's Shun Road Substation.

KU states that no reasonable billing estimates can be made since the load served will build up over a period of time and other loads transferred from other delivery points from time to time.

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KU further states that copies of the tendered filing have been sent to the City and the Kentucky Public Service Commission. KU proposed an effective date of October 15, 1987.

Comment date: October 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Co.

[Docket No. ER87-674-000]

October 2, 1987.

Take notice that on September 28, 1987, Northern States Power Company (Minnesota) tendered for filing the Supplement No. 3 to the Transmission Service Agreement between Northern States Power Company (NSP) and the State of South Dakota.

The Supplement No. 3 provides for a change in the amount of power and energy required to be wheeled by Northern States Power Company for the State of South Dakota from the Western Area Power Administration. The Transmission Service Agreement is on file with the Commission and is designated as FERC Rate Schedule No. 385.

Northern States Power Company requests this Supplement become effective on April 20, 1987, and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Co. of New Mexico

[Docket No. ER87-673-000]

October 2, 1987.

Take notice that on September 28, 1987, Public Service Company of New Mexico (PNM) tendered for filing a Precommercial Energy Sale Letter Agreement (Letter Agreement) between PNM and San Diego Gas & Electric Company (SDG&E).

The service to be provided under the Letter Agreement is the sale to SDG&E of varying amounts of on-peak and off-peak PNM precommercial energy generated by Palo Verde Nuclear Generating Station Unit 3. The price for the precommercial energy is based on 87 percent of SDG&E's hourly decremental costs, not to exceed $27/MWh on-peak and $17/MWh off/peak.

PNM requests an effective date of August 3, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon SDG&E and the New Mexico Public Service Commission.

Comment date: October 19, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23324 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-539-000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co. a Division of Tenneco Inc.

[Docket No. CP87-539-000]

September 29, 1987.

Take notice that on September 15, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-539-000, as supplemented on September 28, 1987, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign volumes of gas authorized for delivery to Connecticut Natural Gas Corporation (Connecticut Natural) near Greenwich, Connecticut to an existing delivery point near Putnam Lake, Connecticut and to upgrade the Putnam Lake metering facilities, under the authorization issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it presently provides service to Connecticut Natural of up to 36,794 Mcf of natural gas per day at several points, including the Greenwich and Putnam Lake delivery points. Tennessee has been authorized, in Docket Nos. CP86-251-000 and CP86-251-001, to deliver an additional 2,000 Mcf per day at the Greenwich delivery point, it is stated. Tennessee states that Connecticut Natural has requested that delivery of the additional 2,000 Mcf per day be made at Putnam Lake rather than at Greenwich. Tennessee further states that the total volumes to be delivered to Connecticut Natural under the proposed reassignment would not exceed the presently authorized delivery volumes and the change is not prohibited by Tennessee's existing tariff.

Comment date: November 13, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Lone Star Gas Co. a Division of Enserch Corp.

[Docket No. CP87-555-000]

September 29, 1987.

Take notice that on September 24, 1987, Lone Star Gas Company, a Division of Enserch Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87-555-000 an application pursuant to section 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and for permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to install and operate a 370 horsepower compressor station on its Line H-3, replace 2.80 miles of its 4-inch pipeline H-3 with 6-inch and 4-inch pipeline, and a crossover between its Line H-3 and Line T. Applicant also requests authorization to construct and operate facilities necessary to connect to its Line T all existing taps on a portion of its existing Line H-3 in interstate commerce, and to operate a pipebridge in interstate commerce. Applicant further requests authorization to abandon approximately 13.4 miles of its Line H and a small portion of its Line H-1.

The facilities Applicant proposes to construct, operate and/or abandon are or will be located in Cotton County, Oklahoma and Clay County, Texas, it is stated. Applicant estimates that the cost of the facilities to be constructed will be $430,910.

Applicant states that the requested proposed construction and abandonment of facilities are necessary because of recent flooding in the North Texas area damaged Applicant's Lines H and T at the Red River.

Comment date: October 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP87–553–000]

October 1, 1987.

Take notice that on September 22, 1987, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing address is P.O. Box 1492, El Paso, Texas, 79978, filed an application in Docket No. CP87–553–000 under section 7(b) of the Natural Gas Act, for permission and approval to abandon certain services and properties to El Paso Production Company (El Paso Production) effective July 1, 1986, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that on February 6, 1987, El Paso Production filed with the Commission an application in Docket No. CI87–290–000 for authorization to sell and deliver natural gas to El Paso, as successor-in-interest to El Paso, effective July 1, 1986. The instant application is a companion to El Paso Production's successor-in-interest application in Docket No. CI87–290–000. The details of the transfer of El Paso's title and interest in certain gas properties to El Paso Production is fully described in El Paso Production's companion application in Docket No. CI87–290–000. Applicant states that the transfer is a result of corporate consolidation of the overall responsibilities for the exploration, development, and production of natural gas from these transferred properties into a separate corporate entity, whose primary purpose is the production of oil and natural gas. Accordingly, in connection with the corporate realignment of responsibilities as to these properties, El Paso proposes to abandon said properties (together with wells, wellhead equipment and appurtenances) by transfer to El Paso Production. Applicant states that all of the acreage transferred to El Paso Production subject to this application continues to be committed to El Paso and its customers and that, upon approval, the sale and price of the gas will continue to be subject to present and future orders, rules and regulations of the Commission.

As described more fully in El Paso Production's companion application in Docket No. CI87–290–000, El Paso has transferred to El Paso Production all of its interest in producing properties, including wells, wellhead equipment, and apputenances for two categories of gas production, "Old Wells on Old Leases"—production from wells commended prior to January 1, 1973 on leases acquired prior to October 8, 1969 and "New Wells on Old Leases"—Production from wells commenced on or after January 1, 1973, on leases acquired prior to October 8, 1969, as such classifications are established according to the manner in which the gas production therefrom is to be valued or priced by El Paso in accordance with Section 11.3 of the Stipulation and Agreement in Settlement of Rate Proceedings filed March 16, 1983 in Docket No. RP82–33–000, *et al.* Accordingly, El Paso seeks those regulatory approvals necessary under the NGA in connection with the transfer of its interest in certain gas producing properties to El Paso effective July 1, 1986.

Comment date: October 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Algonquin Gas Transmission Co.

[Docket No. CP87–554–000]

October 2, 1987.

Take notice that on September 23, 1987, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP87–554–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to render a firm transportation service and to construct and operate certain required facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to render a firm transportation service to Bristol and Warren Gas Company, Central Hudson Gas & Electric Corporation, Colonial Gas Company, Town of Middleborough, Massachusetts, The Pequot Gas Company, South County Gas Company and Valley Gas Company (collectively referred to as the Algonquin Shippers) pursuant to a proposed Rate Schedule PSS–T to be filed as part of Applicant's FERC Gas Tariff Second Revised Volume No. 1. It is indicated that Rate Schedule PSS–T service is related to a long-term firm storage and firm transportation service to be rendered by PennEast Gas Services Company (PennEast). It is further indicated that such storage and transportation service by PennEast would be offered for a primary term beginning April 1, 1988, and continuing through March 31, 2011.

Applicant proposes to provide the following maximum daily transportation quantities for the respective Algonquin Shippers:

FIRM TRANSPORATION QUANTITY IN MMBTU PER DAY

Customer	Nov. 15, 1988	Nov. 15, 1989	Nov. 15, 1990
Bristol and Warren Gas Company	784	778	781
Central Hudson Gas & Electric Corporation	3,855	5,741	5,763
Colonial Gas Company	1,992	1,978	1,986
Town of Middleborough, Massachusetts	149	198	249
The Pequot Gas Company	120	120	120
South County Gas Company	239	237	238
Valley Gas Company	963	956	960
Total	8,102	10,008	10,097

Applicant states that these Algonquin Shippers have requested Applicant to provide firm transportation service on Applicant's pipeline system for the gas quantities available to them from PennEast. Applicant further states that such service by Applicant would involve the receipt of gas from PennEast at Lambertville, New Jersey for the account of an Algonquin Shipper, transportation and redelivery on a firm basis of such quantities at designated deliver points with Applicant. It is indicated that the Algonquin Shippers requesting service have entered into precedent agreements (attach as Exhibit I to the application) with Applicant dated April 9, 1987, which contemplates commencement of initial firm transportation service by Applicant on or about November 15, 1988, pursuant to a service agreement under Rate Schedule PSS–T (attached as Exhibit P to the application).

In order to render the proposed firm transportation service, Applicant proposes to construct and operate the following facilities:

1. Approximately 1.3 miles of 16" G–4 system loop from the system tap to Woods Road in Tiverton, Rhode Island;

2. Approximately 0.6 miles of 16" G–5 system loop from the end of the existing G–5 system loop to downstream of Route 6 in Seekonk, Massachusetts;

3. Approximately 1.2 miles of 20" G–8 system loop from the end of the existing G–8 system 20-inch loop to the G–9 system tap in Plymouth, Massachusetts;

4. Approximately 1.2 miles of 12" I–4 system loop from the system tap to the Westwood Meter & Regulator Station in Westwood, Massachusetts;

5. A meter and regulator station at Cumberland, Rhode Island;

6. Miscellaneous meter station modifications; and

7. Restage various existing compressor units.

Applicant states that the proposed facilities would be constructed during the summer of 1988 for an in-service date of November 15, 1988. Applicant estimates the cost of the facilities to be $8,013,000.

Applicant proposes to recover its facilities costs through a PSS–T monthly demand charge. Applicant states that it would also charge a commodity charge for transportation quantities within the maximum daily quantity. Applicant further states that quantities in excess of the maximum daily quantity would be subject to overrun charges. It is indicated that the rates for commodity related charges are based upon those set forth in Applicant's pending section 4 rate filing in Docket No. RP87–14–000.

Common date: October 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. K N Energy, Inc.

[Docket No. CP87–549–000]

October 2, 1987.

Take notice that on September 21, 1987, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP87–549–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Applicant be allowed to operate a sales tap for the delivery of gas to an end-user under authorization issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes the operation of a sales tap to an end-user, Nucor Steel Corporation (Nucor), located near its jurisdictional pipeline in Madison County, Nebraska. Applicant states that the proposed sales tap is not prohibited by any of its existing tariffs, and that the sale will have no impact on K N's peak day and annual deliveries since K N presently serves Nucor indirectly.

Applicant proposes to sell approximately 4,500 Mcf on a peak day and 900,000 Mcf annually to Nucor. It is stated that the subject gas will be delivered through an existing sales tap via Minnegasco, Inc., a local distribution company and wholesale customer of Applicant. Applicant states that Minnegasco, in turn, resells the gas at retail to its customers, including Nucor, in and around the town of Norfolk, Nebraska. It is stated that Minnegasco supports the direct sale by Applicant to Nucor and has agreed to transport through its existing distribution system gas purchased by Nucor from Applicant, and to deliver such gas to Nucor at Nucor's steel plant located in Minnegasco's distribution system in the Norfolk area.

Comment date: November 16, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP87–542–000]

October 2, 1987.

Take notice that on September 16, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–542–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon certain metering facilities, under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Northern proposes to abandon two 23M meters from its Black River Falls Town Border Station No. 2 located in Jackson County, Wisconsin. Northern explains that Black River Falls No. 2 was installed to deliver natural gas to Wisconsin Gas Company (Wisconsin Gas) for resale to Jackson County Iron Company (Jackson County Iron). Northern further explains that Jackson County Iron has shut down and that Wisconsin Gas has requested Northern to abandon and remove the two 23M at Black River Falls No. 2. Northern states that the meters would be removed and used elsewhere on Northern's system. It is explained that the estimated cost to remove the meters is $1,000.

Comment date: November 16, 1987, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP87–558–000]

October 1, 1987.

Take notice that on September 28, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–558–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to realign certain volumes of Contract Demand and Seasonal Service to future deliveries of natural gas to Iowa Public Service Company (IPSC) and to modify two (2) delivery points and appurtenant facilities to be served by IPSC, under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that by letter dated September 9, 1987, IPSC advised Northern that it wished to realign certain volumes purchased under Northern's Rate Schedules CD–1 and SS–1 between existing delivery points commencing with the 1987/1988 contract year. Northern further states that in accordance with IPSC's request and the Service Agreements dated September 25, 1987, between the parties, it proposes to realign volumes as follows:

Delivery point	SS–1	CD–1	Total
Anoka #1		225	225
Anoka #1A		625	625
Dayton		2,850	2,850
Elk River #1	(200)	400	200
Lexington #1A	(200)	200	
Ham Lake	400	1,200	1,600
Perry, Iowa		1,000	1,000
Yankton, SD		700	700
Terra Chemical		(7,200)	(7,200)
Total			

Northern states that the realignment of volumes between existing delivery points as herein described is within the firm entitlement presently authorized for IPSC. Northern further states that the volumes to be reassigned are presently sold to IPSC under Rate Schedules CD–1 and SS–1 of Northern's FERC Gas Tariff, Third Revised Volume No. 1, it is indicated. Northern explains that no changes are proposed for WPS–1 and PS–1 volumes sold and delivered by Northern to IPSC.

It is stated that IPSC has also informed Northern that the areas served by the Anoka No. 1A and Yankton No. 1 town border stations (TBS) has experienced considerable expansion over the past several years, with a subsequent load increase due to additional residential and commercial customers. In order to accommodate the delivery of natural gas to IPSC at the Anoka No. 1A and Yankton No. 1 TBS', Northern indicates it must modify the existing metering capacity. Northern states that the Anoka No. 1A TBS was originally authorized by Commission order dated January 17, 1973 in Docket No. CP73–111–000 and the Yankton No. 1 was authorized by Commission Order issued in Docket No. G–280 on April 6, 1943.

Northern states that the meter capacity of the existing Anoka No. 1A TBS and Yankton No. 1 TBS facilities is 158 and 474 Mcf per hour respectively.

In order to serve the increased requirements, as well as provide for anticipated additional expansion, Northern indicates that the modified TBS' will be designed to serve volumes up to 264 and 711 Mcf per hour, respectively.

Northern indicates that the total estimated cost to modify the proposed delivery points is $63,000.

Comment date: November 16, 1987, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Gas Transmission Corp.

[Docket No. CP87–546–000]

October 2, 1987.

Take notice that on September 18, 1987, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–546–000, a request pursuant to §§ 157.205, 157.212 and 157.216 of the Regulations under the Natural Gas Act to abandon by removal a delivery point to its customer, Dome Gas Company, Inc. (Dome); to add a new delivery point for Dome; to abandon by removal a delivery point to its customer, Ohio Valley Gas, Inc. (Ohio Valley); and to abandon eight sale taps for Ohio Valley, under the authorization issued to it in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Dome and Ohio Valley has requested that Texas Gas obtain the appropriate abandonment authority of the above-discussed facilities. It is stated that the natural gas measurement stations and the eight sales taps, located on Texas Gas' Slaughters-Montezuma 12-inch pipeline in Sullivan County, Indiana, are no longer needed due to the fact that a major surface coal mining project is scheduled to commence in the near future. It is stated that the natural gas service, with the exception to the Town of Dugger, Indiana, and its environs, will not be resumed after the completion of the mining operation because the residences and associated structures have been demolished or will be demolished by the coal company. It is further stated that the Town of Dugger, Indiana, will receive natural gas service through the new delivery point proposed to be installed for Dome.

Comment date: November 16, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23325 Filed 10–7–87; 8:45 am]

BILLING CODE 6717–01–M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: October 2, 1987.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83–3 and RM81–12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 8, 1987, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 192 leases were issued as a result of OCS Sale No. 110 for the Central Gulf of Mexico on April 22, 1987. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA section 102:

Lease No. OCS-G	Area	Block
8620	WC	42
8621	WC	137
8623	WC	199
8624	WC	209
8625	WC	224
8626	WC	240
8627	WCW	287
8628	WCW	296
8629	WCW	300
8631	WCW	303
8632	WCW	360
8633	WCW	362
8634	WCW	395
8635	WCW	396
8636	WCW	398
8637	WCS	577
8639	EC	55

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Lease No. OCS-G	Area	Block
8640	EC	82
8641	EC	83
8642	EC	[illegible]
8643	EC	91
8644	EC	106
8645	EC	109
8646	EC	118
8647	EC	119
8648	EC	138
8649	EC	139
8650	EC	192
8651	EC	193
8652	ECS	294
8653	ECS	295
8654	ECS	296
8655	ECS	312
8656	ECS	313
8658	ECS	331
8660	ECS	358
8661	ECS	365
8662	VM	68
8663	VM	74
8664	VM	77
8665	VM	91
8666	VM	111
8667	VM	148
8668	VM	160
8669	VM	169
8670	VM	238
8671	VMS	257
8672	VMS	266
8673	VMS	272
8674	VMS	299
8675	VMS	336
8676	VMS	347
8677	VMS	393
8678	VMS	404
8680	SMI	18
8682	SMI	64
8684	SMIS	[illegible]
8685	SMIS	148
8687	SMIN	232
8688	SMIN	241
8689	SMIN	242
8690	SMIN	253
8691	EI	129A
8692	EI	160
8693	EI	225
8694	EIS	291
8695	EIS	320
8696	EIS	346
8697	EIS	347
8698	EIS	362
8699	EIS	363
8700	EIS	366
8702	EIS	375
8703	EIS	381
8704	SS	57
8706	SS	109
8707	SS	128
8708	SS	139
8709	SS	157
8710	SS	163
8711	SS	193
8713	SSS	308
8714	SSS	342
8715	SSS	344
8716	SSS	350
8717	ST	30
8869	GRCAN	36
8870	GRCAN	82
8873	GRCAN	150
8883	GRCAN	515
8884	GRCAN	516
[illegible]	GRCAN	558
8886	GRCAN	559
8887	GRCAN	567
8888	GRCAN	568
8892	ATWVY	3
8893	ATWVY	[illegible]
8894	ATWVY	47
8895	ATWVY	89
8896	ATWVY	106
8898	ATWVY	[illegible]
8904	ATWVY	335
8914	ATWVY	371
8922	ATWVY	382
8926	ATWVY	415
8927	ATWVY	425
8928	ATWVY	426

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after the date this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23326 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-70-000]

Burk Royalty Co. v. Northern Natural Gas Co.; Complaint Regarding Production-Related Costs

October 2, 1987.

On August 3, 1987, Burk Royalty Company (Burk) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. On September 4, 1987, Burk supplemented its complaint with additional information. Burk requests that the Production-Related Costs Board (Board) find that Northern Natural Gas Company (Northern) is in violation of 18 CFR 271.1104 by refusing to reimburse Burk for certain production-related costs.

Burk states that on January 20, 1982, Burk (seller) and Northern (buyer) entered into a gas sales contract covering gas produced from the Wilson No. 1 Well (Well) located in Ochiltree County, Texas. The point of sale is the connection of Burk's gathering line and Northern's gas meter. The Well is the only well on the gathering line which was constructed on or after November 9, 1978.

Burk claims that their 3500-foot gathering line is a recent system which entitles them to collect the $0.07 per MMBtu allowance for recent delivery systems and that the commingling rule is satisfied when gas from the Well is combined with other gas already in Northern's transmission line. Burk states that Northern was invoiced for the delivery allowance incurred during the period December 1983 through December 1985 and that Northern's failure to pay the gathering charge is contrary to 18 CFR 271.1104. Accordingly, Burk requests that the Board find that Burk is entitled to the $1,933.12 as invoiced.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Northern must file an answer to Burk's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Northern shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23327 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-915-000]

Capital A Corp.; Application

October 2, 1987.

Take notice that on September 21, 1987, Capital A Corporation (Capital A), 7410 Blanco Road, Suite 100, San Antonio, TX 78216 filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting blanket certificate authorization for self-implementing sales for resale of certain natural gas in interstate commerce, without market restriction, by Capital A. Capital A also seeks pre-granted abandonment of all sales for resale for which sales certificate authority is sought herein.

Capital A states that the purpose of its application is to enable Capital A to make sales in interstate commerce for resale of gas which is available for sale to new markets, but is still subject to the certificate and abandonment provisions of the Natural Gas Act. Finally, Capital A requests that the Commission declare in its order issuing the authorizations that the Commission's NGA jurisdiction over the activities and operations of Capital A is limited to the transactions

for which authorization is sought in the Application.

Any person desiring to be heard or to make any protest with reference to said filing should on or before October 20, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23328 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-918-000]

Chevron U.S.A. Inc.; Application

October 2, 1987.

Take notice that on September 24, 1987, Chevron U.S.A. Inc. (Chevron) filed an application requesting the Federal Energy Regulatory Commission (Commission) to issue an Order Permitting and Approving a Blanket Limited-Term Certificated for Sales for Resale with Pregranted Abandonment upon the expiration of the term of such sales. The requested authorizations would enable Chevron to initiate sales of gas into interestate commerce from acreage subject to the jurisdiction of the Commission under the Natural Gas Act which is currently not dedicated by contract to a specific purchaser.

Chevron asked that the Commission also: (1) Grant the requested authority for a term of three years; (2) include the undedicated interests of co-owners in the same wells under the requested authorizations; (3) waive requirements under sections 154 and 271 of the Commission's Regulations concerning the establishment and maintenance of rate schedules and blanket affidavits; and (4) include all categories of Outer Continental Shelf gas subject to the jurisdiction of the Commission under the NGA. Chevron anticipates that sales will most likely be from wells prescribed by sections 109 or 102(d) of the Natural Gas Policy Act of 1978 from wells drilled offshore on old OCS leases.

Chevron states that the authority will give Chevron maximum flexibility in moving new gas supplies from wellhead to burner tip at market responsive prices, and thus serve the public interest by promoting competition in the nationwide gas market.

Any person desiring to be heard or to make any protests with reference to said application should on or before October 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20436, a petition to intervene or protest in accordance with the requirements of the Commision's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commissions will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23329 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA87-5-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1987, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to become effective as follows:

Effective September 1, 1987

Substitute One hundred and nineteenth Revised Sheet No. 16
Substitute Forty-ninth Revised Sheet No. 64

Effective October 1, 1987

Substitute One hundred and twentiet Revised Sheet No. 16
Substitute Eleventh Revised Sheet No. 16A2

Columbia states the foregoing tariff sheets are being filed in compliance with the Commission's Order issued August 31, 1987 in Docket No. TA87-5-21-000 and TA87-4-21-002. Columbia states that such order directed it to refile its PGA tariff sheets to be effective September 1, 1987 to reflect the following:

(1) The removal of the Appalachian Marketing Program (AMP) costs from the calculation of both the Unrecovered Purchased Gas Surcharge and the Benchmark Surcharge;

(2) The recalculation of amounts relating to the Benchmark period to reflect actual commodity gas costs which have been paid; and

(3) The use of Texas Eastern Transmission Corporation's currently effective rates.

Columbia states that the revised rates set forth on Substitute One hundred and nineteenth Revised Sheet No. 16 reflect overall reducations of .32¢ per Dth in the Commodity sales rate and $.799 per Dth in the Demand-1 sales rate and an increase of 4.79¢ per Dth in the Demand-2 sales rate.

Columbia further states that the revised rates set forth on Substitute One hundred and twentieth Revised Sheet No. 16 and Substitute Eleventh Revised Sheet No. 16A2, to become effective October 1, 1987, applicable to the Annual Charge Adjustment, reflect the impact of the Commission ordered changes in the September 1, 1987 effective rates.

Copies of the filing were served upon the Company's jurisdicational customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23330 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-22-001]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1987.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on September 29, 1987, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Second Substitute Alternate Fourteenth Revised Sheet No. 31
Substitute Fifteenth Revised Sheet No. 31
First Revised Sheet No. 100
Second Revised Sheet Nos. 122, 123, 124, 125, 127, 130, 131, 132, 133, and 137
Third Revised Sheet Nos. 128 and 129

Consolidated states that it is also resubmitting the following tariff sheets (all to Original Volume No. 1) that were filed originally in Docket No. RP87-111-000 on August 31, 1987, and are currently awaiting Commission approval.

Second Revised Sheet Nos. 121, 126, 134, and 135
Third Revised Sheet No. 136.

Consolidated states that the purpose of Second Substitute Alternate Fourteenth Revised Sheet No. 31 is to comply with the Commission's August 31, 1987, order in this proceeding effective September 1, 1987. Further, Consolidated states that this tariff sheet reflects Consolidated's semi-annual PGA computed in accordance with PGA tariff provisions currently in effect.

Consolidated points out that the remaining tariff sheets are tendered to implement a change in PGA methodology, proposed to become effective October 1, 1987. Consolidated states that the proposed change in PGA methodology is acceptable to the Commission Staff and all parties attending a technical conference held September 15, 1987 in this proceeding.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211, 385.214). All motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2333 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC87-13-000]

Eastern Shore Natural Gas Co.; Tariff Filings

October 1, 1987.

Take notice that on September 16, 1987, Eastern Shore Natural Gas Company (Applicant), P.O. Box 615, Dover, Delaware 19903, filed a revised tariff sheet to become effective November 1, 1987, pursuant to § 281.204(b) of the Commission's Regulations, which requires interstate pipelines to update their indices of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users) Applicant's filing consists of the Ninth Revised Sheet No. 424 of its FERC Tariff, Original Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 9, 1987, file with the Federal Energy Regulatory Commission, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23332 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC87-11-000]

Mississippi River Transmission Corp.; Tariff Sheet Filings

October 1, 1987.

Take notice that on September 15, 1987 Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed revised tariff sheets to become effective November 1, 1987, pursuant to § 281.204(b) of the Commission's Regulations which requires interstate pipelines to update their indices of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Applicant's filing consists of:

Tenth Revised Sheet No. 75
Eighth Revised Sheet No. 76
Fifth Revised Sheet No. 77
Tenth Revised Sheet No. 78
Eighth Revised Sheet No. 79

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23333 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-136-000]

Sierra Pacific Power Co. v. Southwest Gas Corp.; Complaint

October 2, 1987.

Take notice that on September 2, 1987, Sierra Pacific Power Company (Sierra) filed a complaint against Southwest Gas Corporation (Southwest) pursuant to Rules 206, 207, and 209 of the Rules of Practice and Procedure, 18 CFR 385.206, 385.207 and 385.209 (1987).

Sierra contends that the currently effective Southwest PGA provisions fail to match cost incurrence and cost allocation, which failure allegedly results in a substantial overallocation of costs to Southwest's jurisdictional customers. Sierra also alleges that the peak usage allocation provided by Southwest's currently effective PGA provisions contravenes Commission policy and results in an overallocation of costs to Southwest's jurisdictional customers. Finally, Sierra contends that Southwest's currently effective PGA provisions are unreasonably anticompetitive.

Southwest requests that the Commission institute an expedited proceeding to determine the extent to which Southwest's currently effective provisions relating to PGA cost recovery must be changed, and grant such other and different relief as may be appropriate.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before November 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public. Answers to this complaint shall be due on or before November 2, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23334 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-145-000]

Southwest Gas Transmission Co.; Compliance Filing

October 2, 1987

Take notice that on September 18, 1987, Southwest Gas Transmission Company, A Limited Partnership (SGTC), tendered for filing its Rate Schedule T-1 rate, as a part of its FERC Gas Tariff, Original Volume No. 2, in accordance with the Commission's Order issued September 19, 1984, in Docket No. CP83-284-000 which granted SGTC a certificate of public convenience and necessity. Ordering Paragraph (E)(1) of the Order conditioned the certificate upon SGTC's filing for review its rate applicable to Rate Schedule T-1 pursuant to § 154.63 of the Commission's Regulations and section 4(e) of the Natural Gas Act within three years of the date of issuance of the Order.

SGTC is proposing that the present rate for Rate Schedule T-1 be retained because of the *de minimis* nature of the deficiency in recovering its cost of service. Consequently, by its filing, SGTC is proposing no change in its present rates and no other change in its existing tariff.

SGTC states that a copy of this filing has been mailed to El Paso Natural Gas Company and that copies of the filing are available for inspection during regular business hours at Southwest Gas Corporation's (Southwest) office in Las Vegas, Nevada. Southwest is the general partner of SGTC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23335 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-30-001]

Trunkline Gas Co.; Change in Tariff

October 5, 1987

Take notice that Trunkline Gas Company (Trunkline), on September 30, 1987 tendered for filing the following proposed changes in its FERC Gas Tariff, Original Volume No. 1:

Description	Proposed effective date
First Substitute Fifty-Sixth Revised Sheet No. 3-A	September 1, 1987
Second Substitute Fifty-Seventh Revised Sheet No. 3-A.	October 1, 1987

Trunkline states that these revised tariff sheets represent a downward revision of the PGA rate adjustment which became effective September 1, 1987 in Docket No. TA87-2-30-000 and are being filed at this time in compliance with Ordering Paragraph (D) of the Commission's Order in the subject proceeding dated August 31, 1987.

Copies of the filing were served on the Company's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 87-23336 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-50-000]

Valley Gas Transmission, Inc.; Change in Rates Pursuant To Purchased Gas Adjustment

October 5, 1987.

Take notice that on September 30, 1987, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff:

Thirty-sixth Revised Sheet No. 2A to Original Volume No. 1

Ninth Revised Sheet No. 10 to Original Volume No. 2

Valley states that these tariff sheets, which are proposed to become effective on November 1, 1987 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23337 Filed 10-7-87; 8:45 am]

BILLING CODE 6717-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3274-3]

National Drinking Water Advisory Council; Request for Nomination of Members

The Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide advice, consultation and recommendations to the Agency on the activities, functions and policies relating to the implementation of the Safe Drinking Water Act as amended, which became effective December 16, 1974. The Charter for this Advisory Committee is reproduced below.

Any interested person or organization may nominate qualified persons for membership. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should include a resume of the nominee's background, experience and qualifications.

This request for nominations does not imply any commitment by the Agency as to the procedure to be followed in making selections.

Persons selected for membership will receive per diem compensation for travel and nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Executive Secretary, National Drinking Water Advisory Council, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, no later than November 1, 1987. The Agency will not formally acknowledge or respond to nominations.

Lawrence J. Jensen,

Assistant Administrator for Water.

Dated: September 22, 1987.

National Drinking Water Advisory Council

1. Purpose

This Charter is reissued for the National Drinking Water Advisory Council in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. (App. I) 9(c).

2. Authority

The Council was created on December 16, 1974, under the Safe Drinking Water Act of 1974, Pub. L. 93-523, 42 U.S.C. 300j-5 and the charter was renewed on December 23, 1976; December 1, 1978; November 7, 1980; November 29, 1982; and December 7, 1984.

3. Objective and Scope of Activity

The Council advises, consults with, and makes recommendations on a continuing basis to the Administrator, through the Assistant Administrator for Water, on matters relating to activities, functions, and policies of the Agency under the Safe Drinking Water Act.

4. Functions

The Council provides practical and independent advice to the Agency on matters and policies relating to drinking water quality and hygiene, and maintains an awareness of developing issues and problems in the drinking water area. It reviews and advises the Administrator on regulations and guidelines that are required by the Safe Drinking Water Act; makes recommendations concerning necessary special studies and research; recommends policies with respect to the promulgation of drinking water standards; assists in identifying emerging environmental or health problems related to potentially hazardous constituents in drinking water; and proposes actions to encourage cooperation and communication between the Agency and other governmental agencies, interested groups, the general public, and technical associations and organizations on drinking water quality.

5. Composition and Meetings

The Council consists of fifteen members including a Chairperson, appointed by the Deputy Administrator after consultation with the Secretary, Department of Health and Human Services. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Except as provided in section 1446 of the Safe Drinking Water Act, each member of the Council will hold office for a term of three years and will be eligible for reappointment. The Council is authorized to form Subcommittees to consider specific matters and report back to the full Council. Meetings will be held as necessary and convened by the Assistant Administrator for Water. A full-time salaried officer or employee of EPA will be designated as the Executive Secretary. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the designated Agency official. The Designated Federal Official will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. The estimated annual operating cost of the Council is approximately $60,000, which includes .75 work-year of staff support. The Office of Water will provide the necessary staff and support of the Council.

6. Duration

As provided in the Safe Drinking Water Act, "Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council." However, the Charter is subject to the renewal process upon the expiration of each successive two-year period following the date of enactment of the Act establishing this Council.

7. Supersession

The former National Drinking Water Advisory Council charter signed on December 7, 1984, is hereby superseded.

Approval Date: December 4, 1986.

A. James Barnes,

Deputy Administrator.

[FR Doc. 87-23303 Filed 10-7-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3273-6]

Water Quality Criteria; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for comments on an ambient water quality criteria document for ammonia in saltwater.

SUMMARY: EPA announces the availability and provides a summary of a proposed ambient water quality criteria document for ammonia in saltwater. When published in final form after review of public comments, these water quality criteria may form the basis for enforceable State water quality standards. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act.

DATE: Written comments should be submitted to the person listed directly below by December 7, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-7321.

Availability of Document: This notice contains a summary of the document

containing proposed ambient water quality criteria for ammonia in saltwater for the protection of aquatic life and its uses. Copies of the complete criteria document may be obtained upon request from the person listed above. This document is also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act. A document addressing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was announced on February 15, 1984 (49 FR 5831), completing the coverage of the 65 priority pollutants listed under section 307(a)(1).

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on May 1, 1986. Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987, (52 FR 6213), EPA announced the publication of revised ambient water quality criteria for zinc which updated criteria previously published in a 1980 ambient water quality document.

Today EPA is announcing the availability for public comment of a proposed water quality criteria document for ammonia in saltwater for the protection of aquatic organisms. The criteria document announced today may form the basis for enforceable State water quality standards when published in final form.

Dated: September 25, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

Summary of Water Quality Criteria

Saltwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, saltwater aquatic organisms should not be affected unacceptably if the four-day average concentration of un-ionized ammonia does not exceed 0.013 mg/L more than once every three years on the average, and if the one-hour average concentration does not exceed 0.108 mg/L more than once every three years on the average.

Criteria concentrations based on total ammonia for the pH range of 7.0 to 9.0, temperature range of 0 to 35 °C, and salinities of 10, 20 and 30 g/kg are provided in Text Tables 2 and 3.

Three years is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions. The ability to recover differs greatly, however, and site-specific criteria may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model.

[FR Doc. 87-23180 Filed 10-7-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3273-5]

Water Quality Criteria; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for comments on an ambient water quality criteria document for chloride.

SUMMARY: EPA announces the availability and provides a summary of a proposed ambient water quality criteria document for chloride. When published in final form after review of public comments, these water quality criteria may form the basis for enforceable State water quality standards. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act.

DATE: Written comments should be submitted to the person listed directly below by December 7, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-7321.

Availability of Document

This notice contains a summary of the document containing proposed ambient water quality criteria for chloride for the protection of aquatic life and its uses. Copies of the complete criteria document may be obtained upon request from the person listed above. This document is also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28,

1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act. A document addressing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was announced on February 15, 1984 (49 FR 5831), completing the coverage of the 65 priority pollutants listed under section 307(a)(1).

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on May 1, 1986. Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987, (52 FR 6213), EPA announced the publication of revised ambient water quality criteria for zinc which updated criteria previously published in a 1980 ambient water quality document.

Today EPA is announcing the availability for public comment of a proposed water quality criteria document for chloride for the protection of aquatic organisms. The criteria document announced today may form the basis for enforceable State water quality standards when published in final form.

Dated: September 25, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

Summary of Water Quality Criteria

Freshwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of dissolved chloride does not exceed 230 mg/L more than once every three years on the average and if the one-hour average concentration does not exceed 860 mg/L more than once every three years on the average. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium. In addition, because freshwater animals have a narrow range of acute susceptibilities to chloride, this criterion is probably not adequately protective.

Implementation

As discussed in the Water Quality Standards Regulation and the Foreword to this document, a water quality criterion for aquatic life has regulatory impact only after it has been adopted in a State water quality standard. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s). In each standard a State may adopt the national criterion, if one exists, or, if adequately justified, a site-specific criterion.

Site-specific criteria may include not only site-specific criterion concentrations, but also site-specific, and possible pollutant-specific, durations of averaging periods and frequencies of allowed excursions. The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants, and "three years" is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions. However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life.

Use of criteria, which have been adopted in State water quality standards, for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Although dynamic models are preferred for the application of these criteria limited data or other considerations might require the use of a steady-state model. Guidance on mixing zones and the design of monitoring programs is also available.

[FR Doc. 87-23181 Filed 10-7-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. W-25]

Window Notice for the Filing of FM Broadcast Applications

Release: September 30, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning September 30, 1987 and ending November 10, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel 288 A

Key Colony Beach	FL
Wichita Falls	TX

Channel 278 A

Sacramento	CA
Radcliff	KY
Plattsburgh	NY
Sodus	NY
Berwick	PA
New Boston	TX

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-23299 Filed 10-7-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000093–038.
Title: North Europe-U.S. Pacific Freight Conference.
Parties:

Hapag-Lloyd AG
Johnson Scanstar
Compagnie Generale Maritime
Incotrans BV
Sea-Land Service, Inc.

Synopsis: The proposed amendment would provide that a resigning member would have no vote on any matter which would take effect after the date of its resignation and would allow a party to give a proxy to another party, the Chairman or the Secretary of the agreement. It would also tie quorum and majority decision requirements to voting entitlements.

Agreement No.: 202–010987–004.
Title: United States/Central America Liner Association.
Parties:

Crowley Caribbean Transport, Inc.
Sea-Land Service, Inc.
Seaboard Marine Ltd.

Synopsis: The proposed amendment provides that failure by a member to vote within two working days after the commencement of a telecommunications poll, or an abstention by a member in a telecommunications poll, shall be counted as a vote against the matter. The parties have requested a shortened review period.

Agreement No.: 217–011151
Title: Naviera Pacifico/Nedlloyd Lines Space Charter Agreement
Parties:

Naviera Pacifico C.A.
Nedlloyd Lines

Synopsis: The proposed agreement would permit the parties to charter space aboard one another's vessels in the trade between U.S. Pacific Coast ports and ports in Venezuela. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 5, 1987.

[FR Doc. 87–23305 Filed 10–7–87; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Acquisitions of Shares of Banks or Bank Holding Companies; Monke Farm and Cattle Co. et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 23, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Monke Farm & Cattle Co.*, Nickerson, Nebraska, and William Monke, Fremont, Nebraska, to acquire 8.54 percent; Willard Hegne, Fremont, Nebraska, to acquire 8.55; and Wendell Bruner, Fremont, Nebraska, to acquire 8.55 percent of the voting shares of American Banc Corporation, Fremont, Nebraska, and thereby indirectly acquire American National Bank of Fremont, Fremont, Nebraska.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *William Nesbitt,* Waco, Texas, to acquire 13.16 percent; Willard J. Still, Waco, Texas, to acquire 13.16 percent; Pat Beard, Waco, Texas, to acquire 8.77 percent; David B. Kultgen, Waco, Texas, to acquire 8.77 percent; and Bernard Rapoport, Waco, Texas, to acquire 8.77 percent of the voting shares of CentraBank Corporation, Waco, Texas, and thereby indirectly acquire Central National Bank of Woodway-Hewitt, Waco, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *John E. Wertin,* Irvine, California; to acquire 80.4 percent of the voting shares of San Clemente Bancorp, San Clemente, California, and thereby indirectly acquire The Bank of San Clemente, San Clemente, California.

Board of Governors of the Federal Reserve System, October 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–23274 Filed 10–7–87; 8:45 am]
BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Peoples Bancorp of Worcester, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 27, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Peoples Bancorp of Worcester, Inc.*, Worcester, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Savings Bank, Worcester, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance activities. Comments on this application must be received by October 23, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation,* Charlotte, North Carolina; to acquire 100 percent of the voting shares of First Union Corporation of Tennessee, Nashville, Tennessee, and thereby indirectly acquire First Union National Bank of Tennessee, Nashville, Tennessee.

2. *Sandy Spring Bancorp, Inc.*, Olney, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Sandy Spring National Bank of Maryland, Olney, Maryland.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *BOL Bancshares, Inc.*, New Orleans, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Louisiana in New Orleans, New Orleans, Louisiana, Fidelity Bank and Trust Co., Slidell, Louisiana, and BOS Bancshares, Inc., Metairie, Louisiana, and thereby indirectly acquire Bank of the South, Metairie, Louisiana.

2. *South Banking Company*, Alma, Georgia; to acquire 50 percent of the voting shares of Georgia Peoples Bankshares, Baxley, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Mid-Illinois Bancshares, Inc.*, Mattoon, Illinois; to acquire 100 percent of the voting shares of Eagle Bank of Charleston, Charleston, Illinois. Comments on this application must be received by October 23, 1987.

2. *Heritage Racine Corporation*, Racine, Wisconsin; to acquire 87 percent of the voting shares of Bank of Hayward, Hayward, Wisconsin.

3. *Water Tower Bancorp, Inc.*, Chicago, Illinois; to acquire 82.62 percent of the voting shares of Belmont National Bank, Chicago, Illinois.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *McCamey Financial Corporation*, McCamey, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of McCamey Bancshares, Inc., McCamey, Texas, and thereby indirectly acquire Security State Bank, McCamey, Texas.

Board of Governors of the Federal Reserve System, October 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23275 Filed 10-7-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; National Westminister Bank, PLC

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Westminster Bank PLC*, London, England, and NatWest Holdings Inc., New York, New York, to acquire 100 percent of the voting shares of National Westminster Bank USA, New York, New York; First Jersey National Corporation, Jersey City, New Jersey, and thereby indirectly acquire The First Jersey and National Bank, Jersey City, New Jersey; The First Jersey National Bank/Central, Trenton, New Jersey; The First Jersey National Bank/South, Atlantic City, New Jersey; The First Jersey National Bank/West, Denville, New Jersey; and The First Jersey National Bank/Fort Lee, Fort Lee, New Jersey; and First Jersey Fort Lee Corporation, Jersey City, New Jersey. In connection with this application, National Westminster Bancorp, Inc., Wilmington, Delaware, has applied to become a bank holding company.

In connection with this application, National Westminster Bank PLC, London, England, and Natwest Holdings Inc., New York, New York, propose to acquire FJN Corporation, Jersey City, New Jersey, and thereby engage in leasing real property, and to acquire Tilden of Florida, Inc., Fort Lauderdale, Florida, and thereby engage in leasing personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23276 Filed 10-7-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Republic Bancorp, Inc.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Republic Bancorp, Inc.,* Ann Arbor, Michigan; to acquire Mayflower Mortgage Corporation, Plymouth, Michigan, and thereby indirectly engage in making, acquiring and servicing mortgage loans for its own account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23277 Filed 10-7-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Date: October 28-29, 1987.

Place: Conference Room 207, Centers for Disease Control 1600 Clifton Road NE., Atlanta, Georgia 30333.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact Person: Jeffrey P. Koplan, M.D., Executive Secretary of Committee, Centers for Disease Control (1-2047), 1600 Clifton Road, N.E., Atlanta, Georgia 30333. *Telephone:* FTS: 236-3751. Commercial: 404/329-3751.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will discuss draft revisions of typhoid and cholera recommendations; hear updates on *Haemophilus influenzae* type b, meningococcal, BCG, influenza, and Japanese B encephalitis vaccines; discuss measles vaccine and AIDS patients, and inactivated polio vaccine; and consider other matters of relevance among the committee's objectives.

Agenda items are subject to change as priorities dictate.

Dated: October 2, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-23239 Filed 10-7-87; 8:45 am]

BILLING CODE 4160-18-M

National Institute for Occupational Safety and Health; Board of Scientific Counselors; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors (BSC)

Date: October 27, 1987

Place: Conference Room 138, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Time and Type of Meeting: Open: 8:30 a.m. to 9:30 a.m.—October 27; Closed: 9:30 a.m. to 10:00 a.m.—October 27

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, BSC, NIOSH, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: Commercial: (404) 329-3343; FTS: 236-3343

Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, planning of site visits to review NIOSH divisions, and further meeting dates and locations. Beginning at 9:30 a.m. through 10 a.m., October 27, the Board will discuss certain matters the public disclosure of which could constitute a violation of sections 552b(c)(6) and/or 552b(c)(9)(B) of Title 5 U.S. Code. Therefore, pursuant to said provisions and the determination of the Director, Centers for Disease Control, this portion of the meeting will not be open to the public.

Agenda items are subject to change as priorities dictate. The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 2, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-23238 Filed 10-7-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 87D-0292]

Guidelines for the Sampling and Certification of Imported Swordfish for Mercury Residues by Private Laboratories; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidelines for the sampling and the certification of imported swordfish for mercury residues by private laboratories. These guidelines were approved August 13, 1987. These guidelines are of interest to all importers of swordfish and to the private laboratories that are offering certification services.

ADDRESS: Requests for a copy of the guidelines may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Sonia I. Delgado, Center for Food Safety and Applied Nutrition (HFF-314), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0250.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of guidelines for the sampling and the certification of imported swordfish for mercury residues by private laboratories. The agency issued these guidelines to its field offices on August 14, 1987. FDA issued these guidelines in response to the swordfish industry's request that FDA institute uniform sampling procedures to obtain representative samples from lots of swordfish subject to automatic

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detention and certification for mercury residues. This request is based on concern that inconsistencies in sampling procedures between FDA and industry can lead to inconsistencies in analytical results between private laboratories and FDA laboratories.

These guidelines are available for review at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 2, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23255 Filed 10-7-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0304]

Premarket Approval of Sandimmune® Radioimmunoassay Kit; Sandoz Pharmaceuticals Corp.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sandoz Pharmaceutical Corp., East Hanover, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Sandimmune® Radioimmunoassay Kit. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by November 9, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On November 26, 1985, Sandoz Pharmaceutical Corp., East Hanover, NJ 07936, submitted to CDRH an application for premarket approval of the Sandimmune® Radioimmunoassay Kit. The device is an in vitro radioimmunoassay kit for the cyclosporine drug Sandimmune®. It is indicated for measuring levels of Sandimmune® in whole blood, plasma, or serum as an aid in monitoring the dosage of the drug.

On October 27, 1986, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 31, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 9, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 30, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-23320 Filed 10-7-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Office of Minority Health; Delegation of Authority

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services on January 14, 1981, to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Director, Office of Minority Health, with authority to redelegate, all the authority delegated to the assistant Secretary for Health under Title III of the General Powers and duties of Public Health Service Act, section 301 (42 U.S.C. 241), as amended, relative to research, investigation, and testing functions, insofar as they pertain to the functions assigned to the Office of Minority Health. In addition, I hereby affirm and ratify any actions taken by the director, Office of Minority Health, and subordinates which involved the exercise of the authorities delegated herein prior to the effective date of delegation. The authorities delegated exclude the authorities to promulgate regulations and to submit reports to the Congress.

The delegation to the Director, Office of Minority Health became effective on September 29, 1987.

Date: September 29, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-23319 Filed 10-7-87; 8:45 am]

BILLING CODE 4160-17-M

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–30–0049, "Consultant Records Maintained by ADAMHA Contractors, HHS/ADAMHA/OA." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed routine uses on or before November 9, 1987. PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on October 1, 1987. The routine uses will be effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, Alcohol, Drug Abuse, and Mental Health Administration, Room 6–102, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4543.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contract Officer, National Institute on Drug Abuse, Room 10–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6677.

The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) proposes to establish a new system of records: 09–30–0049, "Consultant Records Maintained by ADAMHA Contractors, HHS/ADAMHA/OA." This proposed umbrella system of records will comprise records generated by ADAMHA contractors who provide logistical support for review of grants and/or contracts, conferences; meetings, etc. The records will be used to obtain and pay consultants.

Records collected under this system will be organized and maintained according to the particular study which they support. Records will not be entered into a general or comprehensive data base, nor will there be any general index identifying all persons who are subjects of records in the separate studies covered by this system. However, ADAMHA will be treating the separate sets of records as a single system under the Privacy Act (1) because all of the sets of records serve the same purposes and contain similar types of data, (2) in order to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of, or access to, their records.

Individuals will be required to supply Social Security numbers in order to receive payment. However, ADAMHA will not use records in this system to make any determination concerning rights, benefits, or privileges of the individuals.

The records in this system will be maintained in a secure manner compatible with their content and use. Access will be given only to authorized contractor staff whose official duties require access for purposes of carrying out the contract. Individually identifiable records will be kept in a locked, limited-access area. Computerized records will be maintained in accordance with Part 6, "ADP System Security," in the HHS Information Resource Management Manual.

The first routine use proposed for this system allows disclosure to the Department of Justice or a court in the event of litigation. The second routine use, permitting disclosure to a congressional office, is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. The third routine use is proposed to allow contractors to accomplish logistical work related to the projects. The fourth routine use proposes to allow disclosure to the Internal Revenue Service of customary tax information related to payment of consultants and experts.

This system notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after it becomes effective.

Dated: October 1, 1987.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–30–0049

SYSTEM NAME:

Consultant Records Maintained By ADAMHA Contractors, HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at various contractor sites. A list of specific contractor sites is available from the appropriate System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants who participate in Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) conferences, meetings, evaluation projects, or technical assistance at site locations arranged by contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security numbers, qualifications, curricula vitae, travel records, and payment records for consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, Section 501, (42 U.S.C. 290aa). This section covers program authorities for ADAMHA and its three Institutes.

PURPOSE(S):

This umbrella system of records covers a varying number of separate sets of records used in different projects. These records are established by contractors to organize programs, obtain and pay consultants, and to provide necessary reports related to payment to the Internal Review Service for these programs for ADAMHA. ADAMHA personnel may use records when a technical assistance consultant is needed for a specialized area of research, review, advice, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a congressional office from the record of

an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. ADAMHA proposes to contract with private firms for the purposes of handling logistics for conferences, reviews, development of training materials, and of obtaining the services of consultants. Relevant records will be disclosed to such a contractor or may be developed by the contractor for use in the project. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Information in this system of records is used routinely to prepare W–2 and 1099 Forms to submit to the Internal Revenue Service and applicable State and local governments those items to be included as income to an individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm.

RETRIEVABILITY:

Information will be retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Only ADAMHA personnel working on these projects and personnel employed by ADAMHA contractors to work on these projects are authorized users as designated by the system managers.

2. Physical Safeguards: Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities.

3. Procedural Safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual, and Part 6, "ADP System Security" in the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records will be destroyed 3 years after they are no longer used, or, if payment is involved, 3 years after closeout of the contract.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinating official for this system of records is also the System Manager for NIDA.

Contract Officer, National Institute on Drug Abuse, RM 10–49 Parklawn, 5600 Fishers Lane, Rockville, Maryland 20857

Contract Officer, National Institute of Mental Health, RM 15–81 Parklawn, 5600 Fishers Lane, Rockville, Maryland 20857

Contract Officer, National Institute on Alcohol Abuse and Alcoholism, RM 14C–06 Parklawn, 5600 Fishers Lane, Rockville, Maryland 20857

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the appropriate System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of projet individual participated in; (c) ADAMHA project officer; and (d) approximate date(s) of participation.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information gathered from individual consultants and from assignment or travel documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87–23321 Filed 10–7–87; 8:45 am]
BILLING CODE, 4160–20–M

Privacy Act; Systems of Records

AGENCY: Public Health Service; Department of Health and Human Services.

ACTION: Notification of new system of records, 09–37–0020, "Office of Minority Health Grant Records System, HHS/OASH/OMH."

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to create a new system of records, 09–37–0020 "Office of Minority Health Grants Records System, HHS/OASH/OMH." This new system will maintain the grant files for the Office of Minority Health. We are proposing nine routine uses for this system.

DATE: PHS invites interested persons to submit comments on the proposed routine uses on or before November 9, 1987. PHS has sent a report of the new system to the Congress and to the Office of Management and Budget (OMB) on October 1, 1987. The system of records will be effective 60 days from the date submitted to OMB, unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Please submit comments to: Mr. J. Henry Montes, Associate Director for External Programs, Office of Minority Health, PHS, Room 118F, HHH Building, 200 Independence Ave., SW., Washington, D.C. 20201.

Comments received will be available for inspection at the same address from 9:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ralph L. Sloat, Chief, Grants Management Branch, Room 18A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4033. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

The Office of Minority Health (OMH) is proposing to establish a new system of records which will contain its grant program records. The Report of the Secretary's Task Force on Black and Minority Health identified six health problems that account for 80 percent of the excess deaths among minorities. These six, listed in alphabetical order are: cancer; cardiovascular disease and stroke; chemical dependency, measured by death due to cirrhosis; diabetes; homicide, suicide, and accidents (unintentional injuries); and infant mortality. This grant program is designed to stimulate community

coalitions to work on activities aimed at reducing the risk factors associated with these six categories of disease.

There are nine routine uses of information proposed for this new system. These routine uses will permit OMH to release information in certain specified cases to other organizations or individuals for assistance in review of applications or for good administrative procedures, or to protect the government's interests.

Specifically, routine uses are proposed for the following situations:

Routine use 1 will permit OMH to respond to a Congressional inquiry made at the request of a subject individual.

Routine use 2 will permit the DHHS to provide information to the Department of Justice or any other agency in cases where government litigation interests require it.

Routine use 3 will permit OMH to make use of an outside consulting firm to make special analyses, if needed, on trends or data in OMH grant files and for other management purposes. Any such firms would have to certify to abide by Privacy Act requirements before being given access to any files in the system of records.

Routine use 4 will permit OMH to utilize the expertise of individuals who are not official members of a grant review committee to provide comments on particular applications as requested by the Executive Secretary of the review committee.

Routine use 5 will permit OMH to respond to any valid request which may be received from another Federal agency for information in a particular grant file which might bear on an employment, licensing, contracting or grant award action to be taken by that agency.

Routine use 6 acknowledges that OMH will respond to any valid subpoena issued by a Federal agency which may be received requesting information in the system of records.

Routine use 7 permits OMH to assist in any requests for information by the cognizant audit agency.

Routine use 8 permits OMH to assist with any investigation of a violation or potential violation of law by making information in a particular file in the system of records available to the appropriate Federal or State agency as requested.

Routine use 9 permits OMH to disclose information to a grantee in the grant file relevant to the administration of that grant.

The records will be maintained in locked files with general building security. The records will be available to staff of the Office of Minority Health for administrative purposes, other DHHS staff with a need-to-know, and to contractors for data analysis. Contractors will be bound by the same confidentiality rules that apply to staff.

This notice is written in the present tense, rather than in the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system becomes effective.

Dated: October 1, 1987.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, Public Health Service.

09-37-0020

SYSTEM NAME:

Office of Minority Health Grants Records System, HHS/OASH/OMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Minority Health, Parklawn Building, Room 18A-10, 5600 Fishers Lane, Rockville, Maryland 20857.

A current list of contractor sites is available by writing to the address below under SYSTEM MANAGER.

Inactive records are located at the Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Project Grant Program Directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant files, including grant applications, grant award notices, summary comments of peer reviewers, salary information, staffing lists, general correspondence, and Social Security Numbers (optional).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act Section 301 (42 U.S.C. 242). This section authorizes support of health-related grants.

PURPOSE(S):

The information in this system is used to facilitate day-to-day grants management operations and for purposes of review, analysis, planning and policy formulation by OMH staff members and by other components of DHHS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(3) Disclosure may be made to a private firm for the purposes of providing services related to grant review, or for carrying out quality assessment, program evaluation, and/or management reviews. Any such contractors will be required to maintain Privacy Act safeguards with respect to such records.

(4) Disclosure may be made to qualified experts not within the definition of Department employees for opinions as a part of the application review and award process.

(5) Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit of the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(6) Where Federal agencies having power to subpoena other Federal agencies' records, such as the Internal Revenue Service or Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

(7) Disclosure may be made to the cognizant Audit Agency for auditing.

(8) In the event that a system of records maintained by the Department indicates a violation or potential

violation of law, whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred as a routine use, to the appropriate agency, whether Federal (e.g., the Department of Justice), or State (e.g., the State Attorney General's office) charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto for litigation.

(9) Disclosure may be made to the grantee institution in connection with performance or administration under the terms and conditions of the award.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files (files folders).

RETRIEVABILITY:

Retrievable by program director name and grant number.

SAFEGUARDS:

1. Authorized Users: Only staff members of the office of Minority Health (OMH) have regular access. Staff members of other DHHS components have access on a need-to-know basis only.

2. Physical Safeguards: Locked file cabinets, locked offices, general building security.

3. Procedural Safeguards: OMH staff may inspect and review records, with the approval of Grant Management Branch staff. Other DHHS staff will be granted access by the System manager only on a need-to-know basis. Visitors will not be left unattended in the office containing the files. Grant records are either transmitted in sealed envelopes or are hand-carried.

RETENTION AND DISPOSAL:

Approved grant applications and their respective files are retained by OMH for one year beyond the termination date of the project. Disapproved grant applications are held for six months. The grant files are then retired to a Federal Records Center and subsequently disposed of in accordance with the PHS/OASH records control schedule. The records control schedule may be obtained by writing to the System Manager at the following address.

SYSTEM MANAGER(S) AND ADDRESS:

Mr. J. Henry Montes, Associate Director for External Programs, Office of Minority Health, PHS, Room 118F, HHH Building, 200 Independence Ave. SW, Washington, DC 20201.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address. Specify program director's name and/or grant number.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Positive identification is required. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Grant applications, reports and correspondence from organizations interested in improving minority health, summary statements from grant review committees and incoming correspondence from project staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-23322 Filed 10-7-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1739; FR-2417]

National Manufactured Home Advisory Council; Meeting

AGENCY: Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice, meeting of National Manufactured Home Advisory Council.

SUMMARY: This notice announces a meeting of the National Manufactured Home Advisory Council. The meetings will be held on October 29, and 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mabel Mishler, Compliance Branch, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, 451 7th Street, SW., Room 9158, Washington, DC 20410–8000; telephone: (202) 755–6584. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The National Manufactured Housing Construction and Safety Standards Act of 1974 (hereinafter "the Act"), 42 U.S.C. 5401 *et seq.*, requires the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for manufactured homes. The Act also requires that the Secretary appoint a National Manufactured Home Advisory Council composed of twenty-four members. The membership of the Council is selected equally from each of the following categories: (a) The manufactured home industry and related groups, including at least one representative of small business; (b) consumer organizations, community organizations, and recognized consumer leaders; and (c) government agencies including Federal, State and local governments. The purpose of the National Manufactured Home Advisory Council is to advise the Department, to the extent feasible, prior to the establishment, amendment or revocation of any manufactured home construction and safety standard.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2), announcement is made of the following meeting:

The National Manufactured Home Advisory Council will meet on October 29 and 30, 1987. The meetings are open to the public and will convene at 1:00 p.m. on Thursday, October 29, 1987, at the Department of Housing and Urban Development, Departmental Conference Room 10233, 451 7th Street, SW., Washington, DC 20410–8000.

The Advisory Council will discuss and evaluate proposed revisions to the Federal Manufactured Home Construction and Safety Standards (FMHCSS). Revisions to the Standards are being proposed in the areas of thermal energy conservation standards and lead content in potable water lines.

The final agenda will be available at the meeting. Inquiries concerning the agenda may be made after September 30, 1987, by contacting the Office of Manufactured Housing and Construction Standards, HUD, at (202) 755–6584.

Authority

Sec. 605 of the National Manufactured

Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5404; Sec. 10 of the Federal Advisory Committee Act, 5 U.S.C. App. I.

Date: October 1, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-2323 Filed 10-7-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4213-15 AA-50379-22]

Alaska Native Claims Selection; Chugach Alaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 12(c), 14(h)(8) and 22(f) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611(c), 1613(h)(8), 1621(f), and the 1982 CNI Settlement Agreement of January 10, 1983, entered into pursuant to ANCSA and secs. 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub. L. 96-487, 94 Stat. 2371, 2475, 2531, will be issued to Chugach Alaska Corporation for approximately 762 acres. The lands involved are located in Secs. 6, 7, and 18, T. 2 N., R. 1 E., Seward Meridian, Alaska, on the Snow River in the vicinity of Seward, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 9, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Ajudication.

[FR Doc. 87-23361 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-JA-M

[AK-968-4213-15]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental Regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e) and sec. 12 of the Act of January 2, 1976, Pub. L. 94-204, 43 U.S.C. 1611 nt, as amended, and Par. I.C.(2)(a) of the document entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, will be issued to Cook Inlet Region, Inc. for the following described lands:

Serial No	Land description	Acreage
AA-41952	T. 12 N., R. 5 W., Seward Meridian, Alaska	45 approx
AA-59945	T. 5 N., R. 9 W., Seward Meridian, Alaska.	78.28

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until November 9, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Olivia Short,

Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 87-23362 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-JA-M

[ID-040-08-4341-15]

Salmon District; Emergency Interim Closure of Public Lands, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency interim vehicle closure for Snaketrail Ridge Road located on public lands in Custer County, Idaho. The area is located about 2.5 miles southeast of the junction of the East Fork and main Salmon Rivers and about 20 miles south of Challis, Idaho. The closure will be year-round for vehicles greater than 40" in width, thus allowing winter snowmobile use. This Bureau action will take place as a cooperative venture with Idaho Department of Fish and Game, Challis National Forest, and concerned local citizens.

FOR FURTHER INFORMATION CONTACT: Bob Hale, Bureau of Land Management, P.O. Box 430, Salmon, ID 83567; telephone (208) 756-5400.

Dated: September 29, 1987.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 87-23364 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-GG-M

[WO-150-08-4830-11]

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1981, the terms of seven members on the Council will expire on December 31, 1987. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1988, and expiring December 31, 1990.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the Bureau of Land Management by November 10, 1987.

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ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidate's qualifications to: Director (150), Bureau of Land Management, MS–5558, Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Bureau of Land Management (150), MS–5558, Department of the Interior, Washington, DC 20240, Telephone: (202) 343–2054.

Dated: October 2, 1987.

Robert F. Burford,

Director.

[FR Doc. 87–23380 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–84–M

[ID–010–08–4410–08]

Management Framework Plan; Owyhee and Bruneau-Kuna; Idaho

AGENCY: Bureau of Land Management, Boise District Office, Interior.

ACTION: Notice to amend the Owyhee and Bruneau-Kuna Management Framework Plans.

SUMMARY: The Boise District, Bureau of Land Management proposes to amend the Owyhee and Bruneau-Kuna Management Framework Plans (MEPs) to establish research natural areas as Areas of Critical Environmental Concern.

ADDRESS: Requests for additional information and requests to be involved in this planning action can be directed to the Bureau of Land Management, Chief, Planning and Environmental Assistance, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Ted S. Milesnick, Chief, Planning and Environmental Assistance at the above address or call (208) 334–1582; (FTS) 554–1582.

SUPPLEMENTARY INFORMATION: The Boise District, BLM will evaluate five to ten sites in Owyhee County, Idaho for management as Areas of Critical Environmental Concern to protect research natural area values. These sites are located in the Bruneau and Owyhee Resource Areas. The sites vary in size from 100 acres to approximately 2,000 acres each. These sites would provide representation and protection for several vegetative communities which occur within Idaho. The sites being considered are primarily in good to excellent ecological condition. The main issues anticipated are conflicts between managing the areas as Research Natural Areas or allowing the areas to be open for livestock grazing or unrestricted mineral and energy exploration and development.

An interdisciplinary team including range, wildlife, wilderness and mineral and energy specialists will prepare the amendment and the environmental analysis. A draft amendment and environmental analysis will be circulated to interested publics prior to approval of the proposed amendment.

The existing MFPs for the areas being considered are available for review at the above listed address.

Dated: September 24, 1987.

J. David Brunner,

District Manager.

[FR Doc. 87–23363 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–GG–M

[NM–060–8–4351–90]

Roswell District Advisory Council Tour; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Advisory Council Tour.

SUMMARY: Notice is hereby given that the Roswell District of the Bureau of Land Management will conduct a tour of oil field development northwest of Roswell, following an update of Senate Bill S.7: The California Desert Protection Act of 1987.

DATE: Wednesday, November 4, 1987, beginning at 10 .a.m.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Barbara Bills-Heiss, Acting Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622–9042.

SUPPLEMENTARY INFORMATION: The Council will depart from the BLM District Office at 1717 West Second Street, Roswell, NM. The public is invited to participate at their own expense; transportation will *not* be provideed by BLM.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 87–23365 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–940–07–4212–12; A–20348]

Realty Action; Exchange of Public Land; Mohave and Coconino Counties, AZ

September 29, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice is to inform the public of the completion of an exchange of public and State land in Arizona. The United States acquired 12,195.51 acres in Mohave and Coconino Counties and the State of Arizona acquired 800.89 acres in Mohave County.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: On May 12, 1987, the Bureau of Land Management transferred the following described land to the State of Arizona by Patent No. 02–87–0029 and Deed No. AZ–87–003 pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 39 N., R. 16 W.,
Sec. 14, SW¼SE¼;
Sec. 22, W½NW¼.
T. 40 N., R. 15 W.,
Sec. 3, SE¼NE¼, N½SE¼.
T. 40 N., R. 16 W.,
Sec. 33, SW¼SE¼;
Sec. 34, W½NE¼, NW¼SE¼.
T. 41 N., R. 12 W.,
Sec. 5, lots 3 and 4, S½NW¼.
T. 41 N., R. 13 W.,
Sec. 1, lots 1 to 4, incl., E½SW¼.

In exchange the United States acquired the following described land:

Gila and Salt River Meridian, Arizona

T. 29 N., R. 11 W.,
Sec. 36, NW¼SE¼.
T. 34 N., R. 9 W.,
Sec. 16, all.
T. 35 N., R. 14 W.,
Sec. 36, all.
T. 41 N., R. 6 W.,
Sec. 10, SW¼, W½SE¼, SW¼NE¼SE¼, SE¼SE¼.
T. 41 N., R. 13 W.,
Sec. 16, all.
T. 41 N., R. 14 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all.

T. 38 N., R. 4 E.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.
T. 38 N., R. 5 E.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all.
T. 38 N., R. 6 E.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 32, all.
T. 39 N., R. 3 E.,
Sec. 36, NE¼.
T. 39 N., R. 6 E.,
Sec. 2, lots 1, 3, and 4, S½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 36, W½.
T. 40 N., R. 6 E.,
Sec. 36, all.
T. 40 N., R. 7 E.,
Sec. 2, lot 1, SE¼NE¼, W½SW¼, SE¼SW¼, E½SE¼;
Sec. 16, all.
T. 41 N., R. 4 E.,
Sec. 16, all.
T. 41 N., R. 5 E.,
Sec. 2, S½;
Sec. 16, all.
T. 42 N., R. 3 E.,
Sec. 36, lots 1 to 4, incl., S½.
T. 42 N., R. 4 E.,
Sec. 36, lots 1 to 4, incl.
T. 42 N., R. 5 E.,
Sec. 32, lots 3 and 4, SW¼.
T. 42 N., R. 6 E.,
Sec. 32, lots 1 to 4, incl., S½.

The reconveyed land described above that lies within the boundary of the Grand Canyon National Park is subject to the jurisdiction of the National Park Service.

The purpose of this notice is to inform the public and interested Government officials of the exchange of Federal and State land.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-23366 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-050-84212-10, CA-20856]

Realty Action; Lease of Lands, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, San Bernardino County, California.

SUMMARY: The following described lands and interests therein have been determined to be available for lease under section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732):

San Bernadino Meridian, California

T. 8 N., R. 23 E.,
Sec. 22, SW¼SW¼, containing 40 acres.

The United States proposes to lease these lands on a modified-competitive basis for use as a full-service truck stop and related facilities. Applications shall be considered.

Such lease will be subject to those rights for a highway access right-of-way granted to California Department of Transportation by right-of-way No. RI-04112 and for a 12 kV electric distribution line granted to the City of Needles by right-of-way No. RI-07071.

Publication of this Notice segregate the subject lands from all appropriations under any other public land laws, including location under the mining laws. This segregation will terminate upon issuance of a lease for these lands, 2 years from the date of this publication, or upon publication of a Notice of Termination, whichever occurs first.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, Yuma, Arizona 85364. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior, effective 60 days from the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Dated: September 30, 1987.

J. Darwin Snell,

District Manager.

[FR Doc. 87-23367 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-32-M

[ID-050-08-4212-14]

Realty Action; Sale of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I-21974, I-21982 through I-21986 inclusive and I-24538, I-24539, I-24540, Sale of Public Lands in Lincoln, Jerome, Elmore, and Gooding Counties, Idaho.

SUMMARY: The following described lands were examined, and through land use planning and public input were determined to be suitable for disposal by sale pursuant to section 203(a) of the Federal Land Policy and Management Act of 1976. Only sealed bids will be accepted.

Parcel	Acres	Legal	Case file No.
1	40.00	T. 5 S., R. 15 E., B.M., Section 27: NW¼SE¼	I-21974
2	5.00	T. 6 S., R. 12 E., B.M., Section 1: N½NE¼NE¼SW¼	I-21982
3	30.00	T. 5 S., R. 11 E., B.M., Section 33: E½E½NW¼SE¼; Section 34: S½SW¼SE¼	I-21983
4	160.00	T. 7 S., R. 18 E., B.M., Section 19: NE¼SE¼; Section 30: NW¼NE¼, SE¼NW¼, NE¼SW¼	I-21984
5	40.00	T. 5 S., R. 17 E., B.M., Section 15: SW¼NW¼	I-21985
6	40.00	T. 9 S., R. 19 E., B.M., Section 7: SW¼NE¼	I-21986
7	20.00	T. 6 S., R. 17 E., B.M., Section 2: E½SW¼SW¼	I-24538
8	20.00	T. 9 S., R. 17 E., B.M., Section 21: N½NW¼NW¼	I-24539
9	20.00	T. 9 S., R. 17 E., B.M., Section 21: S½NW¼NW¼	I-24540

Parcels 1 through 9, when patented, will be subject to the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 USC 945.

2. Oil and gas shall be reserved to the United States.

3. All valid existing rights and reservations.

Parcels 2, 3, 8, and 9, when patented, will also be subject to geothermal resources being reserved to the United States.

Parcels 3, when patented, will also be subject to sodium and potassium resources being reserved to the United States.

The lands are hereby segregated from all appropriation under the public land laws including the mining laws until sold or this sale is suspended.

Sealed bids must be received in this office no later than 1:00 p.m. on December 11, 1987. Bids for less than the appraised fair market value will not be accepted. The appraised values are not available at this time, but will be made public approximately one month before the sale date. A bid will constitute an application for conveyance of mineral interests of no known value. A $50.00 filing fee for processing such mineral conveyance, along with, but separate from, 30 percent of the full bid price, must accompany each bid.

Parcel 1 was previously offered on December 13, 1985, but was not sold. This is a reoffering of that parcel.

If a parcel is not sold on December 11, 1987, the parcel(s) will be offered the second Friday of each month at the same time and place until sold or the sale is suspended.

All parcels are offered as open competitive sales without preference to past users or adjacent landowners, except parcels 2, 3, 4, and 8. Those parcels are modified competitive bids for December 11, 1987. To qualify as a designated preference-right bidder, the following identified parties must submit a qualified bid on the original sale date.

Parcel 2 is being sold at public auction, subject to a preference bidding designation to allow Mr. Leroy Hess of L&J Development Company to meet the highest bid based on historical occupancy use and adjacent landownership. Refusal or failure to meet the highest qualifying bid within 31 calendar days of this offering shall constitute a waiver of such bidding provisions and the land will be offered to the highest bidder. If no bid is received on the date of this offering, preference provisions will be waived and the land will be offered for sale using competitive procedures on January 8, 1988, and thereafter on the second Friday of each month until sold or the sale is suspended.

Parcel 3 is being sold at public auction, subject to a preference bidding designation to allow Mr. John C. Parke to meet the highest bid based on historical occupancy use and adjacent landownership. Refusal or failure to meet the highest qualifying bid within 31 calendar days of this offering shall constitute a waiver of such bidding provisions and the land will be offered to the highest bidder. If no bid is received on the date of this offering, preference provisions will be waived and the land will be offered for sale using competitive procedures on January 8, 1988, and thereafter on the second Friday of each month until sold or the sale is suspended.

Parcel 4 is being sold at public auction, subject to a preference bidding designation to allow Reservoir Land Company to meet the highest bid based on historical occupancy use and adjacent landownership. Refusal or failure to meet the highest qualifying bid within 31 calendar days of this offering shall constitute a waiver of such bidding provisions and the land will be offered to the highest bidder. If no bid is received on the date of this offering, preference provisions will be waived and the land will be offered for sale using competitive procedures on January 8, 1988, and thereafter on the second Friday of each month until sold or the sale is suspended.

Parcel 8 is being sold at public auction, subject to a preference bidding designation to allow Mr. Jack Watts to meet the highest bid based on historical occupancy use and adjacent landownership. Refusal or failure to meet the highest qualifying bid within 31 calendar days of this offering shall constitute a waiver of such bidding provisions and the land will be offered to the highest bidder. If no bid is received on the date of this offering, preference provisions will be waived and the land will be offered for sale using competitive procedures on January 8, 1988, and thereafter on the second Friday of each month until sold or the sale is suspended.

DATE AND ADDRESS: The sale offering will be held on December 11, 1987, at 1:00 p.m. in the Shoshone District, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale and conditions, appraised value, bidding procedures, and other details can be obtained by contacting Joe Aitken at (208) 886–2206 or writing to BLM, P.O. Box 2–B, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager at the above address.

K Lynn Bennett,

District Manager.

[FR Doc. 87–23368 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–07–4212–13 ; N–44686]

Realty Action; Exchange of Public Lands in Elko County, NV

The following described public lands administered by the Bureau of Land Managment have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Managment Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 40 N., R. 69 E.,
- Sec. 4, Lots 1 and 4, SE¼NE¼, E½SE¼;
- Sec. 6, All;
- Sec. 8, NW¼NE¼, NE¼NW¼, SW¼NW¼, SW¼, NW¼SE¼, S½SE¼;
- Sec. 14, N½NE¼, NW¼NW¼;
- Sec. 16, NE¼, NE¼SE¼;
- Sec. 18, All;
- Sec. 20, All;
- Sec. 28, W½, W½SE¼, SE¼SE¼.

T. 41N., R. 69 E.,
- Sec. 18, Lots 1–4 inclusive, NW¼NE¼, S½NE¼, E½W½, N½SE¼, SW¼SE¼;
- Sec. 20, W½W½, SE¼SW¼;
- Sec. 30, All;
- Sec. 32, W½NW¼, SW¼.

The areas described above aggregate 4,841.87 acres.

In exchange for these lands the United States will acquire the following described private lands for Lands of Sierra, Inc.:

Mount Diablo Meridian, Nevada

T. 40 N., R. 62 E.,
- Sec. 1, All;
- Sec. 2, Lots 1–4 inclusive, 6, 7, SE¼NW¼, N½SW¼, SW¼SW¼, SE¼;
- Sec. All;
- Sec. 10, All;
- Sec. 11, All;
- Sec. 12, W½NW¼, SE¼SW¼.

T. 41 N., R. 62 E.,
- Sec. 26, E½, S½NW¼, SE¼NW¼;
- Sec. 27, All;
- Sec. 34, All;
- Sec. 35, All;
- Sec. 36, S½SW¼, SW¼SE¼.

The areas described above aggregate 6,206.75 acres.

In addition to the private lands described above, Lands of Sierra is providing an easement to insure public access to the property.

The purpose of the exchange is to acquire non-Federal lands in the Snake Mountain Range with demonstrated wildlife, riparian and recreation potential. The exchange is consistent with the Wells, Resource Management Plan and is in the public interest. The lands to be disposed of are within the Lands of Sierra, Inc., grazing allotment and contain a total of 417 AUMs. Lands of Sierra does not own the mineral estate for the private offered lands. Therefore there would be no exchange of mineral estates by either party. The exchange would not be consummated any sooner than 60 days after the date this notice is published in the **Federal Register.**

The above described lands will be subject to an appraisal to determine the value of the lands to be exchanged. The lands involved may be adjusted to

equalize values following the completion of the appraisal.

Land transferred from the United States will contain the following reservations in the patent:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945).

2. All mineral deposits in the lands, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable laws and such regulations as the Secretary of Interior may prescribe.

The patent would be issued subject to:

1. Those rights for powerline purposes granted to Raft River Electric Company, its successors or assigns, by right-of-way No. Nev-044466, pursuant to the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

2. Those rights for communication line purposes granted to CP National Telephone, its successors or assigns by right-of-way No. N–2614, pursuant to the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

3. Those rights for roadway purposes granted to Elko County, its successors or assigns, by right-of-way No. N–46813, pursuant to the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

4. Those rights for roadway purposes granted to the Bureau of Land Management, its successors or assigns, by right-of-way No. N–47144, pursuant to the Act of October 21, 1976 (90 Stat. 2781; 43 U.S.C. 1767).

5. Those rights for roadway purposes granted to the Bureau of Land Management, its successors or assigns, by right-of-way No. N–47145, pursuant to the Act of October 21, 1976 (90 Stat. 2781; 43 U.S.C. 1767).

Title to the offered lands when conveyed to the United States will contain the following reservations:

1. An easement over a portion of sections 1, 2, 3 and 10, T. 40 N., R. 62 E., MDM, of 20 feet in width for communication facilities and incidental purposes, as granted to American Telephone and Telegraph Company by easement recorded in Book 98 of Official Records at Page 294, Elko County, Nevada.

2. A right-of-way executed by Winecup Ranch Partnership to American Telephone and Telegraph Company over a portion of Section 1, T. 40 N., R. 62 E., MDM., for road purposes by document recorded January 13, 1972, in Book 158 of Official Records at Page 373, Elko County, Nevada.

Publication of this notice in the **Federal Register** will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this notice or upon publication of a Termination of Segregation.

Further information regarding this exchange including the Environmental Assessment is available for review at the Elko District Office, Bureau of Land Management, 3900 E. Idaho, Elko, Nevada 89801. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District, at the above address. All objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: September 30, 1987.

Rodney Harris,

District Manager.

[FR Doc. 87–23367 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–07–4212–13 (N–46056)]

Land Exchange Conveyance; Opening of Public Lands, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; issuance of land exchange conveyance document and order providing for opening of public lands, Nevada.

SUMMARY: This notice identifies Federal and non-Federal lands involved in a recently completed exchange transaction. The lands acquired by the United States will become open to the operation of the public land laws on the date specified below. No minerals were reconveyed to the United States.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Rod Harris, District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801 (702) 738–4071.

SUPPLEMENTARY INFORMATION: The United States issued Deed No. NV–87–001 to Newmont Gold Company on September 25, 1987, for the following described lands pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 31 N., R. 53 E.,
Sec. 4, lots 1, 2, 3, 4, S½N½, S½.
T. 32 N., R. 53 E.,
Sec. 33, lots 1, 2, 3, 4, N½, N½S½.

The area described contains 1,287.44 acres in Elko County, Nevada.

In exchange for these lands, the United States acquired the following described lands from Newmont Gold Company:

Mount Diablo Meridian, Nevada

T. 37 N., R. 55 E.,
Sec. 27 lots 1, 2, 3, 4, E½W½, SW¼SE¼.
Sec. 33, All.

The area described contains 1,027.64 acres in Elko County, Nevada.

The purpose of this exchange was to acquire non-Federal land with demonstrated fishery values and recreation potential. The public interest was served through completion of this exchange.

The Federal and non-Federal land in the exchange were of equal value, $77,000.00.

At 10:00 a.m., on November 9, 1987, the lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m., on November 9, 1987, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–23370 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–08–4212–18; N–45233]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described land in Mesquite, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than fair market value. Authority for the sale is the Act of October 27, 1986, 100 Stat. 3061 (Pub. L. 99–548). The lands will be offered for sale no later than October 26, 1987.

Mount Diablo Meridian

T. 13 S., R. 71 E.,
Sec. 8, lots, 1–3, NW¼NE¼, S½NE¼, NW¼, N½S½, SW¼SW¼;
Sec. 9, lots 1, 5, 6, 8, 11, 17, 19, 21, NE¼, NE¼NW¼, S½NW¼, N½SW¼, N½NW¼SE¼;
Sec. 10, lots 5–9, W½NW¼, NW¼SW¼;
Sec. 17, lot 1;
Sec. 18, N½NW¼.

Aggregating 1,439.62 acres, more or less.

This parcel of land, situated in Mesquite is being offered as a direct sale to the City of Mesquite. Public Law 99–548 directed the Secretary of the Interior through the Bureau of Land Management to sell certain public lands

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to the City of Mesquite to allow for community expansion. This is the first phase of a three phase process.

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system.

A deposit of twenty (20) percent of the appraised fair market value must be paid to the Bureau of Land Management, Las Vegas District Offict, no later than October 26, 1987. The balance of the full purchase price shall be paid within 180 days of the City's receipt of the sale offer.

Conveyance of the available mineral estate except for oil, gas, sodium and potasssium will occur simultaneously with the sale of the land. The subject lands have no known mineral values, with the exception of oil and gas, sodium and potassium. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All oil and gas, sodium and potassium mineral deposits. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the Las Vegas District Office.

and will be subject to:

1. Those rights for highway purposes granted to the State of Nevada, Department of Highways, its successors and assigns by Permit No. N–125, under the Act of August 27, 1958, as amended, 23 U.S.C. 107(d).

2. Those rights for communication site purposes which have been granted to Clark County School District, its successors or assigns, by Permit No. N–3886 under the Act of March 4, 1911, 36 Stat. 1253, formerly 43 U.S.C. 961.

The lands are segregated from all forms of appropriation under the public land laws, including the general mining laws by the Act of October 27, 1986.

Detailed information concerning the sale is available for review at the Las Vegas District Office, Bureau of Land Management, 4765 W. Vegas Dr., Las Vegas, NV.

Dated: October 1, 1987.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 87–23371 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–HC–M

[MT–930–03–4212–13; NDM 62060]

Montana; Conveyance and Order Providing for Opening of Public Land in Bowman County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

EFFECTIVE DATE: At 9 a.m. on November 25, 1987, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including the mining laws, but not from exchange, by the Notices of Realty Action published in the **Federal Register** on December 31, 1985 (50 FR 53404) and on June 25, 1986 (51 FR 23161). The segregation terminated for the affected lands on issuance of the Patent on August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was conveyed to Everett Real Estate, Inc.:

Fifth Principal Meridian, North Dakota

T. 151 N., R. 99 W.,
Sec. 6, lot 5.
T. 152 N., R. 99 W.,
Sec. 7, lot 3;
Sec. 24, NW¼NE¼.
T. 141 N., R. 101 W.,
Sec. 18 SE¼SE¼.
T. 152 N., R. 101 W.,
Sec. 12, NW¼SE¼;
Sec. 14, SW¼SW¼, SE¼SE¼;
Sec. 22, SE¼NW¼.
T. 152 N., R. 103 W.,
Sec. 24, SE¼SW¼.
T. 129 N., R. 106 W.,
Sec. 18, lots 2, 3, NE¼SW¼;
Sec. 19, lot 4;
Sec. 30, lot 1.
T. 129 N., R. 107 W.,
Sec. 12, SW¼SW¼;
Sec. 13, NW½NE¼, N½NW¼, NE¼SE¼;
Sec. 24, E½SE¼, SW¼SE¼;
Sec. 34, lot 4.

Aggregating 923.99 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Bowman County, North Dakota:

Fifth Principal Meridian, North Dakota

T. 131 N., R. 106 W.,
Sec. 23, lots 2, 3, W½NE¼, NE¼NW¼ NW¼, E½NW¼NW¼NW¼, SW¼NW¼NW¼NW¼, S½NW¼ NW¼, S½NW¼, SW¼, W½SE¼;
Sec. 26, W½NW¼, N½NW¼SW¼; and
Sec. 27, SE¼NE¼.

Containing 629.5 acres, more or less.

3. The values of Federal public land and the nonfederal land in the exchange were appraised at $56,500 each. No minerals were transferred by either party in the exchange.

4. At 9 a.m. on November 25, 1987, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

September 30, 1987.

[FR Doc. 87–23372 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–DN–M

[OR–130–08–4212–13: GP8–1; OR 40651 (WA)]

Exchange of Public Lands; Stevens County, WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public Lands in Stevens County, Washington. The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 32 N., R. 38 E.,
Sec. 9, SW¼NE¼NW¼.
T. 35 N., R. 38 E.,
Sec. 3, Lot 4;
Sec. 6, Lots 9 & 11, MS996;
Sec. 7, Lot 6;
Sec. 9, SW¼NW¼, SW¼NE¼.
T. 37 N., R. 38 E.,
Sec. 15, SW¼SE¼;
Sec. 22, E½NE¼.
T. 34 N., R. 39 E.,
Sec. 20, SW¼SW¼;
Sec. 28, SW¼SW¼.
T. 38 N., R. 41 E.,
Sec. 18, SE¼SE¼;
Sec. 19, SE¼SE¼;
Sec. 20, SE¼NE¼, SW¼SW¼;
Sec. 29, NW¼NW¼, SE¼SW¼, E½SE¼;
Sec. 30, NW¼NE¼.
T. 40 N., R. 41 E.,
Sec. 24, Lot 1, S½NE¼;

Sec. 25, Lots 2, 3 & 4.
T. 40 N., R. 42 E.,
Sec. 18, S½SE¼.

The area described above aggregates approximately 913 acres in Stevens County, Washington.

In exchange for all or part of these lands, the Federal Government will acquire all or part of the following described private lands from Arden Tree Farms, Inc.:

Williamette Meridian

T. 29 N., R. 37 E.,
Sec. 1, Lots 3, 4, & 5.
T. 31 N., R. 38 E.,
Sec. 24, Lots 4 & 5, NW¼NE¼SE¼;
Sec. 25, Lots 1 & 2, W½NE¼.
T. 31 N., R. 39 E.,
Sec. 2, Portions of S½SE¼NE¼, N½SE¼;
Sec. 3, S½SW¼;
Sec. 4, Lots 1, 2, 3, 4, S½N½, E½SE¼;
Sec. 8, SE¼NE¼SE¼, SE¼SE¼;
Sec. 9, W½SW¼NW¼, W½SW¼;
Sec. 11, S½NE¼;
Sec. 17, MS735;
Sec. 19, W½ of Lot 4;
Sec. 29, SW¼.
T. 39 N., R. 40 E.,
Sec. 20, SE¼NW¼.

The area described above aggregates approximately 1,375 acres in Stevens County, Washington.

The purpose of the land exchange is to facilitate resource management opportunities in selected management areas as identified in the Spokane District's Resource Management Plan. The private lands being offered have very important values for recreation, wildlife habitat, riparian and forest management. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to equalize the values upon completion of the final appraisal of the lands.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including, but not limited to any right-of-way, easement, or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For a period of 45 days, from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Spokane District Manager at the above address. Any adverse commments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Date of Issue: October 1, 1987.

Joseph K. Buesing,

District Manager.

[FR Doc. 87-23373 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-33-M

[AZ-942-08-4520-12]

Arizona; Filing of Plats of Survey

October 1, 1987.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines and a portion of Homestead Entry Survey No. 86, and a survey of the subdivision and a metes-and-bounds survey of lots 8, 9 and 10, in section 11, Township 21 North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted August 24, 1987, and was officially filed August 31, 1987.

This plat was prepared at the request of the U.S. Forest Service, Coconino National Forest.

A plat representing a dependent resurvey of a portion of subdivisions in section 33, and a survey of lot 20, section 33, Township 11 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted September 16, 1987, and was officially filed September 18, 1987.

This plat was prepared at the request of the U.S. Forest Service, Region Three.

A plat (in two sheets) representing a dependent resurvey of the north boundary and of a portion of the south, east, and west boundaries, and the subdivisional lines, and the survey of subdivisions of sections 2 and 5 in Township 19 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted September 21, 1987, and was officially filed September 23, 1987.

A plat representing a dependent resurvey of the south boundary and a portion of the west boundary of Township 20 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted September 21, 1987, and was officially filed September 23, 1987.

These plats were prepared at the request of the Navajo and Hopi Indian Relocation Commission.

A supplemental plat showing amended lottings created by the segregation of Mineral Survey No. 3210 in section 17, Township 12 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted September 16, 1987, and was officially filed September 18, 1987.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A supplemental plat showing amended lottings created by the segregation of Mineral Survey No. 2744 in section 24, Township 5 North, Range 13 West, Gila and Salt River Meridian, Arizona, was accepted July 1, 1987, and was officially filed July 2, 1987.

This plat was prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lottings in section 2, Township 3 North, Range 15 West, Gila and Salt River Meridian, Arizona, was accepted August 21, 1987, and was officially filed August 25, 1987.

This plat was prepared at the request of the Bureau of Land Management, Yuma District Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 87-23374 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-32-M

[OR-050-4410-10:GP8-002]

Oregon; Prineville District Advisory Council Meeting

September 29, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on November 12, 1987. The meeting will

begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, Oregon 97754. The agenda will include the following items: (1) Discussion of the Draft Brothers/LaPine Resource Management Plan; (2) the decisions and implementation of the Oregon/Washington BLM Organization Study; (3) the progress on the Prineville District land exchange program; (4) progress on the development of the John Day River Management Plan.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral comments to the Board is requested to contact the District Manager at the above address prior to November 9, 1987.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: September 29, 1987.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 87-23282 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-33-M

[U-34712]

Proposed Reinstatement of Terminated Oil and Gas Lease; Utah

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-34712 for lands in Uintah County, Utah, was timely filed and required rentals and royalties accruing from December 1, 1986, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16-⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-34712 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-23241 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-940-07-4220-11; C-027679]

Proposed Continuation of Withdrawal; Colorado

September 29, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for various campground sites, be modified and the withdrawal be continued for 20 years insofar as it affects 10 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received by January 6, 1988.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order No. 2282, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

New Mexico Principal Meridian

Rio Grande National Forest

T. 44 N., R. 6 E.,
Sec. 18, SE¼NE¼NE¼.

The area described aggregates 10 acres in Saguache County.

The purpose of this withdrawal is for the administration and protection of the Big Springs Campground. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-23283 Filed 10-7-87; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the availability of environmental documents prepared for Outer Continental Shelf (OCS) minerals exploration proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for the following oil and gas exploration activities proposed on the Alaska OCS. This listing inclues all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this Notice.

Proposal

Standard Alaska Production Company (Standard Alaska) has submitted a plan for permanent abandonment of the artificial gravel structure "Mukluk Island." Mukluk Island is located at the common corner of the below-named leases. Standard Alaska proposes the removal of all materials making up this island and facilities associated with the drilling and support of drilling operations with the exception of some slope-protection materials to depth of 15 feet below sea level and for materials not presently covered by gravel to 25 feet below sea level. Standard Alaska proposes to monitor the island for 5 years after abandonment through photo documentation.

Location

Lease	Block(s)
OCS-Y:	
0334	280

Lease	Block(s)
0335	281
0343	324
0344	325

Environmental Assessment

EA No. AK 87–04

FONSI Date

July 2, 1987.

Proposal

Tenneco Oil Company (designated as the operator by the leassee, ARCO Alaska, Inc.) proposes to drill up to two wells to explore two leases in the eastern Alaska Beaufort Sea Sale 87 area. The FONSI and associated EA evaluate the potential environmental effects of activities associated with drilling the initial well. These activities include moving the drilling unit to the initial well site during the 1987 open-water season, drilling the initial well between November 1, 1987, and June 2, 1988, and removing the drilling unit from the initial well during the 1988 open-water period.

Location

Lease	Block(s)
OCS–Y:	
0943	560
0950	935/936

Environmental Assessment

EA No. AK 87–05

FONSI Date

August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSI and assoicated EA are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, phone: (907) 261–4435.

SUPPLEMENTAL INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal Actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: September 29, 1987.

Irven F. Palmer, Jr.,

Acting Regional Director, Alaska OCS Region.

[FR Doc. 87–23381 Filed 10–7–87: 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Raintree Resources, Inc.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Raintree Resources, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4769, Block 425, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATES: The subject DOCD was deemed submitted on October 1, 1987. Comments must be received by October 23, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A Copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on th 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program. .

Revised rules governing practices and procedures under which the Minerals management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 2, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23382 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Timbalier Block 23 Federal Unit Agreement No. 14–08–001–3195, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 23 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with

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support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on September 25, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Towner; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2641.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 29, 1987.

J. Rogers Pearcy,

Regional Director,Gulf of Mexico OCS Region.

[FR Doc. 87–23284 Filed 10–7–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7793, Block 98, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was submitted on September 28, 1987. Comments must be received by October 23, 1987, 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m, Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purposes of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 30, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23285 Filed 10–7–87; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Information Collection Submitted for Review to the Office of Management and Budget

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer at a.c. 202 395–7340.

Title: 43 CFR 426 Acreage Limitation—Bureau of Reclamation Rules and Regulations.

Abstract: These forms are to be completed by all holders of irrigable and irrigation land, as described in 43 CFR Part 426, to declare these irrigable and irrigation landholdings. This information is necessary to determine the landholders' ccmpliance with Title II of the Pub. L. 97–293 and 43 CFR Part 426.

Bureau form numbers: 7–2178 through 7–2181, 7–2183 through 7–2185, 7–2187 through 7–2191, 7–2193 through 7–2195, and 7–2197 through 7–2199.

Frequency: Annually, and when landholding change occurs.

Description of respondents: Owners aad Lessees of Land on Federal Reclamation Projects.

Annual responses: 56,610.

Annual burden hours: 20,325.

Bureau clearance officer: Pat Scott, a.c. 202–343–4249.

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

[FR Doc. 87–23265 Filed 10–7–87; 8:45 am]

BILLING CODE 9310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material

may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requriement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC, 20503, telephone 202–395–7340.

Title: 30 CFR Part 779 Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

Abstract: Section 507 and 508 of Pub. L. 95–87 require applicants for surface coal mining permits to provide adequate descriptions of the premining environmental resources and cultural, historic, and archeological values existing within the proposed permit area and adjacent areas. This information is used by the regulatory authority to determine whether the applicant can comply with the environmental protection performance standards for surface mining.

Bureau from number: None.

Frequency: On occasion.

Description of respondents: Coal mine operations.

Annual responses: 2000.

Annual burden hours: 1,230,420.

Bureau clearance officer: Darline Crose-Boyd (202) 343–5447.

Dated: September 4, 1987.

Donald Hinderliter,

Acting Assistant Director, Budget and Administration

[FR Doc. 87–23286 Filed 10–7–87; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Board of Directors; Public Hearing

AGENCY: Overseals Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Board of Directors of Overseas Private Investment Corporation (OPIC) on November 16, 1987. The hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATE: The hearing will be held on November 16, 1987 and will begin promptly at 1:00 p.m. Prospective participants must submit to OPIC on or before October 30, 1987 notice of their intent to participate.

ADDRESS: The location of the hearing will be: Interstate Commerce Commission, Hearing Room A, 12th Street and Constitution Avenue, NW., Washington, DC

Notices and prepared statements should be sent to: James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, Washington, DC 20527.

Procedure

(a) Attendance; Participation

The hearing will be open to the public. However, a person wishing to present his or her views at the hearing must provide OPIC with advance notice on or before October 30, 1987. The notice must include the name, address, and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements

Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5:00 p.m. on November 6, 1987. Prepared statements must be typewritten, double spaced and may not exceed thirty (30) pages.

(c) Duration of Presentations

Oral presentations will in no event exceed twenty (20) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda

Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings

A verbatim transcript of the hearing will be compiled and a record of the hearing will be published. The record of the hearing will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy. OPIC's Board of Directors is required by 22 U.S.C. 2191A(b) to hold at least one public hearing each year.

FOR FURTHER INFORMATION CONTACT: James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527 (202/457–7038).

Peggy A. Kole,

Corporate Secretary.

October 5, 1987.

[FR Doc. 87–23264 Filed 10–7–87; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31112]

Joint Application; Canadian Pacific Ltd. & Incan Ships Ltd.

AGENCY: Interstate Commerce Commission.

ACTION: Institution of proceeding.

SUMMARY: Canadian Pacific Ltd. (CPL) and Incan Ships Ltd. (Incan Ships) filed a joint application for this Commission to determine if CPL's proposed purchase of a controlling stock interest in Incan Ships, and thus its wholly-owned subsidiary, Incan Superior, Ltd. (Incan Superior), would violate provisions of 49 U.S.C. 11321.

DATES: An original and 10 copies of comments must be filed by October 28, 1987. An original and 10 copies of applicants' replies to the comments must be filed by November 17, 1987. Comments and replies referring to Finance Docket No. 31112 must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of comments must be served on applicants' representative: G. Paul Moates, Sidley & Austin, 1722 Eye Street NW., Washington DC 20006.

Applicants must serve their reply on all parties who file comments.

The application may be inspected at the Commission's office in Washington, DC. Copies are also available from applicants' counsel, G. Paul Moates, at the above address.

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FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7246. [TTD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: CPL has owned a 38 percent share of Incan Ships since the latter's establishment in 1973. The remaining shares are owned by Inchcape Canada Ltd. (54.4 percent) and Halidon Holdings, Ltd. (7.5 percent). Both have agreed to sell their holdings to CPL. CPL would then own 100 percent of Incan Ships and Incan Ships' wholly-owned subsidiary, Incan Superior. CPL currently controls, *inter alia*, CP Rail and Soo Line Corporation (which in turn controls Soo Line Railroad).

Incan Superior owns one vessel and provides the only seasonal railcar ferry service on Lake Superior between Thunder Bay, Ontario and Superior, Wisconsin. Great Lakes Forest Products, Ltd. (GLFP), which is controlled by CPL, provides over 87 percent of Incan Superior's traffic.

Applicants contend that the section 11321(a) prohibition against common ownership of a railroad and a water common carrier or vessel carrying property or passengers with which it does or may compete may not apply to the subject transaction because there is no effective competition between CP Rail and the vessel operated by Incan Superior. They admit, however, that CP Rail's limited participation in traffic moving from Thunder Bay to destinations in the Midwest may be sufficient to support a finding of competition betwen CP Rail and Incan Superior. In any case, the applicants maintain that the proposed transaction is authorized under section 11321(b) as there will not be a reduction in competition on the water route. Applicants state that the rail and water operations are complementary rather than competitive, and that CPL intends to improve Incan Superior's efficiency and cost competitiveness through joint marketing programs and coordinated operations to improve vessel use.

The proposed transaction initially appears to have no significant effects on the human environment or energy conservation, but comments on these aspects are invited.

Decided: October 2, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23293 Filed 10–7–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[Civil Action No. 87–1430–CIV–T–10C]

Lodging of Consent Decree Pursuant to Clean Water Act: General Development Utilities, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 23, 1987, a proposed consent decree in *United States v. General Development Utilities, Inc.*, Civil Action No. 87–1430–CIV–T–10C, was lodged with the United States District Court for the Middle District of Florida. The Complaint filed by the United States alleged violations of the Clean Water Act for failure to obtain a National Pollutant Discharge Elimination System permit for discharges from the defendant's North Port, Florida and Silver Springs Shores, Florida wastewater treatment plants. The complaint sought injunctive relief to require the defendant to comply with the Clean Water Act and civil penalties for past violations. The decree requires defendants to achieve compliance with the Clean Water Act by ceasing all discharges by no later than April 30, 1988. In addition, defendant must comply with interim discharge requirements and effluent limitations and must perform monitoring and reporting activities. Defendant must also pay a civil penalty for past violations of $487,000.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. General Development Utilities, Inc.*, D.J. Ref. 90–5–1–1–2887.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Florida, Robert Timberlake Building, 500 Zack Street, Tampa, Florida, and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. P.O. Box 7611, Washington, DC. 20044. When requesting a copy, please refer to *United States v. General Development Utilities, Inc.*, D.J. Ref. 90–5–1–1–2887, and enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–23307 Filed 10–7–87; 8:45am]

BILLING CODE 4410–01–M

[Civil Action No. B–86–88 TFGD)]

Lodging of Consent Decree Pursuant to Clean Air Act; Raymark Industries, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *September 24, 1987*, a proposed Consent Decree in *United States v. Raymark Industries, Inc., et al.*, Civil Action No. B–86–88 (TFGD), was lodged with the United States District Court for the District of Connecticut. The proposed Consent Decree concerns the alleged discharge of asbestos, a hazardous air pollutant, from that portion of the manufacturing facility located at 75 East Main Street, Stratford, Connecticut, that is presently operated by Brake Systems, Inc. The proposed Consent Decree requires Brake Systems, Inc. to implement a comprehensive compliance plan and pay a civil penalty for an alleged past violation of the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Raymark Industries, Inc.*, D.J. Ref. 90–5–2–1–865.

The proposed Consent Decree may be examined at the offices of the United States Attorney, United States Court House, 141 Church Street, New Haven, Connecticut 06510; the Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section,

Land and Natural Resources Division of the United States Department of Justice at the above address. In requesting a copy, please enclose a check in the amount of $4.10 payable to the Treasurer of the United States, to cover the cost of reproduction.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-23308 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 5-87]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Justice Management Division, Department of Justice is eliminating a system of records entitled "Executive Biography, JUSTICE/JMD-012." The Division is eliminating the system because it has found that it is not a useful management tool. The index has been destroyed in accordance with General Records Schedule 23, item 7.b., as approved by the Archivist of the United States. Accordingly, the system, as published in the **Federal Register** on January 10, 1980, (45 FR 2229), is removed from the Department's compilation of Privacy Act systems.

Dated: September 16, 1987.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 87-23309 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-63]

Hearing; James Hastings, D.D.S., Placerville, CA

Notice is hereby given that on June 2, 1987, the Drug Enforcement Administration, Department of Justice, issued to James Hastings, D.D.S. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Registration, AH9009932, and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, October 14, 1987, in Courtroom No. 2041, United States Tax Court, Federal Building, 450 Golden Gate Avenue, San Francisco, California.

Dated: October 2, 1987.

John C. Lawn,

Administration.

[FR Doc. 87-23259 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-29]

Hearing; Joseph P. Hutsko, D.O., Allentown, PA

Notice is hereby given that on February 17, 1987, the Drug Enforcement Administration, Department of Justice, issued to Joseph P. Hutsko, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration executed on November 24, 1986.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, October 29, 1987, in Courtroom No. 10, Room 309, United States Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: October 2, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-23260 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-40]

Hearing; Carl Suchar, D.O., Clearwater, FL

Notice is hereby given that on March 31, 1987, the Drug Enforcement Administration, Department of Justice, issued to Carl Suchar, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS1718723, and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, October 20, 1987, in Courtroom No. 803, United States Tax Court, Twiggs Building, 700 Twiggs Street, Tampa, Florida.

Dated: October 2, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-23261 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-64]

Hearing; Vincent A. Sundry, D.O., Tarpon Springs, FL

Notice is hereby given that on July 27, 1987, the Drug Enforcement Administration, Department of Justice, issued to Vincent A. Sundry, D.O. an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, October 22, 1987, in Courtroom No. 803, United States Tax Court, Twiggs Building, 700 Twiggs Street, Tampa, Florida.

Dated: October 2, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-23262 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-47]

Hearing; Neveille Williams, D.D.S., Houston, TX

Notice is hereby given that on May 6, 1987, the Drug Enforcement Administration, Department of Justice, issued to Neveille Williams, D.D.S. an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration executed on August 24, 1986.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, October 20, 1987, in the South Courtroom, United States Tax Court, 400 2nd Street, NW., Washington, DC.

Dated: October 2, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-23263 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Juvenile Justice Statistics and Systems Development Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of clarification of deadline date.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 241 and 224(b)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a clarification of the deadline date for receipt of applications for the Juvenile Justice Statistics and Systems Development Program Announcement, **Federal Register**, Vol. 52, No. 186, Friday, September 25, 1987. The deadline is Monday, November 16, 1987.

Other program information published in the **Federal Register** on September 25, 1987, regarding this solicitation is current and applicable.

FOR FURTHER INFORMATION CONTACT: Barbara Allen-Hagen at 202/724-5929; or Douglas Dodge at 202/724-5914.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-23232 Filed 10-7-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Babcock and Wilcox Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 19, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 19, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 28th day of September 1987.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union workers firm)	Location	Date received	Date of petition	Petition No	Articles produced
Babcock & Wilcox, Co. (USWA)	Beaver Falls, PA	9/28/87	9/14/87	20,111	Steel
Babcock & Wilcox, Co. (USWA)	Ambridge, PA	9/28/87	9/14/87	20,112	Steel
Babcock & Wilcox, Co. (USWA)	Koppel, PA	9/28/87	9/14/87	20,113	Steel
Babcock & Wilcox, Co. (boilermaker)	Donora, PA	9/28/87	9/13/87	20,114	Steel
Ballard Enterprises (company)	Houston, TX	9/28/87	9/16/87	20,115	Geological consulting
Bighart Pipeline Co. (workers)	Tulsa, OK	9/28/87	9/15/87	20,116	Oil
Bow Pipeline Co. (workers)	Tulsa, OK	9/28/87	9/15/87	20,117	Oil
Champion Die Co. (company)	Lynn, MA	9/28/87	8/18/87	20,118	Cutting dies
Chiha Incorp (ILGWU)	N. Bergen, NJ	9/28/87	9/17/87	20,119	Loungewear
Dillingham Ship Repair (IAM&AW)	Portland, OR	9/28/87	9/17/87	20,120	Ship repair
Esselte Boorum (GCIU)	Syracuse, NY	9/28/87	9/15/87	20,121	Binders
Gramercy Mills (ILGWU)	Passaic, NJ	9/28/87	9/11/87	20,122	Bathing suits
Hamilton Brothers Oil Co.	Houston, TX	9/28/87	9/11/87	20,123	Oil
Kanawha Glass Co.	Dunbar, WV	9/28/87	9/21/87	20,124	Table & novelty ware
Klopman Fabrics (workers)	Dublin, VA	9/28/87	9/15/87	20,125	Fabric
Mechanical Systems, Inc. (workers)	Houston, TX	9/28/87	9/4/87	20,126	Cranes & valves
NCA, Inc. (workers)	Burlington, NC	9/28/87	9/18/87	20,127	Electrical wiring
Ristance Assemblies (workers)	Bremen, IN	9/28/87	9/11/87	20,128	Wire harnesses
III-V Semiconductor, Inc. (workers)	Troy, NY	9/28/87	9/14/87	20,129	Diodes
Streetman, Inc. (company)	Natchez, MS	9/28/87	9/14/87	20,130	Oil & gas
Todd Shipyard Corp. (company)	Jersey City, NJ	9/28/87	9/17/87	20,131	Ships.
Unisys (MMC Bldg) (workers)	Eagan, MN	9/28/87	8/4/87	20,132	Computer products.
Unisys (Plant 8) (workers)	Eagan, MN	9/28/87	8/4/87	20,133	Computer products.
MCR, Inc. (workers)	Mebin, NC	9/28/87	9/18/87	20,134	Electrical wiring

[FR Doc. 87-23310 Filed 10-7-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19, 870]

Dismissal of Applications for Reconsideration; Crescent Brick Co., Altoona, PA

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Crescent Brick Company, Altoona, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19, 870; Crescent Brick

Company, Altoona, Pennsylvania (September 29, 1987).

Signed at Washington, DC this 29th day of September 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-23311 Filed 10-7-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20, 005]

Dismissal of Applications for Reconsideration; Double E Well Service, St. Louis, OK

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Double E Well Service, St. Louis, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20, 005; Double E Well Service, St. Louis, Oklahoma (September 29, 1987).

Signed at Washington, DC this 29th day of September 29, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-23312 Filed 10-7-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,848]

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction; E.F. Johnson Company, Waseca, WI

In **Federal Register** Doc. 87-20076 appearing on page 32976 in the **Federal Register** of September 1, 1987 the company location under Affirmative Determinations for TA-W-19,848, E.F. Johnson Company, Waseca, Wisconsin should be corrected to read "Waseca, Minnesota".

Signed at Washington, DC, this 29th day of September 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-23313 Filed 10-7-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,764]

Negative Determination Regarding Application for Reconsideration; Inexco Oil Co., Houston, TX

By an application dated August 20, 1987, one of the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Inexco Oil Company, Houston, Texas. The denial notice was signed on July 27, 1987 and published in the **Federal Register** on August 25, 1987 (52 FR 32071).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial petition was filed on behalf of corporate staff workers of Inexco Oil Company and its wholly owned subsidiary Wilson Brothers Drilling Company, Seminole, Texas. Inexco Oil was sold to the Louisiana Land and Exploration Company (LLE) in July, 1986.

The petitioner claims that the Department never considered Inexco's crude oil sales and production. The petitioner subsequently provided the names of four major oil companies who purchased crude oil from Inexco in 1986. Further, the petitioner claims that to deny adjustment assistance benefits because the workers were not separately identifiable by product is inconsistent with the data collection of other Federal government agencies, such as the Bureau of Labor Statistics which groups production, clerical and white collar employees together in its industry employment data for the petroleum industry.

First, the corporate staff at Inexco Oil performed a service and do not produce an article as required in the Trade Act of 1974. Therefore, the corporate staff cannot be certified for adjustment assistance unless other workers of the firm producing articles are independently certified for adjustment assistance and reduced demand for their services can be substantiated. Workers who produced natural gas at Inexco did not meet the increased import criterion of the Group Eligibility Requirements. U.S. imports of dry natural gas declined absolutely and relative to domestic shipments in 1986 compared with 1985, which is the period applicable to the petition. The ratio of imports of natural gas to domestic shipments in 1986 was four percent. Workers producing crude oil at Inexco were not denied adjustment assistance because they were not separately identifiable by product. All workers at Inexco Oil were denied adjustment assistance because the "contributed importantly" test was not met. The Department's findings show the "dominant cause" of worker separations at Inexco to be the sale of Inexco to LLE which resulted in workers separations to reduce duplicate activities especially at the corporate level. Inexco's 1985 Annual Report states that Inexco was actively seeking to sell its assets or the company. Worker separations caused by the sale of the company and a subsequent severance program would not form a basis for certification.

Further, workers of the Wilson Brothers Drilling Company, performed oil and gas drilling services. The workers were denied certification to apply for adjustment assistance on September 25, 1986, under an earlier petition (TA-W-17,610). The denial notice was published in the **Federal Register** on October 10, 1986 (51 FR 36186). The Department has consistently determined that the performance of services does not constitute the production of an article, as required by section 222 of the Trade Act of 1974 and this determination has been upheld in the U.S. Court of Appeals.

Investigation findings show that although Inexco was primarily a gas producer a substantial amount of its revenues came from crude oil. The findings also show that Inexco Oil sold all the crude oil it could produce. A review of Inexco's crude oil properties, which constitute the major share of its crude oil revenues, show that there was a slight decline, in barrels, of crude oil production, in the first half of 1986 compared to the same period in 1985. However, this is attributed to a natural decline resulting from the gradual exhaustion of crude oil in the various fields. Officials of several of major crude oil customers reported that their firms purchase all the domestic crude oil available and meet their shortfall with imported oil. Other customers, whose names were furnished by the petitioner, showed increased purchases of crude oil from Inexco in the first half of 1986 compared to the same period in 1985 as a result of new wells and fields in other geographic areas coming into operation.

The petitioner also claims that the Department did not investigate the relationship between the proven reserves of hydrocarbon producers and how they interact with lending institutions. The consideration of such relationships is not a matter for investigation because it is not a criterion for certification under the Trade Act. This relationship would not satisfy any of the group eligibility criteria for certification in section 222 of the Act.

Conclusion

After review of this application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th Day of September, 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislative and Actuarial Services, UIS.

[FR Doc. 87-23314 Filed 10-7-87; 8:45 am]

BILLING CODE 4510-30-M

Bureau of Labor Statistics

Request for Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Request for comments on proposed changes in local area unemployment statistics methodology.

SUMMARY: Following a year of optional use and numerous comments and simulations in two research areas, the Bureau of Labor Statistics intends to introduce mandatory methodological improvements in the procedures for developing local area unemployment statistics. These procedures involve the estimation of agricultural employment and Federal and Railroad unemployment. These proposals had been available as optional methodological procedures during 1987 as announced in a **Federal Register** Notice dated December 19, 1986, and published on December 29, 1986 at 51 FR 46958.

DATE: Comments must be submitted on or by November 9, 1987.

ADDRESS: Send comments to: U.S. Department of Labor, Bureau of Labor Statistics, 441 G Street NW., Room 2083, Washington, DC 20212

FOR FURTHER INFORMATION CONTACT: Sharon Brown, 202-523-1081.

Dated at Washington, DC, this 30th day of September 1987.

Janet L. Norwood,

Commissioner.

[FR Doc. 87-23315 Filed 10-7-87; 8:45 am]

BILLING CODE 4510-24-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for The Arts; Expansion Arts Advisory Panel (Challenge III Section) Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on October 23, 1987 from 9:00 a.m.-4:15 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 23, 1987 from 9:00 a.m.-9:30 a.m. The topics for discussion will be General Program Overview.

The remaining sessions of this meeting on October 23, 1986 from 9:30 a.m.-4:15 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

September 29, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-23267 Filed 10-7-87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater New American Works Prescreening) to the National Council on the Arts will be held on October 27-29, 1987, from 9:00 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

October 1, 1987.

[FR Doc. 87-23383 Filed 10-7-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95-541). NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 6, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627,

Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 24, 1987.

The application received is as follows:

Applicant: John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

Activity for Which Permit Requested

Taking. The applicant is conducting seabird research in the vicinity of the Antarctic Penninsula and South Shetland Islands. Take by capture, marking, handling, and release is requested for up to 6150 Chinstrap penguins, 1100 Macaroni penguins, and 400 Cape Petrels. Take by sacrifice and collection of specimen material is requested for up to 3 American Sheathbills. Permission is requested to import the Sheathbill specimens into the U.S. and subsequently export them to Canada for analysis.

Location: Antarctic Peninsula Area

Dates: November 1987–October 1988.

Charles E. Myers,

Permit Office.

[FR Doc. 87-23384 Filed 10-7-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483]

Environmental Assessment and Finding of no Significant Impact; Union Electric Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment which involves a core reload and would permit operation of the Callaway Plant, located at the licensee's site in Callaway County, Missouri, with high burnup fuel. The proposed amendment would be in response to the licensee's application for Cycle 3 operation, dated March 31, 1987.

Environmental Assessment

Identification of proposed action: The amendment would allow the licensee to use extended burnup fuel during the Cycle 3 and subsequent reloads. The highest region average burnup at the end of the cycle is expected to be 48,000 megawatt days per metric ton of uranium (MWD/MTU). The current generic assessment (including Tables S–3 and S–4) of the environmental impact of the nuclear fuel cycle contained in the Code of Federal Regulations and other NRC reports was prepared for discharge fuel burnups of 33,000 MWD/MTU.

The need for the proposed action: The proposed amendment is needed to permit the licensee to operate the plant with extended burnup fuel.

Environmental impacts of the proposed action

1.0 *Impacts On General Public*

In the Final Environmental Statement Related to the Operation of the Callaway Plant (FES) dated January 1982, the staff calculated the dose commitments to individuals and the population residing around Callaway Unit 1 to assess the impacts on people from radioactive material released as part of the normal operation of the plant. Although the concentrations of some of the radionuclides in the primary coolant may increase due to the use of the higher burnup fuel, it is expected that the quantities of radioactive effluents that were previously estimated to be released (see Tables C.1 and C.2 on pp. C–3 and C–4 of the FES) contain a sufficient amount of conservatism to offset this increase. These values were based on a reactor power level of 3565 megawatts thermal (see Tables 11.1 through 11.3 on pages 11–2 through 11–4 of the Safety Evaluation Report Related to Operation of Callaway Plant, NUREG–0830). Since the previously estimated quantities of radioactive effluents remain valid, the radiological impact analysis of the FES for members of the public remains valid. The staff concludes that doses to members of the public would remain below the dose design objectives of 10 CFR Part 50, Appendix I, and would not be significant.

In Chapter 5.9.4 of the FES, the staff evaluated the environmental impacts of two types of accidents: (1) "design basis accidents" and (2) "severe accidents." "Design basis accidents" were postulated to occur to determine whether specific safety features (e.g., containment sprays, filters for the containment and fuel handling building) of the Callaway Plant met acceptable design and performance criteria. These safety features are described more thoroughly in the Final Safety Analysis Report (FSAR) for Callaway. "Severe accidents" are accidents with more severe sequences than the design basis accidents and they lead to a severely damaged reactor core or core melt.

Estimated doses were listed in the FES (Table 5.6 on page 5–46; and Table 15.1 on page 15–12 of NUREG–0830) for six design basis accidents: (1) Rod ejection; (2) steam generator tube rupture; (3) fuel handling accident; (4) main steam line break; (5) failure of a letdown line; and (6) large break loss-of-coolant-accident (LOCA). The staff's methodology for evaluating each of these accidents is described in the Standard Review Plan, NUREG–0800, and the references therein. The doses to the thyroid and whole body are primarily due to exposure of individuals to radioiodines and noble gases, respectively. These radionuclides quickly reach an equilibrium in the core of the reactor because their halflives are much less than one year.

Of the six design basis accidents listed in Table 5–6 of the FES, the doses from the two design basis accidents whose doses could be increased by the use of higher burnup fuel were reevaluated since they involve the release of gap activity. Only the control-rod-ejection accident and the fuel-handling accident result in the release of principally the gap activity. The staff has reestimated the doses for these two accidents, and the potential doses are less than 25% of the guideline values given in 10 CFR Part 100.

It was not necessary to reevaluate the other accidents because the doses from these accidents are not primarily due to the release of gap activity. The technical specifications limit the doses for the steam generator tube rupture, the failure of a letdown line, and the main steamline break by limiting the concentrations of radioiodines in the primary system and secondary system. For the LOCA analysis, the quantity of radionuclides assumed to be released already exceeded the amount of gap activity estimated to be in the higher burnup fuel.

In regard to "severe accidents," by their very nature they involve releases greater than the gap activity. Although the higher burnup fuel would contain

higher quantities of the long-lived nuclides (e.g., Cs–134, Cs–137, Sr–90, and the transuranics), it is the staff's judgement that the Summary of Environmental Impacts and Probabilities presented in Table 5.8, page 5–54, of the FES remains valid given the uncertainties involved in such assessments.

Further, as stated in the FES (page 5–64), "the overall assessment of environmental risk of accidents, assuming protective action, shows that it is less than the risk for normal operational releases, although accidents have a potential for acute fatalities and economic costs that cannot arise from normal operations." The staff concludes that the proposed increase in burnup would not result in a significant increase in the annual risk to members of the public from reactor accidents.

2.0 Occupational Radiation Exposure

Although the doses to nuclear power plant workers varies from reactor to reactor and from year to year, it can be projected for environmental impact purposes by using previous experience. Exposure of workers was assessed in the FES (Chapter 5.9.3, pages 5–25 through 5–28), and a range of values was presented. The FES discussion is still applicable.

3.0 Uranium Fuel Cycle and Transportation

In addition to the impacts associated with the operation of the reactor, there are impacts associated with the uranium fuel cycle. The uranium fuel cycle consists of those facilities (e.g., uranium mills, fuel fabrication plants, etc.) that are necessary to support the operation of the reactor. The FES (Chapter 5.10 and Appendix G) described the impacts associated with the uranium fuel cycle. These impacts were based on 30 years of operation of a model light-water reactor for discharge fuel burnups of 33,000 MWD/MTU.

The current generic assessment of the environmental impacts of the fuel cycle are contained in Tables S–3 and S–4 of 10 CFR Part 51. Table S–3 presents the environmental impacts of the fuel cycle in terms of natural resource use and chemical and radiological effluents. Table S–4 presents the environmental impacts of the transportation of fuel to and from a reference reactor.

A study was conducted by the Atomic Industrial Forum National Environmental Studies Project, AIF/NESP–032 dated June 1985, entitled, "The Environmental Consequences of Higher Fuel Burn-up." The results of this report are expressed in terms of extended values of Tables S–3 and S–4, extended burnup source terms for Rn–222 and Tc–99, and environmental dose commitment. The study concluded that extending fuel burnup to 60,000 MWD/MTU results in environmental consequences which are either less than or virtually the same as those assumed in the current regulations. The staff considers the AIF/NESP–032 report values acceptable for use in support of higher fuel burnup rates at NRC-licensed facilities.

Data extracted from AIF/NESP–032 and 10 CFR Part 51 Table S–3 are reproduced in Table 1. The environmental impacts were prorated by the projected fuel cycle requirements at higher burnups. AIF/NESP–032 used the following reference conditions for the development of the front-end requirements: (a) 80% Capacity Factor; (b) 1000 MWe Reference Reactor; (c) 0.25 w/o Tails; (d) Uranium Recycle; (e) 18-month Refueling Cycle; (f) U–236 neutron effect; (g) 0.1% Ore Grade; and (h) 90% Milling Efficiency. These reference conditions are the same as used by the staff in Table S–3 except for the last four items which were updated to reflect current conditions or knowledge more accurately. The 18-month cycle is considered more typical than the 12-month cycle previously used. The neutron poison effect of U–236 was included to maintain the conservative nature of the requirements. The ore grade and milling efficiency were reduced from previous values of 0.2% and 100%, respectively, to reflect expected average conditions over the next 20 years. AIF/NESP–032 also utilized the updated ORIGEN 2 code to determine the isotopics of the back-end of the fuel cycle.

Table 1 shows environmental fuel cycle impacts from the AIF/NESP–032 report at fuel burnup rates of 33,000 and 60,000 MWD/MTU. Also shown are the comparable values from the S–3 Table (33,000 MWD/MTU burnup rate) in 10 CFR 51.51. The reason that the AIF and 10 CFR Part 51 values at 33,000 MWD/MTU are different is because the AIF values reflect the more accurate current conditions and knowledge for refueling cycle, U–236 neutron effect, ore grade, and milling efficiency, as discussed above. The principal influence is the change in ore grade from 0.2% to 0.1%. The differences between the NESP 33,000 MWD/MTU and NESP 60,000 MWD/MTU columns are due only to changes in fuel burnup rates and are the values that should be compared for the purposes of this assessment.

TABLE 1.—ENVIRONMENTAL FUEL CYCLE IMPACTS AT EXTENDED BURNUP

	NESP 33000 MWD/MT	NESP 60000 MWD/MT	10CFR 51 Table S–3
Natural Resources Use:			
Termporarily committed	180	157	100
Undisturbed area	134	114	(79)
Disturbed area	46.5	42.8	(22)
Permanently committed	19.3	17.0	13
Overburden moved (million of MT)	6.69	6.32	2.8
Water (millions of gallons)			
Discharged to air	271	263	160
Discharged to water bodies	12,800	12,900	11,090
Discharged to ground	304	288	127
Total	13,375	13,451	11,377
Fossil Fuel:			
Electrical Energy (1000s of MWH)	375	374	323
Equivalent Coal (1000s of MT)	137	136	118
Natural gas ($10^6 \times$ scf)	143	121	135
Effluents Chemical (MT):			
Gases (including entrainment)			
SO_x	5,140	5,160	4,400
NO_x	1,400	1,390	1,190

TABLE 1.—ENVIRONMENTAL FUEL CYCLE IMPACTS AT EXTENDED BURNUP—Continued

	NESP 33000 MWD/MT	NESP 60000 MWD/MT	10CFR 51 Table S-3
Hydrocarbons	18.1	17.7	14
CO	34.4	34.2	29.6
Particulates	1,340	1,350	1,154
Other gases			
F	.753	.727	.67
HC1	.0136	.0075	.014
Fission Products & Transuranics	.345	.227	.203
Liquids			
SO_4	11.2	11.0	9.9
NO_3	26.2	15.9	25.8
Fluoride	13.8	11.4	12.9
Ca	6.24	6.28	5.4
C1	9.78	9.80	8.5
Na	13.8	13.6	12.1
NH_3	11.6	7.08	10.0
Fe^3	.462	.466	.4
Solids	222,000	211,000	91,000
Tailings Solutions (1000)	585	556	240
Effluents Radiological (Curies):			
Gases (including estrainment)			
Rn-222	10,926	10,266	.....
Rn-226	.022	.0209	.02
Th-230	.022	.0209	.02
Uranium	.0372	.0354	.034
Tritium (thousands)	18.1	17.7	18.1
C-14	19.6	15.3	24
Kr-85 (thousands)	334	308	400
Ru-106	.136	.106	.14
I-129	1.08	1.05	1.3
I-131	.928	.519	.83
Tc-99	.13	.119	.....
Fission Products & Transuranics	.345	.227	.203
Liquids			
Tc-99	1.072	.984	.....
Uranium & Daughters	2.29	2.17	2.1
Ra-226	.00374	.00355	.0034
Th-230	.00165	.00157	.0015
Th-234	.01	.00551	.01
Fission & Activation Products	5.9×10^{-6}	5.18×10^{-6}	5.9×10^{-6}
Solids (buried on site)			
Other than high level (shallow)	11,400	11,300	11,300
TRU and HLW	1.1×10^{7}	1.1×10^{7}	1.1×10^{10}
Effluents-thermal (billions BTU)	4,570	4,440	4,063
Transportation (person-rem) exposure of workers and	2.76	1.93	2.5
General Public Occuptional Exposure		12.5	22.6

Table 2 is a comparison of environmental impacts from transportation of radioactive material for extended burnup. The values from the S-4 Table are identical to the values in the NESP 33,000 MWD/MTU column.

TABLE 2.—ENVIRONMENTAL IMPACTS FROM TRANSPORTATION OF RADIOACTIVE MATERIALS FOR EXTENDED BURNUP

	NESP [1] 33000 MWD/MT	NESP 60000 MWD/MT
Heat (BTU/hr.)	250,000	250,000
Weight (lbs./truck)	73,000	73,000
Traffic:		
Truck (per day)	1	1
Rail (per month)	3	3
Exposure:		
Workers (persons)	200	200
Dose (mrem/person)	0 - 300	0 - 300
Total Dose (man-rem)	4	3
Public (onlookers)	1,100	1,100

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TABLE 2.—ENVIRONMENTAL IMPACTS FROM TRANSPORTATION OF RADIOACTIVE MATERIALS FOR EXTENDED BURNUP—Continued

	NESP [1] 33000 MWD/MT	NESP 60000 MWD/MT
Dose (mrem/person)..	0.003–1.3	0.003–1.3
(along route).....	600,000	600,000
Dose (mrem/person)..	0.0001–0.06	0.0001–0.06
Total Dose (man-rem).....	3	2.1
Accidents:		
Radiological Effects Common Causes.....	([2])	([2])
(years between deaths).....	126	202
(years between injury)	7	12
Property Damage per reactor year.....	$475	$296

[1] These values are the same as Table S–4 in 10 CFR 51.
[2] Small.

As can be seen from Tables 1 and 2, when different assumptions are taken into account, extending fuel burnup results in slight changes to the radiological and non-radiological environmental consequences which would not lead to significant changes to the impacts associated with the uranium fuel cycle and transportation.

Alternative to the Proposed Action: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the amendment request. Such actions would not reduce environmental impacts.

Alternative Use of Resources: This action involved no use of resources not previously considered in the Final Environmental Statements (construction permits and operating license) for the Callaway Plant.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons. However, the NRC staff was assisted by a study conducted by the Atomic Industrial Forum National Environmental Studies Project, AIF/NESP–032 dated June 1985, entitled "The Environmental Consequences of Higher Fuel Burnup."

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for amendment dated March 31, 1987 and supplemented April 15, June 5, June 18, July 16, July 28, August 7, August 31, and September 9, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Bethesda, Maryland, this 2nd day of October 1987.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate III–3, Division of Reactor Projects.

[FR Doc. 87–23339 Filed 10–7–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–456–OL; 50–457–OL]

Commonwealth Edison Co. (Braidwood Station, Unit Nos. 1 and 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of September 3, 1987, oral argument on the pending appeal of intervenors Bridget Little Rorem, *et al.*, from the Licensing Board's May 19, 1987 concluding partial initial decision in this operating license proceeding will be heard at 10:00 a.m. on Wednesday, October, 21, 1987 in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For The Appeal Board.

Dated: September 30, 1987.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 87–23340 Filed 10–7–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency clearance officer: Kenneth A. Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270–54, Form 8–A
File No. 270–117, Regulation F
File No. 270–120 Form SR
File No. 270–70, Regulation 12B
File No. 270–116 Rule 12d1–3
File No. 270–125 Form 3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance of the following forms: Form 8–A; Regulation F; Form SR; Regulation 12B; Rule 12d1–3 and Form 3. Form 8–A effects 1940 respondents at an estimated 8 hours per form for a total of 15,520 burden hours. Regulation F effects 7 respondents at an estimated 3 hours per form for a total of 21 burden hours. Form SR effects 2566 respondents at an estimated 5.5 hours per form for a total of 14,113 burden hours. Regulation 12B is not a form but contains rules that effect other forms. As such, it has been assigned one hour for administrative purposes. Rule 12d1–3 effects 688 respondents at an estimated .5 hours per form for a total of 344 burden hours. Form 3 effects 13,265 respondents at an estimated 2.5 hours per form for a total of 33,163 burden hours.

Submit comments to OMB Desk Officer, Mr. Robert Neal (202) 272–7340, Office of Information and Regulation Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23349 Filed 10–7–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24979; SR–NASD–87–20]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 16, 1987, copies of a proposed rule change pursuant to section 19(b) of the

Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, proposing a Pilot Program, for a period of two years, between the NASD and the International Stock Exchange of the United Kingdom and The Republic of Ireland, Ltd., formerly the Stock Exchange, London, England ("Exchange").[3]

Notice of the proposed rule change, together with its terms of substance, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 24364, April 17, 1987), and by publication in the **Federal Register** (52 FR 13891, April 27, 1987). The Commission received two comment letters on the proposed rule change [4] and a response to the first comment letter from the NASD.[5]

I. Background

The Pilot Program is the first program for the transmission of quotation information between a United States self-regulatory organization ("SRO") and an exchange not located in North America.[6] The terms of the Pilot Program are set forth in an agreement entered into between the NASD and the Exchange. Under the agreement, the Exchange furnishes the NASD with current bid and ask quotations for the securities that comprise the Financial Times/Stock Exchange ("FTSE")–100 and for non-U.K. domiciled securities disseminated through the TOPIC [7] International Service. The Exchange also provides on a real-time basis the current level of the FTSE–100 Index.[8] The display of information received from the Exchange includes symbols of the Exchange securities, the competing market makers' quotations for those securities, and a directory of Exchange market makers' symbols and telephone numbers. The NASD will display the Exchange information on authorized NASDAQ terminals.

The NASD provides the Exchange with the current bid and ask quotations of all market makers for the securities comprising the NASDAQ–100 Index,[9] the NASDAQ Financial Index,[10] and all American Depositary Receipts ("ADRs") underlying non-U.K. domiciled securities. It also provides the current level of the NASDAQ–100 Index on a real-time basis. The Exchange will display the NASDAQ information on its TOPIC authorized terminals and TOPICLINE.

The Pilot Program is an informational link only and does not have an execution capability. Currently there is no provision for orders to be automatically routed to specific market makers. Any subscriber who wishes to execute a trade based on a quote viewed via NASDAQ or TOPIC must consult a telephone list and contact a market maker in the security in order to execute a trade.

The NASD, after consultation with the Exchange, modified its original proposal to address certain concerns raised by Instinet in its comment letter on the original proposal.[11] The NASD's current rule filing reflects those changes. As modified, the Pilot Program will permit access to linkage data exclusively by NASDAQ market makers and Exchange dealers that make markets in one or more issues that are quoted in the linkage and traded in both market centers.[12]

II. Comments

The principal issue raised by Instinet is whether the costs of the program have been equitably allocated.[13] Currently, Instinet pays the NASD a vendor fee of $1,600 per month and a subscriber fee of $8.75 per terminal per month for receipt of the National Quotation Data Service ("NQDS") feed. Similarly, TOPIC subscribers in the United Kingdom are charged approximately $8,656 per year for the first terminal receiving TOPIC information, and approximately $4,160 per year for each additional terminal receiving the information.[14] The Stock Exchange Automated Quotations ("SEAQ") charge is approximately $3,084 per terminal per year.[15] Under the terms of the Pilot Program, however, market makers who receive the quote information will not be separately charged for receipt of that information. The NASD argues that such an "in-kind" exchange of quote information is consistent with its obligation to charge reasonable fees under section 15A(b)(5)

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR § 240.19b–4 (1987).

[3] The Exchange and the NASD requested a no-action position with respect to broker-dealer registration raised by the dissemination in the United States of individual market maker quotations from foreign broker-dealers. The staff granted this no-action request on a temporary basis, noting however that this position did not extend to any activities resulting in substantial U.S. contacts or involving solicitations of U.S. investors other than the transmission of quotations from the Exchange to NASDAQ and the executions of trades based on these quotations. Letter from Mary Chamberlin, Chief Counsel, Division of Market Regulation, SEC, to Frank Wilson, General Counsel, NASD, dated May 2, 1986; letter from Robert L.D. Colby, Deputy Chief Counsel, Division of Market Regulation, SEC, to Richard B. Smith, Esq., Davis, Polk & Wardwell, dated July 3, 1986. This position has been extended until December 31, 1987. Letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, to Frank Wilson, General Counsel, NASD, dated June 9, 1987.

[4] Letters from Daniel T. Brooks, Cadwalader, Wickersham and Taft, Counsel for Institutional Networks Corporation ("Instinet"), to Jonathan G. Katz, Secretary, SEC, dated June 30, 1987 and September 25, 1987.

[5] Letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC, dated August 6, 1987.

[6] The terms of the Pilot Program were filed with the Commission as SR–NASD–86–4. The Commission approved the Pilot Program for a six-month period. *See* Securities Exchange Act Release No. 23158 (April 21 1986), 51 FR 15989 (April 29, 1986) ("original proposal"). The Pilot Program has been extended a number of times since then, most recently until September 30, 1987. *See* Securities Exchange Act Release Nos. 23729 (October 20, 1986), 51 FR 39444 (October 28, 1986); 23952 (January 5, 1987), 52 FR 887 (January 9, 1987); 24292 (April 2, 1987), 52 FR 11578 (April 9, 1987); 24544 (June 3, 1987), 52 FR 21781 (June 9, 1987); and 24862 (August 28, 1987), 52 FR 33674 (September 4, 1987).

[7] TOPIC is the acronym for Teletext of Price Information by Computer.

[8] The FTSE–100 Index consists of a capitalization weighted measure of the individual securities included in the Index.

[9] NASDAQ is the acronym for National Association of Securities Dealers Automated Quotations. The NASDAQ–100 Index represents 100 of the largest non-financial foreign and domestic companies in the NASDAQ/National Market System ("NMS"). It is a capitalization weighted measure of the value of the individual securities included in the Index.

[10] The NASDAQ Financial Index represents the 100 largest domestic financial companies in the NASDAQ/NMS.

[11] See letter from Daniel T. Brooks, Cadwalader, Wickersham and Taft, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 16, 1986.

[12] Under the terms of the original proposal, all NASDAQ Level 2 and 3 terminals and all TOPIC terminals were eligible to receive the quotation information without any additional charge. Both NASDAQ Level 2 and 3 services include the bids and offers of individual market makers for each individual security.

[13] In addition, Instinet asserts that the Pilot Program is inconsistent with sections 11A and 15A of the Act and with the antitrust laws.

[14] These estimates assume a dollar/pound exchange rate of $1.60/pound. The actual charges in pounds are 4,160 and 2,600, respectively.

TOPIC screens are used to view the market for Exchange securities and will carry the NASDAQ information. The TOPIC service carries the mid-price for United Kingdom equity securities. To receive the competitive market maker quotes for these securities, a subscriber also must subscribe to the SEAQ Level 2 service. Exchange member firms that are market makers must use a SEAQ terminal to input and view their own quotations.

[15] The actual charge in pounds is 1,928. A TOPIC subscriber in the United States must pay $15,000 per year to receive the TOPIC service that does not include the SEAQ Level 2 feed. In order to receive SEAQ information, a TOPIC subscriber in the United States must pay an additional subscriber fee of $3,000—discounts are available for additional terminals. At present, there are only 126 TOPIC terminals in the United States. Subscribers in the United Kingdom pay subscriber fees that are considerably less than those charged to subscribers based in the United States. We understand that the difference in-cost is attributable to satellite charges that are an integral part of the transatlantic dissemination of information.

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of the Act [16] because of the impracticality of undertaking a separate cost allocation, the similarity of the information exchanged, and the pilot nature of the program. In addition, as discussed below, the NASD asserts that the Pilot Program constitutes a marketplace to marketplace exchange.

In contrast, Instinet argues that the NASD, by refusing to allocate separately the costs attributable to the Pilot Program, has impeded Instinet's ability to compete in the United States and the United Kingdom markets for the distribution of quotation information. Specifically, Instinet asserts that because neither party will charge the other party or the subscribers of either party for the exchange of quotation information, Instinet's ability to compete will be impeded because its customers will be required to pay separate subscriber charges for receipt of substantially the same information.

In addition, Instinet disagrees with the NASD's assertion that the charges being foregone are comparable. Instinet states that, based on the present fee structure, the Exchange would owe the NASD approximately $102,060 per year and the NASD would owe the Exchange approximately $24 million per year for the information each receives. Instinet argues that unless the costs allocable to the link are separately billed to subscribers receiving information pursuant to the link, it is at a competitive disadvantage both in the United States and the United Kingdom. For example, Instinet asserts that it is unable to compete with the NASD in the United States to provide Exchange data to NASDAQ subscribers because the NASD is providing the data to them at no cost.[17] Similarly, Instinet asserts that it will have difficulty competing with the Exchange for the distribution of data for NASDAQ securities in the United Kingdom,[18] because the Exchange receives the data from the NASD and disseminates it to its market makers free of charge.

In its response to Instinet's comment letter, the NASD asserts that the Pilot Program constitutes a marketplace to marketplace exchange that was undertaken to foster more efficient market operations and expanded opportunities for competitive market making. The NASD further points out that the Pilot Program is an experiment similar to those commonly undertaken by self-regulatory organizations to foster progress in the securities markets. The NASD believes that during the two-year period the benefits of the Pilot Program will become evident.

III. Discussion

The Commission generally views agreements between American and foreign securities exchanges as positive developments in the increasing internationalization of the world's securities markets. The Commission believes there are benefits to be gained from the first transatlantic linkage of major equity securities markets. A two-year Pilot Program for the exchange of quotation information is a useful preliminary step to determine the degree of interest in London for OTC securities and the degree of interest in the United States for Exchange securities. The two-year Pilot Program also will facilitate the joint exploration of the implications of a trading linkage between the NASD and the Exchange, and will provide a mechanism for the two organizations to address any problems that might arise with the information exchange and the future allocation of fees to the subscribers of the Pilot Program. The Commission believes that this is a rational way to approach any contemplated linkage.[19]

At the same time, however, the increased availability of quotation information raises the need for appropriate surveillance and investigatory procedures. Before approving the Pilot Program for the two-year period the Commission must be satisfied that adequate safeguards have been established to protect investors and to detect fraudulent or manipulative acts and practices. In this connection, the NASD and the Exchange have provided for information sharing, investigatory, and surveillance measures in the agreement memorializing the linkage.

First, the agreement provides that the NASD will have access to all regulatory information it needs for purposes of its surveillance and investigation responsibilities with respect to the securities in the Pilot Program. The NASD states that for several years the Exchange has been willing to cooperate with the NASD in the area of information disclosure, quotation halts, suspensions and resumption of trading, and the surveillance and investigation of trading in securities of mutual market concern. The agreement reached between the NASD and the Exchange also specifically confirms that the Commission and the United Kingdom regulatory authorities will have access to shared surveillance information. In this regard, although the NASD/Exchange surveillance sharing agreement is extremely general, in view of the fact that the Pilot Program is solely an information exchange, the Commission believes that the surveillance measures in the agreement, in conjunction with the Commission's own Memorandum of Understanding with the United Kingdom Department of Trade and Industry,[20] constitute adequate regulatory safeguards for the limited purposes of the Pilot Program.

Section 15A(b)(5) requires that the NASD's rules provide for the equitable allocation of fees, and section 15A(b)(9) prohibits the NASD from adopting a rule that fosters any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Furthermore, section 11A(a)(1)(C)(ii) of the Act sets forth as among the goals of the Act the furthering of fair competition between exchange markets and markets other than exchange markets.[21]

The Commission finds Instinet's assertion that the Pilot Program is anti-competitive because the costs of the program are not reasonably allocated, to

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[16] Instinet, under a variety of different labels, (*i.e.*, Sections 11A and 15A of the Act) makes essentially one argument, *i.e.*, that because the costs of the Pilot Program are not separately allocated, Instinet finds itself at a competitive disadvantage. For purposes of this order, the Commission is considering this argument in unity.

[17] Although Instinet's calculations are based on the only information available to Instinet, they implicitly assume that a per terminal subscriber fee is the proper way to measure the cost of the Pilot Program. In a program that is temporary as well as of a start-up nature, however, there may be alternative methods of assessing the costs. For example, the parties could have agreed to use their out of pocket costs as a measure of the cost of the program. Also, the NASD and the Exchange are providing information on a limited group of securities; subscribers to NASDAQ receive the entire NASDAQ feed.

[18] Instinet asserts that the provision of the data at no cost is inconsistent with Section 15A of the Act in that it is not a reasonable allocation of costs and it establishes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[19] The Commission expects the NASD to report its findings on the costs and benefits of the Pilot Program within eighteen months of the date of this order. The NASD's analysis should include a monthly survey of market makers participating in the linkage in both the United States and the United Kingdom including share volume and the number of quotation inquiries in each security.

[20] Since the original approval order authorizing the temporary operation of the Pilot Program, the Commission, the Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry entered into a Memorandum of Understanding ("MOU") that is intended to enhance international enforcement of both countries' securities laws by providing assistance for investigations of violative conduct as well as market oversight. In particular, matters involving insider trading, market manipulation and misrepresentation relating to market transactions in the respective jurisdictions are subject to the MOU.

[21] *See also* section 11A(c)(1)(D).

be unpersuasive.[22] While the NASD is subject to an obligation under the Act to charge fair and reasonable fees, any NASD rule filing also must be analyzed as to its effects on the statutory goal to enhance the efficient execution of securities transactions. A quotation exchange will enhance the ability of NASD and Exchange market makers to make competitive and efficient markets and improve their ability to ensure that their customers receive best execution of their orders. In particular, such information should permit market makers in both countries to disseminate more accurate quotations that reflect the trading activity that has occurred or is occurring in the other country. Finally, the quotation exchange may increase interest in securities traded through NASDAQ and SEAQ and, as a result, increase the liquidity of both markets. In view of these additional purposes of the Act which may be served by a market maker to market maker approach (in contrast to the dissemination of quotation information to non-market makers which primarily only serves the goal of the widespread dissemination of such information), the Commission believes that, for purposes of commencing a pilot program limited to an exchange of quotations it is unnecessary, given the practical difficulties of accomplishing such an allocation in an international context, for the NASD to allocate separately the costs of such an exchange. The Commission continues to believe, however, that, as a matter of analytical clarity, it would be preferable for the NASD and the Exchange to establish a separate cost allocation for the information that they are mutually providing.[23]

In this connection, the Commission believes that the NASD has made a good faith effort to address the competitive concerns raised by Instinet. For example, the NASD and the Exchange significantly reduced the number of recipients of the information. Only marker makers that are making a market in the securities traded in the linkage will receive the information at no additional charge, *i.e.*, if a dual market is made in a security then a market maker on either side can receive the quotations. Thus, under the modified proposal only 972 TOPIC terminals will receive the information, in contrast to the 9,500 terminals that would have received the information under the original proposal. Similarly, only 1,634 NASDAQ Level 3 terminals will receive the information under the current proposal, in contrast to 2,807 NASDAQ Level 2 and 3 terminals that would have received the information under the original proposal. All other users of the information will have to pay to receive it, including any United States firms that are not making a market in any of the Exchange securities quoted in the link and any institutional investors that would be interested in obtaining quotation information on Exchange securities they may have in their portfolios. In addition, the information being exchanged as part of the Pilot Program is limited to a subset of the NASDAQ and SEAQ information. In light of the limited competitive impact, the Commission believes it is reasonable for the NASD and the Exchange to absorb their respective costs, and unnecessary for them to allocate separately to one another those costs for purposes of the two-year pilot.

The Commission recognizes, however, that Instinet also objects to these modifications by the NASD which are designed to mitigate any potential effects of the program on Instinet.[24] Specifically, Instinet argues that such a limitation raises concerns about fair allocation of costs among NASD members because implicit in such an arrangement is the fact that some NASDAQ market makers will not be receiving the London information even though other NASDAQ subscribers will receive the information without paying any additional charges. The Commission believes, however, that in conceiving a new program to establish potential new markets, it is reasonable for the NASD to allocate costs in a manner that is sensitive to the start-up nature of the program.[25]

Accordingly, the Commission finds that the NASD's proposed rule change does not foster any burden on competition not necessary or appropriate in furtherance of the purposes of the Act and that approval of the proposed rule change on a two-year pilot basis is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A and 15A, and the rules and regulations thereunder. We have carefully considered all of Instinet's arguments. While we recognize that the NASD/Exchange quotation exchange may have some impact on Instinet and other vendors, we conclude that because effects on vendors are as narrowly limited as is practically consistent with the start up of the Pilot Program, any such impact outweighs the benefits outlined above. Nevertheless, the Commission will monitor carefully the impact of the quotation exchange on competing vendors during the pilot period. The Commission, therefore, emphasizes that it is not reaching any final determination with respect to the issues raised by Instinet but is only determining that the allocation of costs and fees for purposes of the two-year Pilot is reasonable and, therefore, does not impose an inappropriate competitive burden on Instinet.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved for a period of two years from the date of this order.

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[22] Instinet also argues that the NASD's proposal is inconsistent with the federal antitrust laws. The Act, however, contains its own competition standard for evaluating proposed rule changes. *See United States v. NASD*, 422 U.S. 694 (1975); *Gordon v. New York Stock Exchange, Inc.*, 422 U.S. 659 (1975). Section 15A(b)(9) of the Act requires that "[t]he rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." As interpreted by the courts and elaborated by the legislative history of the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (1975), it is clear that neither the Commission in its own rulemaking nor the exchanges are required to pursue the least anti-competitive alternative. *See* Belenke v. SEC, 606 F.2d 193, 199–200 (7th Cir. 1979); Bradford Nat'l Clearing Corp. v. SEC, 590 F.2d 1085, 1105; and Senate Committee on Banking, Housing and Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975*, ("Senate Report"), S. Rep. No. 94–75, 94th Cong., 1st Sess. 30 (1975). Rather, the Commission is required to balance competitive implications in light of the other purposes of the Act, such as the protection of investors and the maintenance of fair and orderly markets. *See* sections 11A(a)(1)(C)(ii); 11A(b)(5)(B); and 11A(c)(1) (C) and (D) of the Act.

[23] In addition, the Commission expects that, during the pilot period, the NASD will continue to examine the possibility of developing a separate allocation of costs associated with the pilot. In this regard, the Commission requests that the NASD report to the Commission the results of that analysis within 18 months of the date of this order.

[24] Instinet also expressed concern that the NASD is planning to expand the quotation link to provide for automatic execution of trades. Of course, any change in the terms or operation of the Pilot Program must be submitted to the Commission for its review pursuant to section 19(b) of the Act.

[25] The Commission previously has approved proposed rule changes in which transaction fees were waived as a competitive response to market conditions or to encourage trading in a developing product. *See, e.g.*, Securities Exchange Act Release No. 24827 (August 20, 1987), 52 FR 32380 (August 27, 1987), in which the Commission approved the Pacific Stock Exchange's request to waive transaction and order book charges for trades executed in options on Microsoft Corporation and Mentor Corporation and Securities Exchange Act Release No. 22470 (September 26, 1985), 50 FR 40640 (October 4, 1985), in which the Commission permitted the Chicago Board Options Exchange to forego charging transaction fees on foreign currency option contracts for a limited period in order to encourage trading of those contracts.

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For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 2, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23290 Filed 10–7–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24981; File No. SR–Phlx–86–36]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

On October 20, 1986, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposal to make permanent its customer margin letter of credit ("LC") program.[3] The proposal was published for comment on November 24, 1986.[4] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change requests that the Commission approve on a permanent basis Phlx's program relating to use of LCs to satisfy foreign currency option customer margin requirements. In brief, the proposal would amend Phlx Rule 722 to enable Phlx members to be named beneficiaries on "standby letters of credit" [5] issued for their customers' accounts by Phlx-approved banks and trust companies. Those LCs would secure customers' initial and maintenance margin requirements relating to their open short foreign currency option positions. As described in detail below, the proposal requires LCs to contain certain terms and establishes LC issuer qualification standards. It also establishes a comprehensive financial protection scheme for issuers of LCs.

Regarding LC terms, the proposal requires each LC to contain an LC issuer's unqualified commitment to pay to the Phlx member, on demand, a specified sum of money equal to, or greater than, the amount of the original margin required when the position was opened. Further, the LC commitment must be irrevocable. Moreover, the LC must not expire later than 18 months after its issuance date.[6] Finally, any LC issued by a non-U.S. institution must be issued and payable at a United States agency or branch of the issuer.

To ensure that only financially responsible institutions can issue LCs under the program, the proposal contains comprehensive issuer qualification standards. Both U.S. and non-U.S. institutions can qualify as issuers under those standards. United States issuers must: (1) Be organized under the laws of the U.S. or a state thereof and be regulated and examined by federal or state authorities having regulatory authority over banks or trust companies; and (2) have, at the time of approval and continuously thereafter, shareholders' equity of at least $200,000,000.[7] A non-U.S. issuer (organized under the laws of a country other than the U.S.) must: (1) Have a branch or agency located in the U.S.; (2) have, at the time of approval and continuously thereafter, shareholders' equity of more than $200,000,000; (3) have its principal executive office in a country (a) rated Aaa by Moody's Investors Service ("Moody's") and/or AAA by Standard & Poor's Corp. ("S&P")[8] or (b) approved by Phlx's Business Conduct Committee ("BCC") as an AAA equivalent country based on consultations with at least two entities satisfactory to the BCC as experienced in international banking and finance; and (4) have a P–1 rating from Moody's and/or an A–1 rating from S&P on its commercial paper or other short-term obligations.[9]

To enable Phlx to analyze an applicant's financial condition, the proposal requires each applicant to provide Phlx initially with its most recent annual report. If a U.S. issuer applicant's annual report is more than 90 days old, the applicant must supply Phlx with its most recent quarterly financial statement; a non-U.S. applicant must supply semi-annual financial reports.[10] The proposal also requires each applicant to inform Phlx in writing about those individuals authorized to sign LCs and the applicant's legal authority to issue LCs.

After Phlx approval, both issuers and Phlx members must comply with ongoing, special reporting requirements. All issuers must supply Phlx with annual reports as they are issued. In addition, U.S. institutions must provide Phlx with quarterly financial statements and non-U.S. institutions must provide Phlx with semi-annual financial reports. In addition, whenever a Phlx member approves a customer foreign currency options account and accepts an LC under the program, it must report to Phlx: (1) The LC issuer's name; (2) the customer's name; (3) the LC dollar amount; (4) the LC expiration date; and (5) customer suitability information including, but not limited to, net income, net worth, occupation or type of business enterprise, and experience in trading securities and/or commodities. Members also must provide Phlx with copies of any subsequent LC accepted for an approved account. In addition, Phlx members must report monthly the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] The Commission approved the LC program on a one year pilot basis in December 1983. Securities Exchange Act Release No. 20497 (December 16, 1983), 48 FR 56882. In this pilot, LCs could be used for initial margin purposes only. In June 1985, the Commission extended the pilot program and expanded it to permit the use of LCs to meet maintenance, as well as initial, margin requirements. Securities Exchange Act Release No. 22189 (June 28, 1985), 50 FR 31802.

[4] Securities Exchange Act Release No. 23821 (November 17, 1986), 51 FR 42321 ("November 1986 Notice").

[5] A "standby letter of credit" represents an obligation to the beneficiary on the part of the issuer: (1) To repay money borrowed by or advanced to or for the account of the account party; or (2) to make payment on account of any evidence of indebtedness undertaken by the account party; or (3) to make payment on account of any default by the account party in the performance of an obligation. See, e.g., 12 CFR 208.8(d) (1987).

[6] The proposal eliminates the pilot program requirement that an LC not terminate before expiration of any related options positions. A member firm accepting an LC that would terminate before the option's expiration would be required to monitor the customer's account to ensure that the customer posts adequate substitute margin, such as another LC, cash, or cash equivalents, before the LC termination date. This will ensure that adequate margin will be maintained at all times.

[7] Banks meeting this standard and approved to issue LCs under the Phlx program are Amro Bank ($2.13 billion shareholders' equity as of 12/31/86), Bank of America ($3.78 billion as of 12/31/86), Fidelity Bank ($393 million as of 6/30/87), Philadelphia National Bank ($502 million as of 6/30/87), Pittsburgh National Bank ($627 million as of 12/31/86), and Provident Bank ($329 million as of 12/31/86). *See* letter from Diana Anderson, Director of Examinations, Phlx, to David Underhill, Attorney, Division of Market Regulation, SEC, dated August 28, 1987.

[8] These ratings are based on the rating assigned to sovereign debt issued by the country's central government.

[9] If a non-U.S. institution's short-term obligations are not rated, it still can qualify if: (1) Any commercial paper or short-term obligation issued by its parent or an affiliated entity has such a rating, or (2) any commercial paper or short-term obligation issued by non-affiliated entities and supported or guaranteed by the institution has such a rating, or (3) the issuer, its parent or any affiliated entity has an Aaa rating from Moody's or an AAA rating from S&P on its long-term obligations, or (4) it has been approved by the BCC as a P–1 equivalent institution.

[10] During the pilot program, non-U.S. issuers were required to supply their most recent quarterly financial statements, as were U.S. applicants.

class and series of each LC-secured option position and the transaction date establishing the position. Finally, each member must notify Phlx promptly of: (1) The withdrawal of any LC; (2) the assignment of an exercise notice to any LC-secured option position; and (3) the liquidation of any LC-secured option position.

As noted above, the proposal contains several provisions designed to ensure the controlled use of LCs. First, the proposal includes concentration requirements that are intended to protect Phlx members against the financial risk arising from over-reliance on LCs of any one LC issuer or for any one customer. The proposal requires that the total amount of LCs issued and outstanding by any one finanacial institution for the account of any one customer not exceed 15% of the unimpaired capital and surplus of the issuing institution.[11] Moreover, the total amount of LCs issued and outstanding at any time by an institution naming any one Phlx member as beneficiary must not exceed 20% of the unimpaired capital and surplus of the issuer. Second, the proposal prohibits a member from allowing a customer to effect a transaction or to maintain a position in foreign currency options against an LC if the amount of margin required under Regulation T of the Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "FRB") [12] would exceed the amount of the LC. If such a deficiency occurs the member must require the customer to deposit promptly with the member: (1) A new or modified LC in an amount equal to, or greater than, the required margin amount, or (2) other acceptable forms of margin in an amount equal to, or greater than, the margin deficiency under Regulation T. If the customer fails to provide the needed collateral, the member, under Regulation T, must liquidate open customer positions sufficient to meet the margin deficit.[13] Third, the proposal prohibits a bank or trust company from issuing an LC to cover its own foreign currency option positions.

Finally, the proposal provides flexibility to Phlx in dealing with LC issuers. Phlx can at any time refuse or revoke it approval of any financial institution as an LC issuer under the program. In addition, Phlx at any time can suspend, terminate or otherwise modify a member's ability to accept an LC, on its own initiative or at the direction of the Commission or the Board of Governors of the Federal Reserve System.

[11] This 15% requirement is equivalent to the current federal lending limitation of 15% of stockholders' equity. *See, e.g.*, 2 U.S.C. 84 (1982).

[12] 12 CFR 220.18(h) (1987).

[13] If the additional margin required is $500 or less, however, the member is not required to liquidate positions. Phlx Rule 722 (c)(8).

III. Phlx's Experience Under the Pilot Program

Phlx outlined its experience under the pilot program in its rule filing and in an April 1986 report to the Commission.[14] With respect to the scope of pilot program use, Phlx noted that seven issuers had been approved under the program, two being non-U.S. institutions. Moreover, three of the seven have been actively issuing LCs. In addition, five customers have been using LCs, and three Phlx members have been accepting LCs for margin purposes.[15] To date, seven LCs have been issued under the program. Phlx anticipates that LC use will expand to at least 30 foreign currency option customers if the program is made permanent.[16]

Phlx represented that members accepting LCs have found the LC program requirements and procedures uncomplicated. Moreover, those members report that LC use facilitates monitoring of cutomer margin deposits. Indeed, members reported that, notwithstanding the absence of "economies of scale" due to the relatively small use of LCs to date, they did not incur any meaningful increase in related administrative costs.[17]

IV. Phlx's Rationale for the Proposed Rule Change [18]

Phlx believes that the LC Program should be approved for several reasons. First, customer use of LCs for margin purposes facilitates trading. Customers can focus more readily on effecting appropriate trading strategies without being distracted by the need to monitor margin deposits or by potential cash flow problems arising form margin requirements.[19] Second, LC use frees up customer assets that otherwise would be needed to meet margin deposit requirements. Phlx notes that customer costs relating to LC issuance are small in comparison to the costs related to posting traditional margin collateral, *e.g.*, cash, Treasury bills or marginable securities.[20] Third, administrative costs are reduced. LC use eliminates the daily cost of wiring funds back and forth between customers and members to meet margin requirements. In sum, Phlx believes that, as LC use grows,[21] it will contribute to increased trading of foreign currency options, thereby increasing market liquidity, to the benefit of all market participants.[22]

Finally, Phlx believes that the several minor amendments to the program should be approved. The first amendment requires non-U.S. issuers to provide Phlx with semi-annual, not quarterly, financial reports. Phlx believes that this amendment is needed to conform the proposal to the different financial reporting timetable of non-U.S. institutions. Generally, those institutions do not prepare quarterly reports. Phlx believes it will be able to protect its members by relying on semi-annual reports as well as information supplied by reputable rating agencies and research organizations specializing in bank and institutional ratings.

The second amendment eliminates the requirement that an LC not terminate earlier than the expiration date of the related options contracts. Phlx believes that this limitation hindered customers wishing to roll forward foreign currency option writing programs because customers seeking to write call options that expire after the letter of credit terminates needed to post either cash margin on the options or second LC with an extended expiration date. Phlx believes that the amendment will increase customer flexibility and will reduce the costs associated with LC use.

[14] See letter from Susan R. Mann, Vice President, Phlx to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated April 30, 1986 ("April 1986 Report").

[15] Id. at 3–4; November 1986 Notice, supra note 4, 51 FR at 42321.

[16] April 1986 Report, supra note 14, at 4.

[17] Id. at 9.

[18] While the Options Clearing Corporation ("OCC") has established an LC program, Phlx members currently cannot pass through customer LCs to OCC to satisfy members' related OCC margin requirements. This is due largely to the fundamental differences between clearing and margin LCs. In particular, a clearing LC names OCC as its beneficiary (rather than a Phlx member) and is issued according to OCC's required clearing margin levels (rather than those set by the Federal Reserve Board for securities margin). The member therefore must use its own assets that qualify as forms of margin under OCC Rule 604, including cash, certain government securities, and common stocks. Some Phlx members have passed on the incremental OCC margin-related costs to customers that participate in the Phlx program. OCC and Phlx currently are discussing ways to allow customers LCs to be used to secure OCC margin obligations.

[19] November 1986 Notice, supra note 4, 51 FR at 42321; April 1986 Report, supra note 14, at 5.

[20] April 1986 Report, supra note 14 at 6.

[21] Phlx anticipates that LC use will increase substantially after permanent approval of the program, as customers, financial institutions and Phlx member firms recognize the flexibility and benefits of using LCs for margin purposes. *Id.* at 4; November 1986 Notice, supra note 4, 51 FR at 42321–22.

[22] April 1986 Report, supra note 14, at 6.

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As additional support for the amendment, Phlx noted that OCC accepts from its clearing members for OCC margin purposes LCs that terminate before the related options positions expire. To protect itself, OCC ensures that before an LC terminates, clearing members post adequate collateral to secure their obligations.[23]

V. Discussion

The Commission recognizes that the proposal raises concerns over providing investors with increased leverage through use of LCs to meet their Regulation T margin deposit requirements (particularly because LCs will be uncollateralized).[24] More specifically, brokers and their customers are exposed to special financial risks relating to the use of uncollateralized LCs should an LC issuer delay or fail to make payment on demand of the LC beneficiary (*i.e.*, the Phlx member) because (1) the issuer becomes insolvent or (2) the issuer believes that "fraud in the underlying transaction" occurred.[25] For the reasons detailed below, the Commisison believes Phlx's LC Program is designed to minimize these risks and should facilitate transactions in foreign currency options.

With respect to concerns over issuer insolvency, the Commission's analysis begins with its experience with LCs in the clearing agency context.[26] The Phlx LC program is similar to previously-approved LC programs at several registered clearing agencies. In connection with the Commission's approval of a segment of OCC's LC program in 1983, the Commission articulated several factors that are necessary to ensure that an LC program does not create unnecessary financial risks arising from issuer insolvency.[27] The Commission suggested that an LC program should: (1) Contain measures designed to ensure that LCs are accepted only from financially responsible issuers; (2) protect the LC beneficiary from becoming exclusively dependent upon any one bank as an LC issuer; and (3) contain sufficient safeguards to protect beneficiaries in the event that an issuer delays or refuses payment.

Respecting the first factor, the Commission believes that the proposal's comprehensive LC issuer qualification standards described in detail above should enable Phlx to approve only financially sound institutions as LC issuers. The Commission notes that nearly identical standards have worked well over the years at OCC and other clearing agencies. Moreover, because LC issuers must continue to comply with the qualification standards (together with the related financial reporting requirements), the proposal should enable Phlx to monitor continuously and effectively the financial condition of LC issuers. That monitoring ability will be complemented by the information provided Phlx through the proposal's member reporting scheme. Thus, Phlx should have a continuous, clear picture of LC use and the extent of its members' potential exposure. Finally, Phlx's authority to revoke issuer approval or to terminate a member's ability to accept LCs assures the Commission that LC use under Phlx's program will be controlled and safe.

The Commission believes that the proposal satisfies the second factor, i.e., that the LC recipient not be dependent upon any one bank as an LC issuer. As described above, the proposal contains specific "concentration requirements" for LC issuers. Those requirements are designed to reduce the risks of a member becoming excessively dependent upon any single LC issuer or relying on an excessive amount of LCs for the account of any one customer. The Commission notes that analogous concentration requirements in the clearing agency context have been effective in guarding against these risks.[28]

Finally, the Commission concludes that the proposal satisfies the third factor, *i.e.*, that Phlx members are protected against the risks of delayed or refused payment arising from issuer insolvency. Members generally must obtain from customers sufficient margin deposits respecting short foreign currency option positions within seven business days after the sale.[29] Failing this, the Phlx member promptly must liquidate the position. If an LC was deposited as margin and the foreign currency option customer became insolvent so that it could not meet its settlement obligation upon exercise of an option, the Phlx member would draw on the LC. If payment on the customer's LC then were delayed or refused by the issuer due to issuer insolvency, the member still would be able to liquidate any other customer postitions to satisfy the customer's settlement obligations. Generally, the obligation of the issuer to pay the beneficiary of an irrevocable LC

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[23] In any event, OCC Rule 605 requires OCC to report any OCC margin deficit to its members before 9:00 a.m., Central Time.

[24] When it approved the pilot program, the Commission noted that the use of uncollateralized LCs is less problematic in the foreign currency options market because of certain special characteristics of that market. In particular, LCs are customary in international trade, and persons likely to participate in the foreign currency options market are accustomed to their use. In addition, LCs often are issued in international trade against anticipated production of other goods that would be difficult to deposit as collateral. Finally, the depth and liquidity of the underlying foreign currency market reduces the volatility concerns underlying margin regulation. Because of the special characteristics and uses of foreign currency options, the Commission believed that a flexible method of margin to permit firms to write such options without locking up their cash reserves as warranted. Any proposal to permit LCs for margin purposes for other securities would raise additional issues not addressed by this order.

[25] Problems also can arise if the account party to an LC (*i.e.*, the foreign currency options customer) becomes insolvent. Courts generally have held that an LC beneficiary can draw on an LC even though the account party is bankrupt. *See* Westinghouse Credit Corp. v. Page, 18 Bankr. 713 (D.D.C. 1982) ("In re Page"); Postal v. Smith (In re Marine Distrib., Inc.), 552 F. 2d 791, 795 (9th Cir. 1975). One court, however, issued a preliminary injunction to halt payment on an LC because of the incongruity of the security interests of the issuer and the LC beneficiaries. Twist Cap, Inc. v. Southeast Bank of Tampa, 1 Bankr. 284 (M.D. Fla. 1979). The Twist Cap decision has been widely criticized. See, e.g., Planes, Inc. v. Fairchild Aircraft Corp., 29 Bankr. 370, 371 (N.D. Ga. 1983); Baird, Standby Letters of Credit in Bankruptcy, 49 U. Chi. L. R. 130 (1982); Chaitman and Sovern, Enjoining Payment on a Letter of Credit in Bankruptcy: A Tempest in a Twist Cap, 38 Bus. Law. 21, 33 (1982); McLaughlin, Letters of Credit as Preferential Transfers in Bankruptcy, 50 Fordham L. Rev. 1033 (1982). One court noted that "the overwhelming authority of the law after [Twist Cap] indicates that an [LC] and its proceeds are not property of the estate * * * and therefore the payment of an [LC] is not a transfer of assets in violation of the automatic stay provisions of [the Bankruptcy Code]." Braucher v. Continental Ill. Nat'l Bank & Trust Co. of Chicago (In re Ill/-Cal. Express, Inc.), 50 Bankr. 232, 234–35 (D. Col. 1985). In this regard, the Commission expects that the Phlx promptly would reexamine the availability of continued reliance on LCs if there were a material change in the law such that substantial questions were raised regarding whether a Phlx member still could recover under an LC in the event of a customer's insolvency. Indeed, the very rationale for the use of LCs would be in doubt were such a question to arise.

[26] For example, in August 1981, the Commission approved a proposal submitted by National Securities Clearing Corporation ("NSCC") that enables NSCC's participants to secure their clearing fund obligations with LCs issued by NSCC-approved banks. See Securities Exchange Act Release No. 18052 (August 21, 1981), 46 FR 43341. Similarly, OCC's LC program is much like Phlx's program, although the LCs issued under the two programs are different (see note 18, *supra*). See, e.g., Securities Exchange Act Release No. 19422 (January 12, 1983), 48 FR 2481 ("OCC Release").

[27] *See* OCC Release, supra note 26, 48 FR at 2483.

[28] *See, e.g.*, NSCC Rule 4, Section 1; OCC Rule 604, Interpretation and Policy .02; and Midwest Clearing Corporation Aarticel IX, Rule 2, Section 1.

[29] Phlx Rule 722(c) (6) (ii). Similarly, Phlx's proposal prohibits members from effecting additional foreign currency options transactions or maintaining such positions for a customer against an LC when the LC amount is smaller than the customer's margin deposit requirement. To lift these restrictions, the member must obtain from the customer additional margin deposits in the form of a new or amended LC acceptable to Phlx or other assets acceptable under Regulation T. Moreover, if the customer fails to provide adequate margin promptly, the Phlx member can liquidate the customer's positions to satisfy the deficiency.

is independent of any contractual obligations between the beneficiary and the account party. An LC issuer, however, may properly refuse to make payment when there is "fraud in the transaction" with respect to either the underlying contract between the account party and the beneficiary or the beneficiary's procurement of the issuance of the LC.[30]

The Commission believes that several factors reduce significantly the risk that an LC issuer would default based on fraud in the transaction. As described above, Phlx will monitor actively the initial issuance of LCs, as well as the day-to-day functioning of the program. In addition, the Commission notes that the LC beneficiaries *i.e.*, Phlx members), issuers, and account parties (*i.e.*, foreign currency options customers) that can be expected to participate in the LC program are large institutions operating in a unique, institutionalized market.[31] Finally, the Commission notes that U.S. courts generally follow a policy favoring enforcement of letters of credit [32] and that conduct giving rise to fraud in the transaction claims generally has arisen in the context of documentary sales transactions.[33]

Accordingly, the Commission believes that the Phlx proposal is consistent with the policies underlying section 7 of the Act.[34] The Phlx proposal should help to increase the liquidity and depth of the foreign currency options market, while ensuring that proper margin as required by secion 7, is initially extended and subsequently maintained on foreign currency options positions.[35]

VI. Conclusion

On the basis of the foregoing, the Commission has concluded that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of sections 6(b)(5) [36] and 7.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, [37] that Phlx's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 2, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23350 Filed 10-7-87; 8:45 am]

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[30] *See* U.C.C. section 5-114(2) (1986); Itek Corp. v. First Nat'l Bank of Boston, 730 F.2d 19, 24-25 (1st Cir. 1984); W.O.A., Inc. v. City Nat'l Bank of Fort Smith, Ark., 640 F. Supp. 1157, 1158-59 (W.D. Ark. 1986); Stejn v. Schroder Banking Corp., 177 Misc. 719, 31 N.Y.S.2d 631 (Sup. Ct. 1941). One court described fraud in the transaction as "situations of fraud in which the wrongdoing of the beneficiary has so vitiated the entire transaction that the legitimate purpose of the independence of the issuer's obligation would no longer be served." Intraworld Indus., Inc. v. Girard Trust Bank, 461 Pa. 343, 359, 336 A.2d 316, 324-25 (1975).

[31] Because of the size and depth of the foreign currency market and the nature of its participants, it is unlikely that any dislocation to the foreign currency options market arising out of the nonperformance of an LC would have an effect on the underlying currency.

[32] *See, e.g.*, Pringle-Associated Mortgage Corp. v. Southern Nat'l Bank of Hattiesburg, Miss., 571 F.2d 871, 874 (5th Cir. 1978); In re Page, *supra* note 25, 18 Bankr. at 717.

[33] If the issuing bank were to allege fraud in the transaction and refuse or delay payment on an LC, the Phlx member still would be able to liquidate customer positions to satisfy the customer's settlement obligations.

[34] 15 U.S.C. section 78(g) (1982). The Commission notes that use of LCs in areas beyond foreign currency options would raise additional questions. The relatively low cost of LCs permits an investor to increase the leverage in his investment. This increased leverage correspondingly increases his potential losses from adverse price movements in the underlying stock. In turn, those increased losses could result in liquidations in the options or underlying security market, raising certain of the price volatility concerns underlying federal margin regulation. Accordingly, the Commission expresses no opinion on the appropriateness of extending the use of LCs to options products other than foreign currency options.

[35] The FRB staff has represented that, while Regulation T does not specifically authorize LC use [see 12 CFR section 220.18(h) (1978)], the FRB will not object to Commission approval of the Phlx proposal and will continue this "no-action" position "until the necessary Regulation T amendment can be considered by the Board." See Letter from Laura Homer, Securities Credit Officer, FRB, to David L. Underhill, Staff Attorney, Division of Market Regulation, SEC, dated February 2, 1987.

[36] 15 U.S.C. 78(f)(b)(5) (1982).

[37] 15 U.S.C. 78s(b)(2) (1982).

[File No. 1-8103]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Collins Foods International Inc. (Common Stock, $.10 Par Value)

October 2, 1987.

Collins Foods International, Inc. ("Company"), has filed an application with Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company does not believe the volume of trading in the shares on the PSE is sufficient to justify the expense of maintaining the listing. The shares are also listed on the New York Stock Exchange, Inc. ("NYSE"). During the six month period January 1, 1987 to June 30, 1987, a total of 7,878,700 shares of CFI stock were traded, on which 85.52% was traded on the NYSE and 6.31% was handled on the PSE. The remaining sales took place on other exchanges or over the counter.

The Company believes that maintenance of a single listing on the NYSE will adequately serve the needs of the investing public in providing a fair and ready market for the shares, since such a large proportion of total trading takes place on the NYSE already. Withdrawal of the shares from listing on the PSE will result in savings of approximately $5,000 in yearly fees payable to the PSE as well as savings relating to the cost of compliance with PSE rules and regulations, relating to the listing, which costs are difficult to quantify but are deemed by the Company, not be insignificant.

Any interested person may, on or before October 26, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23288 Filed 10-7-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16028; File No. 812-6600]

Application; Germany Fund

October 2, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under Investment Company Act of 1940 ("1940 Act").

Applicant: The Germany Fund, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the 1940 Act.

Summary of Application: Applicant seeks an order permitting it to invest in securities of the following major German banks, which are publicly traded on one or more of the German stock exchanges: Dresdner Bank, Commerzbank, Bayerische Hypotheken-und Weschel-Bank, Bayerische Vereinsbank and BHF Bank (collectively hereinafter referred to as the "Banks"). Such investments would be subject to the same quantitative limits as and comparable conditions to those imposed on investments in U.S. broker-dealers in Rule 12d3–1 under the 1940 Act.

Filing Date: The application was filed on January 16, 1987 and amended on August 21, 1987 and September 10, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 27, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Germany Fund., c/o Stephen K. West, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Brion Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a diversified closed-end management investment company registered under the 1940 Act. Applicant's common stock is listed on the New York Stock Exchange.

2. Applicant's investment objective is to seek long-term capital appreciation through investment in equity and equity-linked securities of German companies which are either listed or planned to be listed on one or more of the German stock exchanges or admitted or to be admitted to regulated unlisted trading on such exchanges.

Applicant may also invest in Deutsche mark ("DM")-denominated bonds issued by the Federal Republic of Germany, the German Federal Railways and Post Office, as well as in DM-denominated debt instruments issued by certain private and public entities, including multinational lending institutions and supranational institutions. For temporary defensive purposes, Applicant may invest in U.S. dollar and DM-denominated money market instruments.

3. The Investment Adviser of Applicant is Capital Management International GmbH of Deutsche Bank ("CMI"), an entity organized under the laws of the Federal Republic of Germany, and the Manager of Applicant is Deutsche Bank Capital Corporation ("DBCC"), a corporation organized under the laws of the State of New York. Both are wholly-owned subsidiaries of Deutsche Bank AG ("Deutsche Bank"), an entity organized under the laws of the Federal Republic of Germany. Both CMI and DBCC are registered as investment advisers under the Investment Advisers Act of 1940.

Pursuant to the Investment Advisory Agreement, CMI, in accordance with Applicant's stated investment objective, policies and restrictions, makes recommendations to DBCC with respect to Applicant's investments, and upon instructions given by DBCC as to suitable securities for investment by Applicant, transmits purchase and sale orders and selects brokers and dealers to execute portfolio transactions on behalf of Applicant. Pursuant to the Management Agreement, DBCC acts as the corporate manager and administrator of Applicant and, subject to the supervision of Applicant's Board of Directors and pursuant to recommendations made by CMI, determines suitable securities for investment by Applicant.

4. German commerical and banking laws permit banks to act, either directly or indirectly, as securities broker/dealers, investment bankers/underwriters, mutual and other investment funds managers and investment advisers. All the major German commercial and central savings banks, including the Banks, are members of the German stock exchanges. Therefore, investment in such Banks would be subject to the prohibitions of section 12(d)(3) of the 1940 Act. With respect to the relief provided by Rule 12d3–1, because German companies, including banks, are not required to publicly disclose their income by line of business, it is not possible for Applicant to defintively ascertain whether the Banks derive more or less than 15 percent of their gross revenues from securities-related activities for any given period. Because of the extent of the Banks' participation in securities-related business at the present time, Applicant has assumed for purposes of this application that investment in the Banks would be subject to the conditions of Rule 12d3–1(b).

5. As of October 31, 1986, the five Banks represented 9.13% of the F.A.Z. Index, which includes a broadly representative list of major industrial, mining, financial and utility stocks. In addition, as of April 25, 1986, Dresdner Bank, Commerzbank, and Bayerische Vereinsbank were the eleventh, thirteenth, and sixteenth largest companies in Germany, respectively, based on market capitalization.

Applicant's Legal Analysis

Applicant has reviewed all the conditions set forth in Rule 12d3–1(b) and represents that it will be able to satisfy all but one of the conditions. Applicant cannot satisfy the condition that any equity security acquired must be a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System. Because the equity securities of the Banks are not listed on a United States securities exchange or traded in the United States in the over-the-counter market, they cannot be "margin securities." Because Applicant is unable to satisfy all of the conditions of Rule 12d3–1(b), it is unable to take advantage of good investment opportunities and to increase the diversification of its portfolio, particularly its diversification within the financial sector of the German economy.

2. In support of the requested relief, Applicant submits that the securities of the Banks clearly have at least the degree of investor interest and depth and breadth of market as certain securities traded on U.S. national securities exchanges or in the U.S. over-the-counter market which have been designated as "OTC margin stocks." Applicant also submits that the Banks' securities would meet listing criteria concering total market value, earning power and share distribution and would, based on these grounds, be eligible for listing on one or more the following: The New York Stock Exchange, The American Stock Exchange or the NASDAQ National Market System. Applicant further submits that its investment in securities issued by the

Banks would clearly have no adverse effect on the liquidity of its portfolio.

Applicant asserts that the public information available about the Banks in Germany is at least equal to information available in Germany about other German issuers in nonregulated industries in which the Fund regularly invests, including those listed on German stock exchanges. Applicant submits that the disclosure required by the German Commercial Code, Corporation Act and Stock Exchange Law, while not in all respects as comprehensive as U.S. securities laws, provide significant disclosure in connection with the issuance of securities which is the "substantial equivalent" of the disclosure required by the Securities Act of 1933.

Applicant therefore asserts that the five Banks and their securities would meet the criteria necessary to qualify as "OTC margin stock" if they were U.S. issuers. Thus, the policy for the requirement that equity securities acquired must be "margin securities" would not be compromised by granting the exemption requested in order to allow Applicant to invest in these well-established and highly regulated companies.

8. Applicant submits that, given the significant market share of the Banks and their prominence in the financial services sector of the German economy, it would be able to take advantage of good investment opportunities and to increase the diversification of its portfolio were it permitted to invest in equity and debt securities of the Banks. Applicant asserts that the granting of the requested exemptive order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

9. Applicant undertakes that it will invest in the debt and equity securities of Dresdner Bank, Commerzbank, Bayerische Hypotheken-und Wechsel-Bank, Bayerische, Vereinsbank and BHF Bank only if:

(i) Subject to Applicant's undertaking that each such investment will comply with all the requirements of Rule 12d3–1 except the requirement that such equity securities be margin securities;

(ii) The equity securities are listed on one or more of the German stock exchanges.

Applicant's Conditions

Applicant agrees that if the requested order is granted, such order will be expressly conditioned on Applicant's compliance with the undertaking set forth above.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23351 Filed 10–7–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16027; 812–6734]

Application and Temporary Order; GW Utilities Limited

October 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under the Investment Company Act of 1940 ("1940 Act").

Applicant: GW Utilities Limited.

Relevant 1940 Act Sections: Order requested under section 3(b)(2) or, alternatively, under section 6(c).

Summary of Application: Applicant seeks an order declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, or, alternatively, granting it an exemption from all provisions of the 1940 Act and rules and regulations thereunder. Applicant further requests an order pursuant to section 3(b)(2) of the 1940 Act exempting it during the period from July 25, 1987, until the SEC shall make a final determination on the application.

Filing Date: The application was filed on May 26, 1987, and amended on September 4, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. GW Utilities Limited, One First Canadian Place, Suite 600, Toronto, Ontario, Canada M5X 1A1, Attention: Secretary; with a copy to: Gregory K. Palm, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–2190 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. As a result of the reorganization of Gulf Canada Corporation ("Gulf"), a Canadian corporation, pursuant to a court-approved statutory arrangement (the "Arrangement"), Applicant acquired and is conducted certain businesses formerly conducted by Gulf, Gulf Canada Limited, and Hiram Walker Resources Ltd. ("Hiram Walker"). The Arrangement was authorized by Gulf's board of directors and approved by Gulf's shareholders.

2. Prior to the effective date of the Arrangement, July 1, 1987 (the "Effective Date"), Applicant had no material assets or operations. Pursuant to the Arrangement, Applicant now is engaged primarily in four lines of business: in the distilled spirits business through its 49% ownership of Hiram Walker-Gooderham & Worts Limited ("HW–GW"); in the natural gas distribution business through an 83% interest in The Consumers' Gas Company Ltd. ("Consumers"); in the pipeline business through its 40.8% interest in Interprovincial Pipe Line Limited ("IPL"); and in the oil and gas business through IPL's wholly-owned subsidiary, Home Oil Company Limited ("Home").

3. Consumers is one of Canada's largest natural gas distribution utilities, serving residential, commercial and industrial customers in parts of Canada and New York. IPL is the operator of the longest crude oil and liquids pipeline system in North America. Home, which carries on IPL's natural resource operations, is engaged in the exploration for and production of hydrocarbons. Home's activities are primarily conducted in Canada and, to a lesser extent, in other countries, excluding the United States. HW–GW and certain of its subsidiaries carry on the distilled spirits business which they formerly carried on as subsidiaries of Hiram Walker. HW–GW ranks among the largest distillers in the world, and certain of its brands are marketed throughout the world.

4. Applicant's investments in minority-owned IPL and HW–GW and

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majority-owned Consumers, calculated on a pro forma basis at estimated fair market value as at March 31, 1987, account for approximately $824 million (35%), $814 million (34%), and $721 million (30%), respectively, or 99% in the aggregate, of Applicant's total assets of $2.4 billion. All dollar amounts are stated in Canadian dollars.

Applicant's Legal Analyses

1. Applicant comes within the definition of an investment company as contained in section 3(a)(3) of the 1940 Act since more than 40% of its assets on an unconsolidated basis are "investment securities." Therefore, Applicant requests under section 3(b)(2) of the 1940 Act that the SEC find and declare by order that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses.

2. With respect to section 3(a)(1) of the 1940 Act, Applicant did not in the past, does not now and does not propose to hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Rather, it is a holding company engaged in a number of business enterprises through its majority-owned subsidiary, Consumers, and through IPL and HW–GW, two companies each of which Applicant jointly "controls" with another major shareholder within the meaning of section 2(a)(9) of the 1940 Act. Neither Consumers, IPL or HW–GW is an investment company itself within the meaning of section 3(a) of the 1940 Act. Furthermore, Applicant is not a special situation investment company. The acquisition of the stock of the companies in which it has ownership interests and the holding of such stock was and is for the purpose of engaging in the business activities of the companies involved and is not for the purpose of increasing the value of such companies' securities for profitable resale at some future date.

3. Applicant's historical development, its public representations of policy, the activities of its directors and officers, the nature of its present assets and the source of its present income further support issuance of the order requested under section 3(b)(2), as follows.

4. Applicant's predecessors (Gulf, Gulf Canada Limited, and Hiram Walker) historically have actively conducted the businesses which Applicant is engaging in as integral parts of its current business. Consumers amalgamated with HW–GW in 1980 and both became wholly-owned subsidiaries of Hiram Walker in 1981. Consumers subsequently issued shares to the public and was 83% owned when Hiram Walker was acquired by Gulf in 1986. HW–GW remained a wholly-owned subsidiary of Hiram Walker until December 1986. Certain of the Applicant's executive officers have had long associations working with their counterparts in HW–GW. Four of HW–GW's current directors are also directors or officers of Applicant. Applicant and its predecessors also have had an established relationship with IPL. Prior to the Effective Date, Gulf exercised its right to appoint five directors. Of the IPL directors most recently elected, three are also directors of and one is a senior vice president of Applicant. These directors, and the other directors nominated by Applicant's predecessor, have played and are expected to continue to play an important role in the management of IPL. IPL's president and chief executive officer is a former executive vice president of Applicant's predecessor, Hiram Walker. Similarly, IPL's vice president-finance and chief financial officer, vice president-corporate services and treasurer were officers of a subsidiary of Hiram Walker prior to 1987. Furthermore, on the Effective Date, Gulf's shareholders became Applicant's shareholders and as such, are aware of the historical involvement in these lines of business.

5. Applicant's representations of policies to date have been few, and were, in fact, made by Gulf in connection with the Arrangement. In the Proxy Statement, Gulf stated that Applicant would "be engaged in the gas distribution, pipelines, natural resources and distilled spirits businesses through interests in Consumers, IPL * * * and HW–GW." Applicant intends to engage in these four distinct lines of business through significant equity interests in the three operating corporations, not in the business of trading in securities, and does not hold itself out as being an investment company.

6. Applicant's directors and executive officers have had extensive involvement in the management of businesses with extensive natural resource operations. Certain of Applicant's directors and executive officers are also directors and officers of HW-GW, IPL and Consumers. In addition, a majority of Applicant's directors and executive officers are engaged, either as directors or officers or both, in the management of businesses with substantial operations in areas of activity similar to that conducted by Applicant through its operating subsidiaries. With the exception of one, all of Applicant's directors and senior officers had been or are directors or senior officers of Gulf and thus are farmiliar with Applicant's businesses. None of Applicant's directors or executive officers is a portfolio management or brokerage professional.

7. Moreover, on a fair market value, pro forma basis, Consumers, IPL and HW-GW accounted for 30 percent, 35 percent and 34 percent, respectively, or 99 percent cumulatively, of Applicant's assets at March 31, 1987. Because minority-owned IPL and HW-GW are each engage in a type of business different from that of the other, however, section 3(b) (2) (B) may not permit such assets to be considered together with those of majority-owned Consumers in support of Applicant's contention that it is primarily engaged in businesses other than investing, reinvesting, owning, holding or trading in securities. Nevertheless, Applicant asserts that it should be deemed to be primarily engaged in operating businesses because, on an unconsolidated basis, (1) the combined value of its investment in regulated utilities through Consumers and IPL represents 65 percent of Applicant's total assets, or (2) the combined value of Consumers and HW-GW represents 64 percent of Applicant's total assets.

8. Applicant's 1986 annual pro forma equity earnings from Consumers, IPL and HW-GW are $59 million (39 percent), $43 million (28 percent), and $50 million (32 percent), respectively. Applicant's earnings from other sources (primarily interest income) represent less than 1 percent of such earnings.

9. In the alternative, Applicant requests an order under section 6(c) of the 1940 Act exempting it from all provisions of the 1940 Act. Applicant submits that exempting it from all provisions of the 1940 Act is necessary or appropiate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will not engage in the trading of investment securities for speculative purposes so as to bring Applicant's activities within those intended to be regulated by the 1940 Act.

2. Applicant intends to continue to be primarily engaged in non-investment company businesses.

3. Applicant will notify the staff of the Division of Investment Management immediately of any proposed material changes to be made in its investments.

Temporary Order

The request for exemptive relief pending final determination on the application by the SEC has been considered, and it is found that, in view of the circumstances set forth above and in the application, cause has been shown for granting such relief. Accordingly,

It Is Ordered, pursuant to section 3(b)(2) of the 1940 Act, that the application for an order exempting Applicant from all provisions of the 1940 Act be, and hereby is, granted, during the period from July 25, 1987, until the SEC shall make a final determination upon the request for the permanent order set forth in the application, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23352 Filed 10-7-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8297]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Homefree Village Resorts, Inc. (Common Stock, $.001 Par Value)

October 1, 1987.

Homefree Village Resorts, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration on the BSE include the following:

Trading in the Company's common stock on the Exchange has been minimal. The Company's common stock is traded on the over-the-counter market under the symbol HMFR with trading reported by the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Substantially all trading in the company's common stock occurs in the over-the-counter market. Upon approval by its stockholders, the Company intends to implement a "Pairing Plan" pursuant to which the Company will "pair" its shares of common stock with interests in Homefree Investors L.P. so that such shares and interests may be purchased or sold only as a unit. If the Company continued to list its common stock on the Exchange, it would be necessary to list the partnership interests in Homefree Investors L.P. on the Exchange in order to implement the Pairing Plan.

Any interested person may, on or before October 22, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23289 Filed 10-7-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16031 /File No. 812-6785]

Application for Exemption; John Hancock Mutual Life Insurance Co. ("John Hancock") and John Hancock Variable Annuity Account V "Account V")

October 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: John Hancock Mutual Life Insurance Company "John Hancock") and John Hancock Variable Annuity Account V ("Account V").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit John Hancock to deduct from Account V the mortality and expense risk charges imposed under individual combination fixed/variable annuity contracts (the "Contracts") issued by John Hancock and a deferred sales charge equal to one percent of certain purchase payments made on the contract.

Filing Date: The application was filed on June 8, 1987 and amended on September 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549; John Hancock, c/o Sandra M. Molley, John Hancock Place, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Clifford E. Kirsch, Staff Attorney (202) 272-3032 or Lewis B. Reich, Special Counsel (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Account V, a registered unit investment trust under the 1940 Act, was established by John Hancock pursuant to Massachusetts law to fund the Contracts. A registration statement on Form N-4 under the Securities Act of 1933 has been filed to register the offering of the Contracts. Account V presently comprises five subaccounts each of which invests solely in the shares of one of the portfolios of John Hancock Variable Series Fund I, Inc., and a fixed annuity account. John Hancock, a registered broker/dealer, is the principal underwriter for the Contracts.

2. Prior to a Contract's maturity, John Hancock assesses an Annual Maintenance Charge of $30 (with the right reserved to increase the charge to $50) at the beginning of each Contract year after the first and at full surrender

during a Contract year. In addition, for certain administrative services, John Hancock makes a daily charge to the Account equal to .35% on an annual basis of the current value of its assets.

3. Prior to a Contract's maturity, a deferred sales charge equal to 1 percent of the purchase payments made in the immediately preceding Contract year is deducted from the Accumulated Value of the Contract at the beginning of each Contract Year after the first. A Withdrawal Charge is assessed whenever any amount is withdrawn from a deferred Contract prior to maturity. During the first two Contract Years, any amount withdrawn is subject to a Withdrawal Charge. In any Contract Year after the second, a Withdrawal Charge is assessed upon any amount withdrawn in excess of 10% of the difference between the purchase payments made prior to the beginning of the Contract year and any partial withdrawals (including Withdrawal Charges assessed) made prior to the beginning of the Contract Year without the assessment of any charges.

4. Withdrawal Charges are based upon a percentage of the purchase payments made to date less any partial withdrawals, deferred sales charges, Annual Maintenance Charges, and Withdrawal Charges to date and are assessed as follows:

Years from date of deposit to date of withdrawal	Withdrawal charge, (percent)
less than 1	8.5
1 but less than 2	7.5
2 but less than 3	7.5
3 but less than 4	7.5
4 but less than 5	6.0
5 but less than 6	4.5
6 but less than 7	3.0
7 or more	0

5. The application states that in no event will the aggregate withdrawal charges against a contract plus the 1% deferred sales charge ever exceed 8.5% of the purchase payments received.

6. For assuming certain risks under the Contracts, John Hancock imposes a daily mortality and expense risk charge of .90% of the net asset value of each subaccount of Account V. The charge is allocable .45% to John Hancock's assumption of mortality risks and .45% to John Hancock's assumption of expense risks. Applicants represent that the level of this charge is guaranteed and will not change.

7. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks assumed by John Hancock under the Contracts and that John Hancock is entitled to reasonable compensation for its assumption of mortality and expense risks.

8. Applicants further represent that the mortality and expense risk charge is within the range of industry practice with respect to comparable annuity products. This representation is based upon John Hancock's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates.

9. Applicants also represent that there is a reasonable likelihood that Account V's proposed distribution financing arrangement will benefit Account V and the contract owners.

10. Applicants submit that the deferred sales charge is a very small fraction of the amount of front-end sales load charges permitted under section 27 of the 1940 Act and, as such, is much more favorable to owners of the Contracts than the imposition of a sales load of the permitted amount. Because small amounts will be deducted during the lives of the Contracts for sales expenses, more money will be available for investment for the benefit of the owners of the Contracts.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. John Hancock will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

2. John Hancock will maintain at its administrative offices and make available to the Commission a memorandum setting forth the basis for the conclusion that Account V's distribution financing agreement will benefit Account V and the contract owners.

3. Account V will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of trustees (or directors), a majority of whom are not interested persons of the company, approve any such plan under Rule 12b–1.

4. Applicants will monitor Account V to ensure that, with respect to any Contract, total deferred sales charges assessed plus total Withdrawal Charges assessed will not exceed 8.5 percent of the total purchase payments made under the Contract.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23353 Filed 10–7–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16029; (812–6784)]

Application; Pilgrim Government Securities Fund et al.

October 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an amended order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Pilgrim Government Securities Fund, Pilgrim High Income Fund, Pilgrim International Bond Fund (collectively, "Applicants" or the "Partnerships").

Relevant 1940 Act Sections: Exception requested under section 6(c) from section 2(a)(19).

Summary of Application: Applicants seek to amend an existing order exempting Applicants' Managing General Partners to the extent that they are deemed interested persons solely because they are general partners in the Partnerships (Investment Company Act Release No. 15507, December 30, 1986) ("Existing Order") to now include an additional and future independent Managing General Partners elected subsequent to the Existing Order.

Filing Date: The application was filed on July 7, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 27, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Murray L. Simpson, Gaston Snow & Ely Bartlett, 101 California Street, 30th Floor, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–2847, or Brion R. Thompson, Special Counsel, (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Partnership is a diversified, open-end management investment company registered under the 1940 Act. Each Partnership is organized as a limited partnership in the State of California and shares of each fund are being offered exclusively to foreign investors with the objective of earning income that is not subject to U.S. Federal income tax.

2. Each Partnership will offer a single class of shares registered under the Securities Act of 1933 and the 1940 Act and purchasers will be required to become limited partners of that Partnership. Each Partnership's shareholders will have the voting, approval and other rights required under the 1940 Act but, consistent with the California Revised Limited Partnership Act, will not have the right to participate in the control of a Partnership's business.

3. The general partners of each Partnership consist of one corporate general partner (the "Non-Managing General Partner"), which will not take any role in management (except temporarily, in extraordinary circumstances) and a number of individual general partners (the "Managing General Partners"), who establish the investment policies and supervise and review its operations. The Existing Order exempts certain existing individual Managing General Partners of each Partnership, as of the date of the Existing Order, from the provisions of section 2(a)(19) of the 1940 Act to the extent that they are deemed "interested persons" solely because they are partners and co-partners of each Partnership and the non-Managing General Partner ("Independent Managing General Partners"), but does not exempt any future individual Managing General Partners of the Partnerships. Applicants seek to amend the Existing Order to extend to future individual Managing General Partners and one existing individual Managing General Partner, Felice R. Cutler, in particular, on the same basis set forth in the original application on which the Existing Order was granted.

Applicants' Legal Conclusions

1. Certain individual Managing General Partners are "interested persons" of the Partnerships and their investment manager and principal underwriter, as defined in section 2(a)(19) of the 1940 Act, solely by virtue of being partners of the Partnerships and co-partners of the non-Managing General Partner.

2. Section 2(a)(19) contains a proviso that excludes those individuals who would be interested persons of an investment company solely because they are directors of an investment company in corporate form, but contains no comparable exclusions for partners or co-partners if such company is a partnership. Applicants state that the Partnerships have been structured so that the independent Managing General Partners are the functional equivalents of the non-interested directors of an incorporated investment company.

3. Absent the requested exemption, Ms. Cutler may not be able to act as an independent Managing General Partner and the limitation could restrict the ability of the Partnerships to respond on decisions requiring the action of independent Managing General Partners. Prospective relief is also necessary and appropriate to permit independent Managing General Partners who may be elected in the future to begin fulfilling their obligations as the functional equivalents of independent directors upon election without the need for repeated amendments of the Existing Order.

4. The amendment to the Existing Order is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistance Secretary.

[FR Doc. 87–23354 Filed 10–7–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87–10–7; Docket 44644]

Application of American International Airways, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding that American International Airways, Inc., is fit to engage in the air transportation authorized by its certificate and reissuing the certificate so as to grant it permission to use the trade name Connie Kalitta Flying Service, cancelling its redundant charter certificates, and cancelling sections 104 and 418 certificates issued to Connie Kalitta Services, Inc.

DATE: Persons wishing to file objections should do so no later than October 20, 1987.

ADDRESSES: Responses should be filed in Docket 44644 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washingon, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Air Carrier Fitness Division, P–56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–9721.

Dated: October 2, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–23376 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–62–M

[Order 87–10–6]

Fitness Determination of Custom Air Service, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Custom Air Service, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 20, 1987.

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FOR FURTHER INFORMATION CONTACT:
Mrs. Mary Catherine Terry, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: October 2, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–23377 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–62–M

[Docket 45163]

Spokane-Vancouver Service Case; Assignment of Proceeding

October 5, 1987.

This proceeding has been assigned to Administrative Law Judge Daniel M. Head. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 87–23379 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–62–M

Privacy Act of 1974; Telephone Station Message Detail Reports

The Department of Transportation herewith proposes to modify the system of records on telephone usage for administrative billing purposes, titled "Telephone Station Message Detail Reports", DOT/A11–4. The proposed modification provides for dissemination of telephone usage reports to managers for review. The records will identify Departmental employees use of telephones to place Federal Telecommunications Systems (FTS) and Commercial Long Distance Calls.

Any person or agency may submit written comments on the proposed system to the Privacy Officer (M–34) Room 7109, U.S. Department of Transportation, 400 Seventh Street, SW. Washington, DC., 20590. Comments must be received within 30 days from date of this notice to be considered.

If no comments are received, the proposed changes will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted the document will be republished with the changes.

Issued in Washington, DC, October 2, 1987.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement for the Department to Transportation Assistant Secretary for Administration, Office of Information Resource Management, Telephone Station Message Detail Report

The Department of Transportation proposes to modify the existing Privacy Act systems of records relating to telephone usage for administrative billing purposes. The modification provides for dissemination of telephone usage reports to managers for review.

The records will relate to the use of the Department's telephones to place Federal Telecommunications System (FTS) and Commercial Long Distance calls. They will also identify assignment of telephone numbers and locations of telephones to Department employees.

Each month the Office of the Secretary (OST) and the Operating Administrations' telecommunications representatives will be provided a report of all commercial long distance calls made from each telephone number in their respective organizations during the previous month. The report will include information on all commercial long distance calls made form the number; employee name; telephone number; the time the call was made and the duration and cost of the call. There will also be periodic reports of off-net FTS calls providing the same information.

OST and Operating Administrations' telecommunications representatives will coordinate these reports with the appropriate office managers to review, certify, and when necessary, to arrange for reimbursement to the Federal Government for nonofficial commercial long distance and off-net FTS calls.

Only Telecommunications Management Branch personnel within the Office of the Secretary and selected operation and maintenance contact personnel will have access to tapes. Printed copies of the OST and Operating Administration reports will be provided to the respective telecommunications contacts, as appropriate, for dissemination to managers. All will be responsible for implementation of necessary safeguards. The purpose of this report is to comply with the Office of Management and Budget Circular A–130, Appendix I, entitled "Federal Agency Responsibilities for Maintenance of Records about Individuals" [50 FR 52738 (1985)].

Privacy Act Implications of Call Detail Programs; Proposed Notice

SYSTEM NAME:

Station Message Detail Recording (SMDR)

SYSTEM LOCATIONS:

U.S. Department of Transportation, Assistant Secretary for Administration, Room 9112, 400 7th Street, SW., Washington, DC 20590.

Decentralized segments are located at Operating Administrations' contacts offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Transportation employees who make Federal Telecommunications Systems (FTS) and Domestic and International Commercial Long Distance calls from the three Headquarters Buildings: The Nassif and Trans Point Buildings and Federal Building-10A.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of the Department's administrative telephones to place FTS and Commercial Long Distance calls, records indicating assignment of telephone numbers to Departmental employees, and records relating to the location of telephones.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic Tape storage via batch processing and paper copy.

RETRIEVABILITY:

Records are retrieved by telephone number or routing symbol, from the telecommunications contacts in the Operating Administrations and the Telecommunications Management Branch in OST.

SAFEGUARDS:

Only telecommunications personnel within the Office of the Secretary and operation and maintenance contract personnel have access to tapes. Telecommunications contacts and managers in OST and the Operating Administrations will have access to printed records. Printed records will have a cover sheet indicating Privacy Act coverage.

RETENTION AND DISPOSAL:

Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Management Branch, M–33, U.S. Department of Transportation, Office of the Secretary, Office of Information Resource Management, 400 Seventh Street SW., Room 9112, Washington, DC 20590.

NOTIFICATION PROCEDURES:

Contact Telecommunications Management Branch, M–33, at the above address.

RECORD ACCESS PROCEDURE:

Contact Telecommunications Management Branch, M–33 at the above address or telecommunications contacts in the Operating Administrations.

Individuals may review their own data upon presentation of a valid Department of Transportation identification card to their Operating Administration contact or the Telecommunications Management Branch in OST.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings and results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87–23378 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 25.785–1A; Flight Attendant Seat Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular 25.785–1A and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to flight attendant seat installations. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before February 5, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 431–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire. Commenters should identify AC 25.785–1A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

Advisory Circular 25.785–1 was issued on December 4, 1981, in order to clarify changes made to §§ 25.785 and 121.311 of the Federal Aviation Regulations, by Amendments 25–51 and 121–155, respectively.

In September 1985, the FAA held a Public Technical Conference on Emergency Evacuation of Transport Airplanes in Seattle, Washington. As a result of the conference, three working groups were formed to discuss the issues and recommendations expressed at the conference. The three groups were Design and Certification, Operations and Training, and Maintenance and Reliability. The Design and Certification Working Group, in turn, subdivided into three subgroups: Evacuation Demonstration, exits, and Escape Slides. The Exits Subgroup recommended, in part, that AC 25.785–1 be revised to provide guidance relative to the close proximity of aft-facing flight attendant seats and forward-facing passenger seats. Information is given in this AC which would assist in the design of airplane interiors or the placement of seats which would preclude a passenger from strking a flight attendant during an emergency landing.

Other recommendations from the Exits Subgroup pertained to the width of single and double flight attendant seats, and the proper installation of torso restraint systems. This AC also includes guidance relating to these two areas of flight attendant seat installation.

Issued in Seattle, Washington, on July 21, 1987.

Darrell M. Pederson,

Acting Manager, Aircraft Certification Division, ANM–100.

[FR Doc. 87–23252 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–87–25]

Petition For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; Aviall, Inc., et al

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 28, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 1, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
25366	Aviall, Inc. and Caledonian Airmotive, Ltd	14 CFR 145.47(b) and 145.51(d)	To allow petitioner to perform services including inspection, repair, maintenance, overhaul, and return to service of aircraft engines, appliances, parts and components for which petitioner is appropriately rated for installation on any U.S.-registered aircraft without geographical limitation, and in accordance with their ratings
25315	Eugene G. Lewis	14 CFR 65.91(c)	To allow petitioner relief from the 3-year requirement relating to a currently effective mechanic certificate with both an airframe rating and a powerplant rating.
21991	United Airlines	14 CFR 63.39(b)(1) and (b)(2), and 121.425(a)(2)(1) and (a)(2)(ii)	To allow petitioner, its flight engineers and flight engineer applicants to use a FAA-approved pictorial means and an approved simulator, in lieu of an actual static airplane for demonstrating the satisfactory performance of a preflight inspection and assigned flight engineer duties.
25389	Executive Air Fleet Corporation	14 CFR 61.57(d) and 135.247(a)(2)	To allow pilots of petitioner holding airline transport pilot certificates and serving as pilot in command in passenger-carrying operations of a turbojet airplane, operating under Part 91 or 135, to serve as PIC of aircraft carrying passengers during the hours of darkness without having made three takeoffs and landings during the hours of darkness within the preceding 90 days.
003SW	Parker Hannefin	14 CFR 29.305(a) and (b) and 29.501	To allow petitioner to design the elastic spring members of a Bell Model 412 helicopter wheel landing gear design to the same standards required for a helicopter skid landing gear. The elastic spring members would experience permanent yield under limit design load and would be subject to ultimate design load derived from a "reserve energy" landing condition § 29.501(a)(2) and (3)).
042CE	British Aerospace Public Limited Co	§ 23.807(d)(1)(ii)	To allow certification of the Jetstream Series 3200 in the Community Category of Part 23 with one larger overwing exit on the side opposite the passenger entrance door in lieu of the required two smaller exits
033CE	Beech Aircraft Corporation	§ 23.807(d)(1)(i)	To permit certification of a Model 2000 Airplane with one emergency exit in the cabin opposite the main entrance door, which will not comply with § 23.807(d)(1)(i). The Beech Model 2000 is a twin-turbopropeller engine, nine-passenger airplane intended to be certified in the commuter category. Granted: 4 September 1987
036CE	OMAC, Inc	§ 23.903(e)(2)	To permit certification of a OMAC Model L300 airplane with an engine installation that does not provide a means for stopping the rotation of the engine, which does not comply with § 23.903(e)(2). The OMAC Model L300 is a single pusher turbo-propeller engine, eight-passenger airplane intended to be certificated in the normal category. Granted: 27 August 1987.
038CE	Porsche Aviation Products, Inc	§23.991(a)(1)	To permit supplemental type certification of a Cessna Model 172 Airplanes using the Porsche PFM3200No1 engine, which will not comply with § 23.991(a)(1). The Cessna Model 172 is a small single reciprocating engine, four place airplane. Granted: 27 August 1987
039CE	Porsche Aviation Products, Inc	§23.991(a)(1)	To permit supplemental type certification of a Cessna Model 182 Airplanes using the Porsche PFM3200No3 engine, which will not comply with § 23.991(a)(1) The Cessna Model 182 is a small single reciprocating engine, four place airplane. Granted: 27 August 1987
24808	Pan American World Airways	§§ 121.433(c)(9)(iii), 121.441(a)(11) and 121.441(b)(1) and Appendix F of Part 121 of the FAR	To permit PAA to combine recurrent training and proficiency checks for pilots in command (PIC) into one annual training and proficiency check session. In addition, the line check required by § 121.440 would be administered 6 months subsequent to the annual training and proficiency check session in lieu of the recurrent training presently required. Granted: August 10, 1987
24085	Air Transport Association	Appendix H of Part 121 of the FAR	Petitioned on behalf of ATA's members and other air carriers for an exemption from a specific provision of Appendix H of Part 121 of the Federal Aviation Regulations (FAR) to accomplish total initial and upgrade pilot training and checkin in a Phase II simulator, in lieu of a Phase II simulator. Denial: August 10, 1987
012NM	United Airlines	§25.1305(d)(3)	This exemption would allow United Airlines to operate all of their Boeing Model 737-300 airplanes without having engine rotor unbalance indicators installed. Denial: 19 August 1987
25201	Department of the Air Force	14 CFR 61.73(b)(1)	To allow petitioner's Academy cadet soaring instructors to obtain an FAA commercial pilot-glider certificate without having to comply with the commercial pilot-glider certification requirements of Part 61 or the military pilot qualification requirements. Denied, September 21, 1987
25370	Britt Airways, Inc	14 CFR 135.337 and 135.339	To allow petitioner to use certain instructor pilots of Embraer Aircraft Corporation to train petitioner's initial cadre of pilots in the Embraer 120 type airplane without holding U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart H of Part 135 of the FAR. Granted, September 25, 1987
25067	Flightsafety International	14 CFR 61.2	To allow foreign nationals who already posess U.S. pilot certificates to receive additional aircraft training and ratings at training centers operated by petitioner outside the United States. Denied, September 21, 1987
21605	Alaska Airlines, Inc	14 CFR 121.574(a)(1) and (3)	To allow the carriage and operation of oxygen storage, generating, and dispensing equipment when the equipment is furnished and maintained by hospitals within the State of Alaska for medical use by patients who are passengers' requiring emergency medical attention. Granted, September 14, 1987
19634	Douglas Aircraft Company	14 CFR 121.310(d)(4)	To allow operators of DC-8 series aircraft to operate these aircraft in passenger-carrying operations with a cockpit control device for each emergency light as required. Granted, September 16, 1987
25358	Britt Airways, Inc	14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6) and 121.413(b) and (c).	To allow petitioner to utilize certain highly qualified pilot flight instructors from Aeroformation and Aerospatiale for the purpose of training petitioner's initial cadere of pilots in the Aerospatiale 42 type airplane in Toulouse, France, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart H of Part 121. Granted, September 14, 1987

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PETITIONS FOR EXEMPTION—Continued

Docket No	Petitioner	Regulations affected	Description of relief sought
25374	Bar Harbor Airways, Inc., d.b.a. Eastern Express	14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6) and 121.413(b) and (c).	To allow petitioner to utilize certain highly qualified pilot flight instructors from Aeroformation and Aerospatiale for the purpose of training petitioner's initial cadere of pilots in the Aerospatiale 42 type airplane in Toulouse, France, without holding U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. Granted, September 14, 1987.

[FR Doc. 87-23246 Filed 10-7-87; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 87-20]

Contract Procedures; Buy America Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for national waiver of Buy America; request for comments.

SUMMARY: In accordance with 23 CFR 635.410(c)(6), the FHWA hereby provides notice that it has received a request for a national waiver of the requirements of 23 CFR 635.410 (Buy American Requirements) for Reno Mattresses (Gabion wire baskets). The Federal regulations in 23 CFR 635.410 provide, with exceptions, that no Federal-aid highway construction project in which steel materials are to be used is to be authorized for advertisement or authorized to proceed unless all manufacturing processes for such materials occur in the United States. The request stated that since there is only one domestic producer of Reno Mattresses, the waiver would stimulate competition thus serving the public interest. To assist FHWA in assessing this request for waiver, comments are specifically requested on the present availability of the domestic supply and if there exists a reasonably available quantity of satisfactory quality to meet present needs. Additionally, comments are requested on the comparative costs of Reno Mattresses and competition in the industry.

The request was made by Terra Aqua, Inc., Reno, Nevada. Copies of the petition for waiver have been placed in the docket file identified above. Interested parties are encouraged to comment on this request.

Buy American requirements are contained in section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424, 96 Stat. 2136), as amended.

DATE: Written comments must be received on or before December 7, 1987.

ADDRESS: Submit signed, written comments, preferably in triplicate, to FHWA Docket No. 87-20, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart A. Bender, Office of the Chief Counsel (202) 366-0780, at the above address.

Section 165 of Pub. L. 97-424, 96 Stat. 2097, 2136, as amended; 23 U.S.C. 315; 49 CFR 1.48

Issued on: October 1, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 87-23291 Filed 10-7-87; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement; Honolulu, HI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: William R. Lake, Division Administrator, Federal Highway Administration, Box 50206, Honolulu, Hawaii 96850.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Hawaii Department of Transportation, will prepare an EIS on a proposal to improve Kahekili Highway (FAP 83) in Honolulu, Hawaii. The proposed improvement would involve the widening of the existing FAP 83 between Kamehameha Highway and Likelike Highway for a distance of about 4 miles. Also included in this proposal is the construction of an interchange with Likelike Highway. These improvements are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration other than widening the existing roadway include (1) Taking no action and (2) improving alternate corridors.

A Notice describing the proposed action has been sent by the Hawaii Department of Transportation, to appropriate Federal, State, and local agencies, and to private and community organizations and citizens who have previously expressed interest in this proposal. A public hearing will be scheduled. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at th is time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issued identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

William R. Lake,

Division Administrator, Honolulu, Hawaii.

[FR Doc. 87-23385 Filed 10-7-87; 8:45 am]
BILLING CODE 4910-22-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in June 1987. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-X	DOT-E 2582	Ozark-Mahoning Co., Tulsa, OK	49 CFR 173, 175.3, Subparts D, E, F, G	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions (modes 1, 2, 3, 4)
3600-X	DOT-E 3600	U.S. Department of Defense, Falls Church, VA	49 CFR 172.101, 173.87, 172.300	To authorize shipment of Lance rocket engines in specific configurations which contain Class B and Class C explosives. (modes 1, 2)
4453-P	DOT-E 4453	Quick Supply Co., Des Moines, IA	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (modes 1, 3)
4453-X	DOT-E 4453	ECONEXPRESS, Inc., Wheaton, IL	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (modes 1, 3).
4884-X	DOT-E 4884	Union Carbide Corp., Danbury CT	49 CFR 173.302(a)(1), 175.3, 178.61, 173.3a, 173.304, 173.119(m), 173.136, 173.247, 173.251.	To authorize shipment of Boron trichloride and silicon chloride, corrosive materials, and trichlorosilane, a flammable liquid in Type 304 or Type 316 stainless steel cylinders. (modes 1, 2, 3, 4, 5)
6712-X	DOT-E 6712	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain flammable and nonflammable gases in DOT Specification 3A or 3AA cylinders or ICC-3, 3A or 3AA cylinders. (modes 1, 2, 3, 4, 5).
6752-X	DOT-E 6752	ATOCHEM, Paris, France	49 CFR 173.304(a)(2), 173.301(d)(3)	To authorize use of DOT Specification 3A, 3AA, 3AX, 3AAX or 3T cylinders to form part of a tube trailer or tube bank, for transportation of a liquefied flammable compressed gas. (modes 1, 2, 3)
7051-P	DOT-E 7051	Aldrich Chemical Co., Inc., Milwaukee, WI	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box to transport a corrosive liquid. (modes 1, 4).
7052-P	DOT-E 7052	Teledyne Systems Co., Northridge, CA	49 CFR 172.101, 175.3, 172.420	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (modes 1, 2, 3, 4).
7605-X	DOT-E 7605	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.87, 173.92, 173.101, 173.102, 173.113, 175.3, 176.83, 177.848	To authorize transport of certain explosives contained in a partially dis-assembled aircraft or canopy assembly. (modes 1, 3, 4).
7835-X	DOT-E 7835	Lincoln Big Three, Inc., Baton Rouge, LA.	49 CFR 177.848, Part 107 Appen. B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (mode 1).
7835-X	DOT-E 7835	Scott Specialty Gases, Plumsteadville, PA	49 CFR 177.848, Part 107 Appen. B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (mode 1).
8214-X	DOT-E 8214	Morton Thiokol, Incorporated, Ogden, UT	49 CFR 173.153, 173.154, 175.3	To authorize transport of inflators and modules in passive restraint systems used in automobiles as flammable solids, n.o.s. (modes 1, 2, 3, 4)
8215-X	DOT-E 8215	Olin Corp., East Alton, IL	49 CFR 173.60, 173.74, 173.78, 173.93, 173.101, 173.107.	To authorize shipment of certain identified Class A, B, and C explosives, in non-DOT specification containers. (modes 1, 2)
8225-X	DOT-E 8225	Hoover Group, Inc., Beatrice, NE	49 CFR 173.266, Part 173, Subpart F, 173.119, 173.256.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded polyethylene portable tanks, for transportation of corrosive liquids, flammable liquids or an oxidizer. (modes 1, 2, 3).
8255-X	DOT-E 8255	Applied Companies, San Fernando, CA	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of nonreusable (nonrefillable) non-DOT specification welded steel cylinders, for shipment of certain nonflammable gases. (modes 1, 2, 4)
8256-X	DOT-E 8256	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.273(a)(4), 174.3, 179.102-16, 179.202-13	To authorize shipment of stabilized sulfur trioxide in DOT Specification 105A100W and 111A100W2 tank cars equipped with standpipe electrical heaters and a modified safety relief device. (mode 2).
8554-P	DOT-E 8554	Quick Supply Co., Des Moines, IA	49 CFR 173.93, 173.114a, 173.154	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (mode 1).
8667-X	DOT-E 8667	Federal Emergency Management Agency, Washington, DC.	49 CFR 173.416, 175.3	To authorize use of CDV-794 calibrators instead of DOT Specification or Nuclear Regulatory Commission certified packages, for shipment of radioactive materials. (modes 1, 3, 4).
8684-X	DOT-E 8684	Great Lakes Chemicals Corporation, El Dorado, AR	49 CFR 173.315(a)(1), 178.337(1)(c)(2)(ii)	To authorize use of DOT Specification MC-331 cargo tanks equipped with a manway cover not fully complying with 49 CFR 178.337-1(c)(2)(ii), for transportation of nonflammable gases. (mode 1)
8706-X	DOT-E 8706	Petro-Steel Division of Prairie State Equipment, Sioux Falls, SD.	49 CFR 173.119(a), 173.245(a), 178.340-7, 178.342-5, 178.343-5, 173.119(m), 173.346(a)	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids (mode 1)
8723-P	DOT-E 8723	Explosives Supply Company, Inc., Shirley, MA.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (modes 1, 3)
8723-P	DOT-E 8723	A.E. Sibley, Inc., Middletown, CT	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (modes 1, 3).
8723-P	DOT-E 8723	Falconi Construction, Inc., dba Alpha Explosives, Lincoln, CA.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (modes 1, 3).
8763-X	DOT-E 8763	Liquid Air Corp., San Francisco, CA	49 CFR 173.316(a), 173.315(a)	To authorize use of non-DOT specification vacuum insulated cargo tanks for shipment of liquefied hydrogen. (mode 1).
8924-X	DOT-E 8924	Kane Closures Inc., Westfield, NJ	49 CFR 173.119, 178.118-6 ftnte 3-(1, 173.128	To authorize manufacture, marking and sale of non-DOT steel drums complying with DOT-17H, except for § 178.118-6, Footnote 3-(1)—there will be at least one corrugation in the removable head near the periphery and the head is durablymarked "18"—for shipment of traffic paint. (mode 1).
8978-P	DOT-E 8978	Yardney Electric Corp., Pawcatuck, CT	49 CFR 172.101, 175.3	To authorize transport of lithium cells containing more than 12 but not more than 50 grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums. (modes 1, 2, 3, 4).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8988-X	DOT-E 8988	GOEX, Inc., Cleburne, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (modes 1, 3, 4).
8998-X	DOT-E 8998	Oil-Air Industries, Inc., Brookshire, TX	49 CFR 173.302(a)(1), 175.3	To authorize shipment of nitrogen in hydraulic accumulators (modes 1, 2, 3, 4).
9001-X	DOT-E 9001	Chesterfield Cylinder Company, Inc., Huntingdon Valley, PA.	49 CFR 178.45, 173.301, 173.302, 173.304, 175.3.	To authorize use of a non-DOT specification cylinder complying in part with DOT Specification 3T, for transportation of certain flammable and nonflammable gases. (modes 1, 2, 3, 4)
9001-X	DOT-E 9001	T. I. Chesterfield, Ltd., Derbyshire, England.	49 CFR 178.45, 173.301, 173.302, 173.304, 175.3.	To authorize use of a non-DOT specification cylinder complying in part with DOT Specification 3T, for transportation of certain flammable nonflammable gases. (modes 1, 2, 3, 4).
9004-X	DOT-E 9004	Metric Corp., Tulsa, OK	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for transportation of flammable liquids and flammable gases. (mode 1).
9041-X	DOT-E 9041	IRECO Inc., Salt Lake City, UT	49 CFR 173.100(bb), 175.30	To authorize transport of explosive devices as detonating fuzes, in aluminum trays, packed in a DOT Specification 12H fiberboard box. (modes 1, 4).
9143-X	DOT-E 9143	McCarthy Tank and Steel Co., Bakersfield, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 173.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying in general with DOT Specification MC-307/312 except for bottom outlet valve variations for shipment of waste liquids or semi-solids, classed as flammable, corrosive or poison B. (mode 1).
9275-P	DOT-E 9275	DuPont Pharmaceuticals, Inc., Waukegan, IL.	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Fritzsche, Dodge & Olcott, Inc., New York, NY.	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Sterling Drug, Inc., New York, NY	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	The Upjohn Co., Kalamazoo, MI	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Warner-Lambert Co., Morris Plains, NJ	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Merrell Dow Pharmaceuticals, Inc., Cincinnati, OH.	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	The Proctor & Gamble Distribution Co., Cincinnati, OH.	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Ortho Pharmaceutical Corp., Raritan, NJ	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Amway Corp., Ada, MI	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Firmenich, Inc., Princeton, NJ	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Mary Kay Cosmetics, Dallas, TX	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Carter-Wallace, Inc., Cranbury, NJ	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	A. H. Robins Co., Richmond, VA	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Nowell Corp., Hunt Valley, MD	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Avon Products, Inc., New York, NY	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	DuPont Critical Care, Inc., Waukegan, IL	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Universal Fragrance Corp., South Plainfield, NJ.	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Liz Claiborne Cosmetics, North Bergen, NJ.	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Max Factor & Co., Oxford, NC	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9275-X	DOT-E 9275	Halston Fragrances, Oxford, NC	49 CFR Parts 100 through 199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (modes 1, 2, 3, 4, 5).
9416-X	DOT-E 9416	CIBA-GEIGY Corp., Ardsley, NY	49 CFR 173.359	To authorize shipment of organophosphorous pesticide, liquid, in a DOT Specification 12P fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2-½ gallons capacity. (mode 1)
9440-X	DOT-E 9440	Hoover Group, Inc., Beatrice, NE	49 CFR Part 173, Subpart F, 173.119, 173.256, 173.266, 178.19, 178.253.	To authorize an optional design of a polyethylene portable tank in metal frame for shipment of certain corrosive and flammable liquids and an oxidizer. (modes 1, 2, 3).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9571–P	DOT–E 9571	United States Department of Interior, Pittsburgh, PA.	49 CFR Parts 100 through 177	To authorize transport of not more than 5 grams of an approved or unapproved explosive in a special packaging essentially without regulation. (modes 1, 2, 3, 4, 5).
9683–X	DOT–E 9683	Meter Engineers, Inc., Wichita, KS	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers described as mechanical displacement meter provers mounted on a truck chassis or trailer. (mode 1).

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9697–N	DOT–E 9697	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.31(c)	To authorize use of DOT Specification 105A300W and 105A500W tank car tanks with the tank overdue for retesting, for a one-time shipment of a waste corrosive liquid. (Mode 2.)
9710–N	DOT–E 9710	Union Carbide Corp., Danbury, CT	49 CFR 173.318(g)	To authorize abbreviated marking of the one-way travel time on the tank and on shipping papers. (Modes 1, 2, and 3.)
9728–N	DOT–E 9728	Smith Systems, A Moorco Operation, Corpus Christi, TX.	49 CFR 173.119, 173.305, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers described as mechanical displacement meter provers mounted on a truck chassis or trailer. (Mode 1.)
9730–N	DOT–E 9730	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101	To authorize use of super-insulated DOT Specification MC–338 cargo tank for transportation of flammable cryogenic liquid. (Mode 3.)
9735–N	DOT–E 9735	Hapag-Lloyd, AG Hamburg, West Germany.	49 CFR 176.30(a)	To authorize the Dangerous Cargo Manifest on cargo vessels owned and operated by Hapag-Lloyd AG to be retained in a location other than on or near the bridge of the vessel while the vessel is in port. (Mode 3.)
9746–N	DOT–E 9746	Air Products and Chemicals, Inc., Allentown PA.	49 CFR 173.264(b)(1)	To authorize use of DOT Specification 3BN cylinders for transportation of hydrogen fluoride, anhydrous. (Mode 1.)
9775–N	DOT–E 9775	Essex Environmental Industries, Inc., Hurst, TX.	49 CFR 173.3(c)	To authorize manufacture, marking and sale of a polyethylene, removable head salvage drum of 85-gallon for overpacking of damaged or leaking packages of hazardous materials of no greater than 55-gallon, or for packing hazardous materials that have spilled or leaked, for repackaging or disposal. (Modes 1, 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 6614–X	DOT–E 6614	All Pure Chemical Co., Tracy, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 7648–X	DOT–E 7648	Sunwest Aviation, Roy, UT	49 CFR 172.204(c), 172.300(a), 172.400(a), 173.91(a), 173.91(l), 175.3, 175.35(a).	To authorize carriage of aerial illuminating flares for testing purposes in cargo-only aircraft. (Mode 4.)
EE 8518–P	DOT–E 8518	International Technology Corp., Torrance, CA.	49 CFR 173.119 (a), (m), 173.245(a), 178.340–7, 178.342–5, 178.343–5, 173.36(a).	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
EE 8723–P	DOT–E 8723	Harrison Explosives, Inc., Allentown, PA	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
EE 9776–N	DOT–E 9776	Lithium Corp. of America, Gastonia, NC	49 CFR Part 107, Subpart B, App. B(1), 173.206.	To authorize a one time shipment of approximately 782 non-DOT specification, 30 gallon capacity, metal drums containing lithium metal. (Mode 1.)
EE 9794–N	DOT–E 9794	Anglo Airlines Ltd., Crainley, W. Sussex, England.	49 CFR 172.101	To authorize transport of rocket ammunition with explosive projectile, Class A explosive, in cargo-only aircraft, although it is forbidden for transportation by air. (Mode 4.)
EE 9795–N	DOT–E 9795	Piedmont Airlines, Winston-Salem, NC	49 CFR Part 107, Appendix B, Part 172, Subparts C, D, E, 173.21, 173.118, 175.30, 175.85.	To authorize carriage of small quantities of a flammable liquid in safety lamps in the passenger cabin of an aircraft. (Mode 5.)
EE 9796–N	DOT–E 9796	Heavy Cargo Airlines Ltd., Stansted, Essex, England.	49 CFR 172.101	To authorize a one time shipment of rocket ammunition with explosive projectile, Class A explosive, cargo-only aircraft, although it is forbidden for transportation by air. (Mode 5.)
EE 9798–N	DOT–E 9798	Societe Euromissile, Fontenay-aux-Roses, France.	49 CFR 172.101 Column 6(b), 175.30	To authorize shipment of rocket ammunition with explosive projectile, Class A explosive, in cargo-only aircraft, although it is forbidden for transportation by air. (Mode 4.)
EE 9799–N	DOT–E 9799	Southern Air Transport, Miami, FL	40 CFR 172.101 Column 6(b)	To authorize shipment of rocket ammunition with explosive projectile, Class A explosive, and rocket ammunition withinert projectile, Class B explosive, in cargo-only aircraft, although they are forbidden for transportation by air. (Mode 4.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9052–X	Chemical Handling Equipment Co., Inc. Southfied, MI.	49 CFR Part 173, Subpart F, 173.119, 173.125, 178.19, 178.253.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of corrosive and flammable liquids or an oxidizer. (modes 1, 2, 3)

Denials

9388–P—Request by Gulf Central & Terminal Company Tulsa, OK to authorize an additional loading procedure be allowed to determine the amount of liquefied gas loaded into a tank car denied 06/08/1987.

Issued in Washington, DC, on September 18, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87–23243 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–60–M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in August 1987. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2462–P	DOT–E 2462	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.73(b)	To authorize shipment of certain lead azide in glass bottles overpacked in non-DOT specification wooden boxes. (Mode 1.)
2582–X	DOT–E 2582	Matheson Gas Products, Inc. Secaucus, NJ.	49 CFR Part 173, 175.3, Subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT specification 3E1800, with certain exceptions. (Modes 1, 2, 3, and 4.)
4554–X	DOT–E 4354	Vanchem, Inc. Lockport, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e).	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, and 3.)
4453–P	DOT–E 4453	Brandywine Explosives & Supply, Inc., Lexington, KY.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–P	DOT–E 4453	Landshaw Explosives, Inc., New Brunfels, TX.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–X	DOT–E 4453	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–X	DOT–E 4453	Maynes Explosives Co., Lee's Summit, MO.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–X	DOT–E 4453	Wampum Hardware Co., New Galilee, PA	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–P	DOT–E 4453	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–X	DOT–E 4453	Strawn Explosives, Inc., Dallas, TX	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–X	DOT–E 4453	A. M. Contracting, Grove City, PA	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
5967–X	DOT–E 5967	Rocket Research Co., Redmond, WA	49 CFR 173.304(a)(2), 175.3, 178.44	To authorize use of non-DOT specification cylinders conforming in part with DOT Specification 3HT, for shipment of a nonflammable gas. (Modes 1, 2, 4, and 5.)
6816–X	DOT–E 6816	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, and 3.)
6902–X	DOT–E 6902	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.314(c), 179.300–15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6974–X	DOT–E 6974	Tavco, Inc., Chatsworth, CA	49 CFR 173.302(a)(1), 178.42, 175.3	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquified compressed gases. (Modes 1, 2, and 4.)
7060–X	DOT–E 7060	Federal Express Corp., Memphis, TN	49 CFR 175.75(a)(3)(ii), 175.702(b)	To authorize carriage of non-fissile radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met. (Mode 4.)
7071–X	DOT–E 7071	Olin Hunt Specialty Products Corp., West Paterson, NJ.	49 CFR 173.245, 172.101, 175.3	To authorize shipment of a certain corrosive liquid, in non-DOT specification polyethylene bottles overpacked in a non-DOT specification single-wall fiberboard box, or DOT Specification 2U polyethylene containers overpacked in a DOT Specification 12P fiberboard box. (Modes 1, 2, 3, and 4.)
7252–P	DOT–E 7252	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.93	To authorize transport of Pourvex and Tovex Extra in DOT Specification 17H metal drums. (Modes 1, 3.)
7282–X	DOT–E 7282	MarChem Corp., Maryland Heights, MO	49 CFR 173.315(a)(1)	To authorize use of non-DOT specification steel portable tanks, for shipment of certain mixtures of nonpoisonous, nonflammable compressed gases. (Mode 1.)
7454–P	DOT–E 7454	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 176.83, 176.410(e)(2)	To authorize blastings agent to be stowed in proximity to certain explosives without a bulkhead separating these materials. (Mode 3.)
7455–P	DOT–E 7455	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 176.177(g), 176.177(h), 176.177(n), 176.177(q), 176.177(r), 176.410(e).	To authorize handling and stowage of explosive material in an anchored and unmanned barge. (Mode 3.)
7458–X	DOT–E 7458	Ekohwerks Co., Eastlake, OH	49 CFR 173.304(a)(2), 178.42	To authorize manufacture, marking and sale of non-DOT specification seamless cylinders, for transportation of nonflammable gases (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7648-X	DOT-E 7648	Sunwest Aviation, Ogden, UT	49 CFR 172.204(c), 172.300(a), 172.400(a), 173.91(a), 173.91(i) 175.3, 175.35(a).	To authorize carriage of aerial illuminating flares for testing purposes in cargo-only aircraft. (Mode 4.)
7857-X	DOT-E 7857	Makhteshim Darom (Ramat Hovav) Ltd., Beer Sheva, Israel.	49 CFR 173.315	To authorize use of certain non-DOT specification portable tanks, for shipment of certain flammable gases. (Modes 1, 3.)
7972-P	DOT-E 7972	ETI Explosives Technologies International Inc., Wilmington, DE	49 CFR 172.504	To authorize transport of limited quantities of explosive in a special shipping container without placarding the vehicle. (Mode 1.)
8065-X	DOT-E 8065	U.S. Department of Energy, Washington, DC	49 CFR 173.65, 173.93, 173.94	To authorize shipment of certain Class A and B explosives, in non-DOT specification plywood boxes. (Mode 1.)
8084-P	DOT-E 8084	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.65(a)(5)	To authorize transport of Class A explosives containing more than 5% of moisture in plastic tubes, overpacked in DOT Specification wooden or fiberboard boxes. (Modes 1, 2, and 3.)
8141-X	DOT-E 8141	Altus Corp., San Jose, CA	49 CFR 172.101, 173.206, 173.247	To authorize transport of individual cells and modules consisting of three cells containing lithium metal and thionyl chloride in non-DOT specification wooden boxes. (Modes 1, 3.)
8195-X	DOT-E 8195	McDonnell Douglas Corp., Saint Louis, MO.	49 CFR 173, Subparts D, F, H, 173.6(b)(3), 175.3.	To authorize use of non-DOT specification metal drums as outside containers in lieu of prescribed DOT specification fiberboard and wood containers, for shipments of flammable liquids, corrosive materials, and Class B poisons subject to 49 CFR 173.6(b)(3) (Modes 1, 2, 4, and 5.)
8214-X	DOT-E 8214	Mercedes-Benz of North America, Inc., Montvale, NJ.	49 CFR 173.153, 173.154, 175.3	To authorize transport of inflators and modules in passive restraint systems used in automobiles as flammable solids, n.o.s. (Modes 1, 2, 3, and 4.)
8230-X	DOT-E 8230	Seastar Chemicals, Division of Seastar Instruments, Sidney, B.C., Canada.	49 CFR 173.268(b)(6), 173.269(a)(4)	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, and 4.)
8278-X	DOT-E 8278	Maintenance Mechanical Corp., Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for shipment of flammable gases and flammable liquids. (Mode 1.)
8549-X	DOT-E 8549	United Pumping Service, Inc., City of Industry, CA.	49 CFR 178.340-7, 178.342-5, 178.343-5, 173.119(m), 173.119(a), 173.245(a), 173.346(a).	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of liquid and semi-solid waste materials. (Mode 1.)
8554-P	DOT-E 8554	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.93, 173.114a, 173.154	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Mode 1.)
8579-P	DOT-E 8579	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8606-X	DOT-E 8606	Makhteshim Darom (Ramat Hovav) Ltd., Beer Sheva, Israel.	49 CFR 173.315	To authorize shipment of monomethylamine in non-DOT Specification IMO Type 5 portable tanks. (Modes 1, 3.)
8645-X	DOT-E 8645	A.M. Contracting, Groove City, PA	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC-307 or MC-311 insulated cargo tanks at ambient temperature. (Mode 1.)
8723-P	DOT-E 8723	Winchester Building Supply Co., Inc., Winchester, VA.	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Savage Brothers Inc., American Fork, UT	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Dama Inc., Roanoke, VA	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Explosives Engineers, Inc., Sparks, MD	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Cherokee Explosives, Inc. Plantsville, CT	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8742-X	DOT-E 8742	Cusco Fabricators Ltd., Richmond Hill, Ont., Can.	49 CFR 173.119(a), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5, 173.119(m).	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8812-X	DOT-E 8812	The Protectoseal Co., Bensenville, IL	49 CFR 173.119, 178.89	To authorize Naphtha, Turpentine, Butyl and Ethyl alcohol as additional commodities for shipment in 5 gallon containers similar to DOT Specification 5L. (Mode 1.)
8938-X	DOT-E 8938	Cryogenic Services, Inc., Canton, GA	49 CFR 173.304(a), 175.3	To authorize an additional cylinder design for shipment of certain refrigerated liquids. (Modes 1, 2, 3, and 4.)
9030-X	DOT-E 9030	LND, Inc., Oceanside, NY	49 CFR 173.302, 175.3	To authorize use of non-DOT specification, metal, single trip, inside container, for shipment of a nonflammable gas. (Modes 1, 2, 3, 4, and 5.)
9048-X	DOT-E 9048	Brooks Instrument Div./Emerson Electric Co., Statesboro, GA.	49 CFR 173.119, 173.304, 173.315	To renew and to authorize flow tubes on mechanical displacement meters to be manufactured with Type 304 and 17-4 PH stainless steel used for shipping flammable liquid or gas, n.o.s. (Mode 1.)
9064-X	DOT-E 9064	Corning Glass Works, Corning, NY	49 CFR 173.245, 173.271, 173.247	To authorize various modification to composite type packaging configuration for the shipment of corrosive liquids, n.o.s. (Modes 1, 3.)
9064-X	DOT-E 9064	Amalgamet Canada—Division of Premetalco, Inc., Toronto, Ontario, Canada.	49 CFR 173.245, 173.271, 173.247	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box. (Modes 1, 3.)
9064-X	DOT-E 9064	Corning Glass, Works Corning, NY	49 CFR 173.245, 173.271, 173.247	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9064-X	DOT-E 9064	Preussag AG Metall Goslar, West Germany.	49 CFR 173.245, 173.271, 173.247	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box. (Modes 1, 3.)
9078-X	DOT-E 9078	Monsanto Chemical Co., St. Louis, MO	49 CFR 173.245	To authorize use of DOT Specification 57 stainless steel portable tanks, for transportation of a waste formic acid/phenol mixture. (Mode 1.)
9108-P	DOT-E 9108	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Mode 1.)
9110-X	DOT-E 9110	KemaNord, Inc. Columbus, MS	49 CFR 173.163	To authorize shipment of sodium chlorate, in non-DOT specification collapsible polyethylene-lined, woven polypropylene bags. (Modes 1, 2, and 3.)
9181-X	DOT-E 9181	Honeywell, Inc., Horsham, PA	49 CFR 173.21, 173.206, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9617-P	DOT-E 9617	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 177.848(f), Part 107 Append B(1)	To authorize transport of a specially defined detonating cord on the same motor vehicle with Class A and C detonators. (Mode 1.)
9623-P	DOT-E 9623	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 177.835(c)(3)	To authorize transport of a blasting agent or an oxidizer in a DOT Specification MC-306 or MC-307 cargo tank with a storage box containing Class A explosives mounted directly behind the tractor cab. (Mode 1.)
9623-P	DOT-E 9623	Woodard Explosives, Inc., Albuquerque, NM.	49 CFR 177.835(c)(3)	To authorize transport of a blasting agent or an oxidizer in a DOT Specification MC-306 or MC-307 cargo tank with a storage box containing Class A explosives mounted directly behind the tractor cab. (Mode 1.)
9632-X	DOT-E 9632	Eurotainer S.A., Paris, France	49 CFR 173.315, 178.245	To exclude use of a rupture disk on portable tanks when the lading does not require a combination relief device. (Modes 1, 2, and 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9515-N	DOT-E- 9515	Leake Oil Co., Inc., St. Francisville, LA	49 CFR 173.119, 178.341-5	To authorize shipment of gasoline in a non-DOT specification cargo tank equipped with external self-closing shut off valves. (Mode 1.)
9645-N	DOT-E- 9645	Bonar Rosedale Plastics, Ltd., Lindsay, Ont., Canada.	49 CFR 173, Subpart F, 173.119, 173.256, 173.266, 178.19, 178.253.	To authorize manufacture, marking and sale of non-DOT rotationally molded, cross-linked polyethylene or linear low density polyethylene portable tanks, enclosed within either a protective steel frame or a foam-filled steel reinforced outer cage. (Modes 1, 2.)
9688-N	DOT-E- 9688	GTE Government Systems Corp., Waltham, MA.	49 CFR 173.247	To authorize shipment of thionyl chloride, classed as a corrosive material in non-DOT specification bottles of "Teflon" PFA, ranging in size from 10 to 16 ounces capacity, overpacked in DOT Specification 17H stainless steel drums, not to exceed 54 bottles per drum. (Mode 1.)
9694-N	DOT-E- 9694	All Pure Chemical Co., Inc., Tracy, CA	49 CFR 173.33(f)(9), 173.33(h)(5)(i), 173.315(i)(13).	To authorize use of MC-331 cargo tanks equipped with angle valves and pressure relief valves not presently authorized in the regulations. (Mode 1.)
9715-N	DOT-E- 9715	Pennwalt Corp., Buffalo, NY	49 CFR 173.154(a)(12)	To authorize shipment of dicumylperoxide, dry, or organic peroxide, solid, insider polyethylene bags in quantities of up to 40 pounds, overpacked in a DOT Specification 12B65 corrugated fiberboard box. (Modes 1, 3.)
9717-N	DOT-E- 9717	Mobay Corp., Kansas City, MO	49 CFR 173.119(b),175.3	To authorize shipment of certain flammable liquids in inside containers of up to 1 gallon capacity, overpacked in a DOT Specification 21C fiber drum. (Modes 1, 4.)
9718-N	DOT-E- 9718	Bignier Schmid-Laurent, Ivry Sur Seine, France.	49 CFR 173.315,178.245	To authorize shipment of flammable and nonflammable gases in a non-DOT specification portable tank comparable to DOT Specification 51 portable tanks. (Modes 1, 2, and 3.)
9729-N	DOT-E- 9729	Allied-Signal Inc., Morristown, NJ	49 CFR 173.246(a)(1), 178.61-5	To authorize shipment of corrosive material in stainless steel cylinders complying with requirements of DOT Specification 4BW with specific exceptions. (Modes 1, 2, and 3.)
9731-N	DOT-E- 9731	Richmond Lox Equipment Co., Delphi, IN	49 CFR 173.338-9(c)	To authorize manufacture, marking and sale of MC-338 cargo tanks for shipment of liquid hydrogen with holding time tests performed in a manner other than as prescribed in the regulations. (Mode 1.)
9741-N	DOT-E- 9741	Moura Batteries Co., Inc., Mount Vernon, NY.	49 CFR 173.260(a)(3)	To authorize shipment of batteries palletized and shipped as a unit without means of protection from any superimposed weight. (Modes 1, 2, and 3.)
9742-N	DOT-E- 9742	M1 Engineering Ltd., West Yorkshire, England.	49 CFR 173.353, 178.245	To authorize shipment of methyl bromide liquid in a non-DOT specification portable tank meeting all the requirements of a DOT Specification 51, with exceptions. (Modes 1, 2, and 3.)
9744-N	DOT-E- 9744	Noury Chemicals, Chicago, IL	49 CFR 173.157(a)(5)	To authorize shipment of benzoyl peroxide, wet with at least 30% water, classed as an organic peroxide, in a DOT Specification 12B65 fiberboard box containing a bag with 31.5 pounds of material (dry weight). (Mode 1.)
9752-N	DOT-E- 9752	Ethyl Corp., Baton Rouge, LA	49 CFR 173.354(a)(7)	To authorize shipment of motor fuel antiknock compound, class B poison, in a DOT Specification 12B fiberboard box with inside packaging consisting of an inner metal can, surrounded by vermiculite and then hermetically sealed in an outer metal can. (Modes 1, 3, and 4.)
9756-N	DOT-E- 9756	General Electric Co., Schenectady, NY	49 CFR 173.245b(a)(8)	To authorize a one way shipment of corrosive solids for disposal in four non-DOT specification steel portable tanks. (Mode 1.)
9757-N	DOT-E- 9757	JP Services, Inc., Benicia, CA	49 CFR 173.245b,a)(8)	To authorize shipment of non-DOT specification steel portable tanks containing corrosive solid, n.o.s. to an approved disposal facility. (Mode 1.)
9763-N	DOT-E- 9763	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(a), 173.247, 173 3a.	To authorize shipment of certain hazardous materials in DOT Specification 3BN cylinders, a specification cylinder not presently authorized. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9780–N	DOT–E– 9780	Majestic Lubricating Co., Tulsa, OK	49 CFR 173.119(a)(27)	To authorize shipment of flammable liquids, n.o.s., classed as flammable liquid, in three DOT Specification 2U polyethylene containers of two-gallon capacity each, overpacked in a DOT Specification 12P corrugated fiberboard box. (Mode 1.)
9782–N	DOT–E– 9782	Grumman Aircraft Systems, Bethpage, NY.	49 CFR 173.206	To authorize shipment of potassium metal in non-DOT specification container. (Modes 1, 2, and 4.)
9783–N	DOT–E– 9783	Helios Container Systems, Addison, IL	49 CFR 173.366, 173.154, 173.164, 173.178, 173.182, 173.217, 173.234, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polyprepylene bulk bags having a capacity of approximately 2260 pounds each, and top and bottom outlets, for shipment of flammable solids, oxidizing materials, poison B solids and corrosive solids. (Modes 1, 2.)
9790–N	DOT–E–9790	Taylor-Wharton Div. of Harsco Corp., Indianapolis, IN.	49 CFR 178.57–21(a), 173.316	To authorize manufacture, marking and sale of non-DOT specification welded cylinders conforming with the DOT Specification 4L except that the container is made of Type 316L stainless steel. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4354–X	DOT–E 4354	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119 (m), 173.245, 173.268(d), 173.288(e).	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (modes 1, 2, 3)
EE 8390–X	DOT–E 8390	Olin Hunt Specialty Products, Inc., West Paterson, NJ.	49 CFR 173.272, 178.24a, 178.210	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (mode 1)
EE 9693–X	DOT–E 9593	Honeywell, Inc., Minnetonka, MN	49 CFR 172.101, 175.30	To authorize transport of ammunition for cannon, Class A explosives, and certain non-hazardous materials aboard cargo aircraft. (mode 4)
EE 9814–N	DOT–E 9814	Westinghouse Electric Corp., Pittsburgh, PA.	49 CFR 172.203(c)	To authorize disclosure of the technical name of a hazardous substance explicitly listed in 49 CFR 172.101 as a hazardous material. (mode)
EE 9815–N	DOT–E 9815	PMC Specialties Group, Chicago, IL	49 CFR 179.200–19(b)	To authorize a one time shipment of para cresol, classed as a corrosive material, in a DOT Specification 111A60W1 tank car (GATX 19808) equipped with an anti-shift bracket welded directly to the tank shell without the required reinforcement pad. (mode 2)
EE 9834–N	DOT–E 9834	Northwest Airlines, St. Paul, MN	49 CFR Parts 100 through 199	To authorize a one time shipment of an insulated stainless steel dewar containing liquid nitrogen to be transported in the cabin of a passenger-carrying aircraft under special conditions. (mode 5)
EE 9835–N	DOT–E 9835	O.H. Materials, Findlay, OH	49 CFR Part 107, Appendix B, Part 172, Subpart B, C, E, F, Part 173, 177.848.	To authorize a one time shipment of hazardous materials that are not specifically identified. (mode 1)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6902–X	Great Lakes Chemical Corp. El Dorado, AR.	49 CFR 173.314(c), 179.200–15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)

Denials

9684–N—Request by General Electric Railcar Services Corporation Chicago, IL to authorize shipment of anyhdrous ammonia, classed as non-flammable gas, in DOT Specification 112J and 114J tank cars which are restenciled as DOT Specification 112S and 114S tank cars denied 08/27/1987.

9745–N—Request by Metal Box Enterprises, Inc. Vernona, NJ to manufacture, mark and sell "aerosol containers" conforming with Specification DOT 2P (49 CFR 178.33), except for volumetric capacity denied 08/28/1987.

Issued in Washington, DC, on September 23, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87–23242 Filed 10–7–87; 8:45 am]

BILLING CODE 4910–60–M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in July 1987. The modes of transportation involved are identified by a number of the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letter EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-X	DOT-E 2582	Union Carbide Corp., Danbury, CT	49 CFR 173, 175.3, Subparts D, E, F, G	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, and 4.)
4453-X	DOT-E 4453	Pacco, Inc., Tenino, WA	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Atlas Powder Company Dallas, TX	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	IRECO, Incorp., Salt Lake City, UT	49 CFR 173.114a(h)(3). 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Autin Powder Co., Cleveland OH	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
5243-X	DOT-E 5243	Austin Powder Co., Cleveland, OH	49 CFR 173.66(g)(1), 173.103(a), 177 825(g).	To authorize modified non-DOT specification packaging for transportation of Class C or Class A explosives. (Modes 1, 2, and 3.)
6816-X	DOT-E 6816	General Dynamics/Convair Division, San Diego, CA.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in §173.57(a). (Modes 1, 2, and 3.)
6824-P	DOT-E 6824	Grow Group, Inc., Montebello, CA	49 CFR 173.217(a), 173.154	To authorize packagings not provided for in the Hazardous Materials Regulations, for shipment of certain oxidizing materials. (Modes 1, 2, and 3.)
6902-X	DOT-E 6902	Halocarbon Products Corp., North Augusta, SC.	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6971-P	DOT-E 6971	Alltech Associates, Inc., Deerfield, IL	49 CFR Parts 100-199	To authorize transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (Modes 1, 2, 3, 4, and 5.)
6974-X	DOT-E 6974	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a)(1), 178.42, 175.3	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, and 4.)
7023-X	DOT-E 7023	Texas Instruments, Inc., Dallas, TX	49 CFR 173.245(a), 173.264(a), 173.266, 173.268(f)(5), 173.272(g), 173.272(i)(24), 173.263(a).	To authorize use of non-DOT specification steel portable tanks, for shipment of an oxidizer or corrosive material. (Mode 1.)
7051-X	DOT-E 7051	Ozark-Mahoning Co., Tulsa, OK	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box to transport a corrosive liquid. (Modes 1, 4.)
7555-X	DOT-E 7555	Provost Cartage, Incorp., Ville d'Anjou, Quebec.	49 CFR 173, Subpart F	To authorize manufacture, marking and sale of non-DOT specification cargo tanks made from non-metallic materials, for transportation of certain hazardous materials. (Mode 1.)
7607-X	DOT-E 7607	Ecology and Environment, Inc., Buffalo, NY.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders (Mode 5.)
7730-X	DOT-E 7730	Western Company of North America, Fort Worth, TX.	49 CFR 178.343-5(b)(2)(ii)	To authorize use of a DOT Specification MC-312 cargo tank, for transportation of certain corrosive materials. (Mode 1.)
7835-X	DOT-E 7835	Big Three Industries, Inc., Houston, TX	49 CFR 177.848, Part 107 Appen. B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7876-X	DOT-E 7876	General Chemical Corp., Morristown, NJ	49 CFR 173.299(a), 175.3	To authorize an additional mixture to be shipped as etching acid, liquid, n.o.s. (Modes 1, 2, 3, and 4.)
7891-P	DOT-E 7891	King's Laboratory, Inc., Blythewood, SC	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504 Table 1, 173.25(a), 175.3 173.126, 173.136, 173.237, 173.246.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, and 4.)
7943-P	DOT-E 7943	Grow Group, Inc., Montebello, CA	49 CFR 173.263(a)(15), 173.272(c). 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
8168-X	DOT-E 8168	Container Corporation of America, Wilmington, DE.	49 CFR 173.217, 173.245b, 178.19, 173.239a.	To authorize manufacture, marking and sale of non-DOT specification fully removable head polyethlene drums, for shipment of certain corrosive solids and solid oxidizers. (Modes 1, 2, and 3.)
8221-X	DOT-E 8221	Applied Companies, San Fernando, CA	49 CFR 173.302(a), 175.3	To authorize use of non-DOT specification high pressure cylinders of welded construction for military missile systems use only. (Modes 1, 2, and 4.)
8232-X	DOT-E 8232	GCS Container Service, SA Chiasso, Switzerland.	49 CFR 173.315, 173.123(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases and a flammable liquid. (Modes 1, 2, and 3.)
8239-X	DOT-E 8239	Westinghouse Electric Corp. Horseheads, NY.	49 CFR 173.302, 172.101 Column 6(a), 172.101 Column 6(b), 175.3.	To authorize use of non-DOT specification containers, for the shipment of nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
8363-P	DOT-E 8363	IMR Powder Co., Plattsburgh, NY	49 CFR 173.93(a)	To authorize shipment of certain solid propellant explosives in metal cannisters overpacked in DOT Specification 12H 65 fiberboard boxes. (Modes 1, 3.)
8426-P	DOT-E 8426	Southwest Pumping Services, Whittier, CA.	49 CFR 173.119(a), (m), 173.245(a), 178.342-5, 178.343-5, 178.340-7, 173.346(a).	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 with certain exceptions, for transportation of liquid and semi-solid waste materials. (Mode 1.)
8426-F	DOT-E 8426	Crosby & Overton, Inc., Long Beach, CA	49 CFR 173.119(a), (m), 173.245(a), 178.342-5, 178.343-5, 178.340-7, 173.346(a).	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 with certain excepeons, for transportation of liquid and semi-solid waste materials. (Mode 1.)
8426-P	DOT-E 8426	C.K.C., Inc., Paso Robles, CA	49 CFR 173.119(a), (m), 173.245(a), 178.342-5, 178.343-5, 178.340-7, 173.346(a).	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 with certain exceptions, for transportation of liquid and semi-solid waste materials. (Mode 1.)
8445-P	DOT-E 8445	Bishop & Associates, Inc., Brooklandville, MD.	49 CFR 173, Subpart D, E, F, H	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
8518-P	DOT-E 8518	J.J. Magana, Corp., Richmond, CA	49 CFR 173.119(a), (m), 173.245(a), 178.340-7, 178.342-5, 178.343-5, 173.346(a).	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8522-X	DOT-E 8522	Tuscarora Plastics, Inc., Sterling, VA	49 CFR 178.150, Part 173 Subpart F, §§ 177.839(a), 177.839(b).	Request authorization to modify polystyrene case by increasing thickness; incorporate a third strap etc., for shipment of commodities authorized in DOT Specification 33A. (Modes 1, 2, and 3.)
8547-X	DOT-E 8547	Natco, Inc., Chicago, IL	49 CFR 173 Subpart F, 178.116	To authorize manufacture, marking and sale of a non-DOT specification 55 gallon steel tight head drum incorporating a molded polyethylene top head, in lieu of a steel top head, for shipment of certain corrosive liquids. (Modes 1, 2.)
8569-P	DOT-E 8569	Garrett Fluid Systems Company, Tempe, AZ.	49 CFR 172.101(6)(b), 173.276, 175.3	To authorize shipment of 6.6 gallons of hydrazine, aqueous solution in non-DOT Specification F-16 emergency fuel tanks. (Modes 1, 3, and 4.)
8573-X	DOT-E 8573	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.217(a)(8)	To authorize transport of certain solid oxidizers in non-DOT specification polyethylene bottles packed in a DOT Specification 12B double-wall corrugated fiberboard box. (Modes 1, 2, and 3.)
8579-P	DOT-E 8579	Nitram, Inc., Tampa, FL	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8582-P	DOT-E 8582	Chicago South Shore & South Bend R R. Co., Michigan City, IN.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8582-P	DOT-E 8582	Chicago Missouri & Western Railway Co, Chicago, IL.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8582-P	DOT-E 8582	Springfield Terminal Railway Company, Sterling, MA.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8609-X	DOT-E 8609	Natco, Inc., Chicago, IL	49 CFR 177.841(e), 178.118	To authorize manufacture, marking and sale of non-DOT specification removable head metal drums, for transportation of poison B materials. (Mode 1.)
8678-X	DOT-E 8678	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	To renew and change six months shipping experience report requirement to two years to correspond with renewal application. (Modes 1, 2, and 3.)
8689-X	DOT-E 8689	Schlumberger Offshore Services, Houston, TX.	49 CFR 173.302, 173.304, 175.3	To authorize manufacture, marking and sale of a non-DOT specification oil well sampling device, for the shipment of various compressed gases, n.o.s. (Modes 1, 2, 3, and 4.)
8689-X	DOT-E 8689	Schlumgerger Well Services, Houston, TX	49 CFR 173.302, 173.304, 175.3	To authorize manufacture, marking and sale of a non-DOT specification oil well sampling device, for the shipment of various compressed gases, n.o.s. (Modes 1, 2, 3, and 4.)
8693-X	DOT-E 8693	CAN-TRO, Inc., Kansas City, MO	49 CFR 173.230	To authorize shipment of sodium, metal dispersion in organic solvent, in DOT Specification 4BW240 cylinders. (Modes 1, 3.)
8723-P	DOT-E 8723	High West, Inc., Billings, MT	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Strawn Explosives, Inc., Dallas, TX	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Hamson Explosives, Inc., Allentown, PA	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8937-X	DOT-E 8937	Spectrulite Consortium, Inc., Madison, IL	49 CFR 173.178	To authorize shipment of coated magnesium granules in collapsible polyethylene-lined, woven polypropryiene bags having a capacity of approximately 2000 pounds each. (Modes 1, 2, and 3.)
8978-X	DOT-E 8978	GN Lithium Batteries as Loege, Denmark	49 CFR 172.101, 175.3	To authorize transport of lithium cells containing more than 12 but not more than 50 grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums. (Modes 1, 2, 3, and 4.)
8988-X	DOT-E 8988	Schlumberger Well Services, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, and 4.)
8988-X	DOT-E 8988	Schlumberger Offshore Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, and 4.)
8988-X	DOT-E 8988	Welex, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, and 4.)
8988-X	DOT-E 8988	Dresser Industries, Inc., Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, and 4.)
8992-X	DOT-E 8992	General Dynamics/Pomona Division Aviation Dept., Pomona, CA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.320(b), 175.30(a)(1), Part 107, Appendix B.	To authorize transport of certain Class A and B explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
9010-X	DOT-E 9010	United Technologies, Corp., San Jose, CA.	49 CFR 173.92, 173.88(e)(2)(ii)	To authorize transport of a large motor with or without igniter installed and which may be in a propulsive state, or a rocket motor igniter. (Mode 1.)
9017-X	DOT-E 9017	EVA Eisenbahn-Verkehrsmittel-Gesellschaft GmbH, Dusseldorf, West Germany	49 CFR 173.264(b)	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of anhydrous hydrofluoric acid. (Modes 1, 2, and 3.)
9026-X	DOT-E 9026	Continental Fibre Drum, Inc., Lombard, IL	48 CFR 178.224, 172.101, 175.3, 175.30	To authorize manufacture, marking and sale of non-DOT specification fiber drums of not over 75-gallon capacity, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring. (Modes 1, 2, 3, and 4.)
9027-X	DOT-E 9027	McGean-Rohco, Inc., Cleveland, OH	49 CFR 178.131, 178.28(h), 178.28(m)	To authorize a one-time reuse of DOT Specification 37A (single-trip) drums, for shipment of chromic acid, solid and chromic acid mixture, classed as an oxidizer. (Modes 1, 2.)
9034-X	DOT-E 9034	Union Carbide, Corp., Danbury, CT	49 CFR 173.302, 175.3, 173.304, 173.328, 173.334	To authorize use of a previously unauthorized DOT Specification 3AL aluminum cylinder, for transportation of certain gases and gas mixtures. (Modes 1, 2, 3, 4, and 5.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9040-X	DOT-E 9040	Continental Fibre Drum, Inc., Lombard, IL	49 CFR 173.249a(d)(3)	To authorize manufacture, marking and sale of non-DOT specification fibre drums of not over 55-gallon capacity, lined or coated on the inside with a plastic material, and having modified non-removable top heads of steel or plastic, for transportation of certain corrosive liquids. (Modes 1, 2, and 3.)
9059-X	DOT-E 9059	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 172.202, 172.302(d), 173.34(d)(4).	To authorize use of cylinders currently used for transportation of fluorine, for shipment of a fluorine-helium mixture. (Modes 1, 2.)
9062-X	DOT-E 9062	UOP Inc., Des Plaines, IL	49 CFR 173.245	To authorize use of DOT Specification 57 carbon steel portable tanks, for transportation of a corrosive liquid. (Modes 1, 2.)
9064-X	DOT-E 9064	J.T. Baker Chemical Co., Phillipsburg, NJ	49 CFR 173.245, 173.271, 173.247	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box. (Modes 1, 3.)
9079-X	DOT-E 9079	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315	To authorize use of carbon steel DOT Specification 51 portable tanks, for transportation of a liquefied compressed gas. (Modes 1, 3.)
9108-X	DOT-E 9108	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Mode 1.)
9108-X	DOT-E 9108	Ensign-Bickford Co., Simsbury, CT	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Mode 1.)
9141-X	DOT-E 9141	Bristol Flare Corp., Bristol, PA	49 CFR 172.101, 173.108	To authorize transport of certain hand signal devices, as a flammable solid instead of a class C explosive. (Mode 1.)
9192-X	DOT-E 9192	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2)	To authorize shipment of various refrigerated compressed gases classed as flammable gas in DOT Specification 4L-112 cylinders. (Mode 1.)
9275-X	DOT-E 9275	International Flavors & Fragrances (IFF-US), Hazlet, NJ.	49 CFR Parts 100-199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9282-X	DOT-E 9282	Halocarbon Products Corp., Hackensack, NJ.	49 CFR 173.314(c)	To authorize rail and cargo vessel as additional modes to transportation. (Modes 1, 2.)
9364-P	DOT-E 9364	Platte Chemical Co., Fremont, NE	49 CFR 173.359	To authorize shipment of a parathion mixture, liquid, in a DOT Specification 12P corrugated fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2½ gallon capacity. (Mode 1.)
9402-P	DOT-E 9402	Atochem S.A., Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)
9446-X	DOT-E 9446	Matson Navigation Co., San Francisco, CA.	49 CFR 176.305(c)(5)	To authorize stowage of flammable liquids with flash points below 73 degrees Fahrenheit in holds or compartments that are fitted with a goose neck type of vent head. (Mode 3.)
9549-P	DOT-E 9549	GOEX, Inc., Cleburne, TX	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing more than 350 grains, but not more than 600 grains of Class A, type 3 explosive, as Class C explosive, in DOT Specification 12H fiberboard box. (Modes 1, 3, and 4.)
9678-X	DOT-E 9678	Rosseborough Manufacturing Co., Avon Lake, OH.	49 CFR 173.154	To authorize shipment of various mixtures: Magnesium granules 0 to 30%; Salt-coated magnesium granules 0 to 30%; Calcium carbide 40 to 90%; and Calcium oxide 5 to 20% classes as flammable solids. (Mode 1.)
9732-P	DOT-E 9732	Shell Oil Company, Houston, TX	49 CFR 173.115	Request party status and to authorize additional materials to be shipped as combustible liquid, n.o.s. (Mode 1.)

NEW EXEMPTIONS

Application No	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9579-N	DOT-E 9579	IRECO, Inc., Salt Lake City, UT	49 CFR 173.154(a)(18)	To authorize use of a non-DOT specification motor vehicle for bulk shipment of oxidizers. (mode 1).
9675-N	DOT-E 9675	Surpass Chemical Co., Inc., Albany, NY	49 CFR 172.301(a), Part 107, Appendix b(1), (2), 172.203(a).	To authorize shipment of approximately 100,000 DOT Specification drums of five gallon capacity, containing hypochlorite solution, classed as a corrosive material which have labels marked "NA 1791" instead of the required "UN 1791". (mode 1).
9709-N	DOT-E 9709	Crown Rotational Molded Products, Inc., Marked Tree, AR.	49 CFR 173.3(c)	To authorize manufacture, marking and sale of a polyethylene, removable head salvage drum of 85-gallon capacity for overpacking of damaged or leaking packages of hazardous materials or for packing hazardous materials that have spilled or leaked for repackaging or disposal. (modes 1, 2).
9748-N	DOT-E 9748	Greif Bros. Corp., Springfield, NJ	49 CFR 178.224, Part 173	To authorize manufacture, marking and sale of non-DOT fibre drums of not over 75-gallon capacity, similar to DOT-21C except that the top head is of molded polyethylene or polypropylene and secured to the side wall by a level locking ring, for transportation of various hazardous materials (solids) (modes 1, 2).
9749-N	DOT-E 9749	Union Carbide Corp., Danbury, CT	49 CFR 172.203(c)(1),172.324(a)	To authorize shipment of a material containing a hazardous substance without listing the name of the hazardous substance on the shipping papers and on the package when transported by private or contract carriers. (mode 1).
9750-N	DOT-E 9750	IRECO, Inc., Salt Lake City, UT	49 CFR 173.154(a)(18)	To authorize transport of ammonium nitate solution containing not less than 13% water in DOT specification MC-307 insulated cargo tank or a DOT Specification MC-311 insulated cargo tank. (mode 1).
9770-N	DOT-E 9770	AMSPEC Chemical Corp., Gloucester City, NJ.	49 CFR 173.154(a)(2), 178.118, 173.28(m).	To authorize reuse of DOT Specification 17H drums of 55-gallon capacity for multiple shipments of sodium methylate, classed as a flammable solid, without subjecting drums to reconditioning requirements. (mode 1).

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9792-N	DOT-E 9792	Foam Fabricators, Bloomsburg, PA	49 CFR Part 173, Subpart F, §§ 177.839(a), (b), 178.150.	To authorize manufacture, marking and sale of a non-reusable expanded polystyrene case similar to DOT-33A, except it will have six cavities to contain not more than six five-pint or six 20 ounce bottles, for shipment of those commodities authorized by in a DOT-33A packaging. (modes 1, 2, 3).
9800-N	DOT-E 9800	Space Ordnance Systems, Canyon Country, CA.	49 CFR 173.65	To authorize a one time shipment of a limited quantity of Class A, Type 4 explosive, to be placed in special packaging not prescribed in 49 CFR. (mode 1).

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9801-N	DOT-E 9801	Phelps Dodge Corp., Phoenix, AZ	49 CFR 173.31(c)(2), footnote (d) Table 1.	To authorize retesting of DOT Specification 111A100W2 tank car tanks, over ten years of age, with sulfuric acid in lieu of water. (mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7991-X	Union Pacific Railroad Co., Salt Lake City, UT.	49 CFR Parts 100-177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (mode 1.)
8426-P	Southwest Pumping Services, Whittier, CA.	49 CFR 173.119(a), (m), 173.245(a), 178.342-5, 178.343-5, 178.340-7, 173.346(a).	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 with certain exceptions, for transportation of liquid and semi-solid waste materials. (mode 1.)
8723-X	Atlas Powder Co., Dallas, TX	49 CFR 173.114a(h)(3), 172.101, 176.83, 176.415.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (modes 1, 3.)

Denials

7872-X—Request by Baker Performance Chemicals, Inc. Houston, TX to authorize a portable tank capacity in excess of that set forth in the regulations for a tank transporting a certain flammable liquid denied 07/27/1987.

9293-N—Request by Air Products and Chemicals, Inc. Allentown, PA to request authorization to substitute acoustic emission testing for the periodic retesting prescribed in 49 CFR 173.34 for 3AX, 3AAX and 3T cylinders denied 07/30/1987.

9681-X—Request by Space Ordnance Systems Canyon Country, CA to authorize limited quantities of Class A, Type 4 explosives, to be placed in special packaging not prescribed in 49 CFR denied 07/30/1987.

Issued in Washington, DC, on September 17, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-23245 Filed 10-7-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 226]

Delegation of Authority; Director, National Computer Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This new delegation order authorizes the Director, National Computer Center, to grant an extension of time to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, when an extension to file the associated Forms 1042S on magnetic tape is necessary.

The text of the delegation order appears below.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Phyllis K. Andrews, D:R:R:R, Rm. 7041, 1111 Constitution Ave. NW., Washington, DC 20224, (Telephone 202 566-4089). This is not a toll-free telephone number).

Martha M. Seeman,

Chief, Information and Productivity Improvement Branch.

Authority To Extend the Time To File Form 1042

1. Pursuant to the authority vested in the Commissioner of the Internal Revenue by 26 CFR 1.6081-1, 301.7701-9 and 301.6011-2, there is hereby delegated to the Director, National Computer Center, the authority to grant extensions of time to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, only when also approving extensions to file associated Forms 1042S on magnetic tape.

2. This authority may be redelegated no lower than Magnetic Media Specialists.

Dated: August 13, 1987.

James I. Owens.

[FR Doc. 87-23343 Filed 10-7-87; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Amendment

On April 22, 1987, notice was published at page 13373 of the Federal

Register (52 FR 13373) by the United States Information Agency pursuant to Pub. L. 89–259 relating to the exhibit "Passport to the World." Display of the Greek marble stele in the exhibit at The University Museum of the University of Pennsylvania continues to be in the national interest. The stele will remain in the United States until on or about January 31, 1988.

Dated: September 29, 1987.

John A. Lindburg,

Acting General Counsel.

[FR Doc. 87–23266 Filed 10–7–87; 8:45 am]

BILLING CODE 8230–01–M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held October 14, 1987, in Room 600, 301 4th Street, SW., Washington, DC from 11:00 a.m. to 12:00 noon.

The Commission will meet with members of the Senate Foreign Relations staff to discuss programs of the U.S. Information Agency.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: October 2, 1987.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 87–23386 Filed 10–7–87; 8:45 am]

BILLING CODE 8230–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 195
Thursday, October 8, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 36493, September 29, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, October 5, 1987.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed Federal Reserve Bank salary structure adjustments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: October 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–23389 Filed 10–6–87; 10:11 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, October 13, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed response to a request by the General Accounting Office for Board comment on a draft report regarding supervision of county risk and international lending.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–23390 Filed 10–6–87; 10:11 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 52, No. 195
Thursday, October 8, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC-428-F]

Medicare Program; Payment for Facility Services Related to Ambulatory Surgical Procedures Performed in Hospitals on an Outpatient Basis

Correction

In rule document 87-22783 beginning on page 36765 in the issue of Thursday, October 1, 1987, make the following corrections:

1. On page 36772, in the first column, in the first line, "ban" should read "bad".

§ 413.118 [Corrected]

2. On page 36773, in the first column, in § 413.118(a), in the second line, "1833(a)(3)" should read "1833(i)(3)".

3. On the same page, in the second column, in § 413.118(c)(2), in the first line, "date" should read "data".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N-0140]

Diluted Fruit or Vegetable Juice Beverages Other Than Diluted Orange Juice Beverages; Extension of Comment Period

Correction

In proposed rule document 87-22120 appearing on page 36046 in the issue of Friday, September 25, 1987, make the following correction:

In the second column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "HFF-313" should read "HFF-312."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses; Proposal to Permit Expanded Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update Formats of Several Standards

Correction

In proposed rule document 87-21708 beginning on page 35426 in the issue of Monday, September 21, 1987, make the following corrections:

§ 133.127 [Corrected]

1. On page 35428, in the third column, in § 133.127(a)(1), in the ninth line, "prescribed" should read "described".

2. On page 35429, in the first column, in § 133.127(d), in the sixth line, insert "or" after "plant,".

§ 133.136 [Corrected]

3. On page 35429, in the third column, in § 133.136(a)(3), in the seventh line, "clotting" was misspelled.

§ 133.137 [Corrected]

4. On page 35430, in the first column, in the heading for § 133.137, "cured" should read "curd".

§ 133.140 [Corrected]

5. On page 35430, in the second column, in § 133.140(b), in the first line, "Nomenclature" was misspelled.

§ 133.144 [Corrected]

6. On page 35431, in the second column, in § 133.144(b)(3)(iv), in the first line, "Antimycotic" was misspelled.

7. In the same column, in § 133.144(b)(3)(v), in the fourth line, "to" should read "of".

8. In the same column, in § 133.144(d)(2), in the fourth line, insert "and" after "milkfat".

§ 133.162 [Corrected]

9. On page 35433, in the second column, § 133.162(b)(3)(ii) was incorrectly added to § 133.162(b)(3)(i) and should become a separate paragraph; the next paragraph should be correctly designated "(iii)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses; Proposal to Remove Standards of Identity for Low Sodium Cheeses and to Amend Standards of Identity for Cheddar Cheese and Colby Cheese

Correction

In proposed rule document 87-21709 beginning on page 35435 in the issue of Monday, September 21, 1987, make the following correction:

§ 133.118 [Corrected]

On page 35437, in the second column, in § 133.118(a)(1), in the 11th line, "dry" should read "dairy".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6659

[ES-960-07-4220-10; ES-11592]

Withdrawal of Public Land for Buffalo National River; Arkansas

Correction

In rule document 87-22451 appearing on page 36577 in the issue of Wednesday, September 30, 1987, make the following correction:

In the third column of the page, under T. 17 N., R. 14 W., "Sec. 2, S½SW¼" should read "Sec. 2, S½N½SW¼."

BILLING CODE 1505-01-D

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 5

[CGD 85-073]

Coast Guard Auxiliary Ensign and Auxiliary Patrol Boat Ensign

Correction

In rule document 87-22729 appearing on page 36760 in the issue of Thursday, October 1, 1987, make the following corrections:

§ 5.47 [Corrected]

In the second column, in § 5.47(b), in the third line, "board" should read "broad"; in the fifth line, "while" should read "white".

BILLING CODE 1505-01-D

federal register

Thursday
October 8, 1987

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-27]

Proposed Establishment of Airport Radar Service Areas; Cedar Rapids Municipal Airport, IA, et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Cedar Rapids Municipal Airport, IA; Champaign University of Illinois-Willard Airport, IL; Chicago Midway Airport, IL; Columbus Air Force Base (AFB), MS, and Jackson Allen C. Thompson Field, MS. With the exception of Midway Airport, each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before February 1, 1988. Informal airspace meeting dates are as follows: Cedar Rapids Municipal Airport, IA—December 8, 1987; Champaign University of Illinois-Willard Airport, IL—December 9, 1987; Chicago Midway Airport, IL—December 14, 1987; Columbus AFB, MS—December 9, 1987, and Jackson Allen C. Thompson Field, MS—December 8, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No 87-AWA-27, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Cedar Rapids Municipal Airport, IA, ARSA
Time: 7:00 p.m.
Location: Prairie Junior High School, Lecture Hall, 401 76th Avenue, SW., Cedar Rapids, IA

Champaign University of Illinois-Willard Airport, IL, ARSA
Time: 7:00 p.m.
Location: Chancellor Hotel and Convention Center, 1501 South Neil Street, Champaign, IL

Chicago Midway Airport, IL, ARSA
Time: 7:00 p.m.
Location: Midway Motor Inn, 5600 South Cicero Avenue, Chicago, IL

Columbus AFB, MS ARSA
Time: 7:00 p.m.
Location: Officer's Open Mess, Columbus AFB, MS, (Directions at Main Gate)

Jackson Allen C. Thompson Field, MS, ARSA
Time: 7:30 p.m.
Location: Aircrew Briefing Room, Mississippi Air National Guard Base, Thompson Field, Jackson, MS

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves five locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for the proposed ARSA locations in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 89 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA.

Related Rulemaking

This notice proposes ARSA designation at five locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at four of the locations at which ARSA's are proposed in this notice. Midway Airport is a radar facility currently providing Stage II service. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR), Stage II service, with the exception of separation, provides the same. TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

The provisions of FAR § 91.87 relating to an airport traffic area (ATA), while necessary, do not eliminate the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the ATA of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport requires more complete ATC awareness and/or control of traffic in the area.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at Cedar Rapids Municipal Airport, IA; Champaign University of Illinois-Willard Airport, IL; Chicago Midway Airport, IL, and Jackson Allen C. Thompson Field, MS, which are public airports, and Columbus AFB, MS, a military airport. Four of these currently have nonregulatory TRSA's in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of

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the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of these additional ARSA sites. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites The reasons for these conclusions are presented below.

FAA expects that the additional ARSA sites proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation in radar services at these locations is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and these facilities already operate the necessary radar equipment. FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the

recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic with both efficiency and increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA locations proposed in this notice will only be temporary, and that once established, the ARSA's will result in efficient terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility

analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Cedar Rapids Municipal Airport, IA [New]

That airspace within a 5-mile radius of the Cedar Rapids Municipal Airport (lat. 41°53'04" N., long. 91°42'31" W.) extending upward from the surface to and including 4,900 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 2,100 feet MSL to and including 4,900 feet MSL.

Champaign University of Illinois-Willard Airport, IL [New]

That airspace within a 5-mile radius of the University of Illinois-Willard Airport (lat. 40°02'23" N., long. 88°16'40" W.) extending upward from the surface to and including 4,800 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 2,000 feet MSL to and including 4,800 feet MSL.

Chicago Midway Airport, IL [New]

That airspace within a 5-mile radius of the Midway Airport (lat. 41°47'10" N., long. 87°45'08" W.) extending upward from the surface to 3,000 feet MSL, excluding that airspace from 1,900 feet MSL to 3,000 feet MSL within the 10-mile arc of the O'Hare VOR; and that airspace within a 10-mile radius of the airport beginning at a line 2 miles northeast of and parallel to the Chicago Midway localizer course to Runway 31L clockwise to where the 10-mile arc of the O'Hare VOR intersects the 10-mile radius of the airport, thence via the O'Hare 10-mile arc, extending upward from 1,900 feet MSL to 3,000 feet MSL; excluding all airspace contained within the Chicago, IL, Terminal Control Area.

Columbus AFB, MS [New]

That airspace within a 5-mile radius of Columbus AFB (lat. 33°38'36" N., long. 88°26'36" W.) extending upward from the surface to and including 4,200 feet MSL; and that airspace within a 10-mile radius of Columbus AFB extending upward from 1,500 feet MSL to and including 4,200 feet MSL.

Jackson Allen C. Thompson Field, MS [New]

That airspace within a 5-mile radius of the Allen C. Thompson Field (lat. 32°18'36" N., long. 90°04'28" W.) extending upward from the surface to and including 4,400 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,700 feet MSL to and including 4,400 feet MSL.

Issued in Washington, DC, on October 1, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CEDAR RAPIDS, IOWA
CEDAR RAPIDS MUNI AIRPORT
FIELD ELEV. 864' MSL

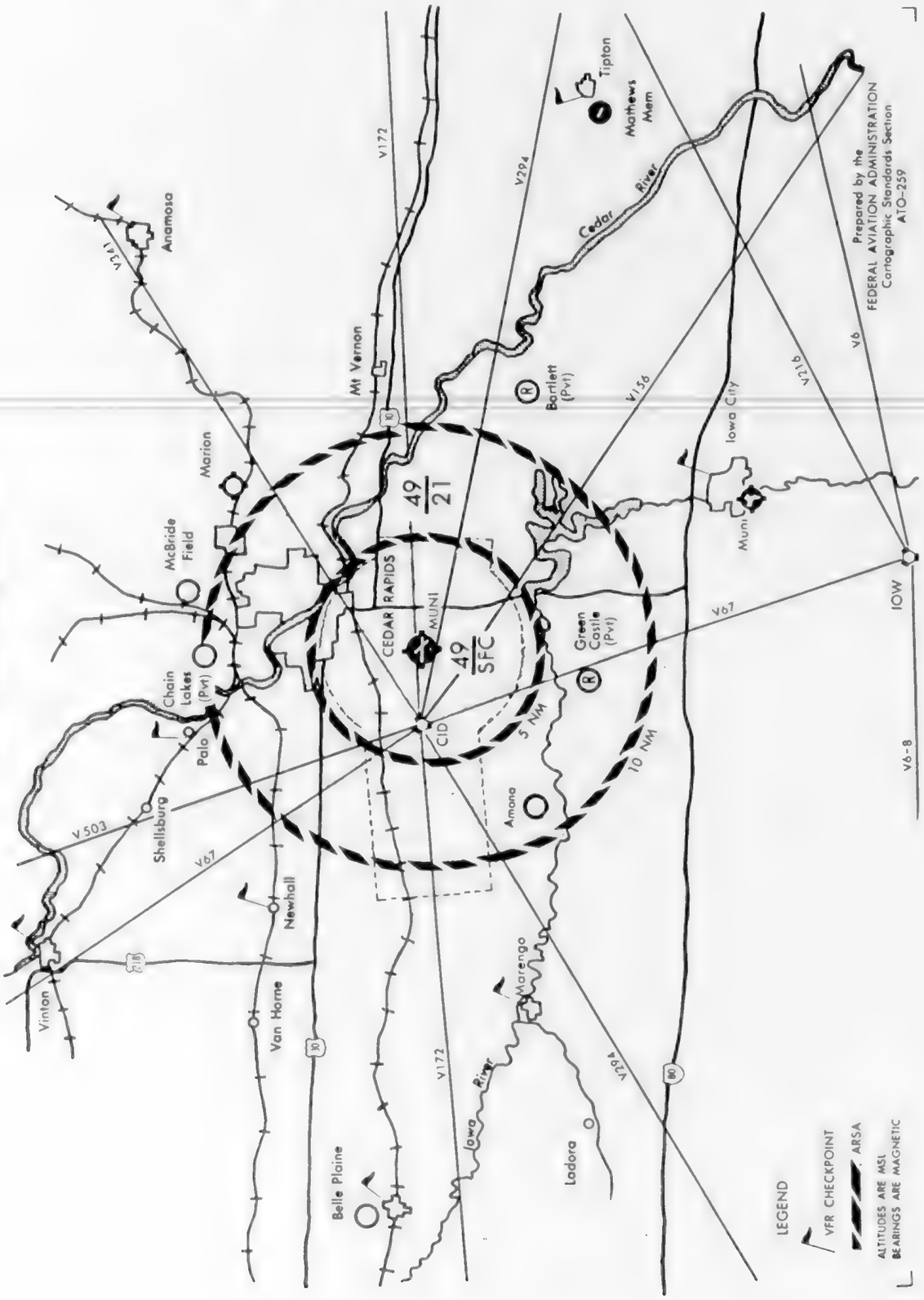

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CHAMPAIGN (URBANA), ILLINOIS
UNIVERSITY OF ILLINOIS-WILLARD AIRPORT
FIELD ELEV. 754' MSL

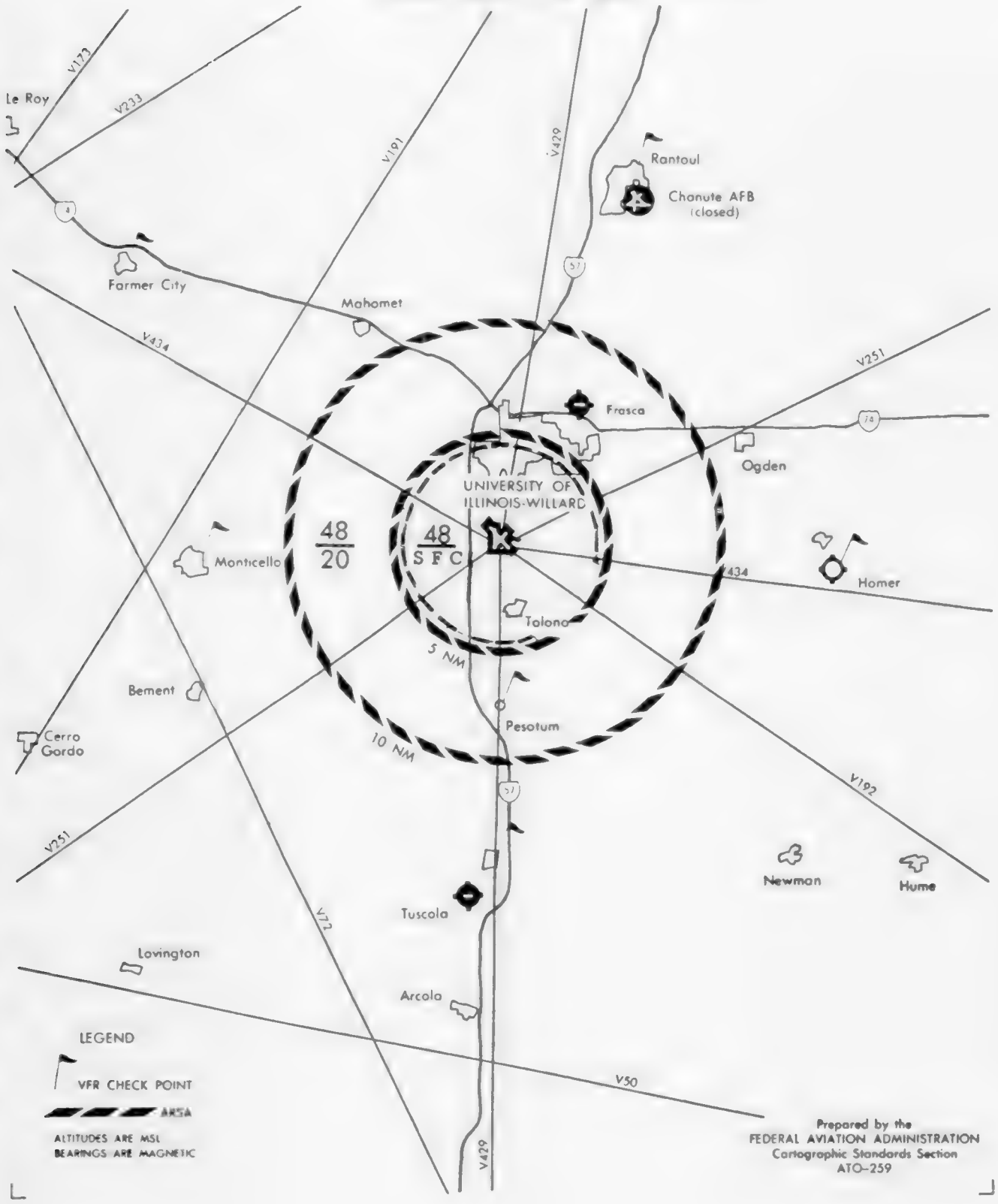

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CHICAGO, ILLINOIS
CHICAGO-MIDWAY
FIELD ELEV. 219' MSL

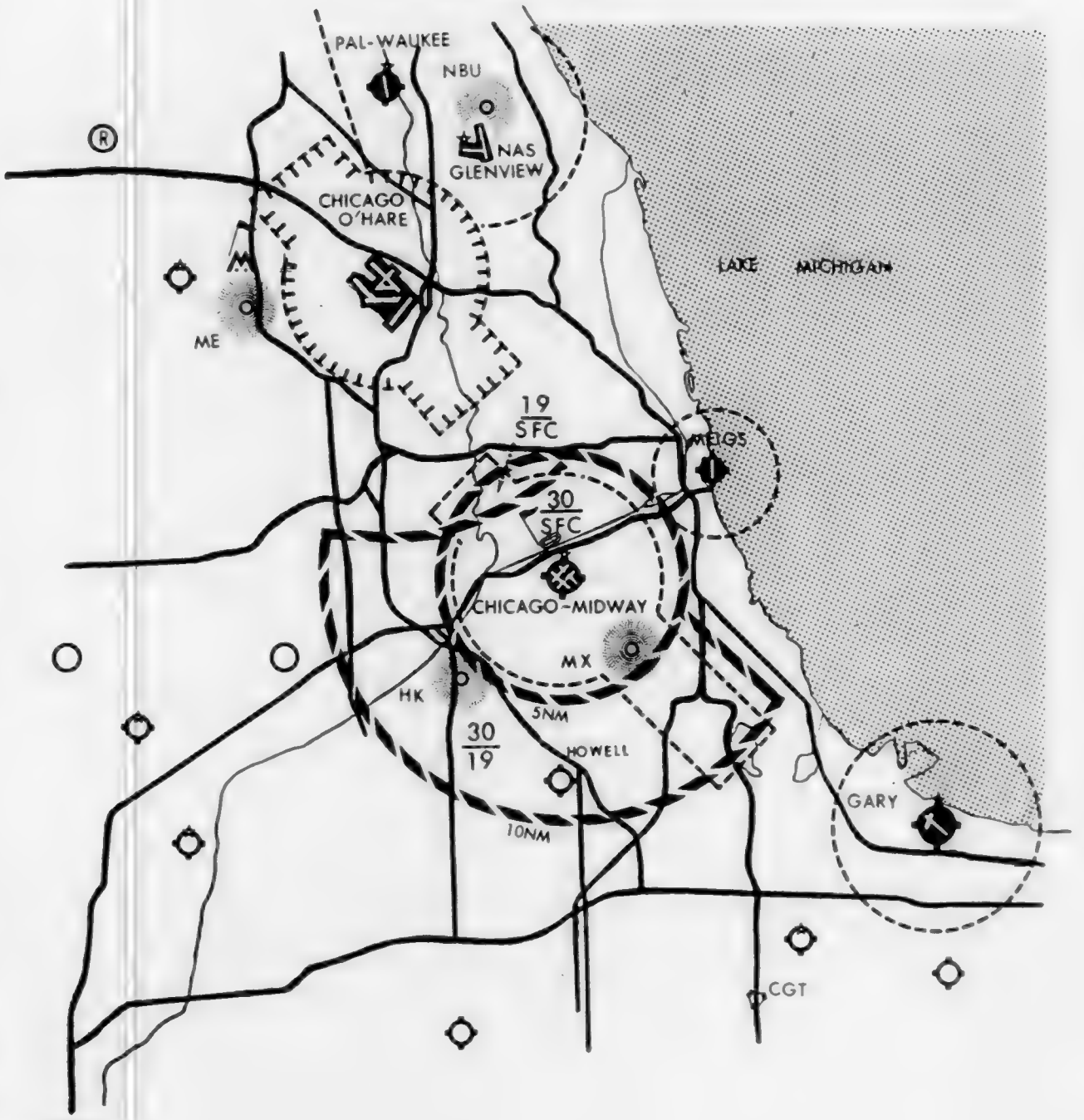

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

COLUMBUS, MISSISSIPPI
COLUMBUS AFB
FIELD ELEV. 219' MSL

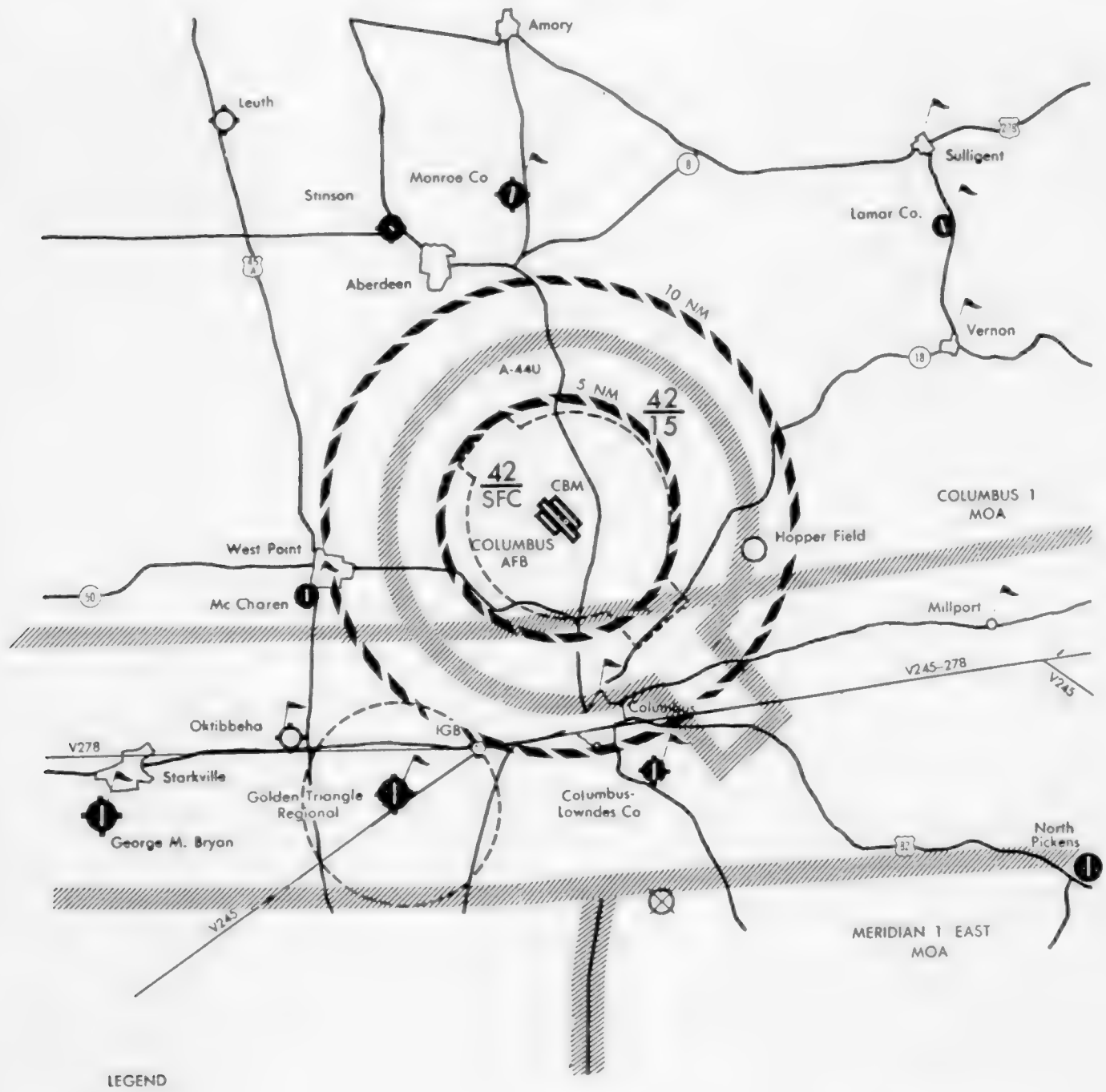

LEGEND

VFR CHECKPOINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

JACKSON, MISSISSIPPI
ALLEN C. THOMPSON FIELD
FIELD ELEV. 346' MSL

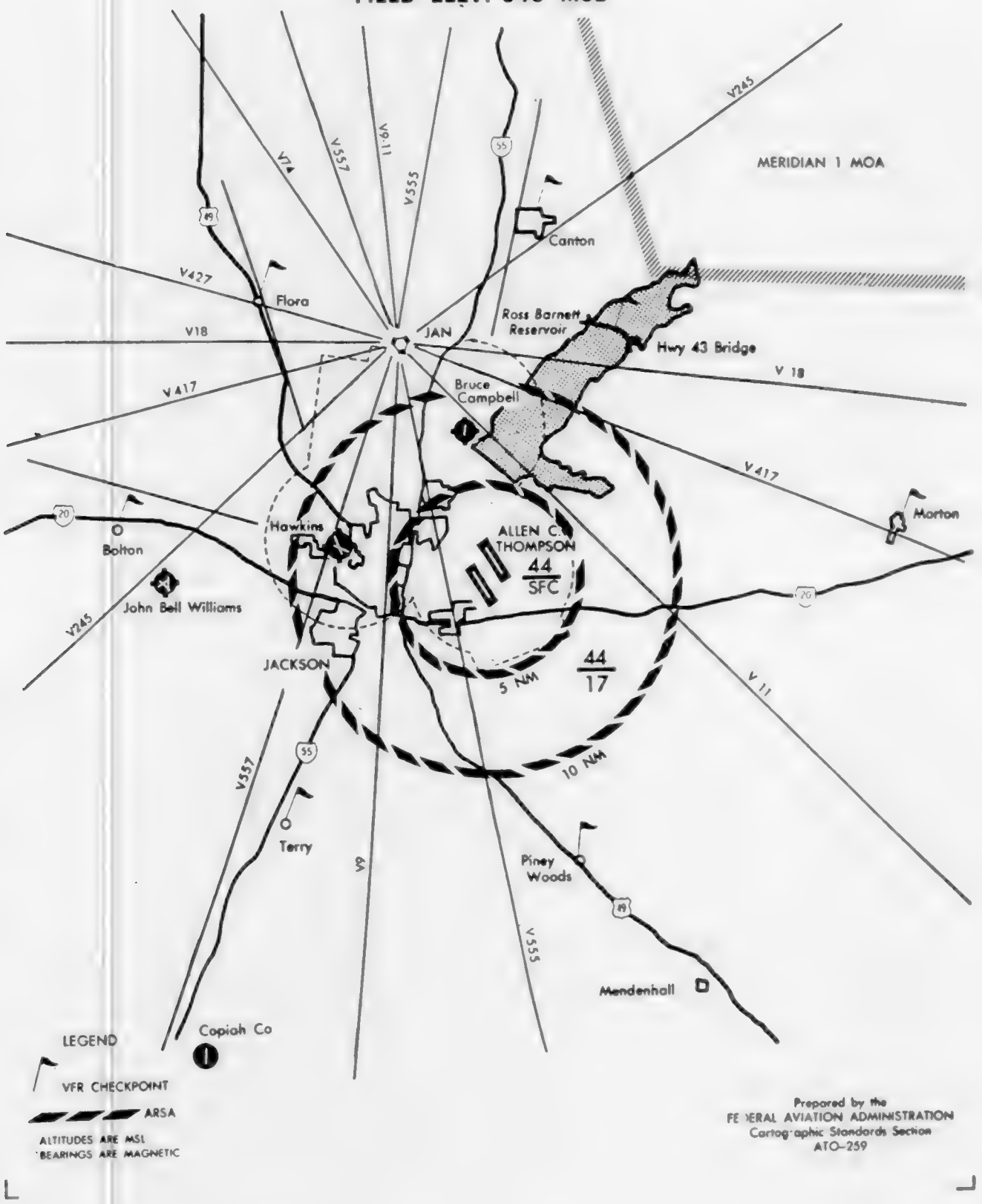

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Federal Register

Thursday
October 8, 1987

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Interim Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is publishing an interim rule on Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others. This rule establishes the procedures to follow when an inmate who tests HIV positive indicates by his actions or verbally a disposition to engage in conduct which poses a significant threat to transmit the virus to another person. The rule is intended to remove from the general inmate population an inmate whose conduct poses a substantial health risk to others.

DATES: Effective October 9, 1987. Comments on the interim rule must be received on or before January 29, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing an interim rule on Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others. The rule authorizes Bureau staff to place an inmate in controlled housing status when there is reliable evidence causing staff to believe that the inmate may engage in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence. The rule establishes procedures for referring an inmate for placement in controlled housing status, requires the inmate be afforded a hearing, and provides for regional review of the Hearing Administrator's recommendation. The rule specifies that the inmate, consistent with available resources and security needs of the institution, is to be considered for activities and privileges afforded the general inmate population. The rule requires the inmate to have his status reviewed regularly, and identifies the factors to be considered in evaluating an inmate's readiness for release from controlled housing status.

The scope of this rule is limited to the inmate who tests HIV positive and for whom there is reliable evidence that the inmate is engaged in, or may engage in, conduct posing a health risk to others (e.g., sexual predators). To prevent the spreading of the virus to others, the Bureau has engaged in an educational program for all its inmates and staff. A person who tests HIV positive is given counseling about the risks of his behavior. When, despite such education and counseling, a person engages or shows a disposition to engage in high-risk behavior, the Bureau believes it is necessary to immediately implement procedures for removing such inmates from the general inmate population. For this reason, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for advance public comment, and delay in effective date. While the rule will become effective immediately, the Bureau is interested in receiving public comment on this rule and suggestions on how the rule may be further refined/modified. Accordingly, the Bureau has decided to publish its policy as an interim rule with public comment invited. Public comment received on or before January 29, 1988 will be considered before publication of the final rule.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 541

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended by adding a new Subpart E to Part 541.

Dated: October 2, 1987.

J. Michael Quinlan,

Director.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

I. The authority citation for Part 541 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

II. Part 541 is amended by adding a new Subpart E to read as follows:

Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

Sec.

541.60 Purpose and scope.
541.61 Standard for placement in controlled housing status.
541.62 Referral for placement.
541.63 Hearing procedure.
541.64 Decision of the Hearing Administrator.
541.65 Regional Director review and appeal.
541.66 Programs and services.
541.67 Review of controlled housing status.
541.68 Release from controlled housing status.

Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

§ 541.60 Purpose and scope.

In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons may place in controlled housing status an inmate who tests HIV positive when there is reliable evidence that the inmate may engage in conduct posing a health risk to another person.

§ 541.61 Standard for placement in controlled housing status.

An inmate may be placed in a controlled housing status when there is reliable evidence causing staff to believe that the inmate may engage in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence.

§ 541.62 Referral for placement.

(a) The Warden shall consider an inmate for controlled housing status when the inmate has been confirmed as testing HIV positive and when there is reliable evidence indicating that the inmate may engage in conduct posing a health risk to others. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to another, or the sharing of needles.

(b) The Warden shall submit a recommendation for referral of an inmate for placement in a controlled housing status to the Regional Director in the region where the inmate is located.

(c) Based on the perceived health risk to others posed by the inmate's threatened or actual actions, the Warden may, with the telephonic approval of the Regional Director, temporarily (not to exceed 20 work days) place an inmate in a special housing status (e.g., administrative detention, or a secure hospital room), pending the inmate's appearance before the Hearing Administrator. Reasons for this placement, and the approval of the Regional Director, shall be documented in the inmate central file. The inmate should be seen daily by case management and medical staff while in this temporary status, and a psychological or psychiatric assessment report should be prepared during this temporary placement period.

§ 541.63 Hearing procedure.

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for controlled housing status. If the Regional Director concurs with the recommendation, the Regional Director shall designate a person in the Regional Office or a person at department head level or above in the institution to conduct a hearing on the appropriateness of an inmate's placement in controlled housing status. This Hearing Administrator shall have correctional experience, no former personal involvement in the instant situation, and a knowledge of the type of behavior that poses a health risk to others, and of the options available for dealing with an inmate who poses such a health risk to others.

(b) The Hearing Administrator shall provide a hearing to an inmate recommended for controlled housing status. The hearing ordinarily shall take place at the institution housing the inmate.

(c) The hearing shall proceed as follows:

(1) Staff shall provide an inmate with an advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis for a recommendation that the inmate be placed in a controlled housing status, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The Hearing Administrator shall upon request of the inmate provide an inmate the service of a full-time staff member to represent the inmate. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines for good reason or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(3) The inmate has the right to be present throughout the hearing, except where institutional security or good order is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for non-appearance, in the record of the hearing.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would pose a health risk to others, if allowed to remain in general prison population. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to others, or the sharing of needles.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in a controlled housing status are not required to appear, provided their recommendation is fully explained in the record.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to hear a witness or to receive documentary evidence.

§ 541.64 Decision of the Hearing Administrator.

(a) At the conclusion of the hearing and following review of all material related to the recommendation for placement of an inmate in a controlled housing status, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or other reliable evidence on which the decision is based, along with evidence of the inmate's HIV positive status.

(b) The Hearing Administrator shall advise the inmate in writing of the decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Regional Director in the region where the inmate is located. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Regional Director. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator may order the continuation of the inmate in special housing pending review by the Regional Director. The Hearing Administrator should state the reasons for this order in the record of the Hearing.

(d) The Hearing Administrator shall send the decision, whether for or against placement in a controlled housing status, and supporting documentation to the Regional Director. Ordinarily, this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

§ 541.65 Regional Director review and appeal.

(a) The Regional Director shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Regional Director shall accept or reject the Hearing Administrator's decision within 30 working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record. The authority of the Regional Director may not be delegated below the level of acting Regional Director.

(b) The Regional Director shall provide a copy of his decision to the Warden at the institution housing the inmate, to the inmate, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons, within 30 calendar days of the inmate's receipt of the Regional Director's decision.

§ 541.66 Programs and services.

To the extent consistent with available resources and the security needs of the institution, an inmate in controlled housing status is to be considered for activities and privileges afforded to the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, counseling, and religious guidance, as well as access to case management, medical and mental health assistance, and legal services, including access to the institution's law libraries. An inmate in controlled housing status should be afforded at least five hours weekly recreation and exercise out of the cell. The recreation shall be by himself or under close supervision. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in controlled housing status. An inmate shall be permitted to have a radio, provided it is equipped with ear plugs. Visits shall be carefully monitored.

§ 541.67 Review of controlled housing status.

(a) Staff designated by the Warden shall evaluate regularly an inmate's adjustment while in controlled housing status. A medical staff member shall see the inmate daily, and regularly record medical and behavorial impressions. Once every 90 days, staff, comprised of a correctional and case management supervisor, and a member of the medical staff, shall meet with the inmate. The inmate is required to attend this meeting in order to be considered for release to the general population. Any refusal by the inmate to attend this meeting will be documented. Staff, at this meeting, shall make an assessment of the inmate's adjustment while in controlled housing and the likely health threat the inmate poses to others by his actions.

(b) The Warden shall serve as the review authority at the institutional level, and shall make a recommendation to the Regional Director when he believes the inmate should be considered for release from controlled housing.

(c) An inmate may appeal a Warden's decision not to recommend release from controlled housing to the Regional Director within five working days of receipt of that decislon.

(d) Upon recommendation of the Warden, or upon appeal from the inmate, the Regional Director may decide whether or not to release the inmate to general population from controlled housing status.

(e) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons within 30 calendar days from the date of the Regional Director's decision.

§ 541.68 Release from controlled housing status.

(a) Only the Regional Director may release an inmate from controlled housing status. The following factors are considered in the evaluation of an inmate's readiness for return to the general population:

(1) Relationships with other inmates and staff members, which demonstrate that the inmate is able to function in a less restrictive environment without posing a health threat to others or to the orderly operation of the institution;

(2) Involvement in work and recreational activities and assignments or other programs; and

(3) Adherence to institution guidelines and Bureau of Prisons rules and policy.

(b) An inmate released from a controlled housing status may be returned to the general population of that institution, or to another federal or non-federal institution.

[FR Doc. 87-23295 Filed 10-7-87; 8:45 am]
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federal register

Thursday
October 8, 1987

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of an Airport Radar Service Area; Final Rule

VOL 52 ISS 195 OCT 8 1987 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-43]

Establishment of an Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at San Juan Luis Munoz Marin International Airport, PR. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in the terminal area and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 89 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On May 15, 1987, the FAA proposed to designate an ARSA at San Juan Luis Munoz Marin International Airport, PR (52 FR 18536). This rule designates an ARSA at this airport. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. There were no adverse comments received. Additionally, the FAA has held an informal airspace meeting for this proposed airport.

Regulatory Evaluation

No comments were received that addressed the information presented in the Regulatory Evaluation of the notice. Therefore, the Regulatory Evaluation of the notice also constitutes the Regulatory Evaluation of the final rule. This document has been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and the estimates of potential reductions in absolute accident rates resulting from the ARSA program also cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100,000, to as much as $300 million, for each accident prevented.

For these reasons. FAA expects that the ARSA site established in this rule will produce long term, ongoing benefits which will exceed its costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which

will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an Airport Radar Service Area (ARSA) at San Juan Luis Munoz Marin International Airport, PR. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

San Juan Luis Munoz Marin International Airport, PR [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Luis Munoz Marin International Airport (lat. 18°26'29" N., long. 66°00'08" W.); and that airspace extending upward from 2,800 feet MSL to 4,000 feet MSL within a 10-mile radius of the Luis Munoz Marin International Airport from the 129° bearing from the airport clockwise to the 189° bearing from the airport and that airspace extending upward from 1,700 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 189° bearing from the airport clockwise to the 229° bearing from the airport and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 229° bearing from the airport clockwise to the 129° bearing from the airport.

Issued in Washington, DC, on October 1, 1987.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-23253 Filed 10-7-87; 8:45 am]

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Part V

Office of Management and Budget

Budget Recissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Recissions and Deferrals

To The Congress of The United States:

In accordance with the Impoundment Control Act of 1974, I herewith report 13 deferrals of budget authority totaling $1,776,737,627.

The deferrals affect programs in the Funds Appropriated to the President and the Departments of Agriculture, Defense (Military and Civil), Health and Human Services, State, Transportation, and Treasury.

The details of these deferrals are contained in the attached report.

Ronald Reagan

The White House, October 1, 1987.

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D88-1	Economic support fund.....	40,000
	Special Assistance for Central America:	
	Promotion of stability and security	
D88-2	in Central America.....	1,000
	Department of Agriculture:	
	Forest Service:	
D88-3	Expenses, brush disposal.....	120,425
D88-4	Timber salvage sales.....	34,841
D88-5	Cooperative work.....	628,025
D88-6	Gifts, donations and bequests for forest and rangeland research.....	104
	Department of Defense - Military:	
	Military Construction:	
D88-7	Military construction, Defense.....	900
	Family Housing:	
D88-8	Family housing, Defense.....	51,015
	Department of Defense - Civil:	
	Wildlife Conservation, Military Reservations:	
D88-9	Wildlife conservation, Defense.....	636
	Department of Health and Human Services:	
	Social Security Administration:	
D88-10	Limitation on administrative expenses (construction).....	6,171
	Department of State:	
	Bureau for Refugee Programs:	
D88-11	United States emergency refugee and migration assistance fund.....	11,638
	Department of Transportation:	
	Federal Aviation Administration:	
D88-12	Facilities and equipment (Airport and airway trust fund).....	879,049

CONTENTS OF SPECIAL MESSAGE (continued)
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of the Treasury:	
	Office of Revenue Sharing:	
D88-13	Local government fiscal assistance trust fund	2,933
	Total, deferrals	1,776,738

SUMMARY OF SPECIAL MESSAGES
FOR FY 1988
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
First special message:		
New items	---	1,776,738
Revisions to previous special messages	---	---
Effects of first special message	---	1,776,738
Amounts from previous special messages that are changed by this message (changes noted above)	---	---
Subtotal, rescissions and deferrals	---	1,776,738
Amounts from previous special messages that are not changed by this message	---	---
Total amount proposed to date in all special messages	---	1,776,738

Deferral No: D88-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $_____ (P.L._____)
Bureau: International Security Assistance	Other budgetary resources.. 40,000,000
Appropriation title and symbol: Economic support fund 1/ 117/81037	Total budgetary resources.. 40,000,000
	Amount to be deferred: Part of year..... $ 40,000,000
	Entire year..... _____
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[X] Multiple-year Sept. 30, 1988 (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other _____

Justification: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development, and the Treasury. This will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-1A).

Deferral No: D88-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: Special Assistance for Central America

Appropriation title and symbol:

Promotion of Stability and Security in Central America 1/

11X1091

OMB identification code:

11-1091-0-1-053

Grant program: [X] Yes [ ] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority..... $_____
(P.L. _____)

Other budgetary resources.. 2,000,000

Total budgetary resources.. 2,000,000

Amount to be deferred:
Part of year..... $ 1,000,000

Entire year..... _____

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: These funds were appropriated to facilitate the participation of Costa Rica, El Salvador, Guatemala, and Honduras in regional meetings and negotiations to promote peace, stability, and security in Central America. The Department of State will monitor the progress of the current Central America Peace Plan negotiations and recommend further disposition of the funds as appropriate. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-27).

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Deferral No: D88-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service
Appropriation title and symbol:
Expenses, brush disposal 1/
12X5206
OMB identification code:
12-9922-0-2-302
Grant program: [ ] Yes [X] No
Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 54,438,000
(16 U.S.C. 490)
Other budgetary resources.. 120,425,470
Total budgetary resources.. 174,863,470
Amount to be deferred:
Part of year..... $ _____
Entire year..... 120,425,470
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: Purchasers of National Forest timber are required to deposit the estimated cost to the Forest Service for disposing of brush and other debris resulting from timber cutting operations pursuant to 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for subsequent years. Many timber contracts cover several years and brush disposal operations do not occur until harvesting is completed. Weather conditions can delay both the harvesting and the brush disposal. It is difficult to predict weather conditions in advance but the work will be performed whenever factors permit. The Forest Service is planning for a stable year-to-year program which will require $54.4 million in 1988. The current fiscal year reserve of $120.4 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for brush disposal operations in future years and contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-2A).

Deferral No: D88-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service
Appropriation title and symbol:
Timber salvage sales 1/
12X5204
OMB identification code:
12-9922-0-2-302
Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 18,635,000
(P.L. 94-588; 16 U.S.C. 472a(h))
Other budgetary resources.. 34,840,766
Total budgetary resources.. 53,475,766

Amount to be deferred:
Part of year..... $ _____
Entire year..... 34,840,766

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: The Timber salvage sales fund was established under the provisions of the National Forest Management Act of 1976 to enable immediate harvesting of dead and dying trees when required by market conditions or natural catastrophes. Purchasers of dead, damaged, insect-infected or downed timber are required to make monetary deposits into this fund to cover future costs associated with this activity. A program level of $19 million for costs of sales operations in 1988 is anticipated based on historical experience. A contingency reserve is established under the provisions of the Antideficiency Act (31 U.S.C. 1512) to fund sales operations in subsequent years.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-3).

Deferral No: D88-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture Bureau: Forest Service	New budget authority..... $ 247,893,000 (16 U.S.C. 576b) Other budgetary resources.. 628,024,842 Total budgetary resources.. 875,917,842
Appropriation title and symbol: Cooperative work 1/ 12X8028	Amount to be deferred: Part of year..... $ _____ Entire year..... 628,024,842
OMB identification code: 12-8028-0-7-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System and it benefits the national forest users, research investigations, reforestation, and administration of private forest lands. A program level of $248 million is anticipated, primarily in the summer of 1988, based on historical experience. Much of the work for which deposits have been or are expected to be collected cannot be done this year because of the seasonal nature of the work, scheduling delays, and extensive site preparation requirements. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-4B).

Deferral No: D88-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service

Appropriation title and symbol:
Gifts, donations, and bequests for forest and rangeland research 1/
12X8034

OMB identification code:
12-8034-0-7-302

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 90,000
(16 U.S.C. 498)
Other budgetary resources.. 241,008
Total budgetary resources.. 331,008

Amount to be deferred:
Part of year..... $ 104,000
Entire year..... _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: Funds are received as gifts, donations, or bequests from State and other public agencies, individuals, associations, and others. These funds are expended by the Forest Service, as authorized by law, for forestry research of mutual interest and benefit. Funds have already been collected for a workshop now being planned for late fiscal year 1988. The estimated cost of $104 thousand is deferred until then. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-5).

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Deferral No: D88-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Military	New budget authority..... $_____ (P.L. _____)
Bureau: Military Construction	Other budgetary resources.. 250,000,000
Appropriation title and symbol: See Coverage Section below 1/	Total budgetary resources.. 250,000,000
	Amount to be deferred: Part of year.....$ _____ Entire year..... 900,000
OMB identification code: See Coverage Section below 1/	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual Sept. 30, 1988 Sept. 30, 1989 [X] Multiple-year Sept. 30, 1990 (expiration date) [X] No-Year Sept. 30, 1991	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Deferred
Military Construction, Defense Agencies.....	977/10500	97-0500-0-1-051	$900,000

Justification: These funds are deferred due to lack of Congressional project authorization or to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon authorization or completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-6A).

Deferral No: D88-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military
Bureau:
Family Housing, Defense
Appropriation title and symbol:
See Coverage Section below 2/

OMB identification code:
See Coverage Section below 2/

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual — Sept. 30, 1988 / Sept. 30, 1989
[X] Multiple-year — Sept. 30, 1990 (expiration date)
[X] No-Year — Sept. 30, 1991

New budget authority.....$_____
(P.L._____)
Other budgetary resources.. 408,616,000
Total budgetary resources1/ 408,616,000

Amount to be deferred:
Part of year.....$_____
Entire year..... 51,015,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage: 2/

Appropriation	Symbol	OMB Identification Code	Deferred
Family housing, Navy.....	177/10703	17-0703-0-1-051	$ 22,000,000
Family housing, Navy.....	176/00703	17-0703-0-1-051	---
Family housing, Army.....	217/10702	21-0702-0-1-051	
Family housing, Army.....	216/00702	21-0702-0-1-051	---
Family housing, Air Force..	577/10704	57-0704-0-1-051	29,015,000
Family housing, Air Force..	576/00704	57-0704-0-1-051	---
Family housing, Air Force..	575/90704	57-0704-0-1-051	
Family housing, Air Force..	574/80704	57-0704-0-1-051	---
Total.....			51,015,000

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon Congressional authorization or completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ Includes all accounts included under this appropriation title.

2/ This account was the subject of a similar deferral in 1987 (D87-7A).

Deferral No: D88-9

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Civil
Bureau: Wildlife Conservation, Military Reservations

Appropriation title and symbol:
Wildlife Conservation, Army 21X5095
Wildlife Conservation, Navy 17X5095
Wildlife Conservation, Air Force 57X5095

OMB identification code:
97-5095-0-2-303

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 1,970,000
(16 U.S.C. 670F)
Other budgetary resources.. 848,432

Total budgetary resources.. 2,818,432

Amount to be deferred:
Part of year..... $ _____
Entire year..... 636,432

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage: 1/

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	$487,971
Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	56,000
Wildlife Conservation, Air Force....	57X5095	57-5095-0-2-303	92,461
			636,432

Justification: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These funds are being deferred because: (1) the authorizing legislation states that installations may accumulate funds over a period of time to fund a major project, (2) the installation may be designing and obtaining approval for the project, and (3) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified.

This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ These accounts were the subject of a similar deferral in 1987 (D87-8B).

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Deferral No: D88-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services

Bureau: Social Security Administration

Appropriation title and symbol:

Limitation on administrative expenses (construction) 1/
75X8704

OMB identification code:

20-8007-0-7-651

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority..... $_____
(P.L. _____)

Other budgetary resources.. $ 7,150,831

Total budgetary resources.. $ 7,150,831

Amount to be deferred:

Part of year..... $_____

Entire year..... $ 6,170,831

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. The only costs in 1988 are for roof repair and replacement and for close-out and claims pending for previously approved construction projects. Some additional obligations will occur in 1989 and subsequent years for roof replacement repair projects. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-12A).

Deferral No: D88-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State Bureau: Bureau for Refugee Programs Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040 OMB identification code: 11-0040-0-1-151 Grant program: [ ] Yes [X] No	New budget authority..... $_____ (P.L._____) Other budgetary resources.. 11,638,000 Total budgetary resources.. 11,638,000 Amount to be deferred: Part of year..... $_____ Entire year..... 11,638,000 Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [ ] Multiple-year _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed $50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922 and to achieve the most economical use of appropriations. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-14A).

Deferral No: D88-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Transportation
Bureau:
Federal Aviation Administration
Appropriation title and symbol:
Facilities and equipment (Airport and airway trust fund) 1/
69X8107 695/98107
697/18107 694/88107 696/08107
OMB identification code:
69-8107-0-7-402
Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual Sept. 30, 1988
Sept. 30, 1989
[X] Multiple-year Sept. 30, 1990
(expiration date)
[X] No-Year Sept. 30. 1991

New budget authority..... $
(P.L.)
Other budgetary resources. 1,319,163,965
Total budgetary resources. 1,319,163,965

Amount to be deferred:
Part of year..... $
Entire year..... 879,049,171

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. These activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested. Due to the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This action is consistent with FAA's full funding approach and Congressional intent to provide multi-year funding for the total costs of projects. This action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512), which authorizes the establishment of reserves for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-16A). None of the deferred funds expire at the end of FY 1988.

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Deferral No: D88-13

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of the Treasury Bureau: Office of Revenue Sharing	New budget authority..... $_____ (P.L. _____) Other budgetary resources... 2,933,115 Total budgetary resources... 2,933,115
Appropriation title and symbol: Local government fiscal assistance trust fund 1/ 20X8111	Amount to be deferred: Part of year..... $ 2,933,115 Entire year.....
OMB identification code: 20-8111-0-7-851	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [X] Other 31 U.S.C. 6701-6724, particularly 31 U.S.C. 6702(d)
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multiple-year _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Pursuant to 31 U.S.C. 6702(d), the Secretary of the Treasury must hold in reserve an amount sufficient to meet valid remaining claims from local governments for adjustments for any prior entitlement periods. A reserve is established to permit such adjustments without the necessity for recomputation of payments to other recipients.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-17).

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Part VI

Department of the Interior

Minerals Management Service

St. George Basin, Outer Continental Shelf Lease Sale 101; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

St. George Basin
Outer Continental Shelf Lease Sale 101
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1356 (1982)), as amended by the OCSLA Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256) with regard to proposed OCS Lease Sale 101 in the St. George Basin Planning Area tentatively scheduled for February 1990.

As a preliminary step to the Call, the Minerals Management Service (MMS) published a Request for Interest in the Federal Register on June 19, 1987, requesting information on oil and gas industry interest in leasing and exploring within the St. George Basin Planning Area. A number of companies provided information. Based on the information provided, it was determined that sufficient interest exists to proceed with the issuance of a Call at this time. This information, along with the information provided in response to this Call, will be used in decisions as to whether to proceed with the lease sale process. This Call does not indicate a preliminary decision to lease in the areas described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible adverse effects and use conflicts will be used in the analysis of environmental impacts in and near the Call area. Together, these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. This will make possible key decisions in connection with the next step in the leasing process—Area Identification—to further resolve conflicts by deferring blocks where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the Environmental Impact Statement (EIS). The Area Identification is scheduled for January 1988.

A third purpose for this Call is to solicit comments as part of the scoping process for the EIS. Also included in the scoping process will be a series of public meetings and an additional formal written comment period. A Notice of Intent to Prepare an EIS and a more detailed description of the scoping process for this proposed sale is included below. As a result of the scoping process, a number of alternatives to the proposed action will be identified and analyzed in the EIS. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Alaska Coastal Management Program.

Areas Deferred or Highlighted in the 5-Year Program Approval Process

During preparation of the 5-Year OCS Oil and Gas Leasing Program for Mid-1987 through Mid-1992, portions of the St. George Basin Planning Area were requested for deferral by the State of Alaska and the signatories to the Institute for Resource Management (IRM) Bering Sea Proposal. A portion of the area requested for deferral has been deferred and is not included in this Call. Deferrals requested by the State and the IRM that were not adopted in the 5-year program have been highlighted for special presale consideration and analysis as potential deferral alternatives in the EIS scoping process. Keeping these areas under consideration for leasing will permit MMS to study them further in the process of analysis and consultation. The acreage finally offered for sale will be that determined, through an extensive consultation and balancing process, to be environmentally sound and which may lead to exploration for and discovery of new oil and gas reserves. This is consistent with the commitment made by the Department of the Interior (DOI) in the 5-Year OCS Oil and Gas Leasing Program.

Previous Sale Related Activities

A Call for Nominations and Comments for oil and gas lease Sale 45 in the St. George Basin of the Bering Sea was issued in December 1974. The DOI selected 299 tracts totaling approximately 1.7 million acres in March 1976 for a tentative sale scheduled for early 1977. However, an EIS was never initiated, and the sale was not held.

The first Federal offshore sale in this area, OCS Oil and Gas Lease Sale 70, was held on April 12, 1983. Ninety-six leases were issued for a primary term of 10 years. Ten wells were drilled on these leases; all have been plugged and abandoned.

On April 29, 1983, the DOI initiated the presale process for Sale 89, St. George Basin, with the publication of the Call for Information in the Federal Register. The presale process continued until the issuance of the proposed Notice of Sale on May 22, 1985, comprising 11,543 blocks (about 65 million acres) and tentative lease terms for the sale scheduled for September 1985. However, on May 2, 1986, the DOI announced the cancellation of Sale 89, citing low industry interest as the basis for the decision.

Description of Area

The general area of this Call lies north of the Aleutian Islands in the Bering Sea between longitudes 174° West and 165° West and between latitudes 54° North and 59° North. A detailed map of the Call for Information and Nominations Area (hereinafter referred to as the Call map) is available free of charge from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508-4302, telephone (907) 261-4621.

The area available for nominations and comments at this time consists of approximately 7,000 blocks (approximately 39 million acres).

The following list of Official Protraction Diagrams and block numbers identifies the Call area. It also includes those blocks that have been highlighted for special presale consideration. Highlighted blocks included in the listings are indicated in parentheses. This will enable respondents to clearly identify highlighted blocks. The diagrams may be purchased for $2.00 each from the Records Manager, Alaska OCS Region, at the address stated above.

Official Protraction Diagram NN 2-2, Pribilof Canyon (Revised August 22, 1986) All Federal blocks.

(Highlighted blocks included in the above: 1-3, 14-30, 45-51, 67-71, 89-95, 110-115, 133-145, 154-160, 177-204, 221-249, 265-293, 309-338, 353-384, 397-429, 441-474, 485-524, 529-568, 573-612, 617-656, 661-700, 705-744, 749-788, 793-832, 837-876, 881-920, 925-964, 969-1008)

Official Protraction Diagram NN 3-1, Akutan North (Revised May 21, 1985) All Federal blocks.

(Highlighted blocks included in the above: 834-836, 841, 878-880, 885-886, 922-924, 929-930, 964-968, 973-975, 995-1001, 1006-1012)

Official Protraction Diagram NN 3-3, Akutan (Revised March 5, 1985) Blocks: 2-42, 46-86, 90-130, 134-174, 178-218, 222-262, 266-306, 310-350, 354-381, 398-423, 442-464, 486-507, 530-550, 574-592, 618-631, 662-672, 706-714, 750-756, 794-799, 838-842, 882-886, 926-972, 1014-1016

(Highlighted blocks included in the above: 2-6, 25-31, 34-42, 46-50, 69-86, 90-95, 113-130, 134-140, 157-174, 178-185, 200-218, 222-230, 243-262, 266-276, 286-306, 310-350, 354-381, 398-423, 442-464, 486-507, 530-550, 574-592, 618-631, 662-672, 706-714, 750-756, 794-799, 838-842, 882-886, 926-929, 970-972, 1014-1016)

Official Protraction Diagram NO 2-3, Zhemchug Gully (Revised August 22, 1986) Blocks: 1-11, 45-57, 89-101, 133-148, 177-192, 221-237, 265-281, 309-328, 353-372, 397-418, 441-462, 485-509, 529-556, 573-601, 617-647, 661-691, 705-738, 749-785, 793-829, 837-873, 881-917, 925-961, 969-1005

Official Protraction Diagram NO 2-4, St. Paul North (Revised August 22, 1986) Blocks: 828-829, 870-873, 912-917, 956-961, 992-1005

(All of the above listed blocks are included in the highlighted area.)

Official Protraction Diagram NO 2-5, St. Paul Spur (Revised August 22, 1986) Blocks: 7-44, 51-88, 95-132, 139-176, 183-220, 227-264, 271-308, 315-352, 359-396, 403-440, 447-484, 491-528, 535-572, 579-616, 623-660, 667-704, 711-748, 755-792, 799-836, 843-880, 890-924, 938-968, 982-1012

(Highlighted blocks included in the above: 220, 263-264, 306-308, 349-352, 392-396, 436-440, 480-484, 523-528, 566-572, 610-616, 654-660, 698-704, 742-748, 786-792, 830-836, 874-880, 918-924, 962-968, 1006-1012)

Official Protraction Diagram NO 2-6, St. Paul Island (Approved September 10, 1984) Blocks: 1-38, 45-82, 89-126, 133-170, 177-214, 221-258, 265-302, 309-346, 353-390, 397-434, 441-478, 485-490, 501-522, 529-533, 547-566, 573-576, 593-610, 617-620, 637-654, 661-663, 682-698, 705-706, 726-742, 749-750, 770-786, 793-794, 814-830, 837-838, 858-874, 881-882, 901-918, 925-926, 945-962, 969-970, 986-1007

(Highlighted blocks included in the above: 7-38, 51-82, 91-126, 134-170, 177-199, 209-214, 221-244, 265-289, 309-334, 353-378, 397-423, 441-467, 485-490, 501-511, 529-533, 547-556, 573-576, 593-600, 617-620, 637-644, 661-663, 682-688, 705-706, 726-732, 749-750, 770-776, 793-794, 814-820, 837-838, 858-864, 881-882, 901-909, 925-926, 945-954, 969-970, 986-999)

Official Protraction Diagram NO 2-7, St. George Canyon (Revised August 22, 1986) Blocks: 15-44, 59-88, 103-132, 147-176, 191-220, 235-264, 279-308, 326-352, 370-396, 425-440, 471-484, 517-528, 564-572, 612-616, 656-660, 700-704, 744-748, 790-792

(Highlighted blocks included in the above: 39-44, 83-88, 128-132, 172-176, 217-220, 261-264, 306-308, 350-352, 395-396, 440)

Official Protraction Diagram NO 2-8, St. George Island (Approved September 10, 1984) Blocks: 1-2, 17-39, 45-47, 62-83, 89-91, 111-127, 133-136, 156-171, 177-181, 201-215, 221-226, 246-259, 265-271, 291-303, 309-316, 335-347, 353-361, 379-391, 397-406, 423-435, 441-450, 467-479, 485-495, 511-523, 529-540, 554-567, 573-585, 597-611, 617-630, 640-655, 661-675, 682-699, 705-743, 749-787, 793-831, 837-875, 881-919, 925-963, 969-1008

(Highlighted blocks included in the above: 1-2, 17-32, 45-47, 62-76, 89-91, 111-121, 133-136, 156-165, 177-181, 201-210, 221-226, 246-254, 265-271, 291-298, 309-316, 335-341, 353-361, 379-385, 397-406, 423-429, 441-450, 467-473, 487-495, 511-517, 531-540, 554-561, 576-585, 597-605, 620-630, 640-648, 664-675, 682-694, 709-738, 754-782, 799-825, 844-869, 889-912, 934-955, 980-998)

Official Protraction Diagram NO 3-1, Cape Newenham West (Revised August 22, 1986) Blocks: 497-502, 541-546, 583-590, 627-634, 669-678, 713-722, 749-766, 793-810, 837-854, 881-898, 925-942, 969-986

(All of the above listed blocks are included in the highlighted area.)

Official Protraction Diagram NO 3-5, St. Paul East (Revised August 22, 1986)
Blocks: 7-25, 51-69, 95-113, 139-157, 183-201, 227-245, 271-289, 315-333, 359-377, 403-421, 447-465, 491-509, 535-553, 579-597, 623-641, 667-685, 711-729, 755-773, 799-817, 843-861, 887-905, 931-949, 974-993

(All of the above listed blocks are included in the highlighted area.)

Official Protraction Diagram NO 3-7, St. George East (Revised August 22, 1986) All Federal blocks.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like to see included in proposed OCS Lease Sale 101. Although the identities of those submitting nominations become a matter of public record, the individual indications of interest are considered to be proprietary information. Those indicating such interest are required to do so on the Call map by outlining the area(s) of interest along block lines.

A detailed list of whole and partial blocks nominated (by Official Protraction Diagram designations) should be submitted to ensure correct interpretation of nominations. The telephone number and name of a person to contact in the respondent's organization for additional information should be included.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). We encourage respondents to be specific in indicating blocks by priority. This information is very helpful in assessing the area to be identified for further study at future sale decision points. Blanket nominations on large areas are not useful in providing information pertinent to analysis of industry interests. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3. Information concerning both location and priority of interest submitted by individual respondents will be held proprietary. In addition to indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use conditions.

To assist in focusing on promising acreage, the Call map outlines the MMS interpretation of the area of hydrocarbon potential. Although primary consideration will be given to those blocks included in the MMS interpretation of the area of hydrocarbon potential, respondents may nominate and are asked to comment on acreage within the entire Call area. The Call map also identifies the highlighted area that will be subject to special consideration.

Commenters who recommend that all or portions of the highlighted areas or other parts of the Call area be deferred from Sale 101 should be as specific as possible in describing why they believe those areas are incompatible with offshore oil and gas drilling and production operations. Such information will be helpful in designing and analyzing deferral alternatives.

As of August 1987, there were 38 active leases in the St. George Basin Planning Area. Respondents are encouraged to include these leased blocks in their review in the event the leases are terminated prior to the issuance of the final Notice of Sale and could, therefore, be considered in proposed OCS Lease Sale 101. In addition to nominations (indications of interest), comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts that may result from the proposed sale between future OCS oil and gas activities and the Alaska Coastal Management Program (ACMP) and approved local coastal management plans. If possible, these comments should identify specific ACMP policies of concern, the nature of the conflict foreseen, and steps that MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for proposed St. George Basin Lease Sale 101" or "Comments on the Call for Information and Nominations for proposed St. George Basin Lease Sale 101" as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated above under Description of Area. A copy of the Call map showing indications of interest and a copy of any comments are to be sent to the Chief, Offshore Leasing Management Division, U.S. Department of the Interior, Minerals Management Service, Room 4230, 18th and C Streets, NW., Washington, D.C. 20240.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date and in accordance with established departmental procedures and applicable laws, including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and the OCSLA, as amended. If a decision to offer blocks is made, a Notice of Availability of the Proposed Notice and a final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede this sale, proposed for February 1990.

Milestones	Date
Comments Due on the Call	November 1987
Area Identification	January 1988
Scoping Comments Due	February 1988

Draft EIS Published	February 1989
Public Hearings on Draft EIS	March 1989
Final EIS Published	August 1989
Proposed Notice of Sale Issued	September 1989
Governor's Comments Due on Proposed Notice	November 1989
Final Notice of Sale Published	January 1990
Sale	February 1990

Existing Information

Information already available for the Call area includes the results of studies and EIS analyses conducted in conjunction with previous Sale 70, previously scheduled Sale 89, and the results of past exploration activities in this planning area. Also available is information gathered during the EIS and decision processes for the 1980, 1982, and current 5-Year OCS Oil and Gas Leasing Program. In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, the Institute for Resource Management, and the oil and gas industry concerning past OCS actions will be used.

An extensive environmental studies program has been underway in this area since 1975 (see Environmental Studies Program Information in the St. George Basin below). The following is a list of other information that will be available to the DOI for consideration regarding the proposed OCS Lease Sale 101 in the St. George Basin.

Alaska Indexes and Bering Sea Summary Reports

1. Alaska Index, December 1974 through November 1980, prepared by MMS.
2. Alaska Index, December 1980 through November 1981, prepared by MMS.
3. Alaska Index, December 1981 through April 1983, prepared by MMS.
4. Alaska Index, May 1983 through January 1985, prepared by MMS.
5. Bering Sea Summary Report, September 1983, prepared by MMS.
6. Bering Sea Summary Report, September 1984, prepared by MMS.
7. Alaska Summary Report, June 1984 through December 1985, prepared by MMS.
8. Alaska Summary/Index, January 1986 through December 1986, prepared by MMS.

Summary Reports and Indices are available for review at the MMS, Alaska OCS Region (see address under Description of Area). Also available for review are technical and geological reports. Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Environmental Studies Program Information in the St. George Basin

The DOI initiated the studies in this area in 1975. The emphasis, including continuing studies, has been on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, and ecological effects of oil and gas activities. These studies will provide useful information for a number of environmental issues, including, but not limited to, endangered whales, marine mammals and seabirds, and socioeconomic effects.

A complete listing of available study reports and information for ordering copies can be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area, or by telephone at (907) 261-4621. The reports may also be ordered, for a fee, directly from the National Technical Information Service by calling (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Description of Area or by telephone at (907) 261-4620.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provision of the National Environmental Policy Act of 1969 (42 U.S.C 4321, et seq.), as amended, the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 101 in the St. George Basin of Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated

under Description of Area above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed St. George Basin Lease Sale 101." Comments are due no later than 45 days from publication of this Notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Wm D Bettenberg

Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

James E Cason

Acting Assistant Secretary - Land and Minerals Management

James E. Cason

10/5/87

Date

[FR Doc. 87-23375 Filed 10-7-87; 8:45 am]

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S. 1532/Pub. L. 100-123

Relating to the payment for telecommunications equipment and certain services furnished by the Sergeant at Arms and Doorkeeper of the Senate. (Oct. 5, 1987; 101 Stat. 794; 2 pages) Price: $1.00

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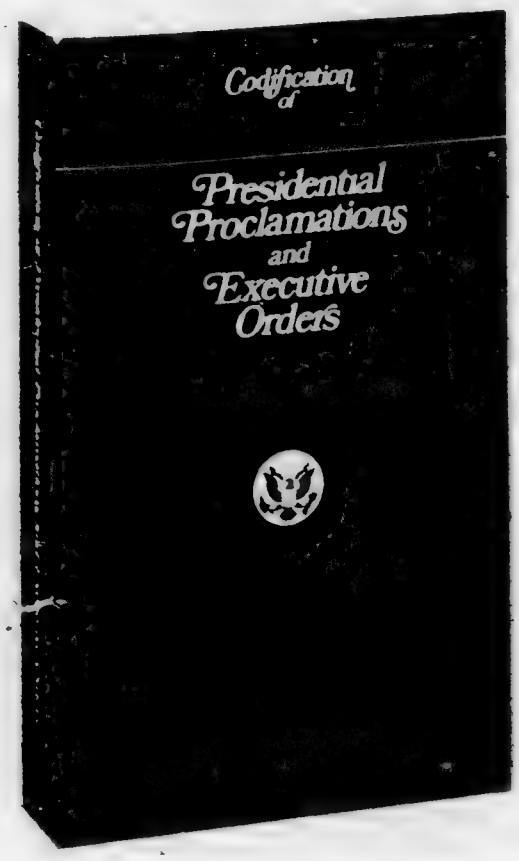

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Rules and Regulations

Federal Register
Vol. 52, No. 196
Friday, October 9, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 330

Placement of Military Reserve Technicians Retired for Disability; Technical Amendment

ACTION: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is updating its regulations covering placement consideration and appointment in the Federal civilian service of military reserve technicians who are eligible for or receiving an annuity based on a disability that disqualifies them from military membership or from holding a military grade required by their technician employment. The revised regulations provide that the military reserve technicians may be receiving such an annuity under either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). The regulations also provide that National Guard technicians may be appointed in the competitive service during the year immediately following their separation from technician employment, and in the excepted service thereafter. These changes are needed to reflect recent legislation.

EFFECTIVE DATE: October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: Section 302(a) of Pub. L. 97–253, the Omnibus Budget Reconciliation Act of 1982, which was codified as 5 U.S.C. 8337(h) provided: (1) That a National Guard Technician who is required as a condition of employment to be a member of the National Guard or to hold a certain military grade may be eligible for disability retirement based on a disability that disqualified the individual from membership in the National Guard or from holding the required military grade; and (2) that any individual applying for or receiving an annuity under this provision "shall, in accordance with regulations prescribed by OPM, be considered by any agency of the Government before any vacant position in the agency is filled if—(A) the position is located within the commuting area of the individual's former position; (B) the individual is qualified to serve in such position as determined by the head of the agency; and (C) the position is at the same grade or equivalent level as the position from which the individual was separated."

OPM issued two regulations specifically to implement this law. Those regulations are still in effect. Subpart H of 5 CFR Part 330 provides for mandatory enrollment of eligible technicians in an OPM priority placement program. Section 213.3102(j) of 5 CFR Part 213 provides authority for the technicians' appointment. Both regulations refer to National Guard Technicians who are applying for or receiving annuities under 5 U.S.C. 8337(h). That reference is now out of date.

Employees appointed since January 1, 1984, are not covered by the Civil Service Retirement System, referenced in 5 U.S.C. 8337(h), but by the Federal Employees Retirement System (FERS). The Federal Employees Retirement Act of 1986, which established FERS, contains comparable provisions, codified in 5 U.S.C. 8457, affording disability retirement benefits and mandating placement assistance for all military reserve technicians who become disabled for their military position or grade.

OPM needs to add a reference to 5 U.S.C. 8457 in both 5 CFR 213.3102(j) and 5 CFR Part 330, Subpart H, and to expand coverage of 5 CFR Part 330, Subpart H, to all military reserve technicians (not only National Guard Technicians) to give practical effect to the legal provisions. (Reference to 5 U.S.C. 8457 is also needed in 5 CFR 330.301, which covers eligibility for the Displaced Employee Program. That change will be included in proposed regulations to be issued soon revising Subpart C of Part 330.) OPM also needs to delete the provisions in 5 CFR 330.804 for notification of the Defense Department concerning eligible National Guard Technicians who were separated between December 31, 1979, and October 1, 1982. Those provisions were needed only during initial implementation of the Reconciliation Act and are now obsolete.

The regulations in 5 CFR Part 330, Subpart H, also need to state that National Guard Technicians may be appointed in the competitive service during the year immediately following their separation from their technician employment. Public Law 99–586, codified in 5 U.S.C. 3304(d), authorizes noncompetitive appointment of technicians who are involuntarily separated (other than for cause) from their technician employment, who qualify for positions in the competitive service, and who are appointed within 1 year after separation. Previously, National Guard Technicians could be appointed only in the excepted service, and OPM's regulations referred to their placement under Schedule A or other appropriate excepted appointing authority. The Schedule A authority remains available for appointment of former technicians who do not meet the 1-year time limit for noncompetitive appointment or who do not meet competitive service qualification requirements. However, the revised regulations also refer to appointment of eligible technicians in the competitive service.

No new regulations are needed to permit appointment of other military reserve technicians covered by 5 U.S.C. 8457 because technicians other than National Guard Technicians are appointed in the competitive service and are eligible for transfer or reinstatement.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The regulations implement statutory placement provisions that are already in effect.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Parts 213 and 330

Administrative practice and procedures, Government employees.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Parts 213 and 330 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

§ 213.3102 [Amended]

2. In § 213.3102, paragraph (j) is amended to add "or 5 U.S.C. 8457" after the phrase "under the provisions of 5 U.S.C. 8337(h)."

PART 330—[AMENDED]

3. The authority citation for Part 330 is revised to read as follows, and the authority citations following any subparts or sections are removed:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; Section 330.102 issued under 5 U.S.C. 3327; Section 330.201 issued under 5 U.S.C. 3315; Section 330.202 issued under 5 U.S.C. 7701, et seq.; Section 330.401 issued under 5 U.S.C. 3310; Subpart H issued under 5 U.S.C. 3301, 3302, 8337(h), and 8457(b).

4. In Part 330, the headnote for Subpart H is changed to substitute the phrase "Military Reserve and National Guard Technicians" for "National Guard Technicians."

5. Section 330.801 is revised to read as follows:

§ 330.801 Coverage.

This subpart applies to current or former Military Reserve and National Guard Technicians who—

(a) Are separated from such positions (or, in the case of National Guard Technicians, were separated from such positions on or after December 31, 1979) because of a medical disability that disqualified them from membership in the Army or Air Force Reserve or the National Guard or from holding the military grade required for such employment;

(b) Have not been found by OPM to be disabled under subchapter III of chapter 83 of title 5, United States Code, section 8337(a), or under subchapter V of chapter 84 of title 5, United States Code, section 8451;

(c) Have applied for or are receiving an annuity under the provisions of subchapter II of chapter 83 of title 5, United States Code, section 8337(h), or under the provisions of subchapter V of chapter 84 of title 5, United States Code, section 8457; and

(d) In the case of National Guard Technicians, are not eligible for assistance under the Displaced Employee Program described in Subpart C of this part.

6. In § 330.803, paragraph (b) is revised to read as follows:

§ 330.803 Priority referral.

* * * * *

(b) When an agency selects an individual under this subpart, it will generally employ him or her in the competitive service if he or she is eligible for reinstatement under § 315.401, for transfer under § 315.501, or for noncompetitive appointment under § 315.610 of this chapter. When the individual selected is not eligible for appointment in the competitive service, the agency may employ him or her under authority of Part 213, Subpart C, § 213.3102(j) of the excepted service or other appropriate excepted service appointing authorities.

§ 330.804 [Amended]

7. In § 330.804, paragraph (b) is removed. Paragraph (c) is redesignated as paragraph (b) and the first sentence is revised to delete the phrase "on or after October 1, 1982." The phrase "Military Reserve or National Guard" is substituted for "National Guard," throughout.

§ 330.805 [Amended]

8. In § 330.805, the phrase "Military Reserve or National Guard" is substituted for "National Guard," throughout. The phrase "or section 8455" is added after "section 8337" in paragraph (a)(3). The phrase "or section 8457" is added after "section 8337(h)(1)" and "section 8337(h)" in paragraphs (a)(4) and (b) respectively.

[FR Doc. 87–23439 Filed 10–8–87; 8:45 am]

BILLING CODE 8325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 913

Grapefruit Grown in the Interior District in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination Order.

SUMMARY: This action terminates the Federal marketing order for Florida grapefruit grown in the Interior District effective October 9, 1987, because the Secretary of Agriculture has determined that the order no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. The Interior Grapefruit Marketing Committee met on June 18, 1987, and unanimously supported a request to the Secretary to terminate the marketing order for Florida Interior District grapefruit.

EFFECTIVE DATE: October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, USDA, AMS, Fruit and Vegetable Division, South Building, P.O. Box 96456, Room 2523, Washington, DC 20090–6456; telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

Marketing Order No. 913 regulates the handling of grapefruit grown in the Interior District of Florida. The order has been in effect since 1965 and provides for a maximum of 14 weekly volume regulations during a marketing season for fresh domestic shipments of grapefruit. However, no volume regulations have been in effect since the 1975–76 season, and the need for volume regulation is not expected in the foreseeable future. Furthermore, Florida grapefruit crops have been moderate in recent years because of four freezes since 1980.

At its June 18, 1987, meeting, the Interior Grapefruit Marketing Committee (IGMC) unanimously supported a request to the Secretary of Agriculture to terminate Marketing Order No. 913. This action was taken as a result of the termination of the Florida Indian River Grapefruit marketing order (M.O. 912) effective July 31, 1987. Members of the IGMC felt that volume regulation of Interior grapefruit would be ineffective since any restriction on grapefruit

shipments from the Interior area could be offset by unrestricted shipments from the Indian River area. Accordingly, the IGMC requested that the Secretary terminate the order.

Therefore, based on the foregoing considerations, Marketing Order No. 913 (7 CFR Part 913) regulating the handling of grapefruit grown in the Interior District in Florida and all rules and regulations and supplementary orders issued thereunder are hereby terminated, effective October 9, 1987.

The Food Security Act of 1985 requires the Secretary to notify Congress 60 days in advance of the termination of any Federal marketing order. Congress was so notified on July 23, 1987.

Pursuant to section 8c(16)(A) of the Act, it is found that Marketing Order No. 913, regulating the handling of Grapefruit Grown in the Interior District in Florida, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and all rules and regulations and supplementary orders heretofore issued thereunder and now effective do not tend to effectuate the declared policy of the Act.

As provided in § 913.60 of the order, on and after the effective date hereof, the members of the IGMC shall, for the purpose of liquidating the affairs of the committee, continue as joint trustees of all funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

List of Subjects in 7 CFR Part 913

Marketing Orders, Interior, Grapefruit,

PART 913—[REMOVED]

For the reasons set forth in the preamble, 7 CFR Part 913 is removed.

Dated: October 5, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–23497 Filed 10–8–87; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 87–1037]

Organization and Operation

Date: September 30, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: By these amendments the Federal Home Loan Bank Board ("Board") is making minor modifications to the organizational structure of the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight, and Supervision ("ORPOS"). ORPOS was established pursuant to regulation in July 1986, that became effective in September 1986. The primary purpose of this amendment is to add an Executive Director as the head of ORPOS.

EFFECTIVE DATE: October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Legal Counsel, (202) 778–2524, ORPOS, Federal Home Loan Bank System, 900 19th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: By its Resolution No. 86–755 of July 24, 1986, the Board established ORPOS within the Federal Home Loan Bank System to improve the effectiveness of the examination and supervisory functions, which had been previously delegated to the Principal Supervisory Agents at each Federal Home Loan Bank. *See* 51 FR 27165 (July 30, 1986).

The Board has now determined that a new executive position should be added at the top of the ORPOS organizational structure. Specifically, the Board has created the position of Executive Director for Examinations and Supervision to head ORPOS.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments related to needed changes in Board organization management, and personnel, notice and public procedure are unnecessary, as is the 30-day delay of effective date.

List of Subjects in 12 CFR Part 522

Conflict of interests, Federal Home Loan Banks.

Accordingly, the Board hereby amends Part 522, of Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 892, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Amend § 522.90 by revising paragraph (a)(2); by revising the second sentence of paragraph (b)(2); and by revising paragraph (c) to read as follows:

§ 522.90 Office of Regulatory Policy, Oversight, and Supervision.

(a) *General.* * * *

(2) ORPOS shall be headed by an Executive Director, who shall have responsibility for the performance of its functions. The Board shall appoint and fix the compensation of the Executive Director, and that person shall fix the compensation of all others. The Executive Director may, with the consent of the Board, select one or more Managing Directors. The Executive Director may select other staff as needed to carry out the functions of the office. As authorized in writing by the Executive Director, subordinate staff may exercise the functions of the Executive Director.

(b) *Functions of the Office of Regulatory Policy, Oversight, and Supervision.*

* * * * *

(2) * * * Such account shall be subject to withdrawal by a check or draft signed by the Executive Director or other persons designated in writing by the Executive Director. * * *

(c) *Budget and expenses.* ORPOS shall annually submit to the Board by December 1 a budget of its proposed expenditures for the following calendar year. After such budget has been approved by the Board, the Executive Director may make disbursements thereunder from the funds provided for in paragraph (b)(2) of this section. Following approval by the Board, the Executive Director shall transmit a copy of the budget to each of the Principal Supervisory Agents. The Executive Director may, without further authority, make a transfer from any excess allotment in the budget to any insufficient allotment. However, transfers to allotments for compensation or rental of office quarters, as well as any proposed changes that would increase the total of the approved budget, shall be submitted for approval in the same manner as the original budget was submitted. In addition, the Executive Director shall, as directed by the Board, make disbursements from the funds provided for in paragraph (b)(2) of this section in payment of such expenses and costs not covered by the

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approved budget and which are deemed appropriate.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-23435 Filed 10-8-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Drugs and Biologics

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority for approval of new drug applications and their supplements. The amendment adds to the delegation a newly established division entitled the Division of Gastrointestinal and Coagulation Drug Products in the Office of Drug Research and Review. In addition, this amendment authorizes supervisory chemists in the drug review divisions of the Center for Drugs and Biologics to approve certain chemistry, manufacturing, and control supplements to new drug applications. Also, a correction is being made in the delegations of authority regulations.

EFFECTIVE DATE: October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is revising § 5.80 *Approval of new drug applications and their supplements* (21 CFR 5.80) in paragraph (b)(1) to add the Director and Deputy Director, Division of Gastrointestinal and Coagulation Blood Products to the list of officials authorized to perform the functions described in § 5.80(b) for drugs under the jurisdiction of this new division. Also, FDA is correcting the introductory text of paragraph (c) by changing the word "view" to read "lieu." Finally, FDA is adding a new paragraph (d) to authorize supervisory chemists in the Divisions of Neuropharmacological Drug Products, Cardio-Renal Drug Products, Surgical-Dental Drug Products, Oncology and Radiopharmaceutical Drug Products, Gastrointestinal and Coagulation Drug Products, Office of Drug Research and Review, and the Divisions of Anti-Infective Drug Products and Metabolism and Endocrine Drug Products, Office of Biologics Research and Review to perform all the functions of the Commissioner of Food and Drugs with regard to approval of certain supplemental applications to new drug applications.

The supplements covered by § 5.80(d) are the chemistry, manufacturing, and control supplements described at 21 CFR 314.70(b) (1) and (2) (ii) through (x) and (c) (1) and (3). Authority to approve supplements that require in vivo bioavailability information or that require a change in the labeling of the drug, except labeling changes that reflect the use of a different facility or establishment either to manufacture the drug substance or to manufacture, process, or pack the drug product, are not included in this amendment. This redelegation of authority will expedite the handling and approval of supplements to new drug applications.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, *61-63, 141 et seq.*; 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. Section 5.80 is amended by revising paragraph (b)(1) and the introductory text of paragraph (c), and by adding new paragraph (d) to read as follows:

§ 5.80 Approval of new drug applications and their supplements.

* * * * *

(b) * * *

(1) The Directors and Deputy Directors of the Divisions of: Neuropharmacological Drug Products, Cardio-Renal Drug Products, Surgical-Dental Drug Products, Oncology and Radiopharmaceutical Drug Products, and Gastrointestinal and Coagulation Drug Products, Office of Drug Research and Review, CDB.

* * * * *

(c) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to approval of abbreviated new drug applications and supplements thereto for drugs for human use and new drug applications for drugs with a 5C classification whose clinical safety and efficacy may be supported by appropriate literature citations in lieu of submission of data from original proprietary studies.

* * * * *

(d) The following officials are authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to new drug applications for human use that are described by § 314.70(b) (1) and (2) (ii) through (x) and (c) (1) and (3) of this chapter. Authority to approve supplements that require in vivo bioavailability information or that require a change in the labeling of the drug, except changes that reflect only the use of a different facility or establishment, are not included in this paragraph (d). The supplemental applications to which this authorization applies may continue to be acted upon by the officials so authorized in § 5.10(a), the introductory text, and paragraphs (a) and (b) (1) and (2) of this section.

(1) The supervisory chemists of the Divisions of: Neuropharmacological Drug Products, Cardio-Renal Drug Products, Surgical-Dental Drug Products, Oncology and Radiopharmaceutical Drug Products, and Gastrointestinal and Coagulation Drug Products, Office of Drug Research and Review, CDB.

(2) The supervisory chemists of the Divisions of: Anti-Infective Drug Products and Metabolism and Endocrine Drug Products, Office of Biologics Research and Review, CDB.

Dated: October 2, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23400 Filed 10-8-87; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 526

Freedom of Information Reform Act of 1986; Regulations for the National Endowment for Democracy

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: These final regulations comply with Pub. L. 99–570, entitled the "Freedom of Information Reform Act of 1986," which requires each agency subject to the Freedom of Information Act, as amended [hereinafter "FOIA"], to promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under FOIA and establishing procedures and guidelines for determining when such fees should be waived or reduced. Pursuant to Pub. L. 99–93 of August 16, 1985, amending the National Endowment for Democracy Act, 22 U.S.C. 1441, *et seq.*, the National Endowment for Democracy [hereinafter "NED"] must comply with the FOIA, even though it is a private, not-for-profit corporation, as opposed to a federal government agency.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Jones, Jr., Freedom of Information/Privacy Act Coordinator, Office of the General Counsel, Room M–10, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, (202) 485–7499.

SUPPLEMENTARY INFORMATION:

A. Background

On June 16, 1987 (52 FR 22791) the United States Information Agency published in the **Federal Register** proposed amendments to 22 CFR 526.5 in order to bring NED in compliance with the Freedom of Information Reform Act of 1986. The agency invited the public to submit comments with respect to the proposed fee schedule and fee waiver regulations. Comments were to be received on or before July 16, 1987.

The agency has received four comments. Three comments came from organizations or individuals representing print and broadcast journalists. One comment came from an organization that monitors FOIA matters in general. All submissions were made part of the public record and duly considered. NED responds here to the major comments.

B. Discussion of Major Comments

1. Fee Schedule

All of the commentators expressed the view that NED should not follow various aspects of the fee schedule guidelines published pursuant to notice and public comment by the Office of Management and Budget. 52 FR 10012 (March 27, 1987). Adherance to the OMB guidelines is specifically mandated by the amended FOIA, which states that an agency's regulations governing the fee schedule shall "conform" to the OMB guidelines. 5 U.S.C. 552(a)(4)(A). Moreover, the amendments to the FOIA sought to establish "a uniform schedule of fees for all agencies." *Id.* In order to follow the plain language of the FOIA amendments and further the goal of uniformity, NED retains the fee schedule as proposed.

2. The Fee Waiver Guidelines

All of the commentators maintained that NED should not follow the factors recommended by the Deprtment of Justice, Office of Legal Policy, in meeting the statute's requirement to promulgate regulations "establishing procedures and guidelines for determining when such fees should be waived or reduced." 5 U.S.C. 552(a)(4)(A)(i). While NED recognizes that nothing in the amendments to the FOIA requires it to follow the recommendations of the Department of Justice, it has adopted many of the recommendations in an effort to clearly set out factors that NED will consider in following the statute's mandate to furnish procedures and regulations regarding reduced or waived fees. Major concerns about specific factors are discussed below.

Some commentators expressed concern over the extent to which NED detailed the factors that it would consider in determining whether to waive or reduce fees. They argued that NED should merely repeat the statutory standard or severely limit the factors it considers. The factors, however, serve the important function of identifying for requesters the information that NED will treat as significant in making its determination. Moreover, instead of expanding NED's discretion to deny fee waivers, as some of the commentators suggested, expressly delineating the factors focuses the relevant considerations to an extent not possible by simply repeating the statute's language.

Several commentators criticized the consideration of whether "the disclosure will contribute to the public at large as opposed to the individual understanding of the requester or a small segment of interested persons." Proposed § 526.5(h)(3)(i), 52 FR 22794 (June 16, 1987). They observed that Congress deleted the former fee waiver standard, which considered whether furnishing the information primarily benefited the "general public", in favor of a new standard, which focuses on a significant contribution to "public understanding." *Compare* former 5 U.S.C. 552(a)(4)(A) with 5 U.S.C. 552(a)(4)(A)(iii), as amended. They pointed to the statement of Rep. Glenn English that the new statutory standard "is intended to emphasize that a request can qualify for a fee waiver even if the issue is not shared with the public-at-large. Public understanding is disclosed to the subset of the public most interested, concerned, or affected by a particular action or matter." 132 Cong. Rec. H9464 (daily ed Oct. 8, 1986).

The language of the statute clearly contemplates something greater than a contribution to a personal interest in the subject matter of a request. As Senator Hatch noted, agencies should interpret the word " 'public'. . . so as to require a breath of benefit beyond any particularly narrow interests that might be presented." 132 Cong. Rec. S16505 (daily ed. Oct. 15, 1986). However, the change in the statutory language from a focus on the "general" public to simply "public understanding" indicates that the new standard lessens the emphasis on the impact on the public at large. In order to reflect the change in statutory language and follow the legislative history as embodied in the statements of Representative English and Senator Hatch, NED has revised the factors set out in Proposed § 526.5(h)(3)(i) and (h)(3)(iii) to reflect this contrast between a public and a primarily personal understanding. In this regard, NED has adopted the suggestion of one of the commentators that a request that serves a "primarily personal" understanding be less likely to receive a fee waiver. In addition, NED has changed rule 526(h)(4)(i) to delete the reference to the "general" public.

Three of the commentators criticized the Proposed Rule's requirement that requesters seeking a fee waiver disclose any and all commercial interests in the information requested. The grounds for this concern varied.

First, they argued that the legislative history does not support placing an obligation on the requester to describe the potential use of the information or the benefit to be derived from its release. This argument flatly contradicts the plain language of the statute, which proscribes fee waivers for requests that are "primarily in the commercial interest of the requester." This is a clear

reference to the use and benefit to be derived by the requester from the information and warrants an inquiry into these matters.

Second, the argument was advanced that the requirement only serves to create cumbersome procedural hurdles and serves no other legitimate rationale However, NED views its requirement as the most effective, open and fair method of meeting the statute's requirement. Indeed, this will obviate NED's need to use other sources to follow the FOIA's plain terms. In addition, the procedural requirements that set time constraints on both NED and the requester to establish what, if any, commercial interest exists merely clarify any procedural uncertainty that would arise if the commercial interest of the requester could not be established initially.

Two commentators suggested that the commercial interest disclosure requirement violated the Paperwork Reduction Act. The Paperwork Reduction Act does not apply to NED as a private, not-for-profit corporation. However, the simple disclosure requirement serves the interest in efficiency that underlies the Paperwork Reduction Act. It allows NED to consider the commercial interest factor with a minimum of additional information requests or outside research.

One commentator expressed concern that the section on assessment of commercial interests in granting fee waivers did not except the commercial interest of representatives of the news media from commercial interests that would prohibit a fee waiver. Given the traditional role of the news media in collecting and disseminating information to the public, NED has rewritten this section to state that the interest served by a request for records supporting the news-dissemination function of the requester will not be considered a request that is for a commercial use for purposes of a waiver.

List of Subjects in 22 CFR Part 526

Freedom of information.

Promulgation

After carefully reviewing the comments submitted regarding the fee schedule and fee waiver regulations, USIA amends 22 CFR Part 526 as follows:

PART 526—[AMENDED]

1. The authority citation for Part 526 is revised to read as follows:

Authority: 22 U.S.C. 4411 *et seq.;* Pub. L. No. 99–570, Secs, 1801–1804, 100 Stat. 3207–48 (1986).

2. Section 526.5 is amended by revising paragraphs (c) and (d) and by adding paragraphs (e), (f), (g) (h) and (i), as follows:

§ 526.5 Availability of NED records.

* * * * *

(c) *Definitions governing schedule of standard fees and fee waivers.* For purposes of these regulations governing fees and fee waivers:

(1) All of the terms defined in FOIA apply;

(2) A "statute specifically providing for setting the level of fees for particular types of records" means any statute that specifically requires the NED to set the level of fees for particular types of records;

(3) The term "direct costs" means those expenditures that NED actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents, photographs, drawings or any other material to respond to a FOIA request. [Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16% of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, any heating or lighting, the facility in which the records are stored];

(4) The term "search" includes all time spent looking for material that is responsive to a request, including page by page or line by line identification of material within documents. Searches shall be conducted to ensure that they are undertaken in the most efficient and least expensive manner so as to minimize costs for both NED and the requester. "Search" is distinguished from "review" of material in order to determine whether the material is exempt from disclosure (*see* subparagraph (c)(6) below);

(5) The term "duplication" refers to the process of making a copy of a document, drawing, photograph, or any other material necessary to respond to a FOIA request. The copy provided by NED will be in a form that is reasonably usable by requesters;

(6) The term "review" refers to the process of examining documents that are located in response to a request that is for a commercial use (*see* subparagraph (c)(7) below) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions;

(7) The term " 'commercial use' requests" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NED will determine the use to which a requester will put the documents requested. Where NED has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, NED will seek additional clarification before assigning the request to a specific category;

(8) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly study and/or research;

(9) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (c)(7) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry;

(10) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "free-lance" journalists, such journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by a news organization. A publication contract would be the clearest proof, but

NED will also look to the past publication record of a requester in making this determination.

(d) *Fees to be charged—general.* NED shall charge fees that recoup the full allowable direct costs it incurs. NED shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made under the FOIA.

(e) *Specific fees.* The specific fees for which NED shall charge the requester when so required by the FOIA are as follows:

(1) Manual searches for records—$8.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel;

(2) Computer searches for records—In any case where a computer search is possible and the most efficient means by which to conduct a search, NED will charge the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and the operator-programmer salary apportionable to the search. The charge for the cost of the operator-programmer time shall be based on the salary of the operator-programmer plus 16 percent;

(3) Review of records—Requesters who seek documents for commercial use shall be charged for the time NED spends reviewing records to determine whether such records are exempt from mandatory disclosure. These charges shall be assessed only for the initial review; *i.e.*, the review undertaken the first time NED analyzes the applicability of a specific exemption to a particular record or portion of a record. Neither NED nor the United States Information Agency will charge for review at the administrative appeal level for an exemption already applied. However, NED will charge for review of records or portions of records withheld in full under an exemption that is subsequently determined not to apply. The fee for review as that term is used in these regulations shall be $15.00 per hour;

(4) Duplication of records—(i) making photocopies—15¢ per page; (ii) for copies prepared by computer, such as tapes or printouts, NED shall charge the actual cost, including operator time, of production of the tape or printout; (iii) for other methods of reproduction or duplication, NED shall charge the actual direct costs of producing the document(s);

(5) Other charges—(i) there shall be no fee for a signed statement of non-availability of a record; (ii) NED will not incur expenses arising out of sending records by special methods such as express mail;

(6) Restrictions on assessing fees—With the exception of requesters seeking documents for a commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires NED to provide the first 100 pages of duplication and the first two hours of search time without charge. NED shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. NED will not begin to assess fees until it has first provided the above-referenced free search and reproduction. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to NED of receiving and recording a requester's remittance and processing the fee for deposit in NED's account. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard size, which will normally be 8½ x 11 or 11 x 14. Thus, for example, requesters shall not be entitled to 100 microfiche or 100 computer disks without charge.

(f) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The fees to be charged each of these categories of requesters are as follows:

(1) Commercial use requesters—when NED receives a request for documents for commercial use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents. NED shall recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records. Requesters must reasonably describe the records sought;

(2) Educational and non-commercial scientific institution requesters—NED shall provide documents to educational and non-commercial scientific institution requesters for the cost of reproduction alone, excluding charges for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought;

(3) Requesters who are representatives of the news media—NED shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in subsection (c)(10) above, and the request must not be made for a commercial use. A request for records supporting the news-dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought;

(4) All other requesters—NED shall charge requesters who do not fit into any of the above categories those fees that recover the full reasonable direct costs of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must reasonably describe the records sought.

(g) *Assessment and collection of fees* (1) NED shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by NED, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date of the billing.

(2) Charges for unsuccessful searches—If NED estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice of request shall suspend the running of the period for response by NED until a reply is received from the requester.

(3) Aggregating requests—Except for requests that are for a commercial use, NED shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NED reasonably believes that a

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requester or a group of requesters acting in concert are attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, NED shall aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have been made. Before aggregating requests from more than one requester, NED must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case shall NED aggregate multiple requests on unrelated subjects from one requester.

(4) Advance payments—NED shall not require payment for fees before work has commenced or continued on a request unless:

(i) NED estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00. In this event, NED shall notify the requester of the likely cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee charged within 30 days of the date of billing.

In this event, NED shall require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NED begins to process a new request or a pending request from that requester.

(iii) When NED acts under paragraphs (g)(4) (i) or (ii) above, the administrative time limits prescribed in subsection (a)(6) of the FOIA will begin only after NED has received fee payments described above.

(5) Form of payment—Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of: National Endowment for Democracy. NED will assume no responsibility for cash lost in the mail.

(h) *Fee waiver or reduction.* NED shall furnish documents without charge or at a charge reduced below the fees established by these regulations if disclosure of the information is in the public interest because the disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. In making a determination under this subsection, NED shall consider these factors in the following order:

(1) Whether the subject of the request for documents concerns the operations or activities of the government. For purposes of determining whether this factor is met:

(i) Records generated by a non-government entity are less likely to respond to a request for documents concerning the operations or activities of the government;

(ii) Records that are sought for their intrinsic informational content apart from their informative value with respect to specific activities or operations of government are less likely to meet this factor.

(2) Whether the information requested is likely to contribute to an understanding of government operations or activities. For purposes of determining whether the request meets this factor:

(i) NED will consider the extent to which the information requested already exists in the public domain;

(ii) NED will consider the extent to which the value of the information relates to an understanding of government operations or activities as opposed to the extent to which the information relates to other subjects.

(3) Whether the information requested will contribute to public understanding of government operations or activities. For purposes of determining whether the request meets this factor:

(i) NED will consider whether the disclosure will contribute to a public understanding as opposed to a primarily personal understanding of the requester;

(ii) NED will consider the identity of the requester to determine whether such requester is in a position to contribute to public understanding through disclosure of the information. Requesters shall describe their qualifications to satisfy this consideration;

(iii) NED will consider the expertise of the requester and the extent to which the expertise will enable the requester to extract, synthesize and convey the information to the public. Requesters shall describe their qualifications to satisfy this consideration;

(4) Whether the contribution to public understanding will be significant. In determining whether this factor has been met:

(i) NED will consider whether the public's understanding of the subject matter in question is likely to be enhanced by the disclosure of information by a significant extent;

(ii) NED will compare the likely level of public understanding of the subject matter of the request before and after disclosure.

(5) After NED is satisfied that factors (h) (1) through (4) have been met, it will consider whether the requested disclosure is primarily in the commercial interest of the requester.

(i) For purposes of this subsection, "commercial interest" is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. Under this subsection, a "commercial interest" shall not be an interest served by a request for records supporting the news dissemination function of the requester. All requesters who seek a fee waiver under section (h) of these regulations must disclose any and all commercial interests that would be furthered by the requested disclosure. NED shall use this information, information in its possession, reasonable inferences drawn from the requester's identity, and the circumstances surrounding the request to determine whether the requester has any commercial interest that would be furthered by the disclosure. If information that NED obtains from a source other than the requester or reasonable inferences or other circumstances are used in making a determination under this paragraph (h)(5), NED shall inform the requester of the information, inferences or circumstances that were used in its initial determination. The requester may, prior to filing an appeal of the initial determination with the President of NED or his designee under paragraph (a)(2) of this section, provide further information to rebut such reasonable inferences, or to clarify the circumstances of the request to the person responsible for the initial determination. Such action by the requester must occur within 20 days of the initial determination by NED. Within 10 days of receipt of such further information, clarification, or rebuttal, NED shall respond to the additional information, reverse or affirm its original position and state the reasons for the reversal or affirmation. Receipt of an affirmation by the requester shall constitute an initial denial of a request for purposes of the appeal process described in paragraphs (a) and (b) of this section.

(ii) NED shall consider the magnitude of the requester's commercial interest. In making a determination under this factor, NED shall consider the role that the disclosed information plays with respect to the requester's commercial interests and the extent to which the disclosed information serves the range of commercial interests of the requester.

(iii) NED shall weigh the magnitude of the identified commercial interest of the

requester against the public interest in disclosure in order to determine whether the disclosure is primarily in the commercial interest of the requester. If the magnitude of the public interest in disclosure is greater than the magnitude of the requester's commercial interest, NED shall grant a full or partial fee waiver.

(6) In determining whether to grant a full or partial fee waiver, NED shall, to the extent possible, identify the portion of the information sought by the requester that satisfies the standard governing fee waivers set forth in FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), and in paragraphs (h) (1) through (6) of this section, and grant a fee waiver with respect to those documents. Fees for reproduction of documents that do not satisfy these standards shall be assessed as provided in paragraphs (c) through (g) of this section.

(i) Except as provided in paragraph (h)(5)(i) of this section, a requester may appeal a determination of the fees to be charged or waived under these regulations as he or she would appeal an initial determination of documents to be disclosed under paragraphs (a) and (b) of this section.

Dated: September 30, 1987.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 87-23341 Filed 10-8-87; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, 413, 466

[BERC-400-CN]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1988 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: In the September 1, 1987 issue of the **Federal Register** (FR Doc. 87-19988), beginning on page 33034, we revised the Medicare inpatient hospital prospective payment system and set forth the prospective payment rates for FY 1988. This notice corrects inadvertent errors we made in that document.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

We are making the following corrections to the September 1, 1987 document:

1. On page 33135, in the last paragraph of the third column, in the eighth line, "216" should read "238".

2. On page 33136, in the first column, in the twelfth line, "$8 million" should read "$4 million" and, in the thirteenth line, "$33,600" should read "$17,000."

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: October 5, 1987.

Raffie Shahrigian,

Acting Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87-23496 Filed 10-8-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR New Part 383

Preference Cargoes

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to establish new administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry bulk preference cargoes in less than full shiploads on United States-flag commercial liner vessels. These regulations require operators to submit data on the operating and capital costs of their vessels. On the basis of these data, MARAD will calculate fair and reasonable guideline rates according to the method explained in the Supplementary Information Section of these regulations.

DATE: This rule is effective November 9, 1987, for application to fair and reasonable rate determinations for the carriage by liner vessels of dry bulk preference cargoes in less than full shiploads on or after July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590, Telephone No. 366-2323.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) (Act), requires that at least 50 percent of any equipment, materials or commodities generated by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, should be transported on privately owned U.S.-flag commercial vessels to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share for certain other programs to 75 percent, phased in over three years.

Section 901 requires that all affected shipper agencies comply with regulations issued by MARAD (by delegation from the Secretary of Transportation). While a substantial number of Federal agencies generate preference cargoes, the preponderance of shipper tonnage subject to cargo preference is generated by the Department of Defense (DOD), U.S. Department of Agriculture (USDA), Department of State's Agency for International Development (AID), Department of Energy's Strategic Petroleum Reserve, and the Export Import Bank. The principal agencies generating parcel lots of dry bulk preference cargoes are USDA and AID.

In 1981, the U.S. District Court for the District of Columbia (District Court), in response to a claim that the Maritime Subsidy Board (MSB) had no rate setting authority, held that the MSB has broad authority under section 901 of the Act to establish the rate formula and to provide guidance to other departments and agencies. The case was appealed to the U.S. Court of Appeals for the District of Columbia (Court of Appeals). In November 1982, the Court of Appeals upheld the previous ruling that the MSB has authority to set rates but it instructed the District Court to remand that particular case to the MSB for further proceedings on the reasonableness of the rate involved.

For many years, MARAD has determined fair and reasonable rates for the carriage of civilian preference cargoes on bulk cargo vessels and provided guidance to the shipper agencies. However, no formal rate guidance has been provided for the carriage of preference cargoes on liner vessels except for full shiploads. Fair and reasonable rates for the carriage of full shiploads of preference cargoes on liner vessels have been determined in the same manner as bulk vessel rates. The rates charged by liner companies for less than full shiploads have been a function of vessel costs and market forces. Decisions as to the reasonableness of such liner rates have been a function of the individual U.S. government agency controlling the cargo. The lack of fair and reasonable

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rate standards for the carriage of non-competitive preference cargoes on liner vessels has recently been criticized. The President's Private Sector Survey on Cost Control (the Grace Commission) cited the need for regulatory standards to limit the cost of transporting preference cargoes on U.S.-flag liner vessels. Further, a General Accounting Office report entitled "Transportation of Pub. L. 480 Commodities—Efforts Needed to Eliminate Unnecessary Costs", included a recommendation to establish a system of fair and reasonable rates for the carriage of preference cargoes by liner vessels in less than full shiploads. However, this regulation is limited in scope to the carriage of dry bulk parcels for reasons provided later in the discussion of the comments.

In response to these recommendations, MARAD developed a system for determining fair and reasonable rates for the liner vessel carriage of dry bulk preference cargoes in less than full shiploads. On February 10, 1986, MARAD published in the **Federal Register** (51 FR 5012) a notice of proposed rulemaking (NPRM) to issue new regulations in 46 CFR Part 383 which set forth appropriate fair and reasonable rate procedures (Docket R–104). MARAD also published simultaneously proposed amendments to 46 CFR 381 which includes procedures governing the evaluation of preference cargo bids by shipper agencies (Docket R–105). The notices provided a period for public comment with respect to each proposal that was to expire on April 11, 1986, but which was subsequently extended to May 12, 1986 at the request of interested parties.

Comments

MARAD's response to the comments submitted on the dual notices of Docket R–104 and R–105 have been separated by subject matter. Comments addressing the determination of fair and reasonable rates, Docket R–104, were received from USDA, AID, the Council of American-Flag Ship Operators (CASO), Sea-Land Service, Inc., Coordinated Caribbean Transport, OMI Corp., and Waterman Steamship Corporation. The comments concerning Docket R–104 are summarized and evaluated below. Comments relating to Docket R–105 will be addressed in a separate rulemaking procedure.

Rate of Return

CASO and AID raised questions concerning the use of the Fortune 500 rate of return in calculating the return on investment.

CASO believes the Fortune 500 rate is inadequate and too low for the risk involved. The Fortune 500 are seen by CASO as operating in a more stable, low risk environment while shipping is a high risk venture. In shipping, the return generated from voyages in good markets is viewed as necessary to make up for losses on voyages made during bad markets. CASO suggested that the return rate should not be fixed, but should be a floating rate, indexed and tied to the shipping market.

On the other hand, AID believes that the Fortune 500 rate is excessive. It also believes that the rate of return should be indexed and directly related to the shipping market, but wants the rate based on an index for transportation stocks or some other maritime-related index.

After reviewing the comments, MARAD believes that there is merit in the idea of basing the rate of return on a transportation related index. Accordingly, MARAD has modified the regulation to provide for a rate of return based on the most recent rate of return on stockholder'a equity for a representative cross section of transportation industry companies, including maritime carriers. Like the Fortune 500 rate previously proposed by MARAD, such an index would have the advantage of reflecting a wide range of risks, but would be restricted to companies in maritime or transportation-related businesses.

Full Cost Recapture

USDA objected to the proposal for use of full cost recapture and continuous profitability in the calculation of the capital component on the grounds that such an assumption is arbitrary and ignores the fluctuations of the business cycle.

MARAD's purpose for issuing a regulation is to produce a fair and reasonable guideline rate that, as required by law, is fair and reasonable to all parties involved. In essence the operator should receive reasonable compensation including a fair profit. This premise is consistent with the Comptroller General's Opinion B–95832, dated February 17, 1955, defining the term "fair and reasonable." It is affirmed by the findings of the United States Court of Appeals, regarding similar matters, in *Aeron Marine Shipping Co., et al.* v. *United States* (695 F. 2d 567 (D.C. Cir 1982)) and is reaffirmed in the Final Opinion and Order issued by the Maritime Subsidy Board in Docket A–132 served on December 22, 1983. Consequently, full cost recapture with inclusion of a fair profit will be retained.

Operating Costs

In general, the greatest number of comments regarding the fair and reasonable guideline rate were generated by the section on operating costs. Three of the commenters provided numerous comments on this subject. The comments were divided into two main categories, i.e., those related to the use of fleet averaging and those addressing the applicability of the data used to generate the rate.

With regard to the use of averaging, some commenters requested that MARAD clarify what is meant by "fleetwide average" and whether the fleet to be averaged is composed of all of the vessels participating in the preference cargo program or only those which make up an individual operator's fleet.

The methodology set forth in the NPRM would have utilized aggregate fleetwide averages on all vessels in the program for determining daily operating costs, voyage length, and tons carried. After reviewing the comments and after additional study of the matter, MARAD has decided to modify its methodology.

With the exception of fuel, the daily operating costs used in the fair and reasonable rate calculation will be an aggregate average of only those vessel types considered appropriate for carriage of bulk preference cargoes. An average of all breakbulk, partial container and LASH vessel operating costs will be used to determine the operating cost component. Ro/Ro and full container vessels will be excluded from the calculation. Fuel was eliminated from the cost averaging since that cost element has been influenced by dramatic fluctuations in the past, a point raised by two of the commenters. Instead, daily fuel coats will be determined separately from all other operating costs and will be based on the individual vessel's fuel consumption characteristics and current fuel prices.

The daily capital costs will be determined on the basis of each vessel's total capitalized cost and applicable interest rates for indebtedness. The capital component will include depreciation, interest, return on working capital, and return on equity.

To determine the operating, fuel, and capital components as costs per ton, the methodology has been revised to utilize the operator's total number of voyage days and total payable tons per sailing for the vessel type and service for which the fair and reasonable rate is being calculated. The voyage data will be historical data from the previous year as provided in each operator's information

submission. The daily operating and capital expenses will be multiplied by the historical number of voyage days per sailing, and will then be divided by the historical cargo tons per sailing to determine those components as costs per ton. The daily fuel cost at sea and in port, derived from current prices and the vessel's characteristics, will be multiplied by the corresponding days at sea and in port, for the historical voyage as indicated by the operator's submission, and will be divided by the historical cargo tons per sailing.

MARAD's determination of the port and cargo handling component will be based on cargo tender terms, and will include the estimated costs of loading and discharging the preference cargo at the ports of origin and destination. The port and cargo handling costs will be divided by the amount of preference cargo tons to provide the port and cargo handling component as a cost per ton.

The methodology has been further revised to provide for brokers' commissions and an allowance for general and administrative expenses in the fair and reasonable rate. After the operating component, fuel component, capital component, and port and cargo handling component, each expressed as a cost per ton, have been added together, the sum will be increased by four percent to yield the total rate.

Specific comments regarding the adequacy of the averaging concept and MARAD's responses to them follow.

Several commenters observed that fleetwide averaging would not reflect individual vessel operating characteristics due to differences in vessel size, crew size and vessel design. They also suggested that variations in fixed costs are not accounted for in the guideline rate and that such variations should be investigated before the guideline formula is finalized.

The methodology set forth herein will utilize historical voyage data of the operator's vessel type making the preference cargo voyage on a service similar to or the same as the preference cargo voyage. This should alleviate many of the problems created by variations in vessel size, age and design. It is also felt that averaging, over a period of time, would tend to eliminate, rather than emphasize cost differentials based on vessel characteristics.

The comments also claimed that cost averaging provides no variance for weather, time of year, trade fluctuations, and political situation, and that averaging does not account for cost variables due to regional differences and quality of operator service.

In MARAD's view, the change in methodology to emphasize vessel type and service will alleviate many of these variances. Regional and political factors would only affect the loading and discharging of cargo and would be considered when determining the port and cargo handling component.

As noted earlier, comments were received regarding the adequacy of the data gathered. The commenters stated that annual fluctuations in operating costs would make a guideline rate based on prior year averages meaningless. Such data would be stale and would not reflect current costs. Certain commenters suggested that more frequent calculations be used. At the same time, some commenters requested that MARAD clarify how the rate would be implemented for the first year.

With regard to the currency of the data used, MARAD agrees that some method for updating the historical data is required. To satisfy this requirement, the final rule provides that the aggregate cost data will be escalated to the current year. With respect to implementation of the system, MARAD currently envisions that first year implementation will be done on the basis of data already filed with MARAD in the operators' MA–172s. Operators not currently filing MA–172s would be given the opportunity to supply the required data upon entering the program. After the first year, all operators wishing to participate in a given year would be required to make timely data filings.

Finally, one respondent states that cost averaging is discriminatory. If the calculation of the average is derived from components of which half are above and half below the average, the resulting guideline rate will be discriminatory to those operators in the upper half.

Theoretically this is true. However, in reality, the actual skew of the average will be toward whichever end of the scale is most represented. If more high cost operators participate in the parcel carriage of dry bulk preference cargoes, the result will be fair and reasonable rates which are skewed to the high cost end of the rate scale. However, if participants are primarily low cost, efficient operators, rates will be on the low end of the scale. If participants are low cost operators, economy and efficiency should be encouraged since rate determinations would favor lower cost operators. The Comptroller General's Opinion B–95832, of February 17, 1955, stated that "fair and reasonable" may not necessarily be fair and reasonable to all parties, so long as the effect of the application of the fair and reasonable concept to an action results in overall fair and reasonable results.

Free Market

Liner vessel freight rates for parcel lots of bulk cargoes have traditionally been based on market conditions at the time of the voyage. One commenter believes that the guideline rate ignores this free market system, and prevents an operator from recouping in good markets, the losses it may have incurred for voyages made during bad markets. This would be especially true in cases where competitive factors cause the operator to receive less-than guideline rates on a regular basis. Accordingly, the commenter contends the guideline rate may not be fair and reasonable. The commenter further suggests that the guideline rate should be based on a comparison system with foreign carriers to determine if U.S.-flag operators are receiving premium rates for their trade.

As mentioned previously, the purpose of this regulation is to provide a system of rates that is fair to both shippers and carriers and to promote competitive efficiency between the operators. The rate system should provide rates high enough to induce U.S.-flag operators to carry preference cargoes and earn a fair profit consistent with the directions of the United States Court of Appeals for the District of Columbia in its findings on November 23, 1982 related to a claim by Aeron Marine Shipping Company in Docket A–132. While it is true that regulatory setting of guideline rates could interfere with the free market rate system on infrequent occasions, MARAD must insure that rates charged for the carriage of preference cargoes are fair and reasonable as required by law. MARAD believes that the rate methodology being set forth produces a fair and reasonable rate within an environment wherein no direct foreign-flag competition exists for up to 50 percent of the preference cargoes reserved for U.S.-flag vessels.

De facto Amendment of ODSAs

One commenter suggested that the implementation of fair and reasonable rate regulation amounts to a de facto amendment of subsidized operators' Operating Differential Subsidy Agreements (ODSA) without the benefit of due process pursuant to section 606 of the Merchant Marine Act, 1936, as amended.

This argument appears in comments on both Dockets R–104 and R–105. MARAD wishes to stress that in no way is any operator's ODS adjusted, rebated, recaptured or abated as a result of either regulation. Accordingly, no "amendment" of ODSAs will occur upon implementation of these procedures.

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One Way Trip

It has been noted that the guideline rate is calculated on the basis of a round voyage, and it has been suggested by a commenter that the calculation be based, instead, on a one-way trip since a liner vessel normally picks up and discharges cargo throughout a voyage.

While a liner vessel does indeed continually pick up and discharge cargo, the overall profitability of the voyage depends upon the degree to which revenues taken in on cargoes carried exceed the cost of the entire voyage. Virtually no cargo makes a complete round voyage on a liner vessel, but the opportunity cost of carrying that cargo is directly related to the total voyage cost. Accordingly, MARAD believes that in order to attain profitability, any rate, including the guideline rate, must be based on fully allocated costs for the entire voyage.

Awareness of Cargo Preference Requirements

Another commenter suggested that ocean carriers and the public that are affected by the cargo preference laws must be made aware of U.S.-flag preference cargo requirements, and restrictions. The commenters stated that violations under the cargo preference laws are frequent and must be reduced. However, general enforcement of the cargo preference laws is beyond the scope of this regulation.

Expansion of Scope

A combined comment covering both Dockets R–104 and R–105 was received from Sea-Land Services, Inc. (Sea-Land). Sea-Land's comment was mainly concerned with the augmentation rule in Docket R–105. However, two comments were made which pertain to the fair and reasonable rate calculation. One concerns the inclusion of packaged cargoes in the fair and reasonable rate regulation, the other concerns the inclusion of military cargoes. USDA also tangentially touches on the subject of scope by mentioning that a rule for non-bulk items should be given priority over a rule for rates on bulk items.

In general, fair and reasonable guideline rates have been calculated by MARAD and advice on the guideline has been provided to government shipper agencies covering full cargoes on the basis of each individual cargo for which a specific vessel offer is being considered. Such a calculation represents the most simple possible formula, usually involving a single homogenous cargo, totally utilizing a specific vessel. The nature of the cargo, either bulk or bagged, makes it comparatively uncomplicated to determine such factors as cost of loading, cost of discharging, standard time allowances for these operations, and port charges.

The application of guideline rates to liner vessel cargoes will create a far more complicated and difficult environment for construction of fair and reasonable rates reflecting liner vessel operating costs. Still, the calculation is simplified to some extent in the system MARAD has developed by the fact that only bulk cargoes on liner vessels are considered. Such individual bulk parcels are usually of substantial volume (upward from several thousand tons), and the receiving, loading and discharging costs for such cargo can be separated more readily from general cargo operations because of the size of the parcels and their bulk nature, utilizing as they do separate handling facilities. The number of such transactions is also quite limited, probably less than 100 per year.

The application of a guideline rate to liner general cargo would expand the impact of such a procedure from a few government agency programs generating very large volumes of bulk cargoes to a wide variety of government impelled cargo covered by Public Law 664. This would encompass shipments of export and import cargo arranged not only by government agencies, but by a broad number of private sector exporters, importers, freight forwarders, and contractors including tiers of subcontractors involved in various transactions. Furthermore, the size of individual shipments would vary widely, from a few tons to thousands of tons. In one program alone, Pub. L. 480, Title II, the number of shipments exceeds 2,500 per year.

The commodities involved in such shipments would constitute an extensive variety, including basic commodities, manufactured products, project equipment, unboxed vehicles, etc., with different handling costs and requirements including space occupied. Individual shipments could consist of a number of differently rated items. Cargo may also be containerized or non-containerized and individual shippers under these programs frequently use a number of different carriers with different cost factors for shipments under a single project or contract.

The expertise required to evaluate the many factors necessary to construct ocean freight rates is not readily or consistently available within the Government. For example, the determination of a freight rate for carriage of a large project including outsized heavy lift pieces is a highly specialized function. To subject private sector shipping to government direction on such rates will only serve to impede the conduct of such business. In addition to the calculation of guideline rates, the policy of enforcing the guideline rate application would be cumbersome and time consuming.

It should also be noted that the Federal Acquisition Regulation (FAR) (Subpart 47.506) provides that rates filed with the Federal Maritime Commission (FMC) may be considered as fair and reasonable rates for purposes of determining the availability of privately-owned U.S.-flag commercial vessels at fair and reasonable rates. Rates for many non-bulk commodities shipped in liner vessels may be covered by conference tariffs, existing service contracts, or similar arrangements. In fact, many liner rates applied to non-bulk preference cargoes are conference rates where U.S.-flag and foreign-flag rates are identical. As such rates would not be considered to be premium rates, they would not be subject to guideline calculations. However, if this regulation were expanded to include non-bulk cargoes, every bill of lading would have to be checked against the tariff to determine whether a conference rate had been applied. This would generate a work load that would be extremely difficult to accommodate.

In addition, under many programs, the private sector shipper or contractor may have contracted with a government agency, basing the contracted price on a carrier's existing tariff rate or freight quotation, without reference to a guideline ceiling. A subsequently imposed rate ceiling may therefore result in a windfall profit to the shipper or contractor.

Essentially, Sea-Land agrees with the foregoing view and points out that the gathering of information is not necessary to determine fair and reasonable rates for packaged cargoes. However, Sea-Land has suggested that this tariff system be formalized as a part of Docket R–104 by adding language which would require, in connection with bids on packaged cargoes, that the U.S.-flag liner operator certify that its bid rate is no more than its comparable commercial rate by attaching the tariff page demonstrating this fact. If the bid rate is higher than the commercial tariff, or no comparable commercial tariff item exists, then the bidder should provide information in a form sufficient to establish that its bid is consistent with its commercial cargo pricing. In addition, the U.S.-flag liner operator should have the opportunity to demonstrate, through tariff pages of its

likely foreign-flag competition, what the foreign-flag competition's rates are on comparable commercial cargo.

As discussed above, MARAD believes that the current system of published tariffs is adequate for insuring the availability of fair and reasonable rates on packaged preference cargoes. The system proposed by Sea-Land would involve a cumbersome administrative process that is not warranted by the circumstances. For the reasons stated, MARAD believes that the inclusion of packaged preference cargoes in this regulation is not appropriate.

In its comments, Sea-Land states that MARAD has authority to determine fair and reasonable rates for military cargoes.

MARAD has crystalized its position with regard to the military cargo issue in connection with a proposed rule published by DOD, Docket No. DAR CASE 86–98. The Cargo Preference Act of 1904, 10 U.S.C. 2631, established the requirement that all U.S. military supplies to be shipped by ocean transport must be shipped on U.S.-flag vessels unless the rate is "excessive or otherwise unreasonable." The Cargo Preference Act of 1954, 46 U.S.C. 1241(b), requires that at least 50 percent of Government-impelled cargo, including military supplies, shipped by ocean vessels must be shipped on privately owned U.S.-flag vessels unless the operators' rates are not "fair and reasonable." This statute did not supplant the 1904 Act, but supplemented it to require the involvement of the private sector. Sinclair Weeks, Secretary of Commerce, in his June 18, 1954 letter to the Chairman of the Committee on Merchant Marine and Fisheries, concerning the 1954 Act, stated that the bill supersedes the Act of 1904 only "insofar as the bill would require transportation of supplies procured by the Army and Navy to be carried in privately owned United States-flag commercial vessels." HR Rep. No. 2329, 83d Cong., 2d Session (1954). See also, testimony of Nicholas Johnson, Maritime Administrator, Hearings on S. 3446 and S. 2600 Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce, 89th Cong., 2d Sess. 141.

With the enactment of the 1954 Act, Congress established the role of MARAD in the implementation of the cargo preference laws. The Secretary of Transportation now has the responsibility for administering section 901(b) of the 1954 Act. That Act was based on the desirability of having an agency with rate expertise providing guidance for proper administration of the provision. H. Rep. No. 80, 84th Cong., 1st Sess. 18 (1955).

MARAD was empowered with the principal authority to determine if the rates of the privately owned U.S.-flag vessel operators were fair and reasonable under the 1954 Act. Due to the impact of the 1954 Act on the Act of 1904, DOT's oversight responsibility and regulations are applicable to DOD's ocean shipping activities in order to ensure that the use of privately owned U.S.-flag commercial vessels is consistent with the 1954 Act. In this connection, DOD cannot avoid the employment of privately owned U.S.-flag commercial vessels when MARAD has determined that the rate is "fair and reasonable" and when DOD has not engaged such privately owned vessels for at least 50 percent of its 100 percent U.S.-flag requirement.

Finally, it has been MARAD's policy and practice since 1955 to provide rate guidance, either in the form of regulations (prior to 1969) or on a case-by-case basis, to agencies and shipping departments as set forth in 46 CFR 381.2(c). MARAD provides this guidance for DOD's programs. MARAD has consistently asserted its primary responsibility for determining fair and reasonable rates as evidenced by the promulgation of this regulation.

Accordingly, MARAD acknowledges that it does have the authority to establish rates for military cargoes to the extent that the 1954 Act is applicable. However, the ocean transportation of military cargoes has been managed by the Military Sealift Command which establishes rates on a route basis every six months by a competitive bidding process. The low responsive bidder is entitled to most of the cargo on a route but a certain percentage, which varies by route, is available to others. This system has encouraged competition among U.S. operators and has kept rates at or below fair and reasonable levels. Therefore, MARAD, at the present time, is not including the transportation of military cargoes within the scope of this rule, but will continue to review this issue and reserves the right to amend these procedures through rulemaking when it is deemed appropriate for application to up to 50 percent of military cargoes transported on U.S.-flag commercial vessels.

Cargo Terms

USDA points out that in § 383.3(d)(2), the proposed fair and reasonable guideline regulation indicated that port and cargo handling costs would be calculated on the basis of full berth terms. USDA believes that the use of full berth terms limits flexibility in setting rates. It does not allow the shipper the advantages to be gained in instances where terms may be based on other than full terms, e.g., a situation where a cargo is booked free in and free out. MARAD concurs with USDA's assessment on the use of full berth terms. However, it must be noted that § 383.3(e)(3) provides relief from this situation by allowing for the calculation of rates on the basis of actual terms upon notification to MARAD that actual cargo terms are other than full berth terms. Accordingly, no change is required in this provision.

Inland Transport

Two comments were received concerning the portion of the regulation that concerns inland transportation.

AID advises that it understands that the rule is limited to ocean transport only and that additional charges beyond that are to be approved by the agency sponsoring the cargo. Further, AID contends it has a right to reject any bid on the basis of the additional charges beyond the ocean transportation, even if the ocean transport portion is within the guideline rate. CCT states that it believes inland transport charges should be included in the fair and reasonable rate since they are costs that affect the operation of ocean carriers.

MARAD agrees with AID's comments and does not propose to set guideline rates for inland transportation. Notwithstanding CCT's comments, MARAD continues to believe that the agency sponsoring the cargo should be responsible for evaluating inland transportation costs. However, in the event that the shipper agency does not approve the charges beyond the ocean transportation, a U.S.-flag vessel must nevertheless be utilized to comply with the cargo preference requirement, if the vessel will accept the ocean transportation at the guideline rate. In such event, the shipper agency would otherwise arrange for any necessary inland transport.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this regulation is not a major rule as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures (49 FR 11034, February 26, 1979). This regulation is considered to be significant because it has generated considerable interest among ship operators and because there are no information submission procedures presently in place for the purpose of determining fair and

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reasonable rates for liner parcels of dry bulk preference cargoes. A regulatory evaluation on this rulemaking has been placed in the public docket. Since this regulation will affect principally ship operators with substantial annual revenues, and Government agencies, MARAD certifies that this rule will not exert a significant economic impact on a substantial number of small entities under Pub. L. 96–354.

This rulemaking contains an information collection requirement in § 383.2 which has been approved by the Office of Management and Budget, control number 2133–0515.

List of Subjects in 46 CFR Part 383

Maritime carriers, Freight, Reporting and recordkeeping requirements.

Accordingly, MARAD is hereby amending 46 CFR Chapter II by adding a new Part 383, to read as follows:

PART 383—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF PARCELS OF DRY BULK PREFERENCE CARGOES ON U.S.-FLAG LINER VESSELS

Sec.
383.1 Scope.
383.2 Data Submission.
383.3 Determination of Fair and Reasonable Rates.

Authority: Secs. 204(b), 901(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1241(b)); 49 CFR 1.66.

§ 383.1 Scope.

Part 383 prescribes regulations applying to the waterborne transportation of dry bulk preference cargoes in less than full shiploads on United States-flag commercial liner vessels. These regulations contain the method that the Maritime Administration (MARAD) shall use in calculating fair and reasonable rates and the type of information that must be submitted by liner operators interested in carrying such preference cargoes.

§ 383.2 Data submission.

(a) *General.* Operators wishing to employ liner vessels in the carriage of liner parcels of dry bulk preference cargoes must submit information as provided in paragraph (b) of this section, as applicable, to the Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. The information in paragraph (b)(1) of this section shall be submitted not later than April 30 of each year and updated not less often than once every 12 months. The information in paragraphs (b)(2) and (b)(3) of this section shall be submitted initially and, thereafter, only when changes occur. All submissions shall be certified by the operator and are subject to verification by MARAD.

(b) *Required information.* (1) For each vessel an operator wishes to be considered for the carriage of preference cargoes, operating cost information shall be submitted, by vessel type, in the format stipulated by 46 CFR 232.1, Form MA–172, including cargo carried, operating revenue and expenses (Schedule 301). Such information shall be applicable to the most recently completed calendar year.

(2) Total vessel costs capitalized (list and date capitalized improvements separately) and applicable interest rates for indebtedness shall be submitted for each vessel.

(3) Fuel consumption, by grades of fuel consumed, shall be submitted for each vessel at normal operating speed and while in port, in metric tons per day.

(4) An operator which already submits the information in paragraph (b)(1) of this section to MARAD in conjunction with other MARAD programs need not submit a duplicate of the information.

(c) *Confidentiality.* If the data submitted under this rule contains information that the submitter considers to be commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time the data is submitted. The claim shall be made in a letter contained in a sealed envelope marked "Confidential Information," addressed to the Secretary, Maritime Administration. The submitter shall stamp or mark "confidential" on the top of each page containing information claimed to be confidential. In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing: That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority, and that measures have been taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to the public, or, if the information has been disclosed or otherwise becomes available to the public, why such disclosure or availability does not compromise the confidential nature of the information. In the event of a subsequent request for any portion of the data under the FOIA, those submissions not so claimed by the submitter will be disclosed, and those so claimed will be subject to the initial determination by the Secretary, Maritime Administration. If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any request for production of information under the FOIA by third parties.

(Approved by the Office of Management and Budget under control number 2133–0515)

§ 383.3 Determination of fair and reasonable rates.

(a) *Cost components.* MARAD shall calculate a fair and reasonable rate for all liner vessels participating in this program. The fair and reasonable rate shall include an operating cost component, a fuel cost component, a capital cost component, and a component for port and cargo handling expenses.

(b) *Operating cost component—(1) General.* MARAD shall calculate a daily average operating cost based on the aggregate average operating costs of all breakbulk, partial container, and LASH vessels. The daily average shall be based on cost data for the calendar year immediately preceding the current year, submitted in accordance with § 382.2(b)(1). Such data shall be escalated by MARAD to the current year.

(2) *Items included.* The operating cost component shall include all costs relating to vessel operation with the exception of fuel costs, and shall include non-fuel expense categories as defined by 46 CFR 232.1, Form MA–172, Schedule 301, Operating Expenses.

(c) *Fuel component.* Fuel costs shall be determined as a separate component for each vessel based on the vessel's rate of consumption and current fuel prices.

(d) *Capital component—(1) General.* MARAD shall calculate the daily capital component of the fair and reasonable rate for each participating vessel, consisting of vessel depreciation, interest, return on working capital (one-half average voyage expenses), and return on equity.

(2) *Items included.* The capital component shall include:

(i) *Depreciation.* The owner's actual construction cost, reconstruction cost or purchase cost shall be depreciated straight-line, based on a 25 year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years

old. When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. When vessels more than 15 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal installments over a 25-year period. If an actual interest rate is not available, the prevailing rate of interest for Title XI financing at the time of capitalization shall be used.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover one-half the operating costs of the vessel for the voyage (as calculated in paragraph (b)(1) of this section). The rate of return shall be based on the most recent return on stockholder's equity for a representative cross section of transportation industry companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be determined as in paragraph (d)(2)(iii) of this section. For the purpose of determining equity it shall be assumed that the vessel's constructed net book value less constructed principal outstanding is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(e) *Port and cargo handling component—(1) General.* MARAD shall calculate an estimate of port and cargo handling costs consisting of a U.S. port and cargo handling element and a foreign element as applicable. Government shipper agencies have at times required steamship lines to perform services beyond their usual scope of operation on some shipments. Additional services such as bagging at discharge, rail or truck loading, oncarriage to some inland destinations, and other sundry expenses have been included in the ocean freight rate in the past. In order to provide a fair and reasonable rate guideline, charges beyond the seaport terminal at which a vessel discharges should be reviewed and approved by the sponsoring Government shipper agency. In the event such charges are not approved, the cargo preference requirement must be met by utilizing a U.S.-flag vessel for the ocean transportation, if such a vessel will accept the guideline rate for the ocean transportation only.

(2) *Items included.* Port and cargo handling charges shall include the following, assuming full berth term quotations:

(i) *U.S. port and cargo handling charges.* In this category MARAD shall include domestic port and cargo handling charges for commodity, port of lading, and lot size based on the cargo tender, expressed as a cost per ton.

(ii) *Foreign port and cargo handling charges.* To the extent possible MARAD shall include in this category all known foreign port and cargo handling charges that would normally be included. These estimates shall be made for commodity, port of discharge, and lot size based on the cargo tender, expressed as a cost per ton.

(3) *Terms.* If the terms of the rate are other than full berth terms to the vessel owner, adjustment to the guideline rate shall be made on an *ad hoc* basis by request to MARAD. This provision shall be interpreted in accordance with Incoterms, as amended, published by the International Chamber of Commerce, Paris, France.

(f) *Determination of voyage days and cargo carried.* For purposes of determining the vessel operating, fuel, and capital cost components of the fair and reasonable rate, the voyage length and cargo tons shall be based on the number of voyage days and total payable tons per sailing for the vessel type and service for which the fair and reasonable rate is being calculated, as determined from data submitted in accordance with § 383.2(b)(1). The component for port and cargo handling charges shall be based on cargo tender terms.

(g) *Total Rate.* The operating cost component, fuel cost component, capital cost component, and port and cargo handling cost component each expressed as a cost per ton, shall be added together. The sum of the four components, plus an additional four percent to account for brokers' commissions and general and administrative expenses, shall yield the guideline rate.

By order of the Maritime Administrator.

Date: October 6, 1987.

James E. Saari,

Secretary.

[FR Doc. 87-23416 Filed 10-8-87; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket 86-128; FCC 87-284]

Common Carrier Services; Licensing, Construction, and Operation of Facilities

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This document adopts a number of changes to Part 21 of the Commission's Rules. The new rules generally are designed to update and simplify the procedures and to eliminate those requirements that appear to be no longer necessary to an efficient and orderly Part 21 licensing scheme. The major substantive changes are: (1) The adoption of a one-step licensing scheme, (2) the adoption of a financial certification requirement for new applicants, (3) the adoption of strict requirements for extension of time allowed for construction, (4) the elimination of network classification distinctions from the rules governing the Digital Electronic Message Service (DEMS), (5) the adoption of streamlined procedures for certain minor facilities changes, (6) a change in the extension of initial construction period for the Multipoint Distribution System (MDS) and DEMS systems, and (7) the elimination of certain licensee recordkeeping requirements. These rules were originally proposed in an NPRM, CC Docket 86-128 (released April 11, 1986), published April 18, 1987, 52 FR 13258.

EFFECTIVE DATE: November 9, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Theodore Waddell, Common Carrier Bureau, (202) 634-1706; Geraldine Matise, Common Carrier Bureau, (202) 634-1841.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, Adopted August 27, 1987, and released September 25, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230) 1919 M Street NW., Washington, DC 20554. The complete text of this decision can also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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Summary of Report and Order

1. The Commission has amended Part 21 of the Commission's Rules, which governs the construction, licensing, and operation of common carrier domestic fixed radio facilities. The new rules generally are designed to update and simplify the procedures and to eliminate those requirements that appear to be no longer necessary to an efficient and orderly Part 21 licensing scheme.

2. First, the Commission adopted a one-step licensing scheme of the services regulated under Part 21. Prior to constructing a station, applicants will file a license application. If granted, the license will be conditioned upon (a) the licensee completing construction of the facilities and the station made ready for operation within a specified time period (12 months for stations in the Multipoint Distribution Service; 18 months for stations in the Digital Electronic Message Services and Point-to-Point Microwave Radio Service), and (b) filing a certification of completion of construction with the Commission. If a licensee does not file a certification of construction completion within the prescribed time, the license will expire automatically. Although the rule changes will become effective 30 days after publication in the **Federal Register**, the one-step licensing procedure will not become effective until after OMB review of the new application forms. At that time a public notice will be issued to initiate the new processing procedures.

3. The Commission also modified its Rules regarding the information necessary to establish an applicant's financial ability to construct and operate its proposed facilities. In adopting a financial certification requirement, all applicants will attest that they have or will have sufficient resources to meet the expected costs of constructing the facilities and operating them for one year. Applicants also will have to indicate whether the FAA has been notified of proposed station construction, but a copy of the FAA study on potential hazard to aviation will no longer be required. Applicants will continue to be required to demonstrate that they will be able to use the site chosen for their radio facility prior to grant of a license. In addition, the Commission eliminated the requirement that applicants submit topographic maps in applications.

4. Changes to the frequency coordination procedures contained in § 21.100 were made to clarify the coordinating carrier's responsibilities to other carriers concerning when prior coordination is required, the parties to the coordination process, notification information, time periods, and computations. In addition, carriers will now have to certify to the Commission that for minor technical amendments or modifications, they have notified others with whom prior coordination was completed of those changes to their systems. A similar requirement was adopted for interference analyses by MDS and DEMS applicants and licensees.

5. The Commission also adopted a new procedure whereby an application for certain minor facilities modifications may be granted automatically on the twenty-first day after the application appears on public notice, unless the applicant is otherwise notified by the Commission. Other minor modifications will be permitted without prior authorization; however, notification to the Commission will be required.

6. The Commission also adopted a proposal to strengthen the requirements for obtaining an extension of the construction period. However, it did not adopt a proposal described in the NPRM to put requests for additional time to construct on public notice. The Commission also adopted a proposal that requires a licensee to submit its authorization for cancellation, if the radio facility is not used for twelve months. Under certain circumstances, licensees may obtain additional time to use the facility.

7. In the Digital Electronic Message Service the Commission generally eliminated the limited and extended network distinctions by, among other things, making all applicants eligible for any channel assignment. Other issues also were clarified, including multiple channel assignments, interference analyses, amending applications or modifying licenses for certain operational changes and station site relocations.

8. Finally, the Commission made several miscellaneous rule modifications. It eliminated certain technical and recordkeeping requirements that were thought to be no longer useful, and would reduce the burdens on licensees.

Ordering Clauses

9. Accordingly, it is ordered, that Part 21 of the Commission's Rules and Regulations is amended as specified below, effective November 9, 1987.

10. It is further ordered, that FCC Forms 435 and 436 are superseded by new FCC Forms 494 and 494A as set forth in Appendix B (not included here), subject to review by the Office of Management and Budget.

List of Subjects in 47 CFR Part 21

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

Rule Changes

Part 21 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 is revised to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

§ 21.0 [Removed]

2. Part 21 is amended by removing § 21.0.

3. Section 21.1 is added to read as follows:

§ 21.1 Scope and authority.

(a) The purpose of the rules and regulations in this part is to prescribe the manner in which portions of the radio spectrum may be made available for domestic communication common carrier and multipoint distribution service non-common carrier operations which require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

(b) The rules in this part are issued pursuant to the authority contained in Titles I through III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate common carriers of interstate and foreign communications, to regulate radio transmissions and issue licenses for radio stations, and to regulate all interstate and foreign communications by wire and radio necessary to the accomplishment of the purposes of the Act.

(c) Unless otherwise specified, the section numbers referenced in this part are contained in Chapter I, Title 47 of the Code of Federal Regulations.

4. Section 21.2 is amended by removing the definitions of "Auxiliary test station," "Extended network," "Inter-office station," "Limited network," "Mobile microwave auxiliary station," by removing the second "Fixed Station" entry, and by revising the following definitions to read in their proper order:

§ 21.2 Definitions.

As used in this part:

* * * * *

Antenna structures. The antenna, its supporting structure and anything attached to it.

* * * * * *

Authorized power. The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization.

* * * * * *

Carrier frequency. The output of a transmitter when the modulating wave is made zero.

* * * * * *

Digital electronic message service. A two-way domestic end-to-end fixed radio service utilizing digital termination systems for the exchange of digital information. This service may also make use of point-to-point microwave facilities, satellite facilities or other communications media to interconnect digital termination systems to comprise a network.

* * * * * *

Fixed station. A station at a fixed location.

* * * * * *

Frequency tolerance. The maximum permissible variation of the carrier frequency expressed as a percentage or in Hertz.

* * * * * *

Mobile station. A radio-communication station capable of being moved and which ordinarily does move.

* * * * * *

Necessary bandwidth of emission. For a given class of emission, the width of the frequency band that is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions.

* * * * * *

5. Section 21.3 is revised to read in its entirety as follows:

§ 21.3 Station authorization required.

(a) No person shall use or operate apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission. Except as otherwise provided herein, no construction or modification of a station may be commenced without an authorization from the Commission. Authorizations for domestic public fixed radio services are governed by the provisions of this part.

(b) A separate application form must be filed for each Digital Termination System Nodal Station. No license is required for a Digital Termination User Station. Authority for a Digital Termination Nodal Station licensee to serve a specific number of user stations to be licensed in the name of the carrier shall be requested on FCC Form 494 filed for the Digital Termination Nodal Station.

6. Section 21.5 is amended by revising paragraph (a) to read as follows:

§ 21.5 Formal and informal applications.

(a) Except for an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission shall grant the following authorizations only upon written application: Station licenses; modifications of station licenses; renewals of station licenses; extensions of time to construct; transfers and assignments of station licenses or of any rights thereunder.

* * * * *

§ 21.6 [Amended]

7. Section 21.6 is amended by removing the term "21.10," in paragraph (a) and by removing the words "for filing" in paragraph (b).

8. Section 21.7 is revised to read as follows:

§ 21.7 Standard application form for domestic public fixed radio service licenses.

FCC Form 494 ("Application for a New and Modified Microwave Radio Station License Under Part 21") shall be submitted and a license granted for each station prior to commencement of any proposed station construction. FCC Form 494 also shall be submitted to amend any license application, to modify any license pursuant to §§ 21.40(a) and 21.41, to notify the Commission of modifications made pursuant to § 21.42, and to delete licensed facilities. FCC Form 494A shall be submitted to certify completion of construction.

9. Section 21.11 is amended by revising paragraphs (a), (b), (d), (e) and (f) to read as follows:

§ 21.11 Miscellaneous forms shared by all domestic public radio services.

(a) *Licensee qualifications.* FCC Form 430 ("Domestic Mobile Service, Domestic Public Fixed Radio Services and Satellite Radio Licensee Qualification Report") shall be filed annually, no later than March 31 for the end of the preceding calendar year, by licensees for each radio service authorized under this part, if service was offered at any time during the preceding year. Each annual filing shall include all changes of information required by FCC Form 430 that occurred during the preceding year. In those cases in which there has been no change in any of the required information, the applicant or licensee, in lieu of submitting a new form, may so notify the Commission by letter. All multichannel Multipoint Distribution Service non-common carrier licensees shall annually file FCC Form 430.

(b) *Additional time to construct*—FCC Form 701 ("Application for Additional Time to Construct Radio Station") shall be filed in duplicate by a licensee prior to the expiration of the time for construction noted in a license if a licensee seeks to modify the license by extending the period of construction.

* * * * *

(d) *Assignment of license.* FCC Form 702 ("Application for Consent to Assignment of Radio Station Construction Permit or License for Stations in Services Other than Broadcasting"), shall be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment (or transfer of control) the application should be filed within 10 days of the event causing the assignment (or transfer of control). FCC Form 702 shall also be used for non-substantial (pro forma) assignments. In addition, FCC Form 430 ("Domestic Mobile Service, Domestic Public Fixed Radio Services, and Satellite Radio Licensee Qualification Report") shall be submitted by the proposed assignee unless such assignee has a current and substantially accurate report on file with the Commission. Whenever a group of station licenses in the same radio services are to be assigned to a single assignee, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. The assignment shall be completed within 45 days from the date of authorization. Upon consummation of an approved assignment, the Commission shall be notified by letter of the date of consummation within 10 days of its occurrence.

(e) *Partial assignment of license.* In the microwave services, authorization for assignment from one company to another of only a part or portions of the facilities (transmitters) authorized under an existing license (as distinguished from an assignment of the facilities in their entirety) may be granted upon application:

(1) By the assignee on FCC Form 494 and

(2) By the assignor on FCC Form 494 for deletion of the assigned facilities.

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indicating concurrence in the assignee's request.

The assignment shall be consummated within 45 days from the date of authorization. In the event that consummation does not occur, FCC Form 494 shall be submitted to return the assignor's license to its original condition.

(f) *Transfer of control of corporation holding a permit or license.* FCC Form 704 ("Application for Consent to Transfer of Control") shall be submitted in order to voluntarily or involuntarily transfer control (*de jure* or *de facto*) of a corporation holding any licenses. FCC Form 704 shall also be used for non-substantial (pro forma) transfers of control. In addition, FCC Form 430 ("Domestic Mobile Service, Domestic Public Radio Services, and Satellite Radio Licensee Qualification Report") shall be submitted by the proposed transferee unless said transferee has a current and substantially accurate report on file with the Commission. The transfer shall be completed within 45 days from the date of authorization. Upon consummation of an approved transfer, the Commission shall be notified by letter of the date of consummation within 10 days of its occurrence.

10. Section 21.13 is amended by removing the term "21.103," in paragraph (a)(6); by removing paragraph (f)(2) and the designation (1) in (f)(1), and by revising the introductory text of paragraph (a), and by revising paragraph (g) to read as follows:

§ 21.13 General application requirements.

(a) Each application for a license or for consent to assignment or transfer of control shall:

* * * * *

(g) Whenever an individual applicant, or a partner (in the case of a partnership) or a full time manager (in the case of a corporation) will not actively participate in the day-to-day management and operation of proposed facilities, the applicant or licensee will submit a statement containing the reasons therefor and disclosing the details of the proposed operation, including a demonstration of how control over the radio facilities will be retained by the applicant. If the operation of a radio station is to be accomplished by contractual arrangement with an entity unrelated to an applicant or licensee, the applicant or licensee shall file a copy of the agreement or contract which shall demonstrate that:

(1) The operation is accomplished according to general instructions provided for by the applicant;

(2) The applicant retains effective control over the radio facilities and their operations; and

(3) The applicant assumes full responsibility for both the quality of service and for contractor compliance with the Commission's Rules.

11. Section 21.15 is amended by removing paragraphs (f), (h), and (i); by redesignating paragraph (g) as paragraph (f); by removing paragraphs (e)(1), (e)(3) and (e)(5) and by redesignating (e)(2) and (e)(4) as (e)(1) and (e)(2); by removing the word "carrier" in new paragraph (e)(1) and replacing it with the word "licensee"; and by adding new paragraph (g) and by revising the introductory paragraph and paragraphs (a), (c) and (d) to read as follows:

§ 21.15 Technical content of applications.

Applications shall contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see Subparts C, F, G, I, J and K as appropriate). The following paragraphs describe a number of technical requirements.

(a) Applicants proposing a new station location (including receive-only stations and passive repeaters) shall indicate whether the station site is owned. If it is not owned, its availability for the proposed radio station site shall be demonstrated. Under ordinary circumstances this requirement will be considered satisfied if the site is under lease or under written option to buy or lease. Where any lease or agreement to use land limits or conditions in any way the applicant's access or use of the site to provide public service, a copy of the lease or agreement (which clearly indicates the limitations or conditions) shall be filed with the application.

* * * * *

(c) Each application involving a new or modified antenna supporting structure or passive facility, the addition or removal of an antenna, or the repositioning of an authorized antenna for a station or receive-only facility (except receive-only facilities in the Multipoint Distribution Service and the Digital Electronic Message Service) must be accompanied by a vertical profile sketch of the total structure depicting its structural nature and clearly indicating the ground elevation (above sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc.) and, if mounted on a building, its overall height above the building. The proposed antenna on the structure must be clearly identified and its height above-ground (measured to the center of radiation) clearly indicated.

(d) Each application proposing a new or modified antenna structure for a station (including a receive-only or passive repeater) so as to change its overall height shall indicate whether any necessary notification of the FAA has been made. Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in Part 17 of this chapter. See also § 21.111 if the structure is used by more than one station.

* * * * *

(g) Each application in the Point-to-Point Radio, Local Television Transmission, Multipoint Distribution Service and Digital Electronic Message Service (excluding user stations) proposing a new or replacement antenna (excluding omni-directional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC–ID number that indicates that the pattern is on file with the Commission.

12. Section 21.17 is revised to read as follows:

§ 21.17 Certification of financial qualifications.

Each application for a new license and each application for a major modification of an existing station shall contain a certification that the applicant has or will have the financial ability to meet the expected costs of constructing the facilities within the time allowed and the estimated operating expenses for a period of twelve months.

13. A new § 21.19 is added to read as follows:

§ 21.19 Waiver of rules.

Waivers of these rules may be granted upon application or on the Commission's own motion. A request for waiver shall contain a statement of reasons sufficient to justify a waiver. A waiver will not be granted except upon an affirmative showing that:

(a) The underlying purpose of the rule will not be served, or would be frustrated, by its application in the

particular case, and that grant of the waiver is otherwise in the public interest; or

(b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

14. In § 21.20 paragraph (b) is revised to read as follows:

§ 21.20 Defective applications.

* * * * *

(b) By way of illustration only, and not in any way limiting the scope of paragraph (a), the following are examples of common deficiencies which result in defective applications under paragraph (a):

(1) The application is not properly executed;

(2) The submitted filing fee (if a filing fee is required) is insufficient;

(3) The application does not demonstrate how the proposed radio facilities will serve the public interest, convenience or necessity;

(4) The application does not demonstrate compliance with the special requirements applicable to the radio service involved;

(5) The application does not demonstrate the availability of the proposed site of a new facility;

(6) The application does not include the environmental assessment required for any significant environmental impact under the Commission's environmental rules (Part 1, Subpart I);

(7) The application does not specify the polarization and, where applicable, the antenna orientation azimuth and distance;

(8) The application does not include all necessary exhibits;

(9) The application is filed after the cutoff date prescribed in § 21.31 of this part; or

(10) The application proposes the use of a frequency not allocated to such use.

* * * * *

§§ 21.21 and 21.22 [Amended]

15. Sections 21.21 and 21.22 are amended by removing the word "his" and inserting in its place the words "the applicant's" throughout those sections.

16. Section 21.23 is amended by revising paragraph (e) as follows:

§ 21.23 Amendment of applications.

* * * * *

(e) The applicant must serve copies of any amendments or other written communications upon the following parties:

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under §§ 21.504 and 21.902;

(2) Any applicant whose application has been found by the Commission, as published in a public notice, to be mutually exclusive with the application being amended; and

(3) Any party who has filed a petition to deny the application or other formal objection, when that petition or formal objection has not been resolved by the Commission.

* * * * *

§ 21.25 [Amended]

17. Section 21.25 is amended by removing the last sentence from paragraph (a) and by removing the term "§ 21.27(b)" from paragraph (b) and inserting in its place the term "§ 21.27(c)".

18. Section 21.26 is revised to read as follows:

§ 21.26 Receipt of applications.

Applications received by the Commission are given a file number for administrative convenience, which does not indicate the acceptance of the application for filing and processing. After preliminary review those applications covered by § 21.27(a) that appear complete will be put on public notice as accepted for filing. Neither the assignment of a file number nor the listing of the application on public notice as accepted for filing indicates that the application has been found acceptable for filing or precludes the subsequent return or dismissal of the application if it is found to be defective or not in substantial compliance with the Commission's rules.

19. Section 21.27 is revised to read in its entirety as follows:

§ 21.27 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of applications and major amendments thereto;

(2) Significant Commission actions concerning applications;

(3) The filing of certifications of completion of construction;

(4) The receipt of applications for minor modifications made pursuant to § 21.41;

(5) Information which the Commission in its discretion believes of public significance; and

(6) Special environmental considerations as required by Part 1 of this chapter.

(b) A public notice will not normally be issued for any of the following applications:

(1) For authorization of a minor technical change in the facilities of a proposed or authorized station where such a change would not be classified as a major amendment to a pending application, as defined by § 21.23, or as a minor modification to a license pursuant to § 21.41;

(2) For temporary authorization pursuant to § 21.25;

(3) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(4) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(5) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

(c) Except as otherwise provided in this Part (e.g., § 21.41), no application that has appeared on public notice will be granted until the expiration of a period of thirty days following the issuance of the public notice listing the application, or any major amendment thereto, or until the expiration of a period of thirty days following the issuance of a public notice identifying the tentative selectee of a random selection process, whichever is later.

20. Section 21.30 is amended by removing the words "21.33 and 1.821," in paragraph (a)(2) and inserting, in lieu thereof, the words "1.821–1.825"; by removing the term "§ 21.27(b)" in paragraph (b)(2) and inserting, in lieu thereof, the term "§ 21.27(c)"; and by revising paragraph (b)(3) to read as follows:

§ 21.30 Opposition to applications.

* * * * *

(b) * * *

(3) Any comments on, or objections to, the grant of an application when the comments or objections do not conform to either paragraph (a) of this section or other Commission rules and requirements.

* * * * *

21. Section 21.31 is amended by revising paragraph (e)(2) to read as follows:

§ 21.31 Mutually exclusive applications.

* * * * *

(e) * * *

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation pursuant to § 21.35, or by random selection pursuant to § 21.33 provided that the amendment does not create new or additional frequency conflicts;

* * * * *

22. Section 21.33 is revised to read as follows:

§ 21.33 Grants by random selection.

(a) If an application for a license in the Multichannel Multipoint Distribution Service (MMDS) or in the Digital Electronic Message Service (DEMS) is mutually exclusive with another such application and satisfies the requirements of § 21.31(b), the applicants may be included in the random selection process set forth in Part 1, §§ 1.821 through 1.825. Renewal applications shall not be included in a random selection process.

(b) If, after filing individual MMDS applications, mutually exclusive applicants enter into settlements that result in the formulation of a joint venture, such applicants will receive the cumulative number of lottery changes that the individual applicants would have had if no settlement had been reached.

§ 21.35 [Amended]

23. Section 21.35 is amended by replacing the word "his" with the words "the applicant's" in paragraph (b)(1)(i), by replacing the words "his attorney is so" with the words "the principal's attorney if" in paragraph (b)(1)(iii); and by replacing the term "his" with the term "that applicant's" in paragraph (b)(2)

24. A new heading "LICENSE TRANSFERS, MODIFICATIONS, CONDITIONS AND FORFEITURES" is added immediately after § 21.37 and a new § 21.38 is added as follows:

§ 21.38 Assignment or transfer of station authorization.

(a) No station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding any such license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval shall include any and all transactions that:

(1) Change the party controlling the affairs of the licensee, or

(2) Affect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership, or

(3) Transfer any vested or contingent interest in such part of the licensee which, if directly transferred, would be an immediate controlling interest in the licensee including but not limited to such interests as liens, mortgages, options, and powers of attorney.

(c) Requests for transfer of control or assignment authority shall be submitted on the application form prescribed by § 21.11 of this chapter, and shall be accompanied by the applicable showings required by §§ 21.13, 21.15, 21.17 and 21.39 of this chapter.

(d) The Commission shall be promptly notified in writing when a licensee is voluntarily or involuntarily placed in bankruptcy or receivership and when an individual licensee, a member of a partnership which is a licensee, or a person directly or indirectly in control of a corporation which is a licensee, dies or becomes legally disabled. Within thirty days after the occurrence of such bankruptcy, receivership, death or legal disability, an application of involuntary assignment of such license, or involuntary transfer of control of such corporation, shall be filed with the Commission, requesting assignment or transfer to a successor legally qualified under the laws of the place having jurisdiction over the assets involved.

(e) The assignor of a station licensed under this part may retain no right of reversion or reassignment of the license and may not reserve the right to use the facilities of the station for any period whatsoever. No assignment of license will be granted or authorized if there is a contract or understanding, express or implied, pursuant to which a right of reversion or reassignment of the license or right to use the facilities are retained as partial or full consideration for the assignment or transfer.

(f) No special temporary authority, or any rights thereunder, shall be assigned or otherwise disposed of, directly or indirectly, voluntarily or involuntarily, without prior Commission approval.

§ 21.39 [Removed]

§ 21.40 [Redesignated as § 21.39 and amended]

25. Section 21.39 is removed and § 21.40 is redesignated as § 21.39. New § 21.39 is amended by removing from paragraph (a) the words "or construction permits", "construction permit or", "permittee or", "or permittee", and "permit or"; by removing from paragraph (c)(1) the words "construction permit," and inserting in their place "license," and by removing from paragraph (c)(2) the words "construction permit or" and "permittee or".

26. Sections 21.40, 21.41, and 21.42 are added as follows:

§ 21.40 Modification of station license.

(a) Except as provided in §§ 21.41 and 21.42, no modification of a license issued pursuant to this part (or the facilities described thereunder) shall be made except upon application to the Commission and upon finding by the Commission that:

(1) Such modification will promote the public interest, convenience and necessity, or

(2) That the provisions of the Communications Act of 1934 or of any treaty ratified by the United States will be more fully complied with if such application is granted.

(b) No application for modification to extend a license construction period will be granted for delays caused by lack of financing or for lack of site availability. Applications for time extensions for other reasons must include a verified statement from the application showing that the licensee has made diligent efforts to construct the facilities and:

(1) That additional time is required due to circumstances beyond the applicant's control, in which case the applicant must describe such circumstances and must set forth with specificity and justify the precise extension period requested; or

(2) That there are unique and overriding public interest concerns that justify such an extension, in which case the applicant must identify such interests and must set forth and justify a precise extension period.

(c) Notwithstanding the provisions of paragraph (b), when a station license has been assigned or transferred pursuant to § 21.38, any extension of time will be limited so that the time left to construct after Commission grant of the transfer or assignment will be no more than the time remaining for construction at the date of the filing of the application for transfer or assignment.

§ 21.41 Special processing of applications for minor facility modifications.

(a) Unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b)

of this section and proposes only the change specified in paragraph (c) of this section shall be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Point-to-Point Microwave Radio, Local Television Transmission, Digital Electronic Message or Multipoint Distribution Services;

(2) The cumulative effect of all such applications made within any 60 days period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within thirty-five miles of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section; and

(6) Frequency coordination procedures, as necessary, are complied with in accordance with § 21.100(d) or, in the Multipoint Distribution and Digital Electronic Message Services, a copy of the application has been served on those who also were served under §§ 21.902 and 21.504.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In all radio services other than Multipoint Distribution Service and Digital Electronic Message Service, any increase in transmitter output power is less than three dB over the previously authorized output power; and in the Multipoint Distribution Service and Digital Electronic Message Service, any increase in transmitter output power is one and one-half dB or less over the previously authorized output power;

(ii) The necessary bandwidth is not increased by more than 10% of the previously authorized necessary bandwidth;

(2) Changes in the height of an antenna, provided that:

(i) In all radio services except Multipoint Distribution Service and Digital Electronic Service, any increase in antenna height is less than twenty feet above the previously authorized height;

(ii) In Multipoint Distribution Service and Digital Electronic Message Service, any increase in antenna height is less than ten feet above the previously authorized height; and

(iii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is twenty feet or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station, receive station or passive facility by ten seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by Part 17 of the rules for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of § 21.15(d).

(4) An increase in the number of Digital Termination user stations.

(d) Upon grant of an application under the procedure of this section and at such time that construction begins, the applicant must keep a complete copy of the application (including the filing date) with the station license if construction is commenced prior to the receipt of the authorization.

§ 21.42 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if the replacement equipment is identical (i.e., same manufacturer and model number) with the replaced equipment.

(b) Licensees of fixed stations in the Point-to-Point Microwave Radio, Local Television Transmission, Digital Electronic Message, or Multipoint Distribution Services may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) Frequency coordination procedures, as necessary, are complied with in accordance with § 21.100(d) or, in the Multipoint Distribution and Digital Electronic Message Services, a copy of the notification described in (b)(3) is served on those who were served under §§ 21.902 and 21.504, and

(2) The cumulative effect of all facility changes made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section, and

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 494 within thirty days after the changes are made.

(c) Modifications that may be made without prior authorization under paragraph (b) of this section are:

(1) Change or modification of a transmitter, when:

(i) The replacement or modified transmitter is type-accepted (or type-notified) for use under this Part and is installed without modification from the type-accepted (or type notified) configuration;

(ii) The type of modulation is not changed;

(iii) The frequency stability is equal to or better than the previously authorized frequency stability; and

(iv) The necessary bandwidth and the output power do not exceed the previously authorized values.

(2) Addition or deletion of a transmitter for protection without changing the authorized power output (e.g. hot standby transmitters);

(3) Change to an antenna (other than any change involving a periscope antenna system), when:

(i) For the Point-to-Point Microwave Radio and Local Television Transmission Services, the new antenna conforms to the requirements of § 21.108 and has essentially the same or better radiation characteristics than the previously authorized antenna;

(ii) For the Multipoint Distribution Service and Digital Electronic Message Service, the new antenna conforms with § 21.906 and the gain of the new antenna does not exceed that of the previously authorized antenna by more than one dB in any direction.

(4) Any technical changes that would decrease the effective radiated power.

(5) Change to the height of an antenna, when:

(i) The new height (measured at the center-of-radiation) is within ± five feet of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is twenty feet or less (above ground or man-made structure, as appropriate) after the change is made.

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by Part 17 of the Rules for the antenna structure at the previously authorized height, the applicant must comply with the provisions of § 21.15(d).

(7) Changes in the azimuth of the center of the main lobe of radiation of a point-to-point station's antenna by a maximum of one degree.

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(8) Changes to the transmission line and other devices between the transmitter and the antenna when the effective radiated power of the station is not increased by more than one dB.

(d) Licensees may correct erroneous information on a license which does not involve a major change (i.e., a change that would be classified as a major amendment as defined by § 21.23) without obtaining prior Commission approval by filing a completed FCC Form 494.

27. Sections 21.43 and 21.44 are revised to read as follows:

§ 21.43 Period of construction; certification of completion of construction.

(a) Each license for a radio station for the services included in this Part shall specify as a condition therein the period during which construction of facilities will be completed and the station made ready for operation. Construction may not commence until the grant of a license, and must be completed by the date specified in the license as the termination date of the construction period. Except as may be limited by § 21.45(b) or otherwise determined by the Commission for any particular application, the following shall be the maximum construction periods for each service:

(1) For stations in the Point-to-Point Microwave Radio and Digital Electronic Message Service, a maximum of 18 months from the date of the license grant;

(2) For all other stations licensed under this Part, a maximum of 12 months from the date of the license grant.

(b) Each license for a radio station for the services included in this part shall also specify as a condition therein that upon the completion of construction, each licensee must file with the Commission a certification of completion of construction using FCC Form 494A, certifying that the facilities as authorized have been completed and that the station is now operational and ready to provide service to the public, and will remain operational during the license period, unless the license is submitted for cancellation.

§ 21.44 Forfeiture and termination of station authorization.

(a) A license shall be automatically forfeited in whole or in part without further notice to the licensee upon:

(1) The expiration of the construction period specified therein, or after such additional time as may be authorized by the Commission, unless within 5 days after that date certification of completion of construction has been filed with the Commission pursuant to § 21.43;

(2) The expiration of the license period specified therein, unless prior thereto an application for renewal of such license has been filed with the Commission; or

(3) The voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) A license forfeited in whole or in part under the provisions of paragraph (a)(1) or (a)(2) may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement filed pursuant to this subsection will be considered only if:

(1) The petition is filed within 30 days of the expiration date set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable;

(2) The petition explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization shall automatically terminate upon the expiration date specified therein, or upon failure to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only after application and upon specific authorization by the Commission.

28. Section 21.100(d) is amended by removing current paragraphs (7) and (8); by redesignating paragraphs (1), (2), (3), (4), (5), (6), (9), (10) and (11) as (2)(i), (2)(ii), (2)(iii), (2)(iv), (2)(v), (2)(vi), (2)(viii), (2)(ix) and (2)(x); by adding new paragraphs (d)(1), (d)(2) introductory text and (2)(vii); by revising the introductory text of paragraph (d), and by revising paragraphs (2)(ii), (2)(viii) and (2)(x) to read as follows:

§ 21.100 Frequencies.

* * * * *

(d) *Frequency coordination.* When required by the rules governing a service, the following frequency usage coordination procedures shall apply.

(1) *General requirements.* Proposed frequency usage shall be prior coordinated with existing users in the area and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference or restricted ultimate system capacity. Coordination shall be completed prior to filing an application for regular authorization or an amendment to a pending application or a modification to a license when the proposed change is defined as "major" by the rules governing the service or is one reasonably expected to cause interference in excess of permissible levels for the service(s) involved. In coordinating frequency usage with stations in the fixed satellite service, applicants shall also comply with the requirements of § 21.706(c) and (d). In engineering a system or modification thereto, the applicant shall by appropriate studies and analyses select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems that are likely to need additional capacity in the foreseeable future. The applicant shall identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved or if the existing licensee, or applicant does not repond to coordination efforts within 30 days after notification, an explanation shall be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof shall be contained in the application.

(2) *Coordination procedure guidelines.* The following guidelines are applicable to the coordination process.

* * * * *

(ii) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Applicant's name.
Transmitting station name.
Transmitting station coordinates.
Frequencies and polarizations to be added or changed.
Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading).

Transmitting antenna type of model and, if required, a typical pattern and maximum gain.
Transmitting antenna height above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station coordinates.
Receiving antenna type and model and, if required, a typical pattern and maximum gain.
Receiving antenna height above ground level and ground elevation above mean sea level.
Path azimuth and distance.

(vii) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified. When changes are not numerous or complex, the carrier receiving the changed notification should make an effort to respond in less than 30 days. When the notifying carrier believes a shorter response time is reasonable and appropriate, it may be helpful for that carrier to so indicate in the notice and perhaps suggest a response date.

(viii) If, after coordination is successfully completed, it is determined that a subsequent change could have no impact on some carriers receiving the original notification, it is not necessary to coodinate the change with such carriers. However, these carriers shall be notified of the change and the opinion that coordination is not required for such change.

* * * * *

(x) Carriers should keep other carriers with whom they are coordinating advised of changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was initiated, carriers may assume that such frequency use is no longer desired unless a second notification has been received within 10 days of the end of the 6 month period. Renewal notifications are to be sent to all originally notified parties, even if coordination has not been successfully completed with those parties.

* * * *

§§ 21.102 through 21.104 [Removed and reserved]

29. Sections 21.102, 21.103, and 21.104 are removed and reserved.

30. Section 21.107 is amended by revising the table and notes in paragraph (b) and revising paragraph (c) to read as follows:

§ 21.107 Transmitter power.

* * * * *

(b) * * *

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	[illegible] (W)	Fixed (dBW)	[illegible] (dBW)
2,110 to 2,130	20.0			
2,150 to 2,160	[1]20.0		+45	
2,160 to 2,180	[1]20.0			
2,500 to 2,686	[1]10.0			
2,686 to 2,690	0.25			
3,700 to 4,200	20.0			
5,925 to 6,425	20.0		+55	
6,425 to 6,525		20.0		+35
10,550 to 10,565	10.0			
10,615 to 10,630	10.0		[2]	
10,700 to 11,200	10.0			
12,200 to 13,250	10.0	10.0		
17,700 to 18,600	10.0		+55	
18,600 to 18,800	[3]10.0		+35	
18,800 to 19,700	10.0		+55	
21,200 to 23,600	10.0		+50	
27,500 to 29,500	10.0		55	
31,000 to 31,300	0.05	0.05		
38,600 to 40,000	10.0	1.5	50	

[1] In the bands 2,150–2,162 MHz and 2,500–2,690 MHz, when used for the Multipoint Distribution Service, up to 100 watts may be authorized pursuant to Section 21.904.
[2] The EIRP of stations in the 10,600–10,680 MHz band must not exceed +40 dBW.
[3] The power delivered to the antenna is limited to −3 dBW.

(c) The power of each transmitter shall be maintained as near as practicable to the power input or output specified in the instrument of station authorization.

§ 21.108 [Amended]

31. Section 21.108 is amended by removing the words "§ 21.109(c)" in paragraph (c) and inserting in their place the words "§ 21.109(b)".

§ 21.109 [Amended]

32. Section 21.109 is amended by removing paragraphs (b) and (d), and by redesignating paragraph (c) as (b).

33. Section 21.110 is revised to read as follows:

§ 21.110 Antenna polarization.

Stations operating in the radio services included in this part are not limited as to the type of polarization of the radiated signal, provided, however, that in the event interference in excess of permissible levels is caused to the operation of other stations the Commission may, after notice and opportunity for hearing, order the licensee to change the polarization of the radiated signal. No change in polarization shall be made without prior authorization from the Commission.

34. Section 21.111 is amended by removing the terms "permittee," and "and § 21.109(b)" and by revising the title to read as follows:

§ 21.111 Simultaneous use of common antenna structures.

* * * * *

35. Section 21.113 is amended by revising the table in paragraph (b) to read as follows:

§ 21.113 Quiet zones.

* * * * *

(b) * * *

Frequency range	[illegible] strength (mV/m) [illegible] author-[illegible] band-width of [illegible]	Power flux density [1] (dbW/m2) [illegible] authorized [illegible] of service
Below 540 kHz	10	−65.8
540 to 1600 kHz	20	−59.8
1.6 to 470 MHz	10	[2] −65.8
470 to 890 MHz	[illegible]	[2] −54.2
Above 890 MHz	1	[2] −85.8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7=120π ohms.
[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

* * * * *

§ 21.116 [Amended]

36. Section 21.116 is amended by removing the phrase "the preparation of the profile graphs described in § 21.115, and in" from the first sentence, and by removing the sentence "Ordinarily, the Commission will not require the submission of topographical maps for areas beyond 15 miles from the antenna site, but the maps must include the principal community to be served."

§ 21.118 [Amended]

37. Section 21.118 is amended by removing the last sentence in paragraph (a); by removing the words "(See also §§ 21.508(e) and 21.605(d).)" from paragraph (b), by removing the words ", other than a hand-carried or pack-carried transmitter," from paragraph (c); and by removing the words "*Provided, however,* That the provisions of this paragraph shall not apply to hand-carried or pack-carried transmitters." from paragraph (e)(1).

§ 21.121 [Removed and reserved]

38. Section 21.121 is removed and reserved.

§ 21.200 [Amended]

39. Section 21.200 is amended by removing the words "and station records".

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40. Section 21.201 is revised to read as follows:

§ 21.201 Posting of station authorization information.

Each licensee shall post at the station the name, address and telephone number of the custodian of the station license or other authorization if such license or authorization is not maintained at the station.

§§ 21.204 through 21.208 [Removed and reserved]

41. Sections 21.204, 21.206, 21.207 and 21.208 are removed and reserved.

§ 21.210 [Amended]

42. Section 21.210 is amended by removing the words "and to the Engineer in Charge of the radio district in which the station is located," and by removing the words "and the Engineer in Charge".

§§ 21.212 and 21.213 [Removed and reserved]

43. Sections 21.212 and 21.213 are removed and reserved.

§ 21.214 [Amended]

44. Section 21.214 is amended by removing the term "21.611" in the last sentence.

§ 21.300 [Removed and reserved]

45. Section 21.300 is removed and reserved.

46. Section 21.303 is amended by removing the words ", and the Commission's Engineer in Charge of the radio district in which the station is located" from paragraph (a), by removing the second sentence from paragraph (b), by removing the second sentence from paragraph (c), and by adding a new paragraph (d) to read as follows:

§ 21.303 Discontinuance, reduction or impairment of service.

* * * * *

(d) If any radio frequency should not be used to render any service as authorized during a consecutive period of twelve months at any time after construction is completed and a certification of completion of construction has been filed, under circumstances that do not fall within the provisions of paragraph (a), (b) or (c) of this section, or, if removal of equipment or facilities has rendered the station not operational, the licensee shall, within thirty days of the end of such period of nonuse:

(1) Submit for cancellation the station license (or licenses) to the Commission at Washington, DC 20554;

(2) File an application for modification of the license (or licenses) to delete the unused frequency (or frequencies); or

(3) Request waiver of this rule and demonstrate either that the frequency will be used (as evidenced by appropriate requests for service, etc.) within six months of the end of the initial period of nonuse, or that the frequency will be converted to allow rendition of other authorized public services within one year of the end of the initial period of nonuse by the filing of appropriate applications within six months of the end of the period of nonuse.

If any frequency authorization is cancelled under this paragraph, the Commission will declare by public notice the frequency (or frequencies) vacated.

47. Section 21.304 is revised to read as follows:

§ 21.304 Tariffs, reports, and other material required to be submitted to the Commission.

Sections 1.771 through 1.815 of this chapter contain summaries of certain materials and reports, including schedule of charges and accounting and financial reports, which, when applicable, must be filed with the Commission.

§ 21.306 [Amended]

48. Section 21.306 is amended by removing the words "permittees and" from the title and from the first sentence.

49. Section 21.401 is amended by removing from paragraph (a) the words "construction permits" and inserting, in lieu thereof, the word "licenses"; and by revising paragraph (b) to read as follows:

§ 21.401 Scope of service.

* * * * *

(b) The testing of existing or authorized antennas, wave guides, or transmission paths.

§ 21.402 [Amended]

50. Section 21.402 is amended by removing the term "construction permit or" from the section.

§ 21.403 [Amended]

51. Section 21.403(b) is amended by removing the words "construction permits for".

52. Section 21.405 is amended by revising paragraph (a) to read as follows:

§ 21.405 Supplementary showing required.

(a) Authorizations for development of a proposed radio service in the services included in this part will be issued only upon a showing that the applicant has a definite program of research and development, the details of which shall be set forth, which has reasonable promise of substantial contribution to these services within the term of such authorization. A specific showing should be made as to the factors which qualify the applicant technically to conduct the research and development program, including a description of the nature and extent of engineering facilities that the applicant has available for such purposes.

* * * * *

53. Section 21.500 is revised to read as follows:

§ 21.500 Eligibility.

Authorization for Digital Termination Systems may be granted to existing and proposed communications common carriers. Applications will be granted only in cases in which the applicant establishes it is legally, technically, financially and otherwise qualified to render the services proposed and that the public interest, convenience and necessity would be served by such a grant. Each application will identify the Standard Metropolitan Statistical Area (SMSA) within which boundaries the DTS nodal station will be constructed and which the facility will serve.

§ 21.501 [Amended]

54. Section 21.501 is amended by removing the term "§ 21.7(c)" and inserting in its place "§ 21.7."

55. Section 21.502 is amended by removing current paragraphs (e)(2) and (f); by removing from paragraph (b) the words "Extended network assignments" in the first sentence and inserting in their place "Assignments"; by removing from paragraph (c) the words "Limited network assignments" in the first sentence and inserting in their place "Assignments" and by removing the words "Limited network" in the second sentence; by redesignating paragraphs (b), (c), (d), (e), (g) and (h) as (d), (e), (f), (g), (h), and (i); and by revising paragraph (a) and new paragraph (g) and adding new paragraphs (b) and (c) to read as follows:

§ 21.502 Frequencies.

(a) Frequencies in the bands 10,550–10,680 MHz and 17,700–19,700 MHz are available for assignment for all DEMS applicants. Assignments will consist of a pair of channels as set out in paragraphs (b), (c), (d) and (g) of this section plus internodal channels as set out in paragraphs (f) and (i) of this section

Note: New applications for the assignment of channel nos. 4, 7, 9 and 19/20 in the 10,500–10,680 MHz band that have been reallocated for private DTS stations will not be accepted after September 9, 1983. Existing licensees and pending applicants are permitted to submit applications for renewal and for additional nodal and associated user stations within the SMSA for which they have applied or have been authorized for use. Applications for the assignment of frequencies in the 17,700–19,700 MHz band as indicated in paragraph (h) will be accepted only for channels 6–A, 6–B, 7–A, 7–B, 8–A, 8–B, 9–A, 9–B, 10–A, and 10–B. Channel Nos. 1–A through 5–A and 1–B through 5–B are available for assignment to private DTS stations under Part 94 rules.

(b) Applicants and licensees in the 10 GHz band may apply for an additional channel pair in that band provided the proposed channel assignments, when aggregated with any previously proposed or granted channel assignment in the 10 GHz band, would not result in the applicant or licensee being granted more than 5 MHz of bandwidth in the 10 GHz band in the SMSA, excluding internodal channels.

(c) Except as provided in (b), licensees may apply for an additional channel pair in an SMSA only when it is operating its previously authorized DTS at or near the expected capacity and the service to be provided will fully utilize all spectrum requested.

* * * * *

(g) The bands 10,585–10,600 MHz and 10,650–10,665 MHz will be available for applicants when all the available channels have been assigned or when applications have been accepted for all available channels. Assignments in these bands will be according to the following plan:

CHANNEL GROUP A

Channel No.	Frequency band limits MHz
19–A	10 585.0–10 587.5
20–A	10 587.5–10 590.0
21–A	10 590.0–10 592.5
22–A	10 592.5–10 595.0
23–A	10 595.0–10 597.5
24–A	10 597.5–10 600.0

CHANNEL GROUP B

Channel No.	Frequency band limits MHz
19–B	10 650.0–10 652.5
20–B	10 652.5–10 655.0
21–B	10 655.0–10 657.5
22–B	10 657.5–10 660.0
23–B	10 660.0–10 662.5
24–B	10 662.5–10 665.0

Licensees will be assigned one pair of channels from Group A and the corresponding pair of channels from Group B. These channels may be adjacent, if available as such. The channel from Group A will be used for the Digital Termination Nodal Station transmitter and the channel from Group B will be used for Digital Termination User Station transmitter. Each pair of channels if adjacent may be used as a single channel if licensees comply with technical standards for use of a single 5 MHz channel. Assignments will start with channels 19 and 20 and proceed upward.

* * * * *

§ 21.504 [Amended]

56. Section 21.504 is amended by removing from paragraph (a) the words "Licensees, permittees" and by inserting in their place "Licensees".

§ 21.512 [Removed and reserved]

57. Section 21.512 is removed and reserved.

58. Section 21.700 is revised to read as follows:

§ 21.700 Eligibility.

(a) Authorizations for stations in this service will be issued to existing and proposed common carriers. Applications will be granted only in cases in which it is shown that:

(1) The applicant is legally, technically, financially and otherwise qualified to render the proposed service;

(2) There are frequencies available to enable the applicant to render a satisfactory service; and

(3) The public interest, convenience, and necessity would be served by a grant thereof.

(b) If the content is originated, selected, controlled, or otherwise substantively influenced by the applicant, licensee, or a closely affiliated entity, no station or radio frequency in this service will be authorized, or may be utilized, to transmit any closed circuit television signals or television signals other than broadcast television signals, unless:

(1) Such service is otherwise permitted for a specific length of time by grant of an acceptable petition for waiver of this rule; or

(2) Such service is otherwise permitted by a condition in the applicable instrument of authorization; or

(3) Such service is provided pursuant to applicable FCC tariff and is temporary and occasional intra-company television communication for management, network supervision, or other internal carrier functions.

For purposes of this paragraph, an entity will be considered to be "closely affiliated" with an applicant if it is in a parent-subsidiary relationship, or both are commonly controlled, or they have any common officers or management employees.

(c) Applications for stations or frequencies that will be used primarily to relay broadcast television signals must include a demonstration (including appropriate system diagrams and tables) that at least fifty percent of the customers (or points of service) on the microwave system involved, including those served through an interconnecting carrier(s), receiving applicant's service, will not be related or affiliated in any degree with the applicant, and that the proposed usage by such customers, in terms of hours of use and channels delivered, shall constitute at least fifty percent of the usage of the applicant's microwave service. Applications that do not contain these demonstrations will be returned as unacceptable for filing.

59. Section 21.704 is revised to read as follows:

§ 21.704 Modulation requirements.

When amplitude modulation is used, the modulation percentage shall be sufficient to provide efficient communication, and shall normally be maintained above 70 percent on peaks but shall not exceed 100 percent on negative peaks.

60. Section 21.706 is amended by redesignating current paragraphs (c) and (d) as (d) and (e), and by adding new paragraph (c) to read as follows:

§ 21.706 Supplementary showing required with applications.

* * * * *

(c) All applicants for regular authorization under this subpart shall, before filing an application, amendments to a pending application or modifications to a license, prior coordinate the proposed frequency usage with existing users in the area and other applicants with previously filed applications in accordance with the procedures in § 21.100(d) except that stations authorized under § 21.707 may complete the prior coordination process orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

* * * * *

§ 21.707 [Amended]

61. Section 21.707 is amended by removing the words "applications (FCC Forms 401 and 403)" in paragraph (a)(2) and inserting in lieu thereof the words "an application (FCC Form 494)" and by removing the words "FCC Form 401, and may be accompanied by completed FCC

Form 403 for a simultaneous consideration provided the equipment to be used is of 'packaged' design" in paragraph (b) and inserting in lieu thereof "FCC Form 494."

62. Section 21.708 is amended by removing the words ", and its Engineer in Charge of the radio district wherein operation is to be conducted," from paragraph (a), by removing the words "and its Engineer in Charge" from paragraph (a)(6), and revising paragraph (a)(7) and paragraph (c) to read as follows:

§ 21.708 Notification of station operation at temporary fixed locations.

(a) * * *

(7) A notification shall include compliance with the provisions of § 21.706 (c) when operations are to be conducted in the area of other terrestrial microwave stations and with the provisions of § 21.706(c) and (d) when operations are to be conducted within the coordination distance contours of a fixed earth station.

* * * * *

(c) A copy of the notification shall be kept with the station license.

63. Section 21.709 is amended by removing paragraphs (b) and (d), by redesignating paragraph (c) as new paragraph (b), and by revising paragraph (a) to read as follows:

§ 21.709 Renewal of station licenses.

(a) An application for renewal of a station license in the Point-to-Point Microwave Radio Service primarily used to relay television signals shall contain:

(1) A statement that such use complies with § 21.700(b); and

(2) The demonstration required by § 21.700(c). Applications that do not contain these items as appropriate will be returned as unacceptable for filing.

§ 21.711 [Amended]

64. Section 21.711 is amended by removing paragraphs (b) and (c), paragraphs (d), (e) and (f) are redesignated paragraphs (b), (c) and (d), new paragraph (b) is amended by removing the words "and a copy of the notification provided to the Engineer in charge"; and new paragraph (c) is amended by removing the words "and the Engineer in Charge".

§ 21.713 [Removed and reserved]

65. Section 21.713 is removed and reserved.

66. Section 21.806 is amended by revising paragraph (a) to read as follows:

§ 21.806 Remote control operation of mobile telephone pickup stations.

(a) Mobile television pickup stations (including nonbroadcast) may be operated by remote control from the fixed locations for periods not to exceed 6 months.

* * * * *

67. Section 21.807 is amended by removing the words "applications (FCC Forms 401 and 403)" in paragraph (a)(2) and inserting in their place "application FCC Form 494" and by revising paragraph (b) to read as follows:

§ 21.807 Stations at temporary fixed locations.

* * * * *

(b) Applications for authorizations to operate stations at temporary locations under the provisions of this section may be made upon FCC Form 494. Blanket applications may be submitted for the required number of transmitters.

* * * * *

68. Section 21.808 is amended by removing the words "and its Engineer in Charge" from paragraph (a)(6), by revising the introductory text of paragraph (a)(8) as follows:

§ 21.808 Notification of station operation at temporary locations.

(a) The licensee of stations authorized pursuant to § 21.807 shall notify the Commission prior to each period of operation. This notification may be oral or written and shall include:

* * * * *

(8) A notification shall include compliance with the provisions of § 21.807(c).

(b) A copy of the notification shall be kept with the station license.

§ 21.809 [Amended]

69. Section 21.809 is amended by removing the designations "(c) and (d)" and inserting in lieu thereof the term "(d) and (e)".

70. Section 21.906 is amended by removing from paragraph (a) the term "directive" and inserting, in lieu thereof, the term "directional"; and by adding a new last sentence at the end of paragraph (a), as follows:

§ 21.906 Antennas.

(a) * * * When an applicant proposes to employ a directional antenna, the applicant shall provide the Commission with information regarding the orientation of the directional antenna, expressed in degree of azimuth, with respect to true north.

* * * * *

§ 21.909 [Amended]

71. Section 21.909 is amended by removing paragraphs (b)(2), (b)(3) and (b)(4) and by redesignating paragraph (b)(5) as (b)(2).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-23513 Filed 10-8-87; 8:45 am]

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47 CFR Part 73

[MM Docket No. 86-144; FCC 87-296]

Broadcast Services; Review of Technical Parameters for FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The method that the FCC uses to classify FM broadcast stations on the basis of effective antenna height and transmitting power is codified. The required procedures for predicting FM broadcast station coverage and calculating the distance between two points are modified for increased accuracy. Permissible modifications for certain grandfathered short-spaced FM broadcast stations are limited to those which do not increase the risk of interference. These actions are necessary to address certain technical discrepancies resulting from an earlier action that increased the number of FM broadcast station classes, and to update and modernize required procedures.

EFFECTIVE DATE: November 9, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's *Second Report and Order*, MM Docket 86-144, adopted September 10, 1987 and released September 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Act of 1980, 5 U.S.C. 604, a final regulatory

flexibility analysis has been prepared. It is available for public viewing as a part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Summary of the Second Report and Order

1. The Commission initiated this proceeding in April 1986 by adopting a *Notice of Proposed Rule Making (Notice)* proposing to amend rules that were affected by BC Docket No. 80–90, but were not given detailed consideration in that proceeding. The Commission also proposed a new method for classifying stations that would allow a continuous range of permissible FM facilitics. More than 400 parties filed comments or reply comments in response to the *Notice*. Earlier this year the Commission adopted a *First Report and Order* resolving two of the matters proposed in the *Notice*.

2. The *Notice* illustrated how some reasonable combinations of antenna height above average terrain (HAAT) and effective radiated power (ERP) do not conform to the maximum and minimum requirements of the Commission's rules for any of the six classes of FM broadcast stations. To rectify this problem, a new "index" method for classifying FM broadcast stations was proposed. The index method would also replace the "equivalence method" currently mandated for overheight power reduction and serve as an alternative to the minimum power requirements for each class.

3. In order to license FM stations efficiently, the Commission must be able to classify them rapidly and accurately. The principal goal of the index method proposal was to provide a clear-cut means of classifying FM stations according to their antenna HAAT and ERP. However, it was determined that the power reduction formulas derived from the proposed method do not track the propagation curves in the rules with sufficient accuracy. Furthermore, it now appears that the index method could easily be misunderstood or incorrectly applied.

4. Therefore, the Commission is not adopting the index method. Instead, the Commission is amending its rules to provide a detailed explanation of the method used to classify FM broadcast stations since the effective date of Docket 80–90. This method first looks to the maximum and minimum ERP and HAAT limits in the rules, and then, for only those stations that fall outside of those limits, uses the distance to the 1 mV/m field strength contour, rounded to the nearest kilometer (the "reference distance") to determine the station class. Exceptions to the minimum power requirements are provided for stations with large effective antenna heights and stations whose reference distance exceeds the class contour distance for the next lower class.

5. To bring its rules up-to-date with changing technology and current engineering practices, the Commission is amending the rules to require that prediction of coverage be determined using the maximum ERP of the main radiated lobe of the FM station's antenna, regardless of the orientation of that lobe. This will result in an improvement in accuracy and will allow the effects of beam-tilt antennas to be reflected in coverage predictions.

6. The Commission's rules specify, by station class, the minimum distance that each FM station must be separated from other FM stations that operate on frequencies separated by 10.6 or 10.8 MHz in order to reduce the probability of intermodulation interference in FM receivers. In Docket 80–90, the Commission applied the existing IF separation distances for the large Class B and C stations to the new intermediate size classes B1, C2, and C1. Consequently, stations in these new classes must meet the same separations as the largest stations, limiting their flexibility in choice of antenna sites. Thus, in the *Notice*, the Commission proposed reductions in the required spacing for the new classes.

7. Based on the record before it, the Commission finds that adoption now of the reduced separation distances proposed for the new classes would be premature. Although not changing the IF separations for the new classes at this time, the Commission continues to believe that reduction of these separations is appropriate. Accordingly, after reviewing and analyzing the IF interference susceptibility test data obtained in its laboratory, the Commission plans to issue a Further Notice of Proposed Rule Making in this proceeding looking toward such a relaxation.

8. The Commission's rules provide a table of routinely permissible modifications that apply only to FM stations authorized prior to November 16, 1964 at locations that did not then and still do not meet the minimum separation distances. Some of these grandfathered short-spaced stations were reclassified to Class C1, C2 or B1, as a result of Docket 80–90. However, the table does not contain provisions for the new classes. In the *Notice*, it was proposed to replace the table and the current rule text with a single paragraph that would permit grandfathered short-spaced stations to be modified or relocated, provided that the 1 mV/m field strength contours are not extended toward the 1 mV/m contours of any short-spaced station.

9. Grandfathered short-spaced stations have had 22 years to take advantage of § 73.213 of the rules to optimize their facilities. The Commission believes that continuing to allow these stations to routinely modify their facilities in ways that increase the risk of interference is not in the public interest. Therefore, the Commission is adopting its proposal. The Commission will continue, however, to consider mutual agreements between these grandfathered short-spaced stations for facilities increases when it is shown that the public interest would be served.

10. The Notice proposed to revise coefficients in the distance calculation equations in § 73.208 of the rules. Some precision in these coefficients was inadvertantly lost when the equations were converted to metric and truncated. The Commission is adopting the more precise coefficients for distance calculation.

11. Finally, the Commission is adopting editorial amendments that (1) specify more clearly the area constituting a quiet zone in Boulder County, Colorado as a box bounded by particular latitude and longitude lines, rather than as the "vicinity" of a specified point; and (2) amend the rule permitting replacement of the transmitting antenna of an FM (or TV) broadcast station without prior Commission authorization in order to clarify that it is intended only for those situations in which there is no change in the coverage characteristics.

12. Applications received prior to the effective date of these rules will be processed in accordance with the rules most advantageous to the applicant.

13. Authority for the action taken herein is contained in section 303 of the Communications Act of 1934 as amended.

14. Accordingly, *it is ordered* That Part 73 of the Commission's Rules and Regulations *are amended*, as set forth below.

15. *It is further ordered* That those Class C stations that, as of March 2, 1987, were operating with an ERP less than 100 kW, HAAT greater than 300 meters, and distance to the 1 mV/m field strength contour exceeding 72 km, and consequently were not reclassified pending action in this proceeding, *are designated* Class C.

16. *It is further ordered* That the Petition for Partial Reconsideration filed

by Hudson Group Limited Partnership of Pennsylvania is *dismissed.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

William J. Tricarico,

Secretary.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.208 is amended by revising paragraph (c) to read as follows:

§ 73.208 Reference points and distance computation.

* * * * *

(c) The method given in this paragraph shall be used to compute the distance between two reference points, except that, for computation of distance involving stations in Canada and Mexico, the method for distance computation specified in the applicable international agreement shall be used instead. The method set forth in this paragraph is valid only for distances not exceeding 475 km (295 miles).

(1) Convert the latitude and longitude of each reference point from degree-minute-second format to degree-decimal format by:

(i) Dividing minutes by 60 and seconds by 3600 then adding the results to degrees; or,

(ii) Using Table 1 of § 73.698.

(2) Calculate the middle latitude between the two reference points by averaging the two latitudes as follows:

$$ML=(LAT1_{dd}+LAT2_{dd})/^{2}$$

(3) Calculate the number of kilometers per degree latitude difference for the middle latitude calculated in paragraph (c)(2) as follows:

$$KPD_{lat}=111.13209-0.56605\cos(2ML)+0.00120\cos(4ML)$$

(4) Calculate the number of kilometers per degree longitude difference for the middle latitude calculated in paragraph (c)(2) as follows:

$$KPD_{lon}=111.41513\cos(ML)-0.09455\cos(3ML)+0.00012\cos(5ML)$$

(5) Calculate the North-South distance in kilometers as follows:

$$NS=KPD_{lat}(LAT1_{dd}-LAT2_{dd})$$

(6) Calculate the East-West distance in kilometers as follows:

$$EW=KPD_{lon}(LON1_{dd}-LON2_{dd})$$

(7) Calculate the distance between the two reference points by taking the square root of the sum of the squares of the East-West and North-South distances as follows:

$$DIST=(NS^{2*}EW^{2})^{0.5}$$

(8) Round the distance to the nearest kilometer.

(9) Terms used in this section are defined as follows:

(i) $LAT1_{dd}$ and $LON1_{dd}$ = the coordinates of the first reference point in degree-decimal format.

(ii) $LAT2_{dd}$ and $LON2_{dd}$ = the coordinates of the second reference point in degree-decimal format.

(iii) ML = the middle latitude in degree-decimal format.

(iv) KPD_{lat} = the number of kilometers per degree of latitude at a given middle latitude.

(v) KPD_{lon} = the number of kilometers per degree of longitude at a given middle latitude.

(vi) NS = the North-South distance in kilometers.

(vii) EW = the East-West distance in kilometers.

(viii) DIST = the distance between the two reference points, in kilometers.

3. A new section 47 CFR 73.210, *Station classes,* is added:

§ 73.210 Station classes.

(a) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located, or proposed to be located. The zones are defined in § 73.205. Allotted station classes are indicated in the Table of Allotments, § 73.202. Class A, B1 and B stations may be authorized in Zones I and I–A. Class A, C2, C1, and C stations may be authorized in Zone II.

(b) The power and antenna height requirements for each class are set forth in § 73.211. If a station has an ERP and an antenna HAAT such that it cannot be classified using the maximum limits and minimum requirements in § 73.211, its class shall be determined using the following procedure:

(1) Determine the reference distance of the station using the procedure in paragraph (b)(1)(i) of § 73.211. If this distance is less than or equal to 24 km, the station is Class A; otherwise,

(2) For a station in Zone I or Zone I–A:

(i) If this distance is greater than 24 km and less than or equal to 39 km, the station is Class B1.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class B.

(3) For a station in Zone II:

(i) If this distance is greater than 24 km and less than or equal to 52 km, the station is Class C2.

(ii) If this distance is greater than 52 km and less than or equal to 72 km, the station is Class C1.

(iii) If this distance is greater than 72 km and less than or equal to 92 km, the station is Class C.

3. 47 CFR 73.211, *Power and antenna height requirements,* is amended by revising the text of paragraph (a) and paragraphs (b)(1) and (b)(2), and by removing paragraphs (d) and (e).

§ 73.211 Power and antenna height requirements.

(a) *Minimum requirements.* (1) Except as provided in paragraphs (a)(3) and (b)(2) of this section, the minimum effective radiated power (ERP) for:

Class A stations must equal 0.1 kW (10.0 dBk);

Class B1 stations must exceed 3 kW (4.8 dBk);

Class B stations must exceed 25 kW (14.0 dBk);

Class C2 stations must exceed 3 kW (4.8 dBk);

Class C1 stations must exceed 50 kW (17.0 dBk);

Class C stations must equal 100 kW (20.0 dBk).

(2) Class C stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). No minimum HAAT is specified for Classes A, B1, B, C2, or C1 stations.

(3) Stations of any class except Class A may have an ERP less than that specified in paragraph (a)(1) of this section, provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, exceeds the distance to the class contour for the next lower class.

(b) *Maximum limits.* (1) The maximum ERP in any direction, reference HAAT, and distance to the class contour for the various classes of stations are listed below:

Station class	Maximum ERP	Reference HAAT in meters (ft)	Class contour distance in kilometers
A	3kW (4.8 dBk)	100 (328)	24
B1	25kW (14.0 dBk)	100 (328)	39
B	50kW (17.0 dBk)	150 (492)	52
C2	50kW (17.0 dBk)	150 (492)	52
C1	100kW (20.0 dBk)	299 (981)	72
C	100kW (20.0 dBk)	600 (1968)	92

(i) The reference distance of a station is obtained by finding the distance to the 1 mV/m contour using Figure 1 of § 73.333 and then rounding to the nearest kilometer. Antenna HAAT is determined using the procedure in § 73.313. If the HAAT so determined is less than 30 meters (100 feet), a HAAT of 30 meters must be used when finding the distance to the 1 mV/m contour.

(ii) If a station's ERP is equal to the maximum for its class, its antenna HAAT must not exceed the reference HAAT, regardless of the reference distance. For example, a Class A station operating with 3 kW ERP may have an antenna HAAT of 100 meters, but not 101 meters, even though the reference distance is 24 km in both cases.

(iii) No station will be authorized in Zone I or I-A with an ERP equal to 50 kW and a HAAT exceeding 150 meters No station will be authorized in Zone II with an ERP equal to 100 kW and a HAAT exceeding 600 meters.

(2) If a station has an antenna HAAT greater than the reference HAAT for its class, its ERP must be lower than the class maximum such that the reference distance does not exceed the class contour distance. If the antenna HAAT is so great that the station's ERP must be lower than the minimum ERP for its class (specified in paragraphs (a)(1) and (a)(3) of this section), that lower ERP will become the minimum for that station.

* * * * *

4. 47 CFR 73.213 is revised in its entirety to read as follows:

§ 73.213 Grandfathered short-spaced stations.

Stations at locations authorized prior to November 16, 1964 that did not meet the separation distances required by § 73.207 and have remained short-spaced since that time may be modified or relocated provided that the predicted distance to the 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any short-spaced station. Mutual increase in the facilities of such stations up to the limits set forth in § 73.211 may be permitted pursuant to an agreement between the affected stations and a showing of public interest. *See* § 73.4235.

5. 47 CFR 73.313 is amended by revising paragraph (c)(2) to read as follows:

§ 73.313 Prediction of coverage.

* * * * *

(c) * * *

(2) To use the chart for other ERP values, convert the ordinate scale by the appropriate adjustment in dB. For example, the ordinate scale for an ERP of 50 kW (17 dBk) should be adjusted by 17 dB and, therefore, a field strength of 40 dBu would be converted to 57 dBu. When predicting the distance to field strength contours, use the maximum ERP of the main radiated lobe in the pertinent azimuthal direction. When predicting field strengths over areas not in the plane of the maximum main lobe, use the ERP in the direction of such areas, determined by considering the appropriate vertical radiation pattern.

* * * * *

§ 73.1030 [Amended]

6. 47 CFR 73.1030 is amended by revising the parenthetical phrase "(in the vicinity of coordinates 40°07'50" N Latitude, 105°14'40" W Longitude)" of paragraph (b) introductory text to read "(within the area bounded by 40°09'10" N Latitude on the north, 105°13'31" W Longitude on the east, 40°07'05" N Latitude on the south, and 105°15'13" W Longitude on the west)".

7. 47 CFR 73.1690 is amended by revising paragraph (c)(1) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(1) Replacement of a non-directional antenna with one of the same or different type or number of bays, provided that the height above ground of the center of radiation is within 2 meters of that specified in the station authorization, the parameters are within that permitted by its class designation, and there is no change in the maximum effective radiated power.

* * * * *

[FR Doc. 87-22758 Filed 10-8-87; 8:45 am]
BILLING CODE 8712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges (NWR). Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, added to or deleted. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

EFFECTIVE DATE: October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy A. Marx, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Room 2343, Washington, DC 20240; Telephone (202) 343-3922.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to: (1) Ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations. Again this year, regulations for nontoxic shot are required on more refuges. Consequently, new regulations are being added.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received during the 30-day comment period for the proposed rule (52 FR 27828) are addressed in the following section.

Responses to Comments Received

Written comments were received from one private organization and several Service Regional offices in response to the proposed rulemaking. Technical corrections have been made, coyote and groundhog have been removed as a proposed huntable species on Wheeler NWR because of an administrative oversight on their addition and several regulations concerning the use of hunter

orange material while hunting have been added for hunter safety. Many substantive issues raised by the one organization were the same as those raised on the 1986 proposed rule opening 17 refuges to hunting and/or fishing. In the interest of reducing the paperwork burden of the government, it is suggested that 51 FR 30655 (final rule opening 17 refuges to hunting and/or fishing) be referenced for Service responses to those issues. Several new issues were presented on this proposed rule on refuge-specific regulations and are addressed below:

Issue: Lack of data supporting the addition of sambar deer to the huntable species at St. Vincent NWR.

Response: The appropriate documentation (i.e., hunt plan, EA, Section 7 evaluation and compatibility statement) has been completed and approved and it was found that the hunting of sambar deer would be compatible with refuge purposes.

Issue: Lack of data supporting the assertion that the proposed regulations are exempt from the requirements of the National Environmental Policy Act.

Response: See statements under "Environmental Considerations" in the preamble of this final rulemaking.

Issue: No evidence is presented that the necessary determinations have been made to ensure that endangered and threatened species will not be adversely affected by these proposed regulations.

Response: The majority of these regulations make technical corrections standardizing language and definitions from Region to Region, parallel the Migratory Bird Management Office's nontoxic shot regulations (for greater protection of the resource including endangered and threatened species) and provide for the public's safety by requiring the wearing of hunter orange material. The Service has concluded that these regulations will not affect any endangered or threatened species.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to adminster areas within the Refuge System for public recreation as an appropriate incidential or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Considering the rapidly approaching hunting seasons and the ones presently taking place, there is an immediate need to place these regulations into effect. The absence of refuge-specific hunting regulations for these hunting seasons woud be contrary to the public interest (confusion on hours, bag limits, or firearm restrictions), hunter safety (added requirements for the use of the hunter orange clothing) and wildlife conservation (nontoxic shot requirements). Thus, the Department concludes that good cause exists within the meaning of 5 U.S.C. 553(d)(3) to make these regulations effective upon publication in the **Federal Register**.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The amendments to the codified refuge-specific hunting regulations, included in this final rule will make relatively minor adjustments to existing hunting programs. These regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the cost of administering this rule. Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of E.O. 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexiblity Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge, do not cause substantial environmental impacts, maintain the permitted level of use or are implemented for public safety purposes. The changes made by this rulemaking (most of which are technical in nature) will not substantially alter the existing uses of the refuges involved and will actually enhance existing uses through more efficient managment regulations. These regulations will also reduce environmental impacts substantially by implementing nontoxic shot regulations that will reduce the impacts of lead shot on waterfowl and other impacted species. And for public safety purposes the requirement for hunter orange is being included.

Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the Regional offices of the U.S. Fish and

Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina and Puerto Rico.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; Telephone (404) 221–3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska, (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges.).
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3538.

Nancy A. Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this final rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301, 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.12 is amended by adding (b)(8); revising (d)(1) introductory text; redesignating (d)(1)(vi) as (d)(1)(vii), and adding (d)(1)(vi); adding (e)(1)(ix) and (3)(ix); revising (f)(1) introductory text and (f)(1)(ii); revising (f)(2), (3), (4) introductory text and (5) introductory text, (f)(5)(iii) and (iv), (f)(6) introductory text, (f)(6)(ii), (iii) and (vi), and (f)(7) introductory text; adding (f)(7)(v); revising (f)(8) introductory text, (f)(8)(iv), (f)(9) introductory text, (f)(9)(v) and (f)(10) introductory text; adding (f)(10)(iii) and (iv); removing (f)(11)(iii) and redesignating(f)(11)(iv), (v) and (vi) as (f)(11)(iii), (iv) and (v); revising (f)(12) introductory text and (f)(12)(iv); redesignating (f)(12)(ii) and (iii) as (f)(12)(iii) and (ii) respectively; revising newly redesignated (f)(12)(iii); revising (f)(13)(ii); adding (f)(13)(v); revising (f)(14) and (f)(15) introductory text, (f)(15)(ii), (iv) and (vii), (g)(1) and (3), (h)(1)(viii) and (2)(vii), and (i)(1)(ii); adding (i)(1)(v) and (vi); removing (i)(2)(iv); redesignating(i)(2)(v) through (vii) as (i)(2)(iv) through (vi); revising newly redesignated (i)(2)(vi); revising (i)(3)(iv), (4)(ii) and (iii), (j)(3) and (k)(2); removing (k)(3)(iii); and redesignating (k)(3)(iv) and (v) as (k)(3)(iii) and (iv); revising new (k)(3)(iv); adding (l)(1)(iv); revising (l)(2)(i), (ii) and (iii), (m)(1)(ii) and (iii) and (o)(2); redesignating (q)(1) through (7) as (q)(2) through (8); adding (q)(1), (2)(v) and (3)(iv) and (v); removing (q)(4)(ii); redesignating (q)(4)(iii) through (v) as (q)(4)(ii) through (iv); adding (q)(4)(v); revising (q)(5)(v), (6)(iv), (7)(i), (ii) and (iii) and (8)(ii); adding (q)(8)(iv), (v) and (vi); revising (s)(1) and (2)(ii); adding (s)(2)(v); revising (t)(1) (t)(2)(ii) and (u)(1)(iii), (u)(2) introductory text, and (u)(2)(iv); adding (u)(2)(v); reviing (u)(3) introductory text and (u)(3)(iii); adding (v)(1)(iv); revising (v)(5)(iii), (w)(1)(ii) and (2)(ii), (z)(1) introductory text and (z)(2), (aa) introductory text and (aa)(1); adding (aa)(7); revising (bb)(1) introductory text, (bb)(1)(i), (2)(iii) and (3)(ii); adding (bb)(3)(ii), (iv) and (v); revising (bb)(4)(ii), (cc)(1)(iv), (cc)(2)(iii) and (dd)(i); revising (dd)(2)(i), (3)(v) and (5)(i) and (ee); revising (ff) introductory text, (ff)(2), (gg)(2), (hh)(1)(iv), (3)(iii); removing (hh)(5)(i), redesignating (hh)(5)(ii) and (iii) as (hh)(5)(i) and (ii); revising newly redesignated (hh)(5)(i); revising (hh)(8)(i) and (13)(iv) and (ii)(2); adding (ii)(1)(iv); revising(11)(2)(iv), (3)(iv) and (4)(ii), (mm)(2)(i), (3)(i), (5)(iv), (6)(iii) and (7)(iii), (nn)(1)(ii), (nn)(2) and (3), (oo)(7), (qq)(5)(iii), (qq)(6), (rr)(1)(iii), (2)(ii) and (3)(ii), and (ss).

§ 32.12 Refuge-specific regulations: migratory game birds.

* * * * *

(b) *Alabama and Georgia—Eufaula National Wildlife Refuge.* * * *

(8) Hunter may not possess or use more than 25 shells per day when waterfowl hunting.

* * * * *

(d) *Arizona and California—(1) Cibola National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and mourning and white-winged doves is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(vi) Waterfowl hunting will cease at 3:00 p.m. each day.

* * * * *

(e) *Arkansas—(1) Felsenthal National Wildlife Refuge.* * * *

(ix) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(3) *Overflow National Wildlife Refuge.* * * *

(ix) Waterfowl and coot hunters shall posses and use, while in the field, only nontoxic shot.

* * * * *

(f) *California—(1) Clear Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens, and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(2) *Colusa National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(3) *Delevan National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl, coot

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and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(4) *Kern National Wildlife Refuge.* Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(5) *Kesterson National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(iii) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(iv) Hunters may not possess more than 25 shells while in the field.

(6) *Lower Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Shooting hours end at 1:00 p.m. daily on all California portions of the refuge.

(iii) Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

(vi) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(7) *Merced National Wildlife Refuge.* Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(v) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(8) *Modoc National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(iv) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(9) *Sacramento National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(v) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(10) *Salton Sea National Wildlife Refuge.* Hunting of geese, ducks, coots, and moorhens is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(iii) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(iv) Hunters may not possess more than 25 shells while in the field.

* * * * *

(12) *San Luis National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(iii) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(iv) Hunters may not possess more than 25 shells while in the field.

(13) *San Pablo Bay National Wildlife Refuge.* * * *

(ii) Hunters may use only portable blinds and temporary or floating blinds constructed of biodegradable materials.

* * * * *

(v) Waterfowl, and coot hunters shall possess and use, while in the field, only nontoxic shot.

(14) *Sutter National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(15) *Tule Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Hunting is permitted until 1:00 p.m. each day.

* * * * *

(iv) Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

(vii) Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(g) *Colorado*—(1) *Alamosa National Wildlife Refuge.* Hunting of geese, ducks, coots, snipe and mourning doves is permitted on designated areas of the refuge subject to the following condition: Snipe and dove hunting are permitted only during the waterfowl hunting season.

* * * * *

(3) *Monte Vista National Wildlife Refuge.* Hunting of geese, ducks, coots, snipe and mourning doves is permitted on designated areas of the refuge subject to the following condition: Snipe and dove hunting are permitted only during the waterfowl hunting season.

(h) *Delaware—(1) Bombay Hook National Wildlife Refuge.* * * *

(vii) Waterfowl, and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(2) *Prime Hook National Wildlife Refuge.* * * *

(vii) Waterfowl, and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(i) *Florida—(1) Chassahowitzka National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(v) Hunting is permitted only on Wednesdays, Saturdays and Sundays.

(vi) Chassahowitzka Wildlife Management Area regulations apply to the Hernando County portion of the refuge.

(2) *Lower Suwannee National Wildlife Refuge.* * * *

(vi) Hunters shall possess and use, while in the field, only nontoxic shot.

(3) *Loxahatchee National Wildlife Refuge.* * * *

(iv) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(4) *Merritt Island National Wildlife Refuge.* * * *

(ii) Hunting is permitted only on Wednesdays, Thursdays, Fridays and Saturdays from one-half hour before sunrise until 1:00 p.m. and on Sundays from one-half hour before sunrise until sunset.

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(j) *Georgia and South Carolina—Savannah National Wildlife Refuge.* * * *

(3) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(k) *Idaho*— * * *

(2) *Camas National Wildlife Refuge.* Hunting of geese, ducks, coots, and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(3) *Deer Flat National Wildlife Refuge.* * * *

(iv) Nonmotorized boats and boats with electric motors are restricted to the area bounded by the water's edge and extending to a point 200 yards lakeward

in hunting area 1 on the Lake Lowell sector.

* * * * *

(l) *Illinois—(1) Chautauqua National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(2) *Crab Orchard National Wildlife Refuge.* * * *

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbriar land areas, plus Orchard, Turkey, Sawmill and Grassy Islands, from sunrise to 12:00 noon each day during the goose season. Goose hunting on these areas, including lake shorelines, is permitted only from existing refuge blinds. Only selected hunters are allowed on these islands or are allowed to occupy any existing refuge blinds during the goose season. The controlled blind hunters may use or possess only 15 shells per hunter.

(ii) No more than three people may occupy a blind during the goose hunting season.

(iii) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(m) *Iowa—(1) DeSoto National Wildlife Refuge.* * * *

(ii) Hunting is permitted until noon each day from November 1 through the end of the second weekend in December, or until the end of the State waterfowl season, whichever comes first.

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(o) *Iowa, Illinois, Minnesota and Wisconsin—Upper Mississippi River Wild Life and Fish Refuge.* * * *

(2) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(q) *Louisiana—(1) Atchafalaya National Wildlife Refuge.* Hunting of geese, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Hunting shall be in accordance with Sherburne Wildlife Management Area regulations.

(2) *Bogue Chitto National Wildlife Refuge.* * * *

(v) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(3) *D'Arbonne National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(v) Firearms must be unloaded while being transported in a vehicle or boat.

(4) *Delta National Wildlife Refuge.* * * *

(v) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(5) *Lacassine National Wildlife Refuge.* * * *

(v) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(6) *Sabine National Wildlife Refuge.* * * *

(iv) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(7) *Tensas River National Wildlife Refuge.* * * *

(i) Only portable blinds may be used and blinds and decoys must be removed from the refuge after each day's hunt.

(ii) Hunting of ducks and coots is permitted only on Tuesdays, Thursdays, Saturdays and Sundays until noon each day during the regular State season.

(iii) Hunting is not permitted during the special teal season and the refuge gun deer hunts.

(8) *Upper Ouachita National Wildlife Refuge.* * * *

(ii) Boats, decoys and blinds must be removed from the refuge after each day's hunt.

* * * * *

(iv) Hunting is not permitted during the special teal season.

(v) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(vi) Firearms must be unloaded while being transportated in a vehicle or boat.

* * * * *

(s) *Massachusetts—(1) Oxbow National Wildlife Refuge.* Hunting of woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Use or possession of alcoholic beverages while hunting are prohibited.

(ii) Vehicles are restricted to the designated parking area that is accessible from the Still River Depot Road. Entry by routes other than Still River Depot Road is prohibited.

(2) *Parker River National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(v) Use or possession of alcoholic beverages while hunting are prohibited.

(t) *Mitchigan—(1) Seney National Wildlife Refuge.* Hunting of woodcock and snipe is permitted on designated areas of the refuge.

(2) *Shiawassee National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

(u) *Minnesota—(1) Minnesota Valley National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

(2) *Sherburne National Wildlife Refuge.* Hunting of geese, ducks, coots, rails, woodcock, and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(v) Entry to hunting areas is not allowed earlier than one and one-half hours before legal shooting hours.

(3) *Tamarac National Wildlife Refuge.* Hunting of geese, ducks, coots, rails, woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

(v) *Mississippi—(1) Bogue Chitto National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(5) *Noxubee National Wildlife Refuge.* * * *

(iii) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(w) *Missouri—(1) Mingo National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

(2) *Swan Lake National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(z) *Nevada—(1) Pahranagat National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens, mourning doves and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(2) *Ruby Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

(aa) *New Jersey—Edwin B. Forsythe National Wildlife Refuge.* Hunting of waterfowl, coots, moorhens and rails is permitted on designated areas of the

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refuge subject to the following conditions:

(1) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(7) Use or possession of alcoholic beverages while hunting are prohibited.

(bb) *New Mexico—(1) Bitter Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, mourning doves and sandhill cranes is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(2) *Bosque del Apache National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

(3) *Las Vegas National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

(iii) Hunters age 17 and under must hunt under the supervision of an adult age 21 or older.

(iv) Hunters or dogs may not enter closed areas to retrieve birds.

(v) Hunting is permitted only on designated days of the week. Notice will be given as provided in 50 CFR 25.31.

(4) *Sevilleta National Wildlife Refuge.* * * *

(ii) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(cc) *New York—(1) Iroquois National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(2) *Montezuma National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(dd) *North Carolina—(1) Alligator River National Wildlife Refuge.* Hunting of swans, geese, ducks, coots, snipe, mourning doves and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) The use of hunting dogs is permitted only on designated areas of the refuge.

(ii) Hunters are permitted access to the refuge one and one-half hours before sunrise until one hour after sunset.

(iii) Firearms must be unloaded while being transported in a vehicle or boat.

(iv) Only portable blinds are permitted and must be removed from the refuge following each day's hunt.

(2) *Cedar Island National Wildlife Refuge.* * * *

(i) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(3) *Mattamuskeet National Wildlife Refuge.* * * *

(v) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(5) *Swanquarter National Wildlife Refuge.* * * *

(i) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(ee) *North Dakota—(1) J. Clark Salyer National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

(2) *Lake Alice National Wildlife Refuge.* Hunting of geese, ducks, coots and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Possession of firearms in retrieving zones is prohibited.

(ii) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(ff) *Ohio—Ottawa National Wildlife Refuge.* Hunting of geese and ducks is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(2) Hunters shall possess and use, while in the field, only nontoxic shot.

(gg) *Oklahoma—* * * *

(2) *Sequoyah National Wildlife Refuge.* Hunting of waterfowl and doves is permitted on designated areas of the refuge subject to the following condition: Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(hh) *Oregon—(1) Ankeny National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(3) *Baskett Slough National Wildlife Refuge.* * * *

(iii) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(5) *Deer Flat National Wildlife Refuge.* * * *

(i) Only portable blinds and temporary blinds constructed of natural materials are permitted.

* * * * *

(8) *Lower Klamath National Wildlife Refuge.* * * *

(i) Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

(13) *William L. Finley National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(ii) *Pennsylvania—Erie National Wildlife Refuge.* * * *

(2) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(11) *Tennessee—(1) Chickasaw National Wildlife Refuge.* * * *

(iv) Hunters shall possess and use, while in the field, only nontoxic shot.

(2) *Cross Creeks National Wildlife Refuge.* * * *

(iv) Hunters shall possess and use, while in the field, only nontoxic shot.

(3) *Hatchie National Wildlife Refuge.* * * *

(iv) Hunters shall possess and use, while in the field, only nontoxic shot.

(4) *Lower Hatchie National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(mm) *Texas—* * * *

(2) *Big Boggy National Wildlife Refuge.* * * *

(i) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(3) *Brazoria National Wildlife Refuge.* * * *

(i) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(5) *McFaddin National Wildlife Refuge.* * * *

(iv) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(6) *San Bernard National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(7) *Texas Point National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(nn) *Utah—(1) Bear River Migratory Bird Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

(2) *Fish Springs National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge.

(3) *Ouray National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge.

(oo) *Vermont*—* * *

(7) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(qq) *Washington*—* * *

(5) *Ridgefield National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(6) *Toppenish National Wildlife Refuge.* Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only within 50 feet of the numbered post assigned to each hunter.

* * * * *

(rr) *Wisconsin—(1) Horicon National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in the field, only nontoxic shot.

(2) *Necedah National Wildlife Refuge.* * * *

(ii) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(3) *Trempealeau National Wildlife Refuge.* * * *

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

(ss) *Wyoming—(1) Pathfinder National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

(2) *Seedskadee National Wildlife Refuge.* Hunting of geese, ducks, coots and mourning doves is permitted on designated areas of the refuge.

3. Section 32.22 is amended by revising (a)(1), and (a)(4)(iv); adding (a)(4)(vi); revising (b)(1); adding (d)(1)(iii); revising (d)(2) (iii) and (iv); adding (d)(2)(vii); revising (d)(4)(iii); adding (d)(4)(vii); revising (d)(5)(ii) and (iii), (e)(4)(ii) and (10)(ii); adding (h)(1)(iii); revising (h)(2) (ii); adding (h)(2)(v); revising (h)(3) (ii) and (iii), adding (h)(4); revising (l)(2) and (n); removing (l)(3); redesignating (q)(1) through (6) as (q)(2) through (7); adding (q)(1); revising (q)(4)(i) and (iii), (6)(i) and (ii); removing (q)(6) (iii) and (iv); revising (q)(7)(i) and (iii); adding (s)(3); revising (u)(1), (x)(6), (aa)(1) introductory text and (aa)(1)(ii); adding (aa)(1)(iv); revising (cc)(1); removing (cc)(2); redesignating (cc)(3) as (cc)(2); revising (dd)(1),(4) introductory text, and (6) introductory text, (dd)(6)(ii) and (ff)(6); adding (gg)(3) and revising (jj)(2)(ii), (ji)(3) and (ll)(1)(ii).

§ 32.22 Refuge-specific regulations; upland game.

(a) *Alabama—(1) Blowing Wind Cave National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Sauty Creek Wildlife Management Area regulations apply.

* * * * *

(4) *Wheeler National Wildlife Refuge.* * * *

(iv) Hunting of rabbits is permitted only during the last 10 days of the State season.

* * * * *

(vi) The use of mules and horses is prohibited on all refuge hunts.

(b) *Arizona—(1)* Buenos Aires National Wildlife Refuge. Hunting of cottontail rabbit, jackrabbit, coyote, fox and bobcat is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted from September 1 through March 31.

(ii) Quail hunting is prohibited.

* * * * *

(d) *Arkansas—(1) Big Lake National Wildlife Refuge.* * * *

(iii) Hunting of raccoon and opossum is permitted for three consecutive weekends (Fri–Sun) beginning on the last Friday in October.

(2) *Felsenthal National Wildlife Refuge.* * * *

(iii) Hunting of raccoon and opossum is permitted only December 1–31 from sunset to surprise. Bag limit is three raccoons per hunter per night.

(iv) Beaver and nutria may be taken only from sunrise to sunset during any refuge hunt.

* * * * *

(vii) Lead shot is permitted only on designated portions of the refuge.

* * * * *

(4) *Overflow National Wildlife Refuge.* * * *

(iii) Hunting of raccoon and opossum is permitted only December 1–31 from sunset to sunrise. Bag limit is three raccoons per hunter per night.

* * * * *

(vii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(5) *Wapanocca National Wildlife Refuge.* * * *

(ii) Hunting of squirrel and beaver is permitted from October 1 through November 15. Rabbit may be taken when the State rabbit season coincides with the above dates.

(iii) Hunting of raccoon and opossum is permitted from November 1 through November 15.

* * * * *

(e) *California* * * *

(4) *Lower Klamath National Wildlife Refuge.* * * *

(ii) Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

(10) *Tule Lake National Wildlife Refuge.* * * *

(ii) Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

(h) *Florida—(1) Chassahowitzka National Wildlife Refuge.* * * *

(iii) Chassahowitzka Wildlife Management Area regulations apply to the Hernando County portion of the refuge.

(2) *Lower Suwannee National Wildlife Refuge.* * * *

(ii) Hunting of squirrel, quail, rabbit and armadillo is permitted only on the Levy County portion of the refuge from the day after the State general deer gun season ends through the last day of the State squirrel season, and during the refuge archery hunt.

* * * * *

(v) Hunters must use and possess only .22 rimfire rifles or shotguns.

(3) *St. Marks National Wildlife Refuge.* * * *

(ii) Hunting is permitted beginning the second Friday in December through the third Sunday in January.

(iii) Aucilla Wildlife Management Area regulations apply to a portion of the refuge.

(4) *St. Vincent National Wildlife Refuge.* Hunting of raccoon is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Raccoons may be taken only during scheduled deer hunts in December and January.

* * * * *

(l) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(2) Hunting of squirrel is permitted on the Keithsburg Division from the opening of the State season until the start of the Illinois waterfowl hunting season. Squirrel hunting is permitted on the Bear Creek Unit of the Gardner Division. On the remainder of the Gardner Division squirrel hunting is permitted only through September 30.

* * * * *

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(n) *Indiana—Muscatatuck National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition:

(1) No discharge of firearms is permitted within 100 yards of an occupied dwelling.

(2) Hunting is permitted only from sunrise to sunset.

(3) Hunting is prohibited from the beginning of the second State muzzleloader deer season through the end of the year.

* * * * *

(q) *Louisiana—(1) Atchafalaya National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, opossum, nutria, muskrat, mink, fox, bobcat, beaver and otter is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting shall be in accordance with Sherburne Wildlife Management Area regulations, except that dogs may not be used to hunt rabbits.

* * * * *

(4) *D'Arbonne National Wildlife Refuge.* * * *

(i) Hunting of raccoon and opossum is permitted only during January and December of odd numbered years.

* * * * *

(iii) Firearms must be unloaded while being transported in a vehicle or boat.

* * * * *

(6) *Tensas River National Wildlife Refuge.* * * *

(i) The use of mules and horses is prohibited on all refuge hunts.

(ii) Only .22 rimfire rifles and pistols or shotguns are permitted.

(7) *Upper Ouachita National Wildlife Refuge.* * * *

(i) Hunting of raccoon and opossum is permitted only during December and January of odd numbered years.

* * * * *

(iii) Firearms must be unloaded while being transported in a vehicle or boat.

* * * * *

(s) *Massachusetts—Oxbow National Wildlife Refuge.* * * *

(3) Use or possession of alcoholic beverages while hunting is prohibited.

* * * * *

(u) *Minnesota—(1) Big Stone National Wildlife Refuge.* Hunting of partridge, pheasant, gray and fox squirrel, cottontail rabbit, jackrabbit, and red and gray fox is permitted on designated areas of the refuge.

* * * * *

(x) *Montana* * * *

(6) *Medicine Lake National Wildlife Refuge.* Hunting of pheasant, partridge, and sharp-tailed grouse is permitted on designated areas of the refuge.

* * * * *

(aa) *New Mexico—(1) Bitter Lake National Wildlife Refuge.* Hunting of pheasant, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Hunts hall possess and use, while in the South Unit (Area C) during the waterfowl season, only nontoxic shot.

* * * * *

(iv) Quail hunting is prohibited.

* * * * *

(cc) *North Carolina—(1) Alligator River National Wildlife Refuge.* Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) The use of hunting dogs is permitted on designated areas of the refuge.

(ii) Firearms must be unloaded while being transported in a vehicle or boat.

* * * * *

(dd) *North Dakota—(1) Arrowwood National Wildlife Refuge.* Hunting of pheasant, grouse, partridge, rabbit and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the day after the State deer gun season through the regular State late upland game season.

* * * * *

(4) *Lostwood National Wildlife Refuge.* Hunting of partridge and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(6) *Upper Souris National Wildlife Refuge.* Hunting of partridge and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Hunter orange vest and cap are required during the deer gun seasons.

* * * * *

(ff) *Oregon—* * * *

(6) *Lower Klamath National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Only unloaded firearms may be taken through posted retrieving zones when traveling to and from hunting areas.

* * * * *

(gg) *Pennsylvania—Erie National Wildlife Refuge.* * * *

(3) Hunters, during the State firearm deer season, just wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(hh) *South Carolina—* * * *

(4) *Savannah National Wildlife Refuge.* * * *

(iii) Hunters must wear a mimimum of 500 square inches of hunter orange material above the waistline.

(jj) *Tennessee* * * *

(2) *Cross Creek National Wildlife Refuge.* * * *

(ii) Hunting is permitted from the opening of the State season through October 12.

* * * * *

(3) *Hatchie National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Upland game hunting is not permitted during the refuge deer archery and gun hunting seasons.

* * * * *

(11) *Utah—(1) Bear River Migratory Bird Refuge.* * * *

(ii) Hunters shall possess and use, while in the filed, only nontoxic shot.

* * * * *

4. Section 32.32 is amended by revising (a)(3) (ii), (iii) and (iv), and (b)(1); removing (c)(1)(ii) and redesignating (c)(1)(iii) as (c)(1)(ii); revising (d)(2) (ii), (vi) and (vii), adding (d)(2)(ix); revising (d)(4) (ii) and (iv); adding (d)(4) (v) and (vi); revising (h)(1), (2)(v) and (3) (ii), (iv) and (v); adding (h)(2) (vi) and (viii); removing (h)(4); redesignating (h) (5) and (6) as (h) (4) and (5); revising (h)(4) (ii), (v) and (viii) and (h)(5) introductory text, (ii), (iv), (v), (vi) and (viii); adding (h)(5)(x); revising (i)(1) (ii), (iii) and (v), (i)(3) (iv) and (vii) and (i)(4)(ii); removing (i)(4) (iii) and (v); redesignating (i)(4) (iv), (vi) and (vii) as (i)(4) (iii), (iv) and (v); revising (i)(6) (iv) and (v); adding (i)(6)(vii); revising (j) (4) and (5); removing (l)(4); revising (n) (1), (2) and (3); adding (o)(4); revising (q)(1); redesignating (r) (1) through (7) as (r) (2) through (8); adding (r) (1), (3)(vii), (4)(iv), (7) (vi) and (vii) and (8)(iv); revising (r)(4) (ii) and (iii), (r)(7) (i), (iiii) and (iv) and (r)(8)(iii); revising (5)(1); adding (t)(2)(iii), (u) (1)(iv) and (2)(v); redesignating (v) through (tt) as (w) through (uu); (the rest of the paragraphs reflect the newly redesignated lettering); adding (v); revising (z)(1)(i); redesignating (z)(2) as (z)(3); adding (z)(2); revising (z)(3)(ii); removing (aa)(2)(ii) and redesignating (aa)(2)(iii) as (aa)(2)(ii); revising (bb)(2)(ii); adding (dd) (3) and (4); revising (ff)(1) and (gg)(1); adding (gg)(2)(iv); revising (gg)(4)(iii); redesignating (ii) (1) through

(3) as (ii) (2) through (4); adding (ii)(1) and (kk)(3); revising (ll)(2)(vii); adding (ll)(2) (viii) and (ix); revising (ll)(3) (iv), (vi) and (vii), (ll)(4)(vi), (oo)(1) (v) and (vi), (oo)(3) (iv) and (v), (qq) and (rr)(1)(v); adding (rr) (2)(iv), (3)(v) and (4)(vii) and removing (ss)(4)(iv).

§ 32.32 Refuge-specific regulations; big game.

(a) *Alabama*—* * *

(3) *Wheeler National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted November 2 through January 30.

(iii) Hunting with flintlock firearms is permitted beginning January 16 through January 30.

(iv) Hunters are required to wear an outergarment containing no less than 144 square inches of hunter orange material visible from any angle during any refuge deer gun hunt.

(b) *Arizona—(1) Buenos Aires National Wildlife Refuge.* Hunting of mule and white-tailed deer, javelina and feral hogs is permitted on designated areas of the refuge.

* * * * *

(d) *Arkansas*—* * *

(2) *Felsenthal National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted beginning October 1 through December 31, except during quota deer hunts when hunting is permitted only by a special permit.

* * * * *

(vi) Feral hogs may be taken from sunrise to sunset during any refuge hunt with weapons legal for that hunt through January 31.

(vii) Possession of a deer without a valid quota deer hunt permit during the modern gun and muzzleloader hunts is prohibited.

* * * * *

(ix) Lead shot is permitted only on designated portions of the refuge.

* * * * *

(4) *Overflow National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted beginning October 1 through December 31, except during quota gun deer hunts when hunting is permitted only by a special permit.

* * * * *

(iv) Feral hogs may be taken from sunrise to sunset during any refuge hunt with weapons legal for that hunt through January 31.

(v) Muzzleloader hunting is permitted during the third consecutive Friday and Saturday in October.

(vi) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(h) *Florida—(1) Chassahowitzka National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Chassahowitzka Wildlife Management Area regulations apply to the Hernando County portion of the refuge.

(2) *Lake Woodruff National Wildlife Refuge.* * * *

(v) Hunters must wear a visible outer garment of hunter orange material above the waistline.

(3) *Lower Suwannee National Wildlife Refuge.* * * *

(ii) Archery and muzzleloader gun hunting of deer (either sex) and feral hogs are permitted on the Levy County portion of the refuge in accordance with State seasons.

* * * * *

(iv) Hunters must wear a visible outer garment of 500 square inches of hunter orange material above the waistline during modern and muzzleloading gun hunts.

(v) Modern gun deer (buck only) and feral hog hunting on the Levy County portion of the refuge are permitted beginning the opening day of the State's general gun deer season for 5 consecutive days.

(vi) Two, 2-day modern gun deer (either sex) and feral hog hunts are permitted on the Levy County portion of the refuge only, beginning the first Thursday and Friday and the first Saturday and Sunday following the opening weekend of the State's general gun deer season.

(vii) In Levy County, hunters must check all antlerless deer at the refuge check station during the muzzleloading and modern gun deer (either sex) hunts.

(4) *St. Marks National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted for deer (either sex), turkey (either sex) and hogs for 12 consecutive days beginning the last Friday in October.

* * * * *

(v) Aucilla Wildlife Management Area regulations apply to a portion of the refuge.

* * * * *

(viii) Hunters must wear a visible outer garment of hunter orange material above the waistline.

(5) *St. Vincent National Wildlife Refuge.* Hunting of white-tailed and sambar deer, turkey and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Archery hunting is permitted for 3 consecutive days beginning on the second Thursday in December.

* * * * *

(iv) Primitive weapon hunting is permitted for 1 day on the first Saturday of the regular State deer gun season and for 3 consecutive days beginning on the first Thursday in January.

(v) One white-tailed deer (either sex) may be taken during the archery hunt and only one antlered white-tailed deer may be taken during the 3-day primitive weapon hunt.

(vi) One turkey (either sex) may be taken during each 3-day hunt.

* * * * *

(viii) Hunters must wear a visible outer garment of hunter orange material above the waistline during the primitive weapons hunt.

* * * * *

(x) One sambar deer (either sex) may be taken during the 1-day primitive weapon hunt.

(i) *Georgia—(1) Blackbeard Island National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted for 3 consecutive days beginning the fourth Friday in October and for 3 consecutive days beginning the first Friday in December.

(iii) Two deer (either sex) may be taken.

* * * * *

(v) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset.

* * * * *

(3) *Harris Neck National Wildlife Refuge.* * * *

(iv) Two deer (either sex) may be taken.

* * * * *

(vii) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset.

(4) *Okefenokee National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted on Thursday, Friday and Saturday on the Pocket Unit during the State season and during the entire State archery season on the Cowhouse Unit.

* * * * *

(6) *Wassaw National Wildlife Refuge.* * * *

(iv) Two deer (either sex) may be taken.

(v) Hunters are required to remain on their stand from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset.

* * * * *

(vii) A special feral hog hunt is permitted on October 9, 10 and 11. Permits are required and there is no hog limit. Firearms must be unloaded and cased while being transported in a boat on the refuge. Hunting hours are from one-half hour before sunrise to one-half hour after sunset. Camping is not permitted. Hunters may enter the refuge one and one-half hour before sunrise and leave the refuge by one and one-half hours after sunset.

* * * * *

(j) *Georgia and South Carolina—Savannah National Wildlife Refuge.* * * *

(4) Hunters must wear a minimum of 500 square inches of hunter orange material above the waistline.

(5) Two deer (either sex) may be taken.

* * * * *

(n) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Permits are required.

(2) Firearms hunting is permitted on the Bear Creek Unit of the Gardner Division. Firearms hunting is permitted on the remainder of the Gardner Division only during part of the November firearms season, from one-half hour before sunrise to 3:00 p.m.

(3) Archery hunting is permitted on the Bear Creek Unit of the Gardner Division. Archery hunting is permitted on the remainder of the Gardner Division during part of the Illinois archery season.

(o) *Indiana—Muscatatuck National Wildlife Refuge.* * * *

(4) No discharge of firearms is permitted within 100 yards of an occupied dwelling.

* * * * *

(q) *Kansas—(1) Flint Hills National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following condition: Only shotguns are permitted.

* * * * *

(r) *Louisiana—(1) Atchafalaya National Wildlife Refuge.* Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following condition: Hunting shall be in accordance with Sherburne Wildlife Management Area regulations.

* * * * *

(3) *Catahoula National Wildlife Refuge.* * * *

(vii) Archery hunting is permitted during the State archery season.

(4) *D'Arbonne National Wildlife Refuge.* * * *

(ii) Either sex deer hunting is permitted the first Friday and Saturday following Thanksgiving.

(iii) Feral hogs may be taken during any refuge hunt.

(iv) Firearms must be unloaded while transported in a vehicle or boat.

* * * * *

(7) *Tensas River National Wildlife Refuge.* * * *

(i) Permits are required for the gun deer hunts.

* * * * *

(iii) One deer (either sex) may be taken per day for all gun hunts.

(iv) Hunters under 16 years old must possess proof, while hunting on the refuge, of completing a State approved hunter safety course.

* * * * *

(vi) All vehicles are restricted to graveled roads and all ATV trails are closed during the turkey season.

(vii) Only still or stalk hunting are permitted.

(8) Upper Ouachita National Wildlife Refuge. * * *

(iii) Feral hogs may be taken during any refuge hunt.

(iv) Firearms must be unloaded while being transported in a vehicle or boat.

* * * * *

(t) *Maine—(1) Moosehorn National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(2) *Rachel Carson National Wildlife Refuge.* * * *

(iii) Hunters, during the State shotgun deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(u) *Maryland—(1) Blackwater National Wildlife Refuge.* * * *

(iv) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(2) *Eastern Neck National Wildlife Refuge.* * * *

(v) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(v) *Massachusetts—Parker River National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(1) A refuge permit is required.

(2) Hunting is permitted from one-half hour before sunrise until 12 noon.

(3) Only shotguns, 20 gauge or larger, loaded with slugs are permitted.

(4) Attendance at a refuge orientation is mandatory.

(5) Hunting is permitted Monday, Tuesday, Friday and Saturday of the State shotgun deer season.

(6) All deer harvested must be brought to the refuge check station whole (undressed).

(7) Use or possession of alcoholic beverages while hunting is prohibited.

* * * * *

(z) *Missouri—(1) Mingo National Wildlife Refuge.* * * *

(i) Only archery and historic weapon hunting are permitted.

* * * * *

(2) *Squaw Creek National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only historic weapon hunting is permitted.

(iii) Hunters are required to check in and out of the refuge.

(iv) Stands must be removed from the refuge each day.

(v) Hunting is permitted only during the special hunt season established by the State for the refuge.

(3) *Swan Lake National Wildlife Refuge.* * * *

(ii) Only historic weapon hunting is permitted.

* * * * *

(bb) *Nebraska—** * *

(2) *DeSoto National Wildlife Refuge.* * * *

(ii) Only archery hunting is permitted on the area west of the Missouri River.

* * * * *

(dd) *New Jersey—Great Swamp National Wildlife Refuge.* * * *

(3) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(4) Use or possession of alcoholic beverages while hunting is prohibited.

* * * * *

(ff) *New York—(1) Iroquois National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition:

(i) Hunters, during the State shotgun deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

(gg) *North Carolina—(1) Alligator River National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The use of hunting dogs is permitted only on designated areas of the refuge.

(ii) Firearms must be unloaded while being transported in a vehicle or boat.

(iii) Only portable stands are permitted and must be removed from the refuge after each day's hunt.

(2) *Great Dismal Swamp National Wildlife Refuge.* * * *

(iv) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

(4) *Pee Dee National Wildlife Refuge.* * * *

(iii) One deer (either sex) may be taken during each gun hunt.

* * * * *

(ii) *Oklahoma—(1) Optima National Wildlife Refuge.* Hunting of mule and white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only fall turkey hunting is permitted.

* * * * *

(kk) *Pennsylvania—Erie National Wildlife Refuge.* * * *

(3) Hunters, during the State firearm deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(ll) *South Carolina—* * *

(2) *Carolina Sandhills National Wildlife Refuge.* * * *

(vii) Hunters must wear a visible outer garment made of hunter orange material above the waistline.

(viii) Firearms must be unloaded while being transported in a vehicle.

(ix) Hunting from a road right-of-way is prohibited.

(3) *Pinckney Island National Wildlife Refuge.* * * *

(iv) Two deer (either sex) may be taken.

* * * * *

(vi) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset.

(vii) Hunters must wear a minimum of 500 square inches of hunter orange material above the waistline.

(4) *Santee National Wildlife Refuge.* * * *

(vi) Hunters must wear a visible outergarment made of hunter orange material during the gun hunts.

* * * * *

(oo) *Texas—(1) Aransas National Wildlife Refuge.* * * *

(v) The firearms hunt bag limit is two deer per hunter.

(vi) Hunters must wear hunter orange caps and vests.

* * * * *

(3) *Laguna Atascosa National Wildlife Refuge.* * * *

(iv) The firearms hunt bag limit is two deer per hunter.

(v) Hunters must wear hunter orange caps and vests.

* * * * *

(qq) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Only shotguns may be used on that part of the refuge east of the Missisquoi River during the State regular season.

(2) Hunters, during the State firearm deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(rr) *Virginia—(1) Back Bay National Wildlife Refuge.* * * *

(v) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(2) *Chincoteague National Wildlife Refuge.* * * *

(iv) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(3) *Great Dismal Swamp National Wildlife Refuge.* * * *

(v) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(4) *Presquile National Wildlife Refuge.* * * *

(vii) Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

Dated: September 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-23278 Filed 10-8-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 50828-7106]

Reef Fish Fishery of the Gulf of Mexico; Corrections

AGENCY: National Marine Fisheries Service (NFMS), NOAA, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document makes corrections in the regulatory text of the final rule to implement mandatory reporting requirements prescribed in the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico published September 23, 1987 (52 FR 35717). Two of the corrections are for clarification of definitions and one corrects an incorrect reference to a paragraph.

EFFECTIVE DATE: October 23, 1987.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

In rule document 87-21745 beginning on page 35717 in the issues of September 23, 1987, make the following corrections:

§ 641.2 [Corrected]

In § 641.2, under the definitions for "Charter vessel" and "Headboat" column 3, in line 3 of each definition, the phrase "that fishes" is corrected to read "who fish".

§ 641.5 [Corrected]

In § 641.5, paragraph (h), on page 35720, column 1, the reference to paragraph "(e)" is corrected to read "(c)", and the words "or quarterly" are added after the word "monthly".

(16 U.S.C. 1801 *et seq.*)

Dated: October 6, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-23511 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-22-M

VOL 52 ISS 196 OCT 9 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 196
Friday, October 9, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue through February 1988 a suspension of portions of the Eastern Colorado Federal milk order. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continuation of the suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due on or before October 19, 1987.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674) the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for the months of October 1987 through February 1988:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

All persons who want to send written data, views or arguments about the proposed suspensions should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October 1987 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would continue to relax for the months of October 1987 through February 1988 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and remove the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. The suspension currently in effect applies to milk deliveries through September 1987. The provisions proposed to be suspended have been suspended since September 1985.

The order provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants during the months of March, April, May, June, July and December, and up to 20 percent in other months. Suspension of the requested language would allow up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Mid-Am states that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk increased 12.7 percent over the previous year during 1985, and 5.8 percent from 1985 to 1986. Producer milk used in Class I increased only 1.8 percent from 1984 to 1985, and did not change from 1985 levels in 1986.

Although Eastern Colorado milk production decreased slightly during the first six months of 1987 due to the Dairy Termination Program, the cooperative states that producer milk used in Class I is 2.0 percent below the same period in 1986. As a result, according to Mid-Am, there are ample supplies of locally produced milk to meet the fluid requirements of Eastern Colorado distributing plants.

Mid-Am states that member producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative states that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconon.ic movements of milk. Without the requested continued

suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: October 6, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87–23409 Filed 10–8–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket No. RM87–5–000]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Opportunity for Oral Presentation

October 5, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of opportunity for oral presentation.

SUMMARY: On June 2, 1987, the Federal Energy Regulatory Commission issued a notice of proposed rulemaking to state by rule what are prohibited practices by interstate pipelines and marketing affiliates under the Natural Gas Act and Natural Gas Policy Act and to set out reporting requirements to reveal unduly discriminatory or otherwise unlawful practices. Over 80 comments were filed in the comment period which ended July 23, 1987. Three commenters requested the opportunity for an oral presentation. This notice informs interested persons of the time, place, and format of this opportunity for oral presentation.

DATE: The opportunity for oral presentation of views will be held on October 20, 1987, and will convene at 9:00 a.m.

ADDRESSES: The opportunity for oral presentation of views will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Changes in room number, if any, will be posted each day. Requests to participate including, if possible, a list of specific questions, should be directed, in writing, by Wednesday, October 14, 1987, to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lynn S. Lichtenstein, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, 202/357–8530.

SUPPLEMENTARY INFORMATION: On November 4, 1986, the Commission issued a Notice of Inquiry (NOI) into "Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines," Docket No. RM87–5–000, 51 FR 41982, November 20, 1986, FERC Stats. and Regs. ¶ 35,520. The NOI was issued in response to several petitions for rulemaking and several specific cases which had raised the issue of potential abuse of the pipeline-marketing affiliate relationship. The NOI solicited comments on the Commission's legal authority to regulate pipeline marketing affiliate activity, the relevance of antitrust, law, examples of existing abuses, and possible remedies.

After evaluating the one hundred and seven comments received in response to the NOI, the Commission concluded that no industry-wide standards are being observed and that anticompetitive activities could be occurring. On June 2, 1987, the Commission issued a notice of proposed rulemaking (NOPR) to state by rule what are prohibited practices by interstate pipelines and marketing affiliates under the Natural Gas Act and the Natural Gas Policy Act.[1] The Commission also proposed reporting requirements, in computer-accessible form, to provide data that would reveal where unduly discriminatory or otherwise unlawful practices were occurring. The Commission also proposed remedies that would be utilized if either the substantive standards or reporting requirements proposed in the rule were violated.

The Commission received 82 comments in response to the NOPR. Three commenters [2] requested an opportunity to make an oral presentation in connection with their comments on the NOPR. In addition, many commenters expressed their willingness or desire to participate in an oral presentation should one be held. Accordingly, the Commission will provide an opportunity for the oral presentation of views on October 20, 1987, with regard to the issues in the NOPR as provided for in section 502(a) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3412(a).

The opportunity for oral presentation of views will not be of a judicial or evidentiary nature. Persons requesting to speak will be divided into participant panels and will be permitted time to present prepared remarks. There will be no cross examination of persons presenting statements. However, the presiding officer and a staff panel may question these persons. In accordance with the provisions of § 3.8(h) of the Commission's regulations,[3] the opinions and comments expressed by staff are not binding on the Commission in the preparation of the final rule or in any other action taken in this docket.

In addition, anyone may submit to the presiding officer questions to be asked of persons on the participant panels. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file of this proceeding, Docket No. RM87–5–000, in the Commission's Office of Public Information, and may be ordered from that office.

Requests to participate in the opportunity for oral presentation should be submitted on or before October 14, 1987 to the Office of the Secretary, and should state the amount of time requested for the oral presentation. Persons participating at the hearing should, if possible, bring 50 copies of their statement to the presentation. A list of the participants in the presentation will be available in the Commission's Office of Public Information and at the hearing room on the morning the presentation is commenced.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23413 Filed 10–8–87; 8:45 am]

BILLING CODE 6717–01–M

[1] "Notice of Proposed Rulemaking Related to Marketing Affiliates of Interstate Pipelines," Docket No. 87–5–000, 52 FR 21578 (June 8, 1987), 39 FERC ¶ 61,247.

[2] ANR Pipeline Company and Colorado Interstate Gas Company, Citizens Energy Corporation and Citizens Gas Supply Corporation, and Salmon Resources Ltd.

[3] 18 CFR 3.8(h) (1987).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 86N-0336]

Prescription Estrogen Drug Products; Patient Package Insert Requirement

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the requirements for patient package inserts for estrogen drug products. The revisions would permit the distribution of patient package inserts that better reflect the current information about the benefits and risks of estrogen drug use.

DATE: Comments by January 7, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 1977 (42 FR 37636), FDA first required manufacturers and dispensers of prescription estrogen drug products to make available to patients information about the use of these products. The agency required that dispensers give users of estrogen drug products a brief informational leaflet—now called a patient package insert—about the benefits and risks of estrogen drug use. The patient package insert alerted potential users of estrogen drug products to the scientific findings linking postmenopausal estrogen use to endometrial cancer, the reports of an association between intrauterine exposure to estrogens and congenital anomalies in exposed offspring, and the findings of an increased risk of vaginal cancer in adolescent daughters exposed in utero to diethylstilbestrol. The patient package insert contained other information about side effects associated with estrogen use and emphasized the importance of patients discussing use of these drugs with their physicians. In addition, the patient package insert regulation contained detailed requirements on the content of the patient package insert and on the ways patient package inserts were to be prepared and distributed. To assist manufacturers in developing patient package inserts, the agency also published a guideline patient package insert text reflecting the informational requirements outlined in the regulation. Manufacturers could adopt the guideline text to comply with the regulatory requirements.

FDA is now proposing to revise the patient package insert regulation (1) to update the technical information in the patient package insert of the benefits and risks of estrogen drug use, and (2) to simplify the content and format of the patient package insert to make the document more readable and understandable.

The current regulation (21 CFR 310.515) describes the specific information to be included in the estrogen patient package insert regarding the uses of estrogen, the dangers of the drug, and the contraindications to use. The detail in which those requirements are described in the patient package insert regulation means that any signficant change in information about the drug's benefits and risks can only be reflected in the patient package insert guideline if the rule is revised, i.e., on completion of notice and comment rulemaking. This procedural obligation may delay communication of important new information about estrogen drug products to the drug products' users. To reduce the possibility of delay, FDA proposes to transform the estrogen patient package insert regulation from a listing of specific items to be included in the patient package insert to an enumeration of general categories of information to be included. The change should make it easier for manufacturers to update patient package inserts to reflect new information about the benefits and risks of estrogen drug use.

The agency proposes several other changes to simplify the patient package insert and to allow manufacturers and other labelers greater flexibility in developing and distributing patient package inserts. In particular, to enhance manufacturers' flexibility in preparing patient package inserts, the proposed rule would eliminate current requirements with respect to printing specifications for the patient package insert. Except in the regulations imposing patient package inserts for specific drug products, FDA has not in the past established printing specifications for drug labeling. The agency has found that its routine review of final printed labeling for drugs subject to premarketing clearance and its other compliance activities have been adequate to ensure that drug labeling can be read by its intended audiences. The agency now believes that this kind of monitoring of labeling practices obviates the need to mandate printing specifications for patient labeling.

FDA also proposes to establish more flexible distribution requirements for estrogen drug products. The current regulation requires that patient package inserts physically accompany the drug product from the manufacturer or labeler through the wholesaler to the dispenser of the product. The proposal would permit distributors of estrogens to adopt whatever distribution method they choose, provided every person in the distribution chain receives an adequate number of patient package inserts to meet his or her obligations.

Elsewhere in this issue of the **Federal Register**, FDA has published a notice announcing the availability of a revised patient package insert guideline for prescription estrogen drug products. The revised guideline reflects new information on the benefits and risks of estrogen drug product use. Manufacturers of such products may rely on the guidelines to meet the requirements of the regulation.

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has carefully analyzed the regulatory impact of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The proposed rule would make minor modifications to the regulations governing the patient labeling requirements for estrogen drug products. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

Interested persons may, on or before January 7, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 310 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 502, 503, 505, 701, 52 Stat. 1051, 1052, 1053, 1055 as amended (21 U.S.C. 352, 353, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. By revising § 310.515 to read as follows:

§ 310.515 Patient package inserts for estrogens.

(a) *Requirement for a patient package insert.* FDA concludes that the safe and effective use of drug products containing estrogens requires that patients be fully informed of the benefits and risks involved in the use of these drugs. Accordingly, except as provided in paragraph (f) of this section, each estrogen drug product restricted to prescription distribution, including products containing estrogens in fixed combinations with other drugs, shall be dispensed to patients with a patient package insert containing information concerning the drug's benefits and risks. An estrogen drug product that does not comply with the requirements of this section is misbranded under section 502(a) of the Federal Food, Drug, and Cosmetic Act.

(b) *Distribution requirements.* (1) Each manufacturer and distributor of estrogen drug products shall provide sufficient numbers of patient package inserts to each person to whom it ships the product to permit the dispenser to give one insert to each patient receiving the drug.

(2) Each dispenser of an estrogen drug product shall provide a patient package insert to each patient to whom the product is dispensed, except that the dispenser may provide the insert to the parent or the legal guardian of a legally incompetent patient or to the agent of either. The patient package insert is required to be placed in or accompanying each package dispensed to the patient.

(3) Patient package inserts for estrogen drug products dispensed in acute care hospitals or long-term care facilities will be considered to have been provided in accordance with this section if provided to the patient prior to administration of the first dose of estrogen and again every 30 days thereafter, as long as the therapy continues.

(c) *Patient package insert contents.* A patient package insert for an estrogen drug product is required to contain the following information:

(1) The name of the drug.

(2) The name and place of business of the manufacturer, packer, or distributor.

(3) A statement regarding the proper use of estrogens.

(4) A statement regarding when estrogens should not be used, including the contraindications to use.

(5) A description of the most serious risks associated with use of estrogens.

(6) A brief summary of other side effects of estrogens.

(7) Instructions on how a patient may reduce the risks of estrogen use.

(8) The date, identified as such, of the most recent revision of the patient package insert.

(d) *Gudeline language.* The Food and Drug Administration has available a guideline patient package insert for estrogen drug products that includes information responsive to all items specified in paragraph (c) of the section. Any person may rely on the latest version of this guideline to comply with paragraph (c) of this section.

(e) *Exemptions.* This section does not apply to estrogen-progestogen oral contraceptives. Labeling requirements for these products are set forth in § 310.501.

(f) *Requirement to supplement new drug application.* Holders of approved drug applications for estrogen drug products that are subject to the requirements of this section must submit supplements under § 314.70(c) of this chapter to provide for the labeling required by paragraph (a) of this section.

Dated: September 8, 1987.

Frank E. Young,

Commissioner for Food and Drugs.

[FR Doc. 87–23453 Filed 10–8–87; 8:45 am]

BILLING CODE 4160–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: FEMA is proposing to change two provisions of the Individual and Family Grant (IFG) program regulations (42 U.S.C. 5178; section 408 of the Disaster Relief Act of 1974, Pub. L. 93–288). The first concerns disaster applicants who received IFG assistance under previous regulations which required them to obtain and maintain flood insurance for various lengths of time. We would consider these recipients to have met their requirement if they keep the policy for 3 years, just as recipients under the current regulations must. The change is being made for the sake of equity.

The second change would clarify the provisions for late filing of IFG applications by strengthening the time limitation language. This change would eliminate reported confusion.

DATE: Public comments are welcome and will be considered if received by December 8, 1987.

ADDRESS: Comments should be sent to: The Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Office of Disaster Assistance Programs, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Phone: (202) 646–3660.

SUPPLEMENTARY INFORMATION: The changes are described below.

Flood Insurance Requirement

Current FEMA regulations on the IFG program (51 FR 32643, September 15, 1986) state that recipients of IFG assistance must maintain a required flood insurance policy for 3 years. It was implied, though not stated, that any IFG applicant who received a grant in prior years, under a different maintenance requirement, and who did not keep the insurance for the then-required period, would be ineligible for a new grant. The proposed rule addresses this inequity. FEMA proposes that any prior IFG recipient who, as a condition of receiving previous grant assistance, was required to maintain insurance longer than 3 years, but has kept it for at least 3 years, is considered to have met the intent of the regulation.

If all other criteria are met, he/she would now be eligible for future IFG assistance. If the State determines, through checking with the National Flood Insurance Program, that a prior IFG recipient canceled a required policy before 3 years from the date of the grant, then he/she would now be ineligible for subsequent grant assistance for insurable items. This provision will make conditions for prior IFG recipients equal to current recipients.

Late Applications/Time Limitations

Current regulations state that applicants may file an IFG application within 60 days from the date of declaration of a major disaster, and within at least 30 days in the case of defined extenuating circumstances. There is also a requirement that, in the case of housing, personal property, and transportation expenses, families first apply for and either be declined for or receive an insufficient disaster loan from the Small Business Administration (SBA) before being determined eligible for assistance. The SBA also accepts late applications beyond the ordinary 60 days. Beyond that, processing times at the SBA may extend for 45 days or more after the filing deadline. Therefore, the IFG program finds that some persons who apply in time, and most who apply late, to the SBA and have their applications accepted are actually too late to officially be processed by the IFG program.

To correct this unintended inequity for SBA clients, FEMA proposes the following. First, if a person files timely to the SBA, but the SBA completes processing after the IFG deadline, that person's case shall be referred to the State and shall be considered timely filed.

Second, if in following its established procedures, SBA accepts a late application for "substantial causes beyond the control of the applicant," and then refers to the State cases turned down for lack of repayment ability or cases where an insufficient loan was made for the same reason, those cases will be considered timely filed. The referral will include the reason the late application was accepted. The State automatically has an extension of time to complete processing of such cases. But in no case may this rule relaxation prevent the State from completing all administrative activity within the 270-day period prescribed in these regulations.

The situation described above is the only one where applicants who failed to apply within the 90-day extended IFG filing period may have their cases considered. If an applicant registers with FEMA beyond the 90-day period, FEMA may forward the case to the SBA so it may follow its established procedures.

Content of the Rule

This rule implements Section 408 of the Disaster Relief Act of 1974, 42 U.S.C. 5178. It provides FEMA policy and clarifies the national eligibility criteria for use by States in implementing the IFG program.

Impacts

FEMA has determined, based upon an Environmental Assessment, that this proposed rule would not have significant impact upon the quality of the human environment. The environmental assessment and a finding of no significant impact are included in the formal docket file and are available for public inspection and copying at the Office of the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The regulations likely to result from this proposed rulemaking would not have a significant economic impact on a substantial number of small entities, and, hence, no regulatory flexibility analysis has been prepared.

The rule likely to result from this proposed rulemaking would not be a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that the rule likely to result from this proposed rulemaking would not contain a collection of information requirement as defined in Section 3502 of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 93-288)

1. The authority citation for Part 205 continues to read as follows:

Authority: 42 U.S.C. 5001; Reorg. Plan No. 3 of 1978; E.O. 12148.

2. Section 205.54 is amended by revising paragraph (d)(1)(iii)(C)(*1*) as follows:

§ 205.54 Individual and Family Grant Programs.

(d) * * *
(1) * * *
(iii) * * *
(C)(*1*) The State may not make a grant for acquisition or construction purposes in a designated flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for 3 years, or as long as they live in the residence to which the grant assistance relates, whichever is less. Any previous grant recipient who may have been required to maintain a policy for a longer period of time (under previous regulations) but who kept it for at least 3 years, is deemed to have satisfied this requirement. Adequate flood insurance, for IFG purposes, means a policy which covers $5,000 building and $2,000 contents (homeowners) or $5,000 contents (renters). If the grant recipient fails to obtain the required flood insurance, he/she must return to the State the amount of the grant received for acquisition and construction of insurable real and personal property, and the flood insurance premium. If a grant recipient cancels a required policy within the 3-year period, he/she is ineligible for subsequent IFG assistance for insurable real and personal property for the remainder of the 3-year period, up to the amount which should have been covered by flood insurance. The cost of the first year's policy is a necessary expense for those required under this section to buy flood insurance.

§ 205.54 [Amended]

3. Section 205.54 is amended by revising paragraph (j)(1)(ii) as follows:

* * * * *

(j)(1) * * *

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely way. *Exception:* If applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans, then such an application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State automatically has an extension of time to complete the processing and disbursement functions. However, the State still must complete all administrative activity within the 270-day period described in this section.

Dated: October 2, 1987.

Dave McLouglin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87-23406 Filed 10-8-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-392, RM-5890]

Radio Broadcasting Services; Fort Myers, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Riverside Baptist Church of Fort Myers, Inc., which seeks to substitute Channel 237C1 for Channel 237A at Fort Myers, Florida, and to modify its Class A license for Station WSOR(FM) to specify the Class C1 channel. A site restriction 29.4 kilometers (18.3 miles) west must be imposed on Channel 237C1.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Wiley, Rein and Fielding, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–392, adopted September 4, 1987, and released October 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Internationa1 Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23425 Filed 10–8–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–394, RM–5963]

Radio Broadcasting Services; Lancaster, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Maurice B. Polayes seeking the allocation of Channel 272A to Lancaster, New Hampshire, as the community's first local FM service. Channel 272A can be allocated to Lancaster in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.3 kilometers (2.1 miles) northeast to avoid a short-spacing to Station WCVR, Randolph, Vermont. Canadian concurrence in the allotment is required since the community is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Esq., Fisher, Wayland, Cooper and Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–394, adopted September 4, 1987, and released October 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23426 Filed 10–8–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–393, RM–5966]

Radio Broadcasting Services; Roland, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Family Broadcasting Company to allocate Channel 222A to Roland, Oklahoma, as the community's frst local FM service. Channel 222A can be allocated to Roland in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) north to avoid a short-spacing to unoccupied and unapplied for Channel 223A at Heavener, Oklahoma.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Family Broadcasting Company, P.O. Box 20700, Oklahoma City, Oklahoma 73156 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–393, adopted September 4, 1987, and released October 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23427 Filed 10–8–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–395, RM–5962]

Radio Broadcasting Services; Brownsville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P–N–P Broadcasting proposing the allocation of Channel 272A to Brownsville, Oregon, as the community's first local FM service and the substitution of Channel 274C1 for Channel 273C1 at Newport, Oregon, licensed to Central Coast Broadcasting Co., Inc., Station KYQT. Channel 272A can be allocated to Brownsville in compliance with the Commission's minimum distance separation requirements without a site restriction if Channel 274C1 is substituted at Newport. Channel 274C1 can be allocated to Newport and used at Station KYQT's present transmitter site. An *Order to Show Cause* is directed to Central Coast Broadcasting Co., Inc. concerning the modification of its license to specify operation on Channel 274C1 in lieu of its present Channel 273C1.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14 , 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Duane J. Polich, P–N–P Broadcasting, Inc., 9235 NE 175th, Bothell, Washington 98011 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–394, adopted September 4, 1987, and released October 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23428 Filed 10–8–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–396, RM–5955]

Radio Broadcasting Services; Gregory, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Gregory Associates, proposing the allotment of Channel 283A to Gregory, Texas, as that community's first FM service. Concurrence must be obtained from the Mexican government.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Samuel Miller, Esquire, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–396, adopted September 4, 1987, and released October 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23429 Filed 10-8-87; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 52, No. 196
Friday, October 9, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes and Committee on Adjudication; Public Meetings

Committee on Governmental Processes

Dates: Monday, October 19; Monday, November 9; and Monday, November 30. 1987.

Time: 9:30 a.m.

Location: Covington and Burling, 1201 Pennsylvania Avenue NW., 11th floor, Washington, DC.

Agenda: The committee will meet to consider the following two draft reports and possible recommendations: (i) The Discretionary Function Exception to the Federal Tort Claims Act, by Professor Ronald A. Cass; and (ii) Contractual Indemnification of Government Contractors, by Professor Frank P. Grad. The committee may also discuss a new study by Professor Henry H. Perritt Jr., of federal agency use of computer systems for submission and handling of regulatory documents.

Contact: David M. Pritzker, 202–254–7065.

Committee on Adjudication

Date: Tuesday, October 20, 1987.

Time: 1:00 p.m.

Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.

Agenda: The committee will meet to discuss reports by Professors Allen E. Shoenberger, Charles H. Koch, Jr. and David A. Koplow. The reports concern Social Security disability determinations at the State and Federal levels.

Contact: Deborah Ross, 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Jeffrey S. Lubbers,
Research Director.
October 6, 1987.

[FR Doc. 87–23434 Filed 10–8–87; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Impact Statement for Gravina and Big Islands Management Area Analysis; Chugach National Forest, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed activities to occur under Management Area Analysis for the Gravina and Big Islands Management Areas on the Chugach National Forest, Alaska.

DATE: Comments concerning the scope of the analysis should be received by November 9, 1987.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis must be sent to Dave Rittenhouse, Acting Forest Supervisor,. Chugach National Forest, 201 E. Ninth Avenue, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Bob Wilhelm, Planning Team Leader, Chugach National Forest, 201 E. Ninth Avenue, Anchorage, Alaska 99501, phone 907–271–2558.

SUPPLEMENTARY INFORMATION: The Chugach National Forest Land and Resource Management Plan was completed in July 1984. A Settlement Agreement to the appeal of the Forest Plan was signed November 26, 1985. That Settlement Agreement requires completion of Management Area Analysis for each of the nine management areas in the Forest Plan. The Settlement Agreement called for Management Area Analysis to be tiered to the Forest Plan EIS, be consistent with the terms of the Agreement, and may result in an amendment or revision of the Forest Plan pursuant to 36 CFR 219.10 (e), (f) or (g) (1986).

Management Area Analysis will further specify if, how, when and where management activities specified by area in the Forest Plan are to be implemented for the life of the current Plan. Resource information needed to manage these Forest lands will be evaluated and updated where possible and appropriate so that cumulative effects of proposed management activities can be estimated.

Specific topics to be addressed in the Management Area Analysis include: minerals area management, recreation, timber, subsistence requirements set forth in section 810 of ANILCA, transportation planning, effects of land selections on the Management Areas, additional standards and guidelines and environmental impacts of proposed activities.

A range of alternatives for the Management Area will be considered. One of them will be no further development in the area. Five significant management activities were proposed by the Forest Plan as amended by the Settlement Agreement for the Gravina and Big Islands Management Areas. These activities would occur during the period of time before than is revised:

1. Develop marine-oriented recreation opportunities which will tie in with an over-all system for Prince William Sound.

2. As part of this system, construct and maintain cabins and marine recreation facilities to include 4 anchor buoys and/or tent platforms in the Gravina Management Area and 3 anchor buoys and/or tent platforms and 2 cabins in the Big Islands Management Area.

3. Improve habitat for fish species through construction of a combination of 7 fishpass, or spawning or rearing structures in the Gravina Management Area and 13 in the Big Islands Management Area.

4. Offer for sale approximately 20 million board feet of timber in the St. Matthews Bay/Olsen Bay area (Gravina Management Area) and approximately 36 million board feet on Montague Island in the Big Islands Management Area.

5. Coordinate management of the National Forest with adjacent landowners and other resource managers in the area.

Dalton DuLac, Forest Supervisor, Chugach National Forest, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that reviewers participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition Federal Court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). NEPA case law supports the proposition that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by November 1988. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: September 21, 1987.

Dave Rittenhouse,

Acting Forest Supervisor.

[FR Doc. 87-23408 Filed 10-8-87; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: International Trade Administration.

Title: Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance.

Form Number: Agency—ITA-840P; OMB—0625-0103

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 600 respondents; 4,800 reporting hours.

Needs and Uses: The Trade Act of 1974 authorizes the International Trade Administration to provide adjustment assistance to firms meeting certain criteria. The information provided is used to determine whether or not a trade-impacted producing firm qualifies for certification of eligibility to apply for technical assistance.

Affected Public: Farms; businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: October 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-23482 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 18-87]

Foreign-Trade Zone 100, Dayton, OH; Application for Subzone Chrysler Auto Components Plant, Dayton

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Dayton Foreign-Trade Zone, Inc., grantee of FTZ 100, requesting special-purpose subzone status for the auto components plant of the Chrysler Corporation in Dayton, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 28, 1987.

The 60-acre facility, which employs 2000 persons, is located at 1600 Webster Street in Dayton. It is used to produce radiators, air conditioners, heaters and electric fuel pumps. Some 2.3 percent of the components are sourced abroad, including blower motors, fuel pump motors, and materials for radiators.

Zone procedures would exempt Chrysler from Customs duties on the foreign components that are reexported either as auto parts or in assembled autos. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The duty rates on components used at the five plants range from 3.2 to 5.0 percent, whereas the rate on autos is 2.5 percent. The savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Nelson, District Director, U.S. Customs Service, North Central Region, 6th floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and, Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 16, 1987.

A copy of the application is available for public inspection at each of the following locations:

Port Directors Office, U.S. Customs Service, Dayton Int'l Airport, Vandalia, OH 45377

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, Washington, DC 20230.

Dated: October 2, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-23483 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-401-603]

Final Determination of Sales at Less Than Fair Value; Stainless Steel Hollow Products From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that stainless steel hollow products (SSNP) from Sweden are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden (202/377-3003) or Mary S. Clapp (202/377-1769), Office of Investigations, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that stainless steel hollow products from Sweden are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The margins found for the companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 15, 1987, we made an affirmative preliminary determination (52 FR 19369, May 22, 1987).

On May 21, 1987, we received a cost of production (COP) questionnaire response from Sandvik AB (SAB, or Sandvik) concerning sales of seamless redraw hollow to the Federal Republic of Germany (FRG).

On May 27, 1987, we received a request from SAB, a respondent in this case, to postpone the final determination to no later than the 135th day after publication of our "Preliminary Determination" notice in the **Federal Register**. We granted this request and postponed the final determination until no later than October 5, 1987 (52 FR 22367, June 11, 1987).

Supplemental computer tape responses from the respondents were received on June 30, 1987. A supplemental COP response from SAB was received on July 14, 1987.

We verified the exporter's sales price responses for both respondents in the United States from July 13 to July 16, and from July 20 to July 22, 1987. We verified the purchase price, home market and third country responses of the respondents in Sweden and the FRG from August 17, 1987 to August 28, 1987.

On September 14, 1987, the Department held a public hearing. Interested parties submitted comments for the record in their pre-hearing briefs of September 10, 1987, and in their post-hearing briefs of September 18, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with the product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain stainless steel hollow products including pipes, tubes, hollow bars and blanks therefor, of circular cross-section, containing over 11.5 percent chromium by weight, as provided for under TSUSA item numbers 610.3701, 610.3727, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231, and currently classifiable under HS item numbers 7304.41.00, 7304.49.00, 7306.40.10, and 7306.40.50

Fair Value Comparisons

To determine whether sales of SSHP in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

We made comparisons on virtually all of the sales of the products during the period of investigation, May 1, 1986 through October 31, 1986.

United States Price

For SAB and Avesta Sandvik Tube AB (AST, or Avesta), we based United States price on exporter's sales price (ESP) when those sales were made after importation, in accordance with section 772(c) of the Act. For those sales by SAB and AST to the United States which were made prior to importation, we

determined that the merchandise had been purchased through related parties directly from the manufacturer or producer and, therefore, based the United States price on purchase price in accordance with section 772(b) of the Act for the following reasons:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, that party commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and ESP based on the packed, f.o.b. or c.i.f., duty paid or delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, as appropriate. For ESP sales, we also deducted credit costs and other expenses normally incurred in selling the merchandise in the United States.

For the exporter's sales price sales involving further manufacturing, we deducted all value added in the United States. This value consisted of all costs associated with the manufacture and sale of the finished pipe or tube, and a proportional amount of the profit or loss related to these costs. Profit or loss was calculated by deducting from the sales price of the finished pipe or tube all costs incurred in Sweden and the U.S. by the company for the production and sale of the product. The profit or loss was then apportioned between the costs of the redraw hollows and additional costs incurred in the U.S. based on the ratio of these costs to total costs.

For the costs of the SSHP sold in the United States, the Department relied primarily on the cost data provided by the respondent In those instances when it appeared all costs were not included or appropriately quantified or valued, certain adjustments were made. For Sandvik AB, interest expenses, classified by the company as factory overhead, were reclassified as a general expense. Freight expense, which was included in general expenses, was deducted from the general expenses, since it concerned an expense incurred after shipment. A proportional amount of general, administrative, and interest expenses were added to these manufacturing costs in determining the total costs incurred in Sweden. For the costs incurred in the United States, packing labor costs were reclassified from direct labor to packing expense.

Foreign Market Value

SAB

In accordance with section 773(a) of the Act, we found sufficient sales of hollow bar in the home market to form the basis of comparison We based our calculations on delivered home market prices We made deductions for inland freight. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we deducted selling expenses incurred on home market sales up to the amount of the indirect selling expenses incurred for sales to the U.S. market, as an offset in accordance with § 353.15(c) of our regulations. For purchase price comparisons, we made an adjustment for differences in credit based on arm's-length borrowing rates in Sweden and for ESP comparisons deducted home market credit costs, in accordance with § 353.15 (b) and (c) of our regulations.

In accordance with section 773(a)(1)(B) of the Act, we determined that there were insufficient home market sales of seamless redraw hollows and finished pipes and tubes to be used as a basis for determining foreign market value. The third country market with the largest volume of sales of the most similar merchandise is the Federal Republic of Germany (FRG). On April 17, 1987, petitioners alleged that third country prices of seamless redraw hollows were below the cost of production. We did not have sufficient time to develop data for purposes of the preliminary determination. Since then, we have received and analyzed the relevant data for purposes of this determination.

For the cost of production of redraw hollows sold in the FRG, the Department relied generally on the cost data provided by SAB. Interest expense, which was classified by the company as part of the factory overhead, was reclassified as a general expense. This interest was then adjusted to reflect a proportional amount of interest expense of Sandvik AB, deducting an apportioned amount for the credit expense, which was included as a selling expense.

The freight expense, which was an ex-factory expense, was excluded from general and administrative expenses. Verified selling expenses were used.

Since we found that virtually all sales were at prices above the cost of production, we based our comparisons for redraw hollows on all sales of that product in the FRG.

We made deductions from delivered prices for discounts and for foreign inland freight between Sweden and the FRG. We deducted third country packing costs and added U.S. packing costs. For comparisons to purchase price, we made a circumstance of sale adjustment for differences in credit expenses. For comparison to ESP, we deducted credit cost incurred in the FRG and offset indirect selling expenses on the U.S. sales, in accordance with § 353.15 (b) and (c) of the Commerce regulations. Where we compared similar products, we made adjustments for differences in physical characteristics based on differences in direct manufacturing costs in accordance with § 353.16 of our regulations.

AST

We found sufficient sales in the home market to form the basis of comparison and, therefore, used delivered home market prices. We made deductions for foreign inland freight and discounts. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we offset the selling expenses incurred in the U.S. with home market selling expenses, in accordance with § 353.15(c) of our regulations. We made an adjustment for difference in credit terms in accordance with § 353.15(b) of our regulations. Where we compared similar products, we made adjustments for differences in

physical characteristics based on differences in direct manufacturing costs in accordance with § 353.16 of our regulations.

Such or Similar Merchandise

Petitioners advocate product comparisons for nonidentical products based on grade, finish (hot or cold), outside diameter and wall thickness. However, where significant differences in physical dimensions would result when using within-grade matches of some merchandise, petitioners state that the Department should use comparisons between regular and low-carbon versions of equivalent grades. In cases where factors being compared vary by more than 20 percent, petitioners urge the use of constructed value instead of the matches proposed by Sandvik.

Petitioners allege that many of Sandvik's proposed matches are defective, comparing products with wide differences in production cost, or overlooking closer matches available. Petitioners also object to Avesta's proposed matches, claiming that Avesta has overlooked identical product matches and chosen others that are not the closest possible comparisons. As with Sandvik, petitioners propose that where matching factors differ by more than 20 percent, the Department should use constructed value.

Sandvik states that when there is no home market or third country merchandise that is identical to that being sold in the U.S., the product matches contained in its concordance computer tape should be used.

Avesta claims an adjustment for differences in physical characteristics between welded pipes and tubes sold in Sweden and those sold for export to the U.S. Avesta bases its claim on its assertion that there were virtually no "identical" product matches between U.S. and Swedish sales and that the "similar" products compared differed in size standards, chemistries and wall thickness, with corresponding differences in cost of production.

Where we found sales of identical merchandise in the relevant foreign market, we made comparisons to sales of the identical products. Where we based our comparisons on sales of similar merchandise, we selected sales of the most similar product sold in the relevant market for our comparisons. In determining the degree of similarity, we used the following criteria which all parties agreed were appropriate:

For seamless pipe and tube:
1. Steel grade,
2. Type of finish (hot or cold),
3. Outside diameter, and
4. Wall thickness; and

For welded pipe and tube:
1. Steel grade,
2. Outside diameter, and
3. Wall thickness.

The use of these criteria resulted in some changes from the comparison groupings proposed by respondents.

Currency Conversion

For ESP comparisons, we used the official exchange rate for the date of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we verified all information relied upon in making this final determination. We used standard verification procedures, including examination of all relevant accounting records and original source documents provided by the respondents on sales and production costs.

Interested Party Comments

Comment 1: Sandvik argues that seamless and welded SSHP constitute two different classes or kinds of merchandise. Sandvik bases it contention on the different physical characteristics of seamless and welded SSHP, their different ultimate uses and different channels of trade used to market the products. Furthermore, Sandvik points to ITC determinations recognizing that seamless and welded SSHP are separate "like" products produced by two separate industries.

DOC Response: We disagree. We consider seamless and welded SSHP as a single "class or kind" of merchandise for reasons outlined in the *Final Affirmative Countervailing Duty Determination: Stainless Steel Hollow Products from Sweden* (52 FR 5794 at 5805, February 26, 1987). The ITC's "like" product determination is irrelevant to the Department's "class or kind" determination since it is conducted for a different purpose.

Comment 2: Sandvik contends that petitioners lack standing to represent the industry producing seamless SSHP and, therefore, the investigation should be terminated Sandvik argues that seamless SSHP is a separate class or kind of merchandise, therefore, petitioners must represent the affected industry. Only one of the original petitioners manufactures seamless SSHP and other members of the industry have indicated to Sandvik's counsel their opposition to the petition. The addition of the United Steel Workers Union as a co-petitioner does not satisfy the standing requirement as they entered the proceedings more then twenty days after the filing of the petition.

DOC Response: We disagree. We consider all products covered by this investigation to constitute a single class or kind of merchandise as stated in our response to Comment 1. Neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioners representation that it has, in fact, filed on behalf of the domestic industry until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major proportion of the domestic industry. In this case, we have not received any opposition from the domestic industry. See *Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794 at 5795, February 26, 1987), *Certain Fresh Atlantic Groundfish from Canada*, (51 FR 10041, March 24, 1986), *Frozen Concentrated Orange Juice from Brazil* (52 FR 8324, March 17, 1987). Based on the foregoing, we have determined that there is no reason to conclude petitioners lack standing in this investigation.

Comment 3: Petitioners have alleged that Sandvik's sales of redraw hollows in the FRG were made at less than the cost of production based on a comparison of Sandvik's prices to the estimated production costs utilizing petitioners experience. Specifically, they contend Sandvik has understated its cost of production in that transfer prices from the Semi-Finished to the Tubular Products Divisions were not used, and these transfer prices are higher than the cost of production. Petitioners further allege that Sandvik's claimed SG&A expenses do not include the SG&A costs incurred by the Tubular Products division, or by Sandvik GmbH.

Sandvik argues that petitioners claim of sales below cost of production is groundless and that the Department's verification established that virtually all of Sandvik's redraw hollow sales made in the FRG during the period of

investigation were above the cost of production.

DOC Response: The Department followed its usual methodology of using the actual costs incurred in production. We determined that the use of the costs incurred by the Tubular Products division and the Semi-Finished Products division of Sandvik were appropriate since they are divisions of Sandvik, not separate companies. After calculating the cost of manufacture based on actual costs, we added SG&A expenses of the corporate entities involved in the production and sale of the products sold in the FRG. We did not find sales at prices below the cost of production in substantial quantities.

Comment 4: Petitioners state that the Department should not deduct inventory carrying costs and credit expenses for the FRG and home market sales claimed by Sandvik where they were incurred prior to shipment. Sandvik defends its claims as proper and verified by the Department.

DOC Response: The inventory carrying costs are warehousing expenses which have been treated as indirect selling expenses in accordance with established practice and, as such, have only been deducted as part of the offset for indirect selling expenses incurred in the United States relative to ESP comparisons.

Comment 5: Petitioners contend that the Department should disallow Sandvik's claimed rebate allowance to one West German customer as Sandvik has not demonstrated that the rebate plan was part of its normal business practice.

Sandvik asserts that the rebate in question has been given to a longstanding customer over the last several years when the customer purchased a certain level of merchandise in a given year and that this rebate program was verified by the Department.

DOC Response: We agree with the respondent. Sandvik demonstrated that the rebates in question were a normal practice and that they reflected past experience of the company

Comment 6: Sandvik claims a cash discount adjustment for certain FRG sales based on information provided to the Department and verified in the FRG.

Petitioners argue that the Department should allow for Sandvik's cash discounts only on those individual sales where they were actually given, rather than averaging them on a per-kilogram basis over Sandvik's total sales.

DOC Response: We agree with the petitioners that the most accurate reporting of these discounts would be on the basis of individual sales However, lacking the specific data required, we have determined that the averaging of these discounts approximates their effect on Sandvik's sales prices.

Comment 7: Petitioners contend that the Department failed to back out completely the value added on Sandvik's ESP sales in the preliminary determination by not deducting an allowance for profit, related home market general operating expenses, and actual direct labor costs incurred in connection with U.S. processing operations. These three items represent significant value added that should be incorporated in the final determination calculations.

With respect to profit, petitioners further argue that the Department identify total profit and allocate it reasonably between the Swedish parent companies and the U.S. subsidiary. They claim that such an allocation is necessary to prevent circumvention of the antidumping law whereby a foreign producer could assign all its profit to the foreign parent and accordingly reduce the downward adjustment to exporter sales price.

Sandvik challenges petitioners' methodology as contrary to law and Department practice. Sandvik states petitioners are attempting to have profit considered as "increased value", in accordance with 19 U.S.C. 1677a(e)(3), which Sandvik contends is counter to the statute and regulations. Moreover, Sandvik contends that petitioners claim no similar allowance for foreign market sales, thus precluding a fair comparison of prices.

DOC Response: The Department considered general and administrative expenses incurred in Sweden to be part of the cost of the redraw hollow entering into the U.S. We considered direct labor costs in calculating value added in the U.S.; these costs had been included as factory overhead in the respondent's submission. We calculated the profit/loss of the SSHP finished and sold by Sandvik Steel Company in the U.S. and allocated this profit/loss, based on the cost of production, to the redraw hollow entering the U.S. and the additional costs incurred in the U.S. To consider profit/loss to be outside the definition of "value added" would be contrary to agency policy (See *Erasable Programmable Read Only Memories* (EPROMs) from Japan (51 FR 39680, Oct. 30, 1986). While it is not the Department's practice to deduct an element for profit attributable to the related reseller in circumstances where ESP sales do not involve additional manufacturing in the U.S., the statute does not preclude us from considering profit to be part of value added when additional manufacturing or assembly is performed.

Comment 8: Sandvik argues that the Department should not consider sales made by SAB to an unrelated distributor in a third country and resold in the United States as sales to the United States. Other than the provision that the distributor must resell the merchandise in the U.S., Sandvik has no other control over this merchandise, including the setting of terms of sale to the U.S. purchaser. Therefore, these transactions do not properly constitute the basis for U.S. purchase price and the sales should not be included in arriving at the final determination.

Petitioners argue for the inclusion of these sales based on Department practice to base United States price on the price charged by the foreign producer to unrelated middlemen or resellers outside the United States where, as here, the foreign producer knew the merchandise was destined for the U.S.

DOC Response: We normally treat sales by a respondent to an unrelated purchaser as sales to the United States where the seller knows that the merchandise is being sold for export to the United States. This is true of sales to trading companies in the country of origin or those in third country locations. *Urea from the USSR* (52 FR 19560, May 26, 1987), *Fuel Ethanol from Brazil* (51 FR 5573, February 14, 1986). Therefore, since Sandvik knew that the merchandise was being sold to the U.S., we included these sales in our analysis.

Comment 9: Sandvik argues that the Department should not consider certain sales of resold merchandise originally imported into the U.S. during 1979 for purposes of the final determination. These SSHP were sold during the period of investigation; however, these sales can no longer be considered "foreign merchandise" as defined under 19 U.S.C 1673(1) and 19 U.S.C., 1677b(a)(1) because of their various resales within the United States between 1979 and 1985. In addition, the merchandise in question was no longer suited for the purpose for which it was originally manufactured due to prolonged outdoor storage; further, the SSHP sales reported were sold as redraw hollows of unusual dimensions at distressed prices during the POI to allow for additional processing required by the purchaser.

Petitioners contend that these sales should be inc1uded in the investigation as they constitute proper sales of foreign merchandise under investigation to an unrelated purchaser during the period of investigation They further argue that

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Sandvik provided no evidence that the merchandise was distressed.

DOC Response: Dumping is defined in part as the sale of foreign merchandise in the United States at less than its fair value. See 19 U.S.C. 1673(1). Fair value is an estimate of foreign market value (19 CFR 353.1), and the foreign market value of imported merchandise is the price of that merchandise at the time it is first sold in the United States (19 U.S.C. S 1677b(a)(1)).

We agree with petitioners that the resold products constitute SSHP from Sweden, Sandvik, however, first sold the products at issue in 1979 to an unrelated customer in the United States. The 1979 transaction then is the only sale that may be reviewed to determine whether dumping has taken place with respect to the resold products. This transaction is outside the scope of the investigation; therefore, the 1986 sale of this merchandise was excluded from the data base.

Comment 10: Sandvik claims that the Department must adjust for differences in quantity between United States and foreign market sales. While Sandvik does not employ a price list for sales to customers, Sandvik contends their sales force does utilize an internal price list from which discounts quoted are directly related to the quantity of seamless SSHP ordered.

Avesta claims that its home market sales of less than 500 kilograms, which constitute the majority of home market sales, should not be used for fair value comparisons as there were no similar sized quantities sold in the U.S. market. If these sales are included for home market price comparisons, an adjustment for different quantities sold should be made Furthermore, as nearly half of U.S. sales were in quantities of over 5,000 kilograms, compared to only a few in the home market of such size, the Department must also make a quantity adjustment for these sales. As further justification for its quantity discount claims, Avesta maintains that its sales force utilizes an internal price list from which discounted prices are quoted to customers and that quantity ordered is directly related to the price quoted.

Petitioners contend that Sandvik and Avesta have not provided evidence that they have a quantity discount policy or that discounts were granted in the ordinary course of trade in 20 percent or more of home market sales, Avesta's comparison of average prices based on quantities sold does not take into account product specifications and differences in product mix that could account for most, if not all of the price differences. Furthermore, petitioners contend that respondents have not demonstrated any cost justification for claimed adjustments.

DOC Response: We have reviewed the respondents pricing practices and determined that no clear correlation between prices and quantities has been demonstrated. While internal price lists (which include quantity related prices) are used in setting prices, it is impossible to measure their final impact on the negotiated prices. Furthermore, no cost justification has been provided. Therefore, the claim has been denied.

Comment 11: Avesta claims that its home market prices to two Swedish distributors should be adjusted for after-sale rebates and loyalty discounts.

Petitioners contend that Avesta has not met the Department's requirements for establishing entitlement to a rebate adjustment. Petitioners also challenge Avesta's claims for loyalty discounts, claiming that these adjustments have not been supported by any evidence that they were granted to any specific transactions during the POI. Instead, petitioners argue that this alleged discount should be treated as "goodwill" and not as a discount adjustment on certain home market sales.

Petitioners argue that should the Department decide to grant these adjustments, it should ensure that none of these adjustments were instituted after the investigation began. Petitioners contend that, particularly with respect to the loyalty discount claim, some or all of these after-sale payments were made after the investigation began.

DOC Response: We verified that the discounts and rebates were granted in accordance with established company policy. However, since the respondent could not tie them to specific sales, they were allocated over all home market sales.

Comment 12: Sandvik claims the Department must make an adjustment for differences in circumstances of sale in the FRG SG&A expenses, direct selling expenses and indirect selling expenses in comparing finished pipes and tubes.

DOC Response: We have adjusted for differences in credit costs in all comparisons. Indirect selling expenses have been offset against those incurred in the United States in comparisons involving ESP. General and administrative expenses were not included in the offset, since they do not constitute selling expenses.

Comment 13: Sandvik claims that in arriving at the preliminary determination, the Department erroneously deducted certain brokerage, handling, duty, and freight and packing costs from its prices in calculating ESP for goods which were processed in the United States Sandvik claims that such deductions resulted in erroneous double- and triple-counting.

DOC Response: At verification, we confirmed that Sandvik reported these expenses in multiple categories of expenses We have adjusted these categories to ensure that the expenses are treated properly.

Comment 14: Avesta contends that the Department should utilize the currency exchange rate in effect 90 days prior to the date of purchase due to significant fluctuations in the relevant exchange rates during the period of investigation in accordance with § 353.56(b) of our regulations.

Petitioners counter that the evidence shows the overall sustained trend in the exchange rate has been a continued decline in the U.S. dollar against the Swedish krona.

DOC Response: We have determined that the changes in exchange rates have been sustained. As Avesta has not demonstrated that it revised its U.S. prices to account for the sustained changes, we have used the certified exchange rates on the date of the U.S. sales, in accordance with § 353.56(a).

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of stainless steel hollow products from Sweden that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond on all entries equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Average margin percentage
Sandvik AB	26.46
Avesta Sandvik Tube AB	34.50
All Others	28.60

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding

will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on stainless steel hollow products from Sweden entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

October 5, 1987.

[FR Doc. 87-23486 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

Postponement of Final Antidumping Duty Determination; Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from Nippon Benkan Kogyo, K.K. (Benkan), in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A).

Based on this request, we are postponing our final determination as to whether sales of certain stainless steel butt-weld pipe and tube fittings from Japan have occurred at less than fair value until not later than January 29, 1988. We are also postponing our public hearing from October 23, 1987, until December 11, 1987.

EFFECTIVE DATE: October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Judith L. Nehring (202-377-0160) or Mary S. Clapp (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On September 16, 1987, we published a preliminary determination of sales at less than fair value with respect to this merchandise (52 FR 34973). This notice stated that if the investigation proceeded normally, we would make our final determination by November 24, 1987.

On September 17, 1987, Benkan requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. Respondent accounts for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than January 29, 1988.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on December 11, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by December 4, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 5, 1987.

[FR Doc. 87-23484 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-274-002]

Carbon Steel Wire Rod From Trinidad and Tobago; Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review of the countervailing duty order on carbon steel wire rod from Trinidad and Tobago, under section 751(b)(1) of the Tariff Act. The review covers the period from October 1, 1984. The petitioners have notified the Department that they are no longer interested in the countervailing duty order. We invite interested parties to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 480) a countervailing duty order on carbon steel wire rod from Trinidad and Tobago. Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas, Inc. (formerly Georgetown Texas Steel Corporation), and Raritan River Steel Company, the petitioners, and an importer, Davis Walker Corporation, informed the Department that they are no longer interested in the order and stated their support for revocation of the order. Continental Steel Corporation, the remaining petitioner, is no longer in business. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

On May 9, 1985, the Department published in the **Federal Register** (50 FR

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19561) a tentative determination to revoke this countervailing duty order due to other changed circumstances. Now that the domestic parties have declared no further interest in the order, the issues in the 1985 tentative determination to revoke have become moot.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of carbon steel wire rod, currently classifiable under item 607.1700 of the TSUSA. These imports are currently classifiable under HS item numbers 7213.3900, 7213.4900, and 7213.5000.

We invite comments from all interested parties on these HS classifications. The review covers the period from October 1, 1984.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic parties' statements of no interest in continuation of the countervailing duty order on carbon steel wire rod from Trinidad and Tobago provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on carbon steel wire rod from Trinidad and Tobago effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Date: October 6, 1987.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87–23485 Filed 10–8–87; 8:45 am]

BILLING CODE 3510–DS–M

[Application No. 87–00010]

Export Trade Certificate of Review

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the North Dakota Export Trading Company (NDETC). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Agricultural products, including edible beans, seed potatoes, wheat, corn, soybeans, durum, sunflower seeds, and livestock.

Export Trade Facilitation Services (As They Relate To The Export of Products)

NDETC and its Members intend to provide or arrange for the provision of shipping (including overseas freight transportation; inland freight transportation to U.S. export terminals, ports or gateways; packing and crating; warehousing; freight forwarding, including consolidation of shipments; and other services directly related to the movement of goods being exported or in the course of being exported), credit, financing, marketing services, and taking title to goods.

Export Markets

All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in Addition to Applicant)

The North Dakota Mill and Elevator Association, Grand Forks, North Dakota; and The Bank of North Dakota, Bismarck, North Dakota.

Export Trade Activities and Methods of Operation

NDETC and its Members may:

1. Enter into joint discussions and negotiations with foreign buyers concerning:

(a) Standardized production specifications, quantities, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreign buyer, NDETC and its Suppliers;

(b) Standardized commodity quality standards that meet foreign buyer specifications; and

(c) Standardized bidding procedures acceptable to foreign buyers.

2. Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, chartering of vessels for NDETC and any or all Suppliers, and inland transportation for Products in the course of being exported.

3. Enter into agreements with individual Suppliers on the terms of Supplier participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for Products in the course of being exported.

4. Refuse to deal with an individual or company with respect to the export of any Product to a foreign buyer.

5. Refuse to deal with any Supplier, with respect to the export of any Product to a foreign buyer, which supplier does not comply with the standards or other terms of export trade set by NDETC and its Members.

6. Exchange information concerning the extent of Supplier participation in specific export transactions, and exchange information with individual Suppliers regarding specific export transactions in which NDETC and the individual Supplier participate. The information to be exchanged includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the Export Markets;

(c) Information on costs specific to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulation affecting sales to Export Markets;

(e) Information about the price, quality, quantity, source, and delivery dates of Products available from Suppliers for export; and

(f) Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by NDETC and its Suppliers.

7. Enter into exclusive or nonexclusive agreements with Export Intermediaries to appoint an Export Intermediary to act for NDETC and its Suppliers, whereby each Export Intermediary agrees not to represent NDETC's competitors in the sale of Products to any Export Market and not to buy any Products from any of NDETC's competitors for resale in any Export Market.

8. Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer agrees not to purchase Products from NDETC's competitors.

9. Act as an Export Intermediary for individual Suppliers and enter into exclusive or nonexclusive agreements with Export Intermediaries for the provision of Export Trade Facilitation Services.

10. Limit membership in NDETC to businesses operating in North Dakota and to North Dakota residents.

11. Enter into joint ventures with and to purchase Products from individual Suppliers that meet quality, quantity, and price specifications for transactions. When taking title to Products, NDETC will engage in price, quantity, quality, and other negotiations directly with the foreign buyer.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: October 6, 1987.

John E. Stiner

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-23423 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-DR-M

Princeton University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 83-242. Applicant: Princeton University, Princeton, NJ 08544. Instrument: Pulsed Motor Generator. Manufacturer: Canadian General Electric Company, Ltd., Canada. Intended Use: See notice at 48 FR 33508, July 22, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a replacement for one of two identical Pulsed Motor Generators (PMG) providing the pulsed energy needed to create and contain star-hot plasma. The PMG's were originally manufactured by the General Electric Company, Schenectady, NY. One of the PMG's was dropped and severely damaged during site installation. In the interim General Electric moved its large motor manufacturing facility to Canada.

The capability of the foreign article is pertinent to the applicant's intended purpose and we know of no domestically manufactured apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23487 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License to Pharmedic Corp.

National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pharmedic Corporation of Deerfield Beach, FL, an exclusive right in the United States to practice the Enkephalins-Endorphins inventions embodied in U.S. Patents 4,127,535, "Dipeptides," 4,127,534, "Tripeptides," 4,127,531, "Hexapeptides," 4,127,532, "Heptapeptides," 4,127,533, "Octapeptides," 4,139,504, "Nonapeptides" and 4,127,541, "Decapeptides" and U.S. Patent Applications S.N. 5-807,209, "Tetrapeptides" and S.N. 5-807,129, "Beta-endorphin." The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended

license must be submitted to Papan Devnani, Office of Federl Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-23397 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, October 19, 1987, Beginning 9:00 a.m.; Tuesday, October 20, 1987, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302-0268;

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87-23403 Filed 10-8-87; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Change in Officials of the Government of Pakistan Authorized To Issue Exempt Certifications

October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Under the terms of the Bilateral Cotton Textile Agreement on March 9 and 11, 1982, the Government of Pakistan has notified the Government of the United States that Mr. Javed-ul-Hasan Qureshi, Deputy Director, Export Promotion Bureau, is now authorized to issue exempt certifications for cotton textile products exported to the United States. Mr. Qureshi replaces Mr. Javed Anwer Khan, who will no longer sign these documents. The purpose of this notice is to advise the public of this change.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-23451 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-DR-M

Textile and Apparel Categories; Proposed United States Tariff Schedule in the Harmonized System Nomenclature

October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

On September 18, 1987, a notice was published in the **Federal Register** (52 FR 35303) amending the proposed United States Tariff Schedule in the Harmonized System Nomenclature.

The purpose of this notice is to further amend the Harmonized System (HS) items in the proposed Tariff Schedule for Category 624. The HS items in Category 624 are as follows:

5407.91.10.00	5515.13.10.00
5407.92.10.00	5515.22.10.00
5407.93.10.00	5515.92.10.00
5407.94.10.00	5516.31.10.00
5408.31.10.00	5516.32.10.00
5408.32.10.00	5516.33.10.00
5408.33.10.00	5516.34.10.00
5408.34.10.00	

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-23450 Filed 10-8-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1987 commodities produced by and services provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 9, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 10, July 31, and August 10, 1987 the Committee for Purchase for the Blind and Other Severely Handicapped published notices (52 FR 26064, 28592 and 29564) of proposed additions to and deletion from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46 through 48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

(a) The action will not result in any additional reporting, recordkeeping or other compliance requirements.

(b) The action will not have a serious economic impact on any contractors for the commodities and services listed

(c) The action will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1987:

Commodities

Cabinet, Storage

7125-00-378-4261

(50% of the Government's requirements)

Towel, Paper

7920–00–823–9772
(Requirements for New Cumberland, Pennsylvania Army Depot)

Services

Food Service Attendant

914th Tactical Airlift Group, Niagara Falls International Airport, Niagara Falls, New York

Janitorial/Custodial

Marine Corps Development and Education Command, MCCDPA, Building 3041A, SABRS Annex, Quantico, Virginia.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46 through 48c, 85 Stat. 77 and 41 CFR 51–2.6.

Accordingly, the following service is hereby deleted from the Procurement List 1987:

Grounds Maintenance, U.S. Customs House, 6 World Trade Center, New York, New York

E.R. Alley,
Acting Executive Director.

[FR Doc. 87–23442 Filed 10–8–87; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1987; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 9, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commissary Warehouse Service, Altus Air Force Base, Oklahoma

Grounds Maintenance, Veterans Administration Medical Center, Palo Alto, California

Janitorial Service, Building 2700, Naval Air Station, Whidbey Island, Washington

Laundry Service, Acoma/Canoncito/Laguna PHS Indian Hospital, Acomita, New Mexico

Laundry Service, Zuni PHS Indian Hospital, Zuni, New Mexico

Multilation of Condemned Assets, Hill Air Force Base, Utah

E.R. Alley,
Acting Executive Director.

[FR Doc. 87–23441 Filed 10–8–87; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 9, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 5, 1987.

Carlos U. Rice,
Director for Information Technology Services.

Office of Elementary and Secondary Education

Type of Review: NEW
Title: Christa McAullife Fellowship Program
Agency Form Number: A10–13P
Frequency: Annually
Affected Public: Individual or households; State or local governments
Reporting Burden:
Responses: 288
Burden Hours: 456
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: These recommendations forms will be used by statewide fellowship selection panels in order to participate in the Christa McAullife Fellowship Program. The Department will use the information collected on these forms to make fellowship awards.

Office of Postsecondary Education

Type of Review: REVISION
Title: Student Aid Report
Agency Form Number: ED 255–1
Frequency: Annually
Affected Public: Individuals or households; businesses or other for profit; non-profit institutions
Reporting Burden:
Responses: 11,045,332

Burden Hours: 1,465,332
Recordkeeping Burden:
Recordkeepers: 6000
Burden Hours: 386,991
Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible applicants to the participating institution of their choice. The institution submits Part 3 of the SAR to the Department to receive funds for the applicant.

Office of Educational Research and Improvement

Type of Review: NEW
Title: Early Estimates of Enrollment, Teachers, Graduates and Current Expenditures
Agency Form Number: G50–40P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 26
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey is designed to collect key statistics from State educational agencies on early estimates for school year 1987–88. The key statistics are numbers of teachers, students and high school graduates, and current expenditures for education by State. The Department will use this information to report education statistics by the end of the current school year and to provide policymakers with adequate data for planning.

Office of Educational Research and Improvement

Type of Review: NEW
Title: 1987 National Postsecondary Student Aid Study—Guaranteed Student Loan Component
Agency Form Number: G50–39P
Frequency: Triennial
Affected Public: Individuals or households
Reporting Burden:
Responses: 14,000
Burden Hours: 9380
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will collect data from a sample of recipients of Guaranteed Student Loans (GSL) who left or completed their postsecondary education between 1976–1985. The Department will use this information to assess the distribution and use of GSL's and to establish a student based postsecondary financial aid data system that will assist policy makers in assessing Federal student aid programs.

[FR Doc. 87–23391 Filed 10–8–87; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10418–000, et al.]

Hydroelectric Applications (City of Harrisburg, Pa. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type Filing: Petition Alleging Commitment of Substantial Monetary Resources.

b. Project No.: 10418–000.

c. Date Filed: August 6, 1987.

d. Applicant: City of Harrisburg, Pennsylvania.

e. Name of Project: Dock Street Project.

f. Location: Susquehanna River at Harrisburg, in Cumberland, Dauphin, and Perry Counties, Pennsylvania.

g. Filed Pursuant to: Electric Consumers Protection Act, Pub. L. 99–945, Section 8(b) (1986).

h. Contact Person: Mr. Daniel R. Lispi, Project Manager, Department of Public Works, Vance McCormick Building, 10 North Second Street, Harrisburg, PA 17101, (717) 255–6455.

i. Comment Date: November 19, 1987.

j. FERC Contact: Dean Wight, (202) 376–9820.

k. Description of Project: The applicant has filed a Petition Alleging Commitment of Substantial Monetary Resources (Petition) for the Dock Street Project, which would consist of a new 17-foot-high dam and a powerhouse with a total capacity of 34.4 MW.

l. Description of Petition: On October 16, 1987, Congress enacted ECPA, amending section 210 of PURPA by imposing three environmental conditions that license applicants for hydroelectric projects located at new dams or diversions must meet in order to qualify for PURPA benefits. These conditions are contained in § 292.203(c)(1)(ii) through (iv) of the Commission's Regulations which implement section 8(a) of ECPA. A new dam is a qualifying facility if:

(ii) The Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality, when it issues the license for the project;

(iii) The Commission finds when it accepts the aplication for license for the project for filing under § 4.32(e) of this chapter, that the project is not located on any segment of a natural watercourse that:

(A) Is included in (or designated for potential inclusion in) a State or National Wild and Scenic River System, or

(B) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development; and

(iv) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

Section 292.208(c) of the Commission's Regulations provides for exception of a licensed project from the fish and wildlife agency conditions requirement of § 292.203(c)(1)(iv) and also from the payment of fees to reimburse fish and wildlife agencies for setting those conditions, upon the Commission's granting of a Petition Alleging Substantial Commitment of Monetary Resources. The petition must demonstrate that the Applicant expended, or committed to spend, at least 50% of the cost of preparing the license application before October 16, 1986.

Section 8(b)(4)(B) of ECPA established a rebuttable presumption that the applicant has made the required showing of monetary commitment if it held a preliminary permit for the project and had completed all of the environmental consultations required by the Commission's regulations before October 16, 1986. The Applicant held a permit for Project No. 7553, issued on May 25, 1984. Staff has not yet concluded whether applicant has completed consultations in accordance with § 4.38.

In section 8(e) of ECPA, implemented by § 292.203(c)(2) of the Commission's Regulations, Congress imposed a mortorium on the availability of PURPA benefits to hydroelectric projects located at new dams or diversions. In accordance with § 292.208(d), any project excepted from one or more of the three new environmental requirements is also excepted from the mortorium imposed by section 8(e) of ECPA.

The Applicant states that it has made a substantial commitment of monetary resources before October 16, 1986, as shown below:

Total Cost for License Application
$2,574,065
Cost Committed before 10/16/86
$2.430,010

The license application has not been accepted for filing. All additional costs incurred or committed up to the acceptance date of the application will be included in the total cost of preparing the license application and will be used in evaluating the petition. No finding on this petition will be made prior to acceptance of the application.

If this petition is granted, the Applicant would be eligible to petition the Commission to make an intitial finding on whether Project No. 10418 would have substantial adverse effects on the environment pursuant to § 292.203(c)(ii) of the Commission's regulations above.

The petition will be available for inspection and copying during regular business hours in the public reference room maintained by the division of Public Information, 825 North Capitol Street, NE., Washington, DC.

m. This notice also consists of the following standard paragraphs: B, C.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 10459–000.

c. Date Filed: August 25, 1987.

d. applicant: Town of Jonesboro, Louisiana.

e. Name of Project: Red River Lock and Dam No. 5.

f. Location: On the Red River in Bossier and Caddo Parishes, Louisana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contract: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896, (504) 927–9321.

i. FERC Contract: Nanzo T. Coley (202) 376–9416.

j. Comment Date: December 7, 1987.

k. Description of Project: The applicant proposes to utilize a proposed U.S. Army Corps of Engineers' dam. The proposed project would consist of: (1) a proposed inlet channel; (2) a proposed powerhouse containing generating units with a total rated capacity of 22,000–kW; (3) a proposed outlet channel; (4) a proposed 138–kV transmission line, and (5) appurtenant facilities. The estimated average annual energy output is 111,800,000 kWh. applicant estimates that the cost of the work to be performed under the preliminary permit would be $25,000.

l. Purpose of Project: Energy produced at the project would be sold to the local utility company or the local municipalities.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, & D2.

a. Type of Application: Transfer of License.

b. Project No.: 4784–016.

c. Date Filed: September 23, 1987.

d. Applicant: Topsham Hydro Partners Limited Partnership, Chrysler Capital Corporation, and Utilco Group, Inc.

e. Name of Project: Pejepscot.

f. Location: On the Androscoggin River in Sagadahoc, Cumberland, and Androscoggin Counties, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contract: Mr. David B. Ward, Flood & Ward, 1000 Potomac Street NW., Suite 402, Washington, DC 20007, (202) 298–6910.

i. FERC Contact: Steven H. Rossi, (202) 376–9819.

j. Comment Date: October 30, 1987.

k. Description of Transfer: On September 23, 1987, Topsham Hydro Partners Limited Partnership (Topsham/licensee) and Topsham, Chrysler Capital Corporation, and Utilco Group, Inc. (transferee), filed a joint application for transfer of a major license for the Pejepscot Project No. 4784.

The purpose of the proposed transfer of the license is to facilitate the financing of the licensed project. The proposed transfer would not result in any changes in the propose development. Because Topsham is a licensee for the project, all engineering, design and feasibility studies performed would be retained by Topsham. The transferee states that it would comply with all the terms and the conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specific comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 6, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23415 Filed 10–8–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–934–000, et al.]

Tenneco Oil Co., et al. Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates; [1] Natural Gas Company

October 6, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments whch are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 [3]	Pressure base
CI87–934–000 (CI81–90), B, Sept. 29, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	El Paso Natural Gas Company, South Marsh Island 66, Offshore Louisiana.	[1]	
CI72–601–000, D, Sept. 29, 1987.	.....do.....	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Vermillion 217, 218, 225 and 226, Offshore Louisiana.	[2]	
CI87–929–000 (CI68–621), B, Sept. 29, 1987.	..do.....	Tennessee Gas Pipeline Co., Vermillion 191 Offshore Louisiana.	[4]	
CI87–935–000 (CI79–606), B, Sept. 29, 1987.	Tenneco Exploration Ltd., II, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Piplene Co., South Marsh Island 252, Offshore Louisiana.	[4]	
CI87–936–000, (CI79–605), B, Sept. 29, 1987.	Tenneco Exploration Ltd	.....do.....	[4]	
CI87–937–000 (CI79–604), B, Sept. 29, 1987.	Tenneco Oil Company.....	.....do.....	[5]	
G–11046–003 D, Sept. 25, 1987.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulas, Okla. 74102.	Tennessee Gas Pipeline Co., N/2, E. Cameron Block 49, OCS–G–0932, Offshore Louisiana.	[6]	
CI87–930–000, F, Sept. 28, 1987.	Koch Exploration Company, P.O. Box 2256, Wichita, Kansas 67201.	Tennessee Gas Pipeline Co., East Cameron Block 49, OCS Lease No. 0932, Offshore Louisiana.	[7]	
CI76–274–001, Sept. 24, 1987.	Kerr-McGee Corporation, Kerr-McGee Center, Oklahoma City, Okla. 73125.	Williston Basin Interstate Pipeline Co. Boxcar Butte Field, McKenzie County, North Dakota.	[8]	
CI76–348–001 Sept. 24, 1987.	.....do.....	.....do.....	[8]	
CI76–457–001, Sept. 24, 1987.	.....do.....	.....do.....	[8]	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date field	Applicant	Purchaser and location	Price per 1,000 [8]	Pressure base
CI76-458-001, Sept. 24, 1987.	.....do.....	.....do.....	[8]	
CI77-13-001, Sept. 24, 1987.	.....do.....	.....do.....	[8]	
CI77-155-001, Sept. 24, 1987.	.....do.....	.....do.....	[6]	
CI69-420-001 D, Sept. 25, 1987.	Conoco Inc. P.O. Box 2197, Houston, Texas 77252.	ANR Pipeline Company, Eugene Island Block 208, Offshore Louisiana.	[9]	
CI87-932-000 (CI61-1486), B, Sept. 24, 1987.	.....do.....	Valero Interstate Transmission Company, El Benadito Field, Starr County, Texas.	[10]	
CI87-926-000 (CI67-675), B, Sept. 24, 1987.	Petroleum, Inc., Edwin L. Cox & Owen H. Nichols, 800 R.H. Garvey Bldg., 300 West Douglas, Wichita, Kansas 67202.	Transwestern Pipeline Company, N.E. Ivanhoe Pool—Kamp Unit #1, A11 Sec. 32-2N-28ECM, Beaver County, Oklahoma.	[11]	
CI87-924-000 (CI67-675), B, Sept. 21, 1987.	.....do.....	.....do.....	[11]	
CI84-285-001, D, July 24, 1987.	Mesa Operating Limited Partnership, One Mesa Square, Amarillo, Texas 79189.	Panhandle Eastern Pipe Line Company Paul Hanke Unit SW/4/NE/4 Sec. 3-3N-9ECM, Cimarron County, Oklahoma.	[12]	
CI87-919-000, B, Sept. 25, 1987.	MM Resources, Inc., P.O. Box 384, Enid, Okla. 73702.	Panhandle Eastern Pipe Line Co., U.S.A. Gas Unit, Greenwood Field, Morton County, Kansas.	[13]	
CI87-920-000, Sept. 25, 1987.	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Panhandle Eastern Pipe Line Co., Hardesty Field, Texas County, Oklahoma.	[14]	
CI87-921-000, F, Sept. 25, 1987.	.....do.....	.....do.....	[14]	
CI87-925-000 (CI63-1291), B, Sept. 21, 1987.	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Southern Natural Gas Company, Section 28 Dome Field, St. Martin Parish, Louisiana.	[8]	
CI87-927-000, B, Sept 25, 1987.	Term Energy Corporation.....	Consolidated Gas Transmission Corp. Dekalb District, Gilmer County, West Virginia (Bessie Floyd Clowser tract).	[16]	
CI64-26-026, Sept. 24, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Texas Eastern Transmisison Corporation, Sec. 17-T6S-R4W, Allen Parish, Louisiana.	[17]	
CI87-942-000, B, Sept. 23, 1987.	TXO Production Corp., First City Center, LB 10, 1700 Pacific Avene, Dallas, Texas 75201-4696.	Williams Natural Gas Company, Newell No. 1 Well, Sec. 13-17N-25W, Roger Mills County, Oklahoma.	[18]	
CI82-232-001, D, Sept. 24, 1987.	Union Pacific Resources Company, 1400 Smith Street—Suite 1500, Houston, Texas 77002.	Arkla Energy Resourcess, a division of Arkla, Inc., North Drummond Field, Garfield and Major Counties, Oklahoma.	[19]	
G-11414-001, D, Sept. 28, 1987	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas Texas 76221.	Northern Natural Gas Company, Division of Enron Corp. El Dorado Gas Plant, Schleicher County, Texas.	[20]	
CI87-938-000, B, Sept. 28, 1987.	Petroleum Resources, Inc.....	Equitable Gas, Courthouse District, Lewis County, West Virginia.	[21]	
CI87-923-000 (CI61-1698), B, Sept. 21, 1987.	A. L. Abercrombie, Inc., 801 Union Center, Wichita, Kansas 67202.	K N Energy, Inc., E/2 and NW/4 of Section 15 and SE/4 of Sec. 10-T21S-R33W, Finney County, Kansas.	[22]	

[1] Gas dedicated under contract dated 12-15-80 has been depleted.
[2] Assigned partial acreage to Taylor Energy by Assignment dated 10-17-86
[3] Assigned interest to Taylor Energy by Assignment dated 11-11-86.
[4] Assigned certain acreage to Tenneco Oil Company by Assignment dated 11-10-86.
[5] Assigned certain acreage to Brooklyn Union by Assignment dated 3-26-87.
[6] By Assignment of Oil and Gas Lease, effective 6-1-87, Cities Service assigned all its operating rights to Koch Exploration Company.
[7] By Assignment dated 6-1-87, effective 6-1-87, Conoco, Inc., Atlantic Richfield Company, Texaco Producing Inc. and Cities Service Oil and Gas Corporation conveyed unto Koch Exploration Company certain acreage.
[8] Applicant is filing to revise the point of delivery.
[9] By Assignment of Operating rights executed 10-23-84, effective 10-1-84, Conoco Inc. conveyed unto Samedan Oil Corporation certain acreage.
[10] The last lease subject to Rate Schedule No. 187 has been assigned to D.B. McGuffin.
[11] With compression to remove water, gas production declined to 5 Mcf per day at a price of 30 cents/Mcf. The net loss for the last 9 months of operation average about $1,400/month. No other economically productive zones were present in the well bore. Last gas production from this well was in December, 1985.

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[12] By Partial Assignment dated 1-20-87, Mesa Operating Limited Partnership assigned certain acreage to Crouch Petroleum Company, but effective 1-11-86.
[13] Applicant is experiencing reduced sales and desires to sell the gas on the open market.
[14] By Assignment dated 2-13-87 and effective 1-1-87, Exxon acquired certain acreage in the Hardesty Field, Texas County, Oklahoma from ARCO Oil and Gas Company, Division of Atlantic Richfield Company.
[15] Southern Natural Gas Company terminated the contract effective 7-1-84 and does not desire to continue purchasers pursuant to the certificate.
[16] Uneconomical.
[17] Applicant is filing for an additional delivery point.
[18] Depleted.
[19] Union Pacific Resources Company has assigned a portion of its rights, title and interest in the dedicated acreage.
[20] The producer has terminated percentage-of-proceeds type contracts at the El Dorado Gas Plant from which residue gas is dedicated to Northern Natural Gas Company, Division of Enron Corp., under ARCO's certificate and Rate Schedule No. 376.
[21] Applicant desires to sell the gas to Consolidated Gas Transmission Corporation. Currently there are two other wells on the lease where the gas is being sold to Consolidated Gas Transmission Corp.
[22] Applicant has discovered a hole in the well casing. In order to bring the well back on production, they would have to repair the casing. Applicant has determined that this is costly and uneconomical and the well does not justify any further expenditures.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial succession.

[FR Doc. 87-23454 Filed 10-8-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF87-662-000]

City of Newport News, VA; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 2, 1987.

On September 17, 1987, the City of Newport News, Virginia (Applicant), c/o Edgar Maroney, City Manager, 2400 Washington Avenue, Newport News, Virginia 23607 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of Newport News, Virginia. The facility will consist of two waterwall steam generators, and a steam turbine generator. The primary energy source will be biomass in the form of municipal solid waste. The maximum electric power production capacity will be 18 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-23455 Filed 10-8-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-680-000]

Central Illinois Light Co.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Central Illinois Light Company (CILCO) tendered for filing a revised Wholesale Rate MW-4 applicable to the Village of Riverton, Illinois. CILCO, in voluntary compliance with the Federal Energy Regulatory Commission (FERC) Order No. 475, is adjusting the Wholesale Rate MW-4 to reflect changes in CILCO's taxes due to the Tax Reform Act of 1986. CILCO, with the support of Riverton, under the abbreviated filing requirements of the Commission, requests an effective date of July 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-23456 Filed 10-8-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-678-000]

Central Illinois Public Service Co.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Central Illinois Public Service Company (CIPS) tendered for filing pursuant to the provisions of the Federal Power Act and Part 35 of the Regulations of the Federal Energy Regulatory Commission (Commission) notice of cancellation of three of its filed rate schedules, Rate Schedule W-1, Rate Schedule W-2 and Rate Schedule W-3. Pursuant to § 35.15 of the Commission's regulations, 18 CFR 35.15, these rate schedules shall be cancelled effective December 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-23457 Filed 10-8-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-682-000]

Central Vermont Public Service Corp.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Central Vermont Public Service Corporation (Company) tendered for filing a proposed tariff change in the Company's FPC Electric Tariff, First Revised Volume No. 1, in voluntary compliance with the Commission's formula filing for lower electric rates to reflect the Federal income tax rate of 34% resulting from the Tax Reform Act of 1986. The Company proposes to make tariff change effective July 1, 1987 which will reduce revenues from affected customers by $40,368 or 1.8% based on 12 months ending June 30, 1987. The Company's other wholesale rate schedules specify rate methodologies which automatically reflect the Federal income tax rate in effect in each test year.

Central Vermont states that this filing has been posted as required by the Commission's regulations and that it has served copies of this filing upon the customers, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23458 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA 87-70-000]

Central Vermont Public Service Corp.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Central Vermont Public Service Corporation (Company) tendered for filing an offer of settlement directed to the four conditions specified in *Iowa-Illinois Gas and Electric Company*, Docket No. FA 84-46-001, Order issued April 24, 1987, for retention of amounts collected through the fuel adjustment clause for retention of amounts collected through the fuel adjustment clause for Spent Nuclear Fuel Disposal Costs (SNFDC). The Company's offer of settlement shows (1) that it concedes the impropriety of the collection of those amounts through the fuel clause without prior authorization by the Commission; (2) that there has been no "double recovery" of SNFDC, (3) that all amounts refunded to the Company for SNFDC related to fuel burned before April 7, 1983 have been flowed through to the customers and (4) that the Company "held" no funds and therefore no deduction from rate base was required.

Central Vermont states that this filing has been posted as required by the Commission's regulations and that it has served copies of this filing upon the affected wholesale customers, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23459 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-679-000]

Columbus Southern Power Co.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Columbus Southern Power Company (CSPCo) tendered for filing proposed changes in its electric resale rate schedules applicable to the City of Jackson, City of Westerville and the Village of Glouster, Ohio, to reflect the decrease in the Federal corporate income tax rate pursuant to the Tax Reform Act of 1986. The proposed change in resale rates will decrease annual revenues from Jackson and Glouster by $64,210 based on the twelve-month period ending June 30, 1987. The proposed changes involve decreased demand charges. This rate decrease filing is being made pursuant to the abbreviated filing requirements set forth in § 35.27 of the Commission's Rules and Regulations.

CSPCo requests that this rate change be made effective as of July 1, 1987.

Copies of the filing were served upon the Cities of Jackson and Westerville, the Village of Glouster and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23460 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-681-000]

Consumers Power Co.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Consumers Power Company (Consumers) tendered for filing a rate schedule change to its Wholesale for Resale Electric Service Contract Rate "WR" (Rate "WR") which is part of Consumers Power's FERC Electric Service Tariff First Revised Volume. The rate schedule change consists of a $.42 per kW decrease to the on-peak billing demand charge from $10.16 to $9.74 per kW of on-peak billing demand. The rate schedule change is to be effective July 1, 1987.

The rate schedule change is occasioned by the Commission's Order No. 475 of June 26, 1987 in Docket No. RM87-4-000.

Consumers states that copies of the filing were served on its 14 Rate WR customers.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are avaialble for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23461 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-683-000]

Dayton Power and Light Co.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Dayton Power and Light Company (DP&L) tendered for filing an executed rate reduction filing to reflect the reduction in the Corporate Federal Income Tax Rate.

The Federal Energy Regulatory Commission has extablished a simplified filing procedure to allow Public Utilities to voluntarily reduce their rates. DP&L has utilized the simplified filing procedure in determining the reduction in rates. DP&L requests the Commission permit the proposed filing to become effective retroactive to July 1, 1987.

Copies of this filing will be served upon DP&L's customers who are affected by the rate change and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secetary.

[FR Doc. 87-23462 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

Mississippi River Transmission Corp.; Proposed Changes in F.E.R.C. Gas Tariff

[Docket No. RP87-151-000]

Take notice that on September 29, 1987, Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to be part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2.

Tariff Sheet	Proposed effective date
First Revised Sheet No. 4C	Aug. 1, 1987.
Substitute Original Sheet No. 4D	Oct. 1, 1987.
Original Volume No. 2	
Rate Schedule X-25	
Original Sheet Nos. 263 through 277	August 1, 1987.

MRT states that the above referenced tariff sheets were submitted to provide for the addition of a new rate schedule (Rate Schedule X-25) to MRT's FERC Gas Tariff reflecting the transportation of natural gas currently being performed pursuant to FERC Order No. 451 for Laclede Gas Company (Laclede), an existing firm sales customer of MRT.

MRT states that the transportation service being provided to Laclede is firm service within Laclede's existing level of contract demand. MRT proposes to charge Laclede 5.25¢ per Mcf per one-hundred miles which represents the commodity component of MRT's one-hundred mile haul rate of 8.11¢ per Mcf applicable to transportation service on MRT's Main Line system.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23463 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-7

[Docket No. ER87-566-000]

New York State Electric & Gas Corp.; Filing

October 6, 1987.

Take notice that on September 30, 1987, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to Supplement No. 3 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would decrease revenues by $432 based on the twelve month period ending March 31, 1988.

This amendment to rate filing, Supplement No. 3, is made pursuant to sections 1 (e) and (f) and 2 (e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1986. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation continue to reflect a 15.50 percent return on equity which was approved by the New York State Public Service Commission's Opinion 85-8 in Case 28824, effective April 15, 1985.

NYSEG wishes to renew the request for an effective date of April 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23464 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-677-000]

Niagara Mohawk Power Corp.; Filing

October 6, 1987.

Take notice that on September 30, 1987, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Long Island Lighting Company (LILCO) dated July 1, 1987, providing for certain transmission services to LILCO. This agreement, Rate Schedule No. 142, supersedes Niagara Mohawk FERC Rate Schedule No. 91.

The July 1, 1987 agreement, provides for the addition of the new service of the transmission and delivery to LILCO of energy generated at the Nine Mile Point Unit #2 plant (Nine Mile #2) and from the Authority's Blenheim-Gilboa Project and for a change in the rate charged LILCO for the transmission and delivery to LILCO of certain power and energy generated at the Nine Mile #2 plant and at the Authority's FitzPatrick Nuclear Plant and from NYPA's Blenheim-Gilboa Project. LILCO has consented to these changes.

The proposed changes would increase revenues from jurisdictional services by $1,937,216 based on the twelve months ending August 31, 1988. Effective dates of July 1, 1987 (for the commencement of transmission and delivery of Nine Mile #2 energy) and September 1, 1987 (for the change in rates) are proposed. Niagara Mohawk states that waiver of the notice requirements of 18 CFR § 35.3 is warranted because LILCO, the only customer under Rate Schedule No. 142, has requested the additional service, has consented to the effective dates, and the practice of LILCO and Niagara Mohawk has been to make rate changes under Rate Schedule 91 effective September 1.

Copies of this filing were served upon LILCO and the New York State Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23465 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-28-001, TA88-1-28-000]

Panhandle Eastern Pipe Line Co; Change in Tariff

October 5, 1987.

Take notice that on September 30, 1987 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Description	Proposed effective date
First Substitute Fifty-Ninth Revised Sheet No. 3-A	Sept. 1, 1987
First Substitute Thirty-Sixth Revised Sheet No 3-B	Do
First Substitute Sixtieth Revised Sheet No. 3-A.	Oct. 1, 1987
First Substitute Thirty-Seventh Revised Sheet No 3-B	Do

Panhandle states that these revised tariff sheets reflect a commodity rate decrease of (0.06¢) per Dt. Panhandle states that this filing reflects reduced purchased gas costs from Panhandle's pipeline supplier, Trunkline Gas Company (Trunkline). Trunkline is filing concurrently herewith a (4.57¢) per Dt reduction to its commodity rates to be effective September 1, 1987.

Copies of the filing were served on the Company's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23466 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-872-000 and CI87-912-000]

Pennzoil Company, Proven Properties, Inc., and Pennzoil Gas Marketing Co.; Applications for Permanent Abandonment and Permanent Blanket Certificates With Pregranted Abandonment

October 6, 1987.

Take notice that on September 1, 1987, as supplemented on September 23, 1987, Pennzoil Company, Proven Properties Inc. and Pennzoil Gas Marketing Company, P.O. Box 2967, Houston, Texas 77252-2967, filed pursuant to section 7 of the Natural Gas Act, and the Commission's Regulations thereunder, 18 CFR Parts 154 and 157; §§ 2.76, 2.77(a), 2.77(b) [1], 375.307 and 270.202, applications of Pennzoil Company and Proven Properties Inc. for permanent abandonment of sales to Sea Robin Pipeline Company (Sea Robin) and Pennzoil Company, Proven Properties Inc. and Pennzoil Gas Marketing Company for a permanent blanket certificate of public convenience and necessity with pregranted abandonment, all as more fully set forth in the applications on file with the Commission and open to public inspection.

Approval would authorize Pennzoil Company, Proven Properties Inc. and Pennzoil Gas Marketing Company to make sales of natural gas released from contract by Sea Robin. Pennzoil Gas Marketing Company states it is a reseller of natural gas governed by 18

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandment authority where the producers assert they are subject to substantially reduced takes without payment or have entered into a take-or-pay buyout.

CFR 270.202. All released gas will be subject to the provisions of the Natural Gas Act and will qualify under the maximum lawful wellhead pricing provisions of the Natural Gas Policy Act.

Pennzoil Company and Proven Properties Inc. assert that they and Sea Robin executed a settlement agreement on June 30, 1987. Under the settlement agreement, Pennzoil Company and Proven Properties Inc. agreed to waive all take-or-pay claims against Sea Robin. Pennzoil Company and Proven Properties Inc. further assert that they and Sea Robin also agreed that, if certain conditions are fulfilled, all existing gas sales contracts executed between them will terminate, so Sea Robin will incur no take-or-pay obligations whatsoever in the future under any of those contracts. As to these contracts, Pennzoil Company and Proven Properties Inc. likewise agreed to waive all monthly minimum-take claims against Sea Robin. Pennzoil Company and Proven Properties Inc. assert they have the legal right under their monthly minimum-take contractual clauses to secure mandatory injunctive relief from courts of competent jurisdiction requiring Sea Robin not only to pay Pennzoil Company and Proven Properties Inc. for contractually specified volumes of natural gas, but also to take actual deliveries of the natural gas. The settlement agreement thus will release Sea Robin from substantial take-or-pay exposure and the threat of monthly minimum-take injunctions.

The settlement agreement is, however, contingent upon the granting of the applications noticed herein expeditiously. By the express terms of the settlement agreement, the take-or-pay and minimum-take buyout will be of no force or effect if the applications are not granted by February 29, 1988. All contracts would remain in effect, and Pennzoil Company and Proven Properties Inc. then would be free to pursue their take-or-pay claims for 1985, 1986 and subsequent years and monthly minimum-take claims against Sea Robin as if no settlement had ever been executed.

Applicants state that the Commission's Order No. 436 provides for expiditious consideration in cases where the producer and pipeline have engaged in a take-or-pay "buyout" as contemplated by § 2.76 of the Commission's Regulations. Applicants state that the precise situation is presented by the instant applications. Applicants state that Pennzoil Company and Proven Properties Inc. have engaged in a take-or-pay buyout as contemplated by § 2.76 of the Commission's Regulations, and the applications should therefore be granted expeditiously.

Applicants state that by the time the June 30, 1987, settlement agreement was executed, Sea Robin was taking only 27,796 Mcf/d of natural gas from Pennzoil Company and Proven Properties Inc., while the total deliverability capacity is 49,892 Mcf/d. Applicants state that the following is a breakdown of the deliverability:

NGPA category	Delivery Capacity—MMcf/day	
	Working interest (including royalty)	New interest (excluding royalty)
102(d)	10	9
104 Flowing Gas	7	6
104 Post 1974	18	15
104 Optional Pricing	14	11
104 1973–1974 Biennium	1	1
Total	50	42

Applicants also state that the following is a breakdown of Pennzoil Company's best estimate of the total net reserves remaining:

NGPA category	MMcf
Total Net Reserves—Pennzoil Company	
104	81,802
102	15,936
Subtotal	97,738
Total Net Reserves—Proven Properties Inc	
Subtotal	2,579
Total	100,317

Applicants also request that the Commission approve the collection of any rate that Pennzoil Company and Proven Properties Inc. have established their right to collect pursuant to Parts 273, 274, or 275 of the Commission's Regulations and that the Commission approve automatic collection of the appropriate monthly adjustments from the date the Commission issues its order granting the applications. Applicants also request the Commission to waive the requirement of filing a blanket affidavit to cover such sales in accordance with § 154.94(h) of the Commission's Regulations, and, to the extent that qualification exists for collection of any applicable allowance under section 110 of the NGPA, to waive the requirements of § 154.94(k) and Part 271 of the Commission's Regulations. Applicants further state that they will file any rate schedules with the Commission that may be required by the order granting the applications, but request the Commission to waive the requirement of establishment and maintenance of rate schedules under Part 154 of the Commission's Regulations.

Since Applicants state that they have entered into a take-or-pay buyout and have requested that their applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23467 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-877-000 and CI87-890-000]

Pennzoil Co. and Pennzoil Gas Marketing Co.; Applications for Permanent Abandonment and Permanent Blanket Certificate of Public Convenience and Necessity With Pregranted Abandonment

October 6, 1987.

Take notice that on September 2, 1987, as supplemented on September 23 and 25, 1987, Pennzoil Company (Pennzoil) and Pennzoil Gas Marketing Company (PGMC), Post Office Box 2967, Houston, Texas 77252-2967, filed applications pursuant to section 7 of the Natural Gas Act and Part 157 and §§ 2.76, 2.77(a)(2) and 2.77(b)[1] for authorization to

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for

Continued

permanently abandon sales of gas under certain certificates of public convenience and necessity issued to Pennzoil heretofore authorizing sales of natural gas to Southern Natural Gas Company (Southern) under various contracts covering gas sales subject to the Commission's Natural Gas Act jurisdiction, and for a permanent blanket certificate of public convenience and necessity with pregranted abandonment, all as more fully set forth in the applications on file with the Commission and open to public inspection.

Pennzoil states that this authorization is necessary to enable it to implement a settlement between Pennzoil and Southern to settle and release certain claims arising from various contractual relationships including the settlement of take-or-pay disputes and the agreement to terminate the contracts covering sales for which abandonment authorization is requested. Estimated deliverability is approximately 4.1 MMcf/day. The estimated reserves to be abandoned are 25,797 MMcf. Pennzoil states that the circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's Regulations as promulgated by Order Nos. 436 and 436–A, issued October 9 and December 21, 1985, respectively, in Docket No. RM85–1–000.

Approval would also authorize Pennzoil and PGMC to make sales of natural gas in interstate commerce for resale. PGMC is a reseller of natural gas governed by 18 CFR 270.202.

Pennzoil states that the abandonment requested is limited to sales by Pennzoil to Southern under contracts that provide for the delivery of natural gas to another pipeline for redelivery to Southern. Pennzoil and Southern shall continue their contractual relationship for all sales by Pennzoil to Southern under contracts that provide for the delivery of natural gas directly to Southern. Pennzoil states that the contracts subject to this application shall be referred to as 'Released Contracts.'

Pennzoil states that its applications are submitted to implement a settlement agreement excuted between Pennzoil and Southern on April 1, 1987. Under the agreement, Southern and Pennzoil mutually terminated their contractual relationship under all Released Contracts. These contracts are of no further force or effect. Southern will incur no take-or-pay obligations in the future under any of the Released Contracts, and, once the applications are granted, Pennzoil and PGMC will be free to market the released natural gas at competitive prices. As consideration for the take-or-pay buyout, Pennzoil states it waived approximately $7,100,000 in take-or-pay obligations incurred not only under the Released Contracts, but also under the other natural gas sales contracts between Southern and Pennzoil that are not subject to the applications. In exchange, Pennzoil states Southern released the contracts that are subject to the applications and provided certain other consideration.

Applicants state that the Commission's Order No. 436 provides for expeditious consideration in cases where the producer and pipeline have engaged in a take-or-pay 'buyout' as contemplated by § 2.76 of the Commission's Regulations. Applicants state that the precise situation is presented by the instant applications. Applicants state that Pennzoil and Southern have engaged in a take-or-pay buyout as contemplated by § 2.76 of the Commission's Regulations, and the applications should therefore be granted expeditiously.

Applicants state that the following is a breakdown of the deliverability:

NGPA category	Delivery capacity—MMcf/day	
	Working interest (including royalty)	Net interest (excluding royalty
102(d)	1.6	1.3
104 Post 1974	2.5	2.1
Total	4.1	3.4

Note.—Released Contracts cover an additional 5.7 MMcf/day W.I. or 4.8 MMcf/day N.I. NGPA Section 102(c) gas that does not require abandonment approval

Pennzoil states that the following is a breakdown of Pennzoil's best estimate of the total net reserves remaining:

NGPA category	Total MMcf
102	14,935
104	10,862
	25,797

Pennzoil and PGMC request that the Commission approve the collection of any rate that Pennzoil has established its right to collect pursuant to Parts 273, 274, or 275 of the Commission's Regulations and that the Commission approve automatic collection of the appropriate monthly adjustments from the date the Commission issues its order granting the applications. Pennzoil and PGMC also request the Commission to waive the requirement of filing a blanket affidavit to cover such sales in accordance with § 154.94(h) of the Commission's Regulations, and, to the extent that qualification exists for collection of any applicable allowance under section 110 of the NGPA, Pennzoil and PGMC request the Commission to waive the requirements of § 154.94(k) and Part 271 of the Commission's Regulations. Pennzoil and PGMC further state that they will file any rate schedules with the Commission that may be required by the order granting the applications, but request the Commission to waive the requirement of establishment and maintenance of rate schedules under Part 154 of the Commission's Regulations.

Since Applicants state that they have entered into a take-or-pay buyout and have requested that their applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days after the date of publication on this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23468 Filed 10–8–87; 8.45 am]

BILLING CODE 6717–01–M

certificate and abandonement authority where the producers assert they are subject to substantially reduced takes without payment or have entered into a take-or-pay buyout.

[Docket Nos. G–3488–000, Jet al.]

Phillips 66 Natural Gas Co.; Application

October 6, 1987.

Take notice that on September 28, 1987, Phillips 66 Natural Gas Company (Phillips 66), of 990–G Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to section 7 of the Natural Gas Act, and §§ 157.23(b) and 157.24 of the

Commission's Regulations for a Certificate of Public Convenience and Necessity to render service previously authorized by the Commission to Phillips Petroleum Company. Phillips 66 also requests redesignation of the Rate Schedules of Phillips Petroleum Company as those of Phillips 66 Natural Gas Company, all as fully shown on the attached Exhibit A. This application is on file with the Commission and open to public inspection.

Under a Contribution Agreement dated January 1, 1986, Phillips 66 was assigned and succeeded to the former Gas and Gas Liquids business of Phillips Petroleum Company. Phillips 66 Natural Gas Company filed with the Commission on March 3, 1986, as successor-in-interest to Phillips Petroleum Company, applications to amend certificates and redesignate Rate Schedules. The Commssion's Order authorizing this request was issued on September 4, 1986. Those docket numbers shown on the attached Exhibit A were inadvertently omitted from the list of certificates which were made part of Applicant's March 3, 1986, successor-in-interest filing.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

Phillips certificate docket No.	Party	Phillips petroleum co rate schedule No
G-2641 [1]	ANR Pipeline Company	552
G-3488	Maxus Energy Corporation	211
G-3489	KN Energy	212
G-3495	Panhandle Eastern Pipe Line Co.	215
G-3504	Williams Natural Gas Company	221
CI65-1253	Panhandle Eastern Pipe Line	412
CI69-160	Natural Gas Pipeline Company of America	453
CI72-552	Natural Gas Pipeline Company of America	495
CI86-85	El Paso Natural Gas Company	[illegible]

[1] Certificate authorization previously transferred to Phillips 66 Natural Gas Company by FERC Order issued September 4, 1986. The rate schedule was not redesignated

[FR Doc. 87-23469 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL86-58-004, EL86-59-001, EL86-59-003, EL82-616-030, and ER87-60-001]

System Energy Resources, Inc.; Filing

October 6, 1987.

Take notice that on September 30, 1987, System Energy Resources, Inc. (SERI) tendered for filing pursuant to Commission Letter dated September 15, 1987, a compliance report concerning the settlement agreement among SERI, MSU System Services, Inc. (SSI) individually and as agent for Arkansas Power & Light Company, Mississippi Power & Light Company, Louisiana Power & Light Company and New Orleans Public Service, Inc. (the Operating Companies); the Public Service Commissions of Arkansas, Louisiana and Mississippi; the City Council of New Orleans, Louisiana; the Attorneys General of Arkansas and Mississippi; Jefferson Parish, Louisiana Energy Users Group; Conway Corporation; the City of Osceola, Arkansas; and West Memphis Utilities Commission.

SERI states that all amounts collected in excess of the revised rates accepted for filing by the Commission have been refunded together with interest thereon computed under § 35.19a of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23470 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC87-26-000]

Wisconsin Electric Power Co. and Upper Peninsula Generating Co.; Filing

October 6, 1987.

Take notice that on September 30 1987, Wisconsin Electric Power Company (Wisconsin Electric) and Upper Peninsula Generating Company (Generating Company) tendered for filing an application for an order of the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act authorizing Wisconsin Electric to purchase from Generating Company all of its transmission facilities. These facilities are used primarily for the purpose of transmitting power and energy from Generating Company's Presque Isle Power Plant. The facilities will be purchased at their net book value which is estimated to be approximately $15.8 million as of December 31, 1987. Generating Company is owned by Cliffs Electric Service Company (Service Co.) and Upper Peninsula Power Company. As part of the transaction Wisconsin Electric will also acquire the Presque Isle Power Plant and will assume obligations under certain power sale contracts including Service Co.'s contracts with the City of Marquette and Wisconsin Public Power Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211, 385.214). All such motions or protests should be filed on or before October 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23471 Filed 10-8-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3275-1]

Pennsylvania, West Virginia, and Ohio; Initiation of SO_2 Study

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice requesting comment on USEPA's Tri-State Study.

SUMMARY: The purpose of this notice is to announce that USEPA Regions III and V, with the assistance of the States of Pennsylvania, West Virginia, and Ohio, are initiating a study of ambient sulfur dioxide SO_2 concentrations in the Pennsylvania—West Virginia—Ohio (PAWVOH) tri-state area. The study will consist primarily of an areawide scale analysis concerned with multi-source, interstate impacts. The main focus of the study will be Brooke and Hancock Counties in the Northern Panhandle of West Virginia and the adjoining areas in eastern Ohio and western Pennsylvania.

Today, notice provides a brief summary of the PAWVOH study and solicits interest in participation in the study. Affected industries are especially encouraged to participate.

DATE: Comments on this study are requested by December 8, 1987.

ADDRESSES: Copies of the project outline study plan are available at the following addresses for review or, alternatively, copies will be mailed upon request (either write or call):

Mark Garrison, U.S. Environmental Protection Agency, Region III (3AM 12), 841 Chestnut, Philadelphia, Pennsylvania 19107, (215) 597–4553

Michael Koerber, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6061.

Comments on the proposed study should be addressed to: Denis Zielinski, U.S. Environmental Protection Agency, Region III, (3AM 12), 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Michael Koerber, at (312) 886–6061 Mark Garrison, at (215) 597–4553.

SUPPLEMENTARY INFORMATION: The purpose of the study is to first evaluate the nature and extent of any current SO_2 nonattainment problem due to areawide scale impacts and then provide a basis for establishing revised SO_2 emission limits, if necessary. The study area covers Brooke and Hancock Counties in the Northern Panhandle of West Virginia, and the adjoining areas in eastern Ohio and western Pennsylvania. As noted above, USEPA will focus on the areawide scale impacts within the study area. Areawide scale imports are defined as multi-source, interstate impacts. Single source dominated impacts will not be considered directly by USEPA as part of the study because of resource limitations (i.e., the limited amount of Federal funding available does not permit the type of analysis outlined below around each individual source). Furthermore, single source dominated impacts have already been considered in the development of the existing State Implementation Plans for sources in this area. (Note, any single source dominated problems uncovered by the areawide scale analysis should be dealt with by the appropriate State.)

The PAWVOH Study will involve:

1. Problem Definition—Establish study area boundaries, identify candidate models, specify regional scale analysis.

2. Preliminary Analysis—Perform preliminary modeling using current actual/allowable emission inventory and review existing studies and information to identify monitor locations. USEPA wishes to make clear that any modeled violations uncovered by this preliminary analysis are *not* a basis for taking regulatory action or enforcement action against any source, but will be the subject of further investigation.

3. Protocal Development—Establish a protocol for the collection of emissions, meteorological, and ambient SO_2 data and the tests to be performed using these data to evaluate the candidate models.

4. Monitoring Program—Collect emissions, meteorological, and ambient SO_2 data over at least one year. (Note, the purpose of the ambient monitoring is to collect data to evaluate models on an areawide scale. The monitors are not necessarily accurate indicators of the attainment/nonattainment status of the area. Thus, USEPA intends to proceed to the next step of the study even if no violations of the SO_2 ambient standards are measured at the special study monitors.)

5. Model Evaluation/Selection—Carry out tests specified in the protocol to select the applicable model(s). These tests will include some minimum absolute criteria that must be met. Failure of these criteria by all the candidate model and the lack of any monitored violations may be cause for ending the study. (Note, application of the selected model is constrained to the source-receptor relationships considered in the evaluation process. This model will not be used to assess the impact of other source-receptor relationships unless the model is first demonstrated to be appropriate for these other situations.)

6. Control Strategy Evaluation/Development—Run applicable model(s) to evaluate current control strategies and develop revised control strategies, if necessary.

7. SIP Revision (if necessary)—Require revisions to State Implementation Plans to reflect new control strategy.

USEPA invites general comments on the planned study. It should be understood that USEPA is taking the lead in the study because of its multi-source, interstate nature. As such, USEPA will provide the primary financial support for the study. Notwithstanding USEPA's lead role, USEPA has formally requested and received a commitment for assistance from Pennsylvania, West Virginia, and Ohio.

Participation of affected parties (especially industry) in the study is invited.

Please provide comments (or acknowledge interest) to the contacts listed in this notice. Future meetings with interested parties are anticipated.

Under 5 U.S.C. section 605(b), this notice will not have a significant economic impact on a substantial number of small entities.

Today's action is not subject to the requirements of section 3 of the Executive Order 12291.

Authority: 42. U.S.C. 7401–7642.

Dated: September 24, 1987.

Frank M. Covington,

Acting Regional Administrator, Region.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 87–23443 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3274–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

This notice announces the Availability of EPA comments prepared September 21, 1987 through September 25, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal**

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Register dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–USN–C85041–NJ, Rating EC2, Naval Weapons Station Earle, Family Housing Development, Construction, NJ. **SUMMARY:** EPA has environmental concerns about the project's impacts on wetlands and water quality. Accordingly, EPA requests additional information regarding these issues to be presented in the final EIS.

Final EISs

ERP No. F–AFS–K65074–AZ, Coconino Nat'l Forest, Land and Resource Mgmt. Plan, AZ. **SUMMARY:** The final EIS adequately addressed the concerns EPA had raised on the draft EIS.

ERP No. F–AFS–K65077–AZ, Prescott Nat'l Forest, Land and Resource Mgmt. Plan, AZ. **SUMMARY:** The final EIS adequately addressed the concerns EPA had raised on the draft EIS.

ERP No. F–BLM–K61062–AZ, Upper Sonoran Wilderness Study Area's, Wilderness Designation/Non-Designation, Recommendations, Lower Gila North and Hualapai—Aquarius Planning Units, Lower Gila and Kingman Resource Areas, AZ. **SUMMARY:** EPA supports the BLM's wilderness recommendations for Upper Sonoran. EPA suggested that BLM's future decision document should state that air and water quality will be best protected under the wilderness designation.

ERP No. F1–BLM–K65089–NV, Lahontan Resource Area Wilderness Study Area's (WSA), Wilderness Designation or Non-Designation, Recommendations, Clan Alpine and Desatoya Mtns., Stillwater Range and Job Peak WSA, NV. **SUMMARY:** EPA supports the BLM's Lahontan wilderness recommendations. EPA suggested that BLM's future decision document should state that air and water quality will be best protected under the wilderness designation.

ERP No. F–BLM–L70006–ID, Cascade Resource Area, Resource Mgmt. Plan, Wilderness Recommendations, ID. **SUMMARY:** EPA is concerned about the potential adverse impacts to water quality and beneficial uses associated with Alternative E, the preferred alternative. EPA continues to favor Alternative C which would provide greater water quality protection, through more stringent environmental protection standards, and results in lower erosion rates.

Dated: October 6, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–23507 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3274–8]

Environmental Impact Statement; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed September 28, 1987 Through October 2, 1987 Pursuant to 40 CFR 1506.9

EIS No. 870328, Final NPS, CA, Sequoia-Kings Canyon National Parks, Grant Grove and Redwood Mountain Areas, Development and Use, Fresno and Tulare Counties, Due: November 9, 1987, Contact: John Davis, (209) 565–3341.

EIS No. 870329, Final AFS, ID, Clearwater National Forest, Land and Resource Management Plan, Due: November 9, 1987, Contact: James Bates, (208) 476–4541.

EIS No. 870330, FSuppl, COE, AL, GA, Alabama-Coosa Rivers Navigation Channel, Operation and Maintenance, Alabama River Segment from its mouth to the vicinity of Montgomery Alabama, Navigation Improvements, Due: November 9, 1987, Contact: Michael Eubanks, (205) 694–3861.

EIS No. 870331, Final, BLM, NM, Taos Resource Area, Resource Management Plan, Due: November 9, 1987, Contact: Dan Wood, (505) 758–8851.

EIS No. 870332, Final, COE, WY, Deer Creek Dam and Reservoir Municipal Water Supply Project, Construction, North Platte River, Natrona and Converse Counties, Due: November 9, 1987, Contact: Steven West, (402) 221–3900.

EIS No. 870333, Final, BLM, ID, Pocatello Resource Area, Resource Management Plan, Due: November 9, 1987, Contact: Lloyd Ferguson, (208) 529–1020.

EIS No. 870334, Draft, EPA, CA, San Diego (LA–5), Ocean Dredged Material Disposal Site (ODMDS), Permanent Designation for Material Dredged from San Diego Bay, Los Angeles County, Due: November 23, 1987, Contact: Patrick Cotter, (415) 974–0257.

EIS No. 870335, Draft, EPA, CA, Los Angeles/Long Beach (LA–2), Ocean Dredged Material Disposal Site (ODMDS), Permanent Designation for Material Dredged from the Ports of Los Angeles and Long Beach, Los Angeles County, Due: November 23, 1987, Contact: Patrick Cotter, (415) 974–0257.

EIS No. 870336, Draft, FRC, WA, Rock Island Hydroelectric Project No. 943, Operating License Renewal, Columbia River, Chelan County, Due: November 23, 1987, Contact: Alan Mitchnick, (202) 376–9061.

EIS No. 870337, Final, SFW, AK, Tetlin National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Due: November 9, 1987, Contact: William Knauer, (907) 786–3399.

EIS No. 870338, Draft, FHW, VT, NY, US 7 in Bennington, VT Improvements, US 7 to US 7/VT–67A Interchange; VT–9 in Bennington, VT and NY–7 in Hoosick, NY Improvements, VT–9 or NY–7 to US 7/VT–67A Interchange or VT–9 east of Bennington Village, Due: November 30, 1987, Contact: George Jensen, (802) 828–4423.

EIS No. 870339, Final, ICC, DC, MD, Georgetown Subdivision (Docket No. AB–19) (Sub-No. 112) Rail Line Abandonment, Milepost 0.23 to Milepost 10.98, License, Montgomery County, MD and the District of Columbia, Due: November 9, 1987, Contact: Carl Bausch, (202) 275–7316.

EIS No. 870340, Final, AFS, ID, MT, Bitterroot National Forest, Land and Resource Management Plan, Due: November 9, 1987, Contact: Robert Morgan, (406) 363–3131.

EIS No. 870341, FSuppl, USA, IN, AR, AL, LA, Binary Chemical Munitions Program, QL and DC Production Facilities, Site Selection, Construction and Operation, Due: November 9, 1987, Contact: Louise Dyson, (301) 671–3629.

EIS No. 870342, Final, BLM, NV, Winnemucca District Wilderness Study Areas, Wilderness Recommendations, Designation, Due: November 9, 1987, Contact: Gerald Moritz, (702) 623–3676.

EIS No. 870343, Final, BLM, NV, Egan Resource Area, Wilderness Study Areas, Wilderness Recommendations, Designation, Due: November 9, 1987, Contact: Gene Drais, (702) 289–4865.

EIS No. 870344, Draft, BLM, AZ, NM, Arizona Mohave Wilderness Study Areas, Wilderness Recommendations, Designation, Due: January 8, 1988, Contact: Bill Carter, (602) 863–4464.

EIS No. 870345, Final, BLM, ID, Jarbidge Resource Area, Wilderness Study Areas, Wilderness Recommendations, Designation, Elmore and Owyhee Counties, Due: November 9, 1987,

Contact: David Brunner, (208) 334–1582.

EIS No. 870346, Final, COE, VA, James City County Dam and Water Supply Reservoir Development, Construction, 404 Permit, (Mef) Ware Creek, James City County, Due: November 9, 1987, Contact: Bob Hume, (804) 441–3657.

EIS No. 870347, DSuppl, USA, PAC, Johnston Atoll Chemical Agent Disposal System (JACADS) of Generated Liquid and Solid Waste, Additional Information, Due: December 7, 1987, Contact: James Maragos, (808) 438–2263.

EIS No. 870348, Final, BLM, CA, Arcata Resource Area, Wilderness Recommendations, Eden Valley and Thatcher Ridge Wilderness Study Areas, Designation, Mendocino County, Due: November 9, 1987, Contact: Earl Curran, (707) 462–3873.

EIS No. 870349, Draft, FHW, KY, OH, US 27/Central Bridge Replacement, Newport, Campbell County, KY to Cincinnati, Hamilton County, OH, Due: November 23, 1987, Contact: Robert Johnson, (502) 227–7321.

EIS No. 870350, Final, UMT, MO, IL, St. Louis Light Rail Transit Project, St. Louis Central/Airport Corridor Alternatives Analysis, Improvements, Major Transit Capital Investments, Due: November 9, 1987, Contact: Charles Donald, (816) 926–5053.

Amended Notice

EIS No. 870290, Draft, AFS, CA, OR, Siskiyou National Forest, Land and Resource Management Plan, Due: December 24, 1987, Published FR 8–28–87—Review period extended.

Richard E. Sanderson,

Dated: October 6, 1987.

Director, Office of Federal Activities.

[FR Doc. 87–23508 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59834; FRL–3273–8]

Certain Chemical Premanufacture Notice; Poly-Branched-Alpha-Olefin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provide the summary of each.

DATES: Close of Review Period: Y 87–262—October 12, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–262

Importer. Confidential.

Chemical. (G) Poly-branched-alpha-olefin.

Use/Import. (G) Modified for polymer properties. Import range: Confidential.

Toxicity Data. Acute oral (Male and Female): >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

Date: September 28, 1987

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–23178 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59835; FRL–3275–3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMNs and provides the summary.

DATES: Close of Review Period

Y 87–264—October 19, 1987.

Y 87–265—October 20, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the exemption received by EPA. The complete non-confidential documents are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–264

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Molding resin. Prod. range: Confidential.

Y 87–265

Manufacturer. Allied-Signal, Incorporated.

Chemical. (G) Graft co-polymer of polyamide and saponified PVA.

Use/Production. (G) A component of a polymer mixture designed to impart improved barrier characteristics in plastics formulations. Prod. range: Confidential.

Date: October 5, 1987

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–23446 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51696; FRL–3275–4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

BEST COPY AVAILABLE

VOL 52 ISS 196 OCT 9 1987 UMI

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1874, 87–1875, and 87–1876—December 23, 1987.

P 87–1877, 87–1878, 87–1879, 87–1880, 87–1881, 87–1882, 87–1883, 87–1884, 87–1885, 87–1886, and 87–1887—December 26, 1987.

P 87–1888, 87–1889, 87–1890, 87–1891, 87–1892, 87–1893, 87–1894, 87–1895, 87–1896, 87–1897, and 87–1898—December 27, 1987.

P 87–1899, 87–1900, 87–1901, 87–1902, 87–1903, and 87–1904—December 28, 1987.

P 88–1—December 29, 1987.

Written comments by:

P 87–1874, 87–1875, and 87–1876—

P 87–1877, 87–1878, 87–1879, 87–1880, 87–1881, 87–1882, 87–1883, 87–1884, 87–1885, 87–1886, and 87–1887—November 26, 1987

P 87–1888, 87–1889, 87–1890, 87–1891, 87–1892, 87–1893, 87–1894, 87–1895, 87–1896, 87–1989, and 87–1898—November 27, 1987.

P 87–1899, 87–1900, 87–1901, 87–1902, 87–1903, and 87–1904—November 28, 1987.

P 88–1—November 29, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51696]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1874

Manufacturer. Monsanto Company.

Chemical. (G) Bismaleimide.

Use/Production. (G) Industrial laminating resin. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >5,000 mg/kg; Irritation: Skin–Non-irritant, Eye–Slight.

P 87–1875

Manufacturer. Confidential.

Chemical. (G) Tetrasubstituted cyclic siloxane.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1876

Manufacturer. Confidential.

Chemical. (G) Polyamide acrylic copolymer.

Use/Production. (G) Industrial printing ink resin. Prod. range: Confidential.

P 87–1877

Importer. Adjinomoto U.S.A., Incorporated.

Chemical. (S) 1,3-Imidazolidinediplopanoic acid, 4-(1-methylethyl)-2,5-dioxo, dihydrazide.

Use/Production. (S) Industrial and commercial curing agent for epoxy resin. Prod. range: 1,200 to 6,000 kg/yr.

Toxicity Data. Acute oral: >20 g/kg; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer.

P 87–1878

Importer. Ajinomoto U.S.A., Incorporated.

Chemical. (S) Eicosanedioci acid, dihydrazide.

Use/Import. (S) Industrial and commercial curing agent for epoxy resin. Import range: 5,000 to 10,000 kg/yr.

P 87–1879

Manufacturer. Confidential.

Chemical. (G) Alkoxylated alkylated aromatic diamine.

Use/Production. (G) Industrial polyurethane cross-linking agent. Prod. range: Confidential.

Toxicity Data. Acute oral: 1.0 g/kg; Acute dermal: 1.0 g/kg; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.

P 87–1880

Manufacturer. Confidential.

Chemical. (G) Alkoxylated alkylated aromatic diamine.

Use/Production. (G) Industrial polyurethane cross-linking agent. Prod. range: Confidential.

Toxicity Data. Acute oral: 1.0 g/kg; Acute dermal: 1.0 g/kg; Irritation: Non-irritant; Ames test: Non-mutagenic.

P 87–1881

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (S) Cis-1,4-diaminocyclohexane.

Use/Production. (S) Industrial and commercial cross-linking agent for epoxy type coatings; polyurethanes for isocyanates and extenders; polyamide resins for plastics, films and adhesives; and corrosion inhibitors. Prod. range: Confidential.

Toxicity Data. Acute oral: 1,300 mg/kg; Irritation: Skin—Irritant, Eye—Severe; Inhalation: 1.9 mg/l; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizier.

P 87–1882

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (S) Trans-1,4-diaminocyclohexane.

Use/Production. (S) Industrial and commercial cross-linking agent for epoxy type coatings; polyurehtanes for isocyanates and extenders; polyamide resins for plastics, films and adhesives; and corrosion inhibitors. Prod. range: Confidential.

Toxicity Data. Acute oral: 1,300 mg/kg; Irritation: Skin—Irritant; Eye—Severe; Inhalation: 1.9 mg/l; Ames test: Non/Mutagenic; Skin sensitization: Non-sensitizer.

P 87–1883

Manufacturer. Confidential.

Chemical. (G) Modified acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1884

Manufacturer. Confidential.

Chemical. (G) Octadecanoic acid reaction with an alkylamine, quarternized.

Use/Production. (G) Open, non-dispersive use. Prod. range: 3,000 to 30,000 kg/yr.

P 87–1885

Manufacturer. Confidential.

Chemical. (G) Modified acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1886

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1887

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1888

Manufacturer. Confidential.

Chemical. (G) Substituted polyolefin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1889

Manufacturer. Confidential.

Chemical. (G) Substituted polyolefin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1890

Manufacturer. Confidential.

Chemical. (G) Substituted sulfonic acid, zinc salt.

Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 87–1891

Manufacturer. Confidential.

Chemical. (G) Alkylpolyamine.

Use/Production. (S) Asphalt emulsifier for highway maintenance. Prod. range: Confidential.

P 87–1892

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (G) Cuprate (4-), [5-(acetylamino)-4-hydroxy-3[[5-hydroxy-6-[[2-hydroxy-5-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-7-sulfo-2-naphthalenyl]azo]2,7-naphthalene disulfonate (6-)]-tetra sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 10,000 to 30,000 kg/yr.

P 87–1893

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (G) 1-Amino 8-hydroxy 2[4-[sulfonic acid]phenylazo]7-[[2-[sulfonic acid]5-[3-chloro 5-[4-[ethylsulfonyl]sulfuric acid ester]phenylamino]S-triazinylamino]phenylazo]naphthalene 3,6-disulfonic acid - penta sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 10,000 to 30,000 kg/yr.

P 87–1894

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (G) 4-[1-Amino 8-hydroxy 2-[4[[2-[sulfooxy]ethyl]sulfonyl]phenylazo] 3,6 disulfo naphthyl-7-azo] 4'-[4-hydroxy phenylaso] stilbene 2,2'-disulfonic acid-penta potassium salt.

Use/Import. (G) Reactive dye for textiles. Import range: 10,000 to 30,000 kg/yr.

P 87–1895

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (G) 1-Naphthol-2-[3-sulfo 4-methoxy phenylazo] 6-[3-chloro 5-[2-methoxy 5-[[2-[sulfooxy]ethyl]sulfonyl]phenylamino] S-triazinyl amino] 3-sulfonic acid trisodium salt.

Use/Import. (G) Reactive dye for textiles. Import range: 10,000 to 30,000 kg/yr.

P 87–1896

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Organopolysiloxane containing hydrogen trifluoroalkyl and methyl groups.

Use/Import. (S) Industrial curing agent of liquid fluorosilicone rubber. Import range: 50 to 500 kg/hr.

P 87–1897

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Reaction products of silane coupling groups.

Use/Import. (S) Component or its ingredients for two or three component low temperature vulcanized silicone rubber compound; and industrial ingredient for primer. Import range: 80 to 800 kg/yr.

P 87–1898

Importer. Hoechst Celanese Corporation.

Chemical. (G) Modified trioxane polymer.

Use/Import. (S) Industrial injection, extrusion, compression and flow molding. Import range: 16,000 to 23,000 kg/yr.

P 87–1899

Manufacturer. Milliken and Company.

Chemical. (G) Polyoxyethylene-polyoxypropylene-, substituted dianiline.

Use/Production. (G) Colorant. Prod range: Confidential.

P 87–1900

Manufacturer. Confidential.

Chemical. (G) Polyacrylate urethane.

Use/Production. (G) Industrial coating with a dispersive use. Prod. range: 100,000 to 123,000 kg/yr.

P 87–1901

Manufacturer. Dow Corning Corporation.

Chemical. (G) Methoxy-methacrylate siloxane.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. Acute oral: 6.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Inhalation: 200 parts per million (ppm).

P 87–1902

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organofunctional polysiloxane.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation Skin—Non-irritant, Eye—Slight; Ames test: Non-mutagenic.

P 87–1903

Manufacturer. Dow Corning Corporation.

Chemical. (G) Polydimethylsiloxane.

Use/Production. (S) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Non-mutagenic.

P 87–1904

Importer. Fritzsche, Dodge and Olcott.

Chemical. (S) Bicyclo [3.1.1.] heptane-3-carboxaldehyde 2,6,6-trimethyl.

Use/Import. (S) Chemical intermediate or as an aroma chemical. Import range: 100 to 5,000 kg/yr.

Toxicity Data. Acute oral: 2,000 mg/kg; Irritation: Skin—Primary irritant, Eye—Non-irritant.

P 88–1

Manufacturer. Confidential.

Chemical. (G) Chloride of ethoxylated alcohol.

Use/Production. (G) Isolated intermediate. Prod. range: Confidential.

Date: October 2, 1987

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–23447 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

VOL 52 ISS 196 OCT 9 1987 UMI

[OPTS-51695; FRL-3274-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifty-nine such PMNs and provides a summary of each.

DATES: *Close of Review Period:*

P 87-1815, 87-1816, 87-1817, 87-1818, 87-1819, 87-1820, 87-1821, 87-1822, 87-1823, 87-1824, 87-1825, 87-1826, 87-1827 and 87-1828—December 16, 1987.

P 87-1829, 87-1830 and 87-1865—December 19, 1987.

P 87-1831, 87-1832, 87-1833, 87-1834, 87-1835, 87-1836, 87-1837, 87-1838, 87-1839, 87-1840, 87-1841, 87-1842—December 20, 1987.

P 87-1843, 87-1844, 87-1845, 87-1846, 87-1847, 87-1848, 87-1849, 87-1850, 87-1851, 87-1852, 87-1853, 87-1854, 87-1855, 87-1856, 87-1857, 87-1858, 87-1859, 87-1860, 87-1861, 87-1862, 87-1863 and 87-1864—December 21, 1987.

P 87-1866, 87-1867, 87-1868, 87-1869, 87-1870, 87-1871, 87-1872 and 87-1873—December 22, 1987.

Written comments by:

P 87-1815, 87-1816, 87-1817, 87-1818, 87-1819, 87-1820, 87-1821, 87-1822, 87-1823, 87-1824, 87-1825, 87-1826, 87-1827 and 87-1828—November 16, 1987.

P 87-1829, 87-1830 and 87-1865—November 19, 1987.

P 87-1831, 87-1832, 87-1833, 87-1834, 87-1835, 87-1836, 87-1837, 87-1838, 87-1839, 87-1840, 87-1841 and 87-1842—November 20, 1987.

P 87-1843, 87-1844, 87-1845, 87-1846, 87-1847, 87-1848, 87-1849, 87-1850, 87-1851, 87-1852, 87-1853, 87-1854, 87-1855, 87-1856, 87-1857, 87-1858, 87-1859, 87-1860, 87-1861, 87-1862, 87-1863 and 87-1864—November 21, 1987.

P 87-1866, 87-1867, 87-1868, 87-1869, 87-1870, 87-1871, 87-1872 and 87-1873—November 22, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51695]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street S.W., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1815

Importer. Hoechst Celanese Corporation.

Chemical. (G) Fiber reactive monoazo dyestuff.

Use/Import. (S) Industrial fiber reactive dyestuff. Import range: 10,000 to 50,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic, EC_{50} 72 hr (Scenedesmus subspicatus): 36.1 mg/l.

P 87-1816

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified polyethylene.

Use/Production. (G) Site-limited film. Prod. range: Confidential.

P 87-1817

Manufacturer. American Cyanamid Company.

Chemical. (G) Aromatic anhydride.

Use/Production. (G) Open, non-dispersive use for resins. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Minimal, Eye—Mild; Ames test: Non-mutagenic.

P 87-1818

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial emulsifier. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87-1819

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial emulsifier, thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87-1820

Manufacturer. Confidential.

Chemical. (G) Polyoxylkylate of trimethylolpropane.

Use/Production. (G) Industrial, commercial and consumer thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87-1821

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial, commercial and consumer thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87-1822

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial, commercial and consumer thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87-1823

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87-1824

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87-1825

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87–1826

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylate of trimethylolpropane.

Use/Production. (G) Industrial, commercial and consumer emulsifier and thickener. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

P 87–1827

Manufacturer. Texaco Chemical Company

Chemical. Phosphorodithioic acid, mixed, O,O-bis(isopropyl, branched octyl, butyl esters, zinc saltes).

Use/Production. (S) Industrial, commercial and consumer lube oil additive for crankcase engine oil packages. Prod. range: Confidential.

P 87–1828

Manufacturer. Texaco Chemical Company.

Chemical. (G) Phosphorodithioic acid, mixed O,O-diisopropyl and O,O-dibranched octyl and O,O-dibutyl esters, zinc salts.

Use/Production. (S) Industrial, commercial and consumer lube oil additive for crankcase engine oil packages. Prod. range: Confidential.

P 87–1829

Importer. Confidential.

Chemical. (G) Sulfurized alkylphosphoric acid, monoester-Amine salt.

Use/Import. (G) Antiwear and extreme pressure additive in lubricants. Import range: 10,000 to 20,000 kg/yr.

P 87–1830

Importer. Confidential.

Chemical. (G) Functional alkoxysilane; monomer and homopolymers.

Use/Import. (S) Binder for zinc rich paints. Import range: Confidential.

P 87–1831

Importer. Industrial Raw Materials Corporation.

Chemical. (G) Butylic acid telomer.

Use/Import. (S) Commercial compounding material in ink or tape or sheet for typewriter or printer use; and industrial raw material provisionally used in production of the ink. Import range: 500 to 1,500 kg/yr.

Toxicity Data. Ames test: Non-mutagenic.

P 87–1832

Importer. Industrial Raw Materials Corporation.

Chemical. (G) Calcium salt of butyric acid telomer.

Use/Import. (S) Commercial compounding material in ink on tape or sheet for typewriter or printer use; and industrial raw material provisionally used in production of the ink. Import range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

P 87–1833

Manufacturer. Confidential.

Chemical. Proprietary monoester.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer.

P 87–1834

Manufacturer. NL Industries, Incorporated.

Chemical. (G) Acrylic copolymer resin.

Use/Production. (G) An acrylic copolymer resin to be used in an open, non-dispersive manner. Prod. range: Confidential.

P 87–1835

Importer. Pacific Anchor Chemical Corporation.

Chemical. (S) 2-Methyl-1-H-imidazole-1-ethanamine.

Use/Import. (S) Industrial powder coatings; epoxy adhesives; and epoxy encapsulating systems. Import range: Confidential.

P 87-1836

Manufacturer. CIBA-CEIGY Corporation.

Chemical. (G) Tetrabromobisphenol A and bisphenol A, reaction products with epichlorohydrin and a polyamine.

Use/Production. (S) Industrial printed wiring board laminates. Prod. range: Confidential.

Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin - Non-irritant, Eye - Non-irritant.

P 87–1837

Manufacturer. Olin Corporation.

Chemical. (S) 2-Propenenitrile, polymer with 1, 3-diisocyanatomethyl benzene, ethenylbenzene, 2-hydroxethyl 2-methyl-e-propenoate, methyloxirane and oxirane.

Use/Production. (S) Industrial reinforcing agent for flexible, polyurethane foam for carpet, underlayment and packaging. Prod. range: Confidential.

P 87–1838

Importer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic lactone copolymer.

Use/Import. (G) Highly dispersive use. Import range: Confidential.

P 87–1839

Importer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic lactone copolymer.

Use/Import. (G) Highly dispersive use. Import range: Confidential.

P 87–1840

Manufacturer. Henkel Process Chemicals, Incorporated.

Chemical. (G) Alkoxylated amine alcohol.

Use/Production. (G) Neutralizing agent. Prod. range: Confidential.

P 87–1841

Importer. CIBA-GEIGY Corporation.

Chemical. (G) Sulfur containing hindered phenolic derivative.

Use/Import. (S) Industrial antioxidant for elastomers, adhesives and similar systems. Import range: Confidential.

P 87–1842

Manufacturer. Confidential.

Chemical. (S) Polymer of dimethyl terephthalate; ethylene glycol; neopentyl glycol; isophthalic acid; and adipic acid.

Use/Production. (S) Industrial coating for metal substrate. Prod. range: 43,000 to 400,000 kg/yr.

P 87–1843

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Organopolysiloxane ethoxy terminated.

Use/Import. (S) Industrial additive for siloxane rubber compounds. Import range: 200 to 400 kg/yr.

P 87–1844

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Industrial retarder for the crosslinking reaction. Import range: 200 to 300 kg/yr.

P 87–1845

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Industrial additive for siloxane rubber compounds. Import range: 200 to 400 kg/yr.

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P 87–1846

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Reaction products of organosiloxanes.
Use/Import. (S) Industrial adhesive promoter; and ingredient for primer. Import range: 500 to 800 kg/yr.

P 87–1847

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Organosilane.
Use/Import. (S) Industrial coating. Import range: 50 to 100 kg/yr.

P 87–1848

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Industrial additives for silicone rubber compounds. Imort range: 200 to 400 kg/yr.

P 87–1849

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Fluoroalkyl polysiloxanes.
Use/Import. (S) Industrial ingredient for silicone rubber compounds. Import range: 300 to 500 kg/yr.

P 87–1850

Manufacturer. Confidential.
Chemical. (G) Emulsion tetrapolymer.
Use/Production. (G) Component of manufactured article, contained use. Prod. range: 1,000 to 3,000 kg/yr.

P 87–1851

Manufacturer. Confidential.
Chemical. (G) Siloxane-caprolactone copolymer.
Use/Production. (G) Fiber additive. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin-Non-irritant, Eye - Non-irritant.

P 87–1852

Manufacturer. Confidential.
Chemical. (G) High solids styrene-vinyl toluene copolymer alkyd resin.
Use/Production. (S) Industrial high solids clear and pigmented finishes. Prod. range: Confidential.

P 87–1853

Importer. Confidential.
Chemical. (G) Substituted polycarbonate.
Use/Import. (G) Industrial substrate. Import range: Confidential.

P 87–1854

Manufacturer. Confidential.
Chemical. (G) Sulfonamide of mono-, di-, and tri-substituted heterocyclic compound.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1855

Manufacturer. Confidential.
Chemical. (G) Sulfonyl chloride of mono-, di-, and trisubstituted heterocyclic compound.
Use/Production. (G) Isolated intermediate. Prod. range: Confidential.

P 87–1856

Manufacturer. Confidential.
Chemical. (G) Modified acrylate terpolymer.
Use/Production. (G) Industrial thickener, non-dispersive use. Prod. range: Confidential.

P 87–1857

Manufacturer. Confidential.
Chemical. (G) Modified acrylate terpolymer.
Use/Production. (G) Industrial thickener, non-dispersive use. Prod. range: Confidential.

P 87–1858

Manufacturer. Confidential.
Chemical. (G) Modified acrylate copolymer.
Use/Production. (G) Industrial thickener, non-dispersive use. Prod. range: Confidential.

P 87–1859

Manufacturer. Confidential.
Chemical. (G) Modified acrylate terpolymer.
Use/Production. (G) Industrial thickener, non-dispersive use. Prod. range: Confidential.

P 87–1860

Manufacturer. Confidential.
Chemical. (G) Modified acrylate copolymer.
Use/Production. (G) Industrial thickener, non-dispersive use. Prod. range: Confidential.

P 87–1861

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyetheramine.
Use/Production. (G) Industrial used coating with an open use. Prod. range: 5,100 to 51,000 kg/yr.

P 87–1862

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyetheramine.
Use/Production. (G) Industrial used coating with an open use. Prod. range: 5,100 to 51,000 kg/yr.

P 87–1863

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyetheraminc.
Use/Production. (G) Industrial used coating with an open use. Prod. range: 5,100 to 51,000 kg/yr.

P 87–1864

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyetheramine.
Use/Production. (G) Industrial used coating with an open use. Prod. range: 5,100 to 51,000 kg/yr.

P 87–1865

Importer. Confidential.
Chemical. (G) Functional alkoxysilane; monomer and homopolymers.
Use Import. (S) Binder for zinc rich paints. Import range: Confidential.

P 87–1866

Importer. Confidential.
Chemical. (G) Alpha-olefin-maleic acid derivatives copolymer.
Use/Import. (G) Dispersants. Import range: Confidential

P 87–1867

Importer. Tioxide America, Incorporated.
Chemical. (S) Titanium complex of propan-2-ol, 2-ethylhexyl phosphate and di(2-ethylhexyl) phosphate.
Use/Import. (S) Industrial coupling agent to assist the incorporation of fillers into plastics. Import range: Confidential.

P 87–1868

Manufacturer. Dow Corning Corporation.
Chemical. (G) Chloroalkylchlorosilane.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Irritation: Eye-Irritant; Ames test: Non-mutagenic; LC_{50} 48 hr (Daphnia magna): <100 parts per million (ppm), LC_{50} 96 hr (Rainbow trout): 38.4 ppm.

P 87–1869

Manufacturer. Dow Corning Corporation.
Chemical. (G) Amino alkyl silane.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 200 mg/kg; Irritation: Skin–Irritant, Eye–Irritant.

P 87–1870

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Packaging. Prod. range: Confidential.

P 87–1871

Manufacturer. Confidential.

Chemical. (G) Aliphatic hydroxyamide.

Use/Production. (G) Industrial used coating with a dispersive use. Prod. range: 5,000 to 20,000 kg/yr.

P 87–1872

Importer. Confidential.

Chemical. (G) 1–[5–[3–[4–(Substituted heterocycle)benzamido] phenylazo]–1–[3-dimethyl-ammoniopropyl)–substituted heterocycle) heterocycle organic acid salt.

Use/Import. (S) Industrial dye for use in fine tissue paper. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin–Non-irritant, Eye–Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; LC_{50} 96 hr (Cyprinus carpio): 10.7 mg/1, LC_{50} 24 hr (Daphnia magna): 299 mg/1.

P 87–1873

Importer. MTC America Incorporated.

Chemical. (G) Maleimide.

Use/Import. (G) Monomer. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin–Non-irritant, Eye–Irritant; Ames test: Non-mutagenic.

Dated: September 28, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–23304 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3275–2]

Work Group Meeting

AGENCY: U.S. Environmental Protection Agency.

ACTION: Work group meeting.

SUMMARY: Pursuant to section 518 of the Water Quality Act, EPA is authorized to treat Indian Tribes as states for various purposes specified in the Clean Water Act. In order to implement these provisions, EPA will hold a work group meeting to discuss how to provide planning/program grants to Indian Tribes.

DATE: November 4, 1987 1–4 p.m. and November 5, 1987 8:30–4:00 p.m.

ADDRESS: Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Patti Morris, Analysis and Evaluation Division, Office of Water Regulations and Standards, Office of Water, Room 747 East Tower, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. Or call, 202–475–8637 or FTS 8–475–8637.

F. Scott Bush,

Director, Analysis and Evaluation Division.

[FR Doc. 87–23445 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3274–1]

Florida Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Florida requesting determinations by the Regional Administrator, Environmental Protection agency, pursuant to section 312(f)(3) of Pub. L. 92–500, as amended by Pub. L. 95–217, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Destin Harbor (aka Old Pass Lagoon), County of Okaloosa, within the State of Florida. Destin Harbor, in the City of Destin, is located in Northwest Florida and is connected to the inlet form the Gulf of Mexico into Choctawhatchee Bay.

The State of Florida has certified that there are five pumpout facilities available to service vessels in Destin Harbor. Pumpout facility No. 1 is located on the dock of the East Pass Towers Yacht Club and will accommodate vessels with a draft of eight feet. This facility is open from 8:00 a.m. to 4:00 p.m., seven days a week and has a $2.00 fee per pumpout. Pumpout facility No. 2 is on the dock at the Waterview Towers and will accommodate vessels with a draft of eight feet. This facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday and has a $2.00 fee per pumpout. Pumpout facility No. 3 is on the dock at the Destin Harbor Resort and accommodates vessels with 10 feet drafts. The facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday. There is no charge per pumpout at this facility. Pumpout facility No. 4 is on the dock at the Sandestin Yacht Club and accommodates vessels wth 15 feet drafts. The facility is open from 6:30 a.m. to 6:00 p.m. sevens days a week. There is no charge per pumpout at this facility. Pumpout facility No. 5 is on the dock at the Dolphin Point Condominium and accommodates vessels with a draft of six feet. The facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday. The pumpout service at this facility is free. All five pumpout facilities discharge into the city sewage system.

Vessel usage of Destin Harbor includes 125 charter fishing vessels, 21 commercial fishing vessels and 190 recreational boats for a total of 336 vessels. The channel depth into Destin Harbor is currently twelve (12) feet; therefore, the City is certifying that all vessels can be accommodated by the five pumpout facilities.

Comments and views regarding this request for action may be filed on or before November 23, 1987. Such communications, or request for information or a copy of the applicant's petition, should be addressed to Sally S. Turner, Chief, Marine Protection Section, 345 Courtland Street, Atlanta, Georgia, 30365. Telephone 404/347–2126.

Dated: September 24, 1987.

Lee A. DeHihns III,

Acting Regional Administration.

[FR Doc. 87–23444 Filed 10–8–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Agreement Policy for Short-Spaced FM Broadcast Stations Expanded

September 25, 1987.

The Commission will now consider mutual agreements between grandfathered short-spaced stations for facilities increases on the same channel, and/or the first, second or third adjacent channels.

By its *Public Notice*, No. 75–1347, released December 15, 1975, 57 FCC 2d 1263 (1975), the Commission reaffirmed the policy of considering agreements between grandfathered short-spaced stations (FM broadcast stations at locations authorized prior to November 16, 1964 which did not meet the minimum spacing requirements of § 73.207 of the rules and have remained short-spaced since that time) to increase their facilities beyond those routinely permitted for such stations in § 73.213 of the rules. That *Public Notice* set forth

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the criteria to be used in evaluating whether such an agreement is in the public interest.

This policy, however, has applied only to grandfathered short-spaced stations that were short-spaced on the same channel and/or the first adjacent channels. In order to maintain consistency with § 73.213, as amended in MM Docket 86-144, the agreement policy will now apply also to grandfathered short-spaced stations that are short-spaced on the second and third adjacent channels.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-23473 Filed 10-8-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87424; File Nos. BPH-850710MI]

Applications For Consolidated Hearing; Michael J. Benns, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Michael J. Benns	Aspen, CO	BPH-850710MI	87-424
B. Harold S. Schwartz	Aspen, CO	BPH-850711NG	
C. Aspen Broadcasting Network, Inc.	Aspen, CO	BPH-850711NI	
D. Louis Richard Keilin d/b/a Pro/Video	Aspen, CO	BPH-850712PD	
E. Aspen FM, Inc.	Aspen, CO	BPH-850712PH	
F. Aspen Skywave, Inc.	Aspen, CO	BPH-850712PI	
G. Ajax Mountain Broadcasting Corp.	Aspen, CO	BPH-850712PR	
H. Aspen Communications, A Limited Partnership	Aspen, CO	BPH-850712PS	
I. Trans-California Broadcasting, Co.	Aspen, CO	BPH-850712PT	
J. Marcus Broadcasting, Inc.	Aspen, CO	BPH-850712PV	
K. HVS Partners	Aspen, CO	BPH-850712PW	
L. Aspen Airwaves, Inc.	Aspen, CO	BPH-850712PY	
M. Aspen Broadcasting	Aspen, CO	BPH-850712PZ	
N. Ute City Broadcasting, Inc.	Aspen, CO	BPH-850712QE	
O. PN Radio Co.	Aspen, CO	BPH-850711NE (*Dismissed*)	
P. Echonet Corp.	Aspen, CO	BPH-850712PU (*Dismissed*)	
Q. Penny Drucker	Aspen, CO	BPH-850712PX (*Dismissed*)	
R. Aspen Radio Partners, A Limited Partnership	Aspen, CO	BPH-850712QA (*Dismissed*)	
S. Theodor R. Jacobsen	Aspen, CO	BPH-850712QF (*Dismissed*)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Environmental	I, K.
2. Air Hazard	A, K.
3. Comparative	All applicants.
4. Ultimate	All applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-23430 Filed 10-8-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-661]

First Federal Savings and Loan Association of Giles County, Pulaski, TN; Final Action; Approval of Conversion Application

Date: October 1, 1987.

Notice is hereby given that on September 14, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Giles County, Pulaski, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-23436 Filed 10-8-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-662]

Heritage Federal Savings and Loan Association, Olympia, WA; Final Action; Approval of Conversion Application

Date: October 1, 1987.

Notice is hereby given that on September 18, 1987, the Office of

General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Heritage Federal Savings and Loan Association, Olympia, Washington, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101–1693.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–23437 Filed 10–8–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement Nos.:

(1) 212–009847–018

(2) 212–009848–020

Title:

(1) U.S. Atlantic Coast/Brazil Agreement

(2) U.S. Gulf Ports/Brazil Agreement

Parties:

(1) Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
American Transport Lines, Inc.

(2) Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
American Transport Lines, Inc.

Synopsis: The proposed amendments would establish a new pool period commencing October 1, 1987 and ending December 31, 1988, for each agreement. They would also establish minimum sailings and port call requirements for the parties for this period and would extend to December 31, 1988, provisions governing the accounting for cargoes under alternate coast service.

Agreement No.: 202–010268–008.

Title: Australia/Eastern U.S.A. Shipping Conference

Parties:

Columbus Line
Pacific America Container Express

Synopsis: The proposed amendment would authorize the parties to agree upon and adopt rules with regard to the movement of cargo at their own expense between discharge ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 6, 1987.

[FR Doc. 87–23399 Filed 10–8–87; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 9, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

1. Statement of Marital Relationship (By One of the Parties)—0960–0038—This form is used to collect information which is needed by the Social Security Administration to prove or disprove an alleged common-law marriage to someone entitled to social security benefits. This form is completed by an individual who alleges such a marriage. Respondents: Individuals or households. Number of Respondents: 30,000; Frequency of Response: Occasionally; Estimated Annual Burden: 15,000 hours.

Desk Officer: Elana Norden

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

1. HHS Acquisition Regulations—HHSAR Part 315—Contracting by Negotiations—0990–0139—HHSAR Subpart 315.4 prescribes policies for the preparation of business proposals (for all solicitations except those listed in FAR 15.401 and research and development). HHSAR 352.215–71 establishes the requirements for an offeror to report its "Employer's Identification Number." This information is used by the Department for recordkeeping purposes. This information is used by the Department to evaluate proposal. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 38,311; Frequency of Responses: Occasionally; Estimated Annual Burden: 27,965 hours.

OMB Desk Officer: Shannan Koss-McCallum

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

National Institutes of Health

1. Qualifications Evaluation Inquiry—0925–0036—The referenced form is a systematic method for collecting information from supervisors, co-workers and others having knowledge of applicant's work performance, particularly as it relates to applicant's potential for health science administration. The information will be used by OPM examining staff, and rating and potential selecting officials. Respondents: Individuals or households. Number of Respondents: 3,900; Frequency of Response: Occasionally; Estimated Annual Burden: 1,300 hours.

Centers for Disease Control

1. Regulation—Mine Safety and Health Administration 30 CFR Part 11—Respiratory Protective Devices—0920–0109—Part 11 prescribes requirements and procedures which must be met in filing applications for joint approval by MSHA and NIOSH of respirators and modifications of respirators. Application contents, qualify control plans and quality control records are required (30 CFR 11.11, 11.35, 11.41 and 11.43). Respondents: Businesses or other for-profit. Number of Respondents: 39; Frequency of Response: Occasionally; Estimated Annual Burden: 32,175 hours.

2. HIV Seroprevalence Monitoring—NEW—A survey of State and local health Departments, universities, and hospitals will be conducted to gather

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existing seropevalence and incidence data on HIV infection in the U.S. Key information from published and unpublished and surveys/studies will be summarized. Respondents: State or local governments, Nonprofit institutions. Number of Respondents: 125; Frequency of Response: One-time; Estimated Annual Burden: 313 hours.

3. Epidemiologic Study of Male Radiofrequency Heater Operators—NEW—The information collected in this study is needed by NIOSH to investigate the relationship between occupational exposure to radiofrequency radiation and the male reproductive profile. The study will examine this relationship by collecting and analyzing data from approximately 190 volunteer male RF heater sealer operators. Respondents: Individuals or households, Businesses or other for-profit. Number of Respondents: 255; Frequency of Response: 1; Estimated Annual Burden: 140 hours.

OMB Desk Officer: Shanna Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
SSA: 301–594–5706
OS: 202–245–6511

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Office designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer).

Date: October 5, 1987.

Raffie Shahrigian,

Acting Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87–23495 Filed 10–8–87; 8:45 am]

BILLING CODE 4150–01–M

Food and Drug Administration

[Docket No. 86D–0334]

Guideline Labeling for Estrogen Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised guideline texts for professional and patient labeling for prescription estrogen drug products. The revisions reflect important new information about estrogen drug products. Any person may rely upon the revised texts to meet labeling requirements for these drug products.

EFFECTIVE DATES: *Professional Labeling:* Effective October 9, 1987, a person may adopt the revised labeling guideline for estrogen drug products and rely on it to meet FDA's professional labeling requirements for prescription drugs. *Patient Package Insert:* Effective October 9, 1987, a person may rely on the revised guideline to meet the patient package insert requirements for estrogen drug products set forth in § 310.515 (21 CFR 310.515). However, pending finalization of the proposed revision to § 310.515 (published elsewhere in this issue of the **Federal Register**), a person may continue to rely on the previously issued guideline text, which was published in full in the **Federal Register** of July 22, 1977 (42 FR 37645).

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for a copy of either guideline to the Consumer and Professional Affairs Branch (HFN–364), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8012.

FOR FURTHER INFORMATION CONTACT: Philip Corfman, Center for Drugs and Biologics (HFN–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

SUPPLEMENTARY INFORMATION: FDA is charged with assuring that drugs are safe and effective for their intended uses and that their labeling provides adequate information for such uses and is not false or misleading. The full disclosure of information to physicians and, where appropriate, to patients concerning warnings and contraindications is an important element in the discharge of that responsibility. The statutory scheme anticipates that new information concerning the safety and effectiveness of marketed drugs may require, for example, that FDA prescribe changes in product labeling to reveal limitations on use or warn of previously unanticipated hazards.

Guideline texts for professional labeling and patient package inserts for estrogen drug products were previously published in notices in the **Federal Register** of September 29, 1976 (41 FR 43117), October 29, 1976 (41 FR 47573), and July 22, 1977 (42 FR 37645).

FDA is revising the guideline texts for estrogen drug products to reflect new information about the benefits and risks of estrogen drug use. This information includes information on the use of estrogens to treat postmenopausal osteoporosis as well as findings regarding the use of progestogens with estrogens.

In addition, the guideline patient insert is being revised to make the technical information about the drug's benefits and risks easier to understand and more readable.

The revisions are the product of the combined efforts of FDA scientists in the Center for Drugs and Biologics and the members of FDA's Advisory Committee on Fertility and Maternal Health Drugs. In developing the guideline texts, FDA also considered comments submitted by interested members of the public, including representatives of the health professions, consumer organizations, and the drug industry.

This notice announces the availability of these revised guidelines.

The revised guideline texts are issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. A person who follows the guideline is assured that his or her conduct is acceptable to the agency. FDA advises that compliance with the professional labeling guideline for estrogen drug products satisfies the requirements set forth in the prescription drug labeling regulations in Part 201 of the agency's regulations (21 CFR Part 201); similarly, compliance with the patient package insert guideline satisfies the requirements of § 310.515 (21 CFR 310.515). The guidelines can be relied upon by any person to meet these specific regulatory requirements. Under the provisions of § 314.70 (21 CFR 314.70), a holder of an approved application for a new drug is required to submit a supplemental application to obtain approval for a change in the text of professional labeling or patient package insert. However, under § 314.70(c) (21 CFR 314.70(c)), these guideline labeling texts may be used before approval of supplements covering the revisions provided a supplement for the change is submitted at the time the change is made. An applicant may choose to use a labeling text not covered in one of the guidelines. If an applicant chooses to depart from a guideline, the applicant should discuss the matter further with the agency to prevent expenditures of money and effort for labeling that the agency may later determine to be unacceptable.

Effective October 9, 1987, a person may adopt the guidelines for estrogen drug products that are the subject of this notice.

Interested persons may submit written comments on these guidelines to the Dockets Management Branch (HFA–305) (address above). Comments will be considered in determining whether future changes to the guidelines are necessary. Two copies should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The guidelines and comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 8, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–23452 Filed 10–8–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–87–1744]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Fiscal Data in Support of Claim for Insurance Benefits (Multifamily Mortgage)
Office: Administration
Description of the need for the information and its proposed use: This form is one of the basic claim documents used by the mortgagee to make a claim for insurance benefits. The data compiled on this form are also used by the General Accounting Office in the audit of HUD records and by the Justice Department in the pursuit and defense of claims by the United States.
Form number: HUD–2742
Respondents: State or Local Governments and Businesses or Other For-Profit
Frequency of respondents: On Occasion
Estimated burden hours: 150
Status: Extension
Contact: Terry L. Bowie, HUD, (202) 755–6448, John Allison, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: September 30, 1987

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Moderate Rehabilitation—Single Room Occupancy Program
Office: Housing
Description of the need for the information and its proposed use: The information will be used to assist the Department in selecting applicants which meet program requirements and demonstrate the greatest need for the Moderate Rehabilitation Single-Room Occupancy (SRO) Program funds. The purpose of this program is to provide rental assistance for homeless individuals in rehabilitated SRO housing. The assistance will be in the form of rental assistance under the Section 8 Housing Assistance Payments Program.
Form number: None
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of response: On Occasion
Estimated burden hours: 2,500
Status: New
Contact: Lawrence Goldberger, HUD, (202) 755–5720, John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: October 2, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–23405 Filed 10–8–87; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–07–4332–13; FES 87–45]

Availability of Final Environmental Impact Statement; Arcata Resource Area Wilderness, Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) for the Eden Valley and Thatcher Ridge Wilderness Proposals.

SUMMARY: This EIS assesses the environmental consequences of managing two Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed in this EIS include: (1) A "no wilderness/no action" alternative for each WSA and (2) an " all wilderness" alternative for each WSA.

The names of the two WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

Eden Valley—6,674 acres; 6,674 acres nonsuitable.
Thatcher Ridge–17,187 acres; 17,187 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Arcata Resources Area, 1125 16th Street, P.O. Box 1112, Arcata, California 95521. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room E–2841, Sacramento, CA 95825

or

Bureau of Land Management, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482–5599.

FOR FURTHER INFORMATION CONTACT: Earle G. Curran, Outdoor Recreation Planner, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482–5599.

Dated: September 30, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–23161 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–4332–09; INT DEIS 87–30]

Availability of Draft Environmental Impact Statement; Arizona Mohave Wilderness Study Area

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of Arizona Mohave Draft Wilderness Environmental Impact Statement.

SUMMARY: The draft Arizona Mohave Wilderness Environmental Impact Statement asseses the environmental consequences of managing 15 wilderness study areas as wilderness or non-wilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) a "No Wilderness Alternative" for each wilderness study area; (3) "Partial Wilderness Alternative" for five wilderness study areas; and (4) "Enhanced Wilderness Alternative" for two wilderness study areas.

The names of the wilderness study areas, their total acreages, and the proposed actions for each are as follows:

WSA	Total acres	Acres recommended	
		Suitable	Nonsuitable
Van Deeman	1,510	0	1,510
Mockingbird	5,815	[redacted]	5,815
Black Mountains North	19,900	18,400	1,500
Burns Spring	30,600	23,000	7,600
Mount Tipton	34,060	28,170	5,890
Grapevine Wash	2,200	[redacted]	2,200
Grand Wash Cliffs	12,176	0	12,176
Mount Davis	2,560	0	2,560
Mount Nutt	29,190	27,210	1,980
Warm Springs	114,800	90,600	24,200
South Bradshaws East	640	0	640
Sierra Estrella	14,830	14,830	[redacted]
Ragged Top	4,460	0	4,460
Apache Box	932	0	932
Hoverrocker	2,791	0	2,791
Total	276,464	202,210	74,254

Public Participation

Copies of the draft Arizona Mohave Wilderness Environmental Impact Statement will be sent to all individuals, government agencies, and groups who have expressed interest in the Arizona Mohave Wilderness Study Areas. In addition, a limited number of copies are available upon request from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027; Safford District Office, 424 East 4th Street, Safford, Arizona 85546; and Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

Public reading copies may be reviewed at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th and C Streets NW., Washington, DC 20240.

Bureau of Land Management, Arizona State Office, 3707 North 7th Avenue, Phoenix, Arizona 85014.

Phoenix District Office, Safford District Office, and Kingman Resource Area Office (addresses above).

The draft EIS will be available for review through January 8, 1988. Written comments should be sent by this date to EIS Team Leader, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Oral or written comments will also be received at the formal public hearings to be held as follows:

7:00 P.M., Tuesday, November 17, 1987—Conference Room Courthouse Annex, 5th and Leonard, Clifton, Arizona
7:00 P.M., Wednesday, November 18, Meeting Room, Red Barn Steakhouse, 708 Silver Heights Boulevard, Silver City, New Mexico
7:00 P.M., Tuesday, December 1, 1987—Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona
7:00 P.M., Wednesday, December 2, 1987—Maricopa Board of Supervisors Auditorium, 205 West Jefferson, Phoenix, Arizona

All comments received during the review period relating to the adequacy of the draft EIS (whether written or oral) will be considered in preparing the final EIS.

For further information contact: Bill Carter, EIS Team Leader, Bureau of Land Management, Phoenix, District Office, Phoenix, Arizona 85027; Telephone (602) 863–4464.

Lynn H. Engdahl,

Acting State Director.

Date: September 30, 1987.

[FR Doc. 87–23164 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–07–4332–09; FES 87–48]

Availability of Final Environmental Impact Statement for Egan Resource Area Wilderness

AGENCY: Department of the Interior, Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Egan Resource Area, Ely District, Nevada.

SUMMARY: The EIS assesses the environmental consequences of managing four wilderness study areas (WSA's) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) Partial Wilderness alternatives for each WSA.

The names of the WSA's analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
Goshute Canyon WSA	22,225	13,369
Park Range WSA	47,268	[redacted]
Riordan's Well WSA	37,542	19,460

WSA	Acres suitable	Acres nonsuitable
South Egan Range WSA	0	96,916
Total	107,035	129,745

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any a case, no final decision on these proposals will be made by the Secretary during the 90 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Egan Resource Area, Star Route 5, Box 1, Ely, Nevada, 89301, or call (702) 289–4865. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Street, NW., Washington, DC 20240

Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520

Bureau of Land Management, Ely District, Star Route 5, Box 1, Ely, NV 89301.

FOR FURTHER INFORMATION CONTACT: Shaaron Netherton, EIS Team Leader, at Star Route 5, Box 1, Ely District, Ely, Nevada, 89301.

Date: September 30, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–23162 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–HC–M

[ID–010–88–4332–01; FES 87–47]

Availability of Final Environmental Impact Statement; Wilderness Proposals; Three Study Areas in Boise and Shoshone District, ID

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of a final Environmental Impact Statement (EIS) for the wilderness proposals on three Wilderness Study Areas (WSAs) in the Boise and Shoshone District of Idaho.

SUMMARY: The Jarbidge Wilderness EIS assesses the environmental consequences of managing three WSAs as wilderness, non-wilderness, or partial wilderness, and of managing parts of two of those WSAs under wild river designation. The alternatives assessed in the Jarbidge Wilderness EIS include: (1) A "no wilderness" alternative for each WSA; (2) an "all wilderness" alternative for each WSA; (3) a "partial wilderness" alternative for the Bruneau River-Sheep Creek WSA, the King Hill Creek WSA, and two "partial wilderness" alternatives for the Jarbidge River WSA; and (4) a "wild river" alternative for the Bruneau River/Sheep Creek and Jarbidge River WSAs. The names of the three WSAs considered in the Jarbidge Wilderness EIS, their total acreage, and the proposed action for each are as follows:

Bruneau River/Sheep Creek

104,406 acres; the canyons, comprising 20,800 acres, are recommended as suitable for wilderness designation.

Jarbidge River

75,118 cres; the canyons, comprising 16,740 acres, are recommended as suitable for wilderness designation.

King Hill Creek

29,309 acres; all non-suitable for wilderness designation.

Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of Interior and President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made during the 30 days following the publication in the Federal Register of the Environmental Protection Agency's notice of the filing of this EIS. This complies with the Council on Environmental Quality Regulations 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of this EIS may be obtained from the District Manager, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. Copies are available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & "C" Streets NW., Washington, DC 20240

Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION, CONTACT: Mr. J. David Brunner, District Manager, Boise District Office, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705, Telephone: (208) 334–1582.

Dated: September 30, 1987

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 87–23163 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–07–4332–09; FES 87–46]

Availability of Final Environmental Impact Statement; Winnemucca District Wilderness

AGENCY: Department of the Interior; Bureau of Land Management.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Winnemucca District, Nevada.

SUMMARY: This EIS assesses the enviornmental consequences of managing 18 Wilderness Study Areas (WSAs) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) a Partial Wilderness alternative for each WSA.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
High Rock Lake	14,000	47,902
Mount Limbo	12,750	10,952
Blue Lakes	16,400	4,108
South Jackson Mountains	10,300	49,911
Black Rock Desert	174,300	145,294
Pahute Peak	25,200	32,329
North Fork Little Humboldt	8,900	60,783
Poodle Mountain	0	142,050
Fox Range	0	75,404
Pole Creek	0	12,969
Calico Mountains	0	67,647
Augusta Mountains	0	89,372
Selenite Mountains	0	32,041
China Mountain	0	10,358
Tobin Range	0	13,107
Alder Creek	0	5,142
North Jackson Mountains	0	26,457
North Black Rock Range	0	30,791
Total	261,850	856,617

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals will be made by the Secretary during the 90 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District

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Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, Nevada 89445 or call (702) 623–3676. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & C Street NW., Washington, DC 20240

Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520

Bureau of Land Management, Winnemucca District, 705 East 4th Street, Winnemucca, NV 89445

FOR FURTHER INFORMATION CONTACT: Gerald L. Moritz, EIS Team Leader, at 705 East 4th Street, Winnemucca District Office, Winnemucca, Nevada 89445.

Dated: September 30, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–23165 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–HC–M

[Alaska AA–48225–L]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48225–L has been received covering the following lands:

Copper River Meridian, Alaska

T. 9 N., R. 7 W.,
Sec. 9, SE¼NE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from February 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48225–L as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Managment is proposing to reinstate the lease, effective February 1, 1985, subject to the terms and conditions cited above.

Dated: September, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–23394 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–JA–M

[CO–942–06–4520–12]

Colorado; Filing of Plats of Survey

September 28, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 23, 1987.

The plat representing the dependent resurvey of a portion of the east boundary and the survey of islands designated as Tracts 37, 38, and 39, T. 6 S., R. 95 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

The plat representing the dependent resurvey of a portion of the east, west, and north boundaries and the subdivisional lines, and the survey of the subdivision of certain sections and of an island designated as Tract 37, T. 7 S., R. 95 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

The plat representing the dependent resurvey of the Twelfth Guide Meridian West (west boundary) and the subdivisional lines and the survey of islands designated as Tracts 37, 38, 39, 40, and 41, T. 8 S., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2805 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87–23395 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Reclamation

Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of delay in completion of a final supplemental environmental statement.

SUMMARY: On August 12, 1986, the Bureau of Reclamation, Department of the Interior, published a Notice of Intent (51 FR 28891), to prepare a Supplement to the Draft Supplemental Environmental Statement (DES 86–9) for the Garrison Diversion Unit in North Dakota in compliance with the National Environmental Policy Act (NEPA).

The Draft Supplement to the Draft Supplemental Environmental Statement (DES 68–51) was filed with the Environmental Protection Agency on December 30, 1986, and the Notice of Availability was published on January 2, 1987 (52 FR 178). The draft supplement amended the previous Draft Supplemental Environmental Statement (DES 86–9) to address changes in some of the features due to the Garrison Diversion Unit Reformulation Act of 1986.

The draft supplement (DES 86–51) included the following: description of changes in the plan, additional studies required, and items deferred until a comprehensive report on the James River is completed and submitted to the Congress.

The original plan was to prepare one final supplemental environmental statement to respond to comments received on both DES 86–51 and DES 86–9 which would be filed as the Final Supplemental Environmental Statement for the Garrison Diversion Unit.

The Bureau of Reclamation is now providing notice of a delay in the preparation of that Final Supplemental Environmental Statement. In the interim, further analysis will be conducted on several issues to be included in the James River Comprehensive Report including the location of Sykeston Canal and meeting water quality standards. The comments received on DES 86–9 and DES 86–51 will be considered in the analysis. Upon completion of the analysis, the appropraite NEPA document will be prepared and public involvement processes continued. A summary of all comments received to date will be sent to all entities/individuals on the Garrison Divesion Unit mailing list within the next 45 days.

FOR FURTHER INFORMATION CONTACT: Timothy J. Keller, Chief, Technical Support Division, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, ND 58502, (701) 255–4011, extension 541, or Robert L. Schroeder, Regional Environmental Affairs Officer, Missouri Basin Region, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107–6900, (406) 657–6558.

Date: October 5, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–23422 Filed 10–8–87; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Intention to Negotiate Concession Permit; Robert Shular

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Robert Shular authorizing him to continue to provide wood, ice and soft drink sales for the public within Great Smoky Mountains National Park for a period of four (4) years from January 1, 1988, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 87-23407 Filed 10-8-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

October 6, 1987.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Avery Coal Co., Inc., P.O. Box 251, Philipsburg, PA 16866, a Pennsylvania Corporation.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: Wallaceton Coal Trucking, Inc., P.O. Box 251, Philipsburg, PA 16866, a Pennsylvania Corporation.

B. 1. Parent corporation and address of principal office: Hexcel Corporation, 11555 Dublin Blvd., P.O. Box 2312, Dublin, CA 94568-0705.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Hexcel/Hi-Tech, Nevada
(ii) Knytex, Minnesota

Noreta R. McGee,

Secretary.

[FR Doc. 87-23419 Filed 10-8-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31115]

Boston and Maine Corp. and Delaware and Hudson Railway Co.; Lease and Trackage Rights Exemption; Exemption

Boston and Maine Corporation (B&M), Delaware and Hudson Railway Company (D&H), and Springfield Terminal Railway Company (ST) filed a notice of exemption for B&M to lease to ST B&M's Connecticut River Maine Line between: (a) Milepost S-3589, at Greenfield, MA, and milepost S-49.67, at East Northfield, MA, a distance of approximately 13.8 miles; and (b) milepost S-60.32, at Brattleboro, VT, and milepost S-109.11, at Windsor, VT, a distance of approximately 48.8 miles.

In addition, B&M will grant ST the right to use the trackage rights of B&M over the following lines of the Central Vermont Railway, Inc. (CV): (a) Between B&M milepost S-109.11/CV milepost 0.70 at Windsor, VT, and B&M milepost S-123.19/CV milepost 14.80, at White River Junction, VT, a distance of approximately 14.1 miles; and (b) between CV milepost 110.60, at East Northfield, MA, and CV milepost 120.70, at Brattleboro, VT, a distance of approximately 10.1 miles.

In order to facilitate the operations of ST, B&M and D&H are granting ST the right to operate over the lines of B&M and D&H between North Pownal, VT, and Crescent, NY.

B&M, D&H, and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI), which also owns the Maine Central Railroad Company (MEC). As a result of the proposed transaction, it is intended that ST will provide service as good as, or better than, service now provided.

Since B&M, D&H, and ST are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The carriers anticipate that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

Any employee affected by the lease transaction would normally be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980) (*Mendocino*). Any employees affected by the trackage rights transactions would normally be protected by the labor conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978) (*Norfolk and Western*), as modified in *Mendocino, supra*, 360 I.C.C. 653 (1980). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for the respective transactions. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including similar existing and future notices and transactions, such as this one, involving the GTI carriers.

Since the May 18, 1987 decision, the Commission has published in the **Federal Register** several related notices of exemption (Finance Docket Nos. 31015, 31023, 31086, and 31103) by various GTI carriers and indicated that the underlying transactions will be considered in the Finance Docket No. 30965 proceeding. The Commission will issue a separate decision determining whether this notice will be considered in that proceeding.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, B&M and D&H consummate this transaction and provide employees with *Mendocino* protection, they do so at their own risk. Should the Commission subsequently

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determine that a higher level of protection is required, B&M and D&H will be required to provide employees with that greater protection.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction.

Decided: October 5, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-23420 Filed 10-8-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. C 80-1893]

Proposed Modification of Final Judgment; First National Supermarkets, Inc., et al.

Notice is hereby given that Fisher Foods, Inc. ("Fisher") has filed with the United States District Court for the Northern District of Ohio a motion to modify the final judgment ("judgment") in *United States v. First National Supermarkets, Inc. et al.*, Civil No. C 80-1893; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to modification of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on October 10, 1980) alleged that Fisher, along with two other firms, conspired to fix prices of grocery products and meat in Cuyahoga County, Ohio. The judgment (entered on November 23, 1985) enjoins Fisher, among other things, from continuing to carry out any of the agreements which constituted the alleged conspiracy. The judgment also prohibits Fisher from being a member of the Association of Stop-N-Shop Super Markets.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that modification of the judgment to permit Fisher to be a member of Stop-N-Shop would serve the public interest. Copies of the complaint and judgment, Fisher's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, 201 Superior Avenue, Cleveland, Ohio 44114. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the judgment to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone 216-522-4070).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-23510 Filed 10-8-87; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("Act"), the Semiconductor Research Corporation ("SRC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of the following companies to the Semiconductor Equipment and Materials Institute, Inc. ("SEMI") Chapter of the SRC:

AG Associates
Coors Ceramics
SILVACO Data Systems
Technology Modeling Associates, Inc.

Furthermore, Monolithic Memories, Incorporated has merged into Advanced Micro Devices, Incorporated, and Machine Intelligence Corp. and Micronix Corporation have ceased doing business.

The SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to SRC and SRC's general areas of planned activity are given below.

SRC is a joint venture which, with the deletion and addition of the previously identified companies to the SRC and the SEMI Chapter, is comprised of the following members:

Advanced Micro Devices, Incorporated
Applied Materials, Inc.
AT&T Technologies, Incorporated
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
E-Systems Inc.
GCA Corporation
General Electric Company
General Motors Corporation
Goodyear Aerospace Corporation
GTE Laboratories, Incorporated
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Monsanto Company
Motorola, Incorporated
National Semiconductor Corporation
Perkin-Elmer Company
RCA Corporation
Rockwell International Corp.

SEMI Chapter, the members of which are the following:

AG Associates
ASYST Technologies, Inc.
Coors Ceramics
Dynapert/Amedyne
Eagle-Picher Ind. Inc.
Emergent Technologies Corporation
FEP Analytic (division of Verity Instruments, Inc.)
FSI Corporation
Genus, Inc.
Gryphon Products
Hercules Specialty Chemicals Company
Ion Beam Technologies, Inc.
Ion Implant Services
Lehighton Electronics, Inc.
Logical Solutions Technologies, Inc.
MacDermid, Inc.
Machine Technology, Inc.,
MG Industries/Scientific Gases
Micrion Corporation
Micromanipulator Company, Inc.
Oneac Corporation
Optical Specialties, Inc.
Pacific Western Systems, Inc.
Peak Systems, Inc.
PT Analytic, Incorporated
Sage Enterprises, Inc.
The SEMI Group, Inc.
Silsco, Inc.
SILVACO Data Systems
Solid State Equipment Corp.
Technology Modeling Associates, Inc.
Thermco Systems, Inc.
UTI Instruments Company
VLSI Standards, Inc.
XMR, Inc.
Silicon Systems, Incorporated
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation

SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term, objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members;

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community as a whole.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 87–23509 Filed 10–8–87; 8:45 am]
BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated July 22, 1987, and published in the **Federal Register** on July 28, 1987; (52 FR 28202), Eli Lilly and Company, 1249 South White River Parkway East Drive, Building 80, Indianapolis, Indiana 46285, made application to the Drug Enforcement

Administration to be registered as a bulk manufacturer of Nabilone (7379), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 22, 1987.

[FR Doc. 87-23404 Filed 10-8-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibililties under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration
Job Corps Data Sheet
1205-0025; ETA 652
On occasion
State or local governments; businesses or other for-profit;
Non-profit institutions
103,000 respondents; 51,500 burden hours; 1 form

This form is used to obtain information for screening and enrollment purposes to determine eligiblity for the Job Corps program. It is prepared by the screener for each applicant and has no further impact on the public. Medical information is critical in the screening process.

Extension

Occupational Safety and Health Administration
Log of Inspection and Test by Competent Person
OMB No. 1218-0011; OSHA 74
On occasion
Businesses or other for profit; Small businesses or organizations
3,500 responses; 825 hours

To ensure that shipyard personnel do not enter confined spaces that contain oxygen deficient, toxic, or flammable atmospheres, qualified personnel must test these spaces and the results of these tests must be available to those who must enter these spaces. Shipyards, barge cleaners, and repair facilities are affected.

Extension

Occupational Safety and Health Administration
Air Quality Record
OMB No 1218-0072; OSHA 233
Recordkeeping; On occasion
Businesses or other for profit; Small businesses or organizations
250 Respondents; 46,876 hours

Underground construction employers are required to keep a record of air quality test results in order to identify decreasing oxygen levels of potentially hazardous concentrations of air contaminants in time to take corrective action prior to the attainment of hazardous conditions.

Signed at Washington, DC, this 6th day of October, 1987.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 87-23504 Filed 10-8-87; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Invitation to Comment on Design Issues for Release of Quality Control Data for Unemployment Insurance Program; Extension of Comment Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of extension of comment period

SUMMARY: This notice extends the comment period on the Notice that was published in the **Federal Register** on September 4, 1987 (52 FR 33784) inviting comments on design issues for the release of Quality Control data for the Unemployment Insurance program. The former closing date for comments was October 5, 1987. The new closing date is close of business on November 6, 1987. The address for comments remains unchanged.

DATE: Written comments must be received by the close of business on November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S-4231, Frances Perkins Building, 200 Constitution Avenue NW.,

Washington, DC 20210. Telephone (202) 535–0600 (this is not a toll free number)

Dated: October 5, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87–23503 Filed 10–8–87; 8:45 am]

BILLING CODE 4510–30–M

Review Panel for the Job Training Partnership Act Presidential Awards; Meeting

The Review Panel for the Job Training Partnership Act (JTPA) Presidential Awards was established by Notice dated September 2, 1987, and published September 8, 1987, 52 FR 33887, to advise the Secretary of Labor on the selection of the Presidential Awards recipients.

Notice is hereby given of the meetings of the Review Panel for the JTPA Presidential Awards and its working groups during a two-week period to begin October 26, 1987.

Time and Place: 9:00 a.m, Room S4215–B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

These meetings will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Panel will review and discuss personal information regarding the nominees, disclosure of which would constitute a clearly unwarranted invasion of privacy.

For further information contact: Robert N. Colombo, Director, Office of Employment and Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4469, Washington, DC 20210. Telephone: 202–535–0577.

Signed at Washington, DC, the 6th day of October 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87–23498 Filed 10–8–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performace of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates an fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III

South Dakota
SD87–4—pp. 304c–304d

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC87–1 (January 2, 1987)—pp. 91, 94
Pennsylvania:
PA87–2 (January 2, 1987)—p. 861
West Virginia:
WV87–3 (January 2, 1987)—p. 1214
Listing by Location (index)—pp. xlii–xliii

Volume II

Illinois:
IL87–1 (January 2, 1987)—pp. 68, 70–71, 73–77
IL87–2 (January 2, 1987)—p. 100
IL87–6 (January 2, 1987)—p. 132
IL87–8 (January 2, 1987)—pp. 142–144
IL87–9 (January 2, 1987)—p. 148
IL87–11 (January 2, 1987)—p. 158

IL87–12 (January 2, 1987)—p. 164

IL87–14 (January 2, 1987)—p. 186
Louisiana:
LA87–4 (January 2, 1987)—p. 378

LA87–5 (January 2, 1987)—p. 384

Volume III

California:
CA87–4 (January 2, 1987)—pp. 68–100b
Hawaii:
HI87–1 (January 2, 1987)—pp. 130–131, 133–137
South Dakota:
SD87–1 (January 2, 1987)—pp. 297–299
Washington:
WA87–1 (January 2, 1987)—pp. 330, 332–334

WA87–2 (January 2, 1987)—pp. 354–357, 360, 362

WA87–3 (January 2, 1987)—pp. 366–367

WA87–5 (January 2, 1987)—p. 376

WA87–7 (January 2, 1987)—p. 382

WA87–8 (January 2, 1987)—p. 388
Listing by location (index)—p. xxx
Listing by decision (index)—p. xxxiv

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or before Janaury 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd day of October, 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87–23229 Filed 10–8–87; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–87–191–C]

BethEnergy Mines Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines Inc., P.O. Box 232, Jenkins, Kentucky 41537 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 26–L (I.D. No. 15–11726) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses by separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected because the air used to ventilate bleeder entries and gob areas would be directed over the headgate operators of the longwall section; it would eliminate one of the two escapeways from the headgate area of the longwall section; and the concentration of respirable dust in the mine atmosphere at the headgate area of the longwall section would exceed the levels that are required to be maintained.

3. As an alternate method, petitioner proposes to use belt air to ventilate active working places and that—

(a) Air used to ventilate the bleeder entries and gob areas will be ventilated away from the headgate of the longwall to the return;

(b) Two separate and distinct travelable passageways maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, which are ventilated with intake air, will be provided; and

(c) The concentration of respirable dust to which the headgate operators will be exposed will be reduced.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 30, 1987

[FR Doc. 87–23500 Filed 10–8–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–204–C]

J.J.G. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

J.J.G. Coal Company, 523 E. Market Street, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting ropes above the main connnecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 30, 1987.

[FR Doc. 87-23501 Filed 10-8-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-199-C]

Laurel Ridge Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Laurel Ridge Coal Company, 109 Broad Bottom Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 22 Mine (I.D. No. 15-16119) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking screw in lieu of padlocks. These locking devices will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the locking screws will be securely attached to the brackets to prevent accidental loss of the screws.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machine affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 30, 1987.

[FR Doc. 87-23502 Filed 10-8-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-205-C]

Raven Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Raven Coal Company, R.D. 2, Box 406, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07112) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 30, 1987.

[FR Doc. 87-23499 Filed 10-8-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time: October 26, 1987; 9:00 a.m. to 6:00 p.m.; October 27, 1987; 9:00 a.m. to 5:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Gerard M. Crawley, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20050, (202) 357-7985.

Summary of Minutes: May be obtained from Ms. Denise S. Henry, Division of Physics, National Science Foundation, Washington, DC 20550.

Purpose of Committee: To provide advice and recommendations concerning support for research in physics.

Agenda:

October 26, 1987, 9:00 a.m.-6:00 p.m.—Discussion of funding issues, Cross Directorate Programs, and Science and Technology Centers.

BEST COPY AVAILABLE

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October 27, 1987, 9:00 a.m.–5:00 p.m.— Discussions on handling oversight reviews of Programs and Long Range Plans.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–23479 Filed 10–8–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for the Biophysics Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: October 29, and 30, 1987, from 8:00 a.m. to 6:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 325 Phone: (202) 357–7777.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary for confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals These matters are within exemptions (4) and (6) of 5 U.S.C. 552 b (c), Government in the Sunshine Act.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–23475 Filed 10–8–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Linguistics; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.

Date and Time: October 26–27, 1987, 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Rm 643, Washington, DC 20550.

Tupe of Meeting: Closed.

Contact Person: Dr. Frances Karttunen, Program Director for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7696.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

Rebecca Winkler,

Committee Management Officer.

October 6, 1987.

[FR Doc. 87–23476 Filed 10–8–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Memory and Cognitive Processes; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Memory and Cognitive Processes.

Date and Time: October 29–30 1987: 9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 642, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Joseph L. Young, Program Director, Memory and Cognitive Processes, Room 320, National Science Foundation, Washington DC, Telephone (202) 357–9896.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in memory and cognitive processes.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act

M. Rebecca Winkler,

Committee Management Officer.

October 6, 1987.

[FR Doc. 87–23477 Filed 10–8–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Metabolic Biology Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology Program.

Date: October 28, 29 & 30, 1987.

Place: Union Square Hotel, San Francisco, California.

Type of Meeting: Closed.

Time of Meeting: 10/28—9:00 a.m. to 5:00 p.m.; 10/29—8:30 a.m. to 5:00 p.m.; 10/30—8:00 a.m. to 1:00 p.m.

Contact Person: Carter Kimsey, Associate Program Director, Metabolic Biology, Room 325, National Science Foundation, Washington DC, 20550, Telephone (202) 357–7987.

Summary Minutes: May be obtained from Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in metabolic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

October 6, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–23478 Filed 10–8–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Sensory Physiology and Perception Program;

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception Program.

Date and Time: October 26–28, 1987, 8:30 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW, Room 1242, Washington, DC

Type of Meeting: Closed.

Contact Person: Dr. Steven Price, Program Director Sensory Physiology and Perception Program, Room 320, National Science Foundation, Washington, DC. 20550. Telephone (202) 357–7428.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in sensory physiology and perception.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 6, 1987.

[FR Doc. 87–23481 Filed 10–8–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Psychobiology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.

Date and Time: October 28–30, 1987, 8:30 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW, Room 543, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7949.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in psychobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 6, 1987.

[FR Doc. 87–23480 Filed 10–8–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of section III.G of Appendix R to 10 CFR Part 50 to Iowa Electric Light and Power Company (IELP/the licensee) for the Duane Arnold Energy Center located at the licensee's site in Linn County, Iowa.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of section III.G of Appendix R to 10 CFR Part 50 which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. The exemptions are technical since the licensee must demonstrate that fire protection configurations meet the specific requirements of section III.G or that alternate fire protection configurations can be justified by an acceptable fire hazard analysis.

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for these items are the most practical method for meeting the intent of Appendix R, and literal compliance would not enhance significantly the fire protection capability at Duane Arnold.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at Duane Arnold. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect plant radiological effluents. With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR Part 20. They do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to not grant the exemptions requested by the licensee from the requirements of Appendix R. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Duane Arnold Energy Center.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, the Commission's staff concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated September 28, 1984, October 31, 1984, and October 21, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Bethesda, Maryland this 2nd day of October 1987.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Project Directorate III–1, Division of Reactor Projects-III, IV, V & Special Projects.

[FR Doc. 87–23488 Filed 10–8–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–3453, ASLBP No. 87–557–05–SP, Source Material License No. SUA–917]

Atlas Minerals Division of Atlas Corp.; Hearing

On September 25, 1987, the Commission issued an Order in this proceeding granting the request of Atlas Minerals Division of Atlas Corporation (Atlas) for a hearing on the NRC Staff's denial of its application for renewal of its source materials license SUA–917. In granting Atlas' request, the Commission provided that Staff and Atlas were to be parties to an informal adjudicatory proceeding to be conducted pursuant to the Commission's proposed rule, "Informal Hearing Procedures for Materials Licensing Adjudications," 52 FR 20089 (May 29, 1987).

Section 2.1205(i) of that proposed rule provides that: "If a request for a hearing is granted and no notice of opportunity for a hearing previously has been published in the **Federal Register**, a notice of hearing must be published in the **Federal Register** * * *". No notice of opportunity for hearing previously has been published in this proceeding. Consequently, pursuant to proposed § 2.1205(i), this notice is issued stating:

1. The time, place, and nature of the hearing will be announced in a subsequent notice following submission of the Hearing File by Staff pursuant to § 2.1231 of the proposed rule, any petitions to intervene filed in response to this notice, and the parties' views on the content of the hearing file and the need for an oral hearing;

2. This hearing is held under the authority of sections 63 and 189 of the Atomic Energy Act of 1954, as amended;

3. Pursuant to the Commission's Order, the issue to be considered in the hearing is whether Atlas' proposed surety arrangements for decommissioning and reclamation of the site of its uranium milling facilities at Moab, Utah, are in compliance with the Commission's requirements, or, if not in compliance, whether an exception or waiver, if permissible, should be granted; and

4. Any person whose interest may be affected by this proceeding may seek leave to intervene by filing a petition setting forth:

a. The interest of the petitioner in the proceeding;

b. How that interest may be affected by the results of the proceeding including the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding, the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and the possible effect that any order entered in the proceeding may have on that interest; and

c. The specific aspect or aspects of the subject matter of the proceeding about which the petitioner wishes to be heard. Any petitions must be filed and served on the Presiding Officer and his Special Assistant, the NRC Staff, the Commission, and Atlas by personal delivery or by first class mail, postage prepaid, no later than November 9, 1987.

The addresses for service are given below:

Administrative Judge John H. Frye III, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge James H. Carpenter, Special Assistant to the Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Edwin J. Reis, Esq., Gregory Alan Berry, Esq., Counsel for NRC Staff, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Office of the Secretary, Docketing and Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Ramsay D. Potts, Esq., Robert E. Zahler, Esq., Shaw, Pittman, Potts, & Trowbridge, 2300 N Street NW., Washington, DC 20037

Mr. Richard R. Weaver, President and Chief Executive Officer, Atlas Corporation, 353 Nassau Street, Princeton, NJ 08542

Mr. Richard E. Blubaugh, Regulatory Affairs Manager, Atlas Minerals Division of Atlas Corporation, 743 Horizon Court, Suite 202, Grand Junction, CO 81506

Following receipt of the Hearing File, and any petitions to intervene and responses thereto filed pursuant to the proposed rules, a date will be set for the parties to comment on the contents of the hearing file and the need for an oral hearing.

It is so ordered.

John H. Frye III,

Administrative Judge.

October 5, 1987.

[FR Doc. 87-23490 Filed 10-8-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Exemption

I.

The Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) the holder of Operating License No. DPR-61 which authorizes operation of the Haddam Neck Plant (the facility) at steady state reactor core power levels not in excess of 1825 megawatts thermal. The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The plant is a single-unit pressurized water reactor located at the licensee's site in Middlesex County, Connecticut.

II.

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is the primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR Part 50, Appendix J. By letter dated July 31, 1985, the staff concluded that it was acceptable to defer implementation of specific Appendix J modifications until an integrated assessment, i.e., Integrated Safety Assessment Program (ISAP), could be performed.

In a July 31, 1985 letter, the NRC staff formally established the scope of the Haddam Neck Plant ISAP and designated the Appendix J issues as ISAP Topic 1.03, "Containment Penetration Evaluations." In that letter, the staff recognized that some issues would require exemptions to defer action until such time as the Haddam Neck Plant ISAP could be completed.

Accordingly, by letters dated March 12, and July 15, 1986, the licensee requested exemptions from section II.H, III.A and III.C of Appendix J.

III.

By letters dated March 12 and July 15, 1986, the licensee requested three permanent exemptions from requirements of 10 CFR Part 50, Appendix J. These included a request to perform integrated containment leak rate testing at values less than ½Pa. By letter dated June 10, 1987, the licensee withdrew the test exemption request and committed to perform a full pressure test for the 1987 outage. The staff has described the acceptability of each of the remaining two permanent exemption requests below. In the March 12 and July 15, 1986 letters, the licensee also submitted a large number of exemption requests for temporary relief from additional Appendix J requirements. The staff resolution of these requests has been described collectively; however, each request for temporary relief has been evaluated individually in the Safety Evaluation dated September 29, 1987.

A. Permanent Exemptions

1. Type C Testing for Steam Generator Blowdown and Auxiliary Feedwater Penetrations

By letter dated March 12, 1986, CYAPCO requested a permanent exemption for section II.H.4 of Appendix J for Type C testing the containment isolation valves in the steam generator blowdown (P-15, 16, 17 and 18) and the auxiliary feedwater (P-81) penetrations.

Historically, the implementation of section II.H.4 of Appendix J does not require that the main steam and feedwater systems in PWRs be Type C tested, by virtue of the definition of containment isolation valves in that section for which Type C testing is required. Similar to the steam and feedwater systems, the steam generator blowdown (P-15, 16, 17 and 18) and auxiliary feedwater (P-81) penetrations are not connected to the reactor coolant system and are not relied upon to prevent the escape of containment air following a postulated LOCA.

By letter dated May 7, 1982, the NRC concluded that Appendix J, section II.H, does not require these valves in systems identified above to be leak-tested and, therefore, no exemption is necessary. The staff's original conclusion was based on the fact that this is a seismically-designed closed system, such that these penetrations would not be potential containment leakage paths. Additionally, CYAPCO has agreed to procedurally maintain steam generator water above the tube bundle and pressurize the secondary side above Pa

as soon as possible following the onset of a postulated LOCA.

Inasmuch as the basis for the original conclusion is unchanged, the NRC concludes that the requests for exemption for penetrations P–15, 16, 17, 18 and 81 are unnecessary and Type C testing of the isolation valves in these lines is not required.

2. Reverse Direction Type C Testing With Water of Auxiliary Containment Spray Penetration (P–80)

The auxiliary containment spray penetration (P–80) is isolated by motor-operated valve RH–MOV–31, which is currently Type C tested in the reverse direction with water. During the ILRT, the system outside containment is pressurized by the fire water system at a minimum of 80 psig assuring that there will be no leakage out of containment through this penetration. The licensee has argued that since the fire water system is maintained at least of 80 psig by an electric driven pump with a diesel driven backup, their current testing meets the underlying purpose of the rule. The NRC staff concluded that the above leak testing for this penetration would be in compliance with Appendix J if CYAPCO could demonstrate a effective 30 day water seal at a pressure at least 1.1 Pa, in accordance with sections III.C.2(b) and III.C.3(b) of Appendix J. This would require that the fire system satisfy the requirements for a safety grade system (i.e., a code class system, seismically qualified, with emergency power and capable of functioning with a limiting active single failure). However, this system does not meet several of these requirements; therefore, an exemption is required.

During normal operation, the water pressure outside the containment is maintained at 80 psig. Any significant leakage through this valve into containment would be detected as it would lead to the spray down of containment. In a sense, this valve is under continuous test (maintenance of the fire water system pressure boundary). The staff has concluded that this system configuration with the reverse direction Type C test with water provides adequate assurance that this valve is leak tight. Additionally, the licensee has proposed to flange the fire water system outside of containment to allow venting of this line during the ILRT. This will provide further assurance that this valve is leak tight. While the ILRT is not an individual test, it assures that the total leakage through containment is below 0.75 La. Therefore, the ILRT does provide reasonable assurance that the leakage through any one penetration is limited to at most 0.75 La. Therefore, the staff concludes that a permanent exemption for penetration P–80 to perform reverse direction testing with water satisfies the underlying purpose of the rule as the proposed testing and the system configuration provides adequate assurance that this penetration is leak tight. The staff concludes that the permanent exemption should be granted.

B. Exemptions for Temporary Relief

By letters dated March 12, and July 15, 1986, CYAPCO requested exemptions from 10 CFR Part 50, Appendix J, for 29 separate penetrations. The 29 requests can be categorized into four groups as described below. These categories include valves that require (1) Type C testing, (2) Type C testing in the reverse direction, (3) Type C testing with water, and (4) Type C testing at pressures greater than Pa.

1. Exemption for Modifications of Valves Requiring Type C Testing

By letters dated March 12, and July 15, 1986, CYAPCO identified three containment penetrations for which exemptions for temporary relief from the Type C testing requirements, of section III.C of Appendix J were requested. These penetrations include the reactor coolant charging system penetration (P–8), the containment sump to RHR suction line penetration (P–73) and the cavity fill line penetration from the high pressure safety injection system (P–3). Upon review of the CYAPCO request, the staff determined that a 30 days water seal would exist in the containment sump and, therefore, a Type C water test of P–73 is not required. A discussion of penetrations P–8 and P–3 follows.

Penetration P–8. CYAPCO had previously requested an exemption from the Type C testing requirements for the reactor coolant charging (P–8) penetration. This previous request was based on the seismic design of system piping inside containment and the proposed seismic qualification (upgrading) of system piping from the isolation valves of penetration P–8 to its water source. Subsequent evaluations by the licensee determined such qualifications to be a more lengthy and costly effort than is justified for this circumstance alone. Consequently, the licensee requested an exemption for temporary relief so that alternative corrective actions could be evaluated in relation to other issues concering the charging system.

As stated earlier, the staff has concluded that the ILRT (Type A test) provides reasonable assurance that leakage through any penetration is limited. Additionally, the operation and physical configuration of the charging system provides a natural deterrent to containment leakage through this system. Based on the foregoing discussion, the NRC concludes that an exemption is technically justified for the period of two refueling outages given the compensatory measures provided by the ILRT and system configuration. This time period would provide a reasonable time to implement necessary modifications to this system to achieve compliance with Appendix J.

Penetration P–3. The high pressure safety injection (HPSI) system is a seismic, Class 1, safety grade system. The cavity fill line branch is the only branch line of the HPSI system for which the isolation valve is not Type C tested. This system is a closed system outside of containment and water filled to the pumps. The licensee requested an exemption so that alternative modifications could be evaluated in relation to other issues concerning the HPSI system.

As stated earlier, the staff has concluded that the ILRT provides reasonable assurance that leakage through any penetration is limited. Additionally, the operation and physical configuration of the HPSI system provides a natural deterrent to containment leakage past this isolation valve. Based on the foregoing discussion, the NRC concludes that an exemption granting temporary relief for the period of two refueling outages is justified given the compensatory measures provided by the ILRT and system configuration. This time period would provide a reasonable time to implement necessary modifications to this system to achieve compliance with Appendix J.

2. Exemption to Continue Reverse Direction Type C Testing

By letters dated March 12, and July 15, 1986, CYAPCO requested exemptions from section III.C.1 of 10 CFR Part 50, Appendix J, to continue reverse direction testing of the refueling cavity purification system (P–33), pressurizer relief tank drain (P–78) penetrations, and the reactor coolant pump (RCP) seal water return line (P–7).

The refueling cavity purification penetration (P–33) is isolated by two containment isolation valves; valve PU–V–242A is Type C tested in the direction of accident pressure and valve PU–V–242 is tested in the reverse direction. The pressurizer relief tank drain penetration (P–78) is isolated by valves DT–TV–1844 and DH–TV–554; valve DT–TV–1844 is tested in the direction of

accident pressure and valve DH–TV–554 is tested in the reverse direction. In both of the foregoing cases, testing is accomplished by pressurizing between the isolation valves.

The RCP seal water return lines form a common header inside the containment and discharge through penetration P–7, which is isolated by valve CH–RV–332 outside containment. CH–RV–332 is Type C tested in the reverse direction.

As a general guideline, the staff considers reverse testing conservative if the seating force is ten times the calculated peak pressure force. While this ensures that the leak geometry is dominated by the seating force instead of the test direction, there is no rigorous calculation for determining what other seating force may be acceptable. The licensee's reverse direction testing is currently performed with a seating force less than four times the calculated containment peak pressure and therefore do not satisfy the established criteria for approval of reverse direction testing of valves. However, in the interim, the staff believes that with the current seating forces, the current leak rate tests will provide some indication of the leak tightness of the subject valves. In addition, these valves are exposed to containment atmosphere in the accident direction during the ILRT. As stated earlier, although the ILRT is not performed as frequently as Type C leak-rate tests, the ILRT does provide reasonable assurance that leakage through any penetration is limited. Based on the results of the current reverse direction test in conjunction with the ILRT, the NRC concludes that an exemption is technically justified for the period of two refueling outages. This time period would permit a reasonable time to implement necessary modifications to these valves to achieve compliance with Appendix J.

3. Exemption to Permit Type C Testing Using Water Instead of Air or Nitrogen

By letter dated March 12, 1986, CYAPCO requested exemptions for 20 penetrations from the air/nitrogen testing requirements of section III.C.2 of 10 CFR Part 50, Appendix J. The systems affected include the high pressure safety injection system, reactor coolant system, component cooling water system, and the reactor coolant pump seal water system. A complete listing of the affected penetrations is given in Table 1. All of the penetrations identified on Table 1 are currently tested with water during the required Type C tests.

The licensee currently applies a conversion factor to the water leakage rate to obtain an equivalent air leakage rate. The results are then added to the other Type C test results and compared to the acceptance criterion in section III.C.3. While several empirical and theoretical relationships have been proposed by the industry for converting water leakage rates to equivalent air leakage rates, the NRC has not found such a relationship sufficiently rigorous or conservative to generically justify a revision to Appendix J.

The licensee has proposed to evaluate the water inventories for these penetrations and potential system modifications that would permit testing with air, in order to determine the most effective means to resolve this issue.

In the interim, the staff concludes that the Type C test with water and the use of the CYAPCO water to air conversion will provide reasonable assurance of the leakage integrity of these valves. Additionally, the operation and physical configuration of these systems provides a natural deterrent to containment leakage past the isolation valves following an accident. Based on the above, the NRC concludes that the exemptions granting temporary relief from Appendix J to permit Type C testing with water for these valves is technically justified for the period of two refueling outages. This time will provide adequate opportunity to modify the penetrations as necessary to achieve compliance with Appendix J.

4. Exemption to Permit Type C Testing With a Test Pressure Greater Than Pa.

By letter dated March 12, 1986, CYAPCO requested exemptions from section III.C.2 of 10 CFR Part 50, Appendix J to permit Type C testing of 3 penetrations at pressures greater than Pa. These penetrations include the reactor coolant sampling system penetrations (P–11), the neutron shield fill line penetration (P–63) and the loop fill line penetration (P–69).

Currently, P–11 and P–69 are tested at normal system pressure, roughly 2000 psig. P–11 is the RCS sampling line and the design of this valve is such that the test pressure of 2000 psig tends to unseat the valve and increase leakage.

The design of the isolation valves in penetration P–63 is such that the test pressure of 70 psig tends to unseat the valve and increase leakage.

Penetration P–69 is a Class 1, seismic line inside of containment and normally isolated from the RCS. The isolation valve in penetration P–69 is a check valve that tends to seat tighter at the test pressure of 2000 psig; however, this line is vented during the ILRT. Penetrations P–63 and P–69 are also addressed in the preceding evaluation for Type C testing with water.

The licensee has requested exemptions from the test pressure requirements of Appendix J for these isolation valves in order to evaluate alternative corrective actions that would either permit testing at Pa or demonstrate conclusively that an exemption is warranted.

Although the current testing is performed at high pressures, the tests provide reasonable assurance of the leakage integrity of the isolation valves. The ILRT confirms these results at lower pressures because the reactor coolant system is vented for those tests. Additionally, the operation of plant systems and the physical configuration of the affected lines are a natural deterrent to the containment leakage. Based on the above, the staff has concluded that exemptions granting temporary relief from the test pressure requirements is technically justified for a period of two refueling outages. This time period will provide adequate time to modify the penetrations as necessary to achieve compliance with Appendix J.

C. 10 CFR 50.12 Determinations for Special Circumstances

1. Permanent Exemption

By letter dated March 12, 1986, CYAPCO requested a permanent exemption from 10 CFR Part 50, Appendix J, to permit reverse direction testing of the auxiliary containment spray penetration (P–80). Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Item (ii) of the subject regulation includes special circumstances where application of the subject regulation is not necessary to achieve the underlying purpose of the rule.

As discussed previously, the NRC has concluded that given the system configuration, any significant leakage through this valve into containment would be detected because it would lead to a spray down of containment. In a sense this valve is under continuous test (maintenance of the fire water system pressure boundary). The staff has concluded that this system configuration with the reverse direction Type C test with water provides adequate assurance that this value is leak tight. Additionally, the licensee has proposed to flange the fire water system outside of containment to allow venting of this line during the ILRT. This will provide further assurance that this valve is leak tight. While the ILRT is not an individual test, it does assure that the total leakage through containment is below 0.75 La. Therefore, the ILRT does

provide reasonable assurance that the leakage through any one penetration is limited to no greater than 0.75 La. Therefore, the staff concludes that a permanent exemption for penetration P–80 to perform reverse direction testing with water satisfies the underlying purpose of the rule as the proposed testing and the system configuration provides adequate assurance that this penetration is leak tight.

2. Exemptions Granting Temporary Relief

In an April 5, 1984 letter, the NRC staff noted that not all containment penetrations are tested in accordance with Appendix J. The Staff concluded that it was acceptable to defer implementation of specific Appendix J and Appendix A modifications until an integrated assessment, i.e., ISAP, could be performed. The basis for the staff's conclusion was that, although the integrated containment (Type A) leak test is not performed as frequently as local leak rate tests would be, the integrated leak rate test does provide an indication of overall containment leak-tightness, including penetrations.

In a July 31, 1985 letter, the NRC staff formally established the scope of the Haddam Neck Plant ISAP and designed Appendix J issues as ISAP Topic 1.03, "Containment Penetration Evaluations." In this letter, the staff notified CYAPCO that some issues would require exemptions to defer action until such time as the necessary modifications could be completed.

By letters dated March 12, and July 15, 1986, CYAPCO requested 29 exemptions from the requirements of various sections of 10 CFR Part 50, Appendix J. In most all cases, CYAPCO has described plant modifications required to bring the subject penetrations into compliance with the requirements of 10 CFR Part 50, Appendix J. The licensee has requested exemptions for the 29 penetrations until these modifications can be evaluated and ranked using an integrated safety assessment. As part of this effort, CYAPCO will schedule plant modifications based on the safety significance of each item and then incorproate the planned modification schedule into an integrated implementation schedule having defined completion dates. The staff has concluded that the necessary modifications to assure compliance with Appendix J can be completed during the next two refueling outages using the methodology described above.

In an effort to bring the Haddam Neck Plant compliance with 10 CFR Part 50, Appendix J, CYAPCO has previously made modifications to the Haddam Neck Plant. In the 1983 outage, two penetrations were modified to permit testing as required by Appendix J. During the 1984 outage, penetration 62 was modified to meet Appendix J requirements, and a filtration system was added to the component cooling water (CCW) system in an effort to resolve substantial penetration leakage rates in this system. During the 1986 refueling outage, the capacity of the filtration system was increased. During an unplanned outage in July 1986, CYAPCO performed local leak rate tests on nine penetrations and all penetrations were found to be acceptable.

During the current 1987 outage modifications are being made to penetrations P–7, P–10, P–30, P–38, and P–60, P–23, P–31, P–35, P–36, P–37, P–59 and P–72B. CYAPCO will also install a flushing tee to the crosstie line between the component cooling water system and the service water system to help in removal of any silt that might affect the performance of the CCW valves. The 1987 outage modifications are projected to cost approximately 3.7 million dollars. CYAPCO also has ongoing engineering and procurement activities for future outages in an effort to bring the Haddam Neck Plant into compliance with 10 CFR Part 50, Appendix J.

The staff concludes that with the installed and planned modifications, CYAPCO has taken prudent steps in improving the Haddam Neck Plant containment integrity from both a risk and operating experience perspective. The modifications made during the previous outages demonstrate CYAPCO's good faith efforts in seeking ultimate resolution of Appendix J issues.

Pursuant to 10 CFR 50.12(a)(2)(v), the Commission will not consider granting an exemption unless the licensee has made good faith efforts to comply with the regulation. The NRC concludes that special circumstances, as described in 10 CFR 50.12(a)(2)(v), exist and the exemptions for temporary relief from 10 CFR Part 50, Appendix J, should be granted.

IV.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Special circumstances are present for the reverse direction testing of penetration P–80 in that application of the regulation in this particular circumstances is not necessary to achieve the underlying purposes of Appendix J to 10 CFR Part 50. Further, special circumstances, as given in section III.C, are present for exemptions granting temporary relief as described in section III.B above. In summary CYAPCO has demonstrated a good faith effort to comply with the regulations by modifying existing penetrations over the last four outages in an effort to reduce containment leakage problems and assure compliance with Appendix J. Therefore, the Commission hereby grants the exemption requests identified in section III above.

Further, the Commission grants the exemptions from the requirements of 10 CFR Part 50, Appendix J, for all penetrations identified in Table 2 of this exemption package for a period of two refueling outages following the 1987 outage. Within three months after startup from the 1987 outage, CYAPCO will provide a final description of all Appendix J modifications performed during the 1987 outage and a schedule for resolution of all outstanding Appendix J issues.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (51 FR 18521, May 20, 1986 and 51 FR 29527, August 18, 1986).

A copy of the Commission's concurrent Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the local public document room located as the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

These Exemptions are effective upon issuance.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 29 day of September, 1987.

TABLE 1.—SUMMARY LIST OF EXEMPTION REQUESTS FOR PENETRATIONS WITH TYPE C WATER TESTS

Penetration number	System location
1. P-3	High pressure safety injection.
2. P-7	RCP seal water return.
3. P-10	RCS letdown.
4. P-11	RCS sampling.
5. P-24	Safety injection recirculation.
6. P-28	CCW to RCP oil coolers.
7. P-30	Space heating steam supply.
8. P-34	CCW from RCP thermal barrier.
9. P-38	CCW to RCP thermal barrier.
10. P-60	CCW to neutron shield cooler.
11. P-61	CCW from neutron shield cooler.
12. P-63	Neutron shield fill.
13. P-66	CCW to drain cooler.
14. P-67	CCW from drain cooler.

TABLE 1.—SUMMARY LIST OF EXEMPTION REQUESTS FOR PENETRATIONS WITH TYPE C WATER TESTS—Continued

Penetration number	System location
15 P-68	Primary water to containment
16 P-69	Loop fill
17 P-74	RCP seal water supply

TABLE 1.—SUMMARY LIST OF EXEMPTION REQUESTS FOR PENETRATIONS WITH TYPE C WATER TESTS—Continued

Penetration number	System location
18. P-75	ECP seal water supply
19 P-76	RCP seal water supply

TABLE 1.—SUMMARY LIST OF EXEMPTION REQUESTS FOR PENETRATIONS WITH TYPE C WATER TESTS—Continued

Penetration number	System location
20 P-77	RCP seal water supply

TABLE 2

(Summary of Exemptions for Temporary Relief Granted)

Penetration No	System location	Exemption category
P-3	High pressure safety injection	Type C test
P-7	RCP seal water return	Reverse direction test
P-8	Containment Sump to RHR section line	Type C test
P-10	RCS letdown	Water test
P-11	RCS sampling	Water test and overpressure test
P-24	Safety injection recirculation	Water test
P-28	CCW to RCP oil coolers	Water test
P-30	Space heating steam supply	Water test
P-33	Refueling cavity purification system	Water direction test
P-34	CCW from RCP thermal barner	Water test
P-38	CCW to RCP thermal barner	Water test
P-60	CCW to neutron shield cooler	Water test
P-61	CCW from neutron shield cooler	Water test
P-63	Neutron shield fill	Water test and overpressure test
P-66	CCW to drain cooler	Water test
P-67	CCW from drain cooler	Water test
P-68	Primary water to containment	Water test
P-69	Loop fill	Water test and overpressure test
P-74	RCP seal water supply	Water test
P-75	RCP seal water supply	Water test
P-76	RCP seal water supply	Water test
P-77	RCP seal water supply	Water test
P-78	Pressurizer relief tank	Reverse direction test
P-80	Auxiliary containment spray	Type C testing

[FR Doc. 87-23491 Filed 10-8-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on October 15 and 16, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 15, 1987—8:30 A.M. until the conclusion of business

Friday, October 16, 1987—8:30 A.M. until the conclusion of business

On Thursday, October 15, the Subcommittee will review and discuss the following Low-Level Waste (LLW) topics: (1) NRC's Low-Level Waste Form Program, (2) EPA's LLW standards, including the "below regulatory concern" and groundwater standards, and (3) Logical framework for the Protection of the public from radiation.

On Friday, October 16, the Subcommittee will review and discuss the following High-Level Waste topics: (1) Definition of HLW, (2) "Q-List" Generic Technical Position and Readiness Reviews, (3) NNWSI Project Seismic/Tectonic Site Characterization Plan Strategies, and (4) NRC's Quality Assurance (QA) Program for computer codes and models.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters be be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: October 6, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-23489 Filed 10-8-87; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Review of Public Information Collection; PBGC Form 1, Annual Premium Payment To PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of information request

submitted for OMB review and extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) has requested review and approval by the Office of Management and Budget (OMB) of revisions to PBGC Form 1, which form is used by pension plan administrators to make premium payments pursuant to the PBGC's regulation on Payment of Premiums, 29 CFR Part 2610. PBGC Form 1 is currently approved, under OMB control number 1212–0009, for use through August 31, 1989. Revisions in PBGC Form 1 are needed to clarify the rules relating to the filing and premium requirements for plans involved in merger and spinoff transactions and to provide for reporting such transactions on the form. Other revisions to Form 1 will facilitate the entry of information currently required to be reported. The effect of this notice is to advise the public that the PBGC has requested OMB approval of revisions to PBGC Form 1 and an extension of the current expiration date.

ADDRESSES: All written comments (at least three copies) should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Corporate Policy and Regulations Department, Regulations Division (Code 35400) 2020 K Street NW., Washington, DC 20006. The information request will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department (Code 35100), 2020 K Street NW., Washington, DC 20006; telephone 202–778–8851 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. Under the provisions of the Act and its implementing regulations, agencies are required to submit information collection requests to the Office of Management and Budget for review and approval, and to publish a notice in the **Federal Register** notifying the public of the submission.

OMB has previously approved the collection of information by the Pension Benefit Guaranty Corporation from plan administrators making premium payments to the PBGC. The information collection requirement is contained in the PBGC's regulation on Payment of Premiums, 29 CFR Part 2610; and the use of PBGC Form 1 for the filing of information and payment of premiums was most recently approved by OMB for use through August 31, 1989 (OMB No. 1212–0009). The PBGC now is seeking approval by OMB of certain revisions to PBGC Form 1 and is requesting OMB approval of an extension of the expiration date for the use of PBGC Form 1 for a three-year period.

The proposed revisions to PBGC Form 1 and its instructions will clarify the rules relating to the filing and premium payment requirements for plans involved in merger and spinoff transactions, and will provide for the inclusion of this information on the form. Additional revisions to the form will facilitate the reporting of information currently required, such as variances between Form 1 and the Annual Report (Form 5500 Series) filed by a plan and the filing status of a terminated plan. The requested information is needed so the PBGC can track premium payers and collect the appropriate premiums.

PBGC Form 1 is filed annually by the plan administrators of plans covered by the PBGC termination insurance program. The form is used to determine the amount owed and to report and pay premiums to the PBGC. The payment of premiums is required under 29 U.S.C. 1307 and the PBGC's Payment of Premiums regulation, 29 CFR Part 2610. The PBGC estimates that the aggregate annual burden imposed on plan administrators in filing the PBGC Form 1 is 39,336 hours, based on an estimated 118,125 annual filings (112,500 original filings and 5625 reconciliation filings). The newly required information will not result in a measurable increase in burden hours because, of the universe of covered plans (112,500), only an estimated ⅛ of 1% will be affected by the reporting requirement and the information requested is uniquely within the knowledge of the plan administrator filing the PBGC Form 1.

Issued at Washington, DC, this 5th day of October, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–23440 Filed 10–8–87; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24996; File No. SR–CBOE–87–23]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on June 1, 1987, submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to amend certain of the CBOE's membership rules. The proposed rule change was published for comment in Securities Exchange Act Release No. 24735 (July 27, 1987), 52 FR 28769. No comments were received.

The proposed rule change would update the Exchange's membership rules. This would include replacing outdated references to the "Office of the Secretary" with "Membership Department." The proposal also would eliminate certain repetitive language from the Exchange's rules. In addition, the CBOE's proposal would incorporate existing Exchange policies into the rules. Rule 1.1(jj) would define the term "good standing," Rule 3.3 would specify that only a nominee who has his employer's permission and who is registered as a broker-dealer can trade for his own account, Rule 3.8 would specify that membership application fees are not refundable, and Rule 3.24 would describe the member death benefit.

The proposal also includes four material rule changes relating to memberships. First, Rule 3.2 would provide explicitly that an individual could own more than one membership. Second, Rule 3.4 would clarify the bases upon which the CBOE can deny or condition membership by stating that the Exchange could deny or condition membership (1) for the same reasons that the Commission can deny or revoke a broker-dealer registration or a membership under the Act; (2) if the applicant has failed the required membership test; (3) if the applicant has a negative net worth or has financial difficulties involving an amount greater than five percent of its net worth or has a pattern of failure to pay the debts; (4) if the applicant cannot demonstrate a capacity to adhere to all applicable CBOE, SEC, Option Clearing Corporation ("OCC") and Federal

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19–4 (1987).

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Reserve Board policies, rules and regulations; (5) if the applicant would bring the Exchange into disrepute; or (6) for "such other cause as the Membership Committee reasonably may decide." Where an applicant for membership is the subject of a pending investigation by a self-regulatory organization ("SRO") or government agency, Rule 3.4(d) would allow the Membership Committee to delay action on the application until the matter is resolved. Third, Rule 3.4(e) would stipulate that the CBOE Business Conduct Committee can take action against a member when any reason for denying or conditioning membership arises after a membership has been approved and/or has become effective. Finally, the CBOE filing contains a proposal to amend CBOE Rule 3.7 to require parents of CBOE member organizations to provide the Exchange with any information requested by the Exchange which is reasonably related to the parent organization's securities business.

The Commission has determined to approve the CBOE rule amendments described above. The Commission agrees that the proposed amendments will enable the CBOE to reflect more accurately current Exchange policies and procedures. In addition, the Exchange will be able to eliminate from its rules repetitious and outdated language.

The Exchange also will be able to implement important new guidelines relating to memberships, without infringing on the rights of members and those who apply for membership. Specifically, Rule 3.2, by allowing individuals to own more than one membership, should contribute to the size and functioning of the market for memberships.

Many of the new provisions described above relating to denial of membership simply are reformulations of criteria currently found in CBOE Rule 3.4. These include denials based on a statutory disqualification under the Act, failure to pass the required membership test, a negative net worth, significant financial difficulties, failure to pay just debts, and failure to demonstrate a capacity to adhere to applicable CBOE, SEC, OCC and Federal Reserve Board policies, rules and regulations. These provisions have functioned well in the past and should allow the CBOE to continue to deny membership to those individuals and organizations that have not demonstrated the ability to take on the significant economic and regulatory responsibilities attendant to Exchange membership.

In addition, the new provisions allowing denial of membership if the applicant would bring the Exchange into disrepute or for "such other cause as the Membership Committee reasonably may decide" are designed to cover important legal and ethical reasons for denial not covered by the other provisions in Rule 3.4, but which should be available to the Exchange in its attempts to limit membership to individuals and firms of integrity and trustworthiness. The CBOE, in a letter to the Commission explaining the rationale for allowing denial for "such other cause as the Membership Committee reasonably may decide," asserted that section 6(c) of the Act, while lengthy, currently would not allow the Exchange to deny membership to one who, for example, has committed murder or assault and battery or who is mentally unstable or who has dealt in controlled substances.[3] Indeed, the Act does not cover certain types of criminal or other conduct that the CBOE desires to base denials of membership on, such as murder or drug dealing. At the same time, because the CBOE cannot possibly specify all of the individual reasons for denying membership, it is reasonable to adopt a general "saving clause." The CBOE noted in its letter that the proposed clause is limited by the word "reasonably" and that the Exchange's appeal procedures will be available to those wishing to challenge the denial or conditioning of a membership.

The provision in new Rule 3.4 that will allow a delay in action on a membership pending the outcome of an investigation by an SRO or government agency is reasonable in light of the fact that membership could be denied based on the result of such an investigation. The provision that will permit the Business Conduct Committee to take action against a member if a reason for denying or conditioning membership arises after a membership is approved and/or effective will enable the CBOE to maintain the membership standards described above.

Finally, the amendment to Rule 3.7 to require parents of CBOE membership organizations to provide the Exchange with information requested by the Exchange which is reasonably related to the parent organization's securities business will allow the CBOE to require parents of member organizations to furnish the kind of information concerning securities activities that the CBOE can require its members to provide. The CBOE also should be able to continue to collect certain information, such as that concerning parents' officers, directors, shareholders, types of business, and financial condition, while Rule 3.7 previously required parent organizations to provide.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requiements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: October 5, 1987.

[FR Doc. 87-23492 Filed 10-8-87; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* letter from Anne Taylor, Associate General Counsel, CBOE, to David Underhill, Staff Attorney, Division of Market Regulation, SEC, dated August 14, 1987.

[4] 15 U.S.C. 78f (1082).

[5] 15 U.S.C. 78s(b)(2) (1082).

[Release No. 34-24993; File No. SR-NYSE-87-28]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of increasing the size of order eligibility for the Opening Automated Reports Service (OARS) [1] from 5,099 shares to 30,099 shares.

[1] OARS is the opening system for the Exchange's "Super Dot" electronic order routing system through which member firms are able to transmit market and limit orders in NYSE listed securities directly to specialist posts on the Exchange floor. OARS accepts member firms' pre-opening market orders up to the current limit of 5099 shares for rapid,

Continued

II. Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in section (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Experience with OARS clearly shows that it greatly facilitates the handling of what is often the most difficult part of the trading day. It has been estimated that of all the orders executed on the Exchange on any given day, some twenty percent are executed at the opening. If it was not for OARS, specialists would have to receive many pieces of paper representing many orders in each stock before the opening. These orders would have to be sorted into the buy side and the sell side, tabulated as to the amount to buy and sell, the imbalance determined, and then interfaced with any other orders represented by brokers in the trading "crowd". OARS eliminates most of the paper order handling and tabulating procedures at the opening, and in addition, sends execution reports to member firm system subscribers within seconds after the opening price has been determined and the System activated. It also facilitates trade comparison, since both "OARS" and "OPN"[2] are omnibus accounts and "lock-in" orders that have been entered into the System.

The Exchange proposes that the size of orders eligible for OARS be increased from the present 5,099 shares to 30,099 shares. If approved, the size of orders will be increased in steps until the 30,099 share limit has been reached.[3] This proposed amendment will accommodate the needs of member firm subscribers to obtain efficient executions of large size orders in a timely and reliable fashion. Typically, larger market orders are given to the specialist at the opening. Allowing these orders to be entered into OARS will ensure more timely execution reports. It should be noted that the order size eligibility for OARS was increased to 30,099 shares for a limited period of time for AT&T and the divestiture issues in 1983, and more recently for the Triple Expiration Friday, June 19, 1987.[4]

Experience with these two events proved the effectiveness of OARS in facilitating the opening trade in equity securities. Finally, increasing the order eligibility size to 30,099 shares will enhance the comparison and settlement process by "locking-in" more orders participating in opening transactions through the omnibus accounts.

(2) Statutory Basis for the Proposed Rule Change

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 in that it will ". . . foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing informaiton with respect to, and facilitating transactions in securities, . . ." and Section 17A(a)(1) of the Act in that it will enhance "The prompt and accurate clearance and settlement of securities transactions, . . ."

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited comments on the Proposed Rule Change and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section. 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to File No. SR-NYSE-87-28 and should be submitted by October 30, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23493 Filed 10-8-87; 8:45 am]

BILLING CODE 8010-01-M

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systemitic execution and immediate reporting. OARS automatically and continuously pairs buy and sell orders and presents the imbalance to each specialist up to the opening of a stock, thereby assisting the specialist in determining the opening price.

[2] Orders electronically executed at opening through the OARS system will receive the designation "OPN" which stands for opening for clearing purposes.

[3] The NYSE has indicated that, if approved, it would increase the OARS size list by 10,000 shares immediately and thereafter increase the size limit in 10,000 share increments at three month intervals depending on the Exchange's evaluation of the impact of the increased order size limits on specialists ability to facilitate the opening and on member reaction.

[4] *See* Securities Exchange Act Release No. 24596, June 16, 1987 52 FR 23618. The Commission has also approved a one day increase in the order size eligibility for OARS (from 5,099 shares to 30,099 shares) as part of the auxiliary opening procedures for the Triple Expiration Friday, September, 18, 1987. *See* Securities Exchange Act Release No. 24917, September 11, 1987, 52 FR 35176.

[Release No. 34-24994; SR-Phlx-86-4]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on February 20, 1986, copies of a proposed rule change pursuant to section 19(b) of the

Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder to clarify that under Phlx rules telephone access, including dedicated lines, to the Phlx Foreign Currency Options Room by a non-holder of a Phlx foreign currency options participation is permitted.[3]

The proposed rule change, together with its terms of substance, was noticed by the issuance of a Commission release (Securities Exchange Act Release No. 23191, May 1, 1986) and by publication in the **Federal Register** (51 FR 17122, May 8, 1986). No comments were received regarding the proposed rule change.

According to the Phlx, this proposal is a response to requests by foreign currency options participation holders who requested that Phlx establish a policy concerning access to the foreign currency options market which would be consistent with the policy of the Philadelphia Board of Trade and other commodity exchanges which permit the installation of dedicated lines connecting non-members to their marketplace.

The proposed rule initially was approved by the Phlx's Options Committee. under Phlx Rules 631 and 1000, all applications for dedicated or direct line access to the options floor must be approved by the Options Committee.[4] Approval would be based on compliance with the rules and policies of the Exchange and the Act.[5] The Phlx Board of Governors has affirmed the determination of the Options Committee. Phlx asserts that the proposed rule change will facilitate transactions in foreign currency options.[6]

In its filing, the Phlx stated that this filing relates only to its policy regarding members' access to non-members from the trading floor with respect to foreign currency options, and does not reach other Phlx products. Regardless of the limited scope of the Phlx clarification, this approval order should not be interpreted to indicate approval of, or acquiescence to, any unwritten or unpublished policy that would permit the Phlx to deny members on the floor access to communicate with non-members off the floor for any Phlx product. We note that the Commission recently issued an Order setting aside actions by the New York Stock Exchange, Inc. ("NYSE") that denied requests for two members to install telephone connections that would permit them to communicate from the floor to non-member customers located off the floor.[7] In a recent letter, we requested the Phlx to review its rules and policies to assure that they conform with the Commission's opinion in that case.[8] Accordingly, the Commission's action in approving the Phlx's proposed rule change is limited to codifying and clarifying that, under Phlx rules, foreign currency options participants can have dedicated and direct lines access to non-member participants located off the floor.[9]

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23494 Filed 10–8–87; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1982).).

[2] 17 CFR 240.19b–4 (1986).

[3] Although the propsoal originally was submitted for immediate effectiveness pursuant to section 19(b) (3)(A) of the Act the Exchange modified its submission to request Commission considertion under section 19(b)(2). *See* letter from Barbara M. Rothenberg, Senior Vice President and General Counsel, to Robert Sevigny, Attorney, Division of Market Regulation, dated May 30, 1986.

[4] Phlx Rule 631 provides that no member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system between the Exchange floor and a non-member without application to and approval by the Committee on Member Firms. Phlx Rule 1000 applies Rule 631 to options trading. *See* note 7, *infra*.

[5] *See* SR–Phlx–80–29, the proposed rule change at p. 2.

[6] As noted above, the propsoed rule change seeks to codify current Exchange policy regarding the installation by foreign currency options participation holders of telephones utilizing either dedicated or unrestricted telephone lines to enable them to communicate from the options floor to non-members located elsewhere. The Commission understands that no Phlx member has objected to previous decisions by the Phlx's Options Committee regarding the installation of dedicated or direct line access to the Foreign Currency Options Room, and no person commented on the instant proposed rule change to codify that policy. Moreover, the Phlx represents that such access is substantially similar to that provided by those boards of trade which trade futures on foreign currencies.

[7] *See In re William J. Higgins and Michael D. Robbins*, Securities Exchange Act Release No. 24429, May 6, 1987, 38 SEC Doc. 432 ("Higgins Order").

The Commission notes that its approval of this Phlx rule change does not address whether an interpretation by the Phlx of rule 631 that would establish a blanket prohibition against members on the Exchange floor communicating with non-members off-floor would be consistent with the terms of the existing rule or would require a separate proposed rule change under section 19(b) of the Act. Moreover, any such proposed interpretation or rule would raise questions, under section 6(b)(8) of the Act, regarding whether such a prohibition would impose a burden on competition not necessary or appropriate under the Act. *See* Commission's order instituting proceedings *In re Applications of William J. Higgins and Michael D. Robbins*, Securities Exchange Act Release No. 22877, February 7, 1986, 35 SEC Doc. 12.

In this regard, the Commission notes that the NYSE currently has pending before the Commission a proposed rule change (SR–NYSE–87–18) that would permit members to install telephone lines to enable them to communicate from their booths on the trading floor with non-members located off-floor. The proposed NYSE rule would, however, prohibit members from using portable telephones on the floor. The Commission notes that the concerns expressed by the NYSE to justify the rule, such as enhanced time and place advantages for institutional customers and increased manipulative opportunities, would not appear relevant to a derivative foreign currency options market. *See* Securities Exchange Act Release No. 24624, June 22, 1987, 52 FR 24576.

[8] *See* letter from Howard Kramer, Assistant Director, Division of Market Regulation, SEC, to Richard T. Chase, Executive Vice President, Phlx, dated July 14, 1987. Similar letters were sent to the American, Boston, Cincinnati, Midwest, and Pacific Stock Exchanges.

[9] The Commission also notes that it previously has approved a proposed rule that granted limited access by non-members to an exchange floor. In Securities Exchange Act Release No. 21145, July 13, 1984, 49 FR 29501, the Commission approved a proposed rule from the American Stock Exchange ("Amex") permitting traders from the Chicago Board of Trade ("CBT") direct telephone acces to the floor of the Amex for certain index options. The NYSE's brief in the Higgins proceeding argued that the Commission's approval of that rule change demonstrated that the Commission had implicitly ratified an Amex policy denying members telephone access to non-members. In its Opimion in Higgins the Commission rejected this argument, stating that it was essential from a negotiation perspective that the Amex and CBT codify this access in rule filings with their respective regulators. Further, the Commission stated that the rule change did not discuss non-member telephone access generally, and that its approval order only determined that, under the terms of the proposed rule, the Amex would permit CBT traders access to the Amex floor. *See* Higgins Order, note 7, *supra*, 38 SEC Doc. at 463.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 5, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Arco Chemical Co.
Common Stock, $1.00 Par Value (File No. 7–0510)
Carriage Industries, Inc.

Common Stock, $.02 Par Value (File No. 7–051)
Tubos De Acero De Mexico SA
Common Stock, No Par Value (File No. 7–051)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 27, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23412 Filed 10–8–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 5, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Americana Hotels and Realty Corporation
Common Stock, $1.00 Par Value (File No. 7–0513)
Charles Schwab Corporation
Common Stock, $0.01 Par Value (File No. 7–0514)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 27, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23411 Filed 10–8–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–17418]

Application and Opportunity for Hearing; Citicorp

October 5, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and two pooling and servicing agreements, each dated July 1, 1987, under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under any of such indentures or agreements. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor upon the indenture securities are outstanding.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures under which the Applicant is the obligor. The indenture dated February 15, 1972 involved the issuance of floating rate notes due 1989; the indenture dated March 15, 1977 involved the issuance of various series of unsecured and unsubordinated notes; the indenture dated August 25, 1977 involved the issuance of rising-rate notes, Series A; and the indenture dated April 21, 1980 involved the issuance of various series of unsecured and unsubordinated notes. Said indentures were filed as respectively, Exhibits 4(a), 2(b), 2(b) and 2(a) to Applicant's respective Registration Statements Nos. 2–42915, 2–58355, 2–59396 and 2–64862 filed under the Securities Act of 1933, and have been qualified under the Act. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On July 14, 1987, the Trust Company entered into a pooling and servicing agreement dated July 1, 1987 (the "1987–10 Agreement") with Citicorp Mortgage Securities, Inc. ("CSMI"), packager and servicer, under which there were issued on July 14, 1987 mortgage pass-through certificates, Series 1987–10 10.00%. Pass-Through Rate (the "Series 1987–10 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987–10 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $75,089,503.14 at the close of business on July 1, 1987, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987–10 Certificates. On July 14, 1987, Applicant, the parent of CMSI, entered into a guaranty of even date (the "1987–10 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987–10 Certificates, to be liable for 7.0% of the initial aggregate principal balance of the 1987–10 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–10 Guaranty. The 1987–10 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987–10 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987–10 Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of

mortgage pass-through certificates pursuant to Rule 415 under the 1933 Act. The Series 1987–10 Certificates were offered by a prospectus supplement dated July 1, 1987, supplemental to a prospectus dated June 10, 1987. The 1987–10 Agreement has not been qualified under the Act.

(4) On July 20, 1987, the Trust Company entered into a pooling and servicing agreement dated July 1, 1987 (the "1987–11 Agreement") with CMSI, packager and servicer, under which there were issued on July 20, 1987 mortgage pass-through certificates, Series 1987–11 9.50% Pass-Through Rate (the "Series 1987–11 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987–11 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $59,519,816.19 at the close of business on July 1, 1987, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987–11 Certificates. On July 20, 1987, Applicant entered into a guaranty of even date (the "1987–11 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987–11 Certificates, to be liable for 7.0% of the initial aggregate principal balance of the 1987–11 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–11 Guaranty. The 1987–11 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987–11 Guaranty would rank on a parity with the obligations evidenced by the Notes.

The Series 1987–11 Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–12788 as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of mortgage pass-through certificates pursuant to Rule 415 under the 1933 Act. The Series 1987–11 Certificates were offered by a prospectus supplement dated July 1, 1987 supplemental to a prospectus dated June 10, 1987. The 1987–11 Agreement has not been qualified under the Act.

The 1987–10 and 1987–11 Agreements are hereinafter called the 1987 Agreements and the 1987–10 and 1987–11 Guarantees are hereinafter called the 1987 Guarantees.

(5) The obligations of Applicant under the Indentures and the 1987 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1987 Guarantees are unlikely to cause any conflict of interest in the trusteeship of the Trust Company under the Indentures and 1987 Agreements.

(6) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–17418, which is a public document on file in the office of Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Notice is further given that any interested person may, not later than October 29, 1987 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application that he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23410 Filed 10–8–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 03/03–0182]

Jiffy Lube Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Jiffy Lube Capital Corporation, 7008 Security Boulevard, Baltimore, Maryland 21207 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The officers, directors and sole shareholder of the Applicant are as follows:

Eleanor C. Hardin, President, Treasurer, 324 Presway Road, Timonium, Maryland 21093

Wood C. McCutchen, Vice President, 7102 Quarry Court, Capitol Heights, Maryland 20743

Arnold Janofsky, Secretary, 3404 Avis Court, Westminster, Maryland 21157

John F. Ripley, Comptroller, 9084 Lambski Lane, Columbia, Maryland 21228

Williard J. Chesser, Jr., Assistant Treasurer, 11778 Lone Tree Court, Columbia, Maryland 21044

Neal D. Borden, Director, 5508 Roland Avenue, Baltimore, Maryland 21210

William H. Rianhard, Director, 508 Woodlawn Road, Baltimore, Maryland 21210

Edward F. Kelley III, Director, 10125 Glasshouse Court, Ellicott City, Maryland 21043

Jiffy Lube International, Inc. Sole Shareholder (100), 7008 Security Boulevard, Baltimore, Maryland 21207

Mr. W.J. Hindman, 4507 Robosson Road, Randallstown, Maryland 21133 is the only person owning 10 or more percent of the corporate stock of Jiffy Lube International, Inc.

The Applicant, a Delaware Corporation, will begin operations with $1,000,000 paid in capital and paid in surplus. The Applicant will conduct its activities from the State of Maryland but intends to invest in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Baltimore, Maryland.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 2, 1987.

Robert G. Lineberry

Deputy Associate Administrator for Investment.

[FR Doc. 87-23392 Filed 10-8-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1031]

Brownsville, TX; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from the Port of Brownsville Texas to H. Matamoros, Tamaulipas, Mexico. The application has been filed by the Brownsville Navigation District, Cameron County, Texas.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding this application in writing by November 9, 1987, to Mr. Jose E. Alvarez, Office of the Legal Adviser, Economic, Business and Communications Affairs, Room 6420, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Adviser for Economic, Business and Communications Affairs during normal business hours.

Any questions relating to this notice may be addressed to Mr. Alvarez at the above address (202) (647-7770).

Dated: September 8, 1987.

Gerald A. Rosen,

Acting Assistant Legal Adviser, Economic, Business and Communications Affairs.

[FR Doc. 87-23398 Filed 10-8-87; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 1030]

Determination Under the Foreign Missions Act Concerning Acquisition of Real Estate Properties Suitable to Serve as Office and Residences for the Consulate General, People's Republic of China in Los Angeles, CA

I. Authorities

Pursuant to the Foreign Missions Act of 1982, as amended [22 U.S.C. 4301 et seq.] ("the Act"), the Secretary of State, or his delegate, is authorized to require a foreign mission: (A) To obtain benefits from or through the Director of the Office of Foreign Missions on such terms and conditions as the Secretary may approve; or (B) to forego the acceptance, use or relation of any benefit or to comply with such terms and conditions as the Secretary may determine as condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention or use of real property, or application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State or municipal governmental authority, or any entity providing public services). 22 U.S.C. 4304(b). Among the terms and conditions that the Secretary may impose are the requirement to pay the Director of the Office of Foreign Missions a surcharge or fee. 22 U.S.C. 4304(C).

Department of State Delegation of Authority No. 147, dated September 13, 1982, delegates to the Under Secretary of State for Management certain authorities under the Act, including authority to make the above-described determinations and designations of benefits.

Delegation of Authority No. 147, by express terms, authorized the successive redelegation of the authorities contained therein to other officers of the Department of State. Redelegation of authority to the Director of the Office of Foreign Missions was accomplished by Foreign Affairs Manual Circular No. 82-27, dated October 15, 1982, subsequently codified in Volume 1 FAM (Foreign Affairs Manual) 157.1, which specifically provides that the "Director of the Office of Foreign Missions exercises authority for the Under Secretary for Management to perform functions vested in the Secretary of State by . . . the Foreign Missions Act."

The Act makes it unlawful for any person to make available any benefits to a foreign mission contrary to the provisions of the Act. 22 U.S.C. 4311(a). Foreign mission includes the personnel of such mission. 22 U.S.C. 4302(a)(4).

Pursuant to the above authorities, I hereby make the following determination applicable to the Consulate General of the People's Republic of China in Los Angeles, California and to the personnel assigned to the Consulate General of the People's Republic of China in Los Angeles, California. For purpose of this Determination, personnel assigned to the Consulate General of the People's Republic of China in Los Angeles, California, includes members of the Consulate General and members of the family forming part of the household of such individuals.

II. Determination

I hereby determine it to be reasonably necessary to accomplish the purposes set forth in section 4304(b) of the Act to require the Government of the People's Republic of China and its official representatives in the United States to acquire all real propety intended to serve as office space for the Consulate General of the People's Republic of China in Los Angeles, California or as residential properties for personnel assigned to the Consulate General of the People's Republic of China in Los Angeles, California, from or through the Office of Foreign Missions under such terms and conditions as may be established by the Director of the Office of Foreign Missions.

III. Administrative Provisions

A. It is unlawful for any person subject to the jurisdiction of the United States to provide, or contract to provide, real estate brokerage services to the aforementioned foreign mission, or any member thereof, other than in accordance with section 4311(a) of the Act, this Determination and any determination issued hereunder.

B. Date of Effect: A determination issued by the Director of the Office of Foreign Missions shall be effective at such time as the Director may prescribe.

C. Persons wishing clarification as to the applicability of this Determination or information on subsequent Determinations may contact the Office of Foreign Missions, U.S. Department of State, 3005 Massachusetts Avenue, NW., Washington, DC 20008; or by telephone (202) 673-6258.

Dated: October 1, 1987.

James E. Nolan, Jr.,

Director, Office of Foreign Missions.

[FR Doc. 87-23393 Filed 10-8-87; 8:45 am]

BILLING CODE 4710-35-M

VOL 52 ISS 196 OC 9 1987 UMI

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 1, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 1120–PC
Type of Review: New Collection
Title: U.S. Property and Casualty Insurance Company Income Tax Return
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
Respondents: Businesses of other for-profit
Estimated Burden: 147,889 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–23401 Filed 10–8–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 1, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0152.
Form Number: 3115.
Type of Review: Revision.
Title: Application for Change in Accounting Method.
Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.
Respondents: Individuals or households, Farms, Businesses of other for-profit.
Estimated Burden: 77,583 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–23402 Filed 10–8–87; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Advisory Committee on Native American Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that the fourth meeting of the Advisory Committee on Native American Veterans will be held in Washington, DC, on November 2 through 4, 1987. On November 2, the meeting will convene in the Omar Bradley Conference Room, Room 1010, at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC, 20420. The meetings on November 3 and 4 will convene in the Executive Room at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC, 20008.

The purpose of the meeting is to address issues and recommendations developed at the third meeting of the Committee on August 4 through 6, 1987 in preparation for the final report of the Committee due February 1, 1988. All meetings will begin at 8:30 a.m. and continue until 4:30 p.m. with the exception of the meeting on November 4 which will adjourn at noon. All sessions will be open to the public up to the seating capacity of the room. To assure adequate accommodations, those who plan to attend should contact Mr. John R. Fulton, MSW, Committee Manager, Advisory Committee on Native American Veterans, at (202) 233–2614.

Dated: October 1, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–23388 Filed 10–8–87; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Administrator of Veterans Affairs' Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Central Office of the Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, on November 3–4, 1987. The meeting will be held in Room 1015.

The session will begin at 9:00 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mrs. Ann Stone, Staff Assistant to the Deputy Chief Memorial Affairs Director (phone 202–233–2396) not later than 12 noon, EST October 23, 1987.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Chief Memorial Affairs Director (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully indentify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Chief Memorial Affairs Director.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Chief Memorial Affairs Director by 12 noon EST October 23, 1987. Oral statements will be heard only between 9 and 10 a.m. on November 4, 1987.

Dated: October 1, 1987.

By direction of the Administrator.

Rosa Maria Fontanez

Committee Management Officer.

[FR Doc. 87–23448 Filed 10–8–87; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; System of Records

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Accordingly, the Veterans, Administration published a notice of its inventory of personal records on September 27, 1977 (42 FR 49726).

Notice is hereby given that the Veterans, Administration is adding a new system of records entitled "Ionizing Radiation Registry—VA" (69VA114). The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Pub. L. 99–576, requires that the VA establish and maintain a registry of veterans who may have been exposed to ionizing radiation while on active military duty.

Information will be included in the Registry concerning veterans who may have been exposed to ionizing radiation while on active military duty, either at the testing of a nuclear device between 1945 and 1962, or during the American occupation of Hiroshima or Nagasaki, Japan, between September 11, 1945 and July 1, 1946. Veterans included in the Registry are those who (1) apply for VA hospital or nursing home care, (2) file a claim for compensation on the basis of a disability which may be associated with the exposure to ionizing radiation, or (3) die and are survived by a spouse, child, or parent who file a claim for dependency and indemnity compensation on the basis of the exposure of the veteran to ionizing radiation. To the extent available, the Registry will include medical data relating to the veteran's medical history, health status, physical examination and health findings; data concerning birth defects, if any, in the natural children of the veteran; information on claims for VA compensation, including decisions and determinations related to the claims; and, an estimate of the dose of radiation to which the veteran was exposed.

If a veteran receives medical care or an ionizing radiation examination at a VA health care facility, information related to the examination or treatment is filed in the patient medical record (consolidated health record) at the facility. Information included in the Registry will be compiled from information that is contained in VA patient medical records, the Patient Treatment File (data file of inpatient episodes of medical care), the outpatient visit file (data file relating to outpatient visits), and information compiled from records that are maintained by the Department of Veterans' Benefits, the Department of Defense and the Defense Nuclear Agency of DoD, and the military departments.

A "Report of New System" and an advance copy of the new system notice were sent on October 2, 1987 to the Speaker of the House, the President of the Senate, and the Office of Management and Budget (OMB), as required by U.S.C. 552a(o) (Privacy Act) and guidelines issued by the Office of Management and Budget (50 FR 52730), December 24, 1985.

The OMB requires that a new system report be distributed no later than 60 days prior to the implementation of a new system. The Office of Management and Budget has been requested to waive this requirement.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed system of records to the Administrator of Veterans' Affairs (271A), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before November 8, 1987 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 20, 1987. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans' Services Unit in room 132. Visitors to any VA field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans' Administration, the routine use statements included herein are effective November 20, 1987.

Approved: October 1, 1987.

Thomas K. Turnage,

Administrator.

Notice of System of Records

69VA114

SYSTEM NAME:

Ionizing Radiation Registry–VA

SYSTEM LOCATION:

Records are maintained at the VA Data Processing Center, Austin, Texas 78772 and VA Central Office, Washington, D.C. 20402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans who may have been exposed to ionizing radiation while on active military duty, either at the testing of a nuclear device between 1945 and 1962, or during the American occupation of Hiroshima or Nagasaki, Japan, between September 11, 1945, and July 1, 1946, and who (1) apply for hospital or nursing home care under Title 38 United States Code, Chapter 17; (2) file a claim for compensation under Title 38 United States Code, Chapter 11; or (3) dies and is survived by a spouse, child, or parent who files a claimfor dependency and indemnity compensation under Title 38 United States Code, Chapter 13.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include identifying information (e.g., name, address, telephone number, social security number, military service number, VA claim number, date of birth); information related to medical examination or treatment (e.g., location of VA medical facility where examination was performed or treatment provided, treatment dates, medical conditions treated or noted on examination, information describing any birth defects in the natural children of the veteran); information concerning VA claims for compensation on the basis of a disability which may be associated with the exposure to ionizing radiation; and, information related to the estimate of the dose of radiation to which the veteran was exposed while on active military duty. The system includes copies of computer files from the military departments that include exposure measurements for military personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 232 of Pub. L. 99–576

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Disclosure of VA records as deemed necessary and proper to accredited service organizations, agents, and attorneys recognized under a power of attorney or declaration of representation to assist in the preparation, presentation, and prosecution of claims.

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3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances: (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provisions of 38 U.S.C. 3301(f).

4.Disclosure of information, excluding name and address, (unless name and address is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Chief Medical Director.

5. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel of the Armed Services and/or their dependents may be disclosed (a) to a Federal department or agency or (b) directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, the VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

6. Disclosure may be made to the NARA (National Archives and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

7. Any information in this system may be disclosed to a Federal grand jury, a Federal court or a party in litigation, or a Federal agency or party to an administrative preceeding being conducted by a Federal agency, in order for the VA to respond to and comply with the issuance of a Federal subpoena.

8. Any information in this system may be disclosed to a State or municipal grand jury, a State or municipal court or a party in litigation, or to a State or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, in order for the VA to respond to and comply with the issuance of a State or municipal subpoena; provided, that any disclosure of claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information contained in records) are maintained on paper documents, microfilm, microfiche, magnetic tape and magnetic disks.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to records in VA Central Office is only authorized to VA personnel on a "need-to-know" basis. Records are maintained in manned rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel. Information in the computer file at the Austin VA Data Processing Center may be accessed and updated by authorized VA Central Office personnel via modem. Access is limited to authorized employees by individually unique access codes which are changed periodically. Access to the VA Data Processing Center is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Radiology Service (114), Veterans Administration Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURES:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the Director, Radiology Service (114). Inquiries should include the veteran's name, social security number and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name in this system may write or visit the Director, Radiology Service (114).

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES.

VA patient medical records, various automated record systems providing clinical and managerial support to VA health care facilities, the veteran, family members, and records from the Department of Veterans Benefits, Department of Defense, Defense Nuclear Agency of the Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy, and other Federal agencies.

[FR Doc. 87-23449 Filed 10-8-87; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 196
Friday, October 9, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

October 6, 1987

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, October 16, 1987, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Resolution on Demond Crawford and Mary Amaya
V. SAC Recharters
VI. General discussion on topics of Commissioner interest (to be decided by the Commissioners)

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman Press and Communications Division (202) 376–8105.

William H. Gillers,
Solicitor, 376–8514.
[FR Doc. 87–23474 Filed 10–6–87; 4:33 pm]
BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 2, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–23555 Filed 10–7–87; 12:45 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 9, 1987.

PLACE: 2033 K Street NW., Washington DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–23556 Filed 10–7–87; 12:46 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 16 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–23557 Filed 10–9–87; 12:46 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 23, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–23558 Filed 10–7–87; 12:46 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 30, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–23559 Filed 10–7–87; 12:46 pm]
BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:25 p.m. on Monday, October 5, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible failure of certain insured banks; (2) a recommendation regarding an administrative enforcement proceeding initiated against an insured bank; and (3) a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 6, 1987.

Federal Deposit Insurance Corporation.
Margaret M. Olsen,
Deputy Executive Secretary.
[FR Doc. 87–23609 Filed 10–7–87; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, October 13, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a

member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Banking Practices," which amendments, with respect to securities activities of subsidiaries of insured nonmember banks and the affiliate relationships of insured nonmember banks with securities companies, concern (1) the use of a common name or logo; (2) the requirement for separate entrances; and (3) disclosure requirements.

Proposed policy statement which would address the issue of whether an insured bank that has received assistance from the Federal Deposit Insurance Corporation should be eligible to participate as a bidder in connection with purchase and assumption transactions involving failed banks or as a party to acquire, on an open bank basis, another insured bank with FDIC assistance.

Proposed standards of conduct for bank directors.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: October 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–23610 Filed 10–7–87; 3:25 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, October 13, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note. Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 5552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: October 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–23611 Filed 10–7–87; 3:25 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 15, 1987.

PLACE: Hearing Room One—1100 L Street NW., Washington DC 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Agreement No. 202–010689–027: Transpacific Westbound Rate Agreement; Loyalty Contract Provisions.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87–23533 Filed 10–7–87; 10:44 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 14, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed guidelines for financial institutions to implement the Bank Bribery Amendments Act of 1985. (Proposed earlier for public comment; Docket No. R–0603)
2. Proposals regarding the cost-sharing ratios of the Board employees' health insurance premiums.

Discussion Agenda

3. Proposed organization and budget of the Board's Office of the Inspector General.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: October 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–23546 Filed 10–7–87; 11:17 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, October 14, 1987.

following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously annouced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202)(452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–23547 Filed 10–7–87 11:17 am]

BILLING CODE 6210–01–M

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Corrections

Federal Register
Vol. 52, No. 196
Friday, October 09, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

Correction

In notice document 87-21592 beginning on page 35301 in the issue of Friday, September 18, 1987, make the following correction:

On page 35302, in the first column, in the table, the first entry now reading "433" should read "434".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3211-3]

Standards of Performance for New Stationary Sources; Rubber Tire Manufacturing Industry

Correction

In rule document 87-21045 beginning on page 34868 in the issue of Tuesday, September 15, 1987, make the following corrections:

1. On page 34871, in the third column, in the last paragraph, in the seventh line from the bottom, "exemption" should read "exempting".

2. On page 34872, in the third column, in paragraph 5., in the second line, the sentence beginning, "The" should begin a new paragraph.

PART 60—[CORRECTED]

3. On page 34874, in the third column, the authority should read: "

Authority: 42 U.S.C. 7411, 7414, and 7601(a)".

§60.543 [Corrected]

4. On page 34877, in the first column, in § 60.543(a), in the first line, insert "not" after "does", and in the fourth line, remove "not" after "does".

5. On page 34879, in the first column, in § 60.543(h), in the first line, "and" should read "end".

§60.546 [Corrected]

6. On page 34881, in the first column, in § 60.546(c)(2), in the seventh line, "(T_d)" should read "(T_o)".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-32517]

Standards of Performance for New Stationary Sources; Reference Methods; Amendments of § 60.106 of Subpart J; Addition of Method 10B for the Determination of Carbon Monoxide Emissions from Stationary Sources

Correction

In proposed rule document 87-19314 beginning on page 32026 in the issue of Tuesday, August 25, 1987, make the following corrections:

1. On page 32028, in the first column, under *2.2 Analysis*, in paragraph 2.2.1.3, in the sixth line, "span, 10 to 1,000 ppm" should read "span 10 to 1,000 ppm".

2. On the same page, in the third column, in paragraph 6.2, in the second formula, remove the "P" after the equal sign.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New System

Correction

In notice document 87-18549 beginning on page 30435 in the issue of Friday, August 14, 1987, make the following correction:

On page 30436, in the second column, in the second complete paragraph, in the fourth line, the number should read "09-70-4001".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-942-07-4220-10; U 61675]

Utah; Proposed Withdrawal and Opportunity for Public Meeting

Correction

In notice document 87-21681 beginning on page 35486 in the issue of Monday, September 21, 1987, make the following land description corrections:

On page 35487, in the first column—

1. Under "T. 1 N., R. 14 W.,", in the next line, "29-31" should read "28-31".

2. Under "T. 2 S., R. 14 W.,", in the next line "A." should read "All.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 87-AWA-8]

Alteration of Jet Routes, Expanded East Coast Plan; Phase II

Correction

In rule document 87-22229 beginning on page 36232 in the issue of Monday, September 28, 1987, make the following correction:

§ 75.100 [Corrected]

On page 36233, in the first column, in § 75.100 under **J-223 [New]**, in the second line, "100°" should read "110°".

BILLING CODE 1505-01-D

Friday
October 9, 1987

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Urban Development Action Grants; Revised Minimum Standards for Small Cities; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. 87-1725; FR-2400]

Urban Development Action Grants; Revised Minimum Standards for Small Cities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with 24 CFR 570.452(b)(l), the Department is providing Notice of the most current minimum standards of physical and economic distress for small cities for the Urban Development Action Grant (UDAG) program.

This Notice supersedes the Notice published October 22, 1985 (50 FR 42822).

The minimum standards of distress have change generally as a result of applying new data from the Bureau of the Census, and the Employment Training Administration within the Department of Labor.

This Notice contains four lists. The first list (see Part II of this Notice) identifies all those cities which qualify as distressed communities based upon the new minimum standards. The second list (see Part III of this Notice) identifies those cities which did not qualify when the October 22, 1985 list was published but which do qualify now. The third list (see Part IV of this Notice) identifies those cities which were classified as distressed on the October 22, 1985 list, but which no longer qualify under the new minimum standards. The fourth and last list (see Part V of this Notice) identifies those towns, townships, and Puerto Rican municipios which qualify as distressed communities based upon the new minimum standards.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Jean Samuels, Office of Urban Development Action Grants, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410, Telephone: 202/755–6784. For information on minimum distress standards or the data used to determine whether a community qualifies as distressed contact: Larry Blume Telephone: 202/755–7390.

SUPPLEMENTARY INFORMATION: In an October 22, 1985 Notice, we provided the minimum standards of physical and economic distress which were applicable up to the effective date of this Notice for small cities which met the standards published at that time.

Part I of this Notice specifies the new minimum standards of physical and economic distress. Parts II through V contain the lists enumerated in the Summary section of this Notice. Part II contains a revised list of all the small cities which meet the new standards. Part III of this Notice lists those small cities which, based upon the new minimum standards, appear on the list in Part II but did not qualify when the October 22, 1985 list was published. Part IV is a list of those cities which were classified as distressed on the October 22, 1985 list, but which no longer qualify under the new minimum standards. These cities listed in Part IV have a period of time, as specified in Part IV, during which they may submit UDAG applications. Part V is a revised list of eligible towns, townships, and Puerto Rican municipios.

The new minimum standards are based on updated data from the Bureau of the Census and Employment Training Administration. The data cover units of government incorporated through June 1986. The updated Census data are 1984 population, 1983 per capita income, 1980 housing and poverty (adjusted for boundary changes through 1983), and retail and manufacturing jobs created from 1977 to 1982. The previous Census data were 1982 population, 1981 per capita income, 1980 housing and poverty (reflecting boundary changes through the 1982), and 1977–1982 retail and manufacturing jobs. The updated data from the Employment Training Administration are Labor Surplus Areas designated as of April 1, 1987. A list of eligible labor surplus areas was published in the **Federal Register** on March 26, 1987 (52 FR 9727). The previous Labor Surplus Areas were designated as of October 1, 1984.

Part I

A small city must pass three minimum standards of physical and economic distress for the categories appropriate to their size, except that if the percentage of poverty is less than half the minimum standard, the city must pass four standards. The most current minimum standards of physical and economic distress are:

A. *Age of Housing.* At least 20.2 percent of the applicant's year-round housing units must have been constructed prior to 1940, based on 1980 Census data, in order to meet this minimum standard;

B. *Per Capita Income Change.* The net increase in per capita income for the period of 1969–1983 must have been $6,203 or less, based on Census Bureau data, in order to meet this minimum standard;

C. *Population Growth Lag/Decline.* For the period 1970–1984 the percentage rate of population growth (based on corporate boundaries as of 1983) must have been 4.6 percent or less, based on Census Bureau data, in order to meet this minimum standard;

D. *Job Lag/Decline.* The rate of growth in retail and manufacturing employment for the period 1977–1982 must have increased by 3.3 percent or less, based on Census Bureau data, in order to meet this minimum standard. The standard is only applicable to cities of 25,000 population or more. For communities where only retail data were available, a job lag percentage for the retail sector was computed. For communities where only manufacturing data were available, a job lag percentage for the manufacturing sector was computed. The retail job lag threshold is 8.5 percent and the manufacturing job lag threshold is 0.0 percent. If neither data source is available, this standard will not be considered;

E. *Poverty.* The percentage of persons within the applicant's jurisdiction at or below the poverty level must be 12.3 percent or more, based on 1980 Census data, in order to meet this minimum standard;

F. *Labor Surplus Area.* The small city must either be entirely within or partially within an area which meets the criteria for designation as a Labor Surplus Area as of April 1, 1987. These areas include counties or county balances (after excluding cities with populations of 50, 000 or more) with an unemployment rate of 9 percent or more for calendar years 1984–1985.

Part II

The following small cities meet the current minimum standards of physical and economic distress appropriate to their class

Alabama

Abbeville	Auburn
Addison	Autaugaville
Akron	Baileyton
Albertville	Banks
Aliceville	Bay Minette
Altoona	Bayou La Batre
Andalusia	Bear Creek
Anderson	Beatrice
Ariton	Belk
Arley	Benton
Ashford	Berry
Ashland	Billingsley
Ashville	Black
Athens	Blue Mountain
Atmore	Blue Springs
Attalla	Boaz

Boligee
Bon Air
Brantley
Brent
Bridgeport
Brighton
Brilliant
Brundidge
Camden
Camp Hill
Carbon Hill
Cardiff
Carolina
Carrollton
Castleberry
Cedar Bluff
Centre
Centreville
Chatom
Chickasaw
Childersburg
Citronelle
Clanton
Clayhatchee
Clayton
Clio
Coffee Springs
Coffeeville
Collinsville
Colony
Columbia
Cordova
Cottonwood
County Line
Courtland
Crossville
Cuba
Cullman
Dadeville
Daleville
Daphne
Daviston
Dayton
Demopolis
Detroit
Dora
Double Springs
Dozier
Dutton
East Brewton
Eclectic
Edwardsville
Elba
Elberta
Eldridge
Elkmont
Emelle
Epes
Eufaula
Eunola
Eutaw
Evergreen
Excel
Fairfield
Fairview
Faunsdale
Fayette
Five Points
Flomaton
Florala
Foley
Forkland
Fort Deposit
Fort Payne
Franklin
Frisco City
Fruithurst
Fulton
Fyffe
Gainsville
Gantt
Gantts Quarry
Garden City
Gaylesville
Geiger
Geneva
Georgiana
Geraldine
Gilbertown
Glen Allen
Glenwood
Good Hope
Goodwater
Gordo
Gordon
Goshen
Graysville
Greensboro
Greenville
Grove Hill
Guin
Guntersville
Gurley
Guwin
Hackleburg
Heleburg
Haleyville
Hamilton
Hommondville
Hanceville
Hardland
Heath
Heflin
Hillsboro
Hobson City
Hodges
Holly Pond
Hollywood
Hurtsboro
Jackson
Jackson's Gap
Jasper
Jemison
Kansas
Kennedy
Kinston
Lafayette
Lakeview
Lanett
Langston
Leighton
Lester
Level Plains
Libertyville
Lincoln
Linden
Lineville
Lipscomb
Lisman
Livingston
Loachapoka
Lockhart
Louisville
Lowndesboro
Loxely
Luverne
Lynn
McKenzie
McMullen
Madrid
Maplesville
Margaret
Marion
Maytown
Memphis
Mentone
Midland City
Midway
Millrly
Montevallo
Morresville
Mosses
Moulton
Moundville
Mountainboro
Mount Vernon
Mulga
Myrtlewood
Nauvoo
Needham
Newbern
New Brockton
Newville
North Courtland
North Johns
Notasulga
Oak Grove
Oak Hill
Oakman
Odenville
Onycha
Opp
Orrville
Ozark
Paint Rock
Parrish
Dell City
Pennington
Petrey
Phenix City
Phil Cambell
Pickensville
Piedmont
Pickard
Pine Apple
Pine Hill
Pine Ridge
Pisgah
Pollard
Powells Crossroads
Prichard
Providence
Ragland
Raomsvo::e
Red Bay
Red Level
Reece City
Reform
Repton
Ridgeville
River Falls
Riverside
Riverview
Roanoke
Robertsdale
Rockford
Roooevelt City
Rosa
Russellville
Rutledge
Samson
Sanford
Sardis City
Section
Selma
Sheffield
Shilo
Silas
Silverhill
Sipsey
Slocomb
Snead
Somerville
South Vinemont
Springville
Steele
Stevenson
Sumiton
Summerdale
Swetwater
Sylacauga
Sylvania
Talladega
Talladega Springs
Tallassee
Tarrant City
Thomaston
Thomasville
Thorsby
Town Creek
Toxey
Trafford
Triana
Troy
Tuscubia
Tuskegee
Union
Union Grove
Union Springs
Uniontown
Valley Head
Vina
Vredenburgh
Wadley
Waldo
Walnut Grove
Waterloo
Waverly
Webb
Wedowee
West Blocton
Weston
West Point
Wetumpka
Whitehall
Whites Chapel
Wilmer
Wilton
Woodland
Woodville
York

Alaska

Akhiok
Akiak
Akolmiut
Akutan
Alakanuk
Allakaket
Anaktuvuk Pass
Angoon
Aniak
Anvik
Atmautluak
Brevig Mission
Buckland
Chefornak
Chevak
Chuathbaluk
Clark's Point
Craig
Deering
Diomede
Eagle
Eek
Ekwok
Elim
Emmonak
Fairbanks
Fortuna Ledge
Fort Yukon
Gambell
Golovin
Goodnews Bay
Grayling
Holy Cross
Hooper Bay
Houston
Hughes
Huslia
Hydaburg
Kaltag
Kasigluk
Kiana
King Cove
Kivalina
Kobuk
Kotlik
Koyuk
Koyukuk
Kwethluk
Lower Kalskag
Mekoryuk
Mountain Village
Napakiak
Napaskiak
Nenana
New Stuyahok
Newtok
Nightmute
Nikolai
Noorvik
Nulato
Old Harbor
Pilot Station
Port Alexander
Quinhagak
Ruby
Russian Mission
St. George
St. Mary's
St. Michael
Savoonga
Scammon Bay
Selawik
Seldovia
Shageluk
Shaktoolik
Sheldon Point
Shishmaref
Shungnak
Stebbins
Tanana
Teller
Tenakee Springs
Togiak
Toksook Bay
Tuluksak
Tununak
Unalakleet
Upper Kalskag
Wales
White Mountain
Yakutat

Arizona

Apache Junction
Avondale
Bisbee
Casa Grande
Clarkdale
Clifton
Colorado City
Coolidge
Douglas
Duncan
Eagar
El Mirage
Eloy
Flagstaff
Florence
Fredonia
Globe
Guadalupe
Hayden
Holbrook
Jerome
Kearny
Mammoth
Miami
Nogales
Patagonia
Payson
Pima
Prescott
Safford
St. Johns
San Luis
Show Low
Somerton
South Tucson
Superior
Surprise
Thatcher
Tombstone
Williams
Winkelman
Winslow

Arkansas

Adona
Alicia
Allport
Almyra
Alpena
Altheimer
Altus
Amagon
Amity
Antoine
Arkadelphia
Arkansas City
Ashdown
Ash Flat
Atkins
Aubrey
Augusta
Avoca
Bald Knob
Banks
Barling
Bassett
Batesville
Bauxite
Bearden
Beaver
Beebe
Beedeville
Belleville
Ben Lomond
Berryville
Bigelow
Big Flat
Biggers
Birdsong
Black Oak
Black Rock
Black Springs
Blevins
Blue Eye
Blue Mountain
Bluff
Blytheville
Bodcaw
Bonanza
Booneville
Bradford
Bradley
Branch
Brinkley
Buckner
Burdette
Caldwell
Calico Rock
Calion
Camden
Campbells Station
Caraway
Carlisle
Carthage
Casa
Cash
Caulksville
Cave City
Cave Springs
Charleston
Cherry Valley
Chester
Chidester
Claredon
Clarksville
Clinton
Coal Hill
College City
Colt
Concord
Corinth
Corning
Cotter
Cotton Plant

Cove
Coy
Crawfordsville
Crossett
Cushman
Daisy
Damascus
Datto
Delaplaine
Delight
Dell
Denning
De Queen
Dermott
Des Arc
De Valls Bluff
De Witt
Diaz
Dierks
Dover
Dumas
Dyer
Dyess
Earle
Edmondson
Elaine
El Dorado
Elkins
Emerson
Emmet
England
Enola
Eudora
Eureka Springs
Evening Shade
Everton
Fifty Six
Fisher
Fordyce
Foreman
Forrest City
Fountain Hill
Fourche
Franklin
Biscoe Town
Friendship
Fulton
Garfield
Garland
Garner
Gateway
Gentry
Gilbert
Gillett
Gilmore
Glenwood
Gosnell
Gould
Grady
Grannis
Gravette
Green Forest
Greenway
Greenwood
Greers Ferry
Griffithville
Grubbs
Guion
Gum Springs
Gurdon
Guy
Hackett
Hamburg
Hardy
Harrell
Harrisburg
Hartford
Hartman
Hatfield
Havana
Haynes
Hazen
Heber Springs
Hector
Helena
Hermitage
Hickory Ridge
Higden
Higginson
Hindsville
Holly Grove
Horatio
Hot Springs
Houston
Hoxie
Hughes
Humnoke
Humphrey
Hunter
Huntington
Huntsville
Imboden
Jacksonport
Jasper
Jerome
Johnson
Joiner
Jonesboro
Judsonia
Junction City
Keiser
Kensett
Keo
Kingsland
Knobel
Knoxville
Lafe
La Grange
Lake View
Lake Village
Lamar
Leachville
Leola
Lepanto
Leslie
Letona
Lewisville
Lexa
Lincoln
Lockesburg
Lonsdale
Louann
Luxora
Lynn
McCrory
McDougal
McGehee
McNeil
McRae
Madison
Magazine
Magness
Magnolia
Malvern
Mammoth Spring
Manila
Mansfield
Marianna
Marie
Marked Tree
Marmaduke
Marshall
Marvell
Maynard
Mena
Menifee
Midland
Minturn
Mitchellville
Monette
Monticello
Montrose
Moro
Morrilton
Morrison Bluff
Mountain Pine
Mountainview
Mount Ida
Mount Vernon
Mulberry
Murfreesboro
Nashville
Newark
Newport
Nimmons
Norfolk
Norman
Norphlet
Oak Grove
Oak Grove Heights
Oden
Ogden
Oil Trough
O'Kean
Okolona
Ola
Omaha
Osceola
Oxford
Ozan
Ozark
Palestine
Pangburn
Paragould
Paris
Parkdale
Parkin
Patmos
Patterson
Peach Orchard
Perla
Perry
Perryville
Piggott
Plainview
Plumerville
Pocahontas
Pollard
Portia
Portland
Pottsville
Powhatan
Prairie Grove
Prattsville
Prescott
Pyatt
Quitman
Ratcliff
Ravenden
Ravenden Springs
Reader
Rector
Reed
Reyno
Rison
Rockport
Roe
Rondo
Rose Bud
Rosston
Rudy
Russell
St. Charles
St. Francis
St. Paul
Salem
Scranton
Searcy
Sedgwick
Sherrill
Shirley
Sidney
Smackover
Smithville
South Lead Hill
Sparkman
Stamps
Star City
Stephens
Strawberry
Strong
Stuttgart
Subiaco
Success
Sulphur Rock
Sulphur Springs
Summit
Sunset
Swifton
Thornton
Tillar
Tollette
Trumann
Tuckerman
Tupelo
Turrell
Tyronza
Ulm
Valley Springs
Vandervoort
Victoria
Vilonia
Viola
Wabbaseka
Waldenburg
Waldo
Waldron
Walnut Ridge
Warren
Washington
Watson
Weiner
Weldon
Western Grove
West Helena
West Point
Wheatley
Wickes
Widener
Wiederkehr
Williford
Willisville
Wilmar
Wilmot
Wilson
Wilton
Winchester
Winslow
Winthrop
Wooster
Wrightsville
Wynne
Yellville
Zinc

California

Alturas
Amador
Anderson
Angels
Arcata
Arvin
Avenal
Bell
Bell Gardens
Beverly Hills
Biggs
Blue Lake
Brawley
Calexico
Calipatria
Clearlake
Coalinga
Colusa
Corcoran
Corning
Crescent City
Cudahy
Delano
Dinuba
Dorris
Dos Palos
Dunsmuir
East Palo Alto
Etna
Eureka
Exeter
Farmersville
Ferndale
Firebaugh
Fort Bragg
Fort Jones
Fowler
Gonzales
Grass Valley
Greenfield
Gridley
Gustine
Hanford
Hollister
Hughson
Huron
Indio
Industry
Ione
Irwindale
Isleton
King City
La Puente
Lawndale
Lindsay
Live Oak
Livingston
Los Banos
Loyalton
McFarland
Madera
Maricopa
Marina
Marysville
Maywood
Mendota
Montague
Mount Shasta
Needles
Nevada City
Orange Cove
Orland
Oroville
Pacific Grove
Paramount
Parlier
Patterson
Plymouth
Point Arena
Portola
Red Bluff
Reedley
Rio Dell
Riverbank
Sand City
San Gabriel
Sanger
San Joaquin
San Pablo
Santa Paula
Selma
Soledad
Sonora
Susanville
Sutter Creek
Tehachapi
Tehama
Tracy
Tulelake
Wasco
Waterford
Watsonville
Weed
Westmorland
Wheatland
Williams
Willits
Willows
Winters
Woodlake
Yreka

Colorado

Aguilar
Akron
Alamosa
Alma
Antonito
Arriba
Ault
Blanca
Bonanza City
Boone
Branson
Brookside
Brush
Buena Vista
Calhan
Campo
Canon City
Cedaredge
Center
Central City
Coal Creek
Cokedale
Collbran
Commerce City
Creede
Crested Butte
Crestone
Cripple Creek
Crowley
Del Norte
Delta
Dinosaur
Dolores
Eckley
Elizabeth
Flagler
Florence
Fort Lupton
Fowler
Frederick
Fruita
Garden City
Genoa
Granada
Grand Junction
Grover
Gunnison
Hartman
Haswell
Holly
Holyoke
Hooper
Hotchkiss
Hugo
Ignacio
Iliff
Johnstown
Julesburg
Keenesburg
Kim
Kit Carson
La Jara
La Junta
Lamar
Las Animas
La Veta
Leadville
Limon
Manassa
Mancos
Manitou Springs
Manzanola
Moffat
Monte Vista
Naturita
Nucla
Nunn
Oak Creek
Olathe
Olney Springs
Ophir
Orchard City
Ordway
Otis
Ouray
Ovid

Pagosa Springs
Palisade
Paoli
Paonia
Peetz
Pierce
Pitkin
Poncha Springs
Pritchett
Prospect Heights
Ramah
Raymer
Red Cliff
Rico
Ridgway
Rockvale
Rocky Ford
Romeo
Rosedale
Rye
Saguache
Salida
Sanford
San Luis
Sawpit
Sedgwick
Seibert
Sheridan Lake
Silt
Silver Cliff
Silverton
Simla
Springfield
Starkville
Sugar City
Superior
Telluride
Trinidad
Two Buttes
Victor
Vilas
Walsenburg
Walsh
Ward
Westcliffe
Wiggins
Wiley
Williamsburg
Yampa
Yuma

Connecticut

Danielson
Jewett City
Naugatuck
Stafford Springs
Torrington

Delaware

Bethel
Blades
Bowers
Bridgeville
Cheswold
Clayton
Delaware City
Delmar
Ellendale
Farmington
Frankford
Frederica
Georgetown
Greenwood
Harrington
Laurel
Leipsic
Lewes
Little Creek
Magnolia
Milford
Milton
New Castle
Odessa
Seaford
Smyrna
Townsend
Woodside
Wyoming

Florida

Alachua
Alford
Altha
Apalachicola
Arcadia
Archer
Auburndale
Avon Park
Bartow
Bay Lake
Bell
Belle Glade
Blountstown
Bonifay
Bowling Green
Branford
Bronson
Bunnell
Bushnell
Callahan
Campbellton
Carrabelle
Caryville
Cedar Grove
Cedar Key
Center Hill
Century
Chattahoochee
Chiefland
Chipley
Cinco Bayou
Coleman
Cottondale
Crescent City
Crestview
Cross City
Davenport
De Funiak Springs
De Land
Dundee
Eatonville
Esto
Eustis
Everglades
Fanning Spring
Fellsmere
Florida City
Fort Meade
Fort White
Frostproof
Graceville
Greensboro
Greenville
Greenwood
Gretna
Groveland
Haines City
Hastings
Havana
Hawthorne
High Springs
Homestead
Horseshoe Beach
Interlachen
Jacob City
Jasper
Jennings
Key West
Labelle
La Crosse
Lady Lake
Lake City
Lake Hamilton
Lake Helen
Lake Wales
Laurel Hill
Lawtey
Lee
Leesburg
Live Oak
Madison
Malone
Marianna
Mascotte
Mayo
Medley
Micanopy
Monticello
Moore Haven
Mount Dora
Mulberry
Noma
Oak Hill
Oakland
Okeechobee
Opalocka
Otter Creek
Palatka
Parker
Paxton
Perry
Pierson
Polk City
Pomona Park
Ponce De Leon
Port St. Joe
Quincy
Reddick
St. Augustine
St. Leo
St. Marks
Sebring
Sopchoppy
South Bay
Springfield
Starke
Umatilla
Vernon
Waldo
Wauchula
Wasau
Webster
Welaka
Westville
Wewahitchka
White Springs
Wildwood
Worthington Springs
Zolfo Springs

Georgia

Abbeville
Adairsville
Adrian
Ailey
Alamo
Alapaha
Aldora
Allenhurst
Allentown
Alma
Alston
Ambrose
Americus
Andersonville
Arabi
Aragon
Arcade
Argyle
Arlington
Ashburn
Attapulgus
Auburn
Avera
Baconton
Bainbridge
Ball Ground
Barnesville
Bartow
Barwick
Baxley
Bellville
Between
Bibb City
Bishop
Blackshear
Blairsville
Blakely
Blue Ridge
Bluffton
Boston
Bostwick
Bowdon
Bowepsville
Bowman
Braselton
Brinson
Bronwood
Brooklet
Brooks
Broxton
Brunswick
Buckhead
Buena Vista
Buford
Butler
Byromville
Byron
Cadwell
Cairo
Camilla
Canon
Canton
Carl
Carlton
Carnesville
Cartersville
Cave Spring
Cecil
Cedartown
Chatsworth
Chauncey
Chester
Clarkesville
Claxton
Clermont
Climax
Cobbtown
Cochran
Cohutta
Colbert
Coleman
Collins
Colquitt
Comer
Commerce
Concord
Coolidge
Cordele
Corinth
Covington
Crawford
Crawfordville
Cusseta
Cuthbert
Daisy
Dallas
Damascus
Danielsville
Danville
Darien
Davisboro
Dawson
Dawsonville
Dearing
Decatur
Denton
De Soto
Dexter
Doerun
Du Pont
East Ellijay
Eastman
East Point
Eatonton
Edison
Elberton
Ellaville
Ellenton
Ellijay
Emerson
Enigma
Ephesus
Eton
Euharlee
Fairmount
Fitzgerald
Flemington
Flovilla
Flowery Branch
Folkston
Forsyth
Fort Gaines
Fort Valley
Franklin
Garfield
Gay
Geneva
Georgetown
Gibson
Gillsville
Girard
Glennville
Glenwood
Gordon
Grantville
Greensboro
Greenville
Griffin
Guyton
Hagan
Hahira
Hampton
Harlem
Harrison
Hartwell
Hawkinsville
Helena
Higgston
HillTonia
Hoboken
Hogansville
Homer
Homerville
Ideal
Ila
Iron City
Irwinton
Jackson
Jacksonville
Jakin
Jeffersonville
Jenkinsburg
Jersey
Jesup
Junction City
Kingston
Kite
La Fayette
La Grange
Lakeland
Lake Park
Lavonia
Leary
Leesburg
Lenox
Leslie
Lexington
Lilly
Lincolnton
Linwood
Lithonia
Locust Grove
Lone Oak
Louisville
Ludowici
Lula
Lumber City
Lumpkin
Luthersville
Lyerly
Lyons
McCaysville
McDonough
McRae
Madison
Manassas
Manchester
Mansfield
Marshallville
Maxeys
Meansville
Meigs
Menlo
Metter
Midville
Milan
Millen
Milner
Mineral Bluff
Mitchell
Molena
Monroe
Montezuma
Monticello
Montrose
Morgan
Morganton
Morven
Moultrie
Mount Airy
Mount Vernon
Nahunta
Naylor
Nelson
Newborn
Newington
Newnan
Newton
Nicholls
Norman Park
Norwood
Nunez
Oak Park
Ochlocknee
Ocilla
Odum
Oglethorpe
Oliver
Omaha
Omega
Parrott
Patterson
Pavo
Payne
Pearson
Pelham
Pembroke
Pinehurst
Pineview
Pitts
Plains
Portal
Porterdale
Poulan
Preston
Pulaski
Quitman
Ranger
Rayle
Rebecca
Register
Remerton
Rest Haven
Reynolds
Rhine
Riceboro

Richland
Riddleville
Riverside
Roberta
Rochelle
Rockmart
Rocky Ford
Rome
Rossville
Rutledge
Sale City
Sandersville
Sardis
Sasser
Scotland
Screven
Senoia
Shady Dale
Sharon
Sharpsburg
Shellman
Shiloh
Siloam
Smithville
Social Circle
Soperton
Sparks
Sparta
Stapleton
Statesboro
Stillmore
Summertown
Summerville
Sumner
Sunny Side
Surrency
Swainsboro
Sycamore
Sylvania
Sylvester
Talbotton
Talking Rock
Tallapoosa
Tallulah Falls
Tarrytown
Taylorsville
Tennille
The Rock
Thomaston
Thomasville
Thomson
Tiger
Tignall
Toomsboro
Trion
Twin City
Ty Ty
Unadilla
Union Point
Uvalda
Valdosta
Varnell
Vidalia
Vienna
Villa Rica
Wadley
Waleska
Walnut Grove
Walthourville
Warm Springs
Warrenton
Warwick
Washington
Waverly Hall
Waycross
Waynesboro
Weston
West Point
Whigham
White
White Plains
Whitesburg
Willacoochee
Williamson
Woodbine
Woodbury
Woodland
Woodville
Wrens
Wrightsville
Yatesville
Young Harris
Zebulon

Idaho

Aberdeen
Acequia
Albion
American Falls
Arco
Ashton
Athol
Atomic City
Bancroft
Bellevue
Blackfoot
Bonners Ferry
Buhl
Burley
Cambridge
Cascade
Castleford
Challis
Clark Fork
Clayton
Clifton
Coeur D'Alene
Cottonwood
Council
Crouch
Culdesac
Dalton Gardens
Dayton
Declo
Donnelly
Downey
Drummond
Dubois
East Hope
Eden
Elk River
Emmett
Fairfield
Ferdinand
Fernan Lake
Glenns Ferry
Gooding
Grand View
Grangeville
Hagerman
Harrison
Hauser Lake
Hayden
Hollister
Hope
Huetter
Idaho City
Jerome
Juliaetta
Kamiah
Kellogg
Kendrick
Kooskia
Kootenai
Lapwai
Lava Hot Springs
Leadore
Lewiston
McCall
McCammon
Mackay
Malad City
Malta
Melba
Menan
Midvale
Minidoka
Moscow
Moyie Springs
Mud Lake
Mullan
Nampa
Newdale
New Meadows
New Plymouth
Nezperce
Notus
Oakley
Oldtown
Onaway
Orofino
Oxford
Parma
Payette
Peck
Pierce
Pinehurst
Placerville
Pocatello
Ponderay
Preston
Priest River
Rathdrum
Reubens
Rexburg
Rigby
Riggins
Rirrie
Roberts
Rockland
Rupert
St. Anthony
St. Charles
St. Marie's
Salmon
Sandpoint
Shoshone
Smelterville
Spencer
Spirit Lake
Stites
Tensed
Teton
Tetonia
Twin Falls
Victor
Wallace
Wardner
Warm River
Weippe
Weiser
Wendell
Weston
White Bird
Wilder
Worley

Illinois

Abingdon
Addieville
Adeline
Albany
Albers
Albion
Alhambra
Allendale
Allerton
Alma
Aloriton
Alpha
Alsey
Altamont
Altona
Alto Pass
Alvin
Amboy
Andover
Annawan
Apple River
Arlington
Armington
Aroma Park
Ashley
Ashton
Assumption
Astoria
Atlanta
Augusta
Ava
Aviston
Avon
Baldwin
Banner
Bannockburn
Bardolph
Barry
Bartelso
Barh
Baylis
Bay View Gardens
Beardstown
Beaverville
Beckemeyer
Beecher City
Belgium
Belknap
Belle Prairie City
Belle Rive
Belleflower
Belvidere
Benlo
Bently
Benton
Berlin
Biggsville
Bingham
Birds
Bishop Hill
Blandinsville
Blue Island
Bluffs
Bluford
Bone Gap
Bonnie
Bowen
Braceville
Bradford
Bridgeport
Broadwell
Brocton
Brooklyn
Brookport
Broughton
Browning
Browns
Brownstown
Brussels
Bryant
Buckner
Buda
Bulpitt
Buncome
Bunker Hill
Bureau Junction
Burnt Paririe
Bush
Bushnell
Butler
Cabery
Cario
Calhoun
Cambria
Cambridge
Camden
Campbell Hill
Camp Point
Canton
Capron
Carbondale
Carlinville
Carlyle
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Clay City
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New Canton
New Douglas
New Grand Chain
New Haven
New Holland
New Minden
New Salem
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North Henderson
North Pekin
North Utica
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Sawyerville
Scales Mound
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Sun River Terrace
Table Grove
Tamaroa
Tamms
Tampico
Taylor Springs
Tennessee
Thawville
Thebes
Thompsonville
Tilden
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Toledo
Tonica
Topeka
Tovey
Tower Hill
Troy Grove
Ullin
Union Hill
Urbain
Ursa
Valier
Valley City
Valmeyer
Vandalia
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Versailles
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Waynesville
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West Brooklyn
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West Frankfort
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West Salem
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Willisville
Willow Hill
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Woodlawn
Wood River
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Wyoming
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Indiana

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Alfordsville
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Bedford
Bethany
Bicknell
Bloomfield
Blountsville
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Brownstown
Bruceville
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Bunker Hill
Burnettsville
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Cambridge City
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Carlisle
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Cedar Grove
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Clay City
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Crothersville
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Dillsboro
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Earl Park
East Germantown
Economy
Edinburg
Edwardsport
Elberfeld
Elizabethtown
Elnora
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Fairmount
Fairview Park
Farmersburg
Farmland
Fountain City
Fowler
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Francisco
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Fredericksburg
French Lick
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Greencastle
Greensboro
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Hagerstown
Hamlet
Hanover
Hardinsburg
Harmony
Hartford City
Hartsville
Hillsboro
Holton
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Jasonville
Jeffersonville
Jonesboro
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Knightstown
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North Judson
North Liberty
North Manchester
North Vernon
Oakland City
Oaktown
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Orleans
Osgood
Palmyra
Paoli
Paragon
Parker City
Patriot
Pennville
Perrysville
Peru
Pierceton
Pine Village
Plainville
Portland
Ravenswood
Redkey
Rensselaer
Reynolds
Richmond
Ridgeville
Rising Sun
Roachdale
Roann
Rockport
Rockville
Rosedale
Roseland
Rossville
Royal Center
Rushville
St. Joe
Salamonia
Saltillo
Sandborn
Saratoga
Scottsburg
Seymour
Lakeville
La Porte
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Lawrenceburg
Leavenworth
Lewisville
Liberty
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Little York
Logansport
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Monroe City
Montgomery
Montpelier
Mooreland
Moores Hill
Mooresville
Morgantown
Morocco
Mount Auburn
Mount Carmel
Mount Summit
Mulberry
Napoleon
New Amsterdam
Newberry
New Castle
New Market
Shelburn
Shelbyville
Sheridan
Shirley
Shoals
Sidney
Silver Lake
Spencer
Spiceland
Spring Grove
Springport
Spurgeon
Stinesville
Straughn
Sullivan
Sulphur Springs
Summitville
Switz City
Tell City
Tennyson
Thorntown
Tipton
Pines
Trafalgar
Troy
Union City
Universal
Upland
Veedersburg
Vernon
Versailles
Vevay
Vincennes
Wabash
Walkerton
Wallace
Washington
Waveland
West Baden
West College Corner
West Harrison
West Lebanon
West Terre Haute
Westville
Wheatfield
Wheatland
Whitestown
Whitewater
Whiting
Winamac
Winchester
Windfall City
Wingate
Winona Lake
Winslow
Wolcott
Worthington

Iowa

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Ainsworth
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Allerton
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Anita
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Aredale
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Ashton
Athelstan
Auburn
Aurora
Ayrshire
Bagley
Baldwin
Bancroft
Barnes City
Barnum
Batavia
Bayard
Beaconsfield
Bedford
Belle Plaine
Bellevue
Benton
Bevington
Birmingham
Blakesburg
Blockton
Bloomfield
Bonaparte
Boxholm
Bradgate
Brandon
Bridgewater
Brighton
Bronson
Brooklyn
Buffalo
Buffalo Center
Burlington
Callender
Cantril
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Casey
Castalia
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Center Junction
Centerville
Chariton
Charles City
Charlotte
Charter Oak
Chatsworth
Chelsea
Cincinnati
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College Springs
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Columbus City
Columbus Junction
Conway
Coon Rapids
Coppock
Corning
Correctionville
Corydon
Cotter
Crawfordsville
Cromwell
Cumberland
Curlew
Cylinder
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Danbury
Davis City
Dayton
Decatur City
Decorah
Deep River
Delaware
Delhi
Deloit
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Dougherty
Downs
Drakesville
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Eagle Grove
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Estherville
Evansdale
Exira
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Farmington
Farnhamville
Fayette
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Floris
Floyd
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Fontanelle
Fort Dodge
Fort Madison
Fraser
Fredericksburg
Fredonia
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Garber
Garden Grove
Garrison
George
Gillett Grove
Gilmore City
Gladbrook
Gowrie
Graettinger
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Grand River
Grandview
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Gravity
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Green Island
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Grinnell
Griswold
Gruver
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Harcourt
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Hurstville
Ida Grove
Independence
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Jackson Junction
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Lacona
Lake City
Lake Park
Lake View
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La Motte
Lanesboro
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La Porte City
Lawler
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Lime Springs
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Liscomb
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New Vienna
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Spillville
Spragueville
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Stacyville
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Swaledale
Swea City
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Kansas

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Formoso
Fort Scott
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Hazelton
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Herndon
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Hillsboro
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Horace
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Howard
Humboldt
Hunter
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Hutchinson
Iola
Jamestown
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Jetmore
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Junction City
Kanopolis
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Kensington
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Lincoln Center
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Louisville
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Manhattan
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Neosho Falls
Netawaka
New Cambria
Niotaze
Norcatur
Norton
Nortonville
Oak Hill
Oakley
Offerle
Oketo
Olmitz
Olsburg
Onaga
Oneida
Osborne
Oswego
Ottawa
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Paradise
Park
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Parkerville
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Partridge
Pawnee Rock
Paxico
Peabody
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Peru
Phillipsburg
Pittsburg
Plainville
Pleasanton
Plevna
Portis
Powhattan
Praire View
Prescott
Preston
Ramona
Randall
Rantoul
Raymond
Redfield
Republic
Reserve
Rexford
Richfield
Richmond
Rozel
Rush Center
Russell Springs
Sabetha
St. Francis
St. Paul
Savonburg
Scammon
Scandia
Schoenchen
Scott City
Scranton
Selden
Severance
Severy
Seward
Sharon Springs
Smith Center
Soldier
Solomon
South Haven
Spearville
Stafford
Stark
Sterling
Strong City
Sublette
Summerfield
Sun City
Susank
Sylvan Grove
Sylvia
Syracuse
Tampa
Tescott
Thayer
Tipton
Toronto
Treece
Tribune
Troy
Turon
Tyro
Utica
Valley Falls
Vermillion
Vining
Virgil
Wakefield
Waldo
Waldron
Wallace
Walnut
Washington
Waverly
Weir
Wetmore
Wheaton
White City
White Cloud
Whiting
Willard
Williamsburg
Wilson
Winchester
Windom
Winona
Woodston
Yates Center
Zenda
Zurich

Kentucky

Adairville
Albany
Allen
Arlington
Auburn
Augusta
Barbourville
Bardstown
Bardwell
Barlow
Beattyville
Bedford
Bellevue
Benham
Benton
Berry
Blaine
Bloomfield
Bonnieville
Booneville
Bowling Green
Bradfordsville
Bremen
Brodhead
Bromley
Brooksville

Brownsville
Burgin
Burkesville
Burnside
Butler
Cadiz
Calhoun
California
Camargo
Campbellsburg
Campton
Caneyville
Carlisle
Carrollton
Carrsville
Caseyville
Catlettsburg
Cave City
Centertown
Central
Clarkson
Clay
Clay City
Clinton
Cloverport
Columbia
Columbus
Concord
Corbin
Corinth
Corydon
Crab Orchard
Crittenden
Crofton
Cumberland
Cynthiana
Danville
Dawson Springs
Dayton
Dixon
Dover
Drakesboro
Dry Ridge
Earlington
Eddyville
Edmonton
Ekron
Elkhorn City
Elkton
Eminence
Eubank
Evarts
Ewing
Fairfield
Falmouth
Ferguson
Fleming-Neon
Flemingsburg
Fordsville
Foster
Fountain Run
Franklin
Fredonia
Frenchburg
Fulton
Georgetown
Germantown
Ghent
Glasgow
Glencoe
Grand Rivers
Gratz
Grayson
Greensburg
Greenup
Guthrie
Hanson
Hardin
Hardinsburg
Harlan
Harrodsburg
Hartford
Hawesville
Hazard
Hazel
Henderson
Hickman
Hindman
Hiseville
Hodgenville
Horse Cave
Hustonville
Hyden
Inez
Irvine
Irvington
Island
Jackson
Jamestown
Jeffersonville
Jenkins
Junction City
Kevil
La Center
La Fayette
Lancaster
Latonia Lakes
Lebanon
Lebanon Junction
Leitchfield
Lewisburg
Lewisport
Liberty
Livermore
Livingston
Lockport
London
Loretto
Louisa
Loyall
Ludlow
Lynch
McHenry
McKee
Mackville
Madisonville
Manchester
Marion
Martin
Mayfield
Maysville
Melbourne
Middlesborough
Midway
Millersburg
Milton
Minor Lane Heights
Monterey
Monticello
Morehead
Morganfield
Morgantown
Mortons Gap
Mount Olivet
Mount Sterling
Mount Vernon
Muldraugh
Munfordville
Murray
Nebo
Newburg
New Castle
New Haven
Newport
Nortonville
Oakland
Olive Hill
Owenton
Owingsville
Paducah
Paintsville
Paris
Park City
Parkway Village
Pembroke
Perryville
Pikeville
Pineville
Pippa Passes
Pleasureville
Powderly
Prestonburg
Prestonville
Princeton
Providence
Raceland
Ravenna
Raywick
Richmond
Rochester
Rockport
Russell Springs
Russellville
Sacramento
Sadieville
St. Charles
Salem
Salt Lick
Salyersville
Sanders
Sandy Hook
Sardis
Science Hill
Scottsville
Sebree
Sharpsburg
Shelbyville
Silver Grove
Slaughterville
Smithfield
Smithland
Smiths Grove
Somerset
Sonora
South Carrolton
South Shore
Sparta
Springfield
Stamping Ground
Stanford
Stanton
Sturgis
Taylorsville
Tompkinsville
Trenton
Uniontown
Upton
Vanceburg
Vicco
Visalia
Wallins Creek
Walton
Warfield
Warsaw
Washington
Water Valley
Waverly
Wayland
West Buechel
West Liberty
West Point
Wheatcroft
Wheelwright
White Plains
Whitesburg
Whitesville
Wickliffe
Williamsburg
Williamstown
Willisburg
Wilmore
Winchester
Wingo
Worthington
Worthville
Wurtland

Louisiana

Abbeville
Abita Springs
Albany
Amite City
Angie
Arcadia
Arnaudville
Ashland
Athens
Baldwin
Basile
Baskin
Bastrop
Belcher
Benton
Bernice
Bienville
Bogalusa
Bonita
Boyce
Breaux Bridge
Brycelanc
Bunkie
Calvin
Campti
Castor
Chataignier
Chathman
Cheneyville
Choudrant
Church Point
Clarence
Clarks
Clayton
Clinton
Colfax
Collinston
Columbia
Converse
Cottonport
Cotton Valley
Coushatta
Covington
Crowley
Cullen
Delcambre
Delhi
Delta
Denham Springs
De Quincy
De Ridder
Dixie Inn
Dodson
Donaldsonville
Doyline
Dry Prong
East Hodge
Elizabeth
Elton
Epps
Erath
Estherwood
Eunice
Evergreen
Farmerville
Fenton
Ferriday
Fisher
Florien
Folsom
Fordoche
Forest
Forest Hill
Franklin
Franklinton
French Settlement
Georgetown
Gibsland
Gilbert
Gilliam
Glenmora
Golden Meadow
Goldonna
Grambling
Grand Cane
Grand Coteau
Grand Isle
Grayson
Greensburg
Gretna
Grosse Tete
Gueydan
Hall Summit
Hammond
Harrisonburg
Haughton
Haynesville
Heflin
Henderson
Hodge
Homer
Hornbeck
Hosston
Independence
Iota
Jackson
Jamestown
Jeanerette
Jena
Jennings
Jonesboro
Jonesville
Junction City
Kaplan
Keatchie
Kentwood
Kilbourne
Kinder
Krotz Springs
Lake Arthur
Lake Providence
Lecompte
Leesville
Leonville
Lillie
Lisbon
Livingston
Logansport
Longstreet
Loreauville
Lucky
Lutcher
McNary
Madisonville
Mamou
Mangham
Mansfield
Mansura
Many
Maringouin
Marion
Marksville
Maurice
Melville
Mermentau
Mer Rouge
Merryville
Minden
Montgomery
Montpelier
Moreauville
Morgan City
Morganza
Morse
Mound
Mount Lebanon
Napoleonville
Natchez
Natchitoches
Newellton
New Iberia
New Roads
North Hodge
Norwood
Oakdale
Oak Grove
Oak Ridge
Oberlin
Oil City
Olla
Opelousas
Palmetto
Parks
Pearl River
Pine Prairie
Pioneer
Plain Dealing
Plaquemine
Plaucheville
Pleasant Hill
Pollock
Ponchatoula
Port Allen
Port Barre
Powhatan
Provencal
Rayne
Rayville
Reeves
Richmond
Richwood
Ridgecrest
Ringgold
Rodeline
Rodessa
Rosedale
Roseland
St. Joseph
St. Martinville
Saline
Sarepta
Shongaloo
Sibley
Sicily Island
Sikes
Simmesport
Simpson
Sorrento
South Mansfield
Spearsville
Springfield
Springhill
Stanley
Sun
Sunset
Tallulah
Tangipahoa
Tickfaw
Tullos
Turkey Creek
Urania
Varnado
Vidalia
Ville Platte
Vinton
Vivian
Walker
Washington
Waterproof
Welsh
Westwego
White Castle
Wilson
Winnfield
Winnsboro
Wisner
Woodworth
Zwolle

Maine

Augusta
Belfast
Biddeford
Brewer
Calais
Caribou
Eastport
Gardiner
Old Town
Presque Isle
Rockland
South Portland
Waterville

Barton
Berlin
Betterton
Brentwood
Brookview
Cambridge
Capitol Heights
Cecilton
Charlestown
Chesapeake City
Chestertown
Church Creek
Colmar Manor
Crisfield
Deer Park
Delmar
Denton
East New Market
Eldorado
Elkton
Emmitsburg
Fairmount Heights
Federalsburg
Friendsville
Frostburg
Galestown
Grantsville
Greensboro
Hancock
Havre De Grace
Hebron

Chelsea
Everett
Gardner

Addison
Adrian
Ahmeek
Akron
Alanson
Albion
Algonac
Allegan
Allen
Alma
Almont
Alpena
Alpha
Applegate
Armada
Ashley
Athens
Bad Axe
Baldwin
Bancroft
Bangor
Baraga
Barryton
Bear Lake
Beaverton
Belding
Bellaire
Bellevue
Benzonia
Berrien Springs
Bessemer
Beulah
Big Rapids
Bloomingdale
Boyne City
Boyne Falls
Breckenridge
Breedsville
Britton
Bronson
Brooklyn
Brown City
Buchanan
Buckley
Burlington

Maryland

Henderson
Hurlock
Kitzmillerville
Loch Lynn Heights
Lonaconing
Mardela Springs
Marydel
Midland
Millington
Mountain Lake Park
Mount Rainier
North Beach
North Brentwood
North East
Oakland
Perryville
Pittsville
Pocomoke City
Port Deposit
Princess Anne
Queen Anne
Ridgely
Rock Hall
St. Michaels
Salisbury
Secretary
Sharpsburg
Snow Hill
Sudlersville
Vienna
Westernport

Massachusetts

North Adams
Revere
Taunton

Michigan

Burr Oak
Burton
Byron
Cadillac
Calumet
Camden
Capac
Carleton
Carney
Caro
Carson City
Carsonville
Caseville
Casnovia
Caspian
Cassopolis
Cedar Springs
Cement City
Central Lake
Centreville
Charlevoix
Charlotte
Chatham
Cheboygan
Chesaning
Clarke
Clarksville
Clayton
Clifford
Clio
Coldwater
Coleman
Coloma
Colon
Columbiaville
Concord
Constantine
Copemish
Copper City
Corunna
Croswell
Crystal Falls
Custer
Daggett
Dansville
Decatur
Deckerville
Deerfield
De Tour Village
Douglas
Dowagiac
Dryden
Dundee
Durand
Eagle
East Jordan
East Lake
East Tawas
Eaton Rapids
Eau Claire
Ecorse
Edmore
Edwardsburg
Elberta
Elkton
Ells Worth
Elsie
Emmett
Empire
Escanaba
Essexville
Estral Beach
Evart
Farwell
Fennville
Fenton
Ferndale
Fife Lake
Forestville
Fountain
Fowler
Frankfort
Freeport
Free Soil
Fremont
Fruitport
Gaastra
Gagetown
Gaines
Galesburg
Gallen
Garden
Gaylord
Gladstone
Gladwin
Gobles
Grand Haven
Grant
Grass Lake
Grayling
Greenville
Hamtramck
Hancock
Hanover
Harbor Beach
Harbor Springs
Harrietta
Harrison
Harrisville
Hart
Hartford
Hastings
Hazel Park
Hersey
Hesperia
Highland Park
Hillman
Hillsdale
Homer
Honor
Hopkins
Houghton
Howard City
Hubbardston
Hudson
Imlay City
Inkster
Ionia
Iron Mountain
Iron River
Ironwood
Ishpeming
Ithaca
Jonesville
Kaleva
Kalkaska
Kinde
Kingsford
Kingsley
Kingston
Laingsburg
Lake Linden
Lake Odessa
Lakeview
Lakewood Club
Lanse
Lapeer
Laurium
Lawrence
Lawton
Lennon
Le Roy
Lexington
Lincoln
Linden
Litchfield
Ludington
Luna Pier
Luther
Lyons
McBain
McBride
Mackinac Island
Mackinaw City
Mancelona
Manistee
Manistique
Manton
Maple Rapids
Marcellus
Marine City
Marion
Marlette
Marquette
Marshall
Martin
Mattawan
Mayville
Mecosta
Melvin
Memphis
Mendon
Menominee
Merrill
Mesick
Metamora
Middleville
Milan
Millersburg
Millington
Minden City
Monroe
Montague
Montrose
Morenci
Morley
Morrice
Mount Clemens
Mount Morris
Mount Pleasant
Muir
Munising
Nashville
Negaunee
Newaygo
Newberry
New Buffalo
New Era
New Haven
New Lothrop
Niles
North Adams
North Branch
Northport
Norway
Oakley
Oak Park
Olivet
Omer
Onaway
Onekama
Onsted
Ontonagon
Otisville
Otsego
Otter Lake
Ovid
Owendale
Owosso
Parma
Paw Paw
Peck
Pellston
Pentwater
Perrinton
Perry
Petersburg
Petoskey
Pewamo
Pierson
Pigeon
Pinconning
Port Austin
Port Hope
Portland
Port Sanilac
Posen
Powers
Prescott
Quincy
Ravenna
Reading
Reed City
Reese
Richmond
River Rouge
Rogers City
Romeo
Roscommon
Rosebush
Rose City
Rothbury
St. Charles
St. Clair
St. Ignace
St. Joseph
St. Louis
Sandusky
Saranac
Saugatuck
Sault Sainte Marie
Scottville
Sebewaing
Shelby
Shepherd
Sheridan
Sherwood
South Haven
South Range
South Rockwood
Springfield
Springport
Stambaugh
Standish
Stanton
Stanwood
Stephenson
Sterling
Sturgis
Suttons Bay
Tawas City
Tecumseh
Tekonsha
Thompsonville
Three Oaks
Three Rivers
Traverse
Turner
Tustin
Twining
Ubly
Union City
Unionville
Vandalia
Vanderbilt
Vassar
Vernon
Wakefield
Waldron
Walkerville
Watervliet
Wayland
West Branch
Westphalia
White Cloud
Whitehall
White Pigeon
Whittemore
Wolverine
Woodland
Wyandotte
Yale
Ypsilanti
Zeeland
Zilwaukee

Minnesota

Ada
Adrian
Aitkin
Akeley
Albany
Alberta
Aldrich
Alexandria
Alpha
Altura
Alvarado
Amboy
Appleton
Argyle
Arlington
Askov
Audubon
Aurora
Avoca
Backus
Badger
Bagley
Barnum
Barrett
Barry
Battle Lake
Baudette
Beardsley
Bejou
Belgrade
Bellchester
Bellingham
Beltrami
Bemidji
Benson
Bertha
Bethel
Bigelow
Big Falls
Bigfork
Bingham Lake
Bird Island
Biwabik
Blackduck
Blomkest
Bluffton
Bock
Bovey
Bowlus
Boyd
Boy River
Braham
Brainerd
Breckenridge
Brewster

Bricelyn
Brook Park
Brooks
Brookston
Brooten
Browerville
Brownsdale
Browns Valley
Bruno
Buckman
Buffalo Lake
Buhl
Butterfield
Caledonia
Callaway
Calumet
Canby
Canton
Carlton
Cass Lake
Cedar Mills
Chandler
Chisholm
Clara City
Clarissa
Clearbrook
Clear Lake
Clements
Climax
Clinton
Clitherall
Clontarf
Cloquet
Cobden
Coleraine
Comfrey
Conger
Cook
Correll
Cosmos
Cromwell
Crookston
Crosby
Currie
Cyrus
Dalton
Danube
Danvers
Darwin
Deer Creek
Deer River
Deerwood
De Graff
Delavan
Delhi
Denham
Dennison
Dent
Detroit Lakes
Donaldson
Dumont
Dundee
Dunnell
Eagle Bend
East Grand Forks
Echo
Eden Valley
Edgerton
Effie
Elbow Lake
Elizabeth
Ellsworth
Elmdale
Elmore
Elrosa
Ely
Emily
Emmons
Erhard
Erskine
Evan
Evansville
Eveleth
Fairfax
Faribault
Farwell
Federal Dam
Felton
Fergus Falls
Fertile
Fifty Lakes
Finlayson
Fisher
Flensburg
Floodwood
Foreston
Fort Ripley
Fosston
Franklin
Frazee
Freeport
Garvin
Gary
Genola
Georgetown
Ghent
Gilbert
Gilman
Glencoe
Glenwood
Glyndon
Gonvick
Goodridge
Good Thunder
Grand Marais
Grand Rapids
Granite Falls
Grasston
Greenbush
Green Isle
Grey Eagle
Grove City
Grygla
Gully
Hackensack
Hadley
Hallock
Halma
Hammond
Hampton
Hancock
Harding
Hardwick
Harmony
Hartland
Hatfield
Hawley
Hazel Run
Hector
Henderson
Hendricks
Hendrum
Henning
Henriette
Herman
Hermantown
Heron Lake
Hewitt
Hibbing
Hill City
Hillman
Hilltop
Hinckley
Hitterdal
Hoffman
Holland
Holloway
Holt
Houston
Humboldt
Ihlen
International Falls
Iron Junction
Ironton
Isle
Ivanhoe
Jackson
Jasper
Jeffers
Jenkins
Johnson
Karlstad
Keewatin
Kelliher
Kellogg
Kennedy
Kenneth
Kensington
Kent
Kenyon
Kerkhoven
Kerrick
Kettle River
Kilkenny
Kimball
Kingston
Kinney
Lake Benton
Lake Brownson
Lake Park
Lake Wilson
Lamberton
Lancaster
Lanesboro
La Porte
La Salle
Lastrup
Lengby
Leonard
Leonidas
Le Roy
Lewisville
Lismore
Litchfield
Little Falls
Littlefork
Long Beach
Longville
Lonsdale
Louisburg
Lowry
Lucan
Luverne
Lyle
Mabel
Madison
Magnolia
Mahnomen
Manhattan Beach
Mankato
Mapleview
Marble
Marietta
Maynard
McGrath
McGregor
McIntosh
McKinley
Meadowlands
Meire Grove
Menahga
Mendota
Mentor
Middle River
Milaca
Milan
Millerville
Millville
Miltona
Minnesota Lake
Mizpah
Montevideo
Montgomery
Moose Lake
Mora
Morris
Morristown
Morton
Motley
Mountain Lake
Murdock
Nashua
Nashwauk
Nassau
Nelson
Nevis
New Auburn
Newfolden
New Germany
New Munich
New Trier
New York Mills
Nimrod
Norcross
Northfield
Northome
Odessa
Ogema
Ogilvie
Oklee
Olivia
Onamia
Orr
Ortonville
Osakis
Oslo
Ottertail
Palisade
Parkers Prairie
Park Rapids
Pease
Pelican Rapids
Pemberton
Pequot Lakes
Perham
Perley
Peterson
Pierz
Pillager
Pine City
Pine River
Pipestone
Plummer
Porter
Princeton
Proctor
Quamba
Randall
Randolph
Ranier
Red Lake Falls
Regal
Remer
Renville
Revere
Richville
Ronneby
Roscoe
Roseau
Rose Creek
Rothsay
Royalton
Rushford Village
Ruthton
Rutledge
Sacred Heart
St. Anthony
St. Hilaire
St. Leo
St. Martin
St. Rosa
St. Vincent
Sandstone
Sauk Centre
Seaforth
Sebeka
Sedan
Shafer
Shelly
Shevlin
Slayton
Sobieski
Springfield
Spring Grove
Spring Hill
Spring Valley
Squaw Lake
Staples
Starbuck
Steen
Stephen
Stewart
Storden
Strandquist
Strathcona
Sturgeon Lake
Sunburg
Swanville
Taconite
Tamarack
Taopi
Taunton
Tenney
Tenstrike
Thief River Falls
Thomson
Tower
Tracy
Trail
Trommald
Turtle River
Twin Lakes
Twin Valley
Two Harbors
Tyler
Ulen
Underwood
Upsala
Urbank
Vergas
Verndale
Vernon Center
Vesta
Villard
Vining
Virginia
Wabasha
Wabasso
Wadena
Wahkon
Waldorf
Walker
Walnut Grove
Walters
Waltham
Wanda
Warba
Warren
Watkins
Watson
Waubun
Waverly
Wells
Westbrook
Westport
West Union
Whalan
Wheaton
Williams
Willow River
Wilmont
Winger
Winnebago
Winona
Winthrop
Winton
Wolf Lake
Wood Lake
Wright
Wykoff
Zemple

Mississippi

Aberdeen
Ackerman
Alligator
Amory
Anguilla
Arcola
Artesia
Ashland
Baldwyn
Bassfield
Batesville
Bay St Louis
Bay Springs
Beaumont
Beauregard
Belzoni
Benoit
Bentonia
Beulah
Big Creek
Blue Mountain
Blue Springs
Bolton
Bonneville
Boyle
Braxton
Brookhaven
Brooksville
Bruce
Bude
Burnsville
Byhalia
Calhoun City
Canton
Carrollton
Carthage
Cary
Centreville
Charleston
Chunky
Clarksdale
Cleveland
Coahoma
Coffeeville
Coldwater
Collins
Columbia
Columbus
Como
Corinth
Courtland
Crawford
Crenshaw
Crosby
Crowder
Cruder
Crystal Springs
Decatur
DeKalb
Derma
D'Lo
Doddsville
Drew
Duck Hill
Dumas
Duncan
Durant
Eden
Edwards
Ellisville
Enterprise
Ethel
Eupora
Falcon
Falkner
Fayette
Flora
Forest
French Camp
Friars Point
Fulton
Gattman
Georgetown
Glendora
Gloster
Golden
Goodman
Greenville
Greenwood
Grenada
Gunnison
Guntown
Hatley
Hattiesburg

Hazlehurst
Heidelberg
Hickory
Hickory Flat
Hollandale
Holly Springs
Houston
Indianola
Inverness
Isola
Itta Bena
Iuka
Jonestown
Jumpertown
Kilmichael
Kosciusko
Kossuth
Lake
Lambert
Laurel
Leakesville
Leland
Lena
Lexington
Liberty
Louin
Louise
Louisville
Lucedale
Lula
Lumberton
Lyon
Maben
McComb
McCool
McLain
Macon
Magnolia
Marks
Mathiston
Mayersville
Meadville
Memphis
Meridian
Merigold
Metcalfe
Mize
Monticello
Montrose
Moorhead
Morgan City
Mound Bayou
Mount Olive
Myrtle
Natchez
Nettleton
New Albany
New Augusta
New Houlka
Newport
Newton
North Carrollton
Noxapater
Oakland
Okolona
Osyka
Oxford
Pace
Pachuta
Paden
Pass Christian
Philadelphia
Picayune
Pickens
Pittsboro
Polkville
Pope
Poplarville
Port Gibson
Potts Camp
Prentiss
Puckett
Quitman
Raleigh
Renova
Richton
Rienzi
Ripley
Rolling Fork
Rosedale
Roxie
Ruleville
Sallis
Sardis
Satartia
Schlater
Scooba
Seminary
Senatobia
Shannon
Shaw
Shelby
Sherman
Shubuta
Shuqualak
Sidon
Silver City
Silver Creek
Slate Spring
Sledge
Soso
Starkville
State Line
Stonewall
Sturgis
Summit
Sumner
Sunflower
Sylarena
Taylorsville
Tchula
Terry
Tillatoba
Tishomingo
Toccopola
Tremont
Tunica
Tupelo
Tutwiler
Tylertown
Union
Utica
Vaiden
Vardaman
Vicksburg
Walnut
Walnut Grove
Water Valley
Waynesboro
Webb
Weir
Wesson
West
West Point
Wiggins
Winona
Winstonville
Woodland
Woodville
Yazoo City

Missouri

Adrian
Albany
Aldrich
Alexandria
Allendale
Altamont
Alton
Amazonia
Amity
Amoret
Amsterdam
Anderson
Annada
Annapolis
Anniston
Appleton City
Arbyrd
Arcadia
Arcola
Aragyle
Armstrong
Arrow Rock
Asbury
Ash Grove
Atlanta
Augusta
Aurora
Ava
Aville
Bangnell
Bakersfield
Baldwin Park
Baring
Barnard
Barnett
Bates City
Bell City
Belle
Bellflower
Benton
Benton City
Berger
Bernie
Bethany
Beverly Hills
Bevier
Bigelow
Billings
Birch Tree
Birmingham
Bismarck
Blackburn
Blackwater
Bland
Blodgett
Bloomfield
Blue Eye
Blythedale
Bogard
Bolokow
Bolivar
Bonne Terre
Boonville
Bosworth
Bourbon
Bowling Green
Bragg City
Brandsville
Braymer
Breckenridge
Brimson
Bronaugh
Brookfield
Brookline
Browning
Browntington
Brumley
Brunswick
Bucklin
Buffalo
Bunceton
Bunker
Burgess
Burlington Junction
Butler
Cabool
Cainsville
Caledonia
Calhoun
California
Callao
Camden
Campbell
Canalou
Canton
Cape Girardeau
Cardwell
Carrollton
Carterville
Carthage
Caruthersville
Carytown
Cassville
Catron
Cedar
Center
Centertown
Centerview
Centerville
Centralia
Chaffee
Chamois
Charlack
Charleston
Chilhowee
Chillicothe
Clarence
Clark
Clarksburg
Clarksdale
Clarksville
Clarkton
Clever
Climax Springs
Clinton
Clyde
Cobalt City
Coffey
Cole Camp
Collins
Commerce
Conway
Cooter
Corder
Corning
Cosby
Cowgill
Craig
Crane
Creighton
Crocker
Cross Timbers
Cuba
Curryville
Dalton
Darlington
Deepwater
Deerfield
Delta
Dennis Acres
Denver
Des Arc
Desloge
De Soto
De Witt
Dexter
Diamond
Diehlstadt
Diggins
Dixon
Doniphan
Downing
Dudley
Eagleville
East Lynne
East Prairie
Edgar Springs
Edina
Eldon
El Dorado Springs
Ellington
Ellsinore
Elmer
Elmo
Elsberry
Elvins
Eminence
Eolia
Essex
Esther
Ethel
Eugene
Everton
Ewing
Excelsior Springs
Exeter
Fairfax
Fair Grove
Fair Play
Fairview
Farber
Farmington
Fayette
Fillmore
Fisk
Flat River
Fleming
Flemington
Flordell Hills
Foley
Fordland
Foster
Frankford
Franklin
Fredericktown
Freeburg
Freistatt
Fulton
Gainesville
Galena
Gallatin
Galt
Garden City
Gasconade
Gentry
Gerald
Gerster
Gibbs
Gideon
Gilliam
Gilman City
Glasgow
Glenallen
Glenwood
Golden City
Goodman
Graham
Granby
Grandin
Grand Pass
Granger
Grant City
Greencastle
Green City
Greenfield
Green Ridge
Greentop
Greenville
Guilford
Hale
Halfway
Hamilton
Hannibal
Hardin
Harris
Hartsburg
Hartville
Hayti
Hayti Heights
Hayward
Haywood City
Henrietta
Higbee
Hillsdale
Hoberg
Holcomb
Holden
Holland
Holliday
Hollister
Holt
Homestown
Hopkins
Hornersville
Houston
Houstonia
Howardville
Humansville
Hume
Humphreys
Hunnewell
Huntsville
Hurdland
Hurley
Ibepia
Ionia
Irondale
Iron Gates
Iron Mountain Lake
Ironton
Jacksonville
Jameson
Jamesport
Jamestown
Jerico Springs
Jonesburg
Junction City
Kahoka
Kelso
Kennett
Keytesville
King City
Kingston
Kinloch
Kirksville
Knox Noster
Knob City
Koshkonong
La Belle
Laclede
Laddonia
La Due
La Grange
Lake Annetta
Lakeview
Lamar
La Monte
Lanagan
Lancaster
La Plata
Laredo
La Russell
Latour
Leadington
Leadwood
Leasburg
Lebanon
Leeton
Leonard
Leslie
Lewistown
Lexington
Liberal
Licking
Lilbourn
Lincoln
Linn
Linn Creek
Linneus
Lithium
Livonia
Lock Spring
Lockwood
Longtown
Louisburg
Louisiana
Lowry City
Lucerne
Ludlow
Lupus
Luray
Lutesville
McFall
Macks Creek
Madison
Malden
Malta Bend
Mansfield
Maplewood
Marbel Hill
Marceline
Marionville
Marquand
Marston
Maryville
Matthews

Maysville
Mayview
Meadville
Memphis
Mendon
Mercer
Meta
Metz
Mexico
Miami
Middletown
Midway
Milan
Millard
Miller
Mill Spring
Milo
Mindenmines
Miner
Mineral Point
Missouri City
Moberly
Monett
Montgomery City
Monticello
Montrose
Morehouse
Morley
Morrison
Mosby
Moscow Mills
Mound City
Moundville
Mountain Grove
Mountain View
Mount Leonard
Mount Moriah
Mount Vernon
Naylor
Neck City
Neelyville
Nelson
Neosho
Nevada
Newark
Newburg
New Cambria
New Florence
New Hampton
New Madrid
New Melle
Newtonia
Newtown
Niangua
Noel
Norborne
Normandy
North Lilbourn
Northmoor
North Wardell
Norwood
Novelty
Novinger
Oakland Park
Oak Ridge
Olean
Oran
Oronogo
Osborn
Osceola
Osgood
Owensville
Pagedale
Paris
Parma
Parnell
Pascola
Pattonsburg
Paynesville
Penermon
Perry
Perryville
Phillipsburg
Pickering
Piedmont
Pierce City
Pilot Knob
Pine Lawn
Pineville
Pleasant Hill
Pocahontas
Pollock
Poplar Bluff
Portageville
Potosi
Powersville
Prairie Home
Prathersville
Preston
Princeton
Purcell
Purdin
Purdy
Puxico
Queen City
Quitman
Qulin
Raymondville
Rea
Reeds
Reeds Spring
Renick
Revere
Richards
Rich Hill
Richland
Ridgeway
Risco
Ritchey
Rivermines
Riverview
Rocheport
Rockaway Beach
Rock Port
Rockville
Rogersville
Rolla
Roscoe
Rosendale
Rush Hill
Rushville
Russellville
Rutledge
St Clair
St Cloud
Ste Genevieve
St Elizabeth
St James
St John
St Mary's
Salem
Salisbury
Sarcoxie
Schell City
Scott City
Sedalia
Sedgewickville
Seligman
Senath
Seneca
Seymour
Shelbina
Shelbyville
Sheldon
Sheridan
Sikeston
Silex
Skidmore
Slater
South Gifford
South Gorin
South Greenfield
South Lineville
South West City
Sparta
Spickardsville
Stanberry
Stark City
Steele
Steelville
Stella
Stewartsville
Stockton
Stotesbury
Stotts City
Stoutland
Stoutsville
Stover
Strasburg
Sugar Creek
Sullivan
Summersville
Sumner
Sunrise Beach
Sweet Springs
Syracuse
Tallapoosa
Taneyville
Tarkio
Thayer
Theodosia
Tipton
Trenton
Triplett
Truesdail
Tuscumbia
Union Star
Unionville
Unity Village
University City
Uplands Park
Urbana
Valley Park
Van Buren
Vandalia
Vanduser
Velda Village
Verona
Versailles
Vienna
Vista
Waco
Wakenda
Walker
Walnut Grove
Wardell
Warrensburg
Warsaw
Washburn
Watson
Waverly
Wayland
Waynesville
Weaubleau
Webb City
Wellston
Wellsville
Westphalia
West Plains
Wheatland
Wheaton
Whiteside
Williamsville
Willow Springs
Wilson City
Windsor
Winfield
Winona
Worth
Worthington
Wyaconda
Wyatt
Zalma

Montana

Alberton
Anaconda-Deer Lodge
Big Sandy
Boulder
Bozeman
Bridger
Broadus
Broadview
Brockton
Browning
Butte-Silver Bow
Cascade
Chester
Chinook
Choteau
Circle
Clyde Park
Columbus
Cut Bank
Darby
Deer Lodge
Denton
Dillon
Drummond
Dutton
Ekalaka
Eureka
Flaxville
Forsyth
Fort Benton
Fromberg
Geraldine
Grass Range
Hamilton
Hardin
Harlem
Harlowton
Hingham
Hobson
Hot Springs
Ismay
Joliet
Jordan
Kevin
Lewistown
Libby
Lima
Livingston
Lodge Grass
Melstone
Missoula
Neihart
Outlook
Philipsburg
Pinesdale
Plains
Plentywood
Plevna
Polson
Poplar
Red Lodge
Rexford
Richey
Ronan
Ryegate
Saco
St Ignatius
Scobey
Shelby
Sheridan
Stevensville
Sunburst
Superior
Terry
Thompson Falls
Three Forks
Troy
Twin Bridges
Walkerville
Westby
Whitehall
White Sulphur Sprgs
Wibaux
Winifred
Winnett
Wolf Point

Nebraska

Abie
Adams
Ainsworth
Albion
Alexandria
Allen
Alma
Alvo
Ansley
Arapahoe
Arcadia
Arnold
Arthur
Ashland
Ashton
Atlanta
Auburn
Ayr
Bancroft
Barada
Barneston
Bayard
Beaver City
Beaver Crossing
Belden
Belgrade
Belvidere
Benkelman
Bennington
Berwyn
Bladen
Bloomfield
Bloomington
Blue Hill
Blue Springs
Boys Town
Brady
Brainard
Brewster
Bristow
Broadwater
Brock
Brownville
Bruning
Brunswick
Burchard
Burr
Burwell
Bushnell
Butte
Callaway
Campbell
Carleton
Carroll
Cedar Bluffs
Cedar Rapids
Chadron
Chambers
Chappell
Chester
Clarks
Clarkson
Clearwater
Cody
Coleridge
Comstock
Concord
Cowles
Crawford
Creighton
Crookston
Culbertson
Curtis
Dannebrog
Davenport
David City
Dawson
Decatur
Deweese
Diller
Dixon
Du Bois
Dunbar
Dunning
Dwight
Eddyville
Edgar
Edison
Elgin
Elk Creek
Emerson
Ericson
Ewing
Fairbury
Fairmont
Falls City
Farnam
Farwell
Firth
Fordyce
Foster
Fremont
Fullerton
Gandy
Garland
Geneva
Genoa
Gilead
Gordon
Grafton
Grant
Greeley Center
Gresham
Guide Rock
Hadar
Haigler
Hardy
Harrison
Harvard
Hastings
Hayes Center
Hay Springs
Hazard
Heartwell
Hendley
Herman
Hershey
Holbrook
Holstein
Hooper
Hoskins
Howells
Hubbard
Hubbell
Humboldt
Humphrey
Huntley
Hyannis
Imperial
Indianola
Inman
Ithaca
Jackson
Johnson
Johnstown
Julian
Kimball
Laurel
Lawrence
Lebanon
Leigh
Lewellen
Liberty
Linwood
Litchfield
Long Pine
Lorton
Louisville
Loup City
Lushton
Lyman
Lynch
Lyons
McLean
Madrid
Magnet

Malmo
Manley
Martinsburg
Maskell
Mason City
Maxwell
Mead
Memphis
Merriman
Milford
Miller
Milligan
Minatare
Mitchell
Mullen
Murdock
Naponee
Nebraska City
Nehawka
Nelson
Nemaha
Newcastle
Newman Grove
Nora
Norman
North Bend
North Loup
Oak
Oakdale
Oakland
Oconto
Odell
Ohiowa
Ong
Orchard
Orleans
Osceola
Oshkosh
Osmond
Oxford
Page
Palisade
Palmer
Palmyra
Pawnee City
Paxton
Pender
Peru
Petersburg
Pilger
Plainview
Platte Center
Polk
Potter
Prague
Primrose
Prosser
Ragan
Randolph
Ravenna
Red Cloud
Republican City
Reynolds
Richland
Riverton
Rockville
Rosalie
Royal
Rulo
Rushville
St Edward
St Helena
St Paul
Salem
Santee
Sargent
Scotia
Scotts Bluff
Scribner
Seneca
Shelby
Sholes
Silver Creek
Snyder
South Bend
Spalding
Spencer
Stamford
Staplehurst
Stapleton
Steinauer
Stella
Sterling
Stockham
Stockville
Strang
Stratton
Stuart
Superior
Surprise
Sutton
Table Rock
Tarnov
Taylor
Tecumseh
Tekamah
Terrytown
Thayer
Thurstcn
Tilden
Trenton
Uehling
Ulysses
Upland
Venango
Verdel
Verdigre
Verdon
Waco
Wakefield
Walthill
Waterbury
Wauneta
Wausa
Wayne
Weeping Water
Western
Weston
Whitney
Wilsonville
Winnebago
Winnetoon
Winside
Wisner
Wolbach
Wood Lake
Wymore
Wynot

Caliente
Ely
Fallon
Mesquite

Nevada

North Las Vegas
Winnemucca
Yerington

Berlin
Claremont

New Hampshire

Concord
Laconia

Beverly
Bradley Beach
Brooklawn

New Jersey

Burlington
Clementon
East Newark
Egg Harbor City
Elmer
Englishtown
Fieldsboro
Freehold
Garfield
Glassboro
Gloucester City
Harrison
Hi-Nella
Island Heights
Keansburg
Kearny
Keyport
Lambertville
Linden
Mount Ephraim
National Park
North Wildwood
Paulsboro
Pemberton
Penns Grove
Phillipsburg
Plainfield
Pleasantville
Runnemede
Salem
Seaside Heights
Shiloh
South Toms River
Swedesboro
Tuckerton
Union Beach
West Cape May
West New York
Westville
West Wildwood
Wildwood
Woodbine
Woodlynne

Alamogordo
Artesia
Aztec
Bayard
Belen
Bernalillo
Bloomfield
Capitan
Carlsbad
Carrizozo
Causey
Central
Chama
Cimarron
Clayton
Columbus
Corona
Deming
Des Moines
Dexter
Eagle Nest
Elida
Encino
Espanola
Estancia
Floyd
Folsom
Fort Sumner
Gallup
Grady
Grants
Grenville
Hagerman
House
Hurley
Lake Arthur
Las Vegas
Logan
Lordsburg
Los Lunas
Loving
Magdalena
Maxwell
Melrose
Mesilla
Milan
Mosquero
Mountainair
Pecos
Portales
Questa
Raton
Reserve
Roy
San Jon
Santa Rosa
San Ysidro
Silver City
Socorro
Springer
Sunlake Park
Taos
Tatum
Tucumcari
Tularosa
Vaughn
Virden
Wagon Mound
Willard

New Mexico

Adams
Addison
Afton
Akron
Albion
Alexander
Alexandria Bay
Alfred
Allegany
Almond
Altmar
Ames
Amsterdam
Andover
Angelica
Angola
Antwerp
Argyle
Athens
Attica
Auburn
Avoca
Bainbridge
Ballston Spa
Barker
Batavia
Bath
Beacon
Belmont
Bloomingburgh
Bloomingdale
Bolivar
Boonville
Broadalbin
Brockport
Brownville
Brushton
Burdett
Burke
Camden
Camillus
Canajoharie
Canaseraga
Canastota
Canisteo
Canion
Cape Vincent
Carthage
Cassadaga
Castile
Castleton-on-Hudson
Castorland
Catskill
Cattaraugus
Celoron
Champlain
Chateaugay
Chatham
Chaumont
Cherry Creek
Cherry Valley
Clayton
Clayville
Cleveland
Clyde
Cobleskill
Cohoes
Cold Brook
Constableville
Copenhagen
Corinth
Corning
Cortland
Coxsackie
Croghan
Dansville
Deferiet
Delanson
Delevan
Delhi
Deposit
Dering Harbor
De Ruyter
Dexter
Dolgeville
Dresden
Dryden
Dundee
Dunkirk
Earlville
East Randolph
Edwards
Ellenville
Ellicottville
Ellisburg
Elmira Heights
Evans Mills
Falconer
Farnham
Fillmore
Fleischmanns
Fonda
Forestville
Fort Ann
Fort Edward
Fort Johnson
Fort Plain
Frankfort
Franklin
Franklinville
Fredonia
Freeport
Freeville
Fulton
Fultonville
Galway
Geneseo
Geneva
Glen Park
Gloversville
Gouverneur
Gowanda
Granville
Greene
Green Island
Greenport
Greenwich
Hagaman
Hamilton
Hammond
Hancock
Hannibal
Harriman
Harrisville
Haverstraw
Hempstead
Herkimer
Hermon
Herrings
Heuvelton
Hobart
Holley
Homer
Hoosick Falls
Hornell
Hudson
Hudson Falls
Hunter
Ilion
Interlaken
Island Park
Ithaca
Jamestown
Jeffersonville
Johnson City
Johnstown
Jordan
Keeseville
Kingston
Kiryas Joel
Lackawanna
Lacona
Lake George
Lake Placid
Laurens
Le Roy
Liberty
Limestone
Lisle
Little Falls
Little Valley
Lockport
Lodi
Long Beach
Lowville
Lyndonville
Lyons
Lyons Falls
McGraw
Malone
Mannsville
Marathon
Margaretville
Massena
Mayfield
Medina
Meridian
Middleburgh
Middleport
Middleville
Millerton
Millport
Mohawk
Monticello
Mooers
Moravia
Morristown
Morrisville
Mount Morris
Munnsville
Nassau
Nelliston
Newark
New Berlin
New Paltz
Newport
New Square
North Collins
North Tonawanda
Northville
Norwich
Norwood
Nunda
Oakfield
Ogdensburg
Olean
Oneida
Oneonta
Oriskany
Oriskany Falls

Oswego
Ovid
Owego
Oxford
Parish
Patchogue
Peekskill
Penn Yan
Perry
Perrysburg
Philadelphia
Philmont
Phoenix
Pike
Pine Hill
Plattsburgh
Poland
Port Byron
Port Henry
Port Jervis
Port Leyden
Portville
Potsdam
Pulaski
Randolph
Red Creek
Rensselaer
Rensselaer Falls
Richfield Springs
Richmondville
Richville
Riverside
Round Lake
Rushville
Sackets Harbor
St. Johnsville
Salamanca
Salem
Sandy Creek
Saranac Lake
Schenevus
Schoharie
Schuylerville
Seneca Falls
Sharon Springs
Sherburne
Sherman
Sidney
Silver Creek
Silver Springs
Sloan
Smyrna
Sodus
South Dayton
South Glens Falls
Speculator
Spencer
Springville
Stamford
Sylvan Beach
Tannersville
Theresa
Ticonderoga
Tivoli
Tupper Lake
Turin
Union Springs
Unionville
Valley Falls
Van Etten
Victory
Waddington
Walden
Walton
Warsaw
Waterford
Waterloo
Watertown
Waterville
Watervliet
Watkins Glen
Waverly
Wayland
Weedsport
Wellsburg
Wellsville
West Carthage
Westfield
Westport
West Winfield
Whitehall
Whitesboro
Wilson
Wolcott
Woodhull
Yorkville

North Carolina

Ahoskie
Alamance
Albemarle
Alexander Mills
Alliance
Andrews
Angier
Ansonville
Arapahoe
Askewville
Atkinson
Aulander
Aurora
Ayden
Bailey
Bakersville
Banner Elk
Bath
Battleboro
Beargrass
Beaufort
Belhaven
Belmont
Belwood
Benson
Bessemer City
Bethel
Beulaville
Biscoe
Bladenboro
Bolivia
Bolton
Boone
Brevard
Bridgeton
Brookford
Brunswick
Bryson City
Bunn
Burgaw
Burnsville
Calabash
Calypso
Cameron
Carrboro
Casar
Castalia
Cerro Gordo
Chadbourn
Chocowinity
Clarkton
Clayton
Cleveland
Clinton
Clyde
Coats
Cofield
Colerain
Columbia
Como
Conetoe
Conway
Cove City
Cramerton
Creswell
Dallas
Davidson
Denton
Dillsboro
Dobbins Heights
Dortches
Dover
Dublin
Dunn
East Arcadia
East Laurinburg
East Spencer
Eden
Edenton
Elizabeth City
Elizabethtown
Elk Park
Ellerbe
Elm City
Enfield
Erwin
Eureka
Fair Bluff
Fairmont
Falcon
Falkland
Farmville
Fountain
Four Oaks
Franklinton
Fremont
Fuquay-Varina
Garland
Garysburg
Gaston
Gatesville
Gibson
Glen Alpine
Goldsboro
Granite Falls
Greenevers
Greenville
Grifton
Grimesland
Halifax
Hamilton
Hamlet
Harrells
Hassell
Haw River
Hayesville
Hazelwood
Henderson
Hendersonville
Hertford
Hildebran
Hillsborough
Hobgood
Hoffman
Holly Ridge
Holly Springs
Hookerton
Hot Springs
Jackson
Jamesville
Jonesville
Kelford
Kenly
Kinston
Kittrell
Lansing
Lasker
Lattimore
Laurinburg
Lawndale
Leggett
Lenoir
Lewiston
Lexington
Liberty
Lilesville
Lillington
Lincolnton
Linden
Littleton
Louisburg
Love Valley
Lowell
Lumber Bridge
Lumberton
McAdenville
Macclesfield
McDonald
McFarlan
Macon
Magnolia
Marion
Marshall
Marshville
Maxton
Mayodan
Maysville
Mebane
Micro
Middleburg
Middlesex
Milton
Monroe
Mooresboro
Mooresville
Morehead City
Morganton
Morven
Mount Airy
Mount Gilead
Mount Holly
Mount Olive
Murfreesboro
Murphy
Nashville
Navassa
New Bern
Newland
New London
Norlina
Norman
North Wilkesboro
Norwood
Oak City
Old Fort
Orrum
Oxford
Pantego
Parkton
Parmele
Peachland
Pembroke
Pilot Mountain
Pine Level
Pine Tops
Pink Hill
Plymouth
Polkton
Pollocksville
Powellsville
Princeton
Princeville
Proctorville
Ramseur
Randleman
Ranlo
Raynham
Red Oak
Red Springs
Reidsville
Rennert
Rhodhiss
Richlands
Rich Square
Roanoke Rapids
Robbins
Robbinsville
Robersonville
Rocky Mount
Ronda
Roper
Roseboro
Rosman
Rowland
Roxboro
Roxobel
St. Pauls
Saluda
Saratoga
Scotland Neck
Seaboard
Seagrove
Seven Springs
Severn
Shallotte
Shelby
Siler City
Simpson
Smithfield
Snow Hill
Southport
Speed
Spindale
Spring Hope
Spring Lake
Staley
Stantonsburg
Star
Statesville
Stedman
Stoneville
Stonewall
Sunset Beach
Sylva
Tabor City
Tar Heel
Taylorsville
Thomasville
Trenton
Troy
Tryon
Turkey
Valdese
Vanceboro
Vandemere
Vass
Wade
Wadesboro
Wagram
Wake Forest
Wallace
Walnut Cove
Walstonburg
Warrenton
Warsaw
Washington
Waynesville
Weldon
West Jefferson
Whitakers
Whiteville
Williamston
Wilson
Windsor
Winfall
Winton
Woodland
Youngsville
Zebulon

North Dakota

Abercrombie
Adams
Alamo
Alexander
Alice
Almont
Ambrose
Amenia
Amidon
Anamoose
Aneta
Arnegard
Ashley
Balfour
Balta
Bantry
Barton
Bathgate
Belfield City
Benedict
Bergen
Berlin
Berwick
Bowdon
Braddock
Brinsmade
Bucyrus
Butte
Buxton
Calio
Carson
Cathay
Cayuga
Clifford
Cogswell
Columbus
Courtenay
Crystal
Dawson
Dazey
Deering
Dickey City
Donnybrook
Douglas
Drake
Dunseith
Edinburg
Edmore
Elgin
Ellendale
Elliott
Esmond
Fairdale
Flasher
Flaxton
Forbes
Fordville
Forest River
Fort Ransom
Fortuna
Fort Yates
Fredonia
Fullerton
Gardena
Garrison
Golva
Goodrich
Grace City
Grafton
Granville
Great Bend
Grenora
Hague
Hamberg
Hankinson
Hannah
Hansboro
Harvey
Hatton
Havana
Hazelton
Hebron
Hoople
Hope
Hunter
Hurdsfield
Inkster
Jud
Karlsruhe
Kathryn
Kenmare
Kensal
Kief
Knox
Kramer
Lakota
Landa
Larimore
Lawton
Leal
Lehr
Leith
Leonard
Lidgerwood
Lignite
Linton

McClusky
McVille
Maddock
Makoti
Mantador
Manvel
Marmarth
Martin
Max
Maxbass
Medina
Merricourt
Milton
Minnewaukan
Minto
Monango
Mott
Mountain
Mylo
Napoleon
Neche
New England
New Leipzig
New Rockford
New Town
Nome
Noonan
Oakes
Oberon
Palermo
Parshall
Pekin
Perth
Petersburg
Pettibone
Pingree
Pisek
Plaza
Powers Lake
Reeder
Regan
Robinson
Rolla
Ross
Ryder
St. John
Sanborn
Sarles
Selfridge
Sheldon
Sheyeene
Solen
Souris
Starkweather
Steele
Strasburg
Streeter
Sykeston
Tappen
Taylor City
Tolley
Towner
Turtle Lake
Tuttle
Upham
Velva
Verona
Voltaire
Walhalla
White Earth
Willow City
Wilton
Wimbledon
Wing
Wishek
York
Zeeland

Ohio

Ada
Adamsville
Addyston
Adelphi
Adena
Albany
Alexandria
Alger
Alliance
Alvordton
Amanda
Amelia
Amesville
Amsterdam
Andover
Anna
Ansonia
Antioch
Antwerp
Apple Creek
Arcadia
Arcanum
Arlington Heights
Ashland
Ashtabula
Ashville
Athalia
Athens
Attica
Bainbridge
Bairdstown
Baltic
Baltimore
Barnesville
Barnhill
Batavia
Batesville
Beach City
Beallsville
Beaver
Beaverdam
Bellaire
Belle Center
Bellefontaine
Belle Valley
Bellevue
Bellville
Belmont
Belmore
Belpre
Bergholz
Bethel
Bethesda
Bettsville
Beverly
Blakeslee
Blanchester
Bloomdale
Bloomingburg
Bloomingdale
Bloomville
Bolivar
Bowerston
Bowersville
Bradford
Bradner
Brady Lake
Bremen
Brice
Bridgeport
Brilliant
Brookside
Brookville
Broughton
Bryan
Buchtel
Buckeye
Buckland
Bucyrus
Burbank
Burgoon
Butler
Byesville
Cadiz
Caldwell
Caledonia
Cambridge
Camden
Campbell
Cardington
Carey
Carroll
Carrollton
Casstown
Castine
Catawba
Cecil
Cedarville
Celina
Centerburg
Centerville
Chatfield
Chauncey
Cherry Fork
Chesapeake
Cheshire
Chesterhill
Chesterville
Chillicothe
Chilo
Christiansburg
Circleville
Clarington
Clarksburg
Clarksville
Clay Center
Clifton
Clinton
Cloverdale
Clyde
Coal Grove
Coalton
Columbiana
Columbus Grove
Commercial Point
Conesville
Congress
Conneaut
Continental
Coolville
Corning
Corwin
Coshocton
Covington
Craig Beach
Crestline
Creston
Crooksville
Crown City
Cumberland
Custar
Danville
Darbyville
Deersville
Defiance
De Graff
Dellroy
Delphos
Delta
Dennison
Deshler
Dexter City
Dillonvale
Donnelsville
Dover
Dresden
Dunkirk
Dupont
East Cleveland
East Liverpool
East Palestine
Edgerton
Edison
Edon
Elgin
Elmwood Place
Empire
Fairport Harbor
Fairview
Fayette
Fayetteville
Felicity
Findlay
Fletcher
Florida
Flushing
Forest
Fort Jennings
Fort Loramie
Fort Recovery
Fostoria
Frankfort
Franklin
Frazeysburg
Fredericksburg
Fredericktown
Freeport
Fremont
Fulton
Fultonham
Galion
Gallipolis
Gann
Garfield Heights
Geneva
Geneva-on-the-Lake
Genoa
Georgetown
Gettysburg
Gibsonburg
Gilboa
Girard
Glandorf
Glenford
Glenmont
Glouster
Gordeon
Grand Rapids
Granville
Gratiot
Graysville
Green Camp
Greenfield
Greenville
Greenwich
Grover Hill
Hamden
Hamersville
Hamler
Hanging Rock
Hanoverton
Harbor View
Harpster
Harrisburg
Harrisville
Harrod
Hartford
Harveysburg
Haskins
Haviland
Helena
Hemlock
Higginsport
Highland
Hillsboro
Hiram
Holgate
Holland
Hollansburg
Holloway
Hopedale
Hoytville
Hubbard
Huntsville
Irondale
Ironton
Ithaca
Jackson
Jacksonburg
Jackson Center
Jamestown
Jefferson
Jeffersonville
Jerry City
Jewett
Junction City
Kelleys Island
Kenton
Kettlersville
Kimbolton
Kingston
Kipton
Kirby
Kirkersville
LaGrange
Lakemore
Lakeview
La Rue
Latty
Laurelville
Lawrenceville
Leesburg
Leesville
Leetonia
Leipsic
Lewisburg
Lewisville
Liberty Center
Lincoln Heights
Linndale
Lisbon
Lockbourne
Lockington
Lockland
Logan
Lore City
Lowell
Lowellville
Lower Salem
Lucas
Ludlow Falls
Lynchburg
Lyons
McArthur
McClure
McConnelsville
McGuffey
Macksburg
Magnetic Springs
Magnolia
Malinta
Malta
Malvern
Manchester
Mantua
Marengo
Marion
Marseilles
Martinsburg
Martins Ferry
Martinsville
Matamora
Mechanicsburg
Melrose
Mendon
Metamora
Middleport
Midland
Midvale
Mifflin
Milford
Milledgeville
Miller City
Millersburg
Millersport
Milton Center
Miltonsburg
Mineral City
Minerva
Mingo Junction
Monroeville
Montezuma
Montpelier
Morral
Morristown
Morrow
Mount Blanchard
Mount Cory
Mount Gilead
Mount Orab
Mount Pleasant
Mount Vernon
Mount Victory
Mowrystown
Murray City
Nashville
Navarre
Nellie
Nelsonville
Nevada
Neville
New Alexandria
New Athens
New Bavaria
New Bloomington
New Boston
Newburgh Heights
Newcomerstown
New Concord
New Holland
New Lexington
New London
New Madison
New Miami
New Philadelphia
New Richmond
New Riegel
New Straitsville
Newton Falls
Newtonsville
Newtown
New Vienna
New Washington
New Waterford
New Weston
Niles
North Bend
North Perry
North Robinson
North Star
Norwalk
Norwich
Norwood
Oak Harbor
Oak Hill
Oakwood
Oberlin
Octa
Ohio City
Old Washington
Orangeville
Orient
Orrville
Orwell
Ostrander
Ottawa
Ottoville
Otway
Owensville
Oxford
Painesville
Palestine
Patterson
Paulding
Peebles
Perrysville
Philo
Piketon
Pioneer
Piqua
Plain City
Pleasant City
Pleasant Hill
Pleasant Plain
Pleasantville
Plymouth
Poland
Polk
Pomeroy
Portage
Port Clinton
Port Jefferson
Portsmouth
Port Washington
Port William
Potsdam
Powhatan Point
Proctorville

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Prospect
Put-in-Bay
Quaker City
Quincy
Racine
Rarden
Ravenna
Rawson
Rayland
Rendville
Republic
Richmond
Ridgeway
Rio Grande
Ripley
Rising Sun
Rittman
Rochester
Rock Creek
Rockford
Rocky Ridge
Rogers
Rome
Roseville
Rossburg
Roswell
Rushsylvania
Rushville
Russells Point
Russellville
Russia
Rutland
Sabina
St. Bernard
St. Martin
St. Mary's
St. Paris
Salem
Salesville
Salineville
Sandusky
Sarahsville
Sardinia
Savannah
Scio
Scott
Seaman
Sebring
Senecaville
Shadyside
Shawnee
Sheffield
Shelby
Sherrodsville
Shiloh
Sidney
Silverton
Sinking Spring
Smithfield
Somerset
Somerville
South Amherst
South Bloomfield
South Charleston
South Lebanon
South Salem
South Solon
South Webster
South Zanesville
Sparta
Spencerville
Spring Valley
Stafford
Stockport
Stone Creek
Stoutsville
Strasburg
Stratton
Struthers
Sugarcreek
Sugar Grove
Summerfield
Summitville
Sycamore
Syracuse
Tarlton
Tiffin
Tiltonsville
Tiro
Toronto
Tremont City
Trimble
Tuscarawas
Uhrichsville
Union City
Uniopolis
Upper Sandusky
Urbana
Urbancrest
Utica
Valley Hi
Vanlue
Van Wert
Venedocia
Verona
Versailles
Vinton
Wakeman
Wapakoneta
Warsaw
Washington
Wauseon
Waverly
Wayne
Waynesburg
Waynesfield
Wellington
Wellston
Wellsville
West Alexandria
West Elkton
West Farmington
West Lafayette
West Leipsic
West Mansfield
West Millgrove
West Rushville
West Union
West Unity
Wharton
Wilkesville
Willard
Williamsburg
Williamsport
Willshire
Wilmington
Wilmot
Winchester
Windham
Woodlawn
Woodsfield
Xenia
Yellow Springs
Yorkshire
Yorkville
Zaleski
Zanesfield
Zanesville

Oklahoma

Achille
Ada
Adair
Afton
Agra
Albion
Alderson
Alex
Allen
Altus
Anadarko
Antlers
Apache
Arkoma
Armstrong
Asher
Ashland
Atoka
Avant
Avard
Barnsdall
Bearden
Beggs
Bennington
Big Cabin
Billings
Binger
Blackburn
Blackwell
Blair
Blanchard
Bluejacket
Boise City
Bokchito
Bokoshe
Boley
Boswell
Bowlegs
Boynton
Bradley
Braggs
Braman
Bridgeport
Bristow
Broken Bow
Bromide
Brooksville
Bryant
Burbank
Burlington
Butler
Byars
Byron
Caddo
Calvin
Camargo
Cameron
Canadian
Caney
Cardin
Carnegie
Carney
Carrier
Carter
Castle
Cedar Valley
Cement
Centrahoma
Chandler
Checotah
Chelsea
Cherokee
Cheyenne
Chickasha
Clayton
Clearview
Cleo
Cleveland
Coalgate
Collinsville
Comanche
Commerce
Cooperton
Cornish
Council Hill
Coweta
Cowlington
Coyle
Crescent
Cromwell
Crowder
Custer City
Cyril
Dacoma
Davenport
Davidson
Davis
Deer Creek
Delaware
Depew
Devol
Dewar
Dewey
Dill City
Disney
Dougherty
Drumright
Durant
Dustin
Eakly
Earlsboro
East Duke
East Ninnekah
Eldorado
Elk City
Elmer
Elmore City
Erick
Erin Springs
Eufaula
Fairfax
Fairland
Fallis
Fanshawe
Faxon
Fletcher
Fort Cobb
Fort Gibson
Fort Towson
Foss
Foyil
Francis
Frederick
Garber
Garvin
Gate
Geary
Gene Autry
Gerty
Glencoe
Goodwell
Gore
Gotebo
Gould
Gracemont
Grandfield
Granite
Grayson
Guthrie
Haileyville
Hallett
Hammon
Hanna
Hartshorne
Haskell
Hastings
Haworth
Headrick
Healdton
Heavener
Helena
Hendrix
Henryetta
Hinton
Hitchita
Hobart
Hoffman
Holdenville
Hollis
Hollister
Hominy
Howe
Hugo
Hulbert
Hydro
Idabel
Indiahoma
Indianola
Jay
Jennings
Johnson
Kaw
Kemp
Kendrick
Kenefic
Keota
Ketchum
Kinta
Kiowa
Knowles
Konawa
Krebs
Lamar
Lamont
Langley
Langston
Le Flore
Lehigh
Lenapah
Leon
Lexington
Lima
Lindsay
Loco
Locust Grove
Lone Wolf
Longdale
Lookeba
Loveland
Luther
McAlester
McBride
McCurtain
Manchester
Mangum
Manitou
Mannsville
Maramec
Marble City
Marietta
Marland
Marlow
Marshall
Martha
Maud
May
Maysville
Medicine Park
Meeker
Meridian
Miami
Milburn
Mill Creek
Millerton
Minco
Moffett
Morris
Mountain Park
Mountain View
Mulhall
Muskogee
Nash
New Alluwe
Norge
North Miami
Nowata
Oakland
Oaks
Oakwood
Oilton
Okeene
Okemah
Okmulgee
Oktaha
Olustee
Osage
Paden
Panama
Paoli
Pauls Valley
Pawhuska
Pawnee
Pensacola
Peoria
Perry
Phillips
Picher
Pittsburg
Pocola
Pond Creek
Porter
Porum
Poteau
Prague
Pryor Creek
Purcell
Putnam
Quapaw
Quay
Quinlan
Quinton
Ralston
Ramona
Randlett
Rattan
Redbird
Red Oak
Red Rock
Rentiesville
Reydon
Ringling
Ripley
Roff
Roosevelt
Rosedale
Rush Springs
Ryan
St. Louis
Salina
Sapulpa
Sasakwa
Savanna
Sayre
Seiling
Seminole
Sentinel
Shamrock
Sharon
Shidler
Skedee
Slick
Smith Village
Smithville
Snyder
Soper
Sparks
Spavinaw
Spiro
Stidham
Stigler
Stilwell
Stonewall
Strang
Stringtown
Stroud
Stuart
Sugden
Sulphur
Summit
Taft
Tahlequah
Talihina
Tamaha
Tatums
Temple
Terlton
Terral
Texhoma
Texola
Thomas
Tipton
Tishomingo
Tryon
Tullahassee
Tupelo
Tuttle
Valley Brook
Valliant
Vera
Verden
Vian
Vinita
Wagoner
Wainwright
Wakita
Walters
Wanette
Wann

Wapanucka
Wardville
Warner
Warwick
Washington
Watonga
Watts
Waurika
Waynoka
Webb City
Webbers Falls
Welch
Weleetka
Wellston
Westville
Wetumka
Wewoka
Whitefield
Wilburton
Willow
Wilson
Wister
Wright City
Wyandotte
Wynnewood
Yale
Yeager

Oregon

Adams
Adrian
Albany
Amity
Ashland
Astoria
Athena
Baker
Bandon
Banks
Bay City
Bend
Bonanza
Brownsville
Burns
Butte Falls
Cannon Beach
Canyon City
Canyonville
Carlton
Cave Junction
Chiloquin
City of the Dalles
Clatskanie
Coburg
Condon
Coos Bay
Coquille
Cottage Grove
Cove
Creswell
Dallas
Dayville
Depoe Bay
Drain
Dufur
Echo
Elgin
Elkton
Enterprise
Falls City
Florence
Fossil
Garibaldi
Gaston
Gearhart
Gervais
Glendale
Gold Beach
Gold Hill
Granite
Granis Pass
Grass Valley
Haines
Halfway
Halsey
Hammond
Helix
Heppner
Hines
Hood River
Huntington
Idanha
Imbler
Irrigon
Jacksonville
Joseph
Junction City
Klamath Falls
La Grande
Lakeside
Lakeview
Lebanon
Lexington
Lincoln City
Long Creek
Lowell
Madras
Malin
Maupin
Merrill
Metolius
Mill City
Milton Freewater
Mitchell
Monmouth
Monroe
Monument
Mostier
Mount Angel
Mt. Vernon
Myrtle Point
Nehalem
Newport
North Bend
North Powder
Nyssa
Oakland
Oakridge
Ontario
Paisley
Pendleton
Phoenix
Port Orford
Powers
Prairie City
Prescott
Rainier
Redmond
Richland
Riddle
Rockaway
Rogue River
Roseburg
St. Helens
St. Paul
Scio
Scotts Mills
Seaside
Seneca
Shady Cove
Shaniko
Sisters
Sodaville
Stanfield
Sumpter
Sutherlin
Sweet Home
Talent
Tangent
Tillamook
Toledo
Union
Unity
Vale
Veneta
Vernonia
Wallowa
Warrenton
Wasco
Weston
Wheeler
Winston
Yachats
Yoncalla

Pennsylvania

Adamsbury
Addison
Albion
Alexandria
Aliquippa
Allenport
Ambridge
Apollo
Applewold
Archbald
Arnold
Arona
Ashland
Ashley
Ashville
Athens
Atwood
Auburn
Austin
Avis
Avoca
Avondale
Avonmore
Baden
Bangor
Barkeyville
Barnesboro
Beallsville
Bear Lake
Beaver Falls
Beaver Meadows
Bedford
Bellefonte
Belle Vernon
Bellevue
Bellwood
Benson
Bentleyville
Benton
Berlin
Bernville
Berrysburg
Berwick
Bessemer
Big Run
Birmingham
Blain
Blairsville
Blakely
Blawnox
Blooming Valley
Bloomsburg
Blossburg
Bolivar
Boswell
Bowmanstown
Brackenridge
Braddock
Bradford
Briar Creek
Bridgeport
Bridgewater
Brisbin
Bristol
Broad Top City
Brockway
Brookville
Brownstown
Brownsville
Bruin
Burgettstown
Burnham
Burnside
Butler
California
Callensburg
Cambridge Springs
Canonsburg
Canton
Carbondale
Carmichaels
Carnegie
Carrolltown
Cassandra
Casselman
Cassville
Catawissa
Centreville
Centerville
Central City
Centralia
Chalfant
Chambersburg
Charleroi
Cherry Valley
Chester Hill
Chest Springs
Chicora
Clairton
Clarendon
Clarion
Clarks Summit
Clarksville
Claysville
Clearfield
Clifton Heights
Clintonville
Clymer
Coal Center
Coaldale
Coalmont
Coalport
Coatesville
Cochranton
Collingdale
Columbia
Colwyn
Confluence
Conneaut Lake
Conneautville
Connellsville
Connoquenessing
Conshohocken
Conway
Coraopolis
Corry
Corsica
Coudersport
Courtdale
Crafton
Cranesville
Creekside
Cresson
Cressona
Curwensville
Dale
Danville
Darby
Darlington
Dawson
Dayton
Deemston
Delmont
Delta
Derry
Dickson City
Donegal
Donora
Dravosburg
Driftwood
Du Bois
Duboistown
Dudley
Dunbar
Duncansville
Dunmore
Dupont
Duquesne
Duryea
Dushore
East Bangor
East Brady
East Butler
East Conemaugh
East Lansdowne
East McKeesport
East Pittsburgh
East Rochester
East Side
East Stroudsburg
Eastvale
East Vandergerift
East Washington
Eau Claire
Ebensburg
Edinboro
Edwardsville
Ehrenfeld
Elco
Elderton
Eldred
Elgin
Elizabeth
Elizabethville
Elkland
Ellport
Ellwood City
Emlenton
Emporium
Enon Valley
Ernest
Etna
Evans City
Everett
Everson
Exeter
Export
Factoryville
Fairchance
Falls Creek
Fallston
Farrell
Fayette City
Ferndale
Finleyville
Flemington
Ford City
Ford Cliff
Forest City
Forksville
Forty Fort
Foxburg
Frackville
Frankfort Springs
Franklin
Franklintown
Fredonia
Freeburg
Freedom
Freeland
Freemansburg
Freeport
Friendsville
Galeton
Gallitzin
Garrett
Geistown
Georgetown
Gettysburg
Gilberton
Girardville
Glasgow
Glassport
Glen Campbell
Glendon
Glenfield
Glen Hope
Gordon
Grampian
Great Bend
Green Hills
Greensboro
Greensburg
Greenville
Grove City
Hallstead
Hanover
Hartleton
Harveys Lake
Hastings
Hawley
Hawthorne
Haysville
Heidelberg
Herndon
Highspire
Hollidaysburg
Homer City
Homestead
Homewood
Honesdale
Hookstown
Hooversville
Hop Bottom
Hopwell
Houston
Houtzdale
Hughesville
Huntingdon
Hyde Park
Hydetown
Hyndman
Indiana
Ingram
Irvona
Jackson Center
Jamestown
Jeannette
Jeddo
Jefferson
Jennerstown
Jermyn
Jersey Shore
Jessup
Jim Thorpe
Johnsonburg
Juniata Terrace
Kane
Karns City
Kingston
Kistler
Kittanning
Knox
Knoxville
Koppel
Kulpmont
Kutztown
Lake City
Landisburg
Lanesboro
Lansford
Laporte
Larksville
Lawrenceville
Leechburg
Leetsdale
Lehighton
Le Raysville
Lewisberry
Lewisburg
Lewis Run
Lewistown
Liberty
Ligonier
Lilly
Linesville
Littlestown
Liverpool
Lock Haven
Loganton
Lorain
Loretto
Lumber City
Luzerne
Lykens
Lyons
McAdoo
McClure
McConnellsburg
McDonald

BEST COPY AVAILABLE

McEwensville
McKean
Mckees Rocks
McSherrystown
McVeytown
Mahaffey
Mahanoy City
Manheim
Manns Choice
Manor
Mansfield
Mapleton
Marcus Hook
Marianna
Marion Center
Marion Heights
Marklesburg
Markleysburg
Mars
Martinsburg
Masontown
Matamoras
Mayfield
Meadville
Mechanicsville
Mercer
Mercersburg
Meshoppen
Meyersdale
Middleburg
Middleport
Midland
Midway
Mifflin
Mifflintown
Milford
Millbourne
Mill Creek
Millersburg
Millersville
Mill Hall
Millheim
Millvale
Milton
Minersville
Modena
Monaca
Monessen
Monongahela
Monroe
Montgomery
Montoursville
Montrose
Mount Carbon
Mount Carmel
Mount Holly Springs
Mount Jewett
Mount Oliver
Mount Pleasant
Mount Union
Muncy
Munhall
Myerstown
Nanticoke
Nanty Glo
Nescopeck
Nesquehoning
New Albany
New Alexandria
New Baltimore
New Beaver
New Berlin
New Bethlehem
New Brighton
Newburg
New Castle
New Centerville
New Columbus
New Eagle
Newell
New Florence
New Galilee
New Hope
New Kensington
New Lebanon
New Milford
New Paris
New Phila
Newport
New Ringgold
Newry
Newton Hamilton
Newville
New Wilmington
Nicholson
Northampton
North Apollo
North Braddock
North Catasauqua
North Charleroi
North East
North Irwin
Northumberland
North York
Norwood
Nuangola
Oakland
Oakmont
Ohiopyle
Oil City
Oklahoma
Old Forge
Olyphant
Orangeville
Orbisonia
Osceola Mills
Oswayo
Oxford
Paint
Palmerton
Palo Alto
Parker
Parkesburg
Parryville
Patterson Heights
Patton
Penn Argyl
Penbrook
Penn
Perryopolis
Petersburg
Petrolia
Philipsburg
Phoenixville
Picture Rocks
Pillow
Pine Grove
Pitcairn
Pittston
Platea
Pleasantville
Plumville
Plymouth
Point Marion
Polk
Portage
Port Allegany
Port Carbon
Port Clinton
Portersville
Portland
Port Royal
Port Vue
Pottstown
Pottsville
Pringle
Punxsutawney
Railroad
Rainsburg
Ramey
Rankin
Renovo
Reynoldsville
Rices Landing
Ridgway
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Bancroft
Barboursville
Barrackville
Bath
Bayard
Beckley
Beech Bottom
Belington
Benwood
Bethany
Beverly
Blacksville
Bluefield
Bradshaw
Bramwell
Bruceton Mills
Buckhannon
Buffalo
Burnsville
Cairo
Camden-on-Gauley
Cameron
Capon Bridge
Cass
Cedar Grove
Ceredo
Chapmanville
Charles Town
Chesapeake
Chester
Clarksburg
Clay
Clendenin
Cowen
Danville
Davis
Davy
Delbarton
Dunbar
Durbin
East Bank
Eleanor
Elizabeth
Elk Garden
Elkins
Fairmont
Fairview
Falling Springs
Farmington
Fayetteville
Flatwoods
Flemington
Follansbee
Fort Gay
Franklin
Friendly
Gary
Gassaway
Gauley Bridge
Gilbert
Glenville
Grafton
Grantsville
Grant Town
Granville
Hambleton
Hamlin
Handley
Harman
Harrisville
Hartford City
Hedgesville
Henderson
Hendricks
Hillsboro
Hinton
Hundred
Huttonsville
Iaeger
Jane Lew
Junior
Kenova
Kermit
Keyser
Keystone
Kimball
Kingwood
Layopolis
Leon
Lester
Lewisburg
Littleton
Logan
Lost Creek
Lumberport
Mabscott
McMechen
Man
Mannington
Marlinton
Marmet
Martinsburg
Mason
Masontown
Matewan
Matoaka
Meadow Bridge
Middlebourne
Mill Creek
Milton
Monongah
Montgomery
Moorefield
Morgantown
Moundsville
Mount Hope
Mullens
Newburg
New Cumberland
New Haven
New Martinsville
Nitro
Northfork
Nutter Fort
Oak Hill
Oakvale
Oceana
Osage
Paden City
Parsons
Paw Paw
Pax
Pennsboro
Petersburg
Peterstown
Philippi
Piedmont
Pine Grove
Pineville
Point Pleasant
Princeton
Pullman
Rainelle
Ransen
Ravenswood
Reedsville
Reedy
Rhodell
Richwood
Ridgeley
Ripley
Rivesville
Romney
Ronceverte
Rowlesburg
Rupert
St. Marys
Salem
Shepherdstown
Shinnston
Sistersville
Smithers
Smithfield
Sophia
South Charleston
Spencer
Star City
Stonewood
Summersville
Sutton
Terra Alta
Thomas
Thurmond
Triadelphia
Tunnelton
Union
Valley Grove
Vienna
War
Wardensville
Wayne
Welch
Wellsburg
West Hamlin
West Liberty
West Logan
West Milford
Weston
Westover
West Union
White Sulphur Springs
Whitesville
Williamson
Womelsdorff
Worthington

Wisconsin

Abbotsford
Algoma
Alma
Alma Center
Almond
Amery
Amherst Junction
Aniwa
Antigo
Arcadia
Ashland
Augusta
Avoca
Bagley
Balsam Lake
Baraboo
Barneveld
Bayfield
Bear Creek
Beaver Dam
Berlin
Big Falls
Birchwood
Black River Falls
Blair
Blanchardville
Bloomington
Blue River
Bowler
Boyceville
Bruce
Butternut
Cambria
Campbellsport
Camp Douglas
Cascade
Cashton
Catawba
Cazenovia
Centuria
Chippewa Falls
Clayton
Clear Lake
Clintonville
Clyman
Cochrane
Colby
Coleman
Conrath
Cornell
Couderay
Crandon
Crivitz
Curtiss
Dallas
Darlington
Delavan
De Soto
Downing
Doylestown
Durand
Eagle River
Eastman
Egg Harbor
Elderon
Eleva
Elroy
Endeavor
Ettrick
Exeland
Fairchild
Fall River
Fond Du Lac
Fountain City
Frederic
Fremont
Galesville
Gays Mills
Gillett
Gilman
Glenbeulah
Glenwood City
Granton
Gratiot
Greenwood
Hancock
Hatley
Hawkins
Hayward
Hixton
Hurley
Hustler
Indpendence
Ingram
Ironton
Jefferson
Kaukauna
Kennan
Kewaunee
Kingston
Lac La Belle
Ladysmith
La Farge
Lake Delton
La Valle
Lena
Lime Ridge
Loganville
Lohrville
Lowell
Loyal
Lublin
Luck
Lyndon Station
Maiden Rock
Manitowoc
Marinette
Markesan
Marquette
Mason

Mattoon
Mauston
Mellen
Melrose
Menomonie
Merrill
Merrillan
Merrimac
Milladore
Milltown
Mineral Point
Minong
Mondovi
Montello
Montreal
Mount Calvary
Mount Hope
Necedah
Neillsville
Nelson
Nelsonville
Neshkoro
New Auburn
New Lisbon
Niagara
Nichols
North Freedom
Oconto
Oconto Falls
Ogdensburg
Ontario
Osseo
Owen
Oxford
Peshtigo
Pittsville
Platteville
Poplar
Portage
Potosi
Pound
Poynette
Prairie Farm
Prentice
Princeton
Radisson
Readstown
Reedsburg
Rewey
Rhinelander
Rib Lake
Richland Center
Rio
Ripon
River Falls
Rockland
Rock Springs
Rosholt
St Naziaz
Schofield
Sheldon
Shell Lake
Shiocton
Shullsburg
Siren
Soldiers Grove
Solon Springs
South Wayne
Spooner
Stanley
Steuben
Stevens Point
Strum
Sturgeon Bay
Superior
Suring
Taylor
Thorp
Tigerton
Tony
Trempealeau
Turtile Lake
Unity
Viroqua
Walworth
Warrens
Washburn
Wausaukee
Wautoma
Webster
West Baraboo
Westfield
Weyerhaeuser
Wheeler
Whitehall
White Lake
Whitewater
Wilton
Winter
Withee
Wonewoc
Wyocena

Wyoming

Albin
Baggs
Big Piney
Clearmont
Dubois
East Thermopolis
Fort Laramie
Frannie
Hulett
La Grange
Laramie
Meeteetse
Riverside
Rock River
Shoshoni
Thayne
Van Tassel
Yoder

Part III

The following list contains the names of those small cities which meet the current minimum standards of physical and economic distress, but which did not meet the standards as of the October 22, 1985 Notice.

Alabama

Cullman
Reece City
Weston

Alaska

Craig
Houston
Kiana
St Mary's
Shungnak
Yakutat

Arizona

Kearny
Prescott

Arkansas

Ashdown
Cash
Hartman
Huntsville
Knoxville
Sedgwick
Sulphur Rock
Weldon
Wilton

California

Gustine
Maywood
Tehachapi

Colorado

Leadville

Florida

Bell
Eustis
Medley
Parker

Georgia

Bellville
Hagan
Jakin
La Fayette
Nunez
Zebulon

Idaho

Burley
Culdesac
Declo
Eden
Fairfield
Ferdinand
Lewiston
Peck
Pierce

Illinois

Addieville
Albany
Albion
Annawan
Bone Gap
Braceville
Browns
Bryant
Butler
Campbell Hill
Cedar Point
Clifton
Creve Coeur
Deer Creek
Delavan
De Soto
Dieterich
East Peoria
Elmwood
Erie
Evansville
Findlay
Fults
Galva
Hecker
Henry
Hillsdale
Ipava
Mackinaw
Makanda
Mechanicsburg
Milledgeville
Mineral
New Holland
Newton
Nokomis
Nora
North Pekin
Oak Grove
Raymond
Sadorus
St Francisville
Shannon
Sparland
Urbain
Valier
Valmeyer
Vergennes
Viola
Walshville
West Salem
Windsor

Indiana

Attica
Camden
Cedar Grove
Covington
Hagerstown
Ladoga
Lake Station
Oolitic
Rensselaer
Rockville
Sandborn
Silver Lake
Pines
Trafalgar
Westville

Iowa

Alta
Anita
Ayrshire
Barnum
Bayard
Brooklyn
Buffalo
Buffalo Center
Clarence
Colfax
College Springs
Columbus Junction
Coon Rapids
Corning
Decorah
Duncombe
Eagle Grove
Ellsworth
Emmetsburg
Garber
Gladbrook
Gowrie
Grinnell
Gruver
Guttenberg
Hapcourt
Holland
Independence
Jesup
Kingsley
Knoxville
Lake City
Lake Park
Lehigh
Luana
Madrid
Mallard
Mechanicsville
Modale
Monona
Moorland
Morning Sun
Newell
New Hampton
Northwood
Olds
Otho
Paullina
Plainfield
Radcliffe
Rockford
Salem
Sanborn
Searsboro
Silver City
South English
Stanhope
Storm Lake
Tripoli
Vail
Vincent
Webb
Woodbine
Wyoming

Kansas

Arkansas City
Atwood
Bennington
Copeland
Dighton
Ellinwood
Erie
Esbon
Haven
Havensville
Humboldt
Kanopolis
Moline
Oketo
Pawnee Rock
Phillipsburg
St Paul
Sublette
Vermillion

Kentucky

Burkesville
Crittenden
Inez
Lewisport
Washington
Waverly

Louisiana

Benton
Denham Springs
Gretna
Jena
New Iberia
Olla
Pearl River
Port Allen
Springhill
Vidalia
Vinton
Westwego

Maryland

Millington
Pittsville

Michigan

Chatham
Douglas
Dundee
Grass Lake
Milan
Pentwater
Saugatuck
Shepherd
Springfield

Minnesota

Aurora
Caledonia
Clinton
Danube
East Grand Forks
Fisher
Gilbert
Glencoe
Grygla
Halma
Hancock
Kerkhoven
Kinney
Leonidas
Le Roy
Mountain Lake
Olivia
Proctor
Renville
Rothsay
Taconite
Urbank
Winton
Wood Lake

Mississippi

Carthage
Iuka
Meadville
Monticello
Soso

Missouri

Blackburn
Clarksdale
Hollister
Milo
Novelty
Rockaway Beach

Montana

Chester

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Nebraska

Allen
Alvo
Ashland
Cedar Bluffs
Dixon
Fremont
Geneva
Haigler
Hazard
Hooper
Hoskins
Mead
Mitchell
Stella
Taylor
Trenton
Uehling
Weeping Water
Wymore

New Mexico

Logan

New York

Sandy Creek
Seneca Falls

North Carolina

Albemarle
Gatesville
Hookerton

North Dakota

Belfield City
Benedict
Berwick
Garrison
Kenmare
Knox
Maddock
Minnewaukan
Oberon
Voltaire

Ohio

Antioch
Ashville
Bolivar
Commercial Point
Dellroy
Lore City
Magnolia
Newburgh Heights
Niles
North Perry
Ostrander
Poland
Rochester
Sheffield
South Amherst
South Bloomfield

Oklahoma

Alex
Binger
Blanchard
Bluejacket
Cedar Valley
Cheyenne
Chickasha
Cleo
Collinsville
Crescent
Cyril
Dill City
Disney
Eakly
East Ninnekah
Elk City
Fletcher
Fort Cobb
Healdton
Hinton
Johnson
Lindsay
Minco
Pensacola
Perry
Pryor Creek
Reydon
Roosevelt
Tahlequah
Thomas
Tuttle
Warner
Watonga

Oregon

Cold Beach
Heppner
Irrigon
Lexington
Nehalem
Newport
Oakridge
Wasco

Pennsylvania

Allenport
Bolivar
Connoquenessing
Conway
Dravosburg
Ebensburg
Finleyville
Franklin
Friendsville
Geistown
Green Hills
Highspire
Homer City
Homewood
Honesdale
Jefferson
Jennerstown
Karns City
Laporte
McKean
Manheim
Midway
Monaca
Montoursville
Northampton
Penbrook
Perryopolis
Roscoe
South Heights
Southmont
Steelton
Utica
West Mifflin
Whitaker

South Dakota

Central City
Colman
Deadwood
Doland
Edgemont
Estelline
Hecla
Tulare

Tennessee

Dandridge
Normandy
Piperton

Texas

Agua Dulce
Arp
Big Spring
Bryson
Centerville
Clifton
Decatur
Devers
Forsan
Giddings
Hallettsville
Henrietta
Kountze
Mount Vernon
New Home
New London
North Cleveland
Palestine
Roscoe
Somerville
Sour Lake
Sunray
Sweetwater
Three Rivers
Wallis

Utah

Castle Dale
Clawson
Elmo
Emery
Helper
Orangeville
Price

Virginia

Amherst
Bluefield
Boydton
Courtland
Fredericksburg
Lebanon

Washington

Albion
Burlington
Kalama
Longview
Napavine
Pe Ell
Stevenson
Uniontown
Waterville

West Virginia

Mabscott
Oak Hill
Ravenswood
Ripley

Wisconsin

Berlin
Peshtigo
Shullsburg
Sturgeon Bay

Wyoming

Baggs
Dubois
Shoshoni

Part IV

The following list contains the names of those small cities which met the minimum standards of physical and economic distress as of the October 22, 1985 Notice, but which do not meet the current standards. The final date for submission of an application by the cities listed below is May 31, 1988.

Alabama

Alexander City
All Good
Ardmore
Beaverton
Blountsville
Brookside
Calera
Cleveland
Columbiana
Coosada
Decatur
Enterprise
Falkville
Goldville
Grimes
Harpersville
Hartselle
Hayden
Jacksonville
Killen
Kinsey
Lexington
Millbrook
Millport
Monroeville
Morris
Napier Field
Nectar
New Site
Newton
Northport
Ohatchee
Oneonta
Rogersville
Sulligent
Taylor
Valley City
Vernon
Vincent
Warrior
Wilsonville

Alaska

Hoonah
Kasaan
Port Lions

Arizona

Benson
Wellton
Wilcox

Arkansas

Alma
Cale
Kibler
London
Mountainburg
Russellville
Van Buren

California

Adelanto
Banning
Barstow
Blythe
Chino
Coachella
Colfax
Colton
Lake Elsinore
Lincoln
Loma Linda
Perris
Placerville
San Jacinto

Colorado

Cheraw
Fleming
Parachute
Kiowa
Silver Plume
Swink

Connecticut

Ansonia
Bantam
Colchester

Florida

Brooksville
Grand Ridge
Marineland
Minneola
Sneads
Weeki Wachee Springs

Georgia

Bremen
Buchanan
Calhoun
Camak
Edge Hill
Jonesboro
Lovejoy
Pine Mountain
Plainville
Rentz
Resaca
Russell
Turin
Winder

Idaho

Bloomington
Caldwell
Craigmont
Georgetown
Greenleaf
Hailey
Middleton
Montpelier
Paris

Illinois

Ashmore
Basco
Bement
Bethany
Blue Mound
Braidwood
Broadlands
Cahokia
Cissna Park
Congerville
De Land
Dixmoor
Elliott
El Paso
Forest Park
Freeburg
Gays
Golf
Hammond
Lakemoor
La Moille
Lebanon
Lerna
Long Creek
Ludlow
Macon
Mansfield
Marengo
Markham
Melrose Park
Meredosia
Minonk
Morrisonville
Park Ridge
Paxton
Pearl City
Percy
Poplar Grove
Posen
Raritan

Rockdale
Rockwood
Sauget
Sparta
Stickney
Stone Park

Albion
Andrews
Angola
Argos
Ashley
Avilla
Bluffton
Bourbon
Butler
Castleton
Center Point
Churubusco
Columbus
Corydon
Country Club Heights
Cromwell
Eaton
Fort Branch
Gas City
Gaston
Geneva
Georgetown
Greensfork
Hamilton
Hazleton
Hope
Kempton
Kendallville
La Fontaine
Lagro
La Paz
Ligonier
Livonia

Alton
Andover
Arthur
Audubon
Bernard
Bristow
Cascade
Central City
Centralia
Colwell
Creston
Dawson
Emerson
Epworth
Farley
Ferguson
Gilman

Agra
Alma
Brookville
Brownell
Dearing
Ensign
Garnett
Gypsum
Hoxie
Latham
Liberty

Hunter's Hollow
Lynnview
Park Hills
Shepherdsville

Eros
Ida

Stonington
Sullivan
Taylorville
Wilmette
Wilmington
Winslow

Indiana

Lynhurst
Harkle
Marshall
Mauckport
Millhousen
Montezuma
Mount Etna
Orestes
Orland
Patoka
Pendleton
Plymouth
Poneto
Princeton
Rochester
Rocky Ripple
Rome City
St Paul
Salem
Selma
Sharpsville
South Whitley
Spring Hills
Staunton
Sunman
Van Buren
Vera Cruz
Walton
Warren
Waterloo
Westport
Williamsport
Wolcottville

Iowa

Guernsey
Kimballton
Luzerne
Marengo
Maurice
Melbourne
Mitchell
New Hartford
North English
Norway
Richland
Rock Falls
Ruthven
State Center
Stockton
Vinton
Wellsburg

Kansas

Little River
Morganville
Moscow
Natoma
Nickerson
Olpe
Quenemo
Quinter
Satanta
Stockton

Kentucky

Woodburn
Woodlawn
Worthington Hills

Louisiana

Mooringsport
St Francisville

Maine

Hallowell

Maryland

Aberdeen
Brookeville
Edmonston
Galena
Goldsboro

Hillsboro
Smithsburg
Templeville
Williamsport

Michigan

Coopersville
Fowlerville
Holly
Howell
Keego Harbor
Kent City
Lowell
Manchester
Melvindale
Mulliken

Ortonville
Pinckney
Potterville
Sand Lake
Sparta
Spring Lake
Sunfield
Vermontville
Wayne

Minnesota

Becker
Big Lake
Cleveland
Crosslake
Dassel
Easton
Elysian
Fountain
Foxhome
Frost
Hanska
Heidelberg
Hokah

Isanti
Kasota
Lafayette
Le Center
Minnesota City
Morgan
New Prague
Sleepy Eye
Trimont
Utica
Warroad
Waterville
Zumbro Falls

Mississippi

Caledonia
Ecru
Magee
Marion
Mendenhall
Plantersville

Pontotoc
Saltillo
Thaxton
Verona
Waveland

Missouri

Bloomsdale
Brashear
Cairo
Cave
Crystal City
Festus
Frohna
Hawk Point
Hermitage
High Hill
Mckittrick
Macon
Marshfield
Marthasville

Martinsburg
Monroe City
Mooresville
New Haven
New London
Palmyra
Rayville
Troy
Union
Vinita Park
Warrenton
Wheeling
Winston
Wooldridge

Montana

Glasgow

Kalispell

Nebraska

Amherst
Anselmo
Bassett
Clay Center
Dickens
Grainton
Henry
Meadow Grove

Plattsmouth
Rogers
Schuyler
Springfield
Swanton
Virginia
Wallace

New Jersey

Audubon
Haledon

Prospect Park
South Amboy

New Mexico

Tijeras

New York

Alden
Arkport
Aurora
Bemus Point
Bridgewater
Brocton
Cato
Cayuga
Cazenovia
Clifton Springs
Cohocton
Corfu
Depe
East Syracuse
Elba
Esperance
Fair Haven
Gainesville
Hammondsport
Holland Patent
Horseheads
Lancaster

Lindenhurst
Marcellus
Mayville
Montour Falls
Naples
Nichols
North Hornell
Odessa
Palmyra
Panama
Red Hook
Rouses Point
Saugerties
Savona
Sinclairville
Sodus Point
South Corning
Tonawanda
Trumansburg
Wappingers Falls
Windson
Wyoming

North Carolina

Autryville
Black Creek
Bostic
Canton
Carthage
Centerville
Dobson
Drexel
Earl
Elkin
Ellenboro
Elon College
Everetts
Faison
Faith
Fallston
Forest City
Gibsonville
Grover
Harmony
Jefferson
Kenansville

Kings Mountain
Madison
Maiden
Mesic
Mocksville
Newton Grove
Pineville
Pittsboro
Polkville
Rockingham
Rose Hill
Ruth
Rutherfordton
Sanford
Seima
Sharpsburg
Sims
Spruce Pine
Stanfield
Tarboro
Teachey
Waco

North Dakota

Arthur
Cando
Cooperstown
Drayton
Edgeley
Fessenden
Kulm
Loma
Marion
Montpelier

Newburg
Niagara
Park River
Portal
Rolette
Tolna
Valley City
Woodworth
Wyndmere

Ohio

Aquilla
Bayview
Berlin Heights
Brewster
Butlerville
Cairo
Castalia
Cheviot
College Corner
Cygnet
Dalton
East Sparta
Eaton
Eldorado
Gloria Glens Park
Gratis
Hartville
Hebron
Hicksville
Jacksonville
Johnstown
Lafayette

Laura
Lebanon
Limaville
Lodi
Loudonville
Louisville
Luckey
Maineville
Marshallville
Marysville
Middlefield
Middle Point
Milford Center
Mutual
New Knoxville
New Paris
Ney
North Baltimore
North Hampton
Payne
Pemberville
Pitsburg

Richwood	Walbridge
St Louisville	Waynesville
Shreve	West Manchester
South Vienna	Weston
Spencer	West Salem
Tontogany	Woodstock
Troy	Wooster
Unionville Center	Wren

Oklahoma

Carmen	Sallisaw
Cans	Shady Grove
Madill	Thackerville
Muldrow	Tushka

Oregon

Aurora	Silverton
Dayton	Spray
Donald	Turner
Hubbard	Willamina
Independence	Woodburn
Jefferson	Yamhill
Sheridan	

Pennsylvania

Beavertown	Mount Pocono
Bloomfield	Mount Wolf
Bonneauville	New Oxford
Catasauqua	Orrstown
Centre Hall	Port Matilda
Cross Roads	Red Lion
Dallastown	Richland
Delaware Water Gap	Royalton
Dover	Smithton
Fountain Hill	South Bethlehem
Girard	South Philipsburg
Glen Rock	Strausstown
Hummelstown	Telford
Jonestown	Wellsville
Manchester	West Grove
Manorville	Winterstown
Mifflinburg	Youngsville

South Carolina

Aynor	Pendleton
Barnwell	Reevesville
Conway	Ruby
Cottageville	Seneca
Elko	Sharon
Fort Mill	Six Mile
Gray Court	Vance
Hardeeville	Waterloo
Heath Springs	Williamston
Johnsonville	Williston
Norris	Windsor
Orangeburg	

South Dakota

Colome	Onida

Tennessee

Atoka	Lakewood
Bulls Gap	Lewisburg
Cedar Hill	Millersville
Cornersville	Portland
Cross Plains	Townsend
Eagleville	Watertown
Gallatin	West Moreland
Gilt Edge	Woodland Mills

Texas

Athens	Grandview
Boerne	Huntington
Broaddus	Livingston
Burke	Oakhurst
Celina	Ore City
Cockrell Hill	Palacios
Coffee City	San Felipe
Corrigan	Seadrift
Crystal Beach	Seagraves
Diboll	Seven Points
Fate	Westminster
Gladewater	

Utah

Ballard	Milford
Henefer	Oakley
Kamas	

Vermont

Derby Line	Pittsford
Montpelier	

Virginia

Culpeper	Keysville
Floyd	Port Royal
Front Royal	Stuart
Glasgow	

Washington

Airway Heights	Monroe
Arlington	Orting
Battle Ground	Puyallup
Cheney	Rainier
Eatonville	Snohomish
Gold Bar	Washougal
Granite Falls	Wenatchee
Medical Lake	Yelm
Millwood	

West Virginia

Montrose	

Wisconsin

Arena	Lone Rock
Athens	Manawa
Black Creek	Maribel
Bloomer	Marion
Boscobel	Melvina
Boyd	Mosinee
Brandon	Muscoda
Brokaw	New London
Cadott	Norwalk
Cambridge	Park Falls
Casco	Patch Grove
Cassville	Pepin
Chaseburg	Phillips
Chilton	Potter
Clinton	Prairie Du Chien
Coloma	Redgranite
Coon Valley	Reeseville
Dodgeville	Ridgeway
Fairwater	Scandinavia
Fennimore	Seymour
Fenwood	Slinger
Footville	Sparta
Fox Lake	Spencer
Francis Creek	Stockholm
Genoa	Stoddard
Grantsburg	Stratford
Hartford	Sullivan
Highland	Tomah
Hillsboro	Two Rivers
Hortonville	Viola
Iola	Watertown
Iron Ridge	Waupaca
Johnson Creek	Westby
Juneau	Weyauwega
Kekoskee	Wild Rose
Lake Mills	Woodman
Lancaster	Yuba
Linden	

Wyoming

Afton	Cokeville

Part V

The following list contains the names of towns, townships and Puerto Rican municiplos which meet the minimum standards for physical and economic distress, and which are in States where towns and townships generally have powers comparable to the powers of municipalities. Towns and townships in states which are not listed should apply to the local HUD field for assistance in determining whether they have appropriate powers. The towns and townships are not listed with places in Section II because their eligibility as cities has not been fully determined under the criteria of 24 CFR 570.3(e), which require that they (1) have powers and perform functions comparable to municipalities, (2) are closely settled and (3) have corporation agreements with all incorporated places within their boundaries. Requests for waivers of the closely settled requirements may be granted by the Secretary on a case by case basis. The asterisk shown in front of the name of some towns or townships indicates that those towns or townships contain an incorporated place within their boundaries.

Connecticut

Name	*County*
North Canaan Town	Litchfield County
Putnam Town	Windham County
Sterling Town	Windham County
Winchester Town	Litchfield County
Windham Town	Windham County

Maine

Name	*County*
Abbot Town	Piscataquis County
Addison Town	Washington County
Albion Town	Kennebec County
Alexander Town	Washington County
Allagash Town	Aroostook County
Alna Town	Lincoln County
Amherst Town	Hancock County
Amity Town	Aroostook County
Andover Town	Oxford County
Anson Town	Somerset County
Appleton Town	Knox County
Ashland Town	Aroostook County
Athens Town	Somerset County
Aurora Town	Hancock County
Avon Town	Franklin County
Baileyville Town	Washington County
Baldwin Town	Cumberland County
Bancroft Town	Aroostook County
Baring Plantation	Washington County
Beals Town	Washington County
Beddington Town	Washington County
Belmont Town	Waldo County
Bingham Town	Somerset County
Blaine Town	Aroostook County
Blue Hill Town	Hancock County
Boothbay Harbor Town.	Lincoln County
Boothbay Town	Lincoln County
Bradford Town	Penobscot County
Bremen Town	Lincoln County
Bridgewater Town	Aroostook County
Brighton Plantation	Somerset County
Bristol Town	Lincoln County
Brooklin Town	Hancock County
Brooks Town	Waldo County
Brooksville Town	Hancock County
Brownville Town	Piscataquis County
Buckfield Town	Oxford County
Bucksport Town	Hancock County
Burlington Town	Penobscot County
Burnham Town	Waldo County

Byron Town	Oxford County
Cambridge Town	Somerset County
Canaan Town	Somerset County
Canton Town	Oxford County
Caratuna Plantation	Somerset County
Carmel Town	Penobscot County
Carroll Plantation	Penobscot County
Carthage Town	Franklin County
Cary Plantation	Aroostook County
Castle Hill Town	Aroostook County
Caswell Plantation	Aroostook County
Centerville Town	Washington County
Charleston Town	Penobscot County
Charlotte Town	Washington County
Chelsea Town	Kennebec County
Cherryfield Town	Washington County
Chester Town	Penobscot County
Chesterville Town	Franklin County
Clinton Town	Kennebec County
Codyville Plantation	Washington County
Columbia Falls Town	Washington County
Columbia Town	Washington County
Cooper Town	Washington County
Corinna Town	Penobscot County
Corinth Town	Penobscot County
Cornish Town	York County
Cornville Town	Somerset County
Cranberry Isles Town	Hancock County
Crawford Town	Washington County
Crystal Town	Aroostook County
Cutler Town	Washington County
Cyr Plantation	Aroostook County
Dallas Plantation	Franklin County
Damariscotta Town	Lincoln County
Danforth Town	Washington County
Deblois Town	Washington County
Deer Isle Town	Hancock County
Dennysville Town	Washington County
Detroit Town	Somerset County
Dexter Town	Penobscot County
Dixmont Town	Penobscot County
Dover Foxcroft Town	Piscataquis County
Dresden Town	Lincoln County
Drew Plantation	Penobscot County
Durham Town	Androscoggin County
Dyer Brook Town	Aroostook County
Eagle Lake Town	Aroostook County
East Machias Town	Washington County
Easton Town	Aroostook County
Edgecomb Town	Lincoln County
Edinburg Town	Penobscot County
Embden Town	Somerset County
Etna Town	Penobscot County
Eustis Town	Franklin County
Exeter Town	Penobscot County
Fairfield Town	Somerset County
Farmington Town	Franklin County
Fort Fairfield Town	Aroostook County
Fort Kent Town	Aroostook County
Frankfort Town	Waldo County
Franklin Town	Hancock County
Freedom Town	Waldo County
Frenchboro Town	Hancock County
Frenchville Town	Aroostook County
Garfield Plantation	Aroostook County
Garland Town	Penobscot County
Georgetown Town	Sagadahoc County
Gilead Town	Oxford County
Gouldsboro Town	Hancock County
Grand Isle Town	Aroostook County
Grand Lake Stream PL.	Washington County
Great Pond Town	Hancock County
Greenfield Town	Penobscot County
Greenville Town	Piscataquis County
Guilford Town	Piscataquis County
Hamlin Town	Aroostook County
Hancock Town	Hancock County
Harmony Town	Somerset County
Harrington Town	Washington County
Harrison Town	Cumberland County
Hartford Town	Oxford County
Hartland Town	Somerset County
Haynesville Town	Aroostook County
Hersey Town	Aroostook County
Highland Plantation	Somerset County
Hiram Town	Oxford County
Hodgdon Town	Aroostook County
Hollis Town	York County
Hope Town	Knox County
Houlton Town	Aroostook County
Howland Town	Penobscot County
Hudson Town	Penobscot County
Industry Town	Franklin County
Island Falls Town	Aroostook County
Isle Au Haut Town	Knox County
Islesboro Town	Waldo County
Jackman Town	Somerset County
Jackson Town	Waldo County
Jefferson Town	Lincoln County
Jonesboro Town	Washington County
Jonesport Town	Washington County
Kenduskeag Town	Penobscot County
Kingfield Town	Franklin County
Knox Town	Waldo County
Lagrange Town	Penobscot County
Lake View Plantation	Piscataquis County
Lebanon Town	York County
Lee Town	Penobscot County
Leeds Town	Androscoggin County
Levant Town	Penobscot County
Liberty Town	Waldo County
Limington Town	York County
Lincoln Plantation	Oxford County
Lincoln Town	Penobscot County
Lincolnville Town	Waldo County
Linneus Town	Aroostook County
Littleton Town	Aroostook County
Livermore Falls Town	Androscoggin County
Lubec Town	Washington County
Ludlow Town	Aroostook County
Machias Town	Washington County
Machiasport Town	Washington County
Macwahoc Plantation	Aroostook County
Madawaska Town	Aroostook County
Madison Town	Somerset County
Madrid Town	Franklin County
Mapleton Town	Aroostook County
Mariaville Town	Hancock County
Mars Hill Town	Aroostook County
Marshfield Town	Washington County
Masardis Town	Aroostook County
Mattawamkeag Town	Penobscot County
Meddybemps Town	Washington County
Medford Town	Piscataquis County
Merrill Town	Aroostook County
Mexico Town	Oxford County
Milbridge Town	Washington County
Milo Town	Piscataquis County
Monhegan Plantation	Lincoln County
Monroe Town	Waldo County
Monson Town	Piscataquis County
Monticello Town	Aroostook County
Montville Town	Waldo County
Moro Plantation	Aroostook County
Morrill Town	Waldo County
Moscow Town	Somerset County
Mount Chase Plantation.	Penobscot County
Mount Vernon Town	Kennebec County
Naples Town	Cumberland County
Nashville Plantation	Aroostook County
New Canada Plantation.	Aroostook County
New Gloucester Town.	Cumberland County
New Limerick Town	Aroostook County
New Portland Town	Somerset County
New Sweden Town	Aroostook County
New Vineyard Town	Franklin County
Newcastle Town	Lincoln County
Newfield Town	York County
Newport Town	Penobscot County
Nobleborough Town	Lincoln County
Northfield Town	Washington County
Northport Town	Waldo County
Oakfield Town	Aroostook County
Oakland Town	Kennebec County
Old Orchard Beach Town.	York County
Orland Town	Hancock County
Orono Town	Penobscot County
Osborn Plantation	Hancock County
Otis Town	Hancock County
Otisfield Town	Oxford County
Owls Head Town	Knox County
Oxbow Plantation	Aroostook County
Oxford Town	Oxford County
Palermo Town	Waldo County
Palmyra Town	Somerset County
Paris Town	Oxford County
Parkman Town	Piscataquis County
Parsonsfield Town	York County
Patten Town	Penobscot County
Pembroke Town	Washington County
Penobscot Town	Hancock County
Penobscott Indian Is.	Penobscot County
Perham Town	Aroostook County
Perry Town	Washington County
Phillips Town	Franklin County
Phippsburg Town	Sagadahoc County
Pittsfield Town	Somerset County
Pittston Town	Kennebec County
Plantation No. 14	Washington County
Pleasant Ridge Plantation.	Somerset County
Plymouth Town	Penobscot County
Porter Town	Oxford County
Prentiss Plantation	Penobscot County
Princeton Town	Washington County
Prospect Town	Waldo County
Rangeley Town	Franklin County
Reed Plantation	Aroostook County
Richmond Town	Sagadahoc County
Ripley Town	Somerset County
Robbinston Town	Washington County
Rome Town	Kennebec County
Roque Bluffs Town	Washington County
Sabattus Town	Androscoggin County
Sandy River Plantation.	Franklin County
Sanford Town	York County
Sangerville Town	Piscataquis County
Searsmont Town	Waldo County
Searsport Town	Waldo County
Sebec Town	Piscataquis County
Sedgwick Town	Hancock County
Sherman Town	Aroostook County
Skowhegan Town	Somerset County
Smithfield Town	Somerset County
Smyrna Town	Aroostook County
Solon Town	Somerset County
Somerville Town	Lincoln County
South Bristol Town	Lincoln County
Southport Town	Lincoln County

Springfield Town	Penobscot County
St Agatha Town	Aroostook County
St Albans Town	Somerset County
St Francis Town	Aroostook County
St John Plantation	Aroostook County
Stacyville Town	Penobscot County
Starks Town	Somerset County
Stetson Town	Penobscot County
Steuben Town	Washington County
Stockholm Town	Aroostook County
Stockton Springs Town.	Waldo County
Stoneham Town	Oxford County
Stonington Town	Hancock County
Strong Town	Franklin County
Sullivan Town	Hancock County
Sumner Town	Oxford County
Surry Town	Hancock County
Swans Island Town	Hancock County
Swanville Town	Waldo County
Talmadge Town	Washington County
Temple Town	Franklin County
The Forks Plantation	Somerset County
Thorndike Town	Waldo County
Topsfield Town	Washington County
Tremont Town	Hancock County
Troy Town	Waldo County
Turner Town	Androscoggin County
Union Town	Knox County
Unity Town	Waldo County
Upton Town	Oxford County
Van Buren Town	Aroostock County
Vanceboro Town	Washington County
Vienna Town	Kennebec County
Vinalhaven Town	Knox County
Wade Town	Aroostook County
Waldo Town	Waldo County
Waldoboro Town	Lincoln County
Waltham Town	Hancock County
Warren Town	Knox County
Washburn Town	Aroostook County
Washington Town	Knox County
Waterford Town	Oxford County
Webster Plantation	Penobscot County
Weld Town	Franklin County
Wellington Town	Piscataquis County
Wesley Town	Washington County
West Forks Plantation	Somerset County
West Paris Town	Oxford County
Westfield Town	Aroostook County
Westmanland Plantation.	Aroostook County
Weston Town	Aroostook County
Westport Town	Lincoln County
Whitefield Town	Lincoln County
Whiting Town	Washington County
Whitneyville Town	Washington County
Willmantic Town	Piscataquis County
Windsor Town	Kennebec County
Winn Town	Penobscot County
Winter Harbor Town	Hancock County
Winterport Town	Waldo County
Winterville Plantation	Aroostook County
Wiscasset Town	Lincoln County
Woodland Town	Aroostock County
Woodstock Town	Oxford County

Massachusetts

Name	*County*
Adams Town	Berkshire County
Amherst Town	Hampshire County
Athol Town	Worcester County
Becket Town	Berkshire County
Blackstone Town	Worcester County
Brookfield Town	Worcester County
Buckland Town	Franklin County
Charlemont Town	Franklin County
Clinton Town	Worcester County
Cummington Town	Hampshire County
Erving Town	Franklin County
Fairhaven Town	Bristol County
Florida Town	Berkshire County
Gay Head Town	Dukes County
Goshen Town	Hampshire County
Greenfield Town	Franklin County
Hancock Town	Berkshire County
Hardwick Town	Worcester County
Heath Town	Franklin County
Hull Town	Plymouth County
Huntington Town	Hampshire County
Middlefield Town	Hampshire County
Millbury Town	Worcester County
Monroe Town	Franklin County
Montague Town	Franklin County
New Braintree Town	Worcester County
Northbridge Town	Worcester County
Plainfield Town	Hampshire County
Provincetown Town	Barnstable County
Rockland Town	Plymouth County
Rowe Town	Franklin County
Royalston Town	Worcester County
Salisbury Town	Essex County
Sandisfield Town	Berkshire County
Savoy Town	Berkshire County
Southbridge Town	Worcester County
Sunderland Town	Franklin County
Truro Town	Barnstable County
Webster Town	Worcester County
Wendell Town	Franklin County
West Springfield Town.	Hampden County
Williamsburg Town	Hampshire County

Michigan

Name	*County*
Adams Township	Arenac County
*Adams Township	Hillsdale County
*Adams Township	Houghton County
*Aetna Township	Mecosta County
Aetna Township	Missaukee County
*Akron Township	Tuscola County
Albee Township	Saginaw County
Albert Township	Montmorency County
Albion Township	Calhoun County
Algansee Township	Branch County
Allegan Township	Allegan County
*Allen Township	Hillsdale County
Allis Township	Presque Isle County
*Allouez Township	Keweenaw County
*Almer Township	Tuscola County
*Almont Township	Lapeer County
Aloha Township	Cheboygan County
Amber Township	Mason County
Amboy Township	Hillsdale County
Antioch Township	Wexford County
Antrim Township	Shiawassee County
*Antwerp Township	Van Buren County
Arcada Township	Gratiot County
Arcadia Township	Lapeer County
Arcadia Township	Manistee County
Arenac Township	Arenac County
Argyle Township	Sanilac County
Arlington Township	Van Buren County
Arthur Township	Clare County
Arvon Township	Baraga County
*Ash Township	Monroe County
Ashland Township	Newaygo County
*Athens Township	Calhoun County
Attica Township	Lapeer County
Au Gres Township	Arenac County
Au Sable Township	Roscommon County
Au Train Township	Alger County
Austin Township	Mecosta County
Austin Township	Sanilac County
Avery Township	Montmorency County
Backus Township	Roscommon County
Bainbridge Township	Berrien County
Baldwin Township	Delta County
Baltimore Township	Barry County
Bangor Township	Van Buren County
*Banks Township	Antrim County
*Baraga Township	Baraga County
Bark River Township	Delta County
*Baroda Township	Berrien County
Barton Township	Newaygo County
Batavia Township	Branch County
Bates Township	Iron County
Bay De Noc Township.	Delta County
Bay Mills Township	Chippewa County
*Bear Lake Township	Manistee County
Beaver Creek Township.	Crawford County
Beaver Township	Newaygo County
Beaverton Township	Gladwin County
Belknap Township	Presque Isle County
Belvidere Township	Montcalm County
Bengal Township	Clinton County
Benona Township	Oceana County
Bentley Township	Gladwin County
Benton Township	Berrien County
*Benzonia Township	Benzie County
Bergland Township	Ontonagon County
Berlin Township	St Clair County
*Berrien Township	Berrien County
Bertrand Township	Berrien County
Bessemer Township	Gogebic County
Bethany Township	Gratiot County
Bethel Township	Branch County
Big Creek Township	Oscoda County
Big Prairie Township	Newaygo County
Big Rapids Township	Mecosta County
Bingham Township	Clinton County
*Bingham Township	Huron County
*Birch Run Township	Saginaw County
Bismarck Township	Presque Isle County
Blaine Township	Benzie County
Bliss Township	Emmet County
Bloomer Township	Montcalm County
Bloomfield Township	Huron County
Bloomfield Township	Missaukee County
*Bloomingdale Township.	Van Buren County
Blue Lake Township	Kalkaska County
Blue Lake Township	Muskegon County
Bohemia Township	Ontonagon County
Bois Blanc Township	Mackinac County
*Boon Township	Wexford County
*Boston Township	Ionia County
Bourrett Township	Gladwin County
*Boyne Valley Township.	Charlevoix County
*Brady Township	Saginaw County
Brampton Township	Delta County
Branch Township	Mason County
*Brant Township	Saginaw County
Breen Township	Dickinson County
Breitung Township	Dickinson County
Brevort Township	Mackinac County
*Bridgehampton Township.	Sanilac County
Bridgeport Township	Saginaw County
Bridgeton Township	Newaygo County
Briley Township	Montmorency County
Brookway Township	St. Clair County

Bronson Township	Branch County
*Brookfiel Township	Huron County
Brooks Township	Newaygo County
Broomfield Township	Isabella County
Brown Township	Manistee County
Bruce Township	Chippewa County
*Bruce Township	Macomb County
Buchanan Township	Berrien County
Buckeye Township	Gladwin County
Buel Township	Sanilac County
Buena Vista Township.	Saginaw County
*Burdell Township	Osceola County
Burleigh Township	Iosco County
*Burlington Township	Calhoun County
*Burlington Township	Lapeer County
Burnside Township	Lapeer County
*Burr Oak Township	St. Joseph County
Burt Township	Alger County
Burt Township	Cheboygan County
*Bushell Township	Montcalm County
Butler Township	Branch County
Butman Township	Gladwin County
Butterfield Township	Missaukee County
Caldwell Township	Missaukee County
Caledonia Township	Alcona County
Caledonia Township	Shiawassee County
California Township	Branch County
*Calumet Township	Houghton County
Calvin Township	Cass County
Cambria Township	Hillsdale County
*Camden Township	Hillsdale County
*Campbell Township	Ionia County
*Carlton Township	Barry County
Carp Lake Township	Emmet County
Carrollton Township	Saginaw County
Casco Township	Allegan County
*Case Township	Presque Isle County
*Caseville Township	Huron County
*Casnovia Township	Muskegon County
*Castleton Township	Barry County
*Cato Township	Montcalm County
Cedar Creek Township.	Wexford County
Cedarville Township	Menominee County
Center Township	Emmet County
Centerville Township	Leelanau County
*Central Lake Township.	Antrim County
Champion Township	Marquette County
Chandler Township	Huron County
Chapin Township	Saginaw County
Charlton Township	Otsego County
Chase Township	Lake County
Chassell Township	Houghton County
Cherry Valley Township.	Lake County
*Chesaning Township	Saginaw County
Cheshire Township	Allegan County
Chester Township	Otsego County
Chestonia Township	Antrim County
Chikaming Township	Berrien County
Chippewa Township	Chippewa County
Chippewa Township	Isabella County
Chippewa Township	Mecosta County
Churchill Township	Ogemaw County
Clam Union Township	Missaukee County
Clarence Township	Calhoun County
Clarendon Township	Calhoun County
Clark Township	Mackinac County
Clay Township	St. Clair County
Clayton Township	Arenac County
Clearwater Township	Kalkaska County
Clement Township	Gladwin County
*Cleon Township	Manistee County
Cleveland Township	Leelanau County
Clinton Township	Oscoda County
Clyde Township	Allegan County
Coldwater Township	Isabella County
*Colfax Township	Benzie County
Colfax Township	Huron County
Colfax Township	Mecosta County
Colfax Township	Oceana County
Colfax Township	Wexford County
Coloma Township	Berrien County
*Colon Township	St. Joseph County
*Columbia Township	Tuscola County
*Columbia Township	Van Buren County
Columbus Township	Luce County
Comins Township	Oscoda County
*Concord Township	Jackson County
*Constantine Township.	St. Joseph County
Convis Township	Calhoun County
Cornell Township	Delta County
*Corwith Township	Otsego County
Cottrellville Township	St. Clair County
Covert Township	Van Buren County
Covington Township	Baraga County
Cross Village Township.	Emmet County
Crystal Falls Township.	Iron County
Crystal Lake Township.	Benzie County
Crystal Township	Montcalm County
Crystal Township	Oceana County
Cumming Township	Ogemaw County
Curtis Township	Alcona County
*Custer Township	Mason County
Custer Township	Sanilac County
Dafter Township	Chippewa County
*Daggett Township	Menominee County
*Dallas Township	Clinton County
*Dalton Township	Muskegon County
*Day Township	Montcalm County
Dayton Township	Newaygo County
Dayton Township	Tuscola County
*De Tour Township	Chippewa County
*Decatur Township	Van Buren County
*Deep River Township.	Arenac County
*Deerfield Township	Lenawee County
*Deerfield Township	Mecosta County
*Delaware Township	Sanilac County
*Denmark Township	Tuscola County
Denver Township	Isabella County
*Denver Township	Newaygo County
Dickson Township	Manistee County
Douglass Township	Montcalm County
Dover Township	Lake County
*Dover Township	Lenawee County
Doyle Township	Schoolcraft County
Drummond Township	Chippewa County
Duncan Township	Houghton County
*Dundee Township	Monroe County
*Duplain Township	Clinton County
*Dwight Township	Huron County
Eagle Harbor Township.	Keweenaw County
Easton Township	Ionia County
Echo Township	Antrim County
Eckford Township	Calhoun County
Eden Township	Lake County
Eden Township	Mason County
Edwards Township	Ogemaw County
*Elba Township	Gratiot County
Elbridge Township	Oceana County
Elk Township	Lake County
*Elk Township	Sanilac County
*Elkland Township	Tuscola County
Ellington Township	Tuscola County
Ellis Township	Cheboygan County
*Ellsworth Township	Lake County
Elm River Township	Houghton County
Elmer Township	Oscoda County
Elmer Township	Sanilac County
*Elmwood Township	Tuscola County
Emerson Township	Gratiot County
Emmett Township	Calhoun County
*Emmett Township	St Clair County
*Empire Township	Leelanau County
Ensign Township	Delta County
Ensley Township	Newaygo County
Enterprise Township	Missaukee County
Erie Township	Monroe County
Erwin Township	Gogebic County
Eureka Township	Montcalm County
Evart Township	Osceola County
Eveline Township	Charlevoix County
Everett Township	Newaygo County
Evergreen Township	Montcalm County
Evergreen Township	Sanilac County
Ewing Township	Marquette County
Excelsior Township	Kalkaska County
*Exeter Township	Monroe County
Fabius Township	St Joseph County
Fairbanks Township	Delta County
Fairfield Township	Lenawee County
Fairfield Township	Shiawassee County
*Fairgrove Township	Tuscola County
Fairhaven Township	Huron County
*Fairplain Township	Montcalm County
Faithorn Township	Menominee County
Fawn River Township	St Joseph County
Felch Township	Dickinson County
Ferris Township	Montcalm County
Fepry Township	Oceana County
*Fife Lake Township	Grand Traverse County
Filer Township	Manistee County
Fillmore Township	Allegan County
Florence Township	St Joseph County
Flowerfield Township	St Joseph County
Flynn Township	Sanilac County
Ford River Township	Delta County
Forest Township	Cheboygan County
*Forest Township	Genesse County
Forester Township	Sanilac County
*Fork Township	Mecosta County
Foster Township	Ogemaw County
Franklin Township	Clare County
Franklin Township	Houghton County
*Free Soil Township	Mason County
Freeman Township	Clare County
Fremont Township	Isabella County
Fremont Township	Saginaw County
Fremont Township	Sanilac County
*Fremont Township	Tuscola County
Friendship Township	Emmet County
Frost Township	Clare County
*Galien Township	Berrien County
Ganges Township	Allegan County
*Garden Township	Delta County
Garfield Township	Clare County
Garfield Township	Kalkaska County
Garfield Township	Mackinac County
Garfield Township	Newaygo County
Genesee Township	Genesee County
Geneva Township	Midland County
Geneva Township	Van Buren County
Germfask Township	Schoolcraft County
Gibson Township	Bay County
Gilead Township	Branch County

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Gilford Township	Tuscola County
*Gilmore Township	Benzie County
Gilmore Township	Isabella County
Girard Township	Branch County
Gladwin Township	Gladwin County
Golden Township	Oceana County
Goodar Township	Ogemaw County
Goodwill Township	Newaygo County
Gore Township	Huron County
Gourley Township	Menominee County
Grand Island Township.	Alger County
Grant Township	Cheboygan County
Grant Township	Grand traverse County
Grant Township	Huron County
Grant Township	Iosco County
Grant Township	Keweenaw County
Grant Township	Mason County
Grant Township	Mecosta County
Grant Township	Newaygo County
*Grant Township	Oceana County
Grant Township	St Claire County
Green Township	Alpena County
Green Township	Mecosta County
Greenbush Township	Alcona County
Greenbush Township	Clinton County
Greendale Township	Midland County
Greenland Township	Ontonagon County
Greenleaf Township	Sanilac County
Greenwood Township	Clare County
Greenwood Township	Oceana County
Greenwood Township	St Clair County
Greenwood Township	Wexford County
Grim Township	Gladwin County
Grout Township	Gladwin County
*Gustin Township	Alcona County
Hagar Township	Berrien County
Haight Township	Ontonagon County
Hamilton Township	Clare County
Hamilton Township	Gratiot County
Hamilton Township	Van Buren County
Hancock Township	Houghton County
*Hanover Township	Wexford County
Harris Township	Menominee County
Harrisville Township	Alcona County
Hart Township	Oceana County
Hartford Township	Van Buren County
Hartwick Township	Osceola County
Hastings Township	Barry County
*Hawes Township	Alcona County
Hay Township	Gladwin County
Hayes Township	Clare County
Haynes Township	Alcona County
Heath Township	Allegan County
Hebron Township	Cheboygan County
Hematite Township	Iron County
Henderson Township	Wexford County
Hendricks Township	Mackinac County
Henrietta Township	Jackson County
*Hersey Township	Osceola County
Highland Township	Osceola County
Hill Township	Ogeman County
*Hillman Township	Montmorency County
Hinton Township	Mecosta County
Holland Township	Missaukee County
Holmes Township	Menominee County
Holton Township	Muskegon County
*Home Township	Montcalm County
Home Township	Newaygo County
*Homer Township	Calhoun County
*Homestead Township.	Benzie County
Hope Township	Barry County
Hope Township	Midland County
*Hopkins Township	Allegan County
Horton Township	Ogeman County
Houghton Township	Keweenaw County
Hudson Township	Charlevoix County
*Hudson Township	Lenawee County
Hudson Township	Mackinac County
Hulbert Township	Chippewa County
Humboldt Township	Marquette County
Huron Township	Huron County
Imlay Township	Lapeer County
*Indianfields Township.	Tuscola County
Inland Township	Benzie County
Interior Township	Ontonagon County
Inwood Township	Schoolcraft County
*Ionia Township	Ionia County
Ira Township	St Clair County
*Iron River Township	Iron County
Ironwood Township	Gogebic County
*Irving Township	Barry County
*Isabella Township	Isabella County
Jasper Township	Midland County
Jefferson Township	Cass County
Jefferson Township	Hillsdale County
*Jonesfield Township	Saginaw County
Jordan Township	Antrim County
Joyfield Township	Benzie County
Juniata Township	Tuscola County
*Kalkaska Township	Kalkaska County
Kasson Township	Leelanau County
Kawkawlin Township	Bay County
*Kearney Township	Antrim County
Keeler Township	Van Buren County
Keene Township	Ionia County
Kenockee Township	St. Clair County
Kimball Township	St. Clair County
*Kingston Township	Tuscola County
Kinross Township	Chippewa County
Klacking Township	Ogemaw County
Koehler Township	Cheboygan County
*Koylton Township	Tuscola County
Krakow Township	Presque Isle County
*La Grange Township	Cass County
La Salle Township	Monroe County
Lafayette Township	Gratiot County
Laird Township	Houghton County
Lake Township	Benzie County
Lake Township	Berrien County
Lake Township	Menominee County
Lake Township	Roscommon County
Lakefield Township	Luce County
Lakefield Township	Saginaw County
Lamotte Township	Sanilac County
*Lanse Township	Baraga County
*Lawrence Township	Van Buren County
*LeRoy Township	Osceola County
*Leavitt Township	Oceana County
*Lebanon Township	Clinton County
Lee Township	Allegan County
Lee Township	Calhoun County
Lee Township	Midland County
*Leelanau Township	Leelanau County
Leighton Township	Allegan County
Leland Township	Leelanau County
*Lenox Township	Macomb County
Leoni Township	Jackson County
Leonidas Township	St. Joseph County
*Lexington Township	Sanilac County
Liberty Township	Jackson County
Liberty Township	Wexford County
Lilley Township	Newaygo County
Limestone Township	Alger County
Lincoln Township	Arenac County
Lincoln Township	Clare County
*Lincoln Township	Huron County
Lincoln Township	Isabella County
Lincoln Township	Newaygo County
Lincoln Township	Osceola County
Litchfield Township	Hillsdale County
Little Traverse Town	Emmet County
*Littlefield Township	Emmet County
Logan Township	Mason County
Logan Township	Ogemaw County
London Township	Monroe County
Long rapids Township	Alpena County
Loud Township	Montmorency County
Lovells Township	Crawford County
Lyon Township	Roscommon County
*Lyons Township	Ionia County
*Mackinaw Township	Cheboygan County
Macon Township	Lenawee County
Madison Township	Lenawee County
*Mancelona Township.	Antrim County
*Manistee Township	Manistee County
Manistique Township	Schoolcraft County
Manlius Township	Allegan County
Mansfield Township	Iron County
Maple Forest Township.	Crawford County
*Maple Grove Township.	Barry County
*Maple Grove Township.	Manistee County
Maple Ridge Township.	Delta County
*Maple River Township.	Emmet County
Maple Valley Township.	Montcalm County
Maple Valley Township.	Sanilac County
*Mapathon Township	Lapeer County
*Marcellus Township	Cass County
Marengo Township	Calhoun County
Marenisco Township	Gogebic County
Marilla Township	Manistee County
Marion Township	Charlevoix County
*Marion Township	Osceola County
Marion Township	Saginaw County
*Marion Township	Sanilac County
Markey Township	Roscommon County
Marlette Township	Sanilac County
Marquette Township	Mackinac County
Marquette Township	Marquette County
*Martin Township	Allegan County
Martiny Township	Mecosta County
*Mason Township	Arenac County
Mason Township	Cass County
Masonville Township	Delta County
*Mastodon Township	Iron County
Matchwood Township	Ontonagon County
Mathias Township	Alger County
Matteson Township	Branch County
Mayfield Township	Grand Traverse County
*McKinley Township	Emmet County
McKinley Township	Huron County
*McMillan Township	Luce County
McMillan Township	Ontonagon County
*Meade Township	Huron County
Meade Township	Mason County
*Mecosta Township	Mecosta County
Medina Township	:Lenawee County
Mellen Township	Menominee County
Melrose Township	Charlevoix County
*Mendon Township	St. Joseph County
Mentor Township	Cheboygan County
Mentor Township	Oscoda County
Merrill Township	Newaygo County

Merritt Township	Bay County
Metz Township	Presque Isle County
Meyer Township	Menominee County
Michigamme Township.	Marquette County
Middle Branch Township.	Osceola County
Mikado Township	Alcona County
Millbrook Township	Mecosta County
Millen Township	Alcona County
*Millington Township	Tuscola County
Mills Township	Midland County
Mills Township	Ogemaw County
Milton Township	Antrim County
*Minden Township	Sanilac County
Mitchell Township	Alcona County
Moffatt Township	Arenac County
Moltke Township	Presque Isle County
Monroe Township	Monroe County
Monroe Township	Newaygo County
Montcalm Township	Montcalm County
Monterey Township	Allegan County
Montmorency Township.	Montmorency County
Moore Township	Sanilac County
Moorland Township	Muskegon County
*Morton Township	Mecosta County
Moscow Township	Hillsdale County
Mottville Township	St. Joseph County
Mount Forest Township.	Bay County
Mount Morris Township.	Genesee County
Mueller Township	Schoolcraft County
Mullet Township	Cheboygan County
Munising Township	Alger County
Munro Township	Cheboygan County
Muskegon Township	Muskegon County
*Mussey Township	St. Clair County
*Nadeau Township	Menominee County
Nahma Township	Delta County
Napoleon Township	Jackson County
Nester Township	Roscommon County
New Haven Township	Gratiot County
New Haven Township	Shiawassee County
Newark Township	Gratiot County
Newberg Township	Cass County
*Newfield Township	Oceana County
*Newkirk Township	Lake County
Newton Township	Mackinac County
Niles Township	Berrien County
Noble Township	Branch County
Norman Township	Manistee County
North Allis Township	Presque Isle County
*North Branch Township.	Lapeer County
*North Plains Township.	Ionia County
North Shade Township.	Gratiot County
North Star Township	Gratiot County
Norvell Township	Jackson County
Norway Township	Dickinson County
Norwich Township	Missaukee County
Norwich Township	Newaygo County
Norwood Township	Charlevoix County
Nottawa Township	Isabella County
*Nottawa Township	St. Joseph County
Novesta Township	Tuscola County
*Nunda Township	Cheboygan County
Ocqueoc Township	Presque Isle County
*Odessa Township	Ionia County
Ogden Township	Lenawee County
Ogemaw Township	Ogemew County
*Oliver Township	Huron County
*Onekama Township	Manistee County
Onota Township	Alger County
*Ontonagon Township.	Ontonagon County
*Ontwa Township	Cass County
Orange Township	Ionia County
Orange Township	Kalkaska County
Orangeville Township	Barry County
Orient Township	Osceola County
Orleans Township	Ionia County
*Oronoko Township	Berrien County
Osceola Township	Houghton County
Osceola Township	Osceola County
Oscoda Township	Iosco County
Ossineke Township	Alpena County
Otisco Township	Ionia County
Otto Township	Oceana County
Ovid Township	Branch County
*Ovid Township	Clinton County
Owosso Township	Shiawassee County
Palmyra Township	Lenawee County
*Paradise Township	Grand Traverse County
Paris Township	Huron County
Park Township	St. Joseph County
*Parma Township	Jackson County
*Paw Paw Township	Van Buren County
*Penn Township	Cass County
Pennfield Township	Calhoun County
Pentland Township	Luce County
Pickford Township	Chippewa County
*Pierson Township	Montcalm County
Pinconning Township	Bay County
Pine Grove Township	Van Buren County
Pine River Township	Gratiot County
Pine Township	Montcalm County
Pinora Township	Lake County
Pioneer Township	Missaukee County
*Pipestone Township	Berrien County
Pittsford Township	Hillsdale County
Plainfield Township	Iosco County
Platte Township	Benzie County
*Pleasant Plains Township.	Leelanau County
*Pleasant Plains Twp	Lake County
Pleasanton Township	Manistee County
Pokagon Township	Cass County
*Port Austin Township.	Huron County
Port Huran Township	St. Clair County
Portage Township	Houghton County
Portage Township	Mackinac County
Porter Township	Cass County
Porter Township	Midland County
Portsmouth Township	Bay County
*Posen Township	Presque Isle County
Powell Township	Marquette County
Prairieville Township	Barry County
Pulaski Township	Jackson County
Pulawski Township	Presque Isle County
*Quincy Township	Branch County
Quincy Township	Houghton County
Ransom Township	Hillsdale County
*Ravenna Township	Muskegon County
Reading Township	Hillsdale County
Readmond Township	Emmet County
Redding Township	Clare County
Reeder Township	Missaukee County
Reno Township	Iosco County
Republic Township	Marquette County
*Reynolds Township	Montcalm County
Rich Township	Lapeer County
Richland Township	Missaukee County
Richland Township	Montcalm County
*Richland Township	Ogeman County
Richmond Township	Marquett County
Richmond Township	Osceola County
*Ridgeway Township	Lenawee County
Riga Township	Lenawee County
Riverside Township	Missaukee County
Riverton Township	Mason County
*Rock River Township.	Alger County
Rockland Township	Ontonagon County
Rolland Township	Isabella County
*Rollin Township	Lenawee County
Rome Township	Lenawee County
Ronald Township	Ionia County
Roscommon Township.	Roscomon County
Rose Lake Township	Osceola County
Rose Township	Ogemaw County
Royal Oak Township	Oakland County
*Rubicon Township	Huron County
Rudyard Township	Chippewa County
Rush Township	Shiawassee County
Rust Township	Montmorency County
Sage Township	Gladwin County
Sagola Township	Dickinson County
Sand Beach Township.	Huron County
*Sandstone Township	Jackson County
*Sanilac Township	Sanilac County
Sauble Township	Lake County
*Saugatuck Township	Allegan County
*Schoolcraft Township.	Houghton County
Scipio Township	Hillsdale County
Sebewa Township	Ionia County
*Sebewaing Township.	Huron County
Selma Township	Wexford County
Seneca Township	Lenawee County
Seney Township	Schoolcraft County
Seville Township	Gratiot County
*Shelby Township	Oceana County
Sheridan Township	Calhoun County
Sheridan Township	Clare County
Sheridan Township	Huron County
Shendan Township	Mason County
Sheridan Township	Mecosta County
Sheridan Township	Newaygo County
Sheridan Township	Gladwin County
Sherman Township	Huron County
Sherman Township	Isabella County
Sherman Township	Keweenaw County
*Sherman Township	Mason County
Sherman Township	Newaygo County
Sherman Township	Osceola County
*Sherwood Township	Branch County
Shiawassee Township.	Shiawassee County
*Sidney Township	Montcalm County
Sigel Township	Huron County
Silver Creek Township.	Cass County
Skandia Township	Marquette County
*Slagle Township	Wexford County
Sodus Township	Berrian County
Solon Township	Leelanau County
Soo Township	Chippewa County
South Arm Township	Charlevoix County
South Branch Township.	Crawford County
South Haven Township.	Van Buren County
*Spalding Township	Menominee County
Spaulding Township	Saginaw County
*Speaker Township	Sanilac County
Springdale Township	Manistee County

Springfield Township	Kalkaska County
*Springport Township	Jackson County
Springvale Township	Emmet County
*Springville Township	Wexford County
Spurr Township	Baraga County
*St. Charles Township.	Saginaw County
St. Ignace Township	Mackinac County
St. James Township	Charlevoix County
Stambaugh Township	Iron County
Standish Township	Arenac County
Stannard Township	Ontonagon County
Stanton Township	Houghton County
Star Township	Antrim County
Stephenson Township.	Menominee County
Stronach Township	Manistee County
Sugar Island Township.	Chippewa County
Summerfield Township.	Monroe County
Summit Township	Mason County
Sumner Township	Gratiot County
Superior Township	Chippewa County
Sweetwater Township	Lake County
Sylvan Township	Osceola County
Tawas Township	Iosco County
Taymouth Township	Saginaw County
*Tekonsha Township	Calhoun County
Thompson Township	Schoolcraft County
*Three Oaks Township.	Berrien County
Tompkins Township	Jackson County
Torch Lake Township	Antrim County
Torch Lake Township	Houghton County
Trout Lake Township	Chippewa County
Trowbridge Township	Allegan County
Troy Township	Newaygo County
Turin Township	Marquette County
*Turner Township	Arenac County
Tuscarora Township	Cheboygan County
Tuscola Township	Tuscola County
*Tyrone Township	Kent County
*Union Township	Branch County
Union Township	Isabella County
Valley Township	Allegan County
Vernon Township	Isabella County
*Vernon Township	Shiawassee County
Verona Township	Huron County
Victory Township	Mason County
Vienna Township	Montmorency County
Volinia Township	Cass County
Wakefield Township	Gogebic County
Wales Township	St Clair County
Walker Township	Cheboygan County
Warner Township	Antrim County
Washington Township	Gratiot County
*Washington Township.	Sanilac County
Waterloo Township	Jackson County
Watersmeet Township.	Gogebic County
Watertown Township	Sanilac County
Watertown Township	Tuscola County
Watervliet Township	Berrien County
Watson Township	Allegan County
Waucedah Township	Dickinson County
Waverly Township	Cheboygan County
Waverly Township	Van Buren County
Wayland Township	Allegan County
Wayne Township	Cass County
Weare Township	Oceana County
*Webber Township	Lake County
Weesaw Township	Berrien County
*Weldon Township	Benzie County
Wellington Township	Alpena County
Wells Township	Delta County
Wells Township	Marquette County
Wells Township	Tuscola County
West Branch Township.	Dickinson County
West Branch Township.	Ogemaw County
*Westphalia Township.	Clinton County
Wexford Township	Wexford County
Wheatland Township	Hillsdale County
Wheatland Township	Mecosta County
Wheatland Township	Sanilac County
*Wheeler Township	Gratiot County
*White Pigeon Township.	St Joseph County
White River Township	Muskegon County
Whitefish Township	Chippewa County
Whitewater Township	Grand Traverse County
Whitney Township	Arenac County
Wilcox Township	Newaygo County
*Wilmot Township	Cheboygan County
Wilson Township	Alpena County
Wilson Township	Charlevoix County
Winfield Township	Montcalm County
*Winsor Township	Huron County
Winterfield Township	Clare County
Wise Township	Isabella County
Wisner Township	Tuscola County
Woodbridge Township.	Hillsdale County
*Woodland Township	Barry County
*Woodstock Township.	Lenawee County
Worth Township	Sanilac County
*Wright Township	Hillsdale County
Wright Township	Ottawa County
Yates Township	Lake County

New Hampshire

Name	*County*
Acworth Town	Sullivan County
Albany Town	Carroll County
Alexandria Town	Grafton County
Alstead Town	Cheshire County
Ashland Town	Grafton County
Bartlett Town	Carroll County
Bath Town	Grafton County
Benton Town	Grafton County
Bradford Town	Merrimack County
Campton Town	Grafton County
Canaan Town	Grafton County
Center Conway Town	Carroll County
Center Harbor Town	Belknap County
Chatham Town	Carroll County
Columbia Town	Coos County
Dalton Town	Coos County
Dorchester Town	Grafton County
Dublin Town	Cheshire County
Dummer Town	Coos County
Durham Town	Strafford County
Eaton Town	Carroll County
Effingham Town	Carroll County
Farmington Town	Strafford County
Groton Town	Grafton County
Henniker Town	Merrimack County
Hill Town	Merrimack County
Lancaster Town	Coos County
Landaff Town	Grafton County
Lempster Town	Sullivan County
Lincoln Town	Grafton County
Lisbon Town	Grafton County
Littleton Town	Grafton County
Lyman Town	Grafton County
Middleton Town	Strafford County
Nelson Town	Cheshire County
New Hampton Town	Belknap County
Newbury Town	Merrimack County
Northumberland Town.	Coos County
Piermont Town	Grafton County
Pittsburg Town	Coos County
Plymouth Town	Grafton County
Springfield Town	Sullivan County
Stark Town	Coos County
Stewartstown Town	Coos County
Stratford Town	Coos County
Troy Town	Cheshire County
Unity Town	Sullivan County
Wakefield Town	Carroll County
Warner Town	Merrimack County
Warren Town	Grafton County
Wentworth Town	Grafton County
Whitefield Town	Coos County
Winchester Town	Cheshire County
Woodstock Town	Grafton County

New Jersey

Name	*County*
Buena Vista Township.	Atlantic County
City of Orange Township.	Essex County
Commercial Township	Cumberland County
Deerfield Township	Cumberland County
Dennis Township	Cape May County
Downe Township	Cumberland County
Fairfield Township	Cumberland County
Greenwich Township	Cumberland County
Lakewood Township	Ocean County
Lawrence Township	Cumberland County
Lower Alloways Creek Township.	Salem County
Mannington Township	Salem County
Maurice River Township.	Cumberland County
Middle Township	Cape May County
Montclair Township	Essex County
Mount Holly Township.	Burlington County
Neptune Township	Monmouth County
New Hanover Township.	Burlington County
North Bergen Township.	Hudson County
Oldmans Township	Salem County
Oxford Township	Warren County
Pittsgrove Township	Salem County
Plumsted Township	Ocean County
Riverside Township	Burlington County
Shrewsbury Township	Monmouth County
Stow Creek Township	Cumberland County
Upper Deerfield Township.	Cumberland County
Washington Township	Burlington County
Weehawken Township.	Hudson County
Woolwich Township	Gloucester County

New York

Name	*County*
*Adams Town	Jefferson County
*Addison Town	Steuben County
*Albion Town	Orleans County
*Albion Town	Oswego County
*Alexander Town	Genesee County
*Alexandria Town	Jefferson County
*Alfred Town	Allegany County

*Allegany Town	Cattaraugus County
Allen Town	Allegany County
Alma Town	Allegany County
*Altamont Town	Franklin County
Altona Town	Clinton County
Amenia Town	Dutchess County
*Amity Town	Allegany County
*Amsterdam Town	Montgomery County
Ancram Town	Columbia County
*Andes Town	Delaware County
*Andover Town	Allegany County
*Angelica Town	Allegany County
Annsville Town	Oneida County
*Antwerp Town	Jefferson County
*Arcadia Town	Wayne County
*Argyle Town	Washington County
Arietta Town	Hamilton County
Ashford Town	Cattaraugus County
Ashland Town	Greene County
*Athens Town	Greene County
*Attica Town	Wyoming County
*Au Sable	Clinton County
*Augusta Town	Oneida County
Ava Town	Oneida County
*Avon Town	Livingston County
*Bainbridge Town	Chenango County
Baldwin Town	Chemung County
Bangor Town	Franklin County
Barre Town	Orleans County
Barrington Town	Yates County
*Barton Town	Tioga County
Batavia Town	Genesee County
*Bath Town	Steuben County
Beekmantown Town	Clinton County
Belfast Town	Allegany County
Bellmont Town	Franklin County
Benson Town	Hamilton County
*Benton Town	Yates County
Berlin Town	Rensselaer County
Bethany Town	Genesee County
Bethel Town	Sullivan County
Birdsall Town	Allegany County
Black Brook Town	Clinton County
Bleecker Town	Fulton County
Blenheim Town	Schoharie County
*Bolivar Town	Allegany County
Bolton Town	Warren County
Bombay Town	Franklin County
*Boonville Town	Oneida County
Bovina Town	Delaware County
Boylston Town	Oswego County
Bradford Town	Steuben County
Brandon Town	Franklin County
*Brant Town	Erie County
Brasher Town	St. Lawrence County
*Bridgewater Town	Oneida County
Brighton Town	Franklin County
*Broadalbin Town	Fulton County
Brookfield Town	Madison County
*Brownville Town	Jefferson County
*Burke Town	Franklin County
Burlington Town	Otsego County
*Burns Town	Allegany County
*Butler Town	Wayne County
Cairo Town	Greene County
*Callicoon Town	Sullivan County
Cambria Town	Niagara County
*Cambridge Town	Washington County
*Camden Town	Oneida County
Cameron Town	Steuben County
*Canajoharie Town	Montgomery County
*Candor Town	Tioga County
Caneadea Town	Allegany County
*Canisteo Town	Steuben County
*Canton Town	St Lawrence County
*Cape Vincent Town	Jefferson County
Carlton Town	Orleans County
Caroga Town	Fulton County
Caroline Town	Tompkins County
*Carrollton Town	Cattaraugus County
*Castile Town	Wyoming County
*Catharine Town	Schuyler County
Catlin Town	Chemung County
Cayuta Town	Schuyler County
Centerville Town	Allegany County
*Champion Town	Jefferson County
Charleston Town	Montgomery County
Charlotte Town	Chautauqua County
*Chateaugay Town	Franklin County
*Chautauqua Town	Chautauqua County
*Cherry Creek Town	Chautauqua County
*Cherry Valley Town	Otsego County
Chester Town	Warren County
*Chesterfield Town	Essex County
Cincinnatus Town	Cortland County
Clare Town	St Lawrence County
Clarksville Town	Allegany County
*Clayton Town	Jefferson County
Clifton Town	St Lawrence County
Clinton Town	Clinton County
Clymer Town	Chautauqua County
*Cobleskill Town	Schoharie County
*Cohocton Town	Steuben County
Colchester Town	Delaware County
Cold Spring Township	Cattaraugus County
*Collins Town	Erie County
Colton Town	St Lawrence County
Columbia Town	Herkimer County
Columbus Town	Chenango County
Conesville Town	Schoharie County
*Conewango Town	Cattaraugus County
Conquest Town	Cayuga County
Constable Town	Franklin County
Copake Town	Columbia County
*Corinth Town	Saratoga County
*Covert Town	Seneca County
*Coxsackie Town	Greene County
*Croghan Town	Lewis County
Crown Point Town	Essex County
Cuyler Town	Cortland County
*Dannemora Town	Clinton County
Danube Town	Herkimer County
Day Town	Saratoga County
*Dayton Town	Cattaraugus County
*De Kalb Town	St Lawrence County
De Peyster Town	St Lawrence County
Decatur Town	Otsego County
Deerpark Town	Orange County
Delaware Town	Sullivan County
*Delhi Town	Delaware County
*Denmark Town	Lewis County
Denning Town	Ulster County
*Diana Town	Lewis County
Dickinson Town	Franklin County
*Dix Town	Schuyler County
Dover Town	Dutchess County
Dresden Town	Washington County
Dunkirk Town	Chautauqua County
Durham Town	Green County
Eagle Town	Wyoming County
East Otto Town	Cattaraugus County
*Easton Town	Washington County
*Eaton Town	Madison County
Edinburg Town	Saratoga County
Edmeston Town	Otsego County
*Edwards Town	St. Lawrence County
*Elba Town	Genesee County
Elizabethtown Town	Essex County
Ellenburg Town	Clinton County
*Ellicottville Town	Cattaraugus County
Ellington Town	Chautauqua County
*Ellisburg Town	Jefferson County
Enfield Town	Tompkins County
Ephratah Town	Fulton County
Erin Town	Chemung County
Esopus Town	Ulster County
Essex Town	Essex County
Exeter Town	Otsego County
*Fairfield Town	Herkimer County
*Fallsburg Town	Sullivan County
Farmersville Town	Cattaraugus County
Fenner Town	Madison County
Fine Town	St Lawrence County
Florence Town	Oneida County
Fort Covington Town	Franklin County
*Fort Edward Town	Washington County
Fowler Town	St Lawrence County
*Frankfort Town	Herkimer County
*Franklin Town	Delaware County
Franklin Town	Franklin County
*Franklinville Town	Cattaraugus County
Freedom Town	Cattaraugus County
Freetown Town	Cortland County
Fremont Town	Steuben County
Fremont Town	Sullivan County
French Creek Town	Chautauqua County
Friendship Town	Allegany County
Fulton Town	Schoharie County
*Gaines Town	Orleans County
*Gainesville Town	Wyoming County
*Galen Town	Wayne County
Genesee Falls Town	Wyoming County
Genesee Town	Allegany County
*Geneseo Town	Livingston County
Genoa Town	Cayuga County
Georgetown Town	Madison County
*German Flatts Town	Herkimer County
German Town	Chenango County
Gilboa Town	Schoharie County
*Glen Town	Montgomery County
*Gouverneur Town	St Lawrence County
Granger Town	Allegany County
*Granville Town	Washington County
Great Valley Town	Cattaraugus County
*Green island Town	Albany County
Greenfield Town	Saratoga County
*Greenwich Town	Washington County
Greenwood Town	Steuben County
Greig Town	Lewis County
Grove Town	Allegany County
Groveland Town	Livingston County
Guilford Town	Chenango County
Hadley Town	Saratoga County
Hague Town	Warren County
Halcott Town	Greene County
Hamden Town	Delaware County
*Hamilton Town	Madison County
*Hammond Town	St. Lawrence County
*Hancock Town	Delaware County
*Hannibal Town	Oswego County
*Hanover Town	Chautauqua County
Hardenburgh	Ulster County
Harford Town	Cortland County
*Harmony Town	Chautauqua County
*Harpersfield Town	Delaware County
*Harrietstown Town	Franklin County
Harrisburg Town	Lewis County
Hartford Town	Washington County
*Hartland Town	Niagara County
Hartsville Town	Steuben County
Hartwick Town	Otsego County
Hebron Town	Washington County
Henderson Town	Jefferson County
*Herkimer Town	Herkimer County
*Hermon Town	St. Lawrence County

Highland Town	Sullivan County
Hillsdale Town	Columbia County
Hinsdale Town	Cattaraugus County
*Homer Town	Cortland County
Hope Town	Hamilton County
Hopkinton Town	St. Lawrence County
Horicon Town	Warren County
Hornby Town	Steuben County
*Hornells Ville Town	Steuben County
*Horseheads Town	Chemung County
*Hounsfield Town	Jefferson County
Howard Town	Steuben County
*Hume Town	Allegany County
Humphrey Town	Cattaraugus County
*Hunter Town	Greene County
Independence Town	Allegany County
Indian Lake Town	Hamilton County
Ischua Town	Cattaraugus County
Italy Town	Yates County
Jasper Town	Steuben County
Jay Town	Essex County
Jefferson Town	Schoharie County
*Jerusalem Town	Yates County
Johnsburg Town	Warren County
Junius Town	Seneca County
Keene Town	Essex County
*Kingsbury Town	Washington County
Kortright Town	Delaware County
Lake Luzerne Town	Warren County
*Lake Pleasant Town	Hamilton County
Lawrence Town	St. Lawrence County
*Le Ray Town	Jefferson County
*Le Roy Town	Genesee County
Lebanon Town	Madison County
*Ledyard Town	Cayuga County
*Lenox Town	Madison County
Leon Town	Cattaraugus County
Lewis Town	Essex County
Lewis Town	Lewis County
*Leyden Town	Lewis County
*Liberty Town	Sullivan County
Lincklaen Town	Chenango County
Lisbon Town	St. Lawrence County
*Lisle Town	Broome County
Litchfield Town	Herkimer County
Little Falls Town	Herkimer County
*Little Valley Town	Cattaraugus County
*Lodi Town	Seneca County
Long Lake Town	Hamilton County
Lorraine Town	Jefferson County
*Lowville Town	Lewis County
Lyme Town	Jefferson County
Lyndon Town	Cattaraugus County
*Lyons Town	Wayne County
*Lyonsdale Town	Lewis County
Machias Town	Cattaraugus County
Macomb Town	St. Lawrence County
*Madison Town	Madison County
Madrid Town	St. Lawrence County
*Malone Town	Franklin County
*Mamakating Town	Sullivan County
*Manheim Town	Herkimer County
Mansfield Town	Cattaraugus County
Martinsburg Town	Lewis County
*Maryland Town	Otsego County
Masonville Town	Delaware County
*Massena Town	St. Lawrence County
*Mayfield Town	Fulton County
McDonough Town	Chenango County
*Mentz Town	Cayuga County
Meredith Town	Delaware County
*Mexico Town	Oswego County
*Middlebury Town	Wyoming County
*Middletown Town	Delaware County
*Milford Town	Otsego County
*Milo Town	Yates County
*Minden Town	Montgomery County
Minerva Town	Essex County
*Mohawk Town	Montgomery County
*Moira Town	Franklin County
Montague Town	Lewis County
Montezuma Town	Cayuga County
*Mooers Town	Clinton County
*Moravia Town	Cayuga County
Morehouse Town	Hamilton County
*Moriah Town	Essex County
*Morristown Town	St. Lawrence County
*Mount Morris Town	Livingston County
*Murray Town	Orleans County
Napoli Town	Cattaraugus County
*New Albion Town	Cattaraugus County
*New Berlin Town	Chenango County
*New Brehem Town	Lewis County
New Lisbon Town	Otsego County
*New Paltz Town	Ulster County
Newcomb Town	Essex County
Newfane Town	Niagara County
*Newport Town	Herkimer County
*Norfolk Town	St. Lawrence County
*North Collins Town	Erie County
*North Dansville Town	Livingston County
*North East Town	Dutchess County
*North Elba Town	Essex County
North Harmony Town	Chautauqua County
North Hudson Town	Essex County
*Northampton Town	Fulton County
Norway Town	Herkimer County
*Oakfield Town	Genesee County
Ohio Town	Herkimer County
Olean Town	Cattaraugus County
*Oppenheim Town	Fulton County
Orange Town	Schuyler County
Orleans Town	Jefferson County
Orwell Town	Oswego County
Osceola Town	Lewis County
*Oswegatchie Town	St. Lawrence County
Otselic Town	Chenango County
Otto Town	Cattaraugus County
*Ovid Town	Seneca County
*Palatine Town	Montgomery County
*Pamelia Town	Jefferson County
*Paris Town	Oneida County
Parishville Town	St. Lawrence County
*Pembroke Town	Genesee County
*Perry Town	Wyoming County
*Perrysburg Town	Cattaraugus County
*Persia Town	Cattaraugus County
Pharsalia Town	Chenango County
*Phelps Town	Ontario County
*Philadelphia Town	Jefferson County
Piercefield Town	St Lawrence County
Pierrepont Town	St Lawrence County
*Pike Town	Wyoming County
Pinckney Town	Lewis County
Pitcairn Town	St Lawrence County
Pitcher Town	Chenango County
Pittsfield Town	Otsego County
Plainfield Town	Otsego County
Plymouth Town	Chenango County
*Portland Town	Chautauqua County
*Portville Town	Cattaraugus County
*Potsdam Town	St Lawrence County
*Potter Town	Yates County
Prattsburg Town	Steuben County
Prattsville Town	Greene County
Preble Town	Cortland County
Preston Town	Chenango County
Providence Town	Saratoga County
Pulteney Town	Steuben County
Putnam Town	Washington County
*Randolph Town	Cattaraugus County
Rathbone Town	Steuben County
*Reading Town	Schuyler County
Red House Town	Cattaraugus County
Redfield Town	Oswego County
Rensselaerville Town	Albany County
*Richfield Town	Otsego County
Richford Town	Tioga County
*Richland Town	Oswego County
*Richmondville Town	Schoharie County
*Ridgeway Town	Orleans County
Rochester Town	Ulster County
Rockland Town	Sullivan County
Rodman Town	Jefferson County
Root Town	Montgomery County
Rose Town	Wayne County
Roseboom Town	Otsego County
Rossie Town	St Lawrence County
Roxbury Town	Delaware County
*Royalton Town	Niagara County
Rushford Town	Allegany County
Russell Town	St Lawrence County
*Russia Town	Herkimer County
*Rutland Town	Jefferson County
Salamanca Town	Cattaraugus County
*Salem Town	Washington County
Salisbury Town	Herkimer County
*Sandy Creek Town	Oswego County
*Sanford Town	Broome County
*Sangerfield Town	Oneida County
Savannah Town	Wayne County
*Schoharie Town	Schoharie County
Schroon Town	Essex County
Schuyler Falls Town	Clinton County
Schuyler Town	Herkimer County
Sempronius Town	Cayuga County
*Seneca Falls Town	Seneca County
Seneca Town	Ontario County
Sennett Town	Cayuga County
Seward Town	Schoharie County
*Shandaken Town	Ulster County
*Sharon Town	Schoharie County
Shawangunk Town	Ulster County
*Shelby Town	Orleans County
*Sherburne Town	Chenango County
Sheridan Town	Chautauqua County
*Sherman Town	Chautauqua County
*Sidney Town	Delaware County
Smithfield Town	Madison County
*Smyrna Town	Chenango County
*Sodus Town	Wayne County
Solon Town	Cortland County
South Valley Town	Cattaraugus County
Southport Town	Chemung County
Springfield Town	Otsego County
*St Armand Town	Essex County
*St Johnsville Town	Montgomery County
*Stamford Town	Delaware County
Stark Town	Herkimer County
*Starkey Town	Yates County
Stephentown Town	Rensselaer County
*Sterling Town	Cayuga County
Steuben Town	Oneida County
*Stockbridge Town	Madison County
*Stockton Town	Chautauqua County
Stoney Creek Town	Warren County
Stratford Town	Fulton County
Summit Town	Schoharie County
*Sweden Town	Monroe County
Taghkanic Town	Columbia County
Taylor Town	Cortland County
*Theresa Town	Jefferson County
*Thompson Town	Sullivan County
Thurman Town	Warren County

*Ticonderoga Town	Essex County
Troupsburg Town	Steuben County
Truxton Town	Cortland County
*Turin Town	Lewis County
Tuscarora Town	Steuben County
Tyre Town	Seneca County
Tyrone Town	Schuyler County
*Van Etten Town	Chemung County
Venice Town	Cayuga County
*Veteran Town	Chemung County
Victory Town	Cayuga County
*Vienna Town	Oneida County
Virgil Town	Cortland County
*Waddington Town	St Lawrence County
*Walton Town	Delaware County
Warren Town	Herkimer County
*Waterloo Town	Seneca County
Watertown Town	Jefferson County
Watson Town	Lewis County
Waverly Town	Franklin County
*Wawapsing Town	Ulster County
Wayne Town	Steuben County
Webb Town	Herkimer County
Wells Town	Hamilton County
Wellsville Town	Allegany County
West Almond Town	Allegany County
West Sparta Town	Livingston County
*West Turin Town	Lewis County
West Union Town	Steuben County
Western Town	Oneida County
*Westfield Town	Chautauqua County
Westford Town	Otsego County
*Westport Town	Essex County
Westville Town	Franklin County
Wheatfield Town	Niagara County
Wheeler Town	Steuben County
*Whitehall Town	Washington County
Willet Town	Cortland County
Williamstown Town	Oswego County
Willing Town	Allegany County
Willsboro Town	Essex County
Wilmington Town	Essex County
*Wilna Town	Jefferson County
*Wilson Town	Niagara County
*Winfield Town	Herkimer County
*Wirt Town	Allengany County
*Wolcott Town	Wayne County
*Woodhull Town	Steuben County
Worcester Town	Otsego County
Worth Town	Jefferson County
*Yates Town	Orleans County
York Town	Livingston County
*Yorkshire Town	Cattaraugus County

Pennsylvania

Name	*County*
Abbott Township	Potter County
Adams Township	Cambria County
Addison Township	Somerset County
Albany Township	Bradford County
Aleppo Township	Greene County
Allegany Township	Potter County
Allegheny Township	Butler County
Allegheny Township	Cambria County
Allegheny Township	Somerset County
Allegheny Township	Venango County
Allison Township	Clinton County
Amity Township	Erie County
Amwell Township	Washington County
Annin Township	McKean County
Anthony Township	Lycoming County
Antis Township	Blair County
Apolacon Township	Susquehanna County
Ararat Township	Susquehanna County
Armagh Township	Mifflin County
Armstrong Township	Lycoming County
Athens Township	Crawford County
Auburn Township	Susquehanna County
Ayr Township	Fulton County
Banks Township	Carbon County
Banks Township	Indiana County
Barnett Township	Forest County
Barnett Township	Jefferson County
Barr Township	Cambria County
Barree Township	Huntingdon County
Barry Township	Schuylkill County
Bart Township	Lancaster County
Bastress Township	Lycoming County
Beale Township	Juniata County
Beaver Township	Clarion County
Beaver Township	Columbia County
Beaver Township	Crawford County
Beaver Township	Jefferson County
Beaver Township	Snyder County
Beccaria Township	Clearfield County
Bedford Township	Beford County
Beech Creek Township.	Clinton County
Belfast Township	Fulton County
Bell Township	Clearfield County
Bell Township	Jefferson County
Bell Township	Westmoreland County
Benezette Township	Elk County
Benton Township	Columbia County
Benton Township	Lackawanna County
Berlin Township	Wayne County
Bethel Township	Armstrong County
Bethel Township	Fulton County
Bigler Township	Clearfield County
Bingham Township	Potter County
Black Creek Township.	Luzerne County
Black Lick Township	Indiana County
Black Township	Somerset County
Blacklick Township	Cambria County
Blaine Township	Washington County
Blair Township	Blair County
Bloom Township	Clearfield County
Bloomfield Township	Bedford County
Bloomfield Township	Crawford County
Bloss Township	Tioga County
Blythe Township	Schuylkill County
Boggs Township	Armstrong County
Boggs Township	Clearfield County
Bradford Township	Clearfield County
Bradford Township	McKean County
Brady Township	Butler County
Brady Township	Clarion County
Brady Township	Clearfield County
Brady Township	Huntingdon County
Brady Township	Lycoming County
Bradys Bend Township.	Armstrong County
Branch Township	Schuylkill County
Bratton Township	Mifflin County
Brecknock Township	Lancaster County
Bridgewater Township.	Susquehanna County
Broad Top Township	Bedford County
Brookfield Township	Tioga County
Brooklyn Township	Susquehanna County
Brothersvalley Township.	Somerset County
Brown Township	Lycoming County
Brown Township	Mifflin County
Brownsville Township	Fayette County
Brush Creek Township.	Fulton County
Brush Valley Township.	Indiana County
Buck Township	Luzerne County
Buckingham Township.	Wayne County
Buffington Township	Indiana County
Bullskin Township	Fayette County
Burlington Township	Bradford County
Burnside Township	Centre County
Burnside Township	Clearfield County
Burrell Township	Armstrong County
Burrell Township	Indiana County
Butler Township	Luzerne County
Butler Township	Schuylkill County
Cadogan Township	Armstrong County
Cambria Township	Cambria County
Cambridge Township	Crawford County
Canaan Township	Wayne County
Canoe Township	Indiana County
Canton Township	Washington County
Carbon Township	Huntingdon County
Carbondale Township	Lackawanna County
Carroll Township	Washington County
Casade Township	Lycoming County
Cass Township	Huntingdon County
Cass Township	Schuylkill County
Castanea Township	Clinton County
Catharine Township	Blair County
Center Township	Greene County
Center Township	Indiana County
Center Township	Snyder County
Ceres Township	McKean County
Chapman Township	Clinton County
Chapman Township	Snyder County
Charleston Township	Tioga County
Chatham Township	Tioga County
Cherry Township	Sullivan County
Cherryhill Township	Indiana County
Cherrytree Township	Venango County
Chest Township	Cambria County
Chest Township	Clearfield County
Clara Township	Potter County
Clarion Township	Clarion County
Clay Township	Butler County
Clay Township	Huntingdon County
Clearfield Township	Butler County
Clearfield Township	Cambria County
Cleveland Township	Columbia County
Clifford Township	Susquehanna County
Clinton Township	Butler County
Clinton Township	Lycoming County
Clinton Township	Venango County
Clinton Township	Wyoming County
Clover Township	Jefferson County
Clymer Township	Tioga County
Coal Township	Northumberland County
Cogan House Township.	Lycoming County
Colebrook Township	Clinton County
Colerain Township	Bedford County
Colerain Township	Lancaster County
Colley Township	Sullivan County
Columbia Township	Bradford County
Concord Township	Butler County
Concord Township	Erie County
Conemaugh Township.	Cambria County
Conemaugh Township.	Indiana County
Conemaugh Township.	Somerset County
Conewango Township.	Warren County
Conneaut Township	Crawford County

Conneaut Township	Erie County
Connellsville Township.	Fayette County
Conyngham Township.	Columbia County
Conyngham Township.	Luzerne County
Coolspring Township	Mercer County
Cooper Township	Clearfield County
Corydon Township	McKean County
Covington Township	Clearfield County
Covington Township	Lackawanna County
Covington Township	Tioga County
Cowanshannock Township.	Armstrong County
Cranberry Township	Venango County
Cresson Township	Cambria County
Cromwell Township	Huntingdon County
Croyle Township	Cambria County
Cumberland Township.	Greene County
Cumberland Valley Township.	Bedford County
Cummings Township	Lycoming County
Curtin Township	Centre County
Cussewago Township	Crawford County
Damascus Township	Wayne County
Darlington Township	Beaver County
Davidson Township	Sullivan County
Dean Township	Cambria County
Decatur Township	Mifflin County
Deer Creek Township	Mercer County
Deerfield Township	Tioga County
Delaware Township	Juniata County
Delaware Township	Mercer County
Delaware Township	Northumberland County
Delmar Township	Tioga County
Derry Township	Mifflin County
Derry Township	Montour County
Derry Township	Westmoreland County
Dimock Township	Susquehanna County
Donegal Township	Butler County
Donegal Township	Washington County
Donegal Township	Westmoreland County
Dorrance Township	Luzerne County
Dreher Township	Wayne County
Dublin Township	Fulton County
Dublin Township	Huntingdon County
Dunbar Township	Fayette County
Duncan Township	Tioga County
Dunkard Township	Greene County
Dunnstable Township	Clinton County
Dyberry Township	Wayne County
Earl Township	Lancaster County
East Bethlehem Township.	Washington County
East Cameron Township.	Northumberland County
East Carroll Township	Cambria County
East Chillisquaque Township.	Northumberland County
East Deer Township	Allegheny County
East Fairfield Township.	Crawford County
East Fallowfield Township.	Crawford County
East Finley Township	Washington County
East Franklin Township.	Armstrong County
East Huntingdon Township.	Westmoreland County
East Mahoning Township.	Indiana County
East Mead Township	Crawford County
East Norwegian Township.	Schuylkill County
East Nottingham Township.	Chester County
East Penn Township	Carbon County
East Providence Township.	Bedford County
East St. Clair Township.	Bedford County
East Taylor Township	Cambria County
East Union Township	Schuylkill County
East Vincent Township.	Chester County
East Wheatfield Township.	Indiana County
Eden Township	Lancaster County
Elder Township	Cambria County
Eldred Township	Jefferson County
Eldred Township	McKean County
Eldred Township	Schuylkill County
Eldred Township	Warren County
Elizabeth Township	Allegheny County
Elk Creek Township	Erie County
Elk Lick Township	Somerset County
Elk Township	Clarion County
Elk Township	Tioga County
Elkland Township	Sullivan County
Elkland Township	Tioga County
Eulalia Township	Potter County
Fairfield Township	Crawford County
Fairfield Township	Westmoreland County
Fairhope Township	Somerset County
Fairmont Township	Luzerne County
Fairview Township	Butler County
Fairview Township	Mercer County
Fallowfield Township	Washington County
Falls Township	Wyoming County
Fannett Township	Franklin County
Farmington Township	Clarion County
Farmington Township	Tioga County
Fawn Township	Allegheny County
Fawn Township	York County
Fayette Township	Juniata County
Fell Township	Lackawanna County
Ferguson Township	Clearfield County
Fermanagh Township	Juniata County
Findley Township	Mercer County
Fishing Creek Township.	Columbia County
Forest Lake Township.	Susquehanna County
Forks Township	Sullivan County
Forward Township	Allegheny County
Forward Township	Butler County
Foster Township	Luzerne County
Foster Township	Schuylkill County
Fox Township	Sullivan County
Frailey Township	Schuylkill County
Franklin Township	Bradford County
Franklin Township	Carbon County
Franklin Township	Columbia County
Franklin Township	Fayette County
Franklin Township	Greene County
Franklin Township	Huntingdon County
Franklin Township	Luzerne County
Franklin Township	Lycoming County
Franklin Township	Susquehanna County
Frankstown Township	Blair County
Freedom Township	Adams County
Freedom Township	Blair County
Freehold Township	Warren County
Freeport Township	Greene County
French Creek Township.	Mercer County
Frenchcreek Township.	Venango County
Gaines Township	Tioga County
Gallagher Township	Clinton County
Gallitzin Township	Cambria County
Gaskill Township	Jefferson County
Genesee Township	Potter County
Georges Township	Fayette County
German Township	Fayette County
Gibson Township	Cameron County
Gibson Township	Susquehanna County
Gilmore Township	Greene County
Gilpin Township	Armstrong County
Girard Township	Clearfield County
Girard Township	Erie County
Goshen Township	Clearfield County
Graham Township	Clearfield County
Grant Township	Indiana County
Granville Township	Bradford County
Granville Township	Mifflin County
Gray Township	Greene County
Great Bend Township	Susquehanna County
Green Township	Forest County
Green Township	Indiana County
Greene Township	Clinton County
Greene Township	Greene County
Greene Township	Mercer County
Greenfield Township	Blair County
Greenfield Township	Erie County
Greenville Township	Somerset County
Greenwood Township	Clearfield County
Greenwood Township	Columbia County
Greenwood Township	Crawford County
Greenwood Township	Juniata County
Gregg Township	Centre County
Grove Township	Cameron County
Gulich Township	Clearfield County
Haines Township	Centre County
Hamilton Township	McKean County
Hamilton Township	Tioga County
Hamlin Township	McKean County
Hanover Township	Luzerne County
Hanover Township	Washington County
Harford Township	Susquehanna County
Harmony Township	Forest County
Harmony Township	Susquehanna County
Harrison Township	Allegheny County
Harrison Township	Bedford County
Harrison Township	Potter County
Hartley Township	Union County
Hayfield Township	Crawford County
Hazle Township	Luzerne County
Heath Township	Jefferson County
Hebron Township	Potter County
Hector Township	Potter County
Hegins Township	Schuylkill County
Hemlock Township	Columbia County
Henderson Township	Huntingdon County
Henderson Township	Jefferson County
Henry Clay Township	Fayette County
Herrick Township	Bradford County
Herrick Township	Susquehanna County
Hickory Township	Forest County
Hickory Township	Lawrence County
Highland Township	Clarion County
Highland Township	Elk County
Hillsgrove Township	Sullivan County
Hollenback Township	Luzerne County
Homer Township	Potter County
Hopewell Township	Bedford County
Hopewell Township	Cumberland County
Hopewell Township	Huntingdon County

Hopewell Township	Washington County
Horton Township	Elk County
Hovey Township	Armstrong County
Howe Township	Forest County
Hubley Township	Schuylkill County
Hunlock Township	Luzerne County
Huntington Township	Luzerne County
Huston Township	Blair County
Huston Township	Centre County
Huston Township	Clearfield County
Independence Township.	Washington County
Irwin Township	Venango County
Jackson Township	Butler County
Jackson Township	Cambria County
Jackson Township	Columbia County
Jackson Township	Greene County
Jackson Township	Huntingdon County
Jackson Township	Lycoming County
Jackson Township	Mercer County
Jackson Township	Northumberland County
Jackson Township	Perry County
Jackson Township	Snyder County
Jackson Township	Susquehanna County
Jackson Township	Tioga County
Jackson Township	Venango County
Jay Township	Elk County
Jefferson Township	Butler County
Jefferson Township	Fayette County
Jefferson Township	Greene County
Jefferson Township	Lackawanna County
Jefferson Township	Mercer County
Jefferson Township	Washington County
Jenkins Township	Luzerne County
Jenks Township	Forest County
Jenner Township	Somerset County
Jessup Township	Susquehanna County
Jordan Township	Clearfield County
Jordan Township	Lycoming County
Jordan Township	Northumberland County
Juniata Township	Bedford County
Juniata Township	Blair County
Juniata Township	Huntingdon County
Karthaus Township	Clearfield County
Keating Township	McKean County
Keating Township	Potter County
Kelly Township	Union County
Kimmel Township	Bedford County
King Township	Bedford County
Kingsley Township	Forest County
Kingston Township	Luzerne County
Kiskiminetas Township.	Armstrong County
Kline Township	Schuylkill County
Knox Township	Clearfield County
Knox Township	Jefferson County
La Plume Township	Lackawanna County
Lack Township	Juniata County
Lackawannock Township.	Mercer County
Lafayette Township	McKean County
Lake Township	Luzerne County
Lake Township	Mercer County
Lamar Township	Clinton County
Laporte Township	Sullivan County
Larimer Township	Somerset County
Lathrop Township	Susquehanna County
Lawrence Township	Clearfield County
Lawrence Township	Tioga County
Le Boeuf Township	Erie County
Leacock Township	Lancaster County
Lebanon Township	Wayne County
Lehigh Township	Carbon County
Lehigh Township	Lackawanna County
Lehman Township	Luzerne County
Leidy Township	Clinton County
Lemon Township	Wyoming County
Lenox Township	Susquehanna County
Leroy Township	Bradford County
Lewis Township	Lycoming County
Lewis Township	Northumberland County
Lewis Township	Union County
Liberty Township	Adams County
Liberty Township	Bedford County
Liberty Township	McKean County
Liberty Township	Mercer County
Liberty Township	Susquehanna County
Liberty Township	Tioga County
Licking Creek Township.	Fulton County
Licking Township	Clarion County
Limerick Township	Montgomery County
Limestone Township	Union County
Lincoln Township	Bedford County
Lincoln Township	Huntingdon County
Lincoln Township	Somerset County
Litchfield Township	Bradford County
Little Beaver Township.	Lawrence County
Little Britain Township	Lancaster County
Little Mahanoy Township.	Northumberland County
Locust Township	Columbia County
Logan Township	Blair County
Logan Township	Clinton County
Logan Township	Huntingdon County
Londonderry Township.	Bedford County
Lowep Augusta Township.	Northumberland County
Lower Chichester Township.	Delaware County
Lower Mahanoy Township.	Northumberland County
Lower Mount Bethel Township.	Northampton County
Lower Towamensing Township.	Carbon County
Lower Turkeyfoot Township.	Somerset County
Lower Tyrone Township.	Fayette County
Lower Yoder Township.	Cambria County
Loyalhanna Township	Westmoreland County
Loyalsock Township	Lycoming County
Lumber Township	Cameron County
Luzerne Township	Fayette County
Madison Township	Armstrong County
Madison Township	Clarion County
Madison Township	Columbia County
Madison Township	Lackawanna County
Mahanoy Township	Schuylkill County
Mahoning Township	Armstrong County
Mahoning Township	Carbon County
Mahoning Township	Lawrence County
Main Township	Columbia County
Manchester Township	Wayne County
Mann Township	Bedford County
Manor Township	Armstrong County
Marion Township	Butler County
Marion Township	Centre County
McCalmont Township	Jefferson County
McHenry Township	Lycoming County
McIntyre Township	Lycoming County
McKean Township	Erie County
McNett Township	Lycoming County
Mehoopany Township	Wyoming County
Menallen Township	Fayette County
Menno Township	Mifflin County
Metal Township	Franklin County
Middle Taylor Township.	Cambria County
Middlebury Township	Tioga County
Middlecreek Township.	Somerset County
Middletown Township	Susquehanna County
Mifflin Township	Columbia County
Mifflin Township	Lycoming County
Miles Township	Centre County
Milford Township	Juniata County
Milford Township	Somerset County
Mill Creek Township	Lycoming County
Mill Creek Township	Mercer County
Millcreek Township	Clarion County
Millcreek Township	Lebanon County
Miller Township	Huntingdon County
Miller Township	Perry County
Millstone Township	Elk County
Mineral Township	Venango County
Monongahela Township.	Greene County
Monroe Township	Bedford County
Monroe Township	Bradford County
Monroe Township	Clarion County
Monroe Township	Juniata County
Monroe Township	Wyoming County
Montgomery Township.	Indiana County
Montour Township	Columbia County
Moreland Township	Lycoming County
Morgan Township	Greene County
Morris Township	Clearfield County
Morris Township	Greene County
Morris Township	Huntingdon County
Morris Township	Tioga County
Morris Township	Washington County
Mount Carmel Township.	Northumberland County
Mount Lebanon Township.	Allegheny County
Mount Pleasant Township.	Columbia County
Mount Pleasant Township.	Washington County
Mount Pleasant Township.	Wayne County
Mount Pleasant Township.	Westmoreland County
Muddy Creek Township.	Butler County
Muncy Township	Lycoming County
Munster Township	Cambria County
Napier Township	Bedford County
Nelson Township	Tioga County
Nescopeck Township	Luzerne County
Neville Township	Allegheny County
New Castle Township	Schuylkill County
New Milford Township.	Susquehanna County
Newport Township	Luzerne County
Nicholson Township	Fayette County
Nicholson Township	Wyoming County
Nippenose Township	Lycoming County
North Bethlehem Township.	Washington County
North Buffalo Township.	Armstrong County
North Mahoning Township.	Indiana County

BEST COPY AVAILABLE

North Shenango Township.	Crawford County
North Union Township.	Fayette County
North Union Township.	Schuylkill County
North Versailles Township.	Allegheny County
North Woodbury Township.	Blair County
Northampton Township.	Somerset County
Northeast Madison Township.	Perry County
Norwegian Township	Schuylkill County
Norwich Township	McKean County
Noyes Township	Clinton County
Oakland Township	Butler County
Oakland Township	Susquehanna County
Oakland Township	Venango County
Oil Creek Township	Crawford County
Oilcreek Township	Venango County
Oliver Township	Jefferson County
Oliver Township	Mifflin County
Oregon Township	Wayne County
Orwell Township	Bradford County
Osceola Township	Tioga County
Oswayo Township	Potter County
Otter Creek Township	Mercer County
Otto Township	McKean County
Overton Township	Bradford County
Paint Township	Somerset County
Paradise Township	Lancaster County
Parker Township	Butler County
Parks Township	Armstrong County
Patterson Township	Beaver County
Penn Township	Butler County
Penn Township	Huntingdon County
Penn Township	Lycoming County
Penn Township	Snyder County
Perry Township	Armstrong County
Perry Township	Clarion County
Perry Township	Fayette County
Perry Township	Greene County
Perry Township	Jefferson County
Perry Township	Mercer County
Perry Township	Snyder County
Piatt Township	Lycoming County
Pike Township	Bradford County
Pike Township	Clearfield County
Pike Township	Potter County
Pine Creek Township	Clinton County
Pine Creek Township	Jefferson County
Pine Grove Township	Schuylkill County
Pine Township	Armstrong County
Pine Township	Clearfield County
Pine Township	Columbia County
Pine Township	Crawford County
Pine Township	Indiana County
Pine Township	Lycoming County
Pine Township	Mercer County
Pinegrove Township	Venango County
Piney Township	Clarion County
Pittsfield Township	Warren County
Pittston Township	Luzerne County
Plain Grove Township	Lawrence County
Plainfield Township	Northampton County
Plains Township	Luzerne County
Pleasant Valley Township	Potter County
Plum Township	Venango County
Plumcreek Township	Armstrong County
Plunketts Creek Township.	Lycoming County
Plymouth Township	Luzerne County
Point Township	Northumberland County
Polk Township	Jefferson County
Portage Township	Cambria County
Portage Township	Potter County
Porter Township	Clarion County
Porter Township	Clinton County
Porter Township	Huntingdon County
Porter Township	Jefferson County
Porter Township	Lycoming County
Porter Township	Schuylkill County
Preston Township	Wayne County
Pulaski Township	Beaver County
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Rayne Township	Indiana County
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Roulette Township	Potter County
Rush Township	Northumberland County
Rush Township	Susquehanna County
Rutland Township	Tioga County
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Sadsbury Township	Lancaster County
Salem Township	Clarion County
Salem Township	Luzerne County
Salem Township	Mercer County
Salem Township	Wayne County
Salisbury Township	Lancaster County
Saltlick Township	Fayette County
Sandy Creek Township.	Mercer County
Sandy Lake Township	Mercer County
Sandy Township	Clearfield County
Saville Township	Perry County
Schuylkill Township	Schuylkill County
Scott Township	Lackawanna County
Scott Township	Lawrence County
Scott Township	Wayne County
Scrubgrass Township	Venango County
Sergeant Township	McKean County
Sewickley Township	Westmoreland County
Shade Township	Somerset County
Shaler Township	Allegheny County
Shamokin Township	Northumberland County
Sharon Township	Potter County
Shenango Township	Lawrence County
Shippen Township	Cameron County
Shippen Township	Tioga County
Shippensburg Township.	Cumberland County
Shirley Township	Huntingdon County
Shrewsbury Township	Lycoming County
Shrewsbury Township	Sullivan County
Silver Lake Township	Susquehanna County
Slippery Rock Township.	Butler County
Slocum Township	Luzerne County
Smith Township	Washington County
Smithfield Township	Bradford County
Smithfield Township	Huntingdon County
Snank Spring Township.	Bedford County
Snyder Township	Blair County
Somerset Township	Somerset County
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South Bend Township	Armstrong County
South Center Township.	Columbia County
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South Lebanon Township.	Lebanon County
South Mahoning Township.	Indiana County
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South Pymatung Township.	Mercer County
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South Union Township.	Fayette County
South Versailles Township.	Allegheny County
South Woodbury Township.	Bedford County
Southampton Township.	Bedford County
Southampton Township.	Somerset County
Southwest Township	Warren County
Sparta Township	Crawford County
Spring Creek Township.	Elk County
Spring Township	Crawford County
Spring Township	Snyder County
Springfield Township	Bradford County
Springfield Township	Erie County
Springfield Township	Fayette County
Springfield Township	Huntingdon County
Springfield Township	Mercer County
Springhill Township	Fayette County
Springhill Township	Greene County
Springville Township	Susquehanna County
Spruce Creek Township.	Huntingdon County
Spruce Hill Township	Juniata County
St. Clair Township	Westmoreland County
Standing Stone Township.	Bradford County
Sterling Township	Wayne County

Steuben Township	Crawford County
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Stewart Township	Fayette County
Stonycreek Township	Cambria County
Stonycreek Township	Somerset County
Stowe Township	Allegheny County
Sugar Grove Township.	Mercer County
Sugarcreek Township	Armstrong County
Sugarloaf Township	Columbia County
Sullivan Township	Tioga County
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Summerhill Township	Crawford County
Summit Township	Butler County
Summit Township	Crawford County
Summit Township	Potter County
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Tell Township	Huntingdon County
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Thompson Township	Fulton County
Thompson Township	Susquehanna County
Tinicum Township	Delaware County
Tioga Township	Tioga County
Tionesta Township	Forest County
Toboyne Township	Perry County
Toby Township	Clarion County
Tod Township	Huntingdon County
Todd Township	Fulton County
Towanda Township	Bradford County
Tremont Township	Schuylkill County
Troy Township	Bradford County
Troy Township	Crawford County
Turbett Township	Juniata County
Tuscarora Township	Bradford County
Tuscarora Township	Juniata County
Tyrone Township	Blair County
Ulysses Township	Potter County
Union Township	Bedford County
Union Township	Clearfield County
Union Township	Crawford County
Union Township	Erie County
Union Township	Fulton County
Union Township	Huntingdon County
Union Township	Lawrence County
Union Township	Luzerne County
Union Township	Mifflin County
Union Township	Schuylkill County
Union Township	Snyder County
Union Township	Tioga County
Union Township	Union County
Unity Township	Westmoreland County
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Upper Mahantonga Township.	Schuylkill County
Upper Mifflin Township.	Cumberland County
Upper Nazareth Township.	Northampton County
Upper Turkeyfoot Township.	Somerset County
Upper Tyrone Township.	Fayette County
Valley Township	Armstrong County
Valley Township	Chester County
Vanpart Township	Beaver County
Venango Township	Butler County
Venango Township	Crawford County
Venango Township	Erie County
Vernon Township	Crawford County
Victory Township	Venango County
Walker Township	Huntingdon County
Walker Township	Juniata County
Walker Township	Schuylkill County
Warren Township	Bradford County
Warren Township	Franklin County
Warrior's Mark Township.	Huntingdon County
Warsaw Township	Jefferson County
Washington Township	Armstrong County
Washington Township	Butler County
Washington Township	Cambria County
Washington Township	Clarion County
Washington Township	Erie County
Washington Township	Fayette County
Washington Township	Greene County
Washington Township	Indiana County
Washington Township	Jefferson County
Washington Township	Lawrence County
Washington Township	Lycoming County
Washington Township	Northumberland County
Washington Township	Schuylkill County
Washington Township	Snyder County
Waterford Township	Erie County
Wayne Township	Armstrong County
Wayne Township	Clinton County
Wayne Township	Crawford County
Wayne Township	Erie County
Wayne Township	Greene County
Wayne Township	Lawrence County
Wayne Township	Mifflin County
Wayne Township	Schuylkill County
Wells Township	Bradford County
Wells Township	Fulton County
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West Beaver Township.	Snyder County
West Bethlehem Township.	Washington County
West Branch Township.	Potter County
West Buffalo Township.	Union County
West Burlington Township.	Bradford County
West Cameron Township.	Northumberland County
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West Chillisquaque Township.	Northumberland County
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West Franklin Township.	Armstrong County
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West Mahanoy Township.	Schuylkill County
West Mahoning Township.	Indiana County
West Penn Township	Schuylkill County
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White Township	Cambria County
Whiteley Township	Greene County
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Wilmington Township	Lawrence County
Wilmington Township	Mercer County
Wilmot Township	Bradford County
Windham Township	Bradford County
Winfield Township	Butler County
Winslow Township	Jefferson County
Wolf Creek Township	Mercer County
Wood Township	Huntingdon County
Woodbury Township	Bedford County
Woodbury Township	Blair County
Woodcock Township	Crawford County
Woodward Township	Clearfield County
Woodward Township	Lycoming County
Worth Township	Mercer County
Wyalusing Township	Bradford County
Young Township	Indiana County
Young Township	Jefferson County
Zerbe Township	Northumberland County

Rhode Island

Name	*County*
New Shoreham Town	Washington County
Warren Town	Bristol County
West Warwick Town	Kent County

Vermont

Name	*County*
Addison Town	Addison County
*Albany Town	Orleans County
*Alburg Town	Grand Isle County
Athens Town	Windham County
Bakersfield Town	Franklin County
Barnet Town	Caledonia County
*Barton Town	Orleans County
Belvidere Town	Lamoille County
Benson Town	Rutland County
Berkshire Town	Franklin County
Bethel Town	Windsor County
Bloomfield Town	Essex County
Braintree Town	Orange County
Brattleboro Town	Windham County
Bridport Town	Addison County
Brighton Town	Essex County
*Bristol Town	Addison County
Brownington Town	Orleans County
*Burke Town	Caledonia County
*Cabot Town	Washington County
*Cambridge Town	Lamoille County
Canaan Town	Essex County
Castleton Town	Rutland County
Charleston Town	Orleans County
Chelsea Town	Orange County

Corinth Town	Orange County
Coventry Town	Orleans County
Craftsbury Town	Orleans County
Danby Town	Rutland County
Danville Town	Caledonia County
*Derby Town	Orleans County
Dover Town	Windham County
Duxbury Town	Washington County
East Haven Town	Essex County
Eden Town	Lamoille County
Elmore Town	Lamoille County
*Enosburg Town	Franklin County
Fair Haven Town	Rutland County
Fairfield Town	Franklin County
Fairlee Town	Orange County
Franklin Town	Franklin County
Glover Town	Orleans County
Granby Town	Essex County
Greensboro Town	Orleans County
Guildhall Town	Essex County
Halifax Town	Windham County
*Hardwick Town	Caledonia County
Highgate Town	Franklin County
Holland Town	Orleans County
Hubbardton Town	Rutland County
*Hyde Park Town	Lamoille County
Ira Town	Rutland County
Irasburg Town	Orleans County
Jamaica Town	Windham County
Jay Town	Orleans County
*Johnson Town	Lamoille County
Leicester Town	Addison County
Lincoln Town	Addison County
Lowell Town	Orleans County
*Ludlow Town	Windsor County
Lunenburg Town	Essex County
*Lyndon Town	Caledonia County
Maidstone Town	Essex County
Marlboro Town	Windham County
*Marshfield Town	Washington County
Montgomery Town	Franklin County
Moretown Town	Washington County
Morgan Town	Orleans County
*Morristown Town	Lamoille County
Newark Town	Caledonia County
Newport Town	Orleans County
Norton Town	Essex County
Orange Town	Orange County
Orwell Town	Addison County
Pawlet Town	Rutland County
Peacham Town	Caledonia County
Plainfield Town	Washington County
Plymouth Town	Windsor County
*Poultney Town	Rutland County
Putney Town	Windham County
Reading Town	Windsor County
*Richford Town	Franklin County
Ripton Town	Addison County
Rochester Town	Windsor County
*Rockingham Town	Windham County
Roxbury Town	Washington County
Royalton Town	Windsor County
Ryegate Town	Caledonia County
Sandgate Town	Bennington County
Sharon Town	Windsor County
Sheffield Town	Caledonia County
Sheldon Town	Franklin County
Springfield Town	Windsor County
St. Johnsbury Town	Caledonia County
Stannard Town	Caledonia County
Starksboro Town	Addison County
*Stowe Town	Lamoille County
Strafford Town	Orange County
Sudbury Town	Rutland County
Sutton Town	Caledonia County
*Swanton Town	Franklin County
Topsham Town	Orange County
Townshend Town	Windham County
*Troy Town	Orleans County
Tunbridge Town	Orange County
Vershire Town	Orange County
Victory Town	Essex County
Walden Town	Caledonia County
Waltham Town	Addison County
Wardsboro Town	Windham County
Washington Town	Orange County
*Waterbury Town	Washington County
Waterville Town	Lamoille County
Wells Town	Rutland County
West Fairlee Town	Orange County
West Haven Town	Rutland County
West Rutland Town	Rutland County
Westfield Town	Orleans County
*Westminster Town	Windham County
Westmore Town	Orleans County
Weybridge Town	Addison County
Wheelock Town	Caledonia County
*Whittingham Town	Windham County
Williamstown Town	Orange County
Windsor Town	Windsor County
Wolcott Town	Lamoille County
Woodbury Town	Washington County
Woodford Town	Bennington County
Worcester Town	Washington County

Puerto Rico

Name
Adjuntas Municipio
Aguada Municipio
Aguas Buenas Municip
Aibonito Municipio
Anasco Municipio
Arroyo Municipio
Barceloneta Municipi
Barranquitas Municip
Cabo Rojo Municipio
Camuy Municipio
Canovanas Municipio
Catano Municipio
Cayey Municipio
Ceiba Municipio
Ciales Municipio
Cidra Municipio
Coama Municipio
Comerio Municipio
Corozal Municipio
Culebra Municipio
Dorado Municipio
Florida Municipio
Guanica Municipio
Guayama Municipio
Guayanilla Municipio
Gurabo Municipio
Hatillo Municipio
Hormigueros Municipio
Isabela Municipio
Jayuya Municipio
Juana Diaz Municipio
Juncos Municipio
Lajas Municipio
Lares Municipio
Las Marias Municipio
Las Piedra Municipio
Loiza Municipio
Luquillo Municipio
Manati Municipio
Maricao Municipio
Maunabo Municipio
Moca Municipio
Morovis Municipio
Naguabo Municipio
Naranjito Municipio
Orocovis Municipio
Patillas Municipio
Penuelas Municipio
Quebradillas Municipio
Rincon Municipio
Rio Grande Municipio
Sabana Grande Municipio
Salinas Municipio
San German Municipio
San Lorenzo Municipio
San Sebastian Municipio
Santa Isabel Municipio
Toa Alta Municipio
Utuado Municipio
Vega Alta Municipio
Vega Baja Municipio
Vieques Municipio
Villalba Municipio
Yabucoa Municipio
Yauco Municipio

Dated: September 30, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

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BILLING CODE 4210-29-M

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Friday, October 9, 1987

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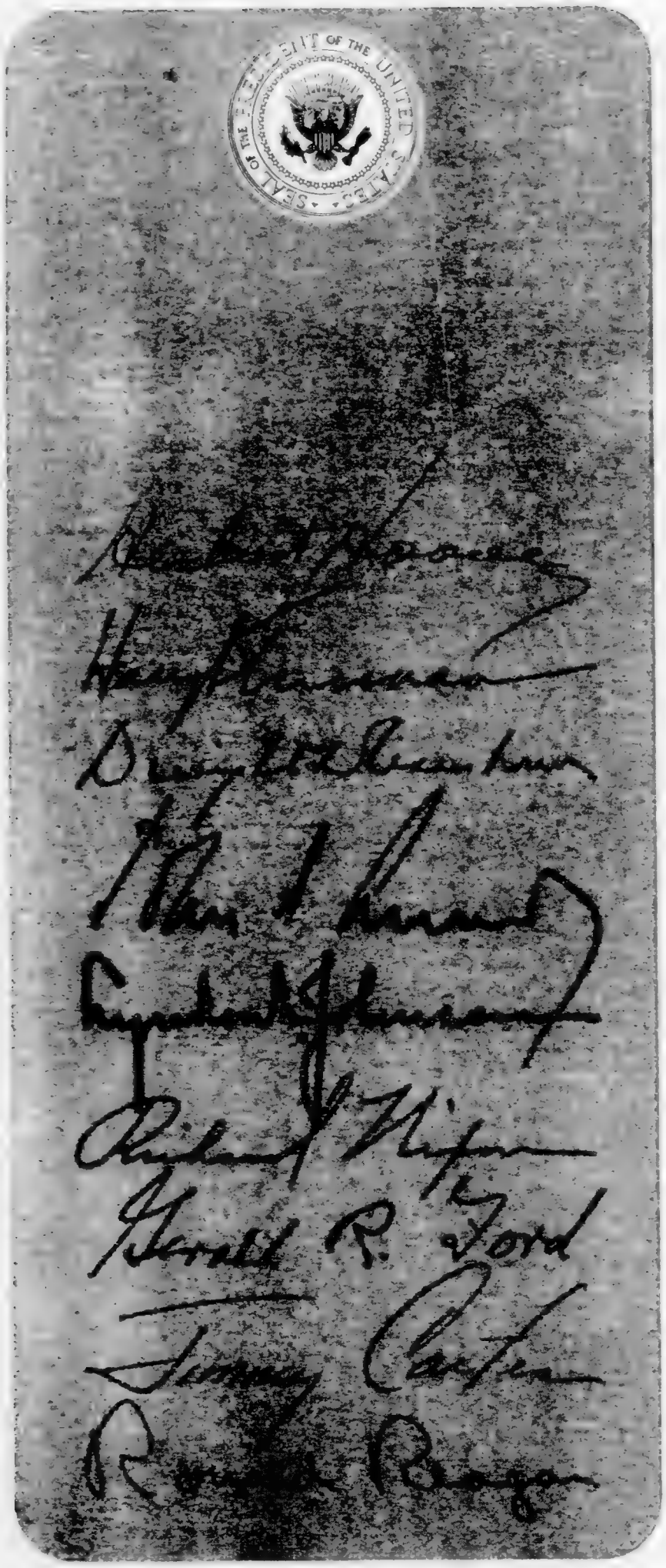

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Title 3—

The President

Proclamation 5723 of October 8, 1987

National Down Syndrome Month, 1987

By the President of the United States of America

A Proclamation

National Down Syndrome Month affords all Americans an opportunity to take note of the progress science has made over the past two decades in understanding developmental disabilities, especially Down Syndrome. An accumulation of new research, a body of knowledge represented by thousands of published scientific papers, has meant fresh help for mentally handicapped people and the establishment of a strong information base for future efforts. One of the most important benefits of this research is that people everywhere are becoming increasingly sensitive to the achievements, needs, and potential of the mentally handicapped.

Our society is stronger and healthier because a new situation now prevails for those in our midst who are developmentally disabled. Today, people with Down Syndrome often take part in special education classes within mainstreamed programs in schools, vocational training, and living arrangements that promote as much independence as possible. In addition, parents of babies with Down Syndrome are receiving the education and support they need to understand this condition and to plan for the future of their children with new confidence and hope.

These strides have been possible thanks to the tireless work of concerned researchers, parents' groups, physicians, teachers, and service providers. Private organizations such as the National Down Syndrome Congress and the National Down Syndrome Society have worked in concert with the Public Health Service, the President's Committee on Mental Retardation, and other government agencies to increase public awareness of this condition and of the capabilities of those with Down Syndrome.

These developments are brightening the outlook for people born with Down Syndrome. That outlook will continue to brighten the more we acknowledge that all of us share the same God-given rights, dignity, and worth, and the more we realize that the sanctity of every human life is both a matter of principle and a call to action. As the late Terence Cardinal Cooke of New York said so eloquently:

> The gift of life, God's special gift, is no less beautiful when it is accompanied by illness or weakness, hunger or poverty, mental or physical handicaps, loneliness or old age. Indeed, at these times, human life gains extra splendor as it requires our special care, concern, and reverence. It is in and through the weakest of human vessels that the Lord continues to reveal the power of His love.

The Congress, by Senate Joint Resolution 84, has designated the month of October 1987 as "National Down Syndrome Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1987 as National Down Syndrome Month. I invite all concerned citizens, agencies, and organizations to unite during October with appropriate observances and activities directed toward assisting affected individuals and their families to enjoy to the fullest the blessings of life.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5724 of October 8, 1987

National Job Skills Week, 1987

By the President of the United States of America

A Proclamation

America's remarkable ability to create new jobs attests to the ingenuity and vitality of our people and to the fundamental strength and effectiveness of the free market economy. More Americans are working now than ever, and millions of new jobs are being created each year, including many by small business. Our observance of National Job Skills Week reminds us that training for new job skills is of critical importance to our economy and to our entire society.

The Department of Labor's Workforce 2000 study indicates a continuing vital need for job skills training. Trends suggest that the rate of labor force growth will diminish significantly and that the pool of workers, particularly at the entry level, will be smaller. This situation may afford unique opportunities for people from groups that historically have not entered the labor market. It challenges schools, business, community-based organizations, and government at all levels—Federal, State, and local—to continue to train people in the skills they will need to find and keep good jobs as the requirements of the workplace change. And it reminds us to pay careful attention to the implications of changes underway in the nature of the workplace and the composition of the work force.

To focus national attention on job training's role in maintaining a competitive work force, the Congress, by Senate Joint Resolution 72, has designated the week of October 11 through October 17, 1987, as "National Job Skills Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 11 through October 17, 1987, as National Job Skills Week, and I urge all Americans and interested groups to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5725 of October 8, 1987

National School Lunch Week, 1987

By the President of the United States of America

A Proclamation

The National School Lunch Program was founded 41 years ago. Through it the Federal government works with State governments and local communities to provide food assistance each day for more than 20 million students in 90,000 schools. During National School Lunch Week the American people take time to salute this program and the hardworking citizens whose participation makes it so effective.

This successful program is constantly improving. For instance, food service managers have reached out to the community to involve parents and have promoted good management practices. Many school cafeterias offer new choices such as salad bars to make the lunch period more enjoyable for students. The National School Lunch Program represents the cooperative efforts of parents, teachers, community leaders, and food service specialists in behalf of the students of our Nation, and that is good reason for all of us to celebrate.

By joint resolution approved October 9, 1962, the Congress designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 11, 1987, as National School Lunch Week, and I call upon all Americans to give special and deserved recognition to those people at the State and local level whose dedication and innovation contribute so much to the success of the school lunch program.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Proclamation 5726 of October 8, 1987

National Farm-City Week, 1987

By the President of the United States of America

A Proclamation

For the past 33 years during Thanksgiving week, the American people have observed National Farm-City Week to express gratitude for the bounty with which God has blessed our land and to recognize the achievements of the farmers, rural townspeople, and city residents who make our Nation's agricultural production and distribution system so successful. Truly this cooperation between rural and city dwellers for mutual benefit helps ensure our country's well-being.

America's farmers have provided food and fiber to sustain our people throughout decade after decade of progress. Farmers' productivity has increased steadily, thanks largely to their initiative in supporting and adopting the methods and materials developed by scientific research. Yield per acre has grown tremendously, with the result that American farmers are able not only to meet the Nation's basic needs for foodstuffs, but also to produce agricultural goods for export and for a wide variety of specialty markets here in the United States and around the world.

American agriculture, and the many service industries that depend upon it in cities and towns and along all the routes in between, is a story of extraordinary labor creating extraordinary abundance. At this time of year, it is only fitting that all Americans should offer some special sign of thanks to those who grow, harvest, and bring to our Nation's tables the fruits of sun, seed, and soil.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 20 through November 26, 1987, as National Farm-City Week. I call upon all Americans, in rural areas and cities alike, to join in recognizing the accomplishments of our productive farmers and of our urban residents, who cooperate to create abundance, wealth, and strength for our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Rules and Regulations

Federal Register
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Tuesday, October 13, 1987

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Almonds Grown in California; Expenses and Assessment Rate and Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for California almonds to: (1) Allow handlers of California almonds to receive credit against their annual advertising assessments for their unreimbursed media expenses for advertising in any foreign market pursuant to a contract with the California Department of Food and Agriculture; (2) add Australia, Korea, New Zealand, the People's Republic of China, the Philippines, and Taiwan to a list of foreign markets where handler media expenditures for brand advertising of almonds are eligible for credit; (3) delete a limitation which provides that credit for media expenditures for brand advertising in a foreign market shall not exceed 20 percent of a handler's advertising assessments or $500,000 for each crop year, whichever is greater; and (4) extend the date by which handlers must submit documented proof in order to receive credit for the distribution of sample packages of almonds to charitable or educational outlets. These changes are designed to give handlers additional flexibility in meeting their assessment obligations.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administrative Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant or adverse economic impact on a substantial number of small entities.

The purpose of the RFA is to address regulatory actions to the scale of business subject to those actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601 through 674), as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 102 handlers of almonds under the marketing order for California almonds are subject to regulation during the course of the current season. There are about 7,500 almond producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose annual gross receipts are less than $3,500,000. The majority of handlers and producers of almonds may be classified as small entities.

This rule will provide handlers with several new opportunities to receive credit against their annual advertising assessments under the order. In addition, it will give handlers in the industry more time to submit documentation to support credit claims for the distribution of sample packages to almonds to charitable or educational outlets and, thereby, provide a uniform method for filing claims for all marketing, promotion and paid advertising activity. Therefore, it is the Agency's view that the rule will relieve restrictions on handlers and will not impose any added costs or expenses upon them.

Information collection requirements in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0071.

This action revises § 981.441 of Subpart—Administrative Rules and Regulations issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The order is effective under the Act. This final rule is based on unanimous recommendations of the Almond Board of California (Board), which is responsible for local administration of the order, and upon other available information.

Notice of this action was published in the **Federal Register** (52 FR 28270) on July 29, 1987. Written comments were invited from interested persons until August 28, 1987. No comments were received.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against their annual advertising assessments. That paragraph also provides that a handler shall not receive credit for allowable expenditures that would exceed that portion of such handler's assessment obligation which is designated for maketing promotion, including paid advertising. Section 981.41(e) provides that before crediting is undertaken the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer provisions for creditable advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate the crediting of payments to advertising media, for distribution of sample packages of almonds to charitable and educational outlets, for promotional materials purchased from the Board, and for certain costs related to mail order promotions. The proposal would revise § 981.441(c)(4), concerning crediting of

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payments to advertising media in foreign markets, and § 981.441(d)(1)(i), concerning the distribution of sample packages of almonds to charitable or educational outlets.

Section 981.441(c)(4)(1) currently prescribes credit for a handler's unreimbursed media expenditures for advertising in any foreign market pursuant to a contract with the Foreign Agriculture Service (FAS), U.S. Department of Agriculture, provided the advertisements meet requirements provided for in § 981.441. This final rule revises § 981.441(c)(4)(i) to also allow handlers credit for such expenditures pursuant to a contract with the California Department of Food and Agriculture (CDFA). In 1986, the CDFA initiated a program similar to the FAS export assistance program, whereby the CDFA contributes funds to handler projects to promote agricultural commodities abroad. This rule will allow credit only for those funds contributed by handlers themselves and not reimbursed by the CDFA. Also, credit would only be allowed for handler funds used for paid media advertising.

Section 981.441(c)(4)(ii) currently allows a handler to receive credit for media expenditures for brand advertising in 16 foreign countries. This credit is in addition to the previously discussed credit for advertising pursuant to a contract with the FAS. The total of this additional foreign credit may not exceed 20 percent of a handler's advertising assessments or $500,000 for each crop year, whichever is greater. The 16 countries are Great Britian, France, Italy, West Germany, Denmark, Belgium, Ireland, Luxembourg, The Netherlands, Sweden, Norway, Finland, Switzerland, Singapore, Hong Kong, Japan. Such claims for credit must be substantiated by applicable rate cards. The relevant administrative provisions of this section applicable to domestic advertising also apply to the crediting of advertising in these countries.

This rule revises § 981.441(c)(4)(ii) to add Australia, Korea, New Zealand, the People's Republic of China, the Philippines, and Taiwan to the list of 16 foreign countries where a handler's media expenditures for advertising may receive foreign advertising credit. It is believed that standard schedules of rates for media advertising are available in these countries to allow the Board to substantiate claims for credit as reasonable and appropriate. These countries are increasingly important markets for California almonds, and handlers should be encouraged to develop the market potential in these countries through advertising.

Section 981.441(c)(4)(ii) is also revised by deleting the limitation which provides that credit for media expenditures for brand advertising in designated foreign markets shall not exceed 20 percent of a handler's advertising assessments or $500,000 for each crop year, whichever is greater. Thus, handlers will be eligible for 100 percent of their brand advertising media expenditures in designated foreign markets subject to limitations applicable to credit for domestic advertising.

Many handlers market all or most of their crop in export. While most handlers incur an annual advertising, assessment of less than $500,000 and are, therefore, not limited in the amount of credit they may receive for foreign brand advertising, a few handlers are limited. This rule will give all handlers opportunities to receive credit for brand advertising in foreign markets which are comparable to opportunities for credit in domestic markets. Section 981.441(d)(1)(i)(F) currently provides that no credit shall be granted for the distribution of sample packages containing one-half ounce or less of almonds to charitable or educational outlets without receipt by the Board of acceptable proof of distribution. This proof shall consist of a signed statement from the organization to which the sample packages were distributed, on that organization's letterhead, stating: (1) The name and address of the handler from whom the packages were received; (2) the date of the receipt; (3) the volume of packages received; (4) how such packages will be used; and (5) a statement that such packages will not be used for resale. This proof must be submitted to the Board no later than July 15 of the crop year succeeding the crop year during which the packages are distributed and for which credit is requested except as provided in § 981.441(b). Section 981.441(b) provides that a handler may receive credit up to a maximum of 40 percent of such handler's annual advertising obligation for expenditures for advertisements published, broadcast, or displayed and other marketing promotion activities (including the distribution of sample packages) conducted no later than December 31 of the succeeding crop year if the required documentation is submitted to the Board no later than the following January 31. The crop year under the order is the 12 months from July 1 to the following June 30, inclusive.

Section 981.441(d)(1)(i)(F) is revised to give handlers until October 15 to submit documented proof of their distribution of sample packages. Handlers will be required to file preliminary claims on ABC Form 31 on or before July 15 of the succeeding crop year, stating that proof of distribution will be submitted as expeditiously as possible, but no later than October 15. Handlers will have until October 15 to file final claims on ABC Form 31 with appropriate proof of distribution. The rule does not affect the 40 percent deferment provided for in § 981.441(b).

This change requires handlers to file for credit for the distribution of sample packages at the same time and in the same manner as claims for credit for advertising expenditures and costs related to mail order promotions. The action corrects a previous oversight to ensure that filing procedures for claiming credit for various types of authorized marketing promotion and paid advertising activities are uniform.

It is further found that good cause exists for not postponing in the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The regulation provides handlers with additional flexibility in crediting advertising and promotion expenditures, and handlers should have the opportunity to utilize this increased flexibility as soon as possible; (2) handlers are aware of this action and need no additional time to comply; and (3) no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Amend § 981.441 by revising paragraphs (c)(4)(i), (c)(4)(ii), and (d)(1)(i)(F) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(4) * * *

(i) For handler's unreimbursed media expenditures for advertising in any foreign market pursuant to a contract

with the Foreign Agricultural Service, U.S. Department of Agriculture, and/or the California Department of Food and Agriculture provided the advertisements meet the requirements of paragraphs (c)(2) and (3) if this section and the limitation of paragraphs (c)(5) (i) and (ii) of this section.

(ii) For a handler's media expenditures for brand advertising in Australia, Belgium, Denmark, Finland, France, Great Britain, Hong Kong, Ireland, Italy, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, the Philippines, the People's Republic of China, Singapore, Sweden, Switzerland, Taiwan, and West Germany, credit shall be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising shall also apply to the crediting of advertising in these markets.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) Handlers must file claims with the Board in order to receive credit for the distribution of sample packages. Except as provided in paragraph (b) of this section, no credit shall be granted unless a preliminary claim is filed on or before July 15 of the succeeding crop year and a final claim is filed on or before October 15 of the succeeding crop year. Each preliminary claim must be filed on an ABC Form 31 (claim for advertising credit), stating that proof of distribution will be submitted as expeditiously as possible, but no later than October 15. If this preliminary claim is not filed on or before July 15, there will be no consideration of the claim under any circumstances. Each final claim must be submitted on ABC Form 31 and accompanied by appropriate proof of performance. This proof shall consist of a signed statement from the organization to which sample packages were distributed, on that organization's letterhead, stating:

(1) The name and address of the handler from whom the packages were received;

(2) The date of receipt;

(3) The volume of packages received;

(4) How such packages will be used; and

(5) A statement that such packages will not be used for resale.

* * * * *

Dated: October 6, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87-23566 Filed 10-9-87 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-18-AD; Amdt. 39-5741]

Airworthiness Directives; Gulfstream (Aero Commander) Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL, 680F(P), 680FL(P), 685, 700, and 720 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Gulfstream (Aero Commander) Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL, 680F(P), 680FL(P), 685, 700, and 720 airplanes, equipped with reciprocating engines herein referred to as "500/600/700 series" airplanes, which requires the modification of the fuel filler port to prevent inadvertent filling of the fuel tanks with jet fuel. The NTSB has reported four accidents where airplane misfueling was found to have contributed to the accidents. The modification is necessary to prevent further misfueling and thereby preclude in-flight engine failure.

EFFECTIVE DATE: November 12, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Gulfstream Aerospace Corp., Service Information No. SI-209 dated July 15, 1986, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123. This information may be examined at the Rules Docket, FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Alma Ramirez-Hodge, Aerospace Engineer, Airplane Certification Branch, ASW-150, Department of Transportation, Federal Aviation Administration, Forth Worth, Texas 76193-0150; Telephone (817) 624-5147.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the modification of the fuel filler port on certain Gulfstream 500/600/700 series airplanes equipped with reciprocating engines was published in the **Federal Register** on June 8, 1987, (52 FR 21574). The proposal responded to an NTSB Recommendation which reported four accidents as a result of in-flight engine failures on Gulfstream Model 500/600/700 series airplanes. These airplanes have reciprocating engines in which misfueling with jet fuel caused the engine failures. Further, the NTSB report indicates that most cases of misfueling occur with light, twin-engine, piston-powered airplanes which are similar in appearance to turbine engine-powered airplanes.

In recent years, the frequency of accidents involving misfueling with jet fuel has increased significantly despite efforts of the FAA and other interested parties. On September 17, 1982, and October 5, 1984, the FAA issued two Advisory Circulars (AC) Nos. 20-116 and 20-122, "Marking Aircraft Fuel Filler Openings with Color Coded Decals," and "Anti-Misfueling Devices: Their availability and Uses." Both recommend methods to prevent airplane misfueling. However, the level of response to these AC's appears low considering the nature of the problem and the number of airplanes involved. Therefore, in the interest of aviation safety, the modification to the fuel filler port was recommended by the NTSB.

Interested persons have been afforded an opportunity to comment on the proposal. Five commenters responded. Three commenters concurred with the proposal.

A fourth commenter asserts that it will cost the manufacturer millions of dollars to comply with the proposed AD. The commenter further suggests that instead of paying for airplane modifications, the monies be used on initial education and recurrent training of airplane fueling operators. The FAA agrees that additional training could benefit the fueling operations but disagrees on withdrawing the AD. Although, well trained personnel should be the goal of all fueling facilities, it is not the only avenue to safe fueling that should be pursued. The FAA has determined that it is appropriate to require installation of fuel filler port restrictors on Gulfstream 500/600/700 series airplanes.

A fifth commenter restated the comments submitted to the FAA as comments to Docket No. 24911 of the **Federal Register** dated March 27, 1986, "Petition to Require That Fueling Ports in Piston Engine Powered Civil Aircraft be Restricted to Less Than 2.5 Inches in Diameter" and the subsequent NTSB recommendation which has been incorporated in this AD. The commenter stated that it is reasonable to apply the AD to a few airplane models which have similar turbin variants but questions the omission of the Beech Model 65 which

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was originally equipped with piston engines but subsequently retrofitted with turbine engines. The commenter also questions the disparity in estimated cost between the petition published in March 27, 1986, and the expected cost of modifying Gulfstream 500/600/700 series airplanes. The commenter stated that the issuance of the AD is only one answer to the multifaceted problem and encourages the industry to continue educating operators on airplane fueling safety.

FAA concurs with the need for continuing education. In addition, FAA will consider the commenter's recommendation to include other airplanes in the modification requirements and may initiate separate rulemaking action. The FAA has reviewed the cost discrepancies and does not believe that this constitutes sufficient justification to withdraw the AD. The cost statements in the petition were based on general aviation industry information and not the manufacturers actual modification cost. The AD allows other equivalent means to compliance to be used if approved.

Therefore the AD is being adopted without change.

The FAA has determined there are approximately 1,995 airplanes affected by this rule. The cost of modifying these airplanes would depend on the number of fuel filler caps on the airplane. For all model airplanes except the Model 700, the approximate one-time cost per tank is $105. The approximate one-time cost for the Model 700 is $228.

Gulfstream Models 500, 500A, 500B, 500U, 500S, 520, 560, and 560A airplanes have only one filler cap. Gulfstream Models 560E, 560F, 680, 680F, 680FP, 680FL, 680FLP, and 720 airplanes have three filler caps. Model 700 airplanes have two filler caps and two optional filler caps. The total cost to modify the fleet will be $405,830. The cost of complying with this AD therefore will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By adding the following new AD:

Gulfstream: Applies to Models 500, 500A, 500B, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680F(P), 680FL(P), and 720 (S/N 1 through 1854); and Models 500S (S/N 1755 through 3323), 680FL (S/N 1261 through 1853), 685 (S/N 12001 through 12066), and 700 (S/N 70001 through 70032) airplanes equipped with reciprocating engines certificated in any category.

Compliance: Required as indicated unless already accomplished.

To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify all fuel filler opening(s) in accordance with the instructions contained in Gulfstream Service Information No. SI–209, dated July 15, 1986.

Note: AD 73–6–2 (38 FR 6989; March 15, 1973), applicable to certain of the above-referenced airplanes, is a prerequisite to the accomplishment of the actions prescribed in this AD.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) In accordance with FAR Part 43, Appendix A, item (c)29, the modifications required by this AD are preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him, subject to the limitations of FAR 43.3(g). The maintenance record entries required by FAR's 43.9 and 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0150, Telephone (817) 624–5150.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to the Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 12, 1987.

Issued in Kansas City, Missouri, on September 17, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–23519 Filed 10–9–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 201, 270, and 271

[Docket Nos. RM83–72–011, RM87–72–012, RM82–16–011, and RM82–16–012]

Pricing of Pipeline-Produced Natural Gas

Issued: October 7, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: In Order No. 391–B, 40 FERC ¶ 61,174 (1987), the Federal Energy Regulatory Commission, on remand from the United States Court of Appeals for the District of Columbia Circuit, reaffirmed its interpretation of section 104 of the NGPA to allow pipeline production from old wells on old leases to be priced on a par with independent producer's gas. The Commission is issuing an order granting rehearing solely for the purpose of further consideration of requests by Mid-West Energy, Inc. for rehearing and by Wexpro Company for rehearing or clarification of Order No. 351–B.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8696.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Order Granting Rehearing Solely for the Purpose of Further Consideration

On August 10, 1987, the Commission issued Order No. 391–B in response to the court remand of Order Nos. 391 and 391–A. Order No. 391–B upheld the Commission's prior determination that pipeline production previously priced on

a cost-of-service basis qualifies for the same ceiling price under the NGPA as gas sold by independent producers.

On September 9, 1987, Midwest Energy, Inc. filed a request for rehearing of Order No. 391–B asserting that the Commission's order is a clearly erroneous construction of the NGPA.

On September 9, 1987, Wexpro Company filed a request for rehearing or clarification of Order No. 391–B seeking clarification as to whether the independent producer rate also applies to Wexpro's unique situation. Wexpro Company states that because its predecessor, Mountain Fuel, operated as a producer, an interstate pipeline, and a local distribution company, there was no sale for resale and no just and reasonable rate established by the Commission although its dedicated gas was subject to cost-of-service rate regulation through state regulation of retail sales.

Under Rule 713(f) of the Commission's rules of practice and procedure, these requests will be denied by operation of law if not acted on by the Commission within 30 days. In order to afford additional time for consideration of the issues raised in the requests for rehearing, the Commission will grant rehearing of the August 10, 1987 order for the limited purpose of further consideration.

The Commission Orders

Midwest Energy Inc's and Wexpro Company's requests for rehearing are granted solely for the purpose of further consideration. As provided in Rule 713(d) of the Commission's rules of practice and procedure, 18 CFR 385.713(d), no answers to the requests for rehearing are permitted.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23621 Filed 10–9–87; 8:45 am]

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18 CFR Part 11

[Docket Nos. RM86–2–002, –003, –004; Order No. 469–A]

Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges

Issued: October 7, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: On May 8, 1987, the Federal Energy Regulatory Commission (Commission) issued Order No. 469, a final rule that amended Part 11 of its regulations under the Federal Power Act (Act) revising the billing procedures for annual charges for administering Part I of the Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges. Three commenters on the final rule filed separate requests for rehearing of the above-captioned proceeding, pursuant to 18 CFR 385.713 (1987). The applicants all argue, *inter alia,* that the final rule went beyond the scope of the notice. The Commission is denying rehearing of Order No. 469.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: James R. Keegan, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8542.

Order Denying Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Commission is denying rehearing of Order No. 469,[1] a final rule that amended Part 11 of its regulations under the Federal Power Act (FPA) (16 U.S.C. 791 through 825). The final rule revised the billing procedures for annual charges for administering Part I of the FPA, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

II. Background

Prior to the Commission's revisions in Order No. 469, since 1942, annual charges for government land used by hydroelectric licensees were based on a national average land value multiplied by a rate of return. The national average land value used by the Commission had remained at $150 an acre since 1976. The rate of return was based on the rate used by the United States Water Resources Council, but this rate is barred by statute from being changed more than one-quarter of a percent in any year.

On December 30, 1985, the Commission issued a notice of proposed rulemaking (NOPR) proposing to change the methodology used in computing charges for the use of Federal lands to correct an undercollection of charges, in response to recommendations of the Inspector General.[2] The Inspector General had concluded that the land value and the interest rate employed by the Commission's then current regulations were outdated, resulting in an undercharging of licensees by approximately $15.2 million each year for the use of about 168,000 acres of Federal land. The Inspector General recommended revising the Commission's regulations to base these land use charges on the current fair market value of the land being used and the current long-term government borrowing rate. The Inspector General also recommended replacing the national average land value with State-by-State averages.[3]

The Commission originally proposed in the NOPR to remedy this undercollection of charges by revising the existing methodology to reflect a more current value of lands and a more precise rate of return. The NOPR noted that the USFS and the Bureau of Land Management of the United States Department of the Interior (BLM) were jointly conducting a market survey to establish representative market values for various types of linear rights-of-way crossing lands administered by the two agencies, and that the market survey data would be used by USFS and BLM to establish geographical zones of similar land values from which to develop a rental schedule for linear rights-of-way. The Commission proposed adopting the fees established by the USFS methodology for linear rights-of-way. Finally, the Commission requested comment on whether it should continue to assess lands used for transmission line rights-of-way at one half the rate of other Federal lands.[4]

The Commission issued a supplemental request for comments on December 23, 1986, on its proposal to base the land use charges on the USFS's recently published index of values of linear rights-of-way, since the index had not yet been published when the NOPR was issued. In its request, the Commission proposed to use the per-acre fee for electric transmission line

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[1] Order No. 469, 52 FR 18201 (May 14, 1987) III FERC Stats. and Regs. ¶ 30,741 (1987).

[2] Revisions of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges, 51 FR 211 (January 3, 1986).

[3] Assessment of Charges Under the Hydroelectric Program, DOE–IG Report No. 0219 (September 3, 1986); *See also* More Effort Needed to Recover Costs and Increase Hydropower Charges, U.S. General Accounting Office Report No. RCED–87–12 (November 1986).

[4] Notice of proposed rulemaking, 51 FR 211 (January 3, 1986).

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rights-of-way as published by the USFS both for the Commission charges for transmission line rights-of-way and for the charges for Federal lands for other than transmission line uses.[5]

In brief, the USFS methodology is based upon a survey of market values for the various types of land that it has allowed to be occupied by linear rights-of-way. The schedule is divided into regional zones and provides per-acre rental fees by state and county. These fees are arrived at by multiplying the raw value of the land in each zone by a rate of return. The fees were adjusted downward to reflect the value difference between rights-of-way authorization granted by private landowners and those issued by the government for electrical transmission, electrical distribution, telephone and other linear rights-of-way (70 percent of the zone right-of-way value); and energy pipelines, ditches, canals, and road rights-of-way (80 percent).[6] The final rule adopted the USFS methodology, applying the 70 percent adjusted rate for transmission line rights-of-way and assessing all other Federal land at twice the transmission line rate.

III. Discussion

The Edison Electric Institute (EEI), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E) filed requests for rehearing of the final rule. The applicants raise no objections to the change in billing procedures established in the final rule. However, they oppose some aspects of the new methodology for assessing Federal land use charges. These issues are address below.

A. Scope of Notice

EEI, SCE, and PG&E argue that they were not provided with an opportunity to comment on the rule as adopted, because the rule went beyond the scope of the NOPR and the supplemental notice. They contend that establishing charges for non-transmission line project land use that are double the USFS per-acre fees, and not adopting USFS methodology in its entirety (including subclasses of charges for telephone and distribution lines, and for canals, roads, ditches, and pipelines) went beyond the proposal.

The Commission rejects this argument. The Administrative Procedure Act [7] requires only that the NOPR include a description of the subjects and issues involved in the proposal, rather than the specifics of every proposal the Commission may ultimately adopt.[8] A NOPR serves to fairly apprise interested persons of the subject and issues of the rulemaking. A final rule need not be an exact replica of the proposal. The final rule must only be a logical outgrowth of the proposal.[9]

In this instance, the NOPR was adequate to provide the public with notice of the possible alternatives to the proposal. The NOPR proposed adopting the USFS methodology as a method of assessing Federal land use charges. The USFS methodology specifically applies to transmission line rights-of-way. The NOPR also proposed discontinuing the practice of assessing charges for lands used for purposes other than transmission line rights-of-way at twice the rate for lands used for transmission line rights-of-way.[10] The Commission adopted the USFS methodology but, partly in response to the comments received requesting that the 50-percent differential be maintained,[11] did not adopt the proposal to eliminate the discount for transmission line rights-of-way.

In fact, in order to ensure that all interested parties had an opportunity to comment on the proposal, the Commission issued a notice requesting additional comments once the USFS methdology a had become final. Here, the notice proposed using the USFS methodology for both classes of land. The fact that the Commission did not adopt the proposal to eliminate the discount is not an indication that the final rule exceeded the scope of the notice; it is inherent in the notice and comment procedure that the Commission may decide on the basis of the comments to adopt or not to adopt a proposal, or to modify a proposal.[12] The Commission adopted the USFS methodology for the type of lands for which it was intended to represent, and chose to continue billing twice that amount for other lands, as suggested by the commenters. Therefore, the final rule was a logical outgrowth of the NOPR.

In addition, the Commission is not pursuaded by the argument that, by not adopting the USFS methodology in full to create new classes of land charges for telephone lines, ditches, canals, and other such uses, the commenters were deprived of notice of what was proposed. This new subclassification was never proposed or even mentioned. The NOPR indicated that the Commission has only two classifications of types of land associated with hydropower projects, a fact that is clearly evident in the regulations.[13] Therefore, the final rule clearly did not go beyond the scope of the NOPR and the supplemental notice.

B. Basis for the 50-Percent Reduction for Transmission Line Rights-of-Way

EEI argues that neither the comments received nor the USFS's policy behind their methodology support the Commission's rationale for doubling the USFS per-acre fee for non-transmission line land use.

First, EEI asserts that the USFS methodology was based on market values adjusted downward by 30 percent, and that doubling these charges for non-transmission line lands results in charging 140 percent of the actual land value. EEI recommends eliminating the 30 pecent adjustment for non-transmission line lands rather than doubling the USFS fees. EEI alleges that this will base non-linear land charges on actual land values. Second, EEI argues that the comments that support retaining the 50-percent discount for transmission-line land-use were not relevant to the USFS methodology the Commission adopted, since they were responding to a proposed methodology based on agricultural land values and were intended to ameliorate the deficiencies in that methodology. Finally, EEI questions the Commission's reliance on the Inspector General (IG) Report's assertion that the national land values were outdated, resulting in an undercharging for land use, when the final rule also found the Report to be flawed. EEI claims that the Commission applied reasoning that it had rejected as deficient in the same order. Each of these arguments is addressed below.

The Commission is not persuaded by EEI's suggestion that charges for transmission line lands should be assessed using the USFS fees, and charges for other lands should be assessed about 42 percent higher (to

[5] Notice requesting supplemental comments, 52 FR 82 (January 2, 1987).

[6] Department of Agriculture, Forest Service, Linear Rights-of-Way Fees, 51 FR 44014 (December 5, 1986).

[7] 5 U.S.C. 553(b)(3) (1982)

[8] Penzoil Co. v. FERC, 645 F.2d 360, 371 (5th Cir. 1981), *cert. denied*, 454 U.S. 897 (1982).

[9] National Black Media Coalition v. F.C.C., 791 F.2d 1016, 1022 (2d Cir. 1986).

[10] 51 F. R. 211, at 214 (January 3, 1986).

[11] Commenters opposed to the elimination of the 50-percent differential are: EEI, PG&E, Public Service Company of Colorado, Northern Colorado Water Conservancy District, Minnesota Power, Idaho Power Co., Seattle City Light, and Sacramento Municipal Utility District, *et al.*

[12] *See* Penzoil Co. v. FERC, 645 f.2d 360 (5th Cir. 1981) *cert. denied*, 454 U.S. 897 (1982).

[13] 18 CFR 11.02 (1987). The Commission also assessed charges differently for land adjoining Government dams (18 CFR 11.03), but these lands were not the subject of this rulemaking.

reflect the fact that under the USFS methodology transmission-line lands were allegedly valued at 30 percent below the market value of other lands). The USFS methodology was intended specifically for linear rights-of-way use of Federal lands, and the base land values were based on market values for linear rights-of-way. The 30 percent differential in these rates reflects the difference in the value of linear rights-of-way on Federal lands and those on non-Federal lands, and not a difference between the market value of transmission line lands and non-transmission line lands. Therefore, the Commission will not be assessing charges at 140-percent of their market value, as EEI alleges.

In response to EEI's second argument, the Commission notes that the comments on eliminating at 50-percent reduction for transmission line lands were not made to ameliorate the inequity of the proposed use of farm values in assessing lands charges. Eight commenters submitted substantive comments on the issue of charging for nontransmission line lands at twice the value of transmission line lands. All eight, including EEI, objected to elimination of the different treatment of the two types of lands to encourage multiple uses of the lands, because of the limited use of the licensees, and to be consistent with right-of-way compensation and appraisal practices in the private sector. No commenter argued that retaining the discount was necessary because of the proposed use of the farm-values index. The Commission relied on these comments and on the USFS's suggestion that the Commission apply its transmission-line lands-fees to the linear rights-of-way, using different factors for other lands, in retaining the 50 percent differential.

Finally, EEI's claim that the IG's Report could not be rejected and relied upon in the same order ignores the fact that the Commission rejected that part of the report that was related to the use of farm values to assess charges for hydropower projects. Commenters unanimously agreed with the Commission. The Commission relied on the report only to show that the national-average land value was outdated.

C. Other Subclasses of Lands

The applicants argue that the Commission should also adopt the USFS charges for other uses of lands, such as telephone lines, distribution lines, ditches, and canals.

The Commission rejects this suggestion. Such a proposal would require the Commission to appraise every project, a procedure it abandons by promulgating the final rule. Currently, the Commission has a billing index which contains a breakdown of each project according to how many acres of Federal lands are used for transmission line rights-of-way, and how many acres are used for other purposes. If the Commission were to adopt the applicants suggestion, it would have to undertake the burdensome task of reappraising every project that uses Federal lands in order to determine how many acres are being used for each of the USFS described uses. SCE also urges that the Commission adopts a subclassification for project uses that would have little adverse impact on the land (SCE cites buried powerhouses as an example of such a use). The Commission also rejects this suggestion because it, too, would require it to reevaluate hundreds of hydroelectric projects.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23619 Filed 10-9-87; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Parts 271 and 389

[Docket No. RM86-7-000; Order No. 473]

Compression Allowances and Protest Procedures

October 7, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, notice of OMB control number.

SUMMARY: On June 23, 1987, the Federal Energy Regulatory Commission, issued a final rule (Order No. 473) in Docket No. RM86-7-000, 52 FR 21660 (June 9, 1987), amending its regulations governing compression allowances and protest procedures under section 110 of the Natural Gas Policy Act of 1978. The information collection provisions were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. OMB has provided an OMB control number.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur W. Iler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-5275.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501 through 3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987) require that OMB approve information collection requirements imposed by agency rule. OMB has approved the information collection requirements of the NGPA Section 110 Protest Procedures in Order No. 473. OMB issued Control Number 1902-0057 for § 154.94(k) of the Commission's regulations. The control number is effective August 10, 1987.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below.

Kenneth F. Plumb,

Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) (1982).

§ 389.101 [Amended]

2. The table of OMB control numbers in § 389.101(b) is amended by inserting "154.94(k)" in numerical order in the "section" column and "0057" in the corresponding position in the "OMB control number" column.

[FR Doc. 87-23618 Filed 10-9-87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 314

[Docket No. 86N-0392]

Revision of Rules Governing Postmarketing Reporting of Adverse Drug Reactions

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations governing the postmarketing reporting of adverse drug reactions in order to improve patient safety. Specifically, the agency is modifying requirements for the submission of 15-day Alert reports and clarifying the reporting obligations of a drug firm conducting a study with a marketed drug. The changes are intended to improve the effectiveness of the adverse drug reaction reporting system by focusing FDA's prompt review on reports of truly serious adverse reactions.

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EFFECTIVE DATE: These final regulations are effective November 12, 1987.

FOR FURTHER INFORMATION CONTACT: Philip L. Paquin, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION:

1. Introduction

In the **Federal Register** of December 30, 1986 (51 FR 47028), FDA proposed several changes to the rules governing the reporting of adverse drug experiences associated with the use of marketed new drug products and marketed prescription drugs for human use without approved new drug applications. FDA proposed these changes to increase patient safety by improving the effectiveness of FDA's postmarketing surveillance of drug products. The agency provided until March 2, 1987, for interested persons to submit written comments on these proposed changes.

Highlights of this final rule and a discussion of related issues are contained in the following sections. The remainder of the preamble is devoted to an analysis of comments received and the agency's responses to them.

II. Highlights of the Final Rule

1. Revision of the Definition of "serious" Adverse Experience

The current regulations require the marketer of a new drug product to report to FDA any adverse drug experience that is both serious and unexpected no later than 15 days after learning of the experience. A serious adverse experience is defined as "an adverse drug experience that is life-threatening, is permanently disabling, requires inpatient hospitalization, or requires prescription drug therapy." In addition, an adverse drug experience with one of the following outcomes is always considered serious: death, congenital anomaly, cancer, or overdose. Thus, an adverse drug experience is "serious" if it results in any of the outcomes listed in the definition.

The agency is deleting "requires prescription drug therapy" from the definition of "serious" adverse drug experience. As explained in the proposal, the agency has found that the "requires prescription drug therapy" element of the definition has resulted in the submission of large numbers of 15-day Alert reports for events that are not sufficiently severe to warrant agency review as a 15-day Alert report. In addition, because almost all important and severe reactions requiring prescription drug therapy also satisfy other criteria of serious (in that, for example, they result in hospitalization or death), nearly all significant reactions will continue to be reported to FDA as 15-day Alert reports even in the absence of the prescription drug therapy criterion. In the very few cases where this is not so, it is anticipated that there will be instances of the same reaction in other patients that do meet other criteria for "serious." Moreover, spontaneous reports of domestic reactions to new drugs with approved new drug applications that do not satisfy any of the criteria of "serious" will still be reported to FDA in periodic reports (quarterly during the first 3 years of marketing a new drug), and become part of the agency's data base concerning the drug.

2. Obligations of a Sponsor of a Postmarketing Study

Currently, the holder of an approved marketing application for a drug product who sponsors a postmarketing study of that drug under an investigational new drug application (IND) is subject to the adverse drug reaction reporting requirements of both the IND regulations (21 CFR Part 312) and the new drug regulations (21 CFR Part 314). In this final rule, the agency is minimizing unnecessary dual reporting to the IND and new drug application (NDA) files by providing that adverse events from clinical investigations and other postmarketing studies be reported under § 314.80 (21 CFR 314.80) only if there is a reasonable possibility that the event is causally related to the drug exposure. Otherwise these events will be reported solely to the IND files. This revision in the reporting requirements also applies to postmarketing studies that are not conducted under an IND. Therefore, reports of adverse experiences from such studies need to be reported under § 314.80 only if they satisfy the criteria of a 15-day Alert report and there is a reasonable possibility that the event is causally related to the drug exposure.

3. Elimination of Periodic Reporting of Adverse Drug Experience Information Obtained From Postmarketing Studies

The agency is revising § 314.80(c)(2)(iii) to eliminate periodic reporting requirements for adverse drug experience information obtained from postmarketing epidemiological/surveillance studies (except for information regarding 15-day Alert reports). Routine information derived from such studies has proven to be of little help to the agency's postmarketing surveillance program. This revision does not affect the requirement that applicants submit postmarketing studies pertinent to safety, including epidemiological studies, in their annual reports under 21 CFR 314.81(b)(2)(vi).

4. Conforming Amendment

In the **Federal Register** of July 3, 1986 (51 FR 24476), FDA adopted a rule requiring 15-day Alert reporting for marketed prescription drugs not the subject of approved applications (21 CFR 310.305). Those rules were patterned after the adverse drug experience reporting provisions in § 314.80. To ensure consistency between these two sets of rules, the agency is revising the reporting requirements in § 310.305 to adopt changes identical to those made in this document for adverse drug reaction reporting on approved new drugs.

III. Comments on the Proposed Rule and FDA Responses

1. Comments on the Proposed Revision of the Definition of "serious" Adverse Experiences

Thirteen comments concurred with or supported this proposed revision. One comment objected, contending that the use of a prescription drug, even in the absence of other criteria of serious, should be considered serious and should be reported to FDA as a 15-day Alert report. The comment argued further that submission of such reports as 15-day Alert reports is necessary in order for FDA to assess the frequency of a reaction as rapidly as possible. The comment discussed adverse reaction reporting experiences with two drugs, reports of kidney damage (flank pain) with suprofen (Suprol) and reports of anaphylaxis with zomepirac (Zomax), in support of its view that without the prescription drug therapy criterion many serious drug reactions will not be reported to the agency in a timely manner.

Contrary to the comment's assertions, analysis of suprofen and zomepirac reporting reveals that FDA's reporting experiences for these two drugs support the current revision. In the case of suprofen, the comment stated that 75 percent of 300 cases of reported flank pain lacked one of the other criteria and probably received a prescription drug. The comment argued that if the prescription drug criterion were dropped, therefore, these cases of flank pain would not have been promptly reported. However, an FDA review of suprofen reports reveals that of 328 case reports of flank pain for the drug about 25 percent came directly to FDA and not through the manufacturer. The critical

reports of flank pain were the first 16 reports received by the agency prior to April 29, 1986, the date on which the first "Dear Doctor" letter concerning flank pain was issued. Of these 16 reports, 7 involved hospitalization while 3 others were direct reports that would have been received by FDA regardless of the regulation. These 10 reports, 7 of hospitalization and 3 direct reports, were received in the first 2 weeks of March 1986 and triggered an FDA request to the manufacturer for expedited submission of all future flank pain reports and for the issuance of the "Dear Doctor" letter that was the main stimulus for subsequent reporting. Only 1 of the 16 initial suprofen reports had treatment with a prescription drug as the sole basis for submission. No outcome was identified in the other 5 reports, which were expedited to FDA by the manufacturer for unknown reasons, apparently prior to FDA's request. Thus, the cited example of suprofen actually supports the proposed change because it shows that the prescription drug therapy criterion did not add significantly to early detection of and FDA's response to the signal of a flank pain reaction.

The comment also contended that the zomepirac reporting experience illustrates the need to receive reports involving prescription drug therapy as 15-day Alert reports. The comment noted that all persons experiencing severe allergic reaction to zomepirac no doubt received prescription medication but that many such reactions may not have qualified as serious under the other criteria. However, of the 1,105 reports of anaphylactoid reaction received by FDA for zomepirac, 341 involved death or hospitalization. Thus, a clear signal of zomepirac's anaphylactic side effect was apparent without the prescription drug therapy criterion.

It must be appreciated that the reason for the distinction made between 15-day Alert reports and other reports is to allow FDA to devote specific resources to early, intense examination of adverse drug reaction reports most likely to contain important new safety information about a drug. Large numbers of reports are not required to trigger this type of intense examination. The system is designed to provide "early warning" signals and the agency follows up even on very small numbers of reports. While periodic reporting of less serious events may be important in a confirmatory sense and improve the agency's understanding of the spectrum of effects which may be associated with the drug, requiring 15-day reporting of events that lead only to prescription drug therapy is not necessary and may actually impede the effective operation of the agency's postmarketing study system. If the definition of serious is too broad, therefore, thus capturing many nonserious events in an attempt to avoid missing any potentially serious event, early triaging is impossible and effective patient protection is diminished. The proposed change is intended to facilitate such triaging and thereby enhance patient safety. Data presented in the preamble to the proposed rule (51 FR 47028) as well as a review of the suprofen and zomepirac reporting experiences support the revision. Therefore, consistent with the proposal, the final rule amends the definition of serious to remove the prescription drug therapy criteria.

2. Other Comments on the Definition of Serious

The current definition of serious adverse drug experience includes overdose as an outcome that is always considered serious. The December 30, 1986, proposal (51 FR 47028) did not propose any revision to this aspect of the definition of serious. Nevertheless, a number of comments were received concerning overdose. One comment noted that overdoses were deemed always serious by the regulation but that a prior letter issued by the agency on September 12, 1985, indicated that: (i) An overdose without resultant signs or symptoms need not be reported, (ii) an overdose resulting in labeled consequences should be reported in the periodic report, and (iii) an overdose resulting in consequences not in the label requires a 15-day Alert report. Five comments suggested the need to clarify the requirement that it is the consequences of an overdose, not the act of overdose itself (without adverse effects), that must be reported. Another comment suggested deleting the requirement for a 15-day Alert report for an overdose. Another comment suggested that there is no need to specifically identify overdose as serious since it should be the medical consequences of the overdose (e.g., hospitalization or death) that constitute the reportable event.

The agency agrees that it is the medical consequences of overdose that trigger the 15-day reporting requirement, but believes that the regulation on the reporting of overdoses is clear in light of the 1985 agency guidance and sees no need for further revisions, at this time, to the definition of serious. When an overdose results in unlabeled consequences, it should be reported as a 15-day Alert report so that FDA can give it immediate attention. FDA believes that overdose should continue to be specifically identified as a serious adverse reaction in the regulation to give the event appropriate visibility and priority. The agency's position on the reporting of overdoses described in the September 12, 1985, letter referred to in the comments continues to reflect FDA's position on this requirement.

Several comments were made about the "life-threatening" criterion in the definition of serious, noting that the term is "judgmental, arbitrary, subjective, vague, confusing, unnecessary" and will result in the submission of too many 15-day Alert reports. One comment suggested that Form FDA–1639 be modified to include the term "life-threatening." Another comment suggested that one of the other criterion for serious would almost always be met in a life-threatening situation.

The term "life-threatening" cannot be defined with great precision but must, of necessity, involve some judgment. In the adverse drug reaction reporting context, a "life-threatening" adverse reaction means that the patient was, in the view of the initial reporter, at *immediate* risk of death from the reaction (emphasis added). The absence of a checkoff box for life-threatening on Form FDA–1639 should no more inhibit reporting of events qualifying for reporting under the life-threatening criteria than of events determined to be serious because they represent reports of cancer, overdose, or congenital anomaly. Applicants should indicate in item 7 of Form FDA–1639 the criterion for the classification of serious other than those included as checkoff boxes.

Four comments asked for clarification of the terms "hospitalization" and "disability." The agency advises that "hospitalization" includes prolongation of existing hospitalization. "Disability" means permanent and substantial disruption of one's ability to carry out normal life functions.

FDA plans to issue "Guideline for Reporting Adverse Drug Reactions (ADR's)" to provide further clarification of the agency's position on the issues addressed by these and other comments.

3. Reporting Obligations For Adverse Drug Reactions From Postmarketing Studies

One comment objected to imposing on the applicant the requirement of making an assessment of possible causality for reports derived from postmarketing studies. This comment contends that whenever a drug precedes an adverse experience, causality is possible and, as a result, the proposed revision will not

reduce the number of uninformative reports submitted to FDA.

FDA disagrees with this comment. Requiring a causality assessment of serious unexpected events found during postmarketing investigations clearly will reduce some uninformative reporting. Only experiences meeting the 15-day Alert criteria and for which there is a reasonable possibility that the drug caused the adverse experience must be reported for events found during postmarketing studies. Although it may be possible, as the comment contends, to consider any adverse event following drug administration as possibly causally related to the drug, not all such possibilities are "reasonable;" those events which are not reasonably causally related to drug exposure may be excluded under this criterion. Currently, if the use of a marketed drug in a study setting results in a serious event, the event must be reported even if it clearly was not caused by the drug. For example, if an antibiotic is being tested for its ability to control postoperative infections and the patient dies from bleeding at the wound site due to mechanical factors, the bleeding death is reportable under current requirements. Under the revised regulation, such an event would not be reportable, because the event is not reasonably attributable to the drug.

One comment stated that causality judgments should be made by the investigator rather than the applicant.

FDA would not object to an applicant's receiving assistance in making a causality assessment from the investigators who are conducting the investigation. However, the responsibility for reporting such adverse drug reactions ultimately remains with the applicant.

One comment recommended that, to avoid duplication, reports of adverse drug reactions from postmarketing studies should be submitted only to the NDA files, and not to the IND files.

Reporting to IND and NDA files serves somewhat different purposes and differing types of reviews and evaluations are performed on the files by the agency. For example, IND safety files are primarily used to determine if a trial should continue and to assemble a specific safety profile for the population and indication being tested. NDA files, on the other hand, are used to identify new information that could affect product labeling for all existing approved uses. IND data almost always require comparison with a control group, while postapproval data require other types of comparison. Thus, some dual reporting is necessary because of the differing approaches and purposes involved. However, the revisions made in this final rule have sought to minimize such duplication.

Two comments objected to cross-referencing NDA reporting requirements with the IND regulations. One comment noted that the preamble to the proposed revision exempts an applicant from the obligation to report an adverse drug experience obtained from a postmarketing clinical study of the drug to its approved NDA file unless the experience represents both a reportable finding within the meaning of § 312.1(a)(6) (now § 312.32, published in the **Federal Register** of March 19, 1987; 52 FR 8837) and a finding that must be reported under § 314.80. The comment stated that, as described in the preamble, the exemption would only apply to IND studies and asks if this was the intent of the proposed revision. The comment recommends that "unless the experience is also reportable under § 312.1 * * *" be revised to state "unless the applicant concludes that there is a reasonable possibility that the drug caused the adverse experience."

The agency agrees with this comment that there is no need to cross reference portions of the IND rule. Consequently, the final rule replaces references to the IND regulations with the phrase "applicant concludes that there is a reasonable possibility that the drug caused the adverse experience." Further, it was not the agency's intention to limit the proposed revisions in reporting requirements to studies conducted under an IND. The agency stated clearly in the proposed rule that the revisions also apply to studies not conducted under an IND.

Two comments objected to the application of causality assessments to reports from postmarketing trials for purposes of reporting to the NDA file. One comment contended that requiring an assessment of the possibility that an adverse event is causally related to the drug exposure in a study setting before requiring the reporting of the event will weaken protection of the American consumer. This comment contended that, in postmarketing studies, events are not monitored as intensely as they are in premarketing studies so that reports from postmarketing studies do not differ substantially from spontaneous reports. One comment stated that the agency places too much reliance on the distinction between use of a drug in clinical practice and its use in a study. The comments concluded that, as a consequence, the same reporting criteria should apply to both settings.

The agency thinks that these comments fail to recognize several important differences between the study setting, including epidemiological and surveillance studies, and the practice setting from which spontaneous reports arise. In a study setting reports of adverse events—even minor ones— are specifically sought routinely, often with no attempt to include only those events that are plausibly drug related and often with such encouragements to reporting such as questionnaires. Moreover, in formal clinical studies, postmarketing or premarketing, it is usual for all adverse events to be reported. It is common, even in placebo groups, to have adverse events of some kind reported in 25 to 50 percent of the patients. Spontaneous reports, on the other hand, occur at a much lower rate and generally involve an assessment by the reporter of the "drug-relatedness" of the adverse experience. Thus, there are significant differences between reports from postmarketing studies and spontaneous reports from a clinical practice setting.

Further, analysis of adverse event rates within a study is informative because the placebo group serves as a control, correcting for the increased intensity of event seeking and allowing the analyst to identify those events that are more common in the treated group. If, however, all such events are submitted to a spontaneous reporting system, they distort that system by giving the impression that the drug under investigation is associated with a higher frequency of common events than would be reported spontaneously, thus generating a spurious signal.

Similarly, intensive postmarketing surveillance, such as that accompanying monitored release programs, produce frequencies of reported events far higher than would be reported spontaneously. Again, such surveillance, analyzed separately, can provide useful information, but the high numbers of events, if added to the spontaneous reports, can distort the spontaneous system. This distortion results in an implication that the drug under study has a higher event rate than drugs not subject to surveillance. In fact, it may be only the likelihood that events will be reported, not the actual incidence of drug reactions, that is different. It is critical to the signal-generating function of spontaneous reporting systems that such distortions be avoided where possible.

One comment contended that the proposal would make reporting from postmarketing studies totally discretionary, that important reactions will, therefore, not be reported, and that, as a result, important information

allowing for development of rates of adverse reactions will be unavailable.

The revision does not make a manufacturer's reporting discretionary. If there is a reasonable possibility that the observed event was caused by the drug, it must be reported.

One comment urged that IND and NDA reporting criteria remain separate and that the NDA reporting criteria for study reports not be modified because the implications of reporting under the NDA and IND reporting regulations are different. That is, currently under § 314.80 reporting decisions are made without an assessment of causation and that consideration of labeling revisions are made as separate and distinct decisions depending on medical evaluation and possible epidemiologic evaluation by the sponsor and FDA. The comment continued that if a serious adverse drug event report for a marketed product also meets the proposed possible causality criterion, the sponsor would be under extreme pressure to consider making a labeling change. The comment analogized to the changes made in investigators' brochures after a "prompt report" is submitted under the IND regulations.

With respect to the concern expressed about a potential increase in pressure for labeling revisions in response to safety information submitted to the agency under the revised criteria for submission of 15-day Alert reports from postmarketing studies, the agency intends that requests for labeling revisions will continue to be made only after the same careful evaluation that is described by the comment.

One comment objected to FDA's proposal to eliminate the periodic reporting requirements for adverse drug experience information obtained from postmarketing epidemiological/surveillance studies. The comment stated that FDA must receive all adverse drug reaction reports, including those from postmarketing epidemiological/surveillance studies, so that the agency can evaluate the incidence of adverse reactions and respond appropriately to protect the American consumer.

Important information will not be lost by eliminating the requirement for periodic reporting from postmarketing epidemiological, surveillance studies. If such studies are conducted under an IND, the data will be submitted and analyzed under the IND requirements. Further, if an increased frequency of a serious, labeled reaction, or if a serious, unlabeled reaction occurs and has a reasonable possibility of being caused by the drug, it must still be reported under 21 CFR 314.80. Moreover, under § 314.81(b)(2)(vi), reports of postmarketing studies pertinent to safety, including epidemiological studies, are required to be submitted to the NDA file in the annual report.

One comment stated that a disclaimer of "admitted" causation included on a Form FDA–1639 submitted under the revised regulation would by definition be inaccurate.

The agency disagrees with this comment. The standard for submission of a 15-day Alert report of an adverse drug experience from a postmarketing study that satisfies the other criteria for 15-day submission, is that there is a reasonable possibility that the adverse event is causally related to drug exposure and not that the drug actually caused the adverse event. Further, identical disclaimer language is present in the IND reporting regulations at § 312.32(e) which also use the reasonable possibility standard. (See § 312.32(a) (21 CFR 312.32(a)) (defining "associated with the use of drug" to mean a reasonable possibility that the experience may have been caused by the drug.)

One comment stated that it was not clear whether the proposed revision applies to the determination whether there has been an increased frequency of adverse experiences.

However, the proposed and final regulation is clear that reports from postmarketing studies are to be submitted under § 314.80(c) only if, in addition to meeting the other criteria for submission as a 15-day Alert report, there is a reasonable possibility that the adverse event was causally related to the drug exposure. Therefore, with respect to 15-day Alert reports of increased frequency, adverse experiences from postmarketing studies should be included in the calculation of increased frequency if, in addition to meeting the criteria for submission as a 15-day Alert report under § 314.80(c)(1)(ii) (e.g., serious, labeled) there is a reasonable possibility that the adverse event is causally related to the drug exposure. To facilitate the agency's evaluation of such reports, § 314.80(e)(2) also requires reports derived from postmarketing studies to be clearly marked and distinguished from spontaneous reports.

4. Other Comments

Two comments objected to the use of the title "adverse reaction report" instead of "drug experience report" for Form FDA–1639. The major concern expressed in the comments is that this title change will expose manufacturers to allegations of prior knowledge about reactions and will create inappropriate pressure for labeling changes. FDA has emphasized that reports are preliminary and do not necessarily constitute an assertion or acceptance of causality. Further, the agency believes that the terminology "adverse reaction report" is more meaningful to medical practitioners than is the term "drug experience report." However, under the provisions of § 314.80(f)(3) that allow alternate report formats, FDA permits manufacturers to substitute the title "drug experience report" on the report form.

Several comments proposed that deaths which are coincidental to drug exposure not be reportable. FDA believes that, for spontaneous reports of deaths, it can be presumed that the reporting physician had some basis for suspicion of a drug relationship and such reports must be submitted. However, reports of death occuring in clinical studies are required to be submitted to FDA only when the deaths are possibly causally related to the drug exposure. This revision will eliminate most of the reporting of coincidental or noncausal events. It should be noted that FDA urges manufacturers to determine the exact circumstances and cause of death.

One comment requested clarification of the reporting requirements for a lack of a therapeutic effect. If the result of the lack of therapeutic effect is an event that is both serious and unlabeled, then a 15-day Alert report must be submitted.

IV. Economic Impact

In accordance with Executive Order 12291, FDA has previously considered the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. Similarly, under the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determinations.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

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nor an environmental impact statement is required.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 310 and 314 are amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 is revised to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat. 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.305 is amended by revising paragraph (b)(4) and redesignating existing paragraph (c)(1) as paragraph (c)(1)(i) and adding new paragraph (c)(1)(ii) to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

* * * * *

(b) * * *

(4) "Serious" means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer, or overdose.

* * * * *

(c) *Reporting requirements—15-day "Alert reports."*

(1) * * *

(ii) A person identified in paragraph (c)(1)(i) of this section is not required to submit a 15-day "Alert report" for an adverse drug experience obtained from a postmarketing study (whether or not conducted under an investigational new drug application) unless the applicant concludes that there is a reasonable possibility that the drug caused the adverse experience.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR Part 314 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

4. Section 314.80 is amended in paragraph (a) by revising the definition of "Serious," in the introductory text of paragraph (c) by revising the address to which reports are submitted to read "Central Document Room, Park Bldg., Rm. 214, 12420 Parklawn Dr., Rockville, MD 20852," in paragraphs (c)(1), (c)(2)(ii)(*b*), and (f)(1) by revising "(Drug Experience Report)" to read "(Adverse Reaction Report)," in paragraphs (d)(2), (f) (3) and (4) by revising "Drug and Biological Product Experience" to read "Epidemiology and Surveillance," and by revising paragraphs (c)(2)(iii) and (e) to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

(a) * * *

"Serious" means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer, or overdose.

* * * * *

(c) * * *

(2) * * *

(iii) Periodic reporting, except for information regarding 15-day Alert reports, does not apply to adverse drug experience information obtained from postmarketing studies (whether or not conducted under an investigational new drug application), from reports in the scientific literature, and from foreign marketing experience.

* * * * *

(e) *Postmarketing studies.* (1) An applicant is not required to submit a 15-day Alert report under paragraph (c) of this section for an adverse drug experience obtained from a postmarketing study (whether or not conducted under an investigational new drug application) unless the applicant concludes that there is a reasonable possibility that the drug caused the adverse experience.

(2) The applicant shall separate and clearly mark reports of adverse drug experiences that occur during a postmarketing study as being distinct from those experiences that are being reported spontaneously to the applicant.

* * * * *

Dated: September 12, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–23542 Filed 10–9–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Pyrantel Pamoate Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Purina Mills, Inc., providing for the use of pyrantel pamoate chewable tablets as an anthelmintic in dogs.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., 835 South Eighth St., St. Louis, MO 63102, is sponsor of NADA 139–191 providing for use of pyrantel pamoate chewable tablets as an anthelmintic in dogs. The NADA provides for use of the product for removal of ascarids (*Toxocara canis; Toxascaris leonina*) and hookworms (*Ancylostoma caninum; Uncinaria stenocephala*) in dogs and puppies; and to prevent reinfection of *Toxocara canis* in puppies, adult dogs, and in lactating bitches after whelping. The NADA is approved and new 21 CFR 520.2041 is added to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. By adding new § 520.2041 to read as follows:

§ 520.2041 Pyrantel pamoate chewable tablets.

(a) *Specifications.* Each tablet contains pyrantel pamoate equivalent to 22.7 or 113.5 milligrams pyrantel base.

(b) *Sponsor.* See No. 017800 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Provides at least 2.27 milligrams pyrantel base per pound body weight for dogs weighing more than 5 pounds, and at least 4.54 milligrams of pyrantel base per pound body weight for dogs weighing 5 pounds or less.

(2) *Indications for use.* (i) In dogs and puppies. For removal of ascarids (*Toxocara canis; Toxascaris leonina*) and hookworms (*Ancylostoma caninum; Uncinaria stenocephala*).

(ii) In puppies and adult dogs and in lactating bitches after whelping. To prevent reinfection of *Toxocara canis.*

(3) *Limitations.* Administer to puppies at 2, 3, 4, 6, 8, and 10 weeks of age. Administer to lactating bitches 2 to 3 weeks after whelping. Retreatment of adult dogs may be necessary at monthly intervals as determined by laboratory fecal examinations. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: September 29, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-23539 Filed 10-9-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R-87-965; FR-2147]

Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Technical amendment.

SUMMARY: A final rule was published on March 5, 1987 (52 FR 6908), to establish a new program of foreclosure avoidance for FHA-insured homebuyers. It stated that various administrative tasks would have to be completed before it could be made effective. This document is being published before an effective date for that rule is announced, to correct erroneous cross-references and to delete material that would have made mortgagors with mortgages coinsured by the lender ineligible for both the Temporary Mortgage Assistance Payments program and the program of assignment with forbearance.

EFFECTIVE DATE: The Department must complete revisions to HUD Handbook 4330.2 and must finish the process of selecting a contractor to administer the nationwide processing of payments under the Temporary Mortgage Assistance Payments program before the rule published on March 5, 1987, as amended by this rule can be made effective. The effective date will be announced by publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Curtis Myron, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6664. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The changes to §§ 203.641 and 203.643 are needed to correct references to the provision (paragraph (b) of § 203.641) that limits the required payment, during the period of reduced or suspended payments, to a maximum of 35 percent of the mortgagor's income. The amendment to § 204.400 (the coinsurance provision that cross-references applicable provisions of Part 203) is necessary in order properly to reflect the Department's obligation under the National Housing Act to consider coinsured mortgagors for mortgage foreclosure relief. Section 230(b) of the National Housing Act (12 U.S.C. 1715u), provides that upon notice of a default "of "*any* mortgage covering a one-, two-, three or four-family residence insured under [the National Housing] Act," HUD is to consider the mortgagor for foreclosure relief (whether or not the mortgage is coinsured).

Under the rule now in effect, § 204.400 provides that the servicing responsibilities of mortgagees stated in Subpart C of Part 203 apply to mortgagees with respect to coinsured mortgages except for certain sections requiring a mortgagee to consider a defaulted mortgagor for eligibility for the assignment program. Therefore, the rule now in effect provides that mortgages insured by HUD under section 203(b) of the National Housing Act, 12 U.S.C. 1709, pursuant to section 244 of the Act, 12 U.S.C. 1715z-9, are ineligible during the coinsurance period (the first five years of the mortgage) for the only HUD program of foreclosure avoidance now available—the assignment program. (HUD Handbook 4330.2 also states this conclusion.) The final rule published on March 5, 1987, but not yet made effective, would have changed § 204.400 to make the new program of foreclosure relief, the Temporary Mortgage Assistance Payments (TMAP) program, also inapplicable to coinsured mortgages during the period of coinsurance.

We have determined that this automatic disqualification of coinsured mortgagors for any form of HUD foreclosure avoidance assistance is not authorized under section 230 of the National Housing Act. Under that Act, assistance in the form of the assignment program, at least, must be made available to all eligible mortgagors of insured one- to four-family residences insured under the Act. Therefore, the language of § 204.400 now precluding coinsured mortgagors from consideration for the assignment program is ineffective and in conflict with the statute.

The Department also has determined to make TMAP available to eligible coinsured mortgagors. To assure that eligible coinsured mortgagors will be considered for both programs when the rule creating TMAP becomes effective, this technical amendment is being made to eliminate the exclusion in advance of the announcement of an effective date for the rule published on March 5, 1987.

Additional changes to Part 204 may be necessary (§§ 204.280 through 204.381) to clarify how the process for considering a mortgagor for TMAP and assignment applies in the case of a coinsured mortgage—where the coinsuring mortgagee is responsible for adsorbing a percentage of the loss in event of payment of an insurance claim. In the meantime, HUD Field Offices and FHA-approved mortgagees are being instructed to follow the procedures found in Subpart C of Part 203 (§ 203.606 and §§ 203.640 through 203.665) for handling defaulted coinsured mortgages, and to consult HUD Headquarters if a question should arise.

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Findings and Certifications

Final Rule

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants benefits, or contracts, despite the exemption for these rules contained in 5 U.S.C. 553 from the requirement to solicit public comment. However under 24 CFR Part 10, in a particular case, the Department may omit solicitation of public comment before publishing a final rule if such comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, one of the amendments is in the nature of correction of a typographical error, on which public comment is clearly unnecessary. The other amendment is needed in order to conform the regulation to the requirements of section 230 of the National Housing Act, 12 U.S.C. 1715u. Without the amendment, the rule would be inconsistent with the statute. Since the issue of whether or not foreclosure relief should apply to coinsured mortgages (the subject of this amendment) is not legally open to question, solicitation and consideration of public comment on that change is unnecessary. The type of comments likely to be submitted on this amendment would be suggestions on the details of processing mortgage insurance claims in the case of defaulted coinsured mortgages.The Department plans to handle the details of claims processing in a subsequent rulemaking, in which public comment will be solicited.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competiton, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it consists of technical refinements to an already published rule and merely requires mortgagees of coinsured mortgages to consider them for mortgage foreclosure relief as they would consider fully insured mortgages.

Regulatory Agenda

The rule that this serves as a correction for was listed as sequence number 958 under the Office of Housing in the Department's Seminannual Regulatory Agenda published on April 27, 1987 (52 FR 14362, 14387), under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains no information collection requirements subject to approval by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501 through 3520).

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: Housing and community development, Mortgage insurance.

24 CFR Part 204

Mortgage insurance.

Accordingly, 24 CFR Parts 203 and 204, as amended in the final rule on Temporary Mortgage Assistance Payments published in the **Federal Register** on March 5, 1987, (52 FR 6908), is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

§ 203.641 [Amended]

2. Section 203.641(c) is amended by removing the words "paragraph (a) of this section" and substituting in their place the words "paragraph (b) of this section".

§ 203.643 [Amended]

3. Section 203.643(c)(3) is amended by removing the reference to "§ 203.641(a)" and substituting in its place the reference "§ 203.641(b)".

PART 204—COINSURANCE

4. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 244 and 211, National Housing Act (12 U.S.C. 1715z–9 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 204.400 [Amended]

5. Section 204.400 is amended by removing the words "and §§ 203.640 through 203.665" and revising the words "do not apply" to read "does not apply".

Dated: October 5, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87–23670 Filed 10–9–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Internal Revenue Practice; Statement of Procedural Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations, amending the Statement of Procedural Rules (SPR). The SPR sets forth the procedural rules of the Internal Revenue Service for all taxes administered by the Service as well as certain rules that apply to the Bureau of Alcohol, Tobacco and Firearms. These amendments update the SPR and make

certain changes in the Service's procedure, including changes necessitated by recent legislation, to conform to changes in corresponding Department of the Treasury regulations, and to update organizational titles and addresses.

DATES: *Effective:* November 12, 1987.

FOR FURTHER INFORMATION CONTACT: Margo Stevens of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: CC:D. Telephone 202–566–3074 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations to amend the SPR (26 CFR 601.702), issued under the authority contained in 5 U.S.C. 301 and 552. The principal amendments update the SPR to reflect changes in the fee and fee waiver provisions of the Freedom of Information Act, as enacted by the Freedom of Information Reform Act of 1986 (Pub. L. 99–570). Some amendments update the SPR to reflect changes in nomenclature and to eliminate references to a particular gender. The Disclosure Operations Division is now the Office of Disclosure. The Civil Service Commission is now the Special Counsel. The Director, Foreign Operations District, is now the Assistant Commissioner (International). The SPR is also updated to reflect changes of addresses to be contacted for Freedom of Information requests. The SPR also incorporates provisions for processing requests involving records of submitters of business information, in conformance with corresponding Department of the Treasury regulations, 31 CFR 1.6, and to satisfy Executive Order 12600, 52 FR 23781 (June 25, 1987). The other amendments are described in the order of the sections of the SPR being amended.

The Internal Revenue Service published proposed amendments to the Freedom of Information Act subpart of its Statement of Procedural Rules on July 27, 1987, 52 FR 28000. The Internal Revenue Service received comments from only one organization. Because the proposed amendments were drafted to conform to Treasury's Departmental final regulations, published on July 14, 1987 (52 FR 26302), the Internal Revenue Service is constrained from making any changes in two of the areas addressed by the commentator: The definition of "representative of the news media" and the referral policy for documents created by other agencies located in Internal Revenue Service files. The revisions proposed by the commentator would be inconsistent with, and therefore superceded by, Treasury Departmental regulations. With respect to the final area, fee waivers, the commentator recommends that the Internal Revenue Service simply reiterate the language of the statute regarding waiver of fees, rather than incorporate any of the Justice Department's guidance. Although the commentator stated that the inclusion of Justice's guidance makes it more difficult for requesters to qualify for fee waivers, we do not agree and such is not our intent. Particularly because the Freedom of Information Act holds individual officials responsible for "arbitrary and capricious" actions, it becomes incumbent upon the agency to establish measurable criteria for its officials to consider in the exercise of their discretion under the statute. The Internal Revenue Service believes that the criteria included in these regulations reaches a reasonable balance between the agency's interest in a "self-sustaining" Freedom of Information Act program (as intended by Congress) and the public's interest in optimal access to government records. Accordingly, no changes have been made to these sections.

An editorial amendment is made to paragraphs (a)(1), (b)(1), and (c)(1) to change "paragraph (b) of § 601.701" to "paragraph (b)(1) of § 601.701."

An amendment is made to paragraphs (a)(1) and (c)(3)(v) to change "Internal Revenue Code of 1954" to "Internal Revenue Code of 1986."

Paragraph (b)(2), relating to deletion of identifying details, is amended to substitute section 6103 of the Internal Revenue Code as a statutory provision for disclosure in lieu of section 7213.

Paragraph (c)(2), relating to requests for records not in control of the Internal Revenue Service, is amended to conform to corresponding Department of the Treasury regulations.

Paragraph (c)(4) is amended to conform to IRC 6103(e)(1)(D) of the Internal Revenue Code: to enable the president or chief executive officer of a corporation to gain access to records without supplying additional proof of authority; to enable other officers or employees of a corporation to gain access to records with an appropriate certification of authority; to enable other persons to gain access to records with a board of directors' resolution of authority.

Paragraph (c)(11) is amended to eliminate the reference to 5 U.S.C. 552(a)(4)(D), relating to expedited judicial proceedings under the Freedom of Information Act, which was eliminated by the Federal Courts Civil Priorities Act (Pub. L. 98–620) in 1984.

Paragraph (c)(12) is redesignated (c)(13); and new paragraph (c)(12) is inserted to conform to corresponding Department of the Treasury regulations.

Paragraphs (d) (1), (3), and (4) are amended to reflect the requirement for a written request prior to public inspection of tax returns, return information and applications for tax exempt status, and to update certain cross references.

Paragraph (d)(2) is amended to clarify the records relating to seizure and sale of real estate that are open to public inspection.

Paragraph (d)(5) is redesignated (d)(8) and is amended to conform to IRC 6103(k)(1), which authorizes full disclosure of accepted offers in compromise, notwithstanding the confidentiality requirements of 18 U.S.C. 1905, relating to trade secrets, processes, operations, style of work, etc.

Paragraph (d)(8) is redesignated (d)(5) and to update certain cross references.

Paragraph (f) is amended to reflect changes necessitated by the Freedom of Information Reform Act (Pub. L. 99–570). Other changes and additions necessitated by the Freedom of Information Reform Act may be found in paragraphs (c)(3) (viii) and (ix); (c)(5)(i), (c)(6), and (c)(7)(ii).

Paragraph (g) is amended to reflect changes in nomenclature and addresses and to clarify that Regional and District Counsel records are under the jurisdiction of the Regional Commissioner and District Director, respectively.

New paragraph (h) is added to conform to corresponding Department of the Treasury regulations concerning the processing of requests of submitters of business information, 31 CFR 1.6, and to satisfy Executive Order 12600.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although procedural rules do not normally require notices of proposed rulemaking pursuant to 5 U.S.C. 553, the Freedom of Information Reform Act required agencies to promulgate final regulations after publication of proposed regulations pursuant to notice and public comment. Proposed regulations were published on July 27, 1987, at 52 FR 28000, for any comments received on or before August 7, 1987.

Drafting Information

The principal author of these final amendments to the Statement of

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Procedural Rules is Margo Stevens of the Disclosure Litigation Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing these amendments, both on matters of substance and style.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of Information, Taxes.

Adoption of Amendments to Statement of Procedural Rules

Accordingly, 26 CFR Part 601 is amended as follows:

PART 601—[AMENDED]

Paragraph 1. The authority for Part 601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

§ 601.702 [Amended]

Par. 2. Section 601.702 (a)(1) is amended as follows:

1. In the first sentence, the language "paragraph (b) of § 601.701" is removed and the language "paragraph (b)(1) of § 601.701" is added in its place.

2. In the flush material immediately following (v), the language "Internal Revenue Code of 1954" is removed and the language "Internal Revenue Code of 1986" is added in its place.

Par. 3. Section 601.702(b)(1) is amended by removing from the first sentence the language "paragraph (b) of § 601.701" and adding the language "paragraph (b)(1) of § 601.701" in its place.

Par. 4. Section 601.702(b)(2) is amended by removing from the last sentence the language "7213, dealing with disclosure of information obtained from members of the public." and adding the language "6103 of the Internal Revenue Code." in its place.

Par. 5. Section 601.702(b)(3) is amended as follows:

1. Paragraph (ii) is revised to read as set forth below.

2. In paragraph (iii), the language "paragraph (f)(4)" is removed and the language "paragraph (f)(5)(iii)" is added in its place.

3. The first sentence of paragraph (iv) is revised to read as set forth below.

(3) *Public reading rooms*—(i) *In general.* * * *

(ii) *Addresses of public reading rooms.* The addresses of the reading rooms are as follows:

National Office

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Location: Same as mailing address.

North Atlantic Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 120 Church Street, 11th Floor, New York, NY 10007.

Location: Same as mailing address.

Mid-Atlantic Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 600 Arch Street, Philadelphia, PA 19105.

Location: Same as mailing address.

Southeast Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 275 Peachtree Street, NE., Room 342, Atlanta, GA 30043.

Location: Same as mailing address.

Midwest Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 230 Dearborn Street, Room 1980, Chicago, IL 60604.

Location: Same as mailing address.

Central Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 201 W. Fourth Street, Covington, KY 41019.

Location: Same as mailing address.

Southwest Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1100 Commerce Street, Room 11B15, Dallas, TX 75242.

Location: Same as mailing address.

Western Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 450 Golden Gate Avenue, Room 2307, San Francisco, CA 94102.

Location: Same as mailing address.

(iv) *Inability to use public reading rooms.* If persons are unable or unwilling to visit a reading room in person but wish to inspect identifiable reading room material, they may request permission to inspect such material at any office of the Internal Revenue Service. * * *

Par. 6. Section 601.702(c)(1) is amended by removing from the first sentence the language "paragraph (b) of § 601.701" and adding the language "paragraph (b)(1) of § 601.701" in its place.

Par. 7. Section 601.702 (c) (2) is amended as follows:

1. In paragraph (i), the third sentence, the language "31 CFR Part 1.5 (g) and (h)" is removed and the language "31 CFR Part 1.5 (g), (h), and (i)" is added in its place.

2. Paragraph (ii) is revised to read as set forth below.

3. A new paragraph (iii) is added immediately following paragraph (ii) to read as set forth below.

(2) *Requests for records not in control of the Internal Revenue Service.* (i) * * *

(ii) Where the record requested was created by another agency or Department of the Treasury constituent unit (*i.e.*, in its control) and a copy thereof is in the possession of the Internal Revenue Service, the Internal Revenue Service official to whom the request is delivered shall refer the request to the agency or constituent unit which originated the record for direct reply to the requester. The requester shall be informed of such referral. This referral shall not be considered a denial of access within the meaning of these regulations. However, where the record is determined to be exempt from disclosure under 5 U.S.C. 552, the referral need not be made, but the Internal Revenue Service shall inform the originating agency or constituent unit of its determination. Where notifying the requester of its referral may cause a harm to the originating agency or constituent unit which would enable the originating agency or constituent unit to withhold the record under 5 U.S.C. 552, then such referral need not be made. In both of these circumstances, the Internal Revenue Service official to whom the request is delivered shall process the request in accordance with the procedures set forth in this subpart.

(iii) When a request is received for a record created by the Internal Revenue Service (*i.e.*, in its possession and control) that includes information originated by another agency or Department of the Treasury constituent unit, the record shall be referred to the originating agency or constituent unit for review, coordination, and concurrence. The Internal Revenue Service official to whom the request is delivered shall not issue its determination with respect to that record without prior consultation with the originating agency or constituent unit.

Par. 8. Section 601.702(c)(3) is amended as follows:

1. In paragraph (v), the language "sections 6103 and 7213 of the Internal Revenue Code of 1954" is removed and the language "section 6103 of the Internal Revenue Code of 1986" is added in its place.

2. In paragraph (vii), the final "and" is removed.

3. In paragraph (viii), "." is removed at the end and ", and" is added in its place.

4. A new paragraph (ix) is added to read as set forth below.

5. The flush language is revised to read as set forth below.

(3) *Form of request.* The initial request for records must—

(i) * * *

(ix) Identify the category of the requester and state how the records will be used, as required by paragraph (f)(3) of this section.

Where the initial requests, rather than stating a firm agreement to pay the fees ultimately determined in accordance with paragraph (f) of this section, place an upper limit on the amount the requesters agree to pay, which upper limit is deemed likely to be lower than the fees estimated to ultimately be due, or where the requesters ask for an estimate of the fees to be charged, the requesters shall be promptly advised of the estimate of fees and asked to agree to pay such amount. Where the initial requests include a request for reduction or waiver of fees, the Internal Revenue Service officials responsible for the control of the requested records (or their delegates) will determine whether to grant the requests for reduction or waiver in accordance with paragraph (f) of this section and notify the requesters of their decisions and, if their decisions result in the requesters being liable for all or part of the fees normally due, ask the requesters to agree to pay the amounts so determined. The requirements of this subparagraph will not be deemed met until the requesters have explicitly agreed to pay the fees applicable to their requests for records, if any, or have made payment in advance of the fees estimated to be due. In addition, requesters are advised that only requests for records which fully comply with the requirements of this subparagraph can be processed in accordance with this section. Requesters will be promptly notified in writing of any requirements which have not been met or any additional requirements to be met. However, every effort will be made to comply with the requests as written.

Par. 9. Section 601.702(c)(4) is amended as follows:

1. In paragraph (i)(A), the second and fourth sentences are revised to read as set forth below.

2. In paragraph (i)(B), first sentence, the language "601.701(b)" is removed and the language "601.701(b)(1)" is added in its place.

3. Paragraph (ii) is revised to read as set forth below.

(4) *Reasonable description of records; identity and right of the requester.* (i)(A) * * * While no specific formula for a reasonable description of a record can be established, the requirement will generally be satisfied if the requester gives the name, subject matter, location, and years at issue, of the requested records. If the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. * * * Where the requester does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine the request. * * *

(ii) In the case of records containing information with respect to particular persons the disclosure of which is limited by statute or regulations, persons making requests shall establish their identity and right to access to such records. Persons requesting access to such records which pertain to themselves may establish their identity by—

(A) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card), in the case of a request made in person,

(B) The submission of the requester's signature, address, and one other identifier (such as a photocopy of a driver's license) bearing the requester's signature, in the case of a request by mail, or

(C) The presentation in person or the submission by mail of a notarized statement swearing to or affirming such person's identity.

Additional proof of persons' identity shall be required before the requests will be deemed to have met the requirement of paragraph (c)(3)(v) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. Persons who have identified themselves to the satisfaction of Internal Revenue Service officials pursuant to this subdivision shall be deemed to have established their right to access records pertaining to themselves. Persons requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the requested records before the requirement of paragraph (c)(3)(v) of this section will be deemed met. In the case of an attorney-in-fact, the requester shall furnish an original of a properly executed power of attorney together with one other identifier bearing the signature of the person executing such power of attorney. In the case of a corporation, if the requester has the authority to legally bind the corporation under applicable state law, such as its president or chief executive officer, then a written statement that the person making the request on behalf of the corporation, on corporate letterhead, shall be sufficient. If the requester is an officer or an employee of a corporation, then such person shall furnish a certification by one of the corporation's officers (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such request. If the requester is other than one of the above, then such person shall furnish a resolution by the corporation's board of directors providing that the person making the request on behalf of the corporation is properly authorized to make such a request. A person requesting access to records of a one-man corporation or a partnership shall provide a notarized statement that the requester is in fact an officer or official of the corporation or a member of the partnership.

Par. 10. Section 601.702(c)(5) is amended as follows:

1. In the first sentence, the language "official responsible for the control of the records requested (or his delegate)" is removed and the language "officials responsible for the control of the records requested (or their delegates)" is added in its place.

2. In the flush material following paragraph (iii), the language "he may expect a response" is removed and the language "a response may be expected" is added in its place.

3. In paragraph (i), the language "search and duplication" is removed and the language "search, duplication, and review" is added in its place.

Par. 11. Section 601.702(c)(6) is amended by adding the following two, new sentences between the first and second sentences:

(6) *Search for records requested.* * * * Search time includes any and all time spent looking for material responsive to the request, including

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page-by-page or line-by-line identification of material within records. However, where duplication of an entire record would be less costly than a line-by-line identification, duplication should be substituted for this kind of search.
* * *

Par. 12. Section 601.702(c)(7) is amended by revising (i), (ii), and (iv) to read as follows:

(7) *Initial determination*—(i) *In general.* The Director of the Office of Disclosure or his/her delegate shall have the authority to make initial determinations with respect to all requests for records of the Internal Revenue Service. With the exception of records which are controlled by the Assistant Commissioner (Inspection), the Director of the Internal Revenue Service Data Center, the Assistant Commissioner (International), or the Director of Practice, the Director of the Office of Disclosure or his/her delegate shall have the sole authority to make such determinations with respect to records controlled by the National Office. Except where the Director of the Office of Disclosure or his/her delegate has such sole authority, the initial determination as to whether to grant the request for records may be made either by the Director of the Office of Disclosure or by the Internal Revenue Service officials responsible for the control of the records requested or their delegates (see paragraph (g) of this section), including those officials mentioned in the preceding sentence. The initial determination will be made and notification thereof mailed within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (c)(5) of this section or the requester otherwise agrees to an extension of the 10-day time limitation.

(ii) *Granting of request.* If it is determined that the request is to be granted, and if the person making the request desires a copy of the requested records, a statement of fees, if any, in accordance with paragraph (f) of this section, will be mailed to the requester, requesting such payment prior to release of the records determined to be available. Upon receipt of such fees, the Internal Revenue Service official responsible for the control of the records (or his/her delegate) will promptly mail such copies to the requester, with any explanation of the deletions or withholdings, as applicable. However, if no fees are due, then a copy of the available records will be promptly mailed to the requester. In the case of a request for inspection the requester will be notified in writing of the determination, when and where the requested records may be inspected and of the fees involved in complying with the request. Any fees involved in complying with the request for inspection of records shall be submitted prior to making the records available for inspection.

The records will promptly be made available for inspection, at the time and place stated, normally at the appropriate office where the records requested are controlled. However, if the person making the request has expressed a desire to inspect the records at another office of the Internal Revenue Service, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished upon payment of the established fees prescribed by paragraph (f) of this section.
* * * * *

(iv) *Inability to locate and evaluate within time limits.* Where the records requested cannot be located and evaluated within the initial 10-day period or any extension thereof in accordance with paragraph (c)(9) of this section, the search for the records or evaluation will continue, but the requesters will be so notified, advised that they may consider such notification a denial of their requests for records, and provided with the address to which an administrative appeal may be delivered. However, the requesters may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time will not constitute a waiver of the requesters' right to appeal any denial of access ultimately made or their right to appeal in the event of failure to comply with the time extension granted.

Par. 13. Section 601.702(c)(8) is amended as follows:

1. The introductory text of paragraph (c)(8) is revised to read as set forth below.

2. Paragraph (v) is revised to read as set forth below.

3. In the flush material following paragraph (vi), the language "Commissioner or his delegate" is removed from the first sentence and the language "Commissioner or his/her delegate" is added in its place; and the word "appellant" is removed from the fifth sentence and the word "requester" is added in its place.

(8) *Administrative appeal.* The requester may submit an administrative appeal to the Commissioner at any time within 35 days after the date of any notification described in paragraph (c)(7) (iii) or (iv) of this section or after receipt of an adverse determination of the requester's category described in paragraph (f)(3) of this section, or the date of the letter transmitting the last records released, whichever is later. The letter of appeal shall— * * *

(v) Specify the date of the request, and the office to which the request was submitted and, where possible, enclose a copy of the initial request and the initial determination being appealed, and

Par. 14. Section 601.702(c)(9) is amended as follows:

1. In paragraph (i)(B), the language "or related requests" is added following "single request," and before "or".

2. In paragraph (i)(C), the language "Disclosure Operations Division" is removed and the language "Office of Disclosure" is added in its place.

Par. 15. Section 601.702(c)(10) is revised to read as follows:

(10) *Failure to comply.* If the Internal Revenue Service fails to comply with the time limitations specified in paragraphs (c) (7), (8), or (9)(i) of this section, any persons making requests for records satisfying the requirements of subdivisions (i) through (ix) of paragraph (c)(3) of this section, shall be deemed to have exhausted their administrative remedies with respect to such requests. Accordingly, these persons may initiate suit in accordance with paragraph (c)(11) of this section.

Par. 16. Section 601.702(c)(11) is revised to read as follows:

(11) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (c)(8) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (c) (7) and (8) of this section, or the period of any extension pursuant to paragraph (c)(9)(i) of this section, or by grant of the requester, respectively, the person making the request may commence an action in a U.S. district court in the district in which the requester resides, in which the requester's principal place of business is

located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or an employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue, NW., Washington, DC 20224. The Internal Revenue Service will serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon it, unless the court otherwise directs for good cause shown. The district court will determine the matter *de novo*, and may examine the contents of the Internal Revenue Service records in question in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions described in paragraph (b)(1) of § 601.701. The burden will be upon the Internal Revenue Service to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed.

Par. 17. Section 601.702(c)(12) is amended as follows'

1. The language "Civil Service Commission" is removed from the first and third sentences and the word "Commission" is removed from the second sentence, and the language "Special Counsel" is added in each such place.

2. The language "his representative" is removed at the end of the second sentence and the language "his/her representative" is added in its place.

3. Paragraph (12) is redesignated paragraph (13).

4. A new paragraph (12) is added to read as follows:

(12) *Preservation of records.* All correspondence relating to the requests received by the Internal Revenue Service under this chapter, and all records processed pursuant to such requests, shall be preserved, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under 5 U.S.C. 552.

Par. 18. Section 601.702(d)(1) is amended by adding the following sentence at the end of the paragraph:

(d) *Rules for disclosure of certain specified matters*—(1) *Inspection of tax returns and return information.* * * * Written requests for this information shall be made in accordance with Rev. Proc. 66–3, as modified by Rev. Proc. 84–71, 1984–2 C.B. 735 and Rev. Proc. 85–56, 1985–2 C.B. 739.

Par. 19. Section 601.702(d)(2) is amended as follows:

1. The language "Part 2," is added following "Record 21,".

2. The following sentence is added at the end of the paragraph.

(2) *Record of seizure and sale of real estate.* * * * However, Record 21 does not list real estate seized for forfeiture under the internal revenue laws (see IRC 7302).

Par. 20. Section 601.702(d)(3) is revised to read as follows:

(3) *Information returns of certain tax-exempt organizations and certain trusts.* Information furnished on Form 990, Form 1041–A, and on the annual report by private foundations pursuant to sections 6033, 6034, 6056 (as in effect before its repeal by Pub. L. 96–603), is open to public inspection. This information will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, as well as in the office of any district director. Copies of these records may, upon written request, be obtained from these offices or from the office of any service center director. The applicability of this subparagraph is subject to the rules on disclosure set forth in section 6104(b) and § 301.6104(b)–1.

Par. 21. Section 601.702(d)(4) is revised to read as follows:

(4) *Applications of certain organizations for tax exemption.* Subject to the rules on disclosure set forth in section 6104(a) and § 301.6104 (a)–1, (a)–5, and (a)–6, applications and certain papers submitted in support of such applications, filed by organizations described in section 501 (c) or (d) and determined to be exempt from taxation under section 501(a), and any letter or other document issued by the Internal Revenue Service with respect to such applications, will be made available for public inspection, upon written request, in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or the office of any district director.

Par. 22. Section 601.702(d)(5) is removed.

Par. 23. Section 601.702(d)(7) is revised to read as follows:

(7) *Comments received in response to a notice of proposed rule making.* Written comments received in response to a notice of proposed rule making may be inspected, upon written request, by any person upon compliance with the provisions of this paragraph. Comments which may be inspected are located in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments that are the subject of the request. Copies of comments may be made in the Freedom of Information Reading Room by the person making the request or may be requested, in writing, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. The person making the request for copies should allow a reasonable time for processing the request. The provisions of paragraph (f)(5) of this section, relating to fees, shall apply with respect to requests made in accordance with this subparagraph.

Par. 24. Section 601.702(d)(8) is amended as follows:

1. In the last sentence, the language "§ 301.6104–1" is removed and the language "§ 301.6104 (a)–1 through (a)–6" is added in its place.

2. Section 601.702(d)(8) is redesignated § 601.702(d)(5).

Par. 25. A new § 601.702(d)(8) is added to read as follows:

(8) *Accepted offers in compromise.* A copy of the Abstract and Statement and the attached narrative report for each accepted offer in compromise with respect to any liability for a tax imposed by Title 26 will be made available for inspection and copying in the following locations:

(i) Except for Exempt Organizations, in the district office (or the Office of the Assistant Commissioner (International))

having jurisdiction over the place in which the taxpayer resides and

(ii) For Exempt Organizations, in the key district which has jurisdiction over the particular organization.

Par. 26. Section 601.702(f) is revised to read as follows:

(f) *Fees for services*—(1) *In general.* The fees to be charged for search, duplication, and review services performed by the Internal Revenue Service, whether or not such services are performed pursuant to the Freedom of Information Act or the regulations thereunder, shall be determined and collected in accordance with the provisions of this paragraph. A fee shall not be charged for monitoring a requester's inspection of records which contains exempt matter. The Internal Revenue Service may recover the applicable fees even if there is ultimately no disclosure of records. Should services other than the services described in this paragraph be requested and rendered, appropriate fees will be established by the Commissioner or his/her delegate, and imposed and collected pursuant to 31 U.S.C. 483(a), subject, however, to the constraint imposed by 5 U.S.C. 552(a)(4)(A).

(2) *Waiver or reduction of fees.* The fees authorized by this paragraph may be waived or reduced—

(i) At the discretion of any Internal Revenue Service official—

(A) Who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, in the case of a record which is not located for any reason, or

(B) Who determines any portion of the requested record to be exempt from disclosure; or

(ii) On a case-by-case basis in accordance with this subdivision by any Internal Revenue Service official who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, provided such waiver or reduction has been requested in writing. Fees will be waived or reduced by such official when it is determined that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Internal Revenue Service and is not primarily in the commercial interest of the requester. Such officials shall consider several factors, including, but not limited to, those set forth below, in determining requests for waiver or reduction of fees—

(A) Whether the subject of the releasable records concerns the agency's operations or activities;

(B) Whether the releasable records are likely to contribute to an understanding of the agency's operations or activities;

(C) Whether the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities (*e.g.*, how will the requester convey the information to the general public);

(D) The significance of the contribution to the general public's understanding of the agency's operations or activities (*e.g.*, is the information contained in the releasable records already available to the general public);

(E) The existence and magnitude of the requester's commercial interest, as that term is used in paragraph (f)(3)(i)(A) of this section, being furthered by the releasable records; and

(F) Whether the magnitude of the requester's commercial interest is sufficiently large in comparison to the general public's interest.

(iii) Requesters asking for reduction or waiver of fees must state the reasons why they believe disclosure meets the standards set forth in paragraph (f)(2)(ii) of this section.

(iv) Requesters who base their request for reduction or waiver of fees solely on the basis of their indigency will not be entitled to a reduction or waiver of fees.

(v) Normally, no charge will be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices thereof. The initial request for waiver or reduction of fees should be addressed to the official of the Internal Revenue Service to whose office the request for disclosure is delivered pursuant to paragraph (c)(3)(iii) of this section. Appeals from denials of requests for waiver or reduction of fees shall be decided by the Commissioner in accordance with the criteria set forth in subdivision (iii) of this subparagraph. Appeals shall be addressed in writing to the Office of the Commissioner within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly. See paragraph (c)(8) of this section for the appropriate address. Upon receipt of the determination on appeal to deny a request for waiver of fees, the requester may initiate an action in U.S. district court to review the request for waiver of fees. In such actions, the courts will consider the matter *de novo,* except that the court's review of the matter shall be limited to the record before the Internal Revenue Service official to whose office the request for waiver is delivered. Upon receipt of the determination on appeal to deny a request for reduction of fees, the requester may initiate an action in U.S. district court to review the request for reduction of fees. In such actions, the courts will consider the matter under the arbitrary and capricious standard.

(3) *Categories of requesters*—(i) *In general.* A request for records under this section shall include an attestation, under penalty of perjury, as to the status of the requester solely for use by the Internal Revenue Service official to whose office the request is delivered in determining the appropriate fees to be assessed. Requesters shall attest that they fall into one of the categories set forth below—

(A) *Commercial use requester.* Any person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(B) *Media requester.* Any person actively gathering news for an entity that is organized and operated to publish or broadcast news (*i.e.*, information about current events or of current interest to the public) to the public. News media entities include, but are not limited to, television or radio stations broadcasting to the public at large, publishers of periodicals, to the extent they disseminate news, who make their periodicals available for purchase or subscription by the general public, and telecommunications. Free lance journalists shall be included as media requesters if they can demonstrate a solid basis for expecting publication through a qualifying news entity (*e.g.*, publication contract, past publication record). Specialized periodicals, although catering to a narrower audience, may be considered media requesters so long as they are available to the public generally, via newsstand or subscription.

(C) *Educational institution requester.* Any person who, on behalf of a preschool, public or private elementary or secondary school, institution of undergraduate or graduate higher education, institution or professional or vocational education, which operates a program or programs of scholarly research, seeks records in furtherance of the institution's scholarly research and is not for a commercial use.

(D) *Noncommercial scientific institution requester.* Any person on behalf of an institution that is not operated on a commercial basis, that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

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(E) *Other requester.* Any requester who falls outside the above categories.

(ii) Allowable charges—

(A) *Commercial use requesters.* Records shall be provided for the cost of search, duplication, and review (including doing all that is necessary to excise and otherwise prepare records for release) of records. Commercial use requesters are not entitled to 2 hours of free search time or 100 pages of duplication.

(B) *Media requesters.* Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(C) *Educational institution requesters.* Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(D) *Noncommercial scientific institution requesters.* Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(E) *Other requesters.* Requesters who do not fit into any of the above categories shall be charged fees that will cover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and first 100 pages of duplication shall be furnished without charge.

(4) *Avoidance of unexpected fees.* In order to protect requesters from unexpected fees, all requests for records shall state the agreement of the requesters to pay the fees determined in accordance with paragraph (f)(5) of this section or state the upper limit they are willing to pay to cover the costs of processing their requests. When the fees for processing requests are estimated by the Internal Revenue Service to exceed that limit, or when requesters have failed to state a limit and the costs are estimated to exceed $250, and the Internal Revenue Service has not then determined to waive or reduce the fees, a notice shall be sent to the requesters. This notice shall—

(i) Inform the requester of the estimated costs;

(ii) Extend an offer to the requester to confer with agency personnel in an attempt to reformulate the request in a manner which will reduce the fees and still meet the needs of the requester;

(iii) If the requester is not amenable to reformulation, which would reduce fees to under $250, then advance payment shall be required; and

(iv) Inform the requester that the time period, within which the Internal Revenue Service is obliged to make a determination on the request, will not begin to run, pending a reformulation of the request or the receipt of advance payment from the requester, as appropriate.

(5) *Fees for services.* The fees for services performed by the Internal Revenue Service shall be imposed and collected as set forth in this paragraph. No fees shall be charged if the costs of routine collecting and processing the fees allowable under 5 U.S.C. 552(a)(4)(A) are likely to equal or exceed the amount of the fee.

(i) *Search services.* Fees charged for search services are as follows—

(A) Searches other than for computerized records—$17.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information within the scope of the request.

(B) Searches for computerized records—Actual direct cost of the search. The fee for computer printouts will be actual costs.

(C) Searches requiring travel or transportation—Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(D) Other services and materials requested, pursuant to the Freedom of Information Act, which are not covered by this part are chargeable at the actual cost to the Internal Revenue Service.

(ii) *Review services.* (A) Review is the process of examining records in response to a commercial use requester, as that term is defined in paragraph (f)(3)(i)(A) of this section, upon initial consideration of the applicability of an exemption described in paragraph (b)(1) of § 601.701 to the requested records, be it at the initial request or administrative appeal level, to determine whether any portion of any record responsive to the request is permitted to be withheld. Review includes doing all that is necessary to excise and otherwise prepare the records for release. Review does not include the time spent on resolving general legal or policy issues regarding the applicability of exemptions to the requested records.

(B) Fees charged for review services—$21.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in reviewing the records for disclosure.

(iii) *Duplication other than for returns and related documents.* Fees charged for duplication other than for returns and related documents are as follows—(A) $.15 per copy of each page, up to 8½" x 14", made by photocopy or similar process.

(B) Photographs, films, and other materials—actual cost of duplication.

(C) Records may be released to a private contractor for copying and the requester will be charged for the actual cost of duplication charged by the private contractor, so long as the cost to the requester is not higher than if the Internal Revenue Service had duplicated the records itself.

(D) When other duplications not specifically identified above are requested and provided pursuant to the Freedom of Information Act their direct cost to the Internal Revenue Service shall be charged.

(iv) *Charges for copies of returns and related documents.* Charges for furnishing copies of returns and related documents are as follows:

(A) A charge of $4.25 will be made for each request for a copy of a return or other related documents (other than Employee Plans and Exempt Organization returns). Payments are to be submitted in advance using IRS Form 4506, Request for Copy of Tax Form.

(B) A charge of $1.00 for the first page and $.15 for each subsequent page will be made for copies of Employee Plans and Exempt Organizations tax returns and related documents. Payments will be submitted subsequent to receipt of IRS Form 2860, Document Transmittal and Bill.

(6) *Printed material.* Certain relevant government publications which will be placed on the shelves of the reading rooms and similar public inspection facilities will not be sold at these locations. However, copies of pages of these publications may be duplicated on the premises and a fee for such services may be charged in accordance with paragraph (f)(5)(iii) of this section. A person desiring to purchase the complete publication, for example, an Internal Revenue Bulletin, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(7) *Search and deletion services with respect to records open to public inspection pursuant to section 6110 of the Code.* Fees charged for searching for and making deletions in records open to public inspection pursuant to section 6110 of the Code only upon written request shall be at actual cost, as the Commissioner may from time to time establish.

(8) *Form of payment.* Payment shall be made by check or money order, payable to the order of the Treasury of the United States or the Internal Revenue Service.

(9) *Advance payments.* (i) If previous search, review, or duplication fees have

not been paid in a timely fashion as defined in paragraph (f)(10) of this section by a person making a request for records, the Internal Revenue Service shall require that person to remit any outstanding balance plus interest as authorized in paragraph (f)(10) of this section, plus payment of estimated fees in advance before processing the request. The "person making the request" for purposes of this paragraph is the person in whose name a request is made, except that if such person is making the request on behalf of another person whose identity is apparent on the face of the request (including attached documents), such other person is considered the "person making the request." The person who made the prior request to which fees are outstanding is identified in the same manner.

(ii) Where it is estimated or determined that allowable fees required to be paid by a requester are likely to exceed $250, the requester will be required to make an advance payment of the entire fee before the Internal Revenue Service official to whom the request is delivered will begin to process the request.

(iii) When the Internal Revenue Service acts pursuant to paragraphs (f)(9) (i) or (ii) of this section, the administrative time limits prescribed in paragraphs (c)(7) and (8) of this section, plus permissible extensions of these time limits as prescribed in paragraph (c)(9)(i) of this section, will begin only after the Internal Revenue Service official to whom the request is delivered has received the fees described above.

(10) *Interest.* Interest shall be charged to requesters who fail to pay the fees in a timely fashion; that is, within 30 days following the day on which the statement of fees as set forth in paragraph (c)(7)(i) of this section was sent by the Internal Revenue Service official to whom the request was delivered. Interest accrues from the date the statement of fees was mailed to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. Pursuant to the Debt Collection Act of 1982, Pub. L. 97-365, the Internal Revenue Service may take all steps authorize by the Debt Collection Act of 1982, including administrative offset, disclosure to consumer reporting agencies, and use of collection agencies, as otherwise authorized by law to encourage repayment.

(11) *Aggregating requests.* When the Internal Revenue Service official to whom a request is delivered reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Internal Revenue Service shall aggregate such requests and charge accordingly, upon notification to the requester and/or requesters.

Par. 27. Section 601.702(g) is revised to read as follows:

(g) *Responsible officials and their addresses.* For purposes of this section, the Internal Revenue Service officials responsible for the control of records are the following officials, in the case of records under their jurisdiction: The Assistant Commissioner (Inspection), Assistant Commissioner (International), the Director of Practice, Regional Commissioners, District Directors, Service Center Directors, and the Director of the Internal Revenue Service Data Center. In the case of records of the National Office not under the jurisdiction of one of the officials referred to in the preceding sentence (including records of the National Office of the Chief Counsel), the Director, Office of Disclosure is the responsible official. Records of a Regional Counsel's Office shall be deemed to be under the jurisdiction of the Regional Commissioner; records of a District Counsel's office shall be deemed to be under the jurisdiction of the District Director. The addresses of these officials are:

National Office

Mailing Address

Director, Office of Disclosure
Internal Revenue Service
FOIA Request
P.O. Box 388
c/o Ben Franklin Station
Washington, DC 20044

Walk-in Address

1111 Constitution Avenue NW.
Washington, DC

Mailing Address

Assistant Commissioner (Inspection)
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1111 Constitution Avenue NW.
Washington, DC 20224

Walk-in Address

Same as mailing address

Mailing Address

Director, IRS Data Center
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
1300 John C. Lodge Drive
Detroit, Michigan 48226

Walk-in Address

Same as mailing address

Mailing Address

Director of Practice
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
1111 Constitution Avenue NW.
Washington, DC 20224

Walk-in Address

1200 Pennsylvania Avenue NW.
Ariel Rios Bldg. Room 1413
Washington, DC

Mailing Address

Assistant Commissioner (Intern't.)
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
950 L'Enfant Plaza
Washington, DC 20024

Walk-in Address

Same as mailing address

North Atlantic Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
90 Church Street
New York, New York 10007

Walk-in Address

Same as mailing address

Augusta District

Mailing Address

Director, Augusta District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 787
Augusta, Maine 04330

Walk-in Address

68 Sewall Street
Augusta, Maine

Albany District

Mailing Address

Director, Albany District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Leo O'Brien Fed. Office Bldg.
Clinton Ave. & N. Pearl St.
Albany, New York 12207

Walk-in Address

Same as mailing address

Brooklyn District

Mailing Address

Director, Brooklyn District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
35 Tillary Street
Brooklyn, New York 11201

Walk-in Address

Same as mailing address

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Boston District

Mailing Address

Director, Boston District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 9097 JFK Post Office
Boston, Massachusetts 02203

Walk-in Address

JFK Federal Building
Boston, Massachusetts

Buffalo District

Mailing Address

Director, Buffalo District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1040 Niagara Square Station
Buffalo, New York 14201

Walk-in Address

111 West Huron Street
Buffalo, New York

Burlington District

Mailing Address

Director, Burlington District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
11 Elmwood Avenue
Burlington, Vermont 05401

Walk-in Address

Same as mailing address

Hartford District

Mailing Address

Director, Hartford District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
135 High Street
Hartford, Connecticut 06103

Walk-in Address

Same as mailing address

Manhattan District

Mailing Address

Director, Manhattan District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
120 Church Street
New York, New York 10007

Walk-in Address

Same as mailing address

Portsmouth District

Mailing Address

Director, Portsmouth District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
80 Daniel Street
Portsmouth, NH 03801

Walk-in Address

Same as mailing address

Providence District

Mailing Address

Director, Providence District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
300 Westminister Mall
Providence, RI 02903

Walk-in Address

Same as mailing address

Andover Service Center

Mailing Address

Director, Andover Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
310 Lowell Street Stop 218
Andover, Massachusetts 01812

Walk-in Address

Same as mailing address

Brookhaven Service Center

Mailing Address

Director, Brookhaven Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 400, Stop 241
Brookhaven, New York 11719

Walk-in Address

1040 Waverly Avenue
Holtsville, New York

Mid-Atlantic Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 12010
Philadelphia, Pa. 19105

Walk-in Address

600 Arch Street, 7th Floor
Philadelphia, Pennsylvania

Newark District

Mailing Address

Director, Newark District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 270, Rm. 1535
Newark, New Jersey 07101

Walk-in Address

970 Broad Street
Newark, New Jersey

Baltimore District

Mailing Address

Director, Baltimore District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1018
Baltimore, Maryland 21203

Walk-in Address

31 Hopkins Plaza
Baltimore, Maryland

Philadelphia District

Mailing Address

Director, Philadelphia District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 12010
Philadelphia, Pa. 19105

Walk-in Address:

600 Arch Street, 7th Floor
Philadelphia, Pennsylvania

Pittsburgh District

Mailing Address

Director, Pittsburgh District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2488
Pittsburgh, Pa. 15230

Walk-in Address

1000 Liberty Avenue
Pittsburgh, Pennsylvania

Richmond District

Mailing Address

Director, Richmond District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 10107
Richmond, Va. 23240

Walk-in Address

400 North Eighth Street
Richmond, Virginia

Wilmington District

Mailing Address

Director, Wilmington District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2415
Wilmington, Delaware 19899

Walk-in Address

844 King Street, 2nd Floor
Wilmington, Delaware

Philadelphia Service Center

Mailing Address

Director, Philadelphia Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 245, Drop Point 590A
Bensalem, Pennsylvania 19020

Walk-in Address

11601 Roosevelt Boulevard
Bensalem, Pennsylvania

Southeast Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer

P.O. Box 926, Room 626
Atlanta, Georgia 30370

Walk-in Address

275 Peachtree Street, NE.,
Atlanta, Georgia

Atlanta District

Mailing Address

Director, Atlanta District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1037, Room 554
Atlanta, Georgia 30370

Walk-in Address

275 Peachtree Street, NE.,
Atlanta, Georgia

Birmingham District

Mailing Address

Director, Birmingham District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
500 22nd Street So., Rm. 312
Birmingham, Alabama 35233

Walk-in Address

Same as mailing address

Columbia District

Mailing Address

Director, Columbia District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Fed. Office Bldg., Rm. 408
1835 Assembly Street
Columbia, S.C. 29202

Walk-in Address

Same as mailing address

Ft. Lauderdale District

Director, Ft. Lauderdale District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1 University Drive, Suite 220
Ft. Lauderdale, Florida 33324

Walk-in Address

Same as mailing address

Greensboro District

Mailing Address

Director, Greensboro District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
320 Federal Place, Room 240
Greensboro, NC 27401

Walk-in Address

Same as mailing address

Jackson District

Mailing Address

Director, Jackson District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
100 W. Capitol Street
Suite 504, Room 31
Jackson, Mississippi 39269

Walk-in Address

Same as mailing address

Jacksonville District

Mailing Address

Director, Jacksonville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 35045, Stop 40340
Jacksonville, Fla. 32202

Walk-in Address

Same as mailing address

Little Rock District

Mailing Address

Director, Little Rock District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 3778, Stop 3
Little Rock, Arkansas 72203

Walk-in Address

700 W. Capitol Avenue
Room 1002
Little Rock, Arkansas

Nashville District

Mailing Address

Director, Nashville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1107, Room 375
Nashville, Tennessee 37202

Walk-in Address

801 Broadway, Room 375
Nashville, Tennessee

New Orleans District

Mailing Address

Director, New Orleans District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
500 Camp Street
Room 705, Stop 40
New Orleans, La. 70130

Walk-in Address

Same as Mailing address

Atlanta Service Center

Mailing Address

Director, Atlanta Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
4800 Buford Highway
Chamblee, Georgia 30006

Walk-in Address

Same as mailing address

Memphis Service Center

Mailing Address

Director, Memphis Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 30309, Stop 30
Memphis, Tennessee 38130

Walk-in Address

3131 Democrat Road, Room 30
Memphis, Tennessee

Midwest Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
One N. Wacker Drive
Chicago, Illinois 60606

Walk-in Address

Same as mailing address

Aberdeen District

Mailing Address

Director, Aderdeen District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 370
Aberdeen, SD 57402

Walk-in Address

115 Fourth Avenue, SE
Aberdeen, South Dakota

Chicago District

Mailing Address

Director, Chicago District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
230 S. Dearbrn St., Rm. 1980
Chicago, Illinois 60604

Walk-in Address

Same as mailing address

Des Moines District

Mailing Address

Director, Des Moines District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1337 Stop 15–1
Des Moines, Iowa 50305

Walk-in Address

210 Walnut Street
Des Moines, Iowa

Fargo District

Mailing Address

Director, Fargo District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 8
Fargo, North Dakota 58107

Walk-in Address

653 Second Avenue North
Fargo, North Dakota

Omaha District

Mailing Address

Director, Omaha District
Internal Revenue Service

FOIA Request
Attn: Disclosure Officer
P.O. Box 1052, Downtown Sta.
Omaha, Nebraska 68101

Walk-in Address

106 South 15th Street
Omaha, Nebraska

Milwaukee District

Mailing Address

Director, Milwaukee District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 495, Room 436
Milwaukee, Wisconsin 53201

Walk-in Address

Federal Bldg. & Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin

Helena District

Mailing Address

Director, Helena District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
301 S. Park Avenue, 2d Floor
Helena, Montana 59626

Walk-in Address

Same as mailing address

St. Louis District

Mailing Address

Director, St. Louis District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1548 Room 935
St. Louis, Missouri 63188

Walk-in Address

1114 Market Street
St. Louis, Missouri

St. Paul District

Mailing Address

Director, St. Paul District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
316 N. Robert Street
Stop 2
St. Paul, Minnesota 55101

Walk-in Address

Same as mailing address

Springfield District

Mailing Address

Director, Springfield District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 19206
Springfield, Illinois 62705

Walk-in Address

320 W. Washington Street
Sprinfield, Illinois

Kansas City Service Center

Mailing Address

Director, Kansas City Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 24551 Stop 7
Kansas City, Missouri 64131

Walk-in Address

2306 East Bannister Road
Kansas City, Missouri

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1818
Cincinnati, Ohio 45201

Walk-In Address

550 Main Street
Cincinnati, Ohio

Cincinnati District

Mailing Address

Director, Cincinnati District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1818
Cincinnati, Ohio 45201

Walk-in Address

550 Main Street
Cincinnati, Ohio

Central Region

Cleveland District

Mailing Address

Director, Cleveland District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 99181
Cleveland, Ohio 44199

Walk-in Address

1240 East 9th Street
Cleveland, Ohio

Detroit District

Mailing Address

Director, Detroit District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 32500 Stop 11
Detroit, Michigan 48232

Walk-in Address

Patrick McNamara Bldg.
477 Michigan Ave. Rm. 2483
Detroit, Michigan

Indianapolis District

Mailing Address

Director, Indianapolis District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 44242 Stop 27
Indianapolis, Indiana 46244

Walk-in Address

Federal Office Building
575 N. Pennsylvania Avenue
Indianapolis, Indiana

Louisville District

Mailing Address

Director, Louisville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1735, Stop 27
Louisville, Kentucky 40201

Walk–in Address

Post Office Building Seventh & Broadway
Louisville, Kentucky

Parkersburg District

Mailing Address

Director, Parkersburg District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1388
Parkersburg, W. Va. 26102

Walk-in Address

425 Juliana Street
Parkersburg, West Virginia

Cincinnati Service Center

Mailing Address

Director, Cincinnati Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 267 Stop 68
Covington, Kentucky 41019

Walk-in Address

200 West Fourth Street
Covington, Kentucky

Southwest Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
7839 Churchill Way LB–70
Dallas, Texas 75222

Walk-in Address

Same as mailing address

Dallas District

Mailing Address

Director, Dallas District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1100 Commerce St. Stop 7000 DAL
Dallas, Texas 75242

Walk-in Address

Same as mailing address

Albuquerque District

Mailing Address

Director, Albuquerque District

BEST COPY AVAILABLE

Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1967 Stop 7000 ALB
Albuquerque, N.M. 87103

Walk-in Address

517 Gold Avenue, S.W.
Albuquerque, New Mexico

Austin District

Mailing Address

Director, Austin District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1448 Stop 7000 AUS
Austin, Texas 78767

Walk-in Address

300 E. 8th Street Stop 100D
Austin, Texas

Denver District

Mailing Address

Director, Denver District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1050 17th St. Stop 7000 DEN
Denver, Colorado 80265

Walk-in Address

Same as mailing address

Houston District

Mailing Address

Director, Houston District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
3223 Briarpark Stop 7000 H–BP
Houston, Texas 77042

Walk-in Address

Same as mailing address

Cheyenne District

Mailing Address

Director, Cheyenne District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
308 West 21 Street
Stop 7000 CHE
Cheyenne, Wyoming 82001

Walk-in Address

Same as mailing address

Phoenix District

Mailing Address

Phoenix District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
2120 North Central Avenue
Mail Stop 7000 PH
Phoenix, Arizona 85004

Walk-in Address

Same as mailing address

Oklahoma City District

Mailing Address

Director, Okla. City District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 66 Stop 7000 OKC
Oklahoma City, OK 73102

Walk-in Address

200 N.W. Fourth Street
Oklahoma City, Oklahoma

Austin Service Center

Mailing Address

Director, Austin Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 934 Stop 70000 AUSC
Austin, Texas 78767

Walk-in Address

3651 S. Interregional Hwy.
Austin, Texas

Salt Lake City District

Mailing Address

Director, Salt Lake City District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
465 S. 400 East Street
Mail Stop 70000 SLC
Salt Lake City, Utah 84111

Walk-in Address

Same as mailing address

Wichita District

Mailing Address

Director, Wichita District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
412 S. Main St. Stop 7000 WIC
Wichita, Kansas 67202

Walk-in Address

Same as mailing address

Ogden Service Center

Mailing Address

Director, Ogden Service, Ctr.
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 9411 Stop 7000 OSC
Ogden, Utah 84409

Western Region

Walk-in Address

1160 West 1200 South Street
Ogden, Utah

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
450 Golden Gate Avenue
Room 2301 Stop 2231
San Francisco, Ca. 94102

Walk-in Address

Same as mailing address

Boise District

Mailing Address

Director, Boise District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Box 041, Room 291
Boise, Idaho 83724

Walk-in Address

Same as mailing address

Anchorage District

Mailing Address

Director, Anchorage District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 101500
Anchorage, Alaska 99510

Walk-in Address

949 E. 36th Ave., Suite 101
Anchorage, Alaska

Laguna Niguel District

Mailing Address

Director, Laguna Niguel District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box C–8
Laguna Niguel, Ca. 92677

Walk-in Address

24000 Via Avila Road
Laguna Niguel, California

Honolulu District

Mailing Address

Director, Honolulu District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 50089
Honolulu, Hawaii 96850

Walk-in Address

300 Ala Moana Blvd.
Federal Bldg. Rm. 2104
Honolulu, Hawaii

Los Angeles District

Mailing Address

Director, Los Angeles District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 391 Room 5202
300 N. Los Angeles Street
Los Angeles, Ca. 90012

Walk-in Address

Same as mailing address

Las Vegas District

Mailing Address

Director, Las Vegas District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 16045
Las Vegas, Nevada 89101

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Walk-in Address

300 Las Vegas Blvd. South
Las Vegas, Nevada

Sacramento District

Mailing Address

Director, Sacramento District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2900 Stop 5201
Sacramento, Ca. 95812

Walk-in Address

2345 Fair Oaks Blvd.
Sacramento, California

Portland District

Mailing Address

Director, Portland District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 3341
Portland, Oregon 97208

Walk-in Address

1220 S.W. Third Ave. Rm. 817
Portland Oregon

San Francisco District

Mailing Address

Director, San Francisco District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
450 Golden Gate Avenue
Room 2301 Stop 2231
San Francisco, Ca. 94102

Walk-in Address

Same as mailing address

Seattle District

Mailing Address

Director, Seattle District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
915 Second Avenue
Stop 625 Room 2056
Seattle, Washington 98174

Walk-in Address

Same as mailing address

Fresno Service Center

Mailing Address

Director, Fresno Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 24014 Stop 891
Fresno, California 93779

Walk-in Address

5045 E. Bulter Avenue
Fresno, California

San Jose District

Mailing Address

Director, San Jose District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
55 S. Market Street, 9th Floor
Stop 3246
San Jose, California 95113

Walk-in Address

Same as mailing address

Par. 28. A new § 601.702(h) is added to read as follows:

(h) *Business information procedures*—(1) *In general.* Business information provided to the Internal Revenue Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this paragraph.

(2) *Definition.* Business information is any trade secret or other financial, commercial (including research) information.

(3) *Notice to business submitters.* The official having control over the requested records, which includes business information, shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required in accordance with paragraph (h)(4) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(4) *When notice is required.* (i) For business information submitted to the Internal Revenue Service prior to October 13, 1987, the official having control over the requested records shall provide a business submitter with notice of a request whenever—

(A) The business information is less than 10 years old;

(B) The business information was submitted to the Internal Revenue Service upon a commitment of confidentiality; or

(C) The Internal Revenue Service has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(ii) For business information submitted to the Internal Revenue Service on or after October 13, 1987, the Internal Revenue Service shall provide a business submitter with notice of a request whenever—

(A) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(B) The official has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

Notice of a request for business information falling within paragraph (h)(4)(ii)(A) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business that the information in question is, in fact, confidential commercial or financial information and has not been disclosed to the public.

(5) *Opportunity to object to disclosure.* Through the notice described in paragraph (h)(3) of this section, the official having control over the requested records shall afford a business submitter ten working days within which to provide the official with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information, with particular attention to why the information is claimed to be a trade secret or commercial or financial information that is privileged and confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under 5 U.S.C. 552.

(6) *Notice of intent to disclose.* The Internal Revenue Service shall carefully consider a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the official having control over the requested records decides to disclose business information over the objection of a business submitter, the official shall forward to the business submitter a written notice which shall include—

(i) Statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date, which is ten working days after the notice of the final decision to release the requested records has been mailed to the submitter. A copy of the disclosure notice shall be forwarded to the requester at the same time.

(7) *Judicial review.* (i) The Internal Revenue Service's disposition of the request and the submitter's objections shall be subject to judicial review under paragraph (c)(11) of this section. A requester is not required to exhaust administrative remedies if a complaint has been filed under this subparagraph by a business submitter of the information contained in the requested records. Likewise, a business submitter is not required to exhaust administrative

remedies if a complaint has been filed by the requester of these records.

(ii) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (h)(4) of this section, the official having control over the requested records shall promptly provide the business submitter with written notice thereof.

(iii) *Exception to notice requirement.* The notice requirements of this paragraph shall not apply if—

(A) The official having control over the records determines that the business information shall not be disclosed;

(B) The information lawfully has been published or otherwise made available to the public;

(C) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(D) The information was acquired in the course of a lawful investigation of a possible violation of the internal revenue laws and notice would interfere with ongoing law enforcement proceedings.

(8) *Appeals.* Procedures for administrative appeals from denials of requests for business information are to be processed in accordance with paragraph (c)(8) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-23472 Filed 10-9-87; 8:45 am]

BILLING CODE 4830-01-M

PANAMA CANAL COMMISSION

35 CFR Part 103

General Provisions Governing Vessels

AGENCY: Panama Canal Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Panama Canal Commission is amending its regulations in 35 CFR 103.8, concerning preference in transit schedulings and order of transiting vessels. The changes take into account the agency's experience with the Panama Canal Transit Booking System over the last year and the corresponding needs of the shipping community. The purpose of this document is to make several changes to the booking system regulations based on numerous requests from Canal users that the Canal Commission revise the tie-breaking procedures, relax the arrival time for restricted vessels and change the cancellation provision in the present rules.

DATES: The amendments made herein are effective October 13, 1987. Written comments should be submitted on or before November 12, 1987.

ADDRESSES: Comments should be sent to Secretary, Panama Canal Commission, 2000 "L" Street, NW., Suite 550, Washington, DC 20036-4996 or Panama Canal Commission, Office of General Counsel, APO Miami 34011-5000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634-6441, or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION: By a document published on March 4, 1983 (48 FR 27406), the Panama Canal Commission adopted a voluntary system by which a limited number of vessels may be assured a timely transit of the Canal, upon payment of a special charge.

The present regulations, in § 103.8(d), require that in the event requests exceed the number of bookings available, first priority will be to vessels carrying primarily perishable cargo; second, preference will be given in the order of frequency of transit during a specified period; and third, if two vessels are found to have an equal number of transits, then preference will be given to the vessel having transited most recently. This section is being revised to take into consideration only booked transits rather than all prior transits.

The present regulations, in § 103.8(f)(1) as amended in 51 FR 45883 on December 23, 1986 require that restricted vessels arrive at 0100. This section is being revised to allow arrival time for restricted vessels not later than 0200.

The present regulations in 35 CFR 103.8(g) require a 2-day notice of cancellation of transit bookings. This section is being revised by deleting the 2-day period and requiring only that notice be provided prior to the required arrival time. It also revises the schedule of cancellation fees by providing a sliding scale depending on the length of the advance notice of cancellation.

The Commission has determined that these rules do not constitute a major change within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented would not have an annual effect on the economy of $100 million or more per year, and secondly, that the rule would not result in a major increase in costs or prices for consumers, individual industries, local government agencies or geographic regions. Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 103

Panama Canal, Vessels, Booking system, Navigation (water).

PART 103—GENERAL PROVISIONS GOVERNING VESSELS

Accordingly, 35 CFR Part 103 is amended as follows:

1. The authority citation for Part 103 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043 and 44 U.S.C. 3501.

2. Sections 103.8(d) (2) and (3), and § 103.8(g) are revised, § 103.8(d)(4) is added, and the first two sentences of § 103.8(f)(1) are revised to read as follows:

§ 103.8 Preference in the transit schedule; order of transiting vessels.

* * * * *

(d) * * *

(2) Second, all other vessels in the order of frequency of booked transits during a specified period.

(3) If two or more vessels are found to have equal number of booked transits under the procedure above, then preference will be given in the order of frequency of transit during a specified period.

(4) If two or more vessels are still found to have equal number of transits under the procedures above, then preference will be given to the vessel having transited most recently.

* * * * *

(f) * * *

(1) When a vessel that is subject to transit restrictions (e.g., clear-cut; clear-cut daylight), has been booked for transit and does not arrive at a terminus of the Canal by 0200 hours of the day of the transit, the booking fee will be forfeited. Similarly, the fee will be forfeited if a booked vessel, that is not subject to such transit restrictions, does

not arrive by 1300 hours on the day of the transit. * * *

* * * * *

(g) *Cancellation.* A transit that is booked may be canceled if notice of cancellation is received by the Canal authorities prior to the required arrival time. A charge will be assessed for such cancellations, however, in accordance with the following schedule.

Date of cancellation	Cancellation charge (the greater of)
Over 10 days prior to transit	20% of booking fee or $500
10 to 7 days prior to transit	40% of booking fee or $750
6 to 2 days prior to transit	60% of booking fee or $1,000
1 day or less	80% of booking fee or $1,250

Failure to cancel prior to scheduled arrival time on the date of intended transit will result in forfeiture of the booking fee.

Failure to cancel prior to scheduled arrival time on the date of intended transit will result in forfeiture of the booking fee.

* * * * *

Dated: September 1, 1987.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 87-23531 Filed 10-9-87; 8:45 am]

BILLING CODE 3640-04-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; Arkansas, et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001 through 4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No
Arkansas: Pulaski (FEMA Docket No. 6910).	City of Little Rock	Apr. 16, 1987 and Apr. 23, 1987 *Arkansas Democrat*	The Honorable Thomas A. Prince, Mayor of the City of Little Rock, City Hall, Room 203, Markham and Broadway Streets, Little Rock, Arkansas 72201	Apr. 1, 1987	050181
Benton (FEMA Docket No. 6910).	City of Rogers	Apr. 23, 1987 and Apr. 30, 1987 *Northwest Arkansas Morning News*	The Honorable John W. Sampier, Jr., Mayor of the City of Rogers, 300 West Poplar Street, Rogers, Arkansas 72756	Apr. 17, 1987	0500138
Florida: Clay (Docket No. FEMA-6910).	Unincorporated Areas	May 14, 1987 and, May 21, 1987 *Clay County Crescent*	The Honorable Larry R. Lancaster, Chairman, Clay County Board of Commissioners, Clay County, Clay County Courthouse, P.O. Box 1366 Green Cove Springs, Florida 32043.	May 6, 1987	120064

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia:					
Bibb and Jones (Docket No. FEMA-6904)	City of Macon and Bibb County	Dec. 19, 1986 and Dec. 26, 1986 *Macon Telegraph and News*	The Honorable George Israel, Mayor, City of Macon, P.O. Box 247, Macon, Georgia 31298.	Dec. 12, 1986	130011
Cobb (Docket No. FEMA-6910)	City of Marietta	May 22, 1987 and May 29, 1987 *Marietta Daily Journal*	The Honorable Vicki Chastain, Mayor, City of Marietta, P.O. Box 609, 205 Lawrence Street, Marietta, Georgia 30061.	May 11, 1987	130226
Iowa					
Scott (Docket No. FEMA-6910)	City of Bettendorf	May 2, 1987 and May 9, 1987 *Quad City Times*	The Honorable William C. Glynn, Mayor, City of Bettendorf, 1609 State Street, Bettendorf, Iowa 52722.	Apr. 20, 1987	190240
Mills (Docket No. FEMA-6910).	City of Emerson	June 18, 1987 and June 25, 1987 *Melbern Leader*	The Honorable Quentin Johnson, Mayor, City of Emerson, City Hall, 410 Manchester, Emerson, Iowa 51533.	Mar. 9, 1987	190202
Maryland: Hartford (FEMA Docket No. 6910).	Town of Bel Air	Apr. 23, 1987 and Apr. 30, 1987 *The Aegis*	The Honorable William N. McFaul, Town Administrator, 39 Hickory Avenue, Bel Air, Maryland 21014.	Apr. 2, 1987	240042
Massachusetts: Worcester (FEMA Docket No. 6910).	City of Leominster	Apr. 13, 1987 and Apr. 20, 1987 *Fitchburg-Leominster Sentinel and Enterprise*	The Honorable Richard Girouard, Mayor of the City of Leominster, City Hall, 25 West Street, Leominster, Massachusetts 01453.	Apr. 6, 1987	250314
Minnesota: Rice (Docket No. FEMA-6910)	City of Northfield	May 21, 1987 and May 28, 1987 *Northfield News*	The Honorable William R. Gill, Mayor, City of Northfield, 801 Washington Street , Northfield, Minnesota 55057.	May 13, 1987	270406
Ohio: Lorain (Docket No. FEMA-6904).	City of Lorain	Dec. 17, 1986 and Dec. 24, 1986 *Lorain Journal*	The Honorable Alex M. Olejko, Mayor, City of Lorain, City Hall, 200 W. Erie Avenue, Lorain, Ohio 44052	Dec. 8, 1986	390351
Texas:					
Denton (FEMA Docket No. 6910)	Town of Corinth	Apr. 6, 1987 and, Apr. 13, 1987 *Denton Record-Chronicle*	The Honorable Shirley Spellersberg, Mayor of the Town of Corinth, Route 3—2003 South Corinth, Denton, Texas 76205.	Apr. 1, 1987	481143
Harris (FEMA Docket No. [illegible]	Unincorporated areas	Jan. 26, 1987 and Feb. 2, 1987 *The Houston Post*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.	Jan. 13, 1987	480287D
Harris (FEMA Docket No 6908).	Unincorporated areas	Feb. 10, 1987 and Feb. 17, 1987 *The Houston Post*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002	Feb. 4, 1987	480287D
Harris, Fort Bend, and Montgomery (FEMA Docket No. 6908)	City of Houston	Feb. 10, 1987 and Feb. 17, 1987 *Houston Post*	The Honorable Kathryn J. Whitmire, Mayor of the City of Houston, P.O. Box 1562, Houston, Texas 77251	Feb. 2, 1987	480296
Bexar	City of San Antonio (FEMA Docket No. 6904).	Nov. 28, 1986 and Dec. 5, 1986 *San Antonio Light*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, Texas 78285.	Nov. 19, 1986	480045

Issued: October 1, 1987.

Horold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-23534 Filed 10-9-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6919]

Changes in Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the Naitonal Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001 through 4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Faulkner	City of Conway	Aug. 14, 1987 and Aug. 21, 1987, *Log Cabin Democrat*	The Honorable David G. Kinley, Mayor of the City of Conway, 1201 Oak Street, Conway, Arkansas 72032	July 27, 1987	050078C
Florida: Pasco	Unincorporated Areas	Aug. 27, 1987 and Sept. 3, 1987, *St. Petersburg Times* (Pasco Times)	The Honorable John J. Gallagher, Pasco County Administrator, Pasco County Government Center, 7530 Little Road, New Port Richey, Florida 33553	Aug. 17, 1987	120230
Mississippi: Madison	City of Ridgeland	Aug. 26, 1987 and Sept. 2, 1987, *Twin City Press*	The Honorable Hite B. Wolcott, Mayor, City of Ridgeland, P.O. Box 217, 500 Highway 51 South, Ridgeland, Mississippi 39158	Aug. 18, 1987	280110
Oklahoma: Tulsa, Osage, and Rogers	City of Tulsa	Aug. 24, 1987 and Aug. 31, 1987, *Tulsa World*	The Honorable Dick Crawford, Mayor of the City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103	Aug. 7, 1987	405381
Rhode Island: Washington	Town of Charlestown	Sept. 16, 1987 and Sept. 23, 1987, *The Chanho Times*	The Honorable Curtis A. Shook, Charlestown Town Administrator, P.O. Box 849, Charlestown, Rhode Island 02813.	Sept. 1, 1987	445395
Tennessee: Davidson and Sumner	City of Goodlettsville	Sept. 23, 1987 and Sept. 30, 1987, *The Messenger*	The Honorable Bobby Jones, Mayor, City of Goodlettsville, City Hall, 105 South Main Street, Goodlettsville, Tennessee 37072.	Aug. 10, 1987	470287
Tennessee: Shelby	City of Memphis	Aug. 17, 1987 and Aug. 24, 1987, *The Daily News*	The Honorable Richard C. Hackett, Mayor, City of Memphis, City Hall, 125 North Mid America Mall, Memphis, Tennessee 38103	July 21, 1987	470177
Texas: Dallas	City of Duncanville	Sept. 3, 1987 and Sept. 10, 1987, *Duncanville Surburban*	The Honorable Cliff Boyd, Mayor of the City of Duncanville, Dallas County, P.O. Box 280, Duncanville, Texas 75138.	Aug. 25, 1987	480173
Harris	Unincorporated areas	Aug. 24, 1987 and Aug. 31, 1987, *Houston Post*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002	Aug. 17, 1987	480287D
Tarrant	City of North Richland Hills	Sept. 22, 1987 and Sept. 29, 1987, *Mid-Cities Daily News*	The Honorable Dan Echols, Mayor of the City of North Richland Hills, P.O. Box 18609, North Richland Hills, Texas 76180.	Sept. 8, 1987	480607

Issued: October 1, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-23535 Filed 10-9-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California, et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD) Modified
CALIFORNIA	
Alameda County (Unincorporated Areas) (FEMA Docket No. 6911)	
San Leandro Line A (Zone 2)	
Area bounded by Dermody Avenue, Wagner Avenue, Vassar Avenue, and Doane Street	None
Maps available for inspection at the Alameda County Public Works Agency, 399 Elmhurst Street, Hayward, California 94544.	
GEORGIA	
Roswell (City), Fulton County (FEMA Docket No. 6911)	
Foe Killer Creek	
Just upstream of Old Roswell Road	^974
About 0.9 mile upstream of Old Roswell Road	^997
Maps available for inspection at the City of Roswell Engineering Department, 105 Dobbs Drive, Roswell, Georgia	
ILLINOIS	
Alexander County (Unincorporated Areas) (FEMA Docket No. 6911)	
Shallow Flooding (from Rainfall): Goose Pond Pumping Station	^307
Maps available for inspection at the City Hall, 2000 Washington Avenue, Cairo, Illinois.	
Monroe County (Unincorporated Areas) (FEMA Docket No. 6915)	
Carr Creek	
About 0.26 mile downstream of Bluff Road	^420
About 550 feet upstream of Bluff Road	^423
About 0.92 mile upstream of Bluff Road	^431
Palmer Creek	
About 1.45 miles downstream of Bluff Road	^403
Just downstream of Bluff Road	^421
Just upstream of Bluff Road	^424
Just downstream of Illinois Central Gulf Railroad	^430
Just upstream of Illinois Central Gulf Railroad	^435
About 0.26 mile upstream of Rueck Road	^460
Palmer Creek Tributary	
At confluence with Palmer Creek	^435
About 0.2 mile downstream of Rueck Road	^446
Just downstream of Abandoned Railroad	^461
Just upstream of Abandoned Railroad	^474
Maps available for inspection at the County Courthouse, Planning Department, 100 South Main Street, Waterloo, Illinois	
INDIANA	
Mishawaka (City), St. Joseph County (FEMA Docket No. 6911)	
Judy Creek	
About 200 feet downstream of footbridge at end of Driftwood Circle	^736
About 1,100 feet upstream of Grape Road	^742
Maps available for inspection at the City of South Bend, Engineering Department, Room 1316, 227 W. Jefferson Boulevard, South Bend, Indiana.	
South Bend (City), St. Joseph County (FEMA Docket No. 6911)	
Judy Creek:	
About 600 feet upstream of the confluence with the St. Joseph River	^666
About 100 feet upstream of the Issac Walton League Dam	^678
About 0.8 mile upstream of the Issac Walton League Dam	^701
Maps available for inspection at the City of South Bend Engineering Department, 227 West Jefferson Boulevard, Room 1316, South Bend, Indiana.	
St. Joseph County (Unincorporated Areas) (FEMA Docket No. 6911)	
Judy Creek.	
About 2,900 feet downstream of Kenilworth Road	^690
About 4,000 feet upstream of Bittersweet Road	^773
Maps available for inspection at the City of South Bend Engineering Department, City/County Building, Room 1316, 227 W. Jefferson Boulevard, South Bend, Indiana	
LOUISIANA	
Tangipahoa Parish (FEMA Docket No. 6911)	
Natalbany River:	
Approximately 400 feet upstream of the Illinois Central Gulf Railroad	^35
Approximately 1,400 feet upstream of the Illinois Central Gulf Railroad	^36
Maps available for inspection at the Tangipahoa Parish Courthouse, Amite, Louisiana	
MARYLAND	
Calvert County (FEMA Docket No. 6911)	
Chesapeake Bay	
At Park Drive	^5
At Hemlock Drive	^5
Maps available for inspection at the County Courthouse, Prince Frederick, Maryland	
NEW JERSEY	
Mahwah (Township), Bergen County (FEMA Docket No. 6911)	
Hohokus Brook	
Approximately 150 feet upstream of Wyckoff Avenue	^312
Upstream side of most upstream dam	^324
At upstream corporate limits	^330
Maps available for inspection at the Township Administrator's Office, Municipal Building, Mahwah, New Jersey	
Millburn (Township), Essex County (FEMA Docket No. 6911)	
Van Winkles Brook	
Approximately 480 feet downstream of the downstream corporate limits	^97
Approximately 365 feet downstream of Short Hills Avenue	^116
At Millburn Avenue	^136
Canoe Brook Tributary No. 1:	
At downstream corporate limits	^228
Approximately 600 feet upstream of the most upstream corporate limits	^252
Maps available for inspection at the Township Hall, Millburn, New Jersey	
Old Bridge (Township), Middlesex County (FEMA Docket No. 6911)	
South River	
Upstream of Bordentown Avenue	^10
Upstream of State Route 18	^11
Deep Run	
Upstream of Bordentown Avenue	^10
Approximately 0.6 mile upstream of Waterworks Road	^11
Tennents Brook	
Upstream of CONRAIL	^10
Downstream side of Perth Amboy Reservoir Dam	^11
Maps available for inspection at the Department of Engineering and Planning, One Old Bridge Plaza, Old Bridge, New Jersey	
NEW YORK	
Hilton (Village), Monroe County (FEMA Docket No. 6911)	
Salmon Creek	
Most downstream corporate limits	^261
Approximately 100 feet upstream of CONRAIL	^264
Approximately 100 feet upstream of State Route 18 and 259/South Avenue	^267
At upstream corporate limits	^270
Maps available for inspection at the Village of Hilton Offices, 59 Henry Street, Hilton, New York	
OHIO	
Springfield (City), Clark County (FEMA Docket No. 6911)	
Buck Creek	
Just upstream of U.S. Route 40	^907
Just upstream of Plum Street	^917
About 500 feet upstream of Conrail (0.45 mile upstream of Belmont Avenue)	^952
Maps available for inspection at the City Building, 76 East High Street, Springfield, Ohio	
TEXAS	
Comal County, Unincorporated Areas (FEMA Docket No. 6905)	
Cibolo Creek	
Approximately 1,100 feet upstream of Ralph Faw Road	^1,253
At confluence of Postoak Creek	^1,257
At confluence of Balcones Creek	^1,270
Approximately 510 feet upstream of County boundary	^1,271
Postoak Creek	
At confluence with Cibolo Creek	^1,257
At upstream County boundary	^1,272
Maps available for inspection at the Comal County Unit Road System, Floodplain Administrator's Office, Highway 46 West, New Braunfels, Texas	
Ovilla (City), Dallas and Ellis Counties (FEMA Docket No. 6901)	
Red Oak Creek	
At downstream corporate limits	^593
Upstream side of State Route 664	^604
Upstream side of Water Street	^619
At upstream corporate limits	^651
Shiloh Branch	
At confluence with Red Oak Creek	^605
Upstream side of Stock Tank Dam	^634
At upstream corporate limits	^637

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Little Creek:	
Approximately 520 feet downstream of downstream corporate limits	*590
At upstream corporate limits	*596
Maps available for inspection at the City Hall, Cocker Hill and Main, Ovilla, Texas.	
Sugar Land (City), Fort Bend County (FEMA Docket 6911)	
Brazos River:	
Approximately 4.2 miles downstream of U.S. Route 59	*69
Downstream side of U.S. Route 59	*74
Approximately 1.3 miles upstream of U.S. Route 59	*76
Oyster Creek	
Upstream side of Oyster Creek	*73
At Southern Pacific Railroad	*74
Approximately 0.7 mile upstream of Southern Pacific Railroad	*75
Approximately 2.8 miles upstream of Harmon Road	*77
Maps available for inspection at the Department of Public Works, City Hall, 200 Mattage Way, Sugar Land, Texas.	
WISCONSIN	
Fond du Lac (City), Fond du Lac County (FEMA Docket No. 6911)	
De Neveu Creek	
At mouth	*750
Just upstream of Fourth Street	*771
About 1.26 miles upstream of County Highway V	*806
McDermott Creek	
At confluence with De Neveu Creek	*755
About 850 feet upstream of Morningside Drive	*772
Maps available for inspection at the City/County Government Center, 160 South Macy Street, Fond du Lac, Wisconsin.	
Fond du Lac County (Unincorporated Areas) (FEMA Docket No. 6915)	
De Neveu Creek	
About 420 feet downstream of County Highway V	*783
About 370 feet upstream of U.S. Highway 45	*820
About 0.7 mile upstream of U.S. Highway 45	*829
Maps available for inspection at the Planning Department, 160 South Macy Street, Fond du Lac, Wisconsin	
Milwaukee (City), Milwaukee County (FEMA Docket No. 6720)	
Kinnickinnic River:	
Just upstream of Kinnickinnic Avenue	*584
About 300 feet downstream of South 20th Street	*626
Just upstream of South 20th Street	*633
Just downstream of South 29th Street	*634
Just upstream of State Highway 24	*639
Maps available for inspection at the Department of City Development, 809 North Broadway, Milwaukee, Wisconsin	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: October 1, 1987.

[FR Doc. 87-23537 Filed 10-9-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: These final regulations amend the regulation on block grant programs to implement legislation enacted by Congress, including Pub. L. 99-117, the Health Services Amendments of 1985; Pub. L. 98-509, the Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984; Pub. L. 98-555 the Preventive Health Amendments of 1984; and Pub. L. 98-558, the Human Services Reauthorization Act of 1984. In addition, the regulations clarify certain requirements regarding audits and reporting under the block grant programs.

EFFECTIVE DATE: November 12, 1987.

FOR FURTHER INFORMATION CONTACT: Robert C. Raymond, 202-245-7316.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 established seven block grants to be administered by the Department of Health and Human Services. Interim final regulations to implement the block grant were published in the **Federal Register** on October 1, 1981 (46 FR 48582). Based upon the Department's review of the comments on the interim final regulations, final regulations were issued on July 6, 1982 (47 FR 29472). Recent legislation changed some of the provisions for the block grants. Certain of these provisions require changes in the regulations for the block grants. To implement these changes a notice of proposed rulemaking was published in the **Federal Register** on July 3, 1986 (51 FR 24402) and a 60-day comment period was provided. We received 110 letters providing comments on the proposed rule. The overwhelming majority of these were directed to the proposed changes in the provisions applying to the low-income home energy assistance program. Of these, most addressed the provision on administrative costs. Based on our evaluation of the comments, the regulations have been revised, as appropriate, and are now being made final. The provisions, together with the comments that we received, are discussed below.

Eligible Entities Under the Community Services Block Grant

The definition of "eligible entity" contained in section 673(1) of the Omnibus Budget Reconciliation Act of 1981 was expanded by Section 202 of the Human Services Reauthorization Act of 1984 to include any organization that received a grant from a state based on a waiver approved by the Secretary under the Appropriations Act of 1984, Pub. L. 98-139. Thus, the organizations or political subdivisions funded by the states of Colorado, Wyoming and Utah in fiscal year 1984 based on a waiver from the Secretary are now recognized as "eligible entities."

Section 202 also defines circumstances under which the governor of a state may designate an orgnaization or a political subdivision to serve a new area and thus qualify as an "eligible entity."

The Human Services Reauthorization Act of 1986 also expanded the definition of an eligible entity to cover certain successors in interest to a community action agency.

We received several comments which requested that we provide a definition of "eligible entity". We agree that a definition of the term would be helpful. An "eligible entity" is an organization that:

(1) Was officially designated as a community action agency or a community action program under the provisions of section 210 of the Economic Opportunity Act of 1964 for fiscal year 1981 and did not lose its designation; or

(2) Was a limited purpose agency under Title II of the Economic Opportunity Act of 1964 for fiscal year 1981 which served the general purposes of a community action agency under Title II of the Economic Opportunity Act and did not lose its designation; or

(3) Received financial assistance under section 222(a)(4) of the Economic Opportunity Act in fiscal year 1981; or

(4) Received a grant in fiscal year 1984 under the waiver provision of Pub. L. 98-139; or

(5) Was created, under section 6723(1)(C) of the Community Services Block Grant Act, to serve a geographic area not previously served; or

(6) Came into existence during fiscal year 1982 as a direct successor in interest to a community action agency or community action program and meets all the requirements under section 675(c)(3) of the Community Services Block Grant Act.

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Earmarks and Other Funding Limitations Under the Alcohol and Drug Abuse and Mental Health Services Block Grant ("ADMS")

Title XIX, Part B of the Public Health Service Act now has eight earmarks—percentage restrictions or requirements—that govern state expenditure of funds under the alcohol and drug abuse and mental health services block grant. These are as follows:

1. Section 1915(d) prohibits a State from using more than ten percent of the amount it is paid under the block grant for the cost of administering the block grant.

2. Section 1916(c)(6)(A) requires a State to use certain proportions of its nondiscretionary funds allocated under the fiscal year 1982 block grant for mental health activities and for substance abuse activities.

3. Section 1916(c)(6)(B) requires a State to divide at least 75 percent of its block grant allotment for fiscal years beginning after fiscal year 1984 into the percentages specified in section 1916(c)(6)(A), with the remainder available for discretionary use.

4. Section 1916(c)(7)(A) requires that, of the ADMS block grant funds required to be made available under 1916(c)(6), at least 35 percent shall be used for programs and activities relating to alcoholism and alcohol abuse.

5. Section 1916(c)(7)(B) requires that, of the ADMS block grant funds required to be made available by a State under 1916(c)(6), at least 35 percent shall be used for programs and activities relating to drug abuse.

6. Section 1916(c)(8) requires that, of the funds to be used by a State for alcohol and drug abuse activities, at least 20 percent shall be used for prevention and early intervention programs designed to discourage the abuse of alcohol or drugs, or both.

7. Section 1916(c)(14) requires a state to use not less than three percent in fiscal year 1985 and not less than five percent in any other fiscal year of its total block grant allotment to initiate and provide new or expanded alcohol and drug abuse services for women.

8. Section 1916(c)(15) requires that, of the amounts to be used in any fiscal year for mental health activities, a state shall use at least ten percent of such funds to initiate and provide (A) in fiscal year 1985 new comprehensive community mental health services for underserved areas or for underserved populations, with special emphasis on new mental health services for severely disturbed children and adolescents and (B) in any other fiscal year new or expanded services as set out in clause (A) above.

In addition to the limitations set out above, section 1915(c) allows a state to transfer not more than seven percent of its block grant allotment out of the block for the support of other activities specified by law. Not more than three percent of the allotment can be transferred in the first three quarters of a fiscal year.

Contact Persons for Block Grants

The contact persons for the block grants are as follows:

Alcohol and Drug Abuse and Mental Health Services

For information and assistance related to program matters: Gary L. Palsgrove, Deputy Director, Division of Intergovernmental Activities, Alcohol, Drug Abuse and Mental Health Administration, 5600 Fishers Lane, Room 13–C–05, Rockville, Maryland 20857 (301) 443–4564. Requests for programmatic technical assistance will be referred to the Institutes, as appropriate. For information and assistance related to fiscal and grants management matters: Thomas M. Reynolds, Grants Management Officer, Division of Grants and Contracts Management, Alcohol, Drug Abuse and Mental Health Administration, 5600 Fishers Lane, Room 13–C–20, Rockville, Maryland 20857 (301) 443–3334.

Preventive Health and Health Services

For information and assistance related to program matters: Jerry Spyke, Senior Public Health Advisor, Center for Preventive Services, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 329–1804. For information and assistance related to fiscal matters and grants management: Leo A. Sanders, Chief, Grants Management Branch, Centers for Disease Control, 255 E. Paces Ferry Road, NW., Room 107A, Atlanta, Georgia 30305, (404) 262–6576.

Maternal and Child Health Services

James Corrigan, Associate Director, Bureau of Community Health Services, 5600 Fishers Lane, Room 7–05, Rockville, Maryland 20857, (301) 443–2380.

Social Services

Janet Hartnett, Office of Policy, Planning and Legislation, Human Development Services, Room 318E, Humphrey Building, 200 Independence Avenue, SW., Washington, DC. 20201, (202) 245–2892. For information and assistance related to fiscal matters and grants management: David Ramos, Office of Management Services, Room 330E, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 472–3243.

Low-Income Home Energy Assistance and Community Serices Block Grant

David Kirker, Director, Office of Community Services, Room 427D Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, (202) 475–0373.

Section-by-Section Analysis of Changes in the Regulations

Section 96.14 Time period for obligation and expenditure of grant funds.

Prior to passage of the Human Services Reauthorization Act (Pub. L. 98–558), states receiving funds to administer the low-income home energy assistance program were permitted to hold available for obligation in the succeeding fiscal year up to 25 percent of their allotment. Beginning with fiscal year 1985 funds that are held available for fiscal year 1986, only 15 percent of funds payable to a State for a fiscal year and not transferred to another block grant may be held available for obligation in the following fiscal year. The amendments in Pub. L. 98–558 specify that funds payable to a State are those funds remaining after any portion of the state's allotment has been set aside for direct grants to applicant Indian tribes and tribal organizations. Section 96.14, which addresses the time period for the use of funds, has been changed accordingly.

Section 96.15 Waivers.

In accordance with Pub. L. 98–558, the Secretary's authority to waive application assurances for the low-income home energy assistance program is repealed, effective at the beginning of fiscal year 1986. Section 96–15, which lists the officials to whom applications for waivers should be sent, has been changed accordingly.

Section 96.17 Annual and biennial reports.

The notice of proposed rulemaking included a provision requiring the annual or biennial reports (except those for the low-income home energy assistance program and the community services block grant) to be made public and transmitted to the Secretary within six months of the end of the block grant reporting periods. (Submission of reports for the low-income home energy assistance program is governed by an existing regulation published at 45 CFR 96.82. No separate annual or biennial report is required for the community services block grant. Rather, the statute

authorizing that block grant requires that the annual report on State activities and expenditures be included as a part of the State's application for the succeeding year's funding.)

Annual reports are required for the health block grants: (preventive health and health services, 42 U.S.C. 300w–5(a)(1); alcohol and drug abuse and mental health services (42 U.S.C. 300x–5(a)(1)), and maternal and child health services (42 U.S.C. 706(a)(1)). A report at least every two years is required for the social services block grant (42 U.S.C. 1397e(a)). Although the statutes do not expressly require that the reports be transmitted within a particular period of time, a requirement that this be done within a reasonable period of time is implicit in those provisions. The reports are intended to provide information on the use of block grant funds for use by the States, their citizens and legislatures, and by the Department and Congress. The reports can only serve these functions if they are prepared, made public, and transmitted in a timely fashion.

We received five comments on the proposed provision. One State asked that we clarify the term "reporting period". In response, we wish to make clear that, for the health block grants, the reporting period is the same as the program year determined by the State to be the basis for administering activities funded under the block grants. In the case of the social service block grant the reporting period consists of two consecutive program years. A second State supported the change but interpreted it to mean that we were requiring annual (or biennial) reports in the case of block grants that do not have a statutory requirement for such reports. We wish to make clear that we are not imposing a requirement that States provide reports where they are not statutorily required to do so. Rather this provision sets a due date for reports for which there is already a statutory requirement.

Another State urged that we modify the rule to clarify that we are requiring that the State make the report *available* to the public and not requiring that the State publish the report. We agree and have modified the provision accordingly.

Two States objected to the due date as it applied to the social services block grant. One of the two States indicated that six months did not allow them sufficient time to prepare the report since the State relied on reports from local providers. The second State indicated that they have included reports on social service block grant expenditures in their applications for the following year and that the proposed six-month deadline would require preparation of a separate report. There are fourteen States that follow this practice.

In consideration of these comments and further consultation with States, we have modified this provision. The provision still requires States to submit reports within six months of the end of the reporting period. However, a State may submit its annual as a part of its application for funding for the year following the end of the six-month period. The deadline for the reports responds to State requests for a clearly specified due date for these reports. However, it allows certain States to continue their practice of including the annual report in their application for funds. The deadline does not ensure the public availability of a description of State block grant activities before the State finalizes plans for the subsequent year's program. However, the block grant statutes stress administrative flexibility and we believe that this outweighs the need for an earlier report. This is supported by the fact that Congress did not set a due date for any of the reports. Clearly, States may choose to make the required information available earlier than the deadline established in this rule. Although we are setting a particular deadline, we encourage States to consider how the timing of the report can contribute to an informed public discussion of future State activities. It should be noted that the establishment of a deadline for these reports does not alter the current policy of allowing States to determine the form and content of the report.

Section 96.30 Fiscal and administrative requirements.

Existing paragraph (b) of this section governs block grant audits. The revision being adopted removes that paragraph and transfers provisions relating to block grant audits to a new § 96.31—Audits.

Section 96.31 Audits.

The Single Audit Act, Pub. L. 98–502, requires units of State and local government to conduct a single audit of all Federal financial assistance received in a fiscal year. By the express terms of the Act, these "single audits" are to be conducted in lieu of the separate program audits required by other provisions of Federal law. Consequently, the Single Audit Act generally overrides the separate audit requirements of the block grant statutes.

The Department has concluded that the Single Audit Act takes precedence over all the block grant audit requirements despite the fact that some of the separate block grant audit requirements were amended several days after the Single Audit Act was enacted. Although the general rule of statutory construction is that the more recent of two conflicting statutes controls, Congress gave no indication of an intent to provide a limited repeal of the Single Audit Act by creating an exception for several block grants. In light of the strong presumption against implied repeals and the manifest congressional intent to impose a single, uniform and consistent audit requirement on recipients of Federal funds, the Department has determined that the Single Audit Act overrides the separate audit requirements in the block grant statutes.

There are two limitations on the applicability of the Single Audit Act. First, the Single Audit Act does not apply to any recipient's fiscal year that began before January 1, 1985. Second, a recipient that receives between $25,000 and $100,000 in total Federal financial assistance from any or all sources has the option of either conducting a single audit or conducting an audit in accordance with the terms of the specific Federal assistance program to be audited. (Any State, local government, or Indian tribe that receives less than $25,000 in total Federal financial assistance from any or all sources is, under the terms of the Single Audit Act, exempt from Federal audit requirements.)

The regulations set out requirements for audits conducted under the Single Audit Act and under the separate block grant programs. Single audits must be conducted in accordance with the Single Audit Act as interpreted by the Office of Management and Budget in Circular A–128, published at 50 FR 19114 (May 6, 1985).

The regulation also establishes reporting deadlines for audits that are conducted under some authority other than the Single Audit Act. While these dates are not expressly established by the relevant statutory provisions, a reasonable audit report deadline is implicit in the need to ensure timely assimilation of audit findings. As provided in OMB Circular A–128, audit reports for audits conducted under the Single Audit Act are required to be submitted within one year of the end of the audit period. We are requiring the some submission date for the audits that are conducted under an authority other than the Single Audit Act.

Audits conducted for state fiscal years that began prior to January 1, 1985, must be submitted within one year of the

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publication of this rule.

Section 96.32 Financial settlement.

This section of the final rule refers to the statutory requirement that states repay to the Department funds that have been determined by audit and audit resolution to have been expended improperly. Each block grant program is subject to a statutory provision that requires grantees to repay funds that have not been expended in accordance with the applicable block grant provisions: (Community services, 42 U.S.C. 9904(g); preventive health and health services, 42 U.S.C. 300w–5(b)(3); alcohol and drug abuse and mental health services, 42 U.S.C. 300x–5(b)(3); maternal and child health services (42 U.S.C. 706(b)(2), social services 42 U.S.C. 1397e(b); low-income home energy assistance, 42 U.S.C. 8624(g)). If an audit uncovers improper expenditures, the state is obligated to repay the Department. If repayment is not made voluntarily, the Department may obtain recovery through offset against other funds due the state. This will be undertaken in accordance with this rule and 45 CFR Part 30, "Claims Collection."

Section 96.33 Referral of cases to the Inspector General.

A new section has been added to identify the Regional Office of Investigations (of the Department's Office of the Inspector General) as the agency to which States and tribes should report information relating to possible fraud or other offenses against the United States.

Section 96.42 General procedures and requirements.

Current regulations at 45 CFR 96.42(b) set a deadline of September 1 for tribes to submit applications for direct grants. The deadline was imposed because states are responsible for serving tribal households if the tribe does not apply for a direct grant, and States need an early indication of which tribal households they must plan to serve. On the other hand, if a State has no objection to having additional funds set aside for a tribal application that is submitted after September 1, we have no objection. We have amended paragraph (b) of § 96.42 to allow for such circumstances.

Section 96.44 Community services.

We have amended § 96.44(e) to make clear that Indian tribes or tribal organizations do not have to comply with the assurance regarding termination of funding to a community action agency or a farmworker organization. This provision is not relevant in the case of Indian tribes and tribal organizations.

We have also added a new § 96.44(f) concerning the costs that Indian tribes and tribal organizations incur in administering the community services block grant. Congress amended section 675(c)(2)(B) of the community services block grant to permit States to expend the greater of $55,000 or five percent of the State's allotment on administrative expenses at the State level. In the notice of proposed rulemaking we indicated that the optional $55,000 ceiling did not apply to tribes or tribal organizations, because we were of the opinion that application of this provision to these entities would allow them to expend a disproportionate amount on administration.

We received one comment on this provision from a National Indian organization. The comment supported the proposed change in administrative costs for tribes under the low-income home energy assistance program and recommended that we provide similar flexibility for the administrative costs of small tribes under the community services block grant. The commenter agreed that the $55,000 amount would allow small tribes to expend too much on administrative costs, but suggested that we attempt to find other formulations that would carry out the intent of Congress to allow more flexibility while still keeping a reasonable limit on administrative costs. We agree with the comment. We have added § 96.44(f) to apply the limit on administrative cost to small tribes and tribal organizations in a manner that achieves the flexibility provided to States and small territories.

The section provides that Indian tribes and tribal organizations may spend for administrative expenses up to the greater of (1) five percent of their allotment or (2) the percent represented by the ratio of $55,000 to the smallest State allotment (excluding territorial allotments) for the fiscal year in question. The Office of Community Services will notify tribes and tribal organizations of the alternative percentage as soon as State and tribal allotments have been determined for the fiscal year.

Section 96.50 Complaints.

The change in this section clarifies that complaints regarding the health block grants should be submitted to either the Assistant Secretary for Health or to the administrator of the office responsible for administering the block grant.

Section 96.51(a) Hearings.

The revision of paragraph (a) clarifies the instances in which a State is entitled to a hearing on repayment of block grant funds. The section now states that no opportunity for a hearing will be offered if the State agrees to the repayment of block grant funds. This is in accordance with the clearly established principle that hearings are intended only to provide an opportunity to resolve disputed issues of law or fact.

Subpart H Low-Income Home Energy Assistance Program ("LIHEAP")

Section 96.81 Reallotment report.

Under the low-income home energy assistance program, the Secretary is required to reallot funds that are unused at the end of each fiscal year. States may request that a portion of their unused funds not be reallotted, but rather held available for use in the next fiscal year. Section 96.81 requires a grantee to submit a report that identifies those funds that are to be held available for use in the succeeding fiscal year and those funds that will be unspent and available for reallotment. Section 606(a) of Pub. L. 98–558 requires grantees to explain why funds were not expended during the fiscal year and to describe the types of assistance to be provided with those funds in the following fiscal year. Therefore, we have revised the reporting requirement at § 96.81 to require that States provide this information as part of their report due August 1 of each year.

Section 606(b)(1)(A) of Pub. L. 98–558 reduces the percentage of funds a State may request be held available for the subsequent fiscal year from 25% to 15% of those funds payable to the State and not transferred. This limit applies beginning with fiscal year 1985 funds held available for fiscal year 1986.

We received no comments on this section of the proposed regulation.

Section 96.82 Required report.

Section 96.82 requires grantees to submit an end-of-year report stating the total number of households assisted by income level. This revision to that section adds a requirement that grantees must report the number of households that contain one or more individuals who are 60 years or older and the number that contain one or more handicapped individuals. We received two comments on this section, one supporting and one opposing this proposed revision. The opposing comment suggested that the word "60 years or older" be replaced with the word "elderly" and indicated that this

would be more consistent with the intent of Congress under the block grants to provide States with maximum administrative flexibility. The comments also indicated that the proposed language would establish an arbitrary Federal definition of elderly and would substantially increase administrative expenses of those States that would be required to bring their administrative practice into compliance.

Congress mandated, by section 2610 of the statute, that the Department report to it annually the number of assisted households that contain "one or more individuals who are 60 years or older or are handicapped * * *" Consistent with this statutory requirement, we provided for the collection of data, including the number of households which received such assistance and included one or more individuals who are 60 years or older or handicapped.

This definition of elderly is for reporting purposes only and does not extend to program implementation. We understand that having two definitions, e.g., one for eligibility determinations and one for Federal reporting, may cause grantees some difficulty. However, the statute is quite specific. As we have no other source for this information at the State and tribal level, we have no alternative but to extend this reporting requirement to grantees. If this requirement creates significant difficulty for a particular grantee, we will, upon request, attempt to assist that grantee meet the requirement in the most efficient manner possible.

Section 96.83 Direct payments to SSI recipients

We have eliminated the section of the regulations which allowed States to request that the Federal government make LIHEAP payments to recipients of the Federal Supplemental Security Income program. The statutory provision allowing this method of payment was repealed by section 603(c) of Pub. L. 98–558.

We received one comment supporting the revision.

Section 96.86 State plans.

Section 605(c) of Pub. L. 98–558 amended the LIHEAP statute to require grantees to expend LIHEAP funds in accordance with the plan submitted as part of the grantee's application for funding. Consequently, the LIHEAP plan, as well as the statute and regulations, now governs the grantee's use of funds and provides standards of compliance. HHS, in exercising its statutory oversight and enforcement activities, and the State or independent tribal auditors, in carrying out their audit functions, must be able to ascertain the standard of compliance contained in the plan for each statutory provision and for each type of assistance provided by the grantee under its LIHEAP program.

Our review of State plans and programs over the past five years has indicated that many States have misinterpreted the statutory requirement in section 2605(c)(1) that grantees describe how they will carry out the assurances in section 2605(b) of Pub. L. 97–35.

Section 96.86 of the regulations clarifies the statutory requirement that all of the assurances in section 2605(b) apply to each form of assistance provided by the grantee, e.g., heating assistance, cooling assistance, crisis assistance and low-cost residential weatherization and energy-related home repairs. The assurance in section 2605(b)(15) is an exception to this rule. Clearly, on its terms it applies only to energy crisis intervention activities. That assurance, because of changes to the LIHEAP statute, is in effect only for fiscal years 1986 and 1987.

One comment suggested that if LIHEAP funds are expended under an approved Department of Energy (DOE) weatherization plan, the DOE plan should have precedence if its requirements conflict with LIHEAP provisions.

The Department does not have the authority to adopt this suggestion. We are aware that the provisions of the DOE Low Income Weatherization Assistance Program (LIWAP) and LIHEAP statutes differ in some ways. However, the Human Services Reauthorization Act of 1984 amended the LIHEAP statute by eliminating the Secretary's authority to waive LIHEAP provisions.

The areas of conflict are relatively few, related primarily to appropriate modifications, the treatment of owners and renters, and the provision of a fair hearing to applicants whose applications are denied or not acted upon with reasonable promptness. It appears that grantees have been able to successfully meet the requirements under both statutes.

Section 96.87 Prevention of waste, fraud and abuse.

Section 605(a)(9) of Pub. L. 98–558 requires that the Secretary issue regulations to prevent waste, fraud and abuse in the LIHEAP program. We have addressed this requirement in § 96.87, which requires grantees to have in place systems and procedures for preventing, detecting and correcting instances of waste, fraud, and abuse in the low-income home energy assistance program. The regulations also requires that these systems and procedures address waste, fraud, and abuse of vendors, clients, and administering agencies. We will review these systems and procedures in the course of the compliance reviews conducted by the Department under 42 U.S.C. 8627. Examples of activities that grantees may use to prevent, detect, and correct instances of waste, fraud, and abuse, include appropriate warning statements on beneficiary applications and vendor vouchers, computer screens, audits, and memoranda of understanding with investigative organizations.

One comment supported this provision but requested clarification as to whether the Department intended to further define the terms waste, fraud, and abuse. We believe the legislative history related to this provision clearly supports broad discretion as to how grantees will comply with the provision. Consequently, we declined to further define the terms by regulation.

Asserting that present administrative funds are inadequate, one comment requested that the Department increase the administrative cost limitation to allow for additional activities that may be required to prevent waste, fraud, and abuse. The administrative cost limitation is imposed on States by statute. The Secretary has no authority to waive any of the statutory provisions imposed on States. The Department is not imposing requirements in this area beyond those contained in the statute and regulation.

We received one comment from a State willing to share its experiences in the area of preventing waste, fraud and abuse and requesting suggestions from other State agencies. We believe this approach, rather than extensive Federal regulations, is the better way to identify appropriate measures to prevent waste, fraud and abuse. The Department conducted a round table discussion on the subject in February 1986. Copies of the proceedings are available from the American Public Welfare Association. Where possible, the Department will continue to provide for the exchange of information among grantees on issues of concern, including preventing waste, fraud, and abuse.

Section 96.88 Limitations on LIHEAP administrative costs.

(a) *Costs of planning and administration.* The statute for the low-income home energy assistance program includes an express limitation on the percent of funds that may be used for

planning and administering the program. In our final rules of July 6, 1982, we declined to define administrative costs for the block grants. Rather, in accordance with the intent of the block grant statutes, the regulation allows States to determine in the first instance which expenses constitute administrative costs chargeable to block grant funds.

While the final rule did not provide a detailed definition of planning and administrative costs, it did include guidance to grantees regarding the determination of administrative costs.

First, § 6.30 refers to State laws and procedures as governing the expenditure of block grant funds.

> Except where otherwise required by Federal law or regulation, a State shall obligate and expend block grant funds in accordance with the laws and procedures applicable to the obligation and expenditure of its own funds.

Guidance issued by the Office of Management and Budget on September 22, 1981 to States indicated that the State's usual definition of administrative costs would apply to the block grant.

Second, the preamble to the block grant regulations of July 6, 1982, established a standard of review for grantee interpretations of block grant provisions.

> Accordingly, when an issue arises as to whether a State has complied with * * * the statutory provisions, * * * the Department will ordinarily defer to the State's interpretation of * * * the statutory provisions. Unless the interpretation is clearly erroneous, State action based on that interpretation will not be challenged by the Department.

In late 1982, responding to an inquiry from a governor who requested an interpretation of administrative costs, the Secretary stated:

> * * * any reasonable interpretation by the states will be acceptable. Our standard for this and other interpretations is whether the state practice is clearly erroneous. It is difficult to imagine that a definition of administrative costs that is consistent with state practice could be considered clearly erroneous.

Third, the preamble to the block grant regulations of July 6, 1982 states:

> In the final analysis, the state must determine which expenses constitute administrative costs chargeable to grant funds on a case-by-case basis, subject to review on the same basis as other state interpretations of the block grant statutes. This decision will be based upon the intrinsic nature of each program and the standard accounting procedures followed by each state. As a general matter, administrative costs are all the costs of program administration,whether they could be considered direct or indirect costs under categorical grants.

This guidance provided grantees with maximum flexibility to define administrative costs consistent with the broad statutory guidelines. The Department declined to provide additional guidance in the regulations because we believed that the meaning of the statute was sufficiently clear.

Since that time, in carrying out the compliance function assigned to the Department by statute, we have learned of misunderstandings on the part of some states and tribes as to (1) whether the costs of planning and administration incurred by subgrantees, local administering agencies and contractors must be considered in assessing compliance with the statutory limits on administrative costs, and (2) what costs are normally associated with the administration of a public assistance program.

We have been addressing these issues in enforcement proceedings. This is a lengthy process which could lead to withholding or ordering repayment of funds found not to have been expended in accordance with the statute. Currently, the Department is reviewing decisions of several grantees to exclude certain costs from the administrative cost limitation. We are concerned that a number of grantees are incurring substantial costs that may eventually be subject to repayment under section 2605(g) of the LIHEAP statute.

Based on these concerns, we decided to clarify this provision by regulation, rather than through audit or compliance reviews of individual grantees.

The notice of proposed rulemaking included a § 96.88 that stated:

Section 96.88 Administrative costs

> (a) *Costs of planning and administration.* Any expenditure for governmental functions normally associated with administration of a public assistance program, such as taking applications, determining eligibility and benefits, and monitoring the assistance provided, must be included in determining administrative costs subject to the statutory limitation on administrative costs, regardless of whether the expenditure is incurred by the state, a subrecipient, a grantee, or a contractor of the state.

The section was intended to clarify the administrative cost limitation in two ways. First, it stated that the limit applied to costs incurred in administration of the program, regardless of whether they were incurred by the state, a subrecipient, a grantee, or a contractor of the state. Second, it defined administrative costs as those expenditures normally associated with administration of a public assistance program, including taking applications, determining eligibility and benefits, and monitoring the assistance provided.

The Department received approximately 100 comments on the proposed language. Only a few comments contested the aspect of the proposed language that required administrative costs from all program levels to be included in the determination of state adherence with the statutory limit on administrative costs. One comment stated that since Congress did not specifically include subrecipients, grantees, and contractors of states in the definition of "state" in section 2603(6) of the LIHEAP statute, it must not have intended that these entities be included under the administrative cost limitation.

We disagree. There is no indication in the statute or legislative history that Congress intended this interpretation. Where Congress has intended to apply the administrative cost limits to expenditures at the State level only, it has done so explicitly. For example, the limitation on administrative costs under the community services block grant clearly applies only to the State level expenditures. By failing to include similar language in the LIHEAP statute, we conclude that Congress intended to limit aggregate administrative costs, regardless of whether they are incurred at the State or subrecipient level. We have maintained that aspect of the proposed rule in the final rule.

Almost all of the remaining comments on this section objected to our attempt to clarify functions that are administrative. The comments demonstrated considerable variation in the kinds of activities that might be included in the functions listed in the proposed regulation. Because the inclusion of these functions in regulation might unintentionally have infringed on state prerogatives to define administrative costs in a manner consistent with the statute, we are removing from the final rule the reference to the specific functions.

We are concerned, however, that many of the comments reflected a lack of understanding of the strict limits placed on administrative costs by the statute. While we are not including the list of specific functions in the final rule, nonetheless, we believe that the costs associated with those functions, i.e., taking applications, determining eligibility and benefit levels, and monitoring the assistance provided, are normally administrative in a predominantly cash assistance program, such as LIHEAP. Consequently, we will

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carefully assess any other categorization of these costs in our compliance reviews and in our reviews of audit findings.

We recognize that a grantee's program may include a variety of benefits and administrative structures. For example, a grantee may provide cash assistance, services, and in-kind benefits. Certain activities associated with one type of benefit may be administrative, while a similar activity associated with another may not be. We will continue to examine grantee programs on a case-by-case basis, looking in particular to other State programs that provide analogous benefits to determine the appropriateness of the State's definition of administrative costs for LIHEAP.

Some comments mistakenly assumed that "outreach" was included in our proposed definition of administrative costs and asserted that outreach is directly related to service delivery rather than to administration. We agree that outreach activities are not intrinsically administrative and therefore we excluded this term from the proposed list. In some cases, the term refers to providing general information to the public about the existence of the LIHEAP program. In others, cited in a number of comments, the term includes such activities as budget counselling, energy education, arranging deferred or budget payment arrangements with energy providers, and other services directly related to the purpose of the statute. The term encompasses activities that are administrative and others that are not. We will review the appropriateness of a grantee's definition of outreach costs during compliance reviews and audits.

Several comments objected to the issuance of any Departmental regulation in the area of administrative costs. Several cited the Secretary's letter of July 15, 1982 (see above) as stating a policy not to regulate block grant administrative costs. The Secretary's letter indicates that the Department at that time had decided against further definition of administrative costs. However, for the reasons stated above, we believe that clarification of the issue of administrative costs is clearly warranted.

Two comments apparently held that all costs incurred by subrecipients, subgrantees, and contractors are program costs because they are closely associated with the delivery of services. Similarly, a number of comments asserted that expenditures related to the functions listed in the proposed rule are directly related to serving clients and are, therefore, "program" or "program support" rather than administration.

We disagree with these comments for three reasons. First, this interpretation is inconsistent with the preamble to the final block grant regulations. This stated that the grantees' determination of administrative costs is based upon the intrinsic nature of each program and the standard accounting procedures followed by each grantee, rather than on the type of agency.

Second, these comments characterize LIHEAP as a service program. While we recognize that certain aspects of LIHEAP involve the delivery of services, in fact, the largest expenditure of LIHEAP funds is for cash assistance. As we indicated earlier, a grantee must determine which expenses constitute administrative costs chargeable to the grant funds based upon the nature of the program and the standard accounting procedures for analogous programs followed by the grantee.

Third, costs associated with determining whether an applicant may receive assistance or assessing whether subgrantees or contractors are following the grantee's plan and procedures are intrinsically administrative in the context of a public assistance program. As noted in the preamble to the block grant regulations of July 6, 1982, the limit upon administrative expenditures is indicative of congressional intent that a very high percentage of a grantee's funds be paid to recipients as benefits or direct services to carry out the purpose of the statute.

A number of comments assumed that the regulatory definition would require expenditure of ninety percent of a grantee's funds for cash assistance and weatherization materials and ten percent for all other costs, and that as a consequence the subrecipients would not have the financial resources to properly or effectively operate their programs. These comments also contended that such an interpretation would hurt the most vulnerable clients, including the elderly and handicapped, and necessitate operation of LIHEAP as a centralized, "pass-through welfare program" and a subsidy for utility companies.

The LIHEAP statute imposes a strict limit on administrative costs. Our compliance reviews and review of audits demonstrate that most grantees are implementing their programs successfully within the statutory limit on administrative costs. A few grantees are not in compliance with this provision and may have to modify their programs to meet the statutory limitation on administrative costs or to fund the excess administrative cost from non-Federal funds. This is unavoidable under the current statute. As noted in the preamble to the July 6, 1982 final regulation:

> There is some indication that Congress intended that states use non-Federal funds to administer block grant programs where necessary. For example, section 2605(b)(9)(B) of the Act expressly requires that states use non-federal funds for planning and administering the low-income home energy assistance program where a state's costs for those activities exceed 10 percent of the state's allotment.

Several comments appeared to assume that only the costs of materials could be considered as non-administrative costs under the Low-Income Weatherization Assistance Program of the Department of Energy. As a matter of practice, the Department usually will not question the categorization of costs used by a grantee for weatherization under section 2605(k) when such funds are expended by a grantee under an approved Low-Income Weatherization Assistance Program plan—provided that such expenditures are otherwise consistent with the LIHEAP statute. (See our comments concerning § 96.86 of these regulations.)

Several local service providers assumed that the limit on administrative costs was imposed by regulation, rather than statute. They claimed that they could not properly operate energy assistance programs under this limitation. As previously indicated, the Department has no discretion to vary the limitation on administrative costs for states. Most States are operating within these limits and we do not believe that the statute has imposed an unreasonable limit. We have several activities under way to assist States and tribes to exchange information on ways to reduce administrative costs.

A number of comments cited dictionary definitions of "administration" as "management of affairs" in contesting the proposed definition. When a dictionary definition frequently is relevant to clarifying congressional intent, it must be considered in context with other relevant statutory and regulatory guidance.

Several comments contended that our definition of administrative costs would limit the resources available to prevent error, fraud, and abuse. As we indicated above, the limit on administrative funds is imposed by statute. Even though the statute imposes requirements on grantees that may necessitate the expenditure of additional funds, the Department does not have the legal authority to alter the amount available for administering LIHEAP.

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A number of comments referred to certain other Federal programs or regulations and claimed that policies or regulations applicable to these programs supported the exclusion of the activities we cited in the proposed regulation from consideration as administrative costs. We contacted the Federal agency responsible for administering each of the programs cited in the comments, e.g., Job Training Partnership Act, Urban and Mass Transit Authority, Federal Highway Administration, Head Start, Medicaid, and Aid to Families with Dependent Children. Most of the programs cited are not cash assistance programs and therefore do not provide adequate basis for defining administrative costs. Under the AFDC program, which as a cash assistance program may be analogous to LIHEAP, the activities cited in the proposed rule—taking applications, determining eligibility and benefits, monitoring assistance provided—are, in fact, considered administrative costs.

Finally, we note that none of the comments cited grantee laws and procedures or administrative cost definitions in analogous State-funded asssitance programs (e.g., general assistance) in support of the position that the functions cited in the proposed rule are administrative in nature. Section 96.30 clearly establishes that the laws and procedures that govern the use of a grantee's own funds will determine the appropriateness of the obligation and expenditure of block grant funds, unless those laws and procedures are inconsistent with the block grant statute or regulations. As we indicated earlier, in reviewing grantee compliance with the statutory limit on administrative costs, we will continue to rely substantially upon the laws and procedures of the grantee.

(b) *Administrative costs of territories and Indian tribes.* Experience has shown that each grantee incurs certain basic administrative costs in developing and implementing a LIHEAP program. The statute requires that each state limit these planning and administrative expenditures to no more than 10 percent of the funds payable to it and not transferred for use under other block grants. As the LIHEAP allotments to the States are substantial, the 10 percent ceiling on planning and administrative costs allows each State sufficient funds for these purposes.

Some tribes and territories, however, receive relatively small LIHEAP allotments and the flat 10 percent limitation on planning and administrative expenditures may not be sufficient to cover the basic costs of developing and implementing their program. Accordingly, we have concluded that the 10 percent limitation on planning and administrative expenditures is not appropriate to tribal grantees. *See* 45 CFR 96.42(a). Similarly, with respect to certain territorial grantees, we have concluded that a different limitation on planning and administrative expenditures would, pursuant to 42 U.S.C. 8623(b)(2), be consistent with the statutory limitation on planning and administrative expenditures. Consequently, we are modifying the limitations on planning and administrative expenditures for tribal and territorial grantees. For tribal and territorial grantees whose funds payable are $20,000 or less, the limitation on the cost of planning and administering the program is 20 percent of the funds payable under the LIHEAP program and not transferred for use under another block grant. For tribal and territorial grantees whose funds payable are over $20,000, the limitation is $4,000 plus 10 percent of the amount of the funds payable and not transferred that exceed $20,000.

The revised limit is based upon estimates for costs associated with audit, personnel, plan development, and overhead. Audit costs considered the cost of an audit apportioned among Federal programs audited by a tribe under the Single Audit Act, allowing a minimum of $300. Personnel costs were based on two hours of processing time per application at a salary of $7 per hour. A figure equal to fifteen percent of personnel costs was allowed for overhead and costs associated with completing and submitting the grant application.

We received several comments suggesting that the administrative limitation be increased for all grantees or for all small grantees, including States. The administrative cost limitation is imposed on States by statute and the Secretary has no authority to waive any of the statutory provisions for States. The Department does have authority under the statute to define the rights and responsibilities of territories and Indian tribes.

We believe this regulation provides the increased flexibility necessary for small grantees to administer their LIHEAP programs.

SUBPART I—COMMUNITY SERVICES

Section 96.92 Termination of funding.

Section 675(c)(11) of the Community Services Block Grant Act, as added by section 203(a)(3) of Pub. L. 98–558, requires a State to provide assurances that it will not end present or future funding of certain entities unless, after issuing notice of the proposed termination and affording an opportunity for a hearing on the record, the State determines that there is cause for terminating funding. Section 676A of the Community Services Block Grant Act, as added by section 203(d) of Pub. L. 98–558, further provides that upon request, the Secretary will review the record of the State's decision to terminate funding. If such a review is requested, the State's decision cannot take effect unless and until the Secretary confirms the State's finding of cause for terminating funding. The grantee has 30 days in which to request a review. The proposed regulation sets out these requirements and indicates that the Department will, upon request for a review of the State's determination, review the State's hearing record and confirm or reject the State's finding of cause for termination. Normally this will take 90 days from receipt of the request.

Several comments suggested that the regulation provide an opportunity for interested parties to make written comments to the Department on the State's final decision before the Department confirms or rejects the State's finding of cause. We have not changed the regulation in this regard. Affected parties will have an opportunity to provide information and their views to the State. This will be part of the State's hearing record and will be submitted to the Department by the State, if there is an appeal of the State's decision to terminate. We believe that the record will provide sufficient information to enable the Department to confirm or reject the State's finding of cause for termination and that the interests of the affected parties are adequately protected by Departmental review of that record.

SUBPART L—ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT

Section 96.111 Earmarks.

Pub. L. 98–509 added, and Pub. L. 99–117 subsequently modified, two new earmark requirements to the alcohol and drug abuse and mental health services block grant. Section 1916(c)(14) requires States to use in fiscal year 1985 not less than three percent and in any other fiscal year not less than five percent of its total block grant allotment to initiate and provide new or expanded alcohol and drug abuse services for women. Section 1916(c)(15) requires that, of the amounts to be used in any fiscal year for mental health activities, a State shall

use at least 10 percent of such funds to initiate and provide (a) in fiscal year 1985 new comprehensive community mental health services for underserved areas or for underserved populations, with special emphasis on new mental health services for severely disturbed children and adolescents and (b) in any other fiscal year new or expanded services as set out in clause (a) above.

The conference report for Pub. L. 98–509 makes clear that each State should target earmarked services based on local needs. The legislative history of Pub. L. 99–117 expresses congressional intent to "allow the States somewhat more flexibility by allowing them to create new treatment opportunities through expansion of existing services as well as through the initiation of entirely new ones."

Consistent with the intent of Congress to allow the States flexibility in implementation of the law, the Department has determined that the baseline for deciding whether services are "new" or "expanded" is fiscal year 1984.

Using fiscal year 1984 as a baseline for determining whether services are "new" or "expanded" avoids cumulating the earmarks in fiscal years after fiscal year 1985. The negative aspects of such a cumulative effect are that over time an excessively large portion of a state's total allotment would be used to satisfy the two earmarks, thus significantly negating the extensive planning and public participation process the statute requires States to undertake in deciding how to spend their allotments and diminishing the State's flexibility in implementing the law.

Technical Corrections

The revision of § 96.2 indicates that, for each block grant program, the regulations apply to any entity defined as a "state" by the applicable block grant statutory provisions. This revision is intended to make clear that references to "states" apply to eligible territories and other non-State jurisdictions.

Section 96.16, Applicability of Title XVII of the Reconciliation Act, has been revised to add appropriate citations to the codification of the Act in the United States Code.

These rules also correct two citations in § 96.46(c) relating to funding applications from Indian tribes under the alcohol and drug abuse and mental health services block grant.

Executive Order 12291

The regulation implements a series of legislative changes which are minor or technical in nature. None will involve a substantial cost. Therefore, this is not a major rule under Executive Order 12291.

Regulatory Flexibility Act

The Department of Health and Human Services certifies that this regulation will have no significant impact on a substantial number of small entities, small businesses, small organizational units, and small governmental jurisdictions. The rules principally affect state administration of block grant funds. States are not "small entities" for purposes of the Act, and the regulation would not have any substantial or significant effects on other entities.

One comment asserted that the regulation as proposed violates the requirements of Executive Order 12291 and the Regulatory Flexibility Act by not providing statements of the impact on local governments or small entities of the § 96.88 (LIHEAP administrative costs) of the proposed rule.

We disagree. The administrative cost limit is imposed by statute upon States. Neither the statute nor the regulation provide an express limit on the administrative costs incurred by subrecipients of the State. Furthermore, States are provided with substantial discretion as to how to structure their program so as to meet the 10 percent limit on administrative costs. This includes choosing service delivery mechanisms that have lower administrative costs and providing additional State funds to provide for administration of the program should they choose mechanisms that exceed the administrative limit imposed by the statute.

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Aged, Alcoholism, Child welfare, Community action program, Drug abuse, Energy, Grant programs-energy, Grant programs-health, Grant programs-Indians, Grant programs-social programs, Health, Indians, Investigations, Low and moderate income housing, Maternal and child health, Mental health programs, Public health, Reporting and recordkeeping requirements, Social Security.

For the reasons set forth in the preamble, Part 96 of Title 45 of the Code of Federal Regulations is amended as follows:

PART 96—[AMENDED]

1. The authority for Part 96 of Title 45 is revised to read as follows:

Authority: 42 U.S.C. 300w *et seq.*; 42 U.S.C. 300x *et seq.*; 42 U.S.C. 300y *et seq.*; 42 U.S.C. 701 *et seq.*; 42 U.S.C. 8621 *et seq.*; 42 U.S.C. 9901 *et seq.*; 42 U.S.C. 1397 *et seq.*; 31 U.S.C. 1243 *note.*

Subpart A—Introduction

2. In § 96.2, by adding a new paragraph (d) to read as follows:

§ 96.2 Definitions.

* * * * *

(d) "State" includes the fifty states the District of Columbia and, as appropriate with respect to each block grant, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subpart B—General Procedures

3. By revising paragraph (a) introductory text and (a)(2) of § 96.14 to read as follows:

§ 96.14 Time period for obligation and expenditure of grant funds.

(a) *Obligations.* Amounts unobligated by the State at the end of the fiscal year in which they were first allotted shall remain available for obligation during the succeeding fiscal year for all block grants except:

* * * * *

(2) *Low-income home energy assistance.* Amounts are available only in accordance with 42 U.S.C. 8626(b)(2)(B). From allotments for fiscal year 1982 through fiscal year 1984, a maximum of 25 percent may be held available for the following fiscal year. Beginning with fiscal year 1985, a maximum of 15 percent of the amount payable to a State and not transferred to another block grant according to 42 U.S.C. 8623(f) may be held available for the next fiscal year. No funds may be obligated after the end of the fiscal year following the year for which they were allotted.

* * * * *

4. By revising § 96.15 to read as follows:

§ 96.15 Waivers.

Applications for waivers that are permitted by statute for the block grants should be submitted to the Assistant Secretary of Health in the case of the preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services block grants; to the Director, Office of Community Services in the case of the community services block grant; and to the Assistant Secretary for Human Development Services in the case of the social services block grant. Beginning with

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fiscal year 1986, the Secretary's authority to waive the provisions of 42 U.S.C. 8624(b) under the low-income home energy assistance program is repealed.

5. Section 96.16 is revised to read as follows:

§ 96.16 Applicability of Title XVII of the Reconciliation Act (31 U.S.C. 7301–7305).

This section interprets the applicability of the general provisions governing block grants set forth in Title XVII of the Reconciliation Act (31 U.S.C. 7301–7305):

(a) Except as otherwise provided in this section or unless inconsistent with provisions in the individual block grant statutes, 31 U.S.C. 7301–7305 apply to the community services, preventive health and health services, and alcohol and drug abuse and mental health services block grants.

(b) The requirement in 31 U.S.C. 7303(b) relating to public hearings does not apply to any of the block grants governed by this part. Instead, the provisions in the individual block grant statutes apply.

(c) The maternal and child health services block grant is not subject to any requirements of 31 U.S.C. 7301–7305.

(d) The social services and low-income home energy assistance programs are subject only to 31 U.S.C. 7304.

(e) The audit provisions of 31 U.S.C. 7305 have, in most cases, been overridden by the Single Audit Act. Pub. L. 98–502, 31 U.S.C. 75, et seq., and do not apply to the block grants. Pursuant to § 96.31(b)(2), certain entities may, however, elect to conduct audits under the block grant audit provisions. For entities making this election, the provisions of 31 U.S.C. 7305 apply to the community services block grant.

(f) The applicability of 31 U.S.C. 7303(a) relating to the contents of a report on proposed uses of funds is specified in § 96.10.

6. By adding a new § 96.17 to Subpart B to read as follows:

§ 96.17 Annual and biennial reporting deadlines.

Except for the low-income home energy assistance program activity reports, a State must make public and submit to the Department, each annual and biennial report required by statute:

(a) Within six months of the end of the period covered by the report; or

(b) At the time the State submits its application for funding for the Federal fiscal year which begins subsequent to the expiration of that six-month period. These reports are required annually for preventive health and health services (42 U.S.C. 300w–5(a)(1)), alcohol and drug abuse and mental health services (42 U.S.C. 300x–5(a)(1)), and maternal and child health services (42 U.S.C. 706(a)(1)), and biennially for the social services block grant (42 U.S.C. 1397e(a)). See § 96.82 for requirements governing the submission of activity reports for the low-income home energy assistance program.

Subpart C—Financial Management

§ 96.30 [Amended]

7. By removing paragraph (b) of § 96.30 and removing the designation "(a)" from the first paragraph of that section.

8. By adding new § 96.31 to Subpart C to read as follows:

§ 96.31 Audits.

(a) *Fiscal periods beginning before January 1, 1985.* All block grant funds received in any grantee fiscal year beginning before January 1, 1985, are subject to the audit requirements set forth in each of the respective block grant statutes. Reports on the audit results for all fiscal years subject to this paragraph must be submitted to the Department within one year of the date of publication of this rule.

(b) *Fiscal periods beginning on or after January 1, 1985.* (1) Each State, local government, and Indian tribe or tribal organization that receives $100,000 or more (during the grantee's fiscal year) in all types of Federal financial assistance provided through the block grants and all other Federal programs must conduct an audit in accordance with the Single Audit Act, Pub. L. 98–502, 31 U.S.C. 75 *et seq.* The Office of Management and Budget has implemented the Single Audit Act through publication of OMB Circular A–128, which is set out in full at 45 CFR Part 74, Appendix J of the Department's Grant Administration Regulations. Grantees must comply with the requirements of 45 CFR Part 74, Appendix J.

(2) Each State, local government, or Indian tribe or tribal organization that receives at least $25,000 and less than $100,000 in total Federal financial assistance from all sources must, at its option, audit block grant funds under either the Single Audit Act or the separate audit requirements set out in each respective block grant statute (or, in the case of the community services block grant, the requirements in 31 U.S.C. 7305). Any audit that is conducted under the block grant audit requirements must be conducted in accordance with standards that are consistent with the Comptroller General's standards for the audit of governmental organizations, programs, activities, and functions. Reports on the results of any such audit must be submitted to the Department within one year of the date of publication.

(c) *Submission of audit reports.* Reports of audits conducted under either the Single Audit Act or the block grant statutes shall, if required to be submitted to the Department, be submitted to the Regional Inspector General for Audit responsible for the Federal region in which the block grant recipient is located.

9. By adding new § 96.32 to Subpart C to read as follows:

§ 96.32 Financial settlement.

The State must repay to the Department amounts found after audit resolution to have been expended improperly. In the event that repayment is not made voluntarily, the Department will undertake recovery.

10. By adding new § 96.33 to Subpart C to read as follows:

§ 96.33 Referral of cases to the Inspector General.

State or tribal officials who have information indicating the commission or potential commission of fraud or other offenses against the United States involving block grant funds should promptly provide the information to the appropriate Regional Office of Investigations of the Department's Office of the Inspector General.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

11. By revising § 96.42(e) to read as follows:

§ 96.42 General procedures and requirements.

* * * * *

(e) Beginning with fiscal year 1983, any request by an Indian tribe or tribal organization for direct funding by the Secretary must be submitted to the Secretary, together with the required application and related materials, by September 1 preceding the Federal fiscal year for which funds are sought. A separate application is required for each block grant. After the September 1 deadline, tribal applications will be accepted only with the concurrence of the State (or States) in which the tribe or tribal organization is located.

* * * * *

12. By amending § 96.44 to add paragraph (e)(4) to read as follows:

§ 96.44 Community services.

(e) * * *

(4) Section 675(c)(11) (42 U.S.C. 9904(c)(11)).

13. By adding new paragraph (f) to § 96.44 to read as follows:

§ 96.44 Community services.

* * * * *

(f) In each fiscal year, Indian tribes and tribal organizations may expend for administrative expenses—comparable to the administrative expenses incurred by State at the State level—an amount not to exceed the greater of the amounts determined by: (1) Multiplying their allotment under section 674 of the Reconciliation Act (42 U.S.C. 9903) by five percent; or (2) multiplying the allotment by the percentage represented by the ratio of $55,000 to the smallest State allotment (excluding territorial allotments) for that fiscal year.

14. By revising § 96.46(c) to read as follows:

§ 96.46 Alcohol and drug abuse and mental health services.

* * * * *

(c) An Indian tribe or tribal organization is not required to comply with section 1916(b) (42 U.S.C. 300x–5(b) or to provide the certifications required by section 1916(c)(2) through (8) and (13) through (15) of the Public Health Service Act (42 U.S.C. 300x–4 (c)(2) through (c)(8) and (c)(13) through (c)(15)). Also, the service identified in section 1915(a)(1) (42 U.S.C. 300x–3 (a)(1)) need not be provided by means of grants to community mental health centers.

Subpart E—Enforcement

15. By revising § 96.50(b) to read:

§ 96.50 Complaints.

* * * * *

(b) Complaints with respect to the health block grants must be submitted in writing to either the Assistant Secretary for Health or: for the preventive health and health services block grant, the Director, Centers for Disease Control; for the alcohol and drug abuse and mental health services block grant, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration; for the maternal and child health services block grant, the Administrator, Health Resources and Services Administration. Complaints with respect to the social services block grant must be submitted in writing to the Assistant Secretary for Human Development Services. Complaints with respect to the low-income home energy assistance program and the community services block grant must be submitted in writing to the Director, Office of Community Services. (The address for the Director, Center for Disease Control is 1600 Clifton Road, NE., Atlanta, Georgia 30333. For each of the other officials cited above the address is 200 Independence Avenue SW., Washington, DC 20201.) The complaint must identify the provision of the act, assurance, or certification that was allegedly violated; must specify the basis for the violations it charges; and must include all relevant information known to the person submitting it.

* * * * *

16. By revising paragraph (a) of § 96.51 to read as follows:

§ 96.51 Hearings.

(a) The Department will order a State to repay amounts found not to have been expended in accordance with law of the certifications provided by the State only after the Department has provided the state notice of the order and an opportunity for a hearing. Opportunity for a hearing will not be provided, however, when the State, in resolving audit findings or at another time, has agreed that the amounts were not expended in accordance with law or the certifications. The hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

* * * * *

Subpart H—Low-Income Home Energy Assistance Program

17. By revising § 96.81 to read:

§ 96.81 Reallotment report.

As a part of the reallotment procedure established by 42 U.S.C. 8626, beginning with funds to be held available for fiscal year 1986, each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information.

(a) The amount of funds that the State desires remain available for obligation in the succeeding fiscal year, not to exceed 15 percent of the funds payable to the State and not transferred pursuant to 42 U.S.C. 8623(f);

(b) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(c) A description of the types of assistance to be provided with the amount held available; and

(d) The amounts of funds, if any, to be subject to reallotment.

(Approved by the Office of Management and Budget under control Number 0960–0446)

18. Section 96.82 is revised to read as follows:

§ 96.82 Required report.

In accordance with 42 U.S.C. 8629(a), each State receiving funds shall submit to the Department by October 31 of each year a report of:

(a) The number and income levels of the households assisted by LIHEAP funds during the preceding fiscal year; and

(b) The number of households assisted by LIHEAP funds during the preceding fiscal year that contain one or more individuals who are 60 years or older and the number which contain one or more individuals who are handicapped.

(Approved by the Office of Management and Budget under control Number 0960–0446)

§ 96.83 [Removed]

19. Part 96 is amended by removing § 96.83.

20. By adding a new § 96.86 to read as follows:

§ 96.86 State plans.

The assurances in section 2605(b) of Pub. L. 97–35, as

The assurances in section 2605(b) of Pub. L. 97–35, as amended, pertain to all forms of assistance provided by the State.

21. By adding a new § 96.87 to Subpart H to read as follows:

§ 96.87 Prevention of waste, fraud and abuse.

States and Indian tribes must establish appropriate systems and procedures to prevent, detect and correct waste, fraud and abuse in activities funded under the low-income home energy assistance program. The systems and procedures are to address possible waste, fraud and abuse by clients, vendors and administering agencies.

22. By adding a new § 96.88 to Subpart H to read as follows:

§ 96.88 Administrative costs.

(a) *Costs of planning and administration.* Any expenditure for governmental functions normally associated with administration of a public assistance program must be included in determining administrative costs subject to the statutory limitation on administrative costs, regardless of whether the expenditure is incurred by the State, a subrecipient, a grantee, or a contractor of the State.

(b) *Administrative costs for territories and Indian tribes.* For Indian tribes, tribal organizations and territories with allotments of $20,000 or less, the limitation on the cost of planning and administering the low-income home

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energy assistance program shall be 20 percent of funds payable and not transferred for use under another block grant. For tribes, tribal organizations and territories with allotments over $20,000, the limitation on the cost of planning and administration shall be $4,000 plus 10% of the amount of funds payable (and not transferred for use under another block grant) that exceeds $20,000.

Subpart I—Community Services Block Grant

23. By adding a new § 96.92 to Subpart I to read as follows:

§ 96.92 Termination of funding.

Where a state determines pursuant to section 675(c)(11) of the Community Services Block Grant Act that it will terminate present or future funding of any community action agency or migrant and seasonal farmworker organization which received funding in the previous fiscal year, the State must provide the organization with notice and an opportunity for hearing on the record prior to terminating funding. If a review by the Secretary of the State's final decision to terminate funding is requested pursuant to section 676A, the request must be made in writing, within 30 days of notification by the State of its final decision to terminate funding. The Department will confirm or reject the State's finding of cause, normally within 90 days. If a request for a review has been made, the State may not discontinue present or future funding until the Department confirms the State's finding of cause. If no request for a review is made within the 30-day limit, the State's decision will be effective at the expiration of that time.

24. A new Subpart L consisting of §§ 96.110 and 96.111 is added to read as follows:

Subpart L—Alcohol and Drug Abuse and Mental Health Services Block Grant

§ 96.110 Scope.

This subpart applies to the alcohol and drug abuse and mental health services block grant.

§ 96.111 Earmarks.

For the purposes of determining whether a state has initiated a new or expanded service within the meaning of the earmarks set out in sections 1916(c)(14) and 1916(c)(15) of the Public Health Service Act, a service will be considered "new" or "expanded" to the extent that it exceeds funds expended by the state in fiscal year 1984.

Otis R. Bowen,

Secretary.

Dated: October 6, 1987.

[FR Doc. 87-23550 Filed 10-9-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 79-105; RM-3017; FCC 87-221]

Uniform System of Accounts for Class A and Class B Telephone Companies

AGENCY: Federal Commnications Commission.

ACTION: Memorandum opinion and order vacating decision.

SUMMARY: The order vacates the Commission decision in 92 FCC 2d 864 (1983), published on January 19, 1983, 48 FR 2324 that held that Communications Act of 1934 did not permit State regulatory commissions to require telephone companies to use depreciation methods and rates that are different from those we prescribe for the same equipment unless we had expressly granted exemptions from this requirement for those companies, or, alternatively, that use of different depreciation methods and rates by state commissions would frustrate the goals we sought to achieve when we adopted new depreciation policies. This action is taken to comply with the decision of the United States Supreme Court that reversed the decision of the Fourth Circuit that affirmed the Commission Order, holding that the Commissions Act "denies the FCC the power to preempt state regulation of depreciation for intrastate ratemaking purposes." *Louisiana Public Service Comm'n* v. *FCC*, 106 S. Ct. 1890, 1901 (1986).

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Common Carrier Bureau, Policy and Program Planning Division, 202-632-9342.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-23590 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-223; RM-5083]

Radio Broadcasting Services; Crosby, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 269A to Crosby, Minnesota, in response to a petition filed by William L. Connor. The allocation could provide Crosby with its first FM broadcast service. There is a site restriction 7.9 kilometers northeast of the community for the allocation of Channel 269A at Crosby. Canadian concurrence has been obtained since Crosby is within 320 kilometers of the common U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 23, 1987; The window period for filing applications will open on November 24, 1987, and close on December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-223, adopted September 11, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Minnesota, by adding Channel 269A to Crosby.

Federal Communications Commisison.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-23593 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-356; RM-5351 and RM-5644]

Radio Broadcasting Services; Webb City and Ash Grove, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 236A to Webb City, Missouri, in response to a petition filed by Don Stubblefield, as that community's second FM broadcast service. We shall also allocate FM Channel 281A to Ash Grove, Missouri, in response to a counterproposal filed by Hooter Exploration Company in this proceeding. The allotment could provide a first local service to Ash Grove. There is a site restriction 12.1 kilometers southwest of the community. With this action, this proceeding is terminated.

DATES: Effective November 23, 1987; the window period for filing applications will open on November 24, 1987, and close on December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-356, adopted September 4, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Missouri by adding FM Channel 236A to Webb City and FM Channel 281A to Ash Grove.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-23594 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-469; RM-5485; 5759; 4760; 5761]

Radio Broadcasting Services; Hilton Head Island, Bluffton, SC; Darien, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 299C2 to Darien, Georgia, as the community's first local FM service, at the request of Clarence E. Jones. Channel 299C2 can be allocated to Darien in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.9 kilometers (14.8 miles) southwest to avoid a short-spacing to the proposed substitution of Channel 300C2 at Hilton Head Island at the transmitter site used jointly by Station WHHR, Channel 292A, Hilton Head Island, Jesse N. Williams, permittee of a new station on Channel 288A at Hilton Head Island, and Dohara Associates, Inc., permittee of Station WLOW, Channel 296A, Bluffton. The proposals to substitute Channels 291C2 and 300C2 for Channels 288A and 292A, respectively, at Hilton Head and the modification of the license of Station WHHR and the construction permit of Jesse N. Williams to specify either of the Class C2 channels as well as the substitution of Channel 293C2 or 295C for Channel 296A of Bluffton, South Carolina, and the modification of the permit of Station WLOW to specify either higher powered channel will be the subject of a *Further Notice of Proposed Rule Making* in this docket.

DATES: Effective November 23, 1987. The window period for filing applications for Channel 299C at Darien will open on November 24, 1987, and close on December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 86-469, adopted August 28, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments of Georgia is amended by adding the entry of Darien, Channel 299C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-23592 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-91; RM-5678]

Radio Broadcasting Services; Sunderland, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236A to Sunderland, Vermont, as that community's first FM service, at the request of Brian Dodge. The original petitioner, Timothy Dodge, failed to file comments in this proceeding. A site restriction of 2.4 kilometers (1.5 miles) northwest of the city is required. Concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective November 23, 1987; the window period for filing applications will open on November 24, 1987, and close on December 24, 1987.

FOR FURTHER INFORMATION CONTRACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-91, adopted September 11, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

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Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Sunderland, Vermont, Channel 236A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23595 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–41; RM–5608]

Radio Broadcasting Services; Lindside, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *294A to Lindside, West Virginia, as that community's first FM service and reserves it for noncommercial educational use, at the request of Monroe County (West Virginia) Board of Education. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–41, adopted September 4, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Lindside, West Virginia, Channel *294A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23596 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–32; RM–5217]

Radio Broadcasting Services; Aiken, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Amici Broadcasting Company, Inc., lifts the stay of the effectiveness of the substitution of Channel 242C2 for Channel 240A at Aiken, South Carolina, and the modification of its license for Station WJFX–FM to specify the higher powered channel. The stay was brought about automatically by the receipt of a petition for reconsideration which was published in the **Federal Register** on August 17, 1987 (52 FR 30734).

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, MM Docket No. 86–32, adopted September 10, 1987, and released October 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23424 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 19A)]

Delaware Otsego Corp.; Petition for Exemption; Boxcar Provisions

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a proposed amendment to its boxcar exemption and rules stating that seven named Class III railroads will no longer be regarded as Class III or unaffiliated Class II carriers for the purpose of the exemption and rules. The seven railroads and Delaware Otsego Corporation, which controls them, asked that they not be afforded the special treatment for Class III and unaffiliated Class II carriers contained in the exemption and rules. The effect of the adopted amendment will be to exempt boxcar traffic transported by the seven railroads from joint rate regulation, to enable them to exercise the empty car provisions of the rules, and to allow other carriers to exercise the empty car provisions with respect to the cars of the seven railroads.

EFFECTIVE DATE: November 12, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: In a decision served August 11, 1987, the Commission proposed to grant a request by Delaware Otsego Corporation and the seven Class III railroads that it controls to remove these railroads from the special provisions for small carriers contained in our boxcar exemption and rules (49 CFR 1039.14). An amendment to the boxcar exemption and rules to carry out this request was published as a proposed rule August 12, 1987, at 52 FR 29873 and a 20-day period ending September 1, 1987, was allowed for comments.

No comments have been received. Therefore, the amendment is adopted as proposed, for the reasons stated in our decision served August 11, 1987. Copies of that decision are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428.

This action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

For the reasons set out in the preamble and explained fully in the decision, Part 1039 of Title 49, Code of Federal Regulations, is amended as set forth below:

PART 1039—CONTRACTS AND EXEMPTIONS

1. The authority citation for Part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713 10762, 11105, and 11122; and 5 U.S.C. 553.

2. Section 1039.14 is amended by adding paragraph (c)(6) as follows:

§ 1039.14 Boxcar transportation exemption and rules.

* * * * *

(c) * * *

(6) The following carriers are not regarded as Class III or unaffiliated Class II carriers for the purpose of this section:

Central New York Railroad Corporation, Cooperstown and Charlotte Valley Railway Corporation, Fonda, Johnstown & Gloversville Railroad Corporation, Lackawaxen and Stourbridge Railroad Corporation, New York, Susquehanna & Western Railway Corporation, Rahway Valley Railroad Company, Staten Island Railway Corporation.

* * * * *

Decided: October 2, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-23577 Filed 10-9-87; 8:45 am]

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Proposed Rules

Federal Register
Vol. 52, No. 197
Tuesday, October 13, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

Revision of Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Advance notice of proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is considering whether to propose a revision of its policies for issuance of Conditional Commitments in the Single Family Rural Housing (RH) loan program. This action is being considered in order to reduce the cost of housing by enabling builders to better control their costs including holding time. The agency is soliciting comments from interested parties in the development of a regulation for this purpose.

DATES: Commeents must be received on or before November 12, 1987.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Speciaiist, at Farmers Home Administration, USDA, Room 5334–S, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration (FmHA) is considering a revision to its regulations that will enable builders, dealer-contractors and sellers of modest dwellings to apply for and receive "firm" conditional commitments for financing from FmHA. The agency will propose to actually set aside loan funds to finance a certain dwelling that FmHA has determined to be acceptable under the 502 program for qualified applicants. We believe that this action will help reduce costs by reducing the builder's, dealer-contractor's or seller's holding time.

The agency is considering two different methods of implementing this approach. The first method would involve a specific allocation of funds for these commitments. A competitive bidding process in which the competitors would make a proposal to the agency to provide housing at a significant savings to the potential homeowner. The agency would evaluate the proposals and award a commitment to the best bidder.

The agency invites comments on this and, specifically, invites suggestions answering the following questions:

What criteria should be used to compare the bids made under this proposal?

Given limited availability of loan funds, should FmHA attempt to limit the number of commitments to any one bidder and if so, how should this be done?

A second approach would allow any potential seller of a dwelling to be financed under the FmHA program to apply for a conditional commitment for financing. The difference between this approach and the preent method is that FmHA would now reserve funds for a certain period of time for those properties under a conditional commitment.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the final rule related notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

Date October 2, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–23567 Filed 10–9–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 971

[Docket No. 50712–7186]

Deep Seabed Mining; Supplemental Proposed Regulations for Commercial Recovery and Revision of Regulations for Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Extension of comment period for supplemental proposed rule.

SUMMARY: Public Law 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizen applicants, licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits.

On July 25, 1986, at 51 FR 26794, NOAA proposed regulations to govern commercial recovery activities of U.S. citizens, and to consolidate parts of the exploration regulations. After review of the public comments on the regulations, NOAA determined that several proposed modifications were sufficiently different from the proposed rule to warrant additional opportunity for public comment prior to promulgation of final regulations. Supplemental proposed regulations were published on September 14, 1987, at 52 FR 34748, seeking further public comment on these provisions.

In order to provide additional time for potential commentors to examine the supplemental proposed rules, NOAA is extending the comment period from October 29, 1987, to November 13, 1987.

DATE: Comments must be received on or before November 13, 1987.

ADDRESS: Submit comments to Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: James P. Lawless, Chief, Ocean Minerals and Energy Division (202) 673–5121, or John W. Padan, Program Manager, Deep Seabed Mining, (202) 673–5117, at the above address.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–23588 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Hazardous Waste Operations and Emergency Response

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor

ACTION: Proposed rules; changes in hearing location and schedule.

SUMMARY: This notice announces changes in one of the hearing locations for the hearings on the proposed standard for Hazardous Waste Operations and Emergency Response (50 FR 29620; August 10, 1987). The hearing scheduled for San Francisco, California, October 27–30, 1987, has been changed to Seattle, Washington, October 27 and 28, 1987, at the address below. Notices of intention to appear were due September 21, 1987. All parties who filed a notice requesting to testify in San Francisco have been rescheduled to testify in Seattle and are being notified individually of the date.

Alternatively, parties who filed a notice of intention to appear in San Francisco may choose to testify in Washington, DC, on October 20 or 21, 1987, by notifying Mr. Thomas Hall or Ms. Theresa Berry by telephone or letter at the address below by October 16, 1987. As a second alternative such parties may submit their testimony in writing to the Docket Office by October 30, 1987. Such parties will continue to have the right to file post hearing comments.

The Washington, DC, hearings commence as scheduled October 13, 1987. Parties who timely filed notices of intention to appear in Washington, DC, are being notified of the date scheduled for their testimony by mail. The hearing period has been shortened from October 13–16 and 20–22, 1987 to October 13–16 and 20–21, 1987. It should be noted that notices of intention to appear were due September 21, 1987, and comments and written copies of testimony longer than 10 minutes were due October 5, 1987. This notice does not change those dates.

Dates: 1. The informal public hearings will begin at 9:30 a.m. and are scheduled as follows:

October 13–16 and 20–21, 1987, at Washington, DC; October 27–28, 1987, at Seattle, Washington;

Or until the completion of testimony at each location.

2. Requests to change location of testimony from Seattle, Washington, to Washington, DC, must be made by October 16, 1987.

Addresses: 1. The informal public hearings will be held in the following locations:

a. Washington, DC—Frances Perkins Department of Labor Building Auditorium, 3rd St., and Constitution Avenue NW., Washington, DC 20210.

b. Seattle, Washington—Stouffer-Madison Hotel, 515 Madison St., Seattle, Washington 98104. Tel. (206) 583–0300.

2. Docket Office, Docket No. S-760A, Occupational Safety and Health Administration, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

3. Requests to change location of testimony from Seattle, Washington, to Washington, DC—Mr. Thomas Hall or Ms. Theresa Berry, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3649, 200 Constitution Avenue NW., Washington, DC 20210. Tel. (202) 523–8615.

FOR FURTHER INFORMATION CONTACT: Proposed Rule: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8151.

Public Hearing: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615.

Signed at Washington, DC, this 7th day of October, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–23664 Filed 10–9–87; 8:45 am]

BILLING CODE 4510–26–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Collection of Late Fees and Interest Penalties on VA Funding Fees

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: Veterans Administration (VA) is proposing to amend its loan guaranty regulations (38 CFR Part 36) to provide for timely collection and deposit of loan guaranty funding fees. These proposed regulatory amendments enable the VA to bring its loan guaranty program into conformance with other Federal loan programs.

DATES: Comments must be received on or before November 12, 1987. Comments will be available for public inspection until November 27, 1987. The VA proposes to make these regulatory amendments effective 30 days after publication of the final regulation.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 27, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. George Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Department of Veterans Benefits, (202) 233–3042.

SUPPLEMENTARY INFORMATION: The VA recently amended its procedures to require the submission of VA-guaranteed home loan funding fees within 15 days from the date of loan closing by means of a lockbox depository. This 15-day limit changed the requirement under which lenders did not have to send the funding fee until they submitted the loan for a guaranty, which has to be done within 60 days of loan closing. Under these proposed regulatory amendments, lenders submitting funding fees more than 15 days after the loan closing will be charged a late fee equal to 4 percent of the total funding fee. If payment of the funding fee is submitted more than 30 days after loan closing interest will be levied at a percentage rate set in conformity with the Department of Treasury's Fiscal Requirements Manual and announced quarterly in the **Federal Register**. The interest charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed

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only on funding fee payments received more than 30 days after closing.

The use of a lockbox depository, designated by the Administrator of Veterans Affairs, provides a reasonable expeditious cash management alternative to the current procedure. Assessment of late fees and interest charges against lenders who fail to submit funding fees through this lockbox depository in the required time frame will encourage the timely deposits of loan guaranty funding fees and allow them to be deposited in the government's account earlier than is presently done.

The Loan Guaranty Revolving Fund (LGRF) is used to finance loan guaranty program operations. Revenue and receipts of the fund consist primarily of interest income, funding fees, cash proceeds from the sale of real property acquired from foreclosure on defaulted loans, and resulting payments made on mortgages issued incident to the sale of acquired properties. The fund's expenses or outlays are mainly to honor VA liabilities under guaranty agreements and to acquire properties. The fund's expenses or outlays are mainly to honor VA liabilities under guaranty agreements and to acquire properties resulting from loan defaults when to do so decreases the VA's liabilities.

In recent years, the revolving fund's expenses have exceeded revenue due to increases in loan defaults and foreclosures. As a result, VA, with congressional approval, has had to reprogram funds from the Direct Loan Revolving Fund to the LGRF; $300 million in fiscal year 1983; $230 million in fiscal year 1984, and $100 million in fiscal year 1987 to date. In addition, in fiscal years 1984, 1985 and 1986, when there were insufficient funds in the Direct Loan Revolving Fund due to program cutbacks, direct appropriations were made to the LGRF: $180 million in fiscal year 1984, $306.6 million in fiscal year 1985 and $200 million in fiscal year 1986.

In order to lessen the need for reprogramming of funds and increasing the LGRF authorization, a funding fee on VA loans was enacted with the passage of the Omnibus Budget Reconciliation Act of 1982 (38 U.S.C. 1829). This Act provided in part that with certain exceptions, a fee, later raised to 1 percent of the total loan amount, was to be collected from each veteran obtaining a housing loan guaranteed, made, or insured. The fees collected were to be deposited into the U.S. Treasury under miscellaneous receipts effective for loans closed October 1, 1982, through September 30, 1985. Exempt from the fee are eligible beneficiaries entitled to disability compensation benefits.

In addition to increasing the funding fee from one-half percent to 1 percent effective on loans closed on or after August 17, 1984, the Deficit Reduction Act of 1984 extended the funding fee program through September 30, 1987, and the collection of funding fees was extended to individuals obtaining a vendee loan (purchase of a VA acquired property with VA provided financing). A significant change to the program was brought about with the depositing of all funding fees directly to the LGRF instead of a Treasury general receipts account. This made the funds collected readily available to the VA Loan Guaranty Program without having to make a supplemental appropriation request or borrow from the U.S. Treasury.

Previously, VA loan guaranty procedures allowed lenders up to 60 days from the loan closing or settlement date to remit loan funding fees to the VA. In addition to Federal interest savings, adoption of an existing Federal delinquent payment policy should improve collection timeliness and result in income from interest and penalty charges of about $800,000 during the next three years of the program.

The Administrator hereby certifies that these proposed regulatory amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The provision concerning the assessment of late fees and interest against lenders will affect lenders only in those cases in which the lender fails to take timely action to deposit the funding fee through lockbox depository. To prevent this from occurring, prudent loan guaranty practice dictates that the VA assess late fees and interest. Use of a lockbox depository and assessment of these late fees and interest will also assure that the VA Loan Guaranty Program is consistent with similar Federal loan programs. As only a relatively small percentage of VA guaranteed loans are held by small entities, these proposed regulatory amendments will not significantly affect small entities. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The VA has determined that these proposed regulatory amendments are not a "major rule" within the meaning of Executive Order 12291. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program-Housing and community development, Manufactured homes, Veterans.

These proposed regulatory amendments are proposed under the authority granted the Administrator by 38 U.S.C. 210(c), 1820, and 1829.

Approved: September 16, 1987.

Thomas K. Turnage,

Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is proposed to be amended as follows:

1. In § 36.4254 paragraph (d) is revised to read as follows:

§ 36.4254 Fees and charges.

* * * * *

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, a fee of 1 percent of the total loan amount must be paid to the Administrator before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (d)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan

closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in section (b)(2) of Title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, or to loans closed after September 30, 1987.

(Authority: 38 U.S.C. 1829(c))

2. In § 36.4312, paragraph (e) is revised to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(e)(1) Subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, a fee of 1 percent of the total loan amount must be paid to the Administrator before a home or condominium loan will be eligible for guaranty or insurance. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interet is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although interet will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in section (b)(2) of Title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, or to loans closed after September 30, 1987.

(Authority: 38 U.S.C. 1829(c))

[FR Doc. 87-23617 Filed 10-9-87; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6918]

Proposed Flood Elevation Determinations; Arkansas, et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premimum rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

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PART 65—[AMENDED]

The Authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Conway, City, Faulkner County	Little Creek	Approximately 160 feet downstream of confluence with Little Creek Tributary No. 1	None	*280
			Approximately 60 feet downstream of Mockingbird Lane (extended).	None	*284
			Approximately 1,650 feet downstream of U.S. Highway 64.	None	*289
			Approximately 320 feet downstream of U.S. Highway 64	None	*292
	Maps available for inspection at the City Hall, 1201 Oak Street, Conway, Arkansas.				
	Send comments to The Honorable David Kinley, Mayor of the City of Conway, Faulkner County, 1201 Oak Street, Conway, Arkansas 72032.				
Arkansas	Noth Little Rock, City, Pulaski County	Fairman Ditch	Approximately 301 feet downstream of Emily Street	*249	*247
			Approximately .1 mile upstream of Emily Street	*252	*250
		Glenview Ditch	Approximately .20 mile downstream of Highway 161	*247	*248
			Approximately .12 mile upstream of Highway 161	*251	*250
	Maps available for inspection at the Planning Division, 1206 Sycamore, North Little Rock, Arkansas.				
	Send comments to The Honorable Terry C. Hartwick, Mayor of the City of North Little Rock, Arkansas 72114.				
Iowa	City of Des Moines, Polk County	Yeader Creek	At mouth	None	*818
			About 1200 feet downstream of Southwest 9th Street	None	*861
			About 1100 feet downstream of Southwest 9th Street	None	*866
			Just downstream of Southwest 9th Street	None	*868
			Just upstream of Southwest 9th Street	None	*873
			Just downstream of Southwest 18th Street	None	*889
			Just upstream of Southwest 18th Street	None	*895
			800 feet upstream of Southwest 18th Street	None	*897
	Maps available for inspection at the City Hall, East First and Locust Streets, Des Moines, Iowa.				
	Send comments to The Honorable John Pat Dorman, Mayor, City of Des Moines, City Hall, East First and Locust Streets, Des Moines, Iowa 50307				
Louisiana	Lafayette, City, Lafayette Parish	Grand Avenue Coulee	At intersection of Wayside Drive and North Phlo Drive	None	*29
	Maps available for inspection at the Acadian Metrocode, 707 West University, Lafayette, Louisiana.				
	Send comments to The Honorable Dud Lastrapes, Mayor of the City of Lafayette, Lafayette Parish, P.O. Box 4017C, Lafayette, Louisiana 70502				
Louisiana	Lafayette Parish	Grand Avenue Coulee	Approximately 100 feet southeast of intersection of North Domingo Avenue and West Congress Street.	None	*29
	Maps available for inspection at the Acadian Metrocode, 707 West University, Lafayette, Louisiana.				
	Send comments to The Honorable Walter F. Comeaux, Jr., President of Lafayette Parish, P.O. Drawer 4508, Lafayette, Louisiana 70502.				
Louisiana	Patterson, Town, St. Mary Parish	Wax Lake East	Intersection of Lucia Drive and David Street	None	*3
			Intersection of Pietro Drive and Bernard Drive	None	*3
	Maps available for inspection at the Town Hall, 203 Park Street, Patterson, Louisiana.				
	Send comments to The Honorable Fred Allen Mensman, Mayor of the Town of Patterson, St. Mary Parish, Town Hall, 203 Park Street, Patterson, Louisiana 70392.				
Massachusetts	North Reading, Town, Middlesex County.	Martins Brook	Downstream side	*78	*79
			Downstream side of Burroughs Road	*78	*79
	Maps available for inspection at the Town Hall, Park Street, North Reading, Massachusetts.				
	Send comments to The Honorable Ernest P. Doucette, Chairman of the Town of North Reading Board of Selectmen, Middlesex County, Town Hall, Park Street, North Reading, Massachusetts 01864				
Massachusetts	Wilmington, Town, Middlesex County	Martins Brook	Upstream side of Salem Street	*82	*78
			Upstream corporate limits	*82	*79
		Tributary to Martins Brook	At confluence with Martins Brook	None	*78
			Upstream side of Ainsworth Road	None	*83
			Approximately 1,130 feet upstream of Andover Street	None	*84
		Martins Pond	Backwater flooding	None	*80
	Maps available for inspection at the Department of Engineering or Planning Department, Town Hall, 121 Glen Road, Wilmington, Massachusetts 01887.				
	Send comments to The Honorable Reginald S. Stapczynski, Wilmington Town Manager, Middlesex County, 121 Glen Road, Wilmington, Massachusetts 01887.				
Minnesota	Unincorporated Areas of Rice County.	Sakatah Lake	Along entire shoreline	None	*1,004
		Lower Sakatah Lake	Along entire shoreline	None	*1,004
	Maps available for inspection at the Zoning Office, 218 Northwest Third Street, Faribault, Minnesota.				
	Send comments to The Honorable Nancy Hohbach, County Coordinator, Rice County, 218 Northwest Third Street, Faribault, Minnesota 55021.				
Missouri	City of Hayti, Pemiscot County	Main Ditch No. 6	Just downstream of Burlington Northern railroad	*259	*265
			About 300 feet upstream of State Highway 412	*262	*265

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, Hayti, Missouri.					
Send comments to The Honorable O.E. McAdams, Mayor, City of Hayti, City Hall, P.O. Box X, Hayti, Missouri 63851.					
Missouri	City of West Plains, Howell County.	Burton Branch	Just downstream of U.S. Highway 63 Bypass	*1,004	*1,004
		Muston Creek	About 800 feet upstream of Harrison Road	None	*1,022
			About 0.54 mile downstream of U.S. Highway 160	*997	*996
			Just upstream of U.S. Highway 160	None	*1,013
Maps available for inspection at 1910 Holiday Lane, West Plains, Missouri.					
Send comments to The Honorable Jim Hawkins, Mayor, City of West Plains, 1910 Holiday Lane, West Plains, Missouri 65775					
New Jersey	Paramus, Borough, Bergen County.	Saddle River	Approximately 1,750 feet downstream of Linwood Avenue.	*72	*73
			Approximately 1,580 feet downstream of Linwood Avenue	*72	*74
			Approximately 580 feet downstream of Linwood Avenue.	*75	*76
Maps available for inspection at the Township Hall, Jockish Square, Paramus, New Jersey.					
Send comments to The Honorable Joseph Cipollo, Mayor of the Borough of Paramus, Bergen County, Jockish Square, Paramus, New Jersey 07652.					
New York	Newark, Village, Wayne County	Ganargua Creek	At State Route 88	None	*416
			Approximately 150 feet upstrem of CONRAIL	None	*418
Maps available for inspection at the Village Office, 100 East Miller Street, Newark, New York.					
Send comments to The Honorable James E. Priano, Mayor of the Village of Newark, Wayne County, Village Office, 100 East Miller Street, Newark, New York 14513.					
New York	Palmyra, Village, Wayne County	Red Creek West	Entire length affecting community	None	*429
Maps available for inspection at the Village Office, 144 East Main Street, Palmyra, New York.					
Send comments to The Honorable Warner Strong, Mayor of the Village of Palmyra, Wayne County, Village Office, 144 East Main Street, Palmyra, New York 14522.					
South Carolina	Unincorporated Areas of Charleston County.	Atlantic Ocean	At the intersection of Stone Post Road and Wyndham Road.	*13	*12
			At the intersection of Cedar Hill Drive and Honeysuckle Lane	None	*12
			About 100 feet east of the intersection of Stonefield Drive and Creekside Drive	*14	*13
			At the intersection of Welch Road and Sea Aire Drive	*14	*12
			About 500 feet south of the intersection Jeffords Street and Avenue A.	None	*12
			At the intersection of Carol Street and Pawpaw Street	*12	*11
			Just north of the intersection of Furman Drive and Harvard Avenue	*9	*8
			Just north of the intersection of James Bay Road and Old Charleston Road	*12	*11
			Just northeast of County Route 20 and Old Charleston Road.	*11	*10
Maps available for inspection at the County Courthouse, 2 Courthouse Square, Charleston, South Carolina.					
Send comments to The Honorable William Furtwagler, Charleston County Administrator, County Courthouse, 2 Courthouse Square, Charleston, South Carolina 29401.					
Tennessee	City of Franklin, Williamson County.	Spencer Creek	Just downstream of Franklin Road	*631	*631
			Just upstream of Franklin Road	None	*635
			Just downstream of CSX railroad	None	*635
			Just upstream of CSX railroad	None	*641
		Dry Branch	About 1.7 miles upstream of CSX railroad	None	*663
			At mouth	None	*657
			Just downstream of CSX railroad	None	*676
			Just upstream of CSX railroad	None	*684
			Just downstream of Mallory Station Road	None	*692
Maps available for inspection at the Harpetch Square Mall, Franklin, Tennessee.					
Send comments to The Honorable A.J. Bethurum, Mayor, City of Franklin, P.O. Box 305, Franklin, Tennessee 37064.					
Texas	Comal County, Unincorporated Areas.	Guadalupe River (Upper Reach)	Approximately 1,970 feet upstream of U.S. Route 281	*1,013	*1,014
			Approximately 5,090 feet upstream of U.S. Route 281	*1,017	*1,018
Maps available for inspection at the Comal County Courthouse, New Braunfels, Texas.					
Send comments to The Honorable Fred Clark, Comal County Judge, Comal County Courthouse, New Braunfels, Texas 78130.					
Texas	El Paso, City, El Paso County.	Flow Path No. 11	Approximately 1,540 feet upstream of confluence with Flow Path #13	* 3,931	* 3,930
			At confluence of Flow Path No. 54	None	* 3,996
			At State Route 110	None	* 4,110
			Approximately .57 mile upstream of confluence Flow Path No. 11A	None	* 4,524
		Flow Path No. 11A	At confluence with Flow Path No. 11	None	* 4,414
			Approximately .27 mile upstream of confluence with Flow Path No. 11	None	* 4,469
			Approximately .57 mile	None	* 4,526
		Flow path No. 12	At confluence with Flow Path No. 11	None	* 3,943
			Approximately 2.18 miles upstream of confluence with Flow Path No. 11.	None	*4,019

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Flow Path No. 13A	Approximatelfy 600 feet upstream of confluence with Flow Path No. 13.	*3,998	*3,997
			At state Route 110	None	*4,098
			approximatelfy .57 mile upstream of State Route 110	None	*4,173
			Approximately 1.01 miles upstream of State Route 110	None	*4,248
			Approximately 1.33 miles upstream of State Route 110	None	*4,323
			Approximately .53 mile downstream of confluence of Flow Path No. 13B.	None	*4,398
			Approximately 930 feet downstream of confluence with Flow Path No. 13B.	None	*4,473
			At confluence of Flow Path No. 13B	None	*4,527
			Approximately .19 mile upstream of confluence of Flow Path No. 13B.	None	*4,569
		Flow Path No. 13B	At confluence with Flow Path No. 13A	None	*4,527
			Approximately .38 mile upstream of confluence with Flow Path No. 13A.	None	*4,567
		Flow Path No. 49	At confluence with Flow Path No. 13A	None	*4,010
			At confluence of Flow Path No 49a	None	*4,039
			Approximately .37 mile downstream of divergence of Flow Path No. 52.	None	*4,096
			At confluence of Flow Path No. 49B	None	*4,154
			Approximately .43 mile upstream of confluence of Flow Path No. 49B.	None	*4,215
			Approximately .85 mile upstream of confluence of Flow Path No. 49B.	None	*4,275
			Approximately 1.23 miles upstream of confluence of Flow Path No. 49B.	None	*4,340
			Approximately 1.52 miles upstream of confluence of Flow Path No. 49B.	None	*4,400
			Approximately 1.80 miles upstream of confluence of Flow Path No. 49B.	None	*4,460
			Approximately 2.08 miles upstream of confluence of Flow Path No. 49B.	None	*4,521
		Flow Path No. 49A	At confluence of Flow Path No. 49	None	*4,039
			Approximately .75 mile upstream of confluence of Flow Path No. 49.	None	*4,097
		Flow Path No. 49B	At confluence of Flow Path No. 49	None	*4,154
			At confluence of Flow Path No. 49C	None	*4,279
			Approximately .48 mile upstream of confluence of Flow Path No. 49C.	None	*4,354
			Approximately .80 mile upstream of confluence of Flow Path No. 49C.	None	*4,429
			Approximately 1.05 miles upstream of confluence of Flow Path No. 49C.	None	*4,504
			Approximately 1.21 miles upstream of confluence of Flow Path No. 49C.	None	*4,554
			Approximately 1.33 miles upstream of confluence of Flow Path No. 49C.	None	*4,589
		Flow Path No. 49C	At confluence with Flow Path No. 49B	None	*4,279
			Approximately .57 mile upstream of confluence with Flow Path No. 49B.	None	*4,381
			Approximately 1.14 miles upstream of confluence with Flow Path No. 49B.	None	*4,520
		Flow Path No. 50	At confluence with Flow Path No. 13A	None	*4,018
			Approximately .71 mile upstream of confluence with Flow Path No. 13A.	None	*4,089
		Flow Path No. 51	At confluence with Flow Path No. 13A	None	*4,011
			At confluence with Flow Path No. 51A	None	*4,045
			Approximately .57 mile upstream of confluence with Flow Path No. 51A.	None	*4,098
		Flow Path No. 51A	At confluence with Flow Path No. 51	None	*4,045
			Approximately .29 mile upstream of confluence with Flow Path No. 51.	None	*4,072
			Approximately .57 mile upstream of confluence with Flow Path No. 51.	None	*4,099
		Flow Path No. 52	At of confluence with Flow Path No. 13A	None	*4,007
			Approximately .83 mile upstream of confluence with Flow Path No. 13A.	None	*4,060
			At divergence from Flow Path No 49	None	*4,126
		Flow Path No. 53	Approximately .47 mile upstream of confluence with Flow Path No. 13.	None	*3,965
			Approximately 1.99 miles upstream of confluence with Flow Path No. 13.	None	*4,019
		Flow Path No. 54	At confluence with Flow Path No. 11	None	*3,996
			Approximately 2.01 miles upstream of State Route [illegible].	None	*4,123
		Flow Path No. 55	At County boundary	None	*4,023
			Approximately .57 mile upstream of confluence with Flow Path No. 55A.	None	*4,410
		flow Path No. 55A	At confluence with Flow Path No. 55	None	*4,345
			Approximately .76 miles upstream of confluence of Flow Path No. 55	None	*4,448
		Flow Path No. 56	At confluence with Flow Path No. 55	None	*4,026
			At State Route 110	None	*4,108
			Approximately .81 mile upstream of State Route 110	None	*4,199
		Flow Path No. 56A	At confluence with Flow Path No. 56	None	*4,094
			At State Route 110	None	*4,115
			Approximately .76 mile upstream of State Route 110	None	*4,199

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Two Civic Center Plaza, El Paso, Texas					
Send comments to The Honorable Jonathan Rogers, Mayor of the City of El Paso, El Paso County, Two Civic Center Plaza, El Paso, Texas 79999					
Texas	Grand Prairie, City, Dallas, Tarrant, and Ellis Counties.	Fish Creek	Approximately 1.39 miles upstream of Dallas/Tarrant County line	*522	*521
			Approximately 1.92 miles upstream of Dallas/Tarrant County line.	*530	*532
			Approximately .2 mile downstream of State Highway 360.	*535	*537
Maps available for inspection at the Department of Public Works, 317 College Street, Grand Prairie, Texas.					
Send comments to The Honorable Jerry Debo, Mayor of the City of Grand Prairie, Dallas, Tarrant, and Ellis Counties, P.O. Box 530011, Grand Praine, Texas 75053-0011					
Texas	Lufkin, City, Angelina County	Hurricane Creek East Tributary East	Confluence with Hurricane Creek East Tributary East	None	*245
			Approximately 970 feet upstream of confluence with Hurricane Creek East Tributary East.	None	*251
Maps available for inspection at the City Hall, P.O. Box 190, Lufkin, Texas					
Send comments to The Honorable Pitser Garrison, Mayor of the City of Lufkin. Angelina County, P.O. Box 190, Lufkin, Texas 75901					
Texas	Mesquite, City, Dallas County	Stream 2J2	Approximately 480 feet downstream of Brookhaven Drive	*491	*492
			Approximately 370 feet downstream of Hollowbend Drive.	*499	*498
Maps available for inspection at the City Hall, 711 North Galloway, Mesquite, Texas.					
Send comments to The Honorable Brunhilde Nystrom, Mayor of the City of Mesquite, Dallas Country, P.O. Box 137, Mesquite, Texas 75149					
Wisconsin	Village of Hales Corners, Milwaukee County.	Whitnall Parak Creek	About 550 feet upstream of West Forest Home Avenue	*769	*769
			Just upstream of West Janesville Road	*780	*781
			Just downstream of the confluence of Upper Kelly Lake	*811	*809
		Upper Kelly Lake	Entire shoreline	*811	*809
Maps available for inspection at the Village of Hales Corners, 5635 New Berlin Road, Hales Corners, Wisconsin.					
Send comments to The Honorable James C. Hurm, Village Commissioner, Village of Hales Corners, 5635 New Berlin Road, Hales Corners, Wisconsin 53130					
Wisconsin	City of New Berlin, Waukesha County	Upper Kelly Lake Tributary	Just upstream of the confluence of Upper Kelly Lake	*808	*809
			Just downstream of St. Mary's Drive	*809	*809
		Upper Kelly Lake	Entire shoreline	*808	*809
Maps available for inspection at the New Berlin Planning Department, 3805 South Casper Drive, New Berlin, Wisconsin					
Send comments to The Honorable Timothy K. Tully, Mayor, City of New Berlin, 3805 South Casper Drive, New Berlin, Wisconsin 53151					

Issued: October 1, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-23536 Filed 10-9-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6917]

Proposed Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001 through 4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Chambers County (unincorporated areas)	
Chattahoochee River:	
About 4.2 miles downstream of Riverview Dam	*527
Just downstream of Langdale Dam	*552
Just upstream of Langdale Dam	*558
About 2000 feet downstream of West Point Dam	*580
Osanippa Creek	
About 800 feet downstream of U.S. Highway 29	*577
About 1,500 feet downstream of Interstate 85	*596
Tributary No. 2:	
At mouth	*579
About 1.2 miles upstream of County Road 55	*597
Moores Creek	
About 600 feet downstream of State Highway 29	*552
Just upstream of Fob James Boulevard	*556
Ginnie Creek	
At mouth	*553
About 500 feet upstream of Fob James Boulevard	*587
Maps available for inspection at the County Commissoner's Office, Valley, Alabama.	
Send comments to The Honorable Doss Leak, Chairman, County Commission, Chambers County, P.O. Box 315, Valley, Alabama 36854	
Lanett (City), Chambers County	
Chattahoochee River	
About 1.6 miles downstream of U.S. Highway 29	*571
About 1,100 feet upstream of U.S. Highway 29	*575
Maps available for inspection at the City Hall, Lanett, Alabama. Send comments to The Honorable Mac Langley, Mayor, City of Lanett, City Hall, P.O. Box 290, Lanett, Alabama 36863	
ARKANSAS	
Lepanto (city), Poinsett County	
Left Hand Chute of Little River:	
Approximately 1.1 miles downstream of most downstream crossing of State Route 140	*220
Approximately .61 mile upstream of Old State Route 140	*223
Maps available for inspection at 117 South Greenwood, Lepanto, Arkansas	
Send comments to The Honorable James A Neal, Mayor of the City of Lepanto, Poinsett County, P.O. Drawer D, Lepanto, Arkansas 72354	
CALIFORNIA	
Encinitas (city), San Diego County	
Pacific Ocean	
Approximately 200 feet west of Tattenham Street	*15
Approximately 260 feet west of intersection of Neptune Avenue and Jason Street	*9
Approximately 300 feet west of intersection of Neptune Avenue and Europa Street	*10
Approximately 330 feet west of intersection of Neptune Avenue and Athena Street	*13
Approximately 600 feet west of intersection of La Mesa Avenue and Orpheus Avenue	*12
Approximately 325 feet west of intersection of Neptune Avenue and La Mesa Avenue	*11
Approximately 300 feet west of intersection of 5th Street and 'A' Street	*10
Approximately 150 feet west of intersection of 5th Street and 'B' Street	* 8
Approximately 350 feet west of intersection of 4th Street and 'D' Street	*10
Approximately 330 feet west of intersection of 4th Street and 'E' Street	*11
Approximately 250 feet west of intersection of 4th Street and 'G' Street	*12
Approximately 450 feet west of intersection of 3rd Street and 'J' Street	*11
Approximately 650 feet west of intersection of Ist Street and 2nd Street	*10
Approximately 1,100 feet west of intersection of Summit Avenue and Westminster Drive	*9
Approximately 750 feet west of intersection of Hayden Drive and Montgomery Avenue	*10
Approximately 700 feet west of intersection of San Elijo Avenue and Birmingham Drive	*11
Approximately 500 feet west of intersection of Camino Del Mar and Chesterfield Drive	*10
Approximately 200 feet west of intersection of San Elijo Avenue and Kilkenny Drive	* 7
At southern corporate limits	*13
Escondido Creek.	
Approximately 1,650 feet south of intersection of Manchester Avenue and El Camino Real	*13
Approximately 50 feet upstream of Encinitas Boulevard	*33
At El Camino Del Norte	*54
Approximately 300 feet north of intersection of Via De Caballo and Val Sereno Drive	*65
San Elijo Creek:	
At confluence with San Elijo Lagoon	*13
Approximately 1,100 feet above confluence with San Elijo Lagoon	*16
Maps are available for review at City Hall, 535 Encinitas Avenue, Encinitas, California.	
Send comments to Mayor Marjorie Gaines, City Hall, 535 Encinitas Avenue, Suite 100, Encinitas, California 92024	
Solana Beach (city), San Diego County	
Pacific Ocean	
Approximately 650 feet west of and then south of the intersection of Sierra Avenue and Del Mar Shores Terrace	*12
Approximately 700 feet west of the intersection of Sierra Avenue and Palm Drive	*13
Approximately 500 feet west of the intersection of Sierra Avenue and Linda-Mar Drive	*12
Approximately 450 feet west of the intersection of Sierra Avenue and Plaza Street	*10
Approximately 300 feet west of the southern intersection of Heux Avenue and Hill Street	*12
Approximately 500 feet west of the intersections of Clark Street, Hill Street and Sierra Avenue	*14
Approximately 300 feet west of the intersection with Solana Vista Drive and Pacific Avenue	*13
San Dieguito River:	
Between Del Mar Downs Road and Valley Avenue	*17
Maps are available for review at the City Manager's Office, City Hall, 380 Stevens Avenue, Solana Beach, California	
Send comments to Mayor Margaret Schlesinger, City Hall, 380 Stevens Avenue, Suite 120, Solana Beach, California 92075	
Trinity County (unincorporated areas)	
Trinity River:	
Approximately 2,250 feet downstream of confluence with Canyon Creek	*1,450
Approximately 1,450 feet downstream of confluence with Feltzer Gulch	*1,475
Approximately 1,300 feet downstream of confluence with Carr Creek	*1,520
Approximately 300 feet downstream of confluence with Browns Creek	*1,545
Approximately 230 feet downstream of State Highway 299	*1,625
Approximately 820 feet downstream of confluence with McIntyre Gulch	*1,655
Approximately 150 feet downstream of confluence with Snipe Gulch	*1,741
Approximately 400 feet downstream of confluence with Rush Creek	*1,780
Approximately 420 feet downstream of Trinity Dam Boulevard	*1,812
Maps are available for review at the Trinity County Planning Department, 303 Trinity Lakes Boulevard, Weaverville, California	
Send comments to Mr. Dean Meyer, Chairman, Trinity County Board of Supervisors, P.O. Box AY, Weaverville, California 96093	
CONNECTICUT	
Washington (town), Litchfield County	
Bantam River:	
At confluence with Shepaug River	*625
At upstream corporate limits	*714
East Aspetuck River:	
At downstream corporate limits	*487
Approximately .3 mile downstream of State Route 25	*556
Downstream side of Church Street	*640
Approximately .4 mile upstream of Shore Road	*697
Shepaug River:	
At downstream corporate limits	*373
Downstream side of West Church Hill Road	*445
At State Route 47	*519
Approximately 1.1 miles downstream of Romford Road	*590
Approximately .7 mile upstream of Romford Road	*660
At upstream corporate limits	*732
Maps available for inspection at the Town Clerk's Vault, Washington Depot, Connecticut 06794	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Send comments to The Honorable John A Marsh, First Selectman of the Town of Washington, Litchfield County, Bryan Town Hall, Washington Depot, Connecticut 06794	
GEORGIA	
Canton (city), Cherokee County	
Canton Creek.	
At mouth	*873
About 0.9 mile upstream of CSX railroad	*886
Etowah River	
About 1,000 feet downstream of confluence of Puckett Creek	*869
Just upstream of Interstate 575	*879
Maps available for inspection at the City Manager's Office, City Hall, 190 West Main Street, Canton, Georgia	
Send comments to The Honorable Walton Davis, Mayor, City of Canton, P.O. Box 468, 190 West Main Street, Canton, Georgia 30114	
Cherokee County (unincorporated areas)	
Rubes Creek:	
At mouth	*861
About 1.0 mile upstream of State Route 92	*898
Noonday Creek:	
At mouth	*861
About 500 feet downstream of confluence of Tate Creek	*894
Little River:	
Just downstream of Interstate 575	*861
About 1.15 miles upstream of confluence of Rocky Creek	*891
Tributary L:	
At mouth	*880
Just downstream of State Route 92	*925
Just downstream of State Route 92	*932
About 3,000 feet upstream of State Route 92	*955
Rocky Creek	
At mouth	*884
About 3,250 feet upstream of Cox Road	*901
Tributary M	
At mouth	*861
Just downstream of Blalock Road	*913
About 400 feet upstream of Blalock Road	*918
Avery Creek	
At mouth	*890
Just downstream of Hickory Drive	*911
Just upstream of Hickory Drive	*917
Just downstream of SCS Dam No. 1	*916
Just upstream of SCS Dam No. 1	*941
Just downstream of SCS Dam No. 2	*942
Mill Creek	
At mouth	*861
About 1,100 feet upstream of State Route 140	*930
Owl Creek	
About 1.15 miles downstream of Kellogg Creek Road	*861
Just downstream of Victory Drive	*938
Just upstream of Victory Drive	*943
About 0.80 mile upstream of Victory Drive	*1,001
Kellogg Drive:	
At mouth	*861
About 2,300 feet upstream of Victory Drive	*985
Clark Creek	
About 1,450 feet downstream of State Route 92	*861
Just downstream of Interstate 75	*903
Just upstream of Interstate 75	*908
Just downstream of Dunnwood Drive	*954
Just upstream of Dunnwood Drive	*959
About 2,350 feet upstream of Dunnwood Drive	*978
Tate Creek	
About 450 feet upstream of mouth	*894
About 500 feet downstream of SCS Dam 17	*907
Just upstream of SCS Dam 17	*940
About 0.95 mile upstream of SCS Dam 17	*941
Toonigh Creek.	
At mouth	*861
About 1,100 feet downstream of Transart Parkway	*866
Just downstream of Sixes Road	*903
Just upstream of Sixes Road	*908

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Just downstream of Palm Road	*946
Just upstream of Palm Road	*954
Just downstream of Hickory Road	*1,041
Just upstream of Hickory Road	*1,048
About 1,600 feet upstream of Hickory Road	*1,061
Etowah River	
About 4,500 feet downstream of State Road 20	*861
About 7.6 miles upstream of CSX railroad	*901
Maps available for inspection at the Cherokee County Planning Commission, 140 North Street, Canton, Georgia	
Send comments to The Honorable Gene Hobgood, County Commissioner, Cherokee County, Cherokee County Courthouse, 100 North Street, Canton, Georgia 30114.	
Woodstock (city), Cherokee County	
Rubes Creek	
About 1,200 feet upstream of Arnold Mill Road	*872
Just downstream of State Route 92	*887
Noonday Creek:	
Just downstream of Interstate 575	*887
At county boundary	*894
Little River	
Just upstream of Interstate 575	*861
About 1,500 feet downstream of Trickum Road	*870
Maps available for inspection at the City Hall, 103 Church Street, Woodstock, Georgia.	
Send comments to The Honorable Evelyn Chambers, Mayor, City of Woodstock, P.O. Box 307, Woodstock, Georgia 30188	
IOWA	
Hills (city), Johnson County	
Iowa River	
About 1,500 feet downstream of Main Street bridge over Iowa River	*628
About 2.8 miles upstream of Main Street bridge over Iowa River	*634
Old Mans Bypass:	
At mouth at Iowa River	*631
About 5,550 feet upstream of mouth	*635
Maps available for inspection at the City Hall, Hills, Iowa	
Send comments to The Honorable Larry Culver, Mayor, City of Hills, City Hall, Box 345, Hills, Iowa 52235	
Oelwein (city), Fayette County	
Otter Creek	
About 1,300 feet downstream of 10th Street Southwest	*1,004
About 450 feet upstream of Charles Street West	*1,019
Dry Run Creek	
About 450 feet downstream of 6th Avenue Southwest	*1,014
Just downstream of East Line Road	*1,071
North Branch Dry Run Creek.	
At mouth	*1,070
Just downstream of East Line Road	*1,073
Maps available for inspection at the City Hall, 20 Second Avenue, SE., Oelwein, Iowa	
Send comments to The Honorable Beth McFarlane, Mayor, City of Oelwein, City Hall, 20 Second Avenue, SE., Oelwein, Iowa 50662.	
LOUISIANA	
Abita Springs (town), St. Tammany Parish	
Abita River	
At downstream corporate limits	*23
Upstream side of State Route 36	*29
At upstream corporate limits	*33
Long Branch	
At confluence of Abita River	*29
At upstream corporate limits	*30
Long Branch Tributary	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Long Branch	*30
At upstream side of Allen Road	*36
Approximately 0.1 mile upstream of Allen Road	*37
LA 36 South Tributary	
At confluence with Abita River	*24
At upstream side of Illinois Central Gulf Railroad	*26
Approximately 0.2 mile upstream of Herbert Road	*32
LA 36 North Tributary	
At confluence with LA 36 South Tributary	*24
At upstream side of Laurel Street	*25
Approximately 0.6 mile upstream of Gum Street	*30
Southwind Branch	
Approximately 0.4 mile upstream from confluence with Abita River	*21
Approximately 0.6 mile upstream from confluence with Abita River	*22
Upstream side of State Route 59	*27
Upstream side of Illinois Central Gulf Railroad	*30
Maps available for inspection at the Town Hall, Level Street, Abita Springs, Louisiana	
Send comments to The Honorable Lynn D. Bridges, Mayor of the Town of Abita Springs, St. Tammany Parish, P.O. Box 461, Abita Springs, Louisiana 70420	
Jefferson Davis Parish (unincorporated areas)	
Keystone Ditch	
1.6 miles upstream of confluence with Mermentau River	*7
Downstream of State Route 380	*11
West Bayou Grand Marais	
Downstream side of Parish Road	*18
At confluence with West Bayou Grand Marais Tributary No 2	*25
West Bayou Grand Marais Tributary No 1 Approximately 1 mile upstream of confluence with West Bayou Grand Marais	*18
West Bayou Grand Marais Tributary No. 2 Approximately 1.5 miles upstream of confluence with West Bayou Grand Marais	*25
Keystone Ditch Tributary Approximately 1.1 miles upstream of confluence with Keystone Ditch	*9
Mermentau River Tributary	
Approximately 95 mile upstream of confluence with Mermentau River	*7
Approximately 1.4 miles upstream of confluence with Mermentau River	*9
Mermentau River	
800 feet upstream of confluence of Keystone Ditch	*9
Approximately 3 7 miles upstream of New U S Route 90	*15
Bayou Lacassine.	
At State Route 14	*6
At Lorrain Road	*8
Unnamed Tributary to Bayou Blue	
At confluence with Bayou Blue	*39
Upstream to Parish boundary	*46
East Bayou Lacassine Approximately .36 mile downstream of Parish boundary	*17
Lateral L-1C At the Southern Pacific Railroad	*18
East Grand Marais Bayou Ditch	
Approximately 0.5 mile downstream of Parish boundary	*13
Approximately 1.6 miles upstream of Parish boundary	*15
Northeast Outfall Ditch: Approximately 0.35 mile upstream of Parish boundary	*17
Gulf of Mexico	
Tidal flooding east of Bell City Drainage Ditch	*5
Tidal flooding affecting entire shoreline of Lake Arthur	*6
Maps available for inspection at the Parish Courthouse, 426 Davis Street, Jennings, Louisiana	
Send comments to The Honorable Raymond Woodel, President of the Jefferson Davis Parish Police Jury, P.O Box 1409, Jennings, Louisiana 70546	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Mansfield (city), DeSoto Parish	
Bayou San Patricio	
At approximately 500 feet upstream of southeast corporate limits	*304
At approximately 300 feet downstream of Jacobs Street	*313
Approximately .4 mile upstream of Johnson Street	*324
Maps available for inspection at the City Hall, 705 Polk, Mansfield, Louisiana.	
Send comments to The Honorable Harold Cornett, Mayor of the City of Mansfield DeSoto Parish, P.O. Box 773, Mansfield, Louisiana 71052	
Many (town), Sabine Parish	
San Jose Creek Tributary	
At downstream corporate limits	*234
Upstream side of Georgia Avenue	*240
Upstream side of Springbrook Avenue	*247
Approximately 950 feet upstream of Springbrook Avenue	*252
Maps available for inspection at the City Hall, 955 A San Antonio, Many, Louisiana.	
Send comments to The Honorable Michael Tarver, Mayor of the Town of Many, Sabine Parish, City Hall, P.O. Box 1330, Many, Louisiana 71449	
Webster Parish	
Bayou Dorcheat.	
USGS Gaging Station 07349000 at Access Road	*159
At landing field	*160
Approximately .8 miles above landing field	*162
Maps available for inspection at the Parish Court, 410 Main Street, Room 302, Minden, Louisiana	
Send comments to The Honorable William Robertson, President of the Webster Parish Police Jury, P.O. Box 389, Minden, Louisiana 71058-0389	
MAINE	
Anson (town), Somerset County	
Kennebec River:	
Downstream corporate limits	*196
Upstream side of Maine Central Railroad	*257
Upstream corporate limits	*272
Carrabassett River	
Confluence with Kennebec river	*267
At Maine Central Railroad	*308
Upstream corporate limits	*344
Getchell Brook	
Confluence with Kennebec River	*255
Approximately 2,885 feet upstream of Bridge Street	*282
Maps available for inspection at the Town Clerk's Office, Anson, Maine	
Send comments to The Honorable Robert Garland, First Selectman of the Town of Anson, Somerset County, Town Hall, Anson, Maine 04911	
Norridgewock (town), Somerset County	
Kennebec River	
Downstream corporate limits	*165
Upstream side of Bridge Street	*171
Confluence of Bombazee Brook	*179
Upstream corporate limits	*184
Sandy River	
Confluence with Kennebec River	*183
Approximately 40 feet downstream of Sandy River Dam	*187
Approximately 1.11 miles upstream of Sandy River Dam	*192
Upstream corporate limits	*197

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Mill Stream:	
Confluence with Kennebec River	*170
Upstream of West Branch Station Dam	*189
Approximately 1.20 miles upstream of State Route 8	*193
Maps available for inspection at the Town Clerk's Vault, Norridgewock, Maine.	
Send comments to The Honorable Harry Norton, Chairman of the Board of Selectmen of the Town of Norridgewock, Somerset County, Town Office, P.O. Box 7, Norridgewock, Maine 04957.	
West Paris (town), Oxford County	
Little Androscoggin River:	
At downstream corporate limits	*387
At confluence of Moose Pond Brook	*460
At upstream corporate limits	*489
Maps available for inspection at the Town Vault, West Paris, Maine	
Send comments to The Honorable Gordon Doughty, Chairman of the Board of Selectmen of the Town of West Paris, Oxford County, P.O Box 247, Town Office, West Paris, Maine 04789	
MICHIGAN	
Castleton (township), Barry County	
Thornapple River:	
About 3,800 feet downstream of confluence of High Bank Creek	*803
About 1.63 miles upstream of Greggs Crossing Road	*813
Maps available for inspection at the Township Supervisor's Home, 512 North Main, Nashville, Michigan	
Send comments to The Honorable Justin W. Cooley, Supervisor, Township of Castleton, Township Hall, 98 South Main, Nashville, Michigan 49073	
MISSOURI	
Andrew County (unincorporated areas)	
Missouri River:	
At downstream corporate limits	*821
At confluence of Nodaway River	*832
At upstream corporate limits	*834
Maps available for inspection at the County Clerk's Office, Andrew County Courthouse, Savannah, Missouri.	
Send comments to The Honorable Donald L Philipe, Presiding Commissioner of Andrew County, Andrew County Courthouse, P.O. Box 206, Savannah, Missouri 64485	
Arbyrd (city), Dunklin County	
Ponding Area. Entire community	*248
Maps available for inspection at the City Hall, Douglas Street, Arbyrd, Missouri	
Send comments to The Honorable Rufus Brown, Mayor of the City of Arbyrd, Dunklin County, Arbyrd, Missouri 63821	
Bolivar (city), Polk County	
Town Branch.	
About 600 feet downstream of East Broadway Street	*981
Just downstream of East Broadway Street	*986
Just upstream of East Broadway Street	*991
Just downstream of South Springfield Avenue	*1,026
Just upstream of South Springfield Avenue	*1,031
Just downstream of South Clark Avenue	*1,038
Just upstream of South Clark Avenue	*1,044
About 1,250 feet upstream of Burlington Northern Railroad	*1,070
South Tributary	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
About 0.5 mile downstream of South Springfield Avenue	*1,024
Just downstream of South Springfield Avenue	*1,048
Maps available for inspection at the City Hall, 116 East Jefferson Street, Bolivar, Missouri.	
Send comments to The Honorable Joe L. Lemon, Mayor, City of Bolivar, 117 South Market, Bolivar, Missouri 65613.	
Clinton (city), Henry County	
Town Creek:	
Downstream corporate limits	*741
Upstream corporate limits	*753
Left Bank Tributary to Town Creek:	
At confluence with Town Creek	*751
Approximately 840 feet upstream of Antioch Road	*758
Coal Creek:	
At downstream corporate limits	*741
At upstream side of Franklin Street	*750
At Sedelia Street	*767
Maps available for inspection at the City Hall, 105 E. Ohio Street, Clinton, Missouri.	
Send comments to The Honorable Edwin J. Denman, Mayor of the City of Clinton, Henry County, City Hall, 105 E. Ohio Street, Clinton, Missouri 64735.	
Keytesville (city), Chariton County	
Missouri River: Within community	*641
Maps available for inspection at the City Hall, 404 West Bridge Street, Keytesville, Missouri.	
Send comments to The Honorable Donald G. Staples, Mayor, City of Keytesville, City Hall, 404 West Bridge Street, Keytesville, Missouri 65261	
Malden (city), Dunklin County	
Ditch No. 1: At Broadwater Road	*283
Ditch No. 14: Approximately 1,250 feet west of the intersection of Broadwater Road and Charlotte Street	*287
Ditch No. 1, Tributary A:	
At downstream corporate limits	*288
Approximately 0.9 mile upstream of State Route 25	*291
Ditch No. 1, Tributary B:	
At St. Louis and Southwestern Railroad	*290
Approximately 0.6 mile upstream of State Route 25	*292
Maps available for inspection at the City Clerk's Office, City Hall, 115 E. Main Street, Malden, Missouri.	
Send comments to The Honorable Philip A. Santie, Mayor of the City of Malden, Dunklin County, City Hall, 115 E. Main Street, Malden, Missouri 63863-2298.	
Milan (city), Sullivan County	
East Locust Creek	
About 3,800 feet downstream of State Highway C	*825
About 3,800 feet upstream of Third Street	*834
Maps available for inspection at the City Hall, 201 North Market, Milan, Missouri.	
Send comments to The Honorable G.E. Maulsby, Mayor, City of Milan, 712 South Market, Milan, Missouri 63556	
NEBRASKA	
Randolph (city), Cedar County	
Middle Logan Creek:	
Approximately .21 mile downstream of most downstream County Road	*1,628
Approximately 1,440 feet upstream of Douglas Street	*1,663

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately .21 mile downstream of U.S. Route 20	*1,695
North Branch Middle Logan Creek:	
Confluence with Middle Logan Creek	*1,631
Approximately 0.7 mile upstream of Sholes Road	*1,664
North Branch Middle Logan Creek Diversion:	
Confluence with East Tributary North Branch Middle Logan Creek	*1,644
Divergence from North Branch Middle Logan Creek	*1,653
East Tributary North Branch Middle Logan Creek:	
Confluence with North Branch Middle Logan Creek	*1,643
Approximately 190 feet upstream of Bridge Street	*1,659
South Branch Middle Logan Creek:	
Confluence with Middle Logan Creek	*1,650
Approximately 0.4 mile upstream of corporate limits and Bridge Street	*1,665
West Tributary South Branch Middle Logan Creek:	
Confluence with South Branch Middle Logan Creek	*1,658
Approximately 0.65 mile upstream of corporate limits	*1,678
Maps available for inspection at the City Hall, Randolph, Nebraska	
Send comments to The Honorable Wendell Eddie, Mayor of the City of Randolph, Cedar County, City Hall, Box 348, Randolph, Nebraska 68771.	
NEW MEXICO	
Silver City (town), Grant County	
San Vicente Arroyo:	
Approximately 0.5 mile upstream of confluence of Maude's Creek	*5,620
Approximately 100 feet upstream of Broken Arrow Drive	*5,664
Approximately 0.5 mile downstream of downstream corporate limits	*5,736
At downstream corporate limits	*5,759
At State Route 90	*5,833
At confluence of Silva Creek & Pinos Altos Creek	*5,894
Pinos Altos Creek:	
At confluence with San Vicente Arroyo	*5,894
At Pine Street	*5,986
Approximately 1,280 feet upstream of 32nd Street	*6,048
Tributary 7 to Pinos Altos Creek:	
At confluence with Pinos Altos Creek	*5,952
Downstream side of Kimberly Road	*5,988
Silva Creek	
At confluence with San Vicente Arroyo	*5,894
At upstream corporate limits	*5,940
Approximately 1.3 miles upstream of upstream corporate limits	*5,990
Maude's Creek	
Approximately 1.6 miles upstream of confluence with San Vicente Arroyo	*5,695
Approximately 2.9 miles upstream of confluence with San Vicente Arroyo	*5,770
At confluence of Tributary 1 to Maude's Creek	*5,855
Approximately 0.7 mile downstream of corporate limits	*5,927
At corporate limits	*5,996
Approximately 765 feet upstream of U.S. Route 180	*6,015
Tributary 1 to Maude's Creek:	
At confluence with Maude's Creek	*5,855
Downstream side of Pinon Lane	*5,910
At downstream corporate limits	*6,007
Approximately 980 feet upstream of corporate limits	*6,044
Tributary 2 to Maude's Creek:	
Approximately 4.5 miles upstream of confluence with Maude's Creek	*5,958
At most downstream corporate limit	*5,981
Approximately 600 feet upstream of U.S. Route 180	*6,044
Maps available for inspection at the City Hall, 101 West Broadway, Silver City, New Mexico	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Dan Dunagan, Mayor of the Town of Silver City, Grant County, P.O. Box 262, Silver City, New Mexico 88062.	
NEW YORK	
Ticonderoga (town), Essex County	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Ticonderoga Town Office, Town Clerk's Office, Ticonderoga, New York.	
Send comments to The Honorable Adolph Diskin, Supervisor of the Town of Ticonderoga, Essex County, Civic Center, Box 226, Ticonderoga, New York 12883.	
NORTH DAKOTA	
Hamilton (city), Pembina County	
Tongue River Tributary:	
Area approximately surrounded by Cavalier Avenue, 8th Street, Burlington Northern Railroad, and 4th Street	*823
Several ponding areas approximately surrounded by Hudson Avenue, 4th Street, Page Avenue, and 2nd Street	*824
Area located just south of North Street, east of Western Avenue and north of 2nd Street	*824
Southeast of the intersection of Page Avenue, and 2nd Street	*824
Near southwest corner of the intersection of Hudson Avenue and 3rd Street	*825
Along eastern side of Burlington Northern Railroad within the corporate limits of Hamilton	#1
Just west of the Burlington Northern Railroad and north of 4th Street	#1
Maps are available for review at the home of the City Auditor, Ms. Gloria Bnese, Hamilton, North Dakota 58238.	
Send comments to Mayor Lester Nelson, P.O. Box 186, Hamilton, North Dakota 58238.	
OHIO	
Jewett (village), Harrison County	
Conotton Creek.	
About 2,450 feet downstream of Center Street	*1,004
About 2,950 feet upstream of Cadiz Street	*1,014
Conotton Creek Overflow Channel	
About 2,450 feet downstream of Center Street	*1,004
At confluence with Conotton Creek	*1,012
Maps available for inspection at the Mayor's Home, Jewett, Ohio	
Send comments to The Honorable Eileen Coffy, Mayor, Village of Jewett, Box 122, Jewett, Ohio 43986.	
OKLAHOMA	
Watonga (city), Blaine County	
North Canadian River Tributary:	
At State Routes 3 and 33, U.S. Routes 270 and 281	*1,492
Approximately .3 mile upstream of upstream corporate limits	*1,535
Maps available for inspection at the City Hall, 119 N. Weigle, Watonga, Oklahoma 73772.	
Send comments to The Honorable R. B. Chapman, Mayor of the City of Watonga, Blaine County, P.O. Box 564, Watonga, Oklahoma 73772.	
PENNSYLVANIA	
Berlin (township), Wayne County	
Delaware River	
At downstream corporate limits	*694
At upstream corporate limits	*697
Indian Orchard Brook	
At downstream corporate limits	*981

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of downstream crossing of Camp Navajo Road	*1,011
Upstream side of upstream crossing of Camp Navajo Road	*1,051
Maps available for inspection at the Township Secretary's Home, Vera E. Shields, R.D. 4, Box 885, Honesdale, Pennsylvania 18431	
Send comments to The Honorable Ray T. Branning, Sr., Chairman of the Township of Berlin Board of Supervisors, Wayne County, R.D. 1, Beach Lake, Pennsylvania 18405	
PENNSYLVANIA	
Bethel (township), Armstrong County	
Allegheny River.	
At downstream corporate limits	*780
At upstream corporate limits	*787
Crooked Creek	
Upstream side of CONRAIL bridge	*787
Approximately 1,600 feet upstream of State Route 66	*798
Maps available for inspection at the Township Building, Vandergrift, Pennsylvania	
Send comments to The Honorable James Riederer, Chairman of the Board of Supervisors of the Township of Bethel, Armstrong County, R.D #2, Box 313, Vandergrift, Pennsylvania 15690	
Dunbar (township), Fayette County	
Youghiogheny River:	
Downstream corporate limits	[illegible]
Approximately 2.75 miles upstream of State Route 711	*908
Maps available for inspection at the Municipal Building, Bell Drive, Dunbar, Pennsylvania.	
Send comments to The Honorable Frank Fabien, Chairman of the Township of Dunbar Board of Supervisors, Fayette County, P.O. Box 32, Dunbar, Pennsylvania 15431.	
Germany (township), Adams County	
Piney Creek	
Approximately 3,000 feet upstream of Mill Road	*560
Approximately 1,650 feet downstream of State Route 97	*570
At State Route 97	*578
Maps available for inspection at the residence of the Township Secretary, David Krebs, 121 Littlestown, Littlestown, Pennsylvania.	
Send comments to The Honorable Fred S. Gernck, Chairman of the Board of Supervisors for the Township of Germany, Adams County, 990 Gettysburg Road, Littlestown, Pennsylvania 17340.	
Hamiltonban (township), Adams County	
Little Marsh Creek	
At downstream corporate limits	*644
Approximately 750 feet downstream side of T-315	*675
Approximately 850 feet upstream side of T-315	*703
Toms Creek	
At downstream corporate limits	*590
Approximately 525 feet of upstream corporate limits	*631
Maps available for inspection at the Residence of the Township Secretary, Phils Beeche, P.O. Box 494, Fairfield, Pennsylvania	
Send comments to The Honorable Steve Jacobs, Chairman of the Board of Supervisors of the Township of Hamiltonban, Adams County, 3600 Bull Frog Road, Fairfield, Pennsylvania 17320	
Highland (township), Adams County	
Marsh Creek	
At downstream corporate limits	*476
200 feet upstream of upstream corporate limits	*522

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the residence of the Township Secretary, Laura Neibert, 2840 Fairfield Road, Gettysburg, Pennsylvania.	
Send comments to The Honorable Carl Keller, Chairman of the Board of Supervisors of the Township of Highland, Adams County, 535 Knoxlyn Orrtanna Road, Gettysburg, Pennsylvania 17325	
Liberty (township), Adams County	
Toms Creek	
At downstream corporate limits	*444
At upstream corporate limits	*475
Friends Creek	
Approximately 1,000 feet upstream of Ranch Trail	*476
Approximately 2,150 feet upstream side of Ranch Trail	*491
Middle Creek	
At downstream corporate limits	*488
Approximately 600 feet upstream of TR-318	*509
Unnamed Tributary to Middle Creek	
Confluence with Middle Creek	*509
Approximately 2,500 feet upstream side of LR 01072	*522
Maps available for inspection at the Chairman's Residence, 125 Brent Road, Fairfield, Pennsylvania.	
Send comments to The Honorable William Brent, Chairman of the Board of Supervisors of the Township of Liberty, Adams County, 125 Brent Road, Fairfield, Pennsylvania 17320	
Menallen (township), Adams County	
Opossum Creek	
Approximately .4 mile downstream of Aspers-Bendersville Road	*598
Approximately .4 mile upstream of State Route 34	*644
Unnamed Tributary to Opossum Creek:	
Confluence with Opossum Creek	*619
At L.R. 01006	*644
Maps available for inspection at the Township Building, Aspers, Pennsylvania.	
Send comments to The Honorable Donald Black, Chairman of the Board of Supervisors of the Township of Menallen, Adams County, Township Building, 170 Memory Lane, Aspers, Pennsylvania 17304	
Mount Joy (township), Adams County	
White Run:	
Approximately .70 mile downstream of State Route 97 Bridge	*415
Approximately 950 feet downstream of State Route 97 Bridge	*423
Approximately 100 feet downstream of State Route 97 Bridge	*428
Upstream side of State Route 97 Bridge	*431
Approximately 0.41 mile upstream of State Route 97 Bridge	*436
Plum Run	
At confluence with White Run	*431
Approximately 0.21 mile upstream of confluence with White Run	*432
Rock Creek	
Upstream side of U.S. Route 15 Bridge	*422
Approximately 0.47 mile upstream of U.S. Route 15 Bridge	*427
Downstream side of State Route 97 Bridge	*432
Approximately 0.17 mile upstream of State Route 97 Bridge	*433
Approximately 0.27 mile upstream of State Route 97 Bridge	*443
Approximately 0.44 mile upstream of State Route 97 Bridge	*456
Approximately 0.6 mile upstream of State Route 97 Bridge	*459
At upstream corporate limits	*461

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Township Building, 902 Hoffman Home Road, Gettysburg, Pennsylvania.	
Send comments to The Honorable Harry Hillbert, Chairman of the Board of Supervisors, for the Township of Mount Joy, Adams County, 150 Hickory Road, Littlestown, Pennsylvania 17340	
Point Marion (borough), Fayette County	
Monongahela River: For entire length affecting community	*808
Cheat River:	
Approximately 600 feet downstream of U.S. Route 119	*808
Approximately 0.6 mile upstream from U.S. Route 119	*809
Maps available for inspection at the Borough Building, 426 Morgantown Street, Point Marion, Pennsylvania.	
Send comments to The Honorable Louis E. Rudolph, Mayor of the Borough of Point Marion, Fayette County, 15 East Street, Point Marion, Pennsylvania 15474.	
Snake Spring (township), Bedford County	
Raystown Branch Juniata River:	
Approximately .35 mile downstream from Lutzville Road	*1,031
Approximately .5 mile upstream from Pennsylvania Turnpike	*1,052
Snake Spring Valley Run:	
Approximately 85 feet downstream from U.S. Route 30	*1,021
Approximately .23 mile upstream from third upstream crossing of State Route 286	*1,070
Approximately .24 mile upstream from T-489	*1,126
Maps available for inspection at the Township Building, R.D. 1, Everett, Pennsylvania.	
Send comments to The Honorable Dawayne Diehl, Chairman of the Board of Supervisors of the Township of Snake Spring, Bedford County, R.D. 1, Box 440, Everett, Pennsylvania 15537.	
TENNESSEE	
Huntingdon (town), Carroll County	
Beaver Creek	
About 1,900 feet downstream of West Main Street	*375
At confluence of Poison Branch	*381
Sner Creek:	
At mouth	*381
About 1,550 feet upstream of State Route 22 Bypass	*383
Lateral No. 1:	
At mouth	*381
Just downstream of Northwood Drive	*394
Lateral No. 2:	
At mouth	*382
Just downstream of Northwood Drive	*392
Poison Branch:	
About 1,200 feet downstream of Buena Drive	*387
Just downstream of Buena Drive	*390
Unnamed Creek	
At mouth	*378
About 120 feet upstream of Hawkins Lane	*405
Maps available for inspection at the City Hall, Huntingdon, Tennessee.	
Send comments to The Honorable Jessie Pinckley, Mayor, Town of Huntingdon, City Hall, P.O. Box 666, Huntingdon, Tennessee 38344	
Pikeville (city), Bledsoe County	
Sequatchie River:	
About 3,800 feet downstream of State Route 30	*819
About 3,600 feet upstream of State Route 30	*825
Tributary No. 1:	
Just upstream of William Howard Taft Highway	*810
Just downstream of Alvin York Highway	*813
Tributary No. 2:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 850 feet downstream of William Howard Taft Highway	*829
About 1,925 feet upstream of Rockford Road	*888
Tributary No. 3:	
About 800 feet downstream of William Howard Taft Highway	*829
About 700 feet upstream of Little's Circle	851
Maps available for inspection at the City Hall, Pikeville, Tennessee.	
Send comments to The Honorable Jerry Johnson, Mayor, City of Pikeville, P.O. Box 225, Pikeville, Tennessee 37367.	
TEXAS	
Snook (city), Burleson County	
Old River Tributary 1:	
At downstream corporate limits	*228
Upstream side County Route 269	*234
At upstream corporate limits	*239
Old River Tributary 2:	
At confluence with Old River Tributary 1	*228
Approximately 0.6 mile upstream of FM 2155	*244
Old River Tributary 3:	
At confluence with Old River Tributary 1	*233
Approximately 0.6 mile upstream of County Route 269	*241
Maps available for inspection at the City Hall—FM 2155, Snook, Texas.	
Send comments to The Honorable Kim Janke, Mayor of the City of Snook, Burleson County, P.O. Box 10, Snook, Texas 77878	
VERMONT	
Underhill (town), Chittenden County	
Browns River:	
At downstream corporate limits	*685
Approximately 1.0 mile upstream of downstream corporate limits	*720
Upstream side of River Road	*781
Upstream of Pleasant Valley Road	*802
Approximately 150 feet upstream of Stevensville Road	*822
The Creek:	
Approximately 0.2 mile downstream of downstream corporate limits	*687
At the confluence of Roaring Brook	*694
Downstream of State Route 15	*701
Maps available for inspection at the Selectmen's Vault, Underhill Center, Vermont.	
Send comments to The Honorable Patrick Lampshere, Chairman of the Board of Selectmen of the Town of Underhill, Chittenden County, Town Clerk's Office, P.O. Box 32, Underhill Center, Vermont 05490	
Wells (town), Rutland County	
Wells Brook:	
Downstream corporate limits	*429
Confluence of Mill Brook	*439
Approximately 1,040 feet upstream of South Street	*515
Approximately 1.1 miles above South Street	*590
Approximately 3.0 miles above South Street	*805
Mill Brook	
At confluence with Wells Brook	*439
Approximately 150 feet upstream of T.R. 8	*448
Approximately 690 feet feet downstream of State Route 2	*480
At Little Lake Dam	*486
Lake St. Catherine: At Little Lake Dam	*486
Lake Lucidan: At Little Lake Dam	*499
Maps available for inspection at the Hopson's County Store, Wells, Vermont.	
Send comments to The Honorable Lance Hopson, Town Clerk of the Town of Wells, Rutland County, P.O. Box 585, Wells, Vermont 05774.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
WASHINGTON	
Moses Lake (city), Grant County	
Parker Horn:	
Just upstream of Alder Street	*1,051
Approximately 980 feet upstream of Alder Street	*1,052
At upstream corporate limit	*1,054
Maps are available for review at City Hall, 321 Balsam Street, Moses Lake, Washington.	
Send comments to Mayor Norman Johnson, P.O. Drawer 1579, Moses Lake, Washington 98837.	
Wilson Creek (town), Grant County	
Crab Creek:	
At downstream corporate limits	*1,278
At the confluence of Wilson and Crab Creeks	*1,280
Wilson Creek:	
Just upstream of Sixth Street	*1,285
At upstream corporate limits	*1,300
Maps are available for review at Town Hall, Fourth and Railroad Streets, Wilson Creek, Washington.	
Send comments to Mayor Roy Mills, Town Hall, P.O. Box 162, Wilson Creek, Washington 98860.	
WEST VIRGINIA	
Barboursville (village), Cabell County	
Mud River: Entire shoreline within community	*555
Guyandotte River: Entire shoreline within community	*555
Maps available for inspection at the City Hall, 721 Central Avenue, Barboursville, West Virginia.	
Send comments to The Honorable William E. Rucker, Mayor of the Village of Barboursville, Cabell County, P.O. Box 256, Barboursville, West Virginia 25504.	
Harrison County (unincorporated areas)	
West Fork River:	
At downstream County boundary	*902
At upstream corporate limits of City of Clarksburg	*948
At upstream County boundary	*994
Bingamon Creek:	
At confluence with West Fork River	*902
Downstream side of first County Route 8 Bridge crossing	*940
Approximately 1,200 feet upstream of County Route 3–1 Bridge	*995
Tenmile Creek:	
At confluence with West Fork River	*920
Downstream side of Indian Run Road Bridge	*982
Upstream side of Access Road approximately 1.1 miles upstream of confluence of Rush Run	*1,005
Simpson Creek:	
At confluence with West Fork River	*927
At upstream County boundary	*996
Little Tenmile Creek:	
At confluence with Tenmile Creek	*932
Approximately 200 feet upstream of confluence of Caldwell Run	*976
Approximately 1.1 miles upstream of confluence of Middle Run	*1,022
Limestone Run:	
At City of Clarksburg corporate limits, downstream side of CSX Transport (B&O) Bridge, approximately 0.5 mile	*942
Approximately 50 feet downstream of Wilsonburg Road	*981
Downstream side of County Route 50–10 Bridge	*1,036
Approximately .77 mile upstream of County Route 50–10	*1,073
Elk Creek:	
Approximately 2.6 miles downstream of Cost Avenue Bridge	*964
Approximately 250 feet upstream of Hastings Run Road	*1,010
At County boundary	*1,025
Gnatty Creek:	
At confluence with Elk Creek	*1,015
At County boundary	*1,042
Maps available for inspection at the Harrison County Planning Commission, 5th Floor, County Courthouse, Clarksburg, West Virginia.	
Send comments to The Honorable Frank X. Lopez, President of the Harrison County Board of Commissioners, 301 West Main Street, Clarksburg, West Virginia 62301.	
Marion County (unincorporated areas)	
Booths Creek:	
At County Route 58	*913
At County Route 27–1	*930
Buffalo Creek:	
At downstream County boundary	*874
At confluence of Johnson Run	*919
At CSX Transportation (2nd upstream crossing)	*952
Approximately .3 mile upstream of confluence of Dents Run	*981
Paw Paw Creek:	
At downstream County boundary	*868
At County Route 17–18	*904
At confluence of Robinson Run	*951
Approximately 1,950 feet upstream of County Route 15	*992
Pnckett Creek:	
Approximately .3 mile downstream, of County Route 73	*904
At confluence of Reuben Run	*970
Approximately .5 mile upstream of County Route 68–1	*1,002
Monongahela River:	
Approximately .7 mile downstream of the confluence of Paw Paw Creek	*866
Approximately .3 mile upstream of confluence of Paw Paw Creek	[illegible]
Approximately 686 feet downstream of the confluence of Tygart Valley and West Fork Rivers	*875
At confluence of Tygart Valley and West Fork Rivers	*875
West Fork River:	
Approximately .34 mile downstream of first upstream crossing of CSX Transportation	*878
Approximately 507 feet upstream of second upstream crossing of CSX Transportation	*880
At downstream County boundary	*898
Approximately 50 feet upstream of most upstream crossing of CSX Transportation	*898
Bingamon Creek:	
Approximately 148 feet downstream of U.S. Route 19	*902
Approximately .5 mile upstream of U.S. Route 19	*902
Tygart Valley River:	
At confluence with Monongahela River	*875
Approximately 1.5 miles upstream of confluence with Monongahela River	*875
Pyles Fork:	
At downstream County boundary	*975
At County Route 250–5	*990
Approximately .3 mile upstream of confluence of Campbell Run	*1,010
Maps available for inspection at the County Commission Office, Room 403, G. Harper Meredith Building, Fairmont, West Virginia.	
Send comments to The Honorable Raymond Prozzillo, President of the Marion County Board of Commissioners, 200 Jackson Street, Fairmont, West Virginia 26554.	
WISCONSIN	
Neosho (village), Dodge County	
Rubicon River:	
About 3300 feet downstream of Schuyler Street	*867
Just downstream of Schuyler Street	*869
Mill Pond: Along entire shoreline	*878
Maps available for inspection at the Village Hall, 115 South Schuyler Street, Neosho, Wisconsin.	
Send comments to The Honorable Robert Hanson, Village President, Village of Neosho, Village Hall, 115 South Schuyler Street, Neosho, Wisconsin 53059	
Princeton (city), Green Lake County	
Fox River:	
About 1.1 miles downstream of Main Street	*766
About 1.0 mile upstream of Main Street	*768
Maps available for inspection at the City Hall, Clerk's Office, 438 West Main, Princeton, Wisconsin.	
Send comments to The Honorable Davey E. Henschel, Mayor, City of Princeton, City Hall, 438 West Main, Box 53, Princeton, Wisconsin 54968.	

The proposed modified base (100-year) flood elevation for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	City of Coronado, San Diego County	Pacific Ocean	Center of Strand Way, 200 feet along the street from its intersection with Pomona Avenue	none	*6
			A point 100 feet due south of the southwest end of Avenida del Sol.	none	*7

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at City Hall, 1825 Strand Way, Coronado, California. Send comments to mayor R.H. Dorman, City Hall, 1825 Strand Way, Coronado, California 92118.					
California	City of San Marcos, San Diego County.	San Marcos Creek	Just upstream of Discovery Road	*514	*514
			At the intersection of Mission Road and Twin Oaks [illegible].	*581	*581
			Approximately 200 feet downstream of Olive Drive	*698	[illegible]
		East Branch San Marcos Creek	At confluence with San Marcos Creek	*565	*565
			At the intersection of Mission Road and Richland [illegible]	*634	*634
			Approximately 10 feet downstream of Rock Springs [illegible].	*651	*651
Maps are available for review at City Hall, 105 West Richmar Avenue, San Marcos, California. Send comments to Mayor Lee B. Thibadeau, City Hall, 105 West Richmar Avenue, San Marcos, California 92069.					
California	City of Santa Maria Santa Barbara County.	Bradley Ditch	At downstream corporate limits	None	*197
			Approximately 200 feet upstream of Railroad Avenue	*204	*205
			Approximately 100 feet upstream of U.S. Highway 101 and State Highway 166.	*215	*220
			Just downstream of Jones Street and the Santa maria Valley Railroad.	*240	*240
Maps are available for inspection at City of Santa Maria Department of Public Works, 810 West Church Street, Santa Maria, California. Send comments to Mayor George Hobbs, City Hall, 110 East Cook Street, Santa Maria, California 93454.					
Georgia	City of Holly Springs, Cherokee County.	Toonigh Creek	Just downstream of Interstate 575	None	*930
			About 1600 feet upstream of Morgan Road	None	*1016
Maps available for inspection at the City Hall, Holly Springs, Georgia.					
Send comments to The Honorable Grady Payne, Mayor, City of Holly Springs, P.O. Box 603, Holly Springs, Georgia 30142.					
Illinois	Village of Lemont, Cook and DuPage Counties.	Tributary A	At mouth	None	*595
			About 1.22 miles upstream of New Avenue	None	*712
Maps available for inspection at the Building Department, Village Hall, 418 Main Street, 2nd Floor, Lemont, Illinois.					
Send comments to The Honorable John Nelson, Village President, Village of Lemont Village Hall, 418 Main Street, Lemont, Illinois 60439-3788.					
Mississippi	City of Gulfport, Harrison County	Turkey Creek	About 4.6 miles upstream of mouth	None	*19
			About 5.7 miles upstream of mouth	None	*22
		Canal No.1	Within community	None	*22
Maps available for inspection at the City Hall, Gulfport, Mississippi.					
Send comments to The Honorable LeRoy Urie, Mayor, City of Gulfport, City Hall, P.O. Box 1780, Gulfport, Mississippi 39502.					
Mississippi	Unincorporated Areas of Harrison County.	Wolf River	At mouth	*12	*12
			About 1.8 miles upstream of State Highway 53	*88	*92
		Tchoutacahoutta	About 0.3 miles upstream of D'Iberville Road	*11	*11
			About 1.8 miles upstream of CC Road	*38	*37
		Tuxachanie Creek	At mouth	*15	*13
		Howard Creek	At mouth	None	*11
			About 2.8 miles upstream of State Route 67	None	*70
		Parker Creek	At mouth	None	*11
			About 1.5 miles upstream of State Route 67	None	*74
		Big Creek	At mouth	*26	*26
			About 3.1 miles of upstream of Wolf River Road	*56	*55
		Turkey Creek	At mouth	None	*11
			About 1.6 miles upstream of Landon Road	*50	*50
		Friz Creek Tributary	At mouth	*15	*15
			About 2.2 miles upstream of mouth	*52	*52
		Pole Branch	At mouth	None	*36
			Just downstream of Cable Bridge Road	None	*61
		Canal No. 1	At mouth	None	*12
			Just downstream of 28th Street	*20	*22
		Canal No. 3	At mouth	None	*12
			Just downstream of 28th Street	*14	*22
Maps available for inspection at the County Courthouse, Gulfport, Mississippi.					
Send comments to The Honorable Hugh B. Snowden, Sr., President, County Board of Supervisors, Harrison County, County Courthouse, P.O. Box CC, Gulfport, Mississippi 39501.					
Missouri	City of Maryland Heights, St. Louis County.	Missouri River	Just upstream of Interstate 70	*456	*456
			About 7.2 miles upstream Interstate 70	*463	*463
		Creve Coeur Creek	About 3.5 feet upstream of mouth	*459	*459
			Just upstream of Creve Coeur Mill Road	*462	*462
		Dorsett Tributary	At mouth	*468	*468
			About 700 feet upstream of Rush Creek Way	*486	*486
		Fee Fee Creek	About 2300 feet downstream of Creve Coeur Mill Road.	*457	*457
			Just downstream of Lackland Avenue	*[illegible]	*508
		East Tributary Fee Fee Creek	At confluence with Fee Fee Creek	*[illegible]	*498

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Midland Creek	Just downstream of Lackland Avenue	*514	*514
			At confluence with Fee Fee Creek	*475	*475
		North Tributary Midland Creek	Just downstream of Ade Road	*529	*529
			At confluence with Midland Creek	*493	*493
			Just downstream of Fee Fee Road	*497	*497

Maps available for inspection at the Building Commissioner's Office, City hall, 212 Millwell, Maryland Heights, Missouri.

Send comments to The Honorable Larry Fitzgerald, Mayor, City of Maryland Heights, City Hall, 212 Millwell, Maryland Heights, Missouri 63043

Montana	City of Bozeman, Gallatin County	Mathew-Bird Creek (Restudy area)	Approximately 340 feet downstream of Mason Street	*4,877	*4,877
			At confluence with Figgins Creek	*4,893	*4,892
		Mathew-Bird Creek (Extended)	Approximately 800 feet upstream of Kagy Boulevard	*4,903	*4,903
			Approximately 275 feet downstream of Graf Street	*4,936	*4,936
			Approximately 1900 feet upstream of Graf Street	None	*4,960
			Approximately 30 feet downstream of Goldenstein Lane.	None	*5,021
			Approximately 2340 feet upstream of farm access road	None	*5,071
		Figgins Creek	At Confluence with Mathew-Bird Creek	*4,893	*4,892
			Approximately 400 feet downstream of S. 3rd Avenue	*4,903	*4,901
			Approximately 150 feet upstream of railroad grade	None	*4,935
			Approximately 100 feet upstream of farm access road	None	*4,970
			Approximately 2750 feet upstream of farm access road	None	*5,011
		Nash-Spring Creek	Approximately 530 feet downstream of golf course access road	*4,935	*4,935
			Approximately 25 feet upstream of farm access road	None	*4,960
			Approximately 275 feet upstream of Goldenstein Lane	None	*5,014
			Approximately 3270 feet upstream of Goldenstein Lane.	None	*5,050

Maps are available for review at the City Engineer's Office, City Hall, 35 North Bozeman Avenue, Bozeman, Montana.

Send Comments to Mayor Judith A. Mathrie, City Hall, P.O. Box 640, Bozeman, Maryland 59714

Nebraska	Unincorporated Areas of Dodge County.	Elkhorn River	Just upstream of State Highway 91	None	*1,195
			At upstream county boundary	None	*1,281

Maps available for inspection at the Building Inspector's Office, County Courthouse, 435 North Park, Fremont, Nebraska.

Sent comments to The Honorable Walt Muruz, Chairman, Board of Supervisors, Dodge County, County Courthouse, 435 North Park, Fremont, Nebraska 68025

Nevada	Lander County (unincorporated aeas).	Reese River	Just Downstream of Interstate Highway 80	None	*4,514
			Approximately 100 feet upstream of County Road 111A	[illegible]	*4,536
			Approximately 4,500 feet upstream of County Road 111A.	None	*4,540
		Humboldt River and Reese River	Approximately 12,700 feet downstream of State Highway 18A (new State Highway 806)	None	*4,491
			Just downstream of State Highway 18A	None	*4,501
			Approximately 800 feet upstream of State Highway 18A	None	*4,505
			Approximately 650 feet upstream of Wagon Road	[illegible]	*4,506
		Humboldt River	Approximately 24,000 feet upstream of Wagon Road	[illegible]	*4,521
		Kingston Creek Canyon	At the intersection of Toyabee Street and the US Forest Service Road	[illegible]	*#1
		Kingston Creek	Approximately 700 feet upstream of the intersection of Toyabee Street and the U.S. Forest Service Road.	None	*5,977
			Just upstream of Toquimp Way crossing	None	*6,240
			Approximately 1,200 feet upstream of Toquimp Way	None	*6,295
		Kingston Creek Tributary	At confluence with Kingston Creek	None	*6,037
			Just upstream of County Road 211	None	*6,178
			Approximately 400 feet upstream of County Road 211	None	*6,200
		Kingston Creek Alluvial Fan	1,200 feet downstream of Jefferson Drive	None	#4
			2,000 feet downstream of Jefferson Drive	None	#3
			3,000 feet downstream of Jefferson Drive	None	#2

Maps are available for review at the Lander County Courthouse, County Commissioners' Offices, 315 S. Humboldt, Battle Mountain, Nevada 89820

Send comments to Mr. William Elquist, Chairman, Lander County Board of Commissioners, P.O. Box 1655, Battle Mountain Nevada 89820

New Jersey	Bound Brook, Borough, Somerset County.	Raritan River	At Ramney Road	#3	*36
			At East High Street	#3	*36

Maps available for inspection at the Municipal Building, 230 Hamilton Street, Bound Brook, New Jersey.

Send comments to The Honorable Michael J. Miller, Mayor of the Borough of Bound Brook, Somerset County, Municipal Building, 230 Hamilton Street, Bound Brook, New Jersey 08805

New York	Dering Harbor, Village, Suffolk County.	North Shelter Island Sound	The shoreline at Dering Lane (extended)	None	*10
			Intersection of Shore Road and Locus Point Road	None	*8

Maps available for inspection at the Village Hall, Dering Harbor, New York.

Send comments to The Honorable Harold Weaver, Jr., Mayor of the Village of Dering Harbor, Suffolk County, P.O. Box K, Shelter Island Heights, New York 11965.

Oregon	City of Baker, Baker County	Powder River	30 feet upstream of Hughes Lane (corporate limits)	*3,413	*3,412
			Diversion Weir near "C" Street	*3,426	*3,425
			Auburn Avenue	*3,439	*3,439
			50 feet upstream of Union Pacific Railroad	*3,453	*3,453
			City of Baker southern corporate limits	None	*3,476

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Powder River Overflow A	At Hughes Lane	None	*3,410
			910 feet south of Hughes Lane	None	*3,410
		Old Settler's Slough	At western corporate limits	*3,412	*3,411
			200 feet above Campbell Street	*3,423	*3,423
			50 feet below Auburn Avenue	*3,435	*3,435
			At divergence from Power River	*3,456	*3,456

Maps are available for inspection at the City Planner's Office, City Hall, 1655 First Street, Baker, Oregon 97814.

Send comments to Mayor George W. Gwilliam, P.O. Box 650, Baker, Oregon 97814

Harold T. Duryee,

Administrator, Federal Insurance Administration

Issued: October 5, 1987.

[FR Doc. 87-23538 Filed 10-9-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 87-389; FCC 87-300]

47 CFR Parts 2 and 15

Revision of Rules Regarding Operation of Radio Frequency Devices Without An Individual License

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: This document proposes a number of changes in the technical and administrative provisions for the operation of a non-licensed radio frequency device. This item proposes to standardize the emission limitations between various devices and to establish a number of general usage frequency bands. While this item considers three petitions for rule making (RM-5193, RM-5250 and RM-5575), this action is initiated by the Commission.

DATES: Comments must be received on or before December 4, 1987, and Reply Comments must be received on or before January 4, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Technical Standards Branch, Office of Engineering and Technology, (202) 653-7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in Gen. Docket No. 87-389, FCC 87-300, Adopted September 17, 1987, and Released October 2, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission has permitted the non-licensed operation of certain radio frequency devices, such as receivers and low power transmitters, for almost 50 years. The regulations governing such devices are contained in Part 15 of the rules and are designed in such a manner as to reduce the probability of interference being caused to the authorized radio services. The original regulations were based on a general field strength limit. As devices were designed to operate on higher frequencies, this standard was found to be too restrictive. Since that time, provisions enabling the operation of new types of devices frequently were adopted in response to petitions for rule making that requested authorization only for the specific device in question. This incremental approach to adopting device-specific regulations has resulted in a number of inconsistencies and inequities in the technical standards, generally as a result of the timing of the petitions. By implementing rules that require compliance with specific definitional and operational restrictions, the operational flexibility originally contained and intended in Part 15 has been curtailed. In addition, the standards needed to protect against interference have changed over the years due to improvements in the sensitivity of equipment used in the licensed services, the increased proliferation of licensed and non-licensed operations, and changes in frequency allocations.

2. The Part 15 regulatory plan proposed in this Notice is designed to restore the technical flexibility originally envisioned for the operation of non-licensed devices, enabling manufacturers to market new RF devices without waiting for the conclusion of rule making considering the interference potential of the devices. The proposed rules seek to eliminate all unnecessary and overly restrictive regulations by proposing minimal standards on operational frequencies, bandwidth, modulation techniques and other parameters. However, in some instances, the decision to permit greater flexibility has required a further reduction in unwanted emissions. In a few instances, we have taken this opportunity to propose more restrictive standards on the permitted levels of unwanted emissions in order to provide a "cleaner" RF environment. In those instances where standards are proposed to be tightened, we also provide a substantial "grandfather" period, 10 years in most instances.

3. The following is a brief summary of some of the more substantial proposed changes to the regulations:

—With certain exceptions, field strength limits and conducted emission limits below 1000 MHz are specified using a CISPR quasi-peak detector, and limits above 1000 MHz are specified in peak values;

—All kits are proposed to be subject to the regulations, including the equipment authorization procedures;

—A power line conducted limit of 250 uV in the frequency range of 450 kHz to 30 MHz is proposed for all devices except carrier current systems operating within that frequency band and Class A digital devices;

—Emission limits for receivers are proposed above 1000 MHz, and the frequency range over which receivers are subject to the regulations is expanded;

—The emission limits for receivers are proposed to be tightened to the Class B digital device limits for the frequency range of 30 to 960 MHz and to 500 uV/m at 3 meters for frequencies above 960 MHz;

—The emission limits for transmitters operating under the general provisions would be increased at frequencies above 1.705 MHz such that within the frequency band of 1.705–30 MHz the general limit is 30 uV/m at 30 meters and above 30 MHz the general limit is the same as proposed for receivers;
—Additional "consumer" bands are established at 13.553–13.567 MHz, 26.96–27.28 MHz, 40.66–40.70 MHz, 49.82–49.90 MHz, 902–928 MHz, 2400–2483.5 MHz, 5725–5875 MHz and 24.0–24.25 GHz; and,
—Peak emissions from transmitters operating under the provisions for periodic operation above 70 MHz, including control and security alarm devices, are proposed to be limited to within 20 dB of the permitted average emission limits.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will have a significant economic impact on a number of small entities. By providing the regulatory flexibility needed to permit general use, consumer frequency bands, this action should foster an effective competitive marketplace in the area of low power telecommunications, providing small entities the opportunity to develop systems that were not previously permitted under the regulations. Some standards regarding spurious and other undesired emissions from receivers and certain transmitters, primarily those operating in the 27 MHz, 40 MHz, and 49 MHz bands and cordless telephones, are proposed to be tightened. In addition, this Notice proposes to delete the Automatic Vehicle Identification System (§§ 15.221 through 15.228) in the 2.9–4.1 GHz band. It is proposed that kits of radio frequency devices comply with the regulations, including authorization by the Commission, where appropriate. The manufacturers of certain transmitters also may be impacted by the proposed restricted frequency bands. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The collection of information requirement contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Communications Commission.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 4, 1987 and reply comments on or before January 4, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Rule Changes

The proposed text amending Parts 2 and 15 of Title 47 of the Code of Federal Regulations is shown in the Commission's complete decision and is available from its copy contractor.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–23598 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 31 and 32

[CC Docket No. 87–447, FCC 87–313]

Common Carrier Services; Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amortize the depreciation reserve imbalances of all local exchange carriers for which it prescribes depreciation rates. This amortization authority would not be contingent on concurrance of the State regulatory commission having jurisdiction over the carrier. The Commission proposes a five-year amortization for all carriers for which it has not previously granted amortization authority, and invites comments on the date such amortization should begin.

DATES: Comments are due by November 4, 1987, and reply comments by November 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert W. Spangler, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rulemaking in CC Docket 87–447, FCC 87–313, adopted October 2, 1987 and released October 5, 1987. The full text of FCC's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this document may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

The FCC prescribes depreciation rates and practices for the larger communications common carriers. Each carrier's rates are reviewed every three years and, if necessary, new rates are prescribed. This function is an important part of the Commission's ratemaking activity, because the level of depreciation expense for the carriers is a large part of their costs.

The depreciation reserve is an important indicator of the depreciation process because it is the accumulation of all past depreciation accurals net of plant retirements. Beginning in the late 1960's a substantial reserve imbalance began to materialize as the carriers replaced their electromechanical switches before the expected end of the life of that plant. The depreciation reserve that was needed to match this plant, with its shorter service life (the theoretical reserve), was far in excess of the book depreciation. This difference between the book reserve and the theoretical reserve is referred to as the depreciation reserve imbalance. The Commission initially responded to the problem in the *Property Depreciation Order*, 83 FCC 2d 267 (1980). In that decision, the Commission determined that the life estimates of carriers' plant were too long, that a significant reserve imbalance existed and that the remaining-life method of accounting should be used to clean up the imbalance. Several years later, the Commission determined that in some circumstances, amortization of the reserve imbalance might be required. The imbalances of certain carriers were amortized, over varying periods, under this procedure. However, the authority to amortize was granted only to carriers whose state regulatory commission concurred.

Although the reserve imbalance has decreased in amount since the 1980 decision to use remaining-life depreciation, the Commission is still concerned that the remaining-life method will not eliminate the imbalance

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in a timely and uniform manner. Accordingly, the Commission proposes a one-time change in its policy in this area. The proposal is to allow all local exchange carrier to amortize their reserve imbalance over a five-year period. This policy would apply to all carriers which have not been granted amortization authority. No change is proposed for those carriers granted amortizations in 1984 and 1985. Amortizations granted in 1986 will be addressed in a separate proceeding. No carrier would be required to show the concurrence of its state regulatory commission. This proposed policy change woud not cause a corresponding increase in carriers' rates, due to changes in economic conditions since 1980, and would be consistent with this Commission's desire to effect cost-based pricing of communications services. Comments are invited as to when the amortization period should start.

Ordering Clauses

In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

Pursuant to sections 1, 4(i), 4(j), 201 through 205, 218, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201 through 205, 218, 220 and 403, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, notice is hereby given of the proposed policy and possible rule changes as set forth in this *Notice of Proposed Rulemaking*.

Interested persons may file comments on the specific proposals discussed herein by the dates specified in the Preamble. In accordance with the provisions of §1.419 of the Commission's Rules, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, DC.

Federal Communications Commission.

William J. Tricarico,

Secretary

[FR Doc. 87-23597 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-401, RN-5876]

Radio Broadcasting Services; Dickson, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Edmisson and Eubank Communications proposing the allotment of Channel 229A to Dickson, Tennessee, as that community's second FM service. A site restriction of 11.3 kilometers (7.0 miles) east of the community is required.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Edmisson and Eubanks Communications, 404 Bellwood Road, Dickson, TN 37055 (Petitioner); and Kirk Tollett, P.O. Box 187, Monterey, TN 38574 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-401, adopted September 4, 1987, and released October 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23525 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-402, RM-5784]

Radio Broadcasting Services; Canadian, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Megahype Broadcasting, Inc., permittee of FM Station KEZP-FM, Channel 276A at Canadian, Texas, proposing the substitution of Channel 277C1 for Channel 276A and the modification of its construction permit to specify operation on the new frequency, as that community's first wide coverage area FM station.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark Jones, P.O. Box 368, Canadian, Texas 79014 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-402, adopted September 4, 1987, and released October 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23526 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-398, RM-5956]

Radio Broadcasting Services; Farwell, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Dominion Communications, Inc., licensee of Station KLZK-FM, Channel 252A, Farwell, Texas, proposing the substitution of Channel 252C2 for 252A at Farwell and modification of its license to specify operation on the higher class channel. The proposal could provide Farwell with its second wide coverage area FM station.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Arthur V. Belendiuk, Esquire, 1920 N Street NW., Suite 510, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-398, adopted September 4, 1987, and released October 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23522 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-397, RM-5961]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Larry S. Tschirhart, proposing the allotment of Channel 281A to George West, Texas, as that community's first FM service. Concurrence from the Mexican government is required.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Larry S. Tschirhart, 7439 Alverstone Way, San Antonio, Texas 78250 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 87-397, adopted September 4, 1987, and released October 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23521 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-399, RM-5967]

Radio Broadcasting Services; Kingwood, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WFSP, Inc., proposing the allotment of Channel 226A to Kingwood, West Virginia, as that community's second FM service.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John E. Fiorini III, Esquire, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jeffrson Street

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NW., Suite 700, Washington, DC 20007 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–399, adopted September 4, 1987, and released October 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23523 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–400, RM–5809, RM–5908]

Radio Broadcasting Services; Mosinee and Shawano, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive petitions proposing the allotment of Channel 234C2 to either Mosinee, Wisconsin or Shawano, Wisconsin. William A. Kasten seeks the allotment of Channel 234C2 to Mosinee, Wisconsin, as that community's first FM service. A site restriction 18.6 kilometers (11.6 miles) north of the city is required. Wheeler Broadcasting, Inc. ("Wheeler"), licensee of FM Station WOWN(FM), Shawano, Wisconsin, seeks the substitution of Channel 234C2 for Channel 257A and modification of its license to specify operation on the new channel, as that community's first wide coverage area station.

DATES: Comments must be filed on or before November 27, 1987, and reply comments on or before December 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

William A. Kasten, P.O. Box 186, Mosinee, WI 54455–0186 (Petitioner at Mosinee, WI)

Julian P. Freret, Esquire, Booth, Freret & Imlay, 1920 N Street, NW., Suite 520, Washington, DC 20036 (Counsel for Wheeler Broadcasting, Inc.)

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–400 , adopted September 4 , 1987, and released October 6 , 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23524 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–406, RM–5893]

Radio Broadcasting Services; Prattville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Downs Broadcasting, Inc., licensee of Station WQIM(FM) (Channel 236A), Prattville, AL, requesting the substitution of Channel 236C2 for Channel 237A and modification of its license accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James J. Popham, Esq., Hardy & Popham, 700 Camp Street New Orleans, LA 70130–3702.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–406, adopted September 11, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-23599 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-405, RM-5886]

Radio Broadcasting Services; Spring Hill, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Paul P. Miller, seeking to allot Channel 275A to Spring Hill, Florida, as a first FM service.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interestd parties should serve the petitioner, or its counsel or consultant, as follows: Paul P. Miller, 6135 Alderwood Street Spring Hill, Florida 33526.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-405, adopted September 14, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Member of the public should note that from the time a notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-23600 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-403, RM-5776]

Radio Broadcasting Services; Douglas, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Gerald Lee Carter, proposing to allot Channel 222A to Douglas, Georgia, as a third FM service.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., Ward and Mendelsohn, 1100 17th Street NW., Suite 900, Washington, DC 20036. (Counsel for petitioner.)

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-403, adopted September 4, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-23601 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-404, RM-5814]

Radio Broadcasting Services; McCall, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mary C. Rhoads, proposing to allot Channel 252A to McCall, Idaho, as a third FM service.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mary C. Rhoads, 1612 Blaine Avenue, Salt Lake City, Utah 84105.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.

87–404, adopted September 4, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23602 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–407, RM–5685 and RM–5925]

Radio Broadcasting Services; Mandeville and Lacombe, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on conflicting petitions by William Seiler for the allotment of FM Channel 234A to Mandeville, Louisiana and Richard B. Chase, III, for the allotment of FM Channel 234A to Lacombe, Louisiana.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Steve M. Kramer, P.E., Sellmeyer & Kramer Engineers, P.O. Box 841, 10500 Bigham Trail, Suite 100, McKinney, Texas 75069 (Consultant to Richard B. Chase III)

Dennis J. Kelly, Corden & Kelly, 1920 N Street NW., Washington, DC 20036 (Counsel to William Seiler)

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–407, adopted September 14, 1987, and released October 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23603 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 52, No. 197
Tuesday, October 13, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail Advisory Council will meet on November 19 and 20, 1987 in Pacific Grove, California. The meeting will begin on November 19 at 8:30 a.m. at the Asilomar Conference Center, 800 Asilomar Blvd, Pacific Grove.

The purpose of the meeting is for the Council to provide recommendations for the Secretary of Agriculture on broad questions of policy, programs, and procedures affecting the Pacific Crest Trail. The meeting will include a review of trail completion status, committee efforts, and other related matters about the trail.

The meeting will be open to the public. Persons who wish additional information should contact Dick Benjamin, Assistant Regional Forester, RW&CR, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California 94111, phone (415) 556–6986.

Date: September 9, 1987.

Paul F. Barker,

Regional Forester.

[FR Doc. 87–23578 Filed 10–9–87; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

Hugh L. Brennan
Guy W. Chamberlin, Jr.
John B. Christian
David L. Edgell
David Farber
Mary Ann T. Knauss
Michael A. Levitt
Roger J. Whyte
Otto J. Wolff

Edward A. McCaw,

Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 87–23580 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–BS–M

Foreign-Trade Zones Board

[Docket No. 19–87]

Foreign-Trade Zone 8, Toledo, OH; Application for Subzone, Chrysler Auto Components Plants, Toledo Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Toledo-Lucas County Port Authority, grantee of FTZ 8, requesting special-purpose subzone status for three Toledo-area plants of the Chrysler Corporation, which produce a variety of components for its North American auto assembly operations. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a through 81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 8, 1987.

The three Chrysler plants, which employ a total of some 1,800 persons, are: The Toledo Machining Plant (169 acres), 8000 Chrysler Drive, Perrysburg (transmission, steering and brake components); the Plastics Plant (22 acres), 3130 W. Monroe, Sandusky (vinyl products); and, the Amplex Plant (38 acres), 1180 Kear Rd., Van Wert (clutch plates, steering couplings, connecting rod caps, rotors and other mechanical parts).

Certain parts and materials for these plants are sourced abroad, including vinyl roll goods, bearings, rotors, sprockets, and parts for transmission, steering and brake components. Foreign materials account for less than 5 percent of total production costs at Chrysler plants.

Zone procedures would exempt Chrysler from Customs duties on the foreign components that are reexported either as auto parts or in assembled autos. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The duty rates on components used at the five plants range from 3.3 to 11.0 percent, whereas the rate on autos is 2.5 percent. The savings would help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Daniel R. Clark, District Engineer, U.S. Army Engineer District Buffalo 1776 Niagara St., Buffalo, NY 14207.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 16, 1987.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 234 No. Summit St., Room 704, Toledo, OH 43604

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, Washington, DC 20230.

Dated: October 5, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–23639 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 20–87]

Foreign-Trade Zone 70, Detroit, MI; Application for Subzone, Yazaki Wiring Harness Plant, Wayne County, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, requesting special-purpose subzone status for the auto wiring harness testing

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and distribution facility of American Yazaki Corporation, a subsidiary of Yazaki Corporation of Japan, located in Canton Township, Wayne County, Michigan, adjacent to the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 CFR Part 400). It was formally filed on September 16, 1987.

The 22-acre plant, which employs 100 persons, is located at 6700 Haggerty Road, Canton, Wayne County, Michigan. It is used to produce wiring harnesses for the U.S. automobile industry, and to modify, repair, test and distribute wiring harnesses produced abroad. Both the harnesses produced abroad and at the plant contain some 50 percent foreign components such as electrical conductors, terminals, insulators, and connectors.

Wiring harnesses have a 5 percent duty rate and the duty rates on harness components range from 4.0 to 6.1 percent.

Zone procedures would allow Yazaki to avoid Customs duty payments on the items it ships to customers with auto assembly subzones, where duties would be paid at the auto duty rate (2.5 percent).

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Avenue, Detroit, Michigan 48226–2586; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231–1027.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 10, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 1140 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 1529, Washington, DC 20230.

Dated: October 5, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–23638 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–580–073]

Bicycle Tires and Tubes From the Republic of Korea; Revocation of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The U.S. International Trade Commission has determined that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of bicycle tires and tubes from the Republic of Korea covered by the antidumping finding if the finding were to be modified or revoked.

As a result, the Department of Commerce is revoking the antidumping finding on bicycle tires and tubes from the Republic of Korea.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1979, an antidumping finding on bicycle tires and tubes from the Republic of Korea was published in the **Federal Register** (44 FR 22051).

On April 28, 1987, the U.S. International Trade Commission (ITC), at the request of Korea Inoue Kasei, a Korean manufacturer and exporter of bicycle tires and tubes, instituted an investigation of bicycle tires and tubes from the Republic of Korea under section 751(b) of the Tariff Act of 1930 ("the Tariff Act"). As a result of its investigation the ITC determined that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of bicycle tires and tubes from the Republic of Korea covered by the antidumping finding if the finding were to be modified or revoked (52 FR 33660, September 4, 1987).

Scope of the Review

Imports covered by the review are shipments of bicycle tires and tubes, currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

Revocation of the Finding

The Department of Commerce, as administering authority, revokes the antidumping finding of bicycle tires and tubes from the Republic of Korea. This revocation applies to all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 4, 1987. The Department will instruct the Customs Service to proceed with liquidation of this merchandise without regard to antidumping duties.

Unappraised entries of bicycle tires and tubes from the Republic of Korea, made prior to September 4, 1987 and covered by the finding, remain unaffected by this notice, and continue to be subject to appraisement under the antidumping finding as required by section 751 of the Tariff Act.

The Department is currently conducting its administrative review of the finding on bicycle tires and tubes from the Republic of Korea. The results of this review which covers the period April 1, 1986 through April 21, 1987, will be published in a subsequent notice.

In addition, if a review is requested the Department will conduct an administrative review of shipments of bicycle tires and tubes from the Republic of Korea to the United States from April 22, 1987 to September 4, 1987, the effective date of the revocation. These results will also be published in a subsequent notice.

This revocation is in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675 (c)).

Dated: October 5, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–23640 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–274–001]

Carbon Steel Wire Rod From Trinidad and Tobago; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review

and tentative determination to revoke antidumping duty order.

SUMMARY: Because of changed circumstances, we tentatively determine to revoke the antidumping duty order on carbon steel wire rod from Trinidad and Tobago. The revocation will apply to all entries of carbon steel wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 52112) an antidumping duty order on carbon steel wire rod from Trinidad and Tobago. Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan Steel Company, the petitioners, informed the Department that they are no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of carbon steel wire rod, currently classifiable under item 607.1700 of the TSUSA. These imports are currently classifiable under HS item numbers 7213.3900, 7213.4900, and 7213.5000.

The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statements of no interest in continuation of the antidumping duty order on carbon steel wire rod from Trinidad and Tobago provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on carbon steel wire rod from Trinidad and Tobago effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse for consumption on or after October 1, 1984 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication, including its analysis of any such comments or hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: October 6, 1987.

[FR Doc. 87–23641 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–068]

Steel Wire Strand for Prestressed Concrete From Japan; Final Results of Antidumping Duty Administrative Review; Correction

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review; correction.

On February 11, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 4373) the final results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan (43 FR 57599, December 8, 1978).

The results for Mitsubishi Corp. were incorrect because we considered in our review a sale of galvanized steel wire strand, which is not included in the scope of the antidumping finding. Mitsubishi had no sales during the period, and as a result we have determined that no margin exists for Mitsubishi Corp. for the period December 1, 1982 through November 30, 1985.

Because there is no margin for Mitsubishi Corp., the Department waives the cash deposit requirement for this firm.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5289/5255.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

Date: October 5, 1987.

[FR Doc. 87–23642 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–DS–M

Bureau of the Census

Census Advisory Committees (CAC) on American Indian and Alaska Native Populations for 1990 Census, Asian and Pacific Islander Populations for 1990 Census, Black Population for 1990 Census, and Hispanic Population for 1990 Census; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held meetings (described below) of the CAC on the

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American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on October 29 and 30, 1987, at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

Each of these committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the October 29 combined meeting that will begin at 8:45 a.m. and end at 3:30 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) 1990 planning update, which includes dress rehearsal plans, disclosure avoidance plans, undercount behavioral research, and processing offices; (3) special urban survey/focus groups updates and committee members' observation reports; (4) 1990 promotion update; (5) affirmative action status; and (6) regional office responsibilities.

The agendas for the four committees in their separate meetings that will begin at 3:45 p.m. and end at 5 p.m. on October 29 are a discussion of regional activities that includes recruitment and outreach, and consideration of the Census Bureau responses to committee recommendations. The Hispanic Committee will also elect a chairperson.

The agenda for the October 30 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. is: (1) 1990 Research, Evaluation, and Experimental (REX) Program; and (2) 1990 data products.

The agendas for the four committees' separate meetings that will begin at 10:30 a.m. and end at 11:45 a.m. on October 30 are as follows:

The CAC on the American Indian and Alaska Native Populations for the 1990 Census

(1) Update on identification of American Indian areas; (2) data issues for American Indians and Alaska Natives, and (3) selection aids for the 1990 census.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census

(1) Data issues for Asian and Pacific Islander, and (2) early alert mailout.

The CAC on the Black Population for the 1990 Census will discuss the 1990 housing program.

The CAC on the Hispanic Population for the 1990 Census

(1) Current Population Survey Report on Hispanics, and (2) early alert mailout.

The agenda for the combined meeting that will begin at 1 p.m. and adjourn at 3 p.m. is development and discussion of recommendations, public comments, and presentation of recommendations and plans for the next meeting.

All meetings are open to the public and a brief period is set aside on October 30 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Russell L. Valentine, Assistant Chief for Outreach and Program Information, Decennial Planning Division, Bureau of the Census, Room 3574, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763–5926.

Date: October 7, 1987.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87–23647 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–07–M

National Bureau of Standards

National Bureau of Standards' Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committe will meet Thursday, November 12, 1987, from 8:30 a.m. to 5:30 p.m., and Friday, November 13, 19087, from 8:30 a.m. to 10:00 a.m., in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersbury, Maryland; from 11:00 a.m. to 12:00 noon in Room 5854, Department of Commerce, Washington, DC.

The NBS Visiting Committee is composed of five members prominent in the field of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to consider the implications of the legislation presently under consideration by Congress.

The public is invite to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301–975–2411.

Ernest Ambler,

Director.

Date: October 2, 1987

[FR Doc. 87–23665 Filed 10–9–87; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council and its Bycatch Committee will convene a separate public meeting and hearing at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service as follows:

Bycatch Committee

Will convene a public meeting October 26, 1987, at 9 a.m., Room 2143, Building 4, 7600 Sand Point Way NE., Seattle, WA, to continue work on developing long-term management for bycatch species in the Gulf of Alaska and Bering Sea/Aleutian Islands; will adjourn on October 30.

Council

Will convene a public hearing October 27 at 10 a.m., at 2725 Montlake Boulevard, East, Seattle, WA, in the auditorium, to take public comment on an industry proposal to establish and provide procedures to enforce crab bycatch rates in the 1988 Bering Sea joint venture flounder fishery.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Date: October 5, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-23554 Filed 10-9-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Bilateral Textile Consultations With Government of Bangladesh To Review Trade in Category 638/639

October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377-4212.

On August 30, 1987, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, as amended, requested consultations with the Government of Bangladesh with respect to man-made fiber knit shirts and blouses in Category 638/639, produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that during consultations held September 14-17, 1987 between the Governments of the United States and Bangladesh, agreement was reached on a limit for Category 638/639.

The new limit for this category will be published upon the exchange of diplomatic notes between the Governments of the United States and Bangladesh.

A summary market statement concerning Category 638/639 follows this notice.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Bangladesh—Market Statement

Category 638/639—Man-Made Fiber Knit Shirts and Blouses

August 1987.

Summary and Conclusions

U.S. imports of Category 638/639 from Bangladesh were 619,467 dozen during the year ending June 1987, more than ten times the 60,023 dozen imported a year earlier. During the first six months of 1986, imports of Category 638/639 from Bangladesh were 536,867 dozen, eleven times the 48,163 dozen imported during the same period in 1985 and four times the amount imported during calendar year 1986.

The U.S. market for Category 638/639 has been disrupted by imports. The sharp and substantial increase of imports from Bangladesh has contributed to this disruption.

U.S. Production and Market Share

U.S. production of man-made fiber knit shirts and blouses dropped from 57.7 million dozen in 1982 to an average of 52.6 million dozen during the 1983-85, a nine percent decline. Although U.S. production increased to 54.6 million dozen in 1986, it remained five percent below the 1982 level. The domestic manufacturers' share of the man-made fiber knit shirts and blouse market declined from 73 percent in 1982 to an average 68 percent during 1983-85. The domestic manufacturers' share dropped to 63 percent in 1986.

U.S. Imports and Import Penetration

U.S. imports of Category 638/639 grew from 21.1 million dozen in 1982 to an average 25.2 million dozen during 1983-85, a 20 percent increase. U.S. imports reached 32.0 million dozen in 1986, 27 percent above the 1983-85 average import level. Imports during the year ending June 1987 are nine percent above the previous year's level. The ratio of imports to domestic production increased from 37 percent in 1982 to an average 48 percent during 1983-85. The ratio jumped to 59 percent in 1986.

Duty Paid Value and U.S. Producers' Price

Approximately 68 percent of Category 638/639 imports from Bangladesh during the first six months of 1987 entered under TSUSA numbers 381.8930—men's and boys' man-made fiber knit shirts, excluding sweatshirts, T-shirts and tank tops, not ornamented; and 384.8045—women's and man-made fiber knit shirts, excluding sweatshirts, T-shirts and tank tops, not ornamented. These garments entered the U.S. at duty paid landed values below U.S. producers' prices for comparable garments.

[FR Doc. 87-23614 Filed 10-9-87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With Government of Socialist Federal Republic of Yugoslavia on Cotton Textile Products in Category 338/339

October 6, 1987.

For further information contact: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultation have been requested call (202) 377-3740.

On September 29, 1987, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of the Socialist Federal Republic of Yugoslavia to enter into consultations concerning exports to the United States of cotton knit shirts and blouses in Category 338/339, produced or manufactured in Yugoslavia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultation with the Government of the Socialist Federal Republic of Yugoslavia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for the consumption of textile products in Category 338/339, produced or manufactured in Yugoslavia and exported to the United States during the twelve-month period which began on September 29, 1987 and extends through September 28, 1988 at a level of 313,100 dozen.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 338/339 or in any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175),

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May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 16622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Yugoslavia—Market Statement

Category 338/339—Cotton Knit Shirts and Blouses

September 1987.

Summary and Conclusions

U.S. imports of Category 338/339 from Yugoslavia were 313,100 dozen during the year ending June 1987, more than 16 times the 18,776 dozen imported a year earlier. During the first six months of 1987, imports of Category 338/339 from Yugoslavia reached 245,464 dozen, 24 times the 10,262 dozen imported during the same period of 1986 and three times the total imported in calendar year 1986.

The market for Category 338/339 has been disrupted by imports. The sharp and substantial increase in imports from Yugoslavia has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton knit shirts and blouses has been on the decline, dropping from 24.6 million dozen in 1982 to a depressed 19 million dozen in 1985, a decline of 23 percent. Production in 1986 partially recovered from 1985, reaching 20.4 million dozen, but remained 12 percent below the 1984 level and 16 percent below the 1983 level. The domestic manufacturers' share of the market dropped 19 percentage points in four years, falling from 63 percent in 1982 to 44 percent in 1986.

U.S. Imports and Import Penetration

U.S. imports of Category 338/339 grew from 14.6 million dozen in 1982 to 25.5 million dozen in 1986, a 74 percent increase. During the first six months of 1987, imports of Category 338/339 reached 17.8 million dozen, 34 percent above the level imported during the same period in 1986. The ratio of imports to domestic production more than doubled, increasing from 60 percent in 1982 to 125 percent in 1986.

Duty-Paid Value and U.S. Producers' Price

Approximately 67 percent of Category 338/339 imports from Yugoslavia during the first six months of 1987 entered under TSUSA numbers 384.2806—women's, girls' and infants' cotton knit tank tops, not ornamented; 384.2815—women's cotton knit blouses, excluding tank tops, not ornamented; 384.2915—women's and girls' cotton t-shirts, not ornamented; and 384.2980—infants' (excluding infant boys' over 24 months of age) cotton knit shirts, excluding T-shirts and sweatshirts, not ornamented. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable garments.

[FR Doc. 87-23615 Filed 10-9-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Bilateral Agreement and Visa and Exempt Requirements Concerning Textile and Apparel Products From Taiwan

October 6, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 6, 1987. For further information contact Pamela Smith, International Trade Specialist (202) 377-4212.

Background

Under the terms of the bilateral agreement of November 18, 1982, as amended and extended, and the visa arrangement and exempt certification of August 16, 1972, as amended and extended, concerning textile and apparel products from Taiwan, agreement was reached to further amend the agreement and the visa and exempt certification requirements to reflect that, effective on October 6, 1987, only shipments of textile and apparel products exported from Taiwan on and after October 6, 1987, which are imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels. All other commercial shipments, regardless of value, now require a visa or exempt certification for entry of traditional Chinese items.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements

October 6, 1987.

Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, concerning an export visa requirement for certain textile and apparel products, produced or manufactured in Taiwan.

Effective on October 6, 1987, entry of all textile and apparel products exported into the United States from Taiwan on or after October 6, 1987, which are imported for the personal use of the importer and not for resale, regardless of value, and all properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels. All other commercial shipments, regardless of value, now require a visa or exempt certification for entry of traditional Chinese items.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-23616 Filed 10-9-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on B-1B Defensive Avionics; Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on B-1B Defensive Avionics will meet in closed session on October 27-28, November 24-25, December 22-23, 1987 and January 12-13, 1988 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the status of the Air Force B-1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act,

Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 7, 1987.

[FR Doc. 87–23644 Filed 10–9–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology Subgroup; Change in Date of Advisory Committee Meeting

ACTION: Change in Date of Advisory Committee Meeting.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology Subgroup scheduled for October 16, 1987, as published in the **Federal Register** (Vol. 52, No. 121, Page 23711, Wednesday, June 24, 1987, FR Doc. 87–14305) will be held on October 26, 1987.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 7, 1987.

[FR Doc. 87–23643 Filed 10–9–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology Subgroup; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology Subgroup will meet in closed session on November 18–19, 1987 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 7, 1987

[FR Doc. 87–23645 Filed 10–9–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise will meet in closed session on October 28, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the potential for technological and operational surprise in the U.S.-Soviet military competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 7, 1987.

[FR Doc. 87–23646 Filed 10–9–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 29, 1987.

The USAF Scientific Advisory Board Aeronautical Systems Division (ASD) Advisory Group will meet on November 12, 1987, from 8:00 a.m. to 5:00 p.m. and on November 13, 1987, from 8:00 a.m. to 4:00 p.m. at Aeronautical Systems Division Headquarters, Building 14, Wright Patterson Air Force Base, Ohio.

The purpose of this meeting is to receive briefings on and to advise the Commander, ASD, on integrated engineered electronics, industrial base modernization, mission opportunities for airship technologies, and the mechanical subsystems integrity program.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–23579 Filed 10–9–87; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 12, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 7, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Educational Research and Improvement

Type of Review: Reinstatement
Title: National Education Longitudinal Study of 1988 (NELS:88)
Agency Form Number: G50–21P
Frequency: Once only
Affected Public: Individuals or households
Reporting Burden: Responses: 56,950; *Burden Hours:* 80,814
Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0

Abstract: This study will collect information from eighth graders and their parents, school administrators, and teachers about educational, vocational, and personal development of these students. The Department will use this data to prepare and submit various reports to Congress.

Type of Review: Revision
Title: Schools and Staffing Survey
Agency Form Number: G50–25P
Frequency: On occasion
Affected Public: Individuals or households: state or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden: Responses: 93,817; *Burden Hours:* 107,558
Recordkeeping: Recordkeepers: 0; *Burden Hours:* 0

Abstract: The purpose of this survey is to provide national and state estimates of teacher demand and shortage, school conditions and staffing, teacher qualifications, and administrator background. These data will be used by policy makers at national, state and local levels.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Application for the Magnet Schools Assistance Program
Agency Form Number: A10–1P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 48; *Burden Hours:* 656
Recordkeeping: Recordkeepers: 0); *Burden Hours:* 0

Abstract: This application is used by local educational agencies to apply for magnet school projects. The Department needs this information to make awards and insure that proposed projects meet the requirements of the statute and regulations.

Office of Bilingual Education and Minority Language Affairs

Type of Review: Extension
Title: Demonstration and Compliance with Terms and Conditions of the Bilingual Fellowship Contract
Agency Form Number: ED 4561–3
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden: Responses: 500; *Burden Hours:* 1000
Recordkeeping: Recordkeeper: 0; *Burden Hours:* 0

Abstract: this form will be used by any person who has received a Bilingual Education Fellowship to demonstrate compliance with the program regulations. The Department uses this information to determine the recipients' compliance with the terms and conditions of the Bilingual Education Fellowship Agreement.

[FR Doc. 87–23573 Filed 10–9–87; 8:45am]

BILLING CODE, 4000–01–M

Executive Committee, National Advisory Council on Indian Education; Meeting

AGENCY: Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This document is intended to notify the general public of their opportunity to attend.

DATE: October 26, 1987, 2:00 p.m. until conclusion of business.

ADDRESS: Sheraton Bismarck Galleria, P.O. Box 2718, Sixth & Broadway, Bismarck, North Dakota 58502 (701/255–6000).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, DC 20036 (202/634–6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92–318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.
(2) NACIE Budget—FY'88.
(3) Plans an agenda for NACIE activities.
(4) Committee assignments.
(5) Other business.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 2000 L Street, NW., Suite 574, Washington, DC 20036.

Dated: October 2, 1987.

Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 87–23613 Filed 10–9–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Divestiture of the Great Plains Coal Gasification Project (GPCGP)

On February 26, 1987, the Department of Energy engaged Shearson Lehman Brothers, one of the world's largest securities firms, to assist the Department in marketing the Great Plains coal-to-synthetic gas plant in North Dakota

The Great Plains Coal Gasification Plant, near Beulah, ND, was built originally at a cost of $2.1 billion. It was acquired by the Department of Energy when its private sponsors defaulted on approximately $1.5 billion in federal loans in 1985. The Department has operated the facility since the default but desires to return the plant to the private sector.

The Department has authorized Shearson Lehman to initiate the sales process, the first phase of which is to provide broad public notice of the sale and to contact prospective buyers.

Parties with a possible interest in purchasing the facility are referred to: Mr. Jeremy Diamond, Shearson Lehman Brothers, Inc. American Express Tower, World Financial Center, New York, New York 10285–1800

A Copy of the Shearson Descriptive Memorandum for the Great Plains Gasification Project is available in the Department of Energy's Public Reading Room (Room 1E–190), Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

Issued in Washington, DC, on October 6, 1987.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 87–23562 Filed 10–9–87; 8:45 am]

BILLING CODE 6450–01–M

Inventories & Storage Task Group National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories & Storage Task Group of the Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and time: Thursday, October 22, 1987, 9 AM.

Place: National Petroleum Council, Conference Room, 1625 K Street, NW, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting

To organize Task Group and discuss assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman.
—Establish the Task Group organization.
—Discuss the individual assignments.
—Discuss any other matters pertinent to the overall assignment.

Public Participation

The meeting is open to the public. The Chairman of the Inventories & Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 6, 1987.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 87–23563 Filed 10–9–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA88–1–46–000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 6, 1987.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on September 30, 1987, tended for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1987:

First Revised Sheet No. 40
First Revised Sheet No. 41

Kentucky West states that the foregoing tariff sheets reflect changes in the tariff sheets filed in Docket No. RP87–147–000 on September 23, 1987, to become effective October 1, 1987. Kentucky West also states that the filing in Docket No. RP87–147–000 was made to update its tariff and to provide for an Annual Charge Adjustment Provision. Kentucky West states, however, that if the Commission believes the PGA filing tendered herewith should reflect changes in the tariff sheets presently in effect prior to October 1, 1987, then Kentucky West, in the alternative, requests that the following tariff sheets be accepted to become effective November 1, 1987:

Thirty-Ninth Revised Sheet No. 27
Twenty-Fourth Revised Sheet No. 27A

If these alternate tariff sheets are accepted, Kentucky West submits it should be with the later right to file the appropriate tariff sheets upon Commission action accepting the tariff sheets filed in Docket No. RP87–147–000.

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in section 18, General Terms and Conditions of its FERC Gas Tariff.

Kentucky West states that the current purchase gas adjustment is an increase of 19.83¢ per dekatherm (dth) and that the deferred gas cost adjustment is an increase of 5.46¢ per dth. These changes, Kentucky West asserts, result in a total net jurisdiction purchase gas cost charge of 193.77¢ per dth, to become effective November 1, 1987.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket No. RP86–52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23625 Filed 10–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–86–001]

KN Energy, Inc.; Compliance Filing

October 6, 1987.

On September 30, 1987, KN Energy, Inc. ("KN") tendered for filing the following tariff sheets in Third Revised Volume No. 1 of its FERC Gas Tariff:

Substitute Twenty-Eighth Revised Sheet No. 4
Substitute Seventh Revised Sheet No. 4B
Substitute Sixth Revised Sheet No. 14

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KN states that the purpose of these substitute tariff sheets is to comply with the Commission's September 11, 1987 suspension order issued in Docket No. RP87–86–000, which directed KN to eliminate the selective discount authority proposed in Rate Schedules 1OR–1 and 1OR–2 and to eliminate the filed Annual Charge Adjustment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23620 Filed 10–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–7–000]

K N Energy, Inc.; Tariff Filing

October 6, 1987.

On September 30, 1987, K N Energy, Inc. ("KN") tendered for filing the following revised tariff sheets:

Third Revised Volume No. 1

Twenty-Ninth Revised Sheet No. 4
Eighth Revised Sheet No. 4B
Second Revised Sheet No. 16
Fifth Revised Sheet No. 27B
Fifth Revised Sheet No. 27C

Second Revised Volume No. 2

First Revised Sheet No. 21
Second Revised Sheet No. 42
First Revised Sheet No. 68A
Fourth Revised Sheet No. 97
First Revised Sheet No. 165
First Revised Sheet No. 190
First Revised Sheet No. 204

K N states that these tariff sheets implement an Annual Charge Adjustment (ACA) and unit charge and requests that the tariff sheets be made effective on October 1, 1987. K N also requests clarification that Order No. 472 assesses annual charges based on local distribution sales by K N and requests that the Commission protect K N from undercollecting the Fiscal Year 1987 annual bill if Order No. 472 *et al.* are reversed on appeal.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23622 Filed 10–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–1–59–000]

Northern Natural Gas Co.; Change in Rates and Tariff Revisions

October 6, 1987.

Take notice that on October 1, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective November 1, 1987 the following tariff sheets to be included in Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1:

Third Revised Volume No. 1

Forty-Fifth Revised Sheet No. 4a
Forty-Ninth Revised Sheet No. 4b
Seventeenth Revised Sheet No. 4b.1

Original Volume No. 2

Fifty-Sixth Revised Sheet No. 1c

Northern states that the purpose of the revised tariff sheets is to adjust its jurisdictional natural gas sales rates to reflect its purchased gas cost from Canadian suppliers in a manner consistent with Commission Opinion Nos. 256 and 256–A.

In accordance with the terms established in Northern's Stipulation and Agreement in Docket No. TA86–3–59 and approved by the Commission on January 30, 1987, Northern will file to adjust its market area sales commodity and demand rates to comply with the requirements of the order in the Natural Gas Pipeline Company (NGPL) proceeding in Docket No. TA85–1–26–004 if the outcome of that proceeding is different than Northern's current treatment.

Northern states that the effect of the proposed changes will be to transfer approximately $3.3 million from its demand rates to its commodity rates and will increase the Company's commodity PGA rate by $.008 per Mcf. The decrease in Northern's D–1 rate will be $.056 per Mcf and the D–2 rate will decrease by $.0019 per Mcf.

Copies of the filing were served on all of Northern's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23626 Filed 10–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–4–000]

Northwest Alaskan Pipeline Co.; Tariff Changes

October 6, 1987.

Take notice that on October 1, 1987, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108–899, tendered for filing in Docket No. RP88–4–000 the following tariff sheets to its FERC Gas Tariff Original Volume No. 2:

Fourth Revised Sheet No. 200
Third Revised Sheet No. 201
Fourth Revised Sheet No. 207
Fourth Revised Sheet No. 208
Third Revised Sheet No. 213B
Third Revised Sheet No. 213C
Third Revised Sheet No. 213D
Third Revised Sheet No. 213E
Fourth Revised Sheet No. 221
Third Revised Sheet No. 250
Fourth Revised Sheet No. 258
Fourth Revised Sheet No. 259
Original Sheet No. 259A
Third Revised Sheet No. 272E
Second Revised Sheet No. 272F
Original Sheet No. 272F–A
Fifth Revised Sheet No. 286

Northwest Alaskan states that it is submitting these sheets to reflect changes in the commodity charges and minimum volume requirements for

Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Panhandle Eastern Pipe Line Company ("Panhandle") under Rate Schedule X–2.

Northwest Alaskan states that it is submitting the above tariff sheets pursuant to the provisions of the amended purchase agreement dated November 1, 1987, between Northwest Alaskan and Panhandle.

Northwest Alaskan states that these tariff changes are beneficial to Panhandle in that the commodity charges for gas purchased and the minimum annual volumes will be reduced. Panhandle will also have greater flexibility in scheduling its daily minimum purchases during the months May-September. For maintenance of a ready supply far in excess of the substantially reduced minimum take obligations, a Panhandle Supply Reservation Payment will be made with respect to takes below certain levels.

Northwest Alaskan requests that the above sheets become effective November 1, 1987.

Northwest Alaskan states that a copy of this filing is being served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23624 Filed 10–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–1–49–000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

October 6, 1987.

Take notice that on September 30, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Sixth Revised Sheet No. 10
Third Revised Sheet No. 11

Original Volume No. 1–A

Fourth Revised Sheet No. 275
Third Revised Sheet Nos. 275A–275B
Fourth Revised Sheet No. 276
First Revised Sheet No. 276A
Fourth Revised Sheet No. 277

Original Volume No. 2

Ninth Revised Sheet No. 10
Tenth Revised Sheet No. 11

Williston Basin states that it prepared the instant PGA filing without benefit of the anticipated Commission order relative to the Company's compliance filing in Docket No. TA87–4–49–000, filed July 1, 1987.

The proposed effective date of the tariff sheets is November 1, 1987.

Williston Basin states the tariff sheets in Sixth Revised Sheet No. 10 and Third Revised Sheet No. 11 (First Revised Volume No. 1) and Ninth Revised Sheet No. 10 and Tenth Revised Sheet No. 11 (Original Volume No. 2) and the schedules in support thereof were computed in adherence to Williston Basin's PGA clause and the Commission's Rules and Regulations. The changes herein reflect a cumulative gas cost adjustment for Rate Schedules G–1, SGS–1, I–1 and X–1 of a negative 47.493 cents per dkt. The surcharge adjustment for Rate Schedules G–1, SGS–1 and I–1, is a negative 16.453 cents per dkt. These changes produce a net decrease in rates for Rate Schedules G–1, SGS–1 and I–1 of 24.723 cents per dkt and a net decrease of 15.021 cents per dkt for Rate Schedule X–1, relative to Williston Basin's compliance PGA filing of July 1, 1987. Rate Schedule X–5 reflects a cumulative gas cost adjustment of a negative 12.577 cents per dkt, an increase of .032 cents per dkt.

Williston Basin states that the projected price of deregulated gas supplies reflect the price last agreed-to by the various suppliers of natural gas.

Williston Basin has also submitted, pursuant to § 154.41(b) of the Commission's Regulations, Fourth Revised Sheet No. 275, Third Revised Sheet Nos. 275A–275B, Fourth Revised Sheet No. 276, First Revised Sheet No. 276A and Fourth Revised Sheet No. 277 (Original Volume No. 1–A), to update its "Index of Purchasers."

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (16 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23623 Filed 10–9–87; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 22 Through June 26, 1987

During the week of June 22 through June 26, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Orders

Cougar Oil Marketers, Inc., Ira Wynn Sanborn, 6/24/87, HRO–0262

Cougar Oil Marketers, Inc. (Cougar) and Ira Wynn Sanborn (Sanborn) objected to a Proposed Remedial Order (PRO) which the DOE's Economic Regulatory Administration (ERA) issued to them on September 21, 1984. In the PRO, the ERA alleged that during the period November 1979 through January 1981, Cougar committed violations of the crude oil reseller "layering regulation," 10 CFR 212.186. The ERA also sought to hold Sanborn personally liable for the pricing violations as the "central figure"controlling Cougar's activities.

The DOE found no merit in Cougar's arguments that the PRO was procedurally inadequate or that the layering regulation was not validly promulgated. The DOE held that in order for Cougar to rebut the ERA's prima facie showing of layering, the firm had to provide evidence of some tangible service which facilitated the movement of crude oil from the producer to the refiner or some other function of economic benefit to the crude oil market. In one instance, the DOE found that Cougar paid a service firm to sample and analyze crude oil, and concluded that no layering violation had

occurred with respect to that transaction. In general, however, the DOE found that Cougar had failed to rebut the evidence of layering presented by the ERA. In response to Cougar's objection that certain crude oil purchases and sales were improperly matched, the DOE accepted that ERA's rematching of those purchases and sales. The DOE also rejected Sanborn's argument that he could not be held personnally liable for the full amount of the overcharges. Accordingly, the PRO, with modifications, was issued as a final Remedial Order. The Remedial Order directs Cougar and Sanborn to refund $4,843,747.97 plus interest, for distribution under 10 CFR Part 205, Subpart V.

Petroleum Carrier Company, Inc., et al., 6/26/87 HRO–0228

Petroleum Carrier Company, Inc., Max B. Penn, and Rodney Siegfried (Respondents) objected to a Proposed Remedial Order (PRO) which the DOE's Economic Regulatory Administration (ERA) issued to them on April 6, 1984. Respondents' Statement of Objections and Objections Supplement set forth only general denials to the PRO. Although given numerous opportunities to submit evidence in support of their claims, the Respondents declined to do so. The DOE examined the record and found that Respondents' submissions failed to rebut the prima facie case established by the PRO. As a result, the DOE found that Respondents resold crude oil at price levels which exceeded the maximum lawful selling price permitted under the reseller price rule at 10 CFR 212.93(a) and 212.111(b)(3). The DOE concluded that Respondents should refund $1,163,865.17 plus interest, and that the refund should be disbursed pursuant to 10 CFR Part 205, Subpart V. Accordingly, the PRO, with a modificaiton, was issued as a final Remedial Order.

Storey Oil Company, Inc., 6/24/87, HRO–0211

Storey Oil Company, Inc. objected to a Proposed Remedial Order (PRO) which the DOE's Economic Regulatory Administration (ERA) issued to the firm on February 14, 1984. In the PRO, ERA found that the firm sold motor gasoline during the period September 1, 1979 through November 30, 1979 at prices in excess of those permitted by the price rule applicable to reseller-retailers, 10 CFR 212.93. After considering the firm's objections, the DOE concluded that the PRO, with modifications, should be issued as a final Order.

Important issues considered in the Decision were (i) the applicability of the acquired entity rule, 10 CFR 212.111(c), in the context of an acquisition of a bulk distribution plant from a refiner, (ii) the inapplicability of the new item/new market rule, 10 CFR 212.111(b), to sales from a retail outlet where the firm previously made sales from a bulk plant to "consumers" as that term is used in the new item/new market rule, (iii) the DOE's refusal to follow, during the pendency of the DOE's appeal to TECA, the district court decision in *County Fuel Company* v. *DOE*, 644 F. Supp. 294 (D. Md. 1986) (DOE required to compute the MLSP for retail sales by a reseller-retailer during the period July 1979 to May 1980 by reference to the July 19, 1979 fixed margin rule, 44 FR 42542 (July 19, 1979), applicable to retailers), and (iv) whether the record supported ERA's finding that the firm's transportation costs had declined from the base period to the audit period.

Petition for Special Redress

Arkansas, 6/26/87, KEG–0010

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the State of Arkansas. The State sought approval to use Stripper Well funds for a project found by the DOE's Assistant Secretary for Conservation and Renewable Energy to be inconsistent with the terms of the Stripper Well Settlement Agreement. After considering Arkansas' Petition, the DOE disapproved the State's proposal to use $400,000 for the Natural Gas Line Extension Project. The DOE found that the project was not an "energy assistance program" as defined in the 1981 Chevron Consent Order. Furthermore, the DOE found that the program did not qualify as a new program under the guidelines established in previous determinations. Accordingly, Arkansas' Petition for Special Redress was denied.

Requests for Exception

Fleming Bros. Oil Co., 6/26/87, KEE–0130

Fleming Bros. Oil Co. filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In its Application the firm argued that exception relief was warranted on the grounds that the firm had filed the form for three years and that it spent one hour per month on preparing the form. In considering the request, the DOE found that the firm was not suffering an inordinate burden by fulfilling its reporting obligations. Accordingly, exception, relief was denied.

McCormick Marketing, Inc., 6/26/87, KEE–0096

McCormick Marketing, Inc. filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." The firm argued that exception relief was warranted on the ground that it had only one full-time employee for bookkeeping and administrative tasks and that it took that employee three hours per month to prepare the form. In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting obligation. Accordingly, exception relief was denied.

Wm. Fabian & Son, Inc., Craft Oil Co., Par-Mar Oil Co., 6/26/87, KEE–0092, KEE–0101, KEE–0116

W. Fabian & Son, Inc., Craft Oil Co. and Par-Mar Oil Co. filed Applications for Exception seeking relief from the requirement to file Form EIA–782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The firms argued that exception relief was warranted on the ground that they spent from one and one-half to four hours per month preparing the form. In considering the request, the DOE found that the firms would not suffer an inordinate burden by fulfilling their reporting obligations. Accordingly, exception relief was denied.

Refund Applications

Charter Co./Louisiana, National Helium Corp./Massachusetts, OKC Corp./Louisiana, 6/25/87, RQ23–359, RQ3–366, RQ13–375

The DOE issued a Decision and Order approving the second-stage refund applications submitted by the State of Louisiana and the Commonwealth of Massachusetts in the Charter Co., National Helium Corp., and OKC Corp. refund proceedings. Louisiana will use $74,200 for the New Orleans Vanpool Program, $55,100 for the Marine Energy Conservation Program, and $60,000 for the Fertilizer Application Energy Conservation Education Program. Massachusetts will use $125,000 for the Fleet Management Program. In evaluating the plans, the DOE found that they would conserve energy and provide restitutionary benefits to consumers who were injured by the oil violations during the period 1973–1981.

Consolidated Freightways of Delaware, Inc., Combustion Engineering, Inc., Salem Transportation Co., Inc., 6/

23/87, RF270–1516, RF270–1531, RF270–1532

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporter Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the volumes of refined petroleum products used by a Class 100 motor carrier, a diversified engineering firm with its own fleet, and an airport passenger transportation company. The DOE will use those volumes as the basis for the refunds that will ultimately be issued to the firms. The total number of gallons approved in this Decision and Order is 654,060,002.

Cressona Trucking Company et al., 6/24/87, RF270–881 et al.

Cressona Trucking Company, and twenty-six other for-hire and private motor carriers sought refunds from the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE examined each claim and ascertained that each of the applicants is an eligible surface transporter, and that its claim does not exceed the volume of petroleum products that the applicant consumed in vehicle operations. The DOE approved the volumes that will be the bases of the refunds ultimately issued to the firms. The total volume approved in this Decision and Order is 118,765,601 gallons.

Davidson Brothers et al., 6/26/87, RF270–1447 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the volumes of refined petroleum products used by fifteen Common Motor Freight Carriers or Bulk Commodity Haulers, after adjusting three claims to compensate for mathematical errors. The DOE will use those volumes as a basis for the refund that will ultimately be issued to the three firms. The total number of gallons approved in this Decision and Order is 90,682,092.

Delux Limousine Service, Inc., Port Washington Delux Taxi, Inc., 6/24/87, RF270–1122, RF270–1144

The DOE issued a Decision and Order approving two affiliated companies who filed separate timely applications for Surface Transporter Refunds. Since both companies could have consolidated their applications into a single application, the DOE considered the two claims as if they had been properly consolidated. The DOE approved the applications after making certain adjustments to the volumes claimed by the firms. The DOE will use these volumes as the bases for the refunds ultimately granted to the firms. The total number of gallons approved in this decision and order is 1,215,552.

East Penn Manufacturing Co. et al., 6/23/87, RF270–2264 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund from the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the settlement period and that it was either a "for hire" carrier or a private fleet operator for the purposes of theis proceeding. One of the applicants based part of its claim on propane consumed by buses. The DOE found that this was an acceptable use of an eligible fuel because these vehicles operated over the road just like taxicabs, whose use of propane had previously been approved. *Owensboro Yellow Cab Co.*, 15 DOE ¶ 85,363 (1987). Accordingly, all eight Applications were approved, and the respective volumes will be used to calculate each company's refund. The total number of gallons approved in this Decision and Order is 15,755,646.

Elm City Filling Stations, Inc./ Consolidated Edison Co. of New York, 6/24/87, RF255–3

Consolidated Edison Company of New York applied for a refund from the Elm City Stations, Inc. consent order fund on the basis of its purchase of residual fuel from JOC Oil Company, a direct purchaser of Elm City residual fuel. The DOE determined that the residual fuel that Con Ed purchased from JOC in January 1974 was unlikely to have been the product purchased by JOC from Elm City in the November 1973 transaction covered by the Elm City consent order. Accordingly, Con Ed's refund application was denied.

Good Hope Refineries/Marathon Petroleum Company, 6/24/87, RF189–11

The DOE issued a Decision and Order concerning an Application for Refund filed by Marathon Petroleum Company on the basis of the procedures outlined in *Good Hope Refineries*, 13 DOE ¶ 85.105 (1985). Marathon, a major refiner that resold Good Hope motor gasoline and No. 2 fuel, was a spot purchaser. According to the *Good Hope* procedures, spot purchasers are ineligible for refunds unless they present a showing that they were injured. Marathon did not submit documentation demonstrating that it was injured by its spot purchases. Therefore, Marathon's refund application was denied.

Gulf Oil Corporation/Lee's Gulf Service, 6/25/87, RF40–2941

The DOE granted a refund from the Gulf Oil Corporation consent order escrow account to Lee's Gulf, a retailer of Gulf petroleum products. Lee's demonstrated that it would not have been required to reduce its selling prices to its customers by the amount of the refund claimed. The refund to Lee's totals $536.

Gulf Oil Corporation/Roo's Gulf et al., 6/23/87, RF40–3387 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corporation*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 Consent Order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $2,002, representing $1,598 in principal and $404 in accrued interest.

Joy Farm Transportation, Inc. et al., 6/24/87, RF270–432 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the volumes of refined petroleum products claimed by four private bus companies and will use those volumes as the bases for the refunds that will ultimately be issued to the four firms. The total number of gallons approved in this Decision and Order is 13,016,063.

Marathon Petroleum Company/Bud's Service, ABC Oil Company, 6/23/87, RF250–2507 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by Bud's Service and ABC Oil Company, both purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company.

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Each applicant demonstrated the volume of its Marathon purchases, and each declined to submit a demonstration that it was injured by the alleged overcharges. Therefore, each applicant was granted a refund under the 35 percent presumption of injury. The sum of refunds approved in this Decision and Order is $13,764 in principal and $1,409 in interest.

Marathon Petroleum Company/Major Oil Products, 6/25/87, RF250–2334, RF250–2335

The DOE issued a Decision and Order granting an Application for Refund filed by Major Oil Products (Major) in connection with the Marathon Petroleum Company special refund proceeding. Under the refund procedures estalished for Marathon applicants, Major's purchase volume corresponded to a volumetric share exceeding the $5,000 small claim threshold level. However, the firm elected to limit its refund claim to $5,000, and was therefore not required to submit a detailed showing of injury. The total refund granted Major is $5,512, representing $5,000 in principal and $512 in interest.

Marathon Petroleum Company/Monarch Oil & Supply Co., 6/23/87, RF250–1523

Monarch Oil & Supply Co. (Monarch) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). Monarch demonstrated that it purchased 4,337,731 gallons of motor gasoline during the consent order period from Marathon through Universal Oil, a direct purchaser that had not filed an Application for Refund in the Marathon proceeding. Using a volumetric methodology, the DOE determined that Monarch's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Monarch a refund of $1,821.85 in principal and $173.51 in accrued interest for a total of $1,995.36.

Marathon Petroleum Company/Pacino's Marathon, 6/23/87, RF250–1715

Pacino's Marathon (PM) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). PM demonstrated that it purchased 1,974,000 gallons of motor gasoline during the consent order period from Marathon through Brubaker Oil Company, a direct purchaser that had not filed an application for Refund in the Marathon proceeding. Using a volumetric methodology, the DOE determined that PM's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted PM a refund of $829.08 in principal and $78.96 in accrued interest for a total refund of $908.04.

Marathon Petroleum Company/Toney's Marathon, 6/23/87, RF250–1524

Toney's Marathon (TM) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). TM demonstrated that it purchased 571,898 gallons of motor gasoline during the consent order period from Marathon through Ray Stewart, a direct purchaser that had not filed an Application for Refund in the Marathon proceeding. Using volumetric methodology, the DOE determined that TM's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted TM a refund of $240.20 in principal and $22.88 in accrued interest for a total refund of $263.08.

Marathon Petroleum Company/Painter Petroleum Co., 6/23/87, RF250–1360, RF250–1361

Painter Petroleum Co. (PPC) filed two Applications for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). PPC demonstrated that it purchased 6,582,549 gallons of motor gasoline and 1,962,570 gallons of middle distillates during the consent order period from Marathon through Ball Tire & Gas, Inc. which had been granted a refund as a direct purchaser under the 35 percent presumption of injury method. Using a volumetric methodology, the DOE determined that PPC's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted PPC a refund of $3,588.95 in principal and $341.80 in accrued interest for a total refund of $3,930.75.

Marathon Petroleum Company/Private Brand Services, Inc. Johnson Oil Company, 6/24/87, RF250–2448, RF250–2490, RF250–2491

The DOE issued a Decision and Order concerning Applications for Refund filed on behalf of Private Brand Services, Inc. and Johnson Oil Company. Private Brand Services demonstrated its indirect purchases of Marathon product through Johnson Oil Company and another supplier. Johnson Oil Company demonstrated its direct purchases of covered product from Marathon. Johnson Oil Company was granted a refund on the basis of the 35 percent presumption of injury, and Private Brand Services was granted a refund under the small claims presumption of injury. The sum of the refunds approved in this Decision is $11,861 in principal and $1,214 in interest for a total refund of $13,075.

Mobil Oil Corporation/Central & Grove Mobil, 6/26/87, RF225–10848

The DOE issued a Decision and Order concerning duplicate Applications for Refund filed by Richard Bird, owner of Central & Grove Mobil. In the Decision, the DOE determined that the applicant had received two refunds based on its purchases from Mobil, and that it should remit $495 for deposit into the Mobil escrow account.

Roesch Lines et al., 6/24/87, RF270–289 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the volumes of refined petroleum products claimed by 13 companies which operated private fleets of trucks and will use those volumes as the bases for the refunds that will ultimately be issued to the 13 firms. The total number of gallons approved in this Decision and Order is 176,647,032.

Shulton, Inc. & John Breck Divisions of American Cyanamid Co., American Cyanamid Co., Chemicals Group, 6/25/87, RF270–751, RF270–1119

The DOE issued a Decision and Order approving two affiliated companies who filed separate timely applications for refunds from the Surface Transporters Escrow fund. Since both companies could have consolidated their applications into a single application, the DOE considered the two claims as if they had been properly consolidated. The total number of gallons approved in this Decision and Order is 8,766,443.

T. Achenberg Transportation Co. et al., 6/23/87, RF270–1799 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the purchase volumes of refined petroleum products claimed by twelve trucking companies and will use those volumes as the bases for the refunds that will ultimatley be issued to the twelve firms. The total number of

gallons approved in this Decision and Order is 22,912,027.

The Davidson Transfer and Storage Company, Inc. et al., 6/24/87, RF270–921 et al.

The Davidson Transfer & Storage Company, Inc. and eighteen other for-hire motor carriers filed Applications for Refund, seeking funds from the Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE examined each claim and ascertained that each of the applicants is an eligible surface transporter, and its claim did not exceed the gallons of petroleum products that the applicant consumed in vehicle operations. The total volume approved in this Decision and Order is 43,164,320 gallons. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Ward Trucking Corp. et al., 6/25/87, RF270–285 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the volumes of refined petroleum products claimed by 26 trucking companies which operated as common carriers and will use those volumes as the bases for the refunds that will ultimately be issued to the 26 firms. The total number of gallons approved in this Decision and Order is 116,542,082.

Yellow Cab Co. of Greater Buffalo et al., 6/26/87, RF270–1681 et al.

The DOE issued a Decision and Order approving the volumes of thirteen Applicants for Refund from the Surface Transporters Escrow, established as the result of the DOE Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter Claims. The total number of gallons approved in this Decision and Order is 37,752,285.

Dismissals

The following submissions were dismissed:

Name	Case No
A & P Service Center	RF225–5342
Conoco, Inc.	RF242–7
E-Z Serve, Inc	RF252–7
Feeder's Grain Co	RF270–2376
Gunnison Watershed School District RE1J	RF270–80
Home Petroleum Corp.	RF212–2
Kerr-McGee Corp.	RF252–6
Madison Taxi of Buffalo, Inc.	RF270–1694
Maritime Overseas Corp.	RF271–227
North Temple Gulf	RF40–3138
The Coastal Corp.	RF242–19
Three Bros. Gulf	RF40–3214
Village Market	RF225–8731

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 2, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–23561 Filed 10–9–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders: Week of August 17 Through August 21, 1987

During the week of August 17 through August 21, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Citizen/Labor Energy Coalition, 8/19/87, KFA–0110

The Citizen/Labor Energy Coalition filed an Appeal from a denial by the Director, Office of Oil and Gas, Energy Information Administration, of a Request for Information which it had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that, except for some transmittal and telecommunication slips, the documents at issue were properly withheld under Exemption 4 and 5 of the FOIA, which exempt confidential commercial information and predecisional agency material from mandatory disclosure. Important issues considered in the Decision and Order involved the confidentiality of survey data and whether drafts of the report at issue came within the agency's deliberative process privilege.

Remedial Order

Texaco Inc., 8/20/87, HRO–0276

Texaco Inc. objected to a Proposed Remedial Order alleging that the firm used excessive May 15, 1973 prices in computing its maximum allowable prices for sales of propane to Dow Chemical Company and Enterprise Products Company. The PRO found that the use of an excessive May 15, 1973 selling price was a per se violation of the refiner price rule for which refunds can be ordered. The PRO proposed the adoption of either a "refund down" remedy or a MAP recalculation. The "refund down" remedy was based on the difference between the correct and incorrect May 15, 1975 selling prices, multiplied by the volume of propane sold during the period in which Texaco used the incorrect May 15, 1973 price. The DOE rejected Texaco's factual objection and affirmative defenses to the May 15 selling price allegation and then determined that the "refund down" remedy was appropriate and lawful. The DOE found that the "refund down" was appropriate because, inter alia, it would remedy the precise regulatory harm that occurred and would further the national energy policy of concluding the enforcement program in a timely manner. In connection with its determination that the "refund down" was lawful, the DOE agreed with the PRO's finding that the use of an incorrect May 15, 1973 selling price was a per se violation of the refiner price rule for which refunds can be ordered. In making this determination, the DOE requested that the Federal Energy Regulatory Commission reconsider its decision in *Exxon U.S.A. Inc.*, 35 FERC 61,033 (1986), in which the FERC held that the use of an incorrect May 15, 1973 selling price was not a per se violation of the refiner price rule for which refunds can be ordered. In this regard, the DOE explained why it believed that the FERC decision was incorrect at the time it was issued and that, in any event, the issuance of a recent TECA decision alone warranted a reconsideration of the Exxon decision.

Request for Exception

Winco, Inc., 8/20/87, KEE–0123

Winco, Inc. filed an Application for Exception seeking relief from the reporting requirements of Form EIA–782B. In considering the request, the DOE found that in view of its precarious financial condition, the firm was experiencing an unfair distribution of burdens as a result of the reporting requirements and that exception relief was warranted. Accordingly, relief

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excepting Winco from any obligation to file Form EIA–782B was approved.

Refund Applications

Affiliated of Florida, Inc. et al., 8/20/87, RF270–446 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by forty-two trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the forty-two firms. The total gallonage approved in the Decision was 146,938,444.

Connecticut American Charters, Inc., et al., 8/18/87, RF270–1225, et al.

The Department of Energy issued a Decision approving ten applications for refunds from the Surface Transporter Escrow, established as a result of the Stripper Well Settlement Agreement. The applicants all provided private surface transportation services. The total number of gallons approved is 46,575,417.

Delaware and Hudson Railroad Company, 8/19/87, RF271–230

The DOE corrected a Decision and Order issued to Delaware and Hudson (D&H), granting the firm's Application for a Refund from the Rail and Water Transporters Escrow. Specifically, the DOE amended the gallonage figure that will be used in calculating the firm's refund to reflect a correction submitted by D&H. Accordingly, D&H's refund will be based on its use of 132,162,080 gallons of petroleum products.

Farm House Foods Corporation, et al., 8/19/87, RF270–2296, et al.

The DOE issued a Decision and Order granting five Applications for Refund from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was a private fleet operation for the purposes of this proceeding. The total number of gallons approved in this Decision is 38,046,466.

Getty Oil Company/Baltimore Gas & Electric Co., et al., 8/21/87, RF265–1785 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by public utilities that used products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty products that were purchased. As end-users, these applicants were entitled to receive a refund in the full volumetric amount. The sum of the refunds approved in this Decision is $309,467, representing $406,465 and $403,002 in accrued interest.

Getty Oil Company/Borough of Media, et al., 8/20/87, RF265–956, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by municipalities that used products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty products that it purchased. As end-users, these applicants were entitled to the full volumetric amount. The sum of the refunds approved in this Decision is $6,196, representing $3,111 in principal and $3,085 in accrued interest.

Getty Oil Company/Boyler's OK Service, et al., 8/17/87, RF265–2203, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Four applicants were eligible for refunds based on the $5,000 small claims presumption and the remaining four applicants elected use that presumption by to limiting their claims to $5,000. The sum of the refunds approved in this Decision is $87,586, representing $33,938 in principal and $33,648 in accrued interest.

Getty Oil Company/Butler's L.P. & Fertilizer, Inc., et al., 8/17/87, RF265–2498, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Three applicants were eligible for refunds based on the $5,000 small claims presumption and the remaining two applicants elected to use that presumption by limiting their claims to $5,000. The sum of the refunds approved in this Decision is $43,093, representing $21,638 in principal and $21,454 in accrued interest.

Getty Oil Company/Kumm Gas Company, Inc., et al., 8/17/87, RF265–2504 et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by resellers and retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Two applicants were eligible for refunds based on the $5,000 small claims presumption. In the remaining case, the applicant elected to use that presumption by limiting its claim to $5,000. The sum of the refunds approved in this Decision is $17,345, representing $8,710 in principal and $8,635 in accrued interest.

Getty Oil Company/Sussex Petroleum Co., Inc., 8/19/87, RF265–2520

The DOE issued a Decision and order concerning an inadvertent overstatement of 118,183 gallons of middle distillates in the purchase volume used in calculating the refund previously granted to Sussex Petroleum Co., Inc. Accordingly, the prior refund was corrected and the total Sussex refund approved was $6,939, representing $3,484 in principal and $3,455 in accrued interest.

Gulf Oil Corporation/Illinois Valley Supply Company, 8/19/87, RF40–3592

The DOE issued a Decision and Order concerning an Application for Refund filed by Illinois Valley Supply Company, a reseller of propane sold by Gulf Oil Corporation. The firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. The applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the estimation technique and other supporting data submitted by the applicant, the DOE concluded that the firm should receive a refund of $2,992 ($2,370 principal plus $622 interest).

Hunt Concrete, et al., 8/18/87, RF270–2447 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four firms seeking portions of the Surface Transporters Escrow. Each of the applications was received after the December 8, 1986 filing deadline established for such claims. In considering each firm's reasons for its late filing, the DOE found that none of the firms had convincingly demonstrated that its position was materially different from any of the approximately 2400 other firms that managed to file timely applications. Accordingly, the DOE dismissed the four applications as untimely filed.

Joyce Bros. Storage & Van, et al., 8/19/87, RF270–1214, et al.

The Department of Energy issued a Decision approving applications submitted by eleven firms for refunds from the Surface Transporter Escrow, established as a result of the Stripper Well Settlement Agreement. Each applicant operated motor vehicles for surface transporter and applied for a refund based on its purchases of motor gasoline and diesel fuel between August 19, 1973 and January 27, 1981. The total number of gallons approved in this Decision is 39,538,680.

Lapeer Community Schools, Matney Service Station, Jonesville Community Schools, 8/21/87, RF270–1203, RF270–1205, RF270–1246

The Department of Energy issued a Decision considering the applications for refunds from the Surface Transporter Escrow, submitted by Lapeer Community Schools, Matney Service Station and Jonesville Community Schools. The DOE determined that Lapeer and Jonesville were school districts and that Matney was a service station. The DOE therefore found that they had failed to establish that they were Surface Transporters as defined in the Stripper Well Settlement Agreement establishing the escrow fund. Accordingly, the applications were denied.

Magnolia Marine Transport Co., et al., 8/19/87, RF271–123, et al.

The Department of Energy issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Each applicant used an acceptable method for estimating its fuel use. The total number of gallons approved in the Decision was 114,976,098.

Mapco, Inc./Gulf States Oil & Refining Co., 8/17/87, RF108–17

Gulf States Oil & Refining Co. filed an Application for Refund in the Mapco, Inc. refund proceeding. Gulf States' refund claim was based on 71,392,254 gallons of covered products, of which 70,955,792 gallons were obtained through exchanging products rather than actual purchases. Since Gulf States failed to establish any regulatory violation with respect to the exchange transactions, the DOE denied the firm's refund request with respect to the gallons that the firm obtained through exchange. Gulf States' refund request was granted for the 436,462 gallons that the firm actually purchased from Mapco. The amount of the refund granted to Gulf States was $785.63, plus $414 in interest.

Midwest Coast Transport, Inc., 8/19/87, RF270–1536

Midwest Coast Transport filed an Application for Refund in the Surface Transporters Escrow fund. The claim included volumes purchased by both Midwest and its independent contractors (owner operators). Although Midwest indicated its intention to pass any refunds through to its owner operators, the DOE approved for refunds only the volumes of product actually purchased by the claimant. The basis for this determination was (i) that the owner operators had not signed claim forms agreeing to be bound by the terms of the Settlement, and (ii) that since each owner operator's purchase volumes were lower than the minimum threshold, they are not individually members of the class for which the Surface Transporters Escrow was established. The total gallonage approved was 13,356,495.

Panella Trucking, Inc., Ralph Panella Trucking, 8/19/87, RF270–890, RF270–891

Panella Trucking, Inc. and Ralph Panella Trucking filed application seeking refunds from the Surface Transporters Escrow established pursuant to the Stripper Well Settlement Agreement. Panella Trucking, Inc. claimed 3,514,108 gallons of motor fuel, and Ralph Panella Trucking's claimed 564,994 gallons. While noting that the two applicants are affiliated firms under a common ownership, and that a strict adherence to the waiver and release clause would have resulted in dismissal of one the two applications, the DOE decided that the gallons that the applicants each claimed were not duplicative, and that the two claims had the same effect as one claim based on a consolidated volume. Accordingly, the DOE granted the applications and approved a total gallonage claim of 4,079,102.

Path Truck Lines, Inc., et al., 8/18/87, RF270–9 et al.

The Department of Energy issued a Decision and Order approving 23 Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The applicants, "for hire" trucking companies, private fleets of trucks, taxi companies, or bus companies, applied for refunds based on purchases of diesel fuel, motor gasoline, motor oil, and lubricating oils. The total number of gallons approved was 63,522,180.

Petroleum Heat and Power Co., Inc./A-One Oil, Inc., 8/19/87, RF285–17

The DOE issued a Decision and Order concerning an Application for Refund filed by A-One Oil, Inc. a retailer of Petroleum Heat and Power Co., Inc. No. 2 heating oil. A-One applied for a refund based on the procedures outlined in *Petroleum Heat and Power Co., Inc.*, 15 DOE ¶ 85,036 (1986), governing the disbursement of settlement funds received from PHP pursuant to a November 13, 1980 Consent Order. Since A-One's purchases entitled it a refund of less than $5,000, the firm was presumed to have been injured by the PHP alleged overcharges. After examining the application and supporting documentation submitted by A-One, the DOE granted the firm a refund of $7,252, representing $4,431 in principal and $2,821 in accrued interest.

R.O. Harrell, Inc. et al., 8/21/87, RF270–581 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well litigation. The DOE approved the gallonages of refined petroleum products claimed by twenty trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the twenty firms. The total number of gallons approved in the Decision was 73,623,492.

R.W. Harmon & Sons, Inc., et al., 8/18/87, RF270–1186, et al.

The Department of Energy issued a Decision approving six applications for refunds from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The claimants provided trucking services, maintained private fleets or contracted for school bus services. The total number of gallons approved in this Decision is 16,072,177.

Sandersville Railroad Company, Inc. et al., 8/21/87, RF271–43 et al.

The DOE issued a Decision and Order approving 19 applications for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. OHA found that all 19 applicants had established that they were members of the RWT class, and had substantiated the volumes of their purchases of U.S. petroleum products claimed in their respective applications. The total number of gallons approved in this Decision is 217,996,157.

Tresler Oil Company/Kent Oil & Trading Company, Inc., 8/19/87, RF295–3

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Kent Oil & Trading Company, Inc. filed an application for a refund from the Tresler Oil Company escrow account. The DOE determined that Kent was a spot purchaser of Tresler product that failed to rebut the presumption that it was not injured as a result of those transactions. Accordingly, the Kent application was denied.

Vickers Energy Corp./Missouri Standard Oil Company (Indiana)/ Missouri OKC Corp./Missouri, 8/ 19/87, RM1–71, RM251–72, RM13–73

The State of Missouri filed Requests for Modification with the Office of Hearings and Appeals. The State sought permission to use second stage refund monies derived from escrow accounts provided by Amoco and OKC Corporation to pay for a project that was originally to be funded by a Vickers Energy Corporation Escrow Account. The DOE found that due to pending litigation, the Vickers fund could not yet be released and that the State's request should therefore be granted.

Wallack Freight Lines, Inc., 8/20/87, RR270–2

Wallack Freight Lines, Inc. (Wallack) filed a Motion for Reconsideration of the dismissal by the DOE of its Application for Refund from the Surface Transporters Escrow fund. The firm's refund application had been dismissed because it was filed after the December 8, 1986 filing deadline established for Surface Transporter applications. In its Motion, Wallack stated that it had been informed by a local trucking association that the filing deadline had been extended and that it did not receive the claim form in sufficient time to meet the filing deadline. The DOE stated that the agency could not be held responsible for erroneous information concerning the deadline and that Wallack had not convincingly demonstrated that its position was materially different from that of any other firms that managed to file timely applications. Accordingly, the firm's Motion for Reconsideration was denied.

Dismissals

The following submissions were dismissed.

Name	Case No.
Bobbett Gas Service, Inc.	RF208–21
Clare Public Schools	RF270–1392
Fort Worth Transportation Authority	RF270–597
Gwinn Area Community Schools	RF270–1297
International Drilling & Energy Corp.	RF208–22
Modern Gas Company, Inc.	RF208–20
School of District of the City of Pontiac	RF270–1391

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 2, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–23560 Filed 10–9–87; 8.45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3275–8]

Science Advisory Board, Research Strategy Subcommittee, Sources, Transport and Fate Group; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Sources, Transport and Fate Group of the Science Advisory Board's Research Strategy Subcommittee will meet from 9:00 a.m. to 4:00 p.m. on October 15th at the Airport Hilton Inn at 4411 Peoria Street, Denver, Colorado in the Conference Room. The purpose of the Research Strategy Subcommittee is to advise the Administrator of the Environmental Protection Agency on the development of research strategies needed to enhance the Agency's ability to acquire scientific and technical information to support regulatory decision making, and to identify emerging environmental problems. The Sources, Transport and Fate Subgroup will evaluate environmental contaminants from both a media-specific and a multi-media basis.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Dr. Terry F. Yosie, Director, Science Advisory Board, at 202-382-4126 or Joanna Foellmer by October 13, 1987.

Dated: October 7, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–23713 Filed 10–9–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 5, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB number: 3060–0041

Title: Application for Authority to Operate a Broadcast Station by Remote Control or to Make Changes in a Remote Control Authorization.

Form number: FCC 301–A.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of responses: On occasion.

Estimated annual burden: 152 Responses; 41 Hours.

Needs and uses: FCC Form 301–A is filed by AM radio station licensees/ permittees with a directional antenna to request authority to operate a station by remote control. The data is used by FCC staff to assure that the directional antenna system is stable.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–23604 Filed 10–9–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–427; File Nos. BP–860616AD and BP–860922AD]

Applications for Consolidated Hearing; Larry Ward Gamble and Ranjack Radio

1. The Commission has before it the

following mutually exclusive applications for a new AM station:

Applicant, city and State	File No	MM Docket No
A. Larry Ward Gamble, Oakhurst, California	BP-860616AD	87-427
B. Ranlack Radio, Oakhurst, California	BP-860922AD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, All applicants
2. Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan. Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-23605 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-425; File Nos. BPH-850712GI and BPH-850712PG]

Applications for Consolidated Hearing; Evelyn Kelly and Betty Reineke

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No
A. Evelyn Kelly, Silverton, Co.	BPH-850712GI	87-425
B. Betty Reineke, Silverton, Co	BPH-850712PG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Environmental Impact, A, B
2. Comparative, A, B
3. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-23606 Filed 10-9-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before November 12, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

Summary: The FDIC is requesting OMB approval for implementing the information collection requirements contained in the Government Securities Act of 1986. The act requires all financial institutions that function as government securities brokers and government securities dealers to notify their designated federal regulatory agencies of their broker-dealer activities unless exempt from the notice requirement by the Department of the Treasury regulation. Insured State nonmember banks that act as government securities broker-dealers must file notices with the FDIC. The forms involved in the required notifications are G-FIN, G-FINW, G-FIN-4, and G-FIN-5.

It is estimated that it takes the average bank one hour to prepare the notification form. The FDIC expects to receive 115 forms over a 12 month period resulting in an annual paperwork burden estimate of 115 hours for all respondents.

Dated: October 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-23607 Filed 10-9-87; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Community Reinvestment Act Statement and Recordkeeping.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to

Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before November 12, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3810.

Summary: The FDIC is requesting OMB approval to continue the collection of information imposed on insured State nonmember banks by regulation 12 CFR Part 345—*Community Reinvestment*, which appeared at 43 FR 47151, October 12, 1978. The information collection requirements of the regulation pertain to the adoption of a Community Reinvestment Act (CRA) statement, posting of a CRA public notice, and maintenance of CRA public files, by banks. These information collection requirements were not previously approved by OMB as required by the Paperwork Reduction Act of 1980. The annual review and updating of CRA statements and the maintenance of public files require, on the average, one hour of effort per bank. The total annual burden on all banks, collectively, is 8,617 hours.

Dated: October 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–23608 Filed 10–9–87; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–663]

Collingdale Federal Savings and Loan Association, Collingdale, PA; Final Action Approval of Conversion Application

Date: October 6, 1987.

Notice is hereby given that on October 1, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Collingdale Federal Savings and Loan Association, Collingdale, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 97–23666 Filed 10–9–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–664; FHLBB No. 2641]

The First Federal Savings Bank, Cleveland, OH; Final Action Approval of Conversion Application

Date: October 6, 1987.

Notice is hereby given that on October 2, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The First Federal Savings Bank, Cleveland, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–23666 Filed 10–9–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Bank South Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 30, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank South Corporation*, Atlanta, Georgia; to acquire 92.21 percent of the voting shares of Heritage Trust, Conyers, Georgia.

2. *C & L Banking Corporation*, Bristol, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of C & L Bank of Bristol, Bristol, Florida.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Cardinal Bancorp II, Inc.*, Washington, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank of Union, Union, Missouri.

2. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to acquire, through its wholly-owned subsidiary, CSB Bancshares, Inc., 100 percent of the voting shares of First Indiana Bank, National Association, Milltown, Indiana, and Indiana First National Bank, Charlestown, Indiana.

3. *Okawville Bancshares, Inc.*, Okawville, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of Old Exchange National Bank, Okawville, Illinois.

4. *Old National Bancorp*, Evansville, Indiana; to acquire 100 percent of the voting shares of Furst Farmers Corporation, Madisonville, Kentucky, and thereby indirectly acquire Farmers Bank and Trust Co., Madisonville, Kentucky.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Willow Bend Bancshares, Inc.*, Plano, Texas; to acquire 100 percent of the voting shares of Preston North National Bank, Dallas, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice

President) 101 Market Street, San Francisco, California 94105:

1. *Eldorado Bancorp*, Tustin, California; to acquire at least 83.8 percent of the voting shares of American Merchant Bank, Newport Beach, California.

Board of Governors of the Federal Reserve System, October 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23527 Filed 10-9-87; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bancorporation, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanies by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation, Inc.*, St. Louis, Missouri; to engage *de novo* through its subsidiary, Mercantile Investment Services, Inc., St. Louis, Missouri, in brokerage services consisting of buying and selling securities soley as agent for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the states of Missouri, Illinois, and Kansas.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Madison Agency, Inc.*, Sioux Falls, South Dakota; to engage *de novo* through its subsidiary, Madison Agency, Inc., Sioux Falls, South Dakota, in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23528 Filed 10-9-87; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested person may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Citizens Fidelity Florida, Inc., Orlando, Florida, in arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to engage *de novo* through its subsidiary, First Commerce Investment Services, Inc., New Orleans, Louisiana, in making available variable rate annuities to its customers pursuant to § 225.25(b)(15) of the Board's Regulation Y.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to engage *de novo* in the issuance and sale at retail of money orders and instruments of issue with face values up to and exceeding $10,000 pursuant to § 225.25(b)(12) of the Board's Regulation Y. Comments on this application must be received by October 23, 1987.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Standard Chartered PLC and Standard Chartered Bank*, London, England; to engage *de novo* through their subsidiary, Scimitar North American Asset Management, Inc., Boston, Massachusetts, in providing investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23529 Filed 10-9-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; Deletion of Notices of Systems of Records

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of the Assistant Secretary for Planning and Evaluation is deleting four Privacy Act Systems of Records previously published in the **Federal Register.**

DATE: Effective October 13, 1987.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington DC, 20201.

FOR FURTHER INFORMATION CONTACT: For information regarding this action, contact Joan Turek-Brezina, Privacy Act Officer (telephone: 202-245-6141).

Notice is hereby given that the Department of Health and Human Services is deleting the following notices which describe systems of records maintained by the Office of the Assistant Secretary for Planning and Evaluation:

System No	System name	Date published in the FEDERAL REGISTER
00-09-0087	Recipient Survey for the Monthly Reporting and Retrospective Accounting Study	3/24/81
00-09-0090	Recipient Survey of Alternative Approaches to Financing Day Care for AFDC Children	10/13/82
09-90-0089	National Long-Term Care Survey	12/7/81
00-90-0082	Pennhurst Longitudinal Study (also called the Longitudinal Study of the Court Ordered Deinstitutionalization of Pennhurst)	12/22/80

The records formerly covered by the systems notices for the Pennhurst Longitudinal Study and the Recipient Survey for Monthly Reporting and Retrospective Accounting study have been certified as being destroyed or disposed of by the respective contractors, Temple University and Abt Associates, Inc. The project, Recipient Survey of Alternative Approaches to Financing Day Care for AFDC Children, was canceled and the survey never conducted. Consequently, no system of records was ever maintained. The National Long-term Care Survey notice has been superseded by the National Long-Term Care Survey Follow-up notice (09-70-0030) of the Health Care Financing Administration.

Dated: October 2, 1987.

Robert B. Helms,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 87-23549 Filed 10-9-87; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Community Demonstration Grant Projects for Alcohol and Drug Abuse Treatment of Homeless Individuals; Availability of Funds

AGENCY: National Institute on Alcohol Abuse and Alcoholism (in consultation with the National Institute on Drug Abuse); HHS.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism in consultation with the National Institute on Drug Abuse announces the availability of Community Demonstration Grant Projects for Alcohol Drug Abuse Treatment of Homeless Individuals, AA-87-04. These grants will be made under the authority of section 613 of Pub. L. 100-77, the Stewart B. McKinney Homeless Assistance Act, which authorizes funds under section 512 of the Public Health Service Act for a new demonstration program for homeless persons with alcohol and/or drug-related problems.

The purpose of this program is to provide, document and evaluate successful and replicable approaches to community-based alcohol and/or drug abuse treatment and rehabilitation services for homeless individuals with alcohol and/or drug-related problems. The program goals are to effect the following changes among the target population: Decreased levels of alcohol and/or drug abuse; increased cooperation and formal linkages among alcohol treatment, drug treatment, and other supportive services in addressing the multiple needs of homeless individuals with alcohol and/or drug-related problems; improved access to shelter and housing (including alcohol and drug-free living environments); increased access to health and mental health services and improved health and mental health status; enhanced economic status; and improved quality of life.

In fiscal year 1988, NIAAA will make up to ten grant awards for community-based services demonstration projects for alcohol and/or drug-dependent homeless persons. Grant awards will be for 2-year projects. A total of approximately $8.6 million will be available for demonstration projects concentrated in urban areas with large homeless populations.

The statute authorizes projects to be carried out by community-based public and private nonprofit entities. NIAAA is limiting applicants under this announcement to those entities already in existence with prior experience and expertise in working with alcohol and/or drug-dependent populations and/or homeless populations. Working knowledge of and experience in dealing with the special needs of the target population is essential to the planning and implementation of viable intervention projects. In addition, demonstration programs must be located in urban centers with populations greater than 250,000 persons, or in smaller urban areas which can demonstrate a generic approach that could be replicated in larger areas. This focus on urban centers is intended to maximize benefits of demonstration projects by serving areas which have the highest concentration of the target population.

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit (Form PHS-398) will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for the State review, applicants are advised to discuss projects with and provide copies of their applications to State contact points as early as possible.

Receipt and Review Procedures for Applications

Applications in response to this announcement will be accepted under the single receipt date of January 5, 1988. The following criteria will be used in the review of applications: Extent to which the applicant demonstrates a clear understanding of the scope and range of service needs among the target population; the availability of community resources in the proposed

demonstration area; level of need for the demonstration project in the proposed locality; prior experience and expertise the applicant and proposed staff demonstrate in working with alcohol and/or drug-dependent populations and/or homeless populations; adequacy of the proposed plan of action and evaluation plan; adequacy of proposed management and coordination strategy; and cultural and programmatic relevance of proposed services for racial and ethnic minority persons.

For additional program guidance, potential applicants should contact: Barbara Lubran, National Institute on Alcohol Abuse and Alcoholism, Room 16C–02, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0786.

The Catalog of Federal Domestic Assistance number is 13.152.

Doanld Ian Macdonald,

Administrator, Alcohol, Drug Abuse and Mental Health Administration.

[FR Doc. 87–23612 Filed 10–9–87; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 87D–0251]

Content Uniformity Testing of Tablets and Capsules; Compliance With U.S.P. Monograph Requirements; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7132a.14 (Guide). The Guide affirms that content uniformity testing of tablets and capsules requirements of the United States Pharmacopeia (U.S.P.), including the specification for relative standard deviation to limit large variations in test results, is applicable to U.S.P. products regardless of whether such products are the subject of approved new drug applications. With regard to tablets and capsules which contain less than 50 milligrams of any active ingredient, but which are not subject to U.S.P. compendial requirements, the sections of the current good manufacturing practice regulations that pertain to content uniformity may be satisfied by U.S.P. specifications or by sound alternative specifications.

ADDRESS: Requests for single copies of FDA Compliance Policy Guide 7132a.14 may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Stephen P. Molinari, Center for Drugs and Biologics (HFN–325), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8098.

SUPPLEMENTARY INFORMATION: FDA has prepared Compliance Policy Guide 7132a.14 to affirm certain test requirements of the U.S.P. to ensure drug product attributes.

Compliance Policy Guide 7132a.14 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of Compliance Policy Guide 7132a.14 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

This notice is issued under 21 CFR 10.85.

Dated: October 2, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–23541 Filed 10–9–87; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice; amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Ophtalamic Devices Panel to reflect changes in the schedule and in the agenda. As a result of these changes, there will be a 1 day meeting only. Notice of the October 22 and 23, 1987, meetings was published in the **Federal Register** of September 18, 1987 (52 FR 35329).

SUPPLEMENTARY INFORMATION: In FR Doc. 87–21559, appearing at page 35330 in the **Federal Register** of Friday, September 18, 1987, the following corrections are made under the heading, "Ophthalmic Devices Panel" beginning in the first column:

(1) On page 35330, first column, lines 1–4 of the *Date, time, and place* paragraph, the days of the meeting scheduled for October 22–23, 1987, is revised to read as follows:

Date, time, and place. October 22, 1987, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

(2) On page 35330, first column, the *Open committee discussion* paragraph is revised to read as follows:

Open committee discussion. The committee will discuss issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses and contact lenses. The committee will also discuss general issues relating to other ophthalmic devices and requirements for PMA approval.

(3) On page 35330, first column, the *Closed committee deliberation* paragraph is revised to read as follows:

Closed committee deliberation. The committee may discuss trade secret and/or confidential commercial information regarding PMA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: October 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–23540 Filed 10–9–87; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Program Announcement for Grants for Faculty Development in General Internal Medicine and/or General Pediatrics

The Health Resources and Services Administration, announces that applications for Fiscal Year 1988 Grants for Faculty Development in General Internal Medicine and/or General Pediatrics are being accepted under the authority of section 784 of the Public Health Service Act, as amended by Pub. L. 99–129.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year.

Section 784 of the Public Health Act authorizes Federal assistance to schools of medicine and osteopathy, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty

skills in physicians who are currently teaching or who plan teaching careers in general internal medicine and/or general pediatrics training programs. These grants also provide direct support in the form of traineeships to physicians in training.

In addition, section 784 authorizes the award of grants to support general internal medicine and/or general pediatrics residency training programs. A separate grant program exists for this purpose.

Section 784, as amended by Pub. L 99–129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to general internal medicine and general pediatrics in their medical education training programs.

Funding Preference

Preference will be given to applicants that demonstrate a commitment to increase participation by minority physicians in their programs or show evidence of efforts to recruit minority physicians.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–28), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Questions regarding programmatic information should be directed to: Chief, Primary Care Graduate Medical Education Branch, Division of Medicine, Health Resources and Services Administration, Bureau of Health Professions, 5600 Fishers Lane, Room 4C–04, Rockville, Maryland 20857, Telephone: 443–1467.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is December 4, 1987. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.900 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this annoucement are not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: August 20, 1987.

John H. Kelso,

Deputy Administrator.

[FR Doc. 87–23544 Filed 10–9–87; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a) of the Public Health Service Act, as amended by Pub. L. 99–129.

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine. In accordance with § 57.1605(b)(2), a funding preference will be accorded approved applications for projects in which:

1. Substantial training experience is in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners; and/or

2. Substantial portions of the training program are conducted in a primary medical manpower shortage area which is a part of a health manpower shortage area(s) designated under section 332 of the PHS Act, or, in an Area Health Education Center funded, at least in part, under section 781 of the Act.

Special Consideration

Special consideration will be given to applicants where applications indicate substantial efforts to recruit and retain minorities.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–15), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Should additional programmatic information be required, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–3614.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is November 20, 1987. Applications shall be considered as meeting the deadline date if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commerical carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: August 20, 1987.

John H. Kelso,

Deputy Administrator.

[FR Doc. 87–23545 Filed 10–9–87; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Health Resources and Service Administration announces that

applications for Fiscal Year 1988 Grants for Residency Training in General Internal Medicine and/or General Pediatrics are being accepted under the authority of section 784, Title VII, of the Public Health Service Act, as amended by Pub. L. 99–129.

Section 784 authorizes the award of grants to planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine general pediatrics. In addition, Section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such program, and who plan to specialize or work in the practice of general internal or medicine or general pediatrics.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Eligible applicants are accredited schools of medicine and osteopathy, public and private nonprofit hosptials, or other public or private nonprofit entities.

To receive support, programs must meet the requirements of final regulations as specified in 42 CFR Part 74, Subpart FF.

Section 784, as amended by Pub. L. 99–129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to general internal medicine and general pediatrics in their medical education training programs.

Section 57.3106(b) of the program regulations requires that preference will be given to projects in which:

1. Substantial training experiences are provided in settings where physician assistants or nurse practitioners, or both, are used as part of a health care team.

2. Administrative and educational resources are coordinated for the use of a program of general internal medicine and a program of general pediatrics which are to be conducted within a single project.

3. Substantial portions of a project are conducted in a primary medical care manpower shortage area(s) designated under section 332 of the Public Health Service Act and in particular, one which is located in a Metropolitan Statistical Area, as defined by the Office of Federal Statistical Policy and Standards, Department of Commerce; or are conducted in an Area Health Education Center funded, at least in part, under section 781 of the Act.

Additional preference will be given to applicants who demonstrate an increase in monority and disadvantaged residents or show evidence of efforts to recruit minority and disadvantaged into their medical education program.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–28), Bureau of Health Professions, Health Resorces and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6960.

Should additional programmatic information be required, please contact: Primary Care Graduate Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–04, Rockvile, Maryland 20857, Telephone (301) 443–1467.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is November 20, 1987. Application shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.884 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Program or 45 CFR Part 100.

Dated: August 20, 1987.

John H. Kelso,

Deputy Administrator.

[FR Doc. 87–23543 Filed 10–9–87; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Administration for Children, Youth and Families

AGENCY: Human Development Services Office, HHS.

ACTION: Extension of closing date for receipt of applications.

SUMMARY: In the **Federal Register** of August 5, 1987 (52 FR 29150), the Office of Human Development Services announced that applications were being accepted for a grant to establish a National Resource Center on Child Sexual Abuse authorized by Pub. L. 93–247, as amended, 42 U.S.C. 5101, *et seq.* The closing date for receipt of applications under that announcement was October 5, 1987.

As a result of an earthquake and several aftershocks, many potential applicants in California were unable to gain access to their offices and were prevented from completing their applications. Because of this, the Office of Human Development Services is extending the deadline for submission of applications for all applicants.

The new closing date for receipt of applications is October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Cynthia Darling, (202) 245–2856.

Dated: October 6, 1987.

Approved: October 7, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Phillip N. Hawkes,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 87–23552 Filed 10–9–87; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

Division of Research Resources; General Clinical Research Centers Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), November 18–19, 1987, Pooks Hill Room, Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20014.

The meeting will be open to the public on November 18 from 3:30 p.m. to 5:00 p.m., during which time there will be comments by the Director, DRR; an update on the GCRC Program; and reports on the Clinical Associate Physician Program, the diffusion of the

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CLINFO System, possible new technologies for GCRCs, and clinical research data management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 18, from 9:00 a.m. to 3:30 p.m. and from 8:30 a.m. November 19 to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Room 5B–10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request. Dr. Stanley L. Slater, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B–51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: September 30, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–23627 Filed 10–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Cancer Therapeutics Program Project Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, December 3–4, 1987, Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Palladian Room, Chevy Chase, Maryland 20815.

This meeting will be open to the public on December 3 from 8 a.m. to 8:30 a.m., to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6),Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 3 from 8:30 a.m. to adjournment on December 4, for the review, discussion and evaluation of individual program project grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Suzanne E. Fisher, Executive Secretary, Westwood Building, Room 820, Bethesda, Maryland 20892 (301/496–2330) will provide substantive program information, upon request.

Dated: September 30, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–23628 Filed 10–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) on November 5–6, 1987 at the Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814. This meeting will be open to the public on November 5 from 7:30 p.m. to 8:30 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posed in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 5 from 8:30 p.m. to adjournment and November 6 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide a summary of the meeting and a roster of the committee members upon request.

Dated: September 30, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–23629 Filed 10–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for November 1987.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Minority Access to Research Careers Review Committee.

Executive Secretary: Dr. Agnes Donahue, Room 949 Westwood Building. Telephone: 301–496–7585.

Dates of Meeting: November 5–6, 1987.

Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

Open: November 5, 1987, 8:30 a.m.–10:30 a.m.

Closed:
November 5, 1987, 10:30 a.m.–5:00 p.m.
November 6, 1987, 8:30 a.m.–adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Executive Secretary: Dr. Helen Sunshine, Room 950 Westwood Building. Telephone: 301–496–7125.

Dates of Meeting: November 9–10, 1987.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland.

Open: November 9, 1987, 8:30 a.m.–10:30 a.m.

Closed:
November 9, 1987, 10:30 a.m.–5:00 p.m.
November 10, 1987, 8:30 a.m.–adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Executive Secretary: Ms. Linda Engel, Room 950 Westwood Building. Telephone: 301–496–7125.

Date of Meeting: November 9, 1987.

Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

Open: November 9, 1987, 8:30 a.m.–10:30 a.m.

Closed: November 9, 1987, 10:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13–859, 13–862, 13–863, 13–880, National Institute of General Medical Sciences, National Institutes of Health)

Date: September 30, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–23630 Filed 10–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L .92–463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, November 12–13, 1987, in Building 30, Room 117, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to recess on November 12 and from 9 a.m. to adjournment on November 13, 1987.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Marie Nylen, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone 301/496–7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorder of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845—Dental Research Institutes, National Institutes of Health)

Dated: October 1, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–23631 Filed 10–9–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Chlorendic Acid

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of chlorendic acid, a chemical intermediate used in the preparation of fire-retardant polyester resins and plasticizers.

Toxicology and carcinogenesis studies of chlorendic acid were conducted by administering the chemical in feed to groups of 50 male and 50 female F344/N rats and $B6C3F_1$ mice at concentrations of 0, 620, or 1,250 ppm for 103 weeks.

Under the conditions of these 2-year feed studies, there was clear evidence of carcinogenicity [1] of chlorendic acid for male F344/N rats as shown by increased incidences of neoplastic nodules of the liver and acinar cell adenomas of the pancreas. Increased incidences of alveolar/bronchiolar adenomas and preputial gland carcinomas may also have been related to the administration of chlorendic acid. There was clear evidence of carcinogenicity of chlorendic acid for female F344/N rats as shown by increased incidences of neoplastic nodules and of carcinomas of the liver. There was clear evidence of carcinogenicity of chlorendic acid for male $B6C3F_1$ mice as shown by increased incidences of hepatocellular adenomas and of hepatocellular carcinomas. There was no evidence of carcinogenicity of chlorendic acid for female $B6C3F_1$ mice given chlorendic acid in the diet at concentrations of 620 or 1,250 ppm for 103 weeks.

The Chemical Manager for this bioassay is Dr. J. E. French. Questions or comments about the contents of this technical report should be directed to Dr. French at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–7790; FTS: 629–7790.

Copies of *Toxicology and Carcinogenesis Studies of Chlorendic Acid in F344/N Rats and $B6C3F_1$ Mice (Feed Studies)* (TR 304) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3391. FTS: 629–3991.

Dated: October 2, 1987

David P. Rall,

Director.

[FR Doc. 87–23632 Filed 10–9–87; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–87–1731; FR–2394]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of application deadline for funds under CDBG program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1988.

SUMMARY: This Notice sets the deadline dates for filing applications for funds under the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1988. Applications are required in order to provide HUD with the information necessary to rate the proposed project(s) and to assure HUD that the necessary citizen participation has taken place.

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FOR FURTHER INFORMATION CONTACT: Mr. Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755–6092. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice sets the deadline dates for submitting applications for the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. HUD will use the information furnished in these applications to rate the proposed project(s) and to assure the Department that there has been the necessary citizen participation. these dates apply only to applications submitted by Indian Tribes and Alaskan Native Villages for Fiscal Year 1988.

The field responsibility for the administration of the program is divided among the following offices: Region V Office of Indian Programs (OIP) in Chicago, responsible for all HUD Indian program activities within Regions I–V, plus the State of Iowa; Oklahoma City Office, responsible for all HUD Indian program activities in the States of Arkansas, Texas, Oklahoma, Kansas, Louisiana, and Missouri; Region VIII, OIP in Denver, responsible for all HUD Indiana program activities in Region VIII, plus the States of Nebraska; Region IX OIP in Phoenix, responsible for all HUD Indian program activities in Region IX, plus the State of New Mexico; Region X OIP in Seattle, responsible for all HUD Indian program activities in Region X, with the exception of the State of Alaska; and the Anchorage Office, responsible for all HUD Indian and Alaskan Native program activities in the State of Alaska.

Applications will be accepted by HUD as of the publication date of this Notice.

FINAL DATES FOR SUBMISSION OF APPLICATIONS

Offices	Applications must be submitted no later than
Region VIII, OIP	Nov. 25, 1987
Region X, OIP	Dec. 18, 1987
Region IX, OIP	Jan. 22, 1988
Oklahoma City Office	Jan. 29, 1988.
Region V, OIP	Feb. 29, 1988
Anchorage Office	March 31, 1988

Applications must be received or postmarked no later than the closing date specified above. Applications received or postmarked after the deadline will not be considered.

Tribes and Villages submitting applications for this program must do so on HUD forms approved by the Office of Management and Budget under OMB Control Number 2506–0043. These forms request participation has taken place. Forms will be provided by the appropriate HUD Field Offices.

Authority: Section 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: October 5, 1987.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 87–23671 Filed 10–9–87; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Uncompahgre Valley Hydropower Project, AB Lateral Hydropower Facility, Colorado; Environmental Scoping Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of environmental scoping meetings.

SUMMARY: Pursuant to CEQ Regulations and Bureau of Reclamation (BR) policy, the Department of the Interior announces two environmental scoping meetings on the AB Lateral Hydropower Facility, Uncompahgre Valley Hydropower Project. Studies for the project have been underway since 1984. During this time, considerable input has been received from interested agencies and individuals. Two meetings will be held to elicit information to use in determining the scope of the environmental impacts and the issues related to the proposal. The results of the meetings will help the Bureau of Reclamation determine whether an environmental impact statement will be prepared on the proposed action.

DATES: The meetings will be held on October 27, 1987, at 7:00 p.m. in Lakewood, Colorado, and October 28, 1987, at 7:00 p.m. in Montrose, Colorado.

ADDRESS: The meetings will be held in the Bergan Park Room of the Sheraton Hotel and Convention Center, 360 Union Boulevard, Lakewood, Colorado, and in the Meeting Room of the Montrose County Chamber of Commerce Building, 550 North Townsend Avenue, Montrose, Colorado.

FOR FURTHER INFORMATION CONTACT: The contact person for this environmental scoping effort is Steve McCall, Bureau of Reclamation, Grand Junction Projects Office, P.O. Box 1889, Grand Junction, Colorado, 81502, telephone (303) 242–8621, extension 441.

SUPPLEMENTARY INFORMATION: The purpose of the facility is to develop hydropower potential in the Uncompahgre Valley for the production of baseload electrical energy. The facility would use hydropower potential afforded by the flow of irrigation water through the Uncompahgre Project, an existing Bureau of Reclamation irrigation project.

The AB Lateral Hydropower Facility would be privately constructed and operated by the Uncompahgre Valley Water Users Association and Montrose Partners. The Bureau of Reclamation serves as the lead Federal agency for compliance with the National Environmental Policy Act.

The facility, to be located near the city of Montrose in west-central Colorado would consist of a diversion and intake works on an enlarged AB Lateral and a 7.4-mile buried pipeline leading to a powerhouse and tailrace leading to the Uncompahgre River. A maximum of 1,100 cubic feet per second of water would be diverted through the powerplant to produce about 240 million kilowatt-hours of electricity per year. The facility would use water diverted from the Gunnison River through the existing Gunnison Tunnel to the AB Lateral. Some of the existing irrigation flows would be utilized for the facility during the irrigation season. These flows could be increased by additional diversions from the Gunnison River when water is available through existing water rights. The facility would be operated year-round, and although flows in the Gunnison River and in parts of the irrigation system would be changed from pre-project flows, the facility would be operated to meet existing minimum flow levels in the Gunnison River below the Gunnison Tunnel and existing irrigation needs.

Dated: October 6, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–23514 Filed 10–9–87; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 213X)]

CSX Transportation, Inc., Exemption; Abandonment in Jefferson County, AL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F-*Exempt Abandonments* to abandon its line of railroad between milepost NC–

397.34 near Chetopa, AL, and milepost NC-400.00 near Vulcan, AL, and between milepost NH-399.20 at Vulcan and milepost NH-400.46 near Sayre, AL, a distance of 3.92 miles, in Jefferson County, AL

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective November 12, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 23, 1987, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by November 2, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 5, 1987.

By the Commission, Jane F. Mackall, Director, Officer of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-23421 Filed 10-9-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association has filed a request for the imposition of labor protective conditions. As the sought exemption involves a transaction under 49 U.S.C. 10903, labor protective conditions have been imposed routinely.

[Finance Docket No. 31060]

Thomas C. Graham; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Thomas C. Graham from the provisions of 49 U.S.C. 11322 to permit him to serve on the Boards of Directors of International Paper Corporation and USX Corporation.

DATES: This exemption will be effective on November 6, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 31060 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Mark T. Priesing, 1054 Thirty-First Street, NW., Suite 200, Washington, DC 20007-4492

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area). (Assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: September 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-23505 Filed 10-9-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-37]

Larry R. Killough, M.D.; Revocation of Registration

On March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Larry R. Killough, M.D. (Respondent) of 1300 South Main Street, Searcy, Arkansas 72143, proposing to revoke his DEA Certificate of Registration AK3231999 and to deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Respondent was convicted in the United States District Court for the Eastern District of Arkansas, of knowingly and intentionally distributing Schedule II narcotic and non-narcotic controlled substances outside the course of professional practice in violation of 21 U.S.C. 841(a)(1).

By letter dated April 23, 1986, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young and the hearing was held in Washington, DC on September 30, 1986.

On March 19, 1987, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent filed exceptions to Judge Young's recommended ruling pursuant to 21 CFR 1316.66. On July 2, 1987, the Administrative Law Judge transmitted the record in the proceeding, including Respondent's exceptions, to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on July 30, 1984, an investigator assigned to the Arkansas State Police Diversion Investigation Unit was advised by an individual, who at that time was a prisoner and admitted drug abuser, that he had been obtaining large quantities of Preludin (phenmetrazine), a Schedule II non-narcotic controlled substance, unlawfully from Respondent. Between August 1 and August 15, 1984, at the direction and under the control of the state investigator, the individual met with Respondent three times. On each occasion, the individual purchased prescriptions for Schedule II controlled substances from Respondent for the price of $200 per visit. At no time did the individual demonstrate any legitimate medical need. On August 17, 1984, the individual purchased four prescriptions from Respondent for Schedule II controlled substances for the sum of $400. Respondent issued these prescriptions even though he was told by the individual that he had a drug abuse problem from which he was slowly withdrawing; he was also told by the individual that the bulk of the drugs obtained would be sold on the street. On August 21, 1984, the individual,

accompanied by the investigator acting in an undercover capacity, met with Respondent and arranged for the purchase of a prescription for 36 Dilaudid 4 mg. tablets, a Schedule II narcotic controlled substance. On August 22, 1984, the individual obtained the Dilaudid prescription from Respondent.

On August 31, 1984, the investigator, acting in an undercover capacity, showed Respondent four diamonds which he represented as samples of 22 stones which he would trade for prescriptions. After some discussion, Respondent stated he would annotate the individual's medical chart to show fictitious visits on August 29 and September 5 and 12, 1984, and issue a prescription bearing each date, in exchange for the 22 diamonds. On September 14, 1984, the investigator met Respondent in a motel room. The meeting was videotaped. During the meeting, the investigator gave Respondent 22 cubic zircon stones in exchange for three prescriptions for Schedule II controlled substances.

Based upon the undercover investigation described above, Respondent was subsequently indicted and tried before a jury in the United States District Court for the Eastern District of Arkansas. Respondent was convicted on eight counts of distribution of a controlled substance for other than a legitimate medical purpose, in violation of 21 U.S.C. 841(a)(1). He was sentenced on June 18, 1985, to 20 months incarceration and fined $40,000.

In June 1985, subsequent to his conviction, Respondent surrendered his medical practice license to the Arkansas Medical Board. In September 1985, his medical license was suspended in that state. On April 18, 1986, the Arkansas Medical Board unanimously decided to reinstate Respondent's license to practice medicine in that state and granted permission for Respondent to reapply for all schedules of his DEA registration with the exception of Schedule II. On June 4, 1986, Respondent applied for renewal of his DEA Registration No. AK3231999, in Schedules III, IV and V only.

The Administrative Law Judge found that Respondent has not provided a satisfactory explanation for his conduct of writing controlled substance prescriptions for the individual and the investigator. After noting that Respondent has not admitted to any motivation for his conduct, the Administrative Law Judge concluded that Respondent's motive was greed. The individual paid Respondent $100 for each prescription. The undercover officer offered, and Respondent accepted, what Respondent believed to be a large number of stolen valuable gems in exchange for prescriptions. The Administrative Law Judge determined that Respondent was unable to put the motivation of greed behind him, and that Respondent might succumb to such temptation again. Based upon those findings, the Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked, and that his application for renewal of said registration be denied.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety.

A felony conviction relating to controlled substances is a sufficient ground for the revocation of a registrant's DEA Certificate of Registration. *Fitzhugh* v. *D.E.A.*, 813 F.2d 1248 (D.C. Cir. 1987).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AK3231999, previously issued to Respondent be, and hereby is, revoked. It is further ordered that any pending applications for renewal be, and hereby are, denied.

This order is effective November 12, 1987.

Dated: October 5, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-23520 Filed 10-9-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Adminsitration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Retiree Health of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Friday, November 13, 1987, at the American Association of Retired Persons, (AARP), 1909 K Street, NW., Room 830, Washington, DC 20049.

This eight-member work group was formed by the Advisory Council to study issues relating to retiree health benefit programs for employee welfare plans covered by ERISA.

The purpose of the November 13 meeting is to hear from several experts in the field of Retiree Health who have been invited to participate in a round-table discussion of the following issue:

How does the retiree health benefit fit into the realm of all empolyee benefits?

In addition, the work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding subject matter.

Individuals, or represenatives or organizations, wishing to address the work group should submit written requests on or before November 9, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 9, 1987.

Signed at Washington, DC This 7th day of October, 1987.

David M. Walker, CPA,

Assistant Secretary-Designate for Pension and Welfare Benefits Administration.

[FR Doc. 87-23653 Filed 10-9-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-82)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Acoustic Wind Tunnel Requirements.

Date and Time: October 28, 1987, 8:15 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625,

Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Randolph A. Graves, Jr., Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The Ad Hoc Team on Acoustic Wind Tunnel Requirements, chaired by Mr. Dean Borgman, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

October 28, 1987

8:45 a.m.—Review of charter, objectives and meeting schedule.
11 a.m.—Presentation of Army acoustic testing requirements for rotorcraft.
1:30 p.m.—Presentation of civil acoustic testing requirements.
5 p.m.—Adjourn.

September 30, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87–23564 Filed 10–9–87; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

October 9, 1987.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on November 12–13, 1987.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on November 12–13, 1987, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on November 12, 1987, will be as follows:

Committee Meetings

8:30–9:30 a.m.—Coffee for Council Members—Room 526 (Open to the Public)
9:30–10:30 a.m.—Committee Meetings—Policy Discussion

Education Programs—Room M–14
Fellowship Programs—Room 315
General Programs—Room 415
Research Programs—Room 316–2
State Programs—Room M–07 East

10:30 a.m. until Adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications
(Open to the Public)
Policy Discussion
3:00–3:30 p.m.
Challenge Grants—Room 430
Preservation Grants—Room M–07 West
3:30 p.m. until Adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on November 13, 1987, will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending meeting will be served from 8:30–9:00 a.m.)

Minutes of the Previous Meeting

Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Final Fiscal Year Reports: Applications; Matching; and Obligations
E. Fiscal Year 1988 Appropriations
F. Biennial Election of Vice Chairman of the National Council on the Humanities
G. National Capital Arts and Cultural Affairs Program
H. Humanities Teachers in the 1990s and Beyond
I. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Preservation Grants
4. Research Programs
5. General Programs.
6. State Programs
7. Challenge Grants
8. Jefferson Lecture
J. OMB Hearing on Fiscal Year 1989 Budget
K. Actions on Emergency Grant Requests
L. Actions Departing from Council Recommendation

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 87–23582 Filed 10–9–87; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunications Standards; Data Communication Systems and Services—Measurement Methods for User-Oriented Performance Evaluation

AGENCY: Office of Technology and Standards, NCS.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1043, "Telecommunications: Data Communication Systems and Services—Measurement Methods for User-Oriented Performance Evaluation."

DATE: Comments are due January 15, 1988.

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ADDRESS: Send comments to National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Bodson, National Communications System, telephone (202) 692–2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunications standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Request for copies of the draft FED–STD 1043 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

Edward P. Greene,

Acting Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 87–23581 Filed 10–9–87; 8:45 am]

BILLING CODE 3610–05–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission: new, revision or extension: Revision.

2. The title of the information collection: Application for License to Export Nuclear Material and Equipment.

3. The form number if applicable: NRC Form 7.

4. How often the collection is required: Once for each separate request for a specific export license.

5. Who will be required or asked to report: Any person in the U.S. who wishes to export nuclear material and equipment subject to the requirements of a specific license.

6. An estimate of the number of reporting responses: 140.

7. An estimate of the total number of hours needed to complete the reporting and recordkeeping requirements: 140 Hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Any person in the U.S. wishing to export nuclear material and equipment requiring a specific authorization should file an application for a license on NRC Form 7. The application will be reviewed by the NRC and by the Executive Branch and, if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

The NRC Clearance Office is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 6th day of October 1987.

For the Nuclear Regulatory Commission.

Ronald M. Scroggins,

Acting Director, Office of Administration and Resources Management.

[FR Doc. 87–23633 Filed 10–9–87; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission: new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 110—Rules and Regulations for the Export and Import of Nuclear Equipment and Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of a specific license.

6. An estimate of the number of reporting responses: 39.

An estimate of the number of recordkeeping responses referred to in § 110.53(b): 125.

7. An estimate of the total number of hours needed to complete the reporting and recordkeeping requirements: 188 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 110 provides application, reporting, and recordkeeping requirements for the export and import of nuclear equipment and material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–3182.

Dated at Bethesda, Maryland, this 6th day of October 1987.

For the Nuclear Regulatory Commission.

Ronald M. Scroggins,

Acting Director, Office of Administration and Resources Management.

[FR Doc. 87–23634 Filed 10–9–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Connecticut Yankee Atomic Power Company (the licensee) for the Haddam Neck Plant located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The licensee is requesting an exemption from Paragraph III.A.3 of 10 CFR Part 50 Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." In 1973, Appendix J was issued to establish

requirements for primary containment leakage testing and incorporated by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This Standard requires that containment leakage calculations be performed by using either the point-to-point method or the total time method. The total time method was used the most by the nuclear industry until about 1976.

At this time, licensees who wish to use mass-point must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to ANSI N45.4. The exemption proposed by the licensee would be granted until pending changes to Appendix J become effective. The exemption applies only to the method of calculating containment leakage. In the mass-point method, the mass of air in containment is calculated and plotted as a function of time. Leakage is calculated from the slope of the Linear Least Squares.

With the present developments in technology, the mass-point method has gained increasing recognition. In the total time method, a series of leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the result of the test will be affected. In the point-to-point method, the leak rates are based on the mass difference between each pair of consecutive points which are the averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the point-to-point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request for exemption and the bases therefore are contained in a letter dated July 10, 1987.

The Need for the Proposed Action

The exemption is needed to allow continued use of the mass-point analysis method at the Haddam Neck Plant.

Environmental Impact of the Proposed Action

The proposed exemption will have no incremental environmental impact relative to current practice because the exemption will allow testing to be conducted in the same manner as it is currently performed.

The error in the total time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increase test frequency, critical path outage time, and exposure to test personnel.

The radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption submittal dated July 10, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 5th day of October, 1987.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Director, Integrated Safety Assessment Project Directorate, Divisions of Reactor Projects III/IV/V and Special Projects.

[FR Doc. 87–23635 Filed 10–9–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Northeast Nuclear Energy Company (the licensee) for the Millstone Nuclear Station, Unit No. 1, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The licensee is requesting an exemption from Paragraph III.A.3 of 10 CFR Part 50 Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." In 1973, Appendix J was issued to establish requirements for primary containment leakage testing and incorporated by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage calculations be performed by using either the point-to-point method or the total time method. The total time method was used the most by the nuclear industry until about 1976.

At this time, licensees who wish to use mass-point must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to ANSI N45.4. The exemption proposed by the licensee would be granted until pending changes to Appendix J become effective. The exemption applies only to the method of calculating containment leakage. In the mass-point method, the mass of air in containment is calculated and plotted as a function of time and leakage is calculated from the slope of the linear least squares.

With the present developments in technology, the mass-point method has gained increasing recognition.

The superiority of the mass-point method becomes apparent when it is compared with the two other methods. In the total time method, a series of

leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the point-to-point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the point-to-point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request and bases for exemption are contained in a letter dated July 10, 1987.

The Need for the Proposed Action

The exemption is needed to allow continued use of the mass-point analysis method at Millstone Unit No. 1.

Environmental Impact of the Proposed Action

The proposed exemption will have no incremental environmental impact relative to current practice because the exemption will allow testing to be conducted in the same manner as it is currently performed.

The erraticism of the total time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Thus, radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological enviromental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption submittal dated July 10, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room located at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 5th day of October, 1987.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Director, Integrated Safety Assessment Project Directorate, Division of Reactor Projects III/IV/V and Special Projects.

[FR Doc. 87-23636 Filed 10-9-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440, 50-441]

Cleveland Electric Illuminating Co., et. al., Perry Nuclear Power Plant, Units 1 and 2, Issuance of Final Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated June 5, 1987, filed by Terry J. Lodge on behalf of the Toledo Coalition for Safe Energy, Sunflower Alliance, Inc., Susan B. Carter and Steve Sass (Petitioners). The Petitioners requested that the Nuclear Regulatory Commission (NRC) issue an order to show cause why the operating license for the Perry Nuclear Power Plant, Unit 1, should not be modified or revoked pending full consideration of certain issues raised in the 1975 General Electric Company Nuclear Reactor Study ("Reed Report") prepared by a team of General Electric engineers. The Petition alleged that the Reed Report identified problems with the General Electric BWR-6 Mark III containment boiling water reactor, specifically: (1) Technology to fix problems would not be available: (2) the design is unusually subject to earthquake hazards; (3) plant workers might be unusually subject to radiation exposures; (4) safety systems contained in the design had not been subjected to adequate testing; and (5) inadequate or undertested metals could create defectively performing systems.

The operating license for Unit 1 of the Perry facility was issued on November 13, 1986 to the Cleveland Electric Illuminating Company, *et al.* On June 30, 1987, the NRC notified Petitioners that this matter would be considered pursuant to 10 CFR 2.206.

The Director has determined that the Petitioners' request should be denied for the reasons set forth in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-87-10, which is available for inspection and copying in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the local Public Document Room for the Perry Nuclear Power Plant at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

A copy of the Decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Bethesda, Maryland, this 7th day of October 1987.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-23637 Filed 10-9-87; 8:45 am]

BILLING CODE 7590-01-M

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records

AGENCY: Panama Canal Commission.

ACTION: Adoption of systems of records.

SUMMARY: In accordance with 5 U.S.C. 552a, the Panama Canal Commission published in the **Federal Register** (52 FR 28498, July 30, 1987) nine Privacy Act Systems of Records. The systems described are PCC/AE-1, Executive

Personnel Financial Disclosure Reports; PCC/AMTE–2, Equity Adjustment; PCC/FMAC–10, Estate Files; PCC/FMAP–2, Payroll Deduction System for Court Ordered Wage Garnishments; PCC/FMCL–1, Travel and Transportation Claims; PCC/GCCL–1, Marine Accident/Miscellaneous General Claims; PCC/MRNP–1, Pilot Training Program; PCC/PRAA–1, Adverse Actions Files; and PCC/PRCL–1, Injury Claims.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Duty, Agency Records Officer, Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011–5000.

SUPPLEMENTARY INFORMATION: On July 30, 1987, the Panama Canal Commission published a notice concerning the nine Systems of Records maintained by the Panama Canal Commission. The public was provided with a comment period of 30 days which ended on August 31, 1987. No comments were received in connection with the interim rule during this period; therefore, the notice is now adopted without change and is incorporated into the Panama Canal Commission Privacy Act Systems of Records.

Dated: September 9, 1987.

Frank R. Turman,

Acting Agency Records Officer.

[FR Doc. 87–23530 Filed 10–9–87; 8:45 am]

BILLING CODE 3640–04–M

POSTAL SERVICE

Implementation of Temporary Changes in the Domestic Mail Classification Schedule Provision Regarding Merchandise Return Service

AGENCY: Postal Service.

ACTION: Notice of implementation of a temporary change in the Domestic Mail Classification Schedule provision regarding merchandise return service.

SUMMARY: This gives notice that effective 12:01 a.m. on October 25, 1987, the Postal Service will implement a change in the Domestic Mail Classification Schedule allowing registered mail service and merchandise return service to be used in conjunction with each other, and allowing special handling and merchandise return service to be used in conjunction with each other.

EFFECTIVE DATE: October 25, 1987.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, (202) 268–5176.

SUPPLEMENTARY INFORMATION: On May 7, 1987, the United States Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on amending sections 14.060, 18.060, and 20.040 of the Domestic Mail Classification Schedule. The Postal Service proposed to allow registered mail service and merchandise return service to be used in conjunction with each other, and to allow special handling and merchandise return service to be used in conjunction with each other. As amended, the sections would read as follows:

Classification Schedule SS–14

Registered Mail

14.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Collect on delivery	SS–6
b. Restricted delivery	SS–15
c. Return receipt	SS–16
d. Special delivery	SS–17
e. Merchandise return (shippers only)	SS–20

Classification Schedule SS–18

Special Handling

18.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. C.O.D. mail	SS–6
b. Insured mail	SS–9
c. Parcel airlift	SS–13
e. Merchandise return (shippers only)	SS–20

Classification Schedule SS–20

Merchandise Return

20.040 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Certificate of mailing	SS–4
b. Insured mail	SS–9
c. Registered mail	SS–14
d. Special handling	SS–19

Notice of the Postal Service's request was published in the **Federal Register** by the Rate Commission on May 15, 1987 (52 FR 18498).

Under the Postal Reorganization Act, if the Postal Rate Commission has not transmitted its recommended decision to the Governors of the Postal Service within 90 days of the submission to it of the Postal Service's request for a recommended decision on a proposed change in the mail classification schedule, the Postal Service may place the proposed change into effect on a temporary basis. 39 U.S.C. 3641(e). More than ninety days have elapsed since the Postal Service filed its request for a recommended decision on the proposed changes in services and the Rate Commission has not transmitted its recommended decision to the Governors. By Resolution No. 87–8 the Board of Governors on October 6, 1987, voted to implement the proposed changes on a temporary basis and set October 25, 1987, as the date on which the temporary changes will become effective. Accordingly, the proposed changes in the classification schedule described above shall take effect on a temporary basis at 12:01 a.m. on October 25, 1987.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–23589 Filed 10–9–87; 8:45 am]

BILLING CODE 7710–12–M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATE AND TIME: October 21, 1987, from 9:00 to 5:00 p.m.

ADDRESS: Room 138 of the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wiley Horsley, Commission Staff Manager, temporarily at the Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, 202/343–3347.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to hold hearings on housing related

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privatization issues. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including committee members). Places will be allocated on a first come, first served basis.

James C. Miller, III,

Director, Office of Management and Budget.

[FR Doc. 87-23729 Filed 10-8-87; 3:18 pm]

BILLING CODE 3110-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-5375]

Issuance of a Small Business Investment Company License; Bentley Capital

On June 17, 1987, a notice was published in the **Federal Register** (Vol. 52, No. 116, Page 23130) stating that an application has been filed by Bentley Capital, San Francisco, California, with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business July 18, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5375 on August 27, 1987, to Bentley Capital to operate as a small business investment company.

(Catalog of Federal Domestic Asssitance Program No. 59.011,) Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 2, 1987.

[FR Doc. 87-23532 Filed 10-9-87; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 01/01-0344]

Application for License To Operate as Small Business Investment Company; First New England Capital Limited Partnership

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to the Regulations governing small business investment companies (13 CFR 107.102 (1987)) by First New England Capital Limited Partnership (the Applicant), 255 Main Street, Hartford, Connecticut 06103, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.*).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
FINEC Corp., 255 Main Street, Hartford, CT 06106.	General Manager and General Partner	10
Richard C. Klaffky, 105 Knob Hill Rd., Glastonbury, CT 06033.	Limited Partner, President, 10% Stockholder of FINEC Corp	
George J. Ritter, 248 Whitney Avenue, Hartford, CT 06105.	Chairman of Board of FINEC Corp.	
Paul F. Romanelli, 265 Natchung Drive, Glastonbury, CT 06033	Treasurer, Director, and 10% Stockholder in FINEC Corp	
Richard Sursman, 148 Kenyon, Hartford, CT 06105	Director and 10% Stockholder in FINEC Corp	
John H. Filer, 627 Fern Street, West Hartford, CT 06107.	Chairman of Advisory Board, 10% Stockholder in FINEC Corp.	

The Applicant, a Connecticut limited partnership, will conduct its operations in the States of Connecticut, Massachusetts, and Rhode Island. The Applicant intends to begin operations with $5,000,000 in partnership private capital. The amount of partnership private capital depends on the success of a private offering of limiting partnership units. Also, additional shares in the corporate general partner will be offered through a private offering.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the notice will be published in a newspaper of general circulation in the Hartford, Connecticut area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 2, 1987.

[FR Doc. 87-23669 Filed 10-9-87; 8:45am]

BILLING CODE, 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1032]

Immigant Visa Files; Records Disposal Procedures

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Systematic disposal of files relating to registrations of aliens who fail to apply for immigrant visas.

SUMMARY: The Department proposes, pursuant to the authority in section 203(e) of the Immigration and Nationality Act, to instruct consular officers at immigrant visa issuing posts to begin to dispose of immigrant visa files in accordance with records disposal procedures, which have been inactive for at least three years from the date on which the priority date has been reached. This notice proposes a change in the procedures established to administer the provisions of section 203(e). The proposal would affect immigrant visa applicants who have not reaffirmed their continuing intent to emigrate.

DATE: Comments must be received on or before November 13, 1987.

ADDRESS: Comments may be addressed to Stephen K. Fischel, Chief, Legislative and Regulations Division, Visa Office, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen K. Fischel, Chief, Legislative and Regulations Division, Visa Office, Department of State, Washington, DC 20520, Telephone (202) 663-1204.

SUPPLEMENTARY INFORMATION: The Department has become aware of a growing number of inactive immigrant visa cases which are being stored at posts abroad. In an effort to cope with the large volume of files currently both occupying valuable file space and overloading computer systems, the Department proposes to change its procedures for processing certain immigrant visa applications. Consequently, the Department proposes to authorize all immigrant visa issuing posts to begin a screening process which

eventually will result in the revocation of petitions of inactive cases as defined herein.

The Department has reviewed the procedures originally established pursuant to the provisions of section 203(e) of the Immigration and Nationality Act, as amended by Pub. L. 94–571, and has determined that such procedures should be modified to allow for the gradual purging of the voluminous number of pending immigrant visa files which have been inactive for years.

Under current procedures, revocation of an inactive petition cannot occur until two years after Packet 4 (Appointment Letter for Immigrants) has been transmitted to the applicant.

The only criterion for transmitting Packet 4 to the applicant under current procedures is the receipt of notification from the alien that all documents have been assembled in accordance with Packet 3 instructions. These procedures, however, give no time limitation after receipt of the Packet 3 letter in which an intending immigrant must collect the required documentation and notify the consular post. A new criterion is being proposed which would trigger transmission of the Packet 4 letter. Under this criterion the letter scheduling the visa interview would be mailed in all "inactive" cases, that is, cases in which the applicant's priority date is current and in which Packet 3 letters have been sent to the applicant and no response has been received for the three years following the Packet 3 mailing date. The mailing of Packet 4 invokes the provisions of section 203(e) which are explained in the background section of this preamble.

A conservative estimate indicates that there are approximately 600,000 inactive immigrant visa cases worldwide which must be stored at a substantial cost to the United States Government. The Department believes that some of the applicants may have adjusted status in the United States and that others have simply abandoned their intention to immigrate to the United States.

The proposed procedure would be implemented in all cases which come before immigrant visa issuing posts. These posts will be directed to begin mailing the Packet 4 appointment letters to those applicants who do not respond to the Packet 3 letter within three years from its mailing date. At posts which have a substantial number of "inactive cases", the procedure would be implemented gradually on a continuous basis to avoid the taxing of available resources. Those posts would be directed to limit the number of "inactive cases" to be processed at one time to be no more then five percent of the total inactive cases or the average number of immigrant visa applicants normally scheduled for an interview in the normal month, whichever is smaller. This gradual processing approach will allow for the orderly implementation of the procedures.

Background

Section 203(e) of the Immigration and Nationality Act provides in part: "* * * The Secretary of State shall terminate the registration of any such alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following the notification of the availability of such visa that failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked."

Under current procedures, a "Packet 3" letter is sent to all immigrant visa applicants when their turn for processing has been reached instructing them to notify the post when all documents have been collected and the applicant is ready for the scheduling of an immigrant visa interview. The Packet 3 letter, as all other correspondence, is sent to the beneficiary's address of record, as the beneficiary had been informed of his responsibility of keeping the consular office informed of the alien's current address.

Further processing (Packet 4 letter) can take place only after receipt of the applicant's reply to Packet 3 informing the post that all documents have been assembled. Upon receipt of such notification and completion of necessary administrative processing, the case is reported to the Department as one for which an immigrant visa number can be allocated, if available. When the alien's priority date actually comes within the visa issuance cut-off date (immediately in some cases; after a further waiting period in others), the visa number is allocated and the post notifies the alien of the availability of a visa by scheduling the formal appointment. If within one year from the date of the scheduled interview a response has not been received from the applicant, a second letter is mailed advising the applicant that since no response was received to the Packet 4 letter the visa petition and accompanying documents have been terminated. This second letter also advises the applicant that the application for registration could be reinstated and the petition revalidated if the applicant is able to establish within one year from the date of the second letter that failure to pursue the application was due to circmstances beyond the applicant's control. At the end of the two year period a third and final letter informs the applicant that the processing of the immigrant visa application has been terminated and that all documentation submitted has been destroyed in accordance with standard records disposal procedures and that the petition has been returned to the originating office of the Immigration and Naturalization Service.

Date: September 29, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87–23586 Filed 10–9–87; 8:45 am]

BILLING CODE 4710–06–M

[Public Notice CM–8/1127]

Advisory Committee on Oceans and International Environmental and Scientific Affairs; Partially Closed Meeting

Department of State officials responsible for international health policy regarding AIDS will be present at 2:00 p.m. Tuesday, October 27 in Room 1107 of the Department of State at 2201 C Street NW., Washington, DC, to discuss key issues and problems in that field and seek comments and advice. This session, which is being convened by the Department's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will be open to the public and will last until 4:00 p.m. Members of the general public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairperson. In that regard, entrance to the Department of State building is controlled, and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Science and Technology Support by contacting William Moody or Douglas Dearborn, telephone (202) 647–4069. All attendees must use the C Street entrance to the building.

Officers of the Bureau of Oceans and International Environmental and Scientific Affairs, along with the Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will meet at 8:30 a.m. on Wednesday, October 28, in a session which will not

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be open to the public. This session will include discussion of classified material under 5 U.S.C. 552b (c) (1) and U.S.C. 552b (c) (9) (B). The disclosure of classified material and revelation of considerations which go into policy development could adversely affect the ability of the United States to achieve its foreign policy objectives. The purposes of these discussions will be to elicit views and discuss issues relating to international health policy regarding AIDS. This portion of the meeting will include classified briefings and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on this meeting should be directed to Thomas Wajda or William Moody of the Office of Science and Technology Support of the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. They may be reached by telephone on (202) 647–4069.

John D. Negroponte,

Chairman, Advisory Committee on Oceans and International Environmental and Scientific Affairs.

October 1, 1987.

[FR Doc. 87–23585 Filed 10–9–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1126]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on November 4, 1987 in the 8th Floor Conference Room, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The purpose of the meeting will be to continue the plan of work for the Study Group during the 1986–1990 period.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone (202) 647–2592.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

October 1, 1987.

[FR Doc. 87–23583 Filed 10–9–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1125]

National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 6, 1987 in Room 1912, Department of State, 2201 C Street NW., Washington, DC. The meeting will begin at 9:30 a.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting is to:

1. Decide certain administrative changes proposed at the September 9 meeting.
2. Establish Ad Hoc groups for particular purposes in preparation for the IX Plenary Assembly of the CCITT, and the Plenipotentiary Conference of the ITU.
3. Determine the program of work and participants of the above mentioned Ad Hoc groups.
4. Establish an Ad Hoc group for strategic planning relating more generally to WATTC and Plenipotentiary Conference issues.
5. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Dated: September 28, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87–23584 Filed 10–9–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending October 2, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45167

Parties: Members of International Air Transport Association
Date Filed: October 1, 1987
Subject: Cancel Specific Co-Rates BUE–US
Proposed Effective Date: October 15, 1987

Docket No. 45168 R–1–R–3

Parties: Members of International Air Transport Association
Date Filed: October 1, 1987
Subject: Within So.-East Asia Fares
Proposed Effective Date: November 1, 1987

Docket No. 45166

Parties: Pan American World Airways, Inc. and Aeroflot Soviet Airlines
Date Filed: October 1, 1987
Subject: Application of Pan American World Airways, Inc. pursuant to sections 412 and 414 of the Act, requests (1) approval of an agreement between itself and the General Department of International Air Services (Aeroflot Soviet Airlines), entitled Agreement Between Pan Am and Aeroflot Concerning the Joint Commercial Use of a Pan Am 747 Aircraft Between the USSR and USA, dated September 25, 1987, and (2) the concomitant conferral of antitrust immunity.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–23648 Filed 10–9–87; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending

October 2, 1987.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart O of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.)*. The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases in a final order without further proceedings.

Docket No. 45170

Date Filed: October 1, 1987
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 29, 1987

Description: Application of Continental Airlines, Inc. and Air Micronesia, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests an amendment of their certificates of public convenience and necessity for Route 171 and Route 170 respectively in order to authorize Continental/Air Micronesia to provide foreign air transportation of persons, property and mail between the United States coterminals Guam and Saipan, on the one hand, and Naha, Japan (formerly Okinawa), on the other hand.

Docket No. 45173

Date Filed: October 2, 1987
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 30, 1987

Description: Application of Executive Air Charter pursuant to section 401 of the Act and subpart Q of the Regulations requests that it be granted a certificate of public convenience and necessity for scheduled and charter interstate and overseas air transportation of persons, property and mail.

Docket No. 45174

Date Filed: October 2, 1987
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 30, 1987

Description: Application of Executive Air Charter pursuant to section 401 of the Act and Subpart Q of the Regulations requests that it be granted a certificate of public convenience and necessity for scheduled and charter foreign air transportation of persons, property and mail.

Phillis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 87-23649 Filed 10-9-87; 8:45 am]
BILLING CODE 4910-62-M

[Docket 45165]

Seattle/Portland-Japan Service Proceeding; Prehearing Conference

The prehearing conference in this proceeding will be held on Wednesday, November 4, 1987 at 10:00 a.m. (local time) in Room 5332, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

On or before October 28, 1987, the parties shall submit one copy to each other and four copies to the Judge of (1) any proposals for changes in the evidence request contained in the Appendix to Order 87-9-66; (2) proposed procedural dates; (3) proposed stipulations; and (4) a statement of position. The latter two matters also bear on the Department's stated anticipation "that most of the record created in Docket 44380 would be incorporated into the new docket * * *." Order 87-9-66 at p. 2. Therefore, the submissions shall comment on how much of the prior record and by what method (notice, stipulation, etc.) the previous evidence can be incorporated into this record. Be specific in outlining exhibits and testimony that can be incorporated.

Dated at Washington, DC, October 5, 1987.

Burton S. Kolko,
Administrative Law Judge.
[FR Doc. 87-23650 Filed 10-9-87; 8:45 am]
BILLING CODE 4910-62-M

[Docket 45163]

Spokane-Vancouver Service Case; Prehearing Conference

Notice is given that a prehearing conference in this proceeding will be held at 10 a.m. (local time) on November 5, 1987 in Room 5332 at the U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC.

The parties are directed to submit one copy to each party and four copies to the Presiding Judge of (1) any proposals for changes in the evidence request contained in the Appendix to Order 87-9-62; (2) proposed procedural dates; (3) proposed stipulations; and (4) a statement of position. This material shall be submitted on or before October 30, 1987.

Dated at Washington, DC, on October 6, 1987.

Daniel M. Head,
Administrative Law Judge.
[FR Doc. 87-23651 Filed 10-9-87; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circular 25.1357-1; Circuit Protective Device Accessibility; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of correction of phone number.

SUMMARY: This notice corrects a phone number previously published in the **Federal Register** dated September 18, 1987 (52 FR 35343). This phone number is under the heading "**FOR FURTHER INFORMATION CONTACT**" and indicates the place to call to obtain copies of proposed Advisory Circular 25.1357-1 for public comment. The phone number is: 431-2127.

Issued in Seattle, Washington October 2, 1987.

Darrell M. Pederson,
Acting Manager, Aircraft Certification Division, ANM-100.
[FR Doc. 87-23518 Filed 10-9-87; 8:45 am]
BILLING CODE 4910-13-M

Advisory Circular 20-127, Use of Society of Automotive Engineers (SAE) Class H11 Bolts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20-127, Use of Society of Automotive Engineers (SAE) Class H11 Bolts. The AC provides guidance on the use of SAE Class H11 bolts in primary structure on all aircraft, including gliders and manned free balloons, and on aircraft engines and propellers.

DATE: Advisory Circular 20-127 was issued by the FAA, Office of Airworthiness in Washington DC, on July 8, 1987.

How To Obtain Copies: A copy of AC 20-127 may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on September 22, 1987.

Darrell M. Pederson,

Acting Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 87-23517 Filed 10-9-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147; Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance System to be held on October 27-29, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Minutes of the Twenty-Second Meeting held on May 19-21, 1987; (3) Briefing on recent near mid-air incident reports; (4) Status Reports on Phase II of Piedmont flight evaluations; (5) Status report on FAA Technical Center TCAS activities; (6) Working Group Reports; (7) Status reports on joint separation assurance task force activities; (8) Briefing on items submitted for change 5 to RTCA/DO-185; (9) Briefing on FAA TCAS program; (10) Discussion on future plan and work programs; (11) Other business; and (12) Date and place of next meeting; (13) Working group separate sessions; (14) Summary of working group deliberations; (15) Closing discussion.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 1, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 87-23515 Filed 10-9-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 151; Minimum Operational Performance Standards for Airborne MLS Area Navigational Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Minimum Operational Performance Standards for Airborne MLS Area Navigational Equipment to be held on October 20-23, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Sixteenth Meeting; (3) Review and Discuss EUROCAE Working Group 27 Activities; (4) Review of the Eleventh Draft MOPS (5) Working Group Sessions; (6) Plenary to Review Working Group Progress and Task Assignments; (7) Other Business; and (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 22, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 87-23516 Filed 10-9-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; St. Joseph County; City of Mishawaka; IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project located in the City of Mishawaka, St. Joseph County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Threlkeld, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, Telephone: (317) 269-7481.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Indiana Department of Highways (IDOH) will prepare an environmental impact statement (EIS) on a proposal to construct a new 4-lane controlled access roadway on the east side of the City of Mishawaka and to the northeast and southeast of the City in the unincorporated area of St. Joseph County. The proposed roadway will generally follow along and/or adjacent to existing sections of Capital Avenue (Elm Road). The south terminus will be at the interchange of Elm Road and the new route for US 20 which is presently under design. The north terminus will be at State Road 23 with connection to the Milepost 83 interchange on the Indiana East-West Toll Road (I80/90). The total corridor length is approximately 7.8 miles.

Completion of this proposed action will provide for interconnection between U.S. 20 and the Indiana Toll Road on the east side of the South Bend/Mishawaka urbanized area and will improve local north-south travel on the east side of the City of Mishawaka and St. Joseph County. The proposed action is a priority recommendation of the 2005 Transportation Plan for the South Bend/Elkhart urbanized area.

Two (2) primary alternative alignments with various crossover connections will be developed and evaluated in the EIS. The alternative alignments will include an alignment which follows adjacent to existing sections of Capital Avenue (and north-south extensions thereof) and parallel alignment to the east or west. The recently completed 4-lane bridge on Capital Avenue over the St. Joseph River, located near the midpoint of the corridor, should not require modifications or replacement. Grade separations of Conrail, Grand Trunk Western Railroad and the Indiana Toll Road are anticipated. The evaluation of alternatives in the EIS will include a do nothing action.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, those agencies, groups or individuals affected by or interested in the proposed action are invited to participate by sending their written comments to the FHWA. No formal Scoping Meeting will be held for this proposed action. Public information meetings will be held during the early development phase of the proposed action. Dates and locations of such

meetings will be advertised in newspapers having local distribution within the project area.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued On: October 2, 1987.

James E. Threlkeld,

District Engineer.

[FR Doc. 87-23587 Filed 10-9-87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA General Docket No. H-87-2]

Petition for Exemption or Waiver for Test Program; National Railroad Passenger Corporation

Notice is hereby given that the National Railroad Passenger Corporation (Amtrak), has submitted a petition for a temporary waiver of 49 CFR 213.57(b), that section of the Federal Track Safety Standards that prescribes the maximum allowable operating speeds for trains on curves as a function of actual superelevation and curvature. Amtrak requests this waiver for the test operation of an RTG II Turbine train on its Northeast Corridor line between New York and Boston. The purpose of the petition is to obtain the approval of the Federal Railroad Administration (FRA) to operate an RTG trainset, under test conditions, at speeds which produce up to six inches of lateral unbalance.

In response to Amtrak's request and for the reasons stated in this notice, FRA has granted a temporary, conditional waiver, pending receipt and evaluation of public comments. The waiver permits the conduct of the RTG II Turbine Train test between New Haven, Connecticut, and Boston, Massachusetts, during the period October 5 to October 31, 1987, at curving speeds that will produce up to six inches of unbalance and is conditioned on Amtrak's adherence to the parameters of the test program set forth in this notice.

In the ideal case, trained vehicles would negotiate all curves at what is called equilibrium speed. That is the speed at which several favorable things happen: Centrifugal force is exactly counterbalanced by the actual superelevation (tilt/cant) of the track, passengers do not sense curve presence and wheel-rail wear is minimized. As a practical matter, the ideal cannot be achieved: operating conditions demand different train speeds, from time to time, over the same location. So, what evolved many years ago was a compromise approach to equilibrium or balanced curve negotiation in which the tracks; superelevation on curves was established at some value less than that which would provide a balanced ride for the fastest type of service. Thus, the concept of unbalance was introduced and there can indeed be both underbalance situations where moving vehicles lean to the outside of curves and overbalance conditions where slowly moving vehicles lean to the inside. The petition is concerned exclusively with underbalance, also called superelevation/cant deficiency or just unbalance.

Section 213.57(b) of the Track Safety Standards specifies a maximum allowable unbalance or cant deficiency of three inches. This means that track maintenance personnel can install superelevation on a curve that is up to three inches less than that which would provide "balanced" curve negotiation. This value of three inches was borrowed from industry application over many years for direct inclusion in the Track Safety Standards at the time that they were being formulated. The origin in the railroad industry of the number was entirely based on passenger comfort, not train safety. There have been a number of tests, over the years and worldwide, in which it was demonstrated that unbalanced curve negotiation could be as high as 11 inches before vehicle safety became an issue. Indeed, the RTG II Turbine trainsets are operated on a daily basis in France in revenue service at up to 6.3 (160 mm) inches of unbalance. However, unbalance is a variable quantity, and the level of can deficiency tolerated by specific railroad car type needs to be determined through analysis and test.

In order to improve trip times between New York and Boston, the petitioner is contemplating train operation over various curves at up to six inches of unbalanced elevation using trainsets designed to operate safely and comfortably at this cant deficiency. In reality, this can only be achieved in the region New Haven to Boston, because the petitioner does not control the track, New Rochelle to New Haven, and the segment, New York to New Rochelle, is unsuitable for higher speeds. These restrictions are acknowledged by the petitioner; therefore, the test zone will be New Haven to Boston. To investigate the implication of this operating concept, the petitioner proposes to test the response of a trainset representing the type likely to provide this service at candidate speeds developing six inches of unbalanced elevation. It is the responsibility of the FRA to assure that this test event can be carried out safely. While the RTG trainsets have an extensive record in the U.S. of safe operation at speeds conforming to the requirements of § 213.57(b), there are no data reflecting domestic operation at speeds beyond those associated with three-inch unbalanced operation. Before approving the petition, an analysis of the risk of test vehicle derailment must be performed. There are three causes of vehicle derailments on curves that are of concern here: Rail rollover, lateral track shift and vehicle overturning. Each of these derailment modes will be considered in turn.

Rail rollover: This mode of derailment is largely a function of the integrity of the fastening system used to attach the rails to the ties and the magnitude of lateral wheel loads. In cases where the rail-tie fasteners are totally secure and large lateral wheel loads are applied to the elevated rail in curves, the hazard then is a shift of the rail-tie structur in the ballast and consequent destabilization of the trainset. Since both of these derailment modes are closely related, it is convenient to consider them together.

There is broad test experience in France with exactly the same kind of equipment proposed for test by the petitioner. This can be summarized as follows based on four typical investigations:

Speed	Unbalance	Lateral wheel force (lb)
107 mph	10"	14,112
83 mph	11"	12,992
78 mph	10"	14,560
150 mph	7"	9,856

What these numbers are saying is that when the French technicians operated an RTG trainset at significantly higher unbalanced speeds than are contemplated in the petition, the design factors of the equipment combined to produce not more than 15,000 lbs of lateral wheel-rail load at any one point in the test zones.

This is to be compared with the wheel-rail loads generated by a conventional American diesel locomotive (SDP-40) operated in 1978 over deliberately misaligned track at the Transportation Test Center. At that time, while running on the misaligned curve at a speed of 75 mph, a total truck force (evenly distributed over the three high rail wheels) of 105,000 lbs caused the track to shift laterally four inches. The rail-tie fasteners at this instrumented location were in excellent

condition and there was no indication of rail tipping (roll). Since the track remained stable during the preceding 70 mph test run, this result provides a quantified bound describing the upper limits of good quality track such as is evident in the highly upgraded corridor, New York to Boston. Note that the loads developed were higher by more than a factor of two than the greatest loads measured in the French RTG tests. Recall, too, that the trainset speeds developed in these French tests resulted in 10-inch to 11-inch unbalanced curve negotiation.

The conclusion to be drawn from this comparison of test experience is that for the two vehicle derailment modes of interest, rail rollover and track shift, the lateral wheel forces developed by an RTG trainset running through curves at six-inch unbalanced speeds in no way approaches an unsafe condition. To assure the validity of this conclusion under actual test conditions, a table was prepared that lists maximum predicted RTG carbody lateral acceleration values, curve by curve, both tracks, in the test zone, New Haven to Boston. It is known from past investigations in this same area what the lateral wheel load/vehicle acceleration output was for other passenger equipment types having higher centers of gravity and stiffer suspensions than RTG vehicles, yet operating safely at more than six inches of unbalance. Instrumentation aboard the test RTG trainset will produce data that will be compared with the tabular values, the point being that the design characteristics of the RTG vehicles are expected to consistently lead to the imposition of lower track loads, carbody accelerations being equivalent. If RTG carbody accelerations approach the levels attained by this previous test equipment known to be capable of safe operation at well over six inches of unbalance, further speed increases on the specific curve will be cut off by the on-board FRA test monitor.

Vehicle overturning: Reference is made, above, to the preparation of a table of RTG carbody lateral acceleration values. These data will accrue as part of the overall exercise intended to preserve the RTG test train set from overturning at the elevated test speeds. The following steps were pursued toward this end:

• The RTG train set was parked on two reversed curves, each having six inches of superelevation. The tilt of the carbody induced by the superelevation caused deflections in truck suspension springing, and these dimensional differences were recorded for consolidation with similar static state data gathered from the RTG while stopped on level track.

• These and other specific RTG data are being entered into the vehicle curving model developed and verified during the referenced earlier passenger-locomotive test series.

• From the exercise of this model, the following steady state estimates of RTG vehicle dynamics were made, all being related to elevation unbalance:

—Carbody lateral acceleration;
—Shift in resultant force due to changes in centrifugal force as speed varies (a measure of outer-rail wheel loading as a vehicle tilts in curving);
—Truck lateral force;
—Vertical wheel force on each rail.

• These estimates were correlated with actual Amcoach and F–40 (locomotive) response data collected in test.

• From a review of this assembled data, the petitioner's test director and FRA's test monitor jointly selected a maximum acceptable value for lateral acceleration of the vehicle carbody in the RTG trainset. No train speeds will be permitted that will cause higher accelerations than this value as measured on board the train during each test run.

In summary, no vehicle accelerations or wheel-rail loads greater than what has already been demonstrated to be safe for rail passenger vehicles will be permitted to occur.

FRA has also prepared a technical justification for the assignment of limiting steady state and transient lateral acceleration values as recorded on board the test train. This justification is on file as part of the public docket.

FRA has reviewed this whole approach to assuring the safety of the RTG trainset during the test events and believes it to be sound. FRA has determined that granting the required temporary waiver would be consistent with railroad safety and in the public interest, provided that Amtrak adheres to the following conditions:

Test Program Guidelines

1. A run at timetable speed (3" unbalanced curve negotiation) shall be made over both tracks, New Haven to Boston and from the on-board lateral accelerometer data output an intermediate test zone will be selected by mutual agreement of the Amtrak Test Director and the FRA Test Monitor. This intermediate test zone will consist of one or more track segments, both main tracks, for which a review of the accelerometer data indicates higher levels of carbody accelerations than occurred elsewhere.

2. Round trips shall then be scheduled over the designated intermediate test area at train speeds producing 4, 5 and 6 inches of curve unbalance, successively. During and following each of these unbalanced speed runs, the strip chart output of the on-board instrumentation shall be observed and analyzed by Amtrak and FRA technical staff who will arrive at mutually acceptable interpretation of the values displayed in the data.

Test train speeds shall not be exceeded which produce greater than:

A. Carbody steady state lateral accelerations of 0.20 g;

b. Transient accelerations (related to track alignment and crosslevel variation) of 0.33 g.

These two values are individually and independently operative as limits; they are not to be combined.

3. At the conclusion of train runs over the intermediate area, round trips shall then be scheduled over the entire test zone, New Haven to Boston, at train speeds producing 4, 5 and 6 inches of curve unbalance, successively. During these trips, maximum train speeds shall not exceed the restrictions, if any, identified for specific curves during the previous test runs in the intermediate test area.

4. If a review of the data displayed by the on-board instrumentation indicates only small increases in carbody accelerations from one value of unbalanced speed to another, the FRA Test Monitor has the authority to suspend scheduled trips in the interest of efficient test operation.

5. The location of the on-board accelerometer will be at floor level in the trailing power car located as close as possible to the pivot point of the leading (passenger compartment) truck.

6. The test train shall not operate at speeds producing more than 3 inches of unbalanced elevation when other trains are passing on the adjacent main track.

7. In no event shall the test train operate at more than 110 mph.

8. Evidence of recent accelerometer calibration shall be available to the FRA Test Monitor prior to the start of test or, if not, calibration shall occur immediately following the test series, and the resulting documentation shall be provided to the FRA Test Monitor in copy form.

9. There shall be a capability for understandable voice communication between the Amtrak Test Director and the test train Engineman continuously operative during each test run.

It is the responsibility of the petitioner to have sufficient spare devices for this purpose on board to obviate

communication interruption because of equipment failure.

10. Copies of test train operating instructions not issued by a train dispatcher shall be available to the FRA Test Monitor before each test run except the first 3-inch unbalance round trip.

11. If the RTG is operated over the Dorchester Branch, timetable speeds shall not be exceeded.

12. During periods when wind gusts of 50 mph or greater are predicted, the test trainset shall not be operated at speeds developing more than 3 inches of unbalanced elevation.

13. The manual on Uniform Traffic Control Devices (for Streets and Highways), Revision No. 4 (page 8C–7) recommends a warning period of at least 20 seconds for actuated automatic highway grade crossing protection. If the operation of the test train produces a warning period of less than 20 seconds at any active highway grade crossing device, the petitioner shall present a plan to FRA, prior to any unbalanced speed testing, which describes compensating measures that will be taken to provide highway traffic with the recommended warning interval.

14. The FRA Test Monitor shall have the authority to withdraw, at anytime for cause, the waiver of (Amtrak) compliance with § 213.57(b) of the Federal Track Safety Standards.

15. The test RTG II Turbine train shall be equipped in the control compartment(s) with accurate, operating speed indicating device(s).

16. The waiver will automatically expire at 11:59 p.m., October 31, 1987.

FRA responded promptly to the Amtrak petition, granting a conditional waiver of compliance on a temporary basis. That temporary waiver was granted with the understanding that FRA's decision would be reviewed in the light of any public comments received in response to this public notice. The decision to grant a temporary waiver, pending receipt and consideration of public comment, was based on the determination that immediate action was required in the public interest.

FRA is not seeking information and comments of all interested parties on this waiver request. As noted, FRA intends to review its initial decision in light of these comments. In addition, FRA will take these comments into account in assessing any future Amtrak petitions for similar test programs involving the RTG II Turbine train. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by November 15, 1987, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H–87–2" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590.

Comments received by November 15, 1987, will be considered in this proceeding and in evaluating any future proposals by Amtrak for similar test programs. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

Issued in Washington, DC, on October 7, 1987.

J.W. Walsh,

Associated Administrator for Safety.

[FR Doc. 87–23745 Filed 10–9–87; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 6, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0013
Form Number: TPS 2208
Type of Review: Extension
Title: States Where Licensed for Surety
Description: Information is collected to report, in Treasury Circular 570, Surety Licenses of Treasury certified companies for the use by Federal bond approving officers.
Respondents: Businesses of other for-profit, Small businesses or organizations
Estimated Burden: 306 hours
Clearance Officer: Hector Leyva, (301) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Alcohol Tobacco and Firearms

OMB Number: 1512–0092
Form Number: ATF F 5100.31 (1648/1649/1650)
Type of Review: Extension
Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act
Description: The Federal Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 27,300 hours
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87–23551 Filed 10–9–87; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice

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advices the public that the interest rates, as set by the Internal Revenue Service, will be 10 percent for underpayments and 9 percent for overpayments for the quarter beginning October 1, 1987. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, IN 46278, (317) 298–1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99–514), amended 26 U.S.C. 6621 mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

Determination

It has been determined that the rates of interest for the period of October 1, 1987–December 31, 1987 are 10 percent for underpayments and 9 percent for overpayments. These rates will remain in effect through December 31, 1987, and are subject to change on January 1, 1988. They will remain in effect until changed by another notice in the **Federal Register.**

Dated: October 6, 1987.

William von Raab,

Commissioner of Customs.

[FR Doc. 87–23553 Filed 10–9–87; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985) I hereby determine that the objects to be included in the exhibit, "Crossroads of Continents: Cultures of Siberia and Alaska" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Museum of Natural History, Smithsonian Institution, Washington, DC, beginning on or about September 22, 1988, to on or about April 2, 1989; at the Seattle Center, Seattle, Washington, beginning on or about May 14, 1989, to on or about October 15, 1989; at the American Museum of Natural History, New York, N.Y., begining on or about November 26, 1989, to on or about March 25, 1990; at the Indiana State Museum, Indianapolis, Ind., beginning on or about May 6, 1990, to on or about September 9, 1990; at the Los Angeles County Museum of Natural History, Los Angeles, California, beginning on or about October 21, 1990, to on or about February 24, 1991; at the Anchorage Museum of History and Art, Anchorage, Alaska, beginning on or about April 7, 1991, to on or about August 11, 1991; and for such period as may be needed for shipment out of the United States to the U.S.S.R., is in the national interest.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Consel.

Date: October 6, 1987.

[FR Doc. 87–23672 Filed 10–9–87; 45am]

BILLING CODE 8230–01

Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisor Board for Radio Broadcasting to Cuba will conduct a meeting on October 15, 1987, in Room 3557, 400 Sixth Street SW., Washington, DC. Below is the intended agenda.

Thursday, October 15, 1987

Part One—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti
11:00 a.m. 2. Discssion of Radio Marti internal personnel rules and practices
11:45 a.m. 3. Tour of new studios (secured area)

Part Two—Open to the Public

2:00 p.m. 4. Discussion of impact of del Pino, Azpillaga interviews
2:30 p.m. 5. Budget status
3:00 p.m. 6. Marathon transmitter site upgrade status
3:30 p.m. 7. Audience research results
4:00 p.m. 8. Marti TV
4:30 p.m. 9. Public Testimony Period.

Items 1 through 3, which will be discussed from 10:00 a.m. to 12:00 noon, will be closed to the public. Item 1 involves discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b (c)(1). Item 2 relates solely to internal personnel rules and practices. Authority for deliberations is provided by U.S.C. 552b (c)(2). Item 3 relates to admittance to a secure area and therefore closed to the public.

Members of the public interested in attending the meeting should contact Peggy Chu (202) 485–7011 to make prior arrangements, as access to the building is controlled.

Dated: October 8, 1987.

Charles Z. Wick,

Director

[FR Doc. 87–23776 filed 10–9–87; 9:38 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 197
Tuesday, October 13, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, October 15, 1987.

LOCATION: Room 556, Westwood, Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. 16 CFR 1015.12

The Commission will discuss the provisions of CPSC's Freedom of Information Act regulations concerning Congressional requests for Commission documents.

2. ATV Voluntary Standards

The staff will brief the Commission on the status of the voluntary performance standard for all-terrain vehicles.

3. LP Gas Automatic Control Values

The staff will brief the Commission on suggested changes to industry voluntary standards and codes relating to residential LP gas system and automatic gas control values.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800

Sheldon D. Butts,

Deputy Secretary.

October 7, 1987.

[FR Doc. 87-23710 Filed 10-8-87; 8:45 am]

BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 10:00 am (Eastern Time) Monday, October 19, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations [A Report from the Office of Review and Appeals]
3. Response to a Petition for Reconsideration and Repeal of the Final Rule on Unsupervised Waivers Under the Age Discrimination in Employment Act
4. Proposed section 630 of Volume II of EEOC's Compliance Manual, Unions

Closed Session

1. Consideration of a Commissioner's Charge
2. Litigation Authorizations: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer (Acting) on (202) 634-6748.

Dated: October 7, 1987.

Cynthia Clark Matthews,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued October 7, 1987.

FR Doc. 87-23737 Filed 10-8-87; 3:43 pm]

BILLING CODE 6570-06-M

FEDERAL ENERGY REGULATORY COMMISSION

October 7, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

DATE AND TIME: October 14, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 864th Meeting—October 14, 1987; Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 6524-006, Hy-Tech Company
CAP-2.
Project Nos. 10182-001, 10183-002 and 10143-001, Skykomish River Hydro
Project Nos. 10356-001, 10359-001, 10360-001 and 10361-001, Snoqualmie River Hydro
CAP-3.
Project No. 8160-001, Dale L.R. Lucas
CAP-4.
Project No. 6456-007, Village of Green Island, New York
CAP-5.
Project No. 9930-003, Northern Hydro Consultants, Inc.
CAP-6.
Project No. 3657-005, City of Nashville, Arkansas, and City of Broken Bow, Oklahoma
CAP-7.
Project No. 9558-001, Carry Falls Corporation
CAP-8.
Project No. 5926-003, City of Bellevue, Washington
CAP-9.
Project No. 10171-001, North Country Hydro Associates
CAP-10.
Project Nos. 8136-005 and 10062-001, Friends of Keeseville, Inc.
Project No. 9817-003, Cash Flow Systems, Inc.
CAP-11.
Project No. 5222-002, South Sutter Water District
CAP-12.
Project No. 3986-003, Swift River Company
CAP-13.
Project No. 3195-022, Joseph M. Keating
CAP-14.
Docket No. E-6454-008, City of Centralia, Washington
CAP-15.
Project No. 2739-013, Utilities Commission and City of Vanceburg, kentucky
CAP-16.
Project No. 6432-001, Town of Chester, Montana, Liberty County, Montana, and Montana Renewable Resources
CAP-17.
Project No. 3083-029, KAMO Electric Cooperative, Inc. and Oklahoma Municipal Power Authority
CAP-18.
Project No. 8936-002, BES Hydro Inc.
CAP-19.
Docket No. EL83-10-000, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District
CAP-20.
Docket No. ER87-599-000, Gulf States Utilities Company

CAP–21.
Docket Nos. ER87–593–000, ER85–598–001, ER85–607–000, ER85–621–000 and ER85–634–000, Central Hudson Gas & Electric Corporation
CAP–22.
Docket No. ER87–365–000, Southern California Edison Company
CAP–23.
Docket No. ER87–561–000, Arizona Public Service Company
CAP–24.
Docket No. ER82–426–004, Jersey Central Power & Light Company
CAP–25.
Docket Nos. EF84–2011–016, EF84–2011–017, EF84–2011–018 and EF84–2011–019, United States Department of Energy—Bonneville Power Administration
CAP–26.
Docket No. EL87–11–001, North Carolina Municipal Power Agency No. 1 v. Duke Power Agency
Docket No. EL87–18–001, Piedmont Municipal Power Agency v. Duke Power Company
Docket No. EL87–20–001, Northern Carolina Electric Membership Corporation v. Duke Power Company
CAP–27.
Docket No. QF86–594–001, Weyerhaeuser Company
CAP–28.
Docket No. ER84–574–004, Holyoke Water Power Company and Holyoke Power and Electric Company
CAP–29.
Docket Nos. ER86–504–001, ER78–71–002 and EL87–44–000, Pennsylvania Power & Light Company
CAP–30.
Docket No. ER87–67–001, Wisconsin Electric Power Company

Consent Miscellaneous Agenda

CAM–1.
State of Alaska
CAM–2.
Docket No. FA87–68–000, New England Power Service Company
CAM–3.
Docket No. RM87–36–000 Interpretation of Comprehensive Plans Under Section 3 of the Electric Consumers Protection Act
CAM–4.
Docket No. RM81–7–002, Exemption From Licensing Requirements of Part I of the Federal Power Act of a Category of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or less
CAM–5.
Docket No. RM87–26–000, Filing Fees Under the Independent Offices Appropriation Act
CAM–6.
Docket No. GP83–12–002, State of Kansas, Section 103 NGPA Determination, Continental Energy, Stanley No. 1 Well (Haskell Co.), FERC No. JD81–01760
CAM–7.
Docket No. GP86–22–001, Williston Basin Interstate Pipeline Company v. ARCO Oil and Gas Company
Docket No. SA86–15–001, Williston Basin Interstate Pipeline Company
CAM–8.
Docket No. RM86–12–000, Generic Determination of Rate and Return on Common Equity for Public Utilities

Consent Gas Agenda

CAG–1.
Docket No. RP87–138–000, Natural Gas Pipeline Company of America
CAG–2.
Docket Nos. TA88–1–47–000 and RP87–143–000, MIGC, Inc.
CAG–3.
Docket No. RP87–7–027, Transcontinental Gas Pipe Line Corporation
CAG–4.
Docket Nos. RP82–55–021, 023 through 028, RP87–7–022 and 024 through 026, Transcontinental Gas Pipe Lien Corporation
CAG–5.
Docket Nos. RP82–124–007, RP81–53–002 and RP81–55–034, East Tennessee Natural Gas Company
CAG–6.
Docket Nos. RP87–26–010 through 018 and RP85–178–017 through 021, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–7.
Docket Nos. RP82–58–018 through 021, Panhandle Eastern Pipe Line Company
Docket Nos. RP82–105–005 through 007, Central Illinois Light Company
CAG–8.
Docket Nos. TA82–1–21–029 and 030, Columbia Gas Transmission Corporation
CAG–9.
Docket Nos. TA85–2–37–000, 015 through 020 and TA85–3–37–000, Northwest Pipeline Corporaton
CAG–10.
Docket Nos. TA87–2–41–003 and 004, Southwest Gas Corporation
CAG–11.
Docket No. RP82–114–000 Williams Natural Gas Company (formerly Northwest Central Pipeline Corporation)
CAG–12.
Docket No. RP86–45–018, El Paso Natural Gas Company
CAG–13.
Docket No. TA87–2–8–000, South Georgia Natural Gas Company
CAG–14.
(A) Docket No. CP87–15–001, Trunkline Gas Company
(B) Docket No. CP87–15–002, Panhandle Eastern Pipe Line Company
CAG–15.
Docket No. TA87–3–53–000, KN Energy, Inc.
CAG–16.
Docket No. TA85–1–29–011, Transcontinental Gas Pipe Line Corporation
CAG–17.
Docket No. ST87–1145–000, Sabine-DeSoto Pipe Line Company, Inc.
CAG–18.
Docket CI87–705–000, Conoco Inc.
Docket No. CI87–706–000, Union Exploration Partners, Ltd.
Docket No. CI87–710–000, Sun Exploration and Production Company
Docket No. CI87–776–000, Odeco Oil & Gas Company
CAG–19.
Docket Nos. CI87–548–000 and CI87–558–000, Conoco Inc.
CAG–20.
Docket Nos. CI87–659–000 and CI87–662–000, Phillips Petroleum Company
CAG–21.
Docket No. CI87–130–000, Grace Petroleum Corporation
CAG–22.
Docket No. CP77–421–030, Transcontinental Gas Pipe Line Corporation
CAG–23.
Docket Nos. CP87–166–002 and CP87–316–002, Florida Gas Transmission Company
CAG–24.
Docket Nos. CP87–196–001, 002, 003 and 005, Transcontinent Gas Pipe Line Corporation
Docket Nos. CP87–203–001, through 004, Consolidated Gas Transmission Corporation and North Penn Gas Company
CAG–25.
Docket Nos. CP87–159–00 through 004, CP87–304–000, 001 and 002, Pacific Gas Transmission Company
CAG–26.
Docket No. CP86–360–000, Northern Natural Gas Company, Division of Enron Corporation
CAG–27.
Docket No. CP86–146–000, Consolidated Gas Transmission Corporation
Docket Nos. CP86–597–000 and 001, Transcontinental Gas Pipe Line Corporation
CAG–28.
Docket No. CP87–21–000, Pacific Gas Transmission Company
CAG–29.
Docket No. CP86–143–006, Texas Gas Transmission Corporation
CAG–30.
Docket No. CP87–301–000, Williams Natural Gas Company
CAG–31.
Docket No. CP87–112–000, Transwestern Pipeline Company and H. L. Brown, Jr.
CAG–32.
Docket No. CP87–119–000, Southern Natural Gas Company
CAG–33.
Docket No. CP84–623–002, Western Gas Interstate Company
Docket Nos. CP84–679–000 and 001, Public Service Company of New Mexico/San Juan Interstate Gas Company
Docket Nos. CI–77–563–000, and 001, Shell Oil Company
Docket Nos. CI–78–38–000 and 001, Conoco In.
CAG–34.
Docket No. CP87–459–000, Shell Gas Pipeline Company

I. Licenced Project Matters

P–1. Omitted
P–2. Omitted
P–3. Omitted

II. Electric Rate Matters

ER–1.
Docket No. EL87—46–000, Arkansas Power & Light Company. Order on petition for

declaratory order regarding accounting regulations.

Miscellaneous Agenda

M–1. Reserved
M–2. Reserved
M–3. Docket No. RM87–25–000, Regulations Delegating Authority. Final Rule.
M–4. Docket No. GP86–2–002, Southern Union Company. Declaratory order on maximum lawful prices.

I. Pipeline Rate Matters

RP–1.
Docket Nos. RP87–141–000 and 001, Natural Gas Pipeline Company of America. Order concerning tariff sheets including an inventory holding charge.
RP–2.
Omitted
RP–3.
Docket Nos. RP84–82–000 and Tarpon Transmission Company. Order on initial decision involving issues concerning rate base, depreciation, capital structure, and rate of return.
RP–4.
Docket Nos. RP85–206–011 through 027, Northern Natural Gas Company, Division of Enron Corporation. Order on rehearing of order issued concerning transportation under Part 284.

II. Producer Matters

CI–1.
Docket No. IN86–5—000 (Phase I), Mobil Exploration and Producing North America, Inc. Order on initial decision regarding maximum lawful prices.

III. Pipeline Certificate Matters

CP1.
Docket Nos. CP85–437–001 and 002, Mojave Pipeline Company
Docket No. CP85–552–001, Kern River Gas Transmission Company
Docket Nos. CP86–205–000 and 001, El Dorado Interstate Transmission Company
Docket No. CP87–479–000, Wyoming-California Pipeline Company. Order on request for rehearing of hearing order, on petitions for declaratory orders, and on motion to consolidate applications, with respect to proposals to provide new gas service for enhanced oil recovery operations in California.
CP2.
Docket Nos. CP85–621–000, CP85–674–000, CP85–713–001, CP85–714–001, CP85–716–000, CP85–889–000 and CP86–53–000, ANR Pipeline Company. Opinion on initial decision regarding requests for section 7(c) authorization for transportation of gas.
CP3.
Docket Nos. CP87–499–000, El Paso Natural Gas Company. Order on petition for declaratory relief with respect to certificate, rate and contract matters arising from state court litigation in Texas.

Kennth F. Plumb,

Secretary.

[FR Doc. 87–23747 Filed 10–8–87; 3:43 pm]

BILLING CODE 6717–01–M

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR, October 1, 1987, Page No. 36862.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Wednesday, October 7, 1987.

CHANGES IN AGENDA: The Federal Trade Commission has cancelled its previously announced oral argument at which it was to discuss Ticor Title Insurance Company et al., Docket No. 9190.

Emily H. Rock,

Secretary.

[FR Doc. 87–73726 Filed 10–8–87; 2:46 pm]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 9:00 a.m., Wednesday, October 7, 1987.

PLACE: Room 532, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of Commission participation in possible revisions to antitrust guides for international operations.

CONTACT PERSON FOR FURTHER INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179, Recorded Message: (202) 326–2711.

Emily H. Rock,

Secretary.

[FR Doc. 87–23727 Filed 10–8–87; 2:46 pm]

BILLING CODE 6750–01–M

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Corrections

Federal Register
Vol. 52, No. 197
Tuesday, October 13, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 86-225; FCC 87-303]

Ex Parte Communications and Presentations in Commission Proceedings

Correction

In rule document 87-23050 beginning on page 37458 in the issue of Wednesday, October 7, 1987, make the following corrections:

1. On page 37460, in the second column, in the amendatory instructions for § 1.1208,, item 9 (b) should read "(b) Redesignating paragraphs (c)(1)(iv) introductory text, (A), (B), and (C), as (c)(1)(i) introductory text, (A), (B), and (C)."

2. In the same column, item 9 (d) should read "(d) Adding paragraphs (c)(1)(ii) introductory text and (c)(1)(ii)(D)."

BILLING CODE 1505-01-D

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

Correction

In rule document 87-19552 beginning on page 32280 in the issue of Wednesday, August 26, 1987, make the following corrections:

1. On page 32284, in the first column, § 1650.16 contained errors and is reprinted in its entirety as follows:

§ 1650.16 Withdrawal elections requiring notification to spouses.

(a) The Executive Director will transfer a vested account balance to an eligible retirement plan for CSRS and FERS participants who separate from government service before having basic retirement eligibility only after notification of the current and each former spouse of the participant in accordance with § 1650.19.

(b) No election of benefits, change of election of benefits, or modification of the commencement date of an annuity can be made effective for a CSRS participant prior to notification of the current spouse of the participant in accordance with the requirements of § 1650.19.

§ 1650.18 [Corrected].

2. Also page 32284, in the first column, in § 1650.18(a), in the fourth line, "Form FSP-" should read "Form TSP-."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

[T.D. 87-124]

Customs Regulations Amendment Relating to Carrier Liabilities for Unlawful Lading, Exportation or Disposition of Export-Controlled Merchandise

Correction

In rule document 87-22934 beginning on page 37132 in the issue of Monday, October 5, 1987, make the following correction:

On page 37135, in the first column, in the fourth complete paragraph, in the ninth line, "and the" should read "and not the".

BILLING CODE 1505-01-D

federal register

Tuesday
October 13, 1987

Part II

Federal Maritime Commission

Notice of Intent To Cancel Inactive Tariffs

VOL
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FEDERAL MARITIME COMMISSION

Notice of Intent To Cancel Inactive Tariffs

The foreign commerce files of the Federal Maritime Commission contain numerous tariffs filed on behalf of firms which appear to be inactive or no longer operating as common carriers. For the purpose of this notice a carrier has been deemed to be inactive or no longer operating if it has met all of the following criteria: (1) Return as undeliverable by the United States Postal Service of an anti-rebating certificate reminder letter mailed to the carrier at its last known address; (2) attempts to contact the carrier by telephone have been unsuccessful; (3) failure of the carrier to file an anti-rebating certificate; and (4) failure of the carrier to amend its tariffs during the preceding twelve months.

Inactive tariffs reflect inaccurate information and serve no useful purpose. Accordingly, in the absence of a showing of good cause why such action should not be taken, the Commission proposes to cancel the tariffs of the companies included on the attached list. Certain information items on the attached list may not apply to a particular carrier and are therefore, intentionally left blank.

Now Therefore, it is ordered, That the carriers included on the attached listing advise the Federal Maritime Commission's Director, Bureau of Domestic Regulation at 1100 L Street, NW., Washington, DC 20573, in writing, within 30 days after the publication of this Order in the **Federal Register**, of any reason why the Commission should not cancel their respective tariffs;

It is further ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed in the attachment;

It is further ordered, That the tariffs of all carriers named in the attached list who fail, within the time allotted, to provide good cause for maintaining these tariffs in an active status will be cancelled;

It is further ordered, That this notice be published in the **Federal Register**.

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by Section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariffs, and Service Contract Operations

Inactive Tariffs

DBA: **A–1 Consolidators, Inc.,**
Person Types: Non-vessel operating common carrier
Street: 2974 Northwest North River Drive
City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 002159

DBA: **A.E. International Shipping**
Person Types: Non-vessel operating common carrier
Street: 1501 Vermont Street
City: San Francisco
State: CA 94107
Country: United States of America
License No:
Name Number: 006774

DBA: **A.K. Express**
Person Types: Non-vessel operating common carrier
Street: 19032–B SO. Vermont Avenue
City: Gardena
State: CA 90248
Country: United States of America
License No:
Name Number: 000152

DBA: **ABACO International Shippers**
Person Types: Non-vessel operating common carrier
Street: 4201 West Wrightwood Avenue
City: Chicago
State: IL 60639
Country: United States of America
License No:
Name Number: 000154

DBA: **ABI Limited**
Person Types: Non-vessel operating common carrier
Street: Pipps Hill Industrial Estate
City: Basildon Essex SS14 3BS England
State:
Country: Great Britain
License No:
Name Number: 005821

DBA: **Acadian Ocean Freight, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 419 Rue Decatur
City: New Orleans
State: LA 70130
Country: United States of America
License No:
Name Number: 000163

DBA: **Aegis Logistics Systems Inc.**
Person Types: Non-vessel operating common carrier Marine terminal operator
Street: Guilford Industrial Center 9505 Berger Road
City: Columbia
State: MD 21046
Country: United States of America
License No:
Name Number: 000169

DBA: **African Liner Service, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O Box 58
City: Red Bank
State: NJ 07701
Country: United States of America
License No:
Name Number: 000174

DBA: **Agencija Dudenjak Inc.**
Person Types: Non-vessel operating common carrier
Street: 32–08A Broadway
City: Astoria
State: NY 11106
Country: United States of America
License No:
Name Number: 000175

DBA: **AL-ROD International, Inc.**
Person Types: Non-vessel operating common carrier
Street: 5625 North Pearl Street
City: Rosemont
State: IL 60018
Country: United States of America
License No:
Name Number: 006773

DBA: **Albury's International Shipping, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box N3456
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 000191

DBA: **Alcoa Streamship Co., Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 2568
City: Mobile
State: AL 36652
Country: United States of America
License No:
Name Number: 000193

DBA: **Alliance Maritime Line, Inc.**
Person Types: Non-vessel operating common carrier
Street: 9–15 Murray Street
City: New York
State: NY 10007
Country: United States of America
License No:
Name Number: 002792

DBA: **Allmodal Shipping**
Person Types: Non-vessel operating common carrier
Street: 1565 Beach Street

City: Oakland
State: CA 94608
Country: United States of America
License No:
Name Number: 000206

DBA: **Altai Shipping Corp.**
Person Types: Non-vessel operating common carrier
Street: 590 Belleville Turnpike
City: Kearny
State: NJ 07032
Country: United States of America
License No:
Name Number: 006189

DBA: **Amercon Ocean Freight Lines, Inc.**
Person Types: Non-vessel operating common carrier
Street: 65 Springfield Avenue
City: Springfield
State: NJ
Country: United States of America
License No:
Name Number: 000217

DBA: **Ameri-Lines Inc.**
Person Types: Non-vessel operating common carrier
Street: 6000 N.W. 84th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 006617

DBA: **America Africa Europe Line**
Person Types: Ocean common carrier (vessel operating)
Street: Trans-Navao
City: Grimm, 14 2000 Hamburg 11, West Germany
State:
Country: German Federal Republic (West)
License No:
Name Number: 007035

DBA: **America-Africa Line, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Bereederungsges M.B.H. Grimm 14
City: 2000 Hamburg 11
State:
Country: German Federal Republic (West)
License No:
Name Number: 000218

DBA: **American Cargo Transportation Group, Inc.**
Person Types: Non-vessel operating common carrier
Street: 233 Broadway—Suite 669
City: New York
State: NY
Country: United States of America
License No:
Name Number: 005902

DBA: **American Continental Line, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: c/o Steamco, 11 Broadway
City: New York
State: NY
Country: United States of America
License No:
Name Number: 005846

DBA: **American Express Lines**
Person Types: Non-vessel operating common carrier
Street: 235 West 134th Street
City: Los Angeles
State: CA 90061
Country: United States of America
License No:
Name Number: 000224

DBA: **American Intermodal Services, Inc.**
Person Types: Non-vessel operating common carrier
Street: 17 Battery Place—Suite 1717
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 000230

DBA: **American Kings, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1412 N.W. 82nd Avenue
City: Miami
State: FL 33126
Country: United States of America
License No:
Name Number: 006768

DBA: **American Maritime Express**
Person Types: Agent—filing non-vessel operating common carrier
Street: 5242 West 104th Street
City: Los Angeles
State: CA 94925
Country: United States of America
License No:
Name Number: 005951

DBA: **American Maritime Express, Inc.**
Person Types: Non-vessel operating common carrier
Street: 5 Marineview Plaza—Suite 312
City: Hoboken
State: NJ 07030
Country: United States of America
License No:
Name Number: 000233

DBA: **American Pacific Line, Inc.**
Person Types: Non-vessel operating common carrier
Street: 110 W. Ocean Blvd. Suite 515
City: Long Beach
State: CA
Country: United States of America
License No:
Name Number: 005843

DBA: **American Shipping Lines, Inc.**
Person Types: Non-vessel operating common carrier
Street: 11320 South Post Oak Road, # 214
City: Houston
State: TX 77035
Country: United States of America
License No:
Name Number: 006615

DBA: **American Trailer Express**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 523070
City: Miami
State: FL 33152
Country: United States of America
License No:
Name Number: 000243

DBA: **Americargo Lines, Inc.**
Person Types: Non-vessel operating common carrier
Street: 7233 NW. 79th Terrace
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 006613

DBA: **Americas Caribbean**
Person Types: Non-vessel operating common carrier
Street: 1300 Mark Street
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No:
Name Number: 000248

DBA: **Americas Container Line Ltd.**
Person Types: Non-vessel operating common carrier
Street: 32 South Street
City: Baltimore
State: MD 21202
Country: United States of America
License No:
Name Number: 006196

DBA: **Amertrans International Corporation**
Person Types: Non-vessel operating common carrier
Street: 8360 W. Flagler Street #104 A
City: Miami
State: FL 33144
Country: United States of America
License No:
Name Number: 006770

DBA: **AML, Inc.**
Person Types: Non-vessel operating common carrier
Street: 3785 NW., 83nd Avenue, Suite 104
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 006614

DBA: **Ancora Shipping N.V.**
Person Types: Non-vessel operating common carrier
Street: Willemstad,

City: Curacoa
State:
Country: Netherlands, Antilles
License No:
Name Number: 000253

DBA: **Angonave, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: 200 Plaza Drive, Harmon Meadows
City: Secaucus
State: NJ 07094
Country: United States of America
License No:
Name Number: 000256

DBA: **Antillean Cargo Services**
Person Types: Non-vessel operating common carrier
Street: 5400 NW. 32nd Court
City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 007037

DBA: **Ontilles & Amazon Line**
Person Types: Non-vessel operating common carrier
Street: 220 E. 42nd Street, Suite 2100
City: New York
State: NY 10017
Country: United States of America
License No:
Name Number: 006611

DBA: **Antilles Transport Line, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: Oceanic House, 21 West Main St.
City: Oyster Bay
State: NY 11771
Country: United States of America
License No:
Name Number: 005884

DBA: **APAC Lines Ltd.**
Person Types: Non-vessel operating common carrier
Street: 1003 Winning Commercial Bldg, 46–48 Hillwood Rd., Tsimshatsui,
City: Kowloon
State:
Country: Hong Kong
License No:
Name Number: 005885

DBA: **API Container Line**
Person Types: Non-vessel operating common carrier
Street: 8915 South LA Cienega Blvd.
City: Ingelwood
State: CA 90301
Country: United States of America
License No:
Name Number: 005886

DBA: **Aqua Lines Inc.**
Person Types: Non-vessel operating common carrier
Street: 123 Pennsylvania Ave.
City: South Kearny
State: NJ 07032
Country: United States of America
License No:
Name Number: 00264

DBA: **Asia Blue Shipping, Inc.**
Person Types: Non-vessel operating common carrier
Street: 149–10 183rd Street
City: Jamaica
State: NY 11413
Country: United States of America
License No:
Name Number: 002849

DBA: **Asia Express Ltd.**
Person Types: Non-vessel operating common carrier
Street: No. 18, Lane 52, I Tung Street
City: Taipei, Taiwan
State:
Country: People's Republic of China
License No:
Name Number: 005887

DBA: **ATA Nautical Corporation**
Person Types: Ocean common carrier (vessel operating)
Street: 3220 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 00283

DBA: **Atlantia Shipping Corporation**
Person Types: Ocean common carrier (vessel operating)
Street: 80 Broad Street
City: Monrovia
State:
Country: Liberia
License No:
Name Number: 00284

DBA: **Atlantic Lines and Navigation Company Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 33 Brouwersvliet–B–2000
City: Antwerp
State:
Country: Belgium
License No:
Name Number: 00307

DBA: **Atlantic Middle East Lines S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Edificio Braniff Av Federico Boyd y Calle 51
City: Panama City
State:
Country: Republic of Panama
License No:
Name Number: 00308

DBA: **Atlantraffik Express Service, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 370 Lexington Avenue
City: New York
State: NY 10017
Country: United States of America
License No:
Name Number: 000311

DBA: **Atlas Lines**
Person Types: Ocean common carrier (vessel operating)
Street: Edificio Torre Bancosur
City: Panama 1, Panama
State:
Country: Republic of Panama
License No:
Name Number: 005899

DBA: **Auro Mar Inc.**
Person Types: Non-vessel operating common carrier
Street: 3095–B NW. 77th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No:
Name Number: 000316

DBA: **Ayo Shipping Corporation**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 2127
City: Mobile
State: AL 36652
Country: United States of America
License No:
Name Number: 006612

DBA: **B.C. Shipping Line, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1911 West Alabama
City: Houston
State: TX 77098
Country: United States of America
License No:
Name Number: 006009

DBA: **B.R. Glynn International Inc.**
Person Types: Non-vessel operating common carrier
Street: 167–37 Porter Road
City: Jamaica
State: NY 11434
Country: United States of America
License No:
Name Number: 000328

DBA: **Backgammon Container Line**
Person Types: Non-vessel operating common carrier
Street: 110 West Ocean Blvd., Suite 320
City: Long Beach
State: CA 90802
Country: United States of America
License No:
Name Number: 000332

DBA: **Bestway Ocean Express Transport, Inc.**
Person Types: Non-vessel operating common carrier
Street: 515 River Road
City: Clifton
State: NJ 07014
Country: United States of America
License No:
Name Number: 000374

DBA: **Blue Shipping Agency**

Person Types: Non-vessel operating common carrier
Street: Via Borra, 35–57100
City: Livorno
State:
Country: Italy
License No:
Name Number: 006766

DBA: **Bluesea Shipping Line, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1361 South Figueroa Street
City: Los Angeles
State: CA 90015
Country: United States of America
License No:
Name Number: 000381

DBA: **Books International, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 6096
City: McLean
State: VA 22106
Country: United States of America
License No:
Name Number: 002802

DBA: **Bostrum-Warren, Inc.**
Person Types: Ocean freight forwarder (independent) Non-vessel operating common carrier
Street: 3200 Fourth Ave South
City: Seattle
State: WA 98134
Country: United States of America
License No: 1729
Name Number: 001769

DBA: **Bow Patmar Container Line, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1105 Caspian Avenue
City: Long Beach
State: CA 90813
Country: United States of America
License No:
Name Number: 001770

DBA: **Branco Atlantico Line S.A.**
Person Types: Non-vessel operating common carrier
Street: 90 Broad Street, 2nd Floor
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 006081

DBA: **Bushfinch International Enterprises**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 19861
City: Raleigh
State: NC 27619
Country: United States of America
License No:
Name Number: 000396

DBA: **C Line Marine Inc.**
Person Types: Non-vessel operating common carrier
Street: 1218 Union Street
City: Brooklyn
State: NY 11225
Country: United States of America
License No:
Name Number: 000642

DBA: **C.A. Naviera de Transporte y Turismo Transytur Line**
Person Types: Ocean common carrier (vessel operating)
Street: c/o Transytur Line
City: Miami
State: FL 33132
Country: United States of America
License No:
Name Number: 007048

DBA: **C.D.I. of Kentucky, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 333 West Vine Street, Suite 1505
City: Lexington
State: KY 40507
Country: United States of America
License No:
Name Number: 002359

DBA: **C.F.M. Consolidators, Inc.**
Person Types: Non-vessel operating common carrier
Street: Hook Creek Blvd. & 145th Avenue
City: Valley Stream
State: NY 11581
Country: United States of America
License No:
Name Number: 005983

DBA: **California International Freight Corp.**
Person Types: Ocean common carrier (vessel operating) Non-vessel operating common carrier
Street: 425 California Street, Suite 2200
City: San Francisco
State: CA 94104
Country: United States of America
License No:
Name Number: 000667

DBA: **Canatlantic Line Ltd.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 8274 Station A
City: St. Johns, Newfoundland, AlB3N4
State:
Country: Canada
License No:
Name Number: 005989

DBA: **Cantaclaro Container Line**
Person Types: Ocean common carrier (vessel operating)
Street: Central Banaven, Nucleo B Piso 2, Oficina 22
City: Chuad, Caracas
State:
Country: Venezuela
License No:
Name Number: 000678

DBA: **Cargomasters, Inc.**
Person Types: Non-vessel operating common carrier
Street: 33 Rector Street
City: New York
State: NY 10006
Country: United States of America
License No:
Name Number: 000694

DBA: **Cargonet (NY) Inc.**
Person Types: Non-vessel operating common carrier
Street: 145 Hook Creek Blvd. Bldg. 15
City: Valley Stream
State: NY 11581
Country: United States of America
License No:
Name Number: 005998.

DBA: **Carib Atlantic Lines Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Grand Cayman B.W.I.
City:
State:
Country: Cayman Islands
License No:
Name Number: 000697

DBA: **Caribbean and Central American Lines Limited.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 190
City: Grand Cayman
State:
Country: Cayman Islands
License No:
Name Number: 006005

DBA: **Caribbean Antillean Freight, Inc.**
Person Types: Non-vessel operating common carrier
Street: 6501 N.W. 36th Street, Suite 180
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 000702

DBA: **Caribbean Basin Transport Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Bank of Nova Scotia Building 4th Floor
City: Georgetown
State:
Country: Cayman Islands
License No:
Name Number: 006003

DBA: **Caribbean Cargo Services, Inc.**
Person Types: Non-vessel operating common carrier
Street: 524 Bergen Street
City: Brooklyn
State: NY 11217
Country: United States of America
License No:
Name Number: 000705

DBA: **Caribe Transport Consolidators, Inc.**
Person Types: Non-vessel operating common carrier

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Street: 7856 NW 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 000716

DBA: **Caribmar Trading Ltd.**
Person Types: Non-vessel operating common carrier Agent - filing
Street: 3500 NW. 114th Street
City: Miami
State: FL 33167
Country: United States of America
License No:
Name Number: 000717

DBA: **Carigulf Lines**
Person Types: Ocean common carrier (vessel operating)
Street: P. O. Box 760
City: Belize City
State:
Country: Belize
License No:
Name Number: 000719

DBA: **Carreras Shipping Co.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 950
City: San Juan
State: PR 00902
Country: United States of America
License No:
Name Number: 002777

DBA: **CBS**
Person Types: Non-vessel operataing common carrier
Street: G.P.O. Box 4811
City: San Juan
State: PR 00936
Country: Puerto Rico
License No:
Name Number: 000703

DBA: **Central American Shipping Services**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 24
City: Puerto Cortes
State:
Country: Republic of Honduras
License No:
Name Number: 000734

DBA: **Central American Trailers**
Person Types: Ocean common carrier (vessel operating)
Street: 14 Calle 8–14 Zone 1
City: Guatemala City
State: Guatemala Cayman Islands
Country:
License No:
Name Number: 000736

DBA: **Centramer Line, C.A.**
Person types: Ocean common carrier (vessel operating)
Street: Piso 2, Oficina 22, Chuao
City: Caracas
State:
Country: Venezuela
License No:
Name number: 006963

DBA: **Century Marine, Inc.**
Person types: Non-vessel operating common carrier
Street: 142–82 Rockaway Boulevard
City: Jamaica
State: NY 11434
Country: United States of America
License No:
Name number: 000742

DBA: **Cheetah International Inc.**
Person types: Non-vessel operating common carrier
Street: 1115 Clifton Avenue
City: Clifton
State: NJ 07013
Country: United States of America
License No:
Name number: 006012

DBA: **CIA. Maritima Sanadres y Providencia, Ltda. Sanprovi**
Person types: Ocean common carrier (vessel operating)
Street: 3750 NW. 28th Street Suite 200
City: Miami
State: FL 33142
Country: United States of America
License No:
Name number: 006966

DBA: **Clipper Navigation Corporation**
Person types: Ocean common carrier (vessel operating)
Street:
City: Monrovia, Liberia
State:
Country: Liberia
License No:
Name number: 001771

DBA: **Colonial Navigation, Inc.**
Person types: Ocean common carrier (vessel operating) Agent—filing
Street: 2 E. Bryan Street
City: Savannah
State: GA 31412
Country: United States of America
License No:
Name number: 000764

DBA: **Columbus Cargo System, Inc.**
Person types: Non-vessel operating common carrier
Street: 120 Broadway, Suite 2903
City: New York
State: NY 10005
Country: United States of America
License No:
Name number: 006762

DBA: **Combined Line, Inc., The**
Person types: Non-vessel operating common carrier
Street: 650 Grain Exchange Building
City: Minneapolis
State: MN 55415
Country: United States of America
License No:
Name number: 002234

DBA: **Combined Transport Line**
Person types: Non-vessel operating common carrier
Street: P.O. Box 34470
City: North Kansas City
State: MO 64116
Country: United States of America
License No:
Name number: 006032

DBA: **Compagnie Maritime Zairoise**
Person types: Controlled Carrier
Street:
City: Kinshasa
State:
Country: Zaire
License No:
Name number: 000785

DBA: **Compagnie Marocaine de Navigation Comanav**
Person types: Ocean common carrier (vessel operating)
Street: 7, Boulevard de la Resistance
City: Casablanca 05
State:
Country: Morocco
License No:
Name number: 005965

DBA: **Companhia Nacional de Navegacao**
Person types: Ocean common carrier (vessel operating)
Street: Rua do Comerco, 85, Apartado 2184–1104
City: Lisbon
State:
Country: Portugal
License No:
Name number: 000790

DBA: **Companhia Portuguesa de Navegacao, Lda.**
Person Types: Ocean common carrier (vessel operating)
Street: Rual Alto Do DuRue, 67—Resteo 1400
City: Lisbon
State:
Country: Portugal
License No.:
Name Number: 006038

DBA: **Concorde Caribe Lines, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 2150 NW. 70th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.:
Name Number: 000797

DBA: **Conex Marine, Ltd.**
Person Types: Non-vessel operating common carrier
Street: 2500 Wilshire Blvd. #1026
City: Los Angeles
State: CA 90057
Country: United States of America
License No.:
Name Number: 002154

DBA: **Conquest Industries, Ltd.**
Person Types: Non-vessel operating common carrier
Street: 1500 Broadway—Suite 2304
City: New York
State: NY 10036
Country: United States of America
License No.:
Name Number: 002156

DBA: **Contimar Gulfmed Line**
Person Types: Ocean common carrier (vessel operating)
Street: Ebbchaussee 189
City: 2000–52 Hamburg
State:
Country: German Federal Republic (West)
License No.:
Name Number: 000825

DBA: **Contramar S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Klipperstraat 15
City: 2020 Antwerpen
State:
Country: Belgium
License No.:
Name Number: 000824

DBA: **Cosmos Express**
Person Types: Non-vessel operating common carrier
Street: 39 Broadway
City: New York
State: NY 10004
Country: United States of America
License No.:
Name Number: 000833

DBA: **Cylanco S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: 25 de Mayo 444 4 Piso
City: Montevideo
State:
Country: Uruguay
License No.:
Name Number: 002430

DBA: **Damco-Boston, Inc.**
Person Types: Non-vessel operating common carrier
Street: 140 Wood Road
City: Braintree
State: MA 02184
Country: United States of America
License No.:
Name Number: 000904

DBA: **Damco-Charleston, Inc.**
Person Types: Non-vessel operating common carrier
Street: 215 East Bay Street
City: Charleston
State: SC 29402
Country: United States of America
License No.:
Name Number: 000905

DBA: **Date Line Shipping Inc.**
Person Types: Non-vessel operating common carrier
Street: 42 Broadway
City: New York
State: NY 10004
Country: United States of America
License No.:
Name Number: 000916

DBA: **Deca Marine Corporation**
Person Types: Ocean common carrier (vessel operating)
Street: 18065 Southwest 77th Avenue
City: Miami
State: FL 33157
Country: United States of America
License No.:
Name Number: 000921

DBA: **Delf Shipping (Pty.) Limited**
Person Types: Non-vessel operating common carrier
Street: 117 Sandown Centre
City: Maud Street-Sandown-Sandton—Transvaal
State:
Country: Lesotho
License No:
Name Number: 000923

DBA: **Delfin Marina S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Aquiliano de la Guardia No. 3
City: Ciudad de Panama
State:
Country: Republic of Panama
License No:
Name Number: 005815

DBA: **Delta Caribbean Lines Limited**
Person Types: Ocean common carrier (vessel operating)
Street: Louisiana Avenue Open Wharf. P.O. Box 750274
City: New Orleans
State: LA 70175
Country: United States of America
License No:
Name Number: 006967

DBA: **Desford Lines, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 80 Broad Street
City: Monrovia
State:
Country: Liberia
License No:
Name Number: 000930

DBA: **Dionysia Shipping Corporation**
Person Types: Ocean common carrier (vessel operating)
Street: Boereniegerstraat 171
City: B 2520 Edegem (Antwerp)
State:
Country: Belgium
License No:
Name Number: 000936

DBA: **Divi-divi Line, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street:
City: Tortola
State:
Country: Virgin Islands
License No:
Name Number: 000945

DBA: **Double Eagle Lines, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 75 Landscape Avenue
City: Yonkers
State: NY 10705
Country: United States of America
License No:
Name Number: 002220

DBA: **DPS Freight Services Ltd.**
Person Types: Non-vessel operating common carrier
Street: Stone House, 128–140 Bishopsgate
City: London EC2M 4HX England
State:
Country: Great Britain
License No:
Name Number: 005740

DBA: **Durion Freight Lines, Inc.**
Person Types: Non-vessel operating common carrier
Street: Universal American, 1860 Ala Moana Blvd, Suite 706
City: Honolulu
State: HI 96815
Country: United States of America
License No:
Name Number: 005701

DBA: **E.D.S. International Shipping Corp.**
Person Types: Non-vessel operating common carrier
Street: 506–528 Cozine Avenue
City: Brooklyn
State: NY 11208
Country: United States of America
License No:
Name Number: 006757

DBA: **E.W.E. Transportation Company Inc.**
Person Types: Non-vessel operating common carrier
Street: Pier 56
City: Seattle
State: WA 98101
Country: United States of America
License No:
Name Number: 006088

DBA: **EAL Europa-Afrika-Linie GMBH**
Person Types: Ocean common carrier (vessel operating)
Street: Hinter Der Mauer 9
City: Bremen
State:
Country: German Federal Republic (West)
License No:
Name Number: 002764

DBA: **Econolines A.J. Groupage B.V. (A Service of)**

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Person Types: Non-vessel operating common carrier
Street: 34 Heemraadssingel
City: 3021 DB Rotterdam
State:
Country: Netherlands Antilles
License No:
Name Number: 006090

DBA: **Elite Container Systems (USA) Ltd.**
Person Types: Non-vessel operating common carrier
Street: 299 Broadway, Suite 1215
City: New York
State: NY 10007
Country: United States of America
License No:
Name Number: 002221

DBA: **Empros Lines**
Person Types: Ocean common carrier (vessel operating)
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 006970

DBA: **Ethiopian Shipping Lines**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 2572
City: Addis Ababa
State:
Country: Ethiopia
License No:
Name Number: 001244

DBA: **Euram Lines and Navigation Inc.**
Person Types: Ocean common carrier (vessel operating)
Street:
City: Panama, R.P.
State:
Country: Republic of Panama
License No:
Name Number: 001245

DBA: **Euroad International, Inc.**
Person Types: Non-vessel operating common carrier
Street: 3785 N.W. 82nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 001250

DBA: **European Express Shipping Lines Co.**
Person Types: Non-vessel operating common carrier
Street: 17 Battery Place—Suite 1930
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 001259

DBA: **European Ocean Freight, Inc.**
Person Types: Non-vessel operating common carrier
Street: 17 Battery Place—Suite 236
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 001260

DBA: **Eurotramp International Limited**
Person Types: Ocean common carrier (Vessel Operating)
Street: P.O. Box N
City: 8327 Nassau
State:
Country: Bahama Islands
License No:
Name Number: 006109

DBA: **Expreso A. Santo Domingo, Inc.**
Person Types: Non-vessel operating common carrier
Street: G.P.O. Box 3433
City: San Juan
State: PR 00936
Country: United States of America
License No:
Name Number: 006306

DBA: **Express Forwarding and Storage Co., Inc.**
Person Types: Non-vessel operating common carrier
Street: 19 Rector Street
City: New York
State: NY 10006
Country: United States of America
License No:
Name Number: 001270

DBA: **Expressvan International, Inc.**
Person Types: Non-vessel operating common carrier
Street: 19 Rector Street
City: New York
State: NY 10006
Country: United States of America
License No:
Name Number: 001272

DBA: **Far East Freight, Inc.**
Person Types: Non-vessel operating common carrier
Street: 79–11 41st Ave
City: Elmhurst
State: NY 11373
Country: United States of America
License No:
Name Number: 005730

DBA: **Fast International Transportation**
Person Types: Non-vessel operating common carrier
Street: 147–39 75th Street Suite 215
City: Jamaica
State: NY 11434
Country: United States of America
License No:
Name Number: 000410

DBA: **Fastainer Line**
Person Types: Non-vessel operating common carrier
Street: 14814 S. Drexel Avenue
City: Dolton
State: IL 60419
Country: United States of America
License No:
Name Number: 006752

DBA: **FEMTCO**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 691
City: San Francisco
State: CA 94105
Country: United States of America
License No:
Name Number: 001777

DBA: **First International Shipping Co.**
Person Types: Non-vessel operating common carrier
Street: 4211 Maine Trail
City: Crystal Lake
State: IL 60014
Country: United States of America
License No:
Name Number: 001783

DBA: **Flota Bananera Ecuatoriana S.A.**
Person Types: Controlled carrier
Street: P. Icaza 437, Edificio Atahualpa, 9th Floor
City: Guayaquil
State:
Country: Ecuador
License No:
Name Number: 000414

DBA: **Flota de Quimicos, C.A. (Floquim)**
Person Types: Ocean common carrier (vessel operating)
Street: Nucleo A. Piso 13 of 131 A
City: Caracas
State:
Country: Venezuela
License No:
Name Number: 001788

DBA: **Flumar Paraguaya, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Calle TTE. V.Kanonnikoff 998
City: Ascuncion
State:
Country: Paraguay
License No:
Name Number: 001785

DBA: **Freightmasters, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 264
City: Mount Prospect
State: IL 60056
Country: United States of America
License No:
Name Number: 000436

DBA: **Freshpro Inc.**
Person Types: Non-vessel operating common carrier
Street: 125 West 4th Street, Suite 213
City: Los Angeles
State: CA 90013
Country: United States of America
License No:
Name Number: 002163

DBA: **Fujian Shipping Co.**
Person Types: Ocean common carrier (vessel operating)
Street: 79 Zhong Ping Rd.
City: Fuzhou, Fujian Province
State:
Country: People's Republic of China
License No:
Name Number: 006972

DBA: **G & E United Cargo Consolidator**
Person Types: Non-vessel operating common carrier
Street: 2322 Bryant Street
City: San Francisco
State: CA 94110
Country: United States of America
License No:
Name Number: 006251

DBA: **Galloway Transport Services**
Person Types: Non-vessel operating common carrier
Street: 9055 SW. 87th Avenue—Suite 33176
City: Miami
State: FL
Country: United States of America
License No:
Name Number: 000454

DBA: **Gasmar S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: 25 de Mayo 444 Piso 4
City: Montevideo
State:
Country: Uruguay
License No:
Name Number: 000456

DBA: **Gaydem Marine Systems Ltd.**
Person Types: Non-vessel operating common carrier
Street: 191 Route de Delmas, Coindelmas 25
City: Port-au-Prince
State:
Country: Haiti
License No:
Name Number: 000458

DBA: **German American Line S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: 119 Vla Espana
City: Panama City
State:
Country: Republic of Panama
License No:
Name Number: 000468

DBA: **Global Express Lines Sebang (Global) Enterprises, Inc.**
Person Types: Non-vessel operating common carrier
Street: 17 Battery Place, Suite 2043
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 006751

DBA: **Global Reffer Carrier, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 3701 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 006974

DBA: **Globex Contract Carrier**
Person Types: Non-vessel operatiang common carrier
Street: 1 Tudor Circle
City: Yorktown
State: NY 10598
Country: United States of America
License No:
Name Number: 006743

DBA: **Glodevan International Transport, Inc.**
Person Types: Non-vessel operating common carrier
Street: 110 W. Ocean Blvd., Suite 512
City: Long Beach
State: CA 90802
Country: United States of America
License No:
Name Number: 002783

DBA: **Goldstar Line Limited**
Person Types: Non-vessel operating common carrier
Street: Suite 2, Weate Trading Estate, Liverpool St.
City: Weaste, Salford M6 5RL United Kingdom
State:
Country: Great Britian
License No:
Name Number: 005889

DBA: **Gorthon Lines**
Person Types: Ocean common carrier (vessel Operating)
Street: Gorthons Rederi A/B
City: Helsingborg
State:
Country: Sweden
License No:
Name Number: 000475

DBA: **Guam Shipping Lnes, Inc. .**
Person Types: Ocean common carrier (vessel operating) Agent—filing
Street: 220 East Marine Drive
City: Agana
State: 96910
Country: Guam,
License No:
Name Number: 005893

DBA: **Gulf Stream Line**
Person Types: Non-vessel operating common carrier
Street: 20 Stone Street
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 006253

DBA: **Guystar International Shipping & Trading Co.**
Person Types: Non-vessel operating common carrier
Street: 146 Stuyvesant Avenue
City: Newark
State: NY 07106
Country: United States of America
License No:
Name Number: 005859

DBA: **Hafskip Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 66 Reade Street
City: New York
State: NY 10007
Country: United States of America
License No:
Name Number: 001420

DBA: **Hanibal Lines, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: 8811 NW. 23rd Street
City: Miami
State: FL 33126
Country: United States of America
License No:
Name Number: 001424

DBA: **Hency Transportations, Inc.**
Person Types: Non-vessel operating common carrier
Street: 10840 S. La Cienega Blvd.
City: Inglewood
State: CA 90304
Country: United States of America
License No:
Name Number: 005844

DBA: **Heritage Airfreight, Inc.**
Person Types: Non-vessel operating common carrier
Street: 113 Sierra Street
City: El Segundo
State: CA 90245
Country: United States of America
License No:
Name Number: 005848

DBA: **Horn-Line**
Person Types: Ocean common carrier (vessel operating)
Street: Baumwall 3, 2000 Hamborg 11
City: West Germany
State:
Country: German Federal Republic (West)
License No:
Name Number: 005696

DBA: **Ibero Lines**
Person Types: Ocean common carrier (vessel operating)
Street: Joaquin, Costa #36
City: Madrid
State:
Country: Spain
License No:
Name Number: 001578

DBA: **Imporex, Inc.**
Person Types: Non-vessel operating common carrier

Street: 33 Broad Street, Suite 330
City: Boston
State: MA 02109
Country: United States of America
License No:
Name Number: 001327

DBA: **Inland Freight Lines**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 707
City: Orange
State: CA 92666
Country: United States of America
License No:
Name Number: 01396

DBA: **Inter Oceanic Freight, S.A.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 20310
City: Santo Domingo
State:
Country: Dominican Republic
License No:
Name Number: 005944

DBA: **Inter-Trade Shipping, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 5099
City: Hialeah
State: FL 33014
Country: United States of America
License No:
Name Number: 005697

DBA: **Intercontinent Express, Inc.**
Person Types: Non-vessel operating common carrier
Street: 7L4 So. Isis Avenue
City: Inglewood
State: CA 90301
Country: United States of America
License No:
Name Number: 001340

DBA: **Intercontinental Marine Lines**
Person types: Ocean common carrier (vessel operating)
Street: 410 Severn Avenue, Suite #312
City: Annapolis
State: MD 21403
Country: United States of America
License No:
Name Number: 001342

DBA: **Intercontinental Maritima, S.A.**
Person types: Ocean common carrier (vessel operating)
Street: Zepita 268 of 602
City: Casilla 4, Callao
State:
Country: Peru
License No:
Name Number: 001343

DBA: **International Freight Services**
Person types: Ocean freight forwarder (independent) Non-vessel operating common carrier
Street: 161 Prescott St
City: East Boston
State: MA 02128
Country: United States of America
License No: 2614
Name Number: 006561

DBA: **International Services**
Person types: Non-vessel operating common carrier
Street: P.O. Box 610903
City: DFW Airport
State: TX 75261
Country: United States of America
License No:
Name Number: 005906

DBA: **International Shipping Company, The**
Person types: Non-vessel operating common carrier
Street: 5550 Friendship Boulevard, #250
City: Chevy Chase
State: MD 20815
Country: United States of America
License No:
Name Number: 001372

DBA: **International Success Corporation**
Person types: Non-vessel operating common carrier
Street: 6041 West Imperial Highway
City: Los Angeles
State: CA 90045
Country: United States of America
License No:
Name Number: 007063

DBA: **International Transportation Network, Inc.**
Person types: Non-vessel operating common carrier
Street: 2340 South El Camino Real, Suite 14
City: San Clemente
State: CA 92672
Country: United States of America
License No:
Name Number: 006748

DBA: **Intra-Modal Systems Co.**
Person types: Non-vessel operating common carrier
Street: P.O. Box 3937
City: Savannah
State: GA 31404
Country: United States of America
License No:
Name Number: 001380

DBA: **Island Line Shipping Co., Ltd.**
Person types: Ocean common carrier (vessel operating)
Street: P.O. Box 21310
City: Ft. Lauderdale
State: FL 33335
Country: United States of America
License No:
Name Number: 006986

DBA: **Island Shipping Ltd.**
Person types: Ocean common carrier (vessel operating)
Street: P.O. Box 680
City: Grand Cayan BWI
State:
Country: Cayman Islands
License No:
Name Number: 001385

DBA: **Island Trade Shipping Line, S.A.**
Person types: Ocean common carrier (vessel operating)
Street: P.O. Box 1824
City: Panama 1
State:
Country: Republic of Panama
License No:
Name Number: 001386

DBA: **J L S International Corp.**
Person types: Non-vessel operating common carrier
Street: 13011 Old Hickory Blvd. Room 210
City: Antioch
State: TN 37013
Country: United States of America
License No:
Name Number: 005874

DBA: **J.F.T. Container Lines**
Person Types: Non-vessel operating common carrier
Street: 625 1st Avenue
City: Seattle
State: WA 98104
Country: United States of America
License No.:
Name Number: 005865

DBA: **J.C.T. Benelux B.V.**
Person Types: Non-vessel operating common carrier
Street: Waalhaven Z.Z. 6–3088 HH
City: Rotterdam
State:
Country: The Netherlands, Holland
License No:
Name Number: 006749

DBA: **Jeco Shipping International, N.V.**
Person Types: Ocean common carrier (vessel operating)
Street: G.W. Burgerplein 5–7 3021 AS
City: Postbus 1041–3000 BA, Rotterdam
State:
Country: The Netherlands, Holland
License No:
Name Number: 001409

Jepsen International
Person Types: Non-vessel operating common carrier
Street: 1000 N. Villa Avenue
City: Villa Park
State: IL 60181
Country: United States of America
License No:
Name Number: 001412

DBA: **Key Kargo Container Service Inc.**
Person Types: Non-vessel operating common carrier
Street: 145 Hook Creek Blvd., Bldg. 1A North
City: Valley Stream
State: NY 11581
Country: United States of America
License No:

Name Number: 005694
DBA: **Koctug Line**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 884–Karakoy
City: Istanbul
State:
Country: Turkey
License No:
Name Number: 001480
DBA: **Kotobuki U.S.A. Inc.**
Person Types: Non-vessel operating common carrier
Street: 9500 Westview—Suite 101
City: Houston
State: TX 77055
Country: United States of America
License No:
Name Number: 005745
DBA: **L.C.L. Incorporated**
Person Types: Non-vessel operating common carrier
Street: 1 World Trade Center, Suite 2045
City: New York
State: NY 10048
Country: United States of America
License No:
Name Number: 001580
DBA: **L.V.V.—Valdez Line**
Person Types: Ocean common carrier (vessel operating)
Street: Prospero, 330
City: Iquitos
State:
Country: Peru
License No:
Name Number: 001581
DBA: **La Rosta Del Monte Express, Inc.**
Person Types: Non-vessel operating common carrier
Street: 5132 NW. 17th Avenue
City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 001588
DBA: **Landal Container Service Inc.**
Person Types: Non-vessel operating common carrier
Street: 45 John Street—Suite 1200
City: New York
State: NY 10038
Country: United States of America
License No:
Name Number: 005916
DBA: **Laser Cargo Services, Inc.**
Person Types: Non-vessel operating common carrier
Street: 7240 NW. 36th Court
City: Miami
State: FL 33147
Country: United States of America
License No:
Name Number: 001589
DBA: **Liberty Lines, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 62048
City: Houston
State: TX 77205
Country: United States of America
License No:
Name Number: 006976
DBA: **Line Manaure C.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Maturin a Santa Barbara 38
City: Caracas 101
State:
Country: Venezuela
License No:
Name Number: 001606
DBA: **Lineas del Caribe**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 2071
City: Barranquilla
State:
Country: Colombia
License No:
Name Number: 006979
DBA: **Litrac B.V.**
Person Types: Non-vessel operating common carrier
Street: Bevrijdingsweg 114 5915 PL
City: Postbus 680 5900 AR VENLO
State:
Country: The Netherlands, Holland
License No:
Name Number: 001611
DBA: **Long Wing Express Ltd.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 55–803 Taipei
City: No. 5 Lane 43, Shuang St. Taipei 10465 Taiwan
State:
Country: People's Republic of China
License No:
Name Number: 005917
DBA: **Lorry, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 81247
City: Atlanta
State: GA 30366
Country: United States of America
License No:
Name Number: 001621
DBA: **Lyon Worldwide Shipping, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 4167
City: Bellevue
State: WA 98009
Country: United States of America
License No:
Name Number: 006742
DBA: **Lyons Transport, Inc.**
Person Types: Non-vessel operating common carrier
Street: First Avenue and Joilet Rd.
City: McCook
State: IL 60525
Country: United States of America
License No:
Name Number: 001630
DBA: **M.E.A.L./W.E.C.**
Person Types: Ocean common carrier (vessel operating)
Street: 1 Edgewater Plaza
City: Staten Island
State: NY 10305
Country: United States of America
License No:
Name Number: 001636
DBA: **M.L.S. Maritime Logistic Services SA**
Person Types: Ocean common carrier (vessel operating)
Street: BD Perolles 1 P.O. Box 587
City: 1600 Fribourg
State:
Country: Switzerland
License No:
Name Number: 001632
DBA: **Magnolia Shipping Co.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 3083
City: Mobile
State: AL 36652
Country: United States of America
License No:
Name Number: 005953
DBA: **Majestic Line Venezolana, C.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Avenida Mirada Cruce Con Paez Porlamar
City: Isla Margarita
State:
Country: Venezuela
License No:
Name Number: 001642
DBA: **Malaysian Intl. Shipping Corporation Berhad**
Person Types: Ocean common carrier (vessel operating)
Street: 2nd Floor, WISMA M.I.S.C. No. 2 Jolan Colony
City: Kuala Lumpur, Peninsular Malaysia
State:
Country: Malaysia
License No:
Name Number: 001644
DBA: **Mantraco Limited**
Person Types: Non-vessel operating common carrier
Street: 34 Chang An East Rd. Sec. 2
City: Taipei 104
State:
Country: People's Republic of China
License No:
Name Number: 005950
DBA: **Mar Azul Motorships, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 3701 N.W. South River Drive

City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 001647
DBA: **Marbrac International**
Person Types: Non-vessel operating common carrier
Street: 27 Avenue S
City: Brooklyn
State: NY 11223
Country: United States of America
License No:
Name Number: 001651
DBA: **Marcella Shipping Company**
Person Types: Ocean common carrier (vessel operating)
Street: 31 North Southriver Dr.
City: Miami
State: FL 33128
Country: United States of America
License No:
Name Number: 006981
DBA: **Marine Container Line Ltd.**
Person Types: Non-vessel operating common carrier
Street: 1010 Knox Street
City: Torrance
State: CA 90502
Country: United States of America
License No:
Name Number: 001663
DBA: **Mariner Container Line Ltd.**
Person Types: Non-vessel operating common carrier
Street: 1010 Knox Street
City: Torrance
State: CA 90502
Country: United States of America
License No:
Name Number: 006739
DBA: **Marinex Shipping Lines, Inc.**
Person Types: Non-vessel operating common carrier
Street: 746 Birginal Drive
City: Bensenville
State: IL 60106
Country: United States of America
License No:
Name Number: 001664
DBA: **Marinvest Funds S.A. Dominican Ferries**
Person Types: Ocean common carrier (vessel operating)
Street: Gustavo Mejia Ricart No. 80, Ens Piantina
City: Santo Domingo
State:
Country: Dominican Republic
License No:
Name Number: 005857
DBA: **Maritima Aquatran, Inc.**
Person Types: Non-vessel operating common carrier
Street: 68–23 Fulton
City: Houston
State: TX 77022
Country: United States of America
License No:
Name Number: 001667
DBA: **Maritimas Eslatt, CIA.**
Person Types: Ocean common carrier (vessel operating)
Street: Camilo Eslait P.O. Box 2071
City: Barranquilla
State:
Country: Colombia
License No:
Name Number: 001669
DBA: **Maritime Company of the Pacific**
Person Types: Non-vessel operating common carrier
Street: 1441 Kapiolani Blvd., Suite 905–A
City: Honolulu
State: HI 96814
Country: United States of America
License No:
Name Number: 001671
DBA: **Maritime Logistics, Inc.**
Person Types: Non-vessel operating common Carrier
Street: 9021 Gaylord Street
City: Houston
State: TX 77024
Country: United States of America
License No:
Name Number: 005945
DBA: **Marshall Islands Maritime Company, Inc.**
Person Types: Ocean common carrier (vessell operating)
Street: P.O. Box 2, Majuro
City: Marshall Islands 96960
State:
Country: Pacific Isles: Marshall, Carolines, Marianas
License No:
Name Number: 001681
DBA: **MAT Line**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 251, Arnold House 36/41 Holywll LN.
City: London EC2P 2EQ
State:
Country: Great Britain
License No:
Name Number: 001684
DBA: **Mayaca Shipping Co. Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Rte 1, 8262 35th St. So.
City: Lakeworth
State: FL 33467
Country: United States of America
License No:
Name Number: 002266
DBA: **Med Express Lines Ltd.**
Person Types: Non-vessel operating common Carrier
Street: 160 Broadway—9th Floor
City: New York
State: NY 10038
Country: United States of America
License No:
Name Number: 001692
DBA: **Med Lakes Line**
Person Types: Ocean common carrier (vessel operating)
Street: 233 N. Michigan Avenue
City: Chicago
State: IL 60601
Country: United States of America
License No:
Name Number: 001693
DBA: **Medafrica Line**
Person Types: Ocean common carrier (vessel operating)
Street: 22 Cortlandt Street
City: New Nork
State: NY 10007
Country: United States of America
License No:
Name Number: 001694
DBA: **Medite Shipping Company (UK) Ltd.**
Person Types: Non-vessel operating common carrier
Street: Suite 11, Orwell House, Ferry Land
City: Felixstowe, Sulfolk
State:
Country: England
License No:
Name Number: 005947
DBA: **Mediterranean Container Line**
Person Types: Non-vessel operating common carrier
Street: 266 Kellogg Street
City: Port Newark
State: NJ 07114
Country: United States of America
License No:
Name Number: 005949
DBA: **Medtrain Mediterranean Shipping GMBH & CO. KG**
Person Types: Ocean common carrier (vessel operating)
Street: 160 Broadway—9th Floor
City: New York
State: NY 10038
Country: United States of America
License No:
Name Number: 001700
DBA: **Megna Transportation Company**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 540
City: Newport
State: KY 41071
Country: United States of America
License No:
Name Number: 001701
DBA: **Mercator Internatl. Frt. (H.K.) Ltd.**
Person Types: Non-vessel operating carrier
Street: 88–91 Gloucester Road
City: China Underwriters Bldg.
State:
Country: Hong Kong

License No:
Name Number: 005960
DBA: **Merchants North American Shipping Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 400 Rue St. Vincent
City: Montreal
State:
Country: Canada
License No:
Name Number: 006984
DBA: **Mermaid Ocean Systems, Incorporated**
Person Types: Non-vessel operating common carrier
Street: 161 Prescott Street
City: East Boston
State: MA 02128
Country: United States of America
License No:
Name Number: 001710
DBA: **MES Container Service, Inc.**
Person Types: Non-vessel operating common carrier
Street: 4000 West Jefferson
City: Detroit
State: MI 48209
Country: United States of America
License No:
Name Number: 001712
DBA: **Meteoro Express, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 522412
City: Miami
State: FL 33152
Country: United States of America
License No:
Name Number: 001716
DBA: **Mex Carib Line**
Person Types: Ocean common carrier (vessel operating)
Street: 2305 Veterans Memorial Blvd. Suite G
City: Metairia
State: LA 70002
Country: United States of America
License No:
Name Number: 006977
DBA: **Micro-Bridge Consolidators Ltd.**
Person Types: Non-vessel operating common carrier
Street: 1000 Tung Shun Hing Commercial Center
City: 20–20A Granville Road, Kowloon
State:
Country: Hong Kong
License No:
Name Number: 005958
DBA: **Micronesia Transport Line**
Person Types: Ocean common carrier (vessel operating)
Street: Underwood House, 37–49 Pitt Street
City: Sydney N.S.W. 2000
State:
Country: Australia
License No:
Name Number: 002790
DBA: **Midwest Ocean Lines**
Person Types: Ocean common carrier (vessel operating)
Street: 12800 Butler Drive
City: Chicago
State: IL 60633
Country: United States of America
License No:
Name Number: 001721
DBA: **MISR Shipping Company**
Person Types: Controlled carrier
Street: No. 6 El Horria Avenue, P.O. Box 2381
City: Alexandria
State:
Country: Egypt
License No:
Name Number: 001727
DBA: **Mortensen & Lange**
Person Types: Ocean common carrier (vessel operating)
Street: Strandvejen 32D
City: DK 2100 Copenhagen Oe Denmark
State:
Country: Denmark
License No:
Name Number: 001738
DBA: **MOS Line**
Person Types: Non-vessel operating common carrier
Street: 90 Broad Street Suite 23
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 005967
DBA: **Moulton Shipping Line, Limited, The**
Person Types: Non-vessel operating common carrier
Street: 15 Pietermaai
City: Curacao
State:
Country: Netherlands Antilles
License No:
Name Number: 001740
DBA: **MPC Transmodal Line**
Person Types: Non-vessel operating common carrier
Street: RM 1201, 12th Floor, No. 246 Sec. 2, Chang An E. Rd.
City: Taipei
State:
Country: Taiwan
License No:
Name Number: 006706
DBA: **MPC Transtainer Line**
Person Types: Non-vessel operating common carrier
Street: RM 1201, 12th Floor No. 246 Sec. 2, Chang An E. Rd.
City: Taipei
State:
Country: Taiwan
License No:
Name Number: 006705
DBA: **Nantai Line Co., Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 450 Sansome Street, Suite 400
City: San Francisco
State: CA 94111
Country: United States of America
License No:
Name Number: 006143
DBA: **NATA Shipping Corporation**
Person Types: Ocean common carrier (vessel operating)
Street: c/o Sancol Shipping Corp. 17804 S.W. 83 Court
City: Miami
State: FL 33157
Country: United States of America
License No:
Name Number: 006641
DBA: **NATCO Internationale Transporte AG**
Person Types: Non-vessel operating common carrier
Street: Postfach 281
City: 8036 Zurich
State:
Country: Switzerland
License No:
Name Number: 001499
DBA: **National Shipping Company of Saudi Arabia**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 8931
City: Riyadh
State:
Country: Saudi Arabia
License No:
Name Number: 001497
DBA: **Nauru Pacific Line**
Person Types: Controlled carrier
Street: 80 Collins Street
City: Melbourne, Victoria
State:
Country: Australia
License No:
Name Number: 001503
DBA: **Nautical Services Corporation**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 2950
City: Freeport
State: TX 77541
Country: United States of America
License No:
Name Number: 001505
DBA: **Naviera Amazonica Peruana, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: 911, 10 PISO-AV. Inca Garcilaso de la Vega
City: Lima
State:
Country: Peru

License No:
Name Number: 001508
DBA: **Naviera Cumboto, S.A.**
Person Types: Non-vessel operating common carrier
Street: Zona Postal 2024, Apartado 298
City: Puerto Cabello
State:
Country: Venezuela
License No:
Name Number: 002786
DBA: **Naviera del Pacificio**
Person Types: Ocean common carrier (vessel operating)
Street: El Oro No. 101
City: Guayaquil
State:
Country: Ecuador
License No:
Name Number: 001514
DBA: **Naviera Guayana C.A.**
Person Types: Ocean common carrier (vessel operating)
Street: De Bello Monte, 1 PISO OFC. 9
City: Caracas 1050
State:
Country: Venezuela
License No:
Name Number: 001516
DBA: **Naviera Mercante C.A.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box S–2367
City: San Juan
State: PR 00903
Country: United States of America
License No:
Name Number: 001526
DBA: **Naviera Multinacional del Caribe S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 10095
City: San Jose
State:
Country: Costa Rica
License No:
Name Number: 001517
DBA: **Naviera Nicaraguense, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 3523
City: Managua
State:
Country: Nicaragua
License No:
Name Number: 001520
DBA: **Naviera Paschold, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street:
City: San Antonio
State:
Country: Chile
License No:
Name Number: 006145
DBA: **Navieria Transpapel, C.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Centro Parque Boyaca-Edif. Centro Piso 111 Av. Surce Los do Caminos
City: Caracas 1071
State:
Country: Venezuela
License No:
Name Number: 006181
DBA: **Navimerca Internacional, C.A. Navinca**
Person Types: Ocean common carrier (vessel operating)
Street: Ave. Luis Roche, Edificio Universal—Piso 4 Officina #404 Altamira
City: Caracas
State:
Country: Venezuela
License No:
Name Number: 006139
DBA: **Nefertiti Line**
Person Types: Ocean common carrier (vessel operating)
Street:
City: Alexandria
State:
Country: Egypt
License No:
Name Number: 006961
DBA: **Nissho Shipping Co., Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: No. 33 Mori Bldg. 8–21, Toranomon 3-Chome
City: Minato-Ku, Tokyo
State:
Country: Japan
License No:
Name Number: 001551
DBA: **North Africa Navigation, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box N624
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 001560
DBA: **North American West African Line**
Person Types: Ocean common carrier (vessel operating)
Street: India Buildings, Water Street
City: Liverpool 2
State:
Country: Great Britain
License No:
Name Number: 001528
DBA: **North Andros Shipping, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Lowe Sound
City: Andros
State:
Country: Bahama Islands
License No:
Name Number: 001562
DBA: **Novo International Express Corp.**
Person Types: Non-vessel operating common carrier
Street: 11930 SW. 35th Street
City: Miami
State: FL
Country: United States of America
License No:
Name Number: 001568
DBA: **Nuasa (Florida) Express Inc.**
Person Types: Non-vessel operating common carrier
Street: 16201 SW. 95 Avenue
City: Miami
State: FL 33157
Country: United States of America
License No:
Name Number: 001569
DBA: **NYCO-American, Inc.**
Person Types: Non-vessel operating common carrier
Street: 217 NW. 1 Avenue
City: Hillandale
State: FL 33009
Country: United States of America
License No:
Name Number: 001572
DBA: **NYTA International Corporation**
Person Types: Non-vessel operating common carrier
Street: 1328 Broadway, Suite 603
City: New York
State: NY 10001
Country: United States of America
License No:
Name Number: 006183
DBA: **O T Africa Line**
Person Types: Ocean common carrier (vessel operating)
Street: Cutler Street
City: London E1 7DU
State:
Country: Great Britain
License No:
Name Number: 000876
DBA: **Ocean Contract Carriers (O.C.C.), Inc.**
Person Types: Non-vessel operating common carrier
Street: 11 Park Place, Suite 612
City: New York
State: NY 10007
Country: United States of America
License No:
Name Number: 001281
DBA: **Ocean Freight Systems, Inc.**
Person Types: Non-vessel operating common carrier
Street: 8496 NW. 61st Street
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 001284

DBA: **Ocean Shipping Limited**
Person Types: Ocean common carrier (vessel operating)
Street:
City: Hamilton
State:
Country: Bermuda
License No:
Name Number: 006811

DBA: **Ocean Systems International**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 451
City: Cranford
State: NJ 07016
Country: United States of America
License No:
Name Number: 001287

DBA: **Ocean-Air Container Service**
Person Types: Non-vessel operating common carrier
Street: 547 West 26th Street
City: New York
State: NY 10001
Country: United States of America
License No:
Name Number: 001278

DBA: **Oceania Line, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 170
City: Saipan, M.I.
State:
Country: United States of America
License No:
Name Number: 006812

DBA: **Omega Shipping N.V.**
Person Types: Non-vessel operating common carrier
Street: Huidevettersstraat, 8–B–2000
City: Antwerp, Belgium
State:
Country: Belgium
License No:
Name Number: 006767

DBA: **Omnitainer**
Person Types: Non-vessel operating common carrier
Street: 111 Broadway, 17th floor
City: New York
State: NY 10006
Country: United States of America
License No:
Name Number: 001295

DBA: **Overseas Consolidators Company**
Person Types: Non-vessel operating common carrier
Street: 5730 Arbor Vitae
City: Los Angeles
State: CA 90045
Country: United States of America
License No: Name Number: 001305

DBA: **Overseas Container Forwarding, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1774 W. 5th Ave.
City: Vancouver, British Columbia V6J 1P2
State:
Country: Canada
License No: Name Number: 001306

DBA: **Overseas Container System, Inc.**
Person Types: Non-vessel operating common carrier
Street: 2701 Lakeside Avenue
City: Cleveland
State: OH 44114
Country: United States of America
License No: Name Number: 001307

DBA: **Overseas Maritime Carriers**
Person Types: Ocean common carrier (vessel operating)
Street: Kaeiser Straat 22
City: Antwerp
State:
Country: Belgium
License No: Name Number: 001309

DBA: **Overseas Shipping & Transportation, Inc.**
Person Types: Non-Vessel operating common carrier
Street: P.O. Box 90654
City: Los Angeles
State: CA 90009
Country: United States of America
License No: Name Number: 001311

DBA: **Pacific & Atlantic Lines, Inc.**
Person Types: Non-vessel operating common carrier
Street: 19 Rector Street
City: New York
State: NY 10006
Country: United States of America
License No: Name Number: 007062

DBA: **Pacific Common Carrier Line**
Person Types: Ocean common carrier (vessel operating)
Street: 39–8, 2-Chome Nishi-Shinbashi Minato-Ku
City: Tokyo
State:
Country: Japan
License No: Name Number: 00971

DBA: **Pacific New Guinea Line**
Person Types: Ocean common carrier (vessel operating)
Street: World Trade Center Suite 297
City: San Francisco
State: CA 94111
Country: United States of America
License No: Name Number: 006594

DBA: **Panatlantic U.S.A., Inc.**
Person Types: Non-vessel operating common carrier
Street: 336 Summer Ridge Drive
City: St. Charles
State: MO 63303
Country: United States of America
License No: Name Number: 006733

DBA: **Parklines**
Person Types: Ocean common carrier (vessel operating)
Street: Rue St. Pierre 30
City: CH–1700 Fribourg
State:
Country: Switzerland
License No: Name Number: 001001

DBA: **Parling Shipping Co.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 22055
City: Long Beach
State: CA 90801
Country: United States of America
License No: Name Number: 001002

DBA: **Penn Yan Express, Inc.**
Person Types: Non-vessel operating common carrier
Street: 100 West Lake Road
City: Penn Yan
State: NY 14527
Country: United States of America
License No: Name Number: 006734

DBA: **Peralta Westward Line**
Person Types: Ocean common carrier (vessel operating)
Street: 80 Broad Street
City: Monrovia
State:
Country: Liberia
License No:
Name Number: 001010

DBA: **Phoenix International Container Services**
Person Types: Non-vessel operating common carrier
Street: 1812 Elmhurst Road
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No:
Name Number: 001016

DBA: **Pococa Consolidators (H.K.) Ltd.**
Person Types: Non-vessel operating common carrier
Street: World Finance Center, North Tower Room 1701
City: Harbour City, Kowloon
State:
Country: Hong Kong
License No:
Name Number: 006735

DBA: **Premier Container Line**
Person Types: Ocean common carrier (vessel operating)
Street: 2100 Travis St. Suite 1300
City: Houston
State: TX 77002
Country: United States of America
License No:
Name Number: 002228

DBA: **Primary International Export Corp.**
Person Types: Non-vessel operating common carrier
Street: 330 East 39th Street-Suite 15B
City: New York
State: NY 10016
Country: United States of America
License No:

Name Number: 001036
DBA: **Prime Carriers, Inc.**
Person Types: Non-vessel operating common carrier
Street: 6300 N.W. 84th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 001037
DBA: **Progressive Ocean Line**
Person Types: Non-vessel operating common carrier
Street: 700 First Street
City: Harrison
State: NJ 07029
Country: United States of America
License No:
Name Number: 001039
DBA: **Project Shipping, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1800 Augusta, Suite 128
City: Houston
State: TX 77057
Country: United States of America
License No:
Name Number: 006123
DBA: **Proodos Marine Carriers**
Person Types: Ocean common carrier (vessel operating)
Street: Bouboulinas 47–49
City: Piraeus
State:
Country: Greece
License No:
Name Number: 001041
DBA: **Prosales Transport Carrier**
Person Types: Non-vessel operating common carrier
Street: 2050 Center Avenue, Suite 302
City: Fort Lee
State: NJ 07024
Country: United States of America
License No:
Name Number: 006168
DBA: **Prudential Lines, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: One World Trade Center, Suite 3701
City: New York
State: NY 10048
Country: United States of America
License No:
Name Number: 001042
DBA: **Puerto Rico Freight System, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 9081
City: Santurce
State: PR 00905
Country: Puerto Rico
License No:
Name Number: 006313
DBA: **Puerto Rico Marine Distribution**
Person Types: Non-vessel operating common carrier
Street: 1521 Green Oak Place Suite 204A
City: Kingwood
State: TX 77339
Country: United States of America
License No:
Name Number: 002270
DBA: **Quality Transportation Company**
Person Types: Non-vessel operating common carrier
Street: G.P.O. Box 202
City: San Juan
State: PR 00936
Country: United States of America
License No:
Name Number: 006343
DBA: **Quinto Shipping Company, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 61
City: Belize City
State:
Country: Belize
License No:
Name Number: 001579
DBA: **R.G. Curbelo**
Person Types: Non-vessel operating common carrier
Street: 8496 NW. 61st Street
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 006070
DBA: **Ramon C. Ungco**
Port Jersey Shipping Industries
Person Types: Non-vessel operating common carrier
Street: 123 Van Winkle Avenue
City: Jersey City
State: NJ 07306
Country: United States of America
License No:
Name Number: 005780
DBA: **Reardon Export (Ocean) Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 107
City: East Boston
State: MA 02128
Country: United States of America
License No:
Name Number: 000860
DBA: **Red Oak Industries Ltd., Inc.**
Person Types: Non-vessel operating common carrier
Street: Box J
City: Blairstown
State: NJ 07825
Country: United States of America
License No:
Name Number: 000861
DBA: **Red Sea Navigation Line**
Person Types: Ocean common carrier (vessel operating)
Street: 26 Broadway
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 000862
DBA: **Reliance Shipping Inc.**
Person Types: Non-vessel operating common carrier
Street: 473 Putnam Avenue
City: Brooklyn
State: NY 12111
Country: United States of America
License No:
Name Number: 000868
DBA: **Rexco Lines**
Person Types: Ocean common carrier (vessel operating)
Street: 4600 Duke Street, Suite 310
City: Alexandria
State: VA 22304
Country: United States of America
License No:
Name Number: 000871
DBA: **Rocci Corporation**
Person Types: Non-vessel operating common carrier
Street: 5111 Leesburg Pike, Suite 100
City: Falls Church
State: VA 22041
Country: Japan
License No:
Name Number: 005719
DBA: **ROF Express Ltd.**
Person Types: Non-vessel operating common carrier
Street: Flat 8, Newport Centre 2/F, 116 MA Tau Kok Road
City: Tokwawan, Kowloon
State:
Country: Hong Kong
License No:
Name Number: 006726
DBA: **Rohde & Liesenfeld, Inc. Windrose Line**
Person Types: Non-vessel operating common carrier
Street: One World Trade Center—Suite 8345
City: New York
State: NY 10048
Country: United States of America
License No:
Name Number: 000879
DBA: **Royal Hawaiian Forwarding**
Person Types: Non-vessel operating common carrier
Street: 14300 East 183rd Street
City: La Palma
State: CA 90623
Country: United States of America
License No:
Name Number: 000885
DBA: **Rush International Electric & Shipping Co. Inc.**
Person Types: Non-vessel operating common carrier
Street: 1520 West 7th Street
City: Los Angeles

State: CA 90017
Country: United States of America
License No:
Name Number: 001750
DBA: **Sagawa Express International Co., Inc.**
Person Types: Non-vessel operating common carrier
Street: Shuwz Hamamatswcho Ekimae Bldg. 2–5–4 Hamamatswcho Minato-ku
City: Tokyo 105
State:
Country: Japan
License No:
Name Number: 006720
DBA: **Salco International, Inc.**
Person Types: Non-vessel operating common carrier
Street: 4200 NW. 35 Court
City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 001052
DBA: **Samatour Shipping Co.**
Person Types: Ocean common carrier (vessel operating)
Street: Safia Zaghloul Street, El Salam Boulevard
City: Alexandria
State:
Country: Egypt
License No:
Name Number: 001060
DBA: **Samba Line, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street:
City: Panama City
State:
Country: Republic of Panama
License No:
Name Number: 006815
DBA: **Samband Isl. Samvinnufelaga Samband Line**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box. 180
City: 121 Reykjavik
State:
Country: Iceland
License No:
Name Number: 001061
DBA: **Sammi Line Co. Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 609
City: Seattle
State: WA 98111
Country: United States of America
License No:
Name Number: 001064
DBA: **Sanyu Transportation, Inc.**
Person Types: Non-vessel operating common carrier
Street: 395 West Heber Road
City: El Centro
State: CA 92243
Country: United States of America
License No:
Name Number: 006029
DBA: **Saturno Lines Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 118
City: Kingston 15
State:
Country: Jamaica
License No:
Name Number: 001074
DBA: **Save Parcel Service, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1225 6th Street
City: San Francisco
State: CA 94107
Country: United States of America
License No:
Name Number: 006663
DBA: **SCAC Transport (USA) Inc.**
Person Types: Non-vessel operating common carrier
Street: 9133 La Cienega Blvd., Suite 130
City: Inglewood
State: CA 90301
Country: United States of America
License No:
Name Number: 001077
DBA: **Scandinavian N.A. Transport Services AB**
Person Types: Ocean common carrier (vessel operating)
Street: 2 World Trade Center
City: New York
State: NY
Country: United States of America
License No:
Name Number: 005679
DBA: **Schaefer and Krebs, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1 Exchange Place
City: Jersey City
State: NJ 07302
Country: United States of America
License No:
Name Number: 006728
DBA: **Sea Lion Container Lines Inc.**
Person Types: Non-vessel operating common carrier
Street: 3455 Jasmine Avenue #4
City: Los Angeles
State: CA 90034
Country: United States of America
License No:
Name Number: 006722
DBA: **Sea-Mates Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 414
City: Grand Cayman Island
State:
Country: Cayman Islands
License No:
Name Number: 006807
DBA: **Sea-Van Freight Services, Inc.**
Person Types: Non-vessel operating common carrier
Street: 3 Park Row
City: New York
State: NY 10038
Country: United States of America
License No:
Name Number: 006724
DBA: **Seabridge Transport**
Person Types: Non-vessel operating common carrier
Street: Bat. 15-Garonor, 93614 Aulnay
City: S/Bois
State:
Country: France
License No:
Name Number: 006037
DBA: **Seamount Navigation, S.A.**
Person Types: Ocean common carrier (vessel operating)
Street: Apartado Postal 5366, Panama 5
City: Republica de Panama
State:
Country: Republic of Panama
License No:
Name Number: 002839
DBA: **Sesko Marine Trailers, Inc.**
Person Types: Non-vessel operating common carrier
Street: 4715 NW. 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 001133
DBA: **Seven Ocean Shipping, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 440321
City: Miami
State: FL 33144
Country: United States of America
License No:
Name Number: 002775
DBA: **Seven Star Container Line**
Person Types: Non-vessel operating common carrier
Street: 1305 Oregon Avenue
City: Long Beach
State: CA 90813
Country: United States of America
License No:
Name Number: 007055
DBA: **Shippers Consolidators, Inc.**
Person Types: Non-vessel operating common carrier
Street: 53 Park Place, Suite 204
City: New York
State: NY 10007
Country: United States of America
License No:
Name Number: 006727

DBA: **Simplified Overseas Parcel Express**
Person Types: Non-vessel operating common carrier
Street: 355 W. Carob Street
City: Compton
State: CA 90220
Country: United States of America
License No:
Name Number: 006719

DBA: **Sino-Piff International Freight Ltd.**
Person Types: Non-vessel operating common carrier
Street: 267–275 Des Voeux Road, Room 1201 Loon Kee Bld
City: Central
State:
Country: Hong Kong
License No:
Name Number: 006055

DBA: **SKS Trading Co., Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Coleman Bldg., Suite 208, 811 First Avenue
City: Seattle
State: WA 98104
Country: United States of America
License No:
Name Number: 006366

DBA: **South Sea Shipping Corp.**
Person Types: Ocean common carrier (vessel operating)
Street: 612 E. Grassy Sprain Road
City: Yonkers
State: NY 10710
Country: United States of America
License No:
Name Number: 001164

DBA: **Southern Container Line**
Person Types: Non-vessel operating common carrier
Street: 7210 NW. 77 Street
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 001159

DBA: **Southland Pacific Shipping Inc.**
Person Types: Non-vessel operating common carrier
Street: 20218 Doogan Ave.
City: Compton
State: CA 90221
Country: United States of America
License No:
Name Number: 001163

DBA: **Southwest Pacific Container Line**
Person Types: Ocean common carrier (vessel operating)
Street: 51 Pitt Street
City: Sydney N.S.W. 2000
State:
Country: Australia
License No:
Name Number: 006821

DBA: **Sovereign Line**
Person Types: Non-vessel operating common carrier
Street: 15 Park Row
City: New York
State: NY 10038
Country: United States of America
License No:
Name Number: 006059

DBA: **Spartan Container Lines**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 1089
City: Greer
State: SC 29651
ountry: United States of America
License No:
Name Number: 001169

DBA: **Speditionscentret**
Person Types: Non-vessel operating common carrier
Street: 1. Dr.Tvaergade
City: DK1302 Copenhagen
State:
Country: Denmark
License No:
Name Number: 001171

DBA: **Speedway Container Line, Inc.**
Person Types: Non-vessel operating common carrier
Street: Suite 421, 3805 Long Beach Blvd.
City: Long Beach
State: CA 90807
Country: United States of America
License No:
Name Number: 001173

DBA: **Star Bright Container Line, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1401 NW. 78th Avenue, Suite 201
City: Miami
State: FL 33126
Country: United States of America
License No:
Name Number: 006093

DBA: **Star Caribbean, Inc.**
Person Types: Non-vessel operating common carrier
Street: 875 Clarkson Avenue
City: Brooklyn
State: NY 11203
Country: United States of America
License No:
Name Number: 006061

DBA: **Star Consolidators, Ltd.**
Person Types: Non-vessel operating common carrier
Street: 409 North Oak Street
City: Inglewood
State: CA 90301
Country: United States of America
License No:
Name Number: 006776

DBA: **Star Shipping Limited**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box N–4723
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 001185

DBA: **Stolt Tank Containers (USA), Inc.**
Person Types: Non-vessel operating common carrier
Street: 8 Sound Shore Drive
City: Greenwich
State: CT 06836
Country: United States of America
License No:
Name Number: 001191

DBA: **Storage & Consolidators, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 10130 Caparra Heights Station
City: Rio Piedras
State: PR 00922
Country: United States of America
License No:
Name Number: 001192

DBA: **Sudan Lines**
Person Types: Controlled Carrier
Street: Via Genova 13
City: Trieste
State:
Country: Italy
License No:
Name Number: 00196

DBA: **SUDCARGOS**
Person Types: **Ocean common carrier (vessel operating)**
Street: 17 Rue Robert Schumann
City: 3218 Marseille
State:
Country: France
License No:
Name Number: 006094

DBA: **Surinam Navigation Co.**
Person Types: Ocean common carrier (vessel operating)
Street: Waterkant 44
City: Paramaribo
State:
Country: Surinam
License No:
Name Number: 001206

DBA: **Sylvania Overseas Corp.**
Person Types: Ocean common carrier (vessel operating)
Street: 1007 North America Way
City: Miami
State: FL 33132
Country: United States of America
License No:
Name Number: 000836

DBA: **TAI Marine & Co., Ltd.**
Person Types: Non-vessel operating common carrier
Street: 8 Fl., No. 172 Fu Hsing N. Rd.
City: Taipei
State:
Country: Taiwan
License No:

Name Number: 001333
DBA: **TBI Limited**
Person Types: Non-vessel operating common carrier
Street: 43 Chatam Road
City: G/S/, Kowloon
State:
Country: Hong Kong
License No:
Name Number: 005775
DBA: **TEC Lines, Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 4310 NW. 36 Avenue
City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 006818
DBA: **TEXSHIP, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1225 North Loop West
City: Houston
State: TX 77032
Country: United States of America
License No:
Name Number: 005803
DBA: **Thriftcargo International, S.A.**
Person Types: Non-vessel operating common carrier
Street: 3290 N.W. 79th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No:
Name Number: 000525
DBA: **TIC Line**
Person Types: Non-vessel operating common carrier
Street: 1660 Rollins Road
City: Burlingame
State: CA 94010
Country: United States of America
License No:
Name Number: 000529
DBA: **Trade Wind Shipping Co., Inc.**
Person Types: Non-vessel operating common carrier
Street: 15248 SE. 43 St. #202
City: Bellevue
State: WA 98006
Country: United States of America
License No:
Name Number: 002774
DBA: **Traficomar Shipping Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 31st Street, 3–80
City: Panama City
State:
Country: Republic Of Panama
License No:
Name Number: 000548
DBA: **Tran Ocean Line**
Person Types: Non-vessel operating common carrier
Street: 3804 South Ocean Drive
City: Hollywood
State: FL 33019
Country: United States of America
License No:
Name Number: 007038
DBA: **Trans Angelo Lines**
Person Types: Ocean common carrier (vessel operating)
Street: 3611 NW., South River Drive
City: Miami
State: FL 33132
Country: United States of America
License No:
Name Number: 006817
DBA: **Trans Global Trade Services, Inc.**
Person Types: Non-vessel operating common carrier
Street: 215 Long Beach Blvd., Ste. 1010
City: Long Beach
State: CA 90802
Country: United States of America
License No:
Name Number: 005776
DBA: **Trans Ocean Distribution**
Person Types: Non-vessel operating common carrier
Street: 851 Traeger Ave.
City: San Bruno
State: CA 94066
Country: United States of America
License No:
Name Number: 005784
DBA: **Trans System Line**
Person Types: Non-vessel operating common carrier
Street: 8055 13th Street, Suite 310
City: Silver Spring
State: MD 20910
Country: United States of America
License No:
Name Number: 000563
DBA: **Trans World Container Service, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1 World Trade Center, Suite 4541
City: New York
State: NY 10048
Country: United States of America
License No:
Name Number: 000565
DBA: **Trans World Export Boxing Corp.**
Person Types: Non-vessel operating common carrier
Street: 808 Garfield Avenue
City: Jersey City
State: NJ 07305
Country: United States of America
License No:
Name Number: 000566
DBA: **Trans-World Atlantic Co., Inc.**
Person Types: Non-vessel operating common carrier
Street: One World Trade Center, Suite 7967
City: New York
State: NY 10048
Country: United States of America
License No:
Name Number: 007039
DBA: **TransAct, Inc.**
Person Types: Non-vessel operating common carrier
Street: 211 College Road E.
City: Princeton
State: NJ 08540
Country: United States of America
License No:
Name Number: 006235
DBA: **TransAction Lines Corp.**
Person Types: Non-vessel operating common carrier
Street: 3000 NW. 74th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No:
Name Number: 000568
DBA: **TransAfrica Shipping Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 12502
City: Arlington
State: VA 22209
Country: United States of America
License No:
Name Number: 005786
DBA: **Transaltic Line Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Development House—21 Wharf Road
City: Apapa
State:
Country: Nigeria
License No:
Name Number: 000569
DBA: **TransCaribbean Consolidated Transport, Inc.**
Person Types: Non-vessel operating common carrier
Street: 2500–83rd St.—Bldg. 10B
City: North Bergen
State: NJ 07047
Country: United States of America
License No:
Name Number: 000574
DBA: **Transinter Shipping Corporation**
Person Types: Non-vessel operating common carrier
Street: 26 Broadway—Suite 1559
City: New York
State: NY 10004
Country: United States of America
License No:
Name Number: 002856
DBA: **Transmar Shipping Lines, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: Suite 200, 3750 NW. 28th Street
City: Miami
State: FL 33142

Country: United States of America
License No:
Name Number: 006819

DBA: **Transmodal Cargo Carriers International Ltd.**
Person Types: Non-vessel operating common carrier
Street: 39 Broadway
City: New York
State: NY 10006
Country: United States of America
License No:
Name Number: 000590

DBA: **Transmodal Cargo Carriers, Inc.**
Person Types: Non-vessel operating common carrier
Street: 43 Potter Lane
City: Halesite
State: NY 11743
Country: United States of America
License No:
Name Number: 000589

DBA: **Transtainer Lines Ltd.**
Person Types: Non-vessel operating common carrier
Street: 107 West Side Avenue
City: Jersey City
State: NJ 07305
Country: United States of America
License No:
Name Number: 000612

DBA: **Transtec (U.S.), Inc.**
Person Types: Non-vessel operating common carrier
Street: c/o Jardine Air Cargo U.S. Ltd., 345–347 North Oak Street
City: Inglewood
State: CA 90301
Country: United States of America
License No:
Name Number: 000613

DBA: **Transtech, Inc.**
Person Types: Non-vessel operating common carrier
Street: 32 Bryden Place
City: Ridgewood
State: NJ 07450
Country: United States of America
License No:
Name Number: 000641

DBA: **Transworld Shipping GMBH**
Person Types: Non-vessel operating common carrier
Street: Messberghof P.O. Box 105 126
City: D–2000 Hamburg 1
State:
Country: German Federal Republic (West)
License No:
Name Number: 000619

DBA: **Traveler's Overseas, Inc.**
Person Types: Non-vessel operating common carrier
Street: 25 James Street
City: New Haven
State: CT 06513
Country: United States of America
License No:
Name Number: 000620

DBA: **Trebol Shipping Co., Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street:
City: Monrovia
State:
Country: Liberia
License No:
Name Number: 006621

DBA: **Trident Ocean Services**
Person Types: Non-vessel operating common carrier
Street: 11938 Waveland Avenue
City: Franklin Park
State: IL 60131
Country: United States of America
License No:
Name Number: 006661

DBA: **Trifent Express Line**
Person Types: Non-vessel operating common carrier
Street: 1642 East Baltimore Street
City: Baltimore
State: MD 21231
Country: United States of America
License No:
Name Number: 006710

DBA: **TSI Intermodal**
Person Types: Non-vessel operating common carrier
Street: 21055 West Road
City: Tranton
State: MI 48183
Country: United States of America
License No:
Name Number: 000499

DBA: **TSI Shipping (U.S.A.), Inc.**
Person Types: Non-vessel operating common carrier
Street: One World Trade Center, Suite 3171
City: New York
State: NY 10048
Country: United States of America
License No:
Name Number: 007049

DBA: **Turbo Line**
Person Types: Non-vessel operating common carrier
Street: 290 Nye Avenue
City: Irvington
State: NJ 07111
Country: United States of America
License No:
Name Number: 000631

DBA: **U-S-Panama Lines, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: 5017 Jose Augustine Arango
City: 691 Zone 9A
State:
Country: Republic of Panama
License No:
Name Number: 000038

DBA: **Uiterwyk Lines (Lakes)**
Person Types: Ocean common carrier (vessel operating)
Street: 50 Shirley Street
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 000043

DBA: **Uiterwyk Lines (Reefer)**
Person Types: Ocean common carrier (vessel operating)
Street: 50 Shirley Street
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 000044

DBA: **Uiterwyk Lines (West Africa, LTD.)**
Person Types: Ocean common carrier (vessel operating)
Street: 50 Shirley Street
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 000045

DBA: **Uiterwyk Shipping Lines**
Person Types: Ocean common carrier (vessel operating)
Street: 50 Shirley Street
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 000046

DBA: **Ultramar Shipping, Inc.**
Person Types: Non-vessel operating common carrier
Street: 170 Broadway
City: New York
State: NY 10038
Country: United States of America
License No:
Name Number: 007043

DBA: **Unico Shipping Company, Inc.**
Person Types: Non-vessel operating common carrier
Street: 439 Hardee Road
City: Coral Gables
State: FL 33146
Country: United States of America
License No:
Name Number: 006150

DBA: **Union Container Line Corp.**
Person Types: Non-vessel operating common carrier
Street: 399 West Victoria Street
City: Gardena
State: CA 90248
Country: United States of America
License No:
Name Number: 006709

DBA: **Union Shipping Line**
Person Types: Ocean common carrier (vessel operating)
Street: 3750 NW. 28th Street Bay 307

City: Miami
State: FL 33142
Country: United States of America
License No:
Name Number: 007052

DBA: **Unique Shipping Co. Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: Banco Popular Center, Suite 935
City: Hato Rey
State:
Country: Puerto Rico
License No:
Name Number: 000054

DBA: **United Thai Shipping Corp. Ltd.**
Person Types: Non-vessel operating common carrier
Street: 306 Silom Road
City: Bangkok
State:
Country: Thailand
License No:
Name Number: 006158

DBA: **United Van Lines International, Inc.**
Person Types: Non-vessel operating common carrier
Street: One United Drive
City: Fenton
State: MO 63026
Country: United States of America
License No:
Name Number: 001756

DBA: **Universal Container Lines**
Person Types: Non-vessel operating common carrier
Street: 1441 West 132rd Street
City: Gardena
State: CA 90249
Country: United States of America
License No:
Name Number: 000076

DBA: **Universal Transcontinental Corporation**
Person Types: Non-vessel operating common carrier
Street: 325 Spring Street
City: New York
State: NY 10013
Country: United States of America
License No:
Name Number: 000080

DBA: **Unsworth Transport International, Inc.**
Person Types: Non-vessel operating common carrier
Street: 1831 Pennsylvania Avenue
City: Lindin
State: NJ 07036
Country: United States of America
License No:
Name Number: 000081

DBA: **Vertex Freight Systems, Inc.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 522217
City: Miami
State: FL 33152
Country: United States of America
License No:
Name Number: 005828

DBA: **Viralina West Africa Line Ltd.**
Person Types: Ocean common carrier (vessel operating)
Street: 39 Longridge Road—Earls Court
City: London SW5
State:
Country: Great Britain
License No:
Name Number: 000017

DBA: **Voyager Lines, Inc.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 2097
City: Westfield
State: NJ 07090
Country: United States of America
License No:
Name Number: 007056

DBA: **Vroon B.V.**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 28
City: 3550 Breskens
State:
Country: The Netherlands, Holland
License No:
Name Number: 000029

DBA: **W.C.I. Freight Ltd.**
Person Types: Non-vessel operating common carrier
Street: 1813 W. Willard Street
City: Long Beach
State: CA 90810
Country: United States of America
License No:
Name Number: 000147

DBA: **West Africa Navigation**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box N624 (C)
City: Nassau
State:
Country: Bahama Islands
License No:
Name Number: 000092

DBA: **West Indies Freight, Inc.**
Person Types: Non-vessel operating common carrier
Street: 4795 NW. 72 Avenue
City: Miami
State: FL 33166
Country: United States of America
License No:
Name Number: 000100

DBA: **White Pass Transportation Limited**
Person Types: Ocean common carrier (vessel operating)
Street: P.O. Box 4070
City: Whitehouse, Yukon Territory K1A 3T1
State:
Country: Canada
License No:
Name Number: 000105

DBA: **Willine**
Person Types: Ocean common carrier (vessel operating)
Street: Roald Amundsesgt 5—P.O. Box 1359, VIKA
City: Oslo 1 Norway
State:
Country: Norway
License No:
Name Number: 006270

DBA: **World & Island Transport Co., Inc.**
Person Types: Non-vessel operating common carrier
Street: 3815 Atlantic Avenue Suite D
City: Long Beach
State: CA 90807
Country: United States of America
License No:
Name Number: 000117

DBA: **World Consolidators (Japan) Ltd.**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 534
City: Palos Park
State: IL 60464
Country: United States of America
License No:
Name Number: 000115

DBA: **World Ports Overseas Ltd.**
Person Types: Non-vessel operating common carrier
Street: 62 Claradon Road
City: Staten Island
State: NY 10305
Country: United States of America
License No:
Name Number: 000119

DBA: **World Trans Line**
Person Types: Non-vessel operating common carrier
Street: 120 East Ogden Avenue
City: Hinsdale
State: IL 60521
Country: United States of America
License No:
Name Number: 000122

DBA: **World Transportation, Incorporated**
Person Types: Non-vessel operating common carrier
Street: 8415 Envoy Avenue
City: Philadelphia
State: PA 19153
Country: United States of America
License No:
Name Number: 002859

DBA: **Worldwide Freight Services Inc.**
Person Types: Non-vessel operating common carrier
Street: 505 North Belt East, Suite 320
City: Houston
State: TX 77060
Country: United States of America
License No:
Name Number: 000127

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DBA: **Yamato Customs Brokers U.S.A. Inc.**
Person Types: Non-vessel operating common carrier
Street: 720 Hinory Avenue
City: Inglewood
State: CA 90301
Country: United States of America
License No:
Name Number: 005687

DBA: **Zebec Maritime**
Person Types: Non-vessel operating common carrier
Street: P.O. Box 920673
City: Houston
State: TX 77292
Country: United States of America
License No:
Name Number: 006133

[FR Doc. 87-23233 Filed 10-9-87; 8:45 am]
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Tuesday
October 13, 1987

Part III

Department of Education

34 CFR Part 763

Drug Abuse Education and Prevention Audiovisual Materials Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 763

Drug Abuse Education and Prevention Audiovisual Materials Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations governing the Drug Abuse Education and Prevention Audiovisual Materials Program. The program reflects the congressional mandate in Pub. L. 99–591 to develop audiovisual materials for distribution to local educational authorities for drug abuse education and prevention activities.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Louie E. Mathis, 202–732–4637.

SUPPLEMENTARY INFORMATION:

Background

Congress appropriated $5.5 million in October 1986 to develop audiovisual materials for distribution to local educational authorities for drug education and prevention activities.

To help carry out that mandate, the Department has created the Drug Abuse Education and Prevention Audiovisual Materials Program. This program will award funds to produce and distribute videotapes of broadcast quality for viewing by students in elementary and secondary schools. Funds awarded under this program would cover the production and distribution of both the videotapes and accompanying printed material such as teacher guides. Awards totalling $4.5 million will be made through cooperative agreements that give the Department a significant role in planning and monitoring the entire course of each project. The remaining $1 million has been reserved for additional activities related to producing and distributing audiovisual materials.

Summary of Major Provisions

On June 9, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**. See 52 FR 21920. The preamble to the NPRM contained a summary of major provisions which is still fully applicable to these final regulations. Section 763.31(c) of the regulations has been changed to reflect minor editorial revisions; § 763.31(c)(1) has also been changed to clarify that recipients of awards, as well as third parties, may contribute to the production and distribution of audiovisual materials with the Secretary's prior written approval. Otherwise, there are no differences between the NPRM and these final regulations. Three commenters submitted comments on the NPRM. A summary of their comments and the Secretary's responses follows.

Comment: One commenter noted that § 763.4 of the NPRM authorized the Secretary to establish program priorities related to grade levels and types of substance abuse. The commenter recommended that the Secretary specifically establish a priority to develop culturally-oriented audiovisual materials targeted for ethnic/racial minorities.

Response: No change is made.

The Secretary does not believe that any priorities should be established under this program exclusively to benefit particular ethnic or racial groups. However, the Secretary has authority to select applications for funding other than those most highly rated if doing so would improve the diversity of activities or projects funded. See § 763.20(d) of the regulations.

Comment: Another commenter objected to the requirement that program funds be used for videotapes of broadcast quality. See § 763.31(d) of the regulations. The commenter also questioned whether videotapes need to be close-captioned. See § 763.3(b). The commenter further noted the prohibition against use of funds to purchase equipment contained in § 763.32, and stated that the proposed regulations failed to mention the possibility of joint projects involving more than one eligible applicant. The commenter recommended that the program fund audiovisual media other than videotapes, such as computers and laserdiscs, and that awards be made for videotapes of less than broadcast qualtity. The commenter believed that these steps would help applicants that do not possess the equipment necessary to ensure broadcast quality.

Response: No change is made.

Videotapes are commonly used in the Nation's schools. Moreover, the Secretary believes that close-captioned videotapes of broadcast quality provide a cost-effective means of enhancing efforts to combat the use of illicit drugs. Alternate methods of distribution—which typically relay solely on the direct mail of multiple copies—could substantially reduce the funds available for production of materials under this program. Both the proposed regulations and these final regulations allow a number of eligible parties to apply as a group. See 34 CFR 75.127(a), which is cross-referenced in § 763.5(a) of the regulations.

Comment: Another commenter urged that this program be restructured to focus on assisting schools in acquiring products already available in the market, as opposed to the production and distribution of new materials. The commenter stated that the NPRM improperly helped nonprofit entities enter a competitive field in which profit-making firms are active. The commenter also objected to § 763.5, which applies the same cost principles to both profit and nonprofit entities that receive an award. According to the commenter, § 763.5 is inconsistent with OMB Circular A–76. the commenter further requested that it be allowed to express its views more fully at a public hearing before final regulations are published.

Response: No change is made.

The legislation authorizing this program calls for the "development of audiovisual materials for distribution to local educational authorities." The Secretary interprets this language as contemplating the production and distribution of new materials, rather than the purchase of existing materials. The Secretary believes that both profit and nonprofit entities should be allowed to compete for awards under the program. This competition is governed by the selection criteria contained in § 763.21, rather than by OMB Circular A–76. The Circular applies only in cases where the Government compares the cost of performing a commercial activity directly with the cost of contracting for that activity through a commercial source. Moreover, the cost principles referenced in § 763.5 address the use of Federal funds after an award has been made, and are unrelated to the competition for an award. It is unnecessary to convene a public hearing because the commenter has already been given an opportunity to provide written comments on the NPRM. Convening a public hearing would also significantly delay the development of new materials to help combat drug abuse among the Nation's young people.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notice of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 763

Education, Grants program—Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.189)

Dated: September 23, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 763 to read as follows:

PART 763—DRUG ABUSE EDUCATION AND PREVENTION AUDIOVISUAL MATERIALS PROGRAM

Subpart A—General

Sec.

763.1 What is the Drug Abuse Education and Prevention Audiovisual Program?
763.2 Who is eligible for an award under this program?
763.3 What types of projects does the Secretary assist under this program?
763.4 What priorities may the Secretary establish for this program?
763.5 What regulations apply to this program?
763.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

763.20 How does the Secretary evaluate an application?
763.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

763.30 What message must project materials convey regarding illicit drug use?
763.31 What other standards must an applicant meet?
763.32 May funds be used to purchase equipment?

Authority: Pub. L. 99–591, 100 Stat. 3341–360.

Subpart A—General

§ 763.1 What is the Drug Abuse Education and Prevention Audiovisual Materials Program?

The Drug Abuse Education and Prevention Audiovisual Materials Program supports the production and distribution of audiovisual materials primarily to local educational agencies for use in drug abuse prevention and education programs.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.2 Who is eligible for an award under this program?

The Secretary may make an award under this program to a State educational agency, local educational agency, institution of higher education, or to another profit or nonprofit agency, organization, or institution.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.3 What types of projects does the Secretary assist under this program?

(a) The Secretary makes awards for projects that produce and distribute audiovisual materials for use in drug abuse education and prevention programs for elementary and secondary school students.

(b) The audiovisual materials produced must be closed-captioned videotapes with brief teacher guides and, if appropriate, student materials for classroom use.

(c) Recipients shall produce and distribute audiovisual materials for drug abuse education and prevention programs in both public and private elementary and secondary schools.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.4 What priorities may the Secretary establish for this program?

The Secretary may establish as priorities particular grade levels, types of substance abuse, or any combination of grade levels or types of substance abuse.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.5 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 763.

(c) The cost principles referenced in 34 CFR 74.174 apply to profit-making organizations that receive awards under this program.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Local educational agency
Private
Project
Public
Secretary
State
State educational agency

(b) *Other Definitions*—The following definitions also apply to this part:

"Drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the use and abuse of controlled, illegal, addictive, or harmful substances, including the abuse of alcohol.

"Illicit drug use" means the use of illegal drugs and the abuse of other drugs and alcohol.

"Institution of higher eduction," "secondary school," and "nonprofit" have the meanings provided in section 1001 of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

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Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 763.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 763.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible points for each criterion are indicated in parentheses.

(d) The Secretary may select applications for funding other than those most highly rated if doing so would improve the diversity of activities or projects funded.

(e) The Secretary may, after applying the criteria in § 763.21, confirm the production and distribution capacity of highly rated applicants in order to make final determinations for awards. That confirmation may include review and inspection of an applicant's facilities.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Creativity and effectiveness.* (15 points) The Secretary reviews each application to determine how creatively and effectively the applicant's proposed project will incorporate a strong message to elementary and secondary school students that illicit drug use is wrong and harmful.

(b) *Applicant's capacity.* (15 points) The Secretary reviews each application to determine the applicant's capacity successfully to complete the production and distribution of audiovisual materials of high quality, including—

(1) The applicant's ability to acquire and organize the necessary expertise, production personnel, and, if necessary, actors and other talent—as evidenced by examples of past performance;

(2) The applicant's experience in developing educational materials for elementary and secondary schools;

(3) The applicant's experience and knowledge concerning drug abuse education and prevention;

(4) The applicant's access to equipment and facilities to produce audiovisual materials; and

(5) The quality of the applicant's work, as evidenced by a sample videotape that demonstrates professional competence in the production of audiovisual education materials.

(c) *Production plan.* (25 points) The Secretary reviews each application to determine how adequately the applicant's production plan will—

(1) Ensure the use of approaches appropriate for the age levels of the target audience;

(2) Incorporate the advice of experts in drug abuse education and prevention;

(3) Incorporate research findings likely to improve drug abuse education and prevention programs;

(4) Involve teachers, school officials, parents, and students in designing the project; and

(5) Include field-testing of materials in classroom settings and make appropriate modifications, if needed, before the materials are distributed in final form.

(d) *Distribution plan.* (12 points) The Secretary reviews each application to determine how adequately the applicant's distribution plan will—

(1) Inform appropriate school authorities of the purpose and availability of materials produced by the applicant's project, and encourage their maximum use;

(2) Effectively and economically distribute these materials for broad use by schools; and

(3) Provide for periodic review and improvement of the applicant's distribution methods.

(e) *Management plan.* (12 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The extent to which the plan is effective and ensures proper, timely, and efficient completion of the project;

(2) The extent to which the plan's project design involves measurable timeliness for achieving significant steps in production and distribution; and

(3) The manner in which the plan will use resources and personnel successfully to complete the project.

(f) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel and applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the audiovisual producer and other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (f)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project.

(g) *Budget and cost-effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project, as well as to timeliness for achieving significant steps in production and distribution.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

Subpart D—What Conditions Must Be Met After an Award?

§ 763.30 What message must project materials convey regarding illicit drug use?

All materials produced or distributed with funds made available under this program must reflect the message that illicit drug use is wrong and harmful.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.31 What other standards must an applicant meet?

(a)(1) A recipient of funds under this part shall secure and provide to the Secretary on a timely basis prior to the broadcast or publication of materials (including field testing) produced with program funds, proof that the recipient has obtained all of the releases and rights that are necessary to ensure the authorized and noninfringing broadcast or publication of audiovisual materials funded under the program.

(2) These rights and releases must at a minimum include signed talent releases from all persons recognizably photographed, recorded or otherwise depicted, including, if necessary, releases from parents or guardians of minors who appear in or on audiovisual materials produced with program funds; worldwide music performance rights; and worldwide exhibition rights for exhibiting by the Government of others during the distribution phase of the project.

(b) Commercialization, or the implied or actual endorsement of commercial products or services through their focused portrayal, depiction, or use in audiovisual materials produced under this program, is prohibited.

(c)(1) Recipients and third parties may contribute to the production and distribution of audiovisual materials under this part only with the prior written approval of the Secretary.

(2) Any contribution under paragraph (c)(1) of this section is subject to the regulations on cost sharing in 34 CFR Part 74; Subpart G.

(3) If audiovisual materials are produced with funds or other assistance

in addition to funds provided by the Secretary under this program, an appropriate acknowledgment of that additional assistance must be placed after the Department's credit line and disclaimer referred to in paragraph (e) of this section.

(d) The videotapes produced under the regulations in this part must be of broadcast quality acceptable to public and commercial broadcasters in the United States. Compliance with the standards set forth in the Federal Communications Commission rules at 47 CFR 73.682, 73.687, and 73.699 constitute an acceptable standard of broadcast quality.

(e) Materials produced under this part must include a credit line and disclaimer at the end stating as follows: "These materials were produced with funds from the U.S. Department of Education. The opinions expressed herein do not necessarily reflect the views or policies of the Department."

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.32 May funds be used to purchase equipment?

Funds awarded under this program may not be used to purchase equipment.

(Authority: Pub. L. 99–591, Stat. 3341–360)

[FR Doc. 87–23572 Filed 10–9–87; 8:45 am]

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 582]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 582 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 265,000 cartons during the period October 11, through October 17, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 582 (§ 910.882) is effective for the period October 11 through October 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96465, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rule issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on October 7, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a unanimous vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for large sized lemons, poor for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect tothis action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunty to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions and the effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.882 is added to read as follows:

§ 910.882 Lemon Regulation 582

The quantity of lemons grown in California and Arizona which may be handled during the period October 11 through October 17, 1987, is established at 265,000 cartons.

Dated: October 8, ,1987.

Charles R. Brader,

Director Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–23772 Filed 10–9–87; 8:45 am]

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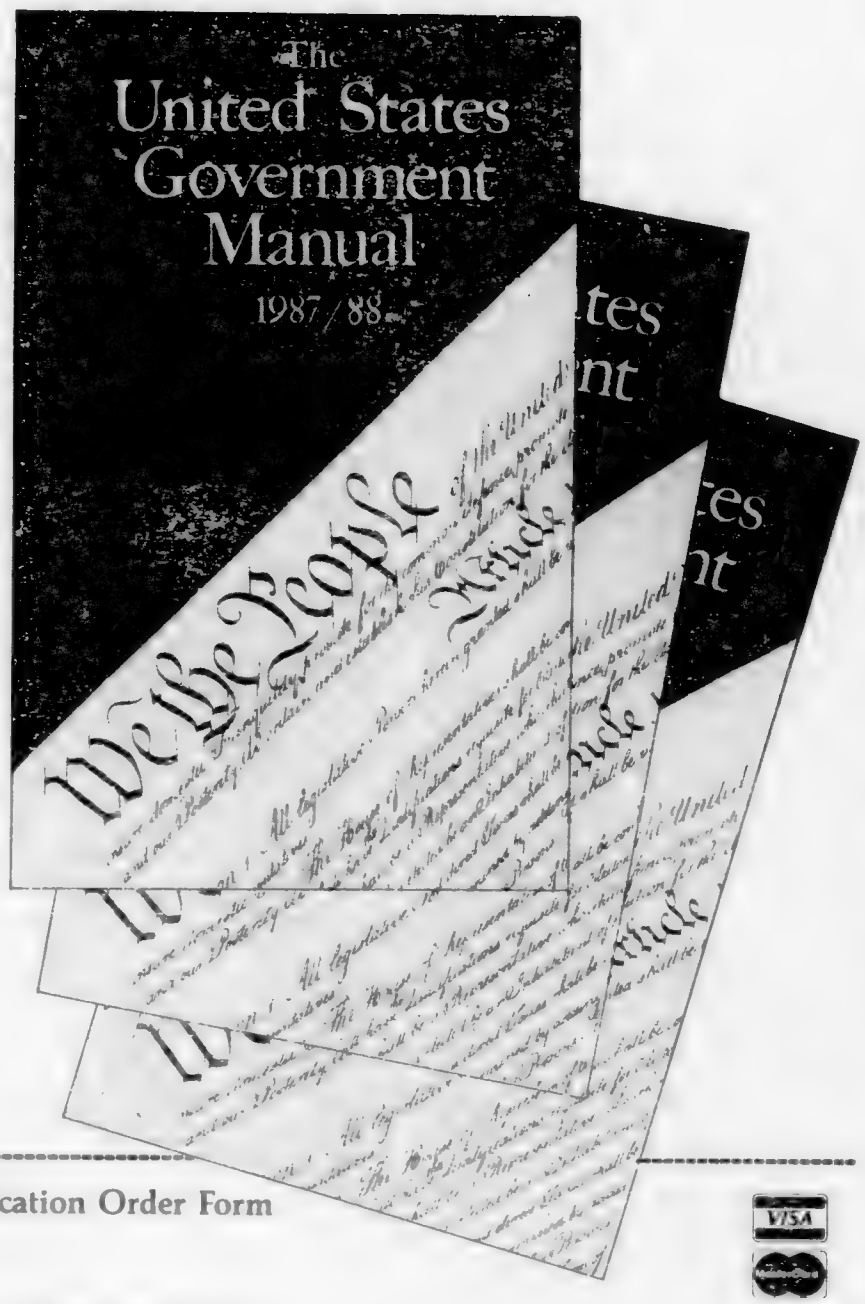

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Federal Register
Vol. 52, No. 198
Wednesday, October 14, 1987

Presidential Documents

Title 3—

The President

Proclamation 5727 of October 9, 1987

Termination of Import Relief on Certain Heavyweight Motorcycles

By the President of the United States of America

A Proclamation

1. In Proclamation 5050 of April 15, 1983 (48 FR 16639), pursuant to section 202(b)(1) and (c) of the Trade Act of 1974, as amended (Act) (19 U.S.C. 2252(b)(1) and (c)), I proclaimed import relief with respect to heavyweight motorcycles having engines with a total displacement over 700 cubic centimeters, provided for in item 692.50 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). This relief took the form of a tariff increase implemented through tariff-rate quotas and the suspension of preferential tariff treatment under the Generalized System of Preferences (GSP) for such heavyweight motorcycles entered, or withdrawn from warehouse for consumption, during the period April 16, 1983, through April 15, 1988.

2. On June 19, 1987, the United States International Trade Commission (USITC) reported to me the results of an investigation (Inv. No. TA–203–17) pursuant to section 203(i)(2)–(5) of the Act (19 U.S.C. 2253(i)(2)–(5)) with respect to the early termination of the heavyweight motorcycles import relief as requested by petitioner Harley-Davidson, Inc. The USITC advised that the early termination of the import relief would have no significant economic effect on the domestic industry producing heavyweight motorcycles.

3. Accordingly, pursuant to section 203(h)(4) of the Act (19 U.S.C. 2253(h)(4)), after taking into account the advice of the United States Trade Representative, the USITC, the Secretary of Commerce, and the Secretary of Labor, I have determined that it is in the national interest to terminate the import relief in effect with respect to the articles concerned. I have further determined that it is appropriate to terminate the suspension of GSP treatment for such articles required by section 503(c)(2) of the Act (19 U.S.C 2463(c)(2)) during the period of effectiveness of the import relief.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sections 203, 503, and 604 of the Act (19 U.S.C. 2253, 2463, and 2483), do proclaim that—

(1) Part I of Schedule XX to the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1986) is modified to conform to the actions taken in this Proclamation.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified by striking out headnote 9 to such subpart and item 924.20.

(3) In order to restore GSP treatment for the motorcycles subject to import relief, part 6B of schedule 6 of the TSUS is modified by inserting in the Rates of Duty Special column for TSUS item 692.52 the symbol "A" immediately before the symbol "E" in parentheses.

(4) (a) Paragraphs (1) and (2) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on and after the third day following the date of publication of this Proclamation in the **Federal Register**.

(b) Paragraph (3) of this Proclamation shall be effective with respect to articles both (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on and after the third day following the date of publication of this Proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-23897
Filed 10-9-87; 4:33 pm]
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Rules and Regulations

Federal Register
Vol. 52, No. 198
Wednesday, October 14, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Commission Policy Statement on Deferred Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This statement presents the policy of the Nuclear Regulatory Commission (NRC) with regard to the procedures that apply to nuclear power plants while in a deferred status and when they are being reactivated. The regulations and guidance applicable to deferred and terminated plants; maintenance, preservation, and documentation requirements; and the applicability of new regulatory requirements and other general administrative considerations are addressed.

EFFECTIVE DATE: November 13, 1987.

FOR FURTHER INFORMATION CONTACT: Theodore S. Michaels, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–8251.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 1987, the Commission published a proposed policy statement on deferred plants in the **Federal Register** for a 30-day comment period (52 FR 8075). Five commenters offered a total of nine comments on the proposed policy statement. The Commission has modified the policy statement in section III of this notice in reponse to comment B(1) in section II below. In addition, some minor editorial changes were made.

II. Response to Public Comments on the Proposed Policy Statement

A. KMC, Inc.

Summary of Comment. KMC, Inc. and the Utility Safety Classification Group recommended that the term "safety-related" be substituted for the term "important to safety" in sections III.B.2.a and III.B.2.b because there is not yet a clear definition of the latter term.

Commission Response. The Commission rejects this suggestion. The term "safety-related" is a subset of the term " important to safety." Safety-related is more precisely defined at this time because licensees provide a list of structures, systems, and components that come within its scope. However, there is sufficient Commission guidance regarding the term "important to safety" to warrant its use without causing confusion. For example, the Commission has indicated that while there is not "a predefined class of equipment at every plant whose functions have been determined by rule to be 'important to safety,' * * * whether any piece of equipment has a function 'important to safety' is to be determined on the basis of a particularized showing of clearly identified safety concerns * * *, and the requirements of * * * GDC 1 must be tailored to the identified safety concerns." *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), CLI–84–9, 19 NRC 1323, 1325 (1984); *see also Shoreham,* ALAB–788, 20 NRC 1102, 1115–1119 (1984).

In the context of this policy statement, it is expected that a utility, planning to maintain its reactivation option or transfer of ownership to others, will identify any structures, systems, and components (SSC) which are important to safety and establish appropriate maintenance, preservation, and documentation (MPD) for these SSC. If a utility determines, based on an analysis of cost-effectiveness, to develop MPD only for safety-related SSC, it must recognize the possibility that SSC for which adequate MPD were not developed may have to be replaced if and when reactivation or transfer of ownership takes place.

The NRC does not want to limit its application of MPD requirements to safety-related SSC because that could allow other SSC, which are important to safety, to be placed into service without proper MPD.

B. Washington Public Power Supply System (WPPSS)

Summary of Comments. WPPSS submitted the following three comments:

(1) The commenter recommended that the requirement in section III.A.6.e (incorrectly referred to by the commenter as 6.c) be amended. This item requires that a listing of any new applicable regulatory requirements that are made effective during the deferral period be submitted with a description of the licensee's proposed plans for compliance with these requirements. The commenter suggests that this presumes a sufficient level of engineering activity during the deferral period to develop such plans. Since this might not be the case, the commenter asks that the requirement be changed to permit a commitment to submit this information at a specific later date.

Commission Response. This change has been made. However, it should be noted that this information should be submitted at the time of reactivation notification, or as soon thereafter as possible, since the lack of this information could impact the review schedule.

(2) The commenter recommended that the requirement in section III.A.6 to notify the NRC at least 120 days before construction resumes be changed to "at least 120 days before construction is expected to resume or as soon as possible after a reactivation decision has been reached." This would permit some construction activities to get under way earlier.

Commission Response. The 120–day advance notification is the minimum period required to evaluate the licensee's submittal to determine the acceptability of reactivation. Any request by the licensee to resume selected non-safety-related activities sooner than 120 days will be considered at the time of the request.

(3) This comment refers to section III.A.6.i, which requires an amendment to the Final Safety Analysis Report (FSAR), as applicable and necessary, discussing the bases for all substantive site and design changes made since the last amendment. The commenter states that, in its specific case, such an amendment would not be available at the time of initial notification. The commenter believes that since no substantive site and design changes will

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be made during deferral, an FSAR amendment would not be needed at that time.

Commission Response. The amendment is required only if there are substantive changes. If there are none, no amendment is necessary. Therefore, the commenter's concern is satisfied by the text in the proposed policy statement.

C. The State of Washington Energy Facility Site Evaluation Council

Summary of Comments. The following three comments were made:

(1) The commenter suggested that the policy clearly state, early on, that it applies only to facilities deferred or terminated during construction.

Commission Response. The intent of the policy statement is made clear throughout the document. Deferral and termination refer to construction, not operation. No further clarification is needed.

(2) The commenter expressed concern that the definition of a terminated plant might cause confusion because it requires a valid construction permit, whereas the only authorized activity is site restoration.

Commission Response. The reference to a valid construction permit in the definition for a terminated plant is not a requirement; it merely identifies the status of a plant that fits the definition. A plant is considered to be in terminated status only from the time the licensee has announced that construction has been permanently stopped until the construction permit is formally withdrawn by the NRC. The licensee of a deferred plant, on the other hand, retains the construction permit because construction has only been deferred, not terminated.

(3) The commenter suggested that the Commission might wish to address circumstances of abandonment and cessation of operation, which the commenter had recently adopted in its rules.

Commission Response. These areas go beyond the intended scope and purpose of the subject policy statement. These matters are being addressed in the Commission's decommissioning rulemaking.

D. Marvin Lewis

Summary of Comment. The commenter suggested that deferral of cancellation often provides a cover for inadequate quality or other very dangerous conditions and that the NRC must handle resumption of construction "sternly" and with "extreme prejudice," requiring that all the latest safety requirements be met.

Commission Response. The proposed policy statement stresses clearly and repeatedly that deferral, termination, and reactivation will be subject to all applicable current regulations, standards, policies, and guidance. No further clarification is needed.

E. Atomic Industrial Forum

Summary of Comment. The commenter supported the proposed policy statement and did not suggest changes to its text.

Commission Response. None required.

III. Policy Statement

This policy guidance outlines (1) the NRC's regulatory provisions for deferring and preserving a deferred nuclear power plant until such time as it may be reactivated and (2) the applicability of new regulatory staff positions to a deferred plant when it is reactivated. Moreover, because of the possibility that the plant and/or its equipment may be sold to another utility, some general guidance with regard to terminated plants is presented.

The following definitions apply to this policy guidance:

"Deferred plant" means a nuclear power plant at which the licensee has ceased construction or reduced activity to a maintenance level, maintains the construction permit (CP) in effect, and has not announced termination of the plant.

"Terminated plant" means a nuclear power plant at which the licensee has announced that construction has been permanently stopped, but which still has a valid CP.

A. Deferred Plant

The following areas should be addressed by the licensee and the NRC when a plant is deferred:

1. Notification of Plant Deferral

The licensee should inform the Director of Nuclear Reactor Regulation (NRR) when a plant is to be deferred within 30 days of the decision to defer. Information to be made available should include the reason for deferral, the expected plant reactivation date (if known), whether a CP extension request will be submitted, and the plans for fulfilling the requirements of the CP, including the maintenance, preservation, and documentation requirements as outlined in Section III.A.3 of this policy statement.

2. Extension of Construction Permit

The licensee must ensure that its CP does not expire. Title 10 of the *Code of Federal Regulations,* § 2.109 (10 CFR 2.109), "Effect of Timely Renewal Application," provides that if a request for renewal of a license is made 30 days before the expiration date, the license will not be deemed to have expired until the application has been finally processed. Extension of the completion date for a CP will be considered in accordance with 10 CFR 50.55(b).

3. Maintenance, Preservation, and Documentation of Equipment

The NRC requirements for verification of construction status, retention and protection of records, and maintenance and preservation of equipment and materials are applied through: 10 CFR 50.54(a), "Conditions of Licenses," and 10 CFR 50.55(f), "Conditions of Construction Permits," which require that a quality assurance program be implemented; 10 CFR Part 50, Appendix B, which requires that all activities performed to establish, maintain, and verify the quality of plant construction be addressed in the licensee's quality assurance program; 10 CFR Part 50, Appendices A and B, which require that certain quality records be retained for the life of the plant; 10 CFR 50.55(e), which requires reporting of deficiencies in design, construction, quality assurance, etc.; 10 CFR 50.71, which applies to the maintenance of records; and 10 CFR Part 21, which applies to reporting of defects and noncompliance. Those NRC regulatory guides that endorse the ANSI N45.2 series of standards, "Quality Assurance Requirements for Nuclear Power Plants," also are applicable and include Regulatory Guides 1.28, 1.37, 1.38, 1.58, 1.88, and 1.116.[1] Of particular importance is the guidance on packaging, shipping, receiving, storing, and handling of equipment as well as on collecting, storing, and maintaining quality control documentation. The maintenance, preservation, and documentation requirements outlined above apply to plants under construction.

The licensee may choose to modify existing commitments during extended construction delays by developing a quality assurance plan that is commensurate with the expected activities and expected (or potential) length of delay. The licensee should discuss with the NRC the expected construction delay period and the quality assurance program to be

[1] These regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H St. NW., Washington DC. Copies of these regulatory guides may be purchased by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington DC 20013–7082.

implemented during the deferral. The program should include a description of the planned activities; organizational responsibilities and procedural controls that apply to the verification of construction status, maintenance, and preservation of equipment and materials; and retention and protection of quality assurance records. The program will be reviewed and approved by the NRC in accordance with 10 CFR 50.54(a)(3), 10 CFR Part 50, Appendix B, and inspection procedures, as appropriate.

Implementation of the program will be examined periodically to determine licensee compliance with commitments and overall program effectiveness.

4. Conduct of Review During Deferral

When a plant is deferred, the staff will normally bring all ongoing post-CP and operating license (OL) reviews and associated documentation to an appropriate termination point. Normally, new reviews will not be initiated. If the review has progressed sufficiently, a safety evaluation report (SER) will be issued, which assembles and discusses the status of the completed work and lists all outstanding open items. Subject to availability of resources, the staff might perform specific technical reviews or complete SER supplements.

5. Applicability of New Regulatory Requirements During Deferral

Deferred plants of custom or standard design will be considered in the same manner as plants still under construction with respect to applicability of new regulations, guidance, and policies. Proposed plant-specific backfits of new regulatory staff positions promulgated while a plant is deferred will be considered in accordance with the Commission backfit criteria. Other modifications to previously accepted staff positions will be implemented either through rulemaking or generic issue resolution, which themselves are subject to the backfit rule. Regulations that have integral update provisions built into them will be applied to deferred plants, as they are to other plants under construction, without the use of the backfit rule.

Provisions in other policy statements that are applicable to plants under construction also will have to be implemented. Any resulting backfit recommendations will have to be supported in accordance with 10 CFR 50.109. Appeals procedures applicable to plant-specific backfits would be applicable to deferred plants. Appeals filed by a licensee during plant deferral will be considered and processed by the NRC while a plant is in a deferred status.

6. Information to be Submitted by Licensee When Reactivating

The licensee should submit a letter to the Director of NRR at least 120 days before plant construction is expected to resume. The letter should include the following information, to the extent that the information has not been submitted to the staff during the deferral period:

a. The proposed date for resuming construction, a schedule for completion of the construction, and a schedule for submittal of an operating license application, including a final safety analysis report (FSAR), if one has not already been submitted.

b. The current status of the plant site and equipment.

c. A description of how any conditions established by the NRC during the deferral have been fulfilled.

d. A list of licensing issues that were outstanding at the time of the deferral and a description of the resolution or proposed resolution of these issues.

e. A listing of any new regulatory requirements applicable to the plant that have become effective since plant construction was deferred, together with a description of the licensee's proposed plans for compliance with these requirements or a commitment to submit such plans by a specified date.

f. A description of the management and organization responsible for construction of the plant.

g. A description of all substantive changes made to the plant design or site since the CP was issued (for those plants for which an OL application has not been submitted).

h. Identification of any additional required information that is not available at the time of reactivation and a commitment to submit this information at a specific later date.

i. As necessary, an amendment to the OL application (revised FSAR) and a discussion of the bases for all substantive site and design changes that have been made since the last FSAR revision was submitted (for those plants which were already under OL review at the time of deferral).

7. Staff Actions When Notified of Reactivation

The acceptability of structures, systems, and components important to safety (10 CFR Part 50, Appendix A, General Design Criterion 1) upon reactivation from deferred status will be determined by the NRC on the following basis:

a. Reviews of the approved preservation and maintenance program, as implemented, in order to determine whether or not any structures, systems, or components require special NRC attention during reactivation.

b. Verification that design changes, modifications, and required corrective actions have been implemented and documented in accordance with established quality control requirements.

c. The results of any licensee of NRC baseline inspections that indicate quality and performance requirements have not been significantly reduced below those originally specified in the FSAR. Structures, systems, and components that fail to meet the acceptability criteria or will not meet current NRC requirements will be dealt with on a case-by-case basis.

B. Terminated Plant

1. Plant Termination

A licensee should inform the Director of NRR when a plant is placed in a terminated status. In the event that withdrawal of a CP is sought, the permit holder should provide notice to the NRC staff sufficiently far in advance of the expiration of the CP to permit the staff to determine appropriate terms and conditions. If necessary, a brief extension of the CP may be ordered by the staff to accommodate these determinations. Until withdrawal of the CP is authorized, a permit holder must adhere to the Commission's regulations and the terms of the CP and should submit suitable plans for the termination of site activities, including redress, as provided for under 10 CFR 51.41, for staff approval. Moreover, if the plant has been completed to a point that it can function as a utilization facility, the licensee must take all necessary actions to ensure that the facility is no longer a facility for which an NRC license is required.

2. Measures that Should be Considered for Reactivation or Transfer of Ownership of Terminated Plants

The licensee of a terminated nuclear plant, if planning to maintain the option of plant reactivation or transfer of ownership to others—either totally or in part—should consider the following actions:

a. For the removal and transfer of ownership of plant components and systems important to safety, make necessary provisions to maintain, collect, and transfer to the new owner appropriate performance and material documentation attesting to the quality of the components and systems that will be

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required of the new owner if intended for use in NRC-licensed facilities.

b. Develop and implement a preservation and maintenance program for structures, systems, and components important to safety, as well as documentation substantially in accordance with section III.A.3 of this policy statement. If these provisions are implemented throughout the period of termination, a terminated plant may be reactivated under the same provisions as a deferred plant.

These licensees also must assure that any necessary extensions of the CP are requested in a timely manner.

Dated at Washington, DC this 7th day of October 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-23740 Filed 10-13-87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-64-AD; Amdt. 39-5749]

Airworthiness Directives; British Aerospace Model 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model 125-800A series airplanes, which requires inspection and replacement, if necessary, of certain connector socket contacts in the engine fire warning system. This proposal is prompted by reports of inadequate crimping of socket contacts. This condition, if not corrected, could lead to failure of the engine fire warning annunciation in the flight deck.

EFFECTIVE DATE: November 13, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection, and replacement if necessary, of certain connector socket contacts in the engine fire detection system on BAe Model 125-800A airplanes, was published in the **Federal Register** on June 22, 1987 (52 FR 23465).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,160.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to BAe Model 125-800A series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the engine fire warning annunciation in the flight deck, accomplish the following:

A. Inspect the socket contacts in connectors TA7 and TB7 for adequate crimping, and replace, if necessary, in accordance with British Aerospace Service Bulletin 26-27, dated May 16, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 13, 1987.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-23681 Filed 10-13-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-66-AD; Amdt. 39-5750]

Airworthiness Directives; British Aerospace Viscount Model 700 and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace (BAe) Viscount Model 700 and 800 series airplanes, which requires periodic inspections for cracks, and replacement if necessary, of the aluminum main landing gear ram feet. This proposal is prompted by reports of long term stress corrosion cracking of a ram foot. Failure

to detect cracks could lead to failure of the main landing gear brake flange and loss of braking.

EFFECTIVE DATE: November 13, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection and replacement if necessary of the aluminum main landing gear ram feet, on Viscount Model 700 and 800 series airplanes, was published in the **Federal Register** on June 24, 1987 (52 FR 23663).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,160.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Viscount Model 700 series and 800 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of landing gear ram feet, accomplish the following:

A. For all Model 700 series airplanes, pre-modification D2781:

1. Within 30 days or 120 landings after the effective date of this AD, whichever occurs first, inspect and replace, if necessary, main landing gear ram feet in accordance with Paragraph 2.0 "Accomplishment Instructions" of British Aerospace (BAe) Viscount Preliminary Technical Leaflet (PTL) No. 317, dated June 10, 1986.

2. Repeat the above inspection at intervals not to exceed 14 months or 1,600 landings, whichever occurs first.

B. For all Model 800 series airplane, pre-modification F1323:

1. Within 30 days or 120 landings after the effective date of this AD, whichever occurs first, inspect and replace, if necessary, main landing gear ram feet in accordance with Paragraph 2.0 "Accomplishment Instructions" of BAe Viscount PTL No. 186, dated June 10, 1986.

2. Repeat the above inspection at intervals not to exceed 14 months or 1,600 landings, whichever occurs first.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 13, 1987.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–23682 Filed 10–13–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–93–AD; Amdt. 39–5751]

Airworthiness Directives; British Aerospace Model H.S. 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Model H.S. 748 Series airplanes with large freight doors, which requires inspection and adjustment, repair, or replacement, if necessary, of the large freight door locking mechanism components, and installation of a placard to warn crew members to depressurize the cabin before opening the large freight door. This amendment is prompted by a report of an incident where, due to an unserviceable pressure lock system, the large freight door was opened in flight while the cabin was pressurized. The door detached from the fuselage, causing severe damage. This condition, if not corrected, could lead to loss of the large freight door and damage to the airplane.

EFFECTIVE DATE: November 13, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, ANM–130S;

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telephone (206) 431–1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection and adjustment, or repair, or replacement, if necessary, of the large freight door locking mechanism, and installation of a placard warning crew members to depressurize the cabin before opening the large freight door on British Aerospace Model H.S. 748 series airplanes, was published in the **Federal Register** on August 10, 1987 (52 FR 29534).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $720.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities, because of the minimal cost of compliance per airplane ($240). A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model H.S. 748 series airplanes with a large freight door, certificated in any category. Compliance required within the next 90 days after the effective date of this AD, unless previously accomplished.

To prevent inadvertent opening of the freight door in flight, accomplish the following:

A. Inspect the large freight door shoot bolt lever, barometric (pressure lock) lever, bellows assembly, dry air cartridge and microswitches for damage, distortion and/or wear in accordance with British Aerospace Service Bulletin 52/129, dated May 1986. If any damage, distortion and/or wear is discovered as a result of the inspection required by this paragraph, prior to further flight, adjust, repair, or replace the affected components, in accordance with British Aerospace Service Bulletin 52/129, dated May 1986.

B. Install a placard to indicate that the aircraft must be depressurized before opening its large freight door, in accordance with British Aerospace Service Bulletin 11/7, dated December 1, 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 13, 1987.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–23679 Filed 10–13–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–CE–30–AD; Amdt. 39–5745]

Airworthiness Directives; Cessna Models 150, 150 A thru M, A150, 152, and A152 Airplanes Modified in Accordance With Supplemental Type Certificate (STC) SA4795SW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Models 150, 150 A thru M, A150, 152 and A152 airplanes modified in accordance with Supplemental Type Certificate (STC) SA4795SW. The FAA has determined that these airplanes have been modified using STC SA4795SW for which no substantiating data exists and that the limitations regarding spins and the center-of-gravity envelopes were not properly defined for airplanes modified by this STC that are eligible for the STC. This action is necessary to prevent operation of the airplane outside the approved CG envelope wherein unknown flight characteristics could lead to loss of control of the airplane.

DATES: *Effective Date:* October 13, 1987.

Compliance: Within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Background information applicable to this AD is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Special Programs Branch, ASW–192, Aircraft Certification Division, Southwest Region, Fort Worth, Texas 76193–0190; Telephone (817) 624–5197.

SUPPLEMENTARY INFORMATION: Supplemental Type Certificate SA4795SW and its latest revisions approves installation of Lycoming Model 0–320–E2A, –E2B, –E2D or –E2H engines with McCauley Model 1C172/TM 7458 propellers or Lycoming Model 0–360–A2A, –A2D or –A4A engines with McCauley Model 1A170/EFA 7562 or 1A170/SFA 7562 propellers and increased takeoff weight from 1600 pounds to 1760 pounds in Cessna 150 Series and 152 airplanes. The terminology "Cessna 150 Series and 152 airplanes" which appears on the STC certificate has been misinterpreted to include all airplanes certificated under Type Certificate Data Sheet 3A19.

Technical data originally submitted by the STC applicant only substantiates the application of the modification to Cessna Models 150 D through M and 152 with operation in the utility category at 1600 pounds and in the normal category at takeoff weights from 1600 pounds to 1760 pounds. This technical data also substantiates a change to the center-of-gravity limits at the new weights. Additionally, spin testing only showed compliance with normal category spin requirements. Specifically not included in any of the substantiating data for STC SA4795SW are Cessna Models 150,150 A/B/C, A150 K/L/M, and A152.

This AD identifies those airplanes eligible for modification under STC SA4795SW, and requires new placards showing the approved center-of-gravity limits and prohibition of intentional spins when operating in the utility category. This AD limits the operation of Cessna Models 150, 150 A/B/C/, A150 K/L/M, and A152 airplanes which have STC SA4795SW installed. The holder of STC SA4795SW is currently developing data to substantiate adding the Cessna Models 150, 150A/B/C, A150K/L/M/, and A152 airplanes to the STC. The limitations imposed on these airplanes by this AD may be removed or modified upon completion of the type certification program.

Since the conditions described only exist for Cessna Model 150, A150, 152 and A152 airplanes modified in accordance with STC SA4795SW, the AD requires the removal of the category and weight limits placard currently required by the STC. Replacement of that placard, in airplanes approved for modification by STC SA4795SW, is required with a placard stating the approved weight and center-of-gravity limits for the utility and normal categories, the prohibition of spins in utility category and the prohibition of spins and any acrobatic maneuver in the normal category. Airplanes improperly modified by STC SA4795SW are limited to operation in the utility category with corresponding aircraft limitations and no spins authorized.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the installation of a new placard and operating limitations on Cessna Models 150, 150A thru M, A150, 152, and A152 airplanes modified in accordance with STC SA4795SW. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the following Models and Serial Numbered airplanes certificated in any category which have been modified in accordance with Supplemental Type Certificate (STC) SA4795SW:

Models	Serial Numbers
150	17001 thru 17999 . 59001 thru 59018.
150A	15059019 thru 15059350.
150B	15059351 thru 15059700.
150C	15059701 thru 15060087.
150D	15060088 thru 15060772.
150E	15060773 thru 15061532.
150F	15061533 thru 15064532.
150G	15064533 thru 15067189 (except 15064970).
150H	649, 15067199 thru 15069308.
150J	15069309 thru 15071128.
150K	15071129 thru 15072003.
150L	15072004 thru 15075781.
150M	15075782 thru 15079405.
A150K	A1500001 thru A1500226.
A150L	A1500227 thru A1500523.
A150M	15064970, A1500524 thru A1500734.
152	15279406 thru 15285595 and on.
A152	A1500433, A1520735 thru A1520808. 681, A1520809 thru A1521015 and on

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure operation of the airplane within the approved center of gravity (CG) limits and approved operating limitations, accomplish the following:

(a) For Model 150, 150 A/B/C, airplanes accomplish the following:

(1) Remove the placard required by STC SA4795SW which states the category and weight limits and begins with the words "THIS AIRPLANE MAY BE OPERATED * * *". The placard probably is located on the right hand door post.

(2) Fabricate a placard with the following statement using letters with a minimum height of ⅛ inch: "NOT APPROVED FOR SPINS". Install this placard in clear view of the pilot on the airplane instrument panel.

(3) Operate the airplane in the Utility Category in accordance with the placard and the operating limitations for center-of-gravity and maximum weight as specified in the original weight and balance data for an unmodified airplane.

Note.—Compliance with Airworthiness Director 86–15–07 does not relieve compliance with this AD for Models 150, 150A/B/C airplanes.

(b) For Model A150 K/L/M airplanes, accomplish the following:

(1) Remove the placard required by STC SA4795SW which states the category and weight limits and begins with the words "THIS AIRPLANE MAY BE OPERATED * * *". The placard probably is located on the right hand door post.

(2) Fabricate the temporary placard detailed in Figure 1. of this AD, marking it with the statement as shown and install it in clear view of the pilot on the instrument panel over the existing maneuver placard.

(3) Operate the airplane in the Utility Category in accordance with the placard and the operating limitations for center-of-gravity and maximum weight as specified in the original weight and balance data for an unmodified airplane.

(c) For Model A152 airplanes, accomplish the following:

(1) Remove the placard required by STC SA4795SW which states the category and weight limit and begins with the words "THIS AIRPLANE MAY BE OPERATED * * *". The placard probably is located on the right hand door post.

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(2) Fabricate the temporary placard detailed in Figure 2. of this AD, permanently marking it with the statement as shown and install it in clear view of the pilot on the instrument panel over the existing maneuver placard.

(3) Operate the airplane in the Utility Category in accordance with the placard and the operating limitations for center-of-gravity and maximum weight as specified in the original weight and balance data for an unmodified airplane.

(d) For Model 150 D thru M and 152 airplanes, accomplish the following:

(1) Remove the placard required by STC SA4795SW which states the category and weight limits and begins with the words "THIS AIRPLANE MAY BE OPERATED * * *". The placard probably is located on the instrument panel over the existing maneuver placard.

(2) Fabricate the placard detailed in Figure 3. of this AD, permanently marking it with the statement as shown and install it in clear view of the pilot on the instrument panel over the existing maneuver placard. Alternatively, this placard may be obtained from Aircraft Conversion Technologies Inc., 1410 Flight Line Drive, Lincoln, California 95648.

(3) Operate the airplane in accordance with the placard.

(e) Installation of the placards required by this AD may be accomplished by the owner/operator on any airplanes which are not used under FAR Part 121 or 135. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(g) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Division, FAA Southwest Region, Fort Worth Texas 76193–0100; Telephone (817) 624–5100

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to J&S Engineering, 222 W. Turbo Drive, San Antonio, Texas 78216; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas Ciry, Missouri 64106.

This amendment becomes effective on October 13, 1987.

Issued in Kansas City, Missouri, on September 28, 1987.

Jerold M. Chavkin,

Acting Director,

Central Region.

BILLING CODE 4910-13-M

MATERIAL: Index card laminated in plastic
SCALE: Full
DIMENSIONS: Inches
LETTERING: 1/8 in. or greater typewritten

2.5 or greater

INTENTIONAL SPINS ARE PROHIBITED
THIS AIRPLANE TO BE OPERATED IN THE UTILITY CATEGORY WITHIN THE FOLLOWING LIMITS:

MAXIMUM AIRSPEEDS (IAS)

NEVER EXCEED (Vne)	162 MPH (141 KNOTS)
STRUCTURAL CRUISING (Vc)	120 MPH (104 KNOTS)
MANEUVERING (Va)	109 MPH (95 KNOTS)
FLAPS EXTENDED (Vfe)	98 MPH (85 KNOTS)

THE FOLLOWING ACROBATIC MANEUVERS ARE APPROVED:

MANEUVER	RECM. ENTRY SPEED	MANEUVER	RECM. ENTRY SPEED
CHANDELLE	109 MPH(95KTS)	LAZY EIGHTS	109 MPH(95KTS)
STEEP TURNS	109 MPH(95KTS)	STALLS (EXCEPT WHIP STALLS) SLOW DECELERATION	

4.5 or greater

PLACARD

FIGURE 1

MATERIAL: Index card laminated in plastic
SCALE: Full
DIMENSIONS: Inches
LETTERING: 1/8 in. or greater typewritten

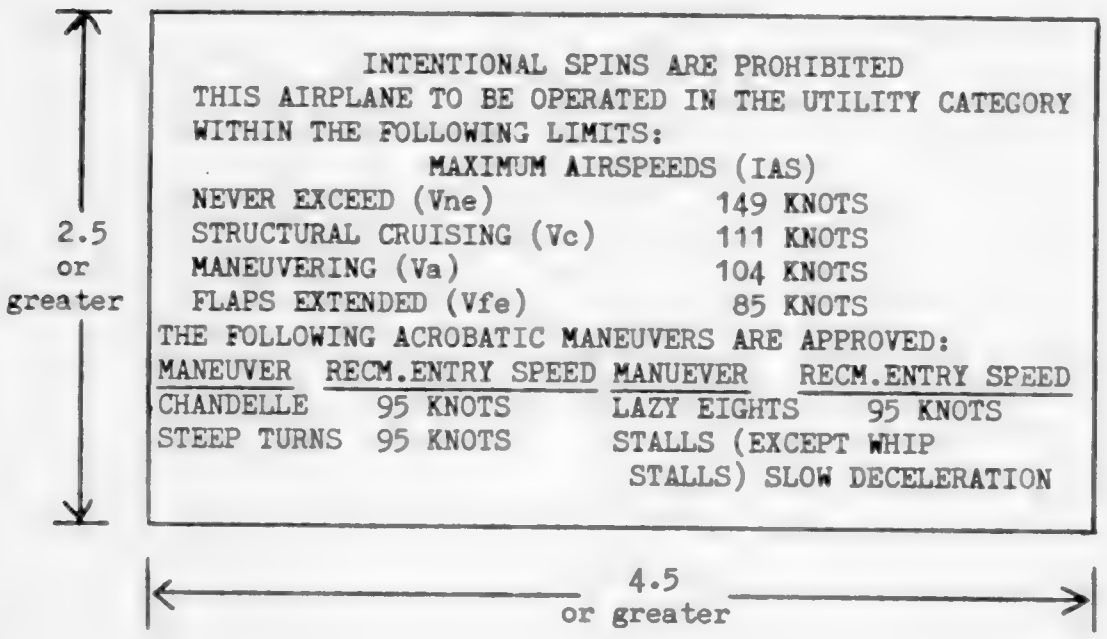

PLACARD

FIGURE 2

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MATERIAL: sheet aluminum
THICKNESS: .020
SCALE: Full
DIMENSIONS: Inches
LETTERING: 1/8 in. or greater, silver on black

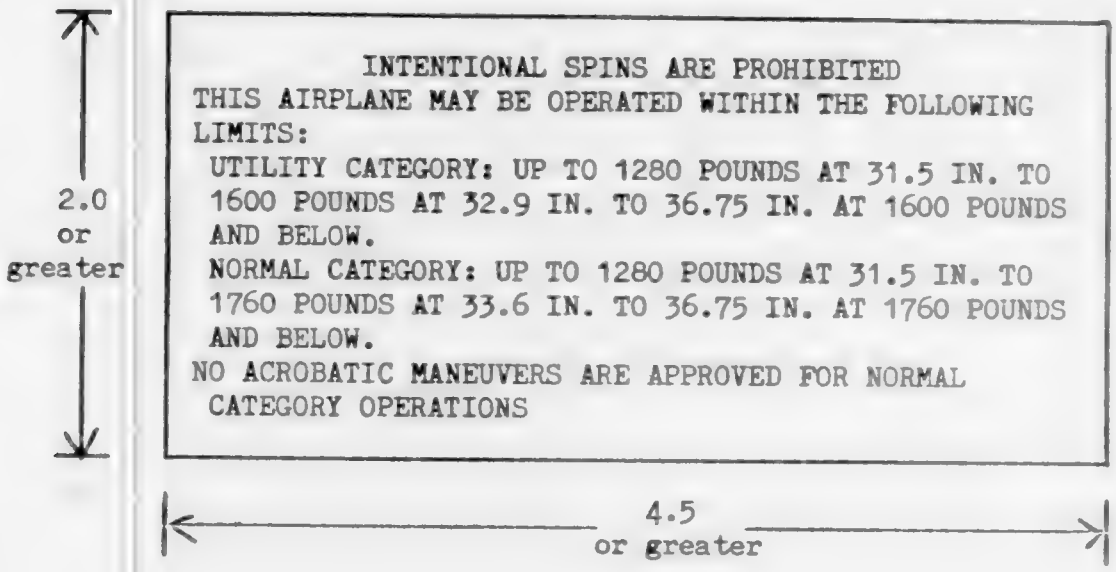

PLACARD

FIGURE 3

[FR Doc. 87-23680 Filed 10-13-87; 8:45 am]
BILLING CODE 4910-13-C

BEST COPY AVAILABLE

14 CFR Part 95

[Docket No. 25408; Amdt. No. 340]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availablity to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on October 2, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 340 EFFECTIVE DATE, NOVEMBER 19, 1987

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO DELETE		
STILLWATER, NJ VOR/DME	MOBBS, NY FIX	3000
§95.6002 VOR FEDERAL AIRWAY 2		
IS AMENDED TO DELETE		
GARDNER, MA VORTAC *2500 - MOCA	TYNGS, MA FIX	*3500
TYNGS, MA FIX	LAWRENCE, MA VOR/DME	2000
§95.6029 VOR FEDERAL AIRWAY 29		
IS AMENDED TO READ IN PART		
BINGHAMTON, NY VORTAC *3600 - MOCA	SYRACUSE, NY VORTAC	*4000
§95.6034 VOR FEDERAL AIRWAY 34		
IS AMENDED TO READ IN PART		
HANCOCK, NY VORTAC *3600 - MOCA	ROCHESTER, NY VORTAC	*6000
§95.6036 VOR FEDERAL AIRWAY 36		
IS AMENDED BY ADDING		
HAWLY, PA FIX *3300 - MOCA	PETTE, NJ FIX	*3800
IS AMENDED TO READ IN PART		
ELMIRA, NY VORTAC *4200 - MOCA	HAWLY, PA FIX	*4500
IS AMENDED TO DELETE		
WONGS, PA FIX	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	SPARTA, NJ VORTAC	4000
SPARTA, NJ VORTAC	LA GUARDIA, NY VOR/DME	2500
LA GUARDIA, NY VOR/DME *2000 - MOCA	DEER PARK, NY VORTAC	*4000

FROM	TO	MEA
§95.6054 VOR FEDERAL AIRWAY 54		
IS AMENDED BY ADDING		
FAYETTEVILLE, NC VOR/DME	KINSTON, NC VORTAC	2000
§95.6106 VOR FEDERAL AIRWAY 106		
IS AMENDED TO READ IN PART		
GARDNER, MA VORTAC	MANCHESTER, NH VORTAC	3000
§95.6116 VOR FEDERAL AIRWAY 116		
IS AMENDED BY ADDING		
WILKES-BARRE, PA VORTAC	SPARTA, NJ VORTAC	4000
IS AMENDED TO READ IN PART		
STONYFORK, PA VORTAC	WILKES-BARRE, PA VORTAC	4000
IS AMENDED TO DELETE		
LAKE HENRY, PA VORTAC *7500 - MCA SLOAT FIX, SE BND	*SLOAT, NJ FIX	4000
SLOAT, NJ FIX *2800 - MOCA	DEER PARK, NY VORTAC	*7500
§95.6184 VOR FEDERAL AIRWAY 184		
IS AMENDED TO READ IN PART		
TIDIOUTE, PA VORTAC *4000 - MOCA	PHILIPSBURG, PA VORTAC	*5000
PHILIPSBURG, PA VORTAC	HARRISBURG, PA VORTAC	4000
HARRISBURG, PA VORTAC	MODENA, PA VORTAC	3000
ATLANTIC CITY, NJ VORTAC *1500 - MOCA	ZIGGI, NJ FIX	*2000
IS AMENDED TO DELETE		
COOBE, PA FIX	PHILIPSBURG, PA VORTAC	4000
MURFE, NJ FIX *2000 - MOCA	BEAMS, NJ FIX	*8000

FROM	TO	MEA
§95.6188 VOR FEDERAL AIRWAY 188		
IS AMENDED BY ADDING		
SPARTA, NJ VORTAC	HARVE, NY FIX	3000
HARVE, NY FIX	NYACK, NY FIX	2300
NYACK, NY FIX	CARMEL, NY VORTAC	2500
§95.6226 VOR FEDERAL AIRWAY 226		
IS AMENDED TO DELETE		
STILLWATER, NJ VOR/DME *2500 - MOCA	BUDDS, NJ FIX	*3000
§95.6232 VOR FEDERAL AIRWAY 232		
IS AMENDED BY ADDING		
SOLBERG, NJ VORTAC	COLTS NECK, NJ VOR/DME	2000
IS AMENDED TO READ IN PART		
MILTON, PA VORTAC *3500 - MOCA	SOLBERG, NJ VORTAC	*4000
IS AMENDED TO DELETE		
SWEET, NJ FIX *2700 - MOCA	BROADWAY, NJ VOR/DME	*4000
BROADWAY, NJ VOR/DME	LA GUARDIA, NY VOR/DME	2700
§95.6252 VOR FEDERAL AIRWAY 252		
IS AMENDED BY ADDING		
DUPONT, DE VORTAC	MUFLA, NJ FIX	2000
MUFLA, NJ FIX	COBUS, NJ FIX	2000
COBUS, NJ FIX *1500 - MOCA	ROBBINSVILLE, NJ VORTAC	*2000
IS AMENDED TO READ IN PART		
COATE, NY FIX *3300 - MOCA	HUGUENOT, NY VORTAC	*4000
§95.6273 VOR FEDERAL AIRWAY 273		
IS AMENDED BY ADDING		
FALLZ, NY FIX *3300 - MOCA	HUGUENOT, NY VORTAC	*4000
HUGUENOT, NY VORTAC *3100 - MOCA	RAGER, NY FIX	*4000

FROM	TO	MEA
§95.6273 VOR FEDERAL AIRWAY 273—Continued		
IS AMENDED TO DELETE		
SCROL, NJ FIX	SPARTA, NJ VORTAC	3000
SPARTA, NJ VORTAC	RAGER, NY FIX	3500
§95.6374 VOR FEDERAL AIRWAY 374		
IS AMENDED BY ADDING		
BINGHAMTON, NY VORTAC	GAYEL, NY FIX	7000
GAYEL, NY FIX	CARMEL, NY VORTAC	2600
§95.6405 VOR FEDERAL AIRWAY 405		
IS AMENDED TO READ IN PART		
POTTSTOWN, PA VORTAC *2000 - MOCA	LANNA, NJ FIX	*4000
LANNA, NJ FIX	SOLBERG, NJ VORTAC	2000
SOLBERG, NJ VORTAC	CARMEL, NY VORTAC	2500
§95.6419 VOR FEDERAL AIRWAY 419		
IS AMENDED TO READ IN PART		
NYACK, NY FIX	CARMEL, NY VORTAC	2100
§95.6423 VOR FEDERAL AIRWAY 423		
IS AMENDED TO READ IN PART		
ITHACA, NY VOR/DME *3100 - MOCA	SYRACUSE, NY VORTAC	*4000
§95.6469 VOR FEDERAL AIRWAY 469		
IS AMENDED BY ADDING		
HARRISBURG, PA VORTAC	DUPONT, DE VORTAC	3000
DUPONT, DE VORTAC	WOODSTOWN, NJ VORTAC	2000
§95.6474 VOR FEDERAL AIRWAY 474		
IS AMENDED TO READ IN PART		
NOENO, PA FIX	MODENA, PA VORTAC	3000
IS AMENDED TO DELETE		
MODENA, PA VORTAC	ECHEL, NJ FIX	2000
§95.6488 VOR FEDERAL AIRWAY 488		
IS AMENDED TO READ IN PART		
REEBA, AK FIX *6000 - MOCA	GOLLY, AK FIX	*7000

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FROM	TO	MEA
§95.6489 VOR FEDERAL AIRWAY 489		
IS AMENDED BY ADDING		
COATE, NY FIX	HUGUENOT, NY VORTAC	*4000
*3300 - MOCA		
HUGUENOT, NY VORTAC	WEARD, NY FIX	*4000
*3500 - MOCA		
WEARD, NY FIX	SAGES, NY FIX	*7000
*5700 - MOCA		
SAGES, NY FIX	ALBANY, NY VORTAC	6000
IS AMENDED TO DELETE		
SPARTA, NJ VORTAC	SILKY, NY FIX	3000
SILKY, NY FIX	ELLAN, NY FIX	4000
ELLAN, NY FIX	ALBANY, NY VORTAC	*6000
*4900 - MOCA		

FROM	TO	MEA
§95.6531 VOR FEDERAL AIRWAY 531		
IS AMENDED TO READ IN PART		
TANANA, AK VOR/DME	REEBA, AK FIX	4000
REEBA, AK FIX	GOLLY, AK FIX	*7000
*6000 - MOCA		
§95.6580 VOR FEDERAL AIRWAY 580		
IS AMENDED TO READ IN PART		
ST LOUIS, MO VORTAC	LEBOY, IL FIX	3000
LEBOY, IL FIX	SEXTN, IL FIX	4500

FROM	TO	MEA	MAA
§95.7036 JET ROUTE NO. 36			
	IS AMENDED BY ADDING		
LAKE HENRY, PA VORTAC	SPARTA, NJ VORTAC	18000	45000
	IS AMENDED TO READ IN PART		
DUNKIRK, NY VORTAC	LAKE HENRY, PA VORTAC	18000	45000
§95.7048 JET ROUTE NO. 48			
	IS AMENDED TO READ IN PART		
POTTSTOWN, PA VORTAC	LANNA, NJ FIX	18000	45000
	IS AMENDED TO DELETE		
CARMEL, NY VORTAC	BOSTON, MA VORTAC	18000	45000
§95.7051 JET ROUTE NO. 51			
	IS AMENDED BY ADDING		
FLAT ROCK, VA VORTAC	NOTTINGHAM, MD VORTAC	18000	45000
NOTTINGHAM, MD VORTAC	DUPONT, DE VORTAC	18000	45000
DUPONT, DE VORTAC	YARDLEY, PA VORTAC	18000	45000
	IS AMENDED TO READ IN PART		
TUBAS, NC FIX	FLAT ROCK, VA VORTAC	26000	45000
§95.7060 JET ROUTE NO. 60			
	IS AMENDED TO READ IN PART		
PHILIPSBURG, PA VORTAC	EAST TEXAS, PA VORTAC	18000	45000
EAST TEXAS, PA VORTAC	ROBBINSVILLE, NJ VORTAC	18000	45000
§95.7064 JET ROUTE NO. 64			
	IS AMENDED TO READ IN PART		
ELLWOOD CITY, PA VORTAC	RAVINE, PA VORTAC	18000	45000
RAVINE, PA VORTAC	ROBBINSVILLE, NJ VORTAC	18000	45000
§95.7068 JET ROUTE NO. 68			

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FROM	TO	MEA	MAA
§95.7068 JET ROUTE NO. 68—Continued			
	IS AMENDED TO DELETE		
DUNKIRK, NY VORTAC	HANCOCK, NY VORTAC	18000	45000
§95.7095 JET ROUTE NO. 95			
	IS AMENDED BY ADDING		
DEER PARK, NY VORTAC	BINGHAMTON, NY VORTAC	18000	45000
BINGHAMTON, NY VORTAC	BUFFALO, NY VORTAC	18000	45000
	IS AMENDED TO DELETE		
KENNEDY, NY VORTAC	HUGUENOT, NY VORTAC	18000	45000
HUGUENOT, NY VORTAC	BUFFALO, NY VORTAC	18000	45000
§95.7106 JET ROUTE NO. 106			
	IS AMENDED BY ADDING		
WILKES-BARRE, PA VORTAC	STILLWATER, NJ VOR/DME	18000	45000
STILLWATER, NJ VOR/DME	LA GUARDIA, NY VOR/DME	18000	45000
	IS AMENDED TO READ IN PART		
JAMESTOWN, NY VOR/DME	WILKES-BARRE, PA VORTAC	18000	45000
	IS AMENDED TO DELETE		
SPARTA, NJ VORTAC	KENNEDY, NY VORTAC	18000	45000
§95.7152 JET ROUTE NO. 152			
	IS AMENDED TO DELETE		
HARRISBURG, PA VORTAC	JENNO, PA FIX	18000	45000
§95.7190 JET ROUTE NO. 190			
	IS AMENDED BY ADDING		
ROCKDALE, NY VORTAC	ALBANY, NY VORTAC	18000	45000
§95.7193 JET ROUTE NO. 193			
	IS AMENDED TO READ		
WILMINGTON, NC VORTAC	COFIELD, NC VORTAC	18000	45000

FROM	TO	MEA	MAA
§95.7193 JET ROUTE NO. 193—Continued			
COFIELD, NC VORTAC	HARCUM, VA VORTAC	18000	29000
HARCUM, VA VORTAC	HUBBS, MD FIX	18000	28000
§95.7211 JET ROUTE NO. 211			
	IS AMENDED BY ADDING		
YOUNGSTOWN, OH VORTAC	JOHNSTOWN, PA VORTAC	18000	27000
§95.7221 JET ROUTE NO. 221			
	IS AMENDED TO DELETE		
SPARTA, NJ VORTAC	LAKE HENRY, PA VORTAC	18000	45000
LAKE HENRY, PA VORTAC	WELLSVILLE, NY VORTAC	18000	25000
WELLSVILLE, NY VORTAC	BUFFALO, NY VORTAC	18000	39000
§95.7223 JET ROUTE NO. 223			
	IS ADDED TO READ		
LA GUARDIA, NY VOR/DME	ELMIRA, NY VORTAC	18000	23000
§95.7227 JET ROUTE NO. 227			
	IS ADDED TO READ		
ARMEL, VA VORTAC	ELMIRA, NY VORTAC	18000	23000
§95.7522 JET ROUTE NO. 522			
	IS AMENDED TO READ IN PART		
HANCOCK, NY VORTAC	KINGSTON, NY VORTAC	18000	42000
§95.7547 JET ROUTE NO. 547			
	IS AMENDED TO READ IN PART		
SYRACUSE, NY VORTAC	CAMBRIDGE, NY VORTAC	18000	45000
CAMBRIDGE, NY VORTAC	KENNEBUNK, ME VORTAC	18000	45000

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§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-33			
IS AMENDED TO READ IN PART			
HARRISBURG, PA VORTAC	PHILIPSBURG, PA VORTAC	35	HARRISBURG
V-34			
IS AMENDED TO DELETE			
HANCOCK, NY VORTAC	ITHACA, NY VOR/DME	32	HANCOCK
V-265			
IS AMENDED TO READ IN PART			
HARRISBURG, PA VORTAC	PHILIPSBURG, PA VORTAC	35	HARRISBURG
V-273			
IS AMENDED BY ADDING			
HUGUENOT, NY VORTAC	HANCOCK, NY VORTAC	17	HUGUENOT

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§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-95		
	IS AMENDED BY ADDING		
DEER PARK, NY VORTAC	BINGHAMTON, NY VORTAC	60	DEER PARK
	J-193		
	IS AMENDED BY ADDING		
COFIELD, NC VORTAC	HARCUM, VA VORTAC	36	COFIELD
	J-211		
	IS AMENDED BY ADDING		
JOHNSTOWN, PA VORTAC	WESTMINSTER, MD VORTAC	47	JOHNSTOWN
	J-221		
	IS AMENDED TO DELETE		
LAKE HENRY, PA VORTAC	WELLSVILLE, NY VORTAC	50	LAKE HENRY

[FR Doc. 87-23683 Filed 10-13-87; 8:45 am]
BILLING CODE 4910-13-C

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 702, 732, 750 and 752

[AIDAR Notice 88-1]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The A.I.D. Acquisition Regulation (AIDAR) is being amended by updating the address for submission of report copies to the A.I.D. reference center, and reducing the number of copies required by that office from 3 to 2; by removing the requirement for routine Inspector General comment or concurrence for extraordinary contractual relief actions; by specifying the approving authority for advance payments to profit making organizations; by clarifying some of the definitions in the policy text of Appendix D; by including a new definition of a resident hire personal services contractor along with guidance on payment of allowances, differentials and fringe benefits for such contractors; by providing for contractor emergency locator information in the contract schedule as well as contractor biographical data; and by clarifying several provisions in Appendix J. Required Personal Services Contractor checklist information has also been added to Appendices D & J along with other miscellaneous editorial changes.

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia L. Bullock, telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: AIDAR Appendix J is being amended by: (1) Adding the note under paragraph 4, Policy, paragraph (b) Limitations on personal services contracts which permits TCNs and CCNs to negotiate on behalf of the U.S. with private individuals and entities the same as in Appendix D (the note was inadvertently omitted when the Appendix was published); (2) Clarifying the language in paragraph 5(a)(4) "Soliciting for Personal Services Contracts" under which, instead of providing an estimate of what a comparable GS or FS position should cost (including benefits), the project officer of the Mission is now required to obtain a certification from the officer in charge at the Mission responsible for the LEPCH or equivalent that the position has been reviewed and properly classified as to title, series, and grade in accordance with LEPCH or its equivalent; (3) Revising the General Provision and Additional General Provision entitled "Physical Fitness" to reflect that costs of physical examinations for both CCNs and TCNs shall be based on rates prevailing locally for such examinations in accordance with Mission practice; (4) Revising the General Provision entitled "Workweek" to permit overtime in accordance with procedures governing premium compensation applicable to direct hire FSN employees; (5) Revising the General Provision "Leave and Holidays" to conform vacation leave and sick leave policies to those that apply to FSN direct hire employees; (6) Revising the payment provision to permit payment of compensation to CCNs and TCNs to be made in a method similar to that used for FSN direct hire employees but require written supporting documentation concerning time and attendance which complies with Mission policy and practice; (7) Allowing Missions to grant access to classified or administratively controlled (LOU) information to CCNs and TCNs based on their need to know in accordance with A.I.D. Handbook 6, Security; and (8) Adding the required FAR Clause 52.203-7, Anti-kickback Procedures.

Appendix D is being amended by clarifying some of the definitions in the policy text, by adding a new definition for a resident hire personal services contractor along with guidance on payment of allowances, differentials and fringe benefits to such contractors and by adding contractor emergency locator information as well as contractor biographical data. Required PSC Checklist information which must be placed in the official contract folder has been added to both Appendices. Miscellaneous and editorial changes are also being made to the AIDAR and the Appendices.

This AIDAR Notice is not a major rule and is exempt from the requirement of Executive Order 12291 by OMB Bulletin 85-7. Therefore, the change is not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Notice will not have an impact on a substantial number of small entities or require any information collection, as contemplated by the Regulatory Flexibility Act or the Paperwork Reduction Act respectively.

List of Subjects in 48 CFR Parts 702, 732, 750 and 752

Government procurement.

1. The authority citation for Parts 702, 732, 750 and 752 and the Appendices to Chapter 7 is unchanged and continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

702.170-13 [Amended]

2. Section 702.170-13(d) is amended by removing the references to the "Office of Acquisition and Assistance Management" and in their place inserting "Office of Procurement".

PART 732—CONTRACT FINANCING

Subpart 732.4—Advance Payments

3. A new section 732.402 is added to read as follows:

732.402 General.

(a)-(d) [Reserved]

(e) All U.S. Dollar advances to profit making organizations require the approval of the Procurement Executive; all such approvals are subject to prior consultation with the A.I.D./W Controller. Interest is charged on such advances at the rate established by the Secretary of the Treasury under Pub. L. 92-41, unless waived by the Procurement Executive.

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 750.71—Extraordinary Contractual Actions To Protect Foreign Policy Interests of the United States

750.7110-2 [Amended]

4. Section 750.7110-2 is amended by removing the words "and the Inspector General" from the first sentence.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

752.202 [Redesignated as 752.202-1 and Amended]

5. Section 752.202, Definitions, is amended as follows:

a. The section number is redesignated from 752.202 to 752.202-1; and

b. The contract clause in paragraph (d) *Alternate 72* is amended by removing paragraph (f) of the clause, and redesignating paragraphs (g) and (h) of

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the clause as paragraphs (f) and (g), respectively.

6. Section 752.7026 is revised as follows:

752.7026 Reports.

(a) *Alternate 70.* For use in all A.I.D. direct contracts except fixed-price contracts for technical services.

Reports (June 1987)

(a) Unless otherwise provided in the schedule of this contract, the contractor shall prepare and submit to the contracting officer 3 copies, to PPC/CDIE/DI, ACQUISITIONS 2 copies [see paragraph (d)], and to the Mission 4 copies, of a semi-annual report, within 45 days following the end of the period being covered, which shall include the following:

(1) A substantive report covering the status of the work under the contract, indicating progress made with respect thereto, setting forth plans for the ensuing period, including recommendations covering the current needs in the fields of activity covered under the terms of this contract.

(2) An administrative report covering expenditures, foreign country national trainees, and personnel employed under the contract.

(b) Contractor shall prepare and submit to the contracting officer and to PPC/CDIE/DI, ACQUISITIONS [see paragraph (d)] such other reports as may be specified in the schedule.

(c) Unless otherwise provided in the schedule of this contract, at the conclusion of the work hereunder, the contractor shall prepare and submit to the contracting officer 3 copies; to PPC/CDIE/DI, ACQUISITIONS 2 copies [see paragraph (d)], and to the Mission 4 copies, of a final report which summarizes the accomplishments of the assignment, methods of work used and recommendations regarding unfinished work and/or program continuations. The final report shall be submitted within 60 days after completion of the work hereunder unless the required date of submission is extended by the contracting officer.

(d) Contractor shall submit 2 copies of each report required by paragraphs (a)(1), (b), and (c) of this clause or of any other reports required by the schedule of this contract to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to: PPC/CDIE/DI, ACQUISITIONS, Room 209, SA–18, Agency for International Development, Washington, DC 20523.

The title page of all reports forwarded to PPC/CDIE/DI pursuant to this paragraph (d) shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the A.I.D. project office, and the publication or issuance date of the report.

(e) When preparing reports, the contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

(b) *Alternate 71.* For use in fixed price contracts for technical services, use the clause in *Alternate 70*, less paragraph (a)(2).

Appendices to Chapter 7

Appendix D—Direct A.I.D. Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad

7. Paragraph 1, General, is amended by revising paragraph (b) to read as follows:

1. General.

* * * * *

(b) *Definitions.* For the purpose of this appendix:

(1) "Personal services contract (PSC)" means a contract which establishes an employer-employee relationship for the performance of services personally by the contractor. The services may include general continuing services as well as specifically identifiable tasks.

(2) "Employer-employee relationship" means an employment relationship in which the employer supervises or has the power to supervise the performance of the work including, for example, the manner in which the work is to be performed, the days of the week and hours of the day in which it is to be performed, and where the work is to be performed. Another indication of this relationship is the provision by the employer of workspace and basic tools and materials for use in accomplishing the work.

(3) "Non-personal services contract" means a contract which directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task and which establishes an independent contractor relationship between the contractor and the activity contracting for the services.

(4) "Independent contractor relationship" means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under these relationships, the Government does not normally supervise the performance of the work, the manner in which it is to be performed, the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) "Resident Hire" means a U.S. citizen who, at the time they are hired as a PSC, resides in the cooperating country (a) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or (b) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of contracting are lawfully admitted permanent residents of the United States.

(6) "U.S. resident alien" means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

(7) "Abroad" means outside the United States and its territories and possessions.

(8) "A.I.D. direct hire employees" means civilian employees appointed under A.I.D. Handbook 25 procedures.

* * * * *

8. Paragraph 3, *Applicability*, is amended by removing the parenthetical sentence at the end of paragraph (a).

9. Paragraph 4, *Policy* is amended by revising subparagraph (c)(2)(v) introductory text as follows:

4. Policy

* * * * *

(c) * * *

(2) * * *

(v) PSCs shall receive the following allowances and differentials provided in the State Department's Standardized Regulations (Government Civilians Foreign Areas) on the same basis as direct hire U.S. Government employees (except for resident hires, see paragraph 4(g) and Section 11, General Provisions, Definitions Clause 26, "Resident Hire Personal Services Contractors"):

* * * * *

10. Paragraph 4, *Policy*, Subparagraph (c)(2)(vi) is amended as follows: The word "shall" in the first sentence is changed to "may".

11. Paragraph 4, *Policy*, is amended by adding a new paragraph (g) which reads as follows:

4. Policy

* * * * *

(g) Resident Hire Personal Services Contractors.

Resident hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances, unless such individuals can demonstrate to the satisfaction of the contracting officer that they have received similar benefits and allowances from their immediately previous employer in the cooperating country or the Mission Director may determine that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

12. Paragraph 7, *Executing a Personal Services Contract*, is revised as follows:

7. Executing a Personal Services Contract.

Contracting activities, whether A.I.D./W or Mission, may execute personal services contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them under Delegation of Authority No. 1103 "To the Assistant to the Administrator for Management, Concerning Acquisition Functions" (50 FR 23842), as amended (see AIDAR 702.170–10).

In executing a personal services contract, the contracting officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A PIO/T covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable for a personal services contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this Appendix); and

(3) There is no apparent conflict of interest involved (if the contracting officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel).

(d) Selection of the contractor is documented and justified. AIDAR 706.302-70(b)(1) provides an exception to the requirement for full and open competition for personal services contracts abroad (see paragraph 5(c) of this Appendix);

(e) The standard contract format prescribed for personal services contracts (Sections 10, 11, 12 and 13 to AIDAR Appendix D) is used; or that any necessary deviations are processed as required by AIDAR 701.470. (**Note:** The prescribed contract format is designed for use with contractors who are residing in the U.S. when hired. If the contract is with a U.S. citizen residing in the cooperating country when hired, contract provisions governing physical fitness and travel/transportation expenses, and Additional General Provisions dealing with home leave, allowances, and orientation should be suitably modified (see paragraph 4(g) of this Appendix). These modifications are not considered deviations subject to AIDAR 701.470. Justification and explanation of these modifications is to be included in the contract file);

(f) Orientation is arranged in accordance with Additional General Provision 32;

(g) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(h) The contract is complete and correct and all information required on the contract Cover Page (AID form 1420-36A) has been entered;

(i) The contract has been signed by the contracting officer and the contractor, and fully executed copies are properly distributed;

(j) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance, including the completed SF 86, to the extent required by A.I.D. Handbook 8, *Security;*

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical clearance(s) for the contractor and for each dependent who is authorized to travel to the overseas post based on a full medical examination(s) and certification of same by a licensed physician. The physician's certification must be in the possession of the contracting officer prior to any travel undertaken by contractor or his/her dependents;

(4) One original executed IRS Form W-4 entitled "Employee's Withholding Allowance Certificate" and one copy shall be obtained. The original shall be sent to the Controller of the paying office and one shall be placed in the contract file;

(5) The approval for any salary in excess of FS-1, in accordance with Appendix G of this chapter;

(6) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302-70, if applicable;

(7) Any deviation to the policy or procedures of this appendix, processed and approved under AIDAR 701.470;

(8) A fully executed SF 171;

(9) The memorandum of negotiation;

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 134 (the contracting officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understands Attachment 2C of Chapter 2, A.I.D. Handbook 24, *General Personnel Policy*, entitled "Employee Responsibilities and Conduct," and a copy is attached to each contract, as provided for in paragraph 2(c) of General Provision 2, Section 11;

(m) Agency conflict of interest requirements, as set out in Chapter 2D and 2F of A.I.D. Handbook 24, are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services Contractors which may be in the form set out above or another form convenient for the contracting officer, provided that a form containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file; and

(o) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in A.I.D. Handbook 18, *Information Services.*

13. In Section 10, Table of Contents, under General Provisions amend the schedule by adding: "Biographical Data" as new Clause 25 and "Resident Hire PSC" as new Clause 26.

14. Section 11, General Provisions, Index of Clauses is amended by adding: "Biographical Data" as new Clause 25 and "Resident Hire PSC" as new Clause 26.

15. Section 11, General Provision 1, Definitions, is amended by adding paragraph (p) as follows:

1. Definitions

* * * * *

(p) "Resident Hire Personal Services Contractor (PSC)" means a U.S. citizen who, at the time they are hired as a PSC, resides in the cooperating country (a) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or (b) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of contracting, are lawfully admitted permanent residents of the United States.

16. Section 11, General Provision 14 is amended by removing the words "shall be available" in paragraph (a) after "employees" and substituting the words "may be available only".

17. Section 11, General Provision 23, Reports is revised as follows:

23. Reports (June 1987)

(a) The contractor shall prepare and submit 2 copies of each report required by the schedule of this contract to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to: PPC/CDIE/DI, ACQUISITIONS, Room 209, SA-18, Agency for International Development, Washington, DC 20523.

The title page of all reports forwarded to PPC/CDIE/DI pursuant to this paragraph shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the A.I.D. project office, and the publication or issuance date of the report.

(b) When preparing reports, the contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

18. Section 11, General Provisions, is amended by adding the following new Clause 25:

25. Biographical Data

(a) The contractor agrees to furnish biographical information to the contracting officer, on forms (SF 171 and 171As) provided for that purpose.

(b) Emergency locator information. The contractor agrees to provide the following information to the Mission Administrative Officer on arrival in the host country regarding himself/herself and dependents:

(1) Contractor's full name, home address, and telephone number including any after-hours emergency number(s).

(2) The name and number of the contract, and whether the individual is the contractor or the contractor's dependent.

(3) The name, address, and home and office telephone number(s) of each individual's next of kin.

(4) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

19. Section 11, General Provisions, is amended by adding the following new clause 26:

26. Resident Hire Personal Services Contractor

A contractor meeting the definition of a Resident Hire PSC contained in Section 11, General Provisions, Clause 1, Definitions, shall not be eligible for any fringe benefits (except contributions for FICA, health insurance and life insurance), allowances, or differentials, including but not limited to travel and transportation, medical, orientation, home leave, etc., unless such individual can demonstrate to the satisfaction of the contracting officer that he/she has received similar benefits/allowances from their immediately previous employer in the cooperating country, or the Mission Director determines that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

Appendix J—Direct A.I.D. Contracts With Cooperating Country Nationals and With Third Country Nationals for Personal Services Abroad.

20. Paragraph 1, *General,* is amended by revising paragraph (b) (8) to read as follows:

1. General

* * * * *

(b) Definitions

* * * * *

(8) "Third Country National (TCN)" means an individual (a) who is neither a citizen nor a permanent legal resident alien of the United States nor of the country to which assigned for duty, and (b) who is eligible for return to his/her home country or country of recruitment at U.S. Government expense [see Section 13, General Provision 11 paragraph (b)(1)].

* * * * *

21. Paragraph 4, Policy, subparagraph (b)(3)(i) is revised to read as follows:

4. Policy

* * * * *

(b) Limitations on Personal Services Contracts

* * * * *

(3) * * *

(i) Negotiating on behalf of the United States with foreign governments and public international organizations.

Note.—Negotiating on behalf of the United States with private individuals and entities is permitted.

* * * * *

22. Also in paragraph 4, Policy, subparagraph (c)(2)(i) is amended by removing the citation "4(c)(2)(b)" and correcting it to read "4(c)(2)(ii)" in the last sentence of the paragraph.

23. Paragraph 5, *Soliciting for Personal Services Contracts,* paragraph (a)(4) is revised as follows:

5. Soliciting for Personal Services Contracts

* * * * *

(a) Project Officer's Responsibilities

* * * * *

(4) a certification from the officer in the Mission responsible for the LEPCH or equivalent that the position has been reviewed and is properly classified as to a title, series and grade in accordance with the LEPCH. If the position does not fall within the LEPCH or equivalent system, an estimate of compensation based on subparagraph 4(c)(2)(ii) (A) or (B) of Appendix D after consultations or in coordination with the contract officer or executive officer.

* * * * *

24. Paragraph 7, *Executing a Personal Services Contract* is revised as follows:

7. Executing a Personal Services Contract

Contracting activities, whether A.I.D./W or Mission, may execute personal services contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them under Delegation of Authority No. 1103 "To the Assistant to the Administrator for Management, Concerning Acquisition Functions" (50 FR 23842), as amended (see AIDAR 702.170–10).

In executing a personal services contract, the contracting officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A written detailed statement of duties covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable for a personal services contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this Appendix); and

(3) There is no apparent conflict of interest involved (if the contracting officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel).

(d) Selection of the contractor is documented and justified. AIDAR 706.302–70(b)(1) provides an exception to the requirement for full and open competition for personal services contracts abroad (see paragraph 5(c) of this Appendix);

(e) The standard contract format prescribed for Cooperating Country Nationals and Third Country Nationals personal services contracts (Sections 10, 11, 12, 13 14, and 15 to this Appendix as appropriate) is used; or that any necessary deviations are processed as required by AIDAR 701.470.

(f) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(g) The contract is complete and correct and all information required on the contract Cover Page (AID form 1420–36B) has been entered;

(h) The contract has been signed by the contracting officer and the contractor, and fully executed copies are properly distributed;

(i) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance to the extent required by A.I.D. Handbook 6, *Security;*

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical clearance(s) based on a full medical examination(s) and certification of same by a licensed physician. The physician's certification must be in the possession of the contracting officer prior to signature of contract. If a TCN is recruited, medical clearance requirements apply to the contractor and for each dependent who is authorized to accompany the contractor.

(4) The approval for any salary in excess of FS–1, in accordance with Appendix G of this chapter;

(5) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302–70, if applicable;

(6) Any deviation to the policy or procedures of this Appendix, processed and approved under AIDAR 701.470;

(7) The memorandum of negotiation;

(j) The position description is classified in accordance with the LEPCH, and the proposed salary is consistent with the local compensation plan or the alternate procedures established in 4(c)(2)(ii) above;

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 134 (the contracting officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understands Attachment 2C of Chapter 2, A.I.D. Handbook 24, *General Personnel Policy,* entitled "Employee Responsibilities and Conduct," and a copy is attached to each contract, as provided for in paragraph 2(c) of General Provision 2, Section 11;

(m) Agency conflict of interest requirements, as set out in Chapter 2D and 2F of A.I.D. Handbook 24, are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services Contractors which may be in the form set out above or another form convenient for the contracting officer, provided that a form containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file;

(o) In consultation with the regional legal advisor and/or the regional contracting officer, the contract is modified by deleting from the General Provisions (Sections 10, 11, 12, 13, 14, and 15 of this Appendix) the inapplicable clause(s) by a listing in the Schedule; and

(p) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in A.I.D. Handbook 18, *Information Services.*

25. Section 11, General Provisions, Contract With a Cooperating Country National for Personal Services, Clause 3, Physical Fitness, is revised as follows:

3. PHYSICAL FITNESS (October 1987)

The contractor shall be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract. A copy of the certificate shall be provided to the contracting officer before the contractor starts work under the contract. The contractor shall be reimbursed for the cost of the physical examination based on the rates prevailing locally for such examinations in accordance with Mission practice.

26. Section 11, General Provisions, Contract With a Cooperating Country National for Personal Services Clause 5, Workweek, is revised as follows:

5. WORKWEEK (October 1987)

The contractor workweek shall not be less than 40 hours, unless otherwise provided in the Schedule, and shall coincide with the workweek for those employees of the Mission or the cooperating country agency most closely associated with the work of this contract. If approved in advance in writing, overtime worked by the contractor shall be paid in accordance with the procedures governing premium compensation applicable to direct hire foreign service national employees.

27. Section 11, General Provisions, Contract With a Cooperating Country National for Personal Services, Clause 6, Leave and Holidays, is revised as follows:

6. LEAVE AND HOLIDAYS (October 1987)

(a) Vacation Leave.

The contractor may accrue, accumulate, use and be paid for vacation leave in the same manner as such leave is accrued, accumulated, used and paid to foreign service national direct hire employees of the Mission. No vacation leave shall be earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy and practice.

(b) Sick Leave.

The contractor may accrue, accumulate, and use sick leave in the same manner as such leave is accrued, accumulated and used by foreign service national direct hire employees of the Mission. Unused sick leave may be carried over under an extension of the contract. The contractor will not be paid for sick leave earned but unused at the completion of this contract.

(c) Leave Without Pay.

Leave without pay may be granted only with the written approval of the contracting officer or Mission Director.

(d) Holidays.

The contractor shall be entitled to all holidays granted by the Mission to direct hire cooperating country national employees who are on comparable assignments.

28. Section 11, General Provisions, Contract With a Cooperating Country National for Personal Services, Clause 10, Payment, is revised as follows:

10. PAYMENT (October 1987)

(a) Payment of compensation shall be based on written documentation supporting time and attendance which may be (1) maintained by the Mission in the same way as for direct hire FSN's or (2) the contractor may submit such written documentation in a form acceptable to Mission policy and practice as required for other personal service contractors and as directed by the Mission Controller or paying office. The documentation will also provide information required to be filed under Cooperating Country laws to permit withholding by A.I.D. of funds, if required, as described in the clause of these General Provisions entitled Social Security and Cooperating Country Taxes.

(b) Any other payments due under this contract shall be as prescribed by Mission policy for the type of payment being made.

29. Section 11, General Provisions, Contact With a Cooperating Country National for Personal Services, in Clause 11, No Access to Classified Information, the clause heading and paragraph (a) are revised as follows:

11. NO ACCESS TO CLASSIFIED INFORMATION (October 1987)

(a) The contractor shall not normally have access to classified or administratively controlled information and shall take conscious steps to avoid receiving or learning of such information. However, based on contractor's need to know, Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with A.I.D. Handbook 6.

* * * * *

30. The title of Section 13, General Provisions—Contract With Third Country National for Personal Services is revised as follows: General Provisions—Contract With a Third Country National for Personal Services.

31. Section 13, General Provisions, Contract With a Third Country National for Personal Services, Clause 3, Physical Fitness, is revised as follows:

3. PHYSICAL FITNESS (October 1987)

The contractor shall be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract. A copy of the certificate shall be provided to the contracting officer before the contractor starts work under the contract. The contractor shall be reimbursed for the cost of the physical examination based on the rates prevailing locally for such examinations in accordance with Mission practice, or not to exceed $100 if not done locally.

32. Section 13, General Provisions, Contract With a Third Country National for Personal Services, Clause 6, Leave and Holidays, is revised as follows:

6. LEAVE AND HOLIDAYS (October 1987)

(a) Vacation Leave.

The contractor may accrue, accumulate, use and be paid for vacation leave in the same manner as such leave is accrued, accumulated, used and paid to foreign service national direct hire employees of the Mission but no vacation leave shall be earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy and practice.

(b) Sick Leave.

The contractor may accrue, accumulate, and use sick leave in the same manner as such leave is accumulated and used by foreign service national direct hire employees of the Mission. Unused sick leave may be carried over under an extension of the contract. The contractor will not be paid for sick leave earned but unused at the completion of this contract.

(c) Holidays.

The contractor shall be entitled to all holidays granted by the Mission to direct hire cooperating country national employees who are on comparable assignments.

33. Section 13, General Provisions, Contract With a Third Country National for Personal Services, in Clause 11, Travel and Transportation Expenses, the clause heading and paragraph (b)(1) are revised as follows:

11. Travel and Transportation Expenses (October 1987)

(a) General.

* * * * *

(b) Travel and Transportation

(1) Notwithstanding other provisions of this Clause 11, a TCN must return to the country of recruitment or to the TCN's home country within 30 days after termination or completion of employment or will forfeit all right to reimbursement for repatriation travel. The return travel obligation (repatriation travel) assumed by the U.S. Government may have been the obligation of another employer in the area of assignment if the employee has been in substantially continuous employment which provided for the TCN's return to home country or country from which recruited.

* * * * *

34. Section 13, General Provisions, Contract With a Third Country National for Personal Services, Clause 12, Payment, is revised as follows:

12. PAYMENT (October 1987)

(a) Payment of compensation shall be based on written documentation supporting time and attendance which may be (1) maintained by the Mission in the same way as for direct hire FSN's or (2) the contractor may submit such written documentation in a form acceptable to Mission policy and practice as required for other personal service contractors and as directed by the Mission Controller or paying office. The

documentation will also provide information required to be filed under Cooperating Country laws to permit withholding by A.I.D. of funds, if required, as described in the clause of these General Provisions entitled Social Security and Cooperating Country Taxes.

(b) Any other payments due under this contract shall be prescribed by Mission policy for the type of payment being made

35. Section 13, General Provisions, Contract With a Third Country National for Personal Services, in Clause 15, No Access to Classified Information, the clause heading and paragraph (a) are revised as follows:

15. NO ACCESS TO CLASSIFIED INFORMATION (October 1987)

(a) The contractor shall not normally have access to classified or administratively controlled information and shall take conscious steps to avoid receiving or learning of such information. However, based on contractor's need to know, Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with A.I.D. Handbook 6.

* * * * *

36. Section 14, Additional Provisions, Contract With a Third Country National for Personal Services, Clause 3, Physical Fitness, is revised as follows:

3. PHYSICAL FITNESS (October 1987)

(a) Predeparture.

The contractor's authorized dependents shall also be required to be examined by a licensed doctor of medicine. The contractor shall require the doctor to certify that in the doctor's opinion, the contractor's authorized dependents are physically qualified to reside in the cooperating country. A copy of the certificate shall be provided to the contracting officer prior to the dependent's departure for the cooperating country.

(b) End of Tour.

The contractor and his/her authorized dependents are authorized physical examinations within 60 days after completion of the contractor's tour of duty.

(c) *Reimbursement.*

The contractor shall be reimbursed for the cost of the physical examinations mentioned in paragraphs (a) and (b) above as follows: (1) Based on those rates prevailing locally for such examinations in accordance with Mission practice or (2) if not done locally, not to exceed $100 per examination for the contractor's dependents of 12 years of age and over and not to exceed $40 per examination for contractor's dependents under 12 years of age. The contractor shall also be reimbursed for the cost of all immunizations normally authorized and extended to FSN employees.

37. Section 15, FAR Clauses is amended by adding the following FAR citation: "14. Anti-Kickback Procedures, 52.203-7."

Date: October 1, 1987.

John F. Owens,

Procurement Executive.

[FR Doc. 87-23396 Filed 10-13-87; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 70752-7196]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 1 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) adopted by the Western Pacific Fishery Management Council (Council) at its 57th meeting in Honolulu, Hawaii on June 4–5, 1987. Amendment 1 permits the Council to consider limited access for American Samoa and Guam, and changes the due date for the annual bottomfish report from March 31 to June 30. The intent of this action is to amend the FMP so that the Council can act quickly to protect the bottomfish resources in American Samoa and Guam, if necessary.

EFFECTIVE DATE: November 11, 1987.

ADDRESS: Copies of the amendment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813 (808-523-1368).

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Council to establish a framework for managing the bottomfish fisheries within the U.S. exclusive economic zone (EEZ) around Hawaii, American Samoa, and Guam, and the seamount groundfish fisheries in the EEZ around the Hancock Seamounts northwest of the Northwestern Hawaiian Islands (NWHI). The FMP describes the processes by which the fishery will be managed, and establishes the limits and controls within which regulatory adjustments may be made. A set of heavily fished bottomfish species is routinely monitored by a Plan Monitoring Team appointed by the Council, and a set of indicators provides the basis for further investigation or recommendations for action on the part of the Regional Director through notice in the **Federal Register.**

In response to concerns of American Samoa and Guam representatives regarding maintaining the stability of the bottomfish resources in their respective areas, the Council approved the development of limited access proposals for these areas at its June meeting. The original FMP reserves limited entry management proposals only for the NWHI.

In addition, regulations presently in effect require the Bottomfish Monitoring Team to prepare an annual report on the fishery by March 31 of each year. The report contains information on the bottomfish fisheries operating in the Northwestern Hawaiian Islands, the main Hawaiian Islands, American Samoa and Guam during the past year. It has not been possible for the monitoring team to prepare an annual report by the March 31 deadline because a large portion of the fishery data is not available before this date. The data availability problem can be solved by extending the due date of the annual report from March 31 to June 30 of each year.

Proposed rules were published in the **Federal Register** on July 24, 1987 (52 FR 27838), and the public comment period ended on September 3, 1987. No comments were received.

Classification

The Administrator of NOAA determined that this amendment is necessary for the conservation and management of the bottomfish fishery of the Western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the amendment containing the EA may be obtained at the above address.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of his determination appears in the proposed rule.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small

businesses. A summary of this determination appears in the proposed rule.

This rule contains no collection of information requirement subject to the Paperwork Reduction Act.

The Council has determined, and the appropriate State and territorial government offices have found, that the measures established in the amendment are consistent to the maximum extent practicable with the approved coastal zone management programs of American Samoa and Guam.

List of Subjects in 50 CFR Part 683

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: October 8, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 683 is proposed to be amended as follows:

PART 683—[AMENDED]

1. The authority citation for 50 CFR Part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 683.24, paragraph (a) introductory text is revised, paragraphs (d) (1) and (2) are redesignated as (d) (2) and (3), and a new paragraph (d)(1) is added to read as follows:

§ 683.24 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

* * * * *

(d) * * *

(1) Access limitation may be adopted only for the NWHI, American Samoa, and Guam.

* * * * *

[FR Doc. 87-23728 F ed 10-8-87; 3:23 pm]

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Proposed Rules

Federal Register
Vol. 52, No. 198
Wednesday, October 14, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 300]

Food Stamp Program; Prerelease Applications From Residents of Institutions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes changes to Food Stamp Program regulations based on section 11006 of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, enacted on October 27, 1986) which provides certain individuals in institutions applying for Supplemental Security Income (SSI) the opportunity to also apply for Food Stamp Program benefits by completing a single application for SSI and food stamps before they are released from instituions. These proposed rule changes allow institutionalized individuals to receive assistance upon release.

DATE: Comments on this proposed rulemaking must be received on or before December 14, 1987, to be assured of consideration.

ADDRESS: Comments should be submitted to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 708, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ms. Seymour at the above address or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512–1

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1 and has been classified as non major. The rule will not result in an annual economic impact of more that $100 million or major increases in costs or prices, nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovermental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action does not have a significant economic impact on a substantial number of small entities. This action would affect certain individuals in institutions and the State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Section 11006 of the Anti-Drug Abuse Act of 1986 amends section 1631 of the Social Security Act (42 U.S.C. 1383) to require the Secretaries of the Department of Health and Human Services and the Department of Agriculture to develop a procedure under which an individual who applies for SSI benefits will also be permitted to apply for participation in the Food Stamp Program prior to the discharge or release of the individual from a public institution by executing a single application. It is expected that this provision will simplify applying for Food Stamp Program benefits for individuals anticipating release from a public institution and expedite financial help upon release.

The Social Security Administration (SSA) currently accepts SSI applications from individuals not yet discharged from an institution under their Prerelease Program for the Institutionalized (Program Operations Manual System GN–00204.293). However, there are no similar procedures in Food Stamp Program regulations for processing food stamp applications for residents of public institutions prior to their release from the institution. Consequently, residents of institutions now must wait until they are released before they may apply for food stamp benefits.

Pursuant to the passage of the Anti-Drug Abuse Act of 1986, the Department met with SSA staff to discuss the procedures which could be used for prerelease institutionalized applicants and to resolve problems in combining the applications for SSI and food stamps into a single application. The Food and Nutrition Service (FNS) is currently working with SSA staff to resolve the problems created by a single application. However, pending resolution of the single application issue, SSA and FNS staff agree that SSA field staff and food stamp State agencies should use the same processing procedures thay are currently using under existing SSA/food stamp joint processing regulations at 7 CFR 273.2(k). This will avoid a delay in implementing the prerelease application provision of section 11006. While current food stamp regulations do not contemplate prerelease applications, they do, in 7 CFR 273.2(k) provide for the joint processing of food stamp and SSI applications at SSA offices. SSA accepts food stamp applications and conducts interviews at SSA offices for food stamp applicant households consisting entirely of SSI applicants or recipients which

request this service and which have neither applied for food stamps during the previous 30 days nor have an application pending at the State agency. These applications are then forwarded to the food stamp office for determination of eligibility for the Food Stamp Program. These determinations are made within one working day after receipt of the signed applications.

SSA issued Program Circular No. 03–87–OSSI on March 9, 1987 to its field office staff notifying them of the upcoming procedures for accepting food stamp applications from prerelease applicants. SSA will issue further instructions on this procedure to their field offices. The FNS is keeping food stamp regional offices informed as plans progress and will notify them when SSA issues further instructions so that their respective State agencies can be alerted to expect applications from individuals not yet discharged from institutions.

That applications will be taken before the applicant leaves the public institution creates a potential conflict with the 30-day application processing time required by section 11(e)(3) of the Food Stamp Act. Unlike the Food Stamp Program, SSI has no processing time requirements. It may take several months for an SSI application to be approved. Under the prerelease program the institutionalized person will usually not be released until the institution has been notified that the person is potentially eligible for SSI. Thus, a prerelease food stamp application could be pending with the State agency for several months. This obviously contravenes the Food Stamp Program's 30-day processing time requirement. Under current application processing procedures in 7 CFR 273.2(c), the 30-day (or 5-day for expedited service) processing time begins on the date a signed application is filed by the applicant. Since the institutionalized applicant cannot be eligible for food stamps until he or she is released from the institution, this definition of the date of application raises problems for prerelease applicants. The Department considered three options on how to re-define the date of application for prerelease applicants.

The first option is to follow current policy, e.g., in accordance with 7 CFR 273.2(c)(1), define the date of application as the day the institutionalized person signs and submits the application. Under this definition, for a State agency to meet the 30-day processing time requirement it would have to deny the application if the applicant is not released within 30 days, and the individual would have to reapply. The applying and denying (since the person very often would be in the institution for several months after applyling for benefits) could go on for several 30-day cycles—this is clearly not what Congress intended. Thus, for this specific group of people the current definition of the date of application is not viable.

The second option is to use the date of the notice of potential SSI eligibility. The determination of potential eligibility is valid for 30 days (37 days if the institution indicates the individual will be released within 7 days of the end of the 30-day period. Once an institution is notified of SSI eligibility it usually, but not always, releases the individual within 30-37 days. If SSA has not been contacted by the institution within 23 days, SSA will contact the institution again. The problem with using the date of SSI prospective eligibility is that the release may not occur within 30 days, or even 37 days, and thus the State agency is again forced to deny the application in order to meet the 30-day time limitation. The applicant would then have to reapply. This is burdensome for both the State agency and the applicant.

The third option is to use the applicant's actual release date from the institution as the date of application. It is not until the time of release that the institutionalized applicant's new living arrangement is known for certain. Before making a final eligibility determination on the prerelease application the State agency will have to know what type of living situation the applicant is moving into. For example, the State agency will have to ensure that the applicant has not moved into another institutional situation and will need information on the applicant's expenses and the composition of the household in order to determine the benefit level The Department expects that most of these applicants will be entitled to expedited service. This is because these applicants are residents of public institutions and probably have little or no resources, they almost certainly have no income at the time of application and they will not know exactly their SSI check will be received. Based on the expectation that most prerelease applicants will be eligible for expedited service, they would receive benefits within 5 days of release from the institution. The State agency would thus meet its processing deadlines and still ensure rapid benefit delivery to the applicant. It will be extremely important that SSA notify the State agency as quickly as possible of the release date, because if there is a delay in notification there may be a delay in benefit delivery. SSA has assured FNS that their notification will be timely. In light of this, the Department is proposing to use the release date as the date of application for prerelease applicants.

Specifically, the changes being proposed in this rule are as follows. Language is being added to 7 CFR 273.1(e) to provide that residents of public institutions who apply for SSI prior to their release from an institution under SSA's Prerelease Program for the Institutionalized shall be permitted to apply for food stamps at the same time they apply for SSI. Changes are proposed to 7 CFR 273.1(c)(1), (g)(1), and (i)(3)(i) to specify that for residents of public institutions who apply jointly for SSI and food stamps the filing date of the food stamp application is the date of release from the instituion and that normal and expedited procesing times shall begin from that date. Consistent with this, language has been added to 7 CFR 273.10(a) to provide that these prerelease applicants will have their eligibility determined for the calendar month in which the household is released from the institution and their benefits will be prorated form the date of release.

Changes are proposed to 7 CFR 273.2(j)(1)(iv) and (j)(2)(i) to provide that, for prerelease applicants, a finding by SSA of *potential* SSI eligibility prior to release would not make these applicants categorically eligible for food stamp benefits. These prerelease applicants will be considered categorically eligible when a final SSI eligibility determination has been made and the individual has been release from the institution. Food Stamp Program benefits would be paid from the prerelease applicant's date of release.

This rule proposes changes to 7 CFR 273.2(k)(1)(i) to include prerelease applicants in the joint processing procedures. The proposed rule provides that SSA staff take the joint SSI and food stamp applications from residents of institutions prior to their release and that the State agency make an eligibility determination and issue benefits within normal or expedited processing standards using the date of release as the date of application. The proposed rule also provides that SSA notify the State agency of the prerelease applicant's release date. The Department encourages State agencies to follow-up with SSA if they do not hear from SSA about a given application for an undue period of time (for example, three months or more). The proposed rule also provided that, if, for any reason, the State agency is not notified on a timely basis of the

applicant's release date, the State agency shall restore benefits in accordance with 7 CFR 273.17 to such applicant back to the date of release.

Finally, this rule proposes to add a paragraph to 7 CFR 273.11 which identifies prerelease applicants as a household with special circumstances and cross-references the sections of the regulations which specify the procedures to be used for such households.

Implementation

It is proposed that the provisions in this rule be implemented by State agencies on the first day of the first month which begins 30 days after publication of the final rule. The Department feels that this timeframe is reasonable. State agencies which will have already received applications from prerelease applicants at the time will need only to adjust the date of application accordingly.

List of Subject in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamp, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly 7 CFR Part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for Part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 273.1, paragraphs (e)(1) through (5) are redesignated as paragraphs (e)(1)(i) through (v), introductory paragraph (e) is redesignated as paragraph (e)(1), and a new paragraph (e)(2) is added to read as follows:

§ 273.1 Household concept.

* * * * *

(e) *Residents of institutions.* * * *

(2) Residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration's Prerelease Program for the Institutionalized (42 U.S.C. 1383(j) shall be permitted to apply for food stamps at the same time they apply for SSI. These prerelease applicants shall be processed in accordance with the provisions in §§ 273.2 (c), (g), (i), (j), and (k), 273.10(a) and 273.11(i), as appropriate.

* * * * *

3. In § 273.2:

a. The second sentence of paragraph (c)(1) is revised, a new sentence is added between the second and third sentences, and a new sentence is added at the end of (c)(1).

b. The first sentence of paragraph (g)(1) is revised and a new sentence is added at the end of the paragraph.

c. A new sentence is added to paragraph (i)(3)(i) between the first and second sentences.

d. The eleventh sentence of paragraph (j)(l)(iv) is revised and a new sentence added between the eleventh and twelfth sentences.

e. Two new sentences are added to paragraph (j)(2)(i) between the first and second sentences.

f. Paragraphs (k)(1)(i)(D) through (k)(1)(i)(O) are redesignated as paragraphs (k)(1)(i)(E) through (P), respectively and a new paragraph (k)(1)(i)(D) is added.

g. The first sentence of newly redesignated paragraph (k)(1)(i)(F) is revised and three new sentences are added between the third and fourth sentences.

h. A new sentence is added to the end of new redesignated paragraph (k)(1)(i)(I).

i. The second sentence of newly redesignated paragraph (k)(1)(i)(J) is amended by adding the words "unless the applicant is a resident of an institution as described in § 273.1(e)(2)." to the end of the sentence.

The revisions and additions read as follows:

§ 273.2 Application processing.

* * * * *

(c) *Filing an application—(1) Household's right to file.* * * * The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution as described in § 273.1(e)(2). Residents of public institutions who apply for food stamps prior to their release from an institution shall be certified in accordance with § 273.2(g)(1) or § 273.2(i)(3)(i), as appropriate. * * * When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by the State agency on the application is the date of release of the application from the institution.

* * * * *

(g) *Normal processing standard—(1) Thirty-day processing.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date application was filed, except for residents of public institutions who apply for SSI and food stamp benefits prior to release from the institution as described in § 273.1(e)(2). * * * For residents of public institutions who apply for food stamps prior to their release from the institution as described in § 273.1(e)(2), the State agency shall provide an opportunity to participate as soon as possible, but no later than 30 calendar days from the date of release of the applicant from the institution.

* * * * *

(i) *Expedited Service* * * *

(3) *Processing standards.* * * *

(i) *General.* * * * For a resident of a public institution who applies for benefits prior to his/her release from the institution as described in § 273.1(e)(2) and who is entitled to expedited service, the date of filing of his/her application is the date of release of the applicant from the institution. * * *

* * * * *

(j) *PA, GA and categorically eligible households.* * * *

(1) *Applicant PA households.* * * *

(iv) Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution as described in § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the food original food stamp application date, or December 23, 1985, whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. * * *

(2) *Categorically eligible households.* (i) * * * Residents of public institutions who apply jointly for SSI and food stamp benefits prior of their release from the institution as described in § 273.1(e)(2), shall not be categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. These individuals shall be considered categorically eligible at such time as a final SSI eligibility determination has been made and the individual has been released from the institution. * * *

* * * * *

(k) *SSI households.* * * *

(1) *Initial application and eligibility determination.* * * *

(i) * * *

(D) The SSA staff shall complete joint SSI and food stamp, applications for residents of public institutions as described in § 273.1(e)(2). For such applicants, the SSA staff shall use a

joint SSI and food stamp application prescribed by both FNS and SSA.

* * * * *

(F) Except for applications taken in accordance with paragraph (k)(1)(i)(D) of this section, the State agency shall make an eligibility determination and issue food stamp benefits to eligible SSI households within 30 days following the date the application was received by the SSA. * * * The State agency shall make an eligibility determination and issue food stamp benefits to residents of public institutions who applying jointly for SSI and food stamps within 30 days following the date of the applicant's release from the institution. Expedited processing time standards shall also begin on the date of applicant's release from the institution in accordance with § 273.2(i)(3)(i). SSA shall notify the State agency of the date of release of the resident of an institution who has applied prior to release for SSA and food stamps. If, for any reason, the State agency is not notified on a timely basis of the applicant's release date, the State agency shall restore benefits in accordance with § 273.17 to such applicant back to the date of release. * * *

* * * * *

(I) * * * This provision does not apply to applications described in paragraph (k)(1)(i)(D) of this section.

* * * * *

4. In § 273.10:

a. A new sentence is added to the end of paragraph (a)(1)(i).

b. The first and second sentences of paragraph (a)(1)(ii) are revised.

The revision and additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) *Month of application—(1) Determination of eligibility and benefit levels.* * * *

(i) * * * Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution as described in § 273.1(e)(2) will have their eligibility determined for the calendar month in which the applicant household was released from the institution.

(ii) A household's benefit level for the initial month of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution as described in § 273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release from the institution to the end of the month. * * *

* * * * *

5. In § 273.11, paragraphs (i), (j), and (k) are redesignated as paragraphs (j), (k), and (l), respectively and a new paragraph (i) is added to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(i) *Prerelease applicants.* A household which consists of a resident or residents of a public institution(s) which applies for SSI under SSA's Prerelease Program for the Institutionalized shall be allowed to apply for food stamp benefits jointly with their application for SSI prior to their release from the institution. Such households shall be certified in accordance with the provisions of §§ 273.1(e), 273.2 (c), (g), (i), (j), and (k), and 273.10(a), as appropriate.

* * * * *

Anna Kondratas,

Administrator.

October 6, 1987.

[FR Doc. 87-23697 Filed 10-13-87; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-130-AD]

Airworthiness Directives; Short Brothers, Ltd., Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Model SD3-60 series airplanes, that would require replacement of certain pitot tubes. This proposal is prompted by reports of inoperative pitot tues due to icing. This condition, if not corrected, could result in erroneous airspeed and altitude indications.

DATES: Comments must be received no later than November 13, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Short Brothers, Ltd., Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, Seattle Aircraft Certification Office, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance

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with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Shorts Model SD3–60 series airplanes. There have been several reports of inoperative pitot tubes due to icing, which have resulted in erroneous airspeed and altitude indications.

Short Brothers, Ltd., issued Service Bulletin SD3–34–26, Revision 1, dated September 1985, which indicates that pitot tubes produced between October 1982 and October 1983 were manufactured from stainless steel, in lieu of copper, with a resultant reduction of efficiency of the anti-icing system. These stainless steel pitot tubes bear a code letter "Z" adjacent to the serial number. The service bulletin describes inspection of pitot tubes for code letter "Z," and replacement, if necessary, with copper pitot tubes bearing a code letter other than "Z." The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of left and right pitot tubes bearing code letter "Z" adjacent to the serial number with pitot tubes bearing a code letter other than "Z," in accordance with the service bulletin previously mentioned.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,920.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers, Ltd.: Applies to Model SD3–60 series airplanes; serial numbers SH3002 through SH3096, inclusive; certificated in any category. Compliance required as indicated, unless previously accompanied.

To prevent pitot tubes from becoming inoperative due to icing, which could result in erroneous airspeed and altitude indication, accomplish the following:

A. Within the next 180 days after the effective date of this AD, replace pitot tubes having the code letter "Z" adjacent to the serial number with one containing a code letter other than "Z," in accordance with accomplishment instructions in Service Bulletin SD3–34–26, Revision 1, dated September 1, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, Ltd., Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 22, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–23678 Filed 10–13–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 861–0019]

Wyoming State Board of Chiropractic Examiners; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Landers, Wyoming board, which has exclusive authority to license chiropractors in the state, to refrain from prohibiting, restricting, impeding or discouraging any person from advertising truthful, nondeceptive information made available by any licensed chiropractor. In addition, respondent would agree not to characterize such advertising as unethical or unprofessional.

DATE: Comments must be received on or before December 14, 1987.

ADDRESSES: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Claude C. Wild, III, Denver Regional Office, Federal Trade Commission, 1405 Curtis Street, Suite 2900, Denver, CO 80202, (303) 844–2271.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Chiropractors, Trade practices.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Wyoming State Board of Chiropractic Examiners (hereafter sometimes

referred to as "proposed respondent") and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the Wyoming State Board of Chiropractic Examiners, by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent is organized, exists and transacts business under the laws of the State of Wyoming. The Board's principal office and place of business is located at the office of Glenn R. Harrison, DC, its Secretary-Treasurer, at 550 Main Street, Lander, Wyoming 82520.

2. Proposed respondent admits all of the jurisdictional allegations set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, both it and the draft complaint will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, in disposition of the proceeding, and without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order, to proposed respondent's address as stated in this agreement, shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered that for the purposes of this Order, the following definitions shall apply:

A. "Board" shall mean the Wyoming State Board of Chiropractic Examiners, its members, officers, agents, representatives, employees, successors and assigns.

B. "Disciplinary action" shall mean:

(1) A refusal to grant, or the revocation or suspension of, a license to practice chiropractic in Wyoming; (2) a refusal to admit a person to examination for a license to practice chiropractic; (3) the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; (4) the imposition of a fine, probation, or other penalty or condition; or (5) the initiation of an administrative, criminal, or civil court proceeding against any person or organization.

C. "Person" shall mean any natural person, corporation, partnership, governmental entity, association, organization, or other entity.

II.

It is further ordered that after the date of service of this Order, the Board, directly or indirectly, or through any device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, impeding or discouraging any person from offering, publishing or advertising any price, term or condition of, or any other information concerning, any chiropractic service offered for sale or made available by any licensed chiropractor. The practices from which the Board shall cease and desist include, but are not limited to:

1. Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit advertising information about any chiropractic service;

2. Taking or threatening to take any disciplinary action against any person for advertising information about any chiropractic service; or

3. Declaring it to be an illegal, unethical, unprofessional, or otherwise improper or questionable practice for any person to advertise information about any chiropractic service; and

B. Inducing, urging, encouraging or assisting any nongovernmental person to take any action that if taken by the Board would be prohibited by part II(A) above.

Provided that, nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action, to prohibit advertising that the Board reasonably believes to be false or deceptive within the meaning of Wyo. Stat. Section 33–10–110(a)(vi), as limited by the First and Fourteenth Amendments to the United States Constitution.

Provided further that, this Order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of chiropractic.

III.

It is further ordered that the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as Appendix A, a copy of this Order and a copy of the accompanying Complaint:

1. Within thirty (30) days after the date of service of this Order, to each person licensed to practice chiropractic in Wyoming as of the date of service of this Order and to each person whose application for, or a request for reinstatement of, a license is pending on such date; and

2. For five (5) years after the date of service of this Order, to each person

who applies for a license to practice chiropractic in Wyoming within (30) days after the Board receives such application;

B. Within ninety (90) days after the date of service of this Order, remove from its Rules and Regulations and any other policy statement or guidelines, any provision, interpretation or statement that is inconsistent with Part II of this Order;

C. For five (5) years after the date of service of this Order, maintain and upon request make available to the Federal Trade Commission (or its staff), for inspection and copying, copies of all records relating to advertising, including but not limited to written communications and any summaries of oral communications to or from the Board regarding the offering, publishing or advertising of information about any chiropractic service;

D. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the practice of chiropractic in Wyoming that may affect compliance obligations arising out of this Order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of (or other relevant change in) the Board; and

E. Within one hundred twenty (120) days after the date of service of this Order, submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which the Board has complied and is complying with this Order.

Appendix A

Announcement

As you may be aware, the Federal Trade Commission has issued a consent order against the Wyoming State Board of Chiropractic Examiners that became final on [date]. The order provides that the Board may not prohibit chiropractors from advertising their services in a truthful, nondeceptive manner. The Board may not (1) adopt or maintain rules, regulations or policies that prohibit truthful, nondeceptive advertising with respect to the sale of chiropractic services; (2) take disciplinary action (such as the suspension, revocation or refusal to issue a license) or threaten disciplinary action against any person or organization that so advertises; or (3) declare it to be illegal, unethical, unprofessional, or otherwise improper or questionable for persons to engage in truthful, nondeceptive advertising. The Board is also prohibited from encouraging any person or organization to take actions that the order prohibits the Board from taking. The order does not affect the Board's authority to prohibit advertising that is likely to deceive or mislead the public, nor does the order prevent the Board from disciplining licensees for engaging in such advertising. Further, the order does not prevent the Board from seeking legislation concerning the practice of chiropractic.

For more specific information, you should refer to the FTC Order itself. A copy of the order is enclosed.

Wyoming State Board of Chiropractic Examiners

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Wyoming State Board of Chiropractic Examiners (the "Board").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that:

The Board is subject to the Commission's jurisdiction pursuant to section 5 of the Federal Trade Commission Act.

The Board has acted as a combination or conspiracy of its members or combined or conspired with others to restrain unreasonably competition among chiropractors in Wyoming by adopting and maintaining "Standards to be Followed" prohibiting the dissemination of truthful, nondeceptive information about chiropractic services. These activities constitute unfair methods of competition and unfair acts or practices in violation of section 5 of the Federal Trade Commission Act.

The Board is organized and exists under the laws of the State of Wyoming. Membership on the Board is limited to chiropractors who by law must have practiced chiropractic for three years before becoming a Board member and must continue to be engaged in the practice of chiropractic while serving their membership terms. Except to the extent that competition is restrained as alleged in the complaint, chiropractors compete with one another, and the Board's members compete with the chiropractors they regulate.

The Board is the sole licensing authority for chiropractors in Wyoming. Under state law the Board is responsible for establishing standards governing the examination and licensing of chiropractors in Wyoming. It may adopt rules and regulations necessary for the performance of its duties. The Board is also authorized to refuse to issue a license to, or to suspend or revoke an existing license of, any person found guilty of certain enumerated offenses, which include "dishonest, unethical or unprofessional conduct likely to deceive, defraud or harm the public." The State of Wyoming has no articulated policy to restrict truthful, nondeceptive advertising by chiropractors.

In furtherance of the combination or conspiracy, the Board has restrained competition among chiropractors in Wyoming by unreasonably restricting the dissemination of truthful, nondeceptive information by chiropractors. Specifically, all telephone book advertising is prohibited with the exception of a statement of the chiropractor's name, address and two additional lines of information. Further, there are a variety of restrictions regarding what can be included in "public relations" materials such as prohibitions against: (1) "flamboyant" copy; (2) promising cures; (3) offering free consultations or examinations; (4) statements regarding fees; (5) claims of superiority; (6) criticisms of other health sciences; and (7) claims that cannot be substantiated by standard laboratory and diagnostic procedures.

The Board has directed individual chiropractors to abandon their efforts to advertise the availability of chiropractic services and the offering of free examinations or consultations. The Board has also encouraged competing chiropractors to agree on the extent of advertising the competitors would permit in their market. The Board has continued its course of conduct although it has known since at least 1978 that its restrictions on truthful, nondeceptive advertising were invalid and probably unenforceable.

As a result of the Board's restraints on advertising, consumers have been deprived of the benefits of vigorous competition and of truthful information about chiropractic services. Chiropractors have been prevented from competing on the basis of making this

information available to consumers through advertising.

Description of the Proposed Consent Order

The proposed consent order would require the Board to cease and desist from prohibiting, restricting, impeding or discouraging any person from offering, publishing or advertising any price, term or condition of, or any other information concerning, any chiropractic service offered for sale or made available by any licensed chiropractor. Thus, the Board would have to repeal its prohibitions on advertising truthful, nondeceptive services and would have to refrain from adopting any other rule or policy that would prohibit or discourage such advertising. The order would further prohibit the Board from inducing, urging, encouraging or assisting others to take any of the actions prohibited by the order.

The order provides, however, that the Board may adopt and enforce reasonable rules and take disciplinary action to prohibit advertising that the Board reasonably believes to be false or deceptive within the meaning of Wyoming State Law, provided that such action is consistent with the First and Fourteenth Amendments to the United States Constitution. The order also provides that the Board is entitled to petition for legislation concerning the practice of chiropractic.

The proposed order would require that the Board distribute a copy of the order and an explanatory announcement notifying all licensees, as well as all persons with applications pending, of the existence and terms of the consent agreement within thirty (30) days after the order becomes final. The Board would be required to send the same notice to each person who applied for a license for a period of five (5) years thereafter. To ensure that the proposed order is obeyed, the Board would be required within one hundred twenty (120) days after the order becomes final to file a written report with the Commission setting forth the manner and form of its compliance. The Board would also be required, for a period of five (5) years, to make its records available to the Commission, and to notify the Commission within thirty (30) days of any change in the Board's authority to regulate the practice of chiropractic that might affect its ability to comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 87-23724 Filed 10-13-87; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3276-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Extension of public comment period for a previously published proposed exclusion for a delisting petition.

SUMMARY: Today's notice announces a 30 day extension of the public comment period for a proposed Agency decision (52 FR 33439, September 3, 1987) to grant Syntex Agribusiness, Inc. (Syntex), located in Springfield, Missouri, a conditional exclusion from hazardous waste regulations. The comment period for the proposed decision was originally scheduled to end on October 5, 1987. Today's notice responds to a request for an extension to the public comment period received on September 24, 1987 from Syntex.

DATES: EPA will accept public comments on the previously proposed decision until November 4, 1987. This date reflects a 30 day extension of the original comment period cited in the proposed rule. Comments postmarked after the close of the extended comment period will be stamped "late".

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. All comments must be identified at the top with docket number "F-87-SSDP-FFFFF".

The public docket where the information can be viewed for the proposed rule is located in the sub-basement of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Frieday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Myles Morse, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4788.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., located in Springfield, Missouri petitioned the Agency to exclude the residue, generated from the off-site incineration of waste sludges, from hazardous waste control. The delisting petition was submitted under 40 CFR 260.20 and 260.22 which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the code of regulations, and specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste list.

On September 3, 1987 the Agency proposed to conditionally exclude the petitioned waste residue that will result when wastewater treatment sludges generated by Syntex are incinerated at EPA's Mobile Incineration System (MIS), located in McDowell, Missouri. The effect of the proposed action, if made final, would be to conditionally exclude (from listing as a hazardous waste) the waste residue resulting from the off-site incineration of sludges generated by Syntex. The comment period for the proposed rule was originally scheduled to end on October 5, 1987.

During the original public comment period for the proposed rule, Syntex requested the Agency to extend the public comment period to allow additional time for the review of docket materials and preparation of comments to support their petition. The Agency has agreed to extend the comment period for this proposed rule and will now accept public comments until November 4, 1987.

Date: October 6, 1987.

Marcia Williams,

Director, Office of Solid Waste.

[FR Doc. 87-23714 Filed 10-13-87; 8:45 am]

BILLING CODE 6560-50-M

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INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file replies to notice of proposed rules.

SUMMARY: In a Federal Register notice of August 31, 1987 (52 FR 32819) the Commission postponed the due date for comments to September 30, 1987 and the due date for replies to October 15, 1987 concerning its proposal to release to the public all non-proprietary data used in calculating the all inclusive index of railroad input prices. The index is used to calculate the quarterly rail cost adjustment factor. At the request of the Association of American Railroads the due date for filing replies has been postponed to October 30, 1987.

DATE: Replies are due October 30, 1987.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275–7354
or
Robert C. Hasek, (202) 275–0938
TDD for hearing impaired, (202) 275–1721.

By the Commission, Heather J. Gradison, Chairman.

Dated: October 9, 1987.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23862 Filed 10–13–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 198
Wednesday, October 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: ACTION.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents may be obtained from the agency clearance officer.

Need and Use: The information in the Project Application is submitted by potential and existing project sponsors and reveiwed by ACTION staff in making funding decisions. The agency would be unable to make decisions regarding grant funding and project renewals without the information.

To obtain information about or to submit comments on this proposed information collection, please contact both:

Melvin E. Beetle, ACTION Clearnace Officer, ACTION, Room M–601, 806 Connecticut Ave., NW., Washington, DC 20525, Tel: (202) 634–9318

and

James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395–7316.

Office of ACTION issuing the Proposal: Domestic & Anti-Poverty Operations—Student Community Service Program.

Title of Form: Student Community Service Program Federal Assistance Project Application.

Type of Request: Revision.

Frequency of Collection: Annually.

General Description of Respondents: Federal, State, or local agency or private non-profit organization or foundation.

Estimated Number of Annual Responses: 230.

Estimated Annual Reporting or Disclosure Burden: 3,800.

Respondent's Obligation to Reply: None.

Dated: October 8, 1987.

Melvin E. Beetle,

ACTION Clearance Officer.

[FR Doc. 87–23769 Filed 10–13–87; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–703]

Postponement of Preliminary Antidumping Duty Determination; Certain Internal-Combustion, Industrial Forklift Trucks From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of certain internal-combustion, industrial forklift trucks from Japan have occurred at less than fair value until not later than November 18, 1987.

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Rick Herring, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–0161 or 377–0187.

SUPPLEMENTARY INFORMATION: On September 11, 1987 (52 FR 34399), we published the notice of postponement of the antidumping duty investigation to determine whether certain internal-combustion, industrial forklift trucks from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by October 29, 1987.

On October 2, 1987, petitioners requested that the Department postpone the preliminary determination by an additional 20 days, i.e., until not later than 210 days after the date of receipt of the petition, in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for the preliminary determination in this investigation is hereby extended. We intend to issue a preliminary determination not later than November 18, 1987.

This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

October 7, 1987.

[FR Doc. 87–23757 Filed 10–13–87; 8:45 am]

BILLING CODE 3510–DS–W

[C–307–702]

Preliminary Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufcturers, producers, or exporters in Venezuela of certain electrical conductor aluminum redraw rod. The estimated net subsidy is 60.11 percent ad valorem, and the rate for duty deposit purposes is 12.99 percent ad valorem.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend

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liquidation of all entries of certain electrical conductor aluminum redraw rod from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry equal to 12.99 percent ad valorem.

If this investigation proceeds normally, we will make our final determination not later than December 21, 1987.

EFFECTIVE DATE: Octobr 14, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Thomas Bombelles, office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377–2438 (Tillman) or 202/377–3174 (Bombelles).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily detemine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of certain electrical conductor aluminum redraw rod (redraw rod) in Venezuela. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- Multiple Exchange Rate System.
- Export Bonds for Credits Against Income Taxes.

We preliminarily determine the estimated net subsidy to be 60.11 percent ad valorem. However, consistent with our policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the cash deposit rate to reflect changes in the Multiple Exchange Rate System. Therefore, the rate for duty deposit purposes is 12.99 percent ad valorem.

Case History

Since the last **Federal Register** publication pertaining to this investigation [the Notice of Initiation (52 FR 29559, August 10, 1987)], the following events have occurred. On August 13, 1987, we presented a questionnaire to the Government of Venezuela in Washington, DC concerning petitioner's allegations. On September 14, 1987, we received responses from Suramerica de Aleaciones Laminadas, C.A. (SURAL), Conductores de Aluminio del Caroni, C.A. (CABELUM), Industria de Conductores Electricos, C.A. (ICONEL), Aliminio del Caroni, S.A. (ALCASA) and Industria Venezolana de Aluminio, C.A. (VENALUM). On Septermber 23, 1987, we received a response from the Government of Venezuela. SURAL, CABELUM, and ICONEL are the only known manufacturers, producers or exporters in Venezuela of the subject merchandise to the United States. ALCASA and VENALUM provided information in reponse to a specific allegation of Preferential Pricing of Inputs Used to Produce Exports.

On August 31, 1987, we received a letter from Reynolds Aluminum stating that the company takes no position with respect to the petition filed by Southwire. On September 7, 1987, we received a letter from counsel for the respondents challenging Southwire's standing to file the petition. On September 24, 1987, we received a letter from the Alcoa Conductor Products Company (ACPC), a division of the Aluminum Company of America (Alcoa), stating the ACPC does not support the positions taken by Southwire in its petition. As we have frequently stated, (see, e.g., "Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden" (52 FR 5794, Febraury 28, 1987), and "Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada" (51 FR 10041, March 24, 1986)), there is nothing in the statute, its legislaitve history, or our regulations which requires that petitioners establish affirmatively that they have the support of a majority of their industries. In many cases such a requirement would be so onerous as to preclude access to import relief under the antidumping and countervailing duty laws. Therefore, the Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are gounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major portion of the domestic industry. We are requesting clarification from ACPC on the question of petitioner's standing and ACPC's opposition. If it becomes necessary, we will send questionnaires to the domestic industry to detemine the extent of any industry opposition.

Scope of Investigation

The product covered by this investigation is certain electrical conductor aluminum redraw rod, which is wrought rod of aluminum which is electrically conductive and contains not less than 99 percent aluminum by weight, as provided for the *Tariff Schedules of the United States, Annotated (TSUSA)* under item numbers 618.1520 and 618.1540. This product is currently classifiable under the Harmonized System (HS) item numbers 7604.10.30 and 7604.29.30.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18009, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such response are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization (the "review period") is calendar year 1986. As is common in our method of analysis, if the companies under ivestigation have different fiscal years, our review period is then the most recently completed calendar year.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters of certain electrical conductor aluminum redraw rod in Venezuela under the following programs.

A. Multiple Exchange Rates

On February 22, 1983, the Government of Venezuela authorized the establishment of a multiple exchange rate system after more than 19 years under a fixed rate system of 4.30

bolivares (Bs.) to the dollar. In its response, the Government of Venezuela stated that this change in the exchange rate was made in an attempt to establish greater control over Venezuela's foreign exchange reserves without precipitating a serious crisis in the development of the national economy.

The Central Bank of Venezuela (CBV) and the Ministry of Finance (MOF) signed an Exchange Agreement on February 28, 1983, establishing a four-tiered exchange rate system. The first exchange rate was a fixed rate of Bs. 4.30 to the dollar. This rate was applied to the sale of foreign exchange by the CBV for payments on foreign-source private and public debt, the importation of essential goods and services, and the sale of foreign exchange from the state-owned oil industries (PDVSA), iron ore industry (FERROMINERA), and the Venezuelan Investment Fund. The second rate was also a fixed rate, at Bs. 6.00 to the dollar. This rate was applied to the sale of foreign exchange by the CBV for the importation of less essential goods, foreign exchange obtained from the export of goods and services from state-owned enterprises (other than PDVSA and FERROMINERA), and foreign exchange received from exports by the private sector when offered to the CBV.

The other two rates that were established were a foreign exchange free market rate (an average Bs. 19.88 to the dollar during 1986) for all exchange operations not specifically provided for elsewhere, and a "free-but-official" rate for the purchase and sale of dollars by the CBV in the free market.

Under this Exchange Agreement, the government also established the Office of Preferential Exchange Regime (RECADI) to administer the multiple exchange rate system. RECADI is responsible for handling applications from importers for merchandise categorized as essential or less essential and also for companies registering foreign debt to be paid at the Bs. 4.30 to the dollar rate. To receive the more preferential exchange rate for imports an importer must submit an application to RECADI identifying the value, quantity and payment terms of the intended purchase. After RECADI reviews the application, it may authorize the use of the more preferential exchange rate to cover the particular purchase. Similarly, companies that desire access to the preferential rate for paying foreign currency debt must register the debt with RECADI and obtain approval for receiving the preferential rate to make loan payments.

In May 1983, the government began gradually to allow the public sector companies (other than PDVSA and FERROMINERA) to use the free market rate to exchange foreign currency earned from export sales. Under this time, only private companies has access to the free market. On February 24, 1984, the Government of Venezuela signed an Exchange Control Agreement between the MOF and the CBV which increased the exchange rate for importation of less essential goods and the payment of most foreign debt to Bs. 7.50 to the dollar. In addition, this Agreement created the "quota share" policy which required all exporters to sell back to the Central Bank the dollars earned on the imported component of the finished product at the same exchange rate used for the importation. Until the 1984 Agreement was signed, exporters could buy imports at the Bs. 4.30 or the Bs. 7.50 to the dollar rate and upon exportation sell the dollars earned on the imported component at the free market exchange rate. The difference in the exchange rate between the lower rate used to purchase imports and the free market rate for selling dollars provided a benefit to exporters.

To implement the quota share policy, the government published Resolution No. 84–05–01 in May 1984. This resolution required that 50 percent of the value of the import content of the exported product, as calculated in the ICE certificates used for granting export bonds, be sold to the CBV at the lower exchange rate of Bs. 7.50 to the dollar (the same rate at which they buy foreign exchange for imports). To enforce the quota share program, the CBV required exporters to sign a contract upon exportation stating that the specified proportion of export earnings will be sold to the CBV at the same rate used for importation of the material inputs.

We preliminarily determine that, under this multiple exchange rate system, a subsidy was conferred on exports because one dollar received for export sales yielded more bolivares than exporters paid to purchase one dollar for imports. Because receipt of the higher exchange rate is contingent upon selling dollars earned from export sales, we consider that the multiple exchange rate conferred an export subsidy.

To calculate the benefit from this program during the review period, we subtracted the exchange rate applicable to each company's purchase of imports from the weighted average exchange rate received by each company when selling dollars earned from export sales. We multiplied this difference by the total 1986 export value for each company in dollars and allocated the resulting amount over the companies' total 1986 export sales in bolivares. On this basis, we calculated an estimated net subsidy of 47.12 percent ad valorem.

On December 6, 1986, the Government of Venezuela substantially changed the Multiple Exchange Rate System. According to the government and company responses, under the revised system, while certain "essential" imports (such as medicine) may qualify for a rate of Bs. 7.50 to the dollar, most dollars for imports must be purchased at the rate of Bs. 14.50 to the dollar. According to information in the government response, the Bs. 4.30 to the dollar rate has been abolished for the purchase of dollars with which to buy imported inputs but still applies to certain categories of foreign currency denominated debt. All imports made by redraw rod producers may be purchased at the Bs. 14.50 rate; however, companies are free to purchase dollars at the free market rate if they choose not to wait for approval from RECADI to purchase dollars at the Bs. 14.50 rate. As of December 1986, all export earnings by all exporters in the economy, both private and public sector, must be exchanged into bolivares at the Bs. 14.50 rate. Furthermore, according to the company response, no foreign currency denominated debt held by the companies under investigation is now payable at the rate of Bs. 4.30 to the dollar.

Because the Government of Venezuela has eliminated the differential between the rate for purchasing imports and the rate at which export proceeds are converted for all companies in the economy, and this program-wide change has been decreed in the Exchange Agreements which administer the Mulitple Exchange Rate System, we preliminarily consider that the export benefit which existed in the earlier system has been eliminated effective December 6, 1986. Therefore, consistent with our policy of taking into account program-wide changes that occur before our preliminary determination, we preliminarily determine that the Multiple Exchange Rate System no longer confers an export subsidy on exports of redraw rod. At verification, we will seek complete information from the relevant government agencies as to the nature and effect of these changes.

B. Export Bonds for Credits Against Income Taxes

Petitioner alleges that Venezuelan redraw rod exporters are remunerated for their exports by the Government of Venezuela in the form of export bonds

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which may be used to pay income taxes or sold for cash.

According to the responses of the government and the companies under investigation, all three producers of redraw rod took advantage of the export bond program during the review period. The program allows exporters a return of a percentage of the value of their exports. This percentage is based on a combination of the domestic value-added of the exported product and certain governmental policy objectives relating to a firm's employment and other considerations. Once derived, this percentage is multiplied by the FOB value of the exported goods expressed in bolivares (converted at the official, Bs. 14.50 to the dollar, rate of exchange). The resulting figure is the face value of the export bond. To receive an export bond, a firm submits to its commercial bank the invoice and shipping documents for the exported merchandise. The bank reviews the documents and remits them to the Central Bank of Venezuela which, after an interval of up to one year, issues the export bond. Because this program is limited to exporters and does not operate to rebate any indirect taxes, we preliminarily determine that this program confers an export subsidy on the products under investigation.

To calculate the benefit, we allocated the bolivar amount of bonds received by the companies in 1986 over their total export sales. On this basis, we calculated an estimated net subsidy of 12.99 percent ad valorem.

II. Programs Preliminarily Determined Not To Confer a Subsidy

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters of certain electrical conductor aluminum redraw rod in Venezuela under the following program.

A. Import Duty Reductions

Petitioner alleges that a system of import duty reductions is maintained by the Government of Venezuela which is aimed specifically at encouraging the aluminum products industry. The government's response indicates that the sole program allowing import duty reductions is provided by Title IV of the Venezuelan Organic Customs Law. Duty reductions under this law are provided to a diverse range of industries and, according to the government, are granted whenever national production or supply is inadequate to meet the demand for a particular item. Since import duty reductions are not limited to a specific enterprise or industry, or group of enterprises or industries, nor do they operate to stimulate export performance, we preliminarily detemine that this program does not provide benefits which constitute subsidies.

B. Government Loans Through the Industrial Credit Fund and the Financing Company of Venezuela on Terms Inconsistent with Commercial Considerations

Petitioner alleges that loans are made available by the Government of Venezuela to the companies under investigation on terms inconsistent with commercial considerations. While one respondent company was found to have loans from the Industrial Credit Fund (FONCREI) and the Financing Company of Venezuela (FIVCA), both named in the petition, the response by the government indicated that both institutions offer financing to all sectors of the economy and both operate on commercial terms. Because these loan programs are not limited to a specific enterprise or industry, or group of enterprises or industries, and do not offer financing on terms inconsistent with commercial considerations. We preliminarily determine that they do not provide a countervailable benefit.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by the manufacturers, producers, or exporters of certain electrical conductor aluminum redraw rod in Venezuela during the review period.

A. Preferential Tax Incentives

Petitioner alleges that through Decree numbers 1374, 1384, and 1776, the Government of Venezuela authorizes income tax rebates to the domestic capital goods industry, and that manufacturers, producers, and exporters of redraw rod benefits from this program.

According to the responses of the Government of Venezuela and the companies under investigation, the redraw rod producers have not utilized any of the programs provided for under the subject decrees.

B. Preferential Export Financing

Petitioner alleges that Venezuela redraw rod manufacturers, producers and exporters may receive preferential export financing through the Export Financing Fund (FINEXPO).

According to the responses, FINEXPO offers three different forms of financing to assist exports. First, through a series of credit lines, importers in other countries may obtain financing for the purchase of goods in Venezuela. However, no credit lines exist for the United States. Second, Venezuelan exporters may qualify for financing for working capital, technical services and other expenses. Third, importers may obtain financing directly from FINEXPO if they provide appropriate collateral.

According to the responses, the companies under investigation did not receive, have outstanding or pay any interest on any FINEXPO loans during the review period.

C. Preferential Pricing of Inputs Used to Produce Exports

Petitioner alleges that ALCASA and VENALUM, government-owned producers of primary aluminum, are directed by the Government of Venezuela to charge preferential prices to domestic customers who purchase aluminum for further processing and subsequent export. According to the responses of the producers of redraw rod, and the government-owned producers of primary aluminum, there was no preferential pricing of inputs used to produce exports during the review period; accordingly, we preliminarily determine that this program was not used.

D. Other Government Loans on Terms Inconsistent with Commercial Considerations

Petitioner alleges that producers and exporters of redraw rod received financing on terms inconsistent with commercial considerations from the following government agencies listed in our Notice of Initiation: The Ministry of Finance; the Venezuelan Investment Fund; and the Industrial Bank of Venezuela (BIV). According to the responses, none of the respondent companies had loans from these institutions outstanding during the review period.

IV. Programs Preliminarily Determined Not To Exist

We preliminarily determine that the following programs do not exist.

A. Tax Contributions to Cover Debt Service Costs

Petitioner alleges that tax contributions authorized by the Ministry of Finance to meet interest obligations are provided to a specific enterprise or industry, or group thereof, and that manufacturers, producers, and exporters of redraw rod may benefit from this program.

According to the responses, there is no program under which any agency of the Government of Venezuela provides tax contributions or other forms of

assistance to help redraw rod producers or exporters meet their debt financing obligations.

B. Sales Tax Exemption

Petitioner alleges that the Government of Venezuela negotiates, through various regional authorities, exemptions from payment of local sales taxes for a specific enterprise or industry, or group thereof, and that manufacturers, producers, and exporters of redraw rod may benefit from this program.

According to the responses, no program exists in Venezuela for the elimination of municipal sales or other taxes, nor has the Government of Venezuela been involved in the negotiation of any such tax reductions or eliminations regarding the respondent companies.

C. Assumption of Foreign Currency Debt

Petitioner alleges that the Government of Venezuela administers a program whereby the Central Bank of Venezuela assumes the foreign currency debt of selected companies and that manufacturers, producers, and exporters of redraw rod may benefit from this program. According to the responses, no agency of the Venezuelan Government has assumed any responsibility for the payment of foreign currency debts of any private sector Venezuelan company and no statutory provisions exist authorizing any agency of the Government of Venezuela to take such action.

D. Loan Guarantees

Petitioner alleges that the Government of Venezuela provides loan guarantees to a specific enterprise or industry, or group thereof, on terms inconsistent with commercial considerations and that manufacturers, producers, and exporters of redraw rod may benefit from this program. According to the responses, the Government of Venezuela does not offer loan guarantees to private companies either directly or through any governmental agency. The BIV, which is owned by the Government of Venezuela, operates as a commercial bank and, therefore, offers loan guarantees in the ordinary course of business under terms and conditions that reflect ordinary commercial of business under terms and conditions that reflect ordinary commercial banking practice as well as the credit risk of the particular customer. During the review period, the BIV did not issue, or have outstanding, any loan guarantees with respect to the companies under investigation.

IV. Program for Which We Need Additional Information

Government Equity Investment in CABELUM

According to the CABELUM's response, 30 percent of its capital stock is owned by a government-owned supplier of primary aluminim, ALCASA. In order for the Department to investigate any equity investments by a government for the purpose of determining if they are on terms inconsistent with commercial considerations, we must have evidence of the following: First, there must be some government equity participation in the company or project; and, second, there must be some showing that the investment was on terms inconsistent with commercial considerations.

In this case, ALCASA is majority-owned by agencies of the Government of Venezuela. Furthermore, based on the information in the responses of the government and CABELUM, there is some reason to believe that ALCASA's purchase of equity was on terms inconsistent with commercial considerations. Therefore, we will seek additional information on ALCASA's equity investment in CABELUM.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept for our final determination any statement in a response that cannot be verified.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain electrical conductor aluminum redraw rod from Venezuela which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond equal to 12.99 percent ad valorem for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Acting Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 120 days after the Department makes its preliminary affirmative determination, or 45 days after the Department makes its final determination, whichever is latest.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination, at 2 p.m. on November 2, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary, Import Administration, Room B–099, at the above address within 10 days of the publication of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a li t of the issues to be discussed. In addition, at least 10 copies of the business propietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Acting Assistant Secretary by October 26, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administrtion.

October 7, 1987.

[FR Doc. 87–23758 Filed 10–13–87; 8:45 am]

BILLING CODE 3510–DS–M

[Application 83-A0027]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended export trade certificate of review.

SUMMARY: The Department of Commerce has issued a second amendment to the export trade certificate of review of SOR, Inc. ("SOR") granted on April 2, 1984 (48 FR 13723, April 6, 1984). The first amendment was granted on August 30, 1985, effective as of July 15, 1985 (50 FR 36126, Sept. 5, 1985). The second amendment consists of the following changes: (1) The section captioned "Export Trade," at subsection "a" captioned "Products," is amended to add "level and flow switches" to read as follows: "Pressure, vacuum, differential pressure and temperature switches, liquid level and flow switches, and hand calibration pumps, and components and accessories thereof, typically used in the power and process industries." (2) The following sentence under the caption "Protection Provided by Certificate" is deleted: "The protections afforded by this certificate shall apply only to SOR and the following members: Controls International, Ltd., and its shareholders; SOR Export, Inc., and its shareholders; including, without limitation, Roy E. Dunlap and Ross E. Johnson; and to the directors, officers and employees of the foregoing acting on their behalf." The following sentence is inserted in place of the deleted sentence: "The protections afforded by this certificate shall apply only to SOR and the following members: SOR Controls Group, Ltd., and its shareholders; Mr. Roy E. Dunlap of Overland Park, Kansas; Mr. James R. Johnson of Stillwell, Kansas; SOR Texas, Inc. and its shareholders; and SOR Europe Ltd. and its shareholders; and to the directors, officers and employees of the foregoing acting on their behalf." (3) The section captioned "Export Trade Activities and Methods of Operation" is amended to replace all references to "SOR" with "SOR and its Members." Effective date: July 7, 1987.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: .Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: October 7, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-23686 Filed 10-13-87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[P250A; Modification No. 2 to Permit No. 473]

Marine Mammals; Permit Modification; Washington Department of Wildlife

Notice is hereby given that, pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Permit No. 473 issued to the Washington Department of Wildlife, Marine Mammal Investigations, 7801 Phillips Road SW., Tacoma, Washington 98498 on June 15, 1984 (49 FR 25892) as modified on November 5, 1986 (51 FR 40997) is further modified as follows:

Section A-8 is added: 8. Oxytocin may be administered intermuscularly to a maximum of 30 lactating harbor seal females (*Phoca vitulina* authorized in A.3 at a dosage of C.a. 1cc of a 20-30 IU/cc solution. Milk samples may be collected.

Section B.1 is deleted and replaced by: "1. This research shall be conducted in the areas and for the purposes set forth in the application and modification requests."

Section B.7 is deleted.

This modification became effective October 6, 1987.

Documents submitted in connection with the above Permit and modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: October 8, 1987.

Dr. Nancy Foster, *Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-23730 Filed 10-13-87; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON EDUCATION OF THE DEAF

Educational Programs for the Deaf; Meetings

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of meetings.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of forthcoming meetings of the Commission on Education of the Deaf and its Committees. The purposes of the Commission and Committee meetings are to address professional certification in mainstreamed programs and needs of rural education, and to review comments and counterproposals received in response to the first set of draft recommendations. These meetings will be open to the public.

DATES: October 28, 1987, 8:30 a.m. to 5:00 p.m.; October 29, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: All meetings will be held in the Holiday Inn-Capitol, 550 C Street SW., Washington, DC. On Wednesday morning, the Precollege Committee will meet in the Columbia B Room, and the Postsecondary Committee in the Saturn and Venus Room. On Wednesday afternoon and Thursday, all meetings will be in the Columbia B Room.

FOR FURTHER INFORMATION CONTACT: Monica Hawkins, Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC 20407. (202) 453-4353 (TDD) or (202) 453-4684 (Voice). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Precollege Committee will meet Wednesday, October 28, from 8:30 a.m. to 12:00 noon in the Columbia B Room to discuss comments received on appropriate education, parents' rights, and early identification. It will also

address professional certification in mainstreamed programs and discuss the agreement between the U.S. Department of Education and Gallaudet University's (GU) Precollege Programs. The Postsecondary Committee will meet at the same time in the Saturn and Venus Room to discuss comments received on the proposed expansion of the Regional Postsecondary Education Programs for the Deaf (RPEPD) the funding cycle of the RPEPD, admissions policies at GU/NTID, funding of research at GU/NTID, setting of research priorities, outside review of GU/NTID research plans, and consumer orientation of GU products/outreach. From 1:00 p.m. to 5:00 p.m. that afternoon, the Joint Committee will meet to review comments on the draft recommendations relating to captioning services, distribution of decoders, federal funding for research on speech recognition and captioning, and the impact of captioning on illiteracy. The Joint Committee will also consider the needs in rural education.

Thursday, October 29th, the Executive Committee will meet from 8:30 a.m.–9:30 a.m. in the Columbia B Room to receive reports. The Joint Committee will meet from 1:00 p.m.–3:00 p.m. to continue its Wednesday afternoon meeting. The full Commission will meet from 3:30 p.m. to 4:30 p.m. The proposed agenda for the Commission meeting on October 29 includes the following:

I. Approval of minutes.

II. Reports.

- Chairperson's Report.
- Vice Chairperson's Report.
- Executive Committee Chairperson's Report.
- Staff Director's Report.

III. New Business.

IV. Agenda for December meeting.

V. Adjournment.

These meeting will be open to the public. Interpreters and captioning will be provided. If you need audio-loop systems or other special accommodations, please contact Monica Hawkins at (202) 453–4353 (TDD) or (202) 453–4684 (Voice) no later than October 21, 1987, 5:00 p.m. e.s.t. These are not toil free numbers.

Records will be kept of the proceedings and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC.

Pat Johnson,

Staff Director.

[FR Doc. 87–23733 Filed 10–13–87; 8:45 am]

BILLING CODE 6820–SD–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Government Furnished Property Requirements.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Schwartz, Office of Federal Acquisition and Regulatory Policy, (202) 523–3780 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* When Government-furnished or contractor-acquired property is provided under federal contracts, Government policy requires the contractor to notify the contracting officer—

(a) When the property is delivered, verification of quantity, condition, and acknowledge receipt in writing;

(b) If Government-furnished property is received in a condition not suitable for the intended use;

(c) Upon loss or destruction of or damage to the property, the time and origin of the loss, destruction or damage, all known interests in commingled property is apart and the insurance, if any, covering any part of or interest in such commingled property;

(d) By clear and convincing evidence that such loss, destruction, or damage (1) did not result from the contractor's failure to maintain an approved program or system, or (2) occurred while an approved program or system was maintained by the contrator; and

(e) Upon the completion of the contract, inventory schedules covering all items of Government property not consumed in the performance of the contract or delivered to the Government. The contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract. This responsibility and accountability extends to the contractor's subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned facilities in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Record special tooling and special test equipment fabricated from Government property materials; and

(d) Locate any item of Government property within a reasonable period of time and more.

This information is used to facilitate the management of Government property in the possession of contractors.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *6,000* responses per respondent, *3.33* total annual responses *20,000*; hours per response, *.25*; and total reporting burden hours, *5.000*.

c. *Annual recordkeeping burden*: The annual recordkeeping burden is estimated as follows: Number of recordkeepers, *6,000*; annual hours per recordkeeper, *4*; and total recordkeeping burden hours, *24,000*.

Obtaining Copies of Proposals:

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0075, Government Furnished Property Requirements.

Dated: October 7, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–23764 Filed 10–13–87; 8:45 am]

BILLING CODE 6820–61–M

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DEPARTMENT OF EDUCATION

[CFDA No. 84.116F]

Invitation of Applications for New Awards To Be Made in Fiscal Year 1988 Under the Innovative Projects for Student Community Service Competition Conducted by the Fund for the Improvement of Postsecondary Education

Purpose: Provides grants to institutions of higher education and other public and private, non-profit institutions and agencies to support projects encouraging students to participate in community service activities in exchange for educational services or financial assistance, thereby reducing the debt incurred by these students in completing their postsecondary educational program.

Deadline for Transmittal of Applications: January 12, 1988

Applications Available: November 12, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However applications are invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based upon the FY 1987 appropriation.

Estimated Size of Awards: $45,000.

Estimated Number of Awards: 16.

Project Peroid: Not to exceed 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (b) the regulations in 34 CFR Part 630, with the exceptions noted in 34 CFR 630.4.

For Applications and Information Contact: The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3100, ROB–3, Washington, DC 20202. Telephone (202) 245–8091/8100.

Program Authority: 20 U.S.C. 1135e–1

Dated: October 6, 1987.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 87–23759 Filed 10–13–87; 8:45 am]

BILLING CODE 4000–01–M

Office of Bilingual Education and Minority Languages Affairs

Request for Data and Information Under the Bilingual Education; State Education Agency Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

Programatic Information: This program provides financial assistance to State educational agencies (SEAs) to collect and report data and information on limited English proficient (LEP) persons under section 732 of the Bilingual Education Act (20 U.S.C. 3242), and 34 CFR Part 548, published in the **Federal Register** on August 16, 1985 at 50 FR 33204. SEAs are required to report data and information to the Secretary in accordance with section 732(b) of the Act, and 34 CFR 548.10.

(Approved under OMB Control number 1885–0509)

Date for Submitting Data and Information: SEA grantees are required to submit Fiscal Year 1986 data and information on LEP persons to the U.S. Department of Education by November 27, 1987.

ADDRESSES: Information should be sent to Luis A. Catarineau, U.S. Department of Education, Office of Bilingual Education and Minority Language Affairs, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For further information contact Luis A. Catarineau. Telephone: (202) 245–2922.

Authority: 20 U.S.C. 3242(b).

Dated: October 7, 1987.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87–23760 Filed 10–13–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Liquid Transportation Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation; National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquid Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Friday, October 30, 1987, 8:00 AM.

Place: Sun Building, Fourteenth Floor Conference Room, 907 S. Detroit Avenue, Tulsa, Oklahoma.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss Task Group organization and individual assignments.

Tentative Agenda

—Opening remarks by Chairman and Government Cochairman
—Establish the Task Group organization
—Discuss the individual assignments
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 AM and 4:00 PM Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 6, 1987.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 87–23687 Filed 10–3–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER88–2–000, et al.]

Iowa Public Service Co., et al., Electric Rate and Corporate Regulation Filings

October 6, 1987.

Take notice that the following filings have been made with the Commission:

1. Iowa Public Service Company

[Docket No. ER88–2–000]

Take notice that on October 1, 1987, Iowa Public Service Company (Iowa) tendered for filing an executed Letter Agreement dated July 21, 1987, as supplemented by a Letter Agreement dated September 5, 1987 whereby Iowa

will supply the Southern Minnesota Municipal Power Agency (SMP) with firm electric capacity and associated energy, commencing July 8, 1987 and continuing through October 2, 1987. Iowa requests that the negotiated Agreement be made effective as of July 8, 1987.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Carolina Power & Light Company

[Docket No. ER88–3–000]

Take notice that on October 1, 1987, Carolina Power & Light Company (CP&L) tendered for filing pursuant to the Commission's Order No. 475 dated June 26, 1987, updated applicable rates in four different contracts that have been changed to include 34 percent Federal corporate income tax in the formula calculations. These contracts include (1) two agreements with the Southeastern Power Administration for wheeling Kerr Project power and Cumberland Projects power; (2) the backstand and transmission use rate to the City of Fayetteville, North Carolina; and (3) the amendment with Duke Power Company for interchange service.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER88–4–000]

Take notice that on October 1, 1987, New England Power Company (NEP) tendered for filing an executed Agreement for Transmission of Firm Power (Agreement) between NEP and the Pascoag Fire District (Pascoag) located in Pascoag, Rhode Island. NEP states that the purpose of the Agreement is to facilitate the delivery of New York Authority (NYPA) power to Pascoag's customers.

NEP requests waiver of the Commission's notice requirements so that the Agreement may become effective July 1, 1985. As good cause for this request, NEP states that service to Pascoag had inadvertently been provided since that date pursuant to a similar agreement with the Massachusetts Municipal Wholesale Electric Company (MMWEC). Erroneous billings to MMWEC for Pascoag's service, according to NEP, have been refunded to MMWEC, and Pascoag has agreed to pay NEP for the arrears.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Cleveland Electric Illuminating Company

[Docket No. ER88–5–000]

Take notice that on October 1, 1987, Cleveland Electric Illuminating Company (CEI) tendered for filing Revised Service Schedule B—Firm Power Service to its Rate Schedule FERC No. 12, and Fifth Revised Sheet No. 4 under its FERC Electric Tariff, 1st Revised Volume No 1. CEI states that the revised rates and charges have been filed pursuant to FERC Order No. 475, in order to reflect the effect of the tax rate changes enacted in the Tax Reform Act of 1986. CEI proposes to make such changes effective as of July 1, 1987.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protexts will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23748 Filed 10–13–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER88–1–000, et al.]

Pacific Gas and Electric Co., et al.; Electric Rate and Corporate Regulation Filings

October 6, 1987.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER88–1–000]

Take notice that on October 1, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing a revised rate schedule for Firm System Sales to the Cities of Anaheim, Azusa, Banning, Colton, and Riverside (Cities).

The energy rates for these Agreements are calculated using PGandE's cost of natural gas and nuclear fuel. Under the terms of the revised rate schedule, when the California Public Utilities Commission (CPUC) authorizes a change in the G–55 natural gas rate, PGandE must make a rate change filing for the Cities to revise the natural gas and nuclear fuel cost inputs to the energy rates. The present filing represents a rate decrease to the Cities of at least $217,290.35 for the first year of service. The amount of the decrease depends upon the amount of energy purchased. The contract requires a minimum annual take, and the above figure is based upon that contract minimum.

PGandE has requested waivers to allow this rate decrease to become effective as of May 1, 1987, and to allow for an abbreviated informational filing procedure for future rate changes where the change is simply a revision of one of the rate formulae inputs. These informational filings would include a revised G–55 gas rate, a revised nuclear fuel rate (if this has changed), the effective date of the CPUC decision authorizing the G–55 rate change, and a showing of the customers' concurrence. PGandE requests that when the above information is filed, the filing fee be waived, and the changed energy rates be deemed effective on the effective date of the CPUC decision authorizing the changed G–55 gas rate.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER87–590–000]

Take notice that on October 1, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing an amendment to Docket No. ER87–590–000. Docket No. ER87–590–000 proposed five identical initial rate schedules for Economy Energy Sales to the southern California cities of Anaheim, Azusa, Banning, Colton, and Riverside (Cities).

The proposed amendment affects the calculation of the fixed-cost portion of a rate cap, pursuant to section 6.3 of each of the Agreements, under which energy may be sold. At the request of FERC Staff, PGandE has voluntarily:

1. Reduced the tax component of the rate cap from taxes at a 46-percent federal corporate income tax rate to a 34-percent federal corporate income tax rate.

2. Allocated the annual costs to the kilowatt-hours associated with a 72.9-percent Equivalent Availability Factor, as opposed to the initial kilowatt-hours

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associated with a 38.5-percent capacity factor.

The effects of the two adjustments reduces the fixed-cost portion of the rate cap from 16.2890 mills per kilowatt-hour to 8.1388 mills per kilowatt-hour.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

In the matter of Virginia Electric and Power Company (Referred to as VEPCo); and Public Service Electric and Gas Company, Philadelphia Electric Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company (Referred to collectively as the PJM Group).

3. VEPCo and PJM Group

[Docket No. ER87-348-000]

Take notice that on September 3, 1987, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection tendered for filing, on behalf of the above listed parties to the VEPCo-PJM Agreement, additional information, at the Commission's request, with respect to modification of charges for Short Term Power services. The parties have requested a revised effective date of August 31, 1987 for the filing originally submitted on March 24, 1987, as modified.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

In the matter of West Penn Power Company, Potomac Edison Company, and Monongahela Power Company, (Referred to collectively as the APS Group); and Public Service Electric and Gas Company, Philadelphia Electric Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electirc Power Company, Atlantic City Electric Company and Delmarva Power & Light Company, (Referred to collectively as the PJM Group).

4. APS Group and PJM Group

[Docket No. ER87-338-000]

Take notice that on September 3, 1987, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection tendered for filing, on behalf of the above listed parties to the APS-PJM Agreement, additional information, at the Commission's request, with respect to modification of charges for Short Term Power services. The parties have requested a revised effective date of August 31, 1987 for the filings orignially submitted on March 24, 1987, as modified.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

In the matter of Cleveland Electric Illuminating Company, (Referred to as CEI); and Public Service Electric and Gas Company, Philadelphia Electric Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company, (Referred to collectively as the PJM Group).

5. CEI and PJM Group

[Docket No. ER87-389-000]

Take notice that on September 3, 1987, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection tendered for filing, on behalf of the above listed parties to the CEI-PJM Agreement, additional information, at the Commission's request, with respect to modification of charges for Short Term Power services. The parties have requested a revised effective date of August 31, 1987 for the filings orignially submitted on April 16, 1987, as modified.

Comment date: October 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commisison, 835 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23749 Filed 10-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-73, et al.]

Joseph B. Gould, et al., Applications for Small Producer Certificates [1]

October 8, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS72-73	9-14-86 [1]	Joseph B. Gould and Joseph B. Gould, Trust (Joseph B. Gould), 430 South 3rd Street, Las Vegas, Nevada 89101.
CS72-1183	5-27-87 [2]	The Estate of Barbara Price Mayhew, Camille Chilcote and Robin R. Williams (Barbara Price Mayhew) c/o Lillick Mchose & Charles, 725 South Figueroa Street, Suite 1200, Los Angeles, California 90017-2513.
CS76-185	9-8-87 [3]	The Estate of Roy Furr (Roy Furr), c/o Jack McClendon, Esq., 1306 Broadway, Lubbock, Texas 79401.
CS76-1068-003	9-16-87 [4]	OXOCO, OXTEX, Inc. and Hawthorne Oil and Gas Corporation OXOCO and OXTEX, Inc.), c/o Hays & Anson, 2700 One American Center, 600 Congress Avenue, Austin, Texas 78701.
CS87-29-000	9-22-87 [5]	Resource Reserves Co. and Billy W. Lee (Resource Reserves Co.), 1212 Main Street, Suite 364, Houston, Texas 77002.
CS87-30-000	9-22-87 [6]	Wyogram Oil Co. and Thomas R. Fuller (Wyogram Oil Co.), 1212 Main Street, Suite 364, Houston, Texas 77002.
CS87-96-000	8-19-87	101 Energy Corporation, P.O. Box 97, Bison, Oklahoma 73720.
CS87-102-000	9-8-87	Alta Energy Corporation, R.F. Bailey, C.R. Bailey and B&B Energy Co., 500 N. Loraine, Suite 900, Midland, TX 79701.
CS87-103-000	9-8-87	Valence Operating Company, P.O. Box 69, Humble, Texas 77338.
CS87-105-000	9-10-87	W.C. Sojourner, Route 1, Hamlin, Texas 79520.
CS87-106-000	9-25-87	George L. McLeod, Inc., 834 Greenpark Road, Houston, Texas 77079.
CS87-107-000	9-28-87	Santa Fe Energy Operating Partners, L.P.; Santa Fe Pacific Exploration Company; and Santa Fe Energy Company, 1616 South Voss Road, Suite 1000, Houston, Texas 77057-2696.
CS87-109-000	9-28-87	GOLDIE CASH REVOCABLE TRUST, 525 South Main, Third Floor, Tulsa, Oklahoma 74103.

[1] By letter dated September 9, 1987, Applicant requests that his small producer certificate issued in Docket No. CS72-73 be amended to include the entity of Joseph B. Gould, Trust.

[2] By letter dated May 21, 1987, as supplemented by letters dated May 23 and August 13, 1987, received May 27 and August 17, 1987, respectively, Applicant states that Camille Chilocote and Mildred Moore inherited the interests of Barbara Price Mayhew in 1974. Applicant further states that Mildred Moore passed away in 1982 and devised here interest to Robin R. Williams. Applicant requests that the small producer certificate issued in Docket No. CS72-1183 to Barbara Price Mayhew be redesignated under the names of the Estate of Barbara Price Mayhew, Camille Chilcote and Robin R. Williams.

[3] By letter dated September 4, 1987, requesting redesignation of the small producer certificate issued to Roy Furr in Docket No. CS76-185 under the name of the Estate of Roy Furr.

[4] By letter dated August 7, 1987, received August 12, 1987, as supplemented by letter dated September 15, 1987, Applicant states that through corporate reorganization certain properties were transferred from OXOCO, the parent company and small producer certificate holder in Docket No. CS76-1068, to its wholly-owned subsidiary, Hawthorne Oil and Gas Corporation. Applicant requests that the small producer certificate issued to OXOCO in Docket No. CS76-1068 be amended to include Hawthorne Oil and Gas Corporation as co-holder of the small producer certificate issued in Docket No. CS76-1068

[5] By letter dated September 9, 1987, Applicant states that Billy W. Lee, as president of Resources Reserves Co., also owns various properties individually, and that the volume for his personal properties was included in the jurisdictional sales volumes shown in the original application for small producer certificate of Resource Reserves Co. Applicant requests that the name of Billy W. Lee be added to the small producer certificate in Docket No. CS87-29-000 as certificate co-holder.

[6] By letter dated September 10, 1987, Applicant states that Thomas R. Fuller, as president of Wyogram Oil Co., als owns various properties individually, and that the volume for his personal properties was included in the jurisdictional sales volume shown in the original application for small producer certificate of Wyogram Oil Co. Applicant requests that the name of Robert R. Fuller be added to the small producer certificate in Docket No. CS87-30-000 as certificate co-holder.

[FR Doc. 87-23750 Filed 10-13-87; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 8707-004]

Yakima—Tieton Irrigation District; Surrender of Preliminary Permit

October 8, 1987.

Take notice that Yakima—Tieton Irrigation District, permittee for the proposed Cle Elum Project, has requested that its preliminary permit be terminated. The permit was issued on September 30, 1985, and would have expired on August 31, 1988. The project would have been located on the Yakima River near the town of Easton, in Kittitas County, Washington. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on September 2, 1987, and the preliminary permit for Project No. 8707 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-23751 Filed 10-13-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CI78-781-003 and CI87-917-000]

Fina Oil and Chemical Co.; Application for Permanent Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

October 8, 1987.

Take notice that on September 23, 1987, as supplemented on October 2, 1987, Fina Oil and Chemical Company (Fina) of P. O. Box 2159, Dallas, Texas 75221 filed applications pursuant to section 7 of the Natural Gas Act (NGA) and Parts 154 and 157 and § 2.7 of the Commission's Regulations under the NGA and the Natural Gas Policy Act of 1978 (NGPA). Fina requests in Docket No. CI78-781-003 permission and approval to abandon permanently a portion of its sales of natural gas to Northern Natural Gas Company, Division of Enron Corp. (Northern), from Platform B, Block A-571, High Island Area, South Addition, Outer Continental Shelf, Offshore Texas (Block 571 Gas). The gas is dedicated to Northern by certificate authorization in Docket No. CI78-781 and contract dated March 17, 1977, which is on file as Fina's FERC Gas Rate Schedule No. 117.

Fina's application in Docket No. CI78-781-003 involves the abandonment of up to 17,000 Mcf per day on a firm basis, and up to an additional 17,000 Mcf per day on an interruptible basis depending on the amount of gas Northern elects not to take on each day. Fina asserts that all Block 571 Gas is duly qualified under section 102(d) of the NGPA. Fina states that approval of its applications will relieve Northern of take-or-pay

obligations and permit Fina to sell the subject gas to others at market-clearing prices. Fina also requests in Docket No. CI87–917–000 the issuance of a blanket limited-term certificate of public convenience and necessity with three-year pregranted abandonment.

Fina requests that its application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85–1–000, at 18 CFR 2.77. [1] Fina also requests waiver of certain of the Commission's regulations, including those Parts 154 and 271 thereof relating to the filing and maintenance of rate schedules.

Since Fina has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Fina to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23752 Filed 10–13–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–1–5–000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

October 7, 1987.

Take notice that on September 30, 1987, Midwestern Gas Transmission Company (Midwestern) tendered for filing ten copies of Twenty-sixth Revised Sheet No. 6 of its FERC Gas Tariff, to be effective November 1, 1987. Midwestern states that this filing implements a Current Purchased Gas Cost Adjustment pursuant to Article XVIII of the General Terms and Conditions (the Northern System PGA clause) in order to reflect in the rates for Midwestern's Northern System Rate Schedules CR–2, CRL–2, SR–2 and I–2 the effective gas charges from TransCanada PipeLines Ltd. (TransCanada), the sole supplier of gas to Midwestern's Northern System. Midwestern also states that this filing does not change the present Northern System Gas Surcharge.

Midwestern states that the Current Purchased Gas Cost Adjustment reflected on Twenty-sixth Revised Sheet No. 6 consists of Unit Demand Rate Changes of $2.07 per Dkt for Rate Schedules CR–2 and CRL–2, $0.1701 per Dkt for Rate Schedule SR–2, and $0.0681 per Dkt for Rate Schedule I–2, and a negative Unit Gas Rate Change of $0.3602 per Dkt. Midwestern states further that the Unit rate changes are based upon the demand and commodity gas rates under Midwestern's gas contracts with TransCanada, and Midwestern's estimated sales billing units and system fuel requirements for the November 1987—March 1988 PGA period.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedure. All such motions or protests must be filed on or before October 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23753 Filed 10–13–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–2–000]

Natural Gas Pipeline Company of America; Change in FERC Gas Tariff

October 8, 1987.

Take notice that on October 1, 1987, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listing tariff sheets to be effective April 1, 1988:

Second Substitute Twenty-fifth Revised Sheet No. 301
Second Substitute Twenty-third Revised Sheet No. 302
Substitute Twenty-fourth Revised Sheet No. 303
Substitute Twenty-fourth Revised Sheet No. 304
Second Substitute Twenty-third Revised Sheet No. 305
Second Substitute Tenth Revised Sheet No. 306
Second Substitute Eleventh Revised Sheet No. 307
Substitute Eleventh Revised Sheet No. 308
Second Substitute Tenth Revised Sheet No. 309

Natural states that the puropose of the filing is to set out the Buyer's quantity entitlements under section 22 of the General Terms and Conditions of Natural's FERC Gas Tariff for the service year April 1, 1988 through March 31, 1989. Natural requested waiver of the Commission's regulations to the extent necessary to permit the revised sheets to become effective April 1, 1988, the beginning of the 1988–89 service year.

Natural states that the Monthly Quantity Entitlements on Sheet Nos. 301 through 309 have been changed, where required, to reflect requested changes in such entitlements by it's sixteen (16) DMQ–1 and thirty-three (33) G–1 customers. Customers requesting changes in Daily Quantity Entitlements were accommodated where feasible by Natural. Natural states that the Monthly and Daily Entitlements on these sheets provide sufficient gas volumes to allow each customer to fully meet (within contractual limits) its nominated requirements for Natural.

A copy of the filing was mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedure. All such motions or protests must be filed on or

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its regulations. Section 2.77 states that applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23754 Filed 10-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-27-001]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that North Penn Gas Company (North Penn) on October 1, 1987, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause and the Federal Energy Regulatory Commission's (Commission) letter order dated September 18, 1987, in Docket No. TA87-2-27-000 to be effective September 1, 1987.

North Penn states that the Commission's letter order dated September 18, 1987 accepted North Penn's PGA filing "subject to downward revisions to reflect any modifications in its pipeline supplier rates tracked herein effective September 1, 1987."

North Penn states that this filing reflects its pipeline supplier rates filed and approved to be effective September 1, 1987.

North Penn states that additionally submitted as Appendix E are the data required by the Commission letter order dated September 18, 1987 pertaining to the minimum bill costs from Transcontinental Gas Pipeline Corporation (Transco) as were included in North Penn's August 20, 1987 PGA filing.

North Penn states that in all other aspects this filing contains the same changes as filed on August 20, 1987 in Docket No. TA87-2-27-000 and approved by the Commission's letter order dated September 18, 1987.

North Penn respectfully requests wavier of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1987 as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23755 Filed 10-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-3-000]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that Sabine Pipe Line Company (Sabine) on October 1, 1987, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 1, 1987:

Fourth Revised Sheet No. 20
Second Revised Sheet No. 100
Second Revised Sheet No. 101
Second Revised Sheet No. 120
Second Revised Sheet No. 121
Second Revised Sheet No. 130
Second Revised Sheet No. 131
Second Revised Sheet No. 140
Second Revised Sheet No. 141

Sabine states that the listed tariff sheets set forth the transportation rates and applicable tariff provisions required to place the rates into effect, applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472 and 472-A issued May 29, 1987 and June 17, 1987, respectively.

Copies of the filing were served upon the Sabine customers, the Louisiana Department of Natural Resources and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Sabine's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23756 Filed 10-13-87; 8:45 am]

BILLING CODE 6717-01-M

Economic Regulatory Administration

[ERA Docket No. 87-38-NG]

Vector Energy (U.S.A.) Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order granting blanket authorization to Vector Energy (U.S.A.) Inc. (Vector) to export natural gas. The order issued in ERA Docket No. 87-38-NG authorizes Vector to export up to 60 Bcf of natural gas over a two-year period, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Ave., SW., Washington DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 5, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-23574 Filed 10-13-87; 8:45 am]

BILLING CODE 6450-01-D

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of August 17 through September 11, 1987

During the period of August 17 through September 11, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

October 2, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Sellers Oil Co., Bainbridge, GA; KEE-0144; Reporting Requirements

Sellers Oil Company filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." On September 9, 1987, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 87-23575 Filed 10-13-87; 8:45 am]

BILLING CODE 6450-01-D

Issuance of Proposed Decisions and Orders; Week of September 14 through September 18, 1987

During the week of September 14 through September 18, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

October 2, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Coble Oil Co., Jim Woods Marketing Co.; Treece, KS; KEE-0146, KEE-0148; Reporting Requirements

Coble Oil Company and Jim Woods Marketing Company filed Applications for Exception from the provisions of the EIA's reporting requirement for resellers. The exception request, if granted, would permit Coble and Woods to be relieved of the requirements to complete and submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On September 15, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception requests be denied.

Le Paul Oil Co., Inc.; Troy, OH; KEE-0147; Reporting Requirements

Le Paul Oil Company, Inc. (Le Paul) filed an Application for Exception from the requirement to file Form EIA-782B. The exception request, if granted, would permit Le Paul to be exempt from the filing requirement due to undue hardship. On September 14, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 87-23576 Filed 10-13-87; 8:45 am]

BILLING CODE 6450-01-D

Cases Filed; Week of August 28 Through September 4, 1987

During the Week of August 28 through September 4, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggreived person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 6, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 28 through Sept. 4, 1987]

Date	Name and location of applicant	Case No	Type of submission
July 8, 1987	California, Kern County, CA	KRZ-0521	Interlocutory. If granted: California would be permitted to participate in all aspects of the enforcement proceeding involving Kern Oil Refining Company (Case No KRO-0520)
Aug. 25, 1987	Brookville Leasing Ltd., Austin, TX	RR270-14	Request for Modification/rescission. If granted: The May 12, 1987, determination issued to Brookville Leasing Ltd. (Case No. RF270-1635) would be modified regarding the firm's application for refund in the surface transporter refund proceeding.
July 28, 1987	Texaco Inc., White Plains, NY	KRZ-0066	Interlocutory. If granted: The Office of Hearings and Appeals would issue an order imposing sanctions on the Economic Regulatory Administration and directing additional discovery with respect to the April 12, 1987 Decision and Order issued to Texaco Inc. (Case No. KRD-0021).
Aug. 31, 1987	Miller, Nash, Wiener, Hager & Carlsen, Portland, OR	KFA-0117	Appeal of an information request denial. If granted: The July 29, 1987 denial of a request for waiver of fees issued by Bonneville Power Administration in connection with a Freedom of Information Act request would be rescinded and Miller, Nash, Wiener, Hager & Carlsen would be refunded $2,513.50
Do	Time Oil Company, Washington, DC	KFA-0119	Appeal of an information request denial. If granted: The Office of Hearings and Appeals would determine if data submitted by Time Oil Company should be exempted from disclosure pursuant to a Decision and Order granting in part Steptoe and Johnson's Freedom of Information Request (Case No. KFA-0103)
Sept. 1, 1987	Lintel Technology, Inc., Roslyn, NY	KFA-0118	Appeal of an information request denial. If granted: The Freedom of Information Request Denial issued by the DOE Office of Energy Research would be rescinded and Lintel Technology, Inc. would receive access to documents relating to the internal reviews of proposal Number 4571-86-II submitted in response to Program Solicitation DOE/ER-01-0180/2.
Sept. 2, 1987	Vanderbilt Energy Corporation, Washington, DC	KEF-0097	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the June 24, 1987 consent order which the DOE entered into with Vanderbilt Energy Corporation
Sept. 11, 1987	Clean Machine, Inc., Washington, DC	KEF-0017	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the consent order which the DOE entered into on July 6, 1987, with Clean Machine, Inc.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 28 to Sept. 4, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No
8/18/87	M. & R. Coutermarsh	RF265-2550
8/28/87	Louis DeLorenzo	RF265-2549
8/28/87	Vickers/Iowa	RQ1-393
8/28/87	Amoco/Iowa	RQ521-394
8/28/87 Thru 9/4/87	Crude Oil Applications Received.	RF272-5034 Thru RF272-5537
9/1/87	Chula Enterprises, Inc	RF225-10904
9/2/87	James S. Passantino	RF225-10905

[FR Doc. 87-23688 Filed 10-13-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 7 Through September 11, 1987

During the week of September 7 through September 11, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Deaton Oil Company, 9/8/87; KEE-0142

Deaton Oil Company (Deaton Oil) filed an Application for Exception from the requirement that it file Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." In considering the firm's request, the Office of Hearings and Appeals found that Deaton Oil is in the midst of bankruptcy proceedings and has therefore reduced its staff. Furthermore, the OHA found that the President of Deaton Oil, Mr. J.D. Beavert, had limited access to the records of the company because they are currently being reviewed by an accountant. The OHA concluded that Deaton Oil's lack of personnel, along with the difficulty of obtaining the company's records, result in a significant burden which exceeds the burden normally associated with the completion of Form EIA-821. Consequently, the OHA granted Deaton Oil permanent relief from the requirement to file Form EIA-821.

Site Oil Company, 9/8/87; KEE-0145

Site Oil Company (Site) filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Site's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

Motion for Discovery

Economic Regulatory Administration, 9/11/87; KRD-0028

The Economic Regulatory Administration (ERA) filed a Motion for Discovery in connection with an enforcement proceeding pending against Cities Service Oil and Gas Corporation (Cities). In its discovery request, the ERA requested Cities to produce documents in order to permit the ERA to prepare for the upcoming evidentiary hearing to be held in the Cities case. The DOE held that Cities need not produce the deposition testimony of Mr. Frank Bowen since discovery of that testimony was denied in a previous Decision and Order. With respect to the remainder of the documents, the DOE found that an order compelling discovery was not warranted since Cities was willing to provide the ERA with documents responsive to its request. Accordingly, the Motion for Discovery was denied.

Implementation of Special Refund Procedures

Bernard A. Krouse d/b/a BAK Ltd., Krouse Fuel Company, Allan Fuel Company, Kealy Fuel Company, Walter T. Hoff & Son, 9/10/87; HEF-0034

The DOE issued a Decision and Order which established procedures to be used in evaluating claims for refunds from the $250,000 settlement fund obtained through a consent order entered into by Bernard A. Krouse, Krouse Fuel Company, Allan Fuel Company, Kealy Fuel Company, and Walter T. Hoff & Son (collectively referred to as BAK Ltd.) and the DOE. The settlement fund was provided by BAK Ltd. to settle alleged pricing violations which occurred in the sales of No. 2 heating oil

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by the firm. The transactions covered by the BAK consent order occurred between November 1, 1973 and July 31, 1974. Refunds will be made to applicants who can demonstrate that they were injured as a result of BAK's pricing practices during the consent order period. However, reseller applicants whose claim is for $5,000 or less and end-users of BAK's No. 2 heating oil need only document their purchase claims in order to receive a refund.

Gulf Oil Corporation, 9/8/87; HEF–0590

The DOE issued a Decision and Order establishing procedures for distribution of approximately $31 million received from Gulf Oil Corporation and related to alleged overcharges with respect to Gulf's sales of refined petroleum products. The Decision describes the presumptions that will be used in analyzing refund applications and sets forth information which refund applicants must include.

Refund Applications

Austin Tupler Trucking, Inc., 9/11/87; RF270–1725

The Department of Energy (DOE) issued a Decision and Order regarding an Application for Refund from the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The refund application was filed by American Trucking Associations, Inc. on behalf of Austin Tupler Trucking, Inc. (Austin Tupler). The DOE determined that owner operator volumes should be excluded from Austin Tupler's claim because the firm's owner-operators paid for the products. Since Austin Tupler purchased for use in its own vehicles less than the 250,000 gallon minimum for the Surface Transporters proceeding, the firm was deemed by the DOE to be ineligible to receive a refund from the Surface Transporters Escrow.

Bicentennial Transport, Inc.; Betz Laboratories, Inc., 9/9/87; RF270–1183, RF270–1250

The Department of Energy issued a Decision and Order approving applications submitted by Bicentennial Transport, Inc. and Betz Laboratories, Inc. for refunds from the Surface Transporters Escrow established as a result of the Stripper Well Agreement. These companies each purchased over 250,000 gallons of motor gasoline and diesel fuel between August 19, 1973 and January 27, 1981, and demonstrated that they were Surface Transporters. The total number of gallons approved in this Decision was 1,686,858.

Frank Martz Coach Company, et al., 9/11/87; RF270–1344 et al.

The Department of Energy (DOE) issued a decision and Order approving in full the volumes claimed in seven Applications for Refund and approving in part the volumes claimed in ten Applications for Refund from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The DOE eliminated from the ten applications a portion of each claim that was based on gallons of fuel purchased by owner-operators of the applicant. The DOE will determine a per gallon refund amount and establish the amount of the 17 companies' refunds based on their approved volumes after it completes its analysis of all Surface Transporter claims.

Getty Oil Company/A & D Oil Company, et al., 9/11/87; RF265–2395, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In 14 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining four cases, the applicants elected to limit their claims to $5,000. The total refunds approved in this decision are $63,279, representing $31,663 in principal and $31,616 in accrued interest.

Getty Oil Company/Adams Skelly, et al., 9/9/87; RF265–1627, et al.

The DOE issued a Decision and Order concerning 70 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them was entitled to a refund greater than the $5,000 small claim refund amount. The total refunds approved in this decision is $181,740, representing $90,928 in principal and $90,812 in accrued interest.

Gulf Oil Corporation/Barefoot Oil Company of Concord, 9/11/87; RF40–2639

The DOE issued a Decision and Order concerning an Application for Refund filed by Barefoot Oi1 Company of Concord, a Concord, North Carolina firm that operated as both a retailer and as a consignee agent of Gulf Oil corporation petroleum products. The firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 Consent Order. With respect to its purchases of 4,385,667 gallons of Gulf middle distillates during the consent order period, Barefoot demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. Using data that compared North Carolina's increasing motor gasoline consumption to Barefoot's declining sales volumes, the firm also showed that Gulf's competitive prices caused it to lose 3,428,383 gallons of motor gasoline consignment sales during the consent order period. After examining the application and supporting documentation submitted by Barefoot, the DOE concluded that the firm should receive a refund of $12,034, representing $9,533 in principal and $2,501 in accrued interest.

Gulf Oil Corp./Glenn's Gulf Coast Service, 9/11/87; RF40–3409

The DOE issued a Decision granting the Application for Refund from the Gulf Oil Corp. consent order fund filed by Glenn's Gulf Coast Service (Glenn's), a retailer of Gulf motor gasoline. In considering the application, the DOE found that Glenn's would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, Glenn's was granted a refund of $232, representing $184 in principal and $48 in interest.

Gulf Oil Corporation/Harvey Oil Company, 9/11/87; RF40–3656

The DOE issued a Decision and Order concerning an Application for Refund filed by Stoel, Rives, Boley, Jones & Grey on behalf of Harvey Oil Company. The firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the supporting data submitted by the applicant, the DOE concluded that the firm should receive a refund of $10,704 ($8,480 principal plus $2,224 interest).

Marathon Petroleum Company/Capitol Oil Company, 9/8/87; RF250–2725

The DOE issued a Decision and Order concerning an Application for Refund filed by Capitol Oil Company, a retailer of motor gasoline covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applicant demonstrated the volume of its purchases from Marathon, and requested a refund amount below the $5,000 small claims threshold. The refund approved in this Decision is $4,602 in principal and $537 in interest.

Mobil Oil Corp./Adams & Ruxton Construction Co. et al., 9/8/87; RF225–522 et al.

The DOE issued a Decision and Order granting 32 applications of end-users and retailers requesting refunds from the Mobil Oil Corporation consent order fund. Each applicant presented evidence that it purchased refined petroleum products from Mobil during the consent order period. The end-user applicants purchased product both directly and indirectly supplied by Mobil. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*), each end-user applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount, except that refunds for indirect motor gasoline purchases were based on the volume times 60 percent of the volumetric refund amount. Two of the applications were filed by retailers supplied directly by Mobil. According to the presumptions set forth in *Mobil*, these applicants were eligible for a refund from the Mobil consent order fund based on the volume of its motor gasoline purchases times 30 percent of the volumetric refund amount. Retailers of products other than motor gasoline received the full volumetric refund amount. The refunds approved in the Decision totaled $34,073.

Mobil Oil Corporation/Alden Oil Company et al., 9/11/87; RF225–5833 et al.

The DOE issued a Decision granting 33 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $47,965 ($38,957 in principal plus $9,008 in interest).

Mobil Oil Corporation, Bauer Service, Inc., et al., 9/8/87; RF225–3118 et al.

The DOE issued a Decision granting twelve Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $19,377 ($15,770 in principal plus $3,607 in interest).

Morgan Drive Away, Inc., 9/9/87; RF271–2483, RF271–81

The Office of Hearings and Appeals (OHA) issued a Decision and Order to two affiliated companies regarding their respective Applications for Refunds from the Rail and Water Transporters (RTW) Escrow and the Surface Transporters (ST) Escrow. Based on prior decisions, OHA held that the two firms could not receive refunds from both the RWT and the ST Escrows. Consequently, OHA first considered the larger RWT application, and finding that it was supported, granted a refund based on the firm's use of 52,980,820 gallons of U.S. petroleum products. OHA then dismissed the small ST application.

Norman Borthers, Inc., Port Terminal Railroad, 9/11/87; RF271–190, RF271–191

The Office of Hearings and Appeals (OHA) issued a Decision and Order to two companies granting their respective Applications for Refunds from the Rail and Water Transporters Escrow. OHA found that both applicants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. The total number of gallons approved in the Decision and Order was 18,202,397.

TNT North America, Inc., 9/11/87; RF270–923

TNT North America, Inc. filed an Application for Refund, seeking funds from the Surface Transporters Escrow established pursuant to the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. The DOE examined the firm's claim and ascertained that it is an eligible surface transporter, and its claim did not exceed the gallons of petroleum products that the applicant consumed in vehicle operations. The total volume approved in this Decision and Order is 143,264,710 gallons.

Wisconsin Michigan, Coaches, Inc., et al. 9/11/87; RF270–1658 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes claimed in seven Applications for Refund from the Surface Transporters Escrow established as the result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Dismissals

The following submissions were dismissed:

Alexandria Yellow Cab—RF270–1685
Algoma Central Railway—Marine Division—RF271–154
Coalition for Safe Power—KFA–0118
Eureka Equity Exchange—RF270–854
Hawaiian Tug & Barge Corporation—RF271–151
Ramona Oil Company—RF157–4
Rusty's Gulf—RF40–223
Seattle Oil Service, Inc.—KEE–0149
Young Brothers, Ltd.—RF271–150

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room lE–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 6, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–23689 Filed 10–13–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3277–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740 (FTS 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Tapwater Consumption Survey (Pilot Survey); (EPA ICR #1383).

Abstract: A small sample of individuals will be surveyed on tapwater consumption patterns. EPA will use the results to design a national survey.

Respondents: Individuals.

Estimated Annual Burden: 195 hours.

Frequency of Collection: One time.

Title: Public Water System Program Information (Monitoring for Volatile Synthetic Organic Chemicals). (EPA ICR #0270–VOC).

Abstract: Community water systems must monitor for chemicals as specified in EPA and State regulations. EPA and the States use the data to determine the systems' compliance with Maximum Contaminent Level regulations (40 CFR Part 141).

Respondents: Community Water Systems.

Estimated Annual Burden: 106,485 hours.

Frequency of Collection: Ranges from quarterly to once every five years, depending on initial monitoring results.

* * * * *

Comments on the abstracts in this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency (EPA), (PM–223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget (OMB), 726 Jackson Place NW. (Rm. 3019), Washington, DC 20503.

Date: October 1, 1987.

Daniel Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87–23720 Filed 10–13–87; 8:45 am]

BILLING CODE 6560–50–M

[AO–FR–3276–2]

National Emission Standards for Hazardous Air Pollutants (NESHAPS); Extension Under Standards for Radon-222 Emissions From Licensed Uranium Mill Tailings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application.

SUMMARY: Notice is being given in accordance with the provisions of 40 CFR 61.252(e)(4), that Pathfinder Mines Corporation has applied for a five year extension so that it can continue to place uranium mill tailings on existing mill tailings piles at its Shirley Basin mill site and at its Lucky Mc mill site. EPA is inviting public comment as to whether or not the application should be approved for any of the piles at either the Shirley Basin facility or the Lucky Mc facility, or both.

DATE: The period for public comment will end on November 13, 1987.

ADDRESSES: Comments should be sent to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The decision making record is contained in Docket No. A 79–11. This docket is available for public inspection between 8:00 a.m. and 3:00 p.m., Monday through Friday, at EPA's Central Docket Section, Room 4, South Conference Center, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jay Silhanek, Environmental Standards Branch, Criteria and Standards Division (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460, (202) 475–9610.

SUPPLEMENTARY INFORMATION:

I. Background

On August 15, 1986, the Environmental Protection Agency (EPA) promulgated a National Emission Standard for Hazardous Air Pollutants (NESHAS) under the authority of section 112 of the Clean Air Act for radon-222 emissions from licensed uranium mill tailings. This NESHAPS is a work practice standard which requires that no new tailings be placed on existing uranium tailing piles after December 31, 1992. However, the rule allows for the continued use of those piles to December 31, 2001, if the owners are granted either an exception or an extension by the Administrator of EPA. On January 7, 1987, Pathfinder Mines Corporation applied for five year extensions pursuant to 40 CFR 61.252(e)(1)(ii). EPA requested more information from Pathfinder and on April 11, 1987, received complete applications.

As required by 40 CFR 61.252(e)(4), EPA is providing public notice and is requesting comment on the applications before deciding whether or not the applications will be approved. EPA will hold a public hearing on this action, if such a hearing is requested by the public.

Although Pathfinder has simultaneously applied for an extension at two facilities, EPA will make a separate decision on each tailings pile. To aid this process commentors should denote which of their comments apply to piles at Shirley Basin, which comments apply to piles at Licky Mc and which comments apply to both facilities. Comments on the adequacy of protection to public health and amount of risk would be appreciated.

II. Grounds for Approval

Pursuant to 40 CFR 61.252(e)(1)(ii) an extension will be granted if the owner demonstrates there will be protection of the public health with an ample margin of safety. The EPA decision on whether or not to grant the applications will be based on an analysis of the risk to the public health that will result from the continued use of the mill tailings facilities for the period of the extension. EPA will take into account the size and condition of the pile, the size and location of the nearby population, the length of the extension requested, the existence and effectiveness of any risk reduction practices that are or will be taken and the expected level of future mill activity. Additional information on these factors was provided by the applicant to assist EPA in its analysis. As part of the action, Pathfinder must certify that the operations of both sites are in compliance with applicable existing Nuclear Regulatory Commission (NRC) regulations and license conditions. Comments from the public will also be considered in our decision.

In determining whether or not to grant an extension for a tailings pile, EPA will not examine the condition of the ground water at the mill sites. Ground water is already protected under existing EPA rules which are implemented by NRC.

III. Lucky Mc Mill

A. Location and Description

The Lucky Mc Uranium Mill is located in the Gas Hills region of Fremont County, Wyoming, about 25 mi northeast of Jeffrey City. This mill first began producing yellowcake in 1958 with a nominal ore processing capacity of 935 tons/day. Since then, the capacity has been expanded to the current level of about 2,800 tons of ore per day.

Pathfinder's open pit mining operations, located 1 to 2 miles from the mill, supply most of the ore. The ore grade has averaged 0.21 percent U_3O_8 in past operations and is expected to average 0.11 percent in the future.

The tailings retention system consists of four tailings impoundments. The impoundments are situated sequentially in the head of a gully north by northeast of the mill and are dug into an underlying shale formation. The clay core dams are keyed into the shale. The average tailings depth is now 40 ft and is expected to increase to 60 ft by the end of the projected milling operation in 1996 (end of extension). Water is sprayed over the dry tailings during warm weather to control dust, but not radon. As of August 1986, the dry beaches account for 172 acres of the total area, whereas 96 acres are covered with tailings solution. The remaining 21 acres of exposed tailings were saturated with water. This ration will change with time. The amount of tailings under management was 12×10^6 tons.

Separate measurements have been made for the homogeneous solid tailings, cycloned tailings sand, and the slimes. EPA estimates the radium-226 content at 420 PCi/g for the total pile. This activity was used to make estimates of radon emissions to air which were 16 kCi/yr when dry and 9 kCi/yr when partially wet for all the piles.

The Pathfinder Lucky Mc Mill is in a remote location away from permanent habitation. A 1983 survey indicated 58 people living within a 5 km radius of the tailings piles. These people lived at a camp for the mill workers and their families. This camp was closed in 1984. There are no known residences within 22 km of the site of this time.

B. Size and Use of Piles

Pathfinder has provided the following information concerning the size and capacity of the tailings impoundments at the Lucky Mc Mill in Table 1:

TABLE 1.—LUCKY MC TAILINGS FACILITIES PILE SIZE AND CAPACITIES

Pile	Total storage capacity (tons)	Current tailings (tons)	Remaining capacity (tons)	Surface area (A) (acres)
1	5,100,000	4,800,000	350,000	53
2	4,800,000	3,900,000	890,000	77
2A	7,500,000	3,100,000	4,500,000	102
3 and 4 Currently licensed for solution storage only.				149
Total	17,400,000	11,800,000	5,740,000	381

(*) Surface area will remain the same as capacity of pile is used.

If the Lucky Mc Mill operates at the licensed rate of 2,800 tons/day, the amount of time left to fill the existing impoundments would be about 7 years. However, they are estimating that they will operate at an average of 850 tons/day during 1987 and 430 tons/day from 1988–1990. After 1990 the average rate would be even lower. The applicant feels they could operate through 2006 with their current capacity. However, they will have to cease using the existing impoundments in 2001 to comply with the mill tailings NESHAPS even if multiple extensions are granted.

Piles 1 and 2 are being used for water control. It is unclear at this time whether these ponds are necessary since pile 2A has sufficient capacity to continue operations at a reduced rate of operation.

C. Condition of the Tailings System

The tailings system has not received new tailings since 1985. As a result, it has been temporarily stabilized with an interim soil cover to prevent windblown tailings off the site. During operation the surface area would be covered with wet tailings minimizing the dry beach area. The discharge line would be relocated periodically to keep most of the surface area wet.

All the dams are inspected on a daily basis for any signs of instability. The NRC also inspects the dams at least once a year. In November 1986, a local engineering firm conducted an investigation of the stability of the dams. It concluded that the existing dam slopes are stable. No seepage was observed.

A pump back system for seepage through the dams was installed in 1984. This was checked in 1985 by a private consulting firm and was felt to be adequate for the planned addition of more wet tailings. Monthly monitoring of wells around the piles are done to determine water level changes.

EPA is not considering the possible water contamination of the ground water with this action. Water pollution from active tailings piles has been covered under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The NRC is implementing standards developed by EPA under this Act.

D. Assessment of Risk

The AIRDOS EPA and DARTAB codes and an assumed radon-222 deay product equilibrium fraction of 0.7 were used by EPA to estimate the increased chance of lung cancer for individuals living near a tailings impoundment and receiving the maximum exposure. For the Lucky Mc Mill, the maximum lifetime risk for an individual living downwind of the tailings site is 7.4×10^{-5} at 22 km from the site. The extension may increase the risk by 5/70 of the lifetime estimate or 5.3×10^{-6}. The estimated health effects from the Lucky Mc impoundment in its current condition are 2.7×10^{-3} fatal cancers per year for the region and 1.2×10^{-1} cancers per year for the nation. The risks can vary by a factor of 2.

E. Current and Proposed Risk Reduction Practices

Interim clay cover or soil is being used on the tailings piles while on standby. Additional wet tailings will be placed on the current dry portions of the pile during operation. Sprinkler systems will be used when necessary to control blowing tailings; but they do not control the radon emissions. Following completion of the mill activities, the site will be reclaimed according to a plan approved by NRC.

IV. Shirley Basin Mill

A. Location and Description

The Pathfinder Mines Corporation Shirley Basin uranium mill is located in an area of plains and rolling hills about 45 mi south of Casper, Wyoming. The mill, which began operation in 1971, uses processes of grinding, leaching, and ion exchange of the ore to produce yellowcake. Current mill capacity is 1,800 tons of ore per day. The mill is currently active and has a throughput of 990 tons/day.

Tailings are contained in a single on site tailings impoundment with three separate piles created by building a single sided earthen retention dam 18 m high. The surface area of the tailings impoundment is 261 acres, of which 179 acres are covered with ponded tailings solution. Sixty acres are dry beaches and 22 acres are wet. The impoundment contains 6.4×10^6 tons of tailings. The tailings are estimated by EPA to contain 540 pCi/g of radium-226. This activity was used to estimate radon emissions to air which were 18 kCi/yr when dry and 4 kCi/yr when partially wet.

A 1983 survey of the population in the vicinity of the Pathfinder Shirley Basin

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Mill indicated the closest inhabitant was living about 5 km from the tailings impoundment. In 1986 this situation had not changed.

B. Size and Use of Piles

The size and capacity of the Shirley Basin tailings impoundment are given in Table 2 as follows:

TABLE 2.—SHIRLEY BASIN TAILINGS FACILITIES PILE SIZE AND CAPACITIES

Piles[a]	Total storage capacity (tons)	Current tailings (tons)	Remaining capacity (tons)	Surface area (acres)
3 Currently used for solution storage only				32
4	7,600,000	3,900,000	3,700,000	175
5	4,000,000	3,200,000	800,000	100
Total	11,600,000	7,100,000	4,500,000	307

a Piles 1 & 2 have been combined in piles 3, 4, and 5.

If the design operating rate of 1,800 tons/day is assumed, the amount of time left to fill the existing impoundments would be about 8 years. One option would be to close pile 5 because of its low remaining capacity but it can be used for water control. The mill plans to operate at about 1,000 tons/day which means they could operate another 15 years. Even lower operations rates are projected after 1989.

C. Condition of Piles

The Shirley Basin tailings system has operated at a reduced rate since 1980. Dry tailings areas are covered with mine overburden to control blowing tailings and to reduce radon emission rates. Additional wet tailings are placed on the dry areas of the pile during operation.

The dams are inspected on a daily basis for any signs of instability. The NRC also inspects the dams on their routine inspections each year.

Seepage from the tailings dam has been observed in the monitoring wells. A collection system for thje seepage has been installed. Monitoring wells will indicate if an additional seepage problem develops in the future. The seepage system is checked by the company and NRC on a routine basis.

EPA is not considering the possible water contamination of the ground water this action. Water pollution from tailings piles has been covered under UMTRCA.

D. Assessment of Risk

The AIRDOS EPA and DARTAB codes and assumed radon-222 decay product equilibrium fraction of 0.7 were used by EPA to estimate the increased chance of lung cancer for the closest individual living near a tailings impoundment and receiving the maximum exposure. For the Shirley Basin Mill, the estimated maximum lifetime risk for the individual living downwind of the tailings piles is 1×10^{-4} at 5 km from the site. The extenstion may increase the risk by 5% of the lifetime estimate or 7.1×10^{-6} The estimated health effects from the Shirley Basin impoundment in its current condition are 4.8×10^{-3} fatal cancers per year for the region and 5.4×10^{-2} cancers per year for the nation. The risks can vary by a factor of two.

E. Current and Proposed Risk Reduction Practices

Interim clay cover or soil is being used on the operating tailings piles. Additional wet tailings will be placed on the current dry portions of the pile. Sprinkler systems will be used when necessary to control blowing tailings but not to control radon emissions. Following completion of the mill activities, the site will be reclaimed according to a plan approved by NRC.

Dated: October 1, 1987.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 87-23715 Filed 10-13-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3276-5]

PSD Permit for the North Broward County Resource Recovery Facility; Broward County, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Prevention of Significant, Deterioration (PSD) permit (PSD-FL-112) issued to Broward County, Florida, on July 28, 1987, became effective on September 3, 1987. The permit was issued for the construction of the Broward County 2420 tons per days municipal solid waste incineration facility with electrical generation capability.

DATE: This action is effective as of September 3, 1987, the effective date of the PSD permit. Construction must begin within eighteen (18) months of this date or the permit will become invalid.

ADDRESSES: Copies of the PSD permit, permit application, and preliminary and final determinations are available for public inspection upon request at the folllowing locations:

U.S. Envioronmental Protection Agency, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400

FOR FURTHER INFORMATION CONTACT: Michael Brandon of the EPA Region IV, Air Programs Branch at the Atlanta address given above, telephone (404) 347-2864; (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: On February 14, 1986, the Broward County Resource Recovery Office submitted an application to EPA for the construction of the North Broward County Resource Recovery Facility. The facility will consist of four 605 tons per day municipal solid waste incinerators located in Broward County, Florida. The preliminary determination was made by the Florida Department of Environmental Regulation and the public comment period commenced on September 13, 1986. Comments on the preliminary determination were made by EPA and Broward County in reference to various permit conditions and by numerous citizens supporting the requirements for acid gas controls. On

June 26, 1987, EPA prepared the Final Determination and Permit Conditions. These conditions require, in part, the installation of an acid gas control device to control 90% of the acid gases, and 65% control or 0.14 lbs per million Btu of the sulfur dioxide emissions. In addition, the permit limits the emission of particulate matter to 0.015 gr/dscf corrected to 12% CO_2. The facility was also allowed to burn municipal solid waste at 110% of its rated capacity (i.e., 2420 tons per day). No other comments were received during the public comment period.

The federal PSD permit (PAD–FL–112) was issued on July 28, 1987, and became effective on September 3, 1987. The effective date of this permit constitutes final agency action uder 40 CFR 124.19 (f)(1) and section 307 of the Clean Air Act, for purposes of judicial review. Under section 307 (b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challanged later in proceedings to enforce its requirements (see section 307 (b)(2)).

If construction does not commence within eighteen (18) months after the effective date, that is, by March 3, 1989, or if construction is not completed within a reasonable time, the permit shall expire and the authorization to construct shall become invalid.

(Sections 160–169 of the Clean Air Act (42 U.S.C. 7470–7479))

Dated: October 1, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

[FR Doc. 87–23721 Filed 10–13–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3275–9]

Science Advisory Board; Water Quality Advisories Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a two day meeting of the Water Quality Advisories Subcommittee of the Science Advisory Board will be held on October 22 and 23, 1987. The meeting will begin at 9:00 a.m. on October 22, and will be held in the Laboratory Conference Room of EPA, Region 3, Annapolis Office at 839 Bestgate Road, Annapolis, MD. Adjournment on October 23 will take place no later than 3:00 p.m.

The main purpose of the meeting is to review draft guidelines developed for preparation of water quality advisories for both human health and aquatic life protection. Water quality advisories are intended to be used as a supplement to development of water quality criteria recommendations under section 304(a) of the Clean Water Act. Advisories are designed to fill the gap between the large number of pollutants and the limited number of criteria documents currently produced, and represent the best scientific judgement given the existing information.

The meeting will be open to the public; however, space is limited. Anyone who wishes to attend, present information to the Subcommittee, or obtain information concerning the meeting should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101–F), Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460, Telephone (202) 382–2552 or FTS 8–382–2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the above address. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than October 19, 1987, in order to be assured of space on the agenda.

Date: October 5, 1987.

Kathleen Conway,

Deputy Director, Science Advisory Board.

[FR Doc. 87–23722 Filed 10–13–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3276–1]

Announcement of a Public Hearing on the Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: A public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" was published in the **Federal Register** and the New Jersey *Star Ledger* on August 7, 1987. (Request for a copy of that notice should be made to the person listed in the section below entitled **FURTHER INFORMATION**.) The August 7, 1987 notice announced the Environmental Protection Agency's (EPA) Region II Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material into wetlands owned by the Russo Development Corporation—71 Hudson Street, Hackensack, New Jersey. The Russo Development Corporation has sought after-the-fact Department of the Army authorization to maintain 52.5 acres of fill and authorization to discharge additional fill material into the remaining five wetland acres on site in Carlstadt, New Jersey (Block 131.1, Lots 59, 64.01–64.06) for the purpose of constructing warehouses. The Regional Administrator has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into the subject wetlands may have unacceptable adverse effects on wildlife. The Russo site was/and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR 230.3. The site therefore is subject to regulations under section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site.

The Corps of Engineers (COE) advised EPA of its intention to issue a permit as requested by the Russo Development Corporaton. Section 404(c) of the Clean Water Act authorizes EPA to prohibit or restrict the discharge of fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that the use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. The purpose of this notice is to announce the scheduling of a hearing to provide the opportunity to comment on the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material onto the subject site pursuant to section 404(c) of the Clear Water Act.

Public Hearing

A public hearing is scheduled for November 5 1987 at the Hackensack Meadowlands Development Commission's auditorium at One De Korte Park Plaza, Lyndhurst, New Jersey from 3 pm to 5:30 pm and continuing at 7 pm after a dinner break. Written comments may be submittd prior to the hearing. Any person may appear at the hearing and present oral or written statements and may be represented by counsel or other authorized representative. Participants will be afforded an opportunity for rebuttal. The Regional Administrator's designee will be the Presiding Officer at the hearing. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examinations of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant. The hearing record will remain open for the submittal of written

comments until November 20, 1987, 15 days from the close of the public hearing. A record of the hearing proceeding shall be made by a verbatim transcript. Copies of the transcript of the proceedings may be purchased by any person from EPA after the close of the comment period. Copies will be available for public inspection at the Region II EPA office, 26 Federal Plaza, New York, NY after the close of the comment period. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

All written statement and information offered in evidence at the hearing will constitute a part of the hearing file which will become part of the administrative record of the Regional Administrator's determination.

DATES: All written comments should be submitted to the person listed under ADDRESSES, below, no later than November 20, 1987, 15 days from the close of the public hearing. Written comments may be submitted to the Presiding Officer at the time of the hearing.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, New York, NY 10278. The public hearing will be held in the Hackensack Meadowlands Development Commission's auditorium located at One De Korte Park Plaza, Lyndhurst, New Jersey.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264–5170. If you wish to receive a copy of the public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" published on August 7, 1987, please contact Mr. Del Vicario and a copy will be mailed to you.

SUPPLEMENTARY INFORMATION: The August 7, 1987 public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site: reviewed the section 404(c) process, provided a description of the subject wetland site, reviewed the proceedings to date on the subject action, discussed the basis for the proposed determination and, solicited comments.

During the scheduled hearing, EPA would like to obtain comments on: (1) Whether the impacts of the subject discharge would represent an unacceptable adverse effect as described in section 404(c) of the Clean Water Act; (2) the vegetative and hydrologic characteristics of the subject site and, observations of our information concerning wildlife on the site prior to and after the placement of fill material; (3) observations of or information concerning wildlife in wetlands similar to the subject site and in the Hackensack Meadowlands in general (4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; (5) whether the Regional Administrator should recommend to the Assistant Administrator for Water the determination to prohibit or restrict the discharge of dredged or fill material on the site. Comments should be submitted no later than November 20, 1987 to the person listed above under **ADDRESSES.** All comments received will be fully considered by the Regional Administrator in making his determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Dagget,

Regional Administrator.

[FR Doc. 87–23712 Filed 10–13–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3275–S]

Water Pollution; Final NPDES General Permit for Private Domestic Discharges in East Baton Rouge Parish in the State of Louisiana

AGENCY: Environment Protection Agency.

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Regional Administrator of Region IV is today issuing a Final NPDES General Permit for certain dischargers who treat private domestic wastes. This final NPDES general permit establishes effluent limitations, standards, prohibitions and other conditions on these discharges. The facilities covered by this permit are located in East Baton Rouge Parish within the State of Louisiana. A copy of the permit is reprinted as required by 40 CFR 122.28.

EFFECTIVE DATE: This NPDES general permit shall become effective November 13, 1987.

ADDRESSES: Notifications required under this permit should be sent to the Director, Water Management Division (6W), U.S. Environmental Protection Agency, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell (6W–PS), U.S. Environmental Protection Agency, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas Texas 75202–2733. (214) 655–7190.

SUPPLEMENTARY INFORMATION: Public notice of the draft permit was published in the **Federal Register** on July 29, 1987 (52 FR 28337). The comment period closed on August 28, 1987. One comment received from the Louisiana Department of Environmental Quality (LDEQ) who submitted several significant comments on the draft permit. In accordance with 40 CFR 124.17(a)(2), EPA describes and responds to these comments as follows. This response supplements the fact sheet which was published with the draft permit and is incorporated by reference. Changes have been made to the permit as noted in this response.

Comment: LDEQ suggested that EPA should extend coverage of the general permit to public owned treatment works (POTWs) as well as private facilities, because East Baton Rouge Parish has a policy of taking over new subdivision treatment facilities for operation and maintenance after they have been permitted.

Response: EPA clearly states in the fact sheet and the permit that this general permit applies only to private domestic treatment works and not to POTWs. Furthermore, a consent decree is presently being issued in East Baton Rouge Parish to require that most small POTWs be connected to central treatment plants. Therefore, this general permit will not be applied to POTWs. If a private domestic treatment works becomes a POTW, it will no longer be covered by this permit and must be covered by an individual NPDES permit.

Comment: LDEQ points out that the area policy on which the general permit is based covers only facilities discharging to water in the Amite/Comite drainage system and questions if EPA wishes to extend the coverage of the general permit beyond the area policy.

Response: The area policy also applies to the Bayou Manchac drainage system. However, under best professional judgment (BPJ), EPA has applied the limitations under the area policy to the entire East Baton Rouge Parish.

Comment: LDEQ requests that the flow based for assigned limitatinos be changed from "facility design flow" to "expected flow."

Response: EPA concurs and has made the change.

Comment: LDEQ requests that the permittee be given the choice of fecal coliform limits of 200/100 ml average

and 400/100 ml maximum or total residual chlorine limits of 0.8 mg/1 minimum and 2.0 mg/1 maximum.

Response: EPA will retain only the fecal coliform limits which allow the permittees to apply any of several types of disinfection which may be most appropriate.

Comment: LDEQ requests that flow ranges be modified to:

2,500< flow < 10,000;
10,000< flow < 25,000;
25,000< flow < 100,000;
100,00 < flow <1,000,000

Response: EPA concurs and has made the changes.

Comment: LDEQ requests that annual reports of monitoring data contain the monthly average and monthly maximum data.

Response: EPA modified the reporting to require that the monthly data also be submitted to the LDEQ with the annual reports.

Comment: LDEQ requests that the time period for submission of a request for exclusion/application for an individual permit for existing facilities be unlimited because many permittees may remain unaware of a general permit until it is called to their attention.

Response: EPA retains the time to request an individual permit to 90 days after publication.

Comment: LDEQ requests that the requirement for requests for coverage under the general permit be changed from fourteen to sixty days prior to commencement of discharge.

Response: EPA concurs and has made the change.

Comment: LDEQ questions the need for new applications for individual permits from those not wishing to be covered by the general permit.

Response: As an administrative matter EPA retains this requirement for a new application.

Paperwork Reduction Act

No comments were received on the information collection requirements contained in this final permit.

Dated: September 18, 1987.

Robert E. Layton Jr.,

Regional Administrator, Region VI.

[Permit No. LAG550000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended, [33 U.S.C. 1251 et. seq.; the "Act"), within East Baton Rouge Parish, Louisiana, operators engaged in the gneration of private domestic wastes with design flows equal to or greater than 2500 gpd and less than 1 MGD are authorized to discharge to various storm sewers, tributaries, stream segments are river basins, which are waters of the United States as defined in 40 CFR 122.2, in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, and III hereof.

Operators within the general permit area must make a written notification to the Regional Administrator that they intend to be covered by this general permit (See Part III.B.)

This permit shall become effective on November 13, 1987.

This permit and the authorization to discharge shall expire at midnight, November 12, 1992.

Signed this 18th day of September, 1987.

Kenton Kirkpatrick,

Acting Director, Water Management Division (6W).

Part I—Requirements for NPDES Permits

Section A. Effluent Limitations and Monitoring Requirements

Outfall 101

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 101-treated sanitary wastes from private domestic facilities with expected flows equal to or greater than 2500 gpd and less than 10,000 gpd.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations—units (specify)	
	Daily avg	Daily max
Flow (MGD)	(1)	(1)
Total Suspended Solids.	30 mg/l (4)	45 mg/l (4)
Biochemical Oxygen Demand (5-day).	30 mg/l	45 mg/l
Fecal Coliform.	200/100 ml (3)	400/100 ml

Effluent charcteristic	Monioring requirements	
	Measurement frequency	Sample type
Flow (MGD)	1/Quarter (2)	Estimate.
Total Suspended Solids.	1/Quarter	Grab.
Biochemical Oxygen Demand (5-day).	1/Quarter	Grab.
Fecal Coliform.	1/Quarter	Grab.

(1) Report.
(2) When discharge occurs.
(3) Monthy log mean.
(4) For facilities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitered 1/quarter by grab sample.

Sample taken in complaince wih the monitoring requirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Outfall 201

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 101-treated sanitary wastes from private domestic facilities with expected flows equal to or greater than 10,000 gpd and less than 25,000 gpd.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations—units (specify)	
	Daily avg	Daily max
Flow (MGD)	(1)	(1)
Total Suspended Solids.	30 mg/l (4)	45 mg/l(4)
Biochemical Oxygen Demand (5-day).	30 mg/l	45 mg/l
Fecal Coliform.	200/100 ml (3)	400/100 ml

Effluent charcteristic	Monioring requirements	
	Measurement frequency	Sample type
Flow (MGD)	1/Month (2)	Estimate.
Total Suspended Solids.	1/Month	Grab.
Biochemical Oxygen Demand (5-day).	1/Month	Grab.

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Effluent charcteristic	Monioring requirements	
	Measurement frequency	Sample type
Fecal Coliform.	1/Month.....	Grab.

(1) Report.
(2) When discharge occurs.
(3) Monthy log mean.
(4) For facilities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitered 1/month by grab sample.

Sample taken in complaince wih the monitoring rquirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Outfall 301

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 301-treated sanitary wastes from private domestic facilities with expected flows equal to or greater than 25,000 gpd and less than 100,000 gpd.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent charactristic	Discharge limitations units (specify)	
	Daily Avg	Daily max
Flow (MGD).....	(1).....	(1)
Total Suspended Solids.	30 mg/l (5).....	45 mg/l (5).
	15 mg/l (2).....	23 mg/l (2).
Biochemical Oxygen Demand (5-day).	30 mg/l.....	45 mg/l.
	10 mg/l (2).....	15 mg/l (2).
Fecal Coliform.	200/100 ml (4)..	400/100 ml (4).

Effluent charactristic	Monitoring requirements	
	Measurement frequency	Sample type
Flow (MGD).....	1/Week (3)	Estimate.
Total Suspended Solids.	1/Month.....	Grab.
Biochemical Oxygen Demand (5-day).	1/Month.....	Grab.
Fecal Coliform.	1/Month.....	Grab.

(1) Report.
(2) Applicable to facilitries schedule (a) from the permit effective date for facilities which were built, modified or upgraded after September 30, 1986, or schedule (b) by October 1, 1991, for facilities existing as of September 30, 1986.
(3) When discharge occurs.
(4) Monthly log mean.
(5) For faiclities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/month by grab sample.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Outfall 401

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 401-treated sanitary wastes from private domestic facilities with expected flows equal to or greater than 100,000 gpd and less than 1 MGD.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent charactristic	Discharge limitations units (specify)	
	Daily Avg	Daily max
Flow (MGD).....	(1).....	(1)
Total Suspended Solids.	30 mg/l (5).....	45 mg/l (5).
	15 mg/l (2).....	23 mg/l (2).
Biochemical Oxygen Demand (5-day).	30 mg/l.....	45 mg/l.
	10 mg/l (2).....	15 mg/l (2).
Fecal Coliform.	200/100 ml (4)..	400/100 ml (4).

Effluent charactristic	Monitoring requirements	
	Measurement frequency	Sample type
Flow (MGD).....	5/Week (3)	Instantaneous.
Total Suspended Solids.	1/Week.....	Grab.
Biochemical Oxygen Demand (5-day).	1/Week.....	Grab.
Fecal Coliform.	1/Week.....	Grab.

(1) Report.
(2) Applicable to facilitries schedule (a) from the permit effective date for facilities which were built, modified or upgraded after September 30, 1986, or schedule (b) by October 1, 1991, for facilities existing as of September 30, 1986.
(3) When discharge occurs.
(4) Monthly log mean.
(5) For faiclities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week by grab sample.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Section B. Other Discharge Limitations

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Section C. Permit Area

The area covered by this general permit includes all areas within East Baton Rouge Parish, Louisiana.

Section D. Schedule of Compliance

The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the requirements of Section A of Part I.

Part II—Standard Conditions for NPDES Permits

Section A. General Conditions

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

The Clean Water Act provides that any person who violates sections 301,

302, 306, 307, 308, 318, or 405 or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation provided that a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. The Act also provides for criminal penalties.

3. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or,

d. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under section 301(b)(2)(C), and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

b. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

4. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" Section B, paragraph 4.b. and "Upsets" Section B, paragraph 5.b., nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Clean Water Act.

6. State Laws

Nothing in this permit shall be construed to preclude the institution of any lagal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulatiaon under authority preserved by section 510 of the Clean Water Act.

7. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

8. Severability

The provisions of this permit are severable, and if any provision of this permit or a the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9. Definitions

The following definitions shall apply unless otherwise specified in this permit:

a. "Daily Average" discharge limitation means the highest allowable average of discharges over a calendar month, calculated as the sum of all discharges measured during a calendar month divided by the number of discharges measured during that month.

b. "Daily Maximum" discharge limitation means the highest allowable discharage during the calendar month.

c. The term "mg/1" shall mean milligrams per liter or parts per million (ppm).

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facialities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty of Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass of Treatment Facilities

a. Definitions

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section B, paragraphs 4.c. and 4.d. of this section.

c. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, paragraph 6 (24-hour notice).

d. Prohibition of bypass

(1) Bypass is prohibited, and the Director Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is

not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occured during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required under Section B, paragrpah 4.c.

(2) The Regional Administrator may approve an anticipated bypass, after cosidering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Section B, paragraph 4.d.(1)

5. Upset Conditions

a. Definition. "Upset" means and exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brough for noncompliance with such technology-based permit effluent limitations if the requirements of Section B, paragraph 5.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permitted who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Section D, paragraph 6.

(4) The permitee complied with any remedial measures required under Section B, paragraph 3.

d. Burden of proof. In any anforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

Section C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

2. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

3. False Statements

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintanined under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10.000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

4. Reporting of Monitoring Results

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) From (EPA No. 3320–1). The annual average reported shall be the average for the twelve months of the highest sample for each month. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration. In addition, for each of the twelve preceeding months a DMR Form shall be submitted only to the LDEQ, reporting the monthly average and maximum data for that month.

The first report is due on the 28th day of the 13th month month from the day this permit first becomes applicable to a permittee. Signed and certified copies of these and other reports required herein, shall be submitted to EPA and to the State at the following addresses:

Director Water Management Division (6W), Regional, VI, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, Texas 75250

J. Dale Givens, Assistant Secretary for Water, Office of Water Resources, Louisiana Department of Environmental Quality, P.O. Box 44091, Baton Rouge, Louisiana 70804–4091

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than reqired by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring in the DMR. Such increased monitoring frequency shall also be indicted on the DMR.

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. Retention of Records

The permittee shall retain records of all monitoring information, inlcuding all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Regional Administrator at any time.

8. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and,

f. The results of such analyses.

9. Inspection and Entry.

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is requried only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b) [48 FR 14153, April 1, 1983, as amended at 49 FR 38046, September 26, 1984]; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants wich are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1) (48 FR 14153, April 1, 1983, as amended at 49 38046, September 26, 1984).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

4. Monitoring Reports

Monitoring results shall be reported at the intervals and in the form specified in Section C, paragraph 5 (Monitoring).

5. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

6. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if noncompliance, including dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

a. Any unanticipated bypass which excees any effulent limitation in the permit.

b. Any upset which exceed any effluent limitation in the permit.

c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in Part III of the permit to be reported within 24 hours.

7. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Section D, paragraphs 4, 5, and 6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section D, paragraph 6.

8. Changes in Discharges of Toxic Substances

The permittee shall notify the Regional Administrator as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, in a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1) i & ii.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the premit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(2) i & ii.

9. *Duty to Provide Information*

The premittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The premittee shall also furnish to the Regional Administrator upon request, copies of records to be kept by this permit.

10. *Signatory Requirements*

All applications, reports, or information submitted to the Regional Administrator shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasure, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or havings gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person.

A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above.

(2) The authorization specifies either an individual or a positon having responsibility for the over operation of the regulated facility or activity, such as the postion of plant manager, operation of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and,

(3) The written authorizatons is submitted to the Regional Administrator.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under may direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, on my inquiry of the person or person who manage the system, or those persons directly responsible for gathering the information, the informatoin submitted is, to the best of my knowledte and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false infomation, including the possibility of fine and imprisonment for knowing violations.

11. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared inaccordance with the terms of this permit shall be availble for public inspection at the office of the Director. As required by the Clean Water Act, the name and address of any permit applicant or permittee, permit appliclations, permits, and effluent data shall not be considered confidential.

Section E. Notification Requirements

1. Commencement of Operations

Written notification of commencement of operations, including the legal name and address of the discharger and the name commonly assigned to the facility shall be submitted:

a. Within 45 days of the effective date of this permit by operators whose facilities are discharging into the general permit area on the effective date of the permit.

b. Sixty days prior to the commencement of discharge by operator whose facilities commence discharge subsequent to the effective date of this permit.

2. Termination of Operations

Operators shall notify the Regional Administrator upon the permanent termination of discharges from their facilities.

Section F. Additional General Permit Conditions

1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occured in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

or

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring;

and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual NPDES permits.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit may be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than (90 days after the publication).

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

Part III—Other Conditions

A. Private Domestic Treatment Works means any device or system which is (a) used to treat domestic wastes and (b) is not a "POTW" as defined under 40 CFR 122.2

B. Operators requesting to be covered by this general permit shall notify the Regional Administrator of any prior application for an individual permit or issued individual permit and shall identify any NPDES number which was assigned to the application or individual permit. Operators who have applied for but have not been issued an individual NPDES permit, and not wishing to be covered by this general permit, shall also notify the Regional Administrator of the NPDES number for the prior application and shall be required to reapply for an individual NPDES permit.

C. With notification, operators requesting to be covered by this general permit shall report 1) the design flow of the facility and identify the outfall and schedule (where applicable) to their facilities, i.e., Outfall 101, Outfall 201, Outfall 301 schedule (a), Outfall 301 schedule (b), Outfall 401 schedule (a) or Outfall 401 schedule (b); and 2) identify if waste stabilization ponds are the primary treatment.

[FR Doc. 87-23571 Filed 10-13-87; 9:30 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83-1376; RM-4436; FCC 87-299]

Intergration of Rates and Services for Provision of Communications

AGENCY: Federal Communications Commission.

ACTION: Order appointing commissioners.

SUMMARY: This order appoints two state commissions nominated by the National

Association of Regulatory Utility Commissioners to the Alaska Joint Board. The two commissioners are Susan M. Knowles of the Alaska Public Utilities Commission and Nels J. Smith of the Wyoming Public Service Commission.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Common Carrier Bureau, Policy and Program Planning Division, 202–632–9342.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–23591 Filed 10–13–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidance on Offsite Emergency Radiation Measurement Systems; Phase 2, the Milk Pathway, FEMA REP–12

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of a guidance document on offsite emergency radiation systems for measurement of the potential radiation dose to the public from the milk pathway in the event of an accident at a light-water nuclear power plant and invitation for submittal of comments.

SUMMARY: The document, Guidance on Offsite Emergency Radiation Measurement Systems, Phase 2—The Milk Pathway, FEMA, REP–12, dated September 1987, will be available for public distribution and comment on October 30, 1987. Copies will be distributed to State and local government emergency planners with nuclear power plants operating or under construction, and other affected Federal agencies for review, comment, and interim use.

As lead Agency under a Memorandum of Understanding (MOU) with the Nuclear Regulatory Commission (NRC), the Federal Emergency Management Agency (FEMA) is responsible for the approval of offsite radiological emergency preparedness around nuclear power plants throughout the United States. FEMA's Rule 44 CFR Part 350 creates the regulatory framework by which FEMA will evaluate and assess State and local radiological emergency plans and preparedness of which offsite emergency radiation systems for measurements of the milk pathway are a part. The document, "Guidance on Offsite Emergency Radiation Measurements Systems, Phase 2—The Milk Pathway," FEMA REP–12, was developed to elaborate upon the requirements of 44 CFR 350 as related to offsite emergency radiation systems for measurement of the milk pathway. The guidance is intented to assist State and local planners and utilities in understanding standards that FEMA will use to assess the adequacy of offsite emergency radiation systems for measurement of the milk pathway and to assist FEMA personnel in uniformly interpreting and applying the applicable planning standards and criteria from NUREG–0654/FEMA-REP–1, Rev. 1 during plan reviews and exercises.

This is the second of a series of guidance documents of offsite emergency radiation measurements systems prepared by the Federal Radiological Preparedness Coordinating Committee, Subcommittee on Offsite Emergency Instrumentation. This report provides guidance on the selection and use of radiation instrumentation and methodologies that are currently available to detect and measure the dose commitment to individuals from the milk pathway.

Protective action levels recommended by the Food and Drug Administration (FDA) for milk are used as the basis for monitoring requirements. Measurement of radionuclides in milk should be made at the earliest practical point in the production chain: Dairy farms, receiving and transfer stations, processing plants or marketing facilities. Early monitoring will provide data to keep significantly contaminated milk out of distribution and will provide the basis for the most timely emergency response action. Radioiodine plus four other radionuclides, cesium–134, cesium–137, strontium–89, and strontium–90, contribute significantly to dose via the milk pathway. For the most severe potential accident, the short-term dose via the milk pathway from the radioiodine is significantly greater than that of cesium or strontium.

There is no emergency field monitoring instrumentation available for accurately monitoring cesium and strontium, particularly in the presence of radioiodine. Radioiodine can be a potential contamination problem in liquid milk, whereas radiocesium and radiostrontium can be a contamination problem is processed milk products. Monitoring for the long half-life nuclides such as cesium and strontium requires sophisticated equipment or chemistry procedures which are only available in a laboratory.

This document is intended for interim use until a final edition can be published early next calendar year. Comments received by FEMA on this document will be analyzed with the results being used to develop the final edition. Single copies of this document may be requested in writing from the Federal Emergency Management Agency, P.O. Box 70274, Washington, DC 20024. Please reference FEMA-REP–12 and the title of the document in your request.

Comments on this document will be accepted through January 31, 1988, and should be addressed to : Rules Docket Clerk, Federal Emergency Management Agency, Room 835, 500 C Street Southwest, Washington, DC 20472.

Dated: September 30, 1987.

For the Federal Emergency Management Agency.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87–23694 Filed 10–13–87; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, *et seq.*). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

Fact Finding Investigation 15 Voluntary Questionnaire

FMC requests clearance for a voluntary, one-time questionnaire to be sent pursuant to Fact Finding Investigation 15. Information will be sought from approximately 22 shippers' associations regarding their organizational structure, membership composition, service contract negotiations, physical cargo handling, and documentation methods.

Information will be sought from approximately 80 carriers/conferences relating to their dealings with shippers' associations and any difficulties they may have experienced with the definition of "shipper" in the Shipping Act of 1984. The Commission estimates a 102 manhour burden to respondents. Total cost to the Federal Government, including overhead, is estimated at $1600; total cost to respondents, is estimated at $2600.

Joseph C. Polking,

Secretary.

[FR Doc. 87-23770 Filed 10-13-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011080-001.

Title: Philadelphia Port Corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation
I.T.O. Corporation

Synopsis: The proposed agreement amendment extends the term for the agreement 90 days as provided for under Article 2.4 of the basic agreement.

Agreement No.: 224-200044.

Title: Port of Tacoma Lease and Operating Agreement.

Parties:

Port of Tacoma
Moller Steamship Company, Inc.

Synopsis: The proposed agreement provides for the lease of approximately 22 acres of land adjacent to Pier 4, Berth B, and the preferential non-exclusive use of 850 foot Berth B, Pier 4, Port of Tacoma piers. The agreement also provides for the preferential non-exclusive use of two Sumitomo container cranes. The initial term shall be until December 31, 1990.

Agreement No.: 224-200043.

Title: Port of Long Beach Preferential Assignment Agreement.

Parties:

City of Long Beach (City)
Forest Terminals Corporation (Assignee)

Synopsis: The proposed agreement provides that the City grants to Assignee a nonexclusive preferential assignment of the wharf and contiguous wharf premises together with improvements located at Pier I, Berth 50, in the Harbor District of the City of Long Beach.

Agreement No.: 224-200042.

Title: Ryan-Walsh Stevedoring Company Terminal Agreement.

Parties:

Ryan-Walsh Stevedoring Company, Inc. (Ryan-Walsh)
Cooper/T. Smith Stevedoring Company, Inc. (Cooper)

Synopsis: The proposed agreement provides that Ryan-Walsh will provide terminal services to Cooper at Ryan Walsh's terminal at Nashville Avenue in New Orleans, Louisiana. The terminal services will include: Clerking for the receipt and delivery of cargo handled by Cooper; unloading/loading of inland conveyances; tiering, stacking, recoopering, etc, of cargo within the terminal; security services and other miscellaneous services.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 8, 1987.

[FR Doc. 87-23771 Filed 10-13-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisitions of Shares of Banks or Bank Holding Companies; Crawford A. Bishop et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 29, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Crawford A. Bishop,* St. Amant, Louisiana; to retain an additional 2.50 precent of the voting shares of Bank of Gonzales Holding Co., Gonzales, Louisiana, and thereby indirectly acquire Bank of Gonzales, Gonzales, Louisiana.

2. *Errol Cautreau,* Baton Rouge, Louisiana, trustee for Bank of Gonzales Employee Stock Ownership Plan; to retain an additional 2.92 percent of the voting shares of Bank of Gonzales Holding Co., Gonzales, Louisiana, and thereby indirectly acquire Bank of Gonzales, Gonzales, Louisiana.

3. *Kenneth A. Jewell,* Lake Worth, Florida; to acquire an additional 7.67 percent of the voting shares of Gold Coast Bancshares, Inc., Hypoluxo, Florida, and thereby indirectly acquire Bank of South Palm Beaches, Lake Worth, Florida.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ellis and Nancy Clark,* Hiawatha, Kansas; to acquire an additional 17.65 percent of the voting shares of Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill & Janes Bank, Hiawatha, Kansas.

2. *Robert Minter,* Wichita, Kansas, to acquire 11.6; D. Michael Case, Wichita, Kansas, to acquire 4.97; Douglas W. Gugler, Howard, Kansas, to acquire 16.48; Gene Kelly, Severy, Kansas, to acquire 16.48; and Neal Osborn, Elk Falls, Kansas, to acquire 16.49 percent of the voting shares of Elk County Bancshares, Inc., Howard, Kansas, and thereby indirectly acquire Howard State Bank, Howard, Kansas.

Board of Governors of the Federal Reserve System, October 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23675 Filed 10-13-87; 8:45 am]

BILLING CODE 6210-01-M

Applications to Engage de Novo in Permissible Nonbanking Activities; The Fuji Bank, Ltd., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to commence or to engage do novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Fuji Bank, Ltd.*, Tokyo, Japan; to engage *de novo* in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by October 26, 1987.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Bank Holding Company*, Coos Bay, Oregon; to engage *de novo* through its subsidiary, Security Mortgage Company, Coos Bay, Oregon, in making, acquiring, or servicing loans or other extensions of credit for the subsidiary's account or the account of others, such as would be made by mortgage companies pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23676 Filed 10-13-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Southwest Financial Group of Iowa, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.12) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 4, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Southwest Financial Group of Iowa, Inc.* Red Oak, Iowa; to become a bank holding company by acquiring at least 98.73 percent of the voting shares of Houthton State Bank, Red Oak, Iowa.

B. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **First Commercial Corporation,** Little Rock Arkansas; to acquire at least 80 percent of the voting shares of First Security Corporation, Harrison, Arkansas, and thereby indirectly acquire The Security Bank, Harrison, Arkansas.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23677 Filed 10-13-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091787 AND 100587

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(1) United Stockyards Corporation, PON Partners, L.P., ESI Meats, Inc.	87-2166	09/17/87
(2) TFBA Limited Partnership, Taft Broadcasting Company, Taft Broadcasting Company	87-2212	09/17/87
(3) WGHP Limited Partnership, American Financial Corporation, Taft Broadcasting Company	87-2246	09/17/87
(4) American Financial Corporation, TBFA L.P., TBFA, L.P.	87-2247	09/17/87
(5) S.A. Vicat, Lafarge Coppee S.A., Lafarge Coppee S.A.	87-2288	09/17/87
(6) Acadia Partners, L.P., Lear Siegler Holdings Corp., Precision Products Group	87-2307	09/17/87
(7) Carson Pine Scott Company, Mr. Robert Campeau, Donaldsons Inc. and Donaldson's Distributing Corp.	87-2314	09/17/87
(8) Sencorp, Joy Technologies, Inc., Joy Finance Company	87-2344	09/17/87
(9) Reed International P.L.C., Mr. Syd Silverman, Variety, Inc	87-2362	09/17/87
(10) Fresenius AG, Delmed, Inc., Delmed, Inc	87-2364	09/17/87
(11) Nikols spa, BMF Services, Inc., BMF Services, Inc	87-2365	09/17/87
(12) United States Leasing International, Inc., Southwest Airlines Co, TranStar Airlines Corporation	87-2384	09/17/87
(13) PS Group, Inc., Southwest Airlines Co., TranStar Airlines Corporation	87-2385	09/17/87
(14) Kubota, Ltd., MIPS Computer Systems, Inc., MIPS Computer Systems, Inc	87-2331	09/18/87
(15) Aon Corporation, Adams & Porter International, Inc., Adams & Porter International, Inc	87-2387	09/1w/87
(16) David F. Bolger, Cleveland-Cliffs Inc., Cleveland-Cliffs Inc	87-2287	09/22/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091787 AND 100587—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No	Date terminated
(17) National Education Corporation, Mr Kamal Alsultany, SCS Business & Technical Institute, Inc	87-2321	09/23/87
(18) GATX Corporation, Mobil Corporation, Wyco Pipe Line Company	87-2322	09/23/87
(19) North American Housing Corp., The Marley Company, Continental Home Division of The Marley Company	87-2370	09/23/87
(20) Cargill, Incorporated, The Quaker Oats Company, ACCO Feeds Holding Corp., ACCO Feeds, Inc	87-2279	09/24/87
(21) N.V. Koninklijke Nederlandsche Petroleum Maatschappij, General Bio-Synthetics B.V., General Synthetics B.V	87-2315	09/24/87
(22) Koninklijke Gist-brocades, N.V., General Bio-Synthetics B.V., General Bio-Synthetics B.V	87-2316	09/24/87
(23) American Home Products Corporation, VLI Corporation, VLI Corporation	87-2318	09/24/87
(24) Kubota, Ltd., Dana Computer, Inc., Dana Computer, Inc	87-2332	09/24/87
(25) Crossland Savings, Donald L. Modglin, four subsidiaries	87-2345	09/24/87
(26) K mart Corporation, American Stores Company, Osco Drug, Inc	87-2366	09/24/87
(27) Tonka Corporation, Kenner Parker Toys Inc., Kenner Parker Toys Inc	87-2386	09/24/87
(28) Tonka Corporation, Kenner Parker Toys Inc., Kenner Parker Toys Inc	87-2388	09/24/87
(29) BBA Group Plc., Joy Technologies Inc., Ozone Industries Division	87-2393	09/24/87
(30) Ronald O. Perelman, Medical Laboratory Associates, Inc., Medical Laboratory Associates, Inc	87-2394	09/24/87
(31) Kirk Kerkorian, The Estate of Howard R. Hughes, Jr., The Estate of Howard R. Hughes, Jr	87-2396	09/24/87
(32) Hooker Corporation Limited, Domenico De Sole, B.A. Holdings, Inc	87-2398	09/24/87
(33) Mellon Bank Corporation, American Savings and Loan Association of Florida, American Savings and Loan Association of Florida	87-2402	09/24/87
(34) Prudential-Bache Energy Income Ltd Partnership VP-18, Edwin L. Cox, Sr., Edwin L. Cox, Sr	87-2404	09/24/87
(35) Canadian National Railway Company, Alco Standard Corporation, Reico Financial Corp	87-2410	09/24/87
(36) Warburg, Pincus Capital Company, L.P., Herbert N. Somekh, and Denise D. Somekh, Hosiery Manufacturing Corp. of Morgantown	87-2415	09/24/87
(37) General American Life Insurance Company, Sanus Corp. Health Systems, Sanus Health Plan, Inc	87-2421	09/24/87
(38) New York Life Insurance Company, Sanus Corp. Health Systems, Sanus Corp Health Systems	87-2422	09/24/87
(39) Grolier Incorporated, Lawrence A. Krames, M.D., Krames Communications	87-2430	09/24/87
(40) Warburg, Pincus Capital Company, L.P., Communications Satellite Corporation, Communications Satellite Corporation	87-2297	09/25/87
(41) IC Industries, GenCorp Inc, RKO Enterprises, Inc	87-2335	09/25/87
(42) "Investing in Success" Equities PLC, Munford, Inc., Munford, Inc	87-2376	09/25/87
(43) Konishiroku Photo Industry Co., Ltd., Powers Chemoc, Inc., Powers Chemco, Inc	87-2389	09/25/87
(44) 716107 Ontario Limited, The Cadillac Fairview Corporation Limited, The Cadillac Fairview Corporation Limited	87-2397	09/25/87
(45) Landis & Gyr AG, Marks Controls Corporation, Mark Controls Corporation	87-2399	09/25/87
(46) Prudential-Bache Energy Income Ltd. Partnership VP-19, Mr. Edwin L. Cox, Sr., Mr. Edwin L. Cox, Sr	87-2403	09/25/87
(47) Trafalgar House Public Limited Company, NHP, Inc., Capital Homes, Inc	87-2439	09/25/87
(48) F.W. Woolworth Co., Armel, Inc., Armel, Inc	87-2448	09/25/87
(49) Meredith Corporation, Garrett Scollard, MMT Sales, Inc	87-2461	09/25/87
(50) F.W. Woolworth Co., Armel, Inc., Armel, Inc	87-2486	09/25/87
(51) SouthernNet, Inc., Southland Communications Corporation, Southland Communications Corporation	87-2306	09/28/87
(52) Mr. Alan Bond, Fluor Corporation, St. Joe Gold Corporation, et al	87-2299	09/29/87
(53) General Investments Australia Limited, Forstmann & Company, Inc., Forstmann & Company, Inc	87-2334	09/29/87
(54) Nitto Electric Industrial Co., Ltd., Rohm & Haas Company, Hydranautics	87-2367	09/29/87
(55) Weyerhaeuser Company, Timberland Industries, Inc., Timberland Industries, Inc	87-2392	09/29/87
(56) Cook Inlet Region, Inc., Richard E. and Nancy P. Marriott, First Media Corporation	87-2420	09/29/87
(57) The Trust created under Article Seven-John Hay Whitney, Richard E. and Nancy P. Marriott, First Media Corporation	87-2426	09/29/87
(58) The Laird Group P.L.C., Bailey Corporation, Bailey Corporation	87-2429	09/29/87
(59) National Semiconductor Corporation, Schlumberger Limited, Fairchild Semiconductor Corporation	87-2309	09/30/87
(60) Panhida, Limited, Munford, Inc., Munford, Inc	87-2375	09/30/87
(61) Mr. James D. Harper, Jr. and Mr William Lyon, Pacific Lighting Corporation, Pacific Lighting Real Estate Group	87-2406	09/30/87
(62) Paul J. Ramsay, Healthcare Services of America, Inc., Healthcare Services of America, Inc	87-2418	09/30/87
(63) Saatchi & Saatchi Company PLC, Peterson Investment Partners, Peterson Investment Partners	87-2427	09/30/87
(64) Frank J. Pasquerilla, Snyder's Inc., Snyder's Inc	87-2428	09/30/87
(65) Mobil Corporation, Arstech Chemical Corporation, Arstech Chemical Corporation	87-2338	10/01/87
(66) Stanadyne, Inc., AIL Corporation, AMBAC S.p.A et al	87-2361	10/01/87
(67) Taft Broadcasting Company, John R.E. Lee, Silver Star Communications—Detroit, Inc. WRIF-FM	87-2479	10/01/87
(68) Peter C. Tongo, Campbell Soup Company, Pietro's Corp	87-2304	10/02/87
(69) Marmon Holdings, Inc., Richmond Tank Car Company, Richmond Tank Car Company	87-2313	10/02/87
(70) Ferruzzi Finanziaria SpA, Roy E. and Patricia A. Disney, SMRK Equity Holdings, Inc. or Central Soya Company, Inc	87-2351	10/02/87
(71) ARA Holding Company, Grand Metropolitan Public Limited Company, New Services, Inc	87-2381	10/02/87
(72) Ladbroke Group PLC, Allegis Corporation, Hilton International Co	87-2419	10/02/87
(73) S.A. Louis Dreyfus et Cie, Scheuer Management Corporation, Scheuer Management Corporation	87-2433	10/02/87
(74) Guinness PLC, Meshulam Riklis, Schenley Industries, Inc	87-2442	10/02/87
(75) Westinghouse Electric Corporation, S&ME, Inc., S&ME, Inc	87-2444	10/02/87
(76) Feltex International Limited, Super Sky International, Inc., Super Sky International, Inc	87-2460	10/02/87
(77) International Multifoods Corporation, Douglas S. Puerringer, Puerringer Distributing, Inc	87-2464	10/02/87
(78) Sea Containers Ltd., Orient-Express Hotels, Inc., Orient-Express Hotels Inc	87-2466	10/02/87
(79) Narragansett First Fund, J.L. Prescott Company, J.L. Prescott Company	87-2477	10/02/87
(80) The Dow Chemical Company, Lamaur Inc., Lamaur Inc	87-2487	10/02/87
(81) The Dow Chemical Company Lamaur Inc., Lamaur Inc	87-2488	10/02/87
(82) Pacific Dunlop Limited, GNB Holdings, Inc., GNB Incorporated	87-2378	10/05/87
(83) Barclays Bank (1964) Pension Trust Fund, Bernard A. Osher, Del Monte Shopping Center	87-2383	10/05/87
(84) Siebe plc, Barber-Colman Company, Barber-Colman Company	87-2400	10/05/87
(85) Wisconsin Energy Corporation, Cleveland-Cliffs Inc., Upper Peninsula Power Company	87-2445	10/05/87
(86) Goldome, Security Pacific Corporation, Rainer Mortgage Company	87-2459	10/05/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87–23725 Filed 10–13–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F–0277]

The Stroh Brewery Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Stroh Brewery Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame as a sweetener in malt beverages of less than 7 percent ethanol by volume and containing fruit juice.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b) (5))), notice is given that a petition (FAP 7A4029) has been filed by The Stroh Brewery Co., 100 River Place,

Detroit, MI 48207–4291, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetner in malt beverages of less than 7 percent ethanol by volume and containing fruit juice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 5, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–23690 Filed 10–13–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[OACT–015–N]

Medicare Program: Medicare Economic Index for 1988

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces that the increase in the Medicare Economic Index for fee screen year (FSY) 1988, beginning on January 1, 1988, is 3.6 percent.

EFFECTIVE DATE: This notice is effective on January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ross H. Arnett III, (301) 594–6714.

SUPPLEMENTARY INFORMATION: Payment under Medicare Part B for a physician's service is based on a reasonable charge which, under section 1842(b) of the Social Security Act (the Act), may not exceed the lowest of: (1) The physician's actual charge for the service, (2) his or her customary charge for that service, (3) the prevailing charges of physicians for similar services in the locality adjusted for the Medicare Economic Index (MEI), or (4) a special reasonable charge limit for a service or category of services that a carrier or the Health Care Financing Administration (HCFA) determines results in grossly excessive charges when the rules previously mentioned are applied. (In a case where the use of the customary and prevailing charges results in a payment that is grossly deficient, a higher reasonable charge may be recognized.)

The prevailing charge for a service, before adjustment by the MEI, is calculated at the 75th percentile of physicians' customary charges for a similar service in the same locality. (In computing prevailing charges, the carrier uses the customary charges of all physicians in the locality, weighted by frequency. However, for payment purposes, the prevailing charge for non-participating physicians is 96 percent of the computed MEI adjusted prevailing charge.) Section 1842(b)(3) of the Social Security Act, and our regulations at 42 CFR 405.504(a)(3)(i), require that the prevailing charge for a physician service furnished before January 1, 1988 not exceed the level in effect for that service in the locality determined for the fiscal year ending on June 30, 1973, except to the extent justified on the basis of appropriate indicators of economic change as discussed below. The prevailing charge for a physician service furnished on or after January 1, 1988 must not exceed the level in effect for that service in the locality, determined for the previous year, except to the extent justified on the basis of appropriate indicators.

We have established an MEI for the purpose of adjusting prevailing charge levels in light of economic changes. The basis for this index is set forth in § 405.504(a)(3)(i). The basic methodology for the calculation of the MEI has not changed and can be reviewed in detail in our September 30, 1985 notice (50 FR 39941). Section 9331(c)(4) of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, prohibits the Secretary from changing the methodology for the MEI until consultation with experts and completion of a study. To date, we have consulted with experts and are working on a study, but are not yet prepared to propose changes to the MEI methodology. We will afford public notice and an opportunity for comment prior to changing that methodology.

The MEI is comprised of two components: One measuring changes in general earnings levels (attributable to factors other than changes in productivity) and the other measuring changes in expenses of the kind incurred by physicians in office practice (42 CFR 405.504(a)(3)(i)(A) and (B)). The physician practice expense portion is currently composed of six components: (1) Salaries and wages; (2) office space; (3) drugs and supplies; (4) automobile expense; (5) malpractice insurance premiums; and (6) all other miscellaneous expenses. A detailed explanation of the calculation of weights for each type of practice expense can be found in the above-mentioned notice of September 30, 1985. The table found in this notice shows the factors and weights used in calculating the MEI for fee screen year (FSY) 1988; that is, the 12 month period beginning January 1, 1988. Items 1 through 6 in the table are the elements used to compute the increase in the physician practice expense component of the economic index. Item 9, the net income component, is derived from information contained in items 7 and 8 and reflects increases in general earnings levels exclusive of productivity increases.

The MEI reflects a base year of calendar 1971. Prior to enactment of Pub. L. 99–509, the cumulative effects of subsequent changes in the MEI for past periods were implemented prospectively. That is, any changes in the measure (based on more accurate data, for example) required recomputing the MEI back to its 1971 base period. This was done to ensure the computation of the most accurate percentage change in the MEI for prospective application in a given fee screen year (FSY). However, section 9331(c)(1) of Pub. L. 99–509 provides that for FSY 1987 the Medicare economic index (as defined in section 1842(b)(4)(E)(ii) of the Act) is 3.2 percent for physicians' services. The fourth sentence of section 1842(b)(3) of the Act, as amended by section 9331(c)(3) of Pub. L. 99–509, additionally provides that for subsequent fee screen years the MEI will be revised only to reflect year-to-year economic changes.

In accordance with this requirement, we have determined that the "annualized" MEI increase for FSY 1988 beginning on January 1, 1988 is 3.6 percent.

A major portion of the 1988 MEI increase is due to the large rate of increase in malpractice insurance premiums. The satute requires us to use the MEI methodology published on October 1, 1985 to determine the malpractice portion, as well as all other portions, of the 1988 MEI. Our previously mentioned study of the MEI will include an analysis that reflects recent economic changes regarding premiums for malpractice insurance.

The Congress is considering various proposals that may affect the MEI, as it did last year. If proposals are implemented that affect the MEI, we will advise the Medicare contractors through an appropriate manual issuance and the general public by means of a notice published in the **Federal Register**.

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ANNUAL PERCENT CHANGE OF THE COMPONENTS OF THE MEDICARE ECONOMIC INDEX [1]

	Percent change [2]
1. Hourly earnings of non-supervisory workers in finance, insurance, & real estate [3]	4.9
2. Housing component of the consumer price index	2.3
3. Private transportation component of the consumer price index	−3.6
4. Drugs and pharmaceutical component of the consumer price index	6.8
5. All other, miscellaneous, expenses (tied to the entire consumer price index)	1.9
6. Premiums for malpractice insurance [4]	42.7
7. Average weekly earnings of production and nonsupervisory workers [3]	1.7
8. Index of output per man hour of employed nonfarm workers [3]	0.7
9. Change in average weekly earnings net of change in output per man hour	1.0

[1] The weights for the MEI components, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1982. The values are 0.47, 0.23, 0.07, 0.09, 0.04, and 0.10 for components one through six, respectively. In addition to the above weights, a 40–60 percent breakdown of gross income between physician practice expenses and physicians' earnings was used.

[2] The rates of change are for the 12-month period ended June 30, 1987. The same base period is used for computing customary and prevailing charges.

[3] Figures are published monthly in the Bureau of Labor Statistics' Monthly Labor Review.

[4] Derived from a survey of several major insurers (latest available percent change data are for calendar year 1986). This is consistent with prior computations of the malpractice insurance component of the MEI.

Regulatory Impact Statement

This notice merely announces the MEI percentage increase for participating physicians' services. (By law, the prevailing charge for non-participating physicians is 96 percent of the prevailing charge for participating physicians.) This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined and the Secretary certifies that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

Paperwork Reduction Act

The changes in this notice do not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Waiver of Public Comment Procedures

We are not publishing this notice for public comment prior to its taking effect since it merely announces the rate of change in the MEI required by legislation. As noted above, the basic methodology for the calculation of the figures has not changed. In order for carriers to complete the calculation of the 1988 prevailing charges they need to be furnished with an MEI factor. Carriers must have this factor immediately in order to complete the update process and initiate a timely participation enrollment in accordance with section 1842(h) of the Act. Thus, we find it impracticable and not in the public interest to publish this document in proposed form with a prior public comment period.

(Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u); 42 CFR 405.504)

(Catalog of Federal Domestic Assistance, Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: September 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–23845 Filed 10–9–87; 1:42 pm]

BILLING CODE 4120–03–M

Public Health Service

National Commission on Orphan Diseases; Public Hearing and Public Meeting

AGENCY: Office of the Assistant Secretary for Health; HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting and hearing of the National Commission on Orphan Diseases scheduled on November 5 and 6, 1987 respectively.

DATE: Date, time and place: Commission meeting on November 5, 1987, 1:30 p.m.; Public Hearing, November 6, 1987 at 8:30 a.m.; Sheraton International at O'Hare, 6810 North Mannheim Rd., Salon A of the O'Hare Ballroom, Chicago/Rosemont, IL 60018. The entire proceedings are open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the public hearing should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Room 18–38, Rockville MD 20857, 301–443–6156. Persons desiring more information regarding the responsibilities and activities of the Commission should contact Stephen C. Groft, Pharm. D., Executive Director, National Commission on Orphan Diseases, at the same address and phone number.

Agenda: Open Public Meeting (November 5)

The Commission will discuss the availability of health insurance for patients with rare diseases and reimbursement policies of the Health Care Financing Adminsitration. The Commission will also discuss reports from workgroups on the liability issue and the peer review process for grants in the Federal sector. Other workgroups established to review the rare disease research activities of drug and medical device manufacturers, voluntary support groups, and private foundations will present their information gathering plans.

Agenda: Open Public Hearing (November 6)

The Commission has identified a series of issuance and questions to be addressed at the public hearings. These issues were published in the **Federal Register** notice announcing the Commission's first public hearing (52 FR 23083, June 17, 1987). Copies of these issues may be obtained from the contact persons listed above.

Persons desiring to make oral presentations that address these issues should notify either of the contact persons before October 26, 1987 and submit a written copy of the statement to be presented to the Commission. Oral presentations will be limited to ten minutes. Longer presentations should be summarized orally and submitted in writing in their entirety. Any person attending the hearing who did not request an opportunity to speak in advance ma be allowed to make an oral presentation at the conclusion of the hearing, if time permits, at the chairperson's discretion.

Persons who are not able to attend the public hearing, but want to submit information, may do so in writing. These statements should be forwarded to the Executive Secretary. Other issues indentified by the participants may also be included. Such information should be mailed to either of the contact persons at the address shown above.

The Commission has scheduled one additional public hearing, in Dallas, Texas, on February 4, 1988.

SUPPLEMENTARY INFORMATION: Meetings of the Commission will be conducted, as far as it is practical in accordance with the agenda published in this **Federal Register** notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may contact Mary Custer, Ph.D., Executive Secretary of the Commission, for the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information or summary minutes of the meeting from the Executive Secretary.

This notice is issued under 10(a)(1) and (2) of the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I).

Dated: October 5, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–23695 Filed 10–13–87; 8:45am]

BILLING CODE 4140–01–M

Office of Refugee Resettlement

Refugee Resettlement Program; Statement of Goals, Priorities, Standards, and Guidelines for the Unaccompanied Minor Refugee and Cuban/Haitian Entrant Programs

ACTION: Final notice.

SUMMARY: This notice establishes goals, priorities, standards, and guidelines for the Unaccompanied Minor Refugee and Cuban/Haitian Entrant Programs. The Standards are amplifications of Office of Refugee Resettlement (ORR) child welfare regulations (45 CFR Part 400, Subpart H, §§ 400.110–400.120). The Guidelines in most cases reflect recommendations of a National Interagency Work Group on Unaccompanied Minors.

A proposed statement was published in the **Federal Register** of November 5, 1986 (51 FR 40260). This final statement reflects changes made in response to the public comments received, which are discussed below.

EFFECTIVE DATE: October 14, 1987.

ADDRESS: Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: William R. Eckhof, (202) 245–0980.

SUPPLEMENTARY INFORMATION:

Authority

Section 412(a)(6) of the Immigration and Nationality Act (the "INA), as amended by the Refugee Act of 1980 (the "Act"), 8 U.S.C. 1522(a)(6):

> As a condition for receiving assistance under this section, a State must * * * (B) meet standards, goals, and priorities, developed by the Director [of the Office of Refugee Resettlement], which assure the effective resettlement of refugees * * * and the effective provision of services * * *.

Section 412(d)(2)(A) of the INA, 8 U.S.C. 1522(d)(2)(A):

> The Director is authorized to provide assistance, reimbursement to States, and grants to and contracts with public and private nonprofit agencies, for the provision of child welfare services, including foster care maintenance payments and services and health care * * *

Section 412(d)(2)(B) of the INA, 8 U.S.C. 1522(d)(2)(B):

> (i) In the case of a refugee child who is unaccompanied by a parent or other close adult relative (as defined by the Director), the services described in subparagraph (A) may be furnished until the month after the child attains eighteen years of age (or such higher age as the State's child welfare services plan under part B of title IV of the Social Security Act prescribes for the availability of such services to any other child in that State).
>
> (ii) The Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United States. During any interim period while such a child is in the United States or in transit to the United States but before the child is so placed, the Director shall assume legal responsibility (including financial responsibility) for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care.

Title V of the Refugee Education Assistance Act of 1980, enacted on October 10, 1980, provides for Federal assistance and services to individuals having Cuban/Haitian Entrant status. Under this Act, the President is required to exercise authorities identical to those under chapter 2 of title IV of the Immigration and Nationality Act (INA) with respect to Cuban/Haitian entrants.

Background

On January 30, 1986, ORR published final regulations (45 CFR Part 400, Subpart H, Child Welfare Services), prescribing requirements concerning grants to States under section 412(d)(2)(B) of the INA for child welfare services to unaccompanied minor refugees. In addition, between February 14, 1985, and June 12, 1986, an interagency work group composed of institutional entities active in the Unaccompanied Minors Program met periodically and developed a series of criteria against which individual agencies could be evaluated, and as a basis for determining allocation of future cases. A Proposed Statement of Program Goals, Priorities, Standards, and Guidelines evolved from these two documents, the Standards being elaboration of Subpart H of the Regulations, and the Guidelines reflecting recommendations adopted by the work group. The Proposed Statement was published in the **Federal Register** of November 5, 1986, inviting public comments until December 22, 1986. In addition, the Proposed Statement was distributed and explained at a Naitonal Conference on Unaccompanied Minor Refugees November 17, 1986, in Philadelphia, with attendees given the opportunity to comment verbally at that time; their verbal comments were transcribed and considered, along with the written comments received, in the development of this final Statement.

Discussion of Comments

ORR received 18 letters from State government agencies, national and local voluntary agencies, and service providers. In addition, seven persons representing similar agencies offered comments at the Philadelphia conference. The following sections address specific points which commenters raised:

1. 90-Day Parental Reunion

Comment: Fifteen commenters expressed the concern that the proposed 90-day period during which ORR would support services to unaccompanied minor refugees following arrival of a parent in the United States was inadequate in some particularly difficult cases. Most acknowledged that for the vast majority of such cases, 90 days was sufficient, but they cited instances in which difficulties were encountered in reuniting a child, who had been separated from his or her parents and placed in a new environment during a particularly volatile stage of development, with his or her newly arrived parent who was unprepared for the cultural and developmental changes of the child. They urged flexibility in implementing this provision.

Response: ORR expects that the overwhelming majority of cases involving parental reunification can be accommodated under the 90-day period, or through foster care assistance under title IV–E of the Social Security Act, or through Refugee Child Welfare Services. However, in order to take into consideration the rare case that might

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not be accommodated by these means, we have amended the policy statement to provide that the Director of ORR may extend the 90-day period in a compelling case with the objective of encouraging family reunion and strengthening the refugee family. This change appears in the section on Legal Considerations, Standard B, Criterion 3.

2. Parental Reunification

Comment: One commenter stated that he believed that parental reunification is not always the best option for unaccompanied minor refugees and that unaccompanied minor status should be continued in such instances.

Response: While recognizing that this may be the case in a very limited number of instances, ORR notes congressional intent to provide funding for unaccompanied minors in the absence of their parents who normally would be expected to provide for them.

ORR's concern for the well-being of the child in such an instance must be weighed against the limitations of statutory authority and legislative intent which limit our ability to continue to provide funding for formerly unaccompanied minors whose parent or parents have reached the United States.

Two other avenues of funding for cases where there is a barrier to parental reunification are: (1) Possible conversion of the case to funding under the foster care authority of title IV–E of the Social Security Act; or (2) payment of support costs (from ORR's social service grant to the State) through the authority for refugee child welfare services, as outlined in 45 CFR Part 400, Subpart H, if the child has been in the United States less than 36 months.

Unaccompanied minor refugees normally are not eligible for support under title IV–E because reunion with their parents is not possible due to geographic considerations. The arrival of a child's parent(s) may make such eligibility possible if reunification is not in the best interest of the child.

3. Program Services and Benefits

Comment: Eight commenters objected to the proposed Administration/Management Standard B, Criterion 2, which required that "State rules and regulations provide the same child welfare services and benefits for refugee children, to the same extent, as those which are provided to other children of the same age in the State under a State's title IV–B plan, and in accordance with the State's child welfare standards, practices, and procedures." The commenters cited special needs of unaccompanied minor refugees, which they felt would not be met under this standard.

Response: This standard is based on program regulations at 45 CFR 400.116(a). It is intended to insure that refugee children, at a minimum, receive such services, consistent with their legal rights in the U.S. Section 400.116(b) allows additional services, if reasonable and necessary, if the ORR Director authorizes them. The language "at a minimum" has been inserted in Criterion 2 to clarify our intent and to address the commenters' concern.

4. Ethnically Matched Foster Parents

Comment: Three commenters stressed the desirability of placing unaccompanied minor refugees with ethnically matched foster parents. One of these commenters expressed the view that all other types of placement should be excluded.

In contrast, two other commenters objected to the guideline which calls for placing children under age 12 in ethnically matched foster homes "to the maximum extent feasible."

Response: The National Work Group recognized the importance of the availability of ethnically matched foster parents, as evidenced by Guidelines C. 1 and 2. Moreover, Guideline E focuses on efforts to help a child retain an understanding of, and respect for, his or her native culture and religion.

The National Work Group on several occasions regarded its approach as described in Guideline C.1 as adequate, and ORR is not persuaded to change this approach which we believe provides a needed measure of flexibility while emphasizing the importance of ethnically matched foster parents.

5. Adoption Procedures

Comment: Several commenters expressed concern that inasmuch as attempts to contact natural parents were discouraged by both the standards and 45 CFR Part 400 Subpart H, it would be difficult for a court to assure the protection of parental rights as specified in Legal Considerations, Criterion 5. One commenter opposed any adoption of unaccompanied minor refugees, and another asked for more detailed guidelines to assist the court in determining if parental rights might be terminated.

Response: In most cases, termination of parental rights will not be legally possible. These children were generally separated from their parents by forces beyond their control—by war and by political and social upheaval—and reunification is the basic objective of the program.

However, 45 CFR 400.115(c) allows for adoption when it is (1) in the best interest of the child and (2) there is termination of parental rights as determined by the appropriate State court, as when parents are dead or are missing and presumed dead. ORR, taking into consideration the wide number of variables in State law throughout the country, believes that such cases must be decided on their own merit, on a case-by-case basis, by local courts empowered to make such decisions based on State law and the best evidence available.

6. Bilingual Workers

Comment: Three commenters stated that bilingual workers might not always be available or be cost-effective to utilize.

Response: The National Work Group felt strongly about the need for good communication with the children under care as a cornerstone of an effective program, a view which ORR strongly supports. For this communication, bilingual workers are clearly required.

7. Caseworker Training

Comment: Three commenters felt that the proposed 50 hours per year of caseworker training would be excessive and unnecessary. A fourth commenter stated that no special training for caseworkers working with refugee youths was being provided in his State.

Response: The National Work Group expressed great concern during its deliberations about the need for training in order to meet the special needs of refugee children. At a time of program constriction, however, and in response to comments, ORR has lowered this period to 30 hours, with the understanding that this represents a minimum, and not necessarily a maximum, of training time, which should be determined by the specific needs of caseworkers.

8. Replacement Rates

Comment: The proposed guideline on placement options specified that (with certain exceptions for temporary care) no more than 30% of a provider agency's existing caseload have had more than two placements and no more than 10% have had more than three placements. Six commenters expressed concern that this guideline would counter-productively encourage agencies to leave children in unsuitable care rather than exceed the recommended replacement rates.

Response: In adopting this guideline, the National Work Group weighed such potential counter-productivity against

the importance of agency care in selecting foster parents. Work-group members, including provider-agency representatives, felt that the margins for change in placements which are permitted by the guideline are adequate to address the concern expressed by the commenters, and ORR is not persuaded to change this decision.

9. Cost-effective Program Size

Comment: Seven persons questioned the implications for the programs of public provider agencies of the guideline which stated that 30 children was the minimum-size program that could be expected to be cost-effective.

Response: The 30-child caseload was intended by the National Work Group to apply to contracted private provider agencies, and not to whatever size caseload might be under the care of a public child welfare agency. We have revised the wording of this criterion to make clear that it refers to "private, voluntary provider-operated local programs."

ORR envisions that private provider agencies whose caseloads are expected to drop below the 30 level within the next 12 months will plan for appropriate administrative adjustments to assure continued cost-effectiveness.

With respect to public agencies, good child welfare practice would seem to require that public agencies with an unaccompanied minor refugee caseload maintain culturally appropriate resources for as long as necessary, regardless of the number of children served.

10. Reunification of Amerasian Unaccompanied Minors

Comment: Three persons requested a statement of ORR policy with respect to reunification of Amerasian unaccompanied minors with their (American) fathers, when the names and whereabouts of the fathers are known.

Response: ORR has no intent to press for such reunifications unless they are desired by both the child and the father. When they do occur, unaccompanied minor status would terminate and the father would be expected to assume legal (and financial) responsibility.

11. "Least Restrictive Care Settings"

Comment: Two commenters asked ORR to clarify the meaning of the term "least restrictive care settings" as it appears in the section of the Statement entitled "Priorities for State Program Administration."

Response: The term "least restrictive care setting" in the child welfare context refers to the smallest and most open type of placement that is manageable, considering the needs of the child being served.

12. Completion of High School

Comment: Two commenters suggested that ORR funding for well-motivated unaccompanied minors should be allowed to enable them to complete high school, even if it required them to remain in care beyond their 21st birthday. A third commenter proposed that the age limit be reduced to age 17 to conform with AFDC–FC age requirement regulations.

Response: The Refugee Act requires that eligibility for unaccompanied minor status be consistent with the State's title IV–B plan "for the availability of such services to any other child in that State." (Section 412(d)(2)(B)(i) of the INA.) Therefore ORR cannot set higher or lower ages of eligibility that differ from a State's title IV–B plan.

13. Case Planning

Comment: One commenter noted that Programmatic Standard A, Case Planning, is not consistent with his State's procedure, policy, and program guidelines for administration of the unaccompanied minors program, and asked for clarification.

Response: This standard is based upon regulations governing operation of the unaccompanied minors program at 45 CFR 400.118 which carries with it the force of law.

14. Applicability of Title IV–E

Comment: One commenter stated that the reference to title IV–E in Administration/Management Standard B, Criterion 3, was irrelevant because, in most cases, unaccompanied minor refugees are ineligible for services under that title.

Response: This criterion is based on ORR child welfare regulations at 45 CFR 400.112(c). ORR recognizes that most unaccompanied minors will not be eligible under title IV–E but feels that in the few instances where such eligibility can be established, funding should be through that mechanism, with ORR providing the share of costs that normally would be borne by the State or local government.

15. Establishing Legal Responsibility

Comment: Three commenters asked for clarification of Legal Considerations Standard A, Criterion 1, which requires that, within 30 days of a child's arrival, the State or State-authorized child welfare agency petition an appropriate court to establish legal responsibility (if action by a court is required by State law).

Response: ORR recognizes that a variety of State legal mechanisms are used to establish responsibility for unaccompanied minor refugees. In some States, responsibility is established within hours of arrival, while, in others, backlogged dockets and court procedures can delay formal establishment of legal responsibility for weeks. ORR's intent is to assure that the process ultimately leading to legal responsibility is commenced promptly (within 30 days) while allowing sufficient flexibility for the State legal system to function normally.

16. Filing of Reports

Comment: One commenter stated that the Administrative/Management Standard C, Criterion 4, requiring the filing of a placement report within 30 days of a child's arrival, provided an unrealistically brief period.

Response: This standard is based on existing regulations at 45 CFR 400.120(a). In view of the Refugee Act's requirement for maintaining current lists of unaccompanied minor refugees, ORR considers this requirement to be both justified and important.

17. Tracking of Children

Comment: One commenter suggested that ORR should require semi-annual, rather than annual, progress reports (ORR–4) on unaccompanied minors to improve tracking of the children.

Response: ORR believes that properly filed ORR–3 Placement Reports together with annual ORR–4 Progress Reports will permit adequate tracking, and that doubling the progress-report workload would yield little aggregate national information while increasing the workload of caseworkers.

18. Religious Heritage

Comment; One commenter questioned the reference, in Programmatic Standard A, Criterion 1, relating to "preservation of * * * religious heritage," expressing the belief that the unaccompanied minor should be accorded "freedom to attend or not attend religious ceremonies."

Response: The language of this standard is taken from existing program regulations at 45 CFR 400.118(b)(6), and ORR is not persuaded of the need for changing the regulatory language.

19. Health and Mental Health Plans

Comment: One commenter asked how frequently ORR expected that the health/mental health plan described in the Health and Mental Health Guideline would be updated.

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Response: ORR expects that the plan would be current, in order to be available in case of emergency.

20. Program Audit

Comment: One commenter proposed that the statement include a section defining standards and responsibility for program audits, in order to assess cost-effectiveness.

Response: ORR believes that the financial records currently required, which must meet HHS grant requirements, are adequate for effective audit purposes.

Statement of Goals, Priorities, Standards, and Guidelines for the Unaccompanied Minor Refugee and Cuban/Haitian Entrant Programs

Introduction

Basis and Purpose of the Program

It is the basis and purpose of the program to provide appropriate care, consistent with State and Federal child welfare laws and practices, for unaccompanied minor refugees and entrants and to prepare them for productive lives in the United States.

To ensure the most effective possible resettlement of unaccompanied minor refugees in the United States consistent with and as mandated by the applicable provisions of the Refugee Act of 1980, as well as compliance with 45 CFR Part 400, Subpart H, "Child Welfare Services," the Office of Refugee Resettlement (ORR) establishes the following program goals, priorities, standards, and guidelines for the State-administered refugee resettlement program (RRP) for FY 1988 and the following fiscal years. These goals and standards will be applied to the Cuban/Haitian Entrant Unaccompanied Minor Program, for the States which participate in that program.

Definitions

The provider agency. An organization, either public or private, which provides placement and direct service to the unaccompanied minor.

The supervising agency. The public agency, either State or local, which supervises the provider agency.

The contracting agency. The public agency which either contracts with a private contractor or a county for care of the child.

I. Program Goals

The goals of the program for unaccompanied minor refugees and entrants are:

To reunify unaccompanied refugee children with their parents or, within the context of State child welfare practice, with non-parental adult relatives.

To help unaccompanied minors develop appropriate skills to enter adulthood and to achieve economic and social self-sufficiency, through delivery of child welfare services in a culturally sensitive manner.

II. Priorities for State Program Administration

To place unaccompanied minor refugees and entrants in least restrictive care settings as soon as possible, and to establish legal responsibility in such a way, under State law, as to ensure that these children receive the full range of assistance, care, and services to which all children in the State are entitled, and to designate a legal authority to act in place of the child's unavailable parent(s).

To encourage reunification of minors with their parents, or other appropriate adult relatives, and to work with supportive resources, such as voluntary refugee resettlement agencies, at the State and local levels, to facilitate such reunion.

To provide child welfare services and refugee-specific services that will help children adjust to their communities, with emphasis on those services most likely to help children prepare for emancipation/self-supporting status, appropriate to their age and development. States should strive to ensure provision of services in a cost-effective manner. Cost should generally parallel those of the State's regular domestic child welfare program, except where consideration given to unique cultural, language, and psychological needs of the refugee clientele mandates different costs.

In attempting to arrange placement of unaccompanied minor refugees under State child welfare laws, to make every effort to ensure a cooperative and effective working relationship between the State, voluntary agencies, and provider agencies participating in the Refugee and Entrant Unaccompanied Minors Programs.

III. Program Standards

The program for unaccompanied minor refugees requires a unique blend of services and program management, with specific cognizance of both refugee resettlement concerns and child welfare practices. Likewise, it requires a high degree of cooperation, coordination, and planning among numerous entities at various levels.

In requiring the Director of the Office of Refugee Resettlement to "attempt to arrange for the placement under the laws of the State * * *" of unaccompanied minor refugees, the Refugee Act implies an effort by the Director to effect this cooperation, coordination, and planning. In consequence, the Director of the Office of Refugee Resettlement hereby establishes the following standards for operation of the State-administered unaccompanied minor refugee and entrant program. Compliance with these standards is mandatory.

Administration/Management

A. Annual Planning

Standard: A cooperative, effective, well-coordinated, and culture-sensitive working relationship exists among agencies involved in the unaccompanied minors program.

Criterion: A State or county supervising and/or contracting agency for refugee children confers at least annually with provider agencies therein to discuss program needs and problems, and to establish numbers of children to be served in the coming year within the State.

B. State Leadership Role

Standard: The State provides adequate organizational leadership and administrative support for the State unaccompanied minors program.

Criteria: 1. Basic requirements of 45 CFR 400.5 (Refugee Resettlement Program State Regulations) and 45 CFR 400.110–400.120 are in place and are adhered to.

2. State rules or regulations provide at a minimum the same child welfare services and benefits for refugee children, to the same extent, as those which are provided to other children of the same age in the State under a State's title IV–B plan, and in accordance with the State's child welfare standards, practices, and procedures.

3. The State provides foster care maintenance payments under the State's title IV–E program to any refugee children eligible under that program.

4. Rules, regulations, and procedures are in place whereby the State assumes program accountability for all aspects of the program, including fiscal and program reporting.

5. The program is structured within State government in such a way that meaningful input into programmatic issues is provided by *both* the State's refugee program and child welfare staffs.

6. State goals and objectives do not alter or infringe upon program goals of ORR as set forth herein.

7. Child welfare services, assistance procedures, and facilities meet

recognized standards consistent with the State Plan pursuant to title IV–B of the Social Security Act.

C. Monitoring and Reporting

Standard: The State effectively monitors services to unaccompanied minor refugees and entrants.

Criteria: 1. Written State procedures, consistent with the State's Refugee Resettlement Plan, ensure that the appropriate supervising child welfare agency monitors activity of the provider agency at least annually.

2. The monitoring instruments reflect regular State standards for foster care, and ORR standards for unaccompanied minors care as applicable.

3. Corrective actions are taken promptly on problems identified during fiscal and program monitoring.

4. All ORR–3 (Placement) Reports are filed with ORR within 30 days of the date of placement, and within 60 days of a change of status (e.g., change of placement or legal responsibility, reunification with adult relatives, and termination from the program (e.g., emancipation or reunification with parent(s))).

5. All ORR–4 (Progress) Reports are filed with ORR annually.

Legal Considerations

A. Legal Responsibility

Standard: Legal responsibility is established promptly under State child welfare laws.

Criteria: 1. The State or State-authorized child welfare provider agency petitions an appropriate court to establish legal responsibility within 30 days of the child's arrival at the location of resettlement and placement, if action by a court is required by State law.

2. The section of State law under which legal responsibility is established makes the unaccompanied minor eligible for the full range of assistance, care, and services to which all children in the State are entitled.

3. The section of State law under which legal responsibility is established designates a legal authority to act in place of the child's unavailable parent(s).

4. Procedures exist to ensure that mechanisms of the Interstate Compact on Placement of Children are utilized when an interstate placement is required subsequent to initial placement.

5. Procedural safeguards exist which ensure that the rights of the minor's unavailable parent(s) are protected, and are not terminated as long as reunification with the parents remains reasonably possible, as determined by an appropriate State court.

B. Family Reunion

Standard: Written State policy encourages the reunion in the United States of unaccompanied minor refugees with their parents or other appropriate relatives.

Criteria: 1. Programs for unaccompanied minor refugees are located in areas which have, or have ready access to, existing refugee resettlement agencies which are able to assist in family reunion.

2. Children are encouraged to apply for admission of their parents to the United States, and are assisted with preparation of the necessary documentation, including applications.

3. When reunion becomes possible following arrival of a parent or parents in the United States, the provider agency assists children and parent(s) in the process, as necessary, for up to 90 days after the agency has knowledge of the presence of the parents, after which ORR unaccompanied minor benefits cease, unless the Director of ORR has extended the time period beyond 90 days by specific waiver.

Programmatic

A. Case Planning

Standard: The unaccompanied minor is provided appropriate child welfare and refugee-specific services to develop the skills necessary for social, emotional, and economic self-sufficiency.

Criteria: 1. State regulations or rules provide that a written case plan for the care and supervision of each child, including a service plan, leading to non-dependent emancipation or family reunion, is developed, and reviewed for each child semi-annually. The case plan at a minimum addresses each of the following areas:

—Social adjustment
—English language training
—Career planning
—Education/training as appropriate
—Health needs
—Suitable mode of care in the least restrictive setting
—Development of socialization skills
—Family reunification
—Preservation of ethnic and religious heritage
—Mental health needs, if necessary.

IV. Guidelines for Program Development

The Director of the Office of Refugee Resettlement further establishes the following Guidelines for Program Development, developed by a special national work group of experts in care for unaccompanied minors, composed of representatives of national voluntary agencies, local provider agencies, State government, the Department of State, and ORR. These guidelines are strongly recommended by the Director as a yardstick against which current provider activities may be evaluated by State or county supervising/contracting agencies, and against which possible future placements may be planned by national voluntary agencies.

A. Cost-Effectiveness

Guideline: The program is administered in a cost-effective manner

Criteria: 1. Costs for refugee children are consistent with costs for other children in care in the State.

2. Cost is a consideration when evaluating overall program effectiveness, but should not exist as an isolated criterion. Minimum program standards must be addressed at first as a context from which to evaluate the effectiveness and costs of unaccompanied minors programs.

3. To assure effective staff utilization and to provide a sufficiently broad range of services and types of care, at least 30 children are participating in private, voluntary provider-operated local programs.

4. The provider agency attempts to access non-ORR funded resources (such as the Job Training Partnership Act, Job Corps, vocational education, scholarships to preparatory schools and colleges).

B. Provider-Agency Staff Qualifications

Guideline: A well-qualified provider-agency staff is utilized to provide services.

Criteria: 1. Supervisors, at a minimum, meet established State standards for persons providing similar services in non-refugee child care agencies.

2. The provider agency has on-staff (a) bilingual, bicultural worker(s) specific to the clientele served.

3. The bilingual, bicultural worker(s) are utilized as an integral part of the program's service function, and not merely as translator(s).

4. Bilingual, bicultural workers are encouraged to actively pursue training opportunities that will help them to become qualified under State standards.

5. At least 30 hours, annually, of ongoing, planned staff development activities are provided for each staff member, including program supervisors, directly involved in provision of services.

6. The direct-services staff ratio of clients to service workers is not greater

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than the State's standard for non-refugee child care.

C. Placement Options

Guideline: The provider agency maintains, or has access to, a range of suitable placement options.

Criteria: 1. Placement options include family foster homes, ethnically matched foster homes, group homes, and supervised independent living.

2. To the maximum feasible extent, children 12 years of age and younger are placed in ethnically matched foster homes to support their understanding of their native culture.

3. No more than 30 percent of the existing caseload have had more than two placements (exclusive of placements in reception centers, reception homes, temporary/emergency placements not exceeding 45 days, or planned independent living situations).

4. No more than 10 percent of the existing caseload have had more than three placements (same exclusions as item 3 above).

5. Before family foster care is utilized, the foster family receives training and information related to cultural sensitivities of the caseload.

D. Preparation for Emancipation

Guideline: The program actively and formally promotes the responsible emancipation of unaccompanied minors.

Criteria: 1. Program components provide independent living skills services to assist unaccompanied minors to prepare adequately for emancipation without reliance on public assistance.

2. The public cash assistance dependency rate for employable former unaccompanied minors, subsequent to their emancipation, is no greater than 10 percent of all the provider agency's refugee emancipees 90 days following emancipation.

3. State law is sufficiently flexible to permit an unaccompanied minor to remain in care through the completion of high school (but not beyond the 21st birthday).

E. Retention of Ethnic Heritage

Guideline: Children are encouraged to retain an understanding of, and respect for, their native culture and religion.

Criteria: 1. Programs for unaccompanied minor refugees are located in geographic areas which have ethnic communities similar to those of the children placed.

2. Children are placed within ethnically similar communities, or in areas that are readily accessible to the activities of those communities.

3. Provider agencies maintain a written plan and periodic schedule for exposure to and participation in appropriate cultural events.

F. Health and Mental Health

Guideline: Children are provided with necessary health and mental health services.

Criteria: 1. The provider agency maintains ongoing access to health and mental health services.

2. The provider agency has a written contingency plan involving identification of potential resources for coping with cases of severe mental health disorders.

Dated: September 24, 1987.

Bill Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 87-23711 Filed 10-13-87; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-040-08-4322-12]

Ely District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Ely District Advisory Council will be held on Wednesday, November 18, 1987.

The meeting will convene at 10:00 a.m. in the Conference Room of the Ely District Office located on the Pioche Highway one mile south of Ely, Nevada.

The main agenda items will be the status of various resource programs in the district, the status of the wildlife reintroduction and augmentation programs on Bureau administered lands in the Ely District and a discussion of the issues and conflicts in the Wilson Greek Allotment where a public scoping and planning process has been initiated by the Ely District.

Public comment time is scheduled for 1:00 p.m. The public is invited to attend this meeting and may, at the designated time, submit written or oral statements for the advisory council's consideration. Minutes of the meeting will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

DATE: October 2, 1987.

ADDRESS: Comment and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Terry Dailey, (702) 289-4865.

Date: October 2, 1987.

Kenneth G. Walker,

District Manager.

[FR Doc. 87-23707 Filed 10-13-87; 8:45 am]

BILLING CODE 4310-HC-M

Federal-State Coal Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board (Board) will meet in Denver, Colorado, December 2, 1987. The public is invited to attend. The Board will (1) review the status of the implementation of the Secretary's coal program decisions of February 21, 1986, (2) discuss the Department's policies and procedures for processing coal preference right lease applications (PRLAs), (3) review the Board's charter with respect to its renewal, and (4) formulate a recommendation to the Secretary on a Departmental long-range lease sale plan, based on information provided by the regional coal teams.

DATE: The Board will meet at 8:30 a.m. on December 2, 1987.

ADDRESS: The Board meeting will be held at the Clarion Hotel, 3202 Quebec Street, Denver, Colorado 80207, telephone 1-800-252-7466.

FOR FURTHER INFORMATION CONTACT: Walt Rewinski or John Carlson, Division of Solid Mineral Leasing, Bureau of Land Management (650), 18th and C Streets NW., Washington, DC 20240, telephone (202/FTS) 343-4636.

SUPPLEMENTARY INFORMATION: Implementation of the Secretary's coal program decisions of February 21, 1986, involved the drafting and publication of several rule changes and the development of a comprehensive set of instructions to the field for carrying out the Federal coal program. The Board will hear a presentation of the current status of these efforts along with a presentation on the Bureau's recently adopted procedures for processing coal preference right lease applications. Regional coal team representatives will provide the Board with an update on activities within their respective regions. Board members will also review and discuss proposed regional lease sale plans, provided by the regional coal teams, and develop a proposed long-range Departmental lease sale plan for submission to the Secretary.

Additionally, the Board will review its charter, which expires in October 1988, and discuss several proposed changes in anticipation of charter renewal, which is required every two years. .

The public will have an opportunity to address the Board on agenda topics during the public comment periods, as noted on the agenda, below. Written copies of a speaker's remarks would be appreciated. Any comments will become a part of the record of the Board meeting. The Chairperson may impose a time limit on speakers' comments to ensure that all those wishing to address the Board are heard.

Agenda.— Federal-State Coal Advisory Board Meeting

December 2, 1987

Denver, Colorado

Welcome and Introductions
—BLM Director
—Assistant Director, Energy and Mineral Resources
—Other Staff
—Review and Approval of Meeting Agenda
—Approval of 1986 Meeting Minutes
—Director's Remarks
—Status of Coal Program
—Implementation of Program Changes
- Revised Coal Leasing Regulations
- Unsuitability Regulations
- Competitive Coal Leasing Handbook
- Lease Exchange Manuals

—PRLA Processing Procedures
- Negotiations
- Final Regulations
- Amended Court Order
- PRLA Handbook

—RCT Reports
- Charters
- Meeting Summaries
- Data Adequacy
- Status of Planning
- PRLAs
- Coal-related Exchanges
- Other

Break Long-Range Lease Sale Plan
—Background
—Coal Demand/National Perspective
—Summary of Leasing-Lease Relinquishments (1985–1987)
—Summary of Regional Lease Sale Plans
—Proposed Departmental Long-Range Lease Sale Plan
—Discussion/Public Comment
—Board Recommendation
Advisory Board Charter
—Background
—Proposed Changes
—Discussion/Public Comment
—Board Recommendation
Other Board Business (if any)
—Discussion/Public Comment
—Board Recommendation
Adjourn.

Robert F. Burford,
Director
[FR Doc. 87–23723 Filed 10–13–87; 8–45 am]
BILLING CODE 4310–87–M

[WY–920–08–4121–13]

Availability of Mudlogs and Geophysical Logs, Wyoming State Office; Campbell County, WY

ACTION: Public Notice of Availability of 13 Mudlogs and 14 Geophysical Logs from the Rawhide Village—Horizon Subdivision, Campbell County, Wyoming.

SUMMARY: Notice is hereby given that 13 mudlogs and 14 geophysical logs from 15 coal test holes located in the Rawhide Village—Horizon Subdivision, Campbell County, Wyoming are now available to the public.

The test holes, located in Township 51 North, Range 72 West, Section 20 were designed to provide additional information on the methane gas concentration within the Rawhide Village—Horizon Subdivision.

ADDRESS: Reproductions of the geophysical logs and mudlogs are available at cost. Contact: William H. Lee, Chief, Branch of Mining Law and Solid Minerals, Division of Mineral Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Telephone (307) 772–2567.

Hillary A. Oden,
State Director.
October 2, 1987.
[FR Doc. 87–23696 Filed 10–13–87; 8:45 am]
BILLING CODE 4310–22–M

[AZ–040–07–4212–14; A 22634]

Realty Action; Noncompetitive Sale of Public Land in Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following lands have been examined and identified as suitable for disposal under the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at fair market value:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 27 E.,
Sec. 35, S½SE¼NW¼SW¼.
Containing 5.0 acres, more or less.

The land is being offered to Mr. Lowell Hively to settle an unauthorized use of public lands.

The land is not required for any federal purpose. Conveyance of the parcel would best serve the public interest. This action is consistent with the Bureau's planning recommendations.

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record. It will contain the following reservations:

1. Rights-of-Way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat, 391; 43 U.S.C. 945.

2. All the oil and gas in the land so patented, and to it or persons authorized by it, the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits (30 U.S.C. 121–124; 186).

The patent will be issued subject to:

1. Such rights as Harold Carpenter, Tillie Carpenter, Hearold Elmer, Charleen Elmer, William Sorsen, Loraine Sorsen, Michael Maryott, Laura Maryott, Sean Maryott and Gillian Maryott may have to the Gem No. 67 mining claim (AMC 46188).

2. Such rights for water pipeline right-of-way purpose as the City of Safford may have. (A 19088)

3. Such rights for buried telephone cable right-of-way purpose as Mountain States Telephone and Telegraph Company may have. (A 11856)

4. Such rights for road right-of-way purpose as Graham County may have. (A 22710)

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

DATE: For a period of 45 days from the date of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning reservations, conditions, appraised other items may be obtained from the Safford District Office or by calling (602) 428–4040 during the office hours 7:45 to 4:15 MTS.

Dated: October 1, 1987.

Ray A. Brady,

District Manager.

[FR Doc. 87-23708 Filed 10-13-87; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-08-4212-11; N-44619]

Realty Action; Lease Purchase for Recreation and Public Purposes; Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 21 S., R. 61 E.,
Sec. 13, W½NE¼NE¼SE¼.

This parcel of land contains approximately 5 acres. The Clark County School District intends to use the land for an education center complex. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mining leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: October 5, 1987.

Ben F. Collins,

District Manger, Las Vegas, NV.

[FR Doc. 87-23734 Filed 10-13-87; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Endangered and Threatened Species Permit; Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-721879

Applicant: William P. Thomas, Orlando, FL

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas), culled from the captive herd of F.W.M. Bowker, Grahamstown, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-721915

Applicant: David S. Conant, Dept. of Biological Sciences, Dartmouth College, Hanover, NH

The applicant requests a permit to collect a total of 80 mature leaves from 40-80 elfin tree ferns (Cyathea druopteroides) to study hybyid specification.

PRT-721880

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import one male and one female captive-born white eared pheasant (Crossoptilon crossoptilon) from Tierpark Berlin, German Democratic Republic, for the purpose of introducing new bloodlines to their captive propagation program.

PRT-721400

Applicant: San Diego Zoological Society, San Diego, CA

This is to amend the **Federal Register** notice, Vol. 52, No. 183, page 35593, published September 22, 1987, to allow theimport of five pairs of golden-shouldered parakeets (Psephotus chrysopterygius) from the Royal Zooloigical Society of South Australia.

Documents and other information submitted with these application are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: October 6, 1987.

Larry LaRochelle,

Acting Chief, Branch of Permits.

[FR Doc. 87-23768 Filed 10-13-87; 8:45 am]

BILLING CODE 4310-55-M

Klamath Fishery Management Council; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuanty to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Council meeting will be held from 9:00 a.m. to 4:00 p.m. Thursday, October 29, 1987.

ADDRESS: The meeting will be held at the Eureka Inn, 7th and F Streets, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, Klamath Field Office, U.S. Fish and Wildlife Service, 1312 Fairlane Road, Yreka, CA 96097; telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Fishery Management Council, please refer to the notice of its initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). During the October 29 meeting, the Council will discuss 1987 fall chinook harvest and escapement, enforcement of gillnet fishing regulations, amendments of the Klamath River Basin Fishery Resources Restoration Act under consideration.

Council operating procedures, appointments to the Council's Technical Advisory Team, in-season management measures to control fall chinook harvest reates, deficit accounting of salmon harvests, and other pertinent topics.

Dated: October 8, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 87-23707 Filed 10-13-87; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.
ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: October 23, 1987, 7:00 p.m.[1]

Inclement Weather Reschedule Date: None.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround the issue of the "strand" along the Upper Delaware Scenic and Recreational River.

The meeting will be open to the public.

Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated: October 5, 1987.

Sandra C. Rosencrans,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 87-23736 Filed 10-13-87; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 3, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 29, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Litchfield County

Canaan, *Music Mountain*, Music Mountain Rd.

New Haven County

West Haven, *Union School*, 174 Center St.

Tolland County

Coventry, *Sprague, Elias, House*, 2187 South St.
Coventry, Strong House, 2382 South St.

GEORGIA

Ben Hill County

Fitzgerald, *Holtzendorf Apartments*, 105 W. Pine St.

Decatur County

Bainbridge, *Bainbridge Commercial Historic District*, Roughly bounded by Water, Clark, Troupe, W. Broughton, & Clark Sts.
Bainbridge, *Bainbridge Residential Historic District*, Roughly bounded by Calhoun, Scott, Evans, College, & Washington Sts.

Fulton County

Atlanta, *St. Marks Methodist Church*, 781 Peachtree St.

Lowndes County

Valdosta, *First Presbyterian Church*, 313 N. Patterson St.

Stewart County

Richland, *Miller, Dr. Thomas B., House*, 97 Nicholson St.

IOWA

Black Hawk County

Waterloo, *Highland Historic District (Boundary Increase)*, Roughly bounded by the Railroad, Idaho St., Independence Ave., & Steely St.

KENTUCKY

Grayson County

Leitchfield, *Court square Historic District (Bonadary Increase)*, 106 & 104N. Main

Louisianage

Orleans Parish

New Orleans, *Carrollton Historic District*, Roughly bounded by Lowerline St., Mississippi River, Monticello Ave., & Earhart Blvd.

Mississippi

Copiah County

Hazlehurst, *Ellis, Issac Newton, House*, 258 S. Extension St.

New York

Franklin County

Saranac Lake, *Smith's, Paul, Electric Light and Power and Railroad Company Complex*, 2 Main St.

Suffolk County

Roosevelt, John Ellis, Estate
Montauk, *Bragg, Caleb, Estate*, Star Island Rd.

Wayne County

Lyons, *Hotchkiss, H.G., Essential Oil Company Plant*, 93—95 Water St.

Westchester County

Peekskill, *Beecher—McFadden Estate*, E. Main St.

North Carolina

Burke County

Morgantown, *Avery Avenue Historic District (Morganton MRA)*, Roughly along parts of Avery, Lenoir, Morehead, Walker, Evans, & Short Sts.
Morgantown, *Avery Avenue School (Morganton MRA)*, 200 Avery Ave.
Morgantown, *Broughton Hospital Historic District (Morganton MRA)*, Roughly bounded by Broughton Hospital campus, NC 18, Bickett St., & Enola Rd.
Morgantown, *Dale's, USB Market (Morganton MRA)*, Jct. of Enola Rd. & Dale St.
Morgantown, *Hunting Creek Railroad Bridge (Morganton MRA)*, Hunting Creek N of US 64 & 70 between jct. of Stonebridge Rd. & E. Union St.
Morgantown, *Jonesboro Historic District (Morganton MRA)*, Roughly bounded by W. Concord, Bay, Jones, Lytle, & S. Anderson Sts.
Morgantown, *Lackey, John Alexamder, House (Morganton MRA)*, 102 Camelot Dr.

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Morgantown, *Morganton Downtown Historic District (Morganton MRA)*, E. Union, S. Green, N. & S. Sterling, King, & Queen Sts.
Morgantown, *North Green Street—Bouchelle Street Historic District (Morganton MRA)*, N. Greet, Bouchelle, & Patterson Sts.
Morgantown, *Quaker Meadows Cemetery (Morganton MRA)*, Off NC 126
Morgantown, *South King Street Historic District (Morganton MRA)*, S. King St.
Morgantown, *West Union Street Historic District (Morganton MRA)*, Roughly parts of W. Union St., Montrose St., & Riverside Dr.
Morgantown, *White Street-Valdese Avenue Historic District (Morganton MRA)*, White St. & Valdese Ave.

Edgecombe County

Tarboro vicinity, *Lone Pine*, SR 1207, S of US 64

Robeson County

Lumberton, *Planters Building*, 312 N. Chestnut St.

Ohio

Summit County

Vaughn Site (33 CU65)

Virgin Islands

St. Croix County

Fairplain Historic and Archaeological District
Lower Love Historic and Archaeological District
Christiansted Vicinity, *Strawberry Hill Historic District*, Queen's Quarter
Christiansted vicinity, *Bethlehem Middle Works Historic District*, King's Quarter
Christiansted vicinity, *Estate Richmond*, Company Quarter
Christiansted vicinity, *Slob Historic District*, King's Quarter
Christiansted, *Bethlehem Historic District:Old and New Works*, King's Quarter

[FR Doc. 87–23735 Filed 10–13–87; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30900; Finance Docket No. 30900 (Sub-No. 1]

Joint Application of CSX Corp. and Sea-Land Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, the acquisition of control by CSX Corporation of two motor carrier subsidiaries of Sea-Land Corporation (Sea-Land Freight Service, Inc., and Intermodal Services, Inc.), subject to labor protective conditions for rail employees.

ADDRESSES: Send petitions referring to Finance Docket No. 30900 and Finance Docket No. 30900 (Sub-No. 1) to:

(1) Office of the Secretarty, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: G. Paul Moates, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: This notice revises and supplements the previous notice in this proceeding published September 4, 1986 at 51 FR 31734–31735.

Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202 289–4357, (assistance for hearing impaired is available through TDD services, (202) 275–1721) of by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: October 2, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23706 Filed 10–13–87; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31120]

Norfolk and Western Railway Co.; Trackage Rights; Southern Railway Co.; Exemption

Southern Railway Company has agreed to grant overhead trackage rights to Norfolk and Western Railway Company, beginning at milepost P–31.1 and ending at milepost F–32.6, a total distance of 1.5 miles in South Boston, VA. The trackage rights became effective on October 1, 1987.

This Notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The fining of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR. Doc. 87–23508 Filed 10–13–87; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31102]

Wisconsin Central Ltd.; Exemption Acquisition and Operation; Certain Lines of Soo Line Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Vacation of stay.

SUMMARY: The Commission vacates its stay of September 11, 1987, published at 52 FR 35505 on September 16, 1987. This action allows the exemption from 49 U.S.C. 10901 to become effective on October 11, 1987. The Commission will issue a decision at a later date addressing in more detail the comments submitted as a result of its earlier request.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: By decision served September 11, 1987, we stayed until October 26, 1987, the effective date of an exemption that would allow Wisconsin Central Ltd. to acquire and operate certain properties of the Soo Line Railroad Company and requested comments from interested parties concerning the transaction. On September 22, 1987, we declined to consider a vacation of the stay until we had received the requested comments. Numerous parties filed comments. Upon consideration of the comments filed, the Commission vacates the stay, but continues to study the transaction.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 202–289–4357 or 289–4359 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: October 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley and Commissioner Simmons

dissented with a separate expression which will be served at a later date.

Noreta R. McGee,

Secretary.

[FR Doc. 87-23705 Filed 10-13-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; Joint Venture of All-Terrain Vehicle Distributors; American Honda Motor Co., Inc., et al.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by the parties to a joint venture of all-terrain vehicle distributors (the "Venture") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Venture and (2) the nature and objectives of the Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Venture, and its general areas of planned activity, are given below.

The parties to the Venture are American Honda Motor Co., Inc., Kawasaki Motors Corp., U.S.C., U.S. Suzuki Motor Corporation, and Yamaha Motor Corporation, U.S.A. The objective of the Venture is to develop voluntary standards pursuant to section 9(b) of the Consumer Product Safety Act, 15 U.S.C. 2058(b), covering certain engineering aspects of All-Terrain Vehicles ("ATVs"). The above-mentioned parties have agreed to collaborate jointly with technical staff of the Consumer Product Safety Commission in research and development activities relating to the development of certain engineering aspects of a voluntary standard for ATVs.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-23773 Filed 10-13-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater New American Works Prescreening) to the National Council on the Arts will be held on October 27-29, 1987, from 9:00 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

October 2, 1987.

[FR Doc. 87-23765 Filed 10-13-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub.L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45, Part 670 of the Code of the Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 13, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Progams, National Science Foundation, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as required special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 24, 1987.

The application received is as follows:

1. Applicant

William L. Stockton, Scripps Institution of Oceanography, La Jolla, California 92093.

Activity for Which Permit Requested

Taking. The applicant will be making observations of *Catharacta maccormicki* (South Polar Skua) incidental to other NSF supported research. No specimens will be captured or handled.

Location

Explorers Cove, McMurdo Sound, Antarctica

Dates

November 1987—February 1988

Charles E. Myers,

Permit Office.

[FR Doc. 87-23709 Filed 10-13-87; 8:45 am]

BILLING CODE 7533-01-M

Advisory Committee for Atmospheric Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS)
Date: October 30-31, 1986
Time: 9:00 a.m.-5:00 p.m. each day
Place: National Center for Atmospheric Research, P.O. Box 3000, Boulder, Colorado 80307
Type of Meeting: Open
Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation,

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Washington, DC 20550, Telephone: (202) 357-9874

Minutes: May be obtained from the Contact Person listed above.

Purpose of Meeting: To provide advice and recommendations on long-range planning and oversight concerning support for research and research areas.

Agenda: Open: Site Visit at the National Center for Atmospheric Research, presentations on the National Science Foundation's Science and Technology Centers, Multi-user Facilities, review of Long-Range Plan for Atmospheric Sciences, and general discussion.

M. Rebecca Winkler,

Committee Management Officer.

October 8, 1987.

[FR Doc. 87-23731 Filed 10-13-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co., Pilgrim Nuclear Power Station: Exemption

I

The Boston Edison Company (BECo), the licensee, is the holder of Operating License No. DPR-35 which authorizes operation of Pilgrim Nuclear Power Station. The license provides, among other things, that the Pilgrim Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective of February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant One of these subsections, III.J., is the subject of the licensee's exemption request.

Section III.J., of Appendix R to 10 CFR Part 50, Emergency Lighting, requires emergency lighting units with a least an 8-hour battery power supply in areas needed for operation of safe shutdown equipment and along access and egress routs thereto.

III

By letter dated April 1, 1987 (BECo 87-053), the licensee requested an exemption from the specific technical requirements of section III.J of Appendix R to 10 CFR Part 50 pertaining to the installation of our 8-hour battery powered lighting units in the yard area outside the process buliding (which includes the reactor building).

Section III.J of Appendix R states, that, "Emergency lighting units with at least an 8-hour battery supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes threto." The yard area in questions is outside of the process building, and in the access/egress route to alternative shutdown stations located in the Emergency Diesel Rooms, the reactor building Auxiliary Bay, and other portions of the reactor building that would not be involved in a postulated fire.

Lighting is already provided throughout the outside yard area (including this part of the yard area which is the access route to the various alternative safe shutdown stations) to satisfy security requirements. This existing security lighting is powered by normal off-site power and by an emergency security diesel-generator unit, an independent on-site unit which starts automatically upon loss off-site power. The licensee states that the security lights are adequate to illuminate the access routes in the outside yard area and are as reliable as individual battery powered lights. The existing security lighting installation does not expressly satisfy the technical requirements of section III.J of Appendix R in the yard area outside of the process building, since individual 8-hour battery powered lighting units are not provided for safe shutdown access and egress routes.

The licensee states that granting this exemption would not present undue risk to the public health and safety because the yard area is adequately lighted by the existing security lighting system. The staff agree with the licensee's statement. The security lighting is sufficient to allow security surveillance of the yard area, and is adequate to allow safe passage by the plant operators to those buildings housing alternate safe shutdown panels. Since there are no alternative safe shutdown sations in the yard are, operators would be simply traversing the yard and not performing any safe shutdown actions in the yard area.

The licensee states that application of the requirements of section III.J of Appendix R regarding 8-hour battery powered lighting units would not serve the underlying purpose of the rule. The staff agrees with the licensee's statement. The standby security lighting system in the yard are provides lighting for a minimum of 8 hours and would serve the underlying purpose of Appendix R. It provides emergency lighting in the access and egress routes leading to the operation of safe shutdown equipment in the Diesel Generator Room and other loctions outside the process building. Providing emergency lighting units with a least an 8-hour battery power supply would not provide any additional protection to the provided by the Security lighting system.

Regarding reliability of the existing yard lighting, the security lighting is supplied from the security diesel, an independent on-site power source initiated automatically on loss of off-site power. The security diesel and the security lighting are located outside of the process building remote from any fire areas within the Plant. Also, the licensee states that the entire security yard-lighting system is installed and maintained to requirements at least as stringent as those contained in section III.J of Appendix R.

Based on the above evaluation, the staff concludes that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50.

Therefore, the licensee's request for an exemption to the requirements of section III.J of Appendix R for the yard area outside the process building should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that (1) the exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption from the requirements of section III.J of Appendix R to 10 CFR Part 50 regarding emergency lighting units with 8-hour battery power supply in the yard outside of the process building, including areas outside of the reactor building.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact

(52 FR 32979 September 1, 1987). A copy of the licensee's request for exemption dated April 1, 1987 is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 6th day of October 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 87-23739 Filed 10-13-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-1 and 50-251-OLA-1]

Florida Power & Light Co., (Turkey Point Plant, Units 3 & 4); Vessel Flux Reduction

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members: Alan S. Rosenthal, Chairman, Dr. W. Reed Johnson, Howard A. Wilber.

Eleanor E. Hagins,

Secretary to the Appeal Board.

Dated: October 7, 1987.

[FR Doc. 87-23743 Filed 10-13-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Withdrawal of Application for Amendment to Facility Operating License; Niagara Mohawk Power Corp.

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Niagara Mohawk Power Corporation (the licensee) to withdraw its May 2, 1983 application for amendment to Facility Operating License No. DPR-63 issued to the licensee for operation of the Nine Mile Point Nuclear Station Unit 1 (NMP-1) located in Oswego County, New York. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on August 23, 1983 (48 FR 38409).

The request proposed changes to Section 4.2.2, Minimum Reactor Vessel Temperature for Pressurization, of the Appendix A Technical Specifications. The amendment was to reflect a change in the surveillance requirements for the Nine Mile Point Unit 1 reactor vessel material samples because one of the sample capsules had been inadvertently mispalced during a previous refueling outage. However, during the Spring 1986 refueling outage, additional surveillance capsules and material samples were installed in the reactor vessel. Since the current surveillance requirements can be met, the request for amendment is no longer required.

By letter dated January 29, 1986, the licensee requested, pursuant to 10 CFR 2.107, withdrawal of its May 2, 1983 application. The Commission has considered the licensee's request and has determined that withdrawal of the May 2, 1983 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated May 2, 1983, (2) the licensee's request for withdrawal dated January 29, 1986, and (3) our letter dated September 30, 1987. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the State University College at Oswego, Penfield Library Documents, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 30th day of September, 1987.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Acting Director Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 87-23738 Filed 10-13-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445-OL2, 50-446-OL2; ASLBP No. 79-430-06AOL]

Texas Utilities Electric Co. et al, (Comanche Peak Steam Electric Station, Units 1 and 2); Prehearing Conference

October 7, 1987.

On October 20, 1987, beginning at 9 am, we will convene a Prehearing Conference in the Embassy West Room at the Downtown Dallas Hilton, 1914 Commerce Street, Dallas, Texas 75201, for the purpose of discussing the schedule for filings and hearings for the remainder of this case.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair, Administrative Judge.

[FR Doc. 87-23744 Filed 10-13-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Instrumentation and Control Systems; Meeting

The ACRS Subcommittee on Instrumentation and Control Systems will hold a meeting on October 29, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, October 29, 1987—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss the NRC's proposed final resolution of USI A-47, "Safety Implications of Control Systems." In addition, the Subcommittee will discuss and consider the comments by Mr. Basdekas regarding the resolution of this USI.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named

individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: October 8, 1987.

Morton W. Libarkin,

Assistant Executive DIrector for Project Review.

[FR Doc. 87-23741 Filed 10-13-87; 8:45am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on October 30, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, October 30, 1987—8:00 a.m. until 11:00 a.m.

The Subcommittee will be briefed and will discuss the proposed Policy Statement on Maintenance of Nuclear Power Plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: October 7, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-23742 Filed 10-13-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24995; File No. SR-NASD-86-22]

Self-Regulatory Organizations; Proposed Amended Rule Change by National Association of Securities Dealers, Inc.

On August 5, 1986, the NASD filed with the Commission proposed rule change SR-NASD-86-22 ("original proposed rule change") pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 ("Act").[1] In response to concerns raised by the public commentators and expressed by the Commission to the NASD, the NASD on May 15, 1987 filed with the Commission its first amendment (the "May 15 amendment") to the original proposed rule change.[2] Subsequently, the NASD filed this second amendment ("amended rule change") to the original proposed rule change, incorporating into this amended rule change the changes reflected in the May 15 amendment as well as additional changes formulated since May 15. For purposes of clarity, all references herein to the "amended rule change" shall refer to this filing.[3]

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 10, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed amended rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed amended rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the text of the proposed amendments to subsections 5(e) and (f) of Appendix F to Article III, section 34 of the Rules of Fair Practice ("Appendix F"). Additions are italicized; deletions are in brackets.

Section 5—Organization and Offering Expenses

(e) No [sponsor, affiliate of a sponsor (other than a member dealing with persons associated with member), or program] *member or person associated with a member* shall *directly or indirectly accept* [provide] any *non-cash compensation or* sales incentive item[.] *including, but not limited to, travel bonuses, prizes, and awards offered or provided to such member or its associated persons by any sponsor, affiliate of a sponsor or program. Notwithstanding the foregoing, a member may provide non-cash compensation or sales incentive items to its associated persons provided that no sponsor, affiliate of a sponsor or program, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash compensation. Further, this section shall not prohibit* [directly to] a person associated with a member *from accepting any non-cash sales incentive item offered directly to that person by a sponsor, affiliate of a sponsor or program* [unless] *where*:

(1) The aggregate value of all such items [to be received] *paid* by *any sponsor or affiliate of a sponsor to* each associated person during any year does not exceed $50.00;

(2) The value of all such items to be made available in connection with an offering is included as compensation to be received in connection with the offering for purposes of subsection (b) of this section; and

(3) The proposed payment or transfer of all such items is disclosed in the prospectus or similar offering document.

(f) *Subject to the limitations on direct and indirect non-cash compensation provided in subsection (e) of this section,* [N]*no* [sponsor, affiliate of a sponsor, or program shall provide compensation to a [member, [in the form of sales incentives or bonuses] *shall accept any cash compension* unless all the following conditions are satisfied:

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[1] The proposed rule change was published for comment in the **Federal Register** on August 20, 1986 (51 FR 29729).

[2] To permit the NASD to make further changes to that May 15 amendment and to incorporate those changes into an all-inclusive amended rule change, the Commission did not publish the May 15 amendment for public comment.

[3] Both the May 15 amendment and this current filing are available for inspection and copying at the Commission's Public Reference Room.

(1) All [sales incentives and bonuses are] *compensation is* paid directly to the member in cash and the distribution, if any, of [incentives or bonuses] *all compensation* to *the member's* associated persons in controlled solely by the member;

(2) The value of all [incentives and bonuses are] *compensation,* to be [made available] *paid* in connection with an offering is included as compensation to be received in connection with the offering for purposes of subsection (b) of this section;

(3) Arrangements relating to the proposed payment of all [incentives and bonuses] *compensation* are disclosed in the prospectus or similar offering document; [and]

(4) The value of all [incentives and bonuses] *compensation,* is reflected on the books and records of the recipient member as compensation received in connection with the offering; *and*

(5) No compensation paid in connection with an offering is directly or indirectly related to any non-cash compensation or sales incentive items provided by the member to its associated persons.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Amended Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed amended rule change and discussed any comments it received on the proposed amended rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Amended Rule Change

As noted above, on August 5, 1986, the NASD filed with the Commission SR–NASD–86–22, pursuant to Rule 19b–4 under the Act. The original rule change proposed to amend subsections 5 (e) and (f) of Appendix F to Article III, section 34 of the NASD's Rules of Fair Practice. The original rule change to subsection 5(e) of Appendix F proposed to prohibit a sponsor, affiliate of a sponsor (other than a member dealing with persons associated with that member) or a program from directly or indirectly offering or providing non-cash compensation with a value in excess of $50.00 in the form of sales incentive items to any member or its associated persons, including but not limited to travel bonuses, prizes and awards. In addition, members and their associated persons were proposed to be prohibited from accepting such non-cash compensation. Finally, the original rule change proposed to clarify that souvenir-type non-cash sales incentives given by a sponsor directly to a person associated with a member may not exceed $50.00 per year per associated person for all programs of that sponsor.

The Commission published the original rule change for pulic comment in Release No. 34–23527 on August 13, 1986 (51 FR 29729, August 20, 1986).

As a result of comments received by the NASD to Notice to Members 85–17 (March 15, 1985) and by the Commission in response to the publication of the original rule change in the **Federal Register**, the NASD is proposing to amend the original rule change to address concerns of commentators regarding the provision that would permit member firms to continue to offer non-cash compensation to their associated persons in connection with sales of direct participation programs sponsored by affiliates of the member.[4] A number of commentators, both in favor of and opposed to the original rule change, urged that the proposal would be anticompetitive and discriminatory with respect to sponsors unaffiliated with a member firm which utilized unaffiliated member firms to distribute their product. The NASD does not believe that the original rule change results in a competitive advantage to members affiliated with program sponsors nor to sponsors affiliated with members. The original rule change to subsections 5(e) and 5(f) of Appendix F was intended to prohibit any sponsor, affiliate of a sponsor or program from providing non-cash sales incentives to any member and/or their associated persons. However, in response to the comments received, the NASD is amending the original rule change to ensure that a member's own internal sales incentive program is funded entirely by the member and to ensure that no sponsor, including an affiliate of a member, will directly or indirectly participate in or contribute to such internal sales incentive program.

Therefore, the NASD is proposing to amend section 5(e) of the original rule change to clarify that members may provide non-cash compensation or sales incentive items to the members' associated persons, provided that no sponsor, affiliate of a sponsor or program, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash compensation. Pursuant to the proposed amendment, no sponsor or program would be permitted to participate in or contribute to any member's non-cash internal sales incentive program, including the internal sales incentive program of a member affiliated with that program or sponsor. The language "participates in" is intended to prohibit a sponsor, affiliate of a sponsor, or program (including an affiliate of the member), from participating in the selection of and arrangements for any trip or merchandise sales incentive provided by a member to its associated persons as part of the member's internal sales incentive program. The language "contributes to" is intended to prohibit a sponsor, affiliate of a sponsor, or program (including an affiliate of a member), from contributing monetarily to any non-cash sales incentive provided by a member to its associated persons as part of the member's internal sales incentive program.

Further, the NASD is concerned that subsection 5(f) as amended by the original rule change may appear to permit the payment of compensation in a manner not permitted by the provisions of subsection 5(e). In particular, the NASD is concerned that subsection 5(f) may appear to permit members to request sponsors to reimburse their expenses related to internal non-cash sales incentive programs. As stated in the original rule filing, at page 21, the language of subsection 5(e) of Appendix F was not only intended to prohibit sponsors from directly or indirectly offering, providing or paying for non-cash compensation to members and their associated persons, but was also intended to prohibit members from directly or indirectly requiring sponsors to pay in cash for the member's internal non-cash sales incentive programs. Rather, a member is permitted to utilize any cash compensation it may receive, including a cash sales incentive, to defray the expenses of the member's internal non-cash sales incentive program.

Therefore, the NASD is proposing to amend subsection 5(f) by the addition of new introductory language and a new subprovision to clarify that any payment of cash compensation is subject to the limitations on non-cash compensation in subsection 5(e). The proposed introductory language provides that any payment in cash to a member pursuant to subsection 5(f) is subject to the limitations on direct and indirect non-cash compensation under subsection

[4] *See* SR–NASD–86–22, at 13, 16–17, 18, 21.

5(e). Further, new subprovision 5(f)(5) provides that no compensation paid in connection with an offering may be directly or indirectly related to any non-cash compensation or sales incentive items provided by a member to its associated persons. The NASD believes that the foregoing amendments will ensure that affiliated and non-affiliated sponsors may not offer and that affiliated and non-affiliated members may not request participation in or contribution to the member's internal noncash sales incentive program.

The proposed amendments to the original rule change are consistent with the underlying rationale of the rule change to ensure the member's supervisory control over its sales force and to ensure that no sponsor participates in or contributes to any member's internal program of compensation. The NASD continues to believe that with respect to a member's internal compensation program, the member has control over the suitability of the product sold by its associated persons and is in a position to exercise control over the sales practices of its associated persons where such persons are free from the influence of an outside sponsor. It is the influence of entities outside the member which has acted to undermine the ability of members to control their sales force.

Further, the NASD determined that the focus of the prohibitions contained in subsections 5(e) and 5(f) should be on members and persons associated with members, rather than on sponsors, affiliates of sponsors or programs. Therefore, the NASD proposes to amend the original rule change to clarify in subsections 5(e) and 5(f) that the prohibition on the receipt of compensation from a sponsor, affiliate of a sponsor or program is directed to members and persons associated with such members.

The NASD is also concerned that it may not be clear that subsection 5(f) as amended by the original rule change is intended to regulate compensation other than that permitted under subsection 5(e) of Appendix F, which permits persons associated with a member to receive non-cash items of compensation not in excess of $50.00 per year directly from a sponsor. Therefore, the NASD is proposing to amend subsection 5(f) to clarify that the provision is applicable to cash compensation, while Subsection 5(e) is applicable to non-cash compensation. Finally, subsection 5(f) is proposed to be amended to delete references to cash sales incentives as unnecessary, and to otherwise make minor grammatical changes.

The proposed amended rule change is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, as the proposal will strengthen the ability of member firms to supervise their associated persons, thereby providing greater protection to the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The amendments to the proposed original rule change are intended to address concerns regarding a potential competitive advantage afforded members affiliated with sponsors of direct participation programs and sponsors affiliated with members. The NASD continues to believe that such competitive advantage does not, in fact, exist and that the rule change presents no impact on competition which is not in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Amended Rule Change Received From Members, Participants, or Others

No comments were requested or received with respect to the proposed amended rule change. The original rule change was proposed for comment in NASD Notice to Members 85–17 (March 15, 1985). *See* SR–NASD–86–22, at 22–27.

III. Date of Effectiveness of the Proposed Amended Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, at the above address. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: October 5, 1987.

Exhibit 1—Copy of Proposed Rule Change as Originally Filed Marked To Show Amendments Filed Herein

Section 5

Organization and Offering Expenses

(e) No [sponsor, affiliate of a sponsor (other than a member dealing with persons associated with that member), or program] *member or person associated with a member* shall directly or indirectly [offer or provide] *accept any* non-cash compensation or sales incentive item[s] including, but not limited to, travel bonuses, prizes, and awards [to a member or a person associated with a member and no member or person associated with a member shall agree to accept such compensation.] *offered or provided to such member or its associated persons by any sponsor, affiliate of a sponsor or program. Notwithstanding the foregoing, a member may provide non-cash compensation or sales incentive items to its associated persons provided that no sponsor, affiliate of a sponsor or program, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash compensation. Further,* [T]*this* section shall not prohibit [a sponsor, affiliate of a sponsor, or program from providing any sales incentive items directly to] a person associated with a member *from accepting any non-cash sales incentive item offered directly to that person by a sponsor, affiliate of a sponsor or program* where:

(1) The aggregate value of all such items paid by any sponsor or affiliate of a sponsor to each associated person during any year does not exceed $50.00;

(2) The value of all such items to be made available in connection with an offering is included as compensation to be received in connection with the offering for purposes of subsection (b) of this section; and

(3) The proposed payment or transfer of all such items is disclosed in the prospectus or similar offering document.

(f) *Subject to the limitations on direct and indirect non-cash compensation provided in subsection (e) of this section,* [N] *no* [sponsor, affiliate of a sponsor, or program shall provide compensation to a] member *shall accept any cash compensation,* [including cash sales incentives] unless all of the following conditions are satisfied:

(1) All compensation is paid directly to the member in cash and the distribution, if any, of *all* compensation [, including cash sales incentives,] to *the member's* associated persons is controlled solely by the member;

(2) The value of all [items of] compensation [, including cash sales incentives,] to be made available in connection with an offering [are] *is* included as compensation to be received in connection with the offering for purposes of subsection (b) of this section;

(3) Arrangements relating to the proposed payment of all [items of] compensation [, including cash sales incentives,] are disclosed in the prospectus or similar offering document; [and]

(4) The value of all items of compensation [, including cash sales incentives, are] *paid in connection with an offering is* reflected on the books and records of the recipient member as compensation received in connection with the offering; *and*

(5) No compensation paid in connection with an offering is directly or indirectly related to any non-cash compensation or sales incentive item provided by the member to its associated persons.

[FR Doc. 87-23699 Filed 10-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16041; File No. 812-6850]

Anchor National Life Insurance Co.; Application for Exemption

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the Act").

Applicants: Anchor National Life Insurance Company ("Company") and American Pathway II—Separate Account of Anchor National Life Insurance Company ("Separate Account").

Relevant Sections of the Act: Order requested pursuant to section 26(b) of the Act.

Summary of Applications: Applicants seek an order to permit them to substitute shares of Anchor Pathway Fund ("Proposed Fund") for shares of the American Pathway Fund ("Present Fund") held by the Separate Account.

Filing Date: The application was filed on August 25, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 28, 1987. Any interested person must request a hearing in writing, giving the nature of the interest, the reason for the request, and the issues to be contested. A person requesting a hearing must serve the Applicants with the request, either personally or by mail, and send it to the Secretary of the SEC, along the proof of service by affidavit, or, for lawyers, by certificate. Notification of the date of a hearing may be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Anchor National Life Insurance Company, 2201 East Camelback Road, Phoenix, Arizona 85016.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey, (202) 272-2067 or Special Counsel Lewis B. Rich, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available from either the SEC's Public Reference Branch in person or, for a fee, from the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. The Separate Account was established by the Company to fund deferred variable annuity contracts. The Separate Account is registered as a unit investment trust under the Act. The contracts funded in the Separate Account are registered under the Securities Act of 1933. The Separate Account is divided into five divisions, each of which invests its assets in the shares of a designated series of the Present Fund. The Present Fund is organized as a Massachusetts business trust and is registered under the Act as a diversified, open-end management investment company. It is advised by Capital Research and Management Company ("Capital").

2. It is proposed that shares of the Proposed Fund be substituted for shares of the Present Fund. The Proposed Fund is organized as a Massachusetts business trust, and is registered under the Act as a diversified, open-end management investment company. The Proposed Fund consists of five series with the same investment objectives, policies and restricitons as the series of the Present Fund. Capital will serve as the adviser and Anchor Investment Adviser, Inc., a subsidiary of the Company, will administer the business affairs of the Proposed Fund.

3. Applicants state that the creation of the Proposed Fund is in keeping with a formal Agreement of Settlement and Mutual Release ("Agreement") disposing of a dispute between Applicants and Capital with respect to a proposal to offer shares of the Present Fund to variable annuity and variable life separate accounts of both affiliated ("mixed funding") and unaffiliated ("shared funding") life insurance companies.

Under the terms of the Agreement, the parties agreed that the Company would establish the Proposed Fund, which would serve as the underlying investment medium solely for the insurance products of Anchor National and that SEC approval would be sought to substitute shares of the Proposed Fund for shares of the Present Fund.

4. Applicants represent that investment in shares of the Present Fund is no longer appropriate in view of the purpose of the Separate Account.

5. Applicants that the fees and charges will be the same under the proposed arrangement as existed in regard to the Present Fund prior to the proposed substitution.

6. Applicants represent that the rationale for effecting the substitution is to avoid the potential conflicts of interest inherent in shared funding arrangements and therefore such substitution is not contrary to the interests of Anchor National contractowners.

7. Applicants represent that the substitution of Proposed Fund shares for Present Fund shares represents a negotiated settlement of a dispute between the parties which has been acknowledged by all such parties.

Applicants represent that the proposed substitution would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary,

Dated: October 8, 1987.

[FR Doc. 87-23766 Filed 10-13-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17302]

Citicorp; Application and Opportunity for Hearing

October 6, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company" or the "Trustee") under four existing indentures, and two pooling and servicing agreements each dated May 1, 1987, under which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under any of such indentures or agreements. Section 310(b) of this Act provides, in pertinent part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign.

Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which the other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interst or for the protection of investors to disqualify such trustee from acting as trustee under such other indenture. The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures under which the Applicant is the obligor. The Indenture dated February 15, 1972 involved the issuance of Floating Rate Notes due 1989; the Indenture dated March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes; the Indenture dated August 25, 1977 involved the issuance of Rising-Rate Notes, Series A; and the Indenture dated April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. The four indentures are hereinafter called the "Indentures" and the Securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On May 26, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated May 1, 1987 (the "1987-3 Agreement") with Citicorp Mortgage Securities, Inc. ("CMSI"), Packager and Servicer, and Citicorp Homeowners, Inc., under which there were issued on May 26, 1987 Mortgage Pass-Through Citicertificates Series 1987-3 9.00% Pass-Through Rate (the "Series 1987-3 Certificates"), which evidence fractional undivided interest in a pool of conventional one-to-four-family mortgage loans (the "1987-3 Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balance aggregating $77,982,439.31 at the close of business on May 1, 1987, which mortgage loans were assigned to the Trust Conpany as Trustee simultaneously with the issuance of the Series 1987-3 Certificates. On May 26, 1987, Applicant, the parent of CMSI, entered into a guaranty of even date (the "1987-3 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987-3 Certificates, to be liable for 7.75% of the initial aggregate principal balance of the 1987-3 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987-3 Guaranty. The 1987-3 states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, in enforced against Applicant, the 1987-3 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987-3 Certificates were registered under the Securities Act of 1933 (Registration Statements on Forms S-11 and S-3, File No. 33-123788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the 1933 Act. The Series 1987-3 Certificates were offered by a prospectus supplement dated May 8, 1987, supplemental to a prospectus dated May 8, 1986. The 1987-3 Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) On May 26, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated May 1, 1987 the "1987-4 Agreement") with CMSI, Packager and Servicer, and Citicorp Homeowners, Inc., under which there were issued on May 26, 1987 Mortgage Pass-through Citi-Certificates, Series 1987-4 9.00% Pass-Through Rate (the Series 1987-4 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987-4 Mortgage Pool") originated and serviced by Citibank, N.A. and have adjusted principal balances aggregating $102,405,896.20 at the close of business on May 1, 1987. On May 26, 1987, Applicant entered into a guaranty of even date (the "1987-4 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987-4 Certificates, to be liable for 7.00% of initial aggregate principal balance of the 1987-4 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987-4 Guaranty. The 1987-4 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987-4 Guaranty would rank on a parity with the obligations evidenced by the Notes. The 1987-4 Certificates were registered under the Securities Act of 1933 (Registration Statements on Forms S-11 and S-3, File No. 33-12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the Act. The Series 1987-4 Certificates were offered by a prospectus supplement dated March 8, 1987 supplemental to a prospectus dated May 8, 1987. The 1987-4 Agreement has not been qualified under the Trust Indenture Act of 1939. The 1987-3 Agreement and the 1987-4 Agreement are hereinafter called the "1987 Agreements" and the 1987-3 Guaranty and the 1987-4 Guaranty are hereinafter called the "1987 Guarantees."

(5) The obligations of Applicant under the Indentures and the 1987 Guarantees are wholly unsecured, are unsorbinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1987 Guarantees are unlikely to cause any conflict of interest in the trusteeship of the Trust Company under the Indentures and 1987 Agreements.

(6) The Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matter of fact and law asserted, all persons are referred to said application, File No. 22–17302, which is a public document on file in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549.

Notice is further given that an interested person may, not later than November 1, 1987, request in writing that a hearing be held on such matter, stating the nature of the interest, the reasons for such request, and the issues of law or fact raised by said application that are controverted or request notification if the Commission should order such a hearing.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an Order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

FR Doc. 87–23698 Filed 10–13–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16035; File No. 811–3798]

Providentmutual Variable Life Bond Account; Application

October 6, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order pursuant to section 8(f) of the Investment Company Act of 1940 (the "1940 Act") declaring that Applicant has ceased to be an investment company.

Applicant: Providentmutual Variable Life Bond Account.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: August 19, 1987.

Hearing or Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicant with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Provident Mutual Variable Life Bond Account, 1600 Market Street. Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272–2026 or Lewis B. Reich, Special Counsel, at (202) 272–2061

Summary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant states that on July 8, 1983, it registered under the Act on Form N–8A, and filed a registration statement on Form N–1 pursuant to section 8(b) of the Act. Applicant was a separate account formed to serve as a funding vehicle for certain scheduled premium variable life insurance policies issued by Providentmutual Variable Life Insurance Company ("PVLICO").

2. Pursuant to an Agreement and Plan of Reorganization ("Plan"), on December 12, 1985, Applicant ceased to function as a diversified management investment company and was converted to unit investment trust ("Bond Account"). Applicant, Providentmutual Variable Life Growth Account, and Providentmutual Variable Life Money Market Account (the "Accounts") were registered with the Commission as a single unit investment trust. In accordance with the Plan, PVLICO, acting on behalf of Applicant, transferred all of Applicant's assets to the Market Street Fund, Inc. (the "Fund"), in exchange for shares of the Fund's Bond Portfolio. PVLICO then recorded and held on its records the shares received issued by the Fund's Bond Portfolio as assets of the Bond Account. Thus, the policyowners' interest in the Bond Account was equivalent to their interest in Applicant prior to its reorganization.

3. The number of shares of the Fund's Bond Portfolio received by PVLICO was determined by dividing the value of the net assets of the Applicant on close of business on the first business day preceding the reorganization by the net asset value per share of the Bond Portfolio ($10.00). Accordingly, the assets of Applicant were exchanged for an aggregate of 44,622,703 shares of the Bond Portfolio, having a total value of $446,227.03.

4. Applicant represents that it has no security holders and is not now engaged in, nor does it propose to engage in, any business activities and has ceased to function as a diversified management investment company. However, the Bond Account, into which applicant was converted, does continue to act as an investment company as part of a registered unit investment trust. Applicant further represents that it has retained no assets, no debts or other liabilities, and it is not a party to any litigation or administrative proceedings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23693 Filed 10–13–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16034; File No. 811–3797]

Providentmutual Variable Life Money Market Account; Application

October 6, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order pursuant to section 8(f) of the Investment Company Act of 1940 (the "1940 Act") declaring that Applicant has ceased to be an investment Company.

Applicant: Providentmutual Variable Life Money Market account.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: August 19, 1987.

Hearing or Notification of Hearing: If no hearing is ordered the application

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will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicant with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Provident Mutual Variable Life Money Market Account, 1600 Market Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (2020 272–2026 or Lewis B. Reich, Special Counsel, at (202) 272–2061.

Summary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant states that on July 8, 1983, it registered under the Act on Form N–8A, and filed a registration statement on Form N–1 pursuant to section 8(b) of the Act. Applicant was a separate account formed to serve as a funding vehicle for certain scheduled premium variable life insurance policies issued by Providentmutual Variable Life Insurance Company ("PVLICO").

2. Pursuant to an Agreement and Plan of Reorganization ("Plan"), on December 12, 1985, Applicant ceased to function as a diversified management investment company and was converted to unit investment trust ("Money Market Account"). Applicant, Providentmutual Variable Life Growth Account, and Providentmutual Variable Life Bond Account (the "Accounts") were registered with the Commission as a single unit investment trust. In accordance with the Plan, PVLICO, acting on behalf of Applicant, transferred all of Applicant's assets to the Market Street Fund, Inc. (the "Fund"), in exchange for shares of the Fund's Money Market Portfolio. PVLICO then recorded and held on its records the shares received issued by the Fund's Money Market Portfolio as assets of the Money Market Account. Thus, the policyowners' interest in the Money Market Account was equivalent to their interest in Applicant prior to its reorganization.

3. The number of shares of the Fund's Money Market Portfolio received by PVLICO was determined by deviding the value of the net assets of the Applicant on close of business on the first business day proceeding the reorganization by the net asset value per share of the Bond Portfolio ($1.00). Accordingly, the assets of Applicant were exchanged for an aggregate of 2,188,537.40 shares of the Money Market Portfolio, having a total value of $2,188,537.40.

4. Applicant represents that it has no securityholders and is not now engaged in, nor does it propose to engage in, any business activities and has ceased to function as a diversified management investment company. However, the Money Market Account, into which applicant was converted, does continue to act as an investment company as part of a registered unit investment trust. Applicant further represents that it has retained no assets, no debts or other liabilities, and it is not a party to any litigation or administrative proceedings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23700 Filed 10–13–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16036; (811–2732)]

Short-Term Yield Securities, Inc.; Application

October 6, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for De-Registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Short-Term Yield Securities, Inc.

Relevant 1940 Act Sections: Application filed pursuant to section 8(f).

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on August 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, Eleven Greenway Plaza, Suite 1919, Houston, TX 77046.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney, (202) 272–3033, or Brion R. Thompson, Special Counsel, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commerical copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, diversified management investment company registered under the 1940 Act. Organized under the laws of the State of Maryland, Applicant filed its Notification of Registration on Form N–8A and its registration statement pursuant to section 8(b) of the 1940 Act on February 25, 1977. Applicant also filed a registration statement under the Securities Act of 1933, which was declared effective on May 25, 1978, and an initial public offering of Applicant's stock commenced on May 25, 1978.

2. Applicant's Board of Directors resolved on May 16, 1987, to approve Applicant's Plan of Liquidation and Dissolution, which in turn was approved by Applicant's shareholders on June 30, 1987. Subsequently, a distribution was made to its shareholders of the Applicant's remaining assets after payment of all costs and expenses associated with the winding up of Applicant's affairs.

3. There was thirty-four shareholders to whom checks were mailed in complete liquidation of their interests at their address of record whose whereabouts Applicant could not ascertain after diligent efforts. Those checks which were returned unclaimed remain with Applicant's transfer agent in its outstanding check file and will remain there during the applicable escheatment period.

4. Applicant has no assets, no outstanding debt, and is not a party to any litigation or administrative proceeding. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, and is not now engaged, nor does it propose to engage, in any business activity other than that necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23701 Filed 10-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16038; 811-4241]

Thomson McKinnon Global Trust; Application

October 6, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Thomson McKinnon Global Trust ("Applicant").

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application on Form N-8F was filed on June 30, 1987 and amended on October 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549 Applicant, One New York Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst, (202) 272-2847, or Brion R. Thompson, Special Counsel, (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application on Form N-8F is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the 1940 Act on February 27, 1985 as a diversified, open-end management investment company and was initially named the Thomson McKinnon Government Securities Fund. Thomson McKinnon Global Fund (the "Fund") is the sole series of Applicant.

2. Applicant is a voluntary association with transferable shares, organized and existing under and by virtue of the laws of The Commonwealth of Massachusetts.

3. Applicant sold all of the Fund's assets to the Thomson McKinnon Global Fund series (the "Series") of Thomson McKinnon Investment Trust, a Massachusetts business trust ("TMIT") pursuant to an Agreement and Plan of Reorganization dated July 31, 1986 (the "Plan"). Each share of the Fund was converted into one share of the Series. A total of 8,434,070.644 shares of the Series having a total net asset value of $103,781,970 ($12.31 per share) were issued to the Fund's shareholders pursuant to the Plan adopted on July 31, 1986 by Applicant's then sole shareholder.

4. Applicant has no outstanding assets or liabilities. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceeding.

5. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs. Applicant will file a Notice of Termination of Trust with the Secretary of State of The Commonwealth of Massachusetts.

6. Applicant has no security holders. There are no former security holders to whom disbursements in complete liquidation of their interests in Applicant have not been made.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23702 Filed 10-13-87; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Increase in the Level of Permissible Imports of Certain Articles From the European Community

AGENCY: Office of the United States Trade Representative.

SUMMARY: This notice increases the level of permissible imports for 1987 and subsequent years of certain articles the product of member countries of the European Community (EC) that are subject to limitation under Presidential Proclamation 5478 of May 15, 1986.

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Laura Kneale, ((202) 395-3074) or John C. Kingery, ((202) 395-6800), Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 15, 1986, the President determined pursuant to section 301(a) of the Trade Act of 1974, that certain restrictions imposed by the EC on imports of grain and oilseeds deny benefits to the United States under the General Agreement on Tariffs and Trade (GATT), are unreasonable and constitute a burden or restriction on U.S. commerce. In Proclamation 5478 (51 FR 18294), the President proclaimed quantitative restrictions on imports into the United States of specified articles the product of any member country of the EC, effective May 19, 1986. In that proclamation, the President authorized the United States Trade Representative (USTR) to suspend, modify or terminate any of the quantitative restrictions upon publication in the **Federal Register** of the USTR's determination that such action is justified by actions of the EC or is otherwise appropriate.

The intent of the U.S. quantitative restrictions is to have an effect on EC trade comparable to the EC's restrictions imposed on imports following Portugal's entry into the EC. The EC has not been willing to remove or significantly ease its restrictions with respect to oilseeds. However, pursuant to negotiations under Article XXIV(6) of the GATT, the EC agreed on January 30, 1987, not to apply quantitative restrictions respecting grain imports into Portugal. The EC has also adjusted the level of the EC quotas on soybean oil consumption in a manner that alleviates the immediate risk of damage to U.S. export interests from these measures in 1987.

In response to these actions of the EC, it is appropriate to adjust the level of U.S. restrictions in order to avoid a more

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damaging effect on EC trade than is warranted by the current operation of the EC restrictions in Portugal.

Action

Pursuant to the authority delegated to me in Proclamation 5478 of May 15, 1986, I have determined that a modification of the quantitative restrictions provided for in that proclamation is justified by actions taken by the EC with respect to this matter and is otherwise appropriate, taking into account the interests of the United States.

Accordingly, for calendar year 1987 and any subsequent calendar year, the level of permissible imports under the quantitative restrictions provided for in items 946.08 through 946.13, inclusive, of Subpart B of Part 2 of the Appendix to the Tariff Schedules of the United States (TSUS), is increased, and effective on the date of publication of this notice and determination in the **Federal Register**, the quantities specified in those TSUS items are modified to read as follows:

946.08	Chocolate, sweetened, in bars or blocks weighing 10 pounds or more each (provided for in item 156.25, Part 10A, schedule 1).	14,128 thousand lbs.
946.09	Candy, and other confectionery, not specifically provided for (provided for in item 157.10, Part 10C, schedule 1).	235,287 thousand lbs.
946.10	Apple or pear juice, not mixed and not containing over 1.0 percent of ethyl alcohol by volume (provided for in item 165.15, Part 12A, schedule 1).	140,339 thousand gals.
	Ale, porter, stout and beer:	
946.11	In containers other than glass each holding not over 1 gallon (provided for in item 167.05, Part 12C, schedule 1).	4,766 thousand gals.
946.12	In containers each holding over 1 gallon (provided for in item 167.05, Part 12C, schedule 1).	14,218 thousand gals.
946.13	White still wines produced from grapes, containing not over 14 percent of alcohol by volume, in containers each holding not over 1 gallon, valued over $4 per gallon (provided for in item 167.30, Part 12C, schedule 1).	48,369 thousand gals.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 87-23674 Filed 10-13-87; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee Notice of Withdrawal of Petition Under the 1987 Annual Review

This publication provides notice that the Ullman Company has withdrawn their petition (Case numbers 87-51 and 52 and 87-HS-33 and 34) concerning TSUS items 772.06 and 772.09 and proposed Harmonized System subheadings 3924.10.20 and 3924.10.30 from consideration. These cases were being considered in the 1987 Annual Review of the GSP. The TPSC had formally initiated the review of these cases in a notice of August 4, 1987 (52 FR 28896). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 87-23790 Filed 10-13-87; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Center Advisory Committee to be he held Monday, November 16, 1987, at 5:30 p.m. at the Hyatt Regency Miami, 400 SE 2nd Avenue, Tuttle Room South, Miami, FL 33131. The agenda for the meeting is as follows:

—Overview of the OSDBU Short-term Loan and Bonding Assistance Programs

—The Historically Black Colleges and Universities Business Management Skills Training Program

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Josie Graziadio, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-1930. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on October 7, 1987.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 87-23746 Filed 10-13-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 163, Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications, 3rd Meeting to Take Place on November 5-6, 1987

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 163 on Unintentional of Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications to be held on July 21-22, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Second Meeting Minutes; (3) Review Task Assignments; (4) Review Section 1.0 of the MOPS; (5)

Further Development of the MOPS; (6) Develop Committee Work Programs and Schedules; (7) Assignment of Tasks; (8) Other Business; and (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statments at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 7, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 87–23885 Filed 10–13–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 7, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0130.
Form Number: IRS Form 1120S and Schedule D (Form 1120S).
Type of Review: Resubmission.
Title: Capital Gains and Losses and Built-In Gains.
Description: Form 1120S and Schedule D (Form 1120S) are used by an S Corporation to figure its tax liability and income and other tax-related information to pass through to its shareholders.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 10,239,435 hours.

OMB Number: 1545–1008.
Form Number: IRS Form 8582.
Type of Review: Resubmission.
Title: Passive Activity Loss Limitations.
Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheet 3 through 6 are used to allocate the loss allowed back to individual activities.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Burden: 18,285,326 hours

Clearance Officer: Garrick Shear, (202) 535–4297 Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Managament and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87–23691 Filed 10–13–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 7, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0068.
Form Number: 2441.
Type of Review: Resubmission.
Title: Credit for Child and Dependent Care Expenses.
Description: Internal Revenue Code section 21 allows a credit for certain child and dependent care expenses to be claimed on Form 1040. The information on Form 2441 is used to help verify that the credit is properly figured.
Respondents: Individuals or households.
Estimated Burden: 1,120,487 hours.

OMB Number: 1545–0687.
Form Number: 990–T.
Type of Review: Resubmission.
Title: Exempt Organization Business Income Tax Return.
Description: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.
Respondents: Non-profit institutions.
Estimated Burden: 293,756 hours.

Clearance Officer: Garrick Shear. (202) 535–4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87–23692 Filed 10–13–87; 8:45 am]

BILLING CODE 4810–25–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 198
Wednesday, October 14, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES, INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. No. 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 10:00 a.m., Wednesday, October 21, 1987.

STATUS: Open.

ADDRESS: 1100 Pennsylvania Avenue, NW., Room MO-9, Washington, DC 20506 (202) 786-0536.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Forbes, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title LL of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities invested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board. If you need special accommodations due to a disability, please contact Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC, (202) 786-0536, TDD (202) 682-5496 at least seven (7) days prior to the meeting.

National Museum Services Board

October 21, 1987 Meeting Agenda

I. Approval of Minutes of July 17, 1987 Meeting
II. Director's Report
III. Legislative and Regulatory Update
IV. Other Business
V. Program Report
  A. Museum Assessment Program
  B. Conservation Support Program
  C. General Operating Support
VI. Discussion of Peer Review Process

Dated: October 8, 1987.

Lois Burke Shepard,

Director.

[FR Doc. 87-23780 Filed 10-9-87; 10:09 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 12, 19, 26, and November 2, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 12

Friday, October 16

9:30 a.m.
  Discussion of Pending Investigations (Closed—Ex. 5 & 7)
10:00 a.m.
  Briefing on Status of Rancho Seco (Public Meeting)
11:30 a.m.
  Affirmation/Discussion and Vote (Public Meeting)
  a. Final Rulemaking "Uranium Mill Tailings Regulations: Ground Water Protection and Other Issues" (Tentative)
  b. Commission Review of ALAB-832 (Shoreham) (Tentative)

Week of October 19—Tentative

Wednesday, October 21

10:00 a.m.
  Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting)
2:00 p.m.
  Briefing on the Federally Funded Research Development Center (FFRDC) (Public Meeting)

Thursday, October 22

10:00 a.m.
  Briefing on Emergency Planning Rule (Public Meeting)
3:30 p.m.
  Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of October 26—Tentative

Wednesday, October 28

2:00 p.m.
  Discussion/Possible Vote on Full Power Operating License for Palo Verde-3 (Public Meeting)

Thursday, October 29

3:30 p.m.
  Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of November 2

Tuesday, November 3

10:00 a.m.
  Briefing on the Status of High Level Waste Issues (Public Meeting)

Wednesday, November 4

2:30 p.m.
  Briefing on Integrated Safety Assessment Program (ISAP) (Public Meeting)

Thursday, November 5

2:00 p.m.
  Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
  Affirmative/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates, (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

October 9, 1987.

[FR Doc. 87-23875 Filed 10-9-87; 3:49 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 52, No. 198
Wednesday, October 14, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Low-Level Radioactive Waste; Procedures for Submitting Documentation and Guidelines for Evaluating State and Regional Compliance With the January 1, 1988, Milestone

Correction

In notice document 87-22427 beginning on page 36540 in the issue of Tuesday, September 29, 1987, make the following corrections:

1. On page 36542, in the second column, in the third complete paragraph, in the fourth line, "compact" was misspelled.

2. On the same page, in the third column, in the first line, "*Evaluation*" should read "*Evaluating*".

3. On the same page, in the same column, in the second complete paragraph, in the eighth line, after "legal" insert "basis for identifying that State, or (2) the site developer, site to be developed, and the legal"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Aid to Families With Dependent Children; Essential Persons

Correction

In proposed rule document 87-22769 beginning on page 37183 in the issue of Monday, October 5, 1987, make the following correction:

On page 37183, in the second column, in the second complete paragraph, in the fifth and sixth lines, remove the words "The definition and categories of essential persons."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 85N-0223]

Obstetrical and Gynecological Devices; Effective Date of Requirement for Premarket Approval; Contraceptive Tubal Occlusion Device (TOD) and Introducer

Correction

In rule document 87-22651 beginning on page 36882 in the issue of Thursday, October 1, 1987, make the following corrections:

1. On page 36882, in the first column, in the last line, "515(b)(2)(H)" should read "515(b)(2)(A)."

2. On the same page, in the third column, in the third complete paragraph, in the 10th line, "515(d)(3)" should read "515(b)(3)."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-943-07-4220-10; A-22923]

Proposed Withdrawal of Federal Land; Opportunity for Public Meeting

Correction

In notice document 87-20227 beginning on page 33297 in the issue of Wednesday, September 2, 1987, make the following corrections:

1. On page 33298, under T.6 S., R.3 W., "Sec. 14, all" should read "Sec. 14, E½."

2. Also under T.6 S., R.3 W., "Sec. 23, all" should read "Sec. 23, E½."

3. In the same column, under T.7 S., R.1 W., in Sec. 6, the second entry reading "SE¼NE¼" should read "SE¼NW¼."

4. Also under T.7 S., R.1 W., the ninth line reading "Sec. 7, all," should be removed.

BILLING CODE 1505-01-D

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federal register

Wednesday
October 14, 1987

Part II

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Urban Development Action Grants; Revised Minimum Standards for Large Cities and Urban Counties; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-87-1726; FR-2401]

Urban Development Action Grants; Revised Minimum Standards for Large Cities and Urban Counties

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with 24 CFR 570.452(b)(1), the Department is providing Notice of the most current minimum standards of physical and economic distress for large cities (metropolitan cities and other cities over 50,000 population), and urban counties for the Urban Development Action Grant (UDAG) program.

This Notice supersedes the Notice published on February 13, 1986 (51 FR 5413).

The minimum standards of distress have changed primarily as a result of applying new data from the Bureau of the Census, the Bureau of Labor Statistics, and the Employment Training Administraton of the Department of Labor.

The Notice contains three lists: The first list identifies all those cities and urban counties which qualify as distressed communities based upon the new minimum standards. The second list identifies those cities and urban counties which did not qualify when the February 13, 1986 list was published but which do qualify now. The third list identifies those cities and urban counties which were classified as distressed on the February 13, 1986 list, but which no longer qualify under the new minimum standards.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Jean Samuels, Office of Urban Development Action Grants, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone: 202/755-6784. For information on minimum distress standards or the data used to determine whether a community qualifies as distressed contact: Larry Blume, Telephone: 202/755-7390.

SUPPLEMENTARY INFORMATION: On February 13, 1986 we published a Notice that provided the minimum standards of physical and economic distress which were applicable up to the effective date of this Notice for large cities and urban counties.

Part I of this Notice specifies the new minimum standards of physical and economic distress. Part II contains a revised list of all the large cities and urban counties which meet the new standards. Part III lists those large cities and urban counties which, based upon the new minimum standards, appear on the list in Part II, but did not qualify when the February 13, 1986 list was published. Part IV is a list of those cities which were classified as distressed on the February 13, 1986 list, but which no longer qualify under the new minimum standards. These cities listed in Part IV have a specified period of time during which they may submit UDAG applications.

The seven minimum standards of distress have been changed as a result of new data from the Bureau of the Census, the Employment Training Administration, and the Bureau of Labor Statistics. The data cover units of government incorporated through June, 1986. The updated Census data are 1984 population, 1983 per capita income, 1980 housing and poverty (adjusted for boundary changes through 1983), and retail and manufacturing jobs created from 1977 to 1982. The previous Census data were 1982 population, 1981 per capita income, 1980 housing and poverty (reflecting boundary changes through 1982), and 1977–1982 retail and manufacturing jobs. The Bureau of Labor Statistics data are updated from 1984 unemployment rates to 1986 unemployment rates. The updated data from the Employment and Training Administration are Labor Surplus Areas designated as of April 1, 1987. The specified unemployment rate for the 1984—1985 period is 9 percent. A list of eligible labor surplus areas was published in the **Federal Register** on March 26, 1987 (52 FR 9727). The previous Labor Surplus Areas were designated as of October 1, 1984.

1. A large city or urban county must pass three minimum standards of physical and economic distress, except if the percentage of poverty is less than half the minimum standard identified in paragraph 1.F. below, then the city or urban county must pass four standards. The minimum standards of distress for age of housing, per capita income change, population growth lag/decline, unemployment, job lag/decline, and poverty are based on the median for all large cities. The minimum standards of distress for Labor Surplus Area is based on the national average unemployment rate over a two year period. The most current minimum standards of physical and economic distress are:

A. *Age of Housing.* At least 20.2 percent of the applicant's year-round housing units must have been constructed prior to 1940, based on the 1980 U.S. Census data, in order to meet this minimum standard;

B. *Per Capita Income Change.* The net increase in per capita income for the period of 1969–1983 must have been $6,203 or less, based on Census Bureau data, in order to meet this minimum standard;

C. *Population Growth Lag/Decline.* For the period 1960–1984 the percentage rate of population growth (based on corporate boundaries) in 1960 and as of 1984 must have been 25.3 percent or less, based on Census Bureau data, in order to meet this minimum standard;

D. *Unemployment.* The average rate of unemployment for 1986 must have been 6.5 percent of greater, based on data compiled by the Bureau of Labor Statistics, in order to meet this minimum standard;

E. *Job Lag/Decline.* The rate of growth in retail and manufacturing employment for the period 1977–1982 must have increased by 3.3 percent or less, based on Census Bureau data, in order to meet this minimum standard. If data are not available for both retail and manufacturing employment, the percentage used will be the median for either retail employment (8.5 percent) or manufacturing employment (0.0 percent), based upon the data available. If neither data source is available, this standard will not be considered.

F. *Poverty.* The percentage of persons within the applicant's jurisdiction at or below the poverty level must be 12.3 percent or more, based on the 1980 Census Bureau data, in order to meet this minimum standard;

G. *Labor Surplus Area.* The city or urban county must be at least partially within an area which meets the criteria for designation as a Labor Surplus Area as of April 1, 1987. These areas include cities with populations of 25,000 or more, counties, or county balances with an unemployment rate of 9 percent for calendar years 1984–1985.

II. A. The following cities and urban counties meet the current minimum standards of physical and economic distress:

State and Place		State and Place	
AL	Anniston	AR	Jacksonville
AL	Bessemer	AR	Pine Bluff
AL	Birmingham	AR	Texarkana
AL	Dothan	AR	West Memphis
AL	Florence	CA	Alhambra
AL	Gadsden	CA	Baldwin Park
AL	Mobile	CA	Bellflower
AL	Montgomery	CA	Berkeley
AL	Tuscaloosa	CA	Chico
AR	Fort Smith	CA	Compton

CA El Monte
CA Fresno
CA Huntington Park
CA Inglewood
CA Lodi
CA Lompoc
CA Long Beach
CA Los Angeles
CA Lynwood
CA Merced
CA Modesto
CA National City
CA Norwalk
CA Oakland
CA Oxnard
CA Pasadena
CA Pico Rivera
CA Pomona
CA Porterville
CA Richmond
CA Sacramento
CA Salinas
CA San Bernadino
CA San Francisco
CA Santa Cruz
CA Santa Maria
CA Seaside
CA South Gate
CA Stockton
CA Tulare
CA Turlock
CA Visalia
CA Woodland
CA Yuba
CA Fresno County
CA Kern County
CA San Joaquin County
CO Denver
CO Greeley
CO Pueblo
CT Bridgeport
CT Hartford
CT Moriden
CT New Britain
CT New Haven
CT New London
CT Norwich
CT Waterbury
DE Wilmington
DC Washington
FL Bradenton
FL Cocoa
FL Fort Pierce
FL Hialeah
FL Lakeland
FL Miami
FL Miami Beach
FL Panama City
FL Pensacola
FL Tampa
FL Titusville
FL West Palm Beach
FL Winterhaven
FL Polk County
GA Albany
GA Athens
GA Atlanta
GA Augusta
GA Columbus
GA Macon
GA Savannah
HI Hawaii County
IL Alton
IL Aurora
IL Belleville
IL Berwyn
IL Champaign
IL Chicago
IL Chicago Heights
IL Cicero
IL Decatur
IL East St. Louis
IL Elgin
IL Evanston
IL Granite City
IL Joliet
IL Kankakee
IL Moline
IL North Chicago
IL Perkin
IL Peoria
IL Rantoul
IL Rockford
IL Rock Island
IL Springfield
IL Urbana
IL Waukegan
IL Madison County
IL St. Clair County
IN Anderson
IN Bloomington
IN East Chicago
IN Elkhart
IN Evansville
IN Fort Wayne
IN Gary
IN Hammon
IN Indianapolis
IN Kokomo
IN Lafayette
IN Mishawaka
IN Muncie
IN New Albany
IN South Bend
IN Terre Haute
IA Cedar Falls
IA Cedar Rapids
IA Council Bluffs
IA Davenport
IA Des Moines
IA Dubuque
IA Sioux City
IA Waterloo
KS Kansas City
KS Lawrence
KS Leavenworth
KY Ashland
KY Covington
KY Hopkinsivlle
KY Louisville
KY Owensboro
KY Jefferson County
LA Alexandria
LA Baton Rouge
LA Houma
LA Lafayette
LA Lake Charles
LA Monroe
LA New Orleans
LA Shreveport
LA Thibodaux
ME Auburn
ME Bangor
ME Lewiston
ME Portland
MD Baltimore
MD Cumberland
MD Hagerstown
MA Attleboro
MA Boston
MA Brockton
MA Cambridge
MA Chycopee
MA Fall River
MA Fitchburg
MA Haverhill
MA Holyoke
MA Lawrence
MA Lecminster
MA Lowell
MA Lynn
MA Malden
MA New Bedford
MA Northampton
MA Pittsfield
MA Quincy
MA Salem
MA Somerville
MA Springfield
MA Waltham
MA Westfield
MA Worcester
MI Ann Arbor
MI Battle Creek
MI Bay City
MI Benton Harbor
MI Detroit
MI Flint
MI Grand Rapids
MI Holland
MI Jackson
MI Kalamazoo
MI Lansing
MI Lincoln Park
MI Muskegon
MI Muskegon Hts
MI Norton Shores
MI Pontiac
MI Port Huron
MI Roseville
MI Saginaw
MI Taylor
MI Genesee County
MN Duluth
MN Minneapolis
MN St. Cloud
MN St. Paul
MS Biloxi
MS Gulfport
MS Moss Point
MS Pascagoula
MO Columbia
MO Joplin
MO Kansas City
MO St. Joseph
MO St. Louis
MO Springfield
MT Great Falls
NE Omaha
NH Manchester
NJ Asbury Park
NJ Atlantic City
NJ Bayonne
NJ Bridgeton
NJ Camden
NJ East Orange
NJ Elizabeth
NJ Hoboken
NJ Irvington
NJ Jersey City
NJ Long Branch
NJ Millville
NJ Newark
NJ New Brunswick
NJ Passaic
NJ Patterson
NJ Perth Amboy
NJ Trenton
NJ Union City
NJ Vineland
NJ Hudson County
NM Las Cruces
NY Albany
NY Binghamton
NY Buffalo
NY Elmira
NY Glen Falls
NY Middletown
NY Mount Vernon
NY Newburgh
NY New Pochelle
NY New York
NY Niagara Falls
NY Poughkeepsie
NY Rochester
NY Rome
NY Schenectady
NY Syracuse
NY Troy
NY Utica
NY White Plains
NY Yonkers
NY Erie County
NC Asheville
NC Concord
NC Durham
NC Fayetteville
NC Gastonia
NC High Point
NC Kannapolis
NC Salisbury
NC Wilmington
OH Akron
OH Barberton
OH Bowling Green
OH Canton
OH Cincinnati
OH Cleveland
OH Cleveland Heights
OH Columbus
OH Dayton
OH Elyria
OH Hamilton City
OH Kent
OH Lakewood
OH Lancaster
OH Lima
OH Lorain
OH Mansfield
OH Marietta
OH Massillon
OH Middletown
OH Newark
OH Springfield
OH Steubenville
OH Toledo
OH Warren
OH Youngstown
OK Shawnee
OR Eugene
OR Medford
OR Portland
OR Salem
OR Springfield
OR Multnomah County
PA Allentown
PA Altoona
PA Bethlehem
PA Bristol Twp.
PA Carlisle
PA Chester
PA Easton
PA Erie
PA Harrisburg
PA Hazleton
PA Johnstown
PA Lancaster
PA Lebanon
PA McKeesport
PA Norristown
PA Philadelphia
PA Pittsburgh
PA Reading
PA Scranton
PA Sharon
PA Upper Darby
PA Wilkes-Barre
PA Williamsport
PA York
PA Allegheny County
PA Beaver County
PA Luzerne County
PA Washington County
PA Westmoreland County
RI East Providence
RI Pawtucket
RIProvidence
RI Woonsocket
SC Anderson
SC Charleston
SC Columbia
SC Florence
SC Greenville
SC North Charleston
SC Rock Hill
SC Spartanburg
TN Bristol
TN Chattanooga
TN Clarksville
TN Jackson
TN Johnson City
TN Kingport
TN Knoxville
TN Memphis
TN Nashville-Davidson
TX Beaumont
TX Brownsville
TX Bryan
TX College Station
TX Denison
TX Edinburg
TX El Paso
TX Forth Worth
TX Galveston
TX Harlingen
TX Killeen
TX Laredo
TX McAllen
TX Marshall
TX Mission
TX Orange
TX Pharr
TX Port Arthur
TX San Antonio
TX San Benito
TX Sherman
TX Texarkana
TX Waco
TX Wichita Falls
UT Ogden
UT Provo
UT Salt Lake City
VT Burlington
VA Bristol
VA Danville
VA Hopewell
VA Lynchburg
VA Norfolk
VA Petersburg
VA Portsmouth
VA Richmond
VA Roanoke
VA Suffolk
WA Bellingham
WA Bremerton
WA Everett
WA Olympia
WA Pasco
WA Seattle
WA Spokane
WA Tacoma
WA Vancouver
WA Yakima
WA Pierce County
WV Charleston
WV Huntington
WV Parkersburg
WV Weirton
WV Wheeling
WI Beloit
WI Eau Claire
WI Green Bay
WI Kenosha
WI La Crosse
WI Madison
WI Milwaukee
WI Oshkosh
WI Racine
WI Sheboygan
WI Superior
WI Wausau
PR Aguadilla Municipio
PR Arecibo Municipio
PR Bayamaon Municipio
PR Caguas Municipio
PR Carolina Municipio
PR Fajardo Municipio
PR Guaynabo Municipio
PR Humacao Municipio
PR Mayaguez Municipio
PR Ponce Municipio
PR San Juan Municipio
PR Toa Baja Municipio
PR Trujillo Alto Municipio

III. A. The following large cities and urban counties which have been added to the list under Section II, above, meet the new standards of physical and economic distress:

State and Place

AR Fort Smith
AR Jacksonville
CA Huntington Park
CA Merced
CA Modesto
CAa Santa Maria
CA Visalia
FL Bradenton
FL Cocoa
FL Titusville
HI Hawaii County
IlL North Chicago
LA Baton Rouge
LA Lafayette
NC Kannapolis
OR Multnomah County
TX Bryan
TX College Station
TX Denison
TX Fort Worth
TX San Antonio
TX Sherman
TX Wichita Falls
WI Sheboygan
PR Humacao Municipio

IV. The following list contains the names of those large cities and urban counties which met the minimum standards of physical and economic distress on February 13, 1986 but which no longer meet those standards. The final date for submission of an application by the cities listed below is March 31, 1988.

State and Place

CA El Cajon
CA Napa City
CA San Bernardino County
CT Middletown
IL Bloomington
IN West Lafayette
MA Gloucester

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MI	Dearborn Heights	NY	Orange County
MI	East Lansing	NC	Burlington
MI	Royal Oak	NC	Hickory
MI	Westland	PA	Bensalem Township
MI	Wyoming	PA	Penn Hills
NH	Dover	PA	State College
NH	Portsmouth	PA	York County
RI	Cranston	WA	Clark County
TN	Murfreesboro	WI	Waukesha
VA	Charlottesville	WI	West Allis
VA	Newport News		

Dated: October 1, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87-23548 Filed 10-13-87; 8:45 am]

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Part III

Commission on Education of the Deaf

Second Set of Draft Recommendations; Notice

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COMMISSION ON EDUCATION OF THE DEAF

Second Set of Draft Recommendations; Comment Solicitation

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of draft recommendations.

SUMMARY: This notice contains a second set of draft recommendations on which the Commission on Education of the Deaf (Commission) solicits public comment. This set addresses comprehensive service centers and training programs; adult and continuing education; the Department of Education (ED) liaison officer to Gallaudet University (GU), the National Technical Institute for the Deaf (NTID) and the regional programs; program evaluation of GU and NTID; ED's Captioned Films Program; Kendall Demonstration Elementary School and the Model Secondary School for the Deaf; minority and deaf-blind education; language acquisition; early intervention; educational technology; professional certification; educational interpreters; American Sign Language; and employment of deaf persons at GU and NTID. In this notice, the Commission reprints, in amended form, its previous draft recommendation on GU's and NTID's research, development, and evaluation activities. It is also investigating the need for a clearinghouse.

DATE: To be accepted for consideration, comments must be in writing, refer to specific recommendations, and be received in the Commission office on or before November 13, 1987.

ADDRESS: Written comments should be sent to the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC 20407. For further information, contact Pat Johanson, Staff Director, or Robert J. Mather, Staff Counsel, (202) 453–4353 (TDD) or (202) 453–4684 (Voice). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: In this notice, the Commission publishes the second of two sets of draft recommendations for written public input. The first set, published on August 28, 1987, addressed "appropriate education" under the Education of the Handicapped Act (EHA), parents' right to be informed about educational options, early identification of hearing impairment in infants and young children, the Regional Postsecondary Education Programs for the Deaf (RPEPD), student admission policies and research and dissemination activities at Gallaudet University (GU) and the National Technical Institute for the Deaf (NTID), and television captioning services.[1]

Clearinghouse

The Commission at its September meeting decided not to make any draft recommendations on the advisability and feasibility of establishing a national clearinghouse on deafness. Many people have noted a continuing problem in the dissemination and availability of information and materials in the field. Many national organizations provide clearinghouse services, for example: Alexander Graham Bell Association of the Deaf, American Deafness and Rehabilitation Association, American Society for Deaf Children, Gallaudet University, the National Association of the Deaf, Self-Help for Hard of Hearing People, Conference of Educational Administrators Serving the Deaf, Convention of American Instructors of the Deaf, Council on Education of the Deaf, and others.

The EHA Amendments of 1986 authorized two national clearinghouses, one on the education of handicapped children and youth and the other on postsecondary education for handicapped individuals.[2] In light of this information, the Commission asks whether new free-standing clearinghouses should be established or whether the current clearinghouses should be strengthened.

Previous Draft Recommendation on GU and NTID

In response to further inquiry about the previous draft recommendation on direct appropriations to GU and NTID for research, development, and evaluation activities,[3] the Commission decided to reprint this recommendation, along with further information, as *Draft Recommendation 21.* The Commission clarifies its intent that this recommendation applies to GU's pre-college programs (the Model Secondary School for the Deaf (MSSD) and the Kendall Demonstration Elementary School (KDES)), in addition to the other programs. The period for comment on this recommendation is extended to November 13, 1987.

As with the first set, the second set of draft recommendations was developed in part from public input received in response to the Notice of Inquiry and from public meetings held on the status of educational programs.[4] Approximately 4,000 responses were received from over 450 organizations, parents, educators, specialists, and consumers.

Established by the Education of the Deaf Act of 1986,[5] the Commission is directed to study infant, early childhood, elementary, secondary, postsecondary, adult, and continuing education programs for persons who are deaf. It must also study federally assisted programs relating to instructional media and captioning services. It must submit to Congress and to the President, no later than February 4, 1988, a final report of its study together with recommendations, including specific proposals for legislation, as the Commission deems advisable.

The Commission requests all interested persons and organizations to submit written comments and/or counterproposals on the draft recommendations listed below. Comments and counterproposals must be received in the Commission office by November 13, 1987.

I. Comprehensive Service Centers and Training Programs

A. Service Centers

Discussion: At least 500,000 of the estimated 2 million deaf persons in the U.S. became profoundly deaf before the age of 19. As many as 100,000 deaf individuals are severely limited in their ability to find employment or to pursue postsecondary education due to inadequate educational preparation.[6] Studies reveal that about 60 percent of deaf students who graduate or drop out of school every year go directly into the labor market in semi- or un-skilled jobs or remain unemployed. They are likely to have limited formal education, very limited English proficiency, poor vocational preparation, and sporadic employment histories. If intensive specialized training does not become available, a 70 percent rate of labor force nonparticipation or unemployment could be predicted for them as technological advances reduce the number and kinds of jobs they have traditionally filled.[7]

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[1] 52 FR 32732–32737.

[2] Pub. L. 99–457, Title III, § 310, 100 Stat. 1168 (1986).

[3] *Draft Recommendation 8,* 52 FR 32735.

[4] 52 FR 10722 (1987).

[5] Pub. L. 99–371, 100 Stat. 781, 786–789 (20 U.S.C. 4341–4344).

[6] Task Force on Rehabilitation Centers for Deaf Individuals. *Guidelines for Rehabilitation Centers for Deaf Individuals. 1973.*

[7] Report of the Steering Committee on Activities for Low Achieving Deaf Post-School Population. Arkansas Rehabilitation Research Training Center. 1969.

Under the Education of the Deaf Act of 1986 (EDA), nearly $74.6 million was allocated in fiscal year 1986 to educate nearly 3,700 students who attended GU and NTID. Conversely, ED's Rehabilitation Services Administration (RSA) estimates it spent about half that amount to rehabilitate 26,200 clients who are deaf.

Since the late 1970s, no comprehensive service center for this under-served population has been funded by RSA. This means that for the past 10 years, over 60 percent of the adult deaf population has not received services appropriate for their unique needs.

Draft Recommendation 1: Congress should establish one comprehensive service center in each of the ten federal regions.

The comprehensive service centers would be funded through a competitive bid process, using a five-year funding cycle. A federal incentive to encourage cooperating states to support these centers after the five-year period has ended would be instituted. To be eligible for initial federal funds, applicants would have to:

(a) Provide comprehensive services, such as initial evaluation and diagnosis, general education, counseling and guidance, vocational training, work transition, supported employment, placement, follow-up, and outreach;

(b) Employ qualified personnel who are able to communicate in the clients' native language or mode of communication;

(c) Disseminate training techniques, instructional materials, results of program evaluations, and public information; and

(d) Demonstrate viability of continuation without direct federal subsidies.

B. Training Programs

Discussion: The pervasive and continuing shortage of qualified personnel to work with the population to be served in the comprehensive centers emphasizes the need for appropriate training programs for rehabilitation counselors.

Draft Recommendation 2: The Department of Education should require rehabilitation counselor training programs, which prepare deafness specialists, to offer additional coursework and internships on counseling the population to be served in the comprehensive centers.

To provide the necessary pool of professionals to staff the comprehensive service centers, the number of training programs offering coursework and internships in counseling this population will have to be increased, or the current programs will need to be expanded. Currently, there are seven training programs for rehabilitation counselors who work with persons who are deaf.

II. Adult and Continuing Education

Discussion: The next recommendation addresses the needs of deaf adults who are functioning fully in the labor market but who require continuing education, as do most adults, in order to keep up with the changes occurring in the workplace. Despite an apparent demand from deaf persons for adult education classes, many adult and continuing education programs do not provide needed support services or utilize teachers who are familiar with the educational, social, cultural, and communication needs of that population. In addition, input and direction from deaf adults in planning adult education courses is often lacking.

Draft Recommendation 3, which follows, recognizes the special considerations inherent in developing and improving programs in adult and continuing education for deaf persons. Such programs should include not only degree programs but also programs in career preparation, personal development, academic skills enhancement, and vocational training.

The Commission's previous draft recommendation on the RPEPD suggested that each of the participating schools provide a "broader range of educational options." [8] The intent of this recommendation was to encourage each RPEPD to provide technical assistance to existing universities and community colleges in order to furnish a full range of postsecondary education opportunities. The Commission now recommends that the mission of each RPEPD in offering postsecondary education to deaf students be expanded to include adult education.

Draft Recommendation 3: Congress should authorize funds for each RPEPD to provide adult and continuing education programs and to assist local educational institutions in providing such programs to adults who are deaf.

To be eligible for additional funding for adult and continuing education components, each RPEPD should meet the following criteria:

(a) Involvement and training of persons who are deaf as administrators, program planners, and instructors;

(b) Provision of adequate support services, including interpreters, notetakers, and tutors;

(c) Provision of outreach services to their communities and schools serving persons who are deaf;

(d) Design of programs to meet the unique needs of adults who are deaf; and

(e) Provision of inservice training on deafness to adult education providers.

III. Department of Education Liaison Officer for Federally Funded Postsecondary Programs

Discussion: The Education of the Deaf Act of 1986 directed ED to designate an individual to serve as liaison between ED and GU, NTID, and the four schools participating in the RPEPD. The duties of the liaison officer are to provide information to the programs regarding ED's activities which directly affect the operation of the institution's programs and to provide such support and assistance as the institutions may request and the Secretary considers appropriate.[9]

The original bill, the Education of the Deaf Act of 1985 (S. 1874), stipulated that this liaison officer: Coordinate the activities of GU, NTID, and the regional programs to ensure the provision of quality education of deaf individuals and avoid unnecessary duplication; to review and comment on plans and other materials submitted by GU and NTID relating to research and demonstration activities, technical assistance, and development of instructional materials; and to assist in the preparation of budget requests.[10] The Senate version was not included in the final bill. To ensure coordination and avoid duplication among the programs, especially in view of the Commission's draft recommendations for the expanding roles of the regional programs, the Commission proposes that the liaison officer should have those additional responsibilities as described in the original Senate bill.

Draft Recommendation 4: Congress should amend the Education of the Deaf Act to direct the Department of Education's liaison officer to: (1) Coordinate the activities of GU, NTID, and the regional programs to ensure quality of the programs and to avoid unnecessary duplication; (2) review and comment on workplans relating to research and demonstration activities, technical assistance, and development of instructional materials; (3) assist in the preparation of budget requests; and (4) serve as an ex-officio member of GU's Board of Trustees and the advisory groups of NTID and the RPEPD.

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[8] *See Draft Recommendation 4,* 52 FR 32734.

[9] Pub. L. 99-371, § 406, 100 Stat. at 790 (20 U.S.C. 4356).

[10] S. 1874, 99th Cong., 2d Sess. 406 (1986).

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It is the Commission's intent that the liaison not be involved in the management, policymaking process, or governance of any of these programs. The person selected for the position of liaison officer should be an acknowledged expert in the field of deafness.

IV. Evaluation of GU and NTID by the Department of Education

Discussion: The General Accounting Office (GAO) reported that although ED generally oversees financial and budgetary matters at GU and NTID, the institutions have not been subject to periodic program evaluation.[11] The Commission is aware that some of the programs are already subject to accreditation evaluation; however, there is still a need for more comprehensive evaluation of those programs that receive federal funds. The liaison officer and advisory boards do not provide evaluative information and do not provide direct information to the Federal government regarding the achievements of these institutions in fulfilling their national missions.

The EDA requires ED to monitor and evaluate the education programs and activities and the administrative operations of GU and NTID. In carrying out these responsibilities, ED is authorized to employ such consultants as may be necessary.[12] The Act does not prescribe how ED should carry out its monitoring and evaluation responsibilities.

Draft Recommendation 5: The Department of Education should conduct program evaluations at GU and NTID on a five-year cycle and submit a report of its evaluation with recommendations, including specific proposals for legislation, as it deems advisable, to the authorizing committees of the Congress. The evaluation team should consist of outside experts in the field of deafness, program evaluation, education, and rehabilitation.

Evaluation should coincide, as much as possible, with the accreditation activities at the two institutions to avoid unnecessary duplication of effort. This recommendation is separate from the other draft recommendations relating to ED's liaison officer [13] and to evaluation of the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf.[14]

V. Membership of GU's Board of Trustees, NTID's National Advisory Group, and RPEPD Advisory Groups

Discussion: The Commission notes that GU's Board of Trustees is currently composed of 21 members, only 4 of whom are deaf; while NTID's National Advisory Group is composed of 16 members, 3 of whom are deaf. Rather than recommending legislative action, the Commission encourages these programs to take the lead by increasing the representation of deaf persons in the governing and policy making bodies which serve this population.[15] If a fifth RPEPD is funded,[16] it would be expected to follow this recommendation as well.

Draft Recommendation 6: At least 51 percent of GU's Board of Trustees and the NTID's National Advisory Group and similar guiding bodies at each school participating in the RPEPD should be deaf.[17]

VI. Captioned Films Program

Discussion: ED's Captioned Films program distributes captioned educational films through 58 depositories free of charge to any school or program that is registered for the service and has at least one child with impaired hearing. ED's 1987 projects include over $5 million for captioning and distributing films. Educational films average about 17,500 showings per month during the school year.

The current process of captioning and distributing films takes almost two years. This process includes: Film selection, negotiations with film producers to caption their films, producing the scripts for captioning, actual captioning of the films, and distribution of the films to the schools.

Draft Recommendation 7: Congress should continue federal funds for the Department of Education's (ED) Captioned Films program (including captioning and distribution of educational and entertainment films). ED should require certain administrative improvements in the program. The use of current technology should be investigated to enhance the production of captioned films and media.

The Commission recognizes the importance of the captioned films program. At the same time, it notes several administrative problems in this program, which could include: Using current technology in the captioning and distribution process; keeping the distribution system on school campuses; lessening the gap between costs incurred and reimbursements; involving the deaf community and other professionals knowledgeable about deafness in all aspects of the program; making more prints available to depositories on the basis of information gathered from unfilled FILMSHARE bookings nationwide; increasing the number of new titles distributed each year; eliminating old films while updating others; and shortening the length of time now required for film distribution. The Commission is also considering a recommendation to ED that an independent contractor conduct a needs assessment on school use of captioned educational films.[18]

VII. Kendall Demonstration Elementary School (KDES) and the Model Secondary School for the Deaf (MSSD)

Discussion: The KDES Act [19] and the MSSD Act [20] directed the two schools to "provide an exemplary educational program to stimulate the development of similar excellent programs throughout the Nation." Both of these programs were established in their present form as a result of the 1964 Babbidge Report, which deplored the lack of systematic education for the majority of preschool deaf children, the limited secondary opportunities for deaf students nationwide, the low level of educational achievement attained by many secondary school graduates who were deaf, and the low allocation of funding for research.[21]

Thus, KDES was authorized to provide elementary-level educational facilities for individuals who are deaf "in order to prepare them for high school and other secondary study,"[22] while

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[11] *Oversight of Gallaudet College and the National Technical Institute for the Deaf: Hearing before the Subcomm. on the Handicapped of the Sen. Comm. on Labor and Human Resources.* 99th Cong. 1st Sess. 3–5 (statements of William J. Gainer, GAO).

[12] Pub. L. 99–371, 405, 100 Stat. at 790 (20 U.S.C. 4355).

[13] *See Draft Recommendation 4* above.

[14] *See Draft Recommendation 8* below.

[15] As a precedent, at least 5 of the 12 members of the Commission must be deaf. 20 U.S.C. 4341(b)(4). *See also* 29 U.S.C. 796d–1(b) (a majority of the members of state independent living council must be handicapped individuals and parents or guardians of handicapped individuals).

[16] *See* previous *Draft Recommendation 4*, 52 FR 32734 (the Commission proposed a fifth regional program in the Southwest, in addition to the four existing programs).

[17] The Commission has not reached full consensus on this recommendation.

[18] It should be noted that the first notice of draft recommendations contains those relating to closed captioned television. *See Draft Recommendations 12–18*, 52 *FR* 32737.

[19] Pub L. 91–587, 84 Stat. 1579 (1970).

[20] Pub. L. 89–694, 80 Stat. 1027 (1966).

[21] The House report accompanying the MSSD Act cited the Babbidge findings of "significant inadequacies in the educational services for the deaf, particularly noting the lack of a genuine secondary school program for deaf persons." H.R. No. 2214, 91st Cong. 2d Sess. 2, *reprinted in* 1966 U.S. Code & Admin. News 3527, 3528.

[22] 20 U.S.C. 4311(a)(1).

MSSD was authorized to provide day and residential facilities for secondary education for individuals who are deaf "in order to prepare them for college and for other advanced study."[23] In carrying out its function to prepare students for college, MSSD has adopted an admissions policy which stipulates "potential students to demonstrate reading levels of third grade or higher."[24] GU reports that 78 percent of former MSSD students continued their education beyond high school, with nearly one-fourth of that number completing programs of advanced study.[25]

A number of educators stated to this Commission that they are able to adequately serve the academically oriented students, but they expressed a need for programs, products, technical assistance, and outreach efforts designed for students who are not achieving satisfactory academic progress. Such students may be average or above average in terms of intelligence, but due to unsuccessful educational methodology, they are functioning at the first, second, or third grade levels in terms of academic achievement. In addition, many professionals expressed a need for other programs and products which are appropriate for students with secondary disabilities, students from non-English speaking homes, students who are members of minority groups, and parents who have deaf children.

Draft Recommendation 8: Congress should amend the EDA to include the following provisions for setting priorities at KDES and MSSD, and for submitting annual and evaluation reports:

Priorities

KDES and MSSD should provide exemplary programs to stimulate the development of similar programs across the nation. These exemplary programs should be developed to meet the critical needs at the elementary and secondary levels through research, development, training, and technical assistance. The current critical needs identified by the Commission relate to the following special populations:

(a) Students who are lower achieving academically;

(b) Students who have secondary handicaps;

(c) Students who are from non-English speaking homes;

(d) Students who are members of minority groups; and

(e) Parents who have deaf children.

Admission criteria should be changed to be congruent with the special populations addressed. The mission and focus of MSSD should be redefined so that the student population served by the school more closely mirrors the national demographics of secondary school-age deaf children. Materials and other product development of MSSD shall first address the special populations defined above.

Annual Report

KDES and MSSD shall submit an annual report to the President and to Congress which includes a list of the critical needs, a description of programs and activities designed to meet those needs, and an evaluation of their effectiveness.

Evaluation Report

Prior to reauthorization, or at least every five years, KDES and MSSD shall select independent experts, including consumers, from all types of educational programs, including mainstream programs, to provide an objective assessment of the progress made by KDES and MSSD in meeting the identified critical needs. An evaluation report shall be provided to the President and to Congress which includes the names of the experts and consumers conducting the assessment, a presentation of their findings, and the response of KDES and MSSD to the evaluation. In addition, the experts will delineate the critical needs to guide the programs during the next funding cycle.

VIII. Minority and Deaf-Blind Education

Discussion: Currently, nearly one-third of the children in schools and programs for the deaf belong to minority groups and that percentage is likely to increase. Numerous statements to the Commission charged that research, development, and training efforts must confront more than the issue of deafness—future activities must also be responsive to cultural and minority concerns. Topics of concern include: Cultural perspectives on education; development of the individual educational plan; teacher, administrator, and student recruitment; learning styles and strategies; the home language environment; and parent and family counseling.

Draft Recommendation 9: With respect to programs and activities serving students who are deaf, special recognition should be given to the unique needs of students who are members of minority groups, including deaf/blind students and those with secondary disabilities, as well as those who are members of racial and ethnic minority groups. This special recognition should apply to educational programs (from infant and early childhood to adult education), parent education, model/demonstration programs, and research, and should take into consideration cultural factors relating to race, ethnicity, and deafness.

IX. Language Acquisition

Discussion: Since language cannot be taught directly, the acquisition of language by children who are deaf is dependent upon the optimal presentation of relationships between concepts, linguistic signals, and social use. Despite the efforts of researchers and educators, little extensive progress has been evidenced in the acquisition of English by persons who are prelingually deaf. Therefore, the Commission views the acquisition of language and reading skills by children as a preeminent goal in the field of deaf education.

Draft Recommendation 10: Facilitating language acquisition in students who are deaf (including verbal, visual, and written language) should be a paramount concern guiding the implementation of exemplary practices, the establishment of program models, the determination of research priorities, the desion of curricula, materials, and assessment instruments, and the provision of professional and parent training.

Exemplary practices, programs, materials, and assessment instruments should be developed based on findings from the fields of deaf education, psycholinguistics, human cognition, and second language acquisition. Funding should be provided for advancement in various areas, including:

(a) Theoretical and Applied Research
(b) Development and Dissemination
(c) Implementation
(d) Parent and Professional Training

The Commission requests input on subtopics which merit attention under each of the preceding four topics. The Commission does not seek to prescribe a specific communication mode; instead, it wishes to explore various aspects of language acquisition which transcend communication mode preferences.

X. Early Intervention

Discussion: Under the Education of the Handicapped Act Amendments of 1986, states must provide early intervention services to all handicapped preschool students by the year 1991 in

[23] *Id.* at 4321(a).

[24] Gallaudet University. Responses to Questions from the Commission on Education of the Deaf, June 12, 1987, p. IV(b)–15.

[25] Gallaudet University Pre-College Programs. Presentation to Commission on Education of the Deaf, March, 1987, p. 8.

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order to be eligible for federal funds.[26] To ensure that quality services are being provided to children who are deaf, standards for personnel and programs should be developed by parents, specialists in early intervention and deafness, and adults who are deaf. Several states have already taken the initiative to develop such standards and the Commission encourages other states to review those standards as they develop their own. In addition, parents should have access to information about standards, allowing them to assess the quality of individual programs.

Draft Recommendation 11: State education agencies should be required to conduct state-wide planning and implementation activities, including the establishment of program and personnel standards which specifically address the educational and psychological needs of families with young children who are deaf. Individuals working with young, deaf children must be professionally trained to serve this population.

In providing early intervention services, the majority of individuals who work with young children who are deaf have been trained as teachers for the school-aged deaf population, as communicative disorder specialists, as early childhood/special education teachers, or in other unrelated fields. As a result, they would benefit from training relative to the population and age-range with whom they work. In addition, the infusion of deaf persons into home and school settings could also provide opportunities for deaf children to be exposed to deaf adult role models and would allow parents to be introduced at the earliest possible time to deaf persons. Amplification devices, including individual hearing aids, group amplification systems and other assistive listening devices, are integral components of any educational program for hearing-impaired children and youth, yet funding sources for the purchase of these systems are frequently inadequate for hearing aids and are non-existent for group amplification systems and tactile aids. These program practices and devices, as well as other important features, might be incorporated into exemplary program models which would improve approaches to high quality early childhood education.

Draft Recommendation 12: Congress should make available federal funding for states to:

(a) Provide preservice and inservice training to personnel to enable them to work effectively with young children, ages 0 to 5, who are deaf. Training should also be provided to adults who are deaf to prepare them to work as facilitating team members with local intervention programs;

(b) Ensure that appropriate technologies, and particularly amplification devices, are available for the provision of education for all children with hearing impairments; and

(c) Initiate or support a variety of program models which demonstrate improved approaches to high quality infant and early childhood education programs for children who are deaf. Projects must provide direct service to participating individuals and have the potential for wide replication.

XI. Educational Technology

Discussion: Great strides have been made in educational technology, and today's technologies include personal computers, satellite communication systems, video disc systems, robotics, and telecommunication systems. The most prominent of the current technological advancements in the field of computer-assisted instruction for children who are deaf include: speech recognition and synthesis software, language and speech development aids, real-time and closed captioning, telecommunication devices (TDDs), warning systems, and amplification devices. Coupled with the use of personal computers, these advancements have the potential to greatly enhance the education of students who are deaf.

Despite these strides, the Commission finds a compelling need for the development and application of these techniques and devices for improving instruction, for measuring student progress, and for disseminating information to interested persons and organizations.

Draft Recommendation 13: Congress should provide funds for research, development, acquisition, and maintenance of technology to be used for special and vocational education of children and adults who are deaf, including those with secondary disabilities.

The EHA Amendments of 1986 authorize federal funds for the support of research, dissemination, and technical assistance activities related to the development, production, and marketing of technology for use in the education of handicapped children.[27] As an alternative, such funds could appropriately be used to help defray much of the high start-up cost associated with the purchase of technological equipment and products for use in classrooms with children and adults who are deaf.

Draft Recommendation 14: Congress should support new and existing assistive devices resource centers to inform and instruct children and adults on the latest technological advances in the education of persons who are deaf.

Assistive devices resource centers should be established in cooperation with experts in audiology and education. The centers should have mobile units to serve the needs of persons who are deaf, including those living in rural areas. The centers would demonstrate the range of available devices, and would provide training and technical assistance on the use of the devices. The centers are intended to bridge the gap in the delivery of rehabilitation engineering research for school-aged children with severe disabilities. This draft recommendation supports and extends beyond the pending Senate bill entitled, "Technology to Educate Children With Handicaps Act."[28]

Draft Recommendation 15: National symposia on media and technology should be held to provide information on the most recent advances in applied technology for children who are deaf.

The last symposium on media and technology for children who are deaf was held in 1983. The Commission strongly endorses the reinstatement of these national symposia so that professionals in the field of deaf education are knowledgeable about state-of-the-art educational technology.

XII. Professional Certification

Discussion: The lack of uniform standards for adequate professional training and preparation continues to be a pressing problem. A set of uniform guidelines would provide urgently needed standards and eliminate problems associated with employing teachers trained in other states. (Standards for educational interpreters will be discussed in Section XIV.)

Section 613(a)(14) of the EHA Amendments of 1986 requires states to include in their plans "policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of * * * [part B] are appropriately and adequately prepared and trained * * *."[29] It also requires

[26] Pub. L. 99-457, title I, § 101, 100 Stat. 1148 (20 U.S.C. 1475).

[27] Pub. L. 99-457, title III, 312, 101 Stat. 1169 (20 U.S.C. 1442).

[28] S. 1586, 100th Cong. 1st Sess. (1987).

[29] 101 Stat. 1159, 1174, 20 U.S.C. 1413(a)(14).

states to establish and maintain standards consistent with state approved or recognized certification, licensing, registration, or other comparable requirements which apply to particular professions or disciplines.[30]

In assisting the states to develop personnel standards for professionals in deaf education, ED should consider the Council on Education of the Deaf's standards for the certification of professionals involved in the education of hearing impaired children and youth.

Draft Recommendation 16: The Department of Education should provide guidelines for states to include in their state plans such policies and procedures, which relate to the establishment and maintenance of standards, to ensure that professionals in special programs for students who are deaf are adequately prepared and trained.

XIII. Educational Interpreters

Discussion: Communication in the classroom is crucial not only to the educational process, but also to student participation in the classroom. Utilizing interpreting services is one way of providing communication for students who are deaf in classrooms with hearing peers. The classroom setting presents a challenge for educational interpreters because they must consider: The varying linguistic and cognitive developmental levels of the child; the differing sign/oral systems employed for interpreting; the appropriateness of performing other duties; and the need to work cooperatively with regular classroom teachers, administrators, and other support personnel.

The Registry of Interpreters for the Deaf (RID), the national certifying organization for interpreters, has established guidelines for the professional interpreter's role and functions but has not established special provisions for educational interpreters. In 1985, the National Task Force on Educational Interpreting (NTFEI) was formed to "examine and clarify roles and responsibilities, training and certification, working conditions, and other needs concerning educational interpreters and their services to mainstreamed deaf students at all educational levels." NTFEI is also seeking to establish standards for educational interpreters and to promote "equitable salary ranges as determined by skill level required and advanced training expectations."

Although NTID's 1986 Interpreter Training Programs resource guide lists 48 interpreter training programs in 30 states, none are specifically designed for educational interpreters. Interpreters, themselves, recognize that they do not receive adequate training in such subjects as child and language development, cognitive processing, the various sign/oral systems, and educational settings that require special knowledge and expertise. Serious concern has been expressed about the lack of understanding of the interpreter's role by deaf students, classroom teachers, parents, administrators, and interpreters themselves. Another serious concern is that states and local educational agencies have not treated interpreters as "professionals," in terms of status and salaries.

Draft Recommendation 17: The Department of Education, in consultation with consumers, professionals, and organizations, should provide guidelines for states to include in their state plans such policies and procedures, which relate to the establishment and maintenance of standards, to ensure that interpreters in educational settings are adequately prepared and trained.

This recommendation is intended to include interpreter standards in the personnel standards as required by section 613(a)(14) of the EHA Amendments of 1986. The Commission proposes that ED should recognize interpreters as professionals and should continue working closely with RID, NTFEI, and other groups in developing and providing guidelines to states to establish and maintain standards for interpreters in educational settings. ED should especially define the appropriate role of interpreters in these settings. The Commission emphasizes that the term "educational interpreters" includes sign language, cued speech, oral, and deaf/blind interpreters.

Draft Recommendation 18: Federal funding should be provided to develop training programs, design curricula, and award stipends to recruit and train potential and working educational interpreters.

There are currently no interpreter training programs specifically designed for educational interpreters. Training programs should offer courses addressing special issues, such as: The various sign systems used in educational settings; oral and cued speech interpreting; manual communication with deaf/blind persons; the need for collaboration between teachers, administrators, and counselors; and the cognitive and language development processes of hearing and deaf children. Section 304 of the Rehabilitation Act currently provides an average of $18,000 per state for interpreter training programs. That amount is not enough to pay for even one qualified instructor let alone pay for additional faculty, curriculum development, and support services that would be needed for a quality training program.[31]

Part D of the EHA allocates monies to promote staff development of special education personnel. These monies could be used to provide stipends to potential and working interpreters who seek training in the field of educational interpreting.

Draft Recommendation 19: Congress should fund section 315 of the Rehabilitation Act. The Department of Education should establish standards for interpreters in the field of rehabilitation.

Section 315 of the Rehabilitation Act of 1973, as amended, authorizes the Commissioner of Rehabilitation Services to make grants to states for establishing interpreting services for individuals who are deaf.[32] Interpreters participating in the programs are required to meet minimum standards.[33] Section 315 has never been funded and consequently no interpreter standards have been established for the states by the Commissioner.

XIV. American Sign Language

Discussion: Researchers examining the linguistic characteristics of American Sign Language (ASL) have determined that it is a natural and complete language, comparable in complexity and expressiveness to other languages. ASL should not be confused with manually coded English sign systems (*e.g.*, Seeing Exact English, Seeing Essential English) which are not considered languages but which have become widely used in educational settings. Some educational institutions also recognize ASL as a distinct language and grant foreign/second language credit to students who master ASL.

Approximately 10 percent of deaf children have parents who are deaf and many of these children learn ASL as their native language and acquire English as a second language. Deaf children of hearing parents often choose to learn ASL later in life. Psycholinguists studying second language acquisition have found that language learning is

[30] *Id.*

[31] 29 U.S.C. 774.

[32] *Id.* at 777e(a).

[33] *Id.* at 777e(b)(5).

enhanced when both languages and cultures are viewed positively by the society in which the individual interacts and when there is complementarity, rather than competition, between linguistic systems.[34]

Draft Recommendation 20: The Commission on Education of the Deaf recognizes American Sign Language as a legitimate language.[35]

It is not the intent of the Commission that ASL be used as the primary method of English instruction for all students who are deaf; however, it should be emphasized that this recommendation recognizes ASL as a language in its own right and as an educational tool.

XV. The Role and Impact of Research, Development, and Evaluation Activities at Gallaudet University and the National Technical Institute for the Deaf

Discussion: The Commission examined several related questions concerning the role and impact of research, development, and evaluation activities conducted by GU (including KDES and MSSD) and NTID. The Commission emphasizes that it has not attempted to evaluate the quality of research at GU and NTID; however, it has considered how research, development, and evaluation priorities should be established, whether there has been adequate oversight to ensure cost-effectiveness and quality, and whether research, development, and evaluation projects should be funded through Congressional appropriations, competitive grants, or both.

Funding of Research, Development, and Evaluation Projects

Discussion: GU and NTID are authorized by law to conduct research, development, and evaluation. There is significant value in having extensive and high quality research, development, and evaluation programs at GU and NTID. The Commission commended the valuable contribution to the field made by the Annual Survey of Hearing Impaired Children and Youth and it expressed interest in exploring ways in which the Survey might provide important data about specific groups, such as the rural student pcpulace. However, it recognized that other research centers are also conducting a significant amount of research on deafness and deaf education. These centers would benefit from increased opportunities to compete for larger amounts of funding. Similarly, requiring GU and NTID to participate in more competition for funding could be expected to enhance the quality of GU's and NTID's research, development, and evaluation activities.

The Commission's recommendation is intended to encourage competition, innovation, and diversity in research and development projects on deafness. The Commission certainly does not recommend any reduction of funding for deafness-related research.

Draft Recommendation 21: Only a base level of Congressionally appropriated line-item funding should continue to be allocated to GU and NTID for research, development, and evaluation projects. Specifically, funding should be adequate to provide a robust research agenda which would include the Annual Survey of Hearing Impaired Children and Youth conducted by Gallaudet. An overall reduction in the current funding provided to these two institutions should be made and the remaining monies should then be set aside and used for competitive grants for deafness-related research. Any research center with adequate capacity in the field, including GU and NTID, could compete for the funds on a multi-year basis.[36]

The Commission welcomes comments on how to set the "base level" for GU and NTID: one-third, one-half, two-thirds, or some other proportion of what Congress now appropriates to them for research, development, and evaluation activities. The current appropriations for GU (including KDES and MSSD) and NTID total approximately $8 million for these activities.

XVI. Employment and Advancement of Persons Who Are Deaf at Federally Funded Postsecondary Education Institutions

Discussion: The Commission requested information regarding the employment of deaf persons at GU and NTID, and the employment of blacks and women at Howard University and Wellesley College, respectively. At GU, the overall employment rate for persons who are deaf is 22% (18% executive, 33% professional, 38% technical, 7% secretarial, 7% maintenance, and 6% service positions). At NTID, the overall employment rate is 12% (12% executive, 12% faculty, 15% professional, 20% technical, and 6% secretarial positions). At Howard University, a primarily black university in Washington, DC, the overall employment rate for black persons is 87% (91% administrative, 77% faculty, and 89% staff positions). At Wellesley College, a women's college near Boston, the overall employment rate is 74% for women (50% administrative, 83% faculty, and 91% staff positions).

The Commission recognizes that the pool of deaf applicants is not as extensive as the pool of female and black applicants; however, these federally-funded postsecondary institutions for the deaf should take initiatives to recruit, hire, and promote deaf persons similar to the initiatives taken by Howard and Wellesley. The Commission acknowledges the efforts made by GU and NTID and supports further efforts, by these institutions and others, to employ and advance persons who are deaf.

Draft Recommendation 22: GU, NTID, and the schools participating in the RPEPD should continue to strengthen the positive efforts they have already made in recruiting, hiring, and promoting qualified applicants and employees who are deaf.

Records of the comments received will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC.

Pat Johanson,

Staff Director, Commission on Education of the Deaf.

October 8, 1987.

[FR Doc. 87-23732 Filed 10-13-87; 8:45 am]

BILLING CODE 6820-SD-M

[34] Beardsmore, H. B. (1982). *Bilingualism: Basic principles.* England: Tieto.

[35] The Commission has not reached full consensus on this recommendation.

[36] The Commission has not reached full consensus on this recommendation.

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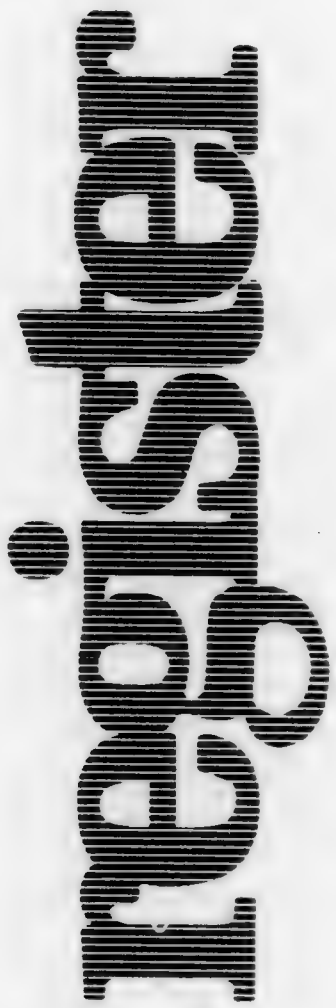

Wednesday
October 14, 1987

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 14, 19, and 52

Small Business Set-Asides; Federal Acquisition Regulation; Interim Rule and Request for Comment

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 19, and 52

[Federal Acquisition Circular 84-31]

Small Business Set-Asides; Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule and request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84–31 amends the Federal Acquisition Regulation (FAR) to implement amendments made to sections 8 and 15 of the Small Business Act by section 921, Pub. L. 99–661. The revisions (i) adopt the statutory prohibition against award of set-aside and 8(a) contracts at a price exceeding fair market price; (ii) require that a fair proportion of Government contracts within each industrial category be awarded to small business concerns, and (iii) implement statutory restrictions concerning the extent of subcontracting permitted under set-aside and 8(a) contracts.

DATES: Effective Date: October 1, 1987.

The revisions made by this interim rule are effective October 1, 1987, except that the revisions made to FAR 19.508(e) and 52.219–14 are effective for those solicitations issued on or after October 1, 1987. Solicitations issued before October 1, 1987, should be amended to incorporate the clause at 52.219–14, unless to do so would unduly delay the contract action.

Comment Date: December 1, 1987.

Comments on the interim rule must be received on or before December 1, 1987, to be considered in the formulation of a final rule. Please cite FAC 84–31 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

This interim rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., and regulations prescribed by OMB at 5 CFR Part 1320. Accordingly, OMB approval of the interim rule is not required.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., principally with respect to its implementation of statutory requirements placing limitations upon subcontracting (section 921(c)).

Pursuant to authority contained in section 608(a) of the Regulatory Flexibility Act (5 U.S.C. 608(a)), a determination has been made that circumstances require delay in preparation of an Initial Regulatory Flexibility Analysis in order to issue regulatory guidance in consonance with the October 1, 1987, effective date of section 921 of Pub. L. 99–661. This determination is based upon the pendency of regulatory implementation by the Small Business Administration (SBA), cited above, and legislation introduced to further amend sections 8 and 15 of the Small Business Act, as amended by section 921 (see 133 Cong. Rec. S 12888 (daily ed., Sept. 26, 1987)). It is anticipated that an Initial Regulatory Flexibility Analysis pertaining to FAC 84–31 will be prepared and submitted to the Chief Counsel for Advocacy of the SBA within 120 days. Comments are invited.

Comments from small entities concerning the affected FAR subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

C. Determination to Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAC 84–31 as an interim rule. This action is necessary to ensure that regulatory guidance is available to contracting officers to implement the statute upon its October 1, 1987, effective date. DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98–577 and FAR 1.301, public comments received in response to this interim rule will be considered in formulating a final rule.

List of Subjects in 48 CFR Parts 14, 19, and 52

Government procurement.

Dated: October 8, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–31]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–31 is effective October 1, 1987.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator.

October 7, 1987.

S.J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 84–31 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Small Business Set-Asides; Implementation of Section 921 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99–661)

Section 921 of the National Defense Authorization Act for Fiscal year 1987 (Pub. L. 99–661), entitled "Small Business Set-Asides," amended sections 8 and 15 of the Small Business Act (15 U.S.C. 637; 15 U.S.C. 644) in order to increase participation by small business and small disadvantaged business concerns in the Federal procurement process. Identical amendments to the Small Business Act were contained in the Department of Defense Appropriations Act, 1987 (Pub. L. 99–591). At a later date, technical corrections to the amendments were made by the Defense Technical Corrections Act of 1987 (Pub. L. 100–26). This interim rule revises certain sections of Federal Acquisition Regulation (FAR) Parts 14, 19 and 52 in order to conform FAR procurement procedures with the statutory amendments. Other provisions of section 921 which require rulemaking by the Small Business Administration (e.g., size determination program) are addressed in separate issuances by the Small Business Administration in the **Federal Register** on March 17, 1987 (52 FR 8261), and on August 31, 1987 (52 FR 32870), and, except as noted in paragraph 8 of this item, are beyond the scope of the present rulemaking.

The following summarizes the principal FAR revisions made by the interim rule and provides a parenthetical reference to the Section 921 requirement implemented by the revision:

1. FAR 19.001 is revised to add a definition of "fair market price," consistent with previous use of the term (see former FAR 19.806–1(a)) in order to give effect to the requirement that set-aside and 8(a) contracts not exceed fair market prices. (Sec. 921(b) (1) and (2)). FAR 19.806–1(a) is deleted as surplusage.

2. FAR 19.202–6 is added to provide additional guidance to contracting officers in determining fair market price in view of the statutory award price restriction. (Sec. 921(b) (1) and (2)).

3. FAR 19.501(j) is added as a further reference to the award price restriction (Sec. 921(b) (1) and (2)). The phrase "except as authorized by law" is added to accommodate certain statutory exceptions to the limitation (e.g., Sec. 1207, Pub. L. 99–661 permits payment of a 10 percent price differential in DOD contract awards to small disadvantaged businesses) (see 52 FR 16263; May 4, 1987).

4. FAR 19.501(k) is added to implement statutory direction concerning release of names and addresses of prospective offerors. (Sec. 921(e)).

5. FAR 19.502–1 is amended to reflect statutory guidance that separate industry categories are to be used in ensuring that a fair proportion of contract awards are made to small businesses. (Sec. 921(a)).

6. FAR 19.508(e) is added to prescribe a contract clause relating to the composition of a contractor's labor force, as a limitation upon subcontracting, for use under total and partial small business set-asides and 8(a) contracts. (Sec. 921(c)).

7. FAR 19.805(b) is added to reference the fair market price limitation concerning 8(a) contracts. (Sec. 921(b)(2)).

8. FAR 52.219–14, Limitations on Subcontracting, is added to provide a contract clause for use in set-aside and 8(a) contracts regarding the composition of a contractor's labor force. (Sec. 921(c)). The statute requires in service contracts (except construction) that at least 50 percent of a contractor's personnel costs be expended for employees of the concern. Similarly, in supply contracts (other than those involving regular dealers) 50 percent of the cost of manufacturing supplies, excluding materials, must be performed by the concern. With respect to construction contracts, the statute requires the Small Business Administration to establish similar requirements concerning general and specialty construction contracts. Pending completion of the public comment process (see 52 FR 8261; 52 FR 32870), the Small Business Administration has requested that the FAR Councils adopt the percentage limitations contained in the clause on an interim basis until a final rule is promulgated by the Small Business Administration.

Therefore, 48 CFR Parts 14, 19, and 52 are amended as set forth below:

1. The authority citation for Parts 14, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

14.205–5 [Amended]

2. Section 14.205–5 is amended in paragraph (a) by removing the period at the end of the sentence and adding a parenthetical cross reference "(see also 19.501(k))."

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

3. Section 19.001 is amended by adding alphabetically a definition to read as follows:

19.001 Definitions.

* * * * *

"Fair market price," as used in this part, means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.202–6).

* * * * *

4. Section 19.202–6 is added to read as follows:

19.202–6 Determination of fair market price.

Agencies shall determine the fair market price of small business set-aside and 8(a) contracts as follows:

(a) For total and partial small business set-aside contracts the fair market price to be the price achieved in accordance with the reasonable price guidelines in 15.805–2.

(b) For 8(a) contracts, both with respect to meeting the requirement at 19.805(b) and in order to accurately estimate the current fair market price and business development expense, contracting officers shall follow the procedure at 19.806–2.

5. Section 19.501 is amended by adding paragraphs (j) and (k) to read as follows:

19.501 General.

* * * * *

(j) Except as authorized by law, a contract may not be awarded as a result of a set-aside if the cost to the awarding agency exceeds the fair market price.

(k) After a decision to set-aside a procurement for small business concerns, the contracting officer shall, within five (5) working days after receipt of a written request, provide the requestor with a list of the names and addresses of the small business concerns expected to respond to the solicitation. However, (1) the Secretary of Defense may decline to provide this information in order to protect national security, and (2) the contracting officer is not required to release information that is not required to be released under the Freedom of Information Act (5 U.S.C. 552).

6. Section 19.502–1 is amended by revising paragraph (c) to read as follows:

19.502–1 Requirements for setting aside acquisitions.

* * * (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502–2 or 19.502–3(a) exist.

19.508 [Amended]

7. Section 19.508 is amended by adding paragraph (e) to read as follows:

* * * * *

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8

8. Section 19.805 is amended by redesignating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

19.805 Pricing the 8(a) contract.

* * * * *

(b) An 8(a) contract may not be awarded if the price of the contract results in a cost to the awarding agency which exceeds a fair market price.

19.806–1 [Amended]

9. Section 19.806–1 is amended by deleting paragraph (a) and redesignating the existing paragraphs (b) and (c) as paragraphs (a) and (b).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.219–14 is added to read as follows:

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52.219-14 Limitations on Subcontracting.

As prescribed in 19. 508(e), insert the following clause:

Limitations on Subcontracting (October 1987)

By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(a) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(b) *Supplies (other than procurement from a regular dealer in such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(c) *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(d) *Construction by special trade contractors.* The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

[FR Doc. 87-23774 Filed 10-13-87; 8:45 am]

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Federal Register

Wednesday
October 14, 1987

Part V

Department of Education

34 CFR Part 778

Strengthening Research Library Resources Program; Proposed Rule and Notice Inviting Applications for New Awards

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DEPARTMENT OF EDUCATION

34 CFR Part 778

Strengthening Research Library Resources Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Strengthening Research Library Resources Program. These amendments are needed to implement a program change legislated by Congress in the Higher Education Amendments of 1986. Additionally, the proposed regulations would change the point values assigned to various selection criteria.

DATES: Comments must be received on or before November 13, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Frank Stevens or Louise Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue, NW., Washington, DC 20208–1430.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, (202) 357–6315.

SUPPLEMENTARY INFORMATION: This proposed rulemaking is primarily designed to implement a change in program operations required by the Higher Education Amendments of 1986. Prior to these amendments, only an organization that qualified as a major research library under criteria developed by the Secretary in the existing program regulations (34 CFR 778.31) was eligible to compete for a grant. These criteria, which would remain unaffected by the proposed regulations, generally favored organizations with considerable library holdings, as required under the then applicable legislation. An organization with smaller holdings, despite the significance of its library collections to scholars and researchers, could not generally qualify as a major research library.

In the Higher Education Amendments of 1986, Congress enacted a program change directing that the Secretary permit organizations otherwise found ineligible as a major research library under the Secretary's criteria to compete for a grant if additional information provided by the organization demonstrates "the national or international significance for scholarly research of the particular collection described in the grant proposal." The proposed regulations would implement this directive.

Aside from this legislative requirement, the Secretary is also proposing changes in the numerical values associated with certain criteria used to score applications for grants. These changes were recommended by the peer reviewers that the Secretary uses to evaluate applications for grants. The proposed changes are intended to ensure better competition among applicants for grants by increasing the numerical value associated with a project's significance to scholarly research.

Finally, the existing regulations would be revised to conform with the Department's current requirements regarding the style and format of regulatory documents.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these regulations would affect institutions of higher education and public and private non-profit organizations the regulations would not have an impact on small entities. These potential grantees are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 778.21 and 778.22 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affiars, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary specifically invites comments on proposed § 778.22(a), a selection criterion relating to the sufficiency of an applicant's description of its project, and whether the point value ascribed to that section should be diminished by the Secretary.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 402D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary also invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 778

Colleges and universities, Education, Grant programs—education, Libraries, Library and information science, Libraries—resource sharing, Networks, Reporting and recordkeeping requirements, Technology.

Dated: September 15, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.091, Strengthening Research Library Resources Program)

The Secretary proposes to revise Part 778 of Title 34 of the Code of Federal Regulations to read as follows:

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES

Subpart A—General

Sec.

778.1 What is the Strengthening Research Library Resources Program?
778.2 Who is eligible for an award?
778.3 What restrictions on eligibility apply?
778.4 What activities may the Secretary fund?
778.5 What priorities may the Secretary establish?
778.6 What regulations apply?
778.7 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

778.20 How does the Secretary evaluate an application?
778.21 What criteria does the Secretary use to evaluate an applicant as a major research library?
778.22 What criteria does the Secretary use to evaluate the quality of a project?
778.23 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

778.30 What agencies must be informed of activities funded by this program?

Authority: 20 U.S.C. 1021, 1041, 1042, unless otherwise noted.

Subpart A—General

§ 778.1 What is the Strengthening Research Library Resources Program?

The Secretary awards grants under the Strengthening Research Library Resources Program for the purpose of promoting research and education of high quality throughout the United States by providing financial assistance to help the Nation's major research libraries—

(a) Maintain and strengthen their collections; and

(b) Make their holdings available to other libraries whose users have need for research materials.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.2 Who is eligible for an award?

(a) The Secretary awards grants under this program to institutions with major research libraries.

(b) An institution with a major research library is defined as a public or private nonprofit institution, an institution of higher education (including a branch campus), an independent research library, a State or other public library, or a consortium of the above entities, having a library collection available to qualified users that—

(1) Makes a significant contribution to higher education and research;

(2) Is broadly based;

(3) Is recognized as having national or international significance for scholarly research;

(4) Is of a unique nature, containing material not widely available; and

(5) Is in substantial demand by researchers and scholars outside the institution.

(c) The Secretary evaluates an applicant's status as a major research library on the basis of the criteria in §§ 778.20 and 778.21. If the Secretary determines that an applicant meets the criteria of a major research library, the determination is effective for each of the four succeeding fiscal year.

(d) An institution that does not meet the criteria for a major research library in §§ 778.20 and 778.21 may still be eligible to receive a grant, if it demonstrates that the library collection proposed for grant assistance is of national or international significance for scholarly research.

(e) If an applicant is a consortium or a branch campus of an institution of higher education, the library collection of the consortium or the branch campus—rather than the separate library collections of each unit comprising the consortium or the institution of higher education—must satisfy the conditions of paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1021, 1041, 3474)

§ 778.3 What restrictions on eligibility apply?

The Secretary does not award a grant to an applicant otherwise eligible under this program if the applicant—

(a) Receives a grant under section 211 of the Act (College Library Resources Program) during the same fiscal year that it applies for a grant under this part; or

(b) Is eligible to receive a grant under other Federal programs, such as the Medical Library Assistance Act of 1965, for the project it proposes to receive assistance under this part, unless the applicant shows that—

(1) Payments under this part will not duplicate payments under those other Federal programs; and

(2) Special circumstances warrant assistance under this part.

(Authority: 20 U.S.C. 1021, 1041, 3474)

§ 778.4 What activities may the Secretary fund?

Funds provided under this part may be used for one or both of the purposes in § 778.1. Authorized activities include, but are not limited to, the following:

(a) Acquiring books and other materials to be used for library purposes.

(b) Binding, rebinding, and repairing books and other materials to be used for library purposes, and preserving these materials by making photocopies, treating paper or bindings to lengthen their life, or other means.

(c) Cataloging, abstracting, and making available lists and guides of the library collection.

(d) Distributing library materials and bibliographic information to users beyond the primary clientele by mail, or by electronic, photographic, magnetic, optical, or other means.

(e) Acquiring additional equipment and supplies that assist in making library materials available to users beyond the primary clientele.

(f) Hiring necessary additional staff to carry out activities funded under this part.

(g) Communicating with other institutions.

(h) Performing evaluations.

(i) Disseminating information.

(Authority: 20 U.S.C. 1021)

§ 778.5 What priorities may the Secretary establish?

The Secretary may give priority to applications proposing one or more of the following activities:

(a) Adapting, converting, or creating library records for unique research materials which expand or otherwise complement the national bibliographic data base and which conform to highest national standards.

(b) Augmenting unique collections of specialized research materials.

(c) Preserving or maintaining unique research materials in danger of deterioration.

(d) Promoting the sharing of library resources.

(Authority: 20 U.S.C. 1021)

§ 778.6 What regulations apply?

The following regulations apply to the Strengthening Research Library Resources Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 778.

(Authority: 20 U.S.C. 1021)

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§ 778.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition	Nonprofit
Applicant	Private
Application	Project
Department	Public
EDGAR	Secretary
Fiscal year	State
Grant	

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Branch campus" means a permanent campus of an institution of higher education located in a community of the United States different from that of the parent institution, not within a reasonable commuting distance from the main campus, that is separately accredited, and that provides—through its own budgetary and hiring authority, and faculty and administrative staff—postsecondary educational programs for which library facilities, services, and materials are necessary.

"Consortium" means a nonprofit organization of library institutions established or operated for the purpose of sharing library resources, coordinating collection development, or engaging in similar cooperative activities.

"Institution of higher education" means a public or private nonprofit institution of higher education as defined in 34 CFR 668.2.

"Primary clientele" means students, faculty, or other registered users of the library of the applicant or grantee.

"State agency" means the State agency designated under section 1203 of the Act.

(Authority: 20 U.S.C. 1021)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 778.20 How does the Secretary evaluate an application?

(a) In evaluating applications for new grants, the Secretary uses two sets of criteria.

(b) (1) The Secretary determines an applicant's status as a major research library on the basis of the criteria in § 778.21. An applicant that receives a score of 65 points or more under the criteria in § 778.21 is determined to be a major research library and qualifies to have its project evaluated for an award.

(2) The Secretary notifies an applicant that does not receive a score of 65 points or more under the criteria in § 778.21 that the application will still be considered for funding if additional information or documents are provided to demonstrate the national or international significance for scholarly research of the particular collection described in the grant application.

(c) The Secretary evaluates the quality of the applications from applicants that qualify under paragraphs (b)(1) and (b)(2) of this section, using the criteria in § 778.22.

(Authority: 20 U.S.C. 1021, 3474)

§ 778.21 What criteria does the Secretary use to evaluate an applicant as a major research library?

The Secretary uses the criteria in this section to evaluate an applicant's status as a major research library. The maximum score is 100 points. The Secretary reviews each application to determine the extent to which the applicant's library collection—

(a) Makes a significant contribution to higher education and research as measured by factors such as—(20 points)

(1) The major research projects for which the library has made resources available in the past fiscal year;

(2) The amount the applicant expended in research funds from all sources and the number of projects conducted by the institution with these funds in the past fiscal year; and

(3) Evidence that the institution is established and recognized in the field of advanced research and scholarship;

(b) Is broadly based as measured by factors such as—(20 points)

(1) The number of subject areas covered or the comprehensiveness of special collections;

(2) The number of volumes and titles, manuscripts, microforms, and other types of materials;

(3) The number of volumes and titles and other materials added to the collection in the previous fiscal year; and

(4) The number of current periodical subscriptions;

(c) Is recognized as having national or international significance for scholarly research as measured by factors such as—(20 points)

(1) The number or percentage of interlibrary loans made or copies of materials provided by the applicant during the past year to libraries outside the geographical region in which the applicant is located;

(2) The number of percentage of interlibrary loans made or copies provided during the past year to libraries located outside the United States; and

(3) The extent to which loans of the applicant's materials described in paragraphs (c)(1) and (c)(2) of this section are made under formal, cooperative arrangements;

(d) Is of a unique nature, and contains material not widely available, as measured by factors such as—(20 points)

(1) The number and nature of special collections containing research materials not widely available;

(2) The availability of printed, computerized, or otherwise published catalogs or other guides to the special collections; and

(3) Evidence which demonstrates possession of uncommon library resources necessary to support advanced research and scholarship; and

(e) Is in substantial demand by researchers and scholars not connected with the applicant institution as measured by factors such as—(20 points)

(1) The number or percentage of loan requests coming from users outside the applicant's primary clientele;

(2) The extent to which the applicant lends more on interlibrary loan than it borrows;

(3) The number or percentage of researchers and scholars outside the applicant's primary clientele who use its collection;

(4) The number of institutions with which the applicant has formal cooperative agreements to provide library and information services for researchers and scholars outside the applicant's primary clientele; and

(5) Membership is a major computer-based bibliographic database.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.22 What criteria does the Secretary use to evaluate the quality of a project?

The Secretary uses the following criteria to evaluate the quality of the proposed project. The maximum score is 100 points.

(a) *Description of the project.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The purpose of the project is clearly stated;

(2) There is a concise description of the project; and

(3) There is a clear statement of the project objectives.

(b) *Significance of the project.* (45 points) The Secretary reviews each application to determine the importance of the project for scholarly research and inquiry by assessing—

(1) The uniqueness of the project;

(2) The size of the audience the project is intended to serve;

(3) The need for the project;

(4) The extent to which the project will increase the availability of the applicant's research collections;

(5) The extent to which the proposed project will help the applicant maintain and strengthen its collections, particularly collections which have national or international significance for scholarly research; and

(6) The extent to which the applicant intends to disseminate the project accomplishments to the scholarly and professional communities.

(7) The extent to which there will be significant project accomplishments as a result of cooperative undertaking when a joint application is submitted by two or more institutions.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Institutional commitment.* (5 points) The Secretary reviews each application to determine the extent of the applicant's commitment to the project, its capability to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.23 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 778.22, the Secretary determines whether the most highly rated projects are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of—

(1) Projects funded under this competition; or

(2) Projects funded under this program during the preceding five fiscal years.

(c) In determining whether to select other applications under paragraph (b) of this section, the Secretary considers the impact of that determination on the needs of the research community.

(Authority: 20 U.S.C. 1042)

Subpart D—What Conditions Must Be Met After an Award?

§ 778.30 What agencies must be informed of activities funded under this program?

Each institution of higher education which receives a grant under this part shall annually inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Authority: 20 U.S.C. 1022)

[FR Doc. 87-23762 Filed 10-13-87; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No. 84.091]

Invitation of Applications for New Awards Under the Strengthening Research Library Resources Program for Fiscal Year 1988

Purpose: Provides grants to the nation's major research libraries to maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Deadline for Transmittal of Applications: December 21, 1987, except for institutions having established significance as a major research library in fiscal year 1984 or later, who may submit applications until January 4, 1988.

Deadline for Intergovernmental Review Comments: March 11, 1988.

Applications Available: October 28, 1987

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Range of Awards: $35,000–$350,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 30.

Project Period: 15 months.

Applicable Regulations: (a) Regulations governing the Strengthening Research Library Resources Program as proposed to be codified in 34 CFR Part 778. Applications are being accepted based on the notice of proposed rulemaking which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given the opportunity to revise or resubmit their applications.

(b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens or Louise Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208–1430. Telephone: (202) 357–6315.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: September 14, 1987.

Chester E. Finn, Jr.,

Assistant Secretary of Educational Research and Improvement.

[FR Doc. 87–23761 Filed 10–13–87; 8:45 am]

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Federal Register

Wednesday
October 14, 1987

Part VI

Environmental Protection Agency

21 CFR Part 193
40 CFR Part 180

Carbon Disulfide, Ethylene Dichloride, Chloroform, and Carbon Tetrachloride; Pesticide Tolerance and Food Additive Provisions; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300155; FRL-3276-6]

Carbon Disulfide, Ethylene Dichloride, and Chloroform; Proposed Revocation of Exemptions From Requirement of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend 40 CFR Part 180 by removing regulations to exempt from the requirement of a tolerance the pesticide chemicals carbon disulfide, (§ 180.1004), ethylene dichloride (§ 180.1007), and chloroform (§ 180.1009). This Agency-initiated regulatory action will remove the exemptions for which related pesticide uses have been cancelled. Elsewhere in this issue of the **Federal Register**, EPA is also proposing revocation of the food additive regulations for carbon disulfide and ethylene dichloride as fumigants when used on grain-mill machinery and grains for fermented malt beverage production.

DATE: Written comments, identified by the document control number [OPP-300155], should be received on or before December 14, 1987.

ADDRESS: By mail, submit comments to:
Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking all or part of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedure set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:
Mark T. Boodee, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460
Office location and telephone number: Rm. 1014, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

SUPPLEMENTARY INFORMATION: The residues resulting from use of carbon disulfide (also named carbon bisulfide), ethylene dichloride, and chloroform as fumigants after harvest are currently exempted from the requirement of a tolerance for the following grains: Barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. These exemptions were granted in 1956 based on available toxicology studies and the conclusion that the 5 to 10 parts per million (ppm) levels of these pesticide residues which resulted in the ready-to-eat grain products did not have any toxicological significance. These residue levels were determined by the less sophisticated analytical methodology available at the time which was not capable of detecting carbon disulfide, ethylene dichloride, and chloroform per se. Currently available analytical methods are now capable of detecting these fumigants per se down to a limit of detection of 1 part per billion (ppb).

On September 28, 1983, the Administrator issued a notice published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of the grain fumigant ethylene dibromide (EDB) for use as a fumigant on harvested grains and grain and flour-milling equipment. Many EDB grain fumigant products, now cancelled, also contained one or more of several other active ingredients registered for use as grain fumigants. One of these chemicals, chloroform, was only used in formulations that also contained EDB and registrations containing this chemical were canceled together with other EDB registrations.

On taking action to eliminate the use of EDB on grains, EPA began a comprehensive review of EDB substitutes to ensure that continued and, in some cases, expanded use of these chemicals would not present unreasonable risks from either occupational or dietary exposure. Because significant data were lacking in key areas for two grain fumigant active ingredients, carbon disulfide and ethylene dichloride, EPA required submission of product chemistry data, analytical methodologies, residue studies, chronic feeding studies, oncogenicity studies, teratogenicity studies, and reproductive studies through its Data Call-In program. Data Call-In notices were mailed to the registrants of these two pesticides on March 16, 1984. None of the registrants agreed to supply the data required for continued registration. Subsequently, all registrations of grain fumigants containing carbon disulfide and ethylene dichloride were either suspended under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for failure to submit the required data or were voluntarily canceled by the registrants.

All suspended registrations have now been canceled. A list of all grain fumigant products containing carbon disulfide, ethylene dichloride, and chloroform that have been cancelled was published in the **Federal Register** of October 23, 1985 (50 FR 42997), and the notice of December 31, 1986 (51 FR 47305).

EPA now proposes to revoke the exemptions from the requirement of a tolerance for carbon disulfide (§ 180.1004), ethylene dichloride (§ 180.1007), and chloroform (§ 180.1009), for residues on barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat resulting from use of these pesticides as fumigants for grain stored in bulk, because the registrations of all products containing these chemicals have been canceled.

The limited data available to the Agency indicate that carbon disulfide, ethylene dichloride, and chloroform are not particularly persistent in the environment. EPA does not expect significant residues resulting from the last allowable treatment of grain stocks, on or before June 30, 1986. Consequently, the Agency anticipates no need to establish action levels for unavoidable residues of these fumigants in or on grain to replace the established tolerance exemptions upon their revocation.

However, small amounts of residue may occasionally remain in grain and grain-based consumer products due to legal application of grain fumigants to grain stocks on or before June 30, 1986. It is doubtful that the presence of low levels of residues of these grain fumigants for this short-term period would pose a risk to the public health. The Agency has recommended to the Food and Drug Administration (FDA) that enforcement action not be taken if residues are detected in grain or grain-based consumer products after the exemptions are removed if such residues were incurred as a result of legal application of the fumigants on or before June 30, 1986. FDA has agreed to this approach.

Elswhere in this issue of the **Federal Register**, a related proposed regulatory action, [OPP-300156], revoking food

additive regulations for carbon disulfide and ethylene dichloride, is also pulished.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of these chemicals may request within 30 days after publication of this notice in the **Federal Register** that this proposal to revoke the exemptions from the requirement of a tolerance for these chemicals be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this proposed revocation of the exemptions from the requirement of a tolerance for these chemicals. Comments should bear the notation indicating the document control number [OPP–300155]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in the Program Management and Support Division at the above address between 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of the exemptions from tolerances for these chemicals. Documents containing these analyses are available in the Information Services Section at the address identified elsewhere in this notice.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354 94 Stat. 1165, 5 U.S.C. 60 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

The revocation of exemptions from tolerances would potentially affect firms in the grain-milling and bakery products industries as well as grain farmers. Products found to contain carbon disulfide, ethylene dichloride, or chloroform may be subject to enforcement action. However, since FDA has agreed not to take enforcement unless residue levels are at a level of public health concern or residues resulted from treatment after June 30, 1986, it is anticipated that little or no economic impact would occur.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 28, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.1004 [Removed]

2. By removing § 180.1004.

§ 180.1007 [Removed]

3. By removing § 180.1007.

§ 180.1009 [Removed]

4. By removing § 180.1009.

[FR Doc. 87–23716 Filed 10–13–87; 8:45 am]
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21 CFR Part 193

[OPP–300156; FRL–3276–7]

Carbon Disulfide and Ethylene Dichloride; Proposed Revocation of Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend 21 CFR Part 193 by removing the food additive for carbon disulfide and ethylene dichloride for fumigation of (1) grain-mill machinery (§ 193.225) and (2) processed grains used in the production of fermented malt beverages, when used in various mixtures (§ 193.230). This Agency-initiated regulatory action removes food additive regulations for which related pesticide uses have been cancelled. Elsewhere in this issue of the **Federal Register**, DEPA is also proposing revocation of the exemptions from the requirement of a tolerance for carbon disulfide, ethylene dichloride, and chloroform as post-harvest fumigants on various grains.

DATE: Written comments, identified by the document control number [OPP–300156], should be received on or before December 14, 1987.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Mark T. Boodee, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1014, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7400)

SUPPLEMENTARY INFORMATION: Section 193.225(a) of 21 CFR currently provides that fumigants may be safely used in or on grain-mill machinery with the following prescribed conditions, among others:

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The fumigants consist of one or more of the following: Carbon disulfide, carbon tetrachloride, ethylene dichloride, methyl bromide.

Section 193.230(a)(1) of 21 CFR provides that fumigants for processed grains used in production of fermented malt beverages may be safely used in accordance with the following conditions, among others:

They consist of one of the following mixtures: Carbon tetrachloride with either carbon disulfide or ethylene dichloride, with or without pentane.

On September 28, 1983, the Administrator issued a notice, published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of the grain fumigant ethylene dibromide (EDB) for use as a fumigant on harvested grains and grain and flour-milling equipment. Many of these cancelled EDB grain fumigant products also contained one or more of several other active ingredients registered for use as grain fumigants, including carbon disulfide and ethylene dichloride.

On taking action to eliminate the use of EDB on grains, EPA began a comprehensive review of EDB substitutes to ensure that continued and, in some cases, expanded use of these chemicals would not present unreasonable risks from either occupational or dietary exposure. Because data were lacking in key areas for the grain fumigants carbon disulfide and ethylene dichloride, EPA required submission of product chemistry data, analytical methodologies, residue studies, chronic feeding studies, oncogenicity studies, teratogenicity studies, and reproductive studies through its Data Call-In program. Data Call-In notices were sent to the registrants of these two pesticides on March 16, 1984. None of the registrants agreed to supply the data required for continued registration. Subsequently, all registrants of grain fumigants containing carbon disulfide and/or ethylene dichloride were either suspended under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for failure to submit the required data or were voluntarily cancelled by the registrants.

All suspended registrations have now been cancelled. A list of all grain fumigant products containing carbon disulfide and ethylene dichloride that have been cancelled was published in the **Federal Register** of October 23, 1985 (50 FR 42997), and the notice of December 31, 1986 (51 FR 47305).

The limited data available to the Agency indicate that carbon disulfide and ethylene dichloride are not particularly persistent. EPA does not anticipate significant residues resulting from the last allowable treatment of grain stocks, on or before June 30, 1986. Consequently, the Agency anticipates no need to establish action levels to replace the established tolerance exemptions upon their revocation.

Elsewhere in this issue of the **Federal Register**, EPA has issued a related document [OPP–300155] which proposes the revocation of exemptions from the requirement of a tolerance in 40 CFR Part 180 for residues resulting from the use of carbon disulfide (§ 180.1004), ethylene dichloride (§ 180.1007), and chloroform (§ 180.1009) as post-war fumigants on a variety of grains.

Based on the information considered by the Agency and discussed in detail in the cited **Federal Register** documents, the Agency now proposes to revoke (1) the food additive regulation in 21 CFR 193.225(a) for use of carbon disulfide and ethylene dichloride as fumigants for grain-mill machinery, and (2) the food additive regulation in 21 CFR 193.230(a)(1) for use of carbon disulfide and ethylene dichloride in mixtures with certain other pesticides, as a fumigant for processed grain used in the production of fermented malt beverages. The Agency is proposing that the words "carbon disulfide" and "ethylene dichloride" be removed from 21 CFR 193.225(a) and from 21 CFR 193.230(a)(1).

Interested persons are invited to submit written comments on this proposal to revoke the food additive regulations in 21 CFR 193.225(a) and 193.230(a)(1) for carbon disulfide and ethylene dichloride. Comments must bear a notation indicating the document control number [OPP–300158]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

This proposed action has been analyzed under the Regulatory Flexibility Act, and the requirements of Executive Order 12291. The analysis contained in the proposals for the revocation of the exemption from the requirement of a tolerance in 40 CFR 180.1004 and 180.1007 for carbon disulfide and ethylene dichloride residues in a variety of grains resulting from post-harvest fumigation, applies equally to the proposed action set forth in this document. Accordingly, I certify that this proposed regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 28, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 21 CFR Part 193 be amended as follows:

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.225(a) is revised to read as follows:

§ 193.225 Fumigants for grain-mill machinery.

* * * * *

(a) The fumigants consist of one or more of the following: Carbon tetrachloride and methyl bromide.

* * * * *

3. Section 193.230(a)(1) is revised to read as follows:

§ 193.230 Fumigants for processed grains used in production of fermented malt beverages.

* * * * *

(a) * * *

(1) Carbon tetrachloride, with or without pentane.

* * * * *

[FR Doc. 87–23717 Filed 10–13–87; 8:45 am]

BILLING CODE 6560–50–M

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21 CFR Part 193

[OPP–300158; FRL–3276–8]

Carbon Tetrachloride; Proposed Revocation of Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend 21 CFR Part 193 by removing the food additive regulations for carbon tetrachloride for fumigation of (1) grain-mill machinery (§ 193.225) and (2) processed grains used in the production of fermented malt beverages, when used in various mixtures (§ 193.230). This

proposed Agency-initiated regulatory action will remove food additive regulations for which related pesticide uses have been cancelled. Elsewhere in this issue of the **Federal Register**, EPA is also proposing revocation of the exemption from the requirement of a tolerance for carbon tetrachloride as a post-harvest fumigant on various grains.

DATE: Written comments, identified by the document control number [OPP–300158], must be received on or before December 14, 1987.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Mark T. Boodee, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Special Review Branch, Rm. 1014, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–7400).

SUPPLEMENTARY INFORMATION: On September 30, 1980, the Administrator issued a notice, published in the **Federal Register** of October 15, 1980 (45 FR 68534) of Special Review (previously referred to as Rebuttable Presumption against Registration) of all pesticide products containing carbon tetrachloride (CCl_4), including those CCl_4 products registered for use as grain fumigants. The Special Review was initiated because the Agency determined that continued use of carbon tetrachloride posed a risk of oncogenic, mutagenic, and other adverse effects and that it satisfied the criteria for commencing a Special Review set forth at 40 CFR 154.7. Position Document 1 on CCl_4 was also published in the **Federal Register** of October 15, 1980 (45 FR 68551), outlining pertinent background information, references, and a summary of the evidence to support a Special Review.

In 1983, EPA began to examine the risks posed by the grain fumigant ethylene dibromide (EDB). On September 28, 1983, the Administrator issued a notice, published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of EDB for use as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain-milling equipment. On taking action to eliminate the use of EDB on grains, EPA began a comprehensive review of EDB substitutes to ensure that continued and, in some cases, expanded use of these chemicals would not present unreasonable risks.

Because data were lacking in key areas for carbon tetrachloride, EPA required submission of product chemistry data, analytical methodologies, residue studies, teratogenicity studies, and reproductive studies through its Data Call-In program. Data Call-in notices were sent to the registrants of CCl_4 products on March 16, 1984. None of the registrants agreed to supply the data required for continued registration. Subsequently, all registrations of grain fumigants containing carbon tetrachloride were either voluntarily cancelled by the registrants or were suspended under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for failure to submit the required data.

A list of many grain fumigant products containing carbon tetrachloride that have been voluntarily cancelled was published in the **Federal Register** of October 23, 1985 (50 FR 42997).

On November 3, 1986, the Administrator issued a final notice, published in the **Federal Register** of November 12, 1986 (51 FR 41004), of intent to cancel registrations for those remaining CCl_4 grain fumigant products. The basis for the Agency's action was that risks posed to humans by CCl_4, including both a risk of acute and subacute poisoning and an oncogenic risk, outweighed its limited benefits. Since no registrants challenged this action within the statutory time frame, the remaining registrations for the CCl_4 grain fumigant products were cancelled by operation of law.

Section 193.225(a) of 21 CFR currently provides that fumigants may be safely used in or on grain-mill machinery with the following conditions, among others:

> The fumigants consist of one or more of the following: Carbon tetrachloride, and methyl bromide.

Section 193.230(a)(1) of 21 CFR provides that fumigants for processed grains used in production of fermented malt beverages may be safely used in accordance with the following conditions, among others:

> They consist of one of the following mixtures: Carbon tetrachloride, with or without pentane.

Based on the information considered by the Agency and discussed in detail in the **Federal Register** documents cited in the preceeding paragraphs, the Agency now proposes to revoke (1) the food additive regulation in 21 CFR 193.225 for use of carbon tetrachloride as a fumigant for grain-mill machinery, and (2) the food additive regulation in 21 CFR 193.230 for use of CCl_4 as a fumigant for processed grain used in the production of fermented malt beverages. The Agency is proposing that all references to "carbon tetrachloride" be removed from 21 CFR 193.225(a) and from 21 CFR 193.230(a)(1).

Elsewhere in this issue of the **Federal Register**, EPA has issued a related document [OPP–300159], which proposes the revocation of the exemption from the requirement of a tolerance in 40 CFR Part 180 for residues resulting from the use of carbon tetrachloride (§ 180.1005) as a post-harvest fumigant on a variety of grains.

Available data indicate that residues of carbon tetrachloride in or on raw grain treated prior to June 30, 1986, the last day of legal use of the fumigant, ranged from less than 10 ppb to 300 ppm. For intermediate grain products, e.g., flour, the CCl_4 levels ranged from less than 10 ppb to 10 ppm. Ready-to-eat grain products contained CCl_4 residues in the range of less than 10 ppb to 0.5 ppm. The Agency has no data on the rate of decline of CCl_4 residues in grain and derived grain products treated prior to the date of cessation of use, i.e., June 30, 1986. However, the Agency anticipates, and available data suggest, that any remaining residues will dissipate with time and that the treated grain and grain products will be used within a period of several years. It is doubtful that the presence of low levels of CCl_4 for this short-term period would pose a risk to the public health. Residue data presently available to the Agency on CCl_4 are not considered adequately validated for the purposes of setting action levels. At a minimum these data would need to be supported with: (1) Full documentation of sample collection, preparation, and storage prior to

analysis; (2) a full description of the analytical method used to generate the data, to indicate the method's limit of detection; (3) the analysis of appropriate control and recovery samples; and (4) storage stability data reflecting the actual storage of the samples prior to analysis. Therefore, the Agency has recommended to the Food and Drug Administration (FDA) that enforcement action not be taken if residues are detected in grain or grain-based consumer products after the exemptions are removed if such residues were incurred as a result of legal use of the fumigant on or before June 30, 1986. FDA has agreed to this approach.

Interested persons are invited to submit written comments on this proposal to revoke the food additive regulations in 21 CFR 193.225 and 193.230 for carbon tetrachloride. Comments must bear a notation indicating the document control number [OPP-300158]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

This proposed action has been analyzed under the Regulatory Flexibility Act, and the requirements of Executive Order 12291. The analysis contained in the proposals for the revocation of the exemption from the requirement of a tolerance in 40 CFR 180.1005 for carbon tetrachloride residues in a variety of grains resulting from post-harvest fumigation, applies equally to the proposed action set forth in this notice. Accordingly, I certify that this regulation does not require a separate regulatory flexibility analysis under the Regulatory Act.

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: September 28, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 21 CFR Part 193 be amended as follows:

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.225(a) is revised to read as follows:

§ 193.225 Fumigants for grain-mill machinery.

* * * * *

(a) The fumigant consists of methyl bromide.

* * * * *

3. Section 193.230(a) is revised to read as follows:

§ 193.230 Fumigants for processed grains used in production of fermented malt beverages.

* * * * *

(a) They consist of methyl bromide. Total residues of inorganic bromide (calculated as Br) from the use of this fumigant shall not exceed 125 parts per million.

* * * * *

[FR Doc. 87-23718 Filed 10-13-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300159; FRL-3276-9]

Carbon Tetrachloride; Proposed Revocation of Exemption From Requirement of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend 40 CFR Part 180 by removing regulations to exempt from the requirement of a tolerance the pesticide chemical carbon tetrachloride (§180.1005). This proposed Agency-initiated regulatory action will remove the exemption for which related pesticide uses have been cancelled. Elsewhere in this issue of the **Federal Register**, EPA is also proposing revocation of the food additive regulations for carbon tetrachloride as a fumigant when used on grain-mill machinery and grains for fermented malt beverage production.

DATE: Written comments, identified by the document control number [OPP-300159], should be received on or before December 14, 1987.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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Office location and telephone number: Special Review Branch, Rm. 1014, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7400).

SUPPLEMENTARY INFORMATION: On September 30, 1980, the Administrator issued a notice, published in the **Federal Register** of October 15, 1980 (45 FR 68534), of Special Review (previously referred to as Rebuttable Presumption against Registration) of all pesticide products containing carbon tetrachloride (CCl_4) including those CCl_4 products registered for use as grain fumigants. The Special Review was initiated because the Agency determined that continued use of carbon tetrachloride posed a risk of oncogenic, mutagenic, and other adverse effects and that it satisfied the criteria for commencing a Special Review as set forth at 40 CFR 154.7. Position Document 1 on CCl_4 was also published in the **Federal Register** of October 15, 1980 (45 FR 68551), outlining pertinent background information, references, and a summary of the evidence to support a Special Review.

In 1983, EPA began to examine the risks posed by the grain fumigant ethylene dibromide (EDB). On September 28, 1983, the Administrator issued a notice, published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of EDB for use as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain-milling equipment. On taking action to eliminate the use of EDB on grains, EPA began a comprehensive review of EDB substitutes to ensure that continued and, in some cases, expanded

use of these chemicals would not present unreasonable risks.

Because data were lacking in key areas for carbon tetrachloride, EPA required submission of product chemistry data, analytical methodologies, residue studies, teratogenicity studies, and reproductive studies through its Data Call-In program. Data Call-in notices were sent to the registrants of carbon tetrachloride products on March 16, 1984. None of the registrants agreed to supply the data required for continued registration. Subsequently, all registrations of grain fumigants containing carbon tetrachloride were either voluntarily cancelled by the registrants or were suspended under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for failure to submit the required data.

A list of those grain fumigant products containing carbon tetrachloride that have been voluntarily cancelled was published in the **Federal Register** of October 23, 1985 (50 FR 42997).

On November 3, 1986, the Administrator issued a final notice, published in the **Federal Register** of November 12, 1986 (51 FR 41004), of intent to cancel registrations for those remaining CCl_4 grain fumigant products. The basis for the Agency's action was that risks posed to humans by CCl_4 including both a risk of acute and subacute poisoning and an oncogenic risk, outweighed its limited benefits. Since no registrants challenged this action within the statutory time frame, the remaining registrations for the CCl_4 grain fumigant products were cancelled by operation of law.

The residues resulting from use of carbon tetrachloride as a fumigant after harvest are currently exempted from the requirement of a tolerance for the following grains: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. This exemption was granted in 1956 based on available toxicology studies and the conclusion that the 5 to 10 parts per million (ppm) residue levels which resulted in the consumed food did not have any toxicological significance. These residue levels were determined by less sophisticated analytical methodology than that available today. Currently available analytical methods are now capable of detecting carbon tetrachloride per se down to a limit of detection of 1 part per billion (ppb).

EPA now proposes to revoke the exemption from the requirement of a tolerance for residues of carbon tetrachloride (§ 180.1005) in barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat resulting from the use of carbon tetrachloride as a fumigant after harvest because the registrations for all products used as fumigants for stored grain or for grain-milling equipment containing this chemical have been cancelled.

Available data indicate that residues of carbon tetrachloride in or on raw grain treated prior to June 30, 1986, the last day of legal use of the fumigant, ranged from less than 10 ppb to 300 ppm. For intermediate grain products, e.g., flour, the CCl_4 levels ranged from less than 10 ppb to 10 ppm. Ready-to-eat grain products contained CCl_4 residues in the range of less than 10 ppb to 0.5 ppm. The Agency has no data on the rate of decline of CCl_4 residues in grain and derived grain products treated prior to the date of cessation of use, i.e., June 30, 1986. However, the Agency anticipates, and available data suggests, that any remaining residues will dissipate with time and that the treated grain and grain products will be used within a period of several years. It is doubtful that the presence of low levels of CCl_4 for this short-term period would pose a risk to the public health. Residue data presently available to the Agency on CCl_4 are not considered adequately validated for the purposes of setting action levels. At a minimum these data would need to be supported with: (1) Full documentation of sample collection, preparation, and storage prior to analysis; (2) a full description of the analytical method used to generate the data, to indicate the method's limit of detection; (3) the analysis of appropriate control and recovery samples; and (4) storage stability data reflecting the actual storage of the samples prior to analysis. Therefore, the Agency has recommended to the Food and Drug Administration (FDA) that enforcement action not be taken if residues are detected in grain or grain-based consumer products after the exemptions are removed if such residues were incurred as a result of legal use of the fumigant on or before June 30, 1986. FDA has agreed to this approach.

Elsewhere in this issue of the **Federal Register**, EPA has issued a related document [OPP–300158], which proposes the revocation of food additive regulations for carbon tetrachloride.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains carbon tetrachloride may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the exemption from the requirement of a tolerance be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. Requests should bear the document control number [OPP–300159], and should be submitted to the mailing address provided above.

Interested persons are invited to submit written comments on this proposed revocation for the exemption from the requirement of a tolerance for carbon tetrachloride. Comments should bear a notation indicting the document control number [OPP–300159]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act, the Agency has analyzed the costs and benefits of this proposal. Documents containing these analyses are available for public inspection in the Information Services Section at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165, 5 U.S.C. 60 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

The revocation of the exemption from the requirement of a tolerance would potentially affect firms in the grain-milling and bakery products industries

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as well as grain farmers. Products found to contain carbon tetrachloride may be subject to enforcement action. However, since FDA has agreed not to take enforcement action unless residue levels are at a level of public health concern or residues resulted from treatment after June 30, 1986, it is anticipated that little or no economic impact would occur.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 28, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.1005 [Removed]

2. By removing § 180.1005.

[FR Doc. 87-23719 Filed 10-13-87; 8:45 am]

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Federal Register

Wednesday
October 14, 1987

Part VII

Department of Education

34 CFR Part 690
Pell Grant Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the regulations for the Pell Grant Program. The regulations are amended as a result of statutory changes made to the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register**, or later, if Congress takes certain adjournments.

These regulations are effective for and apply to award years beginning on or after July 1, 1987. The Secretary does not consider that the December 1, 1986 publication deadline imposed by section 482(c) of the HEA applies to these regulations because (1) these regulatory changes are being made to conform the Pell Grant Program regulations to statutory changes that apply to the award year beginning July 1, 1987, and (2) the change in the name of the Electronic Pilot Project does not affect the general administration of the HEA Title IV student financial assistance programs. If you want to know the effective date of these regulations, call or write to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Sister Bernardine Hayes or Ms. Cheryl Leibovitz, Office of Student Financial Assistance, U.S. Department of Education, (ROB–3, Room 4318), 400 Maryland Ave., SW., Washington, DC 20202. Telephone number (202) 732–4888.

SUPPLEMENTARY INFORMATION: These regulations are being issued to implement the major program changes mandated by Congress under the Higher Education Amendments of 1986 (Pub. L. 99–498). A discussion of the major changes follows:

Section 690.2 General definitions.

The Secretary is amending the regulations to change the name of the Pell Grant Program Electronic Pilot Project. The Electronic Pilot Project is a project under which students attending an institution participating in the project are able to correct or verify information contained on their Student Aid Reports by using computer terminals at the institution. The Secretary is now making this method of processing data available to all institutions participating in the Pell Grant Program. As result, the Secretary is changing the name of this electronic exchange system to the Pell Grant Electronic Data Exchange.

Section 690.6 Duration of student eligibility.

For a student who receives his or her first Pell Grant award in the 1987–88 or a subsequent award year, the Higher Education Amendments of 1986 amended the HEA to limit the duration of a student's eligibility for a Pell Grant to the full-time equivalent of 5 academic years of study, if the student is enrolled in an undergraduate degree or certificate program of 4 years of less, or the full-time equivalent of six academic years if the student is enrolled in an undergraduate program that normally requires more than 4 years of study to complete. If a student is enrolled in a noncredit or remedial coursework or program, the program does not count against this limitation.

The institution may waive this limitation if an undue hardship on the student resulting from the death of a relative of the student, an illness or injury of the student, or other special circumstances as determined by the institution prevents the student from completing his or her academic program within the above time constraints.

The Secretary is, therefore, revising § 690.6 to implement this new statutory requirement.

Section 690.61 Submission process and deadline for student aid report.

The Secretary is revising § 690.61 to allow an institution to make one disbursement of a student's Pell Grant without receiving a valid Student Aid Report (SAR) from the student if it follows the procedures described in § 690.77.

Section 690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

Under the Pell Grant Program, an institution receives the information included on a student's application to have his or her student aid index (SAI) determined in one of several ways. That information is included on the SAR, and the institution receives that information when the student submits the SAR to it. The institution may also receive that information when it receives a "full data tape" from the Pell Grant Central Processor or, beginning with the 1988–89 award year application cycle, it may receive that information from an organization that has a contract to transmit application data to the Secretary. A "full data tape" includes the application information of all students attending the institution who have applied to have a student aid index determined for the Pell Grant Program and who have granted permission to the Secretary to transmit that information to the institution they are attending or expect to attend.

Under the current Pell Grant Program regulations, an institution may not make a disbursement to a student until it has received a valid SAR. The institution then calculates and disburses the student's Pell Grant based on the SAI and the application information contained on the SAR.

Under the verification process set forth in 34 CFR Part 668, Subpart E, an institution may make one disbursement to a student before completing the verification of the information contained in the student's aid application if the institution does not have documentation that indicates that the information is inaccurate. Under a similar procedure the Secretary is permitting an institution, under the following conditions, to make the initial award year disbursement of a Pell Grant award to a student before receiving a valid SAR based on the receipt of the application information from the Secretary or, beginning with the 1988–89 award year application cycle, an organization that has a contract to transmit application data to the Secretary.

If the institution receives the student's SAI and the application information from the Pell Grant Central Processor in the 1987–88 award year or, beginning with the 1988–89 award year application cycle, from an organization that has a contract to transmit application data to the Secretary, an institution may make an initital disbursement without a valid SAR if—

a. The institution does not have documentation that indicates that the application information received on the full data tape is incorrect; or

b. The institution has documentation that indicates that the application information received on the SAR submitted by the student or on the full data tape is incorrect but the institution (1) reconciles the inconsistent information, (2) recalculates the student's SAI based upon the reconciled information, (3) disburses the Pell Grant based upon the recalculated SAI, and (4) reports the change in the student's application information and SAI to the Pell Grant Central Processor. An institution may not make another Pell Grant disbursement for that award year to that student without receiving a valid SAR from the student.

The institution is not limited to one recalculation of the student's SAI. Therefore, if the institution does recalculate an SAI, subsequently receives additional conflicting information, and determines other data elements are incorrect, it may recalculate the SAI to correct the inconsistency.

If the institution chooses to make a disbursement without receiving a valid SAR, the institution and the student are liable for any overpayment resulting from that disbursement that cannot be adjusted with other Pell Grant disbursements for that award year.

The Secretary is adding § 690.77 to the Pell Grant Program regulations to accommodate this process.

Section 690.78 Method of disbursement by check to a student's account.

The Secretary is amending § 690.78 to reflect changes made in the Pell Grant statute by the Higher Education Amendments of 1986. The new statutory provision specifies that the amount of a grant which an institution may disburse by crediting a student's institutional account is limited to tuition, fees, board, if the student contracts with the institution for board, and housing, if the student contracts with the institution for housing. The new statutory provision further specifies that a student may, at his or her option, permit the institution to disburse the Pell Grant by crediting his or her account for other goods and services provided by the institution.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these changes do not implement substantive policy, but merely reflect statutory changes required by the Higher Education Amendments of 1986. Therefore, the Secretary finds that publication of proposed regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B). The Secretary has also determined that the change in the procedures to the electronic transmission of data is exempt from the requirements for public comment under 5 U.S.C. 553(b)(A) as a rule of agency procedure.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds. These regulations are being issued to implement the changes required by the Higher Education Amendments of 1986.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Dated: October 8, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance: No. 84.063, Pell Grant Program)

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as follows:

PART 690—PELL GRANT PROGRAM

1. The authority citation for Part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

§ 690.2 [Amended].

2. In § 690.2, paragraph (b), in the definitions of the "Electronic Pilot Project" and "Valid Student Aid Report," remove the words "Electronic Pilot Project" and add, in their place, the words "Pell Grant Electronic Data Exchange, and alphabetize the definitions accordingly."

3. Section 690.6 is revised to read as follows:

§ 690.6 Duration of student eligibility.

(a) A student is eligible to receive a Pell Grant for the period of time required to complete his or here first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study.

(c) Except as provided in paragraph (d) of this section, for a student who receives his or her first Pell Grant on or after July 1, 1987, the period of time required to complete his or here undergraduate baccalaureate course of study may not exceed the full-time equivalent of—

(1) Five academic years for an undergraduate degree or certificate program that normally requires four academic years or less of study to complete; or

(2) Six academic years for an undergraduate degree or certificate program that normally requires more than four academic years of study to complete.

(d)(1) The institution a student is attending may waive the limitations contained in paragraph (c) of this section if it determines that the student's failure to complete his or her undergraduate program in the time set forth in that paragraph resulted from an undue hardship caused by—

(i) The death of a relative of the student;

(ii) An injury or illness of the student; or

(iii) Other special circumstances.

(2) The institution must support with appropriate documentation any determination of undue hardship made under this paragraph.

(e) For the purpose of paragraph (c) of this section, any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in determining that student's period of Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

4. In § 690.61, paragraph (a) is revised to read as follows:

§ 690.61 Submission process and deadline for student aid report.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, in order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(2) An institution may make one disbursement of a student's Pell Grant without a valid SAR if it follows the procedures described in § 690.77.

(3) An institution is entitled to rely on SAR information except under conditions set forth in § 668.16(f) and 668.60.

. . . . .

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5. A new § 690.77 is added to Subpart G to read as follows:

§ 690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

(a) An institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

(1) Receives a student's application information;

(2) Does not have documentation that indicates that the application information is inaccurate; and

(3) Receives an SAI—

(i) From the Secretary; or

(ii) Beginning with the 1988–89 award year application cycle, from an organization that has a contract to transmit application data to the Secretary.

(b) If an institution receives a student's application information and his or her SAI from the Secretary or, beginning with the 1988–89 award year application cycle, from an organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

(1) Resolves the inconsistencies between its documentation and the student's application information;

(2) Recalculates the student's SAI based on correct information;

(3) Makes the disbursement of the student's Pell Grant for the first payment period based on the recalculated SAI; and

(4) Reports the changes in the student's application information and the recalculated SAI to the Secretary within deadline established by the Secretary.

(c)(1) If an institution chooses to make a disbursement under paragraph (a) or (b) of this section, it shall be liable for that disbursement if it does not receive a valid SAR for the student for that award year.

(2) If an institution chooses to make a disbursement under paragraph (b) of this section, the institution and the student shall be liable for any overpayment caused by an incorrect recalculation of the student's SAI.

(3) If a student receives an overpayment as a result of a disbursement made under paragraph (a) or (b) of this section, the institution shall eliminate the overpayment by following the procedures described in 34 CFR 668.61(a).

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB Control No. 1840-0536)

6. In § 690.78, paragraph (a) is revised to read as follows:

§ 690.78 Method of disbursement—by check or credit to a student's account.

(a)(1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or here account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

* * * * *

(Approved by the Office of Management and Budget under OMB Control No. 1840-0536)

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October 14, 1987

Part VIII

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Apples and Pears From Europe; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 87-145]

Apples and Pears From Europe

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations to relieve restrictions on the importation of apples or pears from certain European countries. Our proposed rule would allow these fruits to be imported under multiple safeguards, including inspections in the exporting country. These safeguards would ensure that the fruits could be imported without significant risk of introducing insect pests into the United States.

DATES: Consideration will be given only to comments postmarked or received on or before October 29, 1987.

ADDRESSES: Send an original and two copies of your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-145. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, APHIS, USDA, Room 637, Federal Building, Hyattsville, MD 20782; 301-436-8248.

SUPPLEMENTARY INFORMATION:

Background The regulations in 7 CFR 319.56 (the regulations) prohibit or restrict the importation of fruits and vegetables into the United States because of the risk that the fruits or vegetables could introduce insect pests that could damage domestic plants.

Apples from Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Sweden, Switzerland, and West Germany; and pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain present a risk of introducing various insect pests, including the pear leaf blister moth

(Leucoptera malifoliella).

Under § 319.56-2, these fruits may be imported only under certain conditions that, in general, require the fruits to come from pest-free areas or require that the fruits be treated to destroy insects known to attack them. The presence of the pear leaf blister moth in Europe, and the lack of an effective treatment to destroy this pest, preclude importation of these fruits under § 319.56-2. Under § 319.56(c):

> * * * whenever the Deputy Administrator for the Plant Protection and Quarantine shall find that existing conditions as to pest risk involved in the importation of the articles to which the regulations supplemental hereto apply, make it safe to modify, by making less stringent, the restrictions contained in any of such regulations, he shall publish such findings in administrative instructions, specifying the manner in which the regulations shall be made less stringent * * *

We are proposing administrative instructions modifying the regulations concerning the importation of apples from Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Sweden, Switzerland, and West Germany; and pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain. The administrative instructions prescribe multiple safeguards, including inspections in the exporting country. It would appear that apples or pears imported under the conditions prescribed in the proposed administrative instructions would not present a significant risk of introducing insect pests into the United States. The specific requirements contained in the proposed administrative instructions are discussed below.

Importations Allowed

The proposed administrative instructions would apply only to the following fruits: Apples from Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Sweden, Switzerland, and West Germany; and pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain.

The administrative instruction does not include apples or pears from European countries other than those specified because we do not have adequate information on the pest risk associated with apples or pears from other countries. We assess the pest risk associated with specific fruits from specific countries as we receive requests to import those fruits from those countries. Manpower and budgetary constraints limit our ability to conduct broader studies. However, if we were to receive an application to import apples or pears from a European country not specified in this proposal, we would initiate a study of the pest risk associated with the apples or pears from that country. If it appeared that the fruit could be safely imported from that country, we would consider amending the regulations to allow the requested importations.

Preclearance in the Exporting Country

We are proposing, for most importations of apples and pears from the European countries named above, to require that the fruit be inspected in the exporting country by inspectors of Plant Protection and Quarantine (PPQ). This inspection, to determine the eligibility of the fruit for shipment to the United States, would be called a preclearance inspection to distinguish it from similar inspections performed by PPQ inspectors at ports of arrival in the United States. We are proposing a preclearance inspection to minimize the risk that the apples and pears will arrive in the United States contaminated with pests that could harm domestic plants. The preclearance inspection would also benefit importers, since time and money would not be wasted in shipping fruit at that might not qualify for importation into the United States. The proposed details of how the preclearance inspection would be conducted are discussed later in this supplementary information.

Inspection in the United States

With few exceptions, we anticipate that apples and pears imported under this proposed rule would be "precleared" for shipment into the United States in the exporting country. However, we propose to allow inspection of the fruit a port of arrival in the United States, in lieu of the preclearance inspection, if the Deputy Administrator determines that inspection can be accomplished at the port of arrival without increasing the risk of introducing insect pests into the United States. The following conditions would apply to inspections performed at the port of arrival:

(1) The Deputy Administrator would first have to determine that a sufficient number of inspectors were available at the port of arrival to perform the services required;

(2) Each pallet of apples or pears would have to be completely enclosed in plastic, to prevent the escape of insects, before being offloaded at the port of arrival;

(3) The entire shipment of apples or pears would have to be offloaded and

moved to an enclosed warehouse, where adequate inspection facilities are available, under the supervision of inspectors of Plant Protection and Quarantine;

(4) The method of inspection would be the same as in preclearance inspections.

These conditions would ensure that inspections could be conducted at the port of arrival in a manner that would prevent the escape of insects, prevent pilferage of the fruit, and ensure that insect pests that may be present on the fruit would be discovered.

Trust Fund and Cooperative Agreements

Except as explained above for inspections in the United States, we are proposing that the national plant protection service of the exporting country (referred to below as the plant protection service) enter into two agreements with PPQ before apples or pears from that country could be imported into the United States.

(1) A trust fund agreement would require the plant protection service to pay in advance all estimated costs incurred by PPQ in providing preclearance inspections during a shipping season. These costs would include administrative expenses incurred in conducting the inspection services; and all salaries (including overtime and the federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The plant protection service would be required to deposit a certified or cashier's check to the Animal and Plant Health Inspection Service (APHIS) for the amount of these costs, as estimated by PPQ. If the deposit did not meet all costs incurred by PPQ, the agreement would further require the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by PPQ, before completion of the inspection.

Requiring payment of costs in advance is necessary to help defray the costs to PPQ of providing inspection services in the exporting country.

(2) A cooperative agreement would require the plant protection service to ensure that certain conditions for importation of the fruit are met before the fruit is shipped to the United States. These conditions, which are discussed below, are intended to ensure that apples and pears presented to PPQ for preclearance inspection have a very low rate of rejection because of insect pests. The cooperative agreement woud help ensure that these conditions are met by placing responsibility with the plant protection service.

Requirements of the Cooperative Agreement

Under the proposed cooperative agreement between PPQ and a plant protection service, the plant protection service would agree that:

(1) Officials of the plant protection service will survey each orchard producing apples or pears for shipment to the United States at least two times between the time of spring blossoming and harvest and:

If the officials find any leaf mines that suggest the presence of *Leucoptera malifoliella* in an orchard, they must reject any fruit harvested from that orchard during that growing season for shipment to the United States. This requirement would help ensure that fruit presented for importation into the United States would be free of *Leucoptera malifoliella.*

If the officials find evidence in an orchard of any other plant pest referred to in proposed paragraph (g), they must ensure that the orchard and all other orchards within 1 kilometer of the orchard are treated for that pest with a pesticide approved by the United States Environmental Protection Agency, in accordance with label directions and under the direction of the national plant protection service. We believe this treatment, if applied as required, would be sufficient to significantly reduce pests in the producing orchard for that growing season.

If the officials determine that the treatment program has not been applied as required or is not controlling a plant pest in the orchard, they must reject any fruit harvested from that orchard during that growing season for shipment to the United States. This requirement would help ensure that fruit presented for shipment to the United States does not present a significant risk of carrying insect pests.

(2) The apples or pears must be identified with the orchard from which they are harvested (the producing orchard) until the fruit arrives in the United States. This requirement would enable us to trace the source of any insect pests to an orchard and to reject all other fruit from that orchard for the remainder of that shipping season.

(3) The apples or pears must be processed and inspected for insects in packing sheds as follows:

A grower lot is all fruit delivered for processing from a single orchard at a given time. Packing shed technicians must inspect each grower lot upon arrival of the grower lot at the packing shed. They must examine all fruit in one carton on every third pallet (there are approximately 42 cartons to a pallet), or at least 80 apples or pears in every third bin (if the fruit is not in cartons on pallets). This sampling procedure would help ensure a high probability that any insect pests on the fruit would be discovered. If the technicians find any live larva or chrysalis of *Leucoptera malifoliella,* they must reject the entire grower lot for shipment to the United States and the plant protection service must reject for shipment any additional fruit from the producing orchard for the remainder of the shipping season. Rejection is the only alternative upon finding *Leucoptera malifoliella* since no treatment exists that will eradicate this pest. This requirement would help ensure that apples and pears presented for shipment to the United States are free of that pest.

(4) The apples or pears must be sorted, sized, packed, and otherwise handled in the packing sheds on grading and packing lines used solely for fruit intended for shipment to the United States, or, if on grading and packing lines used previously for other fruit, only after the lines have been washed with water. This requirement would help ensure that apples and pears presented for shipment to the United States are not contaminated in the packing shed by pests that may carried by other fruit.

(5) During packing operations at the packing sheds, all apples and pears must be inspected for insect pests as follows:

All fruit in each grower lot must be inspected at each of two stations on the packing line by packing shed technicians. In addition, one carton from every pallet in each grower lot must be inspected by officials of the plant protection service. If the inspections reveal any live larva or chrysalis of *Leucoptera milifoliella,* the entire grower lot must be rejected for shipment to the United States, and the plant protection service must reject for shipment any additional fruit from the producing orchard for the remainder of the shipping season. If the inspections reveal any other insect pest referred to in proposed paragraph (g), and a treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, we propose to allow the fruit to remain eligible for shipment to the United States if all the fruit in the grower lot is treated for that pest under the supervision of a PPQ inspector, because the pests would be destroyed. However, if the grower lot is not treated in this manner, or if a plant pest is found for which no treatment authorized in the Plant Protection and

Quarantine Treatment Manual is available, each grower lot would be rejected for shipment to the United States.

Again, these requirements would help ensure that fruit presented for shipment to the United States would not present a significant risk of carrying injurious plant pests.

(6) Apples or pears that pass inspection at approved packing sheds must be presented to PPQ inspectors for preclerance inspection or for inspection in the United States, as explained above. This requirement is necessary to ensure that the fruit qualifies for shipment to the United States.

(7) Apples and pears presented for inspection must be identified with the packing shed where they were processed and this identity must be maintained until the apples or pears arrive in the United States. This requirement would enable us to trace infested fruit to a particular packing shed. Tracing to the packing shed is necessary because repeated interceptions of infested fruit from a particular packing shed would indicate an unacceptable pest risk associated with fruit from that packing shed and may lead to disqualification of the packing shed for the remainder of the shipping season.

(8) Facilities for preclearance inspections must be provided in that country at a site acceptable to PPQ. This requirement is necessary to ensure that PPQ inspectors have adequate inspection facilities in which to perform the required services.

(9) Any apples or pears rejected for shipment to the United States may not, under any circumstances, be presented again for shipment to the United States. These apples or pears would present an unacceptable risk of introducing insect pests into the United States.

Pre-clearance Inspection

As explained earlier, we propose to usually require apples and pears to be inspected in the exporting country by PPQ inspectors. We propose to require that inspection units contain a minimum of 6,000 cartons of apples or pears, which may represent multiple grower lots from different packing sheds. To send PPQ inspectors to Europe for fewer than 6,000 cartons would not be economical; also, inspection units of at least 6,000 cartons would give exporters ample reason to ensure that their product is pest free, since a finding of even one carton infested with a live larva or chrysalis of *Leucoptera malifoliella* would cause PPQ to reject the entire inspection unit for shipment to the United States.

We propose to allow apples or pears in any inspection unit to be shipped to the United States only if the inspection unit passes inspection as follows:

(1) Inspectors would examine, fruit by fruit, a biometrically designed statistical sample of 250 cartons drawn from each inspection unit.

This sample would ensure a very high probability that any insect pests in the inspection unit would be discovered by PPQ inspectors.

If the inspectors were to find any live larva or chrysalis of *Leucoptera malifoliella*, they would reject the entire inspection unit for shipment to the United States. The inspectors also would reject for shipment any additional fruit from the producing orchard for the remainder of the shipping season. However, fruit from other orchards represented in the rejected inspection unit would not be affected for the remainder of the shipping season since there would be no reason to believe that these orchards were infested with *Leucoptera malifoliella*.

Additionally, if inspectors reject any three inspection units because of *Leucoptera malifoliella* on fruit processed by a single packing shed in a single shipping season, no additional fruit from that packing shed would be accepted for shipment to the United States for the remainder of that shipping season. This requirement would ensure that fruit presented for shipment to the United States has a low risk of introducing insect pests into the United States.

If the inspectors find evidence of any other insect pest referred to in proposed paragraph (g), and an authorized treatment is available, we propose to allow the fruit to be shipped to the United States if all the fruit in the inspection unit is treated for that pest under the supervision of a PPQ inspector because the authorized treatments would destroy the pest. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no authorized treatment is available, the inspectors would reject the entire inspection unit for shipment to the United States. Rejection of an inspection unit because of pests other than *Leucoptera malifoliella* would not be cause for rejecting additional fruit from an orchard or packing shed.

Apples and pears precleared for shipment to the United States would not be inspected again in the United States (except as necessary to ensure that the fruit has been precleared) unless the preclearance program with the exporting country were terminated in accordance with proposed paragraph (e). If the preclearance program were terminated with any country, precleared fruit in transit to the United States at the time of termination would be spot-checked by PPQ inspectors upon arrival in the United States for evidence of insect pests referred to in proposed paragraph (g). If any live larva or chrysalis of *Leucoptera malifoliella* is found in any carton of fruit, the inspectors would reject that carton and all other cartons in the same shipment that are from the same producing orchard. In addition, the remaining cartons of fruit in the shipment would be reinspected as an inspection unit in accordance with the preclearance procedures in proposed paragraph (d).

Termination of Pre-Clearance Program

Rejection of fruit because of pests found during preclearance inspections could be cause for termination of the preclearance program in a country. We propose to terminate the preclearance program in a country based on rates of rejection, specified in proposed paragraph (e), of inspection units. These rates are statistically designed and indicate that conditions for shipment of apples or pears are not being met in the exporting country. Terminating the preclearance program would stop shipments of apples or pears from that country for the remainder of that shipping season. This action would ensure that fruits with an unacceptable risk of introducing insect pests are not allowed into the United States.

Treatment for Mediterranean Fruit Fly

In addition to all other requirements for importation, apples and pears would be eligible for importation into the United States from France, Italy, Portugal, or Spain only if the fruit were cold treated for the Mediterranean fruit fly in accordance with § 319.56–2d of this subpart. This requirement is necessary because the Mediterranean fruit fly is known to attack apples and pears in these countries. Cold treatment as required would destroy this pest.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse

effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on interest expressed in importing apples from Europe, we anticipate that approximately 15 million pounds of apples will be imported from France during fiscal year 1988 if this rule is adopted. We expect no apples from other countries covered by this proposed rule and no pears. Apple production in the United States is estimated at approximately 8 billion pounds per year. Although there are probably many small business entities in the United States that grow, pack, or sell apples, we do not believe this proposed rule would have a significant economic impact on them because the volume of French apples expected to be imported is relatively low and the French apples would compete equally in the market place with U.S.-produced apples. We believe that importers of French apples also import a variety of other fruits and vegetables and that importations of the French apples would constitute a small portion of their total importations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372; which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Comment Period

Mr. William F. Helms, Deputy Administrator, Plant Protection and Quarantine, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on the proposal. Importers in the United States have expressed interest in importing apples from France this season, and the shipping season for those apples has already begun. Meanwhile, exporters in France must quickly determine whether their fruit will be marketed. A longer comment period could cause substantial economic losses for importers.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR 319.56 as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56, a new section, § 319.56–2r, would be added to read as follows:

§ 319.56–2r Administrative instructions governing the entry of apples and pears from certain countries in Europe.

(a) *Importations allowed.* Pursuant to § 319.56(c), the Deputy Administrator has determined that the following fruits may be imported into the United States in accordance with this subsection and other applicable provisions of this subpart:

(1) Apples from Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Sweden, Switzerland, and West Germany;

(2) Pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain.

(b) *Trust fund agreement.* Except as provided in paragraph (h) of this section, the apples or pears may be imported only if the national plant protection service of the exporting country (referred to in this subsection as the plant protection service) has entered into a trust fund agreement with Plant Protection and Quarantine (PPQ) for that shipping season. This agreement requires the plant protection service to pay in advance all estimated costs incurred by PPQ in providing the preclearance inspections prescribed in paragraph (d) of this section. These costs will include administrative expenses incurred in conducting the inspection services; and all salaries (including overtime and the federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The agreement requires the plant protection service to deposit a certified or cashier's check with the Animal and Plant Health Inspection Service (APHIS) for the amount of these costs, as estimated by PPQ. If the deposit is not sufficient to meet all costs incurred by PPQ, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as described by PPQ, before the inspection will be completed.

(c) *Cooperative agreement.* The apples or pears may be imported only if the plant protection service has entered into a cooperative agreement with PPQ for shipping season. Under the cooperative agreement, the plant protection service agrees that:

(1) Officials of the plant protection service will survey each orchard producing apples or pears for shipment to the United States at least two times between the time of spring blossoming and harvest. If the officials find any leaf mines that suggest the presence of *Leucoptera malifoliella* in an orchard, the officials must reject any fruit harvested from that orchard during that growing season for shipment to the United States. If the officials find evidence in an orchard of any other plant pest referred to in paragraph (g) of this section, they must ensure that the orchard and all other orchards within 1 kilometer of that orchard will be treated for that pest with a pesticide approved by the United States Environmental Protection Agency, in accordance with label directions and under the direction of the plant protection service. If the officials determine that the treatment program has not been applied as required or is not controlling the plant pest in the orchard, they must reject any fruit harvested from that orchard during that growing season for shipment to the United States.

(2) The apples or pears must be identified with the orchard from which they are harvested (the producing orchard) until the fruit arrives in the United States.

(3) The apples or pears must be processed and inspected in the approved packing sheds as folows:

(i) Upon arrival at the packing shed, the apples or pears must be inspected for insect pests as follows: For each grower lot (all fruit delivered for processing from a single orchard at a given time), packing shed technicians must examine all fruit in one carton on every third pallet (there are approximately 42 cartons to a pallet), or at least 80 apples or pears in every third bin (if the fruit is not in cortons on pallets). If they find any live larva or chrysalis of *Leucoptera malifoliella*, they must reject the entire grower lot for shipment to the United States, and the plant protection service must reject for shipment any additional fruit from the

producing orchard for the remainder of the shipping season.

(ii) The apples or pears must be sorted, sized, packed, and otherwise handled in the packing sheds on grading and packing lines used solely for fruit intended for shipment to the United States, or, if on grading and packing lines used previously for other fruit, only after the lines have been washed with water.

(iii) During packing operations, apples and pears must be inspected for insect pests as follows: All fruit in each grower lot must be inspected at each of two inspection stations on the packing line by packing shed technicians. In addition, one carton from every pallet in each grower lot must be inspected by officials of the plant protection service. If the inspections reveal any live larva or chrysalis of *Leucoptera malifoliella*, the entire grower lot must be rejected for shipment to the United States, and the plant protection service must reject for shipment any additional fruit from the producing orchard for the remainder of that shipping season. If the inspections reveal any other insect pest referred to in paragraph (g) of this section, and a treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, the fruit will remain eligible for shipment to the United States if the entire grower lot is treated for the pest under the supervision of a PPQ inspector. However, if the entire grower lot is not treated in this manner, or if a plant pest is found for which no treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, the entire grower lot will be rejected for shipment to the United States.

(4) Apples or pears that pass inspection at approved packing sheds must be presented to PPQ inspectors for preclearance inspection as prescribed in paragraph (d) of this section or for inspection in the United States as prescribed in paragraph (h) of this section.

(5) Apples and pears presented for preclearance inspection must be identified with the packing shed where they were processed, as well as with the producing orchard, and this identity must be maintained until the apples or pears arrive in the United States.

(6) Facilities for the preclearance inspections prescribed in paragraph (d) of this section must be provided in the exporting country at a site acceptable to PPQ.

(7) Any apples or pears rejected for shipment into the United States may not, under any circumstances, be presented again for shipment to the United States.

(d) *Preclearance inspection.* Preclearance inspection will be conducted in the exporting country by PPQ inspectors. Preclearance inspection will be conducted for a minimum of 6,000 cartons of apples or pears, which may represent multiple grower lots from different packing sheds. The cartons examined during any given preclearance inspection will be known as an inspection unit. Apples or pears in any inspection unit may be shipped to the United States only if the inspection unit passes inspection as follows:

(1) Inspectors will examine, fruit by fruit, a biometrically designed statistical sample of 250 cartons drawn from each inspection unit.

(i) If inspectors find any live larva or chrysalis of *Leucoptera malifoliella*, they will reject the entire inspection unit for shipment to the United States. The inspectors also will reject for shipment any additional fruit from the producing orchard for the remainder of the shipping season. However, other orchards represented in the rejected inspection unit will not be affected for the remainder of the shipping season because of that rejection. Additionally, if inspectors reject any three inspection units in a single shipping season because of *Leucoptera malifoliella* on fruit processed by a single packing shed, no additional fruit from that packing shed will be accepted for shipment to the United States for the remainder of that shipping season.

(ii) If the inspectors find evidence of any other plant pest referred to in paragraph (g) of this section, and a treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, fruit in the inspection unit will remain eligible for shipment to the United States if the entire inspection unit is treated for the pest under the supervision of a PPQ inspector. However, if the entire inspectional unit is not treated in this manner, or if a plant pest is found for which no treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, the inspectors will reject the entire inspection unit for shipment to the United States. Rejection of an inspection unit because of pests other than *Leucoptera malifoliella* will not be cause for rejecting additional fruit from an orchard or packing shed.

(iii) Apples and pears precleared for shipment to the United States as prescribed in this paragraph will not be inspected again in the United States (except as necessary to ensure that the fruit has been precleared) unless the preclearance program with the exporting country is terminated in accordance with paragraph (e) of this section. If the preclearance program is terminated with any country, precleared fruit in transit to the United States at the time of termination will be spot-checked by PPQ inspectors upon arrival in the United States for evidence of plant pests referred to in paragraph (g) of this section. If any live larva or chrysalis of *Leucoptera malifoliella* is found in any carton of fruit, inspectors will reject that carton and all other cartons in that shipment that are from the same producing orchard. In addition, the remaining cartons of fruit in that shipment will be reinspected as an inspection unit in accordance with the preclearance procedures prescribed in paragraph (d) of this section.

(e) *Termination of preclearance programs.* Rejection of fruit because of pests found during preclearance inspections may be cause for termination of the preclearance program in a country. Termination of the preclearance program will stop shipments of apples or pears from that country for the remainder of that shipping season. Termination of the preclearance program in any country will be based on rates of rejection of inspection units as follows:

(1) Termination because of findings of *Leucoptera malifoliella*. The preclearance program will be terminated with a country when, in one shipping season, inspection units are rejected because of *Leucoptera malifoliella* as follows:

(i) 5 inspection units in sequence among inspection units 1–20, or a total of 8 or more of the inspection units 1–20,

(ii) 5 inspection units in sequence among inspection units 21–40, or a total of 10 or more of the inspection units 1–40;

(iii) 5 inspection units in sequence among inspection units 41–60, or a total of 12 or more of the inspection units 1–60;

(iv) 5 inspection units in sequence among inspection units 61–80, or a total of 14 or more of the inspection units 1–80;

(v) 5 inspection units in sequence among inspection units 81–100, or a total of 16 or more of the inspection units 1–100; or

(vi) 5 inspection units in sequence among inspection units 101–120, or a total of 18 or more of the inspection units 1–120.

(Sequence can be continued in increments of 20 inspection units by increasing the number of rejected inspection units by 2.)

(2) Termination because of findings of other plant pests. The preclearance

program will be terminated with a country when, in one shipping season, inspection units are rejected because of other insect pests as follows:

(i) 10 or more of the inspection units 1–20;

(ii) 15 or more of the inspection units 1–40;

(iii) 20 or more of the inspection units 1–60;

(iv) 25 or more of the inspection units 1–80;

(v) 30 or more of the inspection units 1–100; or

(vi) 35 or more of the inspection units 1–120.

(Sequence can be continued in increments of 20 inspection units by increasing the number of rejected inspection units by 5.)

(f) *Cold treatment.* In addition to all other requirements of this subsection, apples or pears may be imported into the United States from France, Italy, Portugal, or Spain only if the fruit is cold treated for the Mediterranean fruit fly in accordance with § 319.56–2d of this subpart.

(g) *Plant pests; authorized treatments.* (1) Applies from Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Sweden, Switzerland, and West Germany; and pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain may be imported into the United States only if they are found free of the following pests or, if an authorized treatment is available, they are treated for the pest under the supervision of a PPQ inspector: the pear leaf blister moth (*Leucoptera malifoliella* (O.G. Costa)), the plum fruit moth (Cydia funebrana (Treitschke) (Tortricidae)), the summer fruit tortrix moth *Adoxophyes orana* (Fischer von Rosslertamm)(Tortricidae)), a leaf roller (*Argyrotaenia pulchellana* (Haworth) (Tortricidae)), and other insect pests that do not exist in the United States or that are not widespread in the United States.

(2) Authorized treatments are listed in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(h) *Inspection in the United States.* Notwithstanding provisions to the contrary in paragraphs (c) and (d) of this section, the Deputy Administrator may allow apples or pears imported under this subsection to be inspected at a port of arrival in the United States, in lieu of a preclearance inspection, under the following conditions:

(1) The Deputy Administrator has determined that inspection can be accomplished at the port of arrival without increasing the risk of introducing insect pests into the United States;

(2) Each pallet of apples or pears must be completely enclosed in plastic, to prevent the escape of insects, before it is offloaded at the port of arrival;

(3) The entire shipment of apples or pears must be offloaded and moved to an enclosed warehouse, where adequate inspection facilities are available, under the supervision of PPQ inspectors.

(4) The Deputy Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required.

(5) The method of inspection will be the same as prescribed in paragraph (d) of this section for preclearance inspections.

Done in Washington, DC, this 13th day of October, 1987.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–23914 Filed 10–13–87; 10:24 am]

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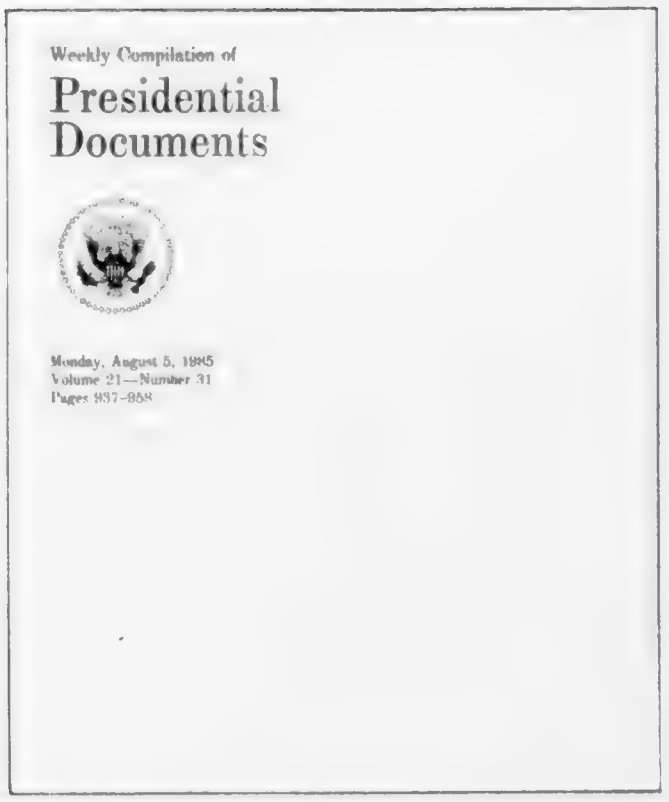

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Presidential Documents

Title 3—

The President

Memorandum of October 10, 1987

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as the President of the United States by Section 301 of Title 3 of the United States Code, I hereby authorize the Director of the Office of Management and Budget to submit the notification required by Section 251(d)(3)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 10, 1987.

[FR Doc. 87-24000
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Rules and Regulations

Federal Register
Vol. 52, No. 199
Thursday, October 15, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 316

Noncompetitive Appointment of Certain Former Overseas Employees

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to permit eligible family members of U.S. Government personnel who have served overseas to be appointed noncompetitively to Stateside civil service positions upon their return. The regulations implement E.O. 12585, which modified the eligibility criteria for appointment.

EFFECTIVE DATE: November 16, 1987.

FOR FURTHER INFORMATION CONTACT: Ed McHugh or Ellen Russell, (202) 632–6817.

SUPPLEMENTARY INFORMATION: On April 30, 1987, OPM published interim regulations in the **Federal Register** (52 FR 15705) to implement Executive Order 12585 of March 3, 1987. The order expands the eligibility of family members for noncompetitive appointment which was first provided under E.O. 12362 in May 1982.

The new Executive order revises the eligibility criteria for noncompetitive appointment. The Order:

- *Reduces* the amount of overseas employment needed to qualify for noncompetitive appointment from 24 months to *18 months;*
- *Increases* the period during which the family member can be hired after returning to the United States from 2 to *3 years* (with provision for further extension in hardship cases);
- Makes family members of *nonappropriated fund employees* who have worked overseas eligible for Stateside employment on the same basis as family members of civilian employees and military personnel; and
- Allows Federal agencies in the United States to waive requirements for a written test when hiring family members for jobs that are similar to those they held overseas.

Eligible candidates for this program must also be U.S. citizens at the time they apply for appointment in the United States and must have received a fully successful or better performance rating for their overseas service. They must provide documentation of their overseas service and family member status when applying for employment in the United States.

The provisions of Executive Order 12585 were effective upon publication of the interim regulations on April 30, 1987. During the comment period we received comments from one agency and one union. Both comments concerned the provision in § 315.608(f) for extending the normal 3-year period of eligibility in situations where a family member is incapacitated for employment or is stationed in an area with no significant Federal employment opportunities. The agency suggested OPM delegate to agencies the authority to make such extensions. The regulation already contains this provision. The union suggested the regulations contain a maximum time limit on such extensions. OPM does not believe this approach is consistent with delegating to agencies the authority to make decisions in individual cases. In addition, since the regulations clearly delineate the conditions under which an individual's period of eligibility can be extended, we do not believe it is necessary to set a maximum time limit.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only apply to Federal employees.

List of Subjects in 5 CFR Parts 315 and 316

Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM's interim regulations in 5 CFR Parts 315 and 316 published on April 30, 1987, at 52 FR 15705, are adopted as final with the following change:

§ 315.608 [Amended]

1. The definition of nonappropriated fund employee under § 315.608(b) is revised to remove the words "Army and Air Force Motion Picture Service,".

[FR Doc. 87–23800 Filed 10–14–87; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 831, 870, and 890

Civil Service Retirement, Federal Employees Group Life Insurance, and Federal Employees Health Benefits Coverage for DC Government Employees

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to reflect the exclusion of the District of Columbia (DC) Government employees first hired on or after October 1, 1987, from Civil Service Retirement coverage, Federal Employees' Group Life Insurance coverage and Federal Employees Health Benefits Program coverage. The Federal Employees' Retirement System Act of 1986 excluded these employees from these and other benefits normally accruing to Federal employees. These final regulations will update OPM's regulations and make them conform with the law as recently amended.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Subsections (f), (k), and (l) of section 207 of title II of Pub. L. 99–335, the Federal Employees' Retirement System Act of 1986, enacted on June 6, 1986, specifically excluded individuals "first employed by the government of the District of Columbia" on or after October 1, 1987, from coverage under the Civil Service Retirement System, (CSRS), the Federal Employees' Group Life Insurance (FEGLI) Program, and the

Federal Employees Health Benefits (FEHB) Program, respectively. Therefore, on May 8, 1987, OPM published interim regulations in the **Federal Register** (52 FR 17387) effective on June 8, 1987, to conform the existing regulations to the exclusions cited in the recently enacted law

Two written comments were received during the 60-day comment period. One comment was from a Federal agency. The other comment was from the DC government. Both respondents pointed out that Pub. L. 98–621, enacted on November 8, 1984, the "St. Elizabeths Hospital and District of Columbia Mental Health Services Act", afforded the Federal employees of St. Elizabeths Hospital statutory protection of many of the benefits of Federal employment they enjoyed if they accepted offers of employment with the new administrator to that facility, the DC government.

OPM was aware of this legislation and of the transfer of responsibility for St. Elizabeths Hospital from Federal authority to the DC government. We did not specifically address the Federal employees of St. Elizabeths Hospital in our interim regulations since we knew that the Department of Health and Human Services and the DC government were working together to accomplish this transition and that both parties were aware of the specificity of the law concerning the continuation of certain benefits. However, in view of the concerns expressed by both parties that the lack of a direct reference to St. Elizabeths Hospital employees in our interim regulations might lead to misunderstanding by the affected employees, we are amending the final regulations to address the continuation of retirement and health and life insurance coverage for these employees.

Waiver Of 30-Day Delay In Effective Date Of Final Regulations

Pursuant to section 553(d)(3) of title 5 of the U.S. Code, I find that good cause exists for making these amendments effective in less than 30 days. The general exclusions cited in these regulations were contained in Pub. L. 99–335 that was enacted on June 6, 1986, and have been a matter of law since that time. The specific exemptions for Federal employees of St. Elizabeths Hospital have been in effect since the enactment of Pub. L. 98–621 on November 8, 1984. These regulations are being made effective immediately so that OPM regulations will conform with these laws and to remove any areas of uncertainty concerning the benefits entitlements of Federal employees of Saint Elizabeths Hospital who might be considering job offers from the DC Government.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect future employees of the District of Columbia government only.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

5 CFR Part 870

Administrative practice and procedure; Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM's interim regulations published on May 8, 1987 (52 FR 17387), are adopted as final with the following changes:

PART 831—RETIREMENT

Subpart B—Coverage

1. The authority citation for Subpart B of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

2. In § 831.201, paragraph (g) is revised to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(g) Individuals first employed by the government of the District of Columbia on or after October 1, 1987, are excluded from subchapter III of chapter 83 of title 5, United States Code. However, employees of St. Elizabeths Hospital who were hired before January 1, 1984, and who were covered under subchapter III of chapter 83 of title 5, United States Code, and accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621, continue to be covered by this Part.

PART 870—BASIC LIFE INSURANCE

Subpart B—Coverage

3. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

4. In § 870.202, paragraph (a)(8) is revised to read as follows:

§ 870.202 Exclusions.

(a) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

5. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C. 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251, 100 Stat. 20.

6. In § 890.102, paragraph (c)(8) is revised to read as follows:

§ 890.102 Coverage.

* * * * *

(c) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621.

* * * * *

[FR Doc. 87–23799 Filed 10–14–87; 8:45 am]
BILLING CODE 6325–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1660

Allocation of Fiduciary Responsibility

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401 through 8479), as amended by Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99–556, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the Thrift Savings Plan for federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600–1699. The Executive Director of the Board is publishing in Part 1660 interim regulations concerning the procedures for allocation of fiduciary responsibilities by Fiduciaries of the Plan.

DATES: Interim rules effective October 15, 1987; comments must be received on or before November 15, 1987.

ADDRESS: Comments may be sent to: James B. Petrick, Federal Retirement Thrift Investment Board, Post Office Box 18899, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 653–2573.

SUPPLEMENTARY INFORMATION: Section 1660.1 contains definitions of the terms used in this Part. Section 1660.2 contains general provisions as to the powers, duties and responsibilities of Plan Fiduciaries. Section 1660.3 provides that a Fiduciary may allocate one or more fiduciary responsibilities to persons described in 8477(a)(3) (C) and (D). Section 1660.4 prescribes the procedures for an allocation under § 1660.3. Section 1660.5 describes the legal effect of an allocation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations will affect only internal government procedures related to the Thrift Savings Plan.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations are being published as interim regulations because the Thrift Savings Plan is now in operation and it is necessary to have procedures in place as soon as possible for the allocation of fiduciary responsibilities by Fiduciaries of the Plan.

List of Subjects in 5 CFR Part 1660

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of Code of Federal Regulations is amended to add Part 1660 to Chapter VI to read as follows:

CHAPTER IV—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

PART 1660—ALLOCATION OF FIDUCIARY RESPONSIBILITY

Subpart A—General

1660.1 Definitions.
1660.2 General.

Subpart B—Allocation Procedures

1660.3 Allocation of fiduciary duties.
1660.4 Procedures for allocation.
1660.5 Effect of allocation.

Authority: 5 U.S.C. 8477(e)(1)(E), 8474(b)(5); Section 114(a) of Pub. L. 99–556 (Oct. 27, 1986).

Subpart A—General

§ 1660.1 Definitions.

Terms used in this Part shall have the following meanings:

"Act" means the Federal Employees' Retirement System Act of 1986, as amended.

"Allocation of fiduciary duty" means the process whereby the allocating Fiduciary is legally relieved of reponsibility for the errors and omissions of the receiving Fiduciary in carrying out the allocated duty or duties.

"Board" means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

"Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board as defined in 5 U.S.C. 8401(13) and 5 U.S.C. 8474.

"Fiduciary" means a fiduciary as defined in 5 U.S.C. 8477(a)(3) (A), (B), (C), and (D).

§ 1660.2 General.

Any Fiduciary shall exercise only the powers, duties, responsibilities and obligations specifically provided under the provisions of the Act and the regulations issued pursuant thereto, or properly allocated pursuant to this Part. A Fiduciary may act in more than one fiduciary capacity. A Fiduciary shall be solely responsible for the proper exercise of that Fiduciary's own powers, duties, responsibilities and obligations only to the extent provided by the aforesaid Act and regulations or as properly allocated pursuant to this Part, and shall not be responsible for any act or failure to act of any other Fiduciary or other person except as provided therein. A Fiduciary may rely on any other Fiduciary to meet the obligations and responsibilities and exercise all duties and powers in accordance with the provisions of the aforesaid Act and regulations, and is not required, except as provided by the aforesaid Act and regulations, to inquire into the propriety of any action or lack thereof by any other Fiduciary. No Fiduciary guarantees the Thrift Savings Fund against investment loss or depreciation in asset value.

Subpart B—Allocation Procedures

§ 1660.3 Allocation of Fiduciary Duties.

Subject to the limitations contained in this Part, a Fiduciary may allocate one or more fiduciary responsibilities to a person or persons described in subparagraph (C) or (D) of 5 U.S.C. 8477 (a)(3).

§ 1660.4 Procedures for Allocation.

An allocation permitted by § 1660.3 shall be accomplished only in accordance with the following procedures:

(a) The allocation shall be in writing and shall be signed by the Executive Director and acknowledged by the receiving Fiduciary.

(b) The allocation shall set forth the duties and responsibilities allocated, either in the body of the allocation, or by reference to another ducument.

§ 1660.5 Effect of Allocation.

A Fiduciary who allocates a responsibility to another Fiduciary pursuant to this Part shall not be liable for the acts or omissions of such other Fiduciary in carrying out the allocated duties and responsibilities, except as otherwise provided in the Act.

[FR Doc. 87–23853 Filed 10–14–87; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

Olives Grown in California; Establishment of Grade and Size Requirements for Limited Use Styles of Processed Olives for the 1987–88 Season, Changes in Incoming and Outgoing Size Requirements, and Conforming Changes in the Olive Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes grade and size requirements for processed olives used in the production of limited use styles of olives such as wedges, halves, slices or segments. The olives to be used for these purposes are too small to be desirable for use as whole or pitted processed olives. However, they are satisfactory for use in the production of limited use styles where the form of the olives is changed, and their use can help the California olive industry meet the increasing market needs of the food service industry. This action also changes certain incoming and outgoing size ranges to allow smaller olives to be included in limited use styles and whole and pitted olives. Similar changes will be made in the import regulation to conform with the domestic requirements.

DATES: Interim final rule effective upon publication. Comments which are received by November 16, 1987 will be considered prior to issuance of the final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, 2085–S, Washington, DC 20090–6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V Division, AMS, USDA, P.O. Box 96458, Room 2523–S, Washington, DC 20090–6456; telephone 202–447–5697.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 932 (7 CFR Part 932), as amended (the order), regulating the handling of olives grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of California olives subject to regulation under the olive marketing order and approximately 1,390 producers in California. Approximately 26 importers of olives will be subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons in the 1972–73 crop year to a high of 146,500 tons in the 1982–83 crop year. Last year's production totaled 107,900 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Because of this and the extreme variance in the size of the 1987–88 crop the industry expects the crop to be slightly more than 63,000 tons.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking. The canned ripe olive is essentially a domestic market. Very few California olives are exported.

This action allows the use of small olives in limited use styles such as slices, wedges, and halves rather than whole or pitted processed olives. It has long been accepted and established by the industry that these smaller sizes are not desirable for whole or pitted use because their flesh to pit ratio is too low. For the 1987–88 crop year, handlers will be permitted to use a higher percentage of undersize olives than last year to meet increasing needs for sliced, wedged, chopped, and halved olives.

Natural condition (unprocessed) olives received from growers must meet incoming sizes requirements. The sizes and quality of olives delivered by growers form the basis by which they are paid for their olives. Processed olives must meet outgoing size and quality requirements to assure consumers of a product of uniform size and quality. This action will allow handlers to market more olives than would be permitted in the absence of these relaxations in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers.

This action modifies §§ 932.151, 932,152, and 932.153 of Subpart—Rules and Regulations (7 CFR 932.108–932.161) and establishes grade and size regulations for 1987–88 crop year limited use size olives and allows more small olives to be used in certain sizes of canned whole or pitted olives. These rules are issued pursuant to §§ 932.51 and 932.52 of the order. This action also makes necessary conforming changes in the olive import regulation (Olive Regulation 1, 7 CFR 944.401). The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order the same requirements must be imposed on the imports. It is AMS's view that this action will benefit importers because this action permits importers to use larger percentages of undersized limited use size olives and allows more small olives to be used in certain sizes of canned whole pitted olives.

Section 932.52(a)(3) provides that processed olives smaller than the sizes prescribed for whole and pitted styles may be used for limited uses if recommended annually by the

committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in the various size categories. The section further provides for the establishment of size tolerances.

To enhance supplies and allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1987–88 crop year (August 1–July 31). The grade requirements are the same as those applied during the 1986–87 crop year, as are the sizes. However, the size tolerances have been increased for the various categories to make more undersize olives available for use in the production of limited use styles. The size tolerance specified in §§ 932.153(b)(2), and (3) are increased from 25 percent to 35 percent; the tolerances in §§ 932.153(b)(4) and (5) are increased from 20 percent to 35 percent. Permitting handlers to use larger percentages of undersized fruit in limited use style canned olives will have a positive impact on industry returns. In the absence of this action, undersized fruit would have to be used for noncanning uses, like oil, for which returns are lower.

Section 944.401(b)(12) of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. The preceding changes authorizing certain olives to be used in limited use styles during the 1987–1988 crop year, and the changes in the limited use size tolerances require similar changes in § 944.401(b)(12) to bring the import regulation into conformity with the applicable domestic requirements.

Section 932.51 of the order specifies size designations in addition to those contained in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52). This action adds a new paragraph (g) to § 932.151 which modifies these designations to change the approximate count per pound of petites and extra large Sevillano "L" 's from 160 and 82, to 166 and 86, respectively, and changes the average count range (per pound) for extra large Sevillano "L" from 76–88, inclusive to 76–90, inclusive. This eliminates a gap between the smallest Sevillano canning size (average count 65–75) and undersize Sevillano olives (average count above 91) and also allows more small olives to be utilized.

In addition, this action also changes certain average count ranges contained in Tables I and II in § 932.152 in order to permit smaller olives to be included in the various size designations in conformity with the committee's recommendations to allow more small olives to be used for limited use styles and smaller olives to be used for whole and pitted styles. This is expected to have a positive effect on industry returns and benefit both growers and handlers.

The average count ranges per pound in Table I for Extra Large Ascolano, Barouni, and St. Agostino olives in Variety Group 1 and all Extra Large olives in Variety Group 2 are changed from 65–88 to 65–90. Because of the change in Table I, this action also makes necessary conforming changes in the olive import regulation, § 944.401(b)(3) which provides size requirements for Ascolano, Barouni, and St. Agostino olives in Variety Group 1. The minimum weight for such olives would be changed from 1/88 pound to 1/90 pound each.

In Table II, which is redesignated as Table III by this action, the average count ranges per pound for Large and Extra Large variety Group 2 olives are changed from 89–105 and 65–88 to 91–105 and 65–90, respectively. Table III is contained in § 932.152(g)(2). These changes bring the average count ranges per pound into conformity with those specified in Table I and the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Parts 52.3751–52.3764) that establishes a count of 91–105 for "large" canning size olives.

This action also establishes a new Table II in § 932.152(g)(1) with average count ranges per pound for Variety Groups 1 and 2 limited use size olives for easier reference.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the recommendation of the committee, it is determined that grade and size requirements for limited use olives for the 1987–88 crop year should be established, and that the use of small olives for such purposes during the 1987–88 crop year will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public proceedings with regard to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The 1987–88 crop year has already begun; (2) handlers are aware of this action as proposed by the California Olive Committee; (3) compliance with this regulation will require no special preparation by handlers or importers; (4) this action relieves restrictions on handlers and importers; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Parts 932 and 944

Marketing agreements and orders, Olives, California, Imports.

For the reasons set forth in the preamble, Parts 932 and 944 are amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citations for 7 CFR Parts 932 and 944 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of grade and size requirements for processed 1987–88 crop year olives for limited use.

(a) *Grade.* On and after August 1, 1987, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1987, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1987, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1987, through July 31, 1988, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1987, or after July 31, 1988.

(2) Variety group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weighs 1/90 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/90 pound;

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weighs 1/40 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/40 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which

individually weighs 1/180 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weighs 1/140 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

3. Section 932.151 is amended by adding a new paragraph (g) as follows:

§ 932.151 Incoming regulations.

* * * * *

(g) *Additional Marketing Order Size Designations.* Pursuant to the authority in § 932.51(a)(1)(ii), the following additional size designations are established:

Designation(s)	Approximate count (per pound)	Average count range (per pound)
Subpetite		181 and up.
Petite	166	141–180, inclusive.
Extra Large Sevillano "L"		76–90, inclusive.
Extra Large Sevillano "C"	70	65–75, inclusive.

* * * * *

4. Section 932.152 is amended by revising paragraphs (f) and (g) to read as follows:

§ 932.152 Outgoing regulations.

* * * * *

(f) *Size designations.* (1) In lieu of the size designations specified in § 932.52(a)(2), except as provided in § 932.51(a) (1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the marketing order size designations listed in Table I contained herein, and shall be of a size not smaller than the applicable size requirements, tolerances, and percentages listed in paragraphs (a)(2) (i), (ii), (iii), and (iv) of § 932.52.

TABLE I.—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES (PER POUND)

Size designation	Variety Group 1		Variety Group 2	
	Except Ascolano Barouni St. Agostino	Ascolano Barouni St. Agostino	Obliza	Except obliza
Small	N.A.	N.A.	N.A.	128–140
Medium	N.A.	N.A.	106–121	106–121
Large	N.A.	N.A.	91–105	91–105
Ex. Large	65–75	65–90	65–90	65–90
Jumbo	51–60	51–60	51–60	51–60
Colossal	41–50	41–50	41–50	41–50
Sup. Colossal	(1)	(1)	(1)	(1)

N.A.—Not Applicable.
[1] 40 or fewer.

(2) The size of the canned whole olives shall conform with the applicable count per pound range indicated in Table I of paragraph (f)(1) of this section. When the count per pound of whole olives falls between two count ranges, the size designation shall be that of the smaller size. The size of the other styles of canned ripe olives shall be determined prior to pitting. The average count for canned whole ripe olives is determined from all containers in the sample and is calculated on the basis of the drained weight of the olives.

(g) *Size certification.* (1) When limited size olives for limited use styles are authorized during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(i), any lot of limited use size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection for size designation if such olives are within the average count range in Table II contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

TABLE II.—LIMITED USE SIZE OLIVES

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino.	76–90, inclusive.
Group 1, Ascolano, Barouni, and St. Agostino.	91–140, inclusive.
Group 2, except Obliza.	141–180, inclusive.
Group 2, Obliza	128–140, inclusive.

(2) When limited use size olives are not authorized for limited use styles during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(ii), any lot of canning size olives may be used in the production of packaged olives for whole, pitted, or limited use styles without an outgoing inspection for size designation if such olives are within the average count range in Table III contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

TABLE III.—AVERAGE COUNT RANGES (PER POUND)

Size designation	Variety Group 1		Variety Group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni St. Agostino	Obliza	Except obliza
Small	N.A.	N.A.	N.A.	128–140
Medium	N.A.	N.A.	106–121	106–121
Large	N.A.	N.A.	91–105	91–105
Ex. Large	65–75	65–90	65–90	65–90
Jumbo	51–60	51–60	51–60	51–60
Colossal	41–50	41–50	41–50	41–50
Sup. Colossal	(1)	(1)	(1)	(1)

N.A.—Not Applicable.
[1] 40 or fewer.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

5. Section 944.401(b) is amended by revising paragraph (b)(3) and the introductory text of paragraph (b)(12) to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(3) Canned whole ripe Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties shall be of such size that not more than 25 percent, by count, of the olives may weigh less than 1/90 pound (5 grams) each except that not more than 10 percent, by count, of the olives may weigh less than 1/98 pound (4.6 grams) each:

* * * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period October 15, 1987 through July 31, 1988, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

* * * * *

6. In § 944.401(b)(12), subparagraphs (i) through (x) remove the words "25 percent" or "20 percent" wherever they appear and add, in their place, the words "35 percent."

Dated: October 7, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–23878 Filed 10–14–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) in order to temporarily place 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine and 4-methylaminorex into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on a finding that the scheduling of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine and 4-methylaminorex is necessary to avoid and imminent hazard to the public safety. As a result of this rule, the regulatory controls and criminal sanctions imposed on a Schedule I substance under the CSA will be applicable to the manufacture, distribution and possession of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine and 4-methylaminorex.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Notice of intent to temporarily place 3,4-methylenedioxy-N-ethylaphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA were published in the **Federal Register** on August 13, 1987 (52 FR 30174–75 and 52 FR 30175–77). The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473) which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place substances into schedule I of the CSA if he finds that such action is necessary to avoid and imminent hazard to the public safety. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100).

The Administrator transmitted notice of his intention to temporarily place 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services. In response to the notification, the Food and Drug Administration has advised DEA that none of the three substances being proposed for emergency scheduling are currently being investigated under the Food, Drug and Cosmetic Act nor are they the subject of approved new drug applications. Therefore, the Food and Drug Administration has no objections to the placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA. No comments have been received from any other interested parties.

Based upon the information and data contained in the notices of intent (52 FR 30174–75 and 52 FR 30175–77), the Administrator, pursuant to Section 201(h) of the CSA (21 U.S.C. 811(h)) and

28 CFR 0.100, has found that scheduling 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex in Schedule I of the CSA, on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

Regulations that are effective on October 15, 1987 and imposed on 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex are as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3, 4-methylenedioxyamphetamine or 4-methylaminorex or who proposes to engage in the manufacture, distribution, importation, exportation or research of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex shall obtain a registration to conduct that activity by October 15, 1987, pursuant to Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of, 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex which are packaged after October 15, 1987 shall comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotes for 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine or 4-methylaminorex shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the CFR.

5. *Inventory.* Registrants possessing 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex are required to take inventories pursuant to §§ 1304.11–1304.19 of Title 21 of the CFR.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the CFR shall do so regarding 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex.

7. *Reports.* All registrants engaged in the manufacture, packaging, labelling or distribution of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex are required to file reports pursuant to §§ 1304.35–1304.37 of Title 21 of the CFR.

8. *Order Forms.* Each distribution of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex requires the use of an order form pursuant to §§ 1305.01–1305.16 of Title 21 of the CFR.

9. *Importation and Exportation.* All importation and exportation of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex shall be in compliance with Part 1312 of Title 21 of the CFR.

10. *Criminal Liability.* Any activity with 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act occurring on or after October 15, 1987 is unlawful.

Pursuant to Title 5, U.S.C., section 605(b), the Administrator certifies that the temporary placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of substances with no currently approved medical use or manufacture in the United States.

It has been determined that the temporary placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby amends 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Paragraphs (g)(4) through (g)(6) are added to § 1308.11 to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(4) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA)—7404

(5) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA)—7402

(6) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline)—1590

Dated: October 2, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87–23781 Filed 10–14–87; 8:45 am]

BILLING CODE 4410–09–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government

AGENCY: Equal Employment Opportunity Commission.

ACTION: Revocation of adoption of Federal Personnel Manual (FPM) letters and Civil Service Commission (CSC) bulletins.

SUMMARY: Pursuant to Reorganization Plan No. 1 of 1978, effective January 1, 1979, all equal opportunity in federal employment enforcement and related functions vested in the former Civil Service Commission pursuant to section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16(b) and (c); section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791; the Equal Pay Act under the Fair Labor Standards Act, as amended, 29 U.S.C. 204 *et seq.*, the Portal-to-Portal Act of 1947 as amended, 29 U.S.C. 259 and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*,

were transferred to the Equal Employment Opportunity Commission (EEOC). On December 29, 1978, the EEOC adopted the substance of the following FPM letters and CSC Bulletins (See 43 FR 60901 and FPM Bulletin 720–5, dated November 29, 1979): FPM Letter 713–19, FPM Letter 713–21, FPM Letter 713–30, FPM Letter 713–32, FPM Letter 713–36, FPM Letter 713–38, FPM Letter 713–40, FPM Letter 713–42, FPM Letter 713–44, FPM Letter 551–9, CSC Bulletin 713–50, CSC Bulletin 713–43.

Guidance contained in those adopted documents is either obsolete or has been superseded by guidance issued by the EEOC. Accordingly, the EEOC has revoked its adoption of the above-referenced FPM Letters and CSC Bulletins.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Lowell, Hearings Program Division, Federal Sector Programs, Equal Employment Opportunity Commission, Room 422, 2401 E Street, NW., Washington, DC 20507, telephone: (202) 634–7833.

SUPPLEMENTARY INFORMATION: Current EEOC guidance concerning the processing of federal sector employment discrimination complaints under Title 29 CFR Part 1613, is contained in EEO Management Directive (MD) 107, dated September 1, 1987, entitled Federal Sector Complaint Processing Manual. Paragraph 3, EEO–MD 107, contains a cross-reference, where applicable, to previous guidance contained in the revoked FPM Letters/CSC Bulletins. The EEOC is disseminating copies of the manual to the EEO Directors of the various federal agencies. For additional information concerning this matter contact the above individual.

This notice has been coordinated with the U.S. Office of Personnel Management (OPM). OPM has advised the EEOC that its Issuance System Manager, Office of Planning and Evaluation, will issue a separate bulletin cancelling FPM Part 713 and those FPM Letters/CSC Bulletins previously adopted by the EEOC. Effective on the date of the publication of this **Federal Register** notice, only that guidance contained in EEO–MD 107 will govern federal sector complaint processing under Title 29 CFR Part 1613.

Accordingly, the Equal Employment Opportunity Commission hereby revokes its adoption of FPM Letters 713–19, 713–21, 713–30, 713–32, 713–36, 713–38, 713–40, 713–42, 713–44, and 551–9 and CSC Bulletins 713–50 and 713–43.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 87–23783 Filed 10–14–87; 8:45 am]

BILLING CODE 6750–06–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning November 1, 1987. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after November 1, 1987, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code 35400, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not all toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since October 1, 1987 (52 FR 34773 (September 15, 1987)). Changes in the financial and annuity markets now require an increase in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after November 1, 1987, which set reflects an increase of ¼ percent in the immediate interest rate to 8¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately and possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after November 1, 1987, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a

major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11009, 11016(c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 253–257.

2. Rate Set 70 of Appendix B is revised and Rate Set 71 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For Plans With a Valuation Date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
70	10–1–87	11–1–87	8.00	1.0725	1.0600	1.0400	7	8
71	11–1–87		8.25	1.0750	1.0625	1.0400	7	

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–23784 Filed 10–14–87; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281 (b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of November 1987.

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month:	The values if i_k are															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
November 1987	.10125	.0975	.0925	.0875	.0825	.07625	.07625	.07625	.07625	.07625	.07	.07	.07	.07	.07	.06

Issued at Washington, DC, on this 7th day of October 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-23785 Filed 10-14-87; 8:45 am]

BILLING CODE 7708-01

POSTAL SERVICE

39 CFR Part 111

Nonmailable Matter; Mail Order Drug Paraphernalia and Ballistic Knives

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual to reflect the Mail Order Drug Paraphernalia Control Act and the Ballistic Knife Prohibition Act of 1986, both enacted last year. The Mail Order Drug Paraphernalia Control Act makes it unlawful, with certain exceptions stated in the Act, for any person to use the Postal Service as part of a scheme to sell drug paraphernalia, as that term is defined by the Act. The Ballistic Knife Prohibition Act of 1986 makes ballistic knives, defined as knives with detachable blades that are propelled by a spring-operated mechanism, generally nonmailable.

EFFECTIVE DATE: December 20, 1987.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268-3076.

SUPPLEMENTARY INFORMATION: On April 29, 1987, the Postal Service published for comment in the **Federal Register** proposed amendments of 124.36, 124.55, and 124.56 of the Domestic Mail Manual to implement the two laws referred to in the **SUMMARY** above, which are parts of a legislative package entitled the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (52 FR 15513). The proposed amendments were explained in detail in the proposal and are not repeated here. Since no comments were received on the proposed amendments, they are being adopted without change. Accordingly, the Postal Service adopts the following changes to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. In 124.3, revise the heading of .36, renumber .366 as .367, and add a new .366 reading as follows:

.36 Poisons, Controlled Substances and Drug Paraphernalia.

* * * * *

.366 Drug Paraphernalia. It is unlawful to make use of the services of the Postal Service as part of a scheme to sell drug paraphernalia.

a. The term "drug paraphernalia" means any equipment, product, or material or any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (see 124.364). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or to short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

b. In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered;

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

c. 124.366 does not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute items described in 124.366; or

(2) any item that, in the normal lawful course of business, is sold through the mail, and primarily intended for use with tobacco products, including any pipe, paper, or accessory.

3. In 124.5, revise the heading of .55, the introductory paragraph of .551, .551b., .553, and .56 to read as follows:

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124.5 Firearms, Knives, and Sharp Instruments (18 U.S.C. 1715, 1716).

* * * * *

.55 Switchblade and Ballistic Knives

.551 When Mailable. Knives (including sharp pointed instruments such as stilettos which lack cutting edges) having a blade which opens automatically by hand pressure applied to a button or other device in the handle, or by operation of inertia, gravity, or both, or having a detachable blade that is propelled by a spring-operated mechanism, are mailable only when sent to:

a. * * *

b. Manufacturers of such knives, or bona-fide dealers therein, in connection with a shipment made pursuant to an order from any person designated in 124.551a. (For advertisements for the mailing of switchblade and ballistic knives, see 123.431.)

* * * * *

.553 Explantation of Mailing. When in doubt as to the mailability of a proposed shipment of ballistic or switchblade knives, the postmaster will require the mailer to furnish a written statement explaining how the mailing complies with this section. If the explanation is not satisfactory, the postmaster will forward it to the appropriate Rates and Classification Center for a ruling.

.56 Marking Parcels of Firearms, Switchblades, and Ballistic Knives. No markings of any kind which would indicate the nature of the contents will be placed on the outside wrapper or container of any parcel containing firearms, ballistic or switchblade knives.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-23851 Filed 10-14-87; 8:45 am]

BILLING CODE 7710-12-M

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39 CFR Part 266

Privacy of Information; Schedule of Fees

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service amends its Privacy Act regulations relating to fees that may be charged in connection with Privacy Act requests for records to make them consistent with the changes made in its FOIA fee schedule pursuant to the guidelines recently issued by the Office of Management and Budget (52 FR 10012 of March 27, 1987) implementing the fee provisions of the Freedom of Information Reform Act of 1986, and to reflect the increase in the directy cost to the Postal Service of duplicating records (from 10 cents to 15 cents per page).

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Program Manager, Records Office (202) 268-2931.

SUPPLEMENTARY INFORMATION: On August 31, 1987, the Postal Service published in the **Federal Register** (52 FR 32816) proposed changes to its regulations at 39 CFR 266.8 to conform the fees charged for duplication of records under the Privacy Act to the duplication fees reflected in 39 CFR 265.8(c)(4), Freedom of Information Act (FOIA) fee regulations (52 FR 13667 of April 24, 1987). No comments were received regarding these proposed changes. However, consistent with the intent of the proposed notice, a change is made to more fully conform the duplication fees under the Privacy Act with those under the FOIA by adding a sentence to § 266.8(b)(3) to read: "If duplicate copies are furnished at the request of the requester, the per page fee is charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to § 266.8(b)(1)." This change, added for clarification, is being issued as a final rule. In effect, the duplication fee assessed for processing a request for information maintained within a privacy system of records would be consistent with the fee charged for processing a request for information about an individual made by the subject of the information pursuant to the FOIA.

List of Subjects in 39 CFR Part 266

Postal Service, Privacy.

Accordingly, Part 266 of 39 CFR is amended as follows:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for Part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Section 266.8 is revised to read as follows:

§ 266.8 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit duplication of records for subject individuals (or authorized representatives) while recovering the full allowable direct costs incurred by the Postal Service.

(b) *Duplication.* (1) For duplicating any paper or micrographic record or publication or computer report, the fee is $.15 per page, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. See paragraph (d) of this section for fee limitations.

(2) The Postal Service may at its discretion make coin-operated copy machines available at any location. In that event, requesters will be given the opportunity to make copies at their own expense.

(3) The Postal Service normally will not furnish more than one copy of any record. If duplicate copies are furnished at the request of the requester, the per page fee is charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to § 266.8(b)(1).

(c) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request for similar types of records down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly.

(d) *Limitations.* No fee will be charged an individual for the process of retrieving, reviewing, or amending a record pertaining to that individual.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-23852 Filed 10-14-87; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6765]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the

effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6–month, and 30–day notification addressed to the Chief Executive Office that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1987, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal Assistance no longer Available in Special Flood Hazard Areas
		REGION I—REGULAR CONVERSIONS			
Maine	Topsham, town of, Sagadahoc County.	230122	May 30, 1975, Emerg., Oct. 16, 1987, Reg., Oct. 16, 1987, Susp.	Oct. 16, 1987	Oct. 16, 1987
		REGION III			
Pennsylvania	Avondale, borough of	421473	Apr. 22, 1980, Emerg., Nov. 4, 1987, Reg., Nov. 4, 1987, Susp	Nov. 4, 1987	Nov 4, 1986
Do.	Monroe, township of, Juniata County	421744	Apr. 22, 1980, Emerg, Nov. 4, 1987, Reg., Nov 4, 1987, Susp.	Nov. 4, 1987	Do
		REGION IV			
Florida	Dade County, unincorporated [redacted]	125098	Aug. 14, 1970, Emerg., Nov. 4, 1987, Reg., Nov. 4, 1987, Susp	Nov. 4, 1987	Do
		REGION VIII—MINIMAL CONVERSION			
Wyoming	Elk Mountain, town of, Carbon County.	560093	June 2, 1987, Emerg., Nov. 4, 1987, Reg., Nov. 4, 1987, Susp.	Nov. 4, 1987	Do

Code for reading fifth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-23816 Filed 10-14-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 86-285]

Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On February 20, 1987, the Commission published a final rule in this proceeding concerning the establishment of a fee collection program. This document corrects errors in the rules amendments portion of that document.

FOR FURTHER INFORMATION CONTACT: Brent Weingardt, (202) 632-3906.

SUPPLEMENTARY INFORMATION: 1. On FR page 5289, the Table of Contents is corrected for § 1.1105 to read: "Schedule of charges for common carrier service requests."

2. On FR page 5292, § 1.1108(b) was miscodified. The paragraphs designated as (b)(i) introductory text, (A)–(D), (ii), and (iii) are hereby correctly designated as (b)(1) introductory text (i)–(iv), (2), and (3), respectively.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87-23777 Filed 10-14-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-251]

Television Broadcasting Services; Santa Barbara, CA, et al. and Galesburg, IL, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this document, the Commission on its own motion substitutes the following UHF television channels.

1. UHF Channel 45 for 48, Bakersfield, California;

2. UHF Channel *55 for *32, Santa Barbara, California;

3. UHF Channel 57 for 41, Ventura, California;

4. UHF Channel 67 for 63, Galesburg, Illinois;

5. UHF Channel *64 for *63, Streator, Illinois.

Originally, the above substitutions were proposed in order to implement the changes proposed in *General Docket* No. 85-172, wherein the Commission proposed additional spectrum sharing to provide sufficient communication capacity for land mobile services in certain major urban areas of the country. However, in light of the fact that Docket 85-172 is still pending, and construction permits have been granted in Bakersfield and Ventura, the Commission believes that it is in the public interest to make the proposed substitutions in order to expedite service to these communities. Furthermore, final action in this proceeding is not dependent on the outcome of the larger land mobile proceeding, since for each vacant channel proposed to be removed there is a comparable substitute channel and no oppositions have been submitted. Finally interested parties should note that the temporary freeze instituted in certain metropolitan areas pursuant to MM Docket 87-268 is applicable as follows:

(1) UHF Channel 48, Bakersfield, California; no impact, construction permit awarded;

(2) UHF Channel *55, Santa Barbara, California: applications may be accepted with a waiver request;

(3) UHF Channel 57, Ventura, California: no impact, construction permit awarded;

(4) UHF Channel 67, Galesburg, Illinois: no applications will be accepted;

(5) UHF Channel *64, Streator, Illinois: applications may be accepted with a waiver request.

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-251, adopted September 5, 1987, and released October 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), in the Table of Television Allotments, amend the entry for Bakersfield, California to remove UHF Channel 48 and add UHF Channel 45; amend the entry for Santa Barbara, California to remove Channel *32 and add Channel *55; amend the entry for Ventura, California to remove Channel 41 and add Channel 57; amend the entry for Galesburg, Illinois to remove Channel 63 and add Channel 67; amend the entry for Streator, Illinois to remove Channel *64 and add Channel *63.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-23848 Filed 10-14-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-72; RM-5638]

Radio Broadcasting Services; Bartlett, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 225A to Bartlett, Tennessee, as that community's first FM service, at the request of Mid-South Frequency Monitoring Service. A site restriction of 3.2 kilometers (2.0 miles) north of the city is required. With this action, this proceeding is terminated.

DATES: Effective November 23, 1987; The window period for filing applications will open on November 24, 1987, and close on December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-72, adopted September 14, 1987, and released October 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's

copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Bartlett, Tennessee, Channel 225A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23847 Filed 10–14–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204, 641, and 651

[Docket Nos. 50828–7106 and 70620–7184]

Reef Fish Fishery of the Gulf of Mexico and Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rules; notice of OMB control numbers.

SUMMARY: This rule makes effective sections in the final rule implementing mandatory reporting requirements prescribed in the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) and in the final rule implementing Amendment 1 to the Fishery Management Plan for the Northeast Multispecies Fishery. The Office of Management and Budget (OMB) has approved information collection requirements (ICR) of § 641.5(g) of the Reef Fish Fishery FMP and § 651.22(f) of the Northeast Multispecies Fishery FMP Amendment 1.

EFFECTIVE DATE: Sections 641.5(g) and 651.22(f) are effective October 2, 1987.

FOR FURTHER INFORMATION CONTACT: William R. Turner (Reef Fish Plan Coordinator), 813–893–3722, or Peter D. Colosi, Jr. (Multispecies Plan Coordinator), 617–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: On September 23, 1987 (52 FR 35717), NOAA published a final rule implementing mandatory reporting requirements prescribed in the final rule for the Reef Fish Fishery which becomes effective October 23, 1987. On October 2, 1987, OMB approved the ICR of § 641.5(g) for the Reef Fish Headboat logbook. On September 17, 1987 (52 FR 35093), NOAA published a final rule implementing Amendment 1 to the Northeast Multispecies Fishery FMP which was effective October 1, 1987. On October 2, 1987, OMB approved the ICR of § 651.22(f) for the Northeast Multispecies exempted fishery reporting revisions. This notice informs the public of the OMB approval of §§ 641.5(g) and 651.22(f) under control number 0648–0016.

Dated: October 8, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

NOAA amends 50 CFR Part 204 as set forth below:

PART 204—[AMENDED]

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. The table in § 204.1(b) is amended by adding §§ 641.5(g) and 651.22(f) in numerical order to read as follows:

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
. . . . .	
§ 641.5(g)	—0016
§ 651.22(f)	—0016
. . . . .	

[FR Doc. 87–23834 Filed 10–14–87; 8:45 am]

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Proposed Rules.

Federal Register
Vol. 52, No. 199
Thursday, October 15, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

Limes and Avocados Grown in Florida; Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 911 and 915 for the 1987–88 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by October 26, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090–6456, telephone 202–447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order Nos. 911 (7 CFR Part 911) and 915 (7 CFR Part 915), regulating the handling of limes and avocados grown in Florida. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes and 34 handlers of Florida avocados under these marketing orders, and approximately 260 lime producers and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee unanimously recommended 1987–88 fiscal year expenditures of $259,000 and an assessment rate of $0.15 per bushel of fresh limes shipped under M.O. 911. In comparison, 1986–87 fiscal year budgeted expenditures were $204,000, and the assessment rate was $0.15. Major expenditure categories in the 1987–88 budget are $121,000 for program administration, $25,000 for market development, and $113,000 for research. Assessment income for 1987–88 is expected to total $210,000, based on shipments of 1,400,000 bushels of limes. Interest income will amount to $1,000. The committee also unanimously recommended that excess 1986–87 assessments ($36,763) be placed in its reserve, resulting in a reserve well within the maximum authorized under the order. Committee reserves and other available funds amounted to about $137,538 on March 31, 1987 (the end of the 1986–87 fiscal year), and will be available to cover the anticipated $48,000 deficit for 1987–88.

The Avocado Administration Committee unanimously recommended a 1987–88 fiscal year budget with estimated expenditures of $200,000 and an assessment rate of $0.11 per bushel of fresh avocados. In comparison, 1986–87 fiscal year budgeted expenditures were $193,000 and the assessement rate was $0.11. Major expenditure categories in the 1987–88 budget are $120,000 for program administration, $25,000 for market development, and $55,000 for research. Assessment income for 1987–88 is expected to total $132,000, based on shipments of 1,200,000 bushels of avocados. Interest income will amount to $10,000. The committee also unanimously recommended that excess 1986–87 assessments ($54,957) be placed in its reserve, resulting in a reserve well within the maximum authorized under the order. Committee reserves and other available funds amounted to about $100,390 on March 31, 1987 (the end of the 1986–87 fiscal year), and will be available to cover the anticipated $58,000 deficit for 1987–88.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional cost may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for both programs need to be expedited. The committees need to have sufficient funds to pay their expense which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, Limes (Florida), and Avocado (Florida).

For the reasons set forth in the preamble, it is proposed that §§ 911.226 and 915.226 be added as follows:

1. The authority citation for both 7 CFR Parts 911 and 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The proposal is to add new §§ 911.226 and 915.226, to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.226 Expenses and assessment rate.

Expenses of $259,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.15 per bushel of limes is established for the fiscal year ending March 31, 1988. Unexpended funds from the 1986–87 fiscal year may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.226 Expenses and assessment rate.

Expenses of $200,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.11 per bushel of avocados is established for the fiscal year ending March 31, 1988. Unexpected funds from the 1986–87 fiscal year may be carried over as a reserve.

Dated: October 7,1987.

Deputy Director,

Robert C. Kenney,

Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–23879 Filed 10–14–87 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1030

[Docket No. AO–361–A25]

Milk in the Chicago Regional Marketing Area; Emergency Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts, on an expedited basis, amendments to the order regulating the handling of milk in the Chicago Regional marketing area based on industry proposals considered at a public hearing held at Madison, Wisconsin, on June 2–4, 1987. It establishes transfer credits on movements of bulk milk from pool plants to distributing plants for Class I use. One credit, the transportation credit, reimburses distributing plant handlers from marketwide pool funds up to .28 cents/cwt./mile on such tranfer milk. The other credit, the assembly credit, provides an 8-cent per cwt. pool reimbursement to pool plant handlers who assemble milk for transfer to bottling plants.

Marketwide service payment program were authorized by Congress when it amended the Agricultural Marketing Agreement Act of 1937 by the Food Security Act of 1985. The Food Security Improvements Act of 1986 provided further that any program providing payments for marketwide services adopted by the Secretary must be implemented not later than 120 days after a hearing is conducted. Therefore, the order changes must be effective by November 6, 1987; however, for administrative purposes November 1 is a preferable effective date. Accordingly, a recommended decision and the opportunity to file exceptions thereto have been omitted. Other issues considered at the June hearing will be dealt with in a later decision on this record.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote more orderly marketing of milk by producers and regulated handlers.

This action does not change the current regulatory status of any pool plant located in the Chicago Regional marketing area. It does reimburse to handlers, from pool funds, some of the costs involved in getting milk to bottling plants. This action helps equate the cost of milk for fluid handlers who receive milk by transfer with the cost of milk for fluid handlers who received milk directly from farms. This action also helps equate the monetary returns of handlers who ship milk to bottlers for Class I uses with the returns of handlers who keep their milk and realize marketing margins on finished products. The economic impact of these provisions on dairy farmers whose milk is pooled is expected to be minimal.

Prior documents in this proceeding:

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice (7 CFR Part 900), at Madison, Wisconsin on June 2–4, 1987. Notice of such hearing was issued on May 15, 1987 and published May 19, 1987 (52 FR 18894).

Interested parties were given until July 9, 1987, to file post-hearing briefs on proposals for marketwide service payments (numbers 1, 2, 3, 4, 5, and 11 as published in the hearing notice).

The material issues on the record of the hearing relate to:

1. Marketwide service payments.
2. Performance standards for pool plants.

3. Definition of supply plant and reserve supply plant.
4. Definition of producer milk.
5. Location adjustments.
6. Omission of a recommended decision and the opportunity to file written exceptions thereto with respect to material issue number 1.

This decision deals with issues 1 and 6. The remaining issues will be considered in a later decision on this record.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Marketwide Service Payments.

Payments from the Order 30 pool funds should be provided to those handlers who perform certain marketwide services. Payments should be made to distributing plant handlers in the form of a transportation credit on bulk Class I milk received by transfer from pool plants and to pool plant handlers in the form of an assembly credit on milk tranferred to distributing plants for Class I use.

The transportation credit, in most cases, would be an additional credit for distributing plant handlers on receipts of milk from other pool plants, the other credit being the location adjustment such handlers already receive on certain transfer. A transferee handler would be reimbursed from pool funds for a portion of the hauling costs through a transportation credit equal to .28 cents per mile-per hundredweight times the miles between the shipping and receiving plants and less the difference in location adjustments for the zones where the two plants are located if the milk movement is to a higher-priced zone. For instance, the per hundredweight transportation credit for a distributing plant in Zone 1 that received milk from a pool plant located 50 miles away in Zone 4 would be determined by multipling .28 cents times 50 miles, which equals 14 cents, and subtracting the difference in location adjustments for the two plants of 9 cents (the Zone 1 adjustment is zero and the Zone 4 adjustment is 9 cents). Thus, the transportation credit from the pool would be 5 cents.

At times the transportation credit would be at the maximum level of .28 cents per mile—per hundredweight times the miles between the transferor-transferee plants. This would occur in those cases where a distributing plant handler would not receive any location adjustment credit because either the transferor plant is located closer to Chicago than the transferee plant or both plants are in the same zone. There are also instances when no transportation credit would apply. This would happen when the difference in location adjustments is greater than the amount computed by multiplying .28 cents per mile—per hundredweight times the miles between the two plants. For example, a distributing plant in Zone 1 receiving milk from a pool plant located five miles away in Zone 2 would not receive a transportation credit. This would be the case because the location adjustment in Zone 2 is 3 cents, which is greater than .28 cents times 5 miles, or 1.4 cents.

The volume of Class I milk eligible for the combined hauling credit would be that currently assigned pro rata to receipts during the month of bulk fluid milk products from other pool plants multiplied by 110 percent. And, as indicated above, the transportation credit would apply to all movements of milk for Class I uses from transferor to transferee (distributing plant) regardless of the direction of the milk movements.

The assembly credit is a credit to the transferor-plant handler on bulk transfers to pool distributing plants for Class I use. The transferor plant, year round, would receive an 8-cent per hundredweight credit on its pro rata share of shipments of Class I milk to a bottler, determined on the same basis as described above.

Included in the hearing notice were proposals of Central Milk Producers Cooperative (CMPC), a federation of 11 dairy-farmer cooperatives, which would provide for payments from the Order 30 pool to those who perform certain marketwide services. Under its proposals, there would be payments made to: (1) Distributing plant handlers in the form of a transportation credit on Class I milk received by transfer from pool plants; (2) supply plant handlers in the form of an assembly credit on all milk transferred to distributing plants; (3) producers via distributing plant handlers in the form of a direct-delivery differential on all milk shipped from farms to distributing plants; and (4) producers via supply plant handlers in the form of a divert-transfer type of direct-delivery differential on all milk shipped from farms to distributing plants.

The transportation credit proposed by CMPC would provide for an additional credit at the transferee plant (i.e., distributing plant) on fluid milk products transferred in bulk between pool plants. Together with the location adjustment credits that are already in the order, each distributing plant handler would receive a total credit of .42 cents and .28 cents per mile—per hundredweight on receipts of bulk fluid milk products by transfer from pool plants for Class I uses. The rate of .22 cents would apply during the period of March through July and the .28 cent rate would apply for the August through February period. The volume of Class I milk eligible for the combined hauling credit would still be assigned pro rata to receipts during the month of producer milk and of bulk fluid milk products from other pool plants as a group; however, the milk received by transfer which is eligible for the credit would be multiplied by 110 percent and further assigned for transportation credit starting with the receipts from the nearest plant (i.e., sequentially instead of proportionately). An exception to this additional credit would occur when an adjustment for location differences between a transferor plant and a transferee plant already yields a rate greater than the rates proposed. In this case, the greater rate would still apply. One final feature of this proposal is that it would apply to all movements of milk for Class I uses from transferor to transferee, regardless of the direction of the milk movements (i.e., the traditional north and south movements and movements from south to north and west to east). Therefore, movements of milk which presently go against the grain, from a plant in a zone with a higher price than that of the distributing plant to which the milk is being transferred, and presently do not receive any price adjustment for location differences would be given a transportation credit at the full rate proposed.

CMPC's proposed assembly credit would also provide a deduction from the handler's obligation to the pool. As proposed, supply plant handlers, which transfer milk to distributing plants would be entitled to a credit of 6 cents or 8 cents per hundredweight. The 6 cents per hundredweight would apply during the period of March through July and the 8 cents per hundredweight would apply for the August through February period. This credit would apply to the total amount of milk transferred and not just on the Class I portion as proposed for the transportation credit.

The direct-delivery differentials proposed by CMPC would be deducted in the uniform price computation. Producers would receive 6 cents or 8 cents per hundredweight of milk shipped directly from their farms to the distributing plants. As with the assembly credit, the 6 cents and 8 cents per hundredweight would apply during March through July for the former and

during August through February for the latter and the payment would be based on the actual amount of the shipment. As proposed, the distributing plant handlers would be obligated to pay these proceeds to those particular producers who shipped to them directly.

The fourth marketwide service payment proposed by CMPC would provide for further deductions from the uniform price computation in order to compensate those particular producers whose milk was delivered directly to distributing plant handlers by divert-transfer. The specifics of this payment are identical to those for the direct-delivery differentials except that a supply plant handler that diverts milk to a distributing plant would be responsible for the direct-delivery differential payment to producers.

Other proponents, The Southland Corporation and Kraft, Inc. (Southland and Kraft), also offered a proposal to consider marketwide service payments. Dean Foods Company (Dean) originally was a co-proponent with these handlers, but at the hearing and in its brief Dean supported CMPC's proposals on marketwide service payments. The Southland and Kraft proposal, however, is basically a modification of CMPC's proposals for assembly credits, direct-delivery differentials and divert-transfer type of direct-delivery differentials. As such, Southland and Kraft proposed that payments from the Order 30 pool should be made to those who make milk available for Class I uses at all pool plants, regardless of whether the receiving plant is a distributing or supply plant. Also, they proposed that beyond Zones 1 and 2, the per hundredweight rate should decrease one cent for each more distant zone until no payment is realized.

As with the CMPC proposal, Southland and Kraft's assembly credit would be a deduction from the handler's obligation to the pool and the rates used would be 6 cents per hundredweight during the March-July period and 8 cents per hundred weight during the August–February period. However, the similarity ends there because: (1) Southland and Kraft's assembly credit applies to any pool plant (supply or distributing) that transfers milk to another pool supply or distributing plant, whereas CMPC's credit is for transfers from a supply plant to a distributing plant only; (2) Southland and Kraft's assembly credit would apply only on the Class I portion of the transfer whereas CMPC's would be based on the actual amount of the transfer; and (3) Southland and Kraft's assembly credit decreases 1 cent per zone for transferee plants located beyond Zone 2 whereas CMPC's credit is constant throughout the marketing area.

Southland and Kraft's direct-delivery differential and divert-transfer type of direct-delivery differential, also like the CMPC proposals would be a deduction in the uniform price computation at the 6 cent and 8 cent per hundredweight rates. However, as with Southland and Kraft's assembly credit proposal, these proposed differentials would be paid only on the Class I portion of the farm deliveries to pool plants at decreasing rates beyond Zone 2.

In its brief, Southland, on its own behalf, modified its proposal to provide for an assembly credit and direct-delivery differential on milk moved to plants for Class I and Class II uses. Also, both the assembly credit and direct-delivery differential, year-round, would be 8 cents per hundredweight for plants in Zones 1 and 2, 7 cents per hundredweight for plants in Zones 3 and 4, and 6 cents per hundredweight for plants located beyond Zone 4.

In its brief, Kraft did not concur with the Southland modification of the assembly credit and direct-delivery differentials. Furthermore, Kraft took a supporting stance concerning CMPC's proposed transportation credit, and suggested limiting the transportation credit to transfers of milk which exceed 60 miles in order to encourage direct deliveries of close-by milk, while compensating handlers when nearby milk is unavailable.

At the hearing, two farmer organizations, National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC), opposed the CMPC proposals and the part of the Southland and Kraft proposal which deals with assembly credits. NFO and FUMMC did support the Southland and Kraft concept of direct-delivery differentials and divert-transfer type of direct-delivery differential; however, they did not favor the decreasing-rate schedule.

Also at the hearing, a proprietary group, the Trade Association of Proprietary Plants (TAPP), said that CMPC's proposed transportation credit had merit although they questioned the need for a reduced rate during the flush months, because in their opinion both rates are sufficiently below actual hauling costs to discourage unnecessary milk movements. In its brief TAPP supported that proposal suggesting the following limitations:

1. If a distributing plant receives enough direct-shipped milk to satisfy its Class I needs, then there would be no transportation credit on shipments received from any other pool plant, be it affiliated, (i.e., the distributing plant and supplying pool plant are owned by the same entity), or non-owned.

2. If a distributing plant does not receive enough direct-shipped milk to satisfy its Class I needs, then there would be a transportation credit on shipments received from other pool plants, however, such supplemental shipments would have to come from affiliated pool plants and the transportation credit would be snubbed at that amount resulting from shipment between the closest distributing plant-supplying pool plant pairing of affiliated plants. Only if a distributing plant does not receive enough direct-shipped milk to satisfy Class I needs and has no affiliation with other pool plants would a transportation credit apply on shipments from non-owned supplying pool plants.

Notwithstanding its support for a transportation credit, TAPP, in general, opposed all marketwide service payments. Wisconsin Cheesemakers Association (WCMA) likewise stated that the transportation credit proposal was justifiable but opposed the other marketwide service payment proposals. However, in its brief, WCMA suggested that the rate be reconsidered. Instead of the .28 cent and .22 cent per mile rate proposed, they called for the rate to be constant throughout the year, set at 50 percent of actual transportation costs. Utilizing the data introduced at the hearing, they arrived at a rate of .21 cents.

CMPC is composed of the following 11 dairy cooperatives: Alto-Golden Guernsey Cooperative, Associated Milk Producers Inc.–Morning Glory Farms Region, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative, and Woodstock Progressive Milk Producers Association. CMPC members account, in the aggregate, for approximately 80 percent of the milk delivered monthly to Order 30 pool plants. Also each month, approximately 94 percent of the milk allocated to Class I is received by Order 30 pool plants subject to the CMPC announced terms of sale.

In support of its proposal for payment from the Order 30 pool for a transportation credit, the spokesman for CMPC claimed that the present location adjustments do not adequately cover the cost of hauling milk from a supply plant

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to a bottling plant, a milk movement that involves approximately 116 million pounds per month or 40 percent of the milk needed for fluid use, nor do they recognize all ordinary movements of milk for fluid use. He stated, however, that because the 1985 Farm Bill amended the Agricultural Marketing Agreement Act (Act) to allow payments from the pool for services of marketwide benefit, now both of these problems can be simultaneously resolved.

Proponent testified that other approaches to solving the problem of inadequate location adjustments were not acceptable. One approach, to increase the location adjustment between plants, he said, would not only increase the transportation rate but also decrease the uniform price for most producers. This, he said, could result in a mass exodus of producers from the pool. He added that one other approach, to increase the Class I differential, repeatedly was denied by the Department for hearing.

The proponent claimed that the rate now employed under location adjustments is clearly outdated. Proponent introduced an exhibit into the record to show that distributing plant handlers, on average, are presently paying 72 percent of the cost of hauling milk from supplying plants to their bottling operations. However, proponent also showed that when the proposed $.0028 per mile rate was applied, handlers would have to pay an average of only 35 percent of the actual cost of hauling. Thus, he said, CMPC's goal of effectively increasing the rate applicable on all transfers without completely recovering the hauling costs for most fluid handlers would be accomplished.

Proponent testified that present location adjustment provisions were structured on the premise that milk moves from the milkshed in the north to the city of Chicago in the south. Proponent's claim is that milk no longer just moves in a north-south direction but also in south-north and west-east directions because the bottling industry has developed along the eastern side of the marketing area. Proponent added that milk moves in any direction in which it is economically feasible to satisfy the needs of the fluid sector. Therefore, it was their belief that these new provisions should accommodate everyday milk movements.

The proponent also stated that CMPC proposed a lower rate of $.0022 per mile applicable during the period of March through July, in order to discourage milk from moving long distances during the flush. Although transportation costs do not vary seasonally, proponent believes that it is not necessary for the order to provide the same rate for transportation during the period of higher production as it does for the short production months.

Proponent testified that a sequential assignment of transfers would help assure that the transportation credit is not abused. Such a change, he said, would encourage transfers from pool plants located the shortest distance from the receiving plant.

NFO and FUMMC both opposed CMPC's transportation credit proposal. Their spokesmen concurred that such credit is not advisable because it would take money out of the pool, thereby decreasing the blend price. Also, it was their view that a south to north shipment is inefficient and uneconomic. FUMMC added that the transportation credit would encourage less efficient milk movements. Taking into account that the haul of direct-shipped milk is highly subsidized by bottlers, FUMMC believes that the extra credit to handlers would be more than enough to get them to switch from direct to transfer milk.

In support of its proposal for payment from the Order 30 pool for an assembly credit, a CMPC spokesman claimed that the cost of supplying milk to distributing plants is not borne evenly by all pool supply plants or their associated producers. Proponent stated that although 40 percent of all the milk needed by bottling plants is received by way of transfer, i.e., roughly 116 million pounds per month, only some supply plants actually meet these needs while others realize manufacturing margins from retained milk. Yet, he added, all draw equally from the pool money generated by the Class I value of milk supplied by the performing plants.

The spokesman stated that the assembly credit which they proposed fits the description of a marketwide service benefit. As proponent took note in it statement from the Department's earlier decision which dealt with this same issue, the entire market benefits from market balancing activities performed by certain handlers; therefore, all producers should share in the cost of providing these services.

In its brief, proponent pointed to statistics presented at the hearing to show the contrast between those who perform for the fluid market and those that do not. Proponent showed that during the period of September 1986–April 1987, CMPC member plant shipments to distributing plants averaged 38 percent of monthly receipts. On the other hand, for the period August 1984–January 1985, there were 66 pool supply and reserve supply plants that shipped less than 5 percent of their producer receipts.

Proponent stated that the assembly credit rate proposed would only provide partial compensation. This is so, he said, because CMPC did not want the Federal order to be an establisher of rates. In its brief, CMPC added that the rate proposed is constant over all 16 zones because this added incentive is needed to move milk from supply plants to distributing plants irrespective of the zone in which the bottler is located. Proponent acknowledged that the Chicago metroplitan area exhibits the greatest deficit of producer milk production in relaton to consumer demand. However, CMPC holds the view that there is a demand for milk at bottling plants located in farther-out zones that may be shipping packaged milk into the Chicago area to meet consumer demands for fluid milk. Proponent added that the distributing plants in the outer zones face steep competition with the manufacturing plants for their milk supplies.

One final point of the proponent was that the credit would apply only on actual shipments to pool distributing plants because of the fact that retained milk realizes marketing margins. It would, however, apply on the entire shipment regardless of the use made of it by the bottling handler. Otherwise, according to proponent, shipping handlers would request (but not all would get) Class I status for the milk that they transfer to bottlers.

Alto-Golden Guernsey (AGG), a member of CMPC which operates three reserve supply plants and two distributing plants regulated under Order 30, gave a minority statement regarding who should be entitled to the assembly credit. It was AGG's view that milk shipments from any pool plant to a distributing plant should entitle the transferor, whether supply plant or another distributing plant, to the credit. This is consistent, a spokesman said, with the current location adjustment provisions and the CMPC proposed transportation credit, which allow distributing plants a credit on receipts of milk from any pool plant.

NFO, FUMMC, TAPP, and WCMA all opposed the assembly credit proposal because they believe such costs should be paid through over-order charges by the handlers who receive the milk. NFO added that the proposed rate may be set at a point where some supply plants would cover all operational costs because they believe that efficient reloads can operate at the 8 cent per hundredweight level or less.

In support of its proposed direct-delivery differentials, the CMPC spokesman stated that such payments

would help preserve the direct-shipped milk and divert-transfer milk that currently moves to fluid handlers. The proponent claimed that direct farm to distributing plant type of shipments supply a monthly average of 173 million pounds or 60 percent of the milk needed each month at the bottling plants, with 81 million pounds being direct-shipped milk and 92 million pounds being divert-transfer milk. These milk movements, he said, are the most efficient and should be encouraged.

Proponent testified that the differentials should apply on the entire shipment to a distributing plant, because to limit it to anything less could result in producers receiving varying values based on handlers' Class I utilizations. In addition, CMPC, in its brief, claimed that the Food Security Act of 1985 specifically provides for such payments out of pool funds irrespective of the use classification of such milk. CMPC also stated that to limit the credit based on a plant's Class I utilization clearly would violate the marketwide pooling requirement of the Act, and in effect, create an individual-handler pool. It was CMPC's opinion that any such proposal would lead to producers switching to the plants with highest utilization. This is turn would cause those plants with relatively lower utilization to match the extra payment to retain supplies, and thus, costs would increase. CMPC added that limiting the credit based on a plant's Class I utilization would also lead to producers shipping milk farther distances to get to the highest utilization plants, at least further than necessary to derive the benefit that would be secured by CMPC's proposal.

Southland and Kraft, co-proponents of a proposal which basically modifies the CMPC assembly credit and direct-delivery differential proposals, each operate in the Chicago Regional market. Southland has one and Kraft five regulated reserve supply plants. A spokesman for Southland and Kraft claimed that such modifications are necessary because as proposed, the CMPC assembly credit and direct-delivery differential proposals would both create an unfair price difference between competing handlers and give special incentives for moving milk to distributing plants located in areas of high milk production when not needed.

The spokesman, referring to a 1977 decision of the Secretary to amend the Chicago Regional order, pointed out that it has been Department policy to promote a more equitable and competitive basis between a handler with Class I and II products produced in one plant and a handler with these same products produced in separate, specialized plants. However, he stated that CMPC's proposal, if not modified, would result in distributing plants with other than Class I products having an advantage over supply plants that produce like Class II or III products. This is so, he said, because producers or handlers who ship to any distributing plant would collect the 6 or 8 cents per hundredweight on the entire load no matter what class-use was made of it, whereas if they were to ship milk to any supply plant, they would not receive extra monies from the pool even if such shipment was directed for Class I use.

He added that such a proposition ignores the basic rationale for marketwide service payments of supplying the Class I needs of the market. Also, he said, it creates an incentive to couple Class II and III operations with Class I operations.

In its brief, Kraft claimed that the Southland and Kraft proposal would more effectively achieve the intent espoused by CMPC (i.e., meeting the fluid needs of the market) and would avoid inequities between Class II handlers. However, in its brief, Southland alone took the revised stance that the assembly credit and direct-delivery differential be provided for milk moved to plants for both Class I and Class II uses in order to maintain competitive equity among handlers producing like products. Kraft stood firm in its view that it is inappropriate to provide credits for milk shipments used to produce Class II products.

It was Southland and Kraft's view that prior to deciding which direct-delivery differential proposal had merit, the Secretary would have to answer the question of whether or not either proposal is authorized by the Act because both cause unequal payments to producers for milk delivered to similarly situated plants, depending upon the utilization or status of the plant. Southland and Kraft pointed out that under the CMPC proposal, producers delivering milk directly to a distributing plant would be eligible to receive a credit, while producers deliverying to a neighboring supply plant, at the same location, would not be eligible for such additional compensation. In addition, under their own proposal, the amount of credit passed on by handlers to producers would vary, depending on the Class I utilization of the plant.

In support of their proposal to gradually reduce the assembly credit and direct-delivery differential to zero in the outer zones, the Southland and Kraft spokesman claimed that it would provide an incentive for producers and shipping plants to supply the fluid needs of Class I handlers in the milk-deficient zones of the market. Outside of Zones 1 and 2, he said, there is sufficient milk to meet the consumer fluid milk demands. Southland and Kraft introduced an exhibit into the record to show that the Chicago area was milk-deficient relative to consumer demand, having to reach out 90 miles to meet that demand. Two other consumption centers of the market shown on the exhibit, Madison and Milwaukee, Wisconsin, had sufficient milk production in their own and surrounding counties. Therefore, Southland and Kraft believes that the credits are acceptable incentives for the Chicago area, specifically Zones 1 and 2, and that they compensate for the hauling shortfall built into the present location adjustment system, but elsewhere in the market they are not acceptable. The spokesman added that in other markets, direct-delivery differentials are given on milk deliveries to bottlers located in the major consumption area, not in the milkshed.

One other point put forth by the spokesman was that the assembly credit should be decreased in direct relationship to the need for assembled milk. If a bottler is located in a sea of milk, then the handler's milk supply should be obtained by direct-delivery; there should be no encouragement to pass through a supply plant before delivering it to plants so situated. However, for plants located in Chicago, he said, running the milk through a reload from some supply areas may be the most efficient system.

In its brief, Southland took the revised stance that year-round, the assembly credit and the direct-delivery differentials should be 8 cents per hundredweight for plants in Zones 1 and 2, 7 cents for Zones 3 and 4, and 6 cents for the remaining zones. Citing several marketing facts brought out at the hearing, such as distributing plants are located throughout the 16-zone area and that these plants currently receive milk by transfer, including the plants in Zones 8 through 16, Southland stated that while the need for assembling and transferring milk may not be as great in some parts of the market as others, it is an important part of milk procurement throughout the Order 30 region.

Kraft, in its brief, stood firm that these payments should only apply to shipments to the inner zones of the market where milk supplies are short and the need for milk is greatest. Furthermore, Kraft stated that CMPC's proposals would reward those who made close-by shipments the same as

those who moved their milk relatively longer distances. Therefore, Kraft holds the view that under such a scheme, shipments to bottlers in the milkshed would be preferred since one would reap the same reward at less expense. Kraft added that if the credits are allowed on shipments to bottlers in the milkshed, then inefficient transfers of milk would ensue, in place of direct shipments, so that plant operators could take advantage of all the new credits.

As stated, Dean, a major milk handler in the Chicago Regional market with three distributing plants, two reserve supply plants, and one supply plant regulated under Order 30, withdrew as a co-proponent of alternative proposals and gave its support to CMPC's proposals. In its brief, Dean stated that the assembly credit and direct-delivery differentials should apply towards an entire shipment, not just the portion used in Class I, because operators of supply plants and producers ship to bottlers believing that their milk will be used in Class I products. The cost over the entire load is the same, Dean said, no matter what its ultimate use is at the plant. Therefore, they should not be deprived the extra monies when a distributing plant handler decides to use only part or none of the load in the bottle. Dean warned that a handler who owns both a bottling and shipping plant could decide to assign all Class I to its own shipments, which, Dean believes, would not be in the best interest of orderly marketing. One other outcome, Dean stated, could be that the shippers, either plant operators or producers, would ssek out the higher Class I use bottlers and avoid those with relatively low Class I use.

Dean also stated opposition to the decreasing payment by zone proposed by Southland and Kraft, contending that milk delivered to a plant in Green Bay (Zone 12) is equally valuable to the fluid market as that delivered to plant in Milwaukee (Zone 4) or Chicago (Zone 1).

Although they favored the Southland and Kraft direct-delivery differential proposal inasfar as it limits such payments to the Class I use at the receiving plant, NFO and FUMMC opposed the decreasing rate schedule because they believe that distributing plants located beyond Zone 2 also serve the fluid needs of the milk-deficient Chicago area. In their opinion it is equally important that all bottling plants be granted identical differentials in order to draw milk to them.

TAPP and WCMA both opposed any form of direct-delivery differentials because in their view, such payment, especially to plants located beyond Zone 6, would be disruptive to orderly marketing. This is so, they said, because direct-delivery differentials would give bottling plants a 6 or 8 cent competitive advantage over proprietary manufacturing plants located in the same area. Such proposals, they said, would undermine the manufacturing segment of the dairy industry. They added that the Southland and Kraft modification, i.e., payment on the Class I portion of a shipment, would undermine the marketwide concept of pooling. One further point raised was that the direct-delivery differentials proposed may not even be authorized by the Food Security Act of 1985, which allows for payment from the pool to handlers, not to producers.

a. *Transportation Credits.* The order should provide transportation credits at the rate of .28 cents per mile per hundredweight to pool distributing plant operators for the Class I portion of bulk milk received by transfer from other pool plants. The volume of such transfers on which the transportation credit would be allowed would be determined on the same basis that location adjustment credits are determined for Class I milk from pool plants. The transportation credits would thus be assigned pro rata to Class I receipts from each pool plant multiplied by 110 percent. The transportation credits would be based on the distance between the distributing plant and the shipping pool plant, as determined by the market administrator, and would be applicable to movements of milk in any direction.

Supply plants are a major source of milk for distributing plants in the Chicago order. In 1986, actual transfers of milk from supply plants and reserve supply plants to pool distributing plants averaged bout 116 million pounds per month, varying from less than 100 million pounds in June and July to about 145 million pounds in October and November. In 1986, 40.2 per cent of the total raw milk physically received at distributing plants was received by transfer from supply plants and reserve supply plants.

In the Chicago market, the distributing plant operator pays the cost of hauling to the distributing plant milk purchased from a supply plant. The distributing plant operator receives any allowable Class I location adjustment under the order on Class I milk at the shipping plant zone. In contrast, milk that a distributing plant receives directly from dairy farms is accounted for at the order prices applicable for the zone where the plant is located. If authorized by the producer, the handler may deduct from payments to a producer the cost of hauling milk from the farm to the plant. Accordingly, if the hauling deduction is made, the handler's lowest cost source of milk should be milk that is recieved directly from producers.

The order provides a location adjustment to the Class I price for milk obtained from a plant located in a zone more distant from Chicago than the distributing plant. This pricing system is intended to recognize the cost of moving milk toward the major population center in the market, Chicago. However, the location adjustment rate of 2.3 cents per hundredweight per 15 miles provided in the order (equal to 1.5 cents per hundredweight per 10 miles) no longer adequately reflects actual hauling costs for moving milk from one plant to another plant. Thus, the additional cost not covered by the order for transferring milk from another pool plant to a distributing plant creates an inequity at a given location between handlers who receive milk via other plant transfers and those who receive milk by direct shipments from the farms of producers. Where there may not be adequate supplies of direct-shipped milk to meet the Class I needs of distributing plants, plants that rely on supply plant milk have some competitive disadvantage compared to those plants that are able to meet their needs with direct-shipped milk.

In addition to the inadequacy of the location adjustment rate provided in the order, the very nature of the market tends not to encourage the movement of milk to distributing plants for Class I uses because manufacturing plants are located throughout the marketing area and provide strong competition for producer milk supplies. The result is that distrubuting plants have difficulty attracting adequate milk supplies at prices that allow them to be competitive with handlers under other nearby orders.

It is not the purpose of the Federal milk marketing order program to arrange for a supply of milk for any milk plant, or to find an outlet for any supply of milk. However, contrary to views expressed by opponents at the hearing, a major purpose of the order program is to assure an adequate supply of pure and wholesome milk for the fluid market and to establish and maintain orderly marketing conditions. This includes adopting order provisions to facilitate securing adequate supplies of milk to meet the market's fluid milk needs. The record shows that obtaining adequate milk for those needs is not being accomplished in an orderly and equitable fashion under the current order provisions.

Conceptually, there are more ways than one to approach this problem. One way would be to increase the Class I price level and increase the location adjustment rate under the Chicago order. While this would encourage more milk to move to fluid milk plants, it would also create misalignment of prices with other nearby orders. Since the Chicago price would be too high relative to the other orders, fluid milk handlers would be placed in an unfavorable competitive position and could lose sales to handlers regulated under other orders. Moreover, a higher Class I price would be difficult, if not impossible, to justify given the current supply-demand situation in the Chicago market where the Class I utilization level averages about 20 percent annually.

Another way to encourage milk to move to the market for Class I use would be to simply provide a steeper slope to the location adjustments of the Class I and unform prices. However, this approach also would create price alignment problems which could result in a competitive advantage for Chicago area handlers relative to other orders. This, too, would not be an acceptable solution.

Because of the existence of these price alignment constraints, the cooperatives that make up CMPC have implemented a system outside the order to deal with a portion of the transportation costs of moving milk between plants. Now that the Agricultural Marketing Agreement Act (the Act) has been amended to permit payments to handlers out of pooled producer returns for services of marketwide benefit, CMPC is proposing that the order do what CMPS has attempted to do outside the order, namely, reimburse handlers of Class I milk for a portion of the cost of obtaining milk from supply plants.

The concept of using pool funds to facilitate the movement of milk from supply plants and other pool plants to distributing plants was widely supported at the hearing. However, two cooperatives, FUMMC and NFO, opposed the concept. Their position was that no provision should be adopted that would take money from producers to pay handlers for providing services that benefit primarily the handlers. This position is noted. However, the Act provides that such payments may be made.

Specifically, in section 608c(5)(J)(iii) of the Act, Congress has delineated "transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification * * *," as a service of marketwide benefit. Congress also indicated that any program of paying handlers for performing marketwide services must meet the requirements of the Act.

The transportation credit provisions adopted in this decision meet the requirements set forth in the statute. The market as a whole benefits from having the fluid milk market adequately supplied in a manner that promotes orderliness in the marketplace. The transportation credits will tend to promote the orderly marketing of milk by encouraging supply plants and other pool plants to make milk available to distributing plants for Class I use.

Distributing plants are located throughout the market. Some are situated with plentiful supplies of raw milk nearby. Others are located more distant from milk supplies. However, a principal characteristic of the Chicago market is that manufacturing plants also are located throughout the milkshed, thus providing intense competition for milk supplies. In this situation, it is essential to orderly marketing that the order recognize more fully the costs of transporting milk.

The current order has location adjustment provisions that recognize a portion of the costs of transporting milk. Through the operation of marketwide pooling, that portion of the hauling costs covered by the location adjustments is shared by all producers. However, as noted earlier in this decision, the location adjustment provisions no longer adequately reflect current hauling costs. Thus, handlers who pay for transporting for milk between plants incur a greater cost than is recognized by the order. Those handlers who incur such additional hauling costs have higher costs than other handlers who do not receive milk from other plants. Moreover, the additional hauling costs, which are not reflected in the order's blend prices, are not shared by all the producers who enjoy the blend prices that results from marketwide pooling. However, as indicated earlier, full recognition of hauling costs in the location adjustment provisions is not a practicable means of dealing with this problem.

The transportation credits provided herein will promote orderly marketing through provisions that are fully consistent with the intent and purposes of the Act. The operation of the credits will improve equity among competing fluid milk handlers by reimbursing a protion of the additional costs incurred when such handlers must reach out to other plans to obtain milk for Class I uses. On the other hand, the costs of such reimbursement will be spread out among all of the market's producers. Thus, all producers who share in the benefits of the higher returns of the fluid market through marketwide pooling will share also the costs of servicing the fluid milk sector of the market on a more equitable basis.

CMPC's proposal would have varied the per-mile hundredweight rate from .28 cents for September through February to .22 cents for March through August. The purpose behind the seasonal variation was that during the surplus production season milk moves to distributing plants from significantly shorter distances than it does during the short production season. CMPC was concerned that a constant rate could encourage distant shipments when not needed and thus further reduce the blend price unnecessarily.

Proponents introduced exhibits showing actual hauling costs paid by distributing plant operators during May, October, November, and December 1986 for plant-to-plant shipments of milk. These data, covering shipments ranging from one mile to 393 miles, indicate an overall average hauling rate of about .42 cents per mile-per hundredweight, although there was a wide range in the hauling rates paid. CMPC chose to propose two-thirds of the average hauling cost to yield a transportation credit rate of .28 cents in the fall months in order to not provide total recovery of hauling cost. Similarly, they proposed 80 percent of the fall rate for the flush production months.

The .28 cents per mile-per hundredweight rate is reasonable and should be adopted as the maximum transportation credit for all months. There is no basis in the record for concluding that hauling rates in the flush production season are 80 percent of short-season rates.

The transportation credits should be applied pro rata to receipts of milk from pool plants. This procedure will conform to the way location adjustments are applied. Since the transportation credits are intended to supplement the location adjustments, it is consistent to follow the same procedures for both provisions.

As proposed, the transportation credits should be applicable to plant-to-milk shipments that move in any direction. The market's principal direction of milk movements is from north to south and northwest to southeast, that is, from the production areas to the principal population center, the Chicago area, which is located in the southeast corner of the marketing area. However, other major population areas, such as Milwaukee and Green Bay, Wisconsin, are along the western shore of Lake Michigan, which forms the

eastern boundary of the marketing area. The record demonstrates that in certain cases shipments of milk from west to east and south to north are feasible and economically practicable. However, the order's location adjustments apply only to shipments that move in the traditional north to south or northwest to southeast direction. Thus, there is no incentive under the order's price structure to move milk supplies in those directions for which there are no location adjustments. The current location adjustment provisions would not be changed by this decision.

There was no specific opposition to the proposed application of transportation credits to milk movements as just described. However, the brief filed on behalf of Kraft urged that the transportation credits apply only to shipments that originate from plants located more than 60 miles from the distributing plant. The purpose of such a limitation would be to encourage primarily the longer distance shipments to distributing plants located in zones one through four. It is clear that these plants do not have sufficient supplies of milk nearby and must depend to a great degree on supply plant milk for their supplies. Also, according to the brief, such a limitation on the application of the transportation credits would discourage distributing plant operators from reaching out to distant supply plants for milk when direct-shipped milk is available from nearby farms.

A similar view was expressed in the brief filed by TAPP, which proposed several restrictions on allowing distributing plants to receive transportation credits. The brief urged that transportation credits only apply to:

1. Class I use, including inventory and shrinkage;
2. Necessary supplemental milk from supply plants; the credits should not apply if the distributing plant has an adequate supply of direct-shipped milk or if the distributing plant shifts milk available by direct shipment to other plants.

Similarly, distributing plants should not receive hauling credits in excess of those applicable to receipts from its own closest supply plants.

The concerns addressed in the briefs filed by Kraft and TAPP should be adequately addressed under the safeguard adopted herein. That is, the less than total coverage of hauling costs by the credits should discourage bypassing locally available supplies in order to obtain credits by receiving milk from more distant plants. Moreover, it would be administratively burdensome to make some of the determinations that would be required to carry out the intent of some of the restrictions called for in TAPP's brief.

As adopted the transportation credits and the current location adjustment provisions will be complementary. The maximum total credit (the transportation credit and the location adjustment combined) on any shipment of milk will be the amount determined by multiplying the .28 cents per mile-per hundredweight rate by the distance between the shipping and receiving plants. Such distance would be determined by the market administrator on the same basis that distances between plants are determined under the current location adjustment provisions of the order. If milk moves in a direction such that a location adjustment covers part of the transportation cost, the location adjustment would apply and the transportation credit would be reduced by the amount of the transportation costs covered by the location adjustment. However, if the location adjustment does not cover any of the transfer cost, the full transportation credit would be allowed. This will carry out the intent that credits apply to milk movements in any direction, but that total compensation not cover the entire hauling cost.

b. *Assembly Credits.* The order also should provide an assembly credit to pool plant operators on milk they assembly and ship to distributing plants for Class I use. Like the transportation credits, the assembly credits would be deducted from the pooled value of milk before computation of the uniform price and would be credited against the supplying handler's pool obligation. The rate for the credit should be eight cents per hundredweight.

The Act, in 608c(5)(J)(i), delineates "providing facilities to furnish additional supplies of milk needed by handlers * * * *" as a service of marketwide benefit. The operation of supply plant facilities is a service of marketwide benefit because it is a function involved in moving milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification. Before milk can be transported from a supply plant to a distributing plant, it must be assembled, and perhaps cooled and stored, then reloaded onto a truck. The costs incurred in performing these functions are not currently recognized in the order.

Since servicing the Class I milk needs of fluid milk handlers is recognized as a service of marketwide benefit, it is appropriate that all producers share in the cost of providing that service. This will be realized by providing an assembly credit, and it is consistent with a major purpose of the Act to assure an adequate supply of pure and wholesome milk for the fluid market and to maintain orderly marketing conditions.

The assembly credit as adopted differs from CMPC's proposal in that the eight cents per hundredweight rate would be applicable each month, rather than varying seasonally, and would be based on transfers assigned to Class I use of the receiving plant. The assembly credit recognizes that there are certain costs associated with the process of assembling and shipping milk to distributing plants. These costs are in addition to the hauling costs that are incurred when milk is shipped from a supply plant to a distributing plant and which will be recovered in part through the transportation credits as discussed elsewhere in this decision.

CMPC proposed that an assembly credit be provided at eight cents per hundredweight for the months of August through February and six centers per hundredweight in the remaining months.

In order to develop a cost basis for the assembly credit, CMPC conducted a detailed survey of the costs incurred in operating 10 reload plants that are totally dedicated to serving the fluid milk market. It was CMPC's view that the mixed operations of manufacturing plants precluded the isolation and determination of the basic costs of assembling Grade A milk for shipment to the fluid market from such plants.

The survey of costs of the 10 reloads yielded a weighted average costs of operation of 12.79 cents per hundredweight, comprised of both fixed and variable costs, for the months of September 1985 through August 1986. A summary of the costs were presented in exhibit number 35 and need not be set out herein in detail. During the 12-month period, the total volume of milk handled through the reloads each month varied from just under 100 million pounds to more than 123 million pounds. The reloads were operated by cooperative associations and proprietary handlers.

It is apparent from data provided in exhibits that the milk received at the 10 reloads included in the detailed cost survey represents a substantial portion of the milk that is transferred to distributing plants from supply plants and reserve supply plants. For example, in Janaury 1986, the 10 reloads had producer milk receipts of 108.3 million pounds. In that month, distributing plants received 110.6 million pounds of milk by transfer from supply and reserve supply plants. Thus, the producer milk receipts of the 10 reloads equaled about

98 percent of the amount actually transferred that month. In June 1986, the same computation yields about 78 percent. Thus, it appears that the cost survey represents costs applicable to a vast majority of the milk that moves from supply and reserve supply plants to distributing plants via actual transfer.

The cost data assembled for the reload operations must be viewed as being suitable for the purpose intended here. Although some questions were raised about the cost data, no other data was presented to refute the validity of the costs submitted by CMPC as representative of actual reload operating costs.

The proponents also did not wish to reimburse supply plants for the total costs of assembling milk, yet they wanted to cover much of those costs. So they first multiplied 12.79 cents by 80 percent, which yielded about 10 cents. This was again by 20 percent because there was variation in the costs of operating the various reloads. The end result thus was the eight cents per hundredweight that CMPC proposed for the short production season. The 80 percent was applied again because the use of reloads varied from month-to-month, which yields the six cents per hundredweight that was proposed as the rate for the assembly credits during March through July.

As in the case of the transportation credits, the arguments in favor of seasonally varying the assembly credits are not convincing. The cost data submitted by CMPC does not reveal any particular seasonal pattern. If a seasonal variation were adopted, it should be based on a demonstration that costs actually vary on a seasonal basis. That is not the case here and so the eight cents per hundredweight rate should be applicable each month.

As adopted herein, the assembly credit will be available to any pool plant that receives milk and ships it to a distributing plant. CMPC's proposal would have limited the credit to shipments from supply plants to distributing plants. However, it is more consistent with the structure of the Chicago order to provide the credits for the pro rata share of Class I milk in any pool plant's shipments of bulk milk to a distributing plant. Whether such shipments originate at a supply plant or another distributing plant, the benefit to the market it terms of supplying milk for Class I use is the same.

Similarly, CMPC's proposal to apply the assembly credit to the entire quantity of milk from a supply plant to a distributing plant should not be adopted. Instead, each pool plant that ships milk to a distributing plant should receive a credit based on a pro rata share of the distribution plant's allocation of Class I use. The procedure to be followed would be essentially the same as now applies in determining the total location adjustment allowed a distributing plant when it receives Class I milk from several different sources. As in the case of both the location adjustment and the transportation credit, the basis for establishing the total amount of assembly credits to be allowed would be 110 percent of the distributing plant's total Class I assigned to receipts from other pool plants.

The primary reason, according to CMPC's spokesman, for proposing to allow assembly credits on all milk that is shipped form the supply plant to a distributing plant was to facilitate the billing process between the shipping and receiving handler. Nevertheless, it is more consistent with the concept of recognizing service to the Class I market to restrict the assembly credits to a measure of the receiving plant's Class I use.

c. *Direct-Delivery Differentials.* Proposals to provide separate payment of up to eight cents per hundredweight from pool funds to producers on milk direct-shipped or divert-transferred from farms to distributing plants should not be adopted. Although such payments perhaps would get milk to bottling plants, they would tend to offset what is intended to be accomplished by adoption of the transportation credits and the assembly credit. In addition, the authority for such payments under the marketwide service provisions of the Act is questionable, since the provisions are couched in terms of payments to handlers for services they perform.

Presently, about 60 percent of the milk needed by bottlers is shipped directly from farms, either by direct delivery or divert-transfer, based on data for the period of January-December 1986. Proponent and others at the hearing testified that the minority of milk moves in this manner because it is the most efficient way to get milk to bottlers. Furthermore, it was proponent's belief that payments should be made to producers for direct-shipped milk in order to maintain the present level of efficient shipments in light of their other proposals.

One reason for adopting proponent's other proposals is to alleviate the cost difference between handlers who obtain their milk by transfer and those who receive milk directly from farms. To also grant a per-hundredweight payment to producers on the milk that they direct deliver to bottlers would be a contrary action. Yet, not adopting the direct-delivery differential will not jeopardize these most-efficient shipments because even with adoption of the transportation credits, the recipient of transfer milk will still, on the average, have to pay 35 percent of the shipping cost.

In its brief, Kraft questioned whether such a proposal was authorized under the amended Act. However, in light of the conclusion that the proposal would thwart the other order provisions adopted herein, Kraft's contention need not be addressed.

For the foregoing reasons, all proposals relating to direct-delivery differential payments are denied.

6. Omission of a Recommended decision and the Opportunity to File Written Exceptions Thereto

The Food Security Improvements Act of 1986, mandates that the Secretary shall implement a marketwide service program that meets the requirements of the Agricultural Marketing Agreement Act of 1937 not later than 120 days after a hearing is conducted. The Department has determined that the receipt of briefs represents the completion of the hearing conducted by the Administrative Law Judge on the issue and the start of the 120-day timeframe for implementation. Accordingly, any amendatory action taken as a result of the public hearing held in Madison, Wisconsin, on June 2–4 1987, with the briefing date on marketwide service payments issue being July 9, 1987, must have an effective date of no later than November 6, 1987. However, for administrative purposes, November 1 is a preferable effective date.

If the normal rulemaking procedures of issuing a recommended decision and providing time to file exceptions thereto were followed, the amended order could not be made effective by November 1, 1987.

It is therefore found that the due and timely execution of the functions of the Secretary under the Act imperatively and unavoidably require the omission of a recommended decision and an opportunity for written exceptions with respect to issue No. 1.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the

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requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified an confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order.

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Chicago Regional marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

June 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Chicago Regional marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on October 8, 1987.

Richard E. Lyng,

Secretary.

Order Amending the Order, Regulating the Handling of Milk in the Chicago Regional Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings

A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which effect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which as has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for CFR Part 1030 continues to read as follows:

Authority: Secs 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1030.52, paragraph (b) is revised to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(b) For the purpose of this section and §§ 1030.55 and 1030.75, the distances to be computed shall be on the basis of the shortest highway mileage as determined by the market administrator—with fractions rounded up to the next whole mile.

(1) The market administrator shall notify each handler of the zone of mileage determination from the city hall in Chicago for each plant and for each handler's pool distributing plant the mileage to each transferor pool plant.

(2) Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination with 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

* * * * *

3. A new § 1030.55 is added to read as follows:

§ 1030.55 Transfer credits on bulk Class I milk

(a) For each handler who operates a pool distributing plant (or plants) a transportation credit on milk received from each other pool plant shall be computed by the market administrator as follows, except that paragraph (a)(2) shall not apply when the Class I milk price adjusted for location pursuant to

§ 1030.52(a) is higher at the transferor plant than at the transferee plant:

(1) Multiply the number of hundredweights of the quantities of milk subject to the computations pursuant to § 1030.52(c)(9) and (10) times the product of 0.28 cents times the number of miles between the transferor plant and the transferee plant; and

(2) Subtract an amount computed by multiplying the absolute value difference between the location adjustment rates specified in § 1030.52(a) applicable at the transferee and transferor plants times the hundredweights of milk used in the computation in paragraph (a)(1) of this section. If the amount computed pursuant to this paragraph is greater than the amount computed in paragraph (a)(1) of this section the transportation credit will be zero.

(b) For each handler who transfers milk from a pool plant to a pool distributing plant (or plants) an assembly credit shall be computed by the market administrator at the rate of 8 cents per hundredweight of such handler's transfers of milk included in the computations pursuant to § 1030.52(c) (9) and (10).

4. In § 1030.60, change the reference "§ 1033.44(a)(9)" in paragraph (c) to "§ 1030.44(a)(9)", delete the word "and" at the end of paragraph (f); at the end of paragraph (g) change the period to a semicolon and add the word "and"; and add a new paragraph (h) to read as follows:

§ 1030.60 Handler's value of milk for computing uniform price.

* * * * * *

(h) Subtract an amount equal to any credits applicable pursuant to § 1030.55.

Marketing Agreement Regulating the Handling of Milk in the Chicago Regional Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86, all inclusive, of the order regulating the handling of milk in the Chicago Regional marketing area 7 CFR Part 1030 which is annexed hereto; and

II. The following provisions:

§ 1030.87 Record of milk handled and authorization to correct typographical errors.

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of June 1987, hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1030.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[FR Doc. 87-23836 Filed 10-14-87; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 242

[INS Number: 1035-87]

Detention and Release of Juveniles

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The purpose of this regulations is to codify Service policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings. This regulation will provide consistent servicewide standards and treatment for exclusion and deportation cases.

DATE: Comments must be received on or before November 16, 1987.

ADDRESS: Please submit written comments in triplicate to the Director of Policy Directives and Instructions, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Mary Ruth Calhoun, Juvenile Detention Specialist, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4120.

SUPPLEMENTARY INFORMATION: The proposed rule adds a new § 242.24 which sets forth Immigration and Naturalization Service policy regarding detention and release of juvenile aliens.

The new section defines "juvenile" as an alien under the age of eighteen (18) years and provides guidelines to the district director regarding the decision to detain or release a juvenile. In addition, the position of "Juvenile Coordinator" is created for the purpose of coordinating family reunification and/or locating suitable placement of juvenile detainees. The regulation also provides a procedure for cases in which the interests of a juvenile are at odds with the wishes of the parents or legal guardian. Finally, the proposed rule would delete the existing text of § 212.5(a)(2)(ii) and would provide in lieu thereof, for the district director or chief patrol agent to consider the factors set forth in § 242.24 in determining whether juveniles detained in accordance with § 235.3(b) or (c) will be paroled out of detention.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Parole, Juveniles.

8 CFR Part 242

Administrative practice and procedure, Aliens, Juveniles.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows and all other authority citations which appear in Part 212 are removed:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, 1182c.

2. Section 212.5(a)(2)(ii) is revised to read as follows:

§ 212.5 Parole of aliens into the United States.

(a) * * *

(2) * * *

(ii) Aliens who are defined as juveniles in 8 CFR 242.24. The district director shall follow the guidelines set

forth in § 242.24(b) in determining under what conditions a juvenile should be paroled from detention.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for Part 242 is revised to read as follows and all other authority citations which appear in Part 242 are removed:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1252, 1254, 1255, 1357, and 1362.

4. A new § 242.24 would be added to read as follows:

§ 242.24 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an alien under the age of eighteen (18) years.

(b) Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles may be released, in order of preference, to:

(i) A parent;

(ii) Legal guardian;

(iii) Adult relative (brother, sister, aunt, uncle, grandparent);

who is not presently in INS detention.

(2) If an individual specified in paragraph (b)(1) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified an adult relative or legal guardian in INS detention, release of the juvenile and the adult relative or legal guardian shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian in in INS detention or outside the United States, the juvenile may be released to such person as designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraph (b)(1) of this section, who executes an agreement to care for the juvenile's well being and to ensure the juvenile's presence at all future proceedings before the INS or an immigration judge.

(c) The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," located in INS Central Office, whose responsibilities should include but not be limited to, finding suitable placement of the juvenile in a facility designed for the occupancy of juvenile. These may include juvenile facilities contracted by the INS, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) In the case of a juvenile for whom detention is determined to be necessary, for such interm period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by INS authorities or placed in any INS detention facility having separate accommodations for juveniles.

(e) If a parent of a juvenile detained by the INS can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his/her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent, or immigration judge before a custody determination is made.

(f) If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from deportation, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his/her views and assert his/her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Notice and request for disposition.* When a juvenile alien is apprehended, he/she must be given a Notice and Request for Disposition. In the event a juvenile who has requested a hearing pursuant to the Notice decides to accept voluntary departure, a new Notice and Request for Disposition should be given to, and signed by the juvenile.

Date: September 18, 1987.

Raymond M. Kisor,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 87-23813 Filed 10-14-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule changes the burden of proof as to whether a violation occurred by allocating the ultimate burden of persuasion to the petitioner for review in a civil penalty proceeding under the Surface Mining Control and Reclamation Act of 1977.

DATE: Comments on the proposed rule are due November 16, 1987.

ADDRESS: Comments may be hand delivered or addressed to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Board of Land Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone: (703) 235-3750.

SUPPLEMENTARY INFORMATION: 43 CFR 4.1155, the existing regulation governing the allocation of burdens of proof in a proceeding for administrative review of a civil penalty imposed on a permittee under section 518(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1268(a), provides: "In civil penalty proceedings OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to *the fact of violation* and as to the amount of the penalty." (Emphasis added.) Both the fact of violation and the amount of the penalty may be contested in a civil penalty proceeding because section 518(c) of the Act, 30 U.S.C. 1268(c) provides: "The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account."

A permittee or person with an interest which is or may be adversely affected may also seek administrative review of a notice of violation or cessation order issued under section 521(a) (2) or (3) of the Act, 30 U.S.C. 1271(a) (2) or (3) (or pursuant to a Federal program or Federal lands program), by filing an application for review in accordance with section 525 of the Act, 30 U.S.C.

1275. The regulation governing the allocation of burdens of proof in an application for review proceeding, however, provides that "OSM shall have the burden of going forward to establish a prima facie case as to the validity of the notice or order" but that "[t]he ultimate burden of persuasion shall rest with the applicant for review." 43 CFR 4.1171. It allocates the ultimate burden of persuasion to the applicant for review because "the legislative history clearly states that an applicant for review has the ultimate burden of proof in proceedings to review notices and orders. S. Rep. No. 128, 95th Cong., 1st Sess. 93 (1977)." 43 FR 34381 (Aug. 3, 1978).

The result of the different allocation of the burden of ultimate persuasion as to the fact of the violation in 43 CFR 4.1155 and 4.1171 is not only that the former regulation is inconsistent with congressional intent but also that there are contradictory provisions applicable to the same burden of proof in administrative review proceedings which consolidate an application for review of a notice or order under section 525 with a petition for review of a civil penalty under section 518. (Section 518(b), 30 U.S.C. 1268(b), provides that section 518 hearings shall be consolidated with proceedings resulting from section 521 of the Act when appropriate.)

To correct inconsistency and provide for the same ultimate burden of persuasion as to the fact of a violation in a civil penalty proceeding as in an application for review proceeding, it is proposed to amend 4.1155 to specify that OSM has the burden of going forward to establish a prima facie case as to the fact of a violation and the amount of proposed penalty and the ultimate burden of persuasion as to the amount of the proposed penalty, while the applicant for review has the ultimate burden of persuasion concerning the fact of the violation.

Determination of Effects

Because this proposed rule merely amends an aspect of administrative review procedures, the Department has determined that the proposed rule is not major, as defined by Exec. Order No. 12291, and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

The Department has determined that this proposed rule will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

The proposed rule contains no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3507.

The author of this proposed regulation is Will A. Irwin, Administrative Judge, Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Penalties, Surface mining.

For the reasons stated in the preamble and under the authority of 30 U.S.C. 1201 *et seq.*, § 4.1155 of Subpart L of Part 4 of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

Dated: September 11, 1987.

Paul T. Baird,

Director.

PART 4—[AMENDED]

1. The authority for 43 CFR Subpart L continues to read:

Authority: 30 U.S.C. 1256, 1260, 1261, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. Section 4.1155 is revised to read as follows:

§ 4.1155 Burdens of proof in civil penalty proceedings.

In civil penalty proceedings, OSM shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

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Notices

Federal Register
Vol. 52, No. 199
Thursday, October 15, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement Supplement to the 1981–86 and 1986–90 Operating Plan Environmental Impact Statements for the Alaska Pulp Corporation (formerly Alaska Lumber & Pulp Company)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare supplement to environmental impact statements.

SUMMARY: The Forest Service will prepare a supplement to the Environmental Impact Statements (EIS) associated with the 1981–86 and 1986–90 operating periods for the Alaska Pulp Corporation (APC) Long-term Timber Sale Contract. A newsletter and other media sources will be used to notify the public of the scope of the supplement and opportunities for public participation. Those interests in receiving the newsletter are invited to write to the individual listed below and request they be added to the supplement mailing list.

FOR FURTHER INFORMATION CONTACT: Information relating to the supplement may be obtained by contacting James Pierce, supplement team leader, Regional Office, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802. Written comments and suggestions may be sent to above listed individual.

SUPPLEMENTARY INFORMATION:

A. Purpose of Scope of Supplement

This supplement is being prepared to address issues identified in a Federal District Court decision, *City of Tenakee Springs, Southeast Alaska Conservation Council, The Sierra Club, and the Wilderness Society v.* Craig V. Courtright, et al., Civil No. J86–24, Memorandum and Order filed June 25, 1987 (District of Alaska). The lawsuit which led to the court decision challenged the adequacy under the National Environmental Policy Act (NEPA) of the environmental impact statement for the 1981–86 Operating Plan for the APC long-term timber sale contract. The Record of Decision for the 1981–86 Plan, issued April 11, 1980, made available to APC for harvest about 525 million board feet of Tongass National Forest timber, from designated units in varous areas of Baranof, Catherine, Chichagof, and Kuiu Islands. The Record of Decision authorized the roadbuilding and other operations associated with harvesting this timber. Approximately 126 million board feet of sawtimber (154 million board feet with utility logs) remain to be harvested and approximately 119 miles of road remain to be completed to access this timber under the Plan. The June 25, 1987, court decision indicated that supplementation of the 1981–86 Plan EIS was required for the following issues:

1. Changes in implementing the Plan since issuance of the Record of Decision, due to Native Corporation land selection and other actions resulting in deletion or deferral of a substantial number of harvest units from the Plan.

2. Further discussion of a no-action alternative (no further roading or harvest until at least the next 5-year operating plan) specific to each drainage or similar geographic area remaining to be entered for roading and harvest under the Plan, particularly in light of the deletions or deferrals of harvest units in various areas.

3. Further site-specific detail regarding environmental effects of alternate road and harvest configurations in the Upper Game Creek area of Chichagof Island, an area about which plaintiffs alleged particular concern in the lawsuit.

4. Further discussion of cumulative impacts of forseeable roading and timber harvest in the vicinity of Upper Game Creek, and impacts associated with any changes in harvest practices on neighboring lands conveyed to Native Corporations.

The supplement will address these issues and in addition will address other issues of concern to the Plaintiffs in the lawsuit. These issues extend to areas included in the EIS for the 1986–90 Operating Plan for the APC contract, for which a Record of Decision adopting a final alternative for the 1986–90 Plan was issued December 31, 1986. The supplement will therefore extend to the 1986–90 Plan EIS, and will consider whether to modify the Record of Decision for the 1986–90 Plan, as well as the Record of Decision for the 1981–86 Plan, in light of further analysis and discussion of environmental effects in the EIS supplement. The additional issues to be addressed in the supplement in response to plaintiffs' concerns include:

1. Further analysis and discussion of site-specific and cumulative environental impacts associated with alternative road and timber harvest configurations in other areas included in the 1981–86 or 1986–90 Plan which are not expected to be entered prior to completion of the supplement, equivalent to that required by the court decision for Upper Game Creek.

2. Further analysis and discussion regarding effects on subsistence resources and uses in relation to alternatives considered in the supplement, including an evaluation and determination of whether a significant restriction of subsistence uses would result, pursuant to section 810 of the Alaska National Interest Lands Conservation Act.

3. Further analysis and discussion regarding mitigating measures, in relation to the alternatives considered in the supplement. Other issues and alternatives identified during the supplement process may also be addressed.

B. Geographic Scope and Interim Activities

The geographic areas upon which the supplement will focus, and in which further roading or timber harvest operations under the APC contract will be deferred until at least completion of the supplement and associated record of decision, are as follows (described by Tongass Land Management Plan Value Comparison Unit (VCU), which conforms to drainage or watershed boundaries generally):

1. VCU 203 (Seagull Creek).

2. Portion of VCU 204, south of the existing road system (Upper Game Creek). (Whether the harvest unit numbered 97 in this VCU is deferred depends on further discussions among the parties to the *Tenakee Springs v. Courtright* lawsuit.)

2. Portion of VCU 216, northwest of the existing road system (Upper Freshwater Creek).

4. VCU 235 (Kadashan; only roading was scheduling as part of 1981–86 and 1986–90 Plans; salvage harvesting of downed right-of-way timber lying across and stacked alongside the already completed portion of the road, as allowed by a June 23, 1987, court order, will not be deferred for the supplement).

5. VCU's 237, 238 (Trap Bay).

6. VCU's 247, 279–281, 283, 285 (Finger Creek, Poison Cove, Ushk Bay, and Patterson Bay, Upper Hoonah Sound).

7. VCU's 416–418 (East Kuiu Island).

8. Portion of VCU's 419, 420 (Port Camden and 3-Mile Arm areas, north of existing and projected roading and harvest shown in the preferred alternative map (alternative J) in the 1986–90 Plan EIS; 3-Mile Arm area, south of the harvest unit numbered 5 depicted in VCU 419 of the preferred alternative map. However, activities in harvest units numbered 8 through 11 and associated roads as depicted in VCU 419 on map 6 for Alternative D in the 1986–90 Plan EIS, and as authorized in the 1986–90 Plan Record of Decision, will not be deferred.)

Roading and harvest will continue on other areas of Chichagof and Kuiu Islands under the 1981–86 and 1986–90 Plans while the supplement is being prepared. Whether and how to proceed with activities presently authorized for these areas under these plans will not be further addressed in the EIS supplement. Completion of such activities will be considered a part of the no-action alternative in the supplement for these areas. Additional roading and harvest in these areas beyond what is included in the presently approved Plans is expected to be considered in the supplement. Further roading and harvest in other areas included in the 1981–86 and 1986–90 EIS study areas, but for which further roading or harvest was deferred in the presently approved operating plans until at least the 1991–96 Plan, such as the Kadashan River drainage, likewise may be considered as alternatives in the supplement.

If further litigation enjoins road or harvest operations under the 1916–86 or 1986–90 Operating Plan in areas not listed for deferral of operations while the supplement is being prepared, then initiation of further operations in one or more areas listed for deferral above, prior to completion of the supplement, may be necessary to meet existing government contract obligations and to avoid undue hardship upon dependent timber industry and communities. The same may be the case if the supplement takes longer to complete than currently projected. The Forest Service hopes no such changes will be necessary. Any such proposed change would be the subject of discussions among at least the parties to the *Tenakee Springs v. Courtright* lawsuit and public notice prior to implementation.

C. Two Phases of Supplement

The EIS supplement is expected to consist of two phases. These phases may proceed concurrent with one another, but a supplement document for the first phase may be circulated for public comment and completed prior to circulation and completion of one or more supplement documents for the second phase. A draft and a final supplement document or documents will be issued for both phases.

The first phase will address changes in the implementation of the Operating Plan and other circumstances since issuance of the 1981–86 Plan ROD. This phase will address the environmental impacts of relevant changes and their relation to alternatives for each area covered by the supplement. This phase will address generally whether to modify the 1981–86 or 1986–90 Operating Plans regarding roading and harvest in each such area. This phase will tier to the Alaska Regional guide, Tongass Land Management Plan, 1976–81 Plan EIS, 1981–86 Plan EIS, and 1986–90 Plan EIS. It is expected to consider, among other alternatives, increased harvest in the portions of the 1981–86 and 1986–90 Plan EIS study areas where roading or harvest is expected to take place while the supplement is being completed, in order to allow decreased harvest in other portions of the study area. This phase will provide an updated section 810 Alaska National Lands Conservation Act (ANILCA) evaluation and determination, regarding alternatives considered in this phase, for the entire study area.

The second phase will further address site-specific effects of alternatives for each area within the study area in which harvest and roading are not expected to take place during completion of the supplement, except those for which the first phase indicates no further roading or harvest until at least the 1991–96 operating plan is the preferred alternative. The second phase will analyze site-specific effects of alternatives for each such area which the first phase indicates should be entered prior to 1991. With respect to areas where already authorized roading and harvest are expected to continue during preparation of the supplement, the second phase will further address site-specific effects of alternatives for additional roading or harvest in those areas which the first phase indicates additional roading or harvest prior to 1991, beyond that already authorized, is the preferred alternative. The seond phase will consider a no-action alternative in light of site-specific effects, for each such area. It will consider mitigation measures and subsistence impacts, including a section 810 ANILCA evaluation and determination, at the site-specific level. It will tier to the first phase and the EIS's to which the first phase is tiered.

Both phases of the supplement are expected to be completed 12 to 18 months from the date of this Notice of Intent. The projected date for issuance of a draft supplement for the first phase is May 1988. Issuance of a draft supplement document or documents for the areas included in the second phase is scheduled for not later than December 1988, and may be issued concurrently with a first phase draft. The projected date for issuance of a final supplement docment or documents for the first phase and second phase, with an accompanying Record of Decision, is May 1, 1989.

D. Comments

The comment period of the draft EIS supplement document or documents will be 45 days from the date the Environmental Protection Agency's notice of availability for the document appears in the **Federal Register**. It is very important that those interested in the management of the Tongass National Forest participate during the comment period. To be the most helpful, comments on each supplement document should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (see The Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553, 1978, and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement, *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can

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meaningfully consider them and respond to them in the final.

After the comment period ends on each draft supplemental document, the comments will be analyzed and considered by the Forest Service in preparing the final supplement document. In the final supplement document, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the supplement document or documents, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Michael A. Barton, Regional Forester of the Alaska Region, located in Juneau, Alaska, is the responsible official.

Date: September 30, 1987.

Michael A. Barton,

Regional Forester.

[FR Doc. 87-23840 Filed 10-14-87; 8:45 am]

BILLING CODE 3410-11-M

Intermountain Region; Proposed Fee Schedule for Electronic Communication Sites and Request for Public Review and Comments

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed fee schedule.

SUMMARY: The Intermountain Region, administering those National Forests in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming, is revising procedures governing determination of rental fees for electronic communication sites. Public review and comment on the proposal are invited. This proposal is based on a market study conducted by the Region during the spring and summer of 1987. The market study and a proposed rental fee schedule are available for review and comment.

DATE: Comments on the proposal must be received, in writing, on or before December 14, 1987.

ADDRESS: Send comments on the proposal to J.S. Tixier, Regional Forester, Intermountain Region, 324 25th Street, Ogden, UT 84401. Comments received in response to this notice may be reviewed in the office of the Director of Recreation and Lands, Room 6025, Federal Building, 324 25th Street, Ogden, UT during normal business hours.

FOR FURTHER INFORMATION CONTACT: Frank Elder (801) 625-5150 or Lynn Bidlack (801) 625-5141, Recreation and Lands Staff.

SUPPLEMENTARY INFORMATION: The Forest Service administers approximately 1,031 electronic communication site authorizations within the Intermountain Region. The existing policy for determining annual land use rental fees is a mixture of schedule and formula. Fees are based on 0.2 percent of the authorization holder's total investment value for electronic communication facilities and equipment plus 5 percent of the rental income from building tenants and/or equipment users served by the holder. Fees for many holders are currently at levels of $25 to $2,695/year while private land rentals for communication sites are in the $175 to $6,886/year range.

Revised Forest Service National Policy contained in **Federal Register** Vol. 50, page 40574, dated October 4, 1985, established that electronic communication site fees are to be based on the fair market value of the rights and privileges authorized rather than on a percentage of investment value and rental income. This change is consistent with requirements of the Federal Land Policy and Management Act of 1976 and accompanying regulations.

Future fees are to be determined by individual appraisals, competitive bidding, or a fee schedule derived through market analysis. The Intermountain Region has determined a fee schedule would be an appropriate cost-effective method to be used for most electronic communications sites. When appropriate, as determined by the Regional Forester, individual site appraisals or competitive bidding can be used to establish fees on large or unique sites of where a competitive interest exists.

Proposed Rental Fee Schedule

The proposed rental fee schedule has been prepared based on (1) analysis of market data of similar uses in Arizona, California, Colorado, Idaho, Montana, North Dakota, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming and (2) sound business management principles. The proposed rental fee schedule for the Intermountain Region appears at the end of this notice. The proposed schedule establishes annual rental fees by type of electronic use (as listed in the Definitions section of this notice) and population categories for the Intermountain Region. After implementation, the proposed schedule will be updated annually by application of the Implicit Price Deflator-Gross National Product Index and further updated by periodic market reviews.

Shared Space

Electronic communication space is frequently shared by several users within an authorized building at a Forest Service administered electronic site. In the private sector, market data shows a very broad range of fees for shared uses: a common fee for second and subsequent users is 50 percent of sublet shared space rentals. Market information also indicates that sublet rentals tend to correlate to category of use, similar to primary use rentals.

Analysis of the market data and consideration of the special limitations and conditions of use of public lands indicate that secondary and subsequent user fees of 50 percent of the full fee for the kind of electronic use are fair and reasonable to electronic site users in this category and to the public. With the implementation of the proposed rental fee schedule, fees for secondary and subsequent users will be established on this basis except in the case of 2-way radio installations (commercial communicators), where specific market data was found as indicated on the proposed rental fee schedule.

Under the proposal, primary users will pay the Forest Service the appropriate shared-service fee for each of their tenants/users, and are free to negotiate a reasonable charge with their tenants.

Miscellaneous Electronic Uses

A review of Forest Service records discloses a number of authorized electronic uses for which the market analysis provided insufficient information on market rent. Many of these uses involved "receive only" equipment, such as TV and radio receiving antennas, satellite dishes, and other equipment or structures designed solely for the reception of electromagnetic signals. Some miscellaneous uses may involve both transmitting and receiving equipment and structures.

There are comparatively few of these installations in the Intermountain Region. Fair market value of these uses can be established administratively through consideration of sound business management principles as provided in Secretary of Agriculture's Regulation 36 CFR 251.57a. The Intermountain Region, Forest Service, has reviewed available information and the market analysis for other electronic uses as listed in the proposed rental fee schedule and concluded that an appropriate annual fee for various miscellaneous electronic uses not otherwise identified in the

proposed fee schedule is $75 per year per unit. A unit is defined as one receiving antenna, one transmit/receive antenna combination serving one radio, one satellite dish, etc.

The field of electronics is expanding rapidly. Many electronic uses are in developmental stages. The Intermountain Region's proposed rental fee schedule is not intended to include these new and developing uses. Fees will be established on the basis of appraisal, sound business management principles, and/or negotiation when these new and developing uses become operational in the Intermountain Region.

Proposed Implementation

Fees proposed according to this schedule will apply to each electronic use on National Forest System lands in the Intermountain Region upon adoption of the final schedule and publication in the **Federal Register.**

For the many cases where more than one user occupies an electronics building on a site, the owner of the building will become the permit holder. The other users of the building, previously also permit holders, will cease to hold permits and will be considered simply as tenants of the permit-holding landlord. The surcharge for tenants of commercial communicator permit holders is shown in the proposed fee schedule. The surcharge for tenants of other permit holders shall be 50 percent of the fee for the use from the schedule for that use (not necessarily the permit holder's use).

Conversion to the new system will occur as the existing authorizations of building owners expire over the next 5 years, or no later than December 31, 1992. As these new authorizations are issued, the authorizations of the other users (tenants) will be terminated.

Under certain qualifying circumstances, as provided by Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, fees may be waived or reduced. These procedures are not affected by the proposed fee schedule.

Copies of this notice and the proposed fee schedule are being mailed to holders of existing communication site authorizations and will also be sent to anyone requesting copies from the contacts listed in this notice. The market study and proposed rental fee schedule are also available for review at Forest Supervisors' Office.

Definitions

Following are definitions for the nine categories as listed in the proposed rental fee schedule for the Intermountain Region:

1. *Passive Reflector:* This use involves a passive antenna element or elements, located to reflect radiation from or redirect radiation to a directional transmitting and/or receiving antenna.

2. *Translators, TV or FM Radio:* This use involves the re-transmission of TV or FM broadcast programs and signals without significantly altering any characteristic of the original signal other than its frequency and amplitude. Stations in this category are licensed under Part 74 of the Code of Federal Regulations.

3. *2-way Radio, Site Only:* This use involves operation of 2-way radios for the purpose of internal communications in support of business, community activities, or other organizational objectives. This user occupies the site only and provides his own building and/or tower.

4. *2-way Radio, Site and Building:* This use involves operation of 2-way radios for the purpose of internal communications in support of business, community activities, or other organizational objectives. This user occupies the site and the landowner's (U.S. Government) building.

5. *Industrial Microwave:* This use involves operation of non-common carrier microwave relay applications (such as utility companies) for internal communications and remote monitoring/control. It may also include uses by state agencies.

6. *Cable Television:* This use applies to cable television receiving and retransmission units. Incoming signals may be received by antenna, satellite dish, or microwave. Retransmission/distribution is generally by cable but may be by microwave to another location. References to population pertaining to this use will mean the total estimated number of people that could potentially be served by the system.

7. *Common Carrier Microwave:* This use relays telephone, television, or other signals over point-to-point microwave metworks.

8. *Commercial Communicators:* This use is for companies or individuals which develop electronic sites for use by their customers. They typically rent out vault space in a building and antenna space on a tower. They may sell, rent and service electronic equipment. The most wide-spread use is for 2-way radio repeaters, but this group also includes such uses as microwave mobile telephone systems, answering services, and paging systems. Often the commercial communicators lease the land and construct the improvements. Occasionally, they are able to lease both the land and improvements. Typically, commercial communicators have a radio for their own use and one or more that are rented out on a time-sharing basis to several users. Commercial communicators include National companies as well as small local businesses.

9. *TV and Radio Broadcast:* This use is for electronic users who broadcast audio and/or video signals which are intended for general public reception. It relates only to primary transmitters and not any rebroadcast systems such as translators. User revenues are generated primarily from commercial advertising.

Intermountain Region—Proposed Rental Schedule

Date: September 29, 1987.

T. A. Roederer,

Deputy Regional Forester, Resources.

BILLING CODE 3410-11-M

INTERMOUNTAIN REGION PROPOSED RENTAL FEE SCHEDULE

POPULATION CATEGORY	COMMUNICATION FACILITY								
	1. Passive Reflector	2. Translators TV/FM Radio	3. 2-Way Radio Site Only	4. 2-Way Radio Site & Bldgs.	5. Industrial Microwave	6. Cable Television	7. Common Carrier Microwave	8. Commercial Communi-cators	9. TV & Radio Broadcast
0- 6,000	600	500	600	600	1100	700	1600	700+200/ radio	2700
6- 14,000	600	700	800	600	1100	1400	1600	700+200/ radio	2700
14- 50,000	600	900	1100	900	1100	1400	1600	1000+250/ radio	3000
50-100,000	600	1200	1100	900	1500	2400	2000	1000+250/ radio	3300
100,000 +	600	1200	1100	900	1500	2400	2000	1000+250/ radio	4000

NOTE: Population on this chart refers to the population within a 40-mile radius of the electronic site.

[FR Doc. 87-23841 Filed 10-14-87; 8:45 am]
BILLING CODE 3410-11-C

Soil Conservation Service

Tazewell Middle School Critical Area Treatment RC&D Measure, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tazewell Middle School Critical Area Treatment RC&D Measure, Tazewell, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for constructing 600 feet of subsurface drainage, 700 square feet of lined waterway, and seeding of 1.5 acres of eroding school grounds on the campus of Tazewell Middle School, Tazewell, Virginia.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable)

George C. Norris,

State Conservationist.

Date: October 8, 1987.

[FR Doc. 87–23797 Filed 10–14–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Species; Sea Turtles

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of receipt of a petition for reconsideration of a rule.

SUMMARY: Mr. Lacy H. Thornburg, Attorney General of North Carolina, petitioned the Department of Commerce to amend final regulations concerning shrimp trawling requirements to conserve endangered and threatened sea turtles. Mr. Thornburg petitioned the Department to withdraw and repeal parts of the final regulations pertaining to North Carolina waters not included in the proposed regulations. The petition states, among other things, that addition of these waters constitutes an abuse of agency discretion and violates the notice and comment procedures of the Administrative Procedures Act, 5 U.S.C. 553. The petition has been reviewed and accepted. It is being processed according to procedures established for responding to such petitions.

DATE: Written comments concerning the proposed actions will be accepted until November 16, 1987.

ADDRESS: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Patricia A. Carter, Office of Protected Resources and Habitat Programs, NMFS, U.S. Department of Commerce, Washington, DC 20235 (202/673–5351).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as endangered or threatened species under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, (ESA). Five of these, the loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*), are found in marine waters from North Carolina through Texas. Based on information provided by observers on shrimp trawlers, NMFS estimates that each year more than 47,000 sea turtles are caught in shrimp trawls; about 11,000 of these die.

In 1978, NMFS began a research program to develop gear or methods to reduce the mortality of sea turtles in shrimp trawls. The program led to the development of a turtle excluder device (TED) which releases 97 percent of the turtles caught in shrimp trawls with no loss of shrimp. Since development of the NMFS TED, other TEDs have been developed and certified for use. NMFS began a formal program in 1983 to encourage shrimp fishermen to use the TED voluntarily. Despite substantial efforts to transfer the technology to the shrimping industry, the voluntary program was not successful because sufficient numbers of TEDs were not used on a regular basis.

On March 2, 1987, NMFS published proposed regulations (52 FR 6179–6199) that would require shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the coast of the Southeastern United States to use approved gear in specified locations and at specified times. Most North Carolina waters were not included in the proposed regulations.

Thousands of comments were received on the proposed regulations. Based on those comments, NMFS made a number of changes, including areas affected and an additional protective measure. On June 29, 1987, NMFS published final regulations (52 FR 24244–24262) requiring shrimp trawlers to use certain protective measures in specified waters at specified times. The final regulations contained requirements for protective measures for sea turtles in North Carolina waters not included in the proposed regulations.

On August 27, 1987, Mr. Lacy H. Thornburg, Attorney General of North Carolina petitioned Mr. Clarence Brown Acting Secretary of the Department of Commerce, to amend the final rules published on June 29, 1987. The petition requested that parts of the regulations dealing with North Carolina waters be withdrawn and repealed. The petition states among other things, that addition of these waters constitutes an abuse of agency discretion and violates the notice and comment procedures of the Administrative Procedures Act, 5 U.S.C. 553.

The petition has been reviewed and accepted by the Department. It is being processed by NMFS according to procedures established for responding to such petitions. These procedures require the agency to nofity the petitioner within

120 days of receipt of a petition as to whether or not the requested rulemaking will be undertaken. A Notice announcing the agency's decision will be published in the **Federal Register**.

To ensure that there is a complete review of this issue, NMFS is soliciting comments and information from any interested party. All responses should include the party's name, address and any association, institution or business that the party represents.

Dated: October 8, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-23835 Filed 10-14-87; 8:45 am]

BILLING CODE 3510-22-M

International Trade Administration

[C-351-609]

Final Affirmative Countervailing Duty Determination; Certain Forged Steel Crankshafts From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts ("CFSC" or "the subject merchandise") as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is determined to be 5.23 percent ad valorem. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to reflect changes in the Preferential Working-Capital Financing for Exports program. Accordingly, the duty deposit rate is 5.10 percent ad valorem.

However, the Department of Commerce, the Government of Brazil, and the manufacturers, producers, and exporters of CFSC entered into a suspension agreement on July 21, 1987. At the request of the Government of Brazil, we continued the investigation.

Subsequent to this determination, the ITC will determine whether imports of CFSC from Brazil materially injure, or threaten material injury to, a U.S. industry. If that injury determination is affirmative, we shall not issue a countervailing duty order as long as the conditions of the agreement are met. If that injury determination is negative, we will terminate the suspension agreement and our investigation.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Bradford Ward, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2239 or 377-2786.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of CFSC. For purposes of this investigation, the following programs are found to confer subsidies:

- Income Tax Exemption for Export Earnings;
- Preferential Working-Capital Financing for Exports (including Incentives for Trading Companies); and
- Import Duty and IPI Tax Exemptions Under Decree-Law 1189 of 1971, as amended.

We determine the estimated net subsidy to be 5.23 percent ad valorem. However, we are adjusting the duty deposit rate to reflect a program-wide change in the Preferential Working-Capital Financing for Exports program. Therefore, the duty deposit rate is 5.10 percent ad valorem.

Case History

The last **Federal Register** publication pertaining to this investigation (*Suspension of Countervailing Duty Investigation: Certain Forged Steel Crankshafts from Brazil* (52 FR 28177, July 28, 1987) contains the case history. Petitioners and respondents filed briefs on the final determination on July 13 and 15, 1987, concurrently with their comments on the suspension agreement. On August 17, 1987, the Government of Brazil requested that this investigation be continued under section 704 (g) of the Act. Therefore, we are required to issue a final determination in this investigation.

There are two known producers in Brazil of CFSC that exported to the United States during the review period. Those producers are Krupp Metalurgica Campo Limpo Ltda. (Krupp) and Sifco S.A. (Sifco). In addition, Brasifco S.A. (Brasifco) is a trading company wholly-owned by Sifco which exported the subject merchandise from Brazil to the United States during the review period. We verfied that Krupp, Sifco, and Brasifco account for substantially all exports of the subject merchandise to the United States.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight of between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127, and 660.7147 of the *Tariff Schedules of the United States, Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidization (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaire, our verfication, and comments received from interested parties, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of CFSC under the following programs:

A. Income Tax Exemption for Export Earnings

Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on a portion of income attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy.

All of the respondent companies used this exemption on their corporate income tax forms filed during the review period. The companies determined their net taxable income and deducted the exemption from that income to lower, or eliminate, their tax liability. We multiplied the value of the exemption by the effective tax rate for each company

and allocated the sum of the benefits over the total value of 1985 exports to calculate an estimated net subsidy of 1.70 percent ad valorem.

B. Preferential Working-Capital Financing for Exports

The Carteira do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. During the review period, these loans were provided under Resolution 882, and also under Resolution 950, as amended by Resolution 1009. Under Resolution 643, as amended by Resolutions 883, 950, and 1009, trading companies can obtain export financing identical to that obtained by manufacturers under Resolution 950. Eligibility for this type of financing is determined on the basis of past export performance or an acceptable export plan. During the review period, the maximum level of eligibility for such financing was 20 percent of the adjusted value of exports.

Under Resolutions 882/883, the statutory interest rate on loans was 100 percent of monetary correction, plus up to three percent interest. This rate is below our commercial benchmark for short-term loans, which is the short-term discount rate for accounts receivable in Brazil as published in *Analise/Business Trends* magazine.

On August 21, 1984, Resolution 950 made these loans available from commercial banks at the prevailing market rates, with interest calculated at the time of repayment. Under Resolution 950, as amended by Resolution 1009, the Banco do Brasil pays the lending institution an equalization fee of up to 15 percentage points (after monetary correction). The lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950 loans are also exempt from the Imposto Sobre Operacoes Financeiras (Tax on Financial Operations, or IOF), a 1.5 percent tax charged on all domestic financial transactions in Brazil.

Since receipt of working capital financing under Resolutions 882/883/950/1009 is contingent upon export performance, and provides funds to borrowers at preferential rates, we determine that this program confers an export subsidy. During the review period, all of the companies had loans outstanding under Resolutions 882 or 883 and 950/1009.

To calculate the benefit from this program, we multiplied the value of those loans on which interest payments were made during the review period by the sum of: (a) The difference between the applicable interest rates and our benchmark, plus (b) the IOF. We then allocated the benefit over the total value of 1985 exports, resulting in an estimated net subsidy of 3.43 percent.

In cases in which program-wide changes have occurred prior to our preliminary determination and where the changes are verifiable, the Department's practice is to adjust the duty deposit rate to correspond more closely to the eventual duty liability. We have verified that companies no longer receive loans under the terms of Resolutions 882 and 883, and that there are no outstanding loans under 882 and 883. Resolution 950 as amended by 1009, the directive currently in force for this financing program, provides for an "equalization fee" against commercial interest rates as described above. Therefore, we calculated a subsidy rate for duty deposit purposes based on the interest rate rebate provided for under Resolution 950/1009 plus the IOF exemption. The methodology used is consistent with that relied upon in our most recent final countervailing duty determination involving Brazil where this program was found to be used, *Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from Brazil* (51 FR 40837, November 10, 1986). We multiplied the maximum percentage amount of financing for which the companies were eligible (20 percent) by the sum of the 15 percent interest rate rebate plus the IOF to arrive at an estimated duty deposit rate of 3.30 percent ad valorem.

C. Import Duty and IPI Tax Exemptions Under Decree-Law 1189 of 1971

Our examination of company documents at verification revealed that one respondent company had imported certain items free of the normal import duty and the IPI tax (Imposto Sobre Produtos Industrializados, or Industrialized Products Tax—IPI). These exemptions were granted under a provision of Decree-Law 1189 of 1971, as amended, which allows for the duty- and tax-free importation of certain non-physically incorporated merchandise based on a percentage of a company's increase in exports.

Because these exemptions from import duty and IPI tax are contingent upon export performance, we determine that this program constitutes an export subsidy. In order to calculate the benefit, we divided the total value of import duties and IPI taxes not paid during the review period by the value of all exports during the review period, resulting in an estimated net subsidy of 0.10 percent ad valorem.

II. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers, ro exporters in Brazil of CFSC did not apply for, claim, or receive benefits during the review period under the following programs which were listed in our notice of *Initiation of Countervailing Duty Investigation: Certain Forged Steel Crankshafts from Brazil* (51 FR 40240, November 5, 1986):

A. Export Financing Under the CIC–CREGE 14–11 Circular
B. Resolution 330 of the Banco Central do Brasil
C. The BEFIEX Program
D. The CIEX Program
E. Exemption of IPI Tax and Customs Duties on Imported Capital Equipment (CDI)
F. IPI Rebates for Capital Investment
G. Accelerated Depreciation for Brazilian-Made Capital Equipment
H. The PROEX Program
I. Resolutions 68 and 509 (FINEX) Financing
J. Loans Through the Apoio o Desenvolvimento Tecnologica a Empresa Nacional (ADTEN)
K. Articles 13 and 14 of Decree Law 2303

This decree law was announced in November, 1986, and implementing regulations had not been promulgated as of the date of our verification. We verified that the respondent companies did not use this program on corporate income tax returns filed during the review period. If there is a subsequent administrative review in this investigation, we will investigate any use of this program which may provide countervailable benefits.

III. Program Determined To Have Been Terminated

IPI Export Credit Premium

Until May 1, 1985, Brazilian exporters of manufactured products were eligible for a tax credit on the IPI. The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to constitute a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the Government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in

accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice of the Ministry of Finance) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985.

The IPI export credit premium was terminated over one year before the initiation of this investigation and we verified in this case that the companies ceased receiving benefits during the review period. Accordingly, we determine that this program has been terminated, and no benefits under this program are accruing to current exports of CFSC.

Comments

Comment 1: Regarding the Income Tax Exemption for Export Earnings program, petitioner argues that the Department should: (a) Not deduct receipts of the IPI export credit premium from the exemption claimed by the respondent companies; (b) use only verified effective income tax rates in our calculations; and (c) allocate the benefit over export sales to calculate the ad valorem subsidy rate. Respondents argue that the Department should: (a) Deduct the IPI export credit premium from the companies' adjusted profits to calculate the benefit from this exemption; (b) use effective rather than nominal tax rates to calculate tax savings; and (c) calculate the ad valorem subsidy rate from this program by dividing benefits over total sales because this exemption is a rebate of an indirect tax which cannot be tied to export sales.

DOC Position: Our calculation of the value of the benefit provided by the income tax exemption for export earnings is based on the full amount claimed on the companies' income tax returns filed during the review period. The companies calculated the amount of the exemption by adjusting net sales and multiplying by the ratio of export sales to all sales. Since the net sales value used as a starting point in calculating the exemption includes receipts of the IPI export credit premium, the exemption likewise includes a proportion of that amount. We are not countervailing the receipt of the IPI export credit premium itself but rather the actual benefit accruing to the companies from the use of this income tax exemption, however derived. As this notice and our verification reports make clear, the companies' receipts of the IPI export credit premium are not accruing to current exports of CFSC and have not been included in our subsidy or duty deposit rates.

We have used only the verified effective income tax rate applicable to each company. In past Brazilian countervailing duty investigations, we have verified that companies which make investments to lower their tax rates receive dividends from those investments, and that the ability to make those investments is not limited to a specific enterprise or industry or group thereof. See *Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil,* (51 FR 21961, June 17, 1986). Therefore, when we calculate the subsidy rate from this program, we take into account the 35 percent base tax rate and all appropriate adjustments claimed by the companies, and verified by the Department, to calculate an effective tax rate.

Regarding respondents' other concerns, as we have stated in numerous previous Brazilian cases, when a benefit such as this one is contingent upon exports, that program confers an export subsidy and the benefit is properly allocated over export revenues. See *e.g., Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from Brazil* (51 FR 40837, November 10, 1986) (*Brass Sheet and Strip from Brazil*).

Comment 2. Petitioner argues that the verified interest rates for loans under the Preferential Working-Capital Financing for Exports program are lower than those originally submitted to the Department and we should use verified information to value the subsidy from these loans.

DOC Position. We agree. Interest rate data provided in the questionnaire response for several loans was discovered to be incorrect at verification. An amended response was filed and our calculations for this determination are based on verified data.

Comment 3. Respondents argue that the Department should calculate the country-wide rate for the Preferential Working-Capital Financing for Exports and the Income Tax Exemption for Export Earnings programs by weight-averaging the benefit by each company's exports of the subject merchandise to the United States.

DOC Position. We disagree. We have calculated the country-wide rate for these programs using the same methodology we have applied in past Brazilian investigations. When calculating the benefit from general export subsidy programs, such as those at issue, where the benefits are not tied to specific shipments or products, we are not convinced that weight-averaging would more accurately reflect the actual subsidy provided under the programs since all exports can benefit equally. This is the first instance in any of the previous Brazilian countervailing duty investigations in which the Government of Brazil has argued that the calculation of the coutnry-wide rate for these programs should be based on weight-averaging. The Government of Brazil simply states that weight-averaging would result in a lower subsidy rate, and has cited no basis for its argument in the Act, our regulations, or economic analysis.

Comment 4. Respondents argue that the Department failed to take into account the program-wide change in the Resolution 882/883/950/1009 financing program. Respondents state that the Department should calculate a duty deposit rate based on the current interest rates in this program, and also that the Department should not include the IOF tax exemption in the benefit rate. Finally, respondents argue that the Department should use historical loan utilization information to calculate the present benefit and use relevant daily or weekly interest rates, rather than an average annual rate, to determine the alternative financing costs.

DOC Position. We agree that the duty deposit rate for this program should be based on the most recent program-wide changes, which adjusted the interest rate benefit under Resolution 950, as amended by Resolution 1009, and our determination reflects this.

Regarding the issues of the IOF tax exemption and the appropriate short-term benchmark, we have stated our position in numerous past Brazilian countervailing duty investigations. See, *e.g., Brass Sheet and Strip from Brazil, supra,* and *Final Affirmative Countervailing Duty Determination: Certain Heavy Iron Construction Casting from Brazil* (51 FR 9491, March 19, 1986). Because the IOF tax is charged on all domestic financial transactions, it is appropriate that we include the value of the IOF exemption when calculating the subsidy from this program. Concerning respondents' comments on our short-term benchmark for purposes of the deposit rate, we have valued the benefit on the basis of the 15 percent maximum interest rate differential. We consider these loans to be made on non-preferential terms absent this "equalization fee" (originating from CACEX and passed through to the borrower by the lending bank) and the IOF exemption. Therefore, it is not necessary to calculate a specific

benchmark, since the equalization fee of 15 percent constitutes the difference between the commerical rate and the preferential rate.

With regard to the issue of historical loan utilization, we have based our calculation of the duty deposit rate on the companies' maximum financing eligibility as described above under *Programs Determined To Confer Subsidies.* We have seen in this and past investigations that companies may use less than complete eligibility at times. However, we have also seen eligibility carried over from prior years, eligibility increased during the term of the proposal, and eligibility based on projected exports. In all instances, the maximum eligibility has remained at 20 percent of adjusted exports. Therefore, we consider it appropriate for the calculation of the duty deposit to use the 20 percent maximum eligibility level as an estimate of the companies' potential duty liability.

Comment 5. Citing the legislative history of the Trade Agreements Act of 1979 (S. Rep. No. 249, 96th Cong., 1st Sess. 85–86 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 74–75 (1979)), petitioner argues that the duty and tax reductions on capital equipment imports under the CDI program are "nonrecurring" subsidies in the nature of grants which provide ongoing benefits to CFSC currently being produced and exported by the respondent companies. Accordingly, petitioner contends that the Department should: (a) Investigate benefits received under the program over the past 15 years (the generally accepted useful life of capital equipment), and (b) amortize those benefits over that same period consistent with our grant methodology.

Citing *Can-Am Corp. v. United States,* Slip Op. 87–67, C.I.T. (June 4, 1987) and past Department determinations on the CDI program's import duty and IPI tax exemptions, respondents argue that any of these benefits provided to the respondent companies are tax benefits properly expensed in the year of receipt. Accordingly, import duty and IPI tax exemptions provided to the respondent companies outside the review period are irrelevant to this investigation. Respondents also argue that the CDI program is not limited to a specific enterprise or industry, or group thereof, and, therefore, is not countervailable in any case.

DOC Position. Given our present understanding of this program, we determine that any duty and tax reductions provided by the CDI program are benefits properly allocated to the year of receipt rather than amortized over time. Accordingly, only benefits from the CDI program received during the review period would be countervailable in this investigation. We found no use of duty or tax reductions under the CDI program during the review period.

The expensing of benefits received under the CDI program is consistent with our past practice for this and similar programs in other cases (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil* (49 FR 17988, April 18, 1984)) and is supported by the recent Court of International Trade decision in *Can-Am* (*supra*). The *Can-Am* case upheld the Department's longstanding practice of expensing tax benefits in the year of receipt. The specific tax program in *Can-Am* involved a tax credit received for making capital investments. In the Department's determination involved in that case, we allocated the benefit to the year of receipt rather than allocating it over the useful life of the equipment acquired.

The tax benefits provided under the CDI program, like those at issue in *Can-Am*, were received after a firm made an approved investment in plant and equipment and the firm, not the government, furnished the capital for the total investment. The court in *Can-Am*, faced with the same argument as presented by petitioner in this case, specifically held that there was no "clear legislative requirement" that the Department amortize tax benefits relating to capital equipment purchases. Since the circumstances of the program at issue in *Can-Am* are analogous to those at issue here, that decision supports our determination on the CDI program.

Since we have determined that the CDI program was not used by the respondents in this investigation, we need not address respondents' comments on the question of whether this program is limited to a specific enterprise or industry, or group of enterprises or industries. Further, we note that the respondents provided no documentation pertaining to their argument on the noncounteravailability of the CDI program until long after verification. Therefore, any such information could not have been used in our final determination.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, and tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with 19 CFR 355.34(a). Written views have been received and considered in reaching this final determination.

Subsequent to this determination, the ITC will determine whether imports of CFSC from Brazil materially injure, or threaten material injury to, a U.S. industry. If that injury determination is affirmative, we shall not issue a countervailing duty order as long as the conditions of the suspension agreement are met. If that injury determination is negative, we will terminate the suspension agreement and our investigation.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

October 8, 1987.

[FR Doc. 87–23891 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting at the Carousel Hotel, on the Ocean at 118th Street, Ocean City, MD (telephone: 301–524–1000). On October 28, 1987, at 8:30 a.m., the Council will commence discussion of the Summer Flounder Fishery Management Plan, Parts 601, 602, and 603, of the Code of Federal Regulations, as well as discuss other fishery management and administrative matters. The public meeting will adjourn on the afternoon of October 29 but may be lengthened or shortened depending upon progress of the agenda. Also, the Council may go into closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street

Room 2115, Dover, DE 19901; telephone (302) 674–2331.

Dated: October 8, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–23856 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries, NOAA, Commerce.

The North Pacific Fishery Management Council's plan team for development of the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (FMP) will convene a public meeting October 14, 1987, at 9 a.m., at the Alaska Regional Office, National Marine Fisheries Service, 709 West Ninth Street, Juneau, AK, to continue work on the draft FMP.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: October 9, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–23855 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Committee is scheduled to convene a public meeting in conjunction with the Council's Technical Advisory Subcommittee, to continue developing specific limited access options for discussion by the Council and the public. The public meeting will convene October 26–27, 1987, at 1 p.m. at the Red Lion Inn, 310 SW. Lincoln Street, Portland, OR, October 26–27, 1987. On October 26 the public meeting will be held in the Multnomah Room and in the Elowah Room on October 27.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Dated: October 8, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–23857 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

October 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 16, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the previously established limits for cotton, wool and man-made fiber textiles and textile products in Categories 310–320 and 610–614, as a group, 300/301, 313, 335, 336/636, 340/640, 342/642, 347/348, 352/652, 359–C, parts of Category 369, 435, 633, 635, 647/648, 659–O, 666, 669–C and 669–P; and to establish limits for newly merged Categories 310/318, 338/339/638/639 and 349/649, produced or manufactured in Mexico and exported during 1987. As a result, the limits for Categories 313 and 335, which are currently filled, will re-open.

Background

CITA directives dated November 28, 1986 and April 7, 1987 (51 FR 43960 and 52 FR 12230) established import restraint limits for certain cotton, wool and man-made fiber textiles and textile products, including Categories 310–320 and 610–614, as a group, 300/301, 310, 313, 318, 335, 336/636, 338/339, 340/640, 342/642, 347/348, 352/652, 359–C (coveralls and overalls), 369pt. (shoe uppers), 369pt. (other), 435, 633, 635, 638/639, 647/648, 649, 659–O (other), 666, 669–C (cordage) and 669–P (man-made fiber bags), produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

During consultations held August 16–21, 1987 between the Governments of the United States and the United Mexican States, agreement was reached to further amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, to increase the current designated consultation levels for cotton and man-made fiber textiles and textile products in Categories 310–320 and 610–614, as a group, and individual Categories 300/301, 313, 335, 336/636, 342/642, 342/642, 352/652, 369pt. (shoe uppers), 369pt. (other), 635, 659–0, 666, 669–C, and 669–P; and specific limits for Categories 347/348 and 359–C, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The designated consultation levels for Categories 340/640, 435 and 633, previously a specific limit, and the specific limit for Category 647/648 are being reduced.

Within the fabric group (Categories 310–320 and 610–614, as a group) Categories 310 and 318 are being merged to become Category 310/318. In addition, currently merged Categories 338/339 and 638/639 are being merged to become Category 338/339/638/639 and Categories 349 and 649 are being merged to become Category 349/649. New limits are being established for the newly merged Categories 310/318, 338/339/638/639 and 349/649.

Import restraint limits for the foregoing categories are being amended and established at the designated levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Rgister** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the

categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

The actions taken pursuant to the letter to the Commissioner of Customs are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 13, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you November 28, 1986 and April 7, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 16, 1987, the directives of November 28, 1986 and April 7, 1987 are hereby amended to include the following new and amended import restraint limits:

Category	12-mo limit [1]
300/301	9,750,000 pods.
310–320 and 610–614, as a group.	35,000,000 sq yds.
313	18,000,000 sq yds.
310/318	1,000,000 sq yds.
335	55,000 doz.
336/636	160,000 doz.
338/339/638/639.	875,000 doz.
340/640	290,000 doz.
342/642	240,000 doz.
347/348	2,000,000 doz. of which not more than 1,200,000 doz. shall be in Category 347 and not more than 1,200,000 doz. shall be in Category 348.
349/649	1,200,000 doz.
352/652	1,600,00 doz.
359–C [2]	1,500,000 pods.
369pt.[3]	1,500,000 pods.
369pt.[4]	400,000 pods.
435	11,000 doz.
633	70,000 doz.
635	110,000 doz.
647/648	1,200,000 doz. of which not more than 636,000 shall be in Category 647 and not more than 636,000 shall be in Category 648.
659–0 [5]	1,500,000 pods.
666	6,000,000 pods.
669–C [6]	400,000 pods.
669–P [7]	850,000 pods.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 359–C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[3] In Category 369pt., only TSUSA numbers 386.0410 and 386.5210.

[4] In Category 369pt., all TSUSA numbers except 355.0200, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, 366.2860, 386.0410, 386.5210, 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

[5] In Category 659–O, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, 384.9310, 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[6] In Category 669–C, only TSUSA numbers 348.0065, 384.0075, 348.0565 and 348.0575.

[7] In Category 669–P, only TSUSA number 385.5300.

Textile products in Category 349 which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive. Charges to category 349 are 38,968 dozen for the period January 1, 1987 through July 31, 1987. Additional charges will be supplied as they become available.

Textile products in Category 349 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(l)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(l).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–24058 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Language Maintenance Panel; Cancellation of; Meeting

ACTION: Cancellation of meeting.

SUMMARY: The Ada [1] Language Maintenance Panel Meeting which was originally scheduled for October 26, 1987, published in the **Federal Register** on October 6, 1987 (52 FR 37360), has been cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, telephone (202) 694–0209.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 9, 1987.

[FR Doc. 87–23899 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

Task Force on Ada 9X; Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Task Force on Ada[1] 9X will be held Tuesday, 27 October 1987 from 7:00 p.m. to 10:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose: To continue discussions on the process for developing Ada 9X and to develop recommendations to be forwarded to the Ada Board.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada[1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Ofc of the Secy of Defense, Federal Register Liaison Office, Department of Defense.

October 9, 1987.

[FR Doc. 87–23900 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

Advisory Committee on Integrated Long-Term Strategy; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 12–13 November 1987 in the Old Executive Office Building, Washington, DC.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program).

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program Office).

Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with long term strategy and policy

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly these meetings will be closed to the public.

October 9, 1987.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–23901 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 7, 1987.

The USAF Scientific Advisory Board Human Systems Division Advisory Group will meet at Brooks AFB, TX, on 18–19 November 1987. The meeting will convene from 8:00 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss the increasing laser threat and the structure of the R&D effort to counter that threat, review control of hazardous waste in weapon system development, evaluate experiments designed to examine operational utility of military man in space, review long range planning concepts, and review investment strategy.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–23795 Filed 10–14–87; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

September 28, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet at the Pentagon, Washington, DC, on 3–4 November 1987. The meeting will convene from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–23796 Filed 10–14–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Intent To Grant an Exclusive Patent License to Boron Biologicals, Inc.

The Department of the Army announces its intention to grant an exclusive license to Boron Biologicals, Inc., a corporation of the State of North Carolina, having a place of business at 2811 O'Berry Street, Raleigh, NC 27607, under the following United States Patents and Patent Applications: 4,209,510, "Ammonia-Cyanoborane, Sodium Iodide Complex," issued June 24, 1980; 4,312,989, Pharmacologically active Amine-Boranes," issued January 26, 1982; 4,368,194, "Pharmacologically Active Amine-Boranes, Method of Use," issued January 11, 1983; 4,587,359, "Amine-Carbamoylborane Adducts," issued May 6, 1986; 4,647,555, "Esters of Boron Analogues of Amino Acids," issued March 3, 1987; Serial No. 864,612, "Method of Making Boron Analogues," filed May 19, 1986; and Serial No. 882,562, "Pharmacological Active Amine-Carboxyboranes," filed July 7, 1986.

The proposed exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR 404.7. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Intellectual Property Counsel of the Army, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, Falls Church, VA 22041–5013.

For further information concerning this notice, contact: Lieutenant Colonel William V. Adams, Patents, Copyrights, and Trademarks Division, OTJAG, Attention: JALS–PC, 5611 Columbia Pike, Falls Church, VA 22041–5013, Telephone No. (202) 756–2434/2435.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87–23811 Filed 10–14–87; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: November 4–6, 1987.

Place: Savannah Sheraton Resort and Country Club, Savannah, Georgia.

Time: 8:00 a.m. to 5:30 p.m. on November 4; 8:00 a.m. to 5:30 p.m. on November 5; 8:00 a.m. to 12:00 p.m. on November 6.

Theme: Sea Level Rise—Its Implications to Coastal Engineering.

Proposed Agenda: The November 4 session will consist of a discussion of old CERB business, status of recommendations to the Chief of Engineers, status of coastal R&D program, presentations on North Atlantic and South Atlantic Divisions research needs, and overview of Savannah District and a tour briefing.

A field trip to Tybee Island, Fort Pulaski, and the Savannah Tidegate is planned for the afternoon of November 4.

The session on November 5 will consist of several presentations entitled: Results of Beach Repenishment Study; Beach Nourishment—Corps Perspective; Experience with Beach Restoration; Introduction to Sea Level Rise Issue; Implications of Sea Level Rise Report of Marine Board Study; Experiences on a U.S. Coast with Rapid Relative Sea Level Rise; International Experience. The session will also consist of two panel discussions: Predicted Magnitude of Sea Level Rise and Where do we go from here?

On November 6 there will be an open discussion of the theme with both panels, recommendations by members of the Board and selection of date for the next CERB.

This meeting is open to the public; participation by the public is scheduled for 9:10 a.m. on November 6. The public may attend the tour on November 4, but must provide their own transportation.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Dwayne G. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

Dwayne G. Lee,

Colonel, Corps of Engineers Executive Secretary.

[FR Doc. 87–23810 Filed 10–14–87; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded, (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Employment in Private Shipyards under Cognizance of Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPS), 0703–0005, NAVSEA 4350–2, NAVSEA 4350/2.

To collect information on employment in private shipyards to make a determination of the capabilities of the shipbuilding industry and its ability to meet the shipbuilding, conversion and repair needs for Navy and Merchant ships. It is collected from firms that build, convert or repair ships.

Businesses or other for profit
Responses 115
Burden hours 11,040

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Manager and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503 and Ms. Pearl Rascoe-Harrison, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 796–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Maxine Eldridge, Commander, Naval Sea Systems Command, National Center #3, Washington, DC 20360, telephone (202) 692–2064.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 9, 1987.

[FR Doc. 87–23989 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E–87–47; OFP Case No. 56290–9367–20, 21, 22, 22–24]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Mobil Oil Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: On April 1, 1987, Mobil Oil Corporation (Mobil or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for its refinery located in Paulsboro, New Jersey.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption are found at 10 CFR 503.32.

Pursuant to section 212(a) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on December 14, 1987.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW, Room GA–093, Washington, DC 20585, Telephone (202) 586–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue SW, Washington, DC 20585, Telephone (202) 586–6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in Paulsboro, New Jersey.

NEPA Compliance

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of

section 102(2)(C) of the National Environmental Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on April 30, 1987 (51 FR 15752), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

Copies of the petition were provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 213(c)(2) and 701(f) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on June 15, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(a) of FUA, ERA hereby grants the petitioner's permanent exemption for the unit to be installed at its facility in Paulsboro, New Jersey permitting the use of natural gas or oil as a primary energy source in each unit identified in this order.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on October 6, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-23823 Filed 10-14-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-6355-001, et al.]

Conoco Inc., et al., Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

October 9,1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 27, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petitition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-6355-001, D, Oct. 1, 1987.	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	El Paso Natural Gas Company, Arrowhead Field Lea County, New Mexico.	(1)	
C162-944-002, D, Oct. 1, 1987.	.....do.....	Arrowhead E-M-E Field, Lea County, New Mexico.	(1)	
G-6342-012, D, Oct. 2, 1987.	.....do.....	Monument Area, Lea County, New Mexico.	(1)	
CI62-1412-005, D, Sep. 30, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Ringwood Gathering Co., Ringwood Field, Major County, Oklahoma.	(2)	
CI62-1412-006, D, Sept. 30, 1987.	.....do.....	.....do.....	(3)	
G-5932-002, D, Sept. 30, 1987.	.....do.....	Arkansas Louisiana Gas Co., Athens Field, Claiborne Parish, Louisiana.	(4)	
C164-40-001, D, Oct. 2, 1987.	.....do.....	S.E. Custer City Field, Custer County, Oklahoma.	(5)	
CI61-1425-004, D, Oct. 2, 1987.	.....do.....	El Paso Natural Gas Company, Jalmat, S. Eunice, Langlie Mattix, *et al.* Fields, Lea County, New Mexico.	(6)	
CI72-555-003, D, Oct. 2, 1987.	.....do.....	Panhandle Eastern Pipeline Co., Reydon Area Field, Roger Mills County, Oklahoma.	(7)	
CI72-556-003, D, Oct. 2, 1987.	.....do.....	Kansas Nebraska Natural Gas Co., Reydon Area Field, Roger Mills County, Oklahoma.	(7)	
CI87-664-000, B, Jun. 1, 1987 [8].	J.D. Burke, P.O. Box 1336, Corpus Christi, Texas 78403.	United Gas Pipe Line Company, Marshall Field, Goliad County, Texas.	(9)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-904-000, B, Sept. 15, 1987 [10].	Burlington Bank and Trust Company, Trustee Under Will of H.E. Trovillo, Deceased, c/o Squire, Sanders & Dempsey, P.O. Box 407, Washington, DC 20044.	Colorado Interstate Gas Company, Applegate No. 1 and Applegate No. 1A Wells, Kearney County, Kansas.	[11].....	
CI87-897-000, B, Sept. 10, 1987.	S&J Operating Company, P.O. Box 2249, Wichita Falls, Texas 76307.	Arkla Energy Resources, a division of Arkla, Inc., Vandeveer No. 1 Well, Pittsburg County, Oklahoma.	[12].....	
CI87-898-000, B, Sept. 10, 1987.	.....do.....	ANR Pipeline Company, Dietz No. 1 Well, Woods County, Oklahoma.	[13].....	
CI88-5-000 (G-19085), B, Oct. 5, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Williams Natural Gas Company, Woodward Field, Woodward County, Oklahoma.	[14].....	
CI88-8-000 (C167-1693), B, Oct. 5, 1987.	Union Texas Petroleum Corp., P.O. Box 2120, Houston, Texas 77252-2120.	Panhandle Eastern Pipe Line Company, Avard Field, Woods County, Oklahoma.	[15].....	

FOOTNOTES

[1] Partial Assignment of Operating Rights to Lynx Petroleum Consultants, Inc.

[2] Sun assigned its interest in Property No. 826335, Ellen, to Entex Petroleum, Inc.

[3] Sun assigned its interest in Property No. 864013, National, to Spess Oil Co.

[4] Sun assigned its interest in Property No. 854714, Mance-Lowe Unit; and No. 891714, Lillian Wallace Unit to Getty Oil Co.

[5] Sun assigned its interest in and to the wells located in Sec. 6-T13N-R15W, Custer County, Oklahoma, limited to the Morrow Springer Formation to Gulf Oil Corporation.

[6] Sun assigned its interest in and to the wells located in W/2 Sec. 25-T24S-R36E, below the depth of 5,000 feet, Lea County, New Mexico covered by Operating Agreement described in said Quitclaim and Bill of Sale (B.P. No. 83755/QC) to Exxon Corp. and Shell Western E&P Inc.

[7] Sun assigned its interest in and to the Scrivner No. 1-26 well located in Sec. 26-T14N-R26W, from the surface down to the base of the Morrow Formation in Roger Mills County, Oklahoma covered by Operating Agreement described in said Quitclaim and Bill of Sale (B.P. No. 83601) to Petroleum Equities Corp.

[8] Additional information received 6-25-87 and 10-2-87.

[9] The application was noticed on June 23, 1987 (52 F.R. 23585). However, on October 2, 1987, Applicant requested, in addition to permanent abandonment, pregranted abandonment authorization for a period of three years for sales of released gas in interstate commerce under its small producer certificate issued in Docket No. CS72-723.

[10] Additional information received 10-5-87.

[11] Applicant requests authorization for a limited-term abandonment expiring January 9, 1990, to cover the sale of its interest to Colorado Interstate Gas Company. Applicant also requests authorization for limited-term pregranted abandonment expiring January 9, 1990, of its sales for resale of the released gas in interstate commerce under its small producer certificate issued in Docket No. CS71-340. In support of its application, Applicant states that takes of gas are substantially below contract levels. The deliverability from Applicant's interest is approximately 90 Mcf/day of NGPA section 104 flowing gas (67%) and section 104-Post 1974 gas (33%).

[12] Applicant requests two-year limited-term abandonment with pregranted abandonment. The purchaser cannot purchase the gas due to market constraints. Deliverability is approximately .100 MMcf/d. The gas is NGPA section 104 minimum rate gas. Applicant intends to sell the released volumes to new purchasers.

[13] Applicant requests two-year limited-term abandonment with pregranted abandonment. The purchaser cannot purchase the gas due to market constraints. Deliverability is approximately .130 MMcf/d. The gas is NGPA section 104 minimum rate gas. Applicant intends to sell the released volumes to new purchasers.

[14] The last well in the McCormick Unit was plugged and abandoned in July 1982, and there are no prospects for additional gas sales from this property. Williams Natural Gas Compony and ARCO have agreed to terminate subject contract effective 9-25-84. All other wells subject to the 7-17-59 contract had been plugged and abandoned and the leases associated therewith had lapsed prior to 1979.

[15] The leases dedicated to the contract filed in Docket No. CI67-1693 and designated Union Texas Petroleum Corp.'s FERC Rate Schedule No. 92 were abandoned as non-productive in February 1982. The remaining leases assigned to other parties and were deleted by an FERC Order issued on 7-28-86.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-23883, Filed 10-14-87; 8:45 am]
BILING CODE 6717-01-M

[Docket Nos. CP88-2-000, et al.]

Northern Natural Gas Co. et al.; Natural Gas Certificate Filings

October 8, 1987.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP88-2-000]

Take notice that on October 1, 1987, Northern Natural Gas Company, Division of Enron Corp., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-2-000, an application pursuant to section 7(c) of the Natural Gas Act for (1) a blanket certificate for authorization to make sales in interstate commerce for resale of existing natural gas supplies, which are surplus to the current and projected needs of Northern's existing on-system customers to off-system and on-system purchasers including interstate and Hinshaw pipelines and local distribution companies (LDC's), on an interruptible basis, in accordance with the provisions of two new sales rate schedules, Interruptible Sales Service-1 and Interruptible Sales Service-2 (ISS-1 and ISS-2) and (2) blanket authorization to utilize Northern's transmission facilities to effectuate interruptible direct sales to end-users, all as more fully, set forth in the application which is on file with the Commission and open to public inspection.

Northern states that is proposes to charge a negotiated rate for sales under ISS-1 and ISS-2 within a range of rates between a minimum and maximum. It is stated that the maximum rate will be equal to Northern's 100 percent load factor CD-1 Zone 2 rate and the minimum rate will equal Northern's actural weighted average cost of natural gas purchased in the month of delivery plus fuel, variable costs of delivery and GRI and AGA if applicable.

Regarding ISS rate schedule sales to end users, Northern proposes to adopt

the following procedures, Northern shall notify the appropriate State Commission LDC of a potential direct sale fifteen days prior to commencement of service, if such end user is currently served by an LDC as listed in Northern's Directory of Communities Served. It is stated that during this fifteen day period, such LDC will have the ability to protest said proposed sale with the FERC. It is further stated that the FERC shall have thirty days to approve the sale, in light of the protest, or the requested sale shall become subject to a section 7(c) application.

Northern states that sales under ISS–1 and ISS–2 would be made through Northern's existing facilities. Northern further states that the purchaser under ISS–2 would be responsible for all costs of third party transportation.

Northern states that ISS–1 and ISS–2 are essential tools that will allow Northern to purchase natural gas at competitive prices by increasing market diversity and thus retain the merchant function. The increased market diversity, Northern explains, will allow it to purchase supplies at the same competitive prices and terms as non-jurisdictional marketers, improve its overall load factor and therein retain long term supplies, manage market more effectively the supply imbalances that result from customers sales entitlement reductions and/or conversions and serve its seasonal markets at reasonable prices.

Comment date: October 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. National Fuel Gas Supply Corporation

[Docket No. CP85–608–011]

Take notice that on September 25, 1987, National Fuel Gas Supply Corporation (National) Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85–608–011 a petition to further amend its certificate of public convenience and necessity in this proceeding so as to authorize, for an additional one-year period commencing January 1, 1988, the transportation of up to 66,403 Mcf of natural gas per day on behalf of National Fuel Gas Distribution Corporation (Distribution) for the account of 33 end-user customers, all as more fully set forth in the Appendix hereto and in the application which is on file with the Commission and open to public inspection.

The petition states that National was authorized by Commission order issued December 31, 1986, as amended and modified, to transport up to 60,858 Mcf of natural gas per day on an interruptible basis for Distribution for the account of 33 specified industrial and large commercial customers for a term ending on December 31, 1987. The Appendix hereto provides details for each of the 33 industrial and commercial customers of Distribution for which Distribution seeks an extension of transportation service by National. National states that it would receive the transportation volumes at existing receipt points on its system and deliver the volumes to Distribution at existing points of deliver.

National seeks authorization to continue to provide the transportation service authorized in this proceeding for an additional term of one year commencing January 1, 1988. The petition states that authorization of this extension prior to January 1, 1988, is needed to avert a disruptive suspension of service to the existing transportation customers.

National adds that it would charge Distribution pursuant to its Rate Schedule T–1 which currently provides for a rate of 31.08 cents per Mcf and 2 percent shrinkage.

Comment date: October 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

APPENDIX.—NATIONAL FUEL GAS SUPPLY CORPORATION END USER TRANSPORTATION CUSTOMERS

End User	Currently authorized maximum volume (MCF/day)	Proposed maximum volume (MCF/day)
1. Airco Carbon, St. Marys, PA	3,300	2,950
2. Airco Carbon, Niagara Falls, NY	2,500	3,500
3. Altech Specialty Steel, Dunkirk, NY	2,750	2,750
4. American Brass, Buffalo, NY	3,000	3,000
5. Angelica Healthcare Service Group, Batavia, NY	250	250
6. Arcata Graphics, Cheektowaga, NY	1,325	1,500
7. Bethlehem Steel Corp., Buffalo, NY	9,000	9,500
8. Chautauqua Hardware Corp., Jamestown, NY	215	215
9. Darling & Co., Buffalo, NY	300	300
10. Erie Wastewater Treatment Plant, Erie, PA	777	400
11. Ferro Corp., Buffalo, NY	500	800
12. Goodyear Tire & Rubber Co., Niagara Falls, NY	1,500	2,500
13. Great Lakes Carbon Corp., Niagara Falls, NY	1,047	1,375
14. Hammermill Papers Group, Erie, PA	6,280	8,780
15. Hopes Architectural Products, Inc., Jamestown, NY	300	300
16. Jamestown Metal MFG. Corp., Jamestown, NY	110	250
17. Kaufman's Bakery, Buffalo, NY	280	280
18. McInnes Steel Corp., Corry, PA	1,500	1,500
19. Morgan Services, Inc., Buffalo, NY	167	[illegible]
20. National Forge Co., Erie & Irvine, PA	4,000	6,500
21. Niagara Cold Drawn Company, Buffalo, NY	166	166
22. Neville-Synthesis (FNA Koppers, Inc.), Oil City, PA	1,750	1,750
23. O–AT–KA Milk Products Corp., Batavia, NY,	700	700
Collins Center, NY	350	400
24. Occidental Chemical Corp., Niagara Falls, NY	648	700
25. PPG Industries, Pittsburgh, PA	7,000	7,500
26. Pendrick Laundry, Buffalo, NY	90	200
27. Sorrento Cheese Co., Buffalo, NY	760	820

APPENDIX.—NATIONAL FUEL GAS SUPPLY CORPORATION END USER TRANSPORTATION CUSTOMERS—Continued

End User	Currently authorized maximum volume (MCF/day)	Proposed maximum volume (MCF/day)
28. Spaulding Fibre Co., Inc., Tonawanda, NY	2,000	2,000
29. Special Metals Corp., Dunkirk, NY	640	640
30. Stackpole Corp., St. Marys, PA	1,800	1,800
31. TAM Ceramics, Inc., Niagara Falls, NY	593	567
32. Trico Products Corp., Buffalo, NY	1,310	1,310
33. Witco Chemical Corp., Bradford, PA	1,500	1,500

3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP87-556-000]

Take notice that on September 24, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-556-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to establish two new delivery points to its existing firm sales customer, the City of Springfield, Tennessee (Springfield) under the blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to Springfield's request, it has agreed to establish two new delivery points to Springfield in Tennessee's Rate Zone 1 to be known as (1) the Betts Road Meter Station located in Robertson County, Tennessee and (2) the Cross Plains Meter Station located in Robertson County, Tennessee. Tennessee states that the new delivery point is necessary to better serve the requirements of Springfield's existing service area. The total estimated cost of the proposed new delivery points is $115,000.

Tennessee does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Springfield. Tennessee asserts that establishment of the proposed new delivery points is not prohibited by Tennessee's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery points without detriment or disadvantage to any of Tennessee's other customers.

Comment date: November 23, 1987, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP87-28-001]

Take notice that on September 29, 1987, Texas Eastern Transmission Corporation (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87-28-001 an amendment to Docket No. CP87-28-000, pursuant to section 7(c) of the Natural Gas Act, to reflect a modification to the proposed facilities for which authorization to construct and operate was sought in Docket No. CP87-28-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that, by its original application in Docket No. CP87-28-000, it sought to provide a firm storage service (referred to as Phase V) for Consolidated Edison Company of New York, Inc. of 23,115 dekatherms equivalent per day and to construct and operate 8.0 miles of 36-inch pipeline looping at four locations on its system in Pennsylvania, and to upgrade compression facilities by 8,600 Horsepower at each of two locations in Pennsylvania. Applicant further states that the total estimated cost for these facilities was $13,438,000.

Applicant requests that the original application be amended so as to construct and operate 6.25 miles of 36-inch pipeline looping at five locations on its system in various countries in Pennsylvania in lieu of the looping proposed in the original filing. Applicant indicates that it still requests authorization to provide the services and to upgrade compression facilities by 8,600 horsepower at each of two locations in Pennsylvania, as proposed in the original filing. Applicant states that the total capital cost is estimated to be $12,256,000.

Applicant submits that the original facilities were to be extended for approved pipeline looping authorized by Commission Order dated September 12, 1986 (36 FERC ¶ 61,273) in *Texas Eastern Transmission Corporation's* Docket No. CP85-806-000. Applicant further submits that, on June 12, 1987, Columbia Gas Transmission Corporation filed a petition to review such order in the United States Court of Appeals for the District of Columbia Circuit, Columbia *Gas Transmission Corp.* vs. *FERC*, Case No. 87-1260. It is indicated that Applicant has not accepted the certificate nor constructed facilities authorized in Docket No. CP85-806-000, since the order is pending judicial review.

Applicant states that the modification to the proposed facilities would result in a reduction of the estimates of Applicant's firm demand charge from $10.035 to $8.797.

Comment date: October 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP87-557-000]

Take notice that on September 25, 1987, Williams Natural Gas Company (WGN), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-557-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim regulating, measuring and appurtenant facilities serving Dooley and Company (Dooley) alfalfa dehydrator in Leavenworth County, Kansas; Western Alfalfa Corporation (Western Alfalfa) alfalfa dehydrating plant in Saline County, Missouri; Highway House Development Company (HHD) service station and restaurant in Newton County, Missouri; and Williams Pipe Line Company (WPL) pump station in Jefferson County, Kansas, and the transportation of gas through said facilities, under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

WNG states that Dooley, Western Alfalfa, HHD and WPL have requested that the facilities be reclaimed. The total cost of the abandonment is approximately $6,780 with an estimated salvage value of $6,420.

Comment date: November 23, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23869 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-48-000]

ANR Pipeline Co.; PGA Rate Change Filing

October 9, 1987.

Take notice that on October 1, 1987, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Fourteenth Revised Sheet No. 18
Alternate Fourteenth Revised Sheet No. 18

ANR states that Fourteenth Revised Sheet No. 18 and Alternate Fourteenth Revised Sheet No. 18 incorporate changes proposed in its September 1, 1987 application to institute the Annual Charge Adjustment (ACA) and its September 25, 1987 filing pertaining to the functionalization and classification of Canadian gas costs consistent with Opinion Nos. 256 and 256-A.

ANR states that this filing also includes changes proposed in its concurrent Opinion Nos. 258 and 258-A compliance filing on October 1, 1987 relative to adoption of a Modified Fixed Variable rate design and elimination of ANR's non-gas fixed cost commodity minimum bill.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before October 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23832 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-80-026]

ANR Pipeline Co.; Compliance Filing

October 8, 1987.

Take notice that on October 1, 1987, ANR Pipeline Company (ANR) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 1-A, to become effective November 1, 1987. ANR states that the filing reflects compliance with the Commission's Opinion Nos. 258 and 258-A and its subsequent order dated May 29, 1987. The revised Tariff Sheets and Alternate Tariff Sheets submitted with this filing are listed below:

Original Volume No. 1

Thirteenth Revised Sheet No. 18
Alternate Thirteenth Revised Sheet No. 18
Second Revised Sheet No. 20
Second Revised Sheet No. 25
First Revised Sheet No. 79
First Revised Sheet No. 80
Original Sheet No. 80A
Second Revised Sheet No. 111
First Revised Sheet No. 112
Second Revised Sheet No. 113
Second Revised Sheet No. 114

Original Volume No. 1-A

Third Revised Sheet No. 5
Alternate Third Revised Sheet No. 5
Third Revised Sheet No. 6
Alternate Third Revised Sheet No. 6
Second Revised Sheet No. 7
Alternate Second Revised Sheet No. 7
Second Revised Sheet No. 8
Alternate Second Revised Sheet No. 8

ANR states that this filing is being made under protest, and with full reservation of all rights relative to appeal of Opinion Nos. 258 and 258-A and any other lawful action relative to the subject matter. ANR has also stated that it has filed its apeal of Opinion Nos. 258 and 258-A to a court of competent jurisdiciton.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the federal Energy regulatory commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23872 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-1-000]

Bayou Interstate Pipeline System; Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that on October 1, 1987, in compliance with 18 CFR 154.38(d)(4)(vi), Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets set forth in Appendix A. Bayou states that an Annual Charges Adjustment provision, pursuant to 18 CFR Part 382, was also included in the filing. Bayou also proposed Original Volume No. 1A which sets in place the General Terms and Conditions under which Bayou could perform firm and interruptible onshore and offshore transportation under Section 311 of the Natural Gas Policy Act along with Rate Schedules FTS and ITS. The proposed effective date is November 1, 1987.

Copies of this filing have been served upon Bayou's jurisdictional customer, the Louisiana Public Service Commission, and the Department of Natural Resources Office of Conservation of the State of Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix A—Proposed Tariff Sheets

FERC Gas Volume No. 1:

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 3
Original Sheet No. 3A
Third Revised Sheet No. 4
First Revised Sheet No. 6
First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 50
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 75
Second Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
Original Sheet No. 80
Original Sheet No. 81

FERC Gas Volume No. 1A:

Original Sheet No. 1
Original Sheet No. 1A
Original Sheet Nos. 2 through 15
Original Sheet Nos. 31-41
Original Sheet Nos. 101-114
Original Sheet Nos. 201-221
Original Sheet No. 301

[FR Doc. 87-23865 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-1-000]

CSX Oil Gas Corp.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Authorizing Pre-Granted Abandonment

October 9, 1987.

Take notice that on October 2, 1987, CSX Oil, & Gas Corporation (CSX), pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f (1982), and the Federal Energy Regulatory Commission's (Commission) Regulations promulgated thereunder, applied for a blanket certificate of public convenience and necessity with pre-granted abandonment of the sale, of natural gas which remains subject to the Commission's Natural Gas Act jurisdiction for which producers have already received separate abandonment authority under section 7(b) of the Natural Gas Act.

CSX states that it is seeking resale and pre-granted abandonment authority for all Natural Gas Policy Act (NGPA) categories of natural gas subject to the Commission's jurisdiction under the Natural Gas Act, including contractually uncommitted natural gas reserves, for which producers selling gas to CSX have secured the necessary sales and abandonment authorizations pursuant to sections 7(b) and 7(c) of the Natural Gas Act. This includes, but is not necessarily limited to, natural gas abandoned in connection with take-or-pay settlements under §§ 2.76 or 2.77 of the Commission's regulations, 18 CFR 2.76 and 2.77 (1987), and natural gas abandoned under the authority of Commission Order No. 451, which provides producers automatic abandonment and blanket sales authority for gas released to them pursuant to the good faith negotiation procedures promulgated by Order No. 451. CSX is only seeking sales and abandonment authority for sales made on its own behalf. CSX's potential resale customers under the requested blanket certificate include interstate, intrastate and so-called "Hinshaw" pipelines, local distribution companies and industrial and other end-users, including firm sales customers of releasing interstate pipelines. CSX is not seeking transportation authority of gas sold under the blanket certificate sought by its application. The transportation authority necessary to implement the requested authorization is proposed to consist of transport authority provided by Commission Order Nos. 451 and 436, and NGPA section 311.

The natural gas sold by CSX under its requested blanket certificate, if granted, will be sold at market-clearing prices, not to exceed the applicable NGPA maximum lawful price of the applicable contract price, whichever is lower.

CSX further states that its request is consistent with the Commission's recently issued order in *The Resource Group, et al.*, 40 FERC (CCH) ¶ 61,153 (issued August 4, 1987), wherein the Commission granted blanket sales certificates with pre-granted abandonment authorizing a number of marketing companies to make sales for resale, and providing pre-granted abandonment for such sales. CSX has expressed its willingness to comply with the terms and conditions set forth in the Commission's order in *Citizens Energy Corporation, et al.*, 39 FERC (CCH) ¶ 61,106 (1987), except as to the term of such authority. CSX requests that the term of the sales and abandonment authority it requests extend for at least three years from the date of approval of such authority by the Commission.

CSX further states that it is willing to subject itself to the Commission's Natural Gas Act jurisdiction to the extent, and only to the extent, of its participation in these jurisdictional transactions in the same manner and on the same basis that the Commission's

jurisdiction was stated to attach to certain marketers in prior Commission orders granting such entities certain blanket sales and abandonment authorizations. CSX also requests that the Commission clarify and declare that CSX will be subject to the Commission's Natuiral Gas Act jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

Any person desiring to be heard or to make any protest with reference to say Application should on or before October 26, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a Motion to Intervene or Protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a Motion to Intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23864 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

October 8, 1987.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on October 1, 1987, tendered for filing Ninth Revised Sheet Nos. 57(i) and 57(ii), and Fifteenth Revised Sheet No. 57-A to its FERC Gas Tariff to be effective November 1, 1987.

Ninth Revised Sheet Nos. 57(i) and 57(ii) reflect a purchased gas cost surcharge resulting from maintaining an unrecovered purchased gas cost account for the period commencing March 1, 1987 and ending August 31, 1987.

Fifteenth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing November 1, 1987 and ending April 30, 1988. No incremental costs are estimated for this period.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23814 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that K N Energy, Inc. ("K N") on October 1, 1987, tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Gas Cost Adjustment provision (section 19) and the Incremental Pricing Surcharges provision (section 20) of the General Terms and Conditions of K N's FERC Gas Tariff, Third Revised Volume No. 1 to reflect a decrease in the base cost of gas and to amortize certain unrecovered gas costs. K N states that the proposed changes would decrease the commodity rate under each of its jurisdictional rate schedules by 17.22¢ per Mcf, of which 16.85¢ per Mcf represents the decrease in the base purchase gas cost and .37¢ per Mcf represents the decrease in the unrecovered gas cost surcharge.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before October 15, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23866 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-W

[Docket No. RP88-6-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

October 8, 1987

Take notice that North Penn Gas Company (North Penn) on October 1, 1987, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Eighty-Sixth Revised Sheet No. PGA-1
Second Revised Sheet No. 15 G(1)

North Penn states that these tariff sheets are being filed to be effective on October 1, 1987 in compliance with Commission Order Nos. 472 and 472-B issued May 29, 1987 and September 16, 1987, respectively in Docket No. RM87-3-018.

North Penn states that the revised tariff rates reflect an increase in the commodity portion of existing rates of $.0021 per Mcf to include the FERC Annual Charge Adjustment. A new section 16 Federal Energy Regulatory Commission Annual Charge Adjustment Provision has been added to the General Terms and Conditions of North Penn's Tariff to include the provision for the FERC Annual Charge Adjustment.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective October 1, 1987, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23867 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-4-000]

Pogo Producing Co.; Application for Limited-Term Blanket Certificate of Public Convenience and Necessity With Pregranted Abandonment

October 9, 1987.

Take notice that on October 1, 1987, Pogo Producing Company ("Pogo") filed an application pursuant to section 7(c) and 7(b) of the Natural Gas Act and Part 157 of the regulations of the Federal Energy Regulatory Commission (the "Commission") requesting a limited-term blanket certificate of public convenience and necessity authorizing the sale for resale of production from East Cameron Block 270 and Eugene Island Blocks 295 and 330 with pregranted abandonment. Pogo requests such certificate authority for a limited term of 3 years.

The subject production previously had been sold to Sea Robin Pipeline Company ("Sea Robin") under certificate authority granted in Docket Nos. CI73-477-000 and CI73-546-000. On September 15, 1987, the Commission granted Pogo authority to permanently abandon such sales to Sea Robin. *Phillips 66 Natural Gas Co., et al.*, Docket Nos. G-2605-001, *et al.* Currently, Pogo's production from the subject blocks is being sold under authority of Sea Robin's limited-term abandonment program authorized by the Commission in Docket No. CI86-595-000.

Pogo requests that the Commission process its application on an expedited basis pursuant to Rule 802 of the Commission's rules of practice and procedure.

Any person desiring to be heard or to make any protest with reference to said application should, on or before October 26, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the Commission's rules of practice and procedure. 18 CFR 385.211, 385.214. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Persons desiring to become parties to the proceeding or to participate as a party in any hearing herein must file motions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23873 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-38-000]

Ringwood Gathering Co.; Filing of Revised Tariff Sheets

October 9, 1987.

Take notice that on October 1, 1987 Ringwood Gathering Company tendered for filing Forty-Second Revised Sheet PGA-1. Ringwood Gathering Company states that Forty-Second Revised Sheet PGA-1 with a proposed effective date of November 1, 1987, is being filed to revise its Base Tariff Rate to reflect a net decrease for changes in the system cost of purchased gas and the recovery of the balance accumulated in its unrecovered purchased gas cost account.

Ringwood Gathering Company further states that the projected cost of purchased gas, as computed in said filing, is based on the applicable NGPA rates that will be paid during the effective period of this PGA. In certain instances, Ringwood has renegotiated the price to be paid for certain gas at costs below the maximum lawful NGPA rates. In these cases the renegotiated prices have been used.

Ringwood Gathering Company states that copies of this filing were served upon Williams Natural Gas Company, Oklahoma Natural Gas Company and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, to be filed on or before October 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23870 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-29-000]

Transcontinental Gas Pipe Line Corp., Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 1, 1987 the following proposed tariff sheets to Second Revised Volume No. 1 of its FERC gas tariff:

Proposed Tariff Sheets

Forty-Ninth Revised Sheet No. 12
Forty-Fifth Revised Sheet No. 15
Sixth Revised Sheet No. 15-A
Fifth Revised Sheet No. 247
Fifth Revised Sheet No. 248
Seventh Revised Sheet No. 249
Fifth Revised Sheet No. 250
Third Revised Sheet No. 250-A
Second Revised Sheet No. 250-B
Second Revised Sheet No. 250-C
First Revised Sheet No. 250-D
First Revised Sheet No. 250-E
First Revised Sheet No. 250-F

Transco states that the proposed tariff sheets reflect an overall rate increase of 14.9 cents per dt in the commodity charge under the CD, G, OG, E, ACQ and S-2 Rate Schedules.

Transco states that the increase of 14.9 cents per dt in commodity charges under the aforementioned Rate Schedules is comprised of 11.5 cents per dt increase related to the current gas cost portion of commodity rates and a 2.0 cents increase in the Deferred Adjustment and a 1.4 cents per dt increase related to the Special Transition Gas Cost Surcharge. Transco states that the instant PGA filing reflects a projected average cost of purchased gas of approximately $2.23 /dt based on projected system gas purchases as more fully reflected on Appendix B of the filing.

Transco states that as background to the instant filing, by order issued May 18, 1987 in TA85-1-29 et al., the Commission approved a Transco PGA Settlement which resolved for the period encompassed by 6 PGA proceedings all outstanding issues in those dockets except for those issues reserved by Art. II of the Settlement. Pursuant to such Settlement, Transco agreed, among other things, (i) to reflect a cost of gas in the instant PGA filing no greater than

BEST COPY AVAILABLE

$2.25 per dt, (ii) to be "at risk" for gas costs in excess of $2.2132 per dt for the period April 1, 1987, through October 31, 1987 (summer period) under certain specified conditions and (iii) to suspend normal deferred accounting for the foregoing summer period and to refund or surcharge customers directly, as appropriate, within sixty days of the conclusion of the summer period. Therefore, Transco states, as reflected in Appendix D of the filing, the negative surcharge of the instant PGA filing of 0.6 cents per dt is attributable only to (i) Account No. 191 carrying charges computed for the period April 1, 1987 through August 31, 1987 and (ii) an adjustment related to the inclusion of deferred state income taxes in the computation of Account No. 191 carrying charges.

Transco has also included revisions to Section 22 of its General Terms and Conditions to eliminate all incremental pricing provisions as a result of Congress' repeal of Title II of the NGPA and the Commission's Order No. 478.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested state commissions. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. In accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23868 Filed 10-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-5-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

October 8, 1987.

Take notice that on October 1, 1987, Transcontinental Gas Pipe Line Corporation ("Transco") tendered for filing First Revised Sheet Nos. 187 through 196, 196-A and 371 through 375 to its FERC Gas Tariff, Second Revised Volume No. 1.

The proposed effective date of the revised tariff sheets is November 1, 1987.

Transco states that the purpose of the filing is to revise its currently effective Rate Schedule FT and its form of Service Agreement for use under its Rate Schedule FT so as to bring such tariff provisions into conformity with the manner in which its expects to operate as an open-access transporter under Commission Order 436 and 500. Transco states that the provisions of the revised Rate Schedule FT and FT Form of Service Agreement are more consistent with the Commission's policies than are the comparable provisions of Transco's currently effective tariff and that the revised tariff sheets delete any reference to Rate Schedule MDQ which has, not to date, been made effective.

Transco states that copies of the filing have been served upon its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are availabale for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23871 Filed 10-04-87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87-426; File Nos. BPH-851219 MD, et al.]

Applications For Consolidated Hearing; LNJ Communications, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. LNJ Communications, Montecito, CA.	BPH-851219MD	87-426
B. Sim Farar and Sonja Farar, A General Partnership, Montecito, CA.	BPH-851226MG	.....
C. Joseph Edward Red Eagle Strickland, Montecito, CA.	BPH-851227ME	.....
D. Raymond J. Bnare, Montecito, CA.	BPH-851227MG	.....
E. Shawn Phalen, Montecito, CA.	BPH-851231MO	.....
F. Patricia Josephine Jacobsen d/b/a Peacock Broadcasting, Montecito, CA.	BPH-851231MP	.....
G. Montecito Hispanic Community Broadcasting, Inc., Montecito, CA.	BPH-851231MQ	.....
H. Ellwood Beach Broadcasting, Ltd., Montecito, CA.	BPH-851231MS	.....
I. Gudrun Z. Dye and Brian De Silva d/b/a El Capitan Radio, Montecito, CA.	BPH-860102MW	.....
J. Montecito Minority Media, Inc., Montecito, CA.	BPH-860102MY	.....
K. Spirit Broadcasting, A California Limited Partnership, Montecito, CA.	BPH-860102MZ	.....
L. Hildburg L. Charles, Montecito, CA.	BPH-860102NC	.....
M. Josephson Broadcasting, Inc., Montecito, CA.	BPH-860102ND	.....
N. Mark Morris, Montecito, CA.	BPH-860102NF	.....
O. Donald Love, Montecito, CA.	BPH-860102NN	.....
P. Gwendolyn Alice Hanan, Montecito, CA.	BPH-860102NO	.....
Q. FM Montecito Limited Partnership, Montecito, CA.	BPH-860102NP	.....
R. James Evans, Montecito, CA.	BPH-851231MR	.....
S. Claudia Bratton, Montecito, CA.	BPH-860102MX (Dismissed)	.....
T. Radio Representatives, Inc., Montecito, CA.	BPH-860102NA (Dismissed)	.....
U. Better News, Inc., Montecito, CA.	BPH-860102NH (Dismissed)	.....
V. Samuel T. Nee, Montecito, CA.	BPH-860102NJ (Dismissed)	.....
W. Premier Broadcasting, Inc., Montecito, CA.	BPH-860102NK (Dismissed)	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding

headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A–Q
2. Ultimate, A–Q

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–23849 Filed 10–14–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–799–DR]

Major Disaster and Related Determinations; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California, (FEMA–799–DR), dated October 7, 1987, and related determinations.

DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice: Notice is hereby given that, in a letter of October 7, 1987, the President declared a major disaster under the authority of the Disaster Relief act of 1974, as amended (42 U.S.C. 521 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of California resulting from an earthquake and continuing aftershocks beginning on October 1, 1987 is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of PL 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared disaster.

Los Angeles County for Individual Assistance and Public Assistance.
Orange County as an adjacent county for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–23815 Filed 10–14–87; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Docket No. 87–21]

Marine Surveyors Guild, Inc. et al. v. Cooper/T. Smith Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Marine Surveyors Guild, Inc., Captain Davenport & Associates, Inc. and Thomas F. Sessum d/b/a Sessum's Marine Surveyors ("Complaints") against Cooper/T. Smith Corporation ("Respondent") was served October 8, 1987. The complaint was filed pursuant to the Shipping Act, 1916, 46 U.S.C. app. 801, et seq., and the Shipping Act of 1984, 46 U.S.C. app. 1701, et seq. Specific alleged violations include sections 15, 16 and 17, Shipping Act, 1916, 46 U.S.C app. 816, 815 and 816, arising out of a requirement that Complainants execute an indemnity agreement and provide insurance coverage before access is allowed to Respondent's premises or vessels.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 10, 1988, and the final decision of the Commission shall be issued by February 10, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 87–23779 Filed 10–14–87; 8:45 am]

BILLING CODE 6730–01–M

Northwest Consolidators, Inc., et al.; Ocean Freight Forwarder License

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573:

Northwest Consolidators, Inc., 12360 Lake City Way, NE., Seattle, Washington 98125, Officers: Gerald W. Smyth—Pres., Dir., Robert O. Smyth—V.P., Dir., Sharon S. Kramer—Sect./Treas., Dean Forgey—Asst. V.P., Gen. Mgr.

Allways Transportation Services, Inc., 5055 South Central Street, Chicago, IL 60638, Officers: Joseph R. Duffy, P. & Dir., Patricia Duffy, Dir., Norman Whiteside, V.P., Jonas Montoya, V.P.

Ace Express Inc., 5511 W. 104th St., Los Angeles, CA 90045, Officers: Alfred Tse, P., Charles Wong, V.P.

Inter-American Moving Services, Inc., 3601 NW. 55th Street, Miami, Florida 33142, Officer: Terence A. Rignault, President.

Seamar Consolidators Corp., 5429 NW. 72 Ave., Miami, Florida, Officer: Lourdes M. Leal, President.

Four Winds International, Inc., 4275 Campus Point Court, San Diego, California 92121, Officer: Robert A. Kelly, V.P.

Sea Rank International, Inc., 5950 6th Ave. South, Suite 113, Seattle, Washington 98108, Officers: Samuel H. Chen, Pres., K.W. Michael Tsang, V.P., Helen H-L Kwong, Secretary.

J.P. Shipping Consultants, Inc., 12735 S.W. 32nd Terrace, Miami, Florida 33175, Officers: Jorge Perez, P., Mireya Perez, Secretary.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 8, 1987.

[FR Doc. 87-23778 Filed 10-14-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Arrow Bank Corp., et al.; Formations of: Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045.

1. Arrow Bank Corp. Glen Falls, New York; to acquire 100 percent of the voting shares of Saratoga National Bank and Trust Company, Saratoga Springs, New York, a *de novo* bank. Comments on this application must be received by October 28, 1987.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Atlantic Bancorporation, Voorhees, New Jersey; to acquire 100 percent of the voting shares of Glendale Bank of Pennsylvania, Philadelphia, Pennsylvania, a *de novo* bank.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First State Corporation, Waynesboro, Mississippi; to acquire 24.9 percent of the voting shares of First National Bank of Lucedale, Lucedale, Mississippi.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Malta Banquo, Inc., Malta, Montana; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Security Bank of Malta, Malta, Montana.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Community Bankers, Inc., Granbury, Texas; to acquire 100 percent of the voting shares of Farmers & Merchants State Bank, Burleson, Texas. *Comments on this application must be received by November 4, 1987.*

Board of Governors of the Federal Reserve System, October 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23893 Filed 10-14-87; 8:45am]

BILLING CODE 6210-01-M

Indiana National Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Indiana National Corporation, Indianapolis, Indiana; to engage *de novo* through its subsidiary, Indiana National Network Corporation, Indianapolis, Indiana, in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23894 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interest persons may

express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 30, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoeig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. W. Dale Maudlin, St. Joseph, Missouri, to acquire 5 percent; Robert W. Wolfe, Union Star, Missouri, to acquire 2.2. percent; and Robert G. Bolin, St. Joseph, Missouri, to acquire 5 percent of the voting shares of First American Bancshares, Inc., Union Star, Missouri, and thereby indirectly acquire First American Bank, Union Star, Missouri.

2. David A. Norton, Filley, Nebraska; to acquire 80 percent of the voting shares of FICO, Inc., Filley, Nebraska, and thereby indirectly acquire Filley Bank, Filley, Nebraska.

Board of Governors of the Federal Reserve System, October 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23895 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

Shawmut Corporation, et al.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 1987.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 01206:

1. Shawmut Corporation, Boston, Massachusetts; to engage *de novo* through it subsidiary, One Federal Asset Management, Inc., Boston, Massachusetts, in (a) portfolio investment advice and management for institutional and employee benefit account customers; (b) investment advisory services to and management of accounts supervised by Shawmut Corporation's banks. The investment research provided by One Federal Asset Management, Inc., will be utilized by said banks. Securities trading for said banks will in most instances be carried out by a central trading function of One Federal Asset Management. (c) serve as an investment adviser to investment company or companies that may be organized by Shawmut Corporation or any of its subsidiaries to the extent permitted by law; (d) provide portfolio investment advice or management to a limited number of personal trust or investment management agency customers; (e) furnish general economic infomation and advice, general economic statistical forecasting services and industry and company studies to the foregoing parties, pursuant to section 225.25(b) (4) (ii) (iii) (iv) and (v) of the Board's Regulation Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1987.

James McAfee,

Associate Secretary of the Board.

FR Doc. 87-23896 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

The Bank of New York Co., Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or at the offices of the Board of Governors not later than November 12, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.,* New York, New York; to acquire 100 percent of the voting shares of Irving Bank Corporation, New York, New York, and thereby indirectly acquire Irving Trust Company, New York, New York; The Bank of Lake Placid, Lake Placid, New York; Bank of Long Island, Babylon, New York; Central Trust Company, Rochester, New York; Dutchess Bank and Trust Company, Poughkeepsie, New York; Endicott Trust

Company, Endicott, New York; The First National Bank of Hancock, Hancock, New York; The First National Bank of Moravia, Moravia, New York; The Fulton County National Bank & Trust Company, Gloversville, New York; and the Hayes National Bank, Clinton, New York.

In connection with this application, Applicant has also applied to acquire Irving Business Center, Inc., New York, New York, and thereby engage in the business of marketing the products and services of Irving Trust Company pursuant to § 225.25(b) (1) and (5); Irving Financial Centers, Inc., New York, New York, and thereby engage in consumer lending and commercial lending to local business pursuant to § 225.25(b)(1); Irving Life Insurance Company, New York, New York, and thereby engage in providing credit-related life, mortgage and health insurance pursuant to § 225.25(b)(8); Irving Trust Company California, San Francisco, California; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); Irving Trust Company Florida, Miami, Florida; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); and One Wall Street Brokerage, Inc., New York, New York, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. *United Jersey Banks,* Princeton, New Jersey; to acquire 100 percent of the voting shares of First Valley Corporation, Bethlehem, Pennsylvania, and thereby indirectly acquire First Valley Bank, Bethlehem, Pennsylvania; the Hazleton National Bank, Hazleton, Pennsylvania; Hanover Bank of Pennsylvania, Wilkes-Barre, Pennsylvania; and West Side Bank, West Pittston, Pennsylvania. In addition, First Valley Inc., Bethlehem, Pennsylvania, has applied to become a bank holding company.

In connection with these applications, United Jersey Banks proposes to acquire First Valley Life Insurance Company, Bethlehem, Pennsylvania, and thereby engage in the reinsurance of credit life, accident and health insurance directly related to extensions of credit by its banking subsidiaries pursuant to § 225.25(b)(8); and First Valley Leasing, Inc., Bethlehem, Pennsylvania, and thereby engage in the leasing of personal property pursuant to § 225.25(b)(5).

Board of Governors of the Federal Reserve System, October 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23787 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

Donald E. Rogers; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 30, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Donald E. Rogers,* to acquire 7.50 percent; Darlene E. Rogers, to acquire 5 percent; Helen M. Rogers Trust, Helen M. Rogers and son, Donald Rogers, Trustees, Spencer, Oklahoma, to acquire 2.22 percent; Donna R. Smith, to acquire 7.50 percent; and Randall C. Smith, to acquire 5 percent of the voting shares of Spencer Bancshares, Inc., Spencer, Oklahoma, and thereby indirectly acquire Spencer State Bank, Spencer, Oklahoma. Unless otherwise stated, all notificants reside in Edmond, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Robert C. Martin,* Lordsburg, New Mexico, to acquire 50.61 percent; Fred J. Ewing, Lordsburg, New Mexico, to acquire 1.52 percent; W. LeRoss Jone, Duncan, Arizona, to acquire 4.35 percent; Standford L. Jone, Duncan, Arisona, to acquire 0.17 percent; M. Don Kidd, Carlsbad, New Mexico, to acquire 9.15 percent; and Anderson W. Carter, Lovington, New Mexico, to acquire 9.15 percent of the voting shares of Western Bank, Lordsburg, New Mexico.

Board of Governors of the Federal Reserve System, October 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23789 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

Salem Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 3, 1987.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Salem Bancorp, Inc.,* Salem, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Bank, Inc., Salem, Kentucky.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Maryville Bancshares, Inc.,* Chillicothe, Missouri, and its subsidiary Citizens State Bank of Maryville, Maryville, Missouri; to merge with Savannah Bancshares, Inc., Chillicothe, Missouri, and thereby indirectly acquire Community Bank of Savannah, Savannah, Missouri. Comments on this application must be received by October 30, 1987.

Board of Governors of the Federal Reserve System, October 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23788 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 49 FR 10168, FR March 19, 1984) is amended to reflect the establishment of the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research in place of the current Center for Drugs and Biologics.

Currently, there are two major program concerns within the Center for Drugs and Biologics—Acquired Immune Deficiency Syndrome (AIDS) and the new drug review process. The crises and public pressures generated by these two major programs make them unmanageable in a single organization. FDA believes both programs need more focused leadership on a day-to-day basis and better management of resources than a single center director and deputy can provide. FDA believes that the director of its biologics program, which will focus on the development of AIDS vaccines and diagnostic tests and coordinate all other AIDS activities, needs to continue to report directly to the Commissioner due to the public health significance of the AIDS threat. FDA also believes that the director of the new drug review program needs to continue to report directly to the Commissioner due to the major public health gains that result from the approval of new therapies. Consequently, FDA believes that the establishment of two new centers in place of the current Center for Drugs and Biologics, with the AIDS program as the dominant focus in one and with the new drug review program as the dominant focus in the other, will enable FDA to focus more attention on these two vital programs.

Section HF-B, Organization and Functions is amended as follows:

1. Delete paragraph (n) and all subparagraphs for *Center for Drugs and Biologics (HFN).*

2. Insert new paragraph (n), *Center for Drug Evaluation and Research (HFN)* reading as follows:

(n) *Center for Drug Evaluation and Research (HFN).* Develops FDA policy with regard to the safety, effectiveness, and labeling of all drug products for human use.

Reviews and evaluates new drug applications (NDAs) and investigational new drug applications (INDs).

Develops and implements standards for the safety and effectiveness of all over-the-counter (OTC) drugs.

Monitors the quality of marketed drug products through product testing, surveillance, and compliance programs.

Coordinates with the Center for Biologics Evaluation and Research regarding activities for biological drug products. Such activities include research, compliance, and product review and approval.

Develops and promulgates guidelines on Current Good Manufacturing Practices for use by the drug industry.

Develops and disseminates information and educational material dealing with drug products to the medical community and the public in coordination with the Office of the Commissioner.

Conducts research and develops scientific standards on the composition, quality, safety, and effectiveness of human drugs.

Collects and evaluates information on the effects and use trends of marketed drug products.

Monitors prescription drug advertising and promotional labeling to assure their accuracy and integrity.

Analyzes data on accidental poisonings and disseminates toxicity and treatment information on household products and medicines.

In carrying out these functions, cooperates with other Agency components of FDA, other PHS organizations, governmental and international agencies, volunteer health organizations, universities, individual scientists, nongovernmental laboratories, and manufacturers of drug products.

3. Insert new paragraph (p), *Center for Biologics Evaluation and Research (HFB)* reading as follows:

(p) *Center for Biologics Evaluation and Research (HFB).* Administers regulation of biological products under the biological product control provisions of the Public Health Service Act and applicable provisions of the Federal Food, Drug, and Cosmetic Act.

Provides dominant focus in FDA for coordination of the Acquired Immune Deficiency Syndrome (AIDS) program. Works to develop an AIDS vaccine, AIDS diagnostic tests and conducts other AIDS-related activites.

Inspects manufacturers' facilities for compliance with standards, tests products submitted for release, establishes written and physical standards, and approves licensing of manufacturers to produce biological products.

Plans and conducts research related to the development, manufacture, testing, and use of both new and old biological products to develop a scientific base for establishing standards designed to ensure the continued safety, purity, potency, and efficacy of biological products.

Coordinates with the Center for Drug Evaluation and Research regarding activities for biological drug products. Such activities include research, compliance, and product review and approval.

Plans and conducts research on the preparation, preservation, and safety of blood and blood products, the methods of testing safety, purity, potency, and efficacy of such products for therapeutic use, and the immunological problems concerned with products, testing, and use of diagnostic reagents employed in grouping and typing blood.

In carrying out these functions, cooperates with other Agency components of FDA, other PHS organizations, governmental and international agencies, volunteer health organizations, universities, individual scientists, nongovernmental laboratories, and manufacturers of biological products.

Prior Delegations of Authority

Pending further delegations, directives, or orders by the Commissioner of Food and Drugs all delegations of authority to the Director, Deputy Director, and office directors of the abolished Center for Drugs and Biologics are vested in the Directors, Deputy Directors, and office directors of the new Center for Drug Evaluations and Research and the Center for Biologics Evaluation and Research as the delegations relate to their newly assigned functions and all delegations of authority to any other officer or employee of the Center in effect prior to the date of this order shall continue in effect in them or their successors.

Date: October 6, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-23833 Filed 10-14-87; 8:45 am]

BILLING CODE 4160-01-M

VOL 52 ISS 199 OCT 15 1987 UMI

Food and Drug Administration

[Docket No. 79D-0124]

Draft Guideline for Drug Master Files; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline to assist persons submitting information to drug master files. FDA is making the draft guideline available for public comment to assist the agency in developing a final guideline. The guideline, when issued in final form, may be relied on by holders of drug master files in submitting information to FDA. The draft guideline was prepared by FDA's Center for Drugs and Biologics.

DATE: Written comments by January 13, 1988.

ADDRESSES: Requests for a copy of draft guideline and written comments regarding the draft guideline may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-adhesive labels to assist the Branch in processing your requests.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drug and Biologics (HFN-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline on drug master files. The guideline is intended to assist submitters of information to drug master files in preparing useful and well-organized submissions. The guideline is intended to replace the current Guideline for Drug Master Files published in 1978.

FDA is making this draft guideline available for public comment before issuing the guideline in final form. Following review of the comments submitted and after making any revisions the agency considers to be appropriate, the guideline will be made final, and FDA will announce its availability under § 10.90 (21 CFR 10.90(b)).

Section 10.90(b) provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. Under § 10.90(b), a person who follows a guideline can be assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. A person who chooses to use an alternate procedure may discuss the matter further with the agency to prevent an expenditure of money and effort for work that the agency may later determine to be unacceptable. Therefore, interested persons are encouraged to use this opportunity to submit comments on the draft guideline if they have suggestions for its revision.

Interested persons may, on or before January 13, 1988, submit written comments on the draft guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether amendments to, or revisions of, the draft guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: October 2, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23812 Filed 10-14-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0005]

Safety of Electromedical Devices

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its notice of intent concerning the establishment of uniform standards for electromedical devices. FDA has determined that immediate action on a standard generic to all electromedical devices is not needed. FDA has concluded that there is insufficient evidence of actual risks to health owing to electrical leakage current from medical devices alone and that existing voluntary standards are being adhered to by manufacturers.

FOR FURTHER INFORMATION CONTACT: James J. McCue, Jr., Center For Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: During the period from 1976 through 1982 under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA's medical device classification panels recommended the classification of approximately 1,100 devices into class II (performance standards). Approximately 300 of these devices are electrically powered. During their review of devices, classification panels identified electrical safety as a concern for virtually every electrically powered device.

In the **Federal Register** of September 5, 1980 (45 FR 58970), FDA published a notice of intent announcing that it would consider various alternative approaches in providing reasonable assurance of the safety and effectiveness of electromedical devices. The agency announced that it would consider establishing a performance standard for electromedical devices to minimize electrical hazards, especially the hazards associated with electrical shock or leakage current. The notice requested data, information, and comment on the need for a safety performance standard for electromedical devices, how to achieve the establishment of such a standard, and whether certain existing voluntary standards were suitable for use as the basis of a mandatory performance standard. FDA also requested comments on whether it should endorse a voluntary standard or aspects of voluntary standards under FDA's then-proposed voluntary standards policy (45 FR 7490; February 1, 1980), or whether FDA should adopt or adapt an existing voluntary standard or parts of existing voluntary standards as a guideline. The then-proposed voluntary standards policy articulated FDA's involvement in the development, support, endorsement, and use of voluntary performance standards for medical devices. In the notice of September 5, 1980, FDA proposed to endorse voluntary standards that conformed to the "Criteria for Endorsement of Voluntary Standards" discussed in the notice of February 1, 1980. The notice of September 5, 1980, also discussed existing voluntary standard activities, State and local electrical codes, user practices, and the need for uniformity of electrical standards. An FDA summary of several voluntary standards dealing with electrical safety was included, as well as FDA's suggestion that a combination of provisions from the American National Standards Institute, Inc./ Association for the Advancement of Medical Instrumentation (ANSI/AAMI) SCL-12/78 and the International Electrical Commission (IEC) 601-1 might be the best approach to achieving uniformity and ensuring safety of electromedical devices.

FDA received 58 comments on the notice of September 5, 1980. Of these 58 comments, 29 were from manufacturers and trade associations, 21 were from professional users, 5 were from government agencies, and 3 were from individuals. Few comments supported the establishment of an electromedical performance standard. Most of the comments recommended that FDA do nothing at this time in regard to the alternatives proposed in the notice, i.e., performance standard, endorsement, or guidelines.

As noted above, one of FDA's reasons for issuing the notice of the ageny's intent to consider establishing standards for electromedical devices was its then-proposed voluntary standards policy. For the reasons discussed below, FDA changed its policy toward adoption of voluntary standards for devices.

In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement; Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all of the devices already classified (or being classified) in class II. Under the amendments, FDA is using the regulatory controls of class I to regulate a device classified into class II until a performance standard is established under section 514 of the act (21 U.S.C. 360d) for a class II device. In the October 23, 1985, notice, FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices:

a. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device;

b. The recommendations of FDA's advisory committees;

c. The impact of an FDA guideline or recommendation;

d. The effect of a Federal standard or other regulatory controls under an authority other than the act;

e. The impact of voluntary standards;

f. The impact of activities authorized under the general controls provisions of the act;

g. The effect of dissemination of information and education efforts;

h. The sufficiency of voluntary corrective actions;

i. Valid scientific evidence developed since classification;

j. The existence of a petition for reclassification;

k. The impact of any other factors that affect a device's safety or effectiveness.

Based on its current policy on setting priorities for establishing performance standards for devices described above and based on a review of the comments received on the notice of intent of September 5, 1980, FDA concludes that the notice of intent should be withdrawn. A summary of the comments received on the notice of intent, and FDA's response follows:

1. Fourteen comments explicitly desired uniform standards for electrical safety of electromedical devices. Nineteen additional comments stated a preference for a particular standard, therefore implying a desire for uniformity.

Mandatory Standards

2. Three comments favored a mandatory electromedical device standard. Fifteen comments opposed any action by FDA, claiming that existing voluntary standards adequately address electrical hazards and that there is no electrical safety problem or, at least, none has been demonstrated.

FDA agrees that existing voluntary standards adequately address electrical hazards and that the number of electrical safety problems is small. In the mid-1960's, electrical safety was one of the most written about and talked about subjects in the health care industry. In 1970, Carl Walter estimated that 5,000 individuals died each year as a result of electric shock from medical devices. (Walter, Carl W., "Electrical Hazards in Hospitals," *Hospital Practice*, December 1970, pp. 53–56.)

To determine the extent of the electrical risks presented by devices, FDA reviewed the recent published literature, the data from FDA's Device Experience Network (DEN), and reports submitted to FDA under the medical device reporting regulations (21 CFR Part 803).

Since FDA published the notice of intent in 1980, FDA published the medical device reporting regulations (21 CFR Part 803) (49 FR 36326; September 14, 1984). These regulations became effective on December 13, 1984, and provide that manufacturers and importers of medical devices which receive, or otherwise become aware of, information that reasonably suggests that one of their marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to death or serious injury if the malfunction were to recur, report such occurrence to FDA. An analysis of the medical device reporting data demonstrates that an electrical safety standard generic to all electromedical devices would not have prevented the majority of the deaths, serious injuries, and malfunctions which have been reported to FDA regarding electromedical devices. Indeed, most reports of deaths or injuries from electromedical devices do not involved electrical shock or leakage current and any such reports that are received are not common to all electromedical devices.

FDA's review of the current literature, data from DEN, and reports submitted under Part 803 identified only a few cases of deaths or injuries that might have been prevented by a performance standard. While it is possible that the extent of unreported deaths and injuries may be higher than what is documented in the literature, DEN, and reported to FDA under Part 803, FDA could find no tangible evidence that this is the case. FDA concludes that a reasonable assurance of safety has already been achieved without the need for additional FDA actions.

If the number of deaths and injuries has decreased since the late 1960's as the comments argue and the available data support, it may be due, in part to the development and use of voluntary standards. Compared to the 1960's, FDA believes that the conformance by device manufacturers with any one of the current voluntary standards provides a reasonable assurance of the safety of electromedical devices.

Under section 513 of the act, all medical devices are subject to the general controls provisions of the act. These provisions provide FDA with authority (1) to determine whether a device is adulterated (section 501 of the act); (2) to determine whether a device is misbranded (section 502 of the act); (3) to require registration of device manufacturers and listing of their devices (section 510 of the act); (4) to determine whether a device should be banned (section 516 of the act); (5) to require notification by health professionals of device defects and, where necessary, to order repair replacement, or refund for the device (section 518 of the act); (6) to require records and reports necessary to ensure that a device is not adulterated or misbranded (section 519 of the act); (7) to require restricted sale, distribution, or use of a device (section 520(e) of the act); (8) to require device manufacturers

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to follow current good manufacturing practices (section 520(f) of the act); and (9) to require manufacturers of new or investigational devices to submit applications for exemption before initiating clinical investigations (section 520(g) of the act). These general controls provisions, coupled with the requirements under Part 803 for reporting to FDA of deaths, serious injuries, and malfunctions associated with medical devices, have enabled FDA to act quickly to correct device safety problems reported to the agency. For example, FDA has worked directly with manufacturers of apnea detection monitors to redesign their products to eliminate potential safety problems caused by incorrect use. These design changes, however, were not made because of electrical leakage current such as would be covered by an electrical safety standard.

As noted above, FDA will initiate proceedings to establish performance standards for class II devices on a priority basis, underaking action first for devices with the most serious health hazards. FDA continues to develop the information necessary to initiate proceedings to establish performance standards for specific electromedical devices for which associated hazards (other than electrical safety) warrant a high priority. Because FDA believes that current voluntary electrical safety standards adequately address the electrical hazards of electromedical devices and are adhered to by manufacturers, FDA will continue to participate in the development and revision of voluntary standards for electromedical devices.

In summary, FDA will defer the initiation of proceedings to establish a safety performance standard for electromedical devices because (1) there is a lack of documented evidence of electrical safety risks; (2) if deaths or injuries from electrical shock or leakage current do occur, manufacturers must report them to FDA promptly under Part 803; (3) the existence of voluntary standards and the adherence to voluntary standards by the majority of manufacturers provide adequate control of risks of electrical shock or leakage current; and (4) the general controls provisions of the act are sufficient to provide reasonable assurance of the safety and effectiveness of devices that present risks to health only of electrical shock or leakage current.

Endorsement

3. Four comments supported FDA endorsement of voluntary standards and 15 comments explicitly opposed any action by FDA. Several comments argued that such endorsement by FDA would give the appearance of substantive rulemaking by FDA and would be perceived as mandatory.

Although FDA did not intend that its endorsement of a voluntary standard would have the force and effect on law, FDA concurs with these comments objecting to endorsement. FDA now believes that endorsement of a voluntary standard by FDA would mislead manufacturers and consumers to believe that the endorsed standard was mandatory. FDA, therefore, does not consider endorsement of an existing voluntary standard as a viable option.

Guideline

4. Four comments objected to FDA developing a guideline regarding safety of electromedical devices under § 10.90(b) of the agency's administrative practices and procedures regulations (21 CFR 10.90(b)). These comments generally discouraged the use of a guideline in lieu of a mandatory performance standard on the ground that confusion existed as to whether a guideline is enforceable. The comments also questioned the use of a guideline as a possible means of issuing a de facto regulatory standard. Four additional comments stated a preference for an FDA guideline on electrical safety to help address uniformity.

FDA believes that the regulatory status of a guideline is not confusing. FDA considers that a guideline made available under 21 CFR 10.90(b) states procedures or standards of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by FDA. Manufacturers of electromedical devices could have relied upon a guideline with the assurance that it is acceptable to FDA. FDA concludes, however, that a guideline is not necessary at this time because voluntary standards appear adequate in preventing risks to health from electrical shock or leakage current from eletromedical devices.

Uniformity

5. Thirty-one comments stated preferences for one or more specific voluntary standards, with 19 comments preferring a particular standard. Therefore, these comments indicate a desire for uniformity of standards. Fourteen comments stated explicitly that uniformity of standards for the safety of electromedical devices was desired. Two comments stated that uniformity of voluntary standards is not a factor in the safety or effectiveness of a device and, therefore, should not be FDA's concern. Only one comment saw an advantage to diversity of standards.

FDA believes that a lack of uniformity of voluntary standards does play a role in the marketplace by raising the costs of medical devices. Higher costs may, in turn, reduce the availability of some devices to patients. Uniformity is also a concern of FDA when diversity of device characteristics results in risks regarding safety or effectiveness. However, in the case of risk of electrical shock or leakage current, the lack of uniformity has not resulted in unsafe electromedical devices because, as discussed infra, all of the voluntary standards are adequate to protect the public health. Moreover, the voluntary standards appear to be undergoing revisions which would render them more uniform.

Uniformity is not the only concern of FDA. FDA considers the factors listed in the notice described above (50 FR 43060) when setting priorities for initiating proceedings to establish performance standards under section 514 of the act (21 U.S.C. 360d). Because FDA considers these other factors in setting priorities for initiating such proceedings, the lack of uniformity of existing voluntary standards alone is insufficient to cause FDA to establish a mandatory performance standard for electromedical devices.

ANSI/AAMI SCL–12/78 and IEC 601–1

6. In the September 5, 1980, notice, FDA suggested a standard combining ANSI/AAMI SCL–12/78 and IEC 601–1 as a possible approach to the control of electrical hazards in electromedical devices. Nine comments were in favor of ANSI/AAMI SCL–12/78, while five comments were opposed to its use. Fifteen comments were in favor of IEC 601–1, while six were opposed to its use.

Currently, the American voluntary standards community and American manufacturers are working to have IEC–601–1 revised to more closely reflect the American position on leakage current.

Because FDA has decided at this time to defer any of its proposed actions to control electrical hazards of electromedical devices, the agency's acceptance or rejection of these voluntary standards as the basis for a uniform electrical safety standard is not necessary.

FDA will, however, consider the specifications of these two voluntary standards in addition to specifications of other voluntary standards when the agency initiates a proceeding to establish a mandatory performance standard for a specific eletromedical device.

Conclusion

For the reasons above, FDA concludes that immediate action on a standard generic to all electromedical devices is not necessary. FDA will consider electrical leakage current risks when it initiates a proceeding to establish a mandatory standard for a specific eletromedical device. Accordingly, FDA withdraws the notice of intent published in the **Federal Register** of September 5, 1980 (45 FR 58970).

Dated: October 7, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23838 Filed 10-14-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-963-4213-15; F-14862-A]

Alaska Native Claims Selection; Kuitsarak, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Kuitsarak, Inc., notice of which was published in the **Federal Register** 48 FR 44668 on September 29, 1983, is modified by the addition of two easements and amended to exclude Native allotment AA-53859, Parcel C, in Section 32, Township 11 South, Range 72 West, Seward Meridian.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in *The Tundra Drums*. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until November 16, 1987, to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given September 29, 1983, as final.

Ann Johnson,

Chief, Branch of Calista Adjudication.

[FR Doc. 87-23827 Filed 10-14-87; 8:45 am]

BILLING CODE 4310-JA-M

[NM-010-4333-10; GP8-0101]

Three Emergency Road Closures in Rio Puerco Resource Area; New Mexico

October 8, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Effective October 10, 1987.

The Rio Puerco Resource Area, Albuquerque District, Bureau of Land Management will be closing (except for authorized users and administrative purposes) three segments of road located in the Ignacio Chavez Grant in T. 15 and 16N., R4 and 5W., Sandoval and McKinley Counties, New Mexico. This closure supersedes the May 18, 1987 closure filed on May 15, 1987, FR Document 87-11323; NM-010-GP7-0119. The first segment is approximately six miles of BLM Road No. 1103 traversing the Grant. The second segment is approximately 1.5 miles in length and begins near Toro Tank. The road proceeds south past Toro Tank and turns west to regain BLM Road No. 1103. The third portion begins at the southern terminus of BLM Road No. 1103 and proceeds in a northwest direction near Heifer Tank for approximately 3 miles to the junction of Forest Service Road No. 239. A map depicting the three closures is available at the Bureau of Land Management, Albuquerque District Office. Under the emergency closure authority contained in 43 CFR 8341.2, this action is being taken to prevent vehicle use associated with these access routes from causing additional damage to the soils, vegetative and scenic resource values on the Ignacio Chavez Grant. The closures will remain in effect until the adverse impacts are eliminated and adequate measures are implemented to prevent recurrence.

FOR FURTHER INFORMATION CONTACT: Herrick E. Banks, Area Manager, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, NM 87107, (505) 761-4504.

Andrew Aboytes,

Acting Associate District Manager, Bureau of Land Management

[FR Doc. 87-23814 Filed 10-9-87; 12:11 pm]

BILLING CODE 4310-FB-M

[CA-930-08-4332-09]

Availability of Draft Environmental Impact Statement; Preliminary Wilderness Recommendations for the Garcia Mountain, Rockhouse, Domeland, Machesna, South Warner Contiguous, Yolla Bolly-Big Butte, and Carson Iceberg Section 202 Wilderness Study Areas, CA; Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft EIS and Public Hearing.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy act of 1969, the Bureau of Land Management has prepared a Draft Environmental Impact Statement (DEIS) on wilderness recommendations for eight section 202 Wilderness Study Areas (WSAs); The Garcia Mountain WSA, Rockhouse WSA, Domeland WSA and Machesna WSA in the Bakersfield District; the South Warner Contiguous WSA in the Susanville District; the Big Butte WSA and Yolla-Bolly WSA in the Ukiah District; and the Carson Iceberg WSA in the Carson City District.

Alternatives analyzed for each of the section 202 WSAs were: (1) All Wilderness and (2) No Wilderness/No Action, which is the continuation of present management under the guidance of existing land use plans. A Partial Wilderness Alternative was also analyzed for the South Warner Contiguous WSA. The preliminary recommendations presented in the DEIS are: Garcia Mountain WSA—No Wilderness/No Action; Rockhouse WSA—No Wilderness/No Action; Domeland WSA—No Wilderness/No Action; Machesna WSA—No Wilderness/No Action; South Warner Contiguous WSA—Partial Wilderness; Big Butte WSA—No Wilderness/No Action; Yolla-Bolly WSA—No Wilderness/No Action; and Carson Iceberg WSA—All Wilderness.

DATES: Comments on the DEIS are being solicited form public agencies and interested individuals and organizations. Written Comments should be submitted by January 18, 1988, to the California State Director (CA-930.16), Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825, in order to be considered in the Final Environmental Imapct Statement.

Three public hearings on the adequacy of the DEIS and the preliminary recommendations are scheduled.

December 1, 1987 beginning at 7:30 p.m., Cedarville Community Hall, Bonner and Center Steets, Cedarville, CA.
December 2, 1987 beginning at 7:00 p.m., Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, CA.
December 9, 1987 beginning at 7:30 p.m., Bakerfield District Office, Bureau of Land Management, 800 Truxtun Drive, Room 224, Bakersfield, CA.

SUPPLEMENTARY INFORMATION:

Statements concerning any of the WSAs may be presented and will be recorded at any of the public meetigns. Copies of the DEIS are available for review at local libraries and a limited number of copies can be obtained from the following Bureau of Land Management offices: Ukiah District Office, Ukiah, CA; Arcata Resource Area Office, Arcata, CA; Redding Resource Area Office, Redding, CA; Susanville District Office, Susanville, CA; Surprise Resouce Area Office, Cedarville, CA; Bakersfield District Office, Bakersfield, CA; Carson City District Office, Carson City, NV; and Walker Resource Area Office, Carson City, NV. Additional copies of the DEIS are available from the California State Office, 2800 Cottage Way, Sacramento, CA 95825 and the Washington Office, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

James T. Jennings, Bakersfield District Office, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861–4287.
Roger A. Farsham, Surprise Resoruce Area Office, (Susanville District), 602 Cressler Street, PO Box 460, Cedarville, CA 96104, (916) 279–6101.
Earle G. Curran, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482–5599, (707) 462–3873.
Stephen Weiss, Walker Resource Area (Carson City District), 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882–1631.

Date: October 8, 1987.

Ronald D. Hofman,

Associate State Director.

[FR Doc. 87–23782 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–40–M

[Alaska AA–48583–AY]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48583–AY has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 7 W.,
Sec. 29, NE¼NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from April 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48583–AY as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1987, subject to the terms and conditions cited above.

Dated: October 5, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–23805 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

[Alaska AA–48686–AX]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48686–AX has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 22 S., R. 6 E.,
Sec. 11, E½.
(320 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48686–AX as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1987, subject to the terms and conditions cited above.

Dated: October 5, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–23808 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48596–B has been received covering the following lands:

Copper River Meridian, Alaska

T. 10 N., R. 6 W.,
Sec. 25 NW.
(160 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48596–B as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1987, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: October 5, 1987.

[FR Doc. 87–23807 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

[Alaska AA–49100–I and AA–49073–S]

Proposed Reinstatement of Terminated Oil and Gas Leases; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases AA–49100–I, and AA–49073–S has been received covering the following lands:

Fairbanks Meridian, Alaska (AA–49100–I)

T. 18 S., R. 3 W.,
Sec. 11, S½NW¼.
(80 acres)

Fairbanks Meridian, Alaska (AA–49073–S)

T. 19 S., R. 4 E.,
Sec. 7, N½NW¼.
(75 acres)

The proposed reinstatement of the leases would be under the same terms and conditions of the original leases, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals

and royalties accruing from March 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of leases AA–49100–I, and AA–49073–S as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the leases, effective March 1, 1987, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: October 5, 1987.

[FR Doc. 87–23808 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

[CO–940–87–4111–15; C–26486]

Proposed Reinstatement of Oil and Gas Lease; Colorado

Notice is hereby given that a petition for reinstatement of oil and gas lease C–26486 for lands in Montrose County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1987, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16-⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

Richard E. Richards,

Supervisor, Oil and Gas/Geothermal Leasing Unit.

[FR Doc. 87–23801 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JB–M

[MT–920–08–4111–14; NDM 63257]

Proposed Reinstatement of Terminated Oil and Gas Lease; North Dakota

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease NDM 63257, Bowman County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: October 6, 1987.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 87–23798 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–DN–M

Public Review Period for U.S. Geological Survey and United States Bureau of Mines; "Mineral Survey Reports": Wilderness Study Areas; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Idaho, Bureau of Land Management (BLM), is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been completed for preliminarily suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the Bureau of Land Management will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Boise, Burley, Idaho Falls, Salmon, Shoshone, and Coeur d'Alene.

DATE: New Information will be accepted on the reports enumerated in this notice until December 31, 1987.

ADDRESS: Send information on reports to: Deputy State Director for Minerals, BLM, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Bob DeTar or Bill LaVelle, BLM, Idaho State Office, Division of Mineral Resources, 3380 Americana Terrace, Boise, Idaho 83706 (208) 334–1189.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system, to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making its final wilderness suitability recommendations to the Secretary of Interior, the State Director, Idaho is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines for further consideration. Evaluations received by the Bureau of Land Management from the U.S. Geological Survey and U.S. Bureau of Mines will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation are not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.

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4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address, and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management, U.S. Geological Survey or U.S. Bureau of Mines assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the Public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

WSA No.	Name	Report No
33-15	Hells Half Acre	Bulletin 1718-A
16-40	No. Fork Owyhee River	Bulletin 1719-A
16-49D	Yatahoney Creek	Bulletin 1719-B
16-49E	Battle Creek	Bulletin 1719-B
16-52	Juniper Creek	Bulletin 1719-B
16-48C	Little Owyhee River	Bulletin 1719-C
16-48B	Owyhee River Canyon	Bulletin 1719-D
16-49A	Deep Creek	Bulletin 1719-D
111-6	Little Jacks Creek	Bulletin 1720-A
111-7B	Duncan Creek	Bulletin 1720-A
111-7C	Big Jacks Creek	Bulletin 1720-A

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, Box 25425, Federal Center, Denver, CO 80225.

Date: October 5, 1987.

Bill R. Lavelle,

Deputy State Director for Mineral Resources.

[FR Doc. 87-23809 Filed 10-14-87; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

[FES 87-49]

Availability of the Final Environmental Impact Statement Regarding Proposed Central, Western, and Eastern Gulf of Mexico Lease Sales 113, 115, and 116

The Minerals Management Service (MMS) has prepared a final Environmental Impact Statement (EIS) relating to proposed 1988 Outer Continental Shelf (OCS) oil and gas lease sales in the Central, Western, and Eastern Gulf of Mexico. Proposed Central Gulf of Mexico Sale 113, Western Gulf of Mexico Sale 115, and Eastern Gulf of Mexico Sale 116 will offer for lease approximately 34.5 million acres, 29.0 million acres, and 71.8 million acres, respectively. Single copies of the final EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Copies of the final EIS are available for review at the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenburg Library, 2310 Sealy Street, Galveston, Texas; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisana; Calcasieu Parish Library, Downtown Branch, 411 Pujo Street, Lake Charles, Louisiana; Nicholls State Library, Nicholls State University, Thibodaux, Louisiana; Harrison County Library, 14th and 21st Avenue, Gulfport, Mississippi; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Fla.; West Florida Regional Library, 200 West Gregory Street, Pensacola, Fla.; Northwest Regional Library System, 25 West Government Street, Panama City, Fla.; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 NW. Aaron Street, Port Charlotte, Florida; and Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

William D. Bettenberg,

Director, Minerals Management Service.

Date: October 9, 1987.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-23839 Filed 10-14-87; 8:45 am]

BILLING CODE 4320-MR-M

INTERNATIONAL TRADE COMMISSION

[332-250]

Harmonized Commodity Description and Coding System; Continuity of Import and Export Trade Statistics After Implementation

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) at the direction of the President, the Commission instituted investigation No. 332-250 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purposes of preparing a cross-reference between the current Tariff Schedules of the United States Annotated (TSUSA) and the proposed Harmonized Tariff Schedule of the United States (HTS) and compiling statistical tables reflecting U.S. import and export trade for the years 1983-1987 in terms of proposed 8-digit HTS subheadings and 10-digit Harmonized System-based Schedule B (Schedule B) numbers, respectively.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Holm Kappler, Deputy Director (telephone 202-523-0362), or Mr. Lawrence DiRicco, Nomenclature Analyst (telephone 202-523-4953), Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (202) 724-0002.

SUPPLEMENTARY INFORMATION: In order to provide the international trade community with a means to maintain a reasonable degree of continuity in historical statistical data after the transition to HTS and HS-based Schedule B statistical reports, the USTR at the direction of the President requested the Commission to prepare: (1) A cross-reference between the current TSUSA and the proposed HTS, (2) a statistical compilation reflecting the estimated total value of U.S. imports for consumption for the years 1983-1987, both by country and in the aggregate, in terms of proposed 8-digit HTS subheadings, and (3) a statistical compilation reflecting the estimated total value of U.S. exports for the years 1983-1987, both by country of destination and in the aggregate, in terms of the 10-digit Schedule B numbers.

The USTR requested that the Commission report on the TSUSA to proposed HTSUS cross-reference no later than January 31, 1988, and on the trade statistics compilations no later than May 31, 1988, and that the Commission arrange for these reports to be available to the public in printed form and microfiche through the National Technical Information Service and on magnetic media through the Bureau of the Census.

The Commission does not plan to hold a public hearing or seek written statements or other information from interested parties in this matter.

By order of the Commission.

Issued: October 6, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-23911 Filed 10-14-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-253]

Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor; Decision Granting Application for Interlocutory Appeal and Reversing Order Excluding Evidence as to Patent-Based Affirmative Defense

AGENCY: International Trade Commission.

ACTION: Decision to permit an interlocutory appeal of an order excluding evidence pertaining to respondents' patent based affirmative defense to the antitrust allegations of this investigation, and to reverse the order excluding such evidence.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: On September 4, 1987, the presiding administrative law judge (ALJ) issued Order No. 47 granting the motion *in limine* of complainant Aunyx Corp. to exclude all evidence to be offered by respondents Canon, Inc. and Canon, U.S.A., Inc., in furtherance of their patent-based affirmative defense to the allegations of antitrust law violations. The Commission investigative attorney (IA) supported Aunyx's motion and respondents opposed the motion. The ALJ found that the patents at issue would not constitute a defense to the antitrust allegations and were irrelevant to the investigation. The ALJ also found that respondents' delay in asserting their patent rights constituted bad faith sufficient to bar the defense.

On September 9, 1987, the Canon respondents filed a petition with the ALJ for leave to file an interlocutory appeal with the Commission of Order No. 47. On September 9, 1987, the ALJ issued Order No. 48 granting leave to file an application for interlocutory appeal.

An application for interlocutory appeal was filed by respondents on September 14, 1987. On September 21, 1987, Aunyx filed an answer to respondent's application for interlocutory appeal. On September 22, 1987 the IA filed an answer to the application for interlocutory appeal.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 210.70 of the Commission rules (19 CFR 210.70).

Copies of the Commission's Action and Order, Opinon, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 5, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-23905 Filed 10-14-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-261]

Certain Ink Jet Printers Employing Solid Ink; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on November 16, 1987, in Hearing Room B at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: October 8, 1987.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 87-23906 Filed 10-14-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-277]

Certain Marine Automatic Pilots; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 9, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Electro-Mechanical Products Inc. d/b/a First-Mate Marine Auto Pilots, 41 Kindred Avenue, Stuart, Florida 34994 and John F. Cyr, 2002 NE. Felicita Place, Jensen Beach, Florida 33457. The complaint was supplemented on September 15, 1987 and again on September 28, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain marine automatic pilots and components thereof; and in their sale, by reason of alleged direct, induced and contributory infringement of claims 1-4 of U.S. Letters Patent 4,681,055. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0115.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on October 5, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain marine automatic pilots, or in their sale, by reason of alleged direct or induced infringement of claims 1-4 of U.S. Letters Patent 4,681,055, the effect or tendency of

which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complaintants are—

Electro-Mechanical Products Inc., d/b/a First-Mate Marine Auto Pilots, Stuart, Florida 34994

John F. Cyr, 2002 NE. Felicita Place, Jensen Beach, Florida 33457

(b) The respondent is the following company, alleged to be in violation of section 337, and is the party upon which the complaint is to be served: King Marine Electronics, Inc., 5300 140th Avenue North, Clearwater, Florida 33520

(c) Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 125, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.21 or the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: October 6, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–23907 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–267]

Certain Minoxidil Power, Salts and Compositions for use in Hair Treatment; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Tulsa Intertrade.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, on October 9, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC, 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC, 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: October 9, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–23908 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–267]

Certain Minoxidil Powder, Salts, and Compositions for use in Hair Treatment; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on October 19, 1987, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue NW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: October 5, 1987.

Janet D. Saxon,

Chief Administrative Law Judge.

[FR Doc. 87–23909 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–266]

Certain Reclosable Plastic Bags and Tubing; Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission has determined not to review an initial determination (ID) granting in part a motion for temporary relief in the above-captioned investigation. The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff

Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a, and in §§ 210.53–210.58 of the Commission's Rules of Practice and Procedure (19 CFR 210.53–210.58).

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–525–0375.

SUMMARY: On August 31, 1987, the presiding administrative law judge (ALJ) issued an ID granting in part complainant's motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 (e) and (f)). Complainant Minigrip, Inc. and respondents Meditech International Company, Euroweld Distributing, and Polycraft Corporation filed petitions for review of the ID on the issues of patent infringement, trademark validity and infringement, domestic industry, harm to complainant, and harm to respondents. No agency comments were received.

Having examined the record, including the petitions for review and the responses thereto, the Commission has concluded that the ID does not warrant review. However, we do not adopt portions of the ALJ's reasoning with regard to the issues of: (1) Trademark validity, (2) domestic industry, and (3) effect or tendency to substantially injure the domestic industry. As to those portions, we waive, pursuant to rule 201.4(b), the provisions of rule 210.53(h) which states that a nonreviewed ID becomes the determination of the Commission. With regard to the issue of trademark validity, we note that some judicial decisions suggest that an incontestable trademark may not be challenged as *de jure* functional. With regard to the other issues, prior Commission decisions suggest that it might be appropriate in this investigation to find one domestic industry rather than two. We have determined not to review the ID on these issues since they are not outcome determining, but we will reexamine them if necessary in the final relief phase of this investigation.

SUPPLEMENTARY INFORMATION: Since the Commission finds that there is reason to believe that a violation of section 337 has occured, the Commission may issue (1) an order which could result in the temporary exclusion, except under bond, of the subject articles from entry into the United States and/or (2) temporary cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of temporary relief, if any, which should be ordered.

If the Commission concludes that temporary relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (4) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting temporary relief would have on the enumerated public interest factors.

If the Commission orders temporary relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. After the expiration of this period, the subject articles would also be entitled to enter the United States under bond pending completion of the Commission's investigation. The Commission is therefore interested in receiving written submissions concerning the amount of the bond or bonds which should be imposed.

Written submissions: The parties to the investigation and interested government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed temporary remedial orders for the Commission's consideration. The written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on Tuesday, October 13, 1987. Reply submissions on these issues must be filed no later than the close of business on Monday, October 19, 1987. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on Thursday, October 15, 1987. No further submissions will be permitted.

Commission hearing: The Commission does not plan to hold a public hearing in connection with the disposition of this matter.

Additional information: Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on April 28, 1987 (52 FR 15568).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: October 5, 1987.

Kennethy R. Mason,

Secretary.

[FR Doc. 87–23910 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–18328]

Leonard Green and Edward Gibbons; Continuance In Control Exemption; Foodmaker, Inc., and Trailways Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Leonard Green and Edward Gibbons, noncarrier individuals, have filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for their continuance in control of motor property carrier Foodmaker, Inc. (Foodmaker) (MC–174021) and motor passenger carrier Trailways Lines, Inc.

(Trailways) (MC–109780). Messrs. Green and Gibbons each own 5.7 percent of the outstanding shares of The Trailways Corporation, whose wholly owned subsidiary, Trailways, holds authority to operate as a motor carrier of passengers and express throughout major portions of the country. Mr. Gibbons is also a director of The Trailways Corporation. On February 22, 1985, Messers. Green and Gibbons became members of the board of directors of Foodmaker.

Under 49 U.S.C. 11343(a)(5), the Commission's prior approval is required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Thus, the involved transaction is subject to our jurisdiction and can be carried out only under our regulation or an exemption from regulation. Petitioners readily acknowledge that a common control relationship commenced on February 22, 1985, when Messrs. Green and Gibbons, then shareholders of the Trailways Corporation, assumed membership on Foodmaker's board of directors. Further, petitioners acknowledge that a petition seeking exemption from prior approval of the transaction should have been filed prior to petitioners' election to Foodmaker's board. However, petitioners assert lack of awareness of the need to seek an exemption or approval of control because Foodmaker is engaged primarily in the fast food restaurant business, with only incidental regulated motor carrier operations. Thus, the common control issue was not recognized until the filing by Foodmaker of its recent application for an extension of its operating authority.

Petitioners argue that the subject transaction is of limited scope, inasmuch as Trailways and Foodmaker serve totally different markets. Likewise, petitioners argue that the disparate business focus of Trailways and Foodmaker assures that the transactions will have no adverse effect on national transportation policy objectives, and will not result in any possible abuse of market power.

In No. MC–F–18505, *GLI Acquisition Company—Purchase—Trailways Lines, Inc; and GLI Holding Company—Control—Continental Panhandle Lines, Inc.*, GLI Acquisition Company (GLI) seeks authority: (1) To purchase all of trailways's intrastate and interstate operating authority and certain other assets, including contractual interests, buses and real estate properties; and (2) to acquire Trailways' 50 percent stock interest in motor passenger carrier Continental Panhandle Lines, Inc. (Panhandle) (MC–8742). GLI's corresponding application for temporary authority to lease Trailways' operating rights, control Panhandle through management, and purchases certain of Trailways' assets has been approved by the Commission. Because of GLI transaction is pending approval, this control proceeding is not moot.

DATES: Comments must be received by November 16, 1987.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–18328, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Miles L. Kavaller Suite 315, 315 South Beverly Drive Beverly Hills, CA 90212.

FOR FURTHER INFORMATION CONTACT:

Marion E. Guyton, (202) 275–7965
TDD for hearing impaired, (202) 275–1721.

SUPPLEMENTARY INFORMATION:

Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: Octoer 6, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23824 Filed 10–14–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167; Sub–1086X]

Consolidated Rail Corp.; Exemption; Discontinuance of Service in Crawford, Marion, Delaware, and Franklin Counties, OH

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue its operation by trackage rights over a 61.8-mile line of railroad owned and operated by Norfolk and Western Railway Company (N&W), as follows: from N&W milepost 62.5±, where it connects with the privately owned Bucyrus Yard lead track in Bucyrus, OH, to the southern terminus of applicant's trackage rights at milepost 0.7±, approximately 600 feet east of the east right of way line of applicant's Mount Vernon Secondary, west of Joyce Avenue in Columbus, OH.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted over other lines, and (2) no formal complaint, filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line, either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the discontinuance.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 14, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 26, 1987, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by November 4, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lilton R. Taliaferro, Jr., Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 5, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23512 Filed 10–14–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging a Final Judgment by Consent; Farmers Grain and Feed Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *September 29, 1987* a proposed Consent Decree in *United States* v. *Farmers Grain and Feed*

Company and Oshkosh Grain, Inc., Civil Action No. 85–0–933, was lodged with the United States District Court for the District of Nebraska.

The Complaint filed by the United States alleged that the defendants had violated the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. 136, seeking a civil penalty of $1,500 assessed in an administrative action by EPA. Oshkosh Grain, Inc. is the successor corporation to Farmers Grain and Feed Company. Defendant Oshkosh Grain, Inc. has signed the decree agreeing to pay $1,000 plus costs and interest. In the decree, defendants admit all allegations of the Amended Complaint and agree to the entry of the Final Judgment. Judgment will be entered by the District Court against defendants in the amount of $1,000 plus interest at the rate of 9% per annum from June 6, 1985 to the date of this Order, plus costs of this action.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Farmers Grain and Feed Company and Oshkosh Grain, Inc.*, DOJ# Ref. 1–45–61. The propose Consent Decree may be examined at the office of the United States Attorney, District of Nebraska, P.O. Box 1228–DTS, Omaha, Nebraska 68101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–23803 Filed 10–14–87; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Henry Nelkin, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that a consent decree in *United States* v. *Henry Nelkin, Inc.*, Civil Action No. 85–4478, was lodged with the United States District Court for the Eastern District of New York on September 29, 1987. The Decree requires payment of a civil penalty of $25,000. As Nelkin has ceased operations, the Decree provides that Nelkin shall conduct any future operations in compliance with any standards in effect at that time.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Henry Nelkin, Inc.*, D.J. Ref. No. 90–5–1–1–2468.

The consent decee may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–23804 Filed 10–14–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; State University of New York

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *State University of New York ("SUNY")*, Civil Action No. 87–CV–1317, was lodged with the United States District Court for the Northern District of New York on 9/29/87.

The proposed consent decree concerns alleged violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR 61.20, *et seq.*, (1983), and the Clean Air Act, 42 U.S.C. 7401, *et seq.*, in connection with various renovation and demolition projects at the Oswego campus of SUNY. The proposed decree requires SUNY to comply with the Clean Air Act and the asbestos NESHAP regulations. The proposed decree also requires payment of a $20,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *State University of New York*, D.J. Ref. No. 90–5–2–1–1049.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of New York, 369 Federal Bldg., 100 S. Clinton St., Syracuse, NY 13260; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth St. and Pennsylvania Ave. NW., Washington, DC 20530.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–23802 Filed 10–14–87; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Claude J. Phillippe, d/b/a/ Erie Drugs Revocation of Registration

On April 3, 1987, the Deputy Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Claude J. Phillippe, d/b/a/ Erie Drugs, of 376 East 61st Street, Chicago, Illinois, seeking to revoke DEA Certificate of Registration AC3850105, and to deny any pending applications for renewal of said registration as a retail pharmacy. The statutory basis for the issuance of the Order to Show Cause was the recent controlled substance felony conviction of Claude J. Phillippe, the owner and registered pharmacist of Erie Drugs.

The Order to Show Cause was sent by way of registered mail to the pharmacy's registered location. The return-receipt indicates that the Order to Show Cause was received on June 6, 1987. There has been no response to the Order to Show Cause. Based upon Mr. Phillippe's failure to respond to the Order to Show Cause, the Administration finds that he has waived his opportunity for a hearing on the issue raised in the Order to Show Cause, and enters this final order based upon the information contained in the investigative file. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that on May 22, 1986, in the Circuit Court of Cook County, Illinois, Claude J. Phillippe was convicted, after entering a plea of guilty,

of two counts of unlawful delivery of controlled substances, in violation of I.S. Chap. 38, Sec. 56½, Subsec. 1401(d); both constitute felony convictions relating to controlled substances.

The investigation which led to Mr. Phillippe's conviction revealed that on July 2, 1985, an undercover agent for the Illinois Department of Law Enforcement visited Mr. Phillippe at Erie Drugs. During her visit, she proposed to give certain legend drugs to Mr. Phillippe in exchange for Valium, a Schedule IV controlled substance, and Tylenol #3 with codeine, a Schedule III controlled substance. Mr. Phillippe readily acquiesced to the exchange and provided the agent with 15 dosage units of Valium 5 mg. and 30 dosage units of Tylenol #3 with codeine. Mr. Phillippe gave the controlled substances to the agent in the original manufacturers' bottles.

On July 5, 1985, the same undercover agent returned to Erie Drugs in an attempt to exchange legend drugs for controlled substances with Mr. Phillippe. Again, Mr. Phillippe readily agreed to the arrangement and gave the agent 10 dosage units of Valium 5 mg. and 13 dosage units of Tylenol #3 with codeine; both were given to the agent in the original manufacturers' bottles.

On July 16, 1985, the agent visited Erie Drugs in a third attempt to exchange legend drugs for controlled substances. During that visit, Mr. Phillippe gave the agent 30 dosage units of Tylenol #3 with codeine and 13 dosage units of Valium 5 mg. As in the other instances, the drugs were given to the agent in the original manufacturers' bottles.

During each of the three exchanges, the agent never presented any orders purporting to be valid prescriptions for the controlled substances she received from Mr. Phillippe. Based upon the information provided, the Administrator determines that Mr. Phillippe clearly was dispensing controlled substances for other than legitimate medical purposes and outside the scope of his professional practice.

The Administrator has consistently held that a finding that a registrant has been convicted of a felony offense relating to controlled substances is sufficient to warrant the revocation of that registrant's DEA Certificate of Registration. See 21 U.S.C. 824(a)(2) and 21 U.S.C. 823(f)(3); see also *Fairbanks T. Chua, M.D.*, 51 FR 41676 (1986).

In this matter, the Administrator concludes that DEA Certificate of Registration AC3850105, previously issued to Claude J. Phillippe, d/b/a Erie Drugs, should be revoked, based upon his felony conviction of two counts of unlawfully distributing controlled substances. The facts underlying Mr. Phillippe's conviction demonstrate his total disregard for his responsibilities as a DEA registrant. Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AC3850105 be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 15, 1987.

Dated: October 8, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-23850 Filed 10-14-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps Center Assessment Advisory Committee; Meeting

A public meeting of the Job Corps Advisory Committee will be held on Thursday and Friday, November 5 and 6, 1987, commencing at 9:00 a.m., in Room N-3437 B and C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The purpose of the meeting is to initiate consideration of the Job Corps Center Assessment system developed in 1986 to rank centers for closing in the event capacity reductions in the program are necessary. This effort is in response to requests by the Congress to review the system developed and presented in 1986. The agenda will be comprised of discussions about the purpose and background of the Committee, consideration of the methodologies and rationales previously used for center assessment purposes, and to identify potential improvements.

Individuals or organizations wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Job Corps, U.S. Department of Labor, Room N-4508, Washington, DC 20210. Telephone (202) 535-0550. Papers will be accepted and included in the record of the meeting if received on or before October 30, 1987.

Signed at Washington, DC, this 7th day of October 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87-23831 Filed 10-14-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-203-C]

Rayscott Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Rayscott Coal Company, Inc., HC 81, Box 858, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 1 (I.D. No. 15-15880) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time betweens trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will

be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: October 5, 1987.

[FR Doc. 87-23830 Filed 10-14-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before November 30, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force, Directorate of Administration (N1-AFU-87-18). Records relating to environmental planning and management.

2. Department of the Air Force (N1-AFU-87-37). Copies of travel records.

3. Department of the Air Force (N1-AFU-87-38). Facilitative records pertaining to Communications-Electronics.

4. Department of the Air Force (N1-AFU-87-39). Facilitative records pertaining to Autodin Switching Center Operations.

5. Department of the Air Force (N1-AFU-87-43). Records relating to child care centers and child care providers.

6. Department of Commerce, Office of the Secretary (N1-40-87-4). Comprehensive schedule for records of the Office of Management and Information Systems.

7. Department of Commerce, International Trade Administration (N1-151-87-16). General administrative records common to all offices of the International Trade Administration.

8. Environmental Protection Agency, Office of Policy, Planning, and Evaluation (N1-412-87-4). Records relating to the policy planning and evaluation programs in the agency.

9. Environmental Protection Agency, Office of Public Affairs (N1-412-87-5). Records relating to the administration of EPA's public affairs programs.

10. Federal Communications Commission, Common Carrier Bureau (N1-173-87-5). Records relating to informal complaints, carrier licenses, uniform settlement policy, and other administrative matters.

11. Federal Communications Commission, Minute Division (N1-173-87-7). Duplicate Federal Communications Commission agendas and minutes.

12. General Services Administration, Office of Administration, Office of Administrative Services (N1-269-87-4). Revision of schedule relating to General Management Program Records.

13. Department of Justice, Office of Liaison Services (N1-60-87-4). Program subject files.

14. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1-65-87-12, -13, -14, and -15). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.

15. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1-65-87-18). Correspondence relating to court orders to expunge/destroy criminal records.

16. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1-65-87-19). Pen Register tapes (slips) containing telephone numbers collected during the course of official business.

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17. National Archives and Records Administration, Office of the National Archives, Civil Archives Division (N2–423–87–1). Accessioned records of the Department of Justice, Office of Justice Programs. Videotapes maintained by the National Criminal Justice Reference Service, 1974–79.

18. Department of State (N1–76–87–1). Administrative material and duplicate copies from the General Claims Commission, United States and Germany; War Claims Arbiter; Tripartite Claims Commission; and Mixed Claims Commission. Historical records will be accessioned.

19. Department of State, U.S. Embassy Bonn (N1–84–87–2). Inventories of goods stored in Berlin.

20. Tennessee Valley Authority, Office of Corporate Services, Office Support Services Branch (N1–142–87–12). Progress reports of routine projects conducted jointly by TVA and the Civil Works Administration, 1934–5.

21. Department of the Treasury, Office of the Assistant Secretary (Enforcement and Operations), Office of Foreign Assets Control (NC1–265–80–1). Records created in the course of the administration of controls and trade restrictions on assets, located in the United States, of "blocked" countries.

22. United States Information Agency, Television and Film Service, (N1–306–87–1). Film Festivals Staff Records. Administrative, housekeeping records. (This comprehensive schedule also provides for the transfer of the Staff's historical files to the National Archives.)

Dated: October 7, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–23912 Filed 10–14–87; 8:45 am]

BILLING CODE 7515–01–M

PENSION BENEFIT GUARANTY CORPORATION

Distress Terminations of Single-Employer Plans; Special Procedures Relating to the Reorganization Distress Test

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: This Notice clarifies certain aspects of the distress termination process established in the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") as they relate to bankruptcy proceedings. SEPPAA creates several alternative distress tests, any one of which must be satisfied by each contributing sponsor and each substantial member of the contributing sponsor's controlled group in order for a plan maintained by the contributing sponsor to be terminated in a distress termination. In certain situations, both the bankruptcy court and the Pension Benefit Guaranty Corporation ("PBGC") may be called upon to evaluate whether to permit a distress termination. In making these determinations, the PBGC and the bankruptcy court are likely to consider many of the same factors. This creates a possibility that the PBGC and the bankruptcy court could make conflicting findings. This Notice adopts procedures to prevent such a conflict.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Steven A. Weiss, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006–1806; 202–778–8820 [202–778–8859 for TTY and TDD].

SUPPLEMENTARY INFORMATION: Under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001–1461, as amended by the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. No. 99–272, 100 Stat. 237 (1986) ("ERISA"), a plan may teminate in a distress termination only if each "person" who is a contributing sponsor or a substantial member of the contributing sponsor's controlled group, as defined in the statute, can demonstrate that it meets the requirements of any of the following criteria:

(1) Liquidation in bankruptcy—as of the termination date, the person has filed a petition seeking liquidation in a case under Title 11, United States Code, or under any similar law, and the case has not been dismissed;

(2) Reorganization in bankruptcy—as of the termination date, the person has filed a petition seeking reorganization under Title 11, United States Code, or under any similar law, and the case has not been dismissed and, thereafter, the bankruptcy court approves the termination;

(3) Inability to pay debts when due—without a distress termination, the person will be unable to pay debts when due and to continue in business; or

(4) Unreasonably burdensome pension costs—the costs of providing pension coverage have become unreasonably burdensome due solely to a decine in the person's covered workforce. [ERISA section 4041(c)(2)(B)] (Cases begun as liquidations and converted to reorganizations, or vice versa, as of the termination date, are included within the first two criteria.)

Under certain circumstances, the contributing sponsor or a substantial member of its controlled group may seek to qualify under more than one of the distress termination tests. One of these circumstances is presented when the contributing sponsor or a substantial member of its controlled group has filed or has filed against it a petition seeking a reorganization under Title 11 of the United States Code, or under any similar law. In such a case, this person may request approval of the termination from the bankruptcy court under the second test, or apply to the PBGC for a determination that it satisfies either the third or fourth test.

With respect to the second test, ERISA does not delineate the factors that bankruptcy courts should use in deciding whether to approve a plan termination in the context of a reorganization proceeding. The legislative history, however, indicates that the standards under sections 365 and 1113 of the Bankruptcy Code (dealing with the rejection of executory contracts and collective bargaining agreements, respectively) are applicable to the court's decision on whether to approve the termination of a pension plan. (*See* H.R. Report No. 99–453, 99th Cong., 1st Sess. 575 (1985)) Bankruptcy courts typically utilize a "balancing of the equities" test in making determinations under these sections.

The third test (inability to pay debts when due and continue in business) is a financial test that requires the PBGC to make an analysis of a number of the same factors that bankruptcy courts are likely to consider as part of their "balancing of the equities" determination. This is particularly true when the contributing sponsor is in a reorganization proceeding, because in such a case the "ability to continue in business" is essentially measured by the ability to successfully reorganize. This creates a possibility that the PBGC and a bankruptcy court could make conflicting findings as to the debtor's financial condition. The PBGC has, therefore, adopted the procedures described below in order to prevent such a conflict between it and a bankruptcy court.[1]

When a contributing sponsor or a substantial member of the contributing sponsor's controlled group requests approval of the plan termination from a bankruptcy court under the reorganization test, the PBGC normally will enter an appearance in that

[1] The fourth test (unreasonably burdensome pension costs) does not involve factors that are closely related to the factors considered by the bankruptcy courts. Accordingly, this test does not present the same possibility of conflicting results.

proceeding to request the bankruptcy court to make certain specific findings. The PBGC will ask the court either to make a finding as to whether, but for distress termination, the contributing sponsor or substantial member of its control group will be unable to pay debts when due and continue in business, or to state that it is unable to make any such findings. In these proceedings, the PBGC will provide the court with any information it has that may be germane to the court's ruling. If the bankruptcy court makes a finding as to the debtor's ability or inability to pay debts when due, and upon the bankruptcy court's order becoming final and non-appealable, the PBGC commits itself to be found by the finding.

If the contributing sponsor or a substantial member of the contributing sponsor's controlled group requests a determination from the PBGC under the third test and also requests (either prior thereto or after) approval of the termination by the bankruptcy court, the PBGC will defer action on the request until the bankruptcy court makes its determination. If the contributing sponsor applies to the PBGC under the third test and the PBGC determines that the distress test is not met, and the contributing sponsor thereafter requests the bankruptcy court's approval of the termination, the PBGC will advise the court of its determination and make its administrative record available to the court for its analysis.

By adopting these procedures, the PBGC hopes to minimize duplicative efforts and expedite the analysis of the financial information submitted to justify plan termination. Moreover, the PBGC anticipates that these procedures will facilitate the development of consistent decision making in this area and better promote the policies behind Title IV of ERISA.

Issued at Washington, DC, this 7th day of October, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-23786 Filed 10-14-87; 8:45 am]

BILLING CODE 7708-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday, October 27, and Wednesday, October 28, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Washington Room B, on the Second Concourse at 9:00 a.m. on October 27, 1987. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. in Washington Room A, also on the Second Concourse, the same day.

The Full Commission will meet at 1:30 p.m. in Washington Rooms A and B, on the Second Concourse, October 27, and in the same rooms on October 28, 1987, at 9:30 a.m.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-24018 Filed 10-14-87; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25000; Filed No. SR-CBOE-87-42]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Addition of Options at a Strike Price up to 100 Points Below the Current Index Value of the Standard & Poor's 500 Stock Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on September 14, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

Terms of Option Cotnracts

Rule 24.9 No change

. . . Interpretation and Policies:

.01 No change

a.–e. No change

f. In the options on the Standard & Poor's 500 Stock Index (SPX or NSX), the Exchange may add one or more series of option contracts at a strike price up to 100 points below the current index price. Such series may only be added on the expiration cycles of March, June, September and December.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the palces specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change allows the Exchange to open for trading options at a strike price up to 100 points below the current index value of the Standard & Poor's 500 STock Index ("SPX" and "NSX", hereinafter collectively referred to as "SPX"). The Exchange believes that this will enable market participants to have a greater range of trading and hedging opportunities in SPX.

SPX is a market with a high degree of institutional activity and these sophisticated market participants believe that they can use a greater range of strike prices than can the typical retail investor. For example, the deep-in-the-money calls will provide a way for a buyer or seller to participate point-for-point in a very substantial market move, as has occurred in the past six months. Because SPX has a European exercise provision, a seller of a deep-in-the-money call also avoids the risk of early exercise.

The Exchange also recognizes that this will make available far out of the money puts, which have a relatively lower possibility of coming into the money before expiration. To that extent, the Exchange has cautioned its member firms that these options, particularly the far out-of-the money puts, are being made available to allow sophisticated market participants a greater range of trading and hedging strategies and that trading activity for customer accounts in the far out-of-the money puts will be closely scrutinized by the Exchange as to the suitability and propriety of the trades for the customers in question.[1]

The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b)(5) thereof, in that the rule change is intended to increase

[1] CBOE Exchange Bulletin, Volume 15, Number 38 (September 23, 1987).

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market liquidity by providing sophisticated market participants with a greater range of availability options series for trading.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 5, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23886 Filed 10-14-87 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25001; File No. SR-CBOE-87-45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1987 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange proposes to make effective, pursuant to CBOE Rule 2.22, a revenue-neutral trade match fee system to encourage clearing firms to provide timely and accurate input to the Exchange's trade match process. To encourage timely input, the Exchange will use the input cutoff times based on daily reported volume in order to define categories of early and late input for a particular day. For each clearing firm, the type [1] and number of transactions will be recorded by time slot. A weighting factor will be applied to each time slot, and a formula will be applied to determine each firm's monthly bill based on its performance. To encourage accurate input, a firm causing an outtrade will have to submit a correction, which will incur a charge.

The Exchange states that the purpose of this trade match fee system is to improve clearing firm performance by encouraging: (1). Early submission to all trade match passes, (2) use of corrective transactions instead of combinations of deletes plus adds, (3) strict adherence by member firms to the second pass schedule of the Exchange's trade match process, which is critical to starting the Options Clearing Corporation process, and (4) accurate input.

As the foregoing rule is concerned solely with Exchange fees, it has become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] *E.g.*, adds, deletes or changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in caption above and should be submitted by November 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23887 Filed 10-14-87; 8:45 am]

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[Release No. 34-25002; File No. SR-DTC-87-9]

Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on June 2, 1987, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. On September 15, 1987, DTC amended the rule change by submitting procedures relating to the proposed rule change. The proposal would enable DTC Participants to change, by automated means, the frequency with which they receive future dividend payments on Variable Mode Preferred (VMP) and

Unit Investment Trust Securities (UIT). The Commission is publishing this notice to solicit comment on the proposed rule change.

The new service is called a Change of Mode Payment ("CMOP") Service. DTC states in its filing that CMOP will enable Participants to change, during specific periods, the frequency with which they receive dividend payments. In accordance with the terms of the security, dividend payments may be made monthly, quarterly, semi-annually, annually, or on another regular frequency. Only certain UIT and VMP stock issues are eligible for the CMOP Service. Fees for the CMOP service will be the same as fees for conversions.

In order to use the CMOP Service, a Participant would communicate the CMOP instructions to DTC by automated means through DTC's Participant Terminal System (PTS). Due to provisions in the documents which created the UITS and VMPs, participants may submit CMOP changes only during certain specified time periods. If a participant attempts to make a change outside of the permissible time periods, PTS will reject the transaction and display an error message. Participants receive an additional notification of transactions not completed by comparing the transactions they submitted with the completed transactions reported on their daily activity statement.

In addition to instructing DTC about a VMP change, a participant who wants to make a VMP change must directly notify the VMP remarketing agent of the change two business days before the dividend payment date. Each afternoon DTC submits that day's CMOP VMP changes to the appropriate VMP remarketing agents. The VMP remarketing agents have until the close of business to inform DTC of changes that must be reversed because the participant failed to notify it of the change at the appropriate time. If a change must be reversed, or is rejected for another reason DTC will notify the participant's coordinator by telephone, and send the participant a written notice of the adjustment.

After a participant has completed a valid CMOP instruction, DTC will begin processing in accordance with the instruction. Because UITs and VMPs are FAST issues, DTC transmits the instructions to the FAST transfer agent via DTC's Computer-to-Computer Facility.[1]

DTC believes the rule change is consistent with the requirements of the Act because it will eliminate the need for Participants to withdraw certificates from DTC, exchange them at the transfer agent's office for certificates with the new payment frequency, and then deposit new certificates at DTC. In addition, DTC believes the proposed rule change would facilitate the timely settlement of these transactions, reduce fails, and decrease financing costs.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, all written communications relating to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public under 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR–DTC–87–09 and should be submitted by November 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23888 Filed 10–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25003; Filed No. SR–MSTC–87–5]

Self-Regulatory Organizations; Midwest Securities Trust Co., Order Approving Proposed Rule Change

The Midwest Securities Trust Company ("MSTC") on March 27, 1987, filed a proposed rule change with the Securities and Exchange Commission ("Commission") under section 19(b) of the Securities Exchange Act of 1934 ("Act"). MSTC filed an amendment to the proposal on August 11, 1987. The proposal, as amended, would authorize MSTC to charge a Participant for the failure to eliminate any negative balance remaining in such Participant's securities account 24 hours after notification by MSTC of the existence of the negative balance. The Commission published notice of the proposal in the **Federal Register** on September 8, 1987, to solicit public comment.[1] No public comment was received. This order approves the proposal.

I. Description

The proposal amends MSTC Article II, Rule 1, Section 1 to authorize MSTC to charge a Participant for the failure to eliminate any negative balance remaining in the Participant's securities account. Under the proposal, if a negative balance remains 24 hours after MSTC has notified a Participant of its existence, MSTC will be authorized to charge the Participant 130% of the market value of equity, or face value of debt (municipal or corporate) securities which constitutes the negative balance. The amount will be placed in a separate escrow account and will be returned to the Participant after the Participant delivers substitute securities to its MSTC account (by deposit or book-entry movement).

II. MSTC's Rationale

MSTC states that the proposed rule change is consistent with the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions, as well as the safeguarding of securities and funds within MSTC's control. MSTC states that when faced with an unpaid negative balance, MSTC's current rules authorize MSTC only to buy-in securities to eliminate the negative balance. While in some instances the procedure is adequate to limit MSTC's exposure, the procedure is inappropriate in other instances, for example, when a limited market exists for a security which is the subject of a negative balance. MSTC believes that the proposal will encourage Participants to take steps to eliminate a negative balance, even in instances where a limited market for the security exists, and will further protect MSTC should the Participant become insolvent before it eliminates the negative balance.

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[1] FAST, which stands for Fast Automated Securities Transfer, provides an expeditious method for transferring certificates. Under the FAST program, DTC leaves certificates with the appropriate transfer agents (TA). When a FAST issue is transferred, DTC does not need to withdraw it from its vault, submit it to the TA for processing, receive a new issue from the TA, and place the new issue in the vault. Instead, DTC merely notifies the TA of the change which is to be made; processing occurs more quickly because the FAST certificates are already in the TA's custody.

[1] *See* Securities Exchange Act Rel. No. 24885 (August 28, 1987) 52 FR 33892.

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III. Discussion

The Commission believes that MSTC's proposal is consistent with Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in MSTC's custody and control. For the reasons discussed below, the Commission is approving MSTC's proposal.

MSTC's proposed outstanding negative balance charge will provide protection to MSTC and it Participants. Most outstanding negative balances develop primarily as a result of deposit rejects (securities submitted to MSTC for deposit which are not in good deliverable form), partial calls in redemption processing and miscellaneous account position adjustments. The existing buy-in procedures protect MSTC only to the extent that the same or similar securities are available for purchase. In certain situations, however, a buy-in of securities may entail significant delays. For example, a Participant depositing securities in a thinly traded issue into its account at MSTC is immediately credited with the securities and may use the position. If the securities, when presented by MSTC to the transfer agent for transfer into MSTC's nominee name, do not clear transfer and MSTC subsequently rejects the deposit, the Participant's account will incur a negative balance. The Participant (and MSTC) may not be able immediately to replace the securities by buying-in because the issue is thinly traded. The negative balance charge is designed to increase MSTC's protection in the event the Participant becomes insolvent after the negative balance charge is made and before the Participant eliminates the negative balance.

The proposed 130% negative balance charge will induce Participants to eliminate the negative balance as quickly as possible. The Commission believes that the negative balance charge also will encourage Participants to examine their procedures and maintain a higher quality control to prevent or reduce deposit rejects and therefore avoid creating outstanding negative balances.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that MSTC's rule change (File No. SR MSTC 87–5) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23889 Filed 10–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–24997; File No. SR–NSCC–87–8]

National Securities Clearing Corp.; Proposed Rule Change; Mutual Fund Settlement, Entry and Registration Verification ("Fund/SERV") Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1987 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would adopt NSCC's Fund/SERV Service as a permanent service of NSCC at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC originally filed a rule change with the Securities and Exchange Commission ("Commission") in December, 1985, in order to operate Fund/SERV. By order dated February 20, 1986, the Commission granted temporary approval to the Fund/SERV rules, allowing NSCC to establish the service on a pilot basis. In April, 1986, after having experience operating Fund/SERV on a pilot basis, NSCC filed an additional rule change making various modifications to the procedures and membership standards for Fund/SERV. By order dated February 10, 1987, the Commission approved that filing and authorized the continuation of Fund/SERV through January 31, 1988. The purpose of this proposed rule change is to adopt Fund/SERV as a permanent service of NSCC.

Since the inception of Fund/SERV in March, 1986, with one mutual fund and two broker-dealers, Fund/SERV has expanded to where there currently are 18 funds participating and 27 broker-dealers participating. The volume of transactions processed by the system also has grown. At its peak, in April, 1987, volume averaged over 7,500 confirmed trades a day. Even with a general downturn in the mutual fund industry, Fund/SERV currently is averaging over 4,000 transactions a day. Similarly, average daily dollar value of confirmed trades has increased to a current average of approximately $100 million, with a monthly high average of over $190 million a day in April, 1987.

As shown by its growth, Fund/SERV has achieved widespread industry acceptance as the central processing system for mutual fund transactions. There have been no operational problems in providing the service; indeed, NSCC has been developing enhancements to Fund/SERV as the service grows (*See* SR-NSCC–87–7). NSCC has been developing enhancements to Fund/SERV as the service grows (*See* SR-NSCC–87–7). NSCC currently is developing plans to increase participation in Fund/SERV by making it more attractive for smaller broker-dealers who currently are not members of NSCC. In addition, NSCC is developing plans to offer additional services with respect to mutual funds. In light of these developments, NSCC believes that it would be appropriate for the Commission to approve Fund/SERV as a permanent service of NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has worked with the mutual fund industry and NSCC's participants in developing Fund/SERV. Formal comments on the proposed rule change, however, have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 5, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 6, 1987.

[FR Doc. 87-23882 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24999; File No. SR-NASD-87-37]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Implementing a Late Fee for Certain Subscribers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 2, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The self-regulatory organization has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and corresponding Rule 19b-4(e), which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") hereby files a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to establish a late fee that would be levied against delinquent subscribers receiving NASDAQ/National Market System Last Sale Information ("NASDAQ/NMS Last Sale Service") through an authorized vendor. The late fee will equal one and one-half percent (1½%) per month of the unpaid balance commencing forty-five (45) days after the invoice date. Prior to this filing, no late fee had ever been authorized respecting subscribers delinquent in paying for NASDAQ/NMS Last Sale Service. The NASD will implement the late fee prospectively in accord with the existing subscriber agreement for NASDAQ/NMS Last Sale Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This filing is intended to effect the Market Services, Inc., Board's determination to impose a late fee against subscribers delinquent in paying for NASDAQ/NMS last sale information obtained through authorized vendors. To the extent that vendors have assumed contractual responsibility for collection and remittance of subscriber fees, such late fee would also apply. Historically, no late fee had ever been levied in connection with this or any other service provided by MSI. The new fee will apply equally to delinquent fees attributable to professional subscribers serviced by vendors. Lastly, the late fee's application is limited to MSI's provision of the NASDAQ/NMS Last Sale Service.

The NASD anticipates that adoption of the late fee will curb the incidence of delinquencies. In this regard, it should be noted that timely receipt of subscriber fees is a contractual precondition to obtaining the last sale information. It is also important to the NASD's funding of the facilities and operations needed to provide this service as well as various automation enhancements that ultimately benefit subscribers and the investing public. Hence, sound business practice and public policy considerations both support the adoption of this late fee.

Section 15A(b)(5) of the Act requires the equitable allocation of reasonable fees among persons accessing data services offered by the NASD. Although related to the NASDAQ/NMS Last Sale Service, the late fee becomes due only when the subscriber is dilatory in paying the prescribed rate for this service. Hence, it is entirely within a subscriber's control to avoid incurrence of the late fee. However, every subscriber who becomes delinquent incurs the identical pecuniary obligation. This result is consistent with the equitable allocation standard articulated in section 15A(b)(5) of the Act.

The NASD believes that the magnitude of the late fee is reasonable, and that its imposition will offset certain additional costs traceable to collection of delinquent payments from the affected universe of subscribers. Further, the late fee's magnitude is believed sufficient to provide an economic incentive for subscribers to pay NASDAQ/NMS Last Sale Service fees in a timely fashion. Based on this rationale, the NASD submits that this

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late fee satisfies the reasonableness requirement of section 15A(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD asserts that no competitive burden will result from the imposition of a late fee on subscribers delinquent in paying the established rates for NASDAQ/NMS Last Sale Service. The late fee will apply uniformly to all delinquent subscribers receiving this service through vendors. Incurrence of the late fee is a matter entirely within each subscriber's control and timely payment obviates liability for the fee. Hence, the fee's application will not unfairly burden a subscriber's continued access to NASDAQ/NMS last sale information. Finally, because the proposed fee addresses delinquent payments by a specific class of subscribers, it has no adverse effect upon any vendor's access to NASDAQ/NMS last sale information nor upon a vendor's ability to service a particular subscriber.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–87–37 and should be submitted by November 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority: 17 CFR 200.30–3(a)(12).

Dated: October 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23819 Filed 10–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24985; File No. SR–NYSE–86–21]

Self-Regulatory Organizations; Order Approving Proposing Rule Change by the New York Stock Exchange, Inc. Relating to a Revision of the List of Exchange Rule Violations and Applicable Fines

The New York Stock Exchange, Inc. ("NYSE") submitted, on July 10, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, to revise the list of NYSE rules eligible to be considered pursuant to the NYSE's minor rule violation plan.[3] In particular, the purpose of the NYSE proposal is to include, within the minor rule violation plan, certain rules which are administered by the NYSE's Member Firm Regulation and Enforcment and Regulatory Standards Divisions.

In 1984, the Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[4] The Commission previously approved such a plan filed by the NYSE.[5] The approved plan relieves the NYSE of the current reporting requirement imposed under section 19(d)(1) for violations listed in NYSE Rule 476A. The NYSE plan, as embodied by Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, or member approved person, or registered or non-registered employee of a member organization for a violation of the delineated rules by issuing a citation with the specified penalty. The respondent can either accept the penalty, or force a full disciplinary hearing on the matter. Fines assessed pursuant to Rule 476A in excess of $2,500 are not considered pursuant to the plan and must be reported in a manner consistent with the current reporting requirements of section 19(d)(1).

The five remaining proposed NYSE rules [6] are different in nature from the list of rules already included under Rule 476A and the above-mentioned rules in that these rules generally relate to the member's relationship with its customers and directly relate to important investor safeguards. In particular, Rules 451 and 452 require NYSE members to transmit proxy materials to beneficial owners of stock and establish procedures for delivery proxies by a member organization for stock registered in its name. Strict compliance with these two rules is necessary to ensure that the member organization is in compliance with Section 14 of the Act and the rules and regulations promulgated thereunder.[9] Likewise, failure to adhere to the requirements contained in Rule 726, mandating delivery to a customer of the current Options Disclosure Document at or prior to approval of the customer's account, also effects compliance with Rule 9b–1 under the Act.[10] Further, the

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[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b–4 (986)

[3] *See* NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"). Included within Rule 476A is the list of Exchange rules whose violations may be reported pursuant to the NYSE's minor rule violation plan. The Commission notes that it simultaneously is approving amendments to the NYSE minor rule violation plan. *See* Securities Exchange Act Release No. 24986.

[4] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 409 FR 23838. Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2), of Rule 19d–1, any disciplinary acton taken by the SRO for violation of an SRO rule that has been designated a minor rule pursuant to the plan shall not considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to immediate, basis. *See* note 7 *infra* (detailing content of quarterly reports filed pursuant to the NYSE plan).

[5] Securities Exchange Act Release No. 22415 (September 14, 1985), 50 FR 38600.

[6] *See* NYSE Rules 408(a), 432(a), 451, 452 and 726.

[9] 15 U.S.C. 78m (1976).

[10] 17 CFR 240.9b–1 (1986).

requirements contained in Rule 408(a) represent essential customer protection safeguards against unauthorized trading, and the requirements of Rule 432(a) serve as part of an overall scheme of margin regulation designed to protect the markets, and specifically the margin purchaser, by preventing the purchase of securities with insufficient margin.[11]

In adopting Rule 19d-1, the Commission noted that the rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[12] In promulgating paragraph (c) of the rule,[13] the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The various SROs have since realized that the inclusion of rules under a minor rule violation plan not only can reduce reporting burdens but also can make their disciplinary systems more efficient. The Commission however, expressed concern, when promulgating the rule, that the SROs would use that provision for the disposition of increasingly more significant violations. Indeed, the Commission specifically rejected a recommendation, made by the Chicago Board Options Exchange ("CBOE"), to raise the fine ceiling to $10,000, in an attempt to limit the use of these plans to "matters of minimal regulatory concern."[14] To ensure further that plans pursuant to Rule 19d–1(c) would be used for intended purposes only, the Commission retained the authority to restrict the categories of violations and impose any terms or conditions that it saw necessary.[15] Specifically, the Commission remains unconvinced that the inclusion of rules that are not basically technical or objective in nature are appropriate for a minor rule violation plan.

The Commission, therefore, is concerned that violations of the above cited five rules may present more than "minimal regulatory concern." At the same time, however, the Commission recognizes that the inclusion of such rules under the NYSE's 19d–1 plan could have positive results, especially in the area of compliance. According to the NYSE, inclusion of these rules will provide an effective alternative response to a rule violation when the initiative of full disciplinary proceedings is unsuitable because such a proceeding would be more costly and time-consuming in view of the minor nature of the particular violation if not the category of violation. The NYSE claims that, presently, members are aware that lesser violations of the five rules probably will result only in a verbal warning or letter of caution and not full disciplinary proceedings. Accordingly, the NYSE believes that its ability to enforce compliance with these rules will increase with the ability to issue summary fines for these violations.[16]

In effect, the NYSE argues that, even though the categories of requirements covered by the five rules provide important investor safeguards, any particular violation of such a rule may or may not rise to the level which would justify a full discipinary proceeding. Thus, in the NYSE's view, because it retains the discretion to bring such a full disciplinary proceeding, adding these rules to its minor disciplinary plan only will enhance, rather than reduce, its enforcement capabilities regarding such rules.

While the Commission is not persuaded the residual availability of full disciplinary proceeding always will justify placing a rule within the minor disciplinary plan, it recognizes that the issue of whether the inclusion of these rules within the minor disciplinary plan will provide a net benefit to the NYSE's enforcement efforts is ultimately a question of how the program is implemented. If the minor disciplinary characterization is used in a manner which is sensitive to the underlying goal of Rule 19d–1, including these rules within the plan may enhance the NYSE's compliance effects. The Commission therefore has determined that, in order to balance the regulatory needs and reqirements of the Commission as set forth in section 19(d), and the compliance goals and reporting burdens of the NYSE, inclusion of these rules under the NYSE's minor rule violation plan should be approved for a pilot period of two years. During that time, the Commission will examine whether summary disposition and quarterly reporting of such vilations allows respondents sufficient due process protections and the Commission sufficient information by which to carry out its oversight responsibilities concerning the enforcement and disciplinary activities of the SROs.[17] To aid in that examination, the NYSE has agreed to submit two reports to the Commission on compliance activities concerning these five rules: one report submitted at the midpoint of the pilot and the other prior to the pilot's expiration.[18]

The two reports submitted by the NYSE concerning these five rules will include considerably more detail than the quarterly reports presently submitted by the NYSE. First, these reports should include statistics on the number of violations of the five rules handled pursuant to the NYSE's minor rule plan. Second, the following information in connection with each violation must be reported, although it should be noted that the Commission may, from time to time, request additional information: (1) The name of each violator; (2) a description of the circumstances under which the violation occurred; (3) the resulting sanction; (4) whether this is a first or repeat offense in this category by the respondent; (5) whether the violation led to any further investigation or violations; and (6) an analysis by the NYSE of how these cases might have been treated if not for the pilot program (*i.e.*, verbal or written caution or full disciplinary proceeing). Third, these reports must include statistics and descriptions of those cases that the NYSE attempted to bring under its minor rule plan, but the respondent requested a hearing. Fourth, these reports must contain an analysis of the overall compliance process for these five rules. Moreover, as the Commission plans to monitor this pilot program through its inspections program and the Rule 19d–1 reporting requirement, the NYSE should retain, consistent with section 17(a) of the Act,[19] in connection with any violation of these five rules, all back-up documentation and analysis leading to either a Rule 19d–1 filing or a more detailed exchange investigation in any compliance capacity.[20]

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[11] *See, e.g.*, Report of Senate Committee of Banking and Currency, Stock Exchange Practices, S Rep. No. 1455, 73d Cong., 2d Sess. 11 (1934).

[12] *See* Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36411.

[13] *See* note 4, *supra*.

[14] *See* Securities Exchange Act Release No. 21013, 43 FR 23838. Specifically, the Commission noted:

In our view, sanctions of that level [$10,000] rarely would involve matters of minimal regulatory concern. Instead, they either involve isolated infractions of significant rules or repeated violations of less significant rules which warrant a stringent sanction. The [Commission] believes that it is important that the Commission be informed on a timely basis of infractions in either situation.

[15] *Id.*

[16] *See* File No. SR-NYSE-86-21.

[17] Reporting of violations by SROs to the Commission is an essential means of SRO oversight by supplementing the information obtained through inspections.

[18] *See* telephone conversation between Rudy Schriber, NYSE, and Stephen Luparello, Staff Attorney, Division of Market Regulation, dated August 31, 1987.

[19] 15 U.S.C. 78q(a).

[20] The Commission also notes that it retains the right to revoke any part or the entire pilot program prior to its expiration if it determines that such an action is necessary in order to further or protect the public interest (*i.e.*, if the absence of quarterly reporting leads to deficiencies in NYSE surveillance or disciplinary procedures).

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Based on the above, the Commission finds that the proposed amendments, with the inclusion of the pilot program, are consistent with the requirements of the Act, and specifically Sections 6 and 19 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) under the Act, that the proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 5, 1987.

[FR Doc. 87-23820 Filed 10-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24986; File No. 4-284]

Self-Regulatory Organizations; Order Approving Amendment to Plan Filed by New York Stock Exchange for Reporting Minor Disciplinary Rule Violations

The New York Stock Exchange, Inc. ("NYSE") submitted, on July 10, 1986, copies of a proposed amendment to its minor rule violation plan, pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder.[1] The Commission previous by approved a minor rule violation plan filed by the NYSE, which relieves the Exchange of the prompt reporting requirements of Rule 19d-1 for violations of rules listed pursuant to the plan.[2]

The amendment adds violations of a variety of NYSE rules to the list of rules subject to the plan.[3] Specifically, the NYSE has proposed to add the following rules, administered by the Exchange's Member Firm Regulation/Enforcement and Regulatory Standards Divisions, to its minor rule violation plan: Rules 312(a), 312(b), 312(c), 313, 345.13, 346(c) 351, 421, 440F, 440G, 440H, and 706 (rules concerning violations of Exchange reporting requirements); Rules 312(h), 312(i), 342(c), 342.10, 382(a), and 791(c) (rules concerning violations of Exchange approval requirements); Rules 345.18, 410, 432(a) and 440 (rules concerning violations of record retention requirements); Rules 343 (violations relating to member organization office-sharing arrangements); Rule 387 (violations of COD/POD transaction requirements); Rules 407 (violations of requirements for transactions of employees of the Exchange, member organizations, and certain non-member organizations); Rule 408(a) (violations of requirement that written authorization be obtained for discretionary power over customer accounts); Rules 451 and 452 (violations of requirement relating to transmission of proxy material and authorizing the giving of proxies); Rule 726 (violations of option disclosure document and prospectus delivery requirement); and Rule 781 (violations of allocation of exercise assignment notices). In approving the amendments to the plan, the Commission has determined that the inclusion of five of these rules [4] should be approved conditionally, subject to a two-year pilot program.[5]

Violations of the above-cited rules will be reported to the Commission in a manner identical to all other violations subject to the minor rule violation plan. Such reports include: (1) A quarterly report listing the NYSE internal file number for the case; (2) the SEC file number; (3) the name of the individual or member organization; (4) the nature of the violation; (5) the specific rule provision violated; (6) the date of violation; (7) the fine imposed; (8) an indication of whether the fine is joint and several; (9) the number of times the violation has occurred; and (10) the date of disposition.[6] The five conditionally approved rules will have additional reporting requirements during the course of the pilot program.[7]

Notice of the proposed amendment was given by the issuance of a Commission release (Securities Exchange Act Release No. 24483, May 19, 1987) and by publication in the **Federal Register** (52 FR 20182, May 29, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed amendments to the NYSE minor rule violation plan are consistent with the requirements of sections 6 and 19 of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Rule 19d-1(c)(2) under the Act, that the proposed amendments, with the inclusion of the pilot program, are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23817 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25004; File No. SR-PSE-86-10]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On June 12, 1986, the Pacific Stock Exchange, Inc., ("PSE") submitted a proposed rule change to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, which would permit Order Book Officials ("OBO") to disclose to exchange members the price and number of contracts on the limit order book ("Book") that are bid below and offered above the displayed market quote.

The proposed rule change was noticed in Securities Exchange Act Release No. 23603, September 9, 1986. No comments were received on the proposed rule change.

The proposed rule change will permit a PSE Member to request from an OBO the price and number of contracts which are bid below and/or offered above the Book information displayed pursuant to PSE Rule VI, section 69. In order to receive the information from the OBO, however, the Member must openly disclose to the trading crowd the identity of the Member or Member

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[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[2] *See* Securities Exchange Act Release No. 22415 (September 15, 1985).

[3] The list of rules subject to the plan is contained in NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"); Securities Exchange Act Release No. 21688 (January 25, 1985) (approving NYSE Rule 476A).

[4] NYSE Rules 408(a), 432(a), 451, 452 and 726.

[5] *See* Securities Exchange Act Release No. 24985.

[6] The fine schedule under Rule 476A is as follows: (1) First offense, $500 for an individual and $1,000 for a member organization; (2) $1,000 for an individual and $2,500 for a member organization; and (3) $2,500 for an individual and $5,000 for a member organization for subsequent offenses. Fines in excess of $2,500 are not covered by the plan and must be reported promptly to the Commission.

[7] These reporting requirements are described in detail in Securities Exchange Act Release No. 34-24985.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

Organization for whom he requests the information.

The PSE states that the proposed rule change is designed to provide additional information to crowd participants and/or their clients and customers so they can better handle large orders and facilitate liquidity. The PSE also notes that while most interest probably will focus on Book size and price information nearest to the present bid and offer, price and aggregate size of Book orders further away from the current Book quote may prove useful to market participants. The PSE proposal also will permit the same access to Book information that is provided for in the Chicago Board Options Exchange ("CBOE") Rules, approved by the Commission in October, 1985 (SR-CBOE-85-30, Release No. 34-22582). Unlike the CBOE provision, however, the PSE proposal would require the member seeking information from the OBO to give up to the trading crowd the name of the firm for which the request is being made. The proposal also allows the PSE to limit crowd access to the Book where appropriate. For example, in circumstances where fast market conditions exist and where the Exchange is aware of a possibility that the information could be misused, access to Book information may be limited.

The Commission finds that the proposed rule change is consistent with the Act and in particular the requirements of Section 6 and the Rules and Regulations thereunder in that the proposed rule change will provide additional information to crowd participants and/or their clients and customers which will help them to establish the best available price for handling large orders. In addition, accessibility to information relating to the size and price of book orders (supply and demand information involving public customers) should assist market makers in determining price levels to buy and sell options. Similarly, the Commission believes that this knowledge should be useful to market participants handling large customer orders and will facilitate hedging and other trading strategies, thereby increasing overall market liquidity. The Commission also believes it is necessary and appropriate for the PSE to have the authority to limit crowd access to the Book in order to limit possible disclosure difficulties and information abuse.

The Commission also believes that the requirement that an OBO not disclose requested information until the requesting member supplies the name of the member or member organization for whom the request is being made is acceptable. The PSE has determined that, in return for receiving Book information, a member should cause more market information (i.e., the identity of an entity interested in buying or selling a specific series) to be made public. Thus, a member that did not want to disclose the identity of a customer would only be prohibited from requesting Book information that has heretofore been non-public. The Commission also notes that this is similar to a rule of the PSE's Options Floor Procedure Committee adopted in 1976 providing for the disclosure, by a floor broker, of the name of the member organization for whom he is acting when he requests the size of the market (See Options Floor Procedure Advice Rule D-9(1)).

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: October 8, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23890 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16042; 813-81]

Elfun Global Fund; Application for Exemption

October 8, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Elfun Global Fund ("Applicant" or "Fund").

Relevant 1940 Act Sections: Exemption requested under Section 6(b) from the provisions of sections 10(a), 13(a)(4), 15(a), 15(c), 16(a), 30(d) and 32(a).

Summary of Application: Applicant seeks an order exempting it from certain shareholder voting requirements, permitting annual reports to unitholders and permitting all of its trustees to be officers or employees of General Electric Company ("GE").

Filing Date: The application was filed on July 8, 1987 and amended on October 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 292 Long Ridge Road, Stamford, Connecticut 06904.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272-3048, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Fund is a trust created pursuant to an agreement among the Fund's trustees ("Trustees") dated May 15, 1987. It is a diversified, open-end, management investment company, and is so organized as to meet the requirements for an "employees' securities company" within the meaning of section 2(a)(13) of the Act. The Fund has not yet commenced operations.

2. Purchase of units of the Fund ("Fund Units") may be made by regular and senior members of the Elfun Society, on behalf of trusts established for the exlusive benefit of such members and by General Electric Company ("GE") and its subsidiary and controlled companies. Regular members of the Elfun Society are selected from among the higher level exempt-salaried employees of GE and its subsidiary and controlled companies and senior members are former regular members who have retired from these companies. Fund Units may also be purchased by the spouse and children of any eligible living Elfun Society member or by the unremarried surviving spouse of a former Elfun Society member and by the trustees of certain profit-sharing trusts

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[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30-3(a)(12) (1985).

hereafter created by GE and by members of the GE Board of Directors. As of May 1, 1987, there were approximately 18,096 regular members and 8,964 senior members of the Elfun Society.

3. The objective of the Fund is to seek as high a level of long-term growth and future income as is available through investment in foreign and domestic securities over a long-term period consistent with a degree of risk determined by the Trustees to be acceptable and consistent with prudent investment management and preservation of capital. The fund may enter into forward foreign currency exchange contracts, foreign currency futures contracts and options on foreign currency for hedging purposes in order to minimize the risk from adverse changes in the relationship between the U.S. dollar and foreign currencies. The Fund may also, for hedging purposes, purchase foreign currencies in the form of bank deposits as well as other foreign money market instruments, and employ stock index futures and options and interest rate options and futures to protect its foreign and domestic portfolios.

4. The Trustees have contracted for investment management services with General Electric Investment Corporation ("GEI"), a wholly-owned subsidiary of GE which is registered as an Investment Adviser with the Securities and Exchange Commission. GEI is subject to removal by the Trustees at any time, without peanlty, on sixty days written notice. The contract for investment management provies that the appointment of the investment manager is subject to annual review by the Trustees.

5. The Fund's five Trustees are all officers or employees of GE who have been assigned to the operations of GEI. The Trustees do not receive any compensation from the Fund for serving as Trustees, although the Fund will be required to reimburse GEI for the portion of the remuneration such persons receive from GE which is allocable to the time they spend on Fund matters in their capacity as GEI employees. Although GEI and GE provide various services to the Fund and are reimbursed for the reasonable costs of providing such services, no element of profit is included in such charges.

6. The Trustees, GEI, and GE all have a very strong interest in assuring that the Fund is well managed. While GE does not sponsor the Fund, the Fund is being established to offer an additional investing opportunity which is open solely to certain GE employees, former employees, and their immediate relatives. GE and its subsidiaries may also invest in the Fund. Thus, the success of the Fund has a strong bearing on employee morale and satisfactory employee relations, a matter, in which GE is vitally interested. It is also clear form the extensive experience and knowledge of the persons who have been selected to act as Trustees of the Fund that the addition of outside persons as trustees is not necessary in order to bring the Fund the needed skills for its operation. Also, the fund has estimated that the addition of two disinterested trustees would add approximately $25,000 of annual operating expenses. For these reasons, the Fund requests exemption from section 10(a) of the 1940 Act.

7. The Trustees have retained the right to terminate the Fund. In the case of such termination, the Unitholders will receive the net asset value of the Units held by them. Since all participants in the Fund will be aware of this right of termination prior to purchasing Fund Units, an exemption is requested from section 13(a)(4) of the 1940 Act to the extent required to permit the Fund to be terminated without a vote of the Unitholders.

8. Exemption is requested from that portion of section 15(a) which would require that the contract between the Fund and GEI be approved by persons holding a majority of the outstanding Fund Units. Since all of the Trustees are interested persons of GEI, exemption is also requested from the requirements of section 15(c) which provide for approval by a majority of disinterested trustees of any renewal of an investment advisory contract. The investment advisory services to be furnished to the Fund will be furnished at cost. Thus, it is highly unlikely that such a contract could be placed with any entity other than one, such as GEI, which is uniquely related to the needs and welfare of the participants in the Fund. Furthermore, were the Fund required to make solicitation of its Unitholders for this purpose or add disinterested trustees so as to meet the renewal approval requirements, a substantial increased cost burden would be placed on the Fund. Moreover, GE's interest in the success of the Fund is so fundmaental that any risk of the retention of unsatisfactory investment advisers would seem remote.

9. Exemption is requested from section 16(a) because the Fund does not plan to have the Trustees elected by the Unitholders. This is consistent with the Fund's approach to minimizing costs and the burden to the Fund participants.

10. Exemption from section 30(d) is requested to the extent that reports to Unitholders more than once a year would be required. The Fund proposes to make an annual report under section 30(d). In addition, the Fund will also file with the Commission other required reports and will furnish the Commission with any other reports and communications transmitted to Unitholders. It is believed that the foregoing reports should adequately serve the interest both of the Commission and of the investors, and that the requirement of additional reports to Unitholders would not be justified in light of the time and expense which the preparation of such reports would require.

11. Exemption from section 32(a) is being requested since the Fund does not plan to have Unitholders ratify the selection of auditors. A nationally recognized accounting firm has been selected by the Trustees and, it is contemplated that only firms of a similar caliber will be selected in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23885 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16044; 811-3001]

MSG Investment Co.; Application for Deregistration

October 9, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: MSG Investment Company ("Applicant").

Relevant 1940 Act Sections: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8F was filed on January 27, 1987 and amended on May 11, and October 2, 1987.

Hearing or Notification of Hearing. If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 3, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and

the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 5620 Ager Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Fran Pollack-Matz, (202) 272–3024 or Special Counsel Karen L. Skidmore, (202) 272–3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is organized as a District of Columbia corporation and is registered as a closed-end, diversified, management investment company under the 1940 Act.

2. On February 29, 1980, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N–8A. On June 30, 1980, Applicant filed a Registration Statement under the 1940 Act on Form N–2 which was declared effective on June 30, 1980.

3. In connection with its proposed dissolution, Applicant entered into an Agreement and Plan of Reorganization with Putnam Tax Exempt Income Fund and the Putnam Management Company, Inc. under which substantially all of the assets of Applicant were transferred to Putnam Tax Exempt Income Fund in exchange for shares of beneficial interest in Putnam Tax Exempt Income Fund. Such shares of beneficial interest were contemporaneously distributed to the shareholders of Applicant.

4. On October 24, 1986, the Board of Directors of Applicant approved the proposed Agreement and Plan of Reorganization and a Proxy and Proxy Statement by which such Plan would be submitted to Applicant's shareholders for their approval. The Board of Directors also approved the liquidation and dissolution of Applicant after the sale of substantially all of the assets of Applicant to Putnam Tax Exempt Income Fund. On December 10, 1986, the stockholders of Applicant, at a special meeting, approved the sale of substantially all of the assets of Applicant to Putnam Tax Exempt Income Fund and the subsequent liquidation and dissolution of Applicant.

5. Assets retained by Applicant consisted solely of $55,000 in cash which was held by the investment adviser of Applicant in the general account of Applicant. All such cash was used to discharge the remaining liabilities of Applicant, and none was invested in securities.

6. At the time of filing of the application, Applicant had no shareholders or liabilities (but since that time Applicant's investment adviser has billed Applicant and Applicant has paid such adviser $9,000 for services), was not a party to any litigation or administrative proceedings, and was not presently engaged in, nor intended to engage in, any business activities other than those necessary for the winding-up of its affairs.

7. As of the date of Amendment No. 2, October 2, 1987, Applicant is current on all filings required to be made with the SEC under the 1940 Act, as amended.

8. Applicant filed an Intent to Dissolve with the District of Columbia as required by the laws of the District of Columbia on December 23, 1986. Applicant intends to file Articles of Dissolution shortly after the order requested herein becomes effective, as required by the laws of the District of Columbia, which will complete the process of its formal dissolution.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23880 Filed 10–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16043; 812–6677]

Prudential-Bache Financial Asset Funding Corp.; Application

October 8, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Prudential-Bache Financial Asset Funding Corp. (as depositor of P-B CMO Trust I-III and similar trusts that will issue Collateralized Mortgage Obligations) ("Trusts").

Relevant 1940 Act Sections: Order requested under section 6(c).

Summary of Application: Applicant seeks a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance of collateralized mortgage obligations ("Bonds") by the Trusts and the sale by Applicant of beneficial ownership interests in such Trusts.

Filing Date: The application was filed on April 3, 1987, and amended on September 2, and September 21, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Prudential Plaza, Sixth Floor, Newark, NJ 07101.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–2190 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a Delaware corporation, is a direct, wholly-owned, limited purpose subsidiary of Prudential Securities Group Inc. The common stock of the Applicant will not be sold or otherwise transferred to any entity other than The Prudential Insurance Company of America ("Prudential") or one of Prudential's director or indirect majority-owned subsidiaries. Further, no sale or other transfer of any assets of the Applicant will cause control (as defined in Rule 405 under the Securities Act of 1933 ("1933 Act")) of the Applicant to be maintained outside of Prudential or one of its direct or indirect majority-owned subsidiaries.

2. Applicant seeks relief in connection with the organization of Trusts to issue and sell one or more series ("Series") of Bonds and the sale of beneficial interests in such Trusts. Each Trust will be established under a separate trust agreement ("Trust Agreement") between

Applicant, acting as depositor, and a banking institution, which may include The Prudential Bank and Trust Company, a bank affiliated with the Applicant, that will act as owner trustee ("Owner Trusttee") pursuant to the Trust Agreement. Under the terms of each Trust Agreement, the Applicant will convey property to the related Trust in return for certificates or other instruments evidencing beneficial ownership of such Trust ("Trust Certificates"). Each Trust will issue one or more Series of Bonds pursuant to the terms of an indenture ("Indenture") between the Trust and an independent trustee ("Bond Trustee"), as supplemented by one of more supplemental indentures.

3. The Mortgage Certificates collateralizing the Bonds will consist of: (1) "Fully-modified pass-through" mortgage-backed certificates and stripped mortgage-backed securities guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) Mortgage Participation Certificates and stripped mortgage-backed securities issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (3) Guaranteed Mortgage Pass-Through Certificates and stripped mortgage-backed securities issued by the Federal National Mortgage Association ("FNMA Certificates") and (4) "Stripped Mortgage-Backed Securities" issued by trusts [1] established by the Applicant.

[1] Stripped Mortgage-Backed Securities issued by trusts established by the Applicant will be similar to stripped mortgage-backed securities issued by FHLMC and FNMA in that they are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions and/or interest distributions on the underlying pool of assets, and the fractional interests of each class are not identical but in the aggregate represent 100% of the principal and interest distributions on the particular pool. Such trusts cannot issue Bonds and are not the subject of this application. In addition, each series of Applicant's Stripped Mortgage-Backed Securities: (a) Will be rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency, (b) will represent an underlying pool of assets consisting entirely of "fully-modified, pass-through" mortgage-backed certificates fully guaranteed by GNMA, Mortgage Participation Certificates issued by FHLMC or Guaranteed Mortgage Pass-Through Certificates issued by FNMA (none of the pool assets will constitute stripped mortgage-backed securities) and (c) will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934 ("1934 Act"). Use of Applicant's Stripped Mortgage-Backed Securities as collateral for Bonds will not reduce the security afforded to Bondholders (as defined herein) nor expose them to a level of risk significantly different from that present in a Series of Bonds directly secured by FNMA Certificates, GNMA Certificates or FHLMC Certificates in which the Applicant's Stripped Mortgage-Backed Securities represent an interest. With respect to a Series of Bonds secured by Mortgage Certificates which are stripped mortgage-backed securities issued by FHLMC, FNMA or a trust established by the Applicant, the Applicant anticipates that less than all of the classes constituting each series of such Mortgage Certificates will secure such Series of Bonds.

4. The Mortgage Certificates securing each Series of Bonds will be owned either: (i) By the Trust issuing such Bonds or (ii) by limited purpose financing entities affiliated with homebuilders, thrifts, commercial banks, mortgage bankers and other entities engaged in mortgage finance and pledged to secure such Series of Bonds pursuant to funding agreements ("Funding Agreements"). Each Series of Bonds may also be secured by a collection account, debt service funds, reserve fund and certain types of eligible investments specified in the Indenture for such Series (any or all of the foregoing together with Mortgage Certificates and Funding Agreements, "Bond Collateral"). The Bond Collateral will not secure any other Series of Bonds or any other obligations of the Trust.

5. Each Series of Bonds to be issued may contain one or more classes of variable or floating interest rate Bonds which will have a fixed maximum rate of interest ("interest rate cap") that will be payable on the Bonds (or the minimum rate of interest, in the case of an inverse-floating rate Bond). Each Series of Bonds will be sold pursuant to a prospectus, offering circular or private placement memorandum in public offerings or private placements through one or more investment banking firms, including Prudential-Bache Securities Inc., an affiliate of the Applicant. Indentures for public offerings will be qualified under the provisions of the Trust Indenture Act of 1939, as amended.

6. The Mortgage Certificates securing each Series of Bonds, together with cash available to be withdrawn from any debt service funds, reserve funds, or other funds, will have scheduled cash flow sufficient, when taken together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principal of and interest on the Bonds in accordance with their terms. The outstanding collateral value of the Mortgage Certificates securing a Series will be at least equal to the unpaid principal balance of such Series on the issue date.

7. The interests of the holders of the Bonds ("Bondholders") will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the owners of the beneficial interests in the Trusts ("Owners") for several reasons: (a) The Mortgage Certificates, as well as the mortgage certificates underlying any Funding Agreement and Applicant's Stripped Mortgage-Backed Securities, which initially will be deposited into each Trust and will be pledged to secure the Bonds issued by such Trust, will not be speculative in nature because they will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, and are guaranteed as to timely payment of interest and timely or ultimate payment of principal by the respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the relevant Indenture subjects the Bond Collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such Bond Collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders.[2] Applicant further submits that, for the reasons described fully in the application, the interests of the Owners will not be adversely affected by Applicant's affiliation with the proposed Owner Trustee.[2]

8. Except to the extent permitted by the limited right to substitute Mortgage Certificates, it will not be possible for the Owners to alter the initial Mortgage Certificates relating to a Series. Although it is possible that substitute Mortgage Certificates may have a different payment experience than the replaced Mortgage Certificates, the interests of the Bondholders will not be impaired because: (a) Such prepayment experience of Mortgage Certificates will be determined by market conditions beyond the control of the Owners, which market conditions are likely to affect all Mortgage Certificates with similar payment terms and cash flows in

[2] Each Indenture will further specifically provide that no amounts may be released from the lien of such Indenture to be remitted to the issuing Trust (and any Owner of Trust Certificates thereof) until: (i) The Bond Trustee has made the required payment of principal and interest on the Boards, (ii) the Bond Trustee has received all fees owed to it, (iii) the firm of independent accountants has received all fees owned to it for services rendered under such Indenture, and (iv) to the extent required by such Indenture, deposits have been made to certain reserve funds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Trust will provide that the Owner Trustee will have a lien superior to that of the Owners to the remaining cash flow.

a similar fashion; (b) the interests of the Owners will not be different from those of the Bondholders with respect to such prepayment experience, since both the Owners and the Bondholders will have purchased their respective interests based on the same assumption of prepayment experience of the related Mortgage Certificates; and (c) to the extent that Owners may substitute Mortgage Certificates which may have a different prepayment experience than the original Mortgage Certificates, this situation is no different for the Bondholders than the situation in traditional collateralized mortgage obligation structures.

9. Without the consent of each Bondholder to be affected, neither the Trust, the Applicant, the Owner Trustee, the Owners nor the Bond Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount of, or the rate of interest on, any fixed rate Bonds or alter the method of determining the interest on any variable rate Bonds (3) change the priority of repayment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture. The sale of Trust Certificates will not alter the payment of cash flow to Bondholders, nor affect the amounts required to be deposited in the collection account or any reserve funds.

Applicant's Legal Conclusions

The requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because: (a) The Applicant and the Trusts are not the type of entities, and their activities are not the type of activities, intended to be regulated by the 1940 Act; (b) the Applicant and the Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Bondholders will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Bond Trustee representing their interests under the Indenture; (d) the Applicant's activities are intended to serve a recognized and critical public need in facilitating available funds for residential mortgages; and (e) the disclosures to Owners of a Trust and the limitation of the Owners of each Trust to no more than 100 institutional or accredited investors familiar with mortgage-related investments provide safeguards adequate to assure that such potential Owners do not require the protection of the 1940 Act.

Conditions to Order

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bond Collateral

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration either pursuant to Section 4(2) of the 1933 Act or because such Series of Bonds is offered and sold outside the United States to non-U.S. persons in reliance upon an opinion of U.S. counsel that registration is not required. No single offering of Bonds sold both within and outside the United States would be made without registration of all such Bonds under the 1933 Act, without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to U.S. investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) fo the 1943 Act. In addition, the Mortgage Certificates underlying the Bonds, and any Funding Agreements securing the Bonds, will be limited to GNMA Certificates, FNMA Certificates, FHLMC Certificates or Stripped Mortgage-Backed Securities as described herein.

(3) If new Mortgage Certificates are substituted, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in Conditions A (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged to the Bond Trustee as a security for a Series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this condition.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds (collectively, the "Bond Collateral") will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. The custodian or Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of the Applicant, any Trust or the Owner Trustee. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with any of the Trusts or the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

(6) So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of each Trust. In addition, as long as any Bonds are outstanding, such accountant will report at least annually on whether the anticipated payments of principal of and interest on the Bond Collateral of each Series of Bonds issued by such Trust continue to be adequate to pay the principal of and interest on the Bonds in accordance with their terms. Upon completion, copies of the accountant's report(s) will be provided to the Bond Trustee.

B. Conditions Relating to Variable-Rate Bonds

(1) Each class of variable rate Bonds will have set maximum interest rates (interest rate caps) which may vary from period to period as specified in the related prospectus.

(2) The Bond Collateral pledged to secure the Bonds will be sufficient to provide for the full and timely payment of the Bonds then outstanding, assuming the maximum applicable interest rates for each specified period on variable rate Bonds.[3] Specifically, reduction of

[3] In the case of a Series of Bonds that contains a class or classes of variable rate Bonds, a number of mechanisms exist to ensure that this representation

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interest payments due on a Series of Bonds that contains a class or classes of variable rate Bonds will not result in the release of any of the Bond Collateral (except as aforesaid) from the lien of the Indenture prior to the payment in full of the Bonds.

C. Conditions Relating to the Sale of Trust Certificates

(1) Trust Certificates in each Trust will be sold only after all Series of Bonds to be issued by such Trust have been issued or concurrently with the fianl issuance of all Bonds to be issued by such Trust.

(2) The Owners of the Trust Certificates will agree to be bond by the terms of the applicable Trust Agreement.

(3) Trust Certificates will be offered and sold only to (a) Eligible Institutions as defined herein, or (b) certain non-institutinal "accredited investors" as defined in Rule 501(a) of the 1933 Act who will each purchase at least $200,000 of such Trust Certificates and have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Eligible Institutions will have such knowledge and experience in financial and business matters as to be capable of evaluating risks and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interest in mortgage-related securities, such as those represented by the Trust Certificates. Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Trust Certificates and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, will be abe to understand the volatility of interest rate flunctuations as they affect the value of mortgage-related securities and residual interests therein. Eligible Institutions include mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutions that customarily engage in the purchase of mortgages and other types of mortgage collateral.

(4) Each sale of Trust Certificates will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the 1933 Act.

(5) Initially, the Applicant intends to sell the Trust Certificates of each Trust to no more than 25 investors. In no event will Applicant sell to more than 100 investors, of which no more than 15 will be noninstitutional accredited investors. The Trust Agreement relating to each Trust will prohibit the transfer of any Trust Certificate of such Trust if there would be more than 100 beneficial owners of such Trust Certificates at any time.

(6) Each purchaser of a Trust Certificate will represent that it is purchasing the Trust Certificate for investment purposes only and that it will hold such Trust Certificate in its own name and not as nominee for undisclosed investors.

(7) No owner of a Trust Certificate will be affiliated with the Bond Trustee; no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in the Trust will be affiliated with either the custodian of the Bond Collateral or the ageny rating the Bonds; and the Owner Trustee will not purchase any Trust Certificate, but will function as a legal stakeholder for the assets of the Trust.

D. Condition Relating to REMICs

The election by a Trust to be treated as a REMIC will have no effect on the level of the expenes that will be incurred by such Trust. Any Trust that elects to be treated as a REMIC will provide for the timely payment of all anticipated fees and expenses to be incurred in connection with the administration of the Trustee in a manner satisfactory to the agency or agencies that initially rate the Bonds. Either the Owners of the Trust Certificates of any such Trust will be personally liable pursuant to the Trust Agreement for such fees and expenses, or payment of such fees and expenses will be provided for any one or more of the methods set forth in the application.

E. Special Conditions

1. Applicant undertakes to secure from each Trust its consent to comply with all of the applicable representations and conditions set forth above and more specifically described in the application.

2. Applicant undertakes to obtain from Prudential its consent to the representation that the common stock of the Applicant will not be sold or transferred to any entity other than Prudential or one of its direct or indirect majority-owned subsidiaries.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23884 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

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will be valid notwithstanding subsequent potential increases in the interest rate applicable to the variable rate Bonds. Procedures that have been identified to date for achieving this result include the use of: (i) Interest rate caps for the Variable Rate Bonds; (ii) "inverse" Variable Rate Bonds (which pay a lower rate of interest as the rate increases on corresponding "normal" Variable Rate Bonds); (iii) variable rate collateral to secure the Bonds; and (iv) interest rate swap agreements (under which a Trust would make periodic payments to the counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the variable rate class, in exchange for receiving corresponding periodic payments from the counterparty at a variable rate of interest based on the same principal amount). It is expected that other mechanisms may be identified in the future. Applicant will give the SEC notice by letter of any such additional mechanisms before they are utilized in order to give the SEC an opportunity to raise any questions as to the appropriateness of their use. In addition, sufficient mechanisms will be placed to ensure the payment of principal of and interest on Variable Rate Bonds secured by stripped mortgage-backed securities issued or guaranteed by GMA, FNMA, FHLMC or trusts established by the Applicant. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

[Rel. No. IC-16040; 811-3765]

Cardinal Tax-Exempt Bond Trust, Selective Trusts Program, First Series (and Subsequent Series); Application

October 7, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregulation under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Cardinal Tax-Exempt Bond Trust, Selective Trusts Program, First Series (and subsequent series) ("Applicant").

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an invesment company.

Filing Date: The application on Form N-8F was filed on June 30, 1987, and an amendment thereto on October 7, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either

personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 155 East Broad Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–2847 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application on Form N–8F is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations: 1. On June 16, 1983, Applicant filed a registration statement on Form N–8B–2, thereby registering under the 1940 Act as a unit investment trust. On June 16, 1983, Applicant filed Form S–6 to register under the Securities Act of 1933, and such registration statement was subsequently withdrawn on April 4, 1984. Applicant never made a public offering of its securities and is not a party to any litigation or administrative proceeding. Applicant does not have any assets or liabilities. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23818 Filed 10–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24471]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); National Fuel Gas Supply Corp., et al.

October 8, 1987.

Notice is hereby given that following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application and/or declaration(s) should submit their views in writing by November 2, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the adresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall idenfity specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Supply Corporation, et al. (70–6991)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and it subsidiaries, National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation ("Seneca"), and Empire Exploration, Inc. ("Empire"), all located at 10 Lafeyette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(f), and 13 of the Act and Rules 45, 86, 87, 90, and 91 thereunder.

By authority granted in three prior orders in this matter, the National system undertook a series of intra-system property transfers, including the granting or retention of incidental property rights relating to mineral, coal, timber, and gas storage interests, and rights-of-way. All such conveyances were part of National's overall functional reorganization plan (HCAR Nos. 23465, 23585 and 23856, November 1, 1984, January 30, 1985 and October 4, 1985, respectively).

Supply and Seneca now proposes to modify the reorganization plan, prior to September 30, 1989, by effecting certain property transfers, which will result in the consolidation of the National system's Appalachian coal, mineral and timber resources, and unused storage rights in Seneca, and the National system's transmission rights in Supply. Supply proposes to transfer to Seneca certain land containing coal, mineral, timber and/or gas storage rights in properties located primarily in New York and Pennsylvania, and certain separate coal, mineral, timber and/gas storage rights, some of which were reserved or retained by Supply in connection with transferring oil and gas rights or interests to Empire. Supply will retain rights respecting existing and future pipelines relative to those properties. These properties will not exceed approximately 150,000 acres in the aggregate. Seneca proposes to convey to Supply rights for existing and future pipelines on land it owns. All transfers will be made at net book value, as of the previous September 30, unless no book value has been recorded. In those instances, the conveyances will be made for nominal consideration.

Monongehela Power Company, et al. (70–7300)

Monongehela Power Company ("Monongehela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac") Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, wholly owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), and 7 of the Act and Rule 50 thereunder.

A notice was issued on September 24, 1987 (HCAR No. 24464) concerning a proposal to extend through December 31, 1988 the period during which Monongehela and West Penn may issue and sell up to $75 million and $35 million, respectively, of first mortgage bonds remaining to be sold, as previously authorized by order of the Commission dated June 12, 1987 (HCAR No. 24410). This supplemental notice adds Potomac's proposal to issue and sell, for refunding purposes, up to $70 million of first mortgage bonds remaining to be sold, as previously authorized, through December 31, 1988.

N.W. Electric Power Cooperative, Inc. (70–7445)

N.W. Electric Power Cooperative, Inc. ("Cooperative"), West Grand Avenue, P.O. Box 312, Cameron, Missouri 64429, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, a Missouri corporation incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit, rural electric distribution cooperative. Its operations are confined to 28 counties in northwest Missouri and two

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counties in southwest Iowa. It is a generation-and-transmission-type cooperative financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 72, GENTRY. It sells electric energy at wholesale to its eight member/owner rural electric distribution cooperatives. Cooperative nominates two representatives to sit on Cooperative's bond board of directors. Cooperative elects the persons who serve on the board of directors of Service. It is stated the election of directors and the management of the affairs of Cooperative are effectively audited and regulated by REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

[FR Doc. 87-23883 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy statements PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 87-4-2, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting October 1, 1987, we have projected nonfuel costs based on the year ended June 30, 1987, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 87-10-18 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982, level:

Atlantic	1.1190
Western Hemiphere	.9279
Pacific	1.2674

FOR FURTHER INFORMATION CONTACT: Julien Schrenk, (202) 366-2441.

By the Department of Transportation:

Dated: October 9, 1987.

Philip W. Haseltine,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-23876 Filed 10-14-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

[Georgia Project EDS-460(1)]

Environmental Impact Statement; Newton, Rockdale, Walton and Gwinnett Counties, GA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Newton, Rockdale, Walton and Gwinnett Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas D. Myers, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road, NW., Atlanta, Geogia 30367, telephone (404) 347-4751, or Peter Malphurs, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (GDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new location, four-lane divided highway from Interstate 20 in Newton County to I-85 in Gwinnett County. The project length is approximately 31 miles. The proposed work is necessary to accommodate existing and future traffic demand resulting from the continued growth in the Metropolitan Atlanta area. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; and (3) constructing a four-lane, limited access highway on new location.

Letters describing the proposed action and soliciting comment will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A public information meeting has been held for the proposed action and a public hearing is planned for early in 1988. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time. To ensure that the full range of issues related to this proposed project are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action on the EIS should be directed to the FHWA at the address provided above.

(The Catalog of Federal Domestic Asssitance Program Number is 20.205, *Highway Research, Planning and Construction.* Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: October 1, 1987.

Thomas D. Myers,

District Engineer, Federal Highway Administration, Atlanta, GA.

[FR Doc. 87-23826 Filed 10-14-87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket Number RSOR-87-1]

Petition for Relief From Requirements of Blue Signal Protection of Workmen; Union Pacific Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that Union Pacific Railroad Company (UP) has petitioned the Federal Railroad Administration (FRA), for permanent relief from the requirements of 49 CFR 218.25. This section establishes minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, on main tracks, whose activities require them to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from such protection except when assigned to work on rolling equipment that is not part of the train or yard movement they have been called to operate.

The UP requests a waiver of the requirement for blue signal protection at the rear end of trains being serviced at the Rawlins, Wyoming, fueling facility on main tracks 1 and 2 and both passing tracks between control points 680 and 685, milepost 680 to milepost 685. Train movements over these main and passing tracks are governed by a Centralized Traffic Control signal system which provides automatic signal protection for the rear of the trains by displaying a "stop" aspect in the block behind the train that is stopped. The UP asserts that this alternative protection does not

compromise safety and requests this waiver in order to avoid significant train delays.

Interested person are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the appropriate Docket Number (Docket Number RSOR–87–1) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before November 30, 1987, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on October 5, 1987.

J.W. Walsh,

Associate Administrotor for Safety.

[FR Doc. 87–23877 Filed 10–14–87; 8:45 am]

BILLING CODE 4910–06–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 199
Thursday, October 15, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87–22147.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 1, 1987, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

* * * * *

"FEDERAL REGISTER" NO.: 87–22801.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 8, 1987, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Public Records and the Freedom of Information Act Regulations—Approval of Final Version of Regulations.

* * * * *

DATE AND TIME: Tuesday, October 20, 1987, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, section 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, October 22, 1987, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987–26—Kirk B. Cunningham on behalf of Principal Mutual Life Insurance Company.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87–23996 Filed 10–13–87; 2:59 pm]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, October 19, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: October 9, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87–23892 Filed 10–9–87; 4:13 am]
BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, October 8, 1987 at 10:30 a.m., or following completion of the Generalized System of Preferences Hearing, whichever occurs later.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:
1. Continuation of FY 89 Budget Discussion

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,
Secretary.

October 6, 1987.

[FR Doc. 87–23903 Filed 10–09–87; 5:05 pm]
BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 36667—dated September 30, 1987.

PREVIOUS ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, October 14, 1987.

Addition of agenda item for the meeting:

7. FY 89 Budget

In conformity with 19 CFR 201.37(b), Commissioners Liebeler, Brunsdale, Eckes, Lodwick, and Rohr determined that Commission business required the change in subject matters of the meeting on October 14, 1987 by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,
Secretary.

October 8, 1987.

[FR Doc. 87–23904 Filed 10–9–87; 5:05 pm]
BILLING CODE 7020–02–M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, December 10, 1987, from 8:30 a.m. to 10:00 a.m. Public sessions of the Commission and the Committee meetings will be held on Thursday, December 10, from 10:00 a.m. to 5:30 p.m., on Friday, December 11, from 9:00 a.m. to 5:30 p.m., and on Saturday, December 12, from 9:00 a.m. to 12:30 p.m.

PLACE: Hyatt Regency, 400 SE. Second Avenue, Miami, Florida 33131–2197, Telephone 305/358–1234.

STATUS: The executive session will be closed to the public. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal issues. Major emphasis will be on the West Indian manatee. In addition, the Hawaiian monk seal, habitat protection, the die-off of bottlenose dolphins (*Tursiops truncatus*) along the Atlantic coast,

certain international activities affecting marine mammals, marine debris, permits, and re-authorization of the Marine Mammal Protection Act will be discussed.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's December meeting and does not constitute any change in the scheduling, location, or agenda. The matters to be considered are those which were originally published in the August 19, 1987 (52 FR 31121) Notice.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006, 202/653–6237.

Date: October 8, 1987.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 87–23916 Filed 10–13–87; 9:43 am]

BILLING CODE 6820–31–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 37398 October 6, 1987].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, September 29, 1987.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting on Thursday, October 8, 1987, at 10:30 a.m.

Formal order of investigation.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

Shirley E. Hollis,

Assistant Secretary.

October 9, 1987.

[FR Doc. 87–23934 Filed 10–13–87; 2:06 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 12, 1987:

A closed meeting will be held on Wednesday, October 14, 1987, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 14, 1987, at 2:30 p.m., will be:

Consideration of *amicus* participation.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Shirley E. Hollis,

Assistant Secretary.

October 9, 1987.

[FR Doc. 87–23935 Filed 10–13–87; 2:06 pm]

BILLING CODE 8010–01–M

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federal register

Thursday
October 15, 1987

Part II

Environmental Protection Agency

40 CFR Part 350

Trade Secret Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Proposed Rule

VOL 52 ISS 199 OC 15 1987 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 350

[FRL-3261-5]

Trade Secret Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule publishes the procedures for claims of trade secrecy for facilities reporting under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III, and for EPA's handling of such claims, under the Superfund Amendments and Reauthorization Act of 1986, for submission and handling of petitions requesting disclosure of chemical identities claimed as trade secret, and for disclosure to health professionals of Title III information claimed as trade secret. The proposed rule published today will not become effective until promulgated in final form following opportunity for comment. Until then, the proposed rule may be used as guidance by affected parties.

DATES: Written comments on the proposed rule must be received on or before December 14, 1987. A series of public meetings will be scheduled about mid-November to receive comment. For further information contact the Chemical Emergency Preparedness Hotline at 1-800-535-0202 (in Washington, DC at (202) 479-2449) or look for notice in the **Federal Register** in mid-October.

ADDRESS: Written comments should be submitted in triplicate to Preparedness Staff, Superfund Docket Clerk, Attention: Docket Number 300 PQ-TS, Superfund Docket Room LG-100, U.S. Environmental Protection Agency, Mail Stop WH 548D, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this rulemaking are contained in the Superfund Docket located in Room LG-100, at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Beverly D. Horn, Attorney-Advisor, Office of General Counsel, Contracts and Information Law Branch, LE-132G, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5460, or the Chemical Emergency Preparedness Program Hotline at 1-800-535-0202 (in Washington, DC at (202) 479-2449).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Authority
  B. Background of this Rulemaking
II. Trade Secret Claim Procedure
  A. Definition of Trade Secret
  B. Methods of Claiming Trade Secrecy
  C. Claims Under Sections 303(d)(2) and 303(d)(3)
  D. Claims Under Section 311
  E. Claims under Section 312
  F. Claims Under Section 313
  G. Initial Substantiation
  H. Claims of Confidentiality in the Substantiation
  I. Submissions to State and Local Authorities
III. Petition Requesting Disclosure of Chemical Identity Claims as Trade Secret
IV. EPA Review of Trade Secrecy Claims
  A. Overview of the Process
  B. Determination of Sufficiency
  C. Determination of Insufficiency
  D. Determination of Trade Secrecy
  E. Enforcement
V. Relation of Section 322 to Other Statutes
  A. Relationship to State Confidentiality Statutes
  B. Overlap with Other EPA-Administered Statutes
  C. Relationship to Freedom of Information Act
VI. Release of Trade Secret Information
  A. Releases to States
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VII. Disclosure to Health Professionals
  A. Non-emergency Diagnosis or Treatment
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  C. Preventive and Treatment Measures
  D. Statement of Need
  E. Confidentiality Agreement
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VIII. Summary of Supporting Analyses
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Analysis
  C. Paperwork Reduction Act

I. Introduction

A. Authority

EPA is proposing this rule pursuant to sections 322 and 323 of Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499. Title III is also cited as "The Emergency Planning and Community Right-To-Know Act of 1986." Section 322 of Title III provides the procedures for claiming trade secrecy for information submitted under sections 303 (d)(2) and (d)(3), 311, 312 and 313. It also provides a process whereby members of the public can file petitions requesting the disclosure of chemical identities claims as trade secret. Section 323 provides procedures for access to chemical identities, including those claimed as trade secret, by health professionals who need the information for diagnosis, treatment or research.

B. Background of this Rulemaking

The Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, signed into law on October 17, 1986, amends and reauthorizes portions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* Title III of SARA is a free-standing statute known as "The Emergency Planning and Community Right-to-Know Act of 1986." It contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and release of extremely hazardous substances (described in sections 302 and 304), and hazardous and toxic chemicals (described in sections 311, 312, and 313 respectively). For the reporting required in sections 303, 311, 312, and 313, a submitter may claim the chemical reported as trade secret.

1. *Section 303.* Section 303 involves the formulation of comprehensive emergency reponse plans for extremely hazardous substances. These are any of 406 substances on a list published by EPA under section 302. The regulations for sections 302, 303, and 304 were published on April 22, 1987, at 52 FR 13378.

Any facility where an extremely hazardous substance under section 302 is present in excess of the threshold quantity (as determined by EPA) must report to the State emergency response commission, established under section 301 of Title III. The local emergency planning committee, also established under section 301 of Title III, will contact any facility that has identified itself, in order to formulate a local emergency contingency plan. In this planning process, a facility is required to provide the local emergency planning committee with information the committee requests, except that the facility may withhold trade secret chemical identity from the committee. The facility must also inform the committee of any relevant changes which occur or are expected to occur which may affect the contingency plan. When informing the committee of these changes, the facility may also withhold trade secret chemical identity from the committee.

2. *Sections 311 and 312.* Section 311 requires the owner or operator of facilities subject to the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act (15 U.S.C. 651 *et seq.* as amended, 52 FR 31852 [August 24, 1987]) to submit material safety data sheet (MSDS), or a list of the chemicals for which the facility is required to have an MSDS, to the local emergency planning committees, State emergency response commissions, and local fire departments. The facilities are required to submit the MSDS or alternative list by October 17, 1987, or three months after the facility is required to prepare or have an MSDS for a hazardous chemical under OSHA regulations, whichever is later. Any trade secret chemical identity may be withheld from the MSDS or list of chemicals, provided the submitter follows the trade secret claims procedures under the section 322 regulation.

Under Section 312, owners and operators of facilities that must submit an MSDS under section 311 area also required to submit additional information on the hazardous chemicals present at the facility. Beginning March 1, 1988, and annually thereafter, the owner or operator of such a facility must submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these chemicals at the facility. Section 312(a) requires owners or operators of such facilities to submit the inventory form to the appropriate local emergency planning committee, State emergency response commission, and local fire department on or before March 1, 1988, (or March 1 of the first year after the facility first become subject to the OSHA MSDS requirements for a hazardous chemical) and annually thereafter on March 1.

Section 312 specifies that there be two reporting "tiers" containing information on hazardous chemicals at the facility in different levels of detail. "Tier I," containing general information on the amount and location of hazardous chemicals by category, is submitted annually. "Tier II," containing more detailed information on individual chemicals, is submitted upon request. There will be no trade secret claims for Tier I reporting since no specific chemical identity is given. However, submitters may withhold trade secret chemical identity from the Tier II form.

OSHA recently published a final rulemaking at 52 FR 31852, on August 24, 1987, expanding coverage of the facilities required to maintain MSDSs. The number of facilities thereby subject to reporting under sections 311 and 312 will have expended from 350,000 to over 4 million, starting in 1988.

The proposed regulation for sections 311 and 312 was published at 52 FR 2836 on January 27, 1987. The final regulation will be published in the near future.

3. *Section 313.* Section 313 is the last reporting requirement in Title III in which trade secret claims can be made. Under section 313, a toxic chemical release inventory form (published by EPA) must be filed with a designated State agency, and EPA. This form must be filed for any toxic chemical (on a list published by EPA) which is manufactured, processed or otherwise used in amounts exceeding the threshold quantity at a covered facility. The form also indicates the total annual releases of the chemical to the environment. A covered facility is any facility with 10 or more employees in SIC Codes 20–39. The list of toxic chemicals was published in the section 313 proposed rule on June 4, 1987 at 52 FR 21152. As with other sections of Title III, trade secret chemical identity may be withheld from the toxic chemical release inventory form.

4. *Section 322.* The section 322 regulations contain the procedures which a submitter must follow in order to file a trade secret claim. These claims are submitted to EPA only, by submitting an unsanitized version of the document containing the Title III information. This version will contain the chemical identity claimed as trade secret. The submitter must also submit a santitized version, which is identical to the unsanitized version in all respects except that the trade secret chemical identity is deleted, and instead a generic class or category is included. This is the version which is submitted to the State or local authorities, as appropriate.

Section 322(b) of Title III requires that a submitter file a substantiation of its trade secret claim with the filing containing the chemical identity claimed as trade secret. This up-front substantiation will consist of the answers to seven questions which are intended to elicit sufficient factual support to indicate whether the claim will meet the criteria set forth in the statute for a claim of trade secrecy.

That statute also allows submitters to claim as trade secret any trade secret or confidential business information which the submitter must include in the substantiation in order to fully answer the seven questions. This claim of trade secrecy is more expansive in scope than that allowed under the reporting requirements of Title III, because it it not limited solely to chemical identity, and includes any trade secret or confidential business information. A detailed explanation on how to make a trade secrecy claim is found under section II.G. below.

The regulation contains the procedures for filing petitions by the public to request disclosure of chemical identity claimed as trade secret. (The public petition process does not cover requests for public disclosure of information claimed as trade secret other than chemical identity. These requests for disclosure must be submitted under EPA's Freedom of Information Act regulations at 40 CFR Part 2.) The section 322 regulation also sets forth procedures the Agency must follow in making a determination as to whether any chemical identity claimed as trade secret is in fact a trade secret. These determinations will be made by the program designated to receive and handle trade secret claims for that particular reporting section in Title III. The Office of General Counsel will hear intra-agency appeals from the determinations of trade secrecy.

5. *Section 323.* The section 323 regulation contains provisions allowing health professionals to gain access to chemical identities, including those claimed as trade secret, in three different situations. The first situation is for non-emergency treatment and diagnosis of an exposed individual. Second, access is permited for emergency diagnosis and treatment. Finally, health professionals employed by the local government may receive access to a trade secret chemical identity to conduct preventive research studies and to render medical treatment. In all situations but the medical emergency, the health professionals must submit a written request and a statement of need, as well as a confidentiality agreement, to the facility holding the trade secret. The statement of need verifies that the health professional will be using the trade secret information only for the needs permitted in the statute, and the confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret.

II. Trade Secret Claim Procedure

A. Definition of Trade Secret

In accordance with section 322(c) of Title III, the definition of a trade secret in this regulation is equivalent to that in the Restatement of Torts, section 757.

and the regulation developd by the Occupational Safety and Health Administration to implement its Hazard Communication Standard. The OSHA Hazard Communication Standard requires disclosures of the specific chemical identity of chemicals to which employees are exposed in the workplace, except in those cases in which the identity of the chemical in question is determined to be a bona fide trade secret. The U.S. Court of Appeals ruling in *United Steelworkers of America* v. *Auchter*, 763 F.2d 728 (3d Cir. 1985), required that OSHA amend its Hazard Communication Standard to adopt a definition from common law, the Restatement of Torts, section 757, Comment b. (1939), which reads: " 'trade secret' may consist of any formula, pattern, device, or compilation of information which is used in one's business, and which gives [the employer] an opportunity to obtain an advantage over competitors who do not know or use it." The court concluded in the *Auchter* case that the term "trade secret" is not intended to provide protection for chemical identities which are readily determinable by reverse engineering.

Title III, however, only allows trade secrecy claims for a subset of the material which is traditionally covered under trade secrecy law. Section 322(a) specifically states that submitters under Title III may withhold only the "specific chemical identity (including the chemical name and other specific identification)" as a trade secret. The "specific chemical identity" means either the chemical name or other specific identification such as the Chemical Abstract Services Registry Number (CASRN).

The statute is unclear as to the permissible scope for claims of trade secrecy for chemical identity. The most narrow interpretation would be to limit a claim of trade secrecy solely to the mere presence of the particular chemical at the facility, or the chemical composition of the chemical itself. Congress stated in the Conference Report that, "the knowledge of [the] presence [of a specific chemical] at the purchasing facility could effectively define for its competitors the process and/or products being made there." H.R. CONF. REP. NO. 99–962, 99th Cong., 2d Sess. 304 (1986).

Throughout the Conference Report, however, Congress also displayed general concern for the protection of all legitimate trade secrets. For instance, in discussing the reporting requirements under section 313, it was noted, "[t]he conference substitute provides for reporting categories of use and ranges of chemical present because the exact [identity] of identified chemical[s] at a facility or the exact amount present may disclose secret processes." *Id.* at 298. Similarily, in discussing the reporting requirements under section 312, Congress stated, "[i]n order to protect chemical process trade secret information, reporting ranges may need to be broad." *Id.* at 290. Congress likely anticipated that it would be possible for the required reporting on the forms under Title III to be structured broadly enough to avoid compromising legitimate trade secrets. EPA has made every effort to do this. EPA believes that even with the use of broad ranges and reporting categories, however, the amount of detail requested under Title III may in some cases still allow cross-referencing of information which could reveal valuable trade secret information.

For these reasons, EPA believes that the statute allows trade secrecy claims for chemical identity to be made for the linkage between chemical identity and other information reported on Title III submissions (e.g., specific process information and special handling procedures), in addition to claims relating to the presence of a chemical at a facility or the chemical composition of the chemical, through claiming chemical identity to be a trade secret. Submitters will be required to meet the four criteria for supporting a claim of trade secrecy set forth in section 322(b) of the statute, and discussed in greater detail in section II.G. below, for all such claims.

As a practical matter, EPA believes that this interpretation of the scope of trade secrecy will not involve great numbers of additional claims, because EPA expects that submitters will be unable to meet the four statutory criteria for trade secret linkages other than the presence of the chemical, or its chemical composition. As an example, EPA does not expect linkages between the chemical identity and the amount on site to meet all the section 322(b) requirements. Where the identity of a chemical that a company uses in a particular product is publicly known but the amount on site is not known, the Agency considers it unlikely that a submitter will be able to show that the chemical identity is not readily discoverable through reverse engineering (section 322(b)(4)), since the chemical identity is already a matter of public knowledge.

EPA also believes that this interpretation does not run counter to the other major public policy thrust in Title III—that of public disclosure—because the requirement of an up-front substantiation, which will cause submitters to justify their claims, will limit spurious claims. Further, EPA's intention is to randomly evaluate trade secret claims and to prosecute vigorously those submitting frivolous claims. The $25,000 fine per frivolous claim under such circumstances is evidence of Congress's intent to deter such claims. All submitters should be aware that supplemental information submitted to EPA after the initial substantiation should clearly confirm the validity of their claim as set out in the initial substantiation, or they may be subject to the penalty for frivolous claims. EPA requests public comment on the scope of the trade secrecy claim.

The question has been raised as to whether information which may qualify as emissions or effluent data, respectively, under section 114(c) of the Clean Air Act and section 308(b) of the Clean Water Act, may be claimed as trade secret under section 322. The second criterion of the four which a trade secret claimant must meet, under section 322(b), requires that information claimed as trade secret "is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law." EPA's position is that this language in section 322(b) refers to specific information previously submitted to a Federal or State authority and determined to be publicly disclosable, or information previously submitted to a Federal or State authority under a law or regulation which does not allow a claim of confidentiality.

Information which has been determined administratively or judicially to constitute emissions or effluent data within the meaning of section 114(c) of the Clean Air Act, or section 308(b) of the Clean Water Act is required to be disclosed to the public and could not be withheld from disclosure under section 322. A company could not claim as trade secret information as to which a trade secrecy claim has been categorically disallowed, such as information required in NPDES permit applications (40 CFR 122.7(c)). Also, a company could not claim as trade secret data already collected by EPA where the Agency has decided that the data presented no valid claim of trade secrecy, either because it was emissions or effluent data or for other reasons.

A further question has been raised concerning the status of information which EPA could obtain, but has not requested, under the Clean Air Act or Clean Water Act and of information in EPA's possession which could constitute emissions or effluent data, but as to which no determination has been made

whether it is trade secret, or, if it is, whether it is emissions or effluent data. There is no discussion of this issue in the Conference Report or elsewhere. Congress likely intended to leave undisturbed the status of information as to which no claim of confidentiality was permitted under State or Federal law, or as to which a decision had been made that no valid claim was presented. However, a trade secret claimant should not be required to show that the chemical identity submitted to the Agency and claimed confidential would not constitute emissions or effluent data required to be made public by EPA if it had been submitted under section 114(c) of the Clean Air Act or section 308(b) of the Clean Water Act. On the other hand, a successful claim that information is trade secret under Title III would not be determinative of the status of the information under the Clean Water Act of Clean Air Act, where no determination had been made whether it constituted emissions or effluent data. EPA requests comment on this issue.

B. Methods of Claiming Trade Secrecy

There are five separate submissions that can be made under Title III which may include a claim of trade secrecy. These are: (1) The notification of any changes at the facility which would affect emergency plans, under section 303(d)(2); (2) answers to questions posed by local emergency planning committees under section 303(d)(3); (3) material safety data sheets or chemical lists submitted under section 311; (4) Tier Two emergency and hazardous chemical inventory forms submitted under section 312; and (5) the toxic release inventory form submitted under section 313.

The basic requirements for making a claim are similar, although there are some differences among the different sections. These differences will not affect the validity of a submitter's claim, provided the submitter adheres to all of the requirements. The basic requirements are as follows. First, EPA must receive a copy of the document required to be submitted under sections 303(d)(2) and (d)(3), 311, 312, or 313, which includes the specific chemical identity claimed as trade secret. Second, EPA must receive a sanitized copy of this same document in which the chemical identity claimed as trade secret is deleted and in its place is included the generic class or category of the chemical claimed trade secret. This sanitized copy should be identical to the original in all respects except that it does not contain the chemical identity. Third, EPA must receive a substantiation for each chemical claimed as trade secret, as explained in Second II.G. below. Although these three items are the minimum required for a claim of trade secrecy under all sections, EPA suggests that submitters carefully review the requirements under each section before filing a trade secrecy claim.

In some cases, a facility may not know the identity of a chemical that it uses under a trade name or in a proprietary mixture, but might want to file a trade secret claim for the trade name or mixture. The user will be allowed to file for trade secrecy, using the trade name as chemical identity and filling out those parts of the Title III submittal sent to EPA that it can supply without knowing the specific chemical identity. The user would still be required to file a complete substantiation. However, some users making trade secret claims for trade name products or mixtures may feel that some portions of the substantiation questions do not apply to their trade secret claim. If so, the user must answer the question to the best of its ability by explaining why it believes the question to be inapplicable.

Users who do not wish to make a trade secret claim for the trade name or mixture, and have not been provided with the specific chemical identity in the trade name or mixture, are not considered to be withholding specific chemical identity for purposes of submitting trade secret claims and substantiations.

EPA considered imposing more extensive requirements on users. One approach would require the supplier to inform EPA of the chemical identity and complete the substantiation questions for the user. Another option considered was the "best efforts" approach proposed in the preamble to the section 313 rule, published on June 4, 1987 (52 FR 21151, 21155), which would require the user to make multiple attempts to obtain the chemical identity from the supplier, including offering to enter into a confidentiality agreement with the supplier.

The Agency decided in favor of the more pragmatic approach taken in this proposal. In general, the Agency is concerned with lessening the burden on users who wish to file for trade secret status, especially since suppliers are unlikely to divulge information to users under a wide variety of circumstances even if the users are repeatedly persistent. EPA requests comment on this issue.

As provided in the final 311 and 312 regulation with regard to reporting mixtures, owners or operators of facilities can make trade secret claims for mixtures on their sections 311 and 312 submittals by either claiming an element or compound in the mixture as trade secret or claiming the entire mixture as trade secret. If the mixture is reported as a whole, a substantiation should be provided for the entire mixture; if the individual elements are reported, then a substantiation should be submitted for each element.

All trade secret claims and petitions requesting disclosure of identities claimed as trade secret should be sent to the following address: U.S. Environmental Protection Agency, P.O. Box 70266, Washington, DC 20024–0266. The Agency will be examining claims processing issues and may need to establish an alternate address for section 313 claims in the future.

C. Claims Under Sections 303(d)(2) and 303(d)(3)

Section 303 concerns the formulation of contingency plans by local emergency planning committees. Section 303(d)(2) states that owners or operators of facilities must promptly inform committees of any relevant changes occurring at the facilities as the changes occur or are expected to occur. Section 303(d)(3) states that owners or operators of facilities must promptly provide information to committees when committees request information from facilities necessary for the development and implementation of emergency plans.

A trade secret claim under section 303(d)(2) must include a copy of the notification of changes in the facility. This notification may be in the form of a letter. The document must include the name and address of the submitter. Chemical identity claimed as trade secret must be clearly marked "CONFIDENTIAL" or "TRADE SECRET." A trade secret claim under section 303(d)(3) must include a copy of the information requested by the local emergency planning committee and the information provided by the facility in response to the request. A letter containing this information is sufficient. The document must include the name and address of the submitter. Chemical identity claimed as trade secret must be clearly marked "CONFIDENTIAL" or "TRADE SECRET."

In both of these submittals, the generic class or category of each chemical ("class" is synonymous with "category") claimed as trade secret should be indicated in parentheses directly after the claimed chemical identity. The generic class or category for chemicals subject to section 303 reporting is discussed below in this section.

EPA must also be provided with a sanitized copy of this document. The sanitized copy should be a duplicate of the original except that the submitter must delete any chemical identity claimed as trade secret, leaving in its place the generic class or category for each claimed chemical. This sanitized copy is the copy which is to be sent to the local emergency planning committee. Finally, for each chemical identity claimed as trade secret, a complete substantiation must be submitted. The substantiation will be discussed in greater detail in Section II.G. below.

Generic Class or Category. When a committee develops its contingency plan, identification of the specific chemicals that are present in its jurisdiction is vital to the negotiation of the plan and is the first issue to be resolved in the initial preparation of the plan. As stated above, if a facility does not wish to reveal the specific chemical identity to the committee in the context of section 303(d)(2) and (d)(3), the section 303 submittal must include in the place of chemical identity, the generic class or category of the chemical claimed as trade secret.

EPA is proposing three options regarding the choice of generic class or category for section 303(d)(2) and (d)(3) submittals. For purposes of reporting prior to promulgation of the final rule, the Agency suggests that submitters choose an appropriate generic class or category based upon any of the three alternatives presented. The purpose of using generic classes or categories when chemical identity is requested by the committee during the contingency planning process and is not disclosed by facilities is to aid the public by providing relevant information about the chemical as a substitute for knowledge which could be gained from the specific chemical identity. We invite comment from the public on each of the alternatives presented below in terms of which option does, in fact, best aid the public. All of the alternatives are based on the concept of an example list of generic classes or categories.

The purpose of a contingency plan is to provide effective, expedient emergency response to aid response workers and community residents in the event of a chemical release. In order to prepare an effective contingency plan, the hazards involved with the specific chemicals such as explosivity or flammability, adverse health effects associated with the release, and special safety equipment needed to contain the release must be known. Only by knowing this information, can proper equipment and procedures be used to contain the release. If chemical identity is claimed as trade secret by a facility, such information can still be obtained through the determination of a generic class or category that reflects the information, as well as by other questions posed to the facility by the local emergency planning committee.

EPA recognizes that each individual committee across the country will have its own unique safety needs to consider when developing its contingency plan. For example, a committee must take into account various factors relating to risk management and assessment such as distance of the affected community from the facility, type of land use near the facility, and level of sophistication of the first responder. These factors vary greatly from one committee to the next. Likewise, facilities across the country also differ widely in terms of potential hazards arising from releases, adverse health effects associated with the releases, and prevention techniques employed to guard against the hazards.

Because of this wide variation of factors for both committees and facilities, the Agency believes it inappropriate to designate specific generic classes or categories which must be used by each committee and facility in all cases where specific chemical identity is claimed as trade secret. To devise such a list, taking into account the variety of important safety factors described above, would be impossible. Instead, the Agency believes that committees and facilities should engage in discussion with each other in order to jointly arrive at generic classes or categories that accurately and suitably reflect the hazards of specific chemical releases, prevention techniques to guard against the releases, adverse health effects associated with the chemical releases and any other safety information, as described above, considered significant.

a. *Alternative A.* This alternative allows committees and facilities to arrive at their own choices of generic classes or categories with no example classes offered by the Agency. In suggesting this approach, however, EPA strongly encourages committees and facilities to arrive at classes or categories that incorporate the safety information discussed above. In this way, class or category determination can be a meaningful substitute for chemical identity and can serve as the vehicle in which important safety facts for contingency planning purposes can be shared and put to good use.

b. *Alternative B.* This alternative differs from Alternative A in that the hazard categories set forth in the final sections 311 and 312 regulation are provided as examples that can be chosen by committees and facilities in arriving at generic classes or categories after discussions. Under this option, either one of the five categories set forth below can be chosen to be the generic class or category, or another hazard-based class can be chosen.

The following is the example list of hazard-based classes or categories:

1. Acute (Immediate)
2. Chronic
3. Fire
4. Sudden Release of Pressure
5. Reactivity

Hazard categories are proposed in this option because, as noted above, contingency planning should have as its goal hazard identification, prevention techniques to guard against the hazards, adverse health effects associated with the releases, and any other safety information the committee and facility consider significant. A generic class or category based on these factors will in most cases be more beneficial for contingency planning purposes than a generic class or category based on chemical structure.

c. *Alternative C.* This alternative differs from the other two options in that the Agency suggests that the determination of class or category by committees and facilities generic be based on chemical structure. It will at times be appropriate for contingency planning purposes to have chemical structure be the basis of the class or category. The important consideration is that hazard identification, hazard prevention techniques, adverse health effects, and any other safety information the committee and facility consider significant be included in the determination of the class or category. These factors are essential to the formulation of an effective contingency plan.

D. Claims Under Section 311

Section 311 concerns the provisions for submissions of material safety data sheets. A trade secret claim submitted under section 311 to EPA must include a copy of the MSDS or chemical list, whichever is submitted by the facility under this section. Chemical identities claimed as trade secret must be clearly marked as "CONFIDENTIAL" or "TRADE SECRET." The generic class or category (the word "class" is synonymous with "category") of the claimed chemical should be inserted directly below the chemical identity. The generic class or category for chemicals claimed as trade secret under sections 311 and 312 is explained below

in this section. This is the unsanitized version of the MSDS.

EPA must also receive a sanitized copy of the MSDS or chemical list, which should be a duplicate of the original in all respects except that the chemical identity claimed as trade secret is deleted and in its place is included the generic class or category of the chemical claimed as trade secret. This is the copy that should be sent to the State emergency response commission, the local emergency planning committee and the local fire department. When sending copies to EPA, the unsanitized copy should be stapled to the sanitized copy, the unsanitized copy on top. In addition, a substantiation for each trade secret chemical identity must be included. An explanation of a sustantiation is set forth in Section II.G. below.

Generic Class or Category. The chemicals covered by sections 311 and 312 are the same as those covered by the Occupational Safety and Health Act of 1970 and its regulations. It is not possible to write a finite list of generic classes or categories for sections 311 and 312 because there is no finite list of chemicals required to be reported under the sections. Therefore, the choice of generic class or category should follow the same process as proposed for section 303 submittals above.

E. Claims Under Section 312

Section 312 requires the submission of emergency and hazardous chemical inventory forms. Information filed on the Tier I emergency and hazardous chemical inventory form will not involve claims of trade secrecy since chemical identity is not requested on the form. Trade secrecy claims under section 312 involve only Tier II inventory forms.

On the Federal section 312 Tier II inventory form, a trade secret box appears to the right of the space for chemical identity. Instructions in the sections 311, 312 final rule, to be published in the near future, direct that if chemical identity is claimed as trade secret, the trade secret box should be checked. As with section 311, EPA must receive an unsanitized copy of the form, i.e., the copy just described with chemical identity included and the trade secret box checked. EPA must also receive a sanitized version of the form which must be a duplicate of the original except that the chemical identity will be deleted and in its place the generic class or category of that chemical will be inserted. The two copies should be stapled to each other, the unsanitized version on top and the sanitized version on the bottom. In order to ensure accurate determination of a trade secret claim, the order of chemical names found on the unsanitized version of the Tier II form (the top page) must match the order of generic classes or categories found on the sanitized version. This sanitized copy of the original form should be sent to the requesting State emergency response commission, local emergency planning committee, or fire department.

In addition, a substantiation must be included for each chemical claimed as trade secret. Explanation of the substantiation is found in Section II.G. below.

Claims of confidentiality regarding the location of chemicals in facilities are not covered by Title III trade secrecy protection. The confidential location information should not be sent to EPA, but only to the requesting entity. This information will be kept confidential by that entity under section 312(d)(2)(F) which refers to section 324. Section 324(a) states that upon request by a facility owner or operator subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee must withhold from disclosure the location of any specific chemical required by section 312(d)(2) to be contained in a Tier II inventory form.

A few states have expressed an interest in using State-designed Tier II inventory forms rather than the Federal inventory form. Under § 370.40 of the final sections 311, 312 regulation, to be published in the near future, facilities will meet section 312 requirements if they submit the Federal form, an identical State form, or an identical State form with supplemental questions authorized under State law. If a submitter wishes to make a trade secrecy claim, however, he must use the Federal form as his section 312 Tier II submittal. Trade secrecy can be more easily determined by EPA by using the Federal form. State forms that collect information under State right-to-know laws are covered under State confidentiality laws.

F. Claims Under Section 313

Trade secrecy claims under section 313 must include a copy of the toxic release inventory form. This proposed form is published at 52 FR 21152. Under the proposal, the submitter must check the box on the form indicating a trade secrecy claim and include the generic classification and code preassigned to the chemical identity in § 372.42 of the regulation. EPA is reexamining the use of preassigned generic codes for its final section 313 reporting rule.

EPA must also receive a sanitized copy of the toxic release inventory form which is identical to the original except that the chemical identity will be deleted, leaving the generic class or category. A substantiation for each claimed chemical identity must also be submitted, as described in section II.G. below.

G. Initial Substantiation

All claims of trade secrecy for chemical identity must be accompanied by a substantiation for each claim. EPA is planning to use a form for this substantiation. (Section 350.27.) EPA believes this form will assist those persons filing substantiations because the substantiation questions which must be answered are preprinted on the form. These questions are identical to those contained in the regulation.

The substantiation must contain an answer to each of the seven questions posed in the regulation, or an explanation as to why that question is not applicable. These seven questions are based on the four statutory criteria in section 322(b) of Title III. EPA received comment on the proposed sections 311 and 312 regulation that substantiations should only be required after an inquiry as to the specific chemical identity has been received by EPA. EPA considers section 322(a)(2)(A)(ii) of the statute to require an up-front substantiation with each submission. The Conference Report states, "[A] claim [must] be documented at the time the claim is made * * * the claimant must support a claim of trade secrecy with assertions of fact concerning the criteria described below sufficient to show, if such assertions are true, that the specific identity is a trade secret based on those criteria." H.R. CONF. REP. 99–962, 99th Cong., 2d Sess. 303–304 (1986).

More than a short conclusory statement must be made in the substantiation. This is so because EPA is required, under section 322(d) of the statute, to make a determination of "sufficiency" based upon the information submitted in the substantiation. To determine statutory sufficiency, EPA must decide whether, assuming all the information presented in the substantiation is true, it is sufficient to support a claim of trade secrecy. Descriptive factual statements are necessary for this purpose. Also, even though submitters are permitted to submit further detailed information after a petition for disclosure is received or if EPA decides to review a claim on its own, and EPA has found the initial claim sufficient, EPA does not believe that this mitigates the requirement for up-front detailed substantiation. This

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submission of additional information, permitted after EPA determines the initial claim is sufficient, is intended to support the truth of the initial assertions and may consist of information in even greater detail than that originally submitted, such as marketing information.

The substantiation questions are designed to elicit specific factual information from the submitter which will support the following section 322(b) statutory requirements for trade secret protection:

(1) The submitter has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures;

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law;

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person; and

(4) The chemical identity is not readily discoverable through reverse engineering.

Information submitted in response to these questions should be as complete as possible. EPA's initial determination as to whether the substantiation is sufficient to support a claim of trade secrecy will be based solely on the information contained in the substantiation. Only if the initial substantiation includes specific information regarding the four factors listed above, will EPA consider the substantiation to be sufficient and allow the submitter to submit further information to show the truth of the assertions in the substantiation, as required by section 322(d) of the statute. The specific criteria for determining whether the substantiation meets the four statutory requirements are set forth in § 350.13.

There are currently seven substantiation questions in § 350.7(a) of this regulation. EPA considered the alternatives of (a) requiring more detailed initial substantiations and (b) requiring no more than a statement of the four factors listed above.

Under the first alternative, the Agency considered initially requiring detailed substantiation like that which must be provided for chemical identity claims for TSCA section 5 Notices of Commencement of Manufacture or Import. 40 CFR 720.85(b). However, this was considered to be overly burdensome to the submitter; moreover, under section 322(d), the Agency may later obtain more detailed information from a submitter to show the truth of the assertions in the initial substantiation.

The second alternative would neither meet the requirements of section 322(a) nor provide EPA with the necessary information to make the determination of sufficiency required by section 322(b). EPA cannot determine the sufficiency of a claim based upon conclusory statements that, for example, disclosure of the chemical identity would cause substantial harm to the competitive position of the submitter. In order for EPA to evaluate such a claim, the Agency would need more information such as the specific use of the substance claimed as trade secret and the value to competitors of knowledge of the presence of the chemical at the facility. If the submitter provided only conclusory statements, this would require the Agency to make further inquiries of each submitter to gain further detail, a time-consuming and costly effort.

Submitters must include a certification with the substantiation, signed by an officer of the submitter, that the information included in the substantiation is true, accurate and complete to the best knowledge and belief of the submitter. This certification is printed on the substantiation form.

Trade secrecy claims with missing substantiations or those lacking a response to each question will be rejected without notice to the submitter, and the chemical identity will be made available to the public. Failure to submit a substantiation with a trade secret claim could make a submitter liable for a fine of up to $10,000 per violation, under section 325(c).

H. Claims of Confidentiality in the Substantiation

Sometimes the submitter may need to refer to the chemical identity claimed as trade secret in the substantiation for that chemical. Also, in order to supply a complete explanation of its claim of trade secrecy, the submitter may include other trade secret or confidential business information in the explanation.

Section 322(f) allows submitters to claim as confidential in the substantiation any information which falls within 18 U.S.C. 1905, the Trade Secrets Act. This includes not only trade secret chemical identity but other trade secret information, as well as any confidential business information. To do this, the submitter must clearly label what information it considers to be trade secret or confidential. This copy of the substantiation is to be submitted to EPA, along with a sanitized copy. In the sanitized copy of the substantiation, the submitter will delete all of the claimed trade secret or confidential business information. If any of the information claimed as trade secret on the substantiation is the chemical identity of a claimed chemical, then the submitter should include the appropriate generic class or category of that chemical on the sanitized version of the substantiation.

No substantiation needs to be submitted for information that the submitter includes in the substantiation and claims as trade secret or confidential. The submitter need only include a certification at the bottom of the substantiation, signed by an officer of the submitter, that the information claimed confidential in the substantiation would, if disclosed, reveal other reveal other business or trade secret information. This statement is included in the certification on the substantiation form. The claims of trade secrecy and confidentiality for information submitted in the substantiation are not subject to the petition process described below because this process applies only to claims of trade secrecy for the chemical identity made under Title III. Instead, requests for disclosure of other trade secret or confidential material must be submitted pursuant to the Freedom of Information Act regulations under 40 CFR Part 2.

I. Submissions to State and Local Authorities

If a trade secrecy claim is made with respect to a particular submission, only the sanitized version of the submission should be sent to the appropriate State or local authorities. Section 322(a)(2)(ii) also requires that a substantiation be included with the Title III submittal. Therefore, only the sanitized version of the accompanying substantiation should be sent to the appropriate State and local authorities. If a version of a form or a substantiation containing trade secret information is sent to a State or local authority by the submitter, it will constitute public disclosure of the information, and the claim will be considered invalid.

III. Petition Requesting Disclosure of Chemical Identity Claimed as Trade Secret

Section 322 provides for a public petition process to request the disclosure of chemical identity claimed as trade secret. This petition process is

applicable only to a chemical identity claimed as trade secret. If requesters desire access to items other than chemical identity claimed as trade secret or confidential in Title III submissions (that is, items claimed as confidential in the substantiation), such requests for disclosure must be made pursuant to EPA's Freedom of Information Act regulations under 40 CFR Part 2.

The petition requesting disclosure must include the petitioner's name, address, and telephone number. It must also include the sanitized copy of the submission (e.g., the MSDS, toxic chemical release form) in which the chemical is claimed as trade secret, and the petitioner must clearly indicate on the form which chemical identity is requested for disclosure. Copies of the sections 303 (d)(2) and (d)(3) filings are available at a location designated by the local emergency planning committee. Copies of the sections 311 and 312 filings are available at locations designated by the State emergency response commission and the local emergency planning committee. Copies of the section 313 filings are available from the public data base maintained by EPA and from the designated State agency.

EPA is requiring a copy of the submission in the proposed rule but has also considered requesting only a reference to the submission. The Agency prefers to require a copy in order to prevent any confusion about what disclosure the petitioner is requesting. Public comment is invited on this issue.

As soon as the petition is filed, EPA will begin the process of reviewing the trade secrecy claim. The time for processing the petition may vary, but the statute requires EPA to reach a decision within 9 months.

IV. EPA Review of Trade Secrecy Claims

Section 322 defines the process by which EPA determines whether a claimed chemical identity is entitled to trade secrecy. First, EPA must decide whether the answers to the substantiation questions are, if true, sufficient to support the conclusion that the chemical identity is a trade secret. This is the determination of sufficiency referred to in the statute and is made prior to any determination on the validity of the trade secrecy claim. The statute requires EPA to follow different procedures depending on whether EPA decides the answers to the substantiation questions are sufficient or insufficient.

A. Overview of the Process

After receiving a petition requesting disclosure of chemical identity, EPA has 30 days to make a determination of sufficiency. If the claim meets EPA's criteria of sufficiency, EPA will notify the submitter that he has 30 days from the date of receipt of the notice to submit supplemental material in writing, supporting the truth of the assertions made in the substantiation. If this additional information is not forthcoming, EPA will make its determination based only upon information previously submitted in the substantiation. Also, failure to provide such additional material may make the submitter liable for a fine of up to $10,000 per violation, under section 325(c).

If the claim does not meet the criteria of sufficiency, EPA will notify the submitter, who may either file an appeal within 30 days to the Office of General Counsel or, for good cause shown, amend the substantiation in support of its claim.

Once a claim has been determined to be sufficient, EPA must decide whether the claim is entitled to trade secrecy. If EPA determines that the facts support the claim of trade secrecy, the petitioner will be notified. If the chemical identity is determined not to warrant trade secrecy, the submitter will be notified.

The statute provides for intra-agency appeal by the submitter to appeal adverse decisions and for U.S. District Court review after intra-agency appeal. This process is explained below in more detail.

B. Determination of Sufficiency

A person withholding specific chemical identity from a submission under Title III must make specific factual assertions that are sufficient to support a conclusion that the chemical identity is a trade secret. These assertions are made by completely answering all of the questions listed in § 350.7 of the regulation. These questions will provide answers to the four requirements set forth in section 322(b) of the statute for claims of trade secrecy.

Section 350.13 of the regulation sets forth criteria for use by EPA in determining whether the answers in the substantiation fully meet the requirements for section 322(b). The criteria listed in § 350.13 can also serve as a guideline for persons preparing substantiations.

To support the first criterion, the facts must show that reasonable safeguards have been taken against unauthorized disclosure of the specific identity, and that the specific chemical identity has not been disclosed to any person not bound by a written confidentiality agreement including local, State or Federal government entities.

In support of the second criterion, the submitter must show that the chemical identity claimed as trade secret is not required to be released: (1) Under a determination by a State or Federal agency that the chemical identity in question is not a trade secret, or (2) under a State or Federal statute which does not allow the chemical identity to be claimed as trade secret.

To show that disclosure of the information is likely to cause substantial competitive harm, under the third criterion, the facts must show that either competitors do not know that the substance can be used in the fashion used by the submitter and that duplication of the specific use cannot be determined by competitors' own research activities or that competitors are unaware that the submitter is using the substance in this manner.

Finally, it must also be shown that competitors cannot reasonably learn the specific chemical identity through reverse engineering analysis of the submitter's products or environmental releases. For this criterion, EPA will be relying on changes made to OSHA's Hazard Communication Standard in response to the case of *United Steelworker's v. Auchter*, 763 F. 2d 728 (3d Cir. 1985). These regulations are set forth at 50 FR 48750 (November 27, 1985), and 51 FR 34590 (September 30, 1986). In these regulations, OSHA made clear that it was adopting the definition of trade secrecy set forth in the Restatement of Torts, section 757. The Restatement definition of trade secrecy does not include chemical identities which are readily determinable by reverse engineering. The OSHA preamble states, "If the specific chemical identity of a component can be readily determined, it does not qualify as a legitimate trade secret. If the product is a complex mixture, and extensive analysis would be required to determine its ingredients, it is more likely that the product would qualify for some trade secret status." 51 FR at 48753 (November 27, 1985).

If the substantiation does contain sufficient answers, EPA will notify the submitter by certified mail. Under the statute, a finding of sufficiency automatically entitles the submitter to submit supplemental information to support the truth of the answers contained in the substantiation. This could include any information or documents which would demonstrate

the veracity of the submitter's substantiation, or provide even greater detail in support of the submitter's claim. Upon receiving EPA's request for supplemental information, the submitter will have 30 calendar days to submit the information. If EPA does not receive the supplemental information within this time, it will make a trade secret determination based upon the information already submitted. Failure to submit such information, however, may make the submitter liable for a fine of up to $10,000 per violation, under section 325(c).

C. Determination of Insufficiency

If a substantiation does not contain answers sufficient to support the four requirements of section 322(b), then EPA will find that the trade secret claim is insufficient. The submitter will be notified by certified mail of EPA's finding of insufficiency. The submitter may either appeal EPA finding to EPA's Office of General Counsel or may amend his original substantiation if it demonstrates good cause to do so.

Good cause is limited to the following:

(1) The submitter was not aware of the facts underlying the additional information at the time the original substantiation was submitted, and could not reasonably have known the facts at that time; or

(2) Neither EPA regulations nor other EPA guidance called for such information at the time the original substantiation was submitted.

The submitter must notify EPA by letter of his contention (1 or 2) as to good cause and should include in that letter the additional supporting material. EPA will notify the submitter by certified mail if the good cause standard has not been met and the additional supporting material will not be accepted. The submitter may then seek review in U.S. District Court. If after acceptance of additional supporting material for good cause, EPA decides the claim is still insufficient, the submitter will be notified by certified mail and may seek review in U.S. District Court.

If EPA reverses itself on appeal or after accepting additional assertions for good cause, and decides that the trade secret claim is sufficient, then the claim will be processed as though it had been initially found to be sufficient. If upon appeal, EPA makes a final determination that the original answers in the substantiation were insufficient, the submitter may request review in U.S. District Court within 30 days of notification of the final determination.

The Small Business Administration has commented that the good cause standard should include the circumstance where a submitter mistakenly does not provide information but otherwise acts in good faith to comply with the rule. EPA believes this is a valid point although it has not included this circumstance as one of the good cause exceptions in the proposed rule. EPA requests comment as to whether this exception should be included in the final rule.

D. Determination of Trade Secrecy

All claims determined to be sufficient either initially, after appeal, or after acceptance of additional material for good cause, will be examined in order to determine whether a valid claim of trade secrecy is presented. In making a determination of trade secrecy, EPA will examine all four factors under section 322(b).

If EPA decides that the chemical identity is a trade secret, the petitioner shall be notified by certified mail and may seek review in U.S. District Court. If EPA decides that the chemical identity is not a trade secret, the submitter shall be notified by certified mail and may appeal this determination to EPA's Office of General Counsel within 30 days. If EPA does not reverse its decision on appeal, the submitter may seek review in U.S. District Court within 30 days of notification of the final determination.

E. Enforcement

Section 325(d) authorizes the Administrator to assess a civil penalty of $25,000 per claim against a trade secret claimant if the Administrator determines that a trade secret claim is frivolous. Section 325(c) authorizes the assessment of a civil penalty of $10,000 per violation for any person who fails to furnish a substantiation or supplemental information requested by the Agency. These penalties can be assessed by either administrative order or through the appropriate U.S. District Court.

V. Relation of Section 322 to Other Statutes

A. Relationship to State Confidentiality Statutes

Section 321 of Title III provides that nothing in Title III "shall preempt any State or local law." This means that the confidentiality requirements of Title III are not to displace state confidentiality requirements under State Right-To-Know Acts. A State can still prescribe the type of information it will classify as confidential when it gathers information for its own use under a State law, such as a Right-To-Know Act.

A question has been raised as to what effect State confidentiality statutes will have on information submitted under Title III to State and local authorities. State confidentiality statutes do not govern information gathered under Federal law, here Title III. State confidentiality statutes only apply to information collected pursuant to State law for State use. When information is gathered under Title III, the Federal confidentiality requirements of section 322 apply regardless of whether the information is sent to a State or Federal agency because the information is being gathered pursuant to a Federal statute. In stating this, EPA is assuming that local emergency planning committees will be asking facilities only for information properly falling under Title III. EPA has published guidance to aid committees in gathering this information. This guidance is entitled the Hazardous Materials Emergency Planning Guide. It is available by writing to the Hazardous Materials Emergency Planning Guide, 401 M Street SW., Mail Code WH 562–A, Washington, DC 20460. Additional site-specific technical guidance for hazards analysis will be available this fall. A notice announcing this availability will appear in the **Federal Register**.

State confidentiality statutes may affect Title III information, however, in that if State trade secrecy regulations prohibit claims of trade secrecy under State law for information that a submitter must also report under Title III, then under the substantiation provisions of Title III, a facility will not be able to justify withholding the information under Title III.

B. Overlap with Other EPA-Administered Statutes

Information collected pursuant to EPA regulations under statutes other than Title III may be similar to that collected under Title III. For purposes of confidentiality, information should be claimed as confidential and will be treated by EPA as is required by the statute under which it is collected. However, the mandatory release of information under one statute may affect its trade secret status under another statute.

C. Relationship to Freedom of Information Act

The procedures set out in section 322 apply only to claims of trade secrecy for chemical identity made under Title III. Pursuant to section 322(f), however, submitters may claim as trade secret any other confidential business or trade secret information which is included in

the substantiation, or supplemental information submitted in the petition process. Requests for disclosure of this material must be submitted under the Freedom of Information Act regulations at 40 CFR Part 2. EPA will make determinations regarding the disclosure of this material under those regulations.

VI. Release of Trade Secret Information

A. Releases to States

Under section 322(h), the States, either the governors or the State emergency response commissions, must provide to any requesting person the adverse health effects associated with extremely hazardous substances (section 303) and hazardous chemicals (sections 311 and 312) claimed as trade secret. The States will not have direct access to the identities of chemicals claimed as trade secret in preparing adverse health effects descriptions. However, the States have information on health effects in the MSDSs submitted under section 311 for this purpose. The MSDS is required to include such information for any substance claimed as trade secret. Thus, governors or State commissions should not be hindered in meeting their responsibilities to provide descriptions of adverse health effects.

Under Title III, EPA is required to provide to the States, upon request by the governor, any trade secret information submitted to EPA. Thus, if a State wished to request the chemical identities of any or all chemicals claimed as trade secret in the State, EPA will provide this information to the State governor, upon request.

This proposed regulation contains certain requirements intended to safeguard the disclosure of trade secret information released to the States. The Agency is concerned that there is a potential for leakage of Title III information used by various State agencies unless information is carefully guarded.

The proposed regulation specifies that the State governor can release trade secret information only to State employees. This requirement has the effect of preventing disclosure of trade secret information to State emergency response commissions (SERCs), although the SERCs are allowed by statute to identify adverse health effects. The SERCs are appointed by the governors and are comprised of members who have technical experience in the emergency response field, including industry representatives that meet this qualification. Rather than impose restrictions on SERC membership or jeopardize the confidentiality of trade secrets, the regulation confines the disclosure of trade secret information to State employees. Also, State employees who knowingly and willfully disclose trade secret information are subject to a fine and possible conviction under section 325(d)(2).

The Agency is requiring that States treat all trade secret information as limited access information to be used by the States only by staff observing security procedures equivalent to those of EPA. The Agency feels that this approach is appropriate to adequately protect trade secret information. EPA will publish information on security procedures in the future.

The Agency is requesting comments on all aspects of disclosure of trade secret information to State governors.

B. Releases to Authorized Representatives of EPA

In addition to contractors and subcontractors, EPA has recently begun to use grantee personnel to perform Agency functions. The Agency believes it is appropriate to designate them as "authorized representatives," along with Federal contractors and subcontractors, as that term is used in this regulation. Full confidentiality protection would be required, as with contractors. Comment is requested on this issue.

VII. Disclosure to Health Professionals

Section 323 of Title III consists of three provisions regarding access to chemical identity information by health professionals. These provisions require the facility owner or operator to disclose chemical identity, including trade secret chemical identity, to a health professional for diagnosis or treatment in both non-emergency and emergency situations, and for purposes of conducting preventive research studies and providing medical treatment by a health professional who is a local government employee. The health professional must sign a statement regarding his need for the chemical identity, and a confidentiality agreement, prior to disclosure, except in emergency situations, when these two documents may be delivered later.

A. Non-emergency Diagnosis or Treatment

The first provision, part (a) of section 323, requires that in non-emergency situations, an owner or operator of a facility which is subject to the requirements of sections 311, 312 or 313, shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional who requests the identity in writing and describes a reasonable basis for suspecting that the specific chemical identity is needed for diagnosis or treatment of an individual or individuals who have been exposed to the chemical concerned. The health professional must also state that knowledge of the specific chemical identity will assist in diagnosis or treatment of the exposed individual(s). The health professional must certify that the information contained in the statement of need is true and accurate. The health professional must also provide a signed confidentiality agreement to the facility prior to gaining access to trade secret chemical identity. Any health professional performing diagnosis or treatment, not solely doctors or nurses, is permitted access to trade secret chemical identity in a non-emergency situation. The request for and safeguarding of trade secrets is a serious responsibility and EPA urges health professionals to use other available information about a chemical for diagnosis, treatment, or research studies if possible.

B. Emergency Situations

The second provision of section 323 deals with medical emergencies and requires an owner or operator of a facility subject to the requirements of sections 311, 312 or 313 to immediately provide a copy of an MSDS, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests the information and has determined that a medical emergency exists and that the specific chemical identity of the chemical is necessary for emergency or first-aid diagnosis or treatment of an exposed individual or individuals. Only a treating physician or nurse can gain access to a trade secret chemical under this provision; these health professionals must use their professional judgment to determine whether a medical emergency exists. The requesting physician or nurse in such an emergency does not need to submit a written confidentiality agreement or statement of need prior to receiving the trade secret chemical identity. The owner or operator disclosing such information may, however, require a written confidentiality agreement and a statement of need as soon as circumstances permit. The fact that a treating physician or nurse does not need to submit a confidentiality agreement or statement of need before

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receiving the requested information does not imply that the information received may be used in any manner other than the proper treatment and diagnosis of a chemically related injury or illness. The chemical identity absolutely may not be disclosed or used for any other purpose.

C. Preventive and Treatment Measures

The third provision of section 323 deals with preventive and treatment measures by local health professionals. This subsection is intended to allow local health professionals access to information on chemicals in order to facilitate epidemiological and toxicological research and to render medical treatment for the effects of chemical exposures. This subsection requires an owner or operator of a facility to promptly provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional who is a local government employee or under contract with a local government who submits a request in writing and provides a written statement of need and a confidentiality agreement. The statement of need must describe one or more of the needs set forth in the regulations.

Under this section of the statute, EPA interprets the term health professional to be any health professional with the professional expertise to perform the types of research and treatment set forth in the statute, and who is employed by the local government. Under this section, such health professionals as physicians, toxicologists and epidemiologists may gain access to trade secret chemical identity.

D. Statement of Need

Unlike the Occupational Safety and Health Act Hazard Communication Standard, the health professional providing medical treatment will not be required to explain in detail in the statement of need why the disclosure of the specific chemical identity is essential, and that in lieu thereof, the disclosure of the following information would not enable the health professional to provide the medical services: (a) The properties and effects of the chemical, (b) measures for controlling the public's exposure to the chemical, (c) methods of monitoring and analyzing the public's exposure to the chemical, and (d) methods of diagnosing and treating harmful exposure to the chemical. EPA requests comment on whether this information should be included in the statement of need.

EPA decided to require certification in the statement of need in order to encourage requesters to understand the serious responsibility involved in handling trade secret material. The certification must be signed by the health professional and must state that the information contained in the statement of need is true.

E. Confidentiality Agreement

The confidentiality agreement required of the health professional must state that the health professional will not use the trade secret chemical identity for any purpose other than the health needs asserted in the statement of need, or as may otherwise be authorized by the terms of the agreement itself. This agreement may be negotiated between the health professional and the facility.

At a minimum, the written confidentiality agreement shall include a description of the procedures to be used to maintain the confidentiality of the disclosed information and a statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need. Also, the health professional must agree not to release the information under any circumstances, except as authorized by the terms of the agreement. For example, the terms of the agreement could specify that the health professional may release the trade secret chemical identity to other health professionals if the professionals work on a daily basis with each other and routinely rely on each other's expertise for needed advice. The agreement could also specify that the first health professional may disclose the trade secret chemical identity to other health professionals if such disclosure is necessary in order for the first professional to learn necessary information in order to render a professional opinion. Except in those instances specified in the confidentiality agreement, the health professional may not be permitted to release the information to other health professionals. The health professional may not be permitted to write articles for medical journals or to go on speaking tours discussing the chemical involved if such activity could result in the disclosure of the identity of the chemical and the facility's relationship to that chemical. Such activities could be permitted, however, if the link between the facility and the chemical identity would not be revealed.

The agreement may provide for appropriate legal remedies in the event of a breach, including a reasonable pre-estimate of damages. However, the agreement cannot include a requirement that a penalty bond be posted. This would have a chilling effect on the health professional community. The Agency believes that the underlying purpose of the confidentiality agreement is to protect a facility's trade secret chemical identity from unlimited and unbridled disclosure, not to make it overly burdensome or difficult for the health professional to obtain the specific identity of a chemical.

This confidentiality agreement is subject to State law and State contractual remedies. The agreement can specify the law of the State that will apply. Also, nothing in this regulation precludes the facility or health professional from pursuing non-contractual remedies to the extent permitted by law.

F. Related Issues

Following the receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the health professional. EPA has considered specifically defining "promptly" and "immediately" to mean a particular number of days. However, EPA is concerned that defined times will limit the speed of response. Comment is requested on this issue. The statute requires "immediate" provision of data in the case of medical emergencies and EPA interprets this to mean that the owner or operator will provide the data over the telephone, without requiring a written statement of need or a confidentiality agreement in advance. Comment is also requested on this issue.

The Agency is aware of the possible situation where the owner or operator of a facility is unable to provide the chemical identity because the manufacturer of the chemical has kept the identity confidential. In these situations, EPA suggests that the owner or operator of the facility put the requester in touch with the supplier of the chemical, but the facility is not responsible for supplying information which it cannot obtain for itself. EPA requests comment on this approach.

The regulation authorizes health professionals to refer to trade secret chemical identity in discussions with EPA personnel, who themselves are authorized to have access to Title III trade secret information. This is based on a provision of the OSHA Hazard Communication Standard. If this provision was not included in the regulation and the confidentiality agreement does not so provide, the health professional would not be permitted to reveal or refer to any trade secret identity information in

discussions with EPA. EPA requests comment on this issue.

EPA construes section 323 to mean that a facility is not permitted to deny disclosure of a specific chemical identity to a health professional under any circumstances provided there is a written statement of need and a confidentiality agreement. Section 325(c) empowers EPA to assess civil penalties of up to $10,000 for failure to disclose the trade secret chemical identity to health professionals in emergency situations, as required by Section 323(b). Health professionals may also sue under section 325(e) in U.S. District Court to obtain the information.

VIII. Summary of Supporting Analyses

A. Regulatory Impact Analysis

1. *Purpose.* Executive Order No. 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with each major rule. EPA has determined that the requirements and procedures for treatment of chemical data considered to be trade secret by facilities reporting under other sections of Title III in this rulemaking does not constitute a major rule under Executive Order No. 12291. However, the Agency has prepared an RIA to assess the economic impact of the final regulation on affected industry and government entities. The following results are presented in detail in the analysis documented in *Regulatory Impact Analysis in Support of Proposed Rulemaking Under Sections 322–323 of the Superfund Amendments and Reauthorization Act of 1986,* which is available for review in the public docket for this rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by E.O. No. 12291.

2. *Methodology and Data Sources.* EPA conducted an assessment of the costs, benefits, and economic impacts associated with the final rule and the primary provisions of sections 322 and 323, including: Preparation of trade secrecy claims by facilities; processing and storage of trade secret reports by EPA; provisions by EPA and the States of health effects information for chemicals whose identities are withheld as trade secrets; and special access procedures under which facilities must promptly provide chemical data to members of the health profession. Both industry and government are required by sections 322 and 323 of title III to undertake certain activities, and thus, both types of entities will incur costs to comply with this regulation implementing these sections.

Benefits for both facilities and government may also arise in conjunction with trade secret activities. In addition, industry, government, and other groups may, as a result of this regulation, undertake additional voluntary activities that generate benefits both for these groups as well as the general community. Interrelationships among the activities undertaken by the various affected groups, the provisions of Title III, and potential consequences for health and the environment are complex. Thus, time constraints did not permit EPA to perform a quantitative evaluation of the benefits of these provisions; a qualitative discussion of the benefits is provided in the RIA.

Costs of complying with sections 322 and 323 of Title III are incurred by facilities and the Agency in terms of the following major activities: protection of trade secrets for facilities complying with sections 303(d)(2), 303(d)(3), 311, 312, and 313; the petition and review process designed to ensure that the public obtains access to reported information that is found to not warrant trade secrecy protection; provision of adverse health effects information in lieu of chemical identities where facilities have disclosed only generic or category information on the materials involved; and, special access, as needed, for members of the health profession for diagnosis, treatment, medical emergency, and health study purposes. Total costs of these activities are highly sensitive to assumptions concerning: The number of reports submitted by facilities under sections 303, 311, 312, 313; the number of reports for which facilities claim trade secrets; the number of petitions submitted by the public to challenge facility claims of trade secrecy; the number of health officials requesting trade secret information; and the unit costs associated with each of the activities.

Both the industry and government analyses assume that reporting and receiving entities undertake the minimum activities that they must perform to comply with Title III. The anlaysis, therefore, does not take into account the costs associated with voluntary activities, alterations in chemical usage patterns that may arise at facilities as a result of other sections of Title III, or other activities or effects.

Several supplemental analyses were performed to provide evidence on the sensitivity of the results to changes in various assumptions of the methodology. In particular, a sensitivity model was performed of the potential variability of substantiation costs reflecting EPA's list of questions that it feels are necessary to establish the sufficiency and validity of a claim for trade secrecy; and, the assumption that facilities will answer the questions with reasonably detailed research and responses. Also included is an analysis of the effects of sections 322 and 323 on small businesses and the analytical factors affecting whether a Regulatory Flexibility Analysis would be required for the proposed regulation. In particular, a definition of small businesses or entity sizes was set forth and a determination as to whether the regulation will have a significant impact upon a substantial number of small entities was considered.

3. *Results.* The RIA analyzes the specific requirements of sections 322 and 323 as established by the statute and the proposed regulation implementing these sections of the Act. The RIA analyzes four activity areas under sections 322 and 323 for facilities and EPA, in particular: Preparation, processing and storage of trade secret reports, petition and review process, provision of adverse health effects information, and disclosure of information to health professionals.

a. *Preparation, Processing and Storage of Trade Secret Reports.* A facility must prepare a trade secret copy of a given Title III report and send it to EPA with an accompanying trade secrecy substantiation. A trade secrecy substantiation (based upon the proposed form) costs approximately from $380 to $1,040 for the first chemical that a facility claims as trade secret, depending upon the level of effort a firm puts into responding to questions on the proposed form. Given certain possibilities for economies of scale where a facility provides substantiations for more than one chemical, each additional substantiation is estimated to cost $220 to $560 for the facility to prepare (these costs do not include the costs of preparing the non-trade secret copy of a Title III report).

EPA will incur costs for processing and storing each of the reports containing trade secret information. EPA will treat as confidential any information properly claimed as trade secret until a review is conducted demonstrating otherwise. The cost to EPA of processing (logging in) and storing (filming, microfilming) trade secret reports is estimated to be less than $10 per report.

b. *Petition and Review Process.* A major provision of section 322 is the opportunity for members of the public to

challenge a facility's claim to the trade secrecy of a chemical's identity through a petition and review process administered by EPA. The estimated costs of the three most likely scenarios of the petition and review process include cases where a facility is found to have a claimed trade secret without a valid basis; a case where the facility has a valid basis; and, a case with many complications in the petition and review process.

In the cases where a facility claims a trade secret without a valid basis, petitioner costs are estimated to be $75 per petition, EPA costs are $593 per petition, and, facility costs are $222 per petition. In the cases where a facility has a valid basis, petitioner costs and facility costs remain the same with an EPA cost of $368 per petition. In cases with many complications in the petition and review process, the petitioner cost are $75 per petition, but EPA costs could be $1,325 per petition, and facility costs are $1,048 per petition.

c. *Provision of Adverse Health Effects Information.* A responsibility is created under section 322 to provide requesters with information on the health hazards of chemicals where specific chemical identity is withheld as trade secret. There is no additional cost to the Agency here; the States will be able to use the MSDSs to provide the public with adverse health effects for chemicals claimed as trade secret under sections 303, 311 and 312. The Agency will already have a listing on the section 313 database of adverse effects for chemicals claimed as trade secret under section 313.

d. *Disclosure of Information to Health Professionals.* Section 323 provides for special access to reported data for health professionals. There are three circumstances for which section 323 sets up special access for health professionals to specific chemical identities or reports: diagnosis or treatment, medical emergencies, and preventive studies of exposure or treatment by local health professionals.

e. *Aggregate Costs.* Total costs (both for facilities and for EPA) are largely related to the number of trade secret claims made in any time period. These are expected to total about $48 million in the first year, drop to $13 million in the second, rise to $169 million in the third, and level off at $23 million for each succeeding year.

The total cost picture is dominated by trade secret claims associated with the submission of MSDSs under section 311. Over the first ten years of the program, these trade secret claims are estimated to account for over 90 percent of all Title III trade secret claims.

The aggregate cost of preparation, petition and review, health effects descriptions, and disclosure of information to health professionals of Title III reports in this medium case projection in present value terms over 10 years, at a 10 percent real discount rate will be $263 million to facilities, and $3.8 million for EPA.

The aggregate cost of the preparation, petition and review process, health effects descriptions, and disclosure of information to health professionals in present value terms over 10 years, at a 4 percent real discount rate will be $329 million to facilities, and $4.8 million for EPA.

With the section 311 and 312 rules so recently published by EPA, and with the publication on August 24, 1987, of the OSHA rulemaking expanding coverage of facilities required to report under sections 311 and 312, EPA has not been able to estimate accurately the added costs of the trade secret provisions. However, analysis conducted for the sections 311/312 rulemaking estimates that the total number of reports to be filed would roughly double, as compared with the coverage prior to the OSHA expansion. EPA intends to look further into the effects of the OSHA expansion prior to promulgation of this rule and requests information from commentors on how unit costs might differ for the newly covered facilities and the likely frequency of trade secret claims.

f. *Benefits.* Section 322 fosters benefits both directly and indirectly. Direct benefits include the following: Facilities are given protection of trade secrets involving their chemicals, which by definition involve information that allows particular firms competitive advantages over others; the public is given a petition and review process that allows them to challenge the validity of trade secrecy claims through an administrative review process; the substantiation requirements will limit the number of trade secrecy claims to cases where firms believe that they have a bona fide basis for trade secrecy; and, information on the health hazards of chemicals is made available to the public while the specific chemical identities are kept from disclosure where facilities have established valid trade secrecy claims. The first two benefits serve to reduce the costs that are incurred by virtue of the other Title III sections (i.e., costs that were not accounted for in the other RIA's). Indirectly, section 322 has benefits as an auxiliary section that makes detailed reporting under sections 303(d)(2), 303(d)(3), 311, 312, and 313 practical, given the competing interests of facilities with a need for protection of trade secrets and the public with a need to know about exposure to chemical health hazards. Without the protections of section 322, many facilities would be reluctant to fully disclose the information required under Title III and as a result, the efficacy of the entire program would be compromised. Allowing trade secrecy claims effectively encourages complete reporting and thus increases the benefits of the entire Title III program.

Section 323 offers specific benefits in the case of medical emergencies, where exposure to chemicals can lead to debilitating or fatal consequences for workers, residents, and others. Prompt disclosure of information by facilities to health professionals will accelerate their ability to diagnose incidents properly and bring the necessary type of treatment into effect.

B. Regulatory Flexibility Analysis

1. *Purpose.* Under the Regulatory Flexibility Act, whenever an Agency is required to issue for publication in the **Federal Register** any proposed or final rule, it must prepare and make available a Regualtory Flexibility Analysis that describes the impact of the rule on small entities (small businesses, small organizations and small governmental jurisdictions), unless the Agency's administrator certifies that the rule will not have a significant impact on a substantial number of small entities. The analysis contained in the RIA addresses the impact of this rule on small entities. Based on this analysis, EPA has concluded that while a large number of small businesses reporting under Title III could be affected, costs will generally be low per facility and significant impacts will not occur.

2. *Methodology and Results.* To examine the impacts on small businesses, EPA compared average costs for small facilities (defined to be those with fewer than 20 employees) to average and median sales for those facilities, and by two digit SIC code.

There are a substantial number of small businesses under this definition; 2,794,400 facilities (the universe of facilities in categories covered by section 303, the broadest of the sections associated with trade secrecy claims). The number of projected trade secret claims—37,000 to 1,114,600—is large enough to affect over 20 percent of small businesses if evenly distributed across facilities.

In order to assess the impacts on small businesses, several guidelines were used. The first criterion is the ratio of annual costs of facilities engaged in manufacturing, with production costs

represented by sales. A worst case scenario is provided by assuming an average in the high projection of 3 chemicals per facility and assuming detailed responses to the proposed substantiation questions. Average first year reporting per facility costs of industry for small businesses, by SIC code, is $885. Average annual costs are significantly lower. As a percent of average sales, the range is between 0.00 to 0.40 percent of sales, which is well below EPA's guideline criterion of 5 percent of production costs in order to avoid significant impact.

3. *Certification.* On the basis of the analyses contained in the RIA with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements can be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA". The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 350

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Superfund Amendments and Reauthorization Act, Trade secrets, Trade secrecy claims, Intergovernmental relations.

Dated: October 6, 1987.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that Title 40 of the Code of Federal Regulations be amended by adding a new Part 350 to read as follows:

PART 350—TRADE SECRET CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION: AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS

Subpart A—Trade Secret Claims

350.1 Definitions.
350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR Part 2.
350.5 Assertion of claims of trade secrecy.
350.7 Substantiating claims of trade secrecy.
350.9 Initial action by EPA.
350.11 Review of claim.
350.13 Sufficiency of assertions.
350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.
350.16 Address to send trade secret claims and petitions requesting disclosure.
350.17 Appeals.
350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.
350.19 Provision of information to States.
350.21 Adverse health effects.
350.23 Disclosure to authorized representatives.
350.25 Disclosure in special circumstances.
350.27 Substantiation form to accompany claims of trade secrecy.

Subpart B—Disclosure of Trade Secret Information to Health Professionals

350.40 Disclosure to health professionals.

Authority: 42 U.S.C. 11042 and 11043 Pub. L. 99–499, 100 Stat. 1747. Subpart A—Trade Secret Claims

§ 350.1 Definitions.

"Administrator" and "General Counsel" mean the EPA officers or employees occupying the positions so titled.

"Business confidentiality" includes the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its right in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905.

"Petitioner" is any person who submits a petition under this regulation requesting disclosure of a chemical identity claimed as trade secret.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance. Where the trade name is reported in lieu of the specific chemical identity, the trade name will be treated as the specific chemical identity for purposes of this part.

"Submitter" means any person submitting a trade secret claim under sections 303(d)(2) and (d)(3), 311, 312 and 313 of Title III.

"Substantiation" means the written answers submitted to EPA by a submitter to the specific questions set forth in this regulation in support of a claim that chemical identity is a trade secret.

"Trade secrecy claim" is a submittal under sections 303(d)(2) or (d)(3), 311, 312 or 313 in which a chemcial identity is claimed as trade secret, and is accompanied by a substantiation in support of the claim of trade secrecy for chemical identity.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it.

"Working day" is any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days; all other days are.

§ 350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR Part 2.

(a) *Applicability of subpart.* Sections 350.1 through 350.40 establish rules governing assertion of trade secrecy claims for chemical identity information collected under the authority of sections 303(d)(2) and (d)(3), 311, 312 and 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, and for trade secrecy or business confidentiality claims for information submitted in a substantiation under sections 303(d)(2) and (d)(3), 311, 312, and 313. This subpart also establishes rules governing petitions from the public requesting the disclosure of chemical identity claimed as trade secret, and determinations by EPA of whether this information is entitled to trade secret treatment. Claims for confidentiality of the location of a hazardous chemical under section 312(d)(2)(F) of Title III are not subject to the requirements of this subpart.

(b) *Priority where provisions conflict.* Where information subject to the requirements of this subpart is also collected under another statutory authority, the confidentiality provisions of that authority shall be used to claim that information as trade secret or confidential when submitting it to EPA under that statutory authority.

(c) *Interaction with Freedom of Information Act procedures.* (1) No trade secrecy or business confidentiality claims other than those allowed in this subpart are permitted for information collected under sections 303(d)(2) and (d)(3), 311, 312, and 313.

(2) Request for access to chemical identities withheld as trade secret under this regulation is solely through this regulation and procedures hereunder,

not through EPA's Freedom of Information Act procedures, set forth at 40 CFR Part 2.

(3) Request for access to information other than chemical identity submitted to EPA under this regulation is through EPA's Freedom of Information Act regulations at 40 CFR Part 2.

§ 350.5 Assertion of claims of trade secrecy.

(a) A claim of trade secrecy may be made only for the specific chemical identity (and other specific identifier) of an extremely hazardous substance under sections 303(d)(2) and (d)(3), a hazardous chemical under sections 311 and 312, and a toxic chemical under section 313.

(b) Method of asserting claims of trade secrecy for information submitted under sections 303(d)(2) and (d)(3).

(1) In submitting information to the local emergency planning committee under sections 303(d)(2) or (d)(3), the submitter may claim as trade secret the specific chemical name (and other specific identifier) of any chemical subject to section 303 reporting.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) A copy of the information which is being submitted under sections 303(d)(2) or (d)(3) to the local emergency planning committee with the chemical identity or identities claimed trade secret clearly labeled "TRADE SECRET." In parentheses after each chemical identity claimed as trade secret should be included the generic class or category of the chemical. The generic class or category for section 303 chemicals is set forth in paragraph (f) of this section.

(ii) A sanitized copy of the document described in paragraph (b)(2)(i) of this section, which is to be identical to that document except that the submitter shall delete the chemical identity or identities claimed as trade secret, leaving the generic class or category of the chemical or chemicals. This copy shall be sent by the submitter to the local emergency planning committee, which shall make it available to the public.

(iii) A substantiation in accordance with § 350.7 for each chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 303 claims shall be sent to the address specified in § 350.16 of this regulation.

(c) Method of asserting claims of trade secrecy for information submitted under section 311.

(1) Submitters may claim as trade secret the chemical identity (and other specific identifier) of any chemical subject to reporting under section 311 in the material safety data sheet or chemical list under section 311.

(2) To assert a claim the submitter shall submit to EPA the following:

(i) A copy of the material safety data sheet or chemical list under section 311. The submitter shall clearly indicate the specific chemical identity claimed as trade secret, and shall label it "TRADE SECRET." The generic class or category of the chemical claimed as trade secret shall be inserted directly below the claimed chemical identity. The generic class or category for chemicals subject to section 311 is set forth in paragraph (f) of this section.

(ii) A sanitized copy of the material safety data sheet or chemical list under section 311. This copy shall be identical to the document in paragraph (c)(2)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret, leaving in place the generic class or category of the chemical claimed as trade secret. This copy shall be sent by the submitter to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public.

(iii) A substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 311 claims shall be sent to the address specified in § 350.16 of this regulation.

(d) Method of asserting claims of trade secrecy for information submitted under section 312.

(1) Submitters may claim as trade secret the chemical identity (and other specific identifier) of any chemical subject to reporting under section 312.

(2) To assert a claim the submitter shall submit to EPA the following:

(i) A copy of the Tier II emergency and hazardous chemical inventory form under section 312. (The Tier I emergency and hazardous chemical inventory form does not require the reporting of specific chemical identity and therefore no trade secrecy claims may be made with respect to that form.) The submitter shall clearly indicate the specific chemical identity claimed as trade secret by checking the box marked "trade secret" next to the claimed chemical identity.

(ii) A sanitized copy of the Tier II emergency and hazardous chemical inventory form. This copy shall be identical to the document in paragraph (d)(2)(i) of this section except that the submitter shall delete the chemical identity or identities claimed as trade secret and include instead the generic class or category of the chemical claimed as trade secret. The generic class or category for chemicals subject to section 312 is set forth in paragraph (f) of this section. The sanitized copy shall be sent by the submitter to the State emergency response commission, local emergency planning committee or the local fire department, whichever entity requested the information.

(iii) A substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 312 claims shall be sent to the address specified in § 350.16 of this regulation.

(e) Method of asserting claims of trade secrecy for information submitted under section 313.

(1) Submitters may claim as trade secret the chemical identity (and other specific identifier) of any chemical subject to reporting under section 313.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) A copy of the toxic release inventory form under section 313 with the information claimed as trade secret clearly identified. To do this, the submitter shall check the box on the form indicating that the chemical identity is being claimed as trade secret. The submitter shall enter the generic classification name and code that is preassigned by 40 CFR 372.42 to that specific toxic chemical.

(ii) A sanitized copy of the toxic release inventory form. This copy shall be identical to the document in paragraph (e)(2)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret. This copy shall be submitted to the State official or officials designated to receive this information.

(iii) A substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 313 claims shall be sent to the address specified in § 350.16 of this regulation.

(f)(1) Method of choosing generic class or category for sections 303, 311 and 312. A facility owner or operator claiming chemical identity as trade secret under sections 303, 311, or 312 should engage in discussion with the state emergency response commission, local emergency planning committee, or local fire department to choose an appropriate generic class or category which suitably reflects the hazards of the release, preventive techniques to guard against the release, adverse health effects associated with the release, and any other significant safety information.

(2) Method of choosing generic class or category for section 313. A facility owner or operator claiming chemical identity as trade secret should choose the generic class or category of the chemical preassigned to the chemical identity in 40 CFR 372.42.

(g) No trade secrecy claim shall be considered to be asserted unless the submittal in which it is made is accompanied by a substantiation under § 350.7. A submittal containing a trade secrecy claim and unaccompanied by a substantiation shall be summarily rejected without further notice to the submitter.

(h) If a specific chemical identity is submitted under Title III to EPA, or to a State emergency response commission, designated State agency, local emergency planning committee or local fire department, without asserting a trade secrecy claim, the chemical identity shall be considered non-trade secret and may be disclosed without notice to the submitter.

(i) A submitter making a trade secrecy claim under this section shall submit to entities other than EPA (e.g., a designated State agency, local emergency planning committee and local fire department) only the sanitized copy of the submission and substantiation.

§ 350.7 Substantiating claims of trade secrecy.

(a) Claims of trade secrecy must be substantiated by providing a specific answer to each of the following questions with the submission to which the trade secrecy claim pertains. Submitters must answer these questions on the form entitled "Substantiation to Accompany Claims of Trade Secrecy" in § 350.27 of this subpart.

(1) Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret.

(2) Have you disclosed this chemical identity to any person not an employee of your company or of a local, State or Federal government entity, who has not signed a confidentiality agreement requiring the person to refrain from disclosing the chemical identity to others?

(3) List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

(4) In order to show the validity of a trade secrecy claim, you must identify your specific use of the substance claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical substance, identifying the product or process in which it is used. (If you use the substance other than as a component of a product or in a manufacturing process, identify the activity where the substance is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity of the substance in publications or other information available to the public (of which you are aware)? Is this linkage known to your competitors? If the answer to either question is yes, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the substance is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

(iv) Explain why your use of the substance would be valuable information to your competitors.

(5) Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss in sales or profitability.

(6) To what extent is the substance available to the public or your competitors in products, articles, or environmental releases? Describe the factors which influence the cost of determining the identity of the substance by chemical analysis of the product, article, or waste which contains the substance (e.g., whether the substance is in pure form or is mixed with other substances), and provide a rough estimate of that cost.

(7) Is the substance, or your use of it, subject to any U.S. patent of which you are aware? If so, identify the patent and explain why—

(i) It does not connect you with the substance, and

(ii) Why it does not protect you from competitive harm.

(b) The answers to the substantiation questions listed in paragraph (a) of this section are to be included with a claimant's trade secret claim, on the form in § 350.27 of this subpart.

(c) An officer of the submitter shall sign the certification on the bottom of the form contained in § 350.27, stating that the information included in the substantiation is true, accurate and complete to the best knowledge and belief of the submitter.

(d) Claims of confidentiality in the substantiation. (1) The submitter may claim as confidential any trade secret or confidential business information contained in the substantiation. Such claims for material in the substantiation are not limited to claims of trade secrecy for chemical identity, but may also include claims of confidentiality for any confidential business information. To claim this material as confidential, the submitter shall clearly designate those portions of the substantiation to be claimed as confidential by marking those portions "CONFIDENTIAL," "PROPRIETARY," or "TRADE SECRET." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(2) An officer of the submitter shall sign the certification stating that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. This certification is combined on the substantiation form in § 350.27 with the certification described in paragraph (c) of this section.

(3) The submitter shall submit to EPA two copies of the substantiation, one of which shall be the unsanitized version, and the other shall be the sanitized version.

(i) The unsanitized copy shall contain all of the information claimed as trade secret or business confidential, marked as indicated in paragraph (d)(1) of this section.

(ii) The second copy shall be identical to the first copy of the substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the substantiation is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or

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category of the chemical claimed as trade secret. This sanitized copy shall be submitted to the State emergency response commission, a designated State agency, the local emergency planning committee and the local fire department, as appropriate.

(e) Supplemental information. (1) EPA may request supplemental information from the requester in support of its trade secret claim, pursuant to § 350.11(a)(i). EPA may specify the kind of information to be submitted, or the submitter may submit any additional detailed information which further supports the information previously supplied to EPA in its initial substantiation, under § 350.7.

(2) The submitter may claim as confidential any trade secret or confidential business information contained in the supplemental information. To claim this material as confidential, the submitter shall clearly designate those portions of the supplemental information to be claimed as confidential by marking those portions "CONFIDENTIAL," "PROPRIETARY," or "TRADE SECRET." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(3) If portions of the supplementary information are claimed confidential, an officer of the submitter shall certify that those portions of the supplemental information claimed as confidential would, if disclosed, reveal the chemical identity being claimed as confidential or would reveal other confidential business or trade secret information.

(4) If supplemental information is requested by EPA and the submitter claims portions of it as trade secret or confidential, then the submitter shall submit to EPA two copies of the supplemental information, an unsanitized and a sanitized version.

(i) The unsanitized version shall contain all of the information claimed as trade secret or business confidential, marked as indicated above in paragraph (e)(2) of this section.

(ii) The sanitized version shall be identical to the unsanitized version except that all of the information claimed as trade secret or confidential shall be deleted.

§ 350.9 Initial action by EPA.

(a) When a claim of trade secrecy, made in accordance with § 350.5 above, is received by EPA, that information is treated as confidential until a contrary determination is made.

(b) A determination as to the validity of a trade secrecy claim shall be initiated upon receipt by EPA of a petition under § 350.15 or may be initiated at any time by EPA if EPA desires to determine whether chemical identity information claimed as trade secret is entitled to trade secret treatment, even though no request for release of the information has been received.

(c) If EPA initiates a determination as to the validity of a trade secrecy claim, the procedures set forth in §§ 350.11, 350.15, and 350.17 shall be followed in making the determination.

(d) When EPA receives a petition requesting disclosure of trade secret chemical identity or if EPA decides to initiate a determination of the validity of a trade secret claim for chemical identity, EPA shall first make a determination that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same facility, or if it is, that the determination upheld the facility's claim of trade secrecy for that chemical identity. If such a prior determination held that the facility's claim for the chemical identity is invalid, EPA shall notify the petitioner that the chemical identity claimed trade secret is the subject of a prior determination concerning the same facility in which it was held that such a claim was invalid, and EPA shall release the claimed chemical identity to the public.

§ 350.11 Review of claim.

(a) *Determination of sufficiency.* When EPA receives a petition submitted pursuant to § 350.15, or if EPA initiates a determination of the validity of a trade secret claim for chemical identity, and EPA has made the determination required in paragraph (d) of § 350.9, then EPA shall determine whether the submitter has presented sufficient support for its claim of trade secrecy in its substantiation. EPA must make such a determination within 30 days of receipt of a petition. A claim of trade secrecy for chemical identity will be considered sufficient if, assuming all of the information presented in the substantiation is true, this supporting information could support a valid claim of trade secrecy. A claim is sufficient if it meets the criteria set forth in § 350.13.

(1) *Sufficient claim.* If the claim meets the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing, by certified mail (return receipt requested), that it has 30 days from the date of receipt of the notice to submit supplemental information in writing in accordance with § 350.7(e), to support the truth of the facts asserted in the substantiation. EPA will not accept any supplemental information, in response to this notification, submitted after the 30-day period has expired. The notification required by this section shall include the address to which supplemental information must be sent. The notification may specifically request supplemental information in particular areas relating to the submitter's claim. The notification must inform the submitter of his right to claim any trade secret or confidential business information as confidential, and shall include a reference to § 350.7(e) of this regulation as the source for the proper procedure for claiming trade secrecy for trade secret or confidential business information submitted in the supplemental information requested by EPA.

(2) *Insufficient claim.* If the claim does not meet the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing of this fact by certified mail (return receipt requested). Upon receipt of this notice, the submitter may either file an appeal of the matter to the Office of General Counsel under paragraph (a)(2)(i) of this section, or, for good cause shown, submit additional material in support of its claim of trade secrecy to EPA under paragraph (a)(2)(ii) of this section. The notification required by this section shall include the reasons for EPA's decision that the submitter's claim is insufficient, and shall inform the submitter of its rights within 30 days of receiving notification to file an appeal with EPA's Office of General Counsel or to amend its original substantiation for good cause shown. The notification shall include the address of the Office of General Counsel, and the address of the office to which an amendment for good cause shown should be sent. The notification shall also include a reference to §§ 350.11(a)(2) (i)–(iv) of this regulation as the source on the proper procedures for filing an appeal or for amending the original substantiation.

(i) *Appeal.* The submittal may file an appeal of a determination of insufficiency with the Office of General Counsel within 30 days of notification of insufficiency, in accordance with the procedures set forth in § 350.15.

(ii) *Good cause.* In lieu of an appeal, the submitter may send additional material in support of its trade secret claim, for good cause shown, within 30 days of receipt of the notification of insufficiency. To do so, the submitter shall notify EPA by letter of its contentions as to good cause, and shall include in that letter the additional supporting material. EPA shall notify the submitter by certified mail if the good cause standard has not been met and

the additional material will not be accepted. The submitter may then seek review in U.S. District Court.

(iii) Good cause is limited to the following:

(A) The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at that time; or

(B) Neither EPA regulations nor other EPA guidance called for such information at the time the substantiation was submitted.

(iv) If EPA determines that the submitter has met the standard for good cause, then EPA shall decide whether the submitter's claim meets the Agency's standards of sufficiency set forth in § 350.13.

(A) If after receipt of additional material for good cause, EPA decides the claim is sufficient, EPA will determine whether the claim presents a valid claim of trade secrecy according to the procedures set forth in paragraph (b) of this section.

(B) If after receipt of additional material for good cause, EPA decides the claim is still insufficient, EPA will notify the submitter by certified mail (return receipt requested) and the submitter may seek review in U.S. District Court within 30 days of notification. The notification required by this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of notification.

(v) If EPA determines that the submitter has not met the standard for good cause, then EPA shall notify the submitter by certified mail (return receipt requested). The submitter may seek review of EPA's decision within 30 days of receipt of notification in U.S. District Court. The notification required in this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of the notification.

(b) *Determination of trade secrecy.* Once a claim has been determined to be sufficient under paragraph (a) of this section, EPA must decide whether the claim is entitled to trade secrecy.

(1) If EPA determines that the information submitted in support of the trade secret claim is true and that the chemical identity is a trade secret, the petitioner shall be notified by certified mail (return receipt requested) of EPA's determination and may bring an action in U.S. District Court within 30 days of receipt of such notice. The notification required in this paragraph shall include the reasons why EPA has determined that the chemical identity is a trade secret and shall inform the petitioner of its right to seek review in U.S. District Court within 30 days of receipt of notification. The submitter shall be notified of EPA's decision by regular mail.

(2) If EPA decides that the information submitted in support of the trade secret claim is not true and that the chemical identity is not a trade secret:

(i) The submitter shall be notified by certified mail (return receipt requested) of EPA's determination and may appeal to the Office of General Counsel within 30 days of receipt of such notice, in accordance with the procedures set forth in § 350.17. The notification required by this paragraph shall include the reasons why EPA has determined that the chemical identity is not a trade secret and shall inform the submitter of its appeal rights to EPA's Office of General Counsel. The notification shall include the address to which an appeal should be sent and the procedure for filing an appeal, as set forth in § 350.17(a) of this regulation.

(ii) The General Counsel shall notify the submitter by certified mail (return receipt requested) of its decision on appeal pursuant to the requirements in § 350.17. If the General Counsel affirms the decision that the chemical identity is not a trade secret, then the submitter shall have 30 days from the date it receives notification of the General Counsel's decision to bring an action in U.S. District Court. If the General Counsel decides that the chemical identity is a trade secret, then EPA shall follow the procedure set forth in paragraph (b)(1) of this section.

§ 350.13 Sufficiency of assertions.

(a) A substantiation submitted under § 350.7 will be determined to be insufficient to support a claim of trade secrecy unless the answers to the questions in the substantiation submitted under § 350.7 assert specific facts to support all of the following conclusions:

(1) The submitter has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures. To support this conclusion, the facts asserted must show all of the following:

(i) The submitter has taken reasonable safeguards to prevent unauthorized disclosure of the specific chemical identity.

(ii) The submitter has not disclosed the specific chemical identity to any person who is not bound by an agreement to refrain from disclosing the information.

(iii) The submitter has not previously disclosed the specific chemical identity to a local, State, or Federal government entity without asserting a confidentiality claim.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person. To support this conclusion, the facts asserted must show all of the following:

(i) *Either:*

(A) Competitors do not know that the substance can be used in the fashion that the submitter uses it, and competitors cannot easily duplicate the specific use of this substance through their own research and development activities; or

(B) Competitors are not aware that the submitter is using the substance in this fashion.

(ii) The fact that the submitter manufactures, imports or otherwise uses the substance in a particular fashion is not contained in any publication or other information source available to competitors or the public.

(iii) The non-confidential version of the submission under this title does not contain sufficient information to enable competitors to determine the specific chemical identity withheld therefrom.

(iv) The information referred to in (a)(3)(i)(A) is of value to competitors.

(v) Competitors are likely to use this information to the economic detriment of the submitter and are not precluded from doing so by a United States patent.

(vi) The resulting harm to submitter's competitive position would be substantial.

(4) The chemical identity is not readily discoverable through reverse engineering. To support this conclusion, the facts asserted must show that competitors cannot reasonably learn the specific chemical identity by analysis of the submitter's products or environmental releases.

(b) The sufficiency of the trade secrecy claim shall be decided entirely upon the information submitted under § 350.7.

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§ 350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.

(a) The public may request the disclosure of chemical identity claimed as trade secret by submitting a written petition requesting such disclosure to the address specified in § 350.16.

(b) The petition shall include:

(1) The name, address, and telephone number of the petitioner;

(2) The name, and address of the company claiming the chemical identity as trade secret; and

(3) A copy of the submission in which the submitter claimed chemical identity as trade secret, with a specific indication as to which chemical identity the petitioner seeks disclosed.

(c) EPA shall acknowledge to the petitioner the receipt of the petition by letter.

(d) Incomplete petitions. If the information contained in the petition is not sufficient to allow EPA to identify which chemical identity the petitioner is seeking to have released, EPA shall notify the petitioner that the petition cannot be further processed until additional information is furnished. EPA will make every reasonable effort to assist a petitioner in providing sufficient information for EPA to identify the chemical identity the petitioner is seeking to have released.

(e) EPA shall make a determination on a petition requesting disclosure, in accordance with section 350.11, and within nine months of receipts of such petition.

§ 350.16 Address to send trade secret claims and petitions requesting disclosure.

All claims of trade secrecy under sections 303(d)(2), (d)(3), 311, 312, and 313 and all public petitions requesting disclosure of chemical identities claimed as trade secret should be sent to the following address:

U.S. Environmental Protection Agency
P.O. Box 70266
Washington, DC 20024–0266

§ 350.17 Appeals.

(a) *Procedure for filing appeal.* A submitter may appeal an EPA determination under § 350.11(a)(2) or (b)(2)(i), by filing an appeal with the Office of General Counsel. The appeal shall be addressed to the Office of General Counsel, Environmental Protection Agency, Contracts and Information Law Branch, Room 3600M, LE–132G, 401 M Street, SW., Washington, DC 20460, and shall contain the following:

(1) A letter requesting review of the appealed decision; and

(2) A copy of the letter containing EPA's decision upon which appeal is requested.

(b) *Appeal from determination of insufficient claim.*

(1) Where a submitter appeals from a finding by EPA under § 350.11(a)(2) that the trade secrecy claim presents insufficient support for a finding of trade secrecy, the Office of General Counsel shall make one of the following determinations:

(i) The trade secrecy claim at issue meets the standards of sufficiency set forth in § 350.13; or

(ii) The trade secrecy claim at issue does not meet the standards of sufficiency set forth in § 350.13.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the claim shall be processed according to § 350.11(a)(1). The General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail. The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, and a statement of the decision on appeal.

(3) If the General Counsel upholds the decision made by the EPA office handling the claim, the submitter may seek review within 30 days in U.S. District Court. The General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail. The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal, and a statement of the submitter's right to seek review in U.S. District Court.

(c) *Finding of no trade secret.* (1) If a submitter appeals from a finding by EPA under § 350.11(b)(ii) that the specific chemical identity at issue is not a trade secret, the Office of General Counsel shall make one of the following determinations:

(i) The assertions supporting the claim of trade secrecy are true and the chemical identity is a trade secret; or

(ii) The assertions supporting the claim of trade secrecy are not true and the chemical identity is not a trade secret.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal. The Office of General Counsel shall send the petitioner the notification required in § 350.11(b)(1).

(3) If the General Counsel upholds the decision of the EPA office which made the trade secret determination, the submitter may seek review in U.S. District Court within 30 days. The General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail (return receipt requested). This notification shall be written, and shall be furnished by certified mail (return receipt requested). The notice shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, the basis for the appeal determination, that it constitutes final Agency action concerning the chemical identity trade secret claim, and that such final Agency action may be subject to review in U.S. District Court. With respect to the release of the trade secret chemical identity EPA shall include in this notification notice of intent to release chemical identity, as required by § 350.18.

§ 350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.

(a) Where EPA's Office of General Counsel makes a determination under § 350.17(c)(3), that chemical identity claimed as trade secret is not entitled to trade secret protection, EPA shall furnish the notice set forth in paragraph (c) of this section to the submitter claiming the chemical identity as trade secret.

(b) Where a submitter fails to seek review within Federal District Court within 20 days of receiving notification of an EPA determination under §§ 350.11(a)(iv)(B), or 350.11(a)(2)(v) of this regulation, EPA may furnish notice of intent to disclose the claimed trade secret chemical identity within 10 days by furnishing the submitter with the notice set forth in paragraph (c) of this section by certified mail (return receipt requested).

(c) EPA shall furnish notice of intent to release chemical identity claimed trade secret by sending the following notification to submitters, under the circumstances set forth in paragraphs (a) and (b) of this section. The notification shall state that EPA will make the chemical identity available to the public on the tenth working day after the date of the submitter's receipt of written notice (or on such later date as the Office of General Counsel may establish), unless the Office of General Counsel has first been notified of the submitter's commencement of an action

in Federal court to obtain judicial review of the determination at issue, and to obtain preliminary injunctive relief against disclosure. The notice shall further state that if such an action is timely commenced, EPA may nonetheless make the information available to the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or whenever it appears to Office of General Counsel, after reasonable notice to the business, that the business is not taking appropriate measures to obtain a speedy resolution of the action.

§ 350.19 Provision of information to States.

(a) Any State may request access to trade secrecy claims, substantiations, supplemental substantiations, and additional information submitted to EPA for good cause. EPA shall release this information, even if claimed confidential, to any State requesting access if:

(1) The request is in writing;

(2) The request is from the Governor of the State; and

(3) The State agrees to safeguard the information with procedures equivalent to those which EPA uses to safeguard the information.

(b) The Governor of a State which receives access to trade secret information under this section may disclose such information only to State employees.

§ 350.21 Adverse health effects.

The Governor or State emergency response commission shall identify the adverse health effects associated with each of the chemicals claimed as trade secret and shall make this information available to the public. The material safety data sheets submitted to the State emergency response commissions may be used for this purpose.

§ 350.23 Disclosure to authorized representatives.

(a) Under section 322(f) of the Act, EPA possesses the authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to trade secret or confidential treatment under this part. Such authority may be exercised only in accordance with paragraph (b) of this section.

(b) (1) A person under contract or subcontract to EPA or a grantee who performs work for EPA in connection with Title III or regulations which implement Title III may be considered an authorized representative of the United States for purposes of this § 350.23. Subject to the limitations in this § 350.23(b), information to which this section applies may be disclosed to such a person if the EPA program office managing the contract, subcontract, or grant first determines in writing that such disclosure is necessary in order that the contractor, subcontractor or grantee may carry out the work required by the contract, subcontract or grant.

(2) No information shall be disclosed under this § 350.23(b) unless this contract, subcontract, or grant in question provides:

(i) That the contractor, subcontractor or the grantee and the contractor's or subcontractor's employees shall use the information only for the purpose of carrying out the work required by the contract, subcontract, or grant, and shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor, subcontractor or grantee for the performance of the work required under the contract, subcontract or grant, or upon completion of the contract, subcontract or grant;

(ii) That the contractor or subcontractor shall obtain a written agreement to honor such terms of the contract or subcontract from each of the contractor's or subcontractor's employees who will have access to the information, before such employee is allowed such access; or that the grantee who has access to the information will sign a written agreement to honor the terms of the grant; and

(iii) That the contractor, subcontractor or grantee acknowledges and agrees that the contract, subcontract or grant provisions concerning the use and disclosure of business information are included for the benefit of, and shall be enforceable by, both EPA and any covered facility having an interest in information concerning it supplied to the contractor, subcontractor or grantee by EPA under the contract or subcontract or grant.

(3) No information shall be disclosed under this § 350.23(b) until each covered facility has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than 5 working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor or grantee, the contract, subcontract or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the **Federal Register** or may be sent to individual facilities.

(4) The EPA program office shall prepare a record of disclosures under this 350.23(b). The EPA program office shall maintain the record of disclosure and the determination of necessity prepared under paragraph (b)(1) of this section for a period of not less than 36 months after the date of the disclosure.

§ 350.25 Disclosure in special circumstances.

Other disclosure of specific chemical identity may be made in accordance with 40 CFR 2.209.

§ 350.27 Substantiation form to accompany claims of trade secrecy.

(a) The form in paragraph (b) of this section must be completed and submitted as required in § 350.7(a).

(b) Substantiation form to accompany claims of trade secrecy.

BILLING CODE 6560-50-M

EPA	Substantiation to Accompany Claims of Trade Secrecy Under Title III	Form Approved OMB No. xxxx-xxxx Approval Expires xx-xx-xx

Instructions: Please answer the following questions in the space provided. Type all responses. If you need more space to answer a particular question, please use additional sheets. If you use additional sheets, be sure to include the number and (if applicable) subpart of the question being answered and to write your facility's Dun & Bradstreet Number on the lower right-hand corner of each sheet.

You must submit this form to EPA in sanitized and unsanitized versions, along with sanitized and unsanitized copies of the submittal that gives rise to this trade secret claim. The unsanitized version of this form contains specific chemical identity and CAS number and may contain other trade secret or confidential business information, which should be clearly labeled as such. Failure to claim other information trade secret or confidential will make that information publicly available. In the sanitized version of this form, the specific chemical identity and CAS number must be replaced with the chemical's generic class or category and any other trade secret or confidential business information deleted. You should also send sanitized copies of the submittal and this form to relevant State and local authorities. Failure to answer each question on this form will make your submittal publicly available.

Is this form sanitized or unsanitized? ☐ Sanitized ☐ Unsanitized

Facility Identification	Title III Section (Check one only)
Name	☐ 303 ☐ 311 ☐ 312 ☐ 313
Street Address	CAS Number (Unsanitized Version Only) ☐☐☐☐☐☐-☐☐-☐
City, State, and ZIP Code	Specific Chemical Identity (Unsanitized Version Only)
Dun & Bradstreet Number ☐☐-☐☐☐-☐☐☐☐	Generic Class or Category

(1) Describe the specific measures taken to safeguard the confidentiality of the chemical identity claimed as trade secret.

(2) Have you disclosed this chemical identity to any person not an employee of your company or of a local, State or Federal government entity, who has not signed a confidentiality agreement requiring them to refrain from disclosing the chemical identity to others?

☐ Yes ☐ No

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(3) List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

Government Entity	Confidentiality Claim Asserted		Confidentiality Claim Denied	
	Yes	No	Yes	No

(4) In order to show the validity of a trade secrecy claim, you must identify your specific use of the substance claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(a) Describe the specific use of the chemical substance, identifying the product or process in which it is used. (If you use the substance other than as a component of a product or in a manufacturing process, identify the activity where the substance is used.)

(b) Has your company or facility identity been linked to the specific chemical identity of the substance in publications or other information available to the public (of which you are aware)? ☐ Yes ☐ No

Is this linkage known to your competitors? ☐ Yes ☐ No or Not Applicable

If the answer to either question is yes, explain why this knowledge does not eliminate the justification for trade secrecy.

EPA Form xxxx (xx-xx)

EPA	Substantiation to Accompany Claims of Trade Secrecy Under Title III	Form Approved OMB No. xxxx-xxxx Approval Expires xx-xx-xx

(c) If this use of the substance is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the form.

(d) Explain why your use of the substance would be valuable information to your competitors.

(5) Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss of sales or profitability.

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EPA	Substantiation to Accompany Claims of Trade Secrecy Under Title III	Form Approved OMB No. xxxx-xxxx Approval Expires xx-xx-xx

(6) To what extent is the substance available to the public or your competitors in products, articles, or environmental releases?

Describe the factors which influence the cost of determining the identity of the substance by chemical analysis of the product, article, or waste which contains the substance (e.g., whether the substance is in pure form or is mixed with other substances), and provide a rough estimate of that cost.

(7) Is your use of this substance subject to any U.S. patent? ☐ Yes ☐ No

If so, identify the patent and explain why (A) it does not connect you with the substance and (B) why it does not protect you from competitive harm.

Patent Number: _____

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential (if any) would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. I acknowledge that I may be asked by the Environmental Protection Agency to provide further detailed factual substantiation relating to this claim of trade secrecy, and certify that to the best of my knowledge and belief such information is available. I understand that if it is determined by the Administrator of E.P.A. that this trade secret claim is frivolous, I may be liable for a penalty of up to $25,000 per claim.

Signature and Date	Name and Title	Telephone

EPA Form xxxx (xx-xx)

BILLING CODE 6560-50-C

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Subpart B—Disclosure of Trade Secret Information to Health Professionals

§ 350.40 Disclosure to health professionals.

(a) *Definitions.* "Medical emergency" means any unforeseen condition which a health professional would judge to require urgent and unscheduled medical attention. Such a condition is one which results in sudden and/or serious symptom(s) constituting a threat to a person's physical or psychological well-being and which requires immediate medical attention to prevent possible deterioration, disability, or death.

(b) The specific chemical identity, including the chemical name of a hazardous chemical, extremely hazardous substance, or a toxic chemical, is made available to health professionals, in accordance with the applicable provisions of this section.

(c) *Diagnosis or Treatment by Health Professionals.* In non-emergency situations, an owner or operator of a facility which is subject to the requirements of sections 311, 312, and 313, shall, upon request, provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional if:

(1) The request is in writing;

(2) The request describes why the health professional has a reasonable basis to suspect that:

(i) The specific chemical identity is needed for purposes of diagnosis or treatment of an individual,

(ii) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(iii) Knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

(3) The request contains a confidentiality agreement which includes:

(i) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(ii) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (c)(2) of this section and will not release the information under any circumstances, except as authorized by the terms of the confidentiality agreement or by the owner or operator of the facility providing such information.

(4) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(5) Following receipt of a written request, the facility owner or operator to whom such request is made shall provide the requested information to the health professional promptly.

(d) *Preventive Measures and Treatment by Local Health Professionals.* An owner or operator of a facility subject to the requirements of sections 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, epidemiologist, or nurse) if:

(1) The requester is a local government employee or a person under contract with the local government;

(2) The request is in writing;

(3) The request describes with reasonable detail one or more of the following health needs for the information:

(i) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(ii) To conduct or assess sampling to determine exposure levels of various population groups.

(iii) To conduct periodic medical surveillance of exposed population groups.

(iv) To provide medical treatment to exposed individuals or population groups.

(v) To conduct studies to determine the health effects of exposure.

(vi) To conduct studies to aid in the identification of chemicals that may reasonably be anticipated to cause an observed health effect.

(4) The request contains a confidentiality agreement which includes:

(i) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(ii) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (d)(3) of this section and will not release the information under any circumstances except as may otherwise be authorized by the terms of such agreement or by the person providing such information.

(5) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(6) Following receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the local health professional.

(e) *Medical Emergency.* (1) An owner or operator of a facility which is subject to the requirements of sections 311, 312, or 313 must provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if the treating physician or nurse determines that:

(i) A medical emergency exists as to the individual or individuals being diagnosed or treated;

(ii) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and,

(iii) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

(2) Owners or operators of facilities must provide the specific chemical identity to the requesting treating physician or nurse immediately following the request, without requiring a written statement of need or a confidentiality agreement in advance.

(3) The owner or operator may require a written statement of need and a written confidentiality agreement as soon as circumstances permit. The written statement of need shall describe in reasonable detail the factors set forth in paragraph (e)(1) of this section. The written confidentiality agreement shall be in accordance with paragraphs (c)(3) and (f) of this section.

(f) *Confidentiality agreement.* The confidentiality agreement authorized in paragraphs (c)(3), (d)(4) and (e)(3) of this section:

(1) May restrict the use of the information to the health purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and

(3) May not include requirements for the posting of a penalty bond.

(g) Nothing in this regulation is meant

to preclude the parties from pursuing any non-contractual remedies to the extent permitted by law, or from pursuing the enforcement remedy provided in section 325(e) of Title III.

(h) The health professional receiving the trade secret information may disclose it to EPA only under the following circumstance: the health professional must believe that such disclosure is necessary in order to learn from the Agency additional information about the chemical necessary to assist him in carrying out the responsibilities set forth in paragraphs (c), (d), and (e) of this section. Such information comprises facts regarding adverse health and environmental effects.

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Part III

Environmental Protection Agency

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Availability of Toxicological Profiles; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-2; FRL-3269-7]

Availability of Toxicological Profiles

AGENCIES: Department of Health and Human Services (DHHS): Agency for Toxic Substances and Disease Registry (ATSDR); and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for the Agency for Toxic Substances and Disease Registry (ATSDR) of DHHS and EPA with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance previously included on the first priority list of 100 chemicals. The list identified the first 100 chemicals which both Agencies determined posed the most significant potential threat to human health. This list was published in the **Federal Register** on April 17th, 1987 (52 FR 12866) as required by SARA section 110.

This notice announces the expected availability dates of the first 25 draft toxicological profiles for review and comment.

Availability

The following draft toxicological profiles are expected to be publicly available by the date indicated:

Date/Profile	CAS number
October 17, 1987	
Benzo(a)anthracene	56-55-3
Benzo(a)pyrene	50-32-8
Beryllium	7440-41-7
Chloroform	67-66-3
Chromium	7440-47-3
Chrysene	218-01-9
Dibenzo(a,h)anthracene	53-70-3
Heptachlor/Heptachlor epoxide	76-44-8/1024-57-3
Nickel	7440-02-0
N-Nitrosodiphenylamine	86-30-6
October 29, 1987	
Aldrin/dieldrin	309-00-2/60-57-1
Arsenic	7440-38-2
Benzo(b)fluoranthene	205-99-2
PCBs—Aroclor 1260, 1254, 1248, 1242, 1232, 1221, 1016	11096-82-5, 11097-69-1, 12672-29-6, 53469-21-9, 11141-16-5, 11104-28-2, 12674-11-2
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6
November 5, 1987	
Benzene	71-43-2
Bis(2-ethylhexyl)phthalate	117-81-7
Cadmium	7440-43-9
1,4-Dichlorobenzene	106-46-7
Methylene chloride	75-09-2
November 30, 1987	
Cyanide	57-12-5
Lead	7439-92-1
Tetrachloroethylene	127-18-4
Trichloroethylene	79-01-6
Vinyl chloride	75-01-4

A full 90-day public comment period will be provided for each profile, starting from the actual release date. The close of the comment period for each draft profile will be indicated on the front of each profile.

Requests for draft toxicological profiles should be sent to: Ms. Georgi Jones, Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee 28 South, 1600 Clifton Rd., Atlanta, GA 30333.

Specify the profiles you wish to review. One copy of each profile requested will be forwarded, free of charge, as they become available. In the case of undue delays, requestors will be notified.

Five copies of all comments should be sent to Ms. Jones at the above address by the end of the comment period. All written comments and the draft profiles will be available for public inspection at the Agency for Toxic Substances and Disease Registry (ATSDR), Building 28 South, Room 1103, 4770 Buford Highway, NE., Chamblee, GA, from 8 am to 4:30 pm, Monday through Friday, except legal holidays. Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-2.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund, 42 U.S.C. 9601 *et seq.).*

Section 110 of SARA amends section 104(i) of CERCLA by establishing requirements for the preparation of: (1) Lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

In compliance with section 104(i)(2)(A) of CERCLA, ATSDR and EPA published on April 17, 1987 (52 FR 12866) the first priority list of 100 hazardous substances. This priority list of 100 was further broken down into four groups of 25 chemicals. The first group of 25 was to be the subject of the second phase of the requirements, i.e., the development of the first set of toxicological profiles. Section 104(i)(3) of CERCLA spells out the content of these profiles and the timetable by which they must be developed. Profiles on at least substances on the first priority list were to be completed within one year of the enactment of SARA (by October 17, 1987). The remaining seventy-five are to be completed at a rate of at least twenty-five per year with the total 100 completed within four years after the enactment of the SARA amendments. Revision and republication is mandated as necessary but no less often than once every three years.

Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. The Agencies' intention is that this information be used to identify the key toxicological testing needs that when filled will improve our ability to define significant human exposure levels.

The toxicological profiles are to be provided to the States and made available to the public. The profiles are to be prepared in accordance with the guidelines developed by ATSDR and EPA. These guidelines were published along with the priority list of 100 in the April 17, 1987 **Federal Register** Notice (52 FR 12870).

This current notice announces the projected availability dates of the first 25 draft toxicological profiles. The documents have undergone extensive internal review and have been subject to scientific and technical peer review by outside experts. We are now announcing their availability and encouraging public participation and comment on the further development of these profiles. Although the profiles will not be completed by the October 17, 1987 deadline, we believe that the extra time given to peer review and public

review and comment is important to the development of quality profiles of scientific merit.

Although we are reasonably confident that the key studies for each of the 25 substances were considered during the profile development process, this **Federal Register** notice solicits any significant studies, including unpublished data, which may aid in the revision of these draft profiles.

II. Levels of Significant Human Exposure

The setting of specific levels of significant human exposure has presented a unique set of problems. The significance of a specific level of a hazardous substance depends on the context in which that level is evaluated. For example, a low level that may be insignificant with respect to causing acute, immediately debilitating symptoms may be highly significant with respect to causing gradual, chronic effects over a longer term. Since these profiles are intended for use by a diverse group of people who have different sutiations in which to interpret the significance of specific levels, it was considered appropriate at this time to describe the range of exposures over which effects may occur (where date are available), and to allow the user to make determinations as to which type of effect is significant in any particular instance. A format for graphically displaying the levels of significant human exposure has been developed and is used in the profiles to present the ranges over which effects may be observed.

We encourage public comment and recommendations on this specific issue.

III. Solicitation of Public Comment

We are soliciting public comment on all phases of the development of the toxicological profiles. A previous **Federal Register** notice, published on April 17, 1987 (52 FR 12866) solicited comment on the first priority list of hazardous substance. We are currently reviewing those comments and are evaluating the impact that those comments may have on the priority list and the methods used in its development.

As the first 25 toxicological profiles become available in draft form, we are eager to provide them to the States, industry, public health professionals, scientists and the general public. We welcome comment and feedback on the content of the profiles; the format and scope of the documents; the process used in the development of the levels of significant human exposure and the overall process used in the development of the profiles.

These are specific items that we would like to draw to the attention of the reader and would strongly encourage as candidates for close attention during the comment period.

A. Public Health Statement

The draft profiles include a public health statement which is intended to provide the lay public with a concise statement of the general health risks associated with the chemical of concern. The summary as originally planned should be able to stand alone. If removed from the rest of the document, it should still be capable of conveying to the public the substantive health concerns associated with the substance. We are also considering the development of more abbreviated versions of the public health statements and are evaluating a number of different formats. This notice specifically invites comments on the existing public health effects statements in the draft profiles and solicits recommendations for alternative approaches.

B. Data/Studies Used in the Development of the Profiles

In general, and for each chemical-specific profile, have the appropriate studies been used in the development of these documents? Our concern here is that we capture the critical, or "key", studies but not miss other data that may be important in the valid evaluation of the toxicological profile chemicals.

C. Format and Content of the Profiles

The draft profiles represent our best effort to provide the information required by section 104(i)(3) of CERCLA in the most useful format for the various identified users of the profiles, given the constraints of the tight timeframe. Every effort has been made to define sections clearly and to format the documents in such a way that they can be used as resource documents by many different audiences. We specifically request comment on the format and content of the initial set of profiles, including how the format might be modified for subsequent sets of profiles.

D. Levels of Significant Human Exposure

What is the most useful way of presenting this type of information? For this first generation of profiles we have selected a graphic presentation that reflects a "range" of values that covers both upper and lower bounds of effect levels. Is this more useful than a single number? Are there other ways of presenting this type of information that would be more useful to the eventual user?

E. Identification of Significant Data Gaps

The process used to develop the draft profiles has resulted in the identification of the full range of health effects data gaps associated with each chemical. However, depending on individual circumstances some subset of the identified data gaps may be essential in determining levels of significant exposure, while other data gaps may be less immediate. ATSDR, EPA, and the National Toxicology Program (NTP) have been exploring ways to identify the critical data elements that are needed to establish significant human exposure levels. This notice specifically requests comment and suggestions for approaching this phase of the toxicological profile process.

For The Agency For Toxic Substances and Disease Registry.

Dated: September 30, 1987.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

For The Environmental Protection Agency.

Dated: October 7, 1987.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

[FR Doc. 87-23920 Filed 10-14-87; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 370

Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 370

[FRL 3251-9]

Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 312 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law on October 17, 1986, required the Administrator to publish a uniform format for emergency and hazardous chemical inventory forms within three months. Under sections 311 and 312 of SARA, facilities required to prepare or have available a material safety data sheet (MSDS) under the Occupational Safety and Health Act (OSHA) and its implementing regulations must submit the MSDS and the inventory forms to local and State officials. These reporting provisions give public access to information on hazardous chemicals present in the local community for a wide variety of uses including emergency response and environmental and public health planning priorities. Today, EPA publishes a revision of the form for inventory reporting based on public comment received on the January 27, 1987, proposal and the July 14, 1987, notice reopening the comment period on several issues. EPA is also publishing the final rules for reporting under sections 311 and 312.

EFFECTIVE DATES: This rule becomes effective on October 15, 1987. Other dates relevant to this rule include the following:

1. Initial submission of material safety data sheets or alternative list: October 17, 1987 (or 90 days after the owner or operator of a facility is required to prepare or have available an MSDS for a hazardous chemical under OSHA regulations, whichever is later: For facilities newly subject to OSHA MSDS requirements in May 1988, MSDS or alternative lists will be due in August 1988).

2. Initial submission of the inventory form containing Tier I information: March 1, 1988 (or March 1 of the first year after a facility is required to prepare or have available an MSDS for that hazardous chemical under OSHA regulations, whichever is later: For facilities newly subject to OSHA MSDS requirements in May 1988, Tier I information must be submitted annually beginning March 1, 1989).

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Brody, Program Analyst, Preparedness Staff, Office of Solid Waste and Emergency Response, WH-562A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Chemical Emergency Preparedeness Program Hotline at 1-(800) 535-0202, or in Washington, DC at (202) 479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline.

I. Introduction
- A. Statutory Authority
- B. Background
  - 1. Superfund Amendments and Reauthorization Act of 1986 (SARA)
  - 2. Title III
  - 3. Subtitle B

II. Summary of the Public Comments on the Proposed Rule
III. Summary of Revisions to the Proposed Rule
IV. Response to Major Public Comments
- A. Definitions
- B. Reporting Thresholds
- C. Submission of Material Safety Data Sheets
- D. Hazard Categories
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  - 1. Subtitle A — Emergency Planning
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- B. CERCLA Reporting Requirements

VI. Effective Date
VII. Regulatory Analyses
- A. Regulatory Impact Analysis
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VIII. Submission of Reports

I. Introduction

A. Statutory Authority

These regulations are issued under Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), ("SARA" or "the Act"). Title III of SARA is known as the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

1. Superfund Amendments and Reauthorization Act of 1986 (SARA)

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA), which revises and extends the authorities established under the Comprehensive Environmental Response, Compensation and Libility Act of 1980 (CERCLA). Commonly known as "Superfund," CERCLA provides authority for federal clean-up of sites where hazardous materials have been deposited or released and for response to releases of hazardous substances or other contaminants. Title III of SARA establishes new authorities for emergency planning and preparedness, community right-to-know reporting, and toxic chemical release reporting.

2. Title III

Title III of SARA, also known as the Emergency Planning and Community Right-to-Know Act of 1986, is intended to encourage and support emergency planning efforts at the State and local levels and to provide citizens and local governments with information concerning potential chemical hazards present in their communities.

Title III is organized into three subtitles. Subtitle A establishes the framework for State and local emergency planning. Final rules for facilities subject to Subtitle A requirements were published on April 22, 1987. 52 FR 13378. Subtitle B provides the mechanism for community awareness concerning hazardous chemicals present in the locality. This information is critical for effective local contingency planning. Subtitle B includes requirements for the submission of material safety data sheets and emergency and hazardous chemical inventory forms to State and local governments as well as the submission of toxic chemical release forms to the States and EPA. Subtitle C contains general provisions concerning trade secret protection, enforcement, citizen suits, and public availability of information.

3. Subtitle B

Subtitle B of Title III is primarily concerned with providing information to appropriate local, State, and federal officials on the type, amount, location, use, disposal, and release of chemicals at certain facilities.

Subtitle B contains three reporting provisions. Section 311 requires the owner or operator of facilities subject to the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act (15 U.S.C. 651 *et seq.* as amended, 52 FR 31852 (August 24, 1987)) to submit material safety data sheets (MSDS), or a list of the chemicals for which the facility is required to have an MSDS, to the local emergency planning committees, State emergency response commissions, and local fire departments. The facilities are required to submit the MSDS or alternative list by October 17, 1987, or three months after the facility is required to prepare or have an MSDS for a hazardous chemical under OSHA regulations, whichever is later. Information collection requirements are approved by Office of Management and Budget under control number 2050–0072.)

Under section 312, owners and operators of facilities that must submit an MSDS under section 311 are also required to submit additional information on the hazardous chemicals present at the facility. Beginning March 1, 1988, and annually thereafter, the owner or operator of such a facility must submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these chemicals at the facility. Section 312(a) requires owners or operators of such facilities to submit the inventory form to the appropriate local emergency planning committee, State emergency response commission, and local fire department on or before March 1, 1988 (or March 1 of the first year after the facility first becomes subject to the OSHA MSDS requirements for a hazardous chemical) and annually thereafter on March 1.

Section 312 specifies that there be two reporting "tiers" containing information on hazardous chemicals at the facility in different levels of detail. "Tier I," containing general information on the amount and location of hazardous chemicals by category, is submitted annually. "Tier II," containing more detailed information on individual chemicals, is submitted upon request.

A proposed rule setting forth sections 311 and 312 reporting requirements and forms for inventory reporting under section 312 was published on January 27, 1987. 52 FR 2836. Additionally, on July 14, 1987, EPA announced reopening of the comment period on three issues raised during the initial rulemaking and held a public meeting on those issues. 52 FR 26357 (July 14, 1987). Today's rule finalizes the reporting requirements and the inventory forms, which have been revised based on public comment.

Section 313 requires that certain facilities with ten or more employees that manufacture, process, or use a "toxic chemical" in excess of a statutorily-prescribed quantity submit annual information on the chemical and releases of the chemical into the environment. This information must be submitted to EPA and to the appropriate State offices annually beginning on July 1, 1988. EPA is required under section 313(i) to establish a national toxic chemical inventory database for the management of these data. A proposed rule setting forth section 313 reporting requirements and a form for submission of such reports was published on June 4, 1987, 52 FR 21152.

The public has access to most Title III information at locations designated by the Administrator, the State emergency response commission, or local emergency planning committee, as appropriate.

II. Summary of the Public Comments on the Proposed Rule

A total of 241 letters was received on the proposed rule setting forth sections 311 and 312 requirements and an additional 94 letters following the notice of the reopening of the comment period on July 14, 1987. There were a number of comments requesting clarification of terms and exemptions provided in the rule. Specific comments focused on the definition of "facility" and the need for clarification of the exemptions that are applicable to the definition of "hazardous chemical," particularly the exemptions related to research laboratories, household products, and solids.

There were numerous comments on the proposed reporting threshold; these focused on the appropriate length of phase-in, appropriate reporting threshold quantities in each year, and the threshold for the extremely hazardous substance list. Many related comments identified the need for funds to implement these reporting requirements.

Another issue commonly addressed by commenters was the need to reduce the number of physical and health hazard categories by which the MSDS list and Tier I and Tier II submissions are compiled. There were also comments on the design and content of the reporting forms.

Other major issues were the need for integration of the federal reporting requirements into existing State and local programs and flexibility for effective implementation by State and local governments.

Other comments addressed information management, the economic analysis and small business analysis, confidentiality of information, and enforcement and penalties.

III. Summary of Revisions to the Proposed Rule

This section describes the significant changes that EPA has made to sections 311 and 312 reporting regulations based upon the public comments on the proposed rule. The following summary, which is organized according to the sections of the rule, describes each of the changes.

Section 370.2 Definitions

Under section 311, an alternative to submitting the actual MSDS for each "hazardous chemical" at a facility is the submission of a list of such chemicals, grouped in "categories of health and physical hazards" as set forth under OSHA or its implementing regulations. Section 312 specifies that these categories should also be used in Tier I inventory reporting. EPA is authorized under these sections to alter these hazard categories.

The proposed rule required use of the OSHA hazard classification but solicited comment on several other options for establishing hazard categories. Based on the numerous comments requesting modifications of the categories in the proposed rule, EPA has consolidated the 23 OSHA hazard categories into five categories, as discussed in more detail in Section IV.D. of this preamble.

A definition for "hazard category" has been added to indicate the hazard classification to be used for Tier I and Tier II reporting and when the alternative list of chemicals rather than MSDS is submitted under § 370.21 of the rule.

Definitions of "extremely hazardous substance" and "threshold planning quantity" (TPQ) have also been added because of the reference to these terms in the minimum threshold regulation. Additionally, "present in the same form and concentration as a product packaged for distribution and use by the general public" is defined to help clarify

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the "household product" exemption. EPA also eliminated the reference to 40 CFR Part 300 for additional definition of terms, since all necessary terms are now defined in Parts 350 and 370. Finally, EPA eliminated the definition on "Act" because that term does not appear elsewhere in the regulations.

Section 370.20 Applicability

Several changes were made to this section based on public comment. First, EPA has revised the threshold levels for reporting, as discussed in more detail in Section IV.B. of this preamble. EPA has revised the rule to raise the threshold in the second year and to establish a threshold of 500 pounds or the TPQ, whichever is less, for extremely hazardous substances. (For list of extremely hazardous substances, see 52 FR 13378 (April 22, 1987), to be codified at 49 CFR Part 355.) Section 370.20 of the final rule has been revised to reflect these changes.

Several commenters requested clarification on whether the threshold applies to the calendar year or to the year preceding October 17. The final rule was modified to delete reference to year in order to make clear that MSDS reporting on October 17, 1987, is to be made for chemicals present at or above the threshold on that date. With regard to inventory reporting, § 370.25 has been modified to make clear that reporting is for the preceding calendar year as specified under Section 312. In addition, the rule has been clarified by setting out the threshold as they apply to MSDS reporting, inventory reporting, and facilities that become subject to these requirements after October 17, 1987.

Section 370.21 MSDS Reporting

In response to a request for clarification regarding reporting of mixtures under the MSDS list reporting, § 370.21(b)(iii) has been modified to indicate that the hazardous components of mixtures do not need to be reported on the list if the mixture itself is reported.

The title of subsection (c) of § 370.21 has been changed from "update reporting" to "supplemental reporting" to reflect more accurately the content. This paragraph has also been modified to require that revised MSDS be submitted not only to the committee as indicated in the proposed rule, but also to the commission and the fire department. This change was made to ensure accuracy of the files held by these entities.

Section 370.21(d) has been revised to clarify that facilities must respond to all requests for MSDS, including requests for MSDS below the threshold and MSDS for listed chemicals.

Section 370.25(c) of the final rule indicates that the Tier II form must be submitted to the commission, the committee, and the fire department upon the request of such entities. In the proposed rule, the commission was omitted erroneously.

Section 370.28 Mixtures

Section (a) has been modified to indicate that reporting of mixtures under §§ 370.21 and 370.25 should be consistent "where practicable." This was done because one commenter pointed out that consistency in reporting may not always be possible; e.g., the percentage of the hazardous components may not be known.

A new section (b) was added to describe the calculation of the quantity of mixtures. If the reporting is on each component that is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) must be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical therein. If the reporting is on the mixture itself, the total quantity of the mixture must be reported.

Sections 370.40 and 370.41 Inventory Forms

As discussed in Section IV.I. of this preamble, several commenters sought clarification on the extent to which State or local forms similar in purpose and content could be used in lieu of the form published under section 312. Because facilities will need some certainty in meeting their reporting obligations, EPA is clarifying the rule to indicate that the forms published today are to be considered uniform formats for reporting. However, State or local governments may add supplemental questions. New §§ 370.40(a) and 370.41(a) address this issue in the final rule. This section has also been revised to correct an error in the proposed rulemaking that indicated that the Tier II form must be submitted to EPA. Section 370.41 in today's rule correctly indicates that the Tier II form must be submitted to the SERC, LEPC, and fire department as required in § 370.25(c).

In response to several comments concerning the average daily amount, EPA has changed the method of calculating this figure. The commenters' primary concern was the EPA's proposed method of calculation would create misleadingly low figures for chemicals that are present on-site for only short periods of time. On the final form, average daily amount is to be calculated by dividing the total of all daily weights by the number of days and chemical was present on the site. To reflect the amount more accurately, however, EPA will require facilities to report the number of days used in the calculation.

Although several commenters requested that EPA eliminate the requirement for a 24-hour emergency contact, the Agency has retained this requirement with minor changes, as discussed in Section IV.H. of this preamble. The final forms for both Tier I and Tier II have space for two emergency contacts and contain amended instructions that allow the naming of an office, instead of an individual, as a contact.

After considering numerous comments about the certification statement, EPA has deleted the word "immediately" from the proposed Tier I and Tier II certification statements. In its present form, the statement indicates that the person signing has read all the information in the inventory and has been responsible in a supervisory capacity—directly or indirectly—for the gathering of the information.

EPA made several other minor changes in both the Tier I and Tier II forms. The revised forms include the correct 6–2–1 block format for CAS numbers and a 4-block format for SIC codes. The revised instructions include an explanation of where a facility can find its Dun & Bradstreet number, a clarification of the reporting of CAS numbers of mixtures, a statement of the thresholds promulgated by the regulations, and a clarification that those thresholds apply to the calendar year preceding the reporting deadline. Additionally, the instructions for the forms have been modified to differentiate between Title III and OSHA exemption, including the supplementary OSHA exemptions that apply under the newly revised hazard communication standard.

In response to numerous comments regarding the location identification system on the Tier II form, the Agency has clarified that the building and lot be indicated, at a minimum, and has added the option of providing a brief narrative statement of location to the site plan and site co-ordinates options. EPA has removed the 3-space site co-ordinate abbreviation and added a blank line to provide more space for this narrative description. Minor changes made to the Tier II form also include more space for the chemical name. In addition, code 6 of the temperature and pressure codes ("less than ambient temperature") was revised slightly to avoid overlap

between code 6 and code 7 ("cryogenic conditions").

IV. Reponses to Major Public Comments

A document summarizing the comments and providing EPA's responses to all the public comments is available in the public docket to this final rule. The major issues raised by the commenters and the Agency's response to them are described below.

A. Definitions

1. "Facility"

Several commenters requested a clarification of the general definition of "facility" for purposes of Title III. Commenters requested that the term be limited to manufacturing, distribution, and storage facilities, or to operations required to prepare or have available an MSDS rather than the whole site. Other commenters asked the Agency to clarify whether the term excludes motor vehicles, rolling stock, and aircraft. Additional comments questioned whether the term "facility" includes non-adjacent warehouses and contractors who bring hazardous materials onto a plant site.

In both the proposed and final rules, EPA has codified the definition of "facility" provided in section 329 of SARA. Section 370.2 provides that, for the purposes of these regulations, "facility" means all buildings and other stationary items located on contiguous property under common ownership or control. Certain non-stationary items (motor vehicles, rolling stock, and aircraft) are also considered facilities, but only for the purposes of emergency release notification under section 304 of the Act (codified at 40 CFR 355.40). Thus, transportation vehicles are not "facilities" for purposes of this rule. ("Transportation-related facilities" under Title III are further defined in 40 CFR 355.20.)

In response to comments requesting EPA to limit "facility" to manufacturing, distribution, and storage, under Section 329, the term "facility" is not limited to manufacturing, distribution, and storage facilities, or operations required to prepare or have available an MSDS. However, sections 311 and 312 requirements are applicable only to facilities required to comply with the OSHA hazard communication standard, which is currently limited to facilities in SIC codes 20–39. OSHA has recently expanded the application of the hazard communication standard to facilities in the non-manufacturing sector, to be effective over the next nine months. 52 FR 51852 (August 24, 1987). With respect to the non-adjacent warehouses, any offsite storage would be considered a separate facility because the definition of "facility" includes only adjacent or contiguous property.

With respect to contractors bringing hazardous material on-site, the hazardous material brought to a facility is subject to sections 311 and 312 requirements if the facility is required to prepare or have available an MSDS for the material. Off-site contractors, if subject to OSHA MSDS requirements, will be required to submit MSDS and inventory forms for the material.

2. "Hazardous Chemical" Issues

Several commenters believed that federal agencies should develop a common definition of "hazardous substance" and "hazardous chemical."

Title III uses several different terms to describe related groups of substances. "Hazardous substances" are substances subject to CERCLA provisions and are defined in section 101(14) of that Act. "Extremely hazardous substances" are substances subject to the emergency planning provisions of Title III and are defined in section 302 of SARA. "Hazardous chemical" comprises the group of substances subject to sections 311 and 312 and is defined as all "hazardous chemicals" as defined under OSHA and its implementing regulations, but with five additional exclusions under section 311(e) of Title III. Because all of these groups of substances are specifically defined by statute, EPA is not able to revise the definitions to eliminate all differences among them. However, EPA is attempting to clarify the requirements pertaining to these different types of substances both through the Title III rulemakings and in future rulemakings concerning CERCLA hazardous substances so that any confusion generated by the different definitions is minimized.

EPA received numerous requests for clarification of the OSHA definition of "hazardous chemical."

Under OSHA's hazard communication standard, "hazardous chemical" is defined as any element, chemical compound, or mixture of elements and compounds that is a physical or health hazard. 29 CFR 1910.1200(c). OSHA does not specifically list all of the substances that may be "hazardous chemicals" but provides definitions of hazards, criteria for evaluating hazard information, and sources of information to determine the physical and health hazards of each chemical. Section 311(e) provides five exclusions from this definition. These exclusions are listed under the definition of "hazardous chemical" under § 370.2 of this regulation.

OSHA regulations also exempt other substances and products from the MSDS requirements, including Resource Conservation and Recovery Act (RCRA) hazardous wastes, tobacco products, wood, and manufactured articles. Because these are not exclusions from the definition of "hazardous chemical" but rather from the applicability of the MSDS requirements, these exclusions are not listed under § 370.2 of the final rule, as requested by a commenter, but are provided in the instructions on the Tier I and Tier II forms.

3. "Research Laboratory"

The Agency received numerous comments requesting clarification of the exemption under section 311(e) for chemicals used in research or medical facilities.

Section 311(e)(4) of SARA and § 370.2 of the regulations exclude from the definition of "hazardous chemical" any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual. EPA believes that this exclusion is designed to exempt facilities where small amounts of many types of chemicals are used, or stored for short periods, that are not hazardous to the general public when administered or used under appropriate supervision.

In addition, it is important to recognize that the exemption applies to the substance used, rather than to the entire facility. Thus, research and medical facilities are not exempted from reporting requirements under sections 311 and 312; rather, they will not need to provide information on many of their chemicals.

With respect to research laboratories, EPA interprets the exclusion to apply to research facilities as well as quality control laboratory operations located within manufacturing facilities. However, laboratories that produce chemical specialty products or full-scale pilot plant operations are considered to be part of manufacturing rather than research operations and would not be a "research laboratory." EPA has adopted this interpretation of "research laboratories" because it is consistent with the interpretation of "laboratory operations" used by OSHA in enforcing its limited requirements under the hazard communication standard for such facilities. In addition, the Agency believes this definition is consistent with the purpose of this exemption because it confines the exclusion to operations where small quantities of hazardous substances are used for short periods of time under the supervision of highly trained individuals.

With respect to medical facilities, commenters requested that EPA exempt veterinary and dental operations and portions of facilities dedicated to medical or first-aid purposes. In contrast, one commenter requested that EPA eliminate the exclusion for medical facilities.

EPA does not believe that it has the authority to expand the definition of "hazardous chemical" beyond that provided by Congress in section 311(e) and therefore cannot eliminate the exclusion for substances used in medical facilities. However, as noted earlier, the exclusion is not for medical facilities but is limited to substances used in the facility for medical purposes. In addition, such substances must be used under the direct supervision of a technically qualified individual. A medical facility might also use or store hazardous chemicals that are not used for medical purposes under the supervision of a "technically qualified individual." Such chemicals would be subject to sections 311 and 312 requirements unless excluded under another exemption under section 311 or OSHA.

With respect to the scope of the definition of "medical facility," EPA believes that the term includes veterinary and dental operations and any portion of a facility devoted to medical treatment, including first-aid.

4. "Household Products"

Several commenters requested clarification of the household product exemption. One commenter specifically requested clarification about petroleum products.

Section 311(e) exempts from the definition of "hazardous chemical" any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. EPA interprets this exclusion to apply to household or consumer products, either in use by the general public or in commercial or industrial use when in the same form and concentration as the product intended for use by the public. Because the public is generally familiar with such substances, their hazards, and their likely locations, the disclosure of such substances is unnecessary for right-to-know purposes.

This exemption is for general household and domestic products, and thus the clearest example of its application is ordinary household products stored in a home or located on a retailer's shelf. However, EPA believes that this exemption also applies to such products prior to distribution to the consumer when in the same form and concentration, and to such products when not intended for use by the general public. Thus, the exemption also applies to any substance packaged in the same form and concentration as a consumer product whether or not it is used for the same purpose as the consumer product. In addition, the exemption applies to such products when purchased in larger quantities by industrial facilities if packaged in substantially the same form as the consumer product and present in the same concentration. The exemption will not apply to substances present in different concentrations from the consumer products even if the substance is only used in small quantities.

In the July 14, 1987, notice, EPA requested comment on the scope of the exemption from the definition of "hazardous chemical" under section 311(e) for consumer or household products. EPA specifically requested comment on whether the term "form" in the phrase "present in the same form and concentration as a product packaged for distribution and use by the general public" should refer to the packaging of the product or only the physical state.

Most commenters on the notice supported EPA's interpretation that this exemption would apply to a substance in the same concentration as the analogous consumer product whether or not it is used for the same purpose or intended for use or distribution to the general public. Thus, a product labelled "for industrial use only" would qualify for this exemption if it was in the same form and concentration as the analogous product used by the general public.

However, several commenters disagreed with EPA's proposed interpretation that the term "form" refer to the packaging, rather than the physical state, of the substance. One commenter argued that the packaging of a product does not usually affect its hazardous properties. EPA disagrees; the packaging of the product not only may affect the hazard presented by a particular substance but also will affect the degree to which the public will be generally familiar with the substance, its hazards, and its likely locations. For instance, if "form" refers only to physical state, then the amount of the product present in a container is irrelevant. Thus, a substance may be packaged in small containers when distributed as a household product but transported or stored in bulk quantities when used for other purposes. Even though in the same concentration as the household product, a substance may pose much greater hazards when present in significantly larger quantities. In addition, while the general public may be familiar with the hazards posed by small packages of hazardous materials, they may not be as aware of the hazards posed by or likely locations of the same substances when transported or stored in bulk. As a result, EPA has retained the proposed interpretation of the consumer product exemption as more consistent with the community right-to-know purpose of section 311 and the section 311(e) exemptions. EPA has also added a definition of this exemption to the regulation.

One commenter stated that the reference to this exemption as the "household product exemption" implies that products used for personal or family purposes but that would not normally be considered "household products" are not exempted. However, section 311(e) explicitly refers to substances used for "personal, family, or household purposes," and EPA did not intend to imply any limitation on this exemption that would exclude only substances used for household purposes.

Concerning the effect of the exemption, EPA agrees with commenters who suggested that the exemption for consumer products applies even if the owner or operator of the facility must prepare or have available an MSDS for the substance. The requirements for MSDS submission, both in the statute and under the regulation, apply only to a facility that is required to prepare or have available an MSDS for a hazardous chemical. Because Title III contains exemptions from the definition of hazardous chemical that do not occur under the OSHA hazard communication standard, not all MSDS are subject to the MSDS reporting requirement under Title III. This is true of all exemptions under section 311(e), not just the household product exemption.

With respect to petroleum products, a petroleum product is excluded from the definition of hazardous chemical only when used for personal, family, or household purposes, such as gasoline in a family motor vehicle, or when the petroleum product is packaged in the same manner as a product available to the general public, such as a can of motor oil. Certain petroleum products or petroleum-derived materials may also be excluded under section 311(e)(5) when they are used as part of routine agricultural operations or are fertilizers held for sale by retailers.

5. Other Exemptions

A number of comments dealt with exemptions of specific substances or facility types.

With respect to questions concerning the exemption of radioactive sources, non-isolated intermediates, and scrap steel or steel and metal components, MSDS for these substances are required under Title III only if MSDS are necessary for them under OSHA and they meet the definition of "hazardous chemical" under section 311(e). For example, OSHA requires MSDS for non-isolated intermediates, and EPA does not see the need to exempt these substances from reporting.

OSHA has not included radioactivity as a hazard to be covered under the HCS. Such hazards would generally be covered under rules of the Nuclear Regulatory Commission or OSHA's radiation rule. Thus, radioactive substances are not subject to reporting under sections 311 and 312.

Steel and other similar non-reactive solids are generally exempt from MSDS requirement under OSHA (and thus from sections 311 and 312) when they are articles shaped during manufacture whose end use depends upon that shape. (See 29 CFR 1910.1200(b).) Even if subject to the OSHA MSDS requirements, steel and other manufactured solids are excluded from sections 311 and 312 reporting under section 311(e)(2).

Other comments concerning exemptions touched on the applicability of these requirements to newspaper producers, general merchandise retailers, and suppliers, dealers, or wholesalers who are not involved in the manufacture, repackaging, or use of hazardous chemicals.

Contrary to the commenters' suggestions that reporting by such facilities would be unnecessary, the Agency does not believe that exemptions for these facilities would be justified at this time. The basis of community right-to-know is not simply the risk that the specific facility may pose to a community by virtue of its manufacture, processing, or direct use of a chemical, but rather, the availability of information to the surrounding community concerning the amounts and location of certain substances that are present at a facility. Thus, if newspaper producers or merchandise suppliers, retailers, or dealers use, handle, or store "hazardous chemicals" for which an MSDS is required under OSHA, the public should have access to that information.

One commenter sought clarification of whether "storage" includes materials in pipelines and similar transportation systems.

Pipelines are part of the transportation exclusion under section 327, which excludes transportation-related facilities from all requirements under Title III except Section 304 release notification. Thus, materials on pipelines are not subject to the Section 311 and 312 reporting requirements.

Several commenters offered recommendations on exemptions in the agricultural area. Section 311(e)(5) is a 2-part exemption that excludes retailers of fertilizer from reporting requirements for the fertilizer and also excludes any substance when used in routine agricultural operations. EPA believes that this exemption is designed to eliminate reporting of fertilizers, pesticides, and other chemical substances when applied, administered, or otherwise used as part of routine agricultural activities. Fertilizers handled by retailers, even though not directly utilized by such persons for agricultural purposes, are also excluded. Because the general public is familiar with the application of agricultural chemicals as part of common farm, nursery, or livestock production activities, and the retail sale of fertilizers, there is no community need for reporting of the presence of these chemicals.

EPA agrees with the commenter who requested that the agricultural exemption be applied to horticultural growers. The term "agricultural" is a broad term encompassing a wide range of growing operations, not just farms, and includes nurseries and other horticultural operations. In addition, the general public is likely to expect pesticides and fertilizers to be used in such operations.

Another commenter would exempt farm supply co-operatives and other retail distributors of agricultural chemicals.

Under section 311(e)(5), substances sold as fertilizers would not need to be reported under sections 311 and 312 by retail sellers because such substances are not "hazardous chemicals." However, other agricultural chemicals, such as pesticides, would need to be reported by retailers and suppliers of such chemicals if and when they become subject to the OSHA hazard communication standard. The exemption for substances used in routine agricultural operations applies only to substances stored or used by the agricultural user.

Thus, agricultural chemical retail and storage operations not now covered by the OSHA hazard communication standard will also become subject to reporting under sections 311 and 312 of Title III when the OSHA MSDS requirements for such businesses become effective.

B. Thresholds

1. Threshold Quantities for the Hazardous Chemicals in Each Year and the Appropriate Phase-in

Section 370.20 of the proposed rule was designed to allow facilities and State and local governments to phase in the receipt and submission of reports under sections 311 and 312 over three years. In the first year, only chemicals stored in excess of 10,000 pounds were to be reported; in the second year, the threshold was to drop to 500 pounds, triggering reporting on chemicals stored between 500 and 10,000 pounds; in the third year, there was no threshold, so that all remaining hazardous chemicals were to be reported. EPA solicited comments in the proposed rule on the appropriate length of the phase-in period and threshold levels for each year. After receiving and considering the comments concerning the phase-in threshold, EPA reopened the comment period on those issues in the July 14, 1987, notice. EPA requested comment on an option under which the first-year threshold would be 10,000 pounds, maintained at 10,000 pounds in the second year, and dropped to 500 pounds in the third and final year of the phase-in.

a. *Length of phase-in.* Numerous commenters addressed the issues of the number of years for phase-in of reporting and the appropriate threshold levels for each year. By far, most comments on the phase-in approach viewed it favorably, either stating specifically that the commenter was in favor of a phase-in approach, or suggesting alternative phase-in schemes ranging from two to ten years in length. The general reasons given in favor of phasing-in the reporting were: alleviating the administrative burden on government and industry and allowing time for information management planning and for the development of information management systems.

Fewer than ten of the more than 90 comments dealing with the phase-in opposed the approach. Some of these comments questioned whether or not EPA had statutory authority to use the phase-in approach; others said that the information should be immediately available or suggested that a phase-in would not alleviate the burdens on government and industry but simply spread the burdens out over time.

Most of the commenters who favored the phase-in approach supported a 3-year phase-in schedule. Some commenters, however, suggested that

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the phase-in be lengthened, in order to provide more time for proper evaluation and management of incoming data, as well as to give industry time to set up appropriate data management systems.

Comments suggesting a phase-in longer than three years fell into three categories. About half of these used EPA's proposed initial threshold but maintained at least one initial or intermediate threshold for two or more years, allowing for more gradual adjustment to the final threshold level. Approximately one-quarter of the comments requested higher initial threshold quantities (ranging from 20,000 up to 100,000 pounds) and suggested reasonable extension to the phase-in period. The third group requested a longer phase-in, without specific quantity suggestions. Several individuals favored a "wait and see" approach, suggesting that EPA should re-evaluate the final threshold decision in the second or third year. Nearly all commenters on the July 14 notice supported the 3-year phase-in.

EPA disagrees with commenters who questioned EPA's statutory authority to establish phase-in thresholds. Section 311(b) provides very broad authority to the Administrator to establish threshold quantities below which a facility may be exempted from reporting under sections 311 and 312. Given the serious concerns raised in the legislative history over the paperwork burden that may be created for State and local governments under these provisions, EPA believes that Congress intended EPA to use this broad authority to establish thresholds that would appropriately balance the public right-to-know with the potentially overwhelming flood of information to State and local governments, especially in the first years of the program. EPA has thus used its authority to fashion the thresholds to meet this Congressional objective. EPA has found no indication in the statutory language or legislative history that the establishment of thresholds based on time as well as amounts of chemicals would be inconsistent with Congressional intent.

EPA agrees with the majority of commenters, who stressed the importance of providing time for local and State governments to set up data management systems by reducing the volume of information being processed initially. Because EPA continues to believe that the phase-in of information is crucial to the development of effective Title III right-to-know programs and that there is no specific limitation on the type of threshold EPA may establish under the statute, EPA has decided to retain the 3-year phase-in approach in the final rule with some modifications.

EPA recognizes the concern expressed by some commenters over the immediate need to have access to valuable information on chemicals stored below the threshold level. In response, EPA believes that the rule reduces the potential loss of important information due to the threshold in several ways. First, as discussed below, § 370.20 provides no phase-in of thresholds for extremely hazardous substances, which are substances identified by Title III as significant for emergency planning. Second, the public retains access, by request, to MSDS for chemicals stored below the threshold. Third, EPA has retained a relatively short, 3-year phase-in schedule so that the baseline threshold is achieved quickly.

EPA recognizes that extending the phase-in beyond three years would provide government and industry with additional time to adjust and thus might be beneficial. There is, however, some burden potentially associated with extending the phase-in period, since it delays the date at which full reporting above the permanent threshold is mandatory. In doing so, it prolongs the uncertainty over how much and what information may be generated and may increase the number of requests during that time. In addition, as discussed below, EPA is not raising the initial threshold above the proposed threshold level (10,000 pounds), thus obviating the need to prolong the phase-in on that ground.

b. *Threshold Quantities*—i. *Final Threshold Level.* One of the most significant issues in the rulemaking was the issue of whether or not EPA should establish a non-zero threshold in the last year of the phase-in.

Approximately 100 commenters addressed the issue of whether or not zero was an appropriate permanent reporting threshold, with or without the phase-in approach. Of these, few favored the proposed reduction of the threshold to zero in the final year.

Arguments made by those favoring the zero threshold emphasized (a) the volume of information that would be lost through establishment of a non-zero threshold, (b) the difficulty of requesting desired information below the threshold without the chemical-specific information in section 311 for all volumes of chemicals, and (c) the potential hazards posed by small quantities of chemicals.

The points raised by proponents of non-zero thresholds fall into several general groups. First, because there are numerous chemicals stored in very small quantities, the data management burden created by zero thresholds could be overwhelming for the recipients of the data, thus jeopardizing public access to the information. Second, they argued that non-zero threshold levels could be established that would capture all substances of concern to the community or emergency response personnel and fire departments. Finally, a large majority of those arguing for non-zero thresholds also suggested that the same threshold should not apply to the extremely hazardous substance list; thus, they argued that information on chemicals of concern at lower levels could be made available without requiring reporting at those levels for all chemicals.

Although several commenters requested that the final threshold be non-zero without specifying the amount, the majority of comments contained suggestions for a final threshold, ranging from de minimis or one-pound quantities up to 50,000 pounds. However, few commenters provided a justification for the numbers they suggested.

EPA believes that there are several competing concerns that must be weighed in determining an appropriate final threshold level. First, information on chemicals of most concern to planners and communities must be readily available. In addition, enough information should be available for members of the public and public officials to be able to ascertain what additional information they want to request. Third, the burden generated for government recipients of the reports should be manageable.

After considering the arguments both supporting and opposing the establishment of a non-zero threshold in the final year of the phase-in, and after considering the comments on the 500-pound permanent threshold that EPA suggested in the July 14 notice, EPA believes that the balance of these concerns weighs in favor of a non-zero threshold.

However, at this time the Agency is not setting a final threshold, but will propose one after conducting a study of alternative thresholds. The Agency has considered 500 pounds (approximately the weight of a 55-gallon drum) as the final threshold beginning in the third year of reporting. Five hundred pounds thus will be the point of departure for discussion of a final threshold. This threshold would eliminate automatic reporting of numerous chemicals that are stored in smaller quantities. As discussed in more detail below, estimates based on available evidence

suggest that 35 to 57 percent of MSDS would be subject to sections 311 and 312 reporting, except upon request, as a result of the 500-pound threshold.

While a 500-pound threshold would eliminate numerous reports of de minimis levels of hazardous chemicals, a substantial volume of information would still be provided to State and local governments. The 500-pound level is also the most common non-zero threshold in effect in States with community right-to-know laws. Over half of all States have community right-to-know laws. Almost one-third of these have a threshold of 500 pounds; the remaining States have thresholds ranging from zero to 500 pounds. This is important since EPA's primary concern in establishing thresholds under sections 311 and 312 is to prevent State and local governments from being so overwhelmed with submissions under this program that effective public access and government use of the information are not possible. A significant number of commenters also supported the 500-pound threshold.

Finally, the expansion of OSHA's hazard communication standard to non-manufacturing employers and the consequent changes in both the number of MSDS and the number of facilities covered by Title III magnify the difficulties associated with a lower, or zero threshold. Because the community right-to-know laws in some of the States described above provide broader coverage than is currently provided under sections 311 and 312 (i.e., they include non-manufacturing facilities that will not be subject to sections 311 and 312 requirements until May, 1988), they provide a significant measure of the continued appropriateness of this threshold when these requirements become applicable concurrently with the expanded hazard communication standard.

Even if EPA were to establish such a 500-pound threshold, this would not suggest that no chemicals of interest to emergency responders, planners, fire departments, or the public are stored in quantities less than 500 pounds, or that all chemicals stored above 500 pounds pose a hazard to the community. Rather, this threshold would attempt to establish a balance between setting the level high enough to avoid an overwhelming paper burden for State and local governments and low enough to avoid a loss of substantial amounts of information. Similarly, a threshold less than 500 pounds would likely present an unmanageable administrative burden. Thus, States or local governments could request information on substances below the threshold, or a State could require reporting at lower thresholds under State law.

EPA has also considered higher final threshold levels. As part of the Regulatory Impact Analysis (RIA) in support of the proposed rulemaking, EPA estimated the percentage of chemicals and facilities that would be covered at different threshold levels. This analysis was revised and expanded for the RIA in support of final rulemaking. The analysis is the final RIA of the effects of thresholds on reporting is based on data sets provided by three States (New Jersey, New York, and Michigan) on the quantity of chemicals stored at a substantial number of manufacturing facilities, for limited lists of hazardous substances. Although the data from each State were adjusted so that the results would be representative of the effects of thresholds nationwide, the limited numbers of facilities reporting, the restrictive chemical lists, and other limitations of the data suggest that the results be viewed with caution.

EPA analyzed four alternatives for the final threshold. Estimates indicate that a 500-pound threshold would lead to reporting by between 50 and 82 percent of the facilities covered by current OSHA requirements, and submissions of between 35 and 57 percent of the MSDS for these chemicals. At this level, the cost to industry in the third year is estimated to be $348 million. At higher thresholds, reporting would be further reduced; a 2,000-pound threshold could result in between 35 and 47 percent of facilities reporting and 22 to 32 percent of chemicals being reported. At the 2,000 pound level, the cost to industry in the third year is estimated to be $225 million. In addition, a threshold that reduces reporting significantly could place substantial burdens on all parties by increasing the numbers of requests made by government and the public for additional information from facilities. On the other hand, a 50-pound threshold could result in between 77 and 90 percent of facilities reporting and between 64 and 79 percent of chemicals reported. At this level, the cost to industry in the third year is estimated to be $387 million. At a zero threshold level, the cost to industry in the third year is estimated to be $500 million. Although information indicates that the 500-pound threshold may represent the most appropriate balance between the broad right-to-know information submission objectives of these provisions and the need to avoid overwhelming State and local governments with the submission of vast amounts of information on de minimis amounts of chemicals, EPA is deferring the establishment of a threshold in the third year of the phase-in. The substantial number and variation of comments received on this issue and the great uncertainty over the impact of these requirements on the recipients of this information, and ultimately on the effectiveness of this program, create a need for further study prior to establishing a permanent threshold level.

After the initial submission of the Section 312 inventory forms in March, 1988, EPA will have more information about the effectiveness of the regulatory thresholds under the federal right-to-know program. During this evaluation, EPA will examine compliance experience with both State and federal right-to-know programs, the completeness of information generated under these programs, the ability of State and local officials to manage and provide public access to this information, the number and source of requests for additional facility information, and volumes of hazardous chemicals covered at a range of thresholds. As stated above, following such review, EPA will initiate another rulemaking to establish the final year thresholds.

ii. *Initial Threshold Levels.* Approximately 50 comments on the proposal addressed the issue of the threshold level in the initial year of a phase-in, either by proposing a specific phase-in schedule of quantities or by registering support of the EPA proposal but suggesting a modification for the final year. Over half of these comments favored 10,000 pounds. The remaining suggestions ranged between 15,000 and 100,000 pounds (one comment suggested up to 500,000 pounds for some chemicals), with a substantial number favoring 50,000 pounds.

In general, arguments that supported raising the first-year threshold emphasized the consequent decrease in the reporting burden and the belief that adequate information on large volume chemicals would still be available with a higher threshold.

After considering comments on the proposal and the July 14 notice, EPA has decided to retain 10,000 pounds as the initial threshold because that level provides the appropriate balance between ensuring that the public has access to information on large volume chemicals and reducing the number of reports to manageable levels in the first years of the program. EPA has rejected establishing higher initial thresholds because it believes that a threshold greater than 10,000 pounds might not

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provide sufficient information in the first year of reporting; the best estimates available to EPA indicate that a threshold equal to 10,000 pounds may reduce reporting to less than 13 to 22 percent of facilities or 8 to 13 percent of chemicals. EPA believes that a reduction in reporting below these levels would not be consistent with the community right-to-know purpose of these provisions and would provide marginal benefits in terms of information management, in comparison with a 10,000-pound reporting threshold.

iii. *Thresholds for Non-manufacturing Facilities.* As indicated in the January 27 proposal and in the July 14 notice, EPA believes that section 311 and 312 reporting requirements apply to any facilities subject to OSHA's MSDS requirements for any Title III "hazardous chemical." Because these requirements are self-implementing under the statute, EPA does not need to promulgate a rule in order for these reporting requirements to become effective. Under section 311(d), facilities must submit an MSDS for each hazardous chemical (or a list of such chemicals) to the appropriate State and local authorities by October 17, 1987, or within three months after they are required to have or prepare such an MSDS. Thus, under the statute, facilities newly covered by the OSHA MSDS requirements must submit those MSDS within three months after they are required to comply with the MSDS requirements. Because OSHA's MSDS requirements will become effective for the non-manufacturing sector in May, 1988 (see 52 FR 31852, (August 24, 1987)), such facilities will be required to submit these MSDS under section 311 in August, 1988. Similarly, inventory forms under section 312 for these facilities must be submitted annually beginning March 1, 1989.

However, although the section 311 and 312 requirements take effect without any regulatory action on the part of EPA, the Agency may, by exercising its discretion under the statute to establish minimum thresholds for reporting, limit the facilities or number of MSDS to be submitted under these provisions. EPA has, under this rule, established such thresholds and amended the proposed threshold regulation specifically to provide analogous thresholds to facilities newly subject to these requirements after October 17, 1987.

Some commenters have suggested that EPA limit this rule to facilities currently subject to the OSHA MSDS requirements, i.e., facilities in SIC codes 20–39. However, the effect of such limitation would not be to limit the scope of the section 311 and 312 reporting requirements since such requirements are effective without regulation, but rather to limit the thresholds established by this rule to manufacturing facilities. A zero threshold would thus be in effect for facilities in the non-manufacturing sector that become subject to the MSDS requirements in May, 1988, and would result in precisely the paperwork burden that the thresholds in this rule are intended to avoid.

Moreover, EPA solicited comment on the appropriateness of the thresholds in today's rule as they would apply to the expected OSHA expansion universe. Based on information currently available, EPA believes that the thresholds applicable to the manufacturing sector currently subject to sections 311 and 312 would be equally applicable to the non-manufacturing facilities that will soon be subject to the MSDS requirements. However, as a result of concerns raised over the possible need to provide different thresholds for the facilities newly subject to these requirements as a result of OSHA's expanded MSDS requirements, EPA is undertaking additional analysis of the universe newly-covered by the OSHA MSDS requirements. This analysis will include a more detailed analysis of small business impacts, a review of some current State right-to-know programs that cover non-manufacturing, and the need for different thresholds for such facilities. Following such review and prior to the time that this rule requires actions by the newly covered non-manufacturing universe, EPA will make the analysis public, receive comment, and, if appropriate, revise the relevant thresholds.

2. Thresholds for the Extremely Hazardous Substances and Other Chemical Lists

In the proposed rule, EPA provided an exception to the phase-in for substances on the list of extremely hazardous substances under section 302 of Title III. The threshold for reporting of such substances was zero in the first year. EPA requested comments on whether the threshold provision should contain this exception and whether there should be additional exceptions for other special chemical lists.

A majority of the over 60 comments on this issue suggested that thresholds should be lower for some classes of hazardous chemicals (than for hazardous chemicals in general), but that the threshold for such substance should still be non-zero. Several comments requested that there be no "special chemical exception" to the reporting thresholds on the basis that it complicated the process. A few commenters suggested zero or very low thresholds for varying lists of chemicals (e.g., SARA section 302 Extremely Hazardous Substances (EHS), carcinogens on the IARC list, other known human carcinogens, or SARA section 313 chemicals). Those comments that addressed the EHS list were split between suggesting thresholds equal to the "reportable quantities" (RQs) and thresholds equal to the "threshold planning quantities" (TPQs) for the EHS. (See the April 22, 1987, final rule for further discussion of RQs and TPQs. 52 FR 13378.)

Of the comments favoring thresholds that are lower for the EHS than for hazardous substances in general, most favored a non-zero threshold and argued that the burden of accounting for and reporting de minimis quantities far outweighs the risk posed by the EHS in very small quantities. Several commenters argued that reporting of minute quantities of these chemicals creates an unnecessary burden on local and State governments and on emergency response groups who receive the information.

Several arguments were made concerning the appropriateness of the TPQs or the RQs for EHS thresholds. The risk of off-site hazard posed by these chemicals either for emergency planning or for emergency response purposes has already been explicitly taken into account in determining the TPQs and RQs. Thus, several comments argued, quantities stored below these amounts are unimportant for planning, response, or other purposes of sections 311 and 312.

After consideration of the several arguments and approaches suggested by commenters, EPA suggested a one-pound de minimis threshold for the EHS list in the July 14 notice. Based on the additional comments received on the notice, EPA has decided to revise the rule to establish a reporting threshold for each EHS of 500 pounds or the TPQ, whichever is less. This threshold will be effective from the first year of reporting onward.

There are several reasons for establishing these thresholds. First, EPA continues to believe that reporting on the EHS should not be subject to the phase-in. Because, based on the information available to date, EPA believes that the 500-pound level represents an appropriate permanent threshold, the Agency is requiring reporting of EHS at a 500-pound threshold during the first year of

reporting, so that information on these chemicals can be made available to the community, while initial planning efforts under section 303 are underway.

In addition, the EHS list represents chemicals that are of particular interest to the community; the TPQs have been established as representing quantities of these chemicals that may pose risks to the community and, thus, are of interest to emergency planners. The Agency has decided, therefore, that for each EHS for which the TPQ is less than 500 pounds, the threshold in the first year and in subsequent years should be the TPQ. This will ensure that information concerning these chemicals will be available not only to emergency planners, but to emergency responders and the general community as well.

EPA is not expanding the list of chemicals subject to the "special chemical threshold" beyond the EHS list. EPA has singled out the EHS list as an exception to the phase-in for several reasons. Although there are numerous chemical lists referenced in Title III, the Agency believes that information concerning EHS will be critical for States and local governments during the next year when emergency planning efforts are under way. Under section 303 of Title III, local committees must prepare an emergency response plan by October, 1988. Because the EHS list developed under section 302 of Title III is intended to be the basis of initial emergency planning efforts under section 303, information concerning all EHS present at facilities will be critical in the first year of section 311 reporting. EPA believes that such information should be made easily accessible to the local planning committee through mandatory reporting under sections 311 and 312, rather than burdening the committee in the first year of its organization with the need to request information on EHS from each facility under section 303(d) or section 311(c).

C. Submission of Material Safety Data Sheets

1. Material Safety Data Sheet (MSDS) or List Option

A facility may meet the requirements of section 311 either through submission of MSDS or a list of chemicals for which an MSDS is required. In the preamble to the proposed rule, the Agency encouraged facilities to exercise the list option whenever possible.

With one exception, the commenters indicated unqualified support of the list option. In addition, many commenters inquired whether use of MSDS for routine reporting of potential community hazards is actually productive and cost-effective. However, numerous commenters indicated that the lists would be difficult to prepare because of the difficulty in using the 23 hazard categories.

As discussed in more detail in Section III. D. EPA has reduced the number of hazard categories in this final rulemaking in order to facilitate list reporting. EPA is continuing to encourage list reporting because it reduces the information management burden on recipients of the information without substantially reducing the amount of information provided.

One commenter requested clarification regarding the right of a State emergency response commission or local emergency planning committee to mandate the submission of a list rather than the actual MSDS. Because the federal law expressly provides that facilities may choose whether to submit a chemical list or each MSDS, EPA has also provided this option in today's final rule. However, State or local governments may effectively limit this choice by establishing reporting requirements pursuant to their own authority.

2. Format and Content of Material Data Sheets

Several commenters requested various changes to the MSDS format, such as the inclusion of the hazard categories on the MSDS.

EPA agrees that the addition of hazard categories on the MSDS would be useful and encourages chemical manufacturers to include this information. However, EPA does not believe that modification of the MSDS can be required in this rule; the content of the MSDS is subject to the regulatory authority of OSHA, not EPA.

A number of commenters raised concerns about the responsibility for accuracy of MSDS information on the part of manufacturers and chemical users who pass on an MSDS received from other manufacturers.

"Downstream" recipients of an MSDS are not generally responsible for its content. However, EPA believes that if an owner or operator is aware of inaccurate or inconsistent information, he should take reasonable steps to clarify the information or alert the recipients of the information when it is distributed that it may be inaccurate.

3. Revisions and Updates

Two commenters requested clarification of the requirement to submit revised material safety data sheets as applied to a facility that had exercised the list option. Further clarification was also requested regarding any obligation to submit a revised MSDS if the original was submitted as a result of a public request.

Section 311(d) requires a facility to submit an MSDS or list by October 17, 1987, or within three months after the owner or operator is required to prepare or have available an MSDS for the chemical, whichever is later. An owner or operator is also required to submit a revised MSDS within three months of the discovery of significant new information concerning a chemical for which an MSDS was submitted. If a facility has submitted only a list of chemicals rather than the actual MSDS, the facility does not need to file a revised MSDS upon discovery of new information. However, after October 17, 1987, if additional hazardous chemicals become present at such facility, a list of these (or the MSDS) must be submitted to the State commission, local committee, and fire department within three months.

Once an MSDS is submitted, even as a result of a request, a revised MSDS must be submitted if the owner or operator receives significant new information concerning the substance. Because the OSHA regulations require MSDS to be revised within three months after a chemical manufacturer or employer becomes aware of significant new information concerning the hazards of a chemical, the Title III regulations merely require that such revised MSDS also be submitted to the agencies that have the original MSDS.

D. Categories for Reporting

Section 311 list reporting and section 312 Tier I reporting requirements were initially based on the 23 physical and health hazards identified under OSHA regulations. To facilitate reporting under sections 311 and 312, Title III permits the Administrator to modify the categories of health and physical hazards set forth under OSHA regulations by requiring information to be reported in terms of "groups of hazardous chemicals which present similar hazards in an emergency." Additionally, for Tier I reporting, the Administrator may require reporting on individual hazardous chemicals of special concern to emergency response personnel.

In the January 27 proposal, the Agency proposed the use of the 23 OSHA categories for reporting but solicited comments on approaches for modification of the reporting categories. EPA recognized that a smaller number of reporting categories might facilitate the manageability of the information and enhance its usefulness, particularly since information on chemicals that

present more than one hazard must be provided in all applicable categories. EPA specifically requested comment on two approaches for modification: Use of the eight DOT hazard labeling categories and use of a 5-category scheme with two health hazard categories and three physical hazard categories. The July 14, 1987, **Federal Register** notice specifically requested comment on the proposed use of the 5-category scheme.

In response to the January 27 proposed rule, EPA received over 100 comments that disagreed with the use of the 23 OHSA categories, while only four commenters supported their use. Many of those commenters that disagreed provided alternative categorization schemes. Many comments supported the Department of Transportation (DOT) categorization scheme in combination with additional health hazard categories. The main advantage to using the DOT categorization would be that emergency response personnel are already familiar with these categories. However, it was designed for hazardous material transportation and reflects an emphasis primarily on immediate health and physical hazards. Thus, the Agency believes that the DOT categories would have to be revised to address delayed (chronic) hazards adequately before this option could be used for Sections 311 and 312. EPA believes that altering the DOT categorization scheme would result in some confusion and reduce the effectiveness of this option.

EPA received several additional proposals for the modification of the reporting categories. However, all of these alternatives were rejected because they either did not adequately encompass the OSHA hazard classes, did not sufficiently reduce multiple reporting, or did not sufficiently reduce the burden of reporting and interpreting data by decreasing the number of reporting categories.

After consideration of these comments, the suggested alternatives, and the burden of using the proposed 23 categories, EPA has revised the rule to reduce the number of reporting categories. Today's rule contains the 5-category scheme described by EPA in the Preamble to the proposal and in the July 14 notice: two health hazard categories (immediate or acute hazards and delayed or chronic hazards) and three physical hazard categories (fire hazards, sudden release of pressure hazards, and reactivity hazards). This scheme was supported by a substantial number of commenters.

A number of other commenters disagreed with the use of the 5-category scheme because they thought the categories were too general and did not represent groups of hazardous chemicals that present similar hazards in an emergency. EPA disagrees with these commenters. Although the categories could be subdivided further, the Agency believes this could complicate the categorization process and could result in inconsistencies in reporting. EPA believes the 5-category scheme will be useful to emergency response personnel by conveying general information on the types of hazards a chemical may present in an emergency response situation and by supplementing other sources of information commonly used by emergency response personnel.

EPA agrees with the numerous commenters who noted that this categorization scheme should significantly reduce the paperwork burden of reporting, minimize multiple reporting and double counting, and enhance the clarity and usefulness of the information reported. The five categories have several advantages over the other proposed alternatives because they encompass all of the OSHA categories as well as all of the DOT categories, and they address delayed (chronic) health hazards as well as immediate (acute) health hazards. The Agency plans to provide written guidance to help facilitiate reporting so that this categorization scheme can be easily used by both large and small reporting entities.

E. Mixtures

EPA received several comments regarding the reporting of mixtures. One commenter requested clarification of the term "mixture." Another desired guidance in applying threshold levels to mixtures. Several commenters stated their belief that reporting of mixtures would be difficult since many mixtures have unknown compositions.

In response to the request for clarification of the term "mixture," EPA has revised § 370.28 of the rule to include the definition of mixture used by OSHA in the hazard communications standard. 29 CFR 1910.1200. In addition, § 370.28 has been revised to indicate how the threshold levels apply to mixtures. The rule now states that if the reporting is on each component of the mixture that is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) should be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture. If a mixture is reported as whole, the threshold applies to the total weight of the mixture.

Finally, where mixtures have unknown composition, facilities should report the mixture as a whole.

F. Public Access to Information

Title III contains a number of provisions relating to public access to information submitted under sections 311 and 312, many of which were codified in today's final rule. Section 324 of Title III, which is not codified in the final rule, requires SERCs and LEPCs to make all MSDS, lists, and inventory forms that are submitted under sections 311 and 312 available to the public during normal working hours. This is the only source of Tier I information for the general public, and there is no access to Tier I below the regulatory threshold.

Section 370.30(a) of the regulation codifies section 311(c) of Title III and provides that any person may request an MSDS through the LEPC. If the MSDS is not in the possession of the LEPC (because a facility had the hazardous chemical only in amounts below the threshold or a facility had submitted only the list of chemicals), the LEPC must request the MSDS from the facility and the facility must, under § 370.21(d), submit the MSDS within 30 days. Under § 370.31, the LEPC must provide the requested information to the requester.

Section 370.30(b) codifies section 312(e) of Title III and provides that any person may request Tier II information concerning a specific chemical at a facility through the LEPC or SERC. If the Tier II information is not in their possession, the SERC or LEPC must request it from the facility if the chemical is stored at the facility in quantities above 10,000 pounds or if the requester is a public official. If the chemical is present in quantities below 10,000 pounds, the response by the SERC or LEPC is discretionary. Under § 370.25(c) of the final rule, a facility must submit requested Tier II information within 30 days. Under § 370.31, the LEPC or SERC must then provide the Tier II information to the requester.

1. Information below Thresholds

In the proposed rule EPA established temporary thresholds below which facilities would not be required to report under sections 311 and 312. However, those thresholds were not applicable to public requests for information on hazardous chemicals. Thus, facilities would need to report on hazardous chemicals below the thresholds, but only upon request. Although EPA codified the requirement that below-threshold requests be justified for Tier II information under section 312, no such

justification was proposed for below-threshold requests for MSDS. EPA solicited comment on its approach to thresholds and public access.

Commenters were split over the issue of public access to information below thresholds through the LEPC. In addition, some commenters believed that requests for below-threshold MSDS information should be justified, and some asked EPA to set guidelines for demonstrating adequate justification.

With respect to issues concerning request justification, section 312 is explicit about the justification of need required in public requests for Tier II information below 10,000 pounds if such information is not already in the possession of the SERC or LEPC but is silent on the issue of what should be included in the statement of need. EPA believes that the task of defining appropriate criteria for the justification of need should be left to the SERCs and LEPCs, who must ultimately decide whether to remit such a request. With regard to MSDS information below the threshold, neither the statute nor this regulation requires that the need underlying a request be justified. Congress specified in section 311(c)(2) that MSDS be submitted upon request by any person. The Agency thus believes that the preservation of access to all MSDS information by the public is most consistent with the intent of section 311.

2. Justification of Need

A number of commenters posed more specific questions on the necessity of justifying requests for Tier II information. One felt "need" should relate to the potential of a hazardous chemical directly to affect either person or property. Others noted that facilities should be able to review requests for Tier II information and be allowed to comment on sensitivity of information.

As indicated above, however, the LEPC and SERC have ultimate responsibility for setting guidelines in this area since the statute and today's final rule give them the decision-making authority in granting requests for Tier II information. Therefore, EPA believes that issues concerning the statement of need should be left to local and State officials.

A few commenters requested that a strategy be developed to assist the SERC and LEPC in fulfilling their responsibilities for public availability. Several other commenters felt programs should be developed to help the general public interpret and use the information. EPA intends to provide such guidance in the form of brochures and pamphlets to be published and distributed through the regional offices to SERCs and LEPCs at a later date. EPA recently used a series of workshops and other presentations to provide information on Title III to the public.

3. Other Clarification

Several commenters requested changes in the time frames for providing information to the public. Some commenters had general questions about how the public would have access to MSDS and inventory information. The public may request Tier II information through either the SERC or the LEPC. For quantities below 10,000 pounds, the SERC or LEPC may exercise discretion in forwarding these requests to a specific facility. Concerning MSDS requests, section 311 and today's final rule place the responsibility for handling requests only in the LEPC. States may, however, under their own authority, also require provision of such MSDS to the SERC.

One commenter requested that the rule clarify that any person may request Tier II information. Although the rule explicitly states that any person may request Tier II information, there are certain instances in which it is not automatically provided. For instance, a facility may opt to withhold chemical location information from the Tier II form, and the public would not have access to this location information. A person may request Tier II information for chemicals stored at a facility in quantities less than 10,000 pounds, but if the SERC or LEPC does not already possess the information, the requester would be required to give a written statement of need. Based on the statement, the LEPC or SERC may, where appropriate, request the information from the facility. A facility may also withhold chemical identity from disclosure by submitting a trade secret claim under section 322. Where a facility withholds chemical identity by virtue of trade secret provisions, the public may challenge the withholding by submitting a petition to EPA pursuant to section 322.

G. Trade Secrets and Confidentiality

EPA received several comments in support of the provision for withholding location information from the public at the facility's request. While a few commenters indicated a need for criteria for determining a confidential location, EPA agreed with other commenters that a request on the part of a facility owner or operator is sufficient. Section 324 allows a facility to request withholding of location information without any determination that such location would be confidential.

The Agency also received numerous comments regarding the protection of trade secret information under sections 322 and 323 of SARA. These will be addressed as part of EPA's rulemaking on trade secrets under sections 322 and 323, to be proposed later this year. It should be noted, though, that if a facility wishes to make a trade secret claim, it is required to submit the federal Tier II inventory form to EPA, rather than any alternative State form, with appropriate substantiation. Such trade secret claims should be sent to: U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know, P.O. Box 70266, Washington, DC 20024-0266.

H. Design and Content of Forms

The most significant comments on the design and content of the Tier I and Tier II forms concerned the calculation of the average daily amount and the reporting format for storage location. Other significant comments concerned the emergency contact, the certification statement, and the Dun & Bradstreet number. In response to these comments, as well as comments on the general layout and graphic design of the forms, EPA has revised the section 312 reporting forms. Following is a discussion of these comments and EPA's response.

On the proposed Tier I and Tier II forms, EPA required facilities to report maximum daily amount and average daily amount in prescribed ranges. Several commenters approved of the proposed reporting ranges on the Tier I and Tier II forms, but several more believed the ranges were too broad. EPA received suggestions to narrow the ranges, add a range category of 0–9 pounds, combine the two lowest ranges, or devise ranges that correspond to powers of ten. A few commenters favored broader ranges.

Upon consideration of these comments, EPA has chosen to retain the ranges set forth in the proposed rule. The Agency believes that the ranges adequately balance the trade-off between protection of confidential information and provision of useful data. In addition, the present ranges are consistent with those proposed for use on the section 313 reporting form and those used on the Toxic Substances Control Act (TSCA) inventory form.

Several commenters favored EPA's proposed method of calculating average daily amount; that is, by totaling all daily weights and dividing by 365, or totaling all monthly weights and dividing by 12. Several other commenters, however were concerned that the results obtained by the

proposed method would be misleading because it would produce artificially low amounts for those chemicals present on site during only short periods of time throughout the year.

The Agency has decided to revise the method of calculating average daily amount so that the figure is based upon the number of days the chemical is actually on site. Thus, facilities should total all daily weights and divide by the number of days the chemical was on site. This method of calculation produces a more accurate figure for average daily amount, particularly for those chemicals that are on site for only a short time each year. To reflect the amount more accurately, however, EPA believes that it will be necessary to report the number of days used in the calculation and has revised the form to require reporting of this information.

The Agency received several comments concerning the maximum daily amount. As many commenters favored the method of calculation as expressed doubts concerning its ultimate usefulness. One commenter suggested that EPA require facilities to report maximum storage capacity instead of maximum daily amount.

Because the maximum daily amount describes a "worst case" scenario, it is useful to both emergency planners and emergency responders. It is important for them to know the maximum amount of hazardous chemicals that they might actually encounter at any time. Because storage capacity may not be an accurate reflection of the amount of hazardous chemicals actually on site at any one time, EPA believes that the reporting of maximum storage capacity is not an appropriate substitute for the maximum daily amount. Thus, EPA has not required reporting of maximum storage capacity instead of maximum daily amount. However, EPA is aware that maximum storage capacity may be the best information available to some facilities in calculating the maximum daily amount.

EPA received numerous comments regarding the "location" section of the Tier II form. Several commenters requested the use of any site identification procedure acceptable to local emergency response agencies; others suggested that EPA design the location coding system solely for ease of data entry. Several commenters gave specific suggestions for revision of the location identification system—namely, grid or quadrant systems. Several other commenters suggested that EPA allow facilities to report that chemicals are unbiquitous at the plant. Based on these comments, EPA has revised the Tier II form to provide for reporting of the building or lot, at a minimum, and to allow facilities to describe briefly on the form itself the location of hazardous chemicals, rather than requiring them to provide a site plan or site co-ordinates. EPA believes that the narrative approach will provide more flexibility for a facility, in conjunction with its SERC, LEPC, and fire department, to identify the method of providing the most useful chemical location information for specific emergency response and information management needs and capabilities of the community in which the facility is located.

EPA believes that additional requirements for location information, such as site plans or quadrants or grid systems, may be useful on a site-by-site basis, but are not necessary for each facility. If a State or local government desires such additional information, it may require it to be submitted under State or local law as a supplement to the federal form. However, the Agency encourages State and local governments to co-ordinate reporting formats so that facilities are not subject to duplicate or inconsistent reporting requirements.

Some commenters requested EPA to state the exceptions to reporting on the inventory forms. Another inquired about the correct number of exemptions.

The exemptions from reporting under both the OSHA hazard communication standard and section 311 of Title III are set out in the instructions to the form. The instructions on the proposed forms included eight reporting exemptions because EPA merged the OSHA and Title III exemptions where there appeared to be substantial overlap. In this final rule, the instructions to the inventory forms state the OSHA and Title III exemptions separately for clarity and accuracy.

EPA received numerous comments regarding the certification statement on the Tier I and Tier II forms. Several commenters raised concerns that the statement implied the owner's or operator's first-hand knowledge of the conditions at the facility relevant to Title III. In response to these concerns, EPA has modified the certification on the final form by deleting the word "immediately," to make clear that the signatory is responsible for the data on the form but has not personally interviewed those principally responsible for performing the calculations. The certification on the final form now reads: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete."

A number of commenters wanted EPA to eliminate or revise the requirement for a 24-hour contact and telephone number. One commenter suggested that EPA require the same number of emergency contacts on Tier II as on Tier I.

The emergency contact is a person, or office at which persons will be available, who can aid responders in the event of an emergency at the facility. The emergency contact need not be a person with expertise concerning the chemical hazards at the facility, but he or she must be available to act as a referral if emergency responders need assistance in responding to a chemical accident at the facility. Although the Agency requires facilities to supply the name of only one emergency contact, both the Tier I and Tier II forms will have space for two. A facility may supply two emergency contacts as necessary to ensure 24-hour availability.

Numerous commenters inquired about the extent to which they could use their computers for reporting. The majority of the comments focused on the acceptability of computer-generated facsimiles of the forms; others dealt with electronic transmittal of data.

To the extent possible, EPA has designed the Tier I and Tier II forms to accommodate computer output. Since EPA will not receive the information, however, the issues regarding computer facsimiles and electronic transmittal are more appropriately addressed to the recipients of the information at the State and local levels. However, EPA does not believe that any provisions of section 312 would prohibit computer generated facsimile forms or electronic transmittal of data.

Several commenters stated that EPA should not require hazard category information on the Tier II form. Although the legislation requires hazard category information only on the Tier I form, EPA has designed Tier II as a worksheet for the preparation of Tier I. For this reason, and because the hazards may provide helpful data to the users of chemical-specific information, EPA believes that hazard categories are an essential element of the Tier II form and has retained this requirement in the final form.

Although several commenters questioned the necessity for the Dun & Bradstreet identification number, the Agency has opted to retain this requirement because of its general usefulness as a widely known and accessible identifier, unique for each

facility. In response to commenters who stated that Dun & Bradstreet numbers should not be required because they did not have such a number, EPA has revised the instructions to the form to indicate where facilities can obtain the number. (Information collection requirements are approved by Office of Management and Budget under control number 2050-0072.)

I. Integration of Title III Federal Requirements With State and Local Programs

A large number of commenters registered concern about the potential for duplication in data collection, since Title III requirements overlap with reporting provisions under some State and/or local laws. Some commenters would prefer to comply with Title III through equivalent State programs; others suggested that the reporting rules be flexible enough to allow integration with existing programs.

Although section 321 states that Title III generally does not pre-empt State or local laws, including similar community right-to-know reporting, the Agency strongly discourages duplicative reporting systems that would increase the community right-to-know paperwork burden and thus potentially reduce the effectiveness of the program and of public access to information. EPA encourages States to modify their community right-to-know requirements to accommodate Title III without eliminating additional requirements that are beneficial to State or local needs. The Agency also advises States to consider reporting requirements that are applicable to local emergency planning committees and fire departments. To the extent possible in this final rule, the Agency has attempted to provide flexibility for State and local implementation and integration with their existing programs.

Several commenters recommended that State and local jurisdictions be allowed to determine the method of reporting.

In the final rule, EPA has tried to provide as much flexibility as possible to the local and State officials who must implement this program, while at the same time provide a degree of standardization to the regulated community and ensure that statutory requirements are met. EPA has thus revised the regulations to specify the circumstances under which a State or local form can be used in lieu of the Tier I and Tier II forms published today. Revised §§ 370.40 and 370.41 of the final rule state that facilities will meet the Section 312 requirements if they submit the published form, or any State or local form that contains identical content. "Identical content" means that, at a minimum, the same information requested on the form published in today's final rule must be requested in some portion of the State form. States may, in addition, use the form as published today but add supplemental questions, either interspersed throughout the form or attached at the end.

J. Information Management

With respect to data management issues, commenters focused on two principal points. First, the majority of commenters on this issue strongly expressed the conviction that the entire program can be made workable only if the information is handled by computer systems. The second principal issue raised by commenters was the need for assistance in organizing the material; designing and selecting systems; co-ordinating the use of the material among SERCs, LEPCs, and fire departments; and ultimately making the information available to the general public.

Specific comments concerned the need to allow information submission in computer-readable media and for guidance from the federal government to aid information management at the State and local levels. A recurring message in the comments was the need for the federal government to play an active role in solving the extensive data management problems triggered by Title III. Suggestions were for EPA, alone or with OSHA, to develop model MSDS databases, to design or develop effective data management and communications techniques for information systems, to convene a high level workgroup to draft a plan for solving the problems, and to provide seed money to each SERC for development of its own MSDS information system. Commenters also raised general concerns about the sources for financial support to implement the legislation and the time necessary to prepare for implementation.

In response to the general information management concerns raised by commenters, the Agency agrees that the data resulting from Title III compliance would best be managed through a computerized system. EPA recommends that the LEPCs and fire departments work closely with the SERCs to develop flexible systems that address the particular requirements of each planning district. However, because most of Title III is carried out through State and local organizations, it is not appropriate for the Agency itself to recommend or design data management systems, to establish a national database under sections 311 and 312, to specify data collection points, or to make any other information management decisions that belong to the State and local authorities implementing the community right-to-know program. Thus, although EPA shares commenters' concerns over the critical data management needs generated by Title III, EPA believes that the most appropriate role for the Agency in information management under sections 311 and 312 will be one of technical assistance to State and local entities in developing effective information management systems. The Agency is reviewing such systems in an effort to identify useful systems that could meet State and local needs and also intends to publish technical guidance regarding the development of such systems by States.

EPA acknowledges that the provisions of Title III concerning hazardous chemicals and community right-to-know present information management problems that are difficult to implement, given the statutory time-frames and governmental budget constraints. Of all the sections of Title III, sections 311 and 312 present by far the largest information management burden for State and local governments. EPA's concern over this issue has been the principal basis for several key regulatory decisions during this rulemaking. For instance, to permit time to work out information management systems and to ensure that State and local capabilities are not overwhelmed during initial implementation, EPA is establishing a 3-year phase-in schedule with high initial reporting thresholds for both sections 311 and 312.

State and local governments also need time to obtain funding and to establish the organizations and processes to implement this legislation. In order to provide as much flexibility as possible to State and local governments in establishing their Title III programs, EPA is leaving decision-making concerning the medium to be used in reporting (e.g., paper, magnetic tape, telecommunication lines) to States and local governments.

Some State and local governments already receive information required under sections 311 and 312 from facilities in their jurisdictions, and some make this information available to the public. To the extent that these submissions under State or local law meet the requirements of sections 311 and 312 regarding the content of submission, timing, and recipients of the information, facilities submitting such information will be in compliance with the federal requirements. Duplicate

submissions under the federal community right-to-know program are unnecessary. Also, in some instances, it may be permissible for fire departments to designate such State systems as the address for their MSDS submissions, provided that these systems will support the emergency response needs.

K. Regulatory Impact Analysis

A number of comments addressed various aspects of the Regulatory Impact Analysis. Comments ranged from general concerns that estimated costs for industry or government were too low to specific comments on the time, personnel, or equipment attributed to individual compliance activities. The comments also addressed the methodology used in the RIA, including compliance activities they felt had been omitted by government, the inclusion of costs for requests and trade secrets in aggregate costs, estimating costs for facilities covered by the OSHA expansion, and expanding the treatment of small business costs.

A number of commenters stated that the time estimated for industry to fill out the forms, or the estimates of the time and space required by government to maintain MSDS, were too low. Other commenters argued generally that estimates of industry costs were too low and gave estimates ranging from one and one-half to ten times the EPA estimates.

EPA has revised the analysis to reflect variations in costs for sections 311 and 312 by facility size and number of MSDS. EPA has also modified the section 312 inventory forms and clarified the instructions in this final rulemaking, which should reduce the amount of time it will take industry to comply with these requirements. Wage rates used in the RIA have also been increased to reflect growth in wages and the technical personnel being used to comply with regulations. EPA believes that the costs imputed to the final rule reasonably estimate, on average, the time and other costs that will be incurred by facilities complying with the requirements of the regulation.

Several commenters addressed government costs, stating that estimated costs were too low, that not all necessary government activities were considered, or that additional personnel would be required to comply with sections 311 and 312. One commenter stated that EPA's estimated costs were too low by as much as an order of magnitude.

In response to these comments, EPA has revised the time requirements to include additional time spent, particularly by State and local government, on several activities. Wage rates in the government are assumed equal to those in the private sector; thus, government wage rates have also been revised to reflect the estimated change in private sector wages. It should be noted that the RIA has assumed that government agencies do the minimum activities necessary to comply with the regulations. Costs are intended to reflect, on average, the costs that will be incurred by representative government entities undertaking these activities. However, community right-to-know is essentially a State and local program, and the costs of implementing its provisions will depend on the activities undertaken by each entity. Thus, the costs presented in the RIA may underestimate the actual costs to individual government entities with sufficient funding and the ability, need, or constituency to be proactive in implementing Title III.

Several commenters said that EPA has not included in the RIA the costs of requesting information, responding to requests, or making trade secret claims. EPA has modified its approach and provides additional sensitivity analysis on the possible magnitude of some of the costs associated with information requests. However, it should, again, be stressed that community right-to-know is a State and local program; the number of requests is highly dependent on the extent and nature of the uses to which data are put, both by public officials and by private citizens and organizations. These uses, in turn, depend on the manner and breadth of the implementation and outreach plans of State and local governments, which makes the costs associated with requests for information difficult to predict. Thus, while a sensitivity analysis is provided, the costs of requests are not aggregated into total costs. The costs associated with trade secrets are being addressed in a separate rulemaking that is under way for the Title III trade secret provisions, sections 322 and 323 of SARA.

Numerous comments point out that EPA did not address the costs that may be associated with any forthcoming expansion of the OSHA hazard communication standard. These costs are included in a supplemental analysis, which is part of the final RIA. These costs are not aggregated into total costs of sections 311 and 312; total costs reflect the costs to facilities and government of complying with sections 311 and 312, given the current scope of the OSHA hazard communication standard.

Other commenters said that the costs estimated for small business were too low or that the regulation constituted a significant impact on small business. An additional group of commenters submitted a form letter saying that the regulations would be an immense burden on small business.

EPA has expanded its small business analysis considerably for the final rulemaking. In particular, per facility costs are varied to reflect both facility size and the estimated number of hazardous chemicals that are present, on average, at a facility in a particular SIC code and size class. To determine whether the regulation will have an impact on small business, a small facility is defined as one with fewer than 20 employees. This group is more likely to show an impact than the broader group (50-150 employees) suggested in the comments. The analysis then looks at the impact on small business using several criteria, including the ratio of costs per facility to sales. After consideration of this additional analysis, EPA reached the same conclusion as in the proposed rulemaking; a substantial number of small businesses will be affected, but the impact will not be significant. Thus, the Agency is not performing a Regulatory Flexibility Analysis.

L. Miscellaneous

1. Enforcement/Penalties

The Agency received numerous comments and queries on the subject of enforcement. Some commenters stated that a violation should be treated as a one-time occurrence and not a continuous violation as specified in the proposed rule. Others requested flexibility in determining violations and assessing penalties, especially where the owner or operator makes good faith efforts toward compliance. Still another commenter asked how enforcement would be accomplished.

With regard to one-time versus continuous violations, section 325(c)(3) of Title III provides that each day a violation of section 311 and 312 continues shall constitute a separate violation. EPA has therefore retained this provision in the final rule. With respect to issues concerning how EPA will enforce compliance with these provisions, EPA is preparing a compliance strategy for Title III that will address these issues. Criteria for determining penalties will also be set out in that document.

2. Compliance/Timing

Two dozen commenters addressed questions concerning compliance and scheduling. Their statements ranged

from a view that the 45-day response period for Tier II requests is unrealistic, to a request that EPA stipulate a 15-day period for a SERC or LEPC to respond to a public request for MSDS or Tier II forms and that the same 15-day deadline be placed on the facility.

EPA has retained the 45-day schedule for response to Tier II public requests as specifically provided under section 312. In the regulation, EPA establishes a 30-day schedule for response by an owner or operator to SERC or LEPC requests for MSDS and Tier II information. EPA believes that the 30-day timetable for Tier II information is necessary to ensure adequate time for the SERC and LEPC to meet the statutorily-established response time. The same period was estalished for MSDS responses to avoid confusion over applicable time periods under this rule. However, the Agency has also rejected the establishment of other time limitations in order to preserve flexibility at the State and local levels with respect to timing of responses.

3. Use of Tier I and Tier II Forms

Numerous comments were received indicating that Tier II information is more useful than Tier I information. EPA agrees with these commenters. For this reason, the Tier II form has been designed for potential use as a worksheet and guide for gathering information ultimately to be used in the Tier I aggregate data. Section 312 and § 370.25(b) of the regulations allow facilities to submit the Tier II form in lieu of Tier I.

Several commenters asked whether the Tier II inventory form could be submitted instead of the MSDS or list; others favored the option of submitting the MSDS instead of Tier I and Tier II. Under today's rule, the Tier II inventory form cannot be submitted in lieu of the MSDS; nor can the MSDS submission constitute compliance with inventory form reporting. Title III establishes several distinct reporting requirements under community right-to-know that serve different purposes. The MSDS submission under section 311 allows the public to find out what chemicals are present at facilities and the types of hazards they present. The 312 inventory forms provide more specific location, storage, and quantity information. These requirements are not alternative.

4. Need for Funds

A dozen commenters indicated a need for funding in order to carry out the Title III requirements.

No federal funding has been provided in support of Title III community right-to-know requirements at State and local levels. However, EPA intends to provide technical support to States in carrying out their responsibilities.

The Agency received a number of comments regarding the burden that Title III places on both industry and State and local agencies in terms of costs, manpower, and record-keeping. EPA has made every effort in this rulemaking to minimize this burden, while effectively satisfying the legislative intent of Title III. The Agency has instituted a 3-year phase-in period, encouraged the use of the list option as opposed to the MSDS option, and reduced the number of reporting categories for physical and health hazards. Additionally, the Agency as conducted outreach activities such has teleconferences and workshops targeted at overall Title III implementation.

5. Responsibility for and Appropriateness of Data

EPA received many comments requesting clarification of the submitter's responsibility for the accuracy and completeness of submitted data.

Several commenters felt that only producers, importers, and distributors should be responsible for the accuracy of chemical hazard assessments and that users should not be responsible for initiation or verification of data.

While producers, importers, and distributors are responsible for providing accurate MSDS information, downstream users who submit, or rely upon, such MSDS should make reasonable efforts to correct information that they know to be inaccurate or to inform the recipients of the information of its inaccuracies.

A number of commenters noted that many workplace substances classified as hazardous chemicals under OSHA regulations do not present a danger to communities. Others mentioned cleaning and maintenance products as examples and asked that they be excluded.

Many work-place substances do not, in fact, constitute a hazard to the community. Sections 311 and 312 focus primarily on the presence of hazardous chemicals within the community and the need for public access to information about their existence whether or not they pose a present hazard to the community. However, many cleaning and maintenance products are excluded from the definition of hazardous chemical as consumer products, or need be reported only on request if they are present in quantities below the threshold.

One commenter asked for a clarification of the obligations of facility owners or operators who voluntarily provide MSDS to customers and employees.

If an owner or operator chooses to provide MSDS to customers and employees even though he is not required to do so under OSHA, the owner or operator does not need to submit the MSDS or Tier I and Tier II forms under Title III since these requirements only apply to persons required to prepare or have available MSDS for hazardous chemicals under OSHA regulations.

6. Scope of the Section 311 and 312 Requirements

Several commenters remarked on the transitory nature of some of the information and the necessity of frequent revisions.

Under section 312, the reporting requirement is annual and thus will automatically capture new or revised information. Facilities may, and in most cases should, inform their local or State government or fire department immediately if there is a change in the emergency contact number or other significant information on the inventory forms. Facilities subject to section 303 must provide information on relevant changes at the facility to the LEPC for planning purposes. With respect to MSDS submission under section 311, under today's rule, a revised MSDS must be filed with the LEPC, the SERC, and the local fire department within three months after significant new information is discovered.

EPA received a number of comments on the scope of the reporting requirements. According to one commenter, reporting on all chemicals required to have an MSDS is too broad, because chemical suppliers have interpreted the OSHA hazard communication standard to include the broadest range of chemicals in order to avoid future liability. Another commenter felt that the reporting requirements would be too narrow if only SIC codes 20–39 were covered.

Title III requires that MSDS be submitted for each hazardous chemical for which an MSDS is required under OSHA except where EPA establishes a threshold for reporting. EPA does not believe that sections 311 and 312 requirements can or should be applied to facilities not required to have MSDS under OSHA regulations. However, when OSHA's expansion of the hazard communication standard to non-manufacturing facilities becomes effective, the reporting requirements under sections 311 and 312 will automatically apply to the facilities newly covered by the OSHA

requirements. Also, EPA does not believe that the expansive interpretation of the OSHA hazard communication standard given by members of the regulated community provides a sufficient basis for limiting the scope of section 311 and 312 requirements, especially in light of explicit statutory coverage and specific statutory exclusions.

To the extent possible, EPA has taken into consideration the expansion of the 311 and 312 universe. EPA has limited authority to revise sections 311 and 312 requirements and has in this rule exercised its full authority to ensure an effective community right-to-know program. In this rule, EPA has mitigated impact by setting high initial thresholds to avoid undue burden in early implementation stages, reducing hazard categories, developing outreach programs, and retaining flexibility for local and State governments as much as possible. However, as discussed earlier, EPA will review the minimum thresholds established in this rule when OSHA's expansion of its hazard communication standard becomes effective and will undertake a rulemaking, if necessary, to revise those thresholds to avoid overwhelming MSDS and Tier I submissions to State and local officials as a result of the expansion.

One commenter recommended that all required information, including updates, be submitted to both the State and local organizations to maintain consistency in reporting.

EPA agrees and has exercised its general rulemaking authority under Section 328 to require submission of the updated MSDS to all entities receiving the original MSDS. Otherwise, under the proposed rule, only the LEPC would receive updated information and thus have current information on a facility. A new MSDS at the facility must also be submitted to all three entities (as indicated in § 370.21(c)(2)).

V. Relationship to Other EPA Programs

A. Other Title III Programs

1. Subtitle A—Emergency Planning

Title III of SARA establishes several reporting and notification requirements in addition to sections 311 and 312. Subtitle A of Title III contains several notification provisions that are critical to local emergency planning. In order to facilitate local emergency planning, under section 302 facilities that have present an amount of an extremely hazardous substance in excess of the corresponding threshold planning quantity were required to notify the State emergency response commission by May 17, 1987, or within 60 days of acquisition of such a substance. Section 303 requires that such facilities designate a representative to work with the local emergency planning committees in the Title III planning process and provide information concerning the facility that may be relevant to emergency planning. Section 304 establishes immediate release reporting requirements to enable timely and effective local response to releases of extremely hazardous substances and CERCLA hazardous substances. These emergency planning requirements are set forth in a final rule published on April 22, 1987. 52 FR 13380. These requirements are unaffected by today's rule.

Today's rule sets out the reporting requirements under sections 311 and 312, Subtitle B of Title III. The focus of Subtitle B is public access to information concerning chemicals in their communities rather than emergency response, and thus reporting requirements under Subtitle B are both broader in scope than Subtitle A and, under section 312, continuing in nature. However, the information obtained or made available under sections 311 and 312 of Subtitle B may also be of significant value to emergency responders.

Subtitle B will make available to the local and State emergency planners information on other chemicals and facilities, beyond those identified under Subtitle A, that they may wish to include in their emergency planning efforts. Tier II information under section 312 will provide specific information on the quantities and locations of hazardous chemicals. Thus, sections 311 and 312 provide information beneficial to the emergency planning required under Subtitle A. As discussed in the April 22, 1987, final rule, the facilities identified as a result of that rule are only a "first cut" of the facilities and potential chemical hazards for which emergency planning may be necessary.

2. Subtitle B—Section 313 Toxic Chemical Release Inventory

Subtitle B also establishes reporting requirements under Section 313. Beginning July 1, 1988, certain manufacturing facilities at which there is a "toxic chemical" manufactured, processed, or otherwise used in excess of a statutory quantity must annually report to EPA and the State, with respect to each substance, the maximum amount present at the facility, the treatment or disposal methods used, and the annual quantity released into the environment. These requirements are the subject of a separate rulemaking, proposed for public comment on June 4, 1987. 52 FR 21152.

3. Trade Secrets

Title III also establishes provisions for the protection of trade secrets. Section 322 of Title III entitles persons required to submit information under sections 303, 311, 312, and 313 to withhold the specific chemical identity from disclosure under certain conditions. In order to withhold such information, however, a person must submit the withheld information and an explanation to EPA. Under section 322(c), EPA is required to publish regulations to implement the trade secret provisions as soon as practicable after the enactment of SARA. EPA intends to propose trade secret regulations under Section 322 later this year.

B. CERCLA Reporting Requirements

CERCLA section 103 establishes notification requirements for facilities at which there is a release of a reportable quantity (RQ) of a CERCLA hazardous substance. Such releases must be immediately reported to the National Response Center (800–424–8802, or in the Washington, DC metropolitan area at 202–426–2675). These reporting requirements and the list of hazardous substances and RQs are found in 40 CFR Part 302 and are for the purpose of alerting federal responders to a potentially dangerous release of a hazardous substance so that any necessary response can be made in a timely fashion. These notification requirements are similar to the release notification requirements under section 304 of Title III that must be made to local and State response personnel and are unaffected by today's rule.

VI. Effective Date

Section 553(d) of the Administrative Procedure Act (APA) generally requires that the effective date of substantive rules be no earlier than 30 days after publication in the **Federal Register**. However, section 553(d) also provides exceptions to the 30-day effective date requirement for rules that grant an exemption or relieve a restriction and for other "good cause."

EPA has made this rule immediately effective upon publication for several reasons. First, the submission of MSDS or alternative lists is required under section 311 by October 17, 1987. Providing a 30-day effective date would make this regulation, which implements those requirements, effective after October 17 and thus may cause serious confusion within the regulated

community over how to comply with statutory and regulatory reporting requirements. In addition, this final rule reduces the categories for reporting and establishes minimum thresholds, which relieves the impact of the statutory requirements otherwise effective on October 17, 1987. Finally, the other requirements implemented by this rule relate to section 312 reporting, which is not required until March 1, 1988. Thus, those requirements would not be affected by the 30-day effective date requirement under section 553(d) of the APA.

Because EPA believes that it thus has "good cause" to suspend the 30-day effective date requirement and this rule relieves reporting otherwise required by statute, the Agency has made this rule immediately effective in accordance with section 553(d) of the APA.

VII. Regulatory Analyses

A. Regulatory Impact Analysis

1. Purpose

Executive Order No. 12291 requires each federal agency to determine if a regulation is a "major" rule as defined by the Order and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with each major rule. Because EPA has determined that the reporting requirements for hazardous chemicals in this rulemaking constitute a major rule under Executive Order No. 12291, the Agency has prepared an RIA to assess the economic impact on the final regulation on affected industry and State and local government entities. The following results are presented in detail in the analysis documented in *Regulatory Impact Analysis in Support of Final Rulemaking Under Sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986*, which is available for review in the public docket for this rulemaking.

This rule was submitted to the Office of Management and Budget for review as required by E.O. No. 12291.

2. Methodology and Data Sources

EPA conducted an assessment of the costs, benefits, and economic impacts associated with the final rule and the primary regulatory alternatives. The regulation affects employers covered by some provisions of OSHA's hazard communication standard and three types of government entities—State emergency response commissions, local emergency planning committees, and fire departments. Both industry and government are required by sections 311 and 312 of SARA to undertake certain activities, and, thus, both types of entities incur costs to comply with these regulations.

Benefits for both industry and government may also arise in conjunction with compliance activities. In addition, industry, government, and other groups may, as a result of these regulations, undertake additional voluntary activities that generate benefits both for these groups as well as for the general community. The interrrelationships among the activities undertaken by these diverse groups, the provisions of Title III, and the potential consequences for health and the environment are complex. Thus, time constraints did not permit EPA to perform a quantitative evaluation of the benefits of these provisions; a qualitative discussion of the benefits is provided in the RIA.

Costs of complying with sections 311 and 312 of SARA are incurred by covered facilities, State emergency response commissions, local emergency planning committees, and fire departments. Total costs depend on the number of facilites reporting, the total number of MSDS, and the number of government entities receiving the data.

For the industry analysis, EPA analyzed the activities that each facility would have to undertake to comply with sections 311 and 312 and the unit costs associated with each activity. It was assumed that the cost incurred by a facility varied in different years depending on the regulatory alternative being considered, the size of the facility, and the number of chemicals at the facility. Total costs to industry, thus, depend on the number of facilities affected or reporting, the number of chemicals for which MSDS are maintained at these facilities, and the unit costs associated with each of the compliance activities.

OSHA's hazard communication standard (HCS) currently covers facilities in the manufacturing sector (Standard Industrial Classification (SIC) codes 20 through 39), although OSHA has recently expanded the HCS to the non-manufacturing sector, to be effective in May, 1988. The number of facilities in each two-digit manufacturing SIC code nationwide was obtained from the Bureau of the Census (County Business Patterns, U.S. Department of Commerce, 1984) for four facility sizes: (1) 1–19 employees, (2) 20–99 employees, (3) 100–249 employees, and (4) more than 249 employees. Based on census data, there are an estimated 350,740 manufacturing facilities that could potentially be affected by this rule.

The number of MSDS present, on average, at a facility in each SIC code and facility size class was provided by updating OSHA's 1980 estimates of the number of "regulated chemicals" (i.e., MSDS) in each SIC code and size class to 1986. The total number of MSDS maintained at all manufacturing facilities is estimated to be 35,004,503, which implies that an average facility maintains 100 MSDS. On average, the smallest facilities (those with 1–19 employees) are estimated to have 74 MSDS, and the largest facilities (more than 250 employees) have 306 MSDS.

The costs to industry of complying with each of the regulatory alternatives have been estimated as have the costs of complying with the default legislative requirements if EPA had promulgated no regulations. Five regulatory alternatives are identified for analysis in this report. The regulatory options differ from each other with regard to the threshold that is in effect in each year. Raising the threshold in a given year reduces industry costs in that year by reducing the number of chemicals that facilities report under both Sections 311 and 312 and by reducing the number of facilities that report.

Estimates of the numbers of covered facilities and reportable chemicals for each threshold level were obtained from a data set that was compiled as part of an industrial survey conducted by the State of New Jersey in 1979. To perform this analysis, the chemical reports in the New Jersey data set were weighted to make the mix of facilities by SIC code more representative of the mix of facilities nationwide. The effects of different thresholds on the numbers of facilities and chemicals covered were then calculated. The cost methodology assumed that the effect of thresholds on the percent of facilities or chemicals covered is unaffected by SIC code or the size of the facility. At 10,000 pounds, it is estimated that 22 percent of the facilities (78,000) will be required to report, and that 13 percent of the chemicals (4.5 million) will be reported. At 500 pounds, it is estimated that 82 percent of the facilities (288,000) and 57 percent of the chemicals (19.9 million) will be covered.

Similar weighting procedures were followed for data sets obtained from two other states, Michigan and New York. The data from these states did not contradict the New Jersey data; the latter were used in the analysis since they were more complete in several variables and also provided a more conservative view of the extent to which thresholds reduce costs.

In addition to differences in the reporting thresholds, the regulatory alternatives differ from the default statutory requirements in two respects. First, the statutory default for hazard categorization is the OSHA categories, which were defined as 23 categories of health and physical hazards for the proposed rule. EPA is promulgating five

hazard categories; performing hazard categorization should be less costly for industry than under the 23 OSHA categories. Second, EPA is publishing inventory forms for reporting; if no forms exist, the legislation requires that facilities submit section 312 information by letter. Both these factors reduce the estimated cost of the regulatory alternatives in comparison with the legislation.

The analysis of costs to government proceeded along lines similar to the industry analysis. The analysis estimated costs for a representative State commission, local committee, and fire department. It was assumed that the costs incurred by each entity in each year depended on the number of reports received, on the number of facilities reporting, and on the number of government entities. EPA assumed that there would be only one commission per State and estimated the number of local committees and fire departments.

Both the industry and government analyses assume that reporting and receiving entities undertake the minimum activities that they must perform to comply with SARA. The analysis, therefore, does not take into account the costs associated with voluntary activities, such as designing and using computer systems to store and access the data, alterations in chemical usage patterns that may arise at facilities as a result of these sections of SARA, or other activities or effects.

Several supplemental analyses were performed to provide evidence on the sensitivity of the results to changes in various assumptions of the methodology. In particular, present value total costs were computed (a) for two discount rates, 4% and 10%, (b) using an alternative set of results on the effects of thresholds, (c) for the 23 OSHA categories as well as the five categories in the rule, and (d) for the non-manufacturing facilities that will be covered by the OSHA expansion of the HCS.

An analysis of some of the costs potentially associated with requests is also presented. In particular, a sensitivity analysis of the aggregate cost to government of responding to requests for MSDS or Tier I information when the information is already in the files is included. The cost to a facility of responding to an individual request for MSDS or Tier I information is provided as is the cost to a government entity of requesting MSDS or Tier I information if it is not in the files. The cost to a facility of responding to Tier II requests, under alternative assumptions on the number of chemicals for which Tier II information is requested, is also provided.

3. Results

The RIA analyzes five regulatory alternatives as well as the statutory or default baseline. In addition, two alternative hazard categorization schemes are considered. The five threshold options considered are:

Alternative I: No threshold
Alternative II: (Proposed)
  10,000 pounds in year 1
  500 pounds in year 2
  No threshold in year 3 and subsequent years
Alternative III:
  10,000 pounds in year 1
  10,000 pounds in year 2
  500 pounds in year 3 and beyond
Alternative IV:
  10,000 pounds in year 1
  10,000 pounds in year 2
  50 pounds in year 3 and beyond
Alternative V:
  10,000 pounds in year 1
  10,000 pounds in year 2
  2,000 pounds in year 3 and beyond.

In present value (PV) terms, the cost of each of the regulatory alternatives is lower than the cost associated with the statutory requirements. Present value costs for each of these threshold alternatives were computed by discounting annual costs over the first ten years of reporting at ten percent. Assuming the five hazard categories promulgated in the final rule, the PV costs to industry for the five alternatives range between $520 million and just over $1 billion, in comparison with $1.6 billion for the statutory requirements (the baseline).

For government, present value costs range between $120 million and $260 million; the costs of the no-threshold option are the greatest and are identical with the costs of the baseline under the assumptions of the analysis. For both industry and government, Alternative V, which has the highest permanent threshold, has the lowest continuing costs and the lowest present value costs. Alternative I, the no-threshold option, has the highest costs. Alternative III, the preferred alternative for this rulemaking, is towards the low end: $708 million for industry and $178 million for government.

For Alternative III, first-year industry costs equal approximately $162 million, second-year costs drop to $24 million since the threshold is unchanged, third year costs rise to $348 million, since the reduction in the threshold requires many more facilities to report on additional chemicals. Costs level off at $59 million in the fourth and subsequent years. Costs for the other alternatives in the fourth and subsequent years range between $39 million and $66 million, depending on the threshold level in those years.

In the first year of reporting, all system set-up and design costs are attributed to section 311; thus, the costs to industry of complying with section 311 slightly outweight those associated with section 312 for all regulatory alternatives except Alternative I, the no-threshold option. For year three onward, section 312 costs outweigh section 311 costs; for Alternative III in year four, the costs associated with section 312 are approximately 64 percent of the combined costs to industry of sections 311 and 312.

In general, annual government costs for sections 311 and 312 combined are much smaller than those estimated for industry. This reflects the assumption in the analysis that many costs, such as rule familiarization and system design, are incurred by each individual facility or government entity and are not directly related to the number of forms being handled. First-year costs equal $43 million for all alternatives except the no-threshold option; second-year costs drop substantially; third-, fourth- (and subsequent) year costs level off at between $15 million and $32 million. Although costs to an individual State commission far exceed those to a local committee or fire department, there are many more fire departments than commissions or committees so that, in aggregate, costs to fire departments may account for as much as one-third to more than one-half of government costs in any given year.

The above costs do not reflect the costs of the regulatory alternatives if OSHA's 23 hazard categories had been used in the final rule. In present value terms, using the original 23 categories rather than five leads to a 28% to 38% increase in costs over 10 years, depending on the alternative.

Both industry and government will incur costs in conjunction with requests. SERCs, LEPCs and fire departments, as well as other government officials, may have access to the information reported under these sections and may request additional information. In addition, SERCs and LEPCs will, under certain circumstances, have to make available MSDS and inventory forms that they have received from facilities. They will also have to request information that either was not reported or that concerns chemicals below the threshold, and they will need to make determinations on, and possibly request, Tier II

information. Similarly, facilities will need to respond to requests by government. It is difficult to estimate the aggregate costs associated with requests, since the magnitude of these costs depends crucially on the behavior of the public and government and the types of programs that are set up on the threshold level in effect, and on the government's implementation of the Tier II provisions.

An estimate of the potential costs to government of responding to requests for MSDS was obtained assuming that requests for between five and 25 percent of facilities are received by government. If government agencies provide copies of all MSDS that a facility has submitted, estimated costs to government of handling these requests range between less than $400,000 to over $1.8 million.

The number of Tier II requests to which industry must respond will depend on the criteria used by local committees to evaluate public requests, the number of public requests made, the distribution of these requests across chemical volumes, and the number of requests originating with the government. It is thus difficult to estimate the aggregate costs associated with Tier II information; however, the costs to an individual facility of responding to a Tier II request may range between approximately $800 and $6,500, depending on the number of chemicals for which the request is received and the size of the facility.

Similarly, the number of requests that government will make to industry for MSDS stored below the threshold will depend on the number of requests that governments receive, which, in turn, depends on the size of the threshold and the outreach program and policies of government. Further, if facilities choose to submit lists, additional requests for MSDS will be generated.

No aggregate estimates of the costs of complying with requests below the threshold are presented. However, the cost to government of requesting all MSDS from a facility, photocopying, and mailing the information to the requester when the information is not on file is estimated to be $52 per request; the cost to industry of complying with the request is $31. Those activities and associated costs are intended to represent one reasonable method of making information available to the public and may not be used by all government entities.

The analysis also examined the effects of OSHA's expansion of its HCS on industry and government costs. This expansion may affect as many as 3.5 million non-manufacturing facilities with approximately 67 million MSDS. Very rough cost estimates suggest that, for the chosen alternative, present value costs to non-manufacturing facilities of complying with sections 311 and 312 combined may be as high as $3.7 billion; this is approximately five times the costs estimated for manufacturing. For government, incremental costs associated with the expansion are approximately $1.1 billion, which is over six times the costs associated with the current scope of the HCS.

Benefits arise in conjunction with several parts of the reporting requirements of this rule. Potential benefits arise in conjunction with this rule primarily because the information that is reported is used (e.g., more effective planning occurs, which reduces the probability of accidents or chronic exposures). Thus, the provisions of the regulation affect the benefits generated, in comparison with those generated by the statutory requirements, in several ways. First, the reporting thresholds affect the volume of information submitted. Reducing the number of submissions generates benefits if the information is more manageable. However, raising thresholds may reduce benefits if public access to complete information on chemical hazards in the community is reduced or impeded.

Second, simplifying the hazard classification system affects benefits. On the one hand, it promotes efficient use of the information; conversely, it reduces the level of detail available to the government and the public.

Benefits also raise in conjunction with two public access provisions that have been incorporated into the final rule: reporting on the list of EHS at 500 pounds or the TPQ and access by the public, on request, to information on chemicals stored below the threshold. Both these provisions provide benefits to communities with specific needs for complete information.

Finally, use of the published form by industry for Section 312 reporting may provide benefits. Consistently formatted information is easier to process, manage, and use and thus may encourage utilization of the information by the general public and government entities.

B. Regulatory Flexibility Act

1. Purpose

Under the Regulatory Flexibility Act, whenever an agency is required to issue any proposed or final rule for publication in the **Federal Register**, it must prepare and make available a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions), unless the agency's Administrator certifies that the rule will not have a significant impact on a substantial number of small entitles. The analyses contained in the RIA address the impact of this rule on small entities. Based on these analyses, EPA has concluded that, while the rule affects a substantial number of small entities, the impact on each is not significant.

2. Methodology and Results

To examine the impacts on small businesses, EPA compared average costs for small facilities (defined to be those with 1–19 employees) to average and median sales for those facilities, by two-digit SIC code.

There are a substantial number of small businesses under this definition; 225,423 facilities—64 percent of total manufacturing—are estimated to be small. All of these facilities must, at least, incur the cost of becoming familiar with the requirements of these Sections, and thus, incur some costs of complying with sections 311 and 312.

In order to assess the impacts on small businesses, several guidelines were used. The primary criterion, however, is the ratio of annual costs to average or median sales. A worst-case scenario is provided by examining the first year of Alternative I, no threshold. Average costs to industry for small businesses, by SIC code, range between $1,400 and $2,100. As a percentage of average sales, the range is .12 to .71 percent. The range as a percentage of median sales is narrower—.20 to .64 percent. This is well within EPA's guidelines that cost remain below 5 percentage of sales in order to avoid significant impacts.

However, EPA is concerned that it has been unable to provide a complete assessment of the impact of this rule on small businesses in all business sectors that will in the future become subject to these requirements due to OSHA's expanded hazard communication standard. As indicated earlier, EPA is understanding a more detailed review of the appropriateness of these thresholds in this rule as they apply to the expanded coverage of the OSHA MSDS requirements. EPA will also be conducting a further analysis of small businesses newly subject to OSHA and Title III requirements.

3. Certification

On the basis of the analyses contained in the RIA with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a

substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2050.0072.

VIII. Submission of Reports

If necessary to obtain reporting forms, facilities should contact their State emergency response commission. Although EPA intends to provide camera-ready copy of the federal form for use by the SERCs, the commission will be responsible for co-ordinating with the LEPCs and fire departments regarding the printing and distribution of the inventory forms.

To obtain the address of a SERC, an individual or facility should contact their Governor's office or the Chemical Emergency Preparedness Hotline at (800) 535-0202 or (202) 479-2449 (DC and Alaska). The SERC should be able to provide information concerning the LEPCs within the State.

List of Subjects in 40 CFR Part 370

Chemicals, Hazardous substances, Extremely hazardous substances, Intergovernmental relations, Community right-to-know, Superfund Amendments and Reauthorization Act, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Date: October 8, 1987

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Subchapter J of Title 40 of the Code of Federal Regulations is amended by adding Part 370 to read as follows:

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

Subpart A—General Provisions

Sec
370.1 Purpose
370.2 Definitions
370.5 Penalties

Subpart B—Reporting Requirements

Sec.
370.20 Applicability
370.21 MSDS Reporting
370.25 Inventory Form Reporting
370.28 Mixtures

Subpart C—Public Access and Availability of Information

Sec.
370.30 Requests for Information
370.31 Provision of Information

Subpart D—Inventory Forms

Sec.
370.40 Tier I Emergency and Hazardous Chemical Inventory Form
370.41 Tier II Emergency and Hazardous Chemical Inventory Form

Authority: Secs. 311, 312, 324, 325, 328, 329 of Pub. L. 99-499, 100 Stat. 1613, 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

Subpart A—General Provisions

§ 370.1 Purpose.

These regulations establish reporting requirements which provide the public with important information on the hazardous chemicals in their communities for the purpose of enhancing community awareness of chemical hazards and facilitating development of State and local emergency response plans.

§ 370.2 Definitions.

"Commission" means the State emergency response commission, or the Governor if there is no commission, for the State in which the facility is located.

"Committee" means the local emergency planning committee for the emergency planning district in which the facility is located.

"Environment" includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

"Extremely hazardous substance" means a substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.

"Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

"Hazard Category" means any of the following:

(1) "Immediate (acute) health hazard," including "highly toxic," "toxic," "irritant," "sensitizer," "corrosive," (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short term exposure and is of short duration;

(2) "Delayed (chronic) health hazard," including "carcinogens" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long term exposure and is of long duration;

(3) "Fire hazard," including "flammable," combustible liquid," "pyrophoric," and "oxidizer" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations);

(4) "Sudden release of pressure," including "explosive" and "compressed gas" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations); and

(5) "Reactive," including "unstable reactive," "organic peroxide," and "water reactive" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations).

"Hazardous chemical" means any hazardous chemical as defined under § 1910.1200(c) of Title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

"Inventory form" means the Tier I and Tier II emergency and hazardous chemical inventory forms set forth in Subpart D of this Part

"Material Safety Data Sheet" or "MSDS" means the sheet required to be developed under § 1910.1200(g) of Title 29 of the Code of Federal Regulations.

"Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of State, or interstate body.

"Present in the same form and concentration as a product packaged for

distribution and use by the general public" means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

"TPQ" means the threshold planning quantity for an extremely hazardous substance as defined in 40 CFR Part 355.

§ 370.5 Penalties

(a) *MSDA reporting.* Any person other than a governmental entity who violates any requirement of § 370.21 shall be liable for civil and administrative penalties of not more than $10,000 for each violation.

(b) *Inventory reporting.* Any person other than a governmental entity who violates any requirement of § 370.25 shall be liable for civil and administrative penalties of not more than $25,000 for each violation.

(c) *Continuing violations.* Each day a violation described in paragraphs (a) or (b) of this section continues shall constitute a separate violation.

Subpart B—Reporting Requirements

§ 370.20 Applicability.

(a) *General.* The requirements of this subpart apply to any facility that is required to prepare or have available a material safety data sheet (or MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(b) *Minimum threshold levels.* Except as provided in paragraph (b)(3) of this section, the minimum threshold level for reporting under this subpart shall be according to the following schedule.

(1) The owner or operator of a facility subject to this Subpart shall submit an MSDS:

(i) On or before October 17, 1987 (or 3 months after the facility first becomes subject to this subpart), for all hazardous chemicals present at the facility in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the TPQ, whichever is less, and

(ii) On or before October 17, 1989 (or 2 years and 3 months after the facility first becomes subject to this Subpart), for all hazardous chemicals present at the facility between 10,000 and zero pounds for which an MSDS has not yet been submitted.

(2) The owner or operator of a facility subject to this Subpart shall submit the Tier I form:

(i) On or before March 1, 1988 (or March 1 of the first year after the facility first becomes subject to this Subpart), covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the TPQ, whichever is less, and

(ii) On or before March 1, 1989 (or March 1 of the second year after the facility first becomes subject to this Subpart), covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the TPQ, whichever is less, and

(iii) On or before March 1990 (or March 1 of the third year after the facility first becomes subject to this Subpart), and annually thereafter, covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than zero pounds or that are extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ, whichever is less.

(3) The minimum threshold for reporting in response to requests for submission of an MSDS or a Tier II form pursuant to §§ 370.21(d) and 370.25(c) of this Part shall be zero.

§ 370.21 MSDS reporting.

(a) *Basic requirement.* The owner or operator of a facility subject to this Subpart shall submit an MSDS for each hazardous chemical present at the facility according to the minimum threshold schedule provided in paragraph (b) of § 370.20 to the committee, the commission, and the fire department with jurisdiction over the facility.

(b) *Alternative reporting.* In lieu of the submission of an MSDS for each hazardous chemical under paragraph (a) of this section, the owner or operator may submit the following:

(1) a list of the hazardous chemicals for which the MSDS is required, grouped by hazard category as defined under § 370.2 of this Part;

(2) the chemical or common name of each hazardous chemical as provided on the MSDS; and

(3) except for reporting of mixtures under § 370.28(a)(2), any hazardous component of each hazardous chemical as provided on the MSDS.

(c) *Supplemental reporting.* (1) The owner or operator of a facility that has submitted an MSDS under this section shall provide a revised MSDS to the committee, the commission, and the fire department with jurisdiction over the facility within three months after discovery of significant new information concerning the hazardous chemical for which the MSDS was submitted.

(2) After October 17, 1987, the owner or operator of a facility subject to this section shall submit an MSDS for a hazardous chemical pursuant to paragraph (a) of this section or a list pursuant to paragraph (b) of this section within three months after the owner or operator is first required to prepare or have available the MSDS or after a hazardous chemical requiring an MSDS becomes present in an amount exceeding the threshold established in § 370.20(b).

(d) *Submission of MSDS upon request.* The owner or operator of a facility that has not submitted the MSDS for a hazardous chemical present at the facility shall submit the MSDS for any such hazardous chemical to the committee upon its request. The MSDS shall be submitted within 30 days of the receipt of such request.

§ 370.25 Inventory reporting.

(a) *Basic requirement.* The owner or operator of a facility subject to this Subpart shall submit an inventory form to the commission, the committee, and the fire department with jurisdiction over the facility. The inventory form containing Tier I information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in § 370.20(b) shall be submitted on or before March 1 of each year, beginning in 1988.

(b) *Alternative reporting.* With respect to any specific hazardous chemical at the facility, the owner or operator may submit a Tier II form in lieu of the Tier I information.

(c) *Submission of Tier II information.* The owner or operator of a facility subject to this Section shall submit the Tier II form to the commission, committee, or the fire department having

jurisdiction over the facility upon request of such persons. The Tier II form shall be submitted within 30 days of the receipt of each request.

(d) *Fire department inspection.* The owner or operator of a facility that has submitted an inventory form under this section shall allow on-site inspection by the fire department having jurisdiction over the facility upon request of the department, and shall provide to the department specific location information on hazardous chemicals at the facility.

§ 370.28 Mixtures.

(a) *Basic reporting.* The owner or operator of a facility may meet the reporting requirements of §§ 370.21 (MSDS reporting) and 370.25 (inventory form reporting) of this Subpart for a hazardous chemical that is a mixture of hazardous chemicals by:

(1) Providing the required information on each component in the mixture which is a hazardous chemical, or

(2) Providing the required information on the mixture itself, so long as the reporting of mixtures by a facility under § 370.21 is in the same manner as under § 370.25, where practicable.

(b) *Calculation of the quantity.* (1) if the reporting is on each component of the mixture which is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) shall be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture.

(2) If the reporting is on the mixture itself, the total quantity of the mixture shall be reported.

Subpart C—Public Access and Availability of Information

§ 370.30 Requests for information.

(a) *Request for MSDS information.* (1) Any person may obtain an MSDS with respect to a specific facility by submitting a written request to the committee.

(2) If the committee does not have in its possession the MSDS requested in paragraph (a)(1) of this section, it shall request a submission of the MSDS from the owner or operator of the facility that is the subject of the request.

(b) *Requests for Tier II information.* (1) Any person may request Tier II information with respect to a specific facility by submitting a written request to the commission or committee in accordance with the requirements of this section.

(2) If the committee or commission does not have in its possession the Tier II information requested in paragraph (b)(1) of this section, it shall request a submission of the Tier II form from the owner or operator of the facility that is the subject of the request, provided that the request is from a State or local official acting in his or her official capacity or the request is limited to hazardous chemicals stored at the facility in an amount in excess of 10,000 pounds.

(3) If the request under paragraph (b)(1) of this section does not meet the requirements of paragraph (b)(2) of this section, the committee or commission may request submission of the Tier II form from the owner or operator of the facility that is the subject of the request if the request under paragraph (b)(1) of this section includes a general statement of need.

§ 370.31 Provision of information.

All information obtained from an owner or operator in response to a request under this subpart and any requested Tier II form or MSDS otherwise in possession of the commission or the committee shall be made available to the person submitting the request under this Subpart; provided upon request of the owner or operator, the commission or committee shall withhold from disclosure the location of any specific chemical identified in the Tier II form.

Subpart D—Inventory Forms

§ 370.40 Tier I emergency and hazardous chemical inventory form.

(a) The form set out in paragraph (b) of this section shall be completed and submitted as required in § 370.25(a). In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier I Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

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Page ____ of ____ pages
Form Approved OMB No. 2050-0072

Tier One

EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

Aggregate Information by Hazard Type

FOR OFFICIAL USE ONLY
ID #
Date Received

Important: Read instructions before completing form

Reporting Period From January 1 to December 31, 19____

Facility Identification

Name _____
Street Address _____
City _____ State _____ Zip _____
SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

Owner/Operator

Name _____
Mail Address _____
Phone ( ) _____

Emergency Contacts

Name _____
Title _____
Phone ( ) _____
24 Hour Phone ( ) _____

Name _____
Title _____
Phone ( ) _____
24 Hour Phone ( ) _____

Physical Hazards

☐ Check if site plan is attached

Hazard Type	Max Amount*	Average Daily Amount*	Number of Days On-Site	General Location
Fire	☐☐	☐☐	☐☐☐	
Sudden Release of Pressure	☐☐	☐☐	☐☐☐	
Reactivity	☐☐	☐☐	☐☐☐	

Health Hazards

Immediate (acute)	☐☐	☐☐	☐☐☐	
Delayed (Chronic)	☐☐	☐☐	☐☐☐	

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete

Name and official title of owner/operator OR owner/operator's authorized representative

Signature _____ Date signed _____

* Reporting Ranges

Range Value	Weight Range in Pounds From...	To...
00	0	99
01	100	999
02	1000	9,999
03	10,000	99,999
04	100,000	999,999
05	1,000,000	9,999,999
06	10,000,000	49,999,999
07	50,000,000	99,999,999
08	100,000,000	499,999,999
09	500,000,000	999,999,999
10	1 billion	higher than 1 billion

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TIER ONE INSTRUCTIONS

GENERAL INFORMATION

Submission of this form is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312, Public Law 99-499.

The purpose of this form is to provide State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the past year.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM.

You may substitute the Tier Two form for this Tier One form. (The Tier Two form provides detailed information and must be submitted in response to a specific request from State or local officials.)

WHO MUST SUBMIT THIS FORM

Section 312 of Title III requires that the owner or operator of a facility submit this form if, under regulations implementing the Occupational Safety and Health Act of 1970, the owner or operator is required to prepare or have available Material Safety Data Sheets (MSDS) for hazardous chemicals present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at §1910.1200.

WHAT CHEMICALS ARE INCLUDED

You must report the information required on this form for every hazardous chemical for which you are required to prepare or have available an MSDS under the Hazard Communication Standard. However, OSHA regulations and Title III exempt some chemicals from reporting.

Section 1910.1200(b) of the OSHA regulations currently provides the following exemptions:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.) when subject to regulations issued under that Act;

(ii) Tobacco or tobacco products;

(iii) Wood or wood products;

(iv) "Articles"– defined under §1910.1200 (b) as a manufactured item:

- Which is formed to a specific shape or design during manufacture;
- Which has end use function(s) dependent in whole or in part upon the shape or design during end use; and
- Which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use.

(v) Food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(vi) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

(vii) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 1251 *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers; and

(viii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), when it is in solid, final form for direct administration to the patient (i.e., tablets or pills).

In addition, Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(iii) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Also, minimum reporting thresholds have been established under Title III, Section 312. You need to report only those hazardous chemicals that were present at your facility at any time during the preceding calendar year at or above the levels listed below:

- January to December 1987 (or first year of reporting) ...10,000 lbs.
- January to December 1988 (or second year of reporting) ...10,000 lbs.
- January to December 1989 (or third year of reporting) ...zero lbs.*

  * EPA will publish the final threshold, effective in the third year, after additional analysis.

- For extremely hazardous substances...500 lbs. or the threshold planning quantity, whichever is less, from the first year of reporting and thereafter.

WHEN TO SUBMIT THIS FORM

Beginning March 1, 1988, owners or operators must submit the Tier One form (or substitute the Tier Two form) on or before March 1 of every year.

INSTRUCTIONS

Please read these instructions carefully. Print or type all responses.

WHERE TO SUBMIT THIS FORM

Send one completed inventory form to each of the following organizations:

1. Your State emergency planning commission
2. Your local emergency planning committee
3. The fire department with jurisdiction over your facility.

PENALTIES

Any owner or operator of a facility who fails to submit or supplies false Tier One information shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation. In addition, any citizen may commence a civil action on his or her own behalf against any owner or operator who fails to submit Tier One information.

You may use the Tier Two form as a worksheet for completing Tier One. Filling in the Tier Two chemical information section should help you assemble your Tier One responses.

If your responses require more than one page, fill in the page number at the top of the form.

REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

FACILITY IDENTIFICATION

Enter the complete name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the state or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

PHYSICAL AND HEALTH HAZARDS

Descriptions, Amounts, and Locations

This section requires aggregate information on chemicals by hazard categories as defined in 40 CFR 370.3. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200. For each hazard type, indicate the total amounts and general locations of all applicable chemicals present at your facility during the past year.

- What units should I use?

  Calculate all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

  If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous solution weighs 100 lbs. but is composed of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5 lbs. of the chemical).

  Select the option consistent with your Section 311 reporting of the chemical on the MSDS or list of MSDS chemicals.

- Where do I count a chemical that is a fire reactivity physical hazard and an immediate (acute) health hazard?

  Add the chemical's weight to your totals for all three hazard categories and include its location in all three categories. Many chemicals fall into more than one hazard category, which results in double-counting.

MAXIMUM AMOUNT

The amounts of chemicals you have on hand may vary throughout the year. The peak weights — greatest single-day weights during the year — are added together in this column to determine the maximum weight for each hazard type. Since the peaks for different chemicals often occur on different days, this maximum amount will seem artificially high

To complete this and the following sections, you may choose to use the Tier Two form as a worksheet.

To determine the Maximum Amount:

1. List all of your hazardous chemicals individually.
2. For each chemical...
   a. Indicate all physical and health hazards that the chemical presents. Include all chemicals, even if they are present for only a short period of time during the year.

BEST COPY AVAILABLE

b. Estimate the maximum weight in pounds that was present at your facility on any single day of the reporting period.

3. For each hazard type -- beginning with Fire and repeating for all physical and health hazard types...
   a. Add the maximum weights of all chemicals you indicated as the particular hazard type.
   b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.
   c. Enter this range value as the Maximum Amount.

EXAMPLE:

You are using the Tier Two form as a worksheet and have listed raw weights in pounds for each of your hazardous chemicals. You have marked an X in the Immediate (acute) hazard column for phenol and sulfuric acid. The maximum amount raw weight you listed were 10,000 lbs. and 50 lbs. respectively. You add these together to reach a total of 10,050 lbs. Then you look at the Reporting Range at the bottom of your Tier One form and find that the value of 03 corresponds to 10,050 lbs. Enter 03 as your Maximum Amount for Immediate (acute) hazards materials.

You also marked an X in the Fire hazard box for phenol. When you calculate your Maximum Amount totals for fire hazards, add the 10,000 lb. weight again.

AVERAGE DAILY AMOUNT

This column should represent the average daily amount of chemicals *of each hazard type* that were present at your facility at any point during the year.

To determine this amount:

1. List all of your hazardous chemicals individually (same as for Maximum Amount).
2. For each chemical...
   a. Indicate all physical and health hazards that the chemical presents (same as for Maximum Amount).
   b. Estimate the average weight in pounds that was present at your facility throughout the year. To do this, total all daily weights and divide by the number of days the chemical was present on the site.
3. For each hazard type -- beginning with Fire and repeating for all physical and health hazards...
   a. Add the average weights of all chemicals you indicated for the particular hazard type.
   b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.
   c. Enter this range value as the Average Daily Amount.

EXAMPLE:

You are using the Tier Two form, and have marked an X in the Immediate (acute) hazard column for nicotine and phenol. Nicotine is present at your facility 100 days during the year, and the sum of the daily weights is 100,000 lbs. By dividing 100,000 lbs. by 100 days on-site, you calculate an Average Daily Amount of 1,000 lbs. for nicotine. Phenol is present at your facility 50 days during the year, and the sum of the daily weights is 10,000 lbs. By dividing 10,000 lbs. by 50 days on-site, you calculate an Average Daily Amount of 200 lbs. for phenol. You then add the two average daily amounts together to reach a total of 1,200 lbs. Then you look at the Reporting Range on your Tier One form and find that the value 02 corresponds to 1,200 lbs. Enter 02 as your Average Daily Amount for Immediate (acute) Hazard.

You also marked an X in the Fire hazard column for phenol. When you calculate your Average Daily Amount for fire hazards, use the 200 lb. weight again.

NUMBER OF DAYS ON-SITE

Enter the greatest number of days that a single chemical within that hazard category was present on-site.

EXAMPLE:

At your facility, nicotine is present for 100 days and phosgene is present for 150 days. Enter 150 in the space provided.

GENERAL LOCATION

Enter the general location within your facility where each hazard may be found. General locations should include the names or identifications of buildings, tank fields, lots, sheds, or other such areas.

For each hazard type, list the locations of all applicable chemicals. As an alternative you may also attach a site plan and list the site coordinates related to the appropriate locations. If you do so, check the Site Plan box.

EXAMPLE:

On your worksheet you have marked an X in the Fire hazard column for acetone and butane. You noted that these are kept in steel drums in Room C of the Main Building, and in pressurized cylinders in Storage Shed 13, respectively. You could enter Main Building and Storage Shed 13 as the General Locations of your fire hazards. However, you choose to attach a site plan and list coordinates. Check the Site Plan box at the top of the column and enter site coordinates for the Main Building and Storage Shed 13 under General Locations.

If you need more space to list locations, attach an additional Tier One form and continue your list on the proper line. Number all pages.

CERTIFICATION

This must be completed by the owner or operator or the officially designated representative of the owner or operator. Enter your full name and official title. Sign your name and enter the current date.

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§ 370.41 Tier II emergency and hazardous chemical inventory form.

(a) The form set out in paragraph (b) of this Section must be completed and submitted as required in § 370.25(c). In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier II Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

Page ____ of ____ pages
Form Approved OMB No. 2050-0072

Tier Two
EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY
Specific Information by Chemical

Facility Identification

Name _____
Street Address _____
City _____ State _____ Zip _____
SIC Code ____ Dun & Brad Number ____-____-____

FOR OFFICIAL USE ONLY
ID #
Date Received

Owner/Operator Name

Name _____ Phone ( ) _____
Mail Address _____

Emergency Contact

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

Important: Read all instructions before completing form

Reporting Period From January 1 to December 31, 19____

Chemical Description	Physical and Health Hazards (check all that apply)	Inventory: Max. Daily Amount (code)	Inventory: Avg. Daily Amount (code)	Inventory: No. of Days On-site (days)	Storage Codes and Locations (Non-Confidential): Storage Code	Storage Locations
CAS ____ Trade Secret ☐ Chem. Name _____ *Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas	☐ Fire ☐ Sudden Release of Pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)					
CAS ____ Trade Secret ☐ Chem. Name _____ *Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas	☐ Fire ☐ Sudden Release of Pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)					
CAS ____ Trade Secret ☐ Chem. Name _____ *Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas	☐ Fire ☐ Sudden Release of Pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)					

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete

Name and official title of owner/operator OR owner/operator's authorized representative _____ Signature _____ Date signed _____

Optional Attachments *(Check one)*

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations

Page ____ of ____ pages
Form Approved OMB No. 2050-0072

Tier Two
EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY
Specific Information by Chemical

Facility Identification

Name _____
Street Address _____
City _____ State ____ Zip ____

SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

FOR OFFICIAL USE ONLY
ID # _____
Date Received _____

Owner/Operator Name

Name _____ Phone ( ) _____
Mail Address _____

Emergency Contact

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

Important: Read all instructions before completing form

Reporting Period From January 1 to December 31, 19____

Confidential Location Information Sheet

Storage Codes and Locations (Confidential)

Storage Codes | *Storage Locations*

CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name

CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name

CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator OR owner/operator's authorized representative _____ Signature _____ Date signed _____

Optional Attachments *(Check one)*

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations

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TIER TWO INSTRUCTIONS

GENERAL INFORMATION

Submission of this Tier Two form (when requested) is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312, Public Law 99-499. The purpose of this Tier Two form is to provide State and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM TO FULFILL TIER TWO REPORTING REQUIREMENTS.

This form may also be used as a worksheet for completing the Tier One form or may be submitted in place of the Tier One form.

WHO MUST SUBMIT THIS FORM

Section 312 of Title III requires that the owner or operator of a facility submit this Tier Two form if so requested by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility.

This request may apply to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communications Standard, found in Title 29 of the Code of Federal Regulations at §1910.1200.

WHAT CHEMICALS ARE INCLUDED

You must report the information required on this form for each hazardous chemical for which Tier Two information is requested. However, OSHA regulations and Title III exempt some chemicals from reporting.

Section 1910.1200(b) of the OSHA regulations currently provides the following exemptions:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act as amended (42 U.S.C. 6901 et seq.) when subject to regulations issued under that Act;

(ii) Tobacco or tobacco products;

(iii) Wood or wood products;

(iv) "Articles"– defined under §1910.1200(b) as a manufactured item:

- Which is formed to a specific shape or design during manufacture;
- Which has end use function(s) dependent in whole or in part upon the shape or design during end use; and
- Which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use.

(v) Food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(vi) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace.

(vii) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 1251 *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers

(viii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), when it is in solid, final form for direct administration to the patient (i.e., tablets or pills).

In addition, Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(iii) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Also, minimum reporting thresholds have been established for Tier One under Title III, Section 312. You need to report only those hazardous chemicals that were present at your facility at any time during the preceding calendar year at or above the levels listed below:

- January to December 1987 (or first year of reporting) ...10,000 lbs.
- January to December 1988 (or second year of reporting) ...10,000 lbs.
- January to December 1989 (or third year of reporting) ...zero lbs.*
  - * EPA will publish the final threshold, effective in the third year, after additional analysis.
- For extremely hazardous substances...500 lbs. or the threshold planning quantity, whichever is less, from the first year of reporting and thereafter.

A requesting official may limit the responses required under Tier Two by specifying particular chemicals or groups of chemicals. Such requests apply to hazardous chemicals regardless of established thresholds.

INSTRUCTIONS

Please read these instructions carefully. Print or type all responses.

WHEN TO SUBMIT THIS FORM

Owners or operators must submit the Tier Two form to the requesting agency within 30 days of receipt of a written request from an authorized official.

WHERE TO SUBMIT THIS FORM

Send the completed Tier Two form to the requesting agency.

PENALTIES

Any owner or operator who violates any Tier Two reporting requirements shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation.

You may use the Tier Two form as a worksheet for completing the Tier One form. Filling in the Tier Two Chemical Information section should help you assemble your Tier One responses.

If your responses require more than one page, fill in the page number at the top of the form.

REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

FACILITY IDENTIFICATION

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the state or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency chemical information will be available 24 hours a day, every day.

CHEMICAL INFORMATION: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

- What units should I use?

  Calculate all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

  If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous solution weighs 100 lbs. but is composed of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture *or* 5 lbs. of the chemical.

  Select the option consistent with your Section 311 reporting of the chemical on the MSDS or list of MSDS chemicals.

CHEMICAL DESCRIPTION

1. Enter the Chemical Abstract Service number (CAS#).

   For mixtures, enter the CAS number of the mixture as a whole if it has been assigned a number distinct from its components. For a mixture that has no CAS number, leave this item blank or report the CAS numbers of as many constituent chemicals as possible.

   If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic chemical class (e.g., list toluene diisocynate as organic isocynate) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to Section 322 of Title III for detailed information on how to comply with trade secret requests.

2. Enter the chemical name or common name of each hazardous chemical.
3. Circle *ALL* applicable descriptors: pure or mixture, *and* solid, liquid, or gas.

EXAMPLE:

You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS#. Then you circle "pure" *and* "mix" — as well as "liq" *and* "gas".

PHYSICAL AND HEALTH HAZARDS

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.3. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

MAXIMUM AMOUNT

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.
2. Find the appropriate range value code in Table I.
3. Enter this range value as the Maximum Amount.

Table I REPORTING RANGES

Range Value	Weight Range in Pounds From...	To...
00	0	99
01	100	999
02	1,000	9,999
03	10,000	99,999
04	100,000	999,999
05	1,000,000	9,999,999
06	10,000,000	49,999,999
07	50,000,000	99,999,999
08	100,000,000	499,999,999
09	500,000,000	999,999,999
10	1 billion	higher than 1 billion

If you are using this form as a worksheet for completing Tier One, enter the actual weight in pounds in the shaded space below the response blocks. Do this for both Maximum Amount and Average Daily Amount.

EXAMPLE:

You received one large shipment of a solvent mixture last year. The shipment filled your 5,000-gallon storage tank. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 5,000 gallons is 500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 500 by 7.29 to get a weight of 3,645 pounds.

Then you look at Table I and find that the range value 02 corresponds to 3,645. You enter 02 as the Maximum Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 3,645 in the shaded area.)

AVERAGE DAILY AMOUNT

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

   To do this, total all daily weights and divide by the number of days the chemical was present on the site.
2. Find the appropriate range value in Table I.
3. Enter this range value as the Average Daily Amount.

EXAMPLE:

The 5,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 929,250 gallons. By dividing 929,250 gallons by 315 days on-site, you calculate an average daily amount of 2,950 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 2,950 is 295, you figure that you had an average of 295 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 295 by 7.29 to get a weight of 2,150 pounds.

Then you look at Table I and find that the range value 02 correponds to 2,150. You enter 02 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 2,150 in the shaded area.)

NUMBER OF DAYS ON-SITE

Enter the number of days that the hazardous chemical was found on-site.

EXAMPLE:

The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

STORAGE CODES AND STORAGE LOCATIONS

List all non-confidential chemical locations in this column, along with storage types/conditions associated with each location.

Storage Codes: Indicate the types and conditions of storage present.

a. *Look at Table II.* For each location, find the appropriate storage type(s). Enter the corresponding code(s) in front of the parentheses.
b. *Look at Table III.* For each storage type, find the temperature and pressure conditions. Enter the applicable pressure code in the first space within the parentheses. Enter the applicable temperature code in the last space within the parentheses.

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Table II – STORAGE TYPES

CODES	Types of Storage
A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or non-metallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

Table III – TEMPERATURE AND PRESSURE CONDITIONS

CODES	Storage Conditions
	(PRESSURE)
1	Ambient pressure
2	Greater than ambient pressure
3	Less than ambient pressure
	(TEMPERATURE)
4	Ambient temperature
5	Greater than ambient temperature
6	Less than ambient temperature but not cryogenic
7	Cryogenic conditions

EXAMPLE:

The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C(1,6)

Storage Locations:

Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional attachments: If you choose to attach *one* of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

a. *A site plan* with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.
b. *A list of site coordinate abbreviations* that correspond to buildings, lots, areas, etc. throughout your facility.

EXAMPLE:

You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. Fill in the Storage Location as follows:

B-6 [Tank 2] G-2 [Main Room]

Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public. If you choose to do so:

- Enter the word "confidential" in the Non-Confidential Location section of the Tier Two form.
- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS# of each chemical for which you are keeping the location confidential.
- Enter the appropriate location and storage information, as described above for non-confidential locations.
- Attach the Tier Two Confidential Location Information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

CERTIFICATION.

This must be completed by the owner or operator or the officially designated representative of the owner or operator. Enter your full name and official title. Sign your name and enter the current date.

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Notice of Fund Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1743; FR-2390]

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Fund Availability

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability.

SUMMARY: The purpose of the section 8 Moderate Rehabilitation Program for Single Room Occupany (SRO) Dwellings for Homeless Individuals is to provide rental assistance for homeless individuals in rehabilitated SRO housing. This program is authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987). Under this program, HUD will fund applications from public housing agencies (PHAs) which best demonstrate a need for the assistance and the ability to undertake and carry out the program. HUD will conduct a national competition to select PHAs to participate.

The assistance will be in the form of rental assistance under the section 8 Housing Assistance Payments Program. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937. HUD will make the assistance available for 10 years. This Notice informs the public of the requirements that will govern the use of the $35 million appropriated for the program by the Supplemental Appropriations Act, 1987 (Pub L. 100–71, approved July 11, 1987). HUD estimates that this $35 million will assist between 600 and 800 units over the 10-year period.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals

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I. Background

A. Legislative Authority

On July 22, 1987, the President signed into law the Stewart B. McKinney Homeless Assistance Act (the "McKinney Act"), Pub. L. 100–77. Title IV of the McKinney Act contains a number of housing assistance provisions for HUD to administer. This Notice implements section 441, which authorizes the section 8 Moderate Rehabilitation Assistance Program for Single Room Occupancy Dwellings for Homeless Individuals.

B. Summary

Under this program, HUD will enter into annual contributions contracts (ACCs) with public housing agencies (PHAs) in connection with the moderate rehabilitation of residential properties in which some or all of the dwelling units do not contain either food preparation or sanitary facilities. Each of these SRO units is intended for occupancy by one eligible homeless individual. Selection of tenants is not subject to the 15 and 30 percent limitations on the number of units that may be occupied by "other single persons" or to the preference for elderly, handicapped, or displaced single persons over other single persons (see section 3(b)(3) of the 91937 Act and the waiver of these provisions in section VIII.B. of this Notice). If, after appropriate outreach efforts by the PHA and the Owner, there are insufficient eligible homeless individuals to fill all assisted units, the Owner may rent them to eligible non-homeless individuals.

Section 441 requires that the amounts made available be allocated by HUD on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted under that section. No single city or urban county is eligible to receive more than 10 percent of the assistance made available (which is $350,000 in contract authority for each year over the 10-year assistance period).

Under this program, the PHAs must submit applications to HUD by November 16, 1987 if they wish to participate in the national competition. Applications will contain an inventory of suitable housing stock available and appropriate for rehabilitation under this program or, if possible, identification of the particular projects proposed for rehabilitation. HUD is not requiring competitive selection of Owners by PHAs because of the special nature of this program. Selected PHAs will execute an ACC with HUD, which will give HUD the option to renew the ACC for an additional 10 years, subject to the availability of appropriations. Before the Owner begins any rehabilitation, but no later than January 4, 1988, the PHA and the Owner must enter into an Agreement to Enter into Housing Assistance Payments Contract (Agreement). After completion of rehabilitation, which must be within six months of execution of the Agreement, the PHA and the Owner will enter into a Housing Assistance Payments (HAP) Contract with a 10-year term. (The

Contract term for the regular Moderate Rehabilitation program is 15 years.)

The total cost of rehabilitation that may be compensated through Contract Rents under a HAP Contract in this program may not exceed $14,000 per SRO unit (including a pro rata share of the cost related to common areas). This limit may be adjusted in certain circumstances. (There is no limitation on the cost of rehabilitation under the regular program.)

This Notice incorporates by reference many of the regulations for the current Moderate Rehabilitation Program in 24 CFR Part 882, Subparts D and E, and refers to other regulations in Title 24. Section references to HUD regulations are to Title 24. The term "family" as used in Title 24 shall be understood to refer to an individual for purposes of this program.

C. Expedited Processing

HUD has set extremely short deadlines for the various processing stages under this program, in an effort to make housing under this program available for the homeless as soon as possible. The Department anticipates that only those PHAs which have already identified specific projects are likely to be able to react quickly enough to submit applications by November 16, 1987, and execute an Agreement by January 4, 1988. We believe this expedited approach is consistent with the Congressional findings in section 102 of the McKinney Act. Among the findings are that "the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families" and that "the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless." HUD, PHAs, Owners, local governments, and other entities are called on by this Notice to make extraordinary efforts to respond to the need to house homeless individuals. If insufficient approval applications are submitted in response to this Notice to use all available funds or if additional funding is appropriated for the program, HUD will issue revised instructions. The Department anticipates that these instructions would give PHAs a longer time to develop applications, thereby permitting more PHAs to compete for funding.

II. Project Eligibility and Other Requirements

A. Eligible and Ineligible Properties

(1) Except as provided in paragraphs (2) through (5) of this paragraph A., housing suitable for moderate rehabilitation, as defined in § 882.402, is eligible for inclusion under this program. Existing structures of various types may be appropriate for this program, including single family houses and multifamily structures.

(2) Housing is not eligible for assistance under this program if it:

(a) Is, or has been within 12 months before the Owner submits a proposal to the PHA, subsidized under any Federal housing program, including the Certificate or Housing Voucher program;

(b) Is owned either by the PHA administering the ACC under this program or an entity controlled by that PHA;

(c) Is a project with a HUD-held mortgage or is a HUD-owned project;

(d) Is assisted, or for which a commitment for assistance has been entered into, under the Rental Rehabilitation program, 24 CFR Part 511; or

(e) Would require displacement (involuntary permanent move) of residential tenants or owner-occupants. HUD will not provide assistance under this program the effect of which would be to cause any individual or family permanently to move from real property (or to move its personal property from real property) because of actual or pending acquisition or rehabilitation of real property, in whole or in part, for a project.

(3) Nursing homes; units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services are not eligible for assistance under this program.

(4) No section 8 assistance may be provided with respect to any unit occupied by an Owner.

B. Housing Quality Standards

Section 882.04 (including its incorporation by reference of § 882.109) shall apply to this program, except as follows:

(1) The housing quality standards in §§ 882.109(i) and 882.404(c), concerning lead-based paint, shall not apply to this program, since these SRO units will not house children under seven years of age.

(2) In addition to the performance requirements contained in § 882.109(p) concerning SRO units, a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require shall be installed in each building.

(3) Section 882.109(q), concerning shared housing, shall not apply to this program.

(4) Section 882.404(b) concerning site and neighborhood standards, shall not apply to this program, except that § 882.404(b) (1) and (2) shall apply. In addition, the site shall be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

C. Financing

Section 882.405 shall apply to this program.

D. Temporary Relocation

(1) *Applicability of Uniform Act. Section 882.406(a) shall apply to this program.*

(2) *Displacement Not Subject to the Uniform Act.* The following policies apply to temporary relocation of tenants which is not subject to the requirements of the Uniform Act. The policies apply only to lawful residential tenants (not owner-occupants or businesses) who are temporarily relocated following the date the PHA submits its application to HUD. The following policies do not apply to tenants who commence occupancy after that date if they are provided adequate notice from the Owner of the impending rehabilitation and possible relocation, or whose tenancy is terminated for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or other good cause. (Good cause does not include terminations because of Owner participation in this program.)

(a) Tenants will not be required to move temporarily from the property (building or complex) unless: (i) Tenants have received adequate, advance written notice and appropriate advisory services, (ii) suitable temporary housing is available, (iii) the temporary relocation period will not exceed six months, and (iv) tenants will receive reimbursement for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

(b) The PHA is responsible for assuring that all the relocation requirements are met. Reasonable relocation costs incurred by the Owner for the temporary relocation of tenants to be assisted under this program are considered eligible rehabilitation costs for inclusion in the Contract Rents.

(Temporary relocation costs for tenants not to be assisted under this program may not be included in the Contract Rents.) Preliminary administrative funds may be used for costs of PHA advisory services for temporary relocation of tenants to be assisted under this program.

(c) Tenants who believe they have not received relocation opportunities, services, or payments in accordance with this section may appeal to the PHA and shall be given an informal hearing on the appeal.

E. Other Federal Requirements

Section 882.407, Other Federal Requirements, shall apply to this program. In addition—

(1) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy, shall apply. Consistent with HUD's responsibilities under these Executive Orders and Executive Order 11625 (see § 882.407(c)(5)), the PHA and Owner shall make efforts to encourage the use of minority and women's business enterprises in connection with activities assisted under this program.

(2) If the procedures that PHA or Owner, as appropriate, intends to use to make known the availability of this program are unlikely to reach persons of any particular race, color, religion, sex, age, or national origin who may qualify for admission to the program, the PHA or Owner shall establish additional procedures that will ensure that these persons are made aware of the availability of this program. The PHA or Owner shall also adopt and implement procedures to ensure that interested persons can obtain information concerning the existence and location of services and facilities which are accessible to handicapped persons.

(3) Notwithstanding the permissibility of projects that serve designated populations of homeless persons, the PHA or Owner, as appropriate, is required, in serving the designated population, to comply with the requirements under this paragraph E, for nondiscrimination on the basis of race, color, religion, sex, age, and national origin. In addition, the PHA shall comply with section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against otherwise qualified individuals with handicaps solely by reason of handicap. Designated populations of homeless persons may include (but are not limited to) substance abusers and the chronically mentally ill.

(4) In selecting among proposals, the PHA shall also take into consideration compliance with the Coastal Barriers Resources Act (which prohibits assistance for sites identified under that Act).

III. PHA Application Process, HUD Review and Selection, ACC Execution, and Pre-Rehabilitation Activities

A. General

(1) PHAs that are currently administering a Moderate Rehabilitation Program under 24 CFR Part 882 are invited to submit applications for this program. There is no application form. Applications shall contain the information prescribed in paragraph C., be addressed to Lawrence Goldberger in Room 6130 at the address specified above, and be received by 5:15 p.m. on November 16, 1987. Each PHA shall also submit a copy of the application to the appropriate HUD field office by the same deadline. HUD will reject late applications.

(2) PHAs have discretion to select proposals by Owners in accordance with their own procedures and policies, consistent with the requirements of this Notice. Accordingly, section 882.503, Obtaining Proposals from Owners; sections 882.504(c)(1), (4), and (5), Selection of Proposals; and section 882.504(d), Notification of Owners, shall not apply to this program.

(3) HUD headquarters will process all applications and select the successful PHAs. HUD intends to complete the selection process by approximately December 1, 1987.

B. Comprehensive Homeless Assistance Plan (CHAP)

(1) Section 401 of the McKinney Act prohibits assistance under this program from being made available within the jurisdiction of a State, or a metropolitan city or urban county that is eligible for a formula allocation under the Emergency Shelter Grants program established by the McKinney Act (ESG formula city or county), unless the entity has a HUD-approved CHAP. For PHAs that wish to receive funding under this program, the following rules apply. If the project to be assisted is located *within* an ESG formula city or county, the city or county must have an approved CHAP. If the project is located *outside* an ESG formula city or county, the State must have an approved CHAP. Since Indian tribes are not required to have approved CHAP's the CHAP requirement does not apply to PHAs seeking funding for projects within the jurisdictions of Indian tribes.

(2) The Department published a Notice in the **Federal Register** on August 14, 1987 (52 FR 30628) establishing requirements for CHAPs. Among other things, that Notice listed the ESG formula cities and counties and other entities that are subject to the CHAP requirements. Potential applicants under this program are encouraged to familiarize themselves with these requirements.

C. PHA Application

Section 441 of the McKinney Act requires that HUD allocate the amounts made available for this program on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted. Each application shall contain the following information to enable HUD to make these determinations.

(1) *Size and Characteristics of SRO Population.* The application shall include a description of the size and characteristics of the homeless population within the applicant's jurisdiction that would occupy SRO dwellings under this program, and a statement of the basis for this description. The application shall also state whether the PHA intends to serve a designated population of homeless persons, such as substance abusers and the chronically mentally ill.

(2) *Inventory of Suitable Housing Stock to Be Rehabilitated under this Program.*

(a) The PHA application shall include an inventory of structures, by address (indicating city and urban county, where applicable), that would be available and appropriate for rehabilitation under this program, and shall specify the number of units the PHA proposes to assist. The application shall also describe the type of rehabilitation expected.

(b) Where possible, instead of the inventory under paragraph (a), the application shall identify specific structures, by address (indicating city and urban county where applicable), that the PHA proposes for rehabilitation and assistance under this program, including:

(i) The total number of units in each structure; and

(ii) The number of SRO units to be assisted under this program, and the number of vacancies among SRO units to be assisted.

The application shall also describe the type of rehabilitation expected.

(3) *Interest in Participation.* The PHA application shall include a description of the interest that has been expressed by builders, developers, Owners and others (including profit and nonprofit organizations) in participating in the program. This may include statements

expressing interest in acquiring or rehabilitating structures identified in the application and in providing supportive services or otherwise assisting the PHA or the Owners in meeting program requirements.

(4) *Additional Commitments.* The application shall describe any additional commitments from public and private sources, which may include (but are not limited to):

(a) Below market interest rate rehabilitation financing;

(b) Donation of real estate or furniture; and

(c) Supportive services.

The application shall identify any supportive services (as defined in section VII.B.) which would be necessary for the population expected to be served. (If this information on supportive services is not available, the PHA may obtain these commitments later, but no later than the date of execution of the Agreement.) The PHA shall demonstrate that the necessary supportive services appropriately address the needs of the homeless population to be served. These services may be provided in the project or elsewhere, if the services are readily accessible to the homeless population to be served. Services are readily accessible if residents can get to the services on their own, or if transportation is provided to the site where the services are provided. The application shall also include a description of how the necessary services will be made available. The PHA is encouraged to include information on commitments for any additional supportive services which would be desirable, but are not necessary.

(6) *CHAP Certifications.* The application shall contain a certification by the public official responsible for submitting a CHAP for the jurisdiction where the project(s) is to be located that the proposed project is consistent with the CHAP. (See, also, paragraph B. of this section.)

(7) *CHAP and Local Government Certifications.* The PHA and the chief executive officer of each unit of general local government in which a project is proposed to be located shall certify that, on or before January 4, 1988 (a) the PHA will be able to complete all necessary steps in time to enter into an Agreement, and (b) necessary private or public resources for the project will be committed. The certification shall also include a statement that the PHA and chief executive officer understand that if the January 4, 1988, deadline is not met, HUD may cancel its approval of the application, terminate the ACC (if executed), recaptured any reservation for the project, and reuse the recapture amounts for other approvable applications then available or which become available as a result of another national competition.

(8) *Permanent Displacement Certification.* The application shall contain a certification from the PHA that neither its proposed activities, nor the acquisition or rehabilitation activities of any Owner whose proposal is selected or considered for selection, will result in the permanent displacement of any residential tenant or owner-occupant.

(9) *Section 213 Letter.* Section 213 of the Housing and Community Development Act of 1974 requires HUD to provide the chief executive officer of the unit of general local government an opportunity to comment on the application. Where the unit of general local government has a housing assistance plan, its comment may include an objection to HUD approval of an application for housing assistance on the grounds that the application is inconsistent with the local housing assistance plan. PHAs should encourage the chief executive officer to submit a section 213 letter with the PHA application. See Part 791 for specific requirements. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application and indicate that approval of the application for assistance under this Notice is consistent with the community's housing assistance plan, where applicable, but also state that HUD may consider the letter to be the final comments, and that no additional comments will be submitted by the unit of local government.

(10) *Schedule.* The application shall contain a schedule for completion of all necessary steps through execution of the Housing Assistance Payments Contract and demonstrate that it is feasible for the PHA to meet its schedule. The schedule shall specify dates for completion of at least the following:

(a) Selection of the specific structure or structures to be rehabilitated (if not already specified in the application);

(b) Inspection of units, feasibility analysis, detailed work write-ups, and cost estimates;

(c) Determine initial base rents and Contract Rents;

(d) Ensuring that firm commitments of financing and identified necessary supportive services and other resources to be provided are in place;

(e) Execution of the Agreement (must be on or before January 4, 1988);

(f) Start of rehabilitation activities, with an identification of any which may be affected by weather conditions and a discussion of how weather delays have been taken into account; and

(g) Execution of the Contract (must be within six months from execution of the Agreement).

(11) *Administrative Capability and Rehabilitation Expertise.* The application shall include a description of the PHA's experience in administering the section 8 Moderate Rehabilitation Program and a description of the PHA's rehabilitation expertise.

(12) *Financing.* The application shall indicate the types of financing expected to be used, including Federal, State, or locally assisted financing programs, and describe the availability of such financing.

D. HUD Selection Process

(1) *Part 791.* Upon receipt of an application that does not include a section 213 letter from the chief executive officer of the Unit of general local government (see paragraph C.(9)), HUD shall send the application to the appropriate chief executive officer in accordance with 24 CFR Part 791.

(2) *Ranking.* HUD will rank all applications from PHAs administering the Moderate Rehabilitation Program that contain all items required by section C., based upon its assessment of which applications have the best combination of the following:

(a) The need for assistance, as demonstrated by the PHA's analysis of the size and characteristics of the population to be served, and by the reliability of the basis for the analysis; and

(b) The PHA's ability to undertake and carry out the program within the schedule proposed by the PHA, as demonstrated by:

(i) Whether the PHA has proposed specific projects for assistance or only submitted an inventory of structures that would be available and appropriate for rehabilitation under this program;

(ii) Whether there is evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule;

(iii) The percentage of units proposed for assistance which are vacant (rehabilitation of vacant units will result in more units becoming available for the homeless);

(iv) Whether it appears feasible that the PHA and Owner will complete all steps necessary so the Agreement may be executed before January 4, 1988, and

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will execute the Contract within six months of execution of the Agreement;

(iv) Whether it appears feasible that the PHA and Owner will execute the Contract sooner than six months from execution of the Agreement;

(vi) Whether the PHA has specified the resources available to provide necessary and any desirable supportive services, including the strength and length of the commitments to provide those resources;

(vii) Other public and private resources to be provided, including the availability of financing, both assisted and unassisted, as demonstrated by statements or commitments form lenders;

(viii) The PHA's experience with the section 8 Moderate Rehabilitation Program, including past performance in placing units under Agreement, and the PHA's overall administrative capability, as evaluated by the HUD field office;

(ix) The demonstrated capacity of the PHA to administer a rehabilitation program; and

(x) The overall feasibility of the proposed program.

HUD shall assign 30 percent of the points based on paragraph (a) and 70 percent based on paragraph (b).

(3) *Selection of Applications.*

(a) HUD will select the highest ranking applications. However, no city or urban county may have projects receiving a total of more than 10 percent of the assistance to be provided under this program ($350,000 in contract authority per year, which HUD expects will fund a maximum of approximately 60–80 units for any one city or urban county).

(b) HUD will notify each PHA whether or not its application has been selected.

(c) Where the review and comment process required under 24 CFR Part 791 has not been completed by the time HUD is ready to make its selections, it may select one or more applications subject to completion of the process required under Part 791, if it has determined that the application is consistent with a housing assistance plan (where applicable). See, also, paragraphs C.(9) and D.(1).

E. ACC Exectution

(1) Before execution of the ACC, the PHA shall submit to the appropriate HUD field office the following:

(a) Equal Opportunity Housing Plan and Certifications, Form HUD–920;

(b) Estimates of Required Annual Contributions, Forms HUD–52672 and HUD–52673;

(c) Administrative Plan;

(d) Proposed Schedule of Allowances for Tenant-Furnished Utilities and Other Services, Form HUD–52667, with a justification of the amounts proposed;

(e) If applicable, proposed variations to the acceptability criteria of the Housing Quality Standards (see section II.B); and

(f) the fire and building code applicable to each project.

(2) After HUD approves the PHA's application, the requirements of 24 CFR Part 791 have been complied with, and the PHA has submitted and HUD has approved the items required by paragraph (1), HUD and the PHA shall execute the ACC in the form prescribed by HUD, on or before January 4, 1988. The ACC shall give HUD the option to renew the ACC for an additional 10 years. The PHA should not wait to receive the executed ACC before proceeding with project development in accordance with paragraph F.

(3) Section 882.403(a), Maximum Total ACC Commitments, shall apply to this program.

(4) Section 882.403(b), Project Account, shall apply to this program.

F. Project Development

Before execution of the Agreement, the PHA shall:

(1)(a) Inspect the project(s) to determine the specific work items which need to be accomplished to bring the unit(s) to be assisted up to the Housing Quality Standards (see section II.B.) or other standards approved by HUD; (b) conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added; (c) ensure that the Owner prepares the work write-ups and cost estimates required by § 882.504(f); and (d) determine initial base rents and Contract Rents;

(2) Assure that the Owner has selected a contractor in accordance with § 882.504(g);

(3) After the financing and a contractor are obtained, determine whether the costs can be covered by initial Contract Rents, computed in accordance with section G.; and, where a project contains more than 50 units to be assisted, submit the base rent and Contract Rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement on or before January 4, 1988;

(4) Obtain firm commitments to provide necessary and any desirable supportive services;

(5) Obtain firm commitments for other resources to be provided;

(6) Develop procedures for tenant outreach and for establishing a waiting list(s);

(7) Develop a policy governing temporary relocation;

(8) Design a mechanism to monitor the provision of supportive services;

(9) Review and approve the Lease, including any special Lease provisions related to special characteristics of the designated population to be served, such as provisions prohibiting the use of alcohol in projects targeted for persons with alcoholism;

(10) Require the Owner to demonstrate to the PHA's satisfaction that the allowable rent will be sufficient to rehabilitate, manage, and maintain the units adequately;

(11) Determine that the $1,000 minimum amount of work requirement and other requirements in §§ 882.504 (c)(2) and (c)(3) are met;

(12) Determine eligibility of current tenants, and select the units to be assisted, in accordance with § 882.504(e);

(13) Comply with the financing requirements in § 882.504(i); and

(14) Assure compliance with all other applicable requirements of this Notice.

G. Initial Contract Rents

Section 882.408, Initial Contract Rents (including the establishment of fair market rents for SRO units at 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent), shall apply to this program, except as follows:

(1)(a) In determining the monthly cost of a rehabilitation loan, in accordance with § 882.408(c)(2), a 10-year loan term (instead of a 15-year loan term) shall be assumed. The exception in § 882.408(c)(2)(iii) for using the actual loan term where the total amount of the rehabilitation is less than $15,000 shall continue to apply. In addition, the cost of the rehabilitation that may be included for the purpose of calculating the amount of the initial Contract Rent for any unit shall not exceed the lower of (i) the projected cost of rehabilitation, or (ii) $14,000 per unit, plus the cost of the fire and safety improvements required by section II.B.(2). HUD shall, however, increase the limitation in clause (ii) by an amount it determines is reasonable and necessary to accommodate special local conditions, including high construction costs or stringent fire or building codes.

(b) Where the PHA believes that high construction costs warrant an increase in the limitation in paragraph G.(1)(a)(ii), the PHA shall demonstrate to HUD's satisfaction that a higher average per unit amount is necessary to conduct this

program and that every appropriate step has been taken to contain the amount of the rehabilitation within an average of $14,000 per unit, plus the cost of the required fire and safety improvements. These higher amounts will be determined as follows:

(i) HUD may approve a higher average per unit amount up to, but not to exceed, an amount derived by applying the HUD-approved High Cost Percentage for Base Cities (used for computing FHA high cost area adjustments) for the area to the total of the $14,000 average per unit cost and the cost of the required fire and safety improvements; or

(ii) HUD may, on a project-by-project basis, increase the level approved in paragraph (i) to up to an amount computed by multiplying 2.4 by the total of the $14,000 average per unit cost and the cost of the required fire and safety improvements.

(2) In approving changes to initial Contract Rents during rehabilitation in accordance with § 882.408(d), the revised Contract Rents may not reflect an average per unit rehabilitation cost that exceeds the limitation specified in paragraph G.(1) of this section.

(3) Where the project involves a structure containing four or fewer SRO units, the Fair Market Rent for that size structure (the Fair Market Rent for a 1-, 2-, 3-, or 4-bedroom unit, as applicable) shall apply instead of a separate Fair Market Rent for each SRO unit. The Fair Market Rent for the structure shall be allocated to each SRO unit.

(4) Contract Rents shall not include the costs of providing supportive services, transportation, furniture, or other non-housing costs, as determined by HUD. PHAs shall consult with HUD where it is not clear whether the cost may be covered by the Contract Rent.

IV. Agreement To Enter Into Housing Assistance Payments Contract, Rehabilitation Period, and Cost Certifications

A. Rehabilitation Period

(1) *Agreement.* Before the Owner begins any rehabilitation, but no later than January 4, 1988, the PHA shall enter into an Agreement with the Owner in the form prescribed by HUD.

(2) *Timely Performance of Work.* Section 882.506(a) shall apply to this program. In addition, the Agreement shall provide that the work shall be completed and the Contract executed within six months of execution of the Agreement. HUD may reduce the number of units or the amount of the annual contribution commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify a reduction in the number of units.

(3) *Inspections.* Section 882.506(b) shall apply to this program.

(4) *Changes.* Section 882.506(c)(1) shall apply to this program. Contract Rents may only be increased in accordance with section III.G.(2).

(5) *List of Vacancies.* Section 882.506(d) shall apply to this program. See also, section VI.A., Outreach to Lower Income Individuals and Appropriate Organizations.

B. Completion of Rehabilitation

(1) *Notification of Completion.* Section 882.507(a) shall apply to this program.

(2) *Evidence of Completion.* Section 882.507(b) shall apply to this program, except that § 882.507(b)(2)(iv), concerning lead-based paint requirements, shall not apply.

(3) *Actual Cost and Rehabilitation Loan Certifications.* Section 882.507(c) shall apply to this program, except that Contract Rents shall be established in accordance with section III.G.

(4) *Review and Inspections.* Section 882.507(d) shall apply to this program.

(5) *Acceptance.* Section 882.507(e) shall apply to this program.

V. Housing Assistance Payments Contract

A. Time of Execution of Contract

Section 882.508(a) shall apply to this program.

B. Term of Contract

The Contract for any unit rehabilitated in accordance with this program shall be for a term of 10 years. The Contract shall give the PHA the option to renew the Contract for an additional 10 years.

C. Changes in Contract Rents from Agreement

The Contract Rents may be higher or lower than those specified in the Agreement, in accordance with section III.G.

D. Unleased Unit(s)

Section 882.508(c) shall apply to this program.

E. Contract Rents at End of Rehabilitation Loan Term

Section 882.409 shall apply to this program, except that the requirement to reduce rents shall apply on the earlier of: (1) The end of the term of the rehabilitation loan, or (2) 10 years from the effective date of the Contract. Base rents for this program are determined under section III.G.

VI. Management

A. Outreach to Lower Income Individuals and Appropriate Organizations; Waiting List(s)

(1) *Outreach to Lower Income Individuals and Appropriate Organizations.* Promptly after receiving the executed ACC, the PHA shall engage in outreach efforts to make known the availability of this program to homeless individuals in general or homeless individuals in the category for which the project is designed, such as substance abusers. The PHA shall also ask appropriate organizations to refer homeless individuals to the PHA or assist the PHA in locating them. Any outreach shall be made in accordance with the PHA's HUD-approved application and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan.

(2) *Waiting List(s).* The PHA shall maintain a separate waiting list for all applicants (or each category of applicants) for this program. In establishing the waiting list(s), the PHA shall first review any of its existing waiting lists for section 8 Moderate Rehabilitation and Existing Housing (Certificate and Housing Voucher) programs and add the names of any homeless individuals on those lists to the list(s) for this program, where it is able to identify the individuals on those lists as homeless. The names of the individuals on the section 8 Moderate Rehabilitation and Existing Housing lists shall remain on those lists as well.

(3) *First Priority for Homeless Individuals.* Homeless individuals on the waiting list(s) shall have a first priority for occupancy of housing rehabilitated under this program.

B. Individual Participation

(1) *Initial Determination of Individual Eligibility.* Section 882.514(a) shall apply to this program. (The Department has suspended requirements relating to alien status pending development of a new regulation.)

(2) *PHA Selection of Individuals for Participation.* Section 882.514(b) shall apply to this program, except that the PHA shall only refer Homeless Individuals.

(3) *Owner Selection of Individuals.* All vacant units under Contract shall be rented to Homeless Individuals referred by the PHA from its waiting list(s). However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting list(s) to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the

Owner may advertise or solicit applications from homeless persons, and refer such persons to the PHA to determine eligibility. Since the Owner is responsible for tenant selection, the Owner may refuse any Individual provided that the Owner does not unlawfully discriminate. Should the Owner reject an Individual, and should the Individual believe that the Owner's rejection was the result of unlawful discrimination, the Individual may request the assistance of the PHA in resolving the issue. If the issue cannot be resolved promptly, the Individual may file a complaint with HUD, and the PHA may refer the Individual to the next available unit in this program.

(4) *Leasing to Non-Homeless Individuals.* When neither the PHA nor the Owner can find a sufficient number of interested applicants who are Homeless Individuals, the Owner may rent to non-homeless Eligible Individuals, in accordance with § 882.514 (a) through (c).

(5) *Briefing of Individuals.* Section 882.514(d) shall apply to this program, except that paragraph (d)(1)(vi) shall not apply.

(6) *Continued Participation of Individual When Contract Is Terminated.* Section 882.514(e) shall apply to this program, except that the PHA may issue a Housing Voucher instead of a Certificate.

(7) *Individuals Determined by the PHA to Be Ineligible.* Section 882.514(f) shall apply to this program. In addition, individuals are not precluded from exercising other rights if they believe they have been discriminated against on the basis of age.

C. Lease

(1) *Contents of Lease.* Section 882.504(j) shall apply to this program. In addition, the Lease shall limit occupancy to one Eligible Individual.

(2) *Term of Lease.* Section 882.403(d) shall apply to this program.

D. Security and Utility Deposits

Section 882.112 shall apply to this program.

E. Rent Adjustments

Section 882.410 shall apply to this program.

F. Payments for Vacancies

Section 882.411 shall apply to this program.

G. Subcontracting of Owner Services

Section 882.412 shall apply to this program.

H. Responsibility of the Individual

Section 882.413 shall apply to this program.

I. Reexamination of Individual Income

(1) *Regular Reexaminations.* The PHA shall reexamine the income of all Individuals at least once every 12 months. After consultation with the Individual and upon verification of the information, the PHA shall make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR Part 813, and determine whether only one individual is still occupying the unit. The PHA shall adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment.

(2) *Interim Reexaminations.* The Individual shall supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including submissions required for interim reexaminations of Individual income and determinations as to whether only one person is occupying the unit. In addition, the second and third sentences of section 882.515(b) shall apply.

(3) *Continuation of Housing Assistance Payments.* Section 882.515(c) shall apply to this program.

J. Overcrowded Units

If the PHA determines that anyone other than, or in addition to, the Eligible Individual is occupying an SRO unit assisted under this program, the PHA shall take all necessary action, as soon as reasonably feasible, to ensure that the unit is occupied by only one Eligible Individual. Such action may include assisting the occupants of the unit in locating other housing, and requiring the occupants who do not have a right to occupy the unit under the Lease to move to other housing.

K. Adjustment of Utility Allowance

Section 882.510 shall apply to this program.

L. Termination of Tenancy

Section 882.511 shall apply to this program.

M. Reduction of Number of Units Covered by Contract

Section 882.512 shall apply to this program.

N. Maintenance, Operation, and Inspections

Section 882.516 shall apply to this program.

O. HUD Review of Contract Compliance

Section 882.217 shall apply to this program.

VII. Definitions

A. Section 882.402 shall apply to this program, except that:

(1) With respect to the definition of Moderate Rehabilitation, in determining compliance with the $1,000 minimum expenditure required to qualify as Moderate Rehabilitation, the cost of the repair or replacement of major building systems or components in danger of failure shall not be counted; and

(2) With respect to the definition of Single Room Occupancy (SRO) Housing, the requirement that an SRO unit must be located within a multifamily structure consisting of more than 12 units shall not apply.

B. In addition to the definitions contained in § 882.402, the following definitions shall apply to this program:

Eligible Individual ("Individual"). A lower income individual who, taking into account the supportive services available to the individual, is capable of independent living as a "Family" or "Single Person" under 24 CFR Part 812.

Homeless Individual. An individual who—

(1) Is an Eligible Individual,

(2) Lacks a fixed, regular, and adequate nighttime residence; and

(3) Has a primary nighttime residence that is—

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "Homeless Individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Supportive Services. Services that may include outpatient health services; employment counseling; nutritional counseling; security arrangements necessary for the protection of residents of facilities to assist the homeless; other services essential for maintaining independent living; assistance to homeless individuals in obtaining other Federal, State, and local assistance available for such individuals, including mental health benefits, employment counseling, medical assistance, and

income support assistance, such as Supplemental Security Income benefits, General Assistance, and Food Stamps; and residential supervision necessary to facilitate the adequate provision of supportive services to the residents. The term does not include major medical equipment.

VIII. Waivers

A. Authority To Waive Provisions of This Notice

Upon determination of good cause, the Assistant Secretary for Housing—Federal Housing Commissioner may, subject to statutory limitations, waive any provision of this Notice. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

B. Waiver of the Limitation and Preference in the Second and Third Sentences of Section 3(b)(3) of the 1937 Act

Section 8(n) of the U.S. Housing Act of 1937 authorizes HUD, in appropriate cases involving SRO housing, to waive the limitation and preference in the second and third sentences of section 3(b)(3) of that Act. The second sentence of section 3(b)(3) limits to 15 percent the number of units under the jurisdiction of any PHA which can be occupied by "other single persons" (those which do not qualify as elderly, displaced, or the remaining member of a tenant family). The third sentence requires a preference for persons who are elderly, handicapped, or displaced over other single persons.

The Department believes that waiver of the limitation and preference is appropriate for this program since many of those who will occupy this housing would not be subject to the 15 percent limitation and would qualify for the preference. Therefore, in light of the administrative burden involved, HUD hereby waives these provisions for purposes of this program. In addition, any regulations implementing the percentage limitation or the preference shall not apply to units assisted under this Notice. The authority elsewhere in section 3(b)(3) to "increase the [15 percent] limitation described in the second sentence" to 30 percent does not apply, since the limitation in the second sentence has been waived and there is no applicable limitation in the second sentence to "increase."

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). When OMB has approved these requirements, HUD will announce control numbers in a Federal Register Notice. Until that time, no person may be subjected to a penalty for failure to comply with information collection requirements.

(The Catalog of Federal Domestic Assistance Program number is 14.156, Lower Income Housing Assistance Program.)

Authority: Sections 401 and 441 of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987; section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 9, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

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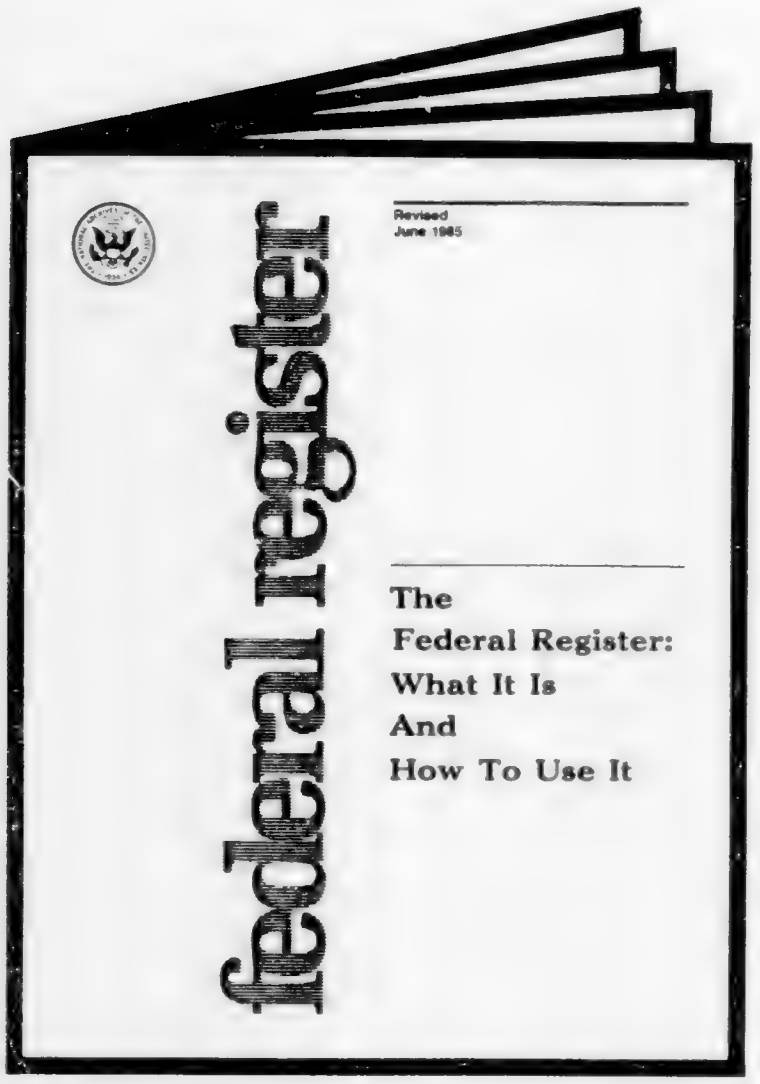

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Presidential Documents

Title 3—

The President

Proclamation 5728 of October 14, 1987

World Food Day, 1987

By the President of the United States of America

A Proclamation

This is the seventh successive year in which people everywhere, including Americans, have observed World Food Day in a spirit of rededication to the continuing fight against world hunger. We Americans are a people with strong ties to other nations and with a long record of humanitarian concern for the hungry around the world. We are blessed with the wherewithal to help: a bountiful land whose fertile soil, moderate climate, and economic and political freedom provide the keys not only to abundance here at home but to a surplus which can be shared with others in grave need around the globe.

Progress has been made in averting the threat of famine in many regions, but widespread poverty and hunger, especially in developing countries, constantly challenge us to ease the human suffering they cause and to preserve the human potential they deplete. As hunger robs people of health and strength, it also saps the economic systems to which they might otherwise contribute, upsets the social order, frustrates progress at every level, and engenders hopelessness and instability.

Our Nation has always been—and continues to be—deeply committed to helping feed the hungry wherever they may be, and to accomplish this goal an extensive network of private and public efforts has been established. But additional steps are clearly necessary. Greater success in the fight against hunger will require the implementation of worldwide agricultural and trade policies designed to promote economic growth and stability for all nations, developing and developed alike. Schemes of narrowly focused government intervention must be replaced by systems that respond to the production and trade decisions made by free individuals. Farmers must have ready access to the international marketplace and the opportunity to compete freely and to sell the goods they produce. Nations, if they are to move toward self-reliance in agriculture, must install systems that promote private ownership, reward effort and efficiency, and recognize the dignity of those who work the land.

The United States has established an initiative to End Hunger in Africa by the end of the century through economic growth and private sector development. All U.S. bilateral and multilateral economic programs and policies are oriented toward this goal. But U.S. government programs cannot do it alone. The participation and commitment of Africans, other donors, and the private sector—volunteer and business, both American and international—are essential.

In recognition of the desire and commitment of the American people to end world hunger, the Congress, by Senate Joint Resolution 110, has designated October 16, 1987, as "World Food Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 16, 1987, as World Food Day, and I call upon the people of the United States to observe this day with appropriate activities to explore ways in which our Nation can contribute further to the elimination of hunger in the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-24195
Filed 10-15-87; 10:49 am]
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Rules and Regulations

Federal Register
Vol. 52, No. 200
Friday, October 16, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

Regional Nuclear Materials Licensing for the United States Navy

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations concerning the domestic licensing of source, byproduct, and special nuclear material (collectively referred to as nuclear materials) to transfer the authority for administering the United States Navy license from Headquarters to the NRC Region II office in Atlanta, Georgia. This action is necessary to inform the public of this administrative change.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: George J. Deegan, Program Analyst, Operations Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4114.

SUPPLEMENTARY INFORMATION: Each year since 1982 (May 27, 1982; 47 FR 23138) (April 14, 1983; 48 FR 16030) (May 9, 1984; 49 FR 19630) (April 15, 1985; 50 FR 14692) (October 8, 1986; 51 FR 35999), the Nuclear Regulatory Commission (NRC) published rules decentralizing most domestic licensing of nuclear materials. The NRC is amending its codified regulations to reflect that the United States Navy license is now included in its decentralization program. This is accomplished by amending 10 CFR 30.6, 10 CFR 40.5, and 10 CFR 70.5 to remove the reference to the exception for the United States Navy.

The NRC recently consolidated approximately one hundred eighty individual United States Navy licenses into one "master" license with many individual permits. During the consolidation and for a short time after it, Headquarters retained the regulatory authority for the Navy licensing effort to maintain continuity. NRC Headquarters has now transferred this authority to the appropriate Regional Office (Region II, Atlanta, Georgia), consistent with similar delegations which affected nearly all other Federal licenses in 1985 and 1986.

Accordingly, with respect to licenses issued pursuant to 10 CFR Parts 30 through 35, 39, 40, and 70, the revisions to 10 CFR 30.6, 40.5, and 70.5 require the Navy to contact the appropriate Regional Office, rather than NRC Headquarters offices, for license applications, renewals, and revisions.

Because delegations of authority to the Regional Administrator are contained in NRC Manual Chapter 0128, the changes to §§ 30.6, 40.5, and 70.5 are procedural amendments only. For purposes of communications, the revised sections indicate the type of licensing authority already delegated administratively to the Regional Administrator.

Because these are amendments dealing with Agency practice, procedure, and organization, pursuant to 5 U.S.C. 533(b)(A), the notice and comment provisions of the Administrative Procedure Act do not apply. The amendments are effective December 1, 1987.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(i). Accordingly, pursuant to 10 CFR 51.22(b), neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150–0017 for Part 30, 3150–0016 for Part 31, 3150–0001 for Part 32, 3150–0015 for Part 33, 3150–0007 for Part 34, 3150–0010 for Part 35, 3150–0130 for Part 39, 3150–0020 for Part 40, and 3150–0009 for Part 70.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Parts 30, 40, and 70 are published as a document subject to codification.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34 (b) and (c), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.36, 30.51, 30.52 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

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2. In § 30.6, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by removing the phrase, "With the exception of the United States Navy," also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 39, 40, and 70 to all persons for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproducts, source, or special nuclear material.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.5, 40.25(c), (d) (3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.5, paragraph (b)(2) (i), (ii), (iii), (iv), and (v) are amended by removing the phrase, "With the exception of the United States Navy," also, the introductory text of paragraph (d) and paragraph (b)(1) are revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 39, 40, and 70 to all persons for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)–(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b) (c), and (d), 70.58(a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a(a), and (d) 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57(b), and (d), and 70.58(a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 70.5, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by removing the phrase, "With the exception of the United States Navy," also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials

issued pursuant to 10 CFR Parts 30 through 35, 39, 40, and 70 to all persons for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant to 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

Dated at Bethesda, MD, this 5th day of October 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-24050 Filed 10-15-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-15-AD; Amdt. 39-5748]

Airworthiness Directives; Beech 65, 70, 80, 90, 99, 100, 200, 300 and 1900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech 65, 70, 80, 90, 99, 100, 200, 300 and 1900 Series airplanes, which requires repetitive inspections of the nose landing gear fork assembly to detect fatigue cracking. Reports have been received of cracks developing in the nose landing gear fork around the edge of the weld. The inspection specified in this action will detect critical cracks prior to failure.

DATES: *Effective date:* November 16, 1987. *COMPLIANCE:* As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2102, Revision I, dated April 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; telephone 316-681-7279. This information may be examined at the Rules Docket, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316-946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections for fatigue cracking of the nose landing gear (NLG) fork around the edge of the weld on certain Beech 65, 70, 80, 90, 99, 100, 200, 300 and 1900 Series airplanes was published in the **Federal Register** on June 5, 1987 (52 FR 21312). The proposal resulted from the receipt of an increased number of reports of cracks developing in the nose landing gear (NLG) fork around the edge of the weld on Beech 90, 100, 200 and 300 airplanes. In February 1985, the NLG fork broke on a Model 200 during ground roll, causing severe damage to the airplane. All the Beech airplanes in the "heavy twin" series utilize the same NLG design. This design uses a welded fork assembly which connects the lower strut to the axle. The fork is a curved tube which is welded to a collar, which is press-fitted on the strut tube. In July 1986, Beech issued Service Bulletin No. 2102, of which Part II pertains to cracking of the NLG fork. Part I of the Bulletin pertains to slippage of the joint where the fork collar is pressed onto the strut tube.

Beech has issued Revision I to Service Bulletin No. 2102, dated April 1987, which eliminates the time period before initial inspection, expands the serial number effectivity, and reduces the allowable crack length from 1.25 inch to 0.75 inch. Beech is also developing an improved NLG fork which will be more fatigue resistant. The improved forks will not be available in quantity for quite some time, so inspections per the revised bulletin must be relied on to ensure safety in the interim period.

Since the condition described is likely to exist or develop in other Beech 65, 70, 80, 90, 99, 100, 200, 300 and 1900 Series airplanes of the same design, the AD requires inspection of NLG forks per Beech Service Bulletin No. 2102, Revision I, dated April, 1987. If a crack along the edge of the weld is found to exceed 0.75 inch length, the NLG fork must be replaced with a serviceable part prior to further flight.

Interested persons have been afforded an opportunity to comment on the proposal. Only one comment was received. The commenter concurred with the proposed rule, with one exception. The commenter feels that improved, fatigue-resistant NLG fork assemblies should be made available by the manufacturer within a reasonable time. The FAA agrees, and is confident that such replacement parts will be available in due course. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation only involves 4200 airplanes at an approximate total cost of $2250 for each airplane, or a total fleet cost of $9,450,000. The total cost of this inspection is less than the threshold for a significant economic impact.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibilty Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

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Beech: Applies to all Models 65, 65–80, A65, A65–8200, 70, 65–A80, 65–A80–8800, 65–B80, 65–88, 65–90, 65–A90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, B90, C90, C90A, E90, H90, F90, 100, A100, B100, 99, 99A, A99A, B99, C99, 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200CT, B200T, 300, 1900, and 1900C (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD unless already accomplished.

To prevent failure of the nose landing gear (NLG) fork due to undetected fatigue cracking, accomplish the following:

(a) Within 200 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS for airplanes in the 65 Series, 70 Series, 80 Series, 99 Series and 1900 Series, and 150 hours TIS for airplanes in the 90 Series, 100 Series, 200 Series and 300 Series, inspect the NLG fork using fluorescent penetrant method in accordance with the instructions in Part II of Beech Service Bulletin No. 2102, Revision I, dated April 1987.

Note.—Inspection for slippage of the NLG fork collar on the strut tube per Part I of the Service Bulletin is recommended but not required by this AD.

(1) If no cracks are found, the airplane may be returned to service.

(2) If a crack is detected at the tip of the weld, is not more than 0.75 inch in length, and does not branch out into the unwelded tube wall (See Figure 1 or Figure 2 as applicable), thereafter at intervals not to exceed 25 hours TIS, inspect the NLG fork per paragraph (a) above until replaced with a serviceable part. The replacement part is immediately subject to the conditions of this AD.

(3) If a crack is detected that exceeds the limits of paragraph (a)(2), prior to further flight, replace the NLG fork with a serviceable part. The replacement part is immediately subject to the conditions of this AD.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(c) The repetitive inspection intervals required by this AD may be adjusted up to 10 percent of the specified interval so as to coincide with other scheduled maintenance.

(d) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316–946–4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 16, 1987.

Issued in Kansas City, Missouri, on September 30, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–23938 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–70–AD; Amdt. 39–5743]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires the modification of the main landing gear (MLG) door ground release lever. This amendment is prompted by reports of a left MLG door ground release lever that vibrated into the door open position during flight. This prevented the extension of the left MLG and resulted in the airplane landing with the left MLG retracted.

EFFECTIVE DATE: November 20, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of the main landing gear (MLG) door ground release lever was published in the **Federal Register** on July 2, 1987 (52 FR 25022).

Interested persons have been afforded an opportunity to participate in the making of this amendment. The Air Transport Association (ATA) of America, on behalf of its members, submitted the only comment.

ATA commented that the parts required to be incorporated in accordance with the proposed AD would not be available for 5 to 6 months. The commenter stated that insufficient time would be available for operators with high utilization rates to comply with the 3,000 hour provision of the proposed AD. Therefore, they requested that the compliance time be extended to two years or 4,500 hours time-in-service, whichever occurs first, after the effective date of this AD. The FAA concurs that the 5 to 6 month lead time on parts would be insufficient time for some operators to comply with the AD. Therefore, the final rule is being changed to require compliance within 2 years or 4,500 hours time-in-service, whichever occurs first, after the effective date of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 1188 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of the modification kit is $148. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $651,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any Model 727 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, as listed in Boeing Service Bulletin 727–32–267, Revision 1, dated June 15, 1984, certified in any category. Compliance is required within the next 4,500 hours time-in-service or 2 years after the effective date of this AD, whichever occurs first, unless previously accomplished.

To prevent the main landing gear door release lever from moving to the door open position during flight, accomplish the following:

A. Modify the left and right main landing gear door release levers in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–32–267, Revision 1, dated June 15, 1984, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 20, 1987.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–23939 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–136–AD; Amdt. 39–5752]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires inspection for cracking, and repair or replacement, as necessary, of the skin along the upper row of fasteners of certain fuselage lap joints. This amendment is prompted by recent inspection reports on three airplanes of extensive skin cracking adjacent to lap splice fasteners. Delamination of fuselage tearstraps has also been found in these same areas. Failure to detect and repair cracks could result in rapid depressurization of the airplane.

EFFECTIVE DATE: November 2, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM–120S; telephone (206) 431–1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There have been recent reports of multiple site cracking of the skin on three airplanes along the upper row of fasteners of certain fuselage lap joints. Delamination of fuselage tearstraps has also been found in these same areas. This cracking, when discovered, was severe enough to require replacement of five skin panels on the fuselage of one airplane. The cracking occurs in lap joints that have also experienced adhesive failure of the bonded joint. The loss of the bond to the joint inner skin creates a knife at the bottom of the countersink for the fastener head in the joint outer skin. Fatigue cracking is initiated at the multiple sites in disbonded panels and extends longitudinally from fastener to fastener along the upper row of fasteners. If the cracks suddenly join together and the associated tearstraps are disbonded, extensive structural damage and rapid depressurization of the airplane could result.

It is believed that the problem is confined to airplanes between line number 1 and 291. Improvements were made in the bonding procedure at line number 292.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1039, Revision 3, dated August 30, 1987, which describes procedures for the visual and eddy current inspection and repair of fuselage lap splices.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and repair, as necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes listed in Boeing Alert Service Bulletin 737–53A1039, Revision 3, dated August 20, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid depressurization as a result of failure of certain fuselage lap splices, accomplish the following:

A. Prior to the accumulation of 30,000 landings or within 250 landings after the effective date of this AD, whichever occurs later, and at intervals thereafter not to exceed 4,500 landings, perform a detailed visual inspection for cracking of the skin

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adjacent to the upper row of longitudinal lap splice fasteners, at stringer 4, both left and right side of the fuselage, from stations 360 to 1016, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 3, dated August 20, 1987, or later FAA-approved revisions. If any cracks are found, perform an eddy current inspection for the full length of the panel in which the cracks were found in accordance with the service bulletin.

B. The repetitive inspections required by paragraph A. of this AD may be terminated upon the performance of inspections for cracks and/or tearstrap delamination using one of the following three options in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 3, dated August 20, 1987, or later FAA-approved revisions:

1. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right side of the fuselage, from stations 360 to 1016. Repeat at intervals thereafter not to exceed 20,000 landings. If no cracks are found, prior to the accumulation of 6,000 landings after the completion of the above eddy current inspection, and at intervals thereafter not to exceed 3,000 landings until the next eddy current inspection, perform a detailed visual inspection of these same areas.

2. Perform a high frequency eddy current inspection on the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right sides of the fuselage, from stations 360 to 1016. Repeat at intervals not to exceed 20,000 landings. In addition, perform a tearstrap inspection for delamination. If no cracks are found and tearstrap bond is intact, prior to the accumulation of 6,000 landings after the completion of the above inspections, and at intervals thereafter not to exceed 6,000 landings, perform a detailed visual inspection for skin cracks of the areas previously inspected by eddy current.

3. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right side of fuselage, from stations 360 to 1016. In addition, perform a tearstrap inspection for delamination. Repeat the eddy current inspections at intervals not to exceed 10,000 landings and the delamination inspections at intervals not to exceed 20,000 landings.

C. Repair all cracks and tearstrap delaminations found as a result of the above inspections prior to further flight in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 3, dated August 20, 1987, or later FAA-approved revisions. If blind fasteners are used in the repair, reinspect installation at intervals not to exceed 3,000 landings for loose or missing fasteners. Also, if blind fasteners are used in the skin repair, prior to the accumulation of 15,000 landings after installation, or within 250 landings after the effective date of this AD, whichever is later, and thereafter at intervals not to exceed 4,500 landings, perform the inspection as detailed in paragraph A. above.

D. Terminating action for the inspections required by this AD is the replacement of the existing upper row of joint fasteners with standard protruding head solid fasteners at all affected fuselage longitudinal lap splices and ensuring functional tearstraps in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 3, dated August 20, 1987, or later FAA-approved revisions.

E. For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 PSI.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 2, 1987.

Issued in Seattle, Washington, on October 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–23940 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–133–AD; Amdt. 39–5744]

Airworthiness Directive; British Aerospace Model BAC 1–11 –200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1–11 –200 and –400 series airplanes, which requires inspection, and replacement or repairs, as necessary, to the rear passenger door structure. This amendment is prompted by reports that several horizontal structural members of the door have failed. This condition, if not corrected, could result in structural failure of the door and sudden decompression of the airplane.

EFFECTIVE DATE: October 21, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Several failed horizontal structural members have been reported on rear passenger doors on Model BAC 1–11 airplanes. Cracks initiated in the aft free flange of some horizontal members, and grew towards the pressure skin attach flange. Failure of these members could result in structural failure of the door and sudden decompression of the airplane.

British Aerospace issued Campaign Wire 52–CW–PM5448, dated September 4, 1987, which describes a one-time inspection, and replacement or repairs, as necessary, to the affected structural members of the door. Campaign Wire 52–CW–PM5448, Issue 2, was issued September 18, 1987, to correct the original issue and specify repetitive inspections. The United Kingdom Civil Aviation Authority has classified the campaign wires as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspections, and replacement or repairs, as necessary, in accordance with the campaign wires previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1–11 –200 and –400 series airplanes, listed in British Aerospace Campaign Wire 52–CW–PM5448, Issue 2, dated September 18, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent sudden decompression of the fuselage as a result of failure of the rear passenger door, accomplish the following:

A. Within the next 100 landings, or within 30 days after the effective date of this AD, or prior to the accumulation of 20,000 landings, whichever occurs later, inspect the rear passenger door structure for cracks, in accordance with British Aerospace Campaign Wire 52–CW–PM5448, Issue 2, dated September 18, 1987.

B. Repair or replace cracked structure, before further flight, in accordance with the campaign wire described in paragraph A., above.

C. Repeat the inspection required by paragraph A., above, at intervals not to exceed:

1. 800 landings for airplanes with doors that have the horizontal members repaired in accordance with the structural repair manual.

2. 1,200 landings for airplanes with doors in which the horizontal members were found undamaged at the last inspection or were replaced.

D. And alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of the inspection required by this AD.

All persons affected by this directive who have not already received the appropriate service information, may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 21, 1987.

Issued in Seattle, Washington, on September 21, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–23941 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ASW–10, Amdt. 39–5747]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale Model AS 332C and L Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an initial inspection and separation of the electrical cable bundles connecting each AC generator to its regulating card on Aerospatiale Model AS 332C and L helicopters. This AD is needed to prevent a complete loss of the AC electrical generation system which could result in possible loss of the helicopter.

DATES: Effective Date: November 12, 1987.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053.

A copy of the applicable service documents is contained in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mr. W. Boyce, Brussels Aircraft Certification Office, AEU–100 (APO Air Mail Address), Federal Aviation Administration, c/o American Embassy, APO New York 09667–1011, or Mr. John Swihart, Aircraft Certification Division, Rotorcraft Standards Staff, ASW–110, Federal Aviation Administration, Fort Worth, Texas 76193–0110, telephone (817) 624–5120.

SUPPLEMENTARY INFORMATION: The FAA has determined that a short circuit in the cable connecting the No. 2 AC generator to its regulator card could cause the complete loss of the AC electrical power on Aerospatiale Model AS 332C and L helicopters. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires an initial inspection and separation of the electrical cable bundles connecting each AC generator to its regulating card.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1987). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.19 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale: Applies to all Model AS 332C and L helicopters certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent loss of the AC electrical generation system, accomplish the following:

(a) Within the next 50 hours' time in service or the next 30 days after the effective date of this AD, inspect the electrical cable bundles connecting each AC generator to its regulating card in accordance with the instructions given in paragraph BBA of Aerospatiale Telex Service No. 05.12, transmitted by Aerospatials Telex No. 10084, dated January 16, 1987.

(b) The aircraft can be returned to operational service if the insulation values measured are greater than 2 megohms.

(c) If the insulation values measured are less than 2 megohms, the installation is to be modified in accordance with the instructions given in Aerospatiale AS 332 Service Bulletin No. 24.10, paragraph 2, "Accomplishment Instructions."

(d) Within 400 hours' time in service following the inspection or before December 31, 1987, whichever occurs first, modify the aircraft in accordance with the instructions given in AS 332 Service Bulletin No. 24.10, paragraph 2, "Accomplishment Instructions."

(e) An alternate means of compliance which provides an equivalent level of safety may be used if approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, Fort Worth, Texas 76193–0100.

This amendment becomes effective November 12, 1987.

Issued in Fort Worth, Texas, on September 25, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87–23942 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–ASO–11]

Alteration of Transition Area, Venice, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Venice, Florida, transition area to accommodate instrument flight rules (IFR) operations at the Venice Municipal Airport. This action lowers the base of controlled airspace from 1200 feet to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure predicated on the Venice non-directional radio beacon (RBN) has been developed to serve the airport and additional controlled airspace is required for the protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Walter H. Wulff, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by increasing the size of the Venice, Florida, transition area to accommodate instrument flight rules (IFR) operations at the Venice Municipal Airport. This action will provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Venice Municipal Airport (FR 26023).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Venice, Florida, transition area to accommodate IFR aeronautical operations in the vicinity of the Venice Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Venice, Florida [Revised]

Venice, Florida

That airspace extending upward from 700 feet above the surface within a 6.5.-mile radius of Venice Municipal Airport (Lat. 27°04'30" N., Long. 82°25'00" W.); within 3 miles each side of the 137° bearing from the Venice RBN (Lat. 27°03'38" N., Long. 82°25'47" W.) extending from the 6.5 mile radius area to 8.5 miles of the RBN.

Issued in East Point, Georgia, on October 1, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87–23943 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 25407; Amdt. No. 1358]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliances dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, when applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on October 2, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective January 14, 1988

Point Hope, AK—Point Hope, NDB RWY 1, Amdt. 1
Point Hope, AK—Point Hope, NDB RWY 19, Amdt. 1
Umiat, AK—Umiat, NDB RWY 23, Orig.
Umiat, AK—Umiat, NDB-A, Amdt. 3
Umiat, AK—Umiat, NDB-B, Amdt. 2 *Cancelled*
Umiat, AK—Umiat, NDB-C, Orig., *Cancelled*

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Chico, CA—Chico, ILS RWY 13L, Amdt. 6
Chino, CA—Chino, VOR-B, Amdt. 2
Chino, CA—Chino, ILS RWY 26, Amdt. 4
Pohnpei Island Federated States of Micronesia, Pohnpei Intl, NDB/DME RWY 9, Amdt. 2
Upland, CA—Cable, VOR RWY 6, Amdt. 5
Savannah, GA—Savannah International, RNAV RWY 27, Amdt. 5, *Cancelled*
Lihue, HI—Lihue, VOR/DME or TACAN RWY 35, Amdt. 5
Worcester, MA—Worcester Muni, NDB RWY 11, Amdt. 16
Worcester, MA—Worcester Muni, NDB RWY 29, Amdt. 8
Worcester, MA—Worcester Muni, ILS RWY 11, Amdt. 17
Syracuse, NY—Syracuse Hancock Intl, ILS RWY 10, Amdt. 5
The Dalles, OR—The Dalles Muni, VOR/DME A, Amdt. 3
Hartsville, SC—Hartsville Muni, NDB RWY 20, Amdt. 3
Brigham City, UT—Brigham City, NDB RWY 34, Amdt. 5
Logan, UT—Logan-Cache, VOR-A, Amdt. 6
Ogden, UT—Ogden Muni, VOR RWY 7, Amdt. 5
Ogden, UT—Ogden Muni, RNAV RWY 7, Amdt. 1, *Cancelled*
Ogden, UT—Ogden Muni, RNAV RWY 3, Orig.
Saint George, UT—Saint George Muni, VOR/DME RWY 34, Amdt. 2
Saint George, UT—Saint George Muni, VOR-C, Amdt. 2
Saint George, UT—Saint George Muni, VOR-B, Amdt. 2
Salt Lake City, UT—Salt Lake City Intl, VOR or TACAN RWY 16L, Amdt. 9
Salt Lake City, UT—Salt Lake City Intl, VOR or TACAN RWY 16R, Amdt. 21
Salt Lake City, UT—Salt Lake City Intl, ILS RWY 34L, Amdt. 37
Salt Lake City, UT—Salt Lake City Intl, ILS/DME RWY 16R, Amdt. 3
Grantsburg, WI—Grantsburg Muni, VOR-A, Amdt. 1, *Cancelled*
Grantsburg, WI—Grantsburg Muni, VOR-A, Orig.
Siren, WI—Burnett County, VOR RWY 5, Orig.

. . . Effective December 17, 1987

Ft. Huachuca-Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, VOR RWY 26, Amdt. 1
Ft. Huachuca-Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, NDB RWY 26, Amdt. 1
Ft. Huachuca-Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, LOC RWY 26, Amdt. 1
Ft. Huachuca-Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, RADAR-1, Amdt. 3
Naples, FL—Naples Muni, VOR RWY 22, Amdt. 4
Atlanta, GA—DeKalb-Peachtree, ILS RWY 20L, Amdt. 6
Madison, GA—Madison Muni, VOR/DME-A, Amdt. 6
Montezuma, GA—Dr. C P Savage Sr., NDB RWY 18, Amdt. 1
Mattoon-Charleston, IL—Coles County Memorial, VOR RWY 6, Amdt. 12
Mattoon-Charleston, IL—Coles County Memorial, VOR RWY 24, Amdt. 10
Charlotte, NC—Charlotte/Douglas Intl, VOR RWY 36L, Amdt. 4
Charlotte, NC—Charlotte/Douglas Intl, VOR/DME RWY 18L, Amdt. 5
Charlotte, NC—Charlotte/Douglas Intl, VOR/DME RWY 18R, Amdt. 5
Allendale, SC—Allendale County, VOR-A, Amdt. 4

. . . Effective November 19, 1987

Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 5L, Amdt. 1
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 5R, Amdt. 2
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23L, Amdt. 3
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23R, Amdt. 3
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 5R, Amdt. 12
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 23L, Amdt. 12
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 28R, Amdt. 18
Cleveland, OH—Cleveland-Hopkins Intl, RADAR-1, Amdt. 29
Cleveland, OH—Cleveland-Hopkins Intl, RNAV RWY 10L, Amdt. 9
Cleveland, OH—Cleveland-Hopkins Intl, RNAV RWY 18, Amdt. 9
Cleveland, OH—Cleveland-Hopkins Intl, RNAV RWY 36, Amdt. 9

. . . Effective October 22, 1987

Tucson, AZ—Tucson International, LOC/DME BC RWY 29R, Amdt. 6
Miami, FL—Miami Intl, LOC RWY 30, Amdt. 4
Miami, FL—Miami Intl, ILS RWY 12, Amdt. 1
Plymouth, MA—Plymouth Muni, NDB RWY 6, Amdt. 8, *Cancelled*
St. Louis, MO—Lambert/St. Louis Intl, LDA/DME RWY 30L, Orig.
St. Louis, MO—Lambert/St. Louis Intl, ILS RWY 30R, Amdt. 5
St. Louis, MO—Lambert/St. Louis Intl, RNAV RWY 30R, Amdt. 2
Winnemucaa, NV—Winnemucca Muni, VOR/DME RWY 14, Orig.
Salt Lake City, UT—Salt Lake City Intl, ILS RWY 16L, Amdt. 8

. . . Effective September 25, 1987

Talkeetna, AK—Talkeetna, VOR/DME RWY 36, Amdt. 1

. . . Effective September 24, 1987

Harrisburg, PA—Capital City, ILS RWY 8, Amdt. 9
Lancaster, PA—Lancaster, VOR RWY 31, Amdt. 14
Lancaster, PA—Lancaster, VOR/DME RWY 26, Amdt. 6
Lancaster, PA—Lancaster, VOR/DME RWY 31, Amdt. 2
Lancaster, PA—Lancaster, ILS RWY 8, Amdt. 12
Latrobe, PA—Westmoreland County, RNAV RWY 5, Amdt. 1
Middletown, PA—Harrisburg Intl Arpt-Olmsted Fld, ILS RWY 31, Amdt. 4
Wise, VA—Lonesome Pine, RNAV RWY 24, Amdt. 2

The FAA published an Amendment in Docket No. 25369, Amdt. No. 1356 to Part 97 of the Federal Aviation Regulations (VOL 52 FR No. 179 Page 34902; dated Wednesday, September 16, 1987) under § 97.27 effective October 22, 1987, which is hereby amended as follows:

Kosrae Island Federated States of Micronesia, KOSRAE, NDB/DME-A Orig. Change effective date to 19 Nov 1987.

The FAA published an Amendment in Docket No. 25369, Amdt. No. 1356 to Part 97 of the Federal Aviation Regulations (VOL 52 FR No. 179 Page 34902; dated Wednesday, September 16, 1987) under § 97.25 effective October 22, 1987, which is hereby amended as follows:

Laurel/Hattiesburg, MS—Pine Belt Regional LOC BC RWY 36 Orig. Should Read:
Laurel/Hattiesburg, MS—Pine Belt Regional LOC BC RWY 36 Orig., *Cancelled.*

[FR Doc. 87-23684 Filed 10-15-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR 276

[Rel. No. IA-1092]

Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services

ACTION: Statement of staff interpretive position.

SUMMARY: The Commission is publishing the views of the staff of the Division of Investment Management on the applicability of the Investment Advisers Act of 1940 to financial planners and other persons who provide investment advice as a component of other financial services. The views expressed in this statement were developed jointly by Division staff and the North American Securities. Administrators Association, Inc. ("NASAA") to update Investment Adivsers Act Release No. 770 and provide uniform interpretations of the application of federal and state adviser laws to financial planners and other persons. The revised statement clarifies, among other things, the "business" element of the definition of investment adviser.

FOR FURTHER INFORMATION CONTACT: A. Thomas Smith III, Attorney, (202) 272-2030 Office of the Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Since the Commission published Investment

Advisers Act Rel. No. 770 (Aug. 13, 1981) ("IA–770"), the Commission and NASAA have worked together to promote more uniform regulation of investment advisers under federal and state securities laws. At the federal level, advisers are regulated under the Investment Advisers Act of 1940 ("Advisers Act"). Approximately 40 states regulate the activities of advisers under state adviser laws that typically are substantially similar to the Advisers Act. The staff of the Division and the NASAA Financial Planner/Investment Advisers Committee jointly developed the views stated in this release to provide uniform interpretations about the applicability of federal and state adviser laws to the activities of financial planners and other persons. While the views being published are based substantially on IA–770, this release revises IA–770 in some respects. Specifically, the revised release provides additional guidance on the fiduciary responsibilities of advisers, clarifies the "business" element of the definition of investment adviser, and supplements the views contained in IA–770 by references to interpretive letters issued by the Division since IA–770 was published.

I. Background

Financial planning typically involves providing a variety of services, principally advisory in nature, to individuals or families regarding the management of their financial resources based upon an analysis of individual client needs. Generally, financial planning services involve preparing a financial program for a client based on the client's financial circumstances and objectives. This information normally would cover present and anticipated assets and liabilities, including insurance, savings, investments, and anticipated retirement or other employee benefits. The program developed for the client usually includes general recommendations for a course of activity, or specific actions, to be taken by the client. For example, recommendations may be made that the client obtain insurance or revise existing coverage, establish an individual retirement account, increase or decrease funds held in savings accounts, or invest funds in securities. A financial planner may develop tax or estate plans for clients or refer clients to an accountant or attorney for these services.

The provider of such financial planning services in most cases assists the client in implementing the recommended program by, among other things, making specific recommendations to carry out the general recommendations of the program, or be selling the client insurance products, securities, or other investments. The financial planner may also review the client's program periodically and recommend revisions. Persons providing such financial planning services use various compensation arrangements. Some financial planners charge clients an overall fee for developing an individual client program while others charge clients an hourly fee. In some instances financial planners are compensated, in whole or in part, by commissions on the sale to the client of insurance products, interests in real estate, securities (such as common stocks, bonds, limited partnership interests, and mutual funds), or other investments.

A second common form of service relating to financial matters is provided by "pension consultants" who typically offer, in addition to administrative services, a variety of advisory services to employee benefit plans and their fiduciaries based upon an analysis of the needs of the plan. These advisory services may include advice as to the types of funding media available to provide plan benefits, general recommendations as to what portion of plan assets should be invested in various investment media, including securities, and, in some cases, recommendations regarding investment in specific securities or other investments. Pension consultants may also assist plan fiduciaries in determining plan investment objectives and policies and in designing funding media for the plan. They may also provide general or specific advice to plan fiduciaries as to the selection or retention of persons to manage the assets of the plan.[1]. Persons providing these services to plans are customarily compensated for their services through fees paid by the plan, its sponsor, or other persons; by means of sales commissions on the sale of insurance products or investments to the plan; or through a combination of fees and commissions.

Another form of financial advisory service is that provided by persons offering a variety of financially related services to entertainers or athletes based upon the needs of the individual client. Such persons, who often use the designation "sports representative" or "entertainment representative," offer a number of services to clients, including the negotiation of employment contracts and development of promotional opportunities for the client, as well as advisory services related to investments, tax planning, or budget and money management. Some persons providing these services to clients may assume discretion over all or a portion of a client's funds by collecting income, paying bills, and making investments for the client. Sports or entertainment representatives are customarily compensated for their services primarily through fees charged for negotiation of employment contracts but may also receive compensation in the form of fixed charges or hourly fees for other services provided, including investment advisory services.

There are other persons who, while not falling precisely into one of the foregoing categories, provide financial advisory services. As discussed below, financial planners, pension consultants, sports or entertainment representatives or other persons providing financial advisory services, may be investment advisers within the meaning of the Advisers Act, state adviser laws, or both.

II. Status as an Investment Adviser

A. Definition of Investment Adviser

Section 202(a)(11) of the Advisers Act defines the term "Investment adviser" to mean:

> * * * any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities * * *.

Whether a person providing financially related services of the type discussed in this release is an investment adviser within the meaning of the Advisers Act depends upon all the relevant facts and circumstances. As a general matter, if the activities of any person providing integrated advisory services satisfy the elements of the definition, the person would be an investment adviser within the meaning of the Advisers Act, unless entitled to rely on one of the exclusions from the definition of investment adviser in

[1] The authority to manage all or a portion of a plan's assets often is delegated to a person who qualifies as an "investment manager" under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 *et seq.*]. Under that statute, which is applicable to private sector pension and welfare benefit plans, an "investment manager" must be a registered investment adviser under the Advisers Act, a bank as defined in the Advisers Act, or an insurance company that is qualified to perform services as an investment manager under the laws of more than one State.

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clauses (A) to (F) of section 202(a)(11).[2] A determination as to whether a person providing financial planning, pension consulting, or other integrated advisory services is an investment adviser will depend upon whether such person: (1) Provides advice, or issues reports or analyses, regarding securities; (2) is in the business of providing such services; and (3) provides such services for compensation. These three elements are discussed below.

1. *Advice or Analyses Concerning Securities*

It would seem apparent that a person who gives advice or makes recommendations or issues reports or analyses with respect to specific securities is an investment adviser under section 202(a)(11), assuming the other elements of the definition of investment adviser are met, *i.e.*, that such services are performed as a part of a business and for compensation. However, it has been asked on a number of occasions whether advice, recommendations, or reports that do not pertain to specific securities satisfy this element of the definition. The staff believes that a person who provides advice, or issues or promulgates reports or analyses, which concern securities, but which do not relate to specific securities, generally is an investment adviser under section 202(a)(11), assuming the services are performed as part of a business [3] and for compensation. The staff has interpreted the definition of investment adviser to include persons who advise clients concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments.[4] A person who, in the course of developing a financial program for a client, advises a client as to the desirability of investing in, purchasing or selling securities, as opposed to, or in relation to, any non-securities investment or financial vehicle would also be "advising" others within the meaning of section 202(a)(11).[5]

Similarly, a person who advises employee benefit plans on funding plan benefits by investing in, purchasing, or selling securities, as opposed to, or in addition to, insurance products, real estate not involving securities, or other funding media, would be "advising" others within the meaning of section 202(a)(11). A person providing advice to a client as to the selection or retention of an investment manager or managers also, under certain circumstances, would be deemed to be "advising" others within the meaning of section 202(a)(11).[6]

2. The "Business" Standard

Under section 202(a)(11), an investment adviser is one who, for compensation, (1) engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or, alternatively, (2) issues or promulgates reports or analyses concerning securities as part of a regular business. Each of these two alternatives in the statutory definition of investment adviser contains a business test—one involves "engaging in the business" of advising others while the other involves issuing reports about securities as "part of a regular business." While the "business" standards established under section 202(a)(11) are phrased somewhat differently, it is the staff's opinion that they should be interpreted in the same manner. In both cases, the determination to be made is whether the degree of the person's advisory activities constitutes being "in the business" of an investment adviser. The giving of advice need not constitute the principal business activity or any particular portion of the business activities of a person in order for the person to be an investment adviser under section 202(a)(11). The giving of advice need only be done on such a basis that it constitutes a business activity occurring with some regularity. The frequency of the activity is a factor, but is not determinative.

Whether a person giving advice about securities for compensation would be "in the business" of doing so, depends upon all relevant facts and circumstances. The staff considers a person to be "in the business" of providing advice if the person: (i) Holds himself out as an investment adviser or as one who provides investment advice, (ii) receives any separate or additional compensation that represents a clearly definable charge for providing advice about securities, regardless of whether the compensation is separate from or included within any overall compensation, or receives transaction-based compensation if the client implements in the investment advice, or (iii) on anything other than rare, isolated and non-periodic instances, provides specific investment advice.[7] For the purposes of (iii) above, "specific investment advice" includes a recommendation, analysis or report about specific securities or specific categories of securities (*e.g.*, industrial development bonds, mutual funds, or medical technology stocks). It includes a recommendation that a client allocate certain percentages of his assets to life insurance, high yielding bonds, and mutual funds or particular types of mutual funds such as growth stock funds or money market funds. However, specific investment advice does not include advice limited to a general recommendation to allocate assets in securities, life insurance, and tangible assets.

In applying the foregoing tests, the staff may consider other financial services activities offered to clients. For example, if a financial planner structures his planning so as to give only generic, non-specific investment advice as a financial planner, but then gives specific securities advice in his capacity as a registered representative of a dealer or as agent of an insurance company, the person would not be able to assert that he was not "in the business" of giving investment advice. See discussion of the broker-dealer exception set forth in section 202(a)(11)(C) of the Advisers Act, *infra*. In the staff's view, it is necessary to

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[2] *See* discussion of section 202(a)(11) (A) to (F) in section IIB, *infra*.

[3] In this regard, as discussed in detail below, it is the staff's view that a person who gives advice or prepares analyses concerning securities generally may, nevertheless, not be "in the business" of doing so and, therefore, will not be considered an "investment adviser" as that term is used in section 202(a)(11).

[4] *See, e. g., Richard K. May* (pub. avail. Dec. 11, 1979).

[5] *See, e. g., Thomas Beard* (pub. avail. May 8, 1975); *Sinclair-deMarinis Inc.* (pub. avail. May 1, 1981).

[6] *See, e. g., FPC Securities Corp.* (pub. avail. Dec. 1, 1974) (program to assist client in selection and retention of investment manager by, among other things, recommending investment managers to clients, monitoring and evaluating the performance of a client's investment manager, and advising client as to the retention of such manager); *William Bye Co.* (pub. avail. Apr. 26, 1973) (program involving recommendations to client as to selection and retention of investment manager based upon client's investment objectives and periodic monitoring and evaluation of investment manager's performance). On occasion in the past the staff has taken no-action positions with respect to certain situations involving persons providing advice to clients as to the selection or retention of investment managers. *See, e. g., Sebastian Associates, Ltd.*, (pub. avail. Aug. 7, 1975) (provision of assistance to clients in obtaining and coordinating the services of various professionals such as tax attorneys and investment advisers, including referring clients to such professionals, in connection with business as agent for clients with respect to negotiation of employment and promotional contracts); *Hudson Valley Planning Inc.* (pub. avail. Feb. 25, 1978) (provision of names of several investment managers to client upon request, without recommendation, in connection with business of providing administrative services to employee benefit plans.)

[7] *See Zinn v. Parish*, 644 F.2d 360 (7th Cir 1981).

consider these other financial services activities. Section 208(d) of the Advisers Act makes it illegal for someone to do indirectly under the Advisers Act what cannot be done directly.

3. Compensation

The definition of investment adviser applies to persons who give investment advice for compensation. This compensation element is satisfied by the receipt of any economic benefit, whether in the form of an advisory fee or some other fee relating to the total services rendered, commissions, or some combination of the foregoing. It is not necessary that a person who provides investment advisory and other services to a client charge a separate fee for the investment advisory portion of the total services. The compensation element is satisfied if a single fee is charged for a number of different services, including investment advice or the issuing of reports or analyses concerning securities within the meaning of the Advisers Act.[8] As discussed above, however, the fact that no separate fee is charged for the investment advisory portion of the service could be relevant to whether the person is "in the business" of giving investment advice.

It is not necessary that an adviser's compensation be paid directly by the person receiving investment advisory services, but only that the investment adviser receive compensation from some source for his services.[9] Accordingly, a person providing a variety of services to a client, including investment advisory services, for which the person receives any economic benefit, for example, by receipt of a single fee or commissions upon the sale to the client of insurance products or investments, would be performing such advisory services "for compensation" within the meaning of section 202(a)(11) of the Advisers Act.[10]

B. Exclusions From Definition of Investment Adviser

Clauses (A) to (E) of section 202(a)(11) of the Advisers Act set forth limited exclusions from the definition of investment adviser available to certain persons.[11] Whether an exclusion from the definition of investment adviser is available to any financial planner, pension consultant or other person providing investment advisory services within the meaning of section 202(a)(11), depends upon the relevant facts and circumstances.

A person relying on an exclusion from the definition of investment adviser must meet all of the requirements of the exclusion. The staff's view is that the exclusion contained in section 202(a)(11)(B) is not available, for example, to a lawyer or accountant who holds himself out to the public as providing financial planning, pension consulting, or other financial advisory services. In such a case it would appear that the performance of investment advisory services by the person would not be incidental to his practice as a lawyer or accountant.[12] Similarly, the exclusion for brokers or dealers contained in section 202(a)(11)(C) would not be available to a broker or dealer, or associated person of a broker or dealer, acting within the scope of the business of a broker or dealer, if the person receives any special compensation for providing investment advisory services.[13] Moreover, the exclusion from the definition of investment adviser contained in section 202(a)(11)(C) is only available to an associated person of a broker or dealer or "registered representative" who provides investment advisory services to clients within the scope of the person's employment with the broker or dealer.[14] For example, if a registered representative provides advice independent of, or separate from, his broker or dealer employer such as by establishing a separate financial planning practice, then he could not rely on the exclusion because his investment advisory activities would not be subject to control by his broker or dealer employer.[15] Similarly, the exclusion would be unavailable if he provides advice without the knowledge and approval of his employer because in that capacity his advisory activities would, by definition, be outside the control of his employer.[16]

III. Registration as an Investment Adviser

Any person who is an investment adviser within the meaning of section 202(a)(11) of the Advisers Act, who is not excluded from the definition of investment adviser by virtue of one of the exclusions in section 202(a)(11), and who makes use of the mails or any instrumentality of interstate commerce in connection with the person's business as an investment adviser, is required by section 203(a) of the Advisers Act to register with the Commission as an investment adviser unless specifically exempted from registration by section 203(b) of the Advisers Act.[17] Also, any

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[8] *See, e.g., FINESCO* (pub. avail. Dec. 11, 1979).

[9] *See, e.g., Warren H. Livingston* (pub. avail. Mar. 8, 1980).

[10] Section 202(a)(11)(C) of the Advisers Act excludes from the definition of investment adviser a broker or dealer who performs investment advisory services that are incidental to the conduct of its broker or dealer business and who receives no special compensation therefor. *See* discussion of section 202(a)(11)(C), *infra*.

[11] Section 202(a)(11) provides that the defintion of investment adviser does not include:

(A) A bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company;

(B) Any lawyer, accountant, engineer or teacher whose performance of such [advisory] services is solely incidental to the practice of his profession;

(C) Any broker or dealer whose performance of such [advisory] services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor;

(D) The publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation;

(E) Any person whose advice, analyses, or reports related to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall be, designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purpose of that Act * * *

Section 202(a)(11)(F) excludes from the definition of investment adviser "such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order."

[12] *See, e. g., Mortimer M. Lerner* (pub. avail. Feb. 15, 1980); *David R. Markley* (pub. avail. Feb. 8, 1985); *Hauk, Soule & Fasani, P.C.* (pub. avail. May 1, 1986). The "professional" exclusion provided in section 202(a)(11)(B) by its terms is only available to lawyers, accountants, engineers, and teachers. A person engaged in a profession other than one of those enumerated in section 202(a)(11)(B) who performs investment advisory services would be an investment adviser within the meaning of section 202(a)(11) whether or not the performance of investment advisory services is incidental to the practice of such profession. Unless another basis for excluding the person from the definition of investment adviser is available, the person would be subject to the Advisers Act.

[13] *See, e. g., FINESCO, supra* note 8. For a general statement of the views of the staff regarding special compensation under section 202(a)(11)(C), *see* Investment Advisers Act Release No. 640 (October 5, 1978), and *Robert S. Strevell* (pub. avail. April 29, 1985). *See* discussion of the "business" standard, *supra*.

[14] *See, e. g., Corinne E. Wood* (pub. avail. April 17, 1986); George E. Bates (pub. avail. April 26, 1979).

[15] *See, e. g., Robert S. Strevell, supra* note 13; *Elmer D. Robinson* (pub. avail. Jan. 6, 1986); *Brent A. Neiser* (pub. avail. Jan. 21, 1986).

[16] *Id.*

[17] Section 203(b) exempts from registration:

(1) any investment adviser all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) Any investment adviser whose only clients are insurance companies; or

(3) Any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out

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person who is an investment adviser within the meaning of any State investment adviser definition, and who is not excluded from that definition, may be required to register with that State. The materials necessary for registering with the Commission as an investment adviser can be obtained by writing the Publications Unit, Securities and Exchange Commission, Washington, DC, 20549. As to the various States, persons should contact the office of the State securities administrator in the State in which they must register to obtain the necessary materials.

IV. Application of Antifraud Provisions

The antifraud provisions of section 206 of the Advisers Act [15 U.S.C. 80b–6], and the rules adopted by the Commission thereunder, apply to any person who is an investment adviser as defined in the Advisers Act, whether or not the person is required to be registered with the Commission as an investment adviser.[18] Sections 206 (1) and (2) of the Advisers Act, upon which many State antifraud provisions are patterned, make it unlawful for an investment adviser, directly or any indirectly, to "employ any device, scheme, or artifice to defraud client or prospective client" or to "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." [19] An investment adviser is a fiduciary who owes his clients "an affirmative duty of 'utmost good faith, and full and fair' disclosure of all material facts." [20] The Supreme Court has stated that a "[f]ailure to disclose material facts must be deemed fraud or deceit within its intended meaning, for, as the experience of the 1920's and 1930's amply reveals, the darkness and ignorance of commercial secrecy are the conditions under which predatory practices best thrive." [21] Accordingly, the duty of an investment adviser to refrain from fraudulent conduct includes an obligation to disclose material facts to his clients whenever the failure to do so would defraud or operate as a fraud or deceit upon any client or prospective client. In this connection the adviser's duty to disclose material facts is particularly pertinent whenever the adviser is in a situation involving a conflict, or potential conflict, of interest with a client.

The type of disclosure required by an investment adviser who has a potential conflict of interest with a client will depend upon all the facts and circumstances. As a general matter, an adviser must disclose to clients all material facts regarding the potential conflict of interest so that the client can make an informed decision as to whether to enter into or continue an advisory relationship with the adviser or whether to take some action to protect himself against the specific conflict of interest involved. The following examples, which have been selected from cases and staff interpretive and no-action letters, illustrate the scope of the duty to disclose material information to clients in certain common situations involving conflicts of interests.

The advisers' duty to disclose material facts includes the duty to disclose the various capacities in which he might act when dealing with any particular client. For example, an adviser who intends to implement the financial plans he prepares for clients, in whole or part, through the broker or dealer or insurance company with whom the adviser is associated, should inform a client that in implementing the plan the adviser will also act as agent for the broker or dealer or the insurance company.[22]

An investment adviser who is also a registered representative of a broker or dealer and provides investment advisory services outside the scope of his employment with the broker or dealer must disclose to his advisory clients that his advisory activities are independent from his employment with the broker or dealer.[23] Additional disclosures would be required, depending on the circumstances, if the investment adviser recommends that his clients execute securities transactions through the broker or dealer with which the investment adviser is associated. For example, the investment adviser would be required to disclose fully the nature and extent of any interest the investment adviser has in such recommendation, including any compensation the investment adviser would receive from his employer in connection with the transaction.[24] In addition, the investment adviser would be required to inform his clients of their ability to execute recommended transactions through other brokers or dealers.[25] A financial planner who will recommend or use only the financial products offered by his broker or dealer employer when implementing financial plans for clients should disclose this practice to clients [26] and inform clients that the plan may be limited by the products offered by the broker or dealer. Finally, the Commission has stated that "an investment adviser must not effect transactions in which he has a personal interest in a manner that could result in preferring his own interest to that of his advisory clients." [27]

An investment adviser who structures his personal securities transactions to trade on the market caused by his recommendations to clients must disclose this practice to clients.[28] An investment adviser generally also must disclose if his personal securities transactions are inconsistent with the advice given to clients.[29] Finally, an investment adviser must disclose compensation received from the issuer of a security being recommended.[30]

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generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the [Investment Company Act] * * *

[18] The antifraud provisions of some State statutes may apply to any person receiving consideration from another person for rendering investment advice even if the person rendering the investment advice is technically excluded from the State definition of investment adviser.

[19] In addition, section 206(3) of the Advisers Act generally makes it unlawful for an investment adviser acting as principal for his own account knowingly to sell any security to or purchase any security from a client, or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The responsibilities of an investment adviser dealing with a client as principal or as agent for another person are discussed in Advisers Act Rel. Nos. 40 and 470 (February 5, 1945 and August 20, 1975 respectively).

[20] *SEC* v. *Capital Gains Research Bureau*, 375 U.S. 180, 194 (1963) quoting Prosser, *Law of Torts* (1955), 534–535.

[21] *Id.* at 200.

[22] *See Elmer D. Robinson, supra* note 15. *See also In the Matter of Haight & Co., Inc.* (Securities Exchange Act Rel. No. 9082, Feb. 19, 1971), where the Commission held that a broker or dealer and its associated persons defrauded its customers in the offer and sale of securities by holding themselves out as financial planners who would, as financial planners, give comprehensive and expert planning advice and choose the best investments for their clients from all available securities, when in fact they were not expert in planning and made their decisions based on the receipt of commissions and upon their inventory of securities. *Accord Institutional Trading Corporation* (pub. avail. Nov. 27, 1972).

[23] *David P. Atkinson* (pub. avail. Aug. 1, 1977). *See also Corrine E. Wood, supra* note 14.

[24] *Id.*

[25] *Don P. Matheson* (pub. avail. Sept. 1, 1976).

[26] Elmer D. Robinson, supra note 15.

[27] *Kidder, Peabody & Co., Inc.*, 43 S.E.C. 911, 916 (1968).

[28] *SEC* v. *Capital Gains Research Bureau, supra* note 19, at 197.

[29] *In the Matter of Dow Theory Letters et al.*, Advisers Act Rel. No. 571 (Feb. 22, 1977).

[30] *In the Matter of Investment Controlled Research et al.*, Advisers Act Release No. 701 (Sept. 17, 1979).

Unlike other general antifraud provisions in the Federal securities laws which apply to conduct "in the offer or sale of any securities" [31] or "in connection with the purchase or sale of any security," [32] the pertinent provisions of Section 206 do not refer to dealings in securities but are stated in terms of the effect or potential effect of prohibited conduct on the client. Specifically, section 206(1) prohibits "any device, scheme, or artifice to defraud any client or prospective client," and section 206(2) prohibits "any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." In this regard, the Commission has applied sections 206(1) and (2) in circumstances in which the fraudulent conduct arose out of the investment advisory relationship between an investment adviser and its clients, even though the conduct does not involve a securities transaction. For example, in an administrative proceeding brought by the Commission against an investment adviser, the respondent consented to a finding by the Commission that the respondent had violated sections 206(1) and (2) by persuading its clients to guarantee its bank loans and ultimately to post their securities as collateral for its loans without disclosing the adviser's deteriorating financial condition, negative net worth, and other outstanding loans.[33] Moreover, the staff has taken the position that an investment adviser who sells non-securities investments to clients must, under sections 206(1) and (2), disclose to clients and prospective clients all its interests in the sale to them of such non-securities investments.[34]

V. Need for Interpretive Advice

The general interpretive guidance provided in this release should facilitate greater compliance with the Advisers Act and the investment adviser laws of the states. The staff of the Commission will respond to routine requests for no-action or interpretive advice relating to the status of persons engaged in the types of businesses described in this release by referring persons making the requests to the release, unless the requests present novel factual or interpretive issues such as material departures from the nature and type of services and compensation arrangements discussed above. Requests for no-action or interpretive advice from the staff of the Commission should be submitted in accordance with the procedures set forth in Investment Advisers Act Release No. 281 (Jan. 25, 1971). As to requests for no-action or interpretive advice from the states, persons should contact the various state securities departments to inquire as to their procedures.

List of Subjects in 17 CFR Part 276

Securities.

Accordingly, Part 276 of Chapter 11 of Title 17 of the Code of Federal Regulations is amended by adding Investment Advisers Act Release No. IA–1092, Statement of the staff as to the applicability of the Investment Advisers Act to financial planners, pension consultants, and other persons who provide investment advisory services as a component of other financial services, which supersedes IA–770.

By the Commission.

Jonathan G. Katz,

Secretary.

Date: October 8, 1987.

[FR Doc. 87–23881 Filed 10–15–87; 8:45 am]

BILLING CODE 8010–01–M

[31] Section 17(a) [15 U.S.C. 787q(a)] of the Securities Act of 1933 [15 U.S.C. 77a et seq.].

[32] Rule 10b–5 [17 CFR 240.10b–5] under the Securities Exchange Act of 1934 [15 U.S.C. 78s *et seq.*]. *See also* section 15(c) [15 U.S.C. 78o(c)] of the Securities Exchange act of 1934.

[33] *In the Matter of Ronald B. Donati, Inc. et al.*, Advisers Act Rel. Nos. 668 and 683 (February 8, 1979 and July 2, 1979 respectively). *See also Intersearch Technology, Inc.*, [1974–1975 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 80,139, at 85,189.

[34] *See Boston Advisory Group* (pub. avail. Dec. 5, 1976).

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[AID Regulation 1]

Amendment of Geographic Codes

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: A.I.D Regulation 1, "Rules and Procedures Applicable to Commodity Transactions Financed by A.I.D." is being amended to reflect the Agency's decision that Afghanistan, Iran, Libya, the People's Democratic Republic of Yemen (South Yemen) and Syria are excluded as eligible sources for procurement of any goods or services financed by A.I.D. The definitions of A.I.D.'s principal geographic codes are being amended accordingly.

EFFECTIVE DATE: May 20, 1987.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Ms. Kathleen J. O'Hara, Room 1600I, SA–14, Agency for International Development, Washington, DC 20523. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: The Agency has determined that this rule will not have a significant economic impact on a substantial number of small organizational units and small government jurisdictions. This rule is not a major rule for purposes of Executive Order 12291 and has been submitted to OMB in accordance with the executive order.

List of Subjects in 22 CFR Part 201

Commodity procurement, Foreign AID, Grant programs-foreign relations, Loan programs-foreign relations.

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY AID

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 445 (22 U.S. C. 2381).

2. In § 201.11, paragraph (b)(4), the summary of Code 899 is revised to read as follows:

§ 201.11 Eligibility of Commodities.

* * * * *

(b) * * *

(4) * * *

Code 899—"Free World": Any area or country, except the cooperating country itself and the following countries: Afghanistan, Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Iran, Laos, Libya, Mongolia, North Korea, People's Democratic Republic of Yemen (South Yemen), People's Republic of China, Poland, Romania, Syria, Union of Soviet Socialist Republic (USSR), and Vietnam.

* * * * *

3. In § 201.11, the summary of Code 941 in paragraph (b)(4) is amended by deleting "Afghanistan," "Iran," "Libya," "Syria," and "South Yemen."

Dated: October 8, 1987.

John F. Owens,

Procurement Executive.

[FR Doc. 87–23958 Filed 10–15–87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Statement of Procedural Rules

AGENCY: Internal Revenue Service, Treasury.

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ACTION: Amendment of the statement of procedural rules.

SUMMARY: This document contains amendments to certain sections of the Statement of Procedural Rules (SPR) that relate to written protest procedures to obtain Appeals consideration of the findings of field examinations. The SPR sets forth the procedural rules of the Internal Revenue Service.

EFFECTIVE DATE: October 16, 1987.

FOR FURTHER INFORMATION CONTACT: George Bradley of the Legislation and Regulations Division, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: CC:LR:T. Telephone 202–343–0231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the SPR (26 CFR Part 601), issued under the authority contained in 5 U.S.C. sections 301 and 552. These amendments simplify the protest procedures through which taxpayers may obtain Appeals review of field examinations. Under existing procedures, a written protest is required in field examination cases if the amount at issue exceeds $2,500. As a result of these amendments, a written protest will be required for field examinations if the total amount at issue for any taxable period exceeds $10,000. In lieu of a written protest, a brief written statement of disputed issues will be required for field examination if the total amount at issue for any taxable period exceeds $2,500 but does not exceed $10,000. No brief written statement of disputed issues or written protest is required to obtain an Appeals office conference in office interview and correspondence examination.

These special amendments do not address any other provisions under § 601.105 or § 601.106, either directly or by implication. General amendments to the Statement of Procedural Rules will be the subject of separate documents.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for procedural rules. Accordingly, the amendments to the Statement of Procedural Rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these amendments to the Statement of Procedural Rules is George Bradley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, other personnel of the Internal Revenue Service participated in developing the amendments in matters of both substance and style.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Taxes.

Adoption of Amendments to Statement of Procedural Rules

Accordingly, 26 CFR Part 601 is amended as follows:

PART 601—[AMENDED]

Paragraph 1. The authority for Part 601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

Par. 2 Section 601.105 is amended as follows:

1. Paragraph (c)(2)(iii) is revised.
2. A new paragraph (c)(2)(iv) is added.
3. Paragraph (d)(2) is revised.
4. The revised and added provisions read as follows:

§ 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

* * * * *

(c) *District procedure*-(1) *Office examination.*

* * * * *

(2) *Field examination.* * * *

(iii) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a brief written statement of disputed issues is submitted.

(iv) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a written protest is filed.

(d) *Thirty-day letters and protests*—(1) *General.* * * *

(2) *Protests.* (i) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in office interview and correspondence examination cases.

(ii) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period.

(iii) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(iv) A written protest is optional (although a brief written statement of disputed issues is required) to obtain Appeals consideration in a field examination case if for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000.

(v) Instructions for preparation of written protests are sent to the taxpayer with the transmittal (30-day) letter.

* * * * *

Par. 3. Section 601.106 is amended as follows:

1. In paragraph (a)(1)(i), third sentence, the language "subdivisions (ii) through (iv)" is revised to read "subdivisions (ii) through (v)".
2. The concluding material in paragraph (a)(1)(ii), immediately following subparagraph (*c*), is revised.
3. Paragraphs (a)(1) (iii) and (iv) are redesignated (a)(1) (iv) and (v), respectively.
4. A new paragraph (a)(1)(iii) is added.
5. The revised and added material read as follows:

§ 601.106 Appeals function.

(a) *General.* (1) * * *

(ii) * * *

(*c*) * * *

in any case originating in the office of any district director situated in the

region, or in any case in which jurisdiction has been transferred to the region.

(iii) The taxpayer must request Appeals consideration.

(*a*) An oral request is sufficient to obtain Appeals consideration in (*1*) all office interview or correspondence examination cases or (*2*) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period. No written protest or brief statement of disputed issues is required.

(*b*) A brief written statement of disputed issues is required (a written protest is optional) to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000 for any taxable period.

(*c*) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(*d*) A written protest is required to obtain Appeals consideration in all employee plan and exempt organization cases.

(*e*) A written protest is required to obtain Appeals consideration in all partnership and S corporation cases.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-24011 Filed 10-15-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 382

[DoD Directive 5134.1]

Under Secretary of Defense (Acquisition)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment.

SUMMARY: This amendment is issued to add paragraph 20. to Appendix A of 32 CFR Part 382, which was erroneously omitted in the **Federal Register** on Tuesday, October 6, 1987.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Office of the Assistant Secretary of Defense (Comptroller), the Pentagon, Washington, DC 20301, telephone (202) 697-0709.

List of Subjects in 32 CFR Part 382

Organization and functions (Government agencies).

PART 382-[AMENDED]

Accordingly, 32 CFR Part 382 is amended as follows:

1. The authority citation for Part 382 continues to read as follows:

Authority: 10 U.S.C. 133.

2. Appendix A is amended by adding paragraph 20. to read as follows:

Appendix A—[Amended]

* * * * *

20. With the exception of the determination of highly sensitive classified programs, which is retained by the Secretary of Defense, exercise the responsibilities and authorities of the Secretary of Defense to designate major defense acquisition programs, as defined in Title 10, United State Code, section 2430.

* * * * *

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 9, 1987.

[FR Doc. 87-23950 Filed 10-15-87; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Implementation of Interim Changes in the Domestic Mail Manual Regarding Merchandise Return Service

AGENCY: Postal Service.

ACTION: Interim regulations and request for comments.

SUMMARY: Effective 12:01 a.m. October 25, 1987, the Postal Service will implement interim changes in the Domestic Mail Manual allowing registered mail service and merchandise return service to be used in conjunction with each other and allowing special handling and merchandise return service to be used in conjunction with each other. Implementing regulations have been developed and are set forth below.

DATES:

Effective date: October 25, 1987.

Comment date: Comments must be received on or before November 25, 1987.

ADDRESSES: Written comments should be directed to the Director, Office of Classification and Rates Administration, Rates and Classification Department, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza SW., Washington, DC 20260-5350. Copies of all written comments received will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday, in the Office of Classification and Rates Administration, Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, (202) 268-5176.

SUPPLEMENTARY INFORMATION: The permanent Domestic Mail Classification Schedule (DMCS) does not provide for registered mail service and mechandise return service to be used in conjunction with each other or for special handling and merchandise return service to be used in conjunction with each other. On May 7, 1987, the United States Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on amending sections 14.060, 18.060, and 20.040 of the DMCS to authorize the use of registered mail service and merchandise return service in conjunction with each other and to authorize special handling and merchandise return service to be used in conjunction with each other. More than ninety days having elapsed since the Postal Service filed its request and the Rate Commission not having transmitted its recommended decision to the Governors, on October 6, 1987, the Board of Governors of the Postal Service adopted Resolution No. 87-8 implementing these changes on a temporary basis. 52 FR_____. This temporary classification change will make registered mail service available for use with articles returned First-Class or Priority Mail to permit holders under merchandise return service. Special handling will also be added as an option for use with merchandise return service for third- and fourth-class pieces. To implement these temporary classification changes, interim regulation changes have been developed. These regulations are needed as the use of registered mail service and merchandise return service in conjunction with each other, and the use of special handling and merchandise return service in conjunction with each other become available on October 25, 1987.

BEST COPY AVAILABLE

A general description of the interim regulations concerning registered mail service and special handling service is as follows:

As to Registered Mail Service

(1) Applications for new merchandise return service permits that indicate registered mail service will be used must be submitted to the post office where the mail will be returned. However, Postal Service headquarters must approve the applications.

(2) Current merchandise return service permit holders that wish to use registered mail service must submit a letter of request and sample label(s) to the post office where the permit is held. Such requests will also require approval by Postal Service headquarters.

(3) A separate merchandise return label format must be used that does not contain any other special service format elements, endorsements or markings. It is recommended that space be allowed to the right of the return address on the merchandise return label for placement of Label 200–A or B, *Registered Mail.*

(4) Merchandise return articles must be brought to the post office to be registered.

(5) The customer returning the article (not the permit holder) must declare the full value of the article at the time of mailing.

(6) Claims or inquiries for registered articles may be filed only by the permit holder and only at the post office where the permit is held.

As to Special Handling Service

(1) Current permit holders desiring to use special handling should submit sample labels to the post office where the permit is held in accordance with 919.22 of the Domestic Mail Manual (DMM). No special application procedures for new permits are required.

(2) The permit holder meets the format and other requirements in 919.421d(2) and 919.453 of the DMM.

(3) The customer must bring the article to a post office.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service ordinarily invites comments from the public before it puts into effect new or amended regulations which might have a substantial effect on the public. In this case, the applicable statute (39 U.S.C. 3641(a)) expressly permits implementation of the underlying mail classification change on 10 days notice in the **Federal Register.** Moreover, any further delay in introducing these services would unnecessarily disadvantage those who may wish to use them. Accordingly, the Postal Service finds it not in the public interest to follow its customary practice of publishing these rules as proposed rules for comment before they become effective. However, comments are requested on these interim rules, and any proposed changes to the regulations will be considered and acted upon, as appropriate, once the Rate Commission and the Governors of the Postal Service have completed their consideration of the permanent changes, so that final implementing rules (to replace the interim rules) can be considered.

In view of the considerations discussed above, the Postal Service hereby adopts on an interim basis the following revisions of the Domestic Mail Manual which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 137—OFFICIAL MAIL

2. Section 137.276h is amended as follows:

137.2 Penalty Mail—Executive and Judicial Officers.

* * * * *

.27 Penalty mail indicia formats.

* * * * *

.276 Penalty reply mail.

* * * * *

h. Penalty merchandise return.

* * * * *

(1) *Description.* Merchandise return service allows a merchandise return permit holder to authorize individuals and organizations to send single piece First-Class (including Priority Mail), single piece third-class, and single piece fourth-class (parcel post, special fourth-class, and bound printed matter) to the permit holder. The permit holder pays the return postage and fees (see 919).

* * * * *

(3) *Label Format.* The one-part merchandise return labels available for use by Federal Government agencies must bear the address of one of the authorized agencies listed in 137.252 or one of their components. See Exhibit 137.276h(3)(a) for the format required when no special services are requested or when insurance and/or special handling are requested and Exhibit 137.276h(3)(b) when registered service *without* postal insurance is requested. The label must be printed in the format required by 919.4 with the following exceptions:

* * * * *

(4) *Special services—insurance.*

* * * * *

(c) The format in Exhibit 137.276h(3)(a) must be used for the merchandise return label. To request insurance, the following endorsement must be preprinted to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement.

Insurance Desired by Permit Holder for

$ _____
(value)

The value portion of the endorsement may be handwritten by the permit holder. The permit holder must indicate the specific dollar amount of insurance applicable to the article in the value portion of the endorsement.

[Renumber 137.276h(5) through (7) as 137.276h(8), (9), and (10) and insert the following.]

(5) *Special services—registered mail.* (a) Only the permit holder (government agency) may request that the mail piece receive registered mail service by preprinting the endorsement required in 137.276h(5)(c). Registered mail service may be obtained only on articles returned at First-Class or Priority Mail rates.

(b) Only registered mail service without postal insurance is available under penalty mail merchandise return procedures. (Agencies desiring to register merchandise return articles with postal insurance must follow the procedures in 919.)

BILLING CODE 7710-12-M

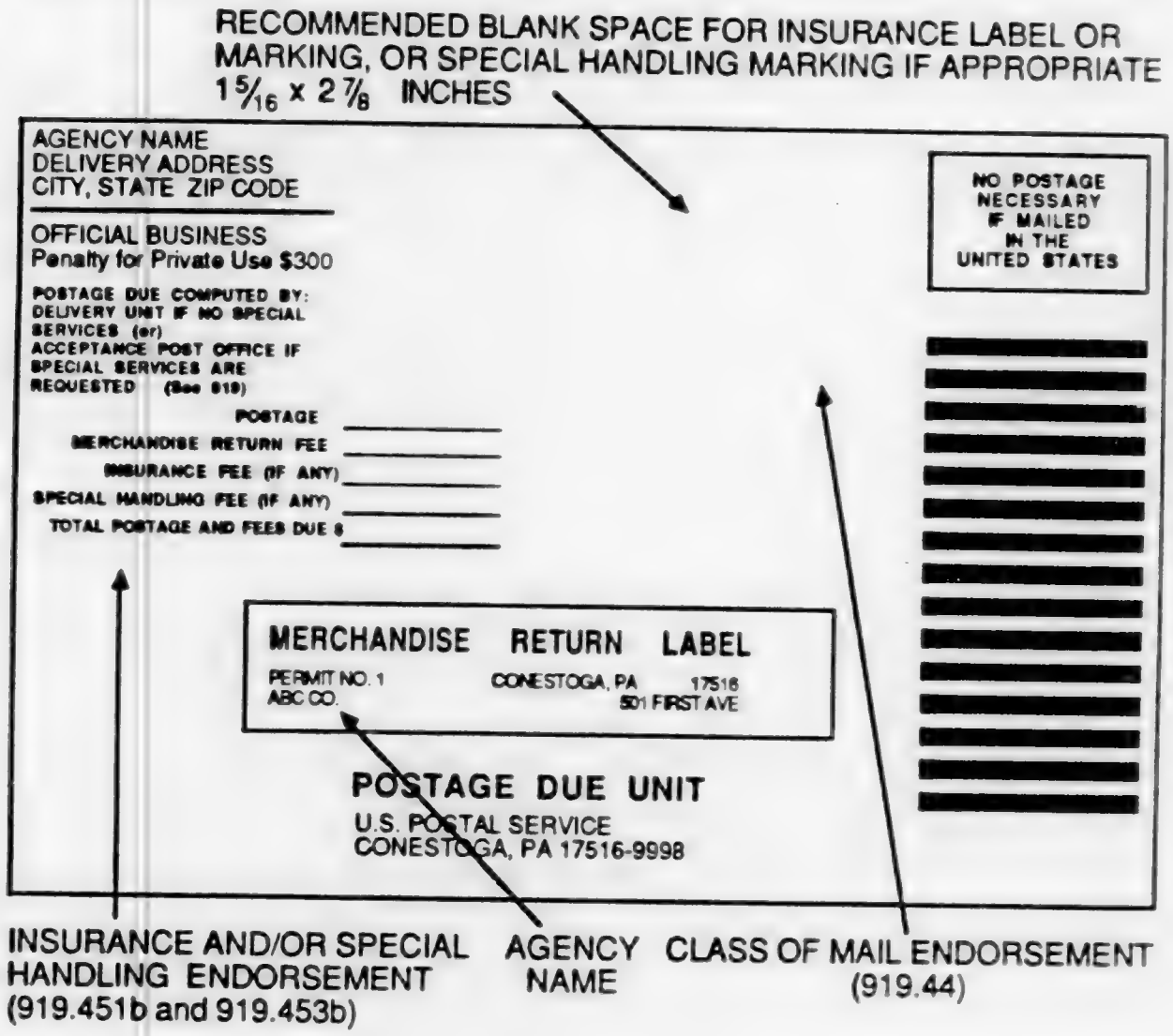

Exhibit 137.276h(3)(a)
Merchandise Return Label With No Special Services or With Insurance and/or Special Handling

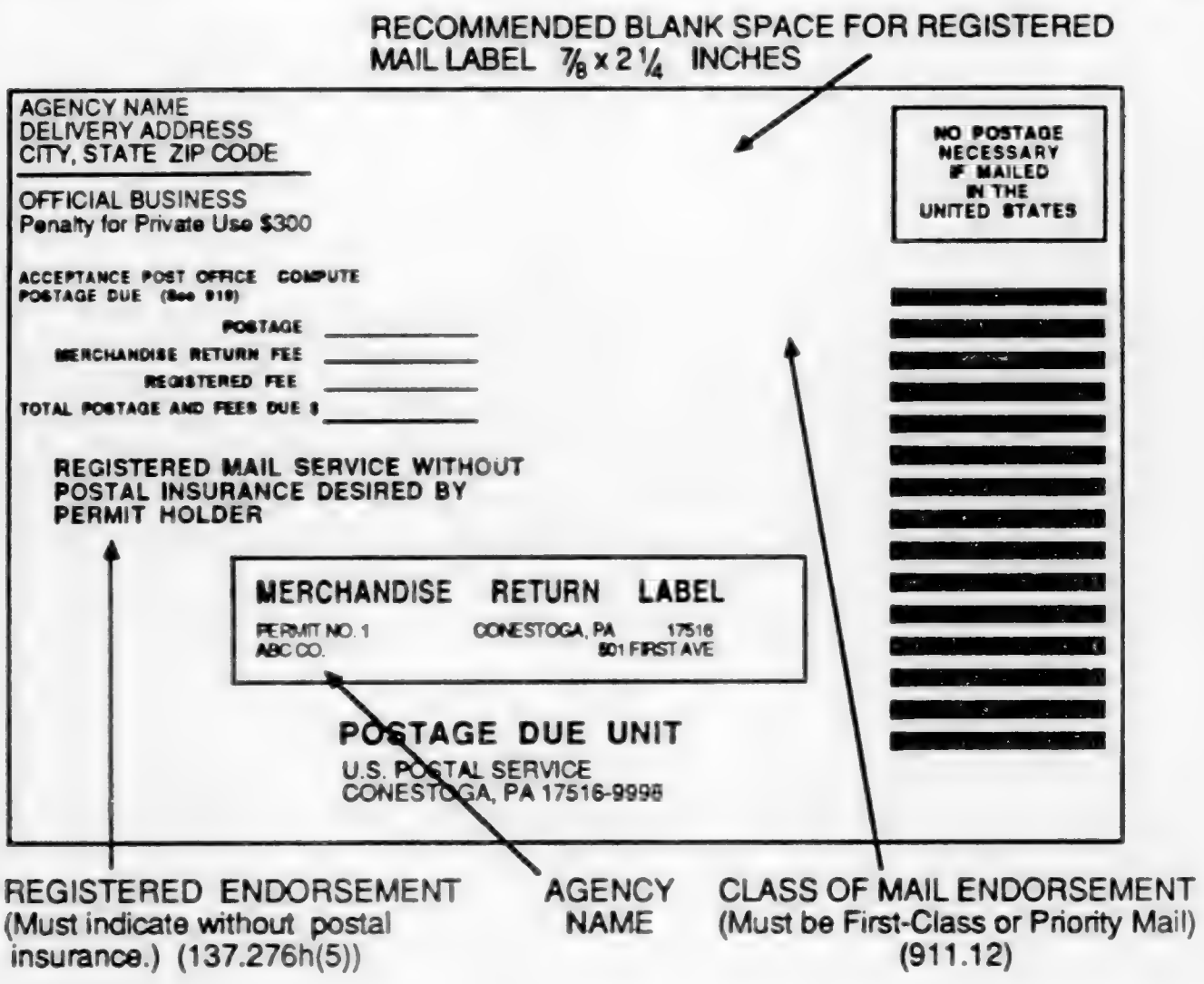

Exhibit 137.276h(3)(b)

Merchandise Return Label For Registered Mail Service Without Postal Insurance

BILLING CODE 7710-12-C

(c) When registered mail service is requested for single piece First-Class (including Priority) Mail, no other special service may be obtained. The format in Exhibit 137.276h(3)(b) must be used for the merchandise return label. The following endorsement must be preprinted to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement.

Registered Mail Service Without Postal Insurance Desired by Permit Holder

(6) *Special services—special handling.* Only the permit holder may request that the mailpiece receive special handling. The format in Exhibit 137.276h(3)(a) must be used for the merchandise return label. Third- or fourth-class items requiring special handling must have the following endorsement preprinted (see 919.41) or rubberstamped to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" Statement.

Special Handling Desired by Permit Holder

(7) *Combining special services.* Third- and fourth-class parcels may be insured and receive special handling if the mailer so desires and preprints or rubberstamps the appropriate endorsements and markings for both special services as required in 137.276h(4), 137.276h(6).

* * * * *

3. Section 149.41 is amended as follows:

PART 149—INDEMNITY CLAIMS

149.4 Registered mail claims.

.41 Claim filing instructions.

.411 Required forms. Except for articles registered in conjunction with merchandise return service, a customer may file a claim at any post office, classified station, or branch. Claims for articles registered in conjunction with merchandise return service may only be filed by the merchandise return permit holder and the claims must be filed only at the post office where the merchandise return permit is held. Form 565, *Registered Mail Application for Indemnity/Inquiry* (May 1982 or later), must be used to file a claim for loss or damage of registered mail insured by the Postal Service. Do not complete a separate Form 1510–B or 3841–A for registered claims. A claim has not been filed until a completed Form 565 has been received by the Postal Service.

.412 Evidence of loss or damage.

a. *Claims for Complete Loss Filed by the Mailer.* [Delete Last sentence and add the following to the end of this section.] Except for articles mailed with merchandise return service, proof may be supplied by any of methods (1) through (4) below. For matter registered in conjuction with merchandise return service, proof must be supplied by the method in (5) below.

* * * * *

(5) The merchandise return service permit holder must request that the customer complete items 2 through 9 of Form 565, and return it, along with the original mailing receipt, to the permit holder. The permit holder must complete items 10 and 11 and submit the completed form, along with the original mailing receipt, to the post office where the permit is held. The date in item 11 must show that 15 days or more have elapsed since the date of mailing.

* * * * *

4. Section 911 is amended as follows:

PART 911—REGISTERED MAIL

911.1 Description.

* * * * *

.12 What May Be Registered. [Add the following to the end of this section.] *Exception:* Official mail prepared in accordance with 137 and items returned under merchandise return service in 919 may be registered without prepayment of postage and fees. However, mail of a government department or agency for which insurance is requested cannot be sent as penalty mail and must have postage and fees prepaid.

* * * * *

911.2 Fees and Liability.

.21 Fees. (See Exhibit 911.21.)

.22 Payment of Fees and Postage. The fee and postage may be paid by ordinary postage stamps, meter stamps, or by permit imprints. The fee and postage on official mail of Federal Government agencies and departments may also be collected under the reimbursement procedures in 137.22. The fees and postage on items registered with merchandise return service are paid through a postage due account as set forth in 919.332.

* * * * *

.25 Declaration by sender.

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.255 Merchandise return. The customer (not the permit holder) must declare the full value of articles presented for registered merchandise return service in accordance with section 911.251.

* * * * *

.26 Mail registered without prepayment.

* * * * *

.262 Merchandise return. Matter registered in conjunction with merchandise return service, if prepared in accordance with the requirements set forth in 919, may be sent by registered mail without prepayment of postage and fees.

[Renumber former 911.262 as 911.263]

.264 Indemnity. Except for matter registered in conjunction with merchandise return service, no indemnity will be paid for any matter registered without prepayment of postage and fees. If a Government department or agency desires indemnity coverage, both the postage and appropriate registry fee from column A, Exhibit 911.21, must be paid in full by stamps or meter stamps.

* * * * *

911.5 Inquiries on uninsured articles.

.51 Who may file. [Add the following to the end of this section.] *Exception:* For matter registered without postal insurance in conjunction with merchandise return service, only the permit holder may file an inquiry.

.52 How to file.

.521 Original inquiry. The mailer may not file any inquiry until 15 days after the date of mailing. An inquiry may be filed at any post office, classified station, or branch, except for inquiries concerning matter registered in conjunction with merchandise return service (see 919) which must be filed by the permit holder at the post office where the permit is held. Form 565, *Registered Mail Application for Indemnity/Inquiry* (May 1982 edition or later), must be used in processing an inquiry for uninsured registered mail. An inquiry may be filed in the following manner:

* * * * *

.521b This proof may be supplied by method (1), (2), or (3), below. *Exception:* See 911.521c for registered merchandise return service articles.

* * * * *

.521c A merchandise return permit holder must ask the customer to complete items 2 through 9 of Form 565, and return it, along with the original mailing receipt, to the permit holder. The permit holder must complete items 10 and 11 and submit the completed form, along with the original mailing receipt, to the post office where the permit is held. An inquiry may be filed no sooner than 15 days after the date of mailing.

5. Section 919 is amended as follows:

PART 919—MERCHANDISE RETURN

919.1 Description.

.11 General. Merchandise return service allows authorized permit holders to pay the postage and fees on single piece First-Class (including Priority Mail), single piece third-class, and single piece fourth-class (parcel post, special fourth-class, library rate, or bound printed matter) mail to be returned by their customers.

* * * * *

.13 Merchandise Return Label. The label used for this service must contain the delivery address of the postage due unit at the post office where the permit is held, the address of the permit holder, a space for the return address of the customer, and otherwise meet the format requirements in 919.4. *Note:* Mailers must preprint the class of mail on the label if they wish articles to be returned at other than single piece third-class or fourth-class parcel post rates. The mailer must also preprint endorsements indicating that registered mail service (for First-Class, including Priority Mail, pieces only), special handling (for third- or fourth-class pieces only), or insurance is to be provided for the return of the pieces. (See 919.451, 919.452, and 919.453.)

* * * * *

.16 Acceptance.

a. *Labels That Do Not Request Special Services.* Customers may mail articles using merchandise return labels that do not request any special services in any mail deposit receptacle, or at any other place designated by the postmaster for receipt of mail, within the delivery area of the post office shown in the return address of the label. If mailed at a post office outside the delivery area of the post office shown in the return address however, the articles must be brought to the window of a post office.

b. *Labels That Request Special Services.* Customers must bring articles bearing merchandise return labels that request special services (registered mail, insurance, or special handling) to a post office window. These articles may be mailed at any post office because they will be processed by an acceptance clerk.

* * * * *

919.2 Permits.

* * * * *

.22 Application. A Form 3625, *Merchandise Return Permit Application* (See Exhibit 919.2), must be submitted to each post office where the mail will be returned. Each application must be accompanied by copies of the merchandise return labels and copies of the instructions that will be furnished to the permit holder's customers. The applicant must write "Registered Mail" in the "Sub-Class" section of the application form(s) if articles will be returned from customers as registered mail. Once a permit is obtained, any changes to label formats, or any changes to the instructions permit holders provide to their customers, must be approved by the post office where the permit is held. A permit holder who desires to add the use of registered mail service under an existing permit must submit a letter of request to the post office where the permit is held, along with samples of the merchandise return labels, and a copy of the instructions to be provided to the permit holder's customers. The permit holder must not distribute labels that request registered mail service until written approval is received as outlined in 919.23.

.23 Processing Applications. Upon receipt of the application and the annual permit fee, the postmaster will complete the indicated section and forward it to the MSC Manager for approval unless registered mail service is requested. If registered mail service is requested, the postmaster must forward the Form 3625, or the letter requesting addition of registered mail service to an existing permit, along with the sample labels and instructions to customers, to the General Manager, Customer and Field Support Division, Office of Classification and Rates Administration, U.S.P.S. Headquarters, Washington, DC 20260–5361. Upon approval by the MSC Manager or the General Manager, Customer and Field Support Division, the application will be returned to the postmaster. The postmaster will issue the permit or issue a letter granting usage of registered mail service under an existing permit.

* * * * *

919.3 Postage and fees.

* * * * *

.33 Postage payment.

.331 Applicable rates and fees. The applicable single piece rate postage for First-Class (including Priority Mail), third-class, or fourth-class (parcel post, special fourth-class, library rate, or bound printed matter) will be charged the permit holder for each piece returned under merchandise return service. In addition, the applicable fees for registry service, special handling, or insurance will be charged the permit holder where return with such a service was indicated on the label by the permit holder. The customer may pay, at the time of mailing, the fee for a certificate of mailing, if such service is desired.

.332 Advance deposit account. Permit holders must pay postage and fees through a postage-due advance deposit account. Only when sufficient funds are in an advance deposit account to pay applicable postage and fees will articles be delivered under this service. Permit holders may use the same advance deposit for this service as they use for other postage due mail. (See 146.33.)

919.4 Format.

* * * * *

.42 Required format elements.

.421 Preprinted endorsements.

* * * * *

d. *Postage Due Computation Markings.*

(1) *With Registered Service.* When registered service is requested for single piece First-Class (including Priority) Mail, no other special service may be obtained. No special service information other than the options shown in this section may appear on merchandise return labels used to obtain registered service. The following information must be shown in capital letters above the merchandise return legend. (See Exhibit 919.4a.)

Acceptance Post Office Compute Postage Due

(See 919)

Postage $ _____
Merchandise Return Fee _____
Registered Mail Fee _____
Total Postage and Fees Due $ _____

Note: The endorsement required in 919.452 that indicates whether or not postal insurance is desired must appear below the "Total Postage and Fees Due" statement. Additionally, the First-Class or Priority Mail endorsement must appear on merchandise return labels that will be used to receive registered mail service (see 919.442).

(2) *With No Special Services or Services other than Registry.* The following information must be shown in capital letters above the merchandise return legend:

Postage Due Computed by: Delivery Unit if no Special Special Services or Acceptance Post Office if Special Services Requested (See 919).

Postage	
Merchandise Return Fee	$
*Insurance Fee, if any	$
*Special Handling Fee, if any	$
Total Postage and Fees Due	$

*The Insurance Fee and Special Handling Fee statements may be omitted if the permit holder does not choose to insure or obtain special handling for returned items. See 919.451 and 919.452 for additional markings and requirements for use of insurance and special handling.

* * * * *

.44 *Class of mail endorsements.*

* * * * *

.442 Articles will be returned as First-Class Mail or Priority Mail if the permit holder endorses the label to show either "First-Class" or "Priority Mail" as appropriate. The endorsements must be in letters at least ¼ inch high and must be printed or rubberstamped in the open space to the right and above the "Merchandise Return Label" legend. (See Exhibits 919.4 a and b.)

Note.—First-Class Mail (including Priority Mail) cannot be insured unless the contents contain third- or fourth-class matter and are so labeled as required in 913.12b. Registered Mail must be paid at First-Class or Priority Mail rates and the merchandise return label must be so endorsed. See 919.421d(1) and 911.12.

.443 Articles qualifying for the single piece special fourth-class rate, library rate, or bound printed matter rate will be returned at those rates, provided the appropriate identifying endorsement prescribed in 764.11, 725.1, or 767.1 is preprinted or rubberstamped in letters at least ¼ inch high to the right and above the "Merchandise Return Label" legend. (See Exhibit 919.4b.)

[Delete former 919.45 and add new 919.45 and 919.46]

.45 *Special services.*

.451 *Insured mail service.*

a. *Eligibility.* Only the permit holder may obtain insured mail service in conjunction with merchandise return service. The customer using a merchandise return label to return an article that does not have the appropriate postage due computation markings in 919.421d(2) or the endorsement required in 919.451b may not elect to obtain insured mail service. Only matter returned at the third- or fourth-class rates, or third- or fourth-class matter mailed at First-Class or Priority Mail rates may be insured. If the matter is to be returned at First-Class (including Priority Mail) rates of postage, the endorsement required by 913.12b must appear below the class of mail endorsement on the merchandise return label.

b. *Required Endorsement.* To request insured mail service, the permit holder must place the following endorsement and information on the merchandise return label:

Insurance Desired by Permit Holder for
$_____ (value)

Except for the dollar amount of insurance requested (value), the endorsement must be preprinted (see 919.41) or rubberstamped to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement. The value portion of the endorsement may be handwritten by the permit holder. The permit holder must indicate the specific dollar amount of insurance applicable to the article in the value portion of the endorsement.

c. *Special Service Marking.* The permit holder must either:

(1) leave a clear space on the merchandise return label to the right of the return address for the placement of the numbered insured label or the insured elliptical stamp (in the manner prescribed in 121.44 and Exhibit 121.4), or

(2) instruct the customer to affix the merchandise return label to the article in a manner that will allow the acceptance clerk to place the insured label or marking on the article directly above the merchandise return label.

.452 Registered mail service.

a. *Eligibility.* Registered mail service may be obtained only on articles returned at First-Class or Priority Mail rates. Only the permit holder may obtain registered mail service in conjunction with merchandise return service by furnishing the customer a label having the appropriate postage due computation markings in 919.421d, and the appropriate endorsement in 919.542b. The customer using the merchandise return label to return an article may not elect to obtain registered mail service. However, when the customer has been provided a merchandise return label that properly indicates registered mail service is desired by the permit holder, the customer will be required to declare the full value of the article to be registered when it is presented at the post office.

b. *Required Endorsement.* To request registered mail service, the permit holder must place one and only one of the following endorsements on the merchandise return label:

Registered Mail Service Without Postal Insurance Desired by Permit Holder

OR

Registered Mail Service With Postal Insurance Desired by Permit Holder

The endorsement must be preprinted (see 919.41) or rubberstamped to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement. The First-Class or Priority Mail endorsement must also be preprinted or handstamped on merchandise return labels requesting registered mail service (see 919.442). *Note:* The customer entering the article at a post office must declare the full value of the article on Form 3806, *Receipt for Registered Mail*, or on Form 3877, *Firm Mailing Book for Registered, Insured, COD, Certified and Express Mail.*"

c. *Special Service Marking.* The mailer must either:

(1) leave a clear space on the merchandise return label to the right of the return address for the placement of Label 200–A or B, *Registered Mail*, (in the manner prescribed in 121.44 and Exhibit 121.4), or

(2) instruct the customer to affix the merchandise return label to the article in a manner that will allow the acceptance clerk to place the registered mail label on the article directly above the merchandise return label.

.453 Special handling.

a. *Eligibility.* Special handling service can be obtained only for articles returned at third- or fourth-class rates. Only the permit holder may obtain special handling on pieces returned with a merchandise return label by furnishing the customer a label having the appropriate endorsement in 919.453b. The customer using the merchandise return label to return an article may not elect to obtain special handling.

b. *Required Endorsement.* To request this service, the permit holder must place the following endorsement and information on the merchandise return label to be attached or affixed to the article:

Special Handling Desired By Permit Holder

This endorsement must be preprinted (see 919.41) or handstamped to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement.

c. *Special Service Marking.* The mailer must either: (1) leave a clear space on the merchandise return label to the right of the return address for the placement of the "Special Handling" marking required by 916.3, or

(2) instruct the customer to affix the merchandise return label to the article in a manner that will allow the acceptance clerk to place the "Special Handling" marking on the article directly above the merchandise return label.

.454 Combining special services. Third— and fourth-class articles may be insured and receive special handling if the mailer so desires and preprints or rubberstamps the appropriate endorsements and markings for both

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special services as required in 919.421d(2), 919.451, and 919.453. Merchandise return pieces that receive registered service cannot receive any other special service.

.46 Illustrations of merchandise return labels. Permit holder's requirements and resources for making labels may vary. Exhibit 919.4a is a suggested example that would meet all address and endorsement requirements for articles to be returned with registered mail service. Exhibit 919.4b is a suggested example that would meet all address and endorsement requirements for articles to be returned with no special services or with insurance, special handling, or both.

BILLING CODE 7710-12-M

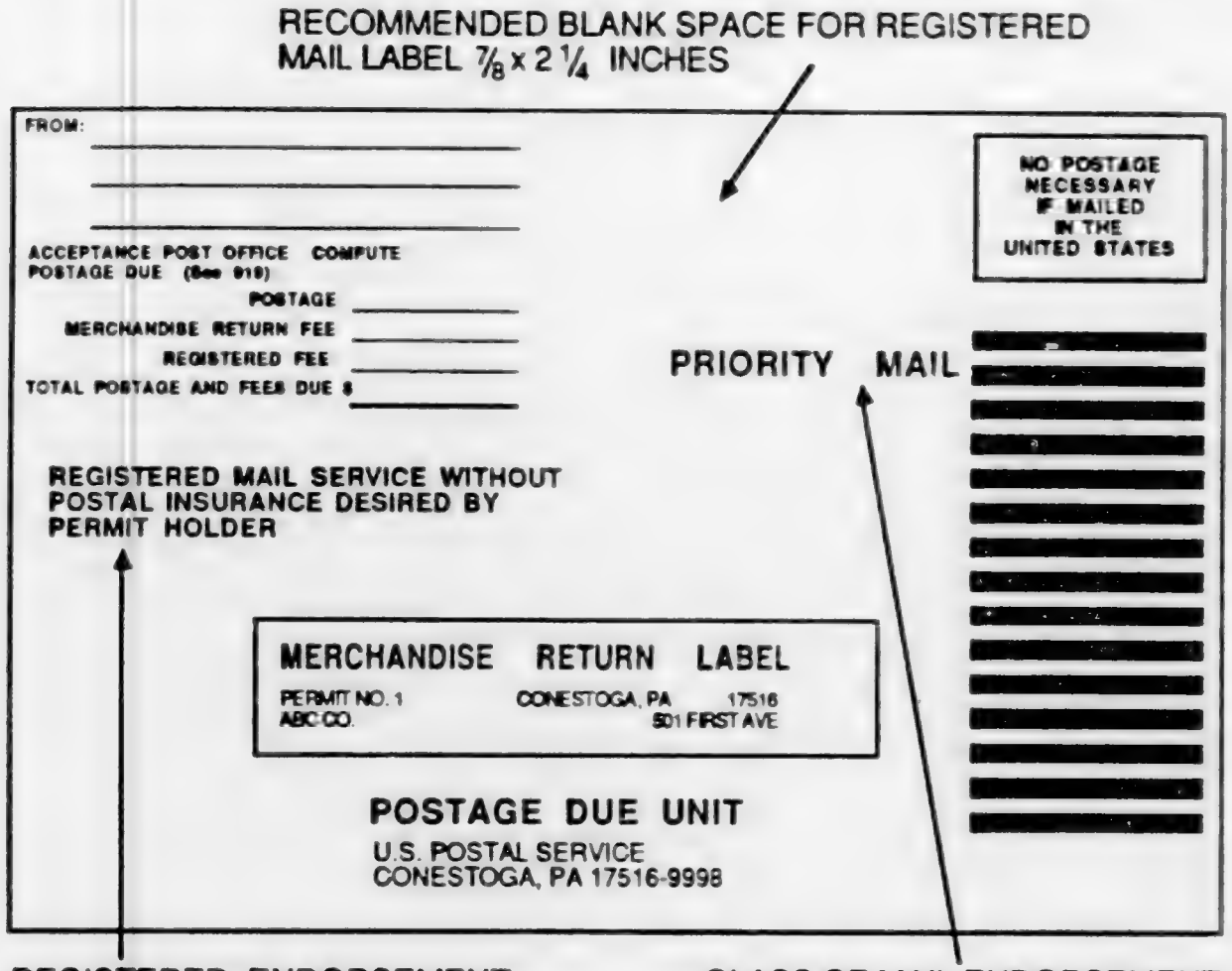

Exhibit 919.4a

Merchandise Return Label With Registered Mail Service

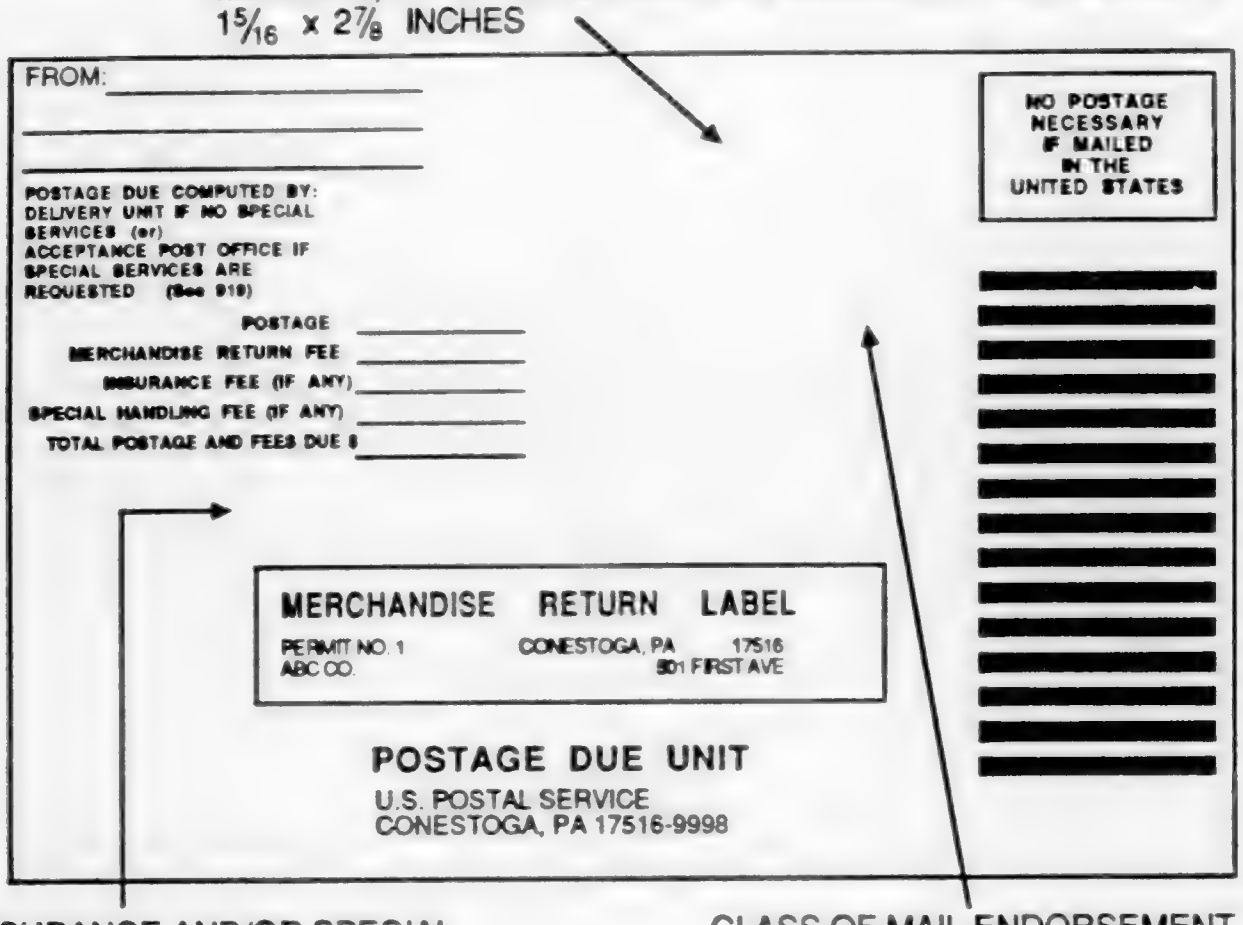

Exhibit 919.4b

Merchandise Return Label With No Special Services or With Insurance and/or Special Handling

BILLING CODE 7710-12-C

[Delete former 919.5 and 919.6 and insert the following]

919.5 Certificate of mailing.

.51 Customers mailing a merchandise return service article may obtain a certificate of mailing (see 931) at their own expense at the time of mailing.

.52 When customers desire a certificate of mailing, they must present the merchandise return article at a post office to obtain the receipt.

919.6 Acceptance.

.61 No special services. If no special services are requested, the customer may place merchandise return articles in any mail-deposit receptacle or any other place designated by the postmaster for receipt of mail within the delivery area of the post office shown in the return address of the merchandise return label. If mailed at a post office other than the one shown in the return address of the label, the merchandise return article must be brought to the window of a post office for mailing. When merchandise return articles requesting no special services are brought to a post office for mailing, the accepting clerk should not compute the amount of postage due. The accepting clerk should, however, postmark the label above the "Merchandise Return Label" legend so that the postage due unit where the permit is held can properly assess postage from the point of mailing.

.62 Insurance. When a merchandise return article is presented at a post office for return to the permit holder, and the return label is endorsed with the "Insurance Desired by Permit Holder for $_____" endorsement, the accepting Postal Service employee will take the following actions:

a. Look at the endorsement to see how much insurance the permit holder desires and enter the appropriate insurance fee for the coverage desired on the mailing label line "Insurance Fee, If Any."

b. Compute the postage based on the class of mail endorsement or weight of the article, as appropriate, and record it and the merchandise return fee on the appropriate lines on the merchandise return label. Total the postage and fees due and enter it on the line "Total Postage and Fees Due." (This information must also be shown on the receipt as indicated below.)

c. If the article is to be insured for $25 or less, stamp the merchandise return label or the item "Insured." Complete and postmark a Form 3813, *Receipt for Domestic Insured Parcel.* Give the receipt to the customer, and instruct the customer to keep the receipt as evidence of mailing until the article is accounted for.

d. If the article is to be insured for more than $25, complete and postmark Form 3813–P, *Receipt for Insured Mail, Domestic/International.* Affix the insured label with the insurance number on it to the merchandise return label or to the article. Give the receipt portion of the Form 3813–P to the customer, and instruct the customer to keep the receipt as evidence of mailing until the article is accounted for.

e. Postmark the merchandise return label in the space directly above the merchandise return legend.

.63 Registered mail. When a merchandise return article is presented at a post office for return to the permit holder, and the return label is endorsed with either the "Registered Mail Service Without Postal Insurance Desired by Permit Holder" or "Registered Mail Service With Postal Insurance Desired by Permit Holder" endorsement, the accepting Postal Service employee will take the following actions:

a. Check to see that the appropriate "First-Class" or "Priority Mail" endorsement appears on the merchandise return label. If it does not, inform the customer that the piece cannot be registered unless the postage and fees are prepaid by the customer (the merchandise return label may not be used).

b. Ask the customer to complete the appropriate portion of the Form 3806, *Receipt for Registered Mail.* The customer must declare the full value of the article on the Form 3806.

c. Look for the registered mail endorsement on the merchandise return label (919.452b) to determine if the permit holder desired registered mail service and, if so, whether insurance was desired. If the customer indicates registered mail service with postal insurance is desired on the Form 3806, the permit holder must have entered the registered mail endorsement requesting postal insurance on the merchandise return label.

d. Enter the appropriate registered mail fee for the declared value and type of coverage desired on the "Registered Mail Fee" line of the merchandise return label.

e. Compute the postage based on the class of mail endorsement or the weight of the article as appropriate, and record it and the merchandise return fee on the appropriate lines on the merchandise return label. Total the postage and fees due on the "Total Postage and Fees Due" line of the merchandise return label.

f. Postmark the merchandise return label in the space directly above the merchandise return legend.

g. Complete and postmark Form 3806, *Receipt for Registered Mail.* Write the words "Merchandise Return Service" in the margin of the Form 3806. Give the receipt to the customer and instruct the customer to keep the receipt as evidence of mailing the registered article.

h. Affix registered mail Label 200–A or B, *Registered Mail,* to the merchandise return label or to the article.

Note.—Articles sent via registered merchandise return service must meet all packaging and sealing requirements for registered mail.

.64 *Special handling.* When a merchandise return article is presented at a post office for return to the permit holder, and the return label is endorsed with the "Special Handling Desired by Permit Holder" endorsement, the accepting Postal Service employee will take the following actions:

a. Check the class of mail endorsement on the merchandise return label. (If it is endorsed "First-Class" or "Priority Mail" advise the customer that the article can not receive special handling service.)

b. Enter the appropriate third- or fourth-class postage based on the endorsement or weight of the article and record it on the merchandise return label. Record the merchandise return fee and special handling fee on the merchandise return label, and enter the total postage and fees due on the "Total Postage and Fees Due" line of the merchandise return label.

c. Place the "Special Handling" marking on the merchandise return label or on the article as appropriate.

d. Postmark the merchandise return label in the space directly above the merchandise return legend

919.7 Delivery.

* * * * *

d. When numbered insured, or registered merchandise return articles are delivered, the delivering postal employee will obtain a delivery receipt for the articles on Form 3849–A, *Delivery Notice or Receipt,* Form 3849–B, *Delivery Reminder Receipt,* or Form 3883, *Firm Delivery Book—Registered, Certified and Numbered and Insured Mail*

Note: Merchandise return articles received without a return address or postmark, that are subject to the parcel post or bound printed matter rates of postage, will be charged the appropriate rate for zone 4 in addition to other required fees.

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A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-23986 Filed 10-15-87; 8:45]

BILLING CODE 7710-12-M

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 77; (FRL-3271-6)]

Revision to the Commonwealth of Puerto Rico Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces Environmental Protection Agency approval of the renewal of a visible emissions variance issued by the Commonwealth of Puerto Rico to the Owens-Illinois of Puerto Rico Corporation's Vega Alta glass making facility, ovens "A" and "B." The renewal maintains the allowable visible emissions limit as regulated under Commonwealth Rule 403, "Visible Emission," at 50 percent opacity for each furnace. This action will not result in an increase in particulate emissions.

EFFECTIVE DATE: This action will be effective December 15, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of this SIP revision are available at the following addresses for inspecting during normal business hours:

Environmental Protection Agency, Air Programs Branch, Region II Office, Room 1005, 26 Federal Plaza, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

Environmental Quality Board, 204 Del Parque Street, Santurce, Puerto Rico 00910

FOR FURTHER INFORMATION CONTACT: William Baker, Chief Air Programs Branch Region II Office, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On December 31, 1986 the Environmental Protection Agency (EPA) received from Puerto Rico a proposed revision to the Commonwealth's Implementation Plan. The Commonwealth requested EPA approval of its renewal of a visible emissions variance which it issued under the provisions of Rule 301, "Variances Authorized," of its "Regulation for the Control of Atmospheric Pollution." This variance was originally approved by EPA on September 3, 1982 at 47 FR 38887.

The effect of the variance is to maintain an average opacity limit at 50 percent applicable to ovens "A" and "B" of Owens-Illinois' Vega Alta glass plant. This limit is based on visible emission observation taken during stack tests which were conducted to determine compliance with the mass emission standard of Rule 407, "Process Sources." It represents a variance to the present average opacity standard of Rule 403, "Visible Emissions," Section A.1, which provides for 20 percent opacity limitation. Rule 403, Section A.2, requiring that visible emission not exceed 60 percent opacity for a period or periods of more than four minutes in any thirty-minute interval, also remains applicable to these sources.

The Commonwealth's submittals consist of an Owens-Illinois glass plant source emissions test report (including visible emission observations taken throughout the stack test), test evaluation information from the Environmental Quality Board (EQB), copy of one resolution of EQB, a certification that adequate public notice was provided by EQB and that no comment or request for public hearing was received, and a letter requesting renewal of the variance. The Commonwealth approved the variance for a three-year period from the date of EPA's approval.

EQB's analysis of the Owens-Illinois oven tests indicates that for three tests of oven "A" the allowable particulate emission rate was 12.3 lbs/hr, the actual particulate emission rate was between 7.2 and 8.7 lbs/hr, and the average opacity was between 46 and 56 percent. For three tests of oven "B," the allowable particulate emission rate was 12.5 lbs/hr, the actual particulate emission rate was between 9.3 and 10.0 lbs/hr, and the average opacity was between 47 and 52 percent. These data support EQB's conclusion that these sources would continue to meet applicable mass emission standards as long as average opacity does not exceed 50 percent.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding approval of this proposed plan revision is based on its meeting of the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 15, 1987.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Puerto Rico was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 28, 1987.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations, is amended as follows:

Subpart BBB—Puerto Rico

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2720 is amended by adding new paragraph (c)(34) as follows:

§ 52.2720 Identification of Plan

* * * * *

(c) * * *

(34) Revision submitted by the Puerto Rico Environmental Quality Board on December 31, 1986, which grants a visible emissions standard variance to Owen-Illinois, Inc. Vega Alta plant.

(i) *Incorporation by reference.* Resolution and notification announcing a Certificate of Renewal to Commonwealth of Puerto Rico Law 403 of the Regulation for Control of Atmospheric Pollution; adopted on July 9, 1986.

(ii) *Additional material.* Documents submitted on December 31, 1986 in support of the above resolution.

[FR Doc. 87–22785 Filed 10–15–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–154; RM–4968, RM–5068, RM–5360, RM–5439, RM–5483 and RM–5495]

Radio Broadcasting Services; Wrightsville, Perryville and Maumelle, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document stays the opening of the filing window for FM Channel 290C2 at Perryville, Arkansas allotted in MM Docket No. 86–154. This window period for filing applications would have opened on October 9, 1987, and closed on November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: The final rule for this document was published at 52 FR 32795, Aug. 31, 1987. This is a summary of the Commission's Order Granting Motion for Stay, MM Docket No. 86–154, adopted October 5, 1987, and released October 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23846 Filed 10–15–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Ch. 9

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Energy Acquisition Regulation (DEAR) to clarify certain policies and to reflect current procedures. This rule follows a notice of proposed rulemaking, published August 26, 1985, 50 FR 34656, and an amendment therefore, published October 28, 1985, 50 FR 43589. These revisions concern correcting the authority citation for issuance of this regulation, updating documentation, changes in reporting procedures, use of standard forms, expansion of existing guidance on interagency acquisition, prenegotiation objectives and price negotiation memorandum, clarification and guidance regarding the small business subcontracting program and updating solicitation provisions and contract clauses.

EFFECTIVE DATE: This final rule will become effective November 16, 1987.

FOR FURTHER INFORMATION CONTACT:

Richard C. Loeb, Office of Policy (MA–42), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586–8190.

Paul J. Sherry, Office of the Assistant General Counsel, for Procurement and Finance, (GC–34), Washington, DC 20585, (202) 586–1526.

Supplementary Information:

I. Background
II. Procedural Requirements
A. Review Under the Executive Order 12291
B. Review Under Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95–91, (42 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the Department of Energy Acquisition Regulation (DEAR) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The primary purpose of this rule is to revise the DEAR, as necessary, to supplement the Federal Acquisition Regulation (FAR), which is codified at 48 CFR Chapter 1. As a result, the following sections and subsections are affected. Section 901.102 is revised to update and correct the authority citation for issuance of this regulation. Section 902.100, "Definitions," is corrected to read 902.101, in order to conform to the numbering of the corresponding FAR section. Section 902.101 is revised to update the priorities authority under paragraph (e) of the definition of "Procurement Executive" and the definition of "Senior Program Official" to reflect current organizational usage. Subsection 904.601–70, "Procurement and Assistance Data System (PADS)," is revised to update reporting procedures and to require use of a standard form in lieu of a DOE form. Sections 912.300, 912.302 and 912.304 are updated to reflect the regulations, procedures and contract clauses required under the Defense Priorities and Allocations System. A new subsection 913.505–1, "Optional Form (OF) 347, Order for Supplies or Services, and Optional Form (OF) 348, Order for Supplies or Services Schedule—Continuation," is added and 913.505–2, "Agency order forms in lieu of Optional Forms 347 and 348," is removed. Sections 915.612, "Formal source selection," and 915.613, "Alternative source selection procedures," are revised to increase the threshold for use of Source Evaluation Board procedures. Section 915.807, "Prenegotiation objectives," has been added, and 915.808, "Price negotiation memorandum," has been revised to implement the FAR by providing additional items that must be addressed

in the prenegotiation plan and in the price negotiation memorandum. Revisions have been made to section 917.505, "Ordering procedures," and subsection 917.505–70, "Methods of financing employed by DOE." Subsection 917.505–71, "Cost reimbursement standards," has been revised to implement FAR 17.5, "Interagency Acquisition Under the Economy Act." Section 919.501, "General," has been revised to clarify the threshold for the Department's review and screening process for small business set-asides. A new Subpart 919.6, "Certificates of Competency and Determinations of Eligibility," is added. A new subsection 919.705–2, "Determining the need for a subcontracting plan" is added and subsection 919.705–5, "Awards involving subcontracting plans," is revised. Editorial changes have been made in subsections 952.204–2, "Security requirements," and 952.209–72, "Organizational conflicts of interest—special clause." Subsections 952.212–70, "Priorities and allocations for energy programs (solicitations)," and 952.212–71, "Priorities and allocations for energy programs (contracts)," are revised to implement the new Defense Priorities and Allocations System (DPAS) which supersedes the regulations of the Defense Materials System (DMS) and the Defense Priorities System (DPS). Subsection 952.219–9, "Small business and small disadvantaged business subcontracting plan," is revised to clarify the requirement for submission of Standard Form 294. A new subsection 952.225–70, "Buy American Act Notice," has been added to clarify Buy American Act applicability to DOE construction contracts. Subsection 970.0404–4, "Contract clauses," is revised with respect to security and classification requirements under atomic energy production contracts. Subpart 970.19, "Small Business and Small Disadvantaged Business Concerns," is amended to revise section 970.1901, "General," regarding the need for a subcontracting plan. Editorial changes have been made in subsections 970.5204–13, "Allowable costs and fixed-fee (CPFF management and operating contracts)," 970.5204–22, "Contractor procurement," and 970.5204–33, "Priorities, allocations and allotments." Section 971.103, "Documentation submittals," is revised to add a list of items that must be provided for Headquarters review for sealed bid awards.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by OMB prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This rule does not involve any of the topics requiring prior review under the Bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates.

DOE certifies that this rule will not have a signficant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collections in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and OMB's implementing regulations at 5 CFR Part 1320.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.* 1976) or the Council on Environmental Quality regulations (40 CFR Part 1020) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this rule.

III. Public Comments

Interested persons were invited to participate by submitting data, views or arguments with respect to this rule, as proposed. Comments were received from three universities, an organization representing universities conducting research, four DOE offices or employees, and the Office of Federal Procurement Policy. They are discussed below.

One comment was received pointing out that the authority citation given for Parts 902, 904, 913, 915, 917, 919, 952, 970 and 971 in the notice of proposed rulemaking included a reference to section 161 of the Atomic Energy Act of 1954, as amended (Act), whereas the reference in the present Code of Federal Regulations is to section 148 of that Act. Section 148 of the Act involves rulemaking authority available to the Secretary relating to the unauthorized dissemination of unclassified information pertaining to atomic energy defense programs. Section 161 of the Act involves a much more general grant of authority including, at paragraph (p), the authority to "make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act." Of the two, the reference to section 161 is the more appropriate reference for the purpose of a general authority citation. Neither is necessary however because the parallel reference to section 644 of the Department of Energy Organization Act contains the more recent generic rulemaking authority. Accordingly, the authority citation for the entire DEAR has been changed to reference section 644 of the DOE Organization Act, (42 U.S.C. 7254). In addition, because the DEAR is also issued under the authority of section 205(c) of the Federal Property and Administrative Services Act of 1949 (FPASA), as amended, (40 U.S.C. 486(c)), a citation of the Secretary's rulemaking authority under that Act is appropriate. DEAR section 901.102, "Authority," references both section 644 of the Department of Energy Organization Act and the FPASA. However, the U.S.C. citation for the FPASA contained in 901.102 is to 41 U.S.C. 252. This is the "Applicability" section of the FPASA rather than the rulemaking authority under which civilian agency acquisition regulations are issued. Accordingly, the U.S.C. citation has been changed to reflect the proper authority under which the DEAR is issued in accordance with the FPASA (40 U.S.C. 486(c)). As a result of the above-described changes, it is necessary to amend the authority citation for all parts of the DEAR. The

revised section 901.102 also reflects these changes.

Two comments were received suggesting that 902.101, as proposed, be changed to identify the Director, Office of Energy Research, as a Senior Program Official. This was accomplished by changing "Assistant Secretaries" to "Secretarial Officers" and by adding a reference to DOE 1325.1A which contains a list of Secretarial Officers, which includes the Director of Energy Research. Subsection 904.601–70, as proposed, would have changed the title and number of the subcontracting report form as well as change the form's due date from 15 to 25 days after the end of each fiscal quarter. No public comments were received on this proposed change. The Department, however, is concerned that it could not meet its own commitments to furnish timely contract data to others, such as the Federal Procurement Data System and Congress. For this reason, the original due date of 15 days after the end of the fiscal quarter has been retained.

No comments were received regarding the Department's proposed changes to Subpart 913.5. Accordingly the proposed language appears in the final rule without change.

No public comments were received regarding the changes proposed for Subpart 915.6, "Source Selection." Several comments were received from within the Department and one comment was received from the Office of Federal Procurement Policy. The Department had first proposed in the August 26, 1985 notice that several sections of this subpart be rearranged to more closely track the Federal Acquisition Regulation coverage of the subject. The proposal would have increased the threshold for source evaluation board applicability from actions exceeding $5 million to actions exceeding $10 million and would have excluded fixed price and architect-engineer acquisitions from this procedure. On October 28, 1985, the Department amended the original notice to eliminate the exemption for fixed-price and other acquisitions for which selection would be based solely on a published predetermined formula or on the lowest price. The changes initially proposed for Subpart 915.6 (i.e., those proposed in the August 26, 1985 proposed rulemaking) were the subject of much discussion. These discussions suggested a need for further study in this area. For this reason, the only changes being made in Subpart 915.6 are increases in the threshold for use of formal source selection procedures and alternative source selection procedures. The other proposed changes in Subpart 915.6 are not being made, and the remainder of DEAR 915.6 will remain unchanged by this rulemaking.

Four comments were received regarding section 915.807, "Prenegotiation objectives." One comment suggested that 915.807(d) was contradictory to the objectives of the Paperwork Reduction Act. The Paperwork Reduction Act calls for the reduction of paperwork burdens on the general public. The prenegotiation plan is not completed by any member of the general public so the concern is unfounded. The same commenter suggested that the duration(s) of the contract(s) rather than just their award date(s) would be more meaningful at 915.807(d)(2)(b). This comment was accommodated by substituting the words "performance period(s)" for the words "date(s) of award" at 915.807(d)(2)(b). Another comment suggested that the words "and the extent of competition in awarding subcontracts" be added to 915.807(d)(5)(d) immediately after the word "subcontracting." DOE does not agree with this comment. Our position is that the extent of competition in subcontracting cannot be accurately gauged prior to award of the prime contract. For this reason, we have chosen not to adopt the suggested language. One comment suggested that the detailed prenegotiation plan should be placed in an informal guide rather than in the DEAR in order that local variations can be adopted. The Department prefers to adopt the detailed plan, at the Departmental level, in order to promote greater uniformity in this area. An individual plan can vary from the prescribed format as indicated by the words of the last sentence of the introductory paragraph preceding the contents of the plan itself.

It was suggested that 915.808, "Price negotiation memorandum," be changed at subparagraph (a)(15) by deletion of the word "significant." This would remove the subjective characteristic of the requirement that significant departures from the prenegotiation objectives be documented. The suggestion would, however, result in a need to document *insignificant* departures from the prenegotiation objectives. The Department has elected not to adopt the suggestion.

A general comment was received to the effect that the detailed listing of interagency agreement contents at 917.504(b) was duplicative of information required for entry on DOE Form 1270.1 as directed by DOE Order 1270.1. DOE is in the process of revising DOE 1270.1. Accordingly, the listing of items supplementary to the FAR will be retained as it appeared in the proposed rule. It was suggested that subparagraph (b)(11) of 917.504, "Ordering procedures," be revised to eliminate the need for patent counsel to review each interagency agreement. This use of the language at (b)(11) is intended to make certain that patent counsel is utilized whenever necessary. Therefore no change was made. Subparagraph (b)(12) of this section was changed to note the new designation of the "Office of Scientific and Technical Information" in place of the old "Technical Information Center" and "minimum of two copies" was changed to "two copies" in subparagraph (b)(12). One comment noted that paragraph (d) of subsection 917.505–71 seemed to indicate that DOE does not automatically acquire title to the capital equipment acquired under an interagency agreement. As promulgated in this final rule, paragraph (d) makes clear that DOE reserves a right of first refusal to any capital equipment acquired under an interagency agreement.

A comment was received regarding Subpart 919.5, "Set-Asides for Small Business." It was requested that DOE specifically provide at subparagraph (g) that class set-asides are made and administered on an individual contracting activity basis only. The suggested change has been incorporated in this final rule.

Two commenters, one representing research universities, expressed objection to the proposed language at 919.705–2, "Determining the need for a subcontracting plan," because it imposes additional requirements unique to DOE on contractors where Federal-wide rules and standards have been established and that a deviation from the FAR is required; because OMB clearance is required since it would establish recordkeeping and reporting requirements for contracts covered by FAR; and because OMB Bulletin 85–7 requires prior review of this subsection by OMB. DOE disagrees with the commenters' interpretations of both the proposed language and the FAR instructions. The proposed DOE language was developed to make it clear that the large multi-million dollar, long-term, research contracts of DOE that are funded on an annual basis may require a subcontracting plan when subcontracting opportunities exist. For such contracts, it is known at the outset that there is a likelihood that DOE will fund the contract to a level that will exceed $500,000, even though the basic contract, and modifications thereto, are

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individually less than $500,000. Although the ultimate funding level is not known at the time of initial award, provisions are included within the contract which indicate that there is a likelihood that DOE will continue funding for a period of time. The Department takes the position that DOE research contracts are included within the ambit of the instructions to contracting officers contained in FAR 19.705–2(a), i.e., "If the action includes options *or similar provisions* (emphasis added) include their value in determining whether the threshold is met." It is the Department's position that we would be remiss in continuing to exempt these large dollar contracts from the requirements of submitting a subcontracting plan when the contracting officer expects at the outset that subcontracting opportunities exist and that the contract funding will exceed $500,000. The Department interprets the FAR to include such situations and therefore we do not consider this provision to be an additional unique requirement of DOE requiring OMB review or deviation from the FAR. Therefore, the substance of the proposed language at DEAR 919.705–2 was not changed, however, it was modified to emphasize that the dollar threshold is an issue only if subcontracting opportunities exist.

The proposed rule contained a new section 925.205 concerning the use of a clause entitled "Buy American Act—Construction Materials." In light of the FAR coverage at 25.205, the proposed DEAR 925.205 has been withdrawn, along with the accompanying clause at 952.225–70.

The proposed rule contained an instruction at 970.0404–4, "Contract clauses," which required, at (a)(2), that all management and operating contracts contain a clause entitled "Additional Work, Defense Classified/Unclassified." The text of the clause, proposed to be set forth as 970.5204–4, would have required acceptance of any national defense work assignment, whether classified or unclassified, by a management and operating contractor. Numerous comments were received regarding this proposal. Most objected to the proposal. The Department withdrew the proposal on October 28, 1985, 50 FR 43589.

At 971.103, "Documentation submittals," it was suggested that the word "advertised" be changed to "sealed bid" to reflect new terminology necessitated by the Competition in Contracting Act. This was done.

List of Subjects in 48 CFR Ch. 9

Government acquisition.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on October 8, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

1. The authority citation for all parts of Chapter 9 is revised to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—[AMENDED]

2. Section 901.102 is revised to read as follows:

901.102 Authority.

The DEAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 486(c)), and other applicable law.

PART 902—[AMENDED]

902.100 [Redesignated as 902.101]

3. Subpart 902.1 is amended by redesignating 902.100 as 902.101. Newly redesignated 902.101 is further amended by revising paragraph (e) of the "Procurement Executive" definition, and by revising the definition for the "Senior Program Official" to read as follows:

902.101 Definitions.

* * * * *

"Procurement Executive" * * *

(e) Exercise priorities authority on behalf of the agency, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, *et seq.*), Defense Priorities and Allocations System Delegation 2, dated June 21, 1984, and applicable policies and regulations; and the Energy Conservation and Policy Act, Pub. L. 94–164.;

* * * * *

"Senior Program Official" is any of the individuals appointed as Secretarial Officers or Directors of DOE staff offices. (See DOE 1325.1A.)

PART 904—[AMENDED]

4. Subsection 904.601–70 is amended by revising paragraph (b)(3)(ii) to read as follows:

904.601–70 Procurement and Assistance Data System (PADS).

* * * * *

(b) * * *

(3) * * *

(ii) On a summary basis, by completion and submission of Standard Form 281, FPDS—Summary of Contract Actions of $10,000 or less. Summary reports shall be submitted within 15 calendar days after the end of each Federal fiscal quarter.

* * * * *

PART 912—[AMENDED]

5. Subpart 912.3 is amended by changing the title and text to conform to the requirements of the Defense Priorities and Allocations System. As revised, Subpart 912.3 reads as follows:

Subpart 912.3—Priorities and Allocations

912.300 Scope of subpart.

This subpart implements and supplements FAR Subpart 12.3, Priorities and Allocations, and implements the regulations and procedures of the Defense Priorities and Allocations System (DPAS) in solicitations and contracts in support of authorized national defense programs and those energy programs which maximize domestic energy supplies. (See 15 CFR Part 350.)

912.302 General.

(d) Programs which maximize domestic energy supplies are eligible for priorities and allocations support depending on an executive decision made on a case-by-case basis. Eligibility is pursuant to section 104(a) of the Energy Conservation and Policy Act, Pub. L. 94–163, which added a new section 101(c) to the Defense Production Act. Guidance is provided by 10 CFR Part 216 and Department of Energy publication DOE/MA–0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985. Rated orders placed in support of authorized energy programs are equivalent to orders placed in support of authorized defense programs under the DPAS and receive the same preferential treatment throughout the industrial supply chain.

(e) Heads of Contracting Activities shall ensure that members of their staffs and contractors under their jurisdiction are advised of the provisions of the DPAS regulation and that the related procedures are followed to ensure adherence to the regulation throughout the industrial supply chain. Under DPAS, it is mandatory that the priority rating be extended through the industrial chain from supplier to supplier.

912.304 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 952.212–70, Priorities and Allocations (Atomic Energy) (June 1987), in solicitations that will result in the placement of rated orders for authorized DOE atomic energy programs.

(b) The contracting officer shall insert the clause at 952.212–71, Priorities and Allocations (Atomic Energy) (June 1987) in contracts that are placed in support of authorized DOE atomic energy programs.

(c) The use of the provisions at 952.212–70 and the clause at 952.212–71 is optional for industrial delivery orders of $1,000 or less.

(d) The contracting officer shall insert the provision at 952.212–70 (Alternate I), Priorities and Allocations (Domestic Energy Supplies) (June 1987), in solicitations that may result in the placement of rated orders for authorized energy programs.

(e) The contracting officer shall insert the clause at 952.212–71 (Alternate I), Priorities and Allocations (Domestic Energy Supplies) (June 1987), if it is believed the contract involves a program the purpose of which is to maximize domestic energy supplies.

PART 913—[AMENDED]

6. Subpart 913.5 is amended by adding a new subsection 913.505–1 and removing subsection 913.505–2. As revised, Subpart 913.5 reads as follows:

Subpart 913.5—Purchase Orders

913.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(a)(2) Optional Forms 347 and 348 shall be used for purchase orders using small purchase procedures. The form shall not be used as the contractor's invoice.

(b)(2) An addendum of applicable clauses, including DOE Clause Set 319 which is provided to contracting activities by the Office of Policy, Procurement and Assistant Management Directorate, shall be used with each Optional Form 347.

PART 915—[AMENDED]

7. Subpart 915.6 is amended by revising paragraph (a) of section 915.612 to reflect a change in the threshold for use of formal source selection procedures, and by revising section 915.613 to reflect a change in the threshold for use of alternative source selection procedures. As revised, 915.612(a) and 915.613 read as follows:

Subpart 915.6—Source Selection

915.612 Formal source selection.

(a) Negotiated competitive acquisitions of less than $10 million are not subject to the SEB Handbook unless specifically required by the Procurement Executive. For acquisitions under $10 million, less formal procedures are used.

* * * * *

915.613 Alternative source selection procedures.

Source Evaluation Board (SEB) procedures shall be used for all negotiated competitive prime acquisitions expected to be $10 million or more, excepting acquisitions for architect-engineer services, and acquisitions specifically waived by the Procurement Executive. Guidance regarding the designation and operation of the SEB are set forth in the SEB Handbook.

8. Subpart 915.8 is amended by adding a new section 915.807 and by adding a new paragraph (a) to section 915.808 to read as follows:

Subpart 915.8—Price Negotiation

915.807 Prenegotiation objectives.

(d) The Head of the Contracting Activity shall assure that all prenegotiation objectives and proposed actions are documented in accordance with the requirements of FAR 15.807 and the following requirements of this section. The degree of documentation should be commensurate with the complexity and dollar value of the procurement. For those procurement actions of $250,000 and above the contracting officer shall prepare a written prenegotiation plan which shall include prenegotiation objectives for price and other contract requirements, as appropriate. The prenegotiation plan required by this section shall be included as section I of the price negotiation memorandum at 915.808. The prenegotiation plan should include, to the extent applicable, the information cited below.

Prenegotiation Plan

(1) *General.*
- (a) Procurement request number, solicitation, and contract number.
- (b) Offeror(s) involved in the negotiation. Include address and location where effort is to be performed.
- (c) Brief description of the work to be performed (reference to statement of work is not sufficient).
- (d) Type of solicitation (RFP, PON, PRDA, etc.) and type of contract being awarded.
- (e) Period of performance/delivery schedule.
- (f) Proposed funding schedule for term of contract.

(2) *Prior procurement history.*

Names of previous contractors, if previous awards made for same or similar work to be performed. Contract number(s) and performance period(s).

(3) *Solicitation data.*
- (a) Summary of selection process used, including number of firms solicited, proposals received, competitive range, name of selection official if SEB was used.
- (b) If noncompetitive, basis for approval and name and title of person approving the justification.
- (c) Discuss what considerations were given to socio-economic requirements.

(4) *Advisory reports.*

Identify, by title and date, the advisory reports received in support of the negotiations, i.e., audit reports, technical evaluation reports, cost or price analysis reports, and any other advisory report used in preparing the prenegotiation objectives.

(5) *Pricing objectives.*
- (a) A schedule showing the elements of the proposer's cost proposal, recommended adjustments (auditor, technical evaluation, etc.), and the negotiator's pricing objectives in columnar form.
- (b) Discussion of how previous procurements impact the pricing objectives of the instant procurement.
- (c) Appropriate comments justifying the negotiation objective for each element of cost. In discussing DOE's objectives indicate the position taken in advisory reports, if requested, and the proposed treatment of such advice/comments.
- (d) The extent of subcontracting and justification for subcontract price(s) provided by the prime contractor and the justification as viewed by the DOE negotiator.
- (e) Discussion of whether, and to what extent, negotiation will be based on actual costs expended.
- (f) Discussion of any special pricing techniques and the rationale for their use.
- (g) Discussion of how DOE's objective for fee and profit was established, including a copy of the weighted guideline analysis, if used. For construction contracts and construction management contracts, discuss how the profit or fee objective was established in accordance with the requirements of 915.971.
- (h) Discussion of incentive arrangements, cost or technical, if applicable, (i.e., share ratios, ceiling price, minimum/maxium fees.)
- (i) Discussion of the treatment given to facilities capital cost of money, if applicable, in establishing the fee/profit objective.
- (j) A summary statement regarding the reasonableness of the total price objective and appropriate discussion of the considerations used to determine the reasonableness of price.

(6) *Other issues and factors.*
- (a) Discuss any proposed special provisions.
- (b) Identify any anticipated deviations to regulations and the required approvals.

(c) Identify any unusual features of the Statement of Work.
(d) If applicable, identify any solicitation provisions which have been challenged by the offeror.
(e) Indicate if the Consolidated List of Debarred, Suspended, and Ineligible Contractors has been reviewed.
(f) Discuss whether the contractor has an approved purchasing and accounting system.
(g) Discuss any unique or peculiar features of the contract; e.g., cost sharing, facility ownership, options, etc.
(h) Discuss any deviations to regulations or exceptions suggested by the offeror and discuss proposed disposition.
(i) Discuss any results of pre-award surveys of the offeror's financial, accounting and other management systems.

915.808 Price negotiation memorandum.

(a) The Head of the Contracting Activity shall assure that all contract actions are adequately documented and shall establish internal review requirements therefor. While documentation may be simplified for lesser dollar value acquisitions, documentation of prenegotiation objectives and negotiation summaries shall be maintained in order to promote the discipline of adequate preparation for negotiations and to assist in supervisory review. For acquisitions of $250,000 and above, the price negotiation memorandum (PNM) shall be divided into two major sections: Section I, the prenegotiation plan and Section II, the post-negotiation summary. The prenegotiation plan prepared in accordance with 915.807 shall document the negotiation objectives established prior to the start of formal negotiations. The post-negotiation summary shall discuss the results of the negotiations leading to a final agreement, and, in a general sense, provide the results of the negotiation in terms of the extent to which prenegotiation objectives were met. In addition to the items listed at FAR 15.807 the following shall also be addressed in the PNM.

(11) Date and location of negotiations.

(12) Discussion of any issues raised during negotiations that were not addressed in the prenegotiation position.

(13) In the event that pricing or other contract terms cannot be justified to the satisfaction of the contracting officer but award is recommended because of compelling programmatic considerations, the PNM must fully document the efforts to obtain a more satisfactory agreement, including the extent to which the matter was escalated within DOE and the contractor's organization. The file must also show what consideration was given to alternate sources or other short or long-term alternatives (See FAR 15.803(d)).

(14) Indicate the date on which agreement was reached on the price, and the date the certificate of current cost or pricing data was signed, if applicable.

(15) Explain why the total price or estimated cost and fee are considered fair and reasonable if there was significant departure from the prenegotiation objectives.

PART 917—[AMENDED]

9. Subpart 917.5 is amended by revising section 917.504; by revising the title and paragraph (a) of section 917.505–70; and by amending section 917.505–71 by revising paragraphs (b), and (c) and adding new paragraphs (d) and (e), to read as follows:

Subpart 917.5—Interagency Acquisitions Under the Economy Act

917.504 Ordering procedures.

(b) DOE Form 1270.1, Order for an Interagency Acquisition, shall be used for interagency acquisitions. The order shall include an attachment addressing, as a minimum, the items listed at FAR 17.504(b) and the following:

(6) The parties to the interagency acquisition.

(7) Order number and/or modification number.

(8) Period covered by the interagency acquisition.

(9) Cost estimate of the interagency acquisition and the amount of funds to be provided by DOE including:

(i) The total etimated cost of the work for the period of time specified in the order;

(ii) The capital equipment, if any, approved for purchase under the subject acquisition; and

(iii) Limitations, if any, on the reimbursement of costs by DOE.

If DOE participates with another agency or agencies in sponsoring a project, the amount of contribution to be made by each agency and the basis for distributing the costs incurred shall be specified.

(10) Termination provisions that allow DOE to terminate the interagency acquisition upon 30 days written notice to the servicing agency. In the event of a termination, DOE may reimburse the servicing agency for costs actually incurred to the effective date of termination and for any commitments extending beyond the termination date (but not exceeding the expiration date of the order) that the servicing agency is unable to cancel.

(11) Appropriate patent provisions which recognize DOE's mission of achieving widespread availability and competitive commercial utilization of the benefits of DOE-funded research, development, and demonstration activities. Specific wording will vary depending on the agency and acquisition involved and must be obtained from the cognizant DOE patent counsel.

(12) Reporting requirements and technical data provisions, if appropriate, which require that technical reports prepared under the order to freely exchanged and made available for public sale, unless classified. Two copies of technical reports must be sent to the DOE Office of Scientific & Technical Information (OSTI), P.O. Box 62, Oak Ridge, TN 37830.

(13) Financial reports as determined by the contracting officer.

(14) Security provisions of 952.204, if appropriate, for those interagency acquisitions requiring access to/or generating classified information. (Revisions to the DEAR clauses will be required to effect the appropriate relationship between the servicing agency and DOE.)

917.505–70 Reimbursement by DOE.

(a) Payment methods to reimburse the servicing agency shall be specified in the interagency acquisition. Such specified payment methods shall be coordinated with the servicing finance officer to ensure that they are consistent with current Department of Treasury Regulations as implemented by DOE.

* * * * *

917.505–71 Cost-reimbursement standards.

* * * * *

(b) Direct costs are the costs that can be directly identified with work under the acquisition. Examples of such costs are salaries and wages, technical services, materials, travel, transportation, communications, and any facilities and equipment expressly approved for purchase under the interagency acquisition.

(c) Indirect costs shall be limited to the properly allocable portion of costs that cannot be charged directly to the work, but can be shown as mutually benefiting the effort covered by the interagency agreement as well as other work of the servicing agency. Justification for any such charges shall be required, and the basis of allocation must be reasonable. Where interagency acquisitions are entered into under authority of section 601 of the Economy Act of 1932, the servicing agency's

charge for any indirect costs may include appropriately allocable charges for "general administration" or "central agency overhead," but only to the extent specified in the acquisition.

(d) The servicing agency shall be responsible for maintenance, safeguarding, control, and accounting of capital equipment (items of equipment expected to have an extended period of service, generally a year or more and generally having a value of $1,000 or more) in a manner satisfactory to DOE. DOE reserves the right of first refusal for any capital equipment acquired under the interagency acquisition at completion or termination of the interagency acquisition.

(e) Unless authorized by the contracting officer in advance, the servicing agency shall not be reimbursed for the acquisition or condemnation of real property or any facility or plant construction or expansion.

PART 919—[AMENDED]

10. Subpart 919.5 is amended by revising 919.501 to read as follows:

Subpart 919.5—Set-Asides for Small Business

919.501 General.

(c) The Department has established an internal comprehensive review and screening process for acquisitions exceeding $10,000. The review is intended to enhance the prospect of participation by small business, small disadvantaged business, and women-owned small business concerns.

(g) The policy prescribed by FAR 19.501(g), which requires that a product or service acquired by a successful small business set-aside shall continue to be acquired on a set-aside basis, is applicable to DOE on a contracting activity-wide basis. The small and disadvantaged business specialist at a contracting activity shall maintain a list of such small business set-aside awards.

11. A new Subpart 919.6 consisting of section 919.602–1 is added to read as follows:

Subpart 919.6—Certificates of Competency and Determinations of Eligibility

919.602–1 Referral

(a)(2) The contracting officer shall coordinate with the small and disadvantaged business specialist and the SBA procurement center representative prior to referring a determination of nonresponsibility of a small business to the SBA Regional Office.

12. Subpart 919.7 is amended by adding a new subsection 919.705–2 and by adding a new paragraph (a)(5) to subsection 919.705–5 to read as follows:

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.702–2 Determining the need for a subcontracting plan.

(a) It is the policy of DOE to comply with the spirit as well as the requirements of Public Law 95–507. FAR requires that options be considered in determining whether the dollar value of a contract meets the dollar threshold necessitating a subcontracting plan. Accordingly, if a contract includes options or *similar provisions* which the contracting officer knows at the time of award will result in an overall contract value exceeding $500,000, then, although the ultimate value of the contract may not be known at the time of initial award, a subcontracting plan will nevertheless be obtained *if* substantial subcontracting opportunities are determined to exist. Examples of such actions which may require a subcontracting plan are contracts for basic research, including special research contracts awarded pursuant to Subpart 917.71, which fund a portion of a project under the initial award, with subsequent research funded on an annual basis by contract modification. The plan should be applicable to the basic contract and then be modified, as appropriate, through the life of the contract.

(b) A subcontracting plan is generally not obtained from an offeror until selection of an awardee except in those cases where a plan is requested of all firms in a competitive range (see FAR 19.705–2(d)). When it is determined that a subcontracting plan is required in accordance with FAR 19.705–2, the contracting officer shall request development and submission for approval of a subcontracting plan which includes all of the elements listed in the contract clause at FAR 52.219–9 or shall determine in writing as required by FAR 19.705–2 that a subcontracting plan is not required because subcontracting opportunities do not exist.

(c) A copy of the determination required by FAR 19.705–2(c) shall be provided, prior to award, to the small and disadvantaged business specialist at the contracting activity.

919.705–5 Awards involving subcontracting plans.

(a)(5) Ensure that an acceptable plan is incorporated into and made a material part of the contract by including in every contract with a plan a provision which either incorporates the approved plan into the contract by reference, or makes the plan an attachment to, and thus a part of, the contract. Subsequent revisions to a plan, i.e., revised goals or other changes, may be incorporated by reference on approval of the contracting officer. The subcontracting plan must be included in the official contract file when the plan is incorporated into the contract by reference.

* * * * *

PART 952—[AMENDED]

14. The table of contents for Part 952 is amended by correcting the designation of "952.261–7" to read "952.216–7".

15. Subsection 952.204–2 is corrected by revising the first sentence in paragraph (a) of the Security clause, and by revising the parenthetical reference at the end of paragraph (i) of the clause, to read as follows:

952.204–2 Security requirements.

* * * * *

Security (April 1984)

(a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. * * *

(i) * * * (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* 18 U.S.C. 793 and 794; and Executive Order 12356).

* * * * *

16. Subsection 952.209–72 is amended by revising paragraph (b)(2)(iii) of the Organizational conflicts of interest—special clause to read as follows:

952.209–72 Organizational conflicts of interest—special clause.

* * * * *

(b) * * *

(2) * * *

(iii) The contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces under this contract for its private purpose consistent with the Rights in Data provisions of this contract.

* * * * *

17. Subsections 952.212–70 and 952.212–71 are revised to read as follows:

952.212–70 Priorities and allocations for energy programs (solicitations).

As prescribed in 912.304(a), insert the following provision in solicitations that will result in the award of a contract in support of DOE atomic energy programs:

Priorities and Allocations (Atomic Energy) (June 1987)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a [ ] DO-Rating; [ ] DX-Rating; and certified for national defense use in accordance with the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 350) (Contracting officer check appropriate box).

Alternate I: As prescribed in 912.304(d), insert the following provision in solicitations in support of a program or project which may be determined to maximize domestic energy supplies:

Priorities and Allocations (Domestic Energy Supplies) (June 1987)

Contracts or purchase orders awarded as a result of this solicitation may be eligible for priorities and allocations support in accordance with 10 CFR Part 216 and section 101(c) of the Defense Production Act of 1950, as amended.

952.212-71 Priorities and allocations for energy programs (contracts).

As prescribed in 912.304(b), insert the following clause in contracts and purchase orders that are placed in support of authorized DOE atomic energy programs pursuant to the Atomic Energy Act of 1954, as amended:

Priorities and Allocations (Atomic Energy) (June 1987)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 350) in obtaining controlled materials and other products and materials needed to fill this contract. *Alternate I:* As prescribed in 912.304(e), insert the following clause in contracts if they are placed in support of programs or projects which may be determined to maximize domestic energy supplies:

Priorities and Allocations (Domestic Energy Supplies) (June 1987)

(a) This contract may be eligible for priorities and allocations support, as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is determined to be to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Energy and Commerce.

(b) DOE regulations regarding material allocations and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

(c) Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

18. In subsection 952.219-9 paragraph (d)(10) of the clause is amended by revising the paragraph through the word "December" to read as follows:

952.219-9 Small business and small disadvantaged business subcontracting plan.

* * * * *

(d)(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit, not later than the 25th day of the succeeding month, Standard Form (SF) only, (DOE contractors need not submit SF 295) on a quarterly basis current as of the last day of March, June, September and December, * * *

PART 970—[AMENDED]

19. Subsection 970.0404-4 is amended by revising paragraph (a)(1) and by removing and reserving paragraph (a)(2), to read as follows:

970.0404-4 Contract clauses.

(a) * * *

(1) *Security and Classification, 970.5204-1.* This clause is required in management and operating contracts under section 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended; and all management and operating contracts which involve classified information.

(2) [Reserved]

* * * * *

20. Subpart 970.19 is amended by adding a new paragraph (i) in section 970.1901 to read as follows:

Subpart 970.19—Small Business and Small Disadvantaged Business Concerns

970.1901 General.

* * * * *

(i) Management and operating contracts shall include a subcontracting plan which is effective for the term of the contract. Goals for the contract shall be negotiated annually when revised funding levels are determined. The plan should include provisions for revising the goals or any other sections of the plan. Such revisions shall be in writing, approved by the contracting officer, and shall be specifically made a material part of the contract.

21. Subsection 970.5204-13 is amended by revising paragraph (d)(14) of the clause to read as follows:

970.5204-13 Allowable costs and fixed-fee (CPFF management and operating contracts).

* * * * *

(d) * * *

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

* * * * *

22. Subsection 970.5204-22 is amended by revising "Note A" to read as follows:

970.5204-22 Contractor procurement.

* * * * *

Note A: When appropriate, the words, "if required by the contracting officer," may be inserted in the third sentence of paragraph (a) after the first use of the word "shall."

* * * * *

23. Subsection 970.5204-33 is revised to read as follows:

970.5204-33 Priorities and allocations.

(a) The following clause shall be used in management and operating contracts for military and atomic energy construction, operations and other directly related activity, where the programs have been authorized pursuant to the Atomic Energy Act of 1954, as amended.

Priorities and Allocations (June 1987)

The contractor shall follow the rules and procedures of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 350) in obtaining controlled materials and other products and materials needed for contract performance.

(b) The following clause shall be used in management and operating contracts in support of programs and projects which may be determined to maximize domestic energy supplies.

Priorities and Allocations—Domestic Energy Supplies (June 1987)

A program or project under this contract may be determined to be eligible for priorities and allocations support as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decison being jointly made by the Department of Energy and Commerce.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised. Copies may be obtained by written request

to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

PART 971—[AMENDED]

24. Section 971.103 is amended by adding new paragraphs (a) (3) and (4) to read as follows:

971.103 Documentation submittals.

(a) * * *

(3) *Prior to a sealed bid award.*

(i) Four copies of the successful bid.

(ii) Copy of proposed contract.

(iii) Record of bid opening and selection.

(iv) Copy of the solicitation.

(4) *After completing a sealed bid award.*

(i) Four copies of an award memorandum which documents that the award was made to the responsible, responsive bidder whose bid is most advantageous to the Government, price and other factors considered as provided in FAR 14.407.

(ii) One copy of any other documents the contracting officer believes would benefit the Headquarters review. (List of documents required for contract file are cited at FAR 4.803(a)).

* * * * *

[FR Doc. 87-23822 Filed 10-15-87; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83-12; Notice 6]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This notice constitutes a technical amendment of Safety Standard No. 108 to reflect the agency's intent in Footnote 3 to Figure 1b. The Footnote in part establishes a minimum separation distance between a turn signal lamp of certain minimum candela and the lower beam headlamp, "or from the lighted edge of any additional lamp installed as original equipment or used in lieu of the lower beam." The distance intended by the agency is between the turn signal lamp and the edge of the lower beam headlamp, or from the lighted edge of any additional lamp installed as original equipment which supplements the lower beam.

DATE: Effective date of the amendment is November 16, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA, Washington, DC (202-366-5280).

SUPPLEMENTARY INFORMATION: With the advent of the replaceable bulb headlamp, motor vehicle and lighting manufacturers have shown an interest in headlamp, designs which combine headlighting with other lighting functions such as parking lamps or fog lamps. Figure 1b of Standard No. 108 establishes the minimum and maximum allowable candle power values for several items of lighting equipment required as original equipment on motor vehicles, including yellow front turn signals. According to Footnote 3 to Figure 1b some of these values "apply when the optical axis (filament center) of the front-turn signal is at a spacing less than 4 in. (10 cm.) from the lighted edge of the headlamp unit providing the lower beam, or from the lighted edge of any additional lamp installed as original equipment or used in lieu of the lower beam." Manufacturers have asked the agency for interpretations of this language as it affects the spacing between turn signals and front lamps that combine headlighting with other functions. These requests have demonstrated that a literal reading of the language results in an overly restrictive interpretation and one which the agency did not intend.

For example, Koito Manufacturing Co. of Japan submitted a drawing depicting a headlamp and a parking lamp in a common chamber, upartitioned, consisting of a lens and a reflector. The parking lamp would be separate and outboard of the headlamp-parking lamp. Koito asked whether the 4 inches specified is to be measured from the edge of the effective area of the optical design of the headlamp or from the edge of the lens adjacent to the parking lamp. Because a parking lamp is an "additional lamp installed as original equiment," a literal interpretation requires that measurement be made from the edge of the lens adjacent to the parking lamp. However, the candela of the parking lamp is so low compared with that of the turn signal lamp, 500 minimum, that it will never conflict with it, and there is no safety reason requiring that measurement take it into account. In adopting Footnote 3 the agency had in mind lamps that are not covered by Standard No. 108 but which a manufacturer might wish to install as original equipment, such as fog lamps or passing lamps. Unlike parking lamps, these lamps supplement the lower beam headlamp, and this fact gave rise to the agency's erroneous phrase "or used in lieu of the lower beam." The agency is not aware of any State in which a lamp may be used in place of the lower beam during such time as headlamp use is required.

The agency has therefore concluded that a technical correction to Footnote 3 is required to reflect its true intent. It is amending the phrase "from the lighted edge of any additional lamp installed as original equipment or used in lieu of the lower beam" to read "from the lighted edge of any additional lamp installed as original equipment and which supplements the lower beam."

Because the amendment is corrective in nature, imposes no additional burden upon any person, and has no safety consequences, it is hereby found that notice and comment thereon are not necessary, and that for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest. The amendment is effective 30 days after publication in the **Federal Register.**

NHTSA has considered this amendment and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a regulatory evaluation is required. The amendment imposes no additional requirements nor alters the cost impacts of requirements already adopted.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will have no effect on the human environment since it clarifies an existing requirement.

The agency has also considered the impact of this amendement under the Regulatory Flexibility Act. I certify that the amendment will not have a significant econmic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those businesses affected by the amendment, generally are not small businesses within the meadning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be affected by this amendment since prices will not be impacted.

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PART 571—[AMENDED]

List of Subjects in 49 CFR Part 571

Motor vehicle safety.

In consideration of the foregoing Part 571 is amended as follows:

1. The authority citation for § 571.108 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Corrected]

2. Footnote 3 to Figure 1b is revised to read:

[3] Values apply when the optical axis (filament center) of the front turn signal is at a spacing less than 4 in. (10 cm.) from the lighted edge of the headlamp unit providing the lower beam, or from the lighted edge of any additional lamp installed as original equipment and which supplements the lower beam.

Issued on: October 9, 1987.

Barry Felrice

Associate Administrator for Rulemaking.

[FR Doc. 87-23979 Filed 10-15-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 61220-7033]

Foreign Fishing, Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: This action reapportions surplus domestic annual processing (DAP) amounts of Atka mackerel to joint venture processing (JVP) in each of the Western and Central Regulatory Areas of the Gulf of Alaska. This action is intended as a conservation and management measure that provides for full utilization of available groundfish resources off Alaska during 1987.

DATES: This notice is effective on October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (National Marine Fisheries Service, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska are managed in accordance with the Fishery Management Plan for Groundfish of the Gulf of Alaska, which was developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented by regulations appearing at 50 CFR 611.92 and Part 672. Under § 672.20(d)(1)(ii) of this Part, the Secretary of Commerce (Secretary), after consultation with the Council, may apportion to domestic annual harvesting (DAH) on such dates any amounts of any reserve that he determines to be needed to supplement DAH. Target quotes (TQs) for groundfish species in the Gulf of Alaska are established under § 672.20(a)(2). The sum of the TQs for all species must fall within the established optimum yield (OY) range for these species of 116,000–800,000 metric tons (mt) as described at 52 FR 7868 (March 13, 1987).

TQs are apportioned initially among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF) for each species under §§611.92 and 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S.fishermen deliver their catches to foreign processors at sea. The reserves for the Gulf of Alaska are 20 percent of the TQ for each species category. These amounts are set aside for possible reapportionment to DAP and/or to JVP if the initial apportionments prove inadequate.

The Regional Director has determined that U.S. harvesting vessels, which process their catch on board or deliver their catch to U.S. processors will only harvest 10 metric tons (mt) of Atka mackerel in each of the Western and Central Regulatory Areas of the Gulf of Alaska for the remainder of 1987. These amounts are expected to be taken as bycatch in other target groundfish fisheries. This determination is based on DAP catches of Atka mackerel to date and results of NMFS industry surveys which indicate the extent to which the Atka mackerel DAP would be processed during the remaining months of 1987. Although current reported DAP catches of Atka mackerel for 1987 are zero, the Regional Director projects that DAP catches will equal 10 mt during the remaining months of 1987. Currently, the DAPs for Atka mackerel for the Western and Central Areas are 80 and 75 mt, respectively. On October 2, 20 mt of Atka macherel were reapportioned from DAP to JVP in the Western Area (52 FR 37464, October 7, 1987).

Since DAP needs for Atka macherel are lower than the current allocation, and JVP needs for this species are higher than the current allocation, the Secretary agrees with the Regional Director and is reapportioning 70 mt and 65 mt of surplus DAP for Atka macherel to JVP in the Western and Central Regulatory Areas, respectively. This leaves 10 mt of Atka macherel for DAP for both the Western and Central Areas of the Gulf of Alaska. This action is taken under § 672.20(d)(2). The resulting reapportionments (see table below) will allow foreign processors receiving groundfish in joint venture operations to purchase and retain catches of Atka macherel from U.S. fishermen, thereby providing economic benefits to those U.S. fishermen.

Species	Area	Species code	TQ	DAH	DAP	JVP	Reserve	TALFF
Atka mackerel	W	207	100	100	10	90	0	0
	C		100	100	10	90	0	0
	E		40	40	40	0	0	0
	Total		240	240	60	180	0	0

Classification

This action is taken under the authority of 50 CFR 611.92 and 672.20 and complies with Executive Order 12291.

The NOAA Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen delivering to foreign processors who otherwise would forgo amounts of Atka mackerel if those amounts remainded in DAP. An immediate opportunity to harvest Atka mackerel in JVP fisheries could result in

substantial economic gain. Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 13, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-24055 Filed 10-13-87; 5:03 pm]

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50 CFR Part 663

[Docket No. 70101-7001]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restriction and request for comments.

SUMMARY: NOAA issues this notice modifying earlier restrictions to limit the levels of fishing for widow rockfish taken in the groundfish fishery off the coasts of Washington, Oregon, and California, and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and is necessary because biological stress to widow rockfish is expected to increase if landings are not restricted. This action is intended to lower fishing rates, reduce the risk of biological stress while allowing for unavoidable incidental catches in other fisheries, and reduce the probability of fishery closure before the end of the year.

DATES: Effective 0001 hours (Pacific Daylight Time), October 14, 1987, until modified, superseded, or rescinded. Comments will be accepted through October 28, 1987.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E. Charles Fullerton at 213-514-6196, or the Pacific Fishery Management Council (Council) at 503-221-6352.

SUPPLEMENTARY INFORMATION: At its September 16-18, 1987 meeting, the Council evaluated catch rates of widow rockfish and recommended to the Secretary of Commerce (Secretary) that when 95 percent of the 12,500 metric ton optimum yield (OY) quota is projected to be reached, the weekly trip limit will be lowered from 30,000 pounds to 5,000 pounds per vessel per trip, limited to no more than one landing a week above 3,000 pounds. As a result, the Secretary published a notice of fishing restrictions on October 7, 1987 (52 FR 37466) which announced his concurrence with the Council's recommendation and stated that this reduced trip limit will be implemented by separate notice in the **Federal Register**. All other provisions of the trip limit for widow rockfish announced at 52 FR 790 (January 9, 1987), as modified at 52 FR 15726 (April 30, 1987), which changes the fishing week from Sunday-Saturday to Wednesday-Tuesday, will remain in effect.

The best available scientific information as of October 6, 1987 indicates that 95 percent of the OY will be landed by October 14, 1987. Accordingly, the trip limit for widow rockfish is reduced to 5,000 pounds effective October 14, 1987, which is the beginning of the fishing week. The States of Washington, Oregon, and California are taking similar action effective October 14, 1987.

This reduction is intended to allow most incidental catches of widow rockfish to be landed, while greatly reducing target fishing on this species. If this action does not sufficiently control landings, additional restrictions may be necessary. If the OY is reached before the end of the calendar year, further landings of widow rockfish will be prohibited. The rationale and overall intent of this action are more fully discussed in the notice at 52 FR 37466.

Secretarial Action

For the reasons stated above and in the notice at 52 FR 37466, the Secretary announces the following:

(1) No more than 5,000 pounds (round weight) of widow rockfish may be taken and retained, or landed, per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(2) This restriction applies to all widow rockfish taken and retained 0-200 nautical miles offshore of Washington, Oregon, or California. All widow rockfish possessed from 0-200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 0-200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

This limit applies to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of this species by foreign fishing or processing vessels is limited by incidental percentage limits established under § 611.70.

U.S. vessels operating under an experimental fishing permit issued under § 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at § 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to impose this fishing restriction is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

This action is taken under the authority of 50 CFR 663.22 and 663.23, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If landings of widow rockfish are not immediately restricted, premature closure of the widow rockfish fishery will result. Accordingly, further delay of this action is impracticable and contrary to the public interest, and this action is published in final form effective October 14, 1987.

The public has had the opportunity to comment on these management

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measures. The public participated in Groundfish Select Group, Groundfish Management Team, and Council meetings in August and September 1987 that generated the management actions endorsed by the Council and the Secretary, in addition to the Groundfish Management Team meeting in October 1987. A public comment period followed publication of the October 7, 1987, notice at 52 FR 37466 announcing this action. Further public comments will be accepted for 15 days after date of filing with the Office of the Federal Register.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: October 13, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-24054 Filed 10-13-87; 5:03 pm]

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7 CFR P

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AGENCY:
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Proposed Rules

Federal Register
Vol. 52, No. 200
Friday, October 16, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary fo the 1987–88 marketing policy for navel oranges grown in California and Arizona. The marketing policy was discussed and approved on September 16, 1987, by the Navel Orange Administrative Committee, which locally administers the marketing order covering California-Arizona navel oranges. The marketing policy contains information on crop and market prospects for the 1987–88 session.

DATE: Written suggestions, views, or pertinent information relative to the marketing of the 1987–88 California-Arizona navel orange crop will be considered if received by October 26, 1987.

ADDRESS: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2085–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456. Such submissions should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC. 20090–6456; telephone: (202) 447–5697. Growers and handlers of navel oranges may obtain a copy of the marketing policy directly from the Navel Orange Adminstrative Committee. Copies of the marketing policy are also available from Mr. Cioffi.

SUPPLEMENTARY INFORMATION: Pursuant to § 907.50 of the marketing order covering navel oranges grown in Arizona and designated part of California, the Navel Orange Administrative Committee, hereinafter referred to as the "committee", is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order, issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, authorizes volume and size regulations applicable to fresh shipments of navel oranges to domestic markets which are defined by the order to include Canada. Regulation of export shipments of navel oranges and navel oranges utilized in the production of processed orange products is not authorized under the order.

Section 907.50 of the marketing order reads as follows:

"(a) Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantities and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the committee should give due consideration to the onset and duration of prorate, and size regulation. In the event that it becomes advisable to substantially modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph."

The committee adopted its marketing policy for the 1987–88 marketing season at its September 16, 1987, meeting. Various meetings to develop, discuss, and review the committee's marketing policy were held throughout the production area on August 18 and 25 in Los Angeles, California, September 3 in Lindsay, California, and September 10 in Phoenix, Arizona. In addition, meetings to discuss and review the marketing policy were held on September 22 in Visalia, California and October 6 in Redlands, California. Substantial numbers of industry representatives were present at many of these meetings. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of navel oranges that can be shipped each week to domestic outlets during the season, without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all prorate districts and supplies a view of the anticipated economic environment in which the total crop will be marketed. The committee identified an array of general considerations in formulating its 1987–88 marketing policy. It indicated that the industry is essentially stable, consisting of about 118,000 acres of navel orange trees. However, despite the general stability in planted acreage, there is a sizeable variation in year-to-year production for reasons beyond the control of growers and handlers, e.g., weather and alternate bearing tendencies. This inherent variability requires a high degree of flexibility in handling and marketing navel oranges within a single marketing season.

Another important characteristic of the navel orange to which the committee called attention is that the navel is primarily a fresh market orange, in contrast with other citrus varieties which have viable alternative uses. Juice from navel oranges develops a bitter off-flavor within a short time after it has been squeezed. This characteristic

precludes its use for juice except when blended with juice from other varieties of oranges, and in most recent years, prices received for navels sold to processors have produced negative returns in terms of on-tree prices.

The committee stated that the importance of the fresh market means that fruit quality is a primary consideration for navel orange growers. There are many factors affecting quality beyond the control of growers. For example, the varied climates in which navels are grown and the various weather conditions that occur produce a variety of skin texture and thicknesses of peel as well as a range of sizes of fruit.

Another major characteristic of navels considered by the committee in developing its marketing policy is the ability of the fruit to be held on the trees for an extended period. This has proven to be useful in extending shipments throughout the marketing season while narrowing fluctuations in short term volume. In many other crops, mature fruit can be harvested and stored for an extended marketing period. However, the marketing policy points out that navels are not amendable to this storage practice as they develop flavor characteristics making them unusable for any purpose. Therefore, the industry has developed a variety of strategies which extend the navel season. These include the use of growth regulators which can delay maturity for long periods, planting of early and late maturing varieties, and the use of frost protection devices.

In its 1987–88 marketing policy, the committee projected the California-Arizona navel orange crop at 49,000 cars (1,000 cartons at 37 1/2 pounds net weight each equals one car). This compares with last year's estimated total production of 71,900 cars. The National Agricultural Statistics Service's (NASS) September estimate for the 1987–88 crop was 52,000 cars for the State of California, which when combined with the committee's estimate of 1,100 cars for the Arizona desert valley, totals 53,100 cars for the entire production area.

The committee estimates District I, Central California, 1987–88 production at 41,500 cars compared to 60,300 cars produced in 1986–87. In District 2, Southern California, the crop is estimated to be 6,100 cars compared to 9,400 cars produced last year. In District 3, the Arizona-Calfornia desert valley, production of 1,100 cars is forecast, compared to 1,600 cars in 1986–87. In District 4, Northern California, a 300 car crop is projected compared to 525 cars last year.

The committee projected much larger orange sizes in the 1987–88 crop than the previous year. In fact, the projected average number of oranges per carton at the mid-point of the season indicates the largest average size on record. Because of the larger fruit sizes, the skin texture of the fruit is not expected to be as smooth or as thin as the past season. Fruit quality is expected to be near average, ranging from excellent to below average.

In estimating the proportion of the crop destined for domestic fresh market outlets, the committee stated "* * * the domestic market will absorb all the fruit that meets quality standards and is economically feasible to ship * * *" On this basis, the Committee estimated that shipments to domestic fresh outlets, including Canada, during the 1987–88 season would account for 36,600 cars. Last year a total of 47,621 cars were shipped to fresh domestic markets. Fresh export shipments are expected to total 5,000 cars compared to 6,069 last year. Processing and other dispositions are forecast at 7,400 cars compared to 18,184 cars last year.

Based on current projections, shipments are expected to begin at the end of October and finish in late May. The committee has developed a schedule of estimated weekly shipments covering the 1987–88 season.

The committee reports that Florida round orange production is expected to be 254,000 cars, about 6 percent greater than last year. In Texas, orange production for the 1987–88 season is expected to be 2,700 cars, an increase of more than 50 percent from last season. Production of apples is estimated at 230.7 million bushels in 1987–88 compared to 187.9 million bushels in 1986–87. The fresh winter pear pack is estimated at 10.1 million bushels in 1987–88 compared to 9.2 million bushels last year. Of increasing importance in the supply of competitive non-citrus fruit are "summer fruit" importations from Chile (nectarines, plums, peaches, grapes and apples), and it is expected that this upward trend will continue. General economic conditions are expected to be favorable.

In terms of total crop utilization, the committee expects 75 percent of the 1987–88 crop to be accounted for in domestic fresh markets compared with 66 percent in 1986–87; fresh exports are projected to use 10 percent of total 1987–88 utilization compared with 9 percent in 1986–87; processed and other uses would account for the residual 15 percent compared with 25 percent in the last season. Expressed in terms of actual changes in the volume of navels shipped or processed, domestic fresh market shipments would be down about 23 percent from 1986–87 estimates, export shipments would be down about 18 percent and processed and other utilization would fall approximately 59 percent.

The 1986–87 season average fresh equivalent on-tree grower returns for California-Arizona navel oranges as reported by the NASS were $3.70 per carton. This was about 72 percent of the equivalent season average parity of $5.16 per carton. The 1987–88 equivalent seasonal parity is projected to be $5.45 per carton.

Preliminary indications are that 1987–88 season grower returns for California-Arizona navel oranges may equal or exceed the equivalent seasonal parity. The Act authorizes regulations in an above parity situation. Section 602(4) of the Act provides that regulations may be issued "* * * to establish and maintain such orderly marketing conditions for any agricultural commodity * * * in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices." The committee's marketing policy states that recommendations for volume regulation at the onset of the season would be made for the purpose of creating conditions of orderly marketing pursuant to § 602(4) of the Act.

Section 907.52 of the naval orange marketing order provides authority for regulation in an above parity situation, stating: "* * * Such regulation may be made effective; as authorized by the Act, irrespective of whether the season average price for navel oranges is in excess of the parity price specified thereof in the act. * * *"

In discussing the possible need for prorate regulation early in the season, the marketing policy indicated that early varieties are reported to have a near normal crop and have not been adversely affected by unfavorable conditions that have affected later varieties (excessive temperatures and a dry winter). Consequently, the committee anticipates there will be abundant, normal supplies at the beginning of the season.

In view of the above, it is the committee's view that early shipments without volume regulation could be excessive and disruptive to the early market and to the market immediately following that time. The committee states that such conditions would be contrary to the purposes of the Act, and one of its objectives is providing for an orderly flow of fruit to the market, for the benefit of growers and consumers.

The committee anticipates that volume regulations likely will be recommended to the Secretary near the very early part of the season, perhaps as early as the first week ending in November. It points out that such recommendations, of course, will depend on the rate of the early harvest and anticipated market conditions at the time regulations are considered. The committee believes it is essential to the successful marketing of the entire crop that shipments be made in an orderly manner from the beginning of the season.

Section 907.51(b) of the marketing order identifies areas the committee should consider in recommending prorate regulation and reads as follows:

"In making its recommendations, the committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and en route to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of competitive fruits; (5) trends and level in consumer income; and (6) other relevant factors."

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of, regulation for the 1987–88 season. Due to the possibility of season average prices above the equivalent season parity, comments are invited on the appropriate levels of fresh oranges which can be made available to the fresh domestic market and the intraseasonal dispersion of shipments. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. This notice provides a 10-day period for the receipt of comments. This period is considered to be adequate due to the number of meetings held throughout the production area, both prior to and subsequent to the adoption of the marketing policy, at which such policy was reviewed and discussed by industry representatives and interested persons.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 13, 1987.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 87–24051 Filed 10–15–87; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 129

Small Business Development Center Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration proposes to adopt the following comprehensive rule to govern the operations of the Small Business Development Center Program, a small business assistance delivery program. SBA intends that these proposed rules provide a framework for the effective and efficient operation of the program.

DATE: Comments will be accepted until November 16, 1987.

ADDRESS: Written comments should be addressed to Ms. Janice Wolfe, Deputy Associate Administrator for Business Development/Small Business Development Centers, 1441 L Street NW., Room 317, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mr. J. Hardy Patten, (202) 653–6315.

SUPPLEMENTARY INFORMATION: The Small Business Development Center (SBDC) Program was originally established in 1980 by Pub. L. 96–302, which amends section 21 of the Small Business Act (15 U.S.C. 648). It was later amended by Pub. L. 98–395 in 1984. Many of the provisions set forth in this proposed rule are contained in one of the Public Laws or have stemmed from the operations of the program since its inception.

On October 23, 1986, at 51 FR 37580, SBA published proposed regulations governing the SBDC program. The public was afforded 60 days to comment on that proposal. By notice in the **Federal Register** on November 21, 1986, SBA extended that comment period by an additional 30 days (see 51 FR 42255). During the 90 days which SBA afforded the public to comment on the proposed SBDC regulations, SBA received approximately 200 comments in response to that publication. A detailed analysis of the issues raised by the public comment has been made a part of this Supplementary Information. SBA has now evaluated all of the public comments and these proposed regulations represent the results of that evaluation. SBA recognizes the complexity of some of the issues addressed in these rules, and is, therefore, publishing these revised rules in proposed form and soliciting public comment on the rules for 30 days.

Review of Issues Raised by Public Comments and Summary of Changes to the Proposed Regulation

SBA has carefully reviewed all of the over 200 comments received during the 90 day public comment period. Where appropriate, SBA has made changes to the proposed regulations to reflect the views of the commenters. Where SBA has not agreed with the comments regarding particular issues raised by the regulations, SBA's rationale for retaining the original proposal is given. In some cases, minor technical changes were made to correct omissions or clarify the intent of the original proposed rule.

Several commenters objected to SBA's statement in the Summary to the October 1986 proposed rule that one of the purposes of the rule was "to insure that the program operations are uniform nationwide." SBA certainly supports a diverse and flexible SBDC program which can accommodate the varied needs of small businesses across the nation. SBA also believes that administrative and financial requirements of the program, such as those addressed by the appropriate Office of Management and Budget Circulars, should be uniform where possible. To avoid any misunderstanding of the purpose of these regulations, the sentence at issue does not appear in the Summary to this proposed rule.

The comment letter received on behalf of the SBDC Directors Association objected to SBA's certification under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), that the October 1986 proposed rule, if promulgated in final form, would not have a significant economic effect *directly* on a substantial number of small entities. It was the view of the commenter that such economic effect need not be direct in order to trigger the RFA requirement that a Regulatory Flexibility Analysis be included in the preamble of the regulation.

SBA's interpretation of the RFA requirement is based on a U.S. Court of Appeals case, *Mid-Tex Electric Cooperative v. Federal Energy Regulatory Commission (Mid-Tex)*, 773 F. 2d 327, 340–343 (1985). In *Mid-Tex*, the Court held that, in complying with the RFA, an agency need only look to the economic impact on the small entities

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subject to the regulation and not to the impact on those which might be indirectly affected by the regulation.

Section 129.10 Introduction.

Some commenters objected to the phrasing of this section because, in their view, the language did not clearly delineate the separate responsibilities of SBA and the SBDC Director in a decentralized program. The section has been amended to address that concern.

Subparagraphs (c)(2) and (3) discussing the relationships between SBDCs and other SBA-funded programs have been deleted in response to comments that such relationships should not be governed by regulations.

Section 129.11 Definitions.

Some new definitions have been added to this proposed section, as noted below. The subsections are proposed to be renumbered as necessary.

Several commenters noted that the definition of "cash match" (subsection (c)) was not consistent with an October 1986 SBA Notice on the subject. The definition has been amended to clarify that direct costs committed by the applicant as specific line item costs prior to funding for such items as personnel services and fringe benefits would be considered cash match for purposes of this program.

Some commenters objected to the definition of "conflict" (subsection (d)) because it failed to recognize that once a Cooperative Agreement has been signed, it governs all program matters to which a disagreement could relate. SBA agrees with this objection and has amended the subsection accordingly.

Many commenters disagreed with SBA's effort to restate the requirements of the OMB Circulars in these regulations, rather than cross-referencing the Circulars. The commenters would prefer simple references to the appropriate Circulars where necessary. SBA has adopted this approach and has referenced the OMB Circulars in amended subsections (e), (m), (n), and (u) defining Direct Costs, Indirect Costs, In-Kind Costs and Program Income, respectively. Subsection (u), Program Income, is a new definition, which was added to these proposed regulations for clarity.

SBA notes, however, that on June 9, 1987, the Agency published a proposed rule amending the provisions of OMB Circular A-102 concerning the administration of Grants and Cooperative Agreements with State and local governments. *See* 52 FR 21824. The proposed rule was based on a model regulation prepared by a task force of representatives of OMB and other interested agencies. A similar effort is underway regarding OMB Circular A-110. Once those regulations are adopted in final form, SBA intends to amend these regulations for consistency on Grants/Cooperative Agreement administration matters.

Several commenters questioned whether teaching a course outside of working hours would diminish the full-time status of an employee. SBA wishes to make clear that nothing in these regulations would preclude a full-time employee from teaching one course outside of the normal SBDC workweek. However, any full-time employee intending to teach two or more courses or to teach during the hours of operation of the SBDC would be expected to receive SBA approval prior to engaging in such activity. (See § 129.17(b)(4) Staff and Access Requirements.)

Subsection (j), Grants/Cooperative Agreement Appeals Committee was redefined generally. The amended definition would authorize the Administrator to appoint the membership of the Committee, in his or her discretion.

Minor technical changes are proposed to subsections (j), (k), and (l) defining the terms "Grants Management Branch Chief" and "Grants Management Officer."

Some commenters questioned SBA's definition of lobbying (redesignated subsection (q)), citing the difficulty of raising the statutorily required matching funds under the definition as proposed. SBA has no intention of limiting the ability of the SBDCs to acquire matching funds. Therefore, SBA proposes to amend the exceptions to the definition of lobbying (subparagraph (q)(2)(ii)) to permit lobbying to obtain matching contributions. It is the Agency's view that this change would be consistent with the requirements of the Small Business Act and with the Federal government-wide policy against subsidizing lobbying with Federal funds.

A definition of "Qualified Independent Public Accountant" (subsection (y)) was added to comply with the **Federal Register** requirements that, where possible, terms used in regulations should be defined in those regulations and not by reference to outside sources. (*See* § 129.21(e)(2)(ii).)

Subsection (dd) defines the term "SBDC State Director." Some commenters found the term misleading because some SBDCs are regional and not statewide. In the history of the program, "SBDC State Director" has come to mean the Director of the SBDC Network, regardless of its area of service. Therefore, SBA has retained the term in these proposed regulations. Further, this definition has been amended to include a statement clarifying that, as part of his or her full-time management duties, an SBDC State Director may manage other Federal and State government programs that are concerned with aiding small business in a manner otherwise authorized for SBDCs by the Small Business Act. Such management would be part of the State Director's full-time duties, and as such, would not be the basis of additional compensation. This clarification resulted from an Opinion of the SBA General Counsel of December 9, 1986, interpreting the statutory requirements that an SBDC employ a full-time director and that the SBDC "make full use of other Federal and State government programs that are concerned with aiding small business;" (*see* section 21(c)(2)(A) of the Small Business Act, 15 U.S.C. 648(c)(2)(A)).

Subsection (ff) defines the term "Subcenter Director." Many commenters noted that some subcenters do not require full-time managers. To require that a subcenter director be a full-time manager, as the October 1986 proposed regulations did, would be detrimental to the efficient operation of the program in some States. SBA proposed to adopt the changes to this definition recommended by the commenters and to delete the "full-time" requirement from the definition of subcenter director.

Some commenters thought that the definition of "working days" (subsection (gg)) inappropriately referenced Federal holidays and should have permitted State holidays or other holidays as agreed upon in the Cooperative Agreement. Since many lead SBDCs are State universities, some commenters believed that State holidays may be more appropriate. SBA agrees with this comment and proposes to amend the definition of working days to exclude Saturdays, Sundays and "those holidays designated in the Cooperative Agreement." In general, the Cooperative Agreements have allowed 12 holidays per SBDC each year. SBA expects that this practice will continue.

Section 129.13 Allocation of funds.

One commenter suggested that the third service category (increased services provided to areas already served by SBDCs established within the previous three years) and the fourth service category (increased services to areas already served by SBDCS established prior to the previous three years) be reversed. Since the priority of service categories (2) through (5) is to be determined for the individual SBDC based on the needs and goals of the

small business community to be served by that SBDC, no purpose would be served by reversing the service categories. Therefore, SBA did not adopt the suggested change.

Section 129.14 Application Procedure.

Several commenters expressed their view that application procedures should remain as flexible as possible and, therefore, should not be the subject of regulations. In order to provide the public with an overview of the application process without eliminating its flexibility, SBA proposes to modify the regulations to generally describe the process and to delete the specific application requirements previously found in § 129.14(b)(2).

Subsection (c) discusses amendments to the application. In response to some comments calling for clarification on this subject, SBA proposes to add a provision making clear that an applicant may submit an amendment to its application at any time for SBA's review. Further, SBA proposes to amend the provision to state that once the Cooperative Agreement is awarded, no amendment, whether submitted by the applicant on its own accord or in response to a request from SBA, is effective until it has been made a part of the Cooperative Agreement by the Grants Management Officer.

In response to public comment, SBA proposes to amend subsection (d), Competing Applications, to state clearly its policy that competing applications will be accepted in states with a currently operating SBDC only after the SBDC has been in operation for five years or more or when SBA has made a decision not to refund an existent SBDC for reasons of nonperformance, poor performance, a disregard for or violations of the regulations or any of the reasons listed in the regulation ("previously causes for terminations"). This proposed policy regarding acceptance of competing applications would apply to applications submitted by subcenters of the operating SBDC as well as by other eligible entities. The proposed policy reflects the agancy's experience that a five year start-up period is generally required for an SBDC to become fully operational. It also incorporates the Agency's view that to allow competing applications to be considered before the SBDC is established and absent a showing of one or more of the above-mentioned causes would be unfair to the SBDC.

One commenter suggested that subsection (e) be amended to allow the agency longer than seven months from the effective date of the Cooperative Agreement. It was the commenter's view that, in light of the filing deadlines on the quarterly reports (45 days after the end of the quarter), the regulation would require a decision not to refund to be made based on only one quarter's performance. SBA considered adjusting the timeframes as suggested by the commenter, but found it impractical to do so in light of the necessity for notice and an opportunity for the SBDC to correct its defective performance.

Another commenter objected to the fact that the procedures outlined in paragraphs (e) (1) through (5) which relate to decisions not to refund operating SBDCs do not incorporate an arbitration by an independent board. It is the agency's view that such arbitration is not called for because the proposed regulations would require notice to the SBDC of the reasons for the proposed decision and an opportunity to correct its deficiencies as well as an opportunity to discuss its case at the District and Regional Office levels before a final decison is made by the Central Office.

SBA proposes to adopt the suggestion of another commenter that the regulation clearly state a period for close-out of an SBDC once SBA has decided not to refund it. Therefore, SBA proposes to amend paragraph (e)(4) to provide for a period of 60 days after SBA has made a decision not to refund an SBDC for that SBDC to conclude its federally funded activities and to submit appropriate documents to the SBA District Office.

Several commenters questioned the purpose of subsection (i), which would require certain employees to submit completed Standard Forms 912 within 30 days of the issuance of the Cooperative Agreement. Such information would enable SBA to perform a criminal background check and are a standard requirement for many SBA programs where individuals are managing substantial Federal funds. SBA has attempted to minimize the proposed regulatory requirement as much as possible by limiting the group of employees to which it would apply and by not requiring its submission prior to the award of the Cooperative Agreement.

Several commenters found the Conflicts Resolution Policy set forth in subsection (k) to be cumbersome. SBA notes that subsection (k) describes the current system for resolving such conflicts which was developed at a joint meeting of SBA and the SBDC State Directors in 1984. While SBA agrees that some streamlining of those producers, as well as those governing disputes resolutions, may be in order, delaying publication of the entire regulation to do so did not seem prudent. SBA does intend to study these procedures over the next several months with an eye toward increasing their effectiveness and eliminating duplication where possible.

Subsection (1), dealing with financial disagreements, is proposed to be amended to shorten the decision process by making the decision of the Grants Management Officer a final decision and by eliminating an appeal to the Grants Management Branch Chief. SBA decided to propose these changes to make the process consistent with the contract dispute resolution procedures used by SBA and other Federal agencies. Moreover, the appeal process proposed in the October 1986 rule would not afford a separate and independent review of the matter since the Grants Management Branch Chief would be responsible in a supervisory capacity for the issuance of the initial decision and, in all likelihood, would be in agreement with that decision.

Section 129.15 Cooperative Agreement.

In response to public comment, SBA proposes to make several amendments to § 129.15 concerning the Cooperative Agreement.

SBA proposes to change subsection (b), Revision to the Cooperative Agreement, in one respect: To require the SBDC to notify SBA in the quarterly report of funding transfers within its budget for that quarter. The October 1986 proposed rule required notice of each transfer as it occurred. The notice requirement was included so that SBA and the SBDC would be aware of the SBDC's cumulative transfers exceeding the 5 percent point, which is the threshold required by OMB Circulars. The compromise adopted in this proposed rule was reached to accommodate the commenters' concern that the proposed reporting requirements were too burdensome, and SBA's interest in maintaining adequate controls on the expenditures of Federal funds and in complying with OMB's guidelines on financial administration.

For reasons discussed above under the procedure for resolving Financial Disagreements, (§ 129.14(1)), SBA proposes to amend subsection (c), Disputes, to eliminate the decision of the Grants Management Branch Chief and to provide for an appeal to a Grants/Cooperative Agreement Appeals Committee which is authorized to make a final decision. These proposed changes would be procedural in nature and would not affect the substantive rights of the recipient organization or the SBDC.

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Several commenters would have preferred SBA's inclusion of a non-SBA party on the Grants/Cooperative Agreement Appeals Committee (G/CA Appeals Committee). SBA did not adopt this suggestion because SBA is primarily responsible for ensuring the proper use of Federal funds in the SBDC program and because involvement of non-SBA individuals would delay the decision process.

One or two commenters urged SBA to impose a time limit on the Committee for issuance of its decisions. SBA has determined that adoption of this suggestion is not advisable because of the substantially different time frames required for decisions where factfinding by the Office of Hearings and Appeals is required and for those where such factfinding is not required. It is expected that the Committee would issue its decision expeditiously.

Section 129.16 Suspension and Termination of the Cooperative Agreement.

This section has been deleted from these proposed regulations because SBA is presently working with the Office of Management and Budget and other agencies to develop regulations concerning government-wide Suspension and Debarment. Since this and other SBA programs will be subject to those regulations once adopted in final form, SBA will refrain from addressing the subject in these proposed regulations.

Section 129.17 (Redesignated as § 129.16) Small Business Development Centers (SBDCs).

Some commenters expressed the view that, except in three states, SBA is not authorized to fund more than one SBDC per State. Others stated their view that the recipient organization should also be consulted in a case where SBA is considering funding more than one SBDC in a given State. It is SBA's view that, although in most States one SBDC is appropriate, there may be instances where the small businesses of the State are better served by funding more than one. In those instances, SBA would be authorized to fund more than one SBDC. Therefore, the first comment was not adopted. However, SBA is in partial agreement with the second comment and proposes to amend the regulation to permit consultation with an existent SBDC about the respective areas of service, once a decision has been made to fund more than one SBDC in a given State. SBA also proposes to add a requirement to subparagraph (ii) that determinations of service areas must be consistent with the State plans, in States where such plans exist.

Proposed paragraph (3) of subsection (a) addressed the procedure to be used when, during the budget year, an SBDC would like to add a subcenter or satellite location which was not specified in its proposal. The provision is proposed to be amended to clarify that this procedure would be required only for such subcenters funded in whole or in part by Federal funds. In response to public comment that such procedure would unnecessarily stifle service to small businesses through satellite locations, SBA also proposes to delete satellite locations from the application of the provision.

SBA proposes to amend subsection (b) by deleting and adding certain paragraphs as noted below. The paragraph numbering has also been corrected to conform to the changes.

SBA proposes to amend paragraph (2) of subsection (b) to incorporate SBA's policy that each SBDC develop a written conflict of interest policy and advise each employee annually of such policy. This amendment is consistent with some public comment which objected to SBA's proposed definition of conflict of interest and which expressed the view that the term should be defined locally.

SBA proposes to amend paragraph (3) of subsection (b) to permit the SBDC Director to manage other Federal or State programs aimed at assisting small business in a manner otherwise authorized for SBDCs under section 21 of the Small Business Act. It would be encouraged, but not required, that each SBDC State Director make full use of one or more other Federal or State-funded small business development programs. The SBDC State Director would be permitted to manage the program if necessary to make full use of it. However, prior SBA approval would be required before an SBDC State Director could commit to undertake such responsibility.

SBA proposes to add a new paragraph (4) to subsection (b) which addresses the question of an SBDC State Director or any other full-time employee teaching one or more academic courses. SBA's rationale for this policy is discussed above in the section concerning the definition of "full-time employee", § 129.11(i).

Some commenters objected to previously proposed paragraph (7) (new paragraph (8)) which would require daily time and attendance records on all part-time SBDC and subcenter employees and a certification in the quarterly report by the SBDC Director that each full-time employee dedicated 100 percent of his effort during that quarter to the SBDC program. Based on past experience where SBA has had difficulty accounting for the hours worked by some part-time employees, the method set forth in the October 1986 proposed version remains unchanged in this proposal. Both the method adopted for part-time employees and that adopted for full-time employees are consistent with cost principles set forth in the appropriate OMB Circulars.

New paragraph (9) (previously proposed paragraph (8)) is proposed to be amended in response to public comment to eliminate the requirement that satellite locations operate on a 40-hour week basis or during the normal business hours of the recipient organization. The requirement remains unchanged for the Lead SBDC and for the subcenters. SBA proposes this change to accommodate the nature of satellite locations which are often temporary or short-term in nature.

Several commenters asked that SBA clarify the meaning of the term "client awareness" as used in previously proposed paragraph (3) of § 129.17(c). SBA proposes to reword the provision (new § 129.16(c)) to make clear that when publicizing other Federal and State government small business programs which it participates in, the SBDC is required to note that the program is separately or cooperatively funded, as appropriate.

In response to a comment from SCORE/ACE (Service Corps of Retired Executives/Active Corps of Executives), a separate SBA management assistance delivery program, SBA proposes to amend paragraph (4) of subsection (c) by deleting references to SCORE/ACE participants which inaccurately characterized them as resources of the SBDC.

Several commenters also objected to a provision of paragraph (4) which required the SBDC Director to *ensure* that resources funded through the SBDC were not providing services identical to those otherwise provided to their service area. The commenters believed that an absolute guarantee would be impossible for an SBDC Director to make. The regulation is proposed to be amended to require the SBDC Director to make a good faith effort to determine that duplication is not occurring with SBDC funded services.

The same comment applies to paragraph (1) of subsection (d), Services. SBA proposes to amend that provision in an identical manner.

SBA proposes to further amend subsection (d) to delete a reference to publicity, which is addressed in

subsection (e) of this section, and to clarify the requirements: (1) That training funded by the Cooperative Agreement not duplicate other training in the service area, and (2) that, prior to beginning the training, the SBDC submit for the approval of the Project Officer a statement describing the nature and extent of training that was not anticipated in the Cooperative Agreement, but will be funded in whole or in part by SBDC program funds.

A few commenters recommended the deletion of previously proposed paragraph (9) (new paragraph (10)) which is concerned with organizing vacation schedules to maintain the operations of the SBDC and subcenters. SBA believes that consistent staffing is important to the quality operation of an SBDC network and therefore, has not adopted the recommendation.

SBA proposes to add a new subsection (e) which would require all publicity relating to SBDC funded activities to prominently list SBA as a funding agency and would describe other publicity requirements. Several commenters noted that provisions of the October 1986 proposed rule dealing with training incorrectly included more generalized requirements for publicity. SBA has created this new subsection to correct that oversight.

SBA received a few comments on previously proposed paragraph (e) (new paragraph (f)), Research. One comment noted that research projects do not always present themselves during the budgeting cycle of the SBA. Another comment found the requirement that the SBDC review the national research projects to avoid duplication to be impossible to satisfy as there is no centralized record of such projects at this time. SBA proposes to adopt both of these comments and to amend the proposed regulation accordingly.

Section 129.17 (previously designated § 129.18) SBDC Clients.

Several commenters objected to the paperwork burden that would result from subsection (a), Eligibility, which would require the SBDC to ensure that it served only small businesses. In the interest of minimizing the paperwork requirements to the extent possible, SBA proposes to amend subsection (a) to prohibit an SBDC from knowingly providing assistance to a business which is not considered small under SBA's regulations (13 CFR Part 121) and to permit the SBDC State Director to refer a questionable case to the appropriate Regional Office for a size determination if the Regional Administrator deems it appropriate.

Some commenters suggested that SBA amend proposed subsection (b) to emphasize the role of the annual Program Announcement and the negotiation process which occurs prior to issuance of the Cooperative Agreement. SBA proposes to adopt this comment and to amend subsection (b) accordingly.

Section 129.18 (previously § 129.19) Advisory Boards.

SBA received several comments concerning Advisory Boards. One commenter did not believe that each SBDC should be required to establish a separate advisory board it another body in the State was available for a similar purpose. Several commenters did not feel it was appropriate to require an SBDC to seek a member of SBA's SCORE/ACE organization to participate in its State SBDC advisory board.

For the following reasons, SBA did not adopt the first comment, but proposes to adopt the second comment concerning advisory boards: First, SBA believes that an advisory board which has as its sole purpose providing advice to the SBDC network in its State will have a greater and more beneficial impact on the operations of the program than one which has more diverse issues as its focus. Second, although SBA encourages cooperative efforts among all of its program participants, SBA agrees that such relationships need not, in this instance, be the subject of regulations.

Section 129.19 (previously § 129.20) Financial Aspects of the Program.

Several commenters suggested that SBA remove due dates from subsection (a) Budgeting, and allow them to be contained in the program announcement for greater flexibility. SBA has not adopted this comment. SBA believes that the public, including SBDCs, should be apprised of submission dates which must be met to ensure timely funding of an SBDC.

Some commenters were concerned that the October 1986 proposed regulation did not require the Office of Procurement and Grants Management (OPGM) to issue a continuation of funding in a situation where timely refunding of a Cooperative Agreement will not occur through no fault of the SBDC. Others suggested that two weeks notice of refunding was insufficient for planning purposes. In addition, a few commenters objected to the letter of continued funding lapsing in 120 days from issuance, citing certain instances where the funding should continue beyond the 120 days.

After reviewing these comments, SBA proposes to make the following changes to paragraph (a)(1) of redesignated § 129.19, Budget Proposal. Subsection (a) is proposed to be reworded to require a letter of continued funding to be issued and received at least two weeks prior to the end of the budget period where all approvals have been received by OPGM in a timely fashion. More advance notice would not be required because OPGM would be able to issue a notice of award in the time remaining in the budget period if more than two weeks was available for processing. SBA also added a provision permitting the letter of continued funding to remain in effect past 120 days where SBA and the SBDC are in the process of resolving a conflict or a dispute.

SBA proposes to amend the general requirements section to reference the Program Announcement concerning certain costs and to delete provisions concerning those costs becuse the requirements are set forth in the Program Announcement.

Subparagraph (vi), SBDC and Subcenter Closures, has been redesignated §129.16(b)(11) but otherwise remains unchanged from the previously proposed rule.

Some commenters suggested that SBA amend redesignated § 129.19(a)(3), Transfer of Funds, to incorporate proposed revisions to applicable OMB Circulars on the subject. Since proposed amendments to the appropriate OMB circulars may change significantly before they are finalized, SBA proposes to retain the requirements of the existing circulars and to make appropriate changes when final OMB revisions are published.

Redesignated § 129.19(a)(4), Carryover of Funds (Unobligated, unexpended Federal dollars) is proposed to be amended in subparagraphs (i), (iii), and (iv) for clarity.

Some commenters suggested that redesignated § 129.19(b) be amended to refer only generally to the statutory funding formula because it may be subject to change. SBA proposes to adopt that suggestion.

Some commenters noted that § 129.19(b)(2) (as redesignated) was not consistent with agency policy on cash match. This inconsistency was inadvertent and has been corrected in this proposed rule.

This paragraph is proposed to be further amended to accommodate the view expressed by several commenters that certain state appropriation cycles do not permit verification of cash match prior to submission of a timely SBDC budget proposal, or in some cases, prior

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to the first day of the budget period. The regulation is proposed to be amended to require such verification prior to the first day of the budget period where possible, and where the state budget cycle would not permit total compliance by the first day of the budget period, the revised regulation would require verification of matching funds prior to the use of the Federal funds to which the match relates. For example, in situations where a state legislature does not appropriate until March and the SBDC is on a calendar year budget, the SBDC would be expected to submit a budget proposal in March of the previous year and would be able to verify only as much match from the state as was appropriated until March of the following year. Under the revised proposal, the SBDC would be required to verify the remainder of the match as soon as the state's budget cycle permits, but in no case would the SBDC be authorized to expend more Federal funds than it had matched on a one to one basis.

Some commenters expressed their view that an SBDC should be able to use verified spent and unspent overmatch to offset any confirmed audit disallowance relating to the budget year in which the overmatch occurred. The October 1986 proposed regulation permitted only verified unspent overmatch to be used for such purposes. Since SBA wishes to encourage overmatching in the SBDC program, the suggestion of the commenters is proposed to be adopted and § 129.19(b)(2), as redesignated, is proposed to be amended accordingly.

Some commenters objected to SBA's inclusion of impermissible source of matching funds in the regulation (§ 129.19(b)(vi)) because they are listed in the pertinent OMB Circulars. SBA has retained them in this proposed rule because questions regarding these sources have arisen in the past.

The definition of program income, previously found in subparagraph (4)(i) of § 129.20(b), is proposed to be abbreviated to reference the appropriate OMB circulars and is proposed to be included § 129.11, Definitions. SBA, upon internal agency comment, proposes to amend subparagraph (4)(ii) of this subsection, as redesignated, to clarify that income received through cosponsored activities would be considered program income for reporting purposes on Financial Reporting Form 269.

The public response was almost unanimously opposed to the portion of previously proposed § 129.19(b)(5), as redesignated, which would have allowed SBDCs to charge fees for counseling with SBA's prior approval. Therefore, SBA proposes to delete that sentence from the paragraph.

SBA received several comments opposing previously proposed § 129.19(c)(3), Travel, which would have required the employees of the SBDC to abide by the Federal Travel Regulations. Commenters suggested that a more appropriate standard would be the written travel policies of the recipient organization which sponsors the SBDC since the SBDC employees are not, strictly speaking, Federal employees, but rather employees of the sponsoring organization. SBA proposes to adopt this comment and has amended this proposed regulation appropriately. In addition, minor changes are proposed to subparagraph (v) to require proposed out-of-state travel which exceeds the budgeted amount for travel to be submitted to the Project Officer for approval.

Many commenters addressed paragraph (4) of this subsection which concerns dues payments to civic, business, technical and professional organizations. Some objected to SBA's absolute prohibition of SBDC program funds being used to pay dues to organizations that may lobby, citing the benefits to the small business community of the SBDCs' membership in certain types of organizations, such as Chambers of Commerce. To accommodate this concern, subparagraph (v) of the regulation is proposed to be amended to permit up to $250 of dues payments per organization per year without a certification by the SBDC Director or Chief Financial Officer regarding lobbying. SBA recognizes that most such organizations charge minimal membership fees and that, although a small fraction of such dues may be spent for lobbying, it is not administratively feasible to trace such small amounts by their use within each organization.

However, the Agency remains committed to ensuring that the Federal and matching funds dedicated to the program are spent to further program interests in legally permissible ways. Therefore, this proposal would require a certification from the SBDC Director or Chief Financial Officer as a part of the budget submission that organization dues in excess of the minimal threshold would not be used directly or indirectly for lobbying as defined in § 129.11(q) of this regulation.

A few commenters objected to the requirement in proposed subparagraph (iv) of a separate written justification for dues payments exceeding $2,000 per organization per year which are paid with program funds. As stated in the preamble to the previously proposed rule, payments from program funds exceeding $2,000 per year per organization should be separately justified because such payments would represent substantial amounts of program funds which should be spent only to further program purposes consistent with the rules and policies of the SBDC program.

Section 129.20 (previously § 129.21) Evaluation of the SBDC Program.

Some commenters noted that paragraph (2) of § 129.20(b) (as redesignated), Client Control Records, should be amended to require projected client results only for long term counseling clients. For reasons of confidentiality with the small business client, other members of the public objected to paragraph (6) of this subsection relating to which documents retained by the SBDC must be made available to SBA upon request. To prevent such documents from being duplicated by other SBA personnel for reasons unrelated to the SBDC and its assistance, the public suggested that the regulation permit such records to be duplicated for SBDC performance reviews and audit purposes only.

SBA proposes to adopt both suggestions in these proposed regulations.

A few commenters requested a longer time for the final filing date of the quarterly report. SBA has proposed to allow the SBDCs 45 days following the end of the quarter to submit their reports. SBA also proposes to abbreviate paragraph (2) of that subsection. Since most of the requirements are set forth in the Cooperative Agreement with each SBDC, SBA proposes to delete all of the requirements of paragraphs (2) and (3) as redundant of the provisions of the Program Announcement.

In response to several comments on the relationship of the Single Audit Act (31 U.S.C. 7501, *et seq.*), to the audit authority of SBA's Inspector General, SBA proposes to amend redesignated § 129.20(e)(2), Audits, to clarify that, in his or her discretion, SBA's Inspector General may condust financial or compliance audits of an SBDC even where a single audit of the recipient organization has been performed. The Single Audit Act encourages agencies to accept the findings of the single audit team, but does not proscribe agencies from conducting their own audits when deemed necessary.

The paragraph is also proposed to be amended in response to public comment to clarify that the Office of Inspector General would assume the costs of any

audit of an SBDC that it requried the SBDC to have performed by a qualified independent public accountant.

Subparagraph (v) of § 129.20(e)(2) is proposed to be deleted from the final rule as duplicative of subparagraph (iii) of that paragraph.

Some commenters questioned on what basis SBA could know that someone was "about to engate in actions which would constitute a violation of the Small Business Act[* * *." Redesignated § 129.20(e)(3), Investigations, is proposed to be amended to clarify that SBA may conduct an investigation where information is received which indicates that such a violation is about to occur.

SBA proposes to make minor amendments to redesignated § 129.20(f) to more accurately reflect the scope of on-site reviews of SBDCs.

Compliance With Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Paperwork Reduction Act (44 U.S.C. ch. 35) and the Administrative Procedure Act (5 U.S.C. 552 et seq.)

Executive Order 12291

For the purposes of E.O. 12291, SBA has determined that this proposed rule is not a major rule because it would not, if adopted in final form, have an annual effect on the economy of $100 million or more. The total SBDC budget for FY 1987 was $35 million. The non-Federal equal matching requirement added another $35 million to the program budget. Although many of the SBDCs are partially funded by non-Federal contributions over and above the matching requirement, it is unlikely that those contributions would equal the $30 million or more needed to exceed the $100 million threshold of a major rule.

Moreover, this rule would not be likey to result in a major increase in costs for consumers, individual industries, Federal, States, or local government agencies, or geographic regions, or to have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based businesses to compete with foreign-based businesses in domestic or export markets. Therefore, it would not be a major rule for purposes of E.O. 12291.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA), SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact directly on a substantial number of small entities. If adopted in final form, these regulations would set forth the policies and operational requirements of the SBDC program, which affect only the SBDCs or their sponsoring organizations directly. The vast majority of entities potentially affected by this rule would not be considered small for purposes of the Regulatory Flexibility Act.

In a 1985 case, *Mid-Tex Elective Cooperative v. Federal Energy Regulatory Commission*, the U.S. Court of Appeals for the District of Columbia held that indirect impact on small business is not properly considered for purposes of the FRA. 773 F.2d 327, 340–343 (1985).

Paperwork Reduction Act

All reporting and recordkeeping requirements of this regulation which require approval by the Office of Management and Budget under the Paperwork Reduction Act are published in Part 133 of this title. Anyone wishing to comment on such requirements may send written comments as specified under the ADDRESS caption of this rule, or to Robert Neal, SBA Desk Officer, Room 3228 New Executive Office Building, 726 Jackson Place, Washington, DC 20503.

Administrative Procedure Act

SBA is publishing this regulation in proposed form to afford the public a 30-day period in which to comment on changes made to the rules proposed in October 1986. Although the issues raised by this revised proposed rule were presented in the October 1986 proposed rule and many public comments were adopted, SBA wishes to allow further opportunity for public input.

List of Subjects in 13 CFR Part 129

Active Corps of Executive (ACE), Service Corps of Retired Executive (SCORE), Management assistance, Small Business Development Centers, Small Business, Federal assistance, Volunteers.

Accordingly, pursuant to the authority contained in section 5(b) and 21 of the Small Business Act (15 U.S.C. 634(b) and 648), Part 129, Title 13 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 129 continues to read as follows:

Authority: Secs. 2, 7(i), 7(j), 8, and 21 of the Small Business Act, as amended (15 U.S.C. 631, 636(i), 636(j), 637(b), 648); section 302(c)(2), Domestic Volunteer Service Act, Pub. L. 93–113, 87 Stat. E.O. 11871, dated July 18, 1975.

2. Sections 129.1 through 129.5 are designated as Subpart A—General and §§ 129.6 through 129.9 are designated as Subpart B—Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE)—Payment of Out-of-Pocket Expenses to Volunteers.

3. A new Subpart C is added to read as follows:

Subpart C—Small Business Development Centers (SBDCs)

Sec.
129.10 Introduction.
129.11 Definitions.
129.12 Entities eligible to establish an SBDC.
129.13 Allocation of funds.
129.14 Application procedure.
129.15 Cooperative Agreement.
129.16 Small Business Development Centers (SBDCs).
129.17 SBDC clients.
129.18 Advisory boards.
129.19 Financial aspects of the program.
129.20 Evaluation of the SBDC program.

Subpart C—Small Business Development Centers (SBDCs)

§ 129.10 Introduction.

(a) The Small Business Development Center (SBDC) Program is a Small Business Management and Technical Assistance Service being approved under the program authority and responsibility of the SBA. The program is a partnership between the SBA and the State-endorsed organizastion receiving SBA appropriated funds as well as other funds being provided by other sources. It is a decentralized program where SBA delegates operational management of the program to SBA regional and district office personnel. The implementation of the program is accomplished through a Cooperative Agreement wherein SBA and the SBDC negotiate the types of services to be performed by the SBDC during a given time period.

(b) *Purposes.* (1) The SBDC program is designated to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity, and management improvement, thereby assisting in furthering economic development.

(2) SBDCs are intended to be responsive to local needs in providing assistance to the small business community as mutually identified by the SBA Project Officer and the SBDC State Director.

(c) *Relation of an SBDC to SBA.* The SBDC Program shall be under the general management and oversight of SBA, but with recognition that a partnership exists between SBA and each SBDC for the delivery of assistance to the small business community. However, the final authority for the

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selection of SBDCs, the terms of the Cooperative Agreement, and the establishment of program policy rests with SBA.

§ 129.11 Definitions.

(a) *Applicant Organization or Applicant.* That entity which applies to sponsor a lead SBDC, as defined in paragraph (q) of this section. After funding is approved and the entity enters into a Cooperative Agreement with SBA, the applicant organization is then referred to as the recipient organization.

(b) *Budget period.* Generally, a 12-month period in which expenditure obligations are incurred, which coincides with either the calendar year or the Federal fiscal year and which is annually reviewed for renewal upon submission and subsequent negotiation of a proposed Cooperative Agreement and upon appropriation of the necessary funds by Congress.

(c) *Cash match.* Non-Federal funds allocated specifically to the SBDC equaling the Federal contribution and under the direct management of the SBDC State Director or, for accounts relating to subcenters, under the direct management of subcenter directors. At no time may cash match include indirect costs, overhead costs or in-kind contributions. Cash match may include direct costs committed by the applicant organization (personnel services, fringe benefits, consultants, etc.), only to the extent that such costs are committed as part of the specific direct line item costs verified by the certifying representative prior to funding. Cash match shall not include:

(1) Funds contributed from other Federal sources;

(2) Program income or fees collected from recipients of assistance; or

(3) Amounts committed by the applicant organization for unidentified and/or contingent costs in the budget proposal.

(d) *Conflict.* For purposes of this subpart, conflict means any preaward disagreement or problem between an SBDC, an applicant organization or a recipient organization and SBA regarding any matter relating to the SBDC application or application process.

(e) *Direct costs.* See definition set forth in Office of Management and Budget (OMB) Circulars A–21, A–87 or A–122, as appropriate.

(f) *Dispute.* For purposes of this Subpart, dispute means any disagreement or problem between an SBDC or the recipient organization and SBA concerning one or more elements of the SBDCs Cooperative Agreement.

(g) *Financial disagreement.* For purposes of this subpart, financial disagreement means a problem or disagreement relating to the budget proposal of an SBDC or applicant organization which arises prior to the award of the Cooperative Agreement. Upon issuance of the Cooperative Agreement, any disagreement relating to the SBDC's budget will be treated as a dispute. (See § 129.11(f).)

(h) *For-profit organization.* Any entity organized for profit.

(i) *Full-time employee.* An employee of the recipient organization who is assigned to work at the SBDC 40 hours per week or the full customary work week of the recipient organization.

(j) *Grants/Cooperative Agreement Appeals Committee.* The six-member Committee responsible for, among other things, resolving appeals arising in disputes between a recipient organization or an SBDC and the SBA after the Cooperative Agreement for that budget period has been awarded. The membership of the Committee is designated by the Administrator. (See, Disputes, § 129.15(c).)

(k) *Grants Management Branch Chief.* The Chief of SBA's Grants Management Branch, who supervises Grants Management Officers. The Grants Management Branch Chief is the person responsible for overseeing fiscal compliance of the SBDC Program with the terms of the Cooperative Agreement.

(l) *Grants Management Officer.* A certified specialist in SBA's Grants Management Branch within the SBA Office of Procurement and Grants Management who awards the Cooperative Agreement and oversees the implementation and operation of Federal grants involving SBA.

(m) *Indirect costs.* See definition set forth in Office of Management and Budget (OMB) Circulars A–21, A–87 or A–122, as appropriate.

(n) *In-kind contributions.* These are valued according to OMB Circulars A–102 or A–110, as appropriate.

(o) *Key SBDC employee.* Any employee of an SBDC having managerial, oversight or substantive control over the activities of the SBDC or any SBDC subcenter.

(p) *Lead SBDC.* The entity which serves as the administrative headquarters of the SBDC network for the purpose of coordinating the delivery of assistance to the small business community. A lead SBDC may also function as a subcenter and provide assistance directly to the small business community.

(q) *Lobbying.* (1)(i) Any attempt to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(iii) Any attempt to influence:

(A) The introduction of Federal or State, legislation; or

(B) The enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or state or local legislature (including efforts to influence State officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Any attempt to influence:

(A) The introduction of Federal or State legislation, or

(B) The enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any demonstration, march, rally, fund-raising drive, lobbying campaign or letter writing or telephone campaign; or

(v) Any legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in proscribed lobbying.

(2) However, the following activities are excepted from the definition of lobbying:

(i) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract, or other agreement through hearing testimony, oral or written statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under

this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(ii) Any lobbying proscribed by paragraph (q)(1)(iii) of this section to influence State legislation in order to obtain matching contributions, to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(iii) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

(r) *Overmatched amount.* That amount of indirect, in-kind or cash contributions by the recipient organization or by a third party to the recipient organization which exceeds the required non-Federal contribution to the program budget of an amount equal to the Federal grant.

(s) *Part-time employee.* An employee of the recipient organization who is assigned to work at the SBDC less than 40 hours per week or less than the full customary work week of the recipient organization.

(t) *Program announcement.* SBA's annual publication of items which an applicant organization must address in its application in order to be considered for SBDC funding by SBA.

(u) *Program income.* Gross income earned by the recipient from federally supported activities, as defined in OMB Circulars A–102 and A–110.

(v) *Program Officer or SBA Program Officer.* The person in SBA's Central Office of SBDCs assigned to oversee the operations of certain SBDCs.

(w) *Project Officer or SBA Project Officer.* Generally the person in the SBA district office designated by the SBA District Director and appointed by the SBA Office of Procurement and Grants Management who monitors and oversees the Cooperative Agreement and the ongoing operations of the SBDC located in the geographic area served by the district office. The Project Officer is usually the Assistant District Director for Business Development within a particular district office, but can also be an SBA employee directly responsible to the District Director. In circumstances where the SBDC will cover multiple SBA districts, an SBA employee who reports to someone other than the district director may be designated the Project Officer, with concurrence from the Deputy Associate Administrator for Business Development/Office of Small Business Development Centers.

(x) *Project period.* The period of time beginning on the day of award and normally continuing in twelve (12) month increments until terminated by SBA. A project period will normally consist of a number of budget periods.

(y) *Qualified independent public accountant.* Certified public accountant or public accountant licensed on or before December 31, 1970, or persons working for a certified public accounting firm or a public accounting firm licensed on or before December 30, 1970.

(z) *Recipient organization.* That organization which enters into a Cooperative Agreement with SBA after applying to be admitted into the SBDC Program.

(aa) *Resources.* SBDC lead center, subcenter or satellite staff, as well as professional consultants, Chambers of Commerce, members of professional associations, qualified student counselors, SBI student teams, university faculty, volunteers or other Federal, State or local personnel qualified to offer small business assistance.

(bb) *Satellite.* Location other than a subcenter used by an SBDC network for program delivery.

(cc) *SBDC Network or SBDC Program.* The combination of the lead SBDC and the SBDC subcenters and satellite locations.

(dd) *SBDC State Director.* Regardless of the area of service of the SBDC, the person with the highest full-time management position within the organization of any SBDC. As part of his/her full time management responsibilities, the SBDC State Director may manage other Federal and State government programs that are concerned with aiding small business in a manner otherwise authorized for SBDCs under the Small Business Act. Implementation of the Program and ultimate responsibility for the operation of an SBDC rests with the SBDC Director.

(ee) *SBDC Subcenter.* An entity which is directly responsible to the lead SBDC for the delivery of assistance to the small business community. A written agreement must govern the relationship between a lead SBDC and its subcenter.

(ff) *Subcenter Director.* The person with the highest management position within an SBDC subcenter. The Subcenter Director runs the day-to-day operations of an SBDC subcenter and is programmatically responsible to the SBDC State Director.

(gg) *Working days.* For purposes of this subpart, those days excluding Saturdays, Sundays and those holidays designated in the Cooperative Agreement.

§ 129.12 Entities eligible to establish an SBDC.

(a) The following entities are eligible to enter into a Cooperative Agreement with the Small Business Administration for the purpose of establishing or continuing the operation of a Small Business Development Center:

(1) Any State government or any of its agencies;

(2) Any regional entity;

(3) Any State-chartered development, credit or finance corporation;

(4) Any public or private institution of higher education;

(5) Any land-grant college or university;

(6) Any college or school of business, engineering, commerce, or agriculture;

(7) Any community or junior college; or

(8) Any entity formed by two or more of the above entities.

(b) SBDC subcenters are not required to meet the eligibility requirements of a lead SBDC.

§ 129.13 Allocation of funds.

(a) The Deputy Associate Administrator for Business Development/SBDCs shall be responsible for the allocation of program funds. The DAA/BD/SBDC will consider recommendations by each Regional Administrator for the allocation of funds within the states within his/her region and from appropriate District Directors. Funds shall be allocated based on applicants' abilities to provide services in the following service categories:

(1) Maintainance of existing services to areas already served by SBDCs,

(2) Provision of service to new areas in States and regions already serviced by SBDCs,

(3) Increases in services provided to areas already served by SBDCs established within the previous three years,

(4) Increases in services to areas already served by SBDCs established prior to the previous three years,

(5) Establishment of service to areas in States and regions not already serviced by SBDCs.

(b) The most important service category is maintenance of existing services to areas already served. The other service categories shall be weighted as deemed appropriate by the DAA/BD/SBDCs.

(c) In determining the allocation of funding among applicants for funding and refunding, significant factors shall include:

(1) Whether or not previous Federal funding has reached the statutory

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funding cap (the greater of $200 thousand or the pro rata share of a $65 million program based on the population to be served by the SBDC as compared to the total population of the United States);

(2) The ability of the applicant to contribute matching funds;

(3) The amount or precentage of total funds allocated to each of the service categories in the preceding fiscal year;

(4) The amount of funding per capita already provided, or to be provided, in the areas served; and

(5) For applicants who have been previously funded, the quality of the performance in the previous year.

§ 129.14 Application procedure.

(a) *General.* (1) An eligible entity may apply to participate in the Small Business Development Program by submitting an application and three copies of the proposal to the SBA district office covering the State or region in which the applicant proposes to provide service. The application shall include a signed Application for Federal Assistance (SF 424). The application shall not be inconsistent with any area-wide plan providing management assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. The application shall indicate what officials are authorized to amend the application with regard to all or particular parts of such application.

(2) An application for the initial funding only of an SBDC must include a letter of endorsement by the Governor of the State in which the SBDC will operate or his delegatee.

(b) *Contents—General.* The application shall set forth the eligible entity or entities participating in or to participate in the program, a list of the centers and subcenters by name and address, the geographic areas to be serviced, the resources to be used, the services that will be provided, the method for delivering the services, including a description of how and what extent academic, private and public resources will be used, a budget, a State or Regional Advisory Board and other information set forth in the Program Announcement.

(c) *Amendment.* The applicant should make every effort to ensure that the application is complete when filed. Authorized SBA officials at the district, regional and Central Office levels may request that the applicant amend an application. At any time, as SBDC may file an amendment for SBA's review. Any amendment shall be signed by the official authorized to do so on the regional application. No application amendment submitted after the Cooperative Agreement has been entered in effective until it is incorporated into the Cooperative Agreement by the Grants Management Officer.

(d) *Competing applications.* (1) Except as provided in paragraphs (d)(1)(i) through (viii) of this section, an existing SBDC will be refunded to provide service to an area it is already servicing in preference to a competing application provided that it has operated for less than five years. An SBDC will not be refunded if there has been clear showing of nonperformance, poor performance, a disregard for or violation of these regulations, or any of the following reasons:

(i) A willful or material failure to perform under the Cooperative Agreement under other public agreements or under these regulations.

(ii) Conduct within an SBDC indicating a lack of business integrity or honesty which affects the present responsibility of that SBDC.

(iii) Conviction of or civil judgment against the SBDC Director, any subcenter Director or any key SBDC employee for:

(A) Fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public or private agreement; or

(B) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction or justice, receiving stolen property, or theft.

(iv) As defined by the SBDCs written conflict of interest policy, a conflict of interest or self-dealing by the SBDC Director, any subcenter Director, or any key employee.

(v) Improper use of letter of credit.

(vi) Failure of the SBDC Director to work at the SBDC on a full-time basis.

(vii) Failure of an SBDC, its subcenters, or the recipient organization to consent to audits or investigations or to maintain required documents and records.

(viii) Any other cause not otherwise specified which seriously and adversely affects the operation or integrity of an SBDC or the SBDC program

(2) Where an existing SBDC has operated five years or more, where an existing SBDC will not be refunded, or where no SBDC has been funded and SBA receives more than one application for a particular region or State, the relevant SBA District Office shall decide which application to pursue based upon which application more closely responds to the needs of the small business community in the area to be served by that SBDC. Where the applications cover more than one SBA district, the appropriate SBA regional office shall make the decision in consultation with the Deputy Associate Administrator for Business Development/SBDCs.

(3) Where two or more applications are received for the same geographical area, the Project Officer shall encourage agreement between the competing applicants to establish and operate an SBDC through their combined efforts. Should agreement not be reached, paragraph (d)(2) of this section applies.

(e) *Decisions not to refund previous program participant.* In situations where the SBA District Office has sufficient evidence of an SBDC's nonperformance poor performance, a disregard for or violation of these regulations or any of the reasons set forth in § 129.14(d)(1) (i) through (viii), the SBA District Office shall notify the SBDC State Director and any other appropriate official of the recipient organization of its intention not to refund the SBDC. This notification must be forwarded to the recipient organization no later than five months prior to the expiration of the current Cooperative Agreement then in existence. However, when the District Office has sufficient evidence of an SBDCs disregard of or violation of these regulations or of any other cause(s) listed in § 129.14(d)(1) (i) through (viii), the SBA District Office may waive the notification period with the concurrence of the Regional Office, the Deputy Associate Administrator for Business Development/SBDCs, and the Grants Management Officer.

(1) This notification shall specifically cite the reasons for the proposal not to refund the SBDC and allow the recipient organization a 60-day period within which to make changes and adjustments in its operations to correct the problem cited in the notice, and to report to the SBA District Office officially, in writing, on the results of such changes.

(2) If the recipient organization is unwilling or unable to resolve the specific problem areas to the satisfaction of the SBA district office within the 60-day time frame, the Project Officer shall describe, in writing, any issue raised and clearly state the positions of his office and the SBDC. The Project Officer shall refer such description and any supportive documentation to the appropriate regional office within ten calendar days of the close of the 60-day period.

(3) If the regional office cannot resolve the matter within 15 calendar days of receipt, it shall refer the issue and its position in writing along with any

supporting documentation to the Deputy Associate Administrator for Business Development/SBDCs for final resolution.

(4) The Deputy Associate Administrator for Business Development/SBDCs or his/her delegatee shall transmit the final resolution in writing to the recipient organization, the SBDC State Director, the Project Officer, the Grants Management Officer and other appropriate SBA Regional and District Office personnel within 15 calendar days of receipt. If the Deputy Associate Administrator for Business Development/SBDCs or his/her delegatee determines that available evidence clearly indicates nonperformance, ineffective performance, or an unwillingness to implement suggested changes to improve performance, the SBA district office shall pursue proposals from other organizations interested in applying for SBDC designation. The SBDC shall have sixty days to conclude operations and to submit close-out documents to the appropriate SBA District Office.

(5) Provided that competing applications are being accepted, nothing herein precludes a subcenter of the previously funded recipient organization from applying for designation as the recipient organization.

(f) *Notice of applications under Executive Order 12372.* Applicants submitting proposals to SBA for operation of an SBDC are bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs."

(1) To ensure compliance with this Executive Order and SBA's regulations pursuant thereto (13 CFR Part 135), SBA will publish a Notice in the **Federal Register** to provide public awareness of the pending application of presently existing SBDCs for refunding and of the pending application for funding of proposed SBDCs. The Notice shall describe the SBDC program, highlighting the area proposed to be served by the applicant and the proposed amount of funding.

(2) A copy of such Notice will be simultaneously furnished to each affected State single point of contact, which has been established under Executive Order.

(g) *Application review*—(1) *District Office.*

The responsibility of assuring that an application is acceptable rests initially with the district office having jurisdiction in the State or region which the SBDC proposes to serve primarily. The district office in that State or region shall request and obtain such amendments to the application as are necessary or desirable to ensure that: (i) The requirements of these regulations and SBA policies are met, and (ii) the SBDC will respond to the needs of small businesses in the area to be served by the SBDC in a cost effective manner and in concert with other small business assistance efforts. Such needs will be determined by the appropriate SBA District Office after consultation with the SBDC State Director. Once the application is complete to the satisfaction of the district office, the district office shall forward its recommendation, either to approve or disapprove, in writing to the appropriate Regional Administrator, and shall submit the application, as amended, for review by that regional office.

(2) *Regional Office.* The regional office shall review the application to determine its conformity with the requirements of the regional operating plans and priorities, the SBDC regulations, and the national policies and priorities of the Agency. The regional office, through the Project Officer in the district office, may request amendments to the application, if necessary, to better accomplish the goals of the program. When the application, as amended, has been thoroughly reviewed by the regional office, that office shall issue a written recommendation to approve or disapprove and shall specify the reasons therefore. The regional office shall forward a copy of the application, the district office's recommendation, and its recommendation to the Central Office for review.

(3) *Central Office.* (i) The Office of SBDCs, in consultation with the Office of General Counsel, shall assure the conformity of the application to the statutory and regulatory requirements, national priorities, and policies of the SBA. The office may request, through the region and district offices, amendments to the application related to such requirements, priorities and policies, if necessary, to better accomplish the goals of the program.

(ii) The Office of Procurement and Grants Management shall negotiate and determine the reasonableness, allowability and allocability of all dollars committed to assure the conformity of the application with the statutory, financial and regulatory requirements, OMB Circulars, and procurement and grants management policies which it administers. It may request amendments to the application related to such responsibilities.

(iii) The Deputy Associate Administrator for Business Development/SBDCs may approve, conditionally approve, or reject any application. If the application is rejected, the Central Office shall simultaneously communicate the reasons therefor to the applicant, the regional office and the district office. If the approval is conditional, the conditions shall be set forth in the Cooperative Agreement. Upon approval or conditional approval, a Cooperative Agreement shall be issued.

(h) Within 30 days of the issuance of a Cooperative Agreement, the State Director, each Subcenter Director and any employee with authority to commit funds must complete and submit SF 912 to SBA's Office of Personnel and Physical Security, Room 203, 1441 L Street, NW., Washington, DC 20416.

(i) *Pre-award audits.* Any SBDC may be subject to a preaward audit prior to the issuance of or continuation of the Cooperative Agreement. All applicant organizations that propose to enter the Program for the first time will be subject to a preaward audit. The purpose of a preaward audit is to verify the adequacy of the accounting system, the allowability of the proposed costs and the proposed matching contribution, including, the source(s) of the matching contributions.

(j) *Conflicts Resolution Policy.* All conflicts will be resolved pursuant to SBA's Conflicts Resolution Policy.

(1) Every effort shall be made to resolve programmatic conflicts at the SBA district office level. The SBDC Director, or proposal developer in the case of a first-time SBDC, shall direct all such questions or conflicts to the SBA Project Officer.

(2) In those infrequent instances in which issues and problems cannot be resolved at the SBA district office level within 15 calendar days, and no agreement has been reached between the parties to extend the resolution period, the issue will be referred, in writing, by the Project Officer or the SBDC Director/proposal developer to the appropriate SBA regional office for resolution. Upon receipt, the Regional Administrator, or his delegatee, shall ensure that good faith attempts had been made by both parties to resolve the issue. If so, the regional office will confer with the SBDC Director's supervisor and attempt to mediate the issue within 15 calendar days of receipt. If not, the regional office will return the issue to the district office for further resolution efforts.

(3) If the regional office and the SBDC Director's supervisor cannot resolve the matter within the specified time, the issue will be referred, in writing, to the

Deputy Associate Administrator for Business Development/SBDCs for final resolution. Upon receipt, the Deputy Associate Administrator for Business Development/SBDCs or his/her delegatee, shall ensure that good faith attempts had been made at the district and regional office levels to resolve the conflict. If so, the Deputy Associate Administrator for Business Development/SBDCs shall confer with the person associated with the SBDC who has supervisory authority over the SBDC Director's immediate supervisor and the SBDC Director to resolve the issue. If not, the Deputy Associate Administrator for Business Development/SBDCs shall return the issue to the appropriate office for further resolution efforts. As soon as practicable, a final decision regarding the conflict is made by the DAA/BD, in writing, to the SBDC and SBA regional and district offices.

(k) *Pre-award financial disagreement.* After 30 days of attempted resolution of a financial disagreement, any applicant that wishes to resolve such disagreement or issue concerning its application must submit a written statement describing the matter to the appropriate Grants Management Officer in the Office of Procurement and Grants Management, with a copy of such statement provided simultaneously to the Project Officer. The Grants Management Officer must issue final written determination to the applicant within 15 calendar days of receipt of the statement. Copies of the determination must be sent to cognizant SBA offices.

§ 129.15 Cooperative Agreement.

(a) *General*—(1) *Description.* Upon approval of the initial or renewal application, the recipient organization and SBA enter into a Cooperative Agreement. The Cooperative Agreement sets forth the programmatic and fiscal responsibilities of the recipient organization and the SBA, and describes the scope of the project to be funded as well as the budget of the program year covered by the Cooperative Agreement. These responsibilities are described in greater detail throughout this part.

(2) Principles for determining administrative requirements are contained in the following Office of Management and Budget Circular and are applicable to the Cooperative Agreement: A–110 (for programs administered by educational institutions and nonprofit organizations), and A–102 (for programs administered by State and local governments).

(b) *Revision to Cooperative Agreement.* A revision to the Cooperative Agreement may be requested in writing, by either the recipient or SBA. Such revision will normally relate to changes in the scope of work, or funding, during a project year. For example, the recipient may wish to transfer dollars from one line item category to another. Should the transfer, together with any other transfers made during that program year, not exceed 5 percent of the approved total budget, prior approval from SBA is not required, however, the SBA Office of Procurement and Grants Management must be notified of the transfer in the quarterly report submitted by each SBDC. Should the amount of transfer exceed 5 percent, either singly or in conjunction with other transfers, then prior SBA written approval and a written revision to the approved budget is required. Any revision to the Cooperative Agreement must have approval of the cognizant SBA field offices and the DAA/SBDC. All revisions shall be issued by the Grants Management Office.

(C) *Disputes.* (1) All communications relating to disputes under the Cooperative Agreement must be transmitted to SBA's Office of Procurement and Grants Management, with a copy of such transmittal provided simultaneously to the Project Officer.

(2) *Disputes resolution procedure.* (i) Any recipient organization or SBDC that wishes to resolve a dispute concerning one or more elements of its Cooperative Agreement must submit a written statement describing the subject of the dispute together with evidence of such dispute to the appropriate Grants Management Officer in the Office of Procurement and Grants Management, with a copy of such statement and evidence to the Project Officer. The Grants Management Officer must respond to such dispute within 30 calendar days of receipt of the descriptive statement.

(ii) If the recipient organization or the SBDC receives an unfavorable decision regarding the dispute, they may make a final appeal to the SBA Grants/Cooperative Agreement Appeals Committee. The appeal must be received within 30 calendar days of the date of the Grants Management Officer's letter by the Chairman, SBA Grants/Cooperative Agreement Appeals Committee, Room 600, 1441 L Street NW., Washington, DC 20416. A copy of the appeal shall also be sent to the Director, Office of Procurement and Grants Management.

(iii) There is no prescribed form for submission of an appeal. Formal briefs and other technical forms of pleading are not required. However, appeals must be in writing and should be concise and logically arranged. Appeals are required to contain at least the following:

(A) Name and address of appellant;

(B) Identity of the SBA office/program and the Cooperative Agreement/Grant;

(C) A statement of the grounds for appeal, with reasons why the appeal should be sustained;

(D) Any documents or other evidence in support of the appeal not previously furnished the Grants Management Officer;

(E) A request for the specific relief desired on appeal; and

(F) A statement as to whether or not a hearing is requested, and if requested, the reasons why a hearing would materially assist in resolving the dispute. Requests for hearing will not usually be granted unless significant material facts are substantially in dispute.

(iv) If a request for a hearing is denied, or no request is made, the Committee will reach a decision on the merits of the appeal as soon as practicable. The Committee may solicit additional information or material before reaching its decision.

(v) If a request for a hearing is granted, the Committee will issue appropriate written instructions to the appellant pertaining to the hearing. Following the hearing, the Committee will reach a decision as soon as practicable. The Committee may solicit additional information or material before reaching its decision.

(vi) The Chairman, with advice from the Office of General Counsel, will prepare a written final decision to be transmitted to the appellant with a copy to the Director, Office of Procurement and Grants Management.

(vii) *Expedited Dispute Appeal Process.* When a dispute which may affect refunding arises within 120 days of the end of the budget period, the Committee, in consultation with the Office of Procurement and Grants Management, by an affirmative vote of two members, may agree to shorten all response times as necessary to reach final resolution of the dispute before the timely issuance of a new Cooperative Agreement. At any time during the appeal process, either the appellant or the Project Officer may submit a written request to use an expedited process.

§ 129.16 Small Business Development Centers (SBDCs).

(a) *Area of service and location of SBDCs*—(1) *Area of service.*

(i) The area of service for any SBDC shall be the State in which it is located. In exceptional circumstances, more than one SBDC may be located in any State

in which, in the determination of the Deputy Associate Administrator for Business Development/SBDCs, in consultation with the appropriate Regional Administrator, it is necessary or beneficial to effectively implement the program and to provide services to all interested small businesses.

(ii) Where more than one SBDC is to be located in a given State, the Deputy Associate Administrator for Business Development/SBDCs, in consultation with the Regional Administrator and the recipient organizations, shall determine in writing the general geographic areas to be served by the SBDCs in that State. Such determination shall be consistent with the State plan. Each SBDC shall provide assistance and services to those small businesses of the State located in the general geographic area to which it is assigned.

(iii) According to the terms of the Cooperative Agreement, certain SBDCs may be permitted by the Deputy Associate Administrator for Business Development/SBDCs, after consultation with the appropriate Regional Administrator, to provide advice, information and assistance to small business concerns located outside the State in which the SBDC is located if the small business is located within a close geographic proximity to the lead SBDC or an SBDC subcenter.

(2) *Location of lead SBDCs, subcenters and facilities.* The facilities and staff of each SBDC network shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the network is intended to serve.

(i) Lead SBDCs and subcenters should be structured to serve major small business population areas of the State.

(ii) SBDC program outreach shall be established by all SBDCs in such locations as mutually determined by the SBDC Director and the SBA Project Officer to provide maximum accessibility and benefits to the small business community. The proper location of the SBDC and subcenters will be annually reviewed by the SBDC Director and Project Officer and the addresses and telephone numbers of existing or new locations will be noted in the annual Cooperative Agreement. Subcenters and satellite locations should be primarily located in the heart of some local communities.

(3) *Subcenters not in the application.* A request for any subcenter not in the original proposal and to be funded in whole or in part by Federal funds must be submitted as an amendment to the Cooperative Agreement to the appropriate SBA district office, and shall be processed according to the procedures used for approving amendments to applications.

(b) Staff and access requirements. (1) Each SBDC shall operate as an independent organization within the receipt organization.

(2) Each SBDC shall have—

(i) A full-time staff, including a full-time Director;

(ii) Access to business analysts to counsel, assist, and inform small business clients;

(iii) Access to technology transfer agents to provide state of the art technology to small business through coupling with national and regional technology data sources;

(iv) Access to information specialists to assist in providing information searchers and referrals to small business;

(v) Access to part-time professional specialists to conduct research or to provide counseling assistance when the need arises;

(vi) Access to laboratory and adaptive engineering facilities; and

(vii) A written conflict of interest policy and shall advise each employee of such policy annually.

(3) The SBDC Director shall, consistent with the Cooperative Agreement and the budget approved therein by SBA, have the authority to make expenditures under the SBDCs budget, including any funding from other Federal or State programs. The SBDC Director shall implement and manage the activities and services of the SBDC program, and, where applicable and approved by SBA, such other Federal and/or State programs that are concerned with aiding small business in a manner otherwise authorized for SBDCs under the Small Business Act.

(i) The Director's position shall be the highest full-time management position established within the organization of any SBDC.

(ii) In a university setting, the SBDC Director shall be directly accountable for the performance of the SBDC to an official of the university at a Dean's level or higher.

(iii) In a nonuniversity setting, the SBDC Director shall be directly accountable for the performance of the SBDC to an official of the state-endorsed organization at a level equivalent to or higher than that of a Dean at a university.

(4) Any full-time employee may teach one course during non-business hours of the SBDC; however, prior approval by the Project Officer is required to permit a full-time employee to teach more than one course or to teach during business hours of the SBDC.

(5) All paid SBDC staff positions shall be limited to those essential to operate the program. Essential positions are those positions required to:

(i) Direct or maintain the efficient operation of the program;

(ii) Provide counseling and training to small business clients when other resources providing these services are not readily available; or

(iii) Further individual program objectives.

(6) All new SBDCs must submit to the district office a current résumé of each key employee as part of its application. At least annually, ongoing SBDCs shall submit a roster of their key employees, and résumés of new key employees only.

(7) SBDCs shall not establish administrative support positions which cannot be justified to the Project Officer by the services to be provided.

(8) The SBDC shall maintain daily time and attendance records on all part-time SBDC and subcenter employees. The SBDC State Director shall certify in the quarterly report that each full-time SBDC employee dedicated 100 percent of his effort during that quarter to the SBDC program.

(9) Lead SBDCs and subcenters shall operate on a 40 hour week basis, or during the normal business hours of the recipient organization, throughout the calendar year provided that such business hours are adequate to insure the services are delivered to the small business community.

(10) Vacations shall be arranged so that the continuity of SBDC and subcenter operations is not disrupted, except where there is a total shutdown of the host organization's facilities where the SBDC or subcenter is located (i.e., shutdown of administrative officers, public services, utilities, etc.)

(11) *SBDC and subcenter closures.* (i) The applicant SBDC is responsible for enumerating all anticipated center and subcenter closures whether for holidays or shutdown of the host organization, in its annual formal proposal. Otherwise, the SBDC must submit such dates to the Project Officer as soon as possible.

(ii) Closures above and beyond those enumerated in the proposal shall result in an appropriate reduction of the SBDCs budget, except for unique unanticipated circumstances (e.g., snow days, building power or heat failure).

(A) The SBDC Director must notify the appropriate SBA Project Officer in the quarterly report of any SBDC or subcenter closure beyond those enumerated in the proposal. If the reason for the closure is a unique unanticipated circumstance, the specific

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rationale for the closure must be furnished in the written notice.

(B) If the closure will be for an extended period of time (more than three days), the SBDC Director must notify the Project Officer within 24 hours.

(c) *Resources.* (1) SBDCs shall concentrate on developing and coordinating the unique resources of the university system, the private sector, and Federal, State and local governments to provide services to the small business community which are not readily available from existing small business support systems in the SBDC service area.

(2) Each subcenter shall be governed by a written agreement with the SBDC. Such agreement shall contain all of the basic terms and conditions of the Cooperative Agreement.

(3) To the extent possible, SBDCs shall make full use of other Federal and State government programs that are concerned with aiding small business. Such programs must be kept separate in funding and recordkeeping. Moreover, publicity of such programs must note that they are separately or cooperatively funded, as appropriate.

(4) SBDC services shall be provided to small businesses:

(i) with the knowledge that many entities both public and private also assist small business in various ways and that better coordination in and through SBA will yield better results for small business. Although the type of resources will differ from location to location, SBDC personnel should make themselves aware of services being provided by such resources as professional consultants, Chambers of Commerce, members of professional associations, qualified student counselors, SBI student teams, university faculty, volunteers and other Federal, State or local entities so that SBDC services will not duplicate those services already being provided at adequate levels and so that the SBDC will be in a position to work cooperatively with the resources available within its area of service.

(ii) Every effort should be made by the SBDC Director to attain a balanced use of resources as negotiated with the Project Officer and reflected in the Cooperative Agreement.

(iii) The SBDC Director is responsible for the development of new resources that will assist small business within the area to be served by that SBDC and is to provide upon request, technical assistance to current resources that will assist them in expanding their services, to the small business community. The SBDC Director must report the progress the SBDC has made to develop new resources in the annual report. The SBDC Director should endeavor to determine that newly acquired resources are not receiving financial compensation from the SBDC program for services which are identical to those already being provided to the area small business community under provisions of another local, State or Federal contract, grant or Cooperative Agreement or other salaried or fee paid arrangements. Proposed services by such new resources must be in addition to pre-existing support provided to the small business community.

(5) SBDCs shall also utilize qualified small business vendors, including but not limited to, private management consultants, private consulting engineers and private testing laboratories, to provide services to small businesses. Such private sector resources shall be compensated for their services. These qualified small business vendors shall be classified in conformity with appropriate SBA size standards as provided in 13 CFR Part 121.

(6) SBDCs are encouraged to use qualified volunteers to provided services to small business.

(7) Laboratories operated and funded by the Federal Government shall cooperate with SBA in developing and establishing programs to support SBDCs by making facilities and equipment available; providing experiment station capabilities in adaptive engineering; providing library and technical information processing capabilities; and providing professional staff for consulting. These laboratories shall be reimbursed through an SBDCs budget for any such services utilized.

(8) SBA and SBDCs may request the cooperation of the National Science Foundation in developing and establishing programs to support the centers.

(9) SBDCs may request the cooperation of the National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration on developing and establishing programs to support the centers.

(d) *Services.* (1) Each SBDC shall endeavor to ensure that the assistance it provides does not duplicate or replace existing services.

(2) SBDCs shall provide assistance to small businesses within the area of service designated or approved by SBA.

(3) In close coordination with SBA, the SBDC Director shall promote the SBDC and its services to the target markets identified in the Cooperative Agreement.

(4) SBDC services shall be tailored as closely as possible to meet the local needs of small business owners and potential small business owners. Primary services to be provided shall include, but not be limited to, management and technical assistance through one-to-one individual counseling and training of small businesses.

(i) *Counseling.* SBDCs shall assist small businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, business planning, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, capital formation, procurement assistance, innovation and research, new product development, product analysis, plant layout and design, computer application, and other disciplines required for small business growth and expansion, increased productivity, and management improvement, and for decreasing industry economic concentrations.

(ii) *Training.* Each SBDC shall ensure that quality training to improve the skills and knowledge of existing and prospective small business owners is provided throughout its SBDC network.

(A) All training offered by an SBDC pursuant to the Copperative Agreement shall be carefully planned with the SBA Project Officer to avoid duplication with the training efforts presented by other Federal, State, local, and private organizations and by SBA.

(B) In those cases where the SBDC recognizes a need for training that was not planned at the time of the negotiation of the Cooperative Agreement, the SBDC shall submit to the Project Officer for his/her approval the particulars of the proposed training prior to the commencement of the training. Such training shall not duplicate other training services being provided in the SBDC service area.

(iii) SBDCs shall assist in technology transfer, research, and coupling from existing sources to small businesses.

(iv) SBDCs shall coordinate and conduct research into technical and general small business problems for which there are no ready solutions. SBDCs are also authorized to coordinate and conduct research concerning market needs.

(v) SBDCs shall maintain a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associations in order to help

address the various needs of the small business community.

(vi) *Other required services.* Each SBDC shall:

(A) Maintain current information concerning Federal, State, and local regulations that affect small businesses, including all regulations promulgated by SBA, and counsel small businesses on methods of compliance. Counseling and technical support shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

(B) Provide and maintain a comprehensive library that contains current information and statistical data needed by small businesses. Such library must contain, among other things, current copies of the Small Business Act, as amended, Small Business Investment Act of 1958, as amended, Title 13 of the Code of Federal Regulations, and the Commerce Business Daily.

(C) Conduct in-depth surveys for local small business groups in order to develop general information regarding the local economy and general small business strengths and weaknesses in the locality; and

(D) Maintain lists of local and regional private consultants to whom small businesses can be referred.

(vii) *International Trade Center.* As mutually determined by the SBA Project Officer and SBDC State Director, an SBDC may establish an International Trade Center within the SBDC to increase the export capabilities of small businesses with products which are potentially marketable internationally; Provided such Center does not duplicate services provided by the International Trade Administration, the Department of Commerce or other Federal, State or local trade assistance programs. The International Trade Center will coordinate and utilize public and private resources to provide assistance to current and potential small business exporters. Its specialists will help business people with the various aspects and complexities of exporting and foreign investment, and assist them in developing an export marketing plan for the sale of their products(s) overseas. International Trade Centers should have the capability to do the following:

(A) Evaluate client's export capability;

(B) Identify and analyze client's international trade needs and problems;

(C) Provide counseling in international trade techniques, procedures, and opportunities;

(D) Establish an operational relationship with Federal, State, and local organizations essential to improving international trade;

(E) Develop and conduct seminars on opportunities and procedures involved in exporting, importing, joint ventures, and licensing; and

(F) Provide a manual of step-by-step procedures and sources of international trade information, where appropriate.

(5) Every SBDC and subcenter must continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

(6) *Legal services restrictions.* Legal advisory information shall not be provided to assist clients involved in litigation or other actions against the Government's interest. Legal information services shall not be used to represent any client in any action. Legal services other than providing basic business law information require the endorsement of the State Bar Association and the approval of SBA.

(e) *Publicity.* SBA must be prominently displayed as a sponsor/co-sponsor and/or funding Agency on all materials (training or other type of materials) and on all publicity initiated or funded by the SBDC. "Prominently displayed" shall be no less than that which is being displayed for the SBDC or other cooperating entities. The verbiage or display pertaining to SBA placement shall be submitted to the Project Officer for approval prior to finalization.

(f) *Research.* Research projects performed by an SBDC and agreed to by SBA Project Officer shall be listed, where possible, in the annual Cooperative Agreement and shall have direct benefit to the State and/or local small business community served by the SBDC. Research activities should not be considered a primary focus of SBDC operations and should be undertaken only when a specific identifiable need exists for this service within the small business community and a plan for using the research results to meet the need has been developed. A description of the results of such projects shall be included as an attachment to the quarterly report for the quarter in which the project is completed. Insofar as possible, research undertaken should not be duplicative of other available research.

§ 129.17 SBDC clients.

(a) *Eligibility.* Subject to available resources, any existing or potential small business owner or primary officer of a small concern may receive assistance from an SBDC. The SBDC may not knowingly provide assistance to businesses which are not considered "small" under Part 121 of this title. When in doubt, the SBDC Director may refer the question of size to the appropriate Regional Office for a size determination if the Regional Administrator deems it appropriate.

(b) *Delivery of assistance.* (1) SBDCs shall provide assistance to eligible clients who independently become aware of the availability of SBDC assistance. SBDCs shall also provide assistance to target groups and to eligible clients referred by SBA.

(2) It is recognized that program and service priorities are set from time to time by Congress and the Administration. These priorities reflect the concerns and the needs of small business as seen by the Legislative and Executive branches of Government. The SBDC, as a partner with SBA, must reflect national priorities in delivering its services to the small business sector. The Central Office will communicate these priorities through the program announcement and other issuances of the Central Office.

(3) Within these standards, the Region will determine the most appropriate manner in which to implement national priorities on a regional level. The Region will also determine regional priorities that are not inconsistent with the national priorities and will communicate this plan to the various district offices within the Region for inclusion in the Cooperative Agreements through the negotiation process. Consistent with the regional plan, the district office will determine the most appropriate means of implementing the priorities along with district level priorities.

(4) The District Office, through the Project Officer will consider the implementation of those national, regional and district priorities as the most critical items to be negotiated in the Cooperative Agreement.

§ 129.18 Advisory Boards.

(a) *National SBDC Advisory Board.* (1) The SBA is required to establish a National SBDC Advisory Board consisting of nine members who are not part of the Federal work force, appointed by the Administrator of SBA. Three members of the National SBDC Board shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. All Board members serve three year terms.

(2) The National SBDC Board shall elect a Chairman and shall advise, counsel, and confer with SBA's Deputy Associate Administrator for Business Development/SBDCs on policy matters pertaining to the operation of the SBDC

program. The Board shall meet, with the Deputy Associate Administrator for Business Development/SBDCs, at least semiannually at the call of the Chairman.

(b) *State/Regional SBDC Advisory Boards.* (1) Each SBDC shall establish an advisory board to advise, counsel, and confer with the SBDC Director on all policy matters pertaining to the operation of the center, including how local and regional private consultants may participate with the SBDC.

(i) Such as advisory board shall be referred to as a State SBDC Advisory Board in a State having only one SBDC.

(ii) Such an advisory board shall be referred to as a Regional SBDC Advisory Board in a State having more than one SBDC.

(2) These boards shall represent the entire service area and each shall be composed predominantly of small business owners and representatives of small business associations.

(3) First-time SBDCs are required to establish a State or regional SBDC Advisory Board no later than the second budget period.

(c) *Local Advisory Boards.* The SBDC State Director shall encourage subcenters to establish local SBDC Advisory Boards to advise, counsel, and confer with the Subcenter Director on matters pertaining to the operation of the subcenter. However, a local Advisory Board need not be established for each subcenter.

(d) A State/Regional or local SBDC Advisory Board member may also be a member of the National SBDC Advisory Board.

(e) *Travel of Advisory Board Members.* Travel of any Board member for official Board activities may be paid for out of the SBDC's budgeted funds.

§129.19 Financial aspects of the program.

(a) *Budgeting—(1) Budget proposal.* (i) the SBA Project Officer shall send the Program Announcement to the SBDC nine months prior to the close of its budget period.

(ii) *Submission.* The budget proposal for the upcoming budget period must be submitted to the SBA district office by the SBDC State Director, or by the proposal developer in the case of a first-time SBDC application, for appropriate review and ultimate approval of the Grants Management Branch Chief. (See §129.14, Application Procedure.) To ensure timely funding of existent SBDCs, the SBDC Director of any SBDC operating on a Federal fiscal year budget must submit to the Project Officer a draft budget proposal by March 15 and a final budget proposal, acceptable to the Project Officer, by June 1, of the preceding budget year. Similarly, for any SBDC operating on a calendar year budget, the SBDC Director must submit a draft budget proposal to the Project Officer by June 15 and a final budget proposal, acceptable to the Project Officer, by September 1, of the preceding budget year.

(iii) In a case where refunding will not occur in a timely fashion through no fault of the SBDC and where the Office of Procurement and Grants Management has received appropriate programmatic and budgeting approvals at least 45 days prior to the expiration of the budget year, the Office of Procurement and Grants Management shall issue a letter advising the SBDC of continued funding based on availability of funds. Such letter should be received by the SBDC at least two weeks prior to the close of the current budget period.

(iv) A letter of continuation may be issued when refunding of an SBDC is anticipated. Except in cases described below, the continuation letter shall lapse in 120 days of its issuance if the recipient organization and SBA have not entered a new Cooperative Agreement. In cases where the SBDC and SBA are in the process of resolving a conflict or a dispute, the continuation letter shall not lapse until a final decision is issued on such conflict or dispute.

(v) *General requirements:* The budget proposal must include all items required by the Program Announcement:

(vi) SBA requires, as a minimum, that 80 percent of the Federal dollars provided must be allocated to direct costs of program delivery. In the case where indirect costs are waived by the applicant organization, in order to meet the matching funds requirement, 100 percent of the Federal dollars must be allocated to program delivery. In a case where some, but not all, indirect costs are waived to meet the matching funds requirement, the lesser of the following may be allocated as indirect costs of the program; and charged to Federal dollars:

(A) 20 percent of Federal dollars provided to the program, or

(B) That amount remaining after the waived portion of indirect costs is subtracted from the total indirect costs.

(vii) *Subcenter costs.* (A) As a separate attachment to the budget, the SBDC shall include separate subcenter budgets indicating individual subcenter costs charged to the recipient and their applicable indirect base and rate.

(B) The amount of Federal cash, in-kind and indirect costs for each subcenter shall be indicated.

(2) *Budget revisions.* (i) Revision may be requested at any time and requires approval of the appropriate district office, regional office, the Central Office of SBDCs and the Office of Procurement and Grants Management within the time frames prescribed by OMB Circulars A-102 and A-110, attachment K and J respectively, as appropriate.

(ii) All procedures for revisions must conform to the requirements of the applicable OMB Circular. (See § 129.15(b)(2).)

(3) *Transfer of funds.* (i) Line item to line item transfer of 5 percent or less of the total approved costs in the budget may be transferred without SBA approval. However, all transfers to the line items relating to out-of-state travel and capital equipment require SBA approval.

(ii) Transfer of greater than a cumulative 5 percent requires prior written approval of the Grants Management Branch Chief.

(4) *Carryover of funds (unobligated, unexpended Federal dollars).* (i) An SBDC may not carry over unobligated, unexpended Federal funds allocable under the Cooperative Agreement to recurring expenses, e.g., salary, travel, supplies, etc., from one budget period to the next. However, an SBDC, subject to SBA approval, may carry over unexpended Federal funds allocated under the Cooperative Agreement to non-recurring, bona fide needs of the SBDC (e.g., start-up costs of a new subcenter), provided that the SBDC obligated the funds during the time period covered by the Cooperative Agreement through which such funds were made available. The Grants Management Officer will determine whether funds may be so carried over, in consultation with the Grants Management Branch Chief and the Project and Program Officers.

(ii) An SBDC may carry over unobligated, unexpended matching funds from one budget period to the next, provided that during the budget period the SBDC had used matching funds on a one-to-one ratio with Federal funds. (i.e., for every dollar of Federal funds expended, one dollar of matching funds is expended). An SBDC cannot claim that it utilized all Federal funds first, and that all unobligated, unexpended funds are matching funds.

(iii) Any funds provided to the SBDC budget by the recipient organization in excess of the required match (overmatch) which have not been obligated or expended may be carried over to the succeeding budget period.

(iv) When the final financial report is issued, the Grants Management Officer will deduct all unobligated, unexpended Federal funds from the letter of credit. Upon closing out the Cooperative Agreement, any unobligated,

unexpended Federal funds will be deobligated by SBA (i.e., returned to the Treasury).

(b) *Receipts*—(1)*Grants—Amount of Grant.* No recipient of funds shall receive a grant which would exceed the greater of—

(i) $200,000, or

(ii) Its pro rata share as determined by the statutory formula.

(2) *Matching funds.* (i) As a condition of any grant or amendment or modification thereof, the applicant organization must provide for an additional amount equal to the amount of the Federal grant. This amount (matching funds) is subject to the following restrictions:

(A) The amount must be provided from sources other than the Federal Government;

(B) It may not include any fees collected from the recipients of assistance, or other program income;

(C) The additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program;

(D) Indirect costs or in-kind contributions shall not exceed 50 percent of the non-Federal additional amount;

(E) The remaining 50 percent will be cash match provided by the applicant, and may include no indirect or in-kind contributions.

(ii) At the close of the phase-in periods indicated below, indirect and in-kind matching contributions shall not exceed 50 percent of the non-Federal matching requirement and not less than 50 percent of the matching contribution shall be cash match. This requirement is effective as follows:

(A) If the applicant is located in a state which received its initial grant to be performed before August 1, 1984, then this requirement applies to grants effected on or after October 1, 1987.

(B) If the applicant is located in a state which received its initial grant to be performed after August 1, 1984, and prior to October 1, 1986, then this requirement applies to grants to be performed on or after October 1, 1988.

(C) If the applicant is located in a state which received its initial grant effective after October 1, 1986, then this requirement applies as of October 1, 1986.

(iii) All sources of matching contributions must be identified as specifically as possible. In the case of cash, it shall be identified by name and account number in the budget proposal and certified by the appropriately authorized official of the applicant organization. The account containing such cash must be under the direct management of the SBDC Director. If the State is providing such cash, and if the State appropriation cycle permits, the SBDC must verify that such funds will be obligated by the State prior to the first day of the budget period. In situations where State appropriation cycles preclude total compliance prior to the first day of the budget period, the SBDC shall verify that sufficient upfront cash match will be available from the State or other sources prior to use of Federal funds.

(iv) The Office of Procurement and Grants Management is responsible for determining acceptable match.

(v) *Restrictions in overmatched amounts.* (A) SBDCs are encouraged to furnish more than the required equal match. Once approved as part of the budget, such amounts (overmatch) become part of the recipient organization's contribution to that year's SBDC program.

(B) If such overmatched amounts are used for program delivery during the budget period for which they were pledged, they may not be applied to the matching funds requirements of the subsequent budget period. If such overmatched funds are not used for program delivery during the budget period for which they were pledged, they may be carried over to meet the match requirements of the subsequent budget period. Such overmatched amounts must be included in the budget presentation for the subsequent budget period.

(C) Any cash match (overmatch) committed to the program over and above the amount required by law shall be budgeted to support the level of effort approved by both parties for the Cooperative Agreement year in which the "overmatch" is applied. Verified, unspent dollars of "overmatch" may be applied to the following continuation year(s) if these "overmatch" funds are budgeted to support the proposed, approved level of effort. Verified "overmatch" dollars may be used as a credit to offset any confirmed audit disallowances applicable to the budget period in which the "overmatch" exists. Offsetting funds shall be considered obligated and not allowable as match for past or future budget periods.

(vi) *Impermissible sources of matching contributions.* Under no circumstances may the following be used as sources of the matching contribution of the recipient organization.

(A) Uncompensated student labor;

(B) SCORE, ACE, or SBI volunteers;

(C) Program income;

(D) Pre-existing training courses or programs, unless the SBDC is expanding or enhancing the course or program;

(E) Funds, indirect or in-kind contributions from any other Federal program, including SBA supported companies or corporations, notwithstanding the allowability of such sources for matching purposes under their own enabling legislation.

(3) *Funding.* (i) Letter of credit is the preferred method of funding SBDCs. Withdrawal of cash from the U.S. Treasury for advances to recipient SBDC organizations shall be deposited in an interest bearing account and, in the case of other than State government sponsored SBDCs, such interest must be reported and returned annually to SBA.

(ii) SBDCs may also be funded by reimbursement for work performed. (SBDCs operating without a letter of credit.)

(A) In order to voluntarily use the reimbursement method of funding, an SBDC must submit written justification to the Project Officer identifying why the letter of credit method would be inappropriate.

(B) In order for an SBDC to be reimbursed, the Project Officer must certify that the SBDC was operating for the period of time claimed.

(C) The reimbursement method may be initiated by SBA, if the Agency determines that its use will be in the best interests of the Government.

(4) *Program income.* (i) Treatment of program income for SBDCs based in universities or nonprofit organization SBDCs is subject to the provisions of Attachment D, of OMB Circular A–110. Treatment of program income for SBDCs based in State or local governments is subject to provisions of Attachment E of OMB Circular A–102.

(ii) Program income, including any interest earned on program income, must be used to further program objectives. It cannot be used to satisfy the match requirements. Each SBDC must report in detail receipts and expenditures of program income, including any income received through co-sponsored activities on Financial Reporting Form SF 269 as outlined in § 129.20(d).

(A) The phrase "to further program objectives" means expanding the quantity and quality of services, resources and outreach provided by the SBDC.

(B) The Project Officer is responsible for determining whether an SBDC is furthering program objectives; and

(C) This determination is based, in part, on the required narrative in the

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financial report indicating how such income was used by the SBDC.

(iii) Any unused program income will be carried over to be utilized to further program objectives in the subsequent budget year.

(5) *Fees.* SBDC clients may be charged a reasonable fee to cover program costs in connection with training activities sponsored or cosponsored by the SBDC, or costs associated with specialized services.

(c) *Expenses.*—(1) *Cost principles.*

(i) Principles for determining the allowable costs of SBDCs are contained in Office of Management and Budget Circulars A–21 (cost principles for grants, contracts, and other agreements with educational institutions), A–87 (cost principles for programs administered by State and local governments), and A–122 (cost principles for nonprofit organizations).

(ii) The principles are designed to provide that the Federal Government and federally-assisted programs bear their fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law.

(iii) The Director of each SBDC shall have the authority to make expenditures under the center's budget.

(iv) No portion of the Federal program funds used by an SBDC may be used for lobbying activities, either directly or indirectly through outside organizations.

(A) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

(B) Organizations shall submit as part of their annual indirect costs rate proposal a certification that the requirements and standards of this paragraph have been complied with.

(C) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable lobbying complies with the requirements of the appropriate OMB Circular.

(D) Time logs, calendars, or similar records documenting the portion of an employee's time that is treated as an indirect cost shall not be required for the purposes of complying with paragraph(c)(1)(v) of this section, and the absence of such records which are not kept pursuant to the discretion of the grantee or contractor, will not serve as a basis for disallowing claims of allowable costs by contesting estimates of unallowable lobbying time spent by employees during any calendar month unless:

(*1*) The employee engages in lobbying for more than 25 percent of his compensated hours of employment during that calendar month; or

(*2*) The organization has materially misstated allowable or unallowable costs within the preceding five year period.

(2) *Salaries.* (i) Generally, the salary of the SBDCs Director, SBDC Subcenter Director and the salaries paid to SBDC staff members shall be comparable to annualized salaries established for similar positions in the area served by that particular SBDC or subcenter as agreed to by the SBA Project Officer and specified in the Cooperative Agreement.

(ii) Recruitment and salary increases for SBDC Directors, subcenter Directors and staff members shall conform to the administrative policy of the recipient organization.–

(3) *Travel.* (i) Transportation costs shall be at coach class and per diem rates, including lodging, shall not exceed those authorized by the written travel policies of the host instititution by that institution.

(ii) All travel must be separately indentified in the proposed budget as in-State, out-of-State, and unplanned.

(iii) In order for any travel to be approved by SBA, it must be in accordance with the written travel policies of the recipient organization and directly attributable to specific work of the SBDC or incurred in the normal course of administration of the program.

(iv) All proposed travel by the SBDC Director and the SBDC staff must be reasonable, justified in writing, and included in the SBDC's proposed annual budget. Such justification must indicate the estimated cost, number of persons traveling, and the benefit to be derived by the small business community for the proposed travel. A specific amount, based on past experiences, where appropriate, must also be included in the budget for any unplanned travel. A justification in greater detail is required for unplanned out-of-State travel.

(v) Any proposed unplanned out-of-State travel that exceeds the approved budgeted amount for travel must be submitted to the Project Officer for approval on a case-by-case basis. Any such submission must contain a written budget revision and written narrative explaining the need for such travel and the relation of such travel to the efficient operation of the SBDC.

(vi) Travel outside the United States must have prior approval by the Administrator on a case-by-case basis.

(4) *Dues.* (i) Costs of the SBDCs membership in civic, business, technical, and professional organizations are allowable expenses. As such, the use of Federal funds in payment of such dues is permitted, provided that the requirements of paragraphs (c)(4)(ii), (iii), (iv) and (v) of this section are met.

(ii) All such payments must be anticipated in the budget proposal, be approved by SBA, be fully described, and be reasonable and realistic in relation to the benefits derived, as determined by SBA's Office of SBDCs and Office of Procurement and Grants Management.

(iii) The benefits derived from this expenditure must be fully explained.

(iv) Notwithstanding the above, annual dues exceeding $2,000 per organization per year which are paid by an individual SBDC network from Federal or matching funds to any professional, technical, business or civic organization must be separately justified, detailing benefits received for this expenditure.

(v) No portion of annual dues exceeding $250 per organization per year paid from Federal or matching funds may be used directly or indirectly for lobbying activities by the organization receiving such funds. As part of the budget proposal, the SBDC Director or, where appropriate, the Chief Financial Officer and the SBDC Director shall certify that no portion of annual dues exceeding $250 per organization per year are paid from program funds are being used directly or indirectly for lobbying activities.

§ 129.20 Evaluation of SBDC Program.

(a) *SBA review authority.* (1) SBA shall monitor and oversee the Cooperative Agreement and ongoing operations of each SBDC to ensure the effective and efficient use of Federal funds for the benefit of the small business community.

(2) In order to properly evaluate the SBDC Program, SBA shall require each SBDC to keep records as set forth below in this section, and to submit quarterly and annual performance and financial reports, as specified in paragraphs (b) and (c) of this section respectively. Those reports and the clients' evaluations of services provided will be reviewed to:

(i) Determine the quality of services provided by the SBDC;

(ii) Determine the completeness and accuracy of SBDC records; and

(iii) Compare the actual SBDC accomplishments with the SBDC performance objectives, such as the Planned Milestone Accomplishment Chart submitted with the proposal for funding or refunding which are listed in the Cooperative Agreement.

(3) SBA representatives are authorized to make on-site visits to SBDCs and SBDC subcenters to inspect SBDC records and clients files, and to analyze and evaluate training, counseling and any other activities. As a courtesy, SBA representatives should generally advise the SBDC Director or Subcenter Director at least two weeks prior to the planned visit. The Project Officer shall review these records on a regular basis to verify that SBDC staff are adequately documenting the necessary files.

(b) *Client control records.* (1) The lead SBDC shall maintain control records as necessary.

(2) Subcenters and lead SBDCs which provide services to small business shall maintain detailed, complete and accurate client activity files, specifying counseling, training and other assistance provided. These records must clearly identify and locate the client, set forth the client's management problems, reflect the SBDC service provided, including the client's evaluations of services received, and for counseling of long duration, project the client results anticipated.

(3) Each SBDC shall report on SBA Standard Form 888 the number of training programs, the number of attendees, and the attendee demographic data and certain financial information, and each shall submit the client evaluations or a summary of those evaluations.

(4) Individual client counseling files are to be maintained for each client and entered into the Management Information System.

(5) One-time files should be concise, but sufficient to ensure that thorough program audit and evaluation practices can be applied. Substantive counseling should be well documented to enable an outside party to assess the adequacy of services provided.

(6) All SBDC and subcenter records shall be made available to SBA for review upon request. Such records may be duplicated for SBDC performance reviews and audit purposes only.

(c) *Performance reports.* (1) Each SBDC shall provide three quarterly and one annual programmatic report to the appropriate SBA Project Officer. Quarterly reports must be submitted (post-marked) no later than 45 days following the end of the quarter; annual reports must be submitted no later than 90 days following the end of the program year. All reports are to be submitted in an original and two copies.

(2) Information required in quarterly and annual performance reports is set forth in the annual Program Announcement.

(d) *Financial reports.* (1) Each SBDC shall provide three quarterly and one annual financial report to the appropriate Project Officer. Quarterly reports must be submitted (post-marked) no later than 45 days of the month following the end of the quarter; preliminary annual reports must be submitted no later than 90 days following the end of the budget year. The final annual reports must be submitted no later than 120 days following the end of the budget year. All reports are to be submitted in an original and two copies.

(2) The required financial reports are set forth in the Cooperative Agreement and include at a minimum the following:

(i) Report of Federal Cash Transactions (SF 272);

(ii) Financial Status Report (SF 269); and

(iii) Request for Advance or Reimbursement (SF 270), as applicable.

(e) *Audits and investigations*—(1) General—. (i) *Access.* At all reasonable times, SBA may inspect, examine and copy in the office of either the SBDC, its subcenters, the respective sponsoring organization or entity, its accountants, attorneys and consultants, or its subcontractors, if any, all documents, files, books, records and other materials relevant to SBA's Small Business Development Center Program. These records shall be maintained for a period of three years beyond the term of the Cooperative Agreement plus such additional time as may be required to settle cost disallowances or claims for which the SBDC may seek recovery from SBA or to resolve any litigation claim or audit begun within the three year period. Such records shall include but not be limited to the following:

(A) The Cooperative Agreement and all amendments;

(B) The application;

(C) All documents submitted by the SBDC clients applying for management assistance;

(D) All information made, used or maintained by the SBDC in connection with the provision of management assistance;

(E) All records of any transaction for which the SBDC makes payments pertinent to the Federal funds, matching funds, and expenditures related to program income spent to further the program objective, including but not limited to all invoices, payroll records, project ledgers, general ledgers, detailed supporting allocations, travel vouchers, subgrants, contracts or subcontracts, and any other pertinent documents;

(F) All records of any transaction relating to receipt of cash from fees or other sources, including but not limited to receipts, bills, settlement agreements, judgments, arbitration decisions and any other pertinent documents;

(G) Legal opinions and memoranda or other advice prepared by an attorney and paid for by the SBDC from the Federal funds, matching funds, or program income funds.

Failure of an SBDC, its subcenters, or the respective sponsoring organizations to maintain such records or to consent to such inspection, examination or copying, will be grounds for SBA to refuse to renew or continue cooperative agreements or to make advance payments until such time as the SBDC or other entity consents to such access. *See* § 129.14(d)(1) (i) through (viii).

(2) *Audits.* (i) All audits will be conducted, supervised, or coordinated by the Office of Inspector General.

(ii) All audits, to the extent practicable, shall be conducted in accordance with generally accepted auditing standards of the Comptroller General of the United States, as published in *Standards for Audit of Government Organizations, Programs, Activities and Functions (Yellow Book)* and in accordance with generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants.

(iii) Whenever possible, financial and compliance audits will be conducted as a single audit of a recipient organization pursuant to OMB Circular A–102, A–110, or A–128. Such audits will be conducted annually, to the extent practicable, and at least once every two years. However, at the discretion of the Inspector General, audits may be performed of selected SBDCs even though single audits may have been performed. SBA also reserves the right to require an SBDC to have the financial and compliance audit performed by a qualified independent public accountant, as defined by § 129.11(d) of this part and submitted to the SBA Office of Inspector General, pursuant to audit guidelines issued by the Office of Inspector General. In such cases where the Office of Inspector General requires such audits, that office will assume all costs associated with the audit. Audit work papers made in connection with such audits must be available and produced for review upon request of the Office of Inspector General.

(iv) Requests for compliance audits of SBDCs may be made to SBA's Office of Inspector General by the Office of SBDCs. Requests for financial audits of SBDCs may be made to the Office of Inspector General by the Office of Procurement and Grants Management.

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(3) *Investigations.* SBA may conduct such investigations as it deems necessary to determine whether a person has engaged in any acts or practices which constitute a violation of the Small Business Act of 1953, as amended (15 U.S.C. 631, *et seq.*), or any rule or regulation under that Act or of any order issued under that Act, or of other applicable Federal law. In circumstances where SBA receives information indicating that any such violation is about to occur, SBA may conduct such investigations as it deems necessary.

(f) *On-site reviews.* (1) An on-site evaluation of each SBDC shall be conducted by SBA at least once every two years. At least one, but no more than two, representative(s) of another SBDC shall participate in each such evaluation on a cost-reimbursement basis.

(i) This evaluation will include a thorough analysis of the records, procedures, organizational structure, management, and services of the SBDC. The evaluation will be both qualitative and quantitative, will measure the effectiveness of the program, and will make an assessment of the benefits accruing to the areas served.

(ii) The SBDC Director and the apropriate Project Officer shall be advised of the scheduled evaluation at least one month before the date of the evaluation.

(iii) The evaluation team shall send a copy of the evaluation with recommendations for improving the program to the SBDC Director, appropriate Project Officer, and other appropriate SBA officials.

(2) In addition, on-site financial evaluations of each SBDC shall be conducted, as needed, by the SBA Grants Management Branch Chief or his delegatee. Representatives of other SBDCs may not participate in such evaluations.

Dated: September 23, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-23921 Filed 10-25-87; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 140

Debt Collection

AGENCY: Small Business Administration

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its Debt Collection Regulations to make them consistent with those published by the Office of Personnel Management (OPM). For policy reasons, government-wide consistency is advisable in the debt collection area. The amendments will permit SBA to collect debts of employees of other Federal agencies via salary offset and make certain other technical corrections.

DATE: Comments must be received on or before November 16, 1987.

ADDRESS: Comments should be addressed to Martin D. Teckler, Deputy General Counsel, Small Business Administration, 1441 L Street NW., Room 700, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Deputy General Counsel, (202) 653-6642.

SUPPLEMENTARY INFORMATION: On July 2, 1984, the SBA published a Final Regulation regarding Debt Collection, 49 FR 27138, that was later amended on October 2, 1984, 49 FR 38931. We have now been asked to conform our Regulations with an OPM Final Regulation referred to as Pay Administration (General), published July 3, 1984, 49 FR 27470. Accordingly, SBA proposes to amend Part 140 consistent with the OPM Pay Administration (General) Regulation in the following respects: (1) The definition of "debt", (2) the sections governing the collection of debt by salary offset when an employee has terminated his or her employment, and (3) to provide for the assessment of interest, penalties and administrative costs and also a non-waiver of rights provision.

In addition, at the time SBA published its Regulations, it had no agreements with other agencies to permit the sharing of debt collection efforts. SBA is now working with other agencies to find Federal employees who have defaulted on their obligations to SBA. Similarly, other agencies are interested in pursuing their debtors who are employees of SBA. Therefore, SBA is proposing to amend those portions of Part 140 of Title 13 of the Code of Federal Regulations which relate to salary offset.

1. Definitions

Section 140.2(c) excludes intra-agency overpayments due to normal processing delays from the definition of "debt."

SBA proposes to amend § 140.2(c) by deleting this language, so that it is consistent with the compatible section of OPM Final Regulation, Pay Administration (General), 5 CFR 550.1103. Section 550.1103 does not include this language. The preamble, 49 FR 27470 (1984), of § 550.1103 addressed these two "exclusions" as "adjustments" and determined that such adjustments for four pay periods or less should not be treated as "exclusions" from the definition of debt. OPM regarded such adjustments as voluntary and therefore, pursuant to 5 U.S.C. 5514, as not *involuntary* adjustments for purposes of salary offset. As a result, the reference to exclusions which were at one time included in § 550.1103 were later deleted from the OPM Final Regulation.

Although these "exclusions" are included in SBA Regulation, § 140.2(c), § 140.2(c) is still consistent with § 550.1103. The added "exclusions" in § 140.2(c) do not alter the meaning of what was intended in both Regulations as to the definition of debt, amounts due and owing the United States from sources which include loans insured or guaranteed and all other amounts due and owing the United States from fees, leases, rents, etc. Nevertheless, the two subsections are proposed to be deleted from § 140.2(c) for consistency.

SBA proposes to add a new paragraph (g) to § 140.2 to define "employee". The current SBA Regulations do not define employee, but appear to be limited to employees of the Small Business Administration. The new definition is proposed to include any person whose salary is eligible for offset pursuant to 5 U.S.C. § 5514.

2. Section 140.4, General

The term "SBA employee" is proposed to be deleted in this section. In its place, SBA proposes to use the term "employee" unless further clarification is required. The word "SBA" or "Agency" is proposed to be changed to "agency" or "paying agency" where required to permit collection by another agency of debts owned to SBA.

3. Payments Made to Employees at the Time of Separation or Thereafter

SBA proposes to amend § 140.4(a)(4) to clarify which payments due a former employee are subject to salary offset, 5 U.S.C. 5514, and which should be collected under administrative offset, 31 U.S.C. 3716. A final salary check and lump sum payments at the end of employment may be offset under this section. The proposed regulation clarifies that salary offset procedures will be used in this situation only if regular salary checks were being offset during employment. Other post-employment payments, such as a civil service annuity, must be offset pursuant to administrative offset, even if salary offset was in effect prior to the employee's retirement or other separation.

The proposed regulation also clarifies that the employee, or former employee,

shall be given only one opportunity to challenge an offset. Salary offset is a subcategory of administrative offset. The procedural rights under this section, salary offset, are more extensive than those under § 140.5, administrative offset. Therefore, a former employee who had a hearing, or an opportunity for hearing prior to salary offset will not be given a § 140.5 administrative offset "review" upon separation.

4. Technical Correction

In paragraph (a)(4)(ii) of § 140.4, the term "retirement" is proposed to be changed to "retired". "Retired pay" is a term of art which applies to certain members of the armed forces. The Comptroller General has rules that such retired pay is subject to salary offset. "Retirement pay", on the other hand, is not a technical term and could be misunderstood to mean a civil service annuity which is not subject to salary offset but must be collected through administrative offset.

5. Interest, Penalties, Administrative Costs; Non-Waiver of Rights

Section 140.4 does not provide for the assessment of interest, penalties and administrative costs and does not provide for a non-waiver of rights provision.

SBA proposes to amend § 140.4 by adding two new subsections (f) and (g). The new subsections (f) and (g) are proposed to be added so that § 140.4 is consistent with OPM Final Regulation, Pay Administration (General), 5 CFR § 550.1104(n), (o).

Section 140.4 is *not* consistent with § 550.1104(n). Section 140.4 does not provide for the assessment of interest, penalties and administrative costs that are provided for in § 550.1104(n). As stated in § 550.1104(n), "* * * [t]hese charges and the waiving of them must be prescribed in accordance with 4 CFR 102.13 [FCCS]." 4 CFR 102.13 provides for agencies to assess interest, penalties, and admnistrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717, and sets forth the procedures by which agencies shall access these charges.

In addition to interest, penalties and administrative costs being omitted from § 140.4, a non-waiver of rights provision was also omitted. Section 550.1104(o) "[p]orvide[s] that an employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary."

Therefore, § 140.4 is proposed to be amended to incorporate these provisions.

6. Procedures When SBA Seeks To Collect a Debt

SBA proposes to amend paragraph (b) to clarify that this paragraph applies when SBA is attempting to collect debts owed by federal employees to SBA.

A new paragraph (c) is proposed to explain how SBA will nofity the debtor's paying agency of the debt. The procedures described are those required by OPM.

7. Deductions for The Account of Another Agency From The Salary of an SBA Employee

A new paragraph (d) is proposed to explain the procedures which another agency must follow when requesting SBA to deduct payments from the salary of an SBA employee.

For the purposes of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.*, SBA certifies that this proposed rule, if adopted in final form, would not be likely to have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b), because employees are not considered small entities under the RFA.

SBA certifies that this proposed rule does not constitute a major rule for the purpose of Executive Order 12291, because the proposed changes would not be likely to result in an annual effect on the economy of $100 million or more.

This proposed rule contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 140

Credit, Practice and procedure, Small business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA proposes to amend Part 140, Title 13, Code of Federal Regulations, as follows:

PART 140—DEBT COLLECTION

1. The authority citation for Part 140 continues to read as follows:

Authority: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

§ 140.2 [Amended]

2. In § 140.2, the last sentence of the introductory text of paragraph (c) and paragraphs (c) (1) and (2) are removed.

3. Section 140.2 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) and adding a new paragraph (g) to read as follows:

* * * * *

(g) "Employee" for the purposes of § 140.2(f) and § 140.4 means a current civilian employee as defined in 5 U.S.C. 2105; an employee of the U.S. Postal Service or Postal Rate Commission; or a member or Reserve of the Uniformed Service.

4. Section 140.4, paragraph (a) is amended by revising the introductory text of paragraph (a), and revising paragraph (a)(4) to read as follows:

§ 140.4 Salary offset.

(a) When SBA determines that an SBA or other Federal employee is indebted to the SBA for debts to which the SBA is entitled to be repaid at the time of the determination, the amount of indebtedness may be collected in monthly installments or at officially established pay intervals, by deduction from the current pay account of the individual.

* * * * *

(4) *Post employment payments.* (i) If an employee terminates employment after salary offset has been initiated, a deduction after salary offset has been initiated, a deduction may be made from final salary payments, from payment for accrued annual leave, or from similar payments due the individual from the Federal government. Deductions against such final payments may exceed 15% of the total payment, up to the amount owed to the Federal government. If the employee terminates employment prior to the completion of salary offset procedures, deductions shall be made pusuant to 31 U.S.C. 3716.

(ii) Where SBA is collecting the indebtedness through deductions from biweekly or monthly retired pay, the Agency may not deduct more than 15 percent of disposable pay for any payment period, except that a greater percentage may be deducted upon the signed written consent of the individual involved.

§ 140.4 [Amended]

5. Section 140.45, paragraph (b) is amended by revising the introductory text of paragraph (b)(1), and paragraphs (b)(1)(i), (b)(1)(ii), the introductory text of paragraph (b)(2), and paragraphs (b)(2)(ii) and (b)(2)(iii), (b)(3), (b)(4)(vi) and (b)(5) to read as follows:

(b) *Notice and opportunity to be heard.* (1) Before initiating any proceedings under paragraph (a) of this section to collect any indebtedness of an employee, SBA shall provide the employee with—(i) A minimum of 30 days written notice, informing such individual: Of the nature and amount of the indebtedness determined to be due; the intention of the agency to initiate

proceedings to collect the debt through deductions from pay; * * *

* * * * *

(iii) An opportunity to enter into a written agreement acceptable to SBA to establish a schedule for the repayment of the debt; and

* * * * *

(2) If there is a statutory provision authorizing waiver, remission or forgiveness of the debt, SBA will give the employee—

* * * * *

(ii) Fifteen days from receipt of such notice in which to request consideration for waiver; and

(iii) A written response, if the employee timely requests a waiver. Such response shall answer the issues raised in the employee's request; state the agency's decision; and if the decision is not in the employee's favor, inform him or her whether there is a right to request a hearing before SBA's Office of Hearings and Appeals, that a hearing will be granted if the employee is entitled to one and timely files a request for a hearing, and that such hearing will be conducted prior to the initiation of deductions.

(3) Any alternative arrangement entered into pursuant to paragraph (b)(1)(iii) of this section shall be signed by both the employee and the SBA and be documented in the SBA's files.

(4) * * *

* * * * *

(vi) If the employee timely requests a waiver under § 140.4(b)(2), the time period in which to file a petition for a hearing is suspended. An employee must then file a petition for a hearing within 15 days after receiving a written response denying the request for a waiver.

(5) An employee loses his or her right to a hearing, and will have his or her disposable pay offset in accordance with the repayment schedule established if the employee fails to file a written petition for a hearing before the deadline established under § 140.4(b)(4).

* * * * *

6. Section 140.4 is amended by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) as follows:

(c) *Notice to paying agency.* Upon completion of the procedures explained in paragraphs (a) and (b) of this section, SBA will provide the following to the paying agency:

(1) The Chief of SBA's Office of Portfolio Management shall certify, for SBA, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that these regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection must be made in installments, the SBA shall advise the paying agency of the amount of percentage of disposable pay to be collected in each installment. SBA may, at its option, state the number and the commencing date of the installments. If SBA does not state such a date, the paying agency shall begin collection the next officially established pay period.

(3) SBA will forward the employee's written consent to the salary offset or signed statement acknowledging receipt of the required procedures. If SBA has not obtained such consent or statement, SBA will advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and give the dates the actions were taken.

(d) *Deductions from pay of an SBA employee upon certification of another agency.* SBA will make deductions from the pay of its employee upon receipt of a claim from another agency. The head of such agency, or a designee, shall provide the information required in paragraph (c) and certify that the claim satisfies the requirements of 5 U.S.C. 5514, the applicable regulations of the Office of Personnel Management, and the implementing regulations of the creditor agency.

* * * * *

7. The following new paragraphs (f) and (g) are added to § 140.4.

(f) *Interest, penalties, and administrative costs.* SBA is authorized to collect any assessment of interest, penalties, and administrative costs on debts being collected under this section. The assessment of these charges and the waiving of them must be made in accordance with 4 CFR 102.13.

(g) *Non-waiver of rights by payments.* An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

Date: September 3, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-23668 Filed 10-15-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-25; Notice No. SC-87-4-NM]

Special Conditions; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 747 series airplanes which incorporate overhead crew rest areas. These rest areas have novel or unusual design features for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before November 5, 1987.

ADDRESSES: Comments on this proposal may be mailed in duplicate to Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-25, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-25 Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, Transport Standards Staff, ANM-112, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in

this Notice may be change in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-25." The postcard will be date/time stamped and returned to the commenter.

Background

Under the provisions of § 21.101(a) of the Federal Aviation Regulations (FAR), an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (sometimes referred to as the "original certification basis") or with the applicable regulations in effect on the date of the application for the change. Section 21.101(b) further provides that, if the proposed change consists of a new design of a component, equipment installation, or system installation and that the regulations incorporated by reference in the type certificate do not provide adequate standards with respect to the proposed change, the applicant must comply with certain additional requirements in order to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate. These additional requirements are the applicable regulations in effect on the date of application for the change and any special conditions established under the provisions of § 21.16.

Section 21.16 provides that if the airworthiness regulations do not contain adequate or appropriate safety standards, because of a novel or unusual design feature, special conditions are prescribed. The special conditions contain the safety standards found necessary to establish a level of safety equivalent to that established in the regulations.

On December 17, 1986, the Boeing Commercial Airplane Company applied for change to Type Certificate No. A20WE for type certification of Model 747 series airplanes with overhead crew rest areas installed. The crew rest area would be installed above the main passenger cabin in the vicinity of the Number 5 passenger doors. This is an area that has never been used for this purpose in any previous transport airplane. Due to the novel or unusual features associated with the installation of these rest areas, special conditions are considered necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate.

The regulations incorporated by reference in Type Certificate No. A20WE for Boeing 747 series airplanes include Part 25 of the FAR as amended by Amendments 25–1 through 25–8, 25–15, 25–17, 25–18, 25–20 and 25–39, and §25.803(d) as amended by Amendment 25–46. In addition, the regulations incorporated by reference include Part 36 of the FAR and a number of special conditions that are not relevant to the installation of crew rest areas. Because neither the regulations incorporated by reference in Type Certificate No. A20WE nor those in effect on the date of application for the change provide adequate standards, the special conditions discussed in this notice are proposed to provide adequate standards for the 747 series airplanes in which crew rest areas are installed.

These special conditions would establish seating, communication, lighting, personal safety and evacuation requirements for the overhead crew rest area. When applicable, the proposed requirements parallel the existing requirements for a lower deck service compartment and would provide an equivalent level of safety to that provided for main deck occupants.

Due to the location and configuration of the crew rest area, occupancy during taxi, takeoff, and landing be prohibited and occupancy is limited to crewmembers.

Two-way voice communications and public address speaker(s) would be required to alert the occupants to an in-flight emergency.

To prevent the occupants from being isolated in a dark area due to loss of the crew rest lighting, either a scond independent source of normal lighting or emergency lighting would be required. An emergency lighting system which is activated under the same conditions as the main deck emergency lighting system would also be required.

Since there are in-flight emergencies that may require the occupants of the crew rest area to return to the main deck and to prevent the occupants from being trapped in the event the stairway is blocked, two evacuation routes including a stairway would be required. These escape routes must provide for the removal of an incapacitated person from the crew rest area to the main deck.

Since the crew rest area may not always be occupied, a smoke detection system and equipment for fire fighting would be required to minimize the hazards associated with a fire in the crew rest area.

In addition, passenger information signs, supplemental exygen, and a seat or berth for each occupant would be required. These items are necessary because of turbulence and/or decompression.

The crew rest areas may also be installed in certain new model 747–400 airplanes. The Model 747–400 is a new model that is derived from the previously type certificated models of the 747 series. The Boeing Commercial Airplane Company has separately applied for a change to Type Certificate No. A20WE to include the new Model 747–400, and the certification basis for those airplanes will be established under the provisions of § 21.101. That certification basis will include any special conditions adopted for the installation for the crew rest area.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and effects only the manufacturer who applies to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions for Boeing Model 747 series airplanes with overhead crew rest areas installed.

PARTS 21 AND 25—[AMENDED]

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq., E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

1. Occupancy of the overhead crew rest area is limited to a maximum of 10 crewmembers. Occupancy during taxi, takeoff, or landing is not permitted.

2. There must be a stairway between the main deck and the crew rest area and there must be an alternate evacuation route for occupants of the crew rest area.

The stairway and alternate evacuation route must be located on opposite sides of the crew rest area or have sufficient separation within the compartment. The stairway and

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the alternate evacuation route must provide for evacuation of an incapacitated person, with assistance, from the crew rest area to the main deck, must not be dependent on any powered device, and must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure. The crewmember procedures for carriage of an incapacitated person must be established.

3. An exit sign meeting the requirements of § 25.812(b)(1)(i) must be provided in the crew rest area near the stairway.

4. In the event airplane's main power system should fail, emergency illumination of the crew rest area must be automatically provided. Unless two independent sources of normal lighting are provided, the emergency illumination of the crew rest area must be automatically provided if the crew rest area normal lighting system should fail. The illumination level must be sufficient for the occupants of the crew rest area to locate, and descend to the main deck by means of the stairway and/or the alternate evacuation route, and to read any required operating instructions.

5. There must be a means for two-way voice communication between crewmembers on the flight deck and occupants of the crew rest area, and between crewmembers at least one flight attendant seat on the main deck and occupants of the crew rest area.

6. There must also be either public address speaker(s), or other means of alterting the occupants of the crew rest area to an emergency situation, installed in the crew rest area.

7. There must be a means, readily detectable by occupants of the crew rest area, that indicates when seat belts should be fastened and when smoking is prohibited.

8. For each occupant permitted in the crew rest area, there must be an approved seat or berth that must be able to withstand the maximum flight loads when occupied.

9. The following equipment must be provided:

a. At least one approved fire extinguisher appropriate to the kinds of fires likely to occur.

b. One protective breathing device, having TSO–C99 authorization or equivalent, suitable for firefighting.

c. One flashlight.

10. A smoke detection system that annunciates in the flight deck and is audible in the crew rest area must be provided.

11. A supplemental oxygen system equivalent to that provided for main deck passengers must be provided for each seat and berth.

12. There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of the evacuation routes.

Issued in Seattle, Washington, on October 1, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–23947 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–128–AD]

Airworthiness Directives: Hamburger Flugzeugbau (HFB) 320 Hansa Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to HFB 320 Hansa series airplanes, that would require an inspection for corrosion, and replacement, as necessary, on the drive shafts and rotary selectors of the landing flaps and slats of both wings, as well as the bolts and drive shafts of the speed brakes and slats. This proposal is prompted by a report of corrosion found on the bolts on the inner area of the air brake flap drive shaft on an aircraft which was being repaired. This condition, if not corrected, could lead to degradation of lateral control.

DATE: Comments must be received no later than December 7, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–128–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Messerschmitt-Bolkow-Blohm BmbH, Postfach 95 01 09, D–2103 Hamburg 95, Federal Republic of Germany. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, 98108.

FOR FURTHER INFORMATION CONTACT:. Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, D–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–128–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority of the Federal Republic of (West) Germany, has notified the FAA of an unsafe condition which may exist on HFB 320 Hansa series airplanes.

During a repair on an airplane, corrosion was found on the bolts and inner area of an air brake flap drive shaft. It has been determined that it is possible for similar severe corrosion to occur in the bolts and drive shafts associated with the wing flaps, slats and speed brakes. This condition, if not corrected, could lead to an asymmetric configuration which may cause degradation of lateral control.

Messerschmitt-Bolkow-Blohm BmbH has issued Service Bulletin 27–74, dated July 1, 1986, which describes an inspection for corrosion, and replacement, if necessary, of the bolts, and drive shafts and rotary selectors for the wing flaps, slats and speed brakes for this model airplane. The LBA has issued an AD requiring compliance with this service bulletin.

This airplane model is manufactured in the Federal Republic of Germany and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Administration and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this same type design registered in the United States, an AD is proposed which would require inspection, and replacement if

necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 70 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $42,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($2800). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Hamburger Flugzeugbau: Applies to Model HFB–320–HANSA series airplanes, Serial Numbers 1021; 1023, 1026, 1030, 1033, 1035, 1040, 1045, and 1050–1057, certificated in any category. Compliance required as indicated, unless previously accomplished:

To prevent asymmetric configuaration which may cause degradation of lateral control, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect, and replace, as necessary, the bolts, drive shafts and rotary selectors for the wing flaps, slats and speed brakes on the HFB 320 HANSA airplane in accordance with Messerschmitt-Bo!kow-Blohm GmbH Service Bulletin 27–74, dated July 1, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Messerschmitt-Bolkow-Blohm GmbH, Postfach 95 01 09, D–2103 Hamburg 95, Federal Republic of Germany. These documents may be examined at the FAA, Nowthwest Mountain Region 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director Northwest Mountain Region.

[FR Doc. 87–23946 Filed 10–15–87; 8:45 am]

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14 CFR Part 39

[Docket No. 87–NM–121–AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 series airplanes, that would require inspection of the main landing gear (MLG) lower tie rods for cracks, and replacement, if necessary. This proposal is promoted by a report of cracks in the blending radius under the head of a lower tie rod. This condition, if not corrected, could lead to collapse of the main landing gear.

DATE: Comments must be received no later than December 7, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–121–Ad), 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South Seattle. Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire, Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention; ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–121–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Airbus Industrie A300 Model B2 series airplanes. Cracks have been detected in

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the MLG lower tie rods at the base of the blending radius under the head during overhaul of A300 airplanes. This condition, if not corrected, could lead to collapse of the MLG.

Airbus Industrie issued Service Bulletin A300–32–369, dated December 12, 1986, which describes ultrasonic inspection of the tie rods, and replacement, if necessary. The service bulletin references Messier-Hispano-Bugatti Service Bulletin 470–32–420, Revision 1, dated December 15, 1986, for explicit directions. The DGAC has issued an airworthiness directive, requiring compliance with the Airbus Industrie service bulletin.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection for cracks, and replacement, if necessary, of the main landing gear (MLG) lower tie rods, in accordance with the Airbus Industrie service bulletin previously mentioned.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this Ad to U.S. operators is estimated to be $80.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 series airplanes, as listed in Airbus Industrie (AI) Service Bulletin A300–32–369, dated December 12, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG), accomplish the following:

A. Prior to each lower tie rod accumulating 7,000 landings or within the next 500 landings, whichever occurs later, and thereafter at intervals not to exceed 1,500 landings, perform an ultrasonic inspection of the MLG lower tie rods, in accordance with AI Service Bulletin A300–32–369, dated December 12, 1986. Replace defective lower tie rods before further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–23944 Filed 10–15–87; 8:45 am]

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14 CFR Part 39

[Docket No. 86–ANE–21]

Airworthiness Directives; General Electric (GE) CT7–5A, –5A1, and –5A2 Turbopropeller Engines as Installed in Saab-Fairchild SF340A Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require the installation of a second overspeed protection system on certain GE CT7–5A series turbopropeller engines as installed in Saab-Fairchild SF340A aircraft. The proposed AD would also supersede AD 86–10–51, Amendment 39–5473. The proposed AD is needed to prevent engine power turbine (PT) overspeed and resulting uncontained failure caused by reaction of the fuel control to an erroneous PT speed signal during ground operation with the bottoming governor enabled.

DATE: Comments must be received on or before December 14, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Council, Attention: Rules Docket Number 86–ANE–21, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86–ANE–21".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins (SB's) may be obtained from Dowty Rotol Limited, Cheltenham Road East, Gloucester, England GL2 9QH; General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910; and Saab-Scania AB, S–581 88, Linkoping, Sweden.

A copy of each SB is contained in Rules Docket Number 86–ANE–21, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Barbara Garian, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New

England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7086.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86–ANE–21". The postcard will be date/time stamped and returned to the commenter.

AD 86–10–51, Amendment 39–5473 (51 FR 44439; December 9, 1986), issued November 18, 1986, requires that the engine bottoming governor be disabled when the aircraft power lever is positioned in the beta range (below flight idle). The AD was needed to prevent PT overspeed and resulting uncontained failure caused by reaction of the fuel control to an erroneous PT speed signal during ground operation with the bottoming governor enabled.

AD 86–10–51 provides interim instructions to prevent PT overspeed and uncontained failure. Since these instructions require special aircraft and engine operating procedures which increase crew workload and invalidate the constant torque on takeoff function, the FAA has determined that a second overspeed protection system with an improved level of safety precludes the need for these interim instructions and returns the aircraft and engine to pre-AD 86–10–51 operation.

This proposed AD also would require incorporation of engine bottoming governor deactivation switches to prevent an adverse yaw condition in the aircraft that could occur due to a mismatched aircraft power condition resulting from an uncommanded power increase of one engine. This would also prevent the crew from misinterpreting the uncommanded power increase of one engine as a failure of the other engine.

Since this condition is likely to exist in other engines of the same type design, the proposed AD would require installation of a second overspeed protection system on GE CT7–5A series turbopropeller engines as installed in Saab-Fairchild SF340A aircraft, and incorporation of engine bottoming governor deactivation switches in the power lever quadrant, and in addition, supersede AD 86–10–51, Amendment 39–5473 (51 FR 44439; December 9, 1986).

Conclusion

The FAA has determined that this proposed regulation involves only five aircraft with a total cost of approximately $10,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 86–10–51, Amendment 39–5473 (51 FR 44439; December 9, 1986):

General Electric: Applies to General Electric (GE) CT7–5A, –5A1, and –5A2 turbopropeller engines as installed in Saab Fairchild SF340A aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent power turbine (PT) overspeed resulting in an uncontained failure or adverse aircraft yaw due to reaction of the fuel control to an erroneous PT speed signal during ground operation with the bottoming governor (BG) enabled, accomplish the following no later than January 31, 1988:

(a) Remove propeller overspeed governor (OSG) Dowty Totol (DR) Part Numberf (P/N) 661001001 and replace with OSG DR P/N 661001002 in accordance with procedures contained in Dowty Rotol Service Bulletin (SB) SF340–61–11, dated October 8, 1986.

(b) Install cable P/N 6068T47P01 between the propeller OSG and the hydromechanical unit in accordance with GE CT7 turboprop series SB 74–09, dated October 10, 1986.

(c) Install engine BG deactivation switches, Mod Kit Saab SF340–76–018–01, in the power lever quadrant in accordance with procedures contained in Saab SB SF340–76–018, dated October 24, 1986.

(c) Upon accomplishment of paragraphs (a) through (c) above:

(1) Remove from the SF340A Aircraft Flight Manual (AFM) the BG disabling procedures required by AD 86–10–51, paragraphs (a) (1) and (2).

(2) Discontinue operating in accordance with the procedures listed in AD 86–10–51, paragraph (b).

Note: Subsequent to compliance with this AD, aircraft operation shall be conducted in accordance with the latest AFM revision.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Should this proposed rule be adopted, the FAA will request the approval of the Federal Register to incorporate by reference the manufacturers' SB's identified and described in this document.

This proposed AD would supersede AD 86–10–51, Amendment 39–5473 (51 FR 44439; December 9, 1986).

Issued in Burlington, Massachusetts, on September 24, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87–23945 Filed 10–15–87; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 292, and 375

[Docket No. RM87-13-000]

Implementation of Section 8 of the Electric Consumer Protection Act of 1986; Hydroelectric Applicants With New Dam or Diversion Projects Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978

October 5, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing applicants for hydroelectric licenses and exemptions that seek benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The proposed amendments only govern applicants that have projects located at a new dam or diversion. In proposing these amendments, the Commission continues to implement section 8 of the Electric Consumers Protection Act of 1986 (ECPA).

Specifically, the Commission is proposing to require every applicant for a license or exemption for a hydroelectric project with a power capacity of 80 megawatts or less to state whether benefits will be sought under PURPA and, if so, whether the project will be located at a new dam or diversion. In addition, the Commission is also proposing to establish procedures for the filing and processing of a petition pursuant to section 8(b)(4)(C) of ECPA.

DATE: Written comments on this proposed rule must be filed with the Commission by November 16, 1987. An original and fourteen copies should be filed. All filings should refer to Docket No. RM87-13-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing applicants for hydroelectric licenses and exemptions that seek benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] The proposed amendments only govern applicants that have projects located at a new dam or diversion. In proposing these amendments, the Commission continues to implement the provisions of the Electric Consumers Protection Act of 1986 (ECPA) [2].

In this notice of proposed rulemaking (NOPR), the Commission is proposing to require every application for a license or exemption for a hydroelectric project with a power capacity of 80 megawatts or less to state whether PURPA benefits will be sought and, if so, whether the project will be located at a new dam or diversion. In addition, the Commission is also proposing to establish procedures for the filing and processing of a petition pursuant to section 8(b)(4)(C) of ECPA.

Section 8 of ECPA establishes three new requirements that a hydroelectric project located at a new dam or diversion must satisfy before it can qualify for PURPA benefits.[3] In addition, section 8 imposes a moratorium on PURPA benefits for such projects.The purpose of the moratorium is to allow Congress time to evaluate whether PURPA benefits should continue to be extended to hydroelectric projects located at new dams or diversions. ECPA requires the Commission to study whether PURPA benefits should be available to these facilities. The Commission will submit the results of its study to Congress, and Congress will then have one full session to consider the issue.

While section 8 of ECPA establishes three new requirements for PURPA benefits, it also creates four exceptions to the new requirements and to the moratorium. Any project which qualifies for one of the exceptions may seek PURPA benefits without complying with one or more of the new requirements. Any project that qualifies for one of the exceptions is also exempted from the moratorium.[4]

[1] 16 U.S.C. 824a-3 (1982).

[2] Pub. L. No. 99-495; 100 Stat. 1243 (Oct. 16, 1986).

[3] The term "PURPA benefits" refers to the provision in section 210 of PURPA which requires electric utilities to purchase electricity from, and sell electricity to, any qualifying facility.

[4] The result of this framework is that the new requirements can have immediate application even though there is a moratorium on PURPA benefits. For example, one of the exceptions only excepts a project from one of the new requirements. Such a project would be exempt from the moratorium and would be able to seek PURPA benefits. However, the project still would have to comply with the remaining new requirements for PURPA benefits added by section 8 of ECPA.

II. Background

Section 210 of PURPA requires electric utilities to sell electricity to, and purchase electricity from, qualifying small power production facilities. The Federal Power Act (FPA) defines "small power production facility" to include facilities with a power production capacity of 80 megawatts or less that produce electric energy solely by the use of renewable resources.[5] The Commission has interpreted "renewable resources" to include water used at hydroelectric projects located at either an existing dam or a new dam or diversion.[6] Therefore, small hydroelectric projects qualify for, or may seek, PURPA benefits.

In section 8(e) of ECPA, enacted on October 16, 1986, Congress imposed a moratorium of approximately two-to-three years on the availability of PURPA benefits for hydroelectric projects located at new dams or diversions. The purpose of this moratorium is to allow Congress time to evaluate whether PURPA benefits should continue to be extended to hydroelectric projects that create new dams or diversions of water.[7]

A. Section 8 of ECPA

Section 8 of ECPA amends section 210 of PURPA to add a new section 210(j) and establishes a moratorium on the availability of PURPA benefits. Section 210(j) only applies to projects located at new dams or diversions that seek PURPA benefits. Section 210(j) establishes three new environmental conditions which must be satisfied before such projects can qualify for PURPA benefits. The three new environmental requirements in section 210(j) are:

(1) *No Substantial Adverse Effects.* At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions

[5] 16 U.S.C. 796(17)(A) (1982).

[6] Small Power Production and Cogeneration Facilities—Qualifying Status, 45 FR 17,959 at 17,966 (Mar. 20, 1980), FERC Stats. and Regs. [Regulations Preambles 1977-1981] ¶ 30,134 (Mar. 13, 1980).

[7] In order to develop a factual record on the impact of extending PURPA benefits to hydroelectric projects located at new dams or diversions, section 8(d) of ECPA required the Commission to study whether PURPA benefits should be available to these projects. The commission will then submit the results of its study to Congress, and Congress will have one full session to consider the issue. The moratorium will end at the expiration of the first full session of Congress following the session in which the Commission submits its report to Congress.

imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

(2) *Protected Rivers.* At the time the application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

(B) Any segment of a natural watercourse which the state has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

(3) *Fish and Wildlife Terms and Conditions.* The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

While section 8 of ECPA establishes these new requirements for PURPA benefits,[8] it also creates four exceptions to one or more of the new requirements and to the moratorium. Any project that qualifies for one of the exceptions is exempted from the moratorium and can seek PURPA benefits without complying with one or more of the new requirements.[9]

The first exception is embodied in section 210(j) itself, since the section does not apply to any new dam or diversion project that is located at a government dam where non-Federal hydroelectric development is permissible. Any project in this category is exempted from the moratorium and can seek PURPA benefits without complying with any of the new requirements.[10]

[8] This notice will refer to the three requirements as: (a) The "adverse environmental effects" requirement (section 210(j)(1)), (b) the "protected rivers" requirement (section 210(j)(2)), and (c) the "fish and wildlife agency" requirement (section 210(j)(3)).

[9] If a project is excepted from one or two of the new requirements, it must still comply with the remaining requirements in section 210(j) of PURPA. However, the project would be exempted from the moratorium and could seek PURPA benefits.

[10] This exception, unlike the other exceptions, is a categorical exception and is not keyed to the timing of any event. Section 210(j) only applies, by definition, to new dams and diversions that are not located at government dams where non-Federal hydroelectric development is permissible. This notice will refer to this exception as the "government dam" exception.

The remaining exceptions are located in section 8(b) of ECPA. These exceptions are intended to provide relief for developers who had relied on existing law and who, at the time of ECPA's enactment, had expended significant amounts of money and effort on their projects. Congress recognized that the new environmental requirements in section 210(j) of PURPA could impose hardships on these developers. In order to alleviate the potential hardships, Congress created three exceptions for developers who were well on their way toward gaining regulatory approval of their projects at the time ECPA was enacted. The three remaining exceptions to the new requirements in section 210(j) of PURPA are:

1. None of the three new requirements applies if the application was filed, and accepted for filing by the Commission, before October 16, 1986, the date of ECPA's enactment. (section 8(b)(2) of ECPA)

2. Only the protected rivers requirement applies (section 210(j)(2) of PURPA) if the application was filed before October 16, 1986, and accepted for filing by the Commission between October 16, 1986, and October 16, 1989. (section 8(b)(3) of ECPA) [11]

3. The fish and wildlife agency requirement (section 210(j)(3) of PURPA) does not apply if the application was filed on or after October 16, 1986, and if the Commission finds, based on a petition filed by the applicant before April 16, 1988, that prior to ECPA's enactment the applicant had committed substantial monetary resources to the development of the project and to the diligent and timely completion of all filing requirements of the Commission. (section 8(b)(4) of ECPA)

The last exception, in section 8(b)(4) of ECPA, is available only if the Commission affirmatively grants the exception upon application, in the form of a petition. It is a portion of this last exception, in section 8(b)(4) of ECPA, that is the subject of this notice.

B. Section 8(b)(4) of ECPA

Section 8(b)(4) sets forth a series of specific steps that a qualifying applicant must take in order to satisfy, or be excepted from, the fish and wildlife agency requirement and the adverse environmental effects requirement in section 210(j) of PURPA. An applicant would qualify for section 8(b)(4) if its application was filed on or after October 16, 1986, and if the Commission finds that before October 16, 1986, the applicant committed substantial monetary resources to the development of the project and to the diligent and timely completion of all the filing requirements of the Commission. The applicant must file a "commitment of resources petition" which demonstrates the commitment of substantial monetary resources prior to the enactment of ECPA.[12] If the commitment of resources petition is denied by the Commission all the new requirements in section 210(j) of PURPA apply, and the applicant is not exempted from the moratorium. If the commitment of resources petition is granted, the applicant is excepted from the fish and wildlife agency requirement in section 210(j)(3) of PURPA.[13] In addition, the applicant may file a second petition and receive a preliminary determination whether the project satisfies the adverse environmental effects requirement in section 210(j)(1) of PURPA. It is this second petition, the adverse environmental effects (AEE) petition, that is the subject of this notice. By filing an AEE petition the applicant, who is already excepted from the fish and wildlife agency requirement, would receive a preliminary determination from the Commission on whether the project satisfies the adverse environmental effects requirement. If, on the basis of the AEE petition, the Commission initially decides that the project will have a substantial adverse effect, it must give the applicant a reasonable opportunity to provide for mitigation of such adverse effects before making a final determination. If the Commission initially decides that the

[11] For projects that qualify for this exception, the Commission is contacting the appropriate state agencies and requesting that the agencies determine if such projects are located on any natural watercourse as described in section 210(j)(2) of PURPA.

[12] The Commission issued an interim rule on February 13, 1987, which set forth what an applicant must demonstrate to show a commitment of substantial monetary resources. The interim rule also set forth procedures for the filing and processing of a commitment of resources petition. Docket No. RM87-8-000 52 FR 5276 (Feb. 20, 1987), III FERC Stats. & Regs. ¶ 30,729 (Feb. 13, 1987).

[13] If an applicant qualifies for the exception from section 210(j)(3) of PURPA, the applicant would still be subject to either recommended terms and conditions set by fish and wildlife agencies under section 10(j) or mandatory terms and conditions set by fish and wildlife agencies under section 30(c) of the FPA. There are two reasons for this interpretation. First, Congress intended FPA section 10(j) to apply to all applications for licenses except for those applications covered by PURPA section 210(j)(3). The Conference report which accompanies ECPA states,

Section 10 of the Federal Power Act, as amended by [ECPA], shall apply to *all* projects * * * for which a license is issued * * * except that section 10(j) will not apply if section 210(j)(3) of PURPA * * * applies to the project." H.R. Rep. No. 934, 99th Cong., 2nd Sess. 32 (1986) (emphasis added).

Second, Congress did not intend to alter the application of section 30(c) of teh FPA. Section 8(c) of ECPA requires that, "Nothing in this Act [ECPA] shall affect the application of section 30(c) of the Federal Power Act to any *exemption* issued after the enactment of this Act." H.R. Rep. No. 934, 99th Cong., 2nd Sess. 32 (1986) (emphasis added).

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project will not have a substantial adverse effect, it will afford interested state(s) a reasonable opportunity to make any determinations under the protected rivers requirement before making a final determination. The Commission is proposing to notify the appropriate Federal and state agencies of its initial finding. The Commission must make a final determination on the AEE petition at the time the license or exemption is issued. If a state has not taken any action before the Commission makes its final determination, the failure to take such action gives rise to a presumption that the project has no substantial adverse effect on the environment for those environmental attributes listed in section 210(j((2) of PURPA.

III. The Commission's Proposal

In this notice of proposed rulemaking (NOPR), the Commission proposes to require every application for license or exemption for a hydroelectric project with a power capacity of 80 megawatts or less to state whether PURPA benefits will be sought and, if so, whether the project will be located at a new dam or diversion. In addition, the Commission also proposes to establish procedures for the filing and processing of an "adverse environmental effects" (AEE) petition. This petition may be filed, under certain circumstances, by applicants who qualify for the specific exception in section 8(b)(4) of ECPA.[14]

A. Changes in Filing Requirements for Applications for License and Exemption

The Commission is proposing to amend its filing requirements to require every application for license or exemption for a hydroelectric project with a power capacity of 80 megawatts or less to state whether PURPA benefits will be sought, and if so, whether the project is located at a new dam or diversion. If the project is located at a new dam or diversion, it must satisfy the new environmental requirements in section 210(j) of PURPA. These proposed changes are intended to aid the Commission in its efforts to comply with ECPA and to promote the efficient use of Commission resources.

Prior to ECPA there was no distinction for obtaining PURPA benefits between new dams and diversions, and existing dams. ECPA introduces this distinction, imposing three new environmental requirements on projects located at new dams or diversions. Applicants may not always be able to determine if their project is a new dam or diversion or is reconstruction at an existing dam. If an applicant makes an incorrect determination of a projects' status, regardless of whether the mistake was inadvertent or deliberate, the applicant could avoid the requirements of section 210(j) of PURPA.[15] Therefore, in order to comply with ECPA, the Commission must verify whether or not the project is located at a new dam or diversion.

Although the new environmental requirements in section 210(j) of PURPA apply only to projects at new dams or diversions, the Commission's proposal would require all applications for projects with a power capacity of 80 megawatts or less to state whether or not PURPA benefits will be sought. This requirement is necessary to prevent applicants from circumventing or avoiding the new requirements.

Specifically, requiring an applicant with a hydroelectric project with a power capacity of 80 megawatts or less to state in its application whether or not it will seek PURPA benefits will allow the Commission to determine which projects require verification. If, prior to the issuance of a license or exemption, an applicant files a statement reversing its intent not to seek PURPA benefits, the Commission proposes to treat the statement as an amendment to the application which materially amends the proposed plans of development. This would encourage an applicant, at the outset, to decide whether to seek PURPA benefits. Treating a reversal of intent in this manner would also change the acceptance date of the application to the date on which the amendment was filed. The Commission would then consider the amended application a new filing for the following purposes:

(1) Reissuing public notice of the application (§ 4.32 of the Commission's regulations—Acceptance for filing or rejection) 18 CFR 4.32 (1987),

(2) Timeliness (§ 4.36 of the Commission's regulations (Competing applications) 18 CFR 4.36 (1987), and

(3) Disposal of competing applications (§ 4.37 of the Commission's regulations—Rules of preference among competing applications) 18 CFR 4.37 (1982).

The Commission also would rescind any acceptance letter for the application if it had issued one. As a consequence, the applicant would be subject to a new notice period and might lose priority among competing applicants.

The Commission is proposing to prohibit an applicant who reverses its intent not to seek PURPA benefits after a license or exemption has been issued from obtaining PURPA benefits. This proposal would prevent an applicant from deliberately avoiding the requirements in section 210(j) of PURPA by initially stating its intention not to seek PURPA benefits and then, after the license or exemption had been issued, attempting to seek PURPA benefits as a project at an "existing dam."

The Commission requests comments on this proposal or other suggestions on how to prevent an applicant from circumventing the new requirements in section 210(j) of PURPA.

If an applicant states its intent to seek PURPA benefits but is not successful, the Commission will have specifically considered the issue of PURPA benefits and will have an adequate record.[16] Therefore, if circumstances were to change, and the applicant could demonstrate that the changed circumstances negated the Commission's reasons for initially denying PURPA benefits, it might qualify for PURPA benefits.

B. Substantial Adverse Environmental Effects Petition

The Commission is proposing standards and procedures for filing an adverse environmental effects (AEE) petition. As explained before, the Commission can only make a determination on the AEE petition for an applicant whose commitment of resources petition was granted by the Commission. Such an applicant is excepted from the fish and wildlife requirements in section 210(j)(3) of PURPA.

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[14] The Commission implemented portions of section 8 of ECPA in an interim rule issued on February 13, 1987. Hydroelectric Applicants Seeking Benefits Under section 210 of the Public Utility Regulatory Policies Act of 1978 for Projects Located at a New Dam or Diversion (Docket No. RM87-8-000), 52 FR 5276 (Feb. 20, 1987), III FERC Stats. & Regs. ¶ 30,729 (Feb. 13, 1987). This NOPR proposes to implement the remaining portions of section 8.

[15] It is important to note that section 8(a) of ECPA defines what a new dam or diversion is for section 210 of PURPA. This definition tracks, or coincides with, the definition of an "existing dam" in section 408(a)(6) of PURPA and in §§4.30(b)(6) (i) and (ii) of the Commission's regulations. However, under section 210(k) of PURPA, the addition of flashboards would not preclude a project from seeking PURPA benefits as an "existing dam." In contrast, the addition of flashboards or similar adjustable devices precludes a project from qualifying for an exemption as an existing dam under the FPA. The Commission is proposing to continue to restrict exemptions to projects which do not provide for the addition of flashboards. However, it is apparently the intent of Congress to apply a more liberal rule regarding flashboards to qualifications for PURPA benefits. Therefore, under PURPA, "existing dams" can include projects which raise the existing impoundment level by the addition of flashboards.

[16] This example assumes that the applicant receives the license or the exemption and that the applicant is only unsuccessful in obtaining PURPA benefits.

If the Commission has granted the commitment of substantial monetary resources petition, and if the applicant has filed an AEE petition, the Commission will make an initial determination whether the project will satisfy the adverse environmental effects requirement in section 210(j)(1) of PURPA. Therefore, the AEE petition should simply identify the project and request that the Commission make an initial determination on the adverse environmental effects requirement. The Commission will make a final determination on the AEE petition at the time it issues the license or grants the exemption. If the appropriate state(s) has not taken any action before the Commission makes a final determination, a presumption arises that there are no substantial adverse effects. In other words, it will be presumed that for those environmental attributes listed in section 210(j)(2) of PURPA, the project has no substantial adverse effect on the environment.[17] The state must act before the Commission makes a final determination on the AEE petition (i.e., when the Commission issues the license or grants the exemption) to prevent the presumption from arising.

The Commission anticipates that the state will be well aware of all projects subject to section to section 8(b)(4) of ECPA and will have ample opportunity to comment on the initial determination. First, the Commission will notify the state when it issues an initial determination on the AEE petition. Second, before any application for a license or exemption can be submitted to the Commission, applicants must complete the requisite prefiling consultation requirements.[18] These requirements include consultation with state agencies. Therefore, since a state is given ample notice under these circumstances, it is reasonable to presume that the state's inaction indicates that the state does not object to the project.

1. *Definition of Substantial Adverse Environmental Effects*

The Commission proposes to define "substantial adverse environmental effects" as follows:

Substantial adverse environmental effects—are, for purposes of the Public Utility Regulatory Policy Act (PURPA), those effects which are characterized by substantial adverse alteration of natural features, existing habitat, recreational uses, water quality or other environmental resources. For the purposes of this rule, "substantial adverse alteration" of a particular resource means a change in the resource which results in a modification of the continued use of that resource. The Commission will determine if a project would result in substantial adverse environmental effects. In making this determination the Commission will consider, among other things, the following:

(1) The proposed mitigative measures;

(2) The consistency of the proposal with local, regional, and national resource plans and programs;

(3) The mandatory terms and conditions of fish and wildlife agencies under section 210(j) of PURPA, or section 30(c) of the Federal Power Act; or the recommended terms and conditions of fish and wildlife agencies under 10(j) of the Federal Power Act, whichever is appropriate; and

(4) Any other information which the Director believes is relevant to consider.

This definition tracks the language and the legislative history of section 210(j)(1) of PURPA.[19]

The Commission is proposing to incorporate its determination of substantial adverse effects into its environmental review process. Specifically, the Commission would review the application; require any additional information necessary to assess the impacts of the project on any environmental resource; assess the impacts of the project; and decide whether the project, even with the proposed mitigation, substantially alters the existing habitat, recreational uses, water quality or other environmental resources.

The Commission believes that the determination under section 210(j)(1) is specific to PURPA and does not affect any findings under the National Environmental Policy Act of 1969 (NEPA). NEPA is a procedural statute, while PURPA is a substantive statute. That is, NEPA mandates that certain procedures must be followed when the government proposes to take any action that significantly affects the quality of the human environment. NEPA does not deny or prohibit any Government action, it only mandates that certain processes be followed. Section 210(j)(1) of PURPA, however, contains a substantive standard which, if it is not satisfied, will result in the denial of PURPA benefits.

2. Review of the Substantial Adverse Environmental Effects Petition

Although the Commission would make the final determination on the AEE petition when it issues the license or grants the exemption, the Commission proposes to delegate to the Director of the Office of Hydropower Licensing (Director) the authority to make an initial determination on the AEE petition. The Director would make an initial finding on the petition after the close of the public notice period. The Director would also provide written notice of this finding to the applicant and to the appropriate Federal and state agencies.[20]

If the Director's initial determination is that the project would not have any adverse environmental effects, the Commission is proposing that a final determination could not be made any sooner than 45 days after the initial determination. The Commission believes that 45 days is sufficient time to allow the state to take any action it deems necessary. Similarly, the Commission proposes to provide an applicant with 45 days in which to file proposed mitigative measures. If an applicant files mitigative measures, the Commission proposes to give the state 45 days to review and comment on the mitigative measures.

The proposed mitigative measures filed by an applicant could contain changes in the development plan that would, in other circumstances, amount to the filing of a material amendment. Since the proposed mitigation measures are filed at the Commission's request and pursuant to ECPA, the Commisson proposes that such measures would not have the consequences of filing a material amendment. However, an applicant could not use the opportunity to provide mitigative measures as a pretext to materially amend its application and avoid the consequences of filing a material amendment. If the

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[17] While Congress used the attributes listed in the protected rivers requirement (section 210(j)(2) of PURPA) to define the scope of the presumption, the presumption arises only for the purposes of the adverse environmental effects requirement in section 210(j)(1) of PURPA.

[18] See 18 CFR 4.38 for the Commission's prefiling consultation requirements.

[19] *See*, 16 U.S.C. 823a–3(j)(1) (1982) (Section 210(j)(1) of PURPA), and the House Report which concluded that,

> • • • the Commission must determine that the project will not have substantial effects on the environment, including recreation or water quality. This requirement for cumulative impact analysis is intended to prevent PURPA benefits from being extended to new dam or diversions projects which *substantially alter, even with mitigation, existing habitat, recreational uses or water quality.* (emphasis added).

H.R. Rep. No. 507, 99th Cong., 2d Sess. 43 (1986).

[20] Congress intended the Commission to notify the state(s) of its preliminary finding on the AEE petition. The Conference Report which accompanied ECPA states, "If FERC issues a preliminary finding that the project would result in such adverse effects, the developer would be provided a reasonable opportunity to mitigate such effect. It is expected that FERC would notify the State of this finding." H.R. Rep. No. 934, 99th Cong., 2d Sess. 32 (1986).

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proposed measures exceed the scope of mitigating substantial adverse environmental effects, the Commission will treat such measures as a material amendment to the application.

IV. Written Comment Procedure

The Commission invites all interested persons to submit written data, views, and other information on the matters proposed in this notice. Submit all comments to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and refer to Docket No. RM87–13–000. Please file an original and fourteen copies. All comments received prior to 4:30 p.m. EST on November 16, 1987 will be considered by the Commission.

Written submissions will be placed in a public file established for this docket and will be available for public inspection during regular business hours in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act [21] requires a notice of proposed rulemaking to either contain an analysis of the impact the rulemaking would have on small entities,[22] or certify that the rule would not have a significant economic impact on a substantial number of small entities. This notice proposes a petitioning procedure that would assist certain applicants in meeting one of the new requirements in section 210(j) of PURPA. Section 210(j) applies to hydroelectric projects located at new dams or diversions that seek PURPA benefits. This notice also proposes regulations that would require applicants for hydroelectric projects with a power capacity of 80 megawatts or less to state whether PURPA benefits will be sought and, if so, whether the project will be located at a new dam or diversion. The Commission recognizes that these proposed regulations would have an economic impact on small entities. That impact, however, would be a beneficial one. The proposed regulations will help small entities comply with ECPA and new section 210(j) of PURPA. The Commission does not believe that the term "significant economic impact on a substantial number of small entities" as used in the Regulatory Flexibility Act, was intended to include regulations having a beneficial, rather than negative, impact on small entities. Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [23] and the Office of Management and Budget's (OMB) regulations [24] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this notice will be submitted to OMB for its approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426 (attention: Ellen Brown (202) 357–5311). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (attention: Desk Officer for the Federal Energy Regulatory Commission).

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission proposes to amend Parts 4, 292 and 375, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986. PUb. L. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982), as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12009, 3 CFR 1978 Comp., p. 142, unless otherwise noted.

2. In § 4.30, a new paragraph (b)(28) is added to read as follows:

§ 4.30 Applicability and definitions.

* * * * *

(b) * * *

(28) "PURPA benefits" mean benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), as amended. Section 210 of PURPA requires electric utilities to purchase electricity from, and to sell electricity to, qualifying facilities.

3. In § 4.32, paragraphs (c) through (i) are redesignated as paragraphs (d) through (j), and a new paragraph (c) is added to read as follows:

§ 4.32 Acceptance for filing or rejection.

* * * * *

(c) Every application for license or exemption for a project with a capacity of 80 megawatts or less must state:

(1) Whether benefits under section 210 of PURPA will or will not be sought;

(2) If benefits under section 210 of PURPA will be sought, the application must also state:

(i) That the project meets the criteria for qualifying small power production facilities contained in §§ 292.201 through 292.210 of this chapter, and

(ii) Whether the project would impound or divert the water of a natural watercourse by means of a new dam or diversion.

* * * * *

4. In redesignated paragraph, (d) through (f) of § 4.32, remove the words "(a) and (b)" where they appear and add, in their place, the words "(a), (b), and (c)".

5. In § 4.32 paragraphs (b) (1) and (2) and redesignated (e)(1)(ii), remove the words, "paragraph (c)" and add, in their place, the words "paragraph (d)".

6. In § 4.32 redesignated paragraph (e)(1)(iii), remove the words "paragraph (d)(2)(iii)" and add, in their place, the words "paragraph (e)(2)(iii)".

7. In § 4.32 redesignated paragraph (e)(2)(ii)(B), remove the words "paragraph (d)(1)" and add, in their place, the words "paragraph (e)(1)".

8. In § 4.32 redesignated paragraph (f), remove the words "paragraph (d)" and add, in their place, the words "paragraph (e)".

9. In § 4.33(d)(3), remove the words "§ 4.32(c)(2)" and add, in their place, the words "§ 4.32(d)(2)".

10. In § 4.35 paragraphs (a)(1), (a)(2)(i), (a)(2)(iii), and (a)(2)(iv) are revised and a new paragraph (a)(2)(v) is added to read as follows:

[21] 5 U.S.C. 601–612 (1982).

[22] 5 U.S.C. 603 (1982).

[23] 44 U.S.C. 3501–3520 (1982).

[24] 5 CFR 1320.13 (1987).

§ 4.35 Amendment of application; date of acceptance.

(a) *General rule.* (1) Except as provided in paragraph (a)(2) of this section, if an amendment to an application is filed, the Commission, in determining the date of acceptance of the application under § 4.32(f) of this part, will consider the date on which the amendment to the application was filed to be the date on which the application was filed with the Commission. The Commission will also consider the amended application as a new filing for the purposes of determining its timeliness under § 4.36 of this part, for disposing of competing applications under § 4.37 of this part, and for reissuing public notice of the application under § 4.32(d)(2) of this part. The Commission will also rescind any acceptance letter already issued for the application. This general rule applies in the following circumstances:

(i) If an applicant amends its filed license or preliminary permit application in order to change the status or identity of the applicant or to materially amend the proposed plans or development; or

(ii) If an applicant amends its filed application for exemption from licensing in order to materially amend the proposed plans of development; or

(iii) If an applicant, with a project that has a capacity of 80 megawatts or less, amends its filed application by changing its statement of intent whether or not to seek benefits under section 210 of PURPA as originally filed under § 4.32(c)(1) of this chapter.

(2) *Exceptions.* This section does not apply to:

(i) Any corrections of deficiencies made pursuant to § 4.32(e)(1);

* * * * *

(iii) Any amendments made pursuant to § 4.37(c)(2) of this chapter by a priority applicant to amend its proposed plans of development to make them as well adopted as the proposed plans of an applicant that is not a priority applicant;

(iv) Any amendments made by a license or an exemption applicant to amend its proposed plans of development to satisfy requests of fish and wildlife agencies submitted after an applicant has consulted adequately under § 4.38 of this chapter; and

(v) Any license or exemption applicant with a project located at a new dam or diversion who is seeking PURPA benefits and who:

(A) Has filed an adverse environmental effects (AEE) petition pursuant to § 292.210 of this chapter and,

(B) Has proposed measures to mitigate the adverse environmental effects which the Commission, in its initial determination on the AEE petition, stated the project will have. This exception does not protect any proposed mitigative measures that the Commission finds are pretext to avoid the consequences of materially amending the application or are outside the scope of mitigating the adverse environmental effects.

* * * * *

§ 4.38 [Amended]

11. In § 4.38(b)(3), remove the words "§ 4.32(d)(1)" and add, in their place, the words "§ 4.32(e)(1)".

§ 4.40 [Amended]

12. In § 4.40(b), remove the words "§ 4.32(g)" and add, in their place, the words "§ 4.32(h)".

§ 4.50 [Amended]

13. In § 4.50(b), remove the words "§ 4.32(g)" and add, in their place, the words "§ 4.32(h)".

§ 4.82 [Amended]

14. In § 4.82(b), remove the words "§ 4.32(c)(2)(i)" and add, in their place, the words "§ 4.32(d)(2)(i)".

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

15. The authority citation for Part 292 is revised to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organiztion Act, 42 U.S.C. 7101–7352 (1982); EO 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), unless otherwise noted.

16. In § 292.101 a new paragraph (b)(12) is added to read as follows:

§ 292.101 Definitions.

* * * * *

(b) * * *

(12) "New dam or diversion" means a dam or diversion which requires, for the purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices).

17. Section 292.210 is added to read as follows:

§ 292.210 Petition for initial determination of no substantial adverse environmental effects (AEE petition).

(a) An applicant that has filed a petition under § 292.209 of this part may also file an AEE petition with the Commission for an initial determination that the project will not cause substantial adverse environmental effects pursuant to § 292.203(c)(1)(ii) of this part. The Commission will act on the AEE petition only if the Commission has granted the applicant's commitment of resources petition under § 292.209 of this part.

(b) Substantial adverse environmental effects are, for purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), those effects which are characterized by substantial alteration, of natural features, existing habitat, recreational uses, water quality or other environmental resources. For the purposes of this section, "substantial alteration" for a particular resource means a change in the resource which results in a modification of the continued use of that resource. The Director of the Office of Hydropower Licensing will determine if a project will result in substantial adverse environmental effects. In making this determination that Director will consider, among other things, the following:

(1) The proposed mitigative measures;

(2) The consistency of the proposal with local, regional, and national resource plans and programs;

(3) The mandatory terms and conditions of fish and wildlife agencies under section 210(j) of PURPA, or section 30(c) of the Federal Power Act; or the recommended terms and conditions of fish wildlife agencies under 10(j) of the Federal Power Act, whichever is appropriate; and

(4) Any other information which the Director believes is relevant to consider.

(c) *Time of filing petition.* The applicant may:

(1) File the AEE petition with the application for license or exemption, or

(2) Submit with the application for license or exemption a request for an extension of time, not to exceed 90 days

or April 16, 1988, whichever occurs first, in which to file the AEE petition.

(d) *Contents of petition.* The AEE petition must identify the project and request that the Commission make an initial determination on the adverse environmental effects requirement in § 292.203(c)(ii) of the Commission's regulations.

(e) *Initial finding on the petition.* The Director of the Office of Hydropower Licensing will make the initial determination on the AEE petition after the close of the public notice period for the accepted application. If the Director's initial determination finds:

(1) No substantial adverse effects, then the Commission must wait at least 45 days before making a final determination that the project satisfies the requirements of § 292.203(c)(1)(ii) of this chapter;

(2) Substantial adverse environmental effects, within 45 days of the initial finding that the project does not satisfy the requirements § 292.203(c)(1)(ii) of this chapter, the applicant may file proposed measures to mitigate the adverse environmental effects found. The state will have 45 days to review any mitigative measures filed by an applicant.

(f) *Notification of finding.* The Commission will provide written notice of the Director's initial finding on the petition to the applicant and to the Federal and state agencies that the applicant must consult under § 4.38 of this chapter.

(g) *Material amendments to application.* The proposed mitigative measures filed under paragraph (e)(2) of this section will not be considered a material amendment to the application unless the Commission finds that the measures proposed by the applicant are unnecessary to, or exceed the scope of, mitigating substantial adverse effects. If the Commission finds the proposed mitigative measures constitute a material amendment, the application will be considered filed with the Commission on the date on which the applicant filed the proposed mitigative measures, and all other provisions of § 4.35(a) of this chapter will apply.

(h) *Final determination on the petition.* The Commission will make a final determination on the petition at the time the Commission issues a license or exemption for the project.

(i) *Presumption of no substantial adverse environmental effects.*—(1) *Presumption.* If, at the time the Commission makes a final determination on the AEE petition (the substantial adverse effect requirement in § 292.203(c)(ii) of this chapter), the state has not taken any action under paragraph (i)(2) of this section, the Commission will presume that, as for those attributes listed in § 292.203(c)(1)(iii) of this chapter, the project will not cause substantial adverse environmental effects.

(2) *Rebuttal.* In order to rebut the presumption described in paragraph (i)(1) of this section the state must, before the Commission issues a license, come forward with evidence to show that, at the time the application for license or exemption was accepted, the project was:

(i) Located on any segment of a natural watercourse which is included in (or designated for inclusion in) a State or National Wild and Scenic River System; or

(ii) Located on any segment of a natural watercourse which the state has determined, in accordance with applicable state law, to possess unique natural, recreational, cultural or scenic attributes that will be adversely affected by hydroelectric development.

§ 292.203 [Amended]

18. In § 292.203(c)(1)(iii) introductory text, remove the words "§ 4.32(e)" and add, in their place, the words § 4.32(f)".

§ 292.209 [Amended]

19. In § 292.209(b), remove the words "§ 4.32(e)" and add, in their place, the words "§ 4.32(f)".

20. In § 292.209(d)(8), remove the words "§ 4.32(d)" and add, in their place, the words "§ 4.32 (e)".

PART 375—THE COMMISSION

21. The authority citation for Part 375 is revised to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7532, EO 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 791a–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et. seq.*, as amended.

22. In § 375.314 paragraph (hh) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(hh) Pass upon petitions filed under §§ 292.209 and 292.210 of this chapter.

[FR Doc. 87–23414 Filed 10–15–87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Decisions by Administrative Law Judges in Cases Remanded by the Courts

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations to provide that where a court remands a case to the Secretary and the Appeals Council subsequently remands the case to an administrative law judge (ALJ) for further proceedings, and a new decision, the ALJ may issue an initial decision. The initial decision will become the decision of the Secretary unless the Appeals Council takes jurisdiction of the case. Under the regulations currently in effect for court remands, the ALJ must issue a recommended decision and the Appeals Council must review that decision and take further action in every case before the decision becomes final.

Following adoption of the proposed change, favorable ALJ decisions that are not reviewed by the Appeals Council should be effectuated on a more timely basis (i.e., claimants should receive benefits earlier) because it will not be necessary for the Appeals Council to issue an adoption decision in most cases. Agency final action on those unfavorable decisions not requiring further action by the Appeals Council will also be accomplished more expeditiously.

DATE: Your comments will be considered if we receive them no later than December 15, 1987.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4, Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during those same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4

Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION:

Background

Under the current regulations, if a Federal court remands a case to the Secretary, the Appeal Council receives the case on behalf of the Secretary. In most instances, the Appeals Council in turn remands the case to an ALJ for further proceedings. Generally, the ALJ holds a supplemental hearing at which the parties may present their arguments and provide any additional evidence. The ALJ then returns the case to the Appeal Council with a recommended decision (20 CFR 404.953, 404.983, 416.1453, and 416.1483). The parties are sent a copy of the recommended decision, and may file briefs or other written statements with the Appeals Council (20 CFR 404.977 and 416.1477). When the Appeals Council receives an ALJ's recommended decision, it must issue a decision adopting, modifying or rejecting an ALJs recommended decision, or again remand the case to an ALJ for further proceedings (20 CFR 404.979 and 416.1479). Thus, the current policy requires Appeal Council action in each case involving a court remand, even if the ALJ's recommended decision is completely free from error and even where the parties do not object to the recommended decision.

A recent review of our policy with respect to court remands indicated that the current procedures could be modified to ensure the more timely processing of court remands. Under present procedures, the issuance of the Appeals Council decision often takes a substantial period from the date ALJ issues the recommended decision. In addition, the Appeals Council adopts ALJ's recommended decisions without substantive revision in a high percentage of cases. In view of these findings, we propose to eliminate the requirement that the ALJ issue a recommended decision in court remand cases. However, ALJs will continue to issue recommended decisions in certain cases involving the application of circuit court case law as interpreted in an Acquiescence Ruling. Regulations covering this policy are being developed.

Proposed Policy

We propose to amend the regulations to eliminate the requirement that ALJs must issue recommended decisions in court remand cases. ALJs would issue initial decisions which would become final unless: (1) Within 30 days after the decision is received, the parties submit written exceptions to the Appeals Council disagreeing with the ALJ's action or within that period submit a written request for an extension of time to file exceptions and, based on these exceptions, the Appeals Council assumes jurisdiction of the case; or (2) the Appeals Council decides to take jurisdiction of the case within 60 days after the date of the decision. If the Appeals Council assumes jurisdiction, the ALJ's decision does not become final, and the Appeals Council's review is not limited to the scope of the ALJ's decision but may encompass all aspects and issues of the case, When parties have filed written exceptions to an ALJ's decision, the Appeals Council may assume jurisdiction at any time, even after the 60-day limit which applies when no such exceptions have been filed. We propose to amend the current regulations at 20 CFR 404.955 and 416.1455 which discuss the binding effect of an ALJ's decision to accommodate these procedures.

Pursuant to 20 CFR 404.901 and 416.1401, the date of receipt of ALJ's decision by the parties is presumed to be 5 days after the date on the notice of the decision. Proposed §§ 404.984(b) and 416.1484(b) provide 30 days after receipt of the ALJ's decision for a party to file written exceptions with the Appeals Council with a 30-day extension to be granted automatically by the Appeals Council when timely requested.

The reason for providing that the parties have 30 days in which to submit written exceptions to the ALJ's decision (with a possible 30-day extension) while the Appeals Council has 60 days to decide whether to assume jurisdiction of the case is that the Appeals Council must be in a position to review every decision within 60 days after the ALJ's decision is issued. In deciding whether or not to assume jurisdiction, it is preferable for the Appeals Council to have the benefit of the parties' exceptions. Because of this, the Appeals Council will usually not decide whether to assume jurisdiction until written exceptions have been submitted or the period for submitting them has expired. If, however, no such exceptions are submitted, there must be a period during which the Appeals Council can decide whether to assume jurisdiction before the 60-day period following the ALJ's decision expires. Hence the 30/60-day differential provides a mechanism that ensures that (1) in the great majority of cases, the Appeals Council will be able to consider the parties' exceptions at the time it decides whether or not to assume jurisdiction and (2) if no exceptions are submitted, the Appeals Council will have time to decide whether to assume jurisdiction before the 60 days for doing so expires. This privision allows more time than the current regulations which provide a 20-day period in which to file briefs or other written statements when an ALJ issues a recommended decision.

If a party indicates in writing the he or she disagrees with the ALJ's decision, the Appeals Council will either take jurisidiction of the case and issue a decision; remand the case to an ALJ for further proceedings; or, in the alternative, issue a notice to the parties explaining why it believes the ALJ's deicision is correct.

Under the proposed policy, if the Appeals Council decides to take jurisdiction (where no exceptions are filed), notice will be sent to the parties and the parties' representatives within 60 days after the date of the ALJ's decision. The notice will inform them of the Appeals Council's proposed action and provide the opportunity to file a brief or other written statement with the Appeals Council relating to the proposed action. All other decisions fully favorable to the parties will be forwarded immediately by the Appeals Council to the appropriate agency component for effectuation with respect to the matters which were decided by the ALJ. ALJ's do not always make decisions regarding all the factors involved in a claim. Determination on factors of eligibility or entitlement not addressed in the ALJ's decision will be made by the apropriate SSA component.

If the ALJ issues a decision unfavorable to the parties and (1) the parties or the parties' representatives do not file written exceptions within the specified time period or within any extension of time disagreeing with the decision, and (2) the Appeals Council does not assume jurisdiction of the case, the ALJ's decision will be the final decision of the Secretary. However, the Appeals Council will continue to ensure that each case is appropriately handled and fully complies with the court remand order. In all cases where further action is necessary, the Appeals Council will so advise the parties and the parties' representatives.

Under the proposed regulations, an ALJ could still issue a recommended decision if he or she chose to do so, or the Appeals Council, at its discretion, may order the ALJ to issue a recommended decision. In any case where the ALJ issues a recommended decision, the parties will continue to have the right to file briefs or other written statements with the Appeals Council within 20 days and the Appeals Council will issue the final decision. 20 CFR 404.977(d) and 416.1477(d).

The procedures set forth in these regulations apply to cases under titles II and XVI of the Social Security Act. They will also apply to cases involving remands by the courts in which the Secretary's final decision was issued under the appeals procedures set forth in 42 CFR Part 405, Subpart G, Reconsiderations and Appeals Under the Hospital Insurance Program (Part A of Medicare). The appeals covered under that subpart involve whether an individual is entitled to Hospital Insurance or Supplementary Medical Insurance under title XVIII of the Act or the amount payable under Hospital Insurance. Those regulations incorporate the regulations in 20 CFR Part 404, Subpart J by reference. Therefore, the amendments to 20 CFR Part 404, Subpart J set forth in this Notice of Proposed Rulemaking would apply to procedures in 42 CFR Part 405, Subpart G. These procedures will not apply to appeals under 42 CFR Part 405, Surpart O. That subpart primarily governs appeals by providers of services and other entities as to participation in the Medicare program. Under that subpart the ALJ is not required to issue a recommended decision in a case remanded by a court unless directed to do so by the Appeals Council. Thus, that subpart of the regulations is consistent with the procedures to be implemented in these regulations.

These procedures will also not apply to appeals pursuant to 20 CFR Part 410, Subpart G. That subpart of the regulations sets forth the procedure for appeals in claims under the Federal Coal Mine Health and Safety Act, Title IV, Black Lung Benefits for which the SSA still has jurisdiction. We are not amending that subpart because ongoing jurisdication for Black Lung claims is now in the Department of Labor. Moreover, there are few remaining cases now within SSA jurisdiction and the number remaining should continue to diminish. Thus, there is no need to change the procedures for these cases.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a sustantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.773 and 13.774, Medicare; 13.802-13.805 Social Security; and 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: April 10, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 19, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart J of Part 404 and Subpart N of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302; sec. 5 of Pub. L. 97-455, 96 Stat. 2500; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

2. Paragraph (b) of § 404.953 is revised to read as follows:

§ 404.953 The decision of an administrative law judge.

* * * * *

(b) *Recommended decision.* Although an administrative law judge will usually make an initial decision, he or she may send the case to the Appeals Council with a recommended decision where appropriate. The administrative law judge shall mail a copy of the recommended decision to the parties at their last known address and send the recommended decision to the Appeals Council.

3. Paragraphs (d) and (e) are revised and a new paragraph (f) is added to § 404.955 to read as follows:

§ 404.955 The effect of an administrative law judge's decision.

* * * * *

(a) The expedited appeals process is used;

(e) The decision is a recommended decision directed to the Appeals Council; or

(f) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 404.984.

4. An undesignated center heading is added immediately before § 404.983 and new § 404.984; and § 404.983 is revised to read as follows:

Court Remand Cases

§ 404.983 Case remanded by a Federal court.

When a Federal court remands a case to the Secretary for further consideration, the Appeals Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision. If the case is remanded by the Appeals Council, the procedures explained in § 404.977 will be followed.

5. A new § 404.984 is added to read as follows:

§ 404.984 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In a case remanded by a Federal court for further consideration, the administrative law judge's decision will become the final administrative decision on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction based on written exceptions to the administrative law judge's decision filed by you or your representative or based on its authority to take jurisdiction pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, all issues relating to your claim whether or not they were considered by the administrative law judge will be before the Appeals Council. The Appeals Council will make a new, independent decision based on the entire record or remand the case to an administrative law judge for further proceedings.

(b) *You file exceptions disagreeing with the administrative law judge's*

decision. (1) If you disagree with the administrative law judge's decision, in whole or in part, you may file exceptions to the decision with the Appeals Council. Exceptions may be filed by submitting a written statement to the Appeals Council setting forth your reasons for disagreeing with the administrative law judge's decision. The exceptions must be filed within 30-days of the date you receive the administrative law judges decision or an extension of time in which to submit exceptions must be requested in writing within the 30 day period. A timely request for a 30-day extension will be granted by the Appeals Council. A request for an extension of more than 30 days should include a statement of reasons as to why you need the additional time.

(2) If written exceptions are timely filed, the Appeals Council will consider your reasons for disagreeing with the administrative law judge's decision and all the issues presented by your case. If the Appeals Council concludes that there is no reason to change the administrative law judge's decision, it will issue a notice to you addressing your exceptions and explaining why no change in the administrative law judge's decision is warranted. The administrative law judge's decision is the final decision of the Secretary unless the decision is revised.

(3) When you file written exceptions to an administrative law judge's decision, the Appeals Council may assume jurisdiction at any time, even after the 60-day limit which applies when no exceptions have been filed. If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on review of the entire record affirming, modifying or reversing the decision of the administrative law judge or remand the case to an administrative law judge for further proceedings, including a new decision.

(c) *Appeals Council assumes jurisdiction without exceptions being filed.* Anytime within 60 days after the date of the administrative law judge's decision, the Appeals Council may decide to assume jurisdiction of your case even though no written exceptions have been filed. Notice of this action will be mailed to all parties at their last known address. You will be provided with the opportunity to file briefs or other written statements with the Appeals Council about the facts and law relevant to your case. After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will issue a decision affirming, modifying or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

(d) *Exceptions are not filed and the Appeals Council does not otherwise assume jurisdiction.* If no exceptions are filed and the Appeals Council does not assume jurisdiction of your case, the administrative law judge's decision becomes the final decision of the Secretary.

PART 416—[AMENDED]

6. The authority citation for Subpart N of Part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

7. Paragraph (c) of §416.1453 is revised to read as follows:

§416.1453 The decision of the administrative law judge.

* * * * *

(c) *Recommended decision.* Although an administrative law judge will usually make an initial decision, he or she may send the case to the Appeals Council with a recommended decision where appropriate. The administrative law judge shall mail a copy of the recommended decision to the parties at their last known address and send the recommended decision to the Appeals Council.

8. Paragraphs (d) and (e) are revised and a new paragraph (f) is added to §416.1455 to read as follows:

§416.1455 The effect of an administrative law judge's decision.

* * * * *

(d) The expedited appeals process is used;

(e) The decision is a recommended decision directed to the Appeals Council; or

(f) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in §416.1484.

9. An undesignated center heading is added immediately before §416.1483 and new §416.1484, and §416.1483 is revised to read as follows:

Court Remand Cases

§416.1483 Case remanded by a Federal court.

When a Federal court remands a case to the Secretary for further consideration, the Appeals Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision. If the case is remanded by the Appeals Council, the procedures explained in §416.1477 will be followed.

10. A new §416.1484 is added to read as follows:

§416.1484 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In a case remanded by a Federal court for further consideration, the administrative law judge's decision will become the final administrative decision on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction based on written exceptions to the administrative law judge's decision filed by you or your representative or based on its authority to take jurisdiction pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, all issues relating to your claim whether or not they were considered by the administrative law judge will be before the Appeals Council. The Appeals Council will make a new, independent decision based on the entire record or remand the case to an administrative law judge for further proceedings.

(b) *You file exceptions disagreeing with the administrative law judge's decision.* (1) If you disagree with the administrative law judge's decision, in whole or in part, you may file exceptions to the decision with the Appeals Council. Exceptions may be filed by submitting a written statement to the Appeals Council setting forth your reasons for disagreeing with the administrative law judge's decision. The exceptions must be filed within 30 days of the date you receive the administrative law judge's decision or an extension of time in which to submit exceptions must be requested in writing within the 30-day period. A timely request for a 30-day extension will be granted by the Appeals Council. A request for an extension of more than 30 days should include a statement of

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reasons as to why you need the additional time.

(2) If written exceptions are timely filed, the Appeals Council will consider your reasons for disagreeing with the administrative law judge's decision and all the issues presented by your case. If the Appeals Council concludes that there is no reason to change the administrative law judge's decision, it will issue a notice to you addressing your exceptions and explaining why no change in the administrative law judge's decision is warranted. The administrative law judge's decision is the final decision of the Secretary unless the decision is revised.

(3) When you file written exceptions to an administrative law judge's decision, the Appeals Council may assume jurisdiction at any time, even after the 60-day limit which applies when no exceptions have been filed. If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on review of the entire record affirming, modifying or reversing the decision of the administrative law judge or remand the case to an administrative law judge for further proceedings, including a new decision.

(c) *Appeals Council assumes jurisdiction without exceptions being filed.* Anytime within 60 days after the date of the administrative law judge's decision, the Appeals Council may decide to assume jurisdiction of your case even though no written exceptions have been filed. Notice of this action will be mailed to all parties at their last known address. You will be provided with the opportunity to file briefs or other written statements with the Appeals Council about the facts and law relevant to your case. After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will issue a decision affirming, modifying or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

(d) *Exceptions are not filed and the Appeals Council does not otherwise assume jurisdiction.* If no exceptions are filed and the Appeals Council does not assume jurisdiction of your case, the administrative law judge's decision becomes the final decision of the Secretary.

[FR Doc. 87-23828 Filed 10-15-87; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 965

[Docket No. R-87-1326; FR-2260]

PHA-Owned or Leased Projects; Maintenance and Operation; Tenant Allowances for Utilities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD's procedures for the establishment and administration by Public Housing Agencies (PHAs) of Allowances for PHA-Furnished Utilities and Allowances for Tenant-Purchased Utilities are contained in 24 CFR Part 965, Subpart E. This subpart also governs the imposition by PHAs of Surcharges for the consumption of Utilities in excess of the Allowance for PHA-Furnished Utilities where Checkmeters have been installed, and of Surcharges for imputed consumption attributable to certain equipment and functions in dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed. This proposed rule would amend Subpart E to clarify how the Utility consumption attributable to air conditioning equipment (whether provided by the PHA or the tenant) and certain tenant-provided major appliances will be treated under the Allowance and Surcharge provisions.

DATE: Comments must be submitted on or before December 15, 1987.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles R. Ashmore, Utilities Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6640. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Hud historically has considered "rent" in the public housing program to include shelter cost plus a reasonable amount for Utilities. As a result, the Department has provided for a system under which Allowances are established showing the amounts of Utilities or Utility-type services whose cost is to be covered by "rent." This system is described in 24 CFR Part 965, Subpart E. As amended on August 7, 1984 (49 FR 31399), this part treats tenant Utilities differently depending on whether the Utilities are purchased by the tenant directly from the Utility Company, whether the Utilities are furnished to the tenant by the PHA and whether Checkmeters have been installed for the individual dwelling units. As background for the consideration of this proposed rulemaking, major features of the Department's existing Utility regulations are summarized below.

For Tenant-Purchased Utilities, the regulations require the PHA to establish an Allowance for Tenant Purchase Utilities—a fixed dollar amount that is deducted from the amount the tenant must pay for rent under the statutory formula in section 3(a) of the U.S. Housing Act of 1937 and 24 CFR 913.107. The tenant pays the actual Utility charge directly to the Utility supplier, whether this charge is more or less than the amount of the Allowance. The Allowance is based on the reasonable consumption of Utilitiers by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment. Since excess Utility consumption by the tenant is paid directly to the Utility company, the regulations contain no provisions for PHA Surcharge for excess consumption.

For PHA-Furnished Utilities where Checkmeters for the Utilities are installed for the individual dwelling units, the rule requires the PHA to establish an Allowance for PHA-Furnished Utilities—an amount of consumption units (*e.g.*, kilowatt hours of electricity) for the dwelling unit. The Allowance is based on the same reasonableness standard discussed above. The regulation requires a Surcharge (a dollar amount based on a rate and level of excess consumption) on the tenant by the PHA for consumption in excess of the Allowance.

For PHA-Furnished Utilities where Checkmeters are not installed for the individual dwelling units (and thus no means exists for the PHA to monitor actual consumption of PHA-Furnished Utilities), the regulation simply requires the PHA to establish schedules of Surcharges indicating additional

amounts that tenants will be required to pay to the PHA for imputed Utility consumption attributable to tenant-owned major equipment or to optional functions of PHA-furnished equipment.

In recent months, uncertainty has arisen concerning the proper treatment of Utility consumption by air conditioning equipment (whether provided by the PHA or by the tenant) and by certain tenant-provided major appliances, such as washing machines, clothes dryers, and food freezers. *I.e.*, should reasonable Utility consumption attributable to such equipment be included within the Allowance for PHA-Furnished and Tenant-Purchased Utilities? Can the PHA establish a Surcharge for the imputed Utility consumption attributable to such equipment in dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed?

The current regulation does not make it absolutely clear that the inclusion of such consumption in Utility Allowances is not permitted or that the establishment of a Surcharge is required for consumption in dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed. The discussion in the preamble to the final rule published August 7, 1984, on the other hand, suggests that Allowances for consumption attributable to air conditioning and laundry equipment (washers and dryers) are within the PHA's discretion (51 FR 31399, 31404). The preamble also implied that air conditioning could be considered a necessity in some climates (51 FR 31399, 31404).

The existing regulation places the entire responsibility for the establishment of Allowances and Surcharges on the PHA. The Federal Government, for the most part, carries the full cost of Utility Allowances either through reduced Tenant Rents (Tenant-Purchased Utilities) or by Utility reimbursement under the performance funding system (PHA-Furnished Utilities). Since Utility costs represent a substantial element of Federal subsidization of PHAs, the Department is proposing, in this proceeding, to clear up any ambiguities that exist for PHAs regarding Utility consumption attributable to PHA- or tenant-provided air conditioning equipment and to tenant-provided major appliances.

Air Conditioning

In general, the Department does not believe that it is necessary to furnish Allowances for air conditioning in order to ensure the provision of decent, safe and sanitary housing. Accordingly, this proposed rule would (1) revise § 965.476(b) to provide that the Allowances for PHA-Furnished and Tenant-Purchased Utilities shall not include imputed consumption attributable to air conditioning equipment; and (2) revise § 965.477(b) to provide that for dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed, the Surcharge schedule must indicate additional dollar amounts that tenants will be required to pay by reason of imputed Utility consumption attributable to air conditioning equipment.

The proposed rule would, however, also recognize that there are some circumstances which require the PHA to include air conditioning Utility consumption in the Utility Allowance or exclude such consumption from the Surcharge provisions of § 965.477(b).

Many project designs *require* tenant use of PHA-provided air conditioning equipment. The most obvious example of this situation occurs where a PHA provides air conditioning to dwelling units from a central facility and tenants are unable to control (*i.e.*, turn on or off or otherwise regulate) the flow of air into individual dwelling units. Another example occurs where a PHA furnishes air conditioning equipment for a dwelling unit and the tenant is compelled by project design (*i.e.*, sealed windows) to use the provided air conditioning.

In recognition of these situations where the avoidance of Utility consumption is not reasonably within the control of the tenant, § 965.476(b) would provide that the Allowance for PHA-Furnished and Tenant-Purchased Utilities shall be designed to include reasonable consumption for air conditioning equipment if the air conditioning equipment is provided by the PHA and the project design either (1) does not provide for natural ventilation of the dwelling unit because of sealed windows or (2) does not permit the tenant to control (*i.e.*, turn on or off or otherwise regulate) the flow of conditioned air into the dwelling unit. Similarly, for dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed, the PHA would be prohibited from establishing a Surcharge under such circumstances. (§ 965.477(b)). However, for dwelling units subject to Allowances for PHA-Furnished Utilities where Checkmeters *have* been installed, the provisions for Surcharge for Utility consumption in *excess of the Allowance* would continue to be applicable. (§ 965.477(a)).

Tenant-Provided Major Appliances (Except Air Conditioning)

As noted above, in addition to questions concerning air conditioning Utility consumption, there has been some uncertainty concerning the treatment of Utility consumption for tenant-provided major appliances, such as washing machines, clothes dryers and food freezers. To clarify this area, HUD is proposing to make revisions to Subpart E. These revisions would apply to all tenant-provided major appliances except the tenant-provided air conditioning equipment discussed above.

Section 965.476(b) would be amended to state specifically that Utility Allowances shall not be designed to include the Utility consumption attributable to major appliances (*i.e.*, washing machines, clothes dryers, food freezers) provided by the tenant. Consistent with the existing regulation, the proposed rule, however, would provide that the Allowances shall be designed to include the Utility consumption attributable to one range and refrigerator per dwelling unit, whether or not the equipment is provided by the PHA.

Similarly, the Surcharge provisions of § 965.477(b) for dwelling units served by PHA-Furnished Utilities without Checkmeters would require that the Surcharge schedule include dollar amounts that tenants would be required to pay by reason of imputed consumption attributable to tenant-provided major appliances. (See § 965.477(b)(2)(i)(A).) Again, Surcharges would not be made for consumption attributable to one range and refrigerator per dwelling unit, whether or not these appliances are provided by the PHA. (See § 965.477(b)(2)(i)(C).)

As noted above, the proposed rule attempts to eliminate the uncertainty in this area by citing, as examples, the most common types of tenant-provided major appliances. This is not intended as an exhaustive list. There may be other major appliance items (such as broilers, microwaves, stereo components and space heaters) that should also be cited in the regulation. Public comment is specifically requested on this issue.

Rights and Duties of PHAs and Tenants

The purpose of this proposed rule is to clarify how Utility consumption for certain equipment items is to be treated under the Utility Allowance and Surcharge provisions of Part 965. The rule will not alter the existing rights and responsibilities of the tenant and the

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PHA with regard to the installation, maintenance, use or removal of PHA- or tenant-provided equipment. The decision to install PHA-provided air conditioning equipment or to provide facilities that permit tenants to install their own air conditioning units (subject to HUD-approvals, if provided in connection with modernization under the Comprehensive Improvement Assistance Programs under Part 966) would remain within the sole discretion of the PHA. Nothing in this rule, however, would empower tenants to compel PHAs to furnish such facilities. Moreover, this rule would not alter the basic obligation under the lease of tenants and PHAs with regard to the installation, maintenance, use or removal of air conditioning equipment or tenant-provided major appliances (*see* § 966.4). (*E.g.*, the exclusion of air conditioning consumption from the utility allowance would have no effect on the tenant's election to use air conditioning in the unit.)

The proposed rule would add provisions to §§ 965.476 and 965.477 stating that nothing in the proposed rule shall alter the rights and duties of the PHA and the tenant with regard to the installation, maintenance, use or removal of equipment and appliances under the terms of the lease and other applicable Hud regulations.

Individual Relief

This proposed rule would provide specific guidance to PHAs regarding Allowances and Surcharges for Utility consumption by air conditioning equipment or by tenant-provided major appliances. While this rule would prescribe specific standards to govern the provision of such Allowances, the Department is not unmindful of the possibility that individual needs or specific circumstances may exist which could support Utility Allowances otherwise prohibited by the rule, on an individual basis.

Such situations may be handled on a case-by-case basis under the provisions of § 965.479 of HUD's existing regulations. This section permits the PHA to grant requests for relief from Surcharges for excess consumption of PHA-Furnished Utilities, or from payment of Utility-supplied billings in excess of the Allowance for Tenant-Purchased Utilities, based on reasonable grounds, such as the special needs of certain elderly, ill or handicapped persons.

Transition Provision

The proposed rule includes a transition provision at § 965.480. This section would provide that Allowances and Surcharges in accordance with the revisions to Subpart E made by this rule must be established and in effect for the PHAs first fiscal year that begins 90 or more days after the effective date of the final rule. This transition period would permit the coordination of the Surcharge and Allowance provisions with the PHAs budget process and should be sufficient to permit PHAs to complete the procedural requirements for the establishment of Allowances and Surcharges (*See* 965.473). The proposed rule also permits the Assistant Secretary for Public and Indian Housing to extend the period for the establishment of Allowance and Surcharges, for good cause shown.

Miscellaneous additional revisions to Subpart E have been made for clarity.

Findings

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291. Analysis of the proposed rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(c) of the National Environmental Policy Act of 1969 (47 FR 35253). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the address listed above.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act,) the Undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies for PHAs when the costs of certain Utility consumption will be borne by the tenant or borne by HUD (through reduced tenant rents or Utility reimbursements under the performance funding system).

This rule was listed as item 1040 in the Department's Semiannual Agenda of Regulations published April 27, 1987 (52 FR 14362, 14401) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title are 14.146, Low-Income Housing—Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 965

Public housing, Utilities, Energy conservation.

Accordingly, Title 24, Part 965 would be amended as follows:

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

1. The authority citation for Part 965 would continue to read as follows:

Authority: Secs. 2, 3, 6 and 9, United States Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d, and 1437g); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d). Subpart H is also issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

2. In § 965.471, the reference in paragraph (a) to 24 CFR Part 800 would be revised to refer instead to 24 CFR Part 900, and paragraph (b) would be revised to read as follows:

§ 965.471 Applicability.

* * * * *

(b) This subpart does not apply to dwelling units served by PHA-Furnished Utilities, unless Checkmeters have been installed to measure actual Utilities consumption of the individual units. However, tenants served by PHA-Furnished Utilities in units without checkmeters shall be subject to charges for Utilities consumed by certain described equipment and functions in accordance with the Surcharge provisions of § 965.477(b).

3. Section 965.472 would be amended to revise the definition of "Surcharge" to read as follows:

§ 965.472 Definitions.

* * * * *

Surcharge. The amount charged by the PHA to a tenant, in addition to the Tenant Rent, for consumption of Utilities in excess of the Allowance for PHA-Furnished Utilities or for imputed consumption attributable to certain described equipment and functions. Surcharges calculated under § 965.477(b), based on imputed consumption where Checkmeters have not been installed, are referred to as "scheduled Surcharges."

4. Section 965.476(b) would be revised to read as follows:

§ 965.476 Standards for allowances for utilities.

* * * * *

(b)(1) Except as specifically provided in paragraph (b)(2) of this section (governing Utility consumption attributable to air conditioning equipment), the Allowances for PHA-Furnished and Tenant-Purchased Utilities:

(i) Shall be designed to include reasonable consumption for the following items provided by the PHA: (A) Major equipment or Utility functions furnished by the PHA for all tenants (*e.g.*, heating system and hot water heater); and (B) essential equipment (*e.g.*, one range and one refrigerator per dwelling unit);

(ii) Shall be designed to include reasonable consumption for the following items provided by the tenant: (A) One range and one refrigerator per dwelling unit, if such equipment is not provided by the PHA; and (B) minor items of equipment (such as toasters and radios); and

(iii) Shall not be designed to include consumption for major appliances (*e.g.*, washing machines, clothes dryers, food freezers) provided by the tenant or for optional functions of PHA-provided equipment.

(2) The Allowances for PHA-Furnished or Tenant-Purchased Utilities shall not be designed to include consumption attributable to air conditioning equipment, except where the air conditioning equipment is provided by the PHA and the project design either (i) does not provide for natural ventilation of the dwelling unit because of sealed windows or (ii) does not permit the tenant to control (*i.e.*, turn on and off or otherwise regulate) the flow of conditioned air into the dwelling unit.

(3) The Surcharge provisions of § 965.477(a) apply to Utility consumption for equipment and Utility functions that are excluded from the Allowance for PHA-Furnished Utilities under this paragraph (b).

(4) Nothing in this paragraph (b) shall alter the rights and duties of the PHA and tenant with regard to the installation, maintenance, use, and removal of equipment and appliances under the terms of the lease and other applicable provisions of this Chapter IX.

* * * * *

5. Section 965.477(b) would be revised to read as follows:

§ 965.477 Surcharges for excess consumption of PHA-furnished utilities.

* * * * *

(b)(1) For dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed, the PHA shall establish schedules of Surcharges indicating additional dollar amounts that tenants will be required to pay by reason of imputed Utility consumption attributable to the equipment or functions described in paragraph (b)(2) of this section. The Surcharge schedule shall state the equipment or function for which Surcharges shall be made and the amounts of any such charges. These amounts shall be based on the cost to the PHA of the Utility consumption estimated to be attributable to reasonable usage of such equipment.

(b)(2)(i) Except for Utility consumption for air conditioning equipment described in paragraph (b)(2)(ii) of this section, the Surcharge schedule for dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed:

(A) Shall include dollar amounts that tenants will be required to pay by reason of imputed consumption attributable to the use of (*1*) major appliances provided by the tenant (including washing machines, clothes dryers, and food freezers), and (*2*) optional functions of PHA-provided equipment;

(B) Shall not inlcude Surcharges for imputed consumption attributable to the following items provided by the PHA: (*1*) Major equipment or Utility functions furnished by the PHA for all tenants (*e.g.*, heating system and hot water heater); and (*2*) essential equipment (*e.g.*, one range and one refrigerator per dwelling unit);

(C) Shall not include Surcharges for imputed consumption attributable to the following items provided by the tenant: (*1*) One range and one refrigerator, if such equipment is not provided by the PHA and (*2*) minor items of equipment (such as toasters and radios).

(ii) The Surcharge schedule for dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed shall include dollar amounts that tenants will be required to pay by reason of imputed consumption attributable to air conditioning equipment, except that the Surcharge schedule shall exclude such Surcharges where air conditioning equipment is provided by the PHA and the project design either (i) does not provide for the natural ventilation of the dwelling unit because of sealed windows or (ii) does not permit the tenant to control (*i.e.*, turn on or off or otherwise regulate) the flow of conditioned air into the dwelling unit.

(3) Nothing in this paragraph (b) shall alter the rights and duties of the PHA and tenant with regard to the installation, maintenance, use and removal of equipment and appliances under the terms of the lease and other applicable regulations in this Chapter IX.

6. Section 965.480 would be revised to read as follows:

§ 965.480 Transition provisions.

Each PHA shall establish Allowances and Surcharges in accordance with this Subpart, as revised on [*insert the effective date of the final rule*]. These Allowances and Surcharges must be in effect for the PHA's fiscal year beginning after [*insert date 90 days after the effective date of the final rule*]. The Assistant Secretary for Public and Indian Housing may extend the period for establishing Allowances and Surcharges, for good cause shown.

Dated: September 10, 1987.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 87-24052 Filed 10-15-87; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

29 CFR Parts 1 and 5

Procedures; Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for filing comments for 30 additional days on the Department of Labor's proposed rule governing the use of semi-skilled "helpers" on federally financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (29 CFR Parts 1 and 5), which was published in the Federal Register on August 19, 1987 (52 FR 31366).

DATE: Comments are due November 18, 1987.

ADDRESS: Submit written comments (preferably in triplicate) to Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards

Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Any commenters desiring notification of receipt of comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On August 19, 1987, the Department of Labor published in the **Federal Register** (52 FR 31366) proposed revisions to its regulations on labor standards applicable to federally financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (29 CFR Parts 1 and 5). The proposed rule would permit contractors to expand their use of semi-skilled classifications of helpers on Davis-Bacon projects if the use of a helper classification is a prevailing practice on construction projects in the area. Commenters were requested to submit their comments by October 19, 1987. The Department has been requested to allow additional time for commenters to prepare full responses to the proposal's options and its request for detailed supporting information. Upon reconsideration, the Department believes that the proposal warants extending the comment period longer than the initial 60 days.

Accordingly, this notice extends the public comment period for this rulemaking until November 18, 1987. Comments on the proposal must be submitted on or before that date.

Signed at Washington, DC, on this 14th day of October 1987.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 87–24073 Filed 10–15–87; 8:45 am]

BILLING CODE 4510–27–M

VETERANS ADMINISTRATION

38 CFR Part 1

Fees Charged When Responding To Requests for Records; Release of Records and Other Information Customarily Furnished the Public

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulations to change the fees that the VA can assess for responding to requests for records, and the procedures for determining the fees that can be charged. In addition, the regulation that requires the VA to process all requests for records under the FOIA, other than those requests made under other specific disclosure statutes, is being clarified to allow the VA more flexibility in releasing records or information outside the Agency.

DATES: Comments must be received on or before November 16, 1987. Comments will be available for public inspection until November 30, 1987.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All comments received will be available for public inspection only in the Veterans Service Unit, Room 132, of the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Doneld R. Howell, Management Analyst, Paperwork Management and Regulations Service (733), Office of Information Management and Statistics, (202) 233–3648.

SUPPLEMENTARY INFORMATION: Sections 1.526, 1.555, and 1.577(f) of Title 38, Code of Federal Regulations, establish the fees that the VA may charge when responding to requests for records subject to the VA confidentiality statue (38 U.S.C. 3301), the Freedom of Information Act (FOIA), and the Privacy Act of 1974. These regulations also establish certain requirements for determining the fees that will be charged.

In accordance with The Freedom of Information Reform Act of 1986 (Pub. L. 99–570), the Office of Management and Budget (OMB) published the Uniform Freedom of Information Act Fee Schedule and Guidelines in the **Federal Register**, dated March 27, 1987, on pages 10012–10020. The proposed changes to § 1.555 incorporate the OMB guidelines. In addition, the VA is adding to § 1.555 the six factors which the Department of Justice has recommended be considered in determining when fees should be waived or reduced under the new statutory standard.

The VA is also amending the regulations governing fees that can be charged when responding to requests for records subject to the Privacy Act and VA confidentiality statute (38 U.S.C. 3301) so that they are consistent with the FOIA fee regulations. These regulations are being revised also to conform to VA policy that a VA beneficiary or applicant for VA benefits will be given on complete set of his/her own beneficiary records free. Previously, giving a set of records free was discretionary. The change removes the VA discretion.

Besides changing its fee regulation, the VA is amending § 1.553, Public Access to Other Reasonably Described Records. As currently written, the regulation requires the Agency to treat all requests for disclosure of records as requests for records under FOIA, even though they are made pursuant to other, specific information disclosure statutes, i.e., 38 U.S.C. 3301, 3305, and 4132. As a result, even though the Agency has released a copy of a document customarily furnished to the public in the performance of official duties, the regulation requires any other request for the document to be made in writing and processed as a FOIA request. For example, many audit reports prepared by the VA Office of Inspector General concern subjects already in the news or are newsworthy themselves, and members of the news media may request copies of individual reports. Instead of requiring each requester to ask for the report in writing, it is preferable to release the report, with reductions where appropriate, without subjecting the requester to existing requirements. The proposed regulation will accomplish this purpose, yet ensure that furnishing such records will not violate any law or regulation governing access to, or confidentiality of, records or information. The Agency will be able to respond more promptly to requests from news media as well as other requesters under appropriate circumstances.

The Administrator has certified that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these changes simply implement, and make VA regulations consistent with, the requirements of Pub. L. 99–570; they impose no new administrative or paperwork burdens, independent of the requirements of the law. They will have no significant direct impact on small

entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions).

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are no Catalog of Federal Domestic Assistance numbers involved.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Claims, Employment, Government employees, Government property, Freedom of Information Act, Privacy.

Approved: September 22, 1987.

Thomas K. Turnage,

Administrator.

PART 1—[AMENDED]

38 CFR Part 1, General, is proposed to be amended as follows:

1. In § 1.526, paragraph (e)(3) is removed; paragraph (e)(4) is redesignated as paragraph (e)(3); and paragraphs (b)and (i) are revised and an authority citation is added to paragraph (i) to read as follows:

§ 1.526 Copies of records and papers.

* * * * *

(b) The types of services provided by the Veterans Administration for which fees will be charged are identified in § 1.526(i) of this section.

* * * * *

(i) *Fees to be charged.*

(1) *Schedule of fees:*

Activity	Fees
(i) Duplication of document by any type of reproduction process to produce plain one-sided paper copies of a standard size (8–1/2" x 11"; 8–1/2" x 14"; 11" x14").	$0.15 per page after first 100 one-sided pages.
(ii) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this title to the extent that it pertains to the cost of duplication.
(iii) Duplication of documents by any type of reproduction process not covered by, by paragraphs (i)(1)(i) and (ii) of this section to produce a copy in a form reasonably usable by a requester.	Actual direct cost to the Agency as defined in § 1.555(a)(ii) of this title to the extent it pertains to the cost of duplication.
(iv) Providing special information, statistics, reports, drawings, specifications, lists of names and addresses (either in paper or machine readable form), computer or other machine readable output.	Actual cost to the Agency including computer and manual search costs, copying costs, labor, and material and overhead expenses.
(v) Attestation under the seal of the Agency.	$3.00 per document so certified.
(vi) Providing abstracts or copies of medical and dental records to insurance companies for other than litigation purposes..	$10.00 per request.
(vii) Providing files under court subpoena.	Actual direct cost to the Agency.

(Note: If the VA regularly contracts for duplicating services related to providing the requested records, such as the duplication of microfilm or architect's plans and drawings, the contractor fees may be included in the actual direct cost to the Agency.)

(2) *Benefit records.* When VA benefit records are requested by a VA beneficiary or applicant for Va benefits, the duplication fee for one complete set of such records will be waived.

(Authority: 38 U.S.C. 3302(b))

* * * * *

2. Section 1.553 is revised and an authority citation is added to read as follows:

§ 1.553 Public access to other reasonably described records.

(2) Except for requests for records which are processed under §§ 1.551 and 1.552, unless otherwise provided for in title 38, Code of Federal Regulations, all requests for records shall be processed under paragraph (b) of this section, as well as under any other VA law or regulation governing access to or confidentiality of records or information. Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished to the public without reference to paragraph (b) of this section. To the extent permitted by other laws and regulations, the VA will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosures could be in the public interest.

(b) Reasonably described records in VA custody, or copies thereof, other than records made available to the public under provisions of §§ 1.551, and §§ 1.552, or unless otherwise provided for in title 38, Code of Federal Regulations, requested in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, will be made promptly available, except as provided in § 1.554, to any person upon request. Such request must be in writing, over the signature of the requester, and must contain a reasonable description of the record desired so that it may be located with relative ease. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Services Officer in the nearest VA regional office the Director, or Chief, Medical Administration Service, or other responsible official of the VA medical facility where most recently treated; or to the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through Friday for VA Central Office and most field stations.

(Authority: 5 U.S.C. 552(a)(3))

3. Section 1.555 is revised and an authority citation is added to read as follows:

§ 1.555 Fees.

(a) *Definition of terms.* For the purpose of this section, the following definition apply:

(1) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. To determine whether a request properly belongs in this category, consideration must be given to the use to which a requester will put the

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documents requested. Where the use of the records sought is not clear in the request or where there is reasonable cause to doubt the use to which the requester will put the records sought, additional information may be sought from the requester before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which the VA actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) documents to respond to a Freedom of Information Act (FOIA) request. Direct costs include, for example, the salary of the employee performing work, i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting of the facility in which the records are stored.

(3) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To determine whether a request properly belongs in this category, the request must be evaluated to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis (as that term is referenced under "Commercial use request" of this paragraph) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers or periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media will be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication history can be considered also. In any case, freelancers who do not qualify for inclusion in the "representative of the news media" category may seek a reduction or waiver of fees under paragraph (f) of this section.

(7) *Review* means the process of examining documents located in response to a "commercial use request" (see definition of commercial use request in this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure in response to a "commercial use request," e.g., doing all that is necessary to excise them and otherwise prepare them for release. The term "review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programs. The most efficient and least expensive manner of searching for material will be used to minimize costs to the VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is the least expensive and quicker method of complying with a request. The term "search" does not cover the time spent to review documents to determine whether all or portions thereof can be withheld under one of the nine categories of exemptions identified in § 1.554.

(b) *Fees to be charged.* (1) Except as provided in paragraphs (c), (d), (f) and (g) of this section, the Veterans Administration will charge fees that recoup the full allowable direct costs for responding to each request from the public. Such fees will be charged in accordance with the schedule of fees in paragraph (e) of this section, and other requirements or restrictions in this regulation. The most efficient and least costly methods will be used to comply with requests for documents made under the FOIA.

(2) If it is estimated that charges for duplication determined by using the fee schedule in § 1.555(e) of this title are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with Agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each department and staff office upon approval of the Administrator is authorized to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. If a contractor is used, the ultimate cost to the requester can be no greater than it would if the department, staff office, or field station performed the task, itself. In no case may a department, staff office, or field station contract out responsibilities which the FOIA provides that they alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service or the Government Printing Office, the requester of such documents will be informed of the steps necessary to obtain records from those sources, rather than from the VA.

(c) *Restrictions on assessing fees.* With the exception of commercial use requests no charges will be assessed for the first 100 pages of duplication and the first two hours of search time. Moreover, no fees are to be charged any requester, including commercial use requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that, except for commercial use requests, fees will not be assessed until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and results in 105 reproduced pages of

documents, fees can be charged for only 10 minutes or search time and for only five pages of reproduction. If this cost were equal to or less than the cost to the VA of billing the requester and processing the fee collected, no charges would be assessed.

Note: The cost of collecting fees are VA's administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The cost is determined to be negligible. The per-transaction costs to the Treasury to handle such remittances is negligible and will not be considered in the Agency's determination.

(1) For purposes of the restriction on assessing fees, the word "pages" refers to one-sided paper copies of the standard sizes 8½" x 11" or 8½" x 14" or 11" x 14". Accordingly, requesters will not be entitled to 100 microfiche or 100 computer disks free. One microfiche containing the equivalent of 100 pages or 100 pages of computer printout might meet the terms of the restriction.

(2) The term "search time" in this context is based on manual searches. To calculate the "computer search time" for the purpose of applying the two-hour search restriction, the hourly cost of operating the computer's central processing unit will be combined with the operator's hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, charges will begin to be assessed for a computer search.

(d) *Categories of requesters and fees to be charged each category.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutional requesters; requesters who are representatives of news media; and all other requesters. Specific levels of fees will be charged for each of these categories as follows:

(1) *Commercial use requesters.* When a request for documents for commercial use is received, the full direct costs of searching for, reviewing for release, and duplicating the records sought will be charged to the requester. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduced documents. Moreover, the commercial use requester will be charged the cost of searching for and reviewing records even if there is ultimately no disclosure of records. The requester must reasonably describe the records sought.

(2) *Educational and non-commercial scientific institution requesters.* These requesters will be charged only for the cost of reproduction, excluding charges for the first 100 pages. In order to be considered a member of this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use. If the request is from an educational institution, the requester must show that the records sought are in furtherance of scholarly research. If the request is from a non-commercial scientific institution, the requester has to show that the records are sought in furtherance of scientific research. Information necessary to support a claim of being categorized as an educational or non-commercial scientific institution requester will be provided by the requester, and the requester must reasonably describe the records sought.

(3) *Representatives of news media.* These requesters will be charged for the cost of reproduction, only, excluding charges for the first 100 pages. To be included in this category, a requester must fall within the definition of a representative of the news media specified in paragraph (a)(6) of this section, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(4) *All other requesters.* Any requester that does not fit into any of the categories in this section will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search will be furnished without charge. In addition, under certain circumstances specified in paragraph (f) of this section, fees will be waived or reduced at the discretion of field station heads or responsible Central Office officials. Requests from VA beneficiaries, applicants for VA benefits, or other individuals for records retrievable by their name or other personal identifier will initially be processed under 38 U.S.C. 3301 and 5 U.S.C. 552a and will be assessed fees in accordance with the applicable fee provisions of § 1.526(i) or 1.577(f) of this title. To the extent that records are not disclosable under these provisions, the disclosure of such records will be evaluated under §§ 1.550 through 1.559, and fees will be assessed under paragraph (e) of this section. Requesters must reasonably describe the records sought.

(e) *Schedule of fees:*

Activity	Fees
(1) Duplication of documents by any type of reproduction process to produced plain one-sided paper copies of a standard size (8½" x 11"; 8½" x 14"; 11" x 14").	$0.15 per page.
(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency. (See paragraph (a)(ii) of this section and, if costs are likely to exceed $25.00, paragraph (b)(2) of this section.
(3) Duplication of documents by any type of reproduction process not covered by paragraphs (e)(1) and (2) of thjis section to produce a copy in a form reasonably usable by the requester.	Actual direct cost to the Agency. (See paragraph (a)(ii) of this section and, if costs are likely to exceed $25.00, paragraph (b)(2) of this section.
(4) Document search by manual (non-automated) methods.	Basic hourly salary rate of the employee(s) performing the search, plus 16 percent. (If costs are likely to exceed $25.00, see paragraph (g)(2) of this section.)
(NOTE: If a department, staff office or field station uses exclusively a single class of personnel, e.g., all administrative/clerical or all professional/executive, an average rate for the range of grades involved may be used.)	
(5) Document search using automated methods, such as by computer.	Actual direct cost to perform search. (See paragraph (c)(2) of this section, and, if costs are likely to exceed $25.00, see paragraph (g)(2) of this section.)

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Activity	Fees
(6) Document review (use only for commercial use requesters).	Basic hourly salary rate of employee(s) performing initial review to determine whether to release document(s) or portions of records, plus 16 percent.
(NOTE: Charge for document reviews covers only the time spent reviewing the document(s) at the initial administrative level to determine applicability of a specific FOIA exemption to a particular record or portion of a record. It does not cover any review incurred at the administrative appeal level once the initial exemptions are applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review may be properly assessed.)	
(7) Other charges: Certifying that records are true copies; Sending records by special methods such as express mail.	Where applicable, assess under provisions of §§ 1.526(i) and (j) of this title, otherwise, actual direct cost of service performed.

(f) *Waiving or reducing fees.* Under the following circumstances, records and services provided in response to a FOIA request will be waived or reduced:

(1) When it is determined by responsible Central Office officials or field station heads that furnishing the document(s) is in the pubic interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) Factors that will be considered in determining whether disclosure of information is in the public interest because it is likely to contribute signficantly to the public understanding of the operations or activities of the government are:

(i) *The subject of the request:* whether the subject of the requested records concerns the operations of the government;

(ii) *The informative value of the information to be disclosed:* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether the disclosure of the requested information will contribute to public understanding; and

(Iv) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) Factors that will be considered in determining whether disclosure of information is not primarily in the commercial interest of the requester are:

(i) *The existence and magnitude of a commerical interest:* Whether the requester has a commerical interest that would be furthered by the requested disclosure; and if so

(ii) *The primary interest in disclosure:* Whether the magnitude of the identified commerical interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commerical interest of the requester.

(4) An appeal from an adverse waiver or reduction determination will be processed in the same manner as described in § 1,557 of this title.

(g) *Other administrative considerations to improve assessment and collection of fees*—(1) *Charging interest—notice and rate.* The Veterans Administration may charge interest to those requesters who fail to timely pay fees assessed in accordance with these regulations. Determination to charge interest will be made by the responsible Central Office official or field station head. Interest will be assessed on the unpaid bill beginning on the 31st day following the day on which the original billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 United States Code and will accrue from the date of the billing. Accounting procedures ensure that a requester who has remitted the full amount within the time period is properly credited with the payment. The fact that fee has been received by the VA, even if not processed, will suffice to stay the accrual of interest.

(2) *Charges for unsuccessful search.* When it is determined by the responsbile Central Office official or field station head, charges for searching may be assessed, even if records are not located to satisfy a request or if records located are determined to be exempt from disclosure. It if is determined that search charges are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Aggregating requests.* When the responsible Central Office official or field station head reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the responsible Central Office official or field station head may aggregate (combine) any such requests and charge accordingly. One element to consider in determining whether a belief would be reasonable is the time period in which the requests occurred. For example, it is reasonable to presume that multiple requests within a 30-day period that seek portion(s) of the same document(s) is an attempt to aviod payment of charges. For requests made over a longer period, however, such presumption becomes harder to sustain. In each case, there must be a solid basis for determining that aggregation is warranted. Caution will be exercised before aggregating requests from more than one requester. There must be a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment. In no case will the multiple requests on unrelated subjects from one requester be aggregated.

(4) *Advance payments.* At the discretion of the responsible Central Office official or field station head a requester may be requested to make an advance payment of fees. The Agency may request advance payments only when:

(i) The allowable charges to be assessed a requester are likely to exceed $250.00. The requester will be notified of the likely charge and asked to provide satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or required to make payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(ii) A requester has previously failed to pay a fee charged in a timely fashion, i.e., within 30 days of the date of the billing. In these cases, the requester may be required to pay the full amount owed, plus any applicable interest or demonstrate that he or she has, in fact, paid the fee and to make an advance payment of the estimated fee before the Agency begins to process a new request or a pending request.

(iii) If a requester is required to make advance payments, as described in this section, the time limits prescribed in § 1.553a, for responding to initial requests and appeals from initial denials plus permissible extensions will begin only after the Agency has received the advance fee payments.

(5) *Debt collection.* In the event of non-payment of billed charges for disclosure of records, the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97–365) may be used. This may include disclosure to consumer reporting agencies and use of collection agencies.

(Authority: 5 U.S.C. 552(a)(4)(A))

4. In § 1.577, paragraph (f) is revised and paragraph (g) and an authority citation are added to read as follows:

§ 1.577 Access to records.

* * * * *

(f) Fees to be charged, if any, to any individual for making copies of his or her record, excluding the cost of any search for and the review of the record, will be as follows:

Activity	Fees
(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½" x 11"; 8-1/2" x 14"; 11" x 14").	$0.15 per page after first 100 one-sided pages.
(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audio tapes, etc.), computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency as defined in § 1.555(a)(i) of this title to the extent that it pertains to the cost of duplication
(3) Duplication of document by any type of reproduction process not covered by paragraphs (f)(1) or (2) of this section to produce a copy in a form reasonably usable by the requester..	Actual direct cost to the Agency as defined in § 1.555(a)(ii) of this title to the extent that it pertains to the cost of duplication.

(**Note:** Fees for any activities other than duplication by any type of reproducing process will be assessed under the provisions of § 1.526(i) or (j) or any other applicable law.)

(g) When VA benefit records, which are retrievable by name or individual identifier of a VA beneficiary or applicant for VA benefits, are requested by the individual to whom the record pertains, the duplication fee for one complete set of such records will be waived.

(Authority: 5 U.S.C. 552a(f)(5))

[FR Doc. 87–23998 Filed 10–15–87; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3275–7]

Approval of the State of Delaware Stack Height Declarations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve a declaration by the State of Delaware that the recent revisions to EPA's stack height regulations do not require revisions to any emission limitation in the State Implementation Plan (SIP). The intent of this action is to formally document that Delaware has satisfied part of its obligation under section 406 of the Clean Air Act (CAA). This action announces the results of the State's review of all existing potential sources. The remaining obligations under section 406 are covered by another notice.

DATE: Comments must be received on or before November 16, 1987.

ADDRESSES: Comments may be mailed to: David L. Arnold, Chief, Delmarva/DC Section (3AM13), US EPA, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the submissions are available for public inspection during normal business hours at the Environmental Protection Agency's address above or at the following State office: Delaware Department of Natural Resources and Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin A. Magerr (3AM13), at the EPA Region III address above or call (215) 597–6863.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F.2d 436 (DC Cir. 1983). On October 11, 1983, the Court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the Court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985. Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and promulgated on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modify some of the criteria for determining Good Engineering Practice (GEP) stack height.

Pursuant to section 406(d)(2) of the Act, all States were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, the States were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to a detailed review for conformance with the revised regulations.

State Submission

EPA received Delaware's inventory on March 18, 1986. Additional material was received from the State on April 15, 1986. The State submittal concluded that existing emission limitations have not been affected by stack height credits above GEP or any other prohibited dispersion techniques. Delaware identified 2 stacks (Delmarva Power and Light, Edgemoor Unit #5 and Indian River Unit #4) that emit 5,000 tons per year. In both cases neither source used merged stacks or any other prohibited dispersion technique. The findings for all the stacks are summarized in Table 1.

The State review found eighteen potential stacks. Of the eighteen, fifteen stacks were "grandfathered" and exempt from any regulatory action under EPA's final stack height regulations. Three sources, Delmarva Power and Light (DP&L) Edgemoor #5, Indian River Unit #4 and Texaco's Sulfur Recovery Unit were shown to be at or below GEP. The following is a summary of the States' GEP analysis.

Delmarva Power and Light Edgemoor Unit #5

The State did not find evidence to show reliance on the traditional Hg=2.5H formula and as such, determained GEP stack height using the Hg=H+1.5L formula where,

Hg=Good Engineering Practice stack height measured from the ground-level elevation at the base of the stack.
H=Height of the nearby structure(s) measured from the ground-level elevation at the base of the stack.
L=Lesser dimension, height or projected width, of nearby structure(s).

Using this formula, GEP was found to be 425 ft., where *H=170 ft. and L=170 ft. The actual stack height was determined to be 275 ft.

TABLE 1.—A SUMMARY OF APPLICABLE SOURCES AND THE STATES REVIEW

Name of Company	Grandfathered [1]	GEP [2]	Documentation
Wilmington Finishing Company	X		Map of Wilmington 1927.
Delmarva Power & Light (Edgemoor):			
Unit #3	X		FERC report 1954 .[3]
Unit #4	X		FERC report 1966.
Unit #5		X	State Air Permit.
Delaware City	X		FERC report 1956.
Indian River:			
Unit #1	X		FERC report 1957.
Unit #2	X		FERC report 1959.
Unit #3	X		FERC report 1970.
Unit #4		X	Strate Air Permit.
Dupont Seaford	X		Drawing dated 1939.
Texaco:			
Sulfur Recovery Unit		X	State Air Permit.
Fluid Coker	X		Drawing dated 12/2/55.
Crude Unit	X		Drawing dated 9/28/55.
Catalytic Cracker	X		Drawing dated 5/10/60.
Sun Olin Chemical Co., Boiler Stack	X		Purchase order 4/6/61.
Allied Corporation Boiuler Stack East	X		Drawing dated 9/28/59.
Delaware Trust Building	X		Drawing dated 1/12/59.
American International Building	X		Drawing dated 10/8/65.

[1] Stack was in place or binding contract before 12/31/70.
[2] Source Follow Good Engineering Practice in accordance with the July 8, 1985 FEDERAL REGISTER notice.
[3] Federal Energy Regulatory Commission (FERC).

Delmarva Power and Light Indian River Unit #4

The State determined GEP stack height using the Hg=H+1.5L formula for the same reason as for DP&L Edgemoor Unit #5. GEP was found to be 500ft., where *H=200ft. and L=200ft. The actual stack height was determined to be 400ft.

* "H" is the height of the boiler house as documented in the State's air permit. "L" is the same value because the boiler house projected widths are greater than the boiler house height.

Texaco Sulfur Recovery Unit

Based on EPA's GEP definition § 51.100(ii), the State considered this source to be acceptable. In this case, the GEP stack height was found to be 65m. The actual stack height is 3.7m greater than 65m. However, ambient air quality modeling was conducted at the GEP Height. Therefore, the source was not given credit for the additional height.

Public Participation

Since this action is not considered a revision to the SIP, the State was not required to hold a public hearing. However, since the State's findings are presently being published in this Notice, the public will have an opportunity to comment before EPA takes final action.

Conclusion

As discussed in the summary, the State has satisfied part of its obligation under section 406 of the CAA, by reviewing sources to determine compliance with the July 8, 1985, GEP stack height regulation. The State has also met its obligations under section 406, for complying with 40 CFR 51.118 and 51.164 by adopting regulations required to review sources constructed, reconstructed or modified subsequent to December 31, 1970. This latter action is covered in another Notice.

EPA has reviewed the State submission and finds that the documentation adequately supports the conclusion as expressed in Table 1. Therefore, EPA is proposing approval of Delaware's declaration that no revisions to emission limitations for existing sources are required under EPA's final stack height regulations or the terms of the Delaware SIP adopting these stack height regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulphur dioxide, Reporting and recording requirements.

Authority: 42 U.S.C. 7401–7642.

Date: March 26, 1987.

James M. Seif,

Regional Administrator.

[FR Doc. 87–23569 Filed 10–15–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3278–1; KY–045]

Approval and Promulgation of Implementation Plans; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve revisions to 401 KAR 50:015, Documents incorporated by reference, submitted by the Commonwealth of Kentucky on March 23, 1987. This regulation incorporates by reference the methods required for demonstrating compliance with the regulations of the Kentucky Division of Air Pollution. The amendments being proposed for approval today adopt reference methods incorporated in 40 CFR Parts 60 and 61 that are used to demonstrate compliance with the federal regulations which the Kentucky Division of Air Pollution has already adopted or is adopting by reference. In addition, another amendment to 401 KAR 50:015 proposed for approval in this notice adopts EPA's revised "Guideline on Air Quality Models (Revised)," EPA—450/2–78–027R, OAQPS No. 1.2–080R, July, 1986.

DATE: Comments must be received on or before November 16, 1987.

ADDRESSES: Copies of the State submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Natural Resources and Environmental, Protection Cabinet, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

Comments should be addressed to Ms. Pamela E. Adams, at the EPA address above.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela E. Adams, U.S. Environmental Protection Agency, Region IV, Air Programs Branch, at the above listed address or at (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On January 27, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet conducted a public hearing in Frankfort, Kentucky to receive comments on revisions to Kentucky regulation 401 KAR 50:015, Documents incorporated by reference. Since no adverse comments regarding the revisions were received, the amended regulation became effective, as proposed, on February 10, 1987. Kentucky regulation KAR 50:015 was amended to add reference methods that are required in the federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), that Kentucky has adopted, or will soon be adopting, by reference.

Kentucky regulation 401 KAR 50:015, Documents incorporated by reference, was revised to incorporate by reference the following reference methods from 40 CFR Part 60: Method 3A, Determination of oxygen and carbon dioxide concentrations in emissions from stationary sources (instrumental analyzer procedure); Method 6C, Determination of sulfur dioxide emissions from stationary sources (Instrumental analyser procedure); and Method 7E, Determination of nitrogen oxides emissions from stationary sources (instrumental analyzer procedure). In addition, the following NESHAP test methods from 40 CFR Part 61 were incorporated by reference into the revised 401 KAR 50:015: Method 108, Determination of particulate and gaseous arsenic emissions; Method 108A, Determination of arsenic content in ore samples from nonferrous smelters; and Method 111, Determination of polonium—210 emissions from stationary sources. Finally, Kentucky amended 401 KAR 50:015 to incorporate the updated version of one of the documents on air quality models that was published by EPA and which has been recently revised. The "Guideline on Air Quality Models (Revised)," EPA–450/2–78–027R, OAPQS 1.2–080R, July 1986, was added under Section 5, entitled Environmental Protection Agency, of 401 KAR 50:015.

Kentucky regulation 401 KAR 50:015 merely incorporates the methods for determining compliance which are required by federal regulations which Kentucky has already adopted or is adopting by reference. Therefore, Kentucky's compliance requirements in 401 KAR 50:015 are the same as the federal compliance requirements. Simply incorporating these compliance methods does not affect any source or other entities. Any impact would occur in the individual regulation where the methods are required.

Proposed Action

EPA is today proposing to approve revisions to Kentucky regulation 401 KAR 50:015, Documents incorporated by reference. These revisions simply adopt reference methods that are used to demonstrate compliance with the federal regulations. Another amendment also being proposed for approval in this notice adopts EPA's "Guideline on Air Quality Models (Revised)," EPA–450/2–78–027R, OAQPS No. 1.2–080R, July 1986.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Date: August 21, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87–23993 Filed 10–15–87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 249

[Docket No. R–101]

Approval of Underwriters for Marine Hull Insurance

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to issue regulations governing the placement of hull insurance on subsidized and Title XI program vessels. The proposed regulations would afford companies participating in MARAD programs wider opportunity to obtain hull insurance coverage from financially sound underwriters with minimal regulatory constraints. Specifically, they would eliminate the current requirement that 75 percent of the required hull insurance coverage be placed in the American market, provide for the approval under certain conditions of additional foreign

underwriters to participate in the writing of hull insurance on MARAD program vessels, and modify the current regulations limiting an underwriter's risk on any single vessel.

DATE: Comments must be received on or before December 15, 1987.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: William B. Ebersold, Office of the Associate Administrator for Maritime Aids, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590, Tel: (202) 366–0364.

SUPPLEMENTARY INFORMATION: On October 11, 1985, MARAD published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (50 FR 41531) concerning its existing policies of (1) accepting only American or certain British underwriters as hull insurers of subsidized or Title XI program vessels; (2) requiring that 75 percent of the required hull insurance coverage be placed in the American market when the rates and conditions are competitive; and (3) limiting an underwriter's risk on any single vessel.

The purpose of the ANPRM was to elicit opinions and data that would be used in the formulation of a proposed rule. However, the comments received tended to be general in nature and did not provide MARAD with sufficient information to make a decision.

There was, however, general support from the ship operators and previously non-admitted foreign underwriters, and opposition from the American marine insurance industry. Consequently, MARAD decided to conduct a public inquiry to give all interested parties an opportunity to provide more information and to support their positions.

Notice of the Inquiry was published in the **Federal Register** on March 18, 1986 (51 FR 9230). The Notice included a series of questions which was intended to provide a focus for the meeting. The Inquiry was held on April 17, 1986, and included presentations by thirteen speakers.

Based on the presentations made and all material submitted in connection with this proceeding, MARAD has decided to proceed with a rulemaking defining MARAD's policy with respect to approval of underwriters to participate in hull insurance placed on subsidized or Title XI program vessels.

It is the intent of the Maritime Administration that its policies afford companies which participate in the subsidy and ship financing (Title XI) programs the widest possible opportunity to obtain hull insurance coverage from financially sound underwriters with minimal regulatory constraints. It is the policy of the Maritime Administration to require those companies subject to its requirements for the placement of hull insurance to afford the American marine insurance market the opportunity to compete for each such placement. However, the placement of hull insurance coverage on MARAD program vessels is ultimately the responsibility of the vessel owner, and MARAD is not responsible for guaranteeing the security of the underwriter. Rather, it is incumbent upon MARAD to provide a regulatory environment which does not impose undue costs upon program participants or a regulatory burden upon owners or the marine insurance industry. The proposed regulation must therefore be viewed as deregulation which is intended to stimulate competition without placing undue risk upon the various MARAD programs.

MARAD's review of all pertinent legislative authority in the Shipping Act, 1916 (46 App. U.S.C. 811), Merchant Marine Act, 1920 (46 U.S.C. 855), and Merchant Ship Sales Act of 1946 (50 U.S.C. 1735) has failed to provide any basis for concluding that Congress ever intended to require that *priority* be given to American marine insurers in underwriting hull or any other form of marine insurance for any U.S.-flag vessels. With respect to marine insurance, the sole intent expressed in the 1916 Act was to "ascertain what steps may be necessary to develop an *ample marine insurance system* as an aid in the development of an American merchant marine." Based on the findings of Congress, it was deemed necessary to provide an antitrust exemption to American marine insurers in the 1920 Act to assure that they would achieve a significant role in the marine insurance market, and provide insurance for U.S. merchant vessels at competitive rates. At that time, the marine insurance market was dominated by British insurance companies.

In 1920, Congress saw the need to develop a strong and independent American marine insurance industry to combat the ills that its absence had caused, especially during World War I. The American marine insurance market developed, became competitive and remains so today.

An administrative agency has the right to change its policy in an area of discretion squarely committed to it by Congress and to apply the new policy to parties to which the old policy had been applied. Without the right to make changes, agencies could not adjust to varying social and economic conditions. *Maxwell Co.* v. *NLRB*, 414 F.2d 477 (6th Cir. 1969).

MARAD is proposing to revoke its current informal policy which reserves 75 percent of the hull insurance market for MARAD program vessels to American hull insurers. However, recognizing the importance of a sound American marine insurance market to a healthy U.S. merchant marine, MARAD would continue to support the American market by requiring owners and brokers to offer American underwriters adequate opportunity to compete for each placement of insurance. While not imposing a regulatory burden to submit documentation of all such offers, MARAD would monitor compliance with this requirement in the manner described in § 249.9 MARAD thus hopes the proposal would ensure the very "level playing field" which the American underwriters have so consistently sought.

MARAD has also concluded that there is no basis upon which to preclude participation by additional underwriters simply because they are not in the American or London markets. If there are other financially sound underwriters subject to adequate regulation in their country of domicile, they should not be excluded from participation or subject to unwarranted regulation. Regulation for the sake of protectionism can only result in added costs for the ultimate insurance purchaser. MARAD's commitment to meaningful regulatory reform calls for elimination not only of unnecessary impediments to competitive maritime operations, but also of restrictive regulatory constraints. MARAD also supports a business environment in which open competition can exist. Consequently, the proposed rule does provide in §§ 249.6 and 249.7 a mechanism for approval of additional foreign underwriters on the basis of their financial soundness, the suitability of the regulatory regime in the country of domicile, and the principle of mutual non-discrimination.

In order not to discriminate against the American marine insurance industry in favor of the British or other foreign markets and to insure the broadest base

of competition within the American market, the proposed rule requires, in § 249.5(a), that American underwriters have an A.M. Best rating of B (Good) or better. This is not to say that individual owners or their brokers should not have more stringent standards if they believe that such standards are appropriate. In order to encourage the broadest range of competition, MARAD does not want to preclude American underwriters who might be otherwise qualified and acceptable to the owners and brokers. Although it is expected that owners and brokers would have certain requirements of their own, MARAD is also not specifying a minimum financial size category.

Underwriters at Lloyd's would remain eligible to participate without further consideration because of their huge resources, the size of the Lloyd's American Trust Fund, and the protection provided by the Lloyd's Central Fund. Member companies of the Institute of London Underwriters and the Liverpool Underwriters Association would generally be eligible to participate without further consideration. However, MARAD would require that the member company actually underwriting the risk maintain a U.S. trust fund for the benefit of its U.S. policyholders in a amount at least equal to the amount which would be required of newly approved underwriters. Also, the amount of insurance written could not exceed the limitation on risk specified in the regulation. These requirements are specified in § 249.5(b).

In order to minimize the administrative burden of monitoring compliance with the proposed rule, MARAD would not require owners and brokers to submit supporting documents to demonstrate that each participating underwriter is approved by MARAD and has adequate surplus to meet MARAD's requirements. Instead, the proposed regulation clearly states in § 249.5(c) that it is the responsibility of the vessel owner and its broker to ensure that the underwriters with whom the coverage is placed meet the specified eligibility criteria. MARAD would then need to monitor such compliance only on the basis of a random sample. MARAD would continue to require timely, full and complete written confirmation of the coverage actually placed.

The application procedures (§ 249.6) for foreign underwriters seeking to participate in marine hull insurance placed on MARAD program vessels involve the submission of (1) financial data, (2) an English language version of the insurance regulatory regime in the country of domicile, (3) a certification that similar market access is available to U.S. insurers seeking to write hull insurance in the applicant's country of domicile and, (4) possibly the details of the reinsurance program.

It is MARAD's intention to evaluate the financial strength of applicant foreign underwriters on the basis of the material submitted, or such additional information as may be required. To the extent possible, comparable evaluation criteria would be used for all underwriters. It is also MARAD's intention that approval be granted only to those foreign underwriters which are financially sound and whose participation does not create any undue risk for either the assets insured or the MARAD programs involved. MARAD does not intend by this deregulation to allow participation by foreign underwriters which are less suitable than participating American underwriters. These requirements would not apply to foreign underwriters who establish a branch or subsidiary in this country and become licensed by a state because such companies are already eligible to participate in the insurance of MARAD program vessels as part of the American market.

MARAD is still considering what financial reporting requirements should be imposed upon insurance companies seeking to write hull insurance on MARAD program vessels. MARAD recognizes the fact that differences exist between insurance accounting systems in this country and abroad. However, because MARAD does not need to precisely compare such systems, it may be possible to assess the financial strength of individual underwriters without requiring them to recast their accounting system to adapt to American norms. Alternatively, submission of financial data in the NAIC format could ensure that all underwriters are evaluated on the basis of comparable data. Consequently, § 249.6(b)(1), dealing with financial data requirements, is presented in two alternative forms. Interested parties are urged to express a preference, and in so doing to provide detailed support for the choice. They should explain precisely what benefits would accrue to MARAD's evaluation effort if all data is submitted in NAIC format, or alternatively, what burdens and difficulties such a requirement would create. Such comments should also address the question of whether three or five years of data should be required, and what type of certification requirement would ensure the accuracy and completeness of the data submitted. MARAD would also welcome any suggestions aimed at ensuring fair and accurate evaluation of applicant foreign underwriters.

MARAD believes that the strength of the insurance industry in this country is partly due to the adequate system of regulation of insurance companies. MARAD also believes that in countries which lack a national rating scheme comparable to A.M. Best's, a review of the national insurance regulatory regime under which the foreign insurer operates can indicate whether there is adequate regulation to maintain high quality security. This approach is preferable to imposing unnecessary regulations which would not actually improve the quality of the foreign security, and would only increase the cost of insurance—a result inconsistent with MARAD's policy. MARAD would, of course, retain the discretionary authority to impose reasonable terms and conditions upon any foreign underwriters which it approves.

The record from the ANPRM and the Inquiry indicates concern among the American underwriters that MARAD's proposal would allow participation by foreign underwriters from countries that discriminate against American insurers. MARAD would not approve access to the American hull insurance market for any underwriters from countries in which American underwriters are denied similar access to their hull insurance markets. MARAD's proposed rule might thus prove beneficial to the American market in its efforts to remove any discriminatory practices which mau inhibit its expansion worldwide. At this time, MARAD does not have any definitive evidence of specific discriminatory practices. The proposed rule requests that the American marine insurance industry specifically identify any discriminatory practices occurring in the foreign marine hull markets. MARAD will then consider whether additional safeguards are necessary and appropriate.

MARAD would grant approvals to foreign underwriters on an annual basis only, to enable periodic assessments of the results and impact of the proposed rule. As a condition of approval, newly approved foreign underwriters would be required to set up a $1 million trust fund in the United States for the benefit of domestic policyholders. The amount would be reviewed annually and adjusted as appropriate. All policies issued by foreign underwriters would be required to contain the latest MARAD-approved American Institute of Marine Underwriters' forms, as well as New York Suable or Service of Suit (USA)

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Clause. To maintain their approvals, newly approvewd foreign underwriters would be required to file annual financial statemens with MARAD, in the same level of detail as required for the original approval.

There was considerable discussion at the Inquiry regarding the amount of surplus necessary for adequate security, and, as a collateral issue, the extent to which an insurer should be exposed on a single risk. In an attempt to balance the interests of all insurers, MARAD has tentatively concluded that the standard should be based upon the level of *net* retention (after reinsurance) and its relation to policyholders surplus, and the level of concentration of reinsurance among reinsurers. By *net* retention is meant the amount of each risk which is retained by the primary direct insurer after a portion of the original total amount insured is passed on to a secondary insurer (the reinsurer).

The standard being proposed in § 249.8 is that an underwriter's *net* retention (after reinsurance) of insurance coverage on a single risk should not exceed five percent of its policyholders' surplus, a level which MARAD believes does not represent too great a concentration of risk. The proposed rule only requires MARAD's consideration if the total amount insured by one underwriter on any single vessel (before reinsurance) exceeds five percent of the underwriters policyholders' surplus.

Since policyholders' surplus data is or will be readily available, it is expected that in most cases a simple comparison between the total amount insured and the underwriter's surplus will obviate the need for MARAD to consider the reinsurance involved, or for the underwriter to submit any documentation concerning its reinsurance arrangements. This procedure minimizes the administrative burden on all parties.

However, if the total amount insured by an underwriter on any single vessel exceeds five percent of its policyholders' surplus, then the underwriter must rely on its reinsurance to meet the standard. Underwriters expecting to consistently rely on reinsurance to meet the standard would be required to state this in their applications. In such case, MARAD would require the underwriter to submit the details of its reinsurance program for MARAD's evaluation prior to granting approval. Because the entire issue of limitation centers on preventing excessive exposure on a single risk, the evaluation of the reinsurance program would be concerned with concentration of reinsurance as well as the quality of reinsurance. MARAD would not approve an underwriter if its reinsurance is so concentrated as to create an undue risk to the underwriter's solvency.

MARAD's failure to specifically adopt certain evaluative criteria suggested by the American marine insurance industry (such as the NAIC Insurance Regulatory Information System) is not a rejection of such proposals, but is a recognition of the evaluation process as a highly inexact science. Even within the insurance industry, the ratios and standards which have been suggested are advisory and not determinative. Consequently, it would be inappropriate to cast all the NAIC criteria into the rigidity of a regulation. However, in the course of its evaluation of applications, MARAD would certainly use such ratios and standards suggested by the marine insurance industry which it considered appropriate to the evaluation being conducted. MARAD would also welcome at this stage any additional suggestions for other evaluation criteria.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this proposed rulemaking is not major, as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures (DOT Order 2100.5) due to controversy and considerable public interest. This proposed rule has also been deemed a significant regulatory action in the Administration's 1987 Regulatory Program. A Regulatory Evaluation has been prepared to assess the economic impact of the proposed rule, and is available upon request.

Various alternatives were considered in connection with whether to (1) retain the 75 percent American market reservation, (2) permit any of the insurance to be placed with foreign underwriters outside the London market, and (3) limit the amount of risk which an underwriter may take on any single vessel. The Regulatory Evaluation concludes that the proposed rule will help to improve the competitive posture of the U.S.-flag fleet by providing the U.S.-flag owner participating in MARAD programs with the broadest opportunity to obtain sound hull insurance coverage with minimal regulatory constraints. Market restraints tend to reduce competition and create an unnecessary impediment to a competitive U.S.-flag merchant marine, and with the antitrust exemption, create the potential for higher insurance costs. Economical and efficient operation of vessels is critical for survival in a highly competitive environment, and the operators must be afforded the opportunity to obtain the best possible coverage at the lowest possible cost. Rate regulation is an undesirable alternative inconsistent with the goals of deregulation and increasing competition.

The maximum potential impact of the proposed regulatory changes on the American underwriters would be the virtually impossible scenario of total loss of market, which is estimated by MARAD staff at $42–$63 million in annual premiums. However, MARAD business may account for as little as 25 percent of the total hull pr ·nium written by American underwriters, who are able to effectively compete for international hull business, presumably with the same foreign underwriters who are now ineligible to participate in MARAD business. Consequently, MARAD does not expect that the proposed rule would have any significant adverse effect upon the American market's ability to compete effectively.

The only anticipated impact is a general reduction of premium levels in response to an increase in competition. In fact, to the extent that there is a loss of premium to the American underwriters, it will be the result of premium savings accruing to American vessel owners.

However, in order to ensure that MARAD's ultimate decision on this matter is based upon the best data available, commenters are specifically invited to submit detailed estimates of the impact of the proposed rule upon their business.

Finally, the Regulatory Evaluation concludes that the proposed rule would balance support of the American marine insurance industry with equity for U.S.-flag vessel owners, and that the various impacts and consequences of implementation would not jeopardize the soundness of either MARAD's subsidy and ship financing programs or the American marine insurance industry.

Since this proposal would principally affect ship operator and insurance companies with substantial annual revenues, the Maritime Administrator certifies that, if finalized, this regulation would not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The proposed rulemaking contains new information collection requirements in §§ 249.6(b) and 249.7(g). They will be submitted to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 249

Grant programs—transportation insurance, Insurance companies, Maritime carrier.

Accordingly, it is proposed to add a new Part 249 to Subchapter C of Chapter II, Title 46, Code of Federal Regulations, to read as follows:

PART 249—APPROVAL OF UNDERWRITERS FOR MARINE HULL INSURANCE

Sec.

249.1 Purpose.
249.2 Policy.
249.3 Amounts of insurance.
249.4 Eligibility.
249.5 Eligibility criteria.
249.6 Application procedures.
249.7 Approval.
249.8 Limitation on risk.
249.9 American market participation.
249.10 Non-discrimination policy.

Authority: Sec. 204(b), 1109, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1279(b)); 49 CFR 1.66.

§ 249.1 Purpose.

This part prescribes certain regulations governing the placement of marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended.

§ 249.2 Policy.

(a) It is the policy of the Maritime Administration (MARAD) that companies subject to requirements for the placement of marine hull insurance shall be afforded the widest possible opportunity to obtain the necessary coverage, with minimal regulatory constraints, and that while the placement of such insurance should be with financially sound underwriters, such placement should not create any unnecessary impediments to competitive maritime operations.

(b) It is also the policy of the Maritime Administration to require owners of vessels with ODS or Title XI obligation guarantees, before placing marine hull insurance on these vessels, to allow the American marine insurance market the opportunity to compete for each such placement.

§ 249.3 Amounts of insurance.

MARAD will inform the owner of each vessel that is subsidized or covered by vessel obligation guarantees, prior to initial placement and at least annually thereafter, of the minimum amount of insurance required to be placed on the vessel.

§ 249.4 Eligibility.

(a) *In general.* All required marine hull insurance must be placed with:

(1) Underwriters licensed to do business in one or more of the United States;

(2) Underwriters at Lloyds;

(3) Member companies of the Institute of London Underwriters or the Liverpool Underwriters Association; or

(4) Other underwriters specifically approved in advance by the Maritime Administration.

§ 249.5 Eligibility criteria.

(a) *U.S. underwriters.* Underwriters licensed to do business in a state are eligibile to participate without further consideration, provided they have at least a B security rating, as published in the latest edition of A.M. Best's Insurance Reports, and the amount of insurance does not exceed the limitation on risk prescribed in § 249.8.

(b) *Foreign underwriters.* (1) Underwriters at Lloyds are eligible to participate without further consideration.

(2) Underwriters which are members of the Institute of London Underwriters (ILU) (*member* companies, not parents or affiliates of the member companies) are eligible to participate without consideration, provided that the ILU member company actually underwriting the risk maintains a trust fund in the United States for the benefit of its U.S. policyholders in an amount at least equal to the minimum provided in § 249.7(c), and the line taken does not exceed the limitation on risk prescribed in § 249.8.

(3) Member companies of the Liverpool Underwriters Association are eligible to participate without further consideration, provided that the member company actually underwriting the risk maintains a trust fund in the United States for the benefit of its U.S. policyholders in an amount at least equal to the minimum provided in § 249.7(c), and the line taken does not exceed the limitation of risk prescribed in § 249.8.

(c) *Documentation of eligibility.* it shall be the responsibility of the vessel owner and its broker to ensure that the requirements of this section are met, and they should be able to provide MARAD, upon request, with documentation to that effect.

(d) *Other foreign underwriters.* Foreign underwriters other than those specified in (b)(1) through (b)(3) of this section may also be eligible to participate in the writing of marine hull insurance on MARAD program vessels of approved to do so in accordance with the procedures contained in §§ 249.6 and 249.7.

§ 249.6 Application procedures.

(a) MARAD may grant specific approval for underwriters described in § 249.5(d) to participate in the writing of marine hull insurance on MARDA program vessels only on an annual basis in advance of any actual placement.

(b) To seek approval, an applicant shall submit to MARAD:

(1) Annual financial statements for the preceding five (three) years in the format used by the National Association of Insurance Commissioners; [or]

(1) Financial data for the three (five) previous years in sufficient detail to enable MARAD to assess the financial strength and solvency of the applicant. MARAD may request additional data (for example, that the financial reports be submitted in the form prescribed by the National Association of Insurance Commissioners for admitted U.S. insurers) if the applicant's submissions are considered inadequate;

(2) An English language version of the insurance regulatory regime that is in place in the insurer's country of domicile (after review MARAD may contact the foreign national regulatory authorities, as appropriate);

(3) An affidavit in writing, executed by an agent of the applicant who is a domiciliary of the United States, and supported by appropriate documentation, to demonstrate that there is nothing to preclude a U.S. insurer from obtaining the same access to the applicant's home market as the applicant is seeking to the U.S. market, and

(4) The details of its reinsurance program, if it expects that any risk assumed or likely to be assumed will exceed five percent of its policyholders' surplus.

§ 249.7 Approval.

(a) Approval of the applicant will be based upon an assessment of the applicant's financial condition and solvency, suitability of the regulatory regime under which the applicant must operate in its home country (in lieu of a national rating scheme), and on the principle of reciprocal non-discrimination.

(b) Notice of Application will be published in the **Federal Register** for each application received from foreign underwriters described in § 249.5(d), affording interested persons an opportunity to comment on the application, and in particular, on any discriminatory practices which might

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exist in the applicant's country of domicile.

(c) In granting approval, MARAD will consider all materials available to it, and may impose reasonable terms and conditions upon any such approvals granted.

(d) Upon approval, applicant will be required to establish a U.S. trust fund for the benefit of its U.S. policyholders in the amount of $1 million, such amount to be reviewed annually in connection with renewal of approval, and adjusted as appropriate.

(e) All policies, at the time of issuance, must contain the latest American Institute of Marine Underwriters' forms, as approved by MARAD.

(f) All policies issued by foreign underwriters shall include New York Suable Clause or Service of Suit (USA) Clause.

(g) To maintain approval, foreign underwriters, other than those specified in § 249.5(b), must file annual financial statements in the same level of detail as required for original approval.

§ 249.8 Limitation on risk.

Underwriters may take a line on any single risk in excess of five percent of its Policyholders' Surplus only with the prior approval of MARAD. Such approval will be based upon a review of the underwriter's reinsurance. The standard to be applied in such review shall be that the underwriter's *net* retention on any single risk may not exceed five percent of its Policyholders' Surplus, and that the reinsurance should not be so concentrated as to create an undue risk to the underwriter's solvency.

§ 249.9 American market participation.

(a) Owners of vessels receiving ODS or Title XI vessel obligation guarantees, or their brokers, shall offer to the American marine insurance market the opportunity to compete for the placement of marine hull insurance on each vessel.

(b) Such companies and their brokers shall provide, upon request by MARAD, evidence of having offered the risk to an adequate cross section of the American marine insurance market.

(c) If, in the opinion of MARAD, the American marine insurance market has not been offered adequate opportunity to participate in the risk, MARAD may require that the risk be reoffered and that the existing placement be modified, as deemed appropriate.

§ 249.10 Non-discrimination policy.

To assist MARAD to effectively administer the policy regarding non-discrimination against U.S. insurers in other countries, as described in §§ 249.6(b)(3) and 249.7(a), it will be the responsibility of the American marine insurance industry to bring to MARAD's attention any discriminatory practices in the marine hull insurance market abroad which are inconsistent with MARAD policy. Upon receipt of such information, MARAD will take whatever action it deems appropriate.

Dated: October 13, 1987.

By Order of the Maritime Administration.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 87-23932 Filed 10-15-87; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. R-115]

46 CFR Part 308

War Risk Insurance

AGENCY: Maritime Admninistration, Department of Transportaton.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) is proposing to amend the war risk insurance regulations (46 CFR Part 308) to allow certain vessels registered in the Commonwealth of the Bahamas (Bahamas) to become eligible to apply for war risk insurance. MARAD administers these regulations as a standby emergency program, which now allows only vessels registered under the laws of the United States, as well as certain vessels that are owned or controlled by U.S. citizens and registered under the laws of Panama, Honduras, and Liberia, to apply for available risk insurance interim binders. These interim binders insure vessels against liabilities resulting from war or warlike actions when commercial war risk insurance is unavailable on reasonable terms and conditions. The proposed amendment would make certain vessels registered in the Bahamas eligible for war risk insurance and subject to the same considerations now applicable to vessels registered under the laws of Panama, Honduras or Liberia. This proposed rulemaking would also make editorial amendments, including those that reflect MARAD organizational changes.

DATES: Comments must be received on or before December 15, 1987.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 7th Street SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366-2400.

SUPPLEMENTARY INFORMATION: The authority of the Secretary of Transportation (Secretary) to provide insurance and reinsurance under Title XII, Mechant Marine Act, 1936, as amended, 46 U.S.C. 1281-1293 (Act), was reinstated by Pub. L. 99-59, which was encted into law on July 3, 1985, and which will expire on June 30, 1990. The implementing war risk insurance regulations were reissued on December 9, 1985 (50 FR 50165) to provide the terms and conditions under which war risk insurance interim binders are issued for U.S.-flag vessels and certain foreign-flag vessels owned or controlled by U.S. citizens.

As authoroized by section 1203, of the Act, as amended (46 U.S.C. 1283), the Secretary of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States, if such insurances cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a state of the United States. The U.S. government's war risk insurance program is a standby emergency program. It becomes effective simultaneously with the automatic termination of ocean marine commercial war risk insurance policies. Those policies are automatically terminated upon the outbreak of war, whether declared or not, between any of the five great powers (United States, United Kingdom, France, People's Republic of China, or the Union of Soviet Socialist Republics) or upon the hostile detonation of a weapon of war employing atomic or nuclear fission.

This program makes it possible for applicants to obtain war risk insurance, underwritten by the U.S. government, when such insurance is unavailable on reasonable terms and conditions in the commercial market. It assures the continued flow of essential U.S. trade, while protecting the shipowner from loss due to risks of war.

A war risk insurance interim binder is a contract under which the U.S. government agrees to provide the

applicant with war risk insurance coverage in the interim period, after termination of commercial insurance coverage, for a fee and upon the conditions set forth in 46 App. U.S.C. section 1282. An agent of MARAD issues the interim binders.

In 1976, Pub. L. 94–523 amended the prior war risk authority (45 App. U.S.C. 1283) by requiring that the Secretary shall determine whether to grant war risk insurance or reinsurance foreign-flag vessels based upon consideration of "the characteristics, the employment, and the general management of the vessel by the owner or charter," (46 U.S.C. 1283). That authority was reinstated in 1979 and 1985, and has been implemented by regulations published in the **Federal Register** on April 3, 1980, (45 FR 22041) and December 9, 1985 (50 FR 50165), respectively.

MARAD has issued implementing regulations restricting foreign-flag vessel eligibility for war risk insurance interim binders. MARAD's regulations provide for a case-by-case review of foreign-flag vessels applying for war risk insurance binders to assure the continued delivery of important U.S. cargoes when commercial war risk insurance is unavailable and to make it possible for the U.S. government to obtain the use of certain foreign-flag vessels under the Voluntary Contract of Commitment (VCC).

Vessels now eligible to apply under MARAD regulations are those that are documented under the laws of the United States (except sport fishing vessels), as well as vessels not more than 20 years old that are registered under the laws of Panama, Honduras, and Liberia. Vessels registered under the laws of the Bahamas would become eligible under this proposed rule.

Owners of these foreign-flag vessels must be U.S. citizens, or U.S. citizen owned corporations, or the vessels must be under the operational control of U.S. citizens. These vessels cannot be subject to requisition for title or use by any national government, other than the U.S. government. Further, the foreign country in which the vessel is registered may not have a statutory restraint preventing the U.S. government from requisitioning a U.S. citizen-owned or controlled vessel registered in that foreign country.

Eligible foreign-flag vessels that qualify for war risk insurance interim binders are those that are: (1) Substantially engaged in the foreign commerce of the U.S. (considered to be so if they carry thirty (30) percent of net cargo tonnage on a semiannual basis in the U.S. foreign commerce); (2) product tankers up to 90,000 deadweight tons; (3) dry cargo vessels; (4) heavy lift vessels; (5) refrigerated vessels; (6) and other classes of vessels in short supply in the U.S.-flag fleet, with special capabilities.

If a vessel meet any of these criteria, the owner must affirm that it will: (2) Make the vessel available during a U.S. national emergency to serve the U.S. economy or cooperate with U.S. military authorities under section 902 of the Act (46 App. U.S.C. 1242); (2) maintain it in its eligible category; and (3) report its location to the U.S. Coast Guard.

Vessels owned or controlled by U.S. citizens and registered under the laws of a foreign government are subject to the laws of the country of registry. Such laws may prevent U.S. citizens or U.S. operators of a foreign-flag vessel from making that vessel available to the U.S. government during periods of U.S. national emergency. MARAD's regulations require that applicants for war risk insurance on a foreign-flag vessel submit with their application a certified copy of the evidence of any official action or approval required by the government of the country of registry as a prerequisite to the execution of a VCC with the U.S. government (46 CFR 308.3(d)(4)). The VCC between the U.S. government (MARAD) and the vessel's U.S. citizen applicant makes that vessel available to the U.S. during any period in which vessels may be requisitioned under section 902 of the Act (46 App. U.S.C. 1242), i.e., whenever the President proclaims that there is a national emergency or that security or the national defense make it advisable.

This NPRM is issued in recognition of legislation enacted by the Bahamian government in 1983 as amendments to the Bahama Merchant Shipping Act, 1976, (MSA). These amendments allow U.S. citizen-owned or controlled Bahamian-flag vessels to comply with the foregoing MARAD requirements and otherwise meet MARAD criteria, approved by the U.S. Navy, to become eligible for war risk insurance. Section 286 of the MSA provides that the Bahamian registrar may grant written permission to the vessel's owner to transfer operating control of that vessel to another country's government during a state of emergency or time of war in the country where the owner resides or is a citizen. Thus, the Bahamian government would allow a U.S. citizen-owned or controlled vessel registered in the Bahamas to be made available to serve the U.S. national economy or U.S. national defense in times of U.S. national emergency under applicable U.S. laws.

This change in Bahamian law has removed the basis for objection by the U.S. Department of the Navy, Office of the Chief of Naval Operations (Navy), which previously objected to approving U.S. citizen-owned or operated vessels registered in the Bahamas as transport vessels to complement U.S. strategic sealift capability. The Navy objected to certain provisions in the prior Bahamian law, e.g. the requirement that all equity owners and mortgagees consent to the requisitioning of the vessel, and the provision that the country requesting title or use of the vessel declare that a state of emergency exists before the Bahamian government would allow the vessel's operational control to be transferred to another country.

Bahamian law now requires that vessels registered under its MSA must comply with numerous safety standards. For example, foreign-owned vessels are eligible for registration in the Bahamas if they are less than 12 years old at the time of first registry and if they are oceangoing vessels of 1,600 or more net registered tons engaged in "foreign-going trade." Foreign-going trade is defined as not trading exclusively within the Bahamian Islands or between the Bahamas and the East Coast of Florida. Under the MSA, a foreign-owner can hold direct title to a Bahamian-flag vessel and such vessel is considered "foreign-owned" unless its ownership is entirely in the hands of citizens of the Bahamas.

The MSA provides that six international classification societies can survey Bahamian-registered vessels, including The American Bureau of Shipping. In addition, the Bahamian Maritime Division of the Ministry of Transport, located in Nassau, London, and New York makes its inspection service available to shipowners. Four of the approved classification societies are members of the International Association of Classification Societies (IACS), based in London.

The willingness of the Bahamian government to include members of the IACS to survey Bahamian-flag vessels shows a desire to impose strict safety inspection standards that vessels under its registry will be operated in class. Further, all Bahamian-registered vessels must be inspected before the vessel is put into service, on an annual basis, whenever an accident occurs which affects the safety of the ship or whenever either important repairs are made or registration renewals are requested. The Bahamian MSA adheres to worldwide shipping safety concerns as its regulations have been modeled after United Kingdom shipping legislation. The Bahamian government has also joined the International

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Maritime Organization (IMO) and has been a party to conventions sponsored by the IMO.

As a result of the changes in Bahamian law, the U.S. Navy now regards U.S. citizen-owned or controlled vessels registered in the Bahamas as providing available cargo capacity to be relied upon to contribute to the cargo sealift capability support complementing U.S. strategic defense requirements. The U.S. Navy has requested that MARAD provide war risk insurance for certain Bahamian vessels, as appropriate.

An additional reason for allowing Bahamian-flag vessels to qualify for war risk insurance is that U.S. citizens are now registering their vessels under the Bahamian flag. Preliminary MARAD statistics now being compiled for publication in the document entitled *Foreign Flag Merchant Ships Owned by U.S. Parent Companies,* to be effective January 1, 1987, indicate that there are 26 U.S. citizen-owned vessels registered in the Bahamas. Seventeen of these 26 vessels would be eligible to apply for an interim binder. Approximately 58 percent of these 17 vessels were formerly registered under the Liberian or Panamanian flag and eligible for war risk insurance interim binders.

Accordingly, MARAD is proposing to amend its regulations at 46 CFR Part 308 to provide that certain vessels registered in the Bahamas be eligible to apply for war risk insurance interim binders. Such vessels could serve the national economy and the national defense needs of the United States.

E.O. 12291 Statutory and DOT Requirements

The Maritime Administration has determined that this proposed rule is not major as defined in E.O. 12291, and is not significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Bahamian law now allows entities registering their vessels in the Bahamas to qualify for U.S. government issued war risk insurance binders, subject to enabling amendments to MARAD regulations. Available data indicates that if all eligible U.S. citizen-owned or controlled vessels registered in the Bahamas applied for war risk insurance binder coverage, such coverage would involve a total of 17 vessels under the control of three companies. More than half of these 17 vessels were previously eligible for an interim binder while registered under either the Liberian flag or Panamanian flag. Accordingly, the economic impact has been found to be minimal. Since the rule affects principally the owners and operators of large commercial ships, the Maritime Administrator certifies that it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

This rule would amend the regulations at 46 CFR Part 308, which contain information collection requirements in §§ 308.3 and 308.6. The information collection for vessels that are registered in the Bahamas will be identical to that which has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). In March 1986, (under OMB Control No. 2133–0011) these new forms were approved for use and are now entitled: War Risk Insurance Application (Form MA–528); War Risk Insurance Binder, Form MA–942; Vessel Data, Form MA–828; and Underwriting Agency Agreement, Form MA 355.

List of Subjects in 46 CFR Part 308

Maritime carriers, War risks insurance.

Accordingly, 46 CFR Part 308 is proposed to be amended as follows:

PART 308—[AMENDED]

1. The citation of authority for Part 308 is revised to read as follows:

Authority: Secs. 204, 1202, 1203, 1209, Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1114, 1282, 1283, 1289; 49 U.S.C. 1.66).

§ 308.2 [Amended]

2. Section 308.2(a) is amended by inserting between the word "Honduran," and the word "or," the word "Bahamian."

§§ 308.3(c) and (g), 308.6(d), 308.304, 308.404, and 308.410 [Amended]

3. Sections 308.3(c) and (g), 308.6(d), 308.304, 308.404, and 308.410 are amended by replacing the title of Director, Office of Marine Insurance with the title of Director, Office of Trade Analysis and Insurance.

§ 308.5 [Amended]

4. Section 308.5 is amended by deleting the phrase "and General Order 75, as revised" and deleting the phrase "(General Order 75)".

§ 308.205 [Amended]

5. Section 308.205 is amended by replacing the title the Office of Marine Insurance with the title the Office of Trade Analysis and Insurance.

§ 308.404 [Amended]

6. Section 308.404 is amended by replacing the title, Chief, Division of Insurance with the title, Director, Office of Trade Analysis and Insurance.

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator.

Date: October 9, 1987.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 87–23829 Filed 10–15–87; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–10; Notice 1]

Federal Motor Vehicle Safety Standards; Power-Operated Window Systems

AGENCY: National Highway Tarffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to amend Standard No. 118 *Power-Operated Window Systems,* in several respects. First, this proposal would include light trucks among the classes of vehicles to which the Standard applies. This change is proposed because power windows in light trucks would appear to present the same prospect for injury to vehicle occupants as power windows in vehicles already subject to the standard. Second, this proposal would eliminate the current limitation on circumstances in which power windows may be *opened.* It would not change the current limitation on the circumstances in which those windows may be *closed.* NHTSA proposes this change because the greatest risk of injury by a moving power window occurs during the such *closing* of a window. Third, this notice proposes to eliminate the requirement that power windows be operable outside of a vehicle only with a *key* locking system. Several vehicle designs now use some kind of numeric or alphanumeric code sequence to lock and unlock the vehicle from the exterior. NHTSA is not aware of any safety reason to treat these locking systems any differently from *key* locking systems. In the alternative, the agency seeks comment on whether the Standard should prohibit closing a power window via *any* external controls. Recently, the agency has received a small number of reports of children injuring themselves by activating an external power window control. One of these reports involved a fatality. Finally, this notice proposes to expand Standard 118's purpose and

scope specifically to include power-operated roof devices.

DATES: Comment closing date: November 30, 1987. Proposed effective date: 180 days after publication of the final rule in the **Federal Register.**

ADDRESSES: Comments should refer to Docket No 87–10; Notice 1, and submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth Rutland, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone #: (202) 366–5267.

SUPPLEMENTARY INFORMATION: This notice proposes several changes to Standard No. 118, *Power-Operated Window Systems* (49 CFR 571.118). The Standard's purpose is to minimize the risk of personal injury that may result if a person, particularly a young one, is caught between a closing power-operated window and the window frame. The agency's experience is that children are the group of people most likely at risk of injury from inadvertent or unsupervised operation of power windows.

The first proposed change is to expand the Standard's applicability to include light trucks (less than 10,000 lbs. gross vehicle weight rating or "GVWR"). Currently, Standard 118 applies to passenger cars and multipurpose passenger vehicles (MPVs) only. Some types of light trucks (e.g., pick-up trucks) are frequently used by their owners in the same way a passenger car or MPV is used, to transport passengers (including small children), even though the principal intended use of these light trucks may be for hauling cargo. While there are no data directly demonstrating that a closing power window has caused significant safety problems in light trucks, the agency believes that the same dangers from inadvertent or unsupervised closing of windows are present in those vehicles. NHTSA believes further that light trucks with power-operated window systems should offer protection equal to other vehicles commonly used for passenger transport.

The second proposed change is to amend the introductory portion of subparagraph S3 of Standard 118 to narrow its limitation on the circumstances under which a power window may be operable so that the limitation would apply only to *closing* a power window. Standard 118 currently limits the circumstances under which a power window may be "operable." Because that term includes any movement of the window, regardless of the direction of movement, the Standard governs both opening and closing a window. However, the agency has tentatively decided that the potential harm created by power windows is likely to occur only when a closing power window catches an occupant's head or other body part between the closing window and door frame. Opening a power window seems unlikely to cause adverse safety consequences.

The third proposed change contemplated is to paragraph S3(c), and involves either amending or eliminating this provision. NHTSA is considering whether to expand the circumstances under which a power window may be operable by replacing the term "key-locking system" in subparagraph S3(c) with the less restrictive term "locking system." The current narrower term discriminates between the traditional key-locking systems and newer locking systems, such as those which are keyless and permit a person to control entry and other aspects of vehicle operation through punching numeric or alpha numeric codes on a touchpad control. If there is no adverse safety impact, it may be appropriate to adopt the broader term in the interest of facilitating technological innovation.

The agency requests comment on whether adopting the term "locking system" would permit any locking systems that would be overly susceptible to misuse or inadvertent activation by children. The agency foresees no risk from any locking system whose design or mode of operation would likely necessitate an adult to be present when a power window is closed. On the other hand, there may be other systems which do not offer such protections.

In the alternative, the agency is considering whether to eliminate subparagraph S3(c) entirely. The effect of eliminating this provision would be that an exterior control could lower, but not raise, a power-operated window. NHTSA is raising this issue because of a small number of recent reports that children have been harmed by power windows that have been externally activated—either by a child inside the vehicle reaching outside, or by a person outside the vehicle. One of these reports concerned a fatal accident in which an unsupervised child reached out of a vehicle, activated a power-operated window, and strangled between the closing window and the door-frame. The agency seeks comment on this possible change.

The final proposed change is to expand Standard 118's purpose and scope to include power-operated sunroofs. NHTSA believes that operating a sunroof presents the same risk of injury as operating traditional windows and partitions, and that children again are the likely victims of unsupervised or inadvertent operation. An informal survey reveals that most (and perhaps all) power sunroofs currently comply with Standard 118. However, expressly including sunroofs in the Standard will minimize the risk of a manufacturer's installing a power-operated sunroof or similar device that does not provide protection for the technical reason that the device is neither a "window" or "partition." The agency would amend the title of Standard 118 to reflect this expansion.

Impacts

A. Costs and Benefits

NHTSA has determined that this rule is not a major rule under Executive Order 12291 nor a significant rule within the meaning of Department of Transportation regulatory policies and procedures. Therefore, neither a regulatory impact analysis nor a full regulatory evaluation is required. For passenger cars and multipurpose passenger vehicles, the proposed changes would enhance design flexibility and user convenience. For light trucks, NHTSA understands that all light trucks equipped with power-operated window systems currently meet existing 118 requirements, and that there would be no significant cost impact as a consequence of extending this Standard's applicability to cover light trucks.

B. Small Business Impact

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The agency believes that few, if any, of the vehicle manufacturers would qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units only to the extent that these entities purchase motor vehicles. The preceding section reflects the agency's assessment that this amendment will have no significant cost impact to the industry, and therefore it will not result in significant increases in consumer prices.

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C. Environmental Impact

As it is required to do under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposal, and determined that this rule would not have any significant impact on the quality of the human environment.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend Title 49 CFR 571.118 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. The title of § 571.118 would be revised to read as follows:

§ 571.118 Standard No. 118; Power-operated window and roof systems.

3. S1 would be revised to read as follows:

S1. *Purpose and scope.* This standard specifies requirements for power-operated window, partition, and roof systems to minimize the risk of death or injury from accidental operation.

4. S2 would be revised to read as follows:

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 10,000 pounds or less.

5. S3 would be amended to read as follows:

S3. *Operating Requirements.* Power window, partition, or roof systems may be closed only in the following circumstances:

(a)

* * * * *

(c) Upon activation by a locking system on the exterior of the vehicle; or

* * * * *

Issued on: October 9, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-23980 Filed 10-15-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 70751-7217]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: NOAA reopens the period for public comments on a proposed rule to implement Amendment 5 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This rule was published on July 27, 1987, at 52 FR 28028. The amendment was adopted by the Western Pacific Regional Fishery Management Council (Council) at its 57th meeting in Honolulu, Hawaii on June 4–5, 1987. It was disapproved by the Secretary of Commerce on August 7, 1987, but was subsequently revised by the Council, adopted on July 29–30, 1987, and resubmitted on September 21, 1987.

Amendment 5 would implement a size limit for slipper lobster, require escape vent panels for all lobster traps, and change existing reporting requirements. The intent is to protect the spiny and slipper lobster resources of the Western Pacific. The amendment also changes the name of the existing FMP from the Spiny Lobster Fishery Management Plan of the Western Pacific Region to the Crustacean Fishery Management Plan of the Western Pacific Region. Also included in the document is an updated estimate of maximum sustainable yield of spiny lobster based upon knowledge gained from the fishery since 1983.

DATE: The public comment period on the proposed rule reopens October 13, 1987. Written comments will be received until November 2, 1987.

ADDRESS: Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of the resubmitted version of Amendment 5 may be received from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION: Amendment 5 was disapproved by the Secretary of Commerce because it lacked specifications for optimum yield (OY) and total allowable level of foreign fishing (TALFF). The resubmitted amendment contains specifications for OY and TALFF and a revised description of the habitat of slipper lobsters. The management measures in the resubmitted version of Amendment 5 are identical to those in the original amendment and original proposed rule. Therefore, the public is referred to the original proposed rule that was published on July 27, 1987 (52 FR 28028). A notice of availability of the resubmitted version of Amendment 5 was published on September 30, 1987 (52 FR 36598).

Classification

Section 304(b)(3)(B) (ii) and (iii) of the Magnuson Act, as amended by Pub. L. 99–659, requires that the Secretary publish a notice stating that a revised plan or amendment is available and comments should be submitted within 30 days and that the Secretary publish the proposed rules to implement the amendment. At this time, the Secretary has not determined that the FMP amendment that this rule would implement is consistent with the national standards, other provisions of the magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The relationship of the proposed rule to the National Environmental Policy Act, Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act was described when the proposed rule was published at 52 FR 28028.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: October 13, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc 87–24056 Filed 10–13–87; 5:03 pm]

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Notices

Federal Register
Vol. 52, No. 200
Friday, October 16, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Meeting of the Committee on Rulemaking

ACTION: Committee on Rulemaking; Notice of Public Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of two meetings of the Committee on Rulemaking of the Administrative Conference of the United States. The committee has scheduled these meetings to develop a proposed recommendation of OSHA regulation, based upon a study conducted for the Conference by Professors Thomas O. McGarity and Sidney A. Shapiro. Copies of the consultants' report and a draft committee recommendation may be obtained from the contact person named in this notice.

DATE: Tuesday, November 3, 1987, at 9:30 a.m., Friday, November 13, 1987 at 9:30 a.m.

Location: Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

Public participation: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meetings. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meetings will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone (202) 254–7065.

Dated: October 13, 1987.

Jeffery S. Lubbers,

Research Director.

[FR Doc. 87–23931 Filed 10–15–87; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain lowfat chocolate crumb from Ireland.

SUMMARY: This notice adjusts the country of origin for the quota quantity of Lowfat Chocolate Crumb assigned to Ireland.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not affect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

Notice

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain Lowfat Chocolate Crumb. Headnote 3(a)(iii) of Part 3 of the Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of origin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the amount of Lowfat Chocolate Crumb specified in TSUS Item 950.16 for Ireland will be entered from that country during calendar year 1987.

Notice is hereby given that 3,000,000 pounds of the 1987 quota quantity of Lowfat Chocolate Crumb specified in TSUS Item 950.16 for Ireland may be imported from the United Kingdom, New Zealand, and Ireland for the remainder of the 1987 quota year.

This quota quantity for TSUS Item 950.16 will revert to the original supplying country on January 1, 1988

Issued at Washington, DC, this 5th day of October 1987.

Leo V. Mayer,

Acting Administrator.

[FR Doc. 87–24042 Filed 10–15–87; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Mt. Graham Astrophysical Proposal; Revised Release of Environmental Impact Statement; Coronado National Forest

As announced on July 16, 1985 and later amended on May 30, 1986, the Department of Agriculture, Forest Service is preparing an environmental impact statement for a proposal astrophysical area on the Safford Ranger District, Coronado National Forest, Graham County, Arizona.

The draft environmental impact statement was released for public comment in October 1986. The public comment period ended on January 20, 1987. More time is needed to incorporate additional information into the environmental analysis process. The revised schedule for releasing the final environmental impact statement is August 1, 1988.

A range of alternatives for future management of this area is being

considered. Several alternatives include no astrophysical development as required by the Agency and also suggested by the public. Other alternatives include different levels of astrophysical development and different locations for support facilities.

Sotero Muniz, Regional Forester of the Southwest Region in Albuquerque, New Mexico is the responsible official.

Questions concerning the analysis and schedule should be addressed to Robert Tippeconnic, Forest Supervisor, Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701; telephone 602–629–6483.

Dated: October 2, 1987.

Sotero Muniz,

Regional Forester.

[FR Doc. 87–24019 Filed 10–15–87; 8:45 am]

BILLING CODE 3410–11–M

[P & S Docket No. D–88–2]

Packers and Stockyards Administration

Complaint and Notice of Inquiry; St. Joseph Stockyards

Before the Secretary of Agriculture; In reference to Market Agencies at St. Joseph Stock Yards; St. Joseph Stock Yards, et al. vs. Emmet M. Connolley, d/b/a/ St. Joseph Livestock Commission Company.

Notice is hereby given that on October 7, 1987, the Packers and Stockyards Administration, United States Department of Agriculture, filed a "Complaint and Notice of Inquiry", the contents of which are as follows:

This proceeding is instituted pursuant to the provisions of Title III of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), hereinafter referred to as "the Act."

I

(a) Complainant St. Joseph Stock Yards, hereinafter referred to as "the stockyard," is a division of United Stockyards Corporation, which corporation is now, and at all times material herein was, engaged in the business of providing stockyard services at various locations, including St. Joseph, Missouri 64505. The stockyard is a posted stockyard subject to the provisions of the Act.

(b) The remaining named complaints, hereinafter referred to as "the commission firm complaints," and respondent are now, and at all times material herein were:

(1) Engaged in the business of selling livestock on a commission basis at the stockyard, and

(2) Registered with the Secretary of Agriculture as market agencies to sell livestock on a commission basis at the stockyard.

II

In accordance with the requirements of the Act, the commission firm complaints and respondent have heretofore filed and presently have in effect a joint schedule of rates and charges for their services at the stockyard. Pursuant to the schedule of rates and charges presently in effect, charges for their market agency services have been and are uniform.

III

On August 11, 1987, respondent filed with the Secretary an amendment to the schedule referred to in paragraph II above entitled, "Tariff II, Item II of the Tariff Number 27," hereinafter referred to as the "amendment." Such amendment, with a stated effective date of August 26, 1987, contains rates and charges different from the schedule of rates and charges presently being assessed by the commission firm complaints and respondent at the stockyard.

IV

On August 17, 1987, the stockyard and the commission firm complaints each filed a written complaint with the Secretary urging the Secretary to reject respondent's amendment because, *inter alia*, it contravenes the long standing practice of market agencies at the stockyard to charge for their services according to a uniform tariff, it establishes charges lower than the cost of providing selling services, and it would disrupt the orderly and efficient solicitation and marketing of livestock at the stockyard.

V

Accordingly, there is reason to believe that certain rates and charges in respondent's amendment are unjust and unreasonable within the meaning of section 305 of the Act (U.S.C. 206). Further, there is reason to believe that rates and charges for market agency services at the stockyard should be assessed according to a uniform tariff, and that non-uniform rates and charges would be unjust and unreasonable in violation of sections 305 and 307 of the Act (7 U.S.C. 206, 208).

VI

On August 25, 1987, pending further inquiry into this matter, the Acting Administrator of the Packers and Stockyards Administration, pursuant to section 306 of the Act (7 U.S.C. 207), suspend and deferred the operation and application of respondent's amendment for a period of thirty (30) days from its stated effective date. The operation and application of the amendment was suspended and deferred an additional thirty (30) days by the Acting Administrator on September 24, 1987, as authorized by section 306 of the Act.

VII

It is concluded, therefore, that a proceeding under Title III of the Act should be instituted for the purpose of inquiring into the reasonableness and lawfulness of the rates and charges set forth in respondent's amendment, and for the purpose of determining the rates and charges to be assessed by all market agencies operating at the stockyard.

It is Therefore Ordered that notice to complainants and respondent shall be and is hereby given that a hearing concerning the matters set forth herein will be held before an administrative law judge of the Department at a time and place to be specified at a later date, of which complaints and respondent will receive adequate notice. At such hearing complaints and respondent and all other interested persons will have a right to appear and present such evidence with respect to this matter as may be relevant and material.

It is Further Ordered that any and all interested persons who may wish to appear and present evidence relative to the issues in this proceeding shall give notice thereof by filing a statement to that effect with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250–1400 within 20 days from the date of the publication hereof in the **Federal Register**.

It is Further Ordered that copies hereof shall be served upon complainants and respondent.

Thomas C. Heinz, Attorney for Packers and Stockyards, Administration, (202) 447–2869.

Done at Washington, DC this 13th day of October, 1987.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 87–24057 Filed 10–15–87; 8:45 am]

BILLING CODE 3410–KD–M

Soil Conservation Service

Environmental Statement on Fall Creek Watershed, KY; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

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ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1959; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fall Creek Watershed, Wayne County, Kentucky.

FOR FURTHER INFORMATION CONTACT: T. Allan Heard, Assistant State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2747.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned action is to install conservation practices on approximately 5,200 acres of excessively eroding cropland that will remain in cultivation and 250 acres of excessively eroding cropland that will be converted to permanent vegetative cover. This planned action will reduce upland erosion and downstream sedimentation and pollution.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Date: October 7, 1987.

Randall W. Giessler,

State Conservationist.

[FR Doc. 87–23951 Filed 10–15–87; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 5:00 p.m., on November 6, 1987 at the Federal Building, 701 C Street (Room C 121/122), Anchorage, Alaska 99513.The purpose of the meeting is to consider program plans and to convene a forum addressing minority and women's business contracting programs of State and local governments.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Philip Montez, Director of the Western Regional Division, (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 7, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–23952 Filed 10–15–87; 8:45 am]

BILLING CODE 6335–01–M

Nebraska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given; pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m., on November 16, 1987, at the Ramada Inn-Airport, 2002 East Locust Street, Omaha, Nebraska. The purpose of the meeting is to provide additional orientation for new SAC members and to develop program activities for FY 1988. It will review information collected during an earlier meeting in Scottsbluff for transmittal to Headquarters. The Committee will also hear presentations on the status of civil rights in Omaha from representatives of the City of Omaha, the American Indian Center of Omaha, the Chicago Awareness Center, the Urban League and the Jewish community.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard F. Duncan, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 9, 1987.

Susan J. Prado,

Acting Staff Director.

FR Doc. 87–23953 Filed 10–15–87; 8:45 am]

BILLING CODE 6335–01–M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 6:00 p.m., on November 13, 1987, at the Holiday Inn Vanderbilt, 2613 West End Avenue, in Nashville. The purpose of the meeting is to conduct a community forum at which the Committee will receive information on the desgregation of public higher education in Tennessee. Presentations will be made by participants from the three major geographical divisions of the State and will include government and education offficials, administrators, faculty, students, legal experts and legislators.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James F. Blumstein, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 9, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–23954 Filed 10–15–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 7105–01]

Actions Affecting Export Privileges; Robert Almori

Summary

Pursuant to the Default Decision and Order of the Administrative Law Judge, which Order is modified by me, Robert Almori, with an address at 80–82 Rue Saint Dominique, Paris 7, France, is denied all export privileges for an indefinite period from the date of this order.

Order

On September 8, 1987, the Administrative Law Judge (ALJ) entered a Default Decision and Order in the above referenced matter. The Default Decision and Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.17(a), for final action.

I hereby modify Paragraph II of the ALJ's Order by deleting that paragraph and inserting in lieu thereof the following:

"II. All outstanding individual validated export licenses in which Almori appears or partsicipates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Almori's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked."

I hereby modify Paragraph V of the ALJ's Order by inserting after the words "specific authorization" the following: ". . . from the Office of Export Licensing . . . ."

Having examined the record and based on the facts adduced in this case, I affirm the Default Decision and Order of the ALJ as thus modified.

This constitutes final agency action in this matter.

Date: October 8, 1987.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

United States Department of Commerce, Office of Administrative Law Judge, Suite 6716, Washington, DC 20230

In the matter of: Robert Almori, Respondent; Docket No. 7105–01.

Appearance for respondent: Robert Almori, 80–82 Rue Saint Dominique, Paris 7, France.

Appearance for agency: Thomas C. Barbour, Esq., Attorney-Advisor, U.S. Department of Commerce, Room H–3845, Washington, DC 20230.

Default Decision and Order

On January 20, 1987, the Acting Director, Office of Export Enforcement, International Trade Administration, United States Department of Commerce (the Agency), issued a Charging Letter alleging that Robert Almori (Respondent) had violated §§ 387.3, 387.4, 387.5 and 387.6 of the Export Adminstration Regulations (15 CFR Parts 368–399) (the Regulations). The Agency established that service of the charging letter was made on the Respondent on January 29, 1987. Respondent failed to submit any answer.

Section 388.8 of the Regulations provides:

Default

(a) General

If a timely answer is not filed, the Department shall file with the administrative law judge a proposed order together with supporting evidence for the allegations in the charging letter. The administrative law judge may require further submissions and shall issue any order he deems justified by the evidence of record. Any order so issued shall have the same force and effect as an order issued following the disposition of contested charges.

In accordance with this section, Agency counsel filed such a motion for a default order on July 22, 1987. The Agency also submitted documentary evidence to support the allegations made in the charging letter. On July 30, 1987, the undersigned Administrative Law Judge issued an Order to Show Cause why the Respondent should not be held in default. The Respondent has failed to file an answer to the charges alleged or a response to the Order issued.

Facts

From a period beginning on or about June 2, 1980 to on or about April 23, 1982, Almori conspired and acted in concert with Michel d'Ormigny, Jean-Jaques Gayant, Marcel Goldfarb, Jean-Michel Didat and others to bring about acts that constituted violations of the Act and the Regulations.[1] The purpose of the conspiracy was to acquire U.S.-origin goods in the United States for export to ultimate proscribed destinations. This was accomplished by representing that France was the intended country of ultimate destination, while in fact, the conspirators intended to, and on at least one occasion did in fact, reexport the goods from France to proscribed destinations without reexport authorization from the Agency.

The conspiracy to fraudulently obtain U.S.-origin goods for ultimate destination in proscribed destinations was directed by Almori. Specifically, Almori established a firm called Hedera (sometimes referred to as "Hedera Establishment"), in Vaduz, Lichtenstein, to sell those goods to customers in the Union of Soviet Socialist Republics (U.S.S.R.) and Czechoslovakia. Almori, in order to implement this scheme, directed Didat, of the firm Cotricom,[2] to obtain a fictitious customer of good standing reputation in France. Didat contacted one of his connections, Goldfarb, who provided Didat with a copy of a blank order form from the genuine French company C.G.E.E. Alsthom. The Respondents then proceeded to pose as representatives of this reputable French company, knowing that C.G.E.E. Alsthom had no interest in any of their transactions.

Duplicates of this blank order form were also used by the Respondents to obtain International Import Certificates (IC's) from the French government. In turn these IC's were presented by Respondents to U.S. exporters to support applications seeking authorization from the Agency to export U.S.-origin equipment to C.G.E.E. Alsthom.[3] These documents were necessary to conceal from the Agency the true destination of these U.S.-origin goods. Each of the applications made to the French government were for an IC and included a representation that C.G.E.E. Alsthom was importing U.S.-origin goods into France. Each was signed "LEFEBVRE" and included the following notation: "For this matter dial number 355–0346 Mr. LEFEBVRE." In fact, as established in a French court proceeding, "LEFEBVRE" was an alias adopted by Goldfarb and the telephone number was for a commercial enterprise

[1] Michel d'Ormigny died in 1985. Thus, he is no longer a Respondent in these administrative proceedings. In addition, after further review of the evidence respecting Mr. Gayant's alleged involvement in the conspiracy, the Agency chose not to pursue any charges against him.

[2] Cotricom was a French forwarding firm who was the usual freight forwarder for Hedera.

[3] In applying for an export license seeking authorization to export from the United States to France any U.S.-origin commodity identified by the code letter A following the Export Control Commodity Number (ECCN) for that commodity, the applicant must include with his license application an IC issued by the French Government. *See* 15 CFR 375.3.

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directed by Goldfarb.[4] In fact, as established by the French court proceeding, the address provided on the application for the firm C.G.E.E. Alsthom as the place of delivery for the goods, 13 Parc du Biches, 91000 Evry-France, was not even a C.G.E.E. Alsthom facility.

On June 2, 1980, an order (SA/SCED–80–1234) was placed with the French subsidiary of a U.S. company for a memory test system (Govt. Exh. 2). That purchase order directed that all letters concerning that order were to be sent to "Monsieur Gerard LEFEBVRE" at the "fictitious" C.G.E.E. Alsthom facility (Govt. Exh. 1). On or about January 9, 1981, the U.S. exporter of the memory test system, unaware that the information provided to him by Didat was false, submitted to the Agency validated export license application A531976 [5], identifying C.G.E.E. Alsthom as the ultimate consignee of the memory test system.[6]

Based on the information provided in export application A531976, the Agency issued a validated export license authorizing the export of the U.S.-origin memory test system to C.G.E.E. Alsthom (Govt. Exh. 5). The validated export license required that a delivery verification certificate be returned to the Agency in connection with the export of this equipment.[7] The U.S.-origin memory test system was exported from the United States to France on or about January 22, 1981 (Govt. Exh. 6, 7). On May 12, 1981, the U.S. exporter submitted to the Agency a copy of the IC covering the export of the memory test system to C.G.E.E. Alsthom, stating that it had been unable to obtain a delivery verification certificate with respect to the shipment (Govt. Exh. 8). C.G.E.E. Alsthom, in fact, never ordered the memory test system. (Govt. Exh. 9).

On or about August 10, 1981, following the refusal of the U.S. manufacturer involved in the shipment of the memory test system to fill additional orders because of the failure to obtain delivery verification certificates, Almori orchestrated the attempt by Didat to obtain through d'Ormigny's company, Technica Ltd. (Technica), a U.S.-origin pattern generator and a photorepeater in the United States for export to France without the validated export licenses required by § 372.1(b) of the Regulations. Almori, through his company, Hedera, ordered these U.S.-origin commodities from Technica (Govt. Exh. 11, 12).[8] D'Ormigny notified the U.S. company from whom he was purchasing the goods that the goods would have to be released "exclusively" to Technica's freight forwarder. On November 27, 1981, Technica's freight forwarder took possession of the goods (Govt. Exh. 13, 14).

A Shipper's Export Declaration (SED) was filed with the U.S. Customs Service stating that the goods were subject to general license G–DEST and that they were being shipped for ultimate consignment to Didat's firm, Cotricom. Acting in accordance with instructions received from Didat and d'Ormigny, on or about December 8, 1981, the U.S. freight forwarder attempted to export the pattern generator and photorepeater from the United States to Didat's company, Cotricom, in France without the required validated export license (Govt. Exh. 17, 18, 19, 20). On December 8, 1981, the U.S.-origin equipment was seized in New York and subsequently forfeited to the United States. (Govt. Exh. 21, 22, 23).

Following the December, 1981 seizure, Almori and Didat attempted, through a new U.S. exporter, to procure additional U.S.-origin equipment, using the fradulently obtained C.G.E.E. Alshtom purchase orders in an attempt to give the transaction an appearance of bona fides. On or about January 4, 1982 and January 19, 1982, based on information provided by Didat, a U.S. exporter submitted two separate export license applications to the Agency (Govt. Exh. 24). [9] Both export license applications stated that C.G.E.E. Alsthom was the intended ultimate consignee of the U.S.-origin equipment identified. Each application was accompanied by International Import Certificates from France, which had been provided to the U.S. exporter by Didat, supporting the representation that the goods were being purchased by C.G.E.E. Alsthom.

On January 19, 1982, the U.S. exporter and Didat met with Agency officials to discuss these applications (Govt. Exh. 26). During that interview, Didat stated that he was an agent for C.G.E.E. Alsthom, and that C.G.E.E. Alsthom had ordered the U.S.-origin goods for its own use. Thus, Didat made false and misleading statements of material fact to the Agency in connection with these transactions. Becasue of the questions raised after the December seizure, neither application was approved.

At the same time Didat was making these statements to the Agency in the United States, Almori and Goldfarb were making false and misleading statements of matertial fact to U.S. Embassy officials in Paris. In the course of an official United States Government investigation conducted in connection with the goods seized, on or about December 22, 1981, Almori made false and miselading statements of material fact to an official of the United States Embassy in Paris by stating that the goods had been purchased for C.G.E.E. Alsthom, when Almori knew that C.G.E.E. Alsthom had no interest in the transaction.

Further, on December 23, 1981,[10] "LEFEBVRE" contacted U.S. Embassy officials to discuss C.G.E.E. Alsthom's purchase of the pattern generator and photorepeater (Govt. Exh. 28).[11] Lefebvre also contacted the Embassy on February 5, April 2, and April 6, 1982 (Govt. Exh. 31). During these contacts, Lefebvre represented that he was acting on behalf of C.G.E.E. Alsthom.[12]

The Agency alleges that the Respondents, acting in accordance with the scheme devised by Almori, conspired to acquire U.S.-origin goods on the representation that a reputable end-user in France was the intended ultimate recipient of such equipment. In fact, the evidence supports the finding that the Respondents intended to, and on at least one occasion did in fact, reexport the goods from France to a proscribed destination without obtaining

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[4] While not addressing the same allegations, a French court proceeding established facts against these Respondents linked to the charges made by the Agency in the January 20, 1987 charging letters. These included the forging of trade records and improper procurement of administrative documents (Govt. Exh. 1).

[5] The charging letter of January 20, 1987, erroneously identified this number as A531926.

[6] Since the memory test system was classified under ECCN 1355A (Govt. Exh. 4), an IC was required to be submitted with the license application. However, the U.S. exporter requested a waiver of this requirement until the IC was received at its facility. The Agency granted this requested waiver and issued the validated export license prior to receipt of the IC. The IC was submitted to the Agency on May 12, 1981 (Govt. Exh. 8).

[7] A delivery verification certificate may be requested by the government of the exporting country. If it is requested for a particular export, the verification is issued by the government of the country of ultimate destination after the export has taken place and the commodities have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. 15 CFR 375.3(a)(2).

[8] Although the purchase order form from d'Ormigny to GCA Corporation indicates that d'Ormigny intended to install the equipment in Pittsburgh, Pennsylvania, the other documentary evidence relating to this transaction reveals that statement on the purchase order to be false. (Govt. Exh. 11, 12, 13–20)

[9] These applications were date stamped by the Agency as January 12, 1982 and January 20, 1982, respectively.

[10] The charging letter issued to Repondent Godfarb incorrectly states December 13, 1981.

[11] Gov. Exh. 28 contains a typographical error, reporting the date as February 3, 1983 instead of 1982.

[12] In his Janaury 6, 1982 contact with the Embassy, Lefebvre cautioned the officials to contact him only at his personal number because knowledge of the transaction was restricted to only a few senior officials at C.G.E.E. Alsthom (Govt. Exh. 28).

the required reexport authorization from the Agency.

The facts are not therefore in dispute and Respondent is not entitled to a fact-finding hearing under such circumstances (*Spawr Optical Research, Inc. v. Baldrige*, Civ. No. 86–0880, D.D.C. Dec. 16, 1986; *In the Matter of Spawr*, 51 FR 7477–7479, 7481 (1986). Cf. also, Order in Gregg (52 FR 13279 (1987), where in an Agency subaltern denied that individual and a related person export previleges for 10 years without notice or opportunity to comment or be heard, under the Export Administration Act for a violation of the Arms Export Control Act. A procedure proposed to be made applicable to convictions for violations of the Export Administration Act as well, under present congressional consideration).

Based on the foregoing, I find that the Respondents violated the Regulations, as alleged in the charging letter of January 20, 1987. Each of these violations involving U.S.-origin goods controlled under section 5 of the Act for national security reasons. I find that an Order denying export privileges to the Respondent for an idefinite period from the date a final order is entered in this proceeding in reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Administrion Act, and the Regulations.

Accordingly, pursuant to the authority delegated to me by Part 388 of the Regulations, it is therefore:

Ordered

I. For an indefinite period from the date this Order becomes final, Respondent: Robert Almori, 80–82 Rue Saint Dominique, Paris 7, France, all successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. All outstanding validated export licenses in which Respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

III. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include but not be limited to participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subjet to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transhipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to or for respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. By Order of April 5, 1983 (48 FR 15935, April 13, 1983), Robert Almori and others were temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The temporary denial order was to remain in effect until the final disposition of any administrative or judical proceedings initiated as a result of the then on-going investigation. Upon approval, this order will constitute such final disposition of the administrative proceeding initiated by the Agency as a result of its investigation relating to the matters which gave rise to the temporary denial order. The Temporary Denial Order of April 5, 1983 (48 FR 15935, April 13, 1983) will thereby be superceded and revoked. Review of the record relating to the Respondents originally named in that Order reflect that all have now been addressed, except for Michel d'Ormigny, a related party. As stated in footnote 1 on page three, Mr. d'Ormigny has since died. Therefore there is no basis for his name to continue to be listed on the table. The following entries will be deleted from the said table: Almori, Robert, a/k/a Mathurin Almori, and Bernard Almori, 75008 Paris, France, Technica Ltd. Technica, S.A., and d'Ormigny, Michel Daniel, 22202 North 84th Place, Scottsdale, Arizona.

From the effective date of this Order it alone will be the basis for any entry on the Table of Denied Orders until modified (15 CFR Part 388 (Supp. No. 1 1987)).

VII. This Order as affirmed or modified, shall become effective upon entry of the Secretary's final action in the proceeding pursuant to this Act (50 U.S.C. app. 2412(c)(1)).

Dated: September 8, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 87–23975 Filed 10–15–87; 8:45 am]

BILLING CODE 3510–DT–M

[Docket Nos. 7105–03 and 7105–04]

Actions Affecting Export Privileges; Jean-Michel Didat, Individually and Doing Business as Cotricom S.A.

Summary

Pursuant to the Default Decision and Order of the Administrative Law Judge, which Order is modified by me, Jean-Michel Didat, individually and doing business as Cotricom S.A., both with addresses at 4 Alles des Mesanges, Yerres, France, is denied all export privileges for an indefinite period from the date of this Order.

Order

On September 8, 1987, the Administrative Law Judge (ALJ) entered a Default Decision and Order in the above referenced matter. The Default Decision and Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.17(a), for final action.

I hereby modify Paragraph II of the ALJ's Order by deleting that paragraph and inserting in lieu thereof the following:

"II. All outstanding individual validated export licenses in which Didat or Cotricom S.A. appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Didat's and Cotricom's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked."

I hereby modify Paragraph V if the ALJ's Order by inserting after the words "specific authorization" the following: ". . . from the Office of Export Licensing . . ."

Having examined the record and based on the facts adduced in this case, I affirm the Default Decision and Order of the ALJ as thus modified.

This constitutes final agency action in this matter.

Date: October 8, 1987.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

United States Department of Commerce, Office of Administrative Law Judge, Suite 6716, Washington, DC 20230

In the matter of: Jean-Michel Didat, Cotricom S.A., Respondent; Docket Nos. 7105–03 and 7105–04.

Appearance for respondents: Jean-Michel Didat, 4 Alles des Mesanges, Yerres, France, and Cotricom S.A., 4 Alles des Mesanges, Yerres, France.

Appearance for agency: Thomas C. Barbour, Esq., Attorney-Advisor, U.S. Department of Commerce, Room H–3845, Washington, DC 20230.

Default Decision and Order

On January 20, 1987, the Acting Director, Office of Export Enforcement, International Trade Administration, United States Department of Commerce (the Agency), issued a Charging Letter alleging that Jean-Michel Didat, individually and doing business as Cotricom S.A., (Respondent), had violated Sections 387.3, 387.4, 387.5 and 387.6 of the Export Administration Regulations (15 C.F.R. Parts 368–399) (the Regulations). The Agency established that service of the charging letter was made on the Respondent on January 29, 1987. Respondent failed to submit any answer.

Section 388.8 of the Regulations provides:

Default

(a) General

If a timely answer is not filed, the Department shall file with the administrative law judge a proposed order together with supporting evidence for the allegations in the charging letter. The administrative law judge may require further submissions and shall issue any order he deems justified by the evidence of record. Any order so issued shall have the same force and effect as an order issued following the disposition of contested charges.

In accordance with this section, Agency counsel filed such a motion for a default order, supported by documentary evidence, on July 22, 1987. On July 30, 1987, the undersigned Administrative Law Judge issued an Order to Show Cause why the Respondent should not be held in default. Respondent has failed to file an answer to the charges alleged or response to the Order issued.

Facts

From a period beginning on or about June 2, 1980 to on or about April 22, 1982, Didat conspired and acted in concert with Robert Almori, Michel d'Ormigny, Jean-Jaques Gayant, Marcel Goldfarb and others to bring about acts that constituted violations of the Act and the Regulations.[1] The purpose of the conspiracy was to acquire U.S.-origin goods in the United States for export to ultimate proscribed destinations. This was accomplished by representing that France was the intended country of ultimate destination, while in fact, the conspirators intended to, and on at least one occasion did in fact, reexport the goods from France to proscribed destinations without reexport authorization from the Agency.

The conspiracy to fraudulently obtain U.S.-origin goods for ultimate destination in proscribed destinations was directed by Almori. Specifically, Almori established a firm called Hedera (sometimes referred to as "Hedera Establishment"), in Vaduz, Lichtenstein, to sell those goods to customers in the Union of Soviet Socialist Republics (U.S.S.R.) and Czechoslovakia. Almori, in order to implement this scheme, directed Didat, of the firm Cotricom,[2] to obtain a fictitious customer of good standing reputation in France. Didat contacted one of his connections, Goldfarb, who provided Didat with a copy of a blank order form from the genuine French company C.G.E.E. Alsthom. The Respondents then proceeded to pose as representatives of this reputable French company, knowing that C.G.E.E. Alsthom had no interest in any of their transactions.

Duplicates of this blank order form were also used by the Respondents to obtain International Import Certificates (IC's) from the French government. In turn these IC's were presented by Respondents to U.S. exporters to support applications seeking authorization from the Agency to export U.S.-origin equipment to C.G.E.E. Alsthom.[3] These documents were necessary to conceal from the Agency the true destination of these U.S.-origin goods. Each of the applications made to the French government were for an IC and included a representation that C.G.E.E. Alsthom was importing U.S.-origin goods into France. Each was signed "LEFEBVRE" and included the follwing notation: "for this matter dial number 355–0346 Mr. LEFEBVRE." In fact, as established in a French court proceeding, "LEFEBVRE" was an alias adopted by Godlfarb and the telephone number was for a commercial enterprise directed by Goodfarb.[4] In fact, as established by the French court proceeding, the address provided on the application for the firm C.G.E.E. Alsthom as the place of delivery for the goods, 13 Parc du Biches, 91000 Evry-France, was not even a C.G.E.E. Alsthom facility.

On June 2, 1980, an order (SA/SCED–80–1234) was placed with the French subsidiary of a U.S. company for a memory test system (Govt. Exh. 2). That purchase order directed that all letters concerning that order were to be sent to

[1] Michel d'Ormigny died in 1985. Thus, he is no longer a Respondent in these administrative proceedings. In addition, after further review of the evidence respecting Mr. Gayant's alleged involvement in the conspiracy, the Agency chose not to pursue any charges against him.

[2] Cotricom was a French forwarding firm who was the usual freight forwarder for Hedera.

[3] In applying for an export license seeking authorization to export from the United States to France any U.S.-origin commodity identified by the code letter A following the Export Control Commodity Number (ECCN) for that commodity, the applicant must include with his license application an IC issued by the French Government. *See* 15 CFR 375.3.

[4] While not addressing the same allegations, a French court proceeding established facts against these Respondents linked to the charges made by the Agency in the January 20, 1987 charging letters. These included the forging of trade records and improper procurement of administrative documents (Govt. Exh. 1).

"Monsieur Gerard LEFEBVRE" at the "fictitious" C.G.E.E. Alsthom Facility (Govt. Exh. 1). On or about January 9, 1981, the U.S. exporter of the memory test system, unaware that the information provided to him by Didat was false, submitted to the Agency validated export license application A531976,[5] identifying C.G.E.E. Alsthom as the ultimate consignee of the memory test system.[6]

Based on the information provided in export application A531976, the Agency issued a validated export license authorizing the export of the U.S.-origin memory test system to C.G.E.E. Alsthom (Govt. Exh. 5). The validated export license required that a delivery verification certificate be returned to the Agency in connection with the export of this equipment.[7] The U.S.-origin memory test system was exported from the United States to France on or about January 22, 1981 (Govt. Exh. 6, 7). On May 12, 1981, the U.S. exporter submitted to the Agency a copy of the IC covering the export of the memory test system to C.G.E.E. Alsthom, stating that it had been unable to obtain a delivery verification certificate with respect to the shipment (Govt. Exh. 8). C.G.E.E. Alsthom, in fact, never ordered the memory test system. (Govt. Exh. 9).

On or about August 10, 1981, following the refusal of the U.S. manufacturing involved in the shipment of the memory test system to fill additional order because of the failure to obtain delivery verification certificates, Almori orchestrated the attempt by Didat to obtain through d'Ormigny's company, Technica Ltd. (Technica), a U.S.-origin pattern generator and a photorepeater in the United States for export to France without the validated export licenses required by § 372.1(b) of the Regulations. Almori, through his company, Hedera, ordered these U.S.-origin commodities from Technica (Govt. Exh. 11, 12).[8] D'Ormigny notified the U.S.company from whom he was purchasing the goods that the goods would have to be released "exclusively" to Technica's freight forwarder. On November 27, 1981, Technica's freight forwarder took possession of the goods (Govt. Exh. 13, 14).

A Shipper's Export Declaration (SED) was filed with the U.S. Customs Service stating that the goods were subject to general license G-DEST and that they ere being shipped for ultimate consignment to Didat's firm, Cotricom. Acting in accordance with instructions received from Didat and d'Ormigny, on or about December 8, 1981, the U.S. freight forwarder attempted to export the pattern generator and photorepeater from the United States to Didat's company, Cotricom, in France without the required validated export license (Govt. Exh. 17, 18, 19, 20). On December 8, 1981, the U.S.-origin equipment was seized in New York and subsequently forfeited to the United States. (Govt. Exh. 21, 22, 23).

Following the December, 1981 seizure, Almori and Didat attempted, through a new U.S. exporter, to procure additional U.S.-origin equipment, using the fraudulently obtained C.G.E.E. Alsthom purchase orders in an attempt to give the transactions an appearance of *bona fides*. On on about January 4, 1982 and January 19, 1982, based on information provided by Didat, a U.S. exporter submitted two separate export license applications to the Agency (Govt. Exh. 24).[9] Both export license applications stated that C.G.E.E. Alsthom was the intended ultimate consignee of the U.S. origin equipment identified. Each application was accompanied by IC's from France, which had been provided to the U.S. exporter by Didat, supporting the representation that the goods were being purchased by C.G.E.E. Alsthom.

On January 19, 1982, the U.S. exporter and Didat met with Agency officials to discuss these applications (Govt. Exh. 26). During that interview, Didat stated that he was an agent for C.G.E.E. Alsthom, and that C.G.E.E. Alsthom had ordered the U.S.-origin goods for its own use. Thus, Didat made false and misleading statements of material fact to the Agency in connection with these transactions. Because of the questions raised after the December seizure, neither application was approved.

At the same time Didat was making these statements to the Agency in the United States, Almori and Goldfarb were making false and misleading statements of material fact to U.S. Embassy officials in Paris. In the course of an official United States Government investigation conducted in connection with the goods sized, on or about December 22, 1981, Almori made false and misleading statements of material fact to an official of the United States Embassy in Paris by stating that the goods had been purchased for C.G.E.E. Alsthom, when Almori knew that C.G.E.E. Alsthom had no interest in the transaction.

Further, on December 23, 1981,[10] "LEFEBVRE" contacted U.S. Embassy officials to discuss C.G.E.E. Alsthom's purchase of the pattern generator and photorepeater (Govt. Exh. 28).[11] Lefebvre also contacted the Embassy on February 5, April 2, and April 6, 1982 (Govt. Exh. 31). During these contacts, Lefebvre represented that he was acting on behalf of C.G.E.E. Alsthom.[12]

The Agency Alleges that the Respondents, acting in accordance with the scheme devised by Almori, conspired to acquire U.S.-origin goods on the representation that a reputable end-user in France was the intended ultimate recipient of such equipment. In fact, the evidence supports the finding that the Respondents intended to, and on at least one occasion did in fact, reexport the goods from France to a proscribed destination without obtaining the required reexport authorization from the Agency.

The facts are not therefore in dispute and Respondent is not entitled to a fact-finding hearing under such circumstances (*Spawr Optical Research, Inc. v. Baldrige*, Civ. No. 86–0880, D.D.C. Dec. 16, 1986; *In the Matter of Spawr*, 51 Fed. Reg. 7477–7479, 7481 (1986). Cf. also, Order in Gregg (52 Fed. Reg. 13279 (1987), wherein an Agency subaltern denied that individual and a related person export privileges for 10 years without notice or opportunity to comment or be heard, under the Export Administration Act for a violation of the Arms Export Control Act. A procedure

[5] The charging letter of January 20, 1987, erroneously identified this number as A531926.

[6] Since the memory test system was classified under ECCN 1355A (Govt. Exh. 4), an IC was required to be submitted with the license application. However, the U.S. exporter requested a waiver of this requirement until the IC was received at its facility. The Agency granted this requested waiver and issued the validated export license prior to receipt of the IC. The IC was submitted to the Agency on May 12, 1981 (Govt. Exh. 8).

[7] A delivery verification certificate may be requested by the government of the exporting country. If it is requested for a particular export, the verification is issued by the government of the country of ultimate destination after the export has taken place and the commodities have either entered the export jurisdiction of the recipient country or are otherwise accounted for the importer to the issuing government. 15 CFR 375.3(a)(2)

[8] Although the purchase order form from d'Ormigny to GCA Corporation indicates that d'Ormigny intended to install the equipment in Pittsburgh, Pennsylvania, the other documentary evidence relating to this transaction reveals that statement on the purchase order to be false. (Govt. Exh. 11, 12, 13–20)

[9] These applications were date stamped by the Agency as January 12, 1982 and January 20, 1982, respectively.

[10] The charging letter issued to Respondent Goldfarb incorrectly states December 13, 1981.

[11] Gov. Exh. 28 contains a typographical error, reporting the date as February 3, 1983 instead of 1982.

[12] In his January 6, 1982 contact with the Embassy, Lefebvre cautioned the officials to contact him only at his personal number because knowledge of the transactions was restricted to only a few senior officials at C.G.E.E. Alsthom (Govt. Exh. 28).

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proposed to be made applicable to convictions for violations of the Export Administration Act as well, under present congressional consideration).

Based on the foregoing, I find that the Respondents violated the Regulations as alleged in the charging letter of January 20, 1987. Each of these violations involving U.S.-origin goods controlled under section 5 of the Act for national security reasons. I find that an Order denying export privileges to the Respondent for an indefinite period from the date a final order is entered in this proceeding is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Administration Act and the Regulations.

Accordingly, pursuant to the authority delegated to me by Part 388 of the Regulations, it is therefore:

Ordered

I. For an indefinite period from the date this Order becomes final, Respondent: Jean-Michel Didat, 4 Alles des Mesanges, Yerres, France, and Cotricom S.A., 4 Alles des Mesanges, Yerres, France, all successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. All outstanding validated export licenses in which Respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

III. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include but not be limited to participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transhipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to or for respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. By Order of April 5, 1983 (48 FR 15935, April 13, 1983), Jean-Michel Dedat, individually and doing business as Cotricom, and others were temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The temporary denial order was to remain in effect until the final disposition of any administrative or judicial proceedings initiated as a result of the then on-going investigation. Upon approval, this Order will constitute such final disposition of the administrative proceeding initiated by the Agency as a result of its investigation relating to the matters which gave rise to the temporary denial order. The Temporary Denial Order of April 5, 1983 (48 FR 15935, April 13, 1983) will thereby be superceded and revoked. Review of the record relating to the Respondents originally named in that Order reflect that all have now been addressed. The following entries will be deleted from the said table: Didat, Jean, c/o Cotricom, Orly Fret 661, 94393 Orly Airport, Cedex, France, and Cotricom S.A., Orly Fret 661, 94393 Orly Airport Cedex and 90 Rue La Fayette, Paris, France.

From the effective date of this Order it alone will be the basis for any entry on the Table of Denied Orders until modified [15 CFR Part 388 (Supp. No. 1 1987)].

VII. This Order as affirmed or modified, shall become effective upon entry of the Secretary's final action in the Proceeding pursuant to this Act (50 U.S.C. app. 2412(c)(1)).

Dated: September 8, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 87-23976 Filed 10-15-87; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. OEE-3-86]

Order Renewing Temporary Denial of Export Privileges; Bollinger GmbH, et al.

In the matter of: Bollinger GmbH, Rosseggergasse 34, 1160 Vienna, Austria, and c/o Bollinger Gmbth, Roseggergasse 34, 1160 Vienna, Austrice, Dietmar Ulrichshofer, with addresses at Kirchenstrasse 1, 3061 Ollersbach, Austria, and Vrablicz and Company, Steinergasse 11, 1170 Vienna, Austria, Respondents.

The Office of Export Enforcement, Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368 through 399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Dietman Ulrichshofer; Bollinger GmbH, which is owned by Dietmar Ulrichshofer; and, Vrablicz and Company (hereinafter collectively referred to as respondents). Ulrichshofer, who is subject to an outstanding indictment in the U.S. District Court for the Central District of

California for conspiracy to violate U.S. export controls and is a fugitive from U.S. justice, resides in Ollersbach, Austria; the other respondents reside in Vienna, Austria.[1] The initial order was issued on August 12, 1986 (51 FR 29509, August 18, 1986) and renewed on October 11, 1986 (51 FR 37210, October 20, 1986), December 10, 1986 (51 FR 44655, December 11, 1986) February 8, 1987 (52 FR 4632, February 13, 1987) and April 9, 1987) (52 FR 12576, April 17, 1987) June 8, 1987 (52 FR 22665, June 15, 1987) and August 7, 1987 (52 FR 30418, August 14, 1987).

In its renewal request dated September 16, 1987, the Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have conspired and acted in concert to violate the Act and the Regulations. The Department has reason to believe that the purpose of the conspiracy is to obtain U.S.-origin goods from third countries for ultimate destination in proscribed countries, without obtaining the required authorization from the Department for such shipments. The Department has reason to believe that respondents have participated in the unauthorized reexport of U.S.-origin commodities, including computer equipment and peripherals, from Austria to proscribed destinations, without authorization from the Department.

As shown in exhibit one of the Department's request, the U.S. Customs Service states that the investigation is still ongoing. Based on the information contained in the initial request and the subsequent renewal requests, the Department believes that the general circumstances surrounding the past activities of Bollinger and its owner, Ulrichshofer and Vrablicz establish that the violations under investigation are significant, deliberate, covert, and likely to occur again, unless appropriate action is taken to reduce the likelihood that they can continue to acquire U.S.-origin goods from the United States and abroad.

The Department submits that renewal of the temporary denial order naming all respondents is necessary for the purpose of giving notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Inasmuch as no opposition was received from any correspondent and based on the showing by the Department, I find that renewal of the order temporarily denying export privileges to respondents Ulrichshofer, Bollinger and Vrablicz is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. However, I find a mere assertion without more, that an investigation is on-going and that no respondent has opposed the denial, inadequate to justify indefinite extension. While I have no reservations respecting the past record and apparent intentions of these respondents, temporary denial orders must not become a substitute for effective, timely investigation and due process. Accordingly, I will look for evidence of investigative progress during the next 60 days when I consider any further extension.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participating, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

[1] Werner Bruchhausen, a co-defendant named in the indictment along with Ulrichshofer, was recently convicted and sentenced in May 1987 to a substantial term of imprisonment, by the U.S. District Court, Los Angeles, California in connection with some of the export control violation activities underlying the Ulrichshofer indictment.

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VI. This order is effective October 6, 1987, and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon each respondent and published in the **Federal Register.**

Dated: October 6, 1987.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-24033 Filed 10-15-87; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 7105-02]

Actions Affecting Export Privileges; Marcel Goldfarb

Summary

Pursuant to the Default Decision and Order of the Administrative Law Judge, which Order is modified by me, Marcel Goldfarb, with an address at 71 Avenue du Commandant Barre, Viry-Chatillon, France, is denied all export privileges for an indefinite period from the date of this Order.

Order

On September 8, 1987, the Administrative Law Judge (ALJ) entered a Default Decision and Order in the above referenced matter. The Default Decision and Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.17(a), for final action.

I hereby modify Paragraph II of the ALJ's Order by inserting after the words "All outstanding" the following:

* * * individual * * *

I hereby modify Paragraph V of the ALJ's Order by inserting after the words "specific authorization" the following:

* * * from the Office of Export Licensing * * *

Having examined the record and based on the facts adduced in this case, I affirm the Default Decision and Order of the ALJ as thus modified.

This constitutes final agency action in this matter.

Dated: October 8, 1987.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

In the Matter of: Marcel Goldfarb, Respondent, Docket No. 7105-02.

Appearance for Respondent: Marcel Goldfarb, 71 Avenue du Commandant Barre, Viry-Chatillon, France.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, U.S. Department of Commerce, Room H-3845, Washington, DC 20230.

Default Decision and Order

On January 20, 1987, the Acting Director, Office of Export Enforcement, International Trade Administration, United States Department of Commerce (the Agency), issued a Charging Letter alleging that Marcel Goldfarb (Respondent), had violated §§ 387.2, 387.3, and 387.5 of the Export Administration Regulations (15 CFR Parts 368 through 399) (the Regulations). The Agency established that service of the charging letter was made on the Respondent on January 29, 1987. Respondent failed to submit any answer.

Section 388.8 of the Regulations provides:

DEFAULT

(a) General

If a timely answer is not filed, the Department shall file with the administrative law judge a proposed order together with supporting evidence for the allegations in the charging letter. The administrative law judge may require further submissions and shall issue any order he deems justified by the evidence of record. Any order so issued shall have the same force and effect as an order issued following the disposition of contested charges.

In accordance with this section, Agency counsel filed such a motion for a default order on July 22, 1987. The Agency also submitted documentary evidence to support the allegations made in the charging letter. On July 30, 1987, the undersigned Administrative Law Judge issued an Order to Show Cause why the Respondent should not be held in default. Respondent has failed to file an answer to the charges alleged or response to the Order issued.

Facts

From a period beginning on or about June 3, 1980 to on or about April 22, 1982, Goldfarb conspired and acted in concert with Robert Almori, Michel d'Ormigny, Jean-Jaques Gayant, Jean-Michel Didat and others to bring about acts that constituted violations of the Act and the Regulations.[1] The purpose of the conspiracy was to acquire U.S.-origin goods in the United States for export to ultimate proscribed destinations. This was accomplished by representing that France was the intended country of ultimate destination, while in fact, the conspirators intended to, and on at least one occasion did in fact, reexport the goods from France to proscribed destinations without reexport authorization from the Agency.

The conspiracy to fraudulently obtain U.S.-origin goods for ultimate destination in proscribed destinations was directed by Almori. Specifically, Almori established a firm called Hedera (sometimes referred to as "Hedera Establishment"), in Vaduz, Lichtenstein, to sell those goods to customers in the Union of Soviet Socialist Republics (U.S.S.R.) and Czechoslovakia. Almori, in order to implement this scheme, directed Didat, of the firm Cotricom,[2] to obtain a fictitious customer of good standing reputation in France. Didat contacted one of his connections, Goldfarb, who provided Didat with a copy of a blank order form from the genuine French company C.G.E.E. Alsthom. The Respondents then proceeded to pose as representatives of this reputable French company, knowing that C.G.E.E. Alsthom had no interest in any of their transactions.

Duplicates of this blank order form were also used by the Respondents to obtain International Import Certificates (IC's) from the French government. In turn these IC's were presented by Respondents to U.S. exporters to support applications seeking authorization from the Agengy to export U.S.-origin equipment to C.G.E.E. Alsthom.[3] These documents were necessary to conceal from the Agency the true destination of these U.S.-origin goods. Each of the applications made to the French government were for an International Import Certificate and included a representation that C.G.E.E. Alsthom was importing U.S.-origin goods into France. Each was signed "LEFEBVRE" and included the following notation: "for this matter dial number 355-0346 Mr. LEFEBVRE." In fact, as

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[1] Michel d'Ormigny died in 1985. Thus, he is no longer a Respondent in these administrative proceedings. In addition, after further review of the evidence respecting Mr. Gayant's alleged involvement in the conspiracy, the Agency chose not to pursue any charges against him.

[2] Cotricom was a French forwarding firm who was the usual freight forwarder for Hedera.

[3] In applying for an export license seeking authorization to export from the United States to France any U.S.-origin commodity identified by the code letter A following the Export Control Commodity Number (ECCN) for that commodity, the applicant must include with his license application an IC issued by the French Government. *See* 15 CFR 375.3

established in a French court proceeding, "LEFEBVRE" was an alias adopted by Goldfarb and the telephone number was for a commercial enterprise directed by Goldfarb.[4] In fact, as established by the French court proceeding, the address provided on the application for the firm C.G.E.E. Alsthom as the place of delivery for the goods, 13 Parc du Biches, 91000 Evry-France, was not even a C.G.E.E. Alsthom facility.

On June 2, 1980, an order (SA/SCED–80–1234) was placed with the French subsidiary of a U.S. company for a memory test system (Govt. Exh. 2). That purchase order directed that all letters concerning that order were to be sent to "Monsieur Gerard LEFEBVRE" at the "fictitious" C.G.E.E. Alsthom facility (Govt. Exh. 1). On or about January 9, 1981, the U.S. exporter of the memory test system, unaware that the information provided to him by Didat was false, submitted to the Agency validated export license application A531976 [5], identifying C.G.E.E. Alsthom as the ultimate consignee of the memory test system.[6]

Based on the information provided in export application A531976, the Agency issued a validated export license authorizing the export of the U.S.-origin memory test system to C.G.E.E. Alsthom (Govt. Exh. 5). The validated export license required that a delivery verification certificate be returned to the Agency in connection with the export of this equipment.[7] The U.S.-origin memory test system was exported from the United States to France on or about January 22, 1981 (Govt. Exh. 6, 7). On May 12, 1981, the U.S. exporter submitted to the Agency a copy of the IC covering the export of the memory test system to C.G.E.E. Alsthom, stating that it had been unable to obtain a delivery verification certificate with respect to the shipment (Govt. Exh. 8). C.G.E.E. Alsthom, in fact, never ordered the memory test system. (Govt. Exh. 9).

On or about August 10, 1981, following the refusal of the U.S. manufacturer involved in the shipment of the memory test system to fill additional orders because of the failure to obtain delivery verification certificates, Almori orchestrated the attempt by Didat to obtain through d'Ormigny's company, Technica Ltd. (Technica), a U.S.-origin patern generator and a photorepeater in the United States for export to France without the validated export licenses required by Section 372.1(b) of the Regulations. Almori, through his company, Hedera, ordered these U.S.-origin commodities from Technica (Govt. Exh. 11, 12).[8] D'Ormigny notified the U.S. company from whom he was purchasing the goods that the goods would have to be released "exclusively" to Technica's freight forwarder. On November 27, 1981, Technica's freight forwarder took possession of the goods (Govt. Exc. 13, 14).

A Shipper's Export Declaration (SED) was filed with the U.S. Customs Service stating that the goods were subject to general license G–DEST and that they were being shipped for ultimate consignment to Didat's firm, Cotricom. Acting in accordance with instructions received from Didat and d'Ormigny, on or about December 8, 1981, the U.S. freight forwarder attempted to export the pattern generator and photorepeater from the United States to Didat's company, Cotricom, in France without the required validated export license (Govt. Exh. 17, 18, 19, 20). On December 8, 1981, the U.S.-origin equipment was seized in New York and subsequently forfeited to the United States. (Govt. Exh. 21, 22, 23).

Following the December, 1981 seizure, Almori and Didat attempted, through a new U.S. exporter, to procure additional U.S.-origin equipment, using the fraudulently obtained C.G.E.E. Alsthom purchase orders in an attempt to give the transactions an appearance of *bona fides*. On or about January 4, 1982 and January 19, 1982, based on information provided by Didat, a U.S. exporter submitted two separate export license applications to the Agency (Govt. Exh. 24).[9] Both export license applications stated that C.G.E.E. Alsthom was the intended ultimate consignee of the U.S. origin equipment identified. Each application was accompanied by IC's from France, which had been provided to the U.S. exporter by Didat, supporting the representation that the goods were being purchased by C.G.E.E. Alsthom.

On January 19, 1982, the U.S. exporter and Didat met with Agency officials to discuss these applications (Govt. Exh. 26). During that interview, Didat stated that he was an agent for C.G.E.E. Alsthom, and that C.G.E.E. Alsthom had ordered the U.S.-origin goods for its own use. Thus, Didat made false and misleading statements of material fact to the Agency in connection with these transactions. Because of the questions raised after the December seizure, neither application was approved.

At the same time Didat was making these statements to the Agency in the United States, Almori and Goldfarb were making false and misleading statements of material fact to U.S. Embassy officials in Paris. In the course of an official United States Government investigation conducted in connection with the goods seized, on or about December 22, 1981, Almori made false and misleading statements of material fact to an official of the United States Embassy in Paris by stating that the goods had been purchased for C.G.E.E. Alsthom, when Almori knew that C.G.E.E. Alsthom had no interest in the transaction.

Further, on December 23, 1981,[10] "LEFEBVRE" contacted U.S. Embassy officials to discuss C.G.E.E. Alsthom's purchase of the pattern generator and photorepeater (Govt. Exh. 28).[11] Lefebvre also contacted the Embassy on February 5, April 2, and April 6, 1982 (Govt. Exh. 31). During these contacts, Lefebvre represented that he was acting on behalf of C.G.E.E. Alsthom.[12]

The Agency alleges that the Respondents, acting in accordance with the scheme devised by Almori, conspired to acquire U.S.-origin goods on the representation that a reputable end-user in France was the intended

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[4] While not addressing the same allegations, a French court proceeding established facts against these Respondents linked to the charges made by the Agency in the January 20, 1987 charging letters. These included the forging of trade records and improper procurement of administrative documents (Govt. Exh. 1).

[5] The charging letter of January 20, 1987, erroneously identified this number as A531926.

[6] Since the memory test system was classified under ECCN 1355A (Govt. Exh. 4), an IC was required to be submitted with the license application. However, the U.S. exporter requested a waiver of this requirement until the IC was received at its facility. The Agency granted this requested waiver and issued the validated export license prior to receipt of the IC. The IC was submitted to the Agency on May 12, 1981 (Govt. Exh. 8).

[7] A delivery verification certificate may be requested by the government of the exporting country. If it is requested for a particular export, the verification is issued by the government of the country of ultimate destination after the export has taken place and the commodities have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. 15 CFR 375.3(a)(2).

[8] Although the purchase order form from d'Ormigny to GCA Corporation indicates that d'Ormigny intended to install the equipment in Pittsburgh, Pennsylvania, the other documentary evidence relating to this transaction reveals that statement on the purchase order to be false. (Govt. Exh. 11, 12, 13–20)

[9] These applications were date stamped by the Agency as January 12, 1982 and January 20, 1982, respectively.

[10] The charging letter issued to Respondent Goldfarb incorrectly states December 13, 1981

[11] Gov Exh. 28 contains a typographical error reporting the date as February 3, 1983 instead of 1982.

[12] In his January 6, 1982 contact with the Embassy, Lefebvre cautioned the officials to contact him only at his personal number because knowledge of the transactions was restricted to only a few senior officials at C.G.E.E. Alsthom (Govt. Exh. 28).

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ultimate recipient of such equipment. In fact, the evidence supports the finding that the Respondents intended to, and on at least one occasion did in fact, reexport the goods from France to proscribed destination without obtaining the required reexport authorization from the Agency.

The facts are not therefore in dispute and Respondent is not entitled to a fact-finding hearing under such circumstances *(Spawr Optical Research, Inc. v. Baldrige,* Civ. No. 86–0880, D.D.C. Dec. 16, 1986; *In the Matter of Spawr,* 51 F.R. 7477–7479, 7481 (1986). Cf. also, Order in Gregg (52 F.R. 13279 (1987), wherein an Agency subaltern denied that individual and a related person export privileges for 10 years without notice or opportunity to comment or be heard, under the Export Administration Act for a violation of the Arms Export Control Act. A procedure proposed to be made applicable to convictions for violations of the Export Administration Act as well, under present congressional consideration).

Based on the foregoing, I find that the Respondents violated the Regulations, as alleged in the charging letter of January 20, 1987. Each of these violations involving U.S.-origin goods controlled under section 5 of the Act for national security reasons. I find that an Order denying export privileges to the Respondent for an indefinite period from the date a final order is entered in this proceeding is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Administration Act and the Regulations.

Accordingly, pursuant to the authority delegated to me by Part 388 of the Regulations, it is therefore:

Ordered

I. For an indefinite period from the date this Order becomes final, Respondent: Marcel Goldfarb, a/k/a Lefebvre, 71 Avenue du Commandant Barre, Viry-Chatillon, France, all successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. All outstanding validated export licenses in which Respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses are hereby revoked.

III. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include but not be limited to participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or any related party may obtain any benefits therefrom or have any interest or participate therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to or for respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. By Order of April 5, 1983 (48 FR 15935, April 13, 1983), Marcel Goldfarb and others were temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The temporary denial order was to remain in effect until the final disposition of any administrative or judicial proceedings initiated as a result of the then on-going investigation. Upon approval, this Order will constitute such final disposition of the administrative proceeding initiated by the Agency as a result of its investigation relating to the matters which gave rise to the temporary denial order. The Temporary Denial Order of April 5, 1983 (48 FR 15935), April 13, 1983) will thereby be superceded and revoked. Review of the record relating to the Respondents originally named in that Order reflect that all have now been addressed. The following entries will be deleted from the said Table:

Marcel Goldfarb,
a/k/a Marcel LeFevre,
and Gerard LeFevre,
71 Avenue du Commandant Barre
and
Farb et Cie,
4 Boulevard Voltaire, Paris, France.

VII. This Order as affirmed or modified, shall become effective upon entry of the Secretary's final action in the proceeding pursuant to this Act (50 U.S.C. app. 2412 (c)(1)).

Dated: September 8, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 87–23977 Filed 10–15–87; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Deep Seaped Mining; Proposed Revisions to Mine Site Areas; Republication

[Editorial Note: The following document was originally published at page 37490 in the issue of Wednesday, October 7, 1987. The document is being republished in its entirety because of typesetting errors.]

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of proposed amendments to Deep Seabed Mining Exploration Licenses and request for comments.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283) and 15 CFR Part 970, the National Oceanic and Atmospheric Administration (NOAA) published notice on September 13, 1984, at 49 FR 35973, of issuance of licenses to Ocean Minerals Company (OMCO), Ocean Management, Inc. (OMI), and Ocean Mining Associates (OMA), to engage in deep seabed mining exploration activities, subject to terms, conditions, and restrictions. These license sites, designated USA–1, USA–2 and USA–3, respectively, are located in the Clarion-Clipperton Fracture Zone of the North-eastern Equatorial Pacific Ocean. At the request of the deep seabed mining consortia, and pursuant to 15 CFR 970.902(d)(5), NOAA published the precise locations of the licensed areas on November 13 and 30, 1984, at 49 FR 44938 and 49 FR 47081, December 11, 1984, at 49 FR 48205, and January 8, 1985 at 50 FR 994.

The above U.S. licensees have agreed recently to several small adjustments to their respective boundaries in order to resolve conflicts with foreign mining interests. Each of these licensees has requested that NOAA approve proposed modifications to its exploration area and otherwise revise its license in order to carry out the conflict resolution. Under the provisions of 15 CFR 970.512 through 970.514, NOAA has determined, as to each license, that the proposed modifications are not significant changes and that the procedures in 15 CFR 970.514(b) apply. Accordingly, NOAA gives notice of its intention to accommodate these area adjustments by means of modifications of license terms, conditions and restrictions (TCRs), as well as relinquishment and revision as appropriate.

Each proposed exploration plan revision consists of boundary changes. Exploration strategies, the proposed schedule of activities, and other basic plan elements generally are not affected. The revision to license USA–1 includes the addition of new area to compensate for agreed-to adjustments in the original area. The revision to license USA–2 includes relinquishment of a small area which is proposed to be added to the area covered by the license designated USA–1. NOAA proposes to accomplish other area adjustments by means of modification of license TCRs to restrict exploration activities in areas to be used by another operator, and to establish measures to oversee, and to provide for contingencies relating to, implementation of conflict resolution. All existing license TCRs would remain in effect.

USA–1, Issued to Ocean Minerals Company

The license would be amended, resulting in a change in operating area from approximately 165,533 square kilometers to approximately 168,841 square kilometers; an addition of approximately 3,308 square kilometers.

USA–2, Issued to Ocean Management, Inc.

The license would be amended, resulting in a change in operating area from approximately 135,100 square kilometers to aproximately 112,500 square kilometers; a reduction of approximately 22,600 square kilometers.

USA–3 Issued to Ocean Mining Associates.

The license would be amended, resulting in a change in operating area from approximately 156,060 square kilometers to approximately 150,310 square kilometers; a reduction of approximately 5,750 square kilometers.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons are permitted to examine the materials relevant to these revisions. Comments on this notice should be received on or before December 7, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Padan, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC. 20235. (202) 673–5117.

Dated: October 1, 1987.

James P. Lawless,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–23152 Filed 10–6–87; 8:45 am]

BILLING CODE 1505-01-T

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene separate public meetings of its advisory entities at the Council's Headquarters (address below), as follows:

Billfish Advisory Panel—Will convene November 2, 1987, from 1 p.m. to 5 p.m., to review billfish public hearing comments and develop recommendations for the Council on the Billfish Plan. A detailed agenda will be available to the public on or about October 23, 1987.

Red Drum Plan Development Team—Will convene November 6, 1987, from 8:30 a.m. to 1 p.m., to discuss the development of a profile document for red drum as the basis for development of a South Atlantic Council fishery management plan for red drum. A detailed agenda will be available on or about October 27, 1987.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone (803) 571–4366.

Dated: October 9, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–23985 Filed 10–15–87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Monsanto Co., St. Louis, MO

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Monsanto Company of St. Louis, MO, an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent 4,456,684, "Method for Screening Bacteria and Application Thereof for Field Control of Diseases Caused by *Gaeumannomyces Graminis*." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Associate Director, Office of

Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas. J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-23955 Filed 10-15-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 9, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 19, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota reopenings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established restraint limits for cotton textile products in Categories 331, 334-336, 338-342, 347/348, 351 and 352, produced or manufactured in Pakistan and exported during 1987. As a result, the import limit for Category 351, which is currently filled, will re-open.

Background

A CITA directive dated July 24, 1987 (52 FR 28325) established import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, and at the request of the Government of Pakistan, the limits for Categories 331, 334-336, 338-342, 347/348, 351 and 352 are being increased by application of swing. The limit for Category 315 is being reduced to account for the swing applied to the foregoing categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of The United States Annotated* (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel the directive of July 24, 1987, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 19, 1987, the directive of July 24, 1987 is hereby amended to include adjustments to the previously established restraint limits for cotton textile products in the following categories, as provided under the terms of the bilateral agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987 [1]:

Category	Adjusted 12-mo limit [1]
315	45,206,580 sq. yards.
331	695,500 doz. pairs.
334	41,195 doz.
335	53,500 doz.
336	140,255 doz.
338	2,889,000 doz.
339	695,500 doz.
340	150,073 doz.
341	259,489 doz.
342	85,600 doz.
347/348	337,664 doz.
351	42,800 doz.
352	214,000 doz.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-23989 Filed 10-15-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 9, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 16, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota reopenings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the import restraint limits for cotton and man-made fiber textile products in Categories 338/339, 340, 342, 346/348, 634, 635, 638, 639, 640, 647 and

[1] The agreement provides, in part, that (1) specific limits may be exceeded by designated percentages, provided that the amount of increase is compensated by an equivalent square yard decrease in another specific limit within the same group; (2) the specific limits for categories may be increased by designated percentages for carryover or carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

648, produced or manufactured in Singapore and exported during the period January 1, 1987 through December 31, 1987.

Background

A CITA directive dated December 16, 1986 (51 FR 45797) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 338/339, 340, 342, 347/348, 634, 635, 638, 639, 640, 647 and 648, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended, between the Governments of the United States and Singapore, provides, among other things, for percentage increases in certain categories, provided a corresponding reduction in equivalent square yards in one or more other specific limits during the agreement year (swing); for the carryover of shortfalls in certain categories from the previous agreement year (carryover); and for the borrowing of yardage from the succeeding year's limit with the amount used being deducted from the limit in the succeeding year (carryforward).

In accordance with the terms of the bilateral agreement and at the request of the Government of Singapore, flexibility in the form of swing, carryover and carryforward is being applied, variously, to Categories 338/339, 340, 342, 347/348, 634, 635, 638, 639, 640, 647 and 648 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 9, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 16, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 16, 197, the directive of December 16, 1986 is hereby amended to include adjusted limits for cotton and man-made fiber textile products in the following categories, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended [1]:

Category	12-mo limit [1]
338/339	814,448 doz.
340	549,830 doz.
342	89,880 doz.
347/348	793,512 doz.
634	134,635 doz.
635	226,161 doz.
638	468,393 doz.
639	3,173,220 doz.
640	77,500 doz.
647	265,326 doz.
648	1,462,567 doz.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 53(a)(1).

Sincerely,

James J. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-23988 Filed 10-15-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that specific limits may be increased by not more than seven percent during an agreement year, provided that an equal quantity in squre yards equivalent is deducted from another specific limit.

Request for Public Comment on Bilateral Textile Consultations with the Government of the Hungarian People's Republic Concerning Category 442

October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

On October 2, 1987, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, and in accordance with section 204 of the Agricultural Act of 1956, as amended, requested the Government of the Hungarian People's Republic to enter into consultations concerning exports to the United States of wool skirts in Category 442, produced or manufactured in Hungary.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Hungarian People's Republic, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 442, produced or manufactured in Hungary and exported to the United States during the twelve-month period which began on October 2, 1987 and extends through October 1, 1988 at a level of 14,932 dozen.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26662), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 442, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade

Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb.

Chairman, Committee for the Implementation of Textile Agreements.

Hungary—Market Statement

Category 442—Wool Skirts

September 1987.

Summary and Conclusions

U.S. imports of Category 442 from Hungary were 13,774 dozen during the year ending June 1987, over five times the 2,509 dozen imported a year earlier. During the first six months of 1987, imports of Category 442 from Hungary reached 5,245 dozen, 29 times the 179 dozen imported during the same period of 1986. In 1986, Category 442 wool skirts imports from Hungary were 8,708 dozen; in 1985 imports totaled 2,330 dozen.

The market for Category 442 has been disrupted by imports. The sharp and substantial increase in imports from Hungary has contributed to this disruption.

U.S. Production and Market Share

U.S. production of wook skirts has been on the decline, falling from 1,415 thousand dozen in 1982 to 791 thousand dozen in 1986, a decline of 44 percent. The U.S. producers' share of this market fell from 92 percent in 1982 to 53 percent in 1986.

U.S. Imports and Import Penetration

U.S. imports of Category 442 were 700 thousand dozen in 1986, over five times the 131 thousand dozen imported in 1982. Category 442 imports were up 34 percent in the year ending June 1987. The ratio of imports to domestic production increased from 9 percent in 1982 to 89 percent in 1986.

Duty Paid Value and U.S. Producer Price

All of Category 442 imports from Hungary during the first six months of 1987 entered under TSUSA number 384.7522—women s girls' and infants' woven wool skirts, not ornamented. These skirts entered the U S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

[FR Doc. 87-23987 Filed 10-15-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 4-5 November 1987

Times of Meeting: 0800-1600 hours daily

Place: Pentagon, Washington, D.C.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet. Objectives of this meeting will be twofold. First, the panel will review results of the last meeting/working session and will consolidate their information into their report. Second, they will begin formulating their report into a final format in preparation for final presentation. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-23956 Filed 10-15-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-9-000, et al.]

Georgia Power Co. et al.; Electric Rate and Corporate Regulation Filings

October 8, 1987.

Take notice that the following filings have been made with the Commission:

1. Georgia Power Co.

[Docket No. ER88-9-000]

Take notice that Georgia Power Company on April 21, 1987 and October 2, 1987, tendered for filing proposed changes in its FERC Rate Schedule No. 704, the Interchange Agreement between Georgia Power Company and the Tennessee Valley Authority. The proposed changes provide for an additional delivery point between the parties and substitution of a 14% return on equity in calculating Georgia Power's carrying costs instead of a varying rate based on Georgia Power's most recent wholesale rate case. Georgia Power has requested an effective date of January 1, 1987 for the changes.

Comment date: October 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Kentucky Utilities Co.

[Docket No. ER88-11-000]

Take notice that on October 2, 1987, Kentucky Utilities Company (KU) tendered for filing a unilateral filing for an amendment to the Interconnection Agreement between KU and Tennessee Valley Authority (TVA) which agreement is designated KU Rate Schedule FERC No. 93. KU states that the filing is in compliance with § 35.23 of the Commission's Regulations as promulgated by Order 84.

KU states that copies of the filing have been sent to TVA and to the Public Service Commission of Kentucky.

Comment date: October 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Co.

[Docket No. ER88-10-000]

Take notice that on October 2, 1987, Nevada Power Company tendered for filing a proposed change in its FPC Electric Service Tariff No. 41. The change reduces the energy charge on this tariff from 1.820 cents per kwh to 1.676 cents per kwh.

The change to this tariff is a result of Nevada Power Company's compliance with [Docket No. RM87-4-000; Order No. 475, issued June 26, 1987. This Order allows electric utilities to make an abbreviated filing to file for certain rate decreases under section 205 of the Federal Power Act (FPA) to reflect a decrease in the Federal income tax rate from 46 percent to 34 percent.

Copies of the filing were served upon the City of Needles, California, the Public Service Commission of Nevada, the Nevada Office of Consumer Advocate, the California Public Utilities Commission and the Federal Energy

Regulatory Commission, San Francisco Office.

Comment date: October 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

Docket No. ER88-7-000]

Take notice that on October 2, 1987, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing as a rate schedule and executed agreement dated April 1, 1987, between Orange and Rockland and Public Service Electric and Gas Company (PSE&G) for the purchase or sale, on a prescheduled basis, system capacity and/or energy in excess of customer requirements from their system to the other on an hourly, daily, weekly or monthly basis.

The rate schedule provides for a system capacity charge to be paid by the buyer to the seller which will be the system capacity charge per megawatt for each hour of the scheduled firm capacity which is negotiated at arms length to the Agreement by the parties prior to each transaction, but which shall not exceed $6.74 per megawatt for each hour when Orange and Rockland is the seller and $8.20 per megawatt for each hour when PSE&G is the seller. The system energy charge to be paid by the buyer is calculated as the product of (i) the megawatt hour scheduled by the buyer actually delivered by the seller to the point of interchange and (ii) the applicable energy charge rate on the system of the seller, as agreed to by the parties.

Orange and Rockland requests waiver of the notice requirements of § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective April 1, 1987 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of its filing was served on Public Service Electric and Gas Company.

Comment date: October 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Co.

[Docket No. ER88-6-000]

Take notice that on October 2, 1987, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective with meter readings on and after January 30, 1987. This filing includes a revised Schedule 4 to Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement this rate change from the Public Utility Commission of Oregon.

PGE states that the filing shows that the first quarter PCA adjustment to the current base ASC is 0.88 mills/kWh credit, which when added with the base ASC results in a net ASC rate effective for this period.

Comment date: October 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. San Diego Gas & Electric Co.

[Docket No. ER87-658-000]

Take notice that on October 2, 1987, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence assenting to and concurring with Southern California Edison Company's (Edison) filing of the San Onofre Refueling Exchange Agreement (Agreement) between Edison, SDG&E, the City of Anaheim, California, and the City of Riverside, California (collectively "Parties").

The Agreement provides for an arrangement whereby, for system reliability purposes, a planned refueling outage can be changed to either an early refueling outage or a delayed refueling outage at the request of one or more Parties and the nonparticipating Parties will receive an exchange of energy and capacity as if the changed refueling outage had not occurred.

Copies of the filing were served upon the Public Utilities Commission of the State of California, Edison, Anaheim, and Riverside.

Comment date: October 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23933 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9779-001 et al.]

Trafalgar Power, Inc., et al; Surrender of Preliminary Permits

October 9, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Trafalgar Power, Inc.

[Project No. 9779-001]

Take notice that Trafalgar Power, Inc., permittee for the Niverville Project No. 9779 located on the Valatiekill River in Columbia County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on June 13, 1986, and would have expired on May 31, 1989. The permittee states that analysis of the North Hoosic Project did not indicate feasibility for development.

The permittee filed the request on August 31, 1987.

2. Independence Electric Corporation

[Project No. 8814-002]

Take notice that Independence Electric Corporation, permittee for the W.B. Oliver Hydropower Project No. 8814, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8814 was issued on August 9, 1985, and would have expired on July 31, 1988. The project would have been located on the Black Warrior River near Tuscaloosa, Tuscaloosa County, Alabama.

The permittee filed the request on September 29, 1987.

3. J K Inc.

[Project No. 9963-001]

Take notice that the J K Inc., permittee for the Andro Project No. 9963, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9963 was issued on November 7, 1986, and would have expired on October 31, 1989. The project would have been located on the Androscoggin River, in Oxford County, Maine.

The permittee filed the request on July 6, 1987.

4. Mr. Louis P. Migliozzi

[Project No. 10075-001]

Take notice that Mr. Louis P. Migliozzi, permittee for the Holyoke Project No. 10075, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 10075 was issued on February 24, 1987, and would have expired on January 31, 1990.

BEST COPY AVAILABLE

The project would have been located on the Holyoke Canal System, in Hampton County, Massachusetts.

The permittee filed the request on September 8, 1987.

5. Modesto Irrigation District

[Project No. 5382–001]

Take notice that the Modesto Irrigation District, permittee for the proposed Little Pine Creek Hydro Project No. 5382, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 13, 1987, and would have expired on December 31, 1989. The project would have been located on Little Pine Creek in Inyo County, California.

The permittee filed the request on August 28, 1987.

6. Modesto Irrigation District

[Project No. 5384–001]

Take notice that the Modesto Irrigation District, permittee for the proposed Baker Creek Hydro Project No. 5384, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 13, 1987, and would have expired on December 31, 1989. The project would have been located on Baker Creek County in Inyo County, California.

The permittee filed the request on August 28, 1987.

7. Modesto Irrigation District

[Project No. 4879–002]

Take notice that the Modesto Irrigation District, permittee for the proposed Butter Creek Hydro Project No. 4879, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 14, 1987, and would have expired on December 31, 1989. The project would have been located on Butter Creek in Trinity County, California.

The permittee filed the request on August 28, 1987.

8. Modesto Irrigation District

[Project No. 5385–001]

Take notice that the Modesto Irrigation District, permittee for the proposed Big Pine Creek Hydro Project No. 5285, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 13, 1987, and would have expired on December 31, 1989. The project would have been located on Big Pine Creek in Inyo County, California.

The permittee filed the request on August 28, 1987.

9. Taft Hydropower, Inc.

[Project No. 9740–001]

Take notice that the Taft Hydropower, Inc., permittee for the Caughdenoy Lock 23 Hydro Project No. 9740, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9740 was issued on June 6, 1986, and would have expired on May 31, 1989. The project would have been located on the Oneida River, in Onondaga and Oswego Counties, New York.

The permittee filed the request on August 31, 1987.

10. Trafalgar Power, Inc.

[Project No. 9778–002]

Take notice that Trafalgar Power, Inc., permittee for the North Hoosic Project No. 9778 located on the Walloomsac River in Rennselaer County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on April 24, 1986, and would have expired on March 31, 1989. The permittee states that analysis of the North Hoosic Project did not indicate feasibility for development.

The permittee filed the request on August 31, 1987.

11. Trafalgar Power, Inc.

[Project No. 9769–002]

Take notice that Trafalgar Power, Inc., permittee for the Castleton Project No. 9769 located on the Moordenerkill River in Rennselaer County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on April 24, 1986, and would have expired on March 31, 1989. The permittee states that analysis of the Castleton Project did not indicate feasibility for development.

The permittee filed the request on August 31, 1987.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23949 Filed 10–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–13–20–001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 13, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 6, 1987, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Substitute Twentieth Revised Sheet No. 201
Substitute Twenty-first Revised Sheet No. 201
Substitute Twenty-second Revised Sheet No. 201
Second Substitute Thirteenth Revised Sheet No. 205
Substitute Fourteenth Revised Sheet No. 205
Substitute Fifteenth Revised Sheet No. 205

Algonquin states such tariff sheets are being filed pursuant to Algonquin's Purchased Gas Adjustment Provision as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 and pursuant to Section 7 of its Rate Schedule F–4 to reflect a change in purchased gas cost to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern").

Algonquin proposes the effective date of Second Substitute Thirteenth Revised Sheet No. 205 to be August 1, 1987. The proposed effective date of Substitute Twentieth Revised Sheet No. 201 is September 1, 1987.

Algonquin states that the proposed effective date of Substitute Twenty-first Revised Sheet No. 201, Substitute Twenty-second Revised Sheet No. 201, Substitute Fourteenth Revised Sheet No. 205 and Substitute Fifteenth Revised Sheet No. 205 is October 1, 1987.

Algonquin states that since notice of its rate change was not received from Texas Eastern 30 days prior to the proposed effective date, it is making this filing within 15 days of receipt of notice as permitted under its gas tariff.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24023 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA87-14-20-001]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

October 13, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 6, 1987, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies of the following tariff sheets:

Substitute Alternate Twentieth Revised Sheet No. 203
Substitute Twenty-first Revised Sheet No. 203
Substitute Twenty-second Revised Sheet No. 203

Algonquin states that such tariff sheets are being filed to reflect in its Rate Schedule F-2 changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), as set forth in Consolidated's filing of September 23, 1987, proposed to be effective September 1, 1987.

Algonquin proposes the effective date of Substitute Alternate Twentieth Revised Sheet No. 203 to be September 1, 1987, and the effective date of Substitute Twenty-first Revised Sheet No. 203 and Substitute Twenty-second Revised Sheet No. 203 to be October 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24024 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-26-019]

Tennessee Gas Pipeline Co.; Filing Revised Tariff Sheets

October 13, 1987.

Take notice that on October 5, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, to be effective as indicated.

SECOND REVISED VOLUME NO. 1

Sheet No.	Effective Date
Substitute First Revised Sheet No. 106	August 21, 1987.
Substitute First Revised Sheet No. 107	August 21, 1987.
Substitute First Revised Sheet No. 108	August 21, 1987.
Substitute First Revised Sheet No. 109	August 21, 1987.
Substitute Second Revised Sheet No. 110	August 21, 1987.
Substitute First Revised Sheet No. 110A	August 21, 1987.
Substitute First Revised Sheet No. 111	August 21, 1987.
Substitute First Revised Sheet No. 112	August 21, 1987.
Substitute First Revised Sheet No. 113	August 21, 1987.
Substitute First Revised Sheet No. 114	August 21, 1987.
Alternate Substitute First Revised Sheet No. 114	August 21, 1987.
Substitute Second Revised Sheet No. 115	August 21, 1987.
Substitute Second Revised Sheet No. 116	August 21, 1987.
Substitute First Revised Sheet No. 206	August 21, 1987.
Substitute First Revised Sheet No. 207	August 21, 1987.
Substitute First Revised Sheet No. 208	December 10, 1986.
Substitute Original Sheet No. 208A	December 10, 1986.
Substitute Original Sheet No. 208B	December 10, 1986.
Substitute First Revised Sheet No. 247	August 21, 1987.
Substitute First Revised Sheet No. 250	August 21, 1987.
Substitute First Revised Sheet No. 251	August 21, 1987.
Substitute First Revised Sheet No. 252	August 21, 1987.
Original Sheet No. 253	August 21, 1987.
Original Sheet Nos. 254 through 299	August 21, 1987.
Substitute First Revised Sheet No. 333	August 21, 1987.
Substitute First Revised Sheet No. 334	August 21, 1987.
Substitute First Revised Sheet No. 336	August 21, 1987.
Substitute First Revised Sheet No. 340	August 21, 1987.
Substitute First Revised Sheet No. 341	August 21, 1987.
Substitute First Revised Sheet No. 342	August 21, 1987.
Substitute First Revised Sheet No. 344	August 21, 1987.
Substitute First Revised Sheet No. 346	August 21, 1987.

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Tennessee states that it is filing these revised tariff sheets in compliance with the Commission's Order in this proceeding issued on August 21, 1987.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions and all parties in Docket No. RP87–26. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24025 Filed 10–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–8–000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

October 13, 1987.

Take notice that on October 2, 1987, United Gas Pipe Line Company (United) tendered for filing, pursuant to section 311 of the Natural Gas Policy Act of 1978 and Section 4 of the Natural Gas Act, the following revised tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 with a proposed effective date of November 1, 1987, as set forth on Appendix A to the filing.

United states that these tariff sheets, consisting of revised Rate Schedules ITS and FTS and Transportation General Terms and Conditions, together with additions to United's G, DB, and PL Rate Schedules to provide for purchase nominations, are intended to permit United to continue to operate as an open access pipeline after November 1, 1987 consistent with the provisions of Order Nos. 436 and 500.

United further states that the tendered tariff sheets are designed to follow as closely as possible the Commission's interpretation of the requirements of Order No. 436 as reflected in detail in its "Order Approving Contested Settlement Subject to Conditions and Issuing Blanket Certificate", issued May 8, 1987 in Docket No. CP86–526–000, and to conform to the revisions to the Order 436 regulations effected by Order No. 500, issued August 7, 1987.

United indicates that it is also filing concurrently herewith a certificate application for transportation authority under Subpart G of Part 284 of the Commission's Regulations to permit United to offer Order No. 436/500 transportation to interstate pipelines and other parties not eligible for transportation under section 311 of the Natural Gas Policy Act.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before October 20, 1987. Protestants will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24026 Filed 10–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–006–000]

United Gas Pipe Line Co.; Application

October 9, 1987.

Take notice that on October 2, 1987, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251–1478, filed in Docket No. CP88–006–000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, on a self-implementing basis, interruptible and firm transportation service on behalf of interstate pipelines and on behalf of shippers other than interstate pipelines, and to abandon sales service to the extent United's customers exercise options to convert firm-service entitlements to firm transportation service pursuant to Section 284.10 and Section 3 of United's FTS Rate Schedule, filed concurrently herewith, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United has requested that the Commission permit the requested certificate authority to become effective November 1, 1987. United states that following the issuance of certificate authorization, such service would be provided pursuant to the terms of the revised ITS and FTS Rate Schedules which United, in its contemporaneous filing, has requested that the Commission permit to become effective on November 1, 1987. In that transporation tariff filing United has requested a November 1, 1987, effective date to provide for ongoing and new transportation service under Section 311 of the Natural Gas Policy Act.[1] United states that it is requesting the issuance of certificate authorization effective that same date in order that it may have authorization to self-implement transportation service for interstate pipelines and for other shippers not covered by Section 311 of the Natural Gas Policy Act. The authorization is particularly required to permit United's pipeline and direct industrial customers the opportunity to timely exercise the options to convert their firm-sale service to firm-transportation service, as provided by Section 3 of the revised FTS rate schedule, it is stated.

United states that the actual rates to be charged for transportation services provided under the ITS and FTS rate schedules are set forth on United's currently effective tariff sheets 4–D and 4–E. United states that the rates applicable to service under the ITS rate schedule are currently in effect as a result of the Commission's order of June 27, 1986, in United's Docket No. RP86–93, accepting interim transportation rates subject to refund. United states that the rates applicable to service under the fTS rate schedule are in effect as a result of the Commission's order of September 29, 1986, in United's Docket No. RP86–158. Both the Its and FTS rates are subject to refund pending the outcome of United's general rate proceeding in Docket No. RP85–209 and will be subject to further adjustment once United's next general rate filing is filed and made effective, it is stated.

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[1] By order dated August 7, 1987, issued in conjunction with Order No. 500, the Commission terminated, effective November 1, 1987, the waiver which it grant to United in Docket No. RP86–93, and pursuant to which United has provided transportation service under Section 311 of the Natural GAs Policy Act, as implemented by § 284.102 of the Regulations.

United states that no new facilities are presently required to perform the services requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1987, filed with Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for United to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24027 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2311-000]

Gary L. Countryman; Filing

October 13, 1987.

Take notice that on October 6, 1987, Gary L. Countryman, filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

President and Chief Executive Officer,
Liberty Mutual Insurance Company
Member of the Board of Directors,
Liberty Mutual Insurance Company
Member of the Board of Directors,
Boston Edison Company

The need for this filing arises out of Liberty Mutual's ownership, through two subsidiaries, of a 70% interest in Liberty Securities Corporation, which is a broker-dealer participating in the marketing of securities. This filing requests a determination as to whether authorizations under section 305(b) of the Federal Power Act are required for Mr. Countryman, and, if they are, authorization to hold the interlocking positions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24028 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

October 13, 1987.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on October 7, 1987, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Fifty-Eighth Revised Sheet No. 3a to become effective September 1, 1987.

Mid Louisiana states that the purpose of the filing of Fifty-Eighth Revised Sheet No. 3a is to reflect a 7.83¢ per Mcf reduction in its gas cost, a Purchased Gas Cost Surcharge of 0.86¢ per Mcf and to comply with Article VI of the Stipulation and Agreement approved by the Commission in Docket Nos. RP86-69-000, TA86-2-15-000 et al., RP82-51-000 et al., RP86-138-000 and GP82-31-000.

Mid Louisiana requests a waiver of § 154.38(d)(iv)(a) of the Commission's Regulations to change its PGA effective dates to September 1 and March 1. Mid Louisiana also requests a waiver of the 30 day prior notice provisions contained in § 154.38(d)(iv)(d)(v) of the Commission's Regulations to allow Fifty-Eighth Revised Sheet No. 3a to become effective September 1, 1987, in compliance with the Commission's Order approving the Stipulation and Agreement in Docket No. RP86-69-000.

Mid Louisiana states that this filing is being made in accordance with Section 19 of its FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the approximate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24030 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-69-006]

Mid Louisiana Gas Co.; Compliance Filing

October 13, 1987.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on October 7, 1987, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective September 1, 1987:

Ninth Revised Sheet No. 1
Fifty-Eighth Revised Sheet No. 3a
First Revised Sheet No. 3a.1
Original Sheets Nos. 12k, 12l and 12m
Fifth Revised Sheet No. 23a
Sixth Revised Sheet No. 26a
First Revised Sheet No. 26g
Original Sheet No. 28a
Third Revised Sheet No. 34

Mid Louisiana states that the purpose of the filing of these Tariff Sheets is to comply with the Commission's Final Letter Order issued August 23, 1987, in the above referenced dockets. Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24031 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-1-38-000 and TA88-1-38-001]

Ringwood Gathering Co.; Corrected Tariff Sheet

October 13, 1987.

Take notice that on October 8, 1987, tendered Substitute Forty-Second Revised Sheet PGA-1 to correct its base tariff rate from $2.3149 previously filed on October 1, 1987, in Docket No. TA88-1-38-000 to $2.2969 now being filed in Docket No. TA88-1-38-001.

Any person desiring to be heard or to protet said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, to be filed on or before October 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24032 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2310-000]

Stephen J. Sweeney,

October 13, 1987.

Take notice that on October 6, 1987, Stephen J. Sweeney filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

Chairman of the Board of Directors, President and Chief Executive, Boston Edison Company

Member of the Board of Directors, Liberty Mutual Insurance Company

Member of the Board of Directors, Liberty Fire Insurance Company

The need for this filing arises out of Liberty Mutual's ownership, through two subsidiaries, of a 70% interest in Liberty Securities Corporation, which is a broker-dealer participating in the marketing of securities. This filing requests a determination as to whether authorizations under section 305(b) of the Federal Power Act are required for Mr. Sweeney, and, if they are, authorization to hold the interlocking positions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24029 Filed 10-15-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

Natural Gas Transportation Task Group; Coordinating Subcommittee on Petroleum Storage & Transportation; National Petroleum Council; Public Meeting

Notice is hereby given of the following meeting:

Name: Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council

Date and Time: Thursday, October 29, 1987, 10 am.

Place: Enron Corp., 1400 Smith, Rm. 49C1, Houston, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, D.C. 20585. Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss Task Group organization and individual assignments.

Tentative Agenda

—Opening remarks by Chairman and Government Cochairman.
—Establish the Task Group organization.
—Discuss the individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion what will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 am and 4:00 pm Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 87-23978 Filed 10-15-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3278-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed October 5, 1987 Through October 9, 1987 Pursuant to 40 CFR 1506.9.

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EIS No. 870351, Draft, AFS, VA, South Coeburn Field, Natural Gas Pipeline and Road Construction and Drilling Development, Clinch Ranger District, Jefferson National Forest, Wise and Scott Counties, Due: November 30, 1987, Contact: Charles Saboites (703) 328–2931.

EIS No. 870352, Report COE, KS, Great Bend Local Flood Control Plan, Design and Mitigation Changes, Arkansas River, Barton County, Contact: Richard Makinen (202) 272–0166.

EIS No. 870353, Draft, BOP, PA, Schuylkill Federal Correctional Institution Complex, Construction and Operation, Schuylkill County, Due: November 30, 1987, Contact: William Patrick (202) 724–3232.

EIS No. 870354, Final, UMC, NC, Cherry 1 Military Operating Area (MOA), Craven, Hyde, Beaufort, Pamlico and Washington Counties and Core MOA, North Carolina Outer Banks/Cape Lookout National Seashore, Establishment, Due: November 16, 1987, Contact: P. J. Lowery (919) 466–2343.

EIS No. 870355, Final, AFS, ID, Nez Perce National Forest, Land and Resource Management Plan, Idaho County, Due: November 16, 1987, Contact: Tom Kovalicky (208) 983–1950.

EIS No. 870356, Final, MMS, SEV, 1988 Central, Western and Eastern Gulf of Mexico, Outer Continental Shelf (OCS) Oil and Gas Sale Nos. 113, 115, and 116, Lease Offerings, Due: November 16, 1987, Contact: R. Mark Rouse (504) 736–0557.

EIS No. 870357, FSuppl, FHW, HI, Interstate H–3 Freeway Construction, Halawa Interchange to Halekou Interchange, Reevaluation, Honolulu County, Due: November 16, 1987, Contact: William Lake (808) 541–2700.

EIS No. 870358, Draft, FAA, CA, Burbank-Glendale-Pasadena Airport, Replacement Passenger Terminal, Construction, Los Angeles County, Due: November 30, 1987, Contact: James Wiggins (213) 297–1248.

Dated: October 13, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–24041 Filed 10–15–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3278–5]

Science Advisory Board Research Strategies Committee; Health Effects Group; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a one-day meeting of the Health Effects Group of the Research Strategies Committee of the Science Advisory Board will be held on October 28, 1987, in Conference Room 729G of the Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. The meeting will be conducted from 9:00 a.m. to 3 p.m.

The purpose of the meeting will be to continue the development of the research strategy for health effects research.

The meeting will be open to the public. Any member of the public wishing to attend the meeting must contact Dr. C. Richard Cothern, Executive Secretary to the Committee, by telephone at (202) 382–2552 or by mail to Science Advisory Board (A–101–F), 401 M Street, SW., Washington, DC., 20460 no later than c.o.b. October 21, 1987.

Dated: October 6, 1987.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 87–23990 Filed 10–15–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140088; FRL–3278–4]

Access to Confidential Business Information by Technical Resources Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Technical Resources Incorporated (TRI) of Rockville, MD, for access to information which has been submitted to EPA under sections 5 & 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street, SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA.

Under contract number 68–02–4289, EPA's contractor TRI, 3202 Monroe Street, Suite 300, Rockville, MD will assist the Office of Toxic Substances' Economics and Technology Division in analyzing the properties and uses of new and existing chemicals under sections 5 and 8 of TSCA. TRI will generate information on selected chemicals through literature search reviews and other activities.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68–02–4289 TRI will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contract. Authorization for access by TRI to TSCA CBI for similar purposes under contract number 68–02–3971 was previously announced in the **Federal Register** of May 3, 1985 (50 FR 18915). Under contract number 68–02–4289, TRI personnel will require access to CBI data submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 & 8 of TSCA that EPA may provide TRI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1988.

TRI personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures and must pass a test on those security procedures before they are permitted access to TSCA CBI. Access is authorized on a yearly basis.

Dated: October 8, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–23991 Filed 10–15–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3278–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

This notice announces the Availability of EPA comments prepared September 28, 1987 through October 2, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and Section

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102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–AFS–L65109–AK, Rating EC2, Cleveland Peninsula Resources Mgmt. Plan, Tongass Nat'l Forest, AK, SUMMARY: EPA's major concern is the effect of the action alternatives on water quality. The Forest Service preferred Alternative 2 does appear to have the least effects on water quality and fisheries. Although the draft EIS states that the monitoring plan will be prepared as part of the final EIS, the lack of a water quality monitoring plan for review makes it difficult to assure that Alaska Water Quality Standards will be met.

ERP No. DB–COE–K35012–CA, Rating EC2, Sacramento River Bank Protection Project, Butte Basin Reach (River Miles 176 to 194) Stabilization, Updated Information, CA. SUMMARY: EPA expressed environmental concerns because further information is needed on: (1) The effectiveness of existing mitigation; (2) the State of California's success in acquiring three parcels of land as mitigation that are outstanding for their riparian habitat values; and (3) project impacts to two colonies of bank swallows which could potentially be lost.

ERP No. DC–COE–K35012–CA, Sacramento River Bank Protection, Erosion Control, Collinsville to Chico Landing, River Miles 0 to 194, Updated Information, CA. SUMMARY: EPA expressed environmental concerns because past efforts to mitigate the loss of Sacramento River riparian habitat have been largely unsuccessful, and this fourth supplemental draft EIS did not provide sufficient mechanisms to mitigate or prevent further losses. EPA requested that the Corps commit to a policy of "no net loss" of riparian habitat when undertaking bank protection actions, and implement an environmentally superior bank protection scenario whenever possible, rather than a least-maintenance scenario. EPA also announced its intention to participate in the activities of the Mitigation Task Force with the Corps and the California Reclamation Board.

ERP No. D–FHW–C40121–NY, Rating EC2, Southwest Lockport Bypass Construction, Robinson Road to NY 31, 404 and 10 Permits, NY. SUMMARY: EPA's review of the draft EIS highlights potential impacts to wetlands, water quality, and hazardous waste sites, and about secondary impacts that may result from implementing the proposed project. Accordingly, EPA requests additional information in the final EIS regarding these concerns.

ERP No. D–FHW–F40292–IN, Rating EC2, US 231/Wabash River Crossing Relocation and Construction, County Road 350S to West Lafayette, 404 Permit, IN. SUMMARY: EPA's review found that although several alternatives are addressed in the draft EIS, a preferred alignment is not specified. In general, EPA's concerns relate to potential impacts upon water quality and wetlands. EPA's major concern is the presence of PCB's in water samples, fish, and sediment of Elliott Ditch and Wea Creek, and would like to review a plan for the handling or any PCB contaminated sediment that might be disturbed. The draft EIS does not include a mitigation plan, although all alternatives involve the acquisition of wetlands, and one should be developed as part of the final EIS. Finally, EPA is concerned about highway noise generated by the proposed project.

ERP No. D–FHW–K40162–CA, Rating E02, Ventura County Routes 23 and 118 Freeway Gap Closure, Rt. 23 Freeway at New Los Angeles Ave. to Rt. 118 Freeway at College View Ave., 404 Permit, CA. SUMMARY: EPA expressed environmental objections because the draft EIS did not adequately discuss potential adverse impacts to wetlands, riparian areas and endangered species. The draft EIS did not adequately discuss a full range of alternative alignments and mitigation measures to avoid or reduce impacts to sensitive habitats and endangered species. EPA requested that the FHWA contact the COE to obtain guidance on compliance with section 404 of the Clean Water Act (CWA), which regulates the discharge of dredge or fill material into waters of the US, including wetlands. EPA requested that the final EIS contain a more complete CWA section 404 alternatives analysis and mitigation plan to fully determine project compliance with the CWA.

ERP No. DS–NRC–A22091–IL, Rating E02, Rare Earths Permenent Waste Disposal Facility Decommissioning, Alternative Site Analysis, License, IL. SUMMARY: EPA's review found environmental impacts associated with the project are both non-radiological and radiological in nature. EPA's most serious concern is that the projected organ doses for the proposed action and all alternatives show exceedence of 4–15 times over the 25 millirem annual dose equivalent in 40 CFR 192 Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, which USEPA promulgated under the Uranium Mill Tailings Control Act of 1978. EPA rated this project an EO (environmental objections) with significant reservations, due to a possibility that modifications can be implemented that would assure compliance in at least some alternatives. Unless documentation can be provided demonstrating mitigation measures will be employed that will meet these regulations, EPA will have to rate the project an EU (environmental unsatisfactory) FINAL EISs

ERP No. F–AFS–J61069–CO, East Fork Ski Area Development, Special Use Permit, San Juan Nat'l Forest, 404 Permit, CO. SUMMARY: EPA believes the final EIS has adequately identified environmental issues associated with the proposed action. Although some of the issues result in significant environmental results, appropriate mitigation has been committed to reduce impacts.

ERP No. F–COE–C32032–NY, Shinnecock Inlet Navigation Project, Erosion Control and Water Quality Improvement, 404 Evaluation, NY. SUMMARY: EPA's concerns regarding changing salinity levels and grain sizes of dredged materials used for beach nourishment have been satisfactorily addressed in the final EIS. Accordingly, EPA has no objection to the proposed project.

ERP No. F–FHA–B32008–ME, Jonesport Harbor Navigation Improvement Project, ME (Adoption of COE final EIS, filed 4–19–76). SUMMARY: EPA is concerned that the information in the 14-year old EIS is outdated and not in compliance with current environmental review requirements. Therefore, EPA believes that the FmHA or the lead agency should prepare a supplemental draft EIS or supplemental information report.

ERP No. F–FHW–E40695–GA, GA–400 Extension, I–85 to I–285, Construction, 404 Permit, GA. SUMMARY: EPA was primarily concerned about predicted noise impacts and the proposed channel relocation of Nancy Creek. EPA requested a follow-up letter addressing additional noise mitigation, alternatives to channelization, creation of more water quality detention basins, and other areas of concern.

Dated: October 18, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 24100 Filed 10–15–87; 8:45 am]

BILLING CODE 6560–50 M

[FRL-3277-4]

Transfer of Data to Contractor

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Industrial Economics, Inc. (IEC) information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Some of the information may have a claim of business confidentiality. This firm is working, in support of the Waste Characterization Branch, on reevaluating the approach used to define wastes as hazardous under RCRA.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than October 23, 1987.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is conducting a program to characterize waste and assess waste management practices within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes and pigments, coke by-products, wood preserving, rubber processing, chlorinated organics, used oil recycling, electroplating, ink formulation, metal heat treating, solvents, explosives, and secondary lead industries. The Agency will use the results to identify and list hazardous waste under the authority of section 3001 of the Resource Conservation and Recovery Act (RCRA), and to develop appropriate waste management standards under section 3004.

Under EPA Contract No. 68-01-7047, IEC, will assist the Waste Characterization Branch of the Office of Solid Waste in reevaluating the approach used to define wastes as hazardous under RCRA. The information being transferred to IEC was previously, or is currently being, collected by other agency contractors and is specific to the above-noted industries. Some of the information being transferred may have been, or will be claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that IEC requires access to confidential business information (CBI) submitted to EPA under section 3007 of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of information under section 3007 of RCRA that EPA may transfer to this firm, on a need-to-know basis, CBI specific to the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, chlorinated organics, used oil recycling, electroplating, ink formulation, metal heat treating, solvents, explosives, and secondary lead industries. Upon completing their review of materials submitted for these industries, IEC will return all such materials to EPA.

IEC has been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved their security plan and will inspect their facility and approve it prior to RCRA CBI being transmitted to the contractor. Personnel from this firm will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

Date: September 28, 1987.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 87-23858 Filed 10-15-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3277-5]

Transfer of Data to Contractor

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, ICF, Inc., information which has been submitted under the "Rulemaking Petition" Regulations (40 CFR 260.20 and 260.22) and under the Hazardous and Solid Waste Amendments (HSWA) of 1984. Some of the information may have a claim of business confidentiality. This firm will use this information to review and assess the completeness of the delisting petitions submitted, based on parameters specified in the Code of Federal Regulations (40 CFR 260.20 and 260.22, as amended by HSWA). The information was previously managed by ICF under Contract No. 68-01-6861.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than October 23, 1987.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Information Management Staff (WH-563), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is conducting a program to review and evaluate delisting petitions received under the "Rulemaking Petitions" Regulations (40 CFR 260.20 and 260.22) and under the Hazardous and Solid Waste Amendments (HSWA) of 1984. The Agency will make a decision whether to grant or deny each delisting petition under the authority of 40 CFR 260 Subpart C and HSWA.

Under EPA Contract No. 68-01-7259, ICF, Inc. of Washington, DC will assist the Variances Section of the Assistance Branch of the Office of Solid Waste in reviewing and assessing the completeness of the delisting petitions submitted, based on the parameters specified in the Code of Federal Regulations (40 CFR 260.20 and 260.22, as amended by HSWA), including: the description of manufacturing/treatment processes; the content of petitioned residual streams; the integrity of sampling data; and the list of raw materials and corresponding Material Safety Data Sheets.

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In accordance with 40 CFR 2.305(h), EPA has determined that ICF requires access to confidential business information (CBI) submitted to EPA under 40 CFR 260.20 and 260.22, as amended by HSWA, to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of information under the above-noted authority that EPA may transfer to this firm, on a need-to-know basis, CBI necessary for the evaluation of delisting petitions which were submitted in response to 40 CFR 260.20 and 260.22, as amended by HSWA. Upon completing their review of materials submitted, ICF will return all such materials to EPA.

ICF has been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of the contractor and will inspect the contractor's facility and approve it prior to the transmittal of any RCRA CBI. Personnel from this firm will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contract Requirements Manual.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

Date: September 22, 1987

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 87-23859 Filed 10-15-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3277-6]

Transfer of Data to Contractor

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Research Triangle Institute (RTI), information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Some of the information may have a claim of business confidentiality. This firm is developing information bases for and conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory development within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, chlorinated organics, used oil recycling, electroplating, ink formulation, metal heat treating, solvents, explosives, and secondary lead industries.

DATE: The transfer of the confidential date submitted to EPA will occur no sooner than October 23, 1987.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory deveopment in support of the policies and programs established for solid and hazardous waste management under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), including subsequent amendments through 1984.

Under EPA Contract Nos. 68-01-7266 and 68-01-7075, RTI will assist the Information Management Staff of the Office of Solid Waste in conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements and other analyses within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, chlorinated organics, used oil recycling, electroplating, ink formulation, metal heat treating, solvents, explosives, and secondary lead industries.

The information being transferred to RTI was previously, or is currently being, collected by other agency contractors and is specific to the above-noted industries. Some of the information being transferred may have been, or will be claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that RTI requires access to CBI submitted to EPA under section 3007 of RCRA to perform work satisfactorily under the above-noted contracts. EPA is issuing this notice to inform all submitters of information under section 3007 of RCRA that EPA may transfer to this firm, on a need-to-know basis, CBI specific to the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, chlorinated organics, used oil recycling, electroplating, ink formulation, metal heat treating, solvents, explosives, and secondary lead industries. Upon completing their review of materials submitted for these industries, RTI will return all such materials to EPA.

RTI has been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved their security plan and will inspect their facility and approve it prior to the transmittal of any RCRA CBI. Personnel from this firm will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

Date: September 28, 1987.

J.W. McCraw,

Acting Assistant Administrator.

[FR Doc. 87-23860 Filed 10-15-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3277-7]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractors, Dynamac Corporation, and their subcontractors: Research Triangle Institute (RTI); S-Cubed; Jacobs Engineering Group; ENSECO, Inc.; and

Sobotka, Inc.; and Midwest Research Institute (MRI), and their subcontractors: ICF, Inc.; Radian Corporation; Romar Consultants; Science Applications International Corporation (SAIC); Versar, Inc.; and Walk, Haydel & Associates (WH&A), information which has been, or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA) in the following surveys:

- National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- National Detailed Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- Solid Waste (Municipal) Landfill Survey;
- Subtitle D Industrial Facilities Telephone Screening Survey;
- Subtitle D Industrial Facilities Mail Survey; and
- National Survey of Hazardous Waste Generators.

These firms are developing and maintaining information bases for and conducting waste characterization studies, regulatory impact anaylses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory development for the Office of Solid Waste. Some of the information may have a claim of business confidentiality.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than October 23, 1987.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer for Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is conducting waste characterization studies, regulatory impact analyses, regulatory flexibility analyses, environmental impact statements and other analyses for regulatory development in support of the policies and programs established for solid and hazardous waste management under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), including subsequent amendments through 1984.

Dynamac, and their subcontractors (EPA Contract No. 68-01-7286), and MRI, and their subcontractors (EPA Contract No. 68-01-7287), are developing and maintaining information bases for and conducting waste characterization studies, regulatory impact analyses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory development for the Office of Solid Waste. Some of the information being transferred may have been, or will be claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that Dynamac, and their subcontractors, and MRI, and their subcontractors, require access of CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contracts. EPA is issuing this notice to inform all submitters of CBI that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA in the above-noted surveys. Upon completing their review of materials submitted, the contractors will return all such materials to EPA.

Dynamac, and their subcontractors, and MRI, and their subcontractors, have been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contract Requirements Manual.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

Date: September 28, 1987.

J.W. McGraw

Acting Assistant Administrator.

[FR Doc. 87-23861 Filed 10-15-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3275-6; Notice No. 87; FL115]

Proposed 404(C) Determination to Prohibit, Deny, or Restrict the Specification of Use of Three East Everglades Areas as Disposal Sites; Notice and Public Hearing Announcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Section 404(c) determination and notice of public hearing.

SUMMARY: Section 404(c) of the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) authorizes the Administrator of the EPA to prohibit, deny or restrict the specification or use of any defined area as a disposal site, whenever he determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials into such an area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas. EPA's procedures for implementing section 404(c) are set forth in 40 CFR Part 231. This notice of proposed 404(c) determination and public hearing is being published by the Regional Administrator of the EPA's Region IV office in Atlanta, Georgia. This notice includes the Regional Administrator's proposal for three section 404(c) actions involving three separately-owned wetland properties in the East Everglades area of southern Florida.

These three properties are located in the Taylor Slough drainage area west of Miami in Dade County, Florida. All three are wetland areas with similar ecological values, each being part of the East Everglades wetlands complex. Taylor Slough is the major drainage way of waters entering the eastern portion of Everglades National Park (ENP). Proposals to "rockplow" these wetland areas to convert them for agricultural use have been made or can reasonably be expected in the near future. Such rockplowing activities would destroy the wetland ecological values which these tracts possess and, if permitted, would encourage future rockplowing of other nearby wetland areas in the East Everglades.

The first of the three properties for which a 404(c) determination is being proposed is a 60-acre tract owned by the Henry Rem Estate (the "Rem site"). The Rem site consists of the southern 60 acres of a 160-acre tract owned by Henry Rem Estate which is located in the western quarter of Section 5,

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Township 56 South, Range 38 East, or about 1 mile south of SW. 168th St. (Richmond Drive) and about 1.8 miles west of Levee L–31N. In December 1986, the Corps of Engineers, Jacksonville District, gave notice of is intention to issue a Section 404 permit to Henry Rem Estate for rockplowing of the 60-acre Rem site.

The second of the three wetland areas is another 60-acre tract located adjacent to and east of the Rem site, and jointly owned by Mrs. Marian Becker, Mrs. Bilba Burk, Mr. Irving Sonnenschein, Mr. Euval Barrekette and Mr. Paul Yanowitz (the "Becker site"). In its permit documentation covering the Rem site, the Corps of Engineers indicated that it was anticipating a future application to permit rockplowing on this 60-acre Becker site, which the Corps viewed as substantially similar to the Rem site for permitting purposes.

The third property totals approximately 312 acres owned by Senior Corporation (collectively the "Senior Corp. site"), within a larger piece of Senior Corp. property which begins about 2.5 miles south of the Rem and Becker sites and extends along SW. 232nd Avenue and south to SW 304th Street in Dade County. The 312-acre Senior Corp. site on which this 404(c) action is being proposed consists of three separate parcels of wetlands: One of approximately 132 acres within Section 7, Township 57 South, Range 38 East; another of approximately 150 acres within Section 30, Township 56 South, Range 38 East; and the third of approximately 30 acres within Section 6, Township 57 South, Range 38 East. A Senior Corp. application to the Corps for a permit to rockplow these three wetland parcels remains pending at this time.

EPA Region IV concluded, because the Rem, Becker and Senior Corp. tracts are essentially similar pieces of the East Everglades wetlands complex with similar ecological values, that the initiation of one 404(c) action embracing all three tracts would be an efficient and appropriate way for the Federal government to address the serious environmental concerns arising from potential rockplowing in these wetland areas. Individual decisions, however, will be made with respect to the three properties.

EPA Region IV proposes to prohibit, deny or restrict the specification or use of the wetland properties described herein as disposal sites for dredged or fill materials resulting from rockplowing under provisions of section 404(c) of the CWA. This 404(c) determination is being proposed because there is reason to believe that rockplowing these wetlands will result in unacceptable adverse effects on fishery (including spawning and breeding areas for forage fishes), wildlife and recreational areas. In accordance with 40 CFR 231.4, it would be in the public interest to hold a hearing on this proposed determination.

Purpose of Public Notice

This serves as a notice of proposed section 404(c) determinations and public hearing covering the Rem site, the Becker site, and the Senior Corp. site, as above described. This hearing will be held to obtain comments on EPA's proposal to prohibit or restrict discharge of fill material from rockplowing these wetland areas and receive data or observations concerning whether the rockplowing of all or part of these approximately 432 acres of East Everglades wetlands in the Taylor Slough drainage area would cause an unacceptable adverse effect as described in section 404(c) of the CWA.

Hearing Date: November 18, 1987, beginning at 7:00 p.m.

Hearing Location: Homestead Senior High School Auditorium, 2351 SE 12th Ave. Homestead, Dade County, Florida, 33035.

Comments may be submitted prior to the hearing or presented at the hearing. The hearing record will remain open after the hearing until close of business, December 3, 1987, for the addressed of written comments. Comments submitted prior to or after the hearing or requests for copies of the proposed determination should be submitted to EPA Region IV's designated Record Clerk, Suzanne Potter, Office of Congressional and External Affairs, EPA, 345 Courtland Street, Atlanta, Georgia 30365, (404)347–3004. Comments should directly address whether the proposed determination should become the final determination or whether corrective action could be taken to reduce the adverse impact of the discharge. All such comments will be considered in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to prohibit, deny or restrict the specification or use of all or portions of the Rem site, the Becker site and/or the Senior Corp. site as disposal sites for rockplowing. A Regional recommendation and the administrative record will be forwarded to the EPA Assistant Administrator for Water in Washington, DC, for review and the final determination. The procedures to be used in making the final determination are specified at 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection during normal working hours (8:00 a.m. to 5:00 p.m.) at the EPA Region IV office.

Hearing Procedures

a. The Regional Administrator of EPA's Region IV, or his designee, will be the Presiding Officer at the hearing.

b. Any person may appear at the hearing and submit oral and/or written statements or data and may be represented by counsel or other authorized representative. Any person may present written statements or recommendations for the hearing file prior to the time the hearing file is closed to public submissions. The Presiding Officer shall afford the participants an opportunity for rebuttal.

c. The Presiding Officer will establish reasonable limits on the nature, amount or from of presentation of documentary material and oral presentations. No cross examination of any hearing participant shall be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

d. The hearing file will be open for submission of written comments until close of business, December 3, 1987.

Supplementary Information and Background

A. Section 404(c) Authority and Criteria

Under section 404 of the CWA (33 U.S.C. 1251 *et seq.*), any person who proposes to discharge dredged or fill material into the waters, including wetlands, of the United States must first obtain a permit from the Secretary of the Army, acting through the Chief of Engineers. However, CWA section 404(c) authorizes the EPA Administrator to prohibit or restrict such permitting within any area defined by him if he determines that discharges of dredged or fill material there would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

EPA's regulations define "unacceptable adverse effect" in 40 CFR 231.2(e) as:

> Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR Part 230).

The preamble to 40 CFR Part 231 explains that one of the basic functions of section 404(c) is to police the

application of the section 404(b)(1) Guidelines. Those portions of the Guidelines relating to significant degradation of waters of the United States (40 CFR 230.10(c)), as well as consideration of cumulative impacts (40 CFR 230.11(g)), are of particular importance in the evaluation of the unacceptability of environmental impacts in this case. Section 230.10(c) of the Guidelines requires that no discharge of dredged or fill material shall be permitted that contributes to significant degradation of waters of the United States. Section 230.11(g) requires that the permitting authority collect, analyze, consider and document information relevant to cumulative impacts within the decision-making process. Thus, it is appropriate under section 404(c) to take into account whether significant degradation of waters of the United States will occur as a result of individual and/or cumulative rockplowing activities.

The Administrator's section 404(c) authority may be used either to "veto" a permit which the Corps has determined it would issue (as in the case of the Rem site) or to preclude permitting either before the Corps has made its decision (as in the case of the Senior Corp. site), or in the absence of an application (as in the case of the Becker site). Under his section 404(c) authority, the Administrator may totally prohibit all discharges of dredged or fill material to a defined area or he may impose some partial prohibition, such as a restriction from a particular type of activity. This proposed section 404(c) determination is limited to a prohibition on discharges resulting from rockplowing the three East Everglades sites under consideration.

B. Nature of Proposed Discharge

"Rockplowing" is a process frequently used in the past to convert East Everglades wetlands into fields suitable for agriculture. In this process, a bulldozer is used to drag a plow-like implement over the pinnacle rock surface of these wetlands, breaking up that surface. The crushed rock and other materials are used to fill the wetlands' characteristic solution holes so that the area is made sufficiently smooth and level to allow a kind of hydroponic farming. EPA is particularly concerned about the continuation of rockplowing in the East Everglades area because this activity, by its nature, completely destroys the irregular surface characteristics which allow these wetlands to perform their most valuable ecological functions.

C. Characteristics of the Sites Under Consideration

The Rem, Becker and Senior Corp. sites encompass some 432 acres of seasonally inundated graminoid prairie wetlands with irregular rocky limestone substrates, typical of wetlands on the eastern margin of Taylor Slough. In their natural state, wetlands of this type provide fish and wildlife habitat, food chain production, groundwater recharge, water storage, and biological and geochemical nutrient and pollutant uptake. In addition, functional muhlygrass/pinnacle rockprairie wetlands in this area have recreational value as sites for bird watching and other nature study.

The elevation of the rocky substrate surface at the Rem and Becker sites is approximately 7 to 7.5 feet NGVD (i.e., above sea level) and approximately 6 to 8 feet NGVD in various locations within the Senior Corp. project site. Solution holes with depths of one to three feet below the rocky surface are common throughout these prairie wetlands. The dominant vegetable community found is described as wetland prairie, muhly/muhly-beardgrass in the Dade County East Everglades Management Plan. The dominant wetland plant species in the solution holes located throughout the wetland prairies is sawgrass, *Cladium jamaicensis*. The predominant wetland plant species on the rocky surface of the prairie is muhlygrass, *Muhlenbergia capillaris*, along with *Flaveria linearis*, *Pluchea* spp., *Dichromena colorata*, *Aristida* spp. and *Hypericum* spp. There is a thin (1"—2") layer of marl soil over portions of the rockland surface of the wetland prairie. During the summer wet season, water accumulates in the solution hole depressions and is held long enough for algal periphyton populations to grow. Numerous EPA and U.S. Fish and Wildlife Service (FWS) inspections over the past five years confirm the presence of standing water and periphyton in the solution holes during the summer rainy season as well as periphyton occurring over much of the rocky ground surface.

Scattered throughout the Rem, Becker and Senior Corp. site muhlygrass prairies are hardwood tree hammocks composed predominantly of red bay, wax myrtle, willow bustic and coco plum. Many of the tree islands have been invaded by exotic tree species, Brazilian pepper and Australian pine. The tree hammocks provide valuable cover and resting areas for a large number of reptiles, amphibians, small mammals and birds. Another type of tree island located in the Rocky Glades is known as a willow head, which normally contains standing water depressions. The willow heads provide very valuable dry season aquatic refuge for numerous aquatic faunal species.

The seasonally flooded solution holes and the normally flooded willow heads provide valuable habitat for numerous amphibians, invertebrates and small fish, which utilize the periphyton-based food web as a food source. These pinnacle rock solution holes and willow heads greatly increase the heterogeneity of the muhlygrass prairies and provide valuable micro-habitats within the prairies for lower trophic level animals to feed, breed and seek refuge. Populations of valuable prey species such as snails, aquatic insects, crayfish, tadpoles, frogs, snakes, turtles, mosquito fish, killifishes, flagfish, sunfish and other small fishes substantially expand in size in the solution holes and willow heads during the summer wet season and disperse across the adjacent prairies. The presence of aquatic food source organisms has been documented at the proposed rockplowing sites. As the wet season ends, the solution holes gradually dry down providing a concentrated food source for reptiles, small mammals and wading birds such as herons and egrets.

The wildlife inhabiting the East Everglades area, which includes these sites, is one of the most valuable and unique natural features of south Florida. Approximately 350 animal species are known to occur in the area including: 34 species of fish, 18 species of amphibians, 44 species of reptiles, 28 species of mammals, and 230 species of birds. These species depend on the diversity of habitats that offer opportunities for feeding, reproduction, and cover. Valuable habitats occur throughout the East Everglades and animals using these natural habitats move freely to other natural areas within the East Everglades, Everglades National Park and throughout south Florida. Some of the animals utilizing these natural habitats have large home ranges requiring free movement to, and use of, a broad array of south Florida habitats types. Migratory birds (e.g., woodstork, warblers, great white heron) utilize parts of the East Everglades as well as Everglades National Park on a seasonal basis.

Although all wildlife is considered a valuable resource, some species have been given special distinction because of their recreational value or because they have been placed on protected lists by Federal or State governments. A total of 33 species which are on various protected lists occur in the East Everglades. Several of the nation's

rarest and most unique animals survive in the East Everglades, two of which are the federally endangered Cape Sable sparrow and Florida panther. The wetland area immediately north of the Rem and Becker tracts was recently used by a radio collared male Florida panther.

The wetlands herbaceous vegetation and periphyton mats serve to filter surface waters removing nutrients and pollutants. This water purification function is important in maintaining the quality of the surficial Biscayne Aquifer, a designated "sole source" aquifer for drinking water supply to residents of southeast Florida.

D. Adverse Impacts of Permit Issuance

Rockplowing the Rem, Becker and Senior Corp. sites would destroy some 432 acres of functional and productive East Everglades muhlygrass-sawgrass prairie wetlands and thereby eliminate virtually all of the habitat value it now provides. The farm fields that would replace these wetlands after rockplowing would be a low quality habitat for wildlife. Cotton rats are the prime resident animals in such fields with some marsh rabbits found around field edges. This paucity of lower food chain prey is fed on by an occasional visiting marsh hawk or kestrel. A dearth of wildlife would be caused both by the seasonal nature of vegetable crops grown in rockland fields and by rockplowing's reduction of a "two-story" habitat system (surface rock/solution holes) to a flat dry plain. EPA Region IV believes that the direct loss of 432 acres of functional East Everglades muhlygrass prairie may represent a significant and unacceptable environmental loss.

The individual and cumulative losses of East Everglades wetlands pose a threat to groundwater quality, specifically the "sole source" designated Biscayne Aquifer. EPA Region IV's concerns for potential impacts to the groundwater quality is based on two factors: (1) The loss of the surface filtration of surface waters which are hydrologically contiguous with the Biscayne Aquifer, and (2) the potential for the transport of nutrients, herbicides, pesticides, oils and grasses and other contaminants that might be associated with agricultural or other development on the altered glade wetlands.

EPA Region IV is also very concerned about cumulative impacts of continuing destruction of East Everglades prairie wetlands which are located along the eastern border of Everglades National Park. According to the FWS, about 25,000 acres of prairie wetlands once occupied the East Everglades area, and approximately 8,000 acres of those wetland areas have now been disturbed or destroyed. Human activities (e.g., rockplowing, drainage, residential development) in the East Everglades have continued to degrade, threaten or eliminated large acreages of East Everglandes wetlands and are instrumental in adversely changing wildlife populations. Loss of functional wetland habitat is recognized by wildlife experts as a major contributing factor to reduction in size of wildlife populations. These cumulative adverse impacts may also be unacceptable.

Additionally, EPA Region IV is also aware that permitting the rockplowing of fully functional prairie wetlands at the Rem, Becker and Senior Corp. sites may be viewed as precedent to stimulate future wetland conversion projects in this area. The owners of these three sites also own approximately another 600 acres of very similar wetlands in the immediate vicinity of the 432 acres of wetlands under consideration. EPA Region IV anticipates that Corps rockplowing permits may be sought for these additional wetland areas if permits are issued for the areas covered by this proposed determination.

Other nearby East Everglades prairie wetlands might also be expected to come under intense pressure for agricultural development if rockplowing is allowed to convert the Rem, Becker and Senior Corp. sites. For example, approximately 585 of muhlygrass-sawgrass wetlands between the Fem and Senior Corp. sites were subject to past rockplowing proposals which were later either withdrawn or rejected on procedural grounds by the Corps. In addition, approximately 2,000 acres of privately owned muhlygrass wetland prairie, very similar in nature to the Henry Rem Estate, Becker and Senior Corp. wetlands are located in Sections 5, 6, 31 and 32, adjacent and north of the Rem and Becker wetland sites, south of SW 168th St. (Richmond Drive) and east of SW. 237th Ave. An additional 2,000 acres of similar muhlygrass wetland prairies exist along the northwest perimeter of the 8.5 square miles East Everglades residential area north of SW 168th St. EPA anticipates that these additional muhlygrass wetland prairies (totaling approximately 5,000 acres) would come under intense agricultural development pressure if the current rockplowing proposals were authorized. The potential cumulative loss of an additional nearby 5,000 acres of similarly classed wetlands would be devastating to the ecological integrity of the East Everglades ecosystem and the eastern border of Everglades National Park and may not be in the public interest.

E. Procedural Background

(1) The Rem and Becker Sites

On April 11, 1985, the Corps of Engineers, Jacksonville District, gave public notice that Henry Rem Estate had applied for a section 404 permit to rockplow 160 acres of East Everglades wetlands including the 60-acre "Rem site". EPA and FWS, in letters dated May 6 and 7, 1985, each objected to permit issuance citing the potential adverse environmental impacts of project construction.

The South Florida Regional Planning Council, in a letter dated May 7, 1985, indicated that the activity was inconsistent with local land planning. The Dade County Department of Environmental Resource Management (DERM), in a letter dated June 28, 1985, recommended denial of the project based upon inconsistency with local zoning and the implementation plan of the Everglades National Park-East Everglades Resources Planning and Management Committee.

On April 14, 198, after negotiations with the applicant, the Corps wrote to EPA and requested EPA's official comment on the applicant's revised proposal to rockplow the southern 60 acres of wetlands at the site. On June 12 and July 2, 1986, FWS and EPA respectively expressed continued opposition to permitting the southern 60 acres of wetlands of the Rem tract based on the project's environmental impacts and inconsistency with the section 404(b)(1) Guidelines. EPA stated that the decision to segment the project into a 60-acre southern portion lacked any biological basis because the 160-acre wetland tract owned by the Henry Rem Estate was essentially homogeneous in nature from north to south.

On December 22, 1986, the Jacksonville Corps District Engineer, forwarded to EPA Region IV its formal notice of intent to issue to 60-acre Rem permit.

On January 22, 1987, Lawrence Jensen, EPA Assistant Administrator for Water, wrote to Robert Dawson, then Assistant Secretary of the Army for Civil Works (ASACW) requesting his review of the Henry Rem Estate permit matter under the provisions of the EPA-Corps Memorandum of Agreement (MOA) pursuant to section 404q of the CWA. EPA restated its environmental concerns

and indicated that review of the Rem permit decisions was justified due to the failure of the Corps to resolve EPA concerns regarding compliance with section 404(b)(1) Guidelines. EPA expressed specific concerns relative to the inadequacy of the Corps' cumulative impacts assessment and the inappropriateness of the Corps' assessment of the significance of impacts associated with rockplowing 60 acres of wetlands at the Rem site, which EPA concluded would result in significant degradation of the waters of the U.S.

On January 23, 1987, William Horne, Assistant Secretary for U.S. Fish and Wildlife and Parks, Department of Interior (DOI), also requested that Mr. Robert Dawson, ASACW, review the Henry Rem Estate permit decision.

On February 12, 1987, Mr. Dawson determined that the issues that EPA discussed in its January 22, 1987, referral request letter should be addressed by the DE without elevation to higher bureaucratic levels prior to final permit action. In Mr. Dawson's letter to Mr. Horne he restated the determination that he made in his letter to EPA.

In the Corps documentation supporting its formal notice of intent to issue the Rem site permit, the Corps indicated that it anticipated that a rockplowing application would be received covering the adjacent 60 acres of wetlands to the east of the Rem property, owned by Mrs. Marian Becker et al. The Corps further indicated that it viewed the 60-acre Becker site as being a substantially similar situation for permitting purposes to the Rem site. In fact, the Corps predicted that the rockplowing of the Becker site would be one of the impacts of permitting the Rem site. Therefore, EPA Region IV believes that inclusion of the Becker site in this 404(c) action is appropriate, even though no application for rockplowing this site has been made at this time.

(2) The Senior Corp. Site

On May 14, 1986, the Corps gave public notice of a section 404 permit application consolidating four rockplowing proposals by Senior Corporation that had been advertised separately by the Corps during 1982 and 1983 into one application proposing 1,028 acres of rockplowing of East Everglades prairie wetlands.

On June 13, 1986, EPA Regional Administrator Jack Ravan, recommended that the Corps deny approximately 716 acres of the 1,028 acre Senior Corp. proposal, based on environmental concerns essentially similar to those expressed in EPA's comments to the Henry Rem Estate project. On June 13, 1986, the FWS wrote to the Corps, recommending denial of 716 acres of the Senior Corp. proposal based on adverse impacts to fish and wildlife habitat.

On April 7, 1987, Senior Corp. provided the Corps with project modifications, reducing wetland impacts at the project site. Corps staff indicated that Senior Corp. project modifications eliminated rockplowing in critical habitat for the federally endangered Cape Sable sparrow, but continued to propose rockplowing activities on approximately 312 acres of wetlands which EPA and FWS had previously recommended permit denial for rockplowing activities.

On April 22, 1987, EPA Region IV initiated this proposed 404(c) determination by notifying the Jacksonville Corps DE and the Rem and Becker site owners of the proposed action. On the same day EPA Region IV also notified Senior Corp. of its intention to initiate a 404(c) action on the approximate 720 acres of wetlands for which this Agency had earlier recommended permit denial. Because of Senior Corporation's April 7, 1987 permit modification, which eliminated approximately 400 acres of proposed wetland rockplowing to which EPA had objected, this 404(c) action addresses only the remaining approximate 312 acres of rockplowing still pending before the Corps of Engineers. On August 3, 1987, the Jacksonville Corps issued a permit to Senior Corp. authorizing 307 acres of rockplowing in wetland areas which were not opposed for rockplowing by EPA and FWS and which are not subject to the current 404(c) action.

Following his review of responses from the owners of the three sites, the Regional Administrator was not persuaded that there would be no unacceptable adverse effects from proposed or anticipated rockplowing at the three sites subject to this proposed 404(c) determination.

FOR FURTHER INFORMATION CONTACT: E.T. Heinen, Chief, Marine and Estuarine Branch, Water Management Division, Environmental Protection Agency, 345 Courtland, Street, NE., Atlanta, Georgia 30365, (404) 347–2126.

Date: October 5, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87–23570 Filed 10–15–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIOINS COMMISSION

Formation of Advisory Committee on Advanced Television Service and Announcement of First Meeting

The Federal Communications Commission has established an advisory committee to assist the Commission in considering the issues surrounding the introduction of advanced television service in the United States. The committee is expected to advise the Commission on the facts and circumstances regarding advanced television systems and to recommend policies, standards, and regulations that could accommodate the orderly and timely introduction of advanced television service. The charter for the committee is attached.

The first meeting of the Advisory Committee on Advanced Television Service will be held on November 17, 1987, in the Commision Meeting Room, Room 856, 1919 M Street, N.W., Washington, D.C. The meeting will start at 2:00 P.M. All interested parties are invited to attend.

The agenda for the first meeting will consist of:

1. FCC Chairman's Remarks;
2. Administrative Matters;
3. Committee Charter;
4. Committee Work Plan—
   Proposed Schedule
   Discussion and Approval;
5. Designation of Subsequent Meetings;
6. Concluding Remarks.

Any questions regarding this meeting should be directed to Mr. William Hassinger at (202) 632–6460 or Mr. Victor Tawil at (202) 653–8162.

Charter for Advisory Committee on Advanced Television Service

A. The Committee's Official Designation

Advisory Committee on Advanced Television Service

The Advisory Committee will have no more than twenty-five members and will function as a Parent Committee. These members will be chosen by the Commission so as to obtain diverse and representative viewpoints. The Advisory committee Chairman will direct the activities of the Committee and Subcommittees and will receive guidance, advice and instructions from the Chairman of the Federal Communications Commission.

B. Name of Subcommittee(s)

Three Subcommittees: Planning Subcommittee, Systems Subcommittee, Implementation Subcommittee.

Membership of Subcommittees will be open to all interested parties.

C. Committee's Objectives and Scope of its Activity

Parent Committee

Objective: The Committee will advise the Federal communications Commission on the facts and circumstances regarding advanced televsion systems for Commission consideration of the technical and public policy issue. In the event that the Commission decides that adoption of some form of advanced broadcast television is in the public interest, the Committee would also recommend policies, standards and regulations that would facilitate the orderly and timely introduction of advanced television services in the United States.

Scope of activity: All steps necessary to assemble information, analyze information, deliberate upon appropriate policies and actions, and develop recommendations regarding the introduction of terrestrial advanced television service. Includes technical, economic, legal and regulatory issues.

Planning Subcommittee

Objective: To plan the attributes of advanced television service in the United States.

Scope of Activity: All steps necessary to provide advice on desired features of terrestrial advanced television service.

(a) Define the desirable characteristics of advanced television service; for example, in terms such as picture quality, population served, costs to broadcaster/consumer/manufacturers, relationship to existing broadcast service, relationship to non-broadcast services.

(b) Review the technical planning factors for the existing television service and recommend planning factors for advanced television service, including consideration of factors such as coverage area, quality of service, frequency reuse criteria, receiver quality, spectrum allocations.

Systems Subcommittee

Objective: To specify the transmission/reception facilities appropriate for providing advanced television service in the United States.

Scope of Activity: All steps necessary to provide advice on the parameters of systems to provide terrestrial advanced television service.

(a) Evaluate, on technical and economic bases, advanced television systems now under development for the purpose of determining feasibility for implementation in the United States.

(b) Recommend advanced television system(s) now under development as candidate(s) for implementation, or specify the design of an appropriate system.

(c) Advise on the appropriate transmission/reception technical standards and spectrum requirements for the recommended system(s).

Implementation Subcommittee

Objective: To establish a scheme for implementation of advanced television service in the United States.

Scope of Activity: All steps necessary to provide advice on policies, regulations and standards for implementation of terrestrial advanced television service.

(a) Develop a transition scheme for implementation of advanced television service in the United States.

(b) Recommend appropriate FCC policies and regulations to oversee implementation of advanced television service and develop guidelines for industry activities.

D. Period of Time Necessary for the Committee To Carry out its Purposes

An initial written report containing recommendations of the Committee on fundamental parameters and spectrum requirements must be submitted by 6 months from the date of the first meeting.

E. Official to Whom the Committee Reports

The Chairman of the Federal Communication Commission.

F. Agency Responsible for Providing Necessary Support for the Committee

The Federal Communications Commission will furnish necessary administrative support, including facilities needed for conducting meetings of the Committee.

G. Description of Duties for Which the Committee is Responsible

The duties of the Committee and its Subcommittees will be to assemble information, to conduct deliberations and to prepare and submit recommendations appropriate to the attainment of the objectives listed under (C) above.

H. Estimated Annual Operating Costs in Dollars and Person Years

The estimated operating costs are $10,000 for the FCC. Estimated person-years are 3.0 for the FCC and 25.0 for non-government participants.

I. Estimated Number and Frequency of Committee Meetings

The Committee will meet three times per year or at such intervals as the Committee decides. Subcommittees are expected to meet on a monthly basis until completion of their tasks.

J. Committee's Termination Date

The Committee will terminate September 30, 1989.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24147 Filed 10-15-87; 8:45am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 87-1056]

Report For Wholly-Owned Service Corporation

Date: October 13, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Report For Wholly-Owned Service Corporation" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction act (44 U.S.C. Chapter 35).

This information is necessary to monitor the financial condition of the Service Corporations. The Bank Board estimates that it requires four hours to complete this report.

Comments on the information collection request are welcome and should be received on or before November 2, 1987.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Bank Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G

Street NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Cathern Smith, Office of Regulatory Policy, Oversight and Supervision, (202) 778–2567, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–24007 Filed 10–15–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–665]

First Dewitt Savings and Loan Association, West Caldwell, NJ; Notice of Final Action Approval of Conversion Application

Date: October 7, 1987.

Notice is hereby given that on October 2, 1987, the Office of the General Counsel of the Federal Home Loan Bank, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Dewitt Savings and Loan Association, West Caldwell, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni.

Assistant Secretary.

[FR Doc. 87–24008 Filed 10–15–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–666; FHLBB No. 3778]

Home Federal Savings Bank, North Hills, NY; Final Action; Approval of Conversion Application

Date: October 13, 1987.

Notice is hereby given that on October 7, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings Bank, North Hills, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–24010 Filed 10–15–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–667; FHLBB No. 4009]

Home Federal Savings and Loan Association of Washington, DC; Notice of Final Action; Approval of Conversion Application

Date: October 13, 1987.

Notice is hereby given that on October 7, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association of Washington, DC, Washington, DC, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–24009 Filed 10–15–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2701
Name: International Shipping Company
Address: 9009 La Cienega Blvd., Inglewood, CA 90301
Date Revoked: May 28, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2102
Name: API Maritime Services Inc.
Address: 8915 So. LaCienga Blvd., Inglewood, CA 90301
Date Revoked: September 9, 1987
Reason: Failed to maintain a valid surety bond

License Number: 168
Name: Latina-Macor Shipping Co., Ltd.
Address: 236 Main Street, P.O. Box 750, Ridegfield, N.J. 07660
Date Revoked: September 10, 1987
Reason: Surrendered license voluntarily

License Number: 2568
Name: Interfreight Forwarding Corporation
Address: 31–A Glen Street, Glen Cove, NY 11542
Date Revoked: September 15, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1999
Name: Air Van Lines, Inc.
Address: 1280 116th Avenue, NE., Bellevue, WA 98009
Date Revoked: September 16, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1139
Name: Engel International, Inc.
Address: 40 Commerce Drive, Cranbury, NJ 08512–9494
Date Revoked: September 16, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1000
Name: General Freight Services, Inc.
Address: 324 Pacific Bldg., Portland, OR 97204
Date Revoked: September 27, 1987
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 87–24005 Filed 10–15–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment of draft FY 1988 program guidelines/application solicitation.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing this draft Fiscal Year 1988 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public and obtain public comments. The

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program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATE: Comments are due on or before November 15, 1987.

ADDRESS: Send comments to: Peter L. Regner, Director, Staff Operations and Programs, FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653–5320.

Labor-Management Cooperation Program Application Solicitation-FY 1988

A. Introduction

The following is the draft solicitation for the Fiscal Year 1988 cycle of the Labor-Management Cooperation Program. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor and management committee which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor management relationships, job secrity, organizational effectivensess, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow as well as a separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I.

B. Program Description Objectives

The Labor Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To imporve communications between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement or workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committe is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. As industy committe generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, State, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or State government. Those employees must be covered by a formal collective bargaining agreement. Employees covered by so-called "meet and confer" agreements are not eligible under this program. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY88, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds of activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have mumbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problems using as much relevant data as possible and disuss the full range of impacts these problems could have or are having on the plant, government, area, or industry. An idustrial or economic profile of the area and workforce might prove useful in explaining the problems. The section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must disuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committee should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons.

Include proposed position description for all staff that will have to be hired as well as resumes for staff already on board.

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of the past efforts and accomplishments and how they would integrate with the proposed future expanded effort.

4. *Major Milestone*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant. The chart should identify months as "month 1, 2," etc., rather than by name of month as the grant start date will not be determined until all applications are reviewed. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation.*—Applicants must provide for an external evaluation or internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment would examine and what baseline data the committee staff would already have/or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mine and the impact or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson on behalf of all members is not acceptable.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the bylaws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective-bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's fiscal feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration and quality of the application; and,

(8) The cost value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site locations, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, private non-profit labor-management committees (or a labor or management entity on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies are not eligible.

Third-party private non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exception applies to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has received a tentative FY88 appropriation of $900,000 for this program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (in-plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY88 appropriation to contract for program support purposes (other than administrative).

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence at least 12 months prior to the submission deadline) will be for a period of 12 months. If successful

progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period will thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period will thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants; up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants of existing committees must provide at least 25 percent of the total allowable project costs. All matching funds must be in cash rather than in-kind goods or services. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/State government funds currently employed for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts only. Also, under no circumstances will business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY88 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than April 16, 1988. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, *plus three copies* should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427. Applications submitted without sufficient copies may be returned.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Board(s). The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process of those applications recommended by the Board(s).

All FY88 grant applicants will be notified of results, and all grant awards will be made, prior to September 30, 1988. Applications submitted after the deadline dates or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY88, FMCS will offer a half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC on December 9, 1987. Individuals interested in attending the session should contact FMCS to reserve a space. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427, or by calling 202/653–5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 87–23957 Filed 10–15–87; 8:45 am]

BILLING CODE 6732–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 16, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

1. Report of New Information in Disability Cases—NEW—This form is used by disability beneficiaries to report changes in their medical or living conditions. Respondents: Individuals or households. Number of Respondents: 200,000; Frequency of Response: Occasionally; Estimated Annual Burden: 16,667 hours.

Desk Officer: Elana Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

1. Evaluation of OPA Marketing/Educational Promotion Survey Questionnaire—NEW—This survey would evaluate pre- and post-Survey Questionnaire to determine level of

knowledge among Medicare Beneficiaries relating to prepaid health plans; effectiveness of information campaign and effectiveness of conveying medicare information to target audience. Respondents: Individuals or households. Number of Respondents: 1,200; Frequency of Response: One-time; Estimated Annual Burden: 480 hours.

OMB Desk Officer: Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

1. National Institute of Mental Health, Protection and Advocacy Program Annual Program Performance Report/ Administrative on Developmental Disabilities—0980–0160—Law provides that the Secretary shall provide to Congress an annual report detailing a description of activities, accomplishments, and expenditures of the protection and advocacy for mentally ill individuals and other persons with developmental disabilities. Respondents: State or local governments, Non-profit institutions. Number of Respondents: 56; Frequency of Response: Annually; Estimated Annual Burden: 2,240 hours.

OMB Desk Officer: Shanna Koss

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

SSA: 301–594–5706
HDS: 202–472–4415
HCFA: 301–594–5706

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: October 9, 1987.

Raffie Shahrigian,

Acting Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87–23981 Filed 10–15–87; 8:45 am]

BILLING CODE 4150–04–M

National Institutes of Health

Division of Research Resources; Meeting of the Animal Resources Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, November 5–6, 1987, National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on November 5 from 1 p.m. to approximately 3 p.m. for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 5 from 3:00 p.m. to approximately 5:00 p.m. and on November 6 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (303) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. David L. Madden, Acting Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496–5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: October 1, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–23928 Filed 10–15–87; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Geriatric Assessment Methods for Clinical Decisionmaking

Notice is hereby given of the NIH Consensus Development Conference on "Geriatric Assessment Methods for Clinical Decisionmaking," sponsored by the National Institute on Aging in collaboration with the NIH Office of Medical Applications of Research, the National Institute of Mental Health, and the Veterans Administration. The conference will be held on October 19–21, 1987, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The care of older persons is becoming an ever increasing responsibility for all but a few physicians and other health care providers. Before practitioners can make reasonable judgments about the best care strategies for each older individual, it is clear that appropriate patient data must be collected.

The type of data and the methods for its collection can affect the outcome of geriatric care, improve the quality of life, and reduce overall health-care costs. Because diseases in the older patient may present themselves differently, the geriatrician must conduct the assessment with an eye toward total care. Accurate diagnosis requries information about an individual's general medical, cognitive, and behavioral status as well as the person's functional capacity or ability to carry on daily activities. In addition, the health care provider will need to obtain certain data about the individual's social supports, personal resources, and environment. To this end, a body of knowledge is being amassed about the instruments and methodologies of geriatric assessment. Although under most circumstances, information relevant to all of the above areas are needed, it is important that health professionals know which techniques are especially useful in one or another situation.

This conference will bring together physicians and other health care professionals with a special interest in geriatric medicine, social scientists, investigators in the area of health services research, and representatives of the public. Following one and a half days of presentations by leaders in the field and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement in response to the following questions:

1. What are the goals, structure, processes, and elements of assessment for clinical decisionmaking?
2. What are the comparative merits of different methods in carrying out a geriatric assessment?
3. What is the evidence that a geriatric assessment is effective? If so, in what settings, for whom, and for which outcomes?
4. Insofar as a geriatric assessment is effective, what linkages to clinical management systems are required?
5. What are the priorities for future research in geriatric assessment?

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On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Marti Bernstein, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland, (301) 468–6555.

Dated: October 8, 1987.

William F. Raub,

Acting Director, NIH.

[FR Doc. 87–23927 Filed 10–15–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B–C
Executive Secretary: Dr. James Harwood, Dr. David Lavrin, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666
Dates of Meeting: November 4–5, 1987
Place of Meeting: National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: November 4, 8:30—9:00 a.m.
Closed: November 4, 9:00 a.m. to recess; November 5, 8:30 a.m. to adjournment
Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A
Executive Secretary: Dr. Walter Spieth, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666
Dates of Meeting: December 2–3, 1987
Place of Meeting: National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: December 2, 8:30 to 9:00 a.m.
Closed: December 2, 9:00 a.m. to recess; December 3, 8:30 a.m. to adjournment

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: October 1, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–23929 Filed 10–15–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council scheduled to meet during the month of October 1987:

Name: National Advisory Council on Health Care Technology Assessment (Medicare Coverage Process Subcommittee).

Date and Time: October 23, 1987, 9:00 AM to 4:00 PM.

Place: Key Bridge Marriott, Potomac D Room, 1401 Lee Highway, Arlington, Virginia.

Open October 23, 9:00 AM to 9:30 AM.

Closed for remainder of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessement functions prescribed by section 305 of the Public Health Service Act, as amended. This Subcommittee is charged with studying the Medicare coverage process.

Agenda: The open session of the meeting on October 23 from 9:00 AM to 9:30 AM will be devoted to administrative matters and a presentation of an overview of the agenda for the remainder of the meeting and the process to be used by the Subcommittee to review and discuss the information and opinions gathered on the DHHS technology assessments and coverage recommendation process.

The closed sessions of the meeting will involve the review and discussion of documents which are exempt from disclosure under 5 U.S.C. 552(b), 5 U.S.C. App. 2 section 10 (b) and (d), and 5 U.S.C. 552(c) (2) and (9). These documents reflect the internal procedural practices of the NCHSR and contain the views, judgments, and deliberations of Federal employees and their disclosure would frustrate the implementation of future agency actions.

During the close sessions of the meeting, the Subcommittee will: Examine the documents which contain the information and opinions gathered; discuss the findings which emerge from the materials reflecting and discussing the Department's technology assessment and coverage recommendation practices and their relative significance; and consider options for addressing the major issues emerging form the subcommittee's examination of the assessment and coverage recommendation process. In order to maintain the confidentiality of these documents, the portions of the meeting devoted to discussion of them will be closed to the public.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mrs. Kelly Fennington, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–5650.

Agenda items are subject to change as priorities dictate.

Date: October 6, 1987.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–23982 Filed 10–15–87; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commission

[Docket No. 87–1727; FR–2396]

Transitional Housing Demonstration Program; Notice of Fund Availability; Modification of Selection Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability—Modification.

SUMMARY: On September 3, 1987 (52 FR 33536), HUD published a Notice of Fund Availability announcing the requirements that will govern the use of $65 million in funds appropriated for the Transitional Housing Demonstration Program by the Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987). The Notice annouunced that the selection of applications would be governed by the Transitional Housing Demonstration Program Guidelines published June 9, 1987 (52 FR 21743), with certain modifications. This notice announces additional modifications to the selection procedures.

EFFECTIVE DATE: October 16, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 3, 1987 (52 FR 33536), HUD published a Notice of Fund Availability announcing requirements that will govern the use of $65 million in funds appropriated for the Transitional Housing Demonstration Program by the Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987). The Notice announced that the selection of applications would be governed by the Transitional Housing Demonstration Program Guidelines ("THDP guidelines") published June 9, 1987 (52 FR 21743), with certain modifications, and set dates for the submission of applications.

The Notice was published while HUD was in the process of analyzing applications seeking funding under the first announcement of fund availability under the Transitional Housing Demonstration Program on June 9, 1987. HUD's experience with the applications submitted under that first announcement has prompted HUD to consider additional modifications to the selection procedures.

Under the THDP guidelines, the selection process has four stages: (1) The application is reviewed to determine if it meets certain threshold requirements; (2) Applications meeting the threshold requirements are ranked in relation to other applications under specified ranking critieria; (3) HUD performs a compliance review on a number of highly ranked applications in accordance with environmental requirements; and (4) HUD makes final selections from those applications that pass the environmental review.

HUD has found that many meritorious applications are being eliminated during the threshold stage because the applicants have failed to understand the application requirements and selection procedures. This problem is largely due to the fact that many of the applicants under the Transitional Housing Demonstration Program are inexperienced with HUD procedures. HUD believes that many of these promising applications can be rehabilitated through HUD's provision of technical assistance during the application processing procedure. HUD believes that these revisions to the application selection procedure are essential to permit the use of all of the $65 million available for funding under the September 3, 1987 Notice of Fund Availability.

Accordinlgy, HUD has decided to revise the application selection procedures. Under these revised procedures, HUD will offer assistance to applicants following the submission of their applications to assist them in meeting the following threshold criteria: (1) Leveraging (THDP guidelines—section IV.D.2.(iii), 52 FR at 21764–65); (2) Site control (THDP guidelines—section IV.D.2.(iv)(d)(1), 52 FR at 21765); and (3) Zoning (THDP guidelines—section IV.D.2.(iv)(d)(2). HUD has found that these threshold criteria are the ones most often misunderstood and most readily correctable during the time period set for threshold review.

If, during the threshold review, HUD finds deficiencies in the application under any of the cited threshold criteria and determines that the deficiencies are correctable within a reasonable time, HUD will: (1) Contact the applicant, (2) Identify the deficiency and explain how the deficiency can be remedied, and (3) Provide the applicant with a reasonable time period to correct the application. In addition to this technical assistance, HUD will continue its current practice of contacting applicants for clarification regarding ambiguities in their application submissions.

HUD emphasizes that the June 9, 1987 THDP guidelines, except as revised by the Notice of Fund Availability and this Notice, continue to govern the use of amounts appropriated under the Supplemental Appropriations Act, 1987.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implements section 102(2) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection in the Office of the General Counsel, Rule Docket Clerk, at the above address.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1960 (44 U.S.C. 3501–3520). The OMB control number is 2502–0361.

The catalog of Federal Domestic Assistance Number is 14.178.

Authority: Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987; section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 7, 1987

James E. Schoenberger,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 87–24053 Filed 10–15–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–965–4213–15; F–14880–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kikiktagruk Inupiat Corporation for approximately 20 acres. The lands involved are in the vicinity of Kotzebue, Alaska.

Tract 10, U.S. Survey No. 2645, Alaska, *excluding* that portion retained in Federal ownership is more particularly described as follows:

Commencing at corner No. 1, Tract 10, U.S. Survey No. 2645, thence S. 32°725' E., 311 feet to corner No. 1 of this description and the true point of beginning.

From corner No. 1, by metes and bounds: S. 77°01'30" E., 945 feet to corner No. 2; thence S. 12°58'30" W., 666 feet to corner No. 3; thence N. 77°01'30" W., 945 feet to corner No. 4; thence N. 12°58'30" E., approximately 666 feet to corner No. 1, the point of beginning.

Containing approximately 14.45 acres.

This tract, as described, contains approximately 20 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Tundra Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office,

701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until November 16, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Bonnell,

Lead Land Examiner.

[FR Doc. 87–24020 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–JA–M

Emergency Closure of Public Lands in Travertine Hot Springs, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency closure of public lands.

SUMMARY: Notice is hereby given that effective immediately all public lands in the SW¼ of Section 34, T. 5 N., R. 25 E., MDM, located west of the Travertine Hot Springs perimeter road with the exception of the Travertine Hot Springs access road are closed to all motorized vehicle and bicycle access. The Travertine Hot Springs perimeter road is also closed to through traffic at the quarry site. The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until further notice.

SUPPLEMENTARY INFORMATION: The purpose of this closure is to protect the scenic and natural resource values located within the Travertine Hot Springs ACEC. Maps of the closed area are available at the Bishop Resource Area Office, Bishop, California.

FOR FURTHER INFORMATION CONTACT: James S. Morrison, Area Manager, 873 N. Main St. Suite 201, Bishop, California 93514 (619) 872–4881.

Dated: October 9, 1987.

Robert E. Beehler,

Acting Area Manager.

[FR Doc. 87–24013 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–40–M

Designation of the Travertine Hot Springs Area of Critical Environmental Concern, Bishop Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice that certain public lands in the Bishop Resource Area, Bakersfield District, California are designated as an Area of Critical Environmental Concern (ACEC).

SUMMARY: Notice is hereby given pursuant to authority in the Federal Land Policy and Management Act of 1976 (section 202(c)), 43 CFR Part 1610, and land use decisions developed in the Bodie/Coleville Management Framework Plan (July 1983), that public lands near Bridgeport, California are designated as an Area of Critical Environmental Concern. The approximately 160 acres of public land are described as follows:

Mount Diablo Meridian, California

T. 5 N., R. 25 E.,
Sec 34, SW¼.

SUPPLEMENTARY INFORMATION: The Travertine Hot Springs ACEC is located in Mono County about 1 mile southeast of Bridgeport, within the Bishop Resource Area of the Bakersfield District. This ACEC is established to protect the unique formations of travertine and the associated natural values. The travertine is formed by a combination of evaporation and chemical interaction between the carbonate-laden spring water and the air. This particular location is unique because of the shape and mode of disposition.

Management of this area as an ACEC will include the following:

1. Protect the geologic, interpretive and cultural resources of the site from further extensive degradation;

2. Improve public recreation access to the site and facilitate recreation use of the site;

3. Clean up debris and reclaim the area where feasible to improve aesthetics and public health and safety needs;

4. Geothermal development can occur within the above-identified goals;

5. Allow some sale of the travertine material within the above identified goals.

Opportunities for public participation were provided through the Management Framework Plan process.

FOR FURTHER INFORMATION CONTACT: James S. Morrison, Area Manager, 873 N. Main St., Suite 201, Bishop, California 93514, (619) 872–4881.

Dated: October 9, 1987.

Robert E. Beehler,

Acting Area Manager.

[FR Doc. 87–24012 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–40–M

[WY–040–07–4212–14; W–87192]

Big Sandy Management Framework Plan

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability Amendment to the Big Sandy Management Framework Plan (MFP)/ Notice of Realty Action, Sale of Public Lands, Sweetwater County.

SUMMARY: The BLM has amended the Big Sandy MFP to allow for the direct sale of the following public lands to PacifiCorp and the Idaho Power Company for use as a flue gas desulfurization pond site:

Sixth Principal Meridian

T. 21 N., R. 101 W.;
Sec. 22, SW¼NE¼, S½NW¼, S½;
Sec. 26, N½NW¼.

Containing 520 acres, more or less.

The lands have been examined through the land use planning process and they are suitable for sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the mining laws. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever occurs first.

DATE: For a period of 45 days from the date this notice is published in the **Federal Register**, any party that participated in the plan amendment and is adversely affected by the amendment may protest this action in accordance with 43 CFR 1610.5–2 only as it affects issues submitted for the record during the planning process.

For a period of 45 days from the date this notice is published in the **Federal Register** interested parties may submit comments regarding the land sale to the District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, WY 82902. Any adverse comments to the sale will be evaluated by the State Director who may vacate or modify the realty action and issue a final determination. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

FOR FURTHER INFORMATION CONTACT: Sally Haverly, Realty Specialist, (307) 362–6422.

SUPPLEMENTARY INFORMATION: Conveyance of the mineral interest except oil and gas will occur simultaneously with the sale of the land.

The patent, when issued, will be subject to existing valid rights and will contain reservations to the United States for oil and gas and ditches and canals. Grazing privileges have been waived.

The planning document and environmental assessment/land report covering the proposed exchange are available for review at the Bureau of Land Management, Green River Resource Area Office.

Hillary A. Oden,

State Director.

[FR Doc. 87–24043 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–22–M

[AZ–020–08–4322–12]

Kingman Resource Area Grazing Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Tuesday, November 17, 1987. The meeting will start at 9:00 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Burro Capture Program and Use of Helicopters and Motor Vehicles.
4. Status of Grazing Program.
5. Report on Range Improvements for F.Y. '87 and F.Y. '88.
6. Range Policy Update.
7. Request for Advisory Board Expenditures.
8. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 8, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–23959 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–08–4322–12]

Phoenix/Lower Gila Resource Areas Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory Board will hold a meeting on Thursday, November 12, 1987. The meeting will start at 9:00 a.m. in the Phoenix District Office Conference Room, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Report on Range Improvements for F.Y. '87 and FY '88.
4. Range Policy Update.
5. Request for Advisory Board Expenditures.
6. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 8, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–23960 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–08–4212–01]

Phoenix District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

DATE: November 19, 8:30 a.m.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona.

SUMMARY: The Phoenix District advisory Council of the Bureau of Land Management meets November 19. The Council will depart from the Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, at 8:30 a.m. and proceed to Lake Carl Pleasant to tour public lands scheduled to become part of the Lake Pleasant Resource Conservation Area. A formal meeting will be held at the lake. Members of the public may accompany the Council, but must provide their own transportation and lunch.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

—Lake Pleasant Resource Conservation Area
—Phoenix Resource Area Resources Management Plan
—BLM Management Updates
—Business from the Floor
—Public Comments and Statements
—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters are welcome.

Dated: October 8, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–23961 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–32–M

[OR–030–07–4322–02–GP8–004]

Vale District Multiple-Use Advisory Council; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is given in accordance with Pub. L. 92–463 that a meeting of the Vale District Multiple-Use Advisory Council will be held November 12, 1987. The Advisory Council will discuss recommendations for the Trout Creek Mountains Management Plan, the district program dealing with agricultural trespass, district recommendations for the final EIS on wilderness, and the proposal for an Oregon Trail visitor center at Flagstaff Hill in Baker County.

The meeting is open to the public. Interested persons may make oral statements to the board or may file written statements for the board's

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consideration. Anyone wishing to make oral statements may do so at 1:00 p.m. the day of the meeting.

Summary minutes of the council's meeting will be maintained in the district office and will be available during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATES: The meeting will begin at 9:00 a.m. November 12, 1987.

ADDRESSES: The meeting will take place in the conference room of the District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, OR 97918.

William C. Calkins,

District Manager.

[FR Doc. 87-23962 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-33-M

[WY-920-08-4111-15; W-88117]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-88117 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-88117 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andew L. Tarshis,

Chief, Leasing Section.

October 7, 1987.

[FR Doc. 87-23963 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-050-08-4212-11; A-23010]

Realty Action; Lease of Public Land in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease of public land in Mohave County.

SUMMARY: The following described lands are presently a part of a Reclamation Lease for public school purposes to the Bullhead City Elementary School District No. 15. The United States Postal Service is interested in acquiring the lands for construction of a new Main Post Office in Riviera, Arizona. This action involves acceptance of a relinquishment of the subject lands from the school district and a simultaneous notice of our intent to lease them to the U.S. Postal Service under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et. seq.):

T. 20 N., R. 22 W., Gila and Salt River Meridian, Arizona,
Sec. 20, portion of NW¼SW¼NW¼, containing 5.179 acres.

Leasing of these lands is consistent with the Bureau's planning for this area and would be in the public interest.

The relinquishment from Bullhead City Elementary School District No. 15 will be accepted concurrent with publication of this Notice of Realty Action.

Subject to all valid existing rights, the lands are hereby segregated from appropriations under any other public land law, including location under the mining laws. The segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

DATES: For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objects will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, effective 60 days from the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Date: October 6, 1987.

J. Darwin Snell,

District Manager.

[FR Doc. 87-23964 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-07-5410-10-ZBJK; CA 19781]

Realty Action; Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this order will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, California State Office, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Mount Diablo Meridian

T. 4 S., R. 18 E.,
Sec. 15, SW¼ SE¼.

This area described contains 40.00 acres in Mariposa County. Currently 100 percent of the mineral interests in these lands is owned by the United States.

The application was filed on July 20, 1987. Upon publication of this Notice of Realty Action in the **Federal Register** as provided in 43 CFR 2091.3-1(c) and 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and

time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of filing of the application, whichever occurs first (43 CFR 2091.3–2(a)).

Date: October 6, 1987.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 87–23965 10–15–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4212–13; CA 19492]

Exchange of Public and Private Lands in Calaveras and Placer Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document.

SUMMARY: The purpose of this exchange was to acquire the non-Federal lands because they have high public values for recreation. These lands are within the North Fork of the American River canyon which was designated a Wild and Scenic River in 1978. The acquisition will protect the area and its spectacular scenery as well as provide public access to a remote section of the river. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978–4818.

The United States issued an exchange conveyance document to Gerald E. Hodnefield and Shirley A. Hodnefield on April 2, 1987, pursuant to Sec. 206 of the Act of October 21, 1987 (43 U.S.C. 1716), for the following described lands:

Mount Diablo Meridian, California

T. 5 N., R. 14 E.,
Sec. 5, lots 2, 10, 11, 12, and 13;
Sec. 7, E½2NW¼.
T. 6 N., R. 14 E.,
Sec. 31, SE¼NW¼;
Sec. 32, lots 9 and 10.

containing 200.13 acres of public land in Calaveras County.

In exchange for these lands, the United States acquired the following described land from Gerald E. Hodnefield and Shirley A. Hodnefield:

Mount Diablo Meridian, California

T. 15 N., R. 10 E.,
Sec. 1, lots 12 and 15, W½ of lot 1 of E½, lot 2 of E½, E½ of lot 1 and lot 2 of W½, and N½SW¼.

containing 344.09 acres of non-Federal land in Placer County.

A payment in the amount of $1,600 has been paid to the United States by Gerald E. Hodnefield and Shirley A. Hodnefield to equalize values between the non-Federal land and the public lands.

Dated: October 6, 1987.

Rose Fairbanks,

Acting Chief, Branch of Adjudication and Records.

[FR Doc. 87–23966 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–40–M

[OR 910 4212–13 GP8–003]

Exchange of Public Lands in Josephine and Curry Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public lands in Josephine and Curry Counties, Oregon.

SUMMARY: This Notice is to advise the public that the Glendale and Grants Pass Resource Areas of the Medford District Bureau of Land Management (BLM) and private landowner Larry Brown are proposing a land exchange.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 35 S., R. 6 W.,
Section 29: NW¼NW¼.
T. 36 S., R. 7 W.,
Section 11: NW¼NW¼NW¼, N½SW¼NW¼NW¼.
T. 37 S., R. 6 W.,
Section 11: N½NW¼;
Section 17: SW¼SW¼, SE¼SE¼.

The area described comprises approximately 215 (±) acres in Josephine County, Oregon.

The Federal Government will acquire the following described private lands from Larry Brown:

Willamette Meridian

T. 32 S., R. 10 W.,
Section 36: SE¼SW¼, SW¼SE¼.
T. 33 S., R. 10 W.,
Section 1: Lots 1, 2, S½NE¼, S½NW¼, NE¼SW¼;
Section 2: NE¼NE¼SE¼NE¼, S½NE¼NE¼, N½SE¼SE¼NE¼.

The above described area comprises approximately 375 (±) acres in Curry County, Oregon.

The purpose of the land exchange (identified by serial number or 42239) is to facilitate resource management opportunities by the Glendale Resource Area, Medford District. The private land being offered have very important values for timber, which would be managed as mandated by the O&C Act, and for wildlife. The exchange would block of ownership of BLM administered lands in the area. The selected BLM parcels are isolated tracts, non-contiguous to other BLM lands, and in some cases lacking legal access. The parcels are mostly timbered, however, because of the above factors and their direct proximity to rural residences and highly populated areas BLM timber management on the parcel would be uneconomical and difficult. The public interest will be highly served by making this exchange.

Acreage consisting of any or all of the BLM parcels to be exchanged must be approximately equal in value to the acreage offered by Mr. Brown, and upon completion of the final appraisal of the lands, cash equalization payments will be made if the values are within twenty-five percent (25%).

The exchange will be subject to:

1. Reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including, but not limited to, any right-of-way, easement of lease of record.

Publication of this notice in the **Federal Register** will segregate the public lands described above, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, is available for review at the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Medford District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action.

Date: October 8, 1987.

David A. Jones,

District Manager.

[FR Doc. 87–23967 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–33–M

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Geological Survey

Establishment of the Closing Date for Transmittal of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1989

Applications are invited for research projects under the NEHRP.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Pub. L. 95–124. (42 U.S.C. 7701, *et. seq.*)

The purpose of this program is to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications must be received on or before January 28, 1988.

Program Information: This program supports research related to the following general areas of national interest: (1) Current tectonic and earthquake potential studies—analysis of regional seismic network data, identification of source zone characteristics, and earthquake potential estimates; (2) earthquake prediction research—prediction methodology and evaluation, focused earthquake prediction experiments, and theoretical, laboratory, and fault zone studies; and (3) regional earthquake hazards assessments—geologic and seismic hazard evaluation and synthesis, loss estimation modeling, and implementation.

Application Forms: The program announcement is expected to be available on or about November 2, 1987. You may obtain a copy of announcement 7346 by writing to Melissa Calloway, U.S. Geological Survey, Branch of Procurement and Contracts—MS 205C, 12201 Sunrise Valley Drive, Reston, VA 22092.

Organizations that applied for a FY 1988 award and organizations that requested to be retained on the mailing list since the last announcement, will be mailed a copy of the program announcement.

Further Information: For further information contact Dr. Elaine Padovani, Deputy Chief, External Research Program, Office of Earthquakes, Volcanoes, and Engineering—MS 905, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703–648–6722.

(Catalog of Federal Domestic Assistance Number 15.807)

Dated: October 9, 1987.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 87–23926 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[Ut–942–08–4212–13; U–51387, U–53678, U–53696]

Conveyance of Public Land; Order Providing For Opening; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The action informs the public of the conveyance of 460.30 acres of public land out of federal ownership. This action will also open 492.99 acres of reconveyed land to surface entry and 416.98 acres of reconveyed land to mining and mining leasing.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111 (Telephone 801–524–3074)

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2743, a patent has been issued transferring 11.44 acres of land in Washington County, Utah, from Federal to private ownership.

2. In exchange, the following described land has been reconveyed to the United States.

Salt Lake Meridian

Begining at the center ¼ of Section 22, T43S, R16W, SLB&M; thence N 0 degrees 03'42" W, along the center section line 583.28 feet to the special meander corner of said Section 22; thence along the 1972 meanders of the Virgin River as follows; N 64 degrees 48'00" W, 362.34 feet; thence N 2 degrees 30'16" E, 533.05 feet; thence N 52 degrees 43'00" E, 474.54 feet thence N 69 degrees 35'00" E, 433.00 feet; thence leaving said meander line S 0 degrees 03'42" E, 1,985.98 feet to a point on the East/West center line of said Section 22; thence S 89 degrees 64'47" W, 744.33 feet along the center section line to the point beginning.

The area described contains 36.01 acres in Washington County.

3. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat 2743, a patent has been issued transferring 408.59 acres of land in Box Elder County from Federal to private ownership.

4. In exchange, the following described land has been reconveyed to the United States.

Salt Lake Meridian

T. 11 N., R. 17 W.,
Sec. 7, lot 4, SE¼¼, W½SW¼SE¼, W½E½SW¼SE¼.
T. 12 N., R. 18 W.,
Sec. 15, SW¼NW¼,
Sec. 22, N½NW½, E½W½SW¼NW¼, E½SW¼NW¼, SE¼NW¼,NW¼SE¼, W½NE¼.

The area contains 416.98 acres in Box Elder County.

5. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat 2743, a patent has been issued transferring 40 acres of land in Tooele County from Federal to private ownership.

6. In the exchange, the following described land has been reconveyed to the United States.

Salt Lake Meridian

T. 6 S., R. 6 W.,
Sec. 25, SW¼NW¼.

Area contains 40 acres in Tooele County

7. The mineral estates in the land described in paragraphs 2 and 6 are not in United States ownership and will not be opened to operation of the mining and mineral leasing laws.

8. At 9:00 am, on November 2, 1987, the lands described in paragraphs 2, 4 and 6 will be open to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 am, on November 2, 1987, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

9. At 9:00 am, on November 2, 1987, land described in paragraph 4 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

10. At 9:00 am, November 2, 1987 the land described in paragraph 4 will be open to applications and offers under the mineral leasing laws.

Date: October 9, 1987.

Orval L.Hadley,

Chief, Branch of Lands and Minerals, Operations.

[FR Doc. 87-23919 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-040-08-4212-14; N-37052]

Realty Action; Nevada; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the **Federal Register** Vol. 52, No. 181 published on Friday, September 18, 1987, on page 35333 in the second line of the title and in the second line under Action, White Pine County should read Lincoln County.

Dated: October 8, 1987.

Kenneth G. Walker,

District Manager.

[FR Doc. 87-24022 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-HC-M

[UT-060-4410-08]

Public Workshop; San Rafael Resource Management Plan

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of public workshop, San Rafael Resource Management Plan.

SUMMARY: A public workshop will be held November 18 at 6:30 p.m. in Huntington, Utah at Canyon View Junior High School. The workshop is to gather public input for alternatives to be assessed in the San Rafael Resource Management Plan environmental impact statement (RMP/EIS).

FOR FURTHER INFORMATION CONTACT: Jim Dryden, San Rafael Resource Area Manager, 900 North 700 East, P.O. Box AB, Price, UT 84501; (801) 637-4584.

SUPPLEMENTARY INFORMATION: In response to public requests, the Moab District will hold a workshop to solicit ideas from the public regarding management of public lands in the San Rafael Resource Area and the Forest Planning Unit of the Sevier River Resource Area. The public will be asked to provide ideas for alternative plans to be assessed in the San Rafael RMP/EIS.

Interested individuals, representatives of organizations, public officials, and representatives of other governmental agencies are invited to attend. The workshop will provide an informal means to gather suggestions.

The San Rafael RMP will provide management direction for the San Rafael Resource Area, containing approximately 1.5 million acres of public land in Emery County, Utah (managed by the Moab District, BLM); and for the Forest Planning Unit, containing about 0.1 million acres of public land in Sevier County, Utah (managed by the Sevier River Resource Area, Richfield District, BLM). The RMP/EIS will also assess impacts to grazing on about 1.6 million acres of public rangelands in Emery, Sevier, and Wayne Counties. The RMP/EIS alternatives will provide different scenarios for managing public lands and resources in order to gauge the potential environmental effects.

The workshop will start at 6:30 p.m. on Wednesday, November 18, 1987. It will be held in the Common Room, Canyon View Junior High School, Huntington Canyon Road, Huntington, Utah.

Gene Nodine,

District Manger.

[FR Doc. 87-23968 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-942-06-4520-12]

Colorado; Filing of Plats of Survey

October 8, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., October 8, 1987.

The plat representing the dependent resurvey of a portion of the Old North Boundary of the Southern Ute Indian Reservation (south boundary), the west boundary, and a portion of the subdivisional lines, and the survey of the subdividion of sections 6 and 7, T. 34 N., R. 16 W., North of the Ute Line, New Mexico Principal Meridian, Colorado for Group No. 717, was accepted October 2, 1987.

The plat representing the dependent resurvey of portion of the south and west boundaries and the subdivisional lines, and the survey of the subdivision of certain sections, T. 35 N., R. 16 W., New Mexico Principal Meridian, Colorado for Group No. 717 was accepted October 2, 1987.

The plat representing the dependent resurvey of portion of the north boundaries and the subdivisional lines, and the survey of the subdivision of certain sections, T. 35 N., R. 17 W., North of the Ute Line, New Mexico Principal Meridian, Colorado for Group No. 717, was accepted October 2, 1987.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the corrective dependent resurvey and the retracement of a portion of the subdivision lines, T. 36 N., R. 9 W., New Mexico Principal Meridian, Colorado for Group No. 813, was accepted October 2, 1987.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Duane E. Olsen,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-24014 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.):

PRT-721876

Applicant: Doc Jones Thurston, Charlotte, NC.

The applicant requests a permit to import one captive-born Bengal tiger (Panthera tigris) trophy that he shot while on safari in South Africa for the purpose of display.

PRT-721953

Applicant: National Museum of Natural History, Washington, DC.

The applicant requests a permit to import salvaged specimes of golden lion tamarins (Leontopithecus rosalia) resulting from accidental or natural deaths of specimens held in captivity worldwide for scientific research.

PRT-722143

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant request a permit to import nine unsexed captive-born golden-shouldered (=hooded) parakeets (Psephotus chrysopterygius dissimilis) from Ken Chisholm, Quebec, Canada for the purpose of exhibition, education, and captive propagation.

PRT-72222

Applicant: Wayne H. Viden, Glassboro, NJ.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas) culled from the captive herd of George Fletcher in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.), Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service at the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: October 9, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-24059 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5714, 5715, and 5716, Blocks 202, 203, and 208, respectively, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on October 5, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 7, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-23969 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5983, Block 752, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base locted at Harbor Island, Texas.

DATE: The subject DOCD was deemed submitted on October 5, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: October 7, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-23970 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; McMoRan Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Oil & Gas Co. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4794, Block 167, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the

development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 7, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 8, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23971 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination Document; Southland Royalty Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Southland Royalty Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5405, Block 88, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 6, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 7, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23972 Filed 10–15–87; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1187, Block 27, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 8, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

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Dated: October 9, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-24015 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; Walter Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil & Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4721, Block 350, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on October 8, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 9, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-24017 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; Walter Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil & Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8132, Block 385, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hyrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on October 8, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 9, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-24016 Filed 10-15-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Action To Restore Channel Capacity in Rio Grande Rectification and Boundary Preservation Projects; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action to restore channel capacity to two international projects on the Rio Grande in Hudspeth County, Texas is not a major Federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500-1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of the National Environmental Policy Act (NEPA), published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement is not being prepared for the joint international project.

ADDRESS: Mr. M.R. Ybarra, U.S. Section Secretary; International Boundary and Water Commission, United States and Mexico, United States Section; The Commons, C-310; 4171 North Mesa; El Paso, Texas 79902. Telephone: (915) 534-6698, FTS 570-6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the U.S. Section conduct channel work in the Rio Grande in the uppermost 2.54-mile segment of the Boundary Preservation Project including the Litle Box Canyon, the uppermost canyon reach in that project in order that flood control capacity in the Rectification Project can be restored. The proposed work will include sediment removal, channel widening, channel deepening, and appropriate mitigation. The channel work will be performed in connection with channel maintenance work

scheduled in the lowermost 16 miles of the Rectification Project.

Alternatives Considered

Two alternatives were considered:

The Proposed Action Alternative provides for widening and deepening of the Rio Grande channel from downstream of Little Box Canyon, in the Boundary Preservation Project, upstream to the Rectification Project, a distance of 2.54 miles. The aim of the channel work is to increase channel capacity in order to avoid ponding of the flows upstream of the canyon.

Channel work in the uppermost 2.54 miles of the Boundary Preservation Project requires a channel top width of 90 feet and a depth of 6 to 8 feet for a discharge of 2,000 cfs. Spoil (excavated silt), for the most part, will be placed in Mexico beyond 100 feet from the river centerline. When spoil must be placed in the United States, it will be placed beyond 100 feet from the river centerline according to current Boundary Preservation Project construction practices.

The No Action Alternative is a continuation of current conditions. Routine operation and maintenance activities will continue in both the Rectification and Boundary Preservation Projects when stream conditions permit. The "bottleneck" created by the downstream project and canyon will remain. There will be no change in current conditions with the probability these conditions will become worse in the future. Because the present situation is unacceptable and will only worsen if nothing is done, the "no action" alternative has been rejected.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment on October 6, 1987.

Findings of the Environmental Assessment

The Draft Environmental Assessment finds that:

1. The proposed channel work will provide drainage of valuable agricultural lands in Hudspeth County, Texas protected by the Rectification Project.

2. The planned work is not expected to have significant impact on wildlife and habitat in the area, and the habitat within the Boundary Preservation Project that is subject to removal will be mitigated. The mitigation plan is being developed in coordination with the Texas Parks and Wildlife Department.

3. No endangered and/or threatened species in the area or habitat critical to the continued existence of these species will be affected by the action.

4. Existing cultural resources within the area will be avoided during the proposed channel work.

On the basis of the Draft Environmental Assessment, the U.S. Section determines that an environmental impact statement is not required for the proposed action to restore channel capacity in the Rio Grande Rectification and Boundary Preservation Projects and hereby supplies notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this notice.

The Draft Finding of No Significant Impact (FONSI) and Draft Environmental Assessment (EA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the Draft FONSI and Draft EA are available to fill single copy requests at the above address.

Dated: October 7, 1987.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 87-24021 Filed 10-15-87; 8:45 am]

BILLING CODE 4710-03-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31119]

Exemption; Aberdeen and Rockfish Railroad Co.; Continuance in Control; Pee Dee River Railway Corp.

Aberdeen and Rockfish Railroad Company (Aberdeen and Rockfish) has filed a notice of exemption under 49 CFR 1180.4(g) regarding its continuance in control of Pee Dee River Railway Corporation (Pee Dee) under the provisions of 49 CFR 1180.2(d)(2). Pee Dee, a wholly owned non-carrier subsidiary of Aberdeen and Rockfish, has filed concurrently a notice of exemption in Finance Docket No. 31118, *Pee Dee River Railway Corporation—Acquisition and Operation Exemption—Marlboro County, SC, Rail Line.* There, Pee Dee seeks an exemption to acquire by lease and operate a 16.79-mile line of railroad extending between McColl and Marlboro, SC, and an additional track known as the Breeden Spur between Bennettsville and Breeden, SC. The line will be acquired from Marlboro County, a South Carolina municipal corporation, after Marlboro County purchases the line from CSX Transportation, Inc. (CSX). CSX recently was authorized to abandon the line in Docket No. AB-55 (Sub-No. 199), *CSX Transportation, Inc.—Abandonment—In Marlboro County, SC* (not printed), served August 25, 1987.

According to Aberdeen and Rockfish, the acquisition and control transaction will result in continuation of service over the line to the benefit of shippers and receivers, and revenues generated by operations over the line will accrue to the benefit of Aberdeen and Rockfish and Pee Dee.

Aberdeen and Rockfish indicates that: (1) Its line will not connect with Pee Dee's line; (2) the acquisition is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the acquisition does not involve a Class I Carrier. Therefore, this transaction involves the continuance in control of a non-connecting carrier, and is exempt from the prior review rquirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Prceedings.

Noreta R. McGee

Secretary.

[FR Doc. 87-23703 Filed 10-15-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31118]

Exemption Pee Dee River Railway Corp.; Acquisition and Operation; Marlboro County, SC, Rail Line

The Pee Dee River Railway Corporation (Pee Dee), a wholly owned non-carrier subsidiary of Aberdeen and Rockfish Railroad Company (Aberdeen and Rockfish), has filed a notice of exemption to acquire by lease and operate 16.79-miles of railroad extending

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. The Commisison routinely has imposed labor protection in this type of proceeding.

between McColl, SC (MP AG–259.40) and Marlboro, SC (MP AG–276.19),[1] and including track known as the Breeden Spur between Bennettsville and Breeden, SC (between MP AGA–269.23 and MP AGA–272.38), 485 feet of Track 13 beyond the junction of Track 13 and Track 4 at MP–259.40 in McColl, SC, and the wye connecting Track 4 from MP AG–259.231 to MP AG–259.40 in McColl, SC. The line will be acquired from Marlboro County, a South Carolina municipal corporation, after Marlboro County purchases the line from CSX Transportation, Inc. (CSX). CSX recently was authorized to abandon the line in Docket No. AB–55 (Sub-No. 199), *CSX Transportation, Inc.—Abandonment—In Marlboro County, SC* (not printed), served August 25, 1987. The agreement between Pee Dee and Marlboro County was to be consummated on September 25, 1987, and Pee Dee was to begin operating over the line during the week of September 28, 1987.

A transaction relating to the control of Pee Dee is the subject of a notice of exemption filed concurrently in Finance Docket No. 31119, *Aberdeen and Rockfish Railroad Company—Continuance in Control Exemption—Pee Dee River Railway Corporation.* Any comments must be filed with the Commission and served on William C. Evans, 1660 L Street, NW., Suite 1000, Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23704 Filed 10–15–87; 8:45 am]

BILLING CODE 7035–01–M

[1] Pee Dee will also acquire by lease, and operate, the track between MP AG–276.19 and MP AG–277.62. This segment of track, however, is either an industrial track or a spur. This Commission had no jurisdiction over the abandonment of that segment by CSX, nor does it have jurisdiction over its acquisition by Pee Dee. *See* 49 U.S.C. 10907(b)(1). Although nominally designated as a spur, the track between Bennettsville and Breeden was authorized for abandonment in Docket No. AB–55 (Sub-No. 199). Accordingly, the exception in section 10907(b)(1) is apparently not applicable to this track.

DEPARTMENT OF LABOR

Employment and Training Administration Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 26, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 26, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 5th day of October 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner, Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Adirondack Steel (Workers)	Watervliet, NY	10/5/87	9/14/87	20, 135	Steel
Anwelt Shoe Corp. (Workers)	Fitchburg, MA	10/5/87	9/25/87	20, 136	Footwear
Behring Diagnostics (Company)	La Jolla, CA	10/5/87	9/17/87	20, 137	Biochemicals
Craddock-Terry Shoe (Workers)	Halifax, VI	10/5/87	9/22/87	20, 138	Shoes
Eaton Corporation, Fluid Power, Div. (UAW)	Marshall, MI	10/5/87	9/1/87	20, 139	Pumps
Frazier Engineering Inc. (Workers)	Greenfield, IN	10/5/87	9/14/87	20, 140	Furniture
Frazier Engineering Inc. (Workers)	Morristown, IN	10/5/87	9/14/87	20, 141	Furniture.
G.A. Gray Co. (USWA)	Cincinnati OH	10/5/87	9/28/87	20, 142	Tools.
International Wire Products Co. (URC & PWA)	Wyckoff, NJ	10/5/87	9/22/87	20, 143	Wire
Kanawha Coal Co. (UMWA)	Ashford, WV	10/5/87	9/18/87	20, 144	Coal
LTV Steel Co. Gateway View Plaza (Company)	Pittsburgh, PA	10/5/87	9/20/87	20, 145	Steel.
Lambert Wood Properties	Refugio, TX	10/5/87	9/23/87	20, 146	Oil and Gas
Latex Industries, Inc. (UPI)	Chippewa Lake, OH	10/5/87	9/24/87	20, 147	Catheters.
Mt. Carmel Fashions (ILGWU)	Mt. Carmel, PA	10/5/87	9/23/87	20, 148	Blouses
Mt. Carmel Fashions (ILGWU)	Girardville, PA	10/5/87	9/23/87	20, 149	Blouses.
O.M. Edwards Co., Incorp. (IABSOIW)	Syracuse, NY	10/5/87	9/24/87	20, 150	Doors, window sashes
Sanjo Dress (Workers)	New York, NY	10/5/87	9/23/87	20, 151	Dresses.
Seamless Hospital Products (Workers)	Fayette, AL	10/5/87	9/24/87	20, 152	Medical products
Shanhouse Outerwear Inc. (Workers)	Magnolia, AR	10/5/87	9/2/87	20, 153	Coats
Ship & Shore (Workers)	Travelers Rest S.C.	10/5/87	9/27/87	20, 154	Blouses
Stolper Industries, Inc. (AIW)	Menomonee Falls, WI	10/5/87	9/22/87	20, 155	Stampings.
TRW–EPI (Workers)	Colorado Springs, CO	10/5/87	9/28/87	20, 156	Coding devices

[FR Doc. 87–24003 Filed 10–15–87; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA-W-19,993]

Cedar Coal Co., Central Rebuild Shop, South Charleston, WV; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Cedar Coal Company, Central Rebuild Shop, South Charleston, West Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,993; Cedar Coal Company, Central Rebuild Shop, South Charleston, West Virginia (October 2, 1987.)

Signed at Washington, DC this 6th day of October 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-24002 Filed 10-15-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,766]

Mattel Toys, City of Industry, CA; Negative Determination Regarding Application for Reconsideration

By an application dated August 10, 1987, counsel for the United Rubber Workers (URW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Mattel Toys, City of Industry, California. The denial notice was signed on July 13, 1987 and published in the **Federal Register** on July 28, 1987 (52 FR 28205).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel claims that employees now on layoff were involved in the production of toys known as "Barbie's Dream House", "Chrystal Castle" and various small plastic toys—vacuum cleaners, chain saws, shopping carts and similar small items whose production was transferred to foreign facilities. Counsel states that the negative determination is erroneously based upon an alleged decline in popularity of a line of toys known as "Masters of the Universe".

Mattel Toys produced about 100 plastic toys at Plant IV in 1986 before closing in December, 1986. Investigation findings show that the plant product mix has changed radically as fashions in toys have changed. Company officials indicated that toy production is complicated by the fact that specific toys produced in one year may not be produced in the next year because of the change in popularity.

The two major product lines in recent years have been "Barbie Dolls" and the "Masters of the Universe" series. Sales and company imports of the Masters series increased in 1986 compared to 1985 before declining in the first six months of 1987 compared to the same period in 1986. Investigation findings show that Plant IV only produced some of the accessories for this line. Company officials stated that the decline in the Masters series was due to an abrupt decline in popularity as company sales and imports of this line decreased. Sales and company imports of the Barbie line increased in 1986 compared to 1985. Company officials stated that Plant IV only produced the larger accessories for the Barbie line (i.e., Barbie's Dream House); these accessories were not produced overseas. According to company officials, most of the Barble line production at Plant IV was transferred to other domestic locations.

Other investigation findings show that Plant IV production of Crystal Castle and other plastic toys—vacuum cleaners, shopping carts and chain saw were transferred to other domestic sources. Only a small percent of the production at Plant IV was transferred to foreign plants during the period applicable to the petition. Workers at Plant IV were not separately identifiable by toy.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 29th day of September, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-24001 Filed 10-15-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 31, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

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volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II:

Louisiana:
LA87–6—pp. 408a–408b

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

District of Columbia:
DC87–1 (January 2, 1987)—pp. 86,91.
Florida:
FL87–17 (January 2, 1987)—p. 154
Virginia:
VA87–14 (January 2, 1987)—pp. 1156–1157

Volume II:

Illinois:
IL 87–2 (January 2, 1987)—p. 98
IL87–7 (January 2, 1987)—p. 136
IL87–16 (January 2, 1987)—p. 206
IL87–17 (January 2, 1987)—p. 216
Louisiana:
LA87–5 (January 2, 1987)—pp. 383–408
Michigan:
MI87–2 (January 2, 1987)—p. 426
Ohio:
OH87–1 (January 2, 1987)—pp. 720–722, pp. 724–732
OH 87–2 (January 2, 1987)—pp. 734–738, pp. 741–747
OH87–3 (January 2, 1987)—pp. 756–760
OH87–28 (January 2, 1987)—pp. 812–813
OH87–29 (January 2, 1987)—pp. 818–829 pp. 831–833, p. 841, pp. 848–853
Listing by Location (index)
pp. xxxii–xxxiv
Listing by Decision (index)
p. lvii

Volume III:

Idaho:
ID87–1 (January 2, 1987) pp. 140–142, pp. 149–150
Nevada:
NV87–5 (January 2, 1987) p. 276c

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 9th Day of October 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87–23915 Filed 10–15–87; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–83]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by November 16, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Excecutive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: NASA FAR Supplement Part 18–43, Contract Modifications.
OMB Number: 2700–0054.
Type of Request: Extension.

Frequency of Report: On occasion.

Type of Respondent: State or local governments, businesses or other for profit, non-profit institutions, small businesses or organizations.

Annual Responses: 1,440.

Annual Burden Hours: 72,000.

Abstract-Need/Uses: Contract must submit engineering changes for evaluation.

October 5, 1987.

Rayburn A. Metcalfe,

Acting Director, General Management Division.

[FR Doc. 87-23923 Filed 10-15-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice 87-84]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal lettes and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by November 16, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washigton, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washigton, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: NASA FAR Supplement, Part 27, Patents, Data and Copyright.

OMB Number: 2700-0052.

Type of Request: Extension

Frequency of Report: Annual, Biennial, Other.

Type of Respondent: State and local governments, businesses or other for profit, non-profit institutions, small businesses or organizations.

Annual Responses: 2,280.

Annual Burden Hours: 27,360.

Abstract-Need-Uses: Records and reports regarding patents and data are required to comply with statutes and the OMB and NASA implementing regulations.

October 5, 1987.

Rayburn A. Metcalfe,

Acting Director, General Management Division.

[FR Doc. 87-23924 Filed 10-15-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice 87-85]

NASA Advisory Council (NAC), Life Sciences Advisory Committee (LSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life Sciences Advisory Committee.

Date and Time: November 6, 1987, 8:45 a.m.—8:30 p.m., November 7, 1987, 8:00 a.m.—12:30 p.m.

ADDRESS: Holiday Inn-Capitol, Clark Room, 550 C Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn D. Griffiths, Code EBF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1545).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee provides advice on the coordination of NASA's life sciences research program. It assists in the long-range planning of space life sciences research and coordinated ground-based research. The committee is composed of 28 members. The meeting will be closed Friday, November 6, from 2 p.m. to 5:30 p.m. to discuss and evaluate the qualifications of candidates being considered for membership on the committee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. Aside from the closed session referenced above, this meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including committee members and other participants).

Meeting: Open—except for a closed session as noted in the agenda below.

Agenda: Friday, November 6, 1987

8:45 a.m.—Welcoming Remarks/ Announcements.

9 a.m.—Office of Space Science and Applications (OSSA) Status Report.

9:30 a.m.—Advisory Committees and OSSA Planning.

10:15 a.m.—Space Station Science Management Study.

11 a.m.—Discussion.

1:15 p.m.—Life Sciences New Initiative Planning.

2 p.m.—Closed Session.

7:30 p.m.—Reports from Other Committees: Committee on Space Biology and Medicine; Committee on Planetary Biology and Chemical Evolution; and Strategic Plan.

8:30 p.m.—Adjourn. Saturday, November 7, 1987.

8 a.m.—LSAC White Paper.

10 a.m.—Status of US/USSR Interaction and COSMOS Flight.

10:30 a.m.—Health Maintenance Facility and Emergency Rescue Vehicle.

11 a.m.—Discussion.

12:30 p.m.—Adjourn.

October 8, 1987.

C. Howard Robins, Jr.,

Deputy Associate Administrator for Management, National Aeronautics and Space Administration.

[FR Doc. 87-23925 Filed 10-15-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Developmental Neuroscience Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience Program.

Date and Time: November 4-6, 1987: 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 642, Washington, DC.

Type of Meeting: Part Open

Closed 11/4—9:00 a.m. to 5:00 p.m.

Closed 11/5—9:00 a.m. to 1:30 p.m. and 2:30 to 5:00 p.m..

Open 11/5/—1:30 p.m. to 2:30 p.m.
Closed 11/6—9:00 a.m. to 5:00 p.m.
Contact Person: Dr. Rodney K. Murphey, Program Director, Developmental Neuroscience Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7042.
Purpose of Meeting: To provide advice and recommendations concerning support for research in the developmental program.
Agenda:
Open—General discussion of the current status and future plans of the Developmental Neuroscience Program.
Closed—To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 13, 1987.

[FR Doc. 87–24036 Filed 10–15–87; 8:45 am]
BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Meeting

The National Science Foundation announces the following meeting:
Name: Earth Sciences Proposal Review Panel
Date: November 4, 5 and 6, 1987.
Time: 8:00 a.m. to 6:00 p.m. each day.
Place: The National Science Foundation, Room 643, 1800 G. Street, NW., Washington, DC 20550
Type of Meeting: Closed
Contact Person: Dr. Ian D. MacGregor, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357–7958
Summary Minutes: May be obtained from the Contact Person at the above address
Purpose of Meeting: To provide advice and recommendations concerning support for research in Earth Sciences
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reasons for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 622b(c). Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 87–24037 Filed 10–15–87; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for the Mathematical Sciences; Meeting

The National Science Foundation announces the following meeting:
Name: Advisory Committee for the Mathematical Sciences
Date and Time:
November 2, 1987—1:00 p.m. to 5:30 p.m.
November 3, 1987—8:30 a.m. to 3:30 p.m.
Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550
Type of Meeting: Open
Contact Person: Dr. Judith S. Sunley, Division Director, Division of Mathematical Sciences, Room 339, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than October 28, 1987.
Purpose of Committee: To provide advice and recommendations concerning support for research in the mathematical sciences.
Agenda:
Monday, November 2, 1987—1:00 p.m.–5:30 p.m.
Introductory activities
Budget update
FY 1987 overview
Strategic planning overview
How is it done at NSF, other agencies
What has been successful in past
Subgroup discussions
1. Documenting needs and opportunities in the mathematical sciences; possible update of the David Report.
2. Coordination of DMS long range plan with that of the Foundation; elaboration of mechanisms to implement mathematical sciences research groups and innovative interactions.
3. Science and Technology Research Centers; short-term and long-term response for the mathematical sciences.
4. Education and human resources; status within mathematical sciences; strategies for developing leadership in these areas.
5. Scientific directions in the mathematical sciences; using the natural tendencies of the discipline strategically; developing a leadership role in interacting with other sciences.

Tuesday, November 3, 1987—8:30 a.m.–3:30 p.m.
Reports from subgroups 1, 2, 3 of previous day
Subgroup discussions
Reports from subgroups 4, 5
Defining a leadership role for the mathematical sciences; strategic planning for the future.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 87–24038 Filed 10–15–87; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for the Prokaryotic Genetics Program; Meeting

The National Science Foundation announces the following meeting:
Name: Advisory Panel for the Prokaryotic Genetics Program
Date and Time: November 2, 3, and 4th, from 9:00 a.m. to 5:00 p.m. each day and completed by noon on Wednesday.
Place: National Science Foundation, 1800 G Street NW., Room 1242, Washington, DC 20550
Type of Meeting: Closed
Contact Person: Dr. Marcus Rhoades, Acting Director, Prokaryotic Genetics, Room 325, Phone: (202) 357–9687
Summary Minutes: May be obtained from the Contact Person at the above address.
Purpose of Meeting: To provide advice and recommendations concerning support for research.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 b (c), Government in the Sunshine Act.

Rebecca Winkler,
Committee Management Officer.
October 13, 1987.

[FR Doc. 87–24039 Filed 10–15–87; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Social and Cultural Anthropology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Social and Cultural Anthropology
Date and Time: November 5–6, 1987, 8:30 a.m.—4:30 p.m. each day.
Place: National Science Foundation, 1800 G. Street, NW., room 639, Washington, DC.
Type of Meeting: Part Open
Closed 11/5—8:30 a.m. to 4:30 p.m.
Closed 11/6—8:30 a.m. to 12:00 p.m.
Open 11/6—1:00 p.m. to 2:00 p.m.
Closed 11/6—2:00 p.m. to 4:30 p.m.
Contact Person: Dr. Stuart Plattner, Program Director, Cultural Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7804.
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for research in cultural anthropology.
Agenda:
Closed—To review and evaluate research proposals as part of the selection process for awards.
Open—To provide advice on trends and opportunities in cultural anthropology.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer
Dated: October 13, 1987.

[FR Doc. 87–24040 Filed 10–15–87; 8:45 am]
BILLING CODE 7555–01–M

United States Antarctic Program Safety Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: United States Antarctic Program (USAP) Safety Review Panel (USRP)
Date and Time: November 2, 3, 1987: 9:00 a.m. to 5:00 p.m. each day.
Place: C.S. Draper Laboratory, Inc., 555 Technology Square, Cambridge, Massachusetts 02139
Type of Meeting: Open
Contact Person: Mr. Russell L. Schweickart, Chairman USAP Safety Review Panel, Room 510, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7673
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: Second meeting of the USAP Safety Review Panel, to review issues from previous meeting and discuss Panel trip to Antarctica on December 7, 1987.
Agenda: A meeting to receive a pre-deployment briefing, to make plans for the Panel's December 7–11, 1987 trip to Antarctica, and to discuss the safety issues of concern to the Panel on this trip.

M. Rebecca Winkler,
Committee Management Officer.
October 13, 1987.

[FR Doc. 87–24035 Filed 10–15–87; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards; Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee) for operation of the Surry Nuclear Power Station, Units 1 and 2, located in Surry County, Virginia.

The proposed amendments would revise section 4.7, "Main Steam Line Trip Valves" of the Surry Units 1 and 2 Technical Specifications by removing the partial-closure test specified in sections 4.7A and 4.7B and replacing it by a more rigorous full-closure test to be performed at each startup. Also, the proposed amendments would remove the discussion of the partial closure test from the Bases section of the Technical Specifications. The proposed amendments would also revise the full-closure test frequency and test conditions, and revise the acceptance criteria for consistency with the accident analysis assumptions. A parallel specification appears in Table 4.1–2A and would be revised to be consistent with the proposed revision to TS 4.7. The Bases section would be expanded to include a discussion of the accident analysis assumptions and derivation of the acceptance criteria for the valve closure time.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the requested amendments involve no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has proposed a modification to section 4.7, "Main Steam Line Trip Valves," of the Surry Units 1 and 2 Technical Specifications. The proposed modification would result in two changes. The first change is the elimination of the partial-closure test specified in section 4.7A, which would be replaced with a more rigorous full-closure test to be performed at each startup instead of at each cold shutdown. The second change involves a revision to the acceptance criterion for Main Steam Trip Valve (MSTV) closure time testing from the present five seconds to a criterion which would result in a more accurate reflection of the assumptions of the existing safety analyses.

The current safety analysis assumes a 5-second time delay from the time the measured process variables (e.g., steam line flow, steam line pressure) reach the main steam line isolation setpoints to the initiation of MSTV motion, followed by an additional 5-second ramp closure of the valves. The proposed surveillance criteria would confirm that each of these components of the MSTV response time are bounded by the analysis assumptions.

The licensee has reviewed the proposed changes against the criteria of 10 CFR 50.92 and has concluded that the changes do not pose a significant hazards consideration as defined therein. Specifically, operation of Surry Power Station with the proposed amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes impact only the Main Steam Trip Valve response time acceptance criteria and associated surveillance frequencies and therefore have no effect on initiating event frequencies. Since the proposed response time criteria remain bounded by the response characteristics assumed in the safety analysis (main steam line break analysis discussed in section 14.3.2 of the Surry Updated Final Safety

Analysis Report), the current analysis results and conclusions are unchanged. Therefore, the proposed changes do not involve any increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The response time characteristics of the engineered safety features have no impact on the range of initiating events previously assessed. Likewise, the revised surveillance frequencies will have no impact. Therefore, new or different kinds of accidents are not created.

3. Involve a significant reduction in a margin of safety. Since the proposed response time criteria for the MSTV's are consistent with the safety analysis assumptions, the existing accident analysis results remain bounding. Therefore, the safety margins are not impacted.

Based on the above considerations, the Commission has made a proposed determination that the requested amendments involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below

By November 16, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (Petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Michael W.

Maupin, Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23213.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petitioner and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 25, 1987, as superseded October 7, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland, this 9th day of October, 1987.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager Project Directorate II–2 Division of Reactor Projects—I/II.

[FR Doc. 87–24049 Filed 10–15–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, November 4, 1987
Wednesday, November 11, 1987
Wednesday, November 18, 1987
Wednesday, November 25, 1987

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

October 9, 1987.

[FR Doc. 87–23984 Filed 10–15–87; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Meeting

Summary: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

Date and Time: October 20, 1987, from 9:30 a.m. to 12:30 p.m.

Address: Room 124 of the Dirksen Senate Office Building, Washington, DC.

For Further Information Contact: Wiley Horsley, Commission Staff Manager, temporarily at the Department of the Interior, 18th and C Streets NW., Washington, DC 20240, 202/343–3347.

Supplementary Information: The purpose of this meeting is the resolution of subject areas for study by the Commission. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including committee members). Places will be allocated on a first come, first served basis.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87–24130 Filed 10–15–87; 8:45 am]

BILLING CODE 3110–01–M

Hearings

Summary: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

Date and Time: October 20, 1987, from 2:00 p.m. to 5:00 p.m.

Address: Room 124 of the Dirksen Senate Office Building.

For Further Information Contact: Wiley Horsley, Commission Staff Manager, temporarily at the Department of the Interior, 18th and C Streets NW., Washington, DC 20240, 202/343–3347.

Supplementary Information: The purpose of this meeting is to hold hearings on housing related privatization issues. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including committee members). Places will be allocated on a first come, first served basis.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87–24131 Filed 10–15–87; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16045; (812–6745)]

The Horizon Funds; Application

Date: October 9, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

BEST COPY AVAILABLE

Applicant: The Horizon Funds.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 18(f)(1), 18(g) and 18(i).

Summary of Application: Applicant seeks an order to permit the issuance and sale of separate classes of shares representing interests in the same investment portfolio that would be identical in all aspects except for class designation and allocation of certain expenses and voting rights.

Filing Dates: The application was filed on June 3, 1987, and amended on September 16 and 25, 1987.

Hearing or Notification of Hearing: If no hearing is orderd, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 3, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Attn: Thomas M. Collins, President, 277 Park Avenue, 38th Floor, New York, New York 10172.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4500).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open-end, management investment company and its registration statement on Form N–1A was declared effective on June 18, 1987. Applicant is a "series" investment company currently offering five series of shares representing interests in five investment portfolios ("Portfolios"), three of which are money market funds. Applicant's distributor and administrator is Concord Financial Group, Inc. ("Concord"), its investment adviser is Security Pacific National Bank ("Security Pacific"), and Mellon Bank, N.A. and Mellon Financial Services Corporation No. 16 are Applicant's custodian and transfer agent, respectively.

2. Shares of Applicant's existing Portfolios ("Existing Shares") are sold solely to institutional investors, such as banks, insurance companies, investment counselors and brokers. Although individuals may not purchase such shares directly, institutional investors may purchase shares for accounts maintained by individuals. Most investors in Applicant's Existing Shares are banks acting in a fiduciary, advisory, agency, custodial or other similar capacity. Such banks often charge the customers for whose benefit they invest in Existing Shares a "sweep fee" or some other fee to compensate them for providing services to their customers. Certain institutional investors may also invest as principal for their own accounts.

3. Shares in the Portfolios are sold and redeemed daily at net asset value without the imposition of a sales or redemption charge. The net asset value per share in each money market Portfolio is calculated based on the amortized cost method of valuation. Net asset value per share in each other Portfolio is calculated based on the mean between bid and asked prices for securities for which market quotations are available and fair value as determined by Applicant's investment adviser for other securities and assets, except that debt securities with remaining maturities of 60 days or less will be valued at their amortized cost. Net asset value per share is determined daily at 4:00 p.m. for each money market Portfolio and at 4:00 p.m. on each day the New York Stock Exchange is open for trading for each other Portfolio. The net investment income of each Portfolio is declared daily and paid monthly to shareholders.

4. All expenses of each Portfolio currently are borne pro-rata by the shareholders of that Portfolio. Portfolio expenses consist of advisory, administrative, custodial and transfer agency fees, as well as other types of operating expenses set forth in Applicant's prospectuses and statement of additional information, subject to certain reimbursement arrangements with Security Pacific and Concord. Applicant has not yet adopted a distribution plan pursuant to Rule 12b–1 under the 1940 Act and does not currently pay Concord for distribution services.

5. Applicant is contemplating the creation of new classes of shares ("New Shares") with the following characteristics. Like the Existing Shares of a Portfolio, the New Shares of a Portfolio would be offered only to institutional investors and could not be purchased directly by individuals. Further, except for class designation and the allocation of certain expenses and voting rights as described below, each class of New Shares of a Portfolio would be identical in all respects and would be subject to the same investment objectives, policies and limitations that apply to the class of Existing Shares to which it is "matched". Unlike the Existing Shares, however, each class of New Shares would be offered in connection with a distribution plan adopted by Applicant pursuant to Rule 12b–1 under the 1940 Act ("Plan"). Under each Plan, Applicant would enter into a servicing agreement ("Servicing Agreement") with each institutional investor concerning the provision of administrative support services to customers ("Customers") of such institutional investors who beneficially own the New Shares offered in connection with such Plan, and distribution assistance to Applicant in connection with such Plan, and distribution of New Shares.

6. Under a Plan, Applicant would pay participating institutions an amount not to exceed .25% (on an annualized basis) of the average daily net asset value of the New Shares owned of record by such participating institutions. Because Servicing Agreements necessarily contemplate provision of services and assistance by an institution to its Customers, Applicant will not knowingly enter into a Servicing Agreement with an institution in those situations where the institution invests for its own account. The provision of administrative support and distribution services under the Plans would not be duplicative of the services currently provided to Applicant by its investment adviser, distributor, transfer agent or custodian.

7. Applicant's Board of Trustees ("Board") believes that by creating and offering New Shares in connection with the Plans, and by concurrently offering Existing Shares independent of such Plans, Applicant may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. The Board also believes that it would be inefficient, and in some instances economically or operationally unfeasible, to organize a separate investment portfolio for each class of New Shares created. Not only would Applicant incur unnecessary accounting and bookkeeping costs in organizing and operating such new portfolios, but the management of the new portfolios as well as the Existing

Portfolios might be hampered. In this regard, Applicant notes that unless the new portfolios grew at a sufficient rate and to a sufficient size, they could be faced with liquidity and diversification problems that would prevent them from producing a favorable yield. Applicant submits that the risk that the new portfolios would ultimately fail because of duplication of costs and management problems would be significant in light of today's extremely competitive environment, in which investors may choose from a broad range of investment alternatives and expect to obtain services suited to their needs without sacrificing safety or yield.

8. To obviate these perceived risks, Applicant proposes to create the New Shares representing interests in the same Portfolios as the Existing Shares, rather than in separate portfolios. Under the proposed arrangement, each New and Existing Share in a particular Portfolio, regardless of class, would represent an equal pro-rata interest in such Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) The New Shares and Existing Shares would have different class designations; (2) the New Shares would bear the entire expense of the Plans and the related payments ("Service Payments") made under the Servicing Agreements entered into with institutional investors with respect to such New Shares; and (3) only the benefical holders of the New Shares would be entitled to vote on matters pertaining to a Plan or Servicing Agreement.

9. The net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same dates, at the same times and by the same methods. Further, the gross income of a Portfolio would be allocated on a pro-rata basis to each outstanding New and Existing Share in the Portfolio regardless of class, and all expenses incurred by the Portfolio would be borne on a pro-rata basis by such New and Existing Shares, except for Service Payments made under a Plan. Because of the payments that would be borne exclusively by the New Shares of a Portfolio, the net income of the dividends payable to such New Shares would be somewhat lower than that paid on the Existing Shares of such Portfolio. On the other hand, beneficial owners of Existing Shares will usually be charged a fee directly by the institutional investors for investing in such Shares on their behalf and, thus, in cases where such fee exceeds expenses related to a Plan, the Existing Shares of a Portfolio may ultimately have a lower rate of return to the beneficial owners than the New Shares of such Portfolio. Applicant notes, however, that although it is unaware of any institutional investor that would charge a direct fee (other than a basic account fee) in addition to receiving payments relating to a Plan, it cannot guarantee that this will never be the case. Applicant has agreed to a specific condition (Condition No. 6 below) to prevent unfair discrimination against the beneficial owners of Existing Shares upon implementation of the Plans. Dividends paid to the New and Existing Shares of a Portfolio would, nonetheless, be declared and paid on the same days and at the same times and, except as noted with respect to the expense of the Plans, would be determined in the same manner and paid in the same amounts.

Applicant's Legal Analysis

1. Applicant requests an order pursuant to section 6(c) of the 1940 Act to the extent that the proposed dual class arrangement might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) and thus prohibited by section 18(f) (1); and (2) to violate the equal voting rights requirement of section 18(i). In support of the requested order, Applicant contends that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and will not discriminate unfairly against any group of shareholders. Investors purchasing New Shares offered in connection with a Plan and receiving the services provided thereunder would bear the costs associated with such services, and would also enjoy exclusive shareholder voting rights with respect to matters affecting that Plan. Conversely, investors purchasing Existing Shares would not bear those expenses or exercise such voting rights but instead, would bear those fees assessed by the institutions for offering such Existing Shares to their customers.

2. Applicant also submits that the proposed arrangement does not involve borrowing, does not affect its existing assets or reserves and will not increase the speculative character of the shares in a Portfolio, because all shares will participate pro-rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of expenses of the Portfolio's Plan and related Service Payments). Accordingly, Applicant asserts that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted Applicant expressly consents to be subject to the following conditions:

1. The only differences between each class of New and Existing Shares representing interests in the same Portfolio will relate solely to priorities with respect to: (a) The payment of dividends, and such priority will reflect only the impact of the Service Payments made by the Applicant under the Plans relating to particular classes of New Shares, (b) voting rights on matters which pertain to the Plans (and Servicing Agreements and Service Payments thereunder), which rights will be granted solely to the classes of New Shares, and (c) the different designation of each class of shares.

2. The Plans, Servicing Agreements and Service Payments relating to the New Shares will be approved and reviewed by the Applicant's Board of Trustees in accordance with the procedures set forth in Rule 12b-1 under the 1940 Act both currently and as that Rule may be modified in the future, and, in addition, the Plans (and, to the extent required, the Servicing Agreements and Service Payments thereunder) relating to the New Shares will be approved by Applicant's shareholders in accordance with said Rule. In addition, Applicant's Board of Trustee, in approving and reviewing payments to an institution pursuant to any Plan, will conclude in good faith based on information available to it that such expenditures are competitive with those offered in the industry.

3. Dividends paid by Applicant with respect to a class of new Shares of a Portfolio will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by Applicant with respect to the class of Existing Shares in the same Portfolio, except that the expenses of any Service Payments made by Applicant under the Servicing Agreements relating said class of New Shares will be borne exclusively by that class.

4. Each prospectus relating to a class of New Shares that is offered in connection with a Plan will:

(a) Describe the services rendered by institutional investors under Servicing Agreements with respect to the new Shares and the fees payable by Applicant for such services; and (b) state that the beneficial owners of the New Shares should read the prospectus in light of the terms governing their

institutional accounts. In addition, each Servicing Agreement entered into by Applicant will contain a representation by the institutional investor involved that any compensation payable to the institution by its Customers in connection with the investment of their assets in the Applicant: (i) Will be disclosed by it to its Customers; (ii) will be authorized by its Customers; and (iii) will not result in an excessive fee to the institution.

5. Applicant will operate a Portfolio issuing new Shares only when and for so long as such Portfolio declares a daily dividend, accrues its Service Payments daily, and has received an undertaking from any person entitled to receive any Service Payment waiving such portion of any such payment to the extent necessary to assure that the Service Payments required to be accured by any class of New Shares on any day does not exceed the income to be accrued to such class of New Shares on that day. In this manner the net asset value per share for

6. For the purpose of preventing unfair discrimination against the beneficial owners of Existing Shares, each institutional investor acquiring Existing Shares will be required to represent on its application with the Applicant that it will not impose a fee or fees upon the beneficial owners of such Shares, for automatically investing such beneficial owners' assets in such Shares, in an amount which exceeds .50% (on an annualized basis) of the average daily net asset value of the Existing Shares of such beneficial owners.

7. Applicant acknowledges that granting of the requested exemptive order will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Applicants may make to institutions pursuant to any Plan in reliance on this exemptive order.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23936 Filed 10-15-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5461]

Issuer Delisting; Application To Withdraw From Listing and Registration; Welded Tube Co. of America (10% Subordinated Debentures Due October 15, 1955)

October 9, 1987.

Welded Tube Co. of America ("Company"), a Pennsylvania corporation, has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company considered various factors including (i) the limited number of record holders of Debentures, (ii) the limited trading of debentures on the Exchange and (iii) the application by the Exchange to the Commission for the delisting of the Common Stock, par value $1.00, of the Company. The Company has also considered the expense of continuing listing of the Debentures on the Exchange in light of the limited number of holders and limited trading on the Exchange.

The Company's Common Stock was stricken from listing on the Exchange on September 4, 1987 following application by the Exchange to the Securities and Exchange Commission ("Commission") to effect the delisting. Subsequently the Company filed with the Commission certification/notices on Form 15 respecting the Common Stock. The Form 15 was filed immediately following consummation on September 30, 1987, of a merger involving the Company. As a result of the merger, the Company has become a wholly-owned indirect subsidiary of Palmer Tube Mills Limited, a Queensland, Australia Corporation.

Any interested person may, on or before November 2, 1987, submit by letter to the Secretary of the Securities Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23937 Filed 10-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25009; File No. SR-NASD-87-38]

Self-Regulatory Organizations; Order Approving on Accelerated Basis Proposed Rule Change; National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 1, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this order to solicit comments on the proposed rule change from interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to extend the pilot program for NASDAQ Workstation Service through October 31, 1987. All other aspects of the current pilot program, as approved by the Commission on July 27, 1987, will remain unchanged during this brief extension.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASDQ Workstation Service commence with the Commission's issuance of an order authorizing a pilot

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[1] *See* Securities Exchange Act Release No. 24749 (July 27, 1987), approving File No. SR-NASD-87-29. The NASD recently submitted File No. SR-NASD-87 to establish the NASDAQ Workstation Service on a permanent basis and to set the applicable subscriber fees. In that connection, the Association requested Commission approval by October 31, 1987.

program from July 31 to October 1, 1987.[2] During this interval, participating NASDAQ market (i.e., NASDAQ Level 3 subscribers) have utilized the service, at no charge, in order to familiarize themselves with its features. Based on that experience, participants will have objective information to apply in deciding whether to continue NASDAQ Workstation Service after the pilot period. The purpose of this rule proposal is to obtain Commission approval of an extension of the pilot program through October 31, 1987. This extension is needed to assure continuity of Workstation Service while the Commission deliberates such matters as permanent status, subscriber fees, and expanded access proposed in File No. SR–NASD–87–36. The requested extension will also allow the NASD to initiate NASDAQ Workstation Service to certain market makers who had volunteered earlier, but not yet participated due to delays in the installation of local circuitry (a factor completely beyond the NASD's control) required to access the Workstation Service. Assuming Commission approval of this extension, about 30 market maker firms will have participated by the pilot program's conclusion. Although this total is lower than the NASD's original projection, it is sufficient to provide a meaningful test of Workstation equipment under actual trading conditions. Accordingly, the Association urges prompt Commission approval of this filing to assure service continuity and to facilitate an orderly transition of the Workstation Service from pilot to permanent status in early November.

The only modification posed in this filing is an extension of the Workstation Service pilot program from October 1, to October 31, 1987 (inclusive). The NASD cites Section 11A and 15A of the Act as providing the statutory basis for this extension. Subsections (A)–(D) of section 11A(1) contain a series of Congressional findings respecting the goals of a national market system. Enhancing market efficiency through application of advanced data processing and communications technologies is the recurrent theme of these provisions. The NASDAQ Workstation Service combines powerful PC's with specialized software developed by NASDAQ, Inc. to provide state-of-the-art data management capabilities to all interested subscribers. In particular, the NASDAQ Workstation's market monitoring and display capabilities were designed to increase the operational efficiency of subscribing marketmakers, to increase their competitiveness, and to contribute to the liquidity of the NASDAQ market. Extension of the pilot program will permit participating market makers to utilize NASDAQ market data more effectively and also facilitate an orderly introduction of the service to other subscribers at the pilot's conclusion. Such results are fully consistent with the policy goals articulated under section 11(A)(a)(1) of the Act.

The Association also relies on Section 15A(b)(6) of the Act in support of this proposal. Section 15A(b)(6) requires, inter alia, that the Association's rules promote just and equitable principles of trade, facilitate securities transactions, perfect the mechanism of a free and open market and a national market system, and generally protect investors and the public interest. Extending the NASDAQ Workstation pilot enables participating market makers to access the advanced data management features under actual trading conditions. Such access means opportunities for subscribers to utilize NASDAQ market data more efficiently in making trading decisions. Continued monitoring of this experience is vital to facilitate an orderly introduction of the Workstation Service to other interested subscribers in November. Moreover, the requested estension will provide some additional market makers with an opportunity to test the service, at no cost, before deciding whether to elect it on a paying basis. The NASD submits that access to the NASDAQ Workstation Service, via an extension of the pilot program, will ultimately serve to facilitate securities transactions, advance the policy goals underlying a national market system, and generally protect investors and the public interest. Therefore, the NASD posits that Commission approval of the instant filing is fully justified under the above-cited elements of section 15A(b)(6)

B. Self-Regulatory Organization's Statement on Burden on Competition

The instant proposal does not involve the imposition of any competitive burden. This conclusion is supported by several factors. First, subscription to the NASDAQ Workstation Service will be voluntary and open to each participant on the same terms. At the conclusion of the extended pilot program, a firm's decision to elect the new service will be based upon an assessment of its costs and benefits relative to accessing the desired level of NASDAQ service via Harris standard terminal or the NQDS service from independent vendors. (The relevant costs are set forth in File No. SR–NASD–87–36 which is pending with the Commission.) Second, the NASD will continue to make available the Harris terminal equipment. The NASD expects that many firms opting for NASDAQ Workstation Service will continue to use some of their existing Harris terminals. Third, the modifications embodied in this filing do not create a competitive burden vis-a-vis vendors of securities market information. Extending the pilot period will not impair any vendor's ability to access NASDAQ market makers' quotes (i.e., the NQDS service) of NASDAQ/NMS last sale reports via high speed data feeds. Fourth, it must be emphasized that the NASDAQ Workstation Service was principally designed to provide sophisticated data management capabilities to NASDAQ market makers. Such capabilities promote greater efficency in market makers' routine activities and thereby enhance the quality of the NASDAQ marketplace. This situation is analogous to an exchange's upgrading of systems that support market making on a physical trading floor. Consequently, an extended pilot program for NASDAQ Workstation Service does not pose a competitive impact upon vendors servicing a much broader range of end users.

It is believed, therefore, that no competitive burden will result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 35th day after its publication in the **Federal Register.** Accelerated approval is necessary and appropriate for a variety of reasons including (i) continuity of service to existing participants in the pilot program until subscriber fees are set; (ii) allowing additional market makers, who had volunteered earlier, to participate in the pilot; (iii) allowing additional opportunities for testing Work station terminals under actual and varied trading conditions; (iv) allowing pilot program participants, as well as the Association's technical staff, further opportunity to evaluate the operation of

[2] Securities Exchange Act Release No. 24749, supra note 1.

Workstation terminals and related software; and (v) to promote an orderly transition of NASDAQ Workstation Service to permanent status. For these reasons, the NASD urges that the Commission find good cause to grant accelerated approval of this proposed rule change.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Specifically, accelerated approval will allow continuity of Workstation Service to existing participants and allow some additional market makers to participate for the extended pilot period. These participants will benefit by gaining experience with the Workstation Service under actual trading conditions before deciding to subscribe on a paying basis. Similarly, the NASD's technical staff will have a further opportunity to evaluate operation of the Workstation terminals and related software in order to address any unforeseen problems. This monitoring process should assure an orderly transition to permanent status at a future date. Likewise, the proposed extension will allow continuation of the pilot program while the Commission considers the fees and permanent status proposed in File No. SR–NASD–87–36. Based on the foregoing, the Commission finds good cause for granting accelerated approval of this rule change proposal in accord with section 19(b)(2)(B) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 6, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 9, 1987.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 87–24034 Filed 10–15–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0207]

Issance of a Small Business Investment Company License; ANB Venture Corp.

On August 7, 1987, a notice was published in the **Federal Register** (52 FR 29463) stating that an application has been filed by ANB Venture Corporation, Chicago, Illinois with Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business September 7, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0207 on September 11, 1987, to ANB Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 6, 1987.

[FR Doc. 87–23922 Filed 10–15–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of The Secretary

[Public Notice 1033]

Foreign Assistance Determination; Bolivia

In accordance with the authorities delegated to me as Secretary of State by Executive Order 12163, I hereby determine that funds withheld from Bolivia pursuant to section 611 of the International Security and Development Cooperation Act of 1985, Pub. L. 99–83, cannot be used effectively in halting illicit drug production or trafficking during their remaining period of availability for such purposes; and I therefore direct that, in accordance with section 553(2)(A) of the Foreign Assistance and Related Programs Appropriations Act, 1987, Pub. L. 99–591, such funds shall be reprogrammed within the accounts to which they were originally appropriated.

George P. Shultz,

Secretary of State.

[FR Doc. 87–23973 Filed 10–15–87; 8:45 am]

BILLING CODE 4710–17–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration Hazardous Materials; Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes October 29, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
3569–X	NL McCullough/NL Industries, Inc., Houston, TX.	3569
5112–X	Austin Powder Co., Cleveland, OH.	5112
5112–X	U.S. Department of Defense, Falls Church, VA.	5112
6325–X	J.H. Van Amburgh Explosives, Inc., Dallas, TX.	6325
6530–X	Liquid Air Corp., Walnut Creek, CA.	6530
6530–X	Scott Specialty Gases, Plumsteadville, PA.	6530
6530–X	Airco Industrial Gases, Murray Hill, NJ.	6530
6530–X	Liquid Carbonic Corp., Chicago, IL.	6530
6530–X	Air Products & Chemicals, Inc., Allentown, PA.	6530
6765–X	....do	6765
6765–X	L'Air Liquide Corp., Le Blanc-Mesnil, France.	6765
6800–X	Plasti-Drum Corp., Lockport, IL.	6800
6861–X	Teledyne McCormick Selph, Hollister, CA.	6861
7052–X	Power Conversion, Inc., Elmwood Park, NJ.	7052
7052–X	U.S. Department of Defense, Falls Church, VA.	7052
7052–X	Geophysical Research Corp., Tulsa, OK.	7052
7052–X	Martin Marietta Corp., Denver, CO.	7052
7052–X	Plainview Electronics, Boca Raton, FL.	7052
7052–X	National Aeronautics and Space Administration, Washington, DC.	7052
7052–X	The Boeing Co., Seattle, WA.	7052
7052–X	ENMET Corp., Ann Arbor, MI.	7052
7052–X	Eagle-Picher Industries, Inc., Joplin, MO.	7052
7052–X	Telonics, Inc., Mesa, AZ.	7052
7052–X	Leigh Instruments, Ltd., Carleton Place, Ontario, VA.	7052
7052–X	Magnavox Government & Industrial Electronics Corp., Fort Wayne, IN.	7052
7060–X	Federal Express Corp., Memphis, TN.	7060
7060–X	Airborne Express, Inc., Wilmington, OH.	7060
7542–X	U.S. Cylinders, Inc., Citronelle, AL.	7542
7549–X	Stauffer Chemical Co., Westport, CT.	7549
7638–X	Minnesota Valley Engineering, Inc., New Prague, MN.	7638
7694–X	Borg-Warner Fluid Controls, Van Nuys, CA.	7694
7753–X	Stauffer Chemical Co., Westport, CT.	7753
7876–X	Ashland Oil, Inc., Dublin, OH.	7876
7887–X	Vulcan Systems, Inc., Colorado Springs, CO.	7887
7915–X	U.S. Department of Defense, Falls Church, VA.	7915
7963–X	Stauffer Chemical Co., Westport, CT.	7963
8175–X	Norac Co., Inc., Azusa, CA.	8175
8264–X	Hercules, Inc., Wilmington, DE.	8264
8265–X	....do	8265
8307–X	U.S. Department of Energy, Washington, DC.	8307
8348–X	Frell, Inc., Corpus Christi, TX.	8348
8354–X	VTG, Hamburg, West Germany.	8354
8377–X	Teledyne McCormick Selph, Hollister, CA.	8377
8390–X	Ashland Oil, Inc., Dublin, OH.	8390
8453–X	Nelson Bros., Inc., Parrish, AL.	8453
8453–X	Pacific Powder Co., Tenino, WA.	8453
8453–X	Pacific Motor Transport, Inc., Tenino, WA.	8453
8453–X	Pacco, Inc., Tenino, WA.	8453
8465–X	C-I-L, Inc., Brampton, Ont., Canada, PA.	8465
8465–X	Chase Bag Co., Greenwich, CT.	8465
8556–X	L'Air Liquide, Le Blanc-Mesnil, France.	8556
8602–X	Minnesota Valley Engineering, Inc., New Prague, MN.	8602
8720–X	Applied Cos., San Fernando, CA.	8720
8732–X	Chemcentral, Inc., Chicago, IL.	8732
8837–X	Fabricated Metals, Inc., San Leandro, CA.	8837
8917–X	Morrison-Knudsen Co., Inc., Boise, ID (see footnote 1).	8917
8938–X	Cryogenic Services, Inc., Canton, GA (see footnote 2).	8938
8995–X	Foam Supplies, Inc., Olivette, MO.	8995
9003–X	General Electric Co., San Jose, CA (see footnote 3).	9003
9016–X	Van Leer Verpackungen GmbH, Hamburg, West Germany (see footnote 4).	9016
9047–X	Union Carbide Corp., Danbury, CT.	9047
9080–X	Henderson's Welding & Manufacturing Corp., Seminole, TX.	9080
9130–X	Bio-Lab, Inc., Decatur, GA (see footnote 5).	9130
9158–X	General Ceramics, Inc., Haskell, NJ.	9158
9164–X	Fabricated Metals, Inc., San Leandro, CA.	9164
9198–X	U.S. Department of the Interior, Boise, ID.	9198

Application No.	Applicant	Renewal of exemption
9256-X	U.S. Department of Defense, Falls Church, VA.	9256
9269-X	Columbia Nitrogen Corp., Augusta, GA.	9269
9316-X	Fluoroware, Inc., Chaska, MN (see footnote 6)	9316
9330-X	MarkAir, Inc., Anchorage, AK.	9330
9346-X	Pennzoil Products, Co., Rouseville, PA.	9346
9352-X	Maloney Pipeline Systems, Inc., Houston, TX.	9352
9355-X	Black & Decker Corp., Hampstead, MD.	9355
9363-X	Columbia Astrophysics Laboratory, New York, NY.	9363
9393-X	Sexton Can Co., Inc., Cambridge, MA.	9393
9421-X	Taylor-Wharton, division of Harsco Corp., Harrisburg, PA (see footnote 7).	9421
9441-X	Amtrol, Inc., West Warwick, RI.	9441
9463-X	Guzzler Manufacturing, Inc., Birmingham, AL.	9463
9478-X	Systron Donner Corp., Concord, CA.	9478
9489-X	Custom Air Service, Howell, MI.	9489
9498-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	9498
9503-X	Rotational Molding, Inc., Gardena, CA.	9503
9505-X	Norac Co., Inc., Azusa, CA.	9505
9790-X	Taylor-Wharton, division of Harsco Corp., Indianapolis, IN (see footnote 8).	9790

(1) To authorize renewal and deletion of section 7.c., which would eliminate the required polyethylene liner.

(2) To authorize two (2) additional models of non-DOT specification cylinders, similar to DOT-4L cylinders, for shipment of Carbon Dioxide, refrigerated liquid.

(3) To authorize renewal and an additional non-DOT specification portable steel tank for shipment of Sodium, metal, classed as flammable solid.

(4) To approve for shipment those commodities presently authorized in a DOT Specification 21C fiber drum in two different style non-DOT specification fiber drums.

(5) To authorize an additional oxidizer for shipment.

(6) To authorize polyethylene overpacks in lieu of the currently authorized steel overpacks.

(7) To authorize an additional non-DOT specification cylinder for shipment of gases classed as nonflammable, flammable and poison A.

(8) To authorize removal of section 8.a., which requires carrying the exemption aboard the motor vehicle.

Application No.	Applicant	Parties to exemption
6530-P	American Gas, Industrial Gases Division, Elk Groove Village, IL.	6530
6614-P	Clearwater Chemical Co., Clearwater, FL.	6614
7052-P	DYMEC, Inc., Winchester, MA.	7052
7607-P	Smith & Denison, Inc., Hayward, CA.	7607
7616-P	Wisconsin Central, Ltd., Rosemont, IL.	7616
7835-P	Airweld Inc., Farmingdale, NY.	7835
8451-P	LTV Missiles & Electronics Group, Dallas, TX.	8451
8451-P	Atlantic Research Corp., Gainesville, VA.	8451
8451-P	Aerojet Solid Propulsion Co., Sacramento, CA.	8451
8489-P	Syn-Tex Converters, Ltd., Winnipeg, Manitoba, Canada (see footnote 1).	8489
9066-P	Allied-Signal Inc., Bendix Safety Restraints Division, Mt. Clemens, MI.	9066
9498-P	C-I-L Inc., North York, Ontario, Canada, NC.	9498
9654-P	Degussa Corp., Teterboro, NJ.	9654
9837-P	Larson Tool & Stamping Co., Attleboro, MA.	9837
9863-P	L'Air Liquide Corp., Le Blanc-Mesnil, France.	9863

(1) To authorize shipment of copper arsenate as an additional commodity

This notice of receipt of applications for renewal exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 8, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-23917 Filed 10-15-87; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes November 12, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No	Applicant	Regulation affected	Nature of exemption thereof
9857-N	Van Laer Verpackungen, GmbH, Am Westhover Berg, West Germany	49 CFR Part 173..	To authorize manufacture, mark, and sell non-DOT specification fiber drums with metal heads and a flat bottom polyethylene bag for shipment of those commodities presently authorized in DOT Specification 21C fiber drum. (modes 1, 2, 3)
9858-N	Forno Products, Inc., Norton, OH	49 CFR 173.1200(a)(8)(ii)(2)	To authorize an alternative testing method for DOT Specification 2Q cans containing consumer commodities, classed as ORM-D (mode 1)
9859-N	Container Products, Inc., Newnan, GA	49 CFR 173.346, 173.358, 173.359	To authorize shipment of ethyl parathion and methyl parathion, classed as poison B, and other materials, once identified, classed as flammable liquid or corrosive material, in DOT Specification 34 polyethylene drums (modes 1, 2, 3)
9860-N	Hoover Group, Inc., Beatrice, NE	49 CFR 178.82	To authorize manufacture, marking and sale of non-DOT specification steel containers, complying with DOT Specification 5B—with certain exceptions, for shipment of those materials authorized in DOT Specification 5B containers. (modes 1, 2, 3)
9861-N	Degussa Corporation, Teterboro, NJ	49 CFR 173.154, 175.3	To authorize shipment of sodium perborate anhydrous (oxoborate), classed as oxidizer, in DOT Specification 44B and 44C bags (modes 1, 2, 3, 4)
9862-N	Morton Thiokol, Inc., Huntsville, AL	49 CFR 173.88(e)(2), 175.3	To authorize shipment of a rocket motor, classed as Class B explosive, in a propulsive state, in a DOT Specification 15A wooden box. (modes 1, 4)
9863-N	Liquid Air Corporation, Walnut Creek, CA	49 CFR 173.34(e), 175.3	To authorize retesting of DOT Specification 3, 3A, 3AA, 3AX and 3AAX cylinders by acoustic emissions testing (modes 1, 2, 3, 4)
9864-N	Wheaton Aerosols Co., Div. of Wheaton Industries, Mays Landing, NJ	49 CFR 173.306, 173.1200, 175.3	To authorize shipment of certain materials charged with various propellants, classed as nonflammable and flammable gases, in non-DOT specification polyethylene terephthalate containers (modes 1, 2, 3, 4)
9865-N	Atlas Powder Company, Dallas, TX	49 CFR 173.64	To authorize shipment of ethylene diamine dinitrate solution, classed as Class A explosive, in DOT Specification 17H drums with DOT Specification 2S liners. (mode 1)
9866-N	Akzo Coatings America, Inc., Troy, MI	49 CFR 173.128	To authorize shipment of paint, classed as a flammable liquid, in non-DOT specification packagings, described as pressure filed and paint spray tanks (mode 1)
9867-N	Olin Hunt Specialty Products, Inc., Seward, IL	49 CFR 173.247(a)(10), 175.3	To authorize silicon chloride and titanium tetrachloride, classed as corrosive materials, for shipment in 2.2 liter or less, stainless steel containers, insider Military Specification MS27684-21 metal drums, and overpacked in DOT Specifcation 19B boxes. (modes 1, 2, 4)
9868-N	Pennwalt Corporation, Buffalo, NY	49 CFR 173.224	To authorize a dicumyl peroxide solution, classed as an organic peroxide, for shipment in DOT Specification MC-331 or MC-312 cargo tanks (mode 1)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 8, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-23918 Filed 10-15-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 9, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau of Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Annual Letter—Certificate of Authority.
Description: Information is collected from currently Treasury certified insurance companies for determination of renewal of their certification to write/reinsure Federal surety bonds and for inclusion in Circular 570 for use by Federal bond approving officers.
Respondents: Businesses or other for-profit.
Estimated Burden: 19,431 hours.

OMB Number: 1510-0047.
Form Number: TFS 2211.
Type of Review: Extension.
Title: List of Data.
Description: Information is collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.
Respondents: Businesses or other for-profit.
Estimated Burden: 360 hours.
Clearance Officer: Hector Leyva (301) 436-5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Comptroller of the Currency

OMB Number: 1557-0163.
Form Number: None.
Type of Review: Extension.
Title: Rules, Policies, and Procedures for Corporate Activities; Bank Service Corporations.
Description: This rule utilizes a simple notification process for national banks seeking OCC approval for an investment in a bank service corporation.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 32 hours.
Clearance Officer: Eric Thompson (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Robert Fishman (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-24044 Filed 10-15-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

October 9, 1987.

The Department of Treasury has made

revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0704.
Form Number: 5471, Schedules M, N, and O.
Type of Review: Resubmission.
Title: Information Return with Respect to a Foreign Corporation.
Description: Form 5471 and its related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to report a U.S. person's acquisition of a 5 percent interest in a foreign corporation; and to report income and deductions of a foreign personal holding company. The IRS uses Form 5471 to determine if U.S. persons have correctly reported income from the foreign corporation.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Burden: 135,657 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 87–24045 Filed 10–15–87; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 13, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0034.
Form Number: 942/942PR.
Type of Review: Extension.
Title: Employer's Quarterly Tax Return for Household Employees.
Description: Household employers must prepare and file Form 942 or Form 942PR (Puerto Rico only) to report and pay social security tax and (942 only) income tax voluntarily withheld. The information is used to verify that the correct tax has been paid.
Respondents: Individuals or households.
Estimated Burden: 699,306 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0059.
Form Number: ATF F 5120.29 (698 Supplemental).
Type of Review: Extension.
Title: Bonded Wineries-Formula and Process for Wine, Letterhead Applications and Notices Relating to Operations.
Description: ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 1,520 hours.

OMB Number: 1512–0142.
Form Number: ATF F 2734 (5100.25).
Type of Review: Extension.
Title: Specific Export Bond-Distilled Spirits or Wine.
Description: ATF F 2734 (5100.25) is used to ensure the payment of taxes on shipments of wine and distilled spirits. The form describes the taxable articles, the surety company, the specific conditions of the bond coverage and the persons that are accountable for tax payment.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 500 hours.

OMB Number: 1512–0204.
Form Number: ATF F 5110.38.
Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act.
Description: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by AFT to ensure that a product is made and labeled properly and to audit distilled spirits operations.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 4,000 hours.

OMB Number: 1512–0392.
Form Number: ATF REC 5190/1.
Type of Review: Extension.
Title: Record of Things of Value Furnished to Retailers Under the Federal Alcohol Administration Act.
Description: These records (bills of sale, invoices) are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers. These records are commercial invoices showing the furnishing of goods to retailers.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 1 hour.
Clearance Officer: Robert Masarsky (202) 566–7077; Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Office.
[FR Doc. 87–24046 Filed 10–15–87; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 13, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau

Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0010.
Form Number: W–4.
Type of Review: Resubmission.
Title: Employee's Withholding Allowance Certificate.
Description: Employees file this form to tell employers (1) the number of withholding allowances claimed, (2) the dollar amount they want withholding increased each pay period, (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages.
Respondents: Individuals or households.
Estimated Burden: 14,395,556 hours.

OMB Number: 1545–1012.
Form Number: 5305A–SEP.
Type of Review: Resubmission.
Title: Salary Reduction and Other Simplified Employee Pension Elective-Individual Retirement Accounts Contribution Agreement.
Description: This form is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS but to be retained in the employer's records as proof of establishing such a plan, thereby justifying a deduction for contributions made to this SEP. The data is used to verify the deduction.
Respondents: Businesses or other for-profit.
Estimated Burden: 34,773 hours.

OMB Number: 1545–1017.
Form Number: 33.
Type of Review: Resubmission.
Title: Affidavit of Individual Surety on Bond.
Description: Form 33 is required under Regulations § 301.7101–1(b)(3)(v) to provide information on the adequacy of security of individual surety given when posting a bond. This form is attached to Form 928, Gasoline Bond.
Respondents: Individuals or households.
Estimated Burden: 26 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 87–24047 Filed 10–15–87; 8:45 am]
BILLING CODE 4810–25–M

Departmental Offices; Notice Listing Instruments Previously Exempted Under the Securities Exchange Act of 1934

AGENCY: Department of the Treasury; Departmental Offices.

ACTION: Notice listing instruments previously designated by the Secretary of the Treasury are exempt under the Securities Exchange Act of 1934.

SUMMARY: Since the enactment of the Securities Exchange Act of 1934 (the 1934 Act), the Secretary of the Treasury has designated securities issued by several government and government-sponsored entities for exemption pursuant to section 3(a)(12) (15 U.S.C. 78c(a)(12)). The Notice is a compilation of such designations to date.

EFFECTIVE DATE: October 16, 1987.

FOR FURTHER INFORMATION CONTACT: Jill K. Ouseley, Associate Director, Office of Government Finance and Market Analysis; Room 3212, Main Treasury, Washington, DC 20220, (202) 566–6741.

SUPPLEMENTARY INFORMATION: Section 3(a)(12) of the 1934 Act (15 U.S.C. 78(a)(12)) provides in part that, unless the context otherwise requires, the term "exempted security" or "exempted securities" shall include "such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors." The Government Securities Act of 1986, Pub. L. 99–571, 100 Stat. 3208 (1986), in part amends the 1934 Act to add a new subparagraph to section 3(a) defining government securities to include "securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors." Pub. L. 99–571, § 102 (adding 3(a)(42)(B), 15 U.S.C. 87c(a)(42)(B)).

This Notice lists designations that have been provided by the Secretary of the Treasury under section 3(a)(12) and which are also referred to in the provision of the Government Securities Act that is quoted above. None of the designations has been rescinded. Securities of the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association, however, are now designated by statute as exempted securities within the meaning of the laws administered by the SEC. Moreover, the securities of certain other entities, such as the Student Loan Marketing Association, are designated as exempt by statute and are not listed in this Notice.

For additional information regarding securities designated by the Treasury, interested parties should refer to the full text of the designations cited in the attached table and to the statutory provisions cited therein.

Dated: October 7, 1987.

Charles O. Sethness,
Assistant Secretary (Domestic Finance).

TREASURY DESIGNATIONS OF EXEMPTED SECURITIES

Issuer or guarantor	Federal Register	Description of Securities
Commodity Credit Corp	31 FR 4899 (1966); 34 FR 8713 (1969).	Special Series Certificates of Interest.
Export-Import Bank	32 FR 2789 (1967)	Participation certificates or other securities issued by the Export-Import Bank.
Farm Credit System:		
a. Central Bank for Cooperatives	14 FR 6138 (1949)	Securities issued under the Farm Credit Act of 1933, as amended.
b. Central and Regional Banks for Cooperatives	19 FR 7162 (1954)	Securities issued under the Farm Credit Act of 1933, as amended in 1954.
c. Federal Intermediate Credit Banks	(1)	Debentures issued under the Federal Farm Loan Act of 1916.
d. Federal Land Banks	(1)	Bonds issued under the Federal Farm Loan Act of 1916.

TREASURY DESIGNATIONS OF EXEMPTED SECURITIES—Continued

Issuer or guarantor	Federal Register	Description of Securities
e. Federal Intermediate Credit Banks and Federal Land Banks.	35 FR 6716 (1970)	Farm Credit Investment Bonds issued under the Federal Farm Loan Act of 1916 and the 1923 amendment.
f. Central and Regional Banks for Cooperatives, Federal Intermediate Credit Banks and Federal Land Banks.	40 FR 4946 (1975)	Federal Farm Credit Banks—Consolidated Systemwide Notes issued under the Farm Credit Act of 1971.
g. Central and Regional Banks for Cooperatives, Federal Intermediate Credit Banks and Federal Land Banks.	42 FR 3242 (1977)	Federal Farm Credit Banks—Consolidated Systemwide Bonds issued under the Farm Credit Act of 1971.
h. Central and Regional Banks for Cooperatives	43 FR 24933 (1978)	Farm Credit Investment Bonds issued under the Farm Credit Act of 1971.
Federal Home Loan Bank Board and Federal Home Loan Banks.	2 FR 775 (1937)	Securities issued under the Federal Home Loan Bank Act, as amended.
Federal Home Loan Mortgage Corp.[2]	36 FR 5623 (1971)	Securities guaranteed under the Federal Home Mortgage Corporation Act of 1970.
	([3])	Securities issued under the Federal Home Loan Mortgage Corporation Act of 1970.
Federal National Mortgage Association[4]	3 FR 1419 (1938)	Securities issued under the National Housing Act of 1934, as amended.
	19 FR 8068 (1954)	Securities issued under the 1954 amendments to the National Housing Act.
	20 FR 1382 (1955)	Common stock issued under the 1954 amendments to the National Housing Act.
	29 FR 13977 (1964)	Participation certificates and other instruments guaranteed under the 1964 amendments to the National Housing Act.
Tennessee Valley Authority	25 FR 7544 (1960)	Securities issued under the Tennessee Valley Authority Act of 1933, as amended.
U.S. Postal Service	36 FR 21365 (1971)	Obligations issued pursuant to Section 2005 of Title 39, United States Code.

[1] This designation predates publication of the **Federal Register.** See Securities and Exchange Commission Exchange Act Release No. 34-28 dated October 24, 1934 and Farm Credit Administration release dated October 5, 1934.

[2] In 1983, Congress enacted 12 U.S.C. 1455(g) which amends the Federal Home Loan Mortgage Corporation Act to provide that securities issued or guaranteed by the Federal Home Loan Mortgage Corporation (other than securities guaranteed by the Corporation that are backed by mortgages not purchased by the Corporation) are exempt securities within the meaning of the laws administered by the SEC.

[3] Unpublished letter of designation dated September 28, 1981.

[4] In 1968, Congress amended 12 U.S.C. 1723c to provide in part that all securities issued by the Federal National Mortgage Association, including stock, are deemed to be exempt securities within the meaning of the laws administered by the SEC.

[FR Doc. 87-23997 Filed 10-15-87; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is requesting approval of the extension of a program OMB 3116-0197, which will enable Radio Marti to continue to conduct the various surveys and interviews associated with assessing audience reaction to the effectiveness of Radio Marti Programming. Respondents will be required to respond only one time.

DATE: Comments must be received by November 10, 1987.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta Graham-Hall, United States Information Agency, M/ASP, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 485-7501, and OMB review: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Title: "Surveys, interviews and other audience research of the Research and Policy Department of Radio Marti."

Abstract: Radio Marti was created by Pub. L. 98-111, the Radio Broadcasting to Cuba Act, "to provide for the broadcasting of accurate information to the people of Cuba, and for other purposes". Radio Marti needs to conduct research among recent Cuban arrivals in the U.S. and abroad to determine audience reaction to its programming and gather information on conditions and events in today's Cuba. Information gathered will be used to improve Radio Marti transmissions in providing the Cuban people with news, information and other programming that is relevant, interesting, timely and appealing.

Proposed Frequency of Responses:

No. of respondents	4,311
Recordkeeping hours	.6033
Total annual burden	2,061

Charles N. Canestro

Federal Register Liaison

[FR Doc. 87-23974 Filed 10-15-87; 8:45am]

BILLING CODE 8230-01-M

Bureau of Educational and Cultural Affairs, University Affiliations Program; Application Notice for Fiscal Year 1988

Applications for grants from U.S. institutions of higher education are invited under the University Affiliations Program.

Authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). The purpose of the Fulbright program is "to enable the government of the United States to increase mutual understanding between the people of the United States and people of other countries."

(Information collection involved in this program has been approved by OMB Action Number 3116-0179, expiration date November 30, 1989

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional partnerships between U.S. and non-U.S. institutions of higher education, including graduate schools, four-year and two-year colleges and universities, and community colleges. One-time grants-in-aid are available for a period of two to three years. Total funding available for each gant may not exceed $50,000 or $60,000, depending on locality.

The goal of the program is to faciliate bilateral institutional relationships which promote mutual understanding through faculty and staff exchanges.

Applications on behalf of the collaborating institutions must be received by USIA no later than 5:00 p.m., EST on Wednesday, January 27, 1988.

Participating institutions should be prepared to assign faculty or staff to the partner institution for teaching, lecturing or research assignments of one month or longer, maintain said person(s) on full salary and benefits, and receive visiting faculty or staff from the partner institution for one month or longer for the same or complimentary activities. USIA funds may be used only for participant travel costs and modest supplements for maintenance expenses. Institutional overhead is not allowable and all other costs related to the exchange program must be borne by the participating institutions.

Participants traveling under USIA grant support must be U.S. citizens (or nationals) if representing the U.S. partner institution, and nationals of the country or area of the foreign partner.

USIA support may be requested for a minimum of two years and a maximum of three years. The total request to USIA, covering eligible expenses of both institutions for the two- or three-year period, may not exceed the maximum allowable for the locality of request, as listed below.

Subject to the availability of funds in Fiscal Year 1988, up to 30 grants will be available on a competitive basis for specific geographic locations and themes. Awards will reflect Agency priorities and academic considerations. Complete program criteria and application guidelines appear below.

Proposal will be accepted either for the establishment of new affiliations or for the development of programs in new areas for existing affiliations not previoulsy funded by USIA's Affiliations Program.

Proposals for funding ad hoc research projects, technical assistance projects and feasibility studies to plan affiliations will not be considered under this program.

All proposals recommended for funding will be subject to Agency review for conformity to relevant OMB and legal considerations. Funding of any proposal is subject to the regular procedures, regulations and requirements for Bureau of Educational and Cultural Affairs grants, including review by USIA's Office of General Counsel.

Eligibility

Because one of the program's purposes is to strengthen ties between the U.S. and many areas of the world, geographic and thematic priorities have also been identified.

Africa: Proposals will be considered for any discipline(s) in the *humanities, social science, education* and *communications* for all countries listed below; however, special consideration will be given to proposals in any of the fields noted after each country. Applicants should focus on one or two specific topics of interest.

Eligible for grants up to *$50,000* maximum each:

Botswana: *Economics, management* and/or *accounting*
Burkina Faso: *Humanities, social sciences* and/or *education*
Ethiopia: *History*
Kenya: *Education, law* and/or *journalism*
Lesotho: *Any eligible field*
Mauritius: *Social sciences*
Mozambique: *Social sciences*
Nigeria: *Any eligible field*
South Africa: *Any eligible field*
Swaziland: *International economics*
Tanzania: *Law, social sciences* and/or *humanities*
Zambia: *Education, political science* and/or *social sciences*
Zimbabwe: *Any eligible field*

Eligible for grants up to *$60,000 maximum* each:

Benin: *Any eligible field*
Burundi: *Economics* and/or *library science*
Cameroon: *Journalism* and/or *international affairs*
Congo: *Any eligible field*
Liberia: *Mass communications*
Niger: *Any eligible field*
Rwanda: *Any eligible field*
Senegal: *Economics, social science, political science, humanities, law, mass communications* and/or *international relations*
Sierra Leone: *American studies* and/or social sciences
Togo: *Any eligible field*
Uganda: *Fine arts, mass communications, social sciences* and/or *education*
Zaire: *Economics*

American Republics: Proposals for the following *countries* and *fields* listed below will be considered in 1988. USIA will give priority to proposals including the foreign institution specified after each listing. The maximum amount of each grant is *$50,000.*

Argentina: *Business administration* (University of Buenos Aires); *interdisciplinary* with focus on *economic policy* (National Uviversity of Cuyo-Mendoza)
Brazil: *Public administration* (National School of Administration-ENAP and University of Brasilia-UNAB under Secretariat of Public Administration to the Presidency-SEDAP-ER)
Chile: *Journalism* (Catholic University-UCC/Santiago)
Colombia: *Journalism* (Externado University-Bogota)
Dominican Republic: *Economics* (Madre y Maestra Catholic University-UCMM/Santa Domingo)
Jamaica: *Journalism* (Caribbean Institute of Mass Communications-CARIMAC/Kingston)
Mexico: *Interdisciplinary* with focus on *economic policy and industrial economics* (National University of Mexico-UNAM/Mexico City)
Trinidad and Tobago: *Law* (University of the West Indies-UWI/St. Augustine, Trinidad)
Uruguay: *International relations* (Center for Advanced Studies, University of the Republic/Montevideo)
Venezuela: *Economics* with focus on *undergraudate cirriculum* (Central University-UCV/Caracas)

East Asia/Pacific: Only proposals for the following *countries* or *localities* and *any of the fields specified* for each country or area listed below will be considered in 1988. The maximum amount of each grant is *$60,000.*

Korea: *U.S. studies, Korean studies, cross-cultural studies on contemporary issues, communications, education*
New Zealand: *Political science*

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Pacific Islands (limited to Micronesia, Tonga, and Western Samoa): *Humanities, secondary education and/or university administration*

People's Republic of China (provinces of Guangxi, Guizhou, Sichuan, Yunan, Gansu, Qinghai, Xinjing, and Xizang only): *Constitutional, business, and/or copyright law; business management with emphasis on international investment and/or international relations*

Philippines: *U.S. studies, Philippine studies and/or education*

Europe: Proposals will be considered for any discipline(s) in the *humanities, social sciences, education and/or communications.* Applicants should focus on one or two specific topics of interest. The maximum amount of each grant is *$50,000.*

Eligible for 1988 are: Czechoslovakia, Finland, Italy, Portugal and Sweden.

Near East/South Asia: Exchanges should concentrate on *American studies.* In addition to traditional themes in American studies such as *history* and *literature,* proposals may also use themes in, for example, *journalism, law, economics, education, art and/or political science.* Applicants should focus on one or two specific topics of interest. USIA will give special consideration to proposals received for funding in the italicized locations.

Eligible for grants up to *$50,000 maximum* each: *Bangladesh,* Egypt, India, Israel, *Jordan, Mauritania,* Morocco, *Nepal,* Pakistan, Tunisia, the West Bank and the Yemen Arab Republic.

Eligible for grants up to *$60,000 maximum* each: *Algeria, Iraq, Qatar, Sudan* and *Syria.*

N.B.: All proposals for India must be accompanied by proof of approval of the project from the University Grants Commission (UGC) in New Delhi in order to comply with Agency technical review requirements. UGC approval must be sought through the U.S. Educational Foundation in India.

Special Competition for Exchanges of Secondary School Teachers

Subject to the availability of funds, USIA may also fund in 1988 projects to develop bilateral relationships between one or more school districts, in consortium with U.S. and foreign colleges or universities, to promote *exchanges of secondary teachers* in all subject areas. Detailed guidelines would appear at a later date. Interested institutions should contact USIA at the address below for further details: Teacher Exchange Branch (E/ASX), Office of Academic Programs, United States Information Agency, 301 4th Street, SW, Washington, DC 20547, Attn: Peter Piness, (202) 485–2556.

Requirements for Application

1. *Eligiblity:* Applications on behalf of the collaborating institutions must be submitted by the U.S. partner. Eligible partner institutions are:

a. Accredited, degree-granting two-year and four-year undergraduate and/or graduate-level U.S. institutions of higher education.

b. Recognized degree-granting institutions of higher education overseas.

2. *Review Process:* Proposals will be reviewed for technical, academic and Agency considerations. Proposals which are technically ineligible (eligibility criteria follow) will not be forwarded for further review by the academic or Agency review committees.

Proposals must be received by USIA no later than *5:00 p.m. EST, Wednesday, January 27, 1988.*

Upon completion of the technical review, project directors of ineligible proposals will be informed in writing. Technically eligible proposals will be forwarded for substantive review. Proposals recommended on substantive grounds will be further considered by USIA review committees. Agency review committees will then evaluate the proposals by specific criteria addressing foactors of quality and geographical and program balance.

Technical Review Criteria: Within deadline, original proposal and fifteen (15) complete copies, including: Abstract, narrative, three-column budget, bio-sketches, required letters of agreement and summary of international linkages; eligible geographic and academic area(s); two- or three-year program (see detailed requirements below).

(For India only: University Grants Commission clearance, as described above, is also required)

N.B.: U.S. institutions are responsible for assuring complete understanding of and compliance with financial requirements by the foreign partner; and for obtaining the letter of commitment so stating in the specific format described below. No exceptions will be made. Academic Review Criteria: a. Soundness of proposal, as reflected by focussed academic goals and selection of topics and activities;

b. Evidence of mutuality of benefits to the institutions involved in the exchanges;

c. Feasibility of the program plan as it relates to the stated goals and selected topics and activities;

d. Academic experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required);

e. Evidence of strong mutual institutional commitment;

f. Evidence of participation and integration of faculty and administration of both institutions (department, college, division or school) in the planning of the proposed activities;

g. Evidence that the proposed individual exchanges are likely to achieve the program's overall goal of institutional academic development;

h. Mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties;

i. Demonstration that the partnership is likely to continue after the conclusion of the USIA grant.

j. If the proposal requests support for an established, active linkage, evidence that the University Affiliations funding would allow for innovation in the exchange relationship.

Agency Review Criteria: a. USIA overseas post assessments, in terms of need, feasibility and quality;

b. Advancement of mutual cultural and political understanding between the countries or geographic areas represented in the partnership;

c. Academic quality, reflected in academic peer review committee's evaluation and review summary notes;

d. Feasibility of program plan;

e. Promise of long-term impact;

f. Cost-effectiveness.

3. *Application Procedures:* Applicants must send or deliver one original and fifteen (15) complete copies of their proposals to the following address: USIA University Affiliations Program (AED/IEEP), 1255 23rd Street, NW., 4th floor, Washington, DC 20037.

All other correspondence or communications concerning this program should be directed to: University Affiliations Program (E/AS), United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485–8489.

In order to be eligible for review the proposal *must* include:

(1) *Summary document:* A typed, double-spaced abstract of approximately two pages.

(2) *Narrative,* total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions and participating departments;

b. A detailed description of the proposed affiliation program including but not limited to: The name and qualifications of the designated project director; the roster of participants or representative sample of potential participants and their qualifications, including language skills; a statement of need; a detailed, specific description of proposed activities, including when and where they will occur; and the anticipated benefits of the program. First-year exchange participants must be identified. A plan for institutional evaluation of the program must also be included.

(3) A detailed, *three-column budget* outlining specific expenditures and source(s) from which funds are anticipated. *Required format for budget:*

All proposed expenditures should be individually listed, using the format below. Each request for travel should specify the number of round trips by number of particpants per fiscal year. Each maintenance request should specify number of participants times per diem rate (*not to exceed published Federal government rates*) per fiscal year. Direct costs, in-kind or cash contributions, and applicable overhead costs absorbed by each institution should be included, along with regular salary and benefits, under the column of contributions for each partner:

	USIA	U.S. Inst.	For. Inst.
Year 1 Travel	$X	$X	$X
Maintenance costs	$X	$X	$X
Salary & Benefits	n/a	$X	$X
Direct or Overhead costs (waived)	n/a	$X	$X
Year 2 Travel	$X	$X	$X
Maintenance costs	$X	$X	$X
Salary & Benefits	n/a	$X	$X
Direct or Overhead costs (waived)	n/a	$X	$X
Year 3 Travel	$X	$X	$X
Maintenance costs	$X	$X	$X
Salary & Benefits	n/a	$X	$X
Direct or Overhead costs (waived)	n/a	$X	$X
Totals	$X	$X	$X

(4) *Appendices,* which should be kept to a minimum but must include:

a. *Bio-sketches* of professional accomplishments of the potential participants, *not to exceed two pages in length each,* clearly indicating the level of language skills, overseas experience, knowledge of the prospective partner country or area as demonstrated through courses taught, relevant scholarly and non-scholarly travel, citizenship, publications, and research activities. *Lengthy academic vitae should not be submitted.* Bio-sketches for the U.S. participants must be included; those of non-U.S. participants are strongly recommended but not required.

b. *Documentation of institutional support* for the proposed affiliation, including a signed letter of endorsement from the U.S. institution's (or consortium members') *President, vice-president, chancellor* or *Provst,* as well as a signed letter of endorsement from the *President (or equivalent)* of the non-U.S. institution. Both letters must specifically refer to the 1988 University Affiliations Programs and commit the institution to maintaining exchange participants on full salary and benefits during the exchange.

N.B.: A general letter or agreement between the two institutions without reference to this specific program and its financial requirements will not fulfill this requirement.

A brief *summary of ongoing, active international linkages* at both partner institutions.

For India only: Proof of University Grants Commission clearance, as described above, is required. (U.S. institutions are reminded that in certain areas, host government approval must be obtained before any exchange program of this type may be carried out.)

Budget: The only eligible budget items are: a. International airfare or overland travel costs for participants;

Compensation (supplements to salary and/or benefits) or modest per diem may be requested for such specific items as housing, food and other maintenance items while in exchange status. Participating universities will be expected to continue full salary and benefits for their own faculty. The maximum amount that may be requested for compensation supplements/per diem may not exceed the rates set by the U.S. Department of State for overseas locations and the General Service Administration (GSA) per diem allowances for U.S. localities. The USIA officers listed below will supply these rates upon request.

The maximum rates described above are legal limitations only. *Institutions are encouraged, in planning their budgets, to set temporary living allowances at a lower level which can be more easily maintained after the period of USIA funding.*

(U.S. institutions are reminded that in certain cases, restrictions may be placed on the export of salary in other currencies.)

Ineligible Budget Items for USIA Grant Support: a. Institutional overhead, including postage, telephone or teletex expenses;

b. Administrative expenses incurred in connection with the affiliation;

c. Expenses for student exchanges;

d. Costs for dependents;

e. Conference, seminar or publication costs;

f. Any costs for non-U.S. citizens or nationals from the U.S. institution, or non-citizens or non-nationals of the overseas host country or locality.

5. *Deadline:* Complete proposal packages must be received by USIA *no later than* Wednesday, January 27, 1988, 5:00 p.m. EST.

Applicants are responsible for the submission of complete applications. *All* required items must be received by deadline.

Notification: All applicants will be notified of the results of the review process on or about May 15, 1988. Funded proposals will be subject to periodic reporting and evaluation requirements.

INQUIRIES: For questions concerning programming and budget, please contact:

Africa: Ms. Winnie emoungu (E/AEA), Academic Exchanges Division, Africa Branch, (202) 485–7355

American Republics: Ms. Paula Durbin (E/AEL), Academic Exchanges Division, American Republics Branch, (202) 485–7365

East Asia and the Pacific: Mr. Ted Grouya (E/AEF), Academic Exchanges Division, East Asia/Pacific Branch, (202) 485–7402

Europe: Ms. Pamela Smith (E/AEE), Academic Exchanges Division, Europe Branch, (202) 485–7420

Near East/South Asia: Mr. Michael Graham (E/AEN), Academic Exchanges Division, Near East/South Asia Branch, (202) 485–7368

General Inquiries: Mr. William Dant, Coordinator, University Affiliations Program, Office of Academic Programs, (202) 485–8489

Dated: October 7, 1987.

Mark Blitz,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 87–23930 Filed 10–15–87; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 200
Friday, October 16, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 21, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C. Street entrance between 20th and 21st Street, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed Board meeting on October 14, 1987.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 14, 1987.

James McAfee,

Associate Secretary of the Board.

FR Doc. 87–24072 Filed 10–14–87; 10:44 am]

BILLING CODE 6210-01-M

PAROLE COMMISSION

DATE AND TIME: Monday, October 19, 1987—2:00 p.m. to 5:00 p.m.

PLACE: 2nd and Chestnut Streets, Customs House, Seventh Floor, Philadelphia, Pennsylvania 19106.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 13 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: David J. Dorworth, Chief Analyst, National Appeals Board, United States Parole Commission, (303) 492–5987.

Date: October 14, 1987.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 87–24117 Filed 10–14–87; 1:25 pm]

BILLING CODE 4410-01-M

PAROLE COMMISSION

PLACE: 2nd and Chestnut Streets, Customs House, Seventh Floor, Philadelphia, Pennsylvania 19106.

DATE AND TIME:

Tuesday, October 20, 1987—9:00 a.m. to 5:30 p.m.
Wednesday, October 21, 1987—9:00 a.m. to 5:00 p.m.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open business meeting of July 22 through July 23, 1987.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Management, and Administration Section.
3. Adoption of final rule on revising the dollar thresholds for property offenses.
4. Discussion and development of Commission policy on AIDS.
5. Adoption of final rule on offenses involving immigration, naturalization, and passports.
6. Adoption of final rule on rewarding assistance in the prosecution of other offenders.
7. Approval of the Witness Protection Manual.
8. Reaccreditation by the American Correctional Assocation (discussion only).
9. Treatment of Transfer Treaty cases, 18 U.S.C. section 4106, under the Sentencing Reform Act of 1984.
10. Development of policy regarding parole eligibility for prisoners sentenced after November 1, 1987, the effective date of the Sentencing Reform Act of 1984.
11. Consideration of innovative uses of parole supervision (discussion only.)
12. Consideration of use of intensive supervision programs.
13. Consideration of use of a mutual agreement program, in which Commission would create a contract with a prisoner, providing for parole in exchange for successful completion of specified programs (discussion only.)
14. Consideration of development of a Commission-wide policy for telephone inquiries posing hypothetical cases (discussion only).
15. Treatment of Immigration and Naturalization Service and State Department detainers (discussion only).
16. Identification of files which may be purged (discussion only).
17. Report on examiner travel time (discussion only).

Consent Agenda

18. Proposed clarification of the requirement for a statement of reasons for Category Eight offenses exceeding the lower guideline limit by more than 48 months.
19. Proposed revision of the Procedures Manual, section 2.2–04 regarding non-parolable sentences.
20. Proposed clarification of the term "adjudication withheld" which is used as a case disposition in the State of Florida.
21. Proposal coordinating costs for disclosures pursuant to 28 CFR 2.56 with Department of Justice fee regulations.

CONTACT PERSON FOR MORE INFORMATION: Jim L. Beck, Director of Research, United States Parole Commission (301) 492–5980.

Date: October 14, 1987.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 87–24118 Filed 10–14–87; 1:25 pm]

BILLING CODE 4410-01-M

POSTAL SERVICE (BOARD OF GOVERNORS)

Notice of Vote To Close Meeting

At its meeting on October 5, 1987, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 2, 1987, in Washington, DC. The members will consider pros and cons of independent advisers for Governors in considering rate decisions.

The meeting is expected to be attended by the following persons: Governors Griesemer, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or

the litigation of a particular case involving a determination on the record after opportunity for a hearing.

In accordance with section 552b(f)(1) of Title 5, United States Code, and §7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 87–24119 Filed 10–14–87; 1:26 pm]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 23, 1987, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Final Rule Regulation on Primary Insurance Amount Determinations
(2) Amendment of Consolidated Board Order 75–5
(3) Proposed Changes in the RUIA Regulations
(4) Revisions to the Basic Board Orders
(5) Special Service Award Recommendation 87–12–G
(6) Transfer of Functions
(7) Review of and Proposal for RRB Automation Efforts of August 31, 1987
(8) Sectional Meetings—FY88
(9) 1986 Annual Report
(10) FTE Allocation for FY88
(11) Alternative Registration Procedure for RUIA Benefits
(12) Training for Word Processing Pilot
(13) Appeal of Alexander Zelinsky of the Service and Compensation Credited Under the Railroad Retirement and Railroad Unemployment Insurance Acts
(14) Appeal of Nonwaiver of Overpayment, Jessie E. Larrison

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: October 13, 1987.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87–24120 Filed 10–14–87; 1:27 pm]

BILLING CODE 7905-01-M

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Corrections

Federal Register
Vol. 52, No. 200
Friday, October 16, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3190-3]

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry

Correction

In proposed rule document 87-22288 beginning on page 36678 in the issue of Wednesday, September 30, 1987, make the following corrections:

1. On page 36678, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the seventh line, "(MU-13)" should read "(MD-13)".

2. On page 36696, in the third column, in the last complete paragraph, in the 11th line from the bottom, "subrogate, A" should read "surrogate, a".

3. On page 36704, in the second column, in the second complete paragraph, in the last line, "11-B-76" should read "II-B-76".

§ 60.560 [Corrected]

4. On page 36706, in § 60.560(c), in Table 1, in the third column, in the 19th line, "0.16^{ck}" should read "0.16^{c}" and in the 28th line, "1" should read "l".

§ 60.561 [Corrected]

5. On page 36708, in the second column, in § 60.561, in the definition for "Recovery system", in the fourth line, "absorbers" should read "adsorbers".

§ 60.562-1 [Corrected]

6. On the same page, in the third column, in § 60.562-1(a)(1)(ii)(E)(*3*), in the sixth line, "§ 60.564(c)(b)" should read "§ 60.564(c)(5)".

§ 60.564 [Corrected]

7. On page 36711, in § 60.564(c)(7), the equation printed below the second column should appear below the third column.

§ 60.565 [Corrected]

8. On page 36713, in the first column, in § 60.565(a)(6)(i), in the fifth line, "rated" should read "routed".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-940-07-4520-12; (ES 037647, Group 155)]

Filing of Plat of Dependent Resurvey; Minnesota

Correction

In notice document 87-22493 beginning on page 36637 in the issue of Wednesday, September 30, 1987, make the following correction:

On page 36637, in the third column, the date below the heading should read "September 21, 1987."

BILLING CODE 1505-01-D

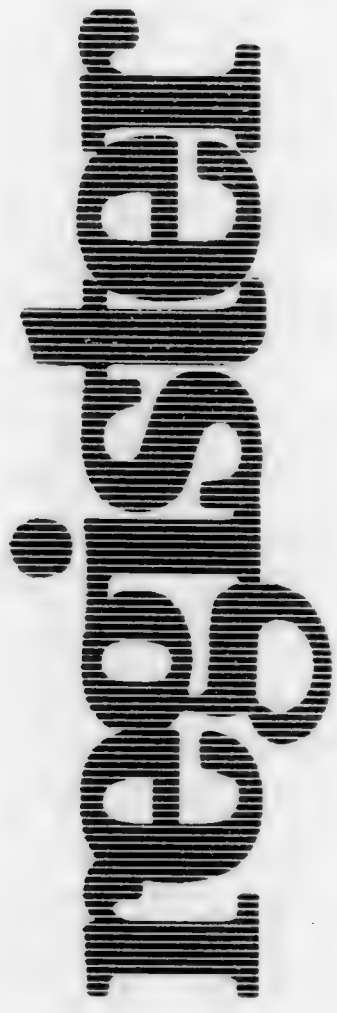

Friday
October 16, 1987

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 442, and 483

Medicare and Medicaid; Conditions of Participation for Long Term Care Facilities; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, and 483

[BERC-396-P]

Medicare and Medicaid; Conditions of Participation for Long Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would revise and consolidate the conditions that facilities furnishing long term care would be required to meet to participate in both the Medicare and Medicaid programs. Long term care facilities include both skilled nursing facilities (SNFs) and intermediate care facilities (ICFs). These conditions would replace the existing separate conditions for SNFs participating in the Medicare program, and SNFs and ICFs participating in the Medicaid program. Although some essential distinctions imposed by the statute remain, these new conditions reflect common needs in SNFs and ICFs. These regulations would not apply to ICFs for the mentally retarded or persons with related conditions.

The purpose of these revisions is to focus on actual facility performance in meeting residents' needs in a safe and healthful environment, rather than on the capacity of a facility to provide appropriate services. The result of this change in focus will be to enforce requirements from the perspective of quality of care and life for long term care residents, not only under Medicare and Medicaid, but generally, since most of these requirements pertain to all the patients of an SNF or ICF. These revisions are also expected to simplify Federal enforcement procedures by using a single set of conditions, which would apply to those activities common to all facilities.

This proposed rule deals only with the conditions of participation of long-term care facilities. We are also publishing a separate proposed rule in this edition of the **Federal Register** which would revise the survey and certification process, which is used to determine whether providers are in compliance with the conditions of participation.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on January 14, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–396–P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–396–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION, CONTACT: Samuel W. Kidder, (301) 597–5909.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to establishment of the Medicare and Medicaid programs by legislation, in 1965, each State applied its own standards to nursing homes. Medicare established conditions of participation and Medicaid established standards for payment which included, for SNFs, the requirement that Medicare conditions of participation for SNFs were met. These were the requirements that facilities had to meet in order to participate in the programs. The Medicaid ICF benefit was established in 1972 under sections 1905(c) and (d) of the Social Security Act (the Act), and is governed exclusively by Medicaid's ICF standards in 42 CFR Part 442. Existing Medicare conditions for SNFs are located in 42 CFR Part 405, Subpart K, and implement section 1861(j) of the Act. The current Medicare conditions were originally published in 1974. Current Medicaid standards for SNFs and ICFs are in 42 CFR Part 442, Subparts D, E and F. The current Medicaid standards have been in effect since 1974.

The 1965 Medicare legislation enacted fairly specific provisions for the furnishing of post-hospital extended care benefits by what were then called "extended care facilities" (Social Security Amendments of 1965, Pub. L. 89–97, § 102(a)). By comparison, the 1965 Medicaid legislation provided for "skilled nursing home services" without defining the scope of the benefit (Pub. L. 89–97, § 121(a)). States defined the Medicaid benefit very broadly, so that it came to cover a level of care much lower than the Medicare extended care benefit. Consequently, in 1972, Congress established a single, uniform definition of "skilled nursing facility," extending the same level of care requirements to both programs (Social Security Amendments of 1972, Pub. L. 92–603, §§ 246–249A). It designates essentially the Medicare definition of SNF to describe the conditions of participation that would apply to both the Medicare and Medicaid programs.

Meanwhile, in 1971, Congress enacted the ICF benefit, section 1905(c) of the Act, under which ICFs would provide regular, health-related care and services to individuals in an institutional setting (Pub. L. 92–223, § 4(a)(2)). These individuals would not require the degree of care and treatment that a hospital or SNF is designed to provide, but because of their mental or physical condition, would require institutional care and services above the level of room and board but below the skilled level of care. This benefit was intended to allow facilities which did not meet SNF conditions of participation to participate as ICFs and provide health related, but not skilled level care to Medicaid patients (see Sec. 4 of Pub. L. 92–223).

The division between SNF and ICF "levels of care" reflected a belief that the needs of both populations were sufficiently different so that different types of facilities could be used to meet them. Consequently, our regulations included separate rules for SNFs and ICFs. However, in practice, a single facility may include both SNF and ICF beds. Also, a person's medical status may initially be evaluated to require SNF care and improve to the point where ICF care may be sufficient, or an ICF patient could deteriorate and require SNF care. Consequently, the distinctions between requirements for the two types of facilities may not always be clear.

The existing regulations prescribe detailed conditions of participation for Medicare that SNFs must meet in order to receive Federal funds. The Medicaid ICF rules are similarly detailed. The Medicaid SNF rules on the other hand, cross-refer to and require that facilities comply with the Medicare SNF conditions of participation; consequently, they lack detail. The focus of all existing conditions and standards is on institutional arrangements and

credential requirements that emphasize the capacity of a facility to furnish quality care.

State survey agencies are responsible for determining the extent of facility compliance with the Federal standards. Failure of a facility to meet these conditions and standards may result in termination of a provider agreement with the facility, under sections 1866(b)(2) and 1902(a)(28) of the Act, and termination of Federal funds under the Medicare or Medicaid programs. Under certain circumstances, however, a State survey agency is permitted to certify a facility with deficiencies, if those deficiencies do not jeopardize the residents' health and safety. The facility must then develop a written plan for correcting the deficiency.

Past attempts by the Department to revise the regulations have been surrounded by controversy and have met with strong opposition from a variety of sources. This controversy has demonstrated the difficulty of establishing effective standards to protect residents, while not imposing unreasonable rigidity and costs that would hinder the ability of facilities to meet those standards. As a result of the controversy over long term care conditions, in September 1983, we awarded a contract to the Institute of Medicine (IoM), a group chartered by the National Academy of Sciences, to enlist distinguished members of appropriate professions to study Federal regulations concerning long term care facilities and recommend changes that might enhance the ability of the regulatory system to assure that residents receive satisfactory care.

In conducting the study, the IoM solicited the views of nursing home residents and their families, administrators, professional staff, State and Federal agency officials and long term care ombudsmen to identify all possible issues. Information was gathered through interviews, reviews of hearings conducted by HCFA in 1978, and Congressional hearings, and a series of public meetings. Information was also gathered on how States regulate nursing homes through a mail survey of all 50 States, through review of 15 State nursing home investigatory commission reports covering the last 10 years, and through extensive case studies in six States. Finally, a workshop was conducted to examine problems of certification and enforcement of the regulations and to recommend improved enforcement.

In February 1986, the IoM issued a report outlining its findings and recommendations. In proposing our revisions to these conditions and standards, we are basing our proposals largely on the recommendations of the Institute of Medicine.

II. Proposed Rule

General Approach

Our proposed revisions to the conditions of participation for SNFs under Medicare, and the conditions and standards for SNFs and ICFs under Medicaid embody the following basic principles:

- The focus of the conditions is on facility performance rather than on compliance with procedural requirements or potential capacity to furnish services.
- The conditions provide that residents needs be assessed, and that, based on the assessment, a plan of care is developed for each resident, and that appropriate care and services are furnished.
- The conditions provide facilities with the flexibility to implement resident plans of care and furnish services without overly prescriptive requirements, as long as resident outcome measures are assured.
- The conditions ensure that residents' rights are protected by facilities, and that residents receive care and services to which they are entitled.
- The conditions enable inspectors to determine whether residents are receiving care and services in accordance with their assessments and plans of care in a safe and healthful environment.

These proposed regulations would not only revise the conditions that all SNFs and ICFs would need to meet to participate in the Medicare and Medicaid programs, but would consolidate in a new Part 483 all conditions for SNFs participating in the Medicare and Medicaid programs, and standards for ICFs participating in the Medicaid program. These regulations would not apply to ICFs for the mentally retarded or persons with related conditions (ICFs/MR) or to the Medicaid ICF/MR benefit. Medicaid standards for ICFs/MR remain in Part 442, Subpart G. Our intent in consolidating long term care facility requirements into a single set of conditions is to highlight the common resident care requirements of the Medicare and Medicaid programs with respect to SNFs and ICFs and to assure the quality of services in all settings, while retaining basic statutory distinctions between SNFs and ICFs. The use of a set of conditions in which common program requirements are uniform will emphasize HCFA's commitment to quality, and should also increase cost effectiveness and improve Federal enforcement. Except when different requirements are imposed by the Act, SNFs under both programs and ICFs would need to be in compliance with identical conditions. A facility's performance, consistent with these requirements, would be measured by whether it meets residents' needs in a safe and healthful environment, emphasizing quality of life, quality of care, and resident rights.

Thus, while we are retaining the statutory distinction between SNFs and ICFs and the coverage and payment distinctions that go with it, we are unifying common elements and stressing quality of care and quality of life issues in all settings. The use of a set of conditions that are generally uniform recognizes the overall commitment of the agency to assure that basic standards of quality are met in all settings by emphasizing care outcomes rather than stressing differences.

Outline of Major Revisions

We are accepting virtually all the IoM recommendations that we believe may be implemented under existing provisions of the Act. In a number of instances, conditions of participation are mandated by specific wording in the Act, and the IoM recognized that new legislation would be necessary to revise those conditions. In summary, we would:

1. Integrate the Medicare SNF conditions of participation (which also apply to Medicaid SNFs) and Medicaid standards of participation for ICFs into a single set of conditions;
2. Use the SNF conditions as the starting point in drafting a combined set of requirements, making distinctions only where the Act requires distinctions;
3. Revise the conditions to emphasize outcomes rather than process;
4. Use the Secretary's authority to impose requirements necessary to the health and safety of inpatients to add a new condition on quality of life and a new condition on quality of care;
5. Make a complete and accurate assessment of each resident's functioning a condition of participation;
6. Elevate the existing SNF standard on resident rights to a condition of participation;
7. Establish "Administration" as a single condition. The new condition would include, among others, seven standards that are conditions under the existing regulations (governing body and management, utilization review, transfer agreements, disaster preparedness, medical direction, laboratory and radiological services, and medical records);

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8. Add two new standards under the Administration condition to require facilities to provide nurse's aide training, and that nurse's aides demonstrate proficiency in patient care.

The existing regulations emphasize the potential ability of a facility to provide care, and the procedures that a facility uses to furnish care. One general result of State survey agency use of these standards to evaluate compliance with health and safety requirements is that evaluation of outcomes, i.e., resident health, safety and satisfaction, is subordinated to evaluation of the process used to reach that outcome. An important feature of these proposed regulations is the use of objectively measurable standards that describe desirable, positive outcomes to be achieved by a facility, and negative outcomes to be avoided.

In keeping with the IoM recommendation to emphasize that a "nursing home" is primarily a place of residence for its clients even though a number of them may be in need of relatively intensive medical care, we have, therefore, adopted the term resident rather than the term patient as a general term of reference for nursing home clients.

We would also note that these proposed conditions of participation are applicable to all of the residents in a nursing home that participates in the Medicare or Medicaid programs, or both, regardless of whether they are Medicare or Medicaid patients or have another source of payment. This means, for instance, that no distinctions in care required by these conditions may be made on the basis of payment levels.

III. Discussion of Proposed Conditions

Resident Rights (§ 483.10)

The IoM study reported that patterns of resident rights violations were cited by consumers, consumer advocates and regulators. The IoM believes that the existing rights standard in § 405.1121(k) is ambiguous, and that enforcement is difficult because a resident's rights and a facility's obligations are unclear. The recommendation of the IoM was to elevate the existing rights standard to a condition level, and to expand on and clarify those rights.

In response to the IoM recommendation, we would revise the current resident rights provisions and elevate them to a condition in proposed § 483.10 to specify clearly the resident rights that must be honored by the staff of a facility, and to provide a clearer statement of the agency's expectations that they be honored. A facility would be required to assert, protect and facilitate those rights. Should a resident be adjudicated incompetent in accordance with State law, we specify that those rights would be exercised by a resident's next of kin or guardian. These revisions are in accordance with sections 1861(j)(15), 1902(a)(28), and 1905(c) of the Act, which give the Secretary general authority to promulgate standards that relate to the health and safety of residents in these facilities. As the IoM study clearly indicates on page 85, resident rights are related to the residents' health and safety because they are a critical component of self-determination and healthy psychosocial functioning, and they act to prevent residents from resigning themselves to unreasonable and unwanted circumstances which can affect their physical health.

The statement of resident rights has been couched in clear, concise, and affirmative statements to make our commitment to assuring that they are observed as clear as possible. We plan to provide more detailed indicators by which compliance with the standards may be measured in our long term care survey instrument to assist our surveyors in determining whether the proper outcomes have been achieved. While we do not plan to include these more detailed items in this rule, we invite suggestions as to specific indicators that may assist in measuring these rights in the survey process.

Quality of Life (§ 483.15)

For many individuals, a nursing home is their residence for an extended period of time, not a facility in which temporary medical care is given. The IoM noted that quality of life in a nursing home is important to the mental and physical well being of a resident. Quality of life is evident in a resident's sense of satisfaction with his or her environment, the quality of care received, and extent of control over his or her life. Quality of life is enhanced by caring and competent staff who treat each resident with dignity and respect, close relationship with others, an environment that encourages independence and the opportunity to have some control over life decisions and over personal belongings. Privacy, quality and variety of food, and participation in one's own health care planning are also important. In addition, the quality of medical and nursing care provided, the sensitivity with which it is provided, and the range of services provided all affect a resident's quality of life, and consequently the resident's functional, physical and mental well-being.

In response to the IoM recommendations, and in recognition of the importance of quality of life, we would create a new condition of participation in § 483.15, which requires that a facility ensure that residents receive care in a manner, and in an environment that maintains or enhances their quality of life. Within this condition, we would include the following five standards: (a) Dignity; (b) environment; (c) freedom of choice; (d) food, and (e) activities.

We would stress, however, that the quality of life in a facility also depends heavily on the proper operation of the other conditions of participation as well. The quality of the medical and nursing care provided, the sensitivity with which it is provided, and the range of services provided all affect a resident's quality of life. Thus, we view the components of the resident rights condition and the quality of care condition as essential to the quality of life in a facility, as we do the other conditions of participation. In fact, it is the desire to measure the quality of care and life that has prompted us to develop our outcome oriented survey instrument and to retrain our surveyors to assure that it is evaluated. Thus, the five standards that comprise the condition, while critical to quality of life in a facility, should be viewed in context with requirements in the other conditions that are also critically important.

a. Dignity. We would require that a facility treat each resident with dignity and respect, and maintain a resident's privacy.

b. Environment. We would require that a facility provide a clean, comfortable and homelike environment for residents. We would retain the present requirement that a facility provide housekeeping and maintenance services needed to maintain a sanitary, orderly and comfortable interior. We would eliminate specificity that deals primarily with the manner of supervision and contracts with outside resources, since we are placing greater emphasis on results rather than, as in the past, on the process by which a facility achieves the standards.

c. Free Choice. In this standard we would require that facilities permit residents to choose freely regarding activities, schedules and health care consistent with their interests, assessments and plans of care. Further, the facility must permit residents to interact freely with members of the community both inside and outside the facility.

d. Food. This standard incorporates the requirements in the existing SNF

dietetic services condition at § 405.1125(e), including the requirement that a patient who refuses food served be offered appropriate substitutes of similar nutritive value.

e. Activities. This standard would require that the facility offer residents an ongoing program of meaningful and appropriate activities. This incorporates the existing activities program requirements for ICFs at § 442.345(a) and the SNF patient activities program standard at § 405.1131, beginning with paragraph (b). The remainder of existing § 405.1131(b) deals primarily with providing adequate space, supplies, and equipment to support the activities program. This requirement is now included in the space and equipment standard of the proposed new condition on Physical Environment, § 483.70(c).

As noted above, many quality of life requirements are outcome oriented expressions of previously existing requirements. The purpose in expressing them in this context is to shift the focus of enforcement from general procedural requirements imposed on the facility to specific care outcomes in the lives of the residents. The authority for these revisions is found at sections 1861(j)(15), 1902(a)(28), and 1905(c) of the Act, since the quality of life in the facility (like the resident rights discussed above) directly affects residents overall morale and adjustment to the facility and is thus related to resident health and safety.

Resident Assessments (§ 483.20)

The existing regulations do not contain a separate SNF condition or ICF standard on resident assessments. Currently, requirements in the regulations regarding resident assessments are scattered among several standards that pertain to patient care plans in §§ 405.1123, 405.1124, 442.319, and 442.341. Because of the importance of unified and coordinated resident assessments to the provision of high quality care, we propose to create a specific condition of participation in § 483.20 that recognizes this need by requiring facilities to perform comprehensive and accurate assessments of a resident's total needs both upon admission and at certain specified intervals throughout the stay. Because accurate and complete assessments are critically important in ensuring that the care received by the resident is appropriate and thus contributes to his or her health and safety, these revisions are in accordance with authority in sections 1861(j)(15), 1902(a)(28), and 1905(c) of the Act.

a. Preliminary assessment. This standard would require that a facility make an initial assessment of each resident's medical, functional and psychosocial needs within 48 hours of the resident's admission to a facility. The initial assessment is necessary so the facility will know what care and services are necessary to meet the immediate needs of the resident. A more thorough and comprehensive assessment must be conducted after 14 days to identify the resident's full spectrum of medical, physical and psychosocial needs.

b. Comprehensive assessment. Within 14 days of admission, we would require the facility to conduct a comprehensive and accurate assessment of each resident's needs. The facility would also be required to reevaluate the assessment of each resident and, if the reevaluation demonstrates a need, update the assessment every 3 months after the first comprehensive assessment, or when a significant change in the resident's status occurs. We propose that periodic assessments be conducted for two reasons: (1) To check on the resident's status changes, and (2) to see what, if any, modifications in the patient's care plan should be made.

The proposed regulations would specify that the assessment must include certain basic information. Except for the requirement that the initial assessment be based on a medical evaluation completed by a physician, we would not specify the qualifications of the staff authorized to do the assessments. We believe that the qualifications of staff responsible for assessments should be left to the judgment of each facility, in accordance with applicable State laws, regulations, and licensure requirements.

c. Accuracy of assessments. We would require that assessments accurately represent a resident's status. Assessments must be accurate not only to reflect correctly the resident's medical, physical and psychosocial needs, but also to establish at a point in time an accurate record of the resident's status, which should not deteriorate as a result of neglect.

d. Comprehensive care plans. In the existing regulations there are various standards on care plan requirements (see for example, § 405.1124(d), nursing plan of care; § 405.1123(b), physician plan of care). Current SNF regulations at § 405.1123(b) require a physician to prescribe a planned regimen of total patient care. The regulations, at § 405.1124(d), require a written patient care plan to be developed and maintained by the nursing service consistent with the physician's plan of medical care. The plan must be reviewed, evaluated, and updated as necessary by all professional personnel involved in the patient's care. The SNF regulations contain additional plan of care requirements for rehabilitative services (§ 405.1126(b)) and, when offered, for social services (§ 405.1130). The ICF regulations currently require an overall plan of care (§§ 442.318(c)(3) and 442.319), as well as a written health care plan developed by appropriate staff and reviewed at least quarterly (§ 442.341). Additional plan of care requirements are specified for rehabilitative services (§ 442.343) and social services (§ 442.344).

In the proposed rule we have consolidated care plan requirements into one standard, § 483.20(d). This standard would require that a facility develop a comprehensive care plan, an individualized document for each resident, that includes short-term and long-term goals and timetables to meet the needs of the resident as identified by the comprehensive assessment. To coincide with the updating of the resident assessments, we would require the facility to review and modify the comprehensive care plan, as necessary, when the resident's comprehensive assessment is updated to ensure that the care plan meets the resident's current needs, as identified by the most recent assessment. It is our intention to assure that the plan of care is directly related to the findings of the assessment and that the care of the patient is consistent with both these documents. Our proposed plan of care requirements would establish a uniform review schedule for both the SNF and ICF settings. We have not attempted to link this review schedule to the Medicaid schedule for physician visits; we believe that the comprehensive plan of care review is essentially a nursing activity and, more importantly, that the physician should be involved whenever physician input is needed rather than waiting until the next scheduled physician visit.

e. Discharge summary. This standard would require that a facility provide a discharge summary for each resident that contains specified information. We would require that the summary also include a post-discharge plan to assist in meeting the resident's needs following discharge, and to facilitate continuity of care.

We view the resident assessment and care planning as the essential element in assuring that the facility evaluates and serves the needs of its residents. Our outcome oriented survey process, which focuses on health care outcomes, will evaluate this process not only by viewing the condition of the resident but also in relating the resident's condition

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to the assessment and plan of care to assure that the facility is operating this critical process correctly.

We recognize that the IoM recommended a more comprehensive resident assessment system, including a uniform assessment instrument, national patient data collection, and other features. The IoM believes that the content of the outcome-oriented survey process should be specified in a uniform assessment instrument out of concern that otherwise data on resident outcomes across nursing homes will not be fully comparable. While we are receptive to this concern, we believe that the current proposal goes a long way towards addressing it by including detailed standards on quality of care, which are specifically pegged to the findings on quality of resident assessment. We expect when this regulation is implemented, it will provide more precise guidelines for surveyors to apply and will thus foster more uniform results. We have not at this point taken the further step of requiring specific data elements or of requiring a specific instrument for use in preparing assessments in order to facilitate comparisons of resident outcomes. This is a difficult issue, which we are continuing to study. Unfortunately, there is not yet agreement on what such data elements should be. We prefer to gain operational experience with the system in order to develop appropriate modifications based on experience with an implemented system. We will, however, closely monitor the results of our survey process to determine whether the assessment and care planning requirements we have instituted are producing the desired care outcomes and will continue to consider whether further refinement of the process is appropriate. We will be looking at the experience of individual States which do require the use of an assessment instrument (e.g., New York and Maryland). If we determine that we should take this approach, we will ensure that the views of relevant groups are considered.

The IoM also recommended that resident assessments be conducted by a registered nurse. We have not incorporated this requirement into this regulation because we do not believe that it is appropriate to insist that an assessment be conducted by a registered nurse in all cases. We do expect that nurses would be involved in virtually all assessments, and that, in many cases, nurses will conduct the assessments. However, we also know that other practitioners are often needed to assess a resident's condition properly, and we do not want to preclude their involvement. For example, the major role in assessing the care needs of a resident with a hip fracture, who has been admitted for rehabilitation care, may well be assumed by a physical therapist. Rather than require that a particular practitioner conduct the assessment, we prefer simply to require that they be accurate and to hold the facility accountable for their accuracy when we perform our surveys.

Quality of Care (§ 483.25)

We would add a new quality care condition under § 483.25 in response to IoM recommendations. An important feature of this new condition is the use of resident care outcomes, especially negative ones, to assess whether residents are receiving satisfactory care. Outcomes can be positive, or negative. Positive outcomes are generally desirable goals of resident care, including physical rehabilitation, restoration of skin breakdown, and restoration of toileting ability. Negative outcomes are situations that should not occur when there is no apparent reason for a resident's decline except neglect. The negative outcomes to be avoided include skin breakdown (decubitus ulcers), urinary tract infections, malnutrition, and contractures that occur after the resident's admission. In the use of negative outcomes, we would identify those specific instances in which undesirable results occur without justification, and provide a basis for imposing sanctions to enforce quality of care standards.

Each of the 14 standards included in this new condition are stated in terms of desired outcomes or outcomes that should be avoided in the areas of functional status, physical well-being and safety, emotional well-being, social involvement and participation, cognitive functioning, and resident satisfaction. All outcomes would be evaluated by a surveyor using each resident's comprehensive assessment as a baseline. We believe that these standards will be useful, objective measures in assessing the quality of care furnished by a facility. However, we welcome public comment on any additional factors that may be appropriate in this condition.

Nursing Services (§ 483.30)

Section 1861(j)(6) of the Act requires that SNFs provide 24 hour nursing services that are sufficient to meet nursing needs in accordance with policies developed by a group of professional personnel (including one or more physicians and one or more registered nurses), and the SNF must have at least one registered professional nurse employed full time. Existing SNF regulations for nursing services are in 42 CFR 405.1124. Specific ICF requirements for nursing services are in existing regulations at §§ 442.338, 442.339, 442.340, and 442.342.

In developing new nursing requirements we have two objectives in mind. First, we wish to promulgate requirements that assure nursing homes have adequate nurse staffing to meet the care needs of their residents. Second, we wish to provide maximum flexibility for staffing and to avoid requiring 24 hour nurse staffing if there are cases in which the needs of the residents can be met through the use of other personnel. The IoM recommended nurse staffing at the SNF level; however, it also indicated that nurse staffing should be sensitive to patient mix. We recognize that the IoM believed that 24 hour nursing should be the basic minimum requirement, and believe that the patient mix in most facilities will be such that 24 hour nursing is warranted. We are not, however, certain that this is the case for all facilities. Also, we are concerned that some facilities would have difficulty in recruiting the nurses necessary to meet the requirement and do not wish to create a situation in which needed nursing home beds are unavailable to program beneficiaries because facilities cannot meet staffing requirements.

We currently believe that 24 hour nurse staffing will most often be appropriate whether as a result of the IoM's recommendation or a more general test of sufficiency. However, in order to assure that our decision on staffing is made only after full consultation and consideration of the alternatives, we are proposing three alternative staffing requirements, as discussed below. We will choose one alternative based on the comments we receive.

The first alternative would be essentially to adapt the current SNF staffing requirements for both SNFs and ICFs. All nursing homes would be required to have a sufficient number of licensed nurses and other personnel on a 24 hour a day basis, including a registered nurse on duty on the day shift at least 8 hours a day, 7 days a week. All facilities would be required to have a director of nursing, although in an ICF this individual could be a licensed professional rather than a registered nurse. All facilities would also be required to have a charge nurse designated for each tour of duty and, in facilities with 60 or more residents, the

charge nurse could not be the director of nursing. The currently existing waiver for SNFs of a portion of the 7 day a week registered nurse requirement would be extended to ICFs as well.

The second alternative would be to retain the above requirements for SNFs and to retain essentially the current requirements for ICFs. ICFs would be required to have a sufficient number of licensed nurses and other nursing personnel on a 24 hour basis 7 days a week to meet the nursing needs of the residents (as determined by their assessments and plans of care). At a minimum, the ICF would be required to have an RN or LPN or licensed vocational nurse on duty full time, on the day shift, 7 days a week. If the nurse was not an RN, the ICF would be required to have a formal contract with an RN for consultation with the LPN or vocational nurse at regular intervals but not less than four hours a week. The ICF would still be required to name a director of nursing and, on shifts with more than one nurse on duty, to designate a charge nurse. These requirements are basically the same as the requirements currently imposed upon ICFs.

The third alternative would be to adapt the current SNF staffing requirements (as described above) to both SNFs and ICFs but to provide a waiver of the nurse staffing requirements in cases in which the ICF can provide appropriate nursing care to its residents (i.e., nursing services sufficient to meet the needs identified in their patient assessments and described in their plans of care) with a lower level of staffing. The specific measure of staffing adequacy for purposes of this determination would be compliance with the quality of care condition of participation at § 483.25. The waiver could only be granted if each of the condition's standards is met. Determinations about the adequacy of nursing services would be based on surveys and waivers would be granted for 6 month periods. A survey every six months would be performed to assure that the waiver is appropriate. The waiver provision is reflected in proposed regulations governing the survey and certification process in a new Part numbered Part 488, which is to be published separately in the **Federal Register**.

While we believe that the first alternative reflects the staffing levels that are appropriate for nursing homes, we are soliciting comments on the other alternatives and will review them carefully before making a determination.

In addition, in § 483.30(d), unless prohibited in writing by the attending physician, we would allow facilities to permit each resident to retain and administer his or her own drugs. Residents who self-administer drugs would be responsible for storing them securely and maintaining a record of drugs taken. We have not included a more general requirement for drugs to be stored securely, since we believe that State licensure laws adequately address the issue of a facility securing drugs against tampering and pilferage. However, we welcome comments on whether there is a need to have this type of requirement explicitly included in these regulations.

Dietary Services (§ 483.35)

The proposed dietary services condition, § 483.35, would incorporate many elements of the existing SNF dietetic services condition in § 405.1125 and the existing ICF standards on meal service in §§ 442.331 and 442.332. This condition would include the following standards:

a. Staffing. We would require that all facilities employ a staff member who is trained or experienced in food management or nutrition. However, to focus on outcomes and allow facilities to employ only the staff necessary to comply with the proposed conditions, we would not specify numbers of staff to be employed. In the staff qualifications standard of the proposed administration condition, § 483.75(j), we would require a facility to employ, on a full-time, part-time, or consultant basis, those professionals needed to carry out the provisions of these conditions.

b. Menus and nutritional adequacy. We would continue present requirements that a facility provide each resident with a nourishing, palatable, well-balanced diet including modified and specially prescribed diets. We would eliminate, however, prescriptive details. Contracts with a food management company would be addressed in the standard on use of outside resources in the administration condition, § 483.75(l). While we would retain the requirement that a facility plan menus to meet residents' needs in accordance with physicians orders in the existing SNF standard on menus and nutritional adequacy, § 405.1125(b), we would delete the reference to the recommended daily allowances of the National Academy of Sciences, as part of our increased emphasis on the needs of the resident as defined by his or her physician.

c. Therapeutic diets. In proposed standard § 483.8(c), on therapeutic diets, we would retain the existing requirement in § 405.1125(c) for SNFs and § 442.332(b) for ICFs that therapeutic diets be prescribed by the attending physician. However, we are deleting the SNF requirements for a written plan and a therapeutic diet manual, as well as the ICF requirement for retention of a record of each menu for 30 days, to de-emphasize process-oriented standards and to remove unnecessarily prescritive requirements.

d. Frequency of meals. The proposed standard, § 483.35(d), on frequency of meals would retain the existing requirement for SNFs at § 405.1125(d) and for ICFs at § 442.331(a) that a facility serve at least three meals daily, or their equivalent, at regular hours, with not more than 14 hours between a substantial evening meal and breakfast except when a nourishing bedtime snack is served. We would modify the existing SNF provision that a facility serve snacks at bedtime daily to add that snacks should be offered to the extent permitted by the physician.

e. Assistive Devices. This proposed standard would incorporate the existing provisions in § 442.331(c) that an ICF must furnish residents with necessary special eating equipment and utensils.

f. Sanitary Conditions. The proposed standard at § 483.35(f) would incorporate the existing SNF standard for sanitary conditions, in § 405.1125(g).

We propose to incorporate a number of provisions of the existing dietary services regulations elsewhere in these regulations. We would place the existing standard on staff hygiene in 42 CFR 405.1125(f) in the personnel policies and procedures standard of the proposed administration condition, §483.75(e). This standard would continue to require that the facility ensure that food service personnel are free of communicable diseases and prevent the spread of communicable diseases and infections by facility employees. The existing standard regarding preparation and service of food for SNFs (§ 405.1125(e)) has been incorporated into the food standard of the proposed new quality of life condition, § 483.15(d).

Physician Services (§ 483.40)

Section 1861(j)(4)(A) of the Act requires that SNFs have the health care of their residents under the supervision of a physician. Section 1861(j)(4)(B) of the Act requires that a SNF must provide for having a physician available in case of emergency. We would retain in the new condition in § 483.40 the provision in existing regulations that requires that residents in need of care are admitted to the facility only upon the approval of, and remain under the care of, a physician.

a. Physician supervision. We would continue to require that a facility ensure that the medical care of each resident is supervised by a physician, as currently provided in § 405.1123(b). Further, the facility must assure that another physician supervises the medical care of residents when the attending physician is unavailable. This is unchanged from existing requirements.

b. Physician visits. To ensure that resident care is adequately supervised, we would retain the requirements contained in the existing regulations at §405.1123(b), that the resident's total program of care be reviewed during required physician visits, and a progress note be written and signed by the physician at the time of each visit, and that the physician sign all his or her orders.

c. Frequency of physician visits. We would adopt prescribed time intervals for physician visits which, together with the visit schedule established in the plan of care, would be applied by the facility in determining how frequently physicians must visit each resident. These provisions will bring the required physician visit schedule more closely in line with the statutory Medicaid periodicity schedule for physician certifications and recertifications, which was revised in 1984 (see Pub. L. 98–369, § 2363). We believe that continuing to specify these time intervals in the regulations provides parameters that will help ensure adequate physician supervision of resident care.

d. Availability of physicians for emergency care. We would retain the basic content of current § 405.1123(c), which requires a facility to have a physician available to furnish necessary medical care in case of emergency. We would add the requirement that the facility must provide or arrange for the provision of physician services 24 hours a day in case of emergency.

e. Delegation of tasks. We would include in § 483.40(e) a provision that allows a physician, under certain conditions, to delegate tasks to a physician assistant or nurse practitioner working under the physician's supervision.

Specalized Rehabilitation Services (§ 483.45)

The proposed condition on specialized rehabilitative services, § 483.45, would incorporate two major elements of the existing regulations for SNFs found at § 405.1126, and for ICFs, at §§ 442.306 and 442.343. We would include the following standards in this condition:

a. Provision of services. We would include in § 483.45(a) the requirement that the facility provided rehabilitative services (i.e., physical therapy, occupational therapy, and speech therapy) or obtain them under a written arrangement, as called for in each resident's plan of care. In addition, if the facility does not provide or obtain such services it does not admit residents in need of rehabilitative care.

b. Qualifications. We would include in § 483.45(b) the existing SNF requirement found at § 405.1126(d) that facilities providing outpatient physical therapy services must meet the applicable health and safety regulations pertaining to such services that are included in Part 405, Subpart Q.

Social Services (§ 483.50)

Under section 1861(j)(15) of the Act, the Secretary may not require as a condition of participation that medical social services be furnished by skilled nursing facilities. Therefore, the existing SNF regulations, at § 405.1130, provide that a facility may either provide social services directly to its residents, or have procedures for referring residents in need of social services to appropriate social agencies.

The proposed condition in § 483.50 retains the option for facilities either to provide directly, or obtain under an agreement, services to meet the medical social service needs of its residents. We are including this condition of participation because it is a major recommendation of the IoM and because we believe, as does the IoM, that the meeting of psychosocial needs is essential to the health and welfare of nursing home residents. In creating this condition of participation, however, we do not mean to imply that the psychosocial needs of residents must or should be met primarily through specific scheduled interventions or through the efforts of individuals with particular credentials.

We recognize that individual residents may well receive assessments by professionals and may well have individual needs which must be addressed by specific interventions. We would stress, however, that both we and the IoM view the psychosocial responsibilities of the facility in a far broader context. Other conditions such as Patient's Rights, Qaulity of Care, and Quality of Life all relate to some extent to the psychosocial needs of the residents. Nursing services should be provided in a manner that is sensitive to the needs of the residents in this respect, as should the activities of other facility employees.

Based on this view, our long term care survey will look not only at the facility's compliance with this specific condition of participation but at the overall effect of its activities on the well-being of the residents. We specifically invite public comments as to what types of specific outcome measures might be used to evaluate this care and as to whether a specific condition should be included in the final regulation or whether these functions should be entirely integrated with other conditions.

Dental Services (§ 483.55)

In proposed § 483.55, We would retain the essential elements of the existing dental services condition in § 405.1129 for SNFs participating in the Medicare program.

We would retain essentially the language in the existing SNF dental services condition except for the explanation of dental services coverage under Parts A and B of Medicare. This explanation is unecessary because the proposed condition would apply equally to facilities under Medicare and Medicaid, and because Medicare's special policies with regard to dental services are discussed elsewhere in the Medicare Regulations, at § 405.310(i) for Part A, and at §§ 410.20(b)(2) and 410.24 (published Nov. 14, 1986, at 51 FR 41341, formerly § 405.232a(a)(2)) for Part B.

a. Advisory dentist. We propose to require that a facility ensure that a dentist is available in an advisory role to the nursing staff.

b. Agreement for outside services. We would require the facility to have an agreement with a dentist to provide care to residents, to maintain a list of dentists for residents to choose from, and to assist residents in making appointments and arranging transportation for dental visits.

Pharmacy (§ 483.60)

a. Methods and Procedures. The proposed condition of participation for pharmacy in § 483.60 would retain, in proposed standard (a) (Methods and Procedures), the existing provision in section 1861(j)(7) of the Act, and in regulations at § 405.1127, that requires the facility to provide appropriate methods and procedures for the dispensing and administering of drugs and biologicals. We would also retain the requirement that the facility be responsible for providing drugs and biologicals to its residents. We propose to divide the existing standard in § 405.1127(a) on supervision of services into two standards, and reduce the content.

b. Supervision of services. In proposed § 483.60(b), we would require that the facility employ or obtain the services of a licensed pharmacist, who must establish a system of records of receipt

and disposition of all controlled drugs, and periodically determine that accurate records are maintained. We would remove existing requirements that a pharmacist work a sufficient number of hours during regularly scheduled visits to the facility necessary to carry out that responsibility.

c. Drug regimen review. In § 483.60(c), we would require that the facility be responsible for conducting a drug regimen review for each resident on a monthly basis. The existing regulations for SNFs at §405.1127(a) designate the pharmacist as responsible for conducting drug regimen reviews, and in ICFs (§ 442.336), a registered nurse is designated. In proposed § 483.60(c), we would retain the requirement that pharmacists be responsible for conducting the reviews in SNFs, and would make this requirement applicable in ICFs as well.

These proposed standards dealing with quality of care outcomes (see the quality of care condition, § 483.25) emphasize the accuracy of the drug distribution system and the quality of drug reviews and allow the facility broad discretion in deciding how to achieve those goals.

Existing standards in § 405.1127(b), "Control and accountability" and § 405.1127(c), "Labeling of drugs and biologicals" are deleted in this proposal since State laws adequately address these issues.

We would not include the existing standard in § 405.1127(d), on "Pharmaceutical services committee" in the revised regulation because the emphasis would now be placed on the outcome of the service and not on process or paper requirements.

Infection Control (§ 483.65)

The proposed condition on Infection Control, § 483.65, incorporates many of the elements of the existing regulations governing infection control for SNFs at § 405.1135 and for ICFS at §§ 442.327 and 442.328. These include the requirements that a facility: Provide a sanitary environment; conduct an active program for the prevention, control, and investigation of infection and communicable diseases; implement corrective action in problem areas; use aseptic and isolation techniques; and handle, store, process, and transport linens in such a manner as to prevent the spread of infection. We would continue to require that facilities isolate residents with infectious diseases in single rooms ventilated to the outside with private toilet and handwashing facilities, identified by precautionary signs. This requirement is in the existing conditions for SNFs at § 405.1134(f).

In revising the proposed conditions, we emphasized residents' needs, the effects of care on residents, and the performance of a facility in providing care rather than its capacity to perform. Thus, we removed the requirement for an infection control committee, leaving the governing body and management free to determine the means by which it develops and implements a program of infection control. Similarly, we would not require that the facility have written effective procedures for aseptic and isolation techniques. Instead, we would specify that the facility must ensure that aseptic and isolation techniques are followed by all personnel, in accordance with acceptable professional practice. This shifts the emphasis from paper compliance to an outcome orientation based on current professional standards. To emphasize further the importance of outcome measures, we would provide that the facility must implement successful corrective action in affected problem areas, and the facility must maintain a record of incidents and corrective actions related to infections. These revisions are made in accordance with sections 1861(j)(15), 1902(a)(28), and 1905(c) of the Act.

Physical Environment (§ 483.70)

Under authority of sections 1861(j)(15), 1902(a)(28), and 1905(c) of the Act, we would add a physical environment condition, which would include the following standards: a. Fire Safety. We would retain or modify the existing requirements as follows:

- We would require newly participating facilities (SNFs or ICFs) to meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (LSC), rather than the 1981 edition currently required.
- We would retain the policy in existing §§ 405.1134(a) and 442.321(c) that allows a facility that is already participating to continue to comply with previous editions of the LSC, including the 1981 edition.
- We would retain the policies in existing §§ 405.1134(a), 442.321 and 442.323 that HCFA (or for ICFs, the State survey agency) may waive specific requirements of the LSC, and permit a State to use the State's fire and safety code in lieu of the LSC, if that code adequately protects residents.
- We would discontinue for SNFs and ICFs the policy in §§ 405.1134(a) and 442.323 that prohibits the placement of blind, non-ambulatory and physically handicapped residents above the street level floor, if the facility is participating on the basis of a waiver of construction type or height and is not of fire resistive construction. Our experience shows that these provisions are unnecessary because a waiver of the LSC can be granted only if it does not affect the health and safety of all residents. A waiver of provisions that would allow any residents to be on the second story of a woodframe building that has no sprinkler system would not be granted since the facility would be unsafe and, therefore, not meet the provisions of the LSC. In addition, the likelihood of a facility requesting such a waiver has been reduced significantly since the introduction of the Fire Safety Evaluation System (FSES).
- We would discontinue the existing ICF requirement found at § 442.322 that allows smaller ICFs (15 beds or less) primarily engaged in the treatment of alcoholism and drug abuse to comply with the less stringent lodging and rooming houses section of the residential occupancy requirement of the 1981 edition of the LSC. These less stringent requirements are allowed in small ICFs if a physician certifies that the residents are ambulatory, engaged in active treatment, and capable of following directions. If the proposal to adopt the "applicable provisions" of the 1985 LSC is adopted, Chapter 21, the Residential Board and Care chapter, will be among the "applicable provisions." Thus, Chapter 21 could be applied to smaller facilities primarily engaged in the treatment of alcoholism and drug abuse, and, depending on the evacuation capability of the residents and staff, the facility could be subject to less stringent physical plant requirements.

b. Emergency Power. We would discontinue the SNF requirements now in § 405.1134(b) that a facility must provide emergency power for exit lighting, and equipment to maintain fire detection, alarm and extinguishing systems because these requirements are covered by the Life Safety Code in standard (a). We would retain the policy in existing § 405.1134(b) that SNFs must provide emergency electrical power to life support systems by means of an emergency generator. To this, we would add the requirement that the generator must be one that meets the requirements of the National Fire Protection Association. Emergency power requirements are not currently in the ICF standards, and consequently, this would be a new requirement for facilities previously meeting ICF standards only, but only to the extent that they have residents on life support systems.

c. Space and Equipment. We would modify the policy in the existing SNF standard in § 405.1134(d) that requires a

nursing unit to contain certain basic service areas, such as a drug preparation area, by requiring that there be adequate space and equipment for dining, health services, recreation, and program areas to provide residents with needed services. This approach does not limit the scope of the regulations just to those functions listed in the regulations.

d. Resident Rooms. We would retain the existing requirements in §§ 405.1134(e), 442.324, 442.325 and 442.326 that: (1) Facilities place no more than four residents per bedroom; (2) that bedrooms in existing facilities measure at least 80 square feet per resident in multiple bedrooms, and 100 square feet in single rooms; (3) each bedroom has direct access to the corridor; (4) the floor of the room be at or above grade level; and (5) the Secretary or the survey agency may waive these requirements under certain circumstances. In addition, the facility must provide each resident with: (1) A separate bed of proper size and height; (2) a clean, comfortable mattress; (3) bedding appropriate to the weather and climate; and (4) furniture appropriate to the resident's needs, as well as individual closet space in the resident's bedroom. We would require that bedrooms be designed or equipped to assure full visual privacy for each resident. This means that the facility must implement measures, such as ceiling-suspended curtains which extend completely around the resident's bed, which enable each resident to obtain complete protection from the view of others, without infringing on the freedom of movement of other occupants of the same room. Further, each bedroom must have outside exposure in existing facilities, and have at least one window to the outside in new facilities.

e. Toilet Facilities. In proposed § 483.70(e), we would incorporate existing standards for SNFs now found in § 405.1134(e) and for ICFs in § 442.325(a)(1) that require each resident room to be equipped with or conveniently located near toilet and bathing facilities.

f. Resident Call System. In proposed § 483.70(f), we would add a standard that requires that the nurses station be equipped so that nurses can be summoned from resident rooms, toilet and bathing facilities, and common resident areas. This standard would incorporate existing requirements for SNFs now in § 405.1134(d) and for ICFs in § 442.325(a)(7) for a resident call system.

g. Dining and Activities. In proposed § 483.70(g), we would incorporate existing SNF requirements in § 405.1134(g). This standard would require that the facility provide one or more rooms for resident dining and activities. These rooms must be clean, well lighted and ventilated, adequately furnished, and have sufficient space to accommodate all activities. We would also specify that if the dining room is used for other activities, there must be sufficient room for all activities so that there is no interference between functions.

h. Other Environmental Considerations. In proposed § 483.70(h), we would retain the content of the existing SNF standard now in § 405.1134(j) that a facility must provide a functional, sanitary, and comfortable environment for residents, personnel and the public. There presently is no comparable ICF requirement. In addition, we would require, in accordance with IOM recommendation 3–8, that the facility maintain a comfortable and safe room temperature. The IOM recommended that we adopt a temperature range for sedentary or slightly active persons developed jointly by the American National Standards Institute (ANSI) and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) specified in the ANSI–ASHRAE Standard 55–1981.

While we have not specified this standard in the regulation, our surveys will find facilities that maintain the 71–81°F temperature range it specifies to be in compliance.

We invite comment as to whether a specific temperature range should be specified in the regulation.

We would also retain the content of the SNF requirements now in § 405.1134(j) and the ICF requirement in § 442.325 that handrails be securely attached to all corridor walls.

Administration (§ 483.75)

We would create a new condition titled "Administration" in § 483.75, in which we would incorporate the following seven existing conditions as standards: governing body and management, utilization review, transfer agreement, disaster preparedness, medical direction, laboratory and radiologic services, and medical records. We would also add several other standards. We have grouped these requirements, many of them statutory for SNFs, in a single condition of participation based on the IoM's recommendations. The IoM favored a format for the conditions that emphasized the resident care outcomes as of greatest overall importance and subordinated other requirements to those concerns. We agree that the emphasis ought to be on the resident outcomes; however, we note that enforcement of the statutory requirements is essential. Thus, while a condition of participation might generally still be met if one of the standards of which it consists is not met, we would enforce the Administration condition in such a manner that a facility would be out of compliance with the condition if any statutory requirement contained in its standards is not met (i.e., utilization review, institutional plan and budget, transfer agreement, medical records, compliance with licensure laws, resident care policies, resident finances, disclosure of ownership, and independent medical evaluation and audit). We do not believe that the Act permits us to deemphasize these requirements to the extent recommended by the IoM. However, as noted throughout this document, we do plan to increase our emphasis on the resident quality of care outcomes embodied in these new conditions. The Administration condition would include the following standards:

a. Licensure. Under the authority of sections 1861(j)(9) and 1905(c)(1) of the Act, the proposed standard in § 483.75(a) would require a facility to be licensed or approved in accordance with applicable State or local laws. This would incorporate the general requirements now found in SNF regulations at § 405.1120(a) and in ICF regulations at § 442.251.

b. Compliance with Federal, State and local laws. In accordance with sections 1861(j)(9) and 1905(c)(3) of the Act, the proposed standard in § 483.75(b) would require that the facility comply with all applicable provisions of Federal, State, and local laws, regulations and codes. This would incorporate the general requirements now found in SNF regulations at § 405.1120 (b) and (c) and ICF regulations at § 442.315.

c. Governing body. In proposed § 483.75(c)(1), we would require a facility to have a governing body that is legally responsible for establishing and implementing policies concerning management and operation of the facility. This requirement would include various provisions of the existing SNF governing body and management condition in existing § 405.1121, and the existing ICF standard on methods of administration in § 442.301. The governing body would be responsible for the following:

1. Appointing an administrator who is State licensed. This requirement is statutory for Medicaid (section 1908 of the Act) but it is not for Medicare. Therefore, this represents a new

Medicare requirement for SNFs that participate in Medicare only. Since licensure of nursing home administrators for Medicaid is a longstanding community standard, HCFA believes it is not unreasonable to impose this requirement on Medicare-only SNFs. Since the requirement helps to assure the health and safety of residents, this revision is in accordance with the authority provided in sections 1861(j)(15), 1902(a)(28) and 1905(c) of the Act;

2. Making available to residents and the public written policies regarding the rights and responsibilities of residents as specified in § 483.10;

3. Permitting access to designated ombudsmen, both volunteer and paid, within normal visiting hours, in accordance with State law. The facility must allow the obudsmen to examine a resident's records if the resident or legal guardian agrees. This is in accordance with IoM recommendation 3–7(F)(1);

4. Permitting access within normal visiting hours to authorized employees or agents of public agencies (consistent with the resident's right to privacy). This is in accordance with IoM recommendation 3–7(F)(2);

5. Posting—

• Information on Federal, State or local agencies responsible for enforcing nursing home rules, and resident advocacy;

• Notification of the results of Federal and State surveys, and plans of correction;

• The name, address and phone number of the State survey office, the State or local ombudsman office, and the State or local legal service office.

6. Assuring that the facility provides space and privacy to resident advisory and family councils (we would specify that staff or visitors may attend only by council invitation); also the facility must provide a designated staff person to provide assistance and responsed to written requests that result from council meetings.

d. Institutional plan and budget. In proposed § 483.75(d), we require a SNF to develop an institutional plan and budget. In doing so, we are simply restating the statutory requirement in section 1861(j)(10) and (z) of the Act. However, the legislative history of the statutory provision makes it clear that it does not envision governmental involvement in the process by which a facility satisfies this requirement:

> The plan would not be reviewed for substance by the Government or any of its agents. The purpose of the provision is to assure that such institutions carry on budgeting and planning *on their own*. It is not intended that the Government will play any role in that process. (Emphasis added.)

H.R. Rep. No. 231, 92d Cong., 2d Sess., *reprinted in* 1972 U.S. Code Cong. & Ad. News, 4989, 5089; S. Rep. No. 1230, 92d Cong., 2d sess. 203–204 (identical provision).

e. Personnel policies and procedures. In proposed § 483.75(e), we would incorporate most of the provisions of existing SNF regulations in § 405.1121(g), but we would delete the requirement for written personnel policies and procedures, as they are unnecessarily prescriptive.

f. Nurse's aide training. In proposed § 483.75(f), we would add a new standard that would require a facility to provide nurse's aide training to untrained aides. There are no existing Federal requirements concerning qualifications of nurse's aides. According to the IoM study, most aides are at the lowest entry level requiring no experience, formal education or training. Yet, aides constitute over 70 percent of nursing home personnel, and furnish most of the patient care. For these reasons, IoM recommended that all nurse's aides complete a preservice, State-approval training program in a State accredited institution such as a community college. While we support preservice training programs, few State-approval training programs exist. We would encourage States and the private sector to develop such training programs. In the interim, we have implemented the IoM recommendation, but modified it to provide that the facility must provide 80 hours of training for new aides before they are allowed to care for patients.

g. Proficiency of nurse's aides. In proposed § 483.75(g), we would add a related standard requiring that nurse's aides be able to demonstrate competency in resident care skills and techniques.

h. Notification of changes. In proposed § 483.75(h), we would include provisions from existing SNF regulations at § 405.1121(j) on notification of changes in patient status. To this, we would add the requirement that the facility record and periodically confirm or update the indentity of each resident's representative to be notified in the event of certain specified occurrences. Notification would be required when there is a significant change in physical, mental or emotional state, an accident involving the resident, a change in billing, a change in room assignment, a decision to discharge the resident (except in a medical emergency), or a change in Federal or State requirements concerning resident rights.

i. Resident care policies. In proposed § 483.75(i), we would include the requirement that a facility have written resident care policies. It would include the provisions of similar ICF regulations found at § 442.305 (resident services director) and § 442.306 (written policies and procedures). For SNFs, § 483.75(i)(2) would incorporate the existing requirements in section 1861(j)(2) of the Act, and existing SNF regulations at §405.1121(1).

j. Resident finances. In proposed § 483.75(j), we would incorporate existing statutory requirements in section 1861(j)(14) of the Act, and replace requirements for SNFs now found in § 405.1121(m), and for ICFs in §442.320.

k. Staff qualifications. In proposed § 483.75(k), we would incorporate the general provisions of existing ICF regulations at § 442.302, as well as the definitions of various types of staff contained in existing SNF regulations at § 405.1101. To eliminate unnecessary requirements, and to focus on outcomes, we would require only that a facility employ those professional staff necessary to meet the conditions of participation, and would not specify numbers of each type of employee. We would also eliminate the SNF requirement for submission of quarterly staffing reports in existing § 405.1121(b).

1. Contracted services. Proposed § 483.75(1) incorporates provisions of the existing SNF regulations on use of outside resources now in § 405.1121(i) and of ICF regulations on arrangements with outside resources in § 442.317. In requiring the facility to ensure the quality and timeliness of services furnished by outside resources, we do not intend to make the facility responsible for actually enforcing separate standards that may be applicable to those outside entities. Rather, we are, as a matter of resident health and safety, making the facility responsible for selecting and continuing to utilize only those outside resources that are professionally competent and that furnish services promptly and accurately (see §§ 405.1121(i) and 442.317 for the current provisions).

m. Medical director. In proposed paragraph (m), we would apply to SNFs and ICFs the basic requirements of existing SNF regulations for a medical director at § 405.1122. The existing ICF regulations contain no comparable provision.

n. Laboratory services. o. Radiology and other diagnostic services. These proposed standards include the provisions of the existing SNF regulations on laboratory (paragraph (n)) and radiologic (paragraph (o)) services currently found at § 405.1128.

The existing ICF regulations contain no comparable provision.

p. Medical records. In proposed § 483.75(p), we would incorporate most of the requirements in existing SNF regulations at § 405.1132, and ICF regulations at §§ 442.319 and 442.318, which implement requirements in section 1861(j)(5) of the Act. The content of existing § 405.1132(g) concerning indexes would not be retained as the regulations already require that the medical records be systematically organized, and we believe the specific process by which this is achieved should be left to the facility. In addition, we would add to the standard in paragraph (p) the requirement that a facility must permit each resident to inspect his or her medical records upon request and the facility must provide photocopies of the records to each resident on request. The facility would be permitted to charge a resident an amount for photocopying not to exceed the amount customarily charged in the community.

q. Disaster preparedness (§ 483.75(q)). We would retain the content of existing SNF regulations on disaster preparedness at § 405.1136, and similar regulations at § 442.313.

r. Transfer agreements (§ 486.75(r)). With some modification, we would retain the content of existing SNF regulations on transfer agreements found at § 405.1133 and on patients' rights with regard to transfers and discharges, in § 405.1121(k). These provisions implement requirements in section 1861(l) of the Act. Existing ICF regulations on transfer and discharge are located in §§ 442.307, 442.316, and 442.311(c). We would add a requirement that the facility notify the resident, the resident's representative, and the attending physician in writing at least 3 days before the end of a period when a bed is held, and, except in documented emergencies, at least 4 days before discharge or transfer from the facility. The written notice must describe the reason for the transfer, the effective date of transfer, the location to which the resident is being transferred, appeal rights, and the address and phone number of the State and local long term care ombudsman.

s. Utilization review requirements (§ 482.75(s)). This proposed section would basically apply to SNFs the existing SNF requirements that are now in § 405.1137. We propose to incorporate in this standard those provisions of the existing regulations that are necessary to achieve the statutory intent of sections 1861(j)(8) and 1861(k) of the Act. These sections of the Act require a skilled nursing facility to have in effect a utilization review plan that provides for the review of its admissions, the duration of its residents' stays, and the professional services furnished, with respect to the medical necessity of the services and for the purpose of promoting the most efficient use of available health facilities and services. The utilization review plan, as required by the Act, must also provide for the prompt notification of the facility, the resident, and his or her attending physician of any finding that further stay in the facility is not medically necessary.

t. Disclosure of ownership. This paragraph references the disclosure of ownership requirement of § 420.206 of this chapter.

u. Resident participation. In proposed § 483.75(u), we would add a new standard that would require facilities to ensure resident participation in the facility's policy and operational decision-making. There are currently no existing Federal requirements for such activities. The IoM study recommended such a requirement based on the observation that residents who have opportunities for choices have higher morale, greater life satisfaction, and better adjustment.

v. Independent Medical Evaluation and Audit. In proposed § 483.75(v), we restate the statutory requirement, at section 1861(j)(12) of the Act, for a SNF to cooperate in an effective program of independent medical evaluation and audit of its residents, to the extent required by Medicare (for SNFs that participate in Medicare) or Medicaid (for SNFs that participate in Medicaid).

III. Revisions to the Regulations

We propose to make the following revisions to the regulations in title 42:

1. In Part 405, Subpart K, Conditions of Participation; Skilled Nursing Facilities, would be removed and reserved. The content of Subpart K would be revised and redesignated as a new Part 483.

2. In Part 442, Subpart A, we would revise paragraph (a) to reflect the revised content of Part 442.

3. In Part 442, Subpart B, we would revise § 442.30(a)(1) to replace references to Subparts D, E, and F with a reference to Part 483.

4. In Subpart C, we would revise § 442.100 to add a reference to Part 483.

5. In Subpart C, we would revise § 442.101(d)(1) to replace references to Subparts D, E, and F with a reference to Part 483.

6. In Subpart C, we would revise the introductory paragraph in § 442.105 by replacing references to Subparts D, E and F with a reference to Part 483.

7. In Part 442, Subpart D, Skilled Nursing Facility Requirements, would be removed and reserved. The content of Subpart D would be revised and redesignated as a new Part 483.

8. In Part 442, Subpart E, Intermediate Care Facility Requirements; All Facilities, would be removed and reserved. The content of Subpart E would be revised and redesignated as a new Part 483.

9. In Part 442, Subpart F, Standards for Intermediate Care Facilities Other than Facilities for the Mentally Retarded, would be removed and reserved. The content of Subpart F would be revised and redesignated as a new Part 483.

10. In Subchapter E, a new Part 483 would be added to describe the conditions of participation for skilled nursing facilities and intermediate care facilities.

IV. Derivation Table

The following table identifies conditions or standards in current rules that are most closely related to the proposed new conditions in Part 483. It provides identification of the extent to which the proposed rule would modify existing rules.

Subject	Proposed Part 483 (section)	Current Part 405 (Section)	Current Part 442 (Section)
Basis, Scope Definitions	483.1(a) and (b)		442.300
	483.5		
Resident Rights	483.10(a)(1)	405.1121(k)(5)	442.311(d)
	483.10(a)(2)	405.1121(k) following (14)	442.312
	483.10(b)(1)	405.1121(k)(1)	442.311(a)(1)–(3)
	483.10(b)(2)	405.1121(k)(6)	442.310
	483.10(b)(3)	405.1121(k)(3)	442.311(b)
	483.10(b)(5)		442.309
	483.10(b)(6)	405.1121(k)(2)	442.311(a)(4)
	483.10(c)	405.1121(k)(6)	442.311(e)
	483.10(d) and (e)	405.1121(k)(7)	442.311(f), 442.308

Subject	Proposed Part 483 (section)	Current Part 405 (Section)	Current Part 442 (Section)
	483.10(f)	405.1121(k)(9)	442.311(g)(1)–(4)
	483.10(g)	405.1121(k)(10)	442.311(h)
	483.10(h)	405.1121(k)(11)	442.311(i)(2)
	483.10(i) and (j)		442.311(i)(1)
	483.10(k)	405.1121(k)(12)	442.311(j)
	483.10(l)	405.1121(k)(13)	442.311(k)
	483.10(m)	405.1121(k)(14)	442.311(g)(5)–(6)
Quality of Life	483.15(b)	405.1135(c)	442.325(a)(4) and 442.327
	483.15(c)	405.1125(e)	
	483.15(e)	405.1132(b)	442.345(a)(b) and (d)
Assessment	483.20(a)	405.1123(a), 405.1123(b), 405.1124(d), 405.1126(b), 405.1130	442.319, 442.341, 442.343, 442.344, 442.345
	483.20(d)		
	483.20(d)(3)	405.1137(h)	
Quality of Care	483.25	405.1124(c)	442.342
Nursing Services	483.30	405.1124 (general)	442.338
	483.30(a)	405.1124(a)	
	483.30(a)(2)		442.339(a)–(d)
	483.30(b)	405.1124(b)	442.339(e)
	483.30(c)	405.1124(c)	442.340
Dietary Services	483.35	405.1125 (general)	
	483.35(a)	405.1125(a)	442.332(a)
	483.35(b)	405.1125(b)	
	483.35(c)	405.1125(c)	442.332(b)
	483.35(d)	405.1125(d)	442.331(a)
	483.35(e)		442.331(c)
	483.35(f)	405.1125(f) and (g)	442.331(b)
Physician Services	483.40	405.1123 (general)	442.346(a)
	483.40(a)–(c)	405.1123(b)	442.346(b)
	483.40(d)	405.1123(c)	
Specialized Rehabilitation Services	483.45(a)	405.1126 (general)	442.343(a)–(c)
	483.45(b)	405.1126(d)	
Social Services	483.50	405.1130	442.344
Dental Services	483.55	405.1129	
Pharmacy Services	483.60(a)	405.1127 (general)	442.333
	483.60(b)	405.1127(a), (b)	
	483.60(c)	405.1127(a)	442.336
Infection Control	483.65(a)	405.1135(a), (b), (f)	442.326(b)
	483.65(b)	405.1135(d)	
Physical Environment	483.70	405.1134	442.321–442.323
	483.70(b)	405.1134(b)	
	483.70(c)	405.1134(h), (i)	442.328, 442.329
	483.70(d)	405.1134(e)	442.324, 442.325
	483.70(e)	405.1134(e)	442.326
	483.70(f)	405.1134(d)	
	483.70(g)	405.1134(g)	
	483.70(h)	405.1134(j)	
Administration	483.75(a)	405.1120, 405.1134	442.315, 442.330
	483.75(b)(1)	405.1121(general)	442.301
	483.75(b)(2)	405.1121(e)	442.303
	483.75(b)(3)	405.1121(k)	442.311
	483.75(c)	405.1121(f)	
	483.75(d)	405.1121(g)	
	483.75(e)	405.1121(h)	442.314
	483.75(g)	405.1121(j)	
	483.75(h)	405.1121(c)	442.304–442.306
	483.75(i)	405.1121(m) and (k)(6)	442.320
	483.75(j)	405.1101(f), (l), (m), (n), (p), (q), (r), (s), and (t)	442.302
	483.75(k)	405.1101(i)	442.317
	483.75(k)	405.1101(i)	442.317
	483.75(l)	405.1122	
	483.75(m) and (n)	405.1128	
	483.75(o)	405.1132, 405.1126(c), 405.1130(c)	442.310, 442.318
	483.75(p)	405.1136	442.313
	483.75(q)	405.1133, 405.1121(k)(4)	442.316, 442.307, 442.311
	483.75(r)	405.1137	
	483.75(s)	405.1121	

IV. Impact Analysis

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A proposed regulation is a major rule if its implementation would be likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse efforts on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not small entities, but we treat all long term care facilities as small entities.

Although we view the anticipated results as beneficial to the nursing home industry as well as to residents and State and Federal governments, we recognize that some of the proposed changes could be controversial and may be responded to unfavorably by some affected facilities.

We also recognize that not all of the potential effects of these proposals can be definitely anticipated, especially in view of their interaction with other Federal, State, and local activities regarding health and safety assurance. In particular, considering the effects of our simultaneous efforts to improve

survey and certification activities, through both survey procedures and instruments and regulation, it is impossible to quantify meaningfully a projection of the future effect of all of these proposals on facilities' compliance costs or on the frequency of substantial deficiency findings and termination proceedings. The following observation of the IoM study on the cost implications of their recommendations in general applies also to this proposed rule.

> The effects of the recommendations on the costs of regulation and on the costs of providing care to residents are not easily calculated for two reasons: (1) The quantitative and qualitative changes in behavior of the various actors in the system, and the effects on efficiency of the regulatory agencies and nursing homes, cannot be predicted on the basis of current data; (2) current data about staffing and costs in nursing homes and in state regulatory agencies are not available in sufficient detail; and (3) some immediate costs are likely to produce long-term savings that cannot be estimated. Given these uncertainties, any estimates made—even with the assistance of a very elaborate cost model—would have to present a wide range of costs to account for interactions of varying assumptions.—(Page 214)

We do, however, expect adverse findings to be more consistent, better documented, and more effectively acted upon than under the current conditions of participation.

It is clear that a large number of small entities would be affected by adoption of these conditions of participation, and a substantial number of those entities could be required to make changes in their operations in order to comply with these proposed health and safety standards. Further, our available data indicate that the additional costs of meeting the proposed alternative in which we would establish a 24-hour nursing staff requirement would add costs of approximately $100 million for the nursing home industry.

For these reasons, we have determined that this is a major rule and prepared the following analysis. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by both E.O. 12291 and the RFA.

B. Affected Entities

As of January, 1986, there were nearly 16 thousand long term care facilities participating in Medicare and Medicaid. Of this total, 6,725 SNFs were participating in Medicare, and many of these were also participating in Medicaid. In addition, 2,246 SNFs were participating in Medicaid only. A total of 6,883 ICFs were participating in Medicaid.

Individual SNFs and ICFs vary in size, type of ownership, financial viability, geographic situation, and local market conditions for institutional services and qualified staff. These factors and more will be related to the kind and magnitude of the effects these proposals would have on an individual facility.

A major area of concern raised in the IoM study was the recommendation to employ more highly qualified personnel, particularly licensed nurses and social workers. We are convinced that the primary effect of these provisions should be to set personnel requirements that are appropriate to the needs of patients. In section II, above, we indicate that the main thrust of these proposed changes, other than increased nursing requirements, would be to emphasize resident outcomes as contrasted to prescriptive processes such as more rigorous credentialing. We believe this would increase competition among potential employees by removing artificial barriers to employment in certain jobs. Thus it is likely that the final regulations would enable small SNFs and ICFs to reduce some costs by increasing the number of candidates for many SNF and ICF positions. In other words, by the removal of some restrictions not harmful to patient outcomes, these facilities will have optimal personnel resources available to choose from.

Only newly participating facilities (SNFs or ICFs) would be required to meet the most recent (1985) Life Safety Code of the National Fire Protection Association rather than the 1981 edition currently required. This should keep costs to a minimum for existing facilities. Facilities will be allowed to waive LSC requirements in favor of State fire safety laws as long as the health of residents is not in jeopardy by such actions. Facilities will also be able to waive the emergency power requirements provided they have no residents on life safety support systems.

C. Effects on SNFs

SNFs are currently required to abide by the majority of the requirements included in this proposed rule, and therefore they should have very little increased cost. Further, there may be several areas (quarterly staff reports, infection control committees, and written personnel policies) which, when eliminated, may offset increased costs that may otherwise be required for SNFs by these proposals.

D. Effects on ICFs

There are several categories of ICFs: the hospital-based ICF; the ICF with some SNF-certified beds; and the freestanding ICF that is usually a separate entity financially and physically. These proposals would result in a greater cost increase for freestanding ICFs than for SNFs because many of the proposed requirements are not currently in effect for ICFs. ICFs that also maintain SNF residents should not be as adversely affected because many of these proposed requirements are already in effect the same as for SNFs.

The heaviest costs experienced by long term care facilities are staff costs, especially for nurses. The proposed requirements would significantly affect ICFs that currently are relatively lightly staffed. As noted above, we are proposing three alternative staffing requirements.

Alternative 1. Under the first alternative, we would require all ICFs to meet 24-hour nurse staffing standards comparable to those currently required for SNFs. We estimate that fewer than 30 percent of participating ICFs (that is, ICFs that do not have any SNF beds) currently meet this requirement. The great majority would have to upgrade many LPNs to RNs and would have to hire additional RNs and LPNs. Our data indicate that this could cost affected facilities an additional $100 million. This, in turn, would result in some increase in Medicaid program expenditures. (The Medicare program does not cover ICF services.

Our estimate is based on staffing data provided by ICFs during the calendar year 1986 certification cycle as reported through MMACS. It includes data received through November 1986. In developing the estimate, we assumed that ICFs generally would adopt the most economical available means of meeting the requirement. That is, where possible we assumed that LPNs would be replaced by RNs (rather than augmented by them) and considered only the added cost of employing an RN (in salary and fringe benefits).

Our estimate reflects the total cost to ICFs to meet the minimum requirement for facilities with less than 60 beds, which is 5 nurses (2 RNs and 3 LPNs) and the minimum requirement for facilities with 60 beds or more, which is 6 nurses (3 RNs and 3 LPNs). Most facilities meet the standard that requires a minimum total number of nurses, but have a disproportionate number of LPNs, and thus do not meet the minimum requirements for RNs. These facilities will be required to hire additional RNs at an average cost of about $25,000 each for salaries and fringe benefits, or replace LPNs with RNs, at an average of $6,250 ($25,000 RN–$18,750 LPN). In addition, some

facilities would need to hire additional LPNs. Our general estimates, using the salary figures cited above, are that this proposal would cause nursing homes to hire an additional 2600 RNs at a cost of $65 million, an additional 600 LPNs at a cost of $11 million, and convert 3600 LPN positions to RN positions at a cost of $23 million. Thus, we estimate that these changes would cost just under $100 million.

As discussed in the preamble, some ICFs may be able to qualify for waiver of the 24 hour nursing requirement under § 405.1911(a). Our estimates of costs cited above do not take this into account. The availability of such waivers should reduce the impact on rural ICFs, but we do not have data that would enable us to estimate the numbers of waivers or the costs or savings that would result for them. Further, we do not have data that would allow us to assess the extent to which reported "nursing shortages" could prevent ICFs from having the required additional nurses.

It should be noted that the cost we estimated would not be borne solely by the Federal government. To the extent that these costs are incurred by the Medicaid program, States would bear up to half the expense under the Medicaid payment formula. To the extent that these facilities serve privately paying patients, they would bear the costs of the improvements. Since we know that the Medicaid program accounts for approximately half of nursing home revenues and that the Federal share of the Medicaid program's costs is approximately half, the Federal share of the estimated cost to the industry of implementing this proposal would be a maximum of 25 percent if all States responded by raising their nursing home reimbursement rates to reflect the additional costs.

The overall effect of this proposal on ICFs will vary from State to State. In many States, ICFs will be required to expend minimal effort in order to meet these standards. However, in a few States, facilities would find it necessary to increase their nursing staff expenditures significantly. These costs, viewed in the context of annual nursing home revenues of approximately $35 billion, represent about three-tenths of a percent of those costs.

Industry costs may also be overstated because nursing salary costs may be somewhat lower in the States where the preponderance of new hires would be necessary.

Benefits to nursing home residents from this proposal are difficult to estimate or quantify. Since the costs, however, represent such a small proportion of nursing home industry revenues, even a small increase in the average level of the quality of patient care in intermediate care facilities would justify an increase of approximately 30 cents a day in the average costs of ICF care under Medicaid, which average approximately $40 per day.

Alternative 2. The second alternative maintains the above requirements for SNFs. However, several changes are proposed for ICFs that could potentially reduce the economic impact for ICFs compared to Alternative 1. Under this alternative, an ICF could qualify to maintain fewer numbers of licensed nurses and other nurse personnel by maintaining a high level of quality of patient care, as shown by their assessments and plans of care. Currently, it would be difficult, if not impossible, to determine how many facilities could qualify for a reduction in staff under this proposal. We welcome comments and data that would enable us to assess further the extent to which this approach might ameliorate effects on facilities compared to the first alternative. If a facility were to qualify for a reduced level of licensed nurses and nurse personnel on staff, potential savings to the facility would be somewhat limited by the requirement that facilities that do not have an RN on duty full time, on the day shift, 7 days a week, will have to employ an RN for consultation no less than four hours a week.

In light of the fact that many experts in the nursing home business are predicting a nursing shortage in future years, this alternative could serve as a strong incentive for ICFs to maximize patient quality of care so that they may qualify for reduced staffing.

Alternative 3. The third alternative would adopt the current SNF staffing requirements as in the first alternative for both SNFs and ICFs, but provide a waiver for ICFs that provide appropriate nursing care to residents. This waiver would also result in a lower level of staffing based on surveys and would be granted for 6 month periods. We are also unable to determine the number of facilities that would qualify under these conditions and therefore, cannot quantify the net economic impact on affected facilities.

ICFs with patients who require more intensive care are already being evaluated against patient outcomes to assure an adequate level of nursing care under the newly implemented Long-Term Care Survey Process. Further, under section 1902(a)(13) of the Act, States already are required to recognize differentials in care in their payments. We believe that levels of care, staffing, and payment will vary appropriately, and that those ICFs that care for patients in need of more intensive services will be paid at a level sufficient to ensure their capability to recruit and maintain required staffing.

The IoM recommended that nurse's aides receive significantly greater training than currently required before employment. We considered this recommendation, and concluded that this would result in insupportable costs and create a significant barrier to employment for many otherwise suitable job candidates. We are proposing instead that aides receive more pre-service (but post employment) training. This may increase costs initially for some facilities. However, we expect it could, over the long run, result in improvements in productivity and efficiency, potentially also in decreased turnover that would offset the costs.

Like SNFs, ICFs would be able to realize savings from the elimination of certain written reports and committees. However, ICFs would be required to make available a dentist, which heretofore was not required. Increased costs for ICFs also may result from requirements of the resident assessment plan, need for a medical director, and provisions for laboratory services, which heretofore were not required for ICFs. Minor costs could result from other new requirements such as those for infection and temperature controls, ventilation, and more sophisticated call systems. However, we expect that the majority of ICFs already meet these standards as a general rule.

E. Effect on States

To the extent that these proposals result in higher costs in providing long-term care services, they would tend to increase State Medicaid expenditures for those services. However, we believe there would be little or no increased cost for State certification activities. Rather, these proposals should benefit State certification agencies in that their reviews of SNFs and ICFs would be simplified. Combining two reviews into one should result in a more cost-effective review system. The recently implemented Long-Term Care Survey Process has already intensified the focus on outcomes. The incremental additional changes flowing from this proposal would have minimal effects on States.

F. Interaction With Other Activities

These proposals, in combination with the proposed new survey and certification proposal, should reduce the

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number of procedures currently used to review SNFs and ICFs. These two proposals, as well as the review conducted for the inspection of care (IOC) that some State Medicaid programs already have integrated, should result in decreased procedural costs for both States and long term care facilities once this integration is fully implemented.

G. Impact on Residents

These proposals should result in improved quality of life and care at both the mental and physical levels, and in an increase in the rights and the decision-making capacity for residents. Resident participation may initially increase facility costs because of innovative programming, but should be offset by long term health care improvements. These proposals also should aid the reallocation of revenues from burdensome procedural requirements to improved care.

H. Paperwork Burden

Sections 483.20 (a), (b), (d) and (e), 483.25(n), 483.35(f), 483.40 (b) and (c), 483.55(b), 483.60(b), 483.65(a), 483.70(d), 483.75 (c), (d), (e), (g), (h), (i), (j), (l), (n), (o), (p), (q), (r), (s), and (u) of the proposed rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the address section of the preamble.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

TITLE 42—PUBLIC HEALTH

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter IV would be amended as follows:

A. The table of contents to Chapter IV is amended by adding a new Part 483 to Subchapter E to read as follows:

* * * * *

SUBCHAPTER E—STANDARDS AND CERTIFICATION

PART 483—CONDITIONS OF PARTICIPATION FOR LONG TERM CARE FACILITIES

* * * * *

SUBCHAPTER B—MEDICARE PROGRAMS

B. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The table of contents is amended by removing and reserving Subpart K to read as follows:

Subpart K—[Reserved]

* * * * *

2. The content of Subpart K (§§ 405.1101 through 405.1137) is removed, revised, and redesignated as a new Part 483. Subpart K is reserved.

Subpart K—[Reserved]

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

C. Part 442 is amended as follows:

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by removing and reserving Subparts D, E, and F to read as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Sec.

* * * * *

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

* * * * *

3. In Subpart A. § 442.1 is amended by revising paragraph (a) as follows:

Subpart A—General Provisions

§ 442.1 Basis and purpose.

(a) This part sets forth requirements for provider agreements, and facility certification relating to the provision of skilled nursing facility and intermediate care facility services to Medicaid recipients. This part also sets forth standards for payment for ICFs/MR. The requirements apply to State Medicaid agencies and survey agencies and to the facilities. This part is based on the following sections of the Act:

Section 1902(a)(4), administrative methods for proper and efficient operation of the State plan;

Section 1902(a)(27), provider agreements;

Section 1902(a)(33)(B), State survey agency functions;

Section 1902(i), circumstances and procedures for denial of payment and termination of provider agreements in certain cases;

Section 1905 (c) and (d), definition of intermediate care facility services;

* * * * *

4. In Subpart B, § 442.30 is amended by revising paragraph (a)(1) to replace the references to Subparts D, E, and F with a reference to Part 483 as follows:

Subpart B—Provider Agreements

§ 442.30 Agreement as evidence of certification.

(a) * * *

(1) The survey agency failed to apply the applicable certification standards required under Subpart G of this part, or Part 483 of this chapter.

* * * * *

5. In Subpart C, § 442.100 is revised to add a reference to Part 483 as follows:

Subpart C—Certification of SNF's and ICF's

§ 442.100 State plan requirements.

A State plan must provide that the requirements of this subpart and Part 483 are met.

6. Section 442.101 is amended by revising paragraph (d)(1) to replace the references to Subparts D, E and F with a reference to Part 483 as follows:

§ 442.101 Obtaining certification.

* * * * *

(d) The notice must state that the facility—

(1) Meets the applicable requirements under Subpart G of this part and Part 483, except for waivers or variations granted by the Secretary or the survey agency under those subparts; or

* * * * *

7. Section 422.105 is amended by revising the introductory statement to replace the references to Subpart D, E and F with a reference to Part 483 as follows:

§ 442.105 Certification with deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards specified under Subpart G of this part or Part 483 of this chapter, the agency may certify the facility for Medicaid purposes under the following conditions:

8. The content of Subpart D (§§ 442.200 through 422.202) is removed, revised, and redesignated as a new Part 483. Subpart D is reserved.

Subpart D—[Reserved 483]

9. The content of Subpart E (§§ 442.250 through 422.254 is removed, revised, and redesignated as a new Part 483. Subpart E is reserved.

Subpart E—[Reserved]

10. The content of Subpart F (§§ 442.300 through 442.346) is removed, revised, and redesignated as a new Part 483. Subpart F is reserved.

Subpart F—[Reserved]

SUBCHAPTER E—STANDARDS AND CERTIFICATION

D. A new Part 483 is added to Subchapter E to read as follows:

PART 483—CONDITIONS OF PARTICIPATION FOR LONG TERM CARE FACILITIES

Sec.

483.1 Basis and scope.
483.5 Definitions.
483.10 Condition of participation: Resident rights.
483.15 Condition of participation: Quality of life.
483.20 Condition of participation: Resident assessment.
483.25 Condition of participation: Quality of care.
483.30 Condition of participation: Nursing services.
483.35 Condition of participation: Dietary services.
483.40 Condition of participation: Physician services.
483.45 Condition of participation: Specialized rehabilitative services.
483.50 Condition of participation: Social services.
483.55 Condition of participation: Dental services.
483.60 Condition of participation: Pharmacy services.
483.65 Condition of participation: Infection control.
483.70 Condition of participation: Physical environment.
483.75 Condition of participation: Administration.

Authority: Sec. 1102, 1861 (j) and (1), 1863, 1871, 1902(a)(28), and 1905 (a) and (c) of the Social Security Act (42 U.S.C. 1302, 1395x (j) and (1), 1395hh, 1396a(a)(28), and 1396d(c)), unless otherwise noted.

§ 483.1 Basis and scope.

(a) *Basis in legislation.* (1) Section 1861(j) of the Act provides that—

(i) Skilled nursing facilities participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements if they are necessary for the health and safety of individuals to whom services are furnished in the facilities.

(2) Section 1902(a)(28) of the Act provides that skilled nursing facilities participating in Medicaid must meet the requirements contained in section 1861(j) of the Act, except for the exclusion of institutions which are primarily for the care and treatment of mental diseases.

(3) Section 1905(c) of the Act provides that—

(i) Intermediate care facilities participating in Medicaid must meet certain specified requirements; and

(ii) The Secretary may impose additional standards necessary for the proper provision of care.

(b) *Scope.* The provisions of this part contain the requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare and Medicaid programs, or as an ICF in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.

§ 483.5 Definitions.

For purposes of this subpart—

"Facility" means a skilled nursing facility (SNF), or an intermediate care facility (ICF). "Facility" may include a distinct part of a facility as specified in § 440.40 or § 440.150 of this chapter, but does not include an institution for the mentally retarded or persons with related conditions described in § 440.150(c). For Medicare, a SNF may not include any institution that is for the care and treatment of mental diseases (see § 1861(j) following (15) of the Act). This restriction does not apply to Medicaid (see § 1902(a)(28) of the Act).

§ 483.10 Condition of participation: Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The facility must assert, protect, and facilitate the exercise of these rights.

(a) *Standard: Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility, and as a citizen or resident of the United States, including the right to file complaints.

(2) The resident has the right to be free of coercion or reprisal from the facility in exercising his or her rights.

(3) A residents next of kin or guardian may exercise a resident's rights when a resident has been adjudicated to be incompetent.

(b) *Standard: Right to be informed.* The resident has a right—

(1) To be informed of his or her rights, and the rules of the facility upon admission, in the language that he or she understands;

(2) To inspect his or her records on request:

(3) To be informed of his or her medical condition, and an opportunity to participate in planning his or her medical treatment;

(4) To refuse treatment, and to refuse to participate in experimental research;

(5) To information on Federal, State and local agencies concerned with enforcement of skilled and intermediate care rules, and agencies acting as client advocates, and is afforded the opportunity to contact these agencies:

(6) To be informed of his or her responsibility for charges, services available, changes in rates, and changes in itemized forms.

(c) *Standard: Resident finances.* The resident has the right to manage his or her financial affairs.

(d) *Standard: Restraints.* The resident has the right to be free from unnecessary drugs and physical restraints, and is provided treatment to reduce dependency on drugs and physical restraint.

(e) *Standard: Abuse.* The resident has the right to be free of physical, psychological, or sexual abuse or punishment.

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(f) *Standard: Privacy and confidentiality.* —The resident has the right to—

(1) Personal privacy;

(2) Confidentiality of his or her records.

(g) *Standard: Work.* The resident has the right not to perform services for the facility, and to be compensated for services voluntarily performed, unless informed prior to preforming services that services are of a voluntary nature and will not be compensated.

(h) *Standard: Mail.* The resident has the right to send and receive mail that is not opened.

(i) *Standard: Access to facility.* The resident has the right to receive visitors at any reasonable hour, and by arrangements at other times.

(j) *Standard: Telephone.* The resident has the right to have access to the private use of a telephone.

(k) *Standard: Self-determination and participation.* The resident has the right to—

(1) Participate in normal social, religious and community group activities; and

(2) Makes choices about significant aspects of his or her life in the facility.

(l) *Standard: Personal property.* The resident has the right to retain and use personal possessions and appropriate clothing, within space allocated by the facility, unless to do so would infringe upon the rights or security of other residents.

(m) *Standard: Married couples.* The resident has the right to—

(1) Privacy during visits by his or her spouse; and

(2) Share a room with his or her spouse, when married residents live in the same facility.

§ 483.15 Condition of participation: Quality of life.

The facility must ensure that residents receive care in a manner and in an environment that maintains or enhances their quality of life without abridging the safety and rights of other residents.

(a) *Standard: Dignity.* The facility must—

(1) Treat each resident with dignity and respect; and

(2) Maintain each resident's privacy.

(b) *Standard: Environment.* The facility must provide—

(1) A safe, clean, comfortable and homelike environment;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior;

(3) Clean bed linens;

(4) Secure and private closet space in each resident room;

(5) For a pest control program to ensure that the facility is free of pests and rodents.

(c) *Standard: Choice.* The facility must—

(1) Permit residents to choose activities, schedules and health care consistent with their interests, assessments and plans of care;

(2) Permit residents to interact with members of the community both inside and outside the facility.

(d) *Standard: Food.* The facility must:

(1) Prepare food by methods that conserve nutritive value, flavor and appearance;

(2) Serve food that is attractive, and that is at the proper temperature;

(3) Provide food to meet individual needs;

(4) Offer substitutes of similar nutritive value to residents who refuse food served.

(e) *Standard: Activities.* The facility must provide for an ongoing program of activities appropriate to residents needs and interests, designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice.

§ 483.20 Condition of participation: Resident assessment.

The facility must conduct initially and periodically thereafter a comprehensive, accurate assessment of each resident's medical, functional and psychosocial needs.

(a) *Standard: Preliminary assessment.*

(1) Within 48 hours of admission, the facility must—

(i) Make an initial assessment of each resident based on a medical evaluation completed at the time of admission by a physician, that includes current medical findings, diagnoses, rehabilitation potential, summary of prior treatment, and orders for immediate care of the resident.

(ii) Develop and implement a preliminary care plan in accordance with the initial assessment of the resident.

(b) *Standard: Comprehensive assessments.*

(1) Within 14 days of admission, the facility must make a comprehensive assessment of a resident's needs, which includes at least the following information:

(i) Medically defined conditions;

(ii) Medical status measurement;

(iii) Functional status;

(iv) Sensory and physical impairments;

(v) Nutritional status and requirements;

(vi) Special treatments or procedures;

(vii) Psychosocial status;

(viii) Discharge potential.

(2) The assessment must be reevaluated and, if necessary updated, at least—

(i) Every 3 months after the first comprehensive assessment; and

(ii) When a significant change in the resident's status occurs.

(c) *Standard: Accuracy of assessments.* Assessments must be an accurate representation of a resident's status.

(d) *Standard: Comprehensive care plans.*

(1) The facility must develop a comprehensive care plan for each resident that includes short term and long term objectives and timetables to meet a resident's needs that are identified in the comprehensive assessment.

(2) A comprehensive care plan must be—

(i) Developed within 7 days after completion of the comprehensive assessment; and

(ii) Reviewed and modified as necessary when the resident's comprehensive assessment in updated.

(3) A comprehensive care plan must include a discharge plan when the attending physician documents that a resident has the potential to be discharged from the facility.

(e) *Standard: Discharge summary.* Each resident must have a discharge summary that includes—

(1) A recapitulation of the resident's stay;

(2) A final summary of the resident's status; as defined by paragraph (b)(1) of this section, at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the resident or legal guardian; and

(3) A post-discharge plan of care that will assist the resident to adjust to his or her new living environment.

§ 483.25 Condition of participation: Quality of Care.

Each resident must receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care.

(a) *Standard: Activities of Daily Living.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident's ability to ambulate, dress, feed, groom, bathe, toilet, transfer (from bed to chair, etc.) and communicate does not diminish unless reasonable justification is documented;

(2) A resident is given the appropriate treatment and services to maintain or improve his or her ability to ambulate, dress, feed, groom, bathe, toilet, transfer and communicate; and

(3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(b) *Standard: Vision and Hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident—

(1) In making appointments; and

(2) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(c) *Standard: Decubitus Ulcers.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without decubitus ulcers does not develop decubitus ulcers unless the attending physician certifies that the ulcers were not reasonably avoidable; and

(2) A resident having decubitus ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new ulcers from developing.

(d) *Standard: Antipsychotic Drugs.* Based on comprehensive assessment of a resident, the facility must ensure that—

(1) Residents who have not used antipsychotic drugs are not given these drugs unless a physician certifies that antipsychotic drug therapy is necessary to treat a specific condition; and

(2) Residents who use antipsychotic drugs receive gradual dose reductions, drug holidays and behavioral programming in an effort to discontinue these drugs;

(e) *Standard: Urinary Catheters.* The facility must ensure that—

(1) A resident who is incontinent of bladder receives the appropriate treatment and services to restore normal bladder functioning;

(2) A resient is not catheterized unless the attending physician certifies that catheterization is medically necessary; and

(3) A resident who uses a urinary catheter receives appropriate treatment and services to prevent urinary tract infections and to restore normal bladder function.

(f) *Standard: Contractures.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without contractures, does not experience an unpredictable reduction in range of motion unless reasonable justification is documented; and

(2) A resident who has contractures receives appropriate treatment and services to increase range of motion and to prevent further decrease in range of motion.

(g) *Standard: Psychosocial Functioning.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services to achieve remotivation and reorientation; and

(2) A resident whose assessment did not reveal a psychosocial adjustment difficulty does not display an unpredictable pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless reasonable justification is documented.

(h) *Standard: Naso-Gastric Tubes.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who has been able to feed or partially feed himself or herself is not fed by naso-gastric tube unless reasonable justification is documented; and

(2) A resident who is fed by a naso-gastric tube receives the appropriate treatment and services to prevent pneumonia and nasal-pharyngeal ulcers and to restore normal feeding function.

(i) *Standard: Drug Therapy.* The facility must ensure that each resident's drug regimen is free of—

(1) Unnecessary drugs;

(2) Unnecessary dose levels;

(3) Undue adverse consequences; and

(4) Significant medication errors or significant medication error rates.

(j) *Standard: Accidents.* The facility must ensure that—

(1) The resident environment remains free of accident hazards; and

(2) Each resident receives adequate supervision and assistive devices to prevent accidents.

(k) *Standard: Nutrition.* The facility must ensure that a resident—

(1) Does not lose weight after entering the facility without medical justification; and

(2) Receives a special therapeutic diet when there is a nutritional problem.

(l) *Standard: Dehydration.* The facility must ensure that each resident is provided with sufficient fluid intake and electrolytes to maintain proper hydration and health.

(m) *Standard: Special Needs.* The facility must ensure that residents receive proper treatment and care for the following special needs:

(1) Injections;

(2) Parenteral fluids;

(3) Colostomy or ileostomy care;

(4) Tracheostomy care;

(5) Tracheal suctioning; and

(6) Respiratory therapy.

(n) *Staff Treatment of Residents.* The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

(1) The facility must ensure that—

(i) The staff does not use corporal punishment, or verbal, physical or sexual abuse;

(ii) The staff does not punish residents by withholding food or liquids that contribute to a nutritionally adequate diet; and

(iii) Individuals who are convicted of abusing, neglecting or mistreating individuals are not employed by the facility.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of the investigation are reported to the administrator or his designated representative or to other officials within 5 working days of the incident, and if the alleged violation is verified, appropriate corrective action is taken.

Alternative I

§ 483.30 Condition of participation: Nursing services.

The facility must have sufficient nursing staff to provide nursing services to meet the needs of all residents in the facility as determined by resident assessments and individual plans of care.

(a) *Standard: Director of nursing services.* (1) In a skilled nursing facility, the director of nursing must be a qualified registered nurse, employed by the facility on a full time basis.

(2) In an intermediate care facility, the director of nursing must be employed full time, and be—

(i) A registered nurse; or

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(ii) A licensed practical (vocational) nurse who must consult with a registered nurse when necessary.

(b) *Standard: Charge nurse.* (1) The director of nursing must designate a charge nurse for each tour of duty, who is responsible for supervising all nursing activities.

(2) The charge nurse must be either a—

(i) Registered nurse; or

(ii) Qualified licensed practical (vocational) nurse.

(3) A director of nursing may serve as charge nurse only when a facility has an average daily occupancy of 60 or fewer residents.

(c) *Standard: Sufficient Staff.* (1) The facility must provide services by a sufficient number of licensed nurses and other personnel on a 24 hour basis to provide nursing care to all residents, in accordance with resident care plans.

(2) At a minimum, the facility must employ at least one registered nurse on the day tour of duty, 7 days a week, except when waived as specified in § 405.1911(a) of this chapter.

(d) *Standard: Self-Administration of drugs.* (1) Unless prohibited in writing by the attending physician, the facility may permit each resident to retain his or her drugs at the bedside, and administer his or her own drugs.

(2) A resident who self-administers drugs is responsible for storing them securely and maintaining a record of drugs taken.

Alternative II

§ 483.30 Condition of participation: Nursing services.

The facility must have sufficient nursing staff to provide nursing services to meet the needs of all residents in the facility as determined by resident assessments and individual plans of care.

(a) *Standard: Director of nursing services.* (1) In a skilled nursing facility, the director of nursing must be a qualified registered nurse, employed by the facility on a full time basis.

(2) In an intermediate care facility, the director of nursing must be employed full time, and be—

(i) A registered nurse; or

(ii) A licensed practical (vocational) nurse who must consult with a registered nurse when necessary.

(b) *Standard: Charge nurse.* (1) In a skilled nursing facility, the director of nursing must designate a charge nurse for each tour of duty, who is responsible for supervising all nursing activities.

(2) In an SNF, a director of nursing may serve as charge nurse only when a facility has an average daily occupancy of 60 or fewer residents.

(3) In an intermediate care facility, on each tour of duty for which more than one licensed nurse is required, the director of nursing must designate a charge nurse who is responsible for supervising all nursing activities on that tour.

(4) The charge nurse must be either a—

(i) Registered nurse; or

(ii) Qualified licensed practical (vocational) nurse.

(c) *Standard: Sufficient Staff.* (1) A skilled nursing facility must:

(i) Provide services by a sufficient number of licensed nurses and other personnel on a 24 hour basis to provide nursing care to all residents, in accordance with resident care plans.

(ii) At a minimum, the skilled nursing facility must employ at least one registered nurse on the day tour of duty, 7 days a week, except when waived as specified in § 405.1911(a) of this chapter.

(2) An intermediate care facility must—

(i) Provide services by a sufficient number of licensed nurses (or other nursing personnel) on a 24 hour basis 7 days a week to provide all necessary nursing care to residents in accordance with resident care needs assessments and plans of care.

(ii) At a mininum, the intermediate care facility must have a registered nurse or licensed practical or vocational nurse to supervise the ICF's health care services full time, 7 days a week, on the day shift.

(iii) If the licensed nurse in (ii) is not a registered nurse, the ICF must have a formal contract with a registered nurse to consult with the licensed practical or vocational nurse at regular intervals but no less than 4 hours each week.

(d) *Standard: Self-Administration of drugs.*

(1) Unless prohibited in writing by the attending physician, the facility may permit each resident to retain his or her drugs at bedside, and administer his or her own drugs.

(2) A resident who self-administers drugs is responsible for storing them securely and maintaining a record of drugs taken.

Alternative III

§ 483.30 Condition of participation: Nursing services.

The facility must have sufficient nursing staff to provide nursing services to meet the needs of all residents in the facility as determined by resident assessments and individual plans of care.

(a) *Standard: Director of nursing services.* (1) In a skilled nursing facility, the director of nursing must be a qualified registered nurse, employed by the facility on a full time basis.

(2) In an intermediate care facility, the director of nursing must be employed full time, and be—

(i) A registered nurse; or

(ii) A licensed practical (vocational) nurse who must consult with a registered nurse when necessary.

(b) *Standard: Charge nurse.* (1) The director of nursing must designate a charge nurse for each tour of duty, who is responsible for supervising all nursing activities.

(2) The charge nurse must be either a—

(i) Registered nurse; or

(ii) Qualified licensed practical (vocational) nurse.

(3) A director of nursing may serve as charge nurse only when a facility has an average daily occupancy of 60 or fewer residents.

(c) *Standard: Sufficient Staff.* (1) The facility must provide services by a sufficient number of licensed nurses and other personnel on a 24 hour basis to provide nursing care to all residents, in accordance with resident care plans.

(2) At a minimum, the facility must employ at least one registered nurse on the day tour of duty, 7 days a week, except when waived as specified in § 405.1911(a) of this chapter.

(3) An intermediate care facility that does not meet the requirements of paragraphs (1) and (2) above may be granted a waiver of these requirements, as specified in § 488.112 of this subchapter.

(d) *Standard: Self-Administration of drugs.* (1) Unless prohibited in writing by the attending physician, the facility may permit each resident to retain his or her drugs at the bedside, and administer his or her own drugs.

(2) A resident who self-administers drugs is responsible for storing them securely and maintaining a record of drugs taken.

§ 483.35 Condition of participation: Dietary services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet including modified and specially prescribed diets.

(a) *Standard: Staffing.* The facility must employ a staff member who is trained or experienced in food management or nutrition.

(b) *Standard: Menus and Nutritional adequacy.* Menus must—

(1) Meet the nutritional needs of residents;

(2) Be prepared in advance; and

(3) Be followed.

(c) *Standard: Therapeutic diets.* Therapeutic diets must be prescribed by the attending physician.

(d) *Standard: Frequency of meals.* (1) The facility must serve each resident at least three meals daily, at regular times comparable to normal mealtimes in the community.

(2) There must be not more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in (4) below.

(3) The facility must serve snacks at bedtime daily, to the extent permitted by the physician.

(4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day.

(e) *Standard: Assistive Devices.* The facility must provide special eating equipment and utensils for residents who need them.

(f) *Standard: Sanitary Conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions;

(3) Dispose of waste properly; and

(4) Maintain a file at the facility containing written reports of inspections by State and local health authorities, with notation of action taken by the facility to comply with any recommendations.

§ 483.40 Condition of participation: Physician services.

A physician must personally approve a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician, and if possible, designate a personal physician. The standards set forth in paragraphs (a)(1) and (d) are statutory requirements, each of which must be satisfied for a facility to participate as an SNF in the Medicare or Medicaid program.

(a) *Standard: Physician supervision.* The facility must ensure that—

(1) The medical care of each resident is supervised by a physician; and

(2) Another physician supervises the medical care of residents when their attending physician is unvailable.

(b) *Standard: Physician visits.* The physician must personally—

(1) Review the resident's total program of care, including medications and treatments, at each visit.

(2) Write progress notes, and sign them, at each visit.

(3) Sign all orders.

(c) *Standard: Frequency of physician visits.* The facility must record in the resident's comprehensive care plan how often a physician must personally visit the resident.

(1) For skilled nursing facilities, the resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter.

(2) For intermediate care facilities, the resident must be seen by a physician at least at the following intervals:

(i) 60 days after the date of admission;

(ii) 180 days after the date of admission;

(iii) 12 months after the date of admission;

(iv) 18 months after the date of admission;

(v) 24 months after the date of admission; and

(vi) Every 12 months thereafter.

(d) *Standard: Availability of physicians for emergency care.* The facility must provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

(e) *Standard: Physician delegation of tasks.* (1) Except as specified in paragraph (e)(2) of this section, a physician may delegate tasks to a physician assistant or nurse practitioner who—

(i) Meets the applicable definition in § 491.2 of this chapter;

(ii) Is acting within the scope of practice as defined by State law; and

(iii) Is under the supervision of the physician.

(2) A physician may not delegate responsibility for tasks when the condition or standard specifies that the physician must personally perform a task, or when the delegation is prohibited under State law or by the facility's own policies.

§ 483.45 Condition of participation: Specialized rehabilitative services.

The facility must provide or obtain rehabilitative services to meet the needs of the individuals that it admits as residents.

(a) *Standard: Provision of services.* (1) The facility must provide rehabilitative services as required in each resident's comprehensive plan of care, or obtain the service from a provider of rehabilitative services under an arrangement described in section 483.75(1) of this part, if the facility does not furnish that service.

(2) The facility must not admit residents who require rehabilitative services if the facility does not provide or obtain these services.

(b) *Standard: Qualifications.* If a facility provides outpatient physical therapy or speech pathology services, the facility must meet the requirements in Part 405, Subpart Q.

§483.50 Condition of Participation: Social services.

(a) The facility must provide or obtain under an agreement or arrangement described in § 483.75(1) of this part, services to meet the psychosocial needs of its residents, as identified in the resident's comprehensive assessment and defined in the resident's comprehensive care plan.

(b) In meeting the resident's psychosocial needs, the facility must establish liaison with community resources which can assist in meeting those needs.

§ 483.55 Condition of participation: Dental services.

The facility must assist residents in obtaining routine and emergency dental care.

(a) *Standard: Advisory dentist.* The facility must ensure that a dentist is available in an advisory role to the nursing staff.

(b) *Standard: Outside services.* The facility must—

(1) Have a cooperative agreement, which meets the requirements of § 483.75(l)(2) of this part, with a dentist to provide dental services;

(2) Maintain a list of dentists for residents who do not have a private dentist; and

(3) If necessary, assist the resident—

(i) In making appointments; and

(ii) By arranging for transportation to and from the dentist's office.

§ 483.60 Condition of participation: Pharmacy services.

The facility must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in § 483.75(l) of this part. The standard set forth in paragraph (a)(1) is statutory, and must be satisfied for a facility to participate as an SNF in the Medicare or Medicaid program.

(a) *Standard: Methods and procedures.* (1) The facility must establish methods and procedures for dispensing and administering drugs and biologicals.

(2) The facility may permit unlicensed personnel to administer drugs if State law permits.

(b) *Standard: Supervision of services.* The facility must employ or obtain the services of a licensed pharmacist who will—

(1) Supervise the provision of pharmacy services by the facility;

(2) Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

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(3) Determine that drug records are in order and that an account of all controlled drugs is maintained and reconciled.

(c) *Standard: Drug regimen review.* The drug regimen of each resident must be reviewed at least once a month and any irregularities reported to the attending physician. The drug regimen review must be conducted by a licensed pharmacist.

§ 483.65 Condition of participation: Infection control.

The facility must provide a sanitary environment to avoid sources and transmission of infections.

(a) *Standard: General Requirements.* The facility must—

(1) Conduct an active program for the prevention, control, and investigation of infection and communicable diseases;

(2) Implement successful corrective action in affected problem areas;

(3) Maintain a record of incidents and corrective actions related to infections;

(4) Isolate residents with infectious disease—

(i) In single rooms that are vented to the outside;

(ii) In rooms with a private toilet and handwashing facilities; and

(iii) In rooms identified by precautionary signs.

(5) Ensure that all personnel follow aseptic and isolation techniques in accordance with acceptable professional practice.

(b) *Standard: Linens.* Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

§ 483.70 Condition of participation: Physical environment.

The facility must be constructed, equipped and maintained to protect the health and ensure the safety of residents, personnel and the public. The standard set forth in paragraph (a) is statutory, and must be satisfied for a facility to participate in the Medicare program.

(a) *Standard: Life safety from fire.*[1] Except as provided in paragraph (a)(1) or (a)(3), the facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference [2]).

(1) A facility is considered to be in compliance with this standard so long as the facility—

(i) On November 26, 1982, complied, with or without waivers, with the requirements of the 1967 or 1973 editions of the Life Safety Code and continues to remain in compliance with those editions of the Code; or

(ii) On (30 days after publication of final rule) complied, with or without waivers, with the 1981 edition of the Life Safety Code and continues to remain in compliance with that edition of the Code.

(2) After consideration of State survey agency findings, HCFA, or in the case of intermediate care facilities, the State survey agency may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of residents.

(3) The provisions of the Life Safety Code do not apply in a State where HCFA finds, in accordance with applicable provisions of section 1861(j)(13) of the Act, that a fire and safety code imposed by State law adequately protects patients in long term care facilities.

(b) *Standard: Emergency power.* When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

(c) *Standard: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Standard: Resident rooms.* Resident rooms must be designed and equipped for adequate nursing care, comfort and privacy of residents.

(1) Bedrooms must—

(i) Accommodate no more than four residents;

(ii) Measure at least 80 square feet per resident in multiple resident bedrooms, and at least 100 square feet in single resident rooms;

(iii) Have direct access to a corridor;

(iv) Be designed or equipped to assure full visual privacy for each resident; and

(v) Have outside exposure in existing facilities, and have at least one window to the outside in new facilities; and

(vi) Have a floor at or above grade level.

(2) The facility must provide each resident with—

(i) A separate bed of proper size and height for the convenience of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(3) HCFA, or in the case of a facility participating as a skilled nursing facilty under Medicaid only or as an intermediate care facility, the survey agency (under 42 CFR 442.101(c)) may permit variations in requirements relating to rooms in individual cases when the facility demonstrates in writing that the variations—

(A) Are required by the special needs of the residents; and

(B) Will not adversely affect residents health and safety.

(e) *Standard: Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities.

(f) *Standard: Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms;

(2) Toilet and bathing facilities; and

(3) Common resident areas.

(g) *Standard: Dining and resident activities.* The facility must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(2) Be well ventilated;

(3) Be adequately furnished;

(4) Have sufficient space to accommodate all activities.

(h) *Standard: Other environmental conditions.* The facility must provide a functional, sanitary and comfortable environment for residents, staff and the public. The facility must—

(1) Maintain adequate and comfortable lighting levels in all areas;

(2) Maintain comfortable and safe temperature levels;

(3) Maintain comfortable sound levels;

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[1] Note to Reviewer: The fire safety requirements are repeated here as they appear in a proposed regulation, Fire Safety Standards for Hospitals, Skilled Nursing Facilities, Hospices, Intermediate Care Facilities and Ambulatory Surgical Centers, published Jan. 22, 1987, 52 FR 2439.

[2] Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 6301, 1110 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincey, Mass. 02269. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register.

(4) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(5) Have adequate outside ventilation by means of windows, or mechanical ventilation or a combination of the two; and

(6) Equip corridors with firmly secured handrails on each side.

§ 483.75 Condition of participation: Administration.

The standards set forth in paragraphs (a), (d), (i), (j), (p), (r), (s), (t), and (v) of this section are statutory requirements, each of which must be satisfied for a facility to participate in the Medicare program.

(a) *Standard: Licensure.* (1) A skilled nursing facility must be—

(i) Licensed in accordance with State or local law if that law requires it; or

(ii) Approved by the State or local agency responsible for licensing such institutions, as meeting the applicable licensing standards.

(2) An intermediate care facility must be licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities.

(b) *Standard: Compliance with Federal, State and local laws.* The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, sanitation, and research.*

(c) *Standard: Governing body.* (1) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsbile for establishing and implementing policies regarding the management and operation of the facility;

(2) The governing body appoints the administrator who is—

(i) Licensed by the State;

(ii) Responsible for management of the facility;

(3) The governing body must make available to residents and the public written policies regarding rights and responsibilities of residents, as specified in § 483.10;

(4) The facility must permit access in accordance with State law, within normal visiting hours, to a designated ombudsman (whether volunteer or paid). If the resident or legal guardian agrees, the ombudsman must be allowed to examine a resident's records;

(5) In accordance with State law, and consistent with the residents' right to privacy, the governing body must permit access within normal visiting hours to authorized employees or agents of public agencies.

(6) The governing body must post in a location accessible to residents—

(i) Information concerning Federal, State, and local agencies responsible for enforcement of nursing home rules, and advocacy for residents;

(ii) Notification of the results of Federal and State surveys, and plans of correction;

(iii) The name, address, and phone number of—

(A) The State survey office;

(B) The State or local ombudsman office; and

(C) The State or local legal service office.

(7) With regard to resident advisory and family councils, the governing body must assure that the facility provides:

(i) Space;

(ii) Privacy—staff or visitors may attend only upon the council's invitation;

(iii) A designated staff person responsible for providing assistance and responding to written requests that result from council meetings.

(d) *Standard: Institutional plan and budget.* Skilled nursing facilities must develop an overall plan and budget that meets the following requirements:

(1) Provides for an annual operating budget which includes all anticipated income and expenses, but need not include an item-by-item identification of the components of each type of anticipated expenditure or income;

(2) Provides for a capital expenditures plan for at least a 3-year period, including the year to which the operating budget described in paragraph (1) of this section is applicable. This plan must identify in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000, or such lesser amount as may be established by the State in which the SNF is located, related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(3) Provides that the plan is submitted to the State agency designated under section 1122(b) of the Act, or if no such agency is designated, to the appropriate health planning agency in the State, except when a facility is exempt from section 1122 review under section 1122(j) of the Act (see 42 CFR Part 100);

(4) Is reviewed and updated by the facility at least annually; and

(5) Is prepared, under the direction of the governing body of the institution by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution.

(e) *Standard: Personnel policies and procedures.* The facility must—

(1) Maintain current records for each employee that contain sufficient information to support placement in the assigned position;

(2) Ensure that a safe and sanitary environment exists for residents and employees. Accidents to residents and employees are reviewed to identify health and safety hazards;

(3) Provide or refer employees for periodic health examinations to ensure that employees do not have communicable diseases; and

(4) Prohibit employees with symptoms or signs of a communicable disease or infected skin lesions from direct contact with residents and their food.

(f) *Standard: Nurse's Aide Training.* (1) The facility must provide 80 hours of training for untrained aides before they are allowed to care for patients without direct supervision.

(2) The facility must provide continuing training on the care of ambulatory and bedridden patients to each individual employed as a nurse's aide.

(3) This training must, at a minimum, include the skills necessary to assist residents to attain the objectives, and prevent the adverse consequences described in § 483.25.

(g) *Standard: Proficiency of Nurse's Aides.* The facility must ensure that nurse's aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(h) *Standard: Notification of Changes.* (1) A facility must notify promptly a resident's physician and other responsible persons when there is—

(i) An accident involving the resident; or

(ii) A significant change in a resident's physical, mental or emotional status.

(2) Except in a medical emergency, before a resident is transferred or

* Further requirements pertaining to civil rights and to the protection of human research subjects are specified under 45 CFR Parts 80, 84, and 90 and 45 CFR Part 46, respectively.

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discharged, or treatment is altered significantly the facility must—

(i) Consult with the resident; or

(ii) Notify the resident's next of kin or guardian.

(3) The facility must record and periodically update the address and phone number of the resident's guardian, conservator or other representative.

(4) The guardian, conservator or other representative must be notified timely when there is—

(i) A significant change in the resident's physical, mental or emotional state;

(ii) An accident involving the resident;

(iii) A change in the billing;

(iv) A change in room assignment;

(v) A decision to discharge the resident from the facility;

(vi) A change in residents' rights under Federal or State law or regulations.

(i) *Standard: Resident care policies.* (1) The facility must have written resident care policies that govern the continuing nursing care, and medical or other services furnished by the facility.

(2) For skilled nursing facilities, resident care policies must—

(i) Be developed with the advice of a group of professional personnel consisting of at least one physician and at least one registered nurse; and

(ii) Be reviewed periodically by the professional personnel group.

(j) *Standard: Resident finances.* The facility must establish and maintain a system that assures a full and complete accounting of the resident's personal funds entrusted to the facility on the resident's behalf.

(1) The system must preclude any commingling of resident funds with the funds of any person other than another resident.

(2) The individual financial record must be available on request to the resident or his or her legal representative.

(k) *Standard: Staff qualifications.* (1) The facility must employ on a full time, part time, or consultant basis those professionals necessary to carry out the provisions of these conditions of participation.

(2) Professional staff must meet the following qualifications:

(i) Physicians, nurses, pharmacists, and physical therapists furnishing services in the facility must have a current license to practice in the State.

(ii) Physician assistants, nurse practitioners, and dental hygienists furnishing services to residents of the facility must have a current license or certification to practice in the State.

(iii) Occupational therapists must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

(iv) Occupational therapy assistants must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

(v) Physical therapy assistants must be a graduate of a two year college-level program approval by the American Physical Therapy Association or another comparable body.

(vi) Social workers must be licensed, if applicable, by the State in which he or she is practicing, and must—

(A) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(B) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

(vii) Speech and language pathologists or audiologists must—

(A) Be licensed, if applicable, by the State in which he or she is practicing; and

(B) Be eligible for a certificate of clinical competence in speech and language pathology or audiology granted by the American Speech-Language-Hearing Association or another comparable body under its requirements in effect on the date of publication of these provisions; or

(C) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(viii) Medical records directors must—

(A) Be eligible to be certified as a Registered Record Administrator or an Accredited Record Technician; or

(B) Have demonstrated competency appropriate to the scope and complexity of services performed, and receive direction from a medical records consultant who meets the requirements of paragraph (k)(2)(viii)(A) of this section.

(ix) Human services professionals must have at least a bachelor's degree in a human services field other than those mentioned in this section (such as gerontology, rehabilitation counseling, human development, psychology).

(l) *Use of Outside Resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or an agreement described in (2) below.

(2) Arrangements or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for the quality and timeliness of the services.

(m) *Standard: Medical director.* (1) The facility must designate a physician, registered nurse or other medical staff member to serve as medical director.

(2) The medical director is responsible for—

(i) Implementation of resident care policies;

(ii) Development and coordination of the resident treatment plan; and

(iii) Care delivered to each resident.

(n) *Standard: Laboratory Services.* (1) The skilled nursing facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in Subpart M of Part 405 of this chapter;

(ii) If the facility provides blood bank and transfusion services, it must meet the applicable conditions for—

(A) Independent laboratories specified in Subpart M of Part 405 of this chapter; and

(B) Hospitals specified in § 482.27(d) of this subchapter;

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved for participation in the Medicare program either as a hospital or an independent laboratory;

(iv) If the facility does not provide laboratory services, it must have an agreement to obtain these services from a physician's office, a participating hospital or skilled nursing facility, or independent laboratory which is approved to provide these services under the Medicare program.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

(iv) File in the resident's medical record signed and dated reports of clinical laboratory services.

(o) *Standard: Radiology and Other Diagnostic Services.* (1) The skilled nursing facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.26 of this subchapter.

(ii) If the facility does not provide diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's medical record signed and dated reports of x-ray and other diagnostic services.

(p) *Standard: Medical records.* (1) The facility must maintain medical records on each resident in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Medical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge when there is no requirement in State law; or,

(iii) For a minor, three years after a resident reaches legal age under State law.

(3) The facility must safeguard medical record information against loss, destruction, or unauthorized use;

(4) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract; or

(iv) The resident.

(5) The facility must—

(i) Permit each resident to inspect his or her records on request; and

(ii) Provide copies of the records to each resident, on request, at a photocopying cost not to exceed the amount customarily charged in the community.

(6) The medical record must contain sufficient information to identify the resident, and record his or her assessments, plan of care and treatment services.

(q) *Standard: Disaster Preparedness.* (1) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills using those procedures.

(r) *Standard: Transfer agreement.* (1) In accordance with section 1861(1) of the Act, the facility must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that—

(i) Residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician;

(ii) Medical and other information needed for care and treatment of residents, and for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions; and

(2) The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(3) *Transfer and discharge.* The facility must ensure that the resident is not involuntarily discharged or transferred to another facility unless—

(i) A physician has certified that it is medically necessary;

(ii) The facility determines that it is necessary for the resident's welfare or the welfare of the other residents;

(iii) The facility is going out of business; or

(iv) Except as prohibited by titles XVIII or XIX of the Act, the resident's bill has been unpaid.

(4) The facility must notify the resident, the resident's representative, and attending physician in writing—

(i) At least 3 days before the end of a period when a bed is held; and

(ii) Except in documented emergencies, at least 4 days before discharge or transfer from the facility.

(5) The written notice must specify—

(i) The reason for the transfer;

(ii) The effective date of the transfer;

(iii) The location to which the resident is being transferred;

(iv) That the resident may appeal the action;

(v) The address and telephone number of the State and local long term care facility ombudsman.

(s) *Standard: Utilization Review.* A skilled nursing facility must have in effect a utilization review plan that applies to services furnished by the facility to individuals entitled to Medicare benefits.

(1) The plan must provide for the review, on a sample or other basis, of the medical necessity of the services, to promote the most efficient use of available health facilities and services. The facility must include reviews of—

(i) Admissions to the institutions;

(ii) Duration of stays for a continuous period of extended duration not to exceed thirty days; and

(iii) Professional services, including drugs and biologicals furnished.

(2) The review committee must be composed of—

(i) A staff committee of the institution composed of two or more physicians, of which at least two must be physicians as defined in § 410.20(b) of this chapter, with or without participation of other professional personnel; or

(ii) A group outside the facility, which is similarly composed and which is—

(A) Established by the local medical society and some or all of the SNFs in the locality; or

(B) If no such group exists, a group that is approved by HCFA.

(3) If it is impracticable for a facility to have a properly functioning utilization review committee because of the small size of the institution or because of lack of an organized medical staff, then the review committee must be composed as described in paragraph (2)(ii) of this section rather than paragraph (2)(i).

(4) HCFA will require that the facility use Medicaid utilization review procedures instead of the procedures specified in this section if HCFA determines that the Medicaid utilization review procedures are superior in effectiveness to the Medicare procedures.

(5) The review must be made as promptly as possible, after each day so specified, and in no event later than one week following such day;

(6) Before a finding that any further stay in the facility is not medically necessary, the review committee must consult with the individual's attending physician.

(7) When the review committee finds that any further stay in the facility is not

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medically necessary, the committee must notify promptly—

(i) The institution;

(ii) The individual; and

(iii) the individual's attending physician.

(t) *Standard: Disclosure of ownership.* The facility must comply with the disclosure requirements of § 420.206 of this chapter.

(u) *Standard: Resident participation.* The facility must ensure resident participation in the facility's policy and operational decision-making.

(v) *Standard: Independent Medical Evaluation and Audit.* A SNF must cooperate in an effective program which provides for a regular program of independent medical evaluation and audit of the residents in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each resident's need for SNF care).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance, No. 13.774, Medical Assistance Program.)

Dated: September 14, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 16, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–23913 Filed 10–13–87; 8:45 am]

BILLING CODE 4120–01–M

Friday
October 16, 1987

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 226

Leasing of Osage Reservation Lands for Oil and Gas Mining; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

Leasing of Osage Reservation Lands for Oil and Gas Mining

April 10, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing a proposed rule to amend the regulations relative to the leasing of the mineral estate of the Osage Tribe of Indians for oil and gas mining. The management of the Osage mineral estate needs to be strengthened to take account of current market conditions and the Osage oil lessees need relief from basing the payment of royalty to the Osage Tribe on the offered or posted price of a major purchaser in the Kansas-Oklahoma area. The promulgation of these amendments to the regulations will improve the management of the Osage mineral estate and will alleviate the economic hardship placed on the oil lessees.

DATES: Comments must be received on or before (November 16, 1987.

ADDRESSES: Send wirtten comments to Joseph C. Johnston, Chief, Divison of Energy and Mineral Resources, Bureau of Indian Affairs, Department of the Interior, 1951 Constitution Avenue NW., MS–340SIB, Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: George E. Tallchief, Osage Tribal Council, Grandview Avenue, Pawhuska, OK 74056, (918) 287–4622 or 4623; Jack Shoemate, Superintendent, Osage Agency, Grandview Avenue, Pawhuska, OK 74056, (918) 287–2481; Cecil O. Wook, Jr., Field Solicitor, Pawhuska, Osage Agency, Grandview Avenue, Pawhuska, OK 74056, (918) 287–2495; Newell Barker, Chief, Branch of Minerals, Osage Agency, Grandview Avenue, Pawhuska, OK 74056, (918) 287–2471.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to amend 25 CFR 226—Leasing of Osage Reservation Lands for Oil and Gas Mining, to strengthen the management of the Osage Mineral Estate by the Bureau of Indian Affairs and the Osage Tribal Council and to provide economic relief to oil lessees imposed by 25 CFR 226.11(a)(2). These facts are apparent from the management of said Estate and the price of the Osage Tribe is receiving for its royalty oil.

It is the consensus of the BIA and the Osage Tribal Council that the proposed rule which amends 25 CFR 226 will best strengthen the management of the Osage Mineral Estate and will alleviate the necessity for many of the oil lessees to pay the Osage Tribe more for its royalty oil than paid by crude oil purchasers. This may reduce the tribal income; however, such action may curtail the plugging of marginal wells. The proposed rule would be cost effective to the Tribe.

Currently 25 CFR 226.42 and 226.43 provide for penalties for non-compliance. The proposed rule increases such penalties and can be monitored and enforced.

The Osage Tribal Council has conferred with the President, Oklahoma Independent Petroleum Association, concerning 25 CFR 26.11(a)(2). Osage oil and gas lessees were not consulted concerning the strengthening of the management of the Osage Mineral Estate.

Statutory Authority

The Secretary of the Interior is authorized by the Act of June 28, 1906, section 3, 34 Stat. 539, as amended, to promulgate 25 CFR 226, to implement Section 3 of the 1906 Act, as amended.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small businesses under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1982).

The primary author of this document is the Osage Tribal Council, telephone number (918) 287–4622 or 4623.

Since this document does not constitute a major Federal action under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.* (1982), no environmental impact statements or environmental assessments were made.

The Office of Management and Budget has determined that the information collection requirement contained in this Part need not be submitted for clearance pursuant to 44 U.S.C. 3516 and 5 CFR 1320.20.

This proposed rule is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

List of Subjects in 25 CFR Part 226

Indians—lands, Minerals resources, Mines, Oil and gas exploration.

Accordingly, it is proposed to amend 25 CFR Part 226 as set forth below.

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

1. The authority citation for Part 226 is revised to read as follows:

Authority: Sec. 3, 34 Stat. 543. Sec. 1, 2, 45 Stat. 1478, 1479. Sec. 3, 52 Stat. 1034, 1035. Sec. 2(a), 92 Stat. 1660

2. Section 226.1 is amended by revising paragraph (h) to read as follows:

§ 226.1 Definitions.

* * * * *

(h) "Major purchaser" means any one of the minimum number of purchasers taking 95 percent of the oil in Osage County, Oklahoma. Any oil purchased by a purchaser from itself, its subsidiaries, partnerships, associations, or other corporations in which it has a financial or management interest shall be excluded from the determination of a major purchaser.

* * * * *

§ 226.3–§ 226.45 [Redesignated as § 226.4–§ 226.46]

3. Sections 226.3 through 226.45 are redesignated as §§ 226.4 through 226.46, and a new § 226.3 is added to read as follows:

§ 226.3 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in this Part need not be submitted for clearance pursuant to 44 U.S.C. 3516 and 5 CFR 1320.20

4. Section 226.7 is amended by revising paragraphs (a) and (c) to read as follows:

§ 226.7 Bonds.

* * * * *

(a) A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in an amount of not less than $5,000 for each quarter section or fractional quarter section covered by said lease: *Provided,* however, that one bond in the sum of not less than $50,000 may be filed on Form G covering all leases on the Osage Mineral Estate not in excess of 10,240 acres to which lessee is or may become a party.

* * * * *

(c) A bond on Form H shall be filed in an amount of not less than $5,000 covering a lease acquired through assignment where the assignee does not have a collective bond on Form G or nationwide bond, or the corporate surety does not execute its consent to remain bound under the original bond

given to secure the faithful performance of the terms and conditions of the lease.

* * * * *

5. Section 226.12 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 226.12 Royalty payments.

(a) * * *

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the highest of the bona fide selling price, posted or offered price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

* * * * *

(b) * * *

(1) *Oil lease.* All casinghead gas shall belong to the oil lessee subject to any rights under existing gas leases. All casinghead gas removed from the lease from which it is produced shall be metered unless otherwise approved by the Superintendent and be subject to a royalty of not less than 16⅔ percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If an oil lessee supplies casinghead gas produced from one lease for operation and/or development of other leases, either his/hers or others, a royalty of not less than 16⅔ percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized or sold by the oil lessee may, with the approval of the Superintendent, be utilized or sold by the gas lessee, subject to the prescribed royalty of not less than 16⅔ percent of the market value.

* * * * *

6. Section 226.14 is amended by revising paragraph (a) to read as follows:

§ 226.14 Time of royalty payments and reports.

(a) Royalty payments due may be paid by either purchaser or lessee. Unless otherwise provided by the Osage Tribal Council and approved by the Superintendent, all payments shall be due by the 25th day of each month and shall cover the sales of the preceding month. Failure to make such payments shall subject lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than 1½ percent for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charge.

* * * * *

7. Section 226.15 is amended by revising paragraph (b) to read as follows:

§ 226.15 Contracts and division orders.

* * * * *

(b) The lessee shall require the purchaser of oil and/or gas from his/her lease or leases to furnish to the Superintendent, no later than the 25th day of each month, a statement reporting the gross barrels of oil and/or gross Mcf of gas sold during the preceeding month. The Superintendent may authorize an extension of time, not to exceed 10 days, for furnishing this statement.

8. Section 226.16 is amended by adding a new paragraph (e) to read as follows:

§ 226.16 Unit leases, assignments and related instruments.

* * * * *

(e) *Combining leases.* The lessee owning both an oil lease and gas lease covering the same acreage is authorized to convert such leases to a combination oil and gas lease.

9. Section 226.19 is amended by removing paragraph (e) and revising the introductory paragraph and paragraph (d) to read as follows:

§ 226.19 Information to be given surface owners prior to commencement of drilling operations.

Except for the surveying and staking of a well, no operations of any kind shall commence until the lessee or his/her authorized representative shall meet with the surface owner or his/her representative, if a resident of and present in Osage County, Oklahoma. Unless waived by the Superintendent, such meeting shall be held at least 10 days prior to commencement of any operations, except for the surveying and staking of the well. At such meeting lessee or his/her authorized representative shall comply with the following requirements:

* * * * *

(d) When the surface owner or his/her representative is not a resident of, or is not physically present in, Osage County, Oklahoma, or cannot be contracted at the last known address, the Superintendent may authorize lessee to proceed with operations.

10. Section 226.20 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 226.20 Use of surface of land.

(a) Lessee or his/her authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not limited to the right to lay and maintain pipelines, electric lines, pull rods, other appliances necessary for operations and marketing, and the right-of-way for ingress and egress to any point of operations. If lessee and surface owner are unable to agree as to the route of pipelines, electric lines, etc., said route shall be set by the Superintendent. The right to use water for lease operations is established by § 226.24. Lessee shall conduct his/her operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any avoidable nuisance to be maintained on the premises under his/her control.

(b) Before commencing a drilling operation, lessee shall pay or tender to the surface owner commencement money in the amount of $25 per seismic shot hole and commencement money in the amount of $300 for each well, after which lessee shall be entitled to immediate possession of the drilling site. Commencement money will not be required for the redrilling of a well which was originally drilled under the current lease. A drilling site shall be held to the minimum area essential for operations and shall not exceed one and one-half acres in area unless authorized by the Superintendent. Commencement money shall be a credit toward the settlement of the total damages. Acceptance of commencement money by the surface owner does not affect his/her right to compensation for damages as described in § 226.20, occasioned by the drilling and completion of the well for which it was paid. Since actual damage to the surface from operations cannot necessarily be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations.

* * * * *

(d) Lessee shall also pay fees for tank sites not exceeding 50 feet square at the rate of $100 per tank site or other vessel: *Provided,* that no payment shall be due for a tank temporarily set on a well location site for drilling, completing, or testing. The sum to be paid for a tank occupying more than 50 feet square shall be agreed upon between the surface owner and lessee or, on failure to agree,

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the same be determined by arbitration as provided by § 226.21.

11. Section 226.22 is amended by revising paragraph (f) to read as follows:

§ 226.22 Procedure for settlement of damages claimed.

* * * * *

(f) Any two of the arbitrators may make a decision as to the amount of damage due. The decision shall be in writing and shall be served forthwith upon the parties in interests. Each party shall have 90 days from the date the decision is served in which to file an action in a court of competent jurisdiction. If no such action is filed within said time and the award is against lessee or his/her authorized representative, he/she shall pay the same, together with an interest at an annual rate established for the Internal Revenue Service from date of award, within 10 days after the expiration of said period for filing an action.

* * * * *

12. Section 226.23 is amended by revising paragraph (b) and (e) to read as follows:

§ 226.23 Prohibition of pollution.

* * * * *

(b) Pits for drilling mud or deleterious substance used in the drilling, completion, recompletion, or workover of any well shall be constructed and maintained to prevent pollution of surface and subsurface fresh water. These pits shall be enclosed with a fence of at least four strands of barbed wire, or an approved substitute, stretched taut to adequately braced corner posts, unless the surface owner, user, or the Superintendent gives consent to the contrary. Immediately after completion of operations, pits shall be emptied and leveled unless otherwise requested by surface owner or user.

* * * * *

(e) Deleterious fluids other than fresh water drilling fluids used in drilling or workover operations, which are displaced or produced in well completion or stimulation procedures including but not limited to fracturing, acidizing, swabbing, and drill stem tests, shall be collected into a pit lined with plastic of at least 30 mil or a metal tank and maintained separately from above-mentioned drilling fluids to allow for separate disposal.

13. Section 226.24 is revised to read as follows:

§ 226.24 Easements for wells off leased premises.

The Superintendent, with the consent of the Osage Tribal Council, may grant commercial and non-commercial easements for wells off the leased premises to be used for purposes associated with oil and gas production. Rental payable to the Osage Tribe for such easements shall be an amount agreed to by Grantee and the Osage Tribal Council subject to the approval of the Superintendent. Grantee shall be responsible for all damages resulting from the use of such wells and settlement therefor shall be made as provided in § 226.21.

14. Section 226.26 is revised to read as follows:

§ 226.26 Gas well drilled by oil lessees and vice versa.

Prior to drilling, the oil or gas leasee shall notify the other lessee of his/her intent to drill. When an oil lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the gas lessee in drilling a well encounters a formation or zone having indication of possible oil production, he/she shall immediately notify the other lessee and the Superintendent. Lessee drilling the well shall obtain all information which a prudent operator utilizes to evaluate the productive capability of such formation or zone.

(a) Gas well to be turned over to gas lessee. If the oil lessee drills a gas well, he/she shall, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the Superintendent. If the gas lessee does not, within 45 days after receiving notice and cost of drilling, elect to take over such well and reimburse the oil lessee for the cost of drilling, including all damages paid and the cost in-place of casing, tubing, and other equipment, the oil lessee shall immediately confine the gas to the original stratum. The disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil or gas lessee who drilled the well.

(b) Oil well to be turned over to oil lessee. If the gas lessee drills an oil well, he/she shall immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the Superintendent. If the oil lessee does not, within 45 days after the receipt of such notice and notice of the cost of drilling, elect to take over the well, he/she shall immediately notify the gas lessee, and the disposition of such well and the production therefrom shall be subject to the approval of the Superintendent. Should the oil lessee elect to take over the well, he/she shall pay the gas lessee for the cost of drilling, including all damages paid and cost in-place of casing, tubing, and other equipment. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil or gas lessee who drilled the well.

(c) *Lands not leased.* If the gas lessee shall drill an oil well upon lands not leased for oil purposes or vice versa, the Superintendent may, until such time as said lands are leased, permit the lessee who drilled the well to operate and market the production therefrom. When said lands are leased, the lessee who drilled and completed the well shall be reimbursed by the oil or gas lessee for the cost of drilling said well, including all damages paid and the cost in-place of casing, tubing, and other equipment. If the lessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom shall be determined by the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil or gas lessee who drilled the well.

15. Section 226.29 is amended by revising the introductory paragraph and paragraph (a) and adding a new paragraph (c) to read as follows:

§ 226.29 Shutdown, abandonment, and plugging of wells.

No productive well shall be abandoned until its lack of further profitable production of oil and/or gas has been demonstrated to the satisfaction of the Superintendent. Lessee shall not shut down, abandon, or otherwise discontinue the operation or use of any well for any purpose without the written approval of the Superintendent. All applications for such approval shall be submitted to the Superintendent on forms furnished by him/her.

(a) Application for authority to permanently shut down or discontinue use or operation of a well shall set forth justification, probable duration, the means by which the well bore is to be protected, and the contemplated eventual disposition of the well. The method of conditioning such well shall

be subject to the approval of the Superintendent.

* * * * *

(c) The Superintendent is authorized to shut in a lease when the lessee fails to comply with the terms of the lease, the regulations, and/or orders of the Superintendent.

16. Section 226.30 is amended by revising paragraph (a) to read as follows:

§ 226.30 Disposition of casings and other improvements.

(a) Upon termination of lease, permanent improvements, unless otherwise provided by written agreement with the surface owner and filed with the Superintendent, shall remain a part of said land and become the property of the surface owner upon termination of the lease, other than by cancellation. Exceptions include personal property not limited to tools, tanks, pipelines, pumping and drilling equipment, derricks, engines, machinery, tubing and the casings of all wells: *Provided,* that when any lease terminates, all such personal property shall be removed within 90 days or such reasonable extension of time as may be granted by the Superintendent. Otherwise, the ownership of all casings shall revert to lessor and all other personal property and permanent improvements to the surface owner. Nothing herein shall be construed to relieve lessee of responsibility for removing any such personal property or permanent improvements from the premises if required by the Superintendent and restoring the premises as nearly as practicable to its original state.

* * * * *

17. Section 226.34 is revised to read as follows:

§ 226.34 Line drilling.

Lessee shall not drill within 300 feet of boundary line of leased lands, nor locate any well or tank within 200 feet of any public highway, any established watering place, or any building used as a dwelling, granary, or barn, except with the written permission of the Superintendent. Failure to obtain advance written permission from the Superintendent shall subject lessee to cancellation of his/her lease and/or plugging of the well.

18. Section 226.35 is revised to read as follows:

§ 226.35 Wells and tank batteries to be marked.

Lessee shall clearly and permanently mark all wells and tank batteries in a conspicuous place with number, legal description, operator, and telephone number, and shall take all necessary precautions to preserve these markings.

19. Section 226.37 is revised to read as follows:

§ 226.37 Control devices.

In drilling operations in fields where high pressures, lost circulation, or other conditions exist which could result in blowouts, lessee shall install an approved gate valve or other controlling device which is in proper working condition for use until the well is completed. At all times preventative measures must be taken in all well operations to maintain proper control of subsurface strata.

20. Section 226.43 is revised to read as follows:

§ 226.43 Penalty for violation of lease terms.

Violation of any of the terms or conditions of any lease or of the regulations in this part shall subject the lease to cancellation by the Superintendent, or lessee to a fine of not more than $500 per day for each day of such violation or non-compliance with the orders of the Superintendent, or to both such fine and cancellation. Payment of penalties not received within 10 days after notice of the decision shall be subject to late charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charge.

21. Section 226.44 is amended by adding a new paragraph (j) and revising paragraphs (a), (b), (d), (e), (g) and (h) to read as follows:

§ 226.44 Penalties for violation of certain operating regulations.

* * * * *

(a) For failure to obtain permission to start operations required by § 226.16(b), $50 per day until permission is obtained.

(b) For failure to file records required by § 226.32, $50 per day until compliance is met.

* * * * *

(d) For failure to construct and maintain pits as required by § 226.22, $50 for each day after operations are commenced on any well until compliance is met.

(e) For failure to comply with § 226.36 regarding valve or other approved controlling device, $500.

* * * * *

(g) For failure to properly care for and dispose of deleterious fluids as provided in § 226.22, $500 per day until compliance is met.

(h) For failure to file plugging reports as required by § 226.29 and for failure to file reports as required by § 226.13, $50 per day for each violation until compliance is met.

* * * * *

(j) Lessee or his/her authorized representative is hereby notified that criminal penalties are provided by 18 U.S.C. 1001 for knowingly filing fraudulent reports and information.

22. Section 226.45 is revised to read as follows:

§ 226.45 Hearings and appeals.

Any person, firm or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, pursuant to the regulations in this part, may appeal pursuant to 25 CFR Part 2.

23. Section 226.46 is revised to read as follows:

§ 226.46 Notices.

Notices and orders issued by the Superintendent to the representative and/or operator shall be binding on the lessee. The Superintendent may in his/her discretion increase the time allowed in his/her orders and notices.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

October 9, 1987.

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46 CFR Part 1 et al.

Licensing of Maritime Personnel, Pilots, Officers, and Operators for Mobile Offshore Drilling Units; Interim Rules

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 10, 15, 26, 35, 157, 175, 185, 186, and 187

[CGD81-059]

Licensing of Maritime Personnel

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the licensing of maritime personnel and the manning of vessels. This rule modifies all of the regulations contained in Parts 10, 15, 26, 157, 186 and 187 concerning the licensing of individuals, the registration of staff officers, and the manning of vessels. This rule simplifies the license structure for ocean and inland service, deletes many trade restricted licenses and examinations, simplifies the license procedure, adds tables, charts, and flow diagrams, and redesigns the format of the regulations. It also establishes new licenses by replacing many other trade restricted licenses; furthermore, this rule revises manning regulations contained in Part 157 to reflect technological developments, the recodification of Title 46, United States Code (USC), and changes in terminology associated with merchant vessel manning. Part 157 is also relocated to Part 15 for convenience. In addition to the amendments to licensing and manning regulations, many other changes have been made in Parts 175 and 185 to conform with proper terminology, e.g., master and mate versus operator of small passenger vessels.

DATES: This regulation is effective on December 1, 1987, except sections 10.205(g) and 10.207(f) which will be effective December 1, 1988. Comments must be received by January 14, 1988.

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G-CMC/21) [CGD 81-059] U.S. Coast Guard, Washington, DC 20593-0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LCDR Gerald D. Jenkins, Project Manager, Office of Merchant Marine Safety, Security, and Environmental Protection, (G-MVP), phone (202) 267-0224.

SUPPLEMENTARY INFORMATION: Although this is an interim final rule, additional changes will be made, where warranted. Therefore, interested persons are invited to participate in evaluating this rule by submitting written data, views, or arguments. Written comments should include the name and address of the person making them, identify this interim final rule (CGD 81-059), the specific section of the interim final rule to which the comment applies, and the reason for the comment. Persons desiring an acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before a decision is made to modify or confirm the interim rule.

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in October of 1981 (46 FR 53624) which outlined the basic philosophy and concepts for this project. The Coast Guard received approximately 75 written comments to the docket on that ANPRM. A Notice of Proposed Rulemaking (NPRM) was published on August 8, 1983, (48 FR 35920). Over 10,000 copies of this notice were mailed out to the public and 19 public meetings were held around the country. This notice elicited over 700 written comments and thousands of telephone inquiries. A Supplemental Notice of Proposed Rulemaking (SNPRM) was published on October 24, 1985 (50 FR 43316), after which the Coast Guard held public hearings in Seattle, Washington; San Francisco, California; Houston, Texas; New Orleans, Louisiana; New York, New York; and Washington, DC. A cumulative total of over 1300 comments have been received and docketed on this project.

When the Supplemental Notice of Proposed Rulemaking was published, the licensing and manning proposals applicable to mobile offshore drilling units were separated and published under docket number CGD-81-059a (50 FR 43366). The Coast Guard has continued to separate the licensing and manning rules dealing with mobile offshore drilling units publishing a separate interim final rule in this issue.

The provisions of Part 10 dealing with pilot licenses were published as a final rule on June 24, 1985 (50 FR 26106) and modified on December 23, 1985 (50 FR 52329). These rules have been reformatted to match the format and organization of these rules and eliminate duplicate provisions. All the reformatted provisions (except for the exam topics which have been included in Subpart I of this interim final rule) are published as another interim final rule under docket number CGD 81-059b appearing elsewhere in this issue.

The preamble section of the supplemental notice discussed many individual areas of concern; similarly, the interim final rule discusses areas of concern in the same format. The changes that have been incorporated into the interim final rule are explained under the "specific comment areas." Because of the adjustments made since the supplemental notice this rulemaking is being published as an interim final rule subject to comments.

Drafting Information

The principal drafters of this interim final rule are: CDR George N. Naccara, Office of Merchant Marine Safety, and CDR Ronald C. Zabel, Office of Chief Counsel.

Background

This interim final rule implements the provisions of Public Law 96-378 and the Port and Tanker Safety Act of 1978. Public Law 96-378 discussed the establishment of career patterns, service and qualifying requirements, substitution of training time and courses of instruction for sea service on deck or in the engine department. The Port and Tanker Safety Act of 1978 required improved pilotage standards, qualification for licenses by the use of simulators, minimum health and physical fitness criteria, and periodic retraining and special training for upgrading positions.

The structure and basic qualifications for licenses have been designed to conform to the provisions of the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978. While the United States has not yet ratified this Convention, the United States delegation was an active participant in the drafting of the Convention and has participated in ensuing interpretations of the Convention. The Convention entered into force internationally in April, 1984. Having the structure and basic qualifications of licenses issued by the Coast Guard in general conformance to the STCW will facilitate their acceptance by the countries that have ratified the STCW.

Under the STCW Convention, a certification stamp is required on each license. This stamp, which must be placed on the face of the license, reads, in effect, "this license complies with the provisions of (the specific regulation) of the International Convention for the Standards of Training, Certification and

Watchkeeping for Seafarers, 1978, with limitations as noted." This certification is discussed in the Convention and will be contained on all licenses issued by signatory nations.

Public Law 98–89 of August 20, 1983, revised and consolidated certain laws relating to vessels and merchant seamen contained in Title 46, United States Code. These changes also necessitated some amendments to the licensing and manning regulations.

For some time the Coast Guard had planned to revise the licensing and manning regulations purely from an administrative point of view. This rule greatly simplifies the existing regulations and provides examples, reference tables, and license structure diagrams which will assist the mariner and the Coast Guard administrators. Much of the basics of the existing licensing system, which has served the United States well for many years have been utilized. The text has been simplified and we have added or deleted licenses as necessary to reflect the changing marine industry, the statutory mandates, and also guidance from the international community.

Much of the discussions at the public hearings and many of the comments in the docket expressed the concern that the United States had lowered the standards of its licensing system and had included the provisions of an international convention which was not yet domestic law. The Coast Guard's position is that this interim final rule maintains the high standards and recognition which the U.S. system has developed over many years and that conformity to internationally accepted standards promotes continued recognition of the quality of U.S. licenses.

Discussion of Comments

It was very encouraging to note the quality and constructive criticism contained in the comments received. The final rule was prepared not only with the written comments in mind, but also the discussions held at the public hearings and the comments on the previous notices of proposed rulemaking. The format of the supplemental notice with specific comment areas in the preamble was well received and that format is used in discussing the modifications in the interim final rule. Revised versions of the license structure charts and the quick reference table are included in the interim final rule. Specific topic listings for every license examination are included in the interim final rule. A table similar to that previously proposed for engineers has been designed for the deck officers as there was much support in the comments for a simplified table with references for all licenses and exam topics.

Specific Comment Areas

1. *Public hearings:* After publication of the supplemental notice, six hearings were held in Seattle, Washington; San Francisco, California; Houston, Texas; New Orleans, Louisiana; New York, New York; and Washington, D.C. Prior to the public hearings, the Coast Guard sent 2500 copies of the proposal to persons and organizations on a mailing list and to large associations for reprinting and dissemination to their membership. At the public hearings, the Coast Guard, in a departure from standard public hearing format, introduced the supplemental notice, discussed the highlights of the notice, and then responded immediately to most of the comments presented at the hearing. The hearings were very constructive to the rulemaking process. Public hearings are not scheduled on this interim final rule; however, if any substantive new proposals are received, which have not already been considered through this lengthy rulemaking project, a hearing may be scheduled.

2. *The STCW provisions:* As in the notices of proposed rulemaking, the provisions of the STCW Convention are included in the interim final rule. The Coast Guard has supported the intent of the Convention since its completion in 1978. Inclusion of the provisions of the Convention has been accomplished in a manner considered to be acceptable to all segments of the marine industry. The effects of the Convention have been mitigated by equating the present system, in many cases, to that required by the Convention. Some licensing standards have been raised by including specialized training in certain categories of licenses. The previously proposed designated duty engineer has been retained, although the license structure for those engineers has been changed and license crossovers have also been modified to reflect the comments received.

3. *High standards of U.S. licenses:* Many comments stated the opinion that the U.S. licensing standards were being lowered by the proposals. The strong message contained in the comments was that some proposed changes to the examination and qualification process were not warranted. As a result of these comments, the interim final rule has been modified to:

a. Require that an examination be taken for second mate and second assistant engineer as in the current system;

b. Provide license progression opportunities from the limited license categories at the third mate or third assistant engineer level;

c. Require all license holders to obtain CPR training for license renewals;

d. Extend firefighting training requirements to service on vessels in inland waters;

e. Tighten the license reexamination procedures; and,

f. Require a statement attesting to the physical condition of the applicant for a license renewal and raise of grade.

4. *Present authority under current licenses:* Many commenters were concerned that they would lose authority granted to them under their present licenses. For ease of understanding the transition to the proposed licenses, a cross-over chart is included in this interim rule. Furthermore, the Coast Guard has attempted to address every possible situation in which a person could convert to a license in the new system with a different route or tonnage limitation. In general, the authority granted under most limited licenses has been expanded; however, there are some situations where existing license routes (such as lakes, bays, and sounds) authorized people to serve on waters which are presently outside of the demarcation lines and require the application of the International Regulations for Preventing Collisions at Sea (COLREGS). Most of these situations have been resolved in this interim final rule and, where they do not fully meet the situation of the license holder, the matter will be resolved on an individual basis at a Regional Examination Center. It is not the Coast Guard's intention to remove any authority which a person presently holds under an existing license when converting to any license in the new system.

5. *Tonnage Convention:* Some comments requested a discussion of the impact of the 1969 Tonnage Convention on the licensing regulations. In the notices of August 1983 and October 1985, it was noted that the probable effect of the Tonnage Convention would be higher vessel gross tonnages. It is assumed that the proposed license tonnage categories will resolve most problems in that the primary vessels affected by the Tonnage Convention will remain in 200–1600 gross tons category. When the implementing legislation and regulations come into effect for the Tonnage Convention, the Coast Guard will make every attempt to allow merchant mariners to continue service on those vessels on which they are

presently employed. That may require specific tonnage endorsements on individual licenses or it may require conversion to licenses with higher tonnage limits in the new system. In either case, the individual will not be penalized by the effects of differing tonnage as calculated under the international Tonnage Convention system, or the standard register tonnage system.

6. *Transition to new licensing system:* Comments were received asking the Coast Guard to simplify transition to the new system. The Coast Guard will implement the policy which was proposed initially, that is, permit a person to convert to the new system upon renewal of their license. In addition, if a job opportunity requires the new type of license, the applicant may obtain a new license at any time after the effective date of the regulations.

7. *Dividing line for inland and ocean licenses:* As in the original notice of proposed rulemaking and the supplemental notice, there was much debate on the line separating inland from ocean licenses. The original proposals utilized the territorial sea baseline. The supplemental notice proposed the COLREGS demarcation line. This interim final rule adopts the Boundary Lines. The Boundary Lines, as discussed in 46 CFR Part 7, are used for many other marine safety purposes. The line is generally well-known and supports the concept of inland and ocean license distinctions, despite the fact that the Boundary Lines frequently extend beyond the COLREGS lines. As a result, those license holders with inland licenses who have not been tested on the COLREGS must have an exclusion added to their license. This exclusion will not permit service on COLREGS waters until the license holder completes an examination on the COLREGS.

8. *Great Lakes and inland licenses:* In the interim final rule, the Coast Guard has retained the Great Lakes and inland licensing schemes which were proposed in the supplemental notice. No comments were received on this issue. The deck license categories for 200 gross tons, 1600 gross tons, and the unlimited category are retained as before. The engineer licenses are consistent, as in the past, with the unlimited horsepower category. The interim final rule continues the career progression from the Great Lakes and inland licenses to near coastal licenses and eventually to an unlimited license for ocean service with appropriate examinations.

9. *License transition for certain inland licenses:* Many comments were received concerning the transition from inland licenses, such as master of vessels upon lakes, bays, and sounds, to the licenses in the new system, such as master of vessels upon Great Lakes and inland waters. In general, the new inland licenses authorize service out to the Boundary Line. This should be consistent with current license limitations for the lakes, bays, and sounds licenses; however, as stated before, applicants who are not tested on the COLREGS must have a route exclusion placed upon their licenses.

10. *Partial exams required for license crossovers:* A number of comments questioned whether partial exams will be required for license crossovers or raises in grade. Raises of grade will require the complete examination for the license desired. Crossovers will require limited examinations only if specified in regulation.

11. *Service requirements for certain crossovers of licenses and sail/auxiliary sail endorsements:* There were a substantial number of comments regarding the proposed experience requirements for deck and engineer license progressions and also for the sail or auxiliary sail endorsement. Generally, the comments expressed the concern that the Coast Guard had reduced the necessary experience requirements thus lowering safety levels for many licenses. The Coast Guard agrees, and for certain licenses and endorsements, has increased the required service in amounts varying between three to nine months over that proposed in the supplemental notice.

12. *Visual acuity requirements for license:* Upon reconsideration of the proposed visual acuity standards, with support from a comment to the docket and with the advice of medical doctors in the Coast Guard, a minor change is made in the interim final rule. The comment and the doctors were concerned about the loss of depth perception that would result with uncorrected vision. The interim final rule continues the existing standard of requiring uncorrected vision of at least 20/200 in each eye (emphasis added) rather than, as proposed, in the better eye.

13. *Use of physician assistant for physical examinations:* Some comments suggested that physician assistants (PA) be allowed to conduct the required physicial examination for license applicants. The Coast Guard agrees with this concept since the emphasis of a PA's training is the performance of physical exams and they must always practice under the supervision of a licensed physician. Therefore, in the interim final rule, as required for original, raise of grade, or renewal of license, the physical exam may be conducted by either a licensed physician or a licensed physician assistant.

14. *Firefighting training:* Most comments supported the firefighting training requirements for licenses. Once again, many comments supported firefighting training for inland licenses as well as offshore licenses. In the interim final rule, firefighting training is required for licenses of all vessels of over 200 gross tons, regardless of route (inland or ocean/near coastal). In addition, this training is required for masters of vessels of not more than 200 gross tons engaged in ocean service and for operators of uninspected towing vessels on ocean (domestic trade) waters. Firefighting training is also required for all engineer licenses. Firefighting training is presently available at 14 schools which have received interim approval for their training courses. The firefighting training for licensed personnel will consist of a combined course that includes the basic and the advanced curriculum as proposed by the International Maritime Organization (IMO). The Coast Guard is not requiring refresher firefighting training; rather, it is expected that mariners will maintain their firefighting proficiency through shipboard firefighting drills and instructions.

15. *License examination topics:* As a result of the many favorable comments received concerning the engineer license examination table and complaints about the manner of the presentation of the topics for deck licenses, the interim rule includes a table for all deck license topics. Although this is a multi-page table, it presents the list of exam topics in a much clearer and concise manner. The applicant can simply compare the different examination topics for every level of license in any progression.

16. *Signaling (flashing light) requirements for licenses:* Many comments again requested that the signaling requirements for limited licenses be discontinued. Previous proposals had suggested testing at a reduced rate on flashing light for licenses which authorize service on vessels of over 150 gross tons. Due to the comments received the Coast Guard has decided that the flashing light portion of the deck license exams will not be required except for licenses which authorize service on vessels above 1,600 gross tons in ocean or near coastal waters.

17. *Oral or orally assisted examination:* Many comments were received which opposed the permitting of oral or orally assisted examinations

for any type of license. These comments suggested that the ability of a licensed individual to read instructions or navigation publications was essential to the safe operation of a vessel.

The Coast Guard is of the opinion that justification exists for the continued use of oral examinations, without adversely affecting safety. Some individuals with extensive maritime experience have educational achievement levels which prevent the reading of written examinations. On shipboard, these individuals routinely have assistance from shipmates when reading or writing skills are required. As in the supplemental notice, the Coast Guard will continue to allow orally assisted examinations for deck or engineering licenses permitting service on vessels of up to 500 gross tons. When issued, these licenses will be restricted to the limited route upon which the qualifying experience was obtained.

18. *License reexamination scheduling:* Many comments were received recommending a major modification to the present reexamination schedule for all licenses. The proposed rules suggested an examination scheme which has been tested in Regional Examination Centers during the past two years. In addition to the opposition to the proposed rules expressed in the comments, the Coast Guard's field experience indicates the proposed system is unsatisfactory. Therefore, the Coast Guard has decided to adopt to an examination schedule more closely aligned to that which exists in current regulations. The guidelines for reexamination scheduling in the interim final rule are similar to the current system; however, some minor changes have been made to assist the license applicant and to allow the Officer in Charge, Marine Inspection (OCMI) some flexibility in scheduling examinations.

19. *Familiarity with the characteristics of each vessel:* As discussed in comments and at the public hearings, section 10.101(b) has been strengthened to require that each licensee become familiar with the relevant characteristics of each vessel prior to assuming their duties. The Coast Guard recognizes the uniqueness of many vessels and particularly the installed equipment on the vessels. Further, with the removal of most license trade restrictions, it becomes even more important that the persons in all responsible positions in the crew be familiar (even to the point of formal or informal training) with the equipment listed.

20. *First Aid and CPR requirements:* Due to support in the written comments and at the public hearings for increased emphasis on first aid and cardiopulmonary resuscitation (CPR) training, the interim final rule requires all applicants for original licenses to have first aid and CPR training. Furthermore, for all license renewals, applicants must present evidence of completing a CPR course within the past 12 months. The American Heart Association requires annual refresher training to keep the CPR qualification current. The Coast Guard recognizes that sea service demands make adoption of an annual refresher requirement impractical. Requiring CPR recertification incident to license renewal should maintain the availability of CPR capable persons on most vessels. While this requirement will add minimal cost to license applications and renewals, the complete dependence on the skills of other crew members in case of an emergency justifies this additional training.

21. *Requirements for pilot license renewal:* The comments to the supplemental notice continued to strongly oppose one specific requirement for the renewal of a pilot license; i.e., the affidavit attesting to involvement in marine casualties. The comments were concerned with the self-incrimination aspect of this requirement and asserted that the Coast Guard already has the information available from casualty records. This requirement has been removed from the interim rule and the Coast Guard will rely on its existing casualty records system to identify those persons whose qualifications may be suspect.

22. *Continuing education and training:* The Coast Guard's policy is to encourage additional formal training. This is in accord with international developments and was supported by many comments addressing the issue. The initiatives for training in the interim rule will result in a more qualified and well-rounded mariner, and allow substitution of training time in an approved course for a portion of the required sea service for many licenses. New technological advances are partially responsible for these provisions because vessels' equipment and operating methods have become increasingly sophisticated. A mariner must keep abreast of new maritime practices in order to remain competent and perform at the high levels demanded of him or her. Another important consideration is the introduction of reduced manning on new vessels, which limits opportunities for mariners to pursue training while underway. The Coast Guard's position is that shore based training can provide skills equal to or greater than that gained by experience during normal sea service. This approach is supported by international agreements and conventions which specifically recommend various training courses and allow the substitution of training for underway service. In order for these training courses to be accepted by the Coast Guard, they must be "approved" which means that the course, the curriculum, physical plant, the instructors and all pertinent details of an educational program must be evaluated by the local Coast Guard OCMI and approved by Coast Guard Headquarters. The approved course may be substituted for a part of an examination, for required training, or for sea service time required for licenses and certificates, as appropriate. The Coast Guard recognizes that a certain amount of sea service is essential to ensure that mariners get the practical experience needed by competent professionals; however, the importance of formal training must also be recognized. By providing an incentive for mariners and ensuring that the schools are quality training institutions, the Coast Guard hopes to encourage mariners to attend these approved courses.

23. *Requirements for third mate or third assistant engineer licenses:* Comments suggested that military personnel (Navy and Coast Guard) may not have sufficient experience to qualify for third mate or third assistant engineer license upon graduation from an academy. The Coast Guard partially agrees. In order to qualify for these licenses, these graduates must now also complete either an underway officer of the deck training qualification program, or complete an on-board engineer officer qualification program, as appropriate for the deck or engineer license.

24. *Recency requirements for military personnel obtaining a merchant marine license:* Comments on this topic were mixed in support of and in opposition to the waiver of a requirement for military personnel to have recent sea experience. As proposed initially, the recency of service requirement in the interim rule is established for all licenses as three months of experience within the last 36 months. This requirement also applies to military personnel. The nature of military service does not justify a waiver of this requirement and the necessity to show recent service is an integral requirement of license qualifications.

25. *Engineer licenses:* Many comments were received concerning the title and nature of experience required for the various engineer licenses that were

proposed. The small vessel industry (mineral and oil industry) supported the expanded designated duty engineer concept, while the deep sea industry was concerned about permitting crossovers into unlimited licenses. In response to the comments, the Coast Guard has retained a designated duty engineer (DDE) title which is now limited to vessels of 500 gross tons. Horsepower limitations are still dependent upon the total amount of service on vessels, however, the interim rule adds two intermediate steps in that license scheme. The primary purpose of these steps is to allow seamen to enter the engineering field and obtain licenses at levels comparable to deck personnel. The first intermediate step license issued will be a designated duty engineer with one year of service, restricted to vessels of not more than 1,000 horsepower, with a route restriction to near coastal waters. The designated duty engineer limited to not more than 1,000 horsepower must complete a minimal examination. The second step will be the 4,000 horsepower designated duty engineer, which is also limited to near coastal routes. The designated duty engineer limited to not more than 4,000 horsepower would not take an examination if one was taken for the 1,000 horsepower license. The third step will be the designated duty engineer serving on any horsepower vessels limited to 500 gross tons upon ocean waters. The complete designated duty engineer of any horsepower examination would be required even if a limited horsepower license had previously been held. Comments requested that the Coast Guard make it possible to obtain the designated duty engineer of any horsepower directly with three years of total service. The Coast Guard agrees and has incorporated this concept into the interim rule.

We are also re-instituting the chief engineer (limited) and assistant engineer (limited) licenses in the interim final rule. These limited licenses were proposed in the original notice of August 1983 and have been included in this interim final rule to satisfy particular engineering needs. These licenses will assist certain types of inland and ocean-going vessels in complying with the STCW Convention, primarily those vessels of over 500 gross tons in ocean service. The chief engineer (limited) and assistant engineer (limited) licenses allow service on inland waters (other than the Great Lakes) on vessels of any gross tons, e.g., ferry vessels and large inland passenger vessels. They also allow service on vessels in ocean service of not more than 1600 gross tons. Horsepower limitations will be set commensurate with the experience of the applicant. The license as chief engineer (limited) upon oceans requires five years of total experience and complies with the STCW.

Many comments were concerned about the high level of crossover for DDE and expressed the belief that more experience was necessary to become a second assistant engineer. In response to these comments, a crossover has been established from the designated duty engineer to assistant engineer (limited) and further to the third assistant engineer (unlimited) license.

26. *Chief and assistant engineer (limited) and designated duty engineers:* The Coast Guard has discussed in this rulemaking's preamble the applicability of the three levels of designated duty engineer and the three levels of engineer (limited) licenses established by the interim final rule. While the general qualifications for these licenses are specified in Part 10, their authority to satisfy manning requirements are specified in detail in Part 15.

27. *Concerns expressed by members of the Sportfishing Association of California:* Many comments were received from this Association regarding the master/mate concept for vessels of under 200 gross tons. Particular issues noted in their correspondence were:

(a) The conversion of the ocean operator license to a master or mate license—Many perceived that there are examination requirements and/or additional service and training requirements necessary to convert their licenses to those in the new system. This notion is incorrect, as ocean operators will convert their license to master (with appropriate tonnage limitations) upon near coastal waters, in fact extending the route from the current 100 mile limit to a 200 mile limit offshore without meeting additional requirements. In order to increase the license tonnage limit, or to extend the route to any ocean waters, additional examination, training or service may be required.

(b) Implementation of a master/mate concept in lieu of ocean operator/operator on waters other than ocean or coastwise—Opposition was expressed to changing the license titles, and there was concern about any loss of present authority under the operator license. As discussed in other areas of the preamble, there will not be any loss of authority for current license holders in converting to the new system. There would not be any aggregate change in the number of personnel required to man any vessel. In fact, some presently required ocean operators may be replaced by mates in the new system, for vessels which have lengthy routes of operation. This structure will allow more personnel flexibility and will provide a training and developmental step for crew members.

(c) Requirement for examination on celestial navigation—Individuals have perceived that masters and mates with the near coastal route restriction must be examined in celestial navigation topic areas. This is also incorrect. As in existing regulations, the celestial navigation exam questions are only required for licenses with ocean routes.

28. *Master and mate licenses for service on vessels of 200 gross tons or less:* Except as noted below, master and mate licenses in the 0 to 200 gross ton range will be issued in 50 ton increments. The tonnage of the vessel upon which at least twenty-five percent of the qualifying service is obtained will be rounded up to the next larger increment. When all the qualifying service is obtained on vessels of not more than 5 gross tons, the license will be limited to not more than 25 gross tons. Licenses as master of not more than 100 gross tons may be obtained with an examination not covering questions on regulatory subchapters appropriate for vessels greater than 100 gross tons, which would be required for a master of not more than 200 gross tons. A limited examination is provided for those individuals wishing to increase the tonnage limitation of their license into the 100 to 200 gross ton range. The new offshore master and mate licenses will be endorsed for "near coastal" routes, defined as 200 miles offshore. There are additional requirements for a license endorsed with an ocean route: as in the supplemental notice, an applicant for the master, oceans license must also obtain qualification as an able seaman, must complete a radar observer course and must complete firefighting training in addition to the supplemental examination topics. In response to comments, the interim final rule contains provisions recognizing able seaman-offshore supply vessels as meeting the able seaman requirement for ocean licenses of 500 gross tons or less.

29. *Service time requirements for operator of uninspected passenger vessels:* Comments regarding the service time requirements for this license (ex-motorboat operator) suggested the higher level of experience as exists in current regulations should be retained. Previous drafts of the rulemaking had suggested six months of service for the

inland license. The Coast Guard agrees with the comments. The interim final rule requires 12 months of experience to qualify for the license as operator of uninspected passenger vessels on either inland or near coastal waters.

30. *Route restrictions for operator of uninspected passenger vessels (OUPV):* The interim final rule limits the near coastal route for the OUPV license to not more than 100 miles offshore. This is consistent with current policy and is justifiable as this license only requires one year of service. This route should not contain any additional geographic restrictions unless the acquired experience was very limited in scope. Applicants will continue to have the opportunity to cross over to the master/mate 200 gross ton category to expand their tonnage and route limitations.

31. *Routes for uninspected towing vessel licenses:* Many comments to the docket requested that the Coast Guard add another route for operator and second class operator of uninspected towing vessels that would allow such license holders to serve on vessels operating between the continental United States, Hawaii, Alaska and U.S. territories. While an ocean (unlimited) route for towboat operators could not be issued because of STCW conflict, an oceans (domestic trade) route has been added. This route will allow ocean service beyond 200 miles in domestic trade. This route endorsement will require additional examination topics and qualifications for the operator including radar observer certification, firefighting training, and qualification as able seaman (unlimited, limited, or special). The examination requirement for an oceans (domestic trade) endorsement will also include the typical celestial navigation topics found on the current operator license exam.

32. *Two watch system for uninspected towing vessels:* Many comments expressed a concern about the requirement for a three watch system if masters or mates are substituted for the licensed operator on uninspected towing vessels of less than 200 gross tons. In many cases, the master or mate license would be needed for ocean service to comply with STCW requirements in the foreign trade; however, a master or mate license may also be substituted for the uninspected towing vessel operator within the route restrictions of the license. The Coast Guard agrees that it is inappropriate to require a three watch system simply because masters and mates are substituted for licensed operators. For this reason, the Coast Guard considers that, for masters or mates substituted for uninspected towing vessel operators, the provisions of 46 U.S.C. 8104(h) allowing a two watch system on uninspected towing vessels is still applicable.

33. *Watchstanding requirements:* The watchstanding requirements of 46 U.S.C. 8104 have been further clarified in the manning regulations, 46 CFR 15.705. That clarification includes the applicability of the two watch and three watch systems on vessels engaged on voyages of less than 600 miles and the general impact of a 12 hour workday during a consecutive 24 hour period.

34. *Offshore supply vessel and mineral and oil industry license holders:* Many comments stated that those who obtained the offshore supply vessel (OSV) and the mineral and oil industry licenses by virtue of the open-book exercise through the temporary licensing program should retain that distinction and not be automatically given a non-trade restricted license. The Coast Guard agrees with those comments. Those personnel who initially obtained the OSV licenses, then met the full service requirement, and took the full examinations to obtain the mineral and oil industry license with the 300 or 500 ton limitation may convert to the 500 ton license in the new system. Those who did not take the full exam, and/or did not meet the full service requirements through the temporary licensing program will retain the OSV limitation on their license.

35. *Service credit obtained aboard Integrated Tug-Barges (ITB):* The Coast Guard, in response to many comments, is granting service credit for original or raise of grade of unlimited deck licenses for service obtained on dual-mode ITBs. It has been Coast Guard policy to accept service on push-mode ITBs in the past; however, we are expanding the creditable service concept because, in this rulemaking, the Coast Guard is accepting service on vessels of less than 1600 gross tons toward unlimited licenses. The regulations provide that service on a dual-mode ITB with an aggregate tonnage of over 1600 gross tons is creditable on a two-for-one basis for up to 50 percent of the service required on vessels over 1600 gross tons for an original or raise of grade of an unlimited license.

36. *Conversion of master/mate licenses for uninspected vessels of any gross tons:* Comments received on this item expressed a broad range of solutions, from support of the 1600 gross ton limit, to endorsement for any gross tons. Upon consideration of the comments, it continues to be the Coast Guard position that the master of uninspected vessels license, which is obtained with four years of total service, closely aligns with the master, 1600 gross ton, ocean license in the new system. Therefore, unless the applicant can present evidence of a higher tonnage necessity and evidence of such service, the master or mate uninspected vessel license will convert to an equivalent grade 1600 gross tons, oceans license. In any case, progression to the unlimited category will require advancement through the conventional scheme.

37. *Coast Guard manning authority on uninspected vessels:* Many comments to the docket expressed the concern that the OCMI was being given authority to set manning levels on uninspected vessels. The Coast Guard agrees that there is no authority to enforce manning levels on these vessels that exceed statutory requirements. The regulations have been reworded to clarify this issue.

38. *License authority:* In the changes to the manning regulations, a section has been added (Part 15, Subpart C) which clarifies the limitations and authorized service of licenses and documents, and the fact that personnel may serve only within those limitations. It has further been emphasized that licensed personnel must acquaint themselves with the characteristics of the vessel prior to assuming any duties.

Another section (46 CFR 15.610) has been added to the manning regulations discussing the exclusion from licensing requirements for personnel serving on towing vessels engaged in the offshore mineral and oil industry. "Offshore" in this context is intended to mean beyond the coastline. The exclusion is provided if the vessel has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure.

39. *Minimum age to act as pilot:* To serve as pilot the licensed individual must be 21, whether that individual be a master, mate, or operator or second-class operator of uninspected towing vessels.

40. *Manning requirements for pilots:* The manning provisions concerning pilots in 46 CFR 157.20–40 had not originally been included in this rulemaking because it was already the subject of a separate rulemaking (CGD 77–084) which was published as a final rule on June 24, 1985 (50 FR 26106) and subsequently modified on December 23, 1985 (50 FR 52329) and March 31, 1986 (51 FR 10837). As this interim final rule contains a general revision and reorganization of the manning Subchapter, that section is republished in this rulemaking as 46 CFR 15.812 so that all the provisions will appear in this

one document. Also, it was necessary to correct cross references to the former provisions of 46 CFR Part 10 to refer to their counterparts in this interim final rule. The radar observer provisions appear in 46 CFR 15.815(b). One substantive change has been made. The existing 46 CFR 157.20–40(d) provides that certain license holders may serve as pilot of certain vessels "of not more than 1000 gross tons." The tonnage limit has been changed to "not over 1600 gross tons." This change, among others, was the subject of a notice of proposed rulemaking (CGD 84–060) published on June 24, 1985 (50 FR 26117). All comments received concerning the proposed increase to 1600 gross tons were favorable. The change has been included in this rule because it is needed for consistency with the new licensing structure. Additionally, two matters which were contained in the Notice of Proposed Rulemaking (CGD 84–060) of June 24, 1985 (50 FR 26117), have been included in this interim final rule.

The practice of requiring pilots on certain vessels operating on the Great Lakes has also been recodified in the interim final rule. The Coast Guard originally required a pilot on vessels operating on the Great Lakes under the authority of the old 46 U.S.C. 404 which was amended by Public Law 96–378 to replace the word "pilot" with "deck officer". The Coast Guard is authorized under 46 U.S.C. 8101 to determine the complement of licensed individuals, including pilots, considered necessary for a vessel's safe operation. The Coast Guard has continued requiring pilots on inspected mechanically propelled vessels and tank barges inspected under 46 U.S.C. Chapter 37 operating on the Great Lakes under this authority. Recodification of the practice under this authority was proposed in the Notice of Proposed Rulemaking CGD 84–060 of June 24, 1985 (50 FR 26117). Since there were no adverse comments on this issue it has been included in this rulemaking rather than being held with the remaining unresolved issues in that notice of proposed rulemaking. All the comments received regarding this issue supported this practice.

41. *Maintenanceperson:* The vast majority of comments received on this issue recommended that the Coast Guard delete the rating of maintenanceperson until establishment of the qualification requirements in 46 CFR Part 12. It is expected that, when the revision to 46 CFR Part 12, Certification of Seamen, is completed, that Part will contain the maintenanceperson designation and will establish the qualification requirements.

42. *Conversion of operator uninspected towing vessels (oceans) licenses:* Coast Guard licensing statistics indicate there are 1047 individuals currently holding licenses as operator of uninspected towing vessels with oceans routes. These licenses authorize service world wide, ex., service in the North Sea. However, the operator's license currently being issued does not comply with the STCW. To resolve this disparity and avoid the rescinding of any license authority presently granted, a restricted master's license will be issued to these individuals. At the time of license renewal, or sooner where a need is demonstrated, the operator of uninspected towing vessels with an ocean route will be converted to a master of steam or motor vessels of not more than 200 gross tons (restricted to uninspected towing vessels). The restriction can only be removed by acquiring the qualifying experience and successfully completing an examination for a master's license, ex., master of not more than 200 or master of not more than 500 gross tons.

43. *Physical examinations:* The Coast Guard is giving consideration to varying the required frequency of physical examinations, with the frequency being determined by the age of the mariner. Older mariners would likely be required to have a physical more often than their younger counterparts. Comments on the appropriateness of such a practice and suggestions on implementation methods are solicited.

COMPLETE LIST OF NEW AND RETAINED LICENSES AND THOSE CORRESPONDING LICENSES

Licenses in new structure	Eliminated corresponding licenses
I. Deck Licenses	
A. Ocean or Near Coastal Service	
1. Master ocean steam or motor vessels of any gross tons (retained)	
2. Master near coastal steam or motor vessels of any gross tons (new)	a. Master coastwise any gross tons. b. Master ocean freight or towing steam or motor vessels of not more than 3,000 gross tons—new license would have tonnage limit.
3. Chief mate ocean steam or motor vessels of any gross tons (retained)	
4. Chief mate near coastal steam or motor vessels of tons any gross (new)	a. Chief mate coastwise any gross tons b. Chief mate ocean freight and towing vessels of not more than 3,000 gross tons—new license would have tonnage limit
5. Second mate ocean steam or motor vessels of any gross tons (retained)	
6. Second mate near coastal steam or motor vessels of any gross tons (new)	a. Second mate coastwise any gross tons
7. Third mate ocean steam or motor vessels of any gross tons (retained)	
8. Third mate near coastal steam or motor vessels of any gross tons (new)	a. Third mate coastwise any gross tons
9. Master ocean or near coastal steam or motor vessels of not more than 1,600 gross tons (new)	a. Master coastwise (if limited tonnage). b. Master uninspected vessels c. Master freight and towing vessels (other than inland) of not more than 1,000 gross tons d. Master coastwise towing vessels of not more than 750 gross tons e. Master steam or motor towing vessels upon oceans.
10. Mate ocean or near coastal steam or motor vessels of not more than 1,800 gross tons (new).	a. Mate uninspected vessels b. Mate freight and towing vessels (other than inland) of not more than 1,000 gross tons. c. Chief mate ocean or coastwise towing vessels of not more than 750 gross tons
11. Master ocean or near coastal steam or motor vessels of not more than 500 gross tons (new)	a. Master freight and towing vessels of not more than 500 gross tons. b. Master mineral and oil industry vessels of not more than 500 gross tons c. Master passenger vessels of not more than 300 gross tons d. Master yachts. e. Master pilot boats of not more than 300 gross tons.
12. Mate ocean or near coastal steam or motor vessels of not more than 500 gross tons (new).	a. Mate mineral and oil industry vessels of not more than 500 gross tons. b. Mate pilot boats of not more than 300 gross tons
13. Master ocean or near coastal steam or motor vessels of not more than 200 gross tons (new).	a. Ocean operator-convertible with additional examination and required experience.
14. Mate near Coastal steam or motor vessels of not more than 200 gross tons (new)	
15. Master near coastal steam or motor vessels of not more than 100 gross tons (new).	a. Ocean operator-convertable without additional examination.
16. Offshore installation manager (new) [reserved]	
17. Barge supervisor (new) [reserved]	
18. Ballast control operator (new) [reserved]	

COMPLETE LIST OF NEW AND RETAINED LICENSES AND THOSE CORRESPONDING LICENSES—Continued

Licenses in new structure	Eliminated corresponding licenses
19. Master uninspected fishing industry vessels (retained)	
20. Mate uninspected fishing industry vessels (retained)	
21. Operator of uninspected towing vessels, oceans (domestic trade) (retained).	
22. Operator of uninspected towing vessels, near coastal (retained)	
23. Second-class operator of uninspected towing vessels, oceans (domestic trade) (retained).	
24. Second-class operator of uninspected towing vessels, near coastal (retained).	
25. Operator of uninspected passenger vessels upon near coastal routes (new-ex-MBO).	
B. Great Lakes and Inland Service:	
1. Master Great Lakes and inland steam or motor vessels of any gross tons (new).	a. Master Great Lakes.
2. Master inland steam or motor vessels of any gross tons (new)	a. Master, lakes, bays and sounds steam or motor vessels. b. Master ferry vessels. c. Master rivers. d. Master or pilot of steam, yachts (if unlimited tonnage). e. Master passenger barges (if unlimited tonnage).
3. Mate Great Lakes and inland steam or motor vessels of any gross tons (new).	a. Mate Great Lakes. b. Mate ferry vessels. c. Inland mate (non-navigating) —service will count as boatswain toward a deck license.
4. Master Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons (new).	a. Master freight and towing vessels of not more than 1,600 gross tons on inland routes. b. Master or pilot of steam pilot boats on inland routes c. Master steam yachts on inland routes. d. Master passenger barges upon inland routes—converted license limited to non-self propelled vessels.
5. Mate Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons (new).	a. Mate freight and towing vessels of not more than 1,000 gross tons on inland routes. b. Mate or pilot of steam pilot boats on inland routes.
6. Master Great Lakes and inland steam or motor vessels of not more than 200 gross tons (new).	a. Operator, waters other than ocean or coastwise (same propulsion modes) —convertible with additional examination.
7. Mate Great Lakes and inland steam or motor vessels of not more than 200 gross tons (new).	
8. Master inland steam or motor vessels of not more than 100 gross tons (new).	a. Operator, waters other than ocean or coastwise (same propulsion modes)—convertible without additional examination.
9. Limited master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons (new).	
10. First Class Pilot (retained)	
11. Operator uninspected towing vessels Great Lakes and inland (new)	a. Operator uninspected towing vessels inland.
12. Second class operator uninspected towing vessels Great Lakes and inland (new).	a. Second class operator uninspected towing vessels inland.
13. Operator uninspected towing vessels upon western rivers (retained)	
14. Second class operator uninspected towing vessels upon western rivers (retained).	
15. Operator uninspected passenger vessels upon inland waters (retained—ex MBO).	
II. Engineer Licenses	
1. Chief engineer steam and/or motor vessels unlimited (retained)	
2. First assistant engineer steam and/or motor vessels unlimited (retained)	
3. Second assistant engineer steam and/or motor vessels unlimited (retained)	
4. Third assistant engineer steam and/or motor vessels unlimited (retained)	
5. Chief engineer (limited-oceans) (new)	a. Chief engineer uninspected motor vessels. b. Chief engineer motor towing vessels. c. Chief engineer mineral and oil industry vessels (with five years engineroom service).
6. Chief engineer (limited-near coastal) (new)	a. Chief engineer motor ferry vessels. b. Chief engineer mineral and oil industry vessels (with four years engineroom service).
7. Assistant engineer (limited) (new)	a. Assistant engineer uninspected motor vessels. b. Assistant engineer motor ferry vessels. c. Assistant engineer motor towing vessels.
8. Designated duty engineer (new) Horsepower will be limited by years of experience when converting assistant engineer licenses.	a. Chief engineer mineral and oil industry vessels. b. Assistant engineer mineral and oil industry vessels. c. First assistant engineer motor towing or ferry vessels.
9. Chief engineer uninspected fishing industry vessels (retained)	
10. Assistant engineer uninspected fishing industry vessels (retained)	
III. Other Licenses/Certificates	
A. Radio officer (retained)	
B. Certificates of registry as staff officer (retained):	
1. Chief purser	
2. Purser	
3. Senior assistant purser	
4. Junior assistant purser	
5. Medical doctor	
6. Professional nurse	
7. Endorsements on certificates of registry:	
a. Marine physician assistant	
b. Hospital corpsman	

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A full regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council (G–CMC/21) [CGD 81–059] Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593–0001 from 8 a.m. to 3 p.m. Copies may also be obtained by referring to the "For Further Information Contact" paragraph.

The regulations serve to implement legislative changes and simplify nearly all aspects of the merchant marine personnel licensing and manning systems. Implementation would not increase manning requirements upon the vessels concerned nor place any significant additional burden upon the

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private or public sectors. There would be an increase in training requirements regarding firefighting for certain deck and engineer officers and for periodic recertification of cardiopulmonary resuscitation (CPR) training. For this analysis, required training costs are expressed in 1986 dollars. Damage costs have been averaged without any adjustments being made to each year's dollar value.

Training in first aid and CPR is made a basic qualification requirement for all licenses. This is not a new or additional requirement for the original issuance of most licenses and will have been met by all current holders of masters, mates, pilots or engineer licenses. In addition, most companies already require first aid/CPR training of their personnel, thus tending to minimize the economic impact of the proposal. Cardiopulmonary resuscitation recertification courses will be required prior to license renewal. First aid recertification is not required for renewal.

The requirement for training in first aid and CPR may be satisfied in a variety of ways with varying costs. Acceptable first aid courses administered by the American Red Cross range from one to three days and cost between $5 and $50. Original CPR qualification and recertification by the American Red Cross or American Heart Association takes no more than one day at a cost of $5. In addition, many license preparatory schools have incorporated first aid and CPR training by certified instructors into their course curricula. The additional annual cost will be equal to the cost of the training multiplied by the number of individuals not presently required to obtain that training. The licenses effected are those of uninspected towing vessels and small passenger vessels. The number of individuals used is a five year average.

a. Cost of first aid training for original license issuance is 6,898×$50=$344,900. The $50 figure used is considered the maximum likely charge.

b. Cost of CPR training for original license issuance is 6,898×$5=$34,490.

c. Cost of CPR training for license renewal is 6,580×$5=$32,900.

d. Total additional annual cost for first aid and CPR training is $412,290.

The firefighting training requirements will provide an assured minimum level of knowledge to those most likely to provide initial response to shipboard fires. Increased awareness of fire hazards and techniques for combating fires will work to reduce the number of fires and their severity. In recognition of the increased safety benefits, many portions of the marine industry already require similar forms of firefighting training.

The financial benefits of firefighting training are significant but not easily quantifiable. There are no known authoritative estimates as to potential dollar savings likely to result from mariners receiving this training. For this analysis a conservative ten percent reduction in fire damage is assumed. For the five year period, 1981 to 1985, there was a reported $274 million damage to vessels which would carry firefighting trained officers. A ten percent reduction would amount to a $5.5 million annual savings. This figure does not include a reduction of deaths (22 in 1984), injuries (38 in 1984), or related pollution to the environment.

The approximate cost of the firefighting training requirement is obtained in the following manner:

(a) Estimate the number of all active licensed mariners who will be affected by the training requirement;

(b) Subtract the number of officers who have completed the firefighting training (after discounting a percentage who may not be actually sailing on their licenses). We must also subtract a percentage who may have been trained as unlicensed personnel;

(c) Multiply this total by the sum of the average cost per course (basic and advanced) and the travel/per diem costs;

(d) Further, we must estimate the number of new licensed personnel each year (total new licenses issued) who must comply with the training requirement and have not been trained already as part of their usual training in order to calculate the recurring costs; and,

(e) Multiply this total by course costs and travel/per diem charges.

Summarizing the facts in the analysis, the totals are:

(a) The total number of all active licensed mariners affected is 25,989;

(b) The approximate total of previously trained officers is 9,656;

(c) The cost per course ranges between $100 and $400, with an average of $150. Travel costs average $250 per person; per diem is $85 per day for a 4–6 day course. Therefore, the start up cost for firefighting training is $13,474,725.

(d) For the recurring costs, the number of new licensed personnel each year (from CG license statistics) who would be affected by the firefighting training requirement is 2,920. From this total, we subtract those persons at state and federal maritime academies who already obtain the training as part of their basic training (998 per year), those engineer students from union schools which require the training (100 per year), and those progressing from unlicensed ratings (approx. 102). Therefore, the total number of new officers each year requiring the training is estimated to be 1720 and recurring costs are estimated to be $1,419,000 per year.

The other significant benefits of this interim final rule are to simplify the licensing regulations, simplify the procedures involved in obtaining a license, and to enhance opportunities for careers in the merchant marine by providing a license progression for all mariners. The number of types of licenses issued will be decreased in the regulations from approximately 100 to 45. This decrease will result in substantial time and associated cost savings to the public as, in the interim final rule, one license may replace two or more trade restricted or specialized licenses. Additional savings to the public will result by decreasing the number of license examinations from approximately 78 to 29. These exams required between four hours and four days to complete.

The agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. These final rules apply to licenses for individuals only. The residual effect on training schools may be a minor modification in some course structures to reflect exam topics for licenses; course title changes to reflect new license titles; and, possibly some course combining to account for the deletion of some trade restricted licenses.

This interim final rule contains no new information collection requirements. The information collection requirements that it does contain have been submitted to the Office of Management and Budget for review under, the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section numbers and the corresponding OMB approval numbers are listed in section 10.107.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (government agencies).

46 CFR Part 10

Seamen, Marine Safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

46 CFR Part 35

Barges, Tank vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 157

Seamen, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels.

46 CFR Part 185

Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 186

Marine safety, Passenger vessels, Seamen.

46 CFR Part 187

Marine safety, Passenger vessels, Seamen.

Interim Final Rules

In consideration of the foregoing, the Coast Guard is amending Parts 1, 10, 35, 157, 175, 185, 186, and 187 of Title 46, Code of Federal Regulations as set forth below:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS [AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 49 CFR 1.45, 1.46; § 1.30 also issued under the authority of 44 U.S.C. 3507.

2. Section 1.05 is amended by revising the list in the note following paragraph (b) to read as follows:

§ 1.05 Organization; districts

* * * * *

(b) * * *

Note: * * *

Boston, MA	Toledo, OH
New York, NY	Long Beach, CA
Baltimore, MD	San Francisco, CA
Charleston, SC	Portland, OR
Miami, FL	Seattle, WA
New Orleans, LA	Anchorage, AK
Houston, TX	Juneau, AK
Memphis, TN	Honolulu, HI
St. Louis, MO	

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3. Part 10 is revised to read as follows:

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF MARITIME PERSONNEL

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10.418 Service requirements for master of ocean or near coastal steam or motor vessels of not more than 500 gross tons.
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10.422 Tonnage limitations and qualifying requirements for licenses as master or mate of vessels of not more than 200 gross tons.
10.424 Service requirements for master of ocean steam or motor vessels of not more than 200 gross tons.
10.426 Service requirements for master of near coastal steam or motor vessels of not more than 200 gross tons.
10.428 Service requirements for mate of near coastal steam or motor vessels of not more than 200 gross tons.
10.429 Service requirements for master of near coastal steam or motor vessels of not more than 100 gross tons.
10.430 Licenses for the Great Lakes and inland waters.
10.431 Tonnage requirements for Great Lakes and inland licenses for vessels of over 1600 gross tons.
10.433 Service requirements for master of Great Lakes and inland steam or motor vessels of any gross tons.
10.435 Service requirements for master of inland steam or motor vessels of any gross tons.
10.437 Service requirements for mate of Great Lakes and inland steam or motor vessels of any gross tons.
10.440 Tonnage limitations and service requirements for licenses as master or mate of Great Lakes and inland vessels of not more than 1600 gross tons.
10.442 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.
10.444 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.
10.450 Tonnage limitations and qualifying requirements for licenses as master or mate of Great Lakes and inland vessels of not more than 200 gross tons.
10.452 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.
10.454 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.
10.455 Service requirements for limited master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.
10.456 Service requirements for master of inland steam or motor vessels of not more than 100 gross tons.
10.460 Special deck license structure.
10.462 Licenses for master or mate of uninspected fishing industry vessels.
10.464 Licenses for operator of uninspected towing vessels.
10.466 Licenses for operator of uninspected passenger vessels.

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10.468 Licenses for mobile offshore drilling units [Reserved].
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10.480 Radar observer.

Subpart E—Professional Requirements for Engineer Officers' Licenses

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10.503 Horsepower limitations.
10.504 Engineer license structure.
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10.520 Service requirements for chief engineer (limited-near coastal) of steam and/or motor vessels.
10.522 Service requirements for assistant engineer (limited-oceans) of steam and/or motor vessels.
10.524 Service requirements for designated duty engineer of steam and/or motor vessels.
10.530 Licenses for engineers of uninspected fishing industry vessels.
10.540 Licenses for mobile offshore drilling units [MODUs] [Reserved].

Subpart F—Licensing of Radio Officers

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10.601 Applicability.
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10.901 General provisions.
10.903 Licenses requiring examinations.
10.905 Examination reference information.
10.910 Subjects for deck licenses.
10.920 Subjects for mobile offshore drilling unit (MODU) licenses. [Reserved].
10.950 Subjects for engineer licenses.

Authority: 46 U.S.C. 2103, 7101; 43 U.S.C. 1333(d); 49 CFR 1.46 (b) and (z).

Subpart A—General

§ 10.101 Purpose of regulations.

(a) The purpose of the regulations in this Part is to provide a comprehensive means of determining the qualifications an applicant must possess in order to be eligible for a license as deck, engineer, pilot, or radio officer on merchant vessels, or a license to operate uninspected towing vessels or uninspected passenger vessels, or for a certificate of registry as staff officer.

(b) With few exceptions, these regulations do not specify or restrict licenses to particular types of service such as tankships, freight vessels or passenger vessels. However, all licensed personnel shall become familiar with the relevant characteristics of each vessel prior to assuming their duties. As appropriate, these characteristics include but are not limited to: general arrangement of the vessel; maneuvering characteristics; proper operation of the installed navigation equipment; firefighting and lifesaving equipment; stability and loading characteristics; emergency duties; and main propulsion and auxiliary machinery, including steering gear systems and controls.

(c) The regulations in Subpart C of this Part prescribe the requirements applicable to all approved training courses if the training course is to be acceptable as a partial substitute for service, for an examination requirement, or as training required for a particular license or license endorsement.

§ 10.103 Definitions of terms used in this part.

"Assistant engineer" means a qualified officer in the engine department.

"Boatswain" means the leading seaman and immediate supervisor of unlicensed deck personnel who supervises the maintenance of deck gear.

"Chief engineer" means any person responsible for the mechanical propulsion of a vessel and who is the holder of a valid license as chief engineer.

"Chief mate" means the deck officer next in seniority to the master and upon whom the command of the vessel will fall in the event of the incapacity of the master.

"Day" means, for the purpose of complying with the service requirements of this Part, eight hours of watchstanding or day-working not to include overtime. On vessels where a 12 hour working day is authorized and practiced, such as on a six-on, six-off watch schedule, each work day may be creditable as one and one half days of service. On vessels of less than 100 gross tons, a day is considered as eight hours unless the Officer in Charge, Marine Inspection determines that the vessel's operating schedule makes this criteria inappropriate, in no case will this period be less than four hours.

"Designated duty engineer" means a qualified engineer, who may be the sole engineer on vessels with a periodically unattended engine room.

"Endorsement" means a provision added to a license which alters its scope or application. An example of an endorsement is a tonnage limitation increase within a general tonnage category, a pilot license route addition, or a radar observer qualification.

"First assistant engineer" means the engineer officer next in seniority to the chief engineer and upon whom the responsibility for the mechanical propulsion of the vessel will fall in the event of the incapacity of the chief engineer.

"Great Lakes" means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

"Horsepower" means, for the purpose of this Part, the total maximum continuous shaft horsepower of all the vessel's main propulsion machinery.

"Inland waters" means the navigable waters of the United States shoreward of the Boundary Lines as described in 46 CFR Part 7, excluding the Great Lakes.

"Master" means the officer having command of a vessel.

"Mate" means a qualified officer in the deck department other than the master.

"Month" means 30 days, for the purpose of complying with the service requirements of this Part.

"Near coastal" means ocean waters not more than 200 miles offshore.

"Oceans" means the waters seaward of the Boundary Lines as described in 46 CFR Part 7.

"Officer in Charge, Marine Inspection (OCMI) for the purposes of Part 10 means the officer or individual so designated at one of the locations of the regional examination centers listed in § 10.105.

"Operator" means an individual licensed to operate certain uninspected vessels.

"Orally assisted examination" means a license examination as described in Subpart I of this Part verbally

administered and documented by an examiner.

"Original license" means the first deck, engineer or radio officer license issued to any person by the Coast Guard.

"Raise of grade" means an increase in the level of authority and responsibility associated with a license.

"Undocumented vessel" means a vessel not required to have a document issued under the laws of the United States.

"Western Rivers" means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River, and those waters specified in 33 CFR 89.25.

"Year" means 360 days, for the purpose of complying with the service requirements of this part.

§ 10.105 Regional examination centers.

Licensing and certification functions are performed only by the Officer in Charge, Marine Inspection, at the following locations:

Boston, MA	Toledo, OH
New York, NY	Long Beach, CA
Baltimore, MD	San Francisco, CA
Charleston, SC	Portland, OR
Miami, FL	Seattle, WA
New Orleans, LA	Anchorage, AK
Houston, TX	Juneau, AK
Memphis, TN	Honolulu, HI
St. Louis, MO	

§ 10.107 Paperwork approval.

(a) This section lists the control numbers assigned by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) for the reporting and record keeping requirements in this part.

(b) The following control numbers have been assigned to the sections indicated:

(1) OMB 2115 0006—46 CFR 10.201, 10.202, 10.205, 10.207, 10.209.

(2) OMB 2115–0501—46 CFR 10.205.

(3) OMB 2115–0502—46 CFR 10.205.

(4) OMB 2115–0514—46 CFR 10.201, 10.202, 10.205, 10.207, 10.209.

(5) OMB 2115–0111—46 CFR 10.302, 10.303, 10.304, 10.480.

Subpart B—General Requirements for All Licenses and Certificates of Registry

§ 10.201 Eligibility for licenses, general.

(a) The applicant must establish to the satisfaction of the Officer in Charge, Marine Inspection, that he or she possesses all of the qualifications necesary, e.g., age, experience, character references and recommendations, physical examination, citizenship, and training, and pass a professional examination, as appropriate, before a license is issued.

(b) No person is eligible for a license who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any state or territory of the United States, within three years prior to the date of filing the application (this period may be extended up to ten years after conviction, if the gravity of the facts or circumstances of the case warrant) or who, unless he or she furnishes satisfactory evidence of cure, has ever been the user of or addicted to the use of a dangerous drug.

(c) An applicant for a license must demonstrate an ability to speak and understand English as found in the navigation rules, aids to navigation publications, emergency equipment instructions, machinery instructions, and radiotelephone communications instructions.

(d) An applicant for a license must meet the requirements for recent service specified in § 10.202(e).

(e) No license or certificate of registry may be issued to any person who is not a citizen of the United States with the exception of operator of uninspected passenger vessels limited to vessels not documented under the laws of the United States.

(f) Except as specified in this paragraph, no license or certificate of registry may be issued to a person who has not attained the age of 21 years.

(1) A license as master of vessels of 25–200 gross tons on near coastal, Great Lakes, or inland waters, third mate, third assistant engineer, mate of vessels of 200–1600 gross tons, assistant engineer of fishing industry vessels, second-class operator of uninspected towing vessels, radio officer, assistant engineer (limited-oceans), or designated duty engineer on vessels of not more than 4000 horsepower may be granted an applicant who has reached the age of 19 years, but no such license may be raised in grade before the holder has reached the age of 21 years.

(2) A license as mate of vessels of 0–200 gross tons upon Great Lakes and inland waters, mate of vessels of 0–200 gross tons upon near coastal waters, operator of uninspected passenger vessels, or designated duty engineer on vessels of not more than 1000 horsepower may be granted an applicant who has reached the age of 18 years.

(g) Persons serving or intending to serve in the merchant marine service are recommended to take the earliest opportunity of ascertaining, through examination, whether their visual acuity, and color vision where required, are such as to qualify them for service in that profession. Any physical impairment or medical condition which would render an applicant incompetent to perform the ordinary duties of an officer at sea is cause for denial of a license.

§ 10.202 Issuance of licenses.

(a) Applications for original licenses, raises of grade, extensions of route, or endorsements must be current and up-to-date with respect to service and the physical examination, as appropriate. Physical examinations and approved applications are valid for 12 months.

(b) Any person who is found qualified under the requirements set forth in this Part is issued an appropriate license valid for a term of five years, except that a certificate of registry does not expire.

(c) The license is not valid until signed by the applicant and the OCMI (or the OCMI's designated representative).

(d) Every person who receives an original license or certificate of registry shall take an oath before a designated Coast Guard official that he or she will faithfully and honestly, according to their best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. Such an oath remains binding for all subsequent licenses issued to that person unless specifically renounced in writing.

(e) The applicant for any original license, endorsement, or raise of grade of license must have at least three months' qualifying service on vessels of appropriate tonnage or horsepower within the three years immediately preceding the date of application. Prior to December 1, 1988, this section is not applicable when all the qualifying service was military sea service.

(f) Any applicant whose uncorrected vision exceeds 20/40 in either eye for deck licenses or 20/50 in either eye for engineer, radio officer, offshore installation manager, barge supervisor, or ballast control operator licenses may not serve under the authority of the license unless corrective lenses are worn and spare lenses are carried on board a vessel while serving. (Not applicable to staff officers).

(g) If an Officer in Charge, Marine Inspection, refuses to grant an applicant

the license for which applied, the OCMI will furnish the applicant, if requested, a written statement setting forth the cause of denial.

(h) If an Officer in Charge, Marine Inspection, modifies the service or examination requirements in this Part to satisfy the unique qualification requirements of an applicant, the license is limited on its face to reflect this modification. Such limitations shall not be removed without the approval of the OCMI who assigned that limit.

§ 10.203 Quick reference table for License Requirements.

Table 10.203 provides a guide to the requirements for the various licenses. Provisions in the reference sections are controlling.

License category	Minimum age	Citizenship requirement	Physical required	Experience requirements	Recommendations and [illegible] check	Firefighting certificate	Professional [illegible] requirements	Recency of service	First aid and CPR requirements
Masters/mates and operators of uninspected passenger vessels (original license).	21; 10.201(f). Note: exceptions.	Yes, 10.201(e). Note: exception.	Yes, 10.205(d); Note: (d)(2)	Yes, 10.205(e); Subpart D	Yes, 10.205(f)	Yes, 10.205(g). Note: exceptions	Yes, 10.205(i). 10.910. Note: 10.903(b)	Yes, 3 months past 36 months, 10.202(e)	Yes, in 10.205(h)
Engineers (original license)	21; 10.201(f). Note: exceptions.	Yes	Yes, 10.205(d). Note: (d)(3)	10.205(e), Subpart E	Yes, 10.205(f)	Yes, 10205(g)	Yes, 10.205(i). 10.950.	Yes, 3 months in past 36 months, 10.202(e)	Yes, 10.205(h)
All raises of grade	21; 10.201(f); Note: exceptions.	Yes	10.207(e). Note: (e)(1)	10.207(c); Subparts D & E.	N/A	Yes, Note: 10.207(f)	10.207(d), 10.910, 10.920, 10.950.	Yes, 3 months in past 36 months 10.202(e)	N/A
All renewals	21	Yes	10.209(d)	10.209(c)	N/A	N/A	10.209(c)	10.209(c)	Yes, CPR 10.209(c)
Pilot	21	Yes	Yes, 10.709	10.703, 10.706(a), 10.715.	Yes, 10.205(f)	N/A	10.707, 10.910	Yes, 10.703, 10.705(e), 10.713	Yes, 10.205(h)
Unmspected fishing industry vessels.	21 10.201(f) Note: exceptions.	Yes	Yes, 10.205(d); Note: (d)(2) or (d)(3)	Deck: 10.462, Eng: 10.530, 10.205(f)	Yes, 10.205(f)	Yes, 10.205(g)	Yes, 10.205(i), 10.910, 10.950 (oral).	Yes, 3 months in past 36 months, 10.202(e)	Yes, 10.205(h)
Unmspected towing vessels	Operator: 21, 2/c operator:19.	Yes	Yes, 10.205(d). Note: (d)(2)	10.464	Yes, 10.205(f)	Yes, 10.205(g). oceans.	Yes, 10.205(i). 10.910	Yes, 3 months in past 36 months, 10.202(e)	Yes, 10.205(h)
Radio officer	19	Yes	Yes, 10.205(d); Note: (d)(3).	10.803	Yes, 10.205(f)	N/A	N/A	N/A	Yes, 10.205(h)
Staff officer	21	N/A	No	10.807	Yes, 10.205(f)	N/A	N/A	N/A	N/A.
Offshore installation manager, barge supervisor, ballast control operator.	21; 10.201(f); Note: [illegible]	Yes	Yes, 10.205(d); Note: (d)(3).	Deck: 10.468, Eng: 10.540.	Yes 10.205(f)	Yes, 10.205(g)	Yes, 10.205(i). 10.920	Yes, 3 months in past 36 months, 10.202(e)	Yes, 10.205(h)

§ 10.204 Appeals.

(a) Any person affected by a decision or action of the Officer in Charge, Marine Inspection, may:

(1) Appeal to the District Commander in whose jurisdiction the decision or action was made; and,

(2) Appeal the decision of the District Commander to the Commandant.

(b) Each appeal must be in writing, filed within 30 days after the date of receipt of the decision or action that is being appealed, and contain:

(1) A description of the decision or action that is being appealed; and,

(2) The appellant's reason why the decision or action should be set aside or revised.

(c) Any decision being appealed remains in effect until set aside or revised.

§ 10.205 Requirements for original licenses and certificates of registry.

(a) *General.* The applicant for an original license or certificate of registry shall present satisfactory documentary evidence of eligibility in respect to the requirements of this section. All applicants shall make written application on a Coast Guard furnished form.

(b) *Minimum age.* The applicant shall present satisfactory proof of age as prescribed in § 10.201(f). This evidence may be any of the items submitted to establish citizenship.

(c) *Citizenship.* (1) The OCMI may reject any evidence of citizenship that is not believed to be authentic. Acceptable evidence of citizenship may be an original or certified copy of the following:

(i) Birth certificate or birth registration.

(ii) Certificate of naturalization.

(iii) Baptismal certificate or parish record recorded within one year after birth.

(iv) Statement of a practicing physician certifying attendance at the birth and who possesses a record showing the date and location at which it occurred.

(v) State Department passport.

(vi) A merchant mariner's document issued by the Coast Guard which shows the holder as a United States citizen.

(vii) Delayed certificate of birth issued under a state seal in the absence of any collateral facts indicating fraud in its procurement.

(viii) Certificate of Citizenship issued by the United States Immigration and Naturalization Service.

(2) If none of the requirements set forth in paragraphs (c)(1)(i) through (c)(1)(viii) of this section can be met by the applicant, the individual shall make a statement to that effect, and may submit data of the following character for consideration:

(i) Report of the Census Bureau showing the earliest available record of age or birth. Request for such information should be addressed to the Personal Census Service Branch, Bureau of the Census, Pittsburgh, Kansas 66762. In making such request, the use of Form BC–600, Application for Search of Census Records, furnished by the Bureau is required.

(ii) Affidavits of parents, relative, or two or more responsible citizens of the United States stating citizenship.

(iii) School records, immigration records, or insurance policies.

(d) *Physical examination.* (1) All applicants for an original license must pass an examination given by a licensed physician or a licensed physician

assistant and present to the OCMI a completed Coast Guard physical examination form, or the equivalent, executed by the physician. This form must provide information on the applicant's acuity of vision, color sense, and general physical condition. This examination must have been completed prior to submission of the application and not more than 12 months prior to issuance of the license. (Physical examinations are not required for staff officers.)

(2) For an original license as master, mate, pilot, or operator, the applicant must have correctable vision to at least 20/40 in each eye and uncorrected vision of at least 20/200 in each eye. The color sense must be determined to be satisfactory when tested by any of the following methods:

(i) Pseudoisochromatic Plates (Dvorine, 2nd Edition; AOC; revised edition or AOC–HRR; Ishihara 16-, 24-, or 38-plate editions).

(ii) Eldridge—Green Color Perception Lantern.

(iii) Farnsworth Lantern.

(iv) Keystone Orthoscope.

(v) Keystone Telebinocular.

(vi) SAMCTT (School of Aviation Medicine Color Threshold Tester).

(vii) Titmus Optical Vision Tester.

(viii) Williams Lantern.

(3) For an original license as engineer, radio officer, offshore installation manager, barge supervisor or ballast control operator, the applicant must have correctable vision of at least 20/50 in each eye and uncorrected vision of at least 20/200 in each eye. Applicants need only to have the ability to distinguish the colors red, green, blue and yellow.

(4) Where an applicant does not possess the vision, hearing, or general physical condition necessary, the OCMI, after consultation with the examining physician or physician assistant, may recommend a waiver to the Commandant if extenuating circumstances warrant special consideration. Applicants may submit to the Officer in Charge, Marine Inspection, additional correspondence, records and reports in support of this request. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made in behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/40 for deck licenses or 20/50 for engineer licenses or whose uncorrected vision is worse than 20/400 in either eye.

(e) *Experience or training.* (1) All applicants for original licenses and certificates of registry shall present to the OCMI, letters, discharges, or other documents certifying the amount and character of their experience and the names, tonnage and horsepower of the vessels on which acquired. The OCMI must be satisfied as to the authenticity and acceptability of all evidence of experience or training presented. Certificates of discharge are returned to the applicant. The OCMI shall note on the application that service represented by these documents has been verified. All other documentary evidence of service, or authentic copies thereof, are filed with the application. A license is not considered as satisfactory evidence of any qualifying experience.

(2) No original license or certificate of registry may be issued to any naturalized citizen on less experience in any grade or capacity than would have been required of a citizen of the United States by birth.

(3) Experience and service acquired on foreign vessels is creditable for establishing eligibility for an original license, subject to evaluation by the OCMI to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters, and operating conditions. An applicant who has obtained qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translation into English) in the forms prescribed by paragraph (e)(1) of this section.

(4) No applicant for an original license who is a naturalized citizen, and who has obtained experience on foreign vessels, will be given an original license in a grade higher than that upon which he or she has actually served while acting under the authority of a foreign license.

(f) *Character check and references.* (1) Each applicant for an original license shall submit written recommendations concerning the applicant's suitability for duty from a master and two other licensed officers of vessels on which the applicant has served. For a license as engineer or as pilot, at least one of the recommendations must be from the chief engineer or licensed pilot, respectively, of a vessel on which the applicant has served. For a license as operator of uninspected towing vessels, the recommendations may be from recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served. Where an applicant qualifies for a license through an approved training school, one of the character references must be an official of that school. For a license for which no commercial experience may be required, such as: Master or mate 0–200 gross tons, operator of uninspected passenger vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

(2) Each applicant's fingerprints are taken during the application process. The fingerprints are checked against the records of law enforcement and other government agencies. The application of any person may be rejected when information has been brought to the attention of the OCMI which indicates that the applicant's habits of life and character are such as to warrant the belief that the applicant cannot be entrusted with the duties and responsibilities of the license for which application is made. In the event an application is rejected, the applicant is notified in writing of the reason(s) for rejection and advised that the appeal procedures in § 10.204 apply. No examination is given in this type of case pending the Commandant's decision on appeal.

(3) A person may apply for an original license, or license of a different type, while on probation as a result of administrative action under Part 5 of this Chapter. The offense for which the applicant was placed on probation will be considered in determining his or her fitness to hold the license applied for. A license issued to an applicant on probation will be subject to the same probationary conditions as were imposed against the applicant's other license or mariner's document. An applicant may not take an examination for a license during any period when a suspension without probation or a revocation is effective against the applicant's currently held license or mariner's document, or while an appeal from these actions is pending.

(g) *Firefighting certificate.* Applicants for the licenses in the following categories must present a certificate of completion from a firefighting course of instruction which has been approved by the Commandant. The course must meet both the basic and advanced sections of the International Maritime Organization's (IMO) Resolution A.437 (XI) "Training of Crews in Firefighting". The course must have been completed within five years before the date of application for the license requested.

(1) Master's license for service on vessels of 200 gross tons or less in ocean service.

(2) All master or mate's licenses for over 200 gross tons.

(3) All operators of uninspected towing vessels, oceans (domestic trade).

(4) All licenses on mobile offshore drilling units.

(5) All engineer's licenses.

(h) *First aid and cardiopulmonary resuscitation (CPR) course certificates.* All applicants for an original license must present to the OCMI:

(1) A certificate indicating completion of a first aid course within the past 12 months from:

(i) the American National Red Cross "Standard First Aid and Emergency Care" or "Multi-media Standard First Aid" course;

(ii) a Coast Guard approved first aid training course; or,

(iii) a course the OCMI determines exceeds the standards of the Red Cross courses; and,

(2) A currently valid certificate of completion of a CPR course from:

(i) the American National Red Cross;

(ii) the American Heart Association; or,

(iii) a Coast Guard approved CPR training course.

(i) *Professional examination.* (1) When an applicant's experience and training are found to be satisfactory and the applicant is eligible in all other respects, the OCMI examines the applicant, in writing; except that, if the license is to be limited to uninspected fishing industry vessels, the applicant may request an oral-assisted examination, a record indicating the subjects covered is placed in the applicant's license file. The alternative of an oral-assisted examination is also available to applicants for deck or engineer licenses limited to 500 gross tons. If there is demonstrated difficulty in reading and understanding the questions, the oral-assisted examination shall be offered. Any license based on an oral-assisted examination is limited to the specific route and type of vessel upon which the majority of experience was obtained. The instructions for administration of examinations and the lists of subjects for all licenses are contained in Subpart I of this Part.

(2) When the license application of any person has been approved, the applicant should take the required examination as soon as practicable. If the applicant cannot be examined without delay at the office where the application is made, the applicant may request that the examination be given at another office.

(3) The qualification requirements for "radar observer" are contained in § 10.480.

(4) An examination is not required for a license as radio officer or a certificate of registry.

§ 10.207 Requirements for raise of grade of license.

(a) *General.* Before any person is issued a raise of grade of license, the applicant shall present satisfactory documentary evidence of eligibility. Applications must be on a Coast Guard furnished form.

(b) *Surrendering old license.* Upon the issuance of a new license for raise of grade, the applicant shall surrender the old license to the OCMI. If requested, the old license is returned to the applicant after cancellation.

(c) *Age, experience, and training.* (1) Applicants for raise of grade of licenses shall establish that they possess the age, experience, and training qualifications necessary before they are entitled to a raise of grade of license.

(2) Applicants for raise of grade of license shall present to the OCMI at a Regional Examination Center, letters, discharges, or other official documents certifying to the amount and character of their experience and the names of the vessels on which acquired. Certificates of discharge are returned to the applicant after review by the OCMI. All other documentary evidence of service, or copies thereof, are filed with the application.

(3) Sea service acquired prior to the issuance of the license held is generally not accepted as any part of the service required for raise of grade of that license. However, service acquired prior to issuance of a license will be accepted for certain crossovers, endorsements or increases in scope of a license, as appropriate. In the limited tonnage categories for deck licenses, total accumulated service is a necessary criterion for most raises in grade; service acquired prior to the issuance of such licenses will, therefore, be accepted.

(4) No raise of grade of license may be issued to any naturalized citizen on less experience in any grade than would have been required of a citizen of the United States by birth.

(5) Experience and service acquired on foreign vessels while holding a valid U. S. license is creditable for establishing eligibility for a raise of grade, subject to evaluation by the OCMI to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters and operating conditions. An applicant who has obtained the qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translations into English) of such service in the forms prescribed by paragraph (c)(2) of this section.

(6) An applicant remains eligible for a raise of grade of license while on probation as a result of action under Part 5 of this chapter.

A raise of grade of license issued to a person on probation will be subject to the same probationary conditions imposed against the applicant's other certificates or licenses. The offense for which he or she was placed on probation will be considered on the merits of the case in determining fitness to hold the license applied for. No applicant will be examined for a raise of grade of license during any period when a suspension without probation or a revocation imposed under Part 5 of this Chapter is effective against the applicant's license or certificate or while an appeal from these actions is pending.

(d) *Professional examination.* (1) When an applicant's experience and training for raise of grade is found to be satisfactory and he or she is eligible in all other respects, the OCMI examines the applicant in writing, unless an oral-assisted examination is authorized under § 10.205(i)(1). A record indicating the subjects covered is placed in the applicant's license file. The general instructions and list of subjects are contained in Subpart I of this Part.

(2) The qualification requirements for "radar observer" are contained in § 10.480.

(e) *Physical requirements.* (1) An applicant for raise of grade of a license who has not had a physical examination for an original license or renewal of license within three years must submit a certification by a licensed physician or physician assistant that he or she is in good health and has no physical impairment or medical condition which would render him or her incompetent to perform the ordinary duties of the license applied for.

(2) If the OCMI has reason to believe that an applicant for raise of grade of license suffers from some physical impairment or medical condition which would render the applicant incompetent to perform the ordinary duties of that license, the applicant may be required to submit the results of an examination by a licensed physician or physician assistant that meets the requirements for an original license.

(3) An applicant who has lost the sight of one eye may obtain a raise of grade

of license, provided that the applicant is qualified in all other respects and that the visual acuity in the one remaining eye passes the test required under § 10.205(d).

(f) *Firefighting certificate.* Applicants for raise of grade of license who have not previously met the requirements in § 10.205(g), must do so.

§ 10.209 Requirements for renewal of license.

(a) *General.* Applicants for renewal of licenses shall establish that they possess all of the qualifications necessary before they are issued a renewal of license. All applications must be on a Coast Guard furnished form. The applicant may appear in person at any Regional Examination Center listed in § 10.107 or may renew the license by mail under paragraph (e)(3) of this section. The applicant must submit the license to be renewed or a photocopy of the license. If requested, the old license is returned to the applicant.

(b) *Fitness.* No license is renewed if it has been suspended without probation or revoked as a result of action under Part 5 of this Chapter, or facts which would render a renewal improper have come to the attention of the Coast Guard.

(c) *Professional requirements.* (1) In order to renew a license as master, mate, engineer, pilot, or operator, the applicant shall:

(i) present evidence of at least one year of sea service during the past five years; or,

(ii) pass a comprehensive, open-book exercise covering the general subject matter contained in appropriate sections of Subpart I of this Part; or,

(iii) complete an approved refresher training course; or,

(iv) present evidence of employment in a position closely related to the operation, construction or repair of vessels (either deck or engineer as appropriate) for at least three years during the past five years. An applicant for a deck license with this type of employment must also demonstrate knowledge on an applicable Rules of the Road exercise.

(2) All applicants for renewal of license must present a valid certificate of completion of a CPR course from those sources listed in § 10.205(h)(2).

(3) The qualification requirements for renewal of "radar observer" endorsement are in § 10.480.

(4) Additional qualification requirements for renewal of a license as pilot are contained in § 10.713.

(5) An applicant for renewal of a radio officer's license shall, in addition to meeting the requirements in this Subpart, present a currently valid license as first- or second-class radiotelegraph operator issued by the Federal Communications Commission. This license is returned to the applicant.

(d) *Physical requirements.* (1) An applicant for renewal of a license shall submit a certification by a licensed physician or physician assistant that he or she is in good health and has no physical impairment or medical condition which would render him or her incompetent to perform the ordinary duties of that license. This certification must address visual acuity and hearing in addition to general physical condition and must have been completed within the previous 12 months.

(2) If the OCMI has reason to believe that an applicant for renewal of license suffers from some physical impairment or medical condition which would render the applicant incompetent to perform the ordinary duties of that license, the applicant may be required to submit the results of an examination by a licensed physician or physician assistant that meets the requirements for original license.

(3) An applicant who has lost the sight of one eye may obtain a renewal of license, provided that the applicant is qualified in all other respects and that the visual acuity in the one remaining eye passes the test required under § 10.205(d).

(e) *Special circumstances*—(1) *Period of grace.* Except as provided herein, a license may not be renewed more than 12 months after it has expired. To obtain a reissuance of the license, an applicant must comply with the requirements of paragraph (f) of this section. When an applicant's license expires during a time of service with the Armed Forces and there was no reasonable opportunity for renewal, including by mail, this period may be extended. The period of military service following the date of license expiration which precluded renewal may be added to the 12 month period of grace. A license is not valid for use after the expiration date.

(2) *Renewal in advance.* A license may not be renewed more than 12 months in advance of the date of expiration unless the OCMI is satisfied that there are extraordinary circumstances that justify a renewal beforehand.

(3) *Renewal by mail.* (i) An applicant may renew a license by mail by making application to the Coast Guard office which issued the present license or holds the applicant's file. The following documents must be submitted:

(A) A properly completed application on a Coast Guard furnished form, with signature notarized;

(B) The license to be renewed, or a photocopy of the license if it is unexpired;

(C) A certification from a licensed physician or physicians assistant in accordance with paragraph (d) of this section;

(D) If the applicant desires to renew a radar observer endorsement, either the radar observer certificate or a certified copy; and,

(E) Evidence of, or acceptable substitute for, sea service.

(ii) The open-book exercise, if required, may be administered through the mail.

(iii) Upon receipt of the renewed license, the applicant must sign it in order to validate the license.

(f) *Reissue of expired license.* Whenever an applicant applies for reissuance of a license more than 12 months after expiration, the applicant must complete an approved course or pass an examination to demonstrate continued professional knowledge. The examination may be oral or orally assisted if the license being renewed was awarded based on such an oral exam. In the case of an expired radio officer's license, the license may be reissued upon presentation of a valid first or second-class radiotelegraph operator license issued by the Federal Communications Commission.

§ 10.211 Creditable service and equivalents for licensing purposes.

(a) Sea service may be documented for licensing purposes in various forms such as certificates of discharge, pilotage service and billing forms, and letters or other official documents from marine companies signed by appropriate officials or licensed masters. For service on vessels of under 200 gross tons, owners of vessels may attest to their own service; however, those who do not own a vessel must obtain letters or other evidence from licensed personnel or the owners of the vessels listed. The documentary evidence produced by the applicant must contain the amount and nature (e.g. chief mate, assistant engineer, etc.) of the applicant's experience, the vessel name, gross tonnage, shaft horsepower and official numbers, the routes upon which the experience was acquired, and approximate dates of service.

(b) Port engineer, shipyard superintendent experience, instructor service, or similar related service may be creditable for a maximum of six months of service for raise of grade of an engineer or deck license, as appropriate, using the following:

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(1) Port engineer or shipyard superintendent experience is creditable on a three-for-one basis for a raise of grade. (Twelve months of experience equals four months of creditable service.)

(2) Service as a bona fide instructor at a school of navigation or marine engineering is creditable on a two-for-one basis for a raise of grade. (Twelve months of experience equals six months of creditable service).

(c) Service on mobile offshore drilling units is creditable for raise of grade of license. Evidence of one year's service while holding a license as third mate or third assistant engineer is acceptable for a raise of grade to second mate or second assistant engineer, respectively; however, any subsequent raises of grade of unlimited, non-restricted licenses must include a minimum of six months of service on conventional vessels.

(d) Service on a Dual Mode Integrated Tug Barge (ITB) unit is creditable for original or raise of grade of any deck licenses. Service on a Dual Mode ITB with an aggregate tonnage of over 1600 gross tons is creditable on a two-for-one basis (two days experience equals one day of creditable service) for up to 50 percent of the total service on vessels over 1600 gross tons required for an unlimited license. The remaining required service on vessels of over 1600 gross tons must be obtained on conventional vessels or Push Mode ITBs.

(e) Other experience in a marine related area, other than at sea, or sea service performed on unique vessels, will be evaluated by the OCMI and forwarded to the Commandant for a determination of equivalence to traditional service.

§ 10.213 Sea service as a member of the Armed Forces of the United States and on vessels owned by the United States as qualifying experience.

(a) Sea service as a member of the Armed Forces of the United States will be accepted as qualifying experience for an original, raise of grade, or increase in scope of all licenses. In most cases, military sea service will have been performed upon ocean waters; however, inland service, as may be the case on smaller vessels, will be credited in the same manner as conventional evaluations. The applicant must submit an official transcript of sea service as verification of the service claimed when the application is submitted.

The applicant must also provide the Officer in Charge, Marine Inspection other necessary information as to tonnage, routes, horsepower, percentage of time underway, and assigned duties upon the vessels which he or she served. Such service will be evaluated by the OCMI and forwarded to the Commandant for a determination of its equivalence to sea service acquired on merchant vessels and the appropriate grade, class, and limit of license for which the applicant is eligible. Normally, 60 percent of the total time on board is considered equivalent underway service; however, the periods of operation of each vessel may be evaluated separately. In order to be eligible for a master's or chief engineer's unlimited license, the applicant must have acquired military service in the capacity of commanding officer or engineer officer, respectively.

(b) Service in deck ratings on military vessels such as seaman apprentice, seaman, boatswain's mate, quartermaster, or radarman are considered deck service for licensing purposes. Service in other ratings may be considered if the applicant establishes that his or her duties required a watchstanding presence on or about the bridge of a vessel. Service in engineer ratings on military vessels such as fireman apprentice, fireman, engineman, machinists, mate, machinery technician or boiler tender are considered engineer service for licensing purposes. There are also other ratings such as electrician, hull technician, or damage controlman which may be credited when the applicant establishes that his or her duties required watchstanding duties in an operating engine room.

(c) In addition to underway service, members of the Armed Forces may obtain creditable service for periods of assignment to vessels at times other than underway, such as in port, at anchor, or in training. Normally, a 25% factor is applied to these time periods. This experience can be equated with general shipboard familiarity, training, ship's business, and other related duties.

(d) Sea service obtained on submarines is creditable, as if it were surface vessel service, for deck and engineer licenses under the provision of paragraph (a) of this section. For application to deck licenses, submarine service may be creditable if at least 25 percent of all service submitted for the license was obtained on surface vessels (e.g. If four years' total service were submitted for an original license, at least one year must have been obtained on surface craft in order for the submarine service to be eligible for evaluation).

(e) Service gained in a civilian capacity as commanding officer, master, mate, engineer, or pilot, etc., of any vessel owned and operated by the United States, in any service, in which a license as master, mate, engineer, or pilot was not required at the time of such service, is evaluated by the OCMI and forwarded to the Commandant for a determination of equivalence.

§ 10.215 Modification or removal of limitations.

(a) If an Officer in Charge, Marine Inspection, is satisfied by the documentary evidence submitted that an applicant is entitled by experience, training, and knowledge to an endorsement or increase in the scope of any license held, any limitations which were previously placed upon the license by that OCMI may be changed. Such an increase in scope may include horsepower or tonnage limitations, or geographic route restrictions.

(b) An OCMI may not change a limitation on any license which that office did not place thereon before full information regarding the reason for the limitation is obtained from the OCMI responsible for the limitation.

(c) No limitation on any license may be changed before the applicant has made up any deficiency in the experience prescribed for the license or endorsement desired and passed any necessary examination.

§ 10.217 Examination procedures and denial of licenses.

(a)(1) The examinations for all deck and engineer unlimited licenses are administered at periodic intervals. If the applicant fails three or more sections of the examination, a complete reexamination must be taken, but may be taken during any of the scheduled exam periods. On the subsequent exam, if the applicant again fails three or more sections, at least three months must lapse before another complete examination is attempted. If an applicant fails one or two sections of an examination, he or she may be retested twice on these sections during the next three months. If the applicant does not successfully complete these sections within the three month period, a complete reexamination must be taken, after a lapse of at least three months from the date of the last retest.

(2) The scheduling of all other deck and engineer license examinations will be at the discretion of the OCMI. In the event of a failure, the applicant may be retested twice whenever the examination can be scheduled with the OCMI. The applicant must be examined in all of the unsatisfactory sections of the preceding examination. If the applicant does not successfully complete all parts of the examination during a three month period from the

initial test date, a complete reexamination must be taken, after a lapse of at least two months from the date of the last retest.

(b) If the OCMI refuses to grant an applicant the license for which applied due to failing to pass a required examination, the applicant is furnished a written statement setting forth the portions of the examination which must be retaken and the date by which the examination must be completed.

§ 10.219 Issuance of duplicate license.

Whenever a person to whom a license has been issued loses the license, that person shall report the loss to any OCMI. A duplicate license may be issued after the OCMI receives an application with an affidavit describing the circumstances of the loss from the applicant and verification of the license record from the Regional Examination Center where it was issued or from the Commandant. The duplicate license will be prepared in the same format and wording as the license being replaced. A duplicate license is issued for the unexpired term of the lost license and bears the following statement: "This license replaces License Number ——— issued at ——— on the above date." (See 33 CFR 1.25–40(b) for fees.)

§ 10.221 Parting with license.

The holder of a license shall not voluntarily part with it or place it beyond his or her personal control by pledging or depositing it with any other person for any purpose. If the holder violates this section, he or she may be proceeded against in accordance with the provisions of Part 5 of this Chapter, looking to a suspension or revocation of the license.

§ 10.223 Suspension and revocation of licenses.

(a) When the license of any individual is revoked, it is no longer valid for any purpose and any license of the same type subsequently requested must be applied for as an original license, except as to number of issue.

(b) No person whose license is suspended without probation or has been revoked may be issued another license without approval of the Commandant.

(c) When a license which is about to expire is suspended, the renewal of such license will be withheld until expiration of the period of suspension.

Subpart C—Training Schools with Approved Courses

§ 10.301 Applicability.

This Subpart prescribes the general requirements applicable to all approved courses which may be accepted in lieu of service experience or examination required by the Coast Guard, or which satisfy course completion requirements.

§ 10.302 Course approval.

(a) The Coast Guard only approves courses satisfying regulatory requirements. The owner or operator of a training school desiring to have a course approved by the Coast Guard shall submit a written request through the appropriate Officer in Charge, Marine Inspection to the Commandant (G–MVP) U.S. Coast Guard, Washington, DC 20593–0001, that contains:

(1) A list of the curriculum including a description of and the number of classroom hours required in each subject;

(2) A description of the facility and equipment;

(3) A list of instructors including the experience, background, and the qualifications of each; and

(4) Specify the Coast Guard training requirements the course is intended to satisfy.

(b) The Coast Guard notifies each applicant in writing whether or not an approval is granted. If a request for approval is denied, the Coast Guard informs the applicant the reasons for the denial and describes what corrections are required for an approval.

(c) Unless sooner surrendered, suspended or revoked, an approval for a course at a training school that meets Coast Guard standards expires 24 months after the month in which it is issued, or on the date of any change in the ownership of the school for which it was issued, whichever occurs first.

(d) If the owner or operator of a training school desires to have a course approval renewed, they shall submit a written request to the address listed in paragraph (a) of this section. For the request to be approved, the Coast Guard must be satisfied that the content and quality of instruction remain satisfactory. Unless sooner surrendered, suspended or revoked, a renewal of the approval expires 60 months after the month it is issued, or on the date of any change in ownership of the school for which it is issued, whichever occurs first.

§ 10.303 General standards.

Each school with an approved course must:

(a) Have a well maintained facility that accommodates the students in a safe and comfortable environment conducive to learning.

(b) Have visual aids for realism, including simulators where appropriate, which are modern and well maintained and sufficient for the number of students to be accommodated.

(c) Give appropriate written or practical examinations in the course material to each student of such a degree of difficulty that a student who successfully completes them could reasonably assume that he or she would pass, on the first attempt, an examination prepared by the Coast Guard based upon knowledge requirements of the position or endorsement for which the student is being trained.

(d) Keep for at least one year after the end of each student's enrollment:

(1) Each written examination, or in the case of a practical test, a report of such test; and

(2) A record of each student's classroom attendance.

(e) Not change its approved curriculum unless approved, in writing, after the request for change has been submitted in writing through the appropriate Officer in Charge, Marine Inspection to the Commandant (G–MVP), U.S. Coast Guard.

(f) At any time the Officer in Charge, Marine Inspection shall direct, allow the Coast Guard to:

(1) Inspect its facilities, equipment, and records, including scholastic records;

(2) Conduct interviews and surveys of students to aid in course evaluation and improvement;

(3) Assign personnel to observe or participate in the course of instruction; and

(4) Supervise or administer the required examinations or practical demonstrations.

§ 10.304 Substitution of training for required service.

(a) Satisfactory completion of certain training courses approved by the Commandant may be substituted for a portion of the required service for many deck and engineer licenses and for qualified ratings of unlicensed personnel. The list of all currently approved courses of instruction including the equivalent service and applicable licenses and ratings is maintained by Commandant (G–MVP). Satisfactory completion of an approved training course may be substituted for not more than two-thirds of the required service on deck or in the engine department of deck or engineer licenses, respectively, and for qualified ratings.

(b) Service time gained at an approved training course does not satisfy recent service requirements nor does training on a simulator; however, any underway service at an approved

course may be used for this purpose. An applicant who had met the recent service requirement before entering school will not be penalized by attending the approved training course.

(c) Training obtained prior to receiving a license may not be used for subsequent raises of grade.

(d) Simulator training in combination with a Coast Guard approved training course may be submitted to the Commandant for evaluation and determination of equivalency to required sea service. Simulator training cannot be substituted for recency requirements, but may substitute for a maximum of 25 percent of the required service for any license transaction.

§ 10.305 Radar observer qualifying courses.

(a) A student who takes an approved course of training, including passing both examinations and practical demonstration on a simulator, and who meets the requirements of this section is entitled to an appropriate radar observer certificate:

(1) In a form prescribed by the school that is acceptable to the Coast Guard; and

(2) Signed by the head of the school.

(b) The following radar observer certificates are issued under this section:

(1) Radar Observer (Unlimited).

(2) Radar Observer (Inland Waters)

(3) Radar Observer (Unlimited Renewal).

(4) Radar Observer (Inland Waters Renewal).

(c) A school with an approved radar observer course may not issue a certificate listed in paragraph (b) of this section unless the student has successfully completed the appropriate curriculum as follows:

(1) Radar Observer (Unlimited). Classroom instruction, including demonstrations and practical exercises using simulators, and examination in the following subjects:

(i) Fundamentals of radar

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar

(C) Description of the purpose and functions of the main components that comprise a typical marine radar installation.

(ii) Operation and use of radar:

(A) The purpose and adjustment of controls.

(B) The detection of malfunctions, false and indirect echoes, and other radar phenomena.

(C) The effect of sea return and weather.

(D) The limitation of radar resulting from design factors.

(E) Precautions to be observed in performing maintenance of radar equipment.

(F) Range and bearing measurement.

(G) Effect of size, shape, and composition of ship targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Determining the course and speed of another vessel.

(B) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(C) Detecting changes of course and/or speed of another vessel after its initial course and speed have been established.

(D) Factors to consider when determining change in course and/or speed of a vessel to prevent collision, on the basis of radar observation, with other vessels.

(iv) Plotting (any method that is graphically correct may be used):

(A) The principles and method of plotting relative and true motion.

(B) Practical plotting problems.

(2) Radar Observer (Inland Waters). Classroom instruction, including demonstration and practical exercises using simulators and examination in the subjects listed in paragraph (c)(1) of this section with emphasis on unique problems attendant to inland waters, with the exception of paragraph (c)(1)(iv) of this section.

(3) Radar Observer (Unlimited Renewal). Classroom instruction, including demonstration and practical exercises using simulators, and examination, in the subjects listed in paragraphs (c)(1) (iii) and (iv) of this section.

(4) Radar Observer (Inland Waters Renewal). Classroom instruction, including demonstration and practical exercises using simulators, and examinations in the subjects listed in paragraph (c)(1)(iii) of this section.

§ 10.307 Training schools with approved radar observer courses.

The Commandant (G–MVP) U.S. Coast Guard, 2100 Second St., Washington, DC 20593–0001, maintains the list of approved schools and specific courses. This information is available upon request by writing the aforementioned address or calling (202) 267–0224.

Subpart D—Professional Requirements for Deck Officers Licenses

§ 10.401 Ocean and near coastal licenses.

(a) Any license issued for service as master or mate on ocean waters qualifies the licensee to serve in the same grade on any waters, subject to the limitations of the license, without additional endorsement.

(b) A license issued for service as master or mate on near coastal waters qualifies the licensee to serve in the same grade on near coastal, Great Lakes, and inland waters, subject to the limitations of the license, without additional endorsement.

(c) Near coastal licenses of any gross tons require the same number of years of service as the ocean unlimited licenses. The primary differences in these licenses are the nature of the service and the professional examination as explained in Subpart I of this Part.

(d) A licensee having a master or mate near coastal license obtained with ocean service may have the license endorsed for ocean service by completing the appropriate examination deficiencies.

(e) Master or third mate near coastal unlimited licenses may be obtained by completing the prescribed examination in Subpart I of this Part and satisfying the requirements of subparagraph (g) while holding a license as unlimited master or mate, respectively, upon Great Lakes and inland waters. To have a near coastal unlimited license obtained in this manner endorsed for ocean service, the licensee must obtain 12 months of service as a deck watch officer or higher on ocean waters on vessels of 1600 gross tons or over, in addition to completing the examination topics.

(f) Masters and mates licenses for service on vessels of over 200 gross tons may be endorsed for sail or auxiliary sail as appropriate. The applicant must present the equivalent total qualifying service required for conventional licenses including at least one year of deck experience on that specific type of vessel. For example, for a license as master of vessels of not more than 1600 gross tons endorsed for auxiliary sail, the applicant must meet the total experience requirements for the conventional license, including time as mate, and the proper tonnage experience, including at least one year of deck service on appropriately sized auxiliary sail vessels. For license endorsement for service on vessels of 200 gross tons or less see individual license requirements.

(g) In order to obtain a master or mate license with a tonnage limit above 200 gross tons, or a license for 200 gross tons or less with an ocean route, the applicant must successfully complete the following training and examination requirements:

(1) approved firefighting course;
(2) approved radar observer course; and,
(3) qualification as an able seaman unlimited or able seaman limited (able seaman special or able seaman offshore supply vessels satisfy the able seaman requirement for licenses permitting service on vessels of 1600 gross tons and less).

§ 10.402 Tonnage requirements for ocean or near coastal licenses for vessels of over 1600 gross tons.

(a) All required experience for ocean or near coastal licenses for vessels of any gross tons must be obtained on vessels of over 200 gross tons with the exception of the prescribed progression from the 1600 gross ton category. At least one-half of the required experience must be obtained on vessels of over 1600 gross tons.

(b) If the applicant for an original or raise of grade of a license as master or mate does not meet the requirements of paragraph (a) of this section, a tonnage limitation is placed on the license based on the applicant's qualifying experience. The license is limited to the maximum tonnage on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated. When the calculated limitation equals or exceeds 10,000 gross tons, the applicant is issued an unlimited tonnage license.

(c) Tonnage limitations imposed under paragraph (b) of this section may be raised or removed in the following manner:

(1) When the applicant has six months of service on vessels of over 1600 gross tons in the highest grade licensed, all tonnage limitations are removed.

(2) When the applicant has a total of six months of service on vessels of over 1600 gross tons in any licensed capacity other than the highest grade for which licensed, all tonnage limitations for the grade in which the service is performed are removed and the next higher grade license is raised to the tonnage of the vessel on which the majority of the service was performed. The total cumulative service before and after issuance of the limited license may be considered in removing all tonnage limitations.

(3) When the applicant has 12 months of service as able seaman on vessels of over 1600 gross tons or over while holding a license as third mate, all tonnage limitations on the third mate's license are removed.

§ 10.403 Deck license structure.

The following diagram illustrates the deck license structure, including cross over points. The section numbers on the diagram refer to the specific requirements applicable.

Figure 10.403-1

OCEANS

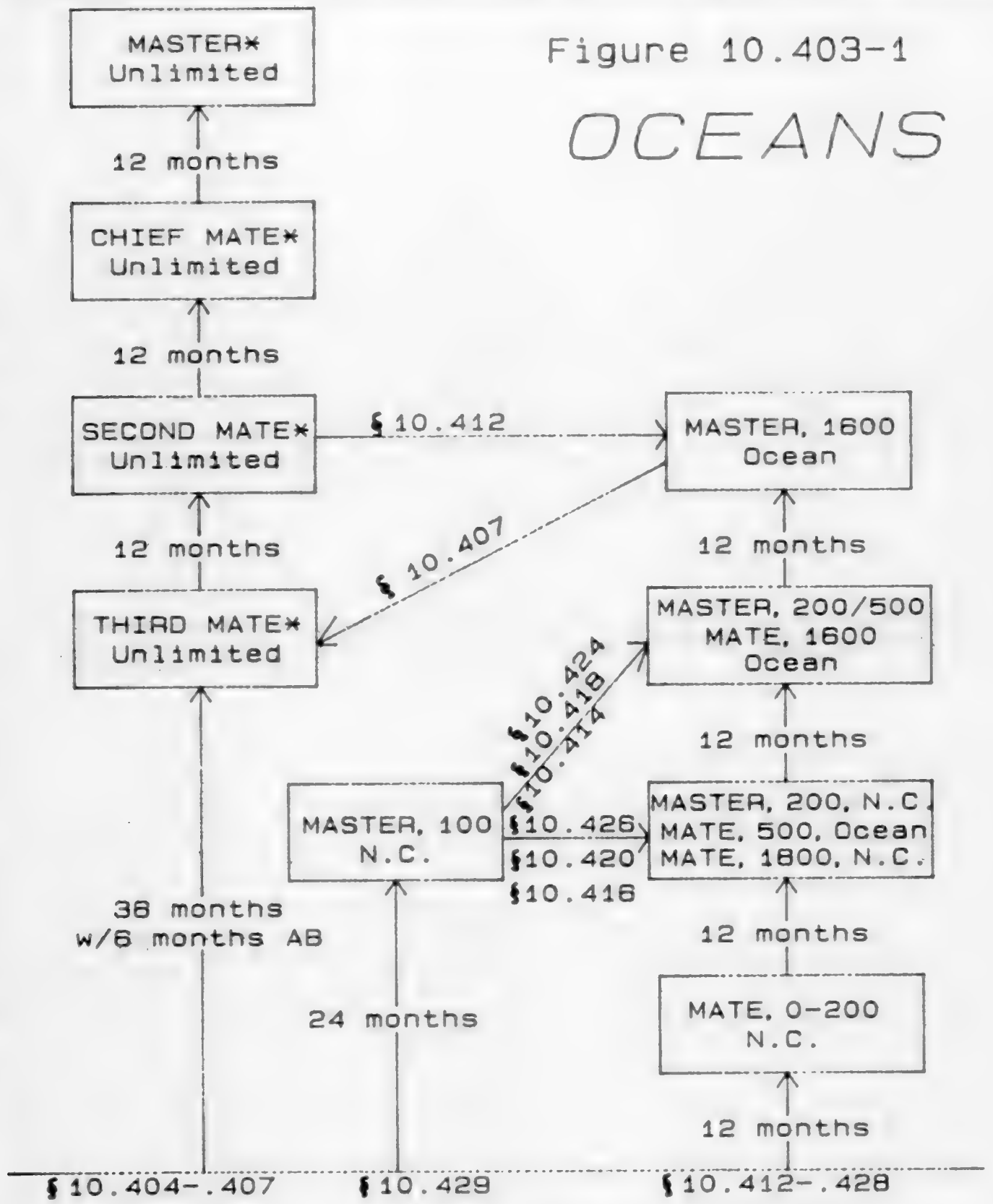

*Licenses for service on vessels of over 1600 gross tons on near coastal routes parallel this structure for service and tonnage requirements. The examinations contain all subjects except those which are appropriate only for ocean licenses, i.e., celestial navigation, ocean sailing problems etc., as indicated in Subpart 10.900.

BILLING CODE 4910-14-C

Deck License Structure

Figure 10.403-2

INLAND

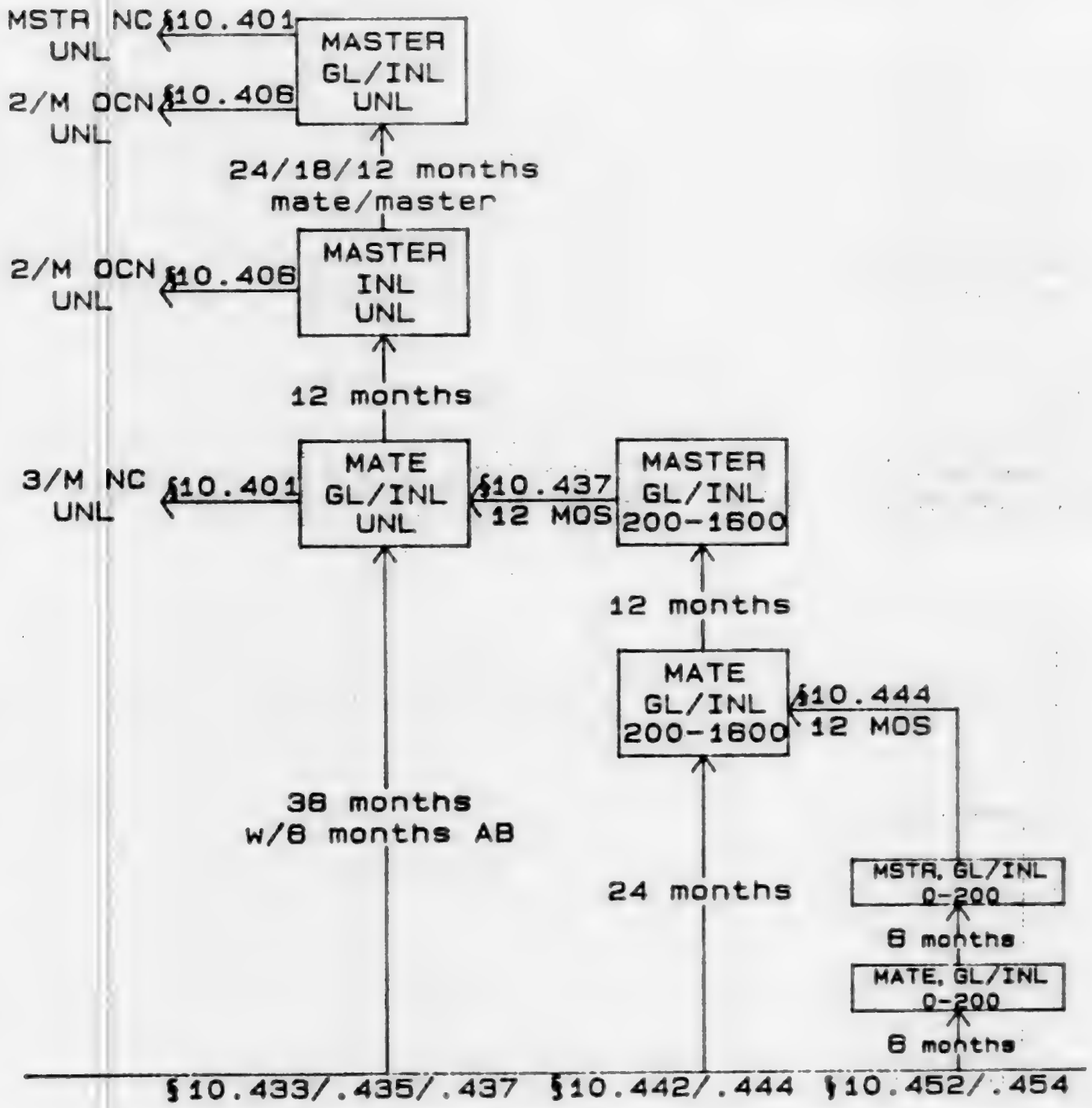

§ 10.404 Service requirements for master of ocean or near coastal steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as master of ocean or near coastal steam or motor vessels of any gross tons is:

(a) One year of service as chief mate on ocean steam or motor vessels; or,

(b) One year of service on ocean steam or motor vessels while holding a license as chief mate of ocean steam or motor vessels as follows:

(1) A minimum of six months of service as chief mate; and,

(2) Service as officer in charge of a navigational watch accepted on a two-for-one basis (12 months as second or third mate equals six months of creditable service).

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§ 10.405 Service requirements for chief mate of ocean or near coastal Stream or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as chief mate of ocean or near coastal steam or motor vessels of any gross tons is one year of service as officer in charge of a navigational watch on ocean steam or motor vessels while holding a license as second mate.

§ 10.406 Service requirements for second mate of ocean or near coastal steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as second mate of ocean or near coastal steam or motor vessels of any gross tons is:

(a) One year of service as officer in charge of a navigational watch on ocean steam or motor vessels while holding a license as third mate; or,

(b) While holding a license as third mate of ocean steam or motor vessels of any gross tons, 12 months of service on deck as follows:

(1) A minimum of six months service as officer in charge of a deck watch on ocean steam or motor vessels; in combination with,

(2) Service as boatswain, able seaman, or quartermaster while holding a certificate as able seaman, which may be accepted on a two-for-one basis to a maximum allowable substitution of six months (12 months of experience equals 6 months of creditable service); or,

(c) A licensed master of Great Lakes and inland steam or motor vessels of any gross tons or master of inland steam or motor vessels of any gross tons, may obtain a license as second mate of ocean or near coastal steam or motor vessels of any gross tons by completing the prescribed examination in Subpart I of this Part.

§ 10.407 Service requirements for third mate of ocean or near coastal steam or motor vessels of any gross tons.

(a) The minimum service or training required to qualify an applicant for license as third mate of ocean or near coastal steam or motor vessels of any gross tons is:

(1) Three years of service in the deck department on ocean steam or motor vessels, six months of which shall have been as able seaman, boatswain, or quartermaster, while holding a certificate as able seaman. Experience gained in the engine department on vessels of appropriate tonnage may be creditable for up to three months of the service requirements for this license; or,

(2) Graduation from:

(i) The U.S. Merchant Marine Academy (deck curriculum);

(ii) The U.S. Coast Guard Academy and qualification as an underway officer in charge of a navigational watch;

(iii) The U.S. Naval Academy and qualification as an underway officer in charge of a navigational watch; or,

(iv) The deck class of a maritime academy approved by and conducted under rules prescribed by the Maritime Administrator and listed in Part 310 of this Title, except the deck class of the Great Lakes Maritime Academy; or,

(3) Satisfactory completion of a three year apprentice mate training program approved by the Commandant.

(b) Graduation from the deck class of the Great Lakes Maritime Academy will qualify the graduate to be examined for a license as third mate near coastal steam or motor vessels of any gross tons.

(c) While holding a license as master of ocean or near coastal steam or motor vessels of not more than 1,600 gross tons, one year of service as master on vessels of over 200 gross tons operating on ocean or near coastal waters will qualify the applicant for a license as third mate of ocean or near coastal steam or motor vessels of any gross tons.

§ 10.410 Tonnage requirements for ocean and near coastal licenses for vessels of not more than 1,600 gross tons.

(a) Licenses as master and mate of ocean or near coastal vessels of not more than 1,600 gross tons are issued in the following tonnage categories:

(1) Not more than 1,600 gross tons;

(2) Not more than 500 gross tons; or,

(3) Between 25–200 gross tons in 50 ton increments and with appropriate mode of propulsion such as steam or motor, sail, or auxiliary sail.

(b) Experience gained in the engine department on vessels of appropriate tonnage may be creditable for up to 25 percent of the service requirements for any mate license in this category.

(c) A license in this category obtained with an orally-assisted examination will be limited to 500 gross tons. In order to raise that tonnage limit to 1,600 gross tons, the written examination and service requirements must be satisfied.

§ 10.412 Service requirements for master of ocean or near coastal steam or motor vessels of not more than 1,600 gross tons.

(a) An applicant for master of ocean or near coastal steam or motor vessels of not more than 1,600 gross tons must have four years of total service on ocean or near coastal waters, two years of which must be on vessels of 100 gross tons or over. Two years of the total required service must have been as a licensed master or mate. One year of the service as licensed master, mate or equivalent supervisory position must have been on vessels of 100 gross tons or over.

(b) An applicant holding a license as second mate of ocean or near coastal steam or motor vessels of over 1,600 gross tons is eligible for this license upon completion of a limited examination.

§ 10.414 Service requirements for mate of ocean steam or motor vessels of not more than 1,600 gross tons.

(a) An applicant for mate of ocean steam or motor vessels of not more than 1,600 gross tons must have three years of total service on ocean or near coastal waters, one year of which must be on vessels of 100 gross tons or over. One year of the total required service must have been as a licensed master, mate or equivalent supervisory position while holding a license as master or mate. Six months of the service as licensed master or mate or equivalent supervisory position must have been on vessels of 100 gross tons or over.

(b) An applicant for this license may have three years of service in the deck department on ocean or near coastal vessels of 200 gross tons or more including at least six months of service as able seaman.

(c) This license may be endorsed on a license as master of ocean or near coastal steam or motor vessels of not more than 500 gross tons if the tonnage requirements are satisfied.

§ 10.416 Service requirements for mate of near coastal steam or motor vessels of not more than 1,600 gross tons.

(a) The minimum service required to qualify an applicant for license as mate of near coastal steam or motor vessels of not more than 1,600 gross tons is two years of service in the deck department of steam or motor vessels on ocean or near coastal waters. Six months of this service must have been as able seaman, boatswain, or quartermaster while holding a certificate as able seaman. All of the experience must have been on vessels of 50 gross tons or over and at least one year must have been on vessels of 100 gross tons or over.

§ 10.418 Service requirements for master of ocean or near coastal steam or motor vessels of not more than 500 gross tons.

(a) An applicant for a license as master of ocean or near coastal steam or motor vessels of not more than 500 gross tons must have three years total service on ocean or near coastal waters. Two years of this service must have been as a licensed master, mate or equivalent supervisory position while holding a

license as master or mate. One year of the service as licensed master or mate or equivalent must have been on vessels of 50 gross tons or over.

(b) An applicant holding a license as operator of uninspected towing vessels upon ocean or near coastal routes is eligible for this license after six months of service as operator on ocean or near coastal waters and completion of a limited examination. This requires three and one-half years of service. Two years of this service must have been served while holding a license as operator, second-class operator or mate.

§ 10.420 Service requirements for mate of ocean or near coastal steam or motor vessels of not more than 500 gross tons.

An applicant for a license as mate of ocean or near coastal steam or motor vessels of not more than 500 gross tons must have one year of service on ocean or near coastal waters as a licensed mate or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels. Six months of this service must have been on vessels of 50 gross tons or more.

§ 10.422 Tonnage limitations and qualifying requirements for licenses as master or mate of vessels of not more than 200 gross tons.

(a) Except as noted in subparagraph (e), all licenses issued for master or mate of vessels of not more than 200 gross tons are issued in 50 gross ton increments based on the applicant's qualifying experience. The license is limited to the maximum tonnage on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 50 gross tons using the next higher figure when an intermediate tonnage is calculated.

(b) The tonnage limitation on these licenses may be raised upon completion of:

(1) At least 45 days of additional service on deck on a vessel of a higher tonnage for a tonnage increase on a mate's license; or,

(2) At least 90 days of additional service on deck on a vessel of a higher tonnage for a tonnage increase on a master's license; or,

(3) Additional service, which, when combined with all previously accumulated service, will qualify the applicant for a higher tonnage license under the basic formula; or,

(4) Six months of service on vessels within the highest tonnage increment on the license. In this case, the tonnage limitation may be raised one increment.

(c) When the service is obtained on vessels upon which licensed personnel are not required, the OCMI must be satisfied that the nature of this qualifying service (i.e., size of vessel, route, equipment, etc.) is a reasonable equivalent to the duties performed on vessels which are required to engage licensed individuals.

(d) Service gained in the engineroom on vessels of not more than 200 gross tons may be creditable for up to 25 percent of the deck service requirements for mate.

(e) When the qualifying service is obtained upon vessels of five gross tons or less, the license will be limited to vessels of not more than 25 gross tons.

§ 10.424 Service requirements for master of ocean steam or motor vessels of not more than 200 gross tons.

(a) An applicant for a license as master of ocean steam or motor vessels of not more than 200 gross tons must have a total of three years of service on ocean or near coastal waters. Service on inland waters may substitute for a maximum of 18 months of the required three years. Two years of this service must have been as a licensed master, mate or equivalent supervisory position while holding a deck license authorizing service on such vessels.

(b) An applicant is eligible for a license as master of ocean steam or motor vessels of not more than 200 gross tons if the applicant has two years of service as licensed operator or second-class operator of uninspected towing vessels upon ocean or near coastal waters. Completion of a limited examination is also required.

(c) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the master's license.

(d) In addition to any required examination, the applicant must comply with the requirements listed in § 10.401(g).

§ 10.426 Service requirements for master of near coastal steam or motor vessels of not more than 200 gross tons.

(a) An applicant for a license as master of near coastal steam or motor vessels of not more than 200 gross tons must have one year of service on ocean or near coastal waters as a licensed mate or equivalent supervisory position on steam or motor, sail, or auxiliary sail vessels, while holding a license as mate of ocean or near coastal vessels. Service on inland waters may substitute for a maximum of six of the required 12 months.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the master's license.

§ 10.428 Service requirements for mate of near coastal steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for license as mate of near coastal steam or motor vessels of not more than 200 gross tons is:

(1) Twelve months of service in the deck department of steam or motor, sail, or auxiliary sail vessels operating on ocean or near coastal waters (service on inland waters may be submitted for a maximum of six of the required 12 months); or,

(2) Three months of service in the deck department of steam or motor vessels operating on ocean, near coastal or inland waters while holding a license as master of inland steam or motor, sail or auxiliary sail propelled vessels of not more than 200 gross tons.

(b) The holder of a license as operator of uninspected passenger vessels with a near coastal route endorsement may obtain this license by completing a limited examination.

(c) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of six months of deck service on sail or auxiliary sail vessels.

(d) A license as master of near coastal steam or motor vessels may be endorsed as mate of sail or auxiliary sail vessels upon presentation of three months of service on sail or auxiliary sail vessels.

(e) In order to obtain a tonnage endorsement of over 100 gross tons, the applicant must complete the additional examination topics indicated in Subpart I of this part.

§ 10.429 Service requirements for master of near coastal steam or motor vessels of not more than 100 gross tons.

(a) An applicant for a license as master of near coastal steam or motor vessel of not more than 100 gross tons must have two years of deck service on ocean or near coastal routes.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12

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months of service may have been obtained prior to issuance of the license.

§ 10.430 Licenses for the Great Lakes and inland waters.

Any license issued for service on the Great Lakes and inland waters is valid on all of the inland waters of the United States as defined in this Part. Any license issued for service on inland waters is valid for the inland waters of the United States, excluding the Great Lakes. As these licenses authorize service on waters seaward of the International Regulations for Preventing Collisions at Sea (COLREGS) demarcation line as defined in 33 CFR Part 80, the applicant must complete an examination on the COLREGS or the license must be endorsed with an exclusion from such waters.

§ 10.431 Tonnage requirements for Great Lakes and inland licenses for vessels of over 1600 gross tons.

(a) All required experience for Great Lakes and inland unlimited licenses must be obtained on vessels of over 200 gross tons. At least one-half of the required experience must be obtained on vessels of 1600 gross tons or over.

(b) Tonnage limitations may be imposed on these licenses in accordance with § 10.402 (b) and (c).

§ 10.433 Service requirements for master of Great Lakes and inland steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as master of Great Lakes and inland steam or motor vessels of any gross tons is:

(a) One year of service as mate or first class pilot while acting in the capacity of first mate of Great Lakes steam or motor vessels of more than 1600 gross tons; or,

(b) Two years of service as master of inland (excluding the Great Lakes) steam or motor vessels of more than 1600 gross tons; or,

(c) One year of service upon Great Lakes waters while holding a license as mate or first class pilot of Great Lakes and inland steam or motor vessels of more than 1600 gross tons. A minimum of six months of this service must have been in the capacity of first mate. Service as second mate is accepted for the remainder on a two-for-one basis to a maximum of six months (12 months of service equals six months of creditable service).

§ 10.435 Service requirements for master of inland steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as master of inland (excluding the Great Lakes) steam or motor vessels of any gross tons is:

(a) One year of service as first class pilot (of other than canal and small lakes routes) or mate of Great Lakes or inland steam or motor vessels of more than 1,600 gross tons; or,

(b) Two years of service as wheelsman or quartermaster while holding a mate/first class pilot license.

§ 10.437 Service requirements for mate of Great Lakes and inland steam or motor vessels of any gross tons.

(a) The minimum service required to qualify an applicant for license as mate of Great Lakes and inland steam or motor vessels of any gross tons is:

(1) Three years of service in the deck department of steam or motor vessels, at least three months of which must have been on vessels on inland waters and at least six months of which must have been as able seaman, inland mate, boatswain, wheelsman, quartermaster, or equivalent position;

(2) Graduation from the deck class of the Great Lakes Maritime Academy; or,

(3) While holding a license as master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons, one year service as master on vessels of over 200 gross tons.

(b) Service gained in the engine department on vessels of appropriate tonnage may be creditable for up to six months of the service requirements under paragraph (a)(1) of this section.

§ 10.440 Tonnage limitations and service requirements for licenses as master or mate of Great Lakes and inland vessels of not more than 1600 gross tons.

(a) All required service for licenses as master or mate of Great Lakes and inland vessels of not over 1600 gross tons must be obtained on vessels of 50 gross tons or over. At least one-half of the required service must be obtained on vessels of 100 gross tons or over.

(b) No tonnage limitations are imposed between 200–1600 gross tons.

(c) Service gained in the engine department on vessels of appropriate tonnage may be creditable for up to 25 percent of the service requirements for mate.

§ 10.442 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for license as master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons is:

(a) One year of service as a licensed mate or equivalent supervisory position while holding a license as mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons; or,

(b) Six months of service as operator while holding a license as operator of uninspected towing vessels.

§ 10.444 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for license as mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons is:

(a) Two years of service in the deck department of Great Lakes or inland steam or motor vessels, six months of which shall have been as able seaman, boatswain, or quartermaster, or equivalent; or,

(b) One year of service as master of steam or motor or auxiliary sail vessels of not more than 200 gross tons on vessels of 50 gross tons or over; or,

(c) Six months of service as a second class operator of uninspected towing vessels while holding such license.

§ 10.450 Tonnage limitations and qualifying requirements for licenses as master or mate of Great Lakes and inland vessels of not more than 200 gross tons.

(a) Except as noted in subparagraph (d), all licenses issued for master or mate of vessels of not more than 200 gross tons are issued in 50 ton increments based on the applicants qualifying experience in accordance with the provisions of § 10.422. See the tonnage and qualifying service discussion in § 10.422 for further clarification.

(b) Service gained in the engineroom on vessels of not more than 200 gross tons may be creditable for up to 25 percent of the deck service requirements for mate.

(c) When the service is obtained on vessels upon which licensed personnel are not required, the OCMI must be satisfied that the nature of this qualifying service (i.e., size of vessel, route, equipment, etc.) is a reasonable equivalent to the duties performed on vessels which are required to engage licensed individuals.

(d) When the qualifying service is obtained upon vessels of five gross tons or less, the license will be limited to vessels of not more than 25 gross tons.

§ 10.452 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

(a) An applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons must have six months of service as mate or equivalent

supervisory position on steam or motor, sail, or auxiliary sail vessels while holding a license as mate, operator or second class operator of uninspected towing vessels.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must have six months of service on sail or auxiliary sail vessels.

§ 10.454 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons is six months of service in the deck department of steam or motor, sail, or auxiliary sail vessels.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of three months of service on sail or auxiliary sail vessels.

(c) A license as master of steam or motor vessels may be endorsed as mate of sail or auxiliary sail vessels upon presentation of three months service on sail or auxiliary sail vessels.

(d) The holder of a license as operator of uninspected passenger vessels upon inland waters may obtain an endorsement as mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons upon successful completion of an examination on rules and regulations for small passenger vessels.

(e) In order to obtain a tonnage endorsement of over 100 gross tons, the applicant must complete the additional examination topics indicated in Subpart I of this part.

§ 10.455 Service requirements for limited master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.

Limited masters' licenses for vessels of not more than 100 gross tons upon Great Lakes and inland waters may be issued to applicants to be employed by organizations such as formal camps, educational institutions, yacht clubs, and marinas with reduced service requirements. A license issued under this paragraph is limited to the specific activity and the locality of the camp, yacht club or marina. In order to obtain this restricted license, an applicant must:

(a) Have four months of service in the operation of the type of vessel for which the license is requested; and,

(b) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law Administrators, or those public education courses conducted by the U.S. Power Squadron or the American National Red Cross, or a Coast Guard approved course; and,

(c) Pass a limited examination appropriate for the activity to be conducted and the route authorized.

§ 10.456 Service requirements for master of inland steam or motor vessels of not more than 100 gross tons.

(a) An applicant for a license as master of inland steam or motor vessels of not more than 100 gross tons must present one year of service on any waters. In order to raise the tonnage limitation over 100 gross tons, the examination topics indicated in Subpart I of this Part must be completed in addition to satisfying the experience requirements of Subpart 10.452(a).

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of six months of service on sail or auxiliary sail vessels. The required six months of service may have been obtained prior to issuance of the license.

§ 10.460 Special deck license structure.

The following diagram illustrates the special deck license structure. The section numbers refer to the specific requirements.

Figure 10.460
Special Deck License Structure

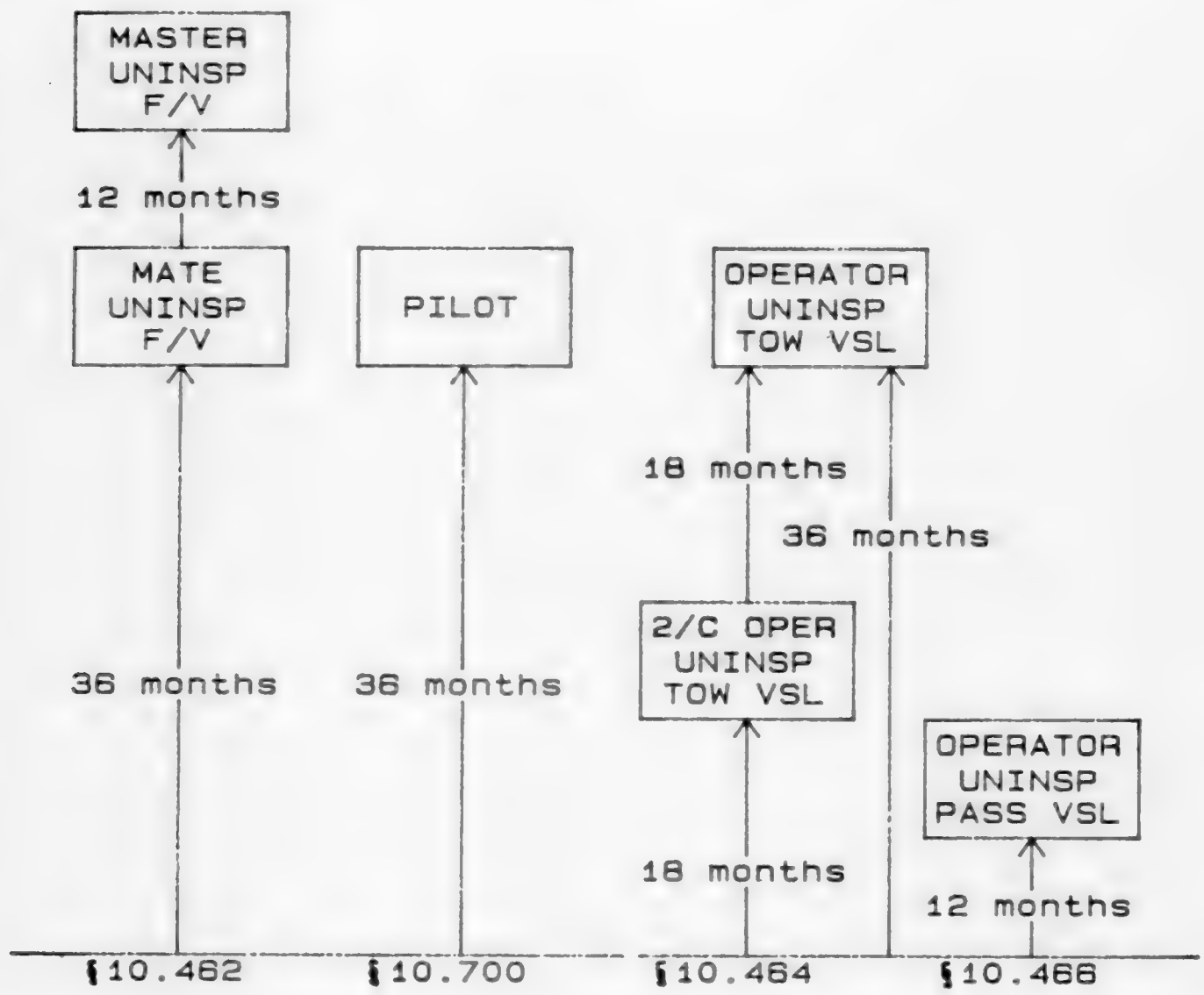

§ 10.462 Licenses for master or mate of uninspected fishing industry vessels.

(a) This section applies to licenses for masters and mates of all vessels, however propelled, navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

(1) Wooden ships of primitive build;

(2) Unrigged vessels; and,

(3) Vessels of less than 200 gross tons.

(b) Licenses as master and mate of uninspected fishing industry vessels are issued for ocean waters with tonnage limitations in accordance with the provisions of § 10.402.

(c) For a license as master of uninspected fishing industry vessels, the applicant must have served four years at sea in the deck department. One year of this service must have been as a licensed mate or in an equivalent supervisory position.

(d) For a license as mate of uninspected fishing industry vessels, the applicant must have served three years at sea in the deck department.

(e) Applicants may request an oral examination on the subjects listed in Subpart I of this Part.

§ 10.464 Licenses for operator of uninspected towing vessels.

(a) Licenses are issued as operator or second-class operator of uninspected towing vessels. These licenses do not authorize service aboard uninspected towing vessels on a foreign voyage nor on those of more than 200 gross tons in ocean or near coastal service.

(b) Licenses as operator and second-class operator of uninspected towing vessels are endorsed for operation on one or more of the following geographic areas:

(1) Oceans (domestic trade) waters;
(2) Near coastal waters;
(3) Great Lakes and inland waters;
(4) Western rivers; or,
(5) A limited local area designated by the Officer in Charge, Marine Inspection.

(c) For a license as operator of uninspected towing vessels, an applicant must have one of the following:

(1) Three years of service including the following:

(i) Two years on deck of a vessel of 26 feet or over in length;

(ii) One year on deck on a towing vessel, with at least six months of training or duty in the wheelhouse of the towing vessel; and,

(iii) Three months of service in each particular geographic area for which application is made; or,

(2) Three years of service on towing vessels including the following:

(i) one year on deck, with at least six months of training or duty in the wheelhouse of the towing vessel; and,

(ii) Three months of service in each particular geographic area for which application is made; or,

(3) For a license endorsed for a limited local area, 18 months service on deck on a towings vessel within the local area, including at least three months of training or duty in the Wheelhouse of the towing vessel.

(d) For a license as second-class operator of uninspected towing vessels, an applicant must have:

(1) At least 18 months of service on deck, including 12 months on towing vessels. The service must include at least three months of training or duty in the wheelhouse of towing vessels and three months of service in each particular geographic area for which endorsement for the license is requested; or,

(2) At least six months of service on towing vessels while holding a merchant mariner's document endorsed as "able seaman unlimited, able seaman limited, or able seaman special." The service must include three months in each particular geographic area for which an endorsement is requested, and either two months of training or duty in the wheelhouse or one month training or duty in the wheelhouse combined with successful completion of a towboat operator course of training approved by the Commandant under Subpart C.

(e) In order to obtain an operator or second-class operator license for ocean (domestic trade) waters, the applicant must complete the following training and examination requirements:

(1) approved firefighting course;
(2) approved radar observer course; and,
(3) qualification as able seaman unlimited, able seaman limited, able seaman special, or able seaman offshore supply vessels.

(f) The examination for a license as operator of uninspected towing vessels endorsed for a local limited area is modified by deleting inappropriate questions.

(g) A person holding a license as second-class operator of uninspected towing vessels who is 21 years old and possesses the service required in paragraph (c) of this section may be issued a license as operator without further examination.

(h) A person holding a license as operator of uninspected towing vessels may have that license endorsed as second-class operator for a geographic area on which he or she has no operating experience, upon passing an examination for that area. Upon completion of three months of experience in that geographic area, the second-class restriction may be removed.

(i) An applicant for a license as operator or second-class operator of uninspected towing vessels who intends to serve only in the vicinity of Puerto Rico, and who speaks Spanish only, may be issued a license restricted to the navigable waters of the United States in the vicinity of Puerto Rico.

§ 10.466 Licenses for operators of uninspected passenger vessels.

(a) This section applies to all applicants for the license to operate a vessel of less than 100 gross tons, equipped with propulsion machinery of any type, carrying six or less passengers.

(b) Operator of uninspected passenger vessels licenses issued for ocean waters will be limited to near coastal waters not more than 100 miles offshore. Licenses issued for inland waters will include all inland waters, except Great Lakes. Licenses may be issued for a particular local area under paragraph (f) of this section.

(c) For a license as operator of an uninspected passenger vessel with an inland endorsement, an applicant must have a minimum of 12 months experience in the operation of vessels.

(d) For a license as operator of an uninspected passenger vessel with a near coastal endorsement, an applicant must have a minimum of 12 months experience in the operation of vessels, including at least three months service on vessels operating on ocean or near coastal waters.

(e) An operator of uninspected passenger vessels license, limited on its face to undocumented vessels, may be issued to a person who is not a citizen of the United States.

(f) Limited operator of uninspected passenger vessel licenses may be issued to applicants to be employed by organizations such as formal camps, yacht clubs, educational institutions, and marinas. A license issued under this paragraph will be limited to the specific activity and the locality of the camp, yacht club, or marina. In order to obtain this restricted license, an applicant must:

(1) Have three months service in the operation of the type of vessel for which the license is requested; and,

(2) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law Administrators, or those public education courses conducted by the U.S. Power Squadron or the American National Red Cross or a Coast Guard approved course; and,

(3) Pass a limited examination appropriate for the activity to be conducted and the route authorized.

(g) An applicant for a license as operator of uninspected passenger vessels who intends to serve only in the vicinity of Puerto Rico, and who speaks Spanish only, may be issued a license restricted to the navigable waters of the United States in the vicinity of Puerto Rico.

§ 10.468 Licenses for mobile offshore drilling units [Reserved].

§ 10.470 Mobile offshore drilling unit (MODU) license structure [Reserved].

§ 10.480 Radar observer.

(a) This section contains the requirements that must be met to qualify as radar observer. Part 15 of this chapter specifies the persons who must be qualified as a radar observer.

(b) If an applicant meets the requirements in this section, one of the following radar observer endorsements will be added to a deck officer's license:

(1) Radar Observer (Unlimited).
(2) Radar Observer (Inland Waters).

(c) Endorsement as Radar Observer (Inland Waters) is valid only for those waters covered by the Inland Navigational Rules, other than the Great Lakes.

(d) Endorsement as Radar Observer (Unlimited) is valid on all waters. Except as provided in paragraphs (f) and (g) of this section, each applicant for

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renewal of an endorsement must complete the appropriate course and receive the appropriate certificate of training from an approved radar training school.

(e) Each applicant for a radar observer endorsement or for renewal of an endorsement must present an approved course completion certificate to the Officer in Charge, Marine Inspection.

(f) Applicants who possess a radar observer endorsement and reside in remote geographic areas and are able to substantiate to the satisfaction of Officer in Charge of Marine Inspection, that their absence would disrupt normal movement of commerce, or that they are unable to attend an approved radar observer renewal course, may have their endorsement renewed upon successful completion of a written examination, administered by the Coast Guard.

(g) An endorsement as radar observer issued under this section is valid for five-years after the month of issuance of the certificate of training from an approved radar training school. The radar observer endorsement is not terminated by the issuance of a new license during this five year period.

(h) The month and year of the expiration of the radar observer endorsement is placed on the license.

(i) A radar observer endorsement may be renewed at any time.

(j) An applicant for renewal of a license that does not have a radar observer endorsement may renew the license without meeting the requirements for a radar observer endorsement.

(k) An applicant who does not have a radar observer endorsement may have a license raised to a higher grade or increased in scope without meeting the requirements for a radar observer endorsement.

Subpart E—Professional Requirements for Engineer Officers' Licenses

§ 10.501 Grade and type of engineer licenses issued.

(a) Licenses are issued in the grades of:

(1) Chief engineer;

(2) First assistant engineer;

(3) Second assistant engineer;

(4) Third assistant engineer;

(5) Chief engineer (limited);

(6) Assistant engineer (limited);

(7) Designated duty engineer;

(8) Chief engineer uninspected fishing industry vessels; and,

(9) Assistant engineer uninspected fishing industry vessels.

(b) Engineer licenses issued in the grades of chief engineer (limited) and assistant engineer (limited) of steam and/or motor vessels allow the holder to serve within any horsepower limitations on vessels of any gross tons on inland waters (other than the Great Lakes) and of not more than 1,600 gross tons in ocean or near coastal service in the following manner:

(1) Assistant engineer (limited—oceans) may serve on ocean waters;

(2) Chief engineer (limited—near coastal) may serve on near coastal waters; and,

(3) Chief engineer (limited-oceans) may serve on ocean waters.

(c) Engineer licenses issued in the grades of designated duty engineer of steam and/or motor vessels allow the holder to serve within stated horsepower limitations on vessels of not more than 500 gross tons in the following manner:

(1) Designated duty engineers limited to vessels of not more than 1000 horsepower or 4000 horsepower may serve only on near coastal or inland waters;

(2) Designated duty engineers with no horsepower limitations may serve on any waters.

(d) Engineer licenses are endorsed to authorize service on either steam or motor vessels or may be endorsed for both modes of propulsion.

(e) A person holding an engineer license which is restricted to near coastal waters may serve within the limitations of the license upon near coastal, Great Lakes, and inland waters.

§ 10.502 Additional requirements for engineer licenses.

(a) For all original and raise of grade of engineer licenses, at least one-third of the minimum service requirements must have been obtained on the particular mode of propulsion for which applied.

(b) If a licensed applicant desires to obtain an endorsement on an engineer license in the other propulsion mode (steam or motor), the following alternative methods are acceptable:

(1) Four months of service as an observer in the same licensed capacity on vessels of the other propulsion mode;

(2) Four months of service as a licensed officer at a lower license level on vessels of the other propulsion mode;

(3) Six months of service as oiler, watertender, or junior engineer on vessels of the other propulsion mode; or,

(4) Completion of a Coast Guard approved training course for this endorsement.

§ 10.503 Horsepower limitations.

(a) Engineer licenses of all grades and types may be subject to horsepower limitations. Other than as provided in § 10.524 for the designated duty engineer license, the horsepower limitation placed on a license is based on the applicant's qualifying experience considering the total shaft horsepower of each vessel on which the applicant has served.

(b) When an applicant for an original or raise of grade of an engineer license, other than a designated duty engineer license, has not obtained at least 50 percent of the required qualifying experience on vessels of 4,000 or more horsepower, a horsepower limitation is placed on the license based on the applicant's qualifying experience. The license is limited to the maximum horsepower on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum horsepower on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1000 horsepower, using the next higher figure when an intermediate horsepower is calculated. When the limitation as calculated equals or exceeds 10,000 horsepower, an unlimited horsepower license is issued.

(c) The following service on vessels of 4,000 horsepower or over will be considered qualifying for the raising or removing of horsepower limitations placed on engineer licenses:

(1) Six months of service in the highest grade licensed: removal of all horsepower limitations.

(2) Six months of service in any licensed capacity other than the highest grade for which licensed: Removal of all horsepower limitations for the grade in which service is performed and raise the next higher grade license to the horsepower of the vessel on which service was performed. The total cumulative service before and after issuance of the limited license may be considered in removing all horsepower limitations.

(3) Twelve months of service as oiler or junior engineer while holding a license as third assistant engineer or assistant engineer (limited-oceans): removal of all horsepower limitations on third assistant engineer or assistant engineer's (limited-oceans) license.

(4) Six months of service as oiler or junior engineer while holding a license as second assistant engineer: removal of all horsepower limitations on third assistant engineer's license.

(d) Raising or removing horsepower limitations based on service required by paragraph (c) of this section may be

granted without further written examination providing the Officer in Charge, Marine Inspection who issued the applicant's license, considers further examination unnecessary.

§ 10.504 Engineer license structure.

The following diagram illustrates the engineering license structure including cross over points. The section numbers on the diagram refer to the specific requirements applicable.

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Figure 10.504 Engineer License Structure

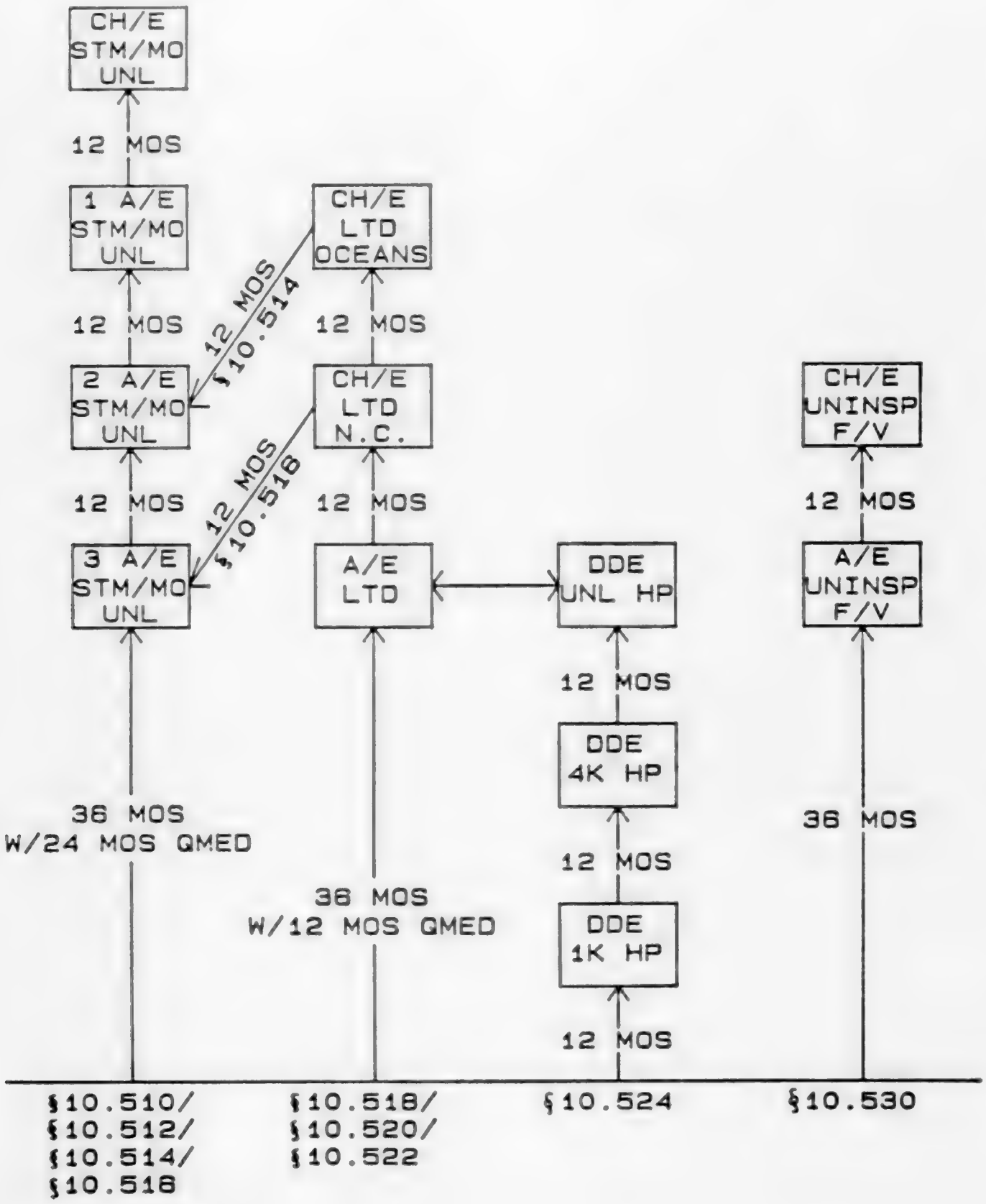

BILLING CODE 4910-14-C

§ 10.510 Service requirements for chief engineer of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as chief engineer of steam and/or motor vessels is:

(a) One year of service as first assistant engineer; or,

(b) One year of service while holding a license as first assistant engineer. A minimum of six months of this service must have been as first assistant engineer. Service as an assistant engineer is accepted on a two-for-one basis to a maximum of six months (12 months of service as a second or third assistant engineer equals six months of creditable service).

§ 10.512 Service requirements for first assistant engineer of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as first assistant engineer of steam and/or motor vessels is one year of service as an assistant engineer, while holding a license as second assistant engineer.

§ 10.514 Service requirements for second assistant engineer of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as second assistant engineer of steam and/or motor vessels is:

(a) One year of service as an assistant engineer, while holding a license as third assistant engineer; or,

(b) One year of service while holding a license as third assistant engineer which includes:

(1) A minimum of six months of service as third assistant engineer; and,

(2) Additional service as a qualified member of the engine department, calculated on a two-for-one basis; or,

(c) One year of service as chief engineer (limited-oceans) of steam or motor vessels, and completing the appropriate examination described in Subpart I of this part.

§ 10.516 Service requirements for third assistant engineer of steam and/or motor vessels.

(a) The minimum service required to qualify an applicant for license as third assistant engineer of steam and/or motor vessels is:

(1) Three years of service in the engineroom of vessels, two years of which must have been as a qualified member of the engine department;

(2) Three years of service as an apprentice to the machinist trade engaged in the construction or repair of marine, locomotive, or stationary engines, together with one year service in the engineroom as oiler, watertender, or junior engineer;

(3) Graduation from:

(i) The U.S. Merchant Marine Academy (engineering curriculum);

(ii) The U.S. Coast Guard Academy and completion of an on-board engineer officer qualification program required by the service;

(iii) The U.S. Naval Academy and completion of an on-board engineer officer qualification program required by the service;

(iv) The engineering class of a Maritime Academy approved by and conducted under the rules prescribed by the Maritime Administrator and listed in Part 310 of this Title;

(4) Graduation from the marine engineering course of a school of technology accredited by the Accreditation Board for Engineering and Technology, together with three months of service in the engine department of steam or motor vessels;

(5) Graduation from the mechanical or electrical engineering course of a school of technology accredited by the Accreditation Board for Engineering and Technology, together with six months of service in the engine department of steam or motor vessels;

(6) Satisfactory completion of a three-year apprentice engineers training program approved by the Commandant; or,

(7) One year of service as chief engineer (limited-near coastal) of steam or motor vessels and completing the appropriate examination described in Subpart I of this Part.

(b) Experience gained in the deck department on vessels of 100 gross tons or over can be credited for up to three months of the service requirements under paragraph (a)(1) of this section.

§ 10.518 Service requirements for chief engineer (limited-oceans) of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as chief engineer (limited-oceans) of steam and/or motor vessels is five years total service in the engineroom of vessels. Two years of this service must have been as a licensed engineer. Thirty months of the service must have been as a qualified member of the engine department or equivalent supervisory position.

§ 10.520 Service requirements for chief engineer (limited-near coastal) of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as chief engineer (limited-near coastal) of steam and/or motor vessels is four years total service in the engineroom of vessels. One year of this service must have been as a licensed engineer. Two years of the service must have been as a qualified member of the engine department or equivalent supervisory position.

§ 10.522 Service requirements for assistant engineer (limited-oceans) of steam and/or motor vessels.

The minimum service required to quailfy an applicant for license as assistant engineer (limited-oceans) of steam and/or motor vessels is three years of service in the engineroom of vessels. Eighteen months of this service must have been as a qualified member of the engine department or equivalent supervisory position.

§ 10.524 Service requirements for designated duty engineer of steam and/or motor vessels.

(a) Designated duty engineer licenses are issued in three levels of horsepower limitations dependent upon the total service of the applicant and completion of appropriate examination. These licenses are limited to vessels of not more than 500 gross tons on certain waters as specified in § 10.501.

(b) The service requirements for licenses as designated duty engineer are:

(1) For designated duty engineer of steam and/or motor vessels of any horsepower, the applicant must have three years of service in the engineroom. Eighteen months of this service must have been as a qualified member of the engine department or equivalent supervisory position.

(2) For designated duty engineer of steam and/or motor vessels of not more than 4,000 horsepower, the applicant must have two years of service in the engineroom. One year of this service must have been as a qualified member of the engine department or equivalent supervisory position.

(3) For designated duty engineer of steam and/or motor vessels of not more than 1,000 horsepower, the applicant must have one year of service in the engineroom. Six months of this service must have been as a qualified member of the engine department or equivalent supervisory position.

§ 10.530 Licenses for engineers of uninspected fishing industry vessels.

(a) This section applies to licenses for chief and assistant engineers of all vessels, however propelled, navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

(1) Wooden ships of primitive build;

(2) Unrigged vessels; and,

(3) Vessels of less than 200 gross tons.

(b) Licenses as chief engineer and assistant engineer of uninspected fishing industry vessels are issued for ocean waters and with horsepower limitations in accordance with the provisions of § 10.503.

(c) For a license as chief engineer, the applicant must have served four years in the engineroom of vessels. One year of this service must have been as a licensed assistant engineer or equivalent supervisory position.

(d) For a license as assistant engineer, an applicant must have served three years in the engineroom of vessels.

(e) Two-thirds of the service required under this section must have been on motor veasels.

(f) Applicants may request an orally assisted examination on the subjects listed in Subpart I of this Part.

§ 10.540 Licenses for mobile offshore drilling units (MODUs) [Reserved].

Subpart F—Licensing of Radio Officers

§ 10.601 Applicability.

This subpart provides for the licensing of radio officers for employment on vessels.

§ 10.603 Requirements for radio officer licenses.

(a) Each applicant for an original license or renewal of license shall present a current first or second class radiotelegraph operator license issued by the Federal Communications Commission. The applicant shall enter on the license application form the number, class, and date of issuance of his or her Federal Communications Commission license.

(b) An applicant for license as radio officer shall apply for a merchant mariner's document under Part 12. This document will be endorsed "See License as Radio Officer."

(c) The application must also include a completed form CG–2765 "Coast Guard Intelligence Agency Check Request".

Subpart G—Professional Requirements for Pilots' Licenses [Reserved]

Subpart H—Registration of Staff Officers

§ 10.801 Applicability.

This Subpart provides for the registration of staff officers for employment on vessels documented or numbered under the laws of the United States. Staff officers must be registered if serving on most vessels in ocean service or on the Great Lakes.

§ 10.803 Grades of certificates issued.

Staff officers are registered in the following grades:

(a) Chief purser.

(b) Purser.

(c) Senior assistant purser.

(d) Junior assistant purser.

(e) Medical doctor.

(f) Professional nurse.

§ 10.805 General requirements.

(a) The applicant for a certificate of registry as staff officer is not required to take any examination; however, the applicant shall present to the Officer in Charge, Marine Inspection a letter justifying the need for the certificate of registry.

(b) The applicant must hold or apply for a merchant mariner s document.

(c) Endorsements for a higher grade are not made on certificates of registry. An applicant for a higher grade in the staff department shall apply in the same manner as for an original certificate of registry and shall surrender the certificate upon issuance of the new certificate of registry. A person holding a certificate of registry as staff officer may serve in a lower grade of a service for which he or she is registered.

(d) Staff officers who are members of the Naval Reserve shall comply with Title 46 U.S.C. 8302 concerning uniforms.

(e) A duplicate certificate of registry may be issued by the Officer in Charge, Marine Inspection. (See § 10.219.)

§ 10.807 Experience requirements for registry.

(a) The applicant for a certificate of registry as staff officer shall submit evidence of experience as follows:

(1) *Chief purser.* Two years of service aboard vessels performing duties relating to work in the purser's office.

(2) *Purser.* One year of service aboard vessels performing duties relating to work in the purser's office.

(3) *Senior assistant purser.* Six months of service aboard vessels performing duties relating to work in purser's office.

(4) *Junior assistant purser.* Previous experience not required.

(5) *Medical doctor.* A valid license as physician or surgeon issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(6) *Professional nurse.* A valid license as a registered nurse issued under authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(b) Employment on shore in connection with ship's business may be accepted in lieu of service aboard vessels. Related shore employment is accepted in the ratio of two months of shore service to count as one month of service aboard vessels.

(c) In computing the length of service required of an applicant for a certificate of registry, service of one season on vessels on the Great Lakes is counted as service of one year.

(d) In the event an applicant for a certificate of registry, other than medical doctor or professional nurse, presents evidence of other qualifications which, in the opinion of the Officer in Charge, Marine Inspection, is equivalent to the experience requirements of this section and is consistent with the duties of a staff officer, the Officer in Charge, Marine Inspection may issue the certificate of registry.

§ 10.809 Experience requirements for ratings endorsed on certificate of registry.

An applicant for rating to be endorsed on a certificate of registry shall submit evidence of experience as follows:

(a) *Marine physician assistant.* Successful completion of an accredited course of instruction for a physician's assistant or nurse practitioner program.

(b) *Hospital corpsman.* A rating of at least hospital corpsman or health services technician, first class in the U.S. Navy, U.S. Coast Guard, U.S. Marine Corps, or an equivalent rating in the U.S. Army (not less than staff sergeant, Medical Department, U.S.A.), or in the U.S. Air Force (not less than technical sergeant, Medical Department, U.S.A.F.), and a period of satisfactory service of at least one month in a military hospital or U.S. Public Health Service Hospital.

Subpart I—License Examination Subjects

§ 10.901 General provisions.

(a) Applicants for the licenses listed in this Subpart must pass an examination on the subjects listed prior to issuance of a license. For all deck and engineering licenses, the examination must be written, except where indicated in § 10.205(i)(1) of this part.

(b) If the license is to be limited in a manner which would render any of the subject matter unnecessary or inappropriate, the examination may be amended accordingly by the Officer in Charge, Marine Inspection. Limitations which may affect the examination content are:

(1) Restricted routes for reduced service licenses (master or mate of vessels of not more than 200 gross tons, operator of uninspected passenger vessels or uninspected towing vessels); or,

(2) Engineer licenses with horsepower restrictions.

(c) Examinations are required within each license category at entry and command levels with the exception of master of near coastal vessels of not

more than 200 gross tons, master of Great Lakes and inland vessels of not more than 200 gross tons, and operator of uninspected towing vessels when the examination was taken at the entry level.

§ 10.903 Licenses requiring examinations.

(a) The following licenses require examinations for issuance:

(1) Master ocean any gross tons;

(2) Master near coastal any gross tons; [1]

(3) Chief mate ocean any gross tons;

(4) Chief mate near coastal any gross tons; [1]

(5) Second mate ocean any gross tons;

(6) Second mate near coastal any gross tons; [1]

(7) Third mate ocean any gross tons;

(8) Third mate near coastal any gross tons; [1]

(9) Master ocean/near coastal not more than 500 or 1600 gross tons;

(10) Mate ocean/near coastal not more than 500 or 1600 gross tons;

(11) Mate near coastal not more than 200 gross tons;

(12) Master Great Lakes and inland any gross tons;

(13) Mate Great Lakes and inland any gross tons;

(14) Master inland any gross tons;

(15) Master Great Lakes and inland not more than 1600 gross tons;

(16) Mate Great Lakes and inland not more than 1600 gross tons;

(17) Mate Great Lakes and inland not more than 200 gross tons;

(18) Pilot;

(19) Operator or 2/c operator uninspected towing vessels;

(20) Operator uninspected passenger vessels;

(21) Master uninspected fishing industry vessels;

(22) Mate uninspected fishing industry vessels;

(23) Chief engineer steam/motor vessels;

(24) First assistant engineer steam/motor vessels;

(25) Second assistant engineer steam/motor vessels;

(26) Third assistant engineer steam/motor vessels;

(27) Chief engineer (limited) steam/motor vessels;

(28) Assistant engineer (limited) steam/motor vessels;

(29) Designated duty engineer steam/motor vessels;

(30) Chief engineer uninspected fishing industry vessels;

(31) Assistsnt engineer uninspected fishing industry vessels.

(b) The following licenses do not require examinations:

(1) Master ocean or near coastal not more than 200 gross tons, when raising license grade from mate near coastal not more than 200 gross tons. Master ocean not more than 200 gross tons would, however, require an examination in celestial navigation.

(2) Master Great Lakes and inland not more than 200 gross tons, when raising license grade from mate Great Lakes and inland not more than 200 gross tons.

(3) Operator of uninspected towing vessels, when raising license grade from second class operator of uninspected towing vessels (endorsed for same route).

§ 10.905 Examination reference information.

The examinations required under this Subpart are based on international agreements, statutes, regulations, and standard reference materials. Applicants should be familiar with the content and use of the following, to the extent they relate to the particular license sought:

(a) International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS);

(b) Inland Navigational Rules;

(c) "Basic Principles to be Observed in Keeping a Navigational/Engineering Watch" (Regulation II/1 and III/1 of The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978;

(d) International Medical Guide for Ships;

(e) Safety of Life at Sea, 1974 (SOLAS);

(f) Merchant Ship Search and Rescue Manual (MERSAR);

(g) International Code of Signals;

(h) International Regulations for Carriage of Goods;

(i) Titles 33, 46 and 49 of the Code of Federal Regulations;

(j) Light List;

(k) List of Lights;

(l) Radio Navigational Aids;

(m) Coast Pilot;

(n) Sailing Directions;

(o) Tide Tables;

(p) Tidal Current Tables;

(q) Nautical Almanac;

(r) Tables of Computed Altitude and Azimuth (Volume III)—Pub. 214;

(s) Sight Reduction Tables for Marine Navigation (Volume II)—Pub. 229;

(t) American Practical Navigator (Volume II)—Pub. 9;

(u) Commandant Instruction M16616.6 (old CG–388) Chemical Data Guide for Bulk Shipment by Water;

(v) Ship's Code Card.

§ 10.910 Subjects for deck licenses.

Table 10.910–1 gives the codes used in table 10.910–2 for all deck licenses. Table 10.910–2 indicates the examination subjects for each license, by code number. Figures in the body of the table, in place of the letter "x", refer to notes.

[1] Examination will differ from oceans unlimited only by deleting those subjects inappropriate for this route.

TABLE 10.910–1 Codes for Deck Licenses

[Deck Licenses]

1. Master, oceans, any gross tons
2. Master, near coastal, any gross tons
3. Chief mate, oceans, any gross tons
4. Chief mate, near coastal, any gross tons
5. Master, oceans, 500/1600 gross tons
6. Master, near coastal, 500/1600 gross tons
7. Second mate, oceans, any gross tons
8. Second mate, near coastal, any gross tons
9. Third mate, oceans, any gosss tons
10. Third mate, near coastal, any gross tons
11. Mate, oceans, 500/1600 gross tons
12. Mate, near coastal, 500/1600 gross tons
13. Master, oceans, 200 gross tons
14. Master or mate, near coastal, 200 gross tons (includes master, near coastal, 100 gross tons)
15. Operator, uninspected passenger vessels, near coastal
16. Operator, uninspected passenger vessels, inland
17. Operator, uninspected towing vessels, oceans (domestic trade)
18. Operator, uninspected towing vessels, near coastal
19. Operator, uninspected towing vessels, great lakes/inland
20. Operator, uninspected towing vessels, western rivers
21. Master, great lakes/inland, or master, inland, any gross tons
22. Mate, great lakes/inland, any gross tons

TABLE 10.910–1 Codes for Deck Licenses—Continued

[Deck Licenses]

23. Master, great lakes/inland, 1600 gross tons
24. Mate, great lakes/inland, 1600 gross tons
25. Master or mate, great lakes/inland, 200 gross tons (includes master, inland, 100 gross tons)
26. Master, uninspected fishing industry vessels
27. Mate, uninspected fishing industry vessels
28. Pilot

TABLE 10.910–2 SUBJECTS FOR DECK LICENSES

Examination Topics	License codes (Table 10.910–1)																										
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
NAVIGATION AND POSITION DETERMINATION																												
Ocean Track Plotting:																												
Middle latitude sailing	X		X		X		X		X																			
Mercator sailing	X	X	X	X	X		X		X																			
Great circle sailing	X		X				X																					
Parallel sailing	X		X				X		X																			
ETA	X	X	X	X	X		X	X	X	X	X																	
Dead reckoning			X		X		X	X	X	X	X		X				X	X								X	X	
Restricted waters navigation:																												
Piloting			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Chart navigation			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ice navigation	X	X	X	X	X	X					X																	
Restricted visibility navigation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Traffic separation schemes			X	X	X	X	X	X	X	X	X	X	X	X	X		X	X										
Extensive tidal effects	X	X	X	X	X	X																						
Speed by RPM	X	X	X	X	X	X	X	X																				
Fuel conservation	X	X	X	X	X	X																						
Celestial observations including:																												
Special cases	X																											
Latitude by Polaris	X		X		X		X				X						X											
Latitude by Meridian transit	X																											
Latitude by Meridian transit for Sun only		X	X	X	X		X	X	X	X	X		X				X									X	X	
Fix or running fix (any body)	X	X	X	X	X		X	X	X	X	X		X				X									X	X	
Star identification	X		X		X		X				X		X															
Time of Meridian transit	X																											
Time of Meridian transit for Sun only		X	X	X	X		X	X	X	X	X		X				X									X	X	
Second estimate Meridian transit	X																											
Zone time sun rise/set	X	X	X	X	X		X		X		X		X															
Zone time moon rise/set	X	X	X	X			X																					
Naut. astronomy & nav. definitions	X	X	X	X			X	X	X	X																		
Terrestrial observations:																												
Aids to navigation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Charts, nav. publications, & notices to mariners	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Piloting	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Distance off			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X			
Bearing problems			X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X	
Fix or running fix			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	
Electronic navigation	X	X	X	X	X	X	X	X	X	X	X	X	X				X	X	X		X	X	X	X	X	X	X	
Instruments and accessories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	
Change in draft due to density	X	X	X	X																								
Marlinspike seamanship & purchases							X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X		
WATCHKEEPING																												
COLREGS	X	X	X	X	X	X	X	X	X	X	X	X	X	X	1	X	X	1		1	1	1	1	1	X	X	1	
Inland Navigational Rules	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Basic Principles, Watchkeeping	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X			
Navigation Safety Regs. (33 CFR 164)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
RADAR EQUIPMENT																												
Radar Observer Certificate	X	X	X	X	X	X	X	X	X	X	X	X									X	X	X	X		X	X	X
COMPASS—MAGNETIC AND GYRO																												
Principles of magnetic & gyro compass	X	X	X	X	X	X	X	X	X	X	X	X	X	X	2	2	X	X	2		X	X	X	X	2	X	X	
Magnetic compass compensation	X	X	X	X			X	X	X	X											X	X						
Magnetic & gyro compass error/corr	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	
Azimuth (any body)			X	X	X	X	X																					
Azimuth (Sun only)									X	X	X		X													X	X	
Amplitude (any body)	X	X							X																			
Amplitude (Sun only)			X	X	X		X	X	X	X	X		X															
Deviation table construction	X	X	X	X	X	X	X	X	X	X																		
Gyro controlled systems	X	X	X	X	X	X	X				X	X																
Operation & care of main gyro systems	X	X	X	X	X	X	X				X	X																
METEOROLOGY AND OCEANOGRAPHY																												
Synoptic chart weather forecasting			X	X	X	X	X	X																				
Characteristics of weather systems			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ocean current systems			X	X	X	X	X		X																	X	X	

TABLE 10.910-2 SUBJECTS FOR DECK LICENSES—Continued

Examination Topics	License codes (Table 10.910-1)																										
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
Tide and tidal current publications			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X
Tide & tidal current calculations			X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X		X	X	X	X	X			X
SHIP MANEUVERING AND HANDLING																												
Approaching pilot vessel or station	X	X	X	X	X	X					X	X																X
Shiphandling in rivers, estuaries	X	X	X	X	X	X					X	X	X	X	X	X	X	X			X	X	X	X	X	X		X
Maneuvering in shallow water	X	X	X	X	X	X					X	X	X	X	X	X	X	X			X	X	X	X	X	X		X
Interaction with bank/passing ship	X	X	X	X	X	X					X	X	X	X	X	X	X	X			X	X	X	X	X	X		X
Berthing and unberthing	X	X	X	X	X	X					X	X	X	X	X	X	X	X			X	X	X		X	X		X
Anchoring and mooring			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X
Dragging, clearing fouled anchors			X	X	X	X	X	X	X	X	X	X	X	X							X	X	X	X	X	X		
Drydocking, w & w/o prior damage			X	X	X	X																						
Hvy WX ops with ship/acft distress, tow			X	X	X	X							X	X	X	X									X	X	X	
Maneuvering for launching of lifeboats and liferafts in heavy weather			X	X	X	X							X	X			X	X			X		X			X	X	
Receiving survivors from lfbts/lfrfts			X	X	X	X							X	X			X	X	X									
Gen. turn circle, pivot point, advance & transfer							X	X	X	X	X	X										X		X				
Det. man. char. major vessel types			X	X			X	X	X	X																		
Wake reduction			X	X	X	X									X	X					X	X	X	X		X		X
Ice operations			X	X	X	X											X	X	X	X	X		X					
Towing operations			X	X	X	X					X	X	X	X	X	X	X	X	X	X					X			
SHIP STABILITY, CONSTRUCTION, AND DAMAGE CONTROL																												
Principles of ship construction			X	X	X	X	X	X	X	X											X		X		X			
Trim and stability	X	X	X	X	X	X	X	X	X	X			X	X			X	X	X	X	X		X		X	X	X	
Damage trim & stability	X	X	X	X	X	X					X	X	3	3														
Stab., trim, and stress calculation	X	X	X	X	X	X	X	X					3	3														
Vessel structural members			X	X	X	X	X	X	X	X	X	X	3	3								X	X		X			
IMO ship stability recommendations	X	X	X	X																								
Damage control	X	X	X	X	X	X						X	3	3											X			
SHIP POWER PLANTS																												
Marine power plant op. principles			X	X	X	X							3	3							X		X		X			
Ship's auxiliary machinery			X	X	X	X															X		X					
Marine engineering terms			X	X	X	X							3	3							X		X		X			
Small engine operations & maint.													X	X	X	X									X			
CARGO HANDLING AND STOWAGE																												
Cargo stowage & security, including cargo gear			X	X	X	X	X	X	X	X	X	X	X	X							X	X	X	X	X			
Loading and discharge operations			X	X	X	X	X	X	X	X	X	X									X	X	X	X				
Inter. regs. (IMDG) for cargoes			X	X																								
Dangerous/hazardous cargo regulations			X	X	X	X	X	X	X	X	X	X									X		X					
Tank vessel safety			X	X	X	X	X	X	X	X	X	X									X		X					
Cargo piping and pumping systems			X	X	X	X	X	X	X	X	X	X									X		X					
Cargo oil terms and definitions			X	X	X	X	X	X	X	X	X	X									X		X					
Ball., tank clean., & gas free ops			X	X	X	X	X	X	X	X	X	X									X							
Load on top procedures			X	X	X	X	X	X	X	X	X	X																
Barge regulations (operations)																	X	X	X	X								
FIRE PREV. AND FIREFIGHTING APPLIANCES																												
Organization of fire drills			X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	
Classes and chemistry of fire			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Firefighting systems			X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	
Firefighting equip. and regulations			X	X	X	X	X	X	X	X	X	X	3	3			X	X	X	X	X	X	X	X	3	X	X	
Firefighting equip. and for T-boats													X	X											X			
Basic firefighting and prevention			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
EMERGENCY PROCEDURES																												
Ship beaching precautions			X	X	X	X															X		X					
Actions prior to/after grounding			X	X	X	X															X		X					
Refloating a grounded ship			X	X	X	X															X		X					
Collision			X	X	X	X							X	X	X		X	X	X	X	X		X		X			
Temporary repairs			X	X	X	X	X	X					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Passenger/crew safety in emergency			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Fire or explosion			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Abandon ship			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Emergency steering			X	X	X	X	X	X													X		X			X	X	
Res. surv. from ships/airc. in dist.			X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X			
Man overboard			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
MEDICAL CARE																												
Knowledge and use of—																												
Inter. Med. Guide for Ships			X	X	X	X																						
Ship Med. Chest & Med. Aid at Sea			X	X	X	X																						
Med. sec., Inter. Code of Signals			X	X	X	X	X	X	X	X																		
1st aid guide: acc. w D.G.			X	X	X	X																						
First aid			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	

TABLE 10.910–2 SUBJECTS FOR DECK LICENSES—Continued

Examination Topics	License codes (Table 10.910–1)																										
	1	2	3	II	5	6	7	III	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
MARITIME LAW																												
International maritime law:																												
Certificates & documents required	X	X	X	X	X	X																						
Int'l convention on load lines	X	X	X	X	X	X																						
SOLAS	X	X	X	X	X								3	3														
MARPOL 73/78	X	X	X	X	X	X	X	X	X	X																		
International health regulations	X	X	X	X	X	X																						
Int'l inst. for ship/pass./crew/cargo safety	X	X	X	X	X	X																						
National maritime law:																												
Load lines	X	X	X	X	X	X					X	X	X	X			X	X	X						3			
Cert. & documentation of vessels	X	X	X	X	X	X							X	X	X	X	X	X	X	X	X		X		3	X		
Ship sanitation	X	X	X	X	X	X							X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Rules and regs for vessel insp.	X	X	X	X	X	X							3	3							X	X	X	X	3			
Rules and regs for T-boat insp.													X	X											X			
Rules & regs for uninsp. vessels													X	X	X	X	X	X	X	X						X	X	
Pollution prevention regs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X	X
COLREG responsibilities	X	X	X	X	X	X								3	3										3			
Pilotage	X	X	X	X	X	X							X	X									X					X
Licensing & certification of seaman	X	X			X	X							X	X	X	X	X	X	X	X	X		X			X	X	
Shipment & discharge, manning	X	X			X	X							X	X			X	X			X		X					
Title 46 U.S. Code	X	X	X	X	X	X															X		X					
Captain of the Port regulations, Vessel Traffic Service procedures for the route desired																												X
PERSONNEL MANAGEMENT AND TRAINING																												
Personnel management	X	X	X	X	X	X															X		X					
Shipboard organization	X	X	X	X	X	X															X		X					
Required crew training	X	X	X	X	X	X															X		X					
SHIP'S BUSINESS	X	X	X	X	X	X																						
COMMUNICATIONS																												
Practical signaling examination	X	X	X	X			X	X	X	X																		
Radiotelephone communications			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Radiotelegraphy emerg. dist. signals			X	X			X	X	X	X																		
Signals: strom/wreck/dist./special			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	
International code of signals			X	X	X	X	X	X	X	X																		
LIFESAVING																												
Survival at sea			X	X	X	X	X	X	X	X																		
Lifesaving appliance regulations			X	X	X	X	X	X	X	X	X	X	3	3							X	X	X		3			
Lifesaving appliance operation for T-boats													X	X											X			
Lifesaving appliance operation			X	X	X	X	X	X	X	X	X	X	3	3							X	X	X	X	3	X	X	
Lifesaving appliance regulations for T-boats													X	X											X			
SEARCH AND RESCUE																												
IMO merch. ship SAR manual (MERSAR)	X	X	X	X	X	X																						
AMVER	X	X	X	X	4	4																						
Chart sketch, including recommended courses, distances, prominent aids to navigation, depths of waters in channels & over hazardous shoals, & other important features of the route, such as character of the bottom																												5
SAIL/AUX. SAIL VESSELS ADDENDUM																												
Sail vessel safety precautions, rules of the road, operations, heavy weather procedures, navigation, maneuvering, and Sailing terminology (6)																												
Any other subject the OCMI considers necessary to establish the applicant's proficiency	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

1—Take COLREGS if license not limited to non-COLREGS waters.
2—Magnetic only.
3—for licenses over 100 gross tons.
4—for licenses over 1,000 gross tons.
5—The OCMI may accept chart sketching of only a portion of the route for long or extended routes.
6—Applicants for sail/auxiliary sail endorsements to master, mate or operator of uninspected passenger vessels licenses are also tested in the subjects contained in this addendum.

§ 10.920 Subjects for mobile offshore drilling unit (MODU) licenses [Reserved].

§ 10.950 Subjects for engineer licenses.

TABLE 10.950 (SUBJECTS FOR ENGINEER LICENSES)

	C/ENG. UNL		1/A ENG. UNL		2/A ENG. UNL		3/A ENG. UNL		C/E LTD		A/E LTD & DDE UNL HP		C/E UNIN		A/E UNIN		DDE	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	F/V	MTR	F/V	STM	MTR
I Theoretical Knowledge																		
1. Thermodynamics	X	X	X	X	X	X	X	X										
2. Combustion Processes	X	X	X	X	X	X	X	X	X	X	X	X						
3. Heat Transmission	X	X	X	X	X	X	X	X	X	X	X	X						

TABLE 10.950 (SUBJECTS FOR ENGINEER LICENSES)—Continued

	C/ENG. UNL		1/A ENG. UNL		2/A ENG. UNL		3/A ENG. UNL		C/E LTD		A/E LTD & DDE UNL HP		C/E UNIN		A/E UNIN		DDE	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	F/V	MTR	F/V	STM	MTR
4. Mechanics & Hydromechanics	X	X	X	X	X	X	X	X	X	X	X	X						
5. Propulsion System Operating Prin.:																		
Diesel		X		X		X		X		X		X		X		X		X
Steam	X		X		X		X		X		X						X	
6. Refrigeration	X	X	X	X	X	X	X	X	X	X	X	X						
7. Steering Gear	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
8. Properties of Fuels and Lubricants	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
9. Technology/Properties of Materials	X	X	X	X	X	X	X	X	X	X	X	X						
10. Fire and Extinguishing Agents	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
11. Marine Electrotechnology	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
12. Marine Electronics	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
13. Marine Electrical Equipment	X	X	X	X	X	X	X	X	X	X	X	X						
14. Automation, Instrumentation and Control Systems	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
15. Naval Architecture	X	X	X	X	X	X	X	X	X	X	X	X						
16. Ship Construction	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
17. Damage Control	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
II Practical Knowledge																		
1. Operation/Maintenance:																		
Diesel Plant		X		X		X		X		X		X		X		X		X
Steam Plant	X		X		X		X		X		X						X	
2. Operation/Maintenance of Auxiliary Machinery including: Pumping/Piping Systems, Auxiliary Boiler Plant, Steering Gear Systems, Propellers and Shafting Systems, Auxiliary Diesel Plants, Sanitary/Sewage Systems, Fresh Water Systems, Distilling Systems, Lubrication Systems, Automation Systems, Control Systems, Cooling Systems, Ventilation Systems	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
3. Operation/Testing/Control of Electrical and Control Equipment	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
4. Operation/Maintenance of:																		
Cargo Handling Equipment	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
Deck Machinery	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
5. Machinery Malfunction Detection and Action to Prevent Damage	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
6. Maintenance & Repair Procedures	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
7. Fire Prevention, Detection, and Extinction	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
8. Methods to Prevent Pollution by Vessels	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
9. Pollution Prevention Regulations	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
10. Effects of Marine Pollution on the Environment	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
11. First Aid/First Aid Equipment	X	X	X	X	X	X	X	X	X	X				X		X		
12. Lifesaving Appliances	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
13. Damage Control including Engineroom Flooding	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
14. Safe Working Practices	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
III Watchstanding																		
1. Change of Watch	X	X	X	X	X	X	X	X	X	X	X	X						
2. Routine Watch Duties	X	X	X	X	X	X	X	X	X	X	X	X		X				
3. Machinery Log Book	X	X	X	X	X	X	X	X	X	X	X	X		X			X	X
4. Main/Auxiliary Machinery Start Up Procedures	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
5. Boiler Operation	X	X	X	X	X	X	X	X	X	X	X	X					X	
6. Boiler Water Levels	X	X	X	X	X	X	X	X	X	X	X	X		X		X		X
7. Diesel Plant Operation	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
8. Routine Pumping Operations	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
9. Bilge, Ballast, Cargo Pumping Systems	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
10. Generator/Alternator Synchronizing & Shifting	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
11. Watch Safety Precautions	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
12. Fire or Accident	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
13. Electrical Safety Precautions	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
IV Miscellaneous																		
1. Approved Fire Fighting Course	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
2. International Rules and Regulations Regarding Machinery/Engineering	X	X	X	X	X	X	X	X	X	X	X	X		X		X		
3. U.S. Rules and Regulations Regarding Machinery/Engineering	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X

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SUBCHAPTER C—UNINSPECTED VESSELS

PART 26—OPERATIONS [AMENDED]

Subpart 26.25—Crew Requirements [Removed]

4. By removing and reserving Subpart 26.25

SUBCHAPTER D—TANK VESSELS

PART 35—OPERATIONS [AMENDED]

§§ 35.05–5 and 35.05–10 [Removed and Reserved]

5. By removing and reserving §§ 35.05–5 and 35.05–10

SUBCHAPTER P—MANNING OF VESSELS

PART 157—MANNING REQUIREMENTS [REDESIGNATED AS PART 15]

6. Part 157 of 46 CFR Subchapter P is redesignated as Part 15, added to Subchapter B, and revised to read as follows:

PART 15—MANNING REQUIREMENTS

Subpart A—Purpose and Applicability

Sec.
15.101 Purpose of regulations.
15.103 General.

Subpart B—Definition of Terms

15.301 Definition of terms used in this part.

Subpart C—Manning Requirements; All Vessels

15.401 Employment and service within restrictions of license or document.
15.405 Familiarity with vessel characteristics.

Subpart D—Manning Requirements; Inspected Vessels

15.501 Certificate of inspection.
15.505 Changes in the certificate of inspection.
15.510 Right of appeal.
15.515 Compliance with certificate of inspection.
15.520 Mobile offshore drilling units [Reserved].
15.525 Reference to other parts.

Subpart E—Manning Requirements; Uninspected Vessels

15.601 General.
15.605 Licensed operators for uninspected passenger vessels.
15.610 Licensed operators for uninspected towing vessels.

Subpart F—Limitations and Qualifying Factors

15.701 Officers' Competency Certificates Convention, 1936.
15.705 Watches.
15.710 Working hours.
15.715 Automated vessels.
15.720 Use of non-U.S. licensed and/or documented personnel.
15.725 Sailing short.
15.730 Language requirements.

Subpart G—Computations

15.801 General.
15.805 Master.
15.810 Mates.
15.812 Pilots.
15.815 Radar observers.
15.820 Chief engineer.
15.825 Engineers.
15.830 Radio officers.
15.835 Staff officers.
15.840 Able seamen.
15.845 Lifeboatmen.
15.850 Lookouts.
15.855 Cabin watchmen and fire patrolmen.

Subpart H—Equivalents

15.901 Licenses required on board inspected vessels of less than 100 gross tons.
15.905 Uninspected passenger vessels.
15.910 Uninspected towing vessels.
15.915 Engineer licenses.

Authority: 46 U.S.C. 2103, 3703, 8105, 8901, 8902, 8903, 8904, 9102; 50 U.S.C. 198; 49 CFR 1.46(b).

Subpart A—Purpose and Applicability

§ 15.101 Purpose of regulations.

The purpose of the regulations in this part is to set forth uniform minimum requirements for the manning of vessels. In general, they implement, interpret, or apply the specific statutory manning requirements in Title 46, United States Code, Parts E & F, implement various international conventions which affect merchant marine personnel, and provide the means for establishing the complement necessary for safe operation of vessels.

§ 15.103 General.

(a) The regulations in this Part apply to all vessels which are subject to the manning requirements contained in the navigation and shipping laws of the United States, including uninspected vessels (46 U.S.C. 7101–9308).

(b) The navigation and shipping laws state that a vessel may not be operated unless certain manning requirements are met. In addition to establishing a minimum of licensed individuals and members of the crew to be carried on board certain vessels, they establish minimum qualifications concerning licenses, citizenship, and conditions of employment. It is the responsibility of the owner, charterer, managing operator, master, or person in charge or command of the vessel to ensure that appropriate personnel are carried to meet the requirements of the applicable navigation and shipping laws and regulations.

(c) Inspected vessels are issued a certificate of inspection which indicates the minimum complement of licensed individuals and crew (including lifeboatmen) considered necessary for safe operation. The certificate of inspection complements the statutory requirements but does not supersede them.

Subpart B—Definition of Terms

§ 15.301 Definition of terms used in this part.

(a) The following terms defined in this subpart apply only to the manning of vessels subject to the manning provisions in the navigation and shipping laws of the United States:

"Deck crew (excluding licensed individuals)" means, as used in 46 U.S.C. 8702, only the following members of the deck department below the grade of licensed individual: Able seamen and ordinary seamen.

"Officer in Charge, Marine Inspection (OCMI)" for the purposes of Part 15 means any person designated as such by the Commandant and who under the Coast Guard District Commander is in charge of an inspection zone.

"Staff officer" means a person who holds a certificate of registry in the staff department such as a purser, a medical doctor or professional nurse, which is issued by the Coast Guard.

(b) The following categories of licensed individuals are established in Part 10 of this Chapter. When used in this Part, the following terms mean an individual holding a valid license to serve in that capacity issued under Part 10 of this chapter.

(1) Master;
(2) Mate;
(3) Pilot;
(4) Engineer;
(5) Radio officer;
(6) Operator of uninspected towing vessels;
(7) Operator of uninspected passenger vessels.

(c) The following categories of ratings are established in Part 12 of this Chapter. When used in this part, the following terms mean an individual holding a valid merchant mariner's document to serve in that capacity issued under Part 12 of this chapter.

(1) Able seaman;
(2) Ordinary seaman;
(3) Qualified member of the engine department;
(4) Tankerman;
(5) Lifeboatman;
(6) Wiper;

(7) Steward's department (F.H.).

Subpart C—Manning Requirements; All Vessels

§ 15.401 Employment and service within restrictions of license or document.

A person may not employ or engage an individual, and an individual may not serve, onboard a vessel subject to this Part unless the individual holds a valid license, certificate of registry, or merchant mariner's document authorizing service in the capacity in which the individual is engaged or employed and the individual serves within any restriction placed on the license, certificate of registry, or merchant mariner's document.

§ 15.405 Familiarity with vessel characteristics.

Each licensed, registered, or certificated individual must become familiar with the relevant characteristics of the vessel on which engaged prior to assuming his or her duties. As appropriate, these include but are not limited to: general arrangement of the vessel; maneuvering characteristics; proper operation of the installed navigation equipment; firefighting and lifesaving equipment; stability and loading characteristics; emergency duties; and main propulsion and auxiliary machinery, including steering gear systems and controls.

Subpart D—Manning Requirements; Inspected Vessels

§ 15.501 Certificate of inspection.

(a) The certificate of inspection (COI) issued by an Officer in Charge, Marine Inspection (OCMI), to a vessel required to be inspected under 46 U.S.C. 3301 specifies the minimum complement of officers and crew necessary for the safe operation of the vessel.

(b) The manning requirements for a particular vessel are determined by the OCMI after consideration of the applicable laws, the regulations in this part, and all other factors involved, such as: Size and type of vessel, installed equipment, proposed routes of operation, cargo carried, type of service in which employed, degree of automation, use of labor saving devices, and the organizational structure of the vessel.

§ 15.505 Changes in the certificate of inspection.

All requests for changes in manning as indicated on the certificate of inspection must be made to the OCMI who last issued the certificate of inspection, unless the request is made in conjunction with an inspection for certification, in which case the request should be addressed to the OCMI conducting the inspection.

§ 15.510 Right of appeal.

Whenever any person directly interested in or affected by any decision or action of any OCMI, feels aggrieved by such decision or action with respect to manning requirements, the person has the right to appeal such decision or action under the provisions of § 2.01–70 of this Chapter. Pending the determination of the appeal, the crew specified on the certificate of inspection must be carried.

§ 15.515 Compliance with certificate of inspection.

(a) Except as provided by § 15.725, no vessel may be operated unless it has in its service and on board the complement required by the certificate of inspection.

(b) Any vessel subject to inspection under 46 U.S.C. 3301 must, while on a voyage, be under the direction and control of an individual who holds an appropriate license issued by the Coast Guard. For the purposes of this paragraph:

(1) A voyage is the period of time necessary to transit from the port of departure to the final port of arrival.

(2) A port does not include an Outer Continental Shelf (OCS) facility as defined in 33 CFR Part 140.

§ 15.520 Mobile offshore drilling units [Reserved].

§ 15.525 Reference to other parts.

Parts 31 and 35 of this Chapter contain additional manning requirements applicable to tank vessels.

Subpart E—Manning Requirements; Uninspected Vessels

§ 15.601 General.

The following sections of Subparts F, G, and H of this Part contain provisions concerning manning of uninspected vessels; §§ 15.701, 15.705, 15.710, 15.720, 15.730, 15.801, 15.805, 15.810, 15.820, 15.825, 15.840, 15.850, 15.855, 15.905, 15.910, and 15.915.

§ 15.605 Licensed operators for uninspected passenger vessels.

Each self-propelled, uninspected vessel carrying not more than six passengers, as defined by 46 U.S.C. 2101(21)(D), must be under the direction and control of an individual licensed by the Coast Guard.

§ 15.610 Licensed operators for uninspected towing vessels.

Every uninspected towing vessel which is at least 26 feet in length measured from end to end over the deck (excluding sheer) must be under the direction and control of an individual licensed by the Coast Guard. This does not apply to a vessel of less than 200 gross tons engaged in the offshore mineral and oil industry if the vessel has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure.

Subpart F—Limitations and Qualifying Factors

§ 15.701 Officers Competency Certificates Convention, 1936.

(a) This section implements the Officers Competency Certificates Convention, 1936, and applies to each vessel documented under the laws of the United States navigating seaward of the Boundary Lines in Part 7 of this Chapter, except:

(1) A public vessel;

(2) A wooden vessel of primitive build, such as a dhow or junk;

(3) A barge; and,

(4) A vessel of less than 200 gross tons.

(b) The master, mates and engineers on any vessel to which this section applies must hold a license to serve in that capacity issued by the Coast Guard under Part 10 of this Chapter.

(c) A vessel to which this section applies, or a foreign flag vessel to which the Convention applies, may be detained by a designated official until that official is satisfied that the vessel is in compliance with the Convention. "Designated official" includes Coast Guard officers, Coast Guard petty officers and officers or employees of the Customs Service.

(d) Whenever a vessel is detained, the owner, charterer, managing operator, agent, master, or individual in charge may appeal the detention within five days under the provisions of § 2.01–70 of this Chapter.

§ 15.705 Watches.

(a) Title 46 U.S.C. 8104 is the law applicable to the establishment of watches aboard certain U.S. vessels. The establishment of adequate watches is the responsibility of the vessel's master. The Coast Guard interprets the term "watch" to be the direct performance of vessel operations, whether deck or engine, where such operations would routinely be controlled and performed in a scheduled and fixed rotation. The performance of maintenance or work necessary to the vessel's safe operation on a daily basis does not in itself constitute the establishment of a watch. The minimal safe manning levels specified in a

vessel's certificate of inspection takes into consideration routine maintenance requirements and ability of the crew to perform all operational evolutions, including emergencies, as well as those functions which may be assigned to persons in watches.

(b) Subject to exceptions, 46 U.S.C. 8104 requires that when a master of a seagoing vessel of more than 100 gross tons establishes watches for the licensed individuals, sailors, coal passers, firemen, oilers and watertenders, the personnel shall be "divided, when at sea, into at least three watches and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel." The Coast Guard interprets "sailors" to mean those members of the deck department other than licensed officers, whose duties involve the mechanics of conducting the ship on its voyage, such as helmsman (wheelsman), lookout, etc., and which are necessary to the maintenance of a continuous watch. "Sailors" is not interpreted to include able seamen and ordinary seamen not performing these duties.

(c) Subject to exceptions, 46 U.S.C. 8104(g) permits the licensed individuals and crew members (except the coal passers, firemen, oilers, and watertenders) to be divided into two watches when at sea and engaged on a voyage of less than 600 miles on the following categories of vessels:

(1) Towing vessel;

(2) Offshore supply vessel; or,

(3) Barge.

(d) Subject to exceptions, 46 U.S.C. 8104(h) permits a licensed individual operating an uninspected towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer) to work not more than 12 hours in a consecutive 24 hour period except in an emergency. The Coast Guard interprets this, in conjunction with other provisions of the law, to permit licensed individuals serving as operators of uninspected towing vessels that are not subject to the provisions of the Officers' Competency Certificates Convention, 1936, to be divided into two watches regardless of the length of the voyage.

(e) Fish processing vessels are subject to various provisions of 46 U.S.C. 8104 concerning watches.

(1) For fish processing vessels that entered into service before January 1, 1988, the following watch requirements apply to the licensed officers and deck crew:

(i) If over 5000 gross tons—three watches.

(ii) If more than 1600 gross tons and not more than 5000 gross tons—two watches.

(iii) If not more than 1600 gross tons—no watch division specified.

(2) For fish Processing vessels which enter into service after December 31, 1987, the following watch requirements apply to the licensed officers and deck crew:

(i) If over 5000 gross tons—three watches.

(ii) If not more than 5000 gross tons and having more than 16 individuals on board primarily employed in the preparation of fish or fish products—two watches.

(iii) If not more than 5000 gross tons and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products—no watch division specified.

§ 15.710 Working hours.

In addition to prescribing watch requirements, 46 U.S.C. 8104 sets limitations on the working hours of licensed individuals and crew members, prescribes certain rest periods, and prohibits unnecessary work on Sundays and certain holidays when the vessel is in a safe harbor. It is the responsibilty of the master or person in charge to ensure that these limitations are met. However, under 46 U.S.C. 8104(f), the master or other licensed individual can require any part of the crew to work when, in his or her judgment, they are needed for:

(a) Maneuvering, shifting berth, mooring, unmooring;

(b) Performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(c) Saving of life on board another vessel in jeopardy; or,

(d) Performing fire, lifeboat, or other drills in port or at sea.

§ 15.715 Automated vessels.

(a) Coast Guard acceptance of automated systems to replace specific personnel or to reduce overall crew requirements is predicated upon the capabilities of the system, the system's demonstrated and continuing reliability, and a planned maintenance program that ensures continued safe operation of the vessel.

(b) The OCMI considers the capabilities of an automated system in establishing initial manning levels; however, until the system is proven reliable, a manning level adequate to operate in a continuously attended mode will be specified on a vessel's COI. It remains the responsibility of the vessel's master to determine when a continuous watch is necessary.

§ 15.720 Use of non-U.S. licensed and/or documented personnel.

(a) United States vessels which need to replace one or more persons while on a foreign voyage and outside the jurisdiction of the United States, in order to meet manning requirements, may utilize non-U.S. licensed and documented personnel until the vessel's first return to a U.S. port. The master must always be a U.S. citizen.

(b) The master shall assure that any replacement will be with an individual who holds a license or document which is equivalent in experience, training, and other qualifications to the U.S. license or document required for the position and that the person possesses or will possess the training required of the position, including an ability to communicate to the extent required by § 15.730.

§ 15.725 Sailing short.

Whenever a vessel is deprived of the service of a member of its complement, and the master or person in charge is unable to find appropriate licensed or documented personnel to man the vessel, the master or person in charge may proceed on the voyage, having determined the vessel is sufficiently manned for the voyage. A report of sailing short must be filed in writing with the Officer in Charge, Marine Inspection (OCMI) having cognizance for inspection in the area in which the vessel is operating, or the OCMI within whose jurisdiction the voyage is completed. The report must explain the cause of each deficiency and be submitted within twelve hours after arrival at the next port. The actions of the master or person in charge in such instances are subject to review and it must be shown the vacancy was not due to the consent, fault or collusion of the master or other individuals specified in 46 U.S.C. 8101(e). A civil penalty may be assessed against the master or person in charge for failure to submit the report.

§ 15.730 Language requirements.

(a) The provisions of 46 U.S.C. 8702 relating to language apply generally to vessels of at least 100 gross tons except:

(1) Vessels operating on rivers and lakes (except the Great Lakes);

(2) A manned barge (except a seagoing barge or a barge to which Chapter 37 of 46 U.S.C. applies);

(3) A fishing vessel, fish tender vessel, whaling vessel, or yacht;

(4) A sailing school vessel with respect to sailing school instructors and sailing school students;

(5) An oceanographic research vessel with respect to scientific personnel;

(6) A fish processing vessel which entered into service before January 1, 1988, and is not more than 1600 gross tons or which enters into service after December 31, 1987, and has not more than 16 individuals on board primarily employed in the preparation of fish or fish products; and,

(7) All fish processing vessels with respect to those personnel primarily employed in the preparation of fish or fish products or in a support position not related to navigation.

(b) 46 U.S.C. 8702(b) requires that on board vessels departing U.S. ports "75 percent of the crew in each department on board is able to understand any order spoken by the officers."

(c) The words "able to understand any order spoken by the officers" relates to any order to a member of the crew when directing the performance of that person's duties and orders relating to emergency situations such as used for response to a fire or in using lifesaving equipment. It is not expected that a member of the deck department understand terminology normally used only in the engineroom or vice versa.

(d) Whenever information is presented to the Coast Guard that a vessel fails to comply with the specified language requirements the Coast Guard investigates the allegation to determine its validity. In determining if an allegation is factual, the Coast Guard may require a demonstration by the licensed individuals and crew that appropriate orders are understood. The demonstration will require that orders be spoken to the individual members of the crew by the licensed individuals in the language ordinarily and customarily used by the licensed individuals. The orders must be spoken directly by the licensed individual to the crew member and not through an interpreter. Signs, gestures, or signals may not be used in the test. The Coast Guard representative will specify the orders to be given and will include not only daily routine but orders involving emergencies, either of a departmental or of a general nature. This test will be conducted, if possible, at a time reasonably in advance of the vessel's departure, to avoid delays.

Subpart G—Computations

§ 15.801 General.

The Officer in Charge, Marine Inspection (OCMI) will determine the specific manning levels for vessels required to have certificates of inspection by Part B of Subtitle II of Title 46 U.S. Code. The masters of all vessels, whether certificated or not, are responsible for properly manning vessels in accordance with the applicable laws, regulations, and international conventions.

§ 15.805 Master.

(a) There must be an individual holding an appropriate license as master in command of each of the following vessels:

(1) Every self-propelled, seagoing documented vessel of 200 gross tons and over.

(2) Every self-propelled inspected vessel.

(3) Every inspected passenger vessel.

(b) Every vessel documented under the laws of the United States must be under the command of a U.S. citizen.

§ 15.810 Mates.

(a) The minimum number of licensed mates required to be carried on every inspected self-propelled seagoing and Great Lakes vessel, and every inspected seagoing passenger vessel is as follows:

(1) Vessels of 1000 gross tons or more—three licensed mates (except when on a voyage of less than 400 miles from port of departure to port of final destination—two licensed mates).

(2) Vessels of 100 or more gross tons but less than 1000 gross tons—two licensed mates (except vessels of at least 100 but less than 200 gross tons on voyages which do not exceed 24 hours in duration—one licensed mate).

(3) All offshore supply vessels of 100 gross tons or more—two licensed mates (except when on a voyage of less than 600 miles–one licensed mate). A voyage includes the accrued distance from port of departure to port of arrival and does not include stops at offshore points.

(4) All vessels of less than 100 gross tons—one licensed mate (except vessels on voyages not exceeding 12 hours in duration may, if the OCMI determines it to be safe, be operated without licensed mates).

(b) An individual in charge of the navigation or maneuvering of a self-propelled, uninspected, documented, seagoing vessel of 200 gross tons or over must hold an appropriate license authorizing service as mate.

(c) The OCMI may increase the minimum number of mates indicated in paragraph (a) of this section where it is deemed the vessel's characteristics, route, or other operating conditions create special circumstances requiring an increase.

(d) The Commandant will consider reductions to the number of mates required by this section when special circumstances allowing a vessel to be safely operated can be demonstrated.

§ 15.812 Pilots.

(a) The following vessels, when underway and not sailing on register, must be under the direction and control of a pilot:

(1) Coastwise seagoing vessels propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and seagoing tank barges subject to inspection under 46 U.S.C. Chapter 37, except when seaward of pilotage waters.

(2) Vessels operating on the Great Lakes propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and tank barges subject to inspection under 46 U.S.C. Chapter 37.

(b) (Reserved)

(c) The requirements of paragraph (a) of this section are satisfied when the vessel is under the direction or control of either:

(1) A first class pilot holding a valid license issued by the Coast Guard, acting within the restrictions on his or her license; or,

(2) An individual holding a valid license issued by the Coast Guard as master, mate, or operator, employed aboard a vessel within the restrictions on his or her license and the limitations of paragraphs (d) and (e) of this section, provided he or she:

(i) Has reached the age of 21 years;

(ii) Complies with the currency of knowledge provisions of 46 CFR 10.713 of this chapter; and,

(iii) Has a current physical examination in accordance with the provisions of 46 CFR 10.709.

(d) A licensed master or mate qualifying under paragraph (c)(2) of this section may serve as pilot of a coastwise seagoing vessel or a Great Lakes vessel, of not more than 1600 gross tons propelled by machinery and subject to inspection for certification, provided the individual has four round trips over the route to be traversed, while in the wheelhouse as watchstander or observer. One of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(e) A licensed individual qualifying under paragraph (c)(2) of this section may serve as pilot of coastwise seagoing tank barges or tank barges operating upon the Great Lakes, totaling not more than 10,000 gross tons carrying cargoes subject to the provisions of 46 U.S.C. Chapter 37, provided the individual:

(1) Has twelve round trips over the route to be traversed, three of which must be made during the hours of darkness if the route is to be traversed during darkness, as an observer or

under instruction in the wheelhouse; and,

(2) Has at least six months' service in the deck department on towing vessels engaged in towing operations.

(f) (Reserved)

(g) In any instance when the qualifications of a person discharging the requirement for pilotage through the provisions of this Subpart are questioned by the Coast Guard, the individual shall, within a reasonable time, provide the Coast Guard with documentation proving compliance with paragraph (c) of this section and the applicable portion(s) of paragraph (d) or (e) of this section.

§ 15.815 Radar observers.

(a) Each person in the required complement of licensed deck individuals, including the master, on inspected vessels of 300 gross tons or over which are radar equipped, shall hold a valid endorsement as radar observer.

(b) Each person who is employed or serves as pilot in accordance with Federal law on board vessels of 300 gross tons or over which are radar equipped, shall hold a valid endorsement as radar observer.

§ 15.820 Chief engineer.

(a) There must be an individual holding an appropriate license as chief engineer or a license authorizing service as chief engineer employed on board the following inspected mechanically propelled vessels:

(1) seagoing or Great Lakes vessels of 200 gross tons and over.

(2) offshore supply vessels of more than 200 gross tons.

(3) inland (other than Great Lakes) vessels of 300 gross tons and over, if the OCMI determines that a licensed individual responsible for the vessel's mechanical propulsion is necessary.

(b) An individual engaged or employed to perform the duties of chief engineer on a mechanically propelled, uninspected, seagoing, documented vessel of 200 gross tons or over must hold an appropriate license authorizing service as a chief engineer.

§ 15.825 Engineers.

(a) An individual in charge of an engineering watch on a mechanically propelled, seagoing, documented vessel of 200 gross tons or over, other than an individual described in § 15.820, must hold an appropriate license authorizing service as an assistant engineer.

(b) The Officer in Charge, Marine Inspection determines the minimum number of licensed engineers required for the safe operation of inspected vessels.

§ 15.830 Radio officers.

Radio officers are required on certain merchant vessels of the United States. The determination of when a radio officer is required is based on the Federal Communications Commission requirements.

§ 15.835 Staff officers.

Staff officers, when carried, must be registered as specified in Part 10 of this Chapter.

§ 15.840 Able seamen.

(a) With certain exceptions, 46 U.S.C. 8702 applies to all vessels of at least 100 gross tons. At 1east 65 percent of the deck crew of these vessels, excluding licensed individuals, must be able seamen. For vessels permitted to maintain a two watch system, the percentage of able seamen may be reduced to 50 percent.

(b) Able seamen are rated as: unlimited, limited, special, offshore supply vessel, sail, and fishing industry, under the provisions of Part 12 of this Chapter. 46 U.S.C. 7312 specifies the categories of able seamen (i.e., unlimited, limited, etc.) necessary to meet the requirements of 46 U.S.C. 8702.

(c) It is the responsibility of the master or person in charge to ensure that the able seamen in the service of the vessel meet the requirements of 46 U.S.C. 7312 and 8702.

§ 15.845 Lifeboatmen.

The number of lifeboatmen required for a vessel are specified in the parts of the regulations dealing with the inspection of that specific type of vessel.

§ 15.850 Lookouts.

The requirements for the maintenance of a proper lookout are specified in Rule 5 of the International Regulations for Preventing Collisions at Sea, 1972, and Rule 5 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2005). Lookout is a function to be performed by a member of a navigational watch.

§ 15.855 Cabin watchmen and fire patrolmen.

(a) On vessels carrying passengers at night, the master or person in charge shall ensure that a suitable number of watchmen are in the vicinity of the cabins or staterooms and on each deck, to guard against and give alarm in case of fire or other danger.

(b) On a fish processing vessel of more than 100 gross tons, there must be a suitable number of watchmen trained in firefighting on board when hot work is being done, to guard against and give alarm in case of a fire.

Subpart H—Equivalents

§ 15.901 Licenses required on board inspected vessels of less than 100 gross tons.

(a) A license authorizing service as mate or pilot of vessels over 200 gross tons will also authorize service as master on vessels of not more than 100 gross tons.

(b) A license which authorizes the holder to serve as master or mate of a mechanically propelled vessel or a sail vessel subject to inspection, also authorizes the holder to serve as master or mate, respectively, of a passenger barge, subject to the route and tonnage restrictions on the license.

(c) A license which authorizes the holder to serve as master or mate of an auxiliary sail vessel subject to inspection, also authorizes the holder to serve as master or mate, respectively, of mechanically propelled or sail vessels, subject to the route and tonnage restrictions on the license.

§ 15.905 Uninspected passenger vessels.

An individual holding a license as master or mate is authorized to serve as an operator of uninspected passenger vessels within any restrictions on the individual's license.

§ 15.910 Uninspected towing vessels.

(a) An individual of 21 years or more of age holding a license as master, or a license as mate on vessels over 200 gross tons, is authorized to serve as operator of uninspected towing vessels within any restrictions on the individual's license. A mate may, however, only serve as operator on domestic routes.

(b) Whenever an uninspected towing vessel is under the direction and control of a person holding a license authorizing service as second-class operator of uninspected towing vessels, a person holding a license authorizing service as operator of uninspected towing vessels must be on board as a member of the crew.

(c) An individual of 19 years or more of age holding a license which authorizes service as mate of vessels of not more than 200 gross tons authorizes the holder to serve as second-class operator of uninspected towing vessels within any restrictions on the individual's license.

§ 15.915 Engineer licenses.

(a) The following licenses authorize the holder to serve on the vessels noted

within any restrictions on the individual's license:

(1) A designated duty engineer license authorizes service as chief or assistant engineer on vessels of not more than 500 gross tons.

(2) A chief engineer (limited, oceans) license authorizes service as chief or assistant engineer on vessels of not more than 1600 gross tons upon any waters and any gross tons upon inland waters (other than the Great Lakes).

(3) A chief engineer (limited, near coastal) license authorizes service on vessels of not more than 1600 gross tons upon near coastal and inland waters and of any gross tons upon inland waters (other than the Great Lakes).

(b) An assistant engineer (limited) license authorizes the holder to serve on vessels of not more than 1600 gross tons upon any waters and of any gross tons upon inland waters (other than the Great Lakes).

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS) [AMENDED]

PART 175—GENERAL PROVISIONS [AMENDED]

7. The authority citation for Part 175 is revised to read as follows, and all other authority citations with this part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

8. Section 175.01–1 is amended by revising paragraph (a) to read as follows:

§ 175.01–1 General.

(a) The regulatins in this Subchapter are prescribed by the Commandant of the Coast Guard to carry out the intent and purpose of Title 46, United States Code, sections 3301, 3302, 3307, 7101 and 8101, which require the inspection and certification of certain vessels of less than 100 gross tons carrying freight for hire or more than six passengers.

* * * * * *

9. By revising § 175.10–13 to read as follows:

§ 175.10–13 Headquarters.

This term means the office of the Commandant, United States Coast Guard, Washington, DC 20593–0001.

10. By adding a new § 175.10–15 to read as follows:

§ 175.10–15 Master.

This term means the officer having command of the vessel.

PART 185—OPERATIONS [AMENDED]

11. The authority citation for Part 185 is revised to read as follows, and all other authority citations with this Part are removed:

Authority: 46 U.S.C. 3306, 6101, 8105; 49 CFR 1.46(b).

12. By revising § 185.10–1 to read as follows:

§ 185.10–1 Officers licenses.

The licensed individuals employed upon any vessel subject to the provisions of this Subchapter shall have their licenses in their possession and available for examination at all times when the vessel is operated.

13. By revising § 185.17–1 to read as follows:

§ 185.17–1 Use prohibited by law.

No person may use a vessel subject to the provisions of this Subchapter in a negligent manner so as to endanger the life, limb, or property of any person. Violations of this Subpart involving use which is grossly negligent, subject the violator, in addition to any other penalties, to the criminal penalties prescribed in 46 U.S.C. 2302.

14. By revising § 185.19–1 to read as follows:

§ 185.19–1 Duty of master.

The master of a vessel involved in a collision, accident or other casualty, to the extent possible without serious danger to his or her own vessel or persons aboard, shall render all practicable and necessary assistance to persons affected by the collision, accident, or casualty. The master shall also give his or her name, address, and the identification of his or her vessel to any person injured and to the owner of any property damaged.

15. By revising § 185.20–1 to read as follows:

§ 185.20–1 Compliance with provisions of certificate of inspection.

The master of the vessel must ensure that all of the provisions of the certificate of inspection are strictly adhered to; however, the master may divert from the route prescribed in the certificate of inspection or take such other steps as deemed necessary and prudent to assist vessels in distress or for other similar emergencies.

16. By revising § 185.20–10 to read as follows:

§ 185.20–10 Steering gear tests.

The master or mate of every vessel, before getting underway for a day's operation, shall test the steering gear, signaling whistle, controls and communication system.

17. By revising § 185.20–15 to read as follows:

§ 185.20–15 Hatches.

It shall be the duty of the master of any vessel to assure that all exposed hatches are properly secured before getting underway for a voyage on other than protected waters.

18. By revising § 185.20–20 to read as follows:

§ 185.20–20 Vessels carrying vehicles.

(a) Automobiles or other vehicles shall be stowed in such a manner as to permit their occupants to get out and away from them freely in the event of fire or other disaster. The decks, where necessary, shall be distinctly marked with painted lines to indicate the vehicle runways and the aisle spaces.

(b) The master shall take any necessary precautions to see that automobiles or other vehicles have their motors turned off and their emergency brakes set when the vessel ia underway, and that the motors are not started until the vessel is secured to the landing. In addition, the vehicles at each end shall have their wheels securely blocked, while the vessel is being navigated.

(c) The master shall have appropriate "NO SMOKING" signs posted and shall take all necessary precautions to prevent smoking or carrying of lighted or smoldering cigars, cigarettes, etc., in the deck area assigned to automobiles or other vehicles.

19. Section 185.20–30 is amended by revising paragraph (c) to read as follows:

§ 185.20–30 Use of auto pilot.

* * * * *

(c) All other hazardous navigational situations, the master shall ensure that:

(1) It is possible to immediately establish manual control of the ship's steering;

(2) A competent person is ready at all times to take over steering control; and,

(3) The changeover from automatic to manual steering and vice versa is made by, or under the supervision of the master or mate.

20. By revising § 185.22–1 to read as follows:

§ 185.22–1 Duties.

(a) At all times during which bunks in passenger areas located below the main deck are occupied, the master shall designate a member of the vessel's crew as a patrolman.

(b) The patrolman shall be stationed in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of fire or other danger.

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§ 185.25–1 [Amended]

21. In § 185.25–1, paragraphs (a) and (d) are amended by removing the phrase "operator in charge" and adding in its place the word "master."

22. By revising § 185.25–10 to read as follows:

§ 185.25–10 Drills.

The master shall conduct drills and give instructions as necessary to ensure that all crew members are familiar with their duties.

23. By revising § 185.25–15 to read as follows:

§ 185.25–15 Officers' responsibilities.

Nothing in the recommended emergency instructions in this Subpart shall exempt any officer from the exercise of good judgment in any emergency situation.

24. By revising § 185.25–20 to read as follows:

§ 185.25–20 Tests of emergency position indicating radiobeacon (EPIRB).

The master of the vessel shall ensure that:

(a) The EPIRB required in § 180.40–1 of this Subchapter is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and,

(b) The EPIRB's battery is replaced after the EPIRB is used and before the date required by FCC regulations in 47 CFR Part 83.

PART 186—[REMOVED AND RESERVED]

25. By removing and reserving Part 186.

PART 187—[REMOVED AND RESERVED]

26. By removing and reserving Part 187.

J.C. Irwin,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

June 3, 1987.

[FR Doc. 87–23433 Filed 10–15–87; 8:45 am]

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46 CFR Part 10

[CGD 81–059b]

Licensing of Pilots

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is republishing its rules concerning professional requirements for pilot's licenses in a revised organization and format. This is being done to make them more understandable, and compatible with the complete revision of the rules for the licensing of maritime personnel appearing elsewhere in this issue under docket (CGD 81–059). The new format and organization is intended to make them clearer and easier to apply.

DATES: Comments must be received on this Interim Final Rule on or before January 14, 1988. Effective December 1, 1987.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/21) (CGD 81–059b), U.S. Coast Guard, Washington, DC 20593–0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Merchant Vessel Personnel Division (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0217.

SUPPLEMENTARY INFORMATION: This Interim Final Rule is open to comments. Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the docket number (CGD 81–059b), the name and address of the person submitting the comments, and the specific section of the interim final rule to which each comment is addressed. Persons desiring an acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is confirmed.

The substance of these rules concerning the professional requirements for pilot's licenses was published as a Final Rule under docket (CGD 77–084) on June 24, 1985 (50 FR 26106) and subsequently modified on March 31, 1986 (51 FR 10837). The rules are being reformatted and reorganized in this rulemaking for consistency with the rules for licensing of maritime personnel which have been completely rewritten and appear as an interim final rule under docket CGD 81–059 appearing elsewhere in this issue. They are published without prior opportunity for notice and comment because they do not change the intent or interpretation of the rules as originally published. For this reason the Coast Guard has determined, under 5 U.S.C. 553, that providing prior notice and opportunity for comment is unnecessary.

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Merchant Vessel Personnel Division and CDR Ronald C. Zabel, Project Attorney, Regulations and Administrative Law Division.

Discussion of Reformatting and Reorganization

The revision of the regulations concerning licensing of maritime personnel (46 CFR Part 10) appears elsewhere in this issue. That revision contains many provisions which duplicate portions of the rules pertaining to pilots, including the basic physical exam requirements, the acceptance of equivalent service, and examination topics; consequently these provisions have been modified or removed from the subpart concerning pilots.

Several of the sections have been reformatted and reorganized, both to be compatible with the general format of the remainder of 46 CFR Part 10 and to make the rules more understandable. Two provisions in particular have been reworded because they created some confusion. The Coast Guard has received numerous questions on how they were to be applied. These are the provisions concerning who can obtain an endorsement as first class pilot, and the provisions concerning removal of tonnage limitations. The preamble to the final rule clearly stated how these provisions would be applied. To eliminate the confusion, some of the explanatory material from the preamble has been added to the rule. In addition, endorsements as first class pilot will not be placed on licenses unless the individual is qualified as first class pilot of vessels over 1,600 gross tons, instead of 1,000 gross tons as currently noted. This is necessary to maintain compatibility with the new licensing structure and the manning provisions authorizing other license holders to serve as pilot. The new manning provisions provide that licensed masters and mates may serve as pilot on vessels of not over 1,600 gross tons. The provision authorizing operators of uninspected towing vessels to serve as pilot on coastwise seagoing tank barges totalling not more than 10,000 gross tons remains unchanged. Since specific endorsements with a tonnage limit of 1,600 gross tons or less are no longer necessary, they will no longer be issued by the Coast Guard. The Coast Guard will continue to issue first class pilots

licenses with tonnage limitations commensurate with the individuals experience even if that tonnage is 1,600 gross tons or less. In view of these changes and the fact that the companion rulemaking is being issued as an interim rule, this rulemaking is being issued as an interim rule subject to comment.

Regulatory Evaluation

This interim final rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). It is not expected to have any economic impact as it is only a republication of an existing rule in a new organization and format. The economic impact of this interim final rule has been found to be so minimal that further evaluation is unnecessary. Since the impact of the rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 10

Seamen, Marine Safety, Navigation (water), Passenger vessels.

The text of this interim final rule is integrated with the remainder of the revision of Part 10 which is published in this issue of the **Federal Register**.

In consideration of the foregoing, the Coast Guard is amending Part 10 of Title 46, Code of Federal Regulations, as follows:

1. The authority citation for Part 10 continues to read as follows:

Authority: 46 U.S.C. 7101; 43 U.S.C. 1333(d); 49 CFR 1.46 (b) and (2).

2. The table of contents for Part 10 is amended by adding a new Subpart G to read as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

* * * * *

Subpart G Professional Requirements for Pilot Licenses

Sec.

10.701 Scope of pilot licenses and endorsements.
10.703 Service requirements.
10.705 Route familiarization requirements.
10.707 Examination requirements.
10.709 Annual physical examination requirements.
10.711 Tonnage requirements.
10.713 Requirements for maintaining current knowledge of waters to be navigated.

3. Part 10 is amended by adding a new Subpart G to read as follows:

Subpart G—Professional Requirements for Pilot Licenses

§ 10.701 Scope of pilot licenses and endorsements.

(a) An applicant for a license as first class pilot need not hold any other license issued under this Part. An individual holding a license as master, mate, or operator of uninspected towing vessels may apply for an endorsement as first class pilot for a specific route or routes in lieu of applying for a first class pilot's license.

(b) The issuance of a license or endorsement as first class pilot to an individual qualifies that individual to serve as pilot over the route(s) specified on the license, subject to any limitations imposed under paragraph (c) of this section.

(c) The Officer in Charge, Marine Inspection, issuing a license or endorsement as first class pilot, imposes appropriate limitations commensurate with the experience of the applicant, with respect to class or type of vessel, tonnage, route, and waters.

(d) A license issued for service as a master, mate, or operator of uninspected towing vessels authorizes service as a pilot under the provisions of § 15.812 of this Chapter; first class pilot endorsements to these licenses for a specific route are only issued if the individual qualifies for a tonnage limitation exceeding 1,600 gross tons.

§ 10.703 Service requirements.

(a) The minimum service required to qualify an applicant for a license as first class pilot is predicated upon the nature of the waters for which pilotage is desired.

(1) *General routes (routes not restricted to rivers, canals and small lakes).* The applicant must have at least 36 months service in the deck department of steam or motor vessels navigating on oceans, coastwise, Great Lakes, or bays, sounds, and lakes other than the Great Lakes, as follows:

(i) 18 months of the 36 months service must be as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilothouse as part of routine duties.

(ii) At least 12 months of the 18 months service required in paragraph (a)(1)(i) of this section must be on vessels operating on the class of waters for which pilotage is desired.

(2) *River routes.* The applicant must have at least 36 months service in the deck department of any vessel including at least 12 months service on vessels operating on the waters of rivers while the applicant is serving in the capacity of quartermaster, wheelsman, apprentice pilot, or deckhand who stands watches at the wheel as part of routine duties.

(3) *Canal and small lakes routes.* The applicant must have at least 24 months service in the deck department of any vessel including at least 8 months service on vessels operating on canals or small lakes.

(b) A graduate of the Great Lakes Maritime Academy in the deck class meets the service requirements of this section for a license as first class pilot on the Great Lakes.

(c) Completion of a course of pilot training approved by the Commandant under Subpart C of this Part may be substituted for a portion of the service requirements of this section in accordance with § 10.304. Additionally, round trips made during this training may apply toward the route familiarization requirements of § 10.705. An individual using substituted service must have at least nine months of shipboard service.

§ 10.705 Route familiarization requirements.

(a) The Officer in Charge, Marine Inspection having jurisdiction determines, within the range limitations specified in this section, the number of round trips required to qualify an applicant for a particular route, considering the following:

(1) The geographic configuration of the waterway;

(2) The type and size of vessels using the waterway;

(3) The abundance or absence of aids to navigation;

(4) The background lighting effects;

(5) The known hazards involved, including waterway obstructions or constrictions such as bridges, narrow channels, or sharp turns; and,

(6) Any other factors unique to the route that the OCMI deems appropriate.

(b) An applicant for an original license as first class pilot shall furnish evidence of having completed a minimum number of round trips, while serving as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilothouse as part of routine duties, over the route sought. The range of round trips for an initial license is a minimum of 12 round trips and a maximum of 20 round trips. An applicant may have additional routes added to the first class pilot license by meeting the requirements for obtaining an endorsement.

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(c) An applicant for an endorsement as first class pilot for a particular route shall furnish evidence of having completed the number of round trips over the route, specified by the Officer In Charge, Marine Inspection, within the range limitations of this paragraph, for the particular grade of existing license held. The range of round trips for an endorsement is a minimum of 8 round trips and a maximum of 15 round trips.

(d) Unless determined impracticable by the OCMI, 25% of the round trips required by the OCMI under this section must be made during the hours of darkness.

(e) One of the round trips required by the OCMI under this section must be made over the route within the six months immediately preceding the date of application.

§ 10.707 Examination requirements.

(a) An applicant for a license as first class pilot is required to pass the examination described in Subpart I of this part.

(b) An applicant for an extension of route, or a licensed master or mate authorized to serve on vessels of over 1,600 gross tons seeking an endorsement as first class pilot, is required to pass those portions of the examination described in Subpart I of this Part that concern the specific route for which endorsement is sought.

§ 10.709 Annual physical examination requirements.

(a) This section applies only to an individual who pilots a vessel of 1,600 gross tons and over.

(b) Every person holding a license or endorsement as first class pilot shall have a thorough physical examination each year while holding the license or endorsement.

(c) Each annual physical examination must meet the requirements specified in § 10.205(d) except that the record of examination need not be submitted to the Coast Guard except as provided for in paragraph (e) of this section.

(d) An individual's first class pilot license or endorsement becomes invalid on the first day of the month following the first anniversary of the individual's most recent physical examination satisfactorily completed; the individual may not operate under the authority of that license or endorsement until a physical examination has been satisfactorily completed.

(e) Upon request, a first class pilot shall provide the Coast Guard with a copy of his or her most recent physical examination.

§ 10.711 Tonnage requirements.

(a) In order to obtain a first class pilot license or endorsement authorizing service on vessels of "any gross tons" over a particular route, the applicant must have sufficient experience on vessels of over 1,600 gross tons.

(b) If an applicant does not have sufficient experience on vessels of over 1,600 gross tons, the license or endorsement will be for a limited tonnage until the applicant completes a number of additional round trips, as determined by the OCMI, within the range contained in § 10.705 (b) or (c), as appropriate, on vessels of over 1,600 gross tons.

(c) For purposes of this section, an applicant is considered to have sufficient experience if the applicant has 18 months experience as master, mate, quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilothouse as part of routine duties, on vessels of 1,600 gross tons or over, and two-thirds of the minimum number of round trips required for the route have been on vessels of 1,600 gross tons or over.

(d) For purposes of this section, for experience with respect to tonnage on towing vessels, the combined gross tonnage of the towing vessel and the vessel(s) towed will be considered. However, the OCMI may require that all or a portion of the required number of round trips be obtained on self-propelled vessels of 1,600 gross tons or over, when the OCMI determines that due to the nature of the waters and the overall experience of the applicant, self-propelled vessel experience is necessary to obtain a first class pilot license or endorsement that is not restricted to tug and barge combinations.

§ 10.713 Requirements for maintaining current knowledge of waters to be navigated.

(a) If a first class pilot has not served over a particular route within the past 60 months, that person's license or endorsement is invalid for that route, and remains invalid until the individual has made one re-familiarization round trip over that route, except as provided in paragraph (b) of this section. Whether this requirement is satisfied or not has no effect on the renewal of a license or endorsement. Round trips made within the 90 day period preceding renewal will be valid for the duration of the renewed license or endorsement.

(b) For certain long or extended routes, the OCMI may, at his discretion, allow the re-familiarization requirement to be satisfied by reviewing appropriate navigation charts, coast pilots tide and current tables, local Notice to Mariners, and any other materials which would provide the pilot with current knowledge of the route. Persons using this method of re-familiarization shall certify, when applying for renewal of their license or endorsement, the material they have reviewed and the dates on which this was accomplished. Review within the 90 day period preceding renewal is valid for the duration of the renewed license or endorsement.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

Dated: May 27, 1987.

[FR Doc. 87-23431 Filed 10-15-87; 8:45 am]

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46 CFR Parts 10 and 15

[CGD 81-059a]

Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule deals solely with the licensing of officers on mobile offshore drilling units (MODUs) and the manning of these vessels. The licensing structure implements National Transportation Safety Board (NTSB) recommendations for the establishment of personnel qualifications and manning regulations for this type of vessel. Compliance with these minimum standards will ensure that qualified individuals are on board to deal with marine safety related matters. This rule will establish three industry-restricted licenses and five sub-categories within one major class of license (the offshore installation manager) and serve as a basis for establishing minimum MODU manning requirements. These regulations are necessary to address the unique characteristics, operating conditions and procedures, service, and extraordinary chain of command and authority inherent in the offshore oil drilling industry. They are being published in conjunction with the complete revision of 46 CFR Part 10 concerning the licensing of maritime personnel under docket number (CGD 81-059) which appears elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received on or before January 14, 1988. This regulation is effective on April 1, 1989, except §§ 15.301 and 15.520 which will be effective on October 1, 1989.

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G–CMC/21) [CGD 81–059a] U.S. Coast Guard, Washington, DC 20593–0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Gerald D. Jenkins, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MVP), phone (202) 267–0224.

SUPPLEMENTARY INFORMATION: Although this is an interim final rule, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the name and address of the person making them, identify this interim final rule [CGD 81–059a], the specific section of the interim final rule to which the comment applies, and the reason for the comment. Persons desiring an acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is confirmed. The delay in placing these regulations in effect will provide the industry time to qualify personnel for the required licenses. Considerable effort on the part of the Coast Guard and industry will be required to prepare the required examinations and course guidelines. In the interim, the Coast Guard will continue to offer licenses as master, mate, chief engineer, and assistant engineer of MODU's.

Drafting Information

The principal drafters of this interim final rule are: CDR George N. Naccara, Office of Merchant Marine Safety, and CDR Ronald C. Zabel, Office of Chief Counsel.

Background

The Notice of Proposed Rulemaking to completely revise licensing regulations in Part 10 of Title 46, Code of Federal Regulations, published on August 8, 1983, (48 FR 35920) included proposed rules which formalized the special industry licenses and extended their application to all mobile offshore drilling units. As a result of comments received, a separate Supplemental Notice of Proposed Rulemaking (SNPRM) concerning the licensing of officers on mobile offshore drilling units (MODU's) and the manning of these vessels was published on October 24, 1985 (50 FR 43366). Six public hearings were held and forty-five specific written comments were received on this project. While there was generally much support for the Coast Guard effort, particularly in conjunction with the industry directed Marine Task Analysis, further changes were necessary to address the differing modes of operation and the types of MODUs. The International Association of Drilling Contractors (IADC) prepared and offered the Coast Guard a marine task analysis for key marine positions on the major types of MODUs in various modes of operation. This report analyzed realistic industry practices and those tasks required of the key marine positions. It also identified personnel training and qualification standards and essential marine tasks. The report provided valuable industry information to the Coast Guard and has been utilized in preparing the proposed rules and this interim final rule. The report is included in the public docket and is available for inspection and copying. Manning examples are also included in the preamble to this rule to provide affected personnel information on Coast Guard manning policy. One should note the variables indicated on the positions, realizing that the final manning is a function of the determinations made by the local Officer in Charge, Marine Inspection.

This interim final rule, in agreement with the industry task analysis, does not require any conventionally licensed personnel on the non-self-propelled units. A person with extensive experience in the drilling industry and an understanding and appreciation for the marine aspects of drilling offshore is most suited for command on a non-self-propelled MODU. The problem of correlating offshore drilling operations with the conventional command structure of a vessel also exists in other countries of the world where MODUs are registered. There is recognition of the need for unique personnel qualifications to meet the demands of both industrial and marine safety. Discussions have been held at the International Maritime Organization (IMO) at various times during recent years. Certain countries have requested the IMO subcommittee on Standards of Training and Watchkeeping (STW) to establish uniform international standards of training and knowledge necessary for persons holding responsible positions on board MODUs. The United States has opposed this, arguing that the IMO subcommittee should "confine its consideration to the conventional maritime training and qualification standards appropriate * * * while in transit and on site floating. * * *" The U.S. position paper delivered to IMO asserted that "consideration of the industrial aspects of such [MODU] operations is believed to be beyond the traditional expertise of the subcommittee and should remain within the authority of each administration. It is indeed a difficult matter to determine the needed qualifications for a person in charge of a MODU since industrial and maritime aspects are so intertwined. The industrial aspects tend to override the marine aspects in terms of specialized knowledge. This knowledge is typically obtained by on-the-job training coupled with short-term shoreside training courses, which include portions dealing with maritime procedures and responsibilities." Therefore, it is the Coast Guard's position that each country should be left to develop appropriate training standards and qualifications for the marine crews and those having joint marine/industrial responsibilities on MODUs. This approach is reflected in this interim final rule.

The only statements concerning personnel qualifications and training on MODUs issued by the STW subcommittee exist in a working paper (STW/WP.4) and in IMO Resolution A.538(13) which mention the necessary familiarity the person-in-charge should have with the characteristics, capabilities and limitations of the unit. These nearly identical documents further state that the person in charge must be fully cognizant of his responsibilities for conducting emergency drills, and that certain designated persons should possess the capability to operate all firefighting equipment and life-saving appliances. These concepts are also followed in this interim final rule.

Discussion of Comments

It was very encouraging to note the quality and constructive criticism contained in the forty-five comments received. The interim final rule was prepared not only with the written comments in mind, but also based on the discussions held at the public hearings. To conform with the approach taken in the revision of Part 10 all license exam topics are listed in a table similar to that prepared for conventional licenses and the MODU engineer exam topics have been added to the conventional engineer license table. In response to comments the following

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adjustments have been made: MODU chief and assistant engineer licenses (which are already being issued) are provided for as alternative manning compliance for certain units in various modes of operation; lifeboatman certification is required for deck licenses in lieu of able seaman qualification; and the license of offshore installation manager is subdivided into five categories to address the unique training requirements an qualifications for the different unit types and modes of operation. In view of the changes and the fact that the companion rule is being published as an interim rule, the rulemaking is being published as an interim rule, subject to comment.

Specific Comment Areas

1. Public Hearings

After publication of the supplemental notice, six hearings were held in Seattle, Washington; San Francisco, California; New York, New York; Washington, DC; Houston, Texas; and New Orleans, Louisiana. Prior to the public hearings, the Coast Guard sent 2500 copies of the proposal to a Coast Guard maintained mailing list and to large associations for reprinting and dissemination to their membership. At the public hearings, the Coast Guard, in a departure from standard public hearing format, introduced the supplemental notice, discussed the highlights of the notice, and then responded immediately to most of the public comments. This process provided opportunity for the constructive exchange of ideas and enhanced the rulemaking process. Public hearings are not planned on this interim final rule unless meaningful substantive issues are raised during the comment period.

2. MODU Deck Licenses

The interim final rule adopts the three new specialized licenses proposed in the SNPRM for service on MODU's. Although the titles given these licenses are offshore installation manager (OIM), barge supervisor (BS), and ballast control operator (BCO), to reflect their specialized nature, they are considered the equivalent of the conventional licenses of master and mate. The terms "master" and "mate" are used in 46 U.S.C. 7101, the Coast Guard's specific licensing authority, and in 46 U.S.C. 8304, which implements the Officer's Competency Convention, but are not defined, apparently because their meaning is so well established in regard to the operation of conventional vessels. The linkage of these titles with specific duties on conventional vessels is so strong that, if the titles were retained for use on MODU's, apparent conflicts would arise with the training requirements, experience levels, and examination requirements of the Internation a 1 Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), 1978. The titles chosen have more meaning in the mixed maritime and industrial environment of MODU operations, where many of the personnel have never served on a MODU which was operating as a conventional vessel. The titles reflect the scope of the duties of the persons who are serving as the equivalent of master and mate.

Most of the comments noted the need for specialized endorsements for the offshore installation manager due to the different types of units and different modes of operation. In response to the comments, the interim final rule provides for special endorsements to more accurately reflect the unique training needs and exam qualifications of each mode of operation and MODU type. The license as offshore installation manager is divided into five categories: OIM/Unrestricted; OIM/Surface Units Under Tow; OIM/Surface Units on Location; OIM/Bottom Bearing Units Under Tow; and OIM/Bottom Bearing Units on Location. Persons serving under these licenses would perform functions with equivalent authority and responsibility as conventional masters and mates. They are issued under the authority of 46 U.S.C. 7101 for all MODUs under tow, on station, or underway independently.

For self-propelled MODUs on location, the conventionally licensed deck officers required on board would need to hold the appropriate endorsement indicated in the proposed manning examples. The Coast Guard's position, which is supported by NTSB findings and by comments, is that conventional masters and mates must have special training and some amount of experience on MODUs prior to assuming positions of responsibility on these vessels. Appropriate sections in the proposal address this issue by requiring between three to six months of service and various industry-related training courses in order to obtain an OIM endorsement.

The interim final licensing regulation, appearing elsewhere in this issue of the **Federal Register** under docket number CGD 81–059, at 46 CFR 10.101, states the overall responsibilities of the licensed personnel on board every type of vessel. Repeating part of this section: "* * * all licensed personnel must become familiar with the relevant characteristics of each vessel prior to assuming their duties. As appropriate, these include but are not limited to: General arrangement of the vessel; maneuvering characteristics; proper operation of the installed navigation equipment; firefighting and lifesaving equipment; stability and loading characteristics; emergency duties; and main propulsion and auxiliary machinery, including steering gear systems and controls." This requirement applies to holders of MODU licenses.

Applicants for any of the three deck MODU licenses would have to successfully complete a Coast Guard written examination appropriate to their tasks and responsibilities. Since these licenses do not authorize service underway independently, typical navigation, shiphandling and position determination topics were excluded. The emphasis instead is placed on ballasting and stability, emergency procedures, meteorology, lifesaving, firefighting, medical care, and maritime law and regulations. We will again request industry assistance to design a comprehensive examination and to develop the questions. The Coast Guard plans to develop the examinations during the interval before the effective date of the regulations. The Coast Guard was quite satisfied with the results of the combined efforts of our own personnel in the Eighth Coast Guard District, the Coast Guard Institute, and the representatives from industry in preparing workable, understandable and, most important, appropriate examinations for able seaman-MOU and lifeboatman-MOU ratings.

In response to comments received from the drilling industry, a certification as lifeboatman will be required for a MODU license rather than certification as able seaman. This certification may be unrestricted lifeboatman or lifeboatman (MOU).

Inquiries were received concerning "grandfathering" provisions for those holding MODU licenses issued during the past 13 years. Persons holding MODU licenses will be "grandfathered" as to their examination requirements. For those persons who obtained master (MODU) or mate (MODU) licenses under the policy guidelines in effect since 1973, the endorsement or license as OIM, BS, or BCO may be obtained by providing evidence of an equivalent amount of service and attendance of the required training courses. The required service and training is considered to be critical in the development of the licensee's competence to serve in those positions.

3. Chain of Command

While some of the comments to the docket suggested different personnel serving separately as OIM and master on self-propelled MODUs, the Coast Guard has decided to continue the concept introduced in the supplemental notice. A clear chain of command is essential on all MODUs. The issue of "who is in charge?" has often been cause for concern wherever MODUs are operating. This proposal provides that the person having ultimate authority, that is,the person required to be in command, is the offshore installation manager (OIM), or the master or mate with OIM endorsement, as appropriate. Our position does not rule out a concept of shared responsibility in some situations (but not shared authority) or the use of specialists in directing or assisting roles. The point to be made is that continuity and control must be assured through a central authority familiar with MODU characteristics, personnel, and with an appreciation for all aspects of MODU operations.

The Coast Guard encourages and expects each company owning or operating MODUs to concisely state in their operating manuals that on self-propelled MODUs the master (with appropriate license endorsement) or on non-self-propelled MODUs, the person serving in the capacity of offshore installation manager, has complete and ultimate responsibility for the rig. In the event that there is more than one person qualified to serve as OIM, it would be the responsibility of the owner of a unit or the owner's agent to designate the OIM in charge. There must be only *one person serving in the capacity of OIM.*

4. Manning Levels on MODUs

Many comments suggested deleting any conventionally licensed personnel from the crew requirements. Statutory requirements for manning on self-propelled vessels, which includes drillships and semi-submersibles, prohibit this at the present time. The billets marked with asterisks in the manning guidelines are subject to revision based upon vessel design and operating status. In determining a sufficient manning scale to operate any MODU, the Officer in Charge, Marine Inspection (OCMI) must consider many factors in addition to specific statutory and regulatory requirements. These factors include, but are not limited to: size of vessel; self-propelled or non-self-propelled status; surface or bottom bearing mode; length of voyage and route; fire protection and lifesaving equipment; number of personnel carried aboard; general arrangement of vessel equipment; level of qualification of each crew member to perform normal or emergency tasks; successful operation of similar vessels; and, among the most important factors, the geographical area of operations, including typical weather patterns and accessibility of rescue and assistance.

5. Rig-Mover Concept

Many comments suggested creating a license as "rig-mover" or "barge-mover" in recognition of the use of such specialists in the drilling industry. The license as OIM/Bottom Bearing Units Under Tow is essentially the rig-mover. Many rig-movers with qualifying service have already obtained a master of MODUs license, which could be converted to an OIM license with documentation of the required training course completions. The responsibility and authority of the rig-mover varies from company to company, as do the requirements to qualify. However, it is a common practice to keep the toolpusher, who would be licensed as an OIM, onboard during rig moves. In such cases, the rig-mover would direct those activities involving the movement of the vessel, but would not be the ultimate authority on firefighting or rig abandonment matters. Instead, the position of a rig-mover can be likened to that of a maritime pilot who acts as a technical adviser to the master, actually giving manuvering orders to the bridge watch, but not assuming ultimate responsiblity for the safety of the vessel.

Use of an unlicensed rig-mover would not be precluded by this rulemaking, as long as a licensed offshore installation manager is on board. There is, however, a critical need for a single ultimate authority relative to vessel and personnel safety. That person is the OIM, who might be the rig-mover licensed as an OIM.

Rig-mover service is by its nature intensive and sporadic. When on duty, that individual is called upon to put in long hours. The rig-mover may also be called upon to go directly from one rig move to the next if scheduling so dictates. That individual may, however, spend extended periods ashore between rig moves and be limited as to the quantity of on board time accumulated.

Additional comment is solicited on means by which equivalent experience to that required of an offshore installation manager might be established. A case by case evaluation is inappropriate without established criteria as this is certain to result in the inequitable treatment of applicants.

6. MODU Engineer Licenses

In response to our request for comments, there was much support for specialized engineer licenses, suitable for self-propelled MODUs in certain modes of operation, and containing a career progression for mariners. In this interim final rule, licenses as chief engineer (MODU) and assistant engineer (MODU) have been added to fit into 46 CFR Part 10. The experience requirements, qualifications and professional examinations are designed similar to the existing licenses issued under our 13 year old policy. Where the Officer in Charge, Marine Inspection (OCMI) determines an equivalent level of safety is maintained, the MODU certificate of inspection may be endorsed allowing MODU license holders to serve on certain self-propelled MODUs in operating modes not requiring the skills of an unlimited license holder. As in current policy, the MODU engineers are an alternative to the conventionally licensed engineers at the discretion of the OCMI.

7. Methods for Certifying Required Training Courses

Nearly all of the comments which discussed the proposed approval or acceptance scheme for training courses required to meet Coast Guard licensing requirements were favorable. Several comments recommended that the "survival suit and survival craft" training be subject to Coast Guard approval rather than industry self-certification. The Coast Guard agrees and has made this change. The specific types of training required for MODU licensed personnel and their method of certification is as follows:

a. Lifeboatman certificate—meeting present regulatory requirements;

b. Survival suit and survival craft training—attendance at a Coast Guard approved course (discussed in 46 CFR Part 10, Subpart C); and,

c. Basic and advanced stability—course will require Coast Guard approval in accordance with the procedures of 46 CFR Part 10, Subpart C.

8. Service Requirements for Masters and Mates To Obtain MODU Licenses

In response to those comments which support higher standards on this issue, the Coast Guard agrees that the amount of service on MODUs proposed for conventionally licensed masters and mates to obtain a MODU endorsement was insufficient, and should be increased. In the interim final rule, the service on MODUs required for masters and mates to obtain an OIM, BS, or BCO

license has been increased by one to three months.

9. Separate Subchapter for MODU Licenses

Many comments suggested a separate subchapter for licensing and manning regulations for MODUs. The Coast Guard does not agree totally with this proposal as we are endeavoring to arrange all our regulations by topic, i.e., all licensing regulations will be in Part 10, all manning regulations in Part 15. The Coast Guard will, as discussed in the supplemental notice, publish a special "specimen examination" booklet addressing the qualifications, training, licenses offered, examination topics and schedules and location of all licensing offices.

10. Conversion of Old Master/Mate MODU Licenses to the New System

Comments requested Coast Guard policy on converting master or mate MODU licenses issued since 1973 to those licenses in the new system. As discussed in the supplemental notice, personnel holding master or mate MODU licenses will not be required to reexamine to convert their licenses to the OIM, BS, or BCO. They will, however, be required to present evidence of an equivalent amount of service and attendance at the appropriate required training courses. Acquisition of the minimum amount of sea service and completion of the required training courses is critical to the development of skills the license holder must possess.

11. "Employment" Versus "Service" for Calculating MODU Experience

A few comments suggested a different phrase "employment assigned to" MODUs in lieu of "service on" MODUs as had been proposed for the license experience requirements. The Coast Guard agrees that the flexibility created by using this phrase rather than the strict "service on" is appropriate in some cases considering a typical assignment in the offshore industry. Therefore, the experience requirements for all MODU licenses have been modified. "Employment assigned to" will include the entire period assigned to a MODU, including that time spent ashore as part of normal crew rotation. The term "service" has been retained where necessary to state the minimum necessary experience on board a unit or performing a particular duty, as appropriate. As an example, if the normal crew rotation is two weeks on and two weeks off, in one year an individual would acquire six months "service on" MODU's and one year "employment assigned to" MODUs.

12. License and Examination Topic Chart

A table similar to that previously proposed for conventional engineers has been designed for all of the MODU licenses as there was much support in the comments for a simplified table with references for all licenses and exam topics.

13. Drilling Safety Courses

Some comments suggested that it was inappropriate for the Coast Guard to become involved with requiring drilling safety courses, and should instead limit its requirements to marine safety considerations. The Coast Guard agrees that requiring such courses merits additional consideration. Therefore, the requirements for blowout prevention or well control, hydrogen sulfide, and drilling equipment safety and management training have not been included in the interim final rule. While the U.S. Minerals Management Service (MMS) already requires such training for certain positions on MODUs, authority to require such training is limited to MODUs on the Outer Continental Shelf of the United States. Comment is solicited as to the appropriateness of requiring personnel with this training to be onboard when MODUs are drilling in foreign locations, or requiring other arrangements which augment the MMS requirement for personnel with such training. Additional comment is solicited as to what material should be included in that training.

14. Manning Scales

The following proposed manning scales would become part of our published policy in the Marine Safety Manual:

Guidelines for Manning of MODUs

1. Drillships underway—voyage of more than 400 miles:

1—Master
1—Chief Mate
1—Second Mate
1—Third Mate
6—Able Seamen
*3—Ordinary Seamen
1—Radio Officer, if required by FCC
1—Chief Engineer
*3—Assistant Engineers**
*3—QMEDs

2. Drillships underway—voyage of less than 400 miles:

1—Master
*2—Mates
*4—Able Seamen
*2—Ordinary Seamen
1—Radio Officer, if required by FCC
1—Chief Engineer
*2—Assistant Engineers**
*3—QMEDs

When engaged on a voyage of 16 hours or less, the required crew may be reduced by 2 ABs, 1 OS, 1 assistant engineer, and 1 QMED. Required mate manning may be modified for short infield moves.

3. Drillships on location:

1—Master (with OIM endorsement)
1—Mate
2—Able Seamen
1—Ordinary Seaman
1—Chief Engineer
*2—QMEDs

4. Self-propelled surface units (other than drillships) underway—voyage of more than 400 miles:

1—Master (with OIM endorsement)
1—Chief Mate (with BS endorsement)
2—Mates (with BCO endorsement)
6—Able Seamen
3—Ordinary Seamen
1—Radio Officer, if required by FCC
1—Chief Engineer
*3—Assistant Engineers**
*3—QMEDs

5. Self-propelled surface units (other than drillships) underway—voyage of less than 400 miles:

1—Master (with OIM endorsement)
*2—Mates (with BCO endorsement)
*4—Able Seamen
*2—Ordinary Seamen
1—Radio Officer, if required by FCC
1—Chief Engineer
*2—Assistant Engineers**
*3—QMEDs

When engaged on a voyage of 16 hours or less, the required crew may be reduced by 2 ABs, 1 OS, 1 assistant engineer, and 1 QMED. Required mate manning may be modified for short infield moves.

6. Self-propelled surface units (other than drillships) on location or under tow:

1—Master (with OIM endorsement)
1—Mate (may also serve as barge supervisor or ballast control operator if so endorsed)
1—Barge Supervisor
2—Ballast Control Operators
2—Able Seamen
1—Ordinary Seaman
1—Chief Engineer**
*2—QMEDs

7. Non-self-propelled surface units (excluding bottom bearing units) on location or under tow:

1—OIM
1—Barge Supervisor
2—Ballast Control Operators
2—Able Seamen

1—Ordinary Seamen

8. Non-self-propelled bottom bearing MODUs on location or under tow:
1—OIM
2—Able Seamen
1—Ordinary Seamen
*—Variables based upon degree of automation, deck labor saving devices, length of period underway, statutory requirements, etc.
**—Individuals holding MODU engineer licenses may be substituted for the required engineers.

Regulatory Evaluation

The Coast Guard considers these regulations to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; 26 February 1979). Coast Guard docket CGD 81-059 (the Licensing of Maritime Personnel revision) contains a full draft regulatory evaluation which also applies to this interim final rule. It may be inspected or copied at the Marine Safety Council (G-CMC/21) [CGD 81-059], Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, from 8 a.m. to 3 p.m.

The rule is not expected to have a significant economic impact. The rule will not require any major expenditures by the maritime industry, consumers, Federal, state or local governments. The costs associated with the interim final rule primarily concern training of personnel. The interim final rule requires individuals serving in certain responsible positions on MODUs of either the self-propelled or non-self-propelled type to obtain a Coast Guard issued license or endorsement that qualifies them for the positions held. Implementation will not increase manning requirements on MODUs but rather will set a standard for training and experience for certain responsible positions. Persons holding these positions on MODUs will have to meet licensing qualifications including a particular level of experience on MODUs, completion of training courses, physical standards and professional examination. Most drilling companies already require high standards of experience and training for the people serving on their units. Therefore, the actual costs are anticipated to be less than the assumed costs.

The cost of the training required by the interim final rule is summarized below. The cost is expressed in 1986 dollars. The assumed cost of $1,452,622 presumes that all personnel that will be required to, hold the required licenses or endorsements on all active U.S. flag MODUs would require the training. The cost may be considered to be a one-time start-up cost, with minimal additional costs in the ensuing years. Of course, anyone entering the industry thereafter would be required to meet the same requirements; however, the offshore industry has been in a severe decline for the past few years and there appear to be no problems in drawing from the current pool of qualified personnel. Although the current industry recession will end, it will probably take an extended period of time for the industry to recover. This will allow a smooth transition as the industry moves from drawing on the large pool of qualified workers, as the recovery begins, to drawing new personnel into the industry as the recovery gains momentum.

The following factors will significantly reduce the assumed cost shown in the evaluation. It is, however, impractical to quantify the exact reductions without polling every licensee and potential license holder in the industry:

(1) Through conversations with industry representatives, it was determined the required amounts of experience are reasonably equivalent to the level of those persons serving in present positions of responsibility;

(2) Many assigned personnel also hold previously issued Coast Guard licenses as master MODU (375 licenses issued), mate MODU (140 licenses), chief engineer MODU (80 licenses) and assistant engineer MODU (25 licenses). By virtue of holding these licenses, they have met our current Coast Guard qualification standards including experience, physical standards and professional examination. They may or may not meet the specialized sea service or training course requirements in this rule. The license holders will have to meet the service and training course requirements in order to convert their licenses to a license under the new system; and,

(3) Many established drilling companies have designed and developed their own in-house training courses and facilities; therefore, these companies already train their personnel in courses similar to those required by the interim final rule. While some costs must still be absorbed, such as loss of productive work time, salary, travel and per diem, the actual cost of the training will be much less when provided by the parent company. Furthermore, by allowing industry certification of courses in some cases, rather than Coast Guard approval, additional flexibility is provided for on-site training with company employees, video cassettes and other portable training devices.

Summary of Costs

1. As explained more fully in the evaluation, assumed training costs are as follows (excluding travel and per diem):

a. Basic and advanced stability.	$1,000	6.5 days
b. Survival suit and survival craft.	175	5
c. First aid and cardiopulmonary resuscitation.	55	2
d. Basic and advanced firefighting.	150	5

2. The figures below reflect the number of licensed individuals required to satisfy the manning standards of those U.S. flag MODUs active in May, 1986. Two individuals for each position is assumed, based upon a standard industry practice of six months on and six months off for each position. The number of required license holders by vessel type is:

a. Drill ships	32
b. Other self-propelled vessels	54
c. Jackups	200
d. Other non-self-propelled	115

3. All the license candidates will be required to complete the courses listed as 1.a. through 1.d. The total cost is $553,380, excluding travel and per diem. This would, on average, involve 18.5 days of training.

4. Finally, the travel and per diem costs must be determined. The computations assume $250 in travel charges and an $85 per diem rate. In addition to the time and travel involved in taking the required courses, a trip to the Regional Examination Center (REC) with two days of testing is included. The travel and per diem costs are:

a. Training required of all candidates	$730,822
b. REC visit	168,420
c. Total	$899,242

5. The total start-up cost to license candidates is $1,452,622.

The total cost will be mitigated by company owned or sponsored training offered on-site to large groups of personnel, among many other factors. Furthermore, the costs associated with licensing and qualification of the personnel in positions of responsibility on MODUs are quite insignificant when compared to typical MODU construction costs and operating fees. Current

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estimates of construction range from $40–$70 million for a jackup rig, $70–$110 million for a semisubmersible and $55–$125 million for a drillship. Operating fees are approximately $8,000–$10,000 per day for jackups, $15,000 per day for semisubmersibles, and $16,000 per day for drillships. The training and qualifications contained in the interim final rule, which are strongly recommended by the National Transportation Safety Board, generally supported by industry, and under development internationally, will certainly be justified if they contribute to the prevention of the loss of even one MODU and its crew, or even minimize the down-time of an operating unit.

Major casualties affecting MODU's are sporadic but when they have occurred, there have been multiple lives lost. If the increased training and experience required for these licenses results in the prevention of casualties which would otherwise have resulted in the loss of only three lives, the benefits of these rules will outweigh the costs. This assumes the minimum accepted value of a human life to be $1,000,000.

The agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. These interim final rules apply to licenses for individuals only. The effect on training schools would be to formalize the requirement to attend such industry-specific training; presently, such training is often optional for the individuals serving on the MODU at the discretion of the owner/operator.

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

The text of this interim final rule is integrated with the remainder of the revision of Parts 10 and 157 (redesignated as Part 15) which are published elsewhere in this issue of the **Federal Register**.

In consideration of the foregoing the Coast Guard is amending Parts 10 and 15 of Title 46, Code of Federal Regulations, as follows:

PART 10—LICENSING OF MARITIME PERSONNEL [AMENDED]

1. The authority citation for Part 10 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101; 43 U.S.C. 1333(d); 49 CFR 1.46 (b) and (z).

2. In § 10.103, the following definitions are added in alphabetical order to read as follows:

§ 10.103 Definitions of terms used in this Part.

* * * * *

"Ballast control operator (BCO)" is a licensed officer restricted to service on MODUs. His duties involve the operation of the complex ballast system found on many MODUs. A ballast control operator, when assigned to a MODU, is the equivalent of a conventionally licensed mate.

* * * * *

"Barge supervisor (BS)" is a licensed officer restricted to service on MODUs. His duties involve support to the OIM in marine related matters including, but not limited to, maintaining watertight integrity, inspecting and maintaining mooring and towing components, and the maintenance of emergency and other marine related equipment. A barge supervisor, when assigned to a MODU is the equivalent of a conventionally licensed mate.

* * * * *

"Employment assigned to" is the total period a person is assigned to work on MODUs, including time spent ashore as part of normal crew rotation.

* * * * *

"Mobile offshore drilling unit (MODU)" means a vessel capable of engaging in drilling operations for the exploration for or exploitation of subsea resources. MODU designs include:

(a) "Bottom bearing units" which include:

(1) "Self-elevating (or jackup) units" with moveable (bottom bearing) legs capable of raising its hull above the surface of the sea; and,

(2) "Submersible units" of ship shape, barge type or novel hull design (other than a self-elevating unit) intended for operating while bottom bearing.

(b) "Surface units" with a ship shape or barge type displacement hull of single or multiple hull construction intended for operating in a floating condition (semi-submersibles and drillships included).

* * * * *

"Offshore installation manager (OIM)" is a licensed officer restricted to service on MODUs. An assigned offshore installation manager is equivalent to a conventionally licensed master or the person-in-charge and has complete and ultimate command of the unit.

"On location" means that the vessel is bottom bearing or moored with anchors placed in the drilling configuration.

* * * * *

3. Section 10.201(f)(1) is revised to read as follows:

§ 10.201 Eligibility for licenses, general.

* * * * *

(f) * * *

(1) A license as master of vessels of 25–200 gross tons on near coastal or inland waters, third mate, third assistant engineer, mate of vessels of 200–1600 gross tons, ballast control operator, assistant engineer (MODU), second-class operator of uninspected towing vessels, radio officer, assistant engineer (limited-oceans), or designated duty engineer on vessels of not more than 4000 horsepower may be granted an applicant who has reached the age of 19 years, but no such license may be raised in grade before the holder has reached the age of 21 years.

* * * * *

4. Section 10.205(f)(1) is revised to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(f) *Character check and references.* (1) Each applicant for an original license shall submit written recommendations concerning the applicant's suitability for duty from a master and two other licensed officers of vessels on which the applicant has served. For a license as engineer or as pilot, at least one of the recommendations must be from the chief engineer or licensed pilot, respectively, of a vessel on which the applicant has served. For a license as operator of uninspected towing vessels, the recommendations may be from recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served. For a license as offshore installation manager, barge supervisor, or ballast control operator, at least one recommendation must be from an offshore installation manager of a unit on which the applicant has served. Where an applicant qualifies for a license through an approved training school, one of the character references must be an official of that school. For a license for which no commercial experience may be required, such as: master or mate 0–200 gross tons, operator of uninspected passenger vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

* * * * *

5. The text of § 10.468 is added to read as follows:

§ 10.468 Licenses for mobile offshore drilling units.

(a) Licenses for service on mobile offshore drilling units (MODUs) authorize service on units of any gross tons upon ocean waters while under tow or at the exploration or exploitation site. These licenses do not authorize service on units when underway independently. Licenses are issued as:

(1) Offshore installation manager (endorsed for one or more of the following):

(i) OIM/Unrestricted;

(ii) OIM/Surface Units on Location;

(iii) OIM/Surface Units Under Tow;

(iv) OIM/Bottom Bearing Units on Location; or,

(v) OIM/Bottom Bearing Units Under Tow.

(2) Barge Supervisor.

(3) Ballast Control Operator.

(b) For a license as offshore installation manager, an applicant must meet the following applicable requirements:

(1) Applicants not holding an unlimited license as master, chief mate or second mate must have qualifying experience as follows:

(i) Four years of employment assigned to MODUs including at least two years service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position; or,

(ii) An appropriate bachelor of science or associate degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology and have at least two years of employment assigned to MODUs with one year serving in a supervisory position on MODUs.

(2) In addition to the general requirements for license listed in Subpart B of this Part and successful completion of the examinations in Subpart I of this Part, the applicant for the license as offshore installation manager shall also present certificates or evidence of course completion as follows:

(i) Lifeboatman certificate (unrestricted or MOU);

(ii) Basic and advanced stability course certificates (Coast Guard approved); and,

(iii) Survival suit and survival craft training (Coast Guard approved).

(3) Applicants holding an unlimited license as master, chief mate or second mate must meet the requirements in paragraph (b)(2) or (b)(3) of this section as appropriate, and have six months service on MODUs in order to obtain an endorsement for offshore installation manager.

(c) For a license as barge supervisor, an applicant must meet the following applicable requirements:

(1) Applicants not holding an unlimited license as master or mate must have qualifying experience as follows:

(i) Three years of employment assigned to MODUs with at least one year of service as mechanic, electrician, driller, subsea specialist, or ballast control operator of which at least six months shall have been as a ballast control operator; or,

(ii) An appropriate bachelor of science or associate degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology and have one year of employment assigned to MODUs with at least six months service in a supervisory position, and three months service as a ballast control operator.

(2) In addition to the general requirements for license listed in Subpart B of this Part and successful completion of the examinations in Subpart I of this Part, the applicant shall also present certificates or evidence of course completion as follows:

(i) Lifeboatman certificate (unrestricted or MOU);

(ii) Basic and advanced stability course certificates (Coast Guard approved); and,

(iii) Survival suit and survival craft training (Coast Guard approved).

(3) Applicants holding an unlimited license as master or mate must meet the requirements in paragraph (c)(2) of this section and have six months of employment assigned to MODUs including three months service as ballast control operator or trainee in order to obtain an endorsement for barge supervisor.

(d) For a license as ballast control operator, an applicant must meet the following applicable requirements:

(1) Applicants not holding an unlimited license as master, mate or engineer must have qualifying experience as follows:

(i) One year of employment assigned to MODUs including three months of training in the position of ballast control operator. This ballast control training must include one month service as an observer with the ballast control operator; or,

(ii) An appropriate bachelor of science or associate degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology and three months of training in the position of ballast control operator. This training must include one month service as an observer with the ballast control operator.

(2) In addition to the general requirements for license listed in Subpart B of this Part and successful completion of the examination in Subpart I of this Part, the applicant must also present certificates and evidence of course completion as follows:

(i) Lifeboatman certificate (unrestricted or MOU);

(ii) Basic and advanced stability course certificates (Coast Guard approved); and,

(iii) Survival suit and survival craft training (Coast Guard approved).

(3) Applicants holding an unlimited license as master, mate or engineer must meet the requirements in subparagraph (d)(2) of this section and have three months of employment assigned to MODUs including one month service as an observer with the ballast control operator in order to obtain an endorsement for ballast control operator.

6. The text of § 10.470 is added to read as follows:

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Figure 10.470 MODU Licenses

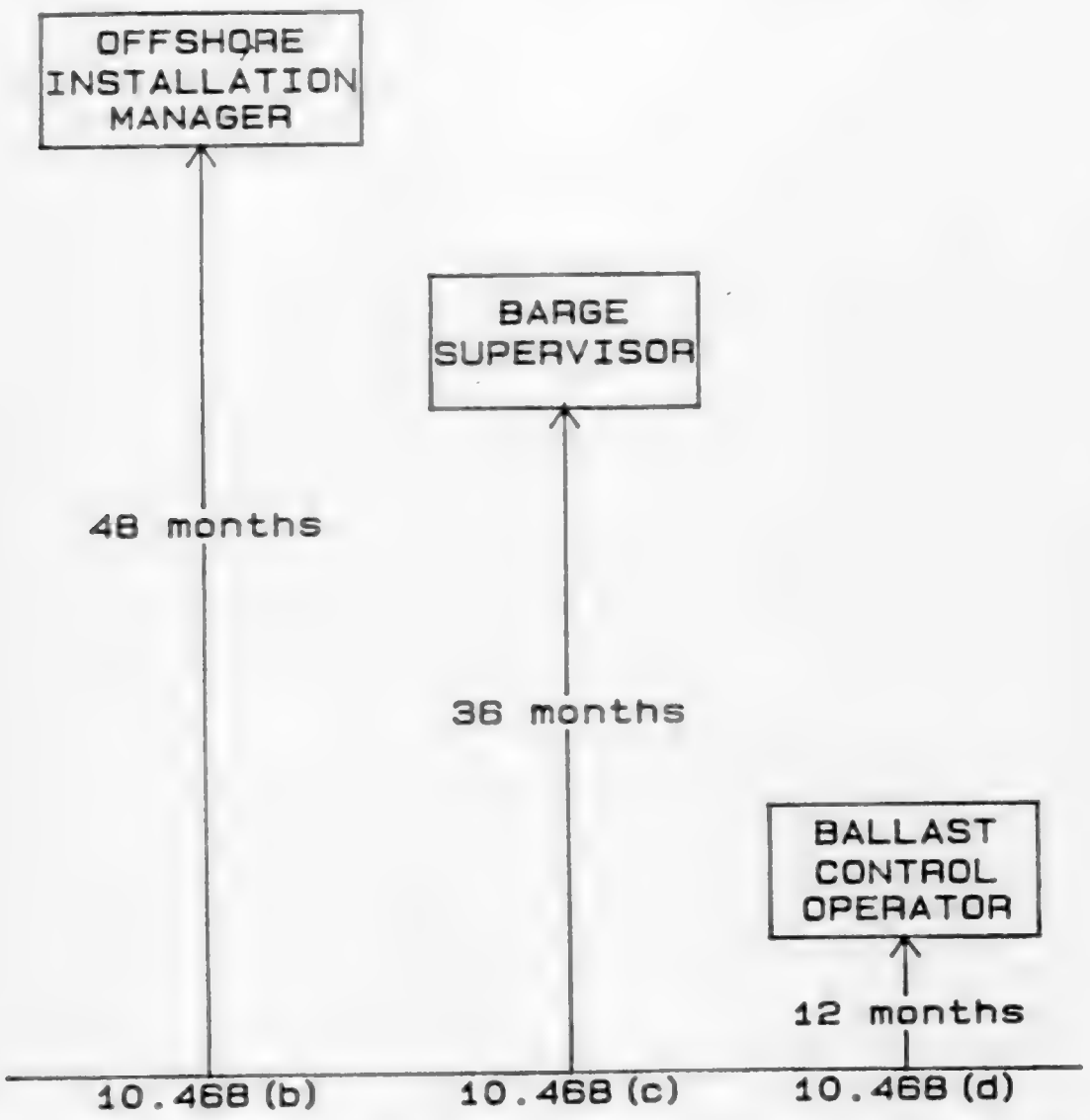

§ 10.470 Mobile offshore drilling unit (MODU) license structure.

7. The text of § 10.540 is added to read as follows:

§ 10.540 Licenses for mobile offshore drilling units (MODUs).

(a) Licenses as chief engineer or assistant engineer of mobile offshore drilling units (MODUs) authorize service on certain self-propelled or non-self-propelled units of any horsepower.

(b) For a license as chief engineer (MODU) an applicant must have:

(1) Six years of employment assigned to MODUs including three years employed as mechanic, motorman, subsea engineer, electrician, barge engineer, toolpusher, unit superintendent, crane operator or equivalent. Eighteen months of this six year employment must have been aboard self-propelled units; or,

(2) Two years of employment as an assistant engineer (MODU).

(c) For a license as assistant engineer (MODU), an applicant must have:

(1) Three years of employment assigned to MODUs with 18 months employed as mechanic, electrician, motorman, subsea engineer, barge engineer, toolpusher, unit superintendent, crane operator or equivalent. Nine months of this three year employment must have been aboard self-propelled units; or,

(2) Three years of employment in the machinist trade engaged in the construction or repair of diesel engines together with one year of employment on MODUs in the capacity of mechanic, motorman, oiler, or equivalent; or,

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(3) An appropriate bachelor of science or associate degree from the marine engineering, mechanical or electrical engineering program of a recognized school of technology accredited by the Accreditation Board for Engineering and Technology, and have at least six months of employment in any of the capacities listed in paragraph (c)(1) of this section.

8. The text of § 10.920 is added to read as follows:

§ 10.920 Subjects for mobile offshore drilling unit (MODU) licenses.

TABLE 10.920.—SUBJECTS FOR MODU LICENSES

Examination topics	OIM	BS	BCO
Watchkeeping:			
*COLREGS	X	X	
"Basic Principles To Be Observed in Keeping a Navigational Watch"	X	X	
Meteorology and Oceanography:			
Synoptic chart weather forecasting	X	X	
Characteristics of weather systems	X	X	X
Ocean current systems	X	X	
Tide and tidal current publications	X	X	
*Tide and tidal current calculations	X		
Stability, Ballasting, Construction and Damage Control:			
Principles of construction, structural members	X	X	X
Trim and stability	X	X	X
*Damage trim and stability, countermeasures	X	X	X
*Stability and trim calculations	X	X	X
*IMO stability recommendations	X	X	X
Casualty control	X	X	X
Leg reaction & reloading calculations	X	X	
Operating manual	X	X	X
*Ballasting procedures	X	X	X
*Load line requirements	X	X	
Maneuvering and Handling:			
*Anchoring and anchor handling	X	X	
Heavy weather operations	X	X	X
*Mooring, positioning	X	X	
*Towing operations, general	X	X	
Fire Prevention and Firefighting Appliances:			
Organization of fire drills	X	X	X
Classes and chemistry of fire	X	X	X
Firefighting systems	X	X	X
Firefighting equipment and regulations	X	X	X
Basic firefighting and prevention (isolation and containment)	X	X	X
Emergency Procedures and Contingency Plans:			
Temporary repairs	X	X	X
Fire or explosion	X	X	X
Abandon ship	X	X	X
Man overboard	X	X	
Heavy weather	X	X	X
Collision	X	X	X
*Failure of ballast control system	X	X	X
General Engineering—Power Plants and Auxiliary Systems:			
Marine engineering terminology	X	X	X
Marine power plant operating principles	X	X	
Auxiliary machinery	X	X	
Mathematics involved in engineering calculations		X	
Deck Seamanship—General:			
Transfer of personnel	X	X	
Support boats/helicopters	X	X	
Cargo stowage and securing	X	X	
Hazardous materials/dangerous goods precautions	X		
Mooring equipment	X		
Crane use procedures & inspections	X	X	
Medical Care:			
Knowledge and use of:			
International Medical Guide for Ships	X	X	
Ships Medicine Chest and Medical Aid at Sea	X	X	
First aid	X	X	X
Preventative and controlled medicines	X		
First response medical action	X	X	
Maritime Law and Regulation:			
International maritime law:			
Certificates and documents required	X		
SOLAS	X		
International Convention on Prevention of Pollution from Ships (MARPOL 73/78)	X		
International health regulations	X		
National maritime law:			
Certification & documentation of vessels	X		
Ship sanitation	X		
Rules and regulations for vessel inspection	X		
Pollution prevention regulations	X	X	
Licensing and certification regulations	X		
Rules and regulations for MODUs	X	X	
Personnel Management and Training:			
Ship's business including:			
Required logs and record keeping	X	X	X
Shipping articles	X		
Casualty reports and records	X		
Shipboard organization	X		
Required crew training	X	X	
Communications:			
Radiotelephone communications and FCC permit	X	X	
Radiotelegraphy emergency distress signals and frequencies	X	X	
Radiotelephone procedures	X	X	
Lifesaving/Survival:			
Lifesaving appliance operation (launching, boat handling)	X	X	X
Procedures and regulations involving lifeboats, survival suits, PFDs, liferafts and workvests, emergency signals	X	X	X
Hypothermia/exposure	X	X	X
Emergency radio transmissions	X	X	X
Survival at sea	X	X	X

*Note: Items marked with an asterisk are not required for OIM/Bottom Bearing Units on Location.

9. Section 10.950 is amended by adding two columns to table 10.950 marked to reference the existing subject list, which is republished herein for clarity, to read as follows:

§ 10.950 Subjects for engineer licenses.

TABLE 10.950—SUBJECTS FOR ENGINEER LICENSES

	. . .	C/E MODU	A/E MODU
I Theoretical Knowledge:			
1. Thermodynamics			
2. Combustion Processes.			
3. Heat Transmission			
4. Mechanics & Hydromechanics.		X	X
5. Propulsion System Operating Prin.:			
—Diesel		X	X
—Steam			
6. Refrigeration		X	X
7. Steering Gear			
8. Properties of Fuels and Lubricants.		X	X
9. Technology/ Properties of Materials.		X	X
10. Fire and Extinguishing Agents		X	X
11. Marine Electrotechnology.		X	
12. Marine Electronics		X	X
13. Marine Electrical Equipment.		X	X
14. Automation, Instrumentation and Control Systems		X	X
15. Naval Architecture		X	
16. Ship Construction		X	X
17. Damage Control		X	X
II Practical Knowledge:			
1. Operation/ Maintenance			
—Diesel Plant		X	X
—Steam Plant		X	X
2. Operation/ Maintenance of Auxiliary Machinery including.			
—Pumping/ Piping Systems			
—Auxiliary Boiler Plant			
—Steering Gear Systems			
—Propellors and Shafting Systems			
—Auxiliary Diesel Plants			
—Sanitary/ Sewage Systems			
—Fresh Water Systems			
—Distilling Systems			
—Lubrication Systems			
—Automation Systems			
—Control Systems			
—Cooling Systems			
—Ventilation Systems			
3. Operation/ Testing/ Control of Electrical and Control Equipment.		X	X
4. Operation/ Maintenance of			
—Cargo Handling Equipment		X	X
—Deck Machinery		X	X
5. Machinery Malfunction Detection and Action to Prevent Damage		X	X
6. Maintenance & Repair Procedures		X	X
7. Fire Prevention, Detection, and Extinction.		X	X
8. Methods to Prevent Pollution by Vessels.		X	X
9. Pollution Prevention Regulations		X	X
10. Effects of Marine Pollution on the Environment.		X	X
11. First Aid/First Aid Equipment.		X	X
12. Lifesaving Appliances		X	X
13. Damage Control including Engineroom Flooding		X	X
14. Safe Working Practices.		X	X

TABLE 10.950—SUBJECTS FOR ENGINEER LICENSES—Continued

	* * *	C/E MODU	A/E MODU
III Watchstanding:			
1. Change of Watch		X	X
2. Routine Watch Duties.		X	X
3. Machinery Log Book		X	X
4. Main/Auxiliary Machinery Start Up Procedures.		X	X
5. Boiler Operation			
6. Boiler Water Levels			
7. Diesel Plant Operation.		X	X
8. Routine Pumping Operations.		X	X
9. Bilge, Ballast, Cargo Pumping Systems.		X	X
10. Generator/ Alternator Synchronizing & Shifting.		X	X
11. Watch Safety Precautions.		X	X
12. Fire or Accident		X	X
13. Electrical Safety Precautions.		X	X
IV Miscellaneous:			
1. Approved Fire Fighting Course.		X	X
2. International Rules and Regulations Regarding Machinery/ Engineering.		X	X
3. U.S. Rules and Regulations Regarding Machinery/ Engineering.		X	X

PART 15—MANNING REQUIREMENTS [AMENDED]

10. The authority citation for Part 15 continues to read as follows:

Authority: 46 U.S.C. 3703, 8105, 9102; 50 U.S.C. 198; 49 CFR 1.46(b).

11. Section 15.301 is amended by adding paragraphs (b)(8), (b)(9), and (b)(10) to read as follows:

§ 15.301 Definition of terms used in this part.

* * * * *

(b) * * *

(8) Offshore installation manager (OIM);

(9) Barge supervisor (BS);

(10) Ballast control operator (BCO).

* * * * *

12. The text of § 15.520 is added to read as follows:

§ 15.520 Mobile offshore drilling units.

(a) The requirements in this section for mobile offshore drilling units (MODUs) supplement other requirements in this part.

(b) A license as offshore installation manager (OIM), barge supervisor (BS), or ballast control operator (BCO) authorizes service only upon MODUs. A license as OIM is restricted to the MODU type and mode of operation specified on the license.

(c) Self-propelled MODUs (other than a drillship) must be under the command of an individual who holds a license as master endorsed as OIM.

(d) Drillships must, when on location, be under the command of an individual who holds a license as master endorsed as OIM.

(e) Non-self-propelled MODUs must be under the command of an individual who holds a license as OIM.

(f) An individual serving as mate on a self-propelled surface unit (other than a drillship) must hold an appropriate license as mate and an endorsement as BS or BCO. Individuals holding licenses as barge supervisor or ballast control operator may be substituted for the required mates when a self-propelled surface unit (other than a drillship) is on location or under tow, under certain circumstances as determined by the cognizant OCMI.

(g) An individual holding a license as barge supervisor is required on a surface unit (other than a drillship) when the MODU is on location or under tow.

(h) An individual holding a license or endorsement as barge supervisor also may serve as ballast control operator.

(i) The OCMI issuing the vessel's certificate of inspection may authorize the substitution of chief or assistant engineer (MODU) for chief or assistant engineer, respectively, on self-propelled surface units.

(j) Drillships, when underway, will be required to meet the same manning standards as a conventional industrial vessel.

(k) Requirements in this part concerning radar observers do not apply to non-self-propelled MODUs.

(l) Mobile offshore drilling units, when afloat and equipped with a ballast control room, must have that ballast control room continuously manned by an individual holding a license or endorsement authorizing service as ballast control operator.

Dated: May 27, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-23432 Filed 10-15-87; 8:45 am]

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Friday
October 16, 1987

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of October 1, 1987, of 13 deferrals contained in the first special message of FY 1988. There were no rescissions proposed. This message was transmitted to the Congress on October 1, 1987.

Rescissions (Table A and Attachment A)

As of October 1, 1987, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of October 1, 1987, $1,771.7 million in 1987 budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below: Vol. 52, FR 37739, Thursday, October 8, 1987.

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	1,776.7
Routine Executive releases through October 1, 1987 (OMB/Agency releases of $5.0 million and cumulative adjustments of $0)	-5.0
Overturned by the Congress	0
Currently before the Congress	1,771.7

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of October 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of October 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-87
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D88-1	40,000		10-1-87	5,000				35,000
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-3	120,425		10-1-87					120,425
Timber salvage sales	D88-4	34,841		10-1-87					34,841
Cooperative work	D88-5	628,025		10-1-87					628,025
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87					104
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					51,015
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					636
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D88-10	6,171		10-1-87					6,171
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D88-11	11,638		10-1-87					11,638

Attachment B - Status of Deferrals - Fiscal Year 1988

As of October 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-87
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D88-12	879,049		10-1-87					879,049
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS		1,776,738	0		5,000	0		0	1,771,738

[FR Doc. 87-23995 Filed 10-15-87; 8:45 am]
BILLING CODE 3110-01-C

federal register

Friday
October 16, 1987

Part VI

Congressional Budget Office

Sequestration Report for Fiscal Year 1988; Notice

CONGRESSIONAL BUDGET OFFICE

Sequestration Report for Fiscal Year 1988

AGENCY: Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the Initial Sequestration Report for Fiscal Year 1988 to the Office of Management and Budget and the Congress in accordance with the new procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100–119.

BILLING CODE 1450-01-M

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CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

October 15, 1987

Honorable James C. Miller III
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Miller:

In accordance with the new procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119, I herewith transmit to you my *Initial Sequestration Report for Fiscal Year 1988*.

Following the specifications set forth in the act, the report provides two sets of budget baseline estimates for 1988--one based on laws and regulations in effect on January 1, 1987, and the other for October 10, 1987. Because no full-year appropriations for 1988 have been enacted so far, both sets of budget baseline estimates use inflated 1987 appropriations as stipulated in the act.

Sequestration of budgetary resources will be necessary for 1988 if the amount of net deficit reduction since January 1 is less than $23 billion. The Congressional Budget Office estimates that the budget baseline deficit for 1988 has increased by $1.0 billion between January 1 and October 10, 1987. Therefore, the required amount of outlay reductions to be obtained through sequestration is $23.0 billion, the maximum amount specified by law for 1988. The report calculates the amounts and percentages by which various budgetary resources must be sequestered, including a detailed listing by budget account.

We would be pleased to provide you with any assistance that you may require in preparing your own initial sequestration report.

With best wishes,

Sincerely yours,

Edward Gramlich

Edward M. Gramlich
Acting Director

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CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

October 15, 1987

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

In accordance with the new procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119, I herewith submit to the Congress my *Initial Sequestration Report for Fiscal Year 1988*.

Following the specifications set forth in the act, the report provides two sets of budget baseline estimates for 1988--one based on laws and regulations in effect on January 1, 1987, and the other for October 10, 1987. Because no full-year appropriations for 1988 have been enacted so far, both sets of baseline budget estimates use inflated 1987 appropriations as stipulated in the act.

Sequestration of budgetary resources will be necessary for 1988 if the amount of net deficit reduction since January 1 is less than $23 billion. The Congressional Budget Office estimates that the budget baseline deficit for 1988 has increased by $1.0 billion between January 1 and October 10, 1987. Therefore, the required amount of outlay reductions to be obtained through sequestration is $23.0 billion, the maximum amount specified by law for 1988. The report calculates the amounts and percentages by which various budgetary resources must be sequestered, including a detailed listing by budget account.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the initial report by the Director of the Office of Management and Budget to be issued on October 20, 1987.

With best wishes,

Sincerely yours,

Edward Gramlich

Edward M. Gramlich
Acting Director

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

October 15, 1987

Honorable James C. Wright, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

In accordance with the new procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119, I herewith submit to the Congress my *Initial Sequestration Report for Fiscal Year 1988.*

Following the specifications set forth in the act, the report provides two sets of budget baseline estimates for 1988--one based on laws and regulations in effect on January 1, 1987, and the other for October 10, 1987. Because no full-year appropriations for 1988 have been enacted so far, both sets of baseline budget estimates use inflated 1987 appropriations as stipulated in the act.

Sequestration of budgetary resources will be necessary for 1988 if the amount of net deficit reduction since January 1 is less than $23 billion. The Congressional Budget Office estimates that the budget baseline deficit for 1988 has increased by $1.0 billion between January 1 and October 10, 1987. Therefore, the required amount of outlay reductions to be obtained through sequestration is $23.0 billion, the maximum amount specified by law for 1988. The report calculates the amounts and percentages by which various budgetary resources must be sequestered, including a detailed listing by budget account.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the initial report by the Director of the Office of Management and Budget to be issued on October 20, 1987.

With best wishes,

Sincerely yours,

Edward Gramlich

Edward M. Gramlich
Acting Director

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INITIAL SEQUESTRATION REPORT FOR FISCAL YEAR 1988

A Congressional Budget Office
Report to the Congress
and the Office of Management and Budget

October 15, 1987

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NOTES

All years referred to in this report are fiscal years, unless otherwise noted.

Details in the text and tables of this report may not add to totals because of rounding.

The Balanced Budget and Emergency Deficit Control Act of 1985 (popularly known as Gramm-Rudman-Hollings) is also referred to in this report more briefly as the Balanced Budget Act. The amendments to this act made by Public Law 100-119, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, are also referred to in this report more briefly as the Reaffirmation Act.

The source for all data in this report is the Congressional Budget Office, unless otherwise noted.

INITIAL SEQUESTRATION REPORT FOR FISCAL YEAR 1988

A CONGRESSIONAL BUDGET OFFICE REPORT TO THE CONGRESS AND THE OFFICE OF MANAGEMENT AND BUDGET

October 15, 1987

INTRODUCTION

The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) provides a new set of deficit targets to be met over the next six years and reinstitutes an automatic sequestration procedure for achieving deficit reductions. The act also provides a $10 billion margin-of-error amount for 1988 through 1992, but none for 1993. The new deficit targets specified by the act are:

Fiscal Year	Maximum Deficit (in billions of dollars)
1988	144
1989	136
1990	100
1991	64
1992	28
1993	0

The sequestration of budgetary resources would be triggered automatically under the following conditions:

- For 1988 only, if the amount of net deficit reduction achieved through laws enacted and regulations promulgated between January 1, 1987, and November 20, 1987, is less than $23 billion. The act sets a $23 billion deficit reduction target for 1988 so that the deficit target of $144 billion and the $10 billion margin-of-error amount do not affect sequestration.
- For 1989 only, if the estimated deficit on October 10, 1988, exceeds $146 billion ($136 billion deficit target plus the $10 billion margin) and the amount of net deficit reduction achieved through laws enacted and regulations promulgated between January 1, 1988, and October 10, 1988, is less than $36 billion.
- For 1990 through 1992, if the estimated deficit at the beginning of each fiscal year exceeds the deficit target by more than $10 billion.
- For 1993 only, if there is any deficit estimated on October 15, 1992.

Sequestration involves the permanent cancellation of new budget authority and other authority to obligate and expend funds, except for special and trust funds where the sequestered amounts of spending authority remain in the funds. The sequestration of budgetary resources is designed to achieve outlay reductions sufficient to reach the deficit targets, except for 1988 and 1989 when the outlay reductions that can be achieved through sequestration are limited to $23 billion and $36 billion, respectively.

Under the Reaffirmation Act, the Director of the Office of Management and Budget (OMB) is to determine each year whether or not sequestration is necessary and the magnitude of sequestration. The role of the Congressional Budget Office (CBO) is advisory to OMB and the Congress. Each year, the two agencies are required to prepare independently two sets of sequestration reports. The CBO reports are transmitted to the Director of OMB and to the Congress, and they provide a benchmark against which the Congress and others may assess the OMB reports. The OMB reports are made to the President and to the Congress, and they provide the basis for sequestration orders to be issued by the President. The timetable for the agency reports and sequestration orders is shown in the box on the next page.

The initial CBO and OMB sequestration reports are to be based on laws enacted and regulations promulgated as final by a common "snapshot date" (October 10 for the 1988 reports). The revised reports, however, must be based on laws enacted and regulations promulgated by the latest possible date

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before they are issued. Therefore, because the snapshot date may be different in the two final agency reports, some legislation and regulations reflected in one report may not be reflected in the other.

Unlike the original Balanced Budget Act of 1985, the amended law does not provide a role for the Comptroller General in the preparation and issuance of sequestration reports. His role under the amended Balanced Budget Act is threefold: preparing a report each year to the Congress and the President that certifies whether the final sequestration order issued by the President complies with the requirements of the Balanced Budget Act, as amended; assessing the compliance and accuracy of the OMB sequestration reports; and making recommendations for improving sequestration procedures. The Comptroller's first report for fiscal year 1988 is due December 15, 1987; in later years, it is due on November 15.

This document is the initial CBO report for 1988. The report:

- Estimates budget baseline levels as of January 1, 1987, and October 10, 1987, the amount of net deficit change that has occurred between the two dates, and the outlay reductions required for 1988;
- Provides CBO economic assumptions used for the two baseline estimates, including the estimated rate of real economic growth for fiscal year 1988 by quarter; and
- Calculates the amounts and percentages by which various budgetary resources must be sequestered in order to achieve the required outlay reductions.

BUDGET BASELINE TOTALS

The CBO budget baseline estimates of total revenues, outlays, and the deficit for fiscal year 1988 are shown in Table 1. These estimates are made in accordance with the specifications set forth in the Balanced Budget Act, as amended by the Reaffirmation Act of 1987. Two sets of budget baseline estimates are provided--one for laws and regulations in effect on January 1, 1987, and the other for laws and regulations in effect on October 10, 1987. The economic and technical assumptions used for the October 10 budget baseline estimates are also used for the January 1 budget baseline estimates. The differences between the two sets of estimates, therefore, result only from laws enacted and final regulations promulgated since January 1 (except for federal pay raises).

The budget baseline specifications were altered by the Reaffirmation Act to approximate more closely the concepts that have been used by OMB in its current services estimates and by CBO in its baseline projections--primarily in the treatment of annual appropriations. When appropriations for the new fiscal year have not been enacted, the CBO and OMB budget baseline estimates under the act are to

	For FY 1988	For FY 1989-1993
Snapshot date for initial CBO and OMB reports	October 10	August 15
Initial CBO report	October 15	August 20
Initial OMB report	October 20	August 25
Initial sequestration order	October 20	August 25
Revised CBO report	November 16	October 10
Revised OMB report	November 20	October 15
Final sequestration order	November 20	October 15

Table 1. CBO ESTIMATES OF BUDGET BASELINE TOTALS FOR 1988
(In billions of dollars)

Budget Aggregates	As of January 1	As of October 10	Difference
Revenues	897.0	897.0	a/
Outlays	1,075.3	1,076.3	1.0
Deficit	178.3	179.3	1.0

a. Less than $50 million.

be based on the appropriations enacted for the previous year with an adjustment for inflation and increased pay costs. The act specifies that the inflator used for 1988 budget baseline estimates shall be 4.2 percent. The inflation factor for future years will be the estimated increase in the gross national product implicit price deflator. For federal personnel costs in 1988, and for 70 percent of personnel costs in 1989 through 1993, the inflator is reduced when pay raises would be in effect for only part of the fiscal year, and is also reduced to account for 22 percent historical pay absorption.

In addition, the Reaffirmation Act resolved a number of disagreements between CBO and OMB about budget baseline calculations under the original Balanced Budget Act regarding appropriated entitlements, federal pay raises, and farm price supports. According to the amended act, appropriated entitlements will be assumed to be fully funded, provision will be made for federal pay raises, and advanced farm deficiency and paid land diversion payments will be included in the budget baseline estimates unless otherwise required by law. The act did not resolve, however, the disagreement about how the new Federal Employees' Thrift Savings Fund should be handled for federal budget accounting. Following guidance in a recent opinion by the General Accounting Office, CBO has not included any amounts for the fund in its budget baseline estimates, in contrast to the President's budget and the Congressional budget resolution for 1988, which include the fund in the budget. This different treatment, however, does not affect the calculations of net deficit reductions in 1988.

For nonappropriated spending accounts and revenues, the baseline estimates assume that current laws and regulations will continue unchanged, except that expiring provisions of law will terminate as scheduled. The amended Balanced Budget Act, however, provides an exception to the general treatment of expiring provisions in the cases of excise taxes dedicated to a trust fund, Commodity Credit Corporation agricultural price support programs, and contract authority for transportation trust funds. As required by the act, the budget baseline estimates include the receipts and outlays of the Social Security trust funds, even though they are legally off-budget.

The Reaffirmation Act provides that asset sales and loan prepayments shall neither be included in the budget baseline estimates nor contribute to any net deficit reduction. The act makes an exception for asset sales and loan prepayments that are routine and ongoing according to fiscal year 1986 practices and for asset sales mandated by law as of September 17, 1987. The budget baseline estimates may not, however, assume or reflect an acceleration of routine asset sales and loan prepayments. The act also prohibits the inclusion of savings resulting from the transfer of outlays, receipts, or revenues from one year to an adjacent year, except for certain types of transfers identified in law.

Under these specifications, CBO's estimate of the budget baseline deficit for 1988 as of October 10 is $179.3 billion. This is $9.4 billion higher than the $169.9 billion deficit that CBO estimated as of August 15 in the joint CBO/OMB sequestration report of August 20, 1987. Almost all of the higher deficit amount can be attributed to inflating 1987 appropriations as required by the Reaffirmation Act.

Table 2 shows the estimated budget effect of laws enacted and final regulations promulgated since January 1, 1987, and the effect of the President's federal pay raise proposal submitted to the Congress at the end of August. The estimated net deficit change that has occurred since January 1 is an increase of $1.0 billion. The increase results primarily from the supplemental appropriations for 1987 enacted in July, which add an estimated $3.0 billion to the budget baseline for 1988. Partially offsetting this increase are other legislative actions and the President's proposal to limit federal pay raises for 1988 to 2 percent. As required by the Reaffirmation Act, the January 1 budget baseline estimates assume that the federal pay raises effective January 1, 1988, will be 4.2 percent, the same inflation factor that is assumed for other appropriated funds. Substituting a 2 percent pay raise proposed by the President reduces the budget baseline deficit by $1.0 billion. Other laws enacted between January 1 and October 10, 1987, reduce the budget baseline deficit for 1988 by an estimated $1.2 billion, as shown in Table 2.

Table 2. CBO ESTIMATES OF DEFICIT REDUCTIONS ACHIEVED FOR 1988

Budget Baseline Deficit as of January 1, 1987	178.3
Effect of New Laws and Regulations:	
Supplemental Appropriations, 1987 (P.L. 100-71)	3.0
Federal employee pay raises a/	-1.0
Surface Transportation and Relocation Act (P.L. 100-17)	-0.4
Competitive Equality Banking Act of 1987 (P.L. 100-86)	-0.6
Balanced Budget Reaffirmation Act of 1987 (P.L. 100-119)	-0.2
Other enacted laws (Public Laws 100-4, 6, 14, 20, 45, 72, 92, and 93) and regulations	0.1
Debt service costs b/	0.2
Net Deficit Change	1.0
Budget Baseline Deficit as of October 10, 1987	179.3

a. Estimated savings from substitution of 2 percent pay raises for 4.2 percent pay raises assumed for January 1 baseline.

b. Costs result largely from the supplemental appropriations for 1987.

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the CBO budget baseline estimates for fiscal year 1988 are shown in Table 3. These assumptions are unchanged from those contained in the August 20 joint CBO/OMB sequestration report. CBO's technical assumptions also are unchanged except for Medicare supplementary medical insurance premium rates and the Medicare economic index, which incorporate the actual amounts announced recently by the Health Care Financing Administration.

The Balanced Budget Act requires the OMB and CBO Directors to estimate the rate of real economic growth for the fiscal year covered by their reports, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than 1 percent for two consecutive quarters, the Congress can suspend many of the provisions of the act. Table 3 cites the CBO estimates for the rate of real economic growth for fiscal year 1988; Table 4 shows the quarterly estimates. CBO does not project real economic growth to be less than zero in any quarter during fiscal year 1988.

Table 3. CBO ECONOMIC ASSUMPTIONS FOR 1988

Gross National Product:	
Current dollars (in billions of dollars)	4,718
Percent change, year over year	7.0
Constant (1982) dollars (in billions of dollars)	3,886
Percent change, year over year	2.8
GNP Implicit Price Deflator (percent change, year over year)	4.1
CPI-W (percent change, year over year)	5.1
Civilian Unemployment Rate (percent, fiscal year average)	6.1
Interest Rates (fiscal year average):	
91-day Treasury bills	6.6
10-year Treasury notes	8.5

REQUIRED OUTLAY REDUCTIONS

Sequestration of budgetary resources will be necessary for 1988 if the amount of net deficit reduction since January 1 is less than $23 billion. The Congressional Budget Office estimates that the budget baseline deficit has increased by $1.0 billion between January 1 and October 10, 1987. Therefore, the required amount of outlay reductions to be obtained through sequestration is $23.0 billion, the maximum amount specified by law for 1988. One half of the required outlay reduction--($11.5 billion)--must be taken from defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half from nondefense programs.

All savings from eliminating automatic spending increases in three specific programs--the National Wool Act, the special milk program, and vocational rehabilitation--are applied to the required reduction in outlays for nondefense programs. According to CBO estimates, this would produce $19 million in outlay savings in 1988. The outlay savings to be obtained by applying four special rules are also credited to the required spending reductions in nondefense programs. These special rules are for guaranteed student loans, foster care and adoption assistance, Medicare, and certain health programs, and are described in a later section of this report. Outlay savings for these programs under the special rules would be $1.6 billion.

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Table 4. REAL ECONOMIC GROWTH RATES FROM PREVIOUS QUARTER
(Percentage growth at annual rates)

Fiscal Year 1987			Fiscal Year 1988 Estimates			
Actual		Estimate				
Jan-Mar 1987 a/	Apr-Jun 1987 a/	Jul-Sep 1987	Oct-Dec 1987	Jan-Mar 1988	Apr-Jun 1988	Jul-Sep 1988
4.4	2.5	2.6	2.9	3.1	2.3	2.4

a. As reported by the Department of Commerce (September 18, 1987).

The $11.5 billion in outlay reductions in defense programs and the remaining $9.9 billion in outlay reductions in nondefense programs must be taken on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The required outlay savings to be achieved through across-the-board reductions are divided by the estimated outlays from sequesterable budgetary resources in each category. The resulting uniform reduction percentages are then applied to all of the sequesterable budgetary resources (budget authority, credit authority, and other spending authority) for defense and nondefense programs.

According to CBO estimates, the 1988 outlays associated with sequesterable budgetary resources for defense programs are $110.5 billion. This amount excludes $71.2 billion in 1988 outlays for military personnel accounts that the President has chosen to exempt from sequestration, which he is permitted to do under the Reaffirmation Act. The President notified the Congress of this exemption on October 10. Outlays from obligated defense balances in 1988 are also excluded by law from the sequesterable outlay base. The uniform percentage to be applied to sequesterable defense budgetary resources therefore is 10.4 percent, as shown in Table 5. The effect of the President's exemption for military personnel accounts is to increase the uniform percentage reduction made in all the remaining defense accounts by 4.1 percentage points since the total required defense outlay reduction of $11.5 billion is unchanged by his action.

The 1988 outlays associated with sequesterable budgetary resources for nondefense programs subject to the uniform percentage reduction are estimated to be $113.5 billion. A number of non-defense programs are exempted by law from the sequestration process. The largest are Social Security benefits, net interest, certain low-income programs, most federal retirement and disability benefits, veterans compensation and pensions, and regular state unemployment insurance benefits. Outlays

Table 5. CBO SEQUESTRATION CALCULATIONS FOR 1988
(Outlays in millions of dollars)

	Defense Programs	Nondefense Programs
Total Required Outlay Reductions	11,500	11,500
Savings from Eliminating Automatic Spending Increases	---	19
Savings from the Application of Special Rules:		
Guaranteed student loans	---	25
Foster care and adoption assistance	---	9
Medicare	---	1,390
Other health programs	---	178
Remaining Reductions Required	11,500	9,879
Estimated Sequestration Outlay Base a/	110,459	113,509
Uniform Reduction Percentage	10.4	8.7

a. Excludes $71,177 million in estimated military personnel outlays that have been exempted from sequestration by the President. Includes $7,490 million in estimated 1989 utlays for the Commodity Credit Corporation that can be affected by a 1988 sequestration (see discussion of special rule for the CCC). Also includes an estimated $2,264 million in outlays from the spending of offsetting collections.

from prior-year appropriations for nondefense programs are also generally not subject to sequestration. Federal administrative expenses for most otherwise exempt programs and activities, however, are sequesterable. The estimated uniform percentage to be applied to sequesterable nondefense programs is 8.7 percent (see Table 5).

The calculations in this report generally assume that all nonexempt budgetary resources can be sequestered so as to produce outlay savings, including entitlement programs and other mandatory spending programs where the spending authority is not controlled through the annual appropriation process. An exception is made for the administrative expenses of the Postal Service. While more than $1 billion of budgetary resources of the Postal Service are sequesterable under CBO estimates, no outlay savings are attributed by CBO to sequestration because the Administration appears to have no mechanism for enforcing a sequestration order on the Postal Service. The CBO calculations also exclude the 1988 federal payment of $214 million to the Corporation for Public Broadcasting because the entire payment was made on October 1, 1987.

AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Balanced Budget Act, as amended, are listed in Table 6. (Automatic spending increases in federal retirement and disability programs were subject to sequestration under the original act, but have been exempted by subsequently enacted legislation.) The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be gained by eliminating these increases.

SPECIAL RULES

The Balanced Budget Act provides special rules for the sequestration of budgetary resources for certain federal programs. This section describes these special rules and their application to the 1988 sequestration calculations. The estimated outlay savings derived from the first four rules are shown separately in Table 5. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Table 6. AUTOMATIC SPENDING INCREASES FOR 1988 SUBJECT TO SEQUESTRATION
(Outlay estimates in millions of dollars)

Program	Scheduled Increase (percent)	Sequestration Outlay Reductions
National Wool Act a/	3.5	4
Special Milk Programs	b/	b/
Vocational Rehabilitation c/	1.6	15
Total		19

a. Payment increases are based on changes in wool parity price.
b. Benefits are indexed to the Producer Price Index for Fresh Processed Milk. This index is not projected to increase between May 1987 and May 1988.
c. This program is indexed to the change in the Consumer Price Index from October of the previous year.

Guaranteed Student Loan Program

The Balanced Budget Act requires two changes in the guaranteed student loan (GSL) program to occur automatically under sequestration. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage points or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0.25 percentage points. Second, a student's origination fee will increase by 0.50 percentage points. In both cases, sequestration affects only GSL loans disbursed during the applicable fiscal year, but after the order is issued. For 1988, these changes are estimated by CBO to reduce outlays by $25 million.

Foster Care and Adoption Assistance Programs

The Balanced Budget Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, the amounts are limited to the extent that the reductions can be made by reducing federal matching payments by a uniform percentage across states. The increases in payment rates for these programs are made by the states and localities. Any increases planned by the states for fiscal year

1988 were included in the CBO calculations for sequestration reductions. The estimated outlay savings in 1988 from sequestration are $9 million.

Medicare

The sequestration reductions in the Medicare program are to be achieved by reducing payment amounts for covered services. No changes in coinsurance or deductible amounts are to be made, and covered services are unaffected under a sequestration order. Under such an order, each payment amount for services provided during the fiscal year would be reduced by a maximum of 2 percent relative to whatever level of payment would otherwise be made under Medicare law and regulation. For fiscal year 1988, however, sequestration reductions for Medicare will not go into effect until a final sequestration order is issued on November 20, 1987. In order to achieve a full-year reduction of 2 percent in Medicare outlays, a 2.3 percent reduction in payments will be necessary after November 20. Based on the need for a $23.0 billion sequestration in 1988, a full-year reduction of 2 percent will be required. According to CBO estimates, the outlay savings to be achieved in 1988 by applying this special rule are $1.4 billion.

Veterans Medical Care and Other Health Programs

The Balanced Budget Act limits reductions in budget authority for the nonadministrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1988 and any subsequent year. The estimated outlay savings to be achieved in 1988 by applying this special rule in these programs are $178 million.

Child Support Enforcement Program

In the child support enforcement (CSE) program, the Balanced Budget Act provides that sequestration of entitlement payments to states, including grants to states for interstate projects from the Family Support Administration's program administration account, is to be accomplished by reducing the federal matching rates for state administrative expenses. For 1988, the federal matching rate on most expenditures under CBO estimates would be reduced from 68 percent to 60.3 percent, and the rate for computer-related expenditures would be reduced from 90 percent to 79.8 percent. These reductions in the matching rates are necessary to achieve the same 8.7 percent reduction applied to other nondefense programs, adjusted to allow also for the sequestration of spending on interstate grants.

If states increase their share of CSE spending to maintain total program spending at the expected 1988 level, this reduction in the federal matching rate will lower federal outlays by the same percentage as other nondefense programs. If states do not increase their 1988 budgeted amounts to compensate for lower matching rates, however, the lower federal matching rate would result in a larger percentage reduction in federal spending than the act requires. The estimated outlay savings that are to be achieved in 1988 by applying this special rule are $87 million.

Unemployment Compensation Programs

The Balanced Budget Act provides that the following items are not to be sequestered: regular state unemployment benefits, the state share of extended unemployment benefits, unemployment benefits paid to former federal employees and former members of the armed services, and loans and advances to the state and federal unemployment accounts. The federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and state and federal administrative expenses are to be sequestered.

Both the federal and state shares of extended unemployment benefits are paid from the unemployment trust fund--the federal share from a federal account and the state share from each state's account. State law sets the amount of each weekly extended benefit. The Balanced Budget Act permits any state to reduce the weekly extended benefit amount by a percentage equal to the percentage reduction in the federal share. If states do not change their laws to provide for such a reduction, weekly benefit payments will not be reduced, the state share will increase by the amount of the decrease in the federal share, and total budget outlays that include both federal and state benefits will not be changed by the sequestration. No states are currently paying extended benefits.

Commodity Credit Corporation

Under the Balanced Budget Act, payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year are subject to a percentage reduction. The act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and

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activities within CCC's jurisdiction. The act further stipulates that outlay reductions in the post-sequestration year that are the result of contract adjustments in the sequestration year should be credited to the overall outlay reduction required in the sequestration year. The amount of outlay savings to be achieved by applying this special rule are estimated by CBO to be $772 million in 1988, and $652 million in 1989. The actual amount of savings realized in each year will depend upon how the sequestration is implemented for the various CCC programs. In accordance with the act, however, all $1.4 billion of these estimated outlay savings are credited toward the $11.5 billion nondefense spending reduction required for 1988.

Federal Pay

The Balanced Budget Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced pursuant to a sequestration order. Budgetary resources available for federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses, which include travel, printing, supplies, and other services. The total amount of governmentwide savings to be achieved in 1988 from employee compensation cannot be estimated because program managers are expected to be urged not to resort to personnel furloughs and reductions in force until other administrative expenses are reduced as much as possible.

SEQUESTRATION REDUCTIONS

A summary of the CBO calculations for the sequestration of budgetary resources and the estimated outlay savings for 1988 are provided for national defense programs in Table 7 and for nondefense programs by function in Table 8. The tables show CBO budget baseline estimates for new budget authority and outlays, the sequestration reductions, and the post-sequestration levels. Table 9 provides a similar summary of the 1988 sequestration reductions for credit programs. In most instances, additional outlay savings would be gained in 1989 and later years as a result of the cancellation of 1988 budget authority. The 1989 savings have not been estimated for this report. A detailed listing of the sequestration base and reductions by agency and budget account by type of spending authority is provided as an appendix to this report.

The CBO sequestration calculations and post-sequestration spending levels are advisory and do not necessarily represent the final outcome of fiscal year 1988. The actual sequestration amounts will be determined by the Office of Management and Budget. OMB's initial sequestration calculations will be issued on October 20, and an initial Presidential sequestration order will become effective that day. This order will result in temporary withholding of funds from obligation and expenditure until a final order is issued on November 20. Since no full-year appropriations for 1988 have been enacted yet, the sequestration for appropriated budget accounts will be applied to the short-term continuing resolution that is in effect through November 10.

The final sequestration reports and Presidential order will incorporate any new laws enacted and regulations promulgated after October 10. If the Congress acts to achieve net deficit reductions of $23 billion from the January 1 budget baseline before November 20, there will be no sequestration of spending for 1988. If the net deficit reductions fall short of $23 billion, sequestration of spending will be necessary to make up the difference and the sequestration calculations will be altered accordingly. Under CBO estimates, the Congress will have to achieve $24 billion in net deficit reductions during the next five weeks to avoid sequestration because $1 billion has been added to the budget baseline deficit since January 1, 1987.

The amended Balanced Budget Act allows the President to propose modifications to the sequestration order for defense programs as long as the total required outlay reductions are still met. This provision could result in changes in the amount of defense budgetary resources that would be sequestered. The Congress would have to approve such a proposal or its own version under expedited legislative procedures. The amended act also provides for an expedited procedure under which the Congress may enact a joint resolution requiring the President to modify his sequestration order, including modifications that effectively cancel it.

In addition, the amended act establishes a procedure for the sequestration of budget accounts in the event that a short-term continuing resolution is in effect when the final order is issued and full-year appropriations are enacted later. In this situation, the sequestration dollar amount will be applied to the full-year appropriation with credit given for any reductions below the budget baseline. Supplemental appropriations are not affected by this new procedure.

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TABLE 7. DEFENSE PROGRAM SEQUESTRATIONS FOR 1988 (In billions of dollars)

Budget Function 050	October Baseline a/	CBO Estimated Sequestration b/	Post-Sequestration
Department of Defense-Military:			
Military personnel			
Budget authority	75.4	0 c/	75.4
Outlays	74.9	0	74.9
Operation and maintenance			
Budget authority	83.7	8.7	75.1
Outlays	81.3	6.6	74.7
Procurement			
Budget authority	89.1	9.3	79.9
Outlays	83.5	1.7	81.7
Research, development, test, and evaluation			
Budget authority	37.5	3.9	33.6
Outlays	34.7	2.2	32.5
Military construction and other			
Budget authority	8.8	1.0	7.8
Outlays	7.8	0.4	7.5
Subtotal, DoD--military			
Budget authority	294.6	22.8	271.8
Outlays	282.2	10.9	271.3
Atomic Energy Defense Activities			
Budget authority	7.8	0.8	7.0
Outlays	7.7	0.6	7.1
Other Defense-related Activities d/			
Budget authority	0.5	e/	0.5
Outlays	0.6	e/	0.5
Total			
Budget authority	302.9	23.7	279.3
Outlays	290.4	11.5	278.9

a. Does not include an estimated $47.7 billion in unobligated balances subject to sequestration.

b. Does not include $5.0 billion in unobligated balances that would be sequestered.

c. The President has exempted the military personnel accounts from sequestration in 1988.

d. Includes the function 050 portion of Federal Emergency Management Agency budget accounts, which are reduced at the same rate as nondefense programs.

e. $50 million or less.

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TABLE 8. NONDEFENSE PROGRAM SEQUESTRATIONS FOR 1988 BY FUNCTION
(In billions of dollars)

Budget	Function	October Budget Baseline	CBO Estimated Sequestration	Post-Sequestration
150	International Affairs			
	Budget authority	17.5	1.6	15.9
	Outlays	16.4	0.9	15.5
250	General Science, Space, and Technology			
	Budget authority	13.1	1.1	12.0
	Outlays	11.0	0.6	10.4
270	Energy			
	Budget authority	3.8	0.5	3.3
	Outlays	4.0	0.3	3.7
300	Natural Resources and Environment			
	Budget authority	15.9	1.5	14.4
	Outlays	14.8	1.0	13.8
350	Agriculture a/			
	Budget authority	28.2	1.0	27.2
	Outlays	27.4	1.1	26.3
370	Commerce and Housing Credit			
	Budget authority	9.4	0.3	9.1
	Outlays	6.0	0.3	5.7
400	Transportation			
	Budget authority	28.0	2.4	25.6
	Outlays	28.1	0.8	27.3
450	Community and Regional Development			
	Budget authority	7.7	0.5	7.2
	Outlays	6.6	0.2	6.5
500	Education, Training, Employment, and Social Services			
	Budget authority	35.7	2.6	33.0
	Outlays	33.5	0.9	32.6
550	Health			
	Budget authority	44.5	1.2	42.3
	Outlays	44.3	0.6	43.7
570	Medicare			
	Budget authority	94.9	---	94.9
	Outlays	82.3	1.5	80.8
600	Income Security			
	Budget authority	169.8	1.3	167.6
	Outlays	132.7	0.7	132.0
650	Social Security			
	Budget authority	258.4	---	258.4
	Outlays	220.7	0.2	220.5
700	Veterans Benefits and Services			
	Budget authority	28.5	0.5	28.0
	Outlays	28.0	0.4	27.6
750	Administration of Justice			
	Budget authority	9.3	0.8	8.5
	Outlays	9.1	0.7	8.5
800	General Government			
	Budget authority	7.5	0.7	6.8
	Outlays	7.1	0.6	6.5
850	General Purpose Fiscal Assistance			
	Budget authority	1.9	0.1	1.8
	Outlays	1.9	0.1	1.7
900	Net Interest b/			
	Budget authority	150.0	0.9	149.1
	Outlays	150.0	0.9	149.1
950	Undistributed Offsetting Receipts			
	Budget authority	-38.0	---	-38.0
	Outlays	-38.0	---	-38.0
	Total			
	Budget authority	885.1	16.9	868.2
	Outlays	785.9	11.7	774.2

a. Excludes $0.7 billion in estimated 1989 outlay savings for programs of the Commodity Credit Corporation that are credited toward the 1988 sequestration (see discussion of special rule for CCC).

b. Includes $0.9 billion savings in debt service costs as result of 1988 outlay reductions through sequestration.

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TABLE 9. CREDIT PROGRAM SEQUESTRATIONS FOR 1988 BY FUNCTION
(In billions of dollars)

Budget Function		October Budget Baseline	CBO Estimated Sequestration	Post-Sequestration
150	International Affairs			
	Direct loans	6.2	0.5	5.6
	Loan guarantees	12.2	1.1	11.1
270	Energy			
	Direct loans	1.3	0.1	1.2
	Loan guarantees	2.2	0.2	2.0
300	Natural Resources and Environment			
	Direct loans	0.1	a/	0.1
350	Agriculture			
	Direct loans	17.4	1.5	15.9
	Loan guarantees	8.1	0.7	7.4
370	Commerce and Housing Credit			
	Direct loans	2.8	0.2	2.6
	Loan guarantees	255.0	22.2	232.8
400	Transportation			
	Direct loans	0.1	a/	0.1
450	Community and Regional Development			
	Direct loans	1.1	0.1	1.0
	Loan guarantees	0.5	a/	0.5
500	Education, Training, Employment, and Social Services			
	Direct loans	0.1	a/	0.1
550	Health			
	Direct loans	a/	a/	a/
600	Income Security			
	Direct loans	a/	a/	a/
700	Veterans Benefits and Services			
	Direct loans	a/	a/	a/
	Loan guarantees	31.6	2.8	28.9
	Total			
	Direct loans	29.0	2.5	26.5
	Loan guarantees	309.6	26.9	282.7

NOTE: Direct loans include new direct loan obligations, commitments, and limitations. Loan guarantees include new loan guarantee commitments and limitations.

a. $50 million or less.

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APPENDIX

SEQUESTRATION REDUCTIONS

BY AGENCY AND BUDGET ACCOUNT

(Fiscal Year 1988, in thousands of dollars)

Percentages used:

Defense	10.4 percent
Nondefense	8.7 percent

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Legislative Branch			
Senate			
Mileage of the Vice President and Senators			
00 0101 0 1 801	Budget Authority	63	5
	Outlays	50	4
Expense allowances of the Vice President, President Pro Tempore, Majorit			
00 0107 0 1 801	Budget Authority	58	5
	Outlays	58	5
Representation allowances for the Majority and Minority Leaders			
00 0108 0 1 801	Budget Authority	21	1
	Outlays	21	2
Salaries, officers and employees			
00 0110 0 1 801	Budget Authority	196,564	17,101
	Outlays	184,770	16,075
Miscellaneous items			
00 0123 0 1 801	Budget Authority	12,102	1,053
	Outlays	12,102	1,053
Secretary of the Senate			
00 0126 0 1 801	Budget Authority	697	61
	Outlays	691	60
Sergeant at Arms and Doorkeeper of the Senate			
00 0127 0 1 801	Budget Authority	67,334	5,858
	Outlays	60,601	5,272
Inquiries and investigations			
00 0128 0 1 801	Budget Authority	57,760	5,025
	Outlays	54,872	4,774
Expenses of United States International Narcotics Control Commission			
00 0129 0 1 801	Budget Authority	349	30
	Outlays	315	27
Stationery (revolving fund)			
00 0140 0 1 801	Budget Authority	14	1
	Outlays	14	1
Office of Senate Legal Counsel			
00 0171 0 1 801	Budget Authority	637	55
	Outlays	478	42
Expense allowances of the Secretary of the Senate, Sergeant at Arms, and			
00 0172 0 1 801	Budget Authority	13	1
	Outlays	8	1
Senate policy committees			
00 0182 0 1 801	Budget Authority	2,156	188
	Outlays	1,833	159
Office of the Legislative Counsel of the Senate			
00 0185 0 1 801	Budget Authority	1,617	141
	Outlays	1,536	134
House of Representatives			
Mileage of Members			
00 0208 0 1 801	Budget Authority	219	19
	Outlays	110	10
House leadership offices			
00 0408 0 1 801	Budget Authority	3,710	323
	Outlays	3,298	287
Salaries, officers and employees			
00 0410 0 1 801	Budget Authority	56,961	4,956
	Outlays	55,195	4,802
Members' clerk hire			
00 0415 0 1 801	Budget Authority	188,396	16,390
	Outlays	185,570	16,145
Committee employees			
00 0416 0 1 801	Budget Authority	53,136	4,623
	Outlays	52,605	4,577
Committee on Appropriations (studies and investigations)			
00 0418 0 1 801	Budget Authority	4,629	403
	Outlays	4,398	383
Committee on the Budget (studies)			
00 0419 0 1 801	Budget Authority	343	30
	Outlays	309	27
Special and select committees			
00 0433 0 1 801	Budget Authority	55,268	4,809
	Outlays	53,058	4,616

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Allowances and expenses			
00 0438 0 1 801	Budget Authority	157,650	13,715
	Outlays	132,426	11,521
Congressional use of foreign currency, House of Representatives			
00 0488 0 1 801	401(C) Authority	2,779	242
	Outlays	2,779	242
Joint Items			
Capitol Guide Service			
00 0170 0 1 801	Budget Authority	1,089	95
	Outlays	980	85
Joint Committee on Printing			
00 0180 0 1 801	Budget Authority	1,017	88
	Outlays	915	80
Joint Economic Committee			
00 0181 0 1 801	Budget Authority	3,029	264
	Outlays	2,876	250
Office of the Attending Physician			
00 0425 0 1 801	Budget Authority	1,353	118
	Outlays	541	47
Joint Committee on Taxation			
00 0460 0 1 801	Budget Authority	4,555	396
	Outlays	4,327	376
General expenses, Capitol police			
00 0476 0 1 801	Budget Authority	1,960	170
	Outlays	1,665	145
Statements of appropriations, House of Representatives			
00 0499 0 1 801	Budget Authority	21	2
Official mail costs			
00 0825 0 1 801	Budget Authority	95,263	8,288
	Outlays	95,263	8,288
Congressional Budget Office			
Salaries and expenses			
08 0100 0 1 801	Budget Authority	18,698	1,627
	Outlays	16,828	1,464
Architect of the Capitol			
Office of the Architect of the Capitol: Salaries			
01 0100 0 1 801	Budget Authority	5,825	507
	Outlays	5,301	461
Contingent expenses			
01 0102 0 1 801	Budget Authority	52	5
	Outlays	52	5
Capitol buildings			
01 0105 0 1 801	Budget Authority	12,834	1,117
	Outlays	11,474	998
Capitol grounds			
01 0108 0 1 801	Budget Authority	3,436	299
	Outlays	3,027	263
Senate office buildings			
01 0123 0 1 801	Budget Authority	27,171	2,364
	Outlays	26,193	2,279
House office buildings			
01 0127 0 1 801	Budget Authority	27,370	2,381
	Outlays	24,469	2,129
Capitol Power Plant			
01 0133 0 1 801	Budget Authority	25,794	2,244
	401(C) Authority - Off. Coll.	135	12
	Outlays	22,318	1,942
Structural and mechanical care, Library buildings and grounds			
01 0155 0 1 801	Budget Authority	6,454	561
	Outlays	5,983	521
Library of Congress			
Salaries and expenses			
03 0101 0 1 503	Budget Authority	144,409	12,564
	401(C) Authority - Off. Coll.	5,000	435
	Outlays	123,415	10,737
Salaries and expenses, Copyright Office			
03 0102 0 1 376	Budget Authority	10,867	945
	401(C) Authority - Off. Coll.	6,992	608
	Outlays	16,935	1,473
Congressional Research Service: Salaries and expenses			
03 0127 0 1 801	Budget Authority	43,554	3,789
	Outlays	39,373	3,425
Books for the blind and physically handicapped: Salaries and expenses			
03 0141 0 1 503	Budget Authority	37,793	3,288
	Outlays	18,897	1,644

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Collection and distribution of library materials (special foreign curren			
03 0144 0 1 503	Budget Authority	410	36
	Outlays	[illegible]0	2
Furniture and furnishings			
03 0146 0 1 503	Budget Authority	5,298	461
	Outlays	1,325	115
Gift and trust fund accounts			
03 9971 0 7 503	401(C) Other - incl. ob. limit	346	30
	Outlays	346	30
Government Printing Office			
Office of Superintendent of Documents: Salaries and expenses			
04 0201 0 1 806	Budget Authority	23,506	2,045
	Outlays	15,514	1,350
Printing and binding			
04 0202 0 1 801	Budget Authority	11,845	1,031
	Outlays	7,699	670
Congressional printing and binding			
04 0203 0 1 801	Budget Authority	68,634	5,971
	Outlays	52,162	4,538
Government Printing Office revolving fund			
04 4505 0 4 806	401(C) Authority - Off. Coll.	29,000	2,523
	Outlays	29,000	2,523
General Accounting Office			
Salaries and expenses			
05 0107 0 1 801	Budget Authority	332,584	28,935
	Outlays	305,977	26,620
United States Tax Court			
Salaries and expenses			
23 0100 0 1 752	Budget Authority	27,499	2,392
	Outlays	21,999	1,914
Other Legislative Branch Agencies			
Commission on Security and Cooperation in Europe: Salaries and expenses			
09 0110 0 1 801	Budget Authority	573	50
	Outlays	515	45
Botanic Garden: Salaries and expenses			
09 0200 0 1 801	Budget Authority	2,265	197
	Outlays	2,039	177
Salaries and expenses, Copyright Royalty Tribunal			
09 0310 0 1 376	Budget Authority	133	12
	Outlays	119	10
Biomedical Ethics: Salaries and expenses			
09 0400 0 1 801	Budget Authority	166	14
	Outlays	166	14
Office of Technology Assessment: Salaries and expenses			
09 0700 0 1 801	Budget Authority	17,141	1,491
	Outlays	12,950	1,127
Railroad Accounting Principles Board: Salaries and expenses			
09 0800 0 1 801	Budget Authority	657	57
TOTAL FOR Legislative Branch			
	Budget Authority	1,823,460	158,642
	401(C) Authority	2,779	242
	401(C) Authority - Off. Coll.	41,127	3,578
	401(C) Other - incl. ob. limit	346	30
	Outlays	1,678,268	146,010
The Judiciary			
Supreme Court of the United States			
Salaries and expenses			
10 0100 0 1 752	Budget Authority	14,767	1,285
	Outlays	11,592	1,009
Care of the building and grounds			
10 0103 0 1 752	Budget Authority	2,427	211
	Outlays	2,233	194
United States Court of Appeals for the Federal Circuit			
Salaries and expenses			
10 0510 0 1 752	Budget Authority	6,066	528
	Outlays	5,465	475
United States Court of International Trade			
Salaries and expenses			
10 0400 0 1 752	Budget Authority	6,638	578
	Outlays	6,306	549
Courts of Appeals, District Courts, and other Judicial Services			
Salaries and expenses			
10 0920 0 1 752	Budget Authority	963,846	83,854
	Outlays	890,594	77,482

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Defender services			
10 0923 0 1 752	Budget Authority	91,241	7,938
	Outlays	54,745	4,763
Fees of jurors and commissioners			
10 0925 0 1 752	Budget Authority	56,460	4,912
	Outlays	52,508	4,568
Court security			
10 0930 0 1 752	Budget Authority	37,545	3,266
	Outlays	26,845	2,336
Administrative Office of the United States Courts			
Salaries and expenses			
10 0927 0 1 752	Budget Authority	32,227	2,803
	Outlays	28,586	2,487
Federal Judicial Center			
Salaries and expenses			
10 0928 0 1 752	Budget Authority	11,348	987
	Outlays	9,045	787
Bicentennial Expenses, The Judiciary			
Bicentennial activities			
10 0933 0 1 806	Budget Authority	1,042	91
TOTAL FOR The Judiciary			
	Budget Authority	1,223,607	106,453
	Outlays	1,087,919	94,650
Executive Office of the President			
The White House Office			
Salaries and expenses			
11 0110 0 1 802	Budget Authority	26,504	2,306
	Outlays	23,854	2,075
Executive Residence at the White House			
Operating expenses			
11 0210 0 1 802	Budget Authority	5,140	447
	401(C) Authority - Off. Coll.	729	63
	Outlays	5,761	501
Official Residence of the Vice President			
Operating expenses			
11 0211 0 1 802	Budget Authority	222	19
	Outlays	50	4
Special Assistance to the President			
Salaries and expenses			
11 1454 0 1 802	Budget Authority	1,937	169
	Outlays	1,705	148
Council of Economic Advisers			
Salaries and expenses			
11 1900 0 1 802	Budget Authority	2,484	216
	Outlays	2,161	188
Council on Environmental Quality and Office of Environmental Quality			
Council on Environmental Quality and Office of Environmental Quality			
11 1453 0 1 802	Budget Authority	874	76
	Outlays	830	72
Office of Policy Development			
Salaries and expenses			
11 2200 0 1 802	Budget Authority	2,838	247
	Outlays	2,469	215
National Security Council			
Salaries and expenses			
11 2000 0 1 802	Budget Authority	4,946	430
	Outlays	3,957	344
National Critical Materials Council			
Salaries and expenses			
11 0111 0 1 802	Budget Authority	190	17
	Outlays	172	15
Office of Administration			
Salaries and expenses			
11 0038 0 1 802	Budget Authority	16,719	1,455
	Outlays	12,038	1,047
Office of Management and Budget			
Office of Federal Procurement Policy: salaries and expenses			
11 0201 0 1 802	Budget Authority	1,739	151
	Outlays	1,567	136
Salaries and expenses			
11 0300 0 1 802	Budget Authority	40,233	3,500
	Outlays	35,767	3,112
Office of Science and Technology Policy			
Salaries and expenses			
11 2600 0 1 802	Budget Authority	2,048	178
	Outlays	1,229	107

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Office of the United States Trade Representative			
Salaries and expenses			
11 0400 0 1 802	Budget Authority	14,400	1,253
	Outlays	12,240	1,065
White House Conference on Drug Abuse and Control			
Salaries and expenses			
11 0212 0 1 551	Budget Authority	5,328	464
	Outlays	4,369	380
TOTAL FOR Executive Office of the President			
	Budget Authority	125,602	10,928
	401(C) Authority - Off. Coll.	729	63
	Outlays	108,169	9,409
Funds Appropriated to the President			
Disaster Relief			
Disaster relief			
11 0039 0 1 453	Budget Authority	125,040	10,878
	Outlays	75,024	6,527
Unanticipated Needs			
Unanticipated needs			
11 0037 0 1 802	Budget Authority	1,053	92
	Outlays	1,013	88
International Security Assistance			
Peacekeeping operations			
11 1032 0 1 152	Budget Authority	33,020	2,873
	Outlays	14,133	1,230
Economic support fund			
11 1037 0 1 152	Budget Authority	3,712,642	323,001
	Direct Loan Limitation	182,955	15,917
	Outlays	2,267,775	197,296
Military assistance			
11 1080 0 1 152	Budget Authority	991,070	86,223
	Outlays	257,678	22,418
International military education and training			
11 1081 0 1 152	Budget Authority	58,352	5,077
	Outlays	26,258	2,284
Foreign military sales credit			
11 1082 0 1 152	Budget Authority	4,223,686	367,461
	Direct Loan Limitation	4,223,686	367,461
	Outlays	1,985,961	172,778
Multilateral Assistance			
Contribution to the Inter-American Development Bank			
11 0072 0 1 151	Budget Authority	35,095	3,053
	Outlays	360	31
Contribution to the International Development Association			
11 0073 0 1 151	Budget Authority	864,964	75,252
	Outlays	86,496	7,525
Contribution to the Asian Development Bank			
11 0076 0 1 151	Budget Authority	109,034	9,486
	Outlays	5,516	480
Contribution to International Bank for Reconstruction and Development			
11 0077 0 1 151	Budget Authority	58,149	5,059
	Outlays	5,815	506
Contribution to the International Finance Corporation			
11 0078 0 1 151	Budget Authority	7,509	653
	Outlays	7,509	653
Contribution to the African Development Fund			
11 0079 0 1 151	Budget Authority	94,225	8,197
Contribution to the African Development Bank			
11 0082 0 1 151	Budget Authority	21,340	1,857
	Outlays	21,340	1,857
Contribution to the special facility for Sub-Saharan Africa			
11 0086 0 1 151	Budget Authority	67,527	5,875
	Outlays	13,505	1,175
International organizations and programs			
11 1005 0 1 151	Budget Authority	247,229	21,509
	Outlays	162,985	14,180
Agency for International Development			
Operating expenses Agency for International Development			
11 1000 0 1 151	Budget Authority	369,605	32,156
	Outlays	277,204	24,117
Operating expenses, Agency for International Development			
11 1007 0 1 151	Budget Authority	22,612	1,967
	Outlays	16,959	1,475
Sahel development program			
11 1012 0 1 151	Budget Authority	72,940	6,346
	Outlays	8,972	781

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
American schools and hospitals abroad			
11 1013 0 1 151	Budget Authority	36,470	3,173
	Outlays	9,300	809
Functional development assistance program			
11 1021 0 1 151	Budget Authority	1,534,853	133,533
	Direct Loan Limitation	156,300	13,598
	Outlays	188,787	16,424
International disaster assistance			
11 1035 0 1 151	Budget Authority	72,940	6,346
	Outlays	18,089	1,574
Housing and other credit guaranty programs			
72 4340 0 3 151	401(C) Authority - Off. Coll.	6,500	566
	Guaranteed Loan Limitation	151,573	13,187
	Outlays	6,351	553
Private sector revolving fund			
72 4341 0 3 151	Budget Authority	13,546	1,179
	Direct Loan Limitation	16,206	1,410
	Outlays	1,563	136
Trade and Development Program			
Trade and development program			
11 1001 0 1 151	Budget Authority	20,912	1,819
	Outlays	4,329	377
Peace Corps			
Peace Corps operating expenses			
11 0100 0 1 151	Budget Authority	147,457	12,829
	401(C) Authority - Off. Coll.	102	9
	Outlays	121,146	10,540
Overseas Private Investment Corporation			
Overseas Private Investment Corporation			
71 4030 0 3 151	401(C) Authority - Off. Coll.	10,600	922
	Direct Loan Limitation	23,966	2,085
	Guaranteed Loan Limitation	208,400	18,131
	Outlays	12,588	1,095
Inter-American Foundation			
Inter-American Foundation			
11 4031 0 3 151	Budget Authority	12,384	1,077
	401(C) Authority - Off. Coll.	14,888	1,295
	Outlays	9,970	867
African Development Foundation			
African Development Foundation			
11 0700 0 1 151	Budget Authority	6,861	597
	Outlays	4,117	358
Military Sales Programs			
Special defense acquisition fund			
11 4116 0 3 155	Obligation Limitation	329,084	28,630
	Outlays	3,291	286
Foreign military sales trust fund			
11 8242 0 7 155	401(C) Authority - Off. Coll.	340,000	29,580
	Outlays	316,200	27,509
TOTAL FOR Funds Appropriated to the President			
	Budget Authority	12,960,515	1,127,568
	401(C) Authority - Off. Coll.	372,090	32,372
	Direct Loan Limitation	4,603,113	400,471
	Guaranteed Loan Limitation	359,973	31,313
	Obligation Limitation	329,084	28,630
	Outlays	5,930,234	515,929
Department of Agriculture			
Office of the Secretary			
Office of the Secretary			
12 0115 0 1 352	Budget Authority	16,719	1,455
	Outlays	6,725	585
Departmental Administration			
Rental payments and building operations			
12 0117 0 1 352	Budget Authority	69,723	6,066
	Outlays	65,261	5,678
Advisory committees			
12 0118 0 1 352	Budget Authority	1,396	121
	Outlays	835	73
Departmental administration			
12 0120 0 1 352	Budget Authority	23,253	2,023
	Outlays	20,649	1,796
Working capital fund			
12 4609 0 4 352	Budget Authority	6,072	528
	Outlays	5,993	521

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Office of Governmental and Public Affairs			
Office of Governmental and Public Affairs			
12 0130 0 1 352	Budget Authority	8,915	776
	Outlays	7,043	613
Office of the Inspector General			
Office of the Inspector General			
12 0900 0 1 352	Budget Authority	48,450	4,215
	Outlays	41,473	3,608
Office of the General Counsel			
Office of the General Counsel			
12 2300 0 1 352	Budget Authority	18,834	1,639
	Outlays	18,664	1,624
Agricultural Research Service			
Agricultural Research Service			
12 1400 0 1 352	Budget Authority	549,802	47,832
	401(C) Authority - Off. Coll.	3,427	298
	Outlays	436,156	37,946
Buildings and facilities			
12 1401 0 1 352	Budget Authority	32,510	2,829
	Outlays	201	17
Cooperative State Research Service			
Cooperative State Research Service			
12 1500 0 1 352	Budget Authority	317,200	27,597
	401(C) Authority	9,170	798
	Outlays	177,514	15,444
Extension Service			
Extension Service			
12 0502 0 1 352	Budget Authority	346,954	30,185
	401(C) Authority - Off. Coll.	495	43
	Outlays	273,421	23,787
National Agricultural Library			
National Agricultural Library			
12 0300 0 1 352	Budget Authority	11,775	1,024
	Outlays	8,537	743
National Agricultural Statistics Service			
Salaries and expenses			
12 1801 0 1 352	Budget Authority	61,298	5,333
	401(C) Authority - Off. Coll.	1,075	94
	Outlays	50,972	4,435
Economic Research Service			
Salaries and expenses			
12 1701 0 1 352	Budget Authority	47,945	4,171
	Outlays	40,322	3,508
World Agricultural Outlook Board			
World agricultural outlook board			
12 2100 0 1 352	Budget Authority	1,757	153
	Outlays	1,339	116
Foreign Agricultural Service			
Foreign Agricultural Service			
12 2900 0 1 352	Budget Authority	88,006	7,656
	Outlays	47,851	4,163
Office of International Cooperation and Development			
Scientific activities overseas (foreign currency program)			
12 1404 0 1 352	Budget Authority	2,607	227
	Outlays	1,304	113
Salaries and expenses			
12 3200 0 1 352	Budget Authority	5,394	469
	Outlays	4,428	385
Foreign Assistance Programs			
Expenses, P.L. 480, foreign assistance programs--agriculture			
12 2274 0 1 151	Budget Authority	1,102,120	95,884
	Direct Loan Limitation	853,606	74,264
	Obligation Limitation	1,524,520	132,633
	Outlays	1,387,313	120,696
Agricultural Stabilization and Conservation Service			
Salaries and expenses			
12 3300 0 1 351	401(C) Authority - Off. Coll.	18,235	1,586
	Outlays	18,235	1,586
Dairy indemnity program			
12 3314 0 1 351	Budget Authority	675	59
	Outlays	675	59
Agricultural conservation program			
12 3315 0 1 302	Budget Authority	184,366	16,040
	Outlays	84,808	7,378

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Emergency conservation program			
12 3316 0 1 453	Budget Authority	10,420	907
	Outlays	2,657	231
Colorado river basin salinity control program			
12 3318 0 1 304	Budget Authority	3,964	345
	Outlays	1,982	172
Conservation reserve program			
12 3319 0 1 302	Budget Authority	560,700	48,781
	Outlays	560,700	48,781
Water Bank program			
12 3320 0 1 302	Budget Authority	8,723	759
	Outlays	1,300	113
Forestry incentives program			
12 3336 0 1 302	Budget Authority	12,390	1,078
	Outlays	4,783	416
Federal Crop Insurance Corporation			
Administrative and operating expenses			
12 2707 0 1 351	Budget Authority	220,141	19,152
	Outlays	124,600	10,840
Commodity Credit Corporation			
Temporary emergency food assistance program			
12 3635 0 1 351	Budget Authority	52,100	4,533
	Outlays	35,636	3,100
Commodity Credit Corporation Fund			
12 4336 0 3 351	401(C) Authority	16,360,000	1,423,320
	Direct Loan Limitation	15,500,000	1,348,500
	Guaranteed Loan Limitation	5,500,000	478,500
	Outlays	16,360,000	1,423,320
National Wool Act (special fund)			
12 5210 0 2 351	401(C) Authority	2,188	190
	401(C) Authority - Spec. Rules	4,100	4,100
	Outlays	6,288	4,290
Rural Electrification Administration			
Salaries and expenses			
12 3100 0 1 271	Budget Authority	32,181	2,800
	Outlays	29,317	2,551
Reimbursement to the Rural electrification and telephone revolving fund			
12 3101 0 1 271	Budget Authority	20,840	1,813
	Outlays	20,840	1,813
Purchase of Rural Telephone Bank capital stock			
12 3102 0 1 452	Budget Authority	29,916	2,603
	Outlays	29,916	2,603
Rural electrification and telephone revolving fund			
12 4230 0 3 271	Direct Loan Limitation	1,296,352	112,783
	Direct Loan Floor	897,475	78,080
	Guaranteed Loan Limitation	2,188,841	190,429
	Guaranteed Loan Floor	972,264	84,587
	Outlays	112,184	9,760
Rural telephone bank			
12 4231 0 3 452	Direct Loan Limitation	219,383	19,086
	Direct Loan Floor	184,481	16,050
Farmers Home Administration			
Salaries and expenses			
12 2001 0 1 452	Budget Authority	421,900	36,705
	Outlays	383,929	33,402
Rural housing for domestic farm labor			
12 2004 0 1 604	Budget Authority	9,913	862
	Outlays	397	35
Mutual and self-help housing			
12 2006 0 1 604	Budget Authority	8,336	725
	Outlays	667	58
Very low income housing repair grants			
12 2064 0 1 604	Budget Authority	13,025	1,133
	Outlays	12,374	1,077
Rural water and waste disposal grants			
12 2066 0 1 452	Budget Authority	113,990	9,917
	Outlays	2,280	198
Rural community fire protection grants			
12 2067 0 1 452	Budget Authority	3,221	280
	Outlays	1,449	126
Rural housing preservation grants			
12 2070 0 1 604	Budget Authority	19,944	1,735
	Outlays	4,986	434
Compensation for construction defects			
12 2071 0 1 371	Budget Authority	743	65
	Outlays	743	65

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Agricultural credit insurance fund			
12 4140 0 3 351	401(C) Authority - Off. Coll.	248,596	21,628
	Direct Loan Limitation	1,893,477	164,732
	Guaranteed Loan Limitation	2,602,916	226,454
	Outlays	1,581,259	137,570
Rural housing insurance fund			
12 4141 0 3 371	401(C) Authority - Off. Coll.	53,500	4,655
	Direct Loan Limitation	1,998,674	173,885
	Obligation Limitation	286,873	24,958
	Outlays	1,003,151	87,275
Rural development insurance fund			
12 4155 0 3 452	401(C) Authority - Off. Coll.	1,175	102
	Direct Loan Limitation	443,975	38,626
	Guaranteed Loan Limitation	119,663	10,411
	Outlays	15,961	1,389
Self-help housing land development fund			
12 4222 0 3 371	Direct Loan Limitation	500	44
	Outlays	340	30
Rural development loan fund			
12 4233 0 3 452	Direct Loan Limitation	3,000	261
	Outlays	3,000	261
Miscellaneous expiring appropriations (Area and regional development)			
12 9912 0 1 452	Budget Authority	3,126	272
	Outlays	782	68
Soil Conservation Service			
Conservation operations			
12 1000 0 1 302	Budget Authority	423,551	36,849
	401(C) Authority - Off. Coll.	11,173	972
	Outlays	369,554	32,151
Resource conservation and development			
12 1010 0 1 302	Budget Authority	26,985	2,348
	401(C) Authority - Off. Coll.	1,937	169
	Outlays	18,074	1,573
Watershed planning			
12 1066 0 1 301	Budget Authority	9,285	808
	401(C) Authority - Off. Coll.	600	52
	Outlays	8,641	752
River basin surveys and investigations			
12 1069 0 1 301	Budget Authority	12,930	1,125
	401(C) Authority - Off. Coll.	198	17
	Outlays	12,300	1,070
Watershed and flood prevention operations			
12 1072 0 1 301	Budget Authority	186,930	16,263
	401(C) Authority - Off. Coll.	17,595	1,531
	Outlays	135,969	11,830
Great Plains conservation program			
12 2268 0 1 302	Budget Authority	21,861	1,902
	Outlays	9,903	862
Miscellaneous contributed funds (Water resources)			
12 8210 0 7 301	401(C) Other - incl. ob. limit	489	43
	Outlays	489	43
Miscellaneous contributed funds (Conservation and land management)			
12 8210 0 7 302	401(C) Other - incl. ob. limit	110	10
Animal and Plant Health Inspection Service			
Salaries and expenses			
12 1600 0 1 352	Budget Authority	332,884	28,960
	401(C) Authority - Off. Coll.	9,568	832
	Outlays	288,464	25,096
Buildings and facilities			
12 1601 0 1 352	Budget Authority	2,340	204
Miscellaneous trust funds			
12 9971 0 7 352	401(C) Other - incl. ob. limit	2,325	202
	Outlays	1,517	132
Federal Grain Inspection Service			
Salaries and expenses			
12 2400 0 1 352	Budget Authority	7,266	632
	Outlays	6,067	528
Inspection and weighing services			
12 4050 0 3 352	401(C) Authority - Off. Coll.	36,829	3,204
	Outlays	36,829	3,204
Agricultural Marketing Service			
Marketing services			
12 2500 0 1 352	Budget Authority	33,679	2,930
	401(C) Authority - Off. Coll.	30,742	2,675
	Outlays	47,817	4,161

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Payments to states and possessions			
12 2501 0 1 352	Budget Authority	982	85
	Outlays	27	2
Perishable Agricultural Commodities Act fund			
12 5070 0 2 352	401(C) Authority	4,262	371
	Outlays	3,192	278
Funds for strengthening markets, income, and supply (section 32)			
12 5209 0 2 605	401(C) Authority	390,000	33,930
	Outlays	150,000	13,050
Milk market orders assessment fund			
12 8412 0 8 351	401(C) Authority - Off. Coll.	35,110	3,055
	Outlays	35,110	3,055
Miscellaneous trust funds			
12 9972 0 7 352	401(C) Authority	85,979	7,480
	Outlays	85,979	7,480
Office of Transportation			
Office of Transportation			
12 2800 0 1 352	Budget Authority	2,565	223
	Outlays	2,098	183
Food Safety and Inspection Service			
Salaries and expenses			
12 3700 0 1 554	Budget Authority	394,996	34,365
	401(C) Authority - Off. Coll.	42,050	3,658
	Outlays	411,371	35,789
Expenses and refunds, inspection and grading of farm products			
12 8137 0 7 352	401(C) Authority	878	76
	Outlays	826	72
Food and Nutrition Service			
Cash and commodities for selected groups			
12 3503 0 1 605	Budget Authority	201,720	17,550
	Outlays	163,393	14,215
Food stamp program			
12 3505 0 1 605	401(C) Authority	61,647	5,363
	Outlays	40,866	3,555
Food program administration			
12 3508 0 1 605	Budget Authority	90,249	7,852
	Outlays	83,029	7,224
Supplemental nutrition assistance for women, infants, and children (WIC)			
12 3510 0 1 605	Budget Authority	2,000	174
	Outlays	2,000	174
Child nutrition programs			
12 3539 0 1 605	401(C) Authority	3,418	297
	Outlays	3,418	297
Human Nutrition Information Service			
Salaries and expenses			
12 3501 0 1 352	Budget Authority	7,369	641
	Outlays	3,176	276
Packers and Stockyards Administration			
Packers and Stockyards Administration			
12 2600 0 1 352	Budget Authority	9,771	850
	Outlays	8,774	763
Agricultural Cooperative Service			
Salaries and expenses			
12 3000 0 1 352	Budget Authority	4,840	421
	Outlays	2,788	243
Forest Service			
Construction			
12 1103 0 1 302	Budget Authority	281,120	24,458
	401(C) Authority - Off. Coll.	2,061	179
	Outlays	165,498	14,398
Forest research			
12 1104 0 1 302	Budget Authority	134,626	11,713
	401(C) Authority - Off. Coll.	929	81
	Outlays	102,302	8,900
State and private forestry			
12 1105 0 1 302	Budget Authority	69,852	6,077
	401(C) Authority - Off. Coll.	135	12
	Outlays	47,513	4,134
National forest system			
12 1106 0 1 302	Budget Authority	1,252,041	108,927
	Outlays	1,103,490	96,003
Land acquisition			
12 5004 0 2 303	Budget Authority	54,331	4,727
	Outlays	21,732	1,891

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Range betterment fund			
12 5207 0 2 302	Budget Authority	3,750	326
	Outlays	3,012	262
Acquisition of lands for national forests, special acts			
12 5208 0 2 302	Budget Authority	1,013	88
	Outlays	855	74
Acquisition of lands to complete land exchanges			
12 5216 0 2 302	Budget Authority	934	81
	Outlays	829	72
Operations and maintenance of quarters			
12 5219 0 2 302	401(C) Other - incl. ob. limit	5,545	482
	Outlays	4,453	387
Cooperative work trust fund			
12 8028 0 7 302	401(C) Other - incl. ob. limit	250,369	21,782
	Outlays	213,314	18,558
Highway Construction: Mount St. Helens National Monument			
12 8029 0 7 401	Budget Authority	10,394	904
Gifts, donations and bequests for forest and rangeland research			
12 8034 0 7 302	Budget Authority	94	8
	Outlays	94	8
Forest Service permanent appropriations			
12 9921 0 2 852	401(C) Other - incl. ob. limit	260,787	22,688
	Outlays	257,462	22,399
Forest Service permanent appropriations			
12 9922 0 2 302	401(C) Other - incl. ob. limit	139,689	12,153
	Outlays	108,285	9,420
Miscellaneous trust funds (conservation and land management)			
12 9973 0 7 302	401(C) Authority - Off. Coll.	1	0
	Outlays	1	0
Reforestation trust fund			
20 8046 0 7 302	401(C) Other - incl. ob. limit	30,000	2,610
	Outlays	24,000	2,088
TOTAL FOR Department of Agriculture			
	Budget Authority	8,071,702	702,238
	401(C) Authority	16,917,542	1,471,825
	401(C) Authority - Off. Coll.	515,431	44,843
	401(C) Other - incl. ob. limit	689,314	59,970
	401(C) Authority - Spec. Rules	4,100	4,100
	Direct Loan Limitation	22,208,967	1,932,181
	Direct Loan Floor	1,081,956	94,130
	Guaranteed Loan Limitation	10,411,420	905,794
	Guaranteed Loan Floor	972,264	84,587
	Obligation Limitation	1,811,393	157,591
	Outlays	26,985,751	2,351,504
Department of Commerce			
General Administration			
Salaries and expenses			
13 0120 0 1 376	Budget Authority	38,625	3,360
	Outlays	37,003	3,219
Grants and loans administration			
13 0125 0 1 452	Budget Authority	27,192	2,366
	Outlays	23,875	2,077
Economic development assistance programs			
13 2050 0 1 452	Budget Authority	199,584	17,364
	Guaranteed Loan Limitation	195,375	16,998
	Outlays	19,958	1,736
Bureau of the Census			
Salaries and expenses			
13 0401 0 1 376	Budget Authority	99,289	8,638
	401(C) Authority - Off. Coll.	8,000	696
	Outlays	96,367	8,384
Periodic censuses and programs			
13 0450 0 1 376	Budget Authority	184,848	16,082
	Outlays	125,697	10,936
Economic and Statistical Analysis			
Salaries and expenses			
13 1500 0 1 376	Budget Authority	32,793	2,853
	401(C) Authority - Off. Coll.	462	40
	Outlays	29,647	2,579
Information products and services			
13 8546 0 7 376	401(C) Other - incl. ob. limit	38,214	3,325
	Outlays	24,839	2,161
International Trade Administration			
Operations and administration			
13 1250 0 1 376	Budget Authority	215,601	18,758
	401(C) Authority - Off. Coll.	8,004	696
	Outlays	160,003	13,920

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Minority Business Development Agency			
Minority business development			
13 0201 0 1 376	Budget Authority	41,855	3,641
	Outlays	13,142	1,143
United States Travel and Tourism Administration			
Salaries and expenses			
13 0700 0 1 376	Budget Authority	12,225	1,064
	401(C) Authority - Off. Coll.	2,239	195
	Outlays	11,408	993
National Oceanic and Atmospheric Administration			
Operations, research, and facilities			
13 1450 0 1 306	Budget Authority	1,157,278	100,683
	401(C) Authority - Off. Coll.	14,952	1,301
	Outlays	803,005	69,861
Coastal energy impact fund			
13 4315 0 3 452	401(C) Authority - Off. Coll.	7,300	635
	Outlays	7,300	635
Federal ship financing fund, fishing vessels			
13 4417 0 3 376	401(C) Authority - Off. Coll.	1,160	101
	Guaranteed Loan Limitation	80,000	6,960
	Outlays	1,160	101
Fishermen's contingency fund			
13 5120 0 2 376	Budget Authority	784	68
	Outlays	746	65
Foreign fishing observer fund			
13 5122 0 2 376	Budget Authority	2,116	184
	Outlays	2,033	177
Promote and develop fishery products and research pertaining to American			
13 5139 0 2 376	401(C) Other - incl. ob. limit	4,850	422
	Outlays	2,667	232
Aviation weather services program			
13 8105 0 7 306	Budget Authority	30,218	2,629
	Outlays	30,218	2,629
Patent and Trademark Office			
Salaries and expenses			
13 1006 0 1 376	Budget Authority	105,607	9,188
	401(C) Authority - Off. Coll.	147,204	12,807
	Outlays	221,023	19,229
National Bureau of Standards			
Scientific and technical research and services			
13 0500 0 1 376	Budget Authority	129,661	11,281
	Outlays	100,099	8,709
Working capital fund			
13 4650 0 4 376	Budget Authority	2,285	199
	Outlays	1,104	96
National Telecommunications and Information Administration			
Salaries and expenses			
13 0550 0 1 376	Budget Authority	14,128	1,229
	Outlays	11,302	983
Public telecommunications facilities, planning and construction			
13 0551 0 1 503	Budget Authority	21,823	1,899
	Outlays	2,531	220
TOTAL FOR Department of Commerce			
	Budget Authority	2,315,912	201,486
	401(C) Authority - Off. Coll.	189,321	16,471
	401(C) Other - incl. ob. limit	43,064	3,747
	Guaranteed Loan Limitation	275,375	23,958
	Outlays	1,725,127	150,085
Department of Defense--Military			
Operation and Maintenance			
Operation and maintenance, Marine Corps			
17 1106 0 1 051	Budget Authority	1,902,939	197,906
	Outlays	1,547,917	160,983
Operation and maintenance, Marine Corps Reserve			
17 1107 0 1 051	Budget Authority	67,060	6,974
	Outlays	43,097	4,482
Operation and maintenance, Navy			
17 1804 0 1 051	Budget Authority	24,615,048	2,559,965
	Outlays	17,234,967	1,792,437
Operation and maintenance, Navy Reserve			
17 1806 0 1 051	Budget Authority	928,472	96,561
	Outlays	662,838	68,935
National Board for the Promotion of Rifle Practice, Army			
21 1705 0 1 051	Budget Authority	4,526	471
	Outlays	4,426	460

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Operation and maintenance, Army			
21 2020 0 1 051	Budget Authority	21,621,360	2,248,621
	Outlays	16,216,773	1,686,544
Operation and maintenance, Army National Guard			
21 2065 0 1 051	Budget Authority	1,857,188	193,148
	Outlays	1,643,135	170,886
Operation and maintenance, Army Reserve			
21 2080 0 1 051	Budget Authority	827,839	86,095
	Outlays	727,957	75,708
Operation and maintenance, Air Force			
57 3400 0 1 051	Budget Authority	19,904,586	2,070,077
	Outlays	14,928,831	1,552,598
Operation and maintenance, Air Force Reserve			
57 3740 0 1 051	Budget Authority	971,786	101,066
	Outlays	858,180	89,251
Operation and maintenance, Air National Guard			
57 3840 0 1 051	Budget Authority	1,874,180	194,915
	Outlays	1,728,057	179,718
Operation and maintenance, Defense agencies			
97 0100 0 1 051	Budget Authority	8,979,748	933,894
	Outlays	7,676,175	798,322
Court of Military Appeals, Defense			
97 0104 0 1 051	Budget Authority	3,473	361
	Outlays	2,977	310
Foreign currency fluctuations, Defense			
97 0801 0 1 051	Unobligated Balances - Defense	173,291	18,022
Environmental restoration, Defense			
97 0810 0 1 051	Budget Authority	1,032	107
	Outlays	310	32
Tenth International Pan American games			
97 0812 0 1 051	Budget Authority	15,630	1,626
	Outlays	14,117	1,468
Humanitarian assistance			
97 0819 0 1 051	Budget Authority	7,815	811
	Outlays	4,602	479
Procurement			
Coastal defense augmentation			
17 0380 0 1 051	Budget Authority	208,400	21,674
	Unobligated Balances - Defense	331,121	34,437
	Outlays	52,344	5,444
Procurement, Marine Corps			
17 1109 0 1 051	Budget Authority	1,526,754	158,782
	Unobligated Balances - Defense	476,953	49,603
	Outlays	128,164	13,329
Aircraft procurement, Navy			
17 1506 0 1 051	Budget Authority	10,396,307	1,081,216
	Unobligated Balances - Defense	2,900,683	301,671
	Outlays	1,117,000	116,168
Weapons procurement, Navy			
17 1507 0 1 051	Budget Authority	5,513,063	573,359
	Unobligated Balances - Defense	2,422,876	251,979
	Outlays	817,335	85,003
Shipbuilding and conversion, Navy			
17 1611 0 1 051	Budget Authority	10,639,851	1,106,545
	Unobligated Balances - Defense	11,380,409	1,183,563
	Outlays	1,071,715	111,458
Other procurement, Navy			
17 1810 0 1 051	Budget Authority	6,289,378	654,095
	Unobligated Balances - Defense	2,100,104	218,411
	Outlays	796,950	82,883
Aircraft procurement, Army			
21 2031 0 1 051	Budget Authority	2,897,542	301,344
	Unobligated Balances - Defense	779,397	81,057
	Outlays	525,767	54,679
Missile procurement, Army			
21 2032 0 1 051	Budget Authority	2,299,486	239,147
	Unobligated Balances - Defense	787,315	81,881
	Outlays	219,163	22,792
Procurement of weapons and tracked combat vehicles, Army			
21 2033 0 1 051	Budget Authority	3,964,646	412,323
	Unobligated Balances - Defense	1,257,398	130,769
	Outlays	224,534	23,352
Procurement of ammunition, Army			
21 2034 0 1 051	Budget Authority	2,174,943	226,194
	Unobligated Balances - Defense	389,565	40,515
	Outlays	600,191	62,420

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Other procurement, Army			
21 2035 0 1 051	Budget Authority	5,321,197	553,404
	Unobligated Balances - Defense	2,068,782	215,153
	Outlays	399,076	41,504
Aircraft procurement, Air Force			
57 3010 0 1 051	Budget Authority	17,980,628	1,869,985
	Unobligated Balances - Defense	7,971,967	829,085
	Outlays	1,591,193	165,484
Missile procurement, Air Force			
57 3020 0 1 051	Budget Authority	7,761,043	807,148
	Unobligated Balances - Defense	3,376,605	351,167
	Outlays	2,595,045	269,885
Other procurement, Air Force			
57 3080 0 1 051	Budget Authority	9,718,865	1,010,762
	Unobligated Balances - Defense	2,571,477	267,434
	Outlays	6,022,206	626,309
Procurement, Defense agencies			
97 0300 0 1 051	Budget Authority	1,586,106	164,955
	Unobligated Balances - Defense	500,268	52,028
	Outlays	427,690	44,479
National guard and reserve equipment			
97 0350 0 1 051	Budget Authority	580,394	60,361
	Unobligated Balances - Defense	414,279	43,085
	Outlays	55,564	5,779
Defense production act purchases			
97 0360 0 1 051	Budget Authority	13,546	1,409
	Unobligated Balances - Defense	24,792	2,578
NATO cooperative defense programs			
97 0370 0 1 051	Unobligated Balances - Defense	5,706	593
	Outlays	742	77
Chemical agents and munitions destruction, Defense			
97 0390 0 1 051	Budget Authority	123,685	12,863
	Unobligated Balances - Defense	10,802	1,123
	Outlays	70,496	7,332
Research, Development, Test, and Evaluation			
Research, development, test, and evaluation, Navy			
17 1319 0 1 051	Budget Authority	9,731,559	1,012,082
	Unobligated Balances - Defense	477,908	49,702
	Outlays	5,312,300	552,479
Research, development, test, and evaluation, Army			
21 2040 0 1 051	Budget Authority	4,808,375	500,071
	Unobligated Balances - Defense	423,193	44,012
	Outlays	2,772,747	288,366
Research, development, test, and evaluation, Air Force			
57 3600 0 1 051	Budget Authority	15,743,420	1,637,316
	Unobligated Balances - Defense	1,725,192	179,420
	Outlays	9,258,555	962,890
Research, development, test, and evaluation, Defense agencies			
97 0400 0 1 051	Budget Authority	7,051,675	733,374
	Unobligated Balances - Defense	524,904	54,590
	Outlays	3,899,998	405,600
Director of test and evaluation, Defense			
97 0450 0 1 051	Budget Authority	124,942	12,994
	Unobligated Balances - Defense	29,976	3,118
	Outlays	46,489	4,834
Director of operational test and evaluation, Defense			
97 0460 0 1 051	Budget Authority	11,775	1,225
	Unobligated Balances - Defense	1,130	118
	Outlays	5,626	585
Military Construction			
Military construction, Navy			
17 1205 0 1 051	Budget Authority	1,442,276	149,997
	Unobligated Balances - Defense	860,936	89,537
	Outlays	414,700	43,128
Military construction, Naval Reserve			
17 1235 0 1 051	Budget Authority	46,369	4,822
	Unobligated Balances - Defense	22,239	2,313
	Outlays	5,358	558
Military construction, Army			
21 2050 0 1 051	Budget Authority	1,334,668	138,805
	401(C) Authority	221,000	22,984
	Unobligated Balances - Defense	834,953	86,835
	Outlays	382,379	39,767
Military construction, Army National Guard			
21 2085 0 1 051	Budget Authority	146,796	15,267
	Unobligated Balances - Defense	15,729	1,636
	Outlays	9,789	1,018

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Military construction, Army Reserve			
21 2086 0 1 051	Budget Authority	90,545	9,417
	Unobligated Balances - Defense	17,246	1,794
	Outlays	5,377	559
Military construction, Air Force			
57 3300 0 1 051	Budget Authority	1,294,716	134,650
	Unobligated Balances - Defense	769,103	79,987
	Outlays	330,153	34,336
Military construction, Air Force Reserve			
57 3730 0 1 051	Budget Authority	61,374	6,383
	Unobligated Balances - Defense	20,504	2,132
	Outlays	9,247	962
Military construction, Air National Guard			
57 3830 0 1 051	Budget Authority	155,180	16,139
	Unobligated Balances - Defense	36,097	3,754
	Outlays	11,521	1,198
Military construction, Defense agencies			
97 0500 0 1 051	Budget Authority	552,333	57,443
	Unobligated Balances - Defense	326,662	33,973
	Outlays	70,339	7,316
North Atlantic Treaty Organization infrastructure			
97 0804 0 1 051	Budget Authority	241,744	25,141
	Unobligated Balances - Defense	62,182	6,467
	Outlays	3,035	316
Family Housing			
Family housing, Navy and Marine Corps			
17 0703 0 1 051	Budget Authority	729,483	75,866
	Unobligated Balances - Defense	73,942	7,690
	Outlays	418,295	43,502
Family housing, Army			
21 0702 0 1 051	Budget Authority	1,660,319	172,673
	Unobligated Balances - Defense	166,854	17,353
	Outlays	950,534	98,856
Family housing, Air Force			
57 0704 0 1 051	Budget Authority	842,468	87,617
	Unobligated Balances - Defense	163,360	16,989
	Outlays	523,743	54,469
Family housing, Defense agencies			
97 0706 0 1 051	Budget Authority	17,342	1,804
	Unobligated Balances - Defense	1,739	181
	Outlays	9,927	1,032
Special Foreign Currency Program			
Special foreign currency program			
97 0800 0 1 051	Budget Authority	3,647	379
	Unobligated Balances - Defense	1,925	200
	Outlays	774	81
Revolving and Management Funds			
Navy stock fund			
17 4911 0 4 051	Budget Authority	367,378	38,207
	Outlays	279,026	29,019
Marine Corps stock fund			
17 4913 0 4 051	Budget Authority	857	89
	Outlays	571	59
Army stock fund			
21 4991 0 4 051	Budget Authority	114,724	11,931
	Outlays	87,275	9,077
Air Force stock fund			
57 4921 0 4 051	Budget Authority	145,859	15,169
	Outlays	110,877	11,531
ADP equipment management fund			
97 3910 0 4 051	Unobligated Balances - Defense	75,145	7,815
	Outlays	12,173	1,266
Defense stock fund			
97 4961 0 4 051	Budget Authority	49,182	5,115
	Outlays	37,415	3,891
TOTAL FOR Department of Defense--Military			
	Budget Authority	219,347,522	22,812,142
	401(C) Authority	221,000	22,984
	Unobligated Balances - Defense	46,574,709	4,843,770
	Outlays	104,977,757	10,917,685
Department of Defense--Civil			
Cemeterial Expenses, Army			
Salaries and expenses			
21 1805 0 1 705	Budget Authority	16,696	1,453
	Outlays	5,393	469

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Corps of Engineers--Civil			
Inland waterways trust fund			
20 8861 0 7 301	Budget Authority	27,092	2,357
	Outlays	17,772	1,546
Flood control, Mississippi River and tributaries			
96 3112 0 1 301	Budget Authority	330,073	28,716
	401(C) Authority - Off. Coll.	1,000	87
	Outlays	271,660	23,634
General investigations			
96 3121 0 1 301	Budget Authority	146,996	12,788
	401(C) Authority - Off. Coll.	18	2
	Outlays	102,033	8,877
Construction, general			
96 3122 0 1 301	Budget Authority	1,185,965	103,179
	401(C) Authority - Off. Coll.	225	20
	Outlays	782,962	68,118
Operation and maintenance, general (Water resources)			
96 3123 0 1 301	Budget Authority	1,316,335	114,521
	401(C) Authority - Off. Coll.	3,803	331
	Outlays	1,070,610	93,143
Operation and maintenance, general (recreational resources)			
96 3123 0 1 303	Budget Authority	13,025	1,133
	Outlays	10,160	884
General expenses			
96 3124 0 1 301	Budget Authority	125,294	10,901
	Outlays	100,235	8,720
Flood control and coastal emergencies			
96 3125 0 1 301	Budget Authority	10,500	914
Revolving fund			
96 4902 0 4 301	Budget Authority	12,509	1,088
	Outlays	2,089	182
Rivers and harbors contributed funds			
96 8862 0 7 301	401(C) Other - incl. ob. limit	209,780	18,251
	Outlays	120,000	10,440
Harbor maintenance trust fund			
96 8867 0 7 301	Budget Authority	151,000	13,137
	Outlays	125,330	10,904
Permanent appropriations (Water resources)			
96 9921 0 2 301	401(C) Other - incl. ob. limit	3,148	274
	Outlays	2,027	176
Permanent appropriations (Other general purpose fiscal assistance)			
96 9921 0 2 852	401(C) Other - incl. ob. limit	6,000	522
Education Benefits			
Payment to the Henry M. Jackson Foundation			
97 0825 0 1 502	Budget Authority	10,420	907
Soldiers' and Airmen's Home			
Operation and maintenance			
84 8931 0 7 705	Budget Authority	37,072	3,225
	401(C) Authority - Off. Coll.	144	13
	Outlays	32,582	2,835
Capital outlays			
84 8932 0 7 705	Budget Authority	16,923	1,472
	Outlays	338	29
Forest and Wildlife Conservation, Military Reservations			
Forest products program			
21 5285 0 2 302	401(C) Authority	1,500	131
	Outlays	1,500	131
Wildlife conservation			
97 5095 0 2 303	401(C) Other - incl. ob. limit	2,020	176
	Outlays	2,020	176
TOTAL FOR Department of Defense--Civil			
	Budget Authority	3,399,900	295,791
	401(C) Authority	1,500	131
	401(C) Authority - Off. Coll.	5,190	453
	401(C) Other - incl. ob. limit	220,948	19,223
	Outlays	2,646,711	230,264
Department of Health and Human Services, except Social Security			
Food and Drug Administration			
Program expenses			
75 0600 0 1 554	Budget Authority	474,969	41,322
	Outlays	413,224	35,950
Buildings and facilities			
75 0603 0 1 554	Budget Authority	1,958	170
	Outlays	613	53

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Revolving fund for certification and other services			
75 4309 0 3 554	401(C) Authority - Off. Coll.	2,799	244
	Outlays	2,799	244
Health Resources and Services Administration			
Health resources and services (Health care services)			
75 0350 0 1 551	Budget Authority	923,871	80,376
	Budget Authority - Spec. Rules	9,329	9,329
	401(C) Authority - Off. Coll.	375	33
	Direct Loan Limitation	1,042	91
	Outlays	524,008	50,358
Health resources and services (Education and training of health care wor			
75 0350 0 1 553	Budget Authority	211,754	18,423
	Outlays	63,526	5,527
Indian health			
75 0390 0 1 551	Budget Authority	69,495	6,046
	Budget Authority - Spec. Rules	16,926	16,926
	401(C) Authority - Spec. Rules	749	749
	Outlays	68,133	18,643
Indian health facilities			
75 0391 0 1 551	Budget Authority - Spec. Rules	1,484	1,484
	Outlays	371	371
Centers for Disease Control			
Disease control, research, and training (Health care services)			
75 0943 0 1 551	Budget Authority	546,330	47,530
	401(C) Authority - Off. Coll.	767	67
	Outlays	362,399	31,529
Disease control, research, and training (Health research)			
75 0943 0 1 552	Budget Authority	74,028	6,440
	Outlays	48,858	4,251
National Institutes of Health			
National Library of Medicine (Health research)			
75 0807 0 1 552	Budget Authority	20,457	1,780
	Outlays	13,092	1,139
National Library of Medicine (Education and training of health care work			
75 0807 0 1 553	Budget Authority	45,333	3,944
	Outlays	29,013	2,524
John E. Fogarty International Center			
75 0819 0 1 552	Budget Authority	12,043	1,048
	Outlays	6,865	597
Buildings and facilities			
75 0838 0 1 552	Budget Authority	33,240	2,892
	Outlays	9,307	810
National Institute on Aging (Health research)			
75 0843 0 1 552	Budget Authority	178,214	15,504
	Outlays	83,760	7,287
National Institute on Aging (Education and training of health care work			
75 0843 0 1 553	Budget Authority	7,900	687
	Outlays	3,713	323
National Institute of Child Health and Human Development (Health researc			
75 0844 0 1 552	Budget Authority	367,340	31,959
	Outlays	161,630	14,062
National Institute of Child Health and Human Development (Education and			
75 0844 0 1 553	Budget Authority	16,323	1,420
	Outlays	1,632	142
Office of the Director (Health research)			
75 0846 0 1 552	Budget Authority	57,921	5,039
	Outlays	44,020	3,830
Office of the Director (Education and training of health care work force			
75 0846 0 1 553	Budget Authority	2,517	219
	Outlays	2,391	208
Research resources (Health research)			
75 0848 0 1 552	Budget Authority	335,369	29,177
	Outlays	184,453	16,047
Research resources (Education and training of health care work force)			
75 0848 0 1 553	Budget Authority	1,324	115
	Outlays	66	6
National Cancer Institute (Health research)			
75 0849 0 1 552	Budget Authority	1,433,953	124,754
	401(C) Authority - Off. Coll.	10	1
	Outlays	716,987	62,378
National Cancer Institute (Education and training of health care work fo			
75 0849 0 1 553	Budget Authority	34,642	3,014
	Outlays	693	60
National Institute of General Medical Sciences (Health research)			
75 0851 0 1 552	Budget Authority	526,438	45,800
	Outlays	257,955	22,442

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National Institute of General Medical Sciences (Education and training o			
75 0851 0 1 553	Budget Authority	68,902	5,994
	Outlays	7,579	659
National Institute of Environmental Health Sciences (Health research)			
75 0862 0 1 552	Budget Authority	210,130	18,281
	Outlays	119,774	10,420
National Institute of Environmental Health Sciences (Education and train			
75 0862 0 1 553	Budget Authority	9,736	847
	Outlays	2,337	203
National Heart, Lung and Blood Institute (Health research)			
75 0872 0 1 552	Budget Authority	928,797	80,805
	Outlays	399,383	34,746
National Heart, Lung and Blood Institute (Education and training of heal			
75 0872 0 1 553	Budget Authority	42,682	3,713
	Outlays	1,707	149
National Institute of Dental Research (Health research)			
75 0873 0 1 552	Budget Authority	118,047	10,270
	Outlays	64,926	5,649
National Institute of Dental Research (Education and training of health			
75 0873 0 1 553	Budget Authority	5,803	505
	Outlays	3,192	278
National Institute of Diabetes and Digestive and Kidney Diseases (Health			
75 0884 0 1 552	Budget Authority	511,844	44,530
	Outlays	225,211	19,593
National Institute of Diabetes and Digestive and Kidney Diseases (Educat			
75 0884 0 1 553	Budget Authority	22,774	1,981
	Outlays	4,555	396
National Institute of Allergy and Infectious Diseases (Health research)			
75 0885 0 1 552	Budget Authority	559,612	48,686
	Outlays	268,614	23,369
National Institute of Allergy and Infectious Diseases (Education and tra			
75 0885 0 1 553	Budget Authority	11,021	959
	Outlays	1,543	134
National Institute of Neurological and Communicative Disorders and Strok			
75 0886 0 1 552	Budget Authority	497,664	43,297
	401(C) Authority - Off. Coll.	12	1
	Outlays	209,031	18,186
National Institute of Neurological and Communicative Disorders and Strok			
75 0886 0 1 553	Budget Authority	15,262	1,328
	Outlays	4,426	385
National Eye Institute (Health research)			
75 0887 0 1 552	Budget Authority	220,210	19,158
	Outlays	96,892	8,430
National Eye Institute (Education and training of health care work force			
75 0887 0 1 553	Budget Authority	6,202	540
	Outlays	1,551	135
National Institute of Arthritis and Musculoskeletal and Skin Diseases (H			
75 0888 0 1 552	Budget Authority	137,932	12,000
	Outlays	60,690	5,280
National Institute of Arthritis and Musculoskeletal and Skin Diseases (E			
75 0888 0 1 553	Budget Authority	6,905	601
	Outlays	1,381	120
National Center for Nursing Research (Health research)			
75 0889 0 1 552	Budget Authority	18,715	1,628
	Outlays	8,422	733
National Center for Nursing Research (Education and training of health c			
75 0889 0 1 553	Budget Authority	2,174	189
	Outlays	978	85
Alcohol, Drug Abuse, and Mental Health Administration			
Federal subsidy for Saint Elizabeths Hospital			
75 1300 0 1 551	Budget Authority	39,832	3,465
	401(C) Authority - Off. Coll.	49,189	4,279
	Outlays	89,021	7,744
Alcohol, drug abuse, and mental health (Health care services)			
75 1361 0 1 551	Budget Authority	782,098	68,042
	Outlays	625,679	54,434
Alcohol, drug abuse, and mental health (Health research)			
75 1361 0 1 552	Budget Authority	604,423	52,585
	Outlays	386,831	33,654
Alcohol, drug abuse, and mental health (Education and training of health			
75 1361 0 1 553	Budget Authority	40,521	3,525
	Outlays	10,941	952
Office of Assistant Secretary for Health			
Public health service management (Health care services)			
75 1101 0 1 551	Budget Authority	49,211	4,281
	401(C) Authority - Off. Coll.	25	2
	Outlays	25,615	2,228

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Public health service management (Health research)			
75 1101 0 1 552	Budget Authority	75,617	6,579
	Outlays	40,833	3,552
Public health emergency fund			
75 1104 0 1 551	Budget Authority	31,260	2,720
	Outlays	17,506	1,523
Health Care Financing Administration			
Federal supplementary medical insurance trust fund			
20 8004 0 7 571	401(C) Other - incl. ob. limit	72,627	6,319
	401(C) Authority - Spec. Rules	410,000	410,000
	Obligation Limitation	1,021,300	88,853
	Outlays	1,371,139	493,619
Federal hospital insurance trust fund			
20 8005 0 7 571	401(C) Other - incl. ob. limit	343,276	29,865
	401(C) Authority - Spec. Rules	980,000	980,000
	Obligation Limitation	842,845	73,328
	Outlays	1,782,333	1,049,804
Program management (Health care services)			
75 0511 0 1 551	Budget Authority	84,914	7,388
	Outlays	72,177	6,279
Program management (Health research)			
75 0511 0 1 552	Budget Authority	10,496	913
	Outlays	8,397	731
Social Security Administration			
Supplemental security income program			
75 0406 0 1 609	401(C) Authority	823,283	71,626
	Outlays	591,965	51,501
Special benefits for disabled coal miners			
75 0409 0 1 601	401(C) Authority	6,437	560
	Outlays	6,437	560
Family Support Administration			
Program administration			
75 1500 0 1 609	Budget Authority	100,051	8,704
	401(C) Authority - Off. Coll.	95	8
	Outlays	78,070	6,792
Family support payments to states			
75 1501 0 1 609	401(C) Authority	990,000	86,130
	Outlays	990,000	86,130
Low income home energy assistance			
75 1502 0 1 609	Budget Authority	1,898,800	165,196
	Outlays	1,708,920	148,676
Refugee and entrant assistance			
75 1503 0 1 609	Budget Authority	353,860	30,786
	Outlays	225,763	19,641
Community services block grant			
75 1504 0 1 506	Budget Authority	422,048	36,718
	Outlays	302,333	26,303
Work incentives			
75 1505 0 1 504	Budget Authority	131,292	11,422
	Outlays	116,719	10,155
Interim assistance to States for legalization			
75 1508 0 1 506	401(C) Authority	930,000	80,910
	401(C) Other - incl. ob. limit	121,000	10,527
	Outlays	121,000	10,527
Payments to states from receipts for child support			
75 5734 0 2 609	401(C) Other - incl. ob. limit	[illegible]	[illegible]
	Outlays	337	[illegible]
Human Development Services			
Social services block grant			
75 1634 0 1 506	401(C) Authority	2,700,000	234,900
	Outlays	2,590,380	225,363
Human development services			
75 1636 0 1 506	Budget Authority	2,190,467	190,571
	Outlays	1,226,141	106,674
Family social services			
75 1645 0 1 506	Budget Authority	252,855	21,998
	401(C) Authority	45,000	3,915
	401(C) Authority - Spec. Rules	11,611	11,611
	Outlays	217,329	27,011
Departmental Management			
General Departmental management			
75 0120 0 1 609	Budget Authority	131,766	11,464
	Outlays	119,907	10,432
Policy research			
75 0122 0 1 609	Budget Authority	8,563	745
	Outlays	3,939	343

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Office of the Inspector General			
75 0128 0 1 609	Budget Authority	32,765	2,851
	Outlays	28,178	2,451
Office for Civil Rights			
75 0135 0 1 751	Budget Authority	16,751	1,457
	Outlays	14,741	1,282
Office of Consumer Affairs			
75 0137 0 1 506	Budget Authority	1,881	164
	Outlays	1,749	152
TOTAL FOR Department of Health and Human Services, except So			
	Budget Authority	16,029,302	1,394,545
	Budget Authority - Spec. Rules	27,739	27,739
	401(C) Authority	1,494,720	478,041
	401(C) Authority - Off. Coll.	53,272	4,635
	401(C) Other - incl. ob. limit	537,353	46,750
	401(C) Authority - Spec. Rules	1,402,360	1,402,360
	Direct Loan Limitation	1,042	91
	Obligation Limitation	1,864,145	162,181
	Outlays	17,256,080	2,796,273
Department of the Interior			
Bureau of Land Management			
Management of lands and resources			
14 1109 0 1 302	Budget Authority	527,120	45,859
	401(C) Authority - Off. Coll.	2,000	174
	Outlays	482,043	41,938
Construction and access			
14 1110 0 1 302	Budget Authority	2,991	260
	Outlays	748	65
Payments in lieu of taxes			
14 1114 0 1 852	Budget Authority	109,410	9,519
	Outlays	109,410	9,519
Oregon and California grant lands			
14 1116 0 1 302	Budget Authority	58,965	5,130
	Outlays	43,634	3,796
Special acquisition of lands and minerals			
14 1117 0 1 302	401(C) Authority	1,300	113
Service charges, deposits, and forfeitures			
14 5017 0 2 302	Budget Authority	7,195	626
	Outlays	5,095	443
Land acquisition			
14 5033 0 2 302	Budget Authority	6,482	564
	Outlays	3,215	280
Operation and maintenance of quarters			
14 5048 0 2 302	401(C) Authority	266	23
	Outlays	221	19
Range improvements			
14 5132 0 2 302	Budget Authority	9,253	805
	Outlays	5,848	509
Miscellaneous permanent appropriations (Conservation and land management			
14 9921 0 2 302	401(C) Other - incl. ob. limit	6,046	526
	Outlays	5,828	507
Miscellaneous permanent appropriations (Other general purpose fiscal ass			
14 9921 0 2 852	401(C) Other - incl. ob. limit	80,287	6,985
Miscellaneous trust funds			
14 9971 0 7 302	401(C) Other - incl. ob. limit	764	66
	Outlays	385	34
Minerals Management Service			
Minerals and royalty management			
14 1917 0 1 302	Budget Authority	173,739	15,115
	Outlays	113,017	9,832
Payments to States from receipts under Mineral Leasing Act			
14 5003 0 2 852	401(C) Other - incl. ob. limit	435,528	37,891
	Outlays	431,664	37,555
Office of Surface Mining Reclamation and Enforcement			
Regulation and technology			
14 1801 0 1 302	Budget Authority	106,205	9,240
	Outlays	61,918	5,387
Abandoned mine reclamation fund			
14 5015 0 2 302	Budget Authority	213,203	18,549
	Outlays	59,057	5,138
Bureau of Reclamation			
Loan program			
14 0667 0 1 301	Budget Authority	39,108	3,402
	Direct Loan Limitation	45,646	3,971
	Outlays	19,021	1,655

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Construction program			
14 0684 0 1 301	Budget Authority	635,694	55,305
	Outlays	534,963	46,542
Lower Colorado River Basin development fund			
14 4079 0 3 301	401(C) Authority - Off. Coll.	100,798	8,769
	Outlays	100,798	8,769
Upper Colorado River Basin fund			
14 4081 0 3 301	401(C) Authority - Off. Coll.	41,485	3,609
	Outlays	41,485	3,609
Working capital fund			
14 4524 0 4 301	Budget Authority	6,400	557
	Outlays	4,480	390
Emergency fund			
14 5043 0 2 301	Budget Authority	1,042	91
	Outlays	630	55
General investigations			
14 5060 0 2 301	Budget Authority	31,546	2,745
	401(C) Authority - Off. Coll.	50	4
	Outlays	20,366	1,771
Operation and maintenance			
14 5064 0 2 301	Budget Authority	150,457	13,090
	401(C) Authority - Off. Coll.	8,000	696
	Outlays	91,353	7,948
General administrative expenses			
14 5065 0 2 301	Budget Authority	55,414	4,821
	Outlays	49,873	4,339
Colorado River dam fund, Boulder Canyon project			
14 5656 0 2 301	401(C) Other - incl. ob. limit	55,814	4,856
	Outlays	40,970	3,564
Reclamation trust funds			
14 8070 0 7 301	401(C) Other - incl. ob. limit	32,085	2,791
	Outlays	30,288	2,635
Miscellaneous permanent appropriations (Other general purpose fiscal ass			
14 9922 0 2 852	401(C) Other - incl. ob. limit	379	33
	Outlays	170	15
Geological Survey			
Surveys, investigations, and research			
14 0804 0 1 306	Budget Authority	457,082	39,766
	401(C) Authority - Off. Coll.	73,333	6,380
	Outlays	447,483	38,931
Bureau of Mines			
Mines and minerals			
14 0959 0 1 306	Budget Authority	148,939	12,958
	Outlays	101,278	8,811
Helium fund			
14 4053 0 3 306	401(C) Authority - Off. Coll.	3,674	320
	Outlays	3,674	320
United States Fish and Wildlife Service			
Resource management			
14 1611 0 1 303	Budget Authority	343,375	29,874
	401(C) Authority - Off. Coll.	2,392	208
	Outlays	277,764	24,165
Construction			
14 1612 0 1 303	Budget Authority	43,339	3,770
	Outlays	6,316	549
Land acquisition			
14 5020 0 2 303	Budget Authority	50,366	4,382
	Outlays	26,008	2,263
Operation and maintenance of quarters			
14 5050 0 2 303	401(C) Other - incl. ob. limit	1,662	145
	Outlays	1,163	101
National wildlife refuge fund			
14 5091 0 2 852	Budget Authority	5,882	512
	401(C) Other - incl. ob. limit	7,040	612
	Outlays	8,078	703
Migratory bird conservation account			
14 5137 0 2 303	Budget Authority	7,372	641
	401(C) Other - incl. ob. limit	31,878	2,773
	Outlays	29,687	2,582
Sport fish restoration			
14 8151 0 7 303	401(C) Other - incl. ob. limit	174,000	15,138
	Outlays	69,600	6,055
Contributed funds			
14 8216 0 7 303	401(C) Other - incl. ob. limit	140	12
	Outlays	140	12

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Miscellaneous permanent appropriations			
14 9923 0 2 303	401(C) Other - incl. ob. limit	114,200	9,935
	Outlays	57,100	4,968
National Park Service			
Operation of the national park system			
14 1036 0 1 303	Budget Authority	758,567	65,995
	401(C) Authority - Off. Coll.	2,214	193
	Outlays	605,822	52,706
John F. Kennedy Center for the Performing Arts			
14 1038 0 1 303	Budget Authority	5,101	444
	Outlays	3,826	333
Construction			
14 1039 0 1 303	Budget Authority	92,819	8,076
	401(C) Authority - Off. Coll.	8,500	740
	Outlays	22,423	1,951
National recreation and preservation			
14 1042 0 1 303	Budget Authority	11,664	1,015
	Outlays	10,498	913
Illinois and Michigan Canal National Heritage Corridor Commission			
14 1043 0 1 303	Budget Authority	266	23
	Outlays	133	12
Jefferson National Expansion Memorial Commission			
14 1044 0 1 303	Budget Authority	81	7
	Outlays	31	3
Planning, development, operation of recreation facilities			
14 5006 0 2 303	Budget Authority	0	0
Land acquisition			
14 5035 0 2 303	Budget Authority	115,201	10,022
	401(C) Authority	30,000	2,610
	401(C) Authority - Off. Coll.	500	44
	Outlays	56,431	4,910
Operation and maintenance of quarters			
14 5049 0 2 303	401(C) Other - incl. ob. limit	8,722	759
	Outlays	5,844	508
National park system visitor facilities fund			
14 5078 0 2 303	Budget Authority	0	0
Historic preservation fund			
14 5140 0 2 303	Budget Authority	25,269	2,198
	Outlays	13,014	1,132
Miscellaneous permanent appropriations			
14 9924 0 2 303	401(C) Other - incl. ob. limit	1,045	91
	Outlays	418	36
Bureau of Indian Affairs			
Operation of Indian programs (Conservation and land management)			
14 2100 0 1 302	Budget Authority	151,799	13,207
	Outlays	130,643	11,365
Operation of Indian programs (Area and regional development)			
14 2100 0 1 452	Budget Authority	542,263	47,177
	401(C) Authority - Off. Coll.	3,000	261
	Outlays	441,999	38,454
Operation of Indian programs (Elementary, secondary, and vocational educ			
14 2100 0 1 501	Budget Authority	295,661	25,723
	Outlays	240,964	20,964
Payment to the White Earth economic development and tribal government fu			
14 2204 0 1 452	Budget Authority	6,877	598
	Outlays	6,877	598
Construction			
14 2301 0 1 452	Budget Authority	92,668	8,062
	Outlays	21,314	1,854
Road construction			
14 2364 0 1 452	401(C) Authority - Off. Coll.	1,000	87
	Outlays	1,000	87
Revolving fund for loans			
14 4409 0 3 452	Direct Loan Limitation	17,005	1,479
	Outlays	13,026	1,133
Indian loan guaranty and insurance fund			
14 4410 0 3 452	Budget Authority	2,555	222
	Direct Loan Limitation	100	[illegible]
	Guaranteed Loan Limitation	33,500	2,915
	Outlays	1,303	113
Operation and maintenance of quarters			
14 5051 0 2 452	401(C) Other - incl. ob. limit	8,636	751
	Outlays	1,848	161
Miscellaneous permanent appropriations (Area and regional development)			
14 9925 0 2 452	401(C) Other - incl. ob. limit	64,000	5,568
	Outlays	36,608	3,185

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Miscellaneous permanent appropriations (Other general government)			
14 9925 0 2 806	401(C) Authority	2,000	174
	Outlays	1,976	172
Territorial and International Affairs			
Administration of territories			
14 0412 0 1 806	Budget Authority	81,637	7,102
	Outlays	55,758	4,851
Trust Territory of the Pacific Islands			
14 0414 0 1 806	Budget Authority	70,217	6,109
	Outlays	62,493	5,437
Compact of free association			
14 0415 0 1 806	401(C) Authority	27,920	2,429
	Outlays	27,920	2,429
Office of the Secretary			
Salaries and expenses			
14 0102 0 1 306	Budget Authority	46,373	4,034
	Outlays	39,417	3,429
Construction management			
14 0103 0 1 306	Budget Authority	745	65
	Outlays	671	58
Operation and maintenance of quarters			
14 5052 0 2 306	401(C) Authority	74	6
	Outlays	66	6
Office of the Solicitor			
Office of the Solicitor			
14 0107 0 1 306	Budget Authority	22,806	1,984
	Outlays	20,525	1,786
Office of Inspector General			
Office of Inspector General			
14 0104 0 1 306	Budget Authority	17,788	1,548
	Outlays	16,009	1,393
TOTAL FOR Department of the Interior			
	Budget Authority	5,530,936	481,192
	401(C) Authority	61,560	5,355
	401(C) Authority - Off. Coll.	246,946	21,485
	401(C) Other - incl. ob. limit	1,022,226	88,932
	Direct Loan Limitation	62,751	5,459
	Guaranteed Loan Limitation	33,500	2,915
	Outlays	5,123,628	445,753
Department of Justice			
General Administration			
Salaries and expenses			
15 0129 0 1 751	Budget Authority	80,696	7,020
	Outlays	72,627	6,319
United States Parole Commission			
Salaries and expenses			
15 1061 0 1 751	Budget Authority	11,174	972
	Outlays	9,610	[illegible]
Legal Activities			
Salaries and expenses, Foreign Claims Settlement Commission			
15 0100 0 1 153	Budget Authority	613	53
	Outlays	443	39
Salaries and expenses, General Legal Activities			
15 0128 0 1 752	Budget Authority	234,642	20,414
	Outlays	200,854	17,474
Fees and expenses of witnesses			
15 0311 0 1 752	Budget Authority	54,379	4,731
	Outlays	38,120	3,316
Salaries and expenses, Antitrust Division			
15 0319 0 1 752	Budget Authority	46,705	4,064
	Outlays	38,298	3,332
Salaries and expenses, United States Attorneys			
15 0322 0 1 752	Budget Authority	381,393	33,181
	Outlays	333,719	29,034
Salaries and expenses, United States Marshals Service			
15 0324 0 1 752	Budget Authority	172,478	15,006
	401(C) Authority - Off. Coll.	660	57
	Outlays	155,890	13,562
Salaries and expenses, Community Relations Service			
15 0500 0 1 752	Budget Authority	31,213	2,716
	Outlays	26,531	2,308
Support of United States prisoners			
15 1020 0 1 752	Budget Authority	72,623	6,318
	Outlays	43,573	3,791

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Assets forfeiture fund			
15 5042 0 2 752	Budget Authority	116,828	10,164
	Outlays	46,731	4,066
United States trustees system fund			
15 5073 0 2 752	Budget Authority	25,145	2,188
	Outlays	23,888	2,078
Federal Bureau of Investigation			
Salaries and expenses			
15 0200 0 1 751	Budget Authority	1,370,509	119,235
	401(C) Authority - Off. Coll.	45,311	3,942
	Outlays	1,141,718	99,329
Drug Enforcement Administration			
Salaries and expenses			
15 1100 0 1 751	Budget Authority	515,837	44,878
	401(C) Authority - Off. Coll.	850	74
	Outlays	445,597	38,767
Immigration and Naturalization Service			
Salaries and expenses			
15 1217 0 1 751	Budget Authority	787,892	68,547
	401(C) Authority - Off. Coll.	3,686	321
	Outlays	697,031	60,642
Immigration legalization			
15 5086 0 2 751	401(C) Authority	180,692	15,720
	Outlays	168,668	14,674
Immigration user fee			
15 5087 0 2 751	401(C) Authority	74,000	6,438
	Outlays	74,000	6,438
Federal Prison System			
Buildings and facilities			
15 1003 0 1 753	Budget Authority	228,423	19,873
	Outlays	44,771	3,895
National Institute of Corrections			
15 1004 0 1 754	Budget Authority	9,494	826
	Outlays	3,798	330
Salaries and expenses			
15 1060 0 1 753	Budget Authority	676,682	58,871
	401(C) Authority - Off. Coll.	12,671	1,102
	Outlays	640,632	55,735
Federal Prison Industries, Incorporated			
15 4500 0 4 753	Obligation Limitation	2,551	222
	Outlays	2,551	222
Office of Justice Programs			
Justice assistance			
15 0401 0 1 754	Budget Authority	434,026	37,760
	Outlays	119,357	10,384
Crime victims fund			
15 5041 0 2 754	401(C) Other - incl. ob. limit	70,000	6,090
	Obligation Limitation	66,688	5,802
	Outlays	19,430	1,690
TOTAL FOR Department of Justice			
	Budget Authority	5,250,752	456,817
	401(C) Authority	254,692	22,158
	401(C) Authority - Off. Coll.	63,178	5,496
	401(C) Other - incl. ob. limit	70,000	6,090
	Obligation Limitation	69,239	6,024
	Outlays	4,347,837	378,261
Department of Labor			
Employment and Training Administration			
Program administration			
16 0172 0 1 504	Budget Authority	73,095	6,359
	Outlays	62,496	5,437
Training and employment services			
16 0174 0 1 504	Budget Authority	3,864,693	336,229
	Outlays	100,211	8,719
Community service employment for older Americans			
16 0175 0 1 504	Budget Authority	350,112	30,460
	Outlays	70,022	6,092
State unemployment insurance and employment service operations (Training			
16 0179 0 1 504	Budget Authority	24,383	2,121
	Outlays	5,462	475
Federal unemployment benefits and allowances			
16 0326 0 1 603	401(C) Authority	137,000	11,919
	Outlays	137,000	11,919
Unemployment trust fund (Training and employment)			
20 8042 0 7 504	Obligation Limitation	361,157	31,421
	Outlays	361,157	31,421

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Unemployment trust fund (Unemployment compensation)			
20 8042 0 7 603	401(C) Other - incl. ob. limit	191,000	16,617
	Obligation Limitation	1,773,492	154,294
	Outlays	1,964,492	170,911
Labor-Management Services			
Salaries and expenses			
16 0104 0 1 505	Budget Authority	67,481	5,871
	Outlays	58,776	5,114
Pension Benefit Guaranty Corporation			
Pension Benefit Guaranty Corporation fund			
16 4204 0 3 601	Obligation Limitation	39,684	3,453
	Outlays	39,684	3,453
Employment Standards Administration			
Salaries and expenses			
16 0105 0 1 505	Budget Authority	211,076	18,364
	Outlays	181,948	15,829
Special workers' compensation expenses			
16 9971 0 7 601	401(C) Authority	2,920	254
	Obligation Limitation	460	40
	Outlays	3,380	294
Black lung disability trust fund			
20 8144 0 7 601	401(C) Authority	49,809	4,333
	Outlays	49,809	4,333
Occupational Safety and Health Administration			
Salaries and expenses			
16 0400 0 1 554	Budget Authority	241,078	20,974
	Outlays	210,702	18,331
Mine Safety and Health Administration			
Salaries and expenses			
16 1200 0 1 554	Budget Authority	170,559	14,839
	Outlays	154,356	13,429
Bureau of Labor Statistics			
Salaries and expenses			
16 0200 0 1 505	Budget Authority	179,038	15,576
	401(C) Authority - Off. Coll.	626	54
	Outlays	160,507	13,964
Departmental Management			
Office of the Inspector General			
16 0106 0 1 505	Budget Authority	37,593	3,271
	Outlays	29,022	2,525
Special foreign currency program			
16 0151 0 1 505	Budget Authority	49	4
	Outlays	49	4
Salaries and expenses			
16 0165 0 1 505	Budget Authority	115,750	10,070
	Outlays	105,796	9,204
TOTAL FOR Department of Labor			
	Budget Authority	5,334,907	464,138
	401(C) Authority	189,729	16,506
	401(C) Authority - Off. Coll.	626	54
	401(C) Other - incl. ob. limit	191,000	16,617
	Obligation Limitation	2,174,793	189,208
	Outlays	3,694,869	321,454
Department of State			
Administration of Foreign Affairs			
Salaries and expenses			
19 0113 0 1 153	Budget Authority	1,692,551	147,252
	Outlays	1,337,115	116,329
Protection of foreign missions and officials			
19 0520 0 1 153	Budget Authority	9,482	825
	Outlays	3,793	330
Emergencies in the diplomatic and consular service			
19 0522 0 1 153	Budget Authority	4,168	363
	Direct Loan Limitation	729	63
	Outlays	2,859	249
Payment to the American Institute in Taiwan			
19 0523 0 1 153	Budget Authority	9,773	850
	Outlays	8,229	716
Acquisition and maintenance of buildings abroad			
19 0535 0 1 153	Budget Authority	469,381	40,836
	401(C) Authority - Off. Coll.	4,000	348
	Outlays	90,367	7,862
Representation allowances			
19 0545 0 1 153	Budget Authority	4,647	404
	Outlays	3,992	347

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
International Organizations and Conferences			
Contributions for international peacekeeping activities			
19 1124 0 1 153	Budget Authority	30,635	2,665
	Outlays	27,572	2,399
International conferences and contingencies			
19 1125 0 1 153	Budget Authority	5,696	496
	Outlays	3,873	337
Contributions to international organizations			
19 1126 0 1 153	Budget Authority	401,450	34,926
	401(C) Authority - Off. Coll.	3,950	344
	Outlays	385,329	33,524
International Commissions			
Salaries and expenses, IBWC			
19 1069 0 1 301	Budget Authority	11,735	1,021
	401(C) Authority - Off. Coll.	72	6
	Outlays	10,164	884
Construction, IBWC			
19 1078 0 1 301	Budget Authority	4,086	355
	Outlays	817	71
American sections, international commissions			
19 1082 0 1 301	Budget Authority	4,489	390
	Outlays	3,035	264
International fisheries commissions			
19 1087 0 1 302	Budget Authority	11,254	979
	Outlays	11,243	978
Other			
U.S. emergency refugee and migration assistance fund			
11 0040 0 1 151	Budget Authority	14,588	1,269
International narcotics control			
11 1022 0 1 151	Budget Authority	123,666	10,759
	Outlays	43,283	3,766
Anti-terrorism assistance			
19 0114 0 1 152	Budget Authority	10,253	892
	Outlays	4,614	401
Soviet-East European research and training			
19 0118 0 1 153	Budget Authority	4,793	417
	Outlays	2,876	250
Payment to the Asia Foundation			
19 0525 0 1 153	Budget Authority	9,170	798
	Outlays	7,795	678
Migration and refugee assistance			
19 1143 0 1 151	Budget Authority	361,785	31,475
	Outlays	242,396	21,088
U.S. bilateral science and technology agreements			
19 1151 0 1 153	Budget Authority	1,980	172
	Outlays	1,980	172
Fishermen's guaranty fund			
19 5121 0 2 376	Budget Authority	1,877	163
	Outlays	1,408	122
International Center, Washington, D.C.			
19 5151 0 2 153	401(C) Authority	945	82
	Outlays	945	82
TOTAL FOR Department of State			
	Budget Authority	3,187,459	277,307
	401(C) Authority	945	82
	401(C) Authority - Off. Coll.	8,022	698
	Direct Loan Limitation	729	63
	Outlays	2,193,685	190,849
Department of the Treasury			
Departmental Offices			
Salaries and expenses			
20 0101 0 1 803	Budget Authority	62,338	5,423
	401(C) Authority - Off. Coll.	4,342	378
	Outlays	47,931	4,170
International affairs			
20 0171 0 1 803	Budget Authority	24,355	2,119
	Outlays	18,583	1,617
Office of Revenue Sharing			
Salaries and expenses			
20 0107 0 1 851	Budget Authority	6,018	524
	Outlays	6,018	524
Federal Law Enforcement Training Center			
Salaries and expenses			
20 0104 0 1 751	Budget Authority	31,526	2,743
	Outlays	28,373	2,468

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Financial Management Service			
Salaries and expenses			
20 1801 0 1 803	Budget Authority		
	Outlays	256,681	22,331
St Lawrence Seaway toll rebate program		223,127	19,412
20 8865 0 7 806	Budget Authority		
	Outlays	6,522	567
Federal Financing Bank		6,522	567
Federal Financing Bank			
20 4521 0 4 803	401(C) Authority - Off. Coll.		
	Outlays	2,000	174
Bureau of Alcohol, Tobacco and Firearms		2,000	174
Salaries and expenses			
20 1000 0 1 751	Budget Authority		
	Outlays	215,067	18,710
United States Customs Service		193,560	16,840
Salaries and expenses			
20 0602 0 1 751	Budget Authority		
	401(C) Authority	902,432	78,512
	Outlays	72,950	6,347
Operation and maintenance, air interdiction program		889,651	77,400
20 0604 0 1 751	Budget Authority		
	Outlays	173,837	15,124
Payments to the Government of Puerto Rico		78,227	6,806
20 0606 0 1 751	Budget Authority		
	Outlays	8,128	707
Customs forfeiture fund		8,128	707
20 5693 0 2 803	Budget Authority		
	Outlays	18,928	1,647
Customs services at small airports		18,928	1,647
20 5694 0 2 806	Budget Authority		
	Outlays	398	35
Refunds, transfers and expenses, unclaimed, abandoned and seized goods		398	35
20 8789 0 7 803	401(C) Authority		
	Outlays	7,861	684
Bureau of Engraving and Printing		7,861	684
Bureau of Engraving and Printing fund			
20 4502 0 4 803	401(C) Authority - Off. Coll.		
	Outlays	36,491	3,175
United States Mint		36,491	3,175
Salaries and expenses			
20 1616 0 1 803	Budget Authority		
	401(C) Authority - Off. Coll.	46,194	4,019
	Outlays	111,793	9,726
Expansion and improvements		151,058	13,142
20 9911 0 1 803	Budget Authority	723	63
Bureau of the Public Debt			
Administering the public debt			
20 0560 0 1 803	Budget Authority		
	Outlays	211,073	18,363
Internal Revenue Service		168,858	14,691
Salaries and expenses			
20 0911 0 1 803	Budget Authority		
	Outlays	96,381	8,385
Processing tax returns		75,177	6,540
20 0912 0 1 803	Budget Authority		
	Outlays	1,493,634	129,946
Examinations and appeals		1,205,596	104,887
20 0913 0 1 803	Budget Authority		
	Outlays	1,798,319	156,453
Investigation, collection and taxpayer service		1,654,986	143,984
20 0914 0 1 803	Budget Authority		
	Outlays	1,311,893	114,135
Federal tax lien revolving fund		1,182,157	102,847
20 4413 0 3 803	401(C) Authority - Off. Coll.		
	Outlays	6,780	590
United States Secret Service		6,780	590
Contribution for annuity benefits			
20 1407 0 1 751	401(C) Authority		
	Outlays	15,000	1,305
Salaries and expenses		15,000	1,305
20 1408 0 1 751	Budget Authority		
	Outlays	354,814	30,869
		283,851	24,695

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
TOTAL FOR Department of the Treasury			
	Budget Authority	7,019,261	610,675
	401(C) Authority	95,811	8,336
	401(C) Authority - Off. Coll.	161,406	14,043
	Outlays	6,309,261	548,907
Department of Health and Human Services, Social Security			
Social Security			
Federal old-age and survivors insurance trust fund			
20 8006 0 7 651	Obligation Limitation	1,799,944	156,595
	Outlays	1,398,636	121,681
Federal disability insurance trust fund			
20 8007 0 7 651	Obligation Limitation	536,398	46,666
	Outlays	422,103	36,722
TOTAL FOR Department of Health and Human Services, Social Se			
	Obligation Limitation	2,336,342	203,261
	Outlays	1,820,739	158,403
Department of Education			
Office of Elementary and Secondary Education			
Indian education			
91 0101 0 1 501	Budget Authority	66,842	5,815
	Outlays	29,410	2,559
Impact aid			
91 0102 0 1 501	Budget Authority	747,635	65,044
	Outlays	580,912	50,539
Reappropriation of contingent obligations			
91 0220 0 1 501	Budget Authority	86,486	7,524
Compensatory education for the disadvantaged			
91 0900 0 1 501	Budget Authority	4,117,633	358,234
	Outlays	205,882	17,912
Special programs			
91 1000 0 1 501	Budget Authority	978,948	85,168
	Outlays	92,928	8,084
Office of Bilingual Education and Minority Languages Affairs			
Bilingual education			
91 1300 0 1 501	Budget Authority	180,365	15,692
	Outlays	6,313	549
Immigrant and refugee education			
91 1600 0 1 501	Budget Authority	16,553	1,440
	Outlays	10,594	922
Office of Special Education and Rehabilitative Services			
Education for the handicapped			
91 0300 0 1 501	Budget Authority	1,815,060	157,910
	Outlays	85,308	7,422
Rehabilitation services and handicapped research			
91 0301 0 1 506	Budget Authority	212,316	18,471
	401(C) Authority - Spec. Rules	20,112	20,112
	Outlays	178,969	29,709
Payments to institutions for the handicapped (Elementary, secondary, and			
91 0600 0 1 501	Budget Authority	5,731	499
	Outlays	5,731	499
Payments to institutions for the handicapped (Higher education)			
91 0601 0 1 502	Budget Authority	33,344	2,901
	Outlays	33,344	2,901
Payments to institutions for the handicapped (Higher education)			
91 0602 0 1 502	Budget Authority	64,604	5,621
	Outlays	64,604	5,621
Promotion of education for the blind			
91 8893 0 7 501	401(C) Authority	10	1
Office of Vocational and Adult Education			
Vocational and adult education			
91 0400 0 1 501	Budget Authority	1,029,184	89,539
	401(C) Authority	7,148	622
	Outlays	21,302	1,853
Office of Postsecondary Education			
Student financial assistance			
91 0200 0 1 502	Budget Authority	5,713,286	497,056
	Outlays	1,066,858	92,817
Higher education			
91 0201 0 1 502	Budget Authority	502,690	43,734
	Outlays	87,713	7,631
Guaranteed student loans			
91 0230 0 1 502	401(C) Authority - Spec. Rules	39,230	39,230
	Outlays	24,910	24,910
Higher education facilities loans and insurance			
91 0240 0 1 502	Budget Authority	1,076	94
	Outlays	1,074	93

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Howard University			
91 0603 0 1 502	Budget Authority	177,380	15,432
	Outlays	170,285	14,815
College housing loans			
91 4250 0 3 502	401(C) Authority - Off. Coll.	1,926	168
	Direct Loan Limitation	62,520	5,439
	Outlays	1,922	167
Office of Educational Research and Improvement			
Libraries			
91 0104 0 1 503	Budget Authority	138,065	12,012
	Outlays	33,826	2,943
Education research and statistics			
91 1100 0 1 503	Budget Authority	66,248	5,764
	Outlays	37,099	3,228
Departmental Management			
Salaries and expenses (Research and general education aids)			
91 0800 0 1 503	Budget Authority	253,595	22,063
	Outlays	210,484	18,312
Salaries and expenses (Federal law enforcement activities)			
91 0800 0 1 751	Budget Authority	64,870	5,644
	Outlays	52,674	4,583
TOTAL FOR Department of Education			
	Budget Authority	16,271,911	1,415,657
	401(C) Authority	7,158	623
	401(C) Authority - Off. Coll.	1,926	168
	401(C) Authority - Spec. Rules	59,342	59,342
	Direct Loan Limitation	62,520	5,439
	Outlays	3,002,142	298,069
Department of Energy			
Atomic Energy Defense Activities			
Atomic energy defense activities			
89 0220 0 1 053	Budget Authority	7,799,939	811,194
	Unobligated Balances - Defense	500,000	52,000
	Outlays	5,386,967	560,245
Energy Programs			
Geothermal resources development fund			
89 0206 0 1 271	Budget Authority	80	7
	Outlays	80	7
Federal Energy Regulatory Commission			
89 0212 0 1 276	Budget Authority	107,581	9,360
	Outlays	91,659	7,974
Fossil energy research and development			
89 0213 0 1 271	Budget Authority	310,523	27,016
	Outlays	124,209	10,806
Energy conservation			
89 0215 0 1 272	Budget Authority	244,259	21,251
	Outlays	48,852	4,250
Energy information administration			
89 0216 0 1 276	Budget Authority	64,182	5,584
	Outlays	48,137	4,188
Economic regulation			
89 0217 0 1 276	Budget Authority	25,350	2,205
	Outlays	15,971	1,389
Strategic petroleum reserve			
89 0218 0 1 274	Budget Authority	153,961	13,395
	Outlays	84,679	7,367
Naval petroleum and oil shale reserves			
89 0219 0 1 271	Budget Authority	127,531	11,095
	Outlays	70,142	6,102
General science and research activities			
89 0222 0 1 251	Budget Authority	738,337	64,235
	Outlays	550,799	47,920
Energy supply, R&D activities			
89 0224 0 1 271	Budget Authority	1,405,725	122,298
	Outlays	702,863	61,149
Uranium supply and enrichment activities			
89 0226 0 1 271	Budget Authority	1,261,552	109,755
	Outlays	856,594	74,524
Emergency preparedness			
89 0234 0 1 274	Budget Authority	6,553	570
	Outlays	5,242	456
Payments to states under Federal Power Act			
89 5105 0 2 852	401(C) Other - incl. ob. limit	727	63
	Outlays	727	63

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Nuclear waste disposal fund			
89 5227 0 2 271	Budget Authority	520,931	45,321
	Outlays	260,466	22,661
Power Marketing Administration			
Operation and maintenance, Southeastern Power Administration			
89 0302 0 1 271	Budget Authority	901	75
	Outlays	793	69
Operation and maintenance, Southwestern Power Administration			
89 0303 0 1 271	Budget Authority	3,585	312
	Outlays	3,155	274
Operation and maintenance, Alaska Power Administration			
89 0304 0 1 271	Budget Authority	776	68
	Outlays	683	59
Bonneville Power Administration fund			
89 4045 0 3 271	401(C) Authority - Off. Coll.	47,600	4,141
	Outlays	41,900	3,645
Colorado river basins power marketing fund, Western Area Power Administr			
89 4452 0 3 271	401(C) Authority - Off. Coll.	8,434	734
	Outlays	7,422	646
Construction, rehabilitation, O&M, Western Area Power Administration			
89 5068 0 2 271	Budget Authority	35,856	3,119
	Outlays	31,553	2,745
Departmental Administration			
Departmental administration			
89 0228 0 1 276	Budget Authority	421,530	36,673
	Outlays	252,918	22,004
TOTAL FOR Department of Energy			
	Budget Authority	13,229,152	1,283,536
	401(C) Authority - Off. Coll.	56,034	4,875
	401(C) Other - incl. ob. limit	727	63
	Unobligated Balances - Defense	500,000	52,000
	Outlays	8,585,811	838,543
Environmental Protection Agency			
Environmental Protection Agency			
Hazardous substance superfund			
20 8145 0 7 304	Budget Authority	1,479,198	128,690
	401(C) Authority - Off. Coll.	40,000	3,480
	Obligation Limitation	147,506	12,833
	Outlays	335,840	29,218
Leaking underground storage tank trust fund			
20 8153 0 7 304	Budget Authority	52,536	4,571
	Outlays	7,880	686
Construction grants			
68 0103 0 1 304	Budget Authority	2,460,162	214,034
	Outlays	15,675	1,364
Research and development (Energy supply)			
68 0107 0 1 271	Budget Authority	56,426	4,909
	Outlays	22,570	1,964
Research and development (pollution control and abatement)			
68 0107 0 1 304	Budget Authority	154,579	13,448
	Outlays	44,828	3,900
Abatement, control, and compliance			
68 0108 0 1 304	Budget Authority	635,292	55,271
	Direct Loan Limitation	37,357	3,250
	Outlays	280,789	24,428
Buildings and facilities			
68 0110 0 1 304	Budget Authority	7,815	680
	Outlays	2,032	177
Salaries and expenses			
68 0200 0 1 304	Budget Authority	774,623	67,392
	401(C) Authority - Off. Coll.	1,800	157
	Outlays	660,008	57,421
Revolving fund for certification and other services			
68 4311 0 3 304	401(C) Authority - Off. Coll.	1,500	131
	Outlays	1,500	131
TOTAL FOR Environmental Protection Agency			
	Budget Authority	5,620,631	488,995
	401(C) Authority - Off. Coll.	43,300	3,768
	Direct Loan Limitation	37,357	3,250
	Obligation Limitation	147,506	12,833
	Outlays	1,371,122	119,289
Department of Transportation			
Federal Highway Administration			
Access highways to public recreation areas on certain lakes			
69 0503 0 1 401	Budget Authority	5,210	453
	Outlays	875	76

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Motor carrier safety			
69 0552 0 1 401	Budget Authority	21,173	1,842
	Outlays	17,997	1,566
Railroad-highway crossings demonstration projects			
69 0557 0 1 401	Budget Authority	4,082	355
	Outlays	408	35
Waste isolation pilot project			
69 0562 0 1 401	Budget Authority	10,420	907
	Outlays	1,761	153
Expressway gap closing demonstration project			
69 0563 0 1 401	Budget Authority	6,460	562
	Outlays	1,092	95
Trust fund share of other highway programs			
69 8009 0 7 401	Budget Authority	8,162	710
	Outlays	816	71
Baltimore-Washington Parkway			
69 8014 0 7 401	Budget Authority	10,420	906
	Outlays	1,763	154
Highway safety research and development			
69 8017 0 7 401	Budget Authority	7,294	635
	Outlays	1,240	108
Highway-related safety grants			
69 8019 0 7 401	401(C) Authority	10,000	870
	401(C) Other - incl. ob. limit	10,000	870
	Outlays	2,000	174
Motor carrier safety grants			
69 8027 0 7 401	Budget Authority	280	25
	401(C) Authority	50,000	4,350
	Outlays	17,598	1,531
Federal-aid highways			
69 8083 0 7 401	401(C) Authority	13,704,000	1,192,248
	401(C) Authority - Off. Coll.	21,082	1,834
	401(C) Other - incl. ob. limit	12,350,000	1,074,450
	Outlays	2,254,082	196,105
Right-of-way revolving fund (trust revolving fund)			
69 8402 0 8 401	Direct Loan Limitation	49,860	4,338
	Outlays	49,860	4,338
Miscellaneous appropriations			
69 9911 0 1 401	Budget Authority	1,966	171
	Outlays	334	29
Miscellaneous trust funds--Highway			
69 9972 0 7 401	Budget Authority	52,934	4,605
	Outlays	8,999	783
National Highway Traffic Safety Administration			
Operations and research			
69 0650 0 1 401	Budget Authority	58,518	5,091
	Outlays	38,037	3,309
Trust fund share of operations and research			
69 8016 0 7 401	Budget Authority	36,099	3,141
	Outlays	23,465	2,041
Highway traffic safety grants			
69 8020 0 7 401	401(C) Authority	126,000	10,962
	401(C) Other - incl. ob. limit	126,000	10,962
	Obligation Limitation	16,828	1,464
	Outlays	57,131	4,971
Federal Railroad Administration			
Northeast corridor improvement program			
69 0123 0 1 401	Budget Authority	17,674	1,538
	Outlays	1,767	154
Office of the Administrator			
69 0700 0 1 401	Budget Authority	24,719	2,151
	Outlays	17,667	1,537
Railroad safety			
69 0702 0 1 401	Budget Authority	39,308	3,419
	Outlays	29,391	2,557
Grants to National Railroad Passenger Corporation			
69 0704 0 1 401	Budget Authority	619,772	53,920
	Outlays	588,783	51,224
Settlements of railroad litigation			
69 0708 0 1 401	401(C) Authority	5,437	473
Commuter rail service			
69 0747 0 1 401	Budget Authority	5,210	453
	Outlays	1,042	91
Railroad rehabilitation and improvement financing funds			
69 4411 0 3 401	Budget Authority	8,329	724
	Direct Loan Limitation	6,773	589
	Outlays	339	29

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Urban Mass Transportation Administration			
Administrative expenses			
69 1120 0 1 401	Budget Authority	33,723	2,934
	Outlays	30,351	2,641
Research, training, and human resources			
69 1121 0 1 401	Budget Authority	18,131	1,577
	Outlays	5,439	473
Interstate transfer grants-transit			
69 1127 0 1 401	Budget Authority	208,400	18,131
	Outlays	31,260	2,720
Washington metro			
69 1128 0 1 401	Budget Authority	209,567	18,232
	Outlays	10,478	912
Formula grants			
69 1129 0 1 401	Budget Authority	2,084,000	181,308
	Outlays	631,468	54,938
Discretionary grants			
69 8191 0 7 401	401(C) Authority	1,200,000	104,400
	Obligation Limitation	1,044,605	90,881
	Outlays	93,480	8,133
Federal Aviation Administration			
Operations			
69 1301 0 1 402	Budget Authority	2,423,621	210,855
	401(C) Authority - Off. Coll.	9,100	792
	Outlays	2,183,138	189,934
Headquarters administration			
69 1302 0 1 402	Budget Authority	37,617	3,273
	Outlays	31,974	2,782
Operation and maintenance, Metropolitan Washington Airports			
69 1332 0 1 402	Budget Authority	25,342	2,204
	Outlays	21,541	1,874
Construction, Metropolitan Washington Airports			
69 1333 0 1 402	Budget Authority	0	1
	Outlays	0	0
Aircraft purchase loan guarantee program			
69 1399 0 1 402	Budget Authority	1,799	157
	Outlays	1,799	157
Trust fund share of FAA operations			
69 8104 0 7 402	Budget Authority	677,073	58,905
	Outlays	677,073	58,905
Grants-in-aid for airports (Airport and airway trust fund)			
69 8106 0 7 402	401(C) Authority	1,017,200	88,496
	Obligation Limitation	1,068,050	92,920
	Outlays	160,208	13,938
Facilities and equipment (Airport and airway trust fund)			
69 8107 0 7 402	Budget Authority	841,096	73,175
	401(C) Authority - Off. Coll.	3,600	313
	Outlays	70,888	6,167
Research, engineering and development (Airport and airway trust fund)			
69 8108 0 7 402	Budget Authority	149,466	13,004
	401(C) Authority - Off. Coll.	600	52
	Outlays	97,753	8,504
Coast Guard			
Operating expenses			
69 0201 0 1 403	Budget Authority	1,935,703	168,407
	401(C) Authority - Off. Coll.	4,000	348
	Outlays	1,633,848	142,145
Acquisition, construction, and improvements			
69 0240 0 1 403	Budget Authority	311,659	27,114
	Outlays	42,064	3,660
Retired pay			
69 0241 0 1 403	401(C) Authority	34,980	3,043
	Outlays	34,980	3,043
Reserve training			
69 0242 0 1 403	Budget Authority	70,583	6,141
	Outlays	61,125	5,318
Research, development, test, and evaluation			
69 0243 0 1 403	Budget Authority	21,307	1,854
	Outlays	7,159	623
Offshore oil pollution compensation fund			
69 5167 0 2 304	Budget Authority	1,042	91
	Obligation Limitation	60,000	5,220
	Outlays	104	9
Pollution fund			
69 5168 0 2 304	401(C) Authority	5,300	461
	Outlays	2,099	183

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Deepwater port liability fund			
69 5170 0 2 304	Budget Authority	1,042	91
	Obligation Limitation	50,000	4,350
Boat safety			
69 8149 0 7 403	Budget Authority	15,630	1,360
	401(C) Authority	15,973	1,390
	Obligation Limitation	30,000	2,610
	Outlays	30,630	2,665
Maritime Administration			
Research and development			
69 1716 0 1 403	Budget Authority	3,647	317
	Outlays	2,188	190
Operations and training			
69 1750 0 1 403	Budget Authority	68,652	5,973
	Outlays	61,787	5,375
Federal ship financing fund			
69 4301 0 3 403	401(C) Authority - Off. Coll.	3,000	261
	Outlays	3,000	261
Saint Lawrence Seaway Development Corporation			
Saint Lawrence Seaway Development Corporation			
69 4089 0 3 403	Budget Authority	2,136	186
	401(C) Authority - Off. Coll.	800	70
	Obligation Limitation	1,985	173
	Outlays	4,844	422
Operations and maintenance			
69 8003 0 7 403	Budget Authority	4,168	363
	Outlays	4,168	363
Office of the Inspector General			
Salaries and expenses			
69 0130 0 1 407	Budget Authority	29,652	2,580
	Outlays	25,619	2,229
Research and Special Programs Administration			
Research and special programs			
69 0104 0 1 407	Budget Authority	21,303	1,653
	Outlays	14,060	1,223
Office of the Secretary			
Salaries and expenses			
69 0102 0 1 407	Budget Authority	55,340	4,815
	Outlays	49,806	4,333
Transportation, planning, research and development			
69 0142 0 1 407	Budget Authority	3,578	311
	Outlays	1,420	124
Payments to air carriers, DOT			
69 0150 0 1 402	Budget Authority	31,260	2,720
	Outlays	25,008	2,176
TOTAL FOR Department of Transportation			
	Budget Authority	10,224,567	889,540
||	401(C) Authority	16,168,890	1,406,693
	401(C) Authority - Off. Coll.	42,182	3,670
	401(C) Other - incl. ob. limit	12,486,000	1,086,282
	Direct Loan Limitation	56,633	4,927
||	Obligation Limitation	2,271,468	197,618
	Outlays	9,167,206	797,551
General Services Administration			
Real Property Activities			
Federal buildings fund			
47 4542 0 4 804	401(C) Authority - Off. Coll.	13,254	1,153
	Outlays	13,254	1,153
Personal Property Activities			
Federal supply service			
47 0116 0 1 804	Budget Authority	176,173	15,327
	Outlays	170,888	14,867
Expenses of transportation audit contracts			
47 5246 0 2 804	401(C) Other - incl. ob. limit	13,040	1,134
	Outlays	8,252	718
Information Resources Management Service			
Operating expenses, information resources management service			
47 0900 0 1 804	Budget Authority	31,193	2,714
	Outlays	26,514	2,307
Federal Property Resources Activities			
Operating expenses, federal property resources service (Defense-related			
47 0533 0 1 054	Budget Authority	30,250	3,146
	Outlays	25,038	2,604
Operating expenses, federal property resources service (General property			
47 0533 0 1 804	Budget Authority	11,462	997
	Outlays	7,278	633

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National defense stockpile transaction fund			
47 4550 0 3 054	Budget Authority	10,420	1,084
	Unobligated Balances - Defense	598,660	62,261
	Outlays	24,277	2,525
Expenses, disposal of surplus real and related personal property			
47 5254 0 2 804	401(C) Other - incl. ob. limit	3,800	331
	Outlays	2,280	198
General Activities			
Allowances and office staff for former Presidents			
47 0105 0 1 802	Budget Authority	956	83
	Outlays	860	75
Office of Inspector General			
47 0108 0 1 804	Budget Authority	23,348	2,031
	Outlays	21,247	1,848
General management and administration, salaries and expenses			
47 0110 0 1 804	Budget Authority	128,108	11,145
	Outlays	102,486	8,916
Consumer information center fund			
47 4549 0 3 376	Budget Authority	1,339	116
	401(C) Authority - Off. Coll.	392	34
	Obligation Limitation	1,678	146
	Outlays	1,082	94
TOTAL FOR General Services Administration			
	Budget Authority	413,249	36,643
	401(C) Authority - Off. Coll.	13,646	1,187
	401(C) Other - incl. ob. limit	16,840	1,465
	Obligation Limitation	1,678	146
	Unobligated Balances - Defense	598,660	62,261
	Outlays	403,456	35,938
Department of Housing and Urban Development			
Housing Programs			
Housing counseling assistance			
86 0156 0 1 506	Budget Authority	3,647	317
Subsidized housing programs (Community development)			
86 0164 0 1 451	Budget Authority	332,971	28,969
	Outlays	43,764	3,807
Subsidized housing programs (Housing assistance)			
86 0164 0 1 604	Budget Authority	7,857,847	683,633
	Outlays	15,643	1,361
Congregate services program			
86 0178 0 1 604	Budget Authority	3,543	308
Shelter programs			
86 0181 0 1 604	Budget Authority	166,720	14,505
	Outlays	60,389	5,253
Rental housing assistance fund			
86 4041 0 3 604	401(C) Authority - Off. Coll.	51,000	4,437
	Outlays	51,000	4,437
Nonprofit sponsor assistance			
86 4042 0 3 604	Direct Loan Limitation	1,000	87
	Outlays	236	21
Federal Housing Administration fund			
86 4070 0 3 371	401(C) Authority - Off. Coll.	382,896	33,312
	Direct Loan Limitation	73,800	6,421
	Guaranteed Loan Limitation	100,000,000	8,700,000
	Obligation Limitation	306,962	26,706
	Outlays	698,197	60,743
Housing for the elderly or handicapped fund			
86 4115 0 3 371	Budget Authority	3,907	340
	Direct Loan Limitation	621,700	54,088
	Outlays	3,907	340
Interstate land sales			
86 5270 0 2 376	401(C) Authority	814	71
	Outlays	749	65
Manufactured home inspection and monitoring			
86 5271 0 2 376	401(C) Authority	5,967	519
	Outlays	2,984	260
Public and Indian Housing Programs			
Payments for operation of low income housing projects			
86 0163 0 1 604	Budget Authority	1,406,700	122,383
	Outlays	703,350	61,191
Government National Mortgage Association			
Payment of participation sales insufficiencies			
86 0145 0 1 371	Budget Authority	1,124	98
Guarantees of mortgage-backed securities			
86 4238 0 3 371	401(C) Authority - Off. Coll.	18,785	1,634
	Guaranteed Loan Limitation	150,000,000	13,050,000
	Outlays	16,363	1,424

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Solar Energy and Energy Conservation Bank			
Assistance for solar and conservation improvements			
86 0179 0 1 272	Budget Authority	625	54
Community Planning and Development			
Community development grants			
86 0162 0 1 451	Budget Authority	3,126,000	271,962
	Guaranteed Loan Limitation	156,300	13,598
	Outlays	62,520	5,439
Urban development action grants			
86 0170 0 1 451	Budget Authority	234,450	20,397
	Outlays	11,723	1,020
Urban homesteading			
86 0171 0 1 451	Budget Authority	12,504	1,088
	Outlays	8,753	762
Rehabilitation loan fund			
86 4036 0 3 451	401(C) Authority - Off. Coll.	23,791	2,070
	Direct Loan Limitation	80,000	6,960
	Outlays	63,791	5,550
Policy Development and Research			
Research and technology			
86 0108 0 1 451	Budget Authority	17,714	1,541
	Outlays	5,314	462
Fair Housing and Equal Opportunity			
Fair housing assistance			
86 0144 0 1 751	Budget Authority	6,607	575
Management and Administration			
Salaries and expenses, Including transfer of funds (Community developmen			
86 0143 0 1 451	Budget Authority	184,030	16,011
	Outlays	153,665	13,369
Salaries and expenses, Including transfer of funds (Housing assistance)			
86 0143 0 1 604	Budget Authority	157,616	13,713
	Outlays	130,683	11,369
Salaries and expenses, Including transfer of funds (Federal law enforcem			
86 0143 0 1 751	Budget Authority	14,543	1,265
	Outlays	12,143	1,056
TOTAL FOR Department of Housing and Urban Development			
	Budget Authority	13,530,548	1,177,159
	401(C) Authority	6,781	590
	401(C) Authority - Off. Coll.	476,472	41,453
	Direct Loan Limitation	776,500	67,556
	Guaranteed Loan Limitation	250,156,300	21,763,598
	Obligation Limitation	306,962	26,706
	Outlays	2,045,174	177,929
National Aeronautics and Space Administration			
National Aeronautics and Space Administration			
Research and program management, offsetting collections			
80 0103 0 1 250	401(C) Authority - Off. Coll.	5,378	468
	Outlays	5,378	468
Research and program management (Space flight)			
80 0103 0 1 253	Budget Authority	705,076	61,342
	Outlays	647,965	56,373
Research and program management (Space science, applications, and techno			
80 0103 0 1 254	Budget Authority	496,031	43,155
	Outlays	451,388	39,271
Research and program management (Supporting space activities)			
80 0103 0 1 255	Budget Authority	60,837	5,293
	Outlays	54,753	4,764
Research and program management (Air transportation)			
80 0103 0 1 402	Budget Authority	286,447	24,921
	Outlays	259,807	22,603
Space flight, control, and data communications			
80 0105 0 1 250	401(C) Authority - Off. Coll.	123,977	10,786
	Outlays	123,977	10,786
Space flight, control, and data communications (Space flight)			
80 0105 0 1 253	Budget Authority	5,472,688	476,123
	Outlays	2,219,517	193,098
Space flight, control, and data communications (Supporting space activit			
80 0105 0 1 255	Budget Authority	899,142	78,225
	Outlays	543,981	47,326
Construction of facilities (Space flight)			
80 0107 0 1 253	Budget Authority	16,985	1,478
	Outlays	1,189	103
Construction of facilities (Space science, applications, and technology)			
80 0107 0 1 254	Budget Authority	9,795	852
	Outlays	686	60

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Construction of facilities (Supporting space activities)			
80 0107 0 1 255	Budget Authority	116,079	10,099
	Outlays	8,126	707
Construction of facilities (Air transportation)			
80 0107 0 1 402	Budget Authority	33,552	2,919
	Outlays	2,349	204
Research and development, offsetting collections			
80 0108 0 1 250	401(C) Authority - Off. Coll.	17,249	1,501
	Outlays	17,249	1,501
Research and development (Space flight)			
80 0108 0 1 253	Budget Authority	953,951	82,994
	Outlays	511,318	44,485
Research and development (Space science, applications, and technology)			
80 0108 0 1 254	Budget Authority	1,911,653	166,314
	Outlays	996,051	86,657
Research and development (Supporting space activities)			
80 0108 0 1 255	Budget Authority	17,818	1,550
	Outlays	10,780	938
Research and development (Air transportation)			
80 0108 0 1 402	Budget Authority	415,237	36,126
	Outlays	251,218	21,856
TOTAL FOR National Aeronautics and Space Administration			
	Budget Authority	11,395,291	991,391
	401(C) Authority - Off. Coll.	146,604	12,755
	Outlays	6,105,732	531,200
Office of Personnel Management			
Office of Personnel Management			
Salaries and expenses			
24 0100 0 1 805	Budget Authority	107,650	9,366
	Outlays	91,503	7,961
Government payment for annuitants, employees health benefits			
24 0206 0 1 551	401(C) Authority	1,788,931	155,637
Revolving fund			
24 4571 0 4 805	401(C) Authority - Off. Coll.	1,051	91
	Outlays	1,051	91
Civil service retirement and disability fund			
24 8135 0 7 602	Obligation Limitation	56,510	4,917
	Outlays	52,465	4,565
Employees life insurance fund			
24 8424 0 8 602	Obligation Limitation	1,215	106
	Outlays	1,215	106
Employees health benefits fund			
24 8440 0 8 551	Obligation Limitation	9,657	840
	Outlays	9,657	840
Retired employees health benefits fund			
24 8445 0 8 551	Obligation Limitation	146	13
	Outlays	146	13
TOTAL FOR Office of Personnel Management			
	Budget Authority	107,650	9,366
	401(C) Authority	1,788,931	155,637
	401(C) Authority - Off. Coll.	1,051	91
	Obligation Limitation	67,528	5,876
	Outlays	156,037	13,576
Small Business Administration			
Small Business Administration			
Salaries and expenses			
73 0100 0 1 376	Budget Authority	212,278	18,468
	Outlays	172,073	14,970
Pollution control equipment contract guarantee revolving fund			
73 4147 0 3 376	Guaranteed Loan Limitation	50,000	4,350
Disaster loan fund			
73 4153 0 3 453	Direct Loan Limitation	364,000	31,668
	Outlays	189,000	16,443
Business loan and investment fund			
73 4154 0 3 376	Budget Authority	114,203	9,936
	Direct Loan Limitation	101,074	8,793
	Guaranteed Loan Limitation	3,741,000	325,467
	Outlays	77,772	6,766
Surety bond guarantees revolving fund			
73 4156 0 3 376	Guaranteed Loan Limitation	1,142,000	99,354
TOTAL FOR Small Business Administration			
	Budget Authority	326,481	28,404
	Direct Loan Limitation	465,074	40,461
	Guaranteed Loan Limitation	4,933,000	429,171
	Outlays	438,845	38,179

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Veterans Administration			
Veterans Administration			
Veterans job training			
36 0103 0 1 702	Budget Authority	31,260	2,720
	Outlays	1,844	160
Construction, major projects			
36 0110 0 1 703	Budget Authority	398,856	34,700
	Outlays	12,763	1,110
Construction, minor projects			
36 0111 0 1 703	Budget Authority	85,571	7,444
	Outlays	41,054	3,572
Readjustment benefits			
36 0137 0 1 702	401(C) Authority	587,432	51,107
	Outlays	559,483	48,675
Grants to the Republic of the Philippines			
36 0144 0 1 703	Budget Authority	521	45
	Outlays	82	7
General operating expenses			
36 0151 0 1 705	Budget Authority	825,957	71,858
	Outlays	759,880	66,110
Medical administration and miscellaneous operating expenses			
36 0152 0 1 703	Budget Authority	44,793	3,897
	Outlays	33,595	2,923
Burial benefits and miscellaneous assistance			
36 0155 0 1 701	401(C) Authority	121,400	10,562
	Outlays	121,220	10,546
Medical care			
36 0160 0 1 703	Budget Authority	805,143	70,047
	Budget Authority - Spec. Rules	188,455	188,455
	401(C) Authority - Spec. Rules	618	618
	Outlays	915,106	224,116
Medical and prosthetic research			
36 0161 0 1 703	Budget Authority	227,819	19,820
	Outlays	185,900	16,173
Grants for construction of state extended care facilities			
36 0181 0 1 703	Budget Authority	44,181	3,844
Direct loan revolving fund			
36 4024 0 3 704	Direct Loan Limitation	1,000	87
	Outlays	230	20
Loan guaranty revolving fund			
36 4025 0 3 704	Guaranteed Loan Limitation	31,622,000	2,751,114
	Outlays	0	0
Vocational rehabilitation revolving fund			
36 4114 0 3 702	Direct Loan Limitation	900	78
	Outlays	884	77
Education loan fund			
36 4118 0 3 702	Direct Loan Limitation	40	3
	Outlays	40	3
Parking garage revolving fund			
36 4538 0 3 703	Budget Authority	27,092	2,357
	401(C) Authority - Off. Coll.	200	17
	Outlays	931	81
TOTAL FOR Veterans Administration			
	Budget Authority	2,491,193	216,732
	Budget Authority - Spec. Rules	188,455	188,455
	401(C) Authority	708,832	61,669
	401(C) Authority - Off. Coll.	200	17
	401(C) Authority - Spec. Rules	618	618
	Direct Loan Limitation	1,940	168
	Guaranteed Loan Limitation	31,622,000	2,751,114
	Outlays	2,633,012	373,573
Other Independent Agencies			
Other Independent Agencies			
Aviation Safety Commission			
48 0053 0 1 402	Budget Authority	2,104	183
	Outlays	1,368	119
Eisenhower Centennial Commission			
76 1700 0 1 801	Budget Authority	52	5
	Outlays	50	4
ACTION			
Operating expenses			
44 0103 0 1 506	Budget Authority	164,090	14,276
	Outlays	99,439	8,651

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Administrative Conference of the United States			
Salaries and expenses			
95 1700 0 1 751	Budget Authority	1,594	139
	Outlays	1,275	111
Advisory Committee on Federal Pay			
Salaries and expenses			
95 1800 0 1 805	Budget Authority	219	19
	Outlays	175	15
Advisory Council on Historic Preservation			
Salaries and expenses			
95 2300 0 1 303	Budget Authority	1,669	145
	Outlays	1,369	119
American Battle Monuments Commission			
Salaries and expenses			
74 0100 0 1 705	Budget Authority	15,973	1,390
	Outlays	10,782	938
Architectural and Transportation Barriers Compliance Board			
Salaries and expenses			
95 3200 0 1 751	Budget Authority	2,046	178
	Outlays	1,485	129
Arms Control and Disarmament Agency			
Arms control and disarmament activities			
94 0100 0 1 153	Budget Authority	31,074	2,703
	Outlays	20,602	1,792
Barry Goldwater Scholarship and Excellence in Education Foundation			
Payment to the Barry Goldwater Scholarship and Excellence in Education F			
95 0500 0 1 502	Budget Authority	41,680	3,626
Barry Goldwater Scholarship and Excellence in Education Foundation			
95 8281 0 7 502	401(C) Other - incl. ob. limit	1,085	94
	Outlays	987	86
Board for International Broadcasting			
Grants and expenses			
95 1145 0 1 154	Budget Authority	180,505	15,704
	Outlays	162,454	14,133
Commission of Fine Arts			
Salaries and expenses			
95 2600 0 1 451	Budget Authority	488	42
	Outlays	448	39
Commission on Civil Rights			
Salaries and expenses			
95 1900 0 1 751	Budget Authority	8,097	704
	Outlays	6,882	599
Committee for Purchase from the Blind and other Severely Handicapped			
Salaries and expenses			
95 2000 0 1 505	Budget Authority	844	73
	Outlays	802	70
Commodity Futures Trading Commission			
Commodity Futures Trading Commission			
95 1400 0 1 376	Budget Authority	32,396	2,818
	Outlays	28,185	2,452
Consumer Product Safety Commission			
Salaries and expenses			
61 0100 0 1 554	Budget Authority	37,002	3,219
	401(C) Authority - Off. Coll.	5	
	Outlays	31,457	2,736
District of Columbia			
Federal payment to the District of Columbia			
20 1700 0 1 852	Budget Authority	603,916	52,541
	Outlays	603,916	52,541
Equal Employment Opportunity Commission			
Salaries and expenses			
45 0100 0 1 751	Budget Authority	179,234	15,593
	Outlays	155,934	13,566
Export-Import Bank of the United States			
Export-Import Bank of the United States			
83 4027 0 3 155	Budget Authority	104,200	9,065
	Direct Loan Limitation	708,560	61,645
	Guaranteed Loan Limitation	11,831,910	1,029,376
	Obligation Limitation	20,020	1,742
	Outlays	126,360	10,993
Farm Credit Administration			
Revolving fund for administrative expenses			
78 4131 0 3 351	Obligation Limitation	39,420	3,430
	Outlays	39,420	3,430

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Federal Communications Commission			
Salaries and expenses			
27 0100 0 1 376	Budget Authority	108,590	9,447
	401(C) Authority - Off. Coll.	50	4
	Outlays	96,994	8,438
Federal Election Commission			
Salaries and expenses			
95 1600 0 1 806	Budget Authority	13,912	1,210
	Outlays	12,521	1,089
Federal Emergency Management Agency			
Salaries and expenses (defense-related activities)			
58 0100 0 1 054	Budget Authority	76,180	6,628
	Outlays	72,088	6,272
Salaries and expenses (Disaster relief and insurance)			
58 0100 0 1 453	Budget Authority	56,279	4,896
	Outlays	48,963	4,260
Emergency mgmt. planning and assistance (defense-related activities)			
58 0101 0 1 054	Budget Authority	246,137	21,414
	Outlays	188,541	16,403
Emergency management planning and assistance (Disaster relief and insura			
58 0101 0 1 453	Budget Authority	26,867	2,337
	Outlays	14,777	1,286
Emergency food distribution and shelter program			
58 0103 0 1 605	Budget Authority	130,250	11,332
	Outlays	130,250	11,332
National insurance development fund			
58 4235 0 3 451	401(C) Authority	220	19
	Outlays	220	19
Federal Labor Relations Authority			
Salaries and expenses			
54 0100 0 1 805	Budget Authority	17,834	1,552
	Outlays	16,407	1,427
Federal Maritime Commission			
Salaries and expenses			
65 0100 0 1 403	Budget Authority	12,672	1,102
	Outlays	11,405	992
Federal Mediation and Conciliation Service			
Salaries and expenses			
93 0100 0 1 505	Budget Authority	25,650	2,232
	Outlays	23,521	2,046
Federal Mine Safety and Health Review Commission			
Salaries and expenses			
95 2800 0 1 554	Budget Authority	4,128	359
	Outlays	3,868	337
Federal Trade Commission			
Salaries and expenses			
29 0100 0 1 376	Budget Authority	70,844	6,163
	Outlays	64,822	5,640
TOTAL FOR Other Independent Agencies			
	Budget Authority	2,196,526	191,095
	401(C) Authority	220	19
	401(C) Authority - Off. Coll.	55	4
	401(C) Other - incl. ob. limit	1,085	94
	Direct Loan Limitation	708,560	61,645
	Guaranteed Loan Limitation	11,831,910	1,029,376
	Obligation Limitation	59,440	5,172
	Outlays	1,977,767	172,064
Other Independent Agencies			
Harry S Truman Scholarship Foundation			
Harry S Truman memorial scholarship trust fund			
95 8296 0 7 502	401(C) Other - incl. ob. limit	2,113	184
	Outlays	2,113	184
Christopher Columbus Quincentennary Jubilee Commission			
Salaries and expenses			
76 0800 0 1 376	Budget Authority	236	21
	Outlays	212	18
Commission on the Bicentennial of the U.S. Constitution			
Salaries and expenses			
76 0054 0 1 806	Budget Authority	13,967	1,215
Franklin Delano Roosevelt Memorial Commission			
Salaries and expenses			
76 0700 0 1 806	Budget Authority	5	0
	Outlays	5	0

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Intelligence Community Staff			
Intelligence community staff			
95 0400 0 1 054	Budget Authority	23,490	2,443
	Outlays	21,177	2,202
Advisory Commission on Intergovernmental Relations			
Salaries and expenses			
55 0100 0 1 806	Budget Authority	1,878	163
	Outlays	1,596	139
Appalachian Regional Commission			
Appalachian regional development programs			
46 0200 0 1 452	Budget Authority	109,540	9,530
	Outlays	7,632	663
Delaware River Basin Commission			
Salaries and expenses			
46 0100 0 1 301	Budget Authority	202	18
	Outlays	188	16
Contribution to Delaware River Basin Commission			
46 0102 0 1 301	Budget Authority	208	18
	Outlays	208	18
Interstate Commission on the Potomac River Basin			
Contribution to Interstate Commission on the Potomac River Basin			
46 0446 0 1 304	Budget Authority	82	7
	Outlays	82	7
Susquehanna River Basin Commission			
Salaries and expenses			
46 0500 0 1 301	Budget Authority	195	17
	Outlays	184	16
Contribution to Susquehanna River Basin Commission			
46 0501 0 1 301	Budget Authority	250	22
	Outlays	250	22
International Trade Commission			
Salaries and expenses			
34 0100 0 1 153	Budget Authority	36,681	3,191
	Outlays	31,582	2,748
Interstate Commerce Commission			
Salaries and expenses			
30 0100 0 1 401	Budget Authority	51,101	4,446
	Outlays	45,991	4,001
James Madison Memorial Fellowship Foundation			
James Madison Memorial Fellowship Foundation			
95 0200 0 1 502	401(C) Authority	13,754	1,197
	Outlays	13,754	1,197
James Madison Memorial Fellowship Trust Fund			
95 8282 0 7 502	401(C) Other - incl. ob. limit	450	39
	Outlays	405	35
Japan-United States Friendship Commission			
Japan-United States friendship trust fund			
95 8025 0 7 154	Budget Authority	1,476	128
	Outlays	1,476	128
Legal Services Corporation			
Payment to the Legal Services Corporation			
20 0501 0 1 752	Budget Authority	318,331	27,695
	Outlays	277,266	24,122
Marine Mammal Commission			
Salaries and expenses			
95 2200 0 1 302	Budget Authority	978	85
	Outlays	868	76
Merit Systems Protection Board			
Salaries and expenses			
41 0100 0 1 805	Budget Authority	20,861	1,815
	Outlays	17,732	1,543
Office of the Special Counsel			
41 0101 0 1 805	Budget Authority	4,801	418
	Outlays	4,412	384
National Archives and Records Administration			
Operating expenses			
88 0300 0 1 804	Budget Authority	108,443	9,434
	Outlays	86,448	7,521
National archives trust fund			
88 8436 0 8 804	401(C) Authority - Off. Coll.	4,343	378
	Outlays	4,343	378
National Capital Planning Commission			
Salaries and expenses			
95 2500 0 1 451	Budget Authority	2,931	255
	Outlays	2,697	235

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National Afro-American History and Culture Commission			
National Center for the Study of Afro-American History and Culture			
95 3800 0 1 503	Budget Authority	145	13
	Outlays	94	8
National Commission on Libraries and Information Science			
Salaries and expenses			
95 2700 0 1 503	Budget Authority	717	62
	Outlays	645	56
National Council on the Handicapped			
Salaries and expenses			
95 3500 0 1 506	Budget Authority	915	80
	Outlays	659	57
National Endowment for the Arts			
National endowment for the arts: Grants and administration			
59 0100 0 1 503	Budget Authority	172,637	15,019
	Outlays	54,726	4,761
National Endowment for the Humanities			
National endowment for the humanities: Grants and administration			
59 0200 0 1 503	Budget Authority	149,077	12,970
	Outlays	74,539	6,485
Institute of Museum Services			
Institute of Museum Services: Grants and administration			
59 0300 0 1 503	Budget Authority	22,174	1,929
	Outlays	5,566	484
National Institute of Building Sciences			
National Institute of Building Sciences trust fund			
95 8222 0 7 376	401(C) Other - incl. ob. limit	500	44
	Outlays	500	44
National Labor Relations Board			
Salaries and expenses			
63 0100 0 1 505	Budget Authority	142,058	12,359
	Outlays	133,677	11,630
National Mediation Board			
Salaries and expenses			
95 2400 0 1 505	Budget Authority	6,999	609
	Outlays	5,571	485
National Science Foundation			
Research and related activities			
49 0100 0 1 251	Budget Authority	1,468,773	127,783
	Outlays	731,449	63,636
Scientific activities overseas (special foreign currency program)			
49 0102 0 1 251	Budget Authority	729	63
	Outlays	109	9
Science and engineering education activities			
49 0106 0 1 251	Budget Authority	103,158	8,975
	Outlays	15,371	1,337
U.S. Antarctic program			
49 0200 0 1 251	Budget Authority	121,914	10,607
	Outlays	45,474	3,956
National Transportation Safety Board			
Salaries and expenses			
95 0310 0 1 407	Budget Authority	24,208	2,106
	Outlays	21,787	1,895
Neighborhood Reinvestment Corporation			
Payment to the Neighborhood Reinvestment Corporation			
82 1300 0 1 451	Budget Authority	19,798	1,722
	Outlays	19,798	1,722
Nuclear Regulatory Commission			
Salaries and expenses			
31 0200 0 1 276	Budget Authority	428,998	37,323
	Outlays	321,749	27,992
TOTAL FOR Other Independent Agencies			
	Budget Authority	3,357,956	292,541
	401(C) Authority	13,754	1,197
	401(C) Authority - Off. Coll.	4,343	378
	401(C) Other - incl. ob. limit	3,063	267
	Outlays	1,952,335	170,210
Other Independent Agencies			
Occupational Safety and Health Review Commission			
Salaries and expenses			
95 2100 0 1 554	Budget Authority	6,275	546
	Outlays	5,842	508
Pennsylvania Avenue Development Corporation			
Salaries and expenses			
42 0100 0 1 451	Budget Authority	2,599	226
	Outlays	2,105	183

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Public development			
42 0102 0 1 451	Budget Authority	4,089	356
	Outlays	3,067	267
Land acquisition and development fund			
42 4084 0 3 451	401(C) Authority - Off. Coll.	14,000	1,218
	Outlays	14,000	1,218
Postal Service			
Payment to the Postal Service fund			
18 1001 0 1 372	Budget Authority	677,300	58,925
	Outlays	677,300	58,925
Postal Service			
18 4020 0 3 372	401(C) Authority	1,059,426	92,170
Railroad Retirement Board			
Railroad social security equivalent benefit account			
60 8010 0 7 601	Obligation Limitation	30,314	2,637
	Outlays	30,314	2,637
Rail Industry Pension Fund			
60 8011 0 7 601	Obligation Limitation	30,880	2,687
	Outlays	30,880	2,687
Supplemental Annuity Pension Fund			
60 8012 0 7 601	Obligation Limitation	2,165	188
	Outlays	2,165	188
Securities and Exchange Commission			
Salaries and expenses			
50 0100 0 1 376	Budget Authority	120,391	10,474
	Outlays	109,556	9,531
Selective Service System			
Salaries and expenses			
90 0400 0 1 054	Budget Authority	28,303	2,944
	Outlays	23,387	2,432
Smithsonian Institution			
Salaries and expenses			
33 0100 0 1 503	Budget Authority	200,361	17,432
	Outlays	176,411	15,348
Construction and improvements, National Zoological Park			
33 0129 0 1 503	Budget Authority	2,605	227
	Outlays	1,172	102
Restoration and renovation of buildings			
33 0132 0 1 503	Budget Authority	13,520	1,176
	Outlays	5,408	470
Construction			
33 0133 0 1 503	Budget Authority	6,351	553
	Outlays	2,540	221
Salaries and expenses, National Gallery of Art			
33 0200 0 1 503	Budget Authority	37,475	3,260
	Outlays	32,116	2,794
Repair, restoration, and renovation of buildings			
33 0201 0 1 503	Budget Authority	2,503	218
Salaries and expenses, Woodrow Wilson International Center for Scholars			
33 0400 0 1 503	Budget Authority	3,547	309
	Outlays	2,178	189
Endowment challenge fund			
33 8188 0 7 503	401(C) Authority	175	15
	Outlays	150	13
Canal Zone biological area fund			
33 8190 0 7 503	401(C) Authority	125	11
	Outlays	120	10
TOTAL FOR Other Independent Agencies			
	Budget Authority	1,105,319	96,646
	401(C) Authority	1,059,726	92,196
	401(C) Authority - Off. Coll.	14,000	1,218
	Obligation Limitation	63,359	5,512
	Outlays	1,118,711	97,723
Other Independent Agencies			
Other Temporary Commissions			
State Justice Institute: Salaries and expenses			
48 0052 0 1 752	Budget Authority	7,520	654
	Outlays	6,768	589
Commission on Education of the Deaf: Salaries and expenses			
48 0200 0 1 503	Budget Authority	801	70
	Outlays	374	33
Navajo and Hopi Indian Relocation Commission: Salaries and expenses			
48 1100 0 1 806	Budget Authority	23,402	2,036
	Outlays	14,743	1,283

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Commission for study of migration and cooperative economic development			
48 1400 0 1 153	Budget Authority	226	20
	Outlays	217	19
National Council on Public Works Improvement			
48 1900 0 1 806	Budget Authority	1,853	161
Tennessee Valley Authority			
Tennessee Valley Authority fund (Energy supply)			
64 4110 0 3 271	401(C) Authority - Off. Coll.	94,900	8,256
	Outlays	83,512	7,266
Tennessee Valley Authority fund (Area and regional development)			
64 4110 0 3 452	Budget Authority	105,559	9,184
	Outlays	25,968	2,259
United States Holocaust Memorial Council			
Holocaust Memorial Council			
95 3300 0 1 806	Budget Authority	2,185	190
	Outlays	1,728	150
United States Information Agency			
Salaries and expenses			
67 0201 0 1 154	Budget Authority	623,655	54,258
	Outlays	492,064	42,810
East-West Center			
67 0202 0 1 154	Budget Authority	20,840	1,813
	Outlays	19,715	1,715
Radio construction			
67 0204 0 1 154	Budget Authority	47,938	4,171
	Outlays	7,670	667
Radio broadcasting to Cuba			
67 0208 0 1 154	Budget Authority	13,154	1,145
	Outlays	10,524	915
Educational and cultural exchange programs			
67 0209 0 1 154	Budget Authority	151,090	13,145
	Outlays	68,746	5,981
National Endowment for Democracy			
67 0210 0 1 154	Budget Authority	15,630	1,360
	Outlays	7,815	680
United States Institute of Peace			
United States Institute of Peace			
95 1300 0 1 153	Budget Authority	681	59
	Outlays	410	36
United States Sentencing Commission			
Salaries and expenses			
10 0938 0 1 752	Budget Authority	6,208	540
	Outlays	5,581	486
TOTAL FOR Other Independent Agencies			
	Budget Authority	1,020,744	88,806
	401(C) Authority - Off. Coll.	94,900	8,256
	Outlays	745,835	64,889
REPORT TOTAL			
	Budget Authority	372,912,055	36,306,433
	Budget Authority - Spec. Rules	216,194	216,194
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	Unobligated Balances - Defense	47,673,369	4,958,031
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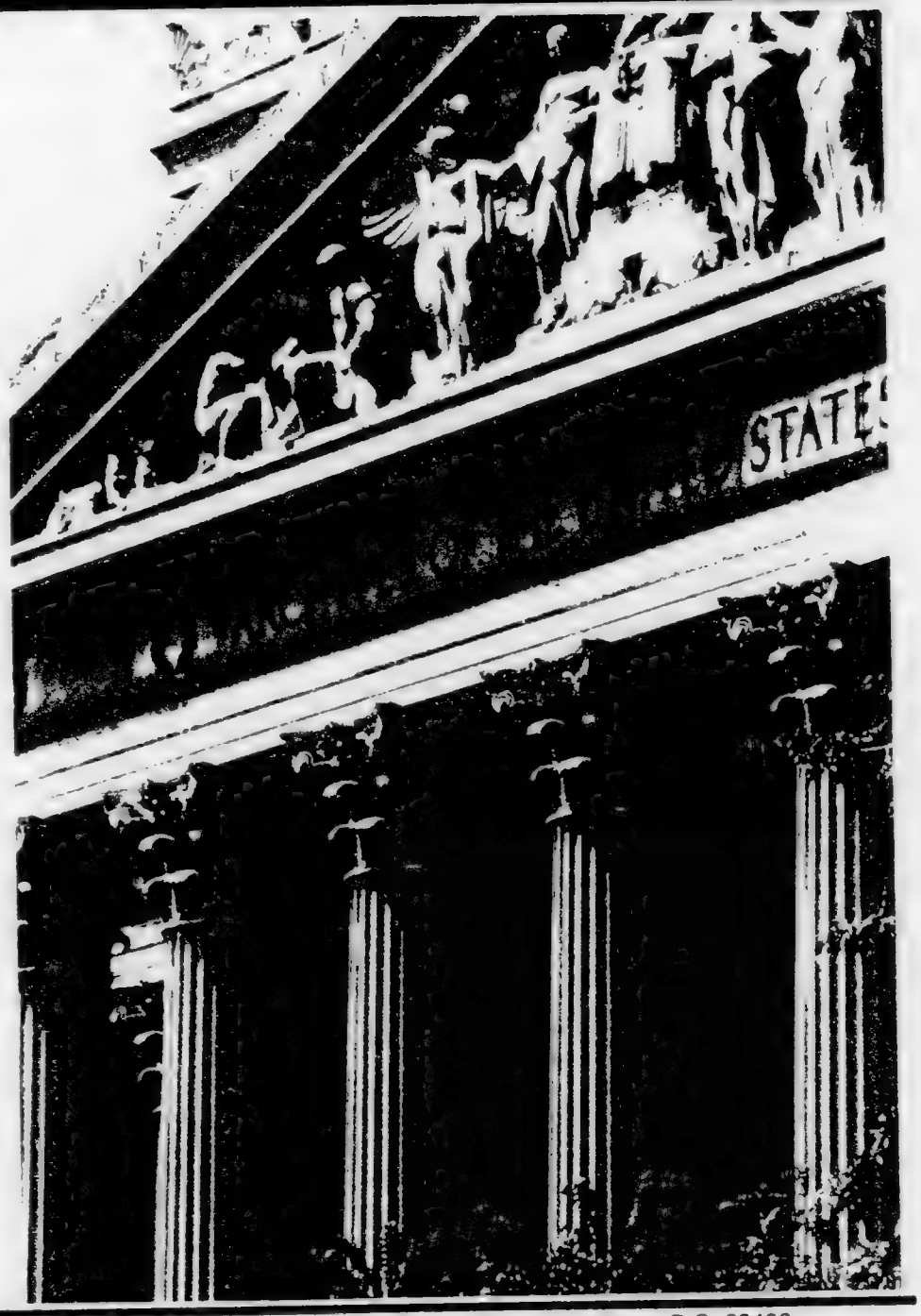

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Title 3—

The President

Proclamation 5729 of October 15, 1987

National Safety Belt Use Day, 1987

By the President of the United States of America

A Proclamation

Studies indicate that 40 to 55 percent of all passenger car occupant fatalities and serious injuries could be eliminated if people would use the safety belts already installed in their vehicles. Each year, 10,000 people could be saved from death if everyone would use safety belts every trip. In 1986, for instance, safety belts saved the lives of 2,200 front seat passengers. Thousands of lives and millions of dollars in medical and insurance expenses have been saved by "buckling up."

The tremendous benefits of adult safety belt and child restraint use are now widely recognized throughout the United States. Twenty-nine States and the District of Columbia have safety belt use laws. These laws, in conjunction with public education, have resulted in a safety belt usage increase among car drivers from 11 percent in 1982 to 42 percent in the first half of 1987.

Although great progress has been made in the recognition of the advantages of increased safety belt use, less than one half of all Americans use their safety belts. Each of us can help increase this number by remembering that the use of safety belts offers protection in a crash and by increasing our willingness to communicate that fact to our loved ones who fail to wear them. We must not wait until personal tragedy strikes to become advocates of safety belt use.

Child passenger protection laws requiring the use of child safety seats and belt systems are in place in all 50 States and the District of Columbia. Correctly used, child safety seats are highly effective, reducing the risk of fatality by about 70 percent and serious injury by about 67 percent. Among children under four, these seats saved about 200 lives in 1986.

Still, the effectiveness of child safety seats can be greatly impaired when they are not installed or used properly. With 100 percent correct use, these seats could save about 500 lives a year. Parents should follow the manufacturer's instructions carefully and inspect the seat regularly to make sure it is installed correctly and used on every trip. With added concern for the proper installation and consistent use of these safety devices, we can eliminate needless and preventable tragedies and save hundreds more of our children.

In order to encourage the people of the United States to wear safety belts, to have their children use child safety seats, and to encourage safety and law enforcement agencies and others to promote greater usage of these essential safety devices, the Congress, by H.J. Res. 338, has designated October 15, 1987, as "National Safety Belt Use Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1987, as National Safety Belt Use Day. I call upon the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the Mayor of the District of Columbia, and the people of the United States to observe this day with appropriate ceremonies and activities and to reaffirm our commitment to encouraging universal seat belt use.

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IN WITNESS WHEREOF, I have hereunto set my hand this 15 day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-24292
Filed 10-16-87; 10:59 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5730 of October 15, 1987

White Cane Safety Day, 1987

By the President of the United States of America

A Proclamation

The white cane is a device that helps blind citizens in their daily lives and reminds all Americans of visually handicapped people's desire and increasing ability to live independently. The cane helps its bearers negotiate physical obstacles and thus enables the sightless to travel and work more easily in the public environment. During our yearly observance of White Cane Safety Day, we pause to recall our need to eliminate barriers of misinformation and misunderstanding as well—to remember the capabilities and accomplishments of sightless people and to respond to their particular needs with sensitivity, friendship, and respect.

In acknowledgment of the white cane and all it symbolizes, the Congress, by joint resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1987, as White Cane Safety Day. I urge all Americans to show respect for those who carry the white cane and to honor their many achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-24293
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Presidential Documents

Executive Order 12611 of October 15, 1987

Delegating Authority To Implement Assistance for Central American Democracies and the Nicaraguan Democratic Resistance

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Military Construction Appropriations Act, 1987, enacted by section 101(k) of the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987 (Public Laws 99–500 and 99–591), the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1988 (Public Law 100–120), and section 301 of title 3 of the United States Code, and in order to delegate certain functions concerning the use of funds, it is hereby ordered as follows:

Section 1. Executive Order No. 12570 of October 24, 1986, is amended by adding the following to the end of Section 2(b):

"and funds provided in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1988 (Public Law 100–120).".

Sec. 2. This Order shall be effective immediately.

Ronald Reagan

THE WHITE HOUSE,
October 15, 1987.

[FR Doc. 87–24294
Filed 10–16–87; 11:01 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 583]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 583 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 267,500 cartons during the period October 18 through October 24, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 583 (§ 910.883) is effective for the period October 18 through October 24, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on October 13, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a unanimous vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for large sized lemons, fair for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreement and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.883 is added to read as follows:

§ 910.883 Lemon regulation 583.

The quantity of lemons grown in California and Arizona which may be handled during the period October 18 through October 24, 1987, is established at 267,500 cartons.

Dated: October 14, 1987.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–24146 Filed 10–16–87; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–125–AD; Amdt. 39–5738]

Airworthiness Directive; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This revises an existing airworthiness directive (AD), applicable to certain CASA Model C–212 series airplanes, which requires replacement of the power quadrant cover with a cover incorporating slot protection. This action is necessary because errors have been discovered in the service bulletin referenced in the existing AD which describes the modification to the power quadrant cover. This amendment requires that the modification be made in accordance to Revision 1A of the service bulletin and extends the compliance time

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EFFECTIVE DATE: October 14, 1987.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued AD 87–05–05, Amendment 39–5562 (52 FR 4766; February 17, 1987), to require modification of the power control quadrant cover, to prevent jamming of the power controls by objects falling in the open slots, in accordance with CASA Service Bulletin 212–76–05, dated October 23, 1985. Operators were required to install the modification within eight months after AD's effective date of March 25, 1987.

Since issuance of the AD, it has been discovered that the applicable CASA service bulletin contained errors in certain critical instructions. During the development and coordination of AD 87–05–05, errors in the original service bulletin were not identified. The manufacturer has issued CASA Service Bulletin 212–76–05, Revision 1A, which contains corrected instructions necessary for proper installation of the protection for the control box upper cover. The Spanish Direccíon General de Aviacíon Civil (DGAC) officially classified Revision 1A as mandatory on July 20, 1987.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA has determined that it is necessary to revise AD 87–05–05 to require that the modification be made in accordance with Revision 1A of CASA Service Bulletin 212–76–05, dated August 7, 1986, and extend the compliance time to February 28, 1988.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; Feburuary 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised Pub. L. 97–449, (January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87–05–05, Amendment 39–5562 (52 FR 4766; February 17, 1987), to read as follows:

CASA: Applies to Model C–212 series airplanes, serial numbers as listed in CASA Service Bulletin 212–76–05, Revision 1A, dated August 7, 1986, certificated in any category. Compliance is required before February 28, 1988, unless previously accomplished.

To prevent the entry of foreign objects into the power and trim controls in the pedestal, accomplish the following:

A. Replace the power quadrant cover with a cover incorporating slot protection in accordance with CASA Service Bulletin 212–76–05, Revision 1A, dated August 7, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 14, 1987.

Issued in Seattle, Washington, on September 17, 1987.

F. Isaac,

Northwest Mountain Region.

[FR Doc. 87–24108 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ASW–2; Amdt. 39–5742]

Airworthiness Directives; Costruzioni Aeronautiche Giovanni Agusta Model A109A and A109AII Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Costruzioni Aeronautiche Giovanni Agusta Model A109A and A109AII helicopters by individual priority letters. The AD requires an initial inspection and recurring inspections to detect cracks of all tail rotor blades Part Number (P/N) 109–0132–02, all dash numbers, with 400 hours' time in service. The AD is needed to prevent failure of the tail rotor blade and subsequent loss of the helicopter.

DATES: *Effective Date:* October 14, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87–83–14, issued February 6, 1987, as revised by AD 87–03–14 R1, issued on February 20, 1987, which contained this amendment.

Compliance: Required within the next 10 hours' time in service after the effective date of this AD unless already accomplished.

ADDRESSES: The applicable telegraphic Technical Bulletin No. 109–5, dated January 27, 1987, may be obtained from Agusta Aviation Corporation, Norcom and Red Lion Roads, Philadelphia, Pennsylvania 19154.

A copy of the telegraphic technical bulletin is contained in the Rules Docket located in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Samuel E. Brodie, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0110, telephone (817) 624–5116.

SUPPLEMENTARY INFORMATION: On February 6, 1987, priority letter AD 87–03–14 was issued and made effective immediately as to all known U.S. owners and operators of certain Costruzioni Aeronautiche Giovanni Agusta helicopters. The priority letter AD was revised on February 20, 1987, to correct the omission of a 400-hour threshold to begin inspections and to complete identification of the telegraphic technical bulletin. The priority letter AD requires an initial and recurring inspection of the tail rotor blade and refers to the technical bulletin. The priority letter AD action was necessary to prevent failure of the tail rotor blade and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued February 6, 1987, to all known U.S. owners and operators of certain Costruzioni Aeronautiche Giovanni Agusta helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons. The body of the AD is reworded from the priority letter AD by including the content of the technical bulletin.

The initial and repetitive dye penetrant inspections are now contained in paragraphs (a) and (d) of the priority letter AD.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to the rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 (14 CFR 39.13) of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Costruzioni Aeronautiche Giovanni Agusta: Applies to Model A109A and A109AII helicopters, certificated in any category, fitted with tail rotor blade Part Number 109–0132–02, all dash numbers, with 400 or more hours' time in service.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the tail rotor blade and subsequent loss of the helicopter, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service:

(1) Remove the finish paint or clear lacquer using a lacquer thinner (TURCO 4960–8 or equivalent MIL–R–25134 type) on each side of each blade. The area of paint or lacquer removal is located chordwise from the leading edge to a distance 4 inches aft of the leading edge and is located spanwise from 7.5 inches to 8.7 inches outboard of the center of the blade retention bolt hole.

Note.—Do not use methyl ethyl ketone (M.E.K.) solvent as damage to the bonding agent may occur.

(2) Conduct a dye penetrant or equivalent inspection of the exposed area.

(3) If no cracks are found, protect the area with clear acrylic lacquer before further flight.

(4) If a crack is found, replace the blade with a serviceable blade before further flight.

(b) Prior to the first flight of each day, after the effective date of this AD, accomplish a visual check of the lacquer coated area of each blade for cracks. This check may be performed by the pilot.

Note.—See § 91.173 of the Federal Aviation Regulations for the requirements for listing of compliance and method of compliance with this AD in the aircraft's permanent maintenance record.

(c) If a crack is suspected and additional inspections with a three- to five-power magnifying glass are warranted, an appropriately certificated mechanic must accomplish the additional inspections. If a crack indication is found, conduct dye penetrant inspections in accordance with paragraph (a) of this AD.

(d) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, Department of Transportation, Fort Worth, Texas 76193–0100.

Note.—Agusta telegraphic Technical Bulletin No. 109–5, dated January 27, 1987, pertains to this subject.

This amendment becomes effective October 14, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87–03–14, issued February 6, 1987, as revised by priority letter AD 87–03–14 R1, issued on February 20, 1987, which contained this amendment.

Issued in Fort Worth, Texas, on September 18, 1987.

L.B. Andriesen,

Acting Director, Southwest Region.

[FR Doc. 87–24106 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–113–AD; Amdt. 39–5737]

Airworthiness Directives; McDonnell Douglas Model DC–10 and KC–10A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain DC–10 series airplanes, which requires inspections and replacement, if necessary, of the inboard slat drive arm. This amendment is prompted by reports that cracks have initiated at a decarburized area and have propagated due to fatigue. This condition, if not corrected, could result in uncommanded motion of the inboard slats, which would then command the outboard slats to follow. Under certain conditions, this could cause the airplane to stall.

EFFECTIVE DATE: October 14, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach,

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California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6321.

SUPPLEMENTARY INFORMATION: Two operators of McDonnell Douglas DC–10 airplanes have reported cracks in the inboard slat drive arm. One crack was within the reworkable limits; the arm was reworked and returned to service. Investigation by Douglas Aircraft Company has revealed that the cracks have initiated at a decarburized area and have propagated due to fatigue. Complete failure of the arm could result in an uncommanded motion of the inboard slats, which would then command the outboard slats to follow the position of the inboard slats. Under certain conditions, this could cause the airplane to stall.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A27–203, dated June 29, 1987, and Revision 1, dated July 9, 1987, which describes the inspection procedures and replacement instructions of the inboard slat drive arm.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and rework or replacement, if necessary, of the inboard slat drive arm, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10 and KC–10A series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the inboard slat drive arm due to fatigue, accomplish the following:

A. Prior to the accumulation of 10,000 landings, or within 15 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 90 days, and thereafter at intervals not to exceed 2,000 landings, inspect the inboard slat drive arm in accordance with the expanded magnetic particle, ultrasonic, or eddy current inspection (Option 2) procedures in the Accomplishment Instructions in McDonnell Douglas Service Bulletin A27–203, Revision 1, dated July 9, 1987, or later FAA-approved revision.

1. If crack(s) are found that are beyond the reworkable limits defined by McDonnell Douglas Service Bulletin A27–203, Revision 1, dated July 9, 1987, or later FAA-approved revision, before further flight, replace the cracked arm in accordance with the Service Bulletin.

2. If crack(s) are found that are within the reworkable limits defined by McDonnell Douglas Service Bulletin A27–203, Revision 1, dated July 9, 1987, or later FAA-approved revision, before further flight, rework or replace the arm in accordance with the Accomplishment Instructions in that Service Bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publication, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective October 14, 1987.

Issued in Seattle, Washington, on September 17, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–24107 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWA–14]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of two Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While six airways were included in the notice only V–184 and V–188 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–162, V–167, V–184, V–188, V–203 and V–205 located in the vicinity of New York (52 FR 26491). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guideline. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only V–184 and V–188 will be implemented at this time. Implementation of the other four airways will be delayed until a later date. With respect to V–188 the segment from Carmel, NY, and Groton, CT, is deleted. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of two Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While six airways were included in the notice only V–184 and V–188 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [AMENDED]

2. § 71.123 is amended as follows:

V–184 [Revised]

From Erie, PA; Tidioute, PA; Philipsburg, PA; Harrisburg, PA; INT Harrisburg 135° and

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Modena, PA, 274° radials; Modena; INT Modena 120° and Woodstown, NJ, 326° radials; Woodstown; Cedar Lake, NJ; Atlantic City, NJ; INT Atlantic City 055° and Kennedy, NY, 198° radials; to INT Kennedy 198° and Robbinsville, NJ, 112° radials.

V–188 [Amended]

By removing the words "to Sparta." and substituting the words "Sparta; INT Sparta 082° and Carmel, NY, 243° radials; to Carmel."

Issued in Washington, DC, on October 6, 1987.

Signed by:

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–24109 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AEA–8]

Alteration of VOR Federal Airways; Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment improves the flow of terminal and en route traffic in an area where the Expanded East Coast Plan (EECP) is currently implemented following the relocation of the Harrisburg, PA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). The immediate need for an airway between Harrisburg and terminals in southern New Jersey became apparent during the early implementation of the EECP. The extension of V–469 in the area improves flight planning and reduces controller workload.

DATES:

Effective date—0901 UTC, November 19, 1987.

Comments must be received on or before November 26, 1987.

ADDRESS: Send comments on the rule in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87–AEA–8, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on The Rule

Although this action is in the form of a final rule, which involves extending a current airway (V–469) from Harrisburg, PA, to Woodstown, NJ, which is necessary to complement the EECP, by improving the traffic flow between Harrisburg and southern New Jersey airports, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of VOR Federal Airway V–469 by extending the airway from Harrisburg, PA, to Woodstown, NJ. This action is required on an immediate basis to enhance the efficient en route flow of traffic in an area where the EECP is currently implemented. The need for the additional airway became apparent following the relocation of the Harrisburg, PA, VORTAC in 1987. Traffic between Harrisburg, PA, and Woodstown, NJ, was not considered in the development of the EECP, Phase I and Phase II, but has subsequently been determined to be a factor which requires immediate accommodation. This airway is added at this time as a necessary enhancement to the EECP. The technical evaluation and the flight inspection required to establish this segment of V–469 have been completed. This action reduces delays by allowing operations for short distances to remain on tower frequencies and under tower control. This action also improves flight planning and reduces controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to alter the description of VOR Federal Airway V–469. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.23 [Amended]

2. § 71.123 is amended as follows:

V–469 [Amended]

By removing the words "to Harrisburg, PA." and substituting the words "Harrisburg, PA; Dupont, DE; to Woodstown, NJ."

Issued in Washington, DC, on October 5, 1987.

Original signed by:

Daniel J. Peterson,

Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 87-24112 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-12]

Removal of Control Zone; Camden, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action will remove the control zone at Camden, AR. This action is necessary because hourly and special weather observations, one of the requirements in the establishment of a control zone, are no longer available. This action will raise the floor of controlled airspace in the vicinity of the Harrell Field Airport, Camden, AR, to 700 feet above ground level (AGL).

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On April 9, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the control zone at Camden, AR (52 FR 12935).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the control zone at Camden, AR. Weather observations, both hourly and special, must be taken during the times and dates a control zone is in effect. Camden, AR, no longer meets the criteria for retention of the control zone since Sunbelt Airlines, who was providing weather observations, ceased operations. This action will raise the floor of the controlled airspace to 700 feet AGL in the vicinity of the Harrell Field Airport (Latitude 33°37'15" N., Longitude 92°45'45" W.).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Camden, AR [Removed]

Issued in Forth Worth, TX, on October 5, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-24113 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-29]

Alteration of Jet Route and VOR Federal Airways; Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of Federal Airway V-162 as published in the **Federal Register** on July 21, 1987, along with several other airspace actions (52 FR 27328). The description of V-162 as published was not technically correct with respect to the route alignment around Harrisburg, PA.

EFFECTIVE DATE: 0901 UTC, October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87-16435, which was published on July 21, 1987, altered the descriptions of VOR Federal Airways V-12, V-162, V-184, V-210 and Jet Route J-152 located in the vicinity of Harrisburg, PA (52 FR 27328). The words "Harrisburg; INT" were inadvertently omitted from the description making it technically incorrect although the charting would not be affected by the mistake. This action corrects the error so that the correct technical description is incorporated into the rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways and jet routes.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** Document 87-16435, as published in the **Federal Register** on July 21, 1987, the entry for V-162 under § 71.123 is corrected to read as follows:

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§ 71.123 [Amended]

V–162 [Amended]

By removing the words "From INT Martinsburg, WV, 130° and Harrisburg, PA, 204° radials; Harrisburg 080° and East Texas, PA, 260° radials;" and substituting the words "From INT Martinsburg, WV, 130° and Harrisburg, PA, 201° radials; Harrisburg; INT Harrisburg 092° and East Texas, PA, 251° radials;"

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on October 6, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–24110 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 87–AWP–17]

Alteration and Establishment of Restricted Areas; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of Restricted Areas R–2306A/B, R–2307 and R–2308A and establishes Restricted Areas R–2306D and R–2308C located near Yuma, AZ. This action releases additional airspace needed to permit realignment of the Arlin arrival routing serving Sky Harbor Airport, Phoenix, AZ.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations alter the descriptions of Restricted Areas R–2306A/B, R–2307 and R–2308A and establish Restricted Areas R–2306D and R–2308C located near Yuma, AZ. Restricted Areas R–2306D and R–2308C are also added to the Continental Control Area. This action releases a portion of restricted airspace at Flight Level 240 and above to enable a realignment of the Arlin arrival routing which will improve air traffic flows to and from the Phoenix area. Although this action establishes Restricted Areas R–2306D and R–2308C, no new additional restricted airspace will be formulated. This action merely reduces and subdivides the existing restricted area airspace to provide for the Arlin arrival routing. Because this action will release additional airspace back to the public for their use, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested. Although the using agency, United States Army did not object to this action, it should be noted that the United States Air Force (USAF) continues to stress their need for all the airspace within the present boundaries of the restricted areas. However, the Air Force requirements are nonhazardous in nature and, therefore, do not require restricted airspace. The FAA is exploring alternatives which will enable the Air Force to meet their flying requirements. Sections 71.151 and 73.23 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area; Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 contines to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. §71.151 is amended as follows:

R–2306D Yuma North, AZ [New]
R–2308C Yuma North, AZ [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

4. § 73.23 is amended as follows:

R–2306A Yuma West, AZ [Amended]

Boundaries. Beginning at lat. 33°00′ 00″ N., long. 114°30′00″ W.; to lat. 33°02′48″ N., long. 114°30′00″ W.; to lat. 33°02′48″ N., long. 114°34′00″ W.; to lat. 33°15′00″ N., long. 114°34′37″ W.; to lat. 33°15′00″ N., long. 114°15′00″ W.; thence south along Highway 95 to lat. 33°52′30″ N., long. 114°21′00″ W.; to lat. 32°51′45″ N., long. 114°27′50″ W.; thence north along the west bank of the Colorado River to the point of beginning.

R–2306B Yuma West, AZ [Amended]

Boundaries. Beginning at lat. 33°28′00″ N., long. 114°28′00″ W.; to lat. 33°28′00″ N., long. 114°26′25″ W.; to lat. 33°25′15″ N., long. 114°13′00″ W.; thence south along Highway 95 to lat. 33°15′00″ N., long. 114°15′00″ W.; to lat. 33°15′00″ N., long. 114°30′00″ W.; to lat. 33°26′00″ N., long. 114°30′00″ W.; to the point of beginning.

R–2306D Yuma North, AZ [New]

Boundaries. Beginning at lat. 33°28′00″ N., long. 114°26′25″ W.; to lat. 33°28′00″ N., long. 114°13′00″W.; thence south along Highway 95 to lat. 33°25′15″ N., long. 114°13′00″ W.; to the point of beginning.
Designated altitudes. Surface to FL 230.
Time of designation. Continuous.
Controlling agency. FAA, Los Angeles ARTCC
Using agency. U.S. Army Yuma Proving Grounds, Yuma, AZ.

R–2307 Yuma, AZ [Amended]

Boundaries. Beginning at lat. 33°00′00″ N., long. 114°17′20″ W.; to lat. 33°00′00″ N., long. 114°11′00″ W.; to lat. 33°02′00″ N., long. 113°56′30″ W.; to lat. 33°02′00″ N., long. 113°37′20″ W.; to lat. 32°58′00″ N., long. 113°37′20″ W.; to lat. 32°52′50″ N., long. 113°50′10″ W.; to lat. 32°52′00″ N., long. 114°00′00″ W.; to lat. 32°51′15″ N., long. 114°21′00″ W.; to lat. 32°52′30″ N., long. 114°21′00″ W.; thence north along Highway 95 to the point of beginning.

R-2308A Yuma East, AZ [Amended]

Boundaries. Beginning at lat. 33°25'15" N., long. 114°13'00" W.; to lat. 33°20'11" N., long. 113°47'42" W.; to lat. 33°17'30" N., long. 113°39'04" W.; to lat. 33°17'30" N., long. 113°45'00" W.; to lat. 33°02'00" N., long. 113°45'00" W.; to lat. 33°02'00" N., long. 113°56'30" W.; to lat. 33°00'00" N., long. 114°11'00" W.; to lat. 33°00'00" N., long. 114°17'20"W.; thence north along Highway 95 to the point of beginning.

R-2308C Yuma North, AZ [New]

Boundaries. Beginning at lat. 33°28'00" N., long. 114°13'00" W.; to lat. 33°20'11" N., long. 113°47'42" W.; to lat. 33°25'15" N., long. 114°13'00" W.; thence north along Highway 95 to the point of beginning.
Designated altitudes. 1,500 feet AGL to FL 230.
Time of designation. Continuous.
Controlling agency. FAA, Los Angeles ARTCC
Using agency. U.S. Army, Yuma Proving Grounds, Yuma, AZ.

Issued in Washington, DC., on October 6, 1987.
Original signed by:
Daniel J. Peterson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24111 Filed 10-16-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Demonstration Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends the comprehensive CHAMPUS regulation to specifically provide that the Director of the Office of CHAMPUS may waive or alter the normally applicable provisions of the CHAMPUS regulations when necessary to conduct a demonstration project required or authorized by law. The final rule, however, would not allow the waiver or alteration of any requirement that may not be waived or altered under applicable law. The final rule is necessary to establish a specific regulatory counterpart to existing statutory authorities for demonstration projects to develop improved methods to finance and deliver health care services under CHAMPUS. It is intended to expedite the administrative processing associated with initiating healthcare demonstration projects.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: LTC David J. Fant, United States Air Force, Office of the Assistant Secretary of Defense for Health Affairs at (202) 697-8975.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to establish an appropriate regulatory counterpart to the current statutory authority for the conduct of demonstration projects relating to CHAMPUS.

One such statutory authority is 10 U.S.C. 1092, which authorizes studies and demonstration projects relating to delivery of health and medical care. This section authorizes demonstrations of alternative methods for financing and delivering health and medical care services, including those under CHAMPUS. The purpose and effect of this statute is to provide for the waiver or alteration of normally applicable requirements as part of a project to test alternative methods.

In addition to this general statutory authority to conduct demonstration projects, Congress from time to time enacts requirements for DoD to conduct specific demonstration projects. For example, in section 702(a) of the National Defense Authorization Act for Fiscal Year 1987, Congress directed DoD to conduct a demonstration of the CHAMPUS Reform Initiative. This initiative involves alternative methods of financing and delivering CHAMPUS health care services under regional umbrella contracts with competitively-selected contractors. DoD issued a request for proposals for the CHAMPUS Reform Initiative in February 1987.

These two rather recent legislative actions are only part of the urging DoD has received from Congress to actively pursue innovative strategies for improving DoD health care programs. Related Congressional actions include authority for resource sharing agreements (10 U.S.C. 1096), special contracts for delivery of medical care services (10 U.S.C. 1097) and incentives for participation in cost-effective health care plans (10 U.S.C. 1098). The common theme of all of these provisions is the desire to try new approaches to bring about needed improvements in the Military Health Services System, especially CHAMPUS.

Against this backdrop of clear Congressional encouragement for developing innovative methods to finance and deliver health care services, this final rule would establish for CHAMPUS a regulatory counterpart to the applicable statutory demonstration provisions. The final rule simply provides that the normally applicable provisions of the CHAMPUS regulation may be waived or altered by the Director of CHAMPUS in connection with the conduct of a demonstration project required or authorized by law. "Demonstration project" is defined to include projects based on the full applicable range of legislatively required or authorized activities designed to test potential program innovations. However, the final rule would not allow waiver or alteration of requirements that may not under the applicable statutory authorities be waived or altered. This final rule is somewhat analogous to § 199.1(n). That section authorizes the waiver of any provision of the part, except for requirements that may not be waived under the law, under very special circumstances when it would be in the best interest of the program. Like the current § 199.1(n), the proposed new paragraph (o) is limited to special circumstances, namely demonstration projects, and does not allow waiver of requirements of law that may not be waived.

Thus, the effect of this final rule is to assure that normally applicable provisions of the CHAMPUS regulation that are within the administrative discretion of the agency not inhibit the ability of OCHAMPUS to conduct demonstrations consistent with the far-reaching intent of Congress to develop meaningful improvements in health care programs.

The impact of this final rule is limited. It does not reach beyond specifically designed demonstration projects. Nor does it allow for the waiver or alteration of rules regarding the Military Health Services System other than CHAMPUS rules. Also, it does not allow for the waiver of requirements that may not be waived under applicable law.

The final rule also establishes certain procedural requirements whenever OCHAMPUS waives or alters a normally applicable provision of the part in connection with a demonstration To assure that providers, beneficiaries and other interested parties are aware of the demonstration project and the matters affected by the regulatory waiver, the proposed rule provides for notice to be published at least 30 days before the waiver would be effective.

Included in this **Federal Register** notice of the demonstration project would be its duration and an explanation of what it is designed to test. The definition included in the final rule makes clear that these are the key features, limited duration and its nature as a test, that distinguish a demonstration project from a change in program policy or procedure. Because of

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these features, these notices of demonstration projects are not covered by public comment practices under DoD Directive 5400.9 (32 CFR Part 296) or DoD Instruction 6010.8.[1] Similarly, individual notices of demonstration projects are not "rules" within the meaning of section 553 of the Administrative Procedure Act because they are not statements of general applicability and future effect that establish or interpret policy or procedure; rather, as is made clear in the definition contained in the final rule, they are time-limited tests. Any generally applicable change in policy or procedure that might arise from a demonstration project will be handled in accordance with established practices for soliciting public comment, to the extent those practices apply.

Discussion of Comments to the NPRM

No public comments were received.

This final rule is not a major rule under the Regulatory Flexibility Act or Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.1(o) is redesignated as § 199.1(p).

3. Add a new paragraph (o) to § 199.1 to read as follows:

§ 199.1 General provisions.

* * * * *

(o) *Demonstration projects*—(1) *Authority.* The Director, OCHAMPUS may waive or alter any requirements of this regulation in connection with the conduct of a demonstration project required or authorized by law except for any requirement that may not be waived or altered pursuant to 10 U.S.C. Chapter 55, or other applicable law.

(2) *Procedures.* At least 30 days prior to taking effect, OCHAMPUS shall publish a notice describing the demonstration project, the requirements of this regulation being waived or altered under paragraph (o)(1) of this section and the duration of the waiver or alteration. Consistent with the purpose and nature of demonstration projects, these notices are not covered by public comment practices under DoD Directive 5400.9 (32 CFR Part 296) or DoD Instruction 6010.8.

(3) *Definition.* For purposes of this section, a "demonstration project" is a project of limited duration designed to test a different method for the finance, delivery or administration of health care activities for the uniformed services. Demonstration projects may be required or authorized by 10 U.S.C. 1092, any other statutory provision requiring or authorizing a demonstration project or any other provision of law that authorizes the activity involved in the demonstration project.".

* * * * *

Thomas J. Condon,

Acting Division Chief, Directives Division, Department of Defense.

[FR Doc. 87-24174 Filed 10-16-87; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Attn: Code 301, Philadelphia, Pa. 19120.

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS AVENGER

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS AVENGER (MCM-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a mine countermeasure ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS AVENGER (MCM-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex 1, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex 1, sec. (3)(a)	Percentage horizontal separation attained.
USS AVENGER	MCM-1							x	

Date: September 29, 1987.

Approved:

H. Lawrence Garrett, III,

Under Secretary of the Navy.

[FR Doc. 87-24148 Filed 10-16-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS SPRUANCE

AGENCY: Department of the Navy.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS SPRUANCE (DD-963) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SPRUANCE (DD-963) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex 1, sec. (3)(a)	Percentage horizontal separation attained.
USS SPRUANCE	DD-963						x	x	46

Date: September 29, 1987.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 87-24149 Filed 10-16-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-87-061]

Special Local Regulations, Master of the Bay Pro/Am Regatta; Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Master of the Bay Pro-Am Regatta. This event will be held on October 22, 23 and 24, 1987, in the waters of the Lower Chesapeake Bay. The race course extends from the pier at Ocean View, Norfolk, Virginia. Approximately four and one half

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nautical miles in a northeasterly direction. These special local regulations are considered necessary to control vessel traffic and fishing activities within the regulated area during the sailing tournament.

EFFECTIVE DATES: These regulations are effective during the following periods:
11:30 a.m. to 6:00 p.m. on October 22, 1987
9:30 a.m. to 6:00 p.m. on October 23, 1987
9:30 a.m. to 6:00 p.m. and 8:30 p.m. to 9:30 p.m. on October 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705–5004 (804–398–6204).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was received in September 24, 1987 leaving insufficient time to publish a notice of proposed rules or to provide a delayed effective date. The sponsor of the sailing tournament submitted an application for a permit to hold the Master of the Bay Sailing Tournament to the Virginia Commission of Game and Inland Fisheries on October 17, 1986. The Commission of Game and Inland Fisheries issued a permit on February 10, 1987, but in so doing was not aware that the race would convey a potential impact on commercial fishing in the area, or that special local regulations would be required to control waterborne traffic.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Proposed Regulation

Bay Master Sailing Tournament Inc. is the sponsor of the sailing tournament. The event will consist of sailing vessels 24 foot and up racing a prearranged course in the regulated area. If the event is postponed, the Patrol Commander will issue a Broadcast Notice to Mariners.

There are two regulated areas, one on each side of Thimble Shoal Channel. When combined they form a rectangular shape approximately two nautical miles wide and four and one half nautical miles long extending in a northeasterly direction from shoreline. Thimble Shoal Channel is not included in the regulated areas.

The race course crosses the Thimble Shoal Channel, which is not included in the regulated areas. Normal marine traffic will be permitted in the channel. Therefore, the race participants crossing Thimble Shoal Channel are required to give way to any vessels transiting the channel, notwithstanding the potential impact on their race positions.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic, other than commercial fishermen, will be inconvenienced only slightly.

A regulatory evaluation was conducted at Coast Guard Group Hamption Roads on August 23, 1987, because of a written objection from the Working Waterman's Association of Poquoson, Virginia. The Association's president, signing on behalf of the Working Waterman's Association, estimated that the event as originally planned would cause the watermen to loss $502,500 in revenues.

In response, the sponsor agreed to realign the course to its presently-described configuration, and to shorten the length of the event by one-half day. Moreover, the Patrol Commander has been empowered to authorize Waterman's Association members access into the regulated area when event participants are sailing in other sectors of the regulated course area. The fact that the event will only restrict Commercial Fishermen from using an area two nautical miles wide and four and one half nautical miles long off of the Ocean View Pier for three days out of a year around season. The accommodations made by the sponsor, and in cooperation with the Patrol Commander's authority to permit access to the regulated areas, should reduce the potential economic impact to commercial fishing interests.

The President of the Working Waterman's Association now estimates that the gill net fishermen and clammers would lose approximately $120,000 in revenue during the three days of the event as restructured by the sponsor. However, the Virginia Department of Natural Resources feels that most of the watermen will be harvesting oysters in the James River during that period, and only a few vessels will be working in the Ocean View area. The Coast Guard therefore, does not believe that the $120,000 figure for lost revenues to the watermen is an accurate projection. Even were $120,000 in revenue to be forfeited that amount would not offset the sponsor's $273,000 invested in the event. Any other economic impact of this proposal is expected to be so minimal, that further regulatory evaluation is unnecessary.

While some potential economic impact on interests represented by the Working Waterman's Association is acknowledged, it does not warrant withholding the permit for this event or publication of these special local regulations. Therefore, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35–05081 is added to read as follows:

§ 100.35–05081 Lower Chesapeake Bay, Norfolk, Virginia.

(a) *Definitions*—(1) *Regulated areas.* (i) Regulated area south of Thimble Shoal Channel is enclosed by a line connecting the following points: Latitude 36°56.52′ North, longitude 76°13.85′ West, latitude 36°57.71′ North, longitude 76°15.83′ West, latitude 37°00.0′ North, longitude 76°13.65′ West, and latitude 36°59.38′ North, longitude 76°11.21′ West.

(ii) Regulated area north of Thimble Shoal Channel is enclosed by a line connecting the following points: Latitude 36°59.75′ North, longitude 76°10.86′ West, latitude 37°00.4′ North, longitude 76°13.7′ West, latitude 37°01.6′, North, longitude

76°12.13′ West, and latitude 37°00.45′ North, longitude 76°10.86′ West.

(iii) Fireworks regulated area is enclosed by a circle with a radius of one nautical mile that is centered on latitude 36°57.55′ North, longitude 76°14.41′ West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Group Hampton Roads.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign, and

(ii) Proceed as directed by the officer.

(3) Spectator vessels may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(4) The Coast Guard Patrol Commander may allow the transit of marine traffic through the regulated area when it will not interfere with the regatta.

(5) The Coast Guard Patrol Commander may allow commercial fishing within the regulated areas when the fishing activities will not interfere with the regatta.

(6) Vessel operators shall remove all unattended crab pot markers, gill nets, or other fishing gear from the regulated areas prior to the effective times listed in paragraph (c)(1) of this section.

(7) The race sponsor may remove any unauthorized obstructions to navigation in the regulated areas.

(8) Sailing vessels and other vessels participating in the event shall give way to any vessels transiting Thimble Shoal Channel.

(c) *Effective dates.* (1) These regulations are effective for the regulated areas north and south of Thimble Shoals Channel during the following periods:

(i) 11:30 a.m. to 6:00 p.m. on October 22, 1987;

(ii) 9:30 a.m. to 6:00 p.m. on October 23, 1987;

(iii) 9:30 a.m. to 6:00 p.m. on October 24, 1987.

(2) These regulations are effective for the fireworks regulated area from 8:30 p.m. to 9:30 p.m. on October 24, 1987.

Dated: October 9, 1987.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 87-24167 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7 87-05]

Drawbridge Operation Regulations; New Pass, Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation (FDOT) the Coast Guard is changing the regulations governing the New Pass bridge on State Route 789 at Sarasota, Florida, by permitting the number of openings to be limited during certain hours. This change is being made because of complaints about vehicular traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on November 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Zonia Reyes, Bridge Section, Seventh Coast Guard District, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: The Commander, Seventh Coast Guard District, published a notice of proposed rulemaking on April 16, 1987, and a Public Notice dated May 1, 1987, soliciting comments on a regulation that would have restricted the bridge openings on Saturdays, Sundays, and Federal holidays between 10 a.m. and 6 p.m. to once every 20 minutes, on the hour, twenty minutes past the hour and forty minutes past the hour. A significant number of responses were received about the proposal. The majority objected to the weekend only limitations. We reviewed new data about bridge openings from January through mid-May and concluded that weekday restrictions will help alleviate some traffic problems.

The Commander, Seventh Coast Guard District, published a supplemental notice of proposed rulemaking on July 13, 1987, and a Public Notice dated July 13, 1987. In each notice, interested persons were given until August 13, 1987, to submit their comments.

Drafting Information

The drafters of this notice are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Ten comments were received about the supplemental rule change. Two commenters supported the regulations as proposed; eight commenters objected to the proposal. Seven of those asked that the bridge openings be limited to once every 30 minutes, at one quarter past the hour, and three quarters past the hour. One commenter objected to the proposal and asked that the bridge openings be limited to once every 30 minutes, on the hour and thirty minutes past the hour, except during the period of National Weather Service Hurricane Alerts and at such times the Governor of the State of Florida orders the evacuation of Longboat Key for reasons of public safety. The Coast Guard has carefully considered the comments. We have determined that vessels can't wait safely for more then 20 minutes because of swift currents and limited holding area. Closure of drawbridges during natural disasters or civil disorders is already outlined in the 33 CFR 117.33. The final rule is unchanged from the supplemental rule published on July 13, 1987, except for minor editorial revisions needed to ensure a consistent format for drawbridge regulations.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 16, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.311 is added to read as follows:

§ 117.311 New Pass.

The draw of the State Road 789 bridge, mile 0.0, at Sarasota, shall open on signal; except that, from 7 a.m. to 6 p.m., Monday thru Friday, except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need not open except on the hour, twenty minutes past the hour, and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at any time.

Dated: September 23, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 87–24166 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM053–PA; (FRL–3277–9)]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving a request from the Commonwealth of Pennsylvania to amend Article XX of Allegheny County's rules and regulations (Appendix 23, section 533). This amendment adds new regulations for abrasive blasting.

DATES: This action will be effective on December 18, 1987 unless notice is received by November 18, 1987 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the SIP revision, as well as accompanying documentation, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Eighth Floor, Philadelphia, PA 19107, Attn: Esther Steinberg.

Allegheny County Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, PA 15201, Attn: Ronald Chleboski.

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary Triplett.

All comments should be submitted to Mr. Joseph Kunz, Chief, PA/WV Section at the EPA, Region III address above, EPA Docket No. AMO53–PA.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597–9134.

SUPPLEMENTARY INFORMATION: On February 3, 1987, the Pennsylvania Department of Environmental Resources (DER) submitted a request from Allegheny County to add Appendix 23, Section 533 to Article XX of its rules and regulations. This amendment provides the Allegheny County Health Department (ACHD) with the authority to regulate particulate matter emissions from sandblasting operations, and the Commonwealth has requested that this amendment be reviewed and processed as a revision to the Pennsylvania State Implementation Plan (SIP). The Commonwealth has provided proof that, after adequate public notice, public hearings were held with regard to this amendment.

This amendment applies to all persons conducting, or allowing to be conducted, abrasive blasting (a technique for cleaning and removing paint from structures, commonly known as sandblasting) of any surface or structure which has a total area greater than 1,000 square feet. This amendment sets forth requirements for the following:

1. Visible Emissions

This provision places limitations on the emissions from abrasive blasting in the absence of lead paint, abrasive blasting of lead paint, and high-silica abrasives.

2. Multiple Nozzles

This specifies that emissions from abrasive blasting which employ multiple nozzles shall be judged as a single source for purposes of complying with this regulation.

3. Permits

This specifies that a project or Annual Abrasive Blasting permit must be issued by the Director of the Allegheny County Bureau of Air Pollution Control (BAPC) prior to abrasive blasting of any surface, structure, or part thereof to which this regulation applies.

4. Monitoring

This allows the Director of the BAPC discretion to require monitoring at an abrasive blasting operation if it is determined that the operation may reasonably be anticipated to have an adverse impact upon the public health, safety or welfare due to, among other concerns, the presence of lead paint or high-silica abrasives.

5. Clean-up and Disposal Procedures

This provision establishes clean-up procedures pertaining to abrasive and blast residue upon termination of abrasive blasting activities each day.

6. Ambient Lead Levels

This gives the Director of the BAPC the authority to immediately suspend any abrasive blasting operation involving lead paint if lead levels in the ambient air equal or exceed 10 micrograms per cubic meter ($\mu g/m^3$), eight-hour concentration, or equal or exceed 25 $\mu g/m^3$ during any period of time.

7. Ambient Respirable Free Silica Levels

This provision gives the Director the authority to immediately suspend any abrasive blasting operation involving a high-silica abrasive if the respirable (particles smaller than 10 micrometers (10^{-6} meters) in size) free silica levels in the ambient air exceed 100 $\mu g/m^3$, eight-hour concentration.

8. Notice of Commencement

This requires that the owner or operator telephone the Director of the BAPC immediately before the actual start of the abrasive blasting operation.

9. Revocation

This gives the Director of the BAPC the authority to revoke an abrasive blasting permit under certain conditions.

10. Violations

This provision specifies that any violation of any requirement of this Section shall be a violation of this Article giving rise to the remedies provided in section 305 of Article XX.

11. Appeals

This allows appeals pursuant to the provisions of section 804.H of Article XX.

12. Alternative Standards or Procedures

This gives the Director of the BAPC the authority to approve alternative standards or procedures to be followed

on a specific abrasive blasting project on a case-by-case basis.

Conclusion

The Administrator's decision to approve this revision is based on a determination that the amendment meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans. Allegheny County has not sought credit for these controls in any attainment demonstration under the Clean Air Act. By this action, EPA finds that these measures bear a significant relationship to the attainment and/or maintenance of the National Ambient Air Quality Standards for particulate matter and lead.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 1987. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Date: October 2, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

SUBPART NN—PENNSYLVANIA

2. Section 52.2020 is amended by adding paragraph (c)(69) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(69) Revision to the Allegheny County portion of the Pennsylvania State Implementation Plan was submitted by the Commonwealth on February 3, 1987.

(i) *Incorporation by reference.* (A) Amendment to the Allegheny County portion of the Pennsylvania SIP for Air Pollution Control, Appendix 23, Section 533, Abrasive Blasting, approved on October 9, 1986.

(B) Letter dated February 3, 1987, from the Commonwealth of Pennsylvania to EPA.

[FR Doc. 87–23994 Filed 10–16–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–1–FRL–3177–7]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Disapproval of Alternative Reasonably Available Control Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision is an alternative reasonably available control technology (RACT) determination involving relaxed emission limitations and an extension of the final compliance date for three paper and fabric coating lines at Arkwright Incorporated (Arkwright) in Fiskeville, Rhode Island.

EPA is disapproving this revision for the following reasons: (1) The revision request does not contain adequate support that the emission limitations already in Rhode Island's SIP for this source cannot feasible be met. (2) The revision request does not contain adequate support that the compliance date extension to June, 1988 for the reformulation of coatings on one of Arkwright's coating lines is expeditious. (3) The revision request does not contain adequate support that a reformulation program or add-on control program is not feasible on one of Arkwright's coating lines. (4) The revision request does not contain adequate support that a final compliance date extension to June 30, 1987, for the installation of control equipment on one of Arkwright's coating lines is justifiable. As a result of this disapproval, Arkwright remains subject to the emission limitations and final compliance date found in Rhode Island Regulation No. 19, Subsection 19.3.1.

The intended affect of this section is to disapprove the SIP revision for Arkwright Incorporated under Section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 18, 1987.

ADDRESSES: Copies of the submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Air and Hazardous Materials Division, Department of Environmental Management, 75 Davis Street, Cannon Building, Room 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: David B. Conroy (617) 565–3252, FTS 835–3252.

SUPPLEMENTARY INFORMATION: On August 1, 1986 (51 FR 27560), EPA published a notice of proposed rulemaking (NPR) to disapprove the administrative consent agreement between the Rhode Island Department of Environmental Management (DEM) and Arkwright Incorporated which was submitted by the State of Rhode Island as a SIP revision. Today's final rulemaking notice discusses EPA's review of Rhode Island's SIP submission in five parts:

I. Background Information
II. Summary of the SIP Revision
III. Deficiencies of the SIP Revision
IV. Public Comments
V. Final Action

I. Background Information

On July 6, 1983 (48 FR 31026), EPA approved Rhode Island's Ozone Attainment Plan and incorporated it into the SIP. As part of the attainment plan, Rhode Island adopted Regulation No. 19, "Control of Volatile Organic Compounds from Surface Coating Operations." A source subject to this regulation is required under Subsection 19.3.1 to apply RACT to its VOC emitting processes. The RACT limitations specified in Subsection 19.3.1 are equivalent to those specified in EPA's applicable Group I control techniques guidelines (CTG) document.

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On November 5, 1985, the Rhode Island DEM submitted a revision to its SIP consisting of an administrative consent agreement between the DEM's Division of Air and Hazardous Materials and Arkwright of Fiskeville, Rhode Island. This consent agreement was issued pursuant to provisions in Rhode Island Regulation No. 19, Subsection 19.3.3 which allow the DEM to impose alternative compliance dates and emission limitations to those set forth in Subsection 19.3.1 on a case-by-case basis provided that certain conditions are met. The process is commonly referred to as making an alternative RACT determination.

In order to qualify for an alternative RACT determination under Subsection 19.3.3, a source must have documented to the satisfaction of the DEM's Division of Air and Hazardous Materials that the applicable emission limitations set forth in Subsection 19.3.1 could not be met. This must be done at least 18 months prior to the final compliance date of July 1, 1985, set forth in Subsection 19.3.1. This documentation must involve demonstrating both economically and technologically that neither coating reformulation nor the installation of a control system is feasible or even partially feasible.

Amendments to Rhode Island Regulation No. 19 which included the alternative RACT provisions of Subsection 19.3.3 were submitted to EPA by Rhode Island on May 14, 1982. EPA approved these amendments on July 6, 1983 (48 FR 31026) as part of Rhode Island's Ozone Attainment Plan. It was EPA's intention when approving Subsection 19.3.3 that all compliance date extensions and emission limitation relaxations granted pursuant to this subsection by the DEM would be submitted to EPA as SIP revisions and that any technical or economic analysis would be independently reviewed and evaluated by EPA. The DEM agrees that EPA has the authority to review such compliance date extensions and emission limitation relaxations.

II. Summary of the SIP Revision

Arkwright Incorporated operates three existing paper and fabric coating lines (coater numbers 5, 6, and 7) in Fiskeville, Rhode Island. At the time the consent agreement was submitted as a SIP revision, a forth existing line (coater no. 4) was to be used as an emergency standby for coater no. 6. This line has since been dismantled and no longer exists at Arkwright. There is one additional line at Arkwright (coater no. 3) which was installed in 1984 and is subject to different control requirements than the existing lines. The lines are used for the coating of plastic films such as transparencies. Due to the nature of the substrates coated, the existing surface coating lines at Arkwright are subject to the control requirements of Rhode Island SIP Regulation No. 19, Subsection 19.3.1 which requires that the VOC content of each coating employed at Arkwright be at or below 2.9 lbs VOC/gallon of coating (minus water) by July 1, 1985, except as provided in Subsection 19.3.3. (Note: 2.9 pounds VOC/gallon of coating (minus water) is the emission limitation specified in EPA's control techniques guideline (CTG) document for such facilities.)

Pursuant to Subsection 19.3.3, the Rhode Island DEM has submitted a revision providing relaxed emission limitations and an extended compliance date for Arkwright. The DEM believes that the provisions of the consent agreement submitted as the SIP revision constitute an alternative RACT determination for the source.

Arkwright has primarily employed solvent-based coatings in its coating lines. During 1980, the first full year this regulation was effective, the VOC emissions from this source were 1042 TPY. In 1984, the VOC emissions from this source were 638 TPY with lines 5, 6 and 7 emitting 70 TPY, 191 TPY and 377 TPY, respectively. Under the proposed consent agreement, Arkwright will be required to install an add-on control device on line 7 by June 30, 1987. This device should reduce approximately 320 TPY of VOC emissions from this line.

The consent agreement also requires Arkwright to reformulate the coatings used on line 6 by June, 1988. All other coatings on line 5 and on lines 6 and 7, before reformulation or the installation of add-ons, would be subject to an emission limit of 7.03 lbs VOC/gallon of coating (minus water). This limit will be reestablished on a yearly basis by the DEM to reflect VOC reductions Arkwright has achieved from its coatings.

III. Deficiencies of the SIP Revision

As previously stated, EPA is disapproving this revision because of several deficiencies in the consent agreement negotiated between Arkwright and the DEM. Each of the deficiencies is discussed below.

1. Compliance Date Extension—Reformulation

The Rhode Island DEM has requested a compliance date extension to June 30, 1988 for Arkwright Incorporated to reformulate its coatings on coater No. 6. Section 172(b)(2) of the Clean Air Act (CAA), 42 U.S.C. 7502(b)(2), requires that all provisions of an implementation plan for a state relating to attainment and maintenance of national ambient air quality standards in any nonattainment area must provide for the implementation of all reasonably available control measures as expeditiously as practicable. Therefore, for each individual compliance date extension request, EPA must determine whether or not the request does, in fact, evidence an expeditious timeframe.

All requests for compliance date extensions in nonattainment areas must conform to the requirements of section 172 of the Clean Air Act, 42 U.S.C. 7502. In order to demonstrate that a compliance date extension is consistent with the statutory requirement that all reasonably available control measures be implemented as expeditiously as practicable (section 172(b)(2)), the source must provide evidence of having made reasonable efforts to develop and/or install low-solvent technology at its facility from the time of adoption by the state of the applicable regulations without any significant periods of inaction. In addition, because section 172(a) requires all SIPs to provide for attainment of the ozone standard by December 31, 1987, in no case will a compliance date extension request extending beyond 1987 be considered expeditious. Further, in order to ensure that the statutory requirements of reasonable further progress (section 172(b)(3)) and timely attainment are met, a compliance date extension request must contain commitments to install add-on control equipment by a specified date if a low-solvent development program fails by a specified date.

Rhode Island Regulation No. 19 was effective on November 13, 1979 and conditionally approved by EPA on May 7, 1981 (46 FR 25466). EPA fully approved Rhode Island Regulation No. 19 as part of Rhode Island's Ozone Attainment Plan on July 6, 1983 (48 FR 31026). Arkwright has not adequately described the steps it took to investigate the use of complying coatings since the adoption of Regulation No. 19. Without this detailed explanation, it is not possible to substantiate Arkwright's claim that it needs an extension beyond the July 1, 1985 final compliance date contained in Regulation No. 19. The type of data needed to substantiate Arkwright's claim should have included, but are not limited to, a summarization of the information gathering effort that was undertaken by the company to investigate the availability of new low/no VOC technologies, a summarization of the results of all screening tests that were performed for the evaluation of new low/no VOC technologies, a

summarization of the results of all full or limited scale production tests, and a summarization of the results of all market trials that were conducted for promising low/no VOC technologies. Additionally, the company should have submitted a detailed schedule outlining when future activities regarding its reformulation program will be completed.

Furthermore, EPA does not consider a compliance date extension request extending beyond December 31, 1987 to be expeditious and cannot approve such a request. Moreover, EPA cannot approve this request because there is no provision in Arkwright's consent agreement requiring the company to install add-on control equipment should the low solvent development program fail.

2. Compliance Date Extension—Add-on Control

The Rhode Island DEM has requested a compliance date extension to June 30, 1987 for Arkwright Incorporated to install add-on controls on coater No. 7. The final compliance date in Regulation No. 19 is July 1, 1985. By this date, Arkwright should have installed add-on control equipment on coater No. 7. Arkwright claims it could not afford to install the add-on control equipment by July 1, 1985 and requested an extension pursuant to Rhode Island Regulation No. 19, Subsection 19.3.3. EPA has done an extensive review of economic and financial information submitted by Arkwright. That review has indicated that Arkwright had and continues to have the capability to make the expenditures necessary to install and operate add-on control equipment prior to June 30, 1987. EPA does not consider this schedule for the installation of add-on control equipment which extends the compliance date 24 months after the final compliance date to be expeditious.

3. Emission Limitation on Uncontrolled Line

The Rhode Island DEM has requested an alternative emission limitation for the coatings used on coater No. 5. The limit that the coatings on this line must meet when operating is 7.03 lbs VOC/gallon coating (minus water). The DEM's Division of Air & Hazardous Materials will reestablish this limit on a yearly basis to reflect VOC reductions Arkwright has achieved from its coatings. Arkwright has not provided adequate support which shows that a reformulation program on this coater is infeasible. Furthermore, Arkwright has not provided adequate support which shows that add-on control equipment is not feasible on this coater.

IV. Public Comments

EPA has reviewed the two letters of public comment which were received on EPA's proposed action of Rhode Island's SIP submittal. Each of the issues raised in the comments is addressed below. For some comments, a more detailed discussion of the comments submitted and EPA's response is contained in EPA's Technical Support Document prepared for and in the docket of this rulemaking action. Copies of the Technical Support Document are available from the Region I office listed in the **ADDRESSES** section of this notice.

Comment: One commenter claimed that Arkwright's plan was approved to attain compliance with Regulation No. 19. The commenter stated that the plan is consistent with Regulation No. 19 and that Arkwright did not receive a final compliance limit other than that contained in Regulation No. 19. The commenter maintained that Arkwright will meet the 2.9 lbs VOC/gallon coating (minus water) emission limitation.

Furthermore, two commenters stated that Arkwright has been engaged in a reformulation program since the late 1970's and has reduced its emissions from 1042 tons/year in 1980 to 638 tons/year in 1984. Therefore, the commenter asserted that EPA's statements in the Technical Support Document about Arkwright's reformulation program are incorrect. One commenter further stated that EPA's statements are incorrect because Arkwright has submitted detailed documentation to the Rhode Island DEM which supports its reformulation efforts for the past several years.

Response: In order to receive an alternative RACT determination, the provisions of Subsection 19.3.3 require that the facility "demonstrate both economically *and* technically that neither coating reformulation nor the installation of a control system is feasible or even partially feasible." Arkwright has not demonstrated that it is both economically and technologically infeasible to achieve compliance by the established timeframe in the regulation. Therefore, Arkwright's compliance plan is not consistent with the federally-approved regulation.

Furthermore, there is no final compliance date in the consent agreement or any requirements requiring Arkwright to meet the 2.9 emission limit. Additionally, there is no requirement in the agreement that line number 6 achieve daily compliance with the 2.9 limit after completion of its reformulation program. By information supplied by Arkwright, EPA knows that Arkwright's reformulation program is not addressing every coating used on line number 6. After June 1988, there is potential for violations on line number 6 since the company will use coatings on that line over the 2.9 limit.

As stated, the actual reduction that has already been achieved by Arkwright is approximately 400 tons per year in VOC. However, it is possible that most of this reduction came from the closure of line numbers 4 and 8. (In 1980, line number 4 emitted approximately 229 TPY and line number 8 emitted approximately 208 TPY.)

Furthermore, on September 26, 1985, Arkwright submitted formulation data for each coating it used in the period from July 1, 1985 through August 15, 1985. Of the 57 formulations used on the existing coating lines (line numbers 5, 6 and 7), only one formulation complies with the 2.9 lbs VOC/gallon coating (minus water) emission limitation. Of equal importance is the fact that every coating used during that time period that Arkwright designated as a "trial formulation" exceeds the 2.9 lbs VOC/gallon (minus water) limitation. Therefore, Arkwright has not demonstrated that it has made substantial progress with its reformulations. To date, EPA has not received the detailed documentation provided by Arkwright to the DEM which the commenter referenced in the comment letter.

Comment: One commenter stated that the compliance plan set forth by Arkwright was reviewed to determine if it was consistent with the source-specific RACT determination made for Arkwright as part of a RACT study done by an independent consultant. The commenter stated that the RACT study clearly stated that Arkwright was not profitable at the time of the report. Another commenter states that Arkwright was not profitable during the years 1981, 1982, and 1983 and per "EPA's own RACT methodology" would not be required to install add-on control equipment. One commenter claimed that all parties involved, including EPA, reviewed the RACT study's document and adequate time was available to incorporate any suggestions made. The commenter stated that EPA was silent on how the RACT study was to be interpreted until more than a year after the study had begun.

The commenter stated that EPA's analyses did not follow the economic criteria used in the RACT study, that the cost per ton criteria EPA used in its analyses is more stringent than that used for other EPA regulatory actions, and that the economic criteria EPA used

in its analyses concerning profits and availability of loans are more stringent than anything ever discussed and does not represent RACT. Another commenter also stated that EPA has attempted to indicate that the criterion for judging feasibility is the company's ability to borrow money from a sound parent company.

The commenter stated that the compliance plan developed by Arkwright (which was incorporated into the DEM's consent agreement) represents RACT under the criteria developed by the RACT study's report.

Response: The RACT study conducted by the consultant did not use "EPA's own RACT methodology" to conduct the financial analyses. The methodology used to analyze the company's financial status was developed by the contractor. Further, the criteria developed by the contractor during the RACT study should not have exclusively been used by the Rhode Island DEM to determine RACT for Arkwright. The purpose of the study was to provide the State of Rhode Island with justification to support its SIP revisions. The purpose of the study was not to develop EPA policy on economic analyses. EPA never approved or endorsed the economic criteria contained in the contractor's study. As noted in comments submitted by DEM, EPA informed DEM in 1984, well before execution of the consent agreement between Arkwright and DEM in June of 1985, that EPA did not accept the contractor's determinations concerning the economic feasibility of installing controls. EPA also informed Arkwright, by a letter in May of 1985, that EPA had determined that Arkwright did have the economic resources to install add-on controls. In that letter, EPA explained the economic criteria that EPA had applied. Finally, in public comments submitted on the proposed consent agreement, EPA informed DEM that EPA did not consider the agreement to represent RACT.

The financial tests developed by the contractor are very generic and, if solely used, would allow many sources to be exempted from control. EPA envisioned those tests to be a screening tool to determine which sources clearly should install controls. Further analysis would be done for any source that claimed it could not afford to install and operate add-on control equipment.

Further, the RACT study does not clearly state that Arkwright was not profitable at the time of the report. The statements made in the RACT study do not represent a clear statement that add-on controls are economically infeasible. Also, the statements in the RACT study are not based on a thorough economic analysis of Arkwright's financial condition. Such an analysis should consider all aspects of a company's financial condition, not just immediate profitability, to determine whether the company is capable of undertaking the installation of pollution control equipment.

In Arkwright's case, the contractor's report did not provide adequate support to justify an alternative RACT. It is for that reason that EPA conducted its own analyses of the economic and technological feasibility of add-on controls. Those analyses do include a company's ability to borrow money from a sound parent company, although that is only a part of the analyses. EPA's economic analyses are contained in a memorandum from EPA Region I's economist, dated November 5, 1985, and in a memorandum from EPA's Office of Air Quality Planning and Standards, dated April 10, 1986. These analyses show that, as measured by several conventional indicators, Arkwright is in healthy financial condition and has been so at least since 1983. Moreover, Arkwright has demonstrated the ability to pay substantial dividends to its parent company, to refinance and reduce its long-term debt, and to make major new investments in plant and equipment. Finally, although Arkwright did not show a new profit in 1982 or 1983, the company was profitable both in 1984 and in 1985, and the cash flow was sufficient to cover the annualized costs of emission controls for all three coating lines in those two years. Thus, even if profitability were the sole criterion, Arkwright's financial condition would not justify a compliance date extension to mid–1987.

Comment: One commenter took issue with EPA's statement that the revision request does not contain adequate support that a reformulation program or add-on control program is not feasible on coater number 5. The commenter stated that Arkwright on the whole, by implementing the requirements of the consent agreement, will achieve a 400 TPY reduction and will be able to achieve compliance with Regulation No. 19 by the use of the bubble provisions contained in Section 19.4. Further, the commenter stated that EPA is attempting to require reductions beyond those needed to comply with RACT.

Response: The commenter claims that Arkwright will be able to achieve compliance with Regulation No. 19 by bubbling. Presumably, the commenter feels that the reductions which will be achieved on coater numbers 6 and 7 will go beyond what is required and compensate for the excess emissions from coater number 5 on a daily basis. However, the SIP revision that has been submitted does not require excess reductions from line numbers 6 and 7 sufficient to compensate for the excess emissions from line number 5. Moreover, from calculations done by EPA, it does not appear that a plantwide bubble would be feasible based on controlling only coating line numbers 6 and 7.

As the commenter stated, Arkwright will achieve 400 TPY in reductions by implementing the control strategy outlined in the consent agreement. This reduction represents a 63% overall reduction in VOC emissions when compared to the 1984 emissions of 638 tons. Since all but one of the formulations reported to EPA on September 26, 1985 need reductions in excess of 69% to achieve compliance with the 2.9 lbs VOC/gallon coating (minus water) emission limitation, this control strategy seems inadequate.

Comment: Two commenters stated that coater number 4 has been physically removed from Arkwright's premises, and therefore, EPA's statement in the NPR that the revision request does not contain adequate support that a reformulation program or add-on control program is not feasible on that line is not relevant.

Response: EPA is aware that coater number 4 was removed from Arkwright's premises sometime after the SIP revision was submitted. The consent agreement which was submitted as a revision to Rhode Island's SIP, however, in no way reflects that this line has been removed or was scheduled to be removed. The consent agreement allows the coater to be used under certain conditions past the final compliance date of July 1, 1985. If this coater had used noncomplying coatings anytime after July 1, 1985, then this SIP revision would still lack the necessary documentation to justify why this should have been allowed to occur.

Comment: One commenter took issue with EPA's statement that Arkwright has not provided evidence of having made reasonable efforts to develop and install low solvent technology from the time of adoption of the state regulation. The commenter claims that EPA never asked for such evidence before the NPR was published. The commenter further states that the reformulation deadline for Arkwright has been advanced from June 30, 1988 to June 30, 1987 which meets the December 31, 1987 test for expeditiousness.

Response: EPA asked Arkwright for information regarding Arkwright's reformulation program in a June 24, 1985 letter. Therefore, the commenter's

statement that EPA never asked for evidence is incorrect.

In a letter dated July 7, 1986, Arkwright proposed to condense the schedule for its reformulation program to July 1987. However, this proposal has no bearing or relationship to the SIP revision submitted by the Rhode Island DEM. The SIP revision which EPA has acted on has a final date of June 1988. That date could only be changed had the Rhode Island DEM resubmitted the consent agreement prior to our rulemaking on that change. Therefore, the commenter's statement about the reformulation deadline is not relevant.

Comment: One commenter took issue with EPA's statement that EPA does not consider a schedule to install add-on control equipment extending 24 months beyond the July 1, 1985 final compliance date to be expeditious. The commenter stated that the criteria of the RACT study allowed for a two year pass if a company was losing money. The commenter stated that since Arkwright was losing money, Arkwright was entitled "by the rule" to have its pass until July, 1986. The commenter says that Arkwright agreed to start installing controls on January 1, 1986 which is six months before it had to and that the 18 month long schedule after January 1, 1986 was realistic based on Arkwright having installed another add-on device to its plant in 1984.

Response: The criteria of the contractor's RACT study does not allow a two year "pass" if a company is losing money. Secondly, the profitability criterion of the RACT study is not "the rule" by which Arkwright or EPA must abide. As mentioned above, the purpose of the RACT study was not to develop EPA policy or to develop EPA or State rules. The study was performed by a private contractor who had no authority to develop EPA rules. The purpose of the study was to provide technical documentation to the State. The State should have used that documentation consistently with EPA policy and procedures.

Finally, the length of the schedule for the installation of controls on line number 7 has not been shown to be expeditious. Arkwright has not provided the necessary economic justification to show that the schedule should have begun January 1, 1986. EPA's own economic analyses, discussed previously, indicate that Arkwright had the resources to begin installation of controls well before that date.

Comment: One commenter took issue with EPA's statement that the revision request does not contain adequate support that there are no existing low/no solvent formulations which can meet Arkwright's needs on coater number 5. The commenter stated that coater number 5's only coated product is unique and no existing low/no solvent formula for this product exists at Arkwright or anywhere else.

Response: EPA agrees that if a product is unique, there are probably no existing low/no solvent formulations for that product. However, this still does not address EPA's comment that Arkwright has not demonstrated that a reformulation program to develop a low/no solvent formulation for that product is not feasible on coater number 5.

Comment: One commenter took issue with EPA's statement that Arkwright has not provided adequate support to show that add-on control equipment is not feasible on coater number 5. The commenter states that the State of Rhode Island addressed this issue and dismissed the possibility of add-on controls on the basis of cost effectiveness.

Response: At the time the contractor completed its analysis of the cost of controls for Arkwright, Arkwright claimed that various assumptions used in the RACT study regarding heat recovery and oven exhaust recirculation were not feasible for its processes. Arkwright did not, however, submit any of its own control cost estimates in conjunction with these assertions in order to show what it would actually cost to install control equipment on its coating lines. Therefore, if these assertions were true, none of the costs in the study can be considered representative of what it would actually cost to install controls. Therefore, it is improbable that Rhode Island could have made an accurate assessment about the cost effectiveness of control equipment on line number 5 with any valid cost estimates for that coating line. Because no accurate assessment of the cost of control equipment existed for line number 5, EPA did its own cost analysis of control equipment on line number 5. EPA found that it would cost $1071/ton of VOC controlled to control line number 5 based on 1983 data. (The analysis is based on 1983 data because that is when Arkwright would have had to have begun the installation of add-on control equipment had it intended to comply with the July 1, 1985 final compliance date contained in Rhode Island's federally-approved SIP.) The costs determined by EPA in its analysis are substantially lower and more favorable than the costs originally determined by the contractor, even with the contractor's invalid assumptions. EPA believes that if the requirement for controls on line number 5 was dismissed for reasons of low cost effectiveness as the commenter asserts, then it was done unjustifiably because the proper documentation did not exist which will allow such a determination.

V. Final Action

EPA is today disapproving the consent agreement submitted by the DEM as a SIP revision request for Arkwright Incorporated in Fiskeville, Rhode Island for the following reasons:

1. The SIP revision request does not contain a demonstration that the requested compliance date extension to June 30, 1988 for reformulation of coatings on coater number 6 constitutes an expeditious schedule as required by the Clean Air Act (CAA) and Subsection 19.3.3 of the federally approved SIP for Rhode Island.

2. The SIP revision request does not contain a demonstration that Arkwright needs a two year compliance date extension until June 30, 1987 for the installation of add-on control equipment on coater number 7 as required by the CAA and Subsection 19.3.3 of the federally approved SIP for Rhode Island.

3. The SIP revision request does not contain a demonstration that an add-on control program or a reformulation program is not feasible on coater number 5 as required by Subsection 19.3.3 of the federally approved SIP for Rhode Island.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the Environmental Protection Agency, J.F.K. Federal Building, Room 2311, Boston, MA 02203.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (December 18, 1987). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Date: October 6, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

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Subpart 00—Rhode Island

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2084 is amended by adding paragraph (a)(i) to read as follows:

§ 52.2084 Rules and regulations.

(a) Part D—Disapproval.

(1) On November 5, 1985, the Rhode Island Department of Environmental Management submitted a revision to the Rhode Island State Implementation Plan (SIP) for Arkwright Incorporated. This revision is an alternative reasonably available control technology determination for the control of volatile organic compounds (VOC) from three paper coating lines at Arkwright Incorporated's Fiskeville, Rhode Island facility. As a result of EPA's disapproval of this revision, the existing VOC rules applicable to Arkwright Incorporated and contained in the Rhode Island SIP remain in effect (Rhode Island Air Pollution Control Regulation No. 19 as approved by EPA in 40 CFR 52.2080(c)(19)).

[FR Doc. 87–24121 Filed 10–16–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment; Public Reference Rooms Available

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends §§ 0.453 and 0.455 of the Commission's Rules, to include an updated listing of all public reference rooms available at the Commission and other locations at which records may be inspected. This action is needed to conform these requirements to current operations at the Commission and to allow easier access to Commission files, documents and records.

EFFECTIVE DATE: Effective on October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Information Resources Planning Division, Office of Managing Director, (202) 632–7513.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 18, 1987.

Released: October 5, 1987.

1. Sections 0.453 and 0.455 of the Commission's Rules require updating so that they conform to the current operation of the Commission.

2. This Order amends §§ 0.453 and 0.455 to remove listings of public reference rooms which are no longer in operation and to add listings of public reference rooms which are currently being used.

3. Authority for this action is contained in sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

4. Accordingly, *It is ordered, that* §§ 0.453 and 0.455 of the Rules is *Amended* in accordance with the attached, effective on the date of publication in the **Federal Register.**

5. Persons having questions on this matter should contact Terry Johnson at (202) 632–7513.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

List of Subjects in 47 CFR Part 0

Organization and functions, (Government agencies).

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. Section 0.453 is amended by revising paragraph (d) and adding new paragraphs (e) through (l) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(d) *The Mass Media Bureau, Auxiliary Services Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Station files containing applications for Remote Pickup, Aural STL/ICR, TV Auxiliary and Low Power Auxiliary Stations.

(2) International Broadcast applications and related files.

(3) FM Translator applications and related files.

(4) FM Booster station applications and related files.

(5) Cards summarizing the historical record of applications and dispositions through May 1982 are available for inspection.

(e) *The Mass Media Bureau, Enforcement Division Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Station files containing Notice of Apparent Liability and Memorandum of Opinion and Order and related files.

(2) Congressional correspondence files and related materials.

(3) Network correspondence files and related materials.

(f) *The Common Carrier Bureau, Accounting and Audits Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Files containing contracts between carriers and affiliates, accounts and subaccounts, pension filings, property records, disposition units, and depreciation rate filings.

(2) Computer II files and related materials.

(3) Official correspondence files which include waiver requests and interpretations and related files.

(4) Docket 86–111 Implementation filings containing Cost Allocation Manuals and related materials.

(g) *The Common Carrier Bureau, Domestic Facilities Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Microwave Point-to-Point, Digital Electronic Message Service (DEMS), Multi-Point Distribution Service application files and related materials.

(2) Space and earth station files and related materials.

(3) Section 214 applications and related files.

(h) *The Common Carrier Bureau, Mobile Services Reference Room.* The following documents, files and records are available for inspection at two different locations. The Legal Branch is the responsible custodian for both locations.

(1) Station files containing a complete history of data submitted by the applicant that has been approved by the Commission which includes maps, diagrams, petitions, co-channel searches, and other background material.

(2) Pending files containing applications for additional facilities or modifications of existing facilities.

(3) Cellular Granted Station files and related materials.

(4) Pending cellular applications and related files.

(5) Petitions and related materials.

(i) *The Common Carrier Bureau, Industry Analysis Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Files containing reports required by FCC Rules and Regulations, annual reports to stockholders, administrative reports, monthly bypass reports and related materials.

(2) Files containing reference material from major telephone companies.

(3) Files containing Local Exchange Rates and related files.

(j) *The Common Carrier Bureau Reference Room, Tariff Review Reference Room.* Contains currently effective tariffs filed by Communications Common Carriers pursuant to various FCC Rules and Regulations. Also available for review and copying are recent revisions to tariff filings and the Public Reference Room Log which is prepared daily and lists the tariff filings received the previous day.

(k) *The Office of Engineering and Technology, FCC Laboratory Reference Room.* The following documents, files and records are available for inspection at this location. Files containing approved applications for Equipment Authorization (Type accepted, type approved, certified and notified) and related materials are available for review. These files are available in the Commission's Laboratory in Columbia, Maryland.

(l) *The Private Radio Bureau Reference Room.* All authorizations in the Private Radio Services and files relating thereto, which includes Land Mobile, Microwave, Aviation Ground, Marine Coast applications. All of these materials are available in the Commission's offices in Gettysburg, Pennsylvania.

3. Section 0.455 is revised to read as follows:

§ 0.455 Other locations at which records may be inspected.

Except as provided in §§ 0.453, 0.457 and 0.459, records are routinely available for inspection in the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those offices upon request. Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below.

(a) *Mass Media Bureau* which includes the *Cable Television Branch,* the *Fairness/Political Programming Branch* and the *Audio Services Division.*

(1) Applications for broadcast authorizations and related files are available for public inspection in the Mass Media and Dockets Reference Room. See § 0.453(a)(2). Certain broadcast applications, reports and records are also available for inspection in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527.

(2) Ownership reports filed by licensees of broadcast stations pursuant to § 73.3615.

(3) Network affiliation contracts between stations and networks (for television stations only).

(4) Contracts relating to network service to broadcast licensees filed on or after the 1st day of May 1969 under § 73.3613.

(5) Annual employment reports filed by licensees and permittees of broad-broadcast stations pursuant to § 73.3612.

(6) Cable TV system reports filed by operators pursuant to § 76.403.

(7) Contract files which contain pledges, trust agreements, options to purchase stock agreements, partnership agreements, management consultant agreements, and mortgage or loan agreements.

(8) Rulings under the Fairness Doctrine and section 315 of the Communications Act, and related materials.

(9) Ruling lists which contain brief summaries of rulings.

(10) Files containing Station History cards for stations in existence prior to 1982.

(b) *Common Carrier Bureau* which includes the *Formal Complaints and Investigations Branch* and the *Informal Complaints and Public Inquiries Branch.*

(1) Annual reports filed by carriers under § 43.21 of this chapter.

(2) Annual reports filed by carriers under § 43.31 of this chapter.

(3) Reports on pensions and benefits filed by carriers under § 43.42 of this chapter.

(4) Reports of proposed changes in depreciation rates filed by carriers under § 43.43 of this chapter.

(5) Reports regarding division of international telegraph communications charges filed under § 43.53 of this chapter.

(6) Reports regarding services performed by telegraph carriers filed under § 43.54 of this chapter.

(7) Reports of public coast station operators filed under § 43.71 of this chapter.

(8) Valuation reports filed under section 213 of the Communications Act, including exhibits filed in connection therewith, unless otherwise ordered by the Commission, with reasons therefor, pursuant to section 213(f) of the Communications Act. See § 0.457(c)(2).

(9) A list of other reports filed by common carriers.

(10) Contracts and other arrangements filed under § 43.51 and reports of negotiations regarding foreign communication matters filed under § 43.52 of this chapter, except for those kept confidential by the Commission pursuant to section 412 of the Communications Act. See § 0.457(c)(3).

(11) Tariff schedules for all charges for interstate and foreign wire or radio communications filed pursuant to section 203 of the Communications Act, all documents filed in connection therewith, and all communications related thereto.

(12) All applications for common carrier authorizations, both radio and nonradio, and files relating thereto.

(13) All formal and informal complaints against common carriers filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith, and all comunications related thereto.

(14) Files relating to submarine cable landing licenses, except for maps showing the exact location of submarine cables, which are withheld from inspection under section 4(j) of the Communications Act. See § 0.457(c)(1)(i).

(15) Annual employment reports filed by common carrier licensees or permittees pursuant to § 1.815 of this chapter.

(16) Enforcement proceedings and public inquiries and related materials.

(c) *Office of Managing Director.* (1) All minutes of Commission actions, containing a record of all final votes, minutes of actions and internal management matters as provided in § 0.457(b)(1) and (c)(1)(i). These records and files are available for inspection in the Agenda Branch.

(2) Files containing information concerning the history of the Commission's rules. These files are available for inspection in the Publications Branch.

(3) See § 0.443.

(4) Reports filed pursuant to Subpart E of Part 19 of this chapter and applications for inspection of such reports. See § 0.460(k).

(d) *Field Operations Bureau.* See § 0.457(f)(3) of this chapter. Commercial radio operator application files are available for inspection at this location.

(e) *Office of Engineering and Technology* which includes the Bureau's *Technical Library* containing technical reports, technical journals, and bulletins

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of spectrum management and related technical materials.

(1) Experimental application and license files.

(2) The Master Frequency Records.

(3) Applications for Equipment Authorization (type accepted, type approval, certification, or advance approval of subscription television systems), following the effective date of the authorization. See § 0.457(d)(1)(ii). (Application files, technical journals and other technical materials are maintained at the Commission's Laboratory at Columbia, Maryland.)

(f) *The Commission's offices in Gettysburg, Pennsylvania.* See § 0.453(1) of the this chapter.

[FR Doc. 87-24080 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-97; RM-5598]

Radio Broadcasting Services; Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Saguaro Broadcasting Co., allocates Channel 300C1 to Laughlin, Nevada, as the community's first local FM service. Channel 300C1 can be allocated to Laughlin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Concurrence by the Mexican government has been received since the community is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-97, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding Laughlin, Nevada, Channel 300C1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24083 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-95; RM-5648]

Radio Broadcasting Services; Anson, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C2 for Channel 252A at Anson, Texas, and modifies the construction permit of Station KTCE(FM) to specify operation on the new frequency, as requested by George L. Chambers. The substitution could provide Anson with its first wide coverage area FM service. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-95, adopted September 17, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing channel 252A and adding Channel 251C2 at Anson.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24082 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-18; RM-5616, RM-5880]

Television Broadcasting Services; Burlington, VT, Boston, MA; and Saranac Lake, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF-TV Channel 44+ to Burlington, Vermont, as that community's third commercial television service, at the request of Vermont Broadcasters. In addition, the offset on Channel *44 at Boston, Massachusetts must be changed from "plus" to "zero" in order to accomplish the Burlington allotment. We are also, allotting UHF-TV Channel 61— to Saranac Lake, New York, at the request of Citadel Communications Co., Ltd., licensee of Station WVNY(TV), Channel 22, Burlington, Vermont. As a first television service at Saranac Lake, a site restriction of 3.1 miles (5 kilometers) southeast of the city is required. The Burlington allotment requires a site restriction of 7.1 miles (11.4 kilometers) south of that community. Canadian concurrence has been obtained for the allotments and offset changes. Although the commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-18, adopted September 25, 1987 and

released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, is amended under Massachusetts, by revising Channel *44+ to *44 for Boston; by adding in the entries for Burlington, Vermont, Channel 44+ and Saranac Lake, New York, Channel 61−.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24081 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–89; RM–5680]

Radio Broadcasting Services; Manchester, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 268A to Manchester, Tennessee, as that community's second FM service, at the joint request of Roger Howell Dotson and James Brittan Gilmore. A site restriction of 9.0 kilometers (5.6 miles) southwest of the city is required.With this action, this proceeding is terminated.

DATES: Effective November 30, 1987; The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–89, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 74—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Channel 268A at Manchester, Tennessee.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24078 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–519; RM–5423]

Television Broadcasting Services; Pullman, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 24+ to Pullman, Washington, as that community's first commercial television service, at the request of P-N-P Broadcasting. Concurrence by the Canadian government has been obtained. Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–519, adopted September 25, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, is amended by adding Channel 24+ at Pullman, Washington.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24077 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–79; RM–5642]

Radio Broadcasting Services; Block Island, RI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kolleen Dodge, allocates Channel 240A to Block Island, Rhode Island, as the community's second local FM service. Channel 240A can be allocated to Block Island in compliance with the Commission's minimum distance separation requirements, without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–79, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International

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Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments for Block Island, Rhode Island, is amended by adding Channel 240A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24152 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–98; RM–5609]

Radio Broadcasting Services; Socastee, SC

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document, at the request of Cat Communications and Joseph A. Booth, allocates Channel 258A to Socastee, South Carolina, as the community's first local FM service. Channel 258A can be allocated to the community in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–98, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by adding Socastee, Channel 258A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24153 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–22; RM–5622]

Radio Broadcasting Services; Nacogdoches, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 299C2 for Channel 221A at Nacogdoches, Texas, and modifies the license of Station KTBC–FM to specify operation on the new frequency, at the request of Texan Broadcasting Co., Inc. A site restriction of 11.6 kilometers (7.2 miles) north of the city is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–22, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by adding Channel 299C2 and removing Channel 221A for Nacogdoches.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24154 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–96; RM–5656]

Radio Broadcasting Services; Morrisville, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 230A to Morrisville, Vermont, as that community's first FM service, at the request of Peter Morton. Concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–96, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Vermont, by adding Channel 230A to Morrisville.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24155 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-90; RM-5637]

Radio Broadcasting Services; Walla Walla, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C2 for Channel 265A at Walla Walla, Washington, and modifies the construction permit of Station KHSS(FM) to specify operation on the new frequency, as requested by Blanche Marie Hodgins. A fourth wide coverage area FM service could be provided to Walla Walla. A site restriction of 20.0 kilometers (11.8 miles) southwest of the community is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-90, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington by removing Channel 265A and adding Channel 264C2 at Walla Walla.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24156 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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Proposed Rules

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 1010

Conduct of Employees; Cooperation with the Inspector General

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy proposes to amend the Department's Conduct of Employees regulations (10 CFR Part 1010) to clarify Department policy regarding cooperation required of Department employees in matters relating to official investigations by the Office of Inspector General.

DATES: Comments must be received not later than November 18, 1987.

ADDRESS: Address comments to the Office of Assistant General Counsel for General Law, GC–43,. U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. The envelope must also display the following designation: "Revision of Conduct of Employees Regulations."

FOR FURTHER INFORMATION CONTACT:

Thomas C. Buchanan, Attorney-Advisory, Office of Assistant General Counsel, for General Law, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–1522

Sanford J. Parnes, Counsel to the Inspector General, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4393.

SUPPLEMENTARY INFORMATION:

I. Background

Section 208 of the Department of Energy Organization Act (Pub. L. 95–91) provides for the establishment of an Office of Inspector General within the Department. It also provides that the Inspector General shall be responsible for conducting investigative activities relating to the promotion of economy and efficency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department. To facilitate such activities, it is considered appropriate that the subject of DOE employees' duty to cooperate with the Office of Inspector General should be addressed in the regulations governing conduct of DOE employees. Accordingly, the Department proposes to amend Part 1010 of title 10, Code of Federal Regulations, by adding a new section (§ 1010.217) entitled, "Cooperation with the Inspector General." The new section will make reference to the other sections of the regulations that have a bearing on conduct of employees in this area. Propsoed § 1010.217 does not confer new authority upon the Office of Inspector General or any other DOE official; rather, it clarifies the policy and authority established by existing statutes, regulations, Federal case law, and Departmental directives.

II. Opportunity for Public Comment

Section 501 of the DOE Organization Act provides that if the Secretary determines that a substantial issue of fact or law exists or that a proposed rule is likely to have a substantial impact on the Nation's economy or on large number of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. DOE has concluded that this proposed regulation does not involve a substantial issue of fact or law and that it will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, DOE does not plan to hold a public hearing. Interested persons are invited to submit written comments with respect to the proposed regulation set forth in this notice. Three copies of written comments should be submitted by [November 18, 1987] as indicated in the "Address" section of this preamble.

III. Review Under Executive Order 12291

It has been determined that the proposed regulation is not a "major rule" within the meaning of Executive Order 12291 (February 17, 1981) because the amendment will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

IV. Review Under the Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (Pub. L. 96–354), it is hereby certified that the proposed regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. It is related solely to internal agency organization, management, or personnel.

V. Review Under the National Environmental Policy Act

DOE has determined that this proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

VI. Review Under the Paperwork Reduction Act

This proposal does not impose a "collection of information" requirement, as defined in 44 U.S.C. 3502(4).

List of Subjects in 10 CFR Part 1010

Conflict of interest conduct of employees.

In consideration of the foregoing, it is proposed to amend Part 1010 of Title 10 of the *Code of Federal Regulations*, as set forth below:

Issued in Washington, DC on *October 5, 1987.*

John S. Herrington,

Secretary of Energy.

PART 1010—CONDUCT OF EMPLOYEES

1. The table of contents is amended by adding the following at the end of Subpart B:

1010.217 Cooperation with the Inspector General (applicable to FERC).

2. The authority citation for Part 1010 is revised to read as follows:

Authority: Secs. 208, 601–608, 644, Pub. L. 95–91, 91 Stat. 575–577, 591–596, 599 (42 U.S.C. 7138, 7211–7218, 7254); sec. 522, Pub. L. 94–163, 89 Stat. 961 (42 U.S.C. 6392); sec. 308, Pub. L. 95–39, 91 Stat. 189 (42 U.S.C. 5816a); 5 U.S.C. 301 and 303 (a); 5 U.S.C. (app. 4) 207 (a); U.S.C. 201–209; E.O. 11222, as amended by E.O. 12565.

3. Part 1010 is amended by adding the following new section:

§ 10.10.217 Cooperation with the Inspector General (applicable to FERC).

(a) Upon the duly authorized request of a representative of the Office of the Inspector General, a DOE employee shall provide information requested by the representative pertaining to the operations and programs of the Department. In responding to such a request, an employee shall testify or respond to questions, under oath if specified by an investigator who is an employee of the Office of Inspector General, and, where appropriate, furnish a signed statement; except that, an employee is not required to respond to questions or to testify if the answers or testimony may subject the employee to criminal prosecution. If the employee's statements or information gained by reason of such statements cannot be used against the employee in a criminal prosecution, failure to respond to such a request for information may lead to disciplinary action.

(b) Employees have a duty to expose fraud, waste, inefficiency, or other forms of wrongdoing on the part of DOE employees, contractors, subcontractors, grantees, or other recipients of DOE financial assistance, or their employees. All alleged violations of these regulations shall be referred to the Counselor and the Inspector General, and the Counselor shall review and determine appropriate action in accordance with § 1010.502 (c). Reviewing officials shall report actual or alleged employee misconduct to the Counselor and the Inspector General (§ 1010.104(b) (6)). Notwithstanding any other provision in these regulations, DOE employees should, when appropriate, report directly to the Office of Inspector General any information concerning wrongdoing by Department employees, or DOE contractors, subcontractors, grantees, or other recipients of DOE financial assistance, or their employees.

[FR Doc. 87–24060 Filed 10–16–87; 8:45 am]
BILLING CODE 6450–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 741

Reserves; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposal rulemaking.

SUMMARY: The NCUA Board requests comment on whether it should redefine the "loans and risk assets" that determine Federal and federally-insured state credit union reserve requirements. Currently, most nonloan assets and certain insured and guaranteed loans are excluded. The Board requests comment on whether all loans and assets should be included. Comments received will assist the Board in determining whether to issue a proposed rule.

DATE: Please comment on or before February 5, 1988.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC. 20456.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Bradford, Chief Economist, D. Michael Riley, Director, Office of Examination and Insurance, or Robert M. Fenner, General Counsel, at the above address, or telephone (202) 357–1100 (Dr. Bradford), (202) 357–1065 (Mr. Riley), or (202) 357–1030 (Mr. Fenner).

SUPPLEMENTARY INFORMATION:

Background

Current Statutory Reserve Requirements

Section 116(a) of the Federal Credit Union Act (12 U.S.C. 1762(a)) requires that Federal credit unions set aside a certain percent of gross income at the end of each accounting period as a Regular Reserve. The amount of reserve transfer required is based on a two-tiered formula, according to the size or age of the credit union; (1) A credit union in operation for less than four years or having assets of less than $500,000 must set aside: (a) 10 percent of gross income until the Regular Reserve equals 71/2 percent of total outstanding loans and risk assets, and then (b) 5 percent of gross income until the Regular Reserve equals 10 percent of loans and risk assets. (2) A credit union in operation for more than four years and having assets of $500,000 or more must set aside: (a) 10 percent of gross income until the Regular Reserve equals 4 percent of loans and risk assets, and then (b) 5 percent of gross income until the Regular Reserve equals 6 percent of loans and risk assets. There is no time limit for achieving these 10 percent and 6 percent reserve goals.

The term "total outstanding loans and risk assets" is defined in § 700.1(j) of NCUA's Regulations (12 CFR 700.1(j)) as all assets except such excluded assets as: Cash, deposits in other insured depositories (including amounts above the $100,000 insurance limit), investments in Treasury and agency securities, loans to other credit unions, government-insured or -guaranteed loans (including student loans), share-secured loans, common trust investments, prepaid expenses, accrued interest and fixed assets. As a result of these exclusions, the definition is essentially limited to nonguaranteed and noninsured loans.

Federally-Insured State-Chartered Credit Unions

Section 201(b)(6) of the Federal Credit Union Act (12 U.S.C. 1781(b)(6)) provides that federally-insured state credit unions must maintain such reserves as the NCUA Board "may require * * * to assure that all insured credit unions maintain rgular reserves which are not less than those required under Title I of the Federal Credit Union Act." This provision is implemented by the standard insurance agreements that NCUA enters into with all federally-insured state credit unions and by § 741.6(a) of the NCUA's regulations, both of which require that federally-insured state credit unions meet, at a minimum, the statutory reserve requirements imposed on Federal credit unions by Section 116 of the Act. Thus, the proposal to redefine risk assets affects federally-insured state-chartered credit unions as well as Federal credit unions.

Corporate Central Credit Unions

Corporate credit unions (both Federal and federally-insured state-chartered) are subject to separate reserve requirements pursuant to Part 704 of NCUA's regulations (12 CFR Part 704) and are unaffected by this proposal.

Review of Current Methods

The nature of a credit union's balance sheet has changed dramatically since the original reserve procedures were established. At that time, consumer loans made up almost all of a credit union's assets and thus the credit union made reserve transfers on what were essentially total assets. At present, a substantial part of most credit unions' balance sheets is in items not considered by definition to be risk assets. These items are not included in

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the assets that determine minimum statutory reserve goals. Events of recent years have shown, however, that substantial losses can occur on many of these assets. For example, credit unions have suffered substantial losses on mutual funds and government securities trading, on deposits in other financial institutions, and on sales of buildings, real estate, computers, and other fixed assets.

Also, a review of historical data shows that reserves as a percentage of assets have declined over the last several years.

The following table presents the ratios for both Federal and federally-insured state credit unions.

RATIO OF REGULAR RESERVES (INCLUDES ALLOWANCE FOR LOAN LOSSES) TO TOTAL ASSETS

Year	Federal credit union	Federally-insured State credit union
1982	3.5	4.0
1983	3.2	3.8
1984	3.3	3.9
1985	3.2	3.6
1986	3.0	3.4

The ratios in the above table exclude undivided earnings and other revocable reserves. If these other net worth (capital) accounts were included, the ratios would be approximately doubled. The trends, however, would not be different.

Finally, a report issued by the credit union industry-sponsored National Credit Union System Capitalization Commission concluded that equity capital should be increased in credit unions. Inasmuch as the current ratio of loans to total assets for all federally-insured credit unions is 56.6%, redefining risk assets to include nonloan assets would clearly help to build credit union capital.

Request for Comment

For the reasons addressed above, the NCUA Board proposes to redefine the loans and risk assets that determine statutory reserve requirements. Comments are requested on the following specific issues:

1. Should all assets be considered risk assets? While it is recognized that degree of risk varies for different assets, all assets carry some risk. Assets that are nearly risk free, e.g., vault cash and Regulation D reserves, are likely to be immaterial in relation to a credit union's total assets. Recognizing this, and in the interest of simplicity, should the definition include all assets?

2. In the alternative, should certain specific assets be excluded? If so, which assets and why?

3. Broadening the definition of reservable assets will temporarily reduce the after-reserve income of some credit unions by placing them in a higher percentage transfer bracket for current accounting periods. A review of June 30, 1987, call report data indicates that 3,040 (or 21%) federally-insured credit unions are currently using retained earnings in whole or in part to meet reserve transfer requirements. If the definition of risk assets were immediately changed to include all assets, it is estimated by NCUA staff that an additional 3,206 (22%) federally-insured credit unions would face increased reserve transfers, requiring those credit unions to either reduce expenses or dividends or use retained earnings. A number of options are available, however, to prevent adverse effects. The NCUA Board has the authority, pursuant to section 116(b) of the Federal Credit Union Act (12 U.S.C. 1762(b)), to decrease reserve requirements on a temporary basis in individual cases. In the alternative, an across-the-board delayed effective date or gradual phase-in might be utilized. The Board requests comment on what specific action should be taken to avoid unreasonable temporary reductions in after-reserve income.

4. If credit unions are required to reserve against additional assets, should they be allowed to charge losses other than loan losses to the regular reserve? Should any limits be placed on these additional charges?

5. Federal credit union accounting procedures call for the creation of contra-assets, or valuation allowance accounts, for projected losses on loans and for marking to the lower of cost or market on mutual funds. This prevents the true value of these assets from being overstated on the credit union's statement of financial condition. The allowance account for loan losses is considered, however, in determining the credit union's reserve position relative to its statutory goal. If investments are treated as risk assets, will it be advisable to establish similar consideration for mutual funds, in order to prevent double reserving? Also, should valuation allowance requirements be established for other types of assets?

Initial Regulatory Flexibility Analysis

The following information is provided in accordance with 5 U.S.C. 603.

1. This action is being considered in order to ensure consistency between credit union reserves against losses and the risk inherent in the current asset structures of credit unions, and also to improve equity capital in credit unions.

2. The legal bases for this request for comment are Sections 116 and 201 of the Federal Credit Union Act (12 U.S.C. 1762, 1781).

3. This proposal would, if implemented, affect all federally-insured credit unions by expanding the asset base that determines reserve goals of credit unions. Such a change would affect some credit unions by temporarily increasing the amount of income required to be transferred to the regular reserve each accounting period, which would reduce the amount of income available to meet expenses, to pay dividends, and for other purposes. At the same time, the changes would increase equity capital in credit unions and should ultimately strengthen the credit union system. The change would not impose new recordkeeping or reporting requirements on credit unions.

4. The changes under consideration would not overlap or duplicate any existing Federal rules.

5. Inasmuch as the reserve transfer requirements (as a percentage of gross income) and reserve goals (as a percentage of risk assets) are fixed by statute, it does not appear that differing requirments would be appropriate for small credit unions.

Accordingly, the NCUA Board requests comments on the issues identified above and any other issues relevant to credit union reserve requirements.

By the NCUA Board on the 8th of October, 1987.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 87-24129 Filed 10-16-87; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-26, Notice No. SC-87-5-NM]

Special Conditions; Airbus Industrie Model A320 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus Industrie Model A320 airplane. This airplane will have novel and unusual design features when compared to the state of

technology envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 25.

DATE: Comments must be received on or before January 19, 1988.

ADDRESSES: Comments of this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM–7), Docket No. NM–26, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM–26. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gregory J. Holt, Standardization Branch, ANM–113, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68996, Seattle, Washington 98168; telephone (206) 431–1918.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–26." The postcard will be date/time stamped and returned to the commenter.

Background

On February 7, 1984, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, applied for type certification of their Model A320 by the Direction Generale de l'Aviation Civile (DGAC) under the provisions of Joint Airworthiness Requirements–25 (JAR–25) and by the FAA under the provisions of § 21.29 of the FAR and an existing bilateral airworthiness agreement with the government of France.

The bilateral agreement was reached in 1973 to facilitate French acceptance of aeronautical products exported from this country and reciprocal U.S. acceptance of such products imported from France. The bilateral agreement provides, in part, for U.S. acceptance of certification by the DGAC that the Model A320 complies with the applicable U.S. laws, regulations and requirements, or with the applicable French laws, regulations and requirements, plus any additional requirements the U.S. finds necessary to ensure that the Model A320 meets a level of safety equivalent to that provided by the applicable U.S. laws, regulations and requirements. The DGAC has elected to certify that the Model A320 complies with the French laws, regulations and requirements, plus any necessary special requirements.

The DGAC has advised that the French laws, regulations and requirements applicable to the Model A320 (i.e. the French type certification basis) consist of JAR–25 with changes 1 through 10 thereto and including the French National Variants, the Orange Papers 84/1, 84/2, and 84/3, Joint Airworthiness Requirements–All Weather Operation (JAR–AWO), and Special Conditions and interpretations applied specifically to the Model A320. JAR–25 is a document developed jointly and accepted by the airworthiness authorities of various European countries, including France, for type certification of large airplanes. JAR–25 is based on Part 25 of the FAR, however there are certain specified differences in the requirements of the two documents. In addition, JAR–25 also contains requirements, known as National Variants, that are peculiar to individual accepting countries. "Orange Papers" are interim amendments which are eventually consolidated as a change to JAR–25. Special conditions are also applied where JAR–25 does not contain adequate or appropriate safety standards due to novel or unusual design features. In order to preclude confusion, these special conditions will be referred to herein as the "French Special Conditions." JAR–AWO contains additional requirements applicable to all weather operations.

The Airworthiness Authorities of Germany, England, and the Netherlands are participating with France in a joint certification process between these countries with the objective of issuing their Type Certificates simultaneously in 1988. U.S. type certification of the A320 is expected to follow shortly after the European certification.

Based on the February 7, 1984, date of application for type certificate, the applicable U.S. laws, regulations and requirements, as established under the provisions of §§ 21.17 and 21.29 of the FAR, are Part 25 of the FAR with Amendments 25–1 through 25–56 thereto and the special conditions proposed in this notice. When the applicable regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 of the FAR in order to establish a level of safety equivalent to that established in the regulations.

A comparison will be made of the French type certification basis and the above noted U.S. laws, regulations and requirements, including the respective French and U.S. special conditions. Based on this comparison, the FAA will prescribe any additional requirements that are necessary to ensure that the Model A320 meets a level of safety equivalent to that provided by the U.S. laws, regulations and requirements.

Noise certification is beyond the scope of the bilateral agreement; however, French test data are accepted by separate arrangement. The French noise certification basis is their "Arrete" (order) dated November 26, 1981 (ICAO Annex 16). The U.S. noise certification basis for the Model A320 is Part 36 of the FAR with Amendments 36–1 through 36–12 thereto and any subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. French noise certification test data will be reviewed by the FAA for compliance with the U.S. noise certification basis.

The Model A320 must also comply with the engine emission requirements of Special Federal Aviation Regulation No. 27 (SFAR 27) with Amendments 27–1 through 27–5 thereto and any subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. Engine emission requirements are also beyond the scope of the bilateral agreement; however, certification of compliance by the DGAC will be accepted by separate arrangement. Lastly, the statutory

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provisions of Pub. L. 92–574, "Noise Control Act of 1972," require that the FAA issue a finding of regulatory adequacy pursuant to section 611 of that Act.

The French type certification basis, together with the additional requirements discussed above, Part 36 of the FAR, SFAR 27, and the Noise Control Act of 1972, will comprise the U.S. type certification basis for the Model A320.

A320 Design Features

General

The Model A320 airplane presented for U.S. type certification is a short to medium-range, twin-turbofan, transport category airplane with a seating capacity of 120 to 179 passengers, a maximum takeoff weight of 158,730 pounds, and a maximum operating altitude of 39,000 feet.

The structure of the A320 is generally of conventional design and construction, but with considerable use of composite materials. Elements of primary structure (the fin and horizontal tailplane) are constructed of composites as well as components such as flaps, spoilers, ailerons, engine cowls, and the leading and trailing edge access panels. In addition, the structural design makes limited use of overspeed protection and active controls in the form of load alleviation.

The model A320 utilizes fly-by-wire (FBW) flight controls for the elevators, ailerons, spoilers, tailplane trim, slats and flaps, speed brakes, trim in yaw, and engine control. The aerodynamic surfaces are positioned relative to the pilot's command by electronic signals sent via airplane wiring from the flight control computers to hydraulic actuators. Conventional mechanical control is provided for the rudder and tailplane trim hydraulic actuators. Should a short-term interrupt occur in the electronic flight controls, flight could be maintained for a period of time through the use of mechanical control of rudder and tailplane trim.

Normal electrical power is supplied by a constant frequency generator on each engine. An auxiliary power unit (APU) driven electrical generator is also available. A continuous source of electrical power is required by the A320 fly-by-wire flight controls. In the event of the loss of normal electrical power, a ram air turbine (RAT) is automatically deployed. The RAT provides hydraulic power which is used by a constant frequency generator to supply electrical power. Until the RAT powered generator comes on line (approximately 7 seconds), the flight control system is powered from the airplane's batteries. RAT deployment may also be selected manually by pushing an electrical switch.

Hydraulic power to the flight control system is simultaneously provided by three independent hydraulic systems. Functions are shared among these systems in order to ensure airplane control in the event of loss of one or two systems. Two of the systems are pressurized by variable displacement pumps driven by the engine accesory gearbox, and the third system is powered by an electrically driven pump or by the RAT hydraulic pump in case of loss of normal electrical power.

The airplane has two basic engine configurations: the SNECMA-General Electric CFM56–5 engines, and the International Aero Engines' (IAE) V2500 engines. Both engine types have a takeoff rating of 25,000 pounds of thrust (sea level, static). The engine control system consists of a dual channel Full Authority Digital Engine Control (FADEC) mounted on the fan case of each engine. Each FADEC interfaces with various airplane computer systems. The FADEC provides gas generator control, engine limit protection, power management, thrust reverser control, and engine parameter inputs for the flight deck displays. In addition to control of the engines from the flight deck through changes in power lever position, an autothrust mode is provided which commands thrust changes directly to the FADEC without a corresponding change in power lever position. In this mode of operation, the position of the power lever sets the upper limit for thrust, except when alpha floor is reached. At alpha floor, the engines are commanded to full thrust, regardless of lever position, to provide high angle-of-attack (AOA) protection. The autothrust mode can be disengaged by pushing a button on the power lever. The engine FADEC and associated airplane related systems form the complete propulsion control system.

Pitch and roll control inputs are made through flight deck side stick controllers mounted on the lateral consoles of the pilot and copilot positions, in place of central control columns. The flight instruments are displayed on six cathode ray tube (CRT) displays. Two CRT's are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two CRT's are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The proposed type design of the A320 contains novel or unusual design features not envisioned by the applicable Part 25 airworthiness stdandards and therefore special conditions are considered necessary in the following areas:

Operation Without Normal Electrical Power

In the A320, a source of electrical power is required by the electronic flight control system. Service experience with traditional airplane designs has shown that the loss of electrical power generated by the airplane's engines is not extremely improbable. The electrical power system of the A320 must therefore be designed with backup or standby electrical sources of sufficient reliability and capacity to power essential loads in the event of loss of normally generated electrical power. The need for electrical power for electronic flight controls was not envisioned by Part 25 since in traditional designs, cables and hydraulics are utilized for the flight control system. Therefore, Special Condition 1(a) is proposed.

Electronic Flight Control System (EFCS) Failure and Mode Annunciation

The A320 flight control system architecture utilizes redundant elements as well as alternate operational modes to deal with losses of equipment and/or signal interfaces, and to achieve a high level of availability.

Existing Part 25 has been considered adequate for stability and automatic flight systems in traditional airplane designs since those designs did not have submodes of operation (they are either on or off), the airplane handling qualities were adequate with the systems either on or off, and the systems were not actively participating in load relieving functions. These rules are not sufficient for the A320 since they do not address differences in handling qualities and levels of envelope protection between submodes of operation and because elements of the automatic system must remain on in order to maintain safe flight and landing. Therefore, Special Condition 1(b) is proposed.

Command Signal Integrity

Command and control of the control surfaces will be achieved by fly-by-wire systems which will utilize electronic interfaces (AC, DC, or digital data buses). These interfaces involve not only the commands to the control surfaces, but all the control feedbacks and sensor input signals as well. These signal paths, as well as the digital electronics that manage them, can be

susceptible to spurious signals which may cause unacceptable or unwanted control responses. These spurious signals may originate from electromagnetic or electrostatic sources or from failures of subsystems in the control loop. Therefore, special designs are needed to maintain the integrity of the fly-by-wire interfaces to an immunity level equivalent to that of traditional hydro-mechanical designs. In addition, similar to the conventional steel cable controls, routing of wire bundles must provide separation and redundancy to ensure maximum protection from damage due to a common cause. Therefore, Special Condition 1(c) is proposed.

Powered Control Integrity

In the A320, a broad scope of flight essential control functions are hydraulically powered; e.g., active controls for gust alleviation, full time automatic trim, active stall protection, active load factor protection, and active overspeed protection. A loss in the hydraulic Power Control Actuator (PCA) capability, whether this is a partial or a total loss, can affect the performance of these flight essential control functions which, in turn, may affect the airplane's operational limitations. Such systems traditionally utilize redundancy and separation in the routing of hydraulic lines to comply with the regulations. As a benefit of the fly-by-wire design, the A320 will also permit modification of the flightcrew commanded inputs to the surfaces based on the flight computers' assessment of the airplane's current state to maintain a safe airplane response. To achieve this response, it is necessary to ensure that the supply of hydraulic power is continuously available for operation of the flight essential control systems. Therefore, Special Condition 1(d) is proposed.

Maximum Control Surface Displacement

In a conventional airplane, pilot inputs directly affect control surface movement (both rate and displacement) for a given flight condition. The pilot provides only one of several inputs to the control surfaces of the A320, and it is possible that the pilot control displacements specified in § 25.331(c)(1) of the FAR may not result in the maximum displacement and rates of displacement of the A320 elevator. The intent of these noted rules may not be satisfied if literally interpreted. Because of certain bank angle and roll rate limits provided by the EFCS, it may not be possible to obtain full aileron deflections at the design maneuvering speed (V_A). On the other hand, the EFCS may, under some conditions, produce higher aileron spoiler or elevator deflections than the pilot input is capable of providing. Therefore, Special Condition 1(e) is proposed.

Active Controls

The A320 has a full time electronic flight control system in the pitch, yaw, and roll axes. There is automatic trim of the horizontal stabilizer. There is also manual control of trim through a mechanical link. The rudder is conventional in design. The response of the airplane to pilot commands and turbulence differs from a conventional airplane. The pitch control law for most of the flight envelope is the "C-Star" Law. The airplane will have neutral static longitudinal stability in its normal flight envelope. The elevator will function automatically to assist holding attitude during coordinated turns up to 33° bank angle, to provide pitch attitude protection, to provide stall protection, and +2.5g, −1g envelope protection. An overspeed protection function is also provided to protect the airplane against speed overshoots above V_{MO}/M_{MO}. This overspeed function phases in a pull up maneuver above the overspeed warning. The spoilers and ailerons are used for a gust load alleviation function, attitude hold up to 33° bank angle, positive spiral stability above 33° bank angle, turn coordination which limits sideslip and lateral load factor, and bank angle protection over 65°. In addition, the elevator performs a trim function which will include correction of the Load Alleviation Function (LAF) effects. The effect of electronic flight controls, including failures, on the structure is not addressed by the regulations for transport airplanes, therefore Special Condition 2 is proposed.

Full Authority Digital Engine Control System (FADEC)

The FADEC is an electronic engine control, and even though the engine it is controlling will be subjected to all of the applicable requirements of Part 33 of the FAR, the overall control system reliability is not adequately addressed by the existing regulations. Unlike conventional hydromechanical controls for which existing regulations were developed, the electronic control does not exhibit a "wear out" characteristic but instead exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent reliability, as has been the case with mechanical systems evaluated in accordance with Part 33. In addition, several components essential to the overall evaluation of propulsion system reliability for the A320 are airplane components not considered in the engine certification program. The propulsion certification and installation requirements of Parts 33 and 25 of the FAR do not contain adequate standards by which to determine acceptable reliability of a FADEC system installed on a transport airplane. Therefore, Special Condition 3(a) is proposed.

Engine Thrust Levers During Autothrust System (ATS) Operation

The A320 ATS interfaces with the FADEC to command thrust changes by a direct input to the FADEC. This approach bypasses the traditional aisle stand clutchpack driven thrust levers and, as a result, the thrust lever position may not correspond to the current engine thrust level with the ATS engaged, since the thrust levers do not move with changes in engine thrust. Thrust changes are detected by the pilot through the electronic instrument displays. In ATS operation, the pilot selected position of the thrust levers, in the range of Maximum Continuous Thrust (MCT) to idle, sets the upper limit of the ATS thrust demand authority. Changes in the lever position by the pilot change the upper limit but do not affect the autothrust function activation/deactivation.

The ATS function is automatically deactivated by the FADEC whenever one of the thrust levers is positioned beyond the MCT gate (detent). The pilot can also deactivate the ATS by pushing the instinctive disconnect on the thrust levers.

There is also an alpha floor protection function. This function automatically applies full rated thrust when a high AOA is reached. This immediate application of full thrust on both engines does not involve thrust lever movement.

This design is unique to the A320 and Part 25 does not contain appropriate safety standards for such a design. Therefore, Special Condition 3(b) is proposed.

Display of Powerplant Parameters

The Electronic Centralized Aircraft Monitoring System (ECAM) does not continuously display the powerplant instruments required by § 25.1305 of the FAR under all flight conditions.

The A320 Electronic Instrument System (EIS) displays some of the required engine instrument parameters on a shared basis with other powerplant or airplane system displays. Engine instruments located on the lower ECAM display unit are called up automatically

when one engine parameter exceeds a specified operating condition or limit. However, the engine display may be superseded by other airplane system displays, such as hydraulic system or electrical system schematics, or by fuel system or APU instrument displays, according to a pre-determined display priority among the various ECAM display modes. The required fuel quantity indications for each tank are not permanently displayed. Total fuel on board is displayed on the upper ECAM display unit to the right of the main engine parameters. Individual tank quantities can only be called up by replacing the current system display on the lower ECAM display unit with the fuel system page. The A320 ECAM does not have a compacted format for display of powerplant instruments after the loss of one display unit as in some previously certified electronic instrument systems. In place of a compacted format, information from the lower ECAM display unit may be manually reconfigured onto one of the navigation display units by selecting the appropriate position on the ECAM/ND transfer switch. The engine/warning image from the upper ECAM display unit is automatically displayed on the remaining screen.

It is apparent from the airplane designs from which FAR Part 25 was based that the existing rules were intended to be complied with by continuously displaying the powerplant instruments for all ground and flight operations. The EIS display of engine instruments which is implemented on the A320 was not envisioned by the current rules. Therefore, Special Condition 3(c) is proposed.

Protection from Lightning and Unwanted Effects of Radio Frequency (RF) Energy

The use of fly-by-wire designs to command and control engines and flight control surfaces increases the airplane's susceptibility to lightning and RF energy sources external to the airplane. The airworthiness regulations do not provide adequate requirements for protection from lightning and unwanted effects of external RF energy.

Lightning interaction with an airplane can result in numerous problems. Physical damage (direct effects) can result from a lightning attachment to the airplane. Such damage is characterized by burning, eroding, and blasting, and is the consequence of either the extreme heat loading and accompanying acoustic shock wave or deforming by magnetic forces from the high current component of lightning. An additional effect (indirect) results from the fast changing electrical and magnetic fields produced by the high currents of a direct or near strike. These fields can couple voltage transients into the airplane wiring and subsequently reach the electrical and electronic systems within.

RF energy also has the potential to cause adverse and potentially hazardous effects on fly-by-wire systems if design measures are not taken to ensure the immunity of such systems. This is particularly true with the trend towards increased power levels from ground based transmitters and the advent of space and satellite communications. This problem is compounded by the fact that no universally accepted guidance exists to define a minimum threat to which civilian airplane system installations should be hardened.

The A320 is being designed with only electrical interfaces between crew inputs and: (1) The elevator, aileron, and spoiler flight control surfaces, and (2) the engines. These interfaces, and the interconnection among the electronic subsystems controlling these functions, can be susceptible to disruption to both command/response signals and the operational mode logic as a result of electrical and magnetic interference. Traditional airplane designs have utilized mechanical means to connect the primary flight controls and the engine to the flight deck. This traditional design results in control paths which are substantially immune to the effects of lightning strike and effects of RF energy. A special condition is required to ensure that critical and essential systems be designed and installed to preclude component damage and system upset or malfunction due to both direct and indirect effects of lightning, and the unwanted effects of RF energy. Therefore, Special Condition 4 is proposed.

Flight Characteristics

The A320 will employ an EFCS which has no direct coupling from controllers to surfaces in pitch (elevator) and roll; it has response-command control laws in these axes for primary operating modes, and it has designated back-up control laws that are utilized when the normal operating state is unavailable. With full augmented airplanes like the A320, almost all the flying qualities characteristics are independent of each other, and individual characteristics cannot, therefore, be used as predictors of acceptable flying qualities in other areas.

1. Flight Characteristics Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases

The A320 EFCS technology has outpaced existing regulations (written essentially for unaugmented airplanes with provisions for limited ON/OFF augmentation). Interpretive material for § 25.672(c) of the FAR needs to be provided to aid in evaluating EFCS failure cases. Therefore, Special Condition 5(a) is proposed.

2. Longitudinal Stability

The A320 and similar airplanes with command-type control systems lacking airspeed or AOA feedback will not pass the current Part 25 demonstration for "static longitudinal stability," even though the basic airframe may have constant Mach gust stability. In the "normal" flight regime, these airplanes have short-term flight path stability, tending to hold zero pitch rate or 1–g normal to the flight path when stick force is zeroed at a new speed away from initial trim. Benefits of such a command-control system are quick, accurate pitch response, minimization of pitch overshoots, and lack of transients associated with gear/flap/speed brake extension and thrust changes. Pilot adaptation and pilot ratings have been favorable for airplanes of this type for most of the flight envelope and flight phases. Because the A320 does not meet the Part 25 requirements for static longitudinal stability, and since the pitch damping is also defined by the control laws, the simple requirement for "heavy damping" may not be appropriate for this design. Therefore, Special Condition 5(b) is proposed.

3. Lateral-Directional Stability

Because of the A320 roll axis design feature in which aileron force commands roll rate, a stabilized constant heading sideslip will result in zero aileron forces, which does not comply with § 25.177 of the FAR. This condition will exist for bank angles up to 33°. Therefore, Special Condition 5(c) is proposed.

4. Control Surface Awareness

With a response-command type flight control system and no direct coupling from cockpit controller to control surface, the pilot is not aware of actual surface position utilized to fulfill the requested demand. Some unusual flight condition, arising from atmospheric conditions and/or airplane or engine failures, may result in full or near-full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting,

piloted or auto-flight system control of the airplane might be inadvertently continued in such a manner to cause an unsatisfactory stability or performance characteristic. Therefore, Special Condition 5(d) is proposed.

Flight Envelope Protection

1. General Limiting Requirements

The manufacturer has elected to develop extensive flight envelope protection features integral to the basic EFCS design. Envelope protection parameters include angle-of-attack (AOA), normal load factor, bank angle, pitch angle, and speed. To accomplish this envelope limiting, a significant change (or multiple changes) occurs in the EFCS control laws as the limit is approached, or exceeded. When EFCS failure states occur, envelope protection features can likewise either be modified or, in some cases, eliminated. The current regulations were not written with comprehensive envelope-limiting systems in mind. Therefore, Special Condition 6(a) is proposed.

2. Angle-of-Attack Limiting

The A320 design incorporates a low speed protection feature (alpha limit) which cannot be overridden by the flightcrew. When operating normally, the low speed protection system limits the ability to demonstrate steady speeds lower than, essentially, 1.06 times the 1–g stall speed (V_{SIG}), i.e., at coefficients of lift (C_L) less than the maximum aerodynamic coefficient of lift (C_{LMAX}). Airbus Industrie believe that the strict application of § 25.103 of the FAR will impose a takeoff and landing performance penalty on the A320 in comparison with conventional-control airplanes.

Stalling speed (V_S) is defined as $V_C = V_{CLMAX} / \sqrt{N_{ZW}}$, where N_{ZW} is the normal flight path load factor. The speed is determined from the certification stalling maneuver with all aspects of the EFCS operating normally, except auto thrust is disengaged or overridden and a higher than production AOA is set so that aerodynamic C_{LMAX} can be achieved. The flight characteristics at the AOA for C_{LMAX} must be suitable in the traditional sense at forward and aft center of gravity (CG) in straight and turning flight at IDLE power. Although for a normal production EFCS and steady full aft stick this AOA for C_{LMAX} cannot be achieved, the AOA can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

A re-definition of the stalling reference speed for the A320 will have impact on various performance and flying qualities requirements currently prescribed in Part 25. Areas of re-evaluation are principally: (1) Factors for trim speed and speed range requirements for flying qualities tests, and (2) the operating speed selection for performance conditions and tests. Therefore, Special Condition 6(b) is proposed.

3. Normal Load Factor (g) Limiting

The A320 flight control design incorporates normal load factor limiting on a full-time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The limiting feature is active in all normal and some alternate flight control modes and cannot be overridden by the pilot. This feature is unique in that traditional airplanes are limited in the pitch axis only by the elevator surface position limit, which is normally sized for adequate controllability and maneuverability which may allow limit structural design values to be exceeded. Therefore, Special Condition 6(c) is proposed.

4. High-Speed Limiting

The longitudinal control law design of the A320 incorporates an overspeed protection system in the normal mode; this would prevent the pilot from inadvertently or intentionally exceeding a speed equivalent to the maximum speed for stability characteristics (V_{FC}) or attaining the maximum demonstrated flight diving speed (V_{DF}). The regulations do not contain requirements for a high speed limiter which might preclude or modify flying qualities assessments in the overspeed region. Therefore, Special Condition 6(d) is proposed.

5. Pitch and Roll Limiting

Airbus Industrie proposes to implement pitch and roll attitude limiting via the EFCS normal modes that will prevent the pilot from commanding pitch attitudes greater than approximately $+35°$, $-15°$ body attitude and roll angles greater than $\pm 65°$. In addition, positive, artificial spiral stability is introduced for roll angles greater than 33° for speeds below the maximum operating limit speed (V_{MO}) or the maximum operating limit Mach (M_{MO}) and 0° for speeds above V_{MO}/M_{MO}. At speeds greater than V_{MO} and up to V_{DF}, maximum aileron force will command only 40° maximum bank. Conventional airplanes are not limited in pitch and roll. While limits may provide certain benefits such as protection from upsets, these limits should not restrict normal and emergency maneuvering. Therefore, Special Condition 6(e) is proposed.

Side Stick Controllers

1. Pilot Strength

The A320 design incorporates side stick controllers for pitch and roll in lieu of conventional wheel controls. The temporary and prolonged force requirements of § 25.143(c), and related flying qualities force requirements in other paragraphs, are valid for wheel controls only. Appropriate force requirements must be established for side stick controllers. Therefore, Special Condition 7(a) is proposed.

2. Controller Coupling

The side stick controllers are not mechanically interconnected, as in conventional airplanes; instead, electronic coupling is used to meet the requirements of § 25.671 of the FAR. Therefore, Special Condition 7(b) is proposed.

3. Pilot Control

Side stick controllers for A320 pitch and roll are a new controlling method for transport airplanes. The regulations do not address these types of airplane controlling devices. Therefore, Special Condition 7(c) is proposed.

4. Autopilot Quick-Release Control Location

The A320 autopilot quick-release is located on the side stick controllers. Since the A320 does not have a yoke, the A320 cannot literally comply with the regulations. Therefore, Special Condition 7(d) is proposed.

Flight Recorder

The A320 utilizes a fly-by-wire flight control system. The pitch and roll control surfaces are positioned relative to the pilot's command by electronic signals transmitted via airplane wiring to hydraulic actuators. In order to achieve the same degree of correlation on recorded commands as is obtained in traditional designs, the flight deck commanded inputs, as well as the resulting control system responses, will need to be recorded. Furthermore, in order to achieve the intent of § 25.1459(a)(4) of the FAR, the digital flight data recorder will need to provide a means to verify that data are being encoded onto the storage medium. Therefore, Special Condition 8 is proposed.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in

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accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are isued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these feature on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus Industrie Model A320 series airplane.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

1. Electronic Flight Controls

(a) Operation Without Normal Electrical Power

In lieu of compliance with § 25.1351(d) of the FAR, it must be demonstrated by test or combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine generated electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines.

Discussion. This special condition requires that the emergency electrical power system be designed to supply: (1) Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power system; (2) electrical power required for continued safe flight and landing; and (3) electrical power required to restart the engines. For compliance purposes, a test demonstration of the loss of normal engine generated power is to be established such that:

1. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of flight relative to the electrical power system design and distribution of equipment loads on the system.

2. After the unrestorable loss of the source of normal electrical power, it must be possible to restart the engines and continue operations in IMC until visual meteorological conditions (VMC) can be reached. (A reasonable assumption can be made that turbojet transport airplanes are capable of achieving flight into VMC conditions 30 minutes after experiencing the failure).

3. After 30 mintues of operation in IMC, the airplane should be demonstrated to be capable of continuous safe flight in VMC for a time duration equal to the maximum flight duration capability of the airplane together with a safe approach and landing in VMC conditions.

(b) Electronic Flight Control System (EFCS) Failure and Mode Annunciation

(1) In lieu of compliance with § 25.672(c) of the FAR, it must be shown that after any single failure or combination of failures of the flight control system that are not shown to be extremely improbable—

(i) The airplane, when the failure or malfunctions occur within the operational flight envelope, has the following characteristics:

(A) Suitable handling qualities;

(B) The airplane is able to withstand the induced loads multiplied by a 1.5 safety factor;

(C) V_D/M_D is not exceeded.

(ii) The airplane has suitable handling qualities for continued safe flight and landing.

(2) In addition to compliance with § 25.672 of the FAR—

(i) If the design of the electronic flight control system or any other automatic or power-operated system has submodes of operation that significantly change or degrade the flight or operating characteristics of the airplane, a means must be provided to indicate to the crew the current submode of operation. Crew procedures must be available to ensure safe and proper operation for the annunciated flight control submode; and

(ii) The total loss of the electronically signaled flight control system (including its electrical or hydraulic power supplies), must be designed to be extremely improbable if its loss would prevent continued safe flight and landing.

Discussion. Suitable handling qualities, for the purposes of special condition 1(b)(1) above, are those determined from compliance with special condition 5a, *Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.* Note that Special Condition 5a is also proposed in lieu of § 25.672(c).

(c) *Command Signal Integrity*

In addition to compliance with § 25.671 of the FAR, it must be shown that each Power Control Actuator (PCA) receives command signals that cannot be altered, unintentionally, or that the altered signal characteristics are such that:

(1) Stable gain and phase margins are maintained for all aerodynamically closed-loop flight control systems.

(2) The control authority characteristics are not degraded to a level that will prevent continued safe flight and landing. Failures which would otherwise prevent the airplane from continued safe flight and landing need not be considered.

Discussion. It should be noted that the proposed wording "command signals that cannot be altered unintentionally" is used in this special condition to emphasize the need for design measures to protect the fly-by-wire control system from the effects of electromagnetic interference (EMI) and radio frequency energy (RF), fluctuations in electrical power, accidental damage caused by uncontained rotary machinery debris (engine burst is addressed in § 25.903(d) of the FAR), environmental factors such as temperature, local fires, and any other spurious signals or disruptions that affect the command signals as they are being transmitted from their source of origin to the PCA's.

(d) Power Control Integrity

In addition to compliance with the requirements of § 25.671 of the FAR, the airplane control system must be designed to allow for continued safe flight and landing after any failure condition to the flight essential powered system which is not shown to be extremely improbable, unless that failure condition in itself would prevent continued safe flight and landing.

(e) Maximum Control Surface Displacement

(1) In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A_1, § 25.333(b)) and, except as limited by pilot effort in accordance with § 25.397(b), the pitching control is moved to obtain the extreme positive (nose up) pitching acceleration. The maximum possible elevator deflections commanded by the EFCS must be considered during this maneuver, using the most adverse system tolerances. The dynamic response or, at the option of the applicant, the transient rigid body response of the airplane must be taken into account in determining the tail load. Airplane loads which occur subsequent to the normal acceleration at the center of gravity exceeding the maximum positive limit maneuvering load factor, n, need not be considered. It should also be established that maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electric rather than mechanical combination of different inputs) are acceptably accounted for, up to V_D/M_D.

(2) In lieu of compliance with § 25.349(a) of the FARA, the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b). It should also be established that maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electric rather than mechanical combiantion of different inputs) are acceptably accounted for, up to V_D/M_D.

(i) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. The investigation must include the maximum possible aileron and spoiler deflections commanded by the EFCS, the using the most adverse system tolerances.

For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(ii) At V_A, sudden deflection of the aileron and spoiler to the maximum possible positions are assumed.

(iii) At C_C, the aileron and spoiler deflections must be that required to produce a rate of roll not less than that obtained in paragraph (ii).

(iv) At V_D, the aileron and spoiler deflections must be that required to produce a rate of roll not less than one-third of that in paragraph (ii).

Discussion: These special conditions require the manufacturer to consider the critical deflection rates and deflections of the control surfaces, considering the entire A320 flight control system, as opposed to only the pilot's input, when demonstrating compliance with §§ 25.331 and 25.349 of the FAR.

2. Active Controls

In addition to compliance with the structural requirements of Subparts C and D of the FAR, the airframe must be designed to meet the criteria in this special condition. These critieria are divided into two groups:

Basic Criteria

These criteria are considered necessary to define a certification basis. The objective of these criteria is to control, in a consistent way, the risk of catastrophic structural failure associated with each failure condition.

Supplementary Criteria

The purpose of the supplementary criteria is to examine areas where the basic criteria may not be sufficient and to check certain situations which are considered realistic but not covered in the normal requirements. The precise need for additional requirements associated with these criteria and their level of severity will depend on the sensitivity of the airplane to these conditions and on the conclusion thast these problems may show the airplane to have a lower level of safety compared to an airplane without active flight controls. These supplementary criteria will form the basis of required investigations to be performed by the manufacturer and will be evaluated by the certification authorities.

(a) *Basic Criteria*

(1) *With the system operative—(i) Determination of limit loads.* Limit loads must be derived in all normal operating configurations of the systems from all deterministic limit load conditions specified in Part 25, taking into account any special behavior of such systems or associated functions or any effect on the structural performance of the airplane which may occur up to limit loads. In particular, any significant nonlinearity (aerodynamic, aeroelastic, rate of displacement of control surfaces, and any other system limit nonlinearities) must be accounted for when deriving limit loads from limit conditions.

(ii) *Load conditions defined on a statistical basis.* In cases where Mission Analysis is used for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the prescribed value of the current requirement.

(iii) *Strength requirements.* The airplane must meet the strength requirements of Part 25 (static strength, residual strength) using the appropriate factors specified in Part 25 to derive ultimate loads from the limit loads defined above.

(iv) *Nonlinearities above limit load.* When some systems present a nonlinear behavior limit loads (e.g., saturation), an increase of the safety factors may be found necessary in order to ensure a protection of the airplane beyond the limit conditions comparable to an airplane not equipped with such systems, taking into account the physical limitations of the airplane established in a conservative way. It must also be shown that, between limit load and 1.5 times limit load, nonlinearities in the load alleviation function, including aeroelastic effects, will not result in a smaller load increment than the increment achieved at limit load due to load alleviation.

(2) *With the system in failure conditions.* (i) Warnings must be provided to annunciate the existence of failure conditions which affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable operational limitations. Failure conditions which affect the structural capability of the airplane and for which there is no suitable compensating operational limitation need not be annunciated to the flightcrew, but must be detected before the next flight.

(ii) In addition, the following conditions must be met for all failure conditions not shown to be extremely improbable and which have an impact on structural performance.

(A) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads and speeds occurring at the time of failure and immediately after failure.

(*1*) The airplane must be able to withstand these loads, multiplied by a 1.5 factor of safety to obtain ultimate loads. These loads must also be included in the damage tolerance evaluation required by § 25.571(b) of the FAR if the failure condition is probable.

(*2*) A flutter and divergence justification must be made in accordance with paragraph (2)(ii)(B) applied to failure conditions not shown to be extremely improbable. For failure conditions which result in speed increases beyond V_C/M_C, freedom from flutter and divergence must be shown to the speeds indicated by paragraph (2)(ii)(B), with V_C/M_C replaced by the maximum speed obtained during the above realistic scenario.

(B) *For continuation of the flight.* The new airplane configuration and associated flight limitations, if any, must be taken into account and the justification must cover:

(*1*) *A static and residual strength substantiation.* These investigations must take into account the loads induced by the failure conditions (resulting from any single or combination of system failures not shown to be extremely improbable) in those cases where these loads will continue up to the end of the flight, in combination with the deterministic limit conditions specified in Part 25 (as maneuvers, discrete gust, design envelope for continuous turbulence, etc.).

(*i*) For the static strength substantiation, each part of the structure affected by failure of the EFCS must be able to withstand the above specified loads multiplied by a factor between 1 and 1.5 depending on the probability of the failure conditions. The factors shown in the following figure may be used.

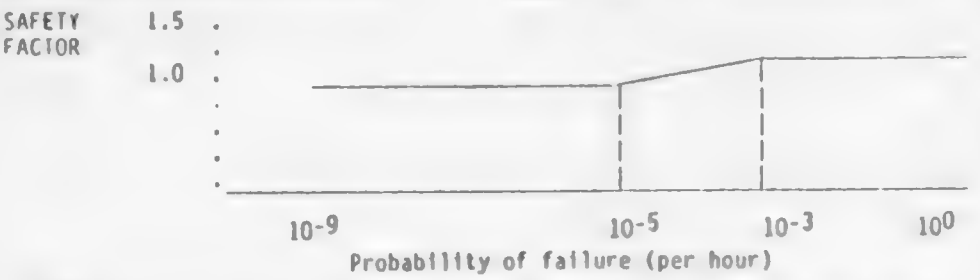

(*ii*) For structure affected by failure of the EFCS and with structural damage in combination with the EFCS failure conditions, a factor must be applied for the same purpose to the loads used for the justification of the airplane without system failure condition. In any case, the residual strength level must be at least 1 g flight loads combined with ⅔ of the gust or maneuver conditions specified in § 25.571(b) of the FAR The residual strength factors shown in the following figure may be used.

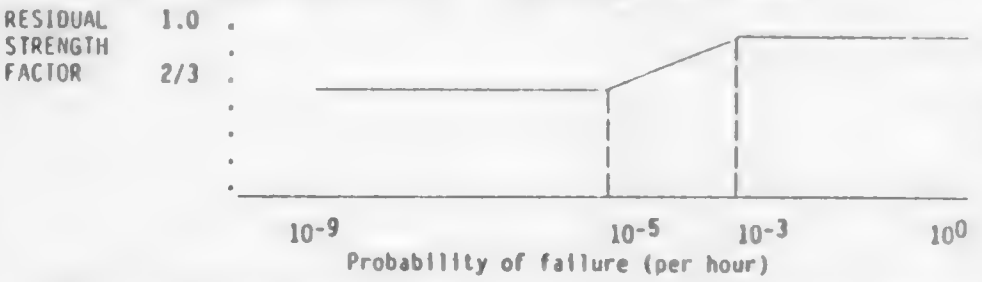

(2) *Flutter and divergence substantiation.* Due to High Speed Protection, the speed margin between V_C and V_D, compared with an airplane without such protection, may be reduced. Therefore, compliance with § 25.629(d) must be shown to a speed of 1.15 V_C or to V_D, whichever is greater. However, at altitudes where V_D is limited by Mach number, compliance may be shown to M_D or $M_C + .05$, whichever is greater. The failsafe flutter speed at any altitude need not exceed the value of V_D that would result from

compliance with § 25.335(b) without high speed protection. In addition, a margin up to 20% above V_D/M_D, depending on the probability of failure, must be provided for any system failure condition affecting the EFCS the Load Alleviation Function (LAF), or High Speed Protection function. For probable failure conditions which affect the High Speed Protection function, this value of V_D/M_D must be the particular value defined for this failure condition. The margins shown in the following figure may be used.

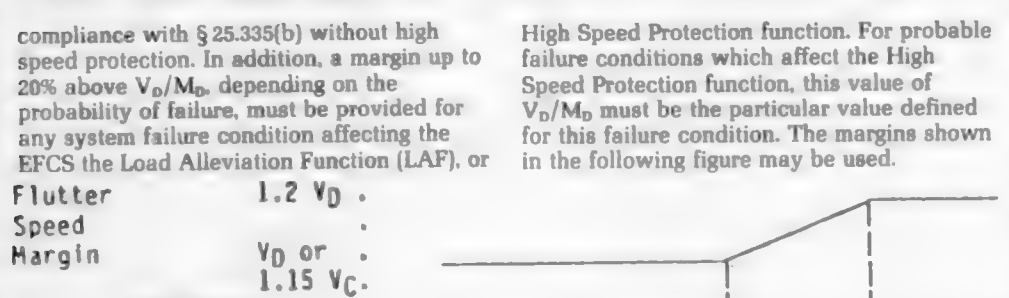

(3) *Damage propagation substantiation.* If the time likely to be spent in this failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(C) *Known failure conditions.* The airplane may be considered to be airworthy in a system failure condition which reduces the structural performance if the effects of flight and operational limitations, when combined with those of the failure condition, allow the airplane to meet all Part 25 structural requirements. The consequences of subsequent system failures must also be considered.

(b) Supplementary Criteria

(1) *Realistic gust fields.* Realistic representations of gust and turbulence must be accounted for. This is both to provide confidence that design assumptions based on idealized turbulence will not lead to optimistic estimates of the degree of load alleviation likely to be achieved and to avoid unnecessary constraints on control system design.

(2) *Availability of control authority and power supply to control systems.* Adequate power supply to the control systems (e.g., hydraulic power) and adequate control authority must be available for load alleviation and flight control under realistic conditions of severe turbulence. Maneuvers, gusts, and combinations of maneuvers and gusts must be considered.

(3) *Effects of control input on loads in turbulence.* The effects of loads induced by control activity during flight in turbulence on the LAF effectiveness in reducing the total loads in turbulence must be assessed.

(4) *System reliability.* If the systems prove less reliable in service than assessed for certification, adjustments in maintenance schedules, load levels, and/or operating limitations may be required. The systems must be monitored for a sufficient period of time to substantiate an adequate level of reliability. Details of the reliability verification program must be based on system criticality and the degree of conservatism inherent in the system design and analysis. Periodic checks for system reliability may be required throughout the service life of the systems.

(5) *Test demonstration.* The purpose of the test demonstration is to show that the airplane meets the regulatory requirements by carrying out performance and fault tests at selected conditions. The tests shall include, in addition to those normally required by Part 25, the following simulator, ground, and flight demonstrations:

(i) The system effectiveness in alleviating loads must be demonstrated by flight tests for selected conditions within the airplane design envelope. Airplane response to oscillatory as well as hardover failure must be similarly verified by tests, unless these conditions are shown to be extremely improbable.

(ii) Maneuvering to limit load factors or load factors which produce light buffeting at both low speed and high speed must be explored for system effectiveness

(iii) If the airplane is proposed to be dispatched with failures in the EFCS (MEL configurations), the tests described in paragraph (i) above must include selected conditions in the MEL configuration.

(iv) An investigation must be made to determine that EFCS signals at various frequencies will not cause structural feedback resulting in control system instability. The frequency range must include the highest and lowest frequencies (including system failures not shown to be extremely improbable) which result in movement of a control surface and the lowest structural or rigid body frequency of the airplane. The effects of structural damage considered under § 25.571(b) and (e) must be included. The investigation must cover all points in the v-n envelope.

The following definitions apply to the terms as they are used in this special condition.

1. *Structural performance.* Capability of the airplane to meet the requirements of Part 25 relating to structures.

2. *Flight limitations.* Limitations which can be applied to the airplane flight conditions following an in-flight occurence and which are included in the flight manual, (e.g., speed limitations, avoidance of severe weather conditions, etc.).

3. *Operational limitations.* Limitations, including flight limitations, which can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

4. *Probabilistic terms.* The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1.

5. *Failure condition.* The term "failure condition" should also be understood as defined in AC 25.1309–1, but this special condition applies only to system failure conditions which have a direct impact on the structural performance of the airplane (e.g., failure conditions which induce loads or change the response of the airplane to imputs such as gusts or pilot actions).

Discussion: The criteria in this special condition address only the direct structural consequences of the system's responses and performances and therefore cannot be considered in isolation but must be included in the overall safety evaluation of the airplane. The presentation of these criteria may, in some instances, duplicate standards already established for this evaluation. However, this presentation is used: (1) To keep explicit the links between the different items to be covered and the continuity with former requirements; and (2) to place in a proper context the specific additional structural requirements. These criteria are applicable to primary structure which, if failed, would prevent continued safe flight and landing. It is advisable to use the same basis for the whole of the structure, but some relief may be considered for cases leading to structural failures which would not prevent continued safe flight and landing.

(c) Dive Speed Definition

In lieu of compliance with § 25.335(b)(1) of the FAR, if the flight control system includes functions which act automatically to initiate recovery before the end of the 20-second period specified in § 25.335(b)(1) the greater of the speeds resulting from the following conditions may be used

(i) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5° below the initial path. Control application, up to full authority, is made to try and maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5 g (0.5 g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data is used. Power, as specified in § 25.175(b)(1)(iv) of the FAR, is assumed until recovery is made, at which time power reduction and the use of pilot controlled drag devices may be assumed.

(ii) From a speed below V_C/M_C, with power to maintain stabilized level fight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15° below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15°).

Recovery may be initiated two seconds after operation of high speed, attitude, or other alerting system by application of a load factor of 1.5 g (0.5 g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

Discussion: Special Condition 2c above has

been adapted from DGAC Special Condition SC–A 2.2.3 for the A320 dated April 4, 1986.

3. Engine Controls and Monitoring

(a) Full Authority Digital Engine Control System (FADEC)

In addition to compliance with the requirements of §§ 25.901 and 25.903 of the FAR, the overall propulsion control system on the A320, including the FADEC and associated electronic equipment, must be substantiated to have an availability of the functions essential for safe flight and landing, in the installed configuration, at least equivalent to those of a conventional propulsion control system of a similar type encompassing a hydromechanical engine control system (HMC) which has been certified to the standards of Parts 33 and 25 of the FAR.

Discussion: The intent of this proposal is to ensure that the FADEC system provides at least the same degree of reliability as current conventional controls by prescribing standards consistent with the "extremely improbable" criteria for multiple failures per § 25.901(c) and as contained in guidance material associated with § 25.1309(b)(1) of the FAR. The inherent level of design integrity for a conventional propulsion control is demonstrated by an in service loss of thrust control of approximately once per 100,000 hours of operation. A similar level of loss of thrust control must be demonstrated for a FADEC considering all dispatchable states. Sources of information which are necessary in order to establish a meaningful determination of reliability include assessing service experience of like controls in similar environments, testing (e.g., bench, flight, etc.) and analysis. Service experience of a complex system such as FADEC could involve similar units in a similar installation, military experience of like installations, or possibly identical installations on other aircraft. In each of these cases, the type and degree of exposure would depend upon various factors such as serivce history of previous systems produced by the manufacturers involved, or the number and type of failures observed during the service evaluation.

(b) Engine thrust levers during autothrust system operation

In lieu of compliance with § 25.1143(c) of the FAR, it must be established by analysis and test that the A320 automatic thrust system:

(1) Provides adequate cues for the flightcrew to monitor thrust changes during normal operation and to recognize a malfunction or inappropriate mode of operation and take corrective action.

(2) Provides a means for the flightcrew to disengage or otherwise override the automatic thrust system and regain manual control of engine thrust through normal motion of the thrust levers as defined in § 25.779(b) of the FAR.

(3) Provides visual and aural alerts during disengagement.

(4) Must function reliably without exceeding the approved engine limits.

(c) Display of powerplant parameters

In addition to compliance with the requirements of §§ 25.1305, 25.1321, and 25.1337 of the FAR—

(1) The required powerplant instrument displays must be arranged and isolated from each other so that the failure or malfunction of any system or component that affects the display or accuracy of any propulsion system parameter for one engine will not cause the permanent loss of display or adversely affect the accuracy of any parameter for the remaining engines.

(2) No single fault, failure or malfunction, or probable combinations of failures, shall result in the permanent loss of display, or in the misleading display, of more than one propulsion unit parameter for a single engine.

(3) Combinations of failures which would result in the permanent loss of required powerplant instrument displays for more than one engine must be improbable.

(4) Combinations of failures which would result in the hazardously misleading display of any parameter for more than one engine must be extremely improbable.

(5) Each powerplant instrument required for certification that is not continuously displayed must have an operating limit or threshold established so that the appropriate engine, auxiliary power unit (APU), or fuel system instruments are automatically displayed for any condition that requires immediate crew awareness. In addition, those instruments must be manually selectable by the flightcrew.

(6) For designs incorporating shared displays, the engine instruments must have display priority for concurrent propulsion and airplane system failures, unless it is shown that crew attention to another propulsion or airplane system display is more critical for continued safe operation of the airplane. It must also be established that failure to concurrently display the engine instruments does not jeopardize the safe operation of the airplane.

(7) Propulsion system parameters essential for determining the health and operational status of the engines and for taking appropriate corrective action, including engine restart, must be automatically displayed after the loss of normal electrical power.

(8) If individual fuel tank quantity information is not continuously displayed, there must be adequate automatic monitoring of the fuel system to alert the crew of both system malfunctions and abnormal fuel management.

Discussion: Section 25.1305 specifies the required powerplant instruments. Section 25.1321(c)(2) requires that powerplant instruments vital to the safe operation of the airplane must be plainly visible to the appropriate crewmembers, and § 25.1309(a) requires that the powerplant instruments function properly and perform their intended functions under any foreseeable operating condition. The instruments function properly if they accurately display the required parameter. The instruments are considered to be performing their intended function if they are displayed when the crew needs them to determine the health or operational status of the engines, or to monitor correct fuel system operation. Any foreseeable operating condition encompasses the entire range of normal airplane and engine operation, as well as engine or airplane system failures. Vital powerplant instruments are not plainly visible to the appropriate crewmembers if they are not being displayed.

4. Protection from Lightning and Unwanted Effects of Radio Frequency (RF) Energy

(a) In the absence of specific requirements for protection from the unwanted effects of RF energy, the following apply:

(1) Each system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiated electromagnetic energy.

Discussion: It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Based on surveys and analysis of existing RF emitters an adequate level of protection exists when compliance with the above special condition is shown to paragraphs 1 or 2 below:

1. A minimum RF threat of 200 volts per meter average electric field strength from 10 KHZ to 20 GHZ.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated:

Frequency	Average (V/m)	Peak (V/m)
10 KHz–3 MHz	100	100
3 MHz–30 MHz	1,000	1,000
30 MHz–100 MHz	100	100
100 MHz–200 MHz	200	3,000
200 MHz–1 GHz	2,000	6,000
1 GHz–2 GHz	2,000	14,000
2 GHz–8 GHz	600	14,000
8 GHz–10 GHz	2,000	14,000
10 GHz–40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatability Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a separation distance between the airplane and emitters as follows: In the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters, for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case levels to which an airplane would be exposed in the operating environment.

(b) In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection—

(1) Each system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

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(2) Systems, whose failure to function properly would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operation conditions, must be designed and installed to ensure that they can perform their intended function after the airplane is exposed to lightning.

Discussion: The current airworthiness regulations address lightning protection for fuel vapor ignition (§ 25.954) and for damage caused to the structural and skin details of the airplane (§ 25.581). However, application of the design requirements of these rules does not provide an equivalent level of safety to fly-by-wire applications when compared to the traditional designs which utilize mechanical means to connect the flight controls and the engines to the flight deck.

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the proposed special condition.

The lightning current waveforms defined below, along with the voltage waveforms in JAR AMC–S5 or Advisory Circular (AC) 20–53A, will provide a consistent and reasonable requirement which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The individual systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

In addition to the use of the Severe Strike/Restrike, Component A or D, to address the direct effects per AC 20–53A, the possible effects or upset that an avionics system or data transmission might exprience needs to be identified. To evaluate the induced effects to these systems, three considerations are required:

1. *First return stroke.* (Severe Strike—Component A or Restrike—Component D). As identified above, this external threat needs to be evaluated to obtain the resultant internal threat and to verify the level is sufficiently below the equipment "hardness" level; then

2. *Multiple stroke flash.* A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis need to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, And,

3. *Multiple burst.* In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up to 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The indiviudal "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), Restrike/"Swept Stroke" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential polynominal equations:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Multiple Burst (Component H)
I_0, amp = 218,810	109,405	54,703	10,572
a, sec^{-1} = 11,354	22,708	22,708	187,191
b, sec^{-1} = 647,265	1,294,530	1,294,530	19,105,100

These equations produce the following characteristics:

	Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Multiple Burst (Component H)
I_0, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:				
i_{peak} =	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec) =	1.4 x 10^{11} @t = 0+sec	1.4 x 10^{11} @t = 0+sec	0.7 x 10^{11} @t = 0+sec	2.0 x 10^{11} @t = 0+sec
di/dt, (amp/sec) =	1.0 x 10^{11} @t = .5 us	1.0 x 10^{11} @t = .25 us	2.0 x 10^{11} @t = .25 us	.....
Action Integral (amp^2 sec) =	2.0 x 10^6	0.25 x 10^6	.0625 x 10^6	.....

5. Flight Characteristics

(a) Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.

In lieu of compliance with § 25.672(c) of the FAR, a handling qualities rating system will be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable. The handling qualities ratings are:

(1) Satisfactory

Full performance criteria can be met with routine pilot effort and attention;

(2) Adequate

Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention;

(3) Controllable

Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration so that the handling qualitites are at least Adequate.

Handling qualities will be allowed to progressively vary with failure state, atmospheric disturbance level, and flight envelope. Specifically within the normal flight envelope, the pilot-rated handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

(b) Longitudinal stability

In lieu of compliance with the requirements of §§ 25.171, 25.173, 25.175, and 25.181(a) of the FAR, the airplane must be shown to have suitable dynamic and static longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(c) Lateral-Directional Stability

(1) In lieu of compliance with § 25.171 of the FAR, the airplane must be shown to have suitable static lateral-directional stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(2) In lieu of compliance with §§ 25.177(b) and 25.177(c), the following applies: In straight, steady, sideslips (unaccelerated forward slips) the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must lie between limits found necessary for safe operation throughtout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has suitable indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

(d) Control Surface Awareness

In addition to compliance with §§ 25.143, 25.671, and 25.672 of the FAR, suitable flight control position annunciation must be provided to the flightcrew when a flight condition exists in which near-full surface authority (not crew commanded) is being utilized.

Note.—The term suitable also indicates an appropriate balance between nuisance and necessary operation.

6. Flight Envelope Protection

In the absence of specific requirements for flight envelope protection, the following apply:

(a) General Limiting Requirements

(1) Normal Operation

(i) Onset characteristics of each envelope protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change airplane flight path, speed, or attitude as needed.

(ii) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with:

(A) Airplane structural limits;

(B) Required safe and controllable maneuvering of the airplane; and

(C) *Margin to critical conditions.* Unsafe flight characteristics/conditions must not result if dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions, in any appropriate combination and phase of flight, can produce a limited flight parameter beyond the nominal design limit value.

(iii) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics such as damping and overshoot must also be appropriate for the flight maneuver and limit parameter in question.

(iv) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

(2) *Failure States*

EFCS (including sensor) failures must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The flightcrew must be alerted by suitable means if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

(3) *Abnormal Attitudes*

In case of abnormal attitude or excursion of any other flight parameters outside the protected flight boundaries, the operation of the EFCS, including the automatic protection functions, must not hinder aircraft recovery.

(b) Angle-of-Attack Limiting

(1) FAR Part 1, § 1.2, Abbreviations and Symbols

(i) In lieu of the definition of V_s in § 1.2, the following applies in subparts B, E, F, and G of FAR 25: "V_s means the reference stalling speed."

Discussion: This caliabrated speed is determined in the stalling maneuver and expressed as $V_{CLMAX}/\sqrt{N_{ZW}}$, where V_{CLMAX} is the speed occurring where C_L is first a maximum, and N_{ZW} is the flight path normal load factor (not greater than 1.0) at the same point; C_L can be expressed as

$$\frac{N_{ZW}\,W - F_G \sin(AOA + iF_G}{{}_eS};$$

conditions associated with the determination of the stalling speed are those provided in § 25.103 of the FAR.

(ii) In lieu of the definition of V_{SO} given in § 1.2, the following applies: "V_{SO} means the reference stalling speed in the landing configuration."

(iii) In lieu of the definition of V_{S1} given in § 1.2, the following applies: "V_{S1} means the reference stalling speed in a specific configuration."

(iv) In addition to the definition given, the following also apply:

"V_{REF} means the steady landing approach speed, selected by the applicant for manual landing, for a defined landing configuation."

"V_{MIN} means the minimum speed obtained by conducting a stalling maneuver."

"V_{SW} means the speed at which onset of natural or artificial stall warning occurs."

(2) FAR Part 25—Airworthiness Standards: Transport Category Airplanes.

(i) In lieu of compliance with § 25.21(b), the following applies: "The flying qualities will be evaluated at speeds based upon the forward CG stalling speed."

(ii) In lieu of compliance with § 25.103(a), the following applies: "V_s is the reference stalling speed with—"

(iii) In lieu of compliance with § 25.103(a)(1), the following applies: "Stalling speed determined at not greater than IDLE thrust (NOTE: automatic go-round thrust application feature must be disengaged)."

(iv) In lieu of compliance with § 25.103(b)(1), the following applies: "From a stabilized straight flight condition at any speed not less than 1.16 V_s, (or speed at AOA protection onset, if greater) nor more than 1.30 V_s, apply elevator control to decelerate the airplane so that the speed reduction at the stall does not exceed on knot per second."

(v) In lieu of § 25.107(b)(1), the following applies: "1.13V_s for—"

(vi) In addition to compliance with § 25.107(c) (1) and (2), the following also applies:

"A speed selected by the applicant which provides fixed-speed maneuver capability, which is free of stall warning and Alpha floor, not less than the values shown in Table B.2."

Note.—Unless AOA protection system production tolerances are acceptably small, so as to produce insignificant changes in

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performance determinations, the flight test settings for features such as Alpha floor and stall warning should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations.

TABLE B.2

Configuration	Speed	Maneuvering bank angle	Maximum thrust representative of
Takeoff	V_2	30° (stall warning) 25° (Alpha floor)	WAT-limited V_2 climb.
Takeoff	*V_2+XX	40°	Climb, rating (all eng).
En route	+V_{FTO}	40°	WAT-limited final climb.
Landing	V_{REF}	40°	−3° Flight Path.

Note.—FWD CG Symmetrical Thrust is Acceptable.
*Airspeed approved for all-engines initial climb.
+Airspeed at end of final takeoff (FTO) flight path for engine-out performance.

(vii) In lieu of compliance with § 25.119(b), the following applies: "A climb speed of not more than V_{REF}."

(viii) In lieu of compliance with § 25.121(c) the following applies: "Final takeoff. In the en route configuration at the end of the takeoff path determined in accordance with § 25.111, the steady gradient of climb may not be less than 1.2 percent at a speed not less than:

- 1.23 V_S, or
- A speed which provided fixed-speed maneuvering capability which is free of stall warning and Alpha floor, not less than the value shown in TABLE B.2, and with—"

(ix) In lieu of compliance with § 25.121(d)(3), the following applies: "A climb speed established in connection with normal landing procedures but not exceeding $1.4V_{S1}$."

(x) In lieu of compliance with § 25.125(a)(2), the following applies: "A stabilized approach, with a calibrated airspeed of not less than V_{REF}, must be maintained down to the 50-foot height. V_{REF} may not be less than: (a) 1.23 V_{S0}, or (b) the speed selected by the applicant which provides a fixed-speed maneuvering capability, which is free of stall warning and Alpha floor, not less than the value shown in TABLE B.2."

(xi) In addition to compliance with the requirements of § 25.143, the following also apply:

"(1) The airplane must be shown to have suitable flight-path stability and control characteristics both in normal flight and when windshear is encountered in a takeoff or landing configuration. This may be shown by an appropriate combination of simulation and flight test."

Note.—Suitable characteristics are those no worse than conventionally controlled aircraft in similar conditions.

"(2) Operation of automatic features (such as significant EFCS stability or control changes) must not adversely affect normal flight operations, including during expected levels of atmospheric disturbance."

(xii) In lieu of the speeds given in the following Part 25 regulations, comply with speeds as follows:

Section 25.145(a), V_{MIN} in lieu of V_S.

Sections 25.145(b)(1)–(4), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.145(b)(6), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.145(b)(6), V_{MIN} in lieu of $1.1V_{S1}$.

Section 25.145(b)(6), $1.6V_{S1}$ in lieu of $1.7V_{S1}$.

Section 25.145(c), $1.13V_{S1}$ in lieu of $1.2V_{S1}$.

Section 25.147(a), (a)(2), (c), (d), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.149(c), $1.13V_S$ in lieu of $1.2V_S$.

Section 25.161(b), (c)(1), (c)(2), (c)(3), (d), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.175(a)(2), (b)(1), (b)(2), (b)(3), (c)(4), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.175(b)(2)(ii), $(V_MO+1.3V_{S1})/2$ in lieu of $(V_MO+1.4V_{S1})/2$.

Section 25.175(c), V_{MIN} and $1.7\ V_{s1}$ in lieu of $1.1V_{S1}$ and $1.8V_{S1}$.

Section 25.175(d), V_{MIN} and $1.7V_{S0}$ in lieu of $1.1V_{S0}$ and $1.3V_{S0}$.

Section 25.175(d)(5), $1.3V_{S0}$ in lieu of $1.4V_{S0}$.

Note.—The stability requirements for §§ 25.173 and 25.175 are further amended by the special condition associated with longitudinal stability.

Section 25.177(a), (b)(1), $1.13V_{S1}$ in lieu of $1.2V_{S1}$.

Section 25.201(a)(2), $1.5V_{S1}$ in lieu of $1.6V_{S1}$.

(xiii) In lieu of compliance with § 25.203(c), the following applies: "With the EFCS operating normally and autothrust ON, the airplane must be shown to have suitable handling characteristics when decelerating at various rates and up to 1.5g in turning flight to the AOA limit."

(xiv) In lieu of compliance with § 25.207(a), the following applies: "With the AOA limiter operating normally, stall warning is not required. For failure states with the AOA limiter inoperative, sufficient stall warning margin must be provided in the following straight and turning flight conditions:

(1) Stall-free characteristics must be shown in power-off, straight ahead stall approaches to a speed five percent (but not less than five knots) below V_{SW}.

(2) Stall-free characteristics must be shown in turning flight stall approaches, at entry rates up to three knots per second, when recovery is initiated not less than one second after the onset of stall warning."

(xv) The requirements of § 25.207(c) are not applicable.

(c) Normal Load Factor (g) Limiting

In addition to compliance with the requirements of § 25.143, the following apply:

(1) The positive limiting load factor must not be less than 2.5g (2.0g with high-lift devices extended) for the EFCS normal state.

(2) The negative limiting load factor must be equal to or more negative than minus 0.5g (0.0g with high lift devices extended) for the EFCS normal state.

Discussion: This allows an incremental plus or minus 1.5g for maneuvering flaps up, and plus or minus 1.0g flaps extended. This Special Condition does not impose an upper bound for the limiter, nor does it require that the limiter exist. If the limit is set at a value beyond the structural design limit maneuvering load factor "n" of §§ 25.333(b) and 25.337 (b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

(d) High-Speed Limiting

In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the high-speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to overspeed warning."

(e) Pitch and Roll Limiting

In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the pitch and roll limiter must not:

(1) Impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engine takeoff, plus a suitable margin to allow for satisfactory speed control.

(2) Restrict or prevent attainment of roll angles up to 65° or pitch attitudes necessary for emergency maneuvering."

7. Side Stick Controllers

(a) Pilot Strength

In lieu of the "strength of pilots" limits of § 25.143(c) for pitch and roll, and in lieu of specific pitch force requirements of §§ 25.145(b) and 25.175(d), the following applies: "It must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal."

(b) Controller Coupling

In the absence of specific requirements for controller coupling, the following applies: "The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with

no unsafe characteristics. Annunciation of controller status must not be confusing to the flightcrew."

(c) Pilot Control

In the absence of specific requirements for side stick controllers, the following applies: "It must be shown by flight tests that the use of sidestick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence."

(d) Autopilot Quick-Release Control Location

In lieu of compliance with § 25.1329(d) of the FAR, quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flightcrew.

8. Flight Recorder

(a) In addition to compliance with the requirements of § 25.1459(a) of the FAR, the flight recorder must record the following parameters in addition to those specified in § 121.343(a)(2):

(1) Pilot and copilot pitch controller position, pitch control surface position, pilot and copilot roll controller position, aileron and spoiler surface position, rudder pedal position and rudder surface position, and the auto thrust system commanded thrust parameter.

(2) The following for each engine installation: Actual thrust (N1/EPR), electronic control command thrust, thrust lever position.

(b) In lieu of compliance with § 25.1459(a)(4) of the FAR, there must be an aural or visual means for preflight checking that data are being recorded.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-23948 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-47]

Proposed Amendment of Transition Area; Venice, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the transition area located at Venice, LA. This proposed action is necessary since a new LORAN C Area Navigation (LORAN RNAV) special instrument approach procedure (SIAP) to several heliports located in the vicinity of Venice, LA, has been developed using LORAN C technology. The intended effect of this proposed action is to provide additional controlled airspace for aircraft executing this new LORAN RNAV SIAP to these various heliports.

DATES: Comments must be received on or before November 23, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-47, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-47." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area located at Venice, LA. This action is necessary since a new LORAN RNAV SIAP to various heliports located in the Venice, LA, area has been developed using LORAN C technology. This will be a point in space approach and will not be associated with a particular heliport. Aircraft executing this approach will proceed by visual flight rules (VFR), weather conditions permitting, after the missed approach point (MAP) to either the Chevron Heliport or the PHI Heliport. Additional heliports may become associated with this approach in the future. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, 87-ASW-47 therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Venice, LA [Amended]

By adding: and within a 7-mile radius of a point in space located at Latitude 29°15'39.70" N., Longitude 89°21'10.40" W.

Issued in Fort Worth, TX, on October 5, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87–24114 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–25]

Proposed Revision of Control Zone: Oklahoma City Wiley Post Airport, and Oklahoma City Will Rogers World Airport, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the control zones at Oklahoma City Wiley Post Airport, OK, and at Oklahoma City Will Rogers World Airport, OK. The intended effect of this proposed multiple action is to release that controlled airspace no longer required. This action is necessary since a review of the existing control zone airspace revealed that, due to the relocation of the Oklahoma City VORTAC and the cancellation and/or modification of standard instrument approach procedures (SIAP), there exists more controlled airspace than is necessary.

DATE: Comments must be received on or before November 18, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic division, Southwest Region, Docket No. 87–ASW–25, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, Environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) to revise the control zones at Oklahoma City Wiley Post Airport, OK, and at Oklahoma City Will Rogers World Airport, OK. This multiple action is necessary since a review of the existing control zone airspace revealed that, due to the relocation of the Oklahoma City VORTAC, there is more controlled airspace than is required. Since the Oklahoma City VORTAC has been relocated and the SIAP's that utilized the VORTAC in its old location have been either canceled or modified, existing control zone extensions to the southwest of the Wiley Post Airport and to the northwest of the Will Rogers World Airport are no longer required. The intended effect of this proposed action is to release that controlled airspace no longer required due to the cancellation and/or modification of these SIAP's. The proposed action will alter the control zone at the Wiley Post Airport to a 5-mile radius of the airport with one short extension to the north, and will alter the control zone at the Will Rogers World Airport to a 5-mile radius of the airport with one short extension to the south. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510;

E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69).

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Oklahoma City Wiley Post Airport, OK [Revised]

Within a 5-mile radius of the Wiley Post Airport (Latitude 35°32'03" N., Longitude 97°38'48" W.); within 2 miles each side of the Wiley Post ILS Localizer north course extending from the 5-mile radius zone to the OM (Latitude 35°37'33" N., Longitude 97°38'50" W.).

Oklahoma City Will Rogers Airport, OK [Revised]

Within a 5-mile radius of the Will Rogers World Airport (Latitude 35°23'35" N., Longitude 97°36'02" W.); within 3 miles each side of the Oklahoma City Runway 35R ILS Localizer south course extending from the 5-mile radius zone to the LOM (Latitude 35°17'42" N., Longitude 97°35" W.).

Issued in Forth Worth, TX, on October 2, 1987.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 87–24115 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 26

[CGD 87–058]

Bridge-to-Bridge Radiotelephone Regulations

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is soliciting comments from interested persons regarding the need to amend the Vessel Bridge-to-Bridge Radiotelephone Act, and implementing regulations in 33 CFR 26.03. A perceived need exists to amend the Act, and regulations, by expanding the categories of vessels required to carry a radiotelephone to include every power-driven vessel of 20 meters or more in length. The Coast Guard expects that increased availability of bridge-to-bridge communications will reduce the risks associated with navigating in congested areas.

DATES: Comments must be received on or before December 18, 1987.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/21) (CGD 87–058), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection or copying at the above address, Room 1606, between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Palmer, Project Manager, Office of Navigation (G–NSS–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, Telephone (202) 267–0362.

SUPPLEMENTARY INFORMATION: The Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201 *et seq.*, requires certain described vessels upon the navigable waters of the United States, within the boundary lines described in 46 CFR Part 7, to carry a radiotelephone. The requirements of the Act are implemented in 33 CFR Part 26. One class of vessels required by the Act, and § 26.03(a)(1) of the regulations, to carry a radiotelephone is every power-driven vessel of 300 gross tons and upward. The Lower Mississippi River Advisory Committee (LMRAC) has studied measures to improve communications and prevent accidents by focusing on the requirements of the "Vessel Bridge-to-Bridge Radiotelephone Act" and VTS procedures in the Lower Mississippi River. Based upon that study a perceived need exists to amend the Act, and regulations, to require every power-driven vessel of 20 meters or more in length, while navigating within the boundary lines described in 46 CFR Part 7, to carry a radiotelephone. The increased availability and proper use of radiotelephones is expected to benefit safe navigation by increasing vessel bridge-to-bridge communications. The Rules of the Road Advisory Council (RORAC) has formed a Working Group to consider the possible safety benefit of amending the Act and regulations. The Coast Guard and RORAC Working Group desire to consider the interest and economic effect on the marine industry if every power-driven vessel of 20 meters or more in length were required, while navigating within the boundary lines, to carry a radiotelephone to provide for more participation in communicating navigational safety information. The public is invited to submit comments concerning the need to amend the Act and regulations as explained, and what measures may be taken to enhance bridge-to-bridge communication of navigational information.

Dated: October 9, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87–24168 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[FRL–3278–7; Docket Nos. AM054VA and AM059VA]

Proposed Approval of Revisions to Virginia's State Implementation Plan and Section 111(d) Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Commonwealth of Virginia submitted to EPA a revised format for its air pollution control regulations, as well as many changes, amendments, and deletions to specific provisions contained within the regulations. Virginia requested that EPA approve these changes as revisions of the Virginia State Implementation Plan.

EPA is proposing approval, as revisions of the Virginia State Implementation Plan (SIP) and section 111(d) Plan, of amendments to Virginia's air pollution control regulations. These amendments include a revised format for Virginia's Regulations, as well as additions and modifications to, or deletions of, specific provisions within the Regulations. While most of the changes are administrative in nature, there are several amendments that affect the allowable air pollutant emissions standards for various sources covered by the Virginia SIP. Included under this category are the stack height regulatory revisions submitted by Virginia in accordance with the **Federal Register** notice of July 8, 1985. EPA is proposing approval of the proposed Virginia SIP and section 111(d) Plan revisions, as they meet the requirements of the Clean Air Act and 40 CFR Parts 51 and 60.

DATE: Comments must be submitted on or before November 18, 1987.

ADDRESSES: Copies of the proposed Virginia SIP revisions and the accompanying support documents are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region III, Air Program Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg, (3AM11)

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, VA 23219, Attn: William W. Parks

All comments on the proposed revision submitted within 30 days of this notice will be considered and should be

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addressed to Mr. David L. Arnold, Chief, Delmarva/DC Section at the above EPA Region III address. Please reference the EPA Docket Number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford, 3AM13, (215) 597–1325 or Kevin Magerr, (215) 597–6863 at the Region III address above.

SUPPLEMENTARY INFORMATION:

40 CFR Part 52

Background

On February 15, 1985, the Commonwealth of Virginia submitted to EPA Region III both a revised format and numerous amendments, both administrative and substantive, to its Regulations for the Control and Abatement of Air Pollution. Virginia requested that the changes be reviewed and processed as revisions of the Virginia State Implementation Plan (SIP). Because of the volume and the complexity of a number of these changes, EPA sought additional information from Virginia in order to better determine the possible impacts of these regulatory changes on current and future air quality. Virginia has provided the requested information, and thus EPA has determined that the Commonwealth's submittal is complete for proposed rulemaking action as of September 5, 1985.

The Virginia regulations have undergone many changes, both substantive and nonsubstantive. Many of the nonsubstantive changes were made to the regulations to improve their clarity and simplicity. The new format of the regulations organizes the emission standards into separate rules based on source type. There are still some rules based on pollutant type. These rules pertain to visible emissions, fugitive dust/emissions, odor, and non-criteria pollutants. Since the latter two categories are not part of the Virginia SIP, EPA has not reviewed the changes made to these rules. The emission standards in these rules are cross-referenced in the source-specific rules.

One element of the reorganization effort was to relocate those definitions previously located in Part I that were primarily used or associated with a particular element (part, rule, or section) within the regulations. Many new definitions have been added to the new source-specific rules developed under the State's Regulatory Reform Program. Parts I (Definitions) and II (General Provisions) contain the definitions and general provisions, respectively, as in the old format, with exception of section 2.33, which has been relocated to Part VIII (Permits for New and Modified Sources). Part IV (Existing and Certain Other Sources) contains the source-specific rules and includes the applicable definitions. Each source-specific rule has been organized into subsections as listed below:

1. Applicability and Designation of Affected Facility
2. Definitions
2a. Control Technology Guidelines (as applicable)
3. Standard for Particulate Matter
3a. Other applicable standards
4. Standard for Visible Emissions
5. Standard for Fugitive Dust/Emissions
6. Standard for Odor (not part of Virginia's SIP)
7. Standard for Non-criteria Pollutants (not part of Virginia's SIP)
8. Compliance
9. Test Methods and Procedures
10. Monitoring
11. Notification, Records and Reporting
12. Registration
13. Facility and Control Equipment Maintenance or Malfunction
14. Permits

Parts V (New Source Performance Standards), VII (Air Pollution Episodes), VIII (Permits for New and Modified Sources), and Appendices A through E remain organized as they are in the current SIP.

The source-specific rules in Part IV all contain a new provision in the definition section. This provision, "As used in this rule, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context," is a requirement imposed by the Commonwealth of Virginia. The phrase, "unless otherwise required by context," implies that definitions other than the approved definitions may be used as needed. This phrase (which precedes all sections containing definitions) is lifted from other Virginia regulations and is intended to deal with situations where a term may be uniquely defined for a particular provision of the regulations and the unique definition is inappropriate in other contexts. After the wording was included in the agency's regulations, the Virginia Code Commission exercised its long held authority to prescribe the style and format of all State regulations. These procedures now require such wording in all State regulations. State agencies are mandated by law to follow the Code Commission procedures.

The State certified that public hearings pertaining to these proposed revisions were held on June 15, 1984, and September 18, 1984, in Richmond, as required by 40 CFR 51.102. Additional public hearings were held in Abingdon, Roanoke, Lynchburg, Virginia Beach, and Springfield.

A description of the substantive proposed revisions of the Virginia SIP is listed below:

Amendments to Part I-Definitions

The chart which follows categorizes the changes made to the definitions in Virginia's Regulations. Many definitions currently located in Part I of the Virginia SIP regulations have been relocated to Virginia's new source-specific regulations. While a number of these definitions have been modified, EPA has determined that these changes clarify the wording and intent of the definitions, and do not substantively change their respective meaning. In addition, several SIP-approved definitions have been deleted, as Virginia has deleted the regulations in which these terms appear. In some cases, the deleted definitions have been replaced with new definitions that are consistent with EPA's New Source Performance Standards (NSPS) definitions in 40 CFR Part 60. Virginia has also added definitions, not currently in SIP regulations, to some of its source-specific regulations. Furthermore, Virginia modified some definitions and deleted others to conform with the amended Federal Stack Height regulations. One modified term—variance—will be reviewed in a separate rulemaking action.

EPA has reviewed the changes to Virginia's defined terms and considers them to be acceptable. Therefore, EPA proposes approval of the additions, modifications, and deletions of Virginia's definitions.

Part I—Virginia Definition Changes

Added

Fuel Burning Equipment Installation
Refuse Derived Fuel (RDF)
Combustion Installation
Asphalt Concrete Plant
Coal processing & Conveying Equipment
Coal Storage System
Pneumatic Coal-Cleaning Equipment
Transfer & Loading System
Portland Cement Plant
Woodworking Operation
Aluminum Production Operation
Brass or Bronze
Brass or Bronze Production
Ferroalloy Production Operation
Gray Iron Foundry Operation
Lead
Magnesium Production Operation
Primary Copper Smelter
Primary Metal Operation
Secondary Lead Production Operation
Secondary Metal Operation

Steel Foundry Operation
Zinc Process Operation
Feed Manufacturing
Reactivation

Modified

Affected Facility
Alternative Method
Consent Agreement
Control Program
Dispersion Technique
Elevated Terrain
Emission Limitation
Emission Standard
Equivalent Method
Excessive Concentrations
GEP Stack Height
Hazardous Air Pollutant
Malfunction
Nearby
Nonmethane
(Standard) Metropolitan Statistical Area
Standard of Performance
Stationary Source
Fugitive Dust
Fugitive Emissions
Six-Minute Period
Fuel Burning Equipment
Total Capacity
Combustion Unit
Manufacturing Operation
Materials Handling Equipment
Physically Connected
Process Operation
Process Unit
Process Weight
Process Weight Rate
Total Capacity
Incinerator
Gasoline
Materials Handling Equipment
Nitric Acid Production Unit
Stack
Stack in Existence

Deleted

Hydrocarbon
Fumes
Mist
Air Table
Photochemically Reactive
Organic Compounds
Loading Facility
Effluent Water Separator
Architectural Caotings
Coal Refuse
Coal Refuse Disposal Area
Coal Refuse Pile

Modified Definitions—VOC Categories

Gasoline Dispensing Facility
Allowable Emission
Begin Actual Construction
Commence
Federally Enforceable
Major Modification
Major Stationary Source
Modification
Modified Source
New Source
Potential to Emit
Public Comment Period
Reconstruction
Secondary Emissions
State Enforceable
Stationary Source
Uncontrolled Emission Rate
Building, Structure or Activity

Organizational Changes Only—No Word Changes

Actual Emissions
Commence
Lowest Achievable Emission Rate
Major Stationary Source
Reconstruction

Description of Substantive Changes

Part II—General Provisions

Section 120–02–02—Establishment of Regulations and Orders. A provision is added to incorporate public participation procedures (Appendix E) for soliciting and utilizing the input of interested parties for use in the formation and development of agency actions relating to the adoption, amendment or repeal of regulations.

Section 120–02–31—Registration. A provision is added notifying owners that de minimis exemption levels are available in the individual rules containing the emission standards for each source type. The effect of this provision on specific sources will be addressed later in this notice.

Part III—Ambient Air Quality Standards

Section 120–03–06—Hydrocarbons. Virginia has repealed the ambient air quality standard for hydrocarbons. The federal standard had previously been repealed by EPA. See 48 FR 629 (1983).

Part IV—Existing and Certain Other Sources

Special Provisions—Section 120–04–01—Applicability. An amendment to subsection (b) provides that all stationary sources, the reconstruction of which commenced on or after December 10, 1976, will be subject to the provisions of Part V (New Source Performance Standards). This amended provision serves to clarify any questions as to which SIP provisions would be applicable to reconstructed sources.

Section 120–04–02—Compliance. 1. For section 120–04–02 (Compliance), the provision in paragraph (A)(3) that exempts sources from the visible emission standard during periods of sootblowing is deleted. EPA had not considered this prior exemption to be part of the Virginia SIP.

2. In paragraph 120–04–02 (H)(6), pertaining to the application of the Appendix N timetable for compliance schedules, Virginia had substituted the word "infeasible" with "impractical."

The State has since begun the process to amend this provision by reinserting the word "infeasible". Because this subsequent change restores the current SIP-approved language, EPA will take no action at this time with respect to this particular change.

3. For section 120–04–02 I (Stack Heights) is modified to conform with 40 CFR § 51.100, 51.118, and 51.165(b). EPA has reviewed these amendments, and has determined that they are consistent with EPA's requirements for good engineering practice (GEP) stack height and dispersion techniques as revised on July 8, 1985.

Section 120–04–04—Monitoring. For section 120–04–04 (Monitoring), those continuous emission monitoring (CEM) provisions which affect only one source type are relocated to the rule containing the emission standards for that source type.

In addition, former subsection (g)(5), which provided an exemption for facilities which were to be retired within 5 years of the effective date of this provision (December 10, 1976) is deleted, as the 5-year period has expired. Therefore, Virginia has determined that this section is obsolete.

Rule 4–1 Visible Emissions. a. The definition of fugitive emissions is modified to delete emissions from vents as fugitive emissions. Hereafter, Virginia will treat emissions from vents as stack emissions for the purpose of determining compliance with the opacity regulations.

b. The definition of six minute period is amended to allow its use, as the case may be, with both "one hour" or "one hour period." The source must consistently use either "one hour" or "one hour period" in determining compliance.

c. The provision that prohibits pollutants that cause a traffic hazard (Former section 4.27) is deleted.

The current SIP-approved opacity limit is 20%, except that visible emissions may exceed 20%, but not 60%, for up to six-minutes in any hour. Under this proposed SIP revision, any visible emission which exceeds 20% opacity for longer than six minutes in any one-hour period is also considered to be a violation.

Rule 4–6 Particulate Emissions from Fuel Burning Equipment 120–04–0601—Applicability and Designation of Affected Facility. The applicability exemption for gaseous fuel-fired fuel burning equipment (FBE) has been increased from one million (1,000,000) btu/hr to 10 million (10,000,000) btu/hr. Based on an evaluation of the

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combustion characteristics of natural gas, EPA has determined that emissions from gaseous FBE are much lower than the applicable standard. The change has no impact on air quality. Therefore, EPA proposes to approve this change as a SIP revision.

Section 120-04-0802—Definitions. Virginia has amended the term "total capacity." This definition refers to the sum of the rated capacities which must be operated simultaneously under conditions of "100% use load." The current definition refers to conditions of "100% load." Virginia explains in its SIP revision submittal that "use load" refers to the load that is necessary for the FBE installation to meet in order to support normal plant operation. This prevents the plant owner from claiming that standby or emergency units be included in the total capacity definition. If this were done, it would increase the allowable emissions singificantly by allowing the owners to allocate emissions allowed for the unit that is not operating to those that are. This change was made to clarify and make legally enforceable an interpretation Virginia has used for some time. EPA is proposing SIP approval, and accepts Virginia's determination that the revised definition is not expected to allow increased sulfur dioxide (SO_2) or total suspended particulate (TSP) emissions.

Section 120-04-0803—Standard for Particulate Matter. In rule 4-8, Virginia has modified the definition of the facilities to which this rule is applicable. The term "fuel burning equipment" has been modified to read "fuel burning equipment unit." Virginia provided an explanation that the term "unit" applies to an individual boiler, while the term "installation" refers to a group of fuel burning equipment units. All standards in this section pertain to fuel burning equipment installations and are based on heat input at total capacity in BTU x 10^6/hour. The regulations controlling fuel burning equipment installations and fuel burning equipment units would be identical since the standard is expressed in the amount of pollutant generated per million BTU/hour. The term fuel burning equipment unit is used only to determine which boilers are exempt from this rule. Virginia has stated, and EPA agrees, that for all practical purposes, the definition of "fuel burning equipment" should be regarded as the definition of "fuel burning equipment unit." EPA is proposing SIP approval, and accepts Virginia's determination that the revised definition is expected to have no adverse impact on air quality.

Rule 120-04-0804—Emissions Allocation System. Virginia has revised its procedures for determining what sources may or may not use its emission allocation system. In effect, the proposed SIP revision serves to limit the application of the system to multiple fuel burning equipment units which do not burn liquid and/or gaseous fuels exclusively. This proposed SIP revision would serve to limit the number of sources that may elect to use this emissions allocation system.

Rule 120-04-0805—Determination of Collection Equipment Efficiency Factor. The current Virginia SIP contains provisions for determining the efficiency factor of pollution collection equipment. In addition, the pre-1985 regulations contained a provision describing alternative criteria by which the efficiency factor for collection equipment would be determined, should the owner of such equipment not accept the standard provisions. EPA had previously disapproved this "alternative criteria" provision, because such provisions were considered to be unenforceable. Virginia has now deleted these alternative provisions. Therefore, deletion of these alternative provisions is acceptable to EPA.

Rule 120-04-0806—Standard for Sulfur Dioxide Emissions. Virginia has revised the wording of the formula for determining allowable SO_2 emissions from fuel burning equipment. These changes will be discussed in a separate rulemaking action.

Section 120-04-0807—Standard for Visible Emissions. Virginia has added to Rule 4-8 a provision which regulates visible emissions from fuel burning equipment. The provision of section 120-04-0807(b) are virtually identical to the visible emissions provision set forth in section 120-04-02 of Rule 4-1. Other sections have been revised in order to be consistent with the new format.

Rule 4-7—Emission Standards for Incinerators. The definition of "incinerator" has been broadened to include "other devices" besides furnaces that are used in the process of burning waste for the primary purpose of destroying matter and/or reducing the volume of the waste by removing combustible matter.

Deletion of Former Rule 4-8—Coal Refuse Disposal Areas. Virginia has deleted the requirement to regulate air pollutant emissions from coal refuse disposal areas. The State believes, and EPA agrees, that the impact upon air quality will be negligible. The rule was originally adopted in 1972 and was intended to prevent air pollution caused by burning of coal refuse at these disposal areas. It requires that an owner take certain measures to prevent his coal refuse pile from igniting. Essentially the rule does not directly control air pollution but establishes operating procedures designed to prevent it.

Since the initial adoption of this rule, the Federal Mine Safety and Health Administration Office has established regulations that accomplish the same goal and has delegated the responsibilities for enforcement of these regulations to the Virginia Division of Mines and Quarries (VDMQ). The State believes that the VDMQ has a more effective rule and their available technical expertise and resources exceed the Air Board's.

EPA proposes to allow Virginia's action to delete this rule, on the State's evaluation of the rule which revealed that the regulation does not significantly impact air quality, is duplicative and, therefore, is no longer needed.

Rule 4-9 Emission Standards for Coke Ovens. The wording of the regulations has been revised to be consistent with the new format. There are no substantive changes that would affect the current SIP emissions limit.

Rule 4-41 Mobile Sources. a. Section 120-04-4103B (Visible Emissions) is amended to allow:

i. Tour buses to idle for 10 minutes per hour in hot weather to maintain air conditioning.

ii. Diesel vehicles to idle for up to 10 minutes per hour to minimize restart problems.

b. The provision that requires the owners of ships and other watercraft to notify the Agency of malfunctions and breakdowns is deleted. This change is acceptable as Virginia no longer provides capacity exceptions for malfunctioning, watercraft.

The exceptions in this section have been expanded from the current SIP limitation of three minute-periods to prevent re-start problems by old, poorly-maintained diesel trucks and tour buses. EPA has determined that these types of vehicles contribute negligibly to mobile source VOC emissions. The three minute period limitation remains in effect for gasoline-powered vehicles and taxis, which are likely to contribute more significantly to mobile source VOC emissions. Because of the limited applicability of this exemption provision, affecting about 24,000 vehicles Statewide, EPA has determined that such exemption provisions will have no detectable impact on current air quality, including a negligible impact on air quality in areas currently not attaining ozone and carbon monoxide standards. EPA agrees with this conclusion, and proposes SIP approval.

Identification of Sections not in the SIP. Rules 4–40, 4–2 and 4–3 contain provisions regarding emissions standards for open burning, non-criteria pollutants, and odor, respectively. None of these provisions are currently in the SIP. For the purposes of this proposed rulemaking action, EPA does not intend to either review or act upon the provisions in Rules 4–40, 4–2 or 4–3 as revisions to the Virginia SIP. In addition, EPA does not intend to either review or act upon, as revisions to the SIP, any of the provisions pertaining to noncriteria pollutants and odor that are contained in Rules 4–41, and 4–4 through 4–39 inclusive.

Process Weight Regulation Changes. Process weight regulations are designed to control air pollution from manufacturing or process operations other than fuel burning equipment. A number of Virginia process weight regulations have been amended. Generally, they include extensions of a process weight standard, lower process weight rates, or the deletion of the standard from the lowest rates altogether. EPA considers overall emissions impact from these sources to be neglible. Therefore, EPA also considers the effect of these changes to be de minimus to air quality, and thus proposes SIP approval.

The following is a list of changes to the regulation and the designated sections to which the rule applies

COMPARISON OF PROCESS WEIGHT REGULATION AMENDMENTS

Rule—No.	Process	Comparison to SIP-Approved Rule
4–4		Emission Standards for General Process Operations
120–04–0403	General Table—Areas 1–6	Administrative changes, reference to Appendix Q
120–04–0404	General Table—Area 7	The general process weight standard for sources with a process weight rate of 50 lb./hr. has been deleted
120–04–0401	General Process Operations	For gaseous fuel-fired fuel burning equipment—Exemption level for applicability to provisions is increased from one million (1,000,000) BTU/hr. to ten million (10,000,000) BTU/hr. Except as otherwise provided, process operations with a process weight rate capacity of <100 lb./hr. are exempt from provisions of this rule.
4–8	Asphalt Concrete Plants	Maximum allowable TSP emissions rates are extended to cover sources with a process weight rate <5 tons/hr. (Areas 1–6). For Area 7, the process weight rate table found in section 120–04–0404 of Rule 4–4 applies.
4–12	Chemical Fertilizer Manufacturing Operations	Maximum allowable TSP emission rate is extended to cover sources with process weight rates <15 tons/hr.
4–14	Sand & Gravel Processing Operations, Stone Quarrying & Processing Operations	Maximum allowable TSP emission rate is extended to cover process weight rates <100 lb./hr. or <0.05 tons/hr. (Areas 1–6). Maximum allowable TSP emission rates for sources located in Area 7 are governed by process weight rate table found in section 120–04–0404 of Rule 4–4
4–15	Coal Preparation Plants	Definition of "Air Table" is deleted; new definitions are added. "Air Table" is replaced with "Pneumatic Coal Cleaning Equipment."
4–16	Portland Cement Plants	Maximum allowable TSP emission rate is extended to cover sources with process weights <100 lb./hr. or <0.05 ton/hr. SO_2 Standard—S=2.64K
4–17	Woodworking Operations	Process Weight Standard is deleted; maximum allowable TSP emissions shall not exceed 0.05 gr./dscf (Areas 1–6) Process Weight table in section 120–04–0404 of rule 4–4, remains applicable for sources located in Area 7.
4–18	Primary and Secondary Metal Operations	New Terms defining those primary and secondary metal operations governed by this rule. Maximum allowable TSP emissions for sources located in Area 7 governed by section 120–04–0404 of Rule 4–4. (1–C) same.
4–19	Lightweight Aggregate Process Operations	Maximum allowable TSP emission rate extended to cover sources with process weights <0.05 ton/hr
4–20	Feed Manufacturing Operations	Maximum allowable TSP emission rate is extended to cover sources with process weight rates <100 lb./hr. and <0.05 ton/hr. for sources located in Area 1–6. Maximum allowable TSP emission rates for sources located in Area 7 are governed by the process weight rate table found in section 120–04–04 of Rule 4–4.
4–22	Sulfur Recovery Operations	Maximum allowable SO_2 emissions rates are extended to cover sources with process weight rates >50 lbs./day and <500 lbs./day.

Revised Volatile Organic Compound (VOC) Regulations. [Rules 4–5, 4–6, 4–11, 4–24 through 4–39]. There are three substantive changes in the regulations covering volatile organic compounds. The first substantive change makes the regulations more stringent by lowering the exemption level for applicable sources from 7.3 tons/year to 7.0 tons/year. The sources affected are solvent metal cleaning operations, large appliance coating lines, magnet wire coating lines, automobile and light duty truck coating lines, can coating lines, metal coil coating lines, paper and fabric coating lines, vinyl coating lines, metal furniture coating lines, miscellaneous metal parts and products, coating application systems, and flatwood paneling coating application systems.

The second substantive change removes the exemption for sources with emissions less than 7.3 tons/year, 40 lb./day, and 8 lb./hour. The sources affected are bulk gasoline plants, as well as both fixed-roof and floating-roof petroleum storage tanks. Deletion of this exemption will make this rule more stringent by requiring all sources in the above categories to be subject to the rule.

The third substantive change removes the exemption for sources used exclusively for chemical or physical analysis or the determination of product quality and commercial acceptance. The sources affected are solvent metal cleaning operations in Appendix P areas other than Area 7 (Rule 4–24), volatile organic compound storage and transfer operations, and petroleum liquid storage and transfer operations (Rules 4–25, 4–27). The removal of this exemption makes the regulation more stringent by requiring that all sources in the above categories be subject to the rule.

Amendments to Part V—Standards of Performance for Stationary Sources—Special Provisions. Section 120–05–01 is amended to indicate the applicability dates for new sources (March 17, 1972) and reconstructed sources (December 10, 1976).

Section 120–05–01 (f) and (g) have been added to define the disposal and incineration requirements for new sources of volatile organic compounds (VOC).

The requirements for performance testing in section 5.02 are relocated to Part VIII, section 8.03(h).

Section 120–05–04 [Monitoring], those provisions which affect only one source type are relocated to the rule containing the standards of performance for that source type.

Standards of Performance Rules—1. Rule 5–1 Visible Emissions And Fugitive Dust/Emissions. a. The definition of fugitive emissions is modified to delete emissions from vents as fugitive emissions.

b. The definition of six minute period is amended to allow its use, as the case may be, with "one hour" or "one hour

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period." The source must consistently use either "one hour" or "one hour period" in determining compliance.

2. Section 120–05–02 I (Stack Heights) is modified to conform with amended 40 CFR 51.100, 51.164 and 51.165(b). These rules apply to all sources that were or are constructed, reconstructed, or modified subsequent to December 31, 1970. EPA has reviewed the stack height revisions to these regulations and has determined that they are consistent with EPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985.

2. *Rule 5–4 Stationary Sources.* Virginia has amended the provision requiring the use of best available control technology (BACT). As amended, the Board will require BACT, rather than the new source performance standards (NSPS), for all new or modified sources. Previously, Virginia prescribed BACT only for those categories of new sources for which no NSPS had existed. EPA proposes approval of this amendment as BACT must be at least as stringent, as NSPS.

Provisions Not Subject to SIP Review.

3. EPA did not review the amendments to Rules NS–2 and NS–3, as these rules are not considered to be part of the SIP.

Part VII—Air Pollution Episodes

Virginia has made no substantive changes to this part. The amendments in Part VII are primarily made to conform with the revised format of the State regulations.

Part VIII—Permits for New and Modified Sources

Section 2.33 of the current SIP, referring to the general requirements for obtaining a permit for new and modified sources, has been relocated in Part VIII, section 120–08–01. The regulations pertaining to permit requirements for new sources located in nonattainment areas have been relocated to section 120–08–03.

The current SIP difinition of "major stationary source," as used in this section, is the "dual definition." The provisions referring to PSD permits for stationary sources and major modifications have been relocated to section 120–08–02. This section is not part of the SIP, as Virginia has received delegation of the federal PSD program in a prior EPA action, 46 FR 29753, and therefore, must follow the federal PSD requirements outlined in 40 CFR 52.21.

Other major amendments to Part VIII consist of the following:

A. Section 120–08–01 (Old section 2.33) is amended as follows:

1. A provision is added to identify the regulated entity (including any exemptions and exclusions), the situations under which a permit is needed and the area of applicability.

2. The provision covering emission testing is amended to specify the criteria for the use of alternative test methods and for granting waivers to the testing requirements.

3. The permit exemption levels are placed in a new appendix [Appendix R] and identified for all source types presently covered by emission standards.

4. The permit exemption level for fuel burning equipment is raised from 1 million Btu per hour to 10 million Btu per hour for units using liquid fuel or a combination of liquid/gaseous fuels and from 1 million Btu per hour to 50 million Btu per hour for units using gaseous fuels.

5. A provision based on mass emission rate (weight of pollutant per unit of time) is included in Appendix R to exempt small modifications.

6. A provision is added to identify the regulated entity (including any exemptions and exclusions), the situations under which a permit is needed and the area of applicability.

The waiver provisions mentioned above are limited to testing provisions and therefore EPA has determined that a State's action granting a waiver in a specific instance does not require a SIP revision.

Although Virginia's revised regulations raise the threshold under which sources may be exempted from permitting requirements, Virginia must still track all new sources, whether or not permits are required, for two reasons:

1. Regardless of the revised thresholds for permit exemptions, all installations that may be subject to Prevention of Significant Deterioration (PSD) review must still abide by Virginia's PSD requirements or set forth in section 120–08–02. Virginia Regulation 120–08–01 M contains a provision that precludes circumvention of the new source review requirements, regardless of the allowed exemptions. A provision in Appendix R states that in cases where a source is modified in increments so that no single increment would be subject to a regulatory provision, and such increments are not part of a preestablished program of modification, Virginia will consider the aggregate of these increments to determine such source's applicability.

2. EPA requires all States to review new sources to determine whether the increased emissions from such sources might cause either NAAQS violations or PSD increment violations, whichever is more restrictive. Currently, Virginia has a program to track emissions growth from all sources that are located in nonattainment areas. The provisions of 40 CFR 51.166(A)(4) requires that States shall review the adequacy of a plan on a periodic basis and 60 days within such time that an applicable increment is being violated. If such is the case, and either EPA or the State determines that such increment is being violated, then a finding will be made that the SIP is substantially inadequate, and these exemption provisions will have to be revised. Given these safeguards, EPA proposes to approve the exemptions, and encourages Virginia to implement a tracking system to ensure that sources exempt under the requirements of Appendix R will not violate PSD increments.

B. Section 120–08–03 is amended as follows:

1. A provision is added to identify the regulated entity (including any exemptions and exclusions), the situations under which a permit is needed, and the area of applicability.

2. The provision covering emission testing is amended to specify the criteria for the use of alternative test methods and for granting waivers to the testing requirements.

3. No provision in Part VIII was specifically amended as part of Virginia's stack height SIP revision. However, the following provisions in Part VIII contain cross references to the provisions in Part V:

a. Section 120–08–03 B. Definitions
b. Section 120–08–03 F. Standards/ conditions for granting permits
c. Section 120–08–03 H. Compliance determination and verification by performance testing

Because the above provisions cross-reference the amended Part V provisions pertaining to GEP stack height, and EPA has determined that the GEP stack height provisions are correct. EPA has determined tht Virginia's new source review provisions cover the necessary requirements incorporating a GEP stack height analysis for new and modified sources.

4. Virginia's amended New Source Review regulation (section 120–04–08–01(a)) specifically exempts reactivated sources from new source review Virginia's regulation defined "reactivation" an "beginning operations of an emissions unit that has shut down."

Under current EPA policy, a reactivated source which has been shut down for two years or more, or has been removed from the State's emission inventory, would be subject to new

source review. Because Virginia's amended regulation represent a significant relaxation from the current SIP and does not conform to current EPA policy, EPA informed Virginia that the amended provisions which allow exemptions for reactivated sources as currently defined cannot be approved as a revision of the Virginia SIP. Accordingly, on August 7, 1986 the State agreed to withdraw these provisions from consideration a proposed SIP revision. Therefore, EPA will continue to enforce the provisions of the current Virginia SIP with regard to the applicability of reactivated sources to New Source Review.

On August 7, 1980, 45 FR 52735, EPA had promulgated regulations in 40 CFR Parts 51 and 52 with respect to prevention of significant deterioration and new source review (PSD/NSR) which required inclusion of vessel emissions in two provisions:

1. For applicability purposes, all dockside vessel emissions that could be attributable to a stationary source (i.e., marine terminal) had to be included in the primary emissions calculation for that source.

2. For offsetting and air quality analysis purposes, the vessel emissions which occurred as the vessel was going to and from the stationary source had to be included in secondary emissions calculations.

On June 25, 1982, 47 FR 27561, EPA promulgated revised regulations in 40 CFR Parts 51 and 52 which completely excluded, and permitted States to exclude, both types of vessel emissions from the determinations described above.

In sections 120–04–0801(b) and 120–04–0803(b), Virginia had modified the definition of "stationary source" to exclude emissions from vessels. Although this amendment may have been consistent with EPA requirements at the time of proposed adoption by Virginia, EPA is in the process of revising its policy of excluding vessel emissions based on recent litigation *(Natural Resources Defense Council v. EPA,* 726 F.2d 724 (D.C. Cir. 1984), in which the Court remanded EPA's promulgation for further consideration. Therefore, EPA will defer action on this proposed SIP revision until final Agency action consistent with this Court decision has been formulated. Until then, Virginia may not utilize the above-described vessel emissions exclusions.

On August 25, 1983, 48 FR 38742, EPA had proposed, but not promulgated, revisions to 40 CFR 51.165, 51.166, 52.21, 52.24 and Appendix S of Part 51 by revising the definition of "allowable emissions" and "potential to emit" to read that the emission rate of a stationary source could be restricted by either State-enforceable limits or federally-enforceable limits rather than both, as required by the current SIP. Virginia had similarly amended its definitions of "allowable emissions" and "potential to emit" in sections 120–04–0801(a) and 120–04–0803(a). EPA is in the process of reviewing its proposed rulemaking revisions on the State/federal enforceability issue as a result of ongoing litigation. Therefore, EPA will defer action on this proposed SIP revision until final Agency action has been formulated. Until EPA takes final action, Virginia cannot use its own enforceable limits to exempt sources from major source review that would not be exempt using only federally-enforceable limits.

Appendices

Virginia has amended the Appendices to its regulations, as described below:

A. For Appendix D [Forest Managment and Agricultural practices], the condition that prohibits the piling or bunching of material to be burned is deleted from the list of forest management practices. This Appendix is not part of the SIP, as this Appendix is related to Virginia's open burning provisions.

B. For Appendix E [Guidelines for Operation of Coal Refuse Disposal Areas], the existing provisions are repealed and replaced by new provisions which specify the public participation procedures for soliciting and utilizing input from interested parties for use in the formation and development of Board actions relative to the adoption, amendment or repeal of regulations.

C. For Appendix G [Standard Metropolitan Statistical Areas], the areas are updated to be consistent with the 1980 Federal Census.

D. For Appendix J [Emission Monitoring Procedures for Existing, New and Modified Sources], those provisions which affect only one source type are relocated to the rule containing the emission standards for that source type.

E. For Appendix K [Nonattainment Areas], all provisions addressing hydrocarbons are deleted.

F. For Appendix L [Prevention of Significant deterioration Areas], all provisions addressing hydrocarbons are deleted.

G. Appendix M [Control Technology Guidelines for Volatile Organic Compound Emissions] is deleted and the provisions thereof are relocated to the rule containing the emission standards for the affected source type.

H. Appendix Q [Interpretation of Emission Standards Based on Process Weight-Rate Tables] is added and explains how to interpret the emission limits based on process weight rate tables for those emission standards based on process weight rate.

I. Appendix R [New and Modified Sources Permit Exemption Levels], is added and identifies those facilities that are exempt from section 120–08–01.

Proposed Deletion of Current SIP Regulations

EPA is proposing to approve the deletion of a number of outdated or redundant regulatory provisions, from the currently-approved SIP. These deleted provisions consist of the following:

1. SIP Regulation 4.52—This regulation, applicable only to VOC sources located in the Virginia portion of the National Capital AQCR, was the original regulation adopted by Virginia to control emissions from sources of photochemically reactive organic compounds located in Northern Virginia. This regulation was approved by EPA prior to EPA's issuing of Round I, Round II and Round III Control Techniques Guideline (CTG) regulations. (See 40 CFR 52.2420 (c)(19), (c)(24)).

Since Virginia's adoption of VOC regulations based on EPA's CTG guidelines, the provisions of SIP regulation 4.52 have become outmoded, as the CTG regulations are more comprehensive than the provisions of SIP Rule 4.52.

2. Former Regulation 4.55(b), pertaining to plant-wide VOC emissions reduction plans, has been deleted. Since EPA had not approved section 4.55(b) as part of the SIP because of enforceability questions, the deletion of this provision is acceptable.

3. Former SIP Regulation 4.54(a), 4.55(a), 4.56(a) and 4.57(a), pertaining to general provisions pertaining to VOC control have been deleted as separate entities. However, the major provisions of these sections have been relocated into the "Applicability and Designation of Affected Facility" Section of Rules 4–11 and 4–24 through 4–39, as well as the "Standard for Volatile Organic Compounds" Sectioln in Rule 4–11. In certain rules, the exemptions included in the SIP-approved versions of the "general provisions" have been removed, thus making the proposed VOC regulations more stringent. This change was discussed in greater detail earlier in this notice.

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Amendment to Rules 4–21, 4–23

Rule 4–21 (Sulfuric Acid Production Units) and 4–23 (Nitric Acid Production Units) are amended to conform with the revised standard formats for source-specific rules. These changes are not substantive. The amendments to regulation 120–04–2104 are proposed revisions of Virginia's 111(d) Plan for sulfuric acid mist, and will be addressed separately in this notice.

Amendments to Rule 4–13

Rule 4–13 (Kraft Pulp Mills) is also amended to conform with the revised standard format for source specific rules. Virginia has also amended Regulation 120–04–1304 by increasing the allowable opacity limit for recovery furnaces from that which is prescribed in Rule 4–2 to 35% at all times. Virginia justifies this change for three reasons:

(1) The standard conforms with current NSPS requirements as stated in 40 CFR, Subpart BB, § 60.282(a)(i)(ii).

(2) The standard represents a more realistic opacity level of current operations at the kraft pulping operation located in the State.

(3) Virginia has established the opacity limitation for kraft pulp mills as a mechanism for enforcing the general particulate regulation (section 120–04–1303), rather than as a control strategy for attaining and maintaining the national ambient air quality standards (NAAQS) for particulates.

The general particulate regulation for kraft pulp mills (former section 4.41(d)) remains unchanged, except that "stacks" and "vents" are now referred to as "units". Therefore, EPA has determined that the amendments to Rule 4–13 will have no adverse air quality impacts. Because the amended opacity regulation still conforms to current EPA and SIP requirements, EPA proposes approval of these amendments. Rule 4–13 also contains a standard for total reduced sulfur. EPA will review this regulation in a separate section 111(d) Plan action that Virginia intends to submit at a later time.

40 CFR Part 62

Virginia currently has an approved section 111(d) Plan for sulfuric acid mist. (See 40 CFR 62.1160). Virginia has submitted administrative amendments to section 120–04–2104, which refer to the standard for sulfuric acid mist. There are no substantive changes. Virginia's public hearings held for all of the SIP changes also meet the public hearing requirements of 40 CFR 60.23.

In view of the above evaluation, EPA proposes to approve the revision to Virginia's 111(d) Plan for sulfuric acid mist.

Conclusion

Based on EPA's review of the amendments and revised format of Virginia's air pollution control regulations, EPA is proposing to approve these changes as revisions of the Virginia SIP and section 111(d) Plan except for those positions which EPA does not regard to be part of the SIP. In addition, EPA will defer action on the proposed SIP revisions in Part VIII pertaining to vessel emissions exclusions and enforceability until final Agency action has been formulated. The Regional Administrator's decision to propose approval of the amendments to Virginia's air pollution control regulations is based on a determination that these proposed SIP revisions meet the requirements of sections 110(a)(2) and 111(d) of the Clean Air Act and 40 CFR Part 51, requirements for Preparation, Adoption and Submittal of State Implementation Plans, and 40 CFR Part 60, Section B. The public is invited to submit, to the EPA address stated above, comments on whether the proposed revisions to Virginia's SIP should be approved.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Sulfur oxides, nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Intergovernmental regulations, Reporting and recordkeeping requirements.

40 CFR Part 62

Air pollution control, Sulfuric acid mist, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: February 6, 1986.

James M. Seif,

Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register October 14, 1987.

[FR Doc. 87–24124 Filed 10–16–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1001

Request for Comments on Developing Regulations for Anti-Kickback Provisions

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Notice of intent to develop regulations.

SUMMARY: This notice requests comments on our intent to publish regulations as required by section 14 of Pub. L. 100–93. The purpose of these regulations will be to specify payment practices which, although potentially capable of inducing referrals of business under Medicare, are not to be considered kickbacks for purposes of criminal or civil remedies. Interested individuals and parties are requested to submit their comments by December 18, 1987.

DATES: To assure consideration, comments must be mailed and delivered to the address provided below by December 18, 1987.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–17–NI, Room 5246, 330 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5643, 330 Independence Avenue SW., Washington, DC. In commenting, please refer to file code LRR–17–NI. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection beginning approximately two weeks after publication of this notice in Room 5643, 330 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m., (202) 472–5270.

FOR FURTHER INFORMATION, CONTACT: Joel J. Schaer, Legislation, Regulations and Public Affairs Staff, (202) 472–5270.

SUPPLEMENTARY INFORMATION: Section 1128B(b) of the Social Security Act provides criminal penalties for individuals and entities participating in the Medicare or Medicaid programs that knowingly and willfully offer, pay, solicit or receive remuneration as an inducement for the referral of individuals for items and services under Medicare or Medicaid. These actions are defined as felonies and are subject, upon conviction, to fines of up to $25,000 and imprisonment of up to 5 years.

These provisions were previously codified at sections 1877 and 1909, but have since been recodified by section 4 of Pub. L. 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987. In addition, section 2 of Pub. L. 100–93 provides authority to exclude a person or entity from participation in the Medicare and Medicaid programs if it is determined that the party is engaged in a prohibited remuneration scheme. Finally, section 14 of Pub. L. 100–93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B(b) and that will not provide a basis for exclusion from the Medicare program or the State health care programs under section 1128(b)(7). The Secretary, in consultation with the Attorney General, is required to publish a proposed rule with regard to this provision within one year of enactment, and to promulgate final regulations within two years of enactment, specifying which payment practices will not be treated as a criminal offense and not serve as a basis for an exclusion.

In order to most effectively address issues raised by these amendments, we are requesting public comments from affected provider, practitioner, supplier and beneficiary representatives before developing proposed regulations. In particular, we are seeking from the public suggestions for generic criteria that can be applied to particular types of business arrangements to determine if they are inappropriate for civil or criminal sanctions. In addition, we invite descriptions of particular business arrangements that should be permissible under any regulatory scheme we develop. In either case, a narrative explanation of the justification for the suggestions would prove helpful in our drafting of proposed regulations.

(Secs. 1128(b)(7) and 1128B of the Social Security Act (42 U.S.C. 1320a–7(b)(7) and 1320a–7b)

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance Program; No. 13.744, Medicare—Supplementary Medical Income Program)

Dated: August 28, 1987.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: September 30, 1987.

Otis R. Bowen.

Secretary

[FR Doc. 87–24105 Filed 10–16–87; 8:45 am]

BILLING CODE 4150–04–M

Family Support Administration

45 CFR Part 400

Refugee Cash and Medical Assistance

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would amend current rules to change the period of eligibility for the special programs of refugee cash assistance (RCA) and refugee medical-assistance (RMA) from the 18-month period beginning with the first month a refugee entered the United States to the 12-month period beginning with such first month.

DATES: To assure consideration, comments should be received by December 3, 1987.

ADDRESSES: Comments should be addressed to Bill F. Gee, Director, Office of Refugee Resettlement, Department of Health and Human Services, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 1229 Switzer Building, 330 C Street SW., Washington, DC.

Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately three weeks after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4:00 p.m., except Federal holidays.

Because of the large number of comments expected, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received during the comment period and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Ellen M. McGovern, (202) 245–1957.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.202 through 400.204 provide for Federal refugee funding, subject to the availability of funds, to be provided to States for cash and medical assistance for eligible refugees during their first 36 months in the United States. Such funding is provided to States for the non-Federal share of assistance if the refugee is eligible for the programs of aid to families with dependent children (AFDC), foster care maintenance payments under title IV–E of the Social Security Act, supplemental security income (SSI), adult assistance in the territories, and medical assistance (Medicaid) under Title XIX of the Social Security Act.

Current regulations also provide for Federal refugee funding, subject to the availability of funds, for a special program of refugee cash assistance (RCA) and refugee medical assistance (RMA) during a refugee's first 18 months in the U.S. and for the cost of general assistance (GA), including GA medical assistance (GMA), provided to eligible refugees under a State or local GA/GMA program during a refugee's second 18 months.

The RCA and RMA programs assist those refugees whose economic needs are equivalent to the economic needs required in a State's AFDC program but who do not meet the AFDC family-composition requirements or the SSI age or disability requirements.

Prior to 1982, RCA and RMA were available during an eligible refugee's first 36 months in the U.S. An interim final regulation published March 12, 1982 (at 47 FR 10841) reduced the period to the current 18 months. After the first 18 months, such refugees may seek assistance under a regular, ongoing State or local GA or GMA program. The 1982 regulation provided for Federal refugee funds to cover the cost of GA and GMA during a refugee's months 19–36 so that overall State costs of providing cash and medical assistance to refugees during their first 36 months in the U.S. would continue to be fully federally funded.

Effective March 1, 1986, this 36-month period was reduced to 31 months in order to implement the fiscal reductions imposed under Pub. L. 99–177, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings).

Funding for cash and medical assistance under the refugee program for Federal fiscal year 1987 (October 1, 1986–September 30, 1987) was provided under the FY 1987 Continuing Resolution (Pub. L. 99–591) at the rate current for FY 1986. Therefore the time-limitation of 31 months has remained in effect in order to meet fiscal restrictions.

Thus, under current law, the entire cost of refugee cash and medical assistance is borne by the Federal Government during a refugee's first 31 months in the United States.

(None of the time-limits cited above apply to funding for assistance and services for unaccompanied minors under 45 CFR 400.205, nor would such funding be affected by this proposed rule.)

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Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regultory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation would not increase costs; rather, it would decrease costs by decreasing Federal funding.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 604(b)), the Secretary certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain collection-of-information requirements which would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Description of the Regulation

Through this regulation, the Department proposes to reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from 18 months to 12 months—a 6-month decrease. This change would result in estimated net savings of $14 million in FY 1988.

This proposed decrease has the following purposes:

a. To provide refugees with stronger incentives to gain employment and become self-sufficient as rapidly as possible after their arrival in the United States.

b. To reduce the likelihood of unnecessary welfare dependency resulting from extended periods of special support.

c. To reduce Federal expenditures to help meet the objectives of the Balanced Budget and Emergency Deficit Control Act of 1985.

d. To reduce the degree of special treatment afforded to refugees, which results in unequal treatment among low-income populations.

e. To reduce total refugee welfare costs while continuing to relieve States of the cost of cash and medical assistance provided to refugees during their initial period in the U.S.

Under this proposal, RCA and RMA would be available only during the first 12 months, and such refugees would seek assistance under a GA or GMA program beginning in their 13th month rather than in their 19th month as at present. Since, under this proposal, Federal refugee funding for GA/GMA would begin with a refugee's 13th month, no added financial burden would occur to States or localities as compared to the present policy of funding RCA/RMA during a refugee's first 18 months and GA/GMA beginning with a refugee's 19th month.

The extent of refugee eligibility for assistance would, however, be affected by this proposed reduction in RCA/RMA from 18 to 12 months. Since the RCA/RMA programs are generally more comprehensive than existing State or local GA/GMA programs, the assistance available to refugees who do not qualify for AFDC, SSI, or Medicaid would be reduced beginning with the 13th month rather than the 19th month. It is, in part, this difference in coverage between RCA/RMA and GA/GMA which could be expected to result in reduced Federal costs without increasing State or local costs. Similarly, this difference would also tend to reduce the likelihood of unnecessary welfare dependency by providing an earlier need for most RCA recipients to seek employment.

The majority of refugees now arriving in the United States receive extended periods of U.S. cultural orientation and English language instruction overseas before reaching this country—training which was not available when the 18-month limitation went into effect in 1982. We believe that the utility of this training can now be reflected in a shorter period of eligibility for special assistance that is not available to U.S. citizens or immigrants to the U.S.

List of Subjects in 45 CFR Part 400

Grant programs—social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: July 1, 1987.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: August 20, 1987.

Otis R. Bowen,

Secretary of the Department of Health and Human Services.

45 CFR Part 400 is proposed to be amended as follows:

The authority citation for Part 400 continues to read as follows:

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. In § 400.2, the definitions of "Refugee cash assistance" and of "Refugee medical assistance" are amended by removing, in each definition, "an 18-month period" and adding therefor "a 12-month period".

§ 400.203 [Amended]

3. In § 400.203, paragraph (b) is amended by removing "18-month period" and adding therefor "12-month period", and paragraph (c) is amended by removing "during the 18-month period beginning with the 19th month" and adding therefor "during the 24-month period beginning with the 13th month".

§ 400.204 [Amended]

4. In § 400.204, paragraph (b) is amended by removing "18-month period" and adding therefor "12-month period", and paragraph (c) is amended by removing "during the 18-month period beginning with the 19th month" and adding therefor "during the 24-month period beginning with the 13th month".

§ 400.209 [Amended]

5. In § 400.209, paragraph (b) is amended by removing "18 months" and adding therefor "12 months".

[FR Doc. 87-24004 Filed 10-16-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Gen. Docket No. 86-337]

Automatic Transmitter Identification

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking; extension of deadline for comments and reply comments.

SUMMARY: Acting under delegated authority, the Chief, Office of Engineering and Technology has issued an *Order* extending the comment and reply comment deadlines for the *Further Notice of Proposed Rulemaking* released July 9, 1987, in General Docket No. 86-337. See 52 FR 26538, July 15, 1987.

This action is in response to an extension request from the Satellite Operators and Users Technical Committee.

DATES: Comments are now due by January 5, 1988, and reply comments by February 4, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Hudak, Field Operations Bureau, (202) 632–6977.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87–24090 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–431, RM–5767; RM–5819]

Radio Broadcasting Services; Cottonwood, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on petitions for rule making filed by KVRD, Inc., to allot FM Channel 289A to Cottonwood, AZ, as that community's second local FM service (RM–5767), and by Central Broadcasting Company, licensee of Station KSMK(FM) (Channel 240A), Cottonwood, seeking to substitute FM Channel 240C for Channel 240A and modify its license accordingly, to specify operation on the higher class channel to provide that community with its first expanded coverage FM service.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Diane H. Ming, Esq., Gammon & Grange, 1925 K Street NW., Suite 300, Wash., DC 20006–1115 (Central Broadcasting Company); B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, 2033 M Street NW., Suite 203, Wash., DC 20036 (KVRD, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–431, adopted September 17, 1987 and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24157 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–252, RM–5099]

Radio Broadcasting Services; LeRoy and Urbana, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Tak Communications, Inc. to allocate FM Channel 223B1 to Urbana, Illinois, to delete Channel 280A from Urbana, and to modify the license of Station WKIO(FM) to specify operation on Channel 223B1. This document also orders the licensee of Station WKIO to show cause why its license should not be modified to specify operation on Channel 300A.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested persons should serve all parties to this proceeding or their counsel or consultants, as follows: Ralph W. Hardy, Jr., Dow, Lohnes & Albertson, 1225 23rd Street NW., Suite 500, Washington, DC 20037 (Counsel to Tak Communications, Inc.); William P. Bernton, Esq., 1875 Eye Street NW., Suite 1050, Washington, DC 20006 (Counsel to W. Russell Withers, Jr.); Merilyn M. Strailman, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006 (Counsel to McLean County Broadcasters, Inc.); Gerald Mason, Esq., 1029 Pacific Street, P.O. Box 1648, San Luis Obispo, CA 93406 (Counsel to WIHN(FM), Normal, Illinois); Kathryn R. Schmeltzer, Esq., Fisher, Wayland, Cooper & Leader, 1255 Twenty-Third Street NW., Washington, DC 20037 (Counsel to WGPU(FM), Urbana, Illinois).

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–252, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24086 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–416, RM–5770]

Radio Broadcasting Services; Cannelton, IN

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Martin L. Hensley proposing the allotment of FM Channel 275A to Cannelton, Indiana as that community's first FM channel.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Martin L. Hensley, 1655 Oliver Street, Evansville, Indiana 47714 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–416 adopted September 4, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24158 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–413, RM–5630]

Radio Broadcasting Services; Ligonier, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Erwin Draper proposing the allotment of FM Channel 274A to Ligonier, Indiana as the community's first FM broadcast service.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Attorney-at-Law, 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–413, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24085 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–415, RM–5654]

Radio Broadcasting Services; West Lafayette, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bruce Quinn proposing the allotment of FM Channel 294A to West Lafayette, Indiana as that community's first FM broadcast service.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Bruce Quinn, 824 South Hamilton Street, Delphi, Indiana 46923 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–415 adopted August 25, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24093 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-418, RM-5769]

Radio Broadcasting Services; Sioux Rapids, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Donald A. Swanson proposing the allotment of FM Channel 275C2 to Sioux Rapids, Iowa as that community's first FM channel.

DATES: Comments must filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Donald A. Swanson, c/o Radio Station KTFC, Route 2, Sioux Rapids, Iowa (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-418 adopted September 4, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24095 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-419, Rm-5800]

Radio Broadcasting Services; Burlington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Douglass R. Lawrence proposing the allotment of FM Channel 237A to Burlington, Kansas as that community's first FM channel. Finalization of this proposal is contingent upon the issuance of license to Station KHUM (Channel 239), Ottawa, Kansas to change its transmitter site and reduce it facilities to Class C1 status.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John R. Wilner, Esq., Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street NW., Suite 1000, Washington, DC 20005 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-419, adopted September 4, 1987, and released October 13, 1987. The full text of this commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24096 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-412, RM-5914]

Radio Broadcasting Services; Litchfield, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Litchfield Broadcasting Corporation, proposing the substitution of Channel 235C2 for Channel 237A at Litchfield, Minnesota, and modification of the license for Station KLFD-FM, to specify the higher class channel. This proposal could provide a first wide coverage area station for Litchfield.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Herbert P. Gross, President, Litchfield Broadcasting Corporation, 2615 Brookridge Avenue, Golden Valley, Minnesota 55422.

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FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–412 adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24084 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–411, RM–5864]

Radio Broadcasting Services; Owensville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Owensville Communications Company, proposing the substitution of Channel 237C2 for Channel 237A at Owensville, Missouri, and modification of its permit for Channel 237A at Owensville to specify the higher class of channel. This proposal could provide a first wide coverage area station for the community.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark Jones, Owensville Communications Company, 1028 Waterford Lane, Pensacola, Florida 32514.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–411, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24087 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–94; RM–5584]

Radio Broadcasting Services; Mesquite, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition.

SUMMARY: This document denies the request of Dale G. Gardner to allocate Channel 248C1 to Mesquite, Nevada, as the community's first local FM service. Petitioner failed to provide the requested information showing that Mesquite is a "community" for allotment purposes. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–94, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (200) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24079 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–408, RM–6004]

Radio Broadcasting Services; Chillicothe, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wyandot Radio Corporation, licensee of Station WFCB–FM, Channel 232A, Chillicothe, Ohio, proposing to substitute Channel 232B1 for its Class A channel and the modification of its license to specify the higher powered channel. Channel 232B1 can be allocated to Chillicothe in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) east to avoid a short-spacing to Station WWNK–FM, Cincinnati, Ohio, and WSNY, Columbus,

Ohio. In compliance with Section 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Chillicothe will not be accepted. Canadian concurrence in the allocation is required since the community is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 30, 1987 and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Alan C. Campbell, Esq., Dow, Lohnes & Albertson, 1255–23rd Street NW., Suite 500, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–408, adopted September 11, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24088 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–409, RM–5940]

Radio Broadcasting Services; Middleport, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Mid-Pom, Inc., licensee of Station WMPO–FM, Channel 221A, Middleport, Ohio, requesting the substitution of Channel 221B1 for its Class A channel and the modification of its license to specify the higher powered allotment. Channel 221B1 can be allocated to Middleport in compliance with the Commission's minimum distance separation requirements with a site restriction of 23 kilometers (14.7 miles) northeast to avoid a short-spacing to Station WMEJ, Channel 220A, Proctorville, Ohio, and to Station WXGT, Channel 222, Columbus, Ohio. This proposal conflicts with the application of Lower Ohio Valley Educational Corporation to operate a noncommercial educational station on Channel 219A at Belpre, Ohio (ARN–860805MA). Canadian concurrence is required since Middleport is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530,

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–409, adopted September 11, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24089 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–287; RM–5556]

Radio Broadcasting Services, Ulysses, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the request of Donna M. Venetz proposing the allocation of Channel 268A to Ulysses, Pennsylvania, as the community's first local FM service. Neither the petitioner nor any other party filed comments expressing a continuing interest in the allotment. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, MM Docket No. 86–287, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24097 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-417, RM-5931]

Television Broadcasting Services; Lima and London, OH; Muncie, IN; Rockford, IL; Grand Rapids, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WKBN Broadcasting Corporation requesting the allocation of Channel 17 to Lima, Ohio, as the community's third local commercial television service and the substitution of noncommercial educational Channel *61 for unused and unapplied for Channel *17 at Muncie, Indiana. Grant of this request would represent a departure from the Commission's policy concerning the dereservation of noncommercial educational channels so as to make them available for commercial use. Therefore, WKBN is requested to show in its comments how the allocation of Channel 17 at Lima, as a commercial service, would better serve the public interest than its retention at Muncie for noncommercial educational service. Channel 17 can be allocated to Lima, Ohio, in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.1 kilometers (19.9 miles) southwest to avoid a short-spacing to Channel 16 at Detroit, Michigan, which is reserved for land mobile use, and to Station KXMI, Channel 17, Grand Rapids, Michigan. In addition, the allocation of Channel 17 at Lima requires a change in offset designation for Station WXMI, Channel 17, Grand Rapids, Michigan, from "zero" to "minus" and for Station WTVO, Channel 17, Rockford, Illinois, from "minus" to "plus" and the addition of a 6.1 kilometer (4.1 mile) southeast site restriction on the pending proposal to allocate Channel 32 to London, Ohio (MM Docket No. 87-190, 52 FR 23569, published June 23, 1987. An *Order to Show Cause* is directed to the licensees of Stations WXMI and WTVO concerning the change in their offset designations. Petitioner is requested to state an intention to reimburse the licensees for the cost of the changeover. Canadian concurrence is required for the changes at Lima, and London, Ohio, Muncie, Indiana, and Grand Rapids, Michigan.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John R. Wilner, Esq., Bryan, Cave, McPheeters & Roberts, 1015 Fifteenth Street NW., Suite 1000, Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-417, adopted September 4, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24094 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-414, RM-5795]

Television Broadcasting Services; Junction City, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Chronicle Broadcasting of Omaha, Inc. proposing the substitution of UHF TV Channel 31 for VHF TV Channel 6 at Junction City, Kansas. The proposal would enable Station WOWT (Channel 6), Omaha, Nebraska, licensed to Chronicle Broadcasting of Omaha, Inc., to relocate its transmitter site and improve its coverage area.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James P. Riley, Esq., Fletcher, Heald Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-414 adopted September 4, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24092 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-410, RM-5802]

Radio Broadcasting Services; Waterbury, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Harvest Broadcasting, Inc., licensee of Station WGLY-FM, proposing the substitution of Channel 276C2 for 276A at Waterbury and modification of its license to specify the higher class frequency. The proposal could provide a first wide area coverage station at Waterbury. A site restriction of 7.9 kilometers (4.9 miles) northwest of the community is required. Also concurrence by the Canadian government is required.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, Box 105FM, Hinsdale, NH 03451 (Consultant for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-410, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24159 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-456, RM-4632]

Television Broadcasting Services; Crandon, WI and Minneapolis-St. Paul, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document orders WCCO Television, Inc., licensee of Station WCCO-TV, Minneapolis-St. Paul, Minnesota, to show cause by written protest why the Station WCCO-TV license should not be modified to specify a channel offset of "plus" in lieu of "zero", in order to accommodate a proposed Channel 4 allotment at Crandon, Wisconsin.

DATE: Response must be filed on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve these parties, or their counsel, as follows: WCCO Television, Inc., c/o Fly, Shuebruk, Gaguine, Boros and Braun, Suite 1759, 45 Rockefeller Plaza, New York, New York 10111; Forest County Television Company, c/o Arter and Hadden, 1919 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's order to show cause, MM Docket No. 84-456, adopted September 16, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24091 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

Draft Environmental Assessment; Falconry and Raptor Propagation Regulations; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: In the July 10, 1987, **Federal Register** (at 52 FR 26030) the Fish and Wildlife Service announced the availability of Draft Environmental Assessment: Falconry and Raptor Propagation Regulations and set the closing date for public comment at September 30, 1987. Based on comments and inquiries received to date by the Service, an extension of the public comment period is warranted. Therefore, the closing date for public

comment on the Draft is extended to November 15, 1987.

DATE: Written comments are requested by November 15, 1987.

ADDRESSES: Copies of the Draft can be obtained by writing to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Washington, DC 20240, or by visiting the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street NW., Washington, DC 20240. Written comments can be sent to the same addresses.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–254–3207).

Date: October 8, 1987.

Steven Robinson,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 87–24141 Filed 10–16–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 630, 638, 640, 641, 642, 645, 646, 649, 650, 652, 654, 655, 658, 663, 669, 672, 674, 675, 676, 680, 681, and 683

[Docket No. 60109–7091]

Domestic Fishing Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to standardize the definition of *Vessel of the United Staes* for all domestic fishery regulations promulgated under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The definition has been recently modified, but not all regulations have been changed accordingly. The intended effect of this action is to incorporate these changes into those regulations that currently need updating.

DATES: Written comments must be received on or before November 16, 1987.

ADDRESS: Comments should be sent to: Richard H. Shaefer, National Marine Fisheries Service, 1825 Connecticut Ave. NW., Washington, DC 20035.

FOR FURTHER INFORMATION CONTACT: Marilyn Luipold, Office of General Counsel, 202–673–5206.

SUPPLEMENTARY INFORMATION: Current domestic fishing regulations promulgated under the Magnuson Act are not consistent in defining *Vessel of the United States.* Although some regulations have been modified to incorporate changes required by the repeal of the Federal Boat Safety Act of 1971, this action is necessary to standardize the definition in all domestic fishing regulations.

In the interest of completeness, the definition proposed in this action also clarifies that unpowered vessels used exclusively for pleasure are vessels of the United States. The status of these vessels requires clarifiation because existing definitions rely on the documentation requirements of Chapter 121 of Title 46, U.S.C., which apply only to vessels of at least 5 net tons, and the provisions of Chapter 123 of Title 46, U.S.C., which only require numbering of undocumented vessels equipped with propulsion machinery. Implementation of the definition proposed in this action ensures that small, unpowered, recreational vessels owned by U.S. citizens are vessels of the United States under Magnuson Act regulations.

Classification

NOAA issues this proposed rule to standardize the definition of *Vessel of the United States* for all domestic fishery regulations promulgated under the Magnuson Act. This action is categorically excluded from the requirements to prepare an environmental assessment by NOAA Directive 02–10. The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. While few instances of unpowered vessels fishing in the exclusive economic zone under Magnuson Act retrictions are anticipated, clarification of the status of small unpowered vessels used exclusively for pleasure will avoid confusion. The proposed rule will affect the fishing operations of few, if any, vessels and will not impose a significant cost on those vessels.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act. The Administrator of NOAA determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 630 through 683

Fisheries.

Dated: October 14, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated above, 50 CFR Parts 630, 638, 640, 641, 642, 645, 646, 649, 650, 652, 654, 655, 658, 663, 669, 672, 674, 675, 676, 680, 681 and 683 are proposed to be amended as follows:

PARTS 630, 638, 640, 641, 642, 645, 646, 649, 650, 652, 654, 655, 658, 663, 669, 672, 674, 675, 676, 680, 681, and 683—[AMENDED]

1. The authority citation for 50 CFR Parts 630 through 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. 50 CFR Chapter VI is amended by revising the definition of *Vessel of the United States* in the designated sections to read as follows:

§§ 630.2, 638.2, 640.2, 641.2, 642.2, 645.2, 646.2, 649.2, 650.2, 652.2, 654.2, 655.2, 658.2, 663.2, 669.2, 672.2, 674.2, 675.2, 676.2, 680.2, 681.2, 683.2 [Amended]

* * * * *

Vessel of the United States means:

(a) Any vessel documented under Chapter 121 of Title 46, United States Code;

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure, and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

* * * * *

[FR Doc. 87–24140 Filed 10–16–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Resource Conservation and Development Program; Determination of Primary Purpose of Program Payments and Benefits for Consideration as Excludable from Income

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that certain payments and benefits that result under the Resource Conservation and Development Program, (Pub. L. 74–46, 16 U.S.C. 590a–f; Pub. L. 87–703, as amended, 7 U.S.C. 1010 through 1011; and Pub. L. 97–98, 16 U.S.C. 3451 through 3461), are made primarily for the purpose of conserving soil, protecting or restoring the environment, or providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments and benefits to exclude them for gross income to the extent allowed by the Internal Revenue Service (IRS).

FOR FURTHER INFORMATION CONTACT: Director, Basin and Area Planning Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 382–8767.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to individuals under Federal programs may be excluded form the recipient's gross income for Federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." The Secretary of Agriculture evaluates the conservation program on the basis of criteria set forth in 7 CFR Part 14, and makes a " primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these programs do not substantially increase the annual income derived from the property benefited by the payments.

The Resource Conservation and Development Program is authorized by Pub. L. 74–46, 16 U.S.C. 590a–f; Pub. L. 87–703, as amended, 7 U.S.C. 1010–1011; and Pub. L. 97–98, 16 U.S.C. 3451–3461. It is funded through annual appropriations to the Soil Conservation Service of the U.S. Department of Agriculture. It is the purpose of the Resource Conservation and Development Program to:

1. Accelerate the conservation, development, and utilization of natural resources to improve the general level of economic activity.

2. Enhance the environment and standard of living in authorized RC&D areas.

In accordance with section 126(a)(9) the Secretary of the Treasury has determined that the Resource Conservation and Development Program authorized by Pub. L. 74–46, 16 U.S.C. 590a–f; Pub. L. 87–703, as amended, 7 U.S.C. 1010 through 1011; and Pub. L. 97–98, 16 U.S.C. 3451 through 3461, is a program under which payments may be considered for exclusion eligibility (26 CFR Part 16A; 46 FR 27636, May 21, 1981). The Resource Conservation and Development Program provides technical and financial assistance to landowners, occupiers and operators for installing works of improvement for critical area treatment, flood prevention, public water-based fish and wildlife, public water-based recreation, farm irrigation, land drainage, and water quality improvement. Financial assistance is provided through locally managed RC&D councils and agreements with landowners, occupiers and operators individually or collectively. The agreements are based on measure plans developed with and approved by the RC&D council. The agreement provides for installing the complete plan within a period not to exceed 10 years. The plan typically provides for implementation of those practices needed to develop, manage, and conserve the natural resources of lands covered by the agreement.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A "Resource Conservation and Development Program Determination for Federal Tax Purposes" record of decision has been prepared and is available upon request from the Director, Basin and Area Planning Division, Soil Conservation Service, United States Department of Agriculture, P.O. Box 2890, Washington, DC 20013.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Resource Conservation and Development Program. In accordance with the criteria set out in 7 CFR Part 14, the review determined that payments made and benefits provided under this program are for development, management, and conservation of natural resources.

Therefore, the Secretary of Agriculture hereby gives notice that in accordance with the criteria set out in 7 CFR Part 14, all payments to landowners, operators, and occupiers made under the Resource Conservation and Development Program are determined to be primarily for the purpose of conserving soil and water or protecting or restoring the environment.

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Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to excluse from gross income, for federal income tax purposes, payments made and benefits resulting from the Resource Conservation and Development Program.

Signed at Washington, DC, on October 8, 1987.

Richard E. Lyng,

Secretary.

[FR Doc. 87-24116 Filed 10-16-87; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1988 Rice Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1988 crop of rice: (a) The loan and purchase level; (b) loan rate adjustments; (c) whether the Secretary should require producers to purchase marketing certificates as a condition of permitting loan repayment at a reduced level; (d) whether the Secretary should make loan deficiency payments available to producers; (e) the level of established (target) price; (f) whether an acreage limitation program (ALP) should be implemented and, if so, the percentage reduction under such ALP; (g) whether an optional land diversion program should be established and, if so, the percentage of diversion under the program; (h) the national program acreage (NPA); (i) whether a voluntary reduction percentage should be proclaimed and, if so, the level of such percentage; (j) whether a portion of the deficiency or diversion payments should be made in the form of commodity certificates or other in-kind compensation; (k) the provisions of a marketing certificate program; (l) whether an inventory reduction program should be implemented; and (m) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act"), the Food Security Act of 1985, as amended, and the Commodity Credit Corporation Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before November 18, 1987 in order to be assured of consideration.

ADDRESS: Orval Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447-5954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impacts of implementing each option is being prepared and will be available soon.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Title-Rice Production Stabilization: Number 10.065 and Title-Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 28, 1987 (52 FR 15362) a notice of proposed determinations was published which set forth provisions common to the 1988 wheat, feed grain, upland cotton, and rice price support and production adjustment programs. Any comments that were received with respect to such notice which are applicable to the 1988 crop of rice and any comments received with respect to this notice of proposed determinations will be reviewed in determining the provisions of the 1988 Rice Program.

Accordingly, the following program determinations with respect to the 1988 crop of rice are to be made by the Secretary.

Proposed Determinations

a. Loan and Purchase Level

Section 101A(a) of the 1949 Act provides that the Secretary shall make loans and purchases available to producers for the 1988 crop of rice at a level that is not less than the higher of: (1) 85 percent of the simple average price received by producers, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of rice, excluding the year in which the average price was the highest and the year in which the average price was the lowest; or (2) $6.50 per hundredweight. Under that subsection the loan level for a crop of rice may not be reduced by more than 5 percent from the loan level determined for the preceding crop. Further, section 101A(a) requires that the Secretary determine and announce the loan and purchase level for the 1988 crop of rice not later than January 31 of 1988. A loan shall have a term of not more than 9 months beginning after the month in which the application for the loan is made.

Comments are requested as to the level of the loan and purchase rate for the 1988 crop of rice.

b. Loan Rate Adjustments

Section 403 of the 1949 Act provides that appropriate adjustments may be made in the level of the support price for rice for differences in grade, type, quality, location, and other factors. Section 403 further provides that such adjustments shall, insofar as practicable, be made in such manner that the average support price will, on the basis of the anticipated incidence of such factors, equal the statutory support level.

Consideration is being given to: (1) Adjusting the grade discounts applied to the loan repayment level in order to reflect the relationship of the loan repayment level to the loan level; (2) establishing farm-stored class loan rates on the basis of individual State milling outturns rather than national average milling outturns; and (3) establishing the loan rate differential and class milled rice rates (value factors) after publication and taking into consideration the estimated 1988 crop plantings.

Comments, along with supporting data, are requested as to: (1) The loan and purchase rate for different classes of whole kernels; (2) the loan and purchase rate for broken kernels; (3) appropriate state or national average milling outturns for use in determining class loan rates; (4) appropriate grade discounts; and (5) adjusting grade discounts applied to the loan repayment level and the loan level.

c. Marketing Loan Certificates

Section 101A(a)(5)(A) of the 1949 Act provides that the Secretary shall permit a producer to repay a loan at a level that

is the lesser of: (1) The loan level determined for such crop or (2) the higher of the loan level multiplied by 60 percent of the prevailing world marketing price for rice, as determined by the Secretary. Further this section provides that as a condition of permitting a producer to repay a loan, the Secretary may require a producer to purchase marketing certificates equal in value to an amount that does not exceed one-half the difference, as determined by the Secretary, between the amount of the loan obtained by the producer and the amount of the loan repayment. Such certificates shall be negotiable and shall be redeemable for rice owned by the Commodity Credit Corporation ("CCC") valued at the revailing market price, as determined by the Secretary. If CCC-owned rice is not available in the State in which the rice pledged as collateral for the loan was produced or at such other location outside of such State as may be approved by the owner of such certificate, such certificate shall be redeemable for cash. If any such certificate is not presented for marketing within a reasonable number of days after issuance, as determined by the Secretary, reasonable costs of storage and other carrying charges shall be deducted from the value of the certificate.

Comments are requested on whether the Secretary should require producers to purchase certificates and, if so, for what percentage of the difference in value between the loan level and the loan repayment rate. Comments are also requested with respect to the amount of time CCC should allow such certificates to be held before they are discounted.

d. Loan Deficiency Payments

Section 101A(b)(1) of the 1949 Act provides that the Secretary may make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments.

Such payments shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of rice the producer is eligible to place under loan. The quantity of rice eligible to be placed under loan may not exceed the product obtained by multiplying the individual farm program acreage for the crop by the farm program payment yield established for the farm. The loan payment rate is the amount by which the loan level determined for such crop exceeds the level at which a loan may be repaid. Section 101A(b) further provides that the Secretary shall make up to one half the amount of such payments available in the form of negotiable marketing certificates redeemable for CCC-owned rice.

Comments are requested with respect to whether loan deficiency payments should be made available and, if so, what portion should be made in the form of certificates.

e. Established (Target) Price

Section 101A(c)(1)(A) of the 1949 Act provides that the Secretary shall make payments available to producers for the 1988 crop of rice in an amount computed by multiplying (1) the payment rate, by (2) the individual farm program acreage, by (3) the farm program payment yield.

Section 101A(c)(1)(C) provides that the payment rate for the 1988 crop of rice shall be the amount by which the established (target) price for the crop exceeds the higher of: (1) The national average market price received by producers during the first five months of the marketing year for such crop or (2) the loan level for such crop. Section 101A(c)(1)(D) of the 1949 Act provides that the established (target) price for rice shall be not less than $11.30 per hundredweight for the 1988 crop.

Comments are requested as to the level of the established price for 1988-crop rice, and whether the Secretary should make a portion of the 1988 rice crop deficiency payment in the form of commodity certificates.

f. Average Limitation Program

Section 101A(f)(1)(A) of the 1949 Act provides that if the Secretary determines that the total supply of rice, in the absence of an acreage limitation program (ALP), will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may implement an ALP. The section provides that in making such a determination the Secretary shall take into consideration the number of acres placed in the conservation acreage reserve established under section 1231 of the Food Security Act of 1985. If the Secretary elects to implement an ALP for 1988, the Secretary shall announce any such program not later than January 31 of 1988.

The Secretary shall, to the maximum extent practicable, carry out an ALP for a crop of rice in a manner that will result in a carryover of 30 million hundredweight of rice. If an ALP is announced for a crop of rice such reduction in production shall be achieved by applying a uniform percentage reduction (not to exceed 35 percent) to the rice crop acreage base for the crop for each rice-producing farm. Except as provided under the Inventory Reduction Program, producers who knowingly produce rice in excess of the permitted rice acreage for the farm, shall be ineligible for rice loans, purchases, and payments with respect to that farm.

The 1987-crop ALP is 35 percent. Comments are requested with respect to the need for an ALP, the appropriate level of reduction under an ALP, and other provisions of such program.

g. Land Diversion Program (LDP)

Section 101A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of rice, whether or not an ALP is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. Such land diversion payments shall be made available to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any acreage reduction under an LDP would be at a producer's option. If such a program were implemented, the Secretary proposes to make payments in the form of cash or commodity certificates.

Comments are requested with respect to the need for an optional paid LDP, appropriate payment rates, and the other provisions of such program.

h. National Program Acreage (NPA)

Section 101A(d) of the 1949 Act provides that the Secretary shall proclaim a National Acreage (NPA) for the 1988 crop of rice not later than January 31, 1988. The NPA shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which

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the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year 1988/89. If the Secretary determines that carryover stocks of rice are excessive or that an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA if the Secretary determines it to be necessary based upon the latest information. If an acreage limitation program is implemented for the 1988 crop of rice, the NPA shall not be applicable to such crop. If required, the likely NPA for the 1988 crop of rice would be:

1. Estimated Domestic Use, 1988/89.	78.2 million cwt.
2. Plus Estimated Exports, 1988/89...	85.0 million cwt.
3. Minue Imports	2.5 million cwt.
4. Plus Stock Adjustment	4.0 million cwt.
5. Divided by National Weighted Average Farm Program Payment Yield.	50.51 cwt./acre.
6. Equals 1988-crop NPA	3.26 million acres.

Comments on the NPA and the appropriate carryover level for the 1988 crop of rice, along with supporting data, are requested.

i. Whether a Voluntary Reduction Percentage Should Be Proclaimed and, if so, the Level of Such Voluntary Reduction Percentage

Section 101A(d)(3)(B) of the 1949 Act provides that the 1988 individual farm program acreage of rice may not be further reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer voluntarily reduces the acreage of rice planted for harvest on the farm from the 1988-crop rice acreage base established for the farm by at least the percentage recommended by the Secretary in the proclamation of the NPA for the 1988 crop.

If an acreage limitation program is implemented for the 1988 crop of rice, the voluntary reduction percentage shall not be applicable to such crop. If required, the likely national recommended voluntary reduction percentage for the 1988 crop of rice would be:

1. 1988 Established Rice Acreage Base.	4.24 million acres.
2. Minus 1988 Preliminary NPA	3.26 million acres.
3. Equals Acreage Reduction Needed from Acreage Base.	98 million acres.
4. Divided by 1988 Rice Acreage Base.	4.24 million acres.
5. Equals 1988-Crop Recommended Reduction Percentage.	23.1 percent

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

j. Commodity Certificates

Section 107E of the 1949 Act provides that, in making in-kind payments under any rice program, other than those programs which provide for payments in the form of negotiable marketing certificates, the Secretary may: (1) Acquire and use commodities that have been pledged to CCC as security for price support loans, including loans made to producers under the farmer-owned reserve program and (2) use other commodities owned by CCC.

The Secretary may make such in-kind payments: (1) By delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; (2) by the transfer of negotiable warehouse receipts; (3) by the issuance of certificates which CCC shall redeem for a commodity; and (4) by such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

Accordingly, comments are requested with respect to the use of commodity certificates in making payments under the 1988 rice program.

k. Marketing Certificates

Section 603 of the Food Security Act of 1985 provides that whenever, during the period beginning August 1, 1986, and ending July 31, 1991, the world price for a class of rice (adjusted to United States qualities and location), as determined by the Secretary of Agriculture, is below the current loan repayment rate for that class of rice, to make United States rice competitive in world markets and to maintain and expand exports of rice produced in the United States, under such regulations as the Secretary may prescribe, CCC shall make payments to persons who have entered into an agreement with CCC to participate in the program established by this section. Such payments shall be made in the form of negotiable marketing certificates. Such certificates shall be in such monetary amounts and subject to such terms and conditions as the Secretary determines will make rice produced in the United States available at competitive prices.

The value of each certificate shall be based on the difference between the loan repayment rate for the class of rice and the prevailing world market price for the class of rice, as determined by the Secretary.

Comments are requested with respect to the provisions of the marketing certificate program for rice.

l. Inventory Reduction Program (IRP)

Section 101A(g) of the 1949 Act provides that the Secretary may make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant rice for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage limitation program. Such payments shall be made in the form of rice owned by CCC and shall be subject to the availability of such rice. Payments under this program shall be determined in the same manner as loan deficiency payments.

Comments are requested on whether the IRP should be implemented for the 1988 crop of rice.

m. Other Related Provisions

A number of other determinations such as commodity eligibility and other provisions must be made in order to carry out the rice loan and purchase programs.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 101A and 107E of the Agricultural Act of 1949, as amended, 99 Stat. 1419, as amended, 1448 (7 U.S.C. 1441–1 and 1445e); sec. 603 of the Food Security Act of 1985, 99 Stat. 1429 (7 U.S.C. 1441–1a).

Signed at Washington, DC, on October 14, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–24143 Filed 10–14–87; 4:06 pm]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Western Pacific Spiny Lobster Log
Form Number: Agency—N/A; OMB—0648–0016
Type of Request: Revision of a currently approved collection
Burden: 12 respondents; 102 reporting hours
Needs and Uses: Lobster fishermen in designated areas of the Western Pacific will be required to submit logbooks and other catch/sales information. The data will be used by the National Marine Fisheries Service for the management of the fishery
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395–7340

Agency: National Oceanic and Atmospheric Administration
Title: Federal Fisheries Permit Amendment O
Form Number: Agency—N/A; OMB—0648–0097
Type of Request: Revision of a currently approved collection
Burden: 33 respondents; 4 burden hours
Needs and Uses: Fishermen of lobsters in designated areas of the Western Pacific will be required to apply for a permit. The information will be used to enumerate participants and acquire other data for management use.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Officer Building, Washington, DC 20503.

Dated: October 13, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–24145 Filed 10–16–87; 8:45 am]

BILLING CODE 3510–CW–M

DEPARTMENT OF DEFENSE

Department of the Navy

Navy Resale Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Navy Resale System Advisory Committee will meet on November 14, 1987, in the White and Gold Suite, The Plaza Hotel, 5th Avenue at 59 Street, New York, New York 23510. The meeting will consist of two sessions: The first from 8:00 a.m. to 8:50 a.m.; and the second from 9:00 a.m. until 4:30 p.m. The purpose of the meeting is to examine policies, operations, and organization of the Navy Resale System and to submit recommendations to the Secretary of the Navy. The agenda will include discussions of the organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public because it will involve discussions of information pertaining solely to trade secrets and confidential commercial or financial information. These matters fall within the exemptions listed in subsections 552b (c)(2)(4), and (9)(B) of WR 18 April 86 Title 5, United States Code. Therefore, the second session will be closed to the public.

For Further Information Contact: Commander W.T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606, Crystal Mall, Building No. 3, Arlington, Virginia 22202, Telephone Number: (202) 695–5457.

Date: October 14, 1987.

Jane M. Virga,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87–24150 Filed 10–16–87; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on October 29–30, 1987. The meeting will be held at offices of Commander-in-Chief, U.S. Atlantic Fleet, Norfolk, Virginia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on October 29 and 30, 1987. All session of the meeting will be closed to the public.

The purpose of the meeting is to provide briefing and tours for the committee members on command and control systems capabilities. The agenda will include technical briefings, tours and discussions addressing C2 and interoperability issues. These briefings, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably interwinded as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For Further Information Contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: October 13, 1987.

Jane Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 87–24151 Filed 10–16–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.087]

Applications for New Awards Under Part B, Indian Education Act of 1972, as Amended, Indian Fellowship Program, for Fiscal Year 1988

Purpose: Enables Indian students to pursue courses of study leading to: (a) Postbaccalaureate degrees in medicine, psychology, law, education, clinical psychology, and related fields, or (b) undergraduate or graduate degrees in business administration, engineering, natural resources, and related fields.

Deadline for Transmittal of Applications: February 8, 1988.

Applications Available: December 8, 1987.

Available Funds: The President's budget request for this program for Fiscal Year 1988 is $1,461,000 which would provide approximately $500,000 for new awards. The remaining funds would be used for continuation awards. The Congress has not yet passed the Fiscal Year 1988 appropriation for this program. The estimates below assume passage of the President's request.

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Estimated Range of Awards: $600–$24,000.

Estimated Average Size of Awards: $8,064.

Estimated Number of Awards: 62.

Project Period: 12–48 months. It is anticipated that approximately 70 percent of the awards will be approved for up to 48 months.

Program Information: The Secretary is not establishing any priorities among the allowable fields of study in 34 CFR 263.4 of the final regulations. However, section 4133(b)(2)(B) of the Drug-Free Schools and Communities Act of 1986 (Title IV, Subtitle B of Pub. L. 99–570) amended section 423 of the Indian Education Act to provide that "[n]ot more than 10 percent of the fellowships [under the Indian Fellowship Program] shall be awarded on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education." It is important that applicants who intend to receive training in the priority area indicate in their applications not only the allowable field of study, such as education or psychology, in which they are seeking a degree, but also that they are "receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education." The estimated maximum stipend allowed will be $750.00 per month. An estimated maximum allowance of $110.00 per month will be allowed for each dependent.

Applicable Regulations: The Indian Fellowship Program Regulations, 34 CFR Part 263.

For Applications or Information Contact: Dorothea Perkins, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 20202. Telephone (202) 732–1909.

Program Authority: 20 U.S.C. 3385b.

Dated: October 13, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary education.

[FR Doc. 87–24076 Filed 10–16–87; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Board on International Education Program; Meeting

AGENCY: National Advisory Board on International Education Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE: November 6, 1987.

ADDRESS: U.S. Department of Education, The Horace Mann Learning Center, (The Stewart Room), 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Executive Director, NABIEP, Postsecondary Relations Staff, 7th & D Streets SW., Room 4907, Washington, DC 20202, Telephone: 202–732–1862.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended by the Education Amendments of 1986 (Pub. L. 99–498; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

The agenda includes oath of office ceremonies for new and reappointed members; continuing discussion of the Federal role regarding international education; update on grants and the Center for International Education Programs and general Board business for Fiscal Year 1988.

Records are kept on the Board proceedings and are available for public inspection at the Office of Postsecondary Relations staff, from 8 a.m. to 4 p.m., ROB–3, 7th & D Streets, SW., Room 3915, Washington, DC

Signed in Washington, DC, on October 14, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–24137 Filed 10–16–87; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3278–6]

Construction Grant Eligibility of Income Generating Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Assistant Administrator for Water has established Agency policy on the construction grant eligibility of income generating facilities under the construction grants program. This statement of policy is needed to clarify any ambiguities that exist in the current program funding policy regarding the eligibility of income generating facilities. The policy defines the limits of grant participation in income generating facilities in which a municipality has a financial interest.

FOR FURTHER INFORMATION CONTACT: Walter Brodtman, Municipal Construction Division (WH–547), Environmental Protection Agency, Washington, DC 20460, (202) (382–5843).

EFFECTIVE DATE: This policy is effective October 5, 1987.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to communicate an Agency policy regarding the eligibility of income generating facilities for funding under the municipal treatment works construction grants program.

In the context of recent discussions, it has come to our attention that there is some ambiguity in current program funding policy regarding the eligibility of those portions of wastewater treatment facilities that will create a source of income generation for the grantee's municipality.

Therefore, after the effective date of this policy, the eligibility of income generating facilities for new construction grant project awards should be determined in accordance with the following criteria:

Section 201(d) of the Clean Water Act encourages wastewater treatment management which provides for the recycling of pollutants through the production of agriculture, silviculture or aquaculture; and for the construction of revenue producing facilities. In conformance with this stated intent of Congress, EPA has vigorously promoted wastewater land treatment and sludge utilization processes under its construction grants program. These processes, which have the potential for generating project income to offset the operation and maintenance (O&M) costs of a grantee, must be intensively reviewed by EPA to ensure unreasonable increases in construction costs are not allowed.

The criteria that follow apply specifically to stabilized and processed

sludges which are to be managed for income generation, and to crops which are grown for sale as an integral part of the wastewater land treatment or sludge utilization process. However, the principles illustrated by the sludge and crop examples should be relied upon in grant allowability decisions involving all projects that include income generation.

Facilities built for processing crops grown on land to which sludge or wastewater has been applied may be an allowable cost if the municipality has a financial interest in the crop and if those facilities are necessary and reasonable to cost-effectively prepare the crop for prompt delivery to its market. Crop processing facilities could involve grain drying or fermenting. Facilities and equipment for transporting the crop to market or storing the crop to await more favorable market prices are unallowable.

Facilities built for processing sludge into marketable products such as compost or heat-dried pellets may be allowable if the municipality has a financial interest in the product and if those facilities are necessary and reasonable to cost-effectively prepare the product for prompt delivery to its market. Processing facilities could include the composting facility plus holding capacity for final stabilization of the compost product. Processing could also include the drying and pelletizing operation when this approach has been selected to stabilize the sludge. Facilities to store the marketable products to get more favorable prices; to transport the product for sale to a market; or to optimize marketing of the stabilized sludge, such as bagging operations, are not allowable.

Funding decisions made on construction grant projects awarded before the issuance of this policy are not affected. Those funding decisions will continue to be assessed based on program policy in effect at the time of the decision.

Dated: October 5, 1987.

Lawrence Jensen,

Assistant Administrator for Water.

[FR Doc. 87-24125 Filed 10-16-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3279-1]

National Drinking Water Advisory Council; Open Meeting

Under section (10)(a)(2) of Pub. L. 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended, will be held at 9:00 a.m. on November 5, 1987 and 8:30 a.m. on November 6, 1987, in the Boardroom, The St. James, 950 24th Street, NW., Washington, DC. Council Subcommittee will be meeting at the U.S. EPA Headquarters, 401 M Street, SW., November 2 and 3, 1987.

The main purpose of the meeting will be to consult the Council on the implementation of the Safe Drinking Water Act Amendments. There will be a panel discussion on Class V Wells and presentations on the impact of the Safe Drinking Water Act on the water industry. Mr. Michael Cook, Director, Office of Drinking Water and Ms. Marian Mlay, Director, Office of Ground Water Protection will update the Council on program activities. A report on the National Pesticide Survey will be given in addition to Reports by the following Council Subcommittees: Health, Science and Standards; Ground Water; Underground Injection Control; Public Water Systems/State Programs; and Legislation/Public Outreach.

This meeting will be open to the public. The Council encourages the hearing of outside statements and has scheduled one hour on November 5 from 5:00 p.m. to 6:00 p.m. for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone (202) 382-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before October 29, 1987.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at the Council meeting and will be part of the permanent meeting record.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Charlene E. Shaw, Executive Secretary, National Drinking Water Advisory Council, Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The telephone number is: (202) 382-2285.

Dated: October 9, 1987.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 87-24126 Filed 10-16-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 6, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0208
Title: Section 73.1870, Chief operators
Action: Extension
Respondents: Business (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 11,892 Recordkeepers; 311,166 Hours
Needs and Uses: Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. It also requires that this designation must be in writing and posted at the transmitter site. The chief operator reviews the station records at least once a week to determine if required entries are being made correctly and verifies that the station has been operated in accordance with FCC rules and regulations. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

OMB Number: 3060-0188
Title: Section 73.3550, Requests for new or modified call sign assignments
Action: Extension
Respondents: Businesses and small businesses (including non-profit institutions)
Frequency of Response: On occasion

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Estimated Annual Burden: 1,090 Responses; 727 Hours
Needs and Uses: Section 73.3550 requires that a licensee, permittee, assignee or transferee file a letter with the Commission when requesting a new or modified call sign. The data is used by FCC staff to ensure that the call sign requested is not already in use by another station and that the proper "K" or "W" designation is used in accordance with the station location (east or west of the Mississippi River).

OMB Number: 3060–0183
Title: Section 73.1840, Retention of logs
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 11,892 Recordkeepers; 309,192 Hours
Needs and Uses: Section 73.1840 requires that any log required to be kept by station licensees shall be retained for a period of two years, unless otherwise instructed by the FCC (communications involved in an investigation by the FCC). The data kept in the logs are used by FCC staff in investigations to ensure that the station is operating in accordance with the terms and conditions specified in the station license and with FCC rules and regulations.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24098 Filed 10–16–87; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0263
Title: Section 90.177, Protection of certain radio receiving locations
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses) and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 300 Responses; 150 Hours
Needs and Uses: Section 90.177 requires that applicants proposing to locate near certain radio receiving sites to notify those parties. This requirement is needed to preserve the interference-free reception conditions necessary at these sensitive sites and to protect critcal national security. The information is used by the appropriate Government agency to determine if the proposed transmitter would cause harmful interference to their respective radio receiving sites.

OMB Number: 3060–0258
Title: Section 90.176, Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses) and non-profit institutions
Frequency of Responses: On occasion
Estimated Annual Burden: 1,050 Responses; 2,100 Hours
Needs and Uses: Section 90.176 requires applicants proposing operation on frequencies normally assigned to a different class of applicant to provide information to evaluate the interference potential of the proposed operation to primary users of the requested frequency. Private radio frequencies are arranged in a block allocation format with each block serving a particular type of user. Frequencies allocated to one service, however, may be sparsely used in a specific geographic area, and can be used to meet a demand for frequencies by other radio services in that same area. The information is used by the Commission licensing personnel to make the public interest determination described above.

OMB Number: 3060–0219
Title: Section 90.49(b), Communications standby facilities "Special Eligibility Showing"
Action: Extension
Respondents: Businesses
Frequency of Response: On occasion
Estimated Annual Burden: 200 Responses; 150 Hours
Needs and Uses: Section 90.49(b) requires that communications common carriers normally providing safety-related communication landline circuits may request licensing on private radio service frequencies to be used as standby facilities for carrying these safety-related communications when normal (i.e., common carrier) circuits are inoperative due to circumstances beyond the control of the carrier. Applicants are required to submit information that is used to ensure that the requested facilities are necessary for the protection of life or public property.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24099 Filed 10–16–87; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 9, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0311
Title: Section 76.54, Significantly viewed signals; method to be followed for special showings
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 60 Responses; 120 Hours
Needs and Uses: Section 76.54 requires that notification be made to television broadcasting stations, system community units, franchisees and franchise applicants in survey area whenever an audience survey is conducted for significantly viewed signal purposes. This notification shall be made at least 30 days prior to the initial survey period and shall include the name of the survey organization and a description of the procedures to be used. This notification allows

interested parties an opportunity to file objections.

OMB Number: 3060–0225
Title: Section 90.131(b), Amendment or dismissal of applications
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses) and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 25 Responses; 4 Hours
Needs and Uses: Section 90.131(b) provides that any application may, upon written request signed by the applicant or his attorney, be dismissed without prejudice as a matter of right prior to the time the application is granted or designated for hearing. The information will alert the Commission licensing personnel of the applicant's desire to discontinue processing of an application.

OMB Number: 3060–0314
Title: Section 76.209, Fairness doctrine; personal attacks, political editorials
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 1,204 Responses; 3,130 Hours
Needs and Uses: During the presentation of views on a controversial issue of public importance, an attack may be made upon the honesty, character, integrity, or like personal qualities of an identified person or group. Section 76.209 requires that cable television system operators notify, in detail, the person or group on which the personal attack was made or the opponent of candidate endorsed by cable system in an editorial. This notification gives the person or group the right to respond over the licensee's facilities.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24160 Filed 10–16–87; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 7, 1987.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 634–1535. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0203
Title: Section 97.90, System network diagram required
Action: Extension
Respondents: Individuals or households
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 200 Recordkeepers; 20 Hours
Needs and Uses: The Commission requires an amateur radio station having one or more units in repeater or auxiliary operation to retain a diagram describing the system network. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

OMB Number: 3060–0222
Title: Section 97.88, Operation of a station by remote control
Action: Extension
Respondents: Individuals or households
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 500 Recordkeepers; 100 Hours
Needs and Uses: Section 97.88 requires operators of amateur radio stations to post a photocopy of the station license, maintain a list of authorized control operators, and retain a block diagram. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that stations are operating in accordance with the Communications Act of 1934, as amended.

OMB Number: None
Title: Section 21.910, Special Procedures for Discontinuance, Reduction, or Impairment of Service by Common Carrier MDS Licensees
Action: New collection
Respondents: Business (including small businesses)
Frequency of Response: Whenever respondent elects to change status
Estimated Annual Burden: 1,330 Responses; 997 Hours
Needs and Uses: Applicants, permittees, and licensees for radio stations in the Multipoint Distribution Service (MDS) may escape certain regulatory requirements, such as filing tariffs, by electing non-common carrier status, and must inform the Commission of election or else continue to be regulated as common carriers.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24161 Filed 10–16–87; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 9, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634–1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None
Title: Automated Reporting and Management Information System (ARMIS), Sections 43.21 and 43.22
Action: New collection
Respondents: Businesses (telephone companies)
Frequency of Response: Quarterly and annual
Estimated Annual Burden: 600 Responses; 69,000 Hours
Needs and Uses: The Commission is creating an automated reporting system to collect financial and operating data from all Tier 1 telephone companies and those Class A telephone companies with annual revenues over $100 million. The automated reporting system is necessary to administer the Commission's accounting, jurisdictional separation, access charge, and joint cost rules and to analyze revenue requirements and rates of return.

BEST COPY AVAILABLE

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-24162 Filed 10-16-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1987-13]

Filing Dates for Tennessee Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Tennessee Special Elections.

SUMMARY: Committees required to file reports in connection with only the special primary election to be held in the 5th Congressional District of Tennessee on December 3, 1987, must file a 12-day preprimary election report by November 21, 1987. Committees required to file reports in connection with *both* the special primary election *and* the special general election to be held on December 3, 1987, and January 19, 1988, respectively, must file a 12-day pre-primary election report by November 21, 1987, the 12-day pre-general election report by January 7, 1988, and a 30-day post-general election report by February 18, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 376-3120, Toll free: (800) 424-9530.

Filing Dates for Special Primary and Special General Elections, 5th Congressional District, Tennessee

All principal campaign committees of candidates in the special primary election and all other political committees not filing monthly reports which support candidates in the special primary election shall file a 12-day pre-primary election report due on November 21, 1987, with coverage dates from the closing date of the last report filed through November 13, 1987.

All principal campaign committees of candidates in the special primary election and the special general election and all other political committees not filing monthly reports which support candidates in these elections shall file a 12-day pre-primary election report due on November 21, 1987, with coverage dates from the last report filed through November 13, 1987; a 12-day pre-general election report due on Jaunary 7, 1988, with coverage dates from November 14, 1987 through December 30, 1987; and a 30-day post-election report due on February 18, 1988, with coverage dates from January 1, 1988, to February 8, 1988.

Committees should file a year-end report, due on January 31, 1988. Committees involved with the special general election have the option of filing a consolidated pre-general and year-end report in lieu of two separate reports, provided the consolidated report is filed by January 7, 1988.

Dated: October 13, 1987.
Scott E. Thomas,
Chairman, Federal Election Commission.
[FR Doc. 87-24176 Filed 10-16-87; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Associated Transportation (Australia Ltd.), et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-018.
Title: Steamship Operators Intermodal Committee.
Parties:
Associated Container Transportation (Australia Ltd.)
Barber Blue Sea Line
Companhia de Navegacao Maritima Netumar
Coordinated Caribbean Transport, Inc.
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Hamburg-Suedamerikknische-Dampfschiffahrts-Gesellschaft
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
South African Marine Corp.
United States Lines, Inc.
Venezuelan Line
Yamashita-Shinnihon Steamship Co. Ltd.
Yang Ming Line
Zim Israel Navigation Co. Ltd.
American President Lines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Seapac Services, Inc.
Showa Line, Ltd.
Trans Freight Lines

Synopsis: The proposed amendment would admit Atlantic Container Line (BV) as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 218-011152.
Title: Mitsui O.S.K. Lines/EAC PNSL Service Transshipment Agreement.
Parties:
Mitsui O.S.K. Lines, Ltd. (Mitsui)
EAC PNSL Service, Ltd. (EAC PNSL)

Synopsis: The proposed agreement would permit Mitsui to transship empty or loaded containers aboard EAC PNSL vessels in the trade between ports and points in the United States and Canada, and Singapore, Malaysia, Hong Kong and Taiwan with transshipment at Hong Kong or Kaohsiung, Taiwan or other ports in the above Far East countries. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: October 4, 1987.
Joseph C. Polking,
Secretary.
[FR Doc. 87-24164 Filed 10-16-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Abington Bancorp, Inc., et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on

an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Abington Bancorp, Inc.*, Abington, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Abington Savings Bank, Abington, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance Activities. Comments on this application must be received by November 3, 1987.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Affiliated Bank Corporation of Wyoming*, Casper, Wyoming; to acquire 100 percent of the voting shares of The First National Bank of Lovell, Lovell, Wyoming.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Wheeler Bancshares, Inc.*, Wheeler, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Wheeler, Wheeler, Texas.

Board of Governors of the Federal Reserve System, October 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24063 Filed 10-16-87; 8:45 am]

BILLING CODE 6210-01-M

Independent Southern Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.26 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Independent Southern Bancshares, Inc.*, Brownsville, Tennessee; to engage de novo in making and servicing loans or other extensions of credit for the account of other banks pursuant to § 225.25(b)(1); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24064 Filed 10-16-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 3, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dennis Casey Reilly, Missoula, Montana; Jacqueline Rahn Reilly, Missoula, Montana; Robert I. Noble, M.D., Profit Sharing Trust and Pension Plan, Robert I. Noble, Trustee, Butte, Montana; Charles Komberec, Missoula Montana; Richard C. Keep, Charlo, Montana; and Russell A. Anderson, Butte, Montana; acting as a group in concert, to acquire 51 percent of the voting shares of First Citizen Bank of Butte, Butte, Montana.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lucia Terwilliger*, Colorado Springs, Colorado, to acquire 25.3 percent of the voting shares of TCB Investments, Inc., Kansas City, Missouri, and thereby indirectly acquire Citizens Bank of Appleton City, Appleton City, Missouri; Tri-County State Bank of El Dorado Springs, El Dorado Springs, Missouri; Lowry City Bank, Lowry City, Missouri; and Osceola Bank, Osceola, Missouri.

Board of Governors of the Federal Reserve System, October 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24065 Filed 10-16-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season Notice; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that advance notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will

commence on November 15, 1987 and end on January 31, 1988. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from January 1 to January 31, 1988.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 653–2573.

Dated: October 15, 1987.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 87–24201 Filed 10–16–87; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: November 5–6, 1987.

Place: Conference Room, Office of the Inspector General, Corridor 5500, HHH North Building, 330 Independence Avenue, SW., Washington, DC 20201.

Time and Type of Meeting: Open 9 a.m. to 5 p.m.—November 5; Open 9 a.m. to 12 noon—November 6.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4474, FTS: 923–4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; and discussion of epidemiological studies of coal miners.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 9, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–24066 Filed 10–16–87; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 87M–0305]

IOLAB Corp.; Premarket Approval of LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers for Iridotomy

AGENCY: Food and Drug Adminstration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by IOLAB Corp. for premarket approval, under the Medical Device Amendments of 1976, of the LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers for performing an iridotomy (hole in the iris). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by November 18, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On April 1, 1987, IOLAB Corp., Claremont, CA 91711, submitted to CDRH a supplemental application for premarket approval of the LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers. The LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers are a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for performing an iridotomy (hole in the iris).

On July 23, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 27, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Devices Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantive issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 18, 1987, file with the

Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this docment. Received petitions may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e)(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 6, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–24070 Filed 10–16–87; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Los Angeles District Office, chaired by George J. Gerstenberg, District Director. The topics to be discussed are health claims on food labels and prescriptions.

Date: Wednesday, October 21, 1987, 9:30 a.m. to 12 m.

Address: Los Angeles District Office, 1521 West Pico Blvd., Los Angeles, CA 90015.

For Further Information Contact: Gordon L. Scott, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213–252–7597.

Nashville District Office, chaired by Hayward E. Mayfield, District Director. The topic to be discussed is health claims on food labels.

Date: Monday, October 26, 1987, 9:30 a.m. to 12 m.

Address: Legislative Plaza, Rm. 16, 16th and Union Sts., Nashville, TN 37219.

For Further Information Contact: Sandra S. Baxter, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–736–2088.

San Francisco District Office, chaired by Ronald M. Johnson, District Director. The topics to be discussed are health claims on food labels and FDA's current issues.

Date: Monday, October 26, 1987, 10:00 a.m. to 12 m.

Address: Federal Building, First Street, Room 160, San Jose, CA 95113.

For Further Information Contact: Lula M. Holland, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, Room 526, San Francisco, CA 94102, 415–556–1457.

St. Louis Branch Office, chaired by Raymond Hedblad, Branch Director. The topic to be discussed is health claims on food labels.

Date: Thursday, October 29, 1987, 4 p.m.

Address: St. Louis University Medical Center, Rooms 103–104, Learning Resources Center, 3544 Caroline St., St. Louis, MO 63104.

For Further Information Contact: Mary-Margaret Richardson, Consumer Affairs Officer, Food and Drug Administration, 808 Collins Alley, St. Louis, MO 63102, 314–425–5021.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 9, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–24071 Filed 10–16–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[PRT# 715460]

Issuance of Permit for Marine Mammals; Adventure world

On July 10, 1987, a notice was published in the **Federal Register** (52, FR 26092) that an application had been filed with the Fish and Wildlife Service by Adventure World (PRT# 715460) for authorization to take (capture) one male and one female Alaskan sea otters (*Enhydra lutris lutris*) and export them to Adventure World, Perfecture, Japan, for public display.

Notice is hereby given that on August 20, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service granted the requested authorization subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Note.—Due to an oversight, this notice was not published within 10 days of issuance of the permit as required by 50 CFR 18.33 (c).

Dated: October 14, 1987.

Larry La Rochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–24175 Filed 10–16–87; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WY–930–07–5101–09–YKAK]

Wyoming; Proposed Projects by Amoco Production Co.; Meetings and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to conduct public scoping meetings and to prepare an Environmental Impact Statement.

SUMMARY: This notice describes the action to be analyzed in the EIS, the geographic area that would be affected, the preliminary list of issues and concerns, the scoping process to be used, the locations of offices that will have information for public review both during and at the completion of the process, and the person to contact for more information.

The environmental impact statement (EIS) will analyze impacts from development of the Raptor Field and construction and operation of the proposed Fontenelle Gas Processing Plant located in southwestern Wyoming, which would be capable of producing 200 million standard cubic feet per day of CO_2, and the construction and operation of a 175-mile-long, 18-inch diameter CO_2 pipeline from the vicinity of Powder River, Wyoming, to the Elk Basin oil field on the Wyoming/Montana border near Powell, Wyoming. In addition, the EIS will also analyze the impacts from field facilities and injection/recovery plants and ancillary facilities for enhanced oil recovery in the Salt Creek field, which would be supplied with CO_2 from a 10-mile-long, 16-inch spur pipeline near Midwest, Wyoming; from similar plants and facilities in the Little Buffalo Basin field which would be supplied by a 32-mile-long, 16-inch spur pipeline located south

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of Meeteetse, Wyoming; and from similar plants and facilities located in the Beaver Creek field, south of Riverton, Wyoming, which would be supplied by a 50-mile-long, 18-inch trunkline which would be a spur line off of the Bairoil Pipeline. The proposed projects are in Big Horn, Fremont, Hot Springs, Lincoln, Natrona, Park, Sweetwater, and Washakie Counties, Wyoming. Part of the Elk Basin field also is in Carbon County, Montana.

DATES: Public scoping meetings will be held at the following times and locations:

December 1, 1987, 7 p.m., Northwest Community College, Faberberg Lecture Hall, Room 65, Engineering and Technology Building, Powell, Wyoming

December 2, 1987, 7 p.m., Bureau of Land Management, Worland District Office, 101 South 23rd Street, Worland, Wyoming

December 3, 1987, 7 p.m., Amoco Field Office, Conference Room, Through Town and ½ Mile Southwest, Midwest, Wyoming

December 8, 1987, 7 p.m., Fremont County School District Administrative Building, 121 North 5th West, Riverton, Wyoming

December 9, 1987, 7 p.m., Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming

FOR FURTHER INFORMATION CONTACT: Comments and suggestions should be sent to the following office before December 30, 1987: Bureau of Land Management, Attn: Mr. Glen Nebeker, Casper District Office, 1701 East E. Street, Casper, Wyoming 82601.

ADDRESSES: Copies of the scoping summary will be available to the public on or about January 19, 1988, for review on request at the addresses listed below.

Bureau of Land Management, Casper District Office, 1701 East E. Street, Casper Wyoming 82601, Phone: (307) 261–5101

Bureau of Land Management, Worland District Office, P.O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401, Phone: (307) 347–9871

Bureau of Land Management, Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming 82902–1869, Phone: (307) 382–5350

Bureau of Land Management, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, Phone: (307) 772–2425

Bureau of Land Management, Rawlins District Office, P.O. Box 670, 1300 North 3rd Street, Rawlins, Wyoming 82301, Phone: (307) 324–7171

Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301, Phone: (406) 232–4331

SUPPLEMENTARY INFORMATION: The action to be analyzed in the EIS consists of the construction, operation, and maintenance of projects proposed by Amoco Production Company. The no action alternative will also be analyzed.

Planning Information Company of Denver, Colorado, has been selected to prepare the EIS for BLM on the proposal. The BLM Wyoming State Director has assigned the project lead to BLM's Casper District Manager. Federal agencies will be queried as to their interest in becoming cooperators.

The CO_2 would either be purchased from Exxon's Shute Creek Gas Processing Plant in southwestern Wyoming, or produced at Amoco's proposed Fontenelle Gas Plant, and carried via the existing Exxon Bairoil CO_2 pipeline to near Powder River, Wyoming, where a new 18-inch pipeline will transport it north. The CO_2 would be initially injected into oil-bearing formations in the Elk Basin field for enhanced oil recovery (EOR). Plans are to stagger delivery of the CO_2 to the other identified fields and possibly to other markets in the Powder River Basin for enhanced oil recovery through the year 2000.

The scope of the document includes construction and operation of the proposed Fontenelle Gas Processing Plant near Opal, Wyoming; development of the Raptor Field Unit for CO_2 production; the main 175-mile-long pipeline to Elk Basin; spur lines to the Little Buffalo Basin, Beaver Creek, and Salt Creek fields; four enhanced oil recovery plants with ancillary facilities, including distribution lines, block valves, meter stations, scraper traps, etc. and maintenance and future abandonment of the proposed facilities. A satellite communications system is proposed to be used.

Geographic Area

The geographic area to be analyzed for impacts is central and northern Wyoming, and extreme south central Montana. The proposed CO_2 pipeline would extend 175 miles, from 20 miles northwest of Bairoil, Wyoming, near Powder River, Wyoming, to Elk Basin, which is the initial site for EOR. A small portion of the affected Elk Basin field is in Montana. It is currently administered by the BLM's Worland Office. Alternate routes have not been developed, but are expected to be in the same general vicinity. Regional and cumulative impacts may extend somewhat beyond these geographic areas, but because the proposal are planned to be staggered over a large geographic area over an 8-year period, they are not expected to be cumulatively significant.

Issues and Concerns

The following issues and concerns have been identified to date:

—Air quality effects for the proposed gas treatment plant and the proposed CO_2 processing plant.

—Potential impacts of crossing coal, other mineral leases, and agricultural lands.

—Impacts on historical trail crossings and cultural resources.

—Potential impacts to wildlife and habitat, recreation, visual resources, and land uses.

—Public safety and health.

The public is encouraged to present their ideas and views on these and other issues and concerns. Responses and comments on the proposal will be accepted through December 30, 1987. All issues and concerns will be considered in preparing the EIS.

Hillary A. Oden,

State Director, Wyoming.

October 9, 1987.

[FR Doc. 87–24067 Filed 10–16–87; 8:45 am]

BILLING CODE 4310–22–M

[CO–010–08–4322–02]

Craig, CO, Advisory Council Meeting

Time and Date: November 17, 1987 at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters To Be Considered:

1. Foreign Investments on Public Lands
2. Land Status
3. Herbicides and Pesticides
4. Wild Horses and Burros
5. BLM's Role in Developing Sections of the Yampa River for Recreation

Contact Person For More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: October 8, 1987.

Alan Schroeder,

Acting Associate District Manager.

[FR Doc. 87–24173 Filed 10–16–87; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1987, through April 30, 1988. The List of Restricted Joint Bidders published in the **Federal Register** on March 30, 1987, at 52 FR 10174 covered the bidding period of May 1, 1987, through October 31, 1987.

Group I.
Chevron U.S.A. Inc.; Chevron Corporation.
Group II.
Exxon Corporation.
Group III.
Texaco Inc.; Getty Oil Company; Texaco Producing Inc.
Group IV.
Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.
Group V.
Mobile Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Dated: October 13, 1987.

David W. Crow,

Deputy Director, Minerals Management Service.

[FR Doc. 87-24101 Filed 10-16-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-376 (Final)]

Import Investigations; Certain Stainless Steel Butt-Weld Pipe Fittings From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-376 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of stainless steel butt-weld pipe fittings, provided for in item 610.89 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before November 24, 1987, and the Commission will make its final injury determination by January 13, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of stainless steel butt-weld pipe fittings from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on April 2, 1987, by Flowline Corp., New Castle, PA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 19936, May 28, 1987).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on November 20, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 3, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 23, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 25, 1987, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 30, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This

rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 10, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 10, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 13, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-24062 Filed 10-16-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-17934 (Sub-No. 1)]

Norfolk Southern Corp. and North American Van Lines, Inc.; Control; Tran-Star, Inc.

AGENCY: Interstate Commerce Commission

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application filed September 16, 1987, for Norfolk Southern Corporation and North American Van Lines, Inc., to acquire control of Tran-Star, Inc.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than November 19, 1987.

ADDRESSES: Unless otherwise indicated, an original and 10 copies of all documents, referring to No. MC-F-17934 (Sub-No. 1), should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding should be sent to: (1) Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

(2) Applicants' representatives:

Robert J. Cooney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

Greg E. Summy, North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801.

FOR FURTHER INFORMATION CONTACT:

Andrew L. Lyon, (202) 275-7191.

TDD for hearing impaired, (202) 275-1721.

Kenneth H. Schwartz, (202) 275-7956.

SUPPLEMENTARY INFORMATION: The proposal has been determined to be a minor transaction. The application and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested person may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than November 19, 1987. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Written comments shall be concurrently served by first-class mail on the United States Secretary of Transportation and the Attorney General of the United States. Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by December 3, 1987. All persons who file timely written comments shall be considered parties of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Comments must contain the information specified at 49 CFR 1180.4(d)(1)(iii) for minor transactions. Because the proposed transaction is a minor transaction, no responsive applications shall be permitted. 49 CFR 1180.4(d)(4).

Preliminary comments from the Secretary of Transportation and Attorney General must be filed by December 3, 1987.

Additional information is contained in the Commission's decision. To obtain a copy of the decision, write to the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428. Telephone number of hearing impaired: (202) 275-1721.

Decided: October 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24127 Filed 10-16-87; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Hearing

AGENCY: National Commission To Prevent Infant Mortality.

ACTION: Notice of hearing.

SUMMARY: In accordance with Public Law 99–660, notice is given of a hearing on perinatal AIDS. The purpose of the hearing is to discuss the perinatal AIDS problem in the United States.

DATE: Monday, October 26, 1987, 9:00–12:00 noon.

ADDRESS: Jackson Memorial Hospital, Mailman Center Auditorium, 1601 NW 12th Avenue, Miami, Florida.

FOR FURTHER INFORMATION CONTACT: Anne Hockett, 202–472–1364.

Senator Lawton Chiles,

Chairman.

[FR Doc. 87–24284 Filed 10–16–87; 11:21 am]

BILLING CODE 6820-SX-M

NATIONAL CREDIT UNION ADMINISTRATION

[Interpretive Ruling and Policy Statement No. 87–1]

Guidelines For Complaince With Federal Bank Bribery Law

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 87–1.

SUMMARY: The Bank Bribery Amendments Act of 1985 requires that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The guidelines were developed by the Interagency Bank Fraud Working Group. The guidelines adopted by the National Credit Union Administration Board (the "Board") encourage federally-insured credit unions to adopt codes of conduct that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board, do not constitute violations of the bribery law. These guidelines do not impose new requirements on federally-insured credit unions. They are designed to help credit unions comply with the bank bribery law.

EFFECTIVE DATE: October 16, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. Telephone number (202) 357–1030.

SUPPLEMENTARY INFORMATION: The Board issued a proposed Interpretive Ruling and Policy Statement (IRPS) containing guidelines for compliance with the Bank Bribery Law on June 10, 1987, and solicited comments during a thirty-day period.

Only ten comment letters were received concerning the proposed IRPS. Nine were favorable, one opposed to the issuance of guidance on this subject. Of the nine favorable letters, four did not recommend any change to the proposal.

One letter asked whether Credit and Supervisory Committee members are intended to be included within the scope of the guidelines. Yes, NCUA interprets the Bank Bribery Amendments Act as applying to committee members and the guidelines should include all officers and committee members of the credit union. The IRPS has been modified to clarify its scope. Also, it should be noted that these guidelines are intended to assist credit union officials, not credit union service organization officials. Of course, NCUA Rules and Regulations do set forth certain requirements concerning a credit union's investment in a CUSO. The proposed guidelines relate only to the Federal Bank Bribery Law; however, credit unions are encouraged to consider other possible conflicts of interest in developing internal codes of conduct.

Another letter recommended that the term "member" rather than "customer" be utilized where appropriate. This change has been made. One proposed that the appropriateness of accepting promotional materials be left to the discretion of the individual employee. The employee would make an individual determination regarding whether something was of nominal value and therefore acceptable. NCUA disagrees and believes that the need for consistency within the institution and the possibility of abuse make it preferable that the code of conduct provide what is nominal or acceptable. Another writer urged absolute prohibition on acceptance of holiday gifts. While a credit union may choose to prohibit receipt of such gifts in its code of conduct, NCUA continues to believe that receipt of a holiday season gift from a member, under appropriate circumstances, would not violate the bank bribery statute.

One writer inquired about treatment of raffle prizes paid for by a particular vendor. Because each sweepstakes scenario is somewhat different, NCUA does not believe it would be effective to include an example in the IRPS. Generally, if the prize is available to all equally through some random selection process, there would not, in NCUA's view, be any danger of violating the bank bribery statute. Of course, credit unions may elect to restrict or require reporting of this type of activity in any code they adopt. Another writer expressed concern that NCUA is attempting to mandate adoption of a code of conduct. These guidelines are not regulatory and encourage, rather than require, credit unions to act.

A letter expressed a concern that the guidelines, in prohibiting officials from accepting anything of value in connection with credit union business, either before or after a transaction is discussed, were in conflict with previous NCUA opinions and the FCU Standard Bylaws. The commenter was specifically concerned with a 1986 NCUA opinion that stated an official who owns a loan collection agency may accept business from the credit union he serves,

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provided he is not involved in discussions involving his pecuniary interest. That situation would not conflict with the guidelines, which refer to discussion or consummation of a transaction by the official. However, it would now violate § 701.21(c)(8), prohibited fees, which was amended in April, 1987.

Finally, one writer objected to the issuance of guidelines as unnecessary and not required by law. In NCUA's view, these guidelines are appropriate and necessary to assist credit unions in complying with the bank bribery statute. The writer suggested that any exceptions set forth in the guidelines should not emphasize value, because the statute proscribes corrupt conduct. NCUA recognizes that the issue of whether conduct is corrupt, within the meaning of the bank bribery statute, does not necessarily depend on the value of something offered or received. Nevertheless, certain of the exceptions set forth properly recognize that the risk of corruption or breach of trust is not present in circumstances involving receipt of an item of reasonable value.

We have inserted language stating that any code should be consistent with the intent of the bank bribery statute to proscribe corrupt activity within financial institutions. We have also suggested that management review disclosures to detemine that they are reasonable and do not threaten the integrity of the credit union.

Interpretive Ruling and Policy Statement No. 87–1

Guidelines for Compliance With Federal Bank Bribery Law

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473, Title I, October 12, 1984) amended the Federal bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents, and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents, or attorneys of financial institutions in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift-giving or entertaining that did not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99–370, August 4, 1986) to narrow the scope of 18 U.S.C. Section 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, section 215 provides in pertinent part:

Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense].

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.[1] This exception is set forth in subsection 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents, and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes do not undermine the duty of an employee, officer, director, agent, or attorney to the financial institution. *United States Attorneys' Manual* Section 9–40.439.

Proposed Guidelines

The proposed guidelines encourage all federally-insured credit unions to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies to include provisions that explain the general prohibitions of the bank bribery law. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that a federally-insured credit union would find advisable to cover in its code of ethics. However, in developing its code of conduct, a federally-insured credit union should be mindful not only of the provisions of the Bank Bribery Act discussed herein, but also of other provisions of state or Federal law concerning conflicts of interest or ethical considerations. Moreover, regardless of whether a conflict of interest constitutes a criminal violation of the bank bribery statute, it could violate NCUA's Rules and Regulations. Those regulations contain various provisions which prohibit officials, employees and their family members from receiving personal gain in connection with business transactions of the credit union. See, for example, § 703.4(e), 12 CFR 703.4(e), concerning investments; § 701.21(c)(8), 12 CFR 701.21(c)(8), concerning loans; § 701.21(d)(5), 12 CFR 701.21(d)(5), concerning preferential lending; § 721.2(c), 12 CFR 721.2(c), concerning group purchasing activities; and § 701.27(d)(6), 12 CFR 701.27(d)(6), concerning CUSO's.

In connection with the Bank Bribery Amendments Act, consistent with the intent of the statute to proscribe corrupt activity within financial institutions, the code should prohibit any employee, officer, director, committee member, agent, or attorney (hereinafter "Credit

[1] Thus, if such payments were made to a credit union official by a sponsoring organization in the usual course of business, they would be excepted from coverage under the law.

Union Official") of a federally-insured credit union (hereinafter "credit union") from (1) soliciting for themselves or for a third party (other than the credit union itself) anything of value from anyone in return for any business, service or confidential information of the credit union, and from (2) accepting anything of value (other than bona fide salary and fees referred to in 18 U.S.C. 215(c)) from anyone in connection with the business of the credit union either before or after a transaction is discussed or consummated.

The credit union's codes or policies should be designed to alert Credit Union Officials about the bank bribery statute, as well as to establish and enforce written policies on acceptable business practices.

In its code of conduct, the credit union may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with credit union business. There are a number of instances where a Credit Union Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the credit union. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Credit Union Official; or if the benefit would be paid for by the credit union as a reasonable business expense if not paid for by another party. By adopting a code of conduct with appropriate allowances for such circumstances, a credit union recognizes that acceptance of certain benefits by its Credit Union Officials does not amount to a corrupting influence on the credit union's transactions.

In issuing guidance under the statute in the areas of business purpose entertainment or gifts, it is not advisable for the Board to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A credit union should seek to embody the highest ethical standards in its code of conduct. In doing this, a credit union may establish in its own code of conduct a range of dollar values which cover the various benefits that its Credit Union Officials may receive from those doing or seeking to do business with the credit union.

The code of conduct should provide that, if a Credit Union Official is offered or receives something of value beyond what is authorized in the credit union's code of conduct or written policy, the Credit Union Official must disclose that fact to an appropriately designated official of the credit union. The credit union should keep written reports of such disclosures. An effective reporting and review mechanism should prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the credit union to better protect itself from self-dealing. However, a Credit Union Official's full disclosure evidences good faith when such disclosure is made in the context of properly exercised supervision and control. Management should review the disclosures and determine that what is accepted is reasonable and does not pose a threat to the integrity of the credit union. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts.

The Board recognizes that a serious threat to the integrity of a credit union occurs when its Credit Union Officials become involved in outside business interests or employment that give rise to a conflict of interest. Such officials of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, credit unions are encouraged to prohibit, in their codes of conduct or policies, their Credit Union Officials from self-dealing or otherwise trading on their positions with credit unions or accepting from one doing or seeking to do business with the credit union a business opportunity not available to other persons or made available because of such officials' positions with the credit union. In this regard, a credit union's code of conduct or polilcy should require that its Credit Union Officials disclose all potential conflicts of interest, including those in which they have bene inadvertently placed due to either business or personal relationships with members, suppliers, business associates, or competitors of the credit union.

Exceptions

In its code of conduct or written policy, a credit union may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with credit union business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities, or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Credit Union Official) where the circumstances make it clear that it is those relationships rather than the business of the credit union concerned which are the motivating factor;

(b) Permit acceptance of meals, refreshments or entertainment, all of reasonable value and in the course of a meeting or other occasion the purpose of which is to hold bona fide business discussions, provided these expenses would be paid for by the credit union if not paid for by the other party as a reasonable business expense (the credit union may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from banks or financial institutions on customary terms to finance proper and usual activities of Credit Union Officials, such as home mortgage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of reasonable value, such as pens, pencils, note pads, key chains, calendars, and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other members;

(f) Permit acceptance of gifts of reasonable value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas, or bar or bat mitzvah (the credit union may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the credit union may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case-by-case basis, a credit union may approve of other circumstances, not identified above, in which a Credit Union Official accepts something of value in connection with credit union business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

Disclosures and Reports

To make effective use of these guidelines, the Board recommends the following additional procedures:

(a) The credit union should maintain a copy of any code of conduct or written policy it establishes for its Credit Union Officials, inlcuding any modifications thereof.

(b) The credit union should require an initial written acknowledgment from its Credit Union Officials of its code or policy and written acknowledgement of any subsequent material changes and

the officials' agreement to comply therewith.

(c) The credit union should maintain written reports of any disclosures made by its Credit Union Officials in connection with a code of conduct or written policy.

By the National Credit Union Administration Board on the 8th day of October 1987.

Becky Baker,

Secretary of the Board.

[FR Doc. 87-24128 Filed 10-16-87; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published September 21, 1987 (52 FR 35503). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the November 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m. Eastern Time.

ACRS Subcommittee Meetings

Joint Scram Systems Reliability and Core Performance, October 28, 1987 has been postponed to January 29, 1988.

Instrumentation and Control Systems, October 29, 1987, Washington, DC. The Subcommittee will discuss the NRC's proposed final resolution of USI A-47, "Safety Implications of Control Systems." In addition, the Subcommittee will discuss and consider the comments by Mr. Basdekas regarding the resolution of this USI.

Maintenance Practices and Procedures, October 30, 1987, Washington, DC. The Subcommittee will be briefed and will discuss the proposed Policy Statement on Maintenance of Nuclear Power Plants.

Systematic Assessment of Operating Experience, November 3, 1987, Washington, DC. The Subcommittee will discuss AEOD's role in helping the NRC learn from operating experience.

TVA Organizational Issues, November 4, 1987, Washington, DC. The Subcommittee will review the safety issues associated with TVA management reorganization and the Sequoyah restart.

Generic Items, November 17, 1987, Washington, DC. The Subcommittee will discuss with selected licensees the contribution to plant safety resulting from the implementation of resolved generic issues and USIs.

Decay Heat Removal Systems, November 17, 1987, Washington, DC. The Subcommittee will discuss: (1) The decision by Toledo Edison not to install a dedicated blowdown system at Davis Besse; (2) the status of NRC's action on potentially unanalyzed LB LOCA scenario; (3) implications of secondary side water level control in B&W OTSGs vis-a-vis operator actions in accident situations; and (4) implications of the Diablo Canyon loss of shutdown cooling event vis-a-vis lack of steam generator water box vents.

Thermal-Hydraulic Phenomena, November 18 and 19, 1987, Washington, DC. The Subcommittee will review key elements of NRC RES's 5-Year Thermal-Hydraulic Research Program for input to an ACRS Report on thermal-hydraulic research to Congress and the Commission.

Quality and Quality Assurance in Design and Construction, November 24, 1987, Washington, DC. The Subcommittee will review QA Experience in Readiness Reviews as applied to nuclear power plants, with a view toward possible application to HLW geologic repositories and monitored retrievable storage (MRS) facilities.

Babcock & Wilcox Reactor Plants, January 5, 1988, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter of V. Stello, EDO.

Joint Scram Systems Reliability and Core Performance, January 29, 1988, Washington, DC. The Subcommittees will review the current status of LWR plant operations (core reload designs, etc.) as they impact on core reactivity control operational limits (e.g., moderator temperature coefficients in general, and ATWS analyses in particular).

Reliability Assurance, February 9, 1988, Washington, DC. The Subcommittee will be briefed on the current status of equipment qualification research. The Subcommittee will also discuss lightning protection at nuclear power plants.

Advanced Reactor Designs, Date to be determined (November), Washington, DC. The Subcommittee will review and comment on the draft Commission paper that will be prepared by the NRC Staff regarding the severe accidents and containment issues for the DOE-sponsored advanced reactor designs.

Containment Requirements, Date to be determined (November/December), Washington, DC. The Subcommittee will review the proposed Containment Performance/Improvement Program Plan. The Plan is in three Parts: (1) Improved plant operations including EOPs, (2) severe accident vulnerabilities via Individual Plant Examinations, and (3) containment performance in the event of a severe accident.

Metal Components, Date to be determined (November/December), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping.

Combustion Engineering Reactor Plants, Date to be determined (November/December), Washington, DC. The Subcommittee will initiate its review of CESSAR-Plus (CE's Advanced LWR for the 1990's).

Safety Philosophy, Technology, and Criteria. Date to be determined (November/December), Washington, DC. The Subcommittee will meet with the NRC Staff and discuss their proposed plans for implementation of the Safety Goals Policy.

Severe Accidents, Date to be determined (November/December) (tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Diablo Canyon, Date to be determined (late November/early December), Location to be determined. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Westinghouse Reactor Plants, Date to be determined (December/January), Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives regarding the important design features and objectives of WAPWR (RESAR SP/90) and the AP 600 designs.

Auxiliary Systems, Date to be determined (January) (tentative), Washington, DC. The Subcommittee will discuss: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water System design, and (3) criteria being used by the NRC Staff to review the Chilled Water System design. To facilitate this discussion, some members of the Subcommittee will tour the Shearon Harris plant to look at the Chilled Water System design at that plant.

Structural Engineering, Date to be determined (3rd week of January), Albuquerque, NM. The Subcommittee will review the results of the model concrete containment test.

Thermal-Hydraulic Phenomena, Date to be determined (3rd week of January, 2-day meeting), Los Alamos, NM. The Subcommittee will review: (1) The documentation developed by LANL to support the TRAC PF1/MOD 1 Code pursuant to the RES CSAU requirements, and (2) final ECCS Rule version (tentative).

Auxiliary Systems, Date to be determined (February), Washington, DC. The Subcommittee will discuss the final report on the Fire Risk Scoping Study being performed by Sandia National Laboratories for the NRC.

Decay Heat Removal Systems, Date to be determined (February), Washington, DC. The Subcommittee will continue its review of the NRC-RES Resolution Position for USI A–45.

Containment Requirements, Date to be determined (February/March), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48). May also involve EPGs for BWRs.

Containment Requirements, Date to be determined (April), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types).

ACRS Full Committee Meeting

November 5–7, 1987: Items are *tentatively* scheduled.

**A. Nuclear Power Plant Technical Specifications (Open)*

Consider proposed NRC policy statement regarding the scope, etc., of Technical Specifications for nuclear power plants. Members of the NRC Staff will take part in the discussion.

**B. Use of Probabilistic Risk Assessment (Open)*

Briefing and discussion of NRC Staff response to ACRS recommendations regarding use of NUREG–1150, Reactor Risk Reference Document and the proposed implementation plan for NRC Quantitative Safety Goals.

**C. Standardization of Nuclear Power Plants (Open)*

Briefing regarding proposed EPRI requirements for advanced LWRs. Representatives of the NRC Staff and the nuclear industry (EPRI) will participate as appropriate.

**D. TVA Nuclear Power Plant Operations (Open)*

Consider proposed TVA Corporate Management Plan and proposed restart of the Sequoyah Nuclear Plant. Representatives of the NRC Staff and of the TVA will participate.

E. Internal Management of NRC Activities (Closed)

Discussion among ACRS members and meeting with NRC Commissioners regarding internal allocation of NRC resources and manpower to provide advice regarding nuclear radwaste.

**F. Station Blackout (Open)*

Briefing and discussion regarding proposed resolution of USI A–44, Station Blackout and related NUMARC activities.

G. Nomination of ACRS Officers for CY–1988 (Closed)

Discuss qualifications of ACRS members considered eligible for selection as Committee Officers for CY 1988.

**H. Future ACRS Activities (Open)*

Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee. Discuss proposed ACRS position/comments regarding legislative proposals to expand/abolish ACRS activities.

**I. Nuclear Power Plant License Renewal (Open)*

Briefing and discussion of proposed NRC policy regarding renewal of nuclear power plant operating licenses (tentative).

**J. Meeting with Director, NRC Office of Research (Open)*

Discuss items of mutual interest (tentative).

K. Appointment of New ACRS Members (Closed)

Discuss qualifications of nominees proposed for consideration as new ACRS members (tentative).

**L. Safety Implications of Control Systems (Open)*

Consider proposed resolution of USI A–47, Safety Implications of Control Systems, as well as comments by Mr. D. Basdekas regarding this matter as it relates to B&W nuclear power plants.

**M. Maintenance of Nuclear Facilities (Open)*

Status report regarding proposed NRC policy statement regarding maintenance practices at nuclear facilities.

**N. Babcock & Wilcox LWR Design Assessment (Open)*

Status report regarding the B&W/NRC design reassessment of the long-term safety of B&W light water reactor (tentative).

**O. Analysis and Evaluation of Operational Data (Open)*

Briefing and discussion regarding AEOD's evaluation of nuclear power plant operating experience.

**P. Diagnostic Evaluation Program (Open)*

Briefing regarding NRC's diagnostic evaluation program, including evaluation of the Dresden Nuclear Power Station.

**Q. ACRS Subcommittee Activities (Open/Closed)*

Briefings regarding the status of assigned ACRS subcommittee activities, including the safety and regulation of nuclear power plants.

**R. Nuclear Safety Research (Open)*

Discuss proposed ACRS recommendations regarding the NRC nuclear radwaste research program.

**S. Nuclear Radwaste Management (Open)*

Report of ACRS subcommittee activities regarding NRC's high-level and low-level radwaste program. Proposed ACRS comments on topics will be discussed as appropriate.

**T. Decay Heat Removal (Open)*

Briefing by NRC Staff regarding the status of resolution of USI A–45, decay heat removal from nuclear power plants.

U. Integrated Safety Assessment Program (Open)

Discuss proposed ACRS comments regarding proposed NRC Staff implementation of the ISAP.

V. Preparation of ACRS Reports to the NRC (Open)

Discuss proposed ACRS reports to the NRC regarding items considered during this meeting, as well as, safety implications of control systems in nuclear power plants.

December 3–5, 1987—Agenda to be announced.

January 7–9, 1988—Agenda to be announced.

Dated: October 14, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–24144 Filed 10–16–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16047; File No. 812–6861]

Fidelity Investment Life Insurance Co., et al.; Application

October 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Fidelity Investment Life Insurance Company ("Fidelity Life"), Fidelity Investments Variable Annuity Account I ("Separate Account"), and Fidelity Distributors Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Account in connection with the issuance and sale of variable annuity contracts.

Filing Date: September 2, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109, Attention: Rodney R. Rohda.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Fidelity Life, a stock life insurance company, established the Separate Account under Pennsylvania law on July 22, 1987, for the purpose of funding certain variable annuity contracts ("Contracts"). The Separate Account is currently seeking registration under the Act as a unit investment trust.

2. The Separate Account has five subaccounts which will invest in shares of the portfolios of the Variable Insurance Products Fund ("Fund"), a Massachusetts business trust registered under the Act as an open-end, diversified management investment company.

3. The minimum initial payment required to purchase a Contract is $5,000. Additional payments of $500 or more may be made prior to the annuity date.

4. Fidelity Life imposes an asset-based administrative charge at an annual rate of .25% to compensate it for expenses incurred in administering the Contracts. These expenses include the costs of issuing the Contract, maintaining necessary systems and records, and providing reports. Fidelity Life does not anticipate a profit from this charge.

5. Fidelity Life deducts a daily asset charge at an annual rate of .75% for its assumption of certain mortality and expense risks under the Contracts. Two-thirds of this charge (.50%) is allocated to mortality risks. The mortality risks borne by Fidelity Life include: the obligation to make the monthly annuity payments for the life of the annuitant; the provision of a limited death benefit if the annuitant dies prior to the annuity date; and the provision of annuity rates guaranteed in the Contracts. The remaining third of this charge (.25%) is alloated to the expense risk. Fidelity Life assumes the expense risk that the deduction of the administrative charge may prove insufficient to cover the actual cost of administering the Contracts.

6. Fidelity Life will realize a gain from the mortality and expense risk charge to the extent that amounts derived from that charge are not needed to provide for benefits and expenses under the Contracts.

7. Fidelity Life does not assess a sales charge under the Contract if the owner maintains the Contract in force for more than five years. If the owner surrenders all or part of the Contract within the first five Contract years, Fidelity Life will reduce the amount payable to the owner by a contingent deferred sales charge equal to 5% in the first contract year and declining 1% each year for Four years thereafter. In the sixth Contract year no contingent deferred sales charge will be applied to withdrawals or surrenders under the Contract. In addition, during the first five Contract years, no contingent deferred sales charge is assessed against the first withdrawal in each Contract year of an amount up to 10% of the owner's premium payments as of the date of withdrawal.

8. Applicants expect that the contingent deferred sales charge will not be sufficient to cover the expenses incurred in selling the Contracts. To the extent that the contingent deferred sales charge fails to cover distribution expenses, Fidelity Life will pay these expenses from its general assets which may include proceeds from the mortality and expense risk charge.

9. Fidelity Life represents that the mortality and expense risk charge is a reasonable charge to compensate it for the assumption of mortality and expense risks.

10. Fidelity Life represents that the charge of .75% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon Fidelity Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Fidelity Life will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

11. Fidelity Life acknowledges that any profit realized from the mortality and expense risk charge may be applied

to distribution expenses. Fidelity Life has concluded that there is a reasonable likelihood that this proposed distribution financing arrangement will benefit the Separate Account and the Contract owners. The basis for this conclusion is set forth in a memorandum which will be maintained by Fidelity Life at its executive office and will be available to the Commission.

12. Fidelity Life represents that the Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–24132 Filed 10–16–87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25033; File No. SR–NASD–87–36]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASDAQ Workstation Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed this proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to establish the NASDAQ Workstation Service on a permanent basis and to set the applicable fees. At the conclusion of the current pilot program,[1] subscribers electing the service will be obligated to pay the following monthly charges:

Access to NASDAQ Workstation Service.	$300 per PC.
Maintenance (offered only on UNISYS and Tandem PCs).	$55 per PC.
Advanced Communications.	$135 First PC, $85 each additional PC.

Assuming Commission approval, the foregoing fees will be incorporated into standardized service and equipment support contracts for subscribers of the NASDAQ Workstation Service. The NASD also proposes to allow subscribers eligible to receive NASDAQ Level 2 service the option of obtaining NASDAQ Workstation Service. The proposed charges would apply equal to each NASDAQ Workstation subscribers. The maintenance package, however, is optional. In that connection, the NASD would also offer the maintenance option, on identical terms, to any Level 2/3 subscriber employing UNISYS or Tandem equipment to emulate a Harris standard terminal. Such emulations, though independent of the NASDAQ Workstation Service, involve the same PC equipment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASDAQ Workstation Service constitutes a major NASD initiative to enhance the equipment and communications network used to deliver NASDAQ market data to subscribers. This initiative is intended to allow subscribers served directly by the NASD, I.E., those who currently receive Level 2/3 Service from NASDAQ, Inc., to obtain enhanced market information through the new subscriber-owned NASDAQ Workstation PC. With the new Workstation Service, delivery of current market data to a subscriber will no longer require individual queries that must be separately processed by NASDAQ, Inc.'s mainframe computers. Instead, specified market information relating to securities selected by the subscriber will be broadcast to the Workstation PC for storage, processing, and retrieval as needed. The PCs approved for the NASDAQ Workstation Service will have ample storage capacity to permit creation of a local data base to satisfy the subscriber's needs. This feature should reduce response times for subscribers' queries and result in more efficient utilization of NASDAQ, Inc.'s mainframe computers. The end result is more expeditious delivery of a greater amount of NASDAQ market data than is now possible with the Harris standard terminal. The latter equipment, introduced in 1981, is basically an interrogation device that lacks the processing and memory capacities found in PCs like those approved for the Workstation Service.

In addition to the approved PCs, the Workstation Service involves usage of specialized software developed by NASDAQ, Inc. That software provides sophisticated data management capabilities which enable subscribers to organize and display NASDAQ quotation and NASDAQ/NMS last sale information in various ways to suit their needs. For example, the software features include: (i) A market minder/limit watch with dynamic updates on the status of a group of securities selected by the subscriber; (ii) specialized displays programmed by a subscriber to observe inside quotation changes, quote updates of individual market makers, and last sale reports for NASDAQ/NMS securities; (iii) bid/ask retrieval with dynamic updates of the displayed securities' quotes; and (iv) multiple screen segments that can be utilized to display market data customized to the subscriber's needs. These features, which are accessible through a single PC, illustrate the flexibility and sophistication of the data management capabilities being offered to subscribers of the NASDAQ Workstation Service. Similarly, these features serve to differentiate the NASDAQ Workstation Service from the more limited informational capabilities offered to subscribers utilizing the Harris standard terminal.

NASDAQ Workstation Service commenced with the Commission's

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[1] *See* File No. SR–NASD–87–29 for a description of the NASDAQ Workstation Service and the terms of the related pilot program.

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issuance of an order authorizing a pilot program from July 31 to October 1, 1987.[2] During this period, participating NASDAQ market makers have been able to utilize the service, at no charge, in order to familiarize themselves with its features. Based on that experience, the participants will have objective information to factor into their decision on whether to continue NASDAQ Workstation Service after the pilot period. The purposes of this rule proposal are to obtain Commission approval of the following: Permanent (versus pilot) status for the NASDAQ Workstation Service; the charges that will apply prospectively to subscribers; and expanded access to non-market maker subscribers.

The instant filing proposes two categories of monthly fees which subscribers will pay for each NASDAQ Workstation terminal. First, there is a monthly service fee of $300 that was computed to be revenue neutral and consists of three components: (i) Recovery of developmental costs; (ii) replacement of the monthly service fee currently payable by NASDAQ Level 2/3 subscribers; and (iii) replacement of revenue from the $.02/ query charge which cannot be assessed directly to subscribers who opt for NASDAQ Workstation Service.[3] Because NASDAQ Workstation PCs can displace existing Harris standard terminals on a one-for-one basis, the NASD seeks to avoid any diminution of revenues that might result from this process. Accordingly, the NASD has computed a monthly service fee that approximates the average, service-based revenue generated by a Harris terminal in operation today.

The second category of fees payable by NASDAQ Workstation subscribers consists of two elements, equipment maintenance and communications support. Although the NASD will have no proprietary interest in the PCs used for the NASDAQ Workstation Service, the Association recognizes that a high level of functionality is exceedingly important for NASDAQ market makers and the investing public. Accordingly, the NASD has contracted with the Harris Corporation to provide a cost-effective maintenance package for subscribers utilizing compatible PCs produced by two firms. Although this service is optional, the NASD anticipates that its cost, coupled with Harris' maintenance experience respecting the existing terminal population, will induce broad acceptance of this maintenance package. The proposed maintenance charge of $55/PC/month is fully cost-based with two components: (i) A pass-through charge payable to Harris Corporation pursuant to a maintenance agreement with the NASD and (ii) a charge reflecting the allocable portion of general and administrative costs. Similarly, the communications support charge of $135 is fully cost-based in that it is calculated to recover: (i) The costs incurred by NASDAQ, Inc. in acquiring, installing, and maintaining specialized modems needed to provide NASDAQ Workstation Service to subscribers and costs related to the equipment replaced; (ii) the allocable costs of technical staff who monitor the NASDAQ communications network to isolate and correct problems traceable to that network versus other sources; and (iii) a charge reflecting the allocable portion of general and administrative costs.[4] Thus, the NASD's communications support charge consists exclusively of the direct and allocable indirect costs incurred in delivering the NASDAQ Workstation Service to a projected base of subscribers.

The major change introduced by this filing is the establishment of subscriber fees that would take effect at the pilot's conclusion. In this regard, section 15A(b)(5) of the Act holds the Association to a standard of reasonable fees equitably allocated in setting charges for automation services offered to members and non-members alike. The fee structure posed for the NASDAQ Workstation Service is substantially cost-based to assure a reasonable, composite charge to all subscribers. Specifically, derivation of the proposed fee structure recognizes the direct and indirect costs traceable to the technical development, start-up, and reliable delivery of NASDAQ Workstation Service to a projected subscriber base. This approach is clearly evident in the components of the maintenance and communications support charges identified above. Further, the proposed monthly service charge is calculated to recover developmental costs and to maintain the revenue stream generated today through service and query charges currently paid by the targeted subscribers. Revenue maintenance is justified because a NASDAQ Workstation PC can displace existing Harris terminals on a one-for-one basis. Continuity of service-based revenue is essential to offset a portion of the costs of various operational support departments and regulatory programs which depend upon the NASDAQ data base. In light of all of these factors, the NASD posits that the proposed fee structure for the NASDAQ Workstation Service satisfies the elements of reasonableness and equitable allocation prescribed by section 15A(b)(5) of the Act.

Regarding the permanent status of and the expanded access to NASDAQ Workstation Service, the NASD cites sections 11A and 15A of the Act as providing the necessary statutory bases. Subsections (A) through (D) of section 11A(a)(1) contain a series of Congressional findings respecting the goals of a national market system. The theme underlying these provisions is that of enhancing market efficiency through application of advanced data processing and communications technologies. The NASDAQ Workstation Service combines powerful PC's with specialized software developed by NASDAQ, Inc. to provide state-of-the-art data management capabilities to all interested subscribers. In particular, the NASDAQ Workstation's market monitoring and display capabilities were designed to increase the operational efficiency of subscribing market makers, to increase their competitiveness, and to contribute to the liquidity of the NASDAQ market. Further, many of the Workstation's data management features could be useful to professional money managers and institutional investors who may now subscribe to NASDAQ Level 2 service. Permitting all categories of subscribers to utilize NASDAQ market data more effectively comports with the broad policy goals articulated under section 11A(a)(1) of the Act.

The Association also relies on section 15A(b)(6) of the Act in support of this proposal. Section 15A(b)(6) requires, inter alia, that the Association's rules promote just and equitable principles of trade, facilitate securities transactions, perfecvt the mechanism of a free and open market and a national market

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[2] Securities Exchange Act Release No. 24749 (July 27, 1987), approving File No. SR–NASD–87–29. The NASD will shortly submit a filing to extend the duration of the pilot program through October 31, 1987.

[3] The $.02/query charge, which covers the costs of lines between the regional concentrators and subscribers' terminals as well as dial back-up capability, is currently paid by all NASDAQ Level 2/3 subscribers utilizing Harris standard terminals owned by NASDAQ, Inc. Queries entered by these subscribers are processed by the NASD's mainframe computer and responses resent through the NASDAQ network. In contrast, queries entered by subscribers accessing the NASDAQ Workstation PC will be processed by that subscriber's local data base. Hence, the usage based query fee that now covers these communications charges can no longer be applied to the NASDAQ Workstation Service.

[4] The lower communications support charge of $85 for additional terminals reflects certain economies in the substitution and maintenance of multiple PC modem sharing devices at the same subscriber location.

system, and generally protect investors and the public interest. Allowing non-market makers to elect NASDAQ Workstation Service broadens access to the advanced data management features that it provides. Broader access translates to more opportunities for subscribers to utilize NASDAQ market data more efficiently in making trading decisions. To encourage the broadest possible access, existing Level ⅔ subscribers will be allowed to substitute NASDAQ Workstations for Harris terminals, notwithstanding the terms of their outstanding agreements with NASDAQ, Inc. The NASD submits that broad access to the advanced data management capabilities attributable to the NASDAQ Workstation software will serve to facilitate securities transactions, advance the policy goals underlying a national market system, and generally protect investors and the public interest. Accordingly, approval of the instant filing is fully consistent with the above-cited elements.

In sum, the NASD believes that Commission approval of this proposal can be readily grounded upon its conformance with the respective policy goals and requirements of sections 11A(a)(1)(A) through (D), and 15A(b)(5) through (6) the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The instant proposal does not portend the imposition of any competitive burden. This conclusion is supported by several factors. First, subscription to the NASDAQ Workstation Service will be voluntary and open to any subscriber on the same terms. A firm's decision to elect the new service will be based upon an assessment of its costs and benefits relative to accessing the desired level of NASDAQ service via Harris standard terminal or the NQDS service from independent vendors. Second, the NASD will continue to make available the Harris terminal equipment. The NASD expects that many firms opting for NASDAQ Workstation Service will continue to use some of their existing Harris terminals. Third, the modifications embodied in this filing do not create a competitive burden vis-a-vis vendors of securities market information. Provision of the new service does not impair any vendor's ability to access NASDAQ market makers' quotes (i.e., the NQDS service) or NASDAQ/NMS last sale reports via high speed data feeds. Moreover, because the service fee is revenue neutral and the support changes fully cost-based, the projected fee structure does not undercut the competitiveness of vendors in servicing non-market makers. Fourth, it must be emphasized that the NASDAQ Workstation Service was principally designed to provide sophisticated data management capabilities to NASDAQ market makers. Such capabilities promote greater efficiency in market maker's routine activities and thereby enhance the quality of the NASDAQ marketplace. This situation is analogous to an exchange's upgrading of systems that support market making on a physical trading floor. Consequently, permanent status for the NASDAQ Workstation Service does not pose a competitive threat to vendors servicing a much broader range of end users.

Based upon the foregoing, it is believed that no competitive burden will result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** [5] or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 29, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 15, 1987.

[FR Doc. 87-24256 Filed 10-16-87; 9:25 am]

BILLING CODE 8010-01-M

[5] The NASD has requested that the Commission approve the proposal prior to 30 days after publication of the proposal in the **Federal Register** in order to ensure continuity in servicing NASDAQ Workstation subscribers who elect the service at the end of the pilot program on October 31, 1987.

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-5134]

Control Data Community Ventures Fund, Inc.; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to the Regulations governing small business investment companies (13 CFR 107.601 (1987)) for the transfer of ownership and control of Control Data Community Ventures Fund, Inc, 8100 34th Street South, Minneapolis, Minnesota 55440, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Control Data Community Ventures Fund, Inc., which was licensed on January 29, 1979, is subject to the prior written approval of SBA.

It is proposed that Capital Dimension, Inc. a holding company, will acquire all of the issued and outstanding capital stock of Control Data Community Ventures Fund, Inc., from Control Data Corporation. Upon completion of the transaction, Control Data Community Ventures Fund, Inc., will change its name to Capital Dimensions Venture Fund, Inc.

The proposed officers, directors and sole shareholder are as follows:

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Name and Address	Title or Relationship	Percent of Ownership
Thomas F. Hunt, Jr., 1404 Echo Drive, Burnsville, Minnesota 55337	President, Director	
Dean R. Pickerell, 15120 Evelyn Lane, Minnetonka, Minnesota 55345	Executive Vice President, Secretary, Treasurer, Director	
David J. Skoog, 6604 Cornelia Drive, Edina, Minnesota 55435	Director	
Capital Dimensions, Inc., Suite 148, 1631 79th Street East, Minneapolis, Minnesota 55420	Sole Shareholder, Investment Advisor	100

Mr. Hunt and Mr. Pickerell are the sole common stockholders of Capital Dimensions, Inc.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management, and the probability of successful operations under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Minneapolis, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 8, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-24102 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2292]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 7, 1987, I find that Los Angeles County and the adjacent County of Orange in the State of California constitute a disaster loan area because of damage from an earthquake and continuing aftershocks beginning on October 1, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 7, 1987, and for economic injury until the close of business on July 7, 1988, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 229202 for physical damage and for economic injury the number is 656600.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 9, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-24138 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #6565]

Texas; Declaration of Disaster Loan Area

Comal County, Texas, constitutes an Economic Injury Disaster Loan Area due to flooding of the Guadalupe and Comal Rivers during June, July, and August 1987. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 8, 1988, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9.0 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002).

Dated: October 8, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-24139 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Chicago, IL

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Chicago, will hold a public meeting at 10:00 a.m. on Friday, October 23, 1987, at 219 South Dearborn, Dirksen Federal Building, Room 1220, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John L. Smith, District Director, U.S. Small Business Administration, 219 South Dearborn St., Room 437, Chicago, Illinois, 312/353-4508.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87-24133 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting; Kansas City, MO

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting at 10:30 a.m. on Monday, November 9, 1987, at United Missouri Bank Building Auditorium, 10th and Grand, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bill Powell, Regional Administrator, U.S. Small Business Administration, 911 Walnut, 13th Floor, Kansas City, Missouri, (816) 374-3316.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87-24134 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Salt Lake City, UT

The U.S. Small Business Administration Region VIII Advisory

Council, located in the geographical area of Salt Lake City, Utah will hold a public meeting at 9:00 a.m. on Thursday, November 12, 1987 at the Salt Lake Hilton Hotel, 150 West 500 South, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah 84138, (801) 524–5804.

Jean M. Nowak,

Directory, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87–24136 Filed 10–16–87; 8:45 am]

BILLING CODE 8025–01–M

Wyoming District Advisory Council Meeting

The U.S. Small Business Administration Wyoming District Advisory Council, located in the geographical area of Wyoming, will hold a public meeting at 9:00 a.m., on Wednesday, October 28, 1987, at the Federal Building—100 East "B" Street, Room 3116, Casper, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, P.O. Box 2839, Casper, Wyoming 82602, (307) 261–5761.

Jean Mr. Nowak,

Director, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87–24135 Filed 10–16–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–87–076]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, November 10 and 11, 1987, at the Travelodge at the Wharf, 250 Beach Street, San Francisco, California, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction of new Committee Sponsor.
2. Review of action taken at the 39th meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Horsepower Regulation Subcommittee report.
7. Presentation on industry trends.
8. Report on non-emergency assistance.
9. Report on National Association of State Boating Law Administrators Association (NASBLA) annual conference.
10. Report of the Hull Identification Number (HIN) Subcommittee.
11. Presentation on "Thrillcraft".
12. Update on boating safety "Hotline".
13. Status report on mandatory operator education.
14. Update on the Personal Flotation Device (PFD) pamphlet project.
15. Presentation on implementation of the North American Datum of 1983.
16. Update on intoxicated boater project.
17. Remarks by Chief, Office of Boating, Public, and Consumer Affairs.
18. Reply to members' items.
19. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. E. Hammond, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G–BBS), Washington, DC 20593–0001, or by calling (202) 267–0997.

Issued in Washington, DC.

W. P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87–24169 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–14–M

[CGD–87–077]

National Boating Safety Advisory Council Subcommittee on Consumer Education; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Consumer Education to be held on Monday, November 9, 1987 at the Travelodge at the Wharf, 250 Beach St., San Francisco, California, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Briefing on new initiative by the boating industry (National Marine Manufacturers Association) to educate new boaters in the basics of safe boating, and proposed steps to curb intoxicated boater operation.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. E. Hammond, Exectutive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC, 20593–0001, or by calling (202) 267–1060.

Issued in Washington DC.

W.P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87–24170 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–14–M

[CGD–87–078]

National Boating Safety Advisory Council Subcommittee on Hull Identification Number (HIN); Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Hull Identification Number (HIN) to be held on Monday, November 9, 1987 at the Travelodge at the Wharf, 250 Beach St., San Francisco, California, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Discuss the possibility of adding additional characters to the Hull Identification Number (HIN) to assist in recovering stolen boats.

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Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any memnber of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R.E. Hammond, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC 20593-0001, or by calling (202) 267-1060.

Issued in Washington, DC.

W.P. Newel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87-24171 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD-87-079]

National Boating Safety Advisory Council Subcommittee on Horsepower Regulation; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Horsepower Regulation to be held on Monday, November 9, 1987 at the Travelodge at the Wharf, 250 Beach Street, San Francisco, California, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Review and discuss the proposed changes in safe powering regulations for tiller steered boats.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R.E. Hammond, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC 20593-0001, or by calling (202) 267-1060.

Issued in Washington, DC.

W.P. Newel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87-24172 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-14-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, October 13, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of The Peoples Bank, Nelsonville, Ohio, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in The Security Bank, Athens, Ohio, and for consent to establish the three offices of The Security Bank as branches of The Peoples Bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,110
Oklahoma City Consolidated Office, Oklahoma City, Oklahoma

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 14, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-24214 Filed 10-15-87; 1:51 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 13, 1987, 52 FR 38039.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 14, 1987, 10:00 a.m.

CHANGE IN THE MEETING: The following Item has been added:

Item No., Docket No., and Company

RP-5
Docket No. RM87-34-000, Regulation of Natural Gas Pipelines After Wellhead Decontrol

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24198 Filed 10-15-87; 11:09 am]

BILLING CODE 6717-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 19, 1987:

Open meetings will be held on Tuesday, October 20, 1987, at 10:00 a.m. and on Wednesday, October 21, at 2:00 p.m., in Room 1C30. A closed meeting will be held on Tuesday, October 20, 1987, following the 10:00 a.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, October 20, 1987, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment amendments to Rule 204-2, the recordkeeping rule under the Investment Advisers Act of 1940. The proposed amendments would require advisers to retain, for Commission inspection, all advertisements and supporting records for performance information in advertisements. These advertisements and supporting records would be required to be kept for five years from the end of the fiscal year in which the advertisement was last published. For further information, please contact Dorothy M. Donohue at (202) 272-7317.

2. Consideration of whether to adopt an amendment to Rule 19b-1 under the Investment Company Act of 1940. The amendment would allow certain registered investment companies to make one additional distribution of long-term capital gains with respect to a taxable year for the purpose of not incurring any excise tax. The Commission will also consider adopting technical changes to the rule to correct certain references to prior distributions and the Internal Revenue Code. For further information, please contact Brian Kaplowitz at (202) 272-2048.

3. Consideration of whether to adopt Rule 6c-9 and Form N-6C9 under the Investment Company Act of 1940. Rule 6c-9 would provide an exemption from the provision of the Act, under certain conditions, to permit foreign banks to offer their own debt securities or non-voting preferred stock in the United States without registering as investment companies or obtaining exemptive orders. The exemption would also be available where a foreign bank offers its securities in the United States indirectly through a finance subsidiary. The form would be filed by a foreign bank or foreign finance subsidiary to appoint a United States agent for service of process. For further information, please contact Ann M. Glickman at (202) 272-3042.

4. Consideration of whether to issue a release adopting an amendment to Rule 3a12-8 under the Securities Exchange Act of 1934 that would designate as exempted securities, solely for purposes of the trading and marketing in the U.S. of futures contracts on those securities, debt securities issued by the governments of Australia, France and New Zealand. For further information, please contact David Underhill at (202) 272-2375.

The subject matter of the closed meeting scheduled for Tuesday, October 20, 1987, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.
Formal order of investigation.

The subject matter of the open meeting scheduled for Wednesday, October 21, 1987, at 2:30 p.m., will be:

The Commission will meet with representatives of the Financial Executives Institute (FEI) Committee on Corporate Reporting to discuss various accounting and reporting matters of mutual interest. The discussion will include the SEC's electronic data gathering, analysis and retrieval system

BEST COPY AVAILABLE

(Edgar), FEI's initiative on summary reporting, the Report of the Treadway Commission and various projects being undertaken by the FASB and Auditing Standards Board. For further information, please contact Jack Albert or Bob Lavery at (202) 272–2130.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2149.

Shirley E. Hollis,

Assistant Secretary.

October 14, 1987.

[FR Doc. 87–24165 Filed 10–14–87; 4:34 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1394]

TIME AND DATE: 10 a.m. (CDT), Wednesday, October 21, 1987.

PLACE: City Hall, Council Chamber, 402 Lee Street, NE., Decatur, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 23, 1987.

Discussion Item

1. Progress Report on the Aquatic Weed Problem in TVA Reservoirs.

Action Items

B–Purchase Awards

B1. Invitation SA–02493A—Indefinite Quantity Term Agreement for Marginally Punched Continuous Form Paper.

B2. Request for Proposal AA–466203—Total Ash Management Program for John Sevier Fossil Plant.

C—Power Items

C1. Supplement to Contract No. TV–62313A with the State of Alabama for Cooperation in the Development and Implementation of Radiological Emergency Plans as Required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

D—Personnel Items

D1. Revised Pay Plan and Salary Schedule for the Management and Specialist Schedule, and the Physician Schedule.

D2. Consulting Contract with Duff and Phelps, Inc., Chicago, Illinois, Covering Arrangements for Services of William A. Abrams to Advise on Financing of the TVA Power Program, Requested by the Office of Power.

D3. Supplement to Personal Services Contract No. TV–71877A with Shaw, Pittman, Potts, and Trowbridge, Washington, DC, for Legal Services, Requested by the Office of the General Counsel.

E—Real Property Transactions

E1. Sale of Noncommercial, Nonexclusive Permanent Easement to James H. Lane for Construction and Maintenance of Recreation Water Use Facilities, Affecting a Total of 0.1 Acre of Tellico Reservoir Shoreline in Monroe County, Tennessee—Tract No. XTELR–56RE.

E2. Grant of Permanent Easement to the City of Oak Ridge, Tennessee, for Road and Utility Purposes, Affecting Approximately 0.47 Acre of Melton Hill Reservoir Land in Anderson County, Tennessee—Tract No. XTMHR–17H.

E3. Grant of Permanent Easement for a Road Right-of-Way Affecting 1.03 Acres of Kentucky Reservoir Land in Exchange for a Permanent Road Right-of-Way Easement to be Granted TVA Affecting 3.33 Acres of Adjoining Private Property Owned by J.W. Green—Tract Nos. XGIR–912H and GIR–8685E.

E4. Resolution Declaring Approximately 21 Acres of Tims Ford Reservoir Land in Franklin County, Tennessee, as Surplus and Authorizing its Sale at Public Auction by Tennessee Elk River Development Agency as Agent for TVA, as Part of Robinson Hollow Cabin Sites Subdivision Development—Tract No. XTMFR–18.

E5—Filing of Condemnation Cases.

[1] F1. Agreement with United States Army Toxic and Hazardous Materials Agency for Reimbursable Services Related to Environment Activities at the Phosphate Development Works Disposal Area at the National Fertilizer Development Center in Muscle Shoals.

F2. Memorandum of Understanding No. TV–73618A with the National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce, Covering Arrangements for Performance of Charting Work by TVA.

F3. TVA Code Relating to Employee Recognition Program.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: October 14, 1987.

John G. Stewart,

Manager of Policy, Planning and Budget.

[FR Doc. 87–24196 Filed 10–15–87; 11:09 am]

BILLING CODE 8120–01–M

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[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE COMMISSION MEETING

DATE AND TIME: October 28–29, 1987

PLACE: Empire Blue Cross/Blue Shield Building, Board Room, 622 Third Avenue, New York, New York

STATUS:

October 28, 1987, 9:00 a.m.–11:00 a.m.
Closed
Section 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR Part 1703
October 28, 1987, 11:15 a.m.–5:15 p.m.
Open
October 29, 1987, 8:30 a.m.–4:30 p.m.
Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of Minutes
Executive Diretor's Report:
FY 1987 End-of-Year Program Report
Administrative Report
NCLIS Committee Reports:
Bicentennial
Budget and Finance
International
Program Review
Public Affairs
Recognition Awards
1989 White House Conference on Library and Information Services
OMB Clearance Report
Privatization Information Resources
Walgren Letter:
HR 2159
HR 2160
Cultural Minority Task Force
NCLIS FY 1988 Program Plans
Chief Officers of State Library Agencies Briefing, Nettie Taylor, Maryland State Librarian
Guest Speaker: Joseph Shubert, New York State Librarian
Sensitive But Not Classified Information—Recommendations
Glenerin Declaration
FBI Library Awareness Program

Special provisions will be made for handicapped individuals. Call Jane McDuffie (202) 254–3100 no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Vivian J. Arterbery, NCLIS Executive Director, 1111 18th Street, Suite 310, Washington, DC 20036, (202) 254–3100.

Dated: October 13, 1987.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 87–24207 Filed 10–15–87; 8:45 am]

BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/49A; FRL-3273-9]

Preliminary Determination To Cancel Certain Registrations of Tributyltin Products Used as Antifoulants; Availability of Technical Support Document and Draft Notice of Intent to Cancel

Correction

In notice document 87-23177 beginning on page 37510 in the issue of Wednesday, October 7, 1987, make the following corrections:

1. On page 37514, in the first column, in paragraph 5., in the 15th line, "300" should read "3000", and the 20th line should read: "concentration 3000 times greater than the ambient water column concentration when the solid".

2. On page 37515, in the second column, in the second complete paragraph, in the fourth line, "do not" should read "do not use".

3. On page 37516, in the first column, in the second paragraph, in the 10th line, "has reformed" should read "has performed".

4. On the same page, in the third column, in the first complete paragraph, the last line should read: "about 20 $\mu g/cm^2/day$.".

5. On page 37518, in the second column, under *G. Proposed Regulatory Decision*, in the sixth line, "cm^2 14 days" should read "cm^2/14 days", and in the eighth line, "cm^2 day" should read "cm^2/day;".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Qualifications of Medical Professionals Evaluating Mental Impairments

Correction

In rule document 87-20679 beginning on page 33921 in the issue of Wednesday, September 9, 1987, make the following correction:

PART 404—[CORRECTED]

On page 33926, in the third column, after amendatory instruction 4., in the first line, "Part 104" should read "Part 404".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 87-126]

Decision on Domestic Interested Party Petition Concerning Classification of Orange Juice Concentrate-Based Product

Correction

In rule document 87-23183 beginning on page 37443 in the issue of Wednesday, October 7, 1987, make the following corrections:

1. On page 37443, in the third column, under **SUMMARY**, in the ninth line, "specifically" should read "specially".

2. On page 37444, in the first column, in the fourth and ninth lines, "specifically" should read "specially".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 87-125]

Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning Classification of Fiber Reinforced Cellulosic Plastic Sausage Casings

Correction

In rule document 87-23182 beginning on page 37442 in the issue of Wednesday, October 7, 1987, make the following corrections:

1. On page 37442, in the second column, under **SUMMARY**, in the 15th and 20th lines, "specifically" should read "specially".

2. On page 37443, in the second column, in the third complete paragraph, in the seventh line, "Trade of" should read "Trade or".

BILLING CODE 1505-01-D

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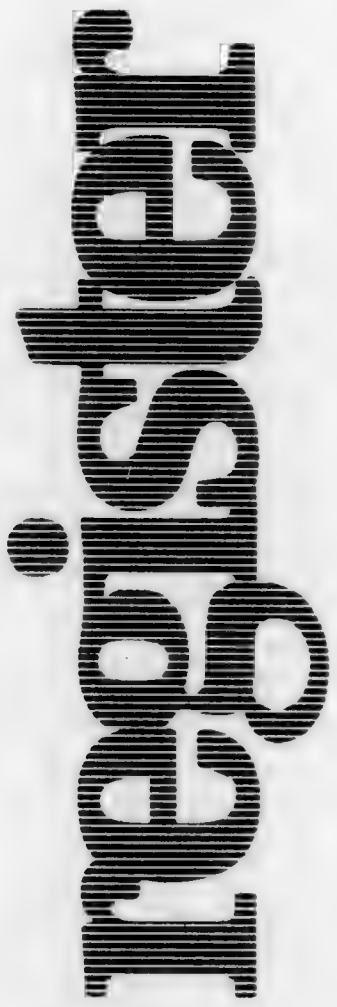

Monday
October 19, 1987

Part II

Environmental Protection Agency

40 CFR Part 252

Guideline for Re-refined Oil Content in Oil Procured by the Federal Government; Proposed Rule

VOL 52 ISS 201 OCT 19 1987 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 252

[SWH-FRL 3080-5]

Guideline for Re-refined Oil Content in Oil Procured by the Federal Government

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing a guideline for Federal procurement of certain engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils. The guideline implements section 6002(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), which requires EPA to designate items which can be produced with recovered materials and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated an item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

The guideline designates engine lubricating oils, hydraulic fluids, and gear oils as products for which the procurement requirements of RCRA section 6002 apply. The guideline also contains recommendations for implementing these procurement requirements.

DATE: EPA will accept public comments on this proposed guideline until December 18, 1987.

ADDRESSES: The public must submit an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562). 401 M Street SW., Washington, DC 20460. Place "Docket number F-87-RLOP-FFFFF" on your comments. Comments received by EPA may be inspected in Room MLG-100, U.S. EPA, 401 M Street SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Introduction
  A. Purpose and Scope
  B. Requirements of Section 6002
  C. Criteria for Selection of Procurement Items
  D. Background Information on Lubricating Oils
III. Rationale for Designating Re-refined Oils
  A. Significant Solid Waste Disposal Problem
  B. Feasible Methods of Recovery
    1. Acid/Clay
    2. Vacuum Distillation/Clay Contacting
    3. Phillips Re-refined Oil Process (PROP)
    4. Vacuum Distillation/Hydrofinishing
    5. Experimental Processes
  C. Technically Proven Uses
    1. Historic Uses of Re-refined Oils
    2. Equivalence of Re-refined Oils to Virgin Oil
    3. Foreign Use of Re-refined Oils
    4. Military Specifications
    5. NBS Provisional Tests
  D. Federal Purchasing Power
  E. Other Considerations
    1. Availability of Used Oil Studies
    2. Specifications
IV. Proposed Guideline
  A. Purpose
  B. Scope
  C. Applicability
    1. Procuring Agency
    2. The $10,000 Threshold
  D. Definitions
  E. Requirements vs. Recommendations
  F. Specifications
    1. Recommendations
    2. Revisions
  G. Affirmative Procurement Program
    1. Recovered Materials Preference Program
    2. Promotion Program
    3. Estimates, Certification, and Verification
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V. Price, Competition, Availability, and Performance
  A. Price
  B. Competition
  C. Availability
  D. Performance
VI. Implementation
VII. Supportive Analyses
  A. Environmental Impacts
  B. Energy Impacts
  C. Executive Order No. 12291
  D. Regulatory Flexibility Act

I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A Purpose and Scope

The Environmental Protection Agency (EPA) is proposing today one in a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to purchase certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (40 CFR Part 249). EPA proposed a second guideline, for paper and paper products containing recovered materials, on April 9, 1985 (50 FR 14076). EPA is in the process of finalizing this guideline. A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). Today's guideline covers engine lubricating oils, hydraulic fluids, and gear oils.

This preamble describes the requirements of section 6002, explains the basis for designating engine lubicating oils, hydraulic fluids, and gear oils as procurement items subject to section 6002, and discusses the provisions of the proposed guideline. It also provides information regarding the price, availability, and performance of re-refined oils.

B. Requirements of Section 6002

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies which use appropriated Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the cost of such items purchased during the preceding year exceeded $10,000.

Federal agencies responsible for drafting or reviewing specifications for procurement items were required to review and revise them by May 8, 1986 in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, when EPA designates a procurement item, procuring agencies must revise their specifications to require the use of

recovered materials in such items to the maximum extent possible without affecting the intended use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

The program must be consistent with Federal procurement requirements.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designed to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability.

C. Criteria for Selection of Procurement Items

In the preamble to the fly ash guideline, EPA established the following four criteria for the selection of procurement items for which guidelines will be prepared (48 FR 4231–4232, January 28, 1983):

(1) The waste material must constitute a significant solid waste management problem due either to volume, degree of hazard or difficulties in disposal;

(2) Economic methods of separation and recovery must exist;

(3) The material must have technically proven uses; and

(4) The Federal government's ability to affect purchasing or use of the final product or recovered material must be substantial.

These criteria incorporate all of the factors which section 6002(e) requires EPA to consider in designating items subject to the section 6002 procurement requirements.

Section 6002(e), as amended by section 501 of the Hazardous and Solid Waste Amendments of 1984, also required EPA to issue guidelines for three procurement items (by October 1, 1985). In order to expedite the promulgation of these guidelines, EPA considered two other factors in selecting items for guidelines: The ready availability of information on technical, economic, and institutional issues associated with the procurement item, and the existence of government or industry specifications allowing use of recovered materials in the item.

D. Background Information on Lubricating Oils

Lubricating oils are used to reduce friction and wear by interposing a film of material between rubbing surfaces. They are compounds of a refined oil or synthetic oil basestock and an additive package tailored to meet the requirements of the intended end use of the oils.

Lubricating oils have many applications. Automotive lubricating oils include engine oils, hydraulic fluids, and gear oils. Industrial lubricating oils include general lubricants, such as hydraulic, circulating, turbine, and gear oils; engine oils; metalworking oils, such as rolling, cutting, grinding, and quenching oils; and electrical rubber, spray, ink, and other process oils. Lubricating oils also are used in railroad, marine, and aviation engines.

Used lubricating oils contain contaminants picked up during use (e.g., lead, iron), as well as the components of the additive packages (e.g., metals, organics). Re-refining removes the contaminants and additives to produce a new basestock, thereby allowing the oil to be used repeatedly.

III. Rationale for Designating Re-Refined Oils

This section of the preamble demonstrates that re-refined oils satisfy EPA's criteria for designating items subject to the procurement requirements of RCRA section 6002.

A. Significant Solid Waste Disposal Problem

The first criterion is that the waste material constitutes a significant solid waste management problem.

Over 2 billion gallons of lubricating oils are sold in the United States annually. Approximately 1.2 billion gallons of used oil are generated, the rest being lost through engine combustion, leakage, and handling. Of this 1.2 billion gallons, 70 percent is recycled; the remaining 30 percent is discharged to land or to sewers. The predominant method of recycling used oil is to burn it as fuel. Other activities include re-refining to remove contaminants, application to land or water for weed or insect control, and use as a dust suppressant (e.g., road oiling).

Used oil frequently is contaminated with organic and inorganic toxics. Some of these substances, such as toxic metals, contaminate the oil during ordinary use in automobile engines. Other contaminants, such as solvents, result from incidental contamination or mixing of the used oil with hazardous wastes.

The organic and inorganic contaminants in used oil rarely are removed when the oil is processed to make fuel. The fuel is burned sometimes in non-industrial boilers, which typically are small and incapable of complete combustion of toxic materials. As a result, when used oil is burned as fuel, the toxic constituents are emitted to the environment. (See the discussion in EPA's regulation for burning and blending of used oil fuel, 50 FR 49191–49192, November 29, 1985.)

Various studies have concluded that unregulated land disposal or land application of used oils, discharging used oil threaten human health and the environment. These practices have led to contamination of land, surface water, and food chain crops with lead, phenols, and other contaminants. They also have affected the quality of drinking water.

In addition, when used oils are mixed with hazardous wastes or other hazardous substances prior to disposal or use as a dust suppressant or a fuel, toxic constituents are released to the environment. Recent examples are the dioxin contamination of Times Beach, Missouri and the PCB contamination of roads and horse arenas in Missouri.

Congress has determined that unregulated disposal and recycling of used oil is a threat to human health and the environment. The Used Oil Recycling Act of 1980 and the Hazardous and Solid Waste Amendments of 1984 require EPA to determine whether used oil should be listed as a hazardous waste. EPA also is required to issue regulations for recycling of used oil. EPA has issued final regulations (50 FR 49164, November 29, 1985) and proposed other regulations to implement this mandate. The Agency currently is considering a range of options to control used oil recycling adequately without imposing unwarranted adverse impacts on recycling and ultimate environmental detriment.

Under the proposed regulations, re-refiners would be subject to regulation as a recycled oil facility. The re-refined

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oil products that they produce, however, would be classified as a product, not a hazardous waste, and would not be subject to the hazardous waste regulations. (See note 18, 51 FR 49218, November 29, 1985 and 40 CFR 261.3(c)(2)(i).)

The guideline proposed today complements the used oil regulatory program by encouraging re-refining, which EPA generally considers to be an acceptable, environmentally sound means of recycling used oil. (See 50 FR 1687.) Specifically, the proposed guideline is designed (1) to develop government demand for re-refined oils, (2) to encourage investment in additional re-refining capacity, (3) to create an alternate demand for the 100 million gallons of used oil potentially to be displaced by the used oil fuel restrictions, and (4) to increase use of re-refining technologies that generate little or no hazardous waste.

In sum, used oil presents a significant solid waste disposal problem. EPA is addressing this problem through a regulatory program designed to control used oil disposal and recycling activities and to channel used oil to facilities involved in environmentally sound recycling. This guideline is part of that effort.

B. Feasible Methods of Recovery

The second EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA section 6002 is the existence of economic methods of separation and recovery.

Economically feasible methods exist to re-refine used oils to produce basestocks. The four major processes presently in use, available for use, or under development in the United States today are acid/clay, vacuum distillation/clay contacting, the Phillips re-refined oil process (PROP), and vacuum distillation/hydrofinishing. There also are several experimental processes being developed in the United States or in Europe.

1. Acid/Clay

Until the late 1970's, acid/clay treatment was the primary re-refining process used in the United States. Because it generates a large volume of hazardous waste and cannot easily remove many of the additives in the oil, it has been replaced by other technologies.

During acid/clay treatment, the used oil is screened/settled, dehydrated, treated with sulfuric acid, steam-stripped, and clay-contacted (i.e., filtered). The process yield ranges from 45 to 75 percent of the used oil feedstock. Wastes generated include acid sludge, spent clay, and corrosive condensates from the dehydration and steam stripping units.

2. *Vacuum Distillation/Clay Contacting*

Vacuum distillation recently replaced acid/clay treatment as a primary means of re-refining used oils in the United States. It has several advantages over acid/clay treatment, including easy removal of the additives and containments from the used oil, generation of little or no hazardous waste, and yields of 70 and 75 percent of the used oil feedstock as re-refined basestock. In addition, several product cuts can be taken from the distillation column, which allows the re-refiner to produce different lubricating oil basestocks. This process has three phases: Pretreatment, vacuum distillation, and clay contacting (i.e., filtering). It generates a spent clay solid waste. There are currently eight vacuum distillation/clay contacting re-refineries operating in the United States.

3. Phillips Re-refined Oil Process (PROP)

PROP consists of chemical, demetallization, clay/carbon contacting, hydrotreating, and flash stripping. The process yield ranges from 50 to 75 percent of the used oil feedstock. It generates solid wastes containing insoluble, bound metals, and some hazardous wastes. One re-refinery used PROP experimentally but is now closed.

4. Vacuum Distillation/Hydrofinishing

Vacuum distillation/hydrofinishing is the newest re-refining technology. Its processing steps include: Dehydration, 2-stage vacuum distillation, hydrogenation (treatment with pure hydrogen), and fractionation. The basestocks produced by this process are of premium quality, and yields approach 82 to 85 percent. No solid waste is generated from this process. Presently one vacuum distillation hydrofinishing facility is operational and two facilities which are under construction are scheduled for completion in 1986.

5. Experimental Processes

The Bartlesville Energy Research Center (BERC) of the Department of Energy has developed a solvent extraction-vacuum distillation process using a unique mixture of solvents. The BERC process is in the pilot plant stage.

The French Petroleum Institute is developing a process using ultrafiltration membranes. The process is based on the established practice of using ultrafiltration to recover spent industrial oils.

Supercritical fluid extraction, in which supercritical fluids (gases in a supercritical state) are used as solvents, has been used in a variety of industries to separate mixtures. For example, it has been used to separate caffeine from raw coffee beans. The Krupp Research Institute in Essen, West Germany has recovered usable oils from used oil in pilot plant tests of supercritical fluid extraction. The oils contained additives and required further treatment with acid/clay. However, the amount of acid and clay used was substantially less than the amount used in the traditional acid/clay process.

Two other processes, the Turbo pretreating process and the Selectopropane process, are in use commercially in Canada and Italy, respectively. The Turbo process is a proprietary pretreatment performed in a single vessel continuous reactor. Selectopropane uses propane as a solvent for treating used oil.

C. Technically Proven Uses

The third EPA criterion for selection of relcaimed materials for affirmative procurement under RCRA section 6002 is that the material has technically proven uses.

1. *Historic Uses of Re-refined Oils*

The American re-refining industry dates back to the early 1900's. At that time, re-refining was a relatively simple process of heating, settling, and separation by centrifugal force. The Armed Forces used re-refined oils for aircraft engines during both World Wars and thereafter. Commercial airlines began using it in 1932. However, the development of jet engines requiring more complex engine oils led to declining use of re-refined oils in aircraft.

At the same time as the aircraft market was declining, the automotive engine market was growing. By 1960, there were over 150 companies producing 300 million gallons of re-refined oils annually. As with the aircraft engines, the development of high performance automobile engines requiring complex lubricating oils created problems for re-refiners. The predominant re-refining technology was acid/clay, which was not very effective in removing many of the new, more sophisticated additives and other contaminants in the used oil. Economic and regulatory factors, combined with the technological problems caused by advances in additive technology, forced the industry into decline.

During the late 1970's and early 1980's, new re-refining technologies capable of economically and effectively removing the contaminants from used oil were

developed and put into use commercially. The majority of Amercian re-refiners use a modern technology, generally one of the vacuum distillation processes. However, re-refiners currently supply only 5 percent of the lubricating oils used in the U.S.

2. Equivalence of Re-refined Oils to Virgin Oil

The quality of lubricating oils is determined through a series of tests, called "engine sequence tests," in which the oils are placed in the test engines on laboratory dynamometer test stands. The tests are run in sequence with different loads, speeds, temperatures, etc. The oil must meet prescribed limits to be considered acceptable.

Oil performance also can be demonstrated through field testing. Automobile fleets containing the oil are driven under normal conditions. After a prescribed mileage is reached, the engines are taken apart and examined.

According to the National Bureau of Standards (NBS), there has been sufficient engine and field testing of re-refined engine oils to demonstrate that they can meet the prescribed test limits, are substantially equivalent to virgin oils, and for some parameters, perform better than virgin oils. NBS has found that there are measurable differences between virgin oils and some re-refined oils in some characteristics and some test results. These include levels of oxyacids, viscosity index improvers, chlorine, and additive/wear metals, as well as total acid number and saponification number. However, these differences do not have any apparent effects on engine performance.[1] The results of four field and engine tests are summarized below:

a. *San Diego Fleet Tests.* As part of a joint EPA/DOD research program, engines from the City of San Diego's fleet were taken apart and compared to those of another city's fleet. San Diego used re-refined oils for three years in its 1500-vehicle fleet. After 100,000 miles of service, six of the engines were examined and compared to two engines from the fleet of another city using virgin oils. No differences were found in the engines.

b. *Department of Defense Engine Sequence Tests.* The U.S. Army's Mobility Equipment Research and Development Command (MERADCOM), in co-ordination with EPA, tested six lubricating oils containing a re-refined oil basestock. The oils passed most of the engine sequence tests and one oil passed all of the tests. Based on these results, MERADCOM revised its specification for administrative engine oils (MIL–L–46152) to allow the use of re-refined oils.

c. *RCMP Fleet Tests.* The Royal Canadian Mounted Police tested eight vehicles under normal fleet operating conditions. Four vehicles used virgin oils and four used re-refined oils. Upon examination, all eight engines showed normal wear and deposits. There were no oil-related problems.

d. *BERC Engine Sequence Tests.* The Department of Energy's Bartlesville Energy Research Center (BERC) conducted engine sequence tests of three re-refined oils. Two of the oils were produced by BERC's experimental re-refining process, while the third was obtained from a commercial re-refinery. The commercial oil passed all engine sequence tests. The BERC oils failed one of the tests; however, after adding more corrosion inhibitors to one of these oils, it passed the test. As with the DOD tests, the BERC tests demonstrate that re-refined oils are capable of passing engine sequence tests.

3. Foreign Use of Re-refined Oils

Foreign users of re-refined oils include Canada, Great Britain, West Germany, France, Italy, New Zealand, South Africa, Israel, Pakistan, and India. In these countries, re-refiners process 20 to 60 percent of the available used oil, compared to 5 percent in the United States.

4. Military Specifications

Military specifications for lubricating oils are used by the Federal government and by State and local governments for procurement purposes. Until recently, these specifications prohibited the use of re-refined oils. DOD has begun to remove the prohibitions as engine sequence tests demonstrate that re-refined oils can meet the specifications. To date, DOD has revised the specifications for administrative vehicle engine lubricating oils (MIL–L–46152), tactical/combat vehicle engine lubricating oils (MIL–L–2104), Arctic engine oils (MIL–L–46167), and gear lubricants (MIL–L–2105). In addition, the existing specifications for hydraulic fluids (MIL–H–5606 and MIL–H–6083) contain no exclusions of re-refined oils.

5. NBS Provisional Tests

One impediment to use of re-refined oils by Federal procuring agencies has been the buyers' uncertainty that the re-refined oil supplied will perform in the same manner as the re-refined oil that was qualified for the Federal Qualified Products List (QPL). Whereas virgin oil is refined from batches of crude oil originating from the same oil field, the used oil used to make batches of re-refined oil may originate from different sources. The re-refined oil batches therefore may differ. To remove this uncertainty, the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6201 *et seq.*, required the National Bureau of Standards (NBS) to develop test procedures for determining the substantial equivalence of re-refined and virgin oils. The purpose of the tests is to assure the consistency of the re-refined oil basestock (i.e., the used oil) during the four-year time period between engine sequence tests.

NBS has proposed a testing regime similar to that required by the military specifications. First, the re-refined oil would be qualified through engine sequence testing and characterization testing. A set of limits would be established for each parameter tested. Then, annually, production samples would be tested for consistency with these limits. The test methods proposed by NBS consist of standard test methods and modified versions of standard test methods that NBS determined to be appropriate for use with re-refined oils.

D. Federal Purchasing Power

The fourth EPA criterion for selection of a procurement item for affirmative procurement under RCRA section 6002 is that the Federal government's ability to affect purchasing or use of the item, when it contains recovered materials, be substantial.

Although Federal procurement of engine lubricating oils, hydraulic fluids, and gear oils is not substantial, representing less than 2 percent of annual domestic purchases, EPA expects Federal procurement of re-refined oils to have a substantial impact on their use through a "ripple" effect.

The Federal government purchases items listed on the Qualified Products List (QPL). In the case of lubricating oils, a supplier must demonstrate that the product meets the applicable military specification (Mil-Spec) before it will be included on the QPL. Since many State and local procuring agencies, as well as the private sector, make use of Mil-Specs and the QPL when purchasing products, qualification of re-refined oil products should also open these markets to re-refiners.

Federal procurement of re-refined oils also should encourage investment in new capacity. The wariness of lending institutions towards re-refiners should decrease due to improved profitability of existing re-refineries and

[1] National Bureau of Standards, U.S. Department of Commerce. *Measurements and Standards for Recycled Oil—IV*, NBS Special Publication 674, July 1984, pg. 309.

demonstrated demand for re-refined oils.

E. Other Considerations

Two other EPA criteria for designation of procurement items under RCRA Section 6002 are the availability of background studies and existence of government or industry specifications allowing use of recovered materials in the item.

1. Availability of Used Oil Studies

EPA, the Department of Energy, the Department of Defense, the National Bureau of Standards, and others have extensively studied the technical, environmental, economic, energy, and institutional issues associated with re-refining used oils. These studies and other publications were used in developing this guideline.

2. Specifications

As discussed above, engine lubricating oils, hydraulic fluids, and gear oils cannot be purchased by the Federal government unless they are listed on the Qualified Products List. Lubricating oils cannot be listed until the vendor demonstrates that they meet the applicable military specifications (Mil-Specs). Thus, if specifications either do not exist or justifiably exclude re-refined oils, Federal procuring agencies cannot be required to procure lubricating oils containing re-refined oils.

The Mil-Specs used by the Federal government when procuring engine lubricating oils and gear oils have been revised to allow use of re-refined oils. Other Mil-Specs (e.g., hydraulic fluids) neither specifically include nor exclude re-refined oils. Therefore, these existing specifications will promote prompt implementation of this guideline.

IV. Proposed Guideline

This portion of the preamble explains each section of the proposed guideline.

A. Purpose

The purpose of this guideline is to (1) designate engine lubricating oils, hydraulic fluids, and gear oils meeting certain military specifications as items subject to the procurement requirements of section 6002 of RCRA; and (2) recommend procedures for complying with section 6002.

B. Scope

This guideline applies to engine lubricating oils, hydraulic fluids, and gear oils (hereafter referred to as "designated oils"). These oils were chosen primarily because the Department of Defense, which establishes Federal government specifications for petroleum products, already has revised its specifications for these oils to eliminate restrictions against the use of re-refined oils. In addition, these items represent large components of the annual Federal procurement of lubricating oils, so purchases of these items will generally be in excess of the $10,000 threshold set by section 6002. (The $10,000 threshold is discussed below.) Most of these oils are commonly used by State and local agencies and by the private sector. EPA expects this guideline to encourage these groups to procure the designated oils.

The guideline does not apply to marine oils and aviation oils. Insufficient technical studies are available at this time on which to base a guideline for procurement of these items. EPA will consider issuing a procurement guideline for them in the future as more information becomes available.

C. Applicability

The requirements of section 6002 apply, for the most part, to "procuring agencies," which is defined by RCRA as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." The procurement requirements apply to any purchase by a procuring agency of an item costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year.

1. Procuring Agency

This guideline applies to purchases made directly by a procuring agency or by a government contractor for use in government vehicles, machinery, or equipment. Direct purchases by a contractor would include purchases for maintaining a government fleet [3] and purchases for use in new equipment to be supplied by the contractor (e.g., a new weapons system).

The Department of Defense, through the Defense Logistics Agency, purchases petroleum products on behalf of all Federal agencies, including the General Services Administration and the Postal Service. Thus, this guideline applies primarily to DOD and its contractors.

[3] The term "government fleet" does not refer to vehicles owned by the contractor but rather to vehicles owned by a government agency and operated or maintained on behalf of the agency by the contractor.

The definition of "procuring agency" in RCRA makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency, using appropriated Federal funds (grants or construction funds). To the best of its knowledge, EPA does not believe that indirect purchases of the designated oils occur. EPA solicits comments on this conclusion.

2. The $10,000 Threshold

The procurement requirements of section 6002 apply to purchases of $10,000 or more. Since today's proposed guideline applies to three broad product categories—engine lubricating oils, hydraulic fluids, and gear oils—several questions are raised as to when the $10,000 threshold is reached.

One possible interpretation is that purchases of various categories of lubricating oils totaling $10,000 trigger the section 6002 requirements. Under this interpretation, a purchase of $6,000 worth of engine lubricating oils, $3,000 worth of hydraulic fluids, and $1,000 worth of gear oils would trigger the requirement. EPA rejects this interpretation as being unduly burdensome on both procuring agencies and suppliers. It would require the agencies to examine every small procurement to determine whether the section 6002 requirements apply, and it might require suppliers to provide re-refined oils in non-economical quantities.

Instead, EPA is proposing that the section 6002 requirements be triggered only when $10,000 worth of any one of the three broad product categories (i.e., engine lubricating oils, hydraulic fluids, or gear oils) is purchased. Under this interpretation, a purchase of $10,000 worth of engine lubricating oils and $3,000 worth of hydraulic fluids would trigger the section 6002 requirements for the engine lubricating oils but not for the hydraulic fluids.

In calculating whether the $10,000 threshold has been reached, EPA intends that procuring agencies consider all specifications of a product within each of the three broad categories to be "functionally equivalent" to one another for purposes of this guideline. For example, hydraulic fluid meeting Mil-Specs MIL–H–5606 and MIL–H–6083 would be considered to be "functionally equivalent" even though, strictly speaking, they are not functionally equivalent in a technical sense because MIL–H–6083 requires additional corrosion resistance. EPA believes that restricting the applicability of section 6002 to purchases based on a very

technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of RCRA. EPA recommended a similar approach in the proposed paper guideline. (See 50 FR 14078, April 9, 1985.)

D. Definitions

Most of the definitions used in this procurement guideline are the same as used in RCRA itself.

For purposes of this guideline, the terms engine lubricating oils, gear oils, and hydraulic fluids refer to petroleum-based oils. These terms include synthetic oils derived from petroleum.

Section 6002(c) requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and section 6002(i) requires procuring agencies to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). Commenters on EPA's proposed paper guidelines asked EPA to define the term "practicable" as used in section 6002. In response, EPA intends to define "practicable" in the final paper guideline and is including the definition in this proposed re-refined oil guideline as well.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications; (2) availability at a reasonable price; (3) availability within a reasonable period of time; and (4) maintenance of a satisfactory level of competition. EPA's definition of practicable incorporates these criteria.

E. Requirements vs. Recommendations

RCRA section 6002 requires procuring agencies and contracting officers to perform activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the section 6002 requirements into the proposed guideline for the benefit of procuring agencies. As a result, the guideline contains two types of provisions: Requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in the guideline, the verbs "shall" and "must" indicate section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies must comply with the requirements of section 6002, whereas EPA's recommendations are only advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the section 6002 requirements.

F. Specifications

Subpart B of the guideline, Specifications, contains two sections, Recommendations and Revisions.

1. Recommendations

The Department of Defense has undertaken an active program to revise its lubricating oil specifications to eliminate discrimination against re-refined oils. The program includes detailed testing of re-refined oils to determine their ability to meet existing military specifications. To date, DOD has revised four engine lubricating oil specifications and its multipurpose gear oil specification to permit use of re-refined oils. (In addition, the hydraulic fluids specifications neither exclude re-refined oils nor require virgin materials.)

EPA is recommending that procuring agencies use these specifications when purchasing the designated oils. Copies of the specifications may be obtained from: Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120.

2. Revisions

RCRA section 6002(d) contains two requirements for revising specifications for procurement items. First, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986 to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials (section 6002(d)(1)). This requirement applies, in the case of lubricating oils, to the Department of Defense. EPA knows of no other Federal agency that drafts or reviews lubricating oil specifications.

Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i) fulfills the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure lubricating oils with appropriated Federal funds. Unless their specifications are revised to allow the use of re-refined lubricating oils, these agencies will be unable to implement the affirmative procurement requirements of RCRA section 6002 (c)(1) and (i). For this reason, § 252.11(b) of the proposed guideline provides that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications for engine lubricating oils, hydraulic fluids, and gear oils require the use of re-refined oils to the maximum extent possible without jeopardizing the intended end use of these items. Section 252.10 recommends that procuring agencies use the DOD specifications as a guide.

G. Affirmative Procurement Program

RCRA section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that lubricating oils containing re-refined oils are purchased to the maximum extent practicable. The program must contain four elements: (1) A preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification; and (4) procedures for annual review and monitoring of the program's effectiveness. The program must be established within one year of the date of publication of this guideline as a final rule.

1. Recovered Materials Preference Program

Under section 6002(i), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose a "substantially equivalent" alternative. The proposed guideline recommends that procuring

agencies adopt minimum content standards.

EPA believes that this approach will increase use of re-refined oil in lubricating oils, thereby promoting growth of the re-refining industry and reducing the amount of used oils in the solid waste stream. EPA notes that this approach is *recommended,* not required. Procuring agencies may adopt other types of affirmative procurement programs, such as case-by-case procurement of the designated oils or a substantially equivalent approach. EPA requests comments on the appropriateness of this approach to re-refined oils procurement.

The following sections provide a detailed discussion of the basis for the minimum content standard, including legal and technical considerations.

a. *Background.* As discussed in the "Technically Proven Uses" section of this preamble, the re-refining industry has declined during the last twenty years due to technical, regulatory, and economic factors. The technical and regulatory hurdles essentially have been overcome. New re-refining technologies capable of removing the complex additives and contaminants in used oil have been developed and are in use commercially; prejudicial regulatory requirements providing for labeling of re-refined oil as "made from previously used oil" have been eliminated; and a 6 cents per gallon Federal excise tax no longer applies to re-refined oil. However, the economic hurdles remain. EPA believes that the proposed guideline will assist the industry to overcome some of the economic hurdles without providing subsidies.

One of the economic hurdles to be overcome is the high cost of qualifying an engine lubricating oil to meet a military specification. In order to be qualified, the oil must pass a series of lubricant performance tests, which measure such characteristics as rust, engine sludge, engine varnish, clogging, ring and lifter sticking, and cam wear. Typically, the cost of lubricant performance testing begins at 30,000 for a series of four tests. The oil may fail one or more portions of one or more tests. When that occurs, the additives in the oil are adjusted, and the tests are run again. Thus, the cost of qualifying an oil can be greater than $100,000.

There has not been sufficient incentive for the re-refiners to incur this cost. Changing the Mil-Specs to allow use of re-refined oils has not provided the incentive. Since the revised military specifications have been in place, three re-refiners have qualified their oil, yet there have been no sales of re-refined oil to the Federal government. The re-refiners have not bid because the Federal procurements did not include enough volume in the re-refiners' local markets to warrant bidding. This fact, combined with the memory of past discrimination on the part of the Federal government against procurement of re-refined oils, has tended to discourage re-refiners from investing in the high cost of qualifying their product without assurance of future sales to offset the costs.

Another economic hurdle is the difficulty in obtaining capital for plant expansion, modernization, and construction. The revisions to the military specifications to permit use of re-refined oils, coupled with affirmative procurement, will demonstrate that there is a steady demand for this product. EPA believes that the ability of re-refiners to obtain capital will be increased as a result.

b. *Alternatives considered.* In addition to minimum content standards, EPA considered four other approaches for a preference program. Those approaches are case-by-case procurement, price preferences, set-asides, and closed loop contracts.

The case-by-case approach was recommended by EPA in the fly ash procurement guideline and in the proposed paper procurement guideline. Under this approach, bids would be solicited for all types of oils, including those containing re-refined oils. The contact would be awarded to the lowest responsible bidder. In the case of identical low bids, preference would be granted to the vendor selling the lubricating oil with the highest percentage of re-refined oils.

The Department of Defense currently uses normal procurement procedures for procuring oils; contracts are awarded to the lowest-priced, responsible bidders, and there is no preference for re-refined oil in the case of a tie bid. Since, as discussed above, DOD's procurement approach has not resulted in procurement of lubricating oils containing re-refined oil, EPA believes that the use of the case-by-case approach, which only adds a preference for re-refined oil in case of a tie bid, will not result in procurement of re-refined oil.

Federal price preferences or set-asides, such as small business, minority business, and labor surplus area programs, have been established under explicit statutory authority or a specific Executive Order. Since RCRA section 6002 does not provide such explicit authority, EPA believes that Congress did not contemplate the adoption of either price preferences or set-asides to fulfill the objectives of section 6002. This issue is discussed further in section IV.G.1.c of this preamble.

Under a closed-loop contract, a re-refiner would process the used oil generated by the government and return it for re-use. A variation on this arrangement is the quasi-closed loop contract, in which a re-refiner would accept a batch of used oil and deliver a like quantity of re-refined oil produced from used oil in inventory. The oil in inventory would not necessarily be government used oil. Re-refiners use both types of arrangements with commercial customers.

A 1983 DOD study concluded that the quasi-closed loop arrangement is feasible, although participation by low-volume oil users would not be cost-effective for DOD.[3] The study recommended a closer look at the quasi-closed loop arrangement to determine the minimum volume of oil use for which it would be appropriate. Because more information is necessary, EPA is not recommending it at this time. EPA believes, however, that a closed-loop or quasi-closed loop arrangement may be an appropriate method for procuring agencies to use.

c. *Legal considerations.* RCRA section 6002(i)(1) requires that affirmative procurement programs be "consistent with applicable Federal procurement law." EPA was concerned that minimum content standards might violate the Competition in Contracting Act of 1984 (CICA) (10 U.S.C. Chapter 137) and the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1). Both provide that specifications restricting what can be offered by bidders are legally permissible only to the extent that they reflect the Government's minimum needs or are authorized by law. (CICA section 2711(a)(1), 48 CFR 10.002(a)(3)(ii).). EPA has concluded that RCRA section 6002 provides the necessary authorization. Section 6002(i)(3)(B) expressly permits agencies to establish specifications which restrict bids to those which meet a minimum content standard. Therefore, minimum content standards are not in violation of general Federal procurement law.

CICA requires agencies to use full and open competitive procedures when procuring property and services. The term "full and open competition" means that all responsible sources must be permitted to submit a bid. In the case of a procurement against a restrictive specification, such as a minimum

[3] Construction Engineering Research Laboratory, U.S. Army Corps of Engineers, *Feasibility of Department of Defense Used Lubricating Oil Re-refining,* December 1983.

content standard, "full and open competition" means that all responsible sources who can meet the specification can bid. The preference program recommendation in the proposed guideline is consistent with this requirement, since any vendor of oil can submit a bid as long as the product offered contains the minimum re-refined oil content.

d. *The minimum content recommendations.* The current capacity of existing re-refineries exceeds government lubricating oil needs. Thus, in theory, procuring agencies could purchase 100 percent of their annual needs from re-refiners. In actuality, there are many factors that will affect the price and availability of re-refined oils. These include the purchase price of used oil, the availability of a constant feedstock for the re-refining process, costs associated with transporting the oils to geographically distant users, costs associated with qualifying the re-refined oil, and requirements that might arise in the future (such as costs of complying with EPA's proposed regulations for used oil). EPA found relatively little data with which to quantify these factors. In fact, the 1983 DOD study (described above) concluded that local factors, which could not be generalized, would be determinative.

The Federal government annually purchases over 7 million gallons of vehicular lubricating oils (Mil-Specs MIL–L–46152 and MIL–L–2104), 800,000 gallons of gear oil (Mil-Specs MIL–L–2105), and 700,000 gallons of hydraulic fluid (Mil-Specs MIL–H–5606 and MIL–H–6083). Re-refiners have indicated to DOD that they would enter into closed-loop contracts if a minimum of 100,000 gallons per year were purchased. A minimum content standard as low as 5 percent re-refined oils would result in purchases of 425,000 gallons annually. Thus, EPA believes that minimum content standards should provide an incentive to the re-refining industry to qualify and bid their product.

RCRA provides four criteria for establishing a minimum content standard. Section 6002(i)(3)(B) provides that the minimum content required by a specification must be the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1)(A) through (C). Thus, the four criteria are (1) the intended end use of the item, (2) availability, (3) technical performance, and (4) price.

For the items designated by this guideline, the first criterion will be satisfied by any content level. DOD already has determined that re-refined oils will not jeopardize the intended end use of the oils designated by this guideline; the specifications for these items either specifically allow the use of re-refined oils or do not prohibit it. Similarly, the third criterion will be satisfied by any content level because the performance testing required to qualify oils for the QPL assures that the oils will meet the specifications. Thus, the availability and price criteria will be the key determinants of the minimum content standard.

EPA is proposing two alternative approaches to setting a minimum content standard. Under the first alternative, EPA would recommend that procuring agencies use minimum content standards but leave it up to procuring agencies to set a level that both satisfies the statutory criteria and meets their needs. Under the second alternative, EPA would recommend that procuring agencies set a minimum re-refined oil content standard of at least 25 percent. EPA requests comments on both alternatives; in particular, comments are requested on two issues: (1) Whether EPA guidelines should recommend specific minimum content levels and (2) is so, what level(s) should be recommended in the proposed guideline.

EPA considered three minimum re-refined oil content levels: 100 percent, 25 percent, and 5 percent. These standards are discussed below. The first alternative (i.e., no specific level recommended in the guideline) is also discussed below.

(1) *One Hundred Percent Standard.* While a minimum content standard of 100 percent meets the "maximum available without jeopardizing the intended end use of the item" and "performance" criteria, EPA believes that it might not meet the availability and price criteria. The small number of re-refiners (less than 20) and their geographic distribution relative to the location of the procuring agencies might result in their inability to supply the needs of the procuring agencies or to supply their oil at a reasonable price. EPA also is concerned that many vendors currently on the QPL will withdraw because they do not now sell re-refined oil and would be unwilling to incur the expense of obtaining re-refined oil for re-sale to procuring agencies because the total quantity of oil sold to procuring agencies is small compared to the total quantity sold to all customers.

Under this alternative, there would be no sales of re-refined oil to procuring agencies unless the vendor could supply qualified, 100 percent re-refined oil to all required locations at a reasonable price. Since EPA believes that this probably cannot be done, it is not recommending this alternative.

(2) *Twenty-five Percent Standard.* One alternative set out in the proposed guideline recommends that procuring agencies set their minimum content standard at the highest level of re-refined oil that they determine meets the statutory criteria (i.e., performance, availability, and price) but at least at 25 percent. Under this approach, if a procuring agency determines that more than 25 percent re-refined oil is available at a reasonable price, then the agency should establish a higher minimum content standard. Otherwise, the agency should use 25 percent.

As with the 100 percent level, a 25 percent level can be achieved with existing re-refining capacity. In addition, a 25 percent level has several advantages over 100 percent. First, blending of re-refined oil and virgin oil is a common industry practice, and blends containing 25 percent re-refined oil are common. Second, blends of virgin and re-refined oil can be sold to procuring agencies by re-refinders, compounders (i.e., blenders), or virgin oil vendors. This larger number of vendors should be able to supply the procuring agencies' needs at a reasonable price. Third, vendors of virgin oil currently on the Qualified Products List may be willing to continue supplying oil since the blends will still be 75 percent virgin oil. Fourth, although these oils must be requalified due to the addition of re-refined oil, industry spokespeople have suggested that the re-refiners and/or the additive manufacturers may be willing to bear some or all of the cost of requalification. Finally, EPA recognizes that it is important to the Department of Defense, for national security reasons, that there be a large number of vendors on the Qualified Products List. Thus, a level that encourages existing vendors to *stay* in the government market is necessary.

(3) *Five Percent Standard.* Unlike the 100 percent and 25 percent standards, a 5 percent standard may require considerably less than a complete requalification of all oils currently qualified. For example, the Department of Defense has indicated that because the quantity of re-refined oil is *de minimus*, it may be possible to test two or three oils and to extrapolate the results to a group of similar oils, rather than completely requalifying all of the oils. As a result, the cost of qualifying oils containing re-refined oil would be considerably less. Thus, the 5 percent standard is a compromise between EPA's desire to promote used oil re-refining and the cost of qualifying re-refined oils. However, a 5 percent standard is far from the "maximum

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available" and EPA believes that it will not result in sales of very much re-refined oil to the government market. Therefore, it is not proposing this level.

(4) *Procuring Agencies Determine the Standard.* EPA also is proposing an alternative—i.e., that each procuring agency set the minimum content standard that it will use. The standard must both satisfy the statutory criteria and meet their needs. This approach would allow the procuring agencies to determine the maximum amount of re-refined oil that is both available to them and available at a reasonable price. As mentioned above, EPA requests comments on this approach.

e. *Limitations Set by RCRA.* As mentioned above, the minimum content standard would be subject to the four limitations provided in RCRA section 6002, namely, reasonable availability, reasonable price, ability to meet the specifications, and maintenance of competition. For example, if a procuring agency determines that it cannot obtain a designated oil containing the minimum amount of re-refined oil or that it cannot obtain the oil at a reasonable price, then the procuring agency can suspend the minimum content standard.

One objection to a minimum re-refined oil content standard is that the virgin oil suppliers will not bid because they will not want to requalify their oils. This is an availability issue. If procuring agencies find that the designated oils with the specified minimum re-refined oil content are unavailable, then they are not required to solicit bids for that specification. Instead, they may solicit bids for virgin oil.

A related objection is that re-refiners cannot supply procuring agencies with all grades of the designated oils. Again, this is an availability issue. If prospective bidders have not qualified their oils or have not qualified them for all grades of the designated oils, then procuring agencies are not required to solicit bids for re-refined oils for those grades.

Similarly, if there will not be adequate price competition,[4] procuring agencies are not required to solicit bids for the minimum content specification.

f. *Procurement Procedures.* Procuring agencies should examine their procedures and eliminate any procurement practice that discriminates against re-refined oils. For example, if a procuring agency invites bids to supply a broad range of lubricating oils on an "all or none" basis, while re-refiners are qualified to supply only a limited range of items, then re-refiners will not be able to bid on the contract. EPA leaves it to the discretion of procuring agencies to determine the best means of eliminating this form of discrimination.

2. *Promotion Program.* The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The proposed guideline recommends several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in invitations to bid, discussing the program at bidders' conferences, and informing industry trade associations about the program.

3. *Estimates, Certification, and Verification.* The third requirement of the affirmative procurement program set forth in section 6002(i) concerns estimates, certification, and verification. Many questions have been raised about the certification and estimation of recovered materials content, such as when they should be provided, who is to provide them, how the information is to be obtained, and how it is to be verified. To clarify this subject, it is necessary to review the requirements of the law.

RCRA sections 6002(c)(3)(B) and 6002(i)(2)(C) require that after the effective date of the proposed guideline, contracting officers must require vendors who supply Federal procuring agencies with items covered by the guideline to provide an *estimate* of the total percentage of recovered materials contained in the items. EPA believes that this requirement is for the purpose of gathering statistical information on price, recovered materials content, and availability, and applies regardless of whether the procurement solicitation specifies that recovered materials can or must be used. EPA is recommending that procuring agencies retain these data for three years.

When solicitations or invitations for bid specify a minimum content of recovered materials, the vendors must *certify* that their product meets the minimum. This requirement is found in RCRA sections 6002(c)(3)(A) and 6002(i)(2)(C). The former provision is for "the percentage of recovered materials *to be used* in the performance of the contract" [emphasis added] and appears to apply to offerors or bidders. The latter provision is for "minimum recovered material *utilized* in the performance of a contract" [emphasis added] and appears to apply to suppliers.

EPA recommends that procuring agencies meet the certification requirement in RCRA section 6002(c)(3)(A) by inserting in the solicitation or invitation for bid a certification provision such as the Recovered Material Certification contained in the Federal Acquisition Regulation (FAR), 48 CFR 52.223–4. (EPA notes that under the FAR, Federal procuring agencies must use this clause; non-Federal procuring agencies may use it or a similar certification.) Procuring agencies can meet the certification requirement in RCRA section 6002(i)(2)(C) by requiring vendors to submit a certification that the oils supplied contain the minimum re-refined oil content specified in the contract. Note that there is no requirement to certify the actual re-refined oil content, but rather that the re-refined oils content actually used meets the contract minimum.

Section 6002(i) also requires procuring agencies to establish reasonable procedures to verify the estimates and certification. It is not possible to verify re-refined oil content by chemical analysis. Since analytical verification of re-refined oil content is not possible, EPA recommends that procuring agencies simply modify their existing quality assurance procedures, as developed under Part 46 of the Federal Acquisition Regulation, to include verification of estimates.

4. *Review and Monitoring.* The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. The review should include an estimate of the quantity of re-refined oils purchased during the year, an assessment of the effectiveness of the agency promotion program, and an assessment of any remaining barriers to procurement of re-refined oils. In assessing barriers to procurement, procuring agencies should determine whether they are internal or external. Internal barriers, such as resistance to use of re-refined oils by agency personnel, without cause, can be corrected by the procuring agencies. External barriers, such as unavailability of re-refined oils, may well be beyond the agencies' control.

V. Price, Competition, Availability, and Performance

As described above, section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that the item is available only at an unreasonable price, a satisfactory level of competition cannot be maintained,

[4] Under 48 CFR 15.804–3(b), competition exists if offers are solicited; two or more responsible offerors that can satisfy the Government's requirements submit price offers responsive to the solicitation's expressed requirements; and these offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

the item is not reasonably available within a reasonable period of time, or the item fails to meet the performance standards. EPA has considered the effect of these limitations on re-refined oil procurement and made the following determinations.

A. Price

Several factors will affect the market price, or bid price, of the designated oils, including the availability and cost of used oil feedstock, transportation costs, qualification costs, excess re-refining capacity, and the yield of oil from the re-refining process. Since these factors are site-specific and variable, EPA believes that the best method of determining price is through the marketplace.

Section 6002 provides that a procuring agency can decide not to purchase re-refined oils if the price is "unreasonable." The determination of reasonableness must be made in accordance with federal procurement law (e.g., the Federal Acquisition Regulation.)

As has been discussed, the factors which have resulted in the Federal government not purchasing oil are not connected with the price of re-refined oil. Indeed, re-refined oil typically sells for 10 to 15 percent less than equivalent virgin oil. EPA does not expect that an affirmative procurement program will result in the government paying a higher price for its oil; in fact, representatives of the re-refining industry claim that affirmative procurement will lower the price.

EPA therefore is recommending that procuring agencies interpret the reasonable price provision of RCRA section 6002(c)(1)(C) to mean that, for re-refined oil, a reasonable price is little or no increase over the price of virgin oil.

B. Competition

As with price, determination of "satisfactory" competition must be made in accordance with federal procurement law.

EPA believes that there will be a satisfactory level of competition for contracts to supply re-refined oils. There currently is excess capacity in the re-refining industy available to supply the procuring agencies' needs. At least four re-refiners have indicated to EPA their intent to qualify their oils to meet the military specifications after this guideline is published as a final rule. EPA believes that other re-refiners will follow their lead once procuring agencies begin to purchase re-refined oils.

C. Availability

Given the excess capacity in the re-refining industry, EPA believes that re-refined oils will be available for purchase by procuring agencies.

D. Performance

As discussed elsewhere in this preamble, the Federal government only purchases petroleum products that have been qualified for inclusion in the Qualified Products List (QPL). A product is not included in the QPL until it successfully meets all qualification tests identified in the applicable military specification. For this reason, once a re-refined oil is included in the QPL, performance will not be a reason for procuring agencies to decline to purchase it.

VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986., (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these requirements.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items were to eliminate from such specifiations any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). In addition, procuring agencies must develop an affirmative procurement program for purchasing designated items, in this instance, engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils (section 6002(i)(1)). Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must procure such items containing the highest percentage of recovered materials practicable (section 6002(c)(1)). In addition, contracting officers must require vendors to submit estimates and certifications of recovered material content (section 6002(c)(3)). Both of these activities must begin after the date specified by EPA in the applicable guideline.

EPA believes that procuring agencies should begin to procure the designated oils as soon as the specification revisions have been completed and the affirmative procurement have been developed. Since these latter activities must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin one year from that date as well. Section 252.26 specifies this implementation date.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurment Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

VII. Supporting Analyses

Existing EPA, Department of Energy, Department of Defense, and National Bureau of Standards studies on the technical, economic, environmental, and institutional impacts of using re-refined oils were used as background documents for the proposed guideline. In addition, EPA prepared an assessment of the impacts of the proposed guideline, "Environmental, Economic, and Energy Impacts of Proposed 'Guideline for Federal Procurement of Re-refined Lubricating Oils.' " The bibliography to this document identifies the other EPA, DOE, DOD, and NBS studies.

A. Environmental Impacts

EPA expects the proposed guideline to have a net positive impact on the environment by promoting recovery and re-use of used oil. Used oil that currently is applied to land or water for dust suppression or weed and pest control, dumped into sewers, or disposed in landfills will be diverted to re-refining.

Re-refineries generate solid and hazardous wastes in the form of distillation bottoms, sludges, and contaminated clays. The quantity of waste depends on the type of re-refining process used and, in any event, is less than the quantity of used oil that would require disposal in the absence of re-refining. Some of these wastes are sold as products (e.g., distillation bottoms),

potentially could be used as fuels (e.g., oily sludges), or potentially could be used as road bases after minimal treatment (e.g., clays). Therefore, these wastes would have minimal environmental impact. Other wastes must be disposed of as hazardous wastes (if they meet the definition of hazardous waste). Re-refining also generates oily wastewater, which must be treated prior to discharge or re-use.

B. Energy Impacts

The re-refining process is a net consumer of energy. Re-refining uses between 5,000 and 14,000 British thermal units (Btus) per barrel of oil produced. In addition, because the re-refined oil product will be used as a lubricant, rather than as a fuel, the heating value of the oil is foregone.

However, re-refining is no different than virgin oil refining in this respect. Virgin oil refining requires 500–1,000,000 Btus per barrel of oil, depending on the type of crude oil used. And, because the oil is used as a lubricant, rather than as a fuel, the heating value of the vigin oil likewise is foregone.

C. Executive Order No. 12291

Under Executive Order No. 12291, EPA must determine whether a regulation is major or nonmajor. The proposed guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Increased usage of the re-refined oil products addressed by this guideline is not expected to produce recurring annual effects on the economy. The re-refining industry will incur some one-time costs in implementing the guideline, including product qualification and expansion of production to meet increased demand. The Federal government will also incur some one-time costs for implementing administrative procedures associated with the guideline. However, these one-time costs are not expected to be major.

An expanded market for used oil, coupled with EPA's new burning and blending regulations, might increase the cost of used oil to vendors (recyclers and blenders) but decrease the cost of used oil to re-refiners. Additionally, the cost of the final re-refined product itself is expected to be no less than that of a virgin refined product of the same category. To the extent it is less, civilian purchasers and various government procuring agencies can expect to benefit from this re-refined product cost advantage.

In the highly mechanized re-refining industry, production expansion is not expected to change the level of employment. Some vendors of the particular products affected by this guideline may not continue to sell those products to government agencies. However, it is not expected that government sales of these particular products, in most cases, represent a significant portion of the vendors' revenue. Therefore, the level of employment is expected to be unaffected by the guideline, while productivity measures may actually increase with its implementation.

In conclusion, no significant adverse effects are expected to result from the guideline as proposed.

This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in the environmental, energy, and economic impact document, the economic impact on both small businesses and small governmental jurisdictions is expected to be in some cases, negligible and in other instances, beneficial. An extremely limited number of business and governmental entities are affected at all by the guideline. Therefore, the proposed guideline is not expected to have significant economic impact on a substantial number of small entities. As a result, the guideline does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 252

Engine lubricating oil, Gear oil, Government procurement, Hydraulic fluid, Military specifications, Recycling, Re-refined oils, Resource recovery.

Dated: October 7, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations by adding a new Part 252 reading as follows:

PART 252—GUIDELINE FOR FEDERAL PROCUREMENT OF LUBRICATING OILS CONTAINING RE-REFINED OIL

Subpart A—General

Sec.
252.1 Purpose.
252.2 Designation.
252.3 Applicability.
252.4 Definitions.

Subpart B—Specifications

252.10 Recommendations.
252.11 Revisions.

Subpart C—Affirmative Procurement Program

252.20 General.
252.21a Preference program. (Alternative 1.)
252.21b Preference program. (Alternative 2.)
252.22 Promotion program.
252.23 Estimates, certification, and verification.
252.24 Annual review and monitoring.
252.25 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 252.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of engine lubricating oils, hydraulic fluids, and gear oils meeting certain military specifications.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications and procurement.

(c) The Agency believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

§ 252.2 Designation.

EPA designates engine lubricating oils, hydraulic fluids, and gear oils which meet the specifications listed in § 252.10 of this guideline as items which are or can be produced with recovered materials (re-refined oil) and whose

procurement by procuring agencies will carry out the objectives of section 6002 of RCRA

§ 252.3 Applicability.

(a) This guideline applies to all procuring agencies and to all procurement actions involving the oils designated in § 252.2 where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. For purposes of this guideline, items in each of the following categories are considered to be functionally equivalent: Engine lubricating oils meeting the specifications in § 252.10(a); and hydraulic fluids meeting the specifications in § 252.10(b).

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made by any person directly in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

§ 252.4 Definitions.

As used in this guideline:

(a) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

(b) "Engine lubricating oils" means petroleum-based oils used for reducing friction in engine parts.

(c) "Federal agency" means any department, agency, or other instrumentality of the Federal Government; any independent agency or establishment of the Federal Government including any Government corporation; and the Government Printing Office.

(d) "Gear oils" means petroleum-based oils used for lubricating machinery gears.

(e) "Hydraulic fluids" means petroleum-based hydraulic fluids.

(f) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

(g) "Practicable" means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition.

(h) "Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

(i) "Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(j) "Re-refined oils" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(k) "Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

Subpart B—Specifications

§ 252.10 Recommendations.

(a) The Department of Defense has revised the following specifications to eliminate restrictions on use of re-refined oils. EPA recommends that procuring agencies use these specifications when procuring the oils designated in § 252.2:

(1) *Engine lubricating oils.*—(i) *MIL–L–46152 (current version)*—Lubricating Oil, Internal Combustion Engine, Administrative Service. (ii) *MIL–L–2104 (current version)*—Lubricating Oil, Internal Combustion Engine, Tactical Service. (iii) *MIL–L–21260 (current version)*—Lubricating Oil, Internal Combustion Engine, Preservative and Break-In. (iv) *MIL–L–46167 (current version)*—Lubricating Oil, Internal Combustion Engine, Arctic.

(2) *Hydraulic fluids.*— (i) *MIL–H–5606 (current version)*—Hydraulic Fluid, Petroleum Base; Aircraft, Missile, and Ordnance. (ii) *MIL–H–6083 (current version)*—Hydraulic Fluid, Petroleum Base, For Preservation and Operation.

(3) *Gear oils.*— (i) *MIL–L–2105 (current version)*—Lubricating Oil, Gear, Multipurpose.

(b) Copies of these military specifications can be obtained from: Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120.

§ 252.11 Revisions.

(a) Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications, by May 8, 1986 to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.

(b) Within one year after the effective date of this guideline, each procuring agency must assure that its specifications for the oils designated in § 252.2 require the use of re-refined oils to the maximum possible without jeopardizing the intended end use of these items.

(c) The specifications identified in § 252.10 should be used by procuring agencies as a guide when revising specifications in accordance with this section.

Subpart C—Affirmative Procurement Program

§ 252.20 General.

Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures the oils designated in § 252.2 must establish an affirmative program for procuring such oils containing re-refined oils. The program must meet the requirements of section 6002(i) of RCRA including the establishment of a preference program; a promotion program; procedures for obtaining estimates and certification of recovered materials content and for verifying the estimates and certifications; and an annual review and monitoring program. This subpart provides recommendations for implementing section 6002(i).

§ 252.21a Preference program. (Alternative 1)

(a) EPA recommends the following affirmative procurement program: That procuring agencies establish minimum re-refined oil content standards for the oils designated in § 252.2 of this part, subject to the limitations described in paragraphs (b) and (c) of this section, so as to achieve procurement of re-refined oils to the maximum extent practicable.

(b) The recommendations in paragraph (a) of this section, as well as any other affirmative procurement program that an agency may adopt, are subject to the following limitations listed in section 6002(c)(1) of RCRA:

(1) Maintenance of a satisfactory level of competition;

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(c) Procuring agencies should make determinations regarding competition, availability, and price in accordance with the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1 *et seq.*

§ 252.21b Preference program. (Alternative 2)

(a) EPA recommends the following affirmative procurement program: That procuring agencies establish minimum re-refined oil content standards for the oils designated in § 252.2 of this part, subject to the limitations described in paragraphs (c) and (d) of this section, so as to achieve procurement of re-refined oils to the maximum extent practicable.

(b) EPA recommends that procuring agencies set their minimum re-refined oil content standard at the highest level of re-refined oil that they determine meets the statutory criteria of performance, availability, and price (described in paragraph (c) of this section, but no lower than 25 percent re-refined oil.

(c) The recommendations in paragraphs (a) and (b) of this section, as well as any other affirmative procurement program that an agency may adopt, are subject to the following limitations provided in section 6002(c)(1) of RCRA:

(1) Maintenance of a satisfactory level of competition;

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(d) Procuring agencies should make determinations regarding competition, availability, and price in accordance with the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1 *et seq.*

(e) Procuring agencies should review their procurement procedures and eliminate any practice that unfairly discriminates against re-refined oils.

§ 252.22 Promotion program.

EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement invitations in the *Commerce Business Daily* or similar publications describing the preference program.

(b) Describe the preference program in lubricating oil procurement solicitations or invitations to bid.

(c) Discuss the preference program at bidders' conferences.

(d) Inform industry trade associations about the preference program.

§ 252.23 Estimates, certification, and verification.

(a) When a vendor supplies an oil designated in § 252.2 of this part, the contracting officer must require the vendor to estimate the total percentage of re-refined oils in that oil. EPA recommends that procuring agencies maintain records of these estimates for three years by type of product, quantity purchased, and price paid.

(b)(1) When a procurement solicitation or invitation for bid requires a minimum re-refined oil content, procuring agencies must require offerors or bidders to certify that the percentage of re-refined oils to be used in the performance of the contract will be at least the amount required by the solicitation or invitation for bid. EPA recommends that procuring agencies insert in solicitations or invitations for bid a certification provision such as the Recovered Material Certification contained in 48 CFR 52.223–4.

(2) When a contract requires a minimum re-refined oil content, procuring agencies must require suppliers to certify that the minimum re-refined oil content was utilized.

(c) The affirmative procurement program must contain reasonable verification procedures for estimates and certifications. EPA recommends that procuring agencies revise the contract quality assurance procedures developed under Part 46 of the FAR to include verification of estimates and certifications.

§ 252.24 Annual review and monitoring.

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(b) EPA recommends that the annual review include the following items:

(1) An estimate of the quantity of refined oils purchased and the total quantity purchased of the oils designated in § 252.2 of this part.

(2) An assessment of the effectiveness of the promotion program.

(3) An assessment of any remaining barriers to purchase of re-refined oils to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailability).

§ 252.25 Implementation.

Procuring agencies must begin procurement of the oils designated in § 252.2, in compliance with this guideline, one year from the date of publication of this guideline.

[FR Doc. 87–23992 Filed 10–16–87; 8:45 am]
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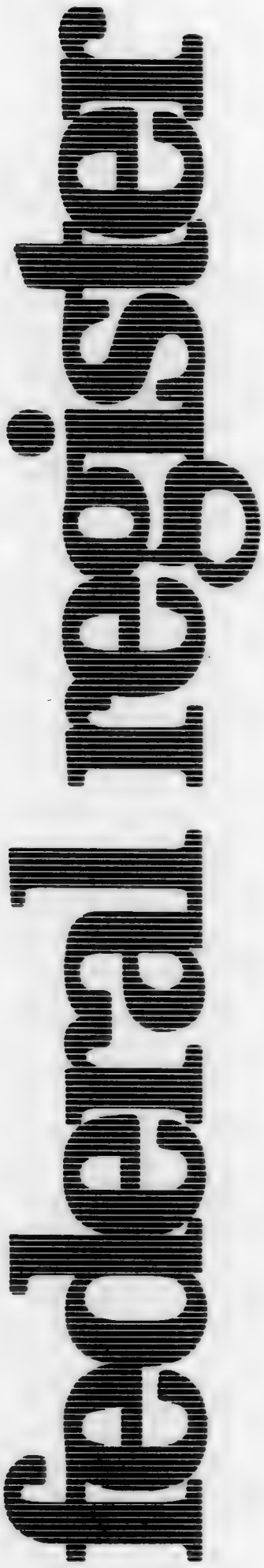

Monday
October 19, 1987

Part III

Department of Education

34 CFR Part 215

Follow Through Program; Final Regulations and Notice of Invitation for Applications for New Awards for 1988-89 School Year

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 215

Follow Through Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Follow Through Program. These final regulations include changes made to comply with the requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, and changes made by the Human Services Reauthorization Act of 1986. The final regulations also provide for a significant redirection of the program by placing greater emphasis on the demonstration and dissemination of effective approaches designed to improve the school performance of low-income children in kindergarten and primary grades. In addition, these final regulations expand the eligible applicants to include new as well as existing grantees.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2043, MS–6276), Washington, DC 20202; telephone: (202) 732–4894.

SUPPLEMENTARY INFORMATION:

A. Background

Since 1968, the Follow Through Program (42 U.S.C. 9861 through 9868) has offered, in a research setting, comprehensive services to children from low-income families. The program has primarily served children in kindergarten and primary grades who were previously enrolled in Head Start or similar preschool programs. The principal goal of Follow Through has been to develop knowledge about various educational practices that can assist low-income children in developing to their full potential. Central to this focus was the strategy of "planned variation," whereby a number of different approaches to early childhood education were implemented in local Follow Through projects. The developers of these approaches have been called "sponsors." Most local projects have chosen to work with sponsors, although a small number have implemented approaches that they themselves have developed. To provide for longitudinal data collection and eventual phaseout of the program, participation has been restricted for a number of years to continuing projects and sponsors.

The Human Services Reauthorization Act of 1986 reauthorized the Follow Through Program through fiscal year (FY) 1990. The legislative history accompanying this reauthorization made clear that Follow Through is to be a competitive grant program and that the grant award process should consider new as well as existing grantees. Consistent with this legislative history, these final regulations make significant changes in the grant award process. Under these regulations, the Secretary awards two types of Follow Through grants. One type is local project grants, including grants to local projects affiliated with a sponsor and grants to self-sponsored local projects. The other type is sponsor grants.

Grantees are selected through two competitions. One competition is among joint local project-sponsor applications. To apply, one to five local project applicants must affiliate with a sponsor and submit a joint application with the sponsor. Separate grants, however, are made to each local project and each sponsor. The other competition is among self-sponsored local project applications. To apply under this competition, local project applicants not affiliated with a sponsor must submit individual applications. Under both competitions, the Secretary encourages new applicants and existing grantees to submit applications.

In addition to opening the program to new applicants, these final regulations provide for a significant redirection of Follow Through. Although the program continues to provide comprehensive services to low-income children in kindergarten and primary grades, greater emphasis is placed on the demonstration and dissemination of effective approaches specifically designed to improve the school performance of those children. Because education is an extraordinarily effective means of escaping poverty for disadvantaged children, the Secretary is particularly interested in studying, publicizing, and replicating what works for educating children from poor families. As a result, the Secretary invites local educational agencies, institutions of higher education, and other appropriate agencies that have found successful approaches for improving the school performance of children from low-income families to apply for Follow Through grants so that those approaches may be demonstrated and disseminated to public and private schools.

On April, 30, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (52 FR 15896–15903). With one exception discussed below, these final regulations make no significant changes from the NPRM. Therefore, readers are referred to the preamble of the NPRM (52 FR 15896–15898) for a detailed explanation of the provisions in these final regulations.

B. Significant Changes From the NPRM

These final regulations make only one significant change from the NPRM. That change, which is contained in § 215.4(a)(2)(ii), requires a local Follow Through project to establish a parent committee to promote parent participation. The importance of parent participation in Follow Through has been emphasized since the beginning of the program, particularly through parent-oriented policy advisory committees. In the NPRM, the Secretary continued to stress the importance of active parent involvement in Follow Through. The Secretary acknowledged, however, that parent involvement may take a variety of forms, best determined by the local projects that receive Follow Through funds. As a result, the NPRM did not require local projects to establish policy advisory committees. A high percentage of commenters, however, recommended that the final regulations be changed to require parent committees. According to the commenters, parent committees have been the framework for ensuring strong, effective parent involvement in Follow Through projects. A number of commenters expressed fear that not requiring parent committees would diminish the level of parent participation that has been achieved in Follow Through projects over the years. In response to these comments, § 215.4(a)(2) has been changed to require local projects to establish parent committees. In makig this change, the Secretary does not intend to reduce the flexibility of local projects. Rather, the Secretary encourages projects to be creative and insightful in designing parent activities that address the particular needs of the local community.

This aspect of the regulations will have a positive impact on the family and is consistent with the requirements of Executive Order 12606—The Family. These regulations strengthen the

authority and participation of parents in the education of their children.

C. Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, twenty-one parties submitted comments on the proposed regulations. Many commenters, in addition to suggesting specific changes, endorsed the redirection of the program as reflected in these final regulations. For example, a number of commenters expressed approval of the emphasis on demonstration and dissemination of effective Follow Through practices as a highly cost-effective means of replicating successful approaches in order to improve school performance of children from low-income families. Several commenters complimented the Department for promoting effective dissemination through the "single school" concept. Similarly, several commenters supported the Department's efforts to encourage active parent participation while keeping the regulations from being overly prescriptive and leaving as many decisions as possible to local discretion.

An analysis of the comments and the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the sections of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 215

Education, Education of disadvantaged, Education—research, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: September 18, 1987.

(Catalog of Federal Domestic Assistance No. 84.014, Follow Through Program)

William J. Bennett,

Secretary of Education.

The Secretary revises Part 215 of Title 34 of the Code of Federal Regulations to read as follows:

PART 215—FOLLOW THROUGH PROGRAM

Subpart A—General

Sec.

215.1 What is the Follow Through Program?
215.2 What types of grants does the Secretary award?
215.3 Who is eligible for an award?
215.4 What does a local Follow Through project do?
215.5 What does a Follow Through sponsor do?
215.6 What children may participate in a local Follow Through project?
215.7 What regulations apply?
215.8 What definitions apply?
215.9 [Reserved]

Subpart B—How Does One Apply for an Award?

215.10 How does an applicant apply to operate a local Follow Through project?
215.11 How does an applicant apply to be a Follow Through sponsor?
215.12–215.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

215.20 How does the Secretary evaluate an application for a Follow Through grant?
215.21 What selection criteria does the Secretary use for self-sponsored local Follow Through project applications?
215.22 What selection criteria does the Secretary use for sponsored local Follow Through project applications?
215.23 What selection criteria does the Secretary use for Follow Through sponsor applications?
215.24 What other factors does the Secretary consider in awarding a Follow Through grant?
215.25–215.29 [Reserved]

Subpart D—What Conditions Must Be Met by a Grantee?

215.30 What program requirements must a local project grantee meet?
215.31 What program requirements must a sponsor meet?
215.32 What fiscal requirements must a local project grantee meet?
215.33 What are the requirements for participation of private school children?
215.34 What evaluation requirements apply to a grantee?
215.35–215.39 [Reserved]

Subpart E—What Compliance Procedures May the Secretary Use?

215.40 What procedure does the Secretary use before terminating a grant?
215.41–215.49 [Reserved]

Authority: 42 U.S.C. 9861–9868.

Subpart A—General

§ 215.1 What is the Follow Through Program?

Follow Through is a program that serves primarily low-income children in kindergarten and primary grades who were previously enrolled in Head Start or similar preschool programs, including other federally assisted preschool programs of a compensatory nature. The goals of the program are to—

(a) Provide comprehensive services that will help these children develop to their full potential;

(b) Achieve active parent participation in the development, conduct, and overall direction of services to these children;

(c) Produce knowledge about innovative educational approaches specifically designed to assist these children in their continued growth and development; and

(d) Demonstrate and disseminate effective Follow Through practices.

(Authority: 42 U.S.C. 9861, 9863)

§ 215.2 What type of grants does the Secretary award?

The Secretary awards two types of Follow Through grants:

(a) Local project grants, including grants for—

(1) Local projects affiliated with a sponsor; and

(2) Self-sponsored local projects.

(b) Sponsor grants.

(Authority: 42 U.S.C. 9861(a), (c), 9863(a), 9866)

§ 215.3 Who is eligible for an award?

(a) *Local Follow Through projects.* (1) Except as provided in paragraph (a)(2) of this section and § 215.33(b), the

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Secretary awards local Follow Through project grants to local educational agencies (LEAs).

(2) The Secretary may award a grant to another public or appropriate private nonprofit agency, organization, or institution if the Secretary determines it is necessary to include in Follow Through significant numbers of eligible children who are not or cannot be served by an LEA.

(b) *Sponsors.* The Secretary may award Follow Through sponsor grants to—

(1) Institutions of higher education:

(2) Regional educational laboratories; or

(3) Other appropriate public or private nonprofit agencies, organizations, or institutons.

(Authority: 42 U.S.C 9861(a), (b), 9863(a), 9866)

§ 215.4 What does a local Follow Through project do?

(a) Unless the Secretary in particular cases specifies otherwise, a local Follow Through project must include the following components:

(1) An educational component that includes—

(i) Implementation of an innovative educational approach specifically designed to improve the school performance of low-income children in kindergarten and primary grades; and

(ii) Orientation and training for Follow Through staff, parents, and other appropriate personnel.

(2) A parent participation component that provides for—

(i) The active participation of Follow Through parents in the development, conduct, and overall direction of the local project, including activities such as—

(A) Notifying each childs' parents in a timely manner that the child has been selected to participate in Follow Through;

(B) Informing each child's parents of the specific instructional objectives for the child;

(C) Reporting to each child's parents on the child's progress;

(D) Establishing conferences between individual parents and teachers;

(E) Providing materials, suggestions, and training to parents to help them work with their children at home;

(F) Providing timely information concerning the Follow Through Program including, for example, program plans and evaluations;

(G) Soliciting parents' suggestions in the development, conduct, and overall direction of the project;

(H) Consulting with parents about how the school can work with parents to achieve the program's objectives;

(I) Providing timely responses to parents' recommendations; and

(J) Facilitating volunteer or paid participation by parents in the project;

(ii) The establishment of a parent committee to promote active parent participation.

(3) A support services component that provides health, social, nutritional, and other support services to aid the continued development of Follow Through children to their full potential.

(4) A demonstration component that affords opportunities to examine in operation, and to assess the qualities of, effective Follow Through practices for the purpose of encouraging adoption of those practices by other public and private schools having similar educational needs.

(5) For self-sponsored local projects, a dissemination component that provides for the dissemination of effective Follow Through practices to public and private school officials, including—

(i) Encouraging adoption of those effective practices by other public and private schools;

(ii) Providing training and technical assistance to persons interested in adopting the effective practices; and

(iii) Following the progress of the adopted practices.

(b) Except as needed to implement § 215.33, a local Follow Through project must be conducted in only one school, unless the Secretary determines that particular circumstances warrant inclusion of more than one school.

(Authority: 42 U.S.C. 9861(a), (c))

§ 215.5 What does a Follow Through sponsor do?

A Follow Through sponsor shall—

(a) Assist local Follow Through projects affiliated with the sponsor in implementing the innovative educational approach specifically developed by the sponsor to improve the school performance of low-income children in kindergarten and primary grades by—

(1) Providing orientation and training to Follow Through staff, parents, and other appropriate personnel;

(2) Recommending or making available necessary materials;

(3) Helping to identify available public and private resources that can contribute to the development of a comprehensive project;

(4) Monitoring implementation;

(5) Evaluating or participating in the evaluation of the effectiveness of the project; and

(6) Providing additional technical assistance, as appropriate; and

(b) Demonstrate and disseminate effective Follow Through practices to public and private school officials by—

(1) Encouraging adoption of those effective practices by other public and private schools;

(2) Providing training and technical assistance to persons interested in adopting the effective practices; and

(3) Following the progress of the adopted practices.

(Authority: 42 U.S.C. 9863(a), 9866)

§ 215.6 What children may participate in a local Follow Through project?

(a) A local Follow Through project must serve primarily low-income children enrolled in kindergarten and primary grades who have participated in a full-year Head Start or similar preschool program, including other federally assisted preschool programs of a compensatory nature.

(b) To meet the requirement in paragraph (a) of this section, a local project must ensure that at least—

(1) Sixty percent of the children enrolled in the project are from low-income families; and

(2) Sixty percent of the children have had preschool experience as described in paragraph (a) of this section.

(c) Children determined to be low-income at the time they are enrolled in a local Follow Through project may be considered to be low-income for the duration of their participation in the project.

(Authority: 42 U.S.C. 9861(a), (c))

§ 215.7 What regulations apply?

The following regulations apply to the Follow Through Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 215.

(Authority: 42 U.S.C. 9861–9868)

§ 215.8 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application

Award
Budget
EDGAR
Elementary school
Equipment
Grant
Grantee
Local educational agency
Materials
Nonprofit
Preschool
Private
Project
Public
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

"Approach" means a coherent, innovative educational strategy—based on one or more theories of child growth and development—that is specifically designed to improve the school performance of low-income children in kindergarten and primary grades. An approach consists of at least—

(1) Classroom or home-based teaching and management practices;

(2) Required or suggested curriculum materials;

(3) Provisions for regular staff training and monitoring; and

(4) Evaluation procedures.

"Follow Through children" means all children participating in a local Follow Through project.

"Follow Through parent" means a parent, legal guardian, or other person acting in the place of a parent of a child who is or will be participating in a local Follow Through project.

"Follow Through staff" means all persons who are employed full- or part-time in a local Follow Through project, whether or not they are paid with Federal Follow Through funds.

"Low-income Follow Through children" means children participating in a local Follow Through project from families whom the applicant has determined, using the best available data, to be low-income. Examples of data the applicant may use include eligibility under the National School Lunch Program, data on children from families receiving Aid to Families with Dependent Children, or other appropriate measures for determining low-income status.

"Primary grades" means grades one through three inclusive.

(Authority: 42 U.S.C. 9861, 9866)

§ 215.9 [Reserved]

Subpart B—How Does One Apply for an Award?

§ 215.10 How does an applicant apply to operate a local Follow Through project?

An applicant may apply for a grant to operate a local Follow Through project in two ways:

(a) *Joint local project-sponsor application.* A local project applicant shall submit a joint application with a sponsor whose approach the applicant will implement, except that no more than five local project applicants may apply with any sponsor.

(b) *Self-sponsored local project application.* A local project applicant shall submit an application without affiliating with a sponsor if the applicant has developed or implemented an innovative educational approach specifically designed to improve the school performance of low-income children in kindergarten and primary grades.

(Authority: 42 U.S.C. 9861 (a), (c))

§ 215.11 How does an applicant apply to be a Follow Through sponsor?

An applicant for a grant to be a Follow Through sponsor shall submit a joint application with one or more local projects that will implement the innovative educational approach developed by the sponsor, except that a sponsor may apply with no more than five local projects.

(Authority: 42 U.S.C. 9863(a), 9866)

§§ 215.12–215.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 215.20 How does the Secretary evaluate an application for a Follow Through grant?

(a) *General.* (1) For each type of grant, the Secretary awards up to 100 possible points for the selection criteria in each applicable section of these regulations.

(2) The maximum possible score for each criterion is indicated in parentheses.

(b) *Self-sponsored local project application.* The Secretary uses the criteria in § 215.21 to evaluate each application for a self-sponsored local project.

(c) *Joint local project-sponsor application.* (1) The Secretary uses the criteria in § 215.22 to evaluate each application for a sponsored local project contained in a joint application.

(2) The Secretary uses the criteria in § 215.23 to evaluate the application of the sponsor contained in a joint application.

(3) To obtain a total score for a joint application, the Secretary—

(i) Averages the points awarded to all the local project applicants contained in the joint application; and

(ii) Adds that local project average score to the sponsor's score.

(Authority: 42 U.S.C. 9861 (a), (c), 9863(a), 9866)

§ 215.21 What section criteria does the Secretary use for self-sponsored local Follow Through project applications?

(a) *Educational component.* (25 points) The Secretary reviews each application for a self-sponsored local Follow Through project to determine the effectiveness of the innovative educational approach the applicant has developed or implemented to improve the school performance of low-income children in kindergarten and primary grades. The Secretary also reviews each application for the percentage of low-income children and the percentage of children with preschool experience who will participate in the project.

(b) *Parent participation component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to provide for active participation of Follow Through parents in the development, conduct, and overall direction of project activities.

(c) *Support services component.* (10 points) The Secretary reviews each application to determine the quality of the support services the applicant will provide to Follow Through children.

(d) *Demonstration component.* (10 points) The Secretary reviews each application to determine the quality of the applicant's plan to—

(1) Demonstrate effective practices in the delivery of Follow Through services; and

(2) Provide opportunities for observation of all aspects of the project.

(e) *Dissemination component.* (10 points) The Secretary reviews each application to determine the quality of the applicant's plan to disseminate information about its effective Follow Through practices to public and private school officials, including the extent to which the applicant will—

(1) Encourage adoption of those effective practices by other public and private schools;

(2) Provide training and technical assistance to persons interested in adopting the effective practices; and

(3) Follow the progress of the adopted practices.

(f) *Quality of key personnel.* (5 points) (1) The Secretary reviews each application to determine the quality of

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the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel; and

(iii) The time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(g) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant provides for the coordination of Follow Through services with existing local resources.

(h) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(1) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(2) The extent to which an applicant's evaluation design meets the standards established in § 215.34.

(Authority: 42 U.S.C. 9861(a), (c), 9865(b))

(Approved by the Office of Management and Budget under control number 1810–0003)

§ 215.22 What selection criteria does the Secretary use for sponsored local Follow Through project applications?

(a) *Educational component.* (25 points) The Secretary reviews each application for a sponsored local Follow Through project contained in a joint application to determine the capability of the applicant to implement a sponsor's approach, including information concerning the applicant's accomplishments to date, where appropriate. The Secretary also reviews each application for the percentage of low-income children and the percentage of children with preschool experience who will participate in the project.

(b) *Parent participation component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to provide for active participation of Follow Through parents in the development, conduct, and overall direction of project activities.

(c) *Support services component.* (10 points) The Secretary reviews each application to determine the quality of the support services the applicant will provide to Follow Through children.

(d) *Demonstration component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plant to—

(1) Demonstrate effective practices in the delivery of Follow Through services; and

(2) Provide opportunities for observation of all aspects of this project.

(e) *Quality of key personnel.* (5 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel; and

(iii) The time that each person referred to in paragraphs (e)(1)(i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraphs (e)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant provides for the coordination of Follow Through services with existing local resources.

(g) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(1) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(2) The extent to which an applicant's evaluation design meets the standards established in § 215.34.

(Authority: 42 U.S.C. 9861(a), (c), 9865(b))

(Approved by the Office of Management and Budget under control number 1810–0003)

§ 215.23 What selection criteria does the Secretary use for Follow Through sponsor application?

(a) *Educational approach.* (25 points) The Secretary reviews the application for a Follow Through sponsor grant contained in each joint application to determine the effectiveness of the innovative educational approach the applicant has developed to improve the school performance of low-income children in kindergarten and primary grades.

(b) *Implementation assistance.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to assist the local projects with which it is affiliated in implementating the applicant's approach, including—

(1) Providing orientation and training to Follow Through staff, parents, and other appropriate personnel;

(2) Recommending or making available necessary materials;

(3) Helping to identify available public and private resources that can contribute to the development of a comprehensive project;

(4) Monitoring implementation; and

(5) Providing additional technical assistance, as appropriate.

(c) *Demonstration and dissemination.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to demonstrate and disseminate information about effective Follow Through practices to public and private school officials, including the extent to which the applicant will—

(1) Assist local projects with which it is affiliated in demonstrating effective practices;

(2) Encourage adoption of those effective practices by other public and private schools;

(3) Provide training and technical assistance to persons interested in adopting the effective practices; and

(4) Follow the progress of the adopted practices.

(d) *Quality of key personnel.* (5 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director,

(ii) The qualifications of each of the other key personnel; and

(iii) The time that each person referred to in paragraphs (d)(1) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each

application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation.* (25 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(1) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(2) The extent to which an applicant's evaluation design meets the standards established in § 215.34.

(Authority: 42 U.S.C. 9863(a), 9865(b), 9866)

(Approved by the Office of Management and Budget under control number 1810–0003)

§ 215.24 What other factors does the Secretary consider in awarding a Follow Through grant?

(a) The Secretary prepares separate rank orderings of the self-sponsored local project applications and the joint local project-sponsor applications.

(b) From the funds appropriated for Follow Through, the Secretary determines the amount of funds available for self-sponsored local project applications and the amount available for joint local project-sponsor applications.

(c) The Secretary awards a grant to a local project—both self-sponsored and sponsored—only if the applicant—

(1) Obtains a rating of at least 70 points; and

(2) Meets the requirements in § 215.4(a).

(d) Under a joint local project-sponsor application, the Secretary—

(1) Awards a grant to a sponsor only if a grant will be made to at least one local project that will implement the sponsor's approach; and

(2) Does not award a grant to any local project applicant included in the joint application, even if the local project applicant scores 70 points or more, if the joint application does not rank sufficiently high to receive funding.

(Authority: 42 U.S.C. 9861, 9863, 9866)

§§ 215.25–215.29 [Reserved]

Subpart D—What Conditions Must be Met by a Grantee?

§ 215.30 What program requirements must a local project grantee meet?

In addition to implementing the components listed in § 215.4(a), a local Follow Through project grantee shall meet the following program requirements:

(a) *Project director.* A local project grantee shall appoint a full- or part-time director to be responsible for overall program management.

(b) *Employment of personnel.* In the hiring of personnel, a local project grantee shall, to the maximum extent feasible, give preference to the following:

(1) Low-income Follow Through parents.

(2) Other residents of the area served by the project.

(Authority: 42 U.S.C 9861 (a), (c), 9867(a))

§ 215.31 What program requirements must a sponsor meet?

A Follow Through sponsor shall meet the following program requirements:

(a) *Responsibilities.* A sponsor shall perform, at a minimum, the activities listed in § 215.5.

(b) *Project director.* A sponsor shall appoint a full- or part-time director to be responsible for overall program management.

(Authority: 42 U.S.C. 9863(a), 9866)

§ 215.32 What fiscal requirements must a local project grantee meet?

(a) *Prohibition against supplanting.* (1) A local project grantee shall use Follow Through funds for services that are in addition to, and not in substitution for, services previously provided without Federal assistance.

(2) To meet the requirements in paragraph (a)(1) of this section, a local project grantee shall contribute for the education of the children participating in the Follow Through project, at a minimum, the level of funds that would, in the absence of Follow Through funds, be made available from non-Federal sources for the education of those children.

(b) *Federal share.* (1) Unless a local project meets the criteria in paragraph (b)(2) of this section, a local project grantee may not use Follow Through funds to pay for more than 80 percent of the total approved costs of Follow Through services and activities.

(2) The Secretary may approve the use of Follow Through funds to pay for more than 80 percent of the total approved costs of the project if the Secretary determines that—

(i) The local grantee has made a reasonable effort to meet its non-Federal share requirement; and

(ii)(A) The project serves an area in which the per capita personal income is equal to or less than one-half of the current poverty income guideline, for a family unit of four members, published by the Department of Health and Human Services in the **Federal Register**.

(B) The project serves an area that has been involved in a major disaster; or

(C) The project serves an area that has been affected by unusual circumstances that have significantly reduced the financial or human resources that would otherwise be available as non-Federal share.

(Authority: 42 U.S.C. 9862 (b), (c))

§ 215.33 What are the requirements for participation of private school children?

(a) A local Follow Through project grantee shall provide for participation of eligible students enrolled in private nonprofit elementary schools.

(b) If an LEA is unable or unwilling to include in its local project eligible children enrolled in private nonprofit elementary schools, the Secretary may provide financial assistance to any other public or appropriate private nonprofit agency, organization, or institution for the purpose of serving those children.

(Authority: 42 U.S.C. 9861 (a), (b))

§ 215.34 What evaluation requirements apply to a grantee?

(a) A grantee's evaluation must comply with the following requirements:

(1) A grantee's evaluation design must include objective measures of the educational progress of project participants when measured against an appropriate nonproject comparison group. These measures should include performance on standardized testing instruments, grade retention, truancy, or referral to or placement in special education.

(2) A grantee's evaluation design must meet the following technical standards:

(i) *Representativeness of evaluation findings.* The evaluation results must be computed so that the conclusions apply to the persons, schools, or agencies served by the projects.

(ii) *Reliability and validity of evaluation instruments and procedures.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, at twelve-month testing intervals, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(b) A grantee shall modify the project, if necessary, as a result of the evaluation of the project.

(Authority: 42 U.S.C. 9865(b))

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§§ 215.35–215.39 [Reserved]

Subpart E—What Compliance Procedures May the Secretary Use?

§ 215.40 What procedure does the Secretary use before terminating a grant?

The Secretary does not terminate Follow Through funds for a grantee's failure to comply with applicable terms and conditions unless the Secretary has afforded the grantee reasonable notice and an opportunity for a hearing under 34 CFR Part 78 (Education Appeal Board).

(Authority: 42 U.S.C. 9867(b))

§§ 215.41–215.49 [Reserved]

Appendix—Summary of Comments and Responses

(Note: This appendix will not appear in the Code of Federal Regulations.)

What Types of Grants Does the Secretary Award? (§ 215.2)

Comments: Two commenters requested that resource center grants be reinstated as one of three types of grants in § 215.2. The commenters felt that resource centers had not been adequately funded to be as effective as they could have been.

Discussion: The Secretary's decision not to fund resource center grants is due in part to the limited funding levels for the program. In order for the program to remain viable, the Secretary believes that the program must be refocused. These final regulations, therefore, emphasize demonstration and dissemination activities for all projects, rather than a few selected projects as in the past. In addition, local projects will be limited to a single school site. The limitation of local projects to one school, the emphasis on demonstration and dissemination, and the deemphasis on direct services are ways in which funds are made available to support fully project grants without an increase in appropriations.

Changes: None.

What Does a Local Follow Through Project Do? (§ 215.4)

Comments: Many commenters expressed a desire to have parent advisory councils required in § 215.4(a)(2), because they believed that parent advisory councils are important to the implementation and success of many programs, particularly programs for disadvantaged students. The commenters believed that parent committees have been the framework for ensuring strong, effective parent involvement in Follow Through projects. A number of commenters expressed fear that not requiring parent committees would diminish the level of parent participation that has been achieved in Follow Through projects over the years.

Several commenters were concerned that the emphasis on demonstration and dissemination would minimize the support services a family would receive and would also minimize sponsor guidance in dissemination activities.

A number of commenters preferred that the program not operate in a single school as required in § 215.4(b).

Another commenter wanted clarification of the Department's position on implementing kindergarten programs in local Follow Through projects.

Discussion: In the NPRM, the Secretary stressed the importance of active parent involvement in Follow Through. The Secretary acknowledged, however, that parent involvement may take a variety of forms, best determined by the local projects that receive Follow Through funds. As a result, the NPRM did not require local projects to establish policy advisory committees. In response to the high percentage of comments favoring parent committees, the Secretary has decided to require local projects to establish parent committees. In making this change, the Secretary does not intend to reduce the flexibility of local projects in devising additional means of involving parents. Rather, the Secretary encourages projects to be creative and insightful in designing parent activities that address the particular needs of the local community.

Although the regulations emphasize demonstration and dissemination activities, the program will continue to provide comprehensive services to low-income children and their families. The Secretary believes, however, that it is most cost-effective to concentrate on publicizing and replicating effective educational approaches—including comprehensive services designed for improving the school performance of children from poor families. Through these demonstration and dissemination activities, a greater number of families will eventually receive services through replication of effective Follow Through practices. Sponsors continue to have a primary role in demonstrating and disseminating effective practices as §§ 215.5(b) and 215.23(c) make clear. For local projects affiliated with a sponsor, the demonstration component is implemented jointly by the sponsor and the local project; dissemination is the sponsor's responsibility. As noted in § 215.4(a)(4) and (5), self-sponsored local projects have both a demonstration and a dissemination component because they have no sponsor affiliation.

The limitation of a local project to one school will provide for a more effective concentration of resources and a sharper focus within a school district. Moreover, in view of the emphasis on demonstration and dissemination activities, the Secretary believes that a project located in one school will be better able to demonstrate effective Follow Through practices. As indicated in § 215.4(b), however, the Secretary may waive this requirement if the Secretary determines that particular circumstances warrant inclusion of more than one school.

There is no statutory requirement that local Follow Through projects include kindergarten in their programs, although if Follow Through is truly to preserve gains made in Head Start or similar preschool programs, it is likely that most local projects will have kindergarten components. Those projects that include a full day of kindergarten, even though the school district has half-day or no kindergarten, certainly are eligible for funding.

Changes: Section 215.4(a)(2) has been changed to require a local Follow Through project to establish a parent committee to promote active parent participation.

What does a Follow Through Sponsor do? (§§ 215.5(a)(3) and 215.23(b)(3))

Comments: One commenter recommend that §§ 215.5(a)(3) and 215.23(b)(3) be clarified by indicating that sponsors "assist" local agencies in identifying public and private resources that can contribute to the development of a comprehensive project.

Discussion: The Secretary agrees that local projects should share in the responsibility for identifying other resources.

Changes: The Secretary has clarified §§ 215.5(a)(3) and 215.23(b)(3) by revising the language to point out that sponsors "help" local projects identify available public and private resources.

What Children May Participate in a Local Follow Through Project? (§ 215.6)

Comments: A number of commenters were concerned with the provision in § 215.6(b) that requires that at least 60 percent of the children enrolled in a local project be from low-income families and at least 60 percent have preschool experience. Specifically, most commenters expressed concern with the impact of § 215.6(b) on their desegregation efforts or the segregating effect of § 215.6(b) itself. Others were concerned that the concentration of

high-risk children would pose a problem in obtaining positive outcomes. The commenters recommended a return to the current 50 percent requirement as being more desirable.

Discussion: Section 662(a) of the Follow Through Act states, in part, that "Follow Through programs [must be] focused *primarily* on children from low-income families * * * who were previously enrolled in Head Start or similar programs." (emphasis added). To ensure that projects are directing their services primarily to low-income children and children with preschool experience, the final regulations impose a more exacting standard than the current regulations by requiring a minimum 60 percent participation by low-income children and a minimum 60 percent participation by children with preschool experience. The Secretary believes that the 60 percent requirement more closely implements the statutory provision and ensures that Follow Through services are targeted on low-income children. At the same time, the Secretary does not believe that the increase from 50 to 60 percent will have the negative effects the commenters fear.

Changes: None.

What Regulations Apply? (§ 215.7(a))

Comments: One commenter felt that State procedures for implementing Executive Order 12372, in some instances, went beyond what was necessary to comply with the intent of the Order. Specifically, the commenter questioned the reason for submitting applications for State review in all States where demonstration and dissemination activities would be provided when no direct Federal financial assistance would be provided to those States.

Discussion: An applicant must comply with the requirements concerning Executive Order 12372 in its own State. The applicant need not submit its application to other States, however, since the States in which services will be performed will not be known at the time an application is filed. Prior to providing any services, in a State other than its home State, a grantee must contact the State's Single Point of Contact to determine if the State wishes to review its project.

Changes: None.

What Definitions Apply? (§ 215.8(b))

Comments: One commenter requested clarification of the definition of "primary grades," noting that the definition does not mention kindergarten. Another commenter questioned whether the use of guidelines other than U.S. Poverty Income Guidelines is allowable for determining a family's low-income status.

Discussion: As the definition of "low-income Follow Through children" indicates, a local project may determine a family's low-income status by measures other than the U.S. Poverty Income Guidelines. For example, a local project may use data for the National School Lunch Program, Aid to Families with Dependent Children, or other appropriate measure for determining a family's low-income status. The choice of an appropriate measure is at the discretion of the local project.

Section 662(a) of the Follow Through Act refers to children "in kindergarten and primary grades * * *." Thus, the statute does not include kindergarten as a primary grade. For this reason, the Secretary defines "primary grades" as "grades one through three inclusive" and does not include kindergarten in that definition.

Changes: None.

How Does One Apply for an Award? (§ § 215.10(a) and 215.11)

Comments: Several commenters objected to the provisions in § § 215.10(a) and 215.11 that limit a joint local project sponsor application to no more than five local project applicants. The commenters noted that no similar provision is contained in the Follow Through regulations curently in effect. The commenters were concerned that some outstanding projects now associated with sponsors with more than five affiliated local projects would be eliminated. They were also concerned that those sponsors with more than five sites would have the unpleasant task of selecting among existing sites.

Discussion: The legislative history accompanying the recent reauthorization of Follow Through makes clear that Follow Through is to be a competitive grant program and that the grant award process should consider new as well as existing grantees. Accordingly, the final regulations provide the opportunity for new applicants and existing grantees to apply for Follow Through funds. Through the competitive process, the Secretary is interested in obtaining the widest range of educational approaches in order to demonstrate and disseminate successful approaches to other locatities. The Secretary believes that a maximum of five local sites will provide sufficiently diverse circumstances for a sponsor to demonstrate the versatility of its approach, while enabling the Secretary to fund the greatest number of different approaches possible with the available funds. Nothing in the regulations precludes an LEA with a current local project from applying to operate separate projects with more than one sponsor or to operate a self-sponsored local project.

Changes: None.

What Other Factors Does the Secretary Consider in Awarding a Follow Through Grant? (§ 215.24)

Comments: Several commenters expressed concern that individual grants may not be large enough to support implementation of the projects, particularly the demonstration and dissemination components. Some questioned the wisdom of opening the competition to new grantees and suggested that the Department fund fewer projects and sponsors to allow an adequate funding level for those projects that are funded. However, another commenter suggested that the Department was exceeding statutory authority and Congressional intent by substantially reducing the number of grants made.

One commenter requested clarification on the rating of applicants' scores in § 215.24(d)(2), noting that there is a minimum score for self-sponsored projects but not for sponsored projects.

Discussion: The Secretary believes that applicants should have sufficient flexibility in designing their projects to ensure the projects meet the purposes of the program. The regulations allow that flexibility, but at the same time reflect the reality that Follow Through is a demonstration program, not a large service program like Head Start.

The legislative history accompanying the reauthorization of the Follow Through program makes clear that Follow Through is to be a competitive grant program and that the grant award process should consider new as well as existing grantees. The new policies should result in the maximum number of awards being made. If any reduction in the number of awards occurs, it will be because of the Secretary's efforts to ensure that projects are sufficiently funded to be successful.

Section 215.24(c) provides that the Secretary awards a grant to a local project—either self-sponsored or sponsored—only if the applicant obtains a rating of at least 70 points. As a result, if a local project scores below 70, it will not be funded—even if it is part of an otherwise successful joint local project-sponsor application. Its score will be averaged with the other local projects, however, to obtain the average local project score for the joint application. As § 215.20(c)(3) indicates, the total

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score for a joint local project-sponsor application is the sponsor's score plus the average of the points awarded to all the local project applicants contained in the joint application. There is no minimum score for sponsor applicants.

Changes: None.

What Program Requirements Must a Local Project Grantee Meet? (§ 215.30)

Comments: One commenter suggested that the Follow Through director should be an integral part of the school organization with line authority. Another commenter suggested that part-time directors be involved with the same populations or functions in their non-Follow Through time as they are when working on Follow Through assignments.

Another commenter opposed the omission of direct language that would serve to underscore the Federal commitment to equal opportunity employment and meaningful opportunities for parental participation.

Discussion: Nothing in § 215.30(a) prohibits local project grantees from hiring a director who is an integral part of the school organization or who also works with low-income children at other times. However, it would not be appropriate for the Department to require these conditions. Grantees should choose a director who has appropriate professional qualifications, experience, and administrative skills and who will best meet the needs of the project.

The employment preferences noted in § 215.30(b) accurately reflect section 668(a) of the Follow Through Act, which states that "[r]ecipients of financial assistance under this [Act] shall provide maximum employment opportunities for residents of the area to be served, and to parents of children who are participating in projects assisted under this [Act]." The Department has not lessened its commitment to equal opportunity employment. All Follow Through grantees are still subject to Federal statutes and regulations prohibiting discrimination. Those requirements are currently listed in 34 CFR 75.500.

Changes: None.

What Fiscal Requirements Must a Local Project Grantee Meet? (§ 215.32(a))

Comments: One commenter was concerned that, if a local project uses local funds to provide supplemental Follow Through activities in a year when Federal Follow Through funds are insufficient to fund such activities and charges those same activities to the Federal grant in a subsequent year, the project would violate the supplanting prohibition.

Discussion: In addition to requiring a 20 percent non-Federal share of the local project costs, § 215.32(a)(2) requires a local project grantee to contribute, at a minimum, the levels of funds that would, in the absence of Follow Through funds, be made available from non-Federal sources for the education of the children participating in the project. If the grantee would not use local funds to provide certain supplemental services to Follow Through children in the absence of the Follow Through project, the local project grantee may use Follow Through funds to provide those services in years when sufficient Follow Through funds are available.

Changes: None.

What Are the Requirements for Participation of Private School Children?(§ 215.33)

Comments: Several commenters raised concerns about the requirement that local projects provide for the participation of private school children, including concerns about the full-day nature of the Follow Through program, the erosion of services to public school children, and the location of the services.

Discussion: Section 215.33 accurately reflects the requirement in section 662(a) of the Follow Through Act that local projects must provide services "focused primarily on children from low-income families in kindergarten and primary grades, including such children enrolled in private nonprofit elementary schools * * *." If a local project is unable or unwilling to provide those services to private school children, § 215.33(b) authorizes the Secretary to provide financial assistance to any other public or appropriate private nonprofit agency, organization, or institution for the purpose of serving those children.

Changes: None.

What Evaluation Requirements Apply to a Grantee? (§ 215.34)

Comments: Commenters expressed a variety of concerns over the evaluation requirements in § 215.34. Specifically, commenters requested that a "defined evaluation design" be included in the regulations, suggested expanding the regulations to include alternative evaluation measures based on multiple-year rather than single-year evaluations, questioned the focus on child outcome measures when many Follow Through programs are directed at adults who work with children, and questioned the appropriateness of comparison groups.

Discussion: The Secretary believes that, because of the significant philosophical and operational differences among various Follow Through approaches, it would be inappropriate for the Department to require a specific evaluation design. Rather, the Secretary believes that the general evaluation standards in § 215.34 are more appropriate because they allow grantees to design evaluations that measure the success of the particular intervention employed by the grantee.

The wording of § 215.34(a) does not exclude alternative evaluation measures, but neither does the wording require that measures such as performance on standardized testing, grade retention, etc., be included. While multiple-year evaluation is important, this can be done in tandem with, or as a result of, a series of single-year evaluations. The very important use of evaluative data to improve projects on a continuing basis must not be overlooked. Section 666(a) of the Follow Through Act requires evaluations to include comparisons with appropriate control groups, where appropriate.

Changes: Section 215.34 has been changed to require a grantee to modify its project, if necessary, as a result of an evaluation of the project.

What Procedure Does the Secretary use Before Terminating a Grant? (§ 215.40)

Comments: Several commenters requested clarification of the procedures for terminating a grant in § 215.40 as they apply to current Follow Through grantees.

Discussion: Section 215.40 reflects the statutory requirement in section 668(b) of the Follow Through Act that the Department may not terminate Follow Through funds for a grantee's failure to comply with applicable terms and conditions unless the grantee has been afforded reasonable notice and opportunity for a full and fair hearing. Under 34 CFR 74.110, "termination" of a grant means "permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee." Therefore, the Department may not terminate the current grants before they expire on June 30, 1988, without providing notice and an opportunity for a hearing. However, the procedures in § 215.40 do not apply to the Department's decision not to award, following a competition, a new grant to a current Follow Through grantee because that grantee did not score sufficiently high to receive funding. That funding decision is not a "termination" of funds under 34 CFR 74.110.

Changes: None.

[FR Doc. 87-23257 Filed 10-16-87; 8:45 am]
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DEPARTMENT OF EDUCATION

[CFDA No.: 84.014]

Invitation for Applications for New Awards Under the Follow Through Program for School Year 1988–89

Purpose: To serve the needs of primarily low-income children in grades K–3 who have had preschool experience by providing grants to local educational agencies to operate local projects, and to institutions of higher education, regional educational laboratories, and other appropriate public or private nonprofit agencies to act as sponsores.

Deadline For Transmittal of Applications: December 11, 1987.

Deadline For Intergovernmental Review Comments: February 9, 1988.

Applications Available: October 13, 1987.

Available Funds: The Administration's budget for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The estimates below are based on the amount appropriated for fiscal year 1987.

Estimated Awards and Funds By Category:

	Number	Amount
Sponsors	14	$2,290,000
Self-sponsored local projects	12	1,512,000
Sponsored local projects	45	3,375,000
Total	71	7,177,000

Project Period: The Follow Through program, if funded, will make multi-year awards. Budget periods will be for 12 months. Performance periods will be for 36 months.

Applicable Regulations: (a) The Follow Through Program Regulations, 34 CFR Part 215. The regulations specify two competitions—open among self-sponsored local project applications and one among joint local project-sponsor applications—in which new applicants as well as existing grantees may apply.

(b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: James M. Spillane, U.S. Department of Education, 400 Maryland Avenue SW., Room 2017, Washington, DC 20202. telephone: (202) 732–4694.

Program Authority: 42 U.S.C. 9861–9868.

Dated: October 2, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 575

Emergency Shelter Grants Program; Final Rule and Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 575

[Docket No. R-87-1316; FR-2298]

Emergency Shelter Grants Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the Emergency Shelter Grants Program contained in HUD's appropriation for fiscal year 1987. The Program authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses, and for essential social service expenses in connection with emergency shelters for the homeless.

The purpose of the Program is to help improve the quality of emergency shelters for the homeless, to make available additional emergency shelters, and to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, so that these individuals have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance they need to improve their situations.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The FY 1987 Appropriations Act

On December 17, 1986, the Department published a proposed rule and program requirements for fiscal year 1987 (51 FR 45278) implementing the Emergency Shelter Grants ("ESG") program contained in Title V, Part C of HUD's appropriation Act for the 1987 fiscal year (H.R. 5313) (the 1986 ESG program). Under section 525(a) of the Act, HUD has notified the affected States, metropolitan cities, and urban counties of their respective allocations for fiscal year 1987 and has implemented the program in accordance with the statutory requirements. This final rule replaces the proposed rule and program requirements and governs the allocation and use of funds appropriated for the 1986 ESG program.

The McKinney Act Emergency Shelter Grants Program

On July 22, 1987, the President approved the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77) which reauthorized the ESG program, but without repealing the 1986 ESG program. The McKinney Act ESG program differs significantly from the 1986 ESG program. Section 416(a) of the McKinney Act, however, requires HUD to operate the 1987 ESG program using the 1986 requirements until notice and comment rulemaking to implement the McKinney Act provisions is completed. The Department believes that certain provisions of the McKinney Act relating to allocation of grant funds and the use of a Comprehensive Assistance Plan must be implemented immediately. The Department has published a notice at 52 FR 33790 (September 4, 1987) concerning these matters as well as a notice (52 FR 30628, August 14, 1987) implementing the Comprehensive Plan requirements contained in Subtitle A of the McKinney Act. This final rule, together with those notices, govern the operation of the McKinney Act ESG program until a final rule can be promulgated.

The Department intends to publish a proposed rule for the McKinney Act ESG program by October 1987 and a final rule (establishing a new CFR part) as quickly as possible thereafter consonant with providing full consideration to the public comments received.

Discussion of Public Comments and Changes Made in the Final Rule

The Department received 29 public comments in response to the December 17, 1986 proposed rule. There follows a discussion of these comments and a review of the changes made in the final rule both in response to public comments and internal departmental initiatives.

Several commenters asked that a definition of "primarily religious" be included in the final rule to differentiate it from "pervasively sectarian", another term used in the proposed rule. The Department has refrained from including such a definition in this final rule since "primarily religious" is synonymous with the term "pervasively sectarian", as that term has been used by the Supreme Court in its First Amendment church/state decisions.

A commenter urged that the list of eligible activities be amended to include mental health services as one of the services that a grantee may provide. The Department has adopted this suggestion by including mental health services under the list of eligible activities at § 575.21(a), and has made a conforming amendment to §575.57, Assistance to the homeless. The commenter, however, mistakenly characterized these eligible activities as mandatory; a grantee may choose among these activities.

A commenter suggested that the list of eligible activities be expanded to include the acquisition or construction of new buildings. This suggestion was not adopted in the final rule since it exceeds the scope of the program's enabling legislation which limits the use of program funds to the renovation, major rehabilitation, or conversion of buildings, and does not include their acquisition or construction.

Another commenter requested that housing arrangements for special populations of the homeless, including transitional housing and group homes for homeless persons who are mentally ill, be explicitly premitted under the ESG Program. In this final rule, the Department has included a definition of the term "emergency shelter" at § 575.3 as "any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless". This definition encompasses transitional housing and similar arrangements that provide longer term accommodations, so long as the maximum length of stay does not exceed 18 months. Similarily, housing for special populations of the homeless is eligible for funding under

the ESG program. It should be noted, however, that the final rule does not permit use of program funds for permanent residences.

A question arose in the public comments as to whether paying for furnishings, not in connection with other assistance for rehabilitation or essential services, constitutes an eligible program activity and, if so, whether the furnishings may be used in a building owned by a religious organization. Buying furnishings for an emergency shelter is an eligible activity under § 575.21(a)(3), whether or not the grantee undertakes other eligible activities with respect to the shelter. Moreover, furnishings purchased with emergency shelter grant allocations may be used in an emergency shelter owned by a religious organization, so long as the emergency shelter is operated in a manner free from religious influences under conditions prescribed in the assistance agreement.

Several commenters inquired about the types of activities that trigger the use commitment at § 575.53. One commenter in particular questioned whether the provision of furnishings, which can readily be removed from the shelter, locks a grantee into using that particular building for three years. The Department has included clarifying language to assist the reader in determining when the use commitment is triggered. The rule now makes clear that the use of ESG funds for any of the activities listed in § 575.21(a)(1) or (3) (including the provision of furnishings) triggers the three-year use commitment, but that the essential services listed at § 575.21(a)(2) do not.

The 10-year continued use requirement was objected to by a commenter on the ground that it severely restricts the number of not-for-profit agencies willing to provide emergency shelter for the homeless. This commenter observed that even fewer nonsectarian organizations have the financial means to acquire such long-term control over property which can then be feasibly adapted for program use. Nevertheless, the Department does not have discretion to revise this aspect of the rule since the 10-year continued use requirement is statutorily mandated.

Several commenters objected to the limitation in § 575.21(a) that no more than 15 percent of a grant allocation to a unit of general local government may be used for "essential services". These commenters argued that the limitation unnecessarily hinders local government's ability to provide services to the homeless—particularly where a municipality delegates the provision of such services to a not-for-profit agency which would not otherwise be subject to the funding restriction. The Department shares these concerns. While this provision was statutorily mandated under the 1986 ESG program, Congress has since provided (under section 414(b) of the McKinney Act) that the Department may waive the 15 percent limitation if the unit of general local government demonstrates that (1) other eligible activities under the program are already being carried out in the locality with other resources; and (2) grant amounts cannot practicably be used for eligible activities other than essential services. Although section 414(b) was included in the 1987 ESG program, and not the 1986 program, the Department believes that it is inappropriate to ignore the clear congressional intent that units of general local government be relieved from the strictures of the 15 percent cap in certain circumstances. Therefore, the Department will entertain requests under § 575.5 to waive the 15 percent ceiling on essential services, for amounts made available by the supplemental Appropriations Act, 1987. Waiver requests from State recipients must first be sent to the State. The State will then promptly send waiver requests to HUD, together with any comments or recommendations it may have on them. (The Department is publishing a notice in today's **Federal Register** that establishes the standards for requesting a waiver under the ESG program.)

A commenter asked that the final rule clarify whether the 15 percent limitation applies only to local governments or whether it also applies to other grantees and recipients. The Department has added clarifying language to § 575.21(a)(2)(ii) to indicate that the 15 percent limitation applies only to grant amounts provided to a unit of general local government (including grant amounts that the unit of general local government distributes to nonprofit recipients). It does *not* apply to direct grants by HUD to nonprofit organizations under the reallocation procedures described in § 575.41. Although there is no direct limitation on a nonprofit recipient's use of grant amounts for essential services, a unit of local government may have to impose such restrictions on one or more of the nonprofit recipients to which it distributes grant amounts to ensure that the unit of general local government is itself in compliance with the 15 percent limitation.

One commenter urged that the prohibition against renting commercial transient accommodations be removed in the final rule and that such activity be considered an eligible activity if undertaken by a nonprofit organization. Upon reconsideration, the Department has decided to remove this prohibition from the list of ineligible activities since the three-year commitment required under § 575.53(a) precludes the renting of hotel rooms on a sporadic basis. (It should be noted that the ten year use commitment at § 575.53 would apply where ESG grant funds are used for the major rehabilitation or conversion of hotel or motel space to facilitate its use as an emergency shelter.) Under this final rule, hotel space rented for a period of at least three years (or ten years in the case of major rehabilitation or conversion) is considered an eligible activity under §575.21(a)(3), so long as the grantee or recipient certifies that: (1) There is an agreement that comparable rooms, in terms of quality, available amenities, and square footage (but not necessarily the same room or rooms for the entire period) will be available for use as an emergency shelter for the entire three years (or ten years, as applicable); (2) the lease can be procured at substantially less than the going daily room rates; and (3) the grantee or recipient has considered alternative facilities and has determined that the use of the hotel or motel space provides the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction.

A number of commenters objected to the prohibition against using grant funds to pay for staff costs involved in operating the shelters, arguing that staff expenses constitute a major portion of any program's operating budget. This prohibition is statutory, and the Department believes it is needed to prevent program funds from being used to pay for employment costs associated with running a shelter, rather than for providing the basic necessities of life for the homeless.

Similarly, the Department received numerous inquiries about whether a prorated portion of a staff member's salary can be considered an eligible expense if the staff member is providing an eligible activity such as maintenance or an essential service. For example, if a shelter operator provides transportation for shelter residents by driving the shelter's van, can that portion of his or her time spent on this transportation service be considered an eligible expense? The answer to this question is "no." The payment of a shelter staff member's salary—whether or not a portion of the staff member's time is devoted to providing an eligible activity—should not be considered an eligible expense. Because the Department believes that, in most shelters, the operator typically provides

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a variety of services and functions, to determine otherwise would compromise the statutory prohibition.

A commenter asked that ESG funds be awarded through cities' Community Development Block Grant programs, rather than on a statewide basis, so that shelters in smaller communities are not being ignored. This suggestion was not adopted since the ESGP allocation formula is statutorily mandated.

One commenter suggested that information on how funded activities interrelate with other efforts to house the homeless should be required under the Homeless Assistance Plan. The Department has not adopted this suggestion. The suggested information might be useful but, given the clear legislative intent to keep the Homeless Assistance Plan simple (*see* H.R. Rep. No. 99–230, 99th Cong., 1st Sess. 81 (1986)), and the need to allocate grant amounts quickly, the Department does not believe that this additional information should be required. (For the sake of clarity to the reader, it should be noted that the requirements of the Homeless Assistance Plan will be superseded by the Comprehensive Homeless Assistance Plan under the McKinney Act ESG program, 52 FR 30628, August 14, 1987.)

A commenter urged that the ESG program be made subject to intergovernmental evaluation under Executive Order 12372, since it affects State and local human service planning efforts and would likely impact upon community infrastructure. The Department has partially adopted this suggestion. Under 24 CFR 52.3, the Department periodically publishes in the **Federal Register** a list of HUD programs subject to intergovernmental evaluation, and specifies the extent to which they must adopt Part 52 procedures. In the most recent notice identifying programs subject to Part 52 (52 FR 29488, August 7, 1987), the Department made those ESG program applications that involve reallocation of grant amounts to grantees; involve major rehabilitation of an emergency shelter, or the conversion of a building to an emergency shelter; and that are site-specific, subject to the intergovernmental procedures under 24 CFR Part 52.

Another commenter asked that each State be notified officially of its allocation under the Program and that the final rule indicate whether the **Federal Register** publication date is the operative date. Under current procedures, the Department sends letters to States and units of general local government officially notifying them of their allocation under the program. The date of notification is used by the Department in determining the relevant submission deadlines.

A commenter claimed that the 180-day deadline under § 575.37(b) for obligating grant allocations is unreasonable because of the required local approval process, and urged that the final rule instead provide that HUD funds be obligated according to a timetable set out in the application. The Department disagrees. It is imperative that ESG funds be obligated as rapidly as possible. The Department's experience has been that the 180-day deadline is reasonable. If a situation arises in which a grantee believes that complying with the 180-day deadline is impossible, it should request a waiver of the requirement under § 575.5.

Another commenter claimed that under the proposed deadlines, applicants that can quickly assemble the necessary documentation may receive awards to the detriment of applicants that cannot meet the deadline but that have projects with greater merit. There is a risk that occasionally a relatively more meritorious application may not be considered because the applicant fails to submit a timely application. Nonetheless, the Department believes that the deadlines set out in this section strike a proper balance betwen the competing need to provide sufficient time for applications to be prepared and the need to avoid delay in providing aid to the homeless.

One commenter requested that grantees, rather than FEMA Boards and HUD field offices, be given the first opportunity to redistribute unused or returned grant funds, since a grantee is likely to have the most thorough understanding of the homeless situation in its jurisdiction. The Department has not adopted this suggestion since a grantee that has rejected the program, thereby causing funds to be "returned", can scarcely be asked to redistribute that which it refused to distribute in the first place. For similar reasons, unused funds should not be redistributed by the governmental unit that could not obligate them in a timely manner. The various sources of unused grant amounts and the sporadic manner in which they can be expected to become available for reallocation make it necessary to aggregate these funds and distribute them to a limited number of grantees. Nevertheless, departmental procedures do permit States to redistribute funds that their recipients fail to obligate. (It should be noted that FEMA boards are not given the authority to redistribute unused or returned grant funds. Rather, under § 575.41, they are a resource that HUD may use to identify applicants for reallocated grant amounts).

To ensure continuity and predicatability in local homeless programs, a commenter requested that unused grant amounts be reallocated to the original grantees on a national scale, using a predetermined formula. The Department believes that the statutory reallocation formula provides greater flexibility and that, given the relatively small amount of funds involved in reallocation, a change in the reallocation formula is unwarranted.

In addition, on its own initiative, the Department has amended the timing provision for submission of the annual and State interim performance reports. Under the proposed rule, the annual report was due one year from the date of the grant award. Interim reports were required to be filed by States within 90 days of the HUD grant award. This final rule establishes a uniform reporting cycle ending December 31, with annual reports due 30 days thereafter. Interim reports are required to be submitted by States within 90 days of the State's distribution of funds to its units of general local government. However, the interim report will be extended whenever a HUD Area Office grants a State an extension of the 65-day deadline for obligating its grant funds.

Restriction on the Use of Grant Amounts With Respect to Buildings Owned by Primarily Religious Organizations

The majority of the comments received concerned § 575.21(b)(2) of the proposed rule. This provision would preclude the use of grant funds "to renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities." In the main, commenters expressed the opinion that the provision goes beyond constitutional requirements regarding the separation of Church and State and would work to prevent participation by many religious organizations. Commenters also expressed the opinion that HUD's Church/State inquiry should focus primarily on the nature of the activity to be funded, not the organization carrying out the activity. We have given consideration to the arguments presented on this complex constitutional issue and have revised our requirements as noted below.

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion." In accordance with this constitutional mandate, the United States Supreme Court has adopted certain principles, in the form of three frequently cited tests,

to be used when passing on the constitutionality of Federal assistance.

First, the statute under which the assistance is to be provided must reflect a clearly secular purpose. Second, the statute must have a primary effect that neither advances nor inhibits religion. Third, the statute and its administration must avoid excessive governmental entanglement with religion. *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971). Working out case applications of these principles has been extraordinarily difficult. Chief Justice Burger noted in the majority opinion in *Lemon* that the language in the First Amendment is "at best opaque." 403 U.S. at 612.

The first test, that the statute reflect a clearly secular purpose, is generally not problematic and does not pose a problem here. As enacted, the Emergency Shelter Grants Program is designed to improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing certain essential social services to homeless individuals. All of the above clearly reflect a secular purpose.

In constructing the reach of the second part of the *Lemon* test, the Court in *Hunt* v. *McNair*, 413 U.S. 734 (1973) stated:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting. *Id.* at 742.

Government assistance to a "pervasively sectarian" organization for any purpose, *secular or religious*, or the funding of a religious activity in secular surroundings, is thus generally viewed as "advancing religion" in violation of First Amendment principles.

Commenters cited *Tilton* v. *Richardson*, 403 U.S. 672 (1971), *Hunt* v. *McNair*, *supra*, and *Roemer* v. *Maryland Board of Public Works*, 426 U.S. 736 (1976), for the proposition that government assistance can be provided to a religious organization to carry out the secular activity of renovating a building owned by it for use in the Emergency Shelter Grants Program. While each of these cases upheld aid to religiously affiliated colleges, they do not support the commenters' position. It is key that in each of these cases, government assistance for secular activities was allowed to stand only after a thorough examination of the characteristics of the institutions led to a specific finding that they were not primarily religious. The determination for constitutional compliance thus requires an examination of the extent to which religion pervades the functions of an institution.

In considering the nature of "pervasively sectarian organizations" Justice Blackmun, speaking for the majority in *Roemer*, declared:

> To answer the question whether an institution is so "pervasively sectarian" that it may receive *no* direct State aid of any kind, it is necessary to paint a general picture of the institution. *Id.* at 758.

Unquestionably, churches are "pervasively sectarian." Additionally, there are other fundamentally religious organizations which conform to the profile of a sectarian or substantially religious institution.

Having stated the above, we are of the opinion that direct assistance under the Emergency Shelter Grants Program to churches or other primarily religious organizations to renovate, rehabilitate, or convert buildings owned by them would be constitutionally impermissible under the second test of *Lemon*, notwithstanding the secular use to which they would be put by such institutions as emergency shelters.

Finally, even if this were not the case, the administrative oversight which would be necessary to assure avoidance of impermissible religious influences in the use of such buildings would most certainly involve an "excessive government entanglement" with religion in violation of the third test. As the Court stated in *Walz v. Tax Commission*, 397 U.S. 664 (1970), "a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *" 397 U.S. at 675.

In 1983, in order to confirm the Department's understanding with respect to constitutional limitations (particularly with respect to the second and third tests under *Lemon*), the Department requested guidance from the Department of Justice (DOJ) concerning the effect of Supreme Court Church/State decisions on HUD programs, specifically the section 202 direct loan program and the community development block grant program.

Under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, loans are made to private nonprofit corporations, limited profit sponsors, consumer cooperatives, public bodies or agencies to develop housing for the elderly or handicapped. To allow religious organizations to participate as sponsors of section 202 projects, HUD requirements provide that religious sponsors must establish private, secular nonprofit borrower corporations to obtain the loan and execute the mortgage as legal owner of the project. The question posed to DOJ was whether the HUD requirements in this regard were constitutionally mandated. In the context of issues raised in the Emergency Shelter Grants Program, it is important to note that the section 202 housing program is an entirely secular activity in nature and purpose.

The DOJ ruled that the creation of a separate secular borrowing entity in the section 202 program is constitutionally required. In reaching this result, DOJ concluded that if separate secular borrower entities were not established, direct and substantial aid would flow to churches, in violation of the Establishment Clause. The opinion states, "where section 202 loans given directly to churches or other fundamentally religious organizations, the principle that no aid at all go to institutions that are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones, see *Roemer* v. *Maryland Public Works Board*, 426 U.S. at 755, would by definition be violated."

Title I of the Community Development Block Grant Act was enacted in 1974 to consolidate a number of community development categorical grant programs. Over the course of the block grant program, questions were presented as to whether churches or church-owned property could be rehabilitated with block grant funds. Departmental advice was that such assistance could not be provided. This conclusion was based in part on *Committee for Public Education* v. *Nyquist*, 413 U.S. 756, 777 (1973) which states that "if the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them when they fall into disrepair."

The DOJ opinion concluded that HUD's longstanding policy of prohibiting CDBG funds to rehabilitate, maintain or restore churches reflects constitutional requirements and, further, that "*any* structure used to promote religious interests, regardless whether constructed for educational, charitable or whatever purposes, may not * * * receive federal assistance." A subsequent DOJ opinion also confirmed the HUD position that the prohibition applies notwithstanding the fact that the structure has historic significance.

In addressing the Church/State issue in the proposed rule, the Department

was guided by relevant Supreme Court cases, as well as the legal opinions from DOJ. With this underpinning, the proposed rule proscribed the use of Emergency Shelter Grants funds to renovate, rehabilitate, or convert buildings owned by primarily religious (a term described in the preamble to be synonymous with "pervasively sectarian") organizations or entities.

In reviewing this matter, the Department has been particularly struck by the vital and unique role religious organizations play in providing for individuals in need of shelter and other public assistance. In view of this, every attempt has been made to further explore mechanisms to facilitate that role within the framework of the Frist Amendment Church/State principles outlined above. After a thorough reconsideration of all the issues presented, the Department is of the opinion that it would be constitutionally permissible to use Emergency Shelter Grants to renovate, rehabilitate or convert buildings owned by "pervasively religious" organizations under the following circumstances:

1. The building (or portion thereof) that is to be improved with the HUD assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious organization);

2. The HUD assistance is provided to the lessee (and not the lessor) to make the improvements;

3. The leased premises will be used exclusively for secular purposes available to all persons regardless of religion;

4. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

5. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

6. The lessor enters into a binding agreement that, unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements.

7. The lessee must remit the residual value of the improvements referred to in (6) above to the original grantee from which the amounts were derived, e.g., if the amounts initially were made available to a State or unit of general local government as a formula allocation (§ 575.31) or a reallocation (§ 575.41), the amount that the lessor provides to the lessee is then remitted to the State or unit of general local government, as appropriate. The original grantee may use this amount to further the objectives of this part. If, however, a private nonprofit organization is the lessee as well as the grantee, the organization must remit the amount to HUD.

The lessee may also enter into a management contract authorizing the lessor religious organization to operate the facility, including the provision of essential services, in carrying out the secular purpose. In such case, the religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences pursuant to conditions prescribed by HUD.

While allowing Emergency Shelter Grant funds to be used to renovate, rehabilitate or convert buildings owned by primarily religious organizations, these requirements have been carefully tailored to ensure that constitutionally impermissible assistance to religious entities is avoided. Thus, the religious organization conveys control of the premises to be assisted during the life of the improvements and the provision of assistance is to a secular lessee for a secular purpose. Under such an arrangement, in accordance with the constitutional mandate, religious organizations will derive no direct benefit from improvements to the premises made with HUD assistance.

Nondiscrimination

Two of the nondiscrimination requirements with which use of emergency shelter grants must comply as provided in § 575.59(a) are Title VIII of the Civil Rights Act of 1968 and Executive Order 11063, which prohibit discrimination in housing on the basis of race, color, religion, sex, or national origin. It may well be that some emergency shelters assisted under this program would not actually be covered under these authorities. The prohibitions against discrimination in Title VIII relate only to a "dwelling", which is defined in section 802(b) of that Act to mean, in part, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families * * *" (the word "family" includes a single individual). Judicial interpretations (*e.g., United States v. Hughes Memorial Home,* 396 F.Supp. 544 (W.D. Va. 1975)) regarding whether a temporary residence is a "dwelling" within the meaning of Title VIII appear to turn on whether the occupants of a place intend to remain for a substantial period of time or whether the place is rather one of temporary sojourn or transient visit. A similar issue arises under Executive Order 11063, which covers certain "housing and related facilities". Since the operation and usage of emergency shelters may vary greatly across the nation, it seemed prudent to deem these authorities generally applicable to shelters assisted under this program.

In any event, under § 575.59(a) all such shelters are subject to the Federal statutory proscriptions against discrimination with respect to race, color, national origin, age and handicap in programs involving Federal financial assistance. Consistent with the statutory intent of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, the Department has included in this final rule a requirement at § 575.59(a)(6) that the ESG recipient or grantee make known that emergency shelter facilities and services are available to all on a nondiscriminatory basis. Where the procedures that a recipient or grantee intends to use are unlikely to reach persons of any particular race, color, religion, sex or national origin who may qualify for the ESG services, the recipient or grantee is required to establish additional procedures to ensure that these persons are made aware of the availability of the facilities and services.

Lead Based Paint Provisions

The Department has included in this final rule a reference to 24 CFR Part 35 (implementing section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822). The reader is advised that under 24 CFR 35.24(b)(4), the Assistant Secretary for Community Planning and Development is required to establish procedures relating to the elimination of lead-based paint poisoning in programs involving HUD-associated housing, and the Department is considering modifying the lead-based paint standards applicable to emergency shelters in its forthcoming proposed rule to implement the McKinney Act ESG program.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because most statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States. In addition, the grant amount to be made available to any ultimate user of a grant is relatively small.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) and have been assigned OMB control number 2506-0089.

This rule is listed as Item 1011 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14363) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance program number for the Emergency Shelter Grants Program is CFDA No. 14.231.

List of Subjects in 24 CFR Part 575

Grant programs—Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

Accordingly, the Department adopts a new 24 CFR Part 575 as follows:

PART 575— EMERGENCY SHELTER GRANTS PROGRAM

Subpart A—General

Sec.

575.1 Applicability and purpose.
575.3 Definitions.
575.5 Waivers.

Subpart B—Eligible Activities

575.21 Eligible activities and ineligible activities.
575.23 Who may carry out eligible activities.

Subpart C—Allocations

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Subpart D—Reallocations

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575.51 Matching funds.
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Subpart F—Grant Administration

575.61 Responsibility for grant administration.
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575.65 Performance reports.
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575.69 Sanctions.

Authority: Sec. 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in sec. 525(a) of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 575.1 Applicability and purpose.

(a) *General.* This part implements the Emergency Shelter Grants Program contained in section 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986). (Pub. L. 99-591, approved October 30, 1986, revised Pub. L. 99-500, but did not affect this program.) The Program authorizes the Secretary of Housing and Urban Development to make grants to States, units of general local government, and private nonprofit organizations, for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses, and for social service expenses in connection with emergency shelters for the homeless.

(b) *Purpose.* The Program is designed to help improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing certain essential social services to homeless individuals, so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other kinds of assistance they need to improve their situations.

§ 575.3 Definitions.

Conversion means a change in the use of a building to an emergency shelter for the homeless under this part, where the cost of conversion and any rehabilitation costs exceed 75 percent of the value of the building before conversion.

Emergency shelter means any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

Emergency shelter grant amounts and *grant amounts* mean grant amounts made available under this part.

Grantee means the entity that executes a grant agreement with HUD under this part. For purposes of this part, "grantee" is

(a) Any State, metropolitan city, or urban county that receives a grant allocation under § 575.31;

(b) Any unit of general local government that receives a grant based on a reallocation under § 575.41(b)(1);

(c) Any private nonprofit organization that receives a grant based on a reallocation under § 575.41(b)(2); and

(d) Any entity that receives a grant based on a reallocation under § 575.41(b)(3).

Homeless means families and individuals who are poor and have no access to either traditional or permanent housing.

HUD means the Department of Housing and Urban Development.

Major rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

Metropolitan city means a city that was classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

Nonprofit recipient means any private nonprofit organization providing assistance to the homeless, to which a unit of general local government distributes emergency shelter grant amounts.

Obligated means that the grantee or State recipient, as appropriate, has placed orders, awarded contracts, received services or entered into similar transactions that require payment from the grant amount. Grant amounts that are awarded by a unit of general local

government to a private nonprofit organization providing assistance to the homeless are obligated.

Private nonprofit organization means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1954 which

(a) Is exempt from taxation under Subtitle A of the Code;

(b) Has an accounting system and a voluntary board; and

(c) Practices nondiscrimination in the provision of assistance.

Rehabilitation means labor, materials, tools, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

Renovation means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

State means any of the several States and the Commonwealth of Puerto Rico.

State recipient means any unit of general local government to which a State makes available emergency shelter grant amounts.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Urban county means a county that was classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

Value of the building means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee or the State recipient.

§ 575.5 Waivers.

The Secretary of HUD may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of the Emergency Shelter Grants Program.

Subpart B—Eligible Activities

§ 575.21 Eligible activities and ineligible activities.

(a) *Eligible activities.* Emergency shelter grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless:

(1) Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless.

(2) Provision of essential services, including (but not limited to) services concerned with employment, physical health, mental health, substance abuse, education, or food. Grant amounts provided to a unit of general local government may be used to provide an essential service only if—

(i) The service is (A) a new service or (B) a quantifiable increase in the level of a service above that which the unit of general local government provided during the 12 calendar months immediately before it received the grant amounts; and

(ii) Not more than 15 percent of any grant provided to a unit of general local government, including grant amounts that the unit of general local government distributes to a nonprofit recipient, is used for these services.

(3) Payment of maintenance, operation (including rent, but excluding staff), insurance, utilities, and furnishings.

(b) *Ineligible activities.* (1) Emergency shelter grant amounts may not be used for activities other than those authorized under paragraph (a) of this section. For example, grant amounts may not be used for:

(i) Acquisition or construction of an emergency shelter for the homeless;

(ii) The costs of staff involved in overseeing the operation of the shelter; or

(iii) Rehabilitation services performed by a grantee's or recipient's staff, such as preparation of work specifications, loan processing, or inspections.

(2) Grant amounts may not be used to renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities unless the following conditions are met:

(i) The building (or portion thereof) that is to be improved with HUD assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious organization);

(ii) The HUD assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a nonleased part of the building will be allocated to and paid for by the lessor;

(vi) The lessor enters into a binding agreement that, unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(vii) The lessee must remit the amount referred to in paragraph (b)(2)(vi) of this section to the original grantee from which the amounts used to renovate, rehabilitate, or convert the building under this paragraph (b)(2) were derived: *e.g.*, if the amounts under this paragraph initially were made available to a State or to a unit of general local government as a formula allocation (§ 575.31) or a reallocation (§ 575.41), the amount that the lessor provides to the lessee is remitted to the State or unit of general local government, as appropriate. The original grantee may use this amount to further the objectives of this part. If, however, a private nonprofit organization is the lessee as well as the grantee, the organization must remit the amount referred to in paragraph (b)(2)(vi) of this section to HUD;

(viii) The lessee may also enter into a management contract authorizing the lessor religious organization to operate the facility, including the provision of essential services, in carrying out the secular purpose. In such case, the religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences pursuant to conditions prescribed by HUD.

§ 575.23 Who may carry out eligible activities.

(a) *Grantees and State recipients.* All grantees (except States) and State recipients may carry out activities with emergency shelter grant amounts. All of a State's formula allocation must be made available to units of general local government in the State, which may include metropolitan cities or urban counties, whether or not such cities or counties receive grant funds directly from HUD.

(b) *Nonprofit recipients.* Units of general local government—both grantees and State recipients—may distribute all or part of their grant amounts to nonprofit recipients to be used for emergency shelter grant activities.

Subpart C—Allocations

§ 575.31 Allocation of grant amounts.

(a) *Allocation grantees.* HUD will initially allocate amounts available for emergency shelter grants to State, metropolitan cities, and urban counties.

(b) *Calculation of allocations.* In determining the amount of the allocation for each State, metropolitan city, and urban county, HUD will provide that the percentage of the total amount available for allocation to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to such State, metropolitan city, or urban county.

(c) *Reallocation to State.* If an allocation to a metroplitan city or urban county would be less than $30,000, the amount is added to the allocation to the State in which the city or county is located.

(d) *Notification of allocation amount.* HUD will notify in writing each State, metropolitan city, and urban county that is entitled to receive an allocation under this section, of the amount of its allocation.

§ 575.33 Application requirements.

(a) *Application deadlines.*—(1) *Metropolitan cities and urban counties.* A metropolitan city or urban county that elects to receive an emergency shelter grant on the basis of the allocation in § 575.31 must submit the application referred to in paragraph (b) of this section to the responsible HUD field office, no later than 45 days after the date of the notification to the city or county of its grant allocation under § 575.31(d).

(2) *States.* A State must provide written notification to the responsible HUD field office of its intention to participate in the Emergency Shelter Grants Program within 45 days of the date of the notification under § 575.31(d) to the State of its grant allocation. A State that elects to participate in the Program must submit the application referred to in paragraph (b) of this section to the responsible HUD field office, no later than 30 days after the end of the 45-day election period referred to in the preceding sentence.

(b) *Application.* To receive an emergency shelter grant, a State, metropolitan city, or urban county must submit:

(1) A Standard Form 424.

(2) A Homeless Assistance Plan, which describes the proposed use of the emergency shelter grant. In the case of a metropolitan city or urban county, the Plan must also identify the respective grant amounts proposed to be used for each of the three categories of eligible activities set forth in § 575.21(a) (1), (2), and (3). In the case of a State, the proposed use of funds must consist of a description of the method by which the grantee will make the grant amounts available to units of general local government.

(3) The following certifications and assurances: (i) A certification that the State, metropolitan city or urban county, will provide the matching supplemental funds required by § 575.51. The certification must describe the sources and amounts of the supplemental funds. A State's matching supplemental funds certification is to be submitted with its interim performance report, as provided by § 575.65.

(ii) A certification that the metropolitan city or urban county will comply, and that the State will ensure that its State recipients comply, with:

(A) The requirements of § 575.53 concerning the continued use of buildings, for which emergency shelter grant amounts are used, as emergency shelters for the homeless;

(B) The building standards requirements of § 575.55; and

(C) The requirements of § 575.57 concerning assistance to the homeless.

(iii) A certification that the metropolitan city or urban county will conduct its emergeny shelter grant activities under this part, and that the State or unit of general local government (as appropriate) will ensure that State recipients or nonprofit recipients conduct their activities under this part in conformity with the nondiscrimination and equal opportunity requirements contained in § 575.59(a) and the other requirements of this part and of other applicable Federal law.

(iv) If grant amounts are proposed to be used to provide emergency shelter for the homeless in hotels or motels, or other commercial facilities providing transient housing, a certification from the State, metropolitan city, or urban county that:

(A) The grantee, or State recipient or nonprofit recipient (as appropriate) has executed (or will execute) an agreement with the provider of such housing that comparable living space, in terms of quality, available amenities, and square footage, will be available in the facility for use as emergency shelter for at least the applicable period specified in § 575.53;

(B) Leases negotiated between the grantee, or State recipient or nonprofit recipient, with the provider of such housing make available such living space at substantially less than the daily room rate otherwise charged by the facility; and

(C) The grantee, or State recipient or nonprofit recipient, has considered using other facilities as emergency shelters, and has determined that the use of such living space in the facilities provides the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction.

(4)(i) An assurance by the State, metropolitan city, or urban county that no renovation, major rehabilitation, or conversion activity funded under this part will:

(A) Involve alterations to a property that is listed on the National Register of Historic Places, is located in a historic district or is immediately adjacent to a property that is listed on the Register, or is deemed by the State Historic Preservation Officer to be eligible for listing on the Register;

(B) Take place in any 100-year floodplain designated by map by the Federal Emergency Managment Agency; or

(C) Be inconsistent with HUD environmental standards in 24 CFR Part 51 or with the State's Coastal Zone Management plan.

(ii) In lieu of the assurance required by paragraph (b)(4)(i) of this section, renovation, major rehabilitation, or conversion of a building may be carried out with emergency shelter grant amounts if:

(A)(1) The State, metropolitan city, or urban county informs HUD that an environmental review of the area in which the proposed activities are to be located—

(i) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58, and

(ii) Addressed properties, activities, and effects comparable to those proposed for assistance under this part; and

(*2*) HUD finds that the prior review applies to the proposed activities; or

(B) The State, metropolitan city, or urban county (1) determines that the only feasible locations for the assisted activities preclude one or more of the assurances in paragraph (b)(4)(i) of this section, and that paragraph (b)(4)(ii)(A) of this section does not apply, and (2) requests a conditional grant in accordance with § 575.35(c)(2).

(5) A certification by the State, metropolitan city, or urban county that the submission of the application required by this paragraph (b) is authorized under State and local law (as applicable), and that the grantee possesses the legal authority to carry out emergency shelter grant activities in

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accordance with the provisions of this part.

§ 575.35 Review and approval of applications.

(a) *Time for approval.* An application from a State, metropolitan city, or urban county will be processed and approved as expeditiously as possible, and will be deemed approved 30 days after HUD receives it, unless within that period HUD notifies the grantee that its application is not approved.

(b) *Review of applications.* HUD will approve an application, unless it determines that the application:

(1) Was not received or postmarked within the applicable time period specified in § 575.33(a);

(2) Does not contain the items required by § 575.33(b); or

(3) Does not otherwise comply with the requirements of this part or of other Federal law.

(c) *Conditional grant.* HUD may grant a conditional grant restricting the obligation and use of emergency shelter grant amounts. Conditional grants may be made:

(1) Where there is substantial evidence that there has been, or there will be, a failure to meet the requirements of this part. In such a case, the reason for the conditional grant, the action necessary to remove the condition, and the deadline for taking those actions will be specified. Failure to satisfy the condition may result in imposition of a sanction under § 575.69 or in any action authorized under any other applicable Federal law.

(2) Where the State, metropolitan city, or urban county requests a conditional grant because the only feasible program sites for renovation, major rehabilitation, or conversion activities assisted under this part preclude one or more of the assurances in § 575.33(b)(4)(i), and § 575.33(b)(4)(ii)(A) does not apply. In such a case, HUD must comply with applicable environmental authorities before grant amounts may be committed and assisted activities may be commenced.

(d) *Grant agreement.* The grant will be made by means of a grant agreement executed by HUD and the grantee.

(e) *Reallocation amounts.* Any emergency shelter grant amounts that are returned to HUD because of (1) a failure to meet the application deadlines under § 575.33(a) or (2) an application disapproval under paragraph (b) of this section will be reallocated under § 575.41.

(f) *Letter to proceed.* Upon request of a metropolitan city or urban county, at any time after submission of an application, HUD may authorize the city or county to incur costs for subsequent reimbursement when the grant is approved.

§ 575.37 Deadlines for using grant amounts.

(a) *States and State recipients.* (1) Each State must make available to its State recipients all emergency shelter grant amounts that it was allocated under § 575.31, within 65 days of the date of the grant award by HUD.

(2) Each State recipient must have all its grant amounts obligated by 180 days after the date on which the State made the grant amounts available to it.

(b) *Metropolitan cities and urban counties.* Each metropolitan city and urban county must have all grant amounts that it was allocated under § 575.31 obligated by 180 days after the date of the grant award by HUD.

(c) *Reallocation amounts.* (1) Any emergency shelter grant amounts that are not made available or obligated within the time periods specified in paragraph (a)(1) of this section (providing 65 days of the date of the HUD grant award within which States must make funds available to their State recipients) or paragraph (b) of this section (providing 180 days after the date of the HUD grant award within which metropolitan cities and urban counties must obligate grant amounts under § 575.31) of this section, respectively, will be reallocated for use under § 575.41. Any emergency shelter grant amounts that are not made available or obligated within the time periods specified in paragraph (a)(1) or (b) of this section, respectively, will be reallocated for use under § 575.41.

(2) The State must recapture any grant amounts that a State recipient does not obligate within the time period specified in paragraph (a)(2) of this section. The State, at its option, must make these grant amounts (or other amounts returned to the State, with the exception of amounts returned under § 575.21(b)(2)(vii)) available as soon as practicable to other units of general local government for use within the time period specified in paragraph (a)(2) of this section, or to HUD for reallocation under § 575.41.

Subpart D—Reallocations

§ 575.41 Reallocation of grant amounts.

(a) *General.* From time to time, HUD will reallocate emergency shelter grant amounts that are returned or unused, as those terms are defined in paragraph (f) of this section. HUD will make reallocations by direct notification or **Federal Register** notice that will set forth the terms and conditions under which the grant amounts are to be reallocated and grant awards are to be made. HUD may use State and local boards established under FEMA's Emergency Food and Shelter Program as a resource to identify potential applicants for reallocated grant amounts.

(b) *Grantees.* Reallocations may be made to:

(1) Units of general local government demonstrating extraordinary need or large numbers of homeless individuals;

(2) Private nonprofit organizations providing assistance to the homeless; and

(3) Units of general local government, private nonprofit organizations and other entities, to meet other needs that HUD determines are consistent with the purposes of the Emergency Shelter Grants Program.

(c) *Reallocation—returned grant amounts.* HUD will endeavor to reallocate returned emergency shelter grant amounts within the jurisdiction to which the amounts were originally allocated under § 575.31.

(1) Returned grant amounts that were allocated to a State will first be made available to units of general local government within the State and, if any grant amounts remain, then to private nonprofit organizations that are providing assistance to the homeless and that are located within the State.

(2) Returned grant amounts that were allocated to a metropolitan city or urban county will be made available first for use in the city or urban county; to units of general local government that are authorized under applicable law to carry out activities under this part serving the homeless in the city or urban county; and then, if grant amounts remain, to private nonprofit organizations.

(3) The field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications and will set out other terms and conditions relating to grant awards, consistent with this part. The announcement will specify the application documents to be submitted which include:

(i) A Standard Form 424;

(ii) A Homeless Assistance Plan containing the type of information required from a metropolitan city or urban county under § 575.33(b)(2);

(iii) Certifications required at § 575.33(b)(3)(iii); and (iv) Other certifications and assurances similar to those required from a metropolitan city or urban county under § 575.33(b)(3), (4) and (5), as appropriate.

(4) The field office may establish maximum grant amounts, considering the grant amounts available.

(5) The field office will rank the applications using the criteria in paragraph (e) of this section.

(6) HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on competing demands for grant amounts and the extent to which the respective activities address the needs of the homeless.

(7) HUD will endeavor to make grant awards within 30 days of the application deadline or as soon thereafter as practicable.

(d) *Reallocation—unused grant amounts.* Unused grant amounts (including any amounts that remain after reallocation under paragraph (c) of this section) will be available, in HUD's discretion, for reallocation from time to time to one or more of the grantees specified in paragraph (b) of this section.

(e) *Selection criteria.* HUD will award grants under paragraphs (c) and (d) of this section based on consideration of the following criteria:

(1) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(2) The extent to which the proposed activities address this need; and

(3) The ability of the grantee to carry out the proposed activities promptly.

(f) *When grant amounts are returned or unused.* (1) For purposes of this section, emergency shelter grant amounts are considered "returned" when they become available for reallocation because a grantee does not execute a grant agreement with HUD for them, *e.g.,* when a grantee for which an allocation is made under § 575.31 fails to meet the application deadlines under § 575.37(a), or has its application disapproved under § 575.33(b) or approved with a reduced grant amount in accordance with § 575.69.

(2) For purposes of this section, emergency shelter grant amounts are considered "unused" when they become available for reallocation by HUD after a grantee has executed a grant agreement with HUD for them: *e.g.,* where

(i) A State fails to make its grant amounts available to State recipients within the time period specified in § 575.33(a)(1);

(ii) A metropolitan city or urban county fails to obligate grant amounts, within the time period specified in § 575.33(b);

(iii) A State recaptures grant amounts from a State recipient and makes them available to HUD as provided in § 575.37(c)(2);

(iv) Grant amounts become available as a result of imposition of a sanction (other than a reduction of grant amounts) under § 575.69 or the close-out of a grant; or

(v) A grantee referrred to in paragraph (b) of this section fails to obligate grant amounts within the time priod specified in its grant agreement.

Subpart E—Program Requirements

§ 575.51 Matching funds.

(a) *General.* Each grantee must supplement its emergency shelter grant amounts with an equal amount of funds from sources other than under this part. These funds must be provided after the date of the grant award to the grantee. A grantee may comply with this requirement by providing the supplemental funds itself, or through supplemental funds or voluntary efforts provided by any State recipient or nonprofit recipient (as appropriate).

(b) *Calculating the matching amount.* In calculating the amount of supplemental funds, there may be included the value of any donated material or building; the value of any lease on a building; any salary paid to staff of the grantee or to any State or nonprofit recipient (as appropriate) in carrying out the emergency shelter program; and the time and services contributed by volunteers to carry out the emergency shelter program, determined at the rate of $5 per hour. For purposes of this paragraph (b), the grantee will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish a fair market value.

§ 575.53 Use as an emergency shelter.

(a) *General.* Any building for which emergency shelter grant amounts are used for one or more of the eligible activities described in § 575.21(a) (1) and (3) must be maintained as a shelter for the homeless for not less than a three-year period, or for not less than a 10-year period if the grant amounts are used for major rehabilitation or conversion of the building. Using emergency shelter grant amounts for eligible activities described in § 575.21(a)(2) does not trigger either the three- or ten-year period.

(b) *Calculating the applicable period.* The three- and 10-year periods referred to in paragraph (a) of this section begin to run:

(1) In the case of a building that was not operated as an emergency shelter for the homeless before receipt of grant amounts under this part, on the date of initial occupancy as an emergency shelter for the homeless.

(2) In the case of a building that was operated as an emergency shelter before receipt of grant amounts under this part, on the date that grant amounts are first obligated to the shelter.

§ 575.55 Building standards.

Any building for which emergency shelter grant amounts are used for renovation, conversion, or major rehabilitation must meet local government safety and sanitation standards.

§ 575.57 Assistance to the homeless.

Homeless individuals must be given assistance in obtaining:

(a) Appropriate supportive services, including permanent housing, physical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(b) Other Federal, State, local, and private assistance available for such individuals.

§ 575.59 Other Federal requirements.

Use of emergency shelter grant amounts must comply with the following additional requirements:

(a) *Nondiscrimination and Equal Opportunity.* (1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 through 3619, and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d through 2000d–4) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60; and

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (see § 570.607(b) of this chapter); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business

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enterprises in connection with activities funded under this part.

(6) The requirement that the recipient or grantee make known that use of the facilities and services is available to all on a nondiscriminatory basis. Where the procedures that a recipient or grantee intends to use to make known the availability of the ESG services are unlikely to reach persons of any particular race, color, religion, sex or national origin who may qualify for such services, the recipient or grantee must establish additional procedures that will ensure that these persons are made aware of the facility and services.

(7) The requirement of Executive order 12372 and the regulations issued under the order at 24 CFR Part 52, to the extent provided by Federal Register notice in accordance with § 52.3.

(b) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102, as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, and Nos. A–110 and A–112 as they relate to the acceptance and use of emergency shelter grant amounts by private nonprofit organizations.

(c) *Uniform Federal Accessibility Standards.* For major rehabilitation or conversion, the Uniform Federal Accessibility Standards at 24 CFR Part 40, Appendix A.

(d) *Lead-based paint.* The requirements as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 through 4846) and implementing regulations at 24 CFR Part 35.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and A–110, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient (or of any designated public agency) that receives emergency shelter grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. HUD may grant an exception to this exclusion as provided in § 570.611 (d) and (e) of this chapter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 4 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Flood insurance.* No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part, other than by grant amounts allocated to State, may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(h) *Audit.* The financial management system used by a State or unit of general local government that is a grantee or State recipient shall provide for audits in accordance with 24 CFR Part 44. A private nonprofit organization is subject to the audit requirements of OMB Circular A–110.

Subpart F—Grant Administration

§ 575.61 Responsibility for grant administration.

Grantees are responsible for ensuring that emergency shelter grant amounts are administered in accordance with the requirements of this part and other applicable laws. Thereafter, the grantee would be reimbursed for the amount of its actual cash disbursement. In the case of States making grant amounts available to State recipients, and in the case of units of general local government distributing grant amounts to nonprofit recipients, the States and the units of local government are responsible for ensuring that their respective recipients carry out the recipients' emergency shelter grant programs in compliance with all applicable requirements.

§ 575.63 Method of payment.

Payments are made to a grantee upon its request and may include a working capital advance for 30 days' cash needs or an advance of $5,000, whichever is greater. Thereafter, the grantee would be reimbursed for the amount of its actual cash disbursement needs. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30-day period in payment of eligible activity costs. Payments with respect to grants of $120,000, or more, will be made by letter of credit, if the grantee meets the requirements of OMB Circular A–102.

§ 575.65 Performance reports.

(a) *Interim performance report*—(1) *Timing of report.* (i) A metropolitan city or urban county must submit its interim performance report to HUD no later than 30 days after the end of the 180-day period allowed for the obligation of grant amounts under § 575.37(b), or 30 days after the date when all grant amounts are obligated, whichever comes first.

(ii) A State must submit its interim performance report not later than 90 days from the date of the State's distribution of funds to its units of general local government; except that where a HUD Area Office grants a State an extension of the 65-day deadline for obligating its grant funds, a corresponding extension for filing of the interim report will automatically be granted. A grantee receiving funds under § 575.41, Reallocation of funds, must submit its interim performance report to HUD within the period specified in its grant agreement.

(2) *Report content.* (i) In the case of a grantee other than a State, the interim performance report must contain information on the amount of funds obligated for each of the three categories of eligible activities described in § 575.21(a) (1), (2), and (3).

(ii) A State report must provide this information for each State recipient.

(3) *Matching funds certification.* A State grantee must submit with its interim performance report the matching funds certification required by § 575.33(b)(3)(i).

(b) *Annual performance report.*—(1) *Content.* A grantee other than a State must provide HUD with an annual performance report on the obligation and expenditure of funds for each of the three categories of eligible activities described in § 575.21(a) (1), (2) and (3). A State must provide this information for each State recipient.

(2) *Timing.* The initial annual performance report is required for the period ending December 31 following the submission of the interim report, and is due no later than 30 days after December 31. A grantee must continue to submit this report annually until all

emergency shelter grant amounts are reported as expended.

§ 575.67 Recordkeeping.

Each grantee and State recipient must maintain records necessary to document compliance with the provisions of this part.

§ 575.69 Sanctions.

(a) *HUD sanctions.* If HUD determines that a grantee is not complying with the requirements of this Part or of other applicable Federal law, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Condition a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

(b) *State sanctions.* If a State determines that a State recipient is not complying with the requirements of this part or other applicable Federal laws, the State must take appropriate action which may include the actions described in paragraph (a) of this section. Any grant amounts that become available to a State as a result of a sanction under this section must, at the option of the State, be made available (as soon as practicable) to other units of general local government for use within the time periods specified in § 575.37(a)(2), or to HUD for reallocation under § 575.41.

(c) *Reallocations.* Any grant amounts that become available to HUD as a result of the imposition of a sanction under this section will be reallocated under § 575.41.

Date: October 9, 1987.

Nancy C. Silvers,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87-24103 Filed 10-16-87; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-87-1737; FR-2416]

Emergency Shelter Grants Program; Use of Grant Amounts for Essential Services

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Section 414(b) of the Emergency Shelter Grants program established by the Stewart B. McKinney Homeless Assistance Act authorizes the Department to waive the program requirement that limits to 15 percent, the amount of assistance under the Act that a unit of general local government may use for essential services in connection with emergency shelter for the homeless. The Department published a Notice on September 4, 1987, establishing requirements for the use of amounts authorized by the Act and appropriated by the Supplemental Appropriations Act, 1987. The Notice stated that HUD would not implement section 414(b) in the Notice, but only after notice and comment rulemaking.

This Notice informs the public that although section 414(b) will continue to be implemented in a separate rulemaking, the Department will consider requests for waivers of the 15 percent limitation under 24 CFR 575.5 in connection with grant amounts governed by the September 4 Notice. The Notice also specifies the criteria that will govern the disposition of waiver requests.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Don Patch, Director, Office of Block Grant Assistance, Room 7280, 451 7th Street SW., Washington, DC 20410, (202) 755-6487 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Discussion

On September 4, 1987, the Department published a Notice in the **Federal Register**, [1] announcing requirements for the allocation and use of amounts appropriated by the Supplemental Appropriations Act, 1987,[2] for the Emergency Shelter Grants program under Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act.[3] The Notice stated that as provided by the McKinney Act, these amounts are governed by (1) the proposed rule and program requirements for the Emergency Shelter Grants program [4] under Part C of the Homeless Housing Act of 1986,[5] and (2) the allocation and certain other provisions of the 1987 ESG program that could be implemented immediately under the program. The Department indicated its intent to implement the remaining features of the 1987 ESG program by notice and comment rulemaking. A final rule based on this proposal rule would be published by July 22, 1988, and would govern the 1987 program when it becomes effective.

One of the 1987 ESG provisions that the Department indicated would be implemented through notice and comment rulemaking was the waiver provision in section 414(b). Both the 1986 and 1987 ESG programs prohibit more than 15 percent of any grant amount received by a unit of general local government from being used for "essential services" in connection with emergency shelter for the homeless. Section 414(b) permits HUD to waive the 15 percent limit in the 1987 ESG program, if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

The Department continues to believe that under the terms of the statute, section 414(b) should be implemented by notice and comment rulemaking for the 1987 ESG program. The Department believes, however, that the substance of this provision can be implemented immediately, for amounts governed by the September 4, 1987 **Federal Register** Notice. As noted earlier, the September 4 Notice specified that the requirements of the 1986 ESG program (as modified by the Notice) govern the 1987 program, until a final rule for the 1987 program becomes effective. Section 575.5 of the proposed rule for the 1986 ESG program permits the Department to waive any non-statutory requirement of Part 575.

Whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the ESG program's purposes.

Although section 414(b) was included in the 1987 ESG program, and not the 1986 program, the Department believes that it is inappropriate to ignore the clear congressional intent that units of general local government be relieved from the strictures of the 15 percent cap in certain circumstances for purposes of the 1987 program.[6] Therefore, the Department will entertain requests under § 575.5 from units of general local government to waive the 15 percent ceiling on "essential services" for the 1987 program.

In considering waiver requests, the Department will use the criteria contained in the Conference Report on section 414(b). Under this test, the unit of local government must demonstrate to HUD that:

> activities other than essential services are adequately provided from other public or private resources and that grant funds cannot practicably be used for eligible activities other than essential services. (H. Rep. No. 174, 100th Cong., 1st Sess. 76 (1987))

The Department believes that these criteria form an appropriate basis for waiver under § 575.5, and provide clear guidance to units of general local government seeking waiver relief.

Waiver requests from units of general local government receiving grant amounts from a State must first be forwarded to the State. The State must promptly forward all such requests to HUD, together with any recommendations or other comments it may have on them.

Conclusion

For purposes of grant amounts governed by the September 4, 1987, **Federal Register** Notice, the 15 percent limitation on the use of grant amounts for "essential services" will be administered as follows:

Not more than 15 percent of any grant amounts provided to a unit of general local government either as a grantee,[7] or

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[1] 52 FR 33790 (September 4, 1987).

[2] Pub. L. 100-71, approved July 11, 1987.

[3] Pub. L. 100-77, approved July 22, 1987. For ease of reference, this Notice refers to this program as the "1987 ESG program."

[4] 51 FR 45278 (December 17, 1986), adding a new 24 CFR Part 575.

[5] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986). For ease of reference, this Notice refers to this program as the "1986 ESG program."

[6] It should be noted that this waiver authority only applies to amounts made available by the Supplemental Appropriations Act, 1987, for the 1987 ESG program. It does not apply to amounts appropriated for the 1986 ESG program.

[7] See 24 CFR 575.3 for the definition of these terms.

as a State recipient,[7] including grant amounts that the unit of government distributes to any nonprofit recipient,[7] may be used for essential services, except that HUD may waive this 15 percent limitation if the unit of government demonstrates to HUD that activities other than essential services are adequately provided from other public or private resources and that grant funds cannot practicably be used for eligible activities other than essential services. Waiver requests from State recipients [7] must first be sent to the State. The State must promptly send the requests to HUD, together with any comments or recommendations the State may have on them.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520). When OMB has approved these requirements, HUD will announce any applicable control number in a **Federal Register** Notice.

The Catalog of Federal Domestic Assistance program number is 14.231.

Authority: Sec. 416 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987); and sec. 7(d) of the Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: October 9, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87–24104 Filed 10–16–87; 8:45 am]

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Part V

Department of Housing and Urban Development

Supplemental Assistance for Facilities to Assist the Homeless; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-87-1746; FR-2389]

Supplemental Assistance for Facilities to Assist the Homeless; Program Guidelines and Notice of Funds Availability

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Program Guidelines and Notice of Funds Availability.

SUMMARY: This Notice announces HUD's guidelines for the operation of a program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH). This program was authorized by Title IV, Subtitle D, of the Steward B. McKinney Homeless Assistance Act. Under the program, HUD is authorized to provide: (1) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants and the Supportive Housing Demonstration programs that are required to meet the special needs of certain homeless populations or to facilitate the transfer and use of public buildings to assist the homeless; or (2) comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless. Under SAFAH, HUD will provide assistance in the forms of non-interest bearing advances to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities to assist the homeless; grants for moderate rehabilitation; and grants for other purposes. This notice also announces the availability of $15 million in funds appropriated for the program by the Supplemental Appropriation Act, 1987.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Division of Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8112, Washington, DC 20410, telephone (202) 755–5537. Hearing or speech impaired individuals may call HUD's TDD number (202) 426–0015.

For information on supplemental assistance related to the Emergency Shelter Grants program, contact: James R. Broughman, Director, Entitlement Cities Division, at the above address, telephone (202) 755–5977, or James Forsberg, Director, Small Cities Division, at the above address, telephone (202) 755–6322.

For information on supplemental assistance related to the Supportive Housing Demonstration program, contact: Lawrence Goldberger, Director, Office of Elderly and Asisted Housing, at the above address, telephone (202) 755–5720.

For information on Comprehensive Homeless Assistance Plans and the requirement that proposed SAFAH activities be consistent with the Plans, contact: James R. Broughman, at the above address and telephone number.

The telephone numbers listed above are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

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Background

Subtitle D of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987) ("McKinney Act") authorized a program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH). Under this program, HUD is authorized to provide:

(a) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants (ESG) program and the Supportive Housing Demonstration (SHD) program that are required: (1) To meet the needs of homeless families with children, elderly homeless individuals, or the handicapped; or (2) to facilitate the transfer and use of public buildings to assist homeless individuals and families; or

(b) Comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families by assisting: (1) The purchase, lease, renovation, or conversion of facilities to assist the homeless; or (2) the provision of supportive services for homeless individuals.

Under the program, HUD is authorized to provide assistance in the forms of

non-interest bearing advances to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities to assist the homeless; grants for moderate rehabilitation; and grants for other purposes. The Supplemental Appropriations Act, 1987 (Pub. L. 100-71, approved July 11, 1987), appropriated $15 million for grants for SAFAH. This Notice announces the guidelines that will govern the operation of SAFAH, and announces the availability of funds under the program.

Procedural Implementation

Section 433 of the McKinney Act contains the following implementation requirements for SAFAH:

(a) HUD must establish by Notice the requirements to govern SAFAH, within 30 days of the date of enactment of the McKinney Act (August 21, 1987). These requirements are not subject to the notice and comment rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553) or the legislative review positions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o));

(b) HUD must publish a Notice of Funds Availability for SAFAH within 30 days of the date on which amounts become available for SAFAH (September 20, 1987);

(c) Applications for SAFAH must be submitted not later than 60 days after publication of the NOFA (November 19, 1987); and

(d) HUD must complete the final selection of applications for SAFAH not later than 90 days after publication of the NOFA (December 19, 1987).

The Department has been unable to meet SAFAH's deadlines for publication of the Notice establishing SAFAH's requirements and of the Notice of Funds Availability. In light of the necessity to ensure the prompt award and use of SAFAH appropriations, the Department will use the following timetable:

(1) This Notice will serve both to establish SAFAH's requirements and to announce the availability of funding under the program;

(2) Applications will be due by December 3, 1987;

(3) HUD will make final SAFAH selections by December 23, 1987: 20 days after the application deadline.

The Department believes that these timeframes will permit adequate time for the submission and review of applications, while at the same time calling for the award and use of funds in approximately the overall timeframes contemplated by section 433 of the McKinney Act.

Guidelines

A. Definitions

The following definitions apply to SAFAH:

Applicant. (a) Applicant means a State, metropolitan city, urban county, tribe, or private nonprofit organization that submits an application for assistance under SAFAH. Applicant includes two or more of these entities that submit a joint application.

(b) Applicants may submit applications on behalf of other entities that will operate facilities to assist the homeless, only in the following circumstances:

(1) A State may submit an application on behalf of: (1) A private nonprofit organization to carry out SAFAH activities in the State; or (ii) any governmental entity in the State, other than an ESG formula city or county or a tribe,

(2) A metropolitan city or urban county may submit an application on behalf of: (i) A private nonprofit organization to carry out SAFAH activities in the city or county; or (ii) any governmental entity in the city or county, other than an entity that is an applicant under paragraph (a),

(3) A tribe may submit an application on behalf of a private nonprofit organization to carry out SAFAH activities for the tribe,

(4) A private nonprofit organization may submit an application on behalf of another private nonprofit organization to carry out SAFAH activities. The threshold and ranking criteria for applicants submitting applications on behalf of other entities are set forth in sections E.2. and 3. below.

(c) As described below, one of the SAFAH funding categories involves assistance in excess of ESG or SHD program funding. SAFAH assistance under this category may only be made available in connection with:

—A project that has been approved for, or has received, funding under the ESG or SHD program;

—A project for which an application for ESG or SHD funding has been submitted, and the application either is presently pending or has been denied funding; or

—A project for which assistance is sought to acquire property to be used for shelters for homeless families with children.

Any applicant may apply for SAFAH assistance, and carry out assisted activities in connection with the acquisition of property for use as shelters for homeless families with children.

For SAFAH assistance in connection with ESG or SHD projects that have been funded or for which an application for ESG or SHD funding has been submitted, an applicant may apply for SAFAH funding only if the applicant is eligible: (1) To apply to HUD for assistance under the ESG or SHD program; or (2) to carry out activities with ESG or SHD assistance. Thus, for SAFAH assistance in connection with such projects:

—States may apply for SAFAH assistance, and carry out assisted activities, in connection with: (1) An ESG project, even though the State is not eligible to carry out activities under the ESG program; (2) a permanent housing project, even though the State is not eligible to carry out activities as a "project sponsor" under this program; and (3) a transitional housing project.

—An ESG formula city or county may apply for SAFAH assistance, and carry out assisted activities, in connection with projects under the ESG program or the transitional housing program. Since ESG formula cities and counties are not eligible to apply for or carry out activities under the permanent housing program, they may not apply for or receive SAFAH assistance in connection with that program.

—A metropolitan city or urban county that is not an ESG formula city or county may apply for SAFAH assistance, and carry out assisted activities, in connection with: (1) An ESG project, even though the city or county may not apply directly to HUD for ESG funding; or (2) a transitional housing project. A metropolitan city or urban county may not apply for assistance in connection with a permanent housing project, since such cities and counties may not apply for assistance or carry out activities under that program.

—Private nonprofit organizations may apply for SAFAH assistance and carry out assisted activities in connection with: (1) An ESG program, irrespective of whether the organization applied directly to HUD for the assistance; (2) a transitional housing project; and (3) a permanent housing project.

—Tribes may apply for assistance in connection with a transitional housing project. Tribes may not apply for assistance with respect to projects assisted in connection with the ESG program or the permanent housing program, since tribes are

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ineligible to apply for or receive assistance under those programs.

Application for ESG or SHD funding has the following meaning for SAFAH applicants:

(a) In the case of States, an application to HUD for funding under the ESG or SHD program.

(b) In the case of ESG formula cities and counties, an application to HUD for funding under the ESG or transitional housing program.

(c) In the case of metropolitan cities and urban counties that are not ESG formula cities or counties, an application (i) To Hud for funding under the transitional housing program or (ii) to the State for funding under the ESG program.

(d) In the case of private nonprofit organizations, an application: (i) To Hud for reallocated amounts under the ESG program or for funding under the transitional housing program; (ii) to a unit of general local government for funding under the ESG program; or (iii) to the State for funding under the permanent housing program.

(e) In the case of tribes, an application to HUD for funding under the transitional housing program.

Assistance means (a) non-interest bearing advances to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities to assist the homeless; (b) grants for moderate rehabilitation; and (c) grants for other purposes.

Comprehensive Homeless Assistance Plan or *Plan* means the Comprehensive Homeless Assistance Plan established by Subtitle A of Title IV of the McKinney Act.

Elderly homeless individual means a homeless individual who is 62 years of age or older. This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is an elderly homeless individual.

Emergency Shelter Grants program or *ESG program* means the homeless assistance program established by Subtitle B of Title IV of the McKinney Act or Part C of the Homeless Housing Act of 1986.

ESG formula city or county means a metropolitan city or urban county that is eligible to receive a formula allocation under the Emergency Shelter Grants program.

Facilities designed primarily to benefit homeless elderly individuals and homeless families with children means facilities to assist the homeless, in which more than 50 percent of the homeless to be served are either homeless elderly individuals or homeless families with children.

Facilities to assist the homeless means one or more existing structures, or parts of one or more existing structures, owned or leased for use in connection with SAFAH.

Handicapped or *handicapped person* means any individual having an impairment that is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation. This term includes:

(a) An individual who is developmentally disabled, *i.e.*, an individual who has a severe chronic disability that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) An individual who is chronically mentally ill, *i.e.*, an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

(c) A handicapped person who also suffers from alcoholism or drug addiction.

This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a handicapped person.

HHS means the Department of Health and Human Services.

Homeless means:

(a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family that has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

Homeless family with children means a homeless family that includes at least one parent, and one child under the age of 18.

Homeless Housing Act of 1986 means title V of section 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986)).

HUD means the Department of Housing and Urban Development.

McKinney Act means the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

Metropolitan city means a city that is classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974. In general, metropolitan cities are those cities that are eligible for an entitlement grant under 24 CFR Part 570, Subpart D.

Moderate rehabilitation means the rehabilitation of facilities to assist the homeless involving a total HUD expenditure that does not exceed the lower of:

(a) $100,000; or

(b) The project limit. The project limit is the amount determined by HUD by multiplying the number of units of each unit type in the facilities times the unit cost for that unit. The cumulative total for all unit types is the project limit. The unit cost limits are:

(1) $5,000 (i) per bedroom unit, in single room occupancy housing (*i.e.*, a unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types or facilities, and which is suitable for occupancy by a single individual); (ii) per bedroom unit, in a group home; or (iii) per unit without a bedroom, in other types of facilities; and

(2) $7,000 per unit with one or more bedrooms, in other types of facilities.

Outpatient health services means:

(a) Outpatient health care (including on-site health screening and evaluation, diagnostic services, health status monitoring, medication dispensing and

monitoring, and referral and follow-up for health services);

(b) Outpatient mental health services (including mental health screening and diagnosis, evaluation of treatment needs, prescription and medication management, individual and group counseling, and referral and follow-up);

(c) Outpatient substance abuse services (including alcohol and drug abuse evaluation and counseling, coordination and referral to appropriate substance abuse services, and monitoring of clients); and

(d) Case management services (including coordination with existing services and referral and tracking of client progress).

Permanent housing means the component of the SHD program that authorizes assistance for permanent housing for handicapped homeless persons.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(a) Have a voluntary board;

(b)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or (ii) designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(c) Practice nondiscrimination in the provision of assistance under SAFAH in accordance with the authorities described in section F.6.(i), below.

Project means (a) facilities to assist the homeless; or (b) any activities eligible under SAFAH that the applicant proposes in its application and HUD approves for SAFAH funding.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to provide assistance to the homeless under SAFAH.

Rehabilitation means labor, materials, tools, and other costs of improving structures to a level that meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repairs directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

SAFAH or *program* means the program of Supplemental Assistance for Facilities to Assist the Homeless established by Subtitle D of Title IV of the McKinney Act.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Substantial rehabilitation means the rehabilitation of facilities to assist the homeless that involves a total HUD expenditure in excess of the moderate rehabilitation limitations.

Supportive Housing Demonstration program or *SHD program* means the homeless assistance program established by Subtitle C of Title IV of the McKinney Act. This term includes transitional housing and permanent housing.

Supportive services includes:

(a) Food;

(b) Child care;

(c) Assistance in obtaining permanent housing;

(d) Outpatient health service;

(e) Employment counseling;

(f) Nutritional counseling;

(g) Security arrangements necessary for the protection of residents of facilities to assist the homeless;

(h) Assistance in obtaining other Federal, State, and local assistance available to the homeless, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(i) Other services proposed by the applicant in its application and approved by HUD, that are essential for maintaining independent living and that address the needs of the homeless to be served. These services may include drug and alcohol abuse programs and job training. Supportive services do not include major medical equipment.

Transitional housing means the Transitional Housing Demonstration program established by Part B of the Homeless Housing Act of 1986 and the component of the SHD program that authorizes assistance for transitional housing.

Tribe means an Indian tribe, band, group or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512).

Urban county means a county that is classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974. In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR Part 570, Subpart D.

B. Assistance Provided

1. Categories of Assistance

Section 432(a) authorizes HUD to provide assistance under SAFAH in the following two categories: Comprehensive assistance and assistance in excess of ESG and SHD program funding. These two funding categories are discussed below.

(i) *Comprehensive assistance.*

(a) General. Assistance will be available under this funding category to provide comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families, by assisting: (a) The purchase, lease, rehabilitation, or conversion of facilities to assist the homeless; and (b) the provision of supportive services for homeless individuals. The purpose of this aspect of SAFAH is to stimulate the development and implementation of innovative, community-based, comprehensive efforts to respond to the problems of homeless individuals and families. (See section 432(a)(2) of the McKinney Act.)

(b) Types of assistance available. HUD will offer assistance under this funding category in the forms of:

—Advances to assist in the acquisition, lease, substantial rehabilitation, or conversion of facilities. HUD will advance sums to recipients to defray the costs of acquisition, lease, substantial rehabilitation, or conversion of structures selected by the recipients for use as facilities to assist the homeless. Advances are interest-free, and if the conditions described in section F.4., below are met, are not subject to repayment. The sale or disposition of facilities purchased, leased, substantially rehabilitated, or converted with an advance is subject to the requirements of section F.5., below.

—Grants for moderate rehabilitation. HUD will make grants to recipients to defray the cost of moderate rehabilitation of structures selected

by the recipients for use as facilities to assist the homeless. The sale or disposition of facilities rehabilitated with a grant under this paragraph are subject to the requirements of section F.5., below.

—Grants for supportive services. HUD will make grants to recipients to defray the cost of providing those supportive services proposed by the recipients in their application and approved by HUD.

(c) Selection process. The selection process for comprehensive assistance applications is described in section E.2., below.

(ii) *Assistance in excess of ESG and SHD program funding.*

(a) General. Under the second funding category, assistance will be available to cover costs in excess of assistance provided under the ESG and SHD programs that are required to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or to facilitate the transfer and use of public buildings to assist homeless individuals and families. One of the purposes of this funding is to compensate for programmatic rigidities in the ESG and SHD programs by providing appropriate assistance supplementing these two programs. (See section 432(a)(1) of the McKinney Act.)

(b) Types of ESG and SHD programs. SAFAH assistance under this category of funding may only be made available in connection with:

—A project that has been approved for, or has received, funding under the ESG or SHD program;

—A project for which an application for ESG or SHD funding has been submitted, and the application either is presently pending or has been denied funding (A SAFAH application that requests assistance in connection with an ESG or SHD application that is pending, or that has been denied funding, will be evaluated under the threshold and ranking criteria set forth in sections E.2. and E.3., below, without regard to the proposed ESG or SHD program.); or

—A project for which assistance is sought to acquire property to be used for shelters for homeless families with children. HUD believes that the funding of such projects under SAFAH will address a major programmatic rigidity of the ESG and SHD programs.

(c) Types of assistance available. HUD will offer assistance under this funding category in the forms of:

—Advances to assist in the acquisition, lease, substantial rehabilitation, or conversion of facilities. HUD will advance sums to recipients to defray the costs of acquisition, lease, substantial rehabilitation, or conversion of structures selected by the recipients for use as facilities to assist the homeless. Advances are interest-free, and if the conditions described in section F.4., below are met, are not subject to repayment. The sale or disposition of facilities purchased, leased, substantially rehabilitated, or converted with an advance is subject to the requirements of section F.5., below.

—Grants for moderate rehabilitation. HUD will make grants to recipients to defray the cost of moderate rehabilitation of structures selected by the recipients for use as facilities to assist the homeless. The sale or disposition of facilities rehabilitated with a grant under this paragraph is subject to the requirements of section F.5., below.

—Grants for other purposes. HUD will make grants to recipients to defray the costs of such other activities that are requested in the recipient's application and approved by HUD as necessary to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or to facilitate the transfer and use of public buildings to assist homeless individuals and families.

(d) Selection process. The selection process applicable for applications for assistance in excess of ESG and SHD program funding is described in section E.3., below.

2. Limitations on the Amount of Assistance

As noted above, the fiscal year 1987 appropriation for the SAFAH program is $15 million. To ensure that assistance will be available to a reasonable number of applicants, HUD has imposed a maximum SAFAH grant award of $1 million per recipient. HUD has not imposed any minimum limitation on the size of the grant.

3. Limitations on the Use of Assistance

(i) *Funding of existing facilities or services.* SAFAH funds may only be used to provide new facilities or services for the homeless, to expand existing facilities serving the homeless, or to provide services in addition to those currently provided to the homeless.

(ii) *Primarily religious organizations.* (a) Direct assistance. (1) HUD will not provide direct assistance to primarily religious organizations to purchase, rehabilitate, or convert facilities to assist the homeless.

(2) HUD may provide direct funding to a primarily religious organization for other purposes, if the organization agrees to provide facilities and supportive services in a manner that is free from religious influences and in accordance with other conditions described in the grant agreement.

(b) Assistance to a wholly secular private nonprofit organization established by a primarily religious organization. (1) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. This wholly secular organization may be eligible to receive all forms of assistance available under SAFAH.

—The wholly secular organization must agree to provide assistance to the homeless in a manner that is free from religious influences and in accordance with other terms described in the grant agreement.

—The wholly secular organization may enter into a management contract with the primarily religious organization to operate facilities to assist the homeless, including the provision of supportive services. In such a case, the primarily religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with conditions prescribed by HUD.

—Assistance provided to the wholly secular organization to purchase, rehabilitate, or convert facilities to assist the homeless are subject to the requirements of section B.3.(ii)(c), below.

(2) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility, commitment to alleviating poverty, capacity, its commitment to provide appropriate resources to the wholly secular organization after formation, its operating assurances and past reasonable efforts to utilize available resources. (see the threshold and ranking criteria described at sections E.2. and 3., below.) Additionally, the primarily religious organization must

demonstrate site control under sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*) and a commitment to transfer control of the site to the wholly secular organization after its formation. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit organization and has the appropriate legal authority to participate in the program following selection. If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

(c) Facilities to assist the homeless owned by a primarily religious organization. HUD will not provide assistance to rehabilitate or convert facilities to assist the homeless that are owned by a primarily religious organization, unless:

(1) The structure (or portion of the structure) that is to be rehabilitated or converted with the HUD assistance has been leased to a recipient that is a wholly secular organization.

(2) The HUD assistance is provided to the recipient to make the improvements, rather than to the primarily religious organization;

(3) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(4) The lease payments provided to the primarily religious organization do not exceed the fair market rent of the structure without the rehabilitation;

(5) The cost of improvements that benefit the portion of the structure that is not leased by the recipient for use in the program will be allocated to and paid for by the primarily religious organization; and

(6) The primarily religious organization agrees that if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the recipient and the recipient will remit the amount to HUD.

(iii) *Structures used for multiple purposes.* Facilities assisted under SAFAH may also be used for other purposes. For example, a structure may contain facilities for outpatient health care and may also be used to provide services to the public at large or include commercial space. Under these circumstances, however, assistance under SAFAH will be available only in proportion to the use of the facilities to assist the homeless. No assistance may be used to support the costs of the facility that are not related to providing approved assistance to the homeless.

(iv) *Administrative costs.* No more than five percent of a grant or an advance made under SAFAH may be used for administrative expenses.

(v) *Outpatient health services.* Outpatient health services must be provided in compliance with guidelines developed by HHS and HUD (see section E.4., below). Not more than $10,000 of any grant or advance under SAFAH may be used for outpatient health services. This limitation does not apply to amounts expended for the rehabilitation or conversion of facilities to assist the homeless that are used to provide outpatient health services.

(vi) *Maintenance of effort.* SAFAH assistance may not be used to supplant any non-Federal resources provided with respect to any project. For purposes of this clause, non-Federal resources means resources provided from any source other than the Federal government. Community Development Block Grants under title I of the Housing and Community Development Act of 1974 are non-Federal resources.

4. Overall use of assistance.

Section 423(d) of the McKinney Act requires HUD, to the maximum extent practicable, to reserve not less than 50 percent of SAFAH funds for the support of facilities designed primarily to benefit homeless elderly individuals and homeless families with children. This provision also requires that a portion of SAFAH funds be used for child care facilities. HUD will implement these requirements by taking one or all of the following actions, to the extent HUD determines such action is necessary to comply with section 432(d): (1) Awarding points in the ranking step to applications that meet the SAFAH threshold requirements and that propose these types of facilities (see sections E.2.(ii) and 3.(ii); (2) augmenting the pool of applications selected by HUD for environmental review with applications that meet the SAFAH threshold requirements and that propose these types of facilities (see sections E.2.(iii) and 3.(iii)); and (3) selecting for funding applications that propose these activities and that have reached the final selection step, but are less highly ranked than applications that do not propose these facilities.

C. Comprehensive Homeless Assistance Plan

1. Prohibition of Assistance

Assistance under SAFAH may not be provided to, or within the jurisdiction of, a State or an ESG formula city or county, unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan.

2. Who Must Have an Approved Plan

The requirements described in paragraph C.1. of this section apply to SAFAH applicants as follows:

—If the applicant is a State, the State must have an approved Plan.

—If the applicant is an ESG formula city or county, the city or county must have an approved Plan.

—If the applicant is a metropolitan city or urban county that is not an ESG formula city or county, the State in which the facilities to assist the homeless are to be located must have an approved Plan.

—If the applicant is a private nonprofit organization and the facilities to assist the homeless are to be located within the jurisdiction of an ESG formula city or county, the city or county must have an approved Plan, or if the ESG formula city or county does not have an approved Plan, the State must have an approved Plan.

—If the applicant is a private nonprofit organization and the facilities to assist the homeless are to be located outside the jurisdiction of an ESG formula city or county, the State must have an approved Plan.

3. Tribes

Assistance may be provided to, or within the jurisdiction of, a tribe without a HUD-approved Comprehensive Homeless Assistance Plan.

4. Notification of Plan Requirements

On August 14, 1987 (52 FR 30628), HUD published the requirements that pertain to the Comprehensive Homeless Assistance Plan. Prospective applicants should familiarize themselves with these requirements.

D. Application Process

1. General

To be considered for funding, the original and two copies of the application must be received at the first address set forth in the beginning of this document no later than 5:15 p.m. (e.s.t.), December 3, 1987.

HUD headquarters will process all applications and select the successful applications. HUD will make its final selections as soon as the applications can be processed, but no later than December 23, 1987.

2. Application Content Requirements

HUD will not provide an application package for this program. The minimum application content requirements for

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comprehensive assistance applications and applications seeking assistance in excess of ESG and SHD program funding are set forth as an appendix to this Notice.

E. Selection Process

1. Overview

The selection process will have two separate stages: a review of applications seeking comprehensive assistance, and a review of applications seeking assistance in excess of ESG and SHD program funding. Each stage will consist of multiple steps.

In the first stage of the selection process, HUD will review all applications seeking comprehensive assistance. HUD will review each of these applications to determine if it meets all of the threshold criteria announced under section E.2.(i), below. If a comprehensive assistance application does not meet all of the threshold requirements, it will not be selected for comprehensive assistance funding. Comprehensive assistance applications that meet all of the threshold criteria will advance to the ranking step.

During the ranking step, HUD will evaluate each application for comprehensive assistance under the ranking criteria described in section E.2.(ii), below. Ranked applications will be placed in order, based on the overall points awarded to them under the ranking factors.

After the completion of the ranking, HUD will perform an environmental review on the number of highly ranked applications that HUD considers necessary to provide an adequate pool of applications to ensure that the entire available amount under SAFAH can be committed to applications for comprehensive assistance. HUD may augment the pool of highly ranked applications with ranked applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children, or that propose child care facilities, if HUD determines that this is necessary to comply with section 432(d) of the McKinney Act. If the amount of funding requested in the ranked applications is not sufficient to ensure that all program funds will be committed to applications for comprehensive assistance, HUD will perform an environmental review for *all* ranked applications. The environmental review will be performed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. During the environmental review, HUD will determine if an application requires the preparation of an Environmental Impact Statement (EIS). Additionally, HUD may make adjustments to the rating scores based on facts disclosed during the environmental review. If an application requires the preparation of an EIS or if HUD does not perform an environmental review on an application because of its low ranking, the application will be ineligible for funding.

In the final step of the review of the comprehensive assistance applications, HUD will consider for final selection, the applications that advance from the environmental review step, with any rating adjustment made on the basis of the environmental review. HUD will fund the highest ranked applications, but reserves the right to fund other applications that successfully completed the third step, if necessary: (i) To assure geographic diversity; or (ii) to support facilities designed primarily to benefit homeless elderly individuals and homeless families with children, and child care facilities. (Under section 432(d) of the McKinney Act, HUD is required, to the maximum extent practicable, to reserve not less than 50 percent of all SAFAH funds for facilities, with a portion of the funds used for child care facilities.)

HUD may use the services of an outside panel of individuals with expertise in housing matters during the final selection step. If such a panel is utilized, the panel would consider all applications that advance from the environmental review step and would make recommendations for funding to the Secretary. The Secretary would consider the panel's recommendations in making the final selection of applications.

If all program funds are not committed to applications for comprehensive assistance during the first (comprehensive assistance) stage of the selection process, HUD will consider applications seeking assistance in excess of ESG and SHD program funding. If such applications are considered, HUD will conduct a four-step review similar to the review performed on the applications for comprehensive assistance. (*I.e.*, The four-step review will consist of threshold review, ranking, environmental review, and final selection). The threshold, ranking, and final selection factors used to evaluate applications seeking assistance in excess of ESG and SHD program funding, however, will differ from those used to evaluate comprehensive assistance applications (see sections E.3.(i) and (ii), below.

2. Comprehensive Assistance

(i) *Threshold requirements.*

(a) General. (1) To be eligible for evaluation under the ranking criteria set out in section E.2.(ii), applications must meet each of the following threshold criteria (as modified for wholly secular private nonprofit organizations established by a primarily religious organization under section B.3.(ii), above).

(2) If HUD determines that an application fails to meet the threshold criteria in section E.3. related to site control and zoning, that these are the only deficiencies in the application under the threshold criteria, and that the deficiencies are correctable, HUD may contact the applicant, identify the deficiencies, explain how the deficiencies can be corrected, and require the applicant to correct the deficiencies. HUD will establish a deadline for the submission of the additional site control and zoning information that will permit the Department to meet its deadlines for final selection.

(3) Applications that fail to meet the threshold criteria, including those that have not been corrected within any additional time provided by HUD, will not be eligible for SAFAH funding.

(b) Threshold criteria.

(1) Contents, time and adequacy of the application. The application must be filed within the time periods established by HUD in this Notice, must include all required elements, and contain evidence or information sufficient to support each of its elements. (See application contents requirements described in the appendix.)

(2) Applicant.

(*a*) Eligibility to receive assistance. The applicant must demonstrate that it is a State, a metropolitan city, an urban county, a tribe, or a private nonprofit organization. If the applicant is submitting an application on behalf of another entity, the applicant must demonstrate that both the applicant and the other entity are eligible to participate in SAFAH, as provided in the definition of applicant under section A., above.

(*b*) Financial responsibility. HUD has determined, for purposes of this program, that all governmental entities, including tribes, are financially responsible. Any private nonprofit organization applying for assistance (or on behalf of which an application is submitted) must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider such factors as the

past financial history of the organization, its current and anticipated financial outlook, the amount of funding that will be committed under the proposal, and the organization's other financial responsibilities.

(*c*) Commitment to alleviating poverty. Each applicant must show a commitment to alleviating poverty. In determining whether the applicant fulfills this threshold criterion, HUD will consider the applicant's past efforts and its continuing commitment to serve lower income persons, and in the case of a private nonprofit organization, whether the applicant's organizational objectives foster service to such persons. (Evidence of organizational objectives may be contained in the applicant's charter, bylaws, articles of incorporation, mission statements, minutes of its governing body, or other organizational documents.)

(*d*) Capacity. Each applicant must demonstrate that the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the continuing ability to effectively provide assistance to homeless individuals. Under this criterion, the applicant must demonstrate that the applicant (or the entity) is able to initiate proposed activities within a reasonable time after execution of a grant agreement with HUD and in a successful manner, and to continue to carry out the proposed activities throughout the term of the proposed commitment to HUD in a successful manner. In determining whether the application meets this threshold criterion, HUD will consider the applicant's (or the other entity's) experience in establishing and operating facilities to assist the homeless or in providing or coordinating supportive services. HUD also will consider the ability of the applicant's (or the other entity's) personnel to perform administrative, managerial, and operation functions necessary to the successful development and operation of facilities to assist the homeless.

(*e*) Legal authority. Each applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the legal authority to participate in the program and to carry out activities in accordance with SAFAH requirements and the requirements of other applicable Federal law; and must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by the governing body of the applicant (and the other entity) authorizing the submission of the application under SAFAH.

(3) Proposed facilities and supportive services.

(*a*) Need. The applicant must demonstrate that an unmet need for the proposed facilities and supportive services exists in the area to be served, and that this need is likely to continue through the term of the proposed commitment to HUD. Applicants should use relevant information contained in the Comprehensive Homeless Assistance Plan to demonstrate need.

(*b*) Appropriateness of the proposed facilities. If the application seeks assistance to acquire, lease, rehabilitate, or convert facilities to assist the homeless, the applicant must demonstrate that the proposed structures and sites are appropriate for the provision of facilities or supportive services for the homeless population proposed to be served. In determining whether facilities will be suitable for the provision of supportive services, HUD will consider whether the structure is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible.

(*c*) Siting and zoning. Except as provided in section E.2.(i)(a)(2) above, if the application seeks assistance to acquire, lease, rehabilitate or convert facilities to assist the homeless, the application must meet the following siting and zoning requirements at the time of application:

—The applicant must demonstrate that the applicant (or in the case of an applicant that submits an application on behalf of another entity, the other entity) has control on the site involved. For example, the applicant may demonstrate that it (or the other entity) owns or has an option to purchase, or leases or has an option to lease, the structure involved;

—The applicant must deomonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within 30 days following the selection of the application for funding;

—The applicant must submit a statement that the proposed project is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA). If 50 percent or more of the living space in the structure is designed for residents with mobility impairments, the applicant must submit a statement that the project is not located in any 500-year floodplain, as designated on FEMA maps.

The applicant must meet one of the following requirements with respect to historic preservation:

—The applicant may provide a letter from the State Historic Preservation Officer (SHPO) indicating that the facility to be funded under SAFAH will not involve an historic property as defined in 36 CFR 800.2 (*i.e.*, an historic or prehistoric district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places) and will not involve a structure that is immediately adjacent to an historic property that is listed on the Register;

—If the facilities involve an historic property that is included in or eligible for inclusion in the Register or is immediately adjacent to an historic property that is listed on the Register, the applicant may demonstrate that the SHPO has agreed to the proposed use of the property and to measures to avoid or reduce any adverse effects of such use; or

—The applicant may demonstrate that an environmental review of the area in which the proposed facilities are to be located: (1) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and (ii) addressed properties, activities, and effects comparable to those proposed for assistance under SAFAH. (If HUD finds that the prior review applies to the proposed activities, this threshold requirement will be met.)

(4) Operating assurances. If the application involves assistance to acquire, lease, rehabilitate, or convert facilities to assist the homeless, the applicant must demonstrate, in the form of assurances acceptable to HUD, that the facility will be operated to assist the homeless for a term of not less than 10 years from the date of initial occupany.

(5) Innovation. The applicant must demonstrate that the proposal involves a particularly innovative program for, or alternate method of meeting the immediate and long-term needs of

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homeless individuals and families. HUD will consider whether the proposal uses a new or unusual approach that holds promise of successfully providing a program that will meet the immediate and long-term needs of homeless individuals or families.

(6) Reasonable efforts. The applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have made reasonable efforts to use all available local resources, including State and local government funding (*e.g.*, Community Development Block Grant funds), resources available from the private sector, and resources available under Title IV of the McKinney Act (the ESG program, the SHD program, and the Section 8—Moderate Rehabilitation program for Single Room Occupany Dwellings authorized under Subtitle E). The application must also demonstrate that these other resources are not sufficient or are not available to carry out the purpose for which the assistance is being sought.

In determining whether reasonable efforts have been made to obtain McKinney Act funds, the applicant must show that either the applicant (and the other entity) or the proposed activities are ineligible for funding under the requirements of the described programs; or if the proposed activities are eligible for funding under one or more of the programs, that the applicant (and the other entity) sought and were not granted sufficient funding under the programs as of the SAFAH application submission date.

In considering whether reasonable efforts have been made to use local resources, HUD will consider such factors as fund-raising activities undertaken by the applicant (and the other entity), and any requests for assistance for available funds made by the applicant (and the other entity) to State or local governments or private entities, such as charitable organizations or private businesses.

(7) Consistency with Comprehensive Homeless Assistance Plan. Applicants must provide a certification from the public official responsible for submitting a Comprehensive Homeless Assistance Plan for the appropriate jurisdiction (as described under section C.2. above), stating that the proposed activities are consistent with the applicable Comprehensive Homeless Assistance Plan.

(8) Displacement. Each applicant must certify that the proposed activities will not result in the temporary or permanent displacement of any person or entity. HUD will not fund applications that will cause any individual, family, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation of real property, in whole or in part, for a project.

(9) Outpatient health services. If an applicant seeks assistance for the provision of outpatient health services, the applicant must demonstrate that the proposal for delivery of the outpatient health services meets the guidelines developed by HHS and HUD. Additionally as noted above, HUD will not approve an application that seeks more than $10,000 in assistance for such services (excluding the cost of any rehabilitation or conversion). If the proposal for the provision of outpatient health services does not meet the HHS/HUD guidelines, HUD may fund the remainder of the application if the application is operationally feasible without the services.

(10) Proposal feasibility. Each applicant must demonstrate that its proposal, when viewed as a whole, is operationally feasible and provides adequate facilities and supportive services to serve homeless individuals and families under SAFAH.

(ii) *Ranking.*

In the second step of the review of comprehensive assistance applications, all applications that meet the above threshold requirements will be placed in priority funding order based upon their scores on the following ranking criteria. The criteria are listed in order of the number of points to be accorded to each in the ranking process.

(a) Innovative quality. HUD will consider the extent to which the proposal involves a particularly innovative program for, or alternate method of, meeting the immediate and long-term needs of homeless individuals and families. In assessing an application under this criterion, HUD will consider the degree to which the applicant demonstrates that the proposal uses a new or unusual approach that holds promise of successfully meeting the immediate and long-term needs of homeless individuals or families.

(b) Comprehensiveness of proposed assistance. HUD will consider the comprehensiveness of the proposed assistance in serving the identified homeless population. In considering whether the proposed assistance is comprehensive, HUD will consider whether the facilities and supportive services to be provided under the proposal, and to be available from others in the area proposed to be served by the application, will satisfy the immediate and long-term needs of the homeless population to be served. HUD will award the maximum number of points to applications that demonstrate that the following will be provided: (1) Facilities and supportive services to meet the immediate needs of the population to be served (*e.g.*, temporary housing, food, appropriate clothing, medical needs, etc.); and (2) housing and supportive services to meet the long-term needs of the population to be served (*e.g.*, permanent housing or assistance in obtaining permanent housing, and supportive services necessary to move members of the homeless population to independent living, such as job training and employment counseling, nutritional counseling, etc.).

(c) Leveraging.

(1) General. HUD will consider the extent to which the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) will leverage the amount of assistance to be provided by HUD under SAFAH with funds and other resources from other public or private sources. HUD will award the maximum amount of points to applications that will leverage to the greatest extent the amount of assistance to be provided.

(2) Computation of the leveraged amounts.

(*a*) Except for funds made available under the Community Development Block Grant program, funds provided under a federally assisted program will be excluded in computing the amount of leveraged funds.

(*b*) Funds that are currently used to provide assistance to the homeless will be excluded from the leveraging computation.

(*c*) Leveraged resources that may be included are: monetary contributions from public or private organizations; donated materials, supplies, equipment, or structures; the value of any lease on a building, any salary paid to staff of the recipient (or of the other entity) for work related to the proposal; and the time and service contributed by volunteers. (For the purposes of this section, time and services contributed by volunteers must be computed at the rate of five dollars per hour.)

(d) Applicant capacity. HUD will consider the relative ability of the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) to initiate the proposed activities to serve the homeless within a reasonable time and in a successful manner, and to continue to carry out these activities

throughout the term of the proposed commitment in a successful manner. The factors that HUD will consider in making this judgment are discussed in section E.2.(i)(b)(2)(*d*) above. HUD will assign the greatest number of points under this criterion to applications that demonstrate experience in establishing and operating facilities to assist the homeless and in providing or coordinating the provision of supportive services, and that demonstrate on the basis of prior experience, the greatest ability to carry out activities under the program expeditiously and successfully.

(e) Strategy. HUD will consider the extent to which the proposal reflects a clear understanding of the needs of the homeless population to be served and appropriately responds to these needs. Under this ranking criterion, HUD will evaluate the extent to which the proposal reflects the unmet needs of the homeless, as identified in the Comprehensive Homeless Assistance Plan for the appropriate jurisdiction under section C.2. above, and the extent to which the proposed strategy addresses those needs. HUD will award the maximum number of points under this criterion to proposals that, to the greatest extent, reflect the needs contained in the Plan and propose strategies that directly respond to these needs. (Applicants that are tribes and, thus, do not have a Comprehensive Homeless Assistance Plan, will not be penalized under this ranking criterion.)

(f) Task force. HUD believes that meaningful response to the homelessness problem is best developed by the coordinated efforts of members of the State or locality who represent the full diversity of the State's or locality's experience; and who understand the size and characteristics of the homeless population, the efforts that are already underway to assist the homeless in the area, the efficacy of these programs in the community, and the availability of additional resources in the community to assist the homeless. These efforts, which would generally take the form of a task force or similar working group, should be able to bring to bear on the needs of the homeless, broad-based and enduring community commitment, access to resources, and leadership to overcome obstacles and barrier to coordination.

Accordingly, HUD will assign rating points based on whether the application is supported by a task force or group, as described below. HUD will assign points under this factor based on the following three components:

(1) Formation. HUD will assign points to an application that is supported by a task force or group that has as its purposes the implementation of short- and long-term community-wide strategies to address the problems of the homeless, and the coordination and procurement of resources to implement these strategies. HUD will assign the maximum number of points under this ranking factor to applications that are supported by a task force or group that has such purposes and that includes community-wide representation consisting of representatives of the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity), local governments and agencies, private nonprofit agencies that serve the homeless, and the private sector.

(2) Commitment. HUD will assign points based on the extent of the commitment of the task force or group to the implementation of the community-wide strategies and the coordination and procurement of resources to implement these strategies. The extent of the commitment may be demonstrated by letters signed by the individual members of the task force or group, indicating the role that the member (and the entity or entities or constituencies he or she represents) will play in the activities of the task force or group. The letters should describe the role of the individual (and the entity or constituencies he or she represents) in the implementation of the community-wide strategy, and the extent to which the member (and the entity or entities or constituencies he or she represents) will commit its own resources, or assist in securing resources from others, to implement this strategy. The maximum number of points will be awarded to applications that show that each member of the task force or group (and the entity or entities or constituencies he or she represents) has demonstrated a significant commitment of time and resources to the activities of the task force or group.

(3) Participation of chief elected official. Because HUD places importance on the implementation of community-wide strategies, HUD will consider the extent to which a chief elected official of a governmental jurisdiction to be served by the proposal has demonstrated an active, personal commitment to participate in the activities of the task force or group, as described above. The maximum number of points under this criterion will be given to applications that are supported by a task force or group that is attended and chaired by such an official.

(g) Special homeless populations. Under this criterion, HUD will consider whether the application proposes facilities designed primarily to benefit homeless elderly individuals and homeless families with children, and whether the application proposes facilities to be used for child care. The maximum number of points will be awarded to applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children.

(iii) *Environmental review.*

(a) General. After the completion of the ranking, HUD will perform an environmental review on the number of applications necessary to provide an adequate pool of applications to ensure that the entire available amount under SAFAH can be committed to applications for comprehensive assistance. HUD may augment this pool with other ranked applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children, or that propose child care facilities, if HUD determines that this is necessary to comply with section 432(d) of the McKinney Act, as described above. Applications that do not receive an environmental review will not be selected for funding. If the amount of funding requested in the ranked applications will not ensure that all program funds will be committed to applications for comprehensive assistance, HUD will review all ranked applications.

(b) Environmental considerations. In conducting the environmental review, HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) is not eligible for funding. Applicants should be prepared to provide such additional information as HUD may request to complete the environmental review.

(c) Rating adjustments. (1) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See *e.g.*, 24 CFR Part 51). Accordingly, HUD will adjust the rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation measures.

(2) The environmental review often will reveal information not contained in

the application that may have relevance to the selection process. HUD will make further adjustments to the ratings based on the information revealed during the environmental review.

(iv) *Final selection.* In the final step of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under section E.2.(ii), and any adjustments made during environmental review under section E.2.(iii), above.

As noted above, under section 432(d) of the McKinney Act, HUD is required, to the maximum extent practicable, to reserve not less than 50 percent of all SAFAH funds for the support of facilities designed primairly to benefit homeless elderly individuals and homeless families with children (and a portion of these funds must be used for child care facilities). Additionally, that section requires HUD, to the extent practicable, to distribute SAFAH funds equitably across geographic areas.

In accordance with these requirements, HUD may substitute one or more other highly rated applications, if the top-rated applications under the ranking criteria described above do not ensure an equitable distribution across geographic areas, or do not ensure that at least 50 percent of all funds provided under this category of funding will support facilities designed primarily to benefit homeless elderly individuals and homeless families with children (including a portion of funds used for child care facilities.)

3. Assistance in excess of ESG and SHD program funding.

If all funds are not committed to applications for comprehensive assistance during the first stage of the selection process, HUD will consider applications seeking assistance in excess of ESG and SHD program funding. The threshold requirements, ranking criteria, environmental review, and final selection process for such applications are described below.

(i) *Threshold requirements.*

(a) General. (1) To be eligible for evaluation under the ranking criteria set out in section E.3.(ii), applications must meet each of the threshold criteria described below (as modified for wholly secular private nonprofit organizations established by a primarily religious organization under section B.3.(ii), above).

(2) If HUD determines that an application fails to meet the threshold criteria in section E.3. related to site control and zoning, that these are the only deficiencies in the application under the threshold criteria, and that the deficiencies are correctable, HUD may contact the applicant, identify the deficiencies, explain how the deficiencies can be corrected, and require the applicant to correct the deficiencies. HUD will establish a deadline for the submission of the additional site control and zoning information that will permit the Department to meet its deadlines for final selection.

(3) Applications that fail to meet the threshold criteria, including those that have not been corrected within any additional time provided by HUD, will not be eligible for SAFAH funding.

(b) Threshold criteria.

(1) Contents, time and adequacy of the application. The application must be filed within the time periods established by HUD in this Notice and must include all required elements, and contain evidence or information sufficient to support each of its elements. (See application contents requirements described in the appendix.)

(2) Applicant

(*a*) Eligibility to receive assistance. The applicant must demonstrate that it is a State, a metropolitan city, an urban county, a tribe, or a private nonprofit organization. If the applicant is submitting an application on behalf of another entity, the applicant must demonstrate that both the applicant and the other entity are eligible to participate in SAFAH as provided in the definition of applicant under section A., above.

(*b*) Financial responsibility. HUD has determined, for purposes of this program, that all governmental entities, including tribes, are financially responsible. Any private nonprofit organization applying for assistance (or, on behalf of which an application is submitted) must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider such factors as the past financial history of the organization, its current and anticipated financial outlook, the amount of funding that will be committed under the proposal, and the organization's other financial responsibilities.

(*c*) Commitment to alleviating poverty. Each applicant must show a commitment to alleviating poverty. In determining whether the applicant fulfills this threshold criterion, HUD will consider the applicant's past efforts and its continuing commitment to serve lower income persons, and in the case of a private nonprofit organization, whether the applicant's organizational objectives foster service to such persons. (Evidence of organizational objectives may be contained in the applicant's charter, by-laws, articles of incorporation, mission statements, minutes of its governing body, or other organizational documents.)

(*d*) Capacity. Each applicant must demonstrate that the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the continuing ability to effectively provide assistance to homeless individuals. Under this criterion, the applicant must demonstrate that the applicant (or the other entity) is able to initiate proposed activities within a reasonable time after execution of a grant agreement with HUD and in a successful manner, and to continue to carry out the proposed activities throughout the term of the commitment under the proposal in a successful manner. In determining whether the application meets this threshold criterion, HUD will consider the applicant's (or the other entity's) experience in operating facilities to assist the homeless or in providing or coordinating supportive services. HUD also will consider the ability of the applicant's (or other entity's) personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of facilities to assist the homeless.

(*e*) Legal authority. Each applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the legal authority to participate in the program and to carry out activities in accordance with SAFAH and the requirements of other applicable Federal law; and must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by the governing body of the applicant (and the other entity) authorizing the submission of the application under SAFAH.

(3) Proposal

(*a*) Status of ESG or SHD program. Each applicant must show that the application is made in connection with:

—A project that has been approved for, or has received funding under the ESG or SHD program;

—A project for which an application for ESG or SHD funding has been submitted, and the application either is presently pending or has been denied funding; or

—A project for which assistance is sought to acquire property to be used for shelters for homeless families with children.

(*b*) Purpose. Each applicant must demonstrate that the proposal will serve the purposes of the ESG program or the SHD program. Applicants seeking assistance must demonstrate that the proposal will serve or complement the following goals:

(*1*) The proposal will improve the qualityof existing emergency shelters for the homeless, make available additional emergency shelters, or help meet the costs of operating emergency shelters and of providing supportive services to homeless individuals, so that these persons will have access not only to safe and sanitary shelter, but also to supportive services and other kinds of assistance they need to improve their lives; or

(*2*) The proposal will assist in facilitating the movement of homeless individuals to independent living within a reasonable time or will assist in the provision of permanent housing and supportive services to handicapped homeless individuals.

(*c*) Each applicant must demonstrate that SAFAH assistance will either serve the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or facilitate the transfer and use of public buildings to assist homeless individuals and families.

(4) Proposed facilities and supportive services.

(*a*) Need. The applicant must demonstrate an unmet need for the proposed facilities, proposed supportive services or other assistance to be provided to the homeless under the proposal. Applicants must demonstrate that the need exists in the area to be served, and that this need is likely to continue through the term of the proposed commitment of HUD. Applicants should use relevant information contained in the Comprehensive Homeless Assistance Plan to demonstrate need.

(*b*) Appropriateness of the proposed facilities. If the application seeks assistance for facilites to assist the homeless the applicant must demonstrate that the proposed structures and sites are appropriate for the provision of facilities, supportive services, or other aid to be provided to the homeless population proposed to be served. In determining whether facilities will be suitable for the provision of supportive services, HUD will consider whether the structure is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible.

(*c*) Siting and zoning. Except as provided in section E.3.(i)(a)(2) above, if the application seeks assistance for facilities to assist the homeless, the application must meet the following siting and zoning requirements at the time of application:

—The applicant must demonstrate that the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) has control of the site involved. For example, the applicant may demonstrate that it (or the other entity) owns or has an option to purchase, or leases or has an option to lease, the structure involved.

—The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully within 30 days following the selection of the application for funding.

—The applicant must submit a statement that the proposed project is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA). If 50 percent or more of the living space in the structure is designed for residents with mobility impairments, the applicant must submit a statement that the project is not located in any 500-year floodplain, as designated on FEMA maps.

The applicant must meet one of the following requirements with respect to historic preservation:

—The applicant may provide a letter from the State Historic Preservation Officer (SHPO) indicating that the facility to be funded under the Program will not involve an historic property as defined in 36 CFR 800.2 (*i.e.*, an historic or prehistoric district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places) and will not involve a structure that is immediately adjacent to an historic property that is listed on the Register.

—If the facilities involve an historic property that is included in or eligible for inclusion in the Register or is immediately adjacent to an historic property that is listed on the Register, the applicant may demonstrate that the SHPO has agreed to the proposed use of the property and to measures to avoid or reduce any adverse effects of such use;

—The applicant may demonstrate that an environmental review of the area in which the proposed facilities are to be located: (i) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and (ii) addressed properties, activities, and effects comparable to those proposed for assistance under SAFAH. (If HUD finds that the prior review applies to the proposed activities, this threshold requirement will be met.)

(5) Operating assurances. If the application involves assistance for the purchase, lease, rehabilitation, or conversion of facilities to assist the homeless, the applicant must demonstrate, in the form of assurances acceptable to HUD, that the facility will be operated to assist the homeless for a term of not less than 10 years from the date of initial occupancy.

(6) Proposal feasibility. If the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) seeks SAFAH funding in connection with a project that has been approved for, or has received, funding under the ESG or SHD program, HUD may consider the ESG or SHD project in determining whether the SAFAH proposal is operationally feasible. In all other cases, the application must demonstrate that the proposal is operationally feasible without ESG or SHD funding.

(7) Reasonable efforts. The applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have made reasonable efforts to use all available local resources, including State and local government funding (*e.g.*, Community Development Block Grant funds), resources available from the private sector, and resources available under Title IV of the McKinney Act (the ESG program, the SHD program, and the Section 8—Moderate Rehabilitation program for Single Room Occupancy Dwellings authorized under Subtitle E). The application must also demonstrate that other resources are not sufficient or are not available to carry out the purpose for which the assistance is being sought.

In determining whether reasonable efforts have been made to obtain McKinney Act funds, the applicant must show that either the applicant (and the other entity) or the proposed activities

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are ineligible for funding under the requirements of the described programs; or if the proposed activities are eligible for funding under one or more of the programs, that the applicant (and the other entity) sought and were not granted sufficient funding under the programs as of the application submission date.

In considering whether reasonable efforts have been made to use local resources, HUD will consider such factors as fund-raising activities undertaken by the applicant (and the other entity) and any requests for assistance for available funds made by the applicant (and the other entity) to State or local governments or private entities, such as charitable organizations or private businesses.

(8) Consistency with Comprehensive Homeless Assistance Plan. Applicants must provide a certification from the public official responsible for submitting a Comprehensive Homeless Assistance Plan for the appropriate jurisdiction (as described under section C.2., above), stating that the proposed activities are consistent with the applicable Comprehensive Homeless Assistance Plan.

(9) Displacement. Each applicant must certify that the proposed activities will not result in the temporary or permanent displacement of any person entity. HUD will not fund applications that will cause any individual, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation of real property, in whole or in part, for a project.

(10) Outpatient health services. If an applicant seeks assistance for the provision of outpatient health services, the applicant must demonstrate that the proposal for delivery of the outpatient health services meets the guidelines developed by HHS and HUD. Additionally as noted below, HUD will not approve an application that seeks more than $10,000 in assistance for such services (excluding the cost of any rehabilitation or conversion). If the proposal for the provision of outpatient health services does not meet the HHS/HUD guidelines, HUD may fund the remainder of the application if the application is operationally feasible without the services.

(ii) *Ranking.* In the second set of the review of applications for assistance in excess of funding provided under the ESG and SHD program, all applications that meet the above threshold requirements will be placed in priority funding order based upon their scores on the following ranking criteria. The criteria are listed in order of the number of points to be accorded to each in the ranking process.

(a) Applicant capacity. HUD will consider the relative ability of the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) to initiate the proposed activities to serve the homeless within a reasonable time and in a successful manner, and to continue to carry out these activities throughout the term of the proposed commitment in a successful manner. (The factors that HUD will consider in making this judgment are discussed in section E.3.(i)(b)(2)(*d*), above.) HUD will assign the greatest number of points under this criterion to applications that demonstrate experience in establishing and operating facilities to assist the homeless and in providing or coordinating the provision of supportive services, and that demonstrate on the basis of prior experience, the greatest ability to carry out activities under the program expeditiously and successfully.

(b) Impact on needs of designated homeless populations. HUD will consider the extent to which the proposed activities will address one or more of the unmet special needs of homeless families with children, elderly homeless individuals, or the handicapped. HUD will assign the maximum number of points under this ranking criterion to applications that will serve only members of the designated homeless populations and whose proposed activities will best address the identified special needs of these populations.

(c) Cost effectiveness. HUD will consider the extent to which the applicant's proposed costs under the proposal are reasonable in relation to the work done and the goods and services purchased; and are effective in accomplishing the purposes of the proposal.

(d) Special homeless populations. Under this criterion, HUD will consider whether the application proposes facilities designed primarily to benefit homeless elderly individuals and homeless families with children, and whether the application proposes facilities to be used for child care. The maximum number of points will be awarded to applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children.

(iii) *Environmental review.*

(a) General. After completion of ranking, HUD will perform an environmental review on the number of applications necessary to provide an adequate pool of applications to ensure that the entire amount available for applications for assistance in excess of funding provided under the ESG and SHD program can be obligated. HUD may augment this pool with other ranked applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children, or that propose child care facilities, if HUD determines that this is necessary to comply with section 432(d) of the McKinney Act, as described above. Applications that do not receive an environmental review will not be selected for funding. If the amount of funding requested in the ranked applications will not ensure that all program funds will be committed to applications for assistance in excess of funding provided under the ESG and SHD program, HUD will review all ranked applications.

(b) Environmental considerations. In conducting the environmental review, HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment process at 24 CFR Part 50, Subpart E) is not eligible for funding. Applicants should be prepared to provide such additional information as HUD may request to complete the environmental review.

(c) Rating adjustments. (1) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See *e.g.*, 24 CFR Part 51). Accordingly, HUD will adjust the rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation measures.

(2) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD will make further adjustments to the ratings based on the information revealed during the environmental review.

(iv) *Final selection.* In the final step of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under section E.3.(ii), above, and any adjustments made during environmental review under section E.3.(iii), above.

In accordance with section 432(d) of the McKinney Act, HUD may substitute one or more other highly rated applications if the top-rated applications under the ranking criteria described above do not ensure an equitable distribution across geographic areas, or do not ensure that more than 50 percent of all funds provided under this category of funding will support facilities designed primarily to benefit homeless elderly individuals and homeless families with children (including a portion of funds used for child care facilities).

4. Procedures for applications involving outpatient health services.

Under section 432(e)(2) of the McKinney Act, HUD and HHS are required to jointly establish guidelines for determining the appropriateness of proposed outpatient health services. HHS and HUD have established these guidelines and they have been incorporated in this Notice.

Section 432(e)(1) of the McKinney Act provides that upon the receipt of any SAFAH application that includes the provision of outpatient health services, HUD must consult with HHS with respect to the proposed services. If HHS determines that the proposal for delivery of outpatient health services does not meet the requirements of HHS/HUD guidelines, the statute permits HUD to require the resubmission of the application, and provides that HUD may not approve such portion of the application until it has been resubmitted in a form that meets the guidelines.

Under the threshold criteria described at sections E.2.(i)(b)(9) and E.3.(i)(b)(10), above, HUD will review all applications that seek assistance for the provision of outpatient health services to determine if the application meets the HHS/HUD guidelines and does not seek more than $10,000 in funding for such services. A representative of HHS will assist in this threshold review. Given the limited time period that HUD has set for the review of applications, HUD has elected not to permit the resubmission of applications that fail to meet the HHS/HUD guidelines. As noted above, however, if the provision of outpatient health services does not meet the HHS/HUD guidelines incorporated in this Notice, HUD may fund the remainder of the application if the proposal is operationally feasible without the services.

F. Program Requirements

1. Grant Agreement

(i) *General.* The duty to provide facilities to assist the homeless in accordance with the program requirements will be incorporated in a grant agreement executed by HUD and the recipient.

(ii) *Enforcement.* HUD will enforce the obligations in the grant agreement through actions on the contract. In addition, restrictions regarding the use of structures will be contained in covenants recorded in the land records of the jurisdiction in which the structure is located.

2. Required Agreements

Each recipient of assistance must agree (or in the case of a recipient that submitted an application on behalf of another entity, the applicant must ensure that the other entity agrees):

(i) To assist the homeless in accordance with the proposal as approved by HUD and the requirements of this Notice.

(ii) To operate any property that has been purchased, leased, rehabilitated, or converted with an advance or grant provided under the program as facilities to assist the homeless for not less than 10 years following the date of initial occupancy.

(iii) If HUD has provided assistance for facilities to assist the homeless, the facilities must be safe and sanitary and must comply with all State and local housing codes, licensing requirements, and other requirements in the jurisdiction in which the facility is located regarding the condition of the structure and the operation of the facilities to assist the homeless.

(iv) To keep any records and make any reports that HUD may require.

3. Term of Commitment

(i) *General.* Recipients receiving assistance to purchase, lease, rehabilitate, or convert property for facilities to assist the homeless (or, in the case of a recipient that submitted an application for such assistance on behalf of another entity, the other entity) must operate the facilities for a term of at least 10 years from the date that the facility is initially occupied by a homeless person for whom assistance is provided under the SAFAH program. Other facilities assisted under SAFAH must be operated for the term proposed in the application and approved by HUD.

(ii) *Successors.* (a) A recipient may select a successor to assume its obligations under SAFAH. A successor-recipient must be approved by HUD before its assumption of obligations. Any obligations for the repayment of advances and for the prevention of undue benefits may remain with the original recipient or may be transferred to the successor-recipient, depending on the terms of the HUD approval.

(b) In the case of a recipient that submitted an application on behalf of another entity, the recipient and the other entity may select a second entity to assume the obligations of the first entity under SAFAH. A successor-entity must be approved by HUD before its assumption of obligations. Any obligations for the repayment of advances and for the prevention of undue benefits may remain with the original entity or may be transferred to the successor-entity, depending on the terms of the HUD approval.

4. Repayment of Advance

(i) *General.* The recipient of an advance under SAFAH (and, in the case of a recipient that submitted an application for an advance on behalf of another entity, the other entity) are responsible for the repayment of the advance in the amount prescribed below and in accordance with the terms prescribed by HUD.

(ii) *Amount of repayment.* The recipient (and the other entity) are responsible for the repayment of the full amount of the advance if the project is used as facilities to assist the homeless for less than 10 years following the date of initial occupancy. For each full year that the project is used as facilities to assist the homeless following the expiration of this 10-year period, the amount that the recipient (and the other entity) are responsible for repaying will be reduced by one tenth of the original advance. If the project is used as facilities to assist the homeless for 20 years following the date of initial occupancy, the recipient (and the other entity) will not be required to repay any portion of the advance.

(iii) *Alternate use.* Upon written request of the recipient (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity), HUD may determine that a project is no longer needed to assist the homeless, and may approve an alternate use of the project for the direct benefit of lower income persons. For the purposes of determining the amount of the repayment obligation, such a project will continue to be treated as facilities to assist the homeless as long as it is used for the approved alternate purpose.

5. Prevention of Undue Benefits

(i) *General.* If a project is acquired, leased, renovated, or rehabilitated with an advance or a grant and the project is sold or otherwise disposed of during the 20 years following initial occupancy, the

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recipient (and, in the case of a recipient that submitted an application for such assistance on behalf of another entity, the other entity) must comply with such terms and conditions as HUD may prescribe to prevent the recipient (and the other entity) from unduly benefitting from the sale or the disposition.

(ii) *Exception.* This provision does not apply to sales or dispositions that result in the continued use of the project for the direct benefit of lower income persons.

6. Applicability of Other Federal Requirements

Use of SAFAH assistance must comply with the following additional requirements:

(i) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons, a recipient (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity) serving a designated population of homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, and handicap:

(a) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(c) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(d) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(e) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity) must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(f) If the procedures that the recipient (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity) intend to use to make known the availability of assistance to the homeless are unlikely to reach persons of any particular race, color, religion, sex, age, or national origin who may qualify for assistance, the recipient (and the other entity) must establish additional procedures that will ensure that these persons are made aware of the availability of assistance opportunities. The recipient (and the other entity) must also establish additional procedures that will ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to handicapped persons.

(ii) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this program.

(iii) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations.

(iv) *Lead-based paint.* (a) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (b), below) apply to the program. These requirements reflect the section 8 Existing Housing regulations (24 CFR 882.109) (published in the **Federal Register** on January 15, 1987, 52 FR 1876, 1893–94) and the Lead-Based Paint requirements contained in the Transitional Housing Demonstration Program Guidelines (published on June 9, 1987, 52 FR 21743, 21761).

(b)(1) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that will be occupied by children under seven years of age.

(2) The following definitions apply to this paragraph (b):

Applicable surface means all exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or door, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

Chewable surface means all chewable, protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age: *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or *EBL* means excessive absorption of lead: *i.e.*, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(3) In the case of a structure constructed before 1973, the applicant must inspect the structure for defective paint surfaces before it submits an application. Recipients must inspect assisted structures at least annually during the term of their operating commitment to HUD. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) In the case of a structure constructed before 1973, if the recipient is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable

surfaces. Testing must be conducted by a State or local health or housing agency, or by an inspector certified by a State or local health or housing agency. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other methods approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(5) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the method set out at 24 CFR 35.24(b)(2)(ii).

(6) The recipient must take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must keep the test results and, if applicable, the certification of treatment, indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this Section, these surfaces do not have to be tested or treated at any subsequent time.

(c) Applicants and recipients that submit an application on behalf of another entity, may require the other entity to comply with some or all of the requirements of this paragraph. The applicant or recipient, however, must ensure that the entity carries out all requirements in accordance with this paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(v) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circulars A–102 and A–110, no person (a) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient (or, in the case of a recipient that submitted an application on behalf of another entity, the other entity) that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (b) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(vi) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(vii) *Audit.* The financial management systems used by governmental entities under this program must provide for audits in accordance with 24 CFR Part 44. Private nonprofit organizations are subject to the audit requirements of OMB Circular A–110. HUD may perform or require further and additional audits as it finds necessary or appropriate.

(viii) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are not applicable to applications under this program.

(ix) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to SAFAH.

G. Administrative Provisions

1. Obligation of Funds, Funding Amendments and Deobligation

(i) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved advance or grant.

(ii) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for the advance or grant.

(iii) *Deobligation.* (a) HUD may deobligate amounts for the advance or grant if proposed activities are not begun or completed within a reasonable time after selection.

(b) The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

(c) HUD may:

(1) Readvertise the availability of funds that have been deobligated under this section in a Notice of Funds Availability; or

(2) Reconsider applications that were submitted in response to the most recently published Notice of Funds Availability under SAFAH and select applications for funding with deobligated funds. Such selections will be made in accordance with the selection process described in section E., above.

2. Waiver

The Secretary of HUD may waive any SAFAH requirement that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number is 2528–0128.

(The Catalog of Federal Domestic Assistance Program Number is 14.510)

Authority: Section 433, Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–71, approved July 22, 1987); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 13, 1987.

C. Duncan MacRae,

Acting Assistant Secretary for Policy Development and Research.

Appendix

Required Information for All Applications

—Preliminary Information

(1) The first page of each application must indicate: (a) the type of assistance requested under the application (*i.e.* whether the applicant requests comprehensive assistance or assistance in excess of funding provided under the ESG and SHD program funding); and (b) whether the applicant seeks assistance for outpatient health services.

(2) Each application must include a table of contents indicating the location of information demonstrating that the applicant has met each of the applicable threshold criteria.

—Applicant Data

(1) The application must include the name, mailing address, and telephone number of applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other

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entity) and the contact person to whom communications should be addressed.

(2) The application must provide evidence that the applicant is a State, a metropolitan city, an urban county, a tribe or a private nonprofit organization (see paragraph (a) of the definition of applicant contained in section A). If the applicant is submitting an application on behalf of another entity, the application must include evidence that the other entity is an eligible entity (see paragraph (b) of the definition of applicant contained in section A).

(3) The applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have the legal authority to participate in the program and to carry out activities in accordance with program requirements and the requirements of other applicable Federal law. (See sections E.2.(i)(b)(2)(*e*) and E.3.(i)(b)(2)(*e*) for a description of required evidence.)

(4) For private nonprofit organizations that are applicants (and, in the case of an applicant that submits an application on behalf of another private nonprofit organization, for the other entity), the application must include information necessary to demonstrate financial responsibility. (See sections E.2.(i)(b)(2)(*b*) and E.3.(i)(b)(2)(*b*) for a description of necessary documentation.)

(5) The application must include evidence of the applicant's commitment to alleviating poverty. (See sections E.2(1)(b)(2)(*c*) and E.3.(i)(b)(2)(*c*) for a desciption of required documentation.)

(6) The application must contain evidence of continuing capacity of the applicant (or, in the case of an applicant that submits an application on behalf of another entity, of the other entity) to effectively provide assistance to homeless individuals. (See sections E.2(i)(b)(2)(*d*) and E.3.(i)(b)(2)(*d*) for required evidence.)

(7) If the applicant is a primarily religious organization, if assistance is to be provided to a wholly secular organization established by a primarily religious organization, or if the facilities to be used in the proposed project are owned by a primarily religious organization, the application must demonstrtate that it will meet the requirements described in section B.3.(ii).

—Assistance Requested

(1) Category of funding requested. The applicant must identify which category of funding assistance is requested (*i.e.*, comprehensive assistance or assistance in excess of ESG or SHD program funding).

(2) Type of assistance requested. The applicant must identify the type of assistance requested (*i.e.*, an advance to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities, a grant for moderate rehabilitation or a grant for other purposes), the amount of assistance requested for each type of assistance, and a line item budget demonstrating how the assistance will be spent. In addition to other line items, the budget should specifically identify the amount of assistance that will be used to provide outpatient health services; for administrative expenses; to support facilities designed primarily to benefit homeless elderly individuals and homeless families with children; and in support of child care facilities.

—Proposed Activities

(1) Homeless population to be served. The applicant must describe the size and characteristics of the population that will be served by the proposal (including a description of the particular homeless population to be served, number of individuals to be served by the proposal, and the supportive services required by the homeless population to be served). Applicants must estimate the number and proportion of the homeless population to be served that will be homeless elderly individuals, homeless families with childern, or the handicapped.

(2) A description of the proposed facilities. The application must include:

(a) Information identifying the facilities to be used and demonstrating that the facilities are appropriate for the homeless population to be served. (See sections E.2.(i)(b)(3)(*b*) and E.3.(i)(b)(4)(*b*).)

(b) With regard to the facilities to be used to assist the homeless, the applicant is requesting assistance for the facilities:

—A description of the acquisition, lease, rehabilitation or conversion activities to be assisted;

—Information demonstrating that the applicant (or in the case of an applicant that submits an application on behalf of another entity, the other entity) has site control;

—Evidence demonstrating that the use of the proposed site is consistent with applicable zoning ordinances and regulations, or will be consistent with such ordinances and regulations within 30 days following the selection of applications for funding;

—Evidence demonstrating that the facilities are not located within a 100-year floodplain, as designated by FEMA. (The applicant must show that the facilities are not located in a 500-year floodplain, if 50 percent or more of the living space in the facility is designed for residents with mobility impairments). (See sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*).)

(c) The applicant must meet one of the following requirements with respect to historic preservation:

—The applicant may provide a letter from the State Historic Preservation Officer (SHPO) indicating that the facility to be funded under the program will not involve an historic property as defined in 36 CFR 800.2 (*i.e.*, an historic or prehistoric district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places) and will not involve a structure that is immediately adjacent to an historic property that is listed on the Register;

—If the facilities involve an historic property that is listed on the Register or is immediately adjacent to an historic property that is listed on the Register, the applicant may demonstrate that the SHPO has agreed to the proposed use of the property and to measures to avoid or reduce any adverse effects of such use; or

—The applicant may demonstrate that an environmental review of the area in which the proposed facilities are to be located: (1) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and (2) addressed properties, activities, and effects comparable to those proposed for assistance under the SAFAH program. (See sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*).)

(d) The applicant must identify the percentage of the homeless to be served in the assisted facilities will be homeless elderly individuals or homeless families with children.

(e) The applicant must identify the assisted facilities that will be used for child care.

(3) Description of services. The application must include a description of the proposed services to be provided, including a description of the services to be provided with the SAFAH funds, services to be provided by others, services that the applicant currently provides, and services currently provided by others.

(4) Need. The applicant must demonstrate that there is a continuing and unmet need for the proposed facilities, services and other aid to be provided under the proposal. (See sections E.2.(i)(b)(3)(*a*) and E.3.(i)(b)(4)(*a*).)

(5) Term of commitment. The application must state the term of the proposed commitment to provide the proposed operations.

(6) Outpatient health services. If the applicant seeks assistance for outpatient health services, the applicant must demonstrate that the proposed services meet the HHS/HUD guidelines incorporated in this Notice.

(7) Proposal feasibility. The applicant must demonstrate that the proposal is operationally feasible under the applicable criteria described in sections E.2.(i)(b)(10) and E.3.(i)(b)(6).

—Reasonable Efforts

Applicants must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have made reasonable efforts to utilize all available local resources and resources available under the McKinney Act and that these other resources are not sufficient or are not available to carry out the purposes of the application. (See sections E.2.(i)(b)(6) and E.3.(i)(b)(5).)

—Consistency with Comprehensive Plan

The applicant must include a certification from the public official responsible for submitting the Comprehensive Homeless Assistance plan as described under section C.2., stating that the proposal is consistent with the applicable Comprehensive Homeless Assistance Plan. This certification is not required of applicants that are tribes.

—Certifications

The applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) must certify that:

(1) It will comply with the federal requirements described in section E.6. of this notice addressing: nondiscrimination and equal opportunity requirements; applicable OMB circulars; the Lead-Based Paint Poisoning Prevention Act; conflict of interest prohibitions; prohibitions against the use of debarred, suspended, or ineligible contractors; and audit requirements.

(2) It will assist the homeless in accordance with their proposal as approved by HUD and the requirements of the SAFAH program.

(3) A resolution, motion or similar action has been adopted authorizing the submission of the application. (See sections E.2.(i)(b)(2) and E.3.(i)(b)(2).)

(4) The proposed activities will not result in the temporary or permanent displacement of any person or entity.

(5) If the application involves assistance to acquire, lease, rehabilitate, or convert facilities to assist the homeless, the facility will be operated to assist homeless individuals for a term of not less than 10 years from the date of initial occupancy. For other applications, the applicant (and other entity) must certify that the operation will be conducted for the term of the commitment proposed in the application.

(6) If the application involves assistance for facilities to assist the homeless, the facilities meet or will meet applicable State and local housing codes, licensing requirements, and other requirements in the jurisdiction in which the facility is to be located regarding the condition of the structure and the operation of the facilities.

(7) If the application involves an advance for the acquisition, lease, substantial rehabilitation or conversion of facilities to assist the homeless, the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) agree to repay the advance in accordance with the provisions of section E.4.

(8) If the application involves a facility that is acquired, leased rehabilitated, or converted with an advance or a grant, the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) agree to comply with such terms and conditions that may be prescribed by HUD to prevent the recipient (or other entity) from unduly benefitting from a sale or disposition occurring prior to the expiration of 20 years from the date of initial occupancy of the facility.

(9) If the application involves the provision of outpatient health service, not more than $10,000 will be used for such services.

(10) Not more than five percent of the requested SAFAH funds will be used for administrative expenses.

(11) Assistance provided under the SAFAH program will be used only to provide new facilities or services for the homeless, to expand existing facilities serving the homeless, or to provide services in addition to those currently provided to the homeless.

(12) Assistance provided under the SAFAH program will not be used to supplant any non-Federal resources provided with respect to any project.

(13) If the application is selected for funding, the applicant will execute a grant agreement with HUD within two weeks of receipt of notification of funding approval.

(14) If required in the notification of funding approval, the applicant will form a wholly secular private nonprofit entity to be the recipient of funds under the program and it will transfer site control to the new entity.

(15) The funds obligated by HUD under the SAFAH program cannot be increased, but may be decreased in accordance with section F.1.

(16) The applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) will keep any records and make any reports that HUD may require.

(17) The cost estimates used in the application can be supported by documentation on file with the applicant (or in the case of an applicant that submits an application on behalf of another entity, the other entity) and the applicant (or the other entity) will maintain this documentation for at least three years.

Additional Informations in Application for Comprehensive Assistance

—Required Information

The application must contain information demonstrating that the proposal involves a particularly innovative program for or alternate method of meeting the immediate and long term needs of homeless individuals and families. (See sections E.2.(i)(b)(5) and E.2.(ii)(a)).

—Information for Ranking Purposes

(1) Comprehensiveness. Applicants should provide a evidence demonstrating that the facilities and supportive services to be provided under the proposal, and to be available from others in the area proposed to be served by the application, will satisfy the immediate and long-term needs of the homeless population proposed to be served. (See section E.2.(ii)(b).)

(2) Leveraging. The application should contain information identifying the amounts and sources of resources (other than to be provided by HUD under the SAFAH program and resources that are currently used to provide assistance to the homeless) that will be available for use in the proposal. (See section E.2.(ii)(c).)

(3) Strategy. The application should explain how the proposed facilities and services reflect the unmet needs of the

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homeless as identified in the appropriate Comprehensive Homeless Assistance Plan and how the proposal addresses these needs. (See section E.2.(ii)(e).)

(4) Task force group. The application should identify any task force or group that supports the application, describe the purposes of the task force or group, identify the membership of the task force or group (including if any chief executive officer of a local governmental jurisdiction chairs, or is a member of the task force or group), and include letters of commitment of members of the task force or group. (See section E.2.(ii)(f).)

Additional Information in Applications Seeking Assistance in Excess of ESG and SHD Program Funding

—Required Information

Applications for assistance in excess of ESG or SHD program funding must:

(1) Demonstrate that the applicant is an eligible applicant for assistance in excess of ESG or SHD program funding as defined in paragraph (c) of the definition of applicant. (See section A.)

(2) Show that the application is made in connection with: a project that has been approved for, or has received funding under the ESG or SHD program; a project for which an application for ESG or SHD funding has been submitted, and the application is either presently pending or has been denied; or a project for which assistance is sought to acquire property to be used for shelters for homeless families with children (See E.3.(i)(b)(3)(*a*).)

(3) Include a narrative description explaining how the proposal will serve or complement the goals of the ESG or SHD program. (See E.3.(i)(b)(3)(*b*).)

(4) If the proposal will serve homeless families with children, elderly homeless individuals, or handicapped persons, the application should identify the special needs of the population to be served, explain how some or all of these needs are currently being met in the community, and explain how the proposal will serve the unmet needs. (See E.3.(i)(b)(3)(*c*).)

(5) Identify public buildings to be transferred or utilized under the proposal, and explain how these buildings will be used to assist homeless individuals and families. (See E.3.(i)(b)(3)(*c*).)

Information for Ranking Purposes

The applicant must demonstrate that the proposed costs are reasonable in relation to the work done and goods and services purchased; and are effective in accomplishing the purposes of the proposal.

[FR Doc. 87–24242 Filed 10–16–87; 8:45 am]
BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. D–87–866; FR 2389]

Delegation of Authority With Respect to Supplemental Assistance for Facilities To Assist the Homeless

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: Title VI, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987) authorizes a program of supplemental assistance for facilities to assist the homeless. This notice delegates to the Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research, the Secretary's power with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Division of Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–5537 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice states the scope of authority given to the Assistant Secretary for Policy Development and Research and General Deputy Assistant Secretary for Policy Development and Research for the program of supplemental assistance for facilities to assist the homeless. All of the Secretary's authority with respect to this program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations and guidelines under the program.

Title IV, Subtitle D of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77 approved July 22, 1987) authorizes a program of supplemental assistance for facilities to assist the homeless. A notice establishing requirements for the operation of this program is published elsewhere in today's issue of the **Federal Register**. Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the program of supplemental assistance for facilities to assist the homeless authorized in Title VI, Subtitle D of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987), except as indicated in Section B below. This includes the authority to issue or waive rules, regulations, or guidelines under the Program.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations and guidelines under the Program.

(Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: October 15, 1987.

Carl D. Covitz,

Acting Secretry.

[FR Doc. 87–24243 Filed 10–16–87; 8:45 am]
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federal register

Monday
October 19, 1987

Part VI

Legal Services Corporation

45 CFR Part 1607

Requirements for Recipient Governing Bodies; Proposed Regulation

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LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Proposed regulation.

SUMMARY: This proposed rule amends Part 1607 of the Legal Services Coporation regulations prescribing the requirements for recipient governing bodies. The amendments and additions will provide new guidelines for the selection, composition, and procedure of such governing bodies. The section on compensation has been changed to better conform with the language in the Act. In addition, the size of the membership and the length of active membership of any board member are proposed to be limited.

DATE: Comments on proposed regulations must be submitted on or before November 18, 1987.

ADDRESS: Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1823.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1823.

SUPPLEMENTARY INFORMATION: Section 1007(c) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996(f) *et seq.*, establishes the procedural requirements for the governing body of any recipient that receives funding for the purpose of providing legal assistance to eligible clients. Among other things, it requires that at least sixty (60) percent of the governing body of a recipient consist of attorneys who are members of the bar in the state where legal assistance is to be provided. Part 1607, which implements these statutory provisions, has been revised two times since its original promulgation on July 23, 1976, with the consistent objective of insuring that programs will be accountable to the communities that they serve.

Part 1607 originally allowed for selection of attorney board members by several groups, including bar associations, law schools and anti-poverty organizations. Also, it required that only one member of the Board be an eligible client. 41 FR 25900 (1976). On July 28, 1978, the rule was revised to implement 1977 amendments to sec. 1007(c). See Pub. L. 95–222 (1977). As amended, it required that at least one-third of the members of a recipient governing body be eligible clients to insure that the recipient would be accountable to the client communities it served. 43 FR 32772 (1978).

The next revision, which became effective on February 16, 1983, contained new mechanisms and requirements for selection of attorney members of recipient governing bodies as required by Pub. L. 97–377, the LSC appropriations bill for that year. 48 FR 1971 (1983). The provision in the LSC appropriations bill commonly referred to as the McCollum Amendment required that the appointment of the attorney members of the governing body of a recipient be conducted so that a majority of the board be selected by the governing bodies of the state, county or municipal bar associations, the membership of which represented the majority of attorneys practicing law in the recipient's service area. All subsequent appropriations bills have retained this provision.

Finally, on August 15, 1983, a final Guideline, No. 83–1, was published after notice and comment as an authoritative interpretation of the regulation as amended. 48 FR 36820 (1983). Briefly, the Guideline establishes that the general membership bar association that is co-extensive with the recipient's service area is to be the appointing bar. The proposed revision would require that the state bar for the state in which the recipient maintains its principal offices, whether or not it is co-extensive with the recipient's area, be the appointing body. To the extent that the changes proposed here are inconsistent with Guideline 83–1, conforming modifications are proposed to be made to the Guideline simultaneously.

The current proposed revisions and amendments to Part 1607 have been constructed to more fully conform to the Act, to better implement Congressional intent, and to insure that recipient governing bodies more closely reflect the structure and procedures which pertain to LSC's own governing body. See 42 U.S.C. 2996(c), 1004.

Section 1607.3 Composition

The proposed change to § 1607.3(c) concerns the appointment of attorneys to governing bodies. It is proposed that attorney board members must be appointed by a nine member legal services selection committee established by the governing body of the state bar association of the state in which the recipient is located. Selection of the nine member committee shall be conducted by an election in which all the voting members of the appointing bar are allowed to participate. The members of the legal services committee, who must be members of the relevant bar, shall sit for no more than a period of three years. The object of this change is to foster consideration and appointment of board members by the broadest possible representation of bar members.

Experience under the Act and the prior versions of Part 1607 taught that often only narrow segments of local bars were consulted in forming recipient boards. As a result, Representative William McCollum initiated an amendment, first articulated in 1981 in H.R. 3480 and later enacted in the appropriations bills for 1983, see Pub. L. 97–276 and Pub. L. 97–377, that was intended to require that the sole authority to appoint the majority of recipient board members be exercised by the governing body of either the state, county, or municipal bar association. The main purpose of the provision was to prevent self-selecting and self-perpetuating recipient governing bodies. See 127 CONG. REC. H 12550 (daily ed. June 16, 1981).

The language of the McCollum Amendment gives LSC discretion to grant appointing authority to either the state, county or municipal bar as long as the membership of that bar represents a majority of attorneys practicing law in the recipient's service area. Exercising this discretion, LSC requires in Guideline 83–1 that the local general, membership bar association that is co-extensive with the recipient's service area be the appointing bar. Problems have been encountered in the administration of this requirement, however. Recipients' service areas often subsume several county or municipal boundaries; in such cases, the interested local bars are counseled to coordinate appointments. Yet uncertainty as to the identity of the majority bar or shared authority among responsible bars often has led to an absence of interest by the bar and, consequently, inattention and indifference towards the appointment process. Recipients have also been known to forum shop among local bars for the most favorable appointment process. In addition, local bars often accept and adopt recommended nominations furnished by the programs themselves. Such self-selection defeats the long-standing objective of active independent attention by the bar itself. The revisions are carefully constructed to avoid such problems. First, selection of appointees by an elected committee will assure substantial participation by a broad spectrum of the bar membership. Second, selection at the State level will eliminate the uncertainty as to the responsible appointing bar.

National support centers serve recipients nationwide. Because it would be unrepresentative of areas served to have just one State's bar be the appointing organization, and unduly cumbersome to have attorney members appointed by bar associations of several States, it is proposed that the appointment of attorney members of the governing bodies of national support centers be conducted by the governing body of the voluntary bar association having the largest membership in the United States.

The present paragraph (h) is proposed to be deleted as inconsistent with the proposed selection procedure outlined in paragraph (c).

A new paragraph (h) is proposed as an addition to § 1607.3 to limit the number of board members of any one political party that may serve at one time on a recipient's governing body. Pursuant to this section, no more than sixty percent of a recipient's governing body may be members of the same political party. This proposal would reinforce the breadth of representation appropriate for governing bodies. It would also reduce the potential for partisan political interference as was intended by Congress when it included the provision in the Act mandating a bipartisan board for the Corporation. See 42 U.S.C. 1004(a); S. Rep. No. 495, 93d Cong., 1st Sess. 9 (1973). Although legislative initiatives to establish this requirement have been entertained but not adopted, see 129 CONG. REC. S. 14443–14449 (daily ed. Oct. 21, 1983), 129 CONG. REC. H. 9587–9589 (daily ed. Nov. 9, 1983), the explicit purpose of the McCollum Amendment is to insure that recipients remain free from political influence, see 127 CONG. REC. 12550 (1981).

Paragraph (i) is proposed as an addition to § 1607.3 in order to limit the length of consecutive terms that a member of a recipient governing body can serve on that body. This proposed amendment prohibits a board member from serving more than a total of six consecutive years and requires a minimum three year absence from board membership before being eligible for reappointment to the same body. By requiring bar associations to appoint board members, Congress intended to prevent self-selecting, self-perpetuating recipient boards. See 127 CONG. REC. 12550 (1981). The bar was considered to be an objective, independent entity that would help insure that recipients remain free from political influence and deliver quality legal services to the poor. Congressional intent is defeated if board members are permitted to serve for unlimited terms with the result that the opportunity to appoint other bar members is constrained. Fixed terms also allow more attorneys in the recipient's area to participate over the years, thus increasing the legal community's involvement with and appreciation of the need for legal services.

Paragraph (j) is proposed as an addition to § 1607.3 to limit the number of voting members of a recipient's governing body to nineteen, absent a waiver obtained through a showing made in accordance with the requirements contained in § 1607.5(b). This revision is intended to reduce the possibility of recipient governing bodies expanding over time, thus diluting the effectiveness and involvement of individual board members. LSC recipient governing bodies currently range in size from approximately fourteen to sixty-six. Governing bodies larger than nineteen tend to be too ponderous to be efficient decisionmakers for recipient organizations.

Paragraph (k) is proposed as an addition to § 1607.3 in order to establish regulations and standards for committees appointed by a recipient governing body. Such committees are permissible, and their actions and resolutions may be effective and binding on the full governing body, only if certain requirements are observed. Any action of a properly constituted committee of a recipient governing body must be ratified by the full governing body prior to its implementation. Alternatively, the actions and resolutions of such a committee may be binding upon the full governing body and the recipient if the committee's quorum is identical in number to that of the full governing body. The intent of this provision is to prevent a committee of a governing body, such as an executive committee, which was a quorum requirement less than that of the entire governing body yet has authority to bind the entire governing body and recipient, from exercising its authority so as to circumvent the quorum requirement of the full governing body.

Paragraph (l) is proposed as an addition to § 1607.3 so as to make the previous revisions and additions, specifically those contained in paragraphs (c), (h), (i), (j), and (k) of § 1607.3, effective as soon as feasible following the effective date of the proposed changes.

Section 1607.6 Compensation

Section 1607.6, is revised to make the language of this part conform to section 1007(c) of the Act in order to insure that no board member will receive compensation from any recipient. This change is proposed to avoid any confusion that may exist due to the inconsistency between the language in the Act and that in the regulation. The Act prohibits an attorney from serving on a board if he receives compensation from "a", meaning "any", recipient. The regulation's language prohibits the receipt of compensation from "the" recipient.

An Opinion dated October 8, 1987, by the Office of Monitoring, Audit and Compliance of LSC, interpreted the Corporation's policy as prohibiting a board member from receiving compensation from any recipient.

This clarification is intended to apply to full-time and part-time recipient staff members as well as to members of the private bar who are concurrently serving as recipient board members. Payment for normal travel expenses and other out-of-pocket expenses is not considered compensation within the meaning of this section.

Section 1607.7 Compliance

Proposed § 1607.7 outlines the necessary steps which must be taken if a recipient governing body fails to comply with the revisions and additions herein proposed for Part 1607. Paragraph (a)(1) through (5) of § 1607.7 deals with specific information which must be included in the non-compliance report.

List of Subjects in 45 CFR Part 1607

Legal services, Governing bodies of recipients.

PART 1607—GOVERNING BODIES

For reasons set out in the Preamble, it is proposed that 45 CFR Part 1607 be amended as follows:

1. The authority citation for Part 1607 is revised to read as follows:

Authority: Sec. 1007(c), 42 U.S.C. 2996f; Pub. L. 99–591, 100 Stat. 3341; Pub. L. 99–180, 99 Stat. 1165.

2. Section 1607.3 (c) and (h) are revised and paragraphs (i) through (l) are added to read as follows:

§ 1607.3 Composition.

* * * * *

(c) Appointment of the attorney members of the governing body shall be conducted by a nine member legal services selection committee established by the governing body of the integrated state bar association of the State in which the recipient is located. In a State which has no integrated bar, appointment shall be made by a nine member legal services selection

committee established by the governing body of the voluntary bar association having the largest membership in that State. Appointment of the attorney members of the governing body of national support centers shall be conducted by a nine member legal services selection committee established by the governing body of the voluntary bar association having the largest membership in the United States. Selection of the nine member committee shall be conducted by an election held by the appointing bar's governing body in which all voting members of the appointing bar are allowed to participate. The elected committee members, who shall be members of the relevant bar association shall sit for a term of no more than three years.

* * * * *

(h) No more than sixty percent of a recipient governing body may be members of the same political party. In the case of unaffiliated status or independent party status on the part of certain board members, the sixty percent maximum of this subpart shall apply only to those board members who claim party affiliation. Party affiliation shall be determined by voter registration in States where voters register by party. In other States, party affiliation shall be determined by participation in the most recent party primary, as reflected by the official voter participation roll.

(i) No board member of a recipient governing body shall serve more than six consecutive years. Board members who have served more than six consecutive years on a particular recipient's governing body shall be absent from that recipient's governing body for a minimum of three years before being eligible for reselection.

(j) No recipient's governing body shall have more than nineteen voting board members, except as otherwise authorized according to the provisions contained in § 1607.5(b).

(k) The governing body of a recipient may establish such committees of board members as are necessary for the handling of specific matters as required by the Act or as are determined, by the governing body as a whole, to be required for the most efficient oversight and administration of the recipient. The actions and resolutions of such committees shall not be binding upon the governing body as a whole, or upon the officers and staff members of the recipient, unless ratified prior to implementation by the full governing body, or unless—

(1) Such committee's quorum is identical in number to that of the full governing body, and

(2) The membership of such committees maintains and reflects the proportions regarding attorneys, eligible clients, and political affiliation specified by the Act and other sections of Part 1607.

(l) The provisions contained in paragraphs (c), (h), (i), (j) and (k) of § 1607.3 shall be implemented by recipient governing bodies as soon as is practicable after the effective date of the revisions of Part 1607 contained herein. In no event shall compliance with the provisions of the aforementioned sections be achieved later than September 30, 1988, unless so authorized in advance by a waiver obtained in accordance with the terms of § 1607.5. No such waiver shall delay compliance with the provisions of the aforementioned subparts beyond December 31, 1988.

3. Section 1607.6 is revised to read as follows:

§ 1607.6 Compensation.

While serving on the governing body of a recipient, no board member shall receive compensation from any recipient of the Corporation, whether such compensation is termed salary, per diem, or otherwise. A board member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of board membership.

4. Section 1607.7 is revised to read as follows:

§ 1607.7 Compliance.

A recipient whose governing body does not satisfy the requirements of this part, as of the effective date of this rule, shall submit a report to the Corporation's Compliance Division no later than thirty days after such effective date. Such report shall include:

(a) The current composition of the recipient's governing body, identifying each board member by name, appointing body, political affiliation, and length of service on such governing body

(b) A listing of the recipient's current governing body committees, which listing shall specify the identity of such committee's membership as well as the recipient's quorum requirements;

(c) A listing of the date upon which the terms of each current board member of the recipient's governing body will expire;

(d) A listing of board members who have received compensation from other Corporation recipients during their service as board members on the recipient's governing body, together with:

(1) The identity of other Corporation recipients which have provided compensation to the board member in question; and

(2) The amount of any such compensation;

(3) A description as to the nature of the compensation (whether salary, per diem, etc.) and the justification for payment;

(a) A statement specifying the date by which the provisions contained in 45 CFR 1607.3 will be met. In the case of anticipated non-compliance, such statement shall specify that an application for waiver, in accordance with the provisions contained in § 1607.5, will be submitted by the recipient. The statement must state the reasons why such a waiver is warranted and why compliance with the provisions of Part 1607 without such a waiver would be unduly burdensome or impossible for the recipient to achieve.

Dated: October 15, 1987.

Timothy B. Shea,

General Counsel.

[FR Doc. 87-24271 Filed 10-16-87; 9:32 am]

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S.J. Res. 110/Pub. L. 100–129

To designate October 16, 1987, as "World Food Day." (Oct. 14, 1987; 101 Stat. 802; 2 pages) Price: $1.00

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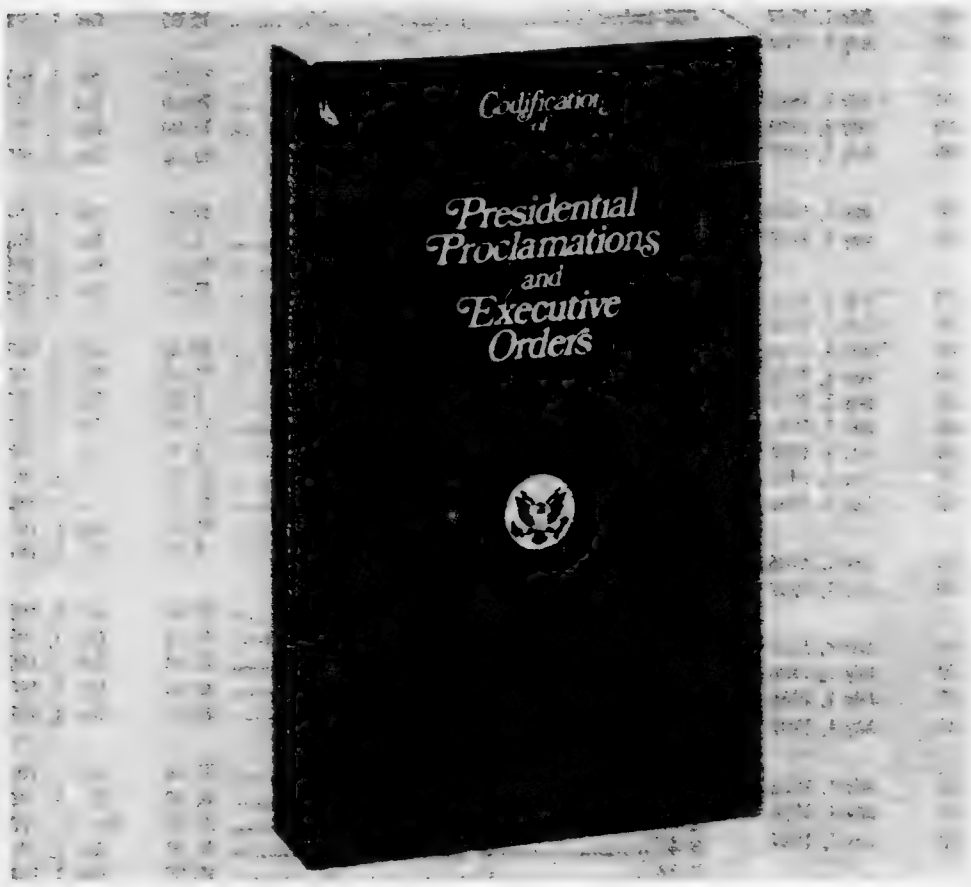

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Proclamation 5731 of October 16, 1987

National Forest Products Week, 1987

By the President of the United States of America

A Proclamation

This year we Americans again set aside a week in October to remind ourselves that from earliest times our vast forests have provided us with food, water, fuel, and raw materials, and that forests remain a source of countless products necessary for our shelter, comfort, and utility. We can be truly grateful for the jobs and trade that forests generate, for the extensive part forest products play in our national life, and for our firmly established national policy of wise use and preservation of forest resources.

We can be grateful too for the occurrence this year of one of the most active tree-planting campaigns in our history. The new forest trees going into the ground this year will be our living legacy for the generations to come. Tomorrow's forests will be productive and continually renewing sources of wood for housing, furniture, and paper; of water for drinking and irrigation; of rich habitats for fish and wildlife; and of opportunities for outdoor recreation. Just as now, forests will be vital to our economic, social, and environmental well-being in the future—and just as now, we will need careful and creative stewardship to nurture them.

To promote greater awareness and appreciation of the many benefits of forests for our Nation, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 18, 1987, as National Forest Products Week, and I urge all Americans to express their appreciation for our Nation's forests through suitable activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-24417
Filed 10-16-87; 4:47 pm]
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Presidential Documents

Proclamation 5732 of October 16, 1987

National Immigrants Day, 1987

By the President of the United States of America

A Proclamation

Our national celebration of Immigrants Day is a moving reminder to us that America is unique among the nations. We are the sons and daughters of every land across the face of the Earth, yet we are an indivisible Nation. We are one people, and we are one in that which drew our forebears here—the love of "freedom's holy Light."

This year we most appropriately observe Immigrants Day on October 28, the 101st anniversary of the unveiling of the Statue of Liberty, the beloved statue Emma Lazarus called "Mother of Exiles," from whose "beacon-hand/Glows world-wide welcome." That welcome is America's welcome, which has ever beckoned millions upon millions of courageous souls to this land of freedom, justice, and opportunity.

Immigrants have always brought great gifts to their new home on these shores—the gifts of hardiness and heart, of intellect and hope. Two hundred years ago, immigrants were among the framers of a Constitution for these United States. They knew what they were about, for they began that charter of liberty and limited government with the words, "We the People" and created what a future President named Lincoln would call "government of the people, by the people, for the people."

One immigrant, J. Hector St. John de Crevecoeur, had described that people very well in 1782 when he wrote, "Here individuals of all nations are melted into a new race of man whose labors and posterity will one day cause great changes in the world." This prophecy came true, and immigrants helped, and are still helping, to make it so—immigrants to a country and a people one in mutual loyalty and one in steady devotion to "freedom's holy Light."

The Congress, by Senate Joint Resolution 86, has designated October 28, 1987, as "National Immigrants Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 28, 1987, as National Immigrants Day, and I call upon the people of the United States to observe that day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-24418
Filed 10-16-87; 4:48 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 52, No. 202
Tuesday, October 20, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

Egg Research and Promotion

ACTION: Final rule.

SUMMARY: The interim final rule with request for comments published August 20, 1987, (52 FR 31376) which decreases the rate of assessment for the activities of the American Egg Board is made final. The rate was reduced from 5 cents per 30-dozen case of eggs to 2½ cents effective September 1, 1987, in an effort to secure a broader base of producer support for programs of primary importance to the egg industry.

EFFECTIVE DATE: October 20, 1987.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, (202) 382–8132.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "nonmajor" as it does not meet the criteria contained therein for major regulatory actions.

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because rather than creating a burden, the action decreasing the assessment will result in an advantage to small entities, while at the same time contributing to programs which are anticipated to have long-term benefits for the industry. The majority of handlers and producers may be characterized as small entities. In addition, inasmuch as producers may request refunds of their assessments under the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*), the disadvantage to any producer under this program would be minuscule. There also would be no change in the reporting or recordkeeping requirements imposed on producers and handlers as a result of this action which decreases the rate of assessment.

The Egg Research and Promotion Order in § 1250.347 authorizes the American Egg Board to collect assessments at the rate of not more than 5 cents per 30-dozen case of eggs, or the equivalent thereof. The assessment is refundable upon demand. The 5-cent rate has been unchanged under the Order since the program was first implemented in August 1976. The Order also provides that the Board may set a lower assessment rate with the approval of the Secretary of Agriculture. On July 22, 1987, the 18-producer-member American Egg Board reviewed the 5-cent assessment rate in light of current participation by egg producers in the program, the cost of the various activities conducted by the Board, and the anticipated needs of the industry. It was determined that a broader base of producer support was needed to carry out programs on a national basis which are essential to the industry and which cannot feasibly be carried out by individual producer entities or State or other egg organizations. To achieve this objective, the Board recommended that beginning on September 1, 1987, the assessment be set at 2½ cents per 30-dozen case of eggs (case of commercial eggs) to fund, in addition to normal authorized operating costs, the following ongoing primary American Egg Board activities: (i) Egg nutrition and education—to communicate information concerning the diet/cholesterol issue to health professionals, the media, and consumers; (ii) foodservice—to encourage greater usage of eggs in commercial and institutional operations; (iii) consumer education—to continue development of materials of consumer interest and to assist State and regional egg promotion organizations in their promotion efforts; and (iv) new product development—to demonstrate the use of eggs in food processing to major food manufacturing companies.

Because it was necessary to implement the decrease in the assessment rate as soon as possible to permit the Board to develop in a timely manner programs and a budget for the 1988 fiscal period, an interim final rule published August 20, 1987, was made effective September 1, 1987. Comments were invited until September 21, 1987. Comments were received from two egg trade associations in support of the action to decrease the assessment rate from 5 cents per 30-dozen case of eggs to 2½ cents. In addition to supporting the continuation of the activities of the American Egg Board, the commenters pointed favorably to the lessened financial burden on egg producers because of the decrease in the assessment rate. There were no comments opposing the change. The interim final rule also revised the authority citation for 7 CFR Part 1250.

Since this document does not alter the regulation decreasing assessment rates which has been in effect since September 1, 1987, there is no reason to postpone its effective date for 30 days. Thus, pursuant to 5 U.S.C. 553 good cause is found to make this document effective upon publication.

List of Subjects in 7 CFR Part 1250

Research and promotion, Eggs.

PART 1250—[AMENDED]

Accordingly, for reasons and purposes stated above and in the interim final rule published August 20, 1987, (52 FR 31376), the amendment made to § 1250.514 of Part 1250, Title 7, Code of Federal Regulations, by the said interim rule is hereby adopted as a final rule without change.

(Pub. L. 93–428, 88 Stat. 1171, as amended; 7 U.S.C. 2701–2718)

Done at Washington, DC, on October 14, 1987.

J. Patrick Boyle,
Administrator.

[FR Doc. 87–24250 Filed 10–19–87; 8:45 am]
BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1942, 1951, and 1955

Revision of Procedure To Service Community Program Loans Sold to the Private Sector With Servicing To Be Performed in the Private Sector

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

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SUMMARY: The Farmers Home Administration (FmHA) amends its regulation to exclude the servicing of loans sold without insurance by FmHA to the private sector with servicing to be performed in the private sector. This action is necessary to clearly establish servicing responsibilities for such loans.

EFFECTIVE DATE: October 20, 1987.

FOR FURTHER INFORMATION CONTACT: Bonnie S. Justice, Loan Officer, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6304, South Agriculture Building, Washington, DC 20250; telephone (202) 382–1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local Government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program". FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969 Pub. L. 91–190, an Environmental Impact Statement is not required.

On September 1, 1987, a proposed rule was published in the **Federal Register** (52 FR 32933) for a 15 day review and comment period. No comments were received.

This change affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985):

Sec.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.423 Community Facilities Loans.

Discussion

FmHA is authorized by the Omnibus Budget Reconciliation Act to sell loans to the private sector with servicing to be performed in the private sector. This action is to clearly establish servicing responsibilities for such loans and to clarify in FmHA's servicing regulations to show that those loans will be serviced in the private sector. This action will provide that future changes to FmHA regulations will not be applicable to such loans.

List of Subjects

7 CFR Part 1942

Community development, Community facilities, Loan programs—housing and community development, Loan security, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

7 CFR Part 1951

Account servicing, Grant programs—housing and community development, Reporting requirements, Rural areas, Subsidies.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C 1989; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.1 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 1942.1 General.

* * * * *

(c) Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Servicing of Community Program Loans and Grants

4. Section 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the policies, authorizations, and procedures for servicing Community Water and Waste Disposal System loans and grants, Community Facility Loans, Industrial Development grants, loans for Grazing and other shift-in-land use projects, Association Recreation loans, Association Irrigation and Drainage loans, Watershed loans and advances, Resource Conservation and Development loans, Economic Opportunity Cooperative loans, loans to Indian Tribes and Tribal Corporations, loans to Timer Development Organizations, Rural Renewal loans and Energy Impacted Area Development Assistance Program grants. Loans sold without insurance by the Farmers Home Administration to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Subpart O—Servicing Cases Where Unauthorized Loans(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

5. Section 1951.701 is revised to read as follows:

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

PART 1955—PROPERTY MANAGEMENT

6. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. Section 1955.1 is revised to read as follows:

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of Farmers Home Administration (FmHA) loans identified in § 1955.3 (d) and (e) of this subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the Government's redemption rights, and certain other actions which result in acquisition of property by the Government. When FmHA elects to liquidate a guaranteed loan *other than Business and Industrial (B&I)* under the contract of guarantee, the liquidation will be completed according to this subpart. Liquidations of guaranteed B&I loans will be effected upon direction from the Assistant Administrator, Community and Business Programs. For Community Programs and insured B&I actions involving loans secured by other than real or chattel property, the case will be forwarded to the National Office for prior review and guidance. Community Program loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Subpart B—Management of Property

8. Section 1955.51 is amended by adding a new paragraph (d) to read as follows:

§ 1955.51 Purpose.

* * * * *

(d) Community Program loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart will not be made applicable to such loans.

Dated: September 25, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-24208 Filed 10-19-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-9]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of three Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While nine airways were included in the notice only V–2, V–29 and V–34 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal airways V–1, V–14, V–16, V–2, V–29, V–3, V–31, V–33 and V–34 located in the vicinity of New York (52 FR 26485). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such

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a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Comments from the Department of the Navy and the Department of the Air Force objected to the routing of an airway through R-5202 and R-4105 and through certain military operations areas. Of the five victor airways objected to by the Navy and Air Force, only V-34 is being implemented at this time. V-34 does not penetrate any special use airspace.

Due to technical and administrative problems only V-2, V-29 and V-34 will be implemented at this time. Implementation of the other six airways will be delayed until a later date. With respect to V-34 "Ithaca, NY," was deleted from the description between Rochester, NY, and Hancock, NY. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of three VOR Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While nine airways were included in the notice only V-2, V-29 and V-34 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-2 [Amended]

By removing the words "Gardner; to Lawrence, MA." and substituting the words "to Gardner."

V-29 [Amended]

By removing the words "Syracuse, NY;" and substituting the words "INT Binghamton 005° and Syracuse, NY, 169° radials; Syracuse;"

V-34 [Amended]

By removing the words "Ithaca, NY;"

Issued in Washington, DC, on October 8, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24186 Filed 10-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-10]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of two Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-36 and V-54 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 14, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–36, V–39, V–44, V–54 and V–58 located in the vicinity of New York (52 FR 26351). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Comments from the Department of the Navy and the Department of the Air Force objected to the routing of an airway through R–5202 and R–4105 and through certain military operations areas. Of the five victor airways objected to by the Navy and Air Force, only V–34 (ASD 87–AWA–9) is being implemented and V–34 does not penetrate any special use airspace.

Due to technical and administrative problems that surfaced in this docket only V–36 and V–54 will be implemented at this time. Implementation of the other three airways will be delayed until a later date. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of two VOR Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V–36 and V–54 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows

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Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-36 [Amended]

By removing the words "Lake Henry, PA; Sparta, NJ; LaGuardia, NY; INT LaGuardia 133° and Deer Park, NY, 209° radials; Deer Park." and substituting the words "INT Elmira 110° and LaGuardia, NY, 310° radials; to INT LaGuardia 310° and Stillwater, NJ, 043° radials."

V-54 [Amended]

By removing the words "to Fayetteville." and substituting the words "Fayetteville; to Kinston, NC."

Issued in Washington, DC, on October 8, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24185 Filed 10-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-11]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of two Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-106 and V-116 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-91, V-93, V-99, V-106 and V-116 located in the vicinity of New York (52 FR 26486). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only V-106 and V-116 will be implemented at this time. Implementation of the other three airways will be delayed until a later date. With respect to V-106, the portion between Lake Henry, NY, and Gardner, MA, has been omitted from this docket. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of two VOR Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V–106 and V–116 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987.

The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–106 [Amended]

By removing the words "INT Gardner 041° and Manchester, NH, 249° radials; Manchester;" and substituting the words "Manchester, NH;"

V–116 [Amended]

By removing the words "Lake Henry, PA; INT Lake Henry 110° and Deer Park, NY, 296° radials; Deer Park." and substituting the words "INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta."

Issued in Washington, DC, on October 8, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–24184 Filed 10–19–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–AWA–3]

Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of six jet routes located in the vicinity of New York. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While ten jet routes were included in the notice only J–48, J–51, J–52, J–55, J–60 and J–64 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA. areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 6 and August 14, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–37, J–40, J–42, J–48, J–51, J–52, J–55, J–60, J–62 and J–64 located in the vicinity of New York (52 FR 25243 and 30382). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 75 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and an environmental assessment was not required. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed. However, in consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that the action should be delayed pending the outcome of the studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory

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impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only J–48, J–51, J–52, J–55, J–60 and J–64 will be implemented at this time. Implementation of the other four jet routes will be delayed until a later date. With respect to J–48 and J–55 the alignment of these routes were changed to improve the traffic flow in those areas. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of six jet routes located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While ten jet routes were included in the notice only J–48, J–51, J–52, J–55, J–60 and J–64 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (52 FR 21248), is further amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–48 [Revised]

From INT Solberg, NJ, 264° and Pottstown, PA, 050° radials; Pottstown; Westminster, MD; Casanova, VA; to Pulaski, VA.

J–51 [Amended]

By removing the words "INT Columbia 040° and Flat Rock, VA, 213° radials; to Flat Rock." and substituting the words "INT Columbia 042° and Flat Rock, VA, 212° radials; Flat Rock; Nottingham, MD; Dupont, DE; to Yardley, NJ."

J–52 [Amended]

By removing the words "INT Columbia 040° and Raleigh-Durham, NC, 228° radials; Raleigh-Durham;" and substituting the words "Raleigh-Durham, NC;"

J–55 [Amended]

By removing the words "INT Florence 003° and Raleigh-Durham, NC, 228° radials; Raleigh-Durham," and substituting the words "INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham;"

J–60 [Amended]

By removing the words "INT Philipsburg 100° and Robbinsville, NJ, 293° radials;" and substituting the words "East Texas, PA;"

J–64 [Amended]

By removing the words "to Robbinsville, NJ." and substituting the words "Ravine, PA; to Robbinsville, NJ."

Issued in Washington, DC, on October 8, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–24187 Filed 10–19–87; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 15, 19 and 150

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has long established and enforced under its rulemaking authority speculative position limits for futures contracts on various agricultural commodities. These limits were first established by the Commission's predecessor agency. The Commission believes that it is appropriate at this time to amend the structure of, and particular levels set for, Federal speculative position limits.

In this regard, the Commission reviewed existing position limits, proposed revised limits, and has considered carefully the comments

received on its proposed revisions. The Commission is now adopting final rules amending Federal speculative position limits. These rules, as adopted, maintain the current speculative position limit levels for the delivery month and, in most cases, maintain the current levels for individual, deferred months. The speculative position limits for all-months-combined have been raised in selected contracts. In addition, certain reporting requirements are being modified in connection with these revisions, and other technical changes have been adopted.

EFFECTIVE DATE: December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory Framework

Speculative position limits have been a Congressionally mandated tool for the regulation of futures markets for over a half-century. In particular, section 4a(1) of the Commodity Exchange Act, 7 U.S.C. 6a(1) (1982) ("Act"), states that:

> [e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, the Congress provided the Commission with the authority to:

> Fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

Section 4a(1) of the Act.

Federal speculative position limits have a long-standing history, dating from the Commission's predecessor, the Commodity Exchange Commission ("CEC"). The CEC promulgated speculative position limits for corn, wheat, other grains, cotton, soybeans and other agricultural commodities. *See*, 17 CFR Part 150 (1987).

The CEC set speculative position limits generically by commodity. That regulatory structure included a limit, by commodity, on speculative positions in any one future and in all-futures-combined and an exemption for *bona fide* hedge positions and also provided for the filing of futures and cash market reports with the Commission. *See*, 17 CFR Parts 15, 18 and 19 (1987). The structure of these speculative position limits largely has remained unchanged since the time of their promulgation, with the exception of amendments added in 1984 by the Commission. 49 FR 36825 (September 20, 1984). These amendments provided exemptions for spread or arbitrage positions between futures and option contracts where the latter had exchange-set speculative position limits pursuant to Commission Rule 1.61, 17 CFR 1.61 (1987).

Since its creation, the Commission periodically has reviewed its policies pertaining to speculative position limits. For example, the Commission initially redefined "hedging," 42 FR 2748 (August 24, 1977), raised speculative position limits in wheat, 41 FR 35060 (August 19, 1976), and published a policy statement on aggregation, 44 FR 33839 (June 13, 1979). Subsequently, the Commission undertook a systematic and thorough examination of its speculative position limit policy. This included the Commission's promulgation and enforcement of Rule. 1.61, which requires that all contract markets not subject to Federal speculative position limits adopt and enforce exchange-set speculative position limits. Recently, the Commission has issued a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests, 52 FR 27195 (July 20, 1987), and has issued guidelines regarding the inclusion of exemptions from exchange-set speculative position limits for risk management positions. 52 FR 34633 (September 14, 1987). Currently, the Commission is studying issues related to its aggregation policy.

As part of this overall review of speculative position limits, the Commission, in September 1986, published an Advance Notice of Proposed Rulemaking regarding the possible revision of Federal speculative position limits. 51 FR 31648. In that request for public comment, the Commission posed eight questions, including requests for comment on general issues such as whether any revisions to speculative position limits were necessary. In addition, the Commission requested comment on specific questions regarding particular exemptions currently applicable to certain commodities. The comment period on the Advance Notice of Proposed Rulemaking closed on November 3, 1986, and fifty-six comments were received by the Commission as of February 1, 1987. Comments were received from agricultural producers and producer associations, commercial users and their associations, exchanges and professional futures trading interests such as futures commission merchants and commodity trading advisors (including attorneys with futures-related practices).

B. The Proposed Rulemaking

After considering the comments received in response to the Advance Notice of Proposed Rulemaking, on March 5, 1987, the Commission proposed to amend Federal speculative position limits. 52 FR 6812. The Commission proposed to restructure speculative position limits, establishing them by contract market, rather than on a generic commodity basis. As proposed, the restructured speculative position limits generally increased in level from the spot limit, to a higher individual month limit, to a yet-higher all-futures-combined limit. As proposed, the speculative position limits applicable to spot months remained unchanged.

The proposed rules also provided for the inclusion of soybean oil and soybean meal futures under Federal limits and provided that the speculative position limits for contracts having essentially identical terms and conditions be cumulated. In addition, the Commission proposed to amend its present definition of "hedging" (17 CFR 1.3(z) (1987)), specifically to enumerate as *bona fide* hedging those spread positions which are offset in the cash market by sales and purchases which are made basis different delivery months. With this clarification, the Commission proposed to delete an existing spread exemption in cotton.

The Commission also proposed several amendments to existing reporting requirements. For example, the Commission proposed to amend Commission Rules 15.03(b), 19.00 and 19.01 to add soybean meal and soybean oil to the list of commodities for which the filing of Form 204 reports is required. In addition, the Commission proposed to raise reporting levels for certain commodities at which Series '04 reports—reports on cash market positions—must be filed. The Commission also proposed to modify the reporting requirements for the filing of Form 304 reports by cotton hedgers and to add a special call provision for the filing of the '04 reports for cash market information. Certain further amendments to the reporting rules were proposed in order to correct erroneous references, delete redundant material and make other conforming, technical changes.

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C. Comments Received

The comment period on the proposed rules closed on June 3, 1987, and seventy-nine comments were received. Commenters included other governmental and quasi-governmental units, exchanges, producers and producer organizations, professional traders and futures commission merchants, and fund managers and commodity pool operators. The greatest number of comments—twenty-four—were received from producers, other individuals and producer organizations. Twenty comments were received from fund managers or commodity pools, and nineteen were received from commercial users of futures contracts. Generally, the comments took issue with various specific provisions of the proposed rules. Almost all of the individual producers commenting opposed any increase to speculative position limits.

Of those commenters favoring increased speculative position limits, many questioned the proposed structure of the limits which would have provided for increasing levels from the spot month level to a higher single month level. These commenters objected to this "telescoping" structure, preferring to have uniform levels for spot and individual deferred months.

A second concern raised by many commenters was the differing levels proposed for the various wheat contracts. Many commenters also opposed the proposed combined limits for contracts having essentially identical terms and conditions. Finally, many commenters believed that the all-futures-combined limits should be raised higher than those proposed, or deleted entirely. These issues are discussed in greater detail below.

As part of its proposed rulemaking, the Commission considered petitions for rulemaking from the New York Cotton Exchange ("NYCE") and the Chicago Board of Trade ("CBT"). The NYCE petitioned the Commission to increase speculative position limits on cotton in individual futures months (outside the spot month) to 1,200 contracts, and in all-futures-combined to 3,000 contracts. The CBT petitioned the Commission to establish Federal speculative position limits for soybean oil and soybean meal futures contracts and to delete the all-futures-combined limit from Federal speculative position limits. In proposing its amendments to these rules, the Commission granted the petition relating to soybean oil and soybean meal and considered and denied the remaining petitions for rulemaking. *See* 52 FR 6814. Subsequently, in response to its proposed rulemaking, the Commission received petitions from the Kansas City Board of Trade ("KCBT") and the Minneapolis Grain Exchange ("MGE"). These petitions seek to have the Federal speculative position limits for all wheat contracts set at the same level. Finally, in response to the proposed rulemaking the CBT submitted an additional petition for rulemaking which would cause speculative position limits for oats, soybeans, corn and wheat futures contracts to be set and enforced by the exchanges rather than by the Commission.

II. The Final Rules

A. Overall Structure

In proposing amendments to existing Federal speculative position limits, the Commission proposed to retain the current limits during the spot months and to raise in a stepped manner both the individual-month limits outside of the spot months and the all-futures-combined limits. In so doing the Commission stated that:

> [w]ith respect to whether the all-futures-combined level should be set higher than the individual futures month limit, the Commission recognizes generally that a higher all-futures-combined level may increase liquidity in the deferred months. After fully and carefully considering the issue and studying the relevant data, the Commission is proposing to incorporate that philosophy into the structure of Federal speculative position limits.

52 FR 6815.

The "telescoping" feature of this structure—raising the single month level from the spot month level—concerned many commenters with respect to its application to futures for grains, soybeans and soybean products. In general, the commenting exchanges objected on the grounds that "telescoping" could be conducive to unnecessary and artificial price aberrations. One commenter opined that such a structure "will lead to potential price distortion in the market place by 'running out speculative interest at an early date from the delivery month.' " Another commenter suggested that telescoping limits would "aggravate the present situation of trading in the front months alone while providing no solution to the deferred trading problem."

In light of the comments received, which objected to both the higher individual month levels proposed and the level at which the all-futures-combined limits were proposed, the Commission reexamined its data. As the Commission has noted previously, particular data concerning the distribution of speculative traders in a market can result in a range of acceptable speculative position limits. 45 FR 79831, 79833 (December 2, 1980). Accordingly, although distribution data of speculative positions in these markets clearly support the Commission's proposed limit levels for individual months and all-futures-combined, these data generally also support retaining the current limits for individual months and increasing the all-futures-combined limits higher than proposed. Although analysis of the Commission's data suggested that the proposed configuration most clearly addressed current trading needs, most commenters preferred the second alternative. Because this alternative is within the range of limits supported by the data and is the configuration clearly preferred by commenters, the Commission has determined, for grains, soybeans and soybean products, not to adopt the levels as proposed, but rather to adopt a modified configuration. Accordingly, as adopted, the speculative position limits will provide for single month limits which are the same as the spot month limits, with an all-futures-combined limit generally higher than that proposed by the Commission.[1]

In contrast, those commenting on the proposed speculative position limits in cotton did not object to the higher single month limit level. Indeed, the chief concern of such commenters was whether the data on position distributions supported higher individual and all-futures-combined limits than proposed. In this regard it should be noted that the NYCE's petition itself provided for such stepped increases. Accordingly, the Commission has determined, with respect to speculative position limits for cotton, to adopt as final a "telescoping" configuration. In addition, as discussed below, the Commission has reconsidered the level of such limits.

[1] As the Commission noted in proposing these rule amendments, however, the data can in no way support the all-futures-combined limit implicit in the CBT's Petition for Rulemaking dated November 7, 1986. For some contracts, deletion of the all-futures-combined limits would increase the overall permissible size of speculative position limits by five to seven times the current limits. Moreover, the overall limit could increase were additional trading months added. The resulting increase in speculative position limits would be unrelated to the size of positions generally held by speculators in these markets. Some commenters opined that such limits, in terms of the percentage of the speculative position limit to overall open interest, are no larger than those currently in effect for certain other commodities, especially financial instruments. However, the Commission is of the opinion that limits of that magnitude are inappropriate for the commodities having Federal speculative position limits.

Many commenters also opined that the Commission's proposal did not increase sufficiently the all-futures-combined levels to encourage use of the contract in the deferred months. These commenters suggested that the approach of the CBT's November 7, 1986, Petition for Rulemaking which was denied by the Commission—to delete entirely the all-futures-combined limit—would be preferable.[2] However, after fully considering the petition and based upon its analysis of the relevant data, the Commission in its proposed rulemaking rejected that Petition on the grounds that the data could not support speculative position limits of the magnitude implicit in the Petition. 52 FR 6814–15. The Commission hereby affirms that determination for the same reasons outlined in that **Federal Register** notice.

In regard to the higher limits being adopted, it should be noted that the Commission proposed that, for all contracts, the speculative position limits immediately preceding and during the spot month remain unchanged. This proposal was based upon the Commission's analysis of current deliverable supplies and the history of various spot month expirations. The Commission, as proposed, has determined to retain in its final rules current spot month speculative position limits.[3]

B. Contract-Specific Limits

Many commenters objected to the proposed establishment of speculative position limits on a contract-market basis, arguing that the historical basis for setting speculative position limits, on a generic commodity basis, should be continued. The exchanges, in particular, objected, stating that differing speculative position limits would disadvantage competitively those exchanges with lower levels. Thus, both the KCBT and the MGE petitioned the Commission to retain identical speculative position limits for similar commodities. These exchanges reasoned that unless speculative position limits for contracts at all exchanges for similar commodities were equivalent, speculative interest, in particular that of managed funds, would gravitate toward the contract with the higher limits. In addition, the MGE opined that:

> [a]ny great disparity in Federal speculative position limits would potentially affect the ability of spread traders to conduct their affairs. This would impair the operation of all wheat markets, where spreaders play a strong arbitrage role.

MGE Petition for Rulemaking dated May 12, 1987.

The Commission has considered carefully its proposal in light of these comments. The Commission is fully aware of the role arbitrage and spreading plays in these markets. The Commission also has considered any anti-competitive effects possibly resulting from differing speculative position limits. However, as the Commission noted in its March 5, 1987, **Federal Register** notice:

> There are vast differences among the contracts for the same or similar commodities. Accordingly, it would appear inappropriate to set a single speculative position limit for all markets trading the same or similar commodities. A single, commodity-wide speculative position limit would result in either a speculative position limit which was too low for certain contracts or far higher than other contracts could conceivably warrant or likely absorb.

52 FR 6815.

And as the Commission further noted, basing speculative position limits upon the characteristics of a specific contract market is consistent with the practice under Commission Rule 1.61.[4]

In this regard, the Commission noted in its Notice of Proposed Rulemaking that raising speculative position limits for contract markets which are currently not constrained by present limits could not be expected, by itself, to increase liquidity on those exchanges. Moreover, the data reflect that current levels of intermarket arbitrage are conducted at levels well below current speculative position limits. Therefore, increasing the existing speculative position limits, albeit by differing amounts, is unlikely to have an adverse effect on such market activity. Accordingly, the Commission has determined to adopt as final the proposed contract-specific structure for speculative position limits. The levels for each contract market's speculative position limit, as discussed in greater detail below, have been set according to the individual characteristics of that contract market.

C. Cumulative Limits

The Commission proposed to cumulate speculative positions in contracts having essentially identical terms and conditions. This proposal was consistent with the Commission's practice under Rule 1.61, to require exchanges having more than one contract trading in the same commodity, such as mini- and maxi-sized contracts, generally to cumulate speculative position limits for those contracts. In light of the comments received on this issue in response to the Advance Notice of Proposed Rulemaking and the significant change the proposal would make in the application of Federal speculative position limits, the Commission sought particular comment on the advisability of this proposed rule. 52 FR 6816.

Commenters were uniformly opposed to cumulating positions in contracts having identical terms and conditions. The exchanges most directly affected objected on the basis that the proposal would adjust downward their combined current speculative position limits in the spot months. They reasoned that there was no evidence that such a downward adjustment was warranted and opined that such an adjustment might adversely impact the hedging function of the MidAmerica Commodity Exchange ("MCE") contracts. Others agreed with this assessment and noted that combining speculative position limits in such a manner was contrary to the understanding of the CBT and MCE, at the time of their affiliation, of how the existing Federal speculative position limits would be applied.

Although the Commission's proposal to combine the specu1ative position limits for certain contracts, in effect, did reduce overall spot-month positions, it also increased positions in the deferred months. Moreover, the Commission noted that because traders would have been able to hold all or part of their positions on either contract market, the proposal should not have resulted in loss of liquidity on either exchange. In light of the levels of speculative positions in existing markets, the Commission believed the proposal was reasonable. However, as discussed above, there is a range of acceptable speculative position limits. In light of the strong preference of commenters to keep Federal speculative position limits separate for each contract market and the fact that separate levels are within the range of appropriate speculative position limits for the contracts

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[2] As noted by the Commission in its March 5, 1987, **Federal Register** notice, several commenters unreservedly supported the CBT's proposal. However, that support was not unanimous; others disagreed with the assumptions upon which the petition was based.

[3] As noted in the **Federal Register** release proposing these rule amendments, this aspect of the proposal is consistent with Congressional understanding of the Federal speculative position limits. As the House Committee on Agriculture noted, any restructuring of speculative position limits "need not result in any increase in position limits in spot months." H.R. Report No. 624, 99th Cong., 2nd Sess. 45 (1986).

[4] Commission Rule 1.61(a)(2) provides that exchange speculative position limits be based upon: Position sizes customarily held by speculative traders on such market for a period of time selected by the contract market, which shall not be extraordinarily large relative to total open positions in the contract for such period.

supported by the relevant data, the Commission has determined not to cumulate these limits. In this regard, it should be noted, however, that the data regarding the distribution of speculative positions does not support an increase in the levels of speculative position limits for MCE contracts.

D. Limit Levels

In proposing the particular levels for speculative position limits, the Commission noted that the primary criterion for determining the levels for such limits is the size of positions—

> customarily held by speculative traders on such markets for a period of time * * * which shall not be extraordinarily large relative to total open positions in the contract for such period. Other factors which may be considered include "the breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market and the commodity underlying the futures contract."

52 FR 6816–17, citing Commission Rule 1.61(a)(2).

The Commission further noted (52 FR 6816–17) that it reviewed total open contracts and the distribution of speculative position limits for the past several years in each contract under consideration. This included analysis of the number of speculative traders holding various sized positions on month-end dates and the relation of the Federal limits—or for soybean meal and oil, exchange limits—to annual average levels of open interest for the past several years. The Commission concluded that there was substantial variation in the range of positions held depending on the contract market and that comparison of total open contracts to the speculative position limit also varied substantially from one contract to another. The Commission noted that those speculative position limits which appeared to be potentially more restrictive in terms of individual positions in a particular contract market were also the smallest as a percentage of total open contracts in such contract markets. Based upon these and other data, the Commission proposed revisions to speculative position limit levels.

Many commenters generally questioned the Commission's reliance on trader distributions in determining the appropriate levels of speculative position limits. These commenters argued that such data were deceptive since activity in the agricultural futures market has been greater during past periods than currently. Commenters also argued that trader distributions are an inappropriate means of determining the appropriate speculative position limits because speculative position limits are a self-fulfilling prophecy. These commenters contended that the historically low speculative position limits in agricultural futures contracts have discouraged their use by managed futures accounts and commodity pools and that such institutional speculators will continue to shun these markets unless speculative position limits are dramatically increased.

The Commission appreciates the plausibility of the argument that past low speculative position limits possibly may have discouraged the speculative use of such markets by certain professionally managed accounts. Nevertheless, the Commission remains convinced that its approach is sound. Despite the possibility that such arguments may have some validity for certain speculators, the distribution of trader data nonetheless provide guidance with respect to the current use of these markets by a preponderance of speculators. In addition, as noted, in establishing the amended levels, the Commission also has considered the size of the limits in relation to total open contracts.

In light of the Commission's determinations to refrain from "telescoping" speculative position limits as proposed and from cumulating limits for contracts having essentially identical terms and conditions, the Commission reexamined the data on market activity and considered carefully the arguments submitted by various commenters. With the change in the proposed structure of the limits, the Commission has determined to amend Federal speculative position limits by increasing the all-futures-combined limits by four times the present spot and individual month limits for CBT corn and soybeans, and for NYCE cotton #2 four times the present spot month limit coupled with an increased individual month limit; by three times the current spot and individual month level for CBT wheat, soybean oil, and soybean meal, and KCBT hard winter wheat; and by two times the current spot and individual month level for MGE spring wheat. The Commission is not changing the levels of the CBT oats and the MCE contracts.[5] The following chart compares the current, proposed and final speculative position limits for these commodities:

[5] It should be noted that in addition to the Federal speculative position limits in MCE soybean meal that are being adopted with this rulemaking, the MCE has established spot month position limits, which apply to both hedgers and speculators, for its soybean meal futures contract. These position limits decrease to lower levels as the delivery month progresses. These position limits are unaffected by the Federal speculative position limits being adopted and remain exchange rather than Federal limits.

CURRENT, PROPOSED AND FINAL FEDERAL SPECULATIVE POSITION LIMITS FOR SELECTED, NON-DORMANT FUTURES CONTRACTS IN CONTRACTS OR CONTRACT EQUIVALENTS [1]

	Current limits			Proposed limits			Final limits		
	All months net	Single month	Spot month	All months net	Single month	Spot month	All months net	Single month	Spot month
CBT corn	600	600	600	1,800	1,200	600	2,400	600	600
CBT soybeans	600	600	600	1,800	1,200	600	2,400	600	600
CBT wheat	600	600	600	1,200	900	600	1,800	600	600
CBT soybean oil	540	540	540	1,080	810	540	1,620	540	540
CBT soybean meal	720	720	720	1,440	1,080	720	2,160	720	720
CBT oats	400	400	400	400	400	400	400	400	400
KCBT hard winter wheat	600	600	600	600	600	600	1,800	600	600
MGE spring wheat	600	600	600	600	600	600	1,200	600	600
NYCE cotton #2	300	300	300	600	450	300	1,200	450	300
MCE corn	600	600	600	(3)	(3)	(3)	600	600	600

CURRENT, PROPOSED AND FINAL FEDERAL SPECULATIVE POSITION LIMITS FOR SELECTED, NON-DORMANT FUTURES CONTRACTS IN CONTRACTS OR CONTRACT EQUIVALENTS [1]—Continued

	Current limits			Proposed limits			Final limits		
	All months net	Single month	Spot month	All months net	Single month	Spot month	All months net	Single month	Spot month
MCE wheat	600	600	600	([3])	([3])	([3])	600	600	600
MCE soybeans	600	600	600	([3])	([3])	([3])	600	600	600
MCE soybean meal	400	400	[2]120	([3])	([3])	([3])	400	400	400
MCE oats	400	400	400	([3])	([3])	([3])	400	400	400

[1] Unlike proposed Commission Rule 150.2, which establish limit levels in terms of bushels, bales, tons, or pounds of the commodity, this table expresses all limits in terms of contracts or contract equivalents. In the case of commodities traded on the MCE, the number of contracts are expressed in terms equivalent to the larger size delivery units which are traded on the CBT. The current CBT soybean oil and CBT and MCE soybean meal limits previously were not Federal limits.

Certain dormant contracts are not set out in this table. The limits for such contracts are not being changed.

[2] The Exchange spot month position limit noted for MCE soybean meal applies to hedgers as well as speculators and decreases to lower levels as the delivery month progresses.

[3] MCE and CBT positions to be combined under limits listed above for CBT.

These increases are based upon the Commission's consideration of, among other things, the distribution of speculative position sizes in recent years and recent levels of open interest. The Commission believes that, based on these factors, the revised limits will provide the trading opportunities and potential liquidity attributed to higher limits by commenters while at the same time continuing to safeguard these markets against speculative abuses as intended in the Commission's proposal. In addition, as noted, in arriving at these limit levels; the Commission has taken into consideration the comments concerning the structure of individual futures limits with respect to the relation of the spot month and other individual months.

Many commenters objected to increases in various contracts which were not proportional to other, selected commodities. For example, the Commission is increasing the net all-futures-combined limit for corn to four times the current spot-month limit but CBT and KCBT wheat are being increased to three times the current limit. Several commenters objected to such disparate increases, however, stating that they preferred to keep wheat and corn limits equivalent because "the wheat/corn spread has proven to be a popular speculative trading strategy * * *." Similarly, commenters objected to the relationship between proposed increases in the levels for soybeans, soybean oil, and soybean meal because positions at the soybean speculative position limit would not correspond to the crush ratio for positions at the speculative position limit in soybean oil and soybean meal.

The Commission has carefully considered these objections. As the Commission has explained, it is increasing speculative position limits by contract market based upon the distribution of trading positions and total open interest in each market. Were the Commission to increase speculative position limits by equivalent ratios in order to maintain the relationships posited by commenters, the result would be either to set speculative position limits for some contracts below levels which are justified by current trading patterns or to set others at levels which are unjustifiably high.

The Commission has determined to follow neither of those alternatives but rather to recognize that in certain instances the maximum positions permitted for those types of trading strategies will be determined by the lower speculative position limit. Thus, for a trader with a wheat/corn spread the lower wheat speculative position limit will determine the extent of the activity permitted, even though the speculative position limit for corn would itself not limit such positions. Similarly, in connection with the soybean crush relationship, spreaders will recognize that permitted positions in soybeans are greater than the corresponding levels for soybean oil and soybean meal. The Commission is confident that increasing the speculative position limits for certain markets above the increases appropriate for others will not result in any price distortion nor will it have any other adverse market impact. Moreover, in any event, to the extent that the preponderance of spreading currently is conducted well below current speculative position limits, the additional increases should have a minimal, if any, impact on such pricing relationships.

E. Spread Exemptions

The Commission proposed to modify two spreading exemptions, one for cotton and one for soybean crush and reverse crush positions. With respect to the cotton spread exemption, as the Commission noted in its Notice of Proposed Rulemaking, this particular exemption for spread positions appears to have been added in response to the statutory definition of hedging which pre-existed the 1974 amendments to the Act. 51 FR 31648, 31650 (September 4, 1986). Because these particular positions—whereby commercial market users cover with futures positions their price-unfixed cash purchases which are coupled with price-unfixed cash sales—are permitted under the Commission's current definition of hedging, the Commission proposed to delete this spreading exemption. In order to remove any doubt that such positions are covered under the Commission's hedging definition, the Commission proposed to amend Rule 1.3(z)(2) to enumerate specifically as *bona fide* hedging these spread positions. And, in light of the Commission's determination to increase speculative position limits in cotton, the change apparently would have little impact on speculators.

The Commission received few comments concerning this proposed rule amendment. One commenter did note, however, that the proposed increase in speculative limits in cotton negated the need for such a spread exemption for speculators. The Commission carefully considered the potential benefits of inter-month spread positions versus the potential for disruption of the market if such positions become unusually large, especially where such positions are across different crop years, and the fact that the majority of existing spread

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positions would be accommodated by the proposed increases in the speculative position limits. On the basis of these considerations, the Commission has determined to adopt these proposed amendments as final.

Currently, the speculative position limits set by the CBT for soybean oil and soybean meal provide spread exemptions for crush and reverse crush positions. These exemptions relate to spread positions between futures contracts in soybeans and in soybean meal and soybean oil in a ratio approximately equivalent to those quantities of soybean products which are derived from soybean processing. Clearly, crush positions—long soybeans and short soybean oil and meal—maintained by soybean processors constitute hedging transactions where such positions represent temporary substitutes for positions to be taken later in the cash market. Crush positions allow the processor to determine or fix his processing margin in advance and are included within the exemptions permitted for anticipatory hedging under Commission Rule 1.3(z)(2). As the Commission noted in its notice of proposed rulemaking:

> [s]pecifically, for a crush position established by a soybean processor, the short positions in soybean oil and soybean meal futures would be permitted to the extent of twelve months unsold anticipated production under 17 CFR 1.3(z)(2)(i)(B); the long positions in soybean futures, to the extent of twelve months unfilled anticipated requirements, would be permitted under 17 CFR 1.3(z)(2)(ii)(C).

52 FR 6818.

However, based upon the comments received by the Commission in response to its Advance Notice of Proposed Rulemaking and its own analysis, the Commission stated its belief that there are important differences between the crush and reverse crush positions from the standpoint of *bona fide* hedging by soybean processors. As the Commission noted in its Notice of Proposed Rulemaking, the results of a crush position, plus or minus basis variation, are known once the position is established. With a reverse crush position, however, "the intended results transpire only if, and when, the futures markets reflect the expected or anticipated more favorable crushing margin and the position can be lifted." 52 FR 6818. Accordingly, the Commission noted that it did not appear appropriate to recognize the reverse crush spread position as an enumerated category of *bona fide* hedging under Commission Rule 1.3(z)(2). Nevertheless, the Commission made clear that requests for exemption from speculative position limits for such reverse crush positions would be considered by the Commission pursuant to Commission Rules 1.3(z)(3) and 1.47, 17 CFR 1.3(z)(3), 1.47.

Several commenters objected to the Commission's failure to include reverse crush positions as an enumerated hedge position. A few commenters objected on the grounds that the Commission ignored their analysis and reasoning in support of enumerating reverse crush positions as a *bona fide* hedge under Commission Rule 1.3(z)(2). Others objected on the basis that the filing of a petition with the Commission for an individual determination on the *bona fide* hedging nature of reverse crush positions was too cumbersome a process.

The Commission has considered carefully comments received in response to both the proposed rulemaking and the Advance Notice of Proposed Rulemaking with respect to the appropriate treatment for reverse crush positions under the Commission's definition of *bona fide* hedging. The Commission also has studied the examples supplied by commenters of the use of reverse crush positions for *bona fide* hedging. As the Commission stated in its Notice of Proposed Rulemaking, however, there are important differences between reverse crush and crush positions in the context of Commission Rule 1.3(z). Accordingly, the Commission believes that the determination of whether a reverse crush position is *bona fide* hedging should be made on a case-by-case basis. With respect to commenters' suggestions that such a process is burdensome, the Commission notes that filings pursuant to Rules 1.3(z)(3) and 1.47 may be made in advance of the time the actual position is contemplated and may establish a maximum exemption which remains in effect for such period as the justification remains appropriate.

The Commission, despite seeking specific comment with respect to the effect on speculators of deleting the crush and reverse crush spread exemptions, received few, if any, comments on the proposal. Data on large speculative positions for month-end dates from January 1983 through November 1986 indicate that removal of the crush and reverse crush exemptions, in light of the higher position limits being adopted, would have little impact on speculators. Accordingly, the Commission is adopting the rule as proposed.

F. Petitions for Rulemaking

In connection with its proposed rule amendments, the Commission received petitions for rulemaking from three exchanges—the CBT, the KCBT and the MGE. By petition dated May 19, 1987, the CBT proposed that the Commission place responsibility for "establishing, monitoring and enforcing speculative position limits" for futures contracts in oats, soybeans, corn and wheat with the relevant contract markets. In effect, the CBT's petition would bring these domestic agricultural commodities under the provisions of Commission Rule 1.61. The exchange contended that—

> the resultant bifurcation of responsibility for administering speculative position limits creates differences in treatment of agricultural and non-agricultural firms which are unnecessary, confusing and potentially damaging to efficient market operation.

CBT Petition of May 19, 1987 at 1–2.

The exchange also argued that exchange responsibility for these limits is preferrable because the present regulatory system "creates an impression that the agricultural and non-agricultural contracts * * * are different * * *." The CBT further argued that the granting of hedge exemptions by both the Commission and the exchanges may result in different outcomes for applications having the same factual basis. Finally, the CBT maintained that it—

> has demonstrated that its systems of monitoring compliance with and enforcement of speculative position limits is [sic] an effective and efficient means of satisfying the requirements of the Commission and the Commodity Exchange Act. It is fully capable of accepting the additional responsibility of applying the same system to * * * [these] contracts.

Id. at 2–3.

The Commission does not find these arguments persuasive. First, the Commission does not agree that the different treatment of domestic agricultural commodities is necessarily confusing or potentially damaging to efficient market operation. The difference in the regulatory structures is, in part, an outgrowth of the historical development of speculative position limits and is not intended by the Commission to distinguish these commodities from those having exchange-set speculative position limits. Second, the problem posited by the CBT of conflicting decisions on hedge applications is not addressed by a change from Federal to exchange-set speculative position limits. Such conflicts also can be anticipated where the various exchanges make such determinations. Indeed, in commodities such as wheat, where there are several contract markets, determinations by the Commission may lead to greater

consistency in interpreting the hedging definition.

In this regard, the direct regulation and enforcement by the Commission of Federal speculative position limits may exert a unifying force on the entire industry, providing more specific guidance and authority for the various exchanges to follow in making such determinations. Moreover, the Commission's maintenance of Federal speculative position limits for these commodities is in no way intended to impugn the regulatory programs of any of the affected exchanges. Finally, the Commission has been informed that various agricultural interests are "comfortable" filing with the Commission confidential information pertaining to cash market positions. Accordingly, the Commission, at this time, believes that Federal speculative position limits should be maintained and hereby denies the Petition of the CBT.

In addition the KCBT, by letter dated March 13, 1987, petitioned the Commission "to change the limits for KCBT wheat to the exact same bushel amounts as those specified in the revised regulation for CBT wheat." In addition, the MGE, by letter dated May 12, 1987, petitioned the Commission to "bring all of the presently traded wheat contracts * * * into conformity with each other." As the Commission discussed above, it has considered thoroughly these petitions and the comments received on this issue and has carefully reexamined the relevant data. For the reasons explained above, the Commission is adopting speculative position limits for the CBT and KCBT which are equivalent. It is also raising the all-futures-combined limit for the MGE. The increase is not equivalent, however, to that of the CBT and the KCBT. In light of the markedly lower levels of open interest and correspondingly lower level of speculative position sizes on the MGE, the petition of the MGE cannot be sustained. Accordingly, the Commission is hereby denying that petition.

G. Reporting Regulations

The Commission proposed several modifications to its reporting requirements in light of its proposal to bring soybean meal and soybean oil under Federal speculative position limits, in particular conforming changes to Commission Rules 15.03(b), 19.00 and 19.01 by adding soybean meal and soybean oil to the list of commodities for which Form 204 reports are required. Form 204 is also being amended to include information for soybean oil and soybean meal comparable to that currently required for soybeans.

In addition, the Commission proposed to raise the reporting level for some commodities at which '04 reports, reports on cash market positions, must be filed. 17 CFR 15.03(b). The Commission proposed to raise the level for reporting in corn and soybeans and to establish the level for soybean meal and soybean oil at the proposed speculative limit level for individual delivery months (outside of the spot-month) for CBT contracts in those commodities. The Commission also proposed to modify the reporting requirements for Form 304 reports for cotton hedgers. The reporting level in Commission Rule 15.03(b) was proposed to be raised to the spot-month speculative limit level for hedgers other than merchants, processors and dealers (*e.g.*, producers).

In light of the Commission's adoption of individual month speculative position limits which are the same as the spot-month limits for all contracts, other than cotton, along with higher all-futures limits for certain contracts, the proposed reporting levels are no longer appropriate. To avoid requiring series '04 reports from traders whose net positions do not exceed speculative position limit levels, however, the Commission is specifying in the rules as adopted that reporting levels for series '04 reports are at the applicable speculative position limit for the spot, single-month or all-months level for the particular commodity. By raising the applicable reporting level for the filing of '04 reports consistent with the increases to, and the change in the structure of, speculative position limits, the Commission is reducing a paperwork burden.[6] In addition, the proposed provision requiring any trader with reportable futures market positions to file '04 reports for cash market information as instructed by Commission special call is being adopted, as proposed. The Commission anticipates that it will be necessary to use this authority infrequently.

The Commission also proposed to amend Rule 15.00(b)(1)(ii) to make the filing of series '04 reports contingent on net rather than gross positions.[7] As the Commission explained in the Proposed Notice of Rulemaking, under the gross reporting rule a trader unnecessarily may be required to file such reports if his or her position exceeds the reporting level even if there is an off-setting position. As amended, such reports will not be required to be filed unless a net futures position results in the trader's exceeding the reporting level. The overall impact of these changes will be to reduce the reporting burden on hedgers. The Commission received no adverse comments on this proposed rule and is adopting it without change.

The Commission also proposed technical amendments to several reporting rules modifying erroneous references, deleting redundant material, and reflecting the deletion of some dormant commodities and is adopting those changes as proposed. In addition, the Commission is adopting proposed modifications to Commission Rule 15.02 which specifies the forms which clearing members, futures commission merchants and other traders use for reporting information required under Parts 17, 18 and 19. By adopting these modifications as proposed, the Commission is consolidating 12 different forms which are presently required into a single form to be used for all exchanges for reporting special account information under Commission Rule 17.00.

III. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The Commission has previously determined that contract markets and "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules are limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, if promulgated, these rules would have no significant economic impact on a substantial number of small entities. Moreover, the Commission invited comments from any firms or other persons which believe that the promulgating of these amendments might have a significant impact upon their activities. No such comments were received. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, ("PRA"), imposes certain requirements on federal agencies, including the Commission, in

[6] Cotton merchants, processors and dealers will be required under the revised Commission Rule 19.00(a)(2) to continue filing Form 304 reports at the current futures reporting level of 5,000 bales.

[7] These amendments apply only to the reporting levels at which cash market, as opposed to futures market, information must be submitted.

connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted to the Director of the Office of Management and Budget ("OMB") these rules, as proposed, and an explanation and details of the information collections required under them. Because these rules amend existing rules, the following OMB control numbers have already been assigned: Commission Rules 15.00, 15.02, and 15.03—3038–0007 and 0009; Commission Rules 19.00, 19.01, 19.03, 19.04 and 19.10—3038–0009.

Copies of the OMB approved information collection package associated with these rules may be obtained from Bob Neal, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects

17 CFR Part 1

Consumer protection, Definitions, Hedging, Reporting requirements, Records.

17 CFR Part 15

Reporting requirements.

17 CFR Part 19

Agricultural commodities, Bona fide hedge positions, Cash reports, Reporting requirements.

17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Position limits.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, and, in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 4g, 4i, 4n, 5, 5a, 6b, 6c, and 15, 7 U.S.C. 2, 4, 4a, 6a, 6c, 6g, 6i, 6n, 7 7a, 12a, 13a–1, and 19, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by amending Parts 1, 15, 19 and 150 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7 7a, 8 12a, 13a, 13a–1, 19, and 21, unless otherwise noted.

2. Section 1.3 is amended by revising paragraph (z)(2)(iii) and adding paragraph (z)(2)(iv), to read as follows:

§ 1.3 Definitions.

* * * * *

(z) Bona fide hedging transactions and positions—

(1) * * *

(2) * * *

(i) * * *

(iii) Offsetting sales and purchases for future delivery on a contract market which do not exceed in quantity that amount of the same cash commodity which has been bought and sold by the same person at unfixed prices basis different delivery months of the contract market, provided that no such position is maintained in any future during the five last trading days of that future.

(iv) Sales and purchases for future delivery described in paragraphs (z)(2)(i), (z)(2)(ii), and (z)(2)(iii) of this section may also be offset other than by the same quantity of the same cash commodity, provided that the fluctuations in value of the position for future delivery are substantially related to the fluctuations in value of the actual or anticipated cash position, and provided that the positions in any one future shall not be maintained during the five last trading days of that future.

* * * * *

PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for Part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 8, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

4. Section 15.00 is amended by revising paragraphs (b)(1) (i) and (ii) to read as follows:

§ 15.00 Definitions.

* * * * *

(b) "Reportable position" means:

(1) * * *

(i) For reports specified in Parts 17, 18 and § 19.00(a)(2) and (a)(3) of this chapter, any one open contract position in any one future of any commodity on any one contract market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market which, at the close of the market on any business day, equals or exceeds the quantity specified in § 15.03 of this part.

(ii) For the purposes of reports specified in § 19.00(a)(1) of this chapter, any open contract position in any one future or in all-futures-combined, either net long or net short, of any commodity on any one contract market, excluding positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market, which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all-months fixed in § 150.2 of this chapter for the particular commodity and contract market.

* * * * *

5. Section 15.02 is amended by revising it to read as follows:

§ 15.02 Reporting forms.

Forms on which to report may be obtained from any office of the Commission. Forms to be used for the filing of reports are listed below, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40	Statement of Reporting Trader	18.04
101	Positions of Special Accounts on or Subject to the Rules of Specified Markets	17.00
102	Identification of Special Accounts	17.01
103	Large Trader Report	18.00
[redacted]	Cash Positions of Grain Traders (including Oilseeds and Products)	19.00
304	Cash Positions of Cotton Traders	19.00

(Approved by the Office of Management and Budget under control numbers 3038–0007 and 3038–0009)

§ 15.03 [Amended]

6. Section 15.03 is amended by removing paragraph (b) and the paragraph (a) designation.

PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO SECTION 1.3(z) OF THIS CHAPTER AND BY MERCHANTS, PROCESSORS, AND DEALERS IN COTTON

7. The authority citation for Part 19 is revised to read as follows:

Authority: 7 U.S.C. 6g(1), 6i and 12a(5).

8. Section 19.00 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 19.00 General provisions.

(a) *Who must file series '04 reports.* The following persons are required to file series '04 reports:

(1) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(b)(1)(ii) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter,

(2) Merchants, processors, and dealers of cotton holding or controlling positions for futures delivery in cotton that are reportable pursuant to § 15.00(b)(1)(i) of this chapter, or

(3) All persons holding or controlling positions for future delivery that are

reportable pursuant to § 15.00(b)(1)(i) of this chapter who have received a special call for series '04 reports from the Commission or its designee. Filings in response to a special call shall be made within one business day of receipt of the special call unless otherwise specified in the call. For the purposes of this paragraph, the Commission hereby delegates to the Director of the Division of Economic Analysis, or to such other person designated by the Director, authority to issue calls for series '04 reports.

(b) *Information required.* Persons required to file series '04 reports shall show the information specified in § 19.01 of this part if the reportable futures position is in wheat, corn, oats, soybeans, soybean meal or soybean oil; and § 19.02 of this part if the reportable futures position is in cotton. The manner of reporting the information required in §§ 19.01 and 19.02 of this part is subject to the following:

* * * * *

9. Section 19.01 is amended by revising the heading and introductory text to read as follows:

§ 19.01 Cash reports pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil or soybean meal.

Persons required to file '04 reports under § 19.00(a)(1) or § 19.00(a)(3) of this chapter shall file CFTC Form 204 reports showing the composition of the fixed price cash position of each commodity hedged in the futures contract market including:

* * * * *

10. Section 19.02 is amended by revising the introductory text to read as follows:

§ 19.02 Cash reports pertaining to futures positions in cotton.

Persons required to file '04 reports under § 19.00(a) of this chapter shall file CFTC Form 304 reports containing the following information:

* * * * *

§§ 19.03 and 19.04 [Removed and Reserved]

11. Sections 19.03 and 19.04 are removed and reserved.

12. Section 19.10 is amended by revising paragraphs (a) and (b) as follows:

§ 19.10 Time and place of filing reports.

* * * * *

(a) CFTC Form 204 reports with respect to transactions in wheat, corn, oats, soybeans, soybean meal and soybean oil should be sent to the Commission's office in Chicago, Ill., unless otherwise specifically authorized by the Commission or its designee.

(b) CFTC Form 304 reports with respect to transactions in cotton should be sent to the Commission's office in New York, NY, unless otherwise specifically authorized by the Commission or its designee.

13. Part 150 is revised to read as follows:

PART 150—LIMITS ON POSITIONS

Sec.
150.1 Definitions.
150.2 Position limits.
150.3 Exemptions.
150.4 Application to aggregate positions.
150.5 Responsibility of contract markets.

Authority: 7 U.S.C. 6a and 12a(5) (1982).

§ 150.1 Definitions.

As used in this part—

(a) "Spot month" means the futures contract next to expire during that period of time beginning at the close of trading on the trading day preceding the first day on which delivery notices can be issued to the clearing organization of a contract market.

(b) "Single month" means each separate futures trading month, other than the spot month future.

(c) "All-months" means the sum of all futures trading months including the spot month future.

§ 150.2 Position limits.

No person may hold or control net long or net short positions for the purchase or sale of a commodity for future delivery in excess of the following:

Contract	Unit of limit	Spot month	Single month	All-months
Chicago Board of Trade:				
Corn	Million bushels	3	3	12
Oats	Million bushels	2	2	2
Soybeans	Million bushels	3	3	12
Wheat	Million bushels	3	3	[illegible]
Soybean oil	60,000 pounds	540	[illegible]	1,620
Soybean meal	100 tons	720	720	2,160
Chicago Rice & Cotton Exchange:				
Corn	Million bushels	3	3	[illegible]
Soybeans	Million bushels	3	3	[illegible]
Short staple cotton	Hundred bales	[illegible]	[illegible]	[illegible]
Kansas City Board of Trade:				
Hard winter wheat	Million bushels	3	3	9
Corn	Million bushels	3	3	3
Soybeans	Million bushels	3	3	3
Gulf wheat	Million bushels	3	3	3
Minneapolis Grain Exchange:				
Hard red spring wheat	Million bushels	3	3	[illegible]
White wheat	Million bushels	3	3	3
Corn	Million bushels	3	3	3
Oats	Million bushels	2	2	2
Soybeans	Million bushels	3	3	3
Durum wheat	Million bushels	3	[illegible]	3
New York Cotton Exchange:				
Cotton (contract No. 1)	Hundred bales	[illegible]	[illegible]	[illegible]
Cotton (contract No. 2)	Hundred bales	300	450	1,200
MidAmerica Commodity Exchange:				
Corn	Million bushels	3	3	3
Oats	Million bushels	2	2	2
Soybeans	Million bushels	3	3	3
Wheat	Million bushels	3	3	3
Crude soybean meal	20 tons	2,000	2,000	2,000

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§ 150.3 Exemptions.

The position limits set forth in § 150.2 of this part may be exceeded to the extent such positions are:

(a) *Bona fide* hedging transactions as defined in § 1.3(z) of this chapter; or

(b) Spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality off-setting, and upon such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this chapter.

§ 150.4 Application to aggregate positions.

The position limits set forth in § 150.2 of this part shall be construed to apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading or to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the positions were done by, a single individual.

§ 150.6 Responsibility of contract markets.

Nothing in this part shall be construed to affect any provisions of the Act relating to manipulation or corners nor to relieve any contract market or its governing board from responsibility under section 5(d) of the Act to prevent manipulation and corners.

Issued in Washington, DC, this 14th day of October, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-24142 Filed 10-19-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Rhone-Poulenc, Inc., providing for deletion of the requirement that cattle feeds containing decoquinate not be fed to breeding animals.

EFFECTIVE DATE: October 20, 1987.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, filed a supplemental NADA (39-417) providing for deletion of the requirement that complete feeds and feed supplements containing decoquinate for use in cattle bear the statement "Do not feed to breeding animals." The supplemental application is approved and § 558.195(d) is amended to delete that required statement. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.195 [Amended]

2. Section 558.195 *Decoquinate* is amended in paragraph (d) in the table under "Limitations" in the entry "22.7 mg per 100 lb of body weight per day (0.5 mg per kilogram)" by revising "Do not feed to breeding animals or cows producing milk for food" to read "Do not feed to cows producing milk for food."

Dated: October 14, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-24177 Filed 10-19-87; 8:45 am]

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Proposed Rules

Federal Register
Vol. 52, No. 202
Tuesday, October 20, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Draft Recommendation; Medicare Program; National Coverage Determinations

AGENCY: Administrative Conference of the United States.

ACTION: Request for comments.

SUMMARY: The Committee on Regulation of the Administrative Conference of the United States is considering the following draft recommendation pertaining to the process for issuing national coverage determinations under the Medicare program. The draft recommendation is addressed to the Health Care Financing Administration of the Department of Health and Human Services and to Congress. The Committee requests public comment on this draft recommendation by November 6, 1987. The Committee is basing this recommendation on a study by Professor Eleanor Kinney of the University of Indiana School of Law. Copies of Professor Kinney's draft report are available upon request. Future meetings of the Committee will be announced.

DATES: Written comments must be received by noon on Friday, November 6, 1987. (Comments received after that date will be sent to the committee and considered to the extent possible.) Comments should be addressed to Sara Gordon, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202–254–7065.

Committee on Regulation—Draft Recommendation on National Coverage Determinations Under the Medicare Program

In 1986, the Administrative Conference undertook a broad overview of the administrative procedures employed by the Federal Government (primarily the Health Care Financing Administration within the Department of Health and Human Services) in administering and deciding appeals under the Medicare program. Recommendation 86–5, *Medicare Appeals*, 1 CFR 305.86–5, urged the Health Care Financing Administration (HCFA) to improve its system for publishing, updating, and making accessible the standards, guidelines and procedures used in making coverage and payment determinations in the Medicare program. The recommendation also suggested some improvements in the administrative appeals system and listed some fruitful areas for further research.

This recommendation builds on 86–5 by focusing on a major aspect of the Medicare program; the making of policy concerning what aspects of medical care are covered by (and therefore may be reimbursed by) the Medicare program. At the implementation level these determinations must be made every day on a case-by-case basis by Medicare contractors (peer review organizations, carriers and fiscal intermediaries such as Blue Cross). In most of these cases the coverage question involves a determination of whether an item or service was medically necessary for the individual or was furnished in the appropriate setting. Typically, the Medicare contractor has considerable discretion in ruling on individual claims although such discretion is bounded by policy pronouncements made in various ways by HCFA. If an individual claim for reimbursement is denied by the Medicare contractor, the claimant (whether a beneficiary or provider of care) may (if the claim exceeds the statutory minimum) appeal the denial to an administrative law judge (ALJ) and then to federal district court. However, recent legislative restrictions have severely limited claimants opportunities to challenge coverage determinations in court or before an ALJ. Moreover, it is difficult for equipment manufacturers (who sometimes have a significant financial stake in coverage policy) to participate in or challenge national coverage determinations.

HCFA makes coverage policy in a number of ways.[1] In some cases Medicare contractors refer questions about new procedures or technology to the HCFA regional or national office which makes an informal judgment for application in that case. In other cases HCFA may decide to make a "national coverage determination" which applies in all future similar cases. Since the beginning of the program HCFA (and its predecessor agency) have made about 200 such national determinations and the number is growing each year. Such rulings are published either in the **Federal Register** or the Medicare Coverage Issues Manual. However, other coverage policies are only discernable from other manuals that are less widely available.

Although the making of these national coverage determinations constitutes rulemaking, HCFA does not use a notice-and-comment procedure in most cases. HCFA's Bureau of Eligibility, Reimbursement and Coverage will normally simply make rulings on coverage determinations referred from contractors unless it determines that a medical question is presented. In such cases the question is referred to the in-house HCFA Physicians Panel which meets periodically, in private, to decide on these referrals. The Physicians Panel may recommend a further referral to the Public Health Service's Office of Health Technology Assessment (OHTA). Most referrals to OHTA are in the form of an informal inquiry, without public notice, after which OHTA simply conducts an in-house investigation and reports back to HCFA. Requests for full OHTA assessments, on the other hand, usually result in a Federal Register notice, and widespread consultation with affected groups. In either event OHTA makes a recommendation to HCFA which then makes and publishes the determination. Only then are the OHTA findings disclosed.

Except in these "formal OHTA assessments," beneficiaries, providers and manufacturers have no opportunity

[1] HCFA's procedures for making national coverage policy have not been published until April 29, 1987 when under court order, the agency issued a Notice in the **Federal Register** describing its process (though not its criteria) and sought comments.

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to participate in this policymaking process. Nor are the criteria used by HCFA and the Medicare contractors in making this policy identified or published. Moreover, once the policy is announced, opportunities to challenge it have been severely circumscribed by the 1986 Omnibus Budget Reconciliation Act. (Pub. L. 99–509, § 9341; 42 U.S.C.A. § 1395ff(b)(3) (1987)). The Act provides that administrative law judges may not review national coverage determinations in administrative appeals. It also limits judicial review by providing that national coverage determinations may not be held unlawful on the grounds of violation of the APA or lack of opportunity for public comment, and further provides that reviewing courts cannot overturn a denial based on coverage determinations without first remanding the case back to HHS for supplementation of the record.

In Recommendation 86–5, the Conference recommended that "HHS should introduce more openness and regularity" into these important determinations through "(1) Development of published decisional criteria; (2) providing for notice and inviting comments in such cases, both in HCFA's decisionmaking process and in the process by which [OHTA] supplies recommendations to HCFA; and (3) providing for internal administrative review or reconsideration of such decisions." The Conference commends the recent HCFA notice and request for comments on its procedures as a good first step, but urges that further steps be taken to open up the decisional criteria and procedure to public participation and also urges Congress to remove the statutory impediments to review of the reasonableness and the procedural fairness of such determinations.

Recommendation

1. Publication of Procedures and Criteria Through Rulemaking

The Health Care Financing Administration (HCFA) should continue its recent steps toward describing and seeking comments upon the process it uses for making national coverage determinations in the Medicare program. HCFA should follow its recent informational notice by initiating a notice-and-comment rulemaking proceeding setting forth its proposed procedures, as well as all decisional criteria for making national coverage determinations.

2. Elements of the National Coverage Determination Process

HCFA's proposed and final rule on national coverage determinations procedures and criteria should:

(a) Specify the process by which HCFA selects coverage questions that will be considered in this process;

(b) Identify and describe what type of coverage issues will be left to Medicare contractors and HCFA regional offices to decide;

(c) Provide for a procedure guaranteeing the public an opportunity to comment prior to promulgation [2] of public input for *all* national coverage policies whether or not the determination is referred to the HCFA Physicians Panel or to the Office of Health Technology Assessment;

(d) Establish internal management controls (including deadlines for completing action and a monitoring systems) to assure the timely processing of requests from Medicare contractors and petitions filed by beneficiaries, providers and other affected persons for initiation of a national coverage determination,[3]

(e) Address techniques for encouraging the HCFA Physicians Panel and the Office of Health Technology Assessment to respond expeditiously to referrals;

(f) Identifies all publications in which coverage policy will be published, and establishes a system by which those publications are made reasonably accessible to beneficiaries and other affected groups.

3. Use of Negotiated Rulemaking

In addition to providing for a national coverage decisionmaking process that accords beneficiaries, providers, equipment manufacturers and other interested parties an opportunity to have input into the formulation of specific national coverage determinations, HCFA should also consider use of a negotiated rulemaking procedure [4] for certain determinations.

4. Modification of Recent Legislative Impediments to Administrative and Judicial Review

Congress should reconsider the recent statutory restrictions it placed upon administrative and judicial review of national coverage determinations. Specifically:

(a) Congress should eliminate the provision (42 U.S.C.A. § 1395ff(b)(3)(A)) that restricts administrative law judges from not reviewing national coverage determinations in administrative appeals or, alternatively, Congress should modify it be specifying that this limitation only apply to those national coverage determinations that are properly published and indexed, and that have been issued after an adequate opportunity for public comment.

(b) Congress should eliminate the provision (42 U.S.C.A. § 1395ff(b)(3)(B)) that prohibits judicial review challenges based on the grounds that the agency did not comply with procedures mandated by the Administrative Procedure Act or that the agency had provided an inadequate opportunity for public comment.

(c) Congress should eliminate the provision (42 U.S.C.A. § 1395ff(b)(3)(C)) that limits reviewing courts' ability to review the validity of a national coverage determination applied in a particular case without first remanding the case to the agency for supplementation of the record.

Jeffrey S. Lubbers,

Research Director.

October 16, 1987.

[FR Doc. 87–24288 Filed 10–20–87; 8:45 am]

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[2] Where the agency finds the pre-promulgation opportunity for public input is impractical, the policy should nevertheless be published with an opportunity for post-adoption comments. The agency should then re-evaluate the policy after receiving comments. See ACUS Recommendation 76–5, *Interpretive Rules of General Applicability and Statement of General Policy*, 1 CFR 305.76–5.

[3] See ACUS Recommendation 86–6, *Petitions for Rulemaking*, Para. 2(d), 1 CFR 305.86–6 (2)(d).

[4] See ACUS Recommendations 82–4 and 85–5, *Procedures for Negotiating Proposed Regulations*, 1 CFR 305.82–4, 85–5.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

Employee Responsibility and Conduct

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends Part 792 of NCUA's Rules and Regulations entitled Employee Responsibility and Conduct. Although this proposal is much more extensive than the present regulation, it does not impose any new requirements on NCUA employees. Rather, the provisions of the proposed rule are a compilation of various statutory, regulatory, and policy requirements which apply to all Federal employees. Minor modifications have

been made which take into account the nature of NCUA employment.

DATE: Comments must be received on or before December 21, 1987.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Background

NCUA's present regulation, Part 792, dealing with employee conduct and responsibility adopts, for the most part, the relevant portions of the Office of Personnel Management's (OPM) regulations. However, there are many other requirements which govern the conduct of Federal employees. These are presently set forth in criminal statutes, the Ethics in Government Act of 1978, additional OPM regulations, current NCUA regulations, Executive Orders, Comptroller General Decisions, Office of Government Ethics opinions, and the NCUA Personnel and Travel Manuals. In order to assist NCUA employees in maintaining the high standards of conduct expected of them, the NCUA Board has determined that these various requirements should be consolidated into a single regulation.

The proposed regulation does not affect federally-insured credit unions. It only affects the Agency's internal personnel regulations. If the NCUA Board chose, it could issue the regulation to each employee and would not have to issue it for public comment in the **Federal Register**. However, the NCUA Board is seeking public comment to determine if there are any other issues it should look at. In addition, the Board believes that if the public is aware of the requirements Federal employees are subject to, then they will know there are certain things they should not offer to NCUA employees.

Regulatory Procedures—Regulatory Flexibility Act and Paperwork Reduction Act

The NCUA Board has determined that the proposed rule is not subject to the requirements of either Act since it deals with internal personnel procedures.

List of Subjects in 12 CFR Part 792

Employee responsibility and conduct, Employee ethics, Employee conflict of interest.

By the National Credit Union Administration Board, this 8th day of October, 1987.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA proposes to revise Part 792 of its regulations as follows:

PART 792—Employee Responsibility and Conduct

Subpart A—General Provisions

Sec.
792.101 Scope.
792.102 Purpose.
792.103 Definitions.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

792.201 General prohibitions.
792.202 Gifts, meals, entertainment and favors.
792.203 Travel expenses and travel promotional material.
792.204 Use of Government property.
792.205 Use of official information.
792.206 Teaching, writing, lecturing and other activities.
792.207 Gambling, betting and lotteries.
792.208 Indebtedness.
792.209 General conduct prejudicial to the Government.
792.210 Employment by NCUA of relatives.
792.211 Other statutory provisions.

Subpart C—Financial Interest and Reporting of Financial Interest and Employment

792.301 Outside employment and other activity.
792.302 Financial interests and transactions.
792.303 Statements of employment and financial interests—form and content.
792.304 Employees required to submit statements.
792.305 Employee's complaint on filing requirements.
792.306 Time and place for submission of employees' statement.
792.307 Supplementary statements.
792.308 Interests of employees' relatives.
792.309 Information not known by employees.
792.310 Information not required.
792.311 Confidentiality of employee's statements.
792.312 Effect of employees' statements on other requirement.
792.313 Financial disclosure reports under the Ethics in Government Act.
792.314 Specific provisions for special government employees.

Subpart D—Ethical and Other Conduct and Responsibilities of Special Government Employees

792.401 Special Government employees.

Subpart E—Post Employment Conflict of Interest

792.501 Purpose and scope.
792.502 Definitions.
792.503 Restrictions on all former employees and special Government employees from acting as representative in a particular matter in which the employee or special Government employee personally and substantially participated.
792.504 Two-year restriction on any former government employee acting as representative in a particular matter for which the employee had official responsibility.
792.505 Two-year restriction on a former senior employee assisting in representing in a matter in which the employee participated personally and substantially.
792.506 One-year restriction on a former senior employee's agency on a particular matter, regardless of prior involvement.

Subpart F—Administrative Provisions

792.601 Employee responsibility, counseling and distribution of regulation.
792.602 Designation of ethics officer, alternate ethics officer and deputy ethics officer.
792.603 Sanctions.
792.604 Appeal of remedial or disciplinary actions.

Authority: E.O. 11222, 3 CFR 1964–65 Comp., p. 306, 5 CFR 735.104, 18 U.S.C 207.

Subpart A—General Provisions

§ 792.101 Scope.

This part establishes the policies and procedures of the National Credit Union Administration (NCUA) with regard to the ethical and other standards of conduct and responsibilities for employees and special Government employees, the reporting of financial interests and outside employment, and post-employment activities.

§ 792.102 Purpose.

In order to ensure the proper performance of NCUA business and to maintain public confidence in Government, NCUA employees and special Government employees are expected to maintain high standards of honesty, integrity, impartiality and conduct. They are also expected, through informed judgment, to avoid misconduct, conflicts of interest, and the appearance of such conflicts.

§ 792.103 Definitions.

(a) "Conflict of interest" means any clash between the individual's duties as an employee or special Government employee and his private pecuniary interest.

(b) "Employee" means an employee of NCUA, but does not include a special Government employee.

(c). A "special Government employee" means one who is retained, designated, appointed or employed by NCUA to perform temporary duties, with or without compensation, for a time not to

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exceed 130 days during any period of 365 consecutive days, on either a full-time or intermittent basis; but it does not mean one who is retained or employed by NCUA in its capacity as conservator or liquidating agent.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 792.201 General prohibitions.

An employee shall avoid any action whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using NCUA employment for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding NCUA's efficiency or effectiveness;

(d) Losing complete independence or impartiality;

(e) Making an NCUA decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of NCUA.

§ 792.202 Gifts, meals, entertainment and favors.

(a) Except as provided in paragraph (b) of this section, an employee cannot solicit or accept, directly or indirectly, any gift, gratuity, favor, meal, entertainment, loan, or any other thing of monetary value, for himself or for any other person or entity, from:

(1) An insured credit union or credit union seeking Federal insurance;

(2) A credit union trade association or state league;

(3) An organization affiliated with an insured credit union, trade association or league; or

(4) Any other person that does, or is seeking to do business with NCUA, or has an interest that can be substantially affected by an NCUA employee's performance or nonperformance of duty.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) Where it is clear from the circumstances that personal or family relationships are the sole motivating factors and that business or financial interests are not motivating factors. "Personal" relationships that are formed due to Government employment, i.e., individuals becoming friends because of business relationships, are not the basis for an exception from the prohibitions enumerated in paragraph (a) of this section;

(2) To the acceptance of food, refreshments and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of an official conference, official meeting or other official function at which the employee is properly in attendance. For example, a luncheon or dinner provided to participants at a league annual meeting or convention may be accepted by an NCUA employee who is properly in attendance as agency representative. An employee, however, cannot be taken to lunch or dinner outside the context of the meeting, for instance, by a credit union manager or league official.

(3) To the acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, commemorative paper weights, pins, or conference packages given to all attendees, and other items of nominal intrinsic value.

(4) To the acceptance of loans from federally insured credit unions to finance proper and usua1 activities of an employee, provided the employee is given terms no more favorable than would be available in like circumstances to persons who are not employees of NCUA, (unless otherwise restricted by § 792.302).

(c) Whenever an employee receives an unsolicited gift or other item of monetary value, the acceptance of which is prohibited by paragraph (a) of this section, the gift or item shall be returned to the sender, or otherwise disposed of as directed by the Ethics Officer. The cost of returning such gift or item shall be borne by NCUA.

(d) An employee cannot solicit a contribution from another employee for a gift to an official superior, make a donation for, or as a gift to, an official superior, or accept a gift from an employee receiving less pay, unless it is a voluntary gift of nominal value or a donation of a nominal amount made on a special occasion such as marriage, illness or retirement.

(e) An employee, or spouse or dependent of an employee, cannot accept a gift, present, decoration, or other thing from a foreign government, except as permitted by 5 U.S.C. 7342.

§ 792.203 Travel expenses and travel promotional material.

(a) Expenses of travel, lodging and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by NCUA (in accordance with the NCUA Travel Manual.) An employee cannot accept payment or reimbursement for such expenses from any private source.

(1) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function as permitted by § 792.202(b)(2).

(2) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging or subsistence provided by family members or personal friends as permitted by § 792.202(b)(1).

(b) Employees are obligated to account for any travel promotional material received from private sources incident to the performance of official duties. Any such promotional materials tendered to the employee are viewed as having been received on behalf of the Agency, whether or not any portion was earned by private travel, and must be relinquished to the Agency in accordance with the procedures outlined in the NCUA Travel Manual. Where the employee had to spend money to enter a travel promotional program discussed herein, the Agency shall reimburse the employee's documented out-of-pocket expenses if those expenses are less than the discount received by the employee from the provider. For example, if the employee spends $25 to enter a program and, as a result, the Agency has received a benefit because his airline fare was reduced from $400 to $300 solely as a result of his entering the program, then the employee should be reimbursed for the cost of entering the program only, and not for the actual savings which accrued to the Agency.

(1) Travel promotional materials include bonus flights, reduced-fare coupons, cash, merchandise, gifts, credits toward future free or reduced costs of services or goods, received by employees in connection with official travel and based on the purchase of a ticket or other services, such as car rental or hotel accommodations. Employees may keep gifts or merchandise of nominal intrinsic value as permitted by § 792.202(b)(3).

(2) Compensation received from having been denied boarding on an airplane is considered liquidated damages for the airline's failure to furnish accommodations for confirmed reserved space due NCUA and must be relinquished to NCUA, according to the procedures outlined in the NCUA Travel Manual.

(3) Compensation received by an employee who voluntarily gives up a reserved seat may be retained by the employee provided that any additional travel expense, beyond that which would have normally been incurred had the seat not been voluntarily relinquished, must be offset against the payment received by the employee. To the extent the employee's travel is

delayed during official duty hours because of the voluntary relinquishment of his seat, the employee is to be charged annual leave for the additional hours.

(4) Items such as free upgrade to first class, membership in executive clubs, and check-cashing privileges, which can only be used by the employee and cannot be used by NCUA, may be retained by the employee. However, other non-transferable travel promotional materials, such as an airline ticket, which can only be used by that employee, must be turned over to the Agency for use by that employee.

§ 792.204 Use of Government property.

An employee cannot directly or indirectly use, or allow the use of NCUA property, of any kind, including property leased to the NCUA, for other than officially approved activities. An employee has a duty to protect and conserve NCUA property, including equipment, supplies and other property entrusted or issued to the employee. This duty also imposes an obligation on the employee to take appropriate action where the employee is aware that others are using NCUA property in a manner which violates this provision.

§ 792.205 Use of official information.

(a) An employee cannot, directly or indirectly, use or allow the use of information which is obtained as a result of his or her NCUA employment, but which has not been made available to the general public in order to engage in any financial transaction or to further a private interest. Material which has not been made available to the general public includes material which would be released to a person under a Freedom of Information request.

(b) An employee cannot maintain, disclose or otherwise use Agency records containing personal information about any other person in a manner which violates the Privacy Act, 5 U.S.C. 552a, or Subpart B of Part 790 of the NCUA Rules and Regulations.

(c) An employee cannot disclose, in any manner, or to any extent not authorized by law, any information coming to him in the course of his employment or official duties, or by reason of any examination or investigation, which information concerns or relates to confidential business information of a federally-insured credit union, or any other entity subject to examination or regulation by NCUA. (18 U.S.C. 1905)

§ 792.206 Teaching, writing, lecturing and other activities.

(a) NCUA employees are encouraged to engage in teaching, writing, and lecturing, provided, however:

(1) An employee cannot publish any material, speak before any credit union or other organization, whether public or private, or teach on matters involving NCUA unless the employee receives the prior approval, and prior clearance of material to be published, from the appropriate Regional or Office Director.

(2) An employee cannot use in any teaching, writing, lecturing or speaking engagement information obtained as a result of his NCUA employment, unless the information is available to the general public, or will be made available on request, or unless the Chairman gives written authorization of the use, upon the determination that the use of the information is in the public interest.

(3) An employee cannot receive any compensation or other thing of monetary value for any speech, lecture, publication, teaching assignment or similar engagement, the subject matter of which either relates substantially to matters involving the responsibilities, programs or operations of NCUA, or contains information that is not otherwise available to the general public.

(b) An employee cannot accept any money or anything of monetary value from a private source as compensation for service to NCUA (18 U.S.C. 209), except as permitted by § 792.202(b).

§ 792.207 Gambling, betting and lotteries.

An employee cannot participate, while on NCUA-owned or leased property, or while on duty for NCUA, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 792.208 Indebtedness.

An employee must pay each just financial obligation in a proper and timely manner. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law, such as Federal, state or local taxes. "In a proper and timely manner" means in a manner which the Agency determines does not, under the circumstances, reflect adversely on NCUA or in a manner such that NCUA will not be asked to assist in the collection of the obligations.

§ 792.209 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral or notoriously disgraceful conduct, or other conduct prejudicial to NCUA or to the Government.

§ 792.210 Employment by NCUA of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an NCUA official as parent, step-parent, chi1d, step-child, brother, sister, step-brother, step-sister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law;

(2) An "official" is any employee who has authority to appoint, employ, promote or advance employees or to recommend anyone for appointment, employment, promotion or advancement at NCUA;

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An NCUA official cannot:

(1) Appoint, employ, promote or advance any relative to a position at NCUA;

(2) Advocate a relative's appointment, employment, promotion or advancement at NCUA; or

(3) Appoint, employ, promote, or advance a relative of another NCUA official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report that fact, in writing, to the appropriate Regional or Office Director. That Director, in consultation with the Director of Personnel and the Ethics Officer, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the office or division and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Personnel Director and the Ethics Officer shall determine whether the relative may be assigned to another position at NCUA which is outside the scope of the supervisor's authority.

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§ 792.211 Other statutory provisions.

NCUA employees shall be familiar with the statutory provisions listed below. These place various restrictions on NCUA employees and are not covered in this regulation. A copy of each of the provisions listed below shall be provided to each new employee and shall be reviewed annually by the Ethics Officer and updated as required.

(a) Prohibitions relating to bribery, conflicts of interest and graft (18 U.S.C. 201 *et seq.*).

(b) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) Prohibition against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(d) Prohibition against employment of a member of a communist organization (50 U.S.C. 784).

(e) Prohibition against the disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 783).

(f) Prohibition against the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349).

(h) Prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) Prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) Prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) Prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) Prohibition against embezzlement of Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of any employee by reason of his or her employment (18 U.S.C. 654).

(n) Prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) Prohibition against political activities (Subchapter III of Chapter 73 of Title 5—the Hatch Act and 18 U.S.C. 602, 603, 606 and 607).

(p) Prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(q) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. 96–303, 94 Stat. 855–856).

(r) Prohibition against the acceptance of excessive honorariums by any elected or appointed officer or employee (2 U.S.C. 441i).

Subpart C—Financial Interest and Reporting of Financial Interest and Employment

§ 792.301 Outside employment and other activity.

(a) An employee cannot engage in employment or other activity outside the scope of his NCUA employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to NCUA. Employment or activity which is not compatible with the employee's duties and responsibilities to NCUA includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with NCUA. Such employment or activity may include, but is not limited to:

(1) Service, with or Without compensation as a director, committee person, officer, employee, consultant or teller of an election of a Federal or state credit union. NCUA employees may, however, become members of Federal and state credit unions in the usual manner.

(2) Service, with or without compensation, for any of the organizations enumerated in § 792.202(a)(1) through (4) or for any of their officers, directors or employees.

(3) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of a conflict of interest.

(b) An employee who engages in, or intends to engage in outside employment or activity has the responsibility of reporting all such employment or activity to the Regional or Office Director. If the Regional or Office Director believes a conflict or the appearance of a conflict exists, the Ethics Officer should be consulted.

(c) If a member of an employee's immediate family (spouse, child, brother, sister or other person residing in employee's household) becomes employed by an organization listed in § 792.202(a), such employment shall be reported to the Regional or Office Director. Generally, employees will not be assigned to specific matters concerning the organization where an employee's immediate family member is employed until a determination is made that there is no conflict of interest. This subsection does not apply to NCUA employees whose positions are strictly clerical.

§ 792.302 Financial interests and transactions.

(a) An employee cannot:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with NCUA duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his NCUA employment; or

(3) Participate personally and substantially in any decision, approval, disapproval, recommendation, rendering of advice, investigation or examination or other action in which the employee, employee's spouse, minor child, partner or organization in which the employee serves as an officer, director, trustee, partner or employee or any person or organization with whom he is negotiating or has an arrangement concerning prospective employment, has a financial interest, unless:

(i) The financial interest is specifically permitted by this Part;

(ii) The employee receives the prior written determination of the Ethics Officer, who shall consult with the appropriate director, that the interest is too inconsequential to affect the integrity of the employee's service to NCUA; or

(iii) If, by general rule or Regulation published in the **Federal Register**, the financial interest has been exempted from the requirements of this section as being too remote or too inconsequential to affect the integrity of an NCUA employee's services.

Otherwise, an employee shall disqualify himself from participation in any matter in which he has a financial interest by advising, in writing, both the Ethics Officer and the appropriate director or, in the case of a Board Member, the Chairman, that disqualification is required by this section.

(b) When an employee participates personally and substantially in any matter of a general or policy nature affecting all credit unions, the following shall not be considered financial interests for which he would have to disqualify himself:

(1) Member accounts, including share, share certificate, share draft, or similar type accounts; or

(2) Loans granted, held, or serviced by a federally-insured credit union.

Such financial interests are deemed, pursuant to 18 U.S.C. 208(b)(2), to be too remote or too inconsequential to affect the integrity of an NCUA employee's services when considering general policy matters. This waiver, however,

does not apply to any action by NCUA that is directed at or applicable to a specific credit union in which the employee, or other person or organization referred to in § 792.301(a)(3) holds a financial interest (18 U.S.C. 208(a)). For example, an examiner must disqualify himself from examining, and a Board Member must disqualify himself from any administrative or other action involving a specific credit union in which they, their spouses or minor children are members. In another example, the contracting officer must disqualify himself in the awarding of a particular contract where his spouse is a partner in one of the firms bidding on the proposal.

§ 792.303 Statements of employment and financial interests - form and content.

(a) The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by OPM in the Federal Personnel Manual. These shall be made available by the Personnel Office to those employees required to submit statements.

(b) [Reserved]

§ 792.304 Employees required to submit statements.

(a) In order to assist managers and supervisors in the scheduling of employees for assignments and in monitoring compliance with the provisions of this part, the following employees shall fill out the Statement of Employment and Financial Interests:

(1) All examiners;

(2) All supervisory examiners;

(3) All regional office employees, grade 13 and above;

(4) All Washington Office Directors, Deputy Directors and Department Directors;

(5) All employees, whether in the Regional or Washington Office, who participate personally and substantially in the procurement of products or services for the Agency, whether by decision, approval, disapproval, recommendation, or the rendering of advice.

(6) All attorneys in the Office of General Counsel; and

(7) Board Members and their staff

The Ethics Officer may require any other employee whose position can affect a credit union, a trade association or any affiliated organization to file a statement.

§ 792.305 Employee's complaint on filing requirement.

An employee may request review through NCUA's grievance procedure of a complaint that the employee's position has been improperly included as one requiring the submission of a statement of employment and financial interest.

§ 792.306 Time and place for submission of employees' statement.

Regional Directors and Washington Office employees who are required to submit Statements of Employment and Financial Interests shall submit them to the Ethics Officer. Regional staff shall submit their statements to the appropriate Regional Director. All statements must be submitted no later than:

(a) Ninety days after the effective date of the Agency regulations issued under this Part if employed on or before that effective date; or

(b) Thirty days after his entrance on duty, but not earlier than ninety days after the effective date, if appointed after that effective date.

§ 792.307 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code and Subpart C of this part.

§ 792.308 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relatives who are residents of the employee's household.

§ 792.309 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

§ 792.310 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interest.

§ 792.311 Confidentiality of employee's statements.

NCUA shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality, only the Ethics Officer, or Deputy Officers, or the appropriate Regional Directors, or the Internal Auditor in the course of a properly authorized audit, are authorized to review and retain the statement. These employees are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. NCUA may not disclose information from a statement except as OPM or the Agency head may determine for good cause shown.

§ 792.312 Effect of employees' statements on other requirement.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 792.313 Financial disclosure reports under the Ethics in Government Act.

In addition to the reporting requirements imposed by this part, individual Board Members, employees at or above the grade 16 level and employees whose positions are excepted from competitive service by reason of being of a confidential or

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policy-making character (unless otherwise excluded by the Office of Government Ethics) must also file financial disclosure reports (SF 278) in accordance with the requirements of the Ethics in Government Act and regulations of the Office of Government Ethics, 5 CFR Part 734.

§ 792.314 Specific provisions for special Government employees.

(a) Each special Government employee shall submit a statement of employment and financial interests which reports:

(1) All other employment; and

(2) The financial interests of the special Government employee and relatives (as defined in § 792.308) in any federally insured credit union that may be affected by, or is otherwise related to, the purpose or function of the special employment.

(b) The Chairman may waive the requirement in paragraph (a) of this section in the case of a special Government employee who is not a consultant or an expert when the Agency finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government.

(c) A statement of employment and financial interest required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee as provided in the Agency regulation. Each special Government employee shall keep his statement current throughout his employment with NCUA by the submission of supplementary statements.

Subpart D—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 792.401 Special Government employees.

(a) Pursuant to 5 CFR 735.104(f), NCUA hereby adopts the provisions in the following sections of 5 CFR Part 735: Sections 735.302, 735.303(a), 735.304, 735.305(a).

(b) Special Government employees of NCUA may teach, lecture, or write in a manner not inconsistent with 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), NCUA authorizes the same exceptions concerning gifts, entertainment and favors for special Government employees as are authorized for employees by Subpart B, § 792.202(b) of this regulation.

(d) All special Government employees shall acquaint themselves with each statute that relates to their ethical and other conduct as special employees of NCUA and of the Government. In addition to the statutes cited in the body of the regulation in this part, the attention of each special Government employee is directed to the statutory provisions listed in Subpart B, § 792.211 of this regulation. Special Government employees are not subject to 18 U.S.C. 209 set forth in Subpart B, § 792.206(b) of this part.

Subpart E—Post Employment Conflict of Interest

§ 792.501 Purpose and scope.

(a) The purpose of this subpart is to provide basic information regarding the restrictions on post employment activity established by Title V of the Ethics in Government Act of 1978 (18 U.S.C. 207), and to provide guidance to former NCUA employees and to NCUA employees prior to their terminating employment. Violations of the provisions of this subpart are punishable by fines of up to $10,000 or imprisonment for not more than two years, or both.

(b) This subpart applies to special Government employees, but it does not apply to an individual performing services for the United States as an independent contractor under a personal services contract.

(c) Former employees are not restricted from accepting employment from any source, but are restricted from participating in certain activities listed below.

§ 792.502 Definitions.

(a) "United States" or "Government" means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(b) "Agency" includes an Executive Department, a Government corporation and an independent establishment of the Executive Branch, which includes an independent commission.

(c) "Senior Employee" means an officer or employee designated by the Director, Office of Government Ethics (OGE) and appearing on the list published and periodically updated by OGE in 5 CFR 737.33. Generally, a senior employee is one who occupies a position in the "Executive Level" or Senior Executive Service (SES).

(d) "Particular matter involving a specific party" means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or a transaction or related set of transactions between identifiable parties. For example, if a Regional Office employee responsible for denying a field of membership (FOM) expansion for XYZ FCU is later employed by XYZ FCU, he may not present an appeal to NCUA on behalf of the FCU regarding the particular FOM he was responsible for denying. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of a general nature is not a "particular matter involving a specific party." Therefore, a former NCUA employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

(e) "Participate personally and substantially" means to participate directly and significantly by decision, approval, disapproval, recommendation, the rendering of advice or investigation.

(f) "Official Responsibility" means direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

(g) "Represent" means to knowingly act on behalf of another, including acting as an agent or attorney, in any formal or informal appearance before the Government or, with the intent to influence, to make any oral or written communication to the Government.

§ 792.503 Restrictions on all former employees and special Government employees from acting as representative in a particular matter in which the employee or special Government employee personally and substantially participated.

(a) This is a lifetime prohibition that applies to all former employees. An employee or special Government employee may not, after his Government employment has ended, knowingly represent anyone other than the United States before the Government:

(1) In conjunction with any matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest; and

(2) In which the former employee participated personally and substantially while employed by the Government.

(b) The purpose of this provision is to preclude any former employee who substantially participates in a particular matter while employed by the Government from later "switching sides" and representing a non-Government party in the same matter. Except as provided in § 792.505(a) regarding the two-year restriction on former senior employees, a former employee may provide in-house assistance, such as advice and counsel, to the non-Government employer in connection with the representation. It is the communication with the intent to influence or the representation before the Government relating to the particular matter that is forbidden to the former Government employee.

§ 792.504 Two-year restriction on any former Government employee acting as representative in a particular matter for which the employee had official responsibility.

(a) In addition to the lifetime prohibition, an employee or special Government employee may not, within two years after his Government employment has ended, knowingly represent anyone other than the United States before the Government:

(1) In conjunction with any matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest; and

(2) Which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(b) The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters which were subject to his responsibility in the one-year period before the termination of that responsibility.

§ 792.505 Two-year restriction on a former senior employee assisting in representing in a matter in which the employee participated personally and substantially.

(a) In addition to all of the other prohibitions imposed by this subpart, a former senior employee may not, for a period of two years after his Government employment has ended, knowingly aid, counsel, advise, consult or assist in representing anyone other than the United States by personal presence at any formal or informal appearance before the Government:

(1) In conjunction with any matter in which the United States is a party or has a direct and substantial interest; and

(2) In which he participated personally and substantially as an officer or employee.

(b) The statutory two-year period is measured from the date of termination of employment in the particular Senior Employee Position held by the former employee when he or she participated personally and substantially in the matter involved.

§ 792.506 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

(a) In addition to all of the other restrictions imposed by this subpart, a former senior employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) may not, for a period of one year after his Government employment has ended, knowingly represent anyone other than the United States before the agency or before any officer or employee of the agency in which he served as an officer or employee:

(1) In conjunction with any particular matter, whether or not involving a specific party or parties; and

(2) Which is pending before such agency or in which such agency has a direct and substantial interest.

(b) The purpose of this Part is to prevent the possible use of personal influence, based upon past Government affiliation, to facilitate the transaction of business. Prior involvement in a particular matter is not required, nor are specific parties necessary in order for the prohibition to apply.

(c) The prohibition of paragraph (a) of this section, shall not apply to appearances, communications, or representation by a former Senior Employee, who is:

(1) An elected official of a State or local government, acting on behalf of such government, or

(2) Whose principal occupation or employment is with:

(i) An agency or instrumentality or a State or local government, acting on behalf of such government, or

(ii) An accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or

(iii) A hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital or organization.

(d) The statutory one-year period is measured from the date when the individual's responsibility as a senior employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously.

Subpart F—Administrative Provisions

§ 792.601 Employee responsibility, counseling and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. NCUA's Ethics Officer and Deputy Ethics Officers shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Officer shall ensure that a copy of this part is provided to each new employee and special Government employee at the time of his entrance on duty. All employees and special Government employees shall be provided with a copy of this rule within 90 days after it has been finally approved by the NCUA Board. The Ethics Officer shall annually distribute to each employee and each special Government employee a reminder of the basic provisions of this part, together with a list of the names, office addresses and office phone numbers of the Ethics Officer, the Alternate Ethics Officer and Deputy Ethics Officers, who shall be available for counseling and guidance. New employees and special Government employees shall be provided with a copy of this list at the time of their entrance on duty.

§ 792.602 Designation of ethics officer, alternate ethics officer and deputy ethics officer.

(a) NCUA's ethics program shall be coordinated and managed by the Ethics Officer. The Deputy General Counsel of NCUA shall act as the Ethics Officer.

(b) The Chairman shall appoint an Alternate Ethics Officer, who shall act as the Ethics Officer in the absence of the Ethics Officer.

(c) The Ethics Officer shall appoint one or more Deputy Ethics Officers, to whom the Ethics Officer may delegate duties and responsibilities under this part.

(d) All Officers appointed under this section shall be qualified and in a position to give authoritative advice and guidance to each employee and special employee who seeks advice and guidance on questions of conflicts of interest and on other matters covered by this part.

§ 792.603 Sanctions.

Any violation of this part by an employee or special employee may be cause for remedial or disciplinary action, which may be in addition to any penalty prescribed by law. Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office. Any such action will be taken in accordance with applicable law, executive order, regulation and procedures set forth in Chapter 8 of the NCUA Personnel Manual. Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, changes in assigned duties, or disqualification for a particular assignment.

§ 792.604 Appeal of remedial or disciplinary actions.

An employee or special employee may appeal any remedial or disciplinary action imposed under this part to the Chairman within 20 days of receipt of notice of such determination. Any such appeal shall be in writing and shall contain a statement of reasons therefor. The Chairman will review the matter and shall provide written notice to the employee of his determination within 20 days.

[FR Doc. 87-24210 Filed 10-19-87; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-135-AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires the inspection for cracking and repair or replacement, as necessary, of the pylon midspar attach fitting horizontal clevis to prevent possible separation of the pylon and engine from the wing. This amendment would increase the repetitive inspection interval from 10,000 flight hours to 12,000 flight hours or 4,000 landings, whichever occurs first. In addition, this amendment would delete certain airplanes from the AD effectively. This action is prompted by additional service experience and further assessment which indicates that these relieving actions would not have an adverse effect on safety.

DATES: Comments must be received no later than December 18, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-135-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commerical Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168,

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-135-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On January 28, 1987, the FAA issued AD 87-04-13, Amendment 39-5546 (52 FR 3420: February 4, 1987), to require inspection for cracking and repair or replacement, as necessary, of the pylon midspar attach fitting horizontal clevis on certain Boeing Model 747 airplanes. Continued operation with cracks could result in possible separation of the pylon and engine from the wing. The AD, based on Boeing Service Bulletin 747-54-2118, dated July 25, 1986, requires repetitive ultrasonic inspections at 10,000 flight hour intervals.

The FAA has reviewed and approved Boeing Service Bulletin 747-54-2118, Revision 1, dated May 21, 1987, which deletes certain Model 747 airplanes equipped with General Electric CF6 engines from the effectivity and increases the repetitive inspection interval from 10,000 flight hours to 12,000 flight hours or 4,000 landings, whichever occurs first. The elimination of certain airplanes from the effectivity is prompted by the determination that the mid-spar fittings incorporated in these airplanes at production are not prone to corrosion or premature fatigue cracking. The increase in repetitive inspection intervals is based on service experience and additional data analysis by the manufacturer which indicated that these relieving actions would not have an adverse effect on safety.

Since this condition is likely to exist or develop on other airplanes of this same type design, the FAA proposes to amend AD 87-04-13 to require inspection and replacement or repair, as necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 160 airplanes of U.S. registry would be affected by this AD. Since this action would decrease the number of airplanes affected by the AD and increase the repetitive inspection interval, there is no additional cost impact to U.S. operators.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities

A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 87–04–13, Amendment 39–5546 (52 FR 3420; February 4, 1987), to revise the effectivity paragraph and paragraph A. as follows:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of engine pylon midspar attach fittings, accomplish the following:

A. Within 5,000 flight hours after the effective date of this AD (March 13, 1987) or prior to the accumulation of 20,000 flight hours, whichever occurs later, unless accomplished within the last 5,000 flight hours, and at intervals thereafter not to exceed 12,000 flight hours or 4,000 landings, whichever occurs first, perform an ultrasonic inspection for cracks initiating at the aft-most two fastener holes in both pylon midspar fittings on the inboard nacelle pylons on airplanes listed in Groups 1 through 5, and on the outboard nacelle pylons on airplanes listed in Group 1, in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, or later FAA approved revisions.

Issued in Seattle, Washington, on October 5, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–24188 Filed 10–19–87; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Lawn Darts; Advance Notice of Proposed Rulemaking; Request for Comments and Data

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on available data, the Commission has preliminarily determined that there may be an unreasonable risk of injury associated with lawn darts which may be sufficiently severe to warrant regulatory action by the Commission. Lawn darts are devices intended to be used outdoors by being thrown upward and striking the ground point first. A regulation, issued in 1970 by the Food and Drug Administration under the Federal Hazardous Substances Act ("FHSA") and now administered by the Commission, currently bans lawn darts, except for those intended for adult use that (1) are labeled to warn against use by children, (2) include instructions for safe use, and (3) are not sold by toy stores or by store departments dealing predominantly in toys or other children's articles. Despite these restrictions, which are intended to ensure that lawn darts are sold only for use as a game of skill by adults, serious injuries and deaths to children contine to occur as children continue to play with lawn darts. In addition, the extent to which lawn darts are being sold in ways that violate the current regulations appears to have increased in the past few years.

This advance notice of proposed rulemaking ("ANPR") commences a rulemaking proceeding that could result in additional restrictions on the sale of lawn darts or could result in a ban on the manufacture, sale, and distribution of lawn darts. This notice asks for comments on whether such actions would be best accomplished by revoking or amending the present exemption to the FHSA ban, which allows the sale of lawn darts under the conditions described above, or whether action should be taken under the Consumer Product Safety Act, either in addition to revoking or amending the FHSA exemption or in place of such action. In addition, this notice specifically invites any person to submit (1) an existing standard that addresses the risk of injury associated with lawn darts that could be used as a proposed regulation or (2) a statement of intention to develop or modify a voluntary standard to address the risk of injury associated with lawn darts, along with a plan for doing so.

DATE: Comments in response to this ANPR are due no later than December 21, 1987.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6800, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Elaine Tyrrell, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission was created in May of 1973. Prior to that time, the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276, was administered by the Food and Drug Administration ("FDA"). The FHSA provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance." The Child Protection and Toy Safety Act of 1969 (83 Stat. 187–190) amended the FHSA to provide that any toy or other article intended for use by children may be classified as a hazardous substance if it is determined that the article presents an electrical, mechanical, or thermal hazard. Pursuant to this authority, the FDA, on November 17, 1970, proposed, among other things, to declare that lawn darts are banned toys because they present a mechanical hazard and an unreasonable risk of injury. 35 FR 17664.

The FDA received only one comment concerning the proposal to determine that lawn darts present a mechanical hazard. That comment stated that the large outdoor-type darts are intended for use by adults as an outdoor sport or game. The comment contended that suitable labeling can be devised to inform parents or other adults of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

After considering this comment, the FDA determined in its final rule, published December 19, 1970, that "lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" presented a mechanical hazard within the meaning of the FHSA. 35 FR 19266. However, the final rule also provided that the following types of lawn darts would not be included within the term "banned hazardous substance":

Lawn darts and similar sharp-pointed articles not intended for toy use and

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marketed solely as a game of skill for adults, provided such articles:

(i) Bear the following statement on the front of the panel of the carton and on any accompanying literature:

Warning: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of the reach of children.

Such statement shall be printed in a sharply contrasting color within a borderline and in letters at [least] one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature.

(ii) Include in the instructions and rules clear and adequate directions and warnings for safe use including a warning against use when any person or animal is in the vicinity of the intended play or target area.

(iii) Are not sold by toy stores or store departments dealing predominantly in toys and other children's articles.

35 FR 19266, 19267.

A petition for judicial review of this regulation was filed by a lawn dart manufacturer, and the regulation was upheld. *R. B. Jarts, Inc.* v. *Richardson*, 438 F.2d 846 (2d Cir. 1971).

Since May of 1973, when the responsibility for administering the FHSA was transferred to the Commission, the Commission has periodically inspected samples of lawn dart labeling and instructions and surveyed marketing practices for lawn darts to determine whether the manufacturers, importers, and sellers of lawn darts are complying with the Commission's regulations under the FHSA.

The ban of lawn darts is codified in § 1500.18(a)(4) of Title 16 of the Code of Federal Regulations (CFR). The exemption quoted above for those lawn darts that have the specified labeling and instructions and that are not marketed in toy stores or in store departments dealing predominantly in children's articles is codified at 16 CFR 1500.86(a)(3).

In 1984, the Commission received reports that—lawn darts were being sold in certain toy stores. As a result, the Commission's staff inspected at least 77 retail stores and found seven stores that were selling lawn darts in violation of the ban and exemption. Of the seven violative retail stores, six were toy stores, and three of these were part of the same nationwide chain. Products of four lawn dart importers had labeling violations. The retail sales and labeling violations discovered by these violations were corrected, and the Commission issued a consumer safety alert in July 1985 warning of the hazards of letting children play with lawn darts.

In June 1987, the Commission's staff examined the labeling on lawn darts marketed by 14 firms, and products from all 14 firms were found to have labeling violations. Products of eight of the firms were considered to have serious labeling violations, *i.e.*, no required warning statement on the front panel of the package. Other labeling violations included one or more of the following: The type size of the required warning statement was smaller than that specified in the exemption, the warning statement was absent from the instructions or was not printed within the borderline as required, and the instructions lacked clear and adequate directions and warnings for safe use.

In addition, Commission field investigators visited 122 retail stores around the country. Included in the 122 stores were 36 toy stores, 60 variety or department stores, and 26 sporting goods stores. Fifty-three of the stores were selling lawn darts, and 18 of these were displaying the product with or in close proximity to toys or sporting goods intended primarily for children.

As a result, the Commission's compliance staff met on July 17, 1987, with importers and manufacturers of lawn darts, with a representative from the Sporting Goods Manufacturers Association in attendance. At that meeting, the staff discussed five voluntary actions that could be taken by the firms to help assure compliance with the exemption from the ban and to increase consumer awareness of the hazards associated with lawn darts in the hands of children. As a result of this meeting and subsequent requests from industry members for samples of acceptable actions, the Commission believes that lawn dart manufacturers and importers should take the following voluntary actions while the question of regulatory options is being considered by the Commission:

1. The front panel warning label should be modified to make it more conspicuous and readable. The requested modifications include placing the signal word "warning" in upper case letters in type size at least ⅜ inch high, in black on an orange "window" that includes the international alert symbol (an exclamation point on a black triangular background). The message words should be in upper and lower case black letters, in type size at least ¼ inch high, on white. Each sentence should be started at the left side, and the sentence "Keep out of reach of children" should be before "Read instructions carefully," with a space between these two instructions and the preceding description of the hazard. The recommended front panel warning label reads as follows:

Warning

Not a toy for use by children.
May cause serious or fatal head injury.
Keep out of reach of children.
Read instructions carefully.

2. Place a warning label on one fin of each lawn dart in a color that contrasts with the fin. (The industry attendees at the July 17, 1987, meeting indicated that they would achieve contrast by means other than color, such as by contrasting texture.) The recommended label would state:

Warning:

Not a toy for use by children.
Can cause serious or fatal head injury.
Keep children away from throwing area.

The signal word should be in upper case letters in type size at least ¼ inch high. The message words should be in upper and lower case letters in type size at least 3/16 inch high.

3. Change the design of lawn darts to prevent modification, or include a warning against modification with the instructions. The Commission recommends the following language for warning consumers against modifying lawn darts:

Warning:

Do not modify or change the lawn dart in any way.
Modification or changes can make the dart more hazardous.

This labeling should be printed in type size at least ⅛ inch high. The signal word should be in all upper case letters, while the remainder of the statement may appear in both upper and lower case.

4. Include with each shipment of lawn darts to retailers information on how to display lawn darts. The Commission recommends the following statement:

Important Safety Information

It is ILLEGAL to sell lawn darts in toy stores or in store departments which sell toys or other articles for children.
DO NOT display lawn darts in sporting goods departments near sports equipment intended primarily for children.
Promote lawn darts for ADULT USE ONLY.
Children have been injured and killed by lawn darts.

The heading should appear in upper case letters in at least ½ inch type size, and the remainder of the notice should appear in upper and lower case letters in at least ½ inch type size.

5. Stop packaging lawn darts in combination sets with other games.

After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known domestic manufacturer and the company that

distributes his products. These letters went both to those that attended the meeting and to those that did not attend. The letters described the five voluntary actions and asked the firms to state in writing whether they were willing to take the actions requested. A total of 20 firms received letters, including additional importers of lawn darts that were identified between July and September.

Nineteen of the firms have responded in writing or by telephone. Seven firms stated that they would carry out the five requests (except for the contrasting color on lawn dart fins); several of these firms requested additional slight modifications of the terms.

Two major firms stated in writing that they would carry out only the first four requests. Of these two, one importer stated that the firm would not stop distributing lawn darts in combination sets. The second firm, another importer, stated that the firm would stop distributing combination sets only if the CPSC banned the sale of lawn darts in combination sets. This firm also stated that it was in favor of the Commission making mandatory all of the voluntary actions which were requested.

Two firms stated general support for the voluntary actions the compliance staff had requested, but did not address the specific requests. Eight firms stated that they intended to stop importing lawn darts.

On July 30, 1987, the Commission issued a news release about lawn dart injuries and deaths. In the release, the Commission provides details on the ban, the exemption, and the hazard and resulting injuries. The release urges consumers to keep lawn darts away from children and asks consumers to report violations of the ban or exemption to the Commission.

On October 1, 1987, the Commission met to consider what actions are appropriate to address the continuing injuries and deaths to children that occur when children play with lawn darts. The major options under consideration included:

1. To direct the staff to enforce the ban and its exemption vigorously.

2. To direct the staff to continue to work with industry and to monitor industry compliance with the voluntary actions recommended to industry representatives at the July 17, 1987, meeting.

3. To direct the staff to develop an advance notice of proposed rulemaking ("ANPR") to propose an amendment to the exemption to require the voluntary actions that were requested of the industry at the July 17, 1987, meeting.

4. To direct the staff to develop an ANPR to ban all lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture would injury.

By a unanimous vote, the Commission decided at its October 1, 1987, meeting to issue an ANPR indicating that the Commission may, among other actions, either require the five actions requested of industry at the July 17, 1987, meeting with the staff or ban all lawn darts and similar pointed objects usually intended for outdoor use and having the capacity for causing puncture wound injuries. The latter action would include the possibility of revoking the current exemption from the 1970 ban. Whatever action ultimately would be taken would take into account the results of a surveillance program to be conducted by the Commission's staff three months after publication of the ANPR; the object of the surveillance would be to determine if the industry is in substantial compliance with the existing regulations and with the actions requested at the July 17, 1987, meeting described above. The Commission's final action would further depend upon an evaluation of whether such voluntary or mandatory standards, if enforced, could be expected to protect consumers from unreasonable risk of injuries. In addition, the ANPR would include inquiries to the public which will enable the Commission to obtain information relevant to whether the current exemption should be revoked or amended. The staff was further directed to vigorously enforce the current FHSA provisions on lawn darts and to issue a consumer alert annually.

In addition, the Commission will request the U.S. Customs Service to consider including lawn darts in the Operation Toyland program. This will enable CPSC and the Customs Service to jointly examine incoming shipments of lawn darts. Those which fail to comply with the labeling provisions of the exemption will be seized by the Customs Service.

The staff also was directed to begin immediately preparing an injury update, human factors, analysis, economic cost/benefit report, possible medical evaluation of data, and other relevant data and analysis that will be needed to determine whether further regulatory action for lawn darts is appropriate.

B. The Product

Lawn darts are devices that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground point first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. A lawn dart typically might be about a foot in length and weight perhaps half a pound.

The tip of the lawn dart often consists of a rod about ¼ inch in diameter, with a rounded end. Although the tip is not necessarily sharp enough to present an obvious danger of puncture, the momentum of the dart in flight, when impact occurs with the tip of the dart, can be sufficient to cause puncture or fracture wounds that can cause serious injury or death.

The Commission staff estimates that at least 500,000 lawn dart sets are sold annually. One domestic manufacturer, a distributor of that manufacturer's products, and 18 importers of lawn darts have been identified. Several firms also have been identified as major distributors or private labelers. Because of the ease of importing the product, it is possible that there are additional private label imports being marketed in this country.

Lawn darts are available in sets by themselves and in combination sets with other lawn games; *e.g.*, badminton and volleyball. In sets by themselves, the retail prices for lawn darts range from about $4.00 to $10.00. The average price is about $5.00 per set. Consumers may consider lawn darts that are packaged in combination with other sporting goods equipment to be as safe as the other games in the package, and it appears that consumers would be likely to consider lawn darts as appropriate for children if the other games are appropriate for children.

C. Risk of Injury

The risk that the Commission intends to address in this proceeding is that of punctures, fractures, and lacerations to children caused by lawn darts being used by children. As mentioned above, the potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves.

The Commission's staff estimates that about 6,100 injuries from lawn darts were treated in U.S. hospital emergency rooms between January 1978 and December 1986. This represents an average of 675 injuries per year treated in emergency rooms. Approximately 57% of the injuries involved the head, face, eye, or ear; nearly 8% of the injuries were fractures or puncture wounds. Approximately 3.4% of the injured victims were hospitalized (on the average, less than approximately 25 per

year), including all of the injuries reported as fractures. Approximately 81% of the victims were under age 15; over 50% of the victims were under age 10. In addition, Commission records dating back to at least 1970 show that at least three children have been killed by injuries associated with lawn darts.

In the 18 lawn dart injury reports for which information about the user of the lawn darts was available, the majority of the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

D. Regulatory Alternatives Under Consideration

The potential hazards associated with lawn darts and the compliance of this product with the existing regulations have received much attantion and publicity during the past few months. The recent death of a seven-year-old girl and the related information presencted at Congressional hearings have raised questions about the adequacy of this existing ban with its broad exemption.

The main question to be decided by the Commission is whether additional restrictions on the sale of lawn darts, such as those discussed in the July 17, 1987, meeting between the industry and the Commission's compliance staff, will be adequate to keep the product out of the hands of children or whether this goal can be achieved only be stopping the sale of the product. Whichever of these approaches is deemed ultimately to be the most appropriate, there is the additional question of whether it can be achieved by voluntary actions on the part of the industry or whether a regulation will be required to ensure that children do not use this product. The various alternatives are discussed below

Prohibition of sale versus additional restrictions on sale. The object of this proceeding is to ensure that lawn darts are kept out of the hands of children. From the injuries and deaths that have occurred since the FDA issued the ban and exemption that allowed the sale of lawn darts with certain labels and instructions, and that were not marketed in toy stores or store departments that predominantly sold children's articles, it appears that the existing limitations on the sale of lawn darts may be insufficient. The additional limitations discussed at the July 17, 1987, meeting between the industry and the Commission's compliance staff, if uniformly adopted, should be more effective in avoiding purchase of the product by children or by adults at the immediate instigation of children. Also, the labels should help inform adults before purchase that the product is not suitable for children. In addition, the labels and instructions should better communicate to adults the need to keep the product away from children.

It is not clear, however, that even these additional restrictions on the sale of lawn darts would be adequate to keep the product out of the hands of children. It can be argued that the product has such a strong inherent appeal to children, who cannot be supervised at every moment, that they will use the product regardless of warnings on the packages or on the darts themselves or in the instructions. On the other hand, it may be that increased restrictions, coupled with increased efforts by the Commission's staff to ensure that the exemption is not violated, would reduce the risk adequately, so that the more drastic regulatory alternative of a ban would not be necessary. The Commission solicits comment on the likely efficacy of additional restriction on the sale of lawn darts to adequately recedue the risk to children from this product. Comments on the specific terms of the five actions requested of the lawn dart industry are also sought.

Statutory remedies. At present, the Commission has not decided which, if any, regulatory option it may elect to address the risks of injury associated with lawn darts. The following is a discussion of the statutory alternatives available to the Commission.

If lawn darts as a class are deemed to be articles intended for use by children, the darts, would be regulated under the provisions of the FHSA for mechanical hazards of children's products. Sec. 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D); sec. 30(d) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2079(d). If at least some lawn darts were deemed to be children's products, while other lawn darts might not be children's products, a regulatory proceeding to address all lawn darts could be conducted either under both the CPSA and the FHSA or under the CPSA alone, after a finding that it is in the public interest to do so as provided in section 30(d) of the CPSA.

An article intended for use by children which has been declared by rule to be a hazardous substance is banned under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), unless exempted. Since a general ban of lawn darts already exists under 16 CFR 1500.18(a)(4), to effect a ban of law darts under the FHSA the Commission would revoke the exemption at 16 CFR 1500.86(a)(3).

The Commission is authorized, under section 7 of the CPSA, to promulgate a mandatory consumer product safety standard which sets forth certain performance requirements for a consumer product or which sets forth certain requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk of injury. In addition, if the Commission finds that no feasible consumer product standard under section 7 would adequately protect consumers from an unreasonable risk of injury associated with lawn darts, the Commission may promulgate a rule under section 8 of the CPSA declaring some or all lawn darts to be banned products. 15 U.S.C. 2057.

The procedures and requisite findings to accomplish any of the mandatory regulatory alternatives under consideration under either or both acts are essentially the same; both acts use a three-stage rulemaking procedure. At each stage of the rulemaking, the Commission is required to consider certain topics and make specified findings, particularly about the status of voluntary standards and about the costs and benefits of the contemplated rule.

The requirements for promulgating a mandatory rule are set out in section 9 of the CPSA, 15 U.S.C. 2058, and section 3(f) of the FHSA, 15 U.S.C. 1262(f). An advance notice of proposed rulemaking ("ANPR") is the first step of a regulatory proceeding that could lead to a safety rule. The second step is the issuance of a proposed rule followed by public comment. The third step is the issuance of a final rule. If the Commission decides after this ANPR to proceed with a mandatory standard, its staff could develop a proposed rule. In the alternative, any interested person may, in response to this ANPR, submit an existing standard as a proposed mandatory safety standard. In either case, the Commission would proceed with a proposed and a final rule, under the second and third rulemaking steps.

However, it may not be necessary to proceed to the second and third rulemaking steps. If the Commission determines that a voluntary standard developed in response to the ANPR is likely to eliminate or adequately reduce the risk of injury, and that it is likely that there will be substantial compliance with such voluntary standard, both the CPSA and the FHSA require that the Commission terminate the rulemaking proceeding.

Voluntary standards. The Commission is unaware of any existing voluntary standard that would eliminate or adequately reduce the risk of injury identified in subsection C above. Any person is invited to submit to the Commission a statement of intention to modify or develop a voluntary safety standard to address the risk of injury identified in subsection C above, together with a plan to modify or develop the standard.

Any plan submitted with a statement of intention to develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is underway; a description of how the views of interested groups and people will be incorporated into the standard; a detailed discussion of how the development of the standard will proceed; a realistic estimate of the length of time that will be required to develop the standard; a detailed schedule for the various stages of the development process; a list of the people expected to participate in the standard's development, along with a description of their backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

Other actions. The Commission could also require actions other than the ones described above. These other actions include: Actions to address imminent hazards under section 12 of the CPSA, 15 U.S.C. 2061, or under section 3(e)(2) of the FHSA, 15 U.S.C. 1262(e)(2); corrective actions to address defective products under section 15 of the CPSA, 15 U.S.C. 2064, or section 15(c) of the FHSA, 15 U.S.C. 1274(c); a rule issued under section 27(e) of the CPSA, 15 U.S.C. 2076(e), to require manufacturers to provide performance and technical data related to the performance and safety of lawn darts to the Commission or to prospective purchasers of lawn darts; and dissemination of safety information by the Commission.

E. Solicitation of Public Input

This ANPR is the first stage in the Commission's consideration of what regulatory action, if any, to take with respect to lawn darts. As discussed above, the Commission may decide to pursue alternatives other than rulemaking to address the risks associated with lawn darts. Members of the public are encouraged to submit their comments to the Commission on any aspect of the various alternatives discussed above.

All comments and submissions should be provided to the Office of the Secretary, at the address given at the beginning of this notice, no later than December 21, 1987.

Dated: October 15, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

Memorandum from Schmeltzer, D., AED/CA, to Noble, D., Director, OPMB, "Lawn Darts," dated July 15, 1987.

Attachment A—Proposed Ban of Lawn Darts, *Federal Register,* Vol. 35, No. 223, November 17, 1970.

Final rule on Lawn Dart Ban and Exemption, *Federal Register,* Vol. 35, No. 246, December 19, 1970.

Attachment B—Memorandum from Karels, T.R. ECSS, to Nelson, C., CARM, "Lawn Darts—PSA #2804", dated June 22, 1987, (Restricted).

Attachment C—Memorandum from Kennedy, J., EPHF, to Nelson, C., CARM, "PSA 2826; Lawn darts in Combination Game Sets," July 13, 1987, (Restricted).

Memorandum from Tinsworth, D., EPHA, to Tyrrell, E., EX–PB, "Lawn Dart Injury Data", August 21, 1987.

Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.

News Release: "Lawn Darts Can Cause Serious or Fatal Head Injuries and Death", Released July 30, 1987.

Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Options Package", August, 1987.

Memorandum from Walton, W.W. ES, to Tyrrell, E., EXPM, "Lawn Darts—Option Package", August 28, 1987.

Memorandum from Ulsamer, A.G., to Tyrrell, E.A., EX–PB, "HS Recommendations on Lawn Darts", August 20, 1987.

Memorandum from Koeser, R., to Tyrrell, E.A., OPMB, "Lawn Dart Options Package", August 19, 1987.

Memorandum from Ray, D.R., ECPA, to Teyrrell E., OPMB "Lawn Darts", August 27, 1987.

Petition from David A. Snow asking that the CPSC ban lawn darts (Petition HP 87–3), received in the Office of the Secretary, September 23, 1987.

[FR Doc. 87–24240 Filed 10–19–87; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 28

[Docket No. R–87–1344; FR–2310]

Implementation of Program Fraud Civil Remedies Act of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Program Fraud Civil Remedies Act of 1986 by establishing administrative procedures for imposing civil penalties and assessments against persons who file false claims or statements while applying for certain benefits provided by the Federal Government.

DATE: Comments due December 21, 1987.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Assistant General Counsel for Inspector General and Administrative Proceedings, Office of General Counsel, Room 10266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755–7200. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 21, 1986, the President signed the Omnibus Reconciliation Act of 1986, which enacted the Program Fraud Civil Remedies Act of 1986 (PFCRA), Pub. L. 99–509. PFCRA establishes in HUD, among other authorities, administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the Department or its agents. In general, anyone who, with knowledge or reason to know, submits a false, fictitious, or fraudulent claim or statement to HUD is liable for a penalty of up to $5,000 per claim and an assessment of up to double damages. However, § 28.5(c) of the proposed rule reflects the Act's restricted applicability with respect to certain beneficiaries under any housing assistance program for lower income families or for elderly or handicapped persons administered by HUD. Under this section, the ultimate beneficiary of such programs (examples of which are listed below) may be held liable for a false claim or statement relating to such benefits only if the false claim or statement is made in making application for such benefits and is made with respect to that beneficiary's

eligibility to receive such benefits. For purposes of the rule, we have designated such ultimate beneficiaries as those individuals who come within the definition of "family" as stated in the Housing Act of 1937, 42 U.S.C. 1437a. This definition includes elderly and handicapped persons. The rule, in keeping with PRCRA also provides for hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

Examples of the types of programs through which beneficiaries would be liable under § 28.5(c) are as follows:

United States Housing Act of 1937 (42 U.S.C. 1437)
- Section 8 Lower-Income Rental Assistance
- Sections 23 and 10(c)—Leased Housing
- Section 202—Direct Loans for Housing for the Elderly and Handicapped
- Section 17—Rental Rehabilitation and Development Grants
- Section 14—Comprehensive Improvement Assistance
- Turnkey III
- Section 4, 5, and 9 Public Housing
- Indian Housing—Rental Housing, Mutual Help Homeownership Opportunity, Section 8

National Housing Act (12 U.S.C. 1702)
- Section 235—Low Income Home Ownership Program
- Section 236—Insurance of Below Market Rate Mortgages

Housing and Urban Development Act of 1965 (12 U.S.C. 1701)
- Section 101 Rent Supplements

The general structure of a PFCRA investigation by HUD would be as follows: PFCRA authorizes investigations of false claims and statements by HUD's "investigation official", who is the Inspector General. Cases would be initially referred to HUD's "reviewing official" for evaluation and approval, then to the Attorney General for Department of Justice approval. HUD's reviewing official would be the Associate General Counsel for Program Enforcement. (Of course, the Department of Justice could elect to bring the case itself in court under the False Claims Act.) If the Department of Justice approves the use of PFCRA, the case would be referred to an ALJ for a formal hearing on the record. The rule would provide for an appeal of the ALJ's decision to the authority head and then to the U.S. District Court. PFCRA states that the civil penalties and assessments it provides are in addition to any other remedy prescribed by law. Hence, this rule would not preclude imposition of individual program sanctions that are permitted.

The Department of Health and Human Services (HHS) was assigned the responsibility for heading a task force to draft the model regulation because of their experience in trying cases before Administrative Law Judges under their Civil Monetary Penalties Law, 42 U.S.C. 1320a–7a. The Department's rule follows closely the model issued by HHS with only minor variations to accommodate HUD's organizational and program structure.

Other Matters

National Environmental Policy Act. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12291. This rule would not constitute a major rule as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis on the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because it would merely establish procedures for imposing civil money penalties and assessments against those persons who have violated existing requirements for obtaining benefits provided by the Federal Government. It would not impose any new requirements on participants in those programs.

Semiannual Agenda. This rule was listed as item number 878 in the Department's April 27, 1987, Semiannual Regulatory Agenda (52 FR 14363), published in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 28

Program fraud, Civil remedies.

Accordingly, the Department proposes to amend Title 24, Subtitle A, of the Code of Federal Regulations by adding a new Part 28 to read as follows:

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec.

28.1 Purpose.
28.3 Definitions.
28.5 Basis for civil penalties and assessments.
28.7 Investigation.
28.9 Review by the reviewing official.
28.11 Prerequisities for issuing a complaint.
28.13 Complaint.
28.15 Service of complaint.
28.17 Answer.
28.19 Default upon failure to file an answer.
28.21 Referral of complaint and answer to the ALJ.
28.23 Notice of hearing.
28.25 Parties to the hearing.
28.27 Separation of functions.
28.29 Ex parte contacts.
28.31 Disqualification of reviewing official or ALJ.
28.33 Rights of parties.
28.35 Authority of the ALJ.
28.37 Prehearing conferences.
28.39 Disclosure of documents.
28.41 Discovery.
28.43 Exchange of witness lists, statements, and exhibits.
28.45 Subpoenas for attendance at hearing.
28.47 Protective order.
28.49 Fees.
28.51 Form, filing and service of papers.
28.53 Computation of time.
28.55 Motions.
28.57 Sanctions.
28.59 The hearing and burden of proof.
28.61 Determining the amount of penalties and assessments.
28.63 Location of hearing.
28.65 Witnesses.
28.67 Evidence.
28.69 The record.
28.71 Post-hearing briefs.
28.73 Initial decision.
28.75 Reconsideration of initial decision.
28.77 Appeal to authority head.
28.79 Stays ordered by the Department of Justice.
28.81 Stay pending appeal.
28.83 Judicial review.
28.85 Collection of civil penalties and assessments.
28.87 Right to administrative offset.
28.89 Deposit in Treasury of United States.
28.91 Compromise or settlement.
28.93 Limitations.

Authority: Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509.

§ 28.1 Purpose.

This part:

(a) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents, and

(b) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 28.3 Definitions.

ALJ means an Administrative Law Judge in HUD appointed pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

Authority head means the Secretary or Under Secretary of the Department of Housing and Urban Development.

Benefits means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan insurance or guarantee.

Claim means any request, demand, or submission made to—

(a) HUD for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) A recipient of property, services, or money from HUD or to a party to a contract with HUD—

(1) For property or services if the United States—

(i) Provided the property or services;

(ii) Provided any portion of the funds for the purchase of the property or services; or

(iii) Will reimburse the recipient or party for the purchase of the property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse the recipient or party for any portion of the money paid on the request or demand; or

(c) HUD which as the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 28.13.

Defendant means any person alleged in a complaint under § 28.13 to be liable for a civil penalty or assessment under § 28.5.

Government means the United States Government.

HUD means the Department of Housing and Urban Development.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 28.19 or § 28.73, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Housing and Urban Development or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, and submits, and causes to be made, presented, or submitted. As the context requires, making or made, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of the term.

Representative means an attorney who is a member in good standing of the bar of any State, Territority, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, or other representative meeting the qualifications of a non-attorney representative found at 24 CFR Part 26 and designated by a party in writing.

Reviewing official means the General Counsel of the Department or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of HUD in which the investigating official is employed; and

(c) Is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant or cooperative agreement, loan, or benefit from, HUD, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or the grant or cooperative agreement, loan, or benefit, or if the Government will reimburse the State, political subdivision, or party for any portion of the money or property under the contract or for the grant or cooperative agreement, loan, or benefit.

§ 28.5 Basis for civil penalties and assessments.

(a) *Claims.* (1) A person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 except as provided in paragraph (c) of this section, when that person makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement that asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of the omission, and

(C) Is a statement in which the person making the statement has a duty to include the material fact; or

(iv) Is for payment for the provision of property or services that the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to HUD, to a recipient, or to a party when the claim actually is made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD, the recipient, or the party.

(4) Each claim for property, services, or money is subject to a civil penalty without regard to whether the property, services, or money actually is delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section also shall be subject to an assessment of not more than twice the amount of the claim or that portion of the claim that is determined to be in violation of

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paragraph (a)(1) of this section. This assessment shall be in lieu of damages sustained by the Government because of the claim.

(b) *Statements.* (1) A person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each statement, except as provided in paragraph (c) of this section, when that person makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement;

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to HUD when the statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD.

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section, the individual may be held liable for penalties and assessments under this section where the benefits are received by the individual or individual's family only if the claim or statement is made by the individual with respect to the individual's or individual's family's eligibility to receive benefits, in the course of making application for the benefits.

(2) For purposes of this paragraph (c), "benefits" shall be defined as any instance wherein funds administered by the Secretary of HUD directly or indirectly permit lower income families or elderly or handicapped persons to reside in housing which othewise would not be available to them. These instances include but are not limited to housing made available in whole or in part under the following enabling legislation and through the following commonly named programs:

(i) United States Housing Act of 1937 (42 U.S.C. 1437)
Section 8 Lower-Income Rental Assistance
Sections 23 and 10(c)—Leased Housing
Section 202—Direct Loans for Housing for the Elderly and Handicapped
Section 17—Rental Rehabilitation and Development Grants
Section 14—Comprehensive Improvement Assistance Turnkey III
Section 4, 5, and 9 Public Housing Indian Housing—Rental Housing, Mutual Help Homeownership Opportunity, Section 8

(ii) National Housing Act (12 U.S.C. 1702)
Section 235—Low Income Home Ownership Program
Section 236
Insurance of Below Market Rate Mortgages

(iii) Housing and Urban Development Act of 1965 (12 U.S.C. 1701)
Section 101 Rent Supplements

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) Where it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) Where it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 28.7 Investigation.

(a) If an investigating official concludes that a subpoena under 31 U.S.C. 3804(a) is warranted—

(1) The subpoena shall notify the person to whom it is addressed of the authority under which it is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving the subpoena shall be required to tender to the investigating official or to the person designated to receive the documents a certification that the documents sought have been produced, or that the documents are not available and the reasons they are not available, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of the investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or for other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 28.9 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 28.7(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under §28.5, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under §28.13.

(b) The notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of §28.5;

(5) A statement of any exculpatory or mitigating circumstances known by the reviewing official or the investigating official that may relate to the claims or statements; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§28.11 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under §28.13 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement as described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under §28.5(a) with respect to a claim, the reviewing official determines that, with respect to the claim or to a group of related claims submitted at the same time the claims is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of §28.5(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant or cooperative agreement,

loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join, in a single complaint against a person, claims that are unrelated or that were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§28.13 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant as provided in §28.15.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from those claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer, and to be represented; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in §28.19.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§28.15 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by a delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgement of receipt by the defendant or his representative.

§ 28.17 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 28.19 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 28.17(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve a notice on the defendant in the manner prescribed in § 25.15, indicating that an initial decision will be issued under this section.

(c) The ALJ shall asume the facts alleged in the complaint to be true, and if such facts establish liability under § 28.5, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, the defendant, by failing to file a timely answer waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, in the motion, the defendant demonstrates extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw any initial decision made under paragraph (c) of this section and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 28.75.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously, based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(k) If the authority head decides that extraordinary cicumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the intitial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head reinstates the decision.

§ 28.21 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 28.23 Notice of hearing.

(a) When the ALJ receives the compliant and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 28.15. At the same time, the ALJ shall send a copy of the notice to the representative for the Government.

(b) The notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ determines to be appropriate.

§ 28.25 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and HUD.

(b) A private plaintiff under the False Claims Act may participate in these

proceedings to the extent authorized under 31 U.S.C. 3730(c)(5).

§ 28.27 Separation of functions.

(a) The investigating offical, the reviewing official, and any employee or agent of HUD who takes part in investigating, preparing, or presenting a particular case may not, in that case or in a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or in the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section the representative for the Government may be employed anywhere in HUD, including in the offices of either the investigating official or the reviewing official.

§ 28.29 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 28.31 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. The motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) The motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or those objections shall be considered to have been waived.

(d) The affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of those facts. It shall be accompanied by a certificate of the representative of record that is made in good faith.

(e) Upon the filing of a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 28.33 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law which shall be made part of the record;

(e) Present evidence relevant to the issue at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 28.35 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 28.37 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 28.39 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 28.7(b) are based, unless such documents are subject to a privilege

under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or the investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information need be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 28.9 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of documents subject to the provisions of this section. The motion may only be filed with the ALJ following the filing of an answer in accordance with § 28.17.

§ 28.41 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admission of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 28.43 and 28.45, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery. (1) A party seeking discovery may file a motion with the ALJ. The motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion, or a motion for a protective order as provided in § 28.47.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 28.47.

(e) Depositions. (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 28.15.

(3) The deponent may file with the ALJ, within ten days of service, a motion to quash the subpoena or a motion for a protective order.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 28.43 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 28.65(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is not prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be regarded as authentic for the purpose of admissibility at the hearing.

§ 28.45 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual also may require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. The request shall specify any documents to be produced and shall designate the witnesses and describe their addresses and locations with sufficient particularity to permit the witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 28.15. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service, or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 28.47 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

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(7) That a deposition, after being sealed, be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, or other administrative investigation not be disclosed, or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes, to be opened as directed by the ALJ.

§ 28.49 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in a United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 28.51 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title for the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of the document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 28.15 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative service shall be made upon the representative, in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 28.53 Computation of time.

(a) In computing any period of time under this part or in an order issued under this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 28.55 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses to the motion has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

§ 28.57 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonable relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, regard each matter about which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with the request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 28.59 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 28.5 and, if so, the appropriate amount of any such civil penalty or assessment, considering any aggravating or mitigating factors.

(b) HUD shall prove the defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) Unless otherwise ordered by the ALJ for good cause shown, the hearing shall be open to the public.

§ 28.61 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and, upon appeal, the authority head should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments imposed. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need to deter others who might be similaryl tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude the misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggrevate the offense for which penalties and assessments are imposed.

§ 28.63 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 28.65 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any written statement admitted must be provided to all other parties along with the last known addresss of the witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 28.43(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the ascertainment of the truth,

(2) avoid needless consumption of time, and

(3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witnesses may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 28.67 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ in accordance with § 28.47.

§ 28.69 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ in accordance with § 28.47.

§ 28.71 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any

party may file a post-hearing brief. The ALJ shall fix the time for filing post-hearing briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 28.73 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 28.5;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 28.61.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 28.75 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claims to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief. The discovery of additional material evidence and a demonstration of reasonable grounds for the failure to present such evidence at the hearing may be a basis for such motion.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revising initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 28.77.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 28.77.

§ 28.77 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal the initial decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 28.75, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 28.75 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 28.5 is final and is not subject to judicial review.

§ 28.79 Stays ordered by the Department of Justice.

If at any time the Attorney General of the United States or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to the claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 28.81 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 28.83 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part, and specifies the procedures for judicial review.

§ 28.85 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for collection actions.

§ 28.87 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 28.83 or § 28.85, or any amount agreed upon in a compromise or settlement under § 28.91, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes then or later owing by the United States to the defendant.

§ 28.89 Deposit in Treasury of United States.

All amounts collected as a result of actions taken under this part shall, except as provided in 31 U.S.C. 3806(g), be deposited as miscellaneous receipts in the Treasury of the United States.

§ 28.91 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 28.83 or during the pendency of any action to collect penalties and assessments under § 28.85.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 28.83 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 28.93 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 28.15 within 6 years after the date on which the claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 28.19(b) shall be regarded as a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: September 28, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-24281 Filed 10-19-87; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

Use of International Air Mail Envelopes, Cards and Postal Stationery for Domestic Mail Service

AGENCY: Postal Service

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Domestic Mail Manual to prohibit international airmail envelopes, cards and postal stationery (those having a red-and-blue border), from use for domestic mail services. Envelopes with red-and-blue borders may be used for international mail, but only for airmail items. When customers attempt to use such envelopes for domestic destinations (not presently prohibited), the distinctive markings may cause postal employees to cull such mail for international airmail service. When the mistake is ultimately discovered, the mail must be rehandled to direct it to the domestic service, resulting in delay of the mail plus the cost of the rehandling. If this rule is adopted, envelopes with red-and-blue borders addressed to a domestic destination will be returned to the sender.

DATE: Comments must be received on or before November 20, 1987.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

SUPPLEMENTARY INFORMATION: Current regulations do not limit the use of red-and-blue bordered envelopes, cards and postal stationery solely to international air mail. However, these postal items have a format which permits their quick identification and routing into the international air mail processing system. Consequently, customers who use them for domestic service (in the belief it will expedite handling or delivery) not only do so inappropriately but also can cause needless additional handling for the Postal Service. Further, such pieces not only do not receive expedited domestic service, but may in fact be delayed if they are mistakenly culled for processing in the international mail system and then have to be redirected back to the domestic mailstream. Accordingly, the Postal Service proposes to amend part 129.4 of the Domestic Mail Manual to prohibit the use of red-and-blue bordered envelopes in domestic mail service.

Although exempt by 39 U.S.C. 410(a) from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)), regarding proposed rulemaking, the Postal Service invites public comment on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation in 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 129—ENVELOPES AND CARDS

2. Revise 129.4 to read as follows:

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129.4 Bordered Envelopes, Cards and Postal Stationery.

.41 Green-Border Envelopes and Cards.

Envelopes and cards bearing a green border may be used only for First-Class Mail. All envelopes and cards bearing a green border shall be charged postage equivalent to the First-Class rate. When printed on letter-size mail (128.2), green borders should not enter the bar code area as defined in 122.33.

.42 Red-and-Blue-Border Envelopes, Cards and Postal Stationery.

Envelopes, cards and postal stationery bearing a red-and-blue border of any type, including bars, stripes and parallelograms, may be used only for international air mail. All envelopes, cards and postal stationery bearing a red-and-blue border, and addressed to an international destination, shall be charged postage equivalent to the international air mail rate. All such pieces addressed to a domestic destination will be returned to the sender.

An appropriate amendment to 39 CFR Part 111 to reflect these changes will be published if the proposed rule is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-24216 Filed 10-19-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior proposes to revise requirements of its regulation 43 CFR 4.411, *Appeal; how taken, mandatory time limit,* in order to preserve appeals where an appellant mistakenly files his notice of appeal either with the Interior Board of Land Appeals or in the wrong office of the Bureau of Land Management, rather than in the office of the officer who made the decision which is the subject of the appeal. The proposed revision provides, with one exception, that a timely notice of appeal which is misfiled either with the Interior Board of Land Appeals or in the wrong office of the Bureau of Land Management will be considered to have been filed in the proper office on the date it is misfiled. The proposed rule does not change the requirement that the notice of appeal be timely filed.

DATE: Written comments on the proposed rule must be received by November 19, 1987.

ADDRESS: Written comments on this proposed rulemaking should be mailed or hand-delivered to the Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, Special Counsel to the Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203; Telephone: (703) 235-3810 (not toll free).

SUPPLEMENTARY INFORMATION: To facilitate handling of misfiled notices of appeal by the Interior Board of Land Appeals and the Bureau of Land Management, the proposed revision includes language to be added to 43 CFR 4.411(b) (governing content of the notice of appeal), requiring an appellant to specify the office of the person who rendered the decision being appealed. The proposed revision recites that this requirement may be satisfied by the appellant's attaching a photocopy of the appealed decsion to the notice of appeal. The proposal expressly denies relief to a would-be appellant where he complicates handling of the misfiling by failing to comply with directive to identify the office of the person who rendered the decision that he wishes to appeal. By so doing, potential for abusive dilatory filing tactics is removed.

Federal Paperwork Reduction Act

The proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291

Because the proposed rule will only set forth the details of procedures for the manner of taking appeals to the Interior Board of Land Appeals, the Department of the Interior has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic effect on a substantial number of small entities because it will only set forth the details of procedures for the manner of taking appeals to the Interior Board of Land Appeals.

National Environmental Policy Act

The Office of Hearings and Appeals has determined, on the basis of the categorical exclusion of regulations of a procedural nature set forth at 516 DM 2 Appendix 1, section 1.10 that the proposed rule will not significantly affect the quality of the human environment.

Drafting

The proposed rule was drafted by Wm. Philip Horton, Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure.

Dated: August 4, 1987.

Paul T. Baird,

Director, Office of Hearings and Appeals.

Accordingly, it is proposed to amend 43 CFR Part 4 as follows:

PART 4—[AMENDED]

43 CFR Part 4 is amended as follows:

1. The authority citation for Part 4 continues to read:

Authority: R.S. 2478, as amended, 43 U.S.C. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. In § 4.411, paragraph (b) is revised, paragraph (c) is redesignated as paragraph (d) and (d) is revised, and a new paragraph (c) is added to read as follows:

§ 4.411 Appeal; how taken, mandatory time limit.

* * * * *

(b) The notice of appeal must give the serial number or other identification of the case and must identify the office of the officer rendering the decision being appealed. These requirements may be satisfied by attaching a photocopy of the appealed decision to the notice of appeal. The notice of appeal may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make.

(c) Except as otherwise provided in this subparagraph, if the notice of appeal is mistakenly filed either with the Board or in the wrong office of the Bureau of Land Management, the office receiving the misfiling shall note on the notice of appeal the date on which it was received and promptly transmit it to

the office of the officer who made the decision being appealed. The notice shall be deemed to have been filed in the correct office on the date so noted. However, if the notice of appeal does not identify the office of the officer rendering the decision being appealed as required by § 4.411(b), the notice shall be returned to the sender, and any subsequent refiling shall be deemed to have been accomplished on the date the notice is filed in the correct office.

(d) No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed during the grace period provided in § 4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

Frances A. Patton,

Certifying Officer.

[FR Doc. 87-24228 Filed 10-19-87; 8:45 am]

BILLING CODE 4310-79-M

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Notices

Federal Register
Vol. 52, No. 202
Tuesday, October 20, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 20, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than October 31, 1988.

Antidumping duty proceeding and firms	Periods to be reviewed
Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada.	
Fortress Allatt	09/01/86—08/31/87
General	09/01/86—08/31/87

Countervailing duty proceeding	Periods to be reviewed
Fresh Cut Roses from Israel	10/01/85—09/30/86
Lime from Mexico	01/01/86—12/31/86
Lamb Meat from New Zealand	04/01/86—03/31/87
Steel Wire From New Zealand	06/16/86—03/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: October 12, 1987.

[FR Doc. 87–24238 Filed 10–19–87; 8:45 am]
BILLING CODE 3510–DS–M

[A–583–401]

Revocation of Antidumping Duty Order; Bicycle Tires and Tubes From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The U.S. International Trade Commission has determined that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of bicycle tires and tubes from Taiwan covered by the antidumping duty order if the order were to be modified or revoked.

As a result, the Department of Commerce is revoking the antidumping duty order on bicycle tires and tubes from Taiwan.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 24157) an antidumping duty order on bicycle tires and tubes from Taiwan.

On April 2, 1987, the U.S. International Trade Commission ("the ITC"), at the request of counsel on behalf of the Taiwan producers of bicycle tires and tubes, instituted an investigation of bicycle tires and tubes from Taiwan under section 751(b) of the Tariff Act of 1930 ("the Tariff Act"). As a result of its investigation, the ITC determined (52 FR 33660, September 4, 1987) that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of bicycle tires and tubes from Taiwan covered by the antidumpting duty order if the order were to be modified or revoked.

Scope of the Review

Imports covered by the review are shipments of bicycle tires and tubes, currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

Revocation of the Order

The Department, as administering authority, revokes the antidumping duty order for all exports of bicycle tires and tubes from Taiwan. This revocation applies to all entries of this merchandise entered, or withdrawn from warehouse, for comsumption on or after September 4, 1987. The Department will instruct the Customs Service to proceed with liquidation of this merchandise without regard to antidumpting duties.

Unappraised entries of bicycle tires and tubes from Taiwan made prior to September 4, 1987 and covered by the order remain unaffected by this notice. These entries are subject to appraisement under the antidumping duty order as required by section 751 of the Tariff Act.

If a review is requested, the Department will conduct an administrative review of shipments of bicycle tires and tubes from Taiwan to the United States during the period June 1, 1987 through September 4, 1987, the effective date of revocation. These results will be published in a subsequent notice.

This revocation is in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675(c)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: October 12, 1987.

[FR Doc. 87-24239 Filed 10-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-041]

Final Results of Antidumping Duty Administrative Review; Synthetic Methionine from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 3, 1987 the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan. The review covers four manufacturers and/or exporters and one third-country reseller of this merchandise to the United States and the period July 1, 1985 through June 30, 1986. The review indicates the existence of dumping margins during the period.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comment received, the final results are unchanged from those presented in our preliminary results.

EFFECTIVE DATE: October 20, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1987, the Department of Commerce published in the **Federal Register** (52 FR 33464) the preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of synthetic methionine other than L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under item 425.0430 of the Tariff Schedules of the United States Annotated and Harmonized System item number 2922.42.50.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from Mitsui & Co. Ltd.

Comment: Mitsui states there is no evidence in the public record indicating any involvement by Mitsui in Central Soya's U.S. sales. Mitsui also asks to review the proprietary data contained in the official files to determine if they contain evidence of any such involvement.

Department's Position: While the public record is sketchy, the petitioner's proprietary information indicates that Mitsui sold this merchandise to Central Soya; neither Mitsui nor Central Soya furnished any evidence to the contrary. The Department permits access to proprietary information only under the strict limitations of an administrative protective order ("APO"). Since Mitsui did not request an APO, we cannot allow it access to any proprietary information.

Final Results of the Review

Based on our analysis of the comment received, the final results of review are the same as those presented in the preliminary results of review and we determine that the following margins exist for the period July 1, 1985 through June 30, 1986:

Manufacturer/Exporter/Third-Country Reseller (country)	Margin (Percent)
Nippon Kayaku	[1] 48.0
Nippon Soda/Mitsui	[1] 3.35
Nippon Soda/Mitsui/Central Soya (Canada)	79.0
Sumitomo Chemical	[1] 0

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 75(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 3.35 percent shall be required. This is in accordance with our practice of not using the most recently reviewed rate as a basis for a cash deposit for new shippers when we have based the most recent rate on best information available.

These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: October 12, 1987.

[FR Doc. 87-24236 Filed 10-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A405-071]

Preliminary Results of Antidumping Duty Administrative Review; Viscose Rayon Staple Fiber From Finland

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Finland. The review covers Kemira Oy Sateri and the period March 1, 1986 through February 28, 1987. The review indicates the existence of a dumping margin during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties

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equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 20, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1987 the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 25899) the final results of its last administrative review of the antidumping finding on viscose rayon staple fiber from Finland (44 FR 17156, March 21, 1979). The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on April 22, 1987 (52 FR 13268). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988.

In view of this, we will be providing both the appropriate *Tariff Schedule of the United States* ("TSUS") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable in TSUSA items 309.4320 and 309.4325. This product is currently classifiable under HS item numbers 5504.10.00 and 5504.90.00.

The review covers Kemira Oy Sateri and the period March 1, 1986 through February 28, 1987.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for handling, foreign inland freight, ocean freight and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market. Home market price was based on the ex-factory price to unrelated purchasers in the home market. We made adjustments for a cash discount and differences in credit expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Manufacturer	Time period	Margin (percent)
Kemira Oy Saten	3/1/86–2/28/87	1 58

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or an administrative protective order within 5 days after the date of publication. Any request for a hearing must be made no later than 10 days after the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 1.58 percent based on the above margin shall be required. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after February 28, 1987 and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 1.58 percent shall be required. These deposit requirements are effective for all shipments of Finnish viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: October 12, 1987.

[FR Doc. 87–24237 Filed 10–19–87; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–001]

Leather Wearing Apparel From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 19, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico. The review covers the period July 1, 1984 through December 31, 1985 and 12 programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: October 20, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Paul McGarr, Office

of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 31059) then preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357, April 10, 1981). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican leather wearing apparel, currently classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. These products are currently classifiable under item 4203.10.40—O of the Harmonized System.

The review covers the periods July 1, 1984 through December 31, 1984 ("the 1984 period"), and January 1, 1985 through December 31, 1985 ("the 1985 period") and 12 programs: (1) FOMEX; (2) FOGAIN; (3) CEPROFI; (4) FONEI; (5) Bancomext loans; (6) Article 15 loans; (7) import duty reductions and exemptions; (8) state tax incentives; (9) NDP preferential discounts; (10) delay of payments on loans; (11) delay of payments to PEMEX of fuel charges; and (12) CEDI.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the total bounty or grant during the 1984 period to be zero for 19 firms and 3.35 percent *ad valorum* for all other firms. We determine the total bounty or grant during the 1985 period to be zero for 20 firms and 2.96 percent *ad valorem* for all other firms.

The following 19 firms received zero benefits during the 1984 and 1985 periods:

(1) Antonio Hurtado
(2) Confecciones de Piel Reno, S.A.
(3) Creaciones Italianas de Mexico, S.A.
(4) Elegance de Baja California, S.A.
(5) Fernando Nila
(6) Fidel Ruiz
(7) Hector Garcia
(8) Jesus Hernandez
(9) Jesus Jasso
(10) Jesus Rivera
(11) Jose Mora
(12) Jose Salcedo
(13) Jose Sotelo
(14) Juan Manuel Hernandez
(15) Karen Internacional, S.A. de C.V.
(16) Manufacturas Industriales de Nogales, S.A.
(17) Raymundo Diaz
(18) Rocio Gallardo
(19) Rosa Ramos

In addition, the rate for Manufacturera Baja de Articulos de Piel was zero during the 1985 period.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 19 firms listed above and to assess countervailing duties of 3.35 percent of the f.o.b. invoice price on shipments from all other firms exported on or after July 1, 1984 and on or before December 31, 1984, and to liquidate, without regard to countervailing duties, shipments of this merchandise from Manufacturera Baja de Articulos de Piel and the 19 firms and to assess countervailing duties of 2.96 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from Manufacturera Baja de Articulos de Piel and 18 of the 19 firms listed above (with the exception of Creaciones Italianas de Mexico, S.A.), and, due to the change in the FOMEX interest rates and a FOGAIN loan to Creaciones Italianas de Mexico, S.A., to collect a cash deposit of estimated countervailing duties of 1.74 percent of the f.o.b. invoice price on shipments from Creaciones Italianas de Mexico, S.A. and all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

October 12, 1987.

[FR Doc. 87–24241 Filed 10–19–87; 8:45 am]

BILLING CODE 3510–DS–M

National Telecommunications and Information Administration

Frequency Management Advisory Council Meeting

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of open meeting, frequency management advisory council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:00 p.m. on November 9, 1987, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC. (Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) ITU conference preparation for High Frequency, Mobile, Space World Administrative Radio Conferences.

(2) Proposed NTIA policy on allocation of multifunction spread spectrum systems.

(3) Proposed NTIA policy on Federal Government trunked land mobile radio.

(4) Preliminary considerations for space station frequency availability.

(5) Proposed NTIA Policy on Spectrum Management Improvement Implementation Plan.

(6) Recent developments relative to radio frequency radiation exposure guidelines.

BEST COPY AVAILABLE

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before November 5, 1987. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4706, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, telephone 202–377–0805.

Date: October 15, 1987.

Michael W. Allen,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 87–24178 Filed 10–19–87; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Levels and a Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

October 15, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), has issued the directive published below to the Commissioner of Customs to be effective on October 21, 1987. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established import limits for Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987, and the guaranteed access level for man-made fiber textile products in Category 632, for the period June 1, 1987 through December 31, 1987.

Background

A CITA directive dated March 27, 1987 (52 FR 10398) established, among other things, import limits for certain cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began September 1, 1986 and extends through December 31, 1987.

A further directive dated April 16, 1987 (52 FR 13281) established guaranteed access levels for properly certified textile products in Category 632, among others, assembled in Jamaica from fabric formed and cut in the United States.

During consultations held on July 31, 1987 between the Governments of the United States and Jamaica, agreement was reached to further amend their Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, to convert the designated consultation level for cotton and man-made fiber textile products in Category 338/339/638/639 to a specific limit and to increase the designated consultation level for cotton and man-made fiber textile products in Category 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.

In addition, the two governments further agreed to increase the guaranteed access level for man-made fiber textile products in Category 632 for properly certified textile products assembled in Jamaica from fabrics formed and cut in the United States during the period which began on June 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 15, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of March 27, 1987, concerning certain cotton and man-made fiber textile products, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.

Effective on October 21, 1987 the directive of March 27, 1987 is hereby amended to increase the levels for cotton and man-made fiber textile products in the following categories:[1]

Category	Amended 16-month level
338/339/638/639	575,000 dozen.
347/348/647/648	725,000 dozen

This directive also amends, but does not cancel, the directive of April 16, 1987, concerning certain cotton and man-made fiber textile products, exported from Jamaica which are not certified in accordance with the certification requirements for products assembled in Jamaica from fabric formed and cut in the United States.

Effective on October 21, 1987, the directive of April 16, 1987 is hereby amended to increase the guaranteed access level for man-made fiber textile products in Category 632 for the agreement period which began on June 1, 1987 and extends through December 31, 1987 to a level of 2,000,000 dozen pairs.

[1] The limits have not been adjusted to reflect any imports exported after August 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-24217 Filed 10-19-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 13, 1987.

The USAF Scientific Advisory Board Minuteman III Penetration Aids Study will meet on 13 November 1987, at the Pentagon, Washington, DC from 8:00 a.m. to 5:00 p.m. The purpose of this meeting is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-24200 Filed 10-19-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: National Board for the Promotion of Rifle Practice.

Date of Meeting: December 8, 1987.

Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869-71 Park Center Road, Herndon, Virginia 22071.

Time: 1330-1600.

Proposed Agenda

1. Open Prayer and Pledge of Allegiance to the Flag.
2. **Federal Register** Notice of the Meeting.
3. Roll Call.
4. Rewrite of regulations.
5. Report on rifles in Excellance in Competition (EIC) Matches.
6. Update on inclusion of the 9mm pistol in EIC competition.
7. Update on ammunition used in EIC matches.
8. Update on conduct of the 1987 National Matches.
9. Report on revision of the Small Arms Firing School Training.
10. Update on issue, receipt, and storage of small arms ammunition by Civilian Marksmanship Program organizations.
11. Report on the National Matches.
12. Report on the National Guard Youth Program.
13. Report on the Budget Review/Presentation.
14. Closing Prayer.

This meeting is open to the public.

Persons desiring to attend the meeting should contact Ms. Sue E. Keown or Ms. Rita G. Cooper at (202) 272-0810 prior to 23 November 1987 to arrange admission.

M.S. Gilchrist,

Colonel, Armor Executive Officer, NBPRP.

[FR Doc. 87-24205 Filed 10-19-87; 8:45 pm]

BILLING CODE 3710-08-M

National Board for the Promotion of Rifle Practice Budget Committee; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: National Board for the Promotion of Rifle Practice Budget Committee.

Date of Meeting: December 8, 1987.

Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869-71 Park Center Road, Herndon, Virginia 22071.

Time: 0930-1130.

Proposed Agenda

1. **Federal Register** Notice of the Meeting.
2. Roll Call.
3. Review of Fiscal Year 1987 Budget.
4. Gramm Rudman Holling.
5. Support Agreements.
6. Benefits of Civilian Marksmanship Support Detachment Under the Director of Civilian Markmanship.
7. Cost of GBL's for Leg Matches.
8. Fiscal Year 1988 Budget and Obligation Plan.
9. Fiscal Year 1899-90 and Out-Year Budgets.

This meeting is open to the public.

Persons desiring to attend the meeting should contact Ms. Sue E. Keown or Ms Rita G. Cooper at (202) 272-0810 prior to 23 November 1987 to arrange admission.

M. S. Gilchrist,

Colonel, Armor Executive Officer, NBPRP.

[FR Doc. 87-24204 Filed 10-19-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 19, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form

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number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 15, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: EXTENSION
Title: Application for the RSA Discretionary Program
Agency Form Number: RSA 424
Frequency: Annually
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions
Reporting Burden:
Responses: 1170
Burden Hours: 46,800
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by States and public or non-profit organizations to apply for grants under the Rehabilitation Act of 1873, as amended. The Department uses the application information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: NEW
Title: Application for Assistance under the Stewart B. McKinney Homeless Assistance Act
Agency Form Number: A10–14P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 52
Burden Hours: 26
Recordkeeping:
Recordkeepers: 52
Burden Hours: 520
Abstract: This form will be used by State agencies to apply for funding under the Stewart B. McKinney Homeless Assistance Act. The Department uses the information collected to make grant awards.

Office of Educational Research and Improvement

Type of Review: NEW
Title: FRSS—Survey on Vocational Education
Agency Form Number: G50–41P
Frequency: Nonrecurring
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 34
Recordkeeing:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this survey is to collect current information on how States allocate funds under the Perkins Act and how they administer Vocational Education programs. The survey is in direct response to a Congressional mandate to describe and evaluate the effects of the Perkins Act and make recommendations for the reauthorization of Federal support to Vocational Education.

Type of Review: NEW
Title: Teacher Status Information for the Schools and Staffing Survey's Teacher Follow-Up Survey
Agency Form Number: G50–42P
Frequency: On occasion
Affected Public: Individuals or households; State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 276
Burden Hours: 69
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: The survey will obtain teacher status information from schools that participated in the 1987 Schools and Staffing field test. The Department will use this information for sampling purposes.

Office of Management

Type of Review: REINSTATEMENT
Title: GEPA 406A: State Uses of Federal Funds Under State-Administered Federal Education Programs
Agency Form Number: P75–7P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 2,550
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will collect information from State educational agencies on how Federal funds are distributed under Federal State-administered education programs. The Department uses this information for an annual report to Congress mandated by section 406A of the General Education Provisions Act.

[FR Doc. 87–24229 Filed 10–19–87; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council; Coordinating Subcommittee on Petroleum Storage and Transportation; Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Friday, November 6, 1987, 9:00 a.m.

Place: Amoco Oil Company, Rooms Two & Three, Third Floor, 200 East Randolph Drive, Chicago, Illinois.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss study assignment & task group assignments.

Tentative Agenda

—Opening remarks by the Chairman and Government Cochairman.
—Discuss study assignment.
—Review task group assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 87–24251 Filed 10–19–87; 8:45 am]
BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87-28-NG]

Tennessee Gas Pipeline Co.; Order Approving Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting authorization to import certain quantities of natural gas from Canada and conditionally authorizing import of certain additional quantities.

SUMMARY: The Economic Regulatory Administration (ERA) of the Deparment of Energy (DOE) gives notice that it has issued an order in ERA Docket No 87–28–NG granting authorization to Tennessee Gas Pipeline Company (Tennessee) to import from TransCanada PipeLines Limited progressively increasing quantities of Canadian natural gas—from 5,000 to 125,000 Mcf per day—for a scheduled term from November 1, 1987, to October 31, 2002. Except for the first 5000 Mcf per day to be imported through existing facilities, the order is conditioned upon the completion and approval by the DOE of an environmental review of the construction of the new facilities needed to transport the additional quantities authorized for import during the later years of the term.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 9, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–24252 Filed 10–19–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Orders; Clark Oil and Refining Corp., et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial orders to Clark Oil & Refining Corporation; Apex Oil Company; Novelly Oil Company; Goldstein Oil Company; and Apex Holding Company.

I. Introduction

Pursuant to 10 CFR 205.192 the Economic Regulatory Administration ("ERA"), Department of Energy ("DOE") hereby gives notice that four Proposed Remedial Orders ("PROs") were issued on July 8, 1987 to Clark Oil & Refining Corporation, Apex Oil Company, Novelly Oil Company, Goldstein Oil Company and Apex Holding Company, 8182 Maryland Avenue, Clayton, Missouri 63105. The impact of the alleged violations is nationwide. In accordance with 10 CFR 205.192, a copy of the Proposed Remedial Orders with confidential information, if any, deleted, may be obtained from the DOE Freedom of Information Room, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585.

Clark Oil & Refining Corporation ("Clark") is a refiner engaged in the production and the refining of crude oil and the marketing of petroleum products. Clark was therefore subject to the Mandatory Petroleum Price and Allocation Regulations ("Regulations") which were in effect until January 28, 1981. The ERA conducted an audit of Clark Oil & Refining Corporation and determined that the firm violated the Regulations. The ERA has reason to believe that Clark Oil & Refining Corporation and the other entities named herein share liability for the violations alleged in the PROs. ERA discusses below the proposed orders for which notice of issuance is hereby given, and also discusses, as pertinent, remedial portions of a proposed order previously issued.

ERA recognizes that the total amount of Clark's refund liability cannot be finally determined until all of the cost-related cases are decided.

II. Issuance of Proposed Remedial Orders

1. Proposed Remedial Order No. RCKB00101

This PRO charges Clark with failing to establish and maintain appropriate classes of purchaser and May 15, 1973 weighted average selling prices applicable to those classes, during the period September 1973 through December 1979. As a remedy for these violations, the PRO directs Clark to recalculate maximum allowable prices (determining May 15, 1973 prices in accordance with the PRO), recompute lawful recoveries consistent with the equal application/deemed recovery rule, refile its Refiners Monthly Cost Allocation Reports, and identify and refund any resulting overcharge. As an alternative remedy, the PRO proposes that Clark refund the differences between the correct and incorrect May 15, 1973 prices multiplied by the applicable sales volumes, totalling $45,170,345, plus interest. As a third alternative, the PRO proposes that Clark perform a recalculation for the period prior to September 1, 1974, and refund the differences between correct and incorrect May 15, 1973 prices for the post-September 1, 1974 period.

2. Proposed Remedial Order No. RCKL000A1

This PRO alleges that Clark improperly calculated certain non-product costs in the areas of interest, overhead, maintenance, additives, depreciation, refinery fuel, refinery labor, taxes, pollution control, and utilities. For the period September 1973 through December 1979, these improper calculations resulted in an overstatement of costs of approximately $40,353,000. This PRO also alleges that Clark's improper calculation of its non-product costs likely continued throughout 1980 until the end of the regulatory period on January 28, 1981. The violation amount for this period is unquantified.

As a remedy for these violations, in the PRO, ERA has recalculated Clark's non-product cost increases for the audit period and has directed Clark to submit new schedules using the recomputed costs and to refund any overcharges, plus interest, generated as a result of the recalculations. In addition, the PRO requires Clark to provide appropriate information and make necessary recalculations for the post-audit period.

3. Proposed Remedial Order No. RCKH016A1

This PRO alleges that Clark improperly failed to report and excluded its out-charter ton-miles in calculating its "cost-per-ton-mile," which was then carried forward to distort other aspects of the net-cost formula, and ultimately the "A" factor. For the period 1977 through 1979, these improprieties resulted in an overstatement of foreign crude oil marine transportation costs of $65,635,938.00. This PRO alleges that Clark failed to report, and excluded out-charter ton-miles from its calculations throughout 1980 until the end of the regulatory period on January 28, 1981. The violation for this period is unquantified.

As a remedy for these violations, in the PRO, ERA has recalculated Clark's foreign crude oil marine transportation costs for the audit period and has directed Clark to submit new schedules using the recomputed costs and to refund any overcharges, plus interest, generated as a result of the recalculations. In addition the PRO

requires Clark to provide appropriate information and make necessary recalculations for the post-audit period.

4. Proposed Remedial Order No. RCKH001A1

This PRO alleges that Clark paid bribes to influence foreign officials to give the firm preferential treatment in connection with its purchases of crude oil and that Clark improperly included these payments in its calculations of its landed costs of crude oil.

The proposed order would require that Clark recalculate its costs of crude oil to eliminate the amount of these payments, determine the amount of overcharges, if any, that resulted from its inclusion of the subject amount in its cost calculations, and make any necessary refunds.

Previously Issued Proposed Remedial Order

1. Proposed Remedial Order No. RCKH00300 (Office of Hearings and Appeals No. HRO–0249) (Federal Energy Regulatory Commission No. RO86–5–000, appeal withdrawn October 1, 1986)

This PRO was issued to Clark Oil & Refining Corporation and Apex Oil Company on April 30, 1979, as amended on August 1, 1984. On October 10, 1985, the Office of Hearings and Appeals ("OHA") issued a Remedial Order, 13 DOE ¶ 83,039 (1985), finding that Clark Oil & Refining Corporation failed to reduce its crude costs to reflect a payment of $82,500 to Clark by Texaco for use of Clark's fee-free licenses to import foreign crude oil in December 1973. In addition to the Remedial Order, OHA issued two Special Report Orders requiring Clark to revise its DOE forms to delete the $82,500 in overstated crude costs and to search its records for additional information relating to other sales or exchanges of Clark's fee-free import licenses.

On September 25, 1986, Apex Oil Company and Clark Oil & Refining Corporation ("Apex/Clark") executed an agreement with DOE providing that (1) Apex/Clark would perform a reduced search of its records for documents pertaining to other exchanges or sales of fee-free import licenses and provide such information to DOE within 12 months of its notice to withdraw its FERC appeals, which was filed on October 1, 1986; and (2) Within six months of the date of any Remedial Order issued by OHA in Case No. RCKB00101, or within two years of the filing of the notice to withdraw its FERC appeal, Apex/Clark will adjust its DOE forms to reflect the $82,500 in overstated crude costs.

IV. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to any or all of the proposed orders described in Section II above with DOE's Office of Hearings and Appeals, within 15 days after the date of this publication. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed orders. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order.

All Notices of Objection, Statements of Objections, Responses, Replies, Motions, and other documents required to be filed with the Office of Hearings and Appeals shall be sent to: Office of Hearings and Appeals, U.S. Department of Energy, Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant shall be served on the same day as filed, on the following person in each of the identified PRO proceedings pursuant to 10 CFR 205.193(c): Jeffrey R. Whieldon, Associate Solicitor, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Room 3H–017, Washington, DC 20585.

Issued in Washington, DC, this 7th day of October 1987.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87–24253 Filed 10–19–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Date and Time: November 4, 1987—9:00 a.m.–5:00 p.m., November 5, 1987—9:00 a.m.–12:30 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 8E–089 Washington, DC 20585

Contact: John E. Metzler, Executive Director, Energy Research Advisory Board, Department of Energy, Office of Energy Research, ER–6, 1000 Independence Avenue SW., Washington, DC 20585 Telephone: (202) 586–5444

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

November 4, 1987

9:00 a.m. Business Items
- —Approval of August Meeting Minutes
- —Schedule of ERAB Meetings for 1988
- —Follow-up on the Geosciences Report
- —Follow-up on the Physics Report
- —Follow-up on the Magnetic Fusion Report

9:30 a.m. Carbon Dioxide and the Greenhouse Effect
10:30 a.m. Break
10:45 a.m. Alternative Fuels Study
11:30 a.m Briefing on DOE Activities of Interest to ERAB
12:00 Noon Lunch
1:00 p.m. Review of Energy Competitiveness Study
3:15 p.m. Break
3:30 p.m. Review of Energy Competitiveness Study
4:50 p.m. Public Comment (10 minute rule)
5:00 p.m. Adjourn

November 5, 1987

9:00 a.m. Progress on Research and Technology Utilization Study
10:00 a.m. Progress on Education Panel
11:00 a.m. Concluding Discussion on R&D Initiatives for Energy Competitiveness
11:45 a.m. Other Business
12:20 p.m. Public Comment (10 minute rule)
12:30 p.m. Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contract John Metzler at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: The transcripts of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Aveune, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on October 15, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–24254 Filed 10–19–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–15–000, et al.]

Duquesne Light Co., et al.; Electric Rate and Corporate Regulation Filings

October 9, 1987.

Taken notice that the following filings have been made with the Commission:

1. Duquesne Light Company

[Docket No. ER88–15–000]

Take notice that on October 2, 1987, Duquesne Light Company (DLC) tendered for filing a proposed change in its FERC Municipal Electric Resale Service Tariff for Pitcairn, Pennsylvania. DLC requested that the proposed rate schedule change become effective as of July 1, 1987. The proposed change would decrease revenues from jurisdictional sales by $12,434.33, based on the twelve-month period ending June 30, 1987, to reflect the decrease in the Federal income tax rate.

DLC states that copies of the filing were mailed to the Pennsylvania Public Utility Commission and to the Secretary of the Borough of Pitcairn on September 30, 1987.

Comment date: October 26, 1987, in accordance with the Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER88–12–000]

Take notice that on October 5, 1987, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement dated April 24, 1987 and an implementing rate schedule providing for the delivery by Con Edison of power and energy purchased by the County of Westchester Public Utility Service Agency (COWPUSA) and sold by COWPUSA to COWPUSA's commercial and industrial electricity consumers in Westchester County in New York State. Under the agreement, Con Edison will deliver no more than ten megawatts of firm power and associated energy to no more than ten industrial or commercial electric consumers in Westchester County.

The rate schedule filed by Con Edison was approved by the New York State Pubic Service Commission (NYPSC) by orders dated July 16, 1987 and September 9, 1987. Con Edison is requesting permission to put this rate schedule into effect as of July 17, 1987, the date the NYPSC authorized the schedule to go into effect.

A copy of this filing has been served upon COWPUSA and the NYPSC.

Comment date: October 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER88–13–000]

Take notice that on October 5, 1987, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during August 1987, along with cost justification for the rate charged. This filing includes the following supplements:

Pacific Power & Light Co., Supplement No. 22
Utah Power & Light Co., Supplement No. 58
Montana Power Co., Supplement No. 54
Washington Water Power Co., Supplement No. 52
Sierra Pacific Power & Light Co., Supplement No. 67
Puget Sound Power & Light Co., Supplement No. 31
Pacific Gas & Electric Co., Supplement No. 27
Portland General Electric Co., Supplement No. 56

Comment date: October 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Oklahoma Gas and Electric Company

[Docket No. ER87–627–000]

Take notice that on October 5, 1987, Oklahoma Gas and Electric Company (OG&E), P.O. Box 321, Oklahoma City, Oklahoma, 73101, tendered for filing Revised Sheet Nos. 4, 7 and 11 to its FERC ELECTRIC TARIFF, 1st Revised Volume No. 1. The revised rates are contained in proposed Rate Schedules WM–1, WM–2, and WC–1 applicable to municipalities and cooperatives, respectively. Also proposed is a change in the rates charged for wheeling and transmission service agreements with Southwestern Power Administration (SWPA) and Western Farmers Electric Cooperative, Inc., (WFEC) and services provided by the Company to the Oklahoma Municipal Power Authority (OMPA).

The decreased rates that have been proposed by the Company are being made to reflect the decrease in the corporate income tax rate pursuant to the Tax Reform Act of 1986, and are proposed to be effective with usage on and after July 1, 1987

OG&E states that copies of the tariff, rate schedules and the entire filing have been sent to its municipal and cooperative customers, to SWPA, to WFEC, and to OMPA. A complete set of the filing has also been sent to the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commision.

Comment date: October 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER88–14–000]

Take notice that on October 5, 1987, Southwestern Electric Power Company (SWEPCO), tendered for filing pursuant to the Commission's Order No. 475, a reduction in its demand charge for full requirements service applicable to the City of Siloam Springs, Arkansas to become effective July 1, 1987. The decrease reflects the impact on SWEPCO's revenue requirements of the lowered Federal corporate income rate enacted by the Tax Reform Act of 1986. SWEPCO calculated such impact pursuant to formulas contained in § 35.27 of the Commission's regulations. Had the proposed demand rate been in effect for the twelve months ended June 30, 1987, SWEPCO would have collected approximately $300,600 less in revenues for Siloam Springs in such period.

Comment date: October 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric power Company, and Upper Peninsula Power Company

[Docket No. EC88–3–000]

Taken notice that on October 6, 1987, Wisconsin Electric Power Company (Wisconsin Electric) and Upper Peninsula Power Company (Power Company) tendered for filing an application for an order of the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act authorizing Wisconsin Electric to purchase from Power Company certain of its transmission facilities which are

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used primarily for the purpose of transmitting power and energy from Upper Peninsula Generating Company's Presque Isle Power Plant. The facilities which will be purchased for $3.8 million will have an estimated net book value of approximately $1.5 million as of December 31, 1987. the applicants state that the transaction is necessary to implement Wisconsin Electric intention to purchase the Presque Isle Power Plant from Generating Company and integrate it into its systems.

Comment date: October 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb

Secretary.

[FR Doc. 87-24197 Filed 10-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-67-000]

Availability of Staff Working Paper; Regulation of Independent Power Producers

October 9, 1987.

Notice is hereby given that a preliminary staff working paper exploring the technical policy issues associated with regulations of independent power producers will be available no later than Wednesday, October 14, 1987 This paper was previously expected to be released by October 9, 1987

Kenneth F. Plumb,

Secretary

[FR Doc. 87-24272 Filed 10-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-679-000]

Application For Commission Certification of Qualifying Status of a Cogeneration Facility; Cogeneration Partners of America

October 8, 1987.

On September 23, 1987, Cogeneration Partners of America (Applicant), of Metroview Corporate Center, 333 Thornall Street, Edison, New Jersey 08837 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located at the Bellevue, Broad and Walnut Streets, Philadelphia, Pennsylvania 19102. The facility will consist of one dual fuel engine generator, and a heat recovery steam generator. Thermal energy recovered from the facility will be used for heating and cooling of the office/hotel complex located in the historic district of Philadelphia. The electric power production capacity of the facility will be 1,558 kW. The primary energy source will be natural gas. The installation of the facility is expected to commence on or about November 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 87-24273 Filed 10-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-265-001]

Application for Commission Recertification of Quafilying Status of a Cogeneration Facility; Indeck Energy Services, Inc.

October 9, 1987.

On September 21, 1987, Indeck Energy Service, Inc. (Applicant), of 1111 South Willis Avenue, Wheeling, Illinois 60090 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Buffalo, New York and will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator. Thermal energy recovered from the facility in the form of steam will be used for space heating and as process steam in the production of plastic film and sheet products. The electric power production capacity of the facility as originally proposed was to be 49.0 MW. The primary energy source will be natural gas. The facility is expected to go into service February 1, 1989.

By order issued May 27, 1987, the Director of the Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF87-265-000.

The recertification is requested due to changes in the net electric power production capacity and process steam characteristics. The net electric power production capacity will increase to 49.9 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kennerth F. Plumb,

Secretary.

[FR Doc. 87-24274 Filed 10-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-007-000]

Application; East Tennessee Natural Gas Co.

October 15, 1987.

Take notice that on October 2, 1987, East Tennessee Natural Gas Company (East Tennessee) P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed an application in Docket No. CP88-007-000 pursuant to section 7 of the Natural Gas Act requesting authority to construct and operate facilities and to rearrange the maximum daily quantities of its customers and to increase and decrease the contract authorizations of some of its customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

East Tennessee proposes to rearrange the maximum daily quantities (MDQ) of some of its customers within existing contract demand and to increase and decrease the MDQ's of other customers by a total of 6,575 Mcf. A summary of the changes is attached as an appendix.

East Tennessee states that it would be required to construct and operate 0.63 miles of six-inch loop in Blount County, Tennessee to implement the proposed rearrangement of MDQ's. East Tennessee estimates the cost of the facilities to be $220,000, which would be financed from funds on hand.

East Tennessee indicates it would supply the increased requirements from deliverability from local producers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 5, 1987, filed with Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participates as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Producer, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for East Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EAST TENNESSEE NATURAL GAS COMPANY PRESENT AND PROPOSED REARRANGEMENT OF MAXIMUM DAILY QUANTITIES (MDQ) BY DELIVERY POINTS AND CHANGES IN CONTRACT DEMANDS

	Column (1)	(2)	(3)	(4)	(5)
Line No.	Customer	Delivery point	Present (CP86-505) MDQ	Increase (decrease)	Proposed MDQ and contract demand
1	Town of Algood	Algood	500	50	550
2	Total—Contract Demand		500	50	550
3	Chattanooga Gas Company	Chattanooga East	12,000	(2,000)	10,000
4		Chattanooga North	10,000		10,000
5		Signal Mountain	3,000		3,000
6		Volunteer Ordnance	1,000		1,000
7		Cleveland	16,000		16,000
8		Chattanooga Access	3,000		3,000
9		Ooltewah	2,000		2,000
10	Total—Contract Demand		47,000	(2,000)	45,000
11	City of Cookeville	Cookeville	5,080	120	5,200
	Total—Contract Demand		5,080	120	5,200
12	Citizens Gas Utility District	Oneida	1,000	(1,000)	0
13		Wartburg	1,742	1,000	2,742
14	Total—Contract Demand		2,742	0	2,742
15	Elk River Public Utility District	Tullahoma	4,055		4,055
16		Estill Springs	4,450	623	5,073
17		AEDC	1,012		1,012
18		Sewanee	1,260		1,260
19	Total—Contract Demand		10,777	623	11,400
20	City of Jamestown	Jamestown	1,300	100	1,400
21	Total—Contract Demand		1,300	100	1,400
22	City of Lenoir Cioty	Lenoir City	3,453	363	3,816
23	Total—Contract Demand		3,453	363	3,816
24	City of Livingston	Livingston	1,751	110	1,861
25	Total—Contract Demand		1,751	110	1,861
26	City of Loudon	Loudon	3,700		3,700
27		Vonore	300	100	400
28	Total—Contract Demand		4,000	100	4,100
29	Town of Madisonville	Madisonville	1,000	50	1,050
30	Total—Contract Demand		1,000	50	1,050
31	Mt. Pleasant Gas System	Mt. Pleasant #1	1,371	369	1,740

EAST TENNESSEE NATURAL GAS COMPANY PRESENT AND PROPOSED REARRANGEMENT OF MAXIMUM DAILY QUANTITIES (MDQ) BY DELIVERY POINTS AND CHANGES IN CONTRACT DEMANDS—Continued

Line No.	Column (1) Customer	(2) Delivery point	(3) Present (CP86-505) MDQ	(4) Increase (decrease)	(5) Proposed MDQ and contract demand
[illegible]		Mt. Pleasant #2	410	350	760
[illegible]	Total—Contract Demand		1,781	719	2,500
34	City of Rockwood	Rockwood	2,852	100	2,952
35	Total—Contract Demand		2,852	100	2,952
36	City of South Pittsburg	South Pittsburg #1	3,155	.....	3,155
37		South Pittsburg #2	.....	800	[illegible]
[illegible]	Total—Contract Demand		3,155	[illegible]	3,955
[illegible]	City of Sweetwater	Sweetwater	2,680	120	2,800
40	Total—Contract Demand		2,680	120	2,800
41	United Cities Gas Company—Zone I	Columbia West	2,280	65	2,345
42		Columbia North	4,708	(118)	4,590
43		Sportex	200	107	307
44		Lynchburg	1,100	(876)	224
45		Lynchburg Portable	150	(105)	45
46		Motlow	140	(80)	60
47		Maryville/Alcoa	6,360	[illegible]	6,428
[illegible]		Rockford	2,020	(60)	1,960
49		Rockford North	100	[illegible]	106
50		Maryville East	1,200	902	2,102
51		Maryville Port.—South	100	(27)	73
52		Shelbyville	3,620	544	4,164
53	Total—Contract Demand—Zone I		21,978	426	22,404
54	United Cities Gas Company—Zone II	Bristol #1	7,938	(1,988)	5,950
55		Morristown	5,840	205	6,045
[illegible]		Lowland	0	10	10
57		Blountville	882	648	1,530
[illegible]		Johnson City East	5,507	(954)	4,553
59		Johnson City West	3,563	240	3,803
60		Morton	272	258	530
61		Kingsport South	4,850	(299)	4,551
62		Kingsport North	79	46	125
[illegible]		Greeneville	3,701	440	4,141
64		Elizabethton	3,002	1,480	4,482
65		Gray Station	247	(142)	105
66		Tri City Airport	175	(119)	56
67		Miller Park	0	16	16
[illegible]		Boones Creek	0	11	11
69	Total—Contract Demand—Zone II		36,056	(148)	35,908
70	United Cities Gas Company—Zone III	Bristol #2	0	2,021	2,021
71		Pulaski	2,053	281	2,334
72		Wytheville	2,370	(162)	2,208
73		Blacksburg	6,134	(1,407)	4,727
74		Marion	2,185	174	2,359
75		Marion North	300	(39)	261
76		Marion East	300	(236)	64
77		Radford	4,517	(715)	3,802
78		Radford East	[illegible]	108	108
79		Abingdon	1,433	(466)	967
[illegible]		Abingdon West	1,641	463	2,104
81		Abingdon East	400	430	[illegible]
82		Dublin	1,672	(16)	1,656
83		Glade Spring	82	(11)	71
84		Chilhowie	275	(99)	176
85	Total—Contract Demand—Zone III		23,362	326	23,688
[illegible]	Total—Contract Demand United Cities		81,396	604	82,000
87	Jefferson-Cocke County Utility District	Jefferson City	2,684	516	3,200
88		Newport	4,046	0	4,046
[illegible]	Total—Contract Demand		6,730	516	7,246
90	Unicoi County Utility District	Erwin	2,500	500	3,000
91	Total—Contract Demand		2,500	500	3,000
[illegible]	Aluminum Company of America	Alcoa North	10,300	(7,061)	3,239
[illegible]		Alcoa West	1,200	(1,200)	[illegible]
[illegible]		Alcoa South	6,500	8,261	14,761
[illegible]	Total—Contract Demand		18,000	[illegible]	18,000
96	Olin Corporation (R)	Charleston	1,200	400	1,600
97	Total—Contract Demand		1,200	400	1,600
98	Stauffer Chemical Company	Mt. Pleasant	[illegible]	[illegible]	750
[illegible]	Total—Contract Demand		700	50	750
100	Union Carbide Corporation	Columbia	[illegible]	2,500	2,500
101	Total—Contract Demand		[illegible]	2,500	2,500
102	Department of Energy	A Station	700	1,200	1,900
103		B Station	[illegible]	(100)	500
104		C Station	100	50	150
105	Total—Contract Demand		1,400	1,150	2,550
106	AFG Industries, Inc.	Blue Ridge	2,200	(600)	1,600

EAST TENNESSEE NATURAL GAS COMPANY PRESENT AND PROPOSED REARRANGEMENT OF MAXIMUM DAILY QUANTITIES (MDQ) BY DELIVERY POINTS AND CHANGES IN CONTRACT DEMANDS—Continued

	Column (1)	(2)	(3)	(4)	(5)
Line No.	Customer	Delivery point	Present (CP86-505) MDQ	Increase (decrease)	Proposed MDQ and contract demand
107	...	Greenland ...	5,100	[illegible]	5,700
108	Total—Contract Demand ...	...	7,300	0	7,300

[FR Doc. 87-24275 Filed 10-19-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-784-000 and CI87-796-000]

Applications for Limited-Term Abandonment With Pregranted Abandonment and Blanket Limited-Term Certificate with Pregranted Abandonment; Hawthorne Oil and Gas Corp.

October 15, 1987.

Take notice that on July 22, 1987, as supplemented on September 16, 1987, Hawthorne Oil and Gas Corporation (Hawthorne), 1717 St. James Place, Suite 200, Houston, Texas 77056, filed applications pursuant to section 7 of the Natural Gas Act, Part 157, and §§ 2.75 and 2.77 of the Commission's Regulations. Hawthorne, as a subsidiary of, and successor-in-interest to, OXOCO, requests in Docket No. CI87-796-000 a limited-term abandonment for a period of one year of four sales to Arkla Energy Resources, a division of Arkla, Inc. (Arkla). Two sales located in the Mathers Ranch Field, Hamphill County, Texas, were previously made under contracts dated February 26 and July 7, 1970, and are covered under Hawthorne's small producer certificate in Docket No. CS76-1068-003. Hawthorne requests pregranted abandonment authorization for a period of one year in order to sell the involved gas for resale in interstate commerce under its small producer certificate. Interest in two other sales located in the S.W. Mathers Ranch Field, Hemphill County, Texas, made under contracts dated August 9 and August 14, 1972, were attributable to OXOCO, whose interest in these sales is covered under certificate authority issued to MCR Oil Corporation of Texas (MCR) in Docket No. CI73-430 pursuant to the optional certificate procedures under § 2.75 of the Commission's Regulations, on file as MCR's FERC Gas Rate Schedule Nos. 6 and 7. Hawthorne's application in Docket No. CI87-784-000 requests a one-year blanket limited-term certificate with pregranted abandonment to cover its interest in the sales previously made under MCR's certificate in Docket No. CI73-430.

In support of its applications Hawthorne states it has been subject to substantial cutbacks in takes by Arkla and that it is subject to substantially reduced takes without payment. Furthermore, Hawthorne has obtained a temporary release of the gas covered by the subject contracts from Arkla in return for Hawthorne's waiver of Arkla's past take-or-pay liability and in return for Hawthorne's crediting of released gas sold to Arkla's future obligations. Hawthorne therefore requests that its applications be considered on an expedited basis, consistent with procedures established by Order Nos. 436 and 436-A, Docket No. RM85-1-000, at 18 CFR 2.77.[1] Estimated deliverability is 9,673 Mcf/day. The gas is NGPA section 104 optional procedure certificate gas (34%), 104 flowing gas (47%), 104 recompletion gas (3%), 104 post-1974 gas (11%), 104 1973-1974 biennium gas (2%) and section 108 gas (3%).

Since Hawthorne states that it is subject to substantially reduced takes without payment and has requested that its applications be considered on an expedited basis, all as more fully described in the applications, which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for Hawthorne to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24276 Filed 10-19-87; 8:45 am]
BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[Docket No. EL88-1-000]

Filing; Indiana and Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Co.

October 14, 1987

Take notice that on October 5, 1987, Indiana and Michigan Municipal Distributors Association (IMMDA) and the City of Auburn, Indiana (Auburn) tendered for filing pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e, and to Rules 206 and 217 of the Federal Energy Regulatory Commission's (Commisison) Rules of Practice and Procedure, 18 CFR 385.206, 385.217 (1987), a Complaint against Indiana Michigan Power Company (IMP).

IMMDA and Auburn state that, due to changes in circumstances, the rates charged by IMP to IMMDA and Aubuarn, as approved by this Commission in accordance with a Settlement Agreement entered into among IMP and its wholesale customers, 33 FERC ¶ 61,090 (1985) are excessive, unjust, and unreasonable.

A copy of this filing has been served upon all affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211

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and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint are also due on or before November 13, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24277 Filed 10-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-239-000]

Application on Behalf of Producer-Suppliers for Blanket Limited-Term Abandonment and Blanket Limited Term Certificate of Public Convenience and Necessity With Pregranted Abandonment; Northwest Central Pipeline Corp.

October 14, 1987

Take notice that on January 23, 1987, as supplemented on September 14, 1987, Northwest Central Pipline Corporation [1] (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application pursuant to section 7 of the Natural Gas Act, as amended, and § 2.77 and Part 157 of the Commission's Regulations. The application requests on behalf of producer-suppliers selling gas to Applicant under contracts subject to the Commission's sales and abandonment jurisdiction an order (1) authorizing the blanket limited-term abandonment by Applicant's producer-suppliers of certain sales for resale of natural gas in interstate commerce, to the extent such gas is released by agreement between Applicant and its producer-suppliers, and (2) issuing a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce, with pregranted abandonment, of natural gas released by Applicant and for which the requested, blanket limited-term abandonment authorization is granted, all to be effective for a five-year term commencing with the effective date of the authorizations requested under the application.

Applicant states that its application is filed in conjunction with its general rate filing, filed simultaneously with the application, in which Applicant has proposed substantial rate, rare schedule and tariff revisions designed to, *inter alia*, implement nondiscriminatory, open-access transportation consistent with the Commission's Order Nos. 436, *et al.* Applicant states that during contract negotiations with producer-suppliers Applicant may agree to release temporarily gas supplies subject to the Commission's NGA sales and abandonment jurisdiction that are in excess of volumes required by Applicant for its current system requirements in order to allow the producer-suppliers to seek alternative markets for such excess gas. Applicant states that the abandonment and sales authorizations requested in the application are a prerequisite to mutually beneficial contractual modifications between Applicant and its producer-suppliers.

Applicant request that the abandonment authorization be specifically subject to Applicant's right to recall and purchase the released supplies at any time as required in Applicant's reasonable discretion to provide adequate service to its customers. Applicant further states that transportation by Applicant of gas subject to the application would occur under the terms of Applicant's blanket transportation authority or other NGA section 7 authorizations.

Applicant requests that in approving this application the Commission waive its regulations under the NGA as to the establishment and maintenance by producer-suppliers of rate schedules under Part 154 of the Commission's Regulations. Because sales under the blanket certificate requested herein may occur on an interruptible, short-term basis and entail frequent changes with regard to volume, purchaser, delivery points, mix of gas and other considerations, waiver is required to permit implementation of such sales without the need for constant rate schedule filings reflecting the conditions of each individual sale. The blanket sales certificate may be conditioned so that the rates charged in the authorized sales shall be the lesser of the contract price or the applicable maximum lawful price prescribed under the NGPA, including any rate the producer-suppliers have established the right to collect pursuant to Parts 273, 274, or 275 of the Commission's Regulations. Applicant also requests the waiver of § 157.30(b) and § 250.7 of the Commission's Regulations to the extent required to grant the abandonment authorization requested herein.

In addition, waiver is requested to allow automatic collection of the appropriate monthly escalations allowed under Part 271 of the Commission's Regulations including waiver of the requirement that producer-suppliers file blanket affidavits to cover such sales in accordance with § 154.94(h) of the Regulations. Applicant also requests that, to the extent producer-suppliers hereunder qualify for the collection of any applicable allowances under Section 110 of the NGPA, the Commission waive the blanket affidavit and other requirements under § 154.94(k) and Part 271 of the Commission's Regulations.

Applicant previously received authorization similar to that requested herein by order issued February 20, 1987, in Docket Nos. CI86-594-000 and CI86-596-000 (38 FERC ¶ 61,165 (1987)). Such applications were filed pursuant to a Stipulation and Agreement filed by Applicant in Docket Nos. RP86-32, *et al.*, which provided for Applicant's transition to a non-discriminatory, open access transporter pursuant to Order No. 436. In the February 20, 1987, order, the Commission found that Applicant's present and predicted deliverability substantially exceeds its projected market requirements and pipeline capacity. The Commission stated that Applicant's project deliverability was in excess of 288 Bcf/year for each year 1986-1989, and that its recent projection of sales in Docket No. RP86-68, *et al.*, was approximately 269 Bcf. On September 14, 1987, Applicant stated it had reviewed that settlement agreement in Docket Nos. RP86-32, *et al.*, as well as the authorizations issued in Docket Nos. CI86-594-000 and CI86-596-000, and as a result believes that the instant application should be processed and approved.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

[1] Northwest Central states that on January 1, 1987, it changed its name to Williams Natural Gas Company.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24278 Filed 10-19-87; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Nevada Office of Community Services Conservation and Renewable Energy Mutual Assistance Program; Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration/Nevada Office of Community Services Conservation and Renewable Energy Mutual Assistance Program (Program) notice of proposed Cooperative Agreement

SUMMARY: The Department of Energy announces that, pursuant to 10 CFR 600.7(b), eligibility for a cooperative agreement to develop and implement cofunded conservation and renewable energy (C&RE) activities for the State of Nevada (State) has been restricted to the Nevada Office of Community Services (NOCS) as the State Energy Office in support of electrical utilities and other Western Area Power Administration (Western) customers.

ADDRESS: Requests for further information should be submitted to the following address: Mr. Dan Bunch, Conservation Officer, Boulder City Area Office, Western Area Power Administration, P. O. Box 200, Boulder, City, NV 89005, (702) 477-3268.

SUPPLEMENTARY INFORMATION: The Western's C&RE Program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. To meet these ends, Western offers a number of C&RE Program activities to its customers, including educational workshops and seminars, equipment loan programs, and cost sharing of C&RE projects. Joint program sponsorship with State Energy Offices is one of the methods that Western uses to effectively deliver its C&RE activities to customers within its 15-State marketing area. Costs are normally shared on a 50/50 basis.

Western's Boulder City Area Office (BCAO) has cosponsored joint C&RE activities with the NOCS in Nevada since 1982. Programs cosponsored to date include a series entitled Energy Efficient Builder's Seminars, irrigation workshops, and the Nevada Energy Forum. Such joint participation mutually benefits the State of Nevada and the Federal Government through the pooling of resources to provide cost-effective activities in Nevada.

The NOCS is committed to promoting energy efficiency and renewable energy development in Nevada. Its resources, technical ability, and Statewide credibility put it in the best position to manage this cooperative programs.

Solicitation Number: DE-RP65-87WG02333.

Scope of Project: The Western/NOCS C&RE Mutual Assistance Program is designed to allow joint sponsorship of C&RE activities within the State of Nevada by Western and the NOCS. The Program will provide cost-shared funding for the development and implementation of C&RE activities in three general categories: (1) Technology development and transfer, (2) public information and (3) economic analysis of C&RE Projects. Activities funded under this Program may include, but are not limited to: Educational workshops and seminars on energy efficiency and renewable energy; State, regional, and national C&RE conferences; energy efficiency tests and monitoring; C&RE publication development; energy efficiency demonstration and evaluation projects; economic analysis of C&RE projects; and community energy management activities.

Issued in Golden, Colorado, October 7, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87-24255 Filed 10-19-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180745; FRL-3279-4]

Receipt of Application for an Emergency Exemption From Montana To Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received a public health exemption request from the Montana State Department of Livestock (hereinafter referred to as "Applicant") to use strychnine alkaloid (CAS 57-24-0) in egg baits for control of rabid skunks. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption.

DATE: Comments must be received on or before November 4, 1987.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180745" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Room 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m, Monday throught Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a public health exemption for the use of strychnine in eggs to control rabid skunks. Montana has been authorized emergency exemptions for this use for the past 13 years.

In 1972, EPA cancelled the registrations of strychnine products used

for predator control, including the use of strychnine to control skunks (37 FR 5718). Last year's exemption request was, therefore, subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18.

The Administrator has previously determined that substantial new evidence does exist in connnection with the registration request and 1986 emergency exemption request, as published in the **Federal Register** of June 13, 1986 (51 FR 21617). Accordingly, a hearing to reconsider whether to modify the prior cancellation order to permit the use of strychnine for controlling skunks to suppress rabies in areas where rapid animals have been found was held on October 7, 1986, as announced in the **Federal Register** of August 8, 1986 (51 FR 28623).

As a result of the hearing, the Order, suspending the registration of strychnine, sodium cyanide, and sodium fluoroaluminate ("1080") for predator uses, has been modified to permit the registration of strychnine to reduce populations of skunks as a means of suppressing the spread of of rabies to humans and domestic animals.

The Applicant has applied, under section 3 of FIFRA, for registration of strychnine in egg baits to control rabid skunks. The Applicant in conjunction with the State of Wyoming is currently generating the data necessary to support the registration of this use of strychnine.

The Applicant has requested the use of strychnine for the purpose of suppressing local populations of skunks, the main carrier of rabies, thereby reducing the opportunity for exposure of humans, domestic animals, and susceptible wild species to rabies. The Applicant considers the incidence of rabies to be at a level which poses an unacceptable threat to public health.

The proposed control program involves use of strychnine egg baits which contain, 0.035 gram of actual strychnine alkaloid.

Placement of strychnine treated eggs is limited to land within a 5-mile radius of a site where a laboratory-confirmed rabid skunk has been found. The number of strychnine egg baits may not exceed: 1,200 eggs in any treatment area, 150 eggs per any square mile, or two eggs per site. Strychnine egg baits will be placed in such skunk habitats as follows: Skunk dens, holes, garbage dumps, road culverts, junk piles, and under non-occupied buildings. All strychnine egg baits will be stamped with the word "poison" in three locations and will contain green food coloring to warn people of their toxic nature. Baits will be covered at all times and checked no less than once a week. Warnign signs will be posted at all points commonly used for access to the treatment area. Strychnine egg baits will be placed only on land where written permission has been obtained from the landowner. Placement or removal of strychnine egg baits will be under the direct supervision of certified commercial applicators of restricted use pesticides.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes use of a pesticide if such pesticide was the subject of a notice under section 6(b) of FIFRA and was subsequently cancelled and is intended for a use that poses a risk similar to the risk posed by the pesticide which was the subject of the notice. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this public health exemption.

Dated: October 5, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-24213 Filed 10-19-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Community Group, Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Community Group, Inc.*, Jasper, Tennessee; to engage *de novo* through its subsidiary, Community Financial Corporation, Chattanooga, Tennessee, in the business of originating, packaging and servicing Small Business Administration and Farmers Home Administration guaranteed loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Community Banchshares, Inc.*, Chillicothe, Missouri; to engage *de novo* in direct lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by November 10, 1987.

Board of Governors of the Federal Reserve System, October 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24179 Filed 10-19-87; 8:45 am]

BILLING CODE 6210-01-M

First National Hayes Center Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 10, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Hayes Center Corp.*, Hayes Center, Nebraska; to acquire 47.1 percent of the voting shares of American State Bank, McCook, Nebraska.

2. *Security Bancshares, Inc.*, Ness City, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank, Ness City, Kansas. Comments on this application must be received by November 5, 1987.

Board of Governors of the Federal Reserve System, October 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24181 Filed 10-19-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Donald R. LaCamp

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 4, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Donald R. LaCamp*, Concordia, Kansas; to acquire an additional 3.84 percent of the voting shares of Cloud County Bancshares, Inc., Concordia, Kansas, and thereby indirectly acquire Cloud County Bank & Trust, Concordia, Kansas.

Board of Governors of the Federal Reserve System, October 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24180 Filed 10-19-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Social Security Demonstration Project; Exclusion of Certain Support and Maintenance Assistance for Supplemental Security Income Purposes

I hereby determine and announce a demonstration project to exclude certain support and maintenance assistance received by Supplemental Security Income (SSI) claimants. This project is for the period October 1, 1987–March 31, 1988.

Authority

This project is being authorized under the provisions of section 1110 of the Social Security Act (the Act).

For Additional Information Contact

Ms. Judy Rhoades, Office of Supplemental Security Income, Social Security Administration, 3–0–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 965–5656.

Purpose

The Purpose of this demonstration is twofold. First, this demonstration will avoid disruption in the receipt of an individual's SSI benefits due to the expiration of section 1612(b)(13), as amended by section 2639(b) of Pub. L. 98–369, the Deficit Reduction Act of 1984. Section 1612(b)(13) provides that support and maintenance assistance, including certain home energy assistance, which is provided on or after October 1, 1984 and before October 1, 1987, will not be counted as income if it has been certified by a State as both provided on the basis of need and (1) provided in kind by a private nonprofit organization, or (2) provided in cash or in kind by an entity providing home energy whose revenues are derived on a rate-of-return basis regulated by a State or Federal governmental body, a supplier of home heating gas or oil, or a municipal utility providing home energy.

Because this exclusion from income has expired, we would be required to count this assistance, since Congress has not yet extended the exclusion. There is legislation pending to extend the exclusion. When this legislation is enacted, individuals who had their benefits reduced or suspended because of the expiration of the exclusion will have their benefits increased or reinstated. Such a result would be confusing and disruptive to claimants. Also, the elimination and reinstatement of the exclusion would be disruptive to the Social Security Administration in the administration of the SSI program. Therefore, continuation of the exclusion under the project will facilitate the administration of the SSI program.

The second purpose of this demonstration is to test whether increased private sector assistance can stabilize the costs of the SSI program, by reducing the need for general benefit increases or increases in the allowable income and resource limits. Consequently, this project will promote the objectives of title XVI of the Act by testing this hypothesis.

Background

Under the law and regulations prior to May 1, 1983, the effective date of section 404 of Pub. L. 98–21, (the Social Security Amendments of 1983), support and maintenance assistance, other than certain home energy assistance which was excluded under section 128 of Pub. L. 97–377 and section 545(a) of Pub. L. 97–424, provided to an aged, blind, or disabled individual, was counted as income in determining whether the individual was eligible for SSI benefits and the amount of his or her benefits. Section 128, which was effective beginning December 18, 1982, stated that no funds provided under it could be used to reduce or deny SSI payments because of the receipt of certain home energy assistance. Section 128 expired September 30, 1983. Section 545(a) of Pub. L. 97–424 added a new section 1612(b)(13) to the Act to provide that certain home energy assistance not be counted as income for SSI purposes. Section 545(a) was enacted on January

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6, 1983, to be effective February 1, 1983 through June 30, 1985.

Section 404 of Pub. L. 98–21, enacted April 20, 1983 and effective from may 1, 1983 through September 30, 1984, amended section 1612(b)(13) of the Act. Section 2639 of Pub. L. 98–369, enacted July 18, 1984 and effective from October 1, 1984 through September 30, 1987 made the same changes to section 1612 (b)(13) of the Act as did section 404 of Pub. L. 98–21. The provisions of section 1612(b)(13), as amended by section 2639 of Pub. L. 98–396 provided that certain support and maintenance assistance will not be counted as income when determining an individual's eligibility for and the amount of SSI payments. Support and maintenance includes assistance to meet the costs of home energy.

Under this statute and implementing regulations, in order for the exclusion to apply, the support and maintenance assistance must be certified in writing by the apporpriate State agency as both provided on the basis of need and (1) provided in kind by a private nonprofit agency, or (1) furnished in cash or in kind by a supplier of home heating oil or gas, by an entitty providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy. This satutory exclusion expired September 30, 1987.

Demonstration Project Provisions

The following support and maintenance assistance received by SSI claimants on or after October 1, 1987 and before April 1, 1988, will be excluded from income are not considered to be resources for SSI purposes:

Support and maintenance assistance that is certified in writing by the appropriate State agency to be both based on need and (1) provided in kind by a private nonprofit agency; or (2) provided in cash or in kind by (i) a supplier of home heating oil or gas; (ii) a rate-of-return entity providing home energy; or (iii) a municipal utility providing home energy.

The following regulatory sections will continue to apply to this 6-month demonstration project; 20 CFR 416. 1124(c)(10), 416.1157, and 416.1201(a).

The claimant's consent for participating in this demonstration project is needed to satisfy a requirement in section 1110(b) of the Act. Consequently, a claimant's consent providing that the claimant's participation is voluntary and that he or she can revoke participation must be obtained in order for him or her to be eligible under the provisions of this project.

Waiver

To conduct this project, we are waiving section 1612(a)(2)(A) of the Act and 20 CFR 416.102, 416.1104, 416.1120 and 416.1121(h) of the regulations. which require support and maintenance to be counted as unearned income for SSI. We are also waiving section 1611 of the Act and 20 CFR 416.1201 of the regulations to the extend those provisions would otherwise require us to count the assistance as resources.

Paperwork Reduction Act

No provisions of this proposal impose reporting/recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.807—Supplemental Security Income; No. 13.812—Assistance Payment Research)

Approved: October 16, 1987.

Otis R Bowen,

Secretary of Health and Human Services.

[FR Doc. 87–24425 Filed 10–19–87: 8:45 am]

BILLING CODE 4190–11–M

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Behavioral Sciences Research Review Committee, Meeting; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Correction Notice.

SUMMARY: Public notice was given in the **Federal Register** on September 14, 1987, Volume 52, No. 177, on page 34719 that the Mental Health Behavorial Sciences Research Review Committee, NIMH, would meet at the Canterbury Hotel. The notice is being corrected to read as follows:

Place: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814

All other information for this committee remains the same.

Dated: October 16, 1987.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–24365 Filed 10–19–87; 8:45 am]

BILLING CODE 4160–20–M

Health Care Financing Administration

[BERC–41–CN]

Medicare Program; Changes to the DRG Classification System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: **Federal Register** document 87–19989, beginning on page 33143 of the issue of Tuesday, September 1, 1987 specified changes to the Medicare DRG classification system. This document corrects errors in the September 1, 1987 publication.

FOR FURTHER INFORMATION CONTACT: Betty Burrier, (301) 594–9773.

Corrections

1. On page 33157, in column 1, in the last paragraph listing the surgical hierarchy for MDC 8, the seventh line from the bottom of the page "Local Excision and Removal of Interal" is changed to "Local Excision and Removal of Internal".

2. On page 33161, in Table II, for procedure code 37.79 the DRG column, reading "117, 442, and 443", is changed to "117, 269, 270, 442 and 443."

(Catalog of Federal Domestic Assistance Program No. 13.774), Medicare—Supplementary Medical Assistance Program)

Dated: October 13, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87–24249 Filed 10–19–87; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Notice of Establishment and Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776], and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, NIH, announces the establishment of the Literature Selection Technical Review Committee, effective November 1, 1987, and the reestablishment, effective November 1, 1987, of the following committees:

Behavioral and Neurosciences Study Section
Biochemical Endocrinology Study Section
Chemical Pathology Study Section

Clinical Sciences Study Section
Mammalian Genetics Study Section
Microbial Physiology and Genetics Study Section
Neurological Sciences Study Section
Pathobiochemistry Study Section
Social Sciences and Population Study Section
Surgery and Bioengineering Study Section

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: October 14, 1987.

William F. Raub,

Acting Director, NIH

[FR Doc. 87-24312 Filed 10-16-87; 12:50 pm]

BILLING CODE 4140-01-M

Consensus Development Conference on Magnetic Resonance Imaging

Notice is hereby given of the NIH Consensus Development Conference on "Magnetic Resonance Imaging," Sponsored by the Warren Grant Magnuson Clinical Center and the Office of Medical Applications of Research. The Conference will be held October 26-28, 1987, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

MRI provides images of the internal structure of the body without the potential harm of radiation exposure or the need for contrast agents or other invasive procedures. MRI provides a number of advantages over other imaging methods, including increased tissue contrast and the ability to image of different planes.

The purpose of this conference is to establish the efficacy of MRI, determine clinical applications of the technology, and compare it to other imaging modalities, such as computed tomography (CT) and ultrasound.

Clinical areas of application to be explored include the head, neck, and spine—for which MRI is commonly recognized as the modality of choice—as well as the heart, vascular system, abdomen, pelvis, and musculoskeletal system. The conference will also address biological risks and future applications of the technology.

The conference will bring together biomedical investigators, clinicians, radiologists, other health professionals, and members of the public. Following a day and half of presentations by medical experts and audience discussion, a consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- Are there contraindications to or risk of MRI?
- What are the technological advantages and limitations (disadvantages) of MRI?
- What are the clinical indications for MRI, and how does it compare to other diagnostic modalities?
- What are the directions for future research in MRI?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Sharon Feldman, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-6555.

Dated: October 14, 1987.

William F. Raub,

Acting Director, NIH.

[FR Doc. 87-24313 Filed 10-16-87; 12:50 pm]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-87-1748]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Propcsed Information Collection to OMB

Proposal: Public Housing Homeownership Demonstration Assessment.

Office: Policy Development and Research.

Description of the Need For the Information and Its Proposed Use: The information will be used to evaluate HUD's Public Housing Homeownership Demonstration program. The information is needed to learn the impacts of this demonstration on those involved and whether the purposes of the demonstration program are being achieved.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Response: Single-Time.

Estimated Burden Hours: 572.

Status: New.

Contact: Earl W. Lindviet, (202) 755-6450 or John Allison, OMB (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

VOL 52 ISS 202 OCT 20 1987 UMI

Dated: October 2, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-24279 Filed 10-19-87; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-87-1735; FR 2405]

RECLAIM Rehabilitation Demonstration

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of RECLAIM Rehabilitation Demonstration.

SUMMARY: HUD is announcing a project to help America's cities make the rehabilitation of public and private-sector housing and infrastructure more efficient and cost effective. The project is called RECLAIM (Rehab Effectively through Comprehensive Local Action and Innovative Methods). It is intended to assist cities to make effective use of a number of innovative rehabilitation concepts which can help to streamline the rehabilitation process.

Among the concepts being examined in this effort are new techniques such as the use of geographic information systems and computer-aided design, drafting, and mapping to improve strategic planning for area-wide rehabilitation; review and modification of restrictive codes and other regulatory items; the use of innovative and cost saving rehabilitation technologies; and the development of new forms of creative financing for rehabilitation.

The results of these research efforts will be used to develop a catalog of innovative techniques and processes to assist cities across the country to adapt the various approaches to their situation and problems.

DATE: Comments are due on or before November 19, 1987.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and title.

FOR FURTHER INFORMATION CONTACT: William A. Wisner, Office of Policy Development and Research, 451 Seventh Street SW., Room 8228, Washington, DC 20410. Phone (202) 755-4370 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The objective of RECLAIM is to investigate ways to reduce substantially the costs of building, neighborhood, and infrastructure rehabilitation through local public/private cooperation, technical innovation, citywide strategic planning, and innovative financing approaches.

In developing the RECLAIM concept, over the last year members of the HUD staff have met with mayors and other city officials and private-sector individuals in nine cities to discuss innovative approaches that they have used and others that they believe could be effective in carrying out rehabilitation programs. These cities include: Chattanooga, TN; Charleston, SC; Charlotte, NC; Columbus, OH; Detroit, MI; Indianapolis, IN; Providence, RI; Toledo, OH; and Trenton, NJ. These discussions have assisted HUD in defining the concepts to be explored in RECLAIM. Among the activities discussed are rehabilitation areas where HUD might provide advice and technical assistance. Examples include: (1) Identifying costly building codes that cities can modify; (2) using strategic planning techniques to solve substandard housing problems; and (3) providing technical information on innovative rehabilitation methods and materials. Other demonstration projects may evolve from the initial planning for this project.

Cities participating in RECLAIM must have a commitment from the mayor (or highest elected official) to providing full city support for the project, must involve effective participation of private-sector developer and financial interests, must have city neighborhoods and housing stock which are good candidates for rehabilitation efforts, and must display a willingness to implement innovative procedural, technical, and financial mechanisms.

As a condition of participation in the project, cities will be expected to contribute their own resources as required to carry out to selected activities. No special funding will be provided to participating cities.

HUD's contribution will be through assistance in identifying potential target areas of RECLAIM in each city, in determining the focus of the city strategy, and in the transfer of information from one city to another with similar problems. HUD also will help to identify appropriate existing departmental programs that could provide support to the city activities.

The Department's conversations with cities in regard to the concept of this Demonstration were primarily to assess their rehabilitation needs and to determine how HUD might assist in achieving them. Some or all of these cities may ultimately participate in this Demonstration. HUD will not enter into a memorandum of understanding or other agreement until at least thirty (30) days after the period provided for public comments has expired and all comments received have been fully considered. In the event that the Department's consideration of the comments gives rise to a significant change in any aspect of the RECLAIM activity, notice of the change will be published in the **Federal Register.** (If appropriate, the commencement of activities may be delayed as a result of comments, the activities may be modified, or additional public comment may be sought.)

The Catalog of Federal Domestic Assistance program number is: 14.506, Office of Policy Development and Research, General Research and Technology Activity.

Authority: Title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1).

Dated: October 13, 1987.

June Q. Koch,

Assistant Secretary for Policy Development and Research.

[FR Doc. 87-24280 Filed 10-19-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chpater 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: A Study of Recall/Reference Period Bias in National Surveys of Fishing and Hunting

Abstract: This study will provide an empirical basis for evaluation of possible recall bias in National Surveys of Fishing and Hunting

resulting from use of a one-year recall period. Results will be used to evaluate possible methodologial changes in future surveys. Respondents are individuals who fish and hunt.

Frequency: On occasion

Description of Respondents: Individuals and households

Annual Responses: 19,500

Annual Burden Hours: 2,353

Service Clearance Officer: James E. Pinkerton, 202–653–7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: September 24, 1987.

Phillip H. Dawson,

Acting Assistant Director—Policy, Budget, and Administration.

[FR Doc. 87–24206 Filed 10–19–87; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Appalachian National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Appalachian National Scenic Trail Advisory Council will be held in Freeport, Maine, on November 6, from 8:30 a.m. to 4:00 p.m. The agenda of the meeting will include a review of current Appalachian Trail protection and management issues.

The meeting will be open to the public, although space will be limited. Persons will be accommodated on a first-come, first-served basis. Any person may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements may contact Charles R. Rinaldi, Acting Project Manager, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425, at Area Code (304) 535–2346.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the above address. Copies of the minutes will also be available from Room 3120, Interior Building, 18th and C Streets, NW., Washington, DC 20240, and at the headquarters of the Appalachian Trail Conference, Washington Street, Harpers Ferry, West Virginia 25425.

Dated: October 8, 1987.

Charles R. Rinaldi,

Acting Project Manager.

[FR Doc. 87–24221 Filed 10–19–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 10, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evauation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by November 4, 1987.

Carol D. Shull,

Chief of Registration, National Register.

AMERICAN SOMOA

Western Division

A'a Village Site (AS34–33)
Maloata Village Site (AS34–34)
Tataga-Matau Fortified Quarry Complex (AS–34–10)

Eastern Division

Lepua, *Church of the Immaculate Coception,* Bounded by main rd, on S & the presbytery on N *Tulauta*
Fagatele Bay Site

FLORIDA

Collier County

Naples vicinity, *Keewaydin Club,* N end of Key Island

Santa Rosa County

Bagdad, *Bagdad Village Historic District,* Roughly bounded by Main, Water, & Oak Sts., Cobb & Woodville Rds., Cemetary, Pooley & School Sts.
Milton, *Milton Historic District,* US 90 & Blackwater River bounded by Berryhill, Willing, Hill, Canal, Margaret, & Susan Sts.

GEORGIA

Clarke County

Athens, *Reese Street Historic District,* Roughly bounded by Meigs, Finley, Broad, & Harris Sts.

MICHIGAN

Huron County

Port Hope, *First Methodist Episcopal Church (Port Hope MPS),* 451 Second St.
Port Hope, *Herman House (Port Hope MPS),* 405 Main St.
Port Hope, *Leuty, Isaac, House (Port Hope MPS),* 955 School St.
Port Hope, *Masonic Temple (Port Hope MPS),* 425 Main St.
Port Hope, *Melligan Store-Agriculture Hall (Port Hope MPS),* 432 Main St.
Port Hope, *Schlichting Building (Port Hope MPS),* 443 Main St.
Port Hope, *St. John's Lutheran Church (Port Hope MPS),* 527 Second St.
Port Hope, *Stafford, Frederick H, and Elizabeth, House (Port Hope MPS),* 489 Main St.
Port Hope, *Stafford, W. R. Flour Mill and Elevator (Port Hope MPS),* 310 Huron St.
Port Hope, *Stafford, W. R. Planning Mill Site (Port Hope MPS),* Huron St.
Port Hope, *Stafford, W. R. Saw Mill Site (Port Hope MPS),* Huron St.
Port Hope, *Stafford, W. R. Worker's House (Port Hope MPS),* 022 Cedar St.

MISSISSIPPI

Claiborne County

Port Gibson, *Sacred Heart Roman Catholic Church,* Grant Gulf Military Monument Park

Panola County

Como, *Holy Innocents' Episcopal Church,* Jct. of Main & Craig St.

OHIO

Hamilton County

Cincinnati, *Gerrard, Stephen A., Mansion,* 748 Betula Ave.

Highland County

Hillsboro, *Scott, William, House,* 338 W. Main St.

Lorain County

Amherst, *Central School,* 474 Church St.

Seneca County

Attica, *Omar Chapel,* OH 408

Wyandot County

Carey, *West End Elementary School,* 200 West St.

PENNSYLVANIA

Allegheny County

Castle Shannon, *Lindon Grove,* Grove Rd. at Library Rd. & Willow Ave.
Pittsburgh, *Eberhardt and Ober Brewery,* Troy Hill Rd. & Vinial St.
Pittsburgh, *Penn-Liberty Historic District,* Roughly bounded by French & Tenth Sts., Liberty & Penn Aves., & Nineth St.

Berks County

Reading, *Wanner, Peter, Mansion,* 1401 Walnut St.

Bucks County

Bristol, *Jefferson Land Association Historic District,* Bounded by Spring St., Jefferson Ave., Garden & Mansion Sts. & Beaver Dam Rd.
Langhorne (also in Bristol vicinity), *Langhorne Historic District,* Summit &

Marshall Aves., Pine St., Richardson AVe., & Green St.

Chester County

Kennett Square vicinity, *Wickersham, Gideon, Farmstead,* 750 Northbrook Rd.

Delaware County

Chester, *Delaware County National Bank,* 1 W. Third St.
Landsdowne, *Landsdowne Park Historic District,* W. Greenwood, Owen, W. Baltimore, Windermere, & W. Stratford Aves.
Radnor, *Wayne Hotel,* 139 E. Lancaster Ave.

Franklin County

Fort Loudon vicinity, *Donaldson, The Widow, Place,* 177 Bear Valley Rd.

Lackawanna County

Scranton, *Ad-Lin Building,* 600 Lindon St.

Philadelphia County

Philadelphia, *Physicians and Dentists Building,* 1831—1833 Chestnut St.
Philadelphia, *Seymour, Edward B., House,* 260 W. Johnson St.

RHODE ISLAND

Kent County

East Greenwich, *Weaver, Clement—Daniel Howland House,* 125 Howland Rd.

SOUTH CAROLINA

Anderson County

Anderson, *Anderson Downtown Historic District (Boundary Increase),* 402 N. Main St.
Belton, *Belton Standpipe,* McGee St.

Beaufort County

Pritchardville vicinity, *St. Luke's Church,* SC 170

Greenville County

Pelham Mills Site (38GR165)

Lexington County

Lexington, *Gunter—Summers House (Lexington County MRA),* 841 Center St.

TENNESSEE

Bedford County

Wartrace, *Sims, John Green, House,* Normandy Rd.

VIRGINIA

Hanover County

Studley vicinity, *Pine Slash,* VA 643

WASHINGTON

Clallam County

Port Angeles, *Blue Mountain School,* Blue Mountain Rd.
Port Angeles, *Paris, Joseph, House,* 101 E. Fifth St.
Port Angeles, *St. Andrew's Episcopal Church,* 206 S. Peabody St.

Skagit County

Anacortes, *California Fruit Store,* 909 Third St.
Anacortes, *Curtis Wharf,* Jct. of O Ave. & Second St.
Anacortes, *Great Northern Depot,* R Avenue & Seventh St.
Anacortes, *Marine Supply and Hardware Complex,* 202—218 Commercial Ave. & 1009 Second St.
Anacortes, *Semar Block,* 501 Q Ave.
Mt. Vernon, *Lincoln Theater and Commercial Block,* 301—329 Kincaid St. & 710—740 First St.

[FR Doc. 87-24230 Filed 10-19-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser, (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Revision
Bureau/Office: Bureau of Accounts
Title of Form: Quarterly Report of Results of Operation
OMB Form No.: 3120-0002
Agency Form No.: QFR
Frequency: Quarterly
Respondents: Class I and Class II Motor Carriers of Property
No. of Respondents: 1,101
Total Burden Hrs.: 18,717
Brief Description of the need & proposed use: Data is used to assess industry growth, sudden changes in carriers financial stability and to identify changes and trends that may affect the National Transportation Industry.

Type of Clearance: Reinstatement
Bureau/Office: Bureau of Accounts
Title of Form: Annual Report of Class I and Class II Motor Carriers of Property
OMB Form No.: 3120-0032
Agency Form No.: M
Frequency: Annually
Respondents: Class I and Class II Motor Carriers of Property
No. of Respondents: 2,183
Total Burden Hrs.: 100,418
Brief Description of the need & proposed use: Data is used to assess industry growth, sudden changes in carriers financial stability and evaluating proposals for changes in ownership, control or merger of transportation companies.

Type of Clearance: Reinstatement
Bureau/Office: Bureau of Accounts
Title of Form: Annual Report of Class I and Class II Motor Carriers of Household Goods
OMB Form No.: 3120-0033
Agency Form No.: M-H
Frequency: Annually
Respondents: Class I and Class II Motor Carriers of Household Goods
No. of Respondents: 154
Total Burden Hrs.: 5,390
Brief Description of the need & proposed use: Data is used to assess industry growth, sudden changes in carriers financial stability and to identify changes and trends that may affect the National Transportation Industry.

Type of Clearance: Reinstatement
Bureau/Office: Bureau of Accounts
Title of Form: Uniform System of Accounts—Motor Carriers of Property
OMB Form No.: 3120-0106
Agency Form No.: N/A
Frequency: Quarterly/Annually
Respondents: Motor Carriers of Property
No. of Respondents: 2,337
Total Burden Hrs.: 329,517
Brief Description of the need & proposed use: Data is used to assess financial, operating, and equipment transaction records of motor carriers of property.

Noreta R. McGee,
Secretary.

[FR Doc. 87-24225 Filed 10-19-87; 8:45 pm]

BILLING CODE 7035-01-M

Motor Passenger Carriers; Summary Grant Notice for Application; DeCamp Holdings, Inc., et al.

MC-F-18682, filed September 14, 1987, DeCamp Holdings, Inc. (Holdings) (101 Greenwood Ave., Montclair, NJ 07042)—Control—West Hunterdon Transit, Inc. (WHT, Inc.), DeCamp Bus Lines (DeCamp Lines), and DeCamp Transit, Inc. (DeCamp Transit) (all of the same address). Representative: Edward F. Bowes, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068. Holdings (a non-carrier) seeks approval for its control of WHT, Inc. (a non-carrier). The transaction arises as a result of the purchase by WHT, Inc. of the operating authority of West Hunterdon Transit Co., Inc. (WHT Co., Inc.) (MC-123473), a motor carrier of passengers. Holdings, which is controlled by members of the DeCamp family, also controls motor passenger carriers DeCamp Bus Lines (MC-109312) and DeCamp Transit (MC-170393). That common control was approved in MC-F-15630. A related

application has been filed in MC–F–18681 for approval of the purchase by WHT, Inc. of the operating authority of WHT Co., Inc.

Decided: October 13, 1987.

By the Commission, Motor Carrier Board, Members, Hartley, Metz, and Thomas.

Noreta R. McGee,

Secretary.

[FR Doc. 87–24226 Filed 10–19–87; 8:45 am]

BILLING CODE 7035–01–M

Motor Passenger Carriers; Summary Grant Notice for Application; West Hunterdon Transit, Inc., et al.

MC–F–18681, filed September 14, 1987. West Hunterdon Transit, Inc., (WHT, Inc.) (101 Greenwood Ave., Montclair, NJ 07042)—Purchase—West Hunterdon Transit Co., Inc. (WHT Co., Inc.) (Routes 202 and 31 South, Flemington, NJ 08822). Representative: Edward F. Bowes, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068. WHT, Inc. (a non-carrier) seeks authority to purchase all of the authority of WHT Co., Inc. (MC–123473), and certain other assets. WHT, Co. Inc. is controlled by Jeanette S. Dilley. WHT, Inc. is controlled by DeCamp Holdings, Inc. (Holdings) (a non-carrier), that in turn is controlled by members of the DeCamp family. Holdings also controls motor passenger carriers DeCamp Bus Lines (DeCamp Lines) (MC–109312) and DeCamp Transit (MC–170393). That common control was approved in MC–F–15630. The operating rights of WHT Co., Inc. to be purchased by WHT, Inc. include nationwide special and charter operations authority, regular-route passenger authority between described points in Pennsylvania, New Jersey, and New York, and intrastate authority issued by the New Jersey Department of Transportation in Dockets 84–156 and 84–157, and Charter No. 398C. New Jersey intrastate authority in Charter No. 388C will be transferred to DeCamp Transit. DeCamp holds nationwide charter and special operations authority, and regular-route authority between described points in New York and New Jersey. It also holds New Jersey intrastate authority. DeCamp Transit holds nationwide charter and special operations authority. A related application has been filed in MC–F–18682 for approval of the control by Holdings of WHT, Inc., DeCamp Lines, and DeCamp Transit. In addition, WHT, Inc. has been granted temporary authority to lease the operating rights and other assets of WHT Co., Inc.

Decided: October 13, 1987.

By the Commission, Motor Carrier Board, Members, Hartley, Thomas, and Metz.

Noreta R. McGee,

Secretary.

[FR Doc. 87–24227 Filed 10–19–87; 8:45am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 215X)]

CSX Transportation, Inc.; Abandonment in Hagerstown, Washington County, MD; Exemption

CSX Transportation, Inc. has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 0.53-mile line of railroad between milepost 23.35 and milepost 23.88 in Hagerstown, Washington County, MD.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 19, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 30, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 9, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 8, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23825 Filed 10–19–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: November 13, 1987, 9:30 a.m. Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565, Signed at Washington, DC this 14th day of October 1987.

Christopher Hankin,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 87–24246 Filed 10–19–87; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Marathon Oil Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Marathon Oil Company, TA–W–19,032 Domestic Exploration Department, Houston, Texas; and TA–W–19,032A Domestic Exploration Department, Rocky Mountain Region, Casper, Wyoming.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 26, 1987

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applicable to all workers of Marathon Oil Company's Domestic Exploration Department in Houston, Texas. The Certification was published in the **Federal Register** on March 24, 1987 (52 FR 9364).

Based on new information furnished by the company, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information from the company revealed production and sales declines in 1986 compared to 1985 in the Rocky Mountain Region (formerly the Casper Division) of the Marathon Oil Company, Casper, Wyoming. Worker separations began in February, 1986. The Marathon Petroleum Company, a wholly-owned subsidiary of Marathon Oil Company, increased its crude oil imports in 1986 compared with 1985.

The intent of the certification is to cover all workers of Marathon Oil Company's Domestic Exploration Departments in Houston, Texas and Casper, Wyoming. The amended notice applicable to TA–W–19,032 is hereby issued as follows:

All workers of Marathon Oil Company, Domestic Exploration Department, Houston, Texas and Casper, Wyoming who became totally or partially separated from employment on or after January 13, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th Day of October, 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87–24244 Filed 10–19–87; 8:45 pm]

BILLING CODE 4510–30–M

Santa Fe Energy Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Santa Fe Energy Company; Midland, Texas, TA–W–17,731; Amarillo, Texas, TA–W–17,731A; Houston, Texas, TA–W–17,731B; Tulsa, Oklahoma, TA–W–17,731C.

According to section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on November 7, 1986 to workers and former workers of Santa Fe Energy Company, Midland, Texas. The Notice of Certification was published in the **Federal Register** on November 28, 1986 (51 FR 43099).

Because of inquiries from the Texas Employment Commission and from former production workers in other locations of the Santa Fe Energy Company who claimed that their unemployment was related directly to the increase of imported crude oil, the Department reviewed the findings on which its determination was based. The Department also obtained new evidence on production and employment from the company which supports the expansion of the original certification to other company locations.

Since the certification of the Midland, Texas workers, Santa Fe Energy workers in Denver, Colorado (TA–W–19,604) and Santa Fe Springs, California (TA–W–19,605) have become certified for adjustment assistance.

Further, additional findings show a substantial decrease in the production of crude oil, in barrels, in 1986 compared to 1985 in the Mid-Continent District, headquartered in Tulsa, Oklahoma and the Gulf Coast District headquartered in Houston, Texas. Company officials indicated that the separation of workers in November, 1985 at corporate offices in Amarillo and Houston, Texas was caused by a reduced demand for their services from Midland, Texas, and Santa Fe Springs, California. The Midland and Santa Fe Springs facilities accounted for a substantial reduction in activity at the Amarillo and Houston, Texas corporate offices.

Based on these findings the Department is amending the Midland, Texas certification to include all workers of the Amarillo, Texas and Houston, Texas corporate offices and all workers in the Mid-Continent and Gulf Coast Districts headquartered in Tulsa, Oklahoma and Houston, Texas, respectively, as eligible to apply for adjustment assistance.

The amended certification for TA–W–17,731 is hereby issued as follows:

All workers of the Santa Fe Energy Company, Midland, Texas who became totally or partially separated from employment on or after July 13, 1985 and all workers of the Santa Fe Energy Company, Amarillo, Texas, Houston, Texas and Tulsa, Oklahoma who became totally or partially separated from employment on or after November 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th Day of October, 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87–24245 Filed 10–19–87; 8:45 am]

BILLING CODE 4510–30–M

Office of Federal Contract Compliance Programs

Bruce Church, Inc.; Reinstatement

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Reinstatement, Bruce Church, Inc.

SUMMARY: This notice advises that Bruce Church, Inc., has been reinstated as an eligible bidder on Federal contracts and subcontracts.

FOR FURTHER INFORMATION CONTACT: Jerry D. Blakemore, Director, Office of Federal Contract Compliance Programs. U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210 (202–523–9475).

SUPPLEMENTARY INFORMATION: Bruce Church, Inc., Salinas, California, is, as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed: October 13, 1987, Washington, DC.

Jerry D. Blakemore,

Director.

[FR Doc. 87–24247 Filed 10–19–87; 8:45 pm]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[V–84–4]

Interstate Lead Company, Inc.; Application for an Extension of Temporary Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of location of hearing on application for an extension of temporary variance.

SUMMARY: In the August 14, 1987 **Federal Register** notice (52 FR 30463), OSHA announced that a hearing will be held in Birmingham, Alabama on the Interstate Lead Company, Inc. (ILCO) application for an extention of its temporary variance from the final medical removal trigger level under the Standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)). This notice provides the time, date, specific location of the hearing, and the name and address of the Administrative Law Judge presiding at the hearing.

DATE: The hearing will begin at 9:30 a.m. on Tuesday, December 1, 1987.

ADDRESSES: The hearing will be held at: Southeastern Program Service Center, Birmingham Room, 2001—12th Avenue North, Birmingham, Alabama 35285.

The name and address of the Administrative Law Judge is: Quentin P. McColgin, Office of Administrative Law Judges, Heritage Plaza, Suite 530, 111 Veterans Memorial Boulevard, Metairie, Louisiana 70005.

Authority: This notice was prepared under the direction of Nahum Litt, Chief Administrative Law Judge.

Signed at Washington, DC, this 14th day of October 1987.

Nahum Litt,

Chief Administrative Law Judge.

[FR Doc. 87-24248 Filed 10-19-87; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Panel Meetings

AGENCY: National Endowment for the Humanities; NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* November 2-3, 1987.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications for the Public Humanities Projects program, submitted to the Division of General Programs, for projects beginning after September 1987.

2. *Date:* November 2-3, 1987.
Time: 7:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for the Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1988.

3. *Date:* November 5-6, 1987.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications for the Humanities Projects in Libraries program, submitted to the Division of General Programs, for projects beginning after September 1987.

4. *Date:* November 5-6, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the Higher Education—Exemplary Projects, submitted to the Division of Education Programs, for projects beginning after April 1, 1988.

5. *Date:* November 9-10, 1987.
Time: 7:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for the Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1988.

6. *Date:* November 16-17, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Higher Education—Central Disciplines, submitted to the Division of Education Programs, for projects beginning after April 1, 1988.

7. *Date:* November 17-18, 1987.
Time: 7:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for the Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1988.

8. *Date:* November 19-20, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for the Higher Education—Central Disciplines, submitted to the Division of Education Programs, for projects beginning after October 1, 1988.

9. *Date:* November 9, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Conferences, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.

2. *Date:* November 6, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for the Conferences, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 87-24212 Filed 10-19-87; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co., Diablo Canyon Nuclear Power Plant; Supplement to Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) has issued a Supplment to its original Enviromental Assessment and Finding of No Significant Impact issued on May 21, 1986 and published in the **Federal Register** on May 29, 1986 (51 FR 19430) regarding proposed amendments to the operating licenses authorizing modifications to the Diablo Canyon spent fuel pools. The modifications would increase the capacity of each pool from 270 fuel assemblies to 1324 fuel assemblies.

Identification of Proposed Action: The proposed action is an amendment to the operating licenses for Diablo Canyon Units 1 and 2 to authorize increased storage capacity of spent fuel by the installation of storage racks with closer spacing. The Supplement addresses the environmental impacts of conducting the conversion to the new spent fuel storage racks with spent fuel now stored in each spent fuel pool, which now are full of borated water ("wet reracking"). The original environmental assessment did not address this matter since the conversion was originally planned before the first refueling of each unit and therefore could be performed in dry empty spent fuel pools.

In addition, the supplement explains how the Final Generic Environmental Impact Statement on Handling and Storate of Spent Light Water Power Reactor Fuel (NUREG-0575, August 1979) was relied upon in the staff's

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original site-specific environmental assessment. The supplement also briefly discusses severe beyond-design-basis accidents. Both of these discussions are in response to comments made by the U.S. Court of Appeals for the Ninth Circuit in *San Luis Obispo Mothers for Peace and the Sierra Club vs. NRC*, 799 F.2d 1268 (9th Cir. 1986).

Summary of Environmental Assessment: With respect to the matters discussed above, non-radiological environmental impacts due to the "wet reracking" are the same as those due to "dry" reracking, i.e., there are no additional environmental impacts due to this change, and the impacts are insignificant. As for radiological impacts, the consequences of fuel damage during the wet reracking are enveloped by the standard fuel handling accident previously evaulated. The wet reracking would generate additional contaminated waste, but its disposal would not create a significant radiological impact on the environment. The previous analyses of six alternatives is not impacted by the change to wet reracking; the alternatives considered continue to be inferior to reracking.

The supplement confirms the continued validity of the generic environmental impact statement and its site-specific applicability to recent environmental assessments at Surry, Robinson, and Diablo Canyon.

Beyond-design-basis accidents, such as a criticality accident and a zircalloy cladding fire caused by overheading due to a loss of pool water caused by pool failure, are very low probability accidents and are not viewed as reasonably foreseeable events. Therefore, further discussion of their impacts is not required or presented.

Finding of No Significant Impact: The Commission has reviewed the proposed changes and other matters discussed above relative to the requirements set forth in 10 CFR Part 51. Based upon the supplement to the environmental assessment, the Commission continues to conclude that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission reaffirms its determination, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see (1) The Environmental Assessment and Finding of No Significant Impact dated May 21, 1987 and related Notice published in the **Federal Register** on May 29, 1986 (51 FR 19430) and references cited therein, and (2) Supplement to the Safety Evaluation and the Environmental Assessment dated October 15, 1987 and references cited therein.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Document and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 15th day of October, 1987.

For the Nuclear Regulatory Commission.

Charles M. Trammel,

Project Manager, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 87-24348 Filed 10-19-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., Duane Arnold Energy Center; Exemption

I

The Iowa Electric Light and Power Company (the licensee) is the holder of Facility Operating License No. DPR-49 which authorizes operation of Duane Arnold Energy Center (DAEC/the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Linn County, Iowa.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of the subsections, III.G, is the subject of the licensee's exemption requests.

Section III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

c. Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

Subsection III.G.3 of Appendix R requires that where Subsection III.G.2 cannot be met, alternative or dedicated shutdown capability should be provided. Also, for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system shall be installed in the area, room, or zone under consideration.

By letter dated September 28, 1984, the licensee requested exemptions from Subsection III.G.2 of Appendix R. By letters dated October 31, 1984, October 21, 1986 and April 3, 1987, the licensee provided additional information regarding the exemption request. In the April 3, 1987 letter, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (see 50 FR 50764). They combined the fire zones into separate categories, described the exemption request in each category and then presented the special circumstances for each category as follows:

Fire Zones: Water tight unlabeled doors between Fire Zones 1-D and 2-B (watertight door No. 203) and 1-D and 1-A (watertight door No. 202).

Description of Exemption Request: These doors are required to be both watertight and 3 hour rated. Underwriters Laboratories (UL) approved the doors as 3 hour rated if gasket material is not used. However, without the gaskets the doors are not watertight. Although there is no known gasket material which is 3 hour rated, Iowa Electric replaced the gasket material with gaskets made of Ferratex #8201 material which is used in U.S Naval scuttles, doors and hatches located in missile blast areas and also on fume-tight doors in fire bulkheads.

Special Circumstances of 10 CFR 50.12: Iowa Electric believes that both special circumstances 10 CFR 50.12(a)(2)(ii) and (vi) apply to the requested exemption. Use of Ferratex ¢8201 gaskets makes the doors equivalent to 3 hour rated doors and literal compliance with that rating is not necessary to achieve the underlying purpose of the rule

(10 CFR 50.12(a)(2)(ii)). Furthermore, the licensee has made a good faith effort to locate a 3 hour rated gasket, but such material has not been developed (10 CFR 50.12(a)(2)(vi)).

Fire Zones: 1–C to 2–A/2–B; 1–D to 2–A/2–B; 2–A/2–B to 3–A/3–B, 3–C and 3–D; 2–D to 3–A/3–B; 3–A/3–B to 4–A/4–B; 7–E to 8–F, 8–G, 8–H and 8–J; 10–A to 11–A; 10–B to 11–A; 10–D to 11–A; 11–A to 12–A; 16–A/16–B to 16–B/16–A; 16–F to 16–A and 16–B; 17–A/17–B to 17–B/17–A; 17–C/17–D to 17–D/17–C.

Description of Exemption Request: Exemptions from the requirement to protect structural steel forming part of or supporting required fire barriers (exemption from Section III.G.2.a to 10 CFR Part 50, Appendix R) were requested for the fire zones identified above.

Special Circumstances of 10 CFR 50.12: Iowa Electric has demonstrated by analysis in the referenced letter that the peak temperature of the structural steel would not exceed the critical temperature of 1100 degrees F when exposed to fires postulated in the DAEC Fire Hazards Analysis. Therefore, protection of the structural steel is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)).

Fire Zones: Open hatch between 3–B and 4–B (Fire Zone 3–B).

Description of Exemption Request: An exemption was requested from the requirement (exemption from Section III.G.2.a to 10 CFR Part 50, Appendix R) to provide a rated fire barrier at the hatch between Fire Zones 3–B and 4–B to separate redundant safe shutdown equipment.

Special Circumstances of 10 CFR 50.12: A rated fire barrier is not needed to achieve the underlying purpose of the rule because of the existence of deluge and partial zone suppression systems, low combustible loading and combustible distribution (10 CFR 50.12(a)(2)(ii)).

Fire Zones: 1–A, 1–C, 2–D, 3–A, 3–B, 4–A, 7–A, 7–C.

Description of Exemption Requests: Exemptions were requested for fire dampers located between Fire Zones 1–A and 1–C, 7–A and 7–C, 3–B and 4–A. Because of congestion and construction tolerances, the dampers cannot be installed totally "in accordance with the conditions of their listing and the manufacturer's installation instructions" as required by NFPA 90A, Article 3–3.7.2.1.

Exemptions were also requested from the requirements of Section III.G.2.a (also Section III.G.2.b for Fire Zone 1–A) of 10 CFR Part 50, Appendix R. The exemption request proposed the use of the flexible wrap manufactured by B & B insulators under the trade name "Hemyc". The use of the flexible "Hemyc" material provides protection equivalent to a complete 3 hour fire barrier.

Special Circumstances of 10 CFR 50.12: The ability of the fire barriers and fire dampers to function will be unimpaired by their installation. Thus, requiring in-situ testing of the dampers to meet the literal reading of NFPA 90A, Article 3–3.7.2.1 is not necessary to achieve the underlying purpose of the rule. The flexible "Hemyc" material has been shown, by extrapolation from 1 hour test data, to be equivalent to a 3 hour fire barrier and its use achieves the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)). For Fire Zone 1–A, Iowa Electric has demonstrated that exemption from full zone detection and automatic suppression is justified and requiring such is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)).

Based on the above information and analysis, the Commission's staff concludes that "special circumstances" exist for the licensee's requested exemptions. See 10 CFR 50.12(a)(2)(ii) and (vi).

The following lists the specific exemption requests submitted by the licensee in their September 28, 1984 letter, supplemented by letters dated October 31, 1984 and October 21, 1986.

1. • Reactor Building, Elevation 716 feet, 9 inches, Torus Area, Fire Zone 1A. An exemption was requested from the specific requirements of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rated fire barrier.

• Reactor Building, Elevation 757 feet, 6 inches, RHR Valve Room, Fire Zone 2D. An exemption was requested from the specific requirements of Section III. G. 2. a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rated fire barrier.

• Reactor Building, Elevation 786 feet, Laydown Area and Reactor Water Cleanup (RWCU) Area, Fire Zones 3A/3B. An exemption was requested from the specific requirements of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3–hour rated fire barrier.

2. • Reactor Building, Elevation 716 feet, 9 inches, Torus Area, Fire Zone 1A. An exemption was requested from specific requirements of Section III.G.2.b to the extent that it requires automatic fire suppression and detection be installed throughout the fire area.

3. • Door No. 202 (Between Fire Zone 1D and Fire Zone 1A). An exemption was requested from the specific requirement of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rated fire barrier.

• Door No. 203 (Between Fire Zone 1D and Fire Zone 2B). An exemption was requested from the specific requirement of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rated fire barrier.

4. • Equipment Hatch Between Fire Zone 3B and Fire Zone 4B. An exemption was requested from the specific requirement of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rated fire barrier.

5. • Fire Dampers FD–010 and FD–012 (Between Fire Zone 1A and Fire Zone 1C). An exemption was requested from the specific requirement of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rated fire barrier.

• Fire Damper FD–021 (Between Fire Zone 7A and Fire Zone 7C). An exemption was requested from the specfic requirement of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rate fire barrier.

• Fire Damper FD–111 (Between Fire Zone 3B and Fire Zone 4A). An exemption was requested from the specific requirement of Section III.G.2.a to the extent that it requires redundant safe shutdown cables and equipment be separated by a 3-hour rated fire barrier.

6. • Protection of exposed Structural Steel for Rated Barriers. An exemption was requested from the specific requirements of Section III.G.2.a to the extent that it requires structural steel forming part of or supporting fire barriers be protected to provide fire resistance equivalent to that required of the barrier.

In summary, the exemptions were requested for separating redundant trains by 3-hour rated fire barriers and for providing automatic fire suppression and detection systems. The exemptions for 3-hour rated fire barriers separating redundant trains included valve motor operators and flexible conduit not protected for 3 hours, watertight doors, and an open equipment hatch and fire dampers not installed in the configuration as they were fire tested. Fire Zone 1A does not contain automatic fire suppression and detection systems throughout the zone. Structural steel forming a part of or supporting required fire barriers in certain areas is not protected to a fire resistance equivalent to that of the barriers.

The licensee has provided alternative and/or acceptable levels of fire protection for areas containing redundant safe shutdown systems not separated from each other. Fire protection in areas with more than a neglible combustible load and containing safe shutdown equipment or cables consists of fire detectors and/or automatc fire suppression systems and portable extinguishers and hose stations.

The Commission's staff finds that there is reasonable assurance that a fire in these areas would be of low magnitude, promptly detected, and

extinguished. The low combustible loading in each area ensures that redundant safe shutdown equipment located in the adjoining areas will not be damaged before the fire brigade can extinguish the fire.

Based on the review of the licensee's analysis, the Commission's staff concludes that the installation of 3-hour fire rated enclosures around safe shutdown valve motor operators and the installation of an automatic fire suppression and detection system throughout Fire Zone 1A would not significantly increase the level of fire protection in these zones. Furthermore, the identified fire dampers and doors, equipment hatch, and unprotected structural steel provide a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Additional details concerning the exemptions are provided in the Safety Evaluation issued concurrently.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), (1) these exemptions as described in Section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) special circumstances 10 CFR 50.12(2)(ii)(iv) are present as discussed in III above. Therefore, the Commission hereby grants the aforementioned exemptions from the requirements of Section III.G of Appendix R to 10 CFR Part 50 as described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting these exemptions will have no significant impact on the environment (52 FR 37855).

A copy of the concurrently issued Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the local public document room located at Cedar Rapids Public Library, 500 First Street, SE, Cedar Rapids, Iowa 52401. A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III,IV, V & Special Projects.

Dated at Bethesda, Maryland this 14th day of October 1987.

[FR Doc. 87-24235 Filed 10-19-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

October 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Arco Chemical Co.
Common Stock, $1.00 Per Value (File No. 7-0525)
Republic Gypsum Co.
Common Stock, $1.00 Per Value (File No. 7-0526)
Royal International Optical Corp.
Common Stock, $.10 Per Value (File No. 7-0527)
RTE Corp.
Common Stock, $1.00 Per Value (File No. 7-0528)
Rykoff-Sexton, Inc.
Common Stock, $.10 Per Value (File No. 7-0529)
Snyder Oil Partners, L.P.
Units of Limited Partnership (File No. 7-0530)
Stride-Rite Corp.
Common Stock, $1.00 Per Value (File No. 7-0531)
Sun Electric Corp.
Common Stock, $1.00 Per Value (File No. 7-0532)
Texfi Industries, Inc.
Common Stock, $1.00 Per Value (File No. 7-0533)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-24262 Filed 10-19-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

October 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Armtek Corp.
Common Stock, $.50 Par Value (File No. 7-0534)
Best Buy Co.
Common Stock, $1.00 Par Value (File No. 7-0535)
Buckeye Partners L.P.
Depository Units, No Par Value (File No. 7-0536)
CBI Industries Inc.
Common Stock, $2.50 Par Value (File No. 7-0537)
Chyron Corp.
Common Stock, $.01 Par Value (File No. 7-0538)
Cleveland Cliffs Inc.
Common Stock, $1.00 Par Value (File No. 7-0539)
Countrywide Mortgage Investments Inc.
Common Stock, $.01 Par Value (File No. 7-0540)
First Fidelity Bancorporation
Common Stock, $6.25 Par Value (File No. 7-0541)
France Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0542)
Huff Corp.
Common Stock, $1.00 Par Value (File No. 7-0543)
Mark IV Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-0544)
Keycorp
Common Stock, $5.00 Par Value (File No. 7-0545)
KN Energy, Inc.
Common Stock, $5.00 Par Value (File No. 7-0546)
Lamaur, Inc.
Common Stock, $3 ⅓ Par Value (File No. 7-0547)
Lamson-Sessions Co.
Common Stock, $5.00 Par Value (File No. 7-0548)

M.D.C. Asset Investors, Inc.
Common Stock, $1.00 Par Value (File No. 7–0549)
Murray Ohio Manufacturing Co.
Common Stock, $2.50 Par Value (File No. 7–0550)
NCH Corporation
Common Stock, $1.00 Par Value (File No. 7–0551)
Quanex Corporation
Common Stock, $5.00 Par Value (File No. 7–0552)
Pilgrim Regional Bankshares, Inc.
Common Stock, $.001 Par Value (File No. 7–0553)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–24263 Filed 10–19–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

October 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Avemco Corp.
Common Stock, Common Stock, Par Value $.10 (File No. 7–0554)
QMS, Inc.
Common Stock, $.01 Par Value (File No. 7–0555)
United Stockyards Corp.
Common Stock, $.01 Par Value (File No. 7–0556)
Del-Val Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–0557)
Global Natural Resources, Inc.
Common Stock, $.01 Par Value (File No. 7–0558)
Munford, Inc.
Common Stock, $1.00 Par Value (File No. 7–0559)
NCH Corp.
Common Stock, $1.00 Par Value (File No. 7–0560)
Toll Brothers, Inc.
Common Stock, $.01 Par Value (File No. 7–0561)
TGI Friday's, Inc.
Common Stock, $.01 Par Value (File No. 7–0562)
Telesphere International, Inc.
Common Stock, $.01 Par Value (File No. 7–0563)
Universal Food Corp.
Common Stock, $.10 Par Value (File No. 7–0564)
United Water Resources, Inc.
Common Stock, $3.50 Par Value (File No. 7–0565)
Wakenhut Corp.
Common Stock, $.10 Par Value (File No. 7–0566)
Zweig Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–0567)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–24264 Filed 10–19–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

October 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

ACM Government Income Fund
Common Stock, $.01 Par Value (File No. 7–0568)
Furrs/Bishop Cafe—L.P.
Depository Preferred Units (File No. 7–0569)
Environmental Treatment Technology
Common Stock, $.10 Par Value (File No. 7–0570)
Battle Mountain Gold
Common Stock, $.10 Par Value (File No. 7–0571)
First Boston Income Fund
Common Stock, $.001 Par Value (File No. 7–0572)
E–II Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–0573)
Quest for Value Dual Purpose Fund
Common Stock, $.01 Par Value (File No. 7–0574)
Montedison S.P.S.
American Depository Shares (File No. 7–0575)
New World Entertainment
Common Stock, $.01 Par Value (File No. 7–0576)
Charles Schwab Corp.
Common Stock, $.01 Par Value (File No. 7–0577)
Motel 6—L.P.
Depository Units (File No. 7–0578)
Shelby Williams Industries, Inc.
Common Stock, $.05 Par Value (File No. 7–0579)
USLICO Corp
Common Stock, $1.00 Par Value (File No. 7–0580)
Valero Natural Gas Partners L.P.
Common Stock, No Par Value (File No. 7–0581)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the

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Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-24265 Filed 10-19-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

October 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Amax Gold, Inc.
Common Stock, $.01 Par Value (File No. 7-0585)
Amfac Inc. Preferred X,
$1.875 Cumulative Convertible Exchangeable Preferred, No Par Value (File No. 7-0586)
Banco Central, S.A.
American Depository Shares (File No. 7-0587)
Battle Mountain Gold Co.
Common Stock, $0.10 Par Value (File No. 7-0588)
British Petroleum PLC
Warrants (File No. 7-0589)
Consolidated Stores
Common Stock, $0.01 Par Value (File No. 7-0590)
Compania Telefonica Nacional De Espana S.A.
American Depositroy Shares (File No. 7-0591)
Computer Factory Inc.
Common Stock, $.01 Par Value (File No. 7-0592)
E-II Holdings, Inc.
Common Stock, No Par Value (File No. 7-0593)
Environmental Treatment & Technology
Common Stock, $0.10 Par Value (File No. 7-0594)
FMC Gold Co. PLC
Common Stock, $.01 Par Value (File No. 7-0595)
Formica Corp.
Common Stock, $.01 Par Value (File No. 7-0596)
Glaxo Holdings PLC
American Depository Receipts (File No. 7-0597)
(Lewis), Galoob Toys, Inc.
Common Stock, No Par Value (File No. 7-0598)
Global Govertment Plus Fund
Common Stock, $0.1 Par Value (File No. 7-0599)
Goldome
Common Stock, $1.00 Par Value (File No. 7-0600)
Lamaur Inc.
Common Stock, $.33⅓ Par Value (File No. 7-0601)
MBIA, Inc.
Common Stock, No Par Value (File No. 7-0602)
Medtrust
Shares of Beneficial Interest (File No. 7-0603)
Monarch Machine Tool Company
Common Stock, No Par Value (File No. 7-0604)
Neiman Marcus Group
Common Stock, $.01 Par Value (File No. 7-0605)
Nuveen Municipal Value Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0606)
Scudder New Asia Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0607)
Speciality Equipment Companies, Inc.
Common Stock, $.01 Par Value (File No. 7-0608)
Sprague Technologies
Common Stock, $1.00 Par Value (File No. 7-0609)
Tiffany & Co.
Common Stock, $.01 Par Value (File No. 7-0610)
TJX Co. Inc.
Common Stock, $.01 Par Value (File No. 7-0611)
The United Kingdom Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0612)
USX Corp. Preferred E
$3.50 Cumulative Convertible Exchangeable Preferred, No Par Value (File No. 7-0613)
Wickes Companies Inc.
Warrants (File No. 7-0614)
McGregor Sporting Goods
Common Stock, $.10 Par Value (File No. 7-0615)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securties and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-24266 Filed 10-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25031; File No. SR-DTC-87-14]

Self-Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 30, 1987, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change. The proposal includes as eligible securities in DTC's Same-Day Funds Settlement ("SDFS") Service zero coupon bonds backed by U.S. Government securities ("zero coupon bonds"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On July 9, 1987, the Commission approved, on a temporary basis, a DTC proposal that established DTC's SDFS Service.[1] The SDFS Service provides full depository and transaction settlement services for certain securities transactions settling in same-day funds. Initially, only transactions involving municipal notes with a maturity of one year or less were eligible for the SDFS Service. DTC stated that based upon initial performance and DTC participant ("Participant") requests it would consider expanding the SDFS Service to include other transactions.[2]

[1] Securities Exchange Act Release No. 24669 (July 9, 1987), 52 FR 28613 (July 15, 1987).

[2] Transactions to be included would involve the following securities: (1) Zero coupon bonds based

Continued

Based upon initial SDFS Service performance and Participant requests, DTC has decided to make zero coupon bonds eligible for the SDFS Service. During the first three months of the SDFS Service, the number of eligible municipal note issues and volume of transactions processed has gradually increased. DTC states that it has not experienced, nor is it aware that SDFS Participants and settling banks have experienced, any significant operational problems in using the SDFS Service during this time. Moreover, according to DTC, participants have requested that zero coupon bond transactions be eligible for the SDFS Service as soon as possible.

DTC represents that it has acted to ensure accurate collateralization of zero coupon bond transactions.[3] DTC will rely primarily on "haircuts" set by its bank lenders, which are obligated under a line of credit to lend DTC funds on SDFS securities. DTC has contracted with a third-party vendor of securities valuation information to obtain daily information on the value of zero coupon bonds. According to DTC, SDFS settlement prices as well as quotations from SDFS Participants would be additional information sources for determining the value of these securities.

DTC believes the proposed rule change is consistent with the requirements of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions that settle in same-day funds. Furthermore, DTC believes the proposal effects a change in the SDFS Service that (1) does not adversely affect the safeguarding of securities or funds in DTC's custody or control and (2) does not significantly affect the respective rights or obligations of DTC or persons using the SDFS Service.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–DTC–87–14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–DTC–87–14) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz.

Secretary.

Dated: October 15, 1987.

[FR Doc. 87–24258 Filed 10–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25032; File No. SR–DTC–87–13]

Self-Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 9, 1987, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change that would eliminate a $40.00 disincentive fee charged for Same-Day Funds Settlement ("SDFS") deposits made between 12:00 noon and 1:00 p.m. at DTC. Under the proposal, fees for SDFS deposits during this time period will be the same as fees for other SDFS deposits.[1] The Commission is publishing this notice to solicit comments from interested persons.

On July 9, 1987, the Commission approved, on a temporary basis, a DTC proposal that established DTC's SDFS Service.[2] The SDFS Service provides full depository and transaction settlement services for certain securities transactions settling in same-day funds.[3] In establishing the SDFS Service, DTC established fees for SDFS transactions. Those fees included a $40.00 disincentive fee for SDFS deposits made between 12:00 noon and 1:00 p.m., the last hour of the day in which SDFS deposits can be made. This fee was imposed to discourage late SDFS deposits and decrease late SDFS deposit volume.

DTC believes late deposit volume is not a matter of concern during the SDFS pilot period and therefore proposes to eliminate the disincentive fee. DTC also believes the elimination of this disincentive fee will encourage Participants to use the SDFS service during the 12:00 noon to 1:00 p.m. period. Moreover, DTC believes this proposal is consistent with section 17A(b)(3)(D) of the Act because it provides for the equitable allocation of dues, fees, and other charges among its Participants.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–DTC–87–13.

Copies of the submission, all subsequent amendments, all written

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on U.S. Government securities; (2) municipal bonds with short-term demand ("put") options; (3) collateralized mortgage obligations (CMOs), auction-rate and tender-rate preferred stock and notes, and (4) medium-term notes.

[3] DTC requires collateralization of each SDFS Service transaction. DTC tracks continously the value of each Participant's collateral by obtaining market value data from bank lenders, third-party vendors of that information, from its Participants, and from settlement values of SDFS securities transactions. On each SDFS Service transaction, DTC will "haircut" (or discount the value of) SDFS securities coming into a Participant's account. A receiving Participant must have sufficient collateral to cover the difference between the value paid for the SDFS securities and their discounted values.

[1] $2.00 plus a charge after the first 10 certificates of $1.00 per group of 10 certificates with a maximum total deposit charge of $6.00.

[2] Securities Exchange Act Release No. 24669 (July 9, 1987), 52 FR 26613 (July 15, 1987).

[3] Currently, only transactions involving municipal notes with a maturity of one year or less are eligible for the SDFS Service. DTC plans to consider expanding the service to include other transactions.

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statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing (SR–DTC–87–13) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 15, 1987.

[FR Doc. 87–24257 Filed 10–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25017; File No. SR–MSRB–87–7]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

On August 20, 1987, the Muncipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Rule G–12(e), G–12(e)(iii), G–15(c)(vi), and G–15(c) to correct cross references to the confirmation provisions of Rules G–12(c) and G–15(a) and to require delivery tickets to conform to descriptions required on confirmation.

In 1986, the MSRB amended RulesG–12(c) and G–15(a) on dealer and customer confirmation requirements to require a disclosure on the confirmation if securities are subject to federal taxation or the federal alternative minimum tax. Certain provisions of the rules were consequently renumbered. The proposed rule change would correct the cross-references in Rule G–12(e) and G–15(c) to the confirmation provisions, and would amend rules G–12(e)(iii) and G–15(c)(ii) to require delivery tickets to include the same designation regarding taxability and alternative minimum tax as are required under the confirmation provisions.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24867 (52 FR 34033). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, to the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pusuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 13, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–24259 Filed 10–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Docket No. 34–25030; File No. SR–OCC–87–17]

Self-Regulatory Organization; Proposed Rule Change by the Options Clearing Corp. Relating to Margin and Clearing Fund Deposits of Candian Government Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on October 7, 1987 The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Options Clearing Corporation ("OCC") preposes to permit for margin and Clearing Fund purposes deposits of securities issued or guaranteed by the Canadian government.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

While working with Canadian broker-dealers, OCC staff has become aware that the ability of these firms to use Canadian government securities for margin and Clearing Fund purposes would greatly facilitate their direct participation in OCC as well as stimulate Canadian investor interest in the U.S. options markets. In addition, enabling Canadian Clearing Members to deposit the Government securities that they have on hand with approved Canadian depositories would put them on a more equal footing with their U.S. counterparts. In response to these concerns, OCC has structured a proposal to ensure that expanding the pool of acceptable Government securities to include Canadian government securities would present no additional risks to the integrity and reliability of OCC's back-up system.

OCC proposes to accept Canadian government securities on the same basis as it currently accepts U.S. government securities. This would be consistent with SEC Rule 15c3–1(c)(2)(vi)(C), which provides that Canadian government debt obligations are to be treated the same as those of the U.S. government for net capital haircut purposes. Accordingly, the securities must mature within ten years, with those maturing within one year characterized as "short-term," and those with longer maturities considered "long-term." Short-term securities would be valued at the lesser of par or 100% of their current market value, while long-term would be valued at the lesser of par or 95% of their current market value. The conversion rate used for this valuation would be the exchange rate provided to OCC by its price vendor. Unlike U.S. securities, however, Canadian securities deposited for margin purposes would be valued daily to account for the fluctuating value of the Canadian dollar.

As in the U.S., OCC would accept deposits only from those Canadian banks acting as clearing banks. OCC is confident of its ability to rely on such banks to honor their commitments pursuant to such deposits. A pledge of Canadian government securities would be evidenced by a Margin Depository Receipt or Clearing Fund Depository Receipt issued to OCC by the depository bank. The existing U.S. Receipts would be modified to reflect differences

between U.S. and Canadian law with respect to such pledges.

The proposed rule change is consistent with the requirements of the Act and section 17A thereunder in that it will facilitate Canadian Clearing Members' access to OCC services, as well as investors' access to U.S. options markets, while assuring the safeguarding of securities and funds in the custody or control of OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Except as indicated above, comments were not and are not intended to be solicited with respect to the proposed rule change and none was received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies there of with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 10, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 15, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24260 Filed 10-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25016; File No. SR-Phlx-87-28)

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Foreign Currency Options Exercise Cut-Off Time

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on September 24, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or the "Exchange") pursuant to Rule 19b-4, hereby proposes the following rule change: (Brackets indicate deletions, italics indicate additions.)

OPTIONS RULES

* * * * *

Exercise of Option Contracts

Rule 1042. (a) No change.

(b) The exercise cut-off time for all member organizations shall be 5:30 p.m., New York time on the business day immediately prior to the expiration date. This is the latest time at which an exercise instruction for expiring option positions may be (1) prepared by a clearing member organization for positions in its proprietary trading account, (2) accepted by a clearing member organization from a non-clearing member, or (3) accepted by a member organization from any customer.

The term "exercise instruction," with respect to a customer, means the notice given to a member organization to exercise an option contract. The term "exercise instruction," with respect to a member organization or clearing member organization means either a notice not to exercise an option position which would automatically be exercised pursuant to Options Clearing Corporation Rule 805, or, a notice to exercise an option position which would not automatically be exercised pursuant to Options Clearing Corporation Rule 805. All exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to expiration (i) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange option transactions, [or] (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such aciton, *or (iv) with respect to foreign currency options.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to allow the PHLX to extend the exercise cut-off time for PHLX traded foreign currency options. Currently pursuant to PHLX Rule 104 PHLX member organizations must submit exercise instructions for expiring options positions, including foreign currency options positions, no later than 5:30 p.m. New York time on the business day immediately prior to the expiration

date. The proposed rule change would extend this deadline for foreign currency options contracts by providing that Rule 1042 shall not apply to them. The proposed rule change is intended to permit persons wishing to exercise foreign currency options contracts to have as much time as possible to do so consistent with the rules of the Options Clearing Corporation ("OCC") because the cash markets underlying the PHLX foreign currency options contracts continue to trade after the general exercise cut-off time established pursuant to PHLX Rule 1042.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Exchange Act, which provides in pertinent part, that the rules of the Exchange facilitate transactions in foreign currency options by enabling member organizations to set more optimal exercise cut-off times.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by, November 10, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 9, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-24261 Filed 10-19-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

October 14, 1987.

The above named national securities exchange has filed application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Hartmarx Corporation
Common Stock, $2.50 Par Value (File No. 7-0515)
Hancock Fabrics, Inc.
Common Stock, $ .01 Par Value (File No. 7-0516)
Helmerich and Payne, Inc.
Common Stock, $ .10 Par Value (File No. 7-0517)
Stone Container Corporation
Common Stock, $1.00 Par Value (File No. 7-0518)
First Republic Bank Corporation
Common Stock, $5.00 Par Value (File No. 7-0519)
Rubbermaid Incorporated
Common Stock, $1.00 Par Value (File No. 7-0520)
Varity Corporation
Common Stock, No Par Value (File No. 7-0521)
E-II Holdings, Inc.
Common Stock, $ .01 Par Value (File No. 7-0522)
Newell Company
Common Stock, $1.00 Par Value (File No. 7-0523)
Ideal Basic Industries, Inc.
Common Stock, No Par Value (File No. 7-0524)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1987. written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 87-24267 Filed 10-19-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ARCO Chemical Company
Common Stock, $1.00 Per Value (File No. 7-0582)
Arrow Electronics, Inc.
Common Stock, $1.00 Per Value (File No. 7-0583)
First Republic Bank Corporation
Common Stock, $1.00 Per Value (File No. 7-0584)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1987. written data, views and arguments concerning the above-referenced application. Persons desiring to make

written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-24268 Filed 10-19-87: 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16049; 812-6587]

Daily Money Fund; Application

October 14, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Daily Money Fund, Equity Portfolio: Growth, Equity Portfolio: Income, Fidelity Capital Trust, Fidelity Cash Reserves, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Corporate Trust, Fidelity Daily Income Trust, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Fund, Fidelity Growth Company Fund, Fidelity High Income Fund, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Money Market Trust, Fidelity Puritan Trust, Fidelity Qualified Dividend Fund, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Special Situations Fund, Fidelity Thrift Trust, Fidelity Trend Fund, Financial Reserves Fund, Income Portfolios, Plymouth Fund, The North Carolina Cash Management Trust, Variable Insurance Products Funds, and Zero Coupon Bond Fund.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the 1940 Act and Rule 12d3-1 thereunder.

Summary of Application: Applicants seek a conditional order to permit them to invest in the equity and convertible debt securities of certain foreign issuers that in their most recent fiscal year derived more than 15% of their gross revenue from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies").

Filing Date: The application was filed on December 31, 1986 and amended on August 4, 1987, September 21, 1987, and October 7, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272-3046, or H.R. Hallock, Jr., Special Counsel, (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Each of the Applicants is registered or in registration as an open-end management investment company under the 1940 Act. Fidelity Management & Research Company ("FMR") is the investment adviser to each of the Applicants. It is requested that any order relating to the application also apply to any other investment companies or portfolios thereof which are advised by FMR and which in the future propose to make investments in the equity and/or convertible debt securities of foreign securities companies that meet the conditions and representations contained in the application.

2. Applicants wish to make portfolio investments in equity and convertible debt securities of foreign securities companies (i) that are listed and publicly traded on certain major foreign stock exchanges, and (ii) that meet the other conditions of quality and liquidity set forth in the application and summarized below. Applicants undertake that, before acquiring any such security, each Applicant's board of trustees will make the specific business decision to permit the Applicant to purchase such securities, as selected by the Applicant's investment adviser, because such purchases may benefit the Applicant and its investors. Applicants further undertake that each of them will invest in the equity and convertible debt securities of foreign securities companies only to the extent permitted by their then-current investment limitations.

3. Applicants' proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of Rule 12d3-1 under the 1940 Act except subparagraph (b)(4) thereof, which provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Accordingly, the application seeks an exemption only from the "margin security" requirements of Rule 12d3-1.

4. The proposed conditions will assure that, in terms of breadth of market, availability of investment information, and character and permanence of the issuer, the securities in which Applicants propose to invest will be fully comparable, and in many respects superior in quality, to securities that fall within the definition of "margin security." Further, the relief requested would allow them to invest in the securities of foreign issuers that derive part of their revenue from securities related activities without first having to make difficult determinations whether or not a particular issuer is, in fact, a foreign securities company. Because many foreign issuers are integrated companies engaged in both financial and non-financial services, or provide both securities related and other financial services, it is often difficult to determine whether their revenues from securities related activities exceed 15 percent of their gross revenues. These difficulties in applying the Rule to foreign issuers potentially could exclude mutual funds from large segments of foreign markets. For instance, uncertainties concerning the nature and sources of revenues of foreign banks could cause mutual funds to forego investment in these institutions, which are estimated to represent more than 35% of the total Swiss market capitalization and approximately 14% of the total German market capitalization. Thus, Applicants propose to make *all* investments in the equity and/or

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convertible debt securities of foreign issuers which may receive 15 percent or more of their revenue from securities related activities subject to the following conditions.

Applicants' Legal Analysis and Conditions

1. Applicants will acquire only those equity securities issued by foreign securities companies (or that underlie the convertible debt of such companies) that are listed on certain major foreign stock exchanges which meet certain standards for dept and liquidity ("Qualified Foreign Exchanges"). An exchange would be deemed a Qualified Foreign Exchange (1) if it is listed in the application,[1] and (2) if, at the end of its most recent calendar year (or at an earlier date if information is not yet publicly available with respect to the end of the most recent calendar year), it meets the following minimum criteria:

(1) The exchange has listed seurity shares of companies with a market value of at least 25 billion dollars;

(2) The exchange has a minimum of 150 companies with equity shares listed on the exchange;

(3) The exchange has had an average daily trading volume over the preceding six-month period of at least 25 million dollars;

(4) The exchange has had, in the previous year, a minimum turnover ratio of at least 20% of its total market capitilization.

Listing on a Qualified Foreign Exchange is the functional equivalent of listing on a U.S. national securities exchange and, accordingly, the securities so listed are fully comparable to "margin securities" for purposes of Rule 12d3–1 under the 1940 Act. Nevertheless, to assure the quality of Applicants' investments, Applicants propose as a further condition to the relief requested hereunder to acquire only those equity securities of foreign securities companies that, themselves, meet certain additional quality standards. These additional standards are collectively equal or superior to the standards applicable to an OTC margin stock. By limiting their investments to equity securities listed on certain major foreign stock exchanges that in terms of quality and liquidity are comparable to the largest of the U.S. national securities exchanges, and by imposing certain additional quality standards on the securities themselves, the conditions proposed exceed the quality standards applicable to a "margin security."

2. Applicants will purchase only those equity securities of foreign securities companies (or debt convertible into such securities) that meet the quality standards outlined below:

(1) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(2) The stock has been publicly traded for at least six months;

(3) The issuer or a predecessor in interest has been in existence for at least three years;

(4) The issuer has at least $10 million of capital, surplus, and undivided profits;

(5) The issuer is required by exchange or governmental regulation publicly to file (i) reports of any important financial or structural corporate changes, (ii) semi-annual profit and loss statements, and (iii) annual reports of independently audited assets and liabilities, profits and losses, and changes in financial position;

(6) The issuer must have a minimum market capitalization of $20 million; and

(7) The equity securities must have (i) an average daily trading volume of at least 500 shares and (ii) an average daily trading volume equal in value to at least $25,000.

Applicants' Conclusions of Law

1. Notwithstanding that foreign issuers may be subject to different reporting, accounting and other standards from those applicable to domestic issuers, the 1940 Act does not prohibit investment companies from investing in, and many investment companies do invest in, the securities of foreign issuers. Rule 12d3–1 under the Act, however, in effect limits an investment company's ability to invest in securities of foreign securities companies. This limitation results from the requirement in Rule 12d3–1 that an eligible security of a securities company be a "margin security." Applicants will comply with all the other requirements of Rule 12d3–1. With respect to the "margin security" requirement, the conditions proposed in this application are fully as rigorous, and in certain respects more rigorous, than the standards applicable to a "margin security." Thus, the relief requested is fully consistent with the policies and purposes of Rule 12d3–1 under the 1940 Act and accordingly with the purposes of the 1940 Act.

2. The relief requested would advance the removal of artificial barriers to the international securities market and would lead to valuable international diversification in the portfolios of investment companies. Investors thereby would likely recognize important benefits, both from increased diversification and from access to international markets in which capital is permitted to flow freely without artificial restraints.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–24269 Filed 10–19–87; 8:45 am]

BILLING CODE 8010–01–M

[1] The following foreign exchanges are so listed: Australia, Association of Exchanges; Belgium, Brussels; Brazil, Rio de Janeiro and Sao Paulo; Canada, Toronto; France, Paris; Germany, Federation of Exchanges (limited to the Frankfurt and Dusseldorf Exchanges); Hong Kong; Italy, Milan; Japan, Tokyo; Netherlands, Amsterdam; Spain; Sweden, Stockholm; Switzerland, Basel, Geneva, and Zurich; United Kingdom, London.

[Release No. IC–16051; 812–6811]

Templeton Funds, Inc.; Application

October 14, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Amendment of Order of Exemption and Approval under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Templeton Funds, Inc. ("Funds, Inc."), Templeton Growth Fund, Inc. ("Growth Fund") Templeton Income Fund ("Income Fund"), Templeton Global Funds, Inc. ("Global Funds") (collectively, the "Funds"), and Securities Fund Investors, Inc. ("SFI") (collectively, the "Applicants").

Relevant 1940 Act Sections: Approving certain transactions pursuant to section 11(a).

Summary of Application: Applicants seek an order amending a Commission Order dated May 20, 1983 ("1983 Order") (Release No. 40–13259), which amended certain previous orders of the Commission (Release No. 40–10172 and 40–10192, dated March 22, 1978 and April 6, 1978, respectively) ("1978 Orders"). The requested amended order would approve certain exchange offers to be made between existing Funds, or which may be made between future Funds, or future investment companies distributed by SFI, on a basis other than the relative net asset values of the shares to be exchanged.

Filing Date: This application was filed on August 4, 1987 and amended on September 22, October 9, and October 13, 1987.

Hearing or Notification of Hearing: If no hering is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hering is ordered. Any requests must be received by the

SEC by 5:30 p.m., on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretry of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Keith W. Vandivort, Esq., 1730 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202) 272–3024 or Karen L. Skidmore, Special Counsel (202) 272–3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each of the Funds is registered as an open-end management investment company under the 1940 Act. Funds, Inc. and Global Funds are managed by Templeton, Galbraith and Hansberger Ltd. ("TGH"), a publicly traded company listed on The Stock Exchange, London. Growth Fund is managed by Templeton Investment Counsel Limited, a wholly-owned subsidiary of TGH. Income Fund is managed by Templeton Investment Counsel, Inc., a wholly-owned subsidiary of TGH. SFI, a wholly-owned subsidiary of TGH, acts as principal under writer for the Funds. Applicants have requested that any order issued by the Commission on this application also extend to all open-end investment companies which may be organized in the future which are distributed by SFI, provided that the shares of such investment companies are subject to the same exchange offers and have the loan characteristics described herein (the "Additional Funds").

2. Shares of each Fund are currently offered at their net asset value plus a sales charge. On purchases of less than $10,000, the maximum sales charge for shares of each of the Funds is 8.5% of the offering price, with the sales charge reduced on larger purchases at the same breakpoint for each Fund. As set forth in each Fund's prospectus, this sales charge is subject to reductions depending on the size and type of investment. There is no charge imposed on reinvestment of dividends and capital gains earned on shares of the Funds.

3. The 1978 Orders permitted Funds, Inc. to offer at relative net asset value, its shares in exchange for shares of the Reserve Fund, Inc. ("Reserve") and Templeton Growth Fund, Ltd ("Growth Fund, Ltd."). The 1983 Order clarified that the 1978 Orders continued to apply to Funds, Inc. even though it had changed its name and added a new series. The 1983 Order also extended the requested relief to any new series of common stock of Funds, Inc. that might be created in the future.

4. "No-Load Funds" as used hereinafter shall include each Additional Fund whose shares are issued with no sales charge; "Reduced Load Fund" as used hereinafter shall include each Additional Fund whose shares are sold with a charge above that of a No-Load Fund; and "Load Fund" as used hereinafter shall include an Additional Fund whose shares are sold with a sales charge above that of a Reduced Load Fund. Applicants propose to make offers of exchange of the Funds or Additional Funds pursuant to the following plan:

a. Shares of any Fund ("Initial Fund") that were not acquired by exchange for shares of another Fund, and reinvested shares accrued on such shares, may be exchanged ("Initial Exchange") for shares of any Fund ("Successor Fund") based on relative net asset value plus the sales charge applicable to the shares of the Successor Fund less the higher of (i) the sales charge, if any, the exchanging shareholder paid for the shares of the Initial Fund or (ii) the sales charge, if any, applicable to the Initial Fund at the time of the exchange.

b. Shares of any Fund ("Predecessor Fund") acquired after an Initial Exchange by one or a series of further exchanges for shares of one or more Funds, and reinvested shares accrued on the shares of such Predecessor Fund, may be exchanged for shares of any Successor Fund based on relative net asset value plus the sales charge applicable to the shares of the Successor Fund less the higher of (i) the total sales charge, if any, the exchanging shareholder paid with respect to the acquisition of the shares of the Initial Fund and all exchange transactions thereafter leading to the acquisition of the shares of the Predecessor Fund or (ii) the sales charge, if any, applicable to the Predecessor Fund at the time of the exchange.

5. Each of the foregoing transactions is subject to a $5.00 service charge payable to the Transfer Agent by the shareholder for each exchange. Also, the minimum amount which may be exchanged is $1,000, based upon the then current offering price of the shares to be exchanged.

6. Shareholders will be notified of the exchange privilege, including the possibility of a sales charge being applicable, through the Funds' prospectuses and by means of other communications, including sales literature and other advertising. Any such communication describing the exchange program will include notification of any administrative fee related thereto. If a shareholder advises any of the Applicants that he wishes to exchange his shares in a Fund for shares of a Successor Fund, the shareholder will be provided with a prospectus of such Successor Fund. In the event that the Applicants decide to discontinue the proposed exchange privilege, however, no notice thereof will be provided to the shareholders of the Funds other than through the next subsequent effective prospectuses of the Funds.

7. Dealers and others who distribute the Funds' shares will receive the same commission upon the exchange of shares of a No Load Fund acquired by direct purchase for shares of a Load or Reduced Load Fund, as they would for distributing a Load or Reduced Load Fund directly; they will not receive a commission for any other exchange transaction. SFI acknowledges that the payment of the sales charge to a dealer on the exchange of No Load shares for shares of a Load or Reduced Load Fund may provide sufficient economic incentive for dealers to initiate such exchanges for their own benefit.

However, Applicants state that, while dealers will be notified of the exchange program, dealers or other persons involved in the distribution of the Funds' shares will not receive advice from SFI as to the suitability of an investment in a Fund, will not actively solicit exchanges, and will not contact investors by telephone to notify them of the exchange privilege. Moreover, SFI requires by the terms of its dealer agreement that a participating dealer make its books and records available to SFI and further agrees to comply with all applicable federal and state laws and rules, as well as the rules and regulations of all agencies having jurisdiction.

Applicant's Legal Conclusions

1. The proposed exchange plan is fair and equitable to shareholders of all of the Funds while at the same time giving such shareholders flexibility in their financial planning. The amendment to the 1983 Order requested herein is in the

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public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Further the requested amendment to the 1983 Order, for the foregoing reasons, should permit exchange offers on the basis described in the proposed exchange plan to holders of shares of Additional Funds for which SFI may act in the future as principal underwriter, to the extent any such Additional Fund has sales charge features consistent with those described herein and offers the same exchange privileges described herein.

2. The proposed amendment to the 1983 order and specifically the proposed formula used to calculate sales loads is consistent with the provisions of proposed Rule 11a–3 recently published by the Commission, but not yet adopted, Release No. 40–15494 (December 23, 1986).

Applicants' Condition

If the requested order is granted, Applicants agree to the following conditions:

Applicants will comply with the provisions of Rule 11a–3, as such proposed Rule may be modified, upon its adoption by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–24270 Filed 10–19–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending October 9, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45184

Parties: Friendship Air Alaska, Inc., Ryan Air Service, Inc., Peninsula Airways, Inc., Wilbur's Incorporated, Frontier Flying Service, Inc., and Cape Smythe Air Force, Inc.

Date Filed: October 7, 1987.

Subject: Application of Friendship Air Alaska, Inc. pursuant to section 412 of the Act requests authority to discuss a possible cooperative working arrangement with other carriers.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–24202 Filed 10–19–87; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 9, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45181

Date Filed: October 5, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 2, 1987.

Description: Application of Hong Kong Dragon Airlines Limited d/b/a Dragonair, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in foreign air transportation between Hong Kong and Guam.

Docket No. 45185

Date Filed: October 8, 1987.

Due Date of Answers, Conforming Applications, or Motions to Modify Scope: November 5, 1987.

Description: Joint Application of Continental Airlines, Inc. and People Express Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations requests a renewal of the certificate of public convenience and necessity for Route 383 authorizing them to provide foreign air transportation of persons, property and mail between Newark, New Jersey, on the one hand, and London, United Kindom, on the other hand.

Docket No. 45188

Dated Filed: October 8, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 5, 1987.

Description: Application of Lineas Aereas Trans Costa Rica, S. A. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in air transportation of property and mail between points in Costs Rica and Miami, Florida, Houston, Texas, San Juan, Puerto Rico, Los Angeles, California and New York, New York.

Docket No. 40683

Dated Filed: October 9, 1987

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 6, 1987.

Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 378 (U.S. –People's Republic of China).

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–24203 Filed 10–19–87; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Minority Business Resource Center Advisory Committee; Cancellation and Rescheduling of Meeting

This notice is given to advise of the cancellation of the Minority Business Resource Center Advisory Committee meeting originally scheduled to be held Monday, November 16, 1987. Notice of meeting was published in the **Federal Register** issue of October 14, 1987 (FR 87–23746).

Notice is hereby given of the rescheduling of said meeting for Wednesday, November 18, 1987, at 5:30 p.m. at the Hyatt Regency Miami, 400 SE 2nd Avenue, Tuttle Room South, Miami, FL 33131. The agenda for the meeting remains the same as published in the issue of October 14, 1987.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Josie Graziadio, Office of Small and Disadvantaged Business Utilization, 400 7th Street SW., Washington, DC 20590, telephone (202) 366–1930. Any number of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on October 15, 1987.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 87–24215 Filed 10–19–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE-87-27]

Petition for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provision governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 9, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 8, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25312	Million Air Charters of Houston	14 CFR 135.169 and 25.853	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 for a period of 3 years beyond the implementation date of November 26, 1987
25333	Horizon Air	14 CFR 121.312(b) and 25.853(c)	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 for a period of 3 years beyond the implementation date of November 26, 1987
25352	Turbine Air Management, Inc	14 CFR 91.191(a)(4) and 135.156(b)	To allow petitioner to operate a Hawker Siddley 125 (HS-125) airplane in extended overwater operations with one VLF/Omega Long-Range Navigation System (LRNS) and one High-Frequency (HF) Communication System.
25356	Milwaukee Jet	14 CFR 135.169 and 25.853	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 for an unspecified period of time beyond the implementation date of November 26, 1987
25360	MST Aviation, Inc	14 CFR 135.169 and 25.853	To allow petitioner to operate permanently certain aircraft without complying with the seat cushion flammability standards of § 25.853 after the implementation date of November 26, 1987.
25361	Ohio University Avionics Engineering Center	14 CFR 91.31(a)	To allow petitioner to operate a Beechcraft Bonanza, Model A-36, Serial Number 1491, beyond certain limitations presented in the pilot's operating handbook for this aircraft. The petition specifically concerns operation of the aircraft under icing conditions.
25384	VIP Jets International, Inc	14 CFR 135.169(a), 25.853(c), and 121.312(b).	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 for a period of 48 months beyond the implementation date of November 26, 1987
25390	Airbus Industrie	14 CFR 145.71, 145.73(a), and 43.3	To allow petitioner to become a certificated foreign repair station and perform maintenance, preventive maintenance, repair, and alteration work during and beyond the warranty period on the aircraft it manufactures and on the appliances thereof, for those aircraft under U.S. registration without limitation as to where such aircraft operate.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23647	Embry-Riddle Aeronautical University	14 CFR 141.65	An extension of Exemption No. 3659 to allow petitioner to continue to recommend graduates of its certificated flight instructor courses for flight instructor certificates and ratings without taking the Federal Aviation Administration (FAA) written or flight tests. *GRANTED, September 28, 1987.*
25166	Evergreen International Airlines, Inc	14 CFR 121.583(a)(8)	To allow petitioner to transport employees and dependents on DC-8 cargo flights. *GRANTED, September 28, 1987*
25197	Crew Concepts, Inc	14 CFR 135.411(a) and 135.429(c)	To allow petitioner to operate its Bell 205/212 series helicopters without performing certain aircraft modifications and without complying with certain performance, operations, and maintenance requirements. *DENIED, September 30, 1987.*
25207	Socata	14 CFR 43.3(a), 145.71, and 145.73	To allow Socata to perform preventive maintenance, maintenance, rebuilding, alteration, and optional equipment fitting on Socata's manufactured aircraft under an FAA type certificate *GRANTED, September 29, 1987*
25227	Northwest Airlines, Inc	14 CFR 121.433(c)	To allow petitioner to merge the recurrent training of former Republic Airlines pilots with its 1988 annual recurrent training. *DENIED, September 29, 1987.*

[FR Doc. 87-24183 Filed 10-19-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 15, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0704
Form Number: 5471, Schedules M, N, and O
Type of Review: Resubmission
Title: Information Return With Respect to a Foreign Corporation

Description: Form 5471 and its related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to report a U.S. person's acquisition of a 5-percent interest in a foreign corporation; and to report income and deductions of a foreign personal holding company. The IRS uses Form 5471 to determine if U.S. persons have correctly reported income from the foreign corporation.

Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 135,868 hours

OMB Number: 1545–0998
Form Number: 8615
Type of Review: Resubmission
Title: Computation of Tax of Children Under Age 14 Who Have More Than $1,000 of Unearned Income

Description: Under section 1(i), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.

Respondents: Individuals or households
Estimated Burden: 604,200 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 87–24232 Filed 10–19–87; 8:45 am]
BILLING CODE 4810–25–M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, People's Democratic Republic of

Date: October 14, 1987.

O. Donaldson Chapoton,
Assistant Secretary for Tax Policy.

[FR Doc. 87–24211 Filed 10–19–87; 8:45 am]
BILLING CODE 4810–25–M

[Supplement To Dept. Circ.; Public Debt Series No. 25–87]

Treasury Notes; Series AD–1989

Washington, September 30, 1987.

The Secretary announced on September 29, 1987, that the interest rate on the notes designated Series AD–1989, described in Department Circular—Public Debt Series—No. 25–87 dated September 17, 1987, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Marcus W. Page,
Acting Fiscal Assistant Secretary.

[FR Doc. 87–24189 Filed 10–19–87; 8:45 am]
BILLING CODE 4810–40–M

[Amdt. to Dept. Circ. Public Debt Series No. 25–87]

8½ percent Treasury Notes: Series AD–1989

Washington, October 9, 1987.

Department of the Treasury Circular, Public Debt Series No. 25–87, dated September 17, 1987, as supplemented, descriptive of 8½ percent Treasury Notes of Series AD–1989, is hereby amended effective September 28, 1987.

The same-numbered paragraphs of Department of the Treasury Circular, Public Debt Series—No. 25–87, are hereby amended and replaced with the following paragraphs. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, September 29, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, September 28, 1987, and received no later than Wednesday, September 30, 1987.

5. Payment and Delivery

5.1 Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, September 30, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; or in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for

the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

The foregoing Amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 87-24190 Filed 10-19-87; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series No. 26-87]

Treasury Notes: Series P-1991

Washington, October 7, 1987.

The Secretary announced on October 6, 1987, that the interest rate on the notes designated Series P-1991, described in Department Circular—Public Debt Series—No. 26-87 dated September 17, 1987, will be 9⅛ percent. Interest on the notes will be payable at the rate of 9⅛ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 87-24191 Filed 10-19-87; 8:45 am]

BILLING CODE 4810-40-M

[Amdt. to Dept. Circ.; Public Debt Series No. 26-87]

9⅛ Percent Treasury Notes; Series P-1991

Washington, October 9, 1987.

Department of the Treasury Circular, Public Debt Series No. 26-87, dated September 17, 1987, as supplemented, descriptive of 9⅛% Treasury Notes of Series P-1991, is hereby amended effective September 28, 1987.

The same-numbered paragraphs of Department of the Treasury Circular, Public Debt Series—No. 26-87, are hereby amended and replaced with the following paragraphs. The other terms and conditions remain unchanged.

2. Description of Securities

2.1. The Notes will be dated October 15, 1987, and will accrue interest from that date, payable on a semiannual basis on March 31, 1988, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, October 6, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, October 5, 1987, and received no later than Thursday, October 15, 1987.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, October 15, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, October 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, October 15, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

The foregoing Amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 87-24192 Filed 10-19-87; 8:45 pm]

BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series No. 27-87]

Treasury Notes; Series G-1994

Washington, October 8, 1987.

The Secretary announced on October 7, 1987, that the interest rate on the notes designated Series G-1994, described in Department Circular—Public Debt Series—No. 27-87 dated September 17, 1987, will be 9½ percent. Interest on the notes will be payable at the rate of 9½ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 87-24193 Filed 10-19-87; 8:45 am]

BILLING CODE 4810-40-M

[Amdt. to Dept. Circ.; Public Debt Series No. 27-87]

9½ Percent Treasury Notes; Series G-1994

Washington, October 9, 1987.

Department of the Treasury Circular, Public Debt Series No. 27–87, dated September 17, 1987, as supplemented, descriptive of 9½% Treasury Notes of Series G–1994, is hereby amended effective September 28, 1987.

The same-numbered paragraphs of Department of the Treasury Circular, Public Debt Series—No. 27–87, are hereby amended and replaced with the following paragraphs. The other terms and conditions remain unchanged.

2. Description of Securities

2.1. The Notes will be dated October 15, 1987, and will accrue interest from that date, payable on a semiannual basis on April 15, 1988, and each subsequent 6 months on October 15 and April 15 through the date that the principal becomes payable. They will mature October 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, October 7, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 6, 1987, and received no later than Thursday, October 15, 1987.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, October 15, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, October 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, October 15, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

The foregoing Amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 87–24194 Filed 10–19–87; 8:45 am]

BILLING CODE 4810–40–M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 645; Ref: ATF O 1100.63C]

Delegation to the Associate Director (Compliance Operations) and Regional Directors (Compliance) to Accept or Reject Offers in Compromise

1. Purpose.

This order delegates the authority to accept or reject certain offers in compromise of liabilities incurred under Chapters 51, 52, 53 and 78 of the Internal Revenue Code, and liabilities incurred under the Federal Alcohol Administration Act.

2. Cancellation.

ATF O 1100.63B, Delegation Order—Acceptance or Rejection of Offers in Compromise, dated November 17, 1978, is cancelled.

3. General.

The authority to accept or reject offers in compromise of liabilities arising under Chapters 51, 52, and 53, and sections 7652 and 7653 (Chapter 78) of Title 26 U.S.C., and the provisions of the Federal Alcohol Administration Act is vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly Order No. 221), dated June 6, 1972, and 26 CFR 301.7122.1.

4. Delegations.

Pursuant to the authority vested in the Director of ATF by Treasury Department Order No. 120–01, subject to the limitations contained in applicable regulations and procedures, there is hereby delegated the following authority relating to the offers in compromise of liabilities (other than forfeiture) arising under Chapters 51, 52, 53, and 78 of Title 26 U.S.C., and under the Federal Alcohol Administration Act.

a. Associate Director, Compliance Operations.

The Associate Director (Compliance Operations) is authorized to accept or reject offers in compromise of all liabilities not specifically delegated to regional directors (compliance) in paragraph 4b, arising from:

(1) Violations of Chapters 51, 52 and 53.

(2) Violations of sections 7652 and 7653 (Chapter 78) of Title 26 U.S.C., insofar as those sections relate to commodities subject to tax under Chapters 51, 52 and 53.

(3) Violations of the Federal Alcohol Administration Act.

(4) Cases which combine liabilities arising from violations of Chapter 51 of the IRC and of the FAA Act.

(5) Cases which are designated as national investigations/cases by the Associate Director (Compliance Operations).

Note: With respect to tax liability, the authority to accept or reject such offers in compromise is limited to cases in which the liability sought to be compromised (including any interest, additional amount, addition to the tax, or assessable penalty is less than $100,000.

b. Regional Directors (Compliance)

(1) Each regional director (compliance) is authorized to accept or reject offers in compromise of tax liabilities and penalties arising from:

(a) Chapter 51, Title 26 U.S.C., as follows:

1 Illegal production of untaxpaid distilled spirits, wines, or beer.

2 Failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, or beer.

(b) Chapter 53, Title 26 U.S.C. (failure to pay firearms making, transfer, and occupational taxes).

(2) Each regional director (compliance) is authorized to accept or reject offers in compromise of criminal liabilities of retail dealers in liquor arising from violations of the Internal Revenue laws relating to liquor, including the refilling or reuse of liquor bottles.

(3) Each regional director (compliance) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of Chapters 51, 52, and 53 and Sections 7652 and 7653 (Chapter 78) of Title 26 U.S.C. not enumerated in paragraphs 4b(1) and (2) as follows:

1 Cases in which the offer in compromise does not exceed $10,000 and the tax liability sought to be compromised does not exceed $20,000.

2 Cases that combine liabilities arising under Chapter 51 and the FAA Act where the tax liability sought to be compromised does not exceed $20,000.

3 Cases of late filed tax returns or late paid excise tax where the tax liability sought to be compromised does not exceed $50,000.

(b) Violations of the Federal Alcohol Administration Act where cases include an offer in compromise which does not exceed $10,000.

(4) The Regional director (compliance) in whose region the majority of violations occur will be the deciding official to accept or reject offers which compromise the liabilities of proprietors with plants in multiple regions. This authority does not include cases which are designated as national investigations/cases by the Associate Director (Compliance Operations).

Note: The tax liability to be compromised shall include any interest, additional amount, addition to tax, or assessable penalty.

5. Redelegation

The authority delegated herein may not be redelegated.

Approved: October 8, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-24163 Filed 10-19-87; 8:45 am]

BILLING CODE 4810-31-M

Customs Service

Automated Surety Interface; Significant New Information Dissemination Product Pursuant to OMB Circular A-130; Solicitation of Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning a new information dissemination product. The Customs Service, through its Automated Commercial System (ACS), is proposing an Automated Surety Interface. Under this program, Customs will furnish certain information to participating surety companies whose bonds cover Customs entries. This information is to be provided irrespective of any claim by Customs against the surety. For some time, disclosure of this information has been made to interested surety companies on a monthly basis. The ultimate goal of the program is a virtually simultaneous exchange of data between the surety company and Customs. As an interim step, Customs is presently conducting a pilot test under which certain data is being provided to a surety company on a weekly basis. It has been represented to Customs that payment by the sureties on claims for liquidated damages or additional duties will be expedited by eliminating the need for Customs to locate the bond and transmit a copy to the surety.

Customs recognized that some or all of this information may be considered to be confidential business information which is protected from disclosure under exemption (b)(4) of the Freedom of Information Act (FOIA). Accordingly, by notice published in the **Federal Register** on August 17, 1987 (52 FR 30762), Customs invited public comment on whether the disclosure of this information will cause competitive harm. Comments were to have been received on or before October 16, 1987. Customs has received a request to extend the comment period because additional time is required to prepare reasonably responsive comments. Customs believes the request has merit. Accordingly, the period of time for the submission of comments is being extended 30 days.

DATE: Comments are requested on or before November 16, 1987.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: John E. Elkins, Chief, Disclosure Law Branch, (202) 566-8681. Operational Aspects: Jim Childress, Commercial System Division, (202) 343-0778.

Dated: October 15, 1987.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 87-24386 Filed 10-19-87; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds; Dairyland Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24609 to reflect this addition:

DAIRYLAND INSURANCE COMPANY. BUSINESS ADDRESS: 9501 East Shea Boulevard, Scottsdale, Arizona 85260-6719. UNDERWRITING LIMITATION [b]: *$5,833,000. SURETY LICENSES* [c]: CA, GA, ID, IA, KS, KY, ME, MD, MS, MT, NV, NM, NY, OH, OR, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, telephone (202) 634-2214.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

Dated: October 14, 1987.

[FR Doc. 87-24209 Filed 10-19-87; 8:45 am]

BILLING CODE 4810-35-M

THE WHITE HOUSE CONFERENCE FOR A DRUG FREE AMERICA

Meetings

SUMMARY: The White House Conference for a Drug Free America will host six regional meetings between November 1 and December 16, 1987 to facilitate the

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gathering of information and to encourage contact between concerned individuals. Participation of individuals with a wide range of experience and interest in the fight against illegal drugs is being encouraged by the Conference staff, with a particular emphasis on anti-drug initiatives at the state and local level in both the public and private sector.

Participants from six to ten regionally grouped states will gather in the following host cities:

Omaha, Nebraska, November 1–4
Cincinnati, Ohio, November 15–18
Albuquerque, New Mexico, December 6–9
Los Angeles, California, November 8–11
Jacksonville, Florida, November 30–December 3
New York, New York, December 13–16

From February 28, 1988, through March 3, 1988, a national conference will be held in Washington, DC, which will enhance and expand upon the findings of the regional meetings, showcase the best of the nation's efforts, and highlight new proposals for combatting drug abuse in this country.

SUPPLEMENTARY INFORMATION: The White House Conference For a Drug Free America was mandated by the Anti-Drug Abuse Act of 1986, and established by President Reagan's Executive Order #12595, of May 5, 1987.

The Conference has a broader mandate to review and critically assess all areas of the drug abuse crisis in the U.S. It will bring together knowledgeable individuals from the public and private sectors who are concerned with drug abuse prevention, education, and treatment, and the production, trafficking and distribution of illicit drugs.

Through a series of meetings and forums, the Conference will focus public attention on effective methods of curbing drug abuse; look at the essential role of parents and family members in preventing drug abuse; explore ways to foster an attitude of intolerance of illicit drugs nationwide; and help eliminate both the supply and demand for these drugs.

Conferees are being appointed by the President on the basis of their experience and commitment to a drug free society. These include: Members of the President's Cabinet, state and local officials, business leaders, educators, religious leaders, sports commissioners, coaches and athletes, law enforcement officials, representatives of family groups, youth, and those working in drug abuse prevention, treatment, rehabilitation, and research.

Supporting the Chairman will be a series of Committees:

—Drug-Free Workplace
—Drug-Free Education
—Drug Abuse Treatment
—Drug-Free Sports
—Drug Law Enforcement
—Drug Abuse Prevention
—Drug-Free Transportation
—Drug-Free Public Housing
—International Drug Control
—Drug-Free Media and Entertainment

Location/Dates of Regional Meetings

(1) Date: November 1–4, 1987
Place: Red Lion Inn, 1616 Dodge Street, Omaha, Nebraska 68102
Time: 1:00 p.m. Nov. 1, 8:30 a.m. Nov. 2–4
Scope: Montana, Colorado, Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming

(2) Date: November 8–11, 1987
Place: LAX Marriott, 5855 W. Century Boulevard, Los Angeles, CA 90045
Time: 1:00 p.m. Nov. 8, 8:30 a.m. Nov. 9–11
Scope: Alaska, California, Hawaii, Idaho, Nevada, Oregon, Utah, Washington

(3) Date: November 15–18, 1987
Place: Omni Netherland Plaza, 35 W. 5th Street, Cincinnati, Ohio 45202
Time: 1:00 p.m. Nov. 15, 8:30 a.m. Nov. 16–18
Scope: Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Ohio, Washington, D.C., West Virginia, Wisconsin

(4) Date: November 30–December 3, 1987
Place: Omni Jacksonville, 245 Water Street, Jacksonville Florida 32202
Time: 1:00 p.m. Nov. 30, 8:30 a.m. Dec. 1–3
Scope: Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands, Virginia

(5) Date: December 6–9, 1987
Place: Regent Albuquerque, 201 Marquette, NW., P.O. Box 1927, Albuquerque, New Mexico 87103
Time: 1:00 p.m. Dec. 6, 8:30 a.m. Dec. 7–9
Scope: Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, Texas

(6) Date: December 13–16, 1987
Place: Marriott Marquis, 1535 Broadway at 45th Street, New York, New York
Time: 1:00 p.m. Dec. 13, 8:30 a.m. Dec. 14–16
Scope: Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont

Location/Date of National Conference

Date: February 28—March 3, 1988
Place: District of Columbia Convention Center, 900 9th Street NW., Washington, DC 20001
Time: 1:00 p.m. Feb. 28, 8:30 a.m. Mar. 1–3
Scope: Nationwide

Procedure: The Conference invites all interested parties to attend the meetings and/or submit written materials regarding any of the aforementioned aspects of drug abuse. Persons interested in providing written information should submit it to Lois Haight Herrington, Chairman, White House Conference For A Drug Free America, 726 Jackson Place, NW., Washington, DC 20503. If possible, all written information should be typed and submitted in duplicate. All written materials is due not later than February 1, 1988, but should be submitted as soon as possible for maximum consideration.

Conduct of Meetings: Registration for the meetings begins at 1:00 p.m. on the first day. The meetings, which will be open to the public, will begin at 8:30 a.m., each succeeding day. The Chairman of the Conference, or her designee, will preside at the meetings. Other members of the Conference will join the Chairman. The meetings will feature speeches, panel discussions, debates, "town hall" or open forum with panel and moderator discussions, and extensive workshop meetings. Any procedural rules needed for the proper conduct of the meetings will be announced by the presiding official.

Persons interested in registering for any of the meetings should call 1–800–423–7314. Persons interested in receiving additional information about the Conference should call (202) 254–4116 or write: The White House Conference For A Drug Free America, 726 Jackson Place, NW., Washington, DC 20503.

William H. Oltmann,

Deputy Executive Director, The White House Conference For A Drug Free America.

[FR Doc. 87–24283 Filed 10–19–87; 8:45 am]
BILLING CODE 3180–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 202
Tuesday, October 20, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 52, P 38039.

PREVIOUSLY ANNOUNCED TIME AND PLACE OF MEETING: Thursday, October 15, 1987.

CHANGES: Item concerning Lawn Darts added to Agenda.

Listed below is the Revised Agenda:

Commission Meeting, Thursday, October 15, 1987, 9:00 a.m.
Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD

Open to the Public

1. *Lawn Darts*

The Commission will consider a draft advance notice of proposed rule making on lawn darts.

2. *16 CFR 1015.12*

The Commission will discuss the provisions of CPSC's Freedom of Information Act regulations concerning Congressional request for Commission documents.

3. *ATV Voluntary Standards*

The staff will brief the Commission on the status of the voluntary performance standard for all-terrain vehicles.

4. *LP Gas Automatic Control Valves*

The staff will brief the Commission on suggested changes to industry voluntary standards and codes relating to residential LP gas systems and automatic gas control valves.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
October 16, 1987.

[FR Doc. 87–24321 Filed 10–16–87; 1:42 pm]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 22, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Bunk Bed Petition, CP 86–2

The staff will brief the Commission on Petition CP 86–2, which requests the Commission to issue a consumer product safety standard for bunk beds.

Closed to the Public.

2. Compliance Status Report

The staff will brief the Commission on a Compliance Status Report.

3. Enforcement Matters OS #3800

The staff will brief the Commission on Enforcement Matter OS #3800.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

October 16, 1987.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 87–24322 Filed 10–16–87; 1:42 pm]
BILLING CODE 6355–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 36493, Tuesday, September 29, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m. (Eastern Time) Monday, Octobr 19, 1987.

CHANGE IN THE MEETING: The Closed Session of the Meeting has been Canceled.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer (Acting), Executive Secretariat, (202) 634–6748.

Cynthia C. Matthews,
Executive Officer (Acting), Executive Secretariat.

This notice issued October 16, 1987.

[FR Doc. 87–24387 Filed 10–16–87; 4:10 pm]
BILLING CODE 6750–06–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

DATE AND TIME: 9:30 a.m. (Eastern Time) Tuesday, October 27, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room, Room No. 200–C on the Second Floor of the Columbia Plaza Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Proposed Pension Rulemaking Under section 4(f)(2) of the Age Discrimination in Employment Act.

Closed Session

Litigation Authorizations: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions

Please telephone (202) 634–6478 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Acting Executive Officer on (202) 634–6748.

Cynthia Clarke Matthews,
Executive Officer (Acting) Executive Secretariat.

This notice issued October 16, 1987.

[FR Doc. 87–24385 Filed 10–16–87; 8:45 am]
BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Thursday, October 15, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider (1) matters relating to the possible failure of an insured bank, and (2) recommendations regarding administrative enforcement proceedings against insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred

in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 16, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-24326 Filed 10-16-87; 3:07 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 19, 26, November 2, and 9, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 19

Wednesday, October 21

10:00 a.m.
Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting)

2:00 p.m.
Briefing on the Federally Funded Research Development Center (FFRDC) (Public Meeting)

Thursday, October 22

10:00 a.m.
Briefing on Emergency Planning Rule (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) a. Commission Review of ALAB-832 (Shoreham) (Tentative) (Postponed from October 16)

Week of October 26 (Tentative)

Wednesday, October 28

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Palo Verde-3 (Public Meeting)

Thursday, October 29

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 2 (Tentative)

Tuesday, November 3

10:00 a.m.
Briefing on the Status of High Level Waste Issues (Public Meeting)

Wednesday, November 4

2:30 p.m.
Briefing on Integrated Safety Assessment Program (ISAP) (Public Meeting)

Thursday, November 5

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 9 (Tentative)

Monday, November 9

9:30 a.m.
Briefing on North Anna Steam Generator Tube Rupture Event (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates, (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

October 16, 1987.

[FR Doc. 87-24349 Filed 10-16-87; 3:25 pm]

BILLING CODE 7590-01-M

VOL 52 ISS 202 OCT 20 1987 UMI

Corrections

Federal Register
Vol. 52, No. 202
Tuesday, October 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0294]

Sumitomo Chemical Co., Ltd.; Filing of Food Additive Petition

Correction

In notice document 87-23185 appearing on page 37525 in the issue of Wednesday, October 7, 1987, make the following correction:

In the third column, under **SUPPLEMENTARY INFORMATION**, in the 11th line, "clarifying in " should read "clarifying agent in".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-12; A-22698]

Realty Action; Arizona

Correction

In notice document 87-22606 beginning on page 36838 in the issue of Thursday, October 1, 1987, make the following correction:

On page 36839, in the first column, under T. 5 S., R. 10 E., in the first line, "SE½N½, S½" should read "S½N½, S½".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-12; A-21081]

Realty Action; Arizona

Correction

In notice document 87-22608 beginning on page 36837 in the issue of Thursday, October 1, 1987, make the following corrections:

1. On page 36838, in the third column, "T. 12 S., R. 327 E."should read "T. 12 S., R. 32 E.".

2. On the same page, in the third column, under T. 13 S., R. 30 E., in the second line, insert a comma after N½.

BILLING CODE 1505-01-D

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Federal Register

Tuesday
October 20, 1987

Part II

Nonprocurement Debarment and Suspension; Notices of Proposed Rulemaking and Interim Final Rule

Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Department of State

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International Deveiopment Cooperation Agency
Agency for International Development
United States Information Agency
Department of the Treasury
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
National Archives and Records Administration
Veterans Administration
General Services Administration
Federal Emergency Management Agency
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum Services
ACTION
Department of Agriculture
Department of the Interior
Department of Health and Human Services
Department of Transportation

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SMALL BUSINESS ADMINISTRATION

13 CFR PART 145

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1265

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15 CFR PART 26

DEPARTMENT OF STATE

22 CFR PART 137

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

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22 CFR PART 208

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DEPARTMENT OF THE TREASURY

26 CFR PART 601

DEPARTMENT OF JUSTICE

28 CFR PART 67

DEPARTMENT OF LABOR

29 CFR PART 98

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR PART 1471

DEPARTMENT OF DEFENSE

32 CFR PART 280

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR PART 1209

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41 CFR PART 101-50

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 17

NATIONAL SCIENCE FOUNDATION

45 CFR PART 620

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR PART 1154

National Endowment for the Humanities

45 CFR PART 1169

Institute of Museum Services

45 CFR PART 1185

ACTION

45 CFR PART 1229

Nonprocurement Debarment and Suspension

AGENCIES: Department of Commerce, Department of Defense, Department of Labor, Department of State, Department of the Treasury, Department of Justice, ACTION, Agency for International Development, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Small Business Administration, United States Information Agency, Veterans Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes a common regulation establishing among the Federal agencies shown above a uniform system of nonprocurement debarment and suspension.

DATE: To be assured of consideration, comments on the proposed rule must be received on or before December 21, 1987. Comments should refer to specific sections in the regulations.

ADDRESSES: See individual agencies below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12549, "Debarment and Suspension," was signed by President Reagan on February 18, 1986 and was published February 21, 1986 (51 FR 6370–71).

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment. This task force recommended in its November 1984 report that a governmentwide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. This could be the first step toward a comprehensive system, including both procurement and nonprocurement.

The Task Force on Nonprocurement Suspension and Debarment considered many issues in developing the proposed guidelines. It concluded that the system should be as compatible as possible with the procurement debarment and suspension system included in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of nonprocurement programs As a result, the guidelines generally used the due process procedural structure of the FAR. Also, the proposed grounds for debarment and suspension were substantially similar to those in the FAR. The proposal combined the criteria common to the existing agency nonprocurement regulations with the criteria in the FAR.

On February 21, 1986, OMB published proposed guidelines covering the subjects indicated in section 6 of E.O. 12549, including: coverage, governmentwide criteria, and minimum due process procedures (51 FR 6372–79). They were prepared in regulation format as a minimum model rule to facilitate their use by the executive departments and agencies in preparing the agency regulations called for by section 3 of the Order.

OMB received 60 comments on the proposed guidelines. All comments were provided to the Task Force on Nonprocurement Suspension and Debarment for consideration in preparing the final guidelines which were issued on May 26, 1987 and published May 29, 1987 (52 FR 20360–69).

Section 3 of E.O. 12549 directs Federal agencies to issue regulations governing implementation of the Order; the regulations must be consistent with these guidelines. In order to comply with these instructions, the executive departments and agencies joining in this common rulemaking essentially have adopted the OMB guidelines verbatim with the exception of two areas, "Coverage" (§ _____.110(a)(1)) and "Responsibilities of Federal agencies" (§ _____.505(e)). Public comments are especially invited on these two sections which are discussed below.

BEST COPY AVAILABLE

The scope of the final OMB guidelines published on May 29, 1987 covered direct and indirect costs but left to agency discretion whether to limit coverage (that is, the responsibility to check the consolidated list and/or certification) to items charged as direct costs. This notice limits coverage in § _____.110(a)(1) only to direct cost activities because extending coverage to indirect costs is administratively complicated and may impose additional paperwork burden on the public.

Section _____.505(e) also has been expanded since publication of the final OMB guidelines. The guidelines published on May 29, 1987 allowed agency discretion to determine when agencies would require certification by nonprocurement participants. This notice requires certification by all nonprocurement participants receiving $25,000 or less. This is consistent with the small purchase threshold in the proposed governmentwide common rule for grants to state and local governments and with the Federal Acquisition Regulation (FAR).

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We do not believe that this regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this regulation is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial member of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

In addition, the Regulatory Flexibility Act does not apply to this regulation because this regulation was not required to be promulgated as a proposed rule by the Administrative Procedure Act, 5 U.S.C. 553, or by any other law. The APA does not require publication of this proposed rule for public comment because it relates to loans, grants or other benefits. Matters "relating to loans, grants [or] benefits" are excepted from the APA, 5 U.S.C. 553(a)(2). Consequently, no Regulatory Flexibility Analysis has been or will be prepared.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

ADDRESS: Comments should be sent to: Robert B. Webber, General Counsel, 1441 L Street NW., Room 700, U.S. Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Karin L. Genis, Attorney-Advisor, (202) 653–6649.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is joining in the joint publication of regulations implementing Executive Order 12549, "Debarment and Suspension," signed by President Reagan on February 18, 1986. The Executive Order required the Office of Management and Budget (OMB) to develop guidelines for agency implementation of the Order. OMB issued its "Guidelines for Non-Procurement Debarment and Suspension" on May 26, 1987, which were published in the **Federal Register** on May 29, 1987 (52 FR 20360–69). The Guidelines were drafted in a form intended to serve as a model regulation for adoption by the affected agencies. The common rule printed below in today's **Federal Register** conforms with the OMB guidelines. While SBA proposes to adopt most provisions of the common rule, certain provisions are proposed to be modified to conform them to SBA's organization and programs. SBA proposes that certain of these changes be incorporated into the common rule. As described below, SBA believes these amendments will clarify the scope and improve the operation of the model regulations. SBA encourages the public to consider each proposed deviation from the common rule, and to advise SBA as to the appropriateness of including such revisions in the final regulation. Any comments on the model regulation or on any of the proposed revisions should be addressed to SBA as noted in the **ADDRESSES** portion of this rule.

SBA proposes to revise the definition of "covered transaction" in § _____.110(a)(1) of the common rule. The revised language is intended to enhance the clarity of this definition by distinguishing more clearly between primary covered transactions (those between the SBA and a participant) and a lower tiered covered transaction (those between a participant and a lower tier participant). The common rule also includes only direct cost transactions. SBA believes that the exclusion of indirect cost transactions is inappropriate. Both direct and indirect cost transactions between a participant and a lower tier participant who has been debarred, suspended or otherwise excluded in connection with a primary covered transaction equally involve the use of Federal source funds to benefit a non-responsible person. Neither should be tolerated, and neither should be beyond the reach of the regulation. The extent to which it is reasonable to routinely enforce the proscriptions elsewhere in the regulation is a separate question that SBA proposes to address by adding a new § 145.510, discussed below, setting forth the responsibilities of participants under the regulations. The common rule, as proposed, does not address participant responsibilities. SBA's proposed approach would clarify the purpose of this section, § _____.110(a)(1), as being only to identify the range of transactions covered by the regulations; enforcement procedures are addressed in §§ 145.505 and 145.510. SBA proposes that this change be incorporated into the common rule.

SBA's proposed new definition of covered transaction also differs from the language of the common rule in that it adds the phrase: ", any other formal agreements between the Agency and a person,". The purpose of this change is to recognize that SBA is involved in transactions that do not fall within any of those expressly enumerated in this provision, but which would also be covered by regulations. Such other transactions would include, for example, debenture guarantees with respect to Small Business Investment Companies and Certified Development Companies, or participation agreements between the Agency and surety bond companies or Preferred or Certified Lenders.

SBA also proposes to revise the language contained in § _____.110(a) of the common rule to reference specially covered activities of Department of Agriculture, Department of Housing and Urban Development and the Veterans Administration designated in those Agencies regulations implementing the Executive Order. These programs are expressly referenced in § _____.110(a)(2) of the common rule. SBA's change would delete the language in that paragraph of the common rule and substitute a general reference within paragraph (a) of this section. In consequence of this SBA further proposes to redesignate § _____.110(a)(1) as § 145.110(a);

§ _____.110(a)(3) as § 145.110(b);
§ _____.110(b) as § 145.110(c); and
§ _____.110(c) as § 145.110(d).

SBA proposes to delete the term "additional" before "affiliates" in § _____.110(b), redesignated here as § 145.110(c). This is to conform this provision to changes made below to § 145.120 and § 145.330(a).

SBA proposes to revise the definition of "Ineligible" in § 145.120 to make clear that only those persons determined to be ineligible pursuant to a governing statute, Executive Order or regulation will be referred to GSA for inclusion on the Consolidated List. SBA also proposes that this change be incorporated into the common rule. SBA believes the language of the common rule is over-broad. As defined in the common rule, "ineligible" persons would include all entities denied assistance pursuant to statutory or regulatory eligibility requirements because they fail to satisfy program eligibility criteria. For example, a company or individual denied a loan would qualify as "ineligible" under the common rule's definition solely because it did not satisfy SBA's statutory and regulatory credit requirements. Similarly, a company that was determined to be other than small would be "ineligible" under that definition. The consequence of this would be to flood the Consolidated List with the names of concerns and individuals whose "ineligibility" is peculiarly related to SBA's programs, without applicability or relevance to programs of other agencies. Consequently, SBA believes it would be inappropriate to include such entities and individuals on the Consolidated List, and proposes to revise the definition accordingly.

SBA proposes to delete the phrase ", including any subsidiary of any of the foregoing" from the definition of "Person" and to delete the definition of "Subsidiary" in its entirety in § _____.120, as contained in the common rule. The language is deleted here to make this provision consistent with changes made to § 145.330(a) (1) and (2), which distinguish debarment of a "person" from debarment of its "affiliates". The definition of "affiliates" in § 145.120 includes subsidiaries (and parents), so that it is unnecessary to define the term "Subsidiary" separately. Affiliates would be debarred together with a "person" only if specifically named and given notice of the proposed debarment. In the common rule, debarment of a person would automatically include debarment of all subsidiaries, unless otherwise specified by the debarring agency. SBA's proposed change would make this procedure consistent with the Agency's approach to size under Part 121 of title 13, Code of Federal Regulations.

SBA proposes to delete the phrase "that relates to the submission of bids or proposals" from § 145.305(a)(3). SBA believes this clause unnecessarily restricts the discretion of the Government to debar entities who have been convicted of violating the anti-trust laws. This change is also proposed for incorporation into the common rule.

SBA proposes that a new § 145.305(c)(7) be added to the regulation to recognize as an independent ground for debarment (and suspension) imposition of a civil penalty under the new Program Fraud Civil Penalties Act of 1986, codified at 31 U.S.C. 3801–12. Consistent with this change, SBA proposes to delete the word "or" at the end of § _____.305(c)(5), and to insert "; or" in place of the period at the end of § _____.305(c)(6). These changes are also proposed for incorporation into the common rule.

SBA proposes to revise proposed § _____.310(a) to state that "Agency employees shall promptly refer information constituting grounds for debarment to the cognizant debarring official for that official's consideration." SBA proposes to revise § _____.310(b) to read: "The Agency shall process debarment actions as informally as practicable, consistent with principles of fundamental fairness." These changes are intended to make the language of the common rule more Agency specific.

SBA proposes to delete the phrase "and the agency's specific procedures governing debarment decisionmaking" from § _____.310(b)(1)(iv). This language is unnecessary because SBA is adopting the procedures outlined in the Guidelines, and does not propose to augment those procedures.

SBA also proposes to revise § _____.310(b)(4)(ii)(B) to provide that the debarring official may refer the proposed debarment action to the Agency's Office of Hearings and Appeals to conduct further proceedings. SBA further proposes to revise § _____.310(b)(4)(ii)(C) to reference the procedural rules otherwise governing proceedings conducted by the Office of Hearings and Appeals at 13 CFR 135.35. These changes conform the regulation to the policies and procedures employed by SBA in connection with procurement debarment and suspension actions and integrate this process into the Agency's comprehensive regulations governing proceedings before its Office of Hearings and Appeals under 13 CFR Part 134.

SBA proposes to substitute the phrase "SBA shall not enter into any new covered transactions with" for the phrase "the debarring agency shall not make any new awards to" in § _____.315. The language in the common rule is borrowed from the procurement debarment and suspension regulations, and is not well suited for these regulations. Such change is also proposed generically for incorporation into the common rule. SBA also proposes to substitute "SBA" for "That agency" in the second sentence of this provision, to improve clarity.

SBA proposes to delete the words "or affiliate", "subsidiaries," and the comma after "divisions" from the first sentence of § _____.330(a)(1). The term "affiliate" is deleted to recognize that SBA does not intend the debarment of a person to automatically result in the debarment of an affiliate unless the procedures outlined in § _____.330(a)(2) are satisfied. "Subsidiaries" is deleted to recognize that such entities are included within the concept of "affiliate" as that term is defined in § _____.120, and in SBA's size regulations at 13 CFR 121.3(a). SBA also proposes to revise the end of this section to read "* * * individuals, division or organizational elements or to specified types of transactions." This change is to clarify the manner in which a debarment decision may be limited. SBA proposes these changes for inclusion in the common rule as well.

SBA proposes to delete the term "other" in § _____.330(a)(2), to make clear that only such affiliates as are specifically named and given notice of a proposed debarment will be affected by such action. This is necessary also due to the deletion of the term "affiliate" from § _____.330(a)(1). This approach would make SBA's non-procurement debarment and suspension procedures consistent with its approach to size under 13 CFR Part 121.

SBA proposes to revised proposed § _____.410(a) to state that "Agency employees shall promptly refer information constituting grounds for suspension to the cognizant suspending official for that official's consideration." SBA proposes to revise § _____.410(b) to read: "The Agency shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness." SBA further proposes to delete the phrase "and the agency's specific procedures governing suspension decisionmaking" from § _____.410(b)(1)(vi). These changes

are to recognize that SBA is adopting the model procedures outlined in the Guidelines as its procedures for suspension actions.

SBA also proposes to revise § _____.410(b)(4)(ii)(B) to state that the suspending official may refer the proposed suspension action to the Office of Hearings and Appeals to conduct further proceedings. SBA also proposes to revise § _____.410(b)(4)(ii)(C) to reference the procedural rules governing proceedings before the Agency's Office of Hearings and Appeals. These changes conform the regulation to the policies and procedures employed by SBA in connection with procurement debarment and suspension actions and integrate this process into the Agency's comprehensive regulations governing proceedings before its Office of Hearings and Appeals under 13 CFR Part 134.

SBA proposes to reception § _____.505 to read: "*Responsibilities of SBA.*" SBA further proposes to revise § _____.505(a) to insert in place of "Each agency shall designate a liaison who" the following: "The Associate Deputy Administrator for Management and Administration shall serve as liaison between SBA and GSA, and". SBA also proposes to substitute "SBA" in place of "each agency" each time it appears in § _____.505(b)–(e) for greater clarity.

SBA proposes to revise § _____.505(e) to delete the limitation contained in the common rule that participants be required to provide certifications only where the transaction is below $25,000. This language in the common rule creates a void as to what action is necessary as to transactions exceeding $25,000. SBA understands that this provision is intended to establish the basis for enforcement of the regulation's proscription against doing business with debarred, suspended or otherwise excluded individuals. In view of this fact, SBA believes that the purpose of this regulation will not be realized if the certification requirement is so limited. The burden of disclosure is properly upon the party seeking to participate in a covered transaction. By requiring certifications by all participants, the enforcement of the proscription against doing business with debarred, suspended or otherwise excluded persons is more efficiently performed. The need for such an enforcement mechanism is equally strong for transactions over $25,000 as for those under $25,000. Consequently, SBA believes the certification requirement should be applied to all participants.

SBA proposes to add a new § 145.505(f) which advises the public that SBA will consult the Consolidated List to determine whether first tier participants in a Primary covered transaction have been debarred, suspended or otherwise excluded.

SBA further proposes to add a new § 145.510 which would establish a requirement that participants obtain certifications from lower tier participants. The new section would identify those circumstances in which participants will be required to consult the Consolidated List and when they may rely on the certifications obtained before entering into a covered transaction with a lower tier participant. SBA proposes that this section be included in the common rule as well. The common rule is silent in this area. SBA believes this guidance is needed to avoid unnecessary confusion and inadvertent violations by participants. The SBA specifically invites comments on this new provision, particularly on the extension of enforcement responsibilities to indirect as well as direct costs.

The proposed provision would require that participants obtain certifications from all lower tier participants prior to entering into a lower tier covered transaction. It further provides that the participant may rely upon the certification of a lower tier participant where the transaction involved has a cost cf $25,000 or less. Where the transaction exceeds $25,000, the participant must consult the Consolidated List prior to entering into the lower tier covered transaction. The $25,000 figure used here is the same as the small purchase limitation employed in the Government contracting arena. Transactions above that limitation are of sufficient magnitude to warrant some further inquiry to verify the certification received. SBA believes that the requirement that the participant consult the Consolidated List is an appropriate further measure to require and is sufficient to assure compliance with the regulation without imposing too great a burden upon participants.

The provision also contains a requirement that each participant retain evidence of their compliance with this requirement for the same period they are otherwise required to retain financial records pertaining to the covered transaction. This is necessary to establish an audit trail.

SBA invites comment on these proposed modifications of the common rule, and on all other provisions of the common rule as they would apply to SBA programs.

List of Subjects in 13 CFR Part 145

Government-wide Nonprocurement Debarment and Suspension System.

SBA proposes to amend Title 13 of the Code of Federal Regulations as set forth below.

Dated: October 13, 1987.

James Abdnor,

Administrator.

1. Part 145 is added to read as set forth at the end of this document.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
145.100 Purpose.
145.105 Authority.
145.110 Scope.
145.115 Policy.
145.120 Definitions.

Subpart B—Effect of Action

145.200 Debarment or suspension.
145.205 Voluntary exclusion.
145.210 Ineligible persons.
145.215 Exception provision.
145.220 Continuation of current awards.
145.225 Failure to adhere to restrictions.

Subpart C—Debarment

145.300 General.
145.305 Causes for debarment.
145.310 Procedures.
145.315 Effect of proposed debarment.
145.320 Voluntary exclusion.
145.325 Period of debarment.
145.330 Scope of debarment.

Subpart D—Suspension

145.400 General.
145.405 Causes for suspension.
145.410 Procedures.
145.415 Period of suspension.
145.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

145.500 GSA responsibility.
145.505 Responsibilities of SBA.
145.510 Responsibilities of participants.

Authority: 15 U.S.C. 634(b)(6).

2. Newly added Part 145 is further amended as set forth below.

a. § 145.110 is revised to read as follows:

§ 145.110 Coverage.

These regulations establish rules and procedures under which the SBA may debar or suspend participants in covered transactions.

(a) *Covered transactions.* Covered transactions are domestic assistance transactions between SBA and a person, which include, except as noted in paragraph (b) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance,

loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts, and any other formal agreements between the SBA and a person. Covered transactions also include those transactions specially designated by the U.S. Department of Agriculture, the Department of Housing and Urban Development and the Veterans Administration in such agencies' regulations implementing Executive Order 12549. Such transactions are primary covered transactions. Covered transactions also include transactions at any lower tier, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards), between a participant and a lower tier participant.

(b) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidental benefits derived from ordinary governmental operations; and other transactions where the application Executive Order 12549 and these regulations would be prohibited by law.

(c) *Relationship to other sections.* This section, § 145.110, describes the types of activities and transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 145.200, sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants in the covered transactions described in § 145.110(a). Sections 145.330, "Scope of debarment," and 145.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(d) *Relationship to Federal acquisition activities.* Executive Order 12549 and these regulations do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, SBA will integrate its administration of these complementary debarment and suspension programs.

b. In § 145.120, the definitions of "Ineligible," and "Person" are revised and the definition of "Subsidiary" is being removed to read as follows:

§ 145.120 Definitions.

* * * * *

Ineligible. Excluded from participation by an agency in covered transactions pursuant to a determination of ineligibility under a statute, Executive Order, or regulation (other than Executive Order 12549 and its agency implementing regulations).

* * * * *

Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized.

* * * * *

c. In § 145.305, paragraph (a) introductory text is republished; paragraph (a)(3) is revised; paragraph (c) introductory text is republished; paragraph (c)(5) is amended by removing "or" at the end of the paragraph; paragraph (c)(6) is amended by removing the period at the end of the paragraph and inserting "; or"; and paragraph (c)(7) is added to read as follows:

§ 145.305 Causes for debarment.

* * * * *

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

* * * * *

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws.

* * * * *

(c) Any of the following causes:

* * * * *

(7) Imposition of a civil penalty under agency procedures implementing the Program Fraud Civil Penalties Act of 1986, 31 U.S.C. 3801–12.

* * * * *

d. In section 145.310, paragraphs (a) and (b) introductor text are revised; paragraph (b)(1) introductory text is republished; paragraph (b)(1)(iv) is revised; paragraph (b)(4) introductory text and (b)(4)(ii) are republished; and paragraphs (b)(4)(ii)(B) and (C) are revised to read as follows:

§ 145.310 Procedures.

(a) *Investigation and referral.* SBA employees shall promptly refer information constituting grounds for debarment to the cognizant debarring official for that official's consideration.

(b) *Decisionmaking process.* SBA shall process debarment actions as informally as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

* * * * *

(iv) Of the provisions of § 145.310(b)(1)–(b)(6);

* * * * *

(4) *Debarring official's decision.*

* * * * *

(ii) *Additional proceedings necessary.*

* * * * *

(B) The debarring official may refer the proposed debarment action to the Office of Hearings and Appeals to conduct further proceedings consistent with Part 134, and to issue recommended findings of fact and conclusions of law.

(C) The debarring official shall issue a final SBA decision consistent with the procedures in § 134.35.

* * * * *

e. Section 145.315 is revised to read as follows:

§ 145.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, agencies shall not enter into any new covered transactions with the respondent. SBA may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver or in the case of other agencies, the provisions of § 145.215 allowing exceptions for particular transactions may be applied.

f. In § 145.330, paragraph (a) is revised to read as follows:

§ 145.330 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is (i) specifically named and (ii) given notice of the proposed debarment and an opportunity to respond (see § 145.310).

g. In § 145.410, paragraphs (a) and (b) introductory text are revised; paragraph (b)(1) introductory text is republished,

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and paragraph (b)(1)(iv) is revised to read as follows:

§ 145.410 Procedures.

(a) *Investigation and referral.* SBA employees shall promptly refer information constituting grounds for suspension to the cognizant suspending official for that official's consideration.

(b) *Decisionmaking process.* SBA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of suspension.* When a respondent is suspended, notice shall immediately be given:

* * * * *

(vi) Of the provisions of § 145.410(b)(1)–(b)(5); and

* * * * *

h. Section 145.505 is revised to read as follows:

§ 145.505 Responsibilities of SBA.

(a) The Associate Deputy Administrator for Management and Administration shall serve as liaison between SBA and GSA, and shall be responsible for providing GSA with current information concerning debarments, suspensions, determinations of ineligibility and voluntary exclusions taken by SBA. Until February 18, 1989, the liaison shall also provide GSA and OMB with information concerning all transactions in which SBA has granted exceptions under § 145.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, SBA shall advise GSA of the information set forth in § 145.500(b) and of the exceptions granted under § 145.215 within five working days after taking such actions.

(c) SBA shall establish procedures to provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in this Part.

(d) SBA shall direct inquiries concerning listed persons to the agency that took the action.

(e) SBA shall require each participant in a covered transaction to certify whether the participant, or any person acting in a capacity listed in § 145.200(b) with respect to the participant or the particular covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 145.305(a).

Adverse information on the certification need not necessarily result in denial of participation. However, the information provided by the certification, and any additional information requested by SBA, shall be considered in the administration of covered transactions.

(f) Before entering into any covered transaction, SBA shall consult the list to determine whether the prospective participant is listed, in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in this part.

i. A new § 145.510 is added to read as follows:

§ 145.510 Responsibilities of participants.

The following requirements pertain to any lower tier covered transaction that is charged either as a direct or indirect cost to a primary covered transaction or to a lower tier covered transaction.

(a) Before entering into any lower tier covered transactions (including transactions involving the provision of counseling or training to an eligible small business) to which this part applies, participants shall require the prospective lower tier participant to certify whether such participant, or any person acting in a capacity listed in § 145.200(b) with respect to such lower tier participant or the particular lower tier covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 145.305(a).

Adverse information on the certification need not necessarily result in denial of participation. However, the information provided by the certification, and any additional information requested by the higher tier participant, shall be considered in the administration of covered transactions.

(b) Before entering into any lower tier covered transactions over $25,000, participants shall consult the Consolidated List to determine whether the prospective lower tier participant is listed, in order to ensure that listed persons do not participate in any lower tier covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these regulations. Participants are not required to consult the Consolidated List before entering into any lower tier transactions under $25,000; participants may rely on the certifications of lower tier participants.

(c) Participants shall direct inquiries regarding compliance with this section to the agency that is a party to the primary covered transaction.

(d) Participants shall retain evidence of their compliance with paragraphs (a) and (b) of this section for the same period of time required for financial records related to the covered transaction.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

ADDRESS: Office of Procurement, Code HP, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Thomas J. Whelan, (202) 453–2114.

List of Subjects in 14 CFR Part 1265

Grants and cooperative agreements.

It is proposed that Title 14 of the Code of Federal Regulations be amended by adding Part 1265 as set forth at the end of this document.

Dale D. Myers,

Deputy Administrator.

PART 1265—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
1265.100 Purpose.
1265.105 Authority.
1265.110 Scope.
1265.115 Policy.
1265.120 Definitions.

Subpart B—Effect of Action

1265.200 Debarment or suspension.
1265.205 Voluntary exclusion.
1265.210 Ineligible persons.
1265.215 Exception provision.
1265.220 Continuation of current awards.
1265.225 Failure to adhere to restrictions.

Subpart C—Debarment

1265.300 General.
1265.305 Causes for debarment.
1265.310 Procedures.
1265.315 Effect of proposed debarment.
1265.320 Voluntary exclusion.
1265.325 Period of debarment.
1265.330 Scope of debarment.

Subpart D—Suspension

1265.400 General.
1265.405 Causes for suspension.
1265.410 Procedures.
1265.415 Period of suspension.
1265.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

1265.500 GSA responsibility.
1265.505 Responsibilities of Federal agencies.

Authority: 42 U.S.C. 2473, the National Aeronautics and Space Act of 1958, as amended; Executive Order 12549.

DEPARTMENT OF COMMERCE

15 CFR Part 26

ADDRESS: Comments should be sent to Robert M. McNamara, Room 6026, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Robert M. McNamara, Room 6026, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: 377–5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: If a statute limits the authority of the Secretary over an organization funded by the Department, that limitation may have the legal effect of excepting some transactions from this regulation. Only where a statute clearly limits the authority of the Secretary regarding a specific transaction will that transaction be viewed as excepted from this regulation.

Paperwork Reduction Act of 1980

This proposed rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

Regulatory Flexibility Act of 1980

The Administrative Procedures Act (APA), 5 U.S.C. 553, does not require the Department to publish this proposed rule for public comment because it relates to grants, loans or benefits. Matters "relating to * * * loans, grants [or] benefits" are excepted from the APA, 5 U.S.C. 553(a)(2). Therefore, the Regulatory Flexibility Act does not apply to this rule because it is not required to be issued as a proposed rule by the APA or any other statute. Consequently, no Regulatory Flexibility Analysis has been or will be prepared.

List of Subjects in 15 CFR Part 26

Administrative practice and procedures, Debarment and suspension.

It is proposed that Title 15 of the Code of Federal Regulations be amended by adding Part 26 as set forth at the end of this document.

Sonya G. Stewart,

Director for Finance and Federal Assistance.

PART 26—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
26.100 Purpose.
26.105 Authority.
26.110 Scope.
26.115 Policy.
26.120 Definitions.

Subpart B—Effect of Action

26.200 Debarment or suspension.
26.205 Voluntary exclusion.
26.210 Ineligible persons.
26.215 Exception provision.
26.220 Continuation of current awards.
26.225 Failure to adhere to restrictions.

Subpart C—Debarment

26.300 General.
26.305 Causes for debarment.
26.310 Procedures.
26.315 Effect of proposed debarment.
26.320 Voluntary exclusion.
26.325 Period of debarment.
26.330 Scope of debarment.

Subpart D—Suspension

26.400 General.
26.405 Causes for suspension.
26.410 Procedures.
26.415 Period of suspension.
26.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

26.500 GSA responsibility.
26.505 Responsibilities of Federal agencies.

Authority: E.O. 12549, 51 FR 6370, 3 CFR 1987 Supp., p. 189.

DEPARTMENT OF STATE

22 CFR Part 137

ADDRESS: Comment should be sent to Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive (703) 875–7044.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State intends to incorporate the proposed rule as Part 137 of Title 22 of the Code of Federal Regulations. The Department has not previously promulgated regulatory coverage for a non-procurement debarment and suspension system.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Grant programs-foreign relations, Grants administration, Reporting and recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 137 as set forth at the end of this document.

John J. Conway,

Procurement Executive.

Part 137—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
137.100 Purpose.
137.105 Authority.
137.110 Scope.
137.115 Policy.
137.120 Definitions.

Subpart B—Effect of Action

137.200 Debarment or suspension.
137.205 Voluntary exclusion.
137.210 Ineligible persons.
137.215 Exception provision.
137.220 Continuation of current awards.
137.225 Failure to adhere to restrictions.

Subpart C—Debarment

137.300 General.
137.305 Causes for Debarment.
137.310 Procedures.
137.315 Effect of proposed debarment.
137.320 Voluntary exclusion.
137.325 Period of debarment.
137.330 Scope of debarment.

Subpart D—Suspension

137.400 General.
137.405 Causes for suspension.
137.410 Procedures.
137.415 Period of suspension.
137.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

137.500 GSA responsibility.
137.505 Responsibilities of Federal agencies.

Authority: 22 U.S.C. 2658.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

ADDRESS: Comments should be sent to Ralph C. Oser, GC/CCM, Office of the General Counsel, Room 6951 N.S., Agency for International Development, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ralph C. Oser, (202) 647–8332.

ADDITIONAL SUPPLEMENTARY INFORMATION: The government-wide regulations have been supplemented by A.I.D. to give examples of specific A.I.D. transactions that are covered by the

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regulation (§ 208.110(a)(4)) and to designate the officials authorized to suspend, debar and to grant exceptions (§§ 208.120 and 208.215).

List of Subjects in 22 CFR Part 208

Accounting, Administrative practice and procedures, Foreign aid grant programs—Foreign relations, Grants Administrator, Loan programs—Foreign relations.

Accordingly it is proposed to amend Title 22 of the Code of Federal Regulations as set forth below.

1. It is proposed to revise Part 208 to read as set forth at the end of this document.

PART 208—GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
208.100 Purpose.
208.105 Authority.
208.110 Scope.
208.115 Policy.
208.120 Definitions.

Subpart B—Effect of Action

208.200 Debarment or suspension.
208.205 Voluntary exclusion.
208.210 Ineligible persons.
208.215 Exception provision.
208.220 Continuation of current awards.
208.225 Failure to adhere to restrictions.

Subpart C—Debarment

208.300 General.
208.305 Causes for debarment.
208.310 Procedures.
208.315 Effect of proposed debarment.
208.320 Voluntary exclusion.
208.325 Period of debarment.
208.330 Scope of debarment.

Subpart D—Suspension

208.400 General.
208.405 Causes for suspension.
208.410 Procedures.
208.415 Period of suspension.
208.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

208.500 GSA responsibility.
208.505 Responsibilities of Federal agencies.

Authority: Section 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

2. It is proposed to further amend newly revised Part 208 as follows:

a. Section 208.110 is amended by adding paragraph (a)(4) to read as follows. Paragraph (a) introductory text is republished.

§ 208.110 Coverage.

(a) *Covered Transactions.* These guidelines apply to Executive Branch assistance described below:

* * * * *

(4) *Examples of A.I.D. covered transactions:* A.I.D. specific covered transactions include A.I.D.-financed cooperating country contracts under A.I.D. Handbook 11, A.I.D.-financed commodity transactions under 22 CFR Part 201, the reimbursement for overseas freight charges under 22 CFR Part 202, and A.I.D.'s investment guarantee program.

b. In §208.120, the definition of "Debarring official" and "Suspending official" are amended by adding a sentence to the end of each definition to read as follows:

§ 208.120 Definitions.

* * * * *

Debarring Official * * * The A.I.D. debarring official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

* * * * *

Suspending Official * * * The A.I.D. suspending official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

* * * * *

c. In § 208.215, the current paragraph is designated (a) and a new paragraph (b) is added to read as follows:

§ 208.215 Exception Provision.

* * * * *

(b) The Associate Assistant to the Administrator for Management has authority to grant exceptions.

d. In § 208.305, paragraph (d) is revised to read as follows:

§ 208.305 Causes for debarment.

* * * * *

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of an A.I.D. participant (e.g. failure to furnish information in accordance with the terms of one or more agreement or subagreement, violation of regulation, offer or acceptance of a bribe or other illegal payment or credit, or commission of a fraudulent act).

R.T. Rollis, Jr.,

Assistant to the Administrator for Management.

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

ADDRESS: Comments should be sent to: Charles N. Canestro, United States Information Agency, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485–8676.

FOR FURTHER INFORMATION CONTACT: Charles N. Canestro, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485–8676.

List of Subjects in 22 CFR Part 513

Grant monitoring, Grants administration, Ineligible grantees.

It is proposed that title 22 of the Code of Federal Regulations be amended by adding Part 513 as set forth at the end of this document.

Woodward Kingman,

Associate Director for Management.

Part 513—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
513.100 Purpose.
513.105 Authority.
513.110 Scope.
513.115 Policy.
513.120 Definitions.

Subpart B—Effect of Action

513.200 Debarment or suspension.
513.205 Voluntary exclusion.
513.210 Ineligible persons.
513.215 Exception provision.
513.220 Continuation of current awards.
513.225 Failure to adhere to restrictions.

Subpart C—Debarment

513.300 General.
513.305 Causes for debarment.
513.310 Procedures.
513.315 Effect of proposed debarment.
513.320 Voluntary exclusion.
513.325 Period of debarment.
513.330 Scope of debarment.

Subpart D—Suspension

513.400 General.
513.405 Causes for suspension.
513.410 Procedures.
513.415 Period of suspension.
513.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

513.500 GSA responsibility.
513.505 Responsibilities of Federal agencies.

Authority: E. O. 12549.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

ADDRESS: Comments should be sent to: Taxpayer Service Division, Taxpayer Information and Education Branch, TR:T:I—Room 7215, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marion L. Butler, Taxpayer Information and Education Branch, telephone 202–566–4904 (not a toll-free number).

Lists of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Taxes.

Proposed Amendments to the Statement of Procedural Rules

It is proposed that Title 26 of the Code of Federal Regulations, Part 601, be amended as follows:

PART 601—[AMENDED]

Paragraph 1. The authority for Part 601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

Subpart I—[Redesignated as Subpart J]

Par. 2. Subpart I is redesignated Subpart J.

Par. 3. A new Subpart I is added to read as set forth at the end of this document.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Subpart I—Common Rule for Nonprocurement Suspension and Debarment

General

601.901 (_____.100) Purpose.
601.902 (_____.105) Authority.
601.903 (_____.110) Scope.
601.904 (_____.115) Policy.
601.905 (_____.120) Definition.

Effect of Action

601.910 (_____.200) Debarment or suspension.
601.911 (_____.205) Voluntary exclusion.
601.912 (_____.210) Ineligible persons.
601.913 (_____.215) Exception provision.
601.914 (_____.220) Continuation of current awards.
601.915 (_____.225) Failure to adhere to restrictions.

Debarment

601.920 (_____.300) General.
601.921 (_____.305) Causes for debarment.
601.922 (_____.310) Procedures.
601.923 (_____.315) Effect of proposed debarment.
601.924 (_____.320) Voluntary exclusion.
601.925 (_____.325) Period of debarment.
601.926 (_____.330) Scope of debarment.

Suspension

601.930 (_____.400) General.
601.931 (_____.405) Causes for suspension.
601.932 (_____.410) Procedures.
601.933 (_____.415) Periods of suspension.
601.934 (_____.420) Scope of suspension.

Agency Responsibilities; Consolidated List

601.940 (_____.500) GSA responsibility.
601.941 (_____.505) Responsibilities of Federal agencies.

DEPARTMENT OF JUSTICE

28 CFR Part 67

ADDRESS: Comments should be sent to Gregory C. Brady, Department of Justice, Office of Justice Programs, 633 Indiana Ave., NW., Room 1268, Washington, DC 20531, (202) 724–6235.

FOR FURTHER INFORMATION CONTACT: Gregory C. Brady, (202) 724–6235.

ADDITIONAL SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking for a uniform system of nonprocurement debarment and suspension proposes a common regulation that will be applicable to the nonprocurement assistance activities of the offices, bureaus, and divisions of the Department of Justice which have grant-making authority. These include: The Office of Justice Programs, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, the National Institute of Corrections, the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, and the Drug Enforcement Administration. With respect to the Drug Enforcement Administration's authority to enter into contractual agreements with State and local law enforcement agencies under 21 U.S.C. 873(a)(7) to provide for cooperative enforcement and regulatory activities, the Attorney General will delegate the authority to grant exceptions, where warranted, under §_____.215 of this Notice to the Administrator, DEA, or his designee for the purposes of these section 873(a)(7) agreements.

Section _____.505(3) of this notice requires certification by only those nonprocurement participants receiving $25,000 or less. However, all participants in nonprocurement assistance emanating from the Department of Justice, regardless of dollar amounts, will be required to submit certifications. The Department believes that requiring certifications by all nonprocurement participants, in conjunction with reference to the list of ineligible organizations and persons by staff of the funding or awarding agency at whatever tier or level, will provide the ultimate protection against receipt of nonprocurement assistance by ineligible parties. The relatively small size of nonprocurement assistance provided by Department of Justice units and the limited tiers of funding associated with this assistance, usually no more than two or three levels, makes this approach feasible. Furthermore, the Department of Justice does not believe that requiring certifications from all participants will create a heavy paperwork burden because it is likely that the certifications will be achieved by a single-page form made available to prospective participants. Accordingly, the Department expressly solicits comments on its proposed § _____.505(e) effectuating this certification requirement.

List of Subjects in 28 CFR Part 67

Administrative practice and procedures, Grant programs—Law, Grants administration, Reporting and recordkeeping requirements.

It is proposed that Title 28 of the Code of Federal Regulations be amended as set forth below.

Edwin Meese III,

Attorney General.

1. Part 67 is added to read as set forth at the end of this document.

PART 67—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
67.100 Purpose.
67.105 Authority.
67.110 Scope.
67.115 Policy.
67.120 Definitions.

Subpart B—Effect of Action

67.200 Debarment or suspension.
67.205 Voluntary exclusion.
67.210 Ineligible persons.
67.215 Exception provision.
67.220 Continuation of current awards.
67.225 Failure to adhere to restrictions.

Subpart C—Debarment

67.300 General.
67.305 Causes for debarment.
67.310 Procedures.
67.315 Effect of proposed debarment.
67.320 Voluntary exclusion.
67.325 Period of debarment.
67.330 Scope of debarment.

Subpart D—Suspension

67.400 General.
67.405 Causes for suspension.
67.410 Procedures.
67.415 Period of suspension.
67.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

67.500 GSA responsibility.
67.505 Responsibilities of Federal agencies.

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Authority: The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

2. Newly added Part 67 is further amended by revising § 67.505(e) to read as follows:

§ 67.505 Responsibilities of Federal agencies.

* * * * *

(e) All participants in non-procurement assistance emanating from the Department of Justice shall be required to certify in writing whether the participant, or any person acting in a capacity listed in § 67.200(b) with respect to the participant or the particular covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 67.305(a).

* * * * *

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 98

ADDRESS: Written comments shall be mailed to Janice M. Sawyer, Director of Administrative and Procurement Programs, Room S–1524, U.S. Department of Labor, Washington, DC 20210. Telephone: 202–523–6415.

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Room S–1522, U.S. Department of Labor, Washington, DC 20210. Telephone: 202–523–9174.

List of Subjects in 29 CFR Part 98

Accounting, Administrative practice and procedures, Grant programs—debarment and suspension procedures, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 29 of the Code of Federal Regulations be amended by adding Part 98 as set forth at the end of this document.

Signed at Washington, DC, this 9th day of October, 1987.

William E. Brock,

Secretary of Labor.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.

98.100 Purpose.
98.105 Authority.
98.110 Scope.
98.115 Policy.
98.120 Definition.

Subpart B—Effect of Action

98.200 Debarment or suspension.
98.205 Voluntary exclusion.
98.210 Ineligible persons.
98.215 Exception provision.
98.220 Continuation of current awards.
98.225 Failure to adhere to restrictions.

Subpart C—Debarment

98.300 General.
98.305 Causes for debarment.
98.310 Procedures.
98.315 Effect of proposed debarment.
98.320 Voluntary exclusion.
98.325 Period of debarment.
98.330 Scope of debarment.

Subpart D—Suspension

98.400 General.
98.405 Procedures.
98.415 Period of suspension.
98.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

98.500 GSA responsibility.
98.505 Responsibility of Federal agencies.

Authority: Executive Order 12549, 51 FR 6370; OMB Guidelines for Nonprocurement Debarment and Suspension, 52 FR 20360 (May 29, 1987).

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

ADDRESS: Comments should be sent to 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Lee A. Buddendeck, 653–5320.

List of Subjects in 29 CFR Part 1471

Grant programs, Grants administration.

It is proposed that Title 29 of the Code of the Federal Regulations be amended by adding Part 1471 as set forth at the end of this document.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

PART 1471—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.

1471.100 Purpose.
1471.105 Authority.
1471.110 Scope.
1471.115 Policy.
1471.120 Definitions.

Subpart B—Effect of Action

1471.200 Debarment or suspension.
1471.205 Voluntary exclusion.
1471.210 Ineligible persons.
1471.215 Exception provision.
1471.220 Continuation of current awards.
1471.225 Failure to adhere to restrictions.

Subpart C—Debarment

1471.300 General.
1471.305 Causes for debarment.
1471.310 Procedures.
1471.315 Effect of proposed debarment.
1471.320 Voluntary exclusion.
1471.325 Period of debarment.
1471.330 Scope of debarment.

Subpart D—Suspension

1471.400 General.
1471.405 Causes for suspension.
1471.410 Procedures.
1471.415 Period of suspension.
1471.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

1471.500 GSA responsibility.
1471.505 Responsibilities of Federal agencies.

Authority: 29 U.S.C. 175a.

DEPARTMENT OF DEFENSE

32 CFR Part 280

ADDRESS: Office of the Under Secretary of Defense (Acquisition), Research and Advanced Technology/Research and Laboratory Management, Room 3E114, The Pentagon, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Herbst, (202) 694–0205

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense proposes the following rule to govern debarment and suspension for grants, cooperative agreements, scholarships, fellowships, and other nonprocurement actions. This proposed rule is intended to apply to domestic nonprocurement programs only. By adopting this government-wide common

rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will establish uniform practices that also are consistent with those being established by other Executive Departments and Agencies.

The Department of Defense currently issues nonprocurement grants principally to academic institutions for the purposes of supporting research and development projects related to weapons systems and other military needs. The use of nonprocurement grants and procurement contracts for these purposes is specifically authorized by 10 U.S.C. 2358.

There are significant differences between the treatment of grantees under the proposed common rule and the treatment of contractors under the recently proposed revision to 48 CFR Subpart 9.4 of the Federal Acquisition Regulation (FAR) and DoD FAR Supplement (DFAR), as published in the **Federal Register** of July 31, 1987. The proposed revisions to the FAR and DFAR require certification for subcontracts over $25,000 and do not apply below the small purchase threshold of $25,000. Section —. 505(e) of the proposed common rule for nonprocurement requires checking the consolidated list for all covered transactions over $25,000 and certifying for covered transactions of $25,000 or less. DoD specifically invites public comment and recommends that the proposed common rule for nonprocurement be amended so that it requires certification for covered transactions over $25,000 and does not apply below $25,000. If this recommendation is adopted, the proposed rule for nonprocurement debarment and suspension will be amended accordingly.

A second difference between the proposed treatment for grantees and contractors involves the extent to which employees and other individuals are covered. Under §§ ____505(e) and 200(b) of the proposed common rule for nonprocurement, grantees and subgrantees must certify whether any debarred and suspended individuals are holding positions charged as direct costs under the transaction. This coverage of employees and others is more extensive than that in the proposed revisions to the FAR and DFAR, which will require contractors to certify that no debarred and suspended individuals are participating under the contract as "principals," defined as officers, directors, owners, partners and persons such as general managers or division heads having primary management or supervisory responsibilities. DoD specifically invites public comment and recommends that the proposed common rule for nonprocurement be amended so that coverage of individuals is limited to "principals," as in the proposed revision to the FAR and DFAR. If this recommendation is adopted, the proposed rule for nonprocurement debarment and suspension will be amended accordingly.

The Department of Defense believes that establishing a dollar threshold and limiting the coverage of individuals would have several beneficial effects. These changes would, in keeping with the Paperwork Reduction Act, avoid excessive record-keeping burdens for recipients and subrecipients of DoD grants. They also would be consistent with the recently proposed revision to the FAR and DFAR.

The Department also is aware that the Office of Management and Budget has initiated a task force to review the relationship between the proposed common rule on nonprocurement and the FAR and DFAR rules on debarment and suspension for procurement. This task force likely will consider whether debarment and suspension rules for procurement should be revised to make contractors subject to the more burdensome requirements in this common rule for grantees. Therefore, the Department also generally invites public comment regarding: (1) The desirability of applying rules for procurement similar to this common rule for nonprocurement; or (2) alternative ways to make debarment and suspension rules apply as equitably as possible to grantees and contractors.

List of Subjects in 32 CFR Part 280

Administrative practice and procedures, Grant programs, Grants Administration, Reporting and recordkeeping requirements.

It is proposed that Title 32 of the Code of Federal Regulations be amended as set forth below.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 9, 1987.

Amendment 1. It is proposed to add part 280 to read as set forth at the end of this document.

PART 280—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
280.100 Purpose.
280.105 Authority.
280.110 Scope.
280.115 Policy.
280.120 Definitions.

Subpart B—Effect of Action

280.200 Debarment or suspension.
280.205 Voluntary exclusion.
280.210 Ineligible persons.
280.215 Exception provision.
280.220 Continuation of current awards.
280.225 Failure to adhere to restrictions.

Subpart C—Debarment

280.300 General.
280.305 Causes for debarment.
280.310 Procedures.
280.315 Effect of proposed debarment.
280.320 Voluntary exclusion.
280.325 Period of debarment.
280.330 Scope of debarment.

Subpart D—Suspension

280.400 General.
280.405 Causes for suspension.
280.410 Procedures.
280.415 Period of suspension.
280.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

280.500 GSA responsibility.
280.505 Responsibilities of Federal agencies.

Authority: E.O. 12549, 51 FR 6370.

§ 280.505 [Amended]

Amendment 2. It is proposed to further amend the newly added Part 280 by removing the terms "participant" and "participants" everywhere in § 280.505(e) and replacing them with the phrases "recipient or subrecipient" and "recipients or subrecipients," respectively.

National Archives and Records Administration

36 CFR Part 1209

ADDRESS: Comments should be sent to the Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 202–523–3214 (FTS 523–3214).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) makes grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs. The Catalog of Federal Domestic Assistance number is 89.003.

List of Subjects in 36 CFR Part 1209

Administrative practice and procedure, Grant programs—Archives and Records, Grants administration, Reporting and recordkeeping requirements.

It is proposed that Title 36 of the Code of Federal Regulations be amended by adding Part 1209 as set forth at the end of this document.

Dated: September 24, 1987.

Claudine J. Weiber,

Acting Archivist of the United States.

PART 1209—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.

1209.100 Purpose.
1209.105 Authority.
1209.110 Scope.
1209.115 Policy.
1209.120 Definitions.

Subpart B—Effect of Action

1209.200 Debarment or suspension.
1209.205 Voluntary exclusion.
1209.210 Ineligible persons.
1209.215 Exception provision.
1209.220 Continuation of current awards.
1209.225 Failure to adhere to restrictions.

Subpart C—Debarment

1209.300 General.
1209.305 Causes for debarment.
1209.310 Procedures.
1209.315 Effect of proposed debarment.
1209.320 Voluntary exclusion.
1209.325 Period of debarment.
1209.330 Scope of debarment.

Subpart D—Suspension

1209.400 General.
1209.405 Causes for suspension.
1209.410 Procedures.
1209.415 Period of suspension.
1209.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

1209.500 GSA responsibility.
1209.505 Responsibilities of Federal agencies.

Authority: 44 U.S.C. 2104.

VETERANS ADMINISTRATION

38 CFR Part 44

ADDRESS: Comments should be sent to: The Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Gail A. Gompf, Director, Office of Intergovernmental Affairs (00A1), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3116.

ADDITIONAL SUPPLEMENTARY INFORMATION: These proposed regulations codify the OMB guidelines pursuant to Executive Order 12549. Veterans Administration (VA) programs affected by these proposed regulations include, but are not limited to, affiliation agreements (38 U.S.C. 4101(b); agencies training counseling staffs at VA Regional Offices; exchange of medical information agreements under 38 U.S.C. 5054(a) and (b); health professional scholarships authorized by 38 U.S.C. 4141–4146; insurance; loan guaranty; provision of training to non-DM&S personnel by Regional Medical Education Centers (RMECs) authorized by 38 U.S.C. 4123(b); State contracts with individuals or organizations for the acquisition or construction of a State home using State home grant funds; State cemetery grants; and vocational rehabilitation and education.

In the area of vocational rehabilitation and education, for example, several programs would be affected. These proposed regulations would apply to facilities to which the VA pays training costs for veterans pursuing vocational rehabilitation programs. Also included would be agencies and organizations for which the VA authorizes grants to conduct rehabilitation research and provide training to enhance the skills of counseling and rehabilitation staff, and employers who are receiving payments that represent a portion of a veteran-trainee's wage under the Veterans' Job Training Act (VJTA).

The VA may currently disapprove job training programs when the agency discovers irregularities in them. Under these proposed regulations, the VA could debar offending employers as well. Further, if an employer were debarred or suspended by another agency, even for reasons unrelated to job training, that employer would be unable to participate in VJTA programs, unless specifically excepted from sanctions under 38 CFR 44.215.

Similarly, in the loan guaranty program, the proposed regulations would affect all nonprocurement program participants, including lenders, builders, participants in the manufactured home loan program (manufacturers, dealers and park operators), fee appraisers, and real estate sales brokers and agents, and their employees. VA may currently impose sanctions on any lender who has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or the Government. A lender who has been suspended or debarred is thereafter barred from making or acquiring by purchase any VA guaranteed loans. In addition, VA suspends or debars on a reciprocal basis lenders who have been denied the benefits of participation in programs administered by the Secretary of Housing and Urban Development (HUD). Under these proposed regulations, lenders who have been debarred or suspended by other agencies would be unable to participate in the VA loan guaranty program. For example, a lender denied participation in the housing loan programs of the Farmers Home Administration would be unable to participate in the VA Home Loan program, unless specifically excepted under 38 CFR 44.215.

Also, builders and real estate sales brokers and agents who are debarred or suspended by other agencies would be unable to participate in VA appraisal agreements. Under 38 U.S.C. 1804(b), VA may currently refuse to appraise any dwelling owned, sponsored or to be constructed by any person identified with housing previously sold to veterans as to which substantial deficiencies have been discovered or where the type of contracts or sale or methods and practices pursued in relation to the marketing of units were unfair or unduly prejudicial to veterans. VA may also refuse to appraise dwellings where the builder or broker has been denied participation in HUD programs. Under these proposed regulations, dwellings constructed or sold by builders or brokers debarred or suspended by other agencies would not be available for appraisal by the VA, unless a specific exception were granted under 38 CFR 44.215.

In the Department of Medicine and Surgery (DM&S), States which qualify are awarded VA grants for construction and acquisition of State veterans home facilities. A suspension or debarment action could arise in a number of situations involving a construction firm with which a State contracts. For instance, there might be fraud or a criminal offense on the part of the contractor in obtaining that public contract. In addition, affiliation agreements, health professional

scholarships, the training of non-DM&S personnel by RMECs, and exchange of medical information agreements would all be susceptible to investigation and referral for suspension or debarment by the VA for willful or material failure of the second party to adhere to terms of the agreement. In each of these situations, the transgressions of the participants could invoke the proposed regulations on debarment and suspension.

The proposed rules do not impose paperwork or recordkeeping burdens. Only some participants in covered transactions under the rules are small entities for purposes of the Regulatory Flexibility Act. Moreover, only those participants involved in debarment or suspension proceedings would be affected. Consequently, less than a substantial number of small entities will be affected by these rules.

List of Subjects in 38 CFR Part 44

Accounting, Administrative practice and procedures, Agreements, Grant programs—State cemetery and State veterans homes, Insurance, Loan guaranty, Reporting and recordkeeping requirements, Scholarships, Veterans, Vocational rehabilitation and Education.

It is proposed that Title 38 of the Code of Federal Regulations be amended by adding Part 44 as set forth at the end of this document.

Approved: September 25, 1987.

By direction of the Administrator.

James E. DeWire,

Chief of Staff.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.

44.100 Purpose.
44.105 Authority.
44.110 Scope.
44.115 Policy.
44.120 Definitions.

Subpart B—Effect of Action

44.200 Debarment or suspension.
44.205 Voluntary exclusion.
44.210 Ineligible persons.
44.215 Exception provision.
44.220 Continuation of current awards.
44.225 Failure to adhere to restrictions.

Subpart C—Debarment

44.300 General.
44.305 Causes for debarment.
44.310 Procedures.
44.315 Effect of proposed debarment.
44.320 Voluntary exclusion.
44.325 Period of debarment.
44.330 Scope of debarment.

Subpart D—Suspension

44.400 General.
44.405 Causes for suspension.
44.410 Procedures.
44.415 Period of suspension.
44.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

44.500 GSA responsibility.
44.505 Responsibilities of Federal agencies.

Authority: E.O. 12549 (51 FR 6370); 38 U.S.C. 210(c)

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-50

ADDRESS: Comments should be sent to: General Services Administration (FBP), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Property Management Division, (703) 557–1240.

ADDITIONAL SUPPLEMENTARY INFORMATION: To promote the uniform and effective administration of the program for the donation of surplus Federal personal property as provided for in section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, the General Services Administration (GSA) proposes to adopt the uniform model regulation published herein and will promulgate it at 41 CFR Part 101–50. The model regulation provides details that do not exist under GSA's present implementing regulations.

List of Subjects in 41 CFR Part 101–50

Administrative practice and procedures, Federal surplus property.

It is proposed that Title 41 of the Code of Federal Regulations be amended by adding Part 101–50 as set forth at the end of this document.

Date: October 13, 1987.

Donald C. J. Gray,

Commissioner, Federal Supply Service.

PART 101-50—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart 101-50.1—General

Sec.

101–50.100 Purpose.
101–50.105 Authority.
101–50.110 Scope.
101–50.115 Policy.
101–50.120 Definitions.

Subpart 101-50.2—Effect of Action

101–50.200 Debarment or suspension.
101–50.205 Voluntary exclusion.
101–50.210 Ineligible persons.
101–50.215 Exception provision.
101–50.220 Continuation of current awards.
101–50.225 Failure to adhere to restrictions.

Subpart 101-50.3—Debarment

101–50.300 General.
101–50.305 Causes for debarment.
101–50.310 Procedures.
101–50.315 Effect of proposed debarment.
101–50.320 Voluntary exclusion.
101–50.325 Period of debarment.
101–50.330 Scope of debarment.

Subpart 101-50.4—Suspension

101–50.400 General.
101–50.405 Causes for suspension.
101–50.410 Procedures.
101–50.415 Period of suspension.
101–50.420 Scope of suspension.

Subpart 101-50.5—Agency Responsibilities; Consolidated List

101–50.500 GSA responsibility.
101–50.505 Responsibilities of Federal agencies.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); and E.O. 12549.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

ADDRESS: Comments should be sent to Office of the Comptroller, Policy Division, Room 721, Federal Emergency Management Division, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Office of the Comptroller Policy Division (202) 646–3718.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency intends to incorporate the proposed rule as Part 17 of Title 44 of the Code of Federal Regulations.

Though the agency has never issued formal Assistance Standards in the Code of Federal Regulations, it did issue guidance for its recipients in FEMA's Financial Assistance Guidelines, CPG 1–32. These guidelines were issued to all of our assistance programs with the exception of the Disaster Program. FEMA will develop and issue implementing administrative procedures and automated programs pertaining to disaster grants and loans in view of the magnitude of the disaster relief program, the number of grants involved, and the number of individuals and local government affected.

List of Subjects in 44 CFR Part 17

Accounting, Administrative practice and procedures, Grant programs—civil defense, disaster, hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements.

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It is proposed that Title 44 of the Code of Federal Regulations be amended by adding Part 17 as set forth at the end of this document.

Michael McCansland,

Financial Policy Specialist, Office of the Comptroller.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
17.100 Purpose.
17.105 Authority.
17.110 Scope.
17.115 Policy.
17.120 Definition.

Subpart B—Effect of Action

17.200 Debarment or suspension.
17.205 Voluntary exclusion.
17.210 Ineligible persons.
17.215 Exception provision.
17.220 Continuation of current awards.
17.225 Failure to adhere to restrictions.

Subpart C—Debarment

17.300 General.
17.305 Causes for debarment.
17.310 Procedures.
17.315 Effect of proposed debarment.
17.320 Voluntary exclusion.
17.325 Period of debarment.
17.330 Scope of debarment.

Subpart D—Suspension

17.400 General.
17.405 Causes for suspension.
17.410 Procedures.
17.415 Period of suspension.
17.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

17.500 GSA responsibility.
17.505 Responsibilities of Federal agencies.

Authority: Reorg. Plan No. 3 1978; EO 12549 51 FR 6370.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 620

ADDRESS: Comments should be sent to Office of General Counsel, Room 501, 1800 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Arthur J. Kusinski, Assistant General Counsel, (202) 357–9435.

List of Subjects in 45 CFR Part 620

Administrative practice and procedures, Grant Administration, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 620 as set forth at the end of this document.

Arthur J. Kusinski,

Assistant General Counsel.

PART 620—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
620.100 Purpose.
620.105 Authority.
620.110 Scope.
620.115 Policy.
620.120 Definitions.

Subpart B—Effect of Action

620.200 Debarment or suspension.
620.205 Voluntary exclusion..
620.210 Ineligible persons.
620.215 Exception provision.
620.220 Continuation of current awards.
620.225 Failure to adhere to restrictions.

Subpart C—Debarment

620.300 General.
620.305 Causes for debarment.
620.310 Procedures.
620.315 Effect of proposed debarment.
620.320 Voluntary exclusion.
620.325 Period of debarment.
620.330 Scope of debarment.

Subpart D—Suspension

620.400 General
620.405 Causes for suspension.
620.410 Procedures.
620.415 Period of suspension.
620.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

620.500 GSA responsibility.
620.505 Responsibilities of Federal agencies.

Authority: Executive Order 12459; and section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. section 1870(a)).

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

ADDRESS: Comments should be sent to Arthur Warren, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202–682–5418).

FOR FURTHER INFORMATION CONTACT: Arthur Warren or Laurence Baden, Grants Officer (202–682–5403), 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

ADDITIONAL SUPPLEMENTARY INFORMATION: Section 505(e) of the proposed regulation, as explained in the common preamble, directs federal agencies to require participants in covered transactions to either check all such transactions against the list of suspended or bebarred participants or, for transactions at or below the proposed small purchase threshold of $25,000, to certify whether a participant in a covered transaction is suspended or debarred.

The National Endowment for the Arts specifically requests public comment on establishing a dollar threshold level for undertaking such action for covered transactions. Below this threshold level, participants would not be required to provide certification (or to refer to the suspended and debarred list) to determine whether those with whom they are doing business have been suspended or debarred on a government-wide basis. We recommend that this threshold level be set at $25,000. If such a threshold were adopted, § _____.505(e) of the regulation would be amended accordingly.

The National Endowment for the Arts believes that establishing such a threshold would have several beneficial effects. It would, in keeping with the Paperwork Reduction Act, avoid excessive record-keeping burdens for grantees and subrecipients. Also, it would be consistent with the debarment and suspension procedures proposed for procurement activities subject to the Federal Acquisition Regulation (FAR) (*see* 52 FR 28642). These proposed amendments to the FAR would require certification for subcontracts over $25,000 but would exempt subcontracts at a below the small purchase threshold of $25,000 from such procedures. Consistency with the procedures for procurement activities under the FAR is important in light of the goal established in Executive Order 12549 of coordinating nonprocurement suspension and debarment procedures with those for procurement-based suspension and debarment.

Therefore, the National Endowment for the Arts recommends that § _____.505(e) of the proposed government-wide regulation on nonprocurement suspension and debarment be revised to adopt from the proposed FAR suspension and debarment amendments the small purchase threshold of $25,000 as the threshold for the certification requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by

adding Part 1154 as set forth at the end of this document.

Peter J. Basso,

Deputy Chairman for Management, National Endowment for the Arts.

PART 1154—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

1154.100 Purpose.
1154.105 Authority.
1154.110 Scope.
1154.115 Policy.
1154.120 Definition.

Subpart B—Effect of Action

1154.200 Debarment or suspension.
1154.205 Voluntary exclusion.
1154.210 Ineligible persons.
1154.215 Exception provision.
1154.220 Continuation of current awards.
1154.225 Failure to adhere to restrictions.

Subpart C—Debarment

1154.300 General.
1154.305 Causes for debarment.
1154.310 Procedures.
1154.315 Effect of proposed debarment.
1154.320 Voluntary exclusion.
1154.325 Period of debarment.
1154.330 Scope of debarment.

Subpart D—Suspension

1154.400 General.
1154.405 Causes for suspension.
1154.410 Procedures.
1154.415 Period of suspension.
1154.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

1154.500 GSA responsibility.
1154.505 Responsibilities of Federal agencies.

Authority: 20 U.S.C. 959(a)(1).

National Endowment for the Humanities

45 CFR Part 1169

ADDRESS: Comments should be sent to Stephen J. McCleary, Deputy General Counsel, 1100 Pennsylvania Avenue NW., Room 530, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Deputy General Counsel, 1100 Pennsylvania Avenue NW., Room 530, Washington DC. 20506.

List of Subjects in 45 CFR Part 1169

Accounting, Administrative practice and procedures, Claims, Grants programs, Grant administration.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1169 as set forth at the end of this document. Part 1169 is added to subchapter D.

John Agresto,

Deputy Chairman.

Part 1169—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
1169.100 Purpose.
1169.105 Authority.
1169.110 Scope.
1169.115 Policy.
1169.120 Definitions.

Subpart B—Effect of Action

1169.200 Debarment or suspension.
1169.205 Voluntary exclusion.
1169.210 Ineligible persons.
1169.215 Exception provision.
1169.220 Continuation of current awards.
1169.225 Failure to adhere to restrictions.

Subpart C—Debarment

1169.300 General.
1169.305 Causes for debarment.
1169.310 Procedures.
1169.315 Effect of proposed debarment.
1169.320 Voluntary exclusion.
1169.325 Period of debarment.
1169.330 Scope of debarment.

Subpart D—Suspension

1169.400 General.
1169.405 Causes for suspension.
1169.410 Procedures.
1169.415 Period of suspension.
1169.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

1169.500 GSA responsibility.
1169.505 Responsibilities of Federal agencies.

Authority: 20 U.S.C. 959(a)(1).

Institute of Museum Services

45 CFR Part 1185

ADDRESS: Comments should be sent to Lois Burke Shepard, Institute of Museum Services, 100 Pa. Ave. NW., Room 510, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers (202) 786–0539.

List of Subjects in 45 CFR Part 1185

Accounting, Administrative practice and procedures, Grant programs—Museums, national boards, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1185 as set forth at the end of the document.

Lois Burke Shepard,

Director.

PART 1185—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

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Authority: 20 U.S.C. 961–68.

ACTION

45 CFR Part 1229

ADDRESS: Comments should be sent to Kirby L. McCollum, Chief, Grants Management Branch, ACTION, 806 Connecticut Avenue NW., Room P–403, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Kirby L. McCollum 202–634–9150.

List of Subjects in 45 CFR Part 1229

Accounting, Administrative practice and procedures, Grant programs, Volunteer services, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by

adding Part 1229 as set forth at the end of this document.

Donna M. Alvarado,

Director.

PART 1229—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.

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1229.105 Authority.
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Subpart B—Effect of Action

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1229.415 Period of suspension.
1229.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

1229.500 GSA Responsibility.
1229.505 Responsibilities of Federal agencies.

Authority: Pub. L. 93–113; 42 U.S.C. 4951 et seq.; 42 U.S.C. 5060.

PART_____—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.

_____.100 Purpose.
_____.105 Authority.
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Subpart B—Effect of Action

_____.200 Debarment or suspension.
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Subpart C—Debarment

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Subpart D—Suspension

_____.400 General.
_____.405 Causes for suspension.
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_____.415 Period of suspension.
_____.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

_____.500 GSA responsibility.
_____.505 Responsibilities of Federal agencies.

Authority:_____.

Subpart A—General

§ _____.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. Section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue guidelines concerning the Order.

(b) These regulations implement sections 3 and 6 of Executive Order 12549 by:

(1) Prescribing the programs and activities that are covered by the Order;

(2) Prescribing the government-wide criteria and government-wide minimum due process procedures that Federal agencies shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible" in § _____.120);

(4) Setting forth the consequences of the actions under paragraph (b)(3) of this section;

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(d) The procedures set forth in §§ _____.310 and _____.410 are the minimum due process procedures which agencies must follow. However, agencies are free to supplement them in any way not inconsistent with those sections.

§ _____.105 Authority.

These regulations are issued pursuant to Executive Order 12549 of February 18, 1986.

§ _____.110 Coverage.

(a) *Covered transactions.* These regulations apply to Executive branch domestic assistance described below:

(1) *General.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards, subcontracts and transactions at any tier that are charged as direct costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and, specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration, and in the interstate land sales and manufactured housing programs of the Department of Housing and Urban Development are subject to these guidelines. Also, those in business relationships with such participants with respect to such programs are subject to these guidelines, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidental benefits derived from ordinary governmental operations; and, other transactions where the application of Executive Order 12549 and these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section, § _____.110, describes the types of activities and transactions to which a debarment or suspension under the regulations will apply. Subpart B, Effect of Action, § _____.200, sets forth the consequences of a debarment or suspension. Those consequences would

obtain only with respect to participants in the covered transactions and activities described in § ____.110. Sections ____.330, Scope of debarment, and § ____.420, Scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549 and these regulations do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, agencies are encouraged to integrate their administration of these complementary debarment and suspension programs.

§ ____.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

§ ____.120 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

Agency. Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

Consolidated List. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these regulations, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Debarring official. An agency head or a designee authorized by the agency head to impose debarment.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in covered transactions, programs, or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared, with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. An agency head or a designee authorized by the agency head to impose suspension.

Suspension. An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

Subpart B—Effect of Action

§ _____.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment or suspension shall be effective throughout the executive branch of the Federal Government. Except as provided in § _____.215, persons who are debarred or suspended under these provisions are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

§ _____.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § _____.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

§ _____.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ _____.215 Exception provision.

An agency may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions should be reported in accordance with § _____.505.

§ _____.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § _____.215.

§ _____.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except as permitted under these regulations, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Subpart C—Debarment

§ _____.300 General.

The debarring official may debar a participant for any of the causes in § _____.305, using procedures established in accordance with § _____.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

§ _____.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ _____.300 and _____.310 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § _____.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ _____.310 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of

matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under §_____.305 for proposing debarment;

(iv) Of the provisions of §_____.310(b)(1)–(b)(6) and the agency's specific procedures governing debarment decisionmaking;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.* (i) In actions not based upon a conviction or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision*—(i) *No additional proceedings necessary.* In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.* (i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in _____.215.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ _____.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the debarring agency shall not make any new awards to the respondent. That agency may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of § _____.215 allowing exceptions for particular transactions may be applied.

§ _____.320 Voluntary exclusion.

A participant and an agency may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

§ _____.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § _____.310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ _____.330 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of transactions.

(2) The debarment action may include any other affiliate of the participant that is (i) specifically named and (ii) given notice of the proposed debarment and an opportunity to respond (see § _____.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Subpart D—Suspension

§ _____.400 General.

(a) The suspending official may suspend a participant for any of the causes in § _____.405 using procedures established in accordance with § _____.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § _____.405 when it has been determined that immediate action is necessary to protect the public interest.

§ _____.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ _____.400 and _____.410 upon adequate evidence:

(1) To suspect the commission of an offense listed in § _____.305(a); or

(2) That a cause for debarment under § _____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ _____.410 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of suspension.* When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause(s) relied upon under § _____.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of § _____.410(b)(1)–(b)(5) and the agency's specific procedures governing suspension decisionmaking; and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.* (i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless—

(A) The action is based on an indictment, conviction or judgment, or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the repondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Suspending official's decision.* The suspending official may modify or terminate the suspension (for example, see § _____.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§ _____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ _____.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of debarment (see § _____.330), except that the procedures of § _____.410 shall be used in imposing a suspension.

Subpart E—Agency Responsibilities; Consolidated List

§ _____ .500 GSA responsibility.

(a) GSA shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ _____.505 Responsibilities of Federal agencies.

(a) Each agency shall designate a liaison who shall be responsible for providing GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by that agency. Until February 18, 1989, the liaison shall also provide GSA and OMB with information concerning all transactions in which the agency has granted exceptions under § _____.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, each agency shall advise GSA of the information set forth in § _____.500(b) and of the exceptions granted under § _____.215 within five working days after taking such actions.

(c) Each agency shall establish procedures to provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these regulations.

(d) Each agency shall direct inquiries concerning listed persons to the agency that took the action.

(e) Each agency shall require participants in covered transactions at or below the proposed small purchase threshold of $25,000 to certify whether the participant, or any person acting in a capacity listed in § _____.200(b) with respect to the participant or the particular covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § _____.305(a).

Adverse information of the certification need not necessarily result in denial of participation. Agencies shall establish procedures to ensure that information provided by the certification, and any additional information they may require, is considered in the administration of covered transactions.

[FR Doc. 87–24182 Filed 10–9–87; 8:45 am]

BILLING CODES 8025–01–M, 7510–01–M, 3510–FE–M, 4710–24–M, 6116–01–M, 8230–01–M, 4830–01–M, 4410–18–M, 4510–23–M, 6732–01–M, 3810–01–M, 7515–01–M, 8320–01–M, 6820–24–M, 6718–01–M, 7555–01–M, 7537–01–M, 7536–01–M, 7036–01–M, 6050–28–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3015

Uniform Federal Assistance Regulations on Nonprocurement Debarment and Suspension

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Department of Agriculture's Uniform Federal Assistance Regulations by adding regulations on nonprocurement debarment and suspension Executive Order 12549 requires executive departments and agencies to issue these regulations consistent with guidelines issued by the Office of Management and Budget.

DATE: To be assured of consideration, comments on the proposed rule must be received on or before December 21, 1987. Comments should refer to specific sections in the regulation.

ADDRESS: Comments should be addressed to Gerald Miske, Supervisory Program Analyst, Office of Finance and Management, Financial Management Division, USDA, Room 1369—South Building, 14th and Independence Avenue SW., Washington, DC 20250. Comments received may be inspected at Room 1369–S, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Gerald Miske (Supervisory Program Analyst), (202) 382–1553.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12549 was signed by President Reagan on February 18, 1986, and was published February 21, 1986 (51 FR 6370–71).

As part of the Administration's initatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment. This Task Force recommended in its November 1984 report that a Governmentwide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established.

The Task Force considered many issues in developing the proposed guidelines. It concluded that the system should be as compatible as possible with the procurement and suspension system included in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of nonprocurement programs. As a

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result, the guidelines generally used the due process procedural structure of the FAR. Also, the proposed grounds for debarment and suspension were subtantially similar to those in the FAR. The proposal combined the criteria common to existing agency nonprocurement regulations with the criteria in the FAR.

On February 21, 1986, OMB published guidelines (51 FR 6372–79) covering the subjects indicated in section 6 of Executive Order 12549, including coverage, Governmentwide criteria, and minimum due process procedures. OMB received 60 comments on the proposed guidelines. All comments were provided to the task force for consideration in preparing the final guidelines which were published May 29, 1987.

Section 3 of Executive Order 12549 directs Federal agencies to issue regulations governing the implementation of the Order which must be consistent with the OMB guidelines. These proposed regulations are consistent with the content of the OMB guidelines. However, certain provisions have been added, deleted, or merged for purposes of clarification, simplification, identification of internal responsibilities, and insertion of items omitted from the OMB guidelines. Those changes are discussed below.

Summary of Changes

Renumbering. Due to differences between the USDA proposed regulation and the OMB guidelines, including the consolidation of some provisions, and in order to be consistent with the established system for numbering sections in Part 3015, the section numbers in this proposed regulation are different from the section numbers used in the OMB guidelines. For ease of reference, therefore, the table of contents and the section headings contain a parenthetical reference to the corresponding section in the OMB guidelines.

Minimum requirements. The OMB guidelines provide that Federal agencies should establish procedures for investigation and referral of appropriate matters to the Debarring/Suspending Offical (DSO) for the debarment/suspension decisionmaking process, and that agencies should establish procedures for the effective dissemination and use of the consolidated list of debarred and suspended participants. Sections 3015.414 and 3015.419 of these regulations propose minimum requirements for each of the procedures. The minimum requirements will be used by USDA agencies in developing their own procedures in those areas.

Coverage. The scope of the final OMB guidelines covered both direct and indirect costs but left to agency discretion whether to limit coverage to only items charged as direct costs. This proposed rule limits coverage in § 3015.401(a)(1) to direct cost activities only.

Certification. The OMB guidelines allowed for agency discretion in determining when to require certification by participants. In the use of this authority, USDA proposes that:

(1) Subrecipients at all levels will be required to certify that they have not been debarred or suspended regardless of dollar amount.

(2) In agreements with USDA recipients:

—For covered transactions under $25,000 in direct costs, USDA agencies will require recipients to clarify that they have not been debarred or suspended; and

—For covered transactions of $25,000 or more in direct costs, USDA agencies are required to check the Governmentwide consolidated list of debarred or suspended persons.

Consolidation. This proposed regulation combines sections of the OMB guidelines. The specific OMB sections that were merged are:

§§ _____.300 and _____.400 were combined and are found in § 3015.411;

§§ _____.310 and _____.410 were combined and are found in § 3015.414; and

§§ _____.330 and _____.420 were combined and are found in § 3015.417.

USDA proposes that the following provisions be added to this regulation that are not included within the OMB guidelines:

Voluntary exclusion. The OMB guidelines did not specify the period during which a voluntary exclusion settlement could be reached. The Department has included in § 3015.406 that the DSO and the participant may enter into a settlement agreement providing for voluntary exclusion at any point in the process prior to the final decision by the DSO.

Submission in opposition. There was no provision in the OMB guidelines for dealing with the situation where the respondent fails to timely provide any submission in opposition. The Department has included in § 3015.414(b)(4)(i)(A) that the action will be considered final in such a case.

Department of Justice (DOJ) coordination. The OMB guidelines provided for coordinative efforts with DOJ only in suspension actions. USDA believes that protection of the Federal Government's interest in debarment actions is of equal importance. In §§ 3015.414(b)(3)(i)(B) and 3015.414(b)(4)(i)(C), the Department has specified coordination with DOJ on debarment as well as on suspension actions. Additionally, § 3015.414(a)(4)(ii) provides that the Department's Office of the General Counsel will be the point of information exchange with DOJ.

DOJ advice on additional proceedings. Section 3015.414(b)(3)(i)(B) provides that if DOJ advises against additional proceedings to determine disputed facts, then the action being taken by USDA would be stopped with USDA retaining the right to proceed at a later date. Alternatively, the action may be permitted to proceed if it is determined that there is enough evidence to proceed without using facts that DOJ has advised would prejudice its pending legal proceedings.

Appeals. The OMB guidelines did not include an appeal mechanism. Agriculture has provided for an appeal procedure that allows an administrative appeal by the debarred or suspended participant. Upon request, a DSO's decision on debarment or suspension actions will be reviewed by an unbiased entity as a final step in fairness to the participant.

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis will be required for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We do not believe that this regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this regulation is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 3015

Grant programs (Agriculture), Intergovernmental relations.

Issued at Washington, DC October 15, 1987.

Richard E. Lyng,

Secretary of Agriculture.

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

Accordingly, USDA proposes to amend 7 CFR Part 3015 as set forth below:

1. The authority citation for Part 3015 is revised to read as follows:

Authority: 5 U.S.C. 301 Subpart W also issued under Executive Order 12549, 51 FR 6370, 3 CFR 1986 Comp., p. 189.

2. It is proposed that Part 3015 be amended by adding Subpart W to read as follows:

* * * * *

Subpart W—Nonprocurement Debarment and Suspension

Sec.

3015.400 (___.100) Purpose.
3015.401 (___.110) Coverage.
3015.402 (___.115) Policy.
3015.403 (___.120) Definitions.
3015.404 (___.200) Effect of debarment or suspension.
3015.405 (___.315) Effect of proposed debarment.
3015.406 (___.205 and ___.310) Effect of voluntary exclusion.
3015.407 (___.210) Effect of declaring persons ineligible.
3015.408 (___.215) Exception provision.
3015.409 (___.220) Continuation of current awards.
3015.410 (___.225) Failure to adhere to restrictions.
3015.411 (___.300 and ___.400) Debarment/suspension—general.
3015.412 (___.305) Causes for debarment.
3015.413 (___.405) Causes for suspension.
3015.414 (___.310 and ___.410) Procedures.
3015.415 (___.325) Period of debarment.
3015.416 (___.415) Period of suspension.
3015.417 (___.330 and ___.420) Scope of debarment/suspension actions.
3015.418 (___.500) General Services Administration (GSA) responsibilities for the consolidated list.
3015.419 (___.505) Responsibilities of USDA—consolidated list.
3015.420 Appeal of debarment/suspension decisions.

Subpart W—Nonprocurement Debarment and Suspension

§ 3015.400 (___.100) Purpose.

The purpose of this subpart is to establish Departmentwide regulations to implement Executive Order 12549 (Order), "Debarment and Suspension." The Order provides that, to the extent permitted by law, executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have Governmentwide effect. Section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue Governmentwide criteria and set forth other details related to the effective administration of the guidelines. Section 3 of the Other requires executive departments and agencies to issue regulations implementing the provisions of the Order. The Department believes these regulations are consistent with the minimum requirements of the OMB guidelines published in the **Federal Register** (FR) at 52 FR 20360 on May 29, 1987.

§ 3015.401 (___.110) Coverage.

(a) *Covered transactions.* These regulations apply to the types of domestic assistance transactions described below:

(1) *General.* Except as noted in paragraph (a)(3) of this section, covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards, subcontracts and transactions at any tier that are charged as direct costs; subtier awards under awards which are statutory entitlement or mandatory awards; and specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Department of Agriculture are subject to these regulations. Also, those in business relationships with such participants with respect to such programs are subject to these regulations, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not themselves excepted); incidental benefits derived from ordinary governmental operations; and, other transactions where the application of Executive Order 12549 and these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of activities and transactions to which a debarment or suspension under these regulations will apply. Section 3015.404 sets forth the consequences of a debarment or suspension with respect to participants in the covered transactions and activities described in § 3015.401. Section 3015.417 governs the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549 and these regulations do not apply to direct Federal acquisition activities. Debarment and suspension of the Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 3015.402 (___.115) Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary action, that taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. USDA agencies may impose debarment or suspension for the causes set forth in § 3015.412 and 3015.413 and in accordance with the procedures set forth in § 3015.414.

§ 3015.403 (___.120) Definitions.

"Adequate evidence." Information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliate." Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has power to control the other, or a third person owns, controls, or has the power to control both.

"Agency." Any organizational unit of the U.S. Department of Agriculture with authority delegated in 7 CFR Part 2 to administer programs of Federal financial and nonfinancial assistance.

"Appeals Officer." Any administrative law judge of the Office of Administrative Law Judges, Department of Agriculture.

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"Consolidated list." A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

"Control." The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these regulations, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indications of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establisment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same managment, ownership, or principal employees as the debarred, suspended, or excluded participant.

"Conviction." A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

"Debarment." An action taken by a DSO in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

"Debarring/Suspending Official (DSO)." Each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in Part 2 of this title to carry out a covered transaction, is authorized to act as a Debarring/Suspending Official in connection with such covered transaction. The Debarring/Suspending Official will be referred to as the DSO throughout this regulation.

"Indictment." Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

"Ineligible." Excluded from participation in covered transactions, programs, or agreements pursuant to statutory, Executive Order, or regulatory authority other than Executive Order 12549 and this regulation, and agency regulations supplementing this regulation. For example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

"Legal proceedings." Any criminal proceeding or any civil judicial proceeding to which the Federal government or a State or local goverment or quasi-governmental authority is a party. The term includes appeals from such proceedings.

"Notice." A written communication sent by certified mail, return receipt requested, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

"Participant." Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

"Person." Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

"Preponderance of the evidence." Proof by information that compared with that opposing it, leads to the conclusin that the fact at issue is more probably true than not.

"Proposal." A solicited or unsolicited bid, application, request, invitation to consider, or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

"Respondent." A person against whom a debarment or suspension action has been initiated.

"Subsidiary." Any corporation, partnership, association, or legal entity, however organized, owned or controlled by another person.

"Suspension." An action taken by a DSO in accordance with these regulations to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

"Voluntary exclusion." A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ 3015.404 (_____.200) Effect of debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment or suspension shall be effective throughout the executive branch of the Federal Government. Except as provided in § 3015.408, persons who are debarred or suspended under these provisions are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred ort suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of Federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

§ 3015.405 (_____.315) Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the debarring agency shall not make any new awards to the respondent. That debarring agency may waive this interim exclusion provision upon a written determination by the DSO identifying the reasons for doing so. In the absence of such a waiver, the provisions of § 3015.408 allowing exceptions for particular transactions may be applied.

§ 3015.406 (_____.205 and _____.320) Effect of voluntary exclusion.

At any point in the process under § 3015.414, prior to the final decision by the DSO, a participant and the DSO may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the consolidated list for informational purposes (see §§ 3015.418 and 3015.419).

Participants who accept voluntary exclusions are excluded in accordance with the terms of their settlements.

§ 3015.407 (_____.210) Effect of declaring persons ineligible.

Persons who are ineligible are excluded pursuant to applicable statutory, Executive order, or regulatory authority. Their inclusion on the consolidated list is for informational purposes only.

§ 3015.408 (_____.215) Exception provision.

An agency may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, exceptions to this policy should be granted only infrequently. Exceptions should be reported in accordance with § 3015.419.

§ 3015.409 (_____.220) Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, USDA agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) USDA agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § 3015.08.

§ 3015.410 (_____.225) Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended, or otherwise excluded from participation in such transaction, except as permitted under these regulations, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

§ 3015.411 (_____.300 and _____.400) Debarment/suspension—general.

A DSO may debar or suspend a participant for any of the causes in §§ 3015.412 and 3015.413 using procedures established in accordance with § 3015.414. The existence of a cause for debarment or suspension, however, does not necessarily require that the participant be debarred or suspended; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any decision.

§ 3015.412 (_____.305) Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 3015.411 and 3015.414 for:

(a) Conviction of or a civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, incuding but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by this section;

(2) Doing business with a debarred, suspended, or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ 3015.413 (_____.405) Causes for suspension.

(a) When it has been determined that immediate action is necessary to protect the public interest, suspension may be imposed in accordance with the provisions of §§ 3015.411 and 3015.414 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 3015.412(a); or

(2) That a cause for debarment under § 3015.412 may exist.

(b) Indictment may constitute adequate evidence for purposes of suspension actions.

§ 3015.414 (_____.310 and _____.410) Procedures.

(a) *Investigation and referral.* USDA agencies shall establish procedures for the prompt reporting, investigation, and referral to their respective DSOs of matters appropriate for that DSO's consideration. At a minimum, these procedures shall provide that:

(1) The decision to utilize agency personnel, the Office of the Inspector General, or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (a)(2) of this section is the responsibility of the agency.

(2) Basic documentation is developed that includes but is not limited to:

(i) The name of the specific respondent(s) against whom the action is being proposed or taken;

(ii) The reason(s) for proposing the debarment or imposing the suspension;

(iii) The specific causes for action from §§ 3015.412 and 3015.413;

(iv) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for wanting to debar or suspend;

(v) The recommended time period for the debarment/suspension;

(vi) The potential effect and/or consequences that the action will have on the respondent(s);

(vii) Signature of the person recommending the action; and

(viii) Copies of any relevant support documentation identified under this section.

(3) The DSO shall be responsible for deciding whether or not to proceed with the action.

(4) The Office of the General Counsel (OGC) is responsible for:

(i) Reviewing documentation and notices for legal sufficiency, and

(ii) Coordinating any actions with the Department of Justice (DOJ).

(b) *Due process requirements.* USDA agencies shall establish procedures governing due process that are as informal as practicable and consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice to the respondent.* Any proceeding shall be initiated by notice to the respondent(s) signed by the DSO, and transmitted by certified mail, return receipt requested. The OGC will be consulted on all proposed actions prior to the notice being sent to the respondent. The notice shall include the following information:

(i) The specific suspension action taken and/or debarment action proposed;

(ii) The reasons for the action or proposed action in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based. In setting out the reasons, USDA agencies must take care to protect the Federal Government's interest in any current or future litigation;

(iii) The cause(s) relied upon under §§ 3015.412 and 3015.413 for the action or proposed action;

(iv) USDA's regulation and any agency specific regulations governing due process;

(v) The immediate effect of the suspension and/or proposed debarment action; and

(vi) The potential effect of the final debarment decision when such action is proposed.

(2) *Submission in opposition.* Within 30 days after receipt of the notice, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension and/or proposed debarment.

(3) *Additional proceedings as to disputed material facts.*

(i) If it is found that there exists a genuine dispute over facts material to the action, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless—

(A) The action is based on a conviction, judgment, or, for suspension actions only, an indictment. In all such cases, the action would be decided as specified under paragraph (b)(4)(i)(B) of this section.

(B) A determination is made by the DSO, after coordination with OGC, on the basis of DOJ advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the action would be prejudiced. In this case the action would be stopped as provided under paragraph (b)(4)(i)(C) of this section. Alternatively, if the DSO determines, after consultation with OGC, that there is enough evidence to proceed without using the facts that DOJ has advised would prejudice its contemplated legal proceedings, the DSO may proceed with the proposed action.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *DSO's decision.* The DSO's decision shall be rendered in accordance with the following provisions:

(i) *No additional proceedings necessary.*

(A) In actions where respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided; or

(B) In all actions—

(1) Based on a conviction, judgment, or in the instance of suspension action only, an indictment, or

(2) In which there is no genuine dispute over material facts.

The decision under paragraphs (b)(4)(i)(A) and (b)(4)(i)(B) of this section shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the DSO extends the period for good cause.

(C) In actions in which additional proceedings to determine disputed material facts have been denied on the basis of DOJ advice. In this case, the DSO shall stop the action immediately. The agency, however, reserves the right to proceed with the action when the DOJ completes its legal proceedings or is satisfied that the action will no longer prejudice their proceedings.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The DSO shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The DSO may refer matters involving disputed material facts to another official for findings of fact. The DSO may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The DSO's decision shall be made after the conclusion of the proceedings with respect to disputal facts.

(5) *Standard of evidence.* The standards of evidence are:

(i) For debarment, the cause must be established by a preponderance of the evidence. In any debarment action which is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(ii) For suspension, the cause must be established by adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the participant. In any suspension action based upon an indictment or conviction, the standard of evidence shall be deemed to have been met.

(6) *Notice of DSO's decision.* Prompt written notice, of any decision, shall be signed by the DSO and sent to the respondent(s) and affiliates involved, by certified mail, return receipt requested. OGC will be consulted on the action the DSO plans to take at any time prior to sending the notice. The notice shall include the following:

(i) Reference to the previously issued notice of action taken or proposed;

(ii) The reason(s) for the action taken in this notice;

(iii) The effective date(s) of the action taken in this notice and, where appropriate, the period of the action; and .

(iv) Advice that the debarment or suspension action is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes a determination referred to in § 3015.408.

§ 3015.415 (_____.325) Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The DSO may extent an existing debarment for an additional period, if that Official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the same facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is found to be necessary, the procedures of § 3015.414 shall be followed to extend the debarment.

(c) The DSO may reduce the period or scope of debarment upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the DSO deems appropriate.

§ 3015.416 (_____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the DSO or as provided in paragraph (b) of this section.

(b) If the legal or debarment proceedings are not initiated within 12 months after the date of suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The DSO shall notify the DOJ, through OGC, of the impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 3015.417(_____.330 and _____.420) Scope of debarment/suspension actions.

(a) *Scope in general.* (1) The scope of a suspension shall be the same as the scope of a debarment as set forth in this section.

(2) Debarment of a person or affiliate under this regulation constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of transactions.

(3) The debarment action may include any other affiliate of the participant that is (i) specifically named and (ii) given notice of the action taken or proposed and an opportunity to respond (see § 3015.414).

(b) *Imputing conduct.* For purposes of determining the scope, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

§ 3015.418 (_____.500) General Services Administration (GSA) responsibilities for the consolidated list.

(a) GSA shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be eligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-reference when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the official responsible for initiating the action.

§ 3015.419 (_____.505) Responsibilities of USDA—consolidated list.

(a) Each USDA agency that takes or plans to take debarment or suspension action(s) shall designate a liaison who shall be responsible for providing GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by USDA agencies. Until February 18, 1989, USDA agencies shall also provide GSA and OMB with information, in writing, concerning all transactions in which a USDA agency has granted exceptions under § 3015.408 permitting participation by debarred, suspended, or excluded persons.

(b) USDA agencies shall provide the Office of Finance and Management with copies of the information requested in § 3015.418(b) and, until February 18, 1989, information concerning exceptions granted under § 3015.408. Such information shall be submitted in writing and shall be sent within five working days of taking such actions.

(c) Unless an alternative schedule is agreed to by GSA, the USDA agency liaison shall advise GSA of the information set forth in § 3015.418(b) and of the exceptions granted under § 3015.408 within five working days after taking such actions. All communications with GSA regarding additions, deletions, or changes to the consolidated list shall be in writing.

(d) Each USDA agency shall establish procedures to provide for the effective dissemination of the consolidated list to agency personnel responsible for making awards or otherwise involving participants in programs using Federal funds.

(e) Each USDA agency shall establish procedures to provide for the effective use of the consolidated list, in order to

ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as provided in these regulations. At a minimum, the following shall apply:

(1) For covered transactions of $25,000 or more in direct costs, USDA agency personnel must check the consolidated list to be sure that they do not make awards to or otherwise involve debarred or suspended persons in affected programs. The list will be available by a subscription through the Government Printing Office.

(2) When checking the consolidated list, it is up to the USDA agency to determine whether it is in the best interest of the Federal Government to allow persons that have been identified on the list as voluntarily excluded, pending debarment, or ineligible under other authorities, to participate in Federal programs. USDA agencies may seek further information on the listed action.

(f) In seeking further information, USDA agencies shall direct inquiries concerning listed persons to the executive department or agency that took the action to put them on the list.

(g) For covered transactions under $25,000 in direct costs, USDA agencies shall establish procedures for certification. Such certificate procedures shall provide that a person who is a direct recipient of Federal funds shall be required to certify as to whether he/she, or any person acting in a capacity listed in § 3015.404(b) with respect to the person or the particular covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participating; or

(4) Indicated, convicted, or had a civil judgment rendered against him/her for any of the offenses listed in §3015.412(a). Adverse information on the certification need not necessarily result in denial of participation. The information provided by the certification, and any additional information USDA agencies may require, shall be considered in the administration of covered transactions as follows:

(i) If a person is debarred or suspended, USDA shall not allow that person to participate in affected programs, except as indicated in § 3015.408.

(ii) If a person indicates he/she has been declared ineligible, formally proposed for debarment with a final determination still pending, voluntarily excluded from participation, or indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 3015.412(a), the USDA agency may determine whether it is in the best interest of the Federal government to allow that person to participate in programs using Federal funds.

(h) USDA agencies shall inform their recipients that subrecipients at all levels must certify to the recipient from whom they receive funds, as to whether the subrecipient or any person acting in a capacity listed in § 3015.404(b) with respect to those subrecipients or the particular covered transaction, is currently or with the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 3015.412(a). Adverse information on the certification need not necessarily result in denial of participation. The information provided by the certification, and any additional, information required, shall be considered in the administration of covered transactions in accordance with paragraphs (g)(4)(i) and (ii) of this section.

(i) USDA agencies shall notify GSA and OFM in writing of debarment or suspension decisions overturned on appeal under § 3015.420.

§ 3015.420 Appeal of debarment/suspension decisions.

(a) If a decision to debar or suspend is made by a DSO under § 3015.414(b)(4), the respondent may appeal this decision to the Office of Administrative Law Judges (OALJ) by filing the appeal in writing to the Hearing Clerk, OALJ, United States Department of Agriculture, Washington, DC 20250. The appeal must be filed within 30 days of receiving the decision rendered under § 3015.414 and it must specify that the decision by the DSO was:

(i) Not in accordance with law;

(ii) Not based on the applicable standard of evidence; or

(iii) Arbitrary and capricious and an abuse of discretion.

(b) The Appeals Officer will base his/her decision solely upon the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the Appeals Officer will notify the respondent(s) in writing and the DSO who took the action being appealed of his/her decision in the appeal. The notice must specify the reason(s) for the decision made by the Appeals Officer.

(d) The Appeals Officer's decision is final and is not appealable within USDA.

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DEPARTMENT OF THE INTERIOR

43 CFR Part 12

Nonprocurement Debarment and Suspension

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes a regulation establishing a uniform system of nonprocurement debarment and suspension. This implements the Office of Management and Budget Guidelines for Nonprocurement Debarment and Suspension.

DATE: Comments must be received on or before December 21, 1987.

ADDRESS: William Opdyke, Chief, Policy and Regulations Branch, Division of Acquisition and Grants, Office of Acquisition and Property Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: William Opdyke, Chief, Policy and Regulations Branch, Division of Acquisition and Grants, Office of Acquisition and Property Management, telephone (202) 343-3433.

SUPPLEMENTARY INFORMATION: Executive Order 12549, "Debarment and Suspension," was signed on February 18, 1986. The Order directs Federal executive branch departments and agencies to participate in a system for nonprocurement debarment or suspension under which an agency's debarment and suspension of a nonprocurement program participant will have government-wide effect.

Pursuant to section 6 of the Order, the Office of Management and Budget (OMB) transmitted a memorandum to executive departments and agencies setting forth guidelines which prescribe program coverage, government-wide criteria, minimum due process procedures, and other guidelines for implementation of this system.

Section 3 of the Order directs agencies to issue regulations to implement the system which are consistent with the guidelines. These proposed regulations

implement the guidelines, with the exception that the term, "contracts of assistance" has been deleted from § 12.110 (a)(1) which identifies covered transactions because the Department does not engage in these types of transactions. An additional term, "primary participant" has been defined in § 12.120 because the term is used in the description of the certification process. The title of § 12.320 has been changed to "Voluntary exclusion settlement," and the title of § 12.505 has been changed to "Responsibilities of the Department of the Interior." The Department has chosen to cover both indirect as well as direct cost transactions for the purpose of suspension or debarment.

As part of the certification process described in § 12.505 (e)(1), bureaus and offices have to ensure that all potential primary participants complete and submit a certification before further action is taken. However, the Department is not proposing to require certifications from participants for indirect cost transactions. A number of the participants in programs administered by the Department are State agencies or entities with which there is a continuing relationship. For these types of participants, it is proposed that an annual certification be permitted to eliminate the administrative burden imposed by individual certifications for each transaction. Comments are requested on the use of such a certification.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E. O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act

If necessary, the information collection requirements contained in 43 CFR 12.505 will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget. Comments on the information collection requirements should be submitted to Pamela Barr, Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, Room 3201, Washington, DC 20503, as well as to the Departmental address listed above.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

It is proposed that Title 43 of the Code of Federal Regulations be amended as set forth below.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary—Policy, Budget and Administration.

Date: September 29, 1987.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–128; OMB Circular A–102; Executive Order 12549 of February 18, 1986.

2. Part 12 is amended by adding Subpart D to read as set forth below:

Subpart D—Nonprocurement Debarment and Suspension

General

Sec.

12.100 Purpose.
12.105 Authority.
12.110 Scope.
12.115 Policy.
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Effect of Action

12.200 Debarment or suspension.
12.205 Voluntary exclusion.
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Debarment

12.300 General.
12.305 Causes for debarment.
12.310 Procedures.
12.315 Effect of proposed debarment.
12.320 Voluntary exclusion settlement.
12.325 Period of debarment.
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Suspension

12.400 General.
12.405 Causes for suspension.
12.410 Procedures.
12.415 Period of suspension.
12.420 Scope of suspension.

Agency Responsibilities; Consolidated List

12.500 GSA responsibility.
12.505 Responsibilities of the Department of the Interior.

Subpart D—Nonprocurement Debarment and Suspension

General

§ 12.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. Section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue guidelines concerning the Order. Section 3 of the Order directs Federal agencies to issue regulations governing implementation of the Order.

(b) These regulations implement section 3 of Executive Order 12549 by:

(1) Prescribing the programs and activities that are covered by the Order;

(2) Prescribing the criteria and government-wide minimum due process procedures that the Department of the Interior shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible" in § 12.120);

(4) Setting forth the consequences of the actions under paragraph (b)(3) of this section; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(d) The procedures set fort in §§ 12.310 and 12.410 are the due process procedures to be followed by the Department of the Interior.

§ 12.105 Authority.

These regulations are issued pursuant to Executive Order 12549 of February 18, 1986.

§ 12.110 Scope.

(a) *Covered transactions.* These regulations apply to Executive branch domestic assistance described below:

(1) *General.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type (including

subtier awards under awards which are statutory entitlement or mandatory awards).

(2) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidental benefits derived from ordinary governmental operations; and, other transactions where the application of Executive Order 12549 and these regulations would be prohibited by law.

(b) *Relationship to other sections.* This § 12.110, describes the types of activities and transactions to which a debarment or suspension under the regulations will apply. Section 12.200 sets forth the consequences of a debarment or suspension. Those consequences would pertain only to participants in the covered transactions and activities described in § 12.110. Sections 12.330, scope of debarment, and 12.420, scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549 and these regulations do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation, 48 CFR Subpart 9.4. Department of the Interior policies and procedures governing the debarment and suspension of contractors, the listing of the debarred and suspended contractors, and dissemination of this listing are prescribed in 48 CFR Subpart 1409.4.

§ 12.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. The Department imposes debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

§ 12.120 Definitions.

"Adequate evidence" means information sufficient to support the reasonable belief that a participation act or omission has occurred.

"Affiliate" means persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

"Agency" means any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

"Consolidated List" means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

"Control" means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these regulations, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

"Conviction" means judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

"Debarment" means an action taken by the debarring official in accordance with these regulations implementing Executive Order 12549 to exclude a person from participating in covered transactions. A person so excluded is "debarred."

"Debarring official" means the Director, Office of Acquisition and Property Management who is authorized to impose debarment within the Department of the Interior.

"Indictment" means indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

"Ineligible" means excluded from participation in covered transactions, programs, or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and these regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

"Legal proceedings" means any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

"Notice" means a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

"Participant" means any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

"Person" means any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

"Preponderance of the evidence" means proof by information that, compared, with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Primary participant" means the person with whom the Interior agency

directly enters into a covered transaction.

"Proposal" means a solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

"Respondent" means person against whom a debarment or suspension action has been initiated.

"Subsidiary" means corporation, partnership, association or legal entity however organized, owned or controlled by another person.

"Suspending official" means the Director, Office of Acquisition and Property Management who is authorized to impose suspension within the Department of the Interior.

"Suspension" means an action taken by a suspending official in accordance with these regulations implementing Executive Order 12549 to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

"Voluntary exclusion" means a status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

Effect of Action

§ 12.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment shall be effective throughout the executive branch of the Federal Government. Except as provided in § 12.215, persons who are debarred or suspended under these provisions are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

§ 12.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § 12.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to § 12.500, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

§ 12.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ 12.215 Exception provision.

The Department of the Interior may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the Director, Office of Acquisition and Property Management stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions are reported in accordance with § 12.505(b).

§ 12.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, the Department and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) The Department and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § 12.215.

§ 12.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except as permitted under these regulations, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Debarment

§ 12.300 General.

The Director, Office of Acquisition and Property Management may debar a participant for any of the causes in §12.305, using procedures in §12.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors may be considered in making any debarment decision.

§ 12.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 12.300 and 12.310 for:

(a) Conviction of, or civil judgment for, any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § 12.305.

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ 12.310 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in § 12.305, becomes known to a Department employee, the matter shall be referred to the head of the bureau, or other official designated by bureau procedures. The head of the bureau, or other designated official, shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Office of Acquisition and Property Management.

(b) *Decisionmaking process.* The decisionmaking process shall be as informal as practicable, consistent with principles of fundamental fairness.

(1) *Notice of proposed debarment.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate proposed debarment by immediately sending a notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under § 12.305 for proposing debarment;

(iv) Of the provisions of § 12.310(b)(1)–(b)(6) and the specific procedures governing debarment decisionmaking under this § 12.310;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.* (i) In actions not based upon a conviction or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment the Director, Office of Acquisition and Property Management, shall afford the respondent(s) an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Department of the Interior presents.

(ii) The hearing shall be conducted by a hearing official designated by the Director, Office of Hearings and Appeals and shall be held at a location convenient to the parties as determined by the hearing official. The proceedings shall be conducted expeditiously and in such a manner that the respondent will have a full opportunity to present all information pertinent to the proposed debarment. A transcribed record of the hearing shall be made available at cost to the respondent, unless the respondent and the Department, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision.* (i) No additional proceedings necessary. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the Director, Office of Acquisition and Property Management shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the Director, Office of Acquisition and Property Management extends this period for good cause.

(ii) *Additional proceedings necessary.* In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared by the hearing official. The Director, Office of Acquisition and Property Management may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous. The Director, Office of Acquisition and Property Management shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.* (i) If the Director, Office of Acquisition and Property Management decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless the Director, Office of Acquisition and Property Management makes the determination referred to in § 12.215.

(ii) If the Director, Office of Acquisition and Property Management decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 12.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the Department of the Interior shall not make any new awards to the respondent. The Department of the Interior may waive this exclusion pending a debarment decision upon a written determination by the Director, Office of Acquisition and Property Management, identifying the reasons for doing so. In the absence of such a waiver, the provisions of § 12.215 allowing exceptions for particular transactions may be applied.

§ 12.320 Voluntary exclusion settlement.

A participant and the Department of the Interior may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see § 12.500).

§ 12.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The Director, Office of Acquisition and Property Management may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § 12.310 shall be followed to extend the debarment.

(c) The Director, Office of Acquisition and Property Management may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Director, Office of Acquisition and Property Management deems appropriate.

§ 12.330 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of transactions.

(2) The debarment action may include any other affiliate of the participant that is (i) specifically named and (ii) given notice of the proposed debarment and an opportunity to respond (see § 12.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any office, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Suspension

§ 12.400 General.

(a) The Director, Office of Acquisition and Property Management may suspend a participant for any of the causes in § 12.405 using procedures in § 12.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in §12.405 when it has been determined that immediate action is necessary to protect the public interest.

§ 12.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§12.400 and 12.410 upon adequate evidence:

(1) To suspect the commission of an offense listed in §12.305(a); or

(2) That a cause for debarment under § 12.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 12.410 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in §12.305, becomes known to a Department employee, the matter shall be referred to the head of the bureau, or other official designated by bureau procedures. The head of the bureau, or other designated official, shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for suspension to the Director, Office of Acquisition and Property Management.

(b) *Decisionmaking process.* The suspension decisionmaking process shall be as informal as practicable consistent with principles of fundamental fairness.

(1) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate suspension by immediately sending a notice to the respondent advising:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause(s) relied upon under § 12.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of § 12.410(b)(1)–(b)(5) and the specific procedures governing suspension decisionmaking under this § 12.410; and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after the receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.* (i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Department of the Interior presents, unless—

(A) The action is based on an indictment, conviction or judgment, or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based

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on the same facts as the suspension would be prejudiced.

(ii) The hearing shall be conducted by a hearing official designated by the Director, Office of Hearings and Appeals and shall be held at a location convenient to the parties as determined by the hearing official. The proceedings shall be conducted expeditiously and in such manner that each respondent will have a full opportunity to present all information considered pertinent to the suspension. A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement waive the requirement for a transcript.

(4) Suspending official's decision. The Director, Office of Acquisition and Property Management may modify or terminate the suspension (for example, see § 12.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) No additional proceedings necessary. In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to detemine disputed material facts have been denied on the basis of Department of Justice advice, the Director, Office of Acquisition and Property Management shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the Director, Office of Acquisition and Property Management extends this period for good cause.

(ii) Additional proceedings necessary. In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared by the hearing official. The Director, Office of Acquisition and Property Management may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous. The Director, Office of Acquisition and Property Management, shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(5) *Notice of suspending official's decision.* Prompt written notice of the decision of the Director, Office of Acquisition and Property Management shall be sent to the respondent and any affiliates involved.

§ 12.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not inititiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The Director, Office of Acquisition and Property Management shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12 month period expires, to give that Department an opportunity to request an extension.

§ 12.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of debarment (see § 12.330), except that the procedures of § 12.410 shall be used in imposing a suspension.

Agency Responsibilities; Consolidated List

§ 12.500 GSA responsibility.

(a) GSA shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 12.505 Responsibilities of the Department of the Interior.

(a) The Division of Acquisition and Grants, Office of Acquisition and Property Management is the liaison responsible for providing GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by the Department of the Interior. Until February 18, 1989, the Division of Acquisition and Grants, Office of Acquisition and Property Management shall also provide GSA and OMB with information concerning all transactions in which the Department of the Interior has granted exceptions under § 12.215 permitting participation by debarred, suspended, or excluded persons.

(b) The Department of the Interior shall advise GSA of the information set forth in § 12.500(b) and of the exceptions granted under § 12.215 within five working days after taking such actions.

(c) The Division of Acquisition and Grants, Office of Acquisition and Property Management, is responsible for the effective dissemination and use of the list in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these regulations.

(d) (1) Monthly issues of the consolidated list shall be disseminated in accordance with bureau procedures to all appropriate assistance management offices.

(2) Any supplements to monthly lists shall be furnished to each bureau headquarters office by the Division of Acquisition and Grants, Office of Acquisition and Property Management. Each bureau shall, in accordance with bureau procedures, maintain list supplements at a central location and issue instructions requiring assistance management offices to contact this location in order to obtain current information.

(3) Inquiries concerning listed persons shall be made to the office that took the action.

(4) Other parties interested in obtaining subscriptions to the list should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238, or FTS 783–3238.

(e) (1) Bureaus and offices shall ensure that all potential primary participants complete and submit the certification in Appendix A before further action is taken. Bureaus and offices may rely upon an annual certification submitted by potential primary participants when a continuing

relationship has been established with the entity. Adverse information on the certification need not necessarily result in a denial of participation. The completed certification shall be included in the official file established for the transaction.

(2) Participants at each level shall receive completed certifications (Appendix A to this section) from next lower tier participants (subawardees) before the subaward is made.

(3) Such certifications need not be submitted for indirect cost transactions.

Appendix A to § 12.500—Certification Regarding Debarments, Suspension, Voluntary Exclusions, Ineligibilities

1. The participant certifies that within the preceding three years from the date of this certification it, or any person acting as an owner or partner holding a controlling interest, director, or office of the participant; as a principal investigator, project director, or other position involved in management of the proposal; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of federal funds; or in any other position charged as a direct cost under this proposal within the preceding three years from the date of this certification:

(a) Has [ ] has not [ ] been debarred, suspended, or declared ineligible from the award of a public contract pursuant to Subpart 9.4 of the Federal Acquisition Regulation (48 CFR Subpart 9.4);

(b) Has [ ] has not [ ] been debarred, suspended, or voluntarily excluded from participation pursuant to Executive Order 12549;

(c) Has [ ] has not [ ] been formally proposed for debarment under (a) or (b) above with a final determination still pending; or

(d) Has [ ] has not [ ] been indicted, convicted, or had a civil judgment rendered against it for any of the following offenses:

(i) Fraud or a criminal offense in connection with obtaining or attempting to obtain or performing a public or private agreement.

(ii) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(iii) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(2) The participant certifies that it will not knowingly enter into any subcontracts or subawards under this transaction with any party who, at the time of award, is debarred, suspended, or voluntarily excluded from award of public domestic assistance pursuant to Executive Order 12549.

(3) The participant may rely upon the certification of a prospective subcontractor or subawardee, that it is not debarred, suspended, or voluntarily excluded from award of public domestic assistance pursuant to Executive Order 12549, unless it has knowledge that the certification is erroneous.

(4) By submitting this certification the participant agrees to make immediate notification, in writing, of any revision of the above certification to the party to whom the certification is submitted based on changed circumstances from the date of submission.

(5) A certification that any of the items in 1 above exist will not necessarily result in a denial of participation but will be considered in determining the participant's responsibility.

(6) Any intentionally false statement in this certification is a violation of law punishable under 18 U.S.C. 1001.

Name of participant

Signature of participant

Date

[FR Doc. 87–24068 Filed 10–19–87; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 76

Government-wide Debarment and Suspension (Nonprocurement)

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This NPRM proposes the HHS implementation of government-wide debarment and suspension system for assistance program.

ADDRESS: Written comments should be sent to Barbara S. Wamsley, Director, Office of Assistance Policy and Systems Review, Department of Health and Human Services, Room 513–D, 200 Independence Ave. SW., Washington, DC 20201.

DATES: Comments must be received on or before December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Neil Steyskal, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513–D, 200 Independence Ave. SW., Washington, DC 20201. Telephone (202) 245–0729.

SUPPLEMENTARY INFORMATION: On May 29, 1987, OMB published Guidelines for Nonprocurement Debarment and Suspension, 52 FR 20360, under Executive Order 12549. The Guidelines prescribe the coverage of the required government-wide system and minimum due process procedures. Executive Order 12549 requires Federal agencies to issue implementing regulations consistent with the OMB Guidelines.

The coverage of the system includes all types of financial assistance (grants, cooperative agreements, loans, etc.) and extends to employment and subawards under that assistance (§ 76.110). The due process procedures parallel those of the Federal Acquisition Regulation (48 CFR Chapter 1) (§§ 76.310 and 76.410).

Major Choices

1. Coverage of indirect cost transactions: § ____.110(a)(1) of OMB Guidelines gives Federal agencies the choice of whether to include indirect cost transactions for purposes of enforcement actions. Adoption of this course would require participants (grantees, subgrantees, contractors of grantees, etc.) to take action to exclude debarred and suspended persons when the costs of their participation would be allocated, through indirect cost or cost allocation procedures, to a Federal award.

We propose to include indirect cost transactions in the coverage of the HHS rules because grantees vary widely in their indirect cost practices. Under some not uncommon organizational arrangements, well over a simple majority of the grantee's contracts (but not subgrants) may be charged indirectly to Federal awards. We believe it is inappropriate to pay Federal funds, either directly or indirectly, to debarred persons.

2. Use of certifications: § ____.505(e) of the OMB Guidelines requires that Federal agencies establish certification requirements in their regulations. We propose to require submission of certifications by participants at any tier (grantee or below) which are not State or local govenrments (exclusive of their hospitals or institutions of higher education). This is because we believe that debarment of a State or local government agency will be extremely rare.

3. Procedures: For both debarment (§ 76.310(b)(4)(i)) and suspension (§ 76.410(b)(4)(i)(A)) the debarring or suspending official, under certain circumstances, bases a final decision on the administrative record, without the need for a fact finding process, e.g., a conviction or civil judgment for a debarrable offense. We propose to add debarment by any public agency as an additional circumstances, because we believe it to be substantially equivalent.

Executive Order 12291

The Department has determined that this rule is not a "major rule" under Executive Order 12291. Although the regulations will prohibit debarred and suspended entities from participation in Federal awards, this will have no effect on the total amounts of Federal dollars

awarded to the class of responsible, eligible entities, and the number of excluded entities will be insubstantial. Therefore the regulation will not affect a substantial number of small entities, and a regulatory impact analysis is not required.

Paperwork Reduction Act

This rule imposes no additional reporting/recordkeeping requirements requiring clearance by OMB.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), for the reasons set forth above, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. Therefore a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Catalog of Federal Domestic Assistance (CFDA)

Although debarment and suspension will affect general eligibility under all covered assistance programs (during the period of debarment or suspension), it is not practicable to list all affected programs because of the great number covered.

List of Subjects in 45 CFR Part 76

Debarment and suspension, Grant programs—health, Grant programs—social programs.

Dated: September 22, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Part 76 is revised to read as follows:

PART 76—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

76.100 Purpose.
76.110 Coverage.
76.115 Policy.
76.120 Definitions.

Subpart B—Effect of Action

76.200 Debarment or Suspension.
76.205 Voluntary Exclusion.
76.210 Ineligible persons.
76.215 Exception provision.
76.220 Continuation of current awards.
76.225 Failure to adhere to restrictions.

Subpart C—Debarment

76.300 General.
76.305 Causes for debarment.
76.310 Procedures.
76.315 Effect of proposed debarment.
76.320 Voluntary exclusion.
76.325 Period of debarment.
76.330 Scope of debarment.

Subpart D—Suspension

76.400 General.
76.405 Causes for suspension.
76.410 Procedures.
76.415 Period of suspension.
76.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

76.500 GSA responsibility.
76.505 Responsibilities of Federal agencies.

Authority: 5 U.S.C. 301.

Subpart A—General

§ 76.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.

(b) This part implements Executive Order 12549 by:

(1) Prescribing the programs and activities that are covered;

(2) Prescribing the criteria and due process procedures that HHS will use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible" in § 76.120);

(4) Setting forth the consequences of the actions taken under the government-wide system.

(c) Although this part covers the listing of ineligible participants and the effect of that listing, it does not prescribe policies and procedures governing declarations of ineligibility.

§ 76.110 Coverage.

(a) *Covered transactions.* This part applies to executive branch domestic assistance transactions described below:

(1) *General.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards and transactions at any tier that are charged as direct or indirect costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, certain programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration are covered in those agencies' regulations.

(3) *Exceptions.* Statutory entitlement or mandatory awards (but not discretionary subawards under these programs), benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted), incidental benefits derived from ordinary governmental operations, and other transactions where the application of Executive Order 12549 and these rules would be prohibited by law are not covered.

(b) *Relationship to other sections.* Section 76.110 describes the types of activities and transactions to which a debarment or suspension will apply. Subpart B, Effect of action, § 76.200 sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants in the transactions and activities described in § 76.110. Sections 76.330, Scope of debarment and 76.420, Scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549 and the regulations of this part do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, as far as possible HHS will integrate the administration of these complementary debarment and suspension programs.

§ 76.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. HHS and other Federal agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in this part.

§ 76.120 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person(s) owns, controls, or has the power to control both.

Agency. Any executive department, military department or defense agency, or other agency of the executive branch (including agencies of HHS), excluding the independent regulatory agencies.

Consolidated List. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these regulations, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. This presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of *nolo contendere.*

Debarment. An action taken by a debarring official to exclude a person from participating in assistance transactions. A person so excluded is "debarred."

Debarring official. In HHS the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

HHS. The Department of Health and Human Services.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in covered transactions, programs or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from these proceedings.

Local government. A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of government (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit under a covered transaction, whether directly or indirectly.

Respondent. A person against whom a debarment or suspension action has been initiated.

State. Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Subaward. An award, at any tier, of a contract, grant or other agreement made by a participant. A person that receives a subaward is a "subawardee."

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. In HHS the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

Suspension. An action taken by a suspending official to immediately exclude a person from participating in covered transactions for a termporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

Subpart B—Effect of Action

§ 76.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment shall be effective throughout the Executive branch of the Federal Government. Except as provided in § 76.215, persons who are debarred or suspended under this part are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards or subawards to or agree to participation by the debarred or

suspended persons during the debarment or suspension period.

(b) In addition, persons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participating person; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of Federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost at any tier under the covered transaction.

§ 76.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § 76.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

§ 76.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ 76.215 Exception provision.

HHS may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular covered transaction upon a written determination by the debarring official stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions will be reported in accordance with § 76.505.

§ 76.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, HHS and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision by HHS as to the type of termination action, if any, to be taken will be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend the duration of current covered transactions with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § 76.215.

§ 76.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in the transaction, except as permitted under these regulations, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Subpart C—Debarment

§ 76.300 General.

The debarring official may debar a participant for any of the causes in § 76.305, using procedures established in accordance with § 76.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

§ 76.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 76.300 and 76.310 for:

(a) Conviction of or civil judgment, whether judicial or administrative, for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § 76.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in the transaction;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay an uncontested debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ 76.310 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for debarment becomes known, the appropriate HHS agency shall prepare a report summarizing the circumstances and forward it through appropriate channels, with a written recommendation, to the debarring official. The debarring official shall initiate an investigation as appropriate.

(b) *Decisionmaking process.* Decisionmaking procedures shall be as informal as practicable, consistent with principles of fundamental fairness.

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under § 76.305 for proposing debarment;

(iv) Of the HHS procedures governing debarment decisionmaking by providing a copy of this Part 76;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.*

(i) In actions not based upon a conviction, civil judgment or debarment by a public agency, if it is found by the debarring official that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person HHS presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and HHS, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision.*—(i) *No additional proceedings necessary.* In actions based upon a conviction, civil judgment or debarment by a public agency, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction, civil judgment, or debarment by a public agency, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.*—(i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in § 76.215.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 76.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, HHS shall not make any new awards to the respondent. HHS may waive this Department-wide exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of a waiver, the provisions of § 76.215 allowing exceptions for particular covered transactions may be applied.

§ 76.320 Voluntary exclusion.

A participant and HHS may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

§ 76.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer term of debarment may be imposed, up to an indefinite period. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § 76.310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 76.330 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of covered transactions.

(2) The debarment action may include any affiliate of the respondent that is specifically named and given notice of the proposed debarment and an opportunity to respond (see § 76.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may

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be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Subpart D—Suspension

§ 76.400 General.

(a) The suspending official may suspend a participant for any of the causes in § 76.405 using procedures established in § 76.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § 76.405 when it has been determined that immediate action is necessary to protect the public interest.

§ 76.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 76.400 and 76.410 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 76.305(a); or

(2) That a cause for debarment under § 76.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 76.410 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for suspension becomes known, the appropriate HHS agency shall prepare a report summarizing the circumstances and forward it through appropriate channels, with a written recommendation, to the suspending official. The suspending official shall initiate an investigation as appropriate.

(b)(1) *Decisionmaking process.* Decisionmaking procedures shall be as informal as practicable, consistent with principles of fundamental fairness. When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause(s) relied upon under § 76.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and any legal or debarment proceedings as may ensue;

(vi) Of the HHS procedures governing suspension decisionmaking by providing a copy of this Part 76; and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.*

(i) If it is found by the suspending official that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless—

(A) The action is based on an indictment, conviction, civil judgment, or debarment by a public agency; or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and HHS, by mutual agreement, waive the requirement for a transcript.

(4) *Suspending official's decision.* The suspending official may modify or terminate the suspension (for example, see § 76.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions—

(A) Based on an indictment, conviction, civil judgment, or debarment by a public agency;

(B) In which there is no genuine dispute over material facts, or

(C) In which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice,

the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§ 76.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 76.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of a debarment (see § 76.330).

Subpart E—Agency Responsibilities; Consolidated List

§ 76.500 GSA responsibility.

(a) Under the government-wide implementation of Executive Order 12549, GSA will compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549, and those who have been determined to be ineligible.

(b) At a minimum, this list will indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 76.505 Responsibilities of Federal agencies.

(a) Under the government-wide implementation of Executive Order 12549, each agency will designate a liaison who shall be responsible for providing GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by that agency. Until February 18, 1989, the liaison will also provide GSA and OMB with information concerning all transactions in which the agency has granted exceptions under § 76.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, each agency will advise GSA of the information set forth in § 76.500(b) and of the exceptions granted under § 76.215 within five working days after taking such actions.

(c) HHS participants may obtain the list from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(d) Inquiries concerning listed persons shall be directed to the agency that took the action.

(e)(1) Under HHS covered transactions, all participants at any tier except State and local governments (exclusive of their hospitals and institutions of higher education) shall submit, to the party from whom they have received or will receive an award or subaward (or to their employer, as appropriate) a certification substantially equivalent to the one below. Certifications shall be submitted before award or employment if possible.

I certify that_____
(name of participant)

and, to the best of my knowledge, information and belief, all persons acting in a capacity listed in 45 CFR 76.200(b) (Attached) with respect to the participant or the particular covered transaction are not currently, nor within the preceding three years have been:

(i) Debarred, suspended or declared ineligible;

(ii) Formally proposed for debarment, with a final determination still pending;

(iii) Voluntarily excluded from participation; or

(iv) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in 45 CFR 76.305(a) (Attached).

I understand that knowingly and willfully submitting a false or misleading certification shall constitute grounds for, and may lead to, termination of participation and/or legal actions as appropriate.

_____
Unqualified certification.

_____
Qaulified certification. (Attach explanation.)

_____
Signature, Name and Title.

_____
Date.

(2) In those instances where a certification shows that a participant is currently debarred or suspended, they are ineligible to participate. Participants receiving other adverse information shall treat it in the same manner as other employment and contract records in accordance with applicable law.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[OST Docket No. 45208]

Nonprocurement Debarment and Suspension

AGENCY: Office of the Secretary, DOT.

ACTION: Interim Final Rule.

SUMMARY: This interim final rule adopts rules concerning nonprocurement debarment and suspension in accordance with OMB Guidelines.

DATES: Effective November 19, 1987. To be assured of consideration, comments on the rule must be received on or before December 21, 1987. Comments should refer to specific sections in the regulations.

ADDRESS: Send comments on the rule to Documentary Services Division, C–55, Attention Docket No. 45208, Room 4107, Department of Transportation, 400 Seventh Street SW., Washington DC 20590. Comments are available for public examination at that address Monday through Friday, except Federal holidays, from 9:00 to 5:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the General Counsel (C–10), U.S. Department of Transportation, Washington, DC 20590; (202) 366–9167.

SUPPLEMENTARY INFORMATION: As part of the Admininstration's initiatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment. This task force recommended in its November 1984 report that a governmentwide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. The Task Force concluded that the system should be as compatible as possible with the procurement debarment and suspension system included in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of nonprocurement programs. Following further efforts of the Task Force to shape a proposed system for use by all Executive agencies, the President issued on February 18, 1986, Executive Order 12549, "Debarment and Suspension." Simultaneously with the publication of the Executive Order on February 21, 1986, OMB published proposed guidelines for use by the Executive agencies (51 FR 6372–79). The guidelines were prepared in regulation format as a minimum model rule to facilitate the preparation of the agency regulations. The guidelines generally used the due process procedural structure of the FAR. Also, the proposed grounds for debarment and suspension were substantially similar to those in the FAR.

OMB received sixty comments on the proposed guidelines. All comments were provided to the Task Force on Nonprocurement Suspension and Debarment for consideration in preparing the final guidelines that were issued on May 26, 1987 and published May 29, 1987 (52 FR 20360–69).

Section 3 of E.O. 12549 directs Federal agencies to issue regulations governing implementation of the Order; the regulations must be consistent with the OMB guidelines. In order to comply with these instructions, the Department of Transportation has generally adopted the OMB guidelines verbatim. Most of the changes are the result of the need to adapt the guidelines to the Department's organization.

At the present time, the Office of the Secretary and the operating administrations within the Department of Transportation have procedures for suspending and debarring individuals or companies doing business with recipients of DOT financial assistance when those individuals or companies have been involved in fraud or other improper practices affecting their present responsibility. 49 CFR Part 29. Suspensions or debarments of participants initiated before the effective date of the rule adopted herein shall be governed by those current regulations. The rule adopted herein will apply to suspensions and debarments of individuals and companies initiated after the effective date of this rule regardless of the date of the cause giving rise to initiation of the action.

This rule contains no provisions applicable to debarment and suspension in direct government contracting. It adopts a flexible procedure that will assure a party of fair opportunity to challenge a suspension or debarment. At the same time the parties to a proceeding under the rule will not be bound by formal rules of evidence or procedure. The rule generally covers DOT financial assistance. Suspensions and debarments will be effective throughout DOT and the executive branch of the Federal Government. Furthermore, persons excluded by other agencies will also be excluded from participation in DOT non-procurement programs.

A suspension or debarment will be initiated by notice to the persons affected. New awards may not be made to respondents. The suspension or debarment includes persons, their affiliates, subsidiaries, and other organizational elements.

The DOT Assistant Secretary for Administration will collect and provide the General Services Administration (GSA) with information concerning DOT suspensions, debarments, voluntary exclusions and ineligibilities. All participants in covered transactions will be required to certify whether persons have been suspended, declared ineligible, proposed for debarment, voluntarily excluded, indicted, covicted or had civil judgment rendered against them.

The Department will not extend reciprocity to suspensions and debarments of other agencies until this interim rule is replaced by a final rule. The purpose is to achieve government-wide effect at approximately the same time as other agencies implement their final rules.

The final OMB guidelines left to agency discretion whether to limit the coverage of agency rules to items charged as direct costs or to cover indirect costs as well. The Department has opted for the coverage of both direct and indirect costs because of its favorable experience with the broader coverage under its current regulations. The Department does not want its funds to benefit delinquent indirect contractors and does not want to assume the administrative burden of distinguishing between direct and indirect cost. It does not require that action be brought where only indirect costs are at issue, but it permits actions to be brought in especially aggravated circumstances.

The OMB guidelines authorized debarment on the basis of a conviction of, or a civil judgment for, offenses indicating a lack of business integrity or honesty affecting the present responsibility of a participant. The Department has decided, in addition, to specify that debarment is appropriate on the basis of a determination of liability pursuant to agency procedures under the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99–509, 31 U.S.C. 3801–3812). That Act makes administrative remedies available to Federal agencies

in cases involving false claims or false statements. Defendants in such actions are afforded the opportunity for a full adversarial hearing before an Administrative Law Judge.

Reason for Adoption of an Interim Final Rule

This rule is exempt from the notice and comment provisions of the Administrative Procedure Act. In any event, we have decided not to issue this document as a notice of proposed rulemaking because we believe that it would be contrary to the public interest to delay the effectiveness of this rule. Our rule mirrors OMB's final guidelines. The Department believes that the public has had a fair opportunity to comment on the substance of this rule through OMB's publication of proposed guidelines in February 1986 (51 FR 6372). Second, the Department has an urgent need to clarify the current DOT suspension and debarment rule so that fraudlent actions can be stopped. This interim final rule clarifies that bids shall not be solicited from persons affected by the rule and that the rule applies to insurance companies. Furthermore, the Department needs to include final determinations under the Program Fraud Civil Penalties Act (31 U.S.C. 3801 et seq.) within the definition of civil judgment under the rule. The Department is asking for public comments and those comments will be considered before a final rule is adopted.

Regulatory Evaluation

This regulation is classified as a "non-major" regulation under Executive Order 12291. This regulation also has been evaluated under the Department of Transportation's Regulatory Policies and Procedures. The regulation is not significant under those procedures, and its economic impact is expected to be so minimal that a further economic evaluation is not warranted.

Regulatory Flexibility Act Determination

I certify that this regulation would not have a significant economic impact on a substantial number of small entities. As stated above, the economic impact of the rule is expected to be minimal. In this connection, debarment and suspension measures are triggered only by serious misconduct and, therefore, are avoidable. The Department has no reason to believe that small entities, in particular, would be seriously affected by this rule.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et seq.)

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Government contracts, Loan programs—transportation, Grant programs—transportation, Fraud.

Accordingly, the Department of Transportation hereby adopts a revised Part 29 of the Regulations of the Office of the Secretary (49 CFR Part 29) to read as set forth below:

PART 29—DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
29.100 Purpose.
29.105 Authority.
29.110 Coverage.
29.115 Policy.
29.120 Definitions.
29.125 Savings clause.

Subpart B—Effect of Action

29.200 Debarment or suspension.
29.205 Voluntary exclusion.
29.210 Ineligible persons.
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Authority: E.O. 12549; OMB Guidelines for Nonprocurement Debarment and Suspension, 52 FR 20360, May 29, 1987; and section 322 of title 49, United States Code.

Subpart A—General

§ 29.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Section 1(a) of the Order provides that debarment or suspension of a participant in a program by one agency shall have government-wide effect. Section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue guidelines concerning the Order. Those Guidelines (entitled "Guidelines for Government-wide Debarment and Suspension (Non-Procurement)") (OMB Guidelines) were published at 52 FR 20360 May 29, 1987.

(b) This part implements section 3 of Executive Order 12549 and the OMB Guidelines by:

(1) Prescribing the programs and activities that are covered by the Order;

(2) Prescribing the criteria and minimum due process procedures that the Department will use in implementing the Order;

(3) Providing for the compilation and dissemination of pertinent information concerning debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible in § 29.120); and

(4) Setting forth the consequences of the actions under paragraph (b)(3) of this section.

§ 29.105 Authority.

This part is issued pursuant to Executive Order 12549 of February 18, 1986, the OMB Guidelines, and section 322 of title 49, United States Code.

§ 29.110 Coverage.

(a) *Covered transactions.* (1) *General.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements, including subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards).

(2) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidental benefits derived from ordinary governmental operations; and other transactions where the application of Executive Order 12549, the OMB Guidelines, and this part would be prohibited by law.

(b) *Relationship to other sections.* This section, § 29.110, describes the

types of activities and transactions to which a debarment or suspension under this part will apply. Subpart B, Effect of Action, § 29.200, sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants in the covered transactions and activities described in § 29.110. Section 29.330, Scope of debarment, and § 29.420, Scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549, the OMB Guidelines, and this part do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR). 48 CFR Subpart 9.4.

§ 29.115 Policy.

(a) In order to protect the public interest, it is the policy of the Department to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and this part, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Debarment or suspension may be imposed for the causes and in accordance with the procedures set forth in this part.

§ 29.120 Definition.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

Agency. Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

Civil judgment or judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, agreement, stipulation, or otherwise, creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Consolidated List. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and the OMB Guidelines, and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under this part, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

Conviction. Conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 (including his part) to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Debarring official. The head of a Departmental operating administration or, with respect to programs administered by the Office of the Secretary, the Assistant Secretary for Administration, any of whom may delegate any of his or her functions under this part and authorize successive delegations.

Indictment. Indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in covered transactions, programs, or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the Department.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with the Department as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. The head of a Departmental operating administration or, with respect to programs administered by the Office of the Secretary, the Assistant Secretary for Administration, any of whom may delegate any of his or her functions under this part and authorize successive delegations.

Suspension. An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 (including this part) to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ 29.125 Savings clause.

Any debarment or suspension initiated before the effective date of this part shall be governed by Part 29 of the Department's regulations as Part 29 existed immediately before the effective date of this part.

Subpart B—Effect of Action

§ 29.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment or suspension shall, under Executive Order 12549 and the OMB Guidelines, be effective throughout the executive branch of the Federal Government. Except as provided in § 29.215, persons who are debarred or suspended by any departmental debarring or suspending official or by any other agency are excluded for the period of their debarment or suspension from participation in all covered transactions of the Department and, under Executive Order 12549 and the OMB Guidelines, all covered transactions of all agencies. Provided that debarments and suspensions by agencies other than the Department of Transportation shall not be effective throughout this Department until such time when the interim rule is replaced by a final rule. At such time, Departmental employees and participants may not, in connection with any covered transaction of the Department, make awards or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred or suspended by any Departmental debarring or suspending official or by any other agency are excluded from participation in any of the following capacities in or under any covered transaction of the Department and, under Executive Order 12549 and the OMB Guidelines, any covered transaction of all agencies: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

§ 29.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § 29.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E of this part and the OMB Guidelines, is for informational purposes. Awarding officers and participants must contact the original action agency to ascertain the extent of the exclusion.

§ 29.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ 29.215 Exception provision.

A suspending or debarring official may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by such official stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. Exceptions to this policy should be granted only infrequently. Exceptions shall be reported in accordance with § 29.500.

§ 29.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded may continue in existence.

(b) Departmental employees and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § 29.215.

§ 29.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except as permitted under this part, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Subpart C—Debarment

§ 29.300 General.

The debarring official may debar a participant for any of the causes in § 29.305, using procedures in § 29.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 29.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 29.300 and 29.310 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes

substantially the same as provided for by § 29.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss of denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ 29.310 Procedures.

(a) *Investigation and referral.* Anyone may contact the appropriate Departmental debarring official concerning the existence of a cause under this subpart. The debarring official shall review the matter and may also refer the matter to the Office of Inspector General for investigation. However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of Inspector General.

(b) *Decisionmaking process.* The decisionmaking process shall be as informal as practicable, consistent with principles of fundamental fairness and shall, at a minimum, provide the following:

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under § 29.305 for proposing debarment;

(iv) Of the provisions of § 29.310(b);

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.* (i) In actions not based upon a conviction or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any witness the Department presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision*—(i) *No additional proceedings necessary.* In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official not under the supervision of the debarring official for findings of fact. Such official may be, but is not restricted to, a Contract Appeals Board judge or an administrative law judge. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.* (i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless a Departmental debarring official makes a determination under § 29.215 or the head of another agency or his or her designee makes such a determination under a comparable regulation.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment on the same grounds by any other agency.

§29.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment by a Departmental debarring official and until the final debarment decision is rendered, new awards may not be made to the respondent. This exclusion may be waived pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of § 29.215 allowing exceptions for particular transactions may be applied.

§ 29.320 Voluntary exclusion.

A participant and a debarring official may enter into a settlement providing for the exclusion of the participant. Information of such exclusion shall be transmitted to the General Services Administration (GSA) for entry on the Consolidated List (see Subpart E).

§ 29.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a

debarment, the suspension period may be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §29.310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 29.330 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of transactions.

(2) The debarment action may include any other affiliate of the participant that is (i) specifically named and (ii) given notice of the proposed debarment and an opportunity to respond (see § 29.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Subpart D—Suspension

§ 29.400 General.

(a) The suspending official may suspend a participant for any of the causes in § 29.405 using procedures in § 29.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § 29.405 when it has been determined that immediate action is necessary to protect the public interest.

§ 29.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 29.400 and 29.410 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 29.305(a); or

(2) That a cause for debarment under § 29.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 29.410 Procedures.

(a) *Investigation and referral.* Anyone may contact the appropriate Departmental suspending official concerning the existence of a cause under this subpart. The suspending official shall review the matter and may also refer the matter to the Office of Inspector General for investigation. However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of Inspector General.

(b) *Decisionmaking process.* The decisionmaking process shall be as informal as practicable, consistent with principles of fundamental fairness and shall, at a minimum, provide the following:

(1) *Notice of suspension.* When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the evidence of the Federal or any other level of government;

(iv) Of the cause(s) relied upon under § 29.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of § 29.410(b); and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.* (i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any witness the Department presents, unless—

(A) The action is based on an indictment, conviction or judgment, or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Govenment in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Suspending official's decision.* The suspending official may modify or terminate the suspension (for example, see § 29.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition, on the same grounds, or suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

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(i) *No additional proceedings necessary.* In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official not under the supervision of the suspending official for findings of fact. Such an official may be, but is not restricted to, a Contract Appeals Board judge or an administrative law judge. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§ 29.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 29.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of debarment (see § 29.330), except that the procedures of § 29.410 shall be used in imposing a suspension.

Subpart E—General

§ 29.500 Information collection and dissemination.

(a) The Assistant Secretary for Administration shall act as liaison with GSA respecting GSA's responsibilities under subpart E of the OMB Guidelines (maintenance of Consolidated List). The Assistant Secretary shall maintain and provide GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by the Department. Until February 18, 1989, the Assistant Secretary shall also provide GSA and OMB with information concerning all transactions in which the Department has granted exceptions under § 29.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the Assistant Secretary shall, within five working days after the Department takes each action, advise GSA of the information set forth below and of the exceptions granted under § 29.215:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The name and telephone number of the Departmental point of contact for the action.

(c) In order to ensure that listed persons do not participate in any covered tansaction in a manner inconsistent with their listed status:

(1) The Assistant Secretary shall establish procedures applicable to obtaining, maintaining, distributing, and using list information;

(2) Each administrator of a Departmental operating administration shall designate a liason officer responsible for assisting the Assistant Secretary in keeping list information current and shall establish procedures applicable to the distribution and use of list information; and

(3) The Assistant Secretary and each administrator shall establish procedures for the dissemination and use of information concerning participants whose debarment has been proposed by a Departmental debarring official (See §§ 29.315 and 29.310(b)(6)(ii)).

§ 29.505 Participant certification requirements.

(a) All participants are required to certify whether the participant, or any person acting in a capacity listed in § 29.200(b) with respect to the participant or the particular covered transaction, is currently or within the proceeding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation, or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 29.305(a).

(b) Adverse information in the certification need not necessarily result in denial of participation. Information provided by the certification and any additional information required of participants shall be considered in the administration of covered transactions.

Issued in Washington, DC, on October 16, 1987.

Jim Burnley,

Deputy Secretary of Transportation.

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Part III

Federal Home Loan Bank Board

Regulations Required by the Competitive Equality Banking Act of 1987

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 87-1038]

Applications Processing Guidelines

Date: October 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Policy statement; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), pursuant to section 410 of the Competitive Equality Banking Act of 1987, is adopting a policy statement that promulgates guidelines concerning processing of applications filed with the Board. This policy statement sets forth maximum time periods for approval of completed applications filed with the Board.

EFFECTIVE DATE: October 9, 1987. Comments on the policy statement must be received on or before December 9, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Gary A. Gegenheimer, Attorney, (202) 377-6575; John A Buchman, Assistant Deputy Director, (202) 377-6963; V. Gerard Comizio, Director, (202) 377-6411, Corporate and Securities Division, or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6459, Office of General Counsel; Cindy L. Hausch, Financial Analyst, (202) 377-7488; Patrick Berbakos, Assistant Director, (202) 377-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Cheryl A. Martin, Financial Analyst, (202) 778-2651; Richard W. Wissinger, Deputy Assistant Director, (202) 778-2608; Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On August 10, 1987, President Reagan signed into law the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100-86, 101 Stat. 552. The CEBA addresses a number of important issues relating specifically to the thrift industry, including the recapitalization of the FSLIC, emergency acquisitions of troubled thrift institutions, and potential areas for improvement in the examination and supervisory processes. Among the provisions contained in the CEBA is section 410, which directs the Board in section 410(a) to promulgate guidelines providing that each completed application filed with the Board or the FSLIC (other than an application submitted under section 408(g) of the National Housing Act ("NHA"), 12 U.S.C. 1730a(g), concerning holding company indebtedness) shall be deemed to be approved as of the end of the period prescribed by such guidelines unless the Board or the FSLIC approves or disapproves the application before the end of the period.

Section 410(b) of the CEBA amends section 408(g) of the NHA to provide that any completed application submitted for approval under that subsection shall be deemed to be approved 60 days after the filing of such completed application, unless the FSLIC approves or disapproves the application prior to the expiration of that period. Under section 410(c) of the CEBA, the Board also is required to submit a report to Congress before October 9, 1987, containing the abovementioned applications processing guidelines required to be promulgated by the Board under section 410(a). Section 410(d) of the CEBA provides that the guidelines required to be promulgated under section 410(a) shall take effect on October 9, 1987, i.e., at the end of the 60 day period beginning on August 10, 1987, the date of enactment of the CEBA.

Accordingly, the Board is today issuing this policy statement, which promulgates guidelines setting forth maximum time periods for approval of completed applications filed with the Board. The Board is concurrently transmitting a report to Congress containing the guidelines adopted today, as required by section 410(c). The Board notes that the guidelines adopted today are being promulgated in final form. However, the Board also is soliciting comments from interested parties as to how the Board's current regulations related to regulatory applications review and processing, as well as the guidelines adopted today, may be further streamlined. Comments should be submitted within 60 days of the effective date of this policy statement.

A. Completed Applications to Which These Guidelines Apply

Section 410 of the CEBA, by its terms, applies to all completed "applications" under the Board's regulations. Congress did not, however, expressly define the term "applications" regarding the nature and type of applications intended to be within the scope of section 410(a). A review of Board regulations, which generally are contained in Chapter V of Title 12 of the Code of Federal Regulations, reveals numerous activities of federally chartered or insured institutions that require the prior (and, in most cases, written) approval of the Board, often acting through the Principal Supervisory Agents ("PSAs") of the Federal Home Loan Bank System pursuant to delegated authority or through the Board's Washington staff. Other proposed activities require prior notification to the Board and may be undertaken by the institution unless the Board or the PSA, pursuant to delegated authority, raises an objection or, in some cases, withholds approval within a certain prescribed period of time. In some cases in which the PSA's approval is withheld, the matter may be referred to the Board for final decision. Certain of these "referred" matters have time deadlines incorporated into the regulations, such that the institution's request is deemed approved if the Board does not act within a certain period of time. Others, however, have no such timeframes.

In determining which applications and other requests for approval should be governed by this policy statement, the Board has attempted to be as broad and inclusive as possible to be consistent with the perceived Congressional intent to expedite applications processing, and has omitted only those matters, discussed below, that the Board believes do not appear to appropriately fall within the scope of section 410.

1. Litigation and Enforcement Activities

Specifically, in paragraph (a) of the policy statement, the Board is excluding from coverage requests submitted in connection with the Board's litigation and enforcement activities, such as permanent and temporary cease-and-desist and removal/prohibition orders (including requests for termination or modification of, or requests for approval submitted pursuant to, such orders), or agreements reached pursuant to the terms of a settlement of litigation. Similar requests relating to supervisory agreements and consent merger agreements are also excluded from coverage. In this regard, the Board notes that cease-and-desist orders often contain provisions that require that the institution in question restrict certain of its activities (*e.g.*, construction lending) and/or engage in certain transactions only after obtaining the prior written approval of the Supervisory Agent. Similar provisions are often contained in supervisory agreements between

insured institutions and the Corporation (through the Supervisory Agent) and in resolutions voluntarily executed by an institution's board of directors giving the PSA the authority to negotiate a merger or acquisition of the institution and consenting to the appointment of a conservator or receiver for the institution if the Corporation should deem it appropriate to take such action. These provisions are not uniformly imposed by regulation on all insured institutions, but instead are included in enforcement or supervisory documents on a case-by-case basis when a need for institutional restrictions is perceived in a particular set of circumstances. The activities that are restricted by cease-and-desist orders and supervisory agreements typically are those areas in which regulatory problems have been noted and thus can include both routine and complex transactions. Moreover, the great majority of such orders and agreements are obtained through negotiation with the institutions or individuals involved. The Board therefore believes that it would be inappropriate to establish standardized timetables in this area, because maximum flexibility must be retained in the negotiation process, as well as in determining what (if any) specific approval procedures may be appropriate for different types of restricted activities. Accordingly, these items are not covered by this policy statement. The Board is, of course, aware that timely decisions are of great importance in the operation of the business of insured institutions and expects that Supervisory Agents will respond to supervisory and enforcement-related requests for approval in a timely fashion.[1]

2. FSLIC Transactions Involving Troubled or Insolvent Thrifts

In addition, requests submitted in connection with mergers or acquisitions of insured institutions accomplished with FSLIC assistance and requests for non-standard supervisory forbearances in connection with a FSLIC-assisted merger or acquisition of an insured institution, in the view of the Board, are not within the scope of section 410(a). Such requests would include those for Board approval of mergers and acquisitions involving FSLIC assistance, insurance of accounts of an interim association in a FSLIC case, and the extension of non-standard supervisory forbearances by the PSA in connection with a merger or acquisition under 12 CFR 563.22(e)(1)(i).

FSLIC assistance in a merger or acquisition is authorized under section 406(f)(1)–(4) of the NHA, 12 U.S.C. 1729(f)(1)–(4), within the "sole discretion" of the FSLIC, and upon "such terms and conditions" as it may prescribe. In these situations, the FSLIC is contemplated by the NHA to be, and actually is, the moving or initiating party in the merger or acquisition, using the assistance authority of section 406(f) to forestall, or as a substitute for, the more costly liquidation process. Accordingly, in such cases, the FSLIC is directly involved in the merger or acquisition of the institution very early in the process and to a much greater degree than is normally the case in a non-assisted transaction. The Board believes that maximum flexibility must be retained in this area in order to enable the FSLIC to take all steps that may be necessary to prevent the failure of insured institutions and to arrange acquisitions of troubled institutions that involve the least cost to the insurance fund. In addition, requests for FSLIC assistance are often competitive, with several potential acquirors submitting proposals to assume control of a given institution with the aid of the FSLIC. In such cases, the Board must choose between several alternatives and must weigh a number of factors in determining which proposal will be most advantageous. Automatic approval of such a request after a given period would therefore create a contradictory result, because it could force the Corporation to approve a merger or acquisition solely because a given request for assistance was the first one submitted, without regard to whether the particular transaction is in the best interests of the FSLIC or of the institution involved. Accordingly, such requests are also excluded from the timeframes set forth in this policy statement.[2]

Similarly, requests related to action taken by the Corporation in connection with (or in order to prevent) the failure of an insured institution, in the Corporation's view, are not contemplated by the term "applications" in section 410(a). These would include offers to purchase assets of the Corporation acquired pursuant to section 406(f)(1)–(4) of the NHA or from a receiver, applications for the payment of insurance or transfer of accounts pursuant to section 405(b) of the NHA, 12 U.S.C. 1728(b), and requests in connection with authorizations by the Corporation of emergency thrift acquisitions pursuant to section 408(m) of the NHA, 12 U.S.C. 1730a(m). In this regard, the Corporation notes that the guidelines apply only to applications made to it in its corporate capacity and not in its capacity as conservator, receiver, or other legal custodian of an insured institution.

3. Regulations with specified applications time periods and procedures.

Finally, a number of applications and requests for approval already contain specific regulatory timetables. For example, notices of intention to acquire control of insured institutions pursuant to the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) (the "Control Act"), are governed by the detailed procedures contained in Part 574, which are derived from the Control Act itself.[3] The guidelines promulgated in this policy statement are not intended to supersede any pre-existing applications processing time periods and/or procedures currently contained in the FSLIC regulations. Thus, where a regulation establishes procedures for processing an application or request for approval, and/or contains specific timeframes for automatic approval unless an application is objected to or disapproved, those regulatory provisions will continue to govern the matters to which they apply. In cases in which a regulation establishes a procedure but not a timetable, the procedure set forth in the regulation will continue to apply, but will be subject to the time periods promulgated in this policy statement.

[1] Similarly, pursuant to section 407 (g) and (h) of the NHA, 12 U.S.C. 1730 (g) and (h), and section 5(d)(4)(D) and 5(a) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(4)(D) and (5)(A), individuals may, under certain circumstances, be removed from their positions at federally insured or chartered institutions and prohibited from further participation in the conduct of the affairs of the institution involved. By statute, such individuals may not vote for a director or serve or act as officers, directors, or employees of insured institutions without the prior written approval of the Board or the Corporation. 12 U.S.C. 1464(d)(12)(A); 1730(p)(1). Such requests for approval are also excluded from the coverage of this policy statement.

[2] The purchase of Net Worth Certificates by the Corporation is another method of aiding insured institutions that is committed to the Corporation's discretion by Congress in § 406(f)(5) of the NHA, 12 U.S.C. 1729(f)(5). Part 572 of the Corporation's regulations provides detailed standards and guidelines for the handling of requests for the purchase of Net Worth Certificates by the Corporation. Accordingly, such requests are not covered by this policy statement.

[3] The Board will shortly be adopting amendments to its acquisition of control regulations, Part 574, designed to streamline further the regulatory processing of the wide range of acquisition of control filings made with the Board under Part 574, including, but not limited to, holding company applications, change in control notices, and rebuttals of control and concerted action by revising the current regulatory application processing time periods and procedures consistent with the guidelines adopted today.

Except as specifically noted in paragraph (a), all other applications or requests for approval submitted subsequent to the date of this policy statement pursuant to the Bank Board's regulations will be governed by the time periods set forth in this policy statement.

B. Applications Submitted for Review

Paragraph (b) of the policy statement provides that an application (or notice) must be submitted on the proper form designated by the Corporation and otherwise in compliance with the applicable filing requirements. In this regard, the Board notes that if an application is incorrectly submitted (*e.g.*, if a copy of the application is not filed with all of the specified persons or offices), the applicable periods for review set forth in the guidelines will not commence until the application is properly filed.

C. Acceptance of Applications for Processing.

Section 410(a) of the CEBA requires that the Board promulgate guidelines providing that each completed application (other than an application regarding holding company indebtedness) will be deemed to be approved at the end of the time period prescribed under such guidelines, unless the Board (or the FSLIC) has approved or disapproved the application before the expiration of that period. Similarly, section 410(b) of the CEBA amends section 408(g) of the NHA to provide that each completed application for approval of holding company indebtedness shall be deemed to be approved as of the end of the 60-day period beginning on the date such application was filed, unless the FSLIC approves or disapproves the application prior to the end of the 60-day period. Thus, with regard to both categories, a completed application is a prerequisite to the commencement of the period within which approval must be granted or denied.

Reflecting this requirement, paragraph (c) states that the period for Corporation review will not commence until the application (or notice) is deemed complete. Under this provision, the Corporation or its delegate must make a determination as to whether an application is complete within 30 days after the application is properly submitted to all appropriate offices. During this period of time, the Corporation may (1) request any additional information that may be required to complete the application, (2) deem the application complete and commence its period for review, or (3) if the application is found to be materially deficient or substantially incomplete, refuse to accept the application for filing and return it to the applicant. Upon expiration of the 30-day period, the application will automatically be deemed to be complete unless it has been returned or additional information has been specifically requested by such date.

The information that will be required in order for an application to be deemed complete will necessarily depend on the type of application involved. In this regard, potential applicants and their professional advisors should take care to submit applications in accordance with the requirements of all applicable regulations and are also encouraged to consult the Board's Washington staff or, as appropriate, the District Bank staff in preparing applications for submission to the Board.

In the event that any additional information is requested, paragraph (c) provides that the applicant must respond fully to the request within 30 days. Failure to respond within such time period may cause the application to be treated as having been withdrawn or may provide grounds for denial by the Corporation or its delegate. If the requested additional information is submitted in a timely manner, the Corporation must make a determination as to its completeness and notify the applicant whether any further additional information will be required within 15 calendar days after the information is received; otherwise, the application will be deemed to be complete at the end of the 15 calendar day period.

Paragraph (c) also provides that, with respect to additional information requests following the initial request, the inquiries must be limited to (1) those matters derived from or prompted by information furnished in response to the provious request, or (2) information that either was not reasonably available from the applicant, was concealed, or pertains to developments subsequent to the initial request. In those situations in which this second type of information is being requested after the application has been deemed complete, the Corporation or its delegate may revoke such determination and deem the application incomplete until the requested information is submitted and, upon receipt of the additional information, recommence processing the application as of that time.

D. Corporation Review Timeframes

Paragraphs (d), (e), and (f) of the policy statement set forth the periods of time within which the Corporation or its delegate must review a completed application and advise the applicant of the Corporation's determination. Paragraph (d) provides that once an application is deemed complete and no additional information is subsequently requested, the Corporation must either approve or disapprove the application within a review period of either 60 or 90 days, depending upon the type of application that has been submitted and particular delegations of authority. If the PSA (or the Supervisory Agent) is authorized to act upon the application (pursuant to authority delegated by the Corporation or by express terms of a regulation), the maximum applicable review period will be 60 days. In addition, for all applications or notices filed under the Board's accquisition of control regulations, including holding company applications, change in control notices, and rebuttals of control or concerted action, regardless of whether delegated or not, the maximum review period will be 60 days.[4] For all other applications that are not delegated, the maximum time period for review of a completed application will be 90 days.[5] Finally, where more than one type of application is required for a proposed transaction or activity, the paragraph provides that the maximum review period for all such applications will be the amount of time prescribed for the application having the longest review period. Failure by the Corporation or its delegate to act upon the application by the end of the Applicable 60 or 90 day period will cause the application to be deemed automatically approved (or, in the case of a notice, not disapproved) unless the review period has been extended pursuant to either paragraph (e) or paragraph (f).[6] To enhance

[4] The Control Act specifically requires that, with certain exceptions, a determination regarding a notice filed thereunder must be made within 60 days, or the notice is deemed not disapproved. 12 U.S.C. 1730(q).

[5] The Board stresses that the 90 day period for review sets forth a *maximum* review period. Generally the maximum review period may be required for applications processes that have longer review periods, such as, for example, applications for permission to organize, applications for insurance of accounts, applications for chartering of an interim federal or state insured institution, or applications for Federal Home Loan Bank membership. However, the Board will continue to endeavor to process applications that in the past have been subject to shorter timeframes for review in those shorter timeframes.

[6] Where a regulation prescribes a procedure for submission of protests on an application following publication of notice of a proposed activity after the application has been deemed complete (*e.g.*, 12 CFR 543.2), the automatic approval process will be discontinued until the issues relating to the protest are resolved. In this situation, the review period will not commence until the Corporation or its delegate informs the applicant that a protest has been deemed to be not "substantial" or that such issues have been resolved.

internal efficiency, the Board also will continue to improve its efforts to monitor applications processing internally and will continue to identify and define specific processing goals and monitoring systems with the objective of reducing processing times below those set forth in these guidelines. In addition, the Board is currently undertaking additional regulatory and other initatives designed to further streamline and improve the regulations and procedures governing the various types of applications filed with the Board.

Under paragraph (e), the Corporation or its delegate may extend the review period by an additional 30 days, thereby increasing the period within which a determination must be made to either 90 or 120 days. If the Corporation or its delegate does elect to extend the review period in this manner, it must notify the applicant of the extension at least 30 days prior to the expiration of the applicable period for review of a complete application. The Corporation believes that this limitation on extensions of the review period in accordance with this provision will facilitate an applicant's preparations for consummation of a proposed transaction or commencement of a planned activity by providing the applicant with sufficient advance notice of the date by which a final determination (or automatic approval) can be expected.

A second exception to the standard review timetables is set forth in paragraph (f). This provision states that in those situations in which any member of the Board, the General Counsel, Executive Director, the Executive Director of the Office of Regulatory Policy, Oversight and Supervision, or Executive Director for Policy believes that an application or notice raises a significant issue of law or policy warranting additional time for consideration, the Board member or such official may designate the application as ineligible for automatic approval by notifying the applicant to that effect and informing the applicant of the law or policy issue raised before the expiration of the applicable review period. The Corporation would anticipate utilizing this type of extension on an infrequent basis and only where, due to the novel, unique, and/or complex nature of the application, the Corporation would be unable to complete its review within the prescribed period of time. It is therefore the Corporation's view that inclusion of this exception in the guidelines will provide the Corporation with a degree of flexibility that is fully consistent with the legislative mandate contained in section 410 of the CEBA.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section.

2. *Issues raised by comments and agency assessment and response.* As explained in the **SUPPLEMENTARY INFORMATION** section, the Board is issuing the policy statement in final form without prior opportunity for comment, although the Board is soliciting post-promulgation public comment. Accordingly, at this time, there are no issues raised by comments that require Board assessment and response.

3. *Significant alternatives minimizing small-entity impact and agency response.* The applications processing guidelines will have no disproportionate impact on small institutions or other entities. The guidelines do not alter or supersede any pre-existing regulations regarding processing of applications, but rather only establish time periods within which action by the Corporation is required on completed applications submitted pursuant to Corporation regulations.

List of Subjects in 12 CFR Part 571

Accounting, Bank deposit insurance Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 571, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend Part 571 by adding a new § 571.12 to read as follows:

§ 571.12 Applications processing guidelines.

(a) *General.* Section 410 of Title IV of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 552, 620, section 410 generally requires that the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation (hereinafter collectively referred to as the "Corporation"), "promulgate guidelines which provide that with respect to each type of completed application" filed by any person for approval by the Corporation, the application "shall be deemed to be approved" as of the end of the period prescribed under such guidelines unless the Corporation approves or disapproves such application before the end of such period (section 410(a)). To comply with these requirements and to ensure the timely processing of applications and notices throughout the Federal Home Loan Bank System, the Board hereby sets forth guidelines for the processing of completed applications and notices (hereinafter collectively referred to as "applications") filed with the Corporation or its delegate subsequent to October 9, 1987. This section does not apply to applications submitted under section 408(g) of the National Housing Act, 12 U.S.C. 1730a(g) ("NHA"), involving holding company indebtedness; requests for Corporation assistance or assistance payments in connection with a merger, acquisition or restructuring of an insured institution pursuant to section 406(f)(1)–(4) of the NHA, 12 U.S.C. 1729(f)(1)–(4); requests in connection with Corporation authorizations of emergency thrift acquisitions pursuant to section 408(m) of the NHA, 12 U.S.C. 1730a(m); requests submitted in connection with cease-and-desist orders issued under section 407(e)(1) of the NHA, 12 U.S.C. 1730(e)(1) or 5(d)(2)(A) of the Home Owners Loan Act, 12 U.S.C. 1464(d)(2)(A) ("HOLA"), temporary cease-and-desist orders issued pursuant to section 407(f)(1) of the NHA, 12 U.S.C. 1730(f)(1) or section 5(d)(3)(A) of the HOLA, 12 U.S.C. 1464(d)(3)(A), removal and/or prohibition orders issued pursuant to section 407(g)(4) or (h)(1) of the NHA, 12 U.S.C. 1730(g)(4) or (h)(1), or section 5(d)(4)(D) or (5)(A) of the HOLA, 12 U.S.C. 1464(d)(4)(D), or (5)(A), temporary suspension orders issued pursuant to section 407(g)(5) or (h)(1) of the NHA, 12 U.S.C. 1730(g)(5) or (h)(1), or section 5(d)(4)(C) of the HOLA, 12 U.S.C. 1464(d)(4)(C), supervisory agreements, consent merger resolutions, or documents negotiated in settlement of litigation (including requests for termination or modification of, or for approval pursuant to such orders, agreements, resolutions or documents), or similar litigation or enforcement matters; or requests for non-standard

supervisory forbearances pursuant to 12 CFR 563.22(e)(1)(i). In addition, where other Corporation or Board regulations establish specific procedures for processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. Where a regulation sets forth a procedure for processing an application but does not contain a time period pursuant to which such application is to be processed, the application will be processed under the procedure established by the regulation, but will be subject to the time periods contained in this policy statement.

(b) *Applications submitted for review.* An application submitted to the Corporation or its delegate for processing shall be submitted on the designated form of application and shall comply with all applicable regulations and guidelines governing the filing of such application.

(c) *Accepting applications for processing.* (1) Within 30 calendar days of receipt of a properly submitted application for processing, the Corporation or its delegate shall (i) request additional information to complete the application, (ii) deem the application to be complete, or (iii) return the application if it is deemed by the Corporation or its delegate to be materially deficient and/or substantially incomplete. Failure by the Corporation or its delegate to act as described in paragraph (c)(1) (i), (ii), or (iii) of this section within 30 calendar days of receipt of an application for processing shall result in the filed application being deemed complete, thereby commencing the period for review.

(2) Failure by an applicant to respond fully to a written request by the Corporation or its delegate for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application, or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice.

(3) The period for review by the Corporation or its delegate of an application will commence on the date that the application is deemed complete. The Corporation or its delegate shall notify an applicant as to whether the application is deemed complete within 15 calendar days after the timely filing of any additional information furnished in response to any initial or subsequent request by the Corporation or its delegate for additional information. If the Corporation or its delegate fails to notify an applicant within such time, the application shall be deemed to be complete as of the expiration of such 15 day period; *provided,* that where an applicant requests a waiver of a requirement that certain information be supplied, the application shall not be deemed to be complete until a final determination is made on the waiver request.

(4) After additional information has been requested and supplied, the Corporation or its delegate may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the applicant at the time of the application, was concealed, or pertains to developments subsequent to the time of the Corporation's initial request for additional information. With regard to information of a material nature that was not reasonably available from the applicant, was concealed at the time an application was deemed to be complete, or pertains to developments subsequent to the time an application was deemed to be complete, the Corporation or its delegate may request such additional information as it considers necessary and, at its option, may deem the application not to be complete until such additional information is furnished and may cause the review period to commence upon receipt of such additional information.

(d) *Failure by the Corporation to approve or deny an application or to disapprove a notice.* (1) If, upon expiration of the applicable period for review of any complete application to which this policy statement applies, or any extension of such period, the Corporation or its delegate has failed to approve or deny such application (or, in the case of a notice, to disapprove such notice), the application shall be deemed to be approved, or, in the case of a notice, not disapproved, by the Corporation or its delegate. For purposes of the previous sentence, the applicable period for review shall be (i) 60 calendar days for an application that is eligible for action by a Principal Supervisory Agent or a Supervisory Agent or for any application or notice submitted pursuant to Part 574 of the Corporation's regulations, or (ii) 90 calendar days for any other application.

(2) In the event that more than one application is being submitted in connection with a proposed transaction or other action, the applicable period for review of all such applications shall be the review period for the application having the longest period for review.

(e) *Extension of time for review.* The applicable period for review of an application deemed to be complete may be extended by the Corporation or its delegate for 30 days beyond the time period for review set forth in paragraph (d) of this section. The Corporation or its delegate shall notify an applicant at least 30 days prior to the expiration of the applicable period for review of a complete application that such review period is being extended for 30 days and shall state the general reasons therefor.

(f) *Extension of time for Corporation review of applications raising significant issues of law or policy.* In those situations in which an application presents a significant issue of law or policy, the applicable period for review of such application also may be extended by any member of the Corporation or its General Counsel, Executive Director, Executive Director for Policy, or the Executive Director of the Office of Regulatory Policy, Oversight and Supervision of the Federal Home Loan Bank System beyond the time period for review set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section until such time as the Corporation acts upon the application. In such cases, such member of the Corporation or designate or such official or designate shall provide written notice to an applicant not later than the expiration of the time period set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section that the period for review is being extended in accordance with this paragraph, which notice shall also state the general reason(s) therefor.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-23663 Filed 10-19-87; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Parts 545, 561, 563, 563c, and 570

[No. 87-1047A]

Definition of Regulatory Capital; Delay of Effective Date

Date: October 5, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; delay of effective date.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan

Insurance Corporation is delaying the effective date of its final rule concerning the Definition of Regulatory Capital. The final rule was published in the **Federal Register** on May 15, 1987 (52 FR 18340). The effective date was given as January 1, 1988. The Board is delaying this effective date until January 1, 1989 and could modify this date further as explained in the preamble to a proposed rule entitled Uniform Accounting Standards, Board Res. No. 87–1047, published elsewhere in this issue of the **Federal Register.**

EFFECTIVE DATE: The effective date of this final rule is delayed until January 1, 1989. This effective date could be modified further as explained in greater detail in the proposed rule; Uniform Accounting Standards, Board Res. No. 87–1047, published elsewhere in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Acting Regulatory Counsel, (202) 377–6649, Deborah Dakin, Assistant Director, (202) 377–6445, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778–2538, Carol Larson, Professional Accounting Fellow, (202) 778–2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–23775 Filed 10–19–87; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563 and 571

[No. 87-1039]

Appraisal Policies and Practices of Insured Institutions and Service Corporations; Withdrawal of Proposed Amendment

Date: October 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; withdrawal.

SUMMARY: On May 5, 1987, the Federal Home Loan Bank Board ("Board") proposed to amend its regulations to adopt a rule and a statement of policy governing appraisal policies and practices of institutions insured by the Federal Savings and Loan Insurance Corporation. *See* Board Res. No. 87-528, 52 FR 18386 (May 5, 1987). At that time, the Board solicited comment on its proposed rule and statement of policy. The Board initially set a 60-day comment period that expired on July 14, 1987, but extended this comment period until September 1, 1987, in order to ascertain the effect of final recapitalization legislation on the proposed rule and policy statement. *See* 52 FR 27219 (July 20, 1987).

The Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, was signed into law on August 10, 1987, during the comment period on the proposed rule and statement of policy. Section 402 of CEBA requires the Board to promulgate an appraisal standard "which is consistent with the appraisal standard established by the Federal banking agencies." CEBA, tit. iv, sec. 402 (a) and (b). In order to comply with the mandate of CEBA, the Board today is withdrawing the proposed rule and statement of policy contained in its Resolution No. 87-528. In their stead, the Board is proposing to adopt a new rule and statement of policy pertaining to appraisal standards that the Board believes are consistent with the appraisal policies of the Federal banking agencies.

DATE: This withdrawal is effective October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Kathy L. Kresch, Attorney, (202) 377-6417, Joan S. van Berg, Attorney, (202) 377-7023, or Karen Knopp O'Konski, Acting Director, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Diana Garmus, Policy Analyst, (202) 778-2515, Office of Regulatory Policy, Oversight, and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-23660 Filed 10-19-87; 8:45 am]

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12 CFR Parts 563 and 571

[No. 87-1040]

Appraisal Policies and Practices of Insured Institutions and Service Corporations

Dated: October 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing to adopt a rule and a statement of policy pertaining to appraisal policies and practices of institutions insured by the FSLIC ("insured institutions") and service corporations of such institutions consistent with the requirements of the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552. This proposal replaces the Board's previous proposal, published in May, which is withdrawn. Section 402 of CEBA requires that the Board adopt an appraisal standard "which is consistent with the appraisal standard established by the Federal banking agencies." CEBA, tit. iv. sections 402 (a) and (b). This proposed rulemaking requires the management of insured institutions and service corporations to develop and implement prudent appraisal policies and procedures.

The Board is also proposing to adopt a statement of policy to accompany the proposed rule. The statement of policy sets forth the appraisal standards that the Board recommends to management for consideration in the development of the appraisal policies and procedures required by the proposed rule. The Board invites public comment on all aspects of the proposed rule and policy statement.

DATE: Comments must be received on or before November 19, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Kathy L. Kresch, Attorney, (202) 377-6417, Joan S. van Berg, Attorney, (202) 377-7023, or Karen Knopp O'Konski, Acting Director, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Patricia Rudolph, Visiting Scholar, (202) 377-7298, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Diana Garmus, Policy Analyst, (202) 778-2515, Office of Regulatory Policy, Oversight, and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The soundness of mortgage loans and real estate investments made by insured institutions and service corporations depends upon the adequacy of the loan underwriting used to support these transactions. An appraisal report is one of several essential components of the loan underwriting process. Accordingly, § 563.17-1 of the Board's regulations requires that the records of a loan secured by real estate include "[o]ne or more written appraisal reports, prepared at the request of the lender or its agent . . . by a person or persons duly appointed and qualified as appraisers by the board of directors of such lender, disclosing the market value of the security offered by the borrower and containing sufficient information and data concerning the appraised property to substantiate the market value of the security described in such report. . . ." 12 CFR 563.17-1(c)(1)(iv). To date, standards for compliance with 12 CFR 563.17-1 have been issued in the form of "R" Memoranda by the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") of the Federal Home Loan Bank System.

On May 5, 1987, the Board proposed to adopt a rule and a statement of policy to incorporate in its regulations appraisal standards to be used by insured institutions and service corporations in complying with regulatory requirements. 52 FR 18386 (May 15, 1987) (the "May proposal"). The May proposal was published with a 60-day comment period that was scheduled to expire on July 14, 1987. On July 14, 1987, however, the Board extended the comment period to September 1, 1987, in order to ascertain the effect of final recapitalization legislation on the proposed rule and policy statement. 52 FR 27219 (July 20, 1987). On August 10, 1987, the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, was signed into law.

CEBA directs the Board to implement an appraisal standard consistent with

the appraisal standards of the Federal banking agencies.[1] The Board has reviewed its May proposal and has concluded that significant modifications to both its structure and content are necessary in order to accomplish CEBA's mandate in the most effective way. Therefore, in a separate document, also published today, the Board is withdrawing the proposed rule and statement of policy adopted on May 5, 1987. *See* Board Res. No. 87–1039. It is, instead, proposing to adopt a new rule and statement of policy consistent with the appraisal principles employed by the Federal banking agencies.

The Board has received many comments in response to its May proposal and notes that some of these will be rendered moot by its action today. The Board will continue to consider comments received in response to the May proposal to the extent they are relevant. The Board invites commenters to revise their comments to the May proposal and solicits new comments on all aspects of today's proposed rule and statement of policy. The Board also notes that it intends to hold a public hearing on this proposal together with others adopted pursuant to CEBA's requirements. Details of this hearing are contained in a Notice published elsewhere in today's edition of the **Federal Register**. The hearing will occur during the comment period, which is set for 30 days so that the Board can complete the process of issuing regulations within the 150-day deadline prescribed by CEBA. *See.* CEBA, tit. iv, sec. 402(d).

1. Statutory Authority

Pursuant to section 402(a) of CEBA, the Board is required to establish, by regulation, an appraisal standard for Federal associations "which is consistent with the appraisal standard established by the Federal banking agencies." CEBA, tit. iv, sec. 402(a), section 9(a)(2). Section 402(b) requires that the Board promulgate a regulation establishing an identical appraisal standard for state-chartered, FSLIC-insured institutions.[2] CEBA, tit. iv, sec. 402(b), section 415(a)(2).

CEBA's specific directive that the Board establish appraisal standards by regulation is consistent with the Board's existing statutory mandate to promote home financing according to principles of safety and soundness. Among the paramount purposes of Title IV of the National Housing Act ("NHA") (12 U.S.C. 1724–30) and the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421–29) is the development and maintenance of a system of sound and economical home financing. An additional, closely related purpose of the NHA is protection of the FSLIC insurance fund from exposure to undue risk. The appraisal standards proposal is designed to enable the Board to carry out both statutory objectives.

Moreover, the Board is authorized by sections 403(b) and 407(m) of the NHA to conduct examinations of insured institutions and their service corporations. 12 U.S.C. 1628(b), 1730(m). The Board believes that carefully documented appraisals are essential to accurate evaluation of the asset portfolio of an insured institution or service corporation. The proposed rule pertaining to appraisal policies and practices of insured institutions and their service corporations therefore comports with the Board's statutory authority to examine and evaluate the asset protfolios of insured institutions and their service corporations.

2. The Board's Appraisal Standards to Date

The Board's first appraisal guidelines were issued as R-Memorandum 41, on June 6, 1977, by its Office of Examinations and Supervision ("OES" now ORPOS). At that time, the thrift industry had suggested that the Board emphasize the importance of the appraisal process in prudent loan underwriting. Moreover, the Board's experience with problem loans had revealed that when a loan underwriter did not receive market-based appraisal information, loans were based upon inaccurate collateral valuations and, consequently, upon inappropriate underwriting assumptions. In the worst cases, deficient underwriting was directly responsible for losses sustained by insured institutions. The Board responded by issuing R–41 and its progeny.

The appraisal documentation requirement of R–41 was not new to the industry in 1977. An appraisal report containing a detailed description of the appraiser's reasoning in arriving at an estimate of value had been a requisite portion of a loan record at least since the adoption of 12 CFR 563.17–1 in 1963. This requirement was continually revised and expanded in R–41a, issued September 15, 1977, R–41a–1, issued March 1, 1979, R–41b, issued March 12, 1982, and R–41c, issued September 11, 1986.

R–41c updated, revised, and replaced R–41b. R–41c elaborated upon the appraisal guidelines of R–41b, adding to its appraisal management procedures, requirements used by the leading national appraisal organizations. Additionally, R–41c updated the definition of market value to be consistent with the terminology adopted by the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae"). On February 26, 1987, ORPOS issued a memorandum clarifying R–41c. *See* Memorandum from William L. Robertson to Professional Staff, Examinations and Supervision (Feb. 27, 1987). *See* 52 FR 18396 (May 15, 1987).

In the preamble to the May proposal, the Board discussed its present appraisal standards set forth in Memorandum R–41c, as clarified, in detail. *See* 52 FR 18387–18388. The May proposal was explicitly intended to codify the R–41c approach to appraisal standards. Toward that end, it contained detailed instructions for insured institutions concerning the responsibility of management and the contents of an acceptable appraisal report, an approach that differs from the approach used by the Federal banking agencies. The hallmark of the Federal banking agencies' appraisal practices is the placement squarely on management of responsibility for developing and maintaining adequate appraisal standards. In the banking system, management is afforded discretion to develop policies best suited to the needs of the particular regulated institution. Today's proposal is intended to follow that model.

3. The Proposed Rule

CEBA requires the Board to adopt appraisal standards that are consistent with those of the Federal banking agencies. Although the Federal banking agencies have not adopted written appraisal standards, Board staff discussions with representatives of those agencies have disclosed that the Board's May proposal was more detailed than their appraisal principles. Therefore, the proposed rule substantially modifies the Board's historical approach to the management of appraisal practices set forth in the series of "R" Memoranda and the May proposal discussed above. In this regard,

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[1] Section 402 of CEBA defines "Federal banking agencies" to include the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[2] Pursuant to 12 CFR 561.1, the term "insured institution" is defined as a Federal association or a state-chartered, FSLIC-insured savings and loan association. Therefore, an amendment to the Board's regulations governing all FSLIC-insured institutions will effectuate the statutory amendments to the HOLA and the NHA made by CEBA.

the Board, in seeking to achieve consistency with the appraisal principles endorsed by the Federal banking agencies, has determined to revise and restructure its appraisal standards. With the exception of certain requirements that management must meet with respect to all appraisals, the proposed rule does not set forth the specific indicia of an acceptable appraisal. Rather, the rule instructs the management of each insured institution to develop, implement, and maintain appraisal policies and practices. The accompanying proposed statement of policy offers guidance to management concerning relevant and accepted appraisal standards to be considered in the development of an institution's appraisal policies and guidelines.

The Board believes that because the proposal emphasizes the exercise of discretion by management rather than the individual components of an acceptable appraisal, it will promote flexibility in achieving compliance with the Board's appraisal policies. The Board is also of the opinion that its new approach, consistent with the appraisal principles endorsed by the Federal banking agencies, will foster both cost efficiency in the appraisal process and competitive equality with the banking industry.

The shift to management of the burden to develop, implement, and maintain adequate appraisal standards does not signal a retreat from the Board's strong policy in favor of encouraging sound underwriting practices, including appraisal standards. Consistent with this policy and the Board's statutory enforcement authority,[3] an institution may be subject to enforcement action either for a violation of any final appraisal regulation or if the appraisal standards it adopts do not comport with principles of safety and soundness.

a. Introduction

The proposed rule begins with the Board's statement of the purpose of the rule. In the interest of safety and soundness, it is incumbent upon management to maintain prudent loan underwriting policies. Appraisals are an essential component of the loan underwriting process because appraisal reports contain the estimates of the value of collateral held or assets owned that lending decisions are based upon. Therefore, under the proposal, management would be responsible for the development, implementation, and maintenance of appraisal practices and procedures in accordance with the Board's regulation.

b. Definitions

The definitional section of the proposed rule includes definitions of the few terms that are crucial to the comprehension and application of its proposed appraisal regulation. "Management" is defined as the directors and officers of an institution as those terms are defined in existing Board regulations. *See* 12 CFR 561.31 and 561.32. This section also includes the definition of "market value," upon which the Board proposes to base estimates of value in an appraisal report. This definition is identical to the definition of market value adopted by Fannie Mae and Freddie Mac.

c. Responsibilities of management

The proposed rule contains a section entitled Responsibilities of Management that addresses the obligations of management to develop, adopt, and implement appraisal policies. This section emphasizes the Board's view that management should have discretion in establishing appraisal policies; these policies must be designed, however, to ensure that appraisals accepted by the institution reflect professional competence and report estimates of market value upon which the institution's lending decisions can be based. To achieve these results, the proposed rule sets forth three appraisal standards that, at a minimum, must be included in the appraisal policies of every insured institution and service corporation. The accompanying proposed statement of policy also recommends appraisal standards that management should consider in fulfilling this responsibility.

First, the proposed rule provides that management must require every appraisal to be based upon the definition of market value set forth in the regulation. As noted above, this market value definition is identical to the definition of market value adopted by both Fannie Mae and Freddie Mac. It contemplates the consummation of a sale as of a specified date and the passing of title from buyer to seller under open and competitive market conditions requisite to a fair sale. In the Board's view, this definition of market value is an accurate measure of the economic potential of security property because in most troubled real estate loans the lender must sell the security in order to recover its invested funds. The Board solicits comment on whether to continue to use the term "market value" in its apraisal regulation.[4]

Second, the proposal provides that management must require an appraisal to be presented in a narrative format. In this regard, the proposed rule requires an appraisal report to be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value reported and the rationale for that estimate. The analysis of the value estimate reported must be commensurate in its detail and depth with the complexity of the real estate appraised. The Board believes that this requirement affords management the discretion to determine the adequacy of an appraisal based upon the characteristics of the collateral appraised. Moreover, this requirement promotes cost efficiency in the preparation of appraisal reports by permitting management to accept shorter, less detailed, and therefore less costly appraisal reports on uncomplicated properties.

Third, the Board believes that the reasonableness of an estimate of the market value of collateral in an appraisal report must be considered in the context of prior sales of the property that occurred in a recent time frame. Threfore, the proposed rule provides that management must require that an appraisal contain a sales history of the real estate appraised. Specifically, an appraisal on one-to-four family residential property that is not prepared on a form approved by Fannie Mae or Freddie Mac must disclose and analyze prior sales that occurred within one year of the date that the appraisal report was prepared. With respect to all other types of property, the appraisal must disclose and analyze any prior sales of the property that occurred within three years of the date the appraisal was prepared.

The proposed rule also requires management to develop and adopt guidelines and to institute procedures pertaining to the hiring of appraisers. In this regard, it instructs management to consider factors including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal

[3] The NHA provides that the FSLIC may take enforcement action, if an institution violates a regulation or if it commits an unsafe or unsound practice. 12 U.S.C. 1730(e). This is, of course, only a partial list of items that may justify enforcement action. *Id.*

[4] In the Board's view, "market value" means "fair value" as that term is used in its Classification of Assets proposal, Board Res. No. 87–1042, and in its proposal on Troubled Debt Restructuring, Board Res. No. 87–1046. The Board does not mean to imply, however, that an institution should base its allowances for loan losses on fair value if the appropriate basis for loan loss allowances is net realizable value in accordance with Statement No. 5 of the Financial Accounting Standards Board.

organizations in formulating hiring guidelines and determining whether to employ an appraiser. The Board continues to believe that for one-to-four family residential properties, management may approve an appraisal company in lieu of individual appraisers. It is, however, incumbent upon management to determine that the appraisal company's standards for hiring appraisers parallel the institution's hiring guidelines.

Furthermore, the Board believes that management is responsible for not only establishing an institution's appraisal policies and hiring appraisers but also for continual oversight of the provision of appraisal services to the institution by fee or staff appraisers. In this regard, it is incumbent upon management to ensure that appraisals consistently report estimates of market value of collateral that adequately support an institution's lending decisions. Therefore, the proposed rule provides that management must review the performances of all appraisers for accuracy and compliance with the institution's appraisal policies at least once every six months.

Additionally, the Board is aware that an institution's underwriting policies and procedures will invariably change over time. Therefore, the Board strongly recommends that management periodically review an institution's appraisal practices to ensure consistency with current underwriting standards.

Finally, there is no requirement in today's rule that an institution's board of directors formally adopt the appraisal policies and practices developed by management. The Board is specifically soliciting comment on whether such a requirement is necessary.

d. Exemptions

The Board is of the opinion that narrative appraisal reports are unnecessary for certain types of properties. The proposed rule therefore exempts from the appraisal requirements to be established by management appraisals on existing or proposed one-to-four family and existing multi-family properties, prepared on the forms approved by Fannie Mae and Freddie Mac, in compliance with their appraisal standards. Although the Fannie Mae appraisal standards are more comprehensive than those of Freddie Mac, the Board has determined that compliance with either set of appraisal standards, in conjunction with the use of approved forms, will satisfy the requirements of the proposed rule.

This section of the proposal also exempts from the appraisal requirements to be established by management any appraisals on commercial and industrial loans that are prepared on the form report approved by the Board. The Board encourages use of this form because the preparation of narrative appraisals for small commercial and industrial loans is neither cost- nor time-efficient.

4. Description of the Proposed Statement of Policy

The Board believes that the management of insured institutions and service corporations is best qualified to develop appraisal policies that meet the needs of their institutions. Management's policies will be measured according to whether they comport with principles of safety and soundness. The policy statement proposed today is intended to serve as guidance about what constitutes adequate appraisal standards—that is, what standards comport with principles of safety and soundness. An institution could, however, adopt appraisal policies different from those set forth in the policy statement and still be consistent with principles of safety and soundness, so long as such policies are designed to consistently produce fair and accurate appraisals. The Board recommends that management consider the appraisal standards set forth in this proposed statement of policy in developing appraisal standards for their institutions.

The appraisal standards contained in the Appraisal Management and Appraisal Content sections of the proposed statement of policy are standards that were in part contained in the May proposal and the "R" Memoranda discussed above. It is the Board's experience that compliance with the appraisal standards contained herein will result in appraisals that report reliable estimates of collateral value upon which institutions can base lending decisions. Over the years, the Board has periodically updated the appraisal standards contained in this proposed statement of policy in response to market fluctuations and industry developments. The Board plans to continue this process of analysis and revision so that the guidance offered in the policy statement will stay current.

Finally, the Board notes that section 407 of CEBA requires it to issue supervisory guidelines "establishing an appraisal review system to avoid overly optimistic or conservative appraisals with the goal of achieving appraisals that are more consistent in reflecting underlying values." Section 407 also requires the Board to create an informal procedure for review of certain appraisal decisions. The Board is studying how best to implement these requirements, and expects to issue the necessary guidelines and establish appropriate procedures shortly. It plans, however, to accomplish these objectives through action separate from this rulemaking.

5. Solicitation of Comments

In placing this proposal before the public, the Board's objective is to initiate a process of comment and analysis that will enable the Board to adopt appraisal standards consistent with those of the Federal banking agencies. The Board has, moreover, designed this proposal to promote safety and soundness throughout the thrift industry. The Board solicits public comment on all aspects of the proposed rule.

The Board notes that its policy statement is proposed as an interpretative rule, which is not subject to the notice and comment provisions of the Administrative Procedure Act. 5 U.S.C. 553 *et seq.* The Board believes, however, that because the rule and the policy statement are closely related, the public interest will best be served by considering comment on the policy statement in conjunction with the rule that it is proposing to adopt. In this regard, the Board solicits comment on all aspects of the proposed rule and statement of policy and specifically asks whether the structures of either should in any way be reorganized. As noted earlier, the Board invites commenters to revise any comments they have submitted in response to the May proposal.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions without regard to size.

3. *Impact of the proposed rule on small entities.* All institutions, including small ones, should benefit from the safety and soundness resulting from investments in loans secured by property that has been valued in compliance with the reivised appraisal standards set forth in the proposal. Moreover, inasmuch as the intent of the proposed rule is to require all institutions to adopt and maintain sound

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underwriting standards including adequate appraisal standards, there is no disproportionate or adverse impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above **SUPPLEMENTARY INFORMATION,** the Board is soliciting comment on the rule as proposed.

List of Subjects in 12 CFR Parts 563 and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 563 and 571, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat, 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., 1071.

2. Amend Part 563 by adding a new § 563.17–1a to read as follows:

§ 563.17–1a Appraisal policies and practices of insured institutions and service corporations.

(a) *Introduction.* The soundness of an insured institution's mortgage loans and real estate investments, and those of its service corporation(s), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy because appraisal reports contain estimates of the value of collateral held or assets owned. This rule sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of §§ 563.17–1 and 563.17–2 of this Part.

(b) *Definitions.*

For purposes of this section:

(1) "Management" means: the "directors" and "officers" of an insured institution as those terms are defined in §§ 563.31 and 561.32 of this chapter, respectively;

(2) "Market value" means: (i) The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (A) buyer and seller are typically motivated; (B) both parties are well informed or well advised, and each acting in what he considers his own best interest; (C) a reasonable time is allowed for exposure in the open market; (D) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(ii) Adjustments to the comparables must be for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily indentifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institution lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

(c) *Responsibilities of management.* An appraisal is a critical component of a loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which institutions may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies that it shall implement in consultation with other appropriate personnel. These policies shall include, but are not limited to, all of the following requirements.

(i) Appraisals shall be based upon the definition of market value as set forth in paragraph (b)(2) of this section.

(ii) Appraisals shall be presented in a narrative format. An appraisal shall be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value and the rationale for that estimate. The analysis of the market value estimate reported shall be commensurate in its detail and complexity with the complexity of the real estate appraised.

(iii) Appraisals shall disclose, analyze, and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(A) For one-to-four family residential property, one year preceding the date when the appraisal was prepared;

(B) For all other property, three years preceding the date when the appraisal was prepared.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the insured institution. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal organizations in determining whether to employ an appraiser.

(3) Management shall periodically, but at least semiannually, review the performance of all approved appraisers for compliance with (i) the institution's appraisal policies and procedures; (ii) section 571.1b of this subchapter; and (iii) the reasonableness of the value estimates reported.

(d) *Exemptions.* The requirements of paragraph (c)(1) of this section shall not apply with respect to:

(1) Appraisals on existing or proposed one-to-four family and existing multi-family properties prepared on forms approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in compliance with the appraisal standards approved by those agencies. This exemption does not apply to proposed tract developments; or

(2) Appraisals on nonresidential properties prepared on form reports approved by the Board and completed in accordance with the applicable instructional booklet.

PART 571—STATEMENT OF POLICY

3. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.1b to read as follows:

§ 571.1b Appraisal policies and practices of insured institutions and service corporations.

(a) *Purpose.* The purpose of this section is to offer to the management of insured institutions and service corporations the Board's views on appraisal policies and practices that comport with principles of safety and soundness. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law. Therefore, insured institutions and service corporations may adopt appraisal standards different from those set forth in this section, however, and still be consistent with the principles of safety and soundness.

(b) *Definitions.*

For purposes of this section:

(1) "Management" shall have the meaning given in § 563.17–1a(b)(1) of this subchapter.

(2) "Market value" shall have the meaning given in § 563.17–1a(b)(2) of this subchapter.

(3) "Market value as is on appraisal date" means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date the appraisal is prepared;

(4) "Market value as if complete on appraisal date" means the market value of a property with all proposed construction, conversion, or rehabilitation hypothetically completed, or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value shall reflect the market value of the property as if complete and prepared for occupancy by tenants;

(5) "Market value upon completion of construction" means the prospective market value of a property on the date that construction is completed, based upon market conditions forecast to exist as of that completion date;

(6) "Market value upon reaching stabilized occupancy" means the prospective market value of a property at a point in time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy.

(c) *Appraisal management.* Management is obligated by regulation to take reasonable steps to ensure that all appraisals used to support credit and investment decisions report accurate values upon which to base lending decisions. Acceptable appraisals may include the following features:

(1) Management should provide appraisers with a letter of engagement that contains a legal description of the property, the interest to be appraised, the different value estimates requested, and copies of both the Corporation's requirements and the institution's written guidelines. Management should attach to the letter of engagement information pertinent to the property that is necessary to comply with these requirements to the extent that this information is available. Such information should include, but is not limited to, financing data, leases, purchase agreements, and profit and loss statements of the security property;

(2) Appraisals should be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is made;

(3) Appraisals should reflect the market value of the rights in realty offered as security or as part of the transaction. All other values or interests appraised should be clearly labeled and segregated, e.g., value of chattels, value of financing terms, business value, funishings, fixtures, and equipment value;

(4) Appraisals should report the cost, income, and market approaches to market value unless the appraiser fully explains and supports the rationale for eliminating one or more approaches to such value;

(5) Appraisals should analyze and report in reasonable detail:

(i) Any current agreement of sale, option, or listing of the property being appraised if such information is available to the appraiser in the normal course of business;

(ii) A history of comparable sales used. If the subject property is located in a market where many of the sales prices of comparable properties have been increasing or decreasing at a rate faster than the growth or decline of the local economy, or the real estate inflation rate, such sales analysis should cover the time period of the multiple transactions and address artificially altered sales prices;

(6) An appraisal of a proposed project, improvement, or change in use should be based upon the most recent plans and specifications. If material changes in the plans and specifications could significantly reduce the estimated collateral value after a loan or investment decision has been made, management should take steps to ensure that a current estimate of value is established based on the final plans and specifications for the project. This may be satisfied by having the original appraiser recertify his value or by obtaining a new appraisal based on the final plans and specifications;

(7) Appraisal reports should contain a property supported estimate of the highest and best use of the property appraised that is consistent with the definition of market value set forth in paragraph (b)(2) of this section. Such estimate should be prepared whether or not the proposed use of the property is in fact the highest and best use. This highest and best use estimate should consider the effect on use and value of such factors as existing land use regulations, reasonably probable modifications of land use regulations, economic demand and supply, physical adaptability of the property, documentable property value trends, and optimal usage of the property. In addition, the appraisal should consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the appraisal date. Where appropriate, and in all cases involving proposed construction, development, or changes in use, the appraiser should specifically address, consider, and support the anticipated economic feasibility and cite all significant market data used in developing his conclusions. Such analyses should be presented in sufficient detail to support the appraiser's forecast of the probable success of the proposed use and should indicate whether this is in fact the highest and best use of the project. Moreover, if a market or economic feasibility study is prepared by someone othen than the appraiser, the appraiser should set forth the reasoning and rationale for accepting or rejecting that study, or any portion thereof;

(8) Appraisals on all properties should report an estimate of "market value as is

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on appraisal date" as that term is defined in paragraph (b)(3) of this section;

(9) Appraisals on all properties wherein a portion of the overall real property rights or physical assets would typically be sold to their ultimate users over a future time period should report the following estimates of value: (i) "market value as is on appraisal date" as defined in paragraph (b)(3) of this section; (ii) "market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section; and (iii) "market value upon completion of construction" as defined in paragraph (b)(5) of this section. Valuations involving such properties must fully reflect all appropriate deductions and discounts as well as the anticipated cash flows to be derived from the disposition of the asset over time. Appropriate deductions and discounts are considered to be those that reflect all expenses associated with the disposition of the realty as well as the cost of capital and entrepreneurial profit;

(10) Appraisals on all properties wherein anticipated market conditions indicate stabilized occupancy is not likely as of the date of completion should report the following estimates of value: (i) "market value as is on appraisal date" as defined in paragraph (b)(3) of this section ; (ii) "market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section; (iii) market value upon completion of construction as defined in paragraph (b)(5) of this section; and (iv) "market value upon reaching stabilized occupancy on the date of stabilization" as defined in paragraph (b)(6) of this section. Such valuations should fully reflect the anticipated pattern of income and pertinent operating expenses during the absorption period as well as the impact upon the value estimates of rental and other concessions;

(11) Appraisals should reflect, in the valuation of fractional interests in the real estate, the accepted premise that it is inappropriate to arrive at the value of the whole by simply summing the fractional interests. Similarly, it is also inappropriate to arrive, without market support, at the value of a fractional interest in the real estate by merely subdividing the value of the whole into proportional parts. All anaylses involving fractional interests in the real estate, where the combined value of all interests or estates is not reported, should establish with market evidence whether the terms and conditions of the agreement creating the estate or fractional interest reflect market rates and terms.

(d) *Appraisal content.* The content of each appraisal accepted by an institution should follow generally accepted and established appraisal practices as reflected in the appraisal standards of the nationally recognized professional appraisal organizations. Specifically, each appraisal should:

(1) Be totally self-contained, with no pertinent information withheld, and not misleading so that when read by any third party, the appraiser's logic, reasoning, judgment, and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported;

(2) Unequivocally identify, by legal description or otherwise, the real estate being appraised as this information is provided to the appraiser by management (management is obliged to ensure, prior to funding, that the appraised real estaste is described in a manner consistent with the description found in the institution's evidence of debt or encumbrance);

(3) Identify the property rights being appraised;

(4) Describe all salient features of the property being appraised;

(5) State that the purpose of the appraisal is to estimate market value as defined in paragraph (b)(2) of this section;

(6) Set forth the effective date(s) of the value conclusion(s) and the date of the report;

(7) Set forth the appraisal procedures followed and the data considered that support the reasoning, analyses, adjustments, opinions, and conclusions (including highest and best use) arrived at by the appraiser;

(8) As it relates to market comparable date analysis, be presented so that:

(i) It contains descriptive information presented with sufficient detail to demonstrate that the transactions were conducted under the terms and conditions of the definition of value being estimated, or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property; and that the selected properties are physically and economically comparable to the subject property; and

(ii) It includes a presentation and explanation of adjustments used in the analysis together with the appropriate market support.

(9) Contain a summary of actual annual operating statements for existing income-producing properties made available to the appraiser by the lender and/or borrower, together with a supported forecast of the most likely future financial performance. If the appraiser is told that actual operating statements are unavailable, the appraiser should identify the source of this information. The appraiser should report current rents and current vacancies;

(10) Set forth all material assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report. Such assumptions and limiting conditions may not result in either a non-market value estimate or one so limited in scope that the final product will not represent a complete appraisal. A summary of all such assumptions and limiting conditions shall be presented in one separate section within the appraisal;

(11) Include in the appraiser's certification (i) a statement that the appraiser has no present or prospective interest in either the property being appraised or with the parties involved; and (ii) a statement indicating that to the best of the appraiser's ability, the analyses, opinions, and conclusions were developed and the report was prepared in accordance with the standards and reporting requirements of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-23861 Filed 10-19-87; 8:45 am]

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12 CFR Parts 525, 583, 584

[No. 87-1041]

Qualified Thrift Lender Test; Savings and Loan Holding Company Amendments; Federal Home Loan Bank Advances

Date: October 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("the Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") is proposing to amend its regulations governing savings and loan holding companies to implement the qualified thrift lender test recently enacted in the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 ("CEBA"). The CEBA amends section 408 of the National Housing Act, 12 U.S.C. 1730a, also

commonly known as the Savings and Loan Holding Company Act ("the SLHC Act"), to provide that the current exemption from the nonthrift activity restrictions for unitary savings and loan holding companies will be available only where the subsidiary institution, the accounts of which are insured by the FSLIC ("insured institution"), meets the new qualified thrift lender test. The CEBA also amends Section 10 of the Federal Home Loan Bank Act ("FHLBank Act"), 12 U.S.C. 1430, to reduce the eligibility for advances from the Federal Home Loan Banks ("FHLBanks") of member insured institutions that do not meet the qualified thrift lender test.

This proposed regulation sets forth the new qualified thrift lender test, which requires that an insured institution must maintain 60 percent of its tangible assets in housing and housing-related investments in order for the institution to have Qualified Thrift Lender ("QTL") status. The proposed regulations also implement the new statutory limitations on eligibility for advances and permissible holding company activities where an institution fails to maintain its QTL status.

DATE: Comments must be received by November 19, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available at this address for public inspection.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Acting Regulatory Counsel (202–377–6649), Andrew C. Gilbert, Attorney (202–377–6441), Nancy M. Lytle, Attorney (202–377–6077), Regulations and Legislation Division, Office of General Counsel; Richard C. Pickering, Deputy Director (202–377–6770), Robert Pomeranz, Senior Policy Analyst (202–377–6730), Office of Policy and Economic Research; Thomas Sheehan, Director, Policy Analysis Division, Office of District Banks (202–377–6351); Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Linda S. Hallerman, Professional Accounting Fellow (202–778–2536), Office of Regulatory Policy, Oversight and Supervision; Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction; Statutory Authority

Section 104(c)(1) of the CEBA amends section 408 of the National Housing Act (12 U.S.C. 1730a) by adding a new subsection (o) entitled "Qualified Thrift Lender Requirements." CEBA, tit. I, sec. 104(c)(1), section 408(o). This provision sets forth a QTL test for all insured institutions, including both state-chartered and federal associations.

As stated in the legislative history of the CEBA, Congress' objective in promulgating the QTL provisions was one of "committing insured institutions to the unique, congressionally defined role of providing housing-related finance." H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess. 137 (1987). The key component of the QTL test is whether the institution's "actual thrift investment percentage" equals or exceeds 60 percent of its tangible assets on an average basis over time; that is, whether the institution consistently invests the stated majority of its tangible assets in certain "qualified thrift investments." Generally, these qualified investments are related to domestic real estate or manufactured housing but they include other assets that are incidental to the thrift's housing-related investments.

In addition to setting forth the QTL test and defining necessary terms, section 104(c) of CEBA provides a special transition period for state-chartered savings banks and a five-year disqualification for any institution that fails to maintain its QTL status. Moreover, certain exceptions and exemptions may be granted by the FSLIC. Finally, the CEBA requires the FSLIC to adopt regulations implementing the requirements of the QTL test that must be effective on or before January 1, 1988.

The CEBA provides that an insured institution's ability to qualify as a thrift lender may affect its ability to obtain advances from its FHLBank as well as the ability of any holding company parent and nonthrift affiliates of the institution to engage in certain nontraditional thrift activities. In particular, section 105 of the CEBA provides that member institutions that do not have QTL status will be eligible for advances only to the extent that they hold qualified thrift investments. Moreover, section 104(b) of the CEBA provides that the current exemption for unitary thrift holding companies from the activities restrictions in the Act will now be available only if the subsidiary thrift institution meets the QTL test. This dual impact of the QTL test is discussed in detail below.

II. Description of the Proposal

A. Definition of Qualified Thrift Lender

Section 104(c)(1) of the CEBA, provides that an insured institution shall have QTL status if the institution's qualified thrift investments equal or exceed 60 percent of the institution's total tangible assets, "on an average basis in 3 out of every 4 quarters and 2 out of every 3 years." Section 104(c) defines the term "qualified thrift investments" as the sum of (1) the aggregate amount of loans, equity positions, or securities held by the insured institution (or any subsidiary thereof) that are "related to domestic residential real estate or manufactured housing;" (2) the value of property used by the institution or its subsidiary in the conduct of the business of the institution or its subsidiary; (3) the types of liquid assets required to be maintained under section 5A of the FHLBank Act, 12 U.S.C. 1425a; and (4) 50 percent of the dollar amount of residential mortgages originated by the institution or its subsidiary and sold within 90 days of origination. CEBA, tit. I, sec. 104(c), section 408(o)(5)(B). The aggregate amount of the assets described in the latter two categories may not exceed 10 percent of the institution's tangible assets.

Beyond these specific statutory requirements, Congress has left to the Board fairly broad discretion to implement the requirements of the QTL test. In addition to the basis objective of "committing insured institutions to the unique, congressionally defined role of providing housing-related finance," Congress expressed its concern that the Board be "especially cognizant of the dangers of evasion that may be represented by various options for the calculation of the QTL test." H.R. Conf. Rep. No. 261 at 137. Congress charged the Board with adopting "regulations that minimize, to the extent feasible and without imposing undue burden on insured institutions, the risk of evasions of the QTL test." *Id.*

The Board proposes to accomplish its mandate under the CEBA by addiing to its regulations a new § 583.27.[1] Among the issues addressed by this proposal are the definition of housing-related investments (the major component of qualified thrift investments) and the implementation of the QTL test in a manner that is neither retroactive in effect nor unduly burdensome for institutions. As proposed, § 583.27(a)

[1] Although the QTL test affects both the area of advances, which is governed by Part 525, and the area of permissible activities for holding companies under Part 584, the new QTL regulation is placed in Part 583, the definitional regulations implementing the SLHC Act. This placement is consistent with Congress' action in the CEBA of introducing the QTL test through an amendment to section 408 of the SLHC Act. As discussed below, the changes to Part 525 proposed today incorporate by reference the QTL test in proposed section 583.27.

would implement the general QTL test and would define terms such as actual thrift investment percentage, tangible assets, and qualified thrift investments for purposes of the QTL test. The Board request comment on these as well as any other issues raised by the following discussion of the new regulation.

1. Housing-Related Investments

For purposes of the QTL test, the Board is proposing to enumerate those investments that are "related to domestic residential real estate and manufactured housing." In fashioning this list, the Board has taken a flexible approach consistent with the indications of congressional intent noted above. The Board is concerned that no investment be excluded if it meets the statutory criterion of being housing-related. Moreover, this inclusive approach will minimize disruption to industry efforts at building profitability and net worth. Thus, the Board has attempted to be as comprehensive as possible by including all types of investments currently made by insured institutions that may be viewed as related to their traditional role of encouraging thrift and facilitating private home ownership.

The list of housing-related investments in proposed § 583.27(c) includes all forms of home mortgages, home improvement loans, and loans made on the security of residential real estate or manufactured housing. Similarly, the list includes all investments acquired by the institution through foreclosure and liquidation of any of the aforementioned investments, as well as any other equity interests held by the institution and its subsidiaries in residential real estate. Definitions of key terms, such as home mortgage, residential real estate, and manufactured housing, are tied to existing definitions contained in federal statutes and regulations that are generally understood by and accessible to the entire industry.[2] In the Board's view, this approach is the best way to accomplish its goal of including all investments that traditionally and commonly are understood to be related to the provision of housing finance.

In addition to the more traditional housing related investments discussed above, proposed paragraph (c) also includes other types of investments that have become an essential and vital part of the housing finance marketplace. In particular, paragraph (c) includes stocks, bonds, and other securities issued or guaranteed by the FHLBanks, the newly established Financing Corporation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association and obligations issued by the FSLIC. These agencies and quasi-governmental instrumentalities play an important role in facilitating the modern housing finance market. Congress often has recognized the crucial importance of the secondary mortgage market and has sought to promote participation in it by private parties, including insured institutions. *See, e.g.*, Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98–440, 98 Stat. 1689 (1985).

Indeed, the CEBA, by its own terms, evidences congressional recognition of the significant role played by thrifts in the secondary mortgage market, as well as the importance of that market in securing affordable home finance. Specifically, section 104(c)(1) includes, as a component of qualified thrift investments, a portion of the dollar value of new mortgages originated by the institution and sold into the secondary market. CEBA, tit. I, sec. 104(c)(1), section 408(o)(5)(B). Thus, in this light, the Board does not hesitate to include all forms of mortgage-related securities as housing-related investments under proposed § 583.27(c). For example, these securities include pass-through participation type certificates as well as pay-through bonds. This would include, but is not limited to, any portion or tranche of a collateralized mortgage obligation or REMIC. It also includes any type of derivative product currently existing or hereafter created, such as so-called residual or stripped securities (assuming such instruments are an authorized and permissible part of the institution's portfolio.) The aforementioned securities are meant to be illustrative and not exhaustive of the types of qualifying investments in the continually evolving mortgage-related securities marketplace.

As proposed, § 583.27(c)(10) includes as qualified investments any investment in a corporation, partnership, or trust whose primary activities include servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other housing related activities such as domestic residential loan origination or the sale of residential loans. A company is considered to have its primary activity in such activities if it derives more than half its annual gross revenues from such activities. The Board recognized that servicing a mortgage loan portfolio is an important thrift activity particularly in connection with the secondary market. Moreover, such activities clearly are related to the provision of housing finance.

The Board specifically solicits comment on whether an investment in an entity that derives less than 50 percent of its primary revenue from housing related investments should be treated as a qualified thrift investment to the degree to which such entity derives its reserves from housing-related activities. For example, if a company derives 30 percent of its revenues from housing related activities, should a thrift be permitted to count 30 percent of its investment in this company as a housing-related investment.

Similarly, some institutions have become increasingly involved in providing financing (which may take the form of a debt issuance or an equity investment) to firms that develop real estate. If the real estate project involves the development of domestic residential real estate, then the investment is sufficiently related to the provision of residential housing to be included as a qualified thrift investment. The Board is aware that some of these investments may involve acquisition, development, and construction loans. The Board is proposing that, for purpose of this rule, land loans, as defined in 12 CFR 561.18, on a particular project could not be counted toward meeting the 50 percent test under paragraph (c)(10) until actual construction of residential housing has begun. This treatment is consistent with the treatment of land loans under Board regulations regarding equity risk investments (12 CFR 563.9–8, *as amended*) and regulatory capital (12 CFR 563.13 (1987)). *See* 52 FR 23787, 23800 (June 25, 1987) (final rule on equity risk investment); 51 FR 3365, 33581 (Sept. 22, 1986) (final rule on minimum capital requirements). The Board, however, specifically requests comments on whether such investments should be included before actual construction begins if an insured institution can document the residential purpose of the loan. Commenters may also wish to address what would be adequate documentation under these circumstances.

Moreover, as proposed, the regulation would allow an institution to count any investments in state housing corporations and community

[2] The definitions referenced in the regulation are themselves comprehensive, including, for example, leaseholds, condominiums, cooperatives and mixed business/residential property. Moreover, since the statute specifies "domestic" real estate or manufactured housing, the regulation requires a connection between the investment and any "State". Among the various existing alternative definitions of "State," the Board again selected the most comprehensive. *Compare* 12 U.S.C. 1464(c)(5) *with* 12 CFR 521.11 (1987).

development projects. Also included in the proposal would be investments in obligations of any state or political subdivision that are issued for the purpose of providing financing for residential housing or incidental services. The term incidental services is intended to include municipal projects that are related to the public financing and maintenance of housing, for example, municipal bonds floated for the purpose of constructing or repairing a neighborhood sewage system. The Board specifically requests comment as to the inclusion of this category of investments.

The Board notes that proposed paragraph (c) is not intended to expand, contract, or otherwise affect an institution's investment authority under relevant statutes and regulations. Specifically, insured institutions may only invest in those assets listed in paragraph (c) to the extent they have independent legal authority, under either law or regulation, to make such investments. To the extent an institution has independent legal authority to make an investment, section 583.27(c) sets forth those investments that may be counted as qualified thrift investments for purposes of meeting the QTL test.

Finally, consistent with the flexible approach taken here, proposed paragraph (c)(11) expressly provides that the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") may issue T-Memoranda that list particular investments that qualify as housing-related investments under paragraph (c) but are not specifically listed in the regulation. This approach is similar to the approach taken in ORPOS Memorandum T–2–3h (April 25, 1985) with respect to liquid assets and permissible investments for Federal associations. The Board intends that this provision will update its guidance to the industry and will help keep implementation of the regulation as current as possible to accommodate rapidly changing market conditions and innovations, particularly in the area of asset securitization.

2. Other Types of Qualified Thrift Investments

In addition to the housing-related component described above, the statutory definition of qualified thrift investments contains several other components. These include (1) property used by the institution or its subsidiary in the conduct of its business; (2) liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a), and (3) 50 percent of the dollar amount of mortgages originated by the institution or its subsidiary and sold within 90 days of origination. Under the statute, the latter two categories of investments may be counted as qualified investments only up to a combined aggregate amount not to exceed ten percent of the institution's tangible assets. As proposed, §§ 583.27(b)(ii) and (iii) mainly track and condense the statutory language of the CEBA. *See* CEBA, tit. 1, sec. 104(c)(1), section 408(o)(5)(B)(ii), (iii), (6). These provisions are fairly self-explanatory with certain clarifications added where appropriate.

First, § 583.27(b)(3)(i) specifies that the calculation of the aggregate amount of all housing-related loans, equity positions and securities of the institution and its subsidiary is based on the aggregate net amount of such investments as reported on an institution's monthly and quarterly reports to the Board. Thus, any such investment would not include contra assets such as loan allowances or discounts. Accrued interest on an eligible investment, however, would be included.

Second, § 583.27(b)(3)(ii) specifies that the book value of business property used by the institution or its subsidiary, as opposed to other measures such as market value, is the basis on which to determine the value of the business property. As used in this section, book value means the historical cost of the asset, *i.e.*, the actual amount paid at the date of acquisition, less depreciation. *See* Accounting Principles Board, *Opinion No. 12.* In the Board's view, the book value of an institution's business property is an appropriate measure for purposes of this regulation because it is the basis on which institutions carry such fixed assets on their financial statements and reports to the Board.

Third, paragraph (b)(3)(iii)(A) references 12 CFR 523.10, the Board's regulation that lists investments that qualify as liquid assets pursuant to section 5A of the Federal Home Loan Bank Act. The Board notes that institutions should consult ORPOS Memorandum T–2–3h, dated April 25, 1985, which lists specific assets that qualify as liquid assets for purposes of § 523.10.

The Board notes that the CEBA only permits the inclusion of the institution's liquid assets and not those of its subsidiaries. The Board assumes that the omission of subsidiaries with regard to liquid assets is deliberate since liquid assets maintained under section 5A of the FHLBank Act (12 U.S.C. 1425a) may include particular investments, such as certain corporate debt or commercial paper, that are completely unrelated to housing finance. In possible contrast to the holding of such investment by some subsidiary, when such an investment is held by the insured institution itself, as required by the liquidity statute, it is related to the ongoing conduct of the institution's business as a thrift business. Indeed, the liquidity statute, section 5A of the FHLBank Act, is itself only applicable to insured institutions, not to their subsidiaries. Thus, § 583.27(b) tracks the statutory language and excludes investments of the type required by the liquidity statute where these are held by a subsidiary as opposed to the insured institution itself.

Finally, paragraph (b)(3)(iii)(B) specifies that only those mortgages sold by the thrift or its subsidiary during the calendar quarter for which the actual thrift investment percentage is being calculated may be counted as qualified thrift investments for any given quarter.

3. Tangible Assets

As proposed § 583.27(b)(2) defines total tangible assets as total unconsolidated assets of the insured institution minus goodwill and any other intangibles such as purchased mortgage loan servicing rights, purchased deposit base and branch network, and leasehold improvements net of accumulated depreciation. In setting forth the QTL test and in defining "actual thrift investment percentage," the CEBA does not specify that total tangible assets are to be calculated on a consolidated or unconsolidated basis. CEBA, tit. I, sec. 104(c), section 408(o)(1), (5)(A). In the implementing regulations, the Board proposes to require such calculations on an unconsolidated basis; *i.e.*, only assets of the institution itself, as opposed to any subsidiaries, need be included in the calculation of total tangible assets. The Board believes that such an interpretation is most consistent with the letter and spirit of the QTL test.

Other sections of the statute expressly provide for consolidation of any subsidiaries of the institution. There is no indication that the omission is anything but deliberate in the case of tangible assets. Indeed, it does not appear to the Board that Congress intended to limit the activities of authorized subsidiaries primarily to ventures that are housing-related—a possible consequence were these assets to be consolidated with the parent thrift institution. Indeed, the statutory and regulatory authorizations for insured institutions having service corporations and operating subsidiaries presumes that much of this authority will be used for non-housing related ventures.

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4. Effective Date and Implementation

Section 104(c)(1) of the CEBA provides that the institution shall have QTL status if its actual thrift investment percentage continues to equal or exceed 60 percent "on an average basis in 3 out of every 4 quarters and 2 out of every 3 years." CEBA, tit. I, sec. 104(c)(1), section 408(o)(1)(B). The legislative history gives little guidance as to how this provision should be implemented. *See* H.R. Conf. Rep. No. 261 at 136. The CEBA, however, directs that these regulations must be effective on or before January 1, 1988, the date on which all insured institutions must begin to comply with the new QTL provisions. Moreover, these new regulations must "minimize, to the extent feasible and without imposing an undue burden on insured institutions, the risks of evasion of the QTL test." *Id.* at 137.[3] Finally, the CEBA provides a penalty of five years' disqualification for any institution that fails to maintain its status as a QTL. CEBA, tit. I, sec. 104(c)(1), section 408(o)(4).

The Board proposes to implement these provisions in the manner set forth in § 583.27(a) (1) and (2). Under paragraph (1), all institutions are deemed to have QTL status as of January 1, 1988. This is the effective date of the QTL regulation and the date from which all relevant data can now be compiled and compliance calculated. As an alternative, the Board might have directed that a "snapshot" be taken on that date to ascertain which institutions would have QTL status on the basis of the newly promulgated definitions and calculations set forth in § 583.27. The Board believes, however, that as a practical matter, and as a matter of prudent regulation, this approach would constitute an undue and unfair burden to those institutions and their holding companies that would thereby suffer the consequences of not having QTL status, especially given the mandatory five year disqualification that would follow. An institution cannot know with any acceptable degree of certainty how to comply with the new QTL provisions until final promulgation of this regulation. Such promulgation and the concomitant exercise of discretion by the Board are expressly provided by Congress. Furthermore, the statutory requirement that an institution meet the 60 percent level on an average basis over a period of years seems to belie any interpretation that QTL be determined by a single "snapshot" on January 1, 1988.

As of the January 1, 1988 effective date then, insured institutions are responsible for tracking data according to new reporting schedules now being prepared by Board staff. The first reports for the new QTL investment schedule will be made for the calendar quarter ending March 31, 1988. Under section 583.27(a)(1) an institution would lose its QTL status at the close of any calendar quarter during which the institution had failed to maintain its actual thrift investment percentage at or above 60 percent, which failure made it mathematically impossible for the institution to meet the 60 percent test during three out of every four calendar quarters *for each of* two out of every three calendar years. Thus, the earliest point at which an institution would lose its QTL status is June 30, 1989, assuming the institution fails the 60 percent test in at least two of the quarters in the first year and in the first two quarters of the second year following January 1, 1988.[4]

The Board has preliminarily determined that newly chartered insured institutions should receive the same treatment as existing institutions; that is, they will be deemed to have QTL status as of the date of their charter. Counting from the first full reporting quarter following the charter, and looking towards the successive three calendar month periods thereafter, the *de novo* institution would lose its QTL status at the close of any calendar quarter during which the institution's investment percentage fell below 60 percent, and which shortfall made it impossible for the institution to meet the 60 percent test during three out of every four calendar quarters for each of two out of every three twelve month periods following the charter. The Board intends to give *de novo* institutions the same benefit of a prospective phase-in enjoyed by existing institutions. However, the Board also realizes that under this alternative calculations and monitoring will not necessarily occur on the same calendar year cycle as with existing institutions. The Board specifically requests comments and suggestions for how best to implement this aspect of the proposal.

In order to prevent evasions, the proposed regulation directs that compliance be monitored on a calendar year and quarterly-reporting basis. Calculations of actual thrift investment percentages are to be made on an average basis by taking the sum of an institution's qualifying thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months, and dividing by the sum of the institution's total tangible assets at the end of these same four months. While the Board believes that its approach will minimize evasions of the statutory requirement, it specifically solicits comment on whether a PSA should be authorized to calculate the average based on dates other than those listed in the regulation, if the PSA determines that the institution is engaging in transactions to remove certain assets from its books temporarily for purposes of meeting the QTL test. The Board also requests comment and suggestions on alternative ways in which to implement the averaging requirement.

In the Board's view, the approach taken in the proposed regulation appears to be the most reasonable way to implement the new QTL test. The Board requests comment on these important aspects of the proposed regulation, and the Board welcomes suggestions as to alternative approaches as well as estimates as to the impact of the provisions under the various alternatives.

5. FSLIC Exceptions; Special Phase-In For Certain Institutions

Section 104(c) of the CEBA allows a ten-year transition to QTL status for institutions chartered as state savings banks or cooperatives before October 15, 1982. Proposed § 583.27(d) implements these provisions. CEBA, tit. I, section 104(c)(1), section 408(o)(2). The statutory language is tracked and somewhat condensed in the proposed regulation.

Under section 104(f) of the CEBA, a state savings bank or cooperative bank that is insured by the Federal Deposit Insurance Corporation may be deemed an insured institution if the FSLIC, upon application, determines that the bank is a qualified thrift lender. The Board believes that such state savings institutions, and any holding company, would enjoy the potential benefits of the special ten year phase-in described above, assuming it met the relevant criteria of § 583.27(d). The Board specifically requests comment on this provision and its implementation.

The statute also gives the FSLIC the authority to grant temporary exceptions from the QTL test. These provisions are contained in paragraph (c) of the

[3] "Specifically, these regulations should provide that compliance with the qualified thrift lender requirements be determined on the basis of data that accurately and currently reflect investments made by insured institutions, and should prevent or disregard short-term investment portfolio changes designed to evade or circumvent the intent of the QTL test." *id.*

[4] In effect, the proposal contemplates a phase-in of the QTL test. In the Board's view, such a phase-in is consistent with the letter and spirit of the CEBA. *See* S. Rep. No. 19, 100th Cong., 1st Sess. 39 (1987).

proposed regulation. By the terms of the statute, such exceptions are temporary and limited to extraordinary circumstances, when, for example, mortgage demand is depressed to such an extent that an institution cannot meet the asset composition requirement; or to facilitate acquisitions and mergers under sections 406(f) and 408(m) of the National Housing Act. The Board requests comment as to other types of "extraordinary circumstances" for which the FSLIC appropriately could grant exemptions.

B. Savings and Loan Holding Companies

The SLHC Act originally was enacted to give the Board comprehensive authority over savings and loan holding companies ("S&L holding companies") and their subsidiaries and to guard against the potential conflicts of interest that were thought to exist in the holding company structure. *See* S. Rep. No. 354, 90th Cong., 1st Sess. 1–2 (1967). The Board's regulations at Parts 574, 583 and 584 implement this authority.

A S&L holding company is a company that directly or indirectly controls an insured institution, *i.e.*, a FSLIC-insured institution or a federally chartered bank insured by the Federal Deposit Insurance Corporation. *See* 12 U.S.C. 1730a(1)(D). There are generally two types of holding companies. A "unitary" S&L holding company is a holding company that directly or indirectly controls only a single subsidiary insured institution. Subject to two relatively minor conditions,[5] a unitary S&L holding company and its nonthrift subsidiaries traditionally have enjoyed the authority to engage in a broad range of business activities unrelated to the provision of housing finance. 12 CFR 584.2–2 (1987).

A multiple S&L holding company is a holding company that directly or indirectly controls two or more insured institutions. 12 CFR 583.12 (1987). In contrast to a unitary S&L holding company, a multiple S&L holding company historically has been subject to stringent statutory restrictions on its activities that generally are required to be closely related to the activities of their subsidiary insured institutions. 12 U.S.C. 1730a(c) (1) & (2) (1982 & Supp. III 1985); 12 CFR 584.2, 584.2–1 (1987). Before the CEBA's enactment and pursuant to its authority under the SLHC Act to designate additional permissible activities, the Board permitted multiple S&L holding companies, subject to certain limitations, to engage in additional activities such as certain real estate activities, data processing and insurance underwriting. *See* 12 CFR 584.2–1 (1987), for a comprehensive list of permissible activities.

Section 104(b) of the CEBA completely revises section 408 of the SLHC Act, 12 U.S.C. 1730a(c), which governs the activities of S&L holding companies, to apply the new qualified thrift lender test to S&L holding company activities.[6] First, the CEBA preserves the current exemption from the nonthrift activity restrictions in the SLHC Act for unitary holding companies (or subsidiaries thereof) if the subsidiary insured institution meets the QTL test. CEBA, tit. I, sec. 104(b), section 408(c)(3). The CEBA also exempts from the nonthrift activity restrictions those S&L holding companies (or subsidiaries thereof) that control more than one insured institution if all, or all but one, of such institutions were acquired pursuant to a supervisory acquisition, and all the subsidiary insured institutions meet the QTL test. *Id.*

With respect to multiple S&L holding company activities, section 104(b) of the CEBA restricts such companies to those activities that were permissible for multiple S&L holding companies as of March 5, 1987, as well as additional activities determined by the Federal Reserve Board to be permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act, subject to any Board limitations and restrictions. Effectively, the CEBA deleted from the SLHC Act the authority of the Board to approve new activities for multiple S&L holding companies and substituted for it the authority for S&L holding companies to engage, subject to Board approval, in those activities deemed permissible for bank holding companies. *Compare* 12 U.S.C. 1730a(c)(2)(F) (1982 & Supp. III 1985) *with* CEBA, tit. I, sec. 104(b), section 408(c)(2)(F).

As a result of the CEBA amendments to the SLHC Act, the Board is required to amend its Regulations for Savings and Loan Holding Companies, 12 CFR Parts 583, 584. As discussed above, the Board proposes to amend Part 583 to include the qualified thrift lender test. Part 584 would be amended to reflect the effect of the QTL test on the permissible activities of S&L holding companies. This effect is directed mainly to the activities of what are now commonly known as unitary S&L holding companies. Part 584 would contain new restrictions, exemptions, and grandfathering provisions applicable to S&L holding companies and also would incorporate the CEBA's prescribed list of permissible activities for S&L holding companies. In order to track the statutory language of the CEBA, which does not use the terms "multiple" or "unitary", the proposed regulation refers to "exempt and grandfathered S&L holding companies" and "S&L holding companies," which are those that are neither exempt nor grandfathered.

1. S&L Holding Company Activities

The Board today is proposing to amend section 584.2 concerning prohibited holding company activities to reflect the new limitations on nonthrift activities for S&L holding companies. In accordance with the statutory requirement, section 584.2(b) would prohibit an S&L holding company or its nonthrift subsidiaries from commencing or continuing any activities other than: (1) those activities set forth in CEBA tit. I, sec. 104(b), § 408(c)(2)(A)–(E); (2) those activities already approved by the Board through regulation as permissible activities in 12 CFR 584.2; 584.2–1 (1987); and (3) those nonbanking activities permissible for bank holding companies pursuant to regulations issued by the Federal Reserve Board under section 4(c)(8) of the Bank Holding Company Act ("BHCA nonbanking activities").[7]

The proposal would require a S&L holding company to conform its existing activities to the new limitations set forth in section 104(b) within two years after August 10, 1987, *i.e.*, by August 10, 1989, or the date on which the company becomes an S&L holding company, whichever is later. CEBA, tit. I, sec. 104(b), § 408(c)(1)(C). This grace period for compliance is not available to S&L holding companies that received approval to acquire control of an insured institution between March 5, 1987 and August 10, 1987 (the date of enactment of the CEBA). *Id.* section 408(c)(6)(A). Pursuant to section 104(b)(6)(A), such companies are required to conform their activities as of August 10, 1987, to the new list of

[5] These conditions are (1) the company may not engage in activities for the purpose or effect of evading applicable laws and (2) the company must qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code. *See* 12 U.S.C. 1730a(a), (n) (1982 & Supp. III 1985); 12 CFR 584.2, 584.2–1 (1987).

[6] Title I of the CEBA makes various other amendments to the SLHC Act that may necessitate changes to Board regulations. The Board today is only proposing the changes necessary to implement the effect of the QTL test on S&L holding company activities. The Board anticipates, however, that it will at some later date propose other changes to Parts 574, 583 and 584 which may be necessary to implement other sections of Title I.

[7] As discussed below, special application procedures are required for S&L holding companies to engage in these newly authorized activities.

permissible activities for S&L holding companies. *Id.*

2. *Exempt and Grandfathered S&L Holding Company Activities*

As discussed above, section 104(b) of the CEBA amends section 408(c) of the Act to provide that the current exemption from nonthrift activity restrictions for unitary S&L holding companies will be available only if the subsidiary insured institution meets the QTL test. In addition, section 104(b) of the CEBA exempts from the activity restrictions any S&L holding company (or any subsidiary thereof) that controls more than one insured institution, if all, or all but one, of the subsidiary insured institutions of such company were acquired under sections 408(m) or 406(f) of the Act *and* all of the subsidiary insured institutions of such company satisfy the QTL test (collectively "exempt S&L holding companies"). *Id.* section 408(c)(3). It also exempts foreign S&L holding companies with respect to activities conducted exclusively in a foreign country. *Id.* section 408(c)(7).

As described above, proposed § 583.27 would set forth the QTL test and would provide that an insured institution must have 60 percent or more of its tangible assets in housing and related investments in order to maintain its QTL status. If the subsidiary insured institution meets the QTL test, its parent S&L holding company would continue to have no limits on its nonthrift activities conducted directly or indirectly through a subsidiary.[8]

Section 104(b) of the CEBA provides certain grandfather rights for those S&L holding companies that received approval to acquire an insured institution prior to March 5, 1987. *Id.* Section 408(c)(6)(B). Specifically, the CEBA grandfathers the activities in which such an S&L holding company was engaged on March 5, 1987. The legislative history specifically indicates that this provision applies to a unitary S&L holding company whose subsidiary thrift does not meet the QTL test. It is the Board's view that this grandfather provision also applies to those S&L holding companies that became multiple S&L holding companies by virtue of receiving approval to acquire troubled thrifts prior to March 5, 1987. The Board believes that its view is consistent with the CEBA in that section 104(b) exempts such multiple S&L holding companies from the limitations on activities. *See id.* section 408(c)(3)(B). Thus, it follows that these same holding companies also should be afforded grandfather status under the CEBA. *See id.* section 408(c)(6)(B).

Pursuant to the CEBA, these grandfathered S&L holding companies maintain their grandfathered status so long as: (1) The holding company does not acquire any additional insured institutions other than troubled thrifts pursuant to sections 406(f) and 408(m) of the National Housing Act; (2) any insured institution subsidiary continues to meet the test under section 7701(a)(19) of the Internal Revenue Code;[9] (3) the holding company does not engage in any new activity in which it was not engaged on March 5, 1987, and that is not included among the permissible activities identified in existing section 584.2–1; (4) any insured institution subsidiary does not increase the number of its business locations (other than increases on account of acquiring troubled thrifts); and (5) any insured institution subsidiary does not permit or incur any overdraft at a Federal Reserve Bank on behalf of an affiliate. Upon the occurrence of any of those events, these S&L holding companies lose their grandfathered status and become subject to the limitations on S&L holding company activities. *Id.* section 408(c)(1)(C).

Not only may S&L holding companies lose their grandfathered status, but section 104(b) of the CEBA also provides that the FSLIC may terminate any grandfathered activity. *Id.* section 408(c)(6)(D). Before terminating any such activity, the FSLIC must afford the S&L holding company opportunity for a hearing. *Id.* Any decision to terminate a grandfathered activity must be based on a finding that (1) such termination is necessary to prevent conflicts of interest or unsafe and unsound practices, or (2) the termination is in the public interest. *Id.*

Additionally, section 104(b) of the CEBA provides a grace period for certain holding companies whose insured institution subsidiaries fail to maintain qualified thrift lender status. This grace period is available to (1) any unitary S&L holding company and (2) a unitary S&L holding company that becomes a multiple holding company as a result of acquiring troubled thrifts. *Id.* section 408(c)(5). The grace period permits such holding companies, upon a showing of good cause, up to three years to comply with the activities limitations on S&L holding companies. *Id.*

The Board today is proposing to add a new section 584.2a that would parallel section 104(b) of the CEBA. Paragraph (a)(1) of proposed § 584.2a describes those S&L holding companies that are exempt from the nonthrift activities restrictions provided that their insured institution subsidiaries meet the QTL test. If the subsidiary insured institutions of such companies fail the QTL test, the companies lose their exemption and must conform their activities to those prescribed for S&L holding companies. Consistent with the CEBA, proposed § 584.2a(a)(2) provides for a grace period of up to 3 years for any such company, upon a showing of good cause. Paragraph (b) would set forth the grandfather rights applicable to certain S&L holding companies that acquired insured institutions prior to March 5, 1987.

Paragaph (c) would set forth the authority of the FSLIC to terminate, after an opportunity for a hearing, any such grandfathered activity of a grandfathered S&L holding company. The Board proposes that the FSLIC makes an initial finding that grounds exist for termination and, upon such a finding, the FSLIC would notify the affected company, which in turn may request a hearing. In this regard, the Board specifically requests comment on what type of procedures should be adopted for such hearings.

3. Permissible S&L Holding Company Activities and New Nonthrift Activities

In light of the CEBA, the Board today is proposing to make a technical amendment to existing § 584.2–1, which describes permissible activities for multiple holding companies and their nonthrift subsidiaries as promulgated under the "proper incident" authority of prior section 408(c)(6) of the SLHC Act. This authority has been deleted by the CEBA but the activities listed in existing § 584.2–1 remain intact although the FSLIC cannot add any additional activities to the list. *See id.* section 408(c)(2)(F)(ii). The technical amendment would add a reference to § 584.2–1 to conform it to the CEBA provisions.

As discussed above, the CEBA also provides that, with prior Board approval, S&L holding companies may engage in those nonbanking activities

[8] The S&L holding company would be subject to the CEBA's moratorium, however. This moratorium is in effect until March 1, 1988, and prohibits any new affiliations between insured thrift institutions and firms engaged principally in certain securities activities. CEBA, tit. I, sec. 106.

[9] In order to qualify for tax treatment as a domestic building and loan association, a thrift institution must: (1) be a FSLIC-insured institution or be subject to supervision and examination by state or federal authority having supervisory powers over such associations; (2) be principally engaged in the business of acquiring the savings of the public and investing in loans; and (3) devote 60 percent of its total assets to certain investments listed in section 7701(a)(919). 26 U.S.C 7701(a)(19) (1982 & Supp. III 1985).

that the Board of Governors of the Federal Reserve System ("FRB") has determined "by regulation" to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act ("BHC Act") *Id.* section 408(c)(2)(F)(i). This effectively permits S&L holding companies to engage in the same nonbanking activities as bank holding companies, thereby effecting an "equalization" of bank holding company and S&L holding company powers.

The nonbanking activities in which bank holding companies may engage are listed in the FRB's Regulation Y at 12 CFR 225.25 (1987). These activities (currently numbering twenty-four) were promulgated under the FRB's authority under section 4(c)(8) of the BHC Act to approve certain activities considered so closely related to banking as to be properly incident thereto.[10] Under the same authority, the FRB also may approve by order additional nonbanking activities proposed by applicants that are not included in the § 225.25 list ("unlisted activities"). *See* 12 CFR 225.23 (a)(3) & (d)(2). The FRB periodically initiates a rulemaking to incorporate into the section 225.25 list those unlisted activities approved by order. While the CEBA specifically refers to those bank holding company activities that the FRB has approved by regulation, the legislative history is silent on whether Congress also intended to authorize those activities approved by order under the FRB's regulations. While the Board has initially determined to include both listed and unlisted activities as permissible nonthrift activities, it specifically requests comment on whether such unlisted activities are properly included within the scope of the regulation.

The CEBA specifies that this new authority to engage in BHC nonbanking activities is subject to prior approval by the FSLIC. CEBA, tit. I, sec. 104(b), section 408(c)(2)(F)(i). The CEBA further gives the FSLIC discretion to prohibit or limit any of these new activities.[11] As indicated above, the Board proposes initially to authorize all the BHC nonbanking activities set forth in 12 CFR 225.25 as permissible nonthrift activities as well as those activities approved by order of the FRB under § 225.25(d)(2). Based on its experience in implementing this provision, the Board reserves the right to limit or restrict such activities.

[10] *See* 12 U.S.C. 1843(c)(8) (1982 & Supp. III 1985). 12 CFR 225.25(a).

[11] Of course, the FSLIC would be required to do this on a continuing basis every time the FRB determines to add new activities to the 12 CFR 225.25 list.

Based on the authority of section 17 of the Federal Home Loan Bank Act,[12] the Board proposes to delegate responsibility to approve applications to engage in these new activities to the Principal Supervisory Agent ("PSA") of the district in which the insured institution is located. In the Board's view this represents the most efficient allocation of its limited resources and will give the Board the opportunity to observe the degree of interest institutions show in engaging in these activities. Under the proposal, the PSAs will make initial determinations concerning these applications unless the PSA, upon notice to the applicant, refers the application to the FSLIC because it raises issues of law or policy inappropriate for resolution by the PSA. Proposed § 584.2–2 (b) and (c) set forth the Board's recommended scheme for consideration of applications under this section. The specific procedures and time frames would follow those set forth in the new guidelines for application processing required by section 410 of the CEBA which the Board also adopted today. *See* Board Res. No. 87–1038, published elsewhere in this issue of the **Federal Register** (to be codified at 12 CFR 571.12).

As proposed, § 584.2–2 sets forth the factors that the CEBA requires to be taken into consideration in reviewing such applications: (1) Whether the activity would be expected to produce benefits to the public; (2) the managerial resources of the companies involved and (3) the adequacy of the financial resources, including capital, of the companies involved. *See id.* section 408(c)(4)(B).

In evaluating applications under this section, the PSAs will be directed to take these factors into account. Pursuant to the authority in section 104(b)(4)(C) to distinguish between *de novo* applications and acquisitions of a going concern, the Board proposes that § 584.2–2 will specify that an application to engage in activities *de novo* is presumed to result in benefits to the public through increased competition unless the record demonstrates otherwise. *Id.* section 408(c)(4)(C). As required by the CEBA, the PSA will issue a written decision containing the reasons for its approval or disapproval of the application. *Id.* section 408(c)(4)(D). If the application is referred to the FSLIC because it raises issues of law or policy, the FSLIC shall act on the application in accordance with the procedures set forth at 12 CFR 571.12. *See* Board Res. No. 87–1038. The Board notes that, to the extent an activity is listed both in § 584.2–1 and § 225.25, an applicant need only follow the notice procedures set forth in § 584.2–1 and is not required to file an application to engage in such activity pursuant to proposed § 584.2–2. In this regard, the Board solicits comment on whether the notice procedures under § 584.2–1 should be revised to track the new guidelines for applications set forth in § 571.12.

[12] Section 17 of the FHLBank Act provides as follows: "the Board may from time to time make such provision as it deems appropriate authorizing the performance by any officer, employee, agent or administrative unit thereof of any function of the Board (including any function of the Federal Savings and Loan Insurance Corporation) * * *" 12 U.S.C. 1437(a) (1982 & Supp. III 1985).

C. Impact of the QTL Test on Eligibility for FHLbank System Advances

Section 105 of the CEBA amends section 10 of the FHLBank Act, 12 U.S.C. 1430, by adding a new paragraph (e) entitled: "Reduced Eligibility For Advances For Certain Members That Are Not Qualified Thrift Lenders." This new paragraph provides that, except for certain exemptions, a member of the FHLBank System that is not a qualified thrift lender may not receive advances in excess of the amount determined by multiplying the amount that the member otherwise would be able to receive by the member's actual thrift investment percentage. The latter component has the same meaning it has given in the QTL provisions section 104(c)(1) of the CEBA; *i.e.*, the percentage of an institution's total tangible assets that constitute qualified thrift investments. CEBA, tit. I, sec. 104(c)(1), section 408(o)(5)(A). The first component, the member's general eligibility for advances, is determined under section 10(c) of the FHLBank Act. That paragraph, which is unchanged by CEBA, limits the aggregate outstanding advances to a member made by its FHLBank to twenty times the amounts paid in by the member for its capital stockholdings in the FHLBank. Subject to that upper limit, the statute leaves to each FHLBank the discretion to determine particular applications for advances based upon the Bank's credit and collateral requirements.

Thus, for example, if a member institution holds $5 million in FHLBank capital stock, it generally would be eligible for up to $100 million in FHLBank advances, subject to the Bank's credit and collateral requirements. If the institution is not a QTL, however, it would be eligible for these advances only to the extent it holds qualified thrift investments. If its actual thrift investment percentage is 50 percent, it would be eligible for $50 million. To obtain the same $100 million

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advance limit, it would have to double its FHLBank capital stockholdings to $10 million. Otherwise, until it regains QTL status (which would take five years), the disqualified member must increase its actual thrift investment percentage in order to increase proportionately its eligibility for advances.

The Board proposes to implement section 105 by amending the Board's existing regulation 12 CFR 525.1, which sets forth several limitations on advances. As amended, § 525.1(b) would track the language of the statute and incorporate by reference the new QTL regulation in proposed § 583.27, discussed above. The Board notes that a non-QTL member can increase its stock in its FHLBank and thereby increase its twenty-to-one ceiling under section 10(c) of the FHLBank Act. Thus, the Board requests comment on whether the regulation is a sufficient enough constraint on the amount of advances.

New paragraph 525.1(c) incorporates the exceptions to the new limitations on advances for non-QTL members. This paragraph also tracks the language of the statute with the exception of § 525.1(c)(4). The statutory exemptions contained in section 104 of the CEBA specifically include certain state-chartered savings banks insured by the FSLIC as well as state-chartered savings banks insured by the FDIC. CEBA, tit. I, sec. 105, section 10(e)(2). The general statutory rule, set forth in section 105, begins with the phrase: "Except as the Board may prescribe. * * *" Notwithstanding the generality of these express statutory terms, the CEBA Conference Report states that this phrase is intended for the specific purpose of authorizing the Board "to exempt an institution from the QTL test requirement for obtaining Federal Home Loan Bank advances in situations in which severe financial conditions threaten the stability of the institution." H.R. Conf. Rep. No. 261 at 141. In light of this specific clarification in the legislative history, the Board proposes to incorporate this particular ground for exemption at § 525.1(c)(4).

Finally, it should be noted that these amendments to the Bank Act are intended by Congress to apply only prospectively. H.R. Conf. Rep. No. 261 at 141. Thus, the proposed regulatory amendments do not affect advances made, or to be made, pursuant to binding agreements that were entered by FHLBank prior to August 10, 1987, the date of enactment of the CEBA.

Solicitation of Comments

The Board solicits comment on all aspects of these proposed regulations. To facilitate the processing of comments the Board requests that any comments on this proposal clearly reference the Board Resolution Release Number of this proposal.

Pursuant to the rulemaking policies and procedures of 12 CFR 508.13, as supplemented by Board Res. No. 80–584, 45 FR 73135 (Sept. 23, 1980), the Board is providing for a 30-day rather than a 60-day public comment period because section 104(c)(3) of the CEBA requires prompt Board action by January 1, 1988, the effective date of these regulations. Finally, the Board intends to conduct a hearing on this proposal, together with others required by the CEBA. Details of this hearing are provided in a notice published elsewhere in today's edition of the **Federal Register**.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibilty analysis

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the "SUPPLEMENTARY INFORMATION" regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all institutions whose accounts are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would not have a substantial impact on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the "**SUPPLEMENTARY INFORMATION**" set forth above.

List of Subjects in 12 CFR Parts 525, 583, and 584

Credit, Federal home loan banks, Government securities, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby proposes to amend Part 525, Subchapter B, Parts 583 and 584, Subchapter F, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

1. The authority citation for Part 525 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Revise § 525.1 to read as follows:

§ 525.1 Limitation on advances.

(a) *General.* Unless otherwise authorized by the Board, a Bank shall not make advances to any member in excess of the limits set forth in § 563.8(b) of this chapter.

(b) *Reduced eligibility for advances for certain members that are not qualified thrift lenders.* A member that is not a qualified thrift lender, as defined in § 583.27 of this chapter, may not receive advances in excess of the amount that is the product of:

(1) The total amount of advances that such member would be eligible to receive without reference to the qualified thrift lender test contained in § 583.27, and

(2) The member's actual thrift investment percentage, as defined in § 583.27.

(c) *Exceptions.* Paragraph (b) of this section does not apply to:

(1) A savings bank as defined in section 3(g) of the Federal Deposit Insurance Act; or

(2) An insured institution that was chartered as a savings bank under State law before October 15, 1982; or

(3) An insured institution that acquired its principal assets from an institution that was chartered before as a savings bank under State law before October 15, 1982; or

(4) Any insured institution whose financial stability the Board finds to be threatened by severe financial conditions.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583—DEFINITIONS

3. The authority citation for Part 583 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

4. Amend Part 583 by adding a new § 583.27 to read as follows:

§ 583.27 Qualified thrift lender status.

(a) *General test.* For purposes of Parts 525 and 584 of this chapter an insured institution shall be a qualified thrift lender ("QTL") if the institution's actual thrift investment percentage (as defined in paragraph (b)(1) of this section) equals or exceeds 60 percent.

(1) As of January 1, 1988, an insured institution shall be deemed to have QTL status and shall maintain its status as a QTL so long as the institution's actual thrift investment percentage continues to equal or exceed 60 percent during three (3) out of every four (4) calendar quarters in each of two (2) out of every three (3) calendar years. For purposes of this paragraph (a)(1), calculations of the actual thrift investment percentage shall be made on an average basis by taking the sum of an institution's qualified thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months, and dividing by the sum of the institution's total tangible assets at the end of each of these same four months.

(2) An institution shall lose its QTL status at the close of the quarter during which the institution has failed to maintain its actual thrift investment percentage at or above 60 percent, which failure makes it mathematically impossible for the institution to meet the 60 percent actual thrift investment percentage test during three out of every four calendar quarters for each of two out of every three calendar years on a continuous basis.

(3) An insured institution that fails to maintain its status as a qualified thrift lender may not thereafter be a qualified thrift lender for a period of five (5) years from the close of the quarter on which the institution lost its QTL status.

(b) *Definitions:* For purposes of determining whether an insured institution is a qualified thrift lender, the following terms are defined as stated:

(1) "Actual thrift investment percentage" means the percentage determined by dividing the amount of an insured institution's qualified thrift investments (as defined in paragraph (b)(3) of this section) by the total amount of the institution's tangible assets (as defined in paragraph (b)(2) of this section).

(2) "Total tangible assets" of an institution means the total assets of the insured institution minus goodwill and any other intangible assets, including, but not limited to, purchased mortgage loan servicing rights, purchased deposit base and branch network, and leasehold improvements net of accumulated depreciation.

(3) "Qualified thrift investments" means, with respect to any insured institution, the sum of:

(i) The aggregate net amount of all investments (including loans, equity positions, or securities) held by such institution (or any subsidiary of such institution) that are related to domestic residential real estate or manufactured housing as defined in paragraph (c) of this section;

(ii) The book value of property used by such institution or subsidiary in the conduct of the business of such institution or subsidiary: and

(iii) An aggregate amount not to exceed ten percent of such institution's tangible assets of: (A) the liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a) and set forth in 12 CFR 523.10 of this Chapter, and (B) 50 percent of the dollar amount of residential mortgage loans originated by the insured institution or its subsidiary and sold within 90 days of origination, *provided that* these mortgage loans were sold during the calendar quarter for which the actual thrift investment percentage is being measured.

(c) *Housing related investments.* For purposes of the definition contained in paragraph (b)(3)(i) of this section, investments that are "related to domestic residential real estate or manufactured housing" include the following:

(1) Any home mortgage, as defined in 12 CFR 521.6, provided that the home or other dwelling unit is located in any State;

(2) Any loan made on the security of liens upon residential real estate, located in any State, or any loan made for the repair, equipping, alteration, or improvement of any residential real property located in any State;

(3) Any investment in manufactured home chattel paper and interests therein, where the underlying security is either manufactured, sold, or used in any State. "Manufactured home and "manufactured home chattel paper" shall have the same definitions as contained in 12 CFR 545.45;

(4) Any investment in any property acquired through the liquidation or in foreclosure of investments described in paragraphs (c) (1), (2) and (3) of this section; and any other equity interest investment in residential real estate or residential real property;

(5) Any investment in any state housing corporation as defined in 12 CFR 571.8; in any obligations of or issued by any State or any political subdivision thereof that is issued for the purpose of providing financing for residential housing or incidental services; and in any community development investment of the type described in 12 CFR 545.41;

(6) Investments in the stock of a Federal Home Loan Bank or obligations issued by the Corporation, the Federal Home Loan Bank System, or the Financing Corporation, or in the stock of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(7) Investments in mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act;

(8) Investments in obligations, participations, securities, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association;

(9) Investments in any other mortgage-backed securities, including mortgage pass-through certificates, mortgage-backed bonds, and mortgage pay-through bonds, as well as any derivative mortgage-related security that is created by disaggregating and repackaging the cash flows to be received as payments on mortgages and traditional mortgage-backed securities;

(10) Any investment in a corporation, partnership, or trust whose primary activity is servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other domestic housing related activities such as residential loan origination or selling residential real estate loans. A company that derives more than 50 percent of its annual gross revenues from such activities is presummed to have a primary activity in such housing related activity; and

(11) Any investment that the Office of Regulatory Policy Oversight and Supervision hereafter identifies by T-Memorandum as a housing related investment for purposes of this regulation.

For the purposes of this paragraph (c), the terms "State," "residential real estate," and "residential real property" shall have the same definitions that are stated for these terms in section 5(c)(5) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(c)(5). The inclusion of any investment as a "qualified thrift investment" under this regulation is not intended to expand, contract, or otherwise affect the permissibility of investments as

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determined for any institution under other relevant state and federal statutes or regulations.

(d) *Special phase-in for certain institutions.* (1) Any insured institution that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982, or whose principal assets were acquired from such a state savings bank or cooperative bank chartered before October 15, 1982, shall be deemed to have the status of a qualified thrift lender through December 31, 1997, *provided that*:

(i) The institution's actual thrift investment percentage does not decrease below the actual thrift investment percentage calculated for the institution on August 10, 1987; and

(ii) The amount by which—

(A) The actual thrift investment percentage of such institution on the dates indicated in paragraph (d)(2) exceeds

(B) The actual thrift investment percentage of such institution on August 10, 1987, is equal to or greater than the applicable percentage (as indicated in paragraph (d)(2)) of the amount by which 60 percent exceeds the actual thrift investment percentage of such institution on August 10, 1987:

(2) The applicable percentage referenced in paragraph (d)(1) of this section is 25 percent on 2/10/90; 50 percent on 8/10/92; and 75 percent on 2/10/95.

(e) *Exceptions.* Notwithstanding paragraph (a) of this section, the Corporation may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in paragraph (a) as the Corporation deems necessary if—

(1) The Corporation determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for an insured institution to meet such investment requirements; or

(2) The Corporation determines that (i) the grant of any such exception will facilitate an acquisition under sections 406(f) or 408(m) of the National Housing Act, as amended, and (ii) the acquired institution will comply with the transition requirements of paragraph (d) of this section.

PART 584—REGULATED ACTIVITIES

5. The authority section for Part 584 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1728, 1728–1730); sec. 408, 82 Stat 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

6. Amend § 584.2 by revising the heading of the section; and by revising paragraphs (b) and (c) to read as follows:

§ 584.2 Prohibited activities.

* * * * *

(b) *Unrelated business activity.* No savings and loan holding company or subsidiary thereof that is not an insured institution shall commence, or continue for more than 2 years after August 10, 1987, or the date on which such company becomes a savings and loan holding company, whichever is later, any business activity other than (1) furnishing or performing management services for a subsidiary of such company; (2) conducting an insurance agency or an escrow business; (3) holding, managing, or liquidating assets owned by or acquired from a subsidiary insured institution; (4) holding or managing properties used or occupied by a subsidiary insured institution; (5) acting as trustee under deed of trust; or (6) any other activity (i) that is permissible for bank holding companies pursuant to 12 CFR 225.25, subject to the limitations and requirements of § 584.2–2 of this subchapter; or (ii) any activity set forth in section § 584.2–1, subject to the limitations therein.

Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a (e) to acquire control of an insured institution shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Service corporation subsidiaries of insured institutions.* Until further notice by order or regulation, the Corporation hereby approves without application the furnishing or performing of such services or engaging in such activities as are specified in § 545.74 of this chapter, as now or hereafter in effect, if such service or activity is conducted by a service corporation subsidiary of a subsidiary insured institution of a savings and loan holding company and if such service corporation has legal power to do so.

* * * * *

7. Amend Part 584 by adding a new § 584.2a to read as follows:

§ 584.2a. Exempt and grandfathered savings and loan holding companies.

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 584.2(b) of this Part:

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one insured institution, if the insured institution subsidiary of such company is a qualified thrift lender as defined in § 583.27 of this subchapter.

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one insured institution if all, or all but one of the insured institution subsidiaries of such company were acquired pursuant to an acquisition under §§ 408(m) or 406(f) *and* all of the insured institution subsidiaries of such company are qualified thrift lenders as defined in § 583.27 of this subchapter.

(2) Any savings and loan holding company referred to in paragraph (a)(1) of this section whose subsidiary insured institution(s) fails to qualify as a qualified thrift lender pursuant to § 583.27 may not commence, or continue, any service or activity other than those permitted under § 584.2(b) of this Part, *except that,* the Corporation may allow, for good cause shown, such company (or subsidiary thereof) up to 3 years to comply with the limitations set forth in § 584.2(b).

(b) *Grandfathered activities for certain savings and loan holding companies.* Notwithstanding § 584.2(b) of this Part and subject to paragraph (c) of this section, any S&L holding company that received approval prior to March 5, 1987, under 12 U.S.C. 1730a(e) to acquire control of an insured institution may engage, directly or indirectly or through any subsidiary (other than a subsidiary insured institution of such company) in any activity in which it was lawfully engaged on March 5, 1987, *Provided that:*

(1) The holding company does not, after August 10, 1987, acquire control of a bank or an additional insured institution, other than an insured institution acquired pursuant to §§ 408(m) or 406(f) of the National Housing Act;

(2) Any insured institution subsidiary of the holding company continues to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 after August 10, 1987;

(3) The holding company does not engage in any business activity other

than those included in the permissible activity identified in § 584.2(b) of this part and in which it was not engaged on March 5, 1987;

(4) Any insured institution subsidiary of the holding company does not increase the number of locations from which such insured institution conducts business after March 5, 1987, other than an increase due to a transaction under sections 408(m) or 406(f) of the National Housing Act; *and*

(5) Any insured institution subsidiary of the holding company does not permit any overdraft (including an intra-day overdraft) or incur any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the insured institution subsidiary and the affiliate.

(c) *Termination by the corporation of grandfathered activities.* Notwithstanding the provisions of paragraph (b) of this section, the Corporation may, after opportunity for hearing, terminate any activity engaged in under paragraph (b) of this section upon determination that such action is necessary (1) to prevent conflicts of interest; (2) to prevent unsafe or unsound practices; or (3) is in the public interest.

(d) *Foreign holding company.* Any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not an insured institution) that controls a single insured institution on August 10, 1987, shall not be subject to any restrictions in 12 U.S.C. 1730a(c) with respect to activities conducted exclusively in a foreign country.

8. Amend § 584.2–1 by revising the heading of the section; and by revising paragraph (a) to read as follows:

§ 584.2–1 Prescribed services and activities of savings and loan holding companies.

(a) *General.* For the purpose of § 584.2(b)(6)(ii), the activities set forth in paragraph (b) of this section are permissible services and activities for savings and loan holding companies or subsidiaries thereof that are neither insured institutions nor service corporation subsidiaries of subsidiary insured institutions. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary insured institutions are prescribed by § 584.2(d) of this subchapter. Notwithstanding and without regard to any other provision of this section other than this sentence, a savings and loan holding company and any noninsured subsidiary thereof, other than a service corporation, may invest in the types of securities specified in §§ 523.10 and 545.71 of this chapter without regard to any limitation therein as to amount of maturity.

* * * * *

9. Revise the heading and the text of § 584.2–2 to read as follows:

§ 584.2–2 Permissible nonbanking activities of savings and loan holding companies.

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to 12 CFR 225.23 or 225.25, are deemed to be permissible services and activities for savings and loan companies, or subsidiaries thereof that are neither insured institutions nor service corporation subsidiaries of subsidiary insured institutions: *Provided however,* that no such savings and loan holding company or subsidiary thereof shall commence, either *de novo* or by an acquisition (in whole or in part) of a going concern, any activity described in this paragraph (a) without the prior approval of the Corporation pursuant to paragraph (c) of this section.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the Principal Supervisory Agent of the Federal Home Loan Bank District in which the insured institution subsidiary is located. Applications shall be addressed to the Office of Regulatory Policy, Oversight and Supervision and to the Supervisory Agent of the district in which the principal office of a subsidiary insured institution is located. The Principal Supervisory Agent (or his designee) shall act upon such application pursuant to the guidelines set forth in 12 CFR 571.12 unless, the PSA, upon notice to the applicant, refers the application to the Corporation because it raises issues of law of policy inappropriate for resolution by the PSA. Where the PSA has referred an application to the Corporation, the Corporation will act on such application pursuant to the guidelines set forth at 12 CFR 571.12.

(c) *Factors considered in acting on applications.* In evaluating an application filed under this paragraph (c), the PSA and the Corporation shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–23655 Filed 10–19–87; 8:45 am]

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12 CFR Parts 561, 563, and 571

[No. 87–1042]

Classification of Assets

Date: October 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing to revise its regulations governing the classification of assets of insured institutions consistent with the requirements of the Competitive Equality Banking Act of 1987 ("CEBA"). CEBA requires that the Board establish an asset classification system consistent with the asset classification practices of the Federal banking agencies. This proposed rule broadens the scope of the existing rule and ensures the use of broader, but judicious, examiner discretion in the classification of assets, consistent with the asset classification practices of the bank regulatory agencies.

Specifically, the proposal employs the existing classification categories of Substandard, Doubtful, and Loss, but significantly alters the consequences of these classifications with respect to valuation allowance requirements and their effect on minimum captial requirements.[1] Assets classified Substandard would no longer be treated as scheduled items, and twenty percent of the value of such assets would therefore not be included in calculating the contingency component of an insured institution's minimum regulatory capital requirement. Moreover, the

[1] N.B. This proposal refers to specific and general "allowances for loan losses" or to "valuation allowances," instead of "reserves," since the former designations are more consistent with accepted accounting terminology.

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Board would no longer require institutions to establish specific valuation allowances for assets classified Doubtful. With respect to assets classified Substandard or Doubtful, if the examiner concludes that the existing aggregate valuation allowances established by the institution are inadequate, the examiner would determine the need for, and extent of, any increase necessary in the insured institution's general allowances for loan losses, subject to review by the Principal Supervisory Agent ("PSA") or his designee. For the portion of assets classified Loss, the Board would no longer require institutions to establish specific allowances for losses of 100 percent of the amount classified. Instead, institutions will be required to charge off 100 percent of the amount of an asset, or portion of an asset, classified Loss. Consistent with CEBA, today's proposal deletes the Board's scheduled item regulation, thus broadening the scope of the classification of assets regulation to encompass those items formerly included in scheduled items. Today's proposal also requires insured institutions to classify their own assets and to establish prudent general allowances for loan losses. The Board is soliciting public comment on all aspects of the proposed rule.

DATE: Comments must be received on or before November 19, 1987.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Daniel G. Lonergan, Staff Attorney, (202) 377–6458, Joan S. van Berg, Staff Attorney, (202) 377–7023, Karen Knopp O'Konski, Acting Director, (202) 377–7240, Regulations and Legislation Division, Office of General Counsel; Jane W. Katz, Senior Policy Analyst, (202) 377–6782, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Edward J. Taubert, Associate Director—Policy, (202) 778–2511, or Francis E. Raue, Policy Analyst, (202) 778–2517, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board, as operating head of the FSLIC, is authorized pursuant to section 403(b) of the National Housing Act ("NHA"), to conduct examinations of institutions the accounts of which are insured by the FSLIC ("insured institutions"). 12 U.S.C. 1726(b). Pursuant to this authority, the Board has the responsibility to examine and evaluate insured institutions' assets, to require reporting, and to prescribe the treatment of such assets for regulatory evaluation purposes. In addition, the NHA requires insured institutions to establish and maintain reserves in accordance with Board regulations. *Id.*

The Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100–86, 101 Stat. 552, was signed into law on August 10, 1987. Section 402 of CEBA requires that the Board establish an asset classification scheme consistent with the classification practices established by the Federal banking agencies.[2] On May 5, 1987, the Board proposed for public comment a revision of the classification of assets regulation "to encourage greater exercise of discretion, judgment, and flexibility by both supervisory and examination staff, to integrate the classification system with other regulations prescribing treatment of problem assets, . . . and to achieve greater conformity with the classification practices of the bank regulators." 52 FR 18369, 18371 (May 15, 1987) ("May proposal"). The Board originally set a 60-day comment period for the May proposal, but extended this comment period until September 1, 1987. *See* 52 FR 27218 (July 20, 1987). Because CEBA became law during this comment period, the Board has decided to repropose its May proposal, in order to incorporate revisions consistent with CEBA's mandate that the Board adopt a classification scheme consistent with the classification practices of the Federal banking agencies. As is discussed in greater detail *infra*, all comments received in response to the May proposal will be preserved and considered in issuing any final rule on the classification of assets.

A. Description of Existing Rule and May Proposal

Today's proposal is consistent with both the requirements of CEBA and the Board's intent to move toward an asset classification scheme more consistent with the classification practices of the Federal banking regulators. This proposal reflects the Board's recognition that methods of evaluating asset quality should be modified in light of significant changes in thrifts' investment authority in the last five years. Section 325 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L No. 97–320, 96 Stat. 1469, amended section 5(c)(1)(R) of the Home Owners Loan Act of 1933, 12 U.S.C. 1464(c)(1)(R), to authorize federally-chartered savings and loan associations and mutual savings banks to invest in secured or unsecured loans for commercial, corporate, business, or agricultural purposes within specified limits. The Board promptly promulgated regulations in 1983 to implement this new commercial lending authority for federal institutions. *See* 12 CFR 545.46. Moreover, many states subsequently granted to state-chartered institutions the authority to engage in commercial lending activity.

The Board's then-existing asset classification system, which had been primarily designed to address the requirements of home lending, emphasized the timely receipt of periodic payments and other features inherent in loans secured by real estate. Because of Board concern that this system of asset classification was not attuned to the characteristics of the newly authorized type of lending, and was thus not appropriately suited to gauge the condition of a given asset, the Board sought a better method of evaluating the condition of these loans.

On June 21, 1985, the Board proposed for public comment a new method of classifying certain commercial loans and a revision of its regulation governing examiners' reevaluation of real estate. Board Res. No. 85–504, 50 FR 27290 (July 2, 1985). The Board's proposal adopted the basic asset classification concepts contained in the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" ("Uniform Agreement"), issued in revised form on May 7, 1979, as a Joint Statement of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and Conference of State Bank Supervisors. In short, the proposed scheme classified problem assets as Substandard, Doubtful, or Loss, consistent with the Federal banking agencies, and prescribed treatment of each problem asset depending on the category to which it was assigned.[3] The proposal

[2] Section 402 of CEBA defines "Federal banking agencies" to include the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[3] These categories are defined in detail in the existing regulation and policy statement. *See* 12 CFR 561.16c(b), 571.1a(a). Generally, assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, and have a well-defined weakness or weaknesses. Assets classified Doubtful have all of the weaknesses inherent in

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also sought to revise the appraisal provisions in the Board's examinations and audit regulation to provide for the "automatic" classification of assets with a nonconforming or nonexistent appraisal. *See* 12 CFR 563.17–2(b).

On December 9, 1985, the Board adopted as a final rule the proposed classification of assets scheme with some modifications. This regulation, currently in effect, employs the classification categories of the Uniform Agreement, *i.e.*, Substandard, Doubtful, and Loss. Assets classified Substandard are treated as scheduled items, thus increasing the contingency component of an institution's minimum regulatory capital requirement under section 563.13 by an amount equal to 20 percent of the dollar amount of the Substandard assets. *See* 12 CFR 563.13(b)(4)(ii)(B). *See also* 12 CFR 561.16(c)(1). In effect, this classification serves to increase an insured institution's capital requirement by 20 percent of the value of assets classified Substandard, since the contingency component is added to an institution's liability component (minus the maturity matching credit) to determine the minimum regulatory capital requirement. 12 CFR 563.13(b). Assets classified Doubtful require the establishment of specific allowances for loan losses of up to 50 percent of the amount of the asset so classified. *See* Office of Regulatory Policy, Oversight and Supervision ("ORPOS") Memorandum No. SP 68 (Aug. 14, 1986) (Attachment 2). Assets classified Loss require the establishment of specific allowances for loan losses of 100 percent of the book value of assets or portions of assets classified Loss. This scheme permits assets to be "split" for classification purposes; different portions of the same asset may be classified under different categories or may remain unclassified. 12 CFR 571.1a.

The Board's December 1985 rule also authorized examiners to reevaluate assets in accordance with the newly adopted classification system, as reflected in 12 CFR 563.17–2(b). Section 563.17–2(b) was amended to provide that a reevaluation of real estate must be based on an appraisal, except in the following instances: (1) If a loan or investment requires an appraisal under the Board's rules, but the institution has no appraisal in its files, the asset is to be classified Doubtful; (2) if there is an appraisal in the institution's files that does not conform with the Board's appraisal standards, or if the examiner determines that the assumptions underlying an appraisal (even one that was in compliance when made) are demonstrably incorrect, such assets are to be classified Substandard; and (3) if the examiner and the District Appraiser determine that the assumptions underlying an appraisal are demonstrably incorrect, rendering the appraisal inaccurate, and the asset has an additional weakness inherent in an asset classified Substandard, the asset is to be classified Doubtful. In promulgating this final rule, the Board emphasized that its supervisory experience indicated that continued reliance on reappraisals as the sole mean for classifying problem reals estate assets was not advisable.

The Board also amended § 563.17–2(c) to require adjustments to the book value of assets deemed to be overvalued on the institution's books as a result of asset re-evaluation. At the direction of its supervisory agent, an institution must make such an adjustment to the book value by establishing a specific valuation allowance in an amount equal to the overvaluation.

Although the Board adopted the above classification of assets scheme as a final rule, the Board also provided an additional 60-day comment period to solicit further public comment on the general scope of the classification system that, in its final form, encompassed all assets except consumer loans, loans secured by one-to-four family, owner-occupied homes, and securities. Because these comments are potentially relevant to the revisions proposed today pursuant to CEBA, these comments will be briefly summarized.

In response to its solicitation of comments on the scope of the final rule, the Board received fifty-six comment letters. Of these fifty-six letters, only thirty addressed the scope of the classification of assets regulation, while the remainder addressed aspects of the final rule on which comment had not been solicited. Forty-four of the letters were received from insured institutions. Of the remainder, seven letters were received from industry trade associations, two were received from state agencies, one was received from a law firm representing 20 insured institutions, one was received from a mortgage insurance company, and one letter was received from a private citizen.

Although the comments received in response to the scope of the final rule were generally supportive, several criticisms and suggestions were made by more than one commenter. Several commenters recommended that the Board broaden the scope of the regulation specifically to include loans on the security of one-to-four family, owner-occupied homes. Several other commenters objected to the breadth of the scope of the final rule, specifically criticizing its application to loans secured by real estate. These commenters generally argued that because loans made on the security of real property are inherently less risky than commercial loans, such loans should not fall within the rule. Several other commenters contended that the rule should properly apply only to those institutions that are of "substantial supervisory concern" to the Board and threaten the industry, and that the Board should not "overregulate" all insured institutions for the excesses of a few.

One trade association commenter supported the broadened scope of the rule contingent upon further regulatory modifications, including granting supervisory personnel discretion to establish loan loss allowance requirements below the stated percentages to take into account the lower loss levels associated with loans secured by real estate. In view of the fact that further comment is solicited in this proposal, however, the Board has decided to defer responding to these comments and will consider them together with any additional comments it receives.

After over a year of experience with the existing rule, promulgated December 9, 1985, the Board concluded that further revision of the classification regulation was necessary. Thus, on May 15, 1987, the Board proposed revisions to the asset classification scheme that would afford examiners and supervisory staff greater flexibility and discretion and would generally achieve greater conformity with the classification practices of the Federal banking agencies. Specifically, this proposal would have broadened the scope of the regulation to encompass debt and equity securities, and would have imposed an affirmative duty upon insured institutions to classify their own assets and establish appropriate valuation allowances. More importantly, the proposal provided that Substandard assets would no longer receive scheduled item treatment, and Doubtful assets would no longer require the establishment of specific reserves. Under the proposal, if assets were classified Substandard or Doubtful and the examiner concluded that the general valuation allowances established by the institution were inadequate, the

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those classified Substandard, with the added characteristic that the weaknesses make collection or liquidation in full highly questionable and improbable. Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific allowance for loan losses is not warranted.

examiner would determine the need for, and extent of, any increase necessary in the insured institution's general valuation allowances. Under the May proposal, assets, or portions of assets, classified Loss would continue to require the establishment of specific valuation allowances of 100 percent of the value of such assets, or be charged off.

As noted, the enactment of CEBA during the comment period of the May proposal has necessitated that the Board repropose the classification of assets regulation incorporating provisions mandated by this recently enacted statute. Because one of the Board's goals in issuing the May proposal was to establish an asset classification system that more closely conformed to the classification practices of the Federal banking agencies, many elements of the May proposal have been retained in today's proposal. For this reason, it is unnecessary to summarize the May proposal in greater detail in this proposal.

In response to the May proposal, however, the Board received 74 comments, most of which offered qualified support for the proposed revisions. Fifty-four comments were received from insured institutions; nine comments were received from industry trade associations; one comment was received from a securities broker' one comment was received from a professional society of financial managers; 3 comments were received from mortgage insurers; and 6 other comments were received from interested societies representing economists, executives, home builders, and others. Generally, commenters expressed concern with respect to three provisions of the May proposal: the examiner-supervisory staff relationship and examiner discretion; the inclusion of debt and equity securities within the scope of the classification regulation; and the inclusion of an augmented minimum capital requirement based on the extent of classified assets.

In proposing the following revisions to the existing classification of assets regulations, the Board has also considered these comments submitted in response to the May proposal. Because the Board is soliciting comment in this proposal on many of the same issues and approaches that were contained in the May proposal, however, the Board will preserve and defer responding to such comments untial a final rule is issued, when any new comments received will be considered and addressed as well.

B. Objectives of the Proposal

The Board's current classification regulation became effective on January 30, 1986. Thus, the Board, the Federal Home Loan Bank System supervisory staff, and the field examination staff have had well over a year of experience with the rule. This experience suggests that modifications to the rule are in order. More importantly, section 402 of CEBA specifically requires that the Board establish an asset classification system consistent with the asset classification practices established by the Federal banking agencies. By adopting this proposal, the Board again seeks to encourage the greater exercise of discretion, judgment, and flexibility by both supervisory and examination staff, to integrate the classification system with other regulations prescribing treatment of problem assets, and to achieve greater conformity with the classification practices of the bank regulators.

Upon further consideration, the Bank Board believes that the existing classification system could be construed to constrain unduly the exercise of judgment, flexibility, and discretion by both supervisory agents and examiners. As written, certain portions of the provisions bearing on asset classification rely heavily on appraisals of collateral. For example, the Board's regulation governing re-evaluation of assets imposes a requirement that, when reevaluation is necessary, most assets should be classified based on an appraisal done in conformity with Board standards. 12 CFR 563.17–2. *See also* ORPOS Memorandum No. R–41c (Sept. 11, 1986). Similarly, the Board's Statement of Policy on classification of assets requires that the amount of specific allowances for loan losses for assets classified Doubtful or Loss be based on a conforming appraisal. 12 CFR 571.1a.

The approach implicit in today's proposal—that is, the introduction of greater flexibility into the classification process—is consistent with the practices of the banking regulatory agencies. As a matter of course, bank examiners exercise informed judgment both in determining whether to classify an asset and in determining the appropriate amounts of allowances for loan losses to be maintained by a bank whose portfolio contains classified assets. This classification approach will encourage the examiner to identify weaknesses inherent in the institution's ongoing lending strategies and practices, in addition to quantifying current problems.

The Board believes that classification is a crucial tool for reducing the risk exposure of both insured institutions and the FSLIC insurance fund. Identification of problem assets enables the FSLIC, through the examination process, to require institutions to maintain adequate allowances for loan losses to help insulate the FSLIC from loss. The classification process can serve a second, invaluable function. It can reveal lending patterns or deficiencies in portfolio administration that are consistently causing collectibility problems for an institution. Once the examiner identifies such patterns or deficiencies, his or her discussions with management can focus on avoiding practices that have resulted in the necessity for classifying existing assets. In this way, the classification process can serve a preventative, as well as a protective, function.

The Board's original classification of assets proposal contained language that would have made reliance on an appraisal in re-evaluating real estate merely permissive, in order to allow for evaluations that take into consideration other economic factors that directly affect the immediate value of the assets from the insured institution's point of view. Board Res. No. 85–504, 50 FR 27290 (July 2, 1985). Most commenters opposed this position. "They believed that the proposal might lead to arbitrary decision-making by examiners because it was highly subjective and, consequently, they believed that it would give examiners too much discretionary authority." 50 FR 53280 (summary of comments). The Board responded to these comments by requiring appraisals to support re-evaluation of most assets and by providing for the automatic classification of assets unsupported by a conforming appraisal. 12 CFR 563.17–2.

The Board continues to believe that an appraisal of collateral that follows accepted appraisal methodology is an important factor in an examiner's assessment of the risk of nonpayment associated with assets in an insured institution's portfolio. Risk of nonpayment is also dependent upon other factors, however. These factors include the overall risk involved in the project or business being financed; the nature and degree of the collateral security; the character, capacity, financial responsibility, and record of the borrower; and the feasibility and probability of orderly liquidation of the asset. Of necessity, the institution's or the examiner's arrival at a valuation based on all the relevant factors will involve the exercise of some subjective

judgment. The Board recognizes the importance of an appraisal; however, it believes the value of the collateral should not be the sole determinant of asset valuation where, for example, the borrower has other resources for repayment against which the lender has legal recourse. This approach is consistent with the classification practices of the Federal banking agencies.

The Board does not believe that the examiner's exercise of discretion and judgment will result in arbitrary valuation. Several reasons support this conclusion. First, valuation allowances should be established in accordance with Generally Accepted Accounting Principles ("GAAP"), which is consistent with CEBA. CEBA, tit. iv, sec. 402(a), section 9(c). While allowances established in accordance with GAAP are based on subjective judgment, guidelines do exist in accounting literature to assist in providing appropriate reserves. Additionally, all insured institutions are required to submit annual audited financial statements. This, along with the institution's and the examiner's review, provides a third source of review that should result in the establishment of fair and adequate valuation allowances.

Second, the Board notes that additional training has been available to the examiners, especially since July 1985 when the Board transferred its field examination force to the twelve Federal Home Loan Bank districts under the authority of the PSAs. Nationwide, senior examination and supervisory staff have been instructed as to the background and intent of the classification regulations and have received training on individual asset classification and asset review concerns. Currently, only the most experienced examiners classify assets. Based on more than one and one-half years of experience with the classification system, these examiners are continuing to become even more proficient. Also, classification advice is being obtained from banking regulators on an ongoing basis.

Third, today's proposal does not give unreviewable discretion to examiners, but retains the current approach of vesting the PSA with authority to review and disapprove or modify the examiner's classification and valuation of assets, although these determinations will generally be made by the examiner, subject to review by the supervisory agent. Effective control measures are employed whereby examiners' supervisors and supervisory staff review all classifications to preclude any arbitrary classifications. Lastly, section 407 of CEBA requires the Board to establish an informal review procedure under which an insured institution can obtain review by an independent arbiter and the PSA of the classification and valuation allowance determinations of the examiner and supervisory agent. CEBA, tit. iv, sec. 407(d), section 22A. This review procedure, which is to be established shortly and will be separate from this rulemaking, will also minimize the risk of arbitrary valuation.

C. Description of Proposal

1. Scope

The Board is proposing to broaden the scope of the classification of assets regulation to encompass "securities" (debt and equity) as defined in § 561.41 of the Board's regulations, as well as loans secured by owner-occupied "homes," as defined in § 541.14; "slow loans," as defined in § 561.16; "slow consumer credit," as defined in § 561.16a; "consumer credit classified as a loss" under § 561.16b; and real estate owned as presently described under § 561.15. In issuing the existing rule, the Board earlier alluded to the desirability of including securities within the scope of the regulation, but recognized the need to review further the implications of such an expansion of coverage. 50 FR 53275, 53279 (Dec. 31, 1985). In light of further staff consideration and supervisory experience, and pursuant to CEBA's clear mandate that the Board prescribe regulations establishing an asset classification system "which is consistent with the asset classification systems established by the Federal banking agencies," the Board believes it appropriate and necessary to include securities in its asset classification scheme. [4]

The inclusion of debt and equity securities in the classification scheme is consistent with the practices of the Federal banking agencies, which consider such securities to be classifiable assets under their respective asset classification schemes. With respect to securities rated in the top four investment grades ("investment grade" securities) or unrated securities of equivalent quality, the Board proposes to treat these assets in conformance with the Uniform Agreement. With regard to sub-investment quality securities (*i.e.*, securities evidencing investment characteristics that are distinctly or predominantly riskier), which generally include securities in grades below the four highest grades and unrated securities of equivalent quality, it is the Board's position that these securities should not automatically be classified merely because the security is unrated or has not been rated within the top four investment grades. Included within this category would be high-yield or "junk bonds." [5] ORPOS will issue supervisory and examination guidelines addressing the appropriate classification procedures for these assets.

In proposing to encompass owner-occupied homes, slow loans, consumer credit, consumer credit classified as loss, and real estate owned within the scope of the classification regulation, the Board is departing from its current practice of affording such assets "scheduled item" treatment under § 561.15. Scheduled item treatment, which was intended to factor into the calculation of minimum regulatory capital those assets whose value may not be fully realizable, is not a classification category employed by the Federal banking agencies and would thus appear inconsistent with section 402(a) of CEBA. In fact, section 407 of CEBA, which requires the Board to issue guidelines providing improvements and flexibility in the supervisory process, specifically requires the promulgation of guidelines "eliminating the scheduled item system except as such system relates to 1–to–4 family residences." CEBA, tit. iv, sec. 407(b)(4).

In proposing the existing classification of assets scheme in 1985, the Board recognized that the then-existing scheme evolved primarily to classify owner-occupied home loans, and was thus keyed to the timely receipt of periodic

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[4] Consistent with the practices of the Federal banking agencies and the broadened scope of the proposal, insured institutions must establish liabilities for off-balance-sheet items in accordance with GAP as described in Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* ("FASB–5"). FASB–5, which is published elsewhere in this issue as an attachment to the Troubled Debt Restructuring proposal, Board Res. No. 87–1046 (Oct. 5, 1987), provides that an estimated loss shall be accured when it is probable that an asset has been impaired or a liability incurred, and the amount of loss can be reasonably estimated. Generally, while valuation allowances are established for assets, liabilities are established for off-balance-sheet items. Institutions shall record liabilities for such items when off-balance-sheet loss becomes probable and estimable.

[5] The Board notes that pursuant to section 1201 of CEBA, Congress has mandated that a study be conducted on high-yield bonds by the Comptroller General, in consultation with the federal banking agencies and certain other federal agencies. The statute required that a report containing the results of the study be transmitted to Congress no later than February 10, 1988. The Board recognizes that the results of such study might provide relevant information on the appropriate classification status of high-yield bonds as investments. Therefore, when this report is completed, the Board will revisit its position on such investments if necessary.

payments. In light of industry experience with such loans and other regulatory protections applicable to an institution's mortgage lending, an objective, timeliness-of-payments classification scheme was determined to be well-suited to loans for one-to-four family, owner-occupied homes, traditional consumer loans, and other specified types of lending. The Board drew a distinction, however, between one-to-four family, owner-occupied dwellings and non-owner occupied dwellings, because the source of payments received on a mortgage from an owner-occupant is derived primarily from earnings of a family member. The risk of nonpayment on owner-occupied dwellings was perceived to be diminished because of the substantial costs, both monetary and psychological, imposed by eviction. Non-owner occupied loans, however, were deemed to be more risky since cash flows to service these mortgages could be derived from sources that are less reliable over time. 50 FR 53278 (Dec. 31, 1985). Thus, only one-to-four family, owner-occupied home loans were "classified" under the slow loan-scheduled item treatment of § 561.15 and § 561.16. [6]

Through discussions with representatives of the Federal banking agencies, the Board's staff has learned that these agencies do not classify home mortgage loans in a manner differing appreciably from either their classification policy for assets generally or from the slow loan-scheduled item treatment found in the Board's regulations. Both the Board and the Federal banking agencies primarily look to payment delinquency/cash flow in examining such assets, although the Board's slow loan regulations is arguably the more specific approach. The greater specificity of the Board's regulations is explained in large measure by the historically large role played by the savings and loan industry with respect to this type of lending, when contrasted with the commercial banking industry's relative lack of exposure to home mortgage lending.

The specific contractual delinquency standards and other factors set forth in the slow loan regulation have proven to be a rational and effective approach to gauging the risk of nonpayment with respect to the savings and loan industry's high volume of home mortgage loans. Moreover, these standards have been employed with relatively minor revision for many years and are understood by the industry and supervisory personnel. For this reason, the Board is reluctant to depart from the slow loan-scheduled item treatment for 1-to-4 family, owner-occupied home loans. At the same time, however, the Board is cognizant of Congressional intent, as reflected in CEBA, that the Board establish a classification scheme consistent with the classification practices of the Federal banking agencies.

Consistent with the approach of the banking agencies to discourage "automatic" classifications and encourage case-by-case discretion when appropriate, the Board is proposing to eliminate, consistent with the deletion of scheduled items, an automatic or mandatory classification approach to those assets constituting slow loans. Although the slow loan provision as set forth in § 561.16 will be retained, and examiners will continue to apply this provision in examining the 1-to-4 family, owner-occupied home loan portfolio, assets constituting slow loans may be classified under § 563.16c. Such classification will not mandate a 20 percent increase in an institution's minimum regulatory capital, as would be the case under the existing scheduled item treatment. *See* 12 CFR 563.13(b)(4).

The Board is of the view that the complete deletion of scheduled item treatment—including one-to-four family, owner-occupied home loans—is consistent with section 407 of CEBA. Under the existing classification regulation, Substandard assets and scheduled items receive identical treatment: both *increase* minimum regulatory capital by 20 percent. Under the proposal (and consistent with CEBA), Substandard assets will now require general valuation allowances, which count *toward* regulatory capital. As discussed in more detail *infra*, many assets that were formerly scheduled items will likely be classified Substandard. To continue to require one-to-four family, owner-occupied home loans to be treated as scheduled items under a cursory reading of section 407 would actually penalize those institutions engaging in such home lending, in light of the stricter, capital-based treatment for scheduled items relative to the proposal's more flexible general allowance treatment for Substandard assets. Such a penalty could discourage home lending and would be patently inconsistent with the historical role of this industry to provide home mortgage lending. The Board believes that this could not have been the intent of Congress. Furthermore, a partial retention of the scheduled item regulation would result in a more fragmented classification scheme. Thus, the Board is proposing to delete its scheduled items regulation completely.

The proposal's deletion of scheduled items pursuant to section 407 of CEBA also requires that the scope of the § 561.16c classification scheme be broadened to encompass "slow consumer credit," which currently receives scheduled item treatment under § 561.16a, as well as "slow consumer credit classified as a loss," addressed under § 561.16b. In 1980, pursuant to the recommendation of the Federal Financial Institutions Examination Council ("FFIEC"), the Federal banking agencies adopted a uniform policy for the classification of installment credit based on delinquency status. On November 18, 1980, the Board promulgated § 561.16a and § 561.16b for the express purpose of implementing this FFIEC-recommended uniform policy. 45 FR 76104 (Nov. 18, 1980). Thus, there is no inconsistency between the Board and the Federal banking agencies with respect to the classification of consumer credit; all classify consumer credit on the basis of the same delinquency formula.

For this reason, § 561.16a and § 561.16b are being retained, notwithstanding the elimination of scheduled items. In applying delinquency standards identical to those contained in the Board's § 561.16a and § 561.16b slow consumer credit regulations, the Federal banking agencies routinely classify assets exceeding such limits Substandard or Loss, respectively, although the banking examiners do make exceptions to this practice where the bank being examined can clearly demonstrate that repayment will occur irrespective of delinquency status (*e.g.*, loans well secured by collateral and in the process of collection, or loans supported by valid guaranties or insurance). In classifying consumer credit, Board examiners will apply § 561.16a and § 561.16b, which already provide for consideration of such mitigating factors.

Real property acquired by an insured institution by foreclosure or deed in lieu of foreclosure ("REO") is presently treated as a scheduled item under § 561.15(c). In light of today's proposed elimination of the scheduled item regulation, such assets will be classifiable under proposed § 561.16c.

Through discussions with representatives of the Federal banking agencies, Board staff has learned that

[6] Owner, occupied home loans are "classified" under a two-step process under Board regulation. Section 561.15 defines "scheduled items" to include slow loans. Section 561.16 defines slow loans, specifically setting forth at what point a loan secured by an owner-occupied home is deemed "slow."

the banking agencies generally classify REO Substandard, absent mitigating circumstances such as the fact that the property is subject to an agreement of sale or is generating sufficient income to carry the asset. Currently under § 561.15, REO is treated as a scheduled item, largely due to the circumstances of its acquisition (*i.e.*, the fact that the property was acquired by the institution due to inadequate demand). To ensure consistency with the Federal banking agencies, the Board is proposing to treat REO as an asset that may be classified under the § 561.16c classification scheme.

Under existing § 563.17–2, institutions must appraise REO when it is treated as a scheduled item under section 561.15. The Board believes that such an appraisal is necessary in order to assess the fair value of the property at the time of acquisition. The fair value of REO at the date of acquisition then becomes the carrying value of the property. However, in order to be consistent with the banking agencies, under proposed § 563.17–2, the Board will not only require appraisals at the time of foreclosure, but also will require that the property be appraised annually, in order to ascertain whether the property has declined in value. This will require the institution or examiner to recognize additional losses if, subsequent to the date of acquisition, the Net Realizable Value is less than the carrying value of such properties, rather than permit the maintenance of an asset at book value when a loss is probable and estimable.[7] Consistent with the practices of the Federal banking agencies, a letter from a qualified appraiser certifying that the property has not declined in value from the value stated in the previous appraisal will satisfy the annual appraisal requirement, subject to examiner review and acceptance. If the examiner, however, determines that the letter is not adequate, he or she may require an appraisal prepared in accordance with the appraisal requirements set out at § 563.17–1 and § 563.17–2. ORPOS will issue supervisory and examination guidelines addressing the appropriate classification procedures for these assets.

The elimination of scheduled items pursuant to secti·n 407 of CEBA also requires that certain other assets, currently encompassed by § 561.15, be classifiable under § 561.16c. Section 561.15(e) currently includes "securities upon which one or more interest or principal payments due have not been paid" as scheduled items. Moreover, paragraphs (f) through (j) of the existing scheduled item regulation pertain to deposits in, or loans to, a bank or savings and loan under the control (or in the possession) of supervisory authorities; assets acquired in an exchange for a scheduled item; assets transferred to a service corporation or other corporation in which the insured institution has an investment;[8] amounts invested in personal property; and the unpaid balances of loans secured by, and any contract for the sale of, personal property, if the unpaid balance exceeds any applicable lending limitation or 100 percent of the wholesale value. Under the proposal, such assets will be classifiable under the § 561.16c classification scheme. ORPOS will issue supervisory and examination guidelines addressing the appropriate classification procedures for these assets as well. The Board solicits specific comment on the extent to which this classification treatment is appropriate.

2. Effect of Classification

Under today's proposal, the categories to which problem assets may be classified—Substandard, Doubtful, and Loss—would remain the same as they are in the current classification regulation. 12 CFR 561.16c(b). The Board reiterates that, as under the existing rule, a portion of an asset may remain unclassified, or may be classified under a different category than the remainder of the asset. Moreover, this proposal would retain without change the factors used to determine the proper category or categories to which an asset should be classified, except in cases of certain "automatic" classifications related to appraisal deficiencies. 12 CFR 571.1a; *see* discussion at subheading 6, *infra*, "Deletion of automatic classification for failure to comply with appraisal requirements." This proposal would, however, amend both the classification rule and policy statement to change the effect of classification for the three asset classification categories.

The proposal would no longer require treating assets classified Substandard as scheduled items. For assets classified Doubtful, establishing specific allowances for loan losses would no longer be required; instead, in cases where assets are classified Substandard or Doubtful, the proposal would authorize the examiner to direct the establishment of general allowances for loan losses based on the assets classified and the overall quality of the asset portfolio. These valuation allowances would be required to be established in accordance with GAAP. Moreover, in cases where an examiner has classified an asset or a portion of an asset Loss, the institution would be required to charge off 100 percent of the amount of the asset or portion so classified. These charge-offs would also be required to be established in accordance with GAAP.

In examining an institution's asset portfolio, the examiner will consider the systems and internal controls employed by the institution in classifying assets. By examining those assets classified and the allowances for loan losses established pursuant to the institution's self-classification, the examiner can determine the effectiveness of, and the institution's adherence to, its classification procedures and methods of evaluation and determine the need to require additional valuation allowances.

This proposed classification and valuation allowance scheme is consistent with both the requirements of CEBA and the classification practices of the Federal banking agencies.

Section 402 of CEBA amends both the Home Owners Loan Act of 1933 ("HOLA"), 12 U.S.C. 1461, and the NHA to require that any amount that an insured institution holds in any account as a general loss allowance may be treated, at the institution's option, as capital of the association for purposes of determining regulatory capital. Under today's proposal, once assets have been classified Substandard or Doubtful, the thrift examiner would review the adequacy of the insured institution's aggregate general allowances for loan losses and, if necessary, direct the institution to increase these aggregate allowances. Although the establishment of these allowances would reduce

[7] "Net Realizable Value" is defined in the AICPA's Audit and Accounting Guide for Savings and Loan Associations.

[8] This raises a related issue. Section 407 of the NHA provides that, in making examinations of insured institutions, examiners appointed by the Board shall have the power, on behalf of the FSLIC, to make such examinations of the affairs of all affiliates of such institutions as shall be necessary to disclose fully the relations between such institutions and their affiliates, and the effect of such relations upon insured institutions. 12 U.S.C. 1730(m)(1). The Board is of the opinion that in order to protect adequately both the FSLIC and parent institutions from risk, the parent must, incident to its self-classification procedure, set aside adequate valuation allowances to the extent an affiliate possesses assets requiring classification and poses a risk to such institution.

The Board is of the opinion that where an affiliate is holding assets that pose a risk to the parent (*e.g.*, where the affiliate is 100 percent owned or where the parent guarantees obligation(s) of the affiliate), such assets may pose a sufficient risk of loss to the parent to warrant classification and the establishment of valuation allowances. Consequently, to protect against such loss, the parent shall consider such assets when it classifies its assets and shall establish valuation allowances appropriately reflecting the level of risk posed by an affiliate to the parent institution.

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GAAP capital, the institution could include general allowances for loan losses in determining its regulatory capital, as is permitted by the Federal banking regulators and as is required under section 402 of CEBA. Thus, under the proposal, an increase in general allowances would lead to a different capital result than would the current allocation of specific allowances for Doubtful items, since specific valuation allowances for loan losses do not qualify as regulatory capital. *See* 12 CFR 561.13(a).[9]

The treatment of items classified Loss under this proposal is a departure from the existing classification regulation. If an asset or a portion thereof is classified Loss, an institution shall charge off 100 percent of the amount of the asset or portion so classified. This treatment is consistent with the classification practices of the Federal banking agencies.

In Attachment 1 to this proposal, the Board is providing a simple example of the accounting consequences of classification under today's proposal. Readers are advised that this example is intended only to illustrate the operation of the proposed scheme under risk analysis reporting. Insured institutions should not rely upon it to predict the consequences of classification on their own capital positions.

In the May 1987 proposal, the Board sought to amend § 563.13, governing regulatory capital, to provide for the imposition of an increased minimum capital requirement on the basis of the quality of an institution's overall portfolio, consistent with the practices of the Federal banking agencies. Section 406 of CEBA provides the FSLIC with the same authority currently held by the Federal bank regulators under Section 908 of the International Lending Supervision Act of 1983, 12 U.S.C. 3907, with respect to minimum capital requirements. Specifically, section 406 provides that the Board may establish case-by-case minimum levels of capital for associations "at such amount or at such ratio or capital-to-assets as the Board determines to be necessary or appropriate for such association in light of the particular circumstances of the association." Pursuant to this statutory authority, the Board will shortly propose regulations to implement such a case-by-case minimum capital requirement. Board Res. No. 87–1045 (Oct. 5, 1987). For this reason, the Board deems it unnecessary to address this issue in this proposal. The Board solicits specific comments as to the removal of this case-by-case capital provision from the classification of assets proposal.

The amendments contained in today's proposal indicate that GAAP is to be applied in setting the amount of valuation allowances for loan losses. The Board believes that such an approach is consistent with the requirements of CEBA and the Board's goal of achieving similar flexibility in the administration of its classification system.[10] In adopting this approach, the Board recognizes its responsibility to ensure that examiners receive necessary training.

3. Assets deserving Special Mention.

Under current thrift examination practice, examiners use a category designated "Loans Subject to Comment." This category is intended to identify assets that do not warrant adverse classification at the time of the examination, but that possess credit deficiencies or potential weaknesses that deserve management's close attention. In order to comply with CEBA's mandate that the Board implement an asset classification scheme that is consistent with the classification practices of the Federal banking agencies, the Board is proposing to adopt a "Special Mention" category, which will include those assets that do not justify a classification of Substandard, but do constitute undue and unwarranted credit risks to the institution.

The Board believes that the adoption of this Special Mention category under § 561.16c(e) will promote, through self-classification, the identification and monitoring of those assets that have potential weaknesses that may, if not checked or corrected, weaken the asset or inadequately protect the institution's financial position at some future date.

4. Self-Classification and Reporting

The Board also is proposing, consistent with the May proposal, to amend § 561.16c to require that insured institutions independently review their asset portfolios, classify their assets, and set aside appropriate valuation allowances on the basis of such self-classification. This amendment merely sets forth as a regulatory requirement what is commonly regarded as a prudent institutional management policy. This process of self-classification is already widely observed throughout the banking industry and is thus consistent with CEBA.[11]

Pursuant to the Board's authority, as operating head of the FSLIC, to prescribe the manner in which an insured institution reports its affairs to the FSLIC, 12 CFR 563.18, the Board is proposing to require that an institution reflect its self-classification of assets in its quarterly reports to the Board, in the form of aggregate totals of assets in each of the three asset classification categories. As reflected in § 561.16c(c)(2), an institution's failure to classify its assets reasonably and in good faith, and to establish appropriate valuation allowances, will be a factor considered by the examiner and supervisory personnel in determining any necessary valuation allowances. Such reports will be reviewed by supervisory personnel to ensure that they accurately reflect an institution's self-classification and reflect a self-classification procedure performed reasonably and in good faith. Although these reports are subject to § 563.18, and may be reviewed to ensure consistency with safe and sound practice, it is not the Board's intention to penalize an institution for good faith efforts to self-classify.

5. Delegations and Interpretations

This portion of the classification regulation would remain substantially unchanged. The Principal Supervisory Agent would retain primary authority over the examiner's classification of an asset, the examiner's directives with respect to the appropriate amount of valuation allowances to be established, and the acceptability of an appraisal made in connection with the re-evaluation of an asset. As set forth in § 561.16c(f)(4), this authority may be delegated to a Supervisory Agent. It should also be noted that the proposed amendment would substitute a delegation to ORPOS for the previous delegation to the Board's former Office of Examination and Supervision ("OES"), although this amendment is not intended to circumscribe the Office of General Counsel's authority to issue legal interpretations with respect to the classification regulations. *See* Board Res. No. 86–755, 51 FR 27165, 27167 (July 24, 1986) (codified at 12 CFR 522.90)

[9] The Board is also proposing a technical revision of § 571.1a(a) to clarify that the eight Substandard characteristics set forth in this paragraph do not constitute an exclusive listing of such possible characteristics.

[10] It should be noted that the Board continues to believe that factors such as the coverage of a loan by private mortgage insurance should be taken into account in determining the appropriate allowances for loan losses when the probability of a full insurance payment is substantial. *See* 12 CFR 571.1a(b)(3).

[11] This self-classification and reporting requirement should not pose a particular problem for insured institutions using GAAP financial reporting, since the proposed method of setting aside allowances for loan losses is generally consistent with GAAP.

(ORPOS succeeds to all delegations of authority from Board to OES).

6. Deletion of Automatic Classification for Failure To Comply With Appraisal Requirements

The Board also is proposing to amend § 563.17–2 pertaining to the re-evaluation of assets. The proposal would delete those provisions of § 563.17–2(b) requiring "automatic" or mandatory classification where the appraisal is absent or does not conform with the Board's appraisal requirements, or where the assumptions underlying the appraisal are demonstrably incorrect. While the Board recognizes the importance of a properly conducted appraisal to an examiner's assessment of the risk of nonpayment associated with a particular asset, this amendment is consistent with the Board's recognition that risk of nonpayment is dependent upon other factors as well. Therefore, the Board is proposing to delete this automatic classification mechanism to provide examiners with sufficient flexibility and discretion to consider these other factors, and to promote consistency between the Board's classification of assets scheme and the classification practices of the Federal banking agencies. This is also consistent with GAAP and the Board's intention to afford examiners adequate discretion to determine the necessity of, and appropriate reliance on, a reappraisal, subject to review by the PSA.

7. Classifying Restructured Loans

Section 402 of CEBA amends the HOLA and the NHA to provide that, in establishing an asset classification system consistent with the classification practices of the Federal banking agencies, the Board shall provide that the PSA may determine whether to classify a restructured loan that is nonperforming, or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms. It must be noted that in a separate resolution the Board also is proposing to implement CEBA's requirement that the Board prescribe uniform accounting standards. In addition to this accounting proposal, the Board is also proposing a detailed policy statement that, pursuant to section 402 of CEBA, authorizes and discusses the use of Statement of Financial Accounting Standards Numbers 5 and 15 in the restructuring of troubled debt.

In broadening the scope of the § 561.16c classification regulation to encompass all assets or portions thereof held by an insured institution, the Board specifically intends that restructured loans will be classifiable, consistent with section 402 of CEBA and with the practices of the Federal banking agencies. The Board recognizes that some risk of nonpayment may remain after a troubled debt restructuring. To the extent that a risk of nonpayment or collectibility questions remain after restructuring or become manifest during the pendency of the loan, examiners will conduct a credit analysis to determine whether the restructured loan should be classified and whether any valuation allowances should be established. Such restructured loans will be classifiable under § 561.16c after consideration has been given to the existence of other types of collateral or other reliable means of repayment. As a result of staff discussions with Federal banking agency representatives, the Board believes this approach to be consistent with the Federal banking agencies' classification approach to restructured loans. ORPOS will issue supervisory and examination guidelines addressing the appropriate classification procedures for such restructured loans.

8. Technical Questions

In light of the proposal's deletion to the requirement of specific valuation allowances for assets classified Doubtful, questions arise as to the appropriate treatment of existing specific valuation allowances for assets classified Doubtful under the current regulation. Because the Board has defined regulatory capital to include general allowances, but not specific allowances, the transfer to allowances from the specific to the general category could cause some institutions to show an immediate improvement in their capital positions, even on paper, though they have not, in fact, acquired additional capital. In light of this potential problem, the Board solicits specific comment on whether existing specific allowances should be redesignated general allowances. Further, if the Board permits such a redesignation, commenters are asked to address whether the newly redesignated general reserves should count immediately for purposes of determining compliance with any of the Board's regulations that are tied to an institution's capital level. The Board solicits comment on when an institution can take advantage of any increase in regulatory capital that results from a redesignation of reserves, *e.g.*, after its next regularly scheduled exam, after a thorough and well considered self-examination, or at some other time.

9. Solicitation of Comment

The Board solicits comment on all aspects of this proposal without limitation. The Board will consider and respond to all comments received, as well as all comments received in response to the Board's May proposal. Although some of the latter comments have undoubtedly been addressed by changes made in this proposal pursuant to CEBA, the Board will defer responding to these comments in light of today's further solicitation of comment. The Board particularly encourages commenters to address the comparability of the classification scheme proposed today with the classification practices of the Federal banking agencies. Finally, the Board notes that it intends to hold a public hearing on this proposal, together with other proposals published in accordance with CEBA's requirements. Details of this hearing are provided in a notice published elsewhere in today's edition of the **Federal Register**.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION:**

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions without regard to size.

3. *Impact of the proposed rule on small entities.* The Board believes that the proposed revision of its classification of assets scheme will not have a disparate effect on small entities. To the extent that small entities engage to a greater degree than larger insured institutions in one-to-four family, owner-occupied mortgage lending, the impact of the proposal would be liberalizing since the proposal no longer provides an automatic "classification" of such assets as scheduled items, nor a twenty percent increase to minimum regulatory capital for such scheduled items.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above **SUPPLEMENTARY INFORMATION,** the Board is soliciting comment on the rule as proposed.

List of Subjects in 12 CFR Parts 561, 563 and 571

Accounting, Bank deposit insurance, Investments, Reporting and

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recordkeeping requirements, and Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 561, 563, and 571, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for Part 561, as proposed at 52 FR 18374 (May 15, 1987), continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 1, 48 Stat. 128, as amended (12 U.S.C. 1461 *et seq.*); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Remove § 561.15 as proposed at 52 FR 18374 (May 15, 1987) and as it appears in 12 CFR 561.15, and reserve the section designation for future use:

§ 561.15 [Reserved]

3. Amend § 561.16c by revising paragraphs (a), (c), and (d), as proposed at 52 FR 18375 (May 15, 1987); by redesignating paragraph (e), as proposed at 52 FR 18375 (May 15, 1987), as the new paragraph (f) (the text for paragraph (f) is republished without change for the convenience of the reader); and by adding a new paragraph (e) to read as follows:

§ 561.16c. Classification of assets.

(a) *Scope.* The classification system described in this section applies to all assets or portions thereof held by an insured institution.

* * * * *

(c) *Implementation of classification system.* (1) In connection with examinations of an insured institution, the examiner shall have authority to identify problem assets and, if appropriate, classify them.

(2) Each insured institution shall classify its own assets on a regular basis. In addition to any other remedy available to the Board, an institution's failure to classify its assets in a reasonable manner and to set aside prudent valuation allowances, or to monitor portfolio risk with an effective self-classification procedure, will be considered by the examiner or the Principal Supervisory Agent in determining the amount of valuation allowances to be established by such institution.

(3) In its quarterly reports to the Corporation, each insured institution shall include aggregate totals of assets that the institution has classified in each of the three asset classification categories, and the aggregate general and specific valuation allowances established.

(d) *Effect of classification.* (1) When, pursuant to § 561.16c, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish purdent general allowances for loan losses. When, pursuant to § 561.16c, an examiner has classified one or more assets of portions thereof Substandard or Doubtful and has determined that the existing valuation allowances are inadequate, the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner, subject to approval of the Principal Supervisory Agent.

(2) When, pursuant to § 561.16c, either an insured institution or an examiner has classified one or more assets or assets or portions thereof Loss, the insured institution shall charge off 100 percent of the value of such asset or portions so classified.

(3) Allowances provided on classified assets should be established in accordance with Generally Accepted Accounting Principles.

(e) *Assets deserving special mention.* Assets that do not currently expose an insured institution to a sufficient degree of risk to warrant classification under paragraph (b) of this section but do possess credit deficiencies or potential weaknesses deserving management's close attention shall be designated "Special Mention." Special Mention assets have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future.

(f) *Delegations and interpretations.* (1) The Principal Supervisory Agent may approve, disapprove, or modify any classifications of assets made pursuant to § 561.16c and any amounts of allowances for loan losses established by insured institutions or required by examiners pursuant to § 561.16c.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the Principal Supervisory Agent may approve or reject the appraisal and any valuation related to it.

(3) The Office of Regulatory Policy, Oversight and Supervision of the Federal Home Loan Bank System, shall, from time to time, issue supervisory interpretations and other informational material regarding classification of assets. *See* § 571.1a of this subchapter containing the Corporation's statement of policy on the classification of assets.

(4) The Principal Supervisory Agent may delegate functions assigned under § 561.16c to a Supervisory Agent in the same Federal Home Loan Bank district.

PART 563—OPERATIONS

4. The authority citation for Part 563, as proposed at 52 FR 18375 (May 15, 1987), continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., P. 1071.

5. Amend § 563.13 by revising paragraph (b)(4)(i)(D) to read as follows; and by deleting paragraph (b)(4)(ii)(B), and redesignating paragraphs (b)(4)(ii) (C) through (G) as new paragraphs (b)(4)(ii) (B) through (F), respectively:

§ 563.13 Regulatory capital requirement.

* * * * * * *

(b) *Minimum required amount.* * * *

(1) *General definitions.* * * *

(4) *Calculation of contingency component.*—(i) *Definitions.* * * *

(D) "Fixed reserve elements" means recourse liabilities and standby letters of credit.

* * * * * * *

6. Amend § 563.17–2 by revising paragraph (a); and by revising paragraph (b), as proposed at 52 FR 18375 (May 15, 1987), to read as follows:

§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* An insured institution shall appraise each parcel of real estate owned at the time of the institution's acquisition of such property, and annually thereafter. A letter from a qualified appraiser certifying that the property has not declined in value from the value stated in the appraisal required at acquisition will satisfy the annual appraisal requirement, subject to examiner review and acceptance. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal

made pursuant to the preceding sentences. A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph shall be retained in the institution's records.

(b) *Re-evaluation of other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate may be based on an appraisal as provided by § 563.17–1, and re-evaluation of parcels of real estate that are simlar in all essential respects may be based on an appraisal of one or more of such parcels. When an appraisal is required, it shall conform with § 563.17–1a of the Board's regulations.

* * * * *

PART 571—STATEMENTS OF POLICY

7. The authority citation for part 571, as proposed at 52 FR 18375 (May 15, 1987), continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–38 Comp., p. 1071.

8. Amend § 571.1a by revising the last sentence of the introductory text of paragraph (a); by revising paragraph (b)(3); by revising paragraph (c); and by revising paragraph (d), as proposed at 52 FR 18375 (May 15, 1987) to read as follows:

§ 571.1a Classification of assets.

* * * * *

(a) *Substandard.* * * *. Assets classified Substandard may exhibit one or more of the following characteristics:

* * *

(b) *Doubtful.* (1) * * *

(3) A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors which may work to the strengthening of an asset. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted. An entire asset should not be classified Doubtful if the probability of a partial recovery is substantial (for example, there is private mortgate insurance and the probability of full insurance payment is substantial).

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset of the institution is not warranted. A Loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of classification.* (1) When, pursuant to § 561.16c of this subchapter, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish prudent general allowances for loan losses. When, pursuant to § 561.16c of this subchapter, an examiner has classified one or more assets, or portions thereof, Substandard or Doubtful, and has determined that the existing valuation allowances are inadequate, the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner.

(2) When, pursuant to § 561.16c of this subchapter, either an insured institution or an examiner has classified one or more assets or portions thereof Loss, the insured institution shall charge off 100 percent of the value of such asset or portions so classified.

(3) Allowances provided on classified assets should be established in accordance with Generally Accepted Accounting Principles.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Note.—Attachments 1 and 2 will not appear in the *Code of Federal Regulations*.

Attachment 1

The following is an example of the application of the proposed classification of assets regulation to the books and records of a $1,000,000 association as noted in I. The association reviews its loan portfolio and classifies its assets which results in the amounts listed in II. The allowances established for substandard and doubtful assets of $12,500 are included in determining regulatory capital. This amount, and the $10,000 charge off amount (totalling $22,500), are charged aginst earnings in the current period as reflected in the balance sheet shown in III through a reduction to the capital accounts, both allowances and charge offs are established in accordance with GAAP.

I. The following information reflects the institution's balance sheet before classification of assets:

Loans	$900,000
Other Assets	100,000
Total Assets	$1,000,000
Deposits and Liabilities	$950,000
Capital	50,000
Total	$1,000,000

II. After the institution classifies its assets, allowances and charge-offs are established in the following manner:

Classification	*Amount classified*	*Allowances established*	*Amounts charged off*
Substandard	$50,000	[1]$5,000	
Doubtful	25,000	[1]7,500	12,500
Loss	10,000		[1,2]$10,000
Total Amount Charged Against Earnings			$22,500

[1] Allowances for loans losses or charge offs are established in accordance with generally accepted accounting principles (GAAP), FASB Statement No. 5 Accounting for Contingencies. Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies*, provides that an estimated loss should be acquired when it is probable that the asset has been impaired and the amount of loss can be reasonably estimated.

[1] 100% of the amount classified Loss is required to be charged off.

III. The following information reflects the institution's balance sheet after asset classification and the establishment of allowances and charge-offs:

Loans	[1] $890,000
Allowances for Loan Losses	[2](12,500)
Net Loans	877,500
Other Assets	100,000
Total Assets	$977,500
Deposits and Liabilities	$950,000
Capital	[3]27,500
Total	$977,500
* * * * *	
Regulatory Capital:	
Capital	$27,500
General Reserves	12,500
Total	$40,000
Regulatory Capital Requirement 950,000 x 3%	(28,500)
Regulatory Capital In Excess of Minimum Requirement	$11,500

[1] This amount represents the total loans ($900,000) minus the total amount charged off ($10,000).

[2] This amount represents the total sum of general allowances established for Substandard and Doubtful assets.

[3] This amount represents the beginning capital of $50,000 less the provision for loan losses of $22,500 ($12,500 general reserves plus $10,000 charged off).

Attachment 2

Federal Home Loan Bank Board—Office of Examinations and Supervision

MEMORANDUM

To: Principal Supervisory Agents August 14, 1986.

From: Francis M. Passarelli

Classification of Assets.

1. This memorandum reiterates the Board's policy and provides clarification for classification of assets and reevaluation of real estate pursuant to 12 CFR 561.16c and 563.17–2(b). The use of this memorandum should aid in efforts to ensure that asset evaluations receive consistent treatment nationwide.

2. It has always been the Board's intent that examination and supervision have maximum flexibility in classifying assets.

3. Principal Supervisory Agents are responsible for implementation and supervision of the classification of assets and reevaluation of real estate. The Principal Supervisory Agent has the final authority on all classifications and valuation reserves. It is the Board's intent that in exercising the discretion available to them under these regulations, the Principal Supervisory Agents may require less than a 50 percent valuation reserve, that is to say 1 to 50%, on Doubtful classifications taking into account appropriate credit and collateral factors, e.g., future prospects, performance, willingness and ability to pay, previous payment record (other than from an interest reserve) of the borrower, and management strength of the institution, its past experience in complying with supervisory directives, supervisory agreements or consent resolutions, and willingness to enter into a supervisory agreement or consent resolution geared toward resolving the problem at issue.

4. It is not the Board's intent that an entire asset be automatically classified because of a single weakness in the credit file. As indicated in the Statement of Policy (§ 571.1a) on classification of assets, it is incumbent upon examination and supervision to avoid classification of sound assets. This duty exists regardless of the type of asset or underwriting deficiency involved, e.g., the absence of any appraisal. Discretion and judgment should be exercised; if only part of the asset is at risk, only that part should be classified. Thus, consideration should be given to, among other things, the overall risk involved; the nature and degree of collateral security; the character, capacity, financial responsibility and record of the borrower; and the probability of orderly liquidation in accordance with the specified terms. Accordingly, an entire credit should not be classified as Doubtful when an analysis of the relevant factors shows that collection of a specific portion appears probable. It is The Principal Supervisory Agent who has the final authority on all classifications and valuation reserves.

5. An appraisal is only one factor to be weighed in credit analysis, and other factors, such as those discussed above in paragraph three, should be evaluated and weighed prior to determining a classification. Sound lending practices dictate that insured institutions obtain appraisals reflecting current market conditions. Memorandum R–41b is the definitive interpretation of the Board's appraisal requirements. The absence of an R–41b appraisal is a weakness because without an appraisal it is very difficult to make a sound credit judgment. The absence of an R–41b appraisal also suggests there may be a problem with the loan. Furthermore, this weakness may be considered unsafe and unsound, as a failure to reflect the asset's true value may result in misrepresentation of the institution's financial condition.

6. In classifying an asset the examiner should document all information required to support the classification and any valuation reserve. In those instances where the institution disputes the classification or the reserve, the examiner should have available the information supplied by the institution so that all documentation bearing on the classification and reserve is available for decision by the Principal Supervisory Agent.

Francis M. Passarelli,

Director.

cc: Professional Staff—Examinations and Supervision.

[FR Doc. 87–23656 Filed 10–19–87; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Part 563

[No. 87–1044]

Capital Forbearance

Date: October 5, 1987.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing regulations to implement section 404 of the Competitive Equality Banking Act of 1987, which provides that the Board shall establish a program of capital forbearance for well-managed, viable Federal associations and FSLIC-insured institutions if certain requirements are met. The proposal sets forth the requirements that institutions must meet to obtain forbearance under this program, the procedures for requesting forbearance, the procedures under which an applicant's Principal Supervisory Agent ("PSA") will consider such requests, the effect of forbearance, and the termination of a grant of forbearance.

DATE: Comments must be received on or before November 19, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Michael P. Scott, 202–778–2516, Policy Analyst, or Kevin O'Connell, 202–778–2615, Supervision, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System; Catherine McFadden, 202–377–6639, Thomas J. Delaney, 202–377–7054, Attorneys, or Jerome L. Edelstein, 202–377–7057, Acting Deputy Director, Regulations and Legislation Division, Office of General Counsel; C. Dawn Causey, 202–653–2624, Attorney, or Marianne E. Roche, 202–653–2609, Deputy Director, Office of Enforcement; Richard Brown, 202–377–6795, Economist, or Joseph A. McKenzie, 202–377–6763, Director, Policy Analysis Division, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Summary of Statute

Section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552 ("CEBA"), provides that the Board, as operating head of the Federal Savings and Loan Insurance Corporation, adopt capital recovery regulations for regulating and supervising troubled but well-managed and viable insured institutions in a manner that will maximize the long-term

viability of the thrift industry at the lowest cost to the Corporation.

CEBA describes certain circumstances under which the Board is to extend capital forbearance. Thus, the Board is to consider whether an institution's weak capital condition is primarily the result of losses on loans or participations in loans, and either the value of the collateral for such loans has been adversely affected by economic conditions in designated economically depressed regions or the institution is a minority institution of which 50 percent or more of its loan assets are minority loans and 50 percent or more of its originated loans are construction or permanent loans for one-to-four family residences. In addition, the Board is to consider whether an institution's weak capital condition is the result of imprudent operating practices. Furthermore, to exercise capital forbearance, the Board must approve a capital recovery plan submitted by the institution and the institution must adhere to the plan and submit regular and complete reports on its progress in meeting its goals under the plan.

CEBA also provides the Board with discretionary authority to include provisions in the capital recovery regulations to extend capital forbearance to institutions with regulatory capital of less than 0.5 percent. In making capital forbearance available to such an institution, the Board is to consider whether an institution satisfies the same capital forbearance requirements set forth in the capital recovery regulations that pertain to institutions with regulatory capital of 0.5 percent or more and, in addition, whether the institution has reasonable and demonstrable prospects for returning to a satisfactory capital level.

The authority of the Board to extend capital forbearance under CEBA applies in the same manner for all insured institutions, whether federally or state chartered. Pursuant to section 416 of CFBA, authority to extend capital forbearance under the statute expires when the Financing Corporation established under section 302 completes all net new borrowing authority pursuant to that section.

II. Summary of Proposal

A. Purpose

The Board is proposing this regulation to maximize the long-term viability of the thrift industry at the lowest cost to the Corporation by implementing section 404 of CEBA to permit well-managed and viable institutions suffering capital impairment under certain conditions to obtain forbearance and to continue to operate.[1]

These proposed regulations set forth the considerations to be taken into account in granting capital forbearance and the procedures for institutions to follow in applying for capital forbearance. The proposal also sets forth the procedures that the Board or the Corporation and, under delegated authority, the applicant's PSA should follow in processing requests for forbearance and the factors to consider in determining whether such requests should be granted and, once granted, the circumstances under which forbearance may be terminated.

The proposal also provides that insured institutions granted forbearance will not be closed or be subject to supervisory or enforcement action for failing to meet their minimum capital requirements. To avoid termination of forbearance, however, such an institution must remain in compliance with its capital plan which is also an important element in determining its eligibility for forbearance. Moreover, the Board recognizes that institutions with deficient capital may have other problems that need to be addressed through supervisory or enforcement action. The proposal would clarify that the Board retains such authority.

B. Definitions

Paragraph (b) of the proposed regulation defines certain terms set forth in the substantive provisions of the regulation contained in paragraph (c). Therefore, these definitions are discussed in connection with the provisions of paragraph (c).

C. Qualifying for Capital Forbearance

For an institution to be granted and retain forbearance under the statute, it must meet the following four conditions: (1) have a weak capital condition linked to economic conditions in an economically depressed region; (2) submit and adhere to a capital recovery plan; (3) submit regular reports demonstrating its adherence to the plan; and (4) meet certain standards regarding its management and operating practices.

1. Weak Capital Condition Linked To Economically Depressed Region

a. Proposal. Pursuant to 12 U.S.C. 1437 (1982 & Supp. III 1985), the Board proposes to delegate the authority for evaluating and making final determinations regarding an institution's eligibility for capital forbearance to that institution's PSA. In addition, the PSA will have the authority to terminate grants of capital forbearance. In making this delegation, the Board proposes that each PSA be granted broad flexibility to evaluate each institution's eligibility for capital forbearance.

Proposed paragraph (c) sets forth the circumstances under which the PSA may determine that an institution is eligible for capital forbearance. These circumstances reflect those established by Congress in CEBA. Each PSA will evaluate requests for forbearance on the basis of the requirements set forth in CEBA and the particular circumstances of each applicant requesting capital forbearance.

Therefore, with certain exceptions for minority institutions, an applicant seeking forbearance must demonstrate that its weak capital condition is primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to remain in compliance with the repayment terms of loans or participations in loans, the value of the collateral for which has been adversely affected by economic conditions in a designated economically depressed region.

The statute defines "economically depressed region" as, "a region within which real estate values have suffered serious declines due to severe economic conditions, such as a decline in energy or agricultural values or prices." When it passed the statute, Congress was concerned with downturns in local economies that could result in capital erosion. It intended that capital forbearance be made available to institutions suffering a weak capital condition as a result of the economic conditions that affect their operations. According to the Joint Explanatory Statement of the Conference Committee:

> this section provides a capital recovery program for thrift institutions suffering from a weakened financial condition primarily related to the depressed economy in the regional areas in which the institutions operate.

H. Rep. No. 100–261, 100th Cong., 1st Sess. 165 (1987).

Given the statutory language and legislative history, the Board is proposing that institutions applying for forbearance identify a geographical region (or regions) and demonstrate to the PSA that it is economically depressed. Under the proposed approach, a "geographical region" is any region that has established boundaries

[1] When effective, these regulations will supersede the prior capital forbearance policy statement adopted by the Board on February 26, 1987 (52 FP 6876 (March 5, 1987)). That policy statement, however, will continue to govern applications filed pursuant to its terms on or before December 31, 1987.

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or is a Metropolitan Statistical Area. This approach permits any institution seeking forbearance to identify any specific region (or regions) within which its collateral is located. Having identified a region, the institution must then demonstrate to the PSA that real estate values have declined due to severe economic conditions that exist within that region.

The Board is proposing flexibility with regard to the evidence that the PSA may consider in making determinations regarding severe economic conditions. This evidence includes: increases in unemployment; decreases in personal income; and, in regions that are largely dependent on a single industry, evidence that such industry is undergoing economic problems, due to such factors as declining prices or income, that affect the economic health of the region. The impact of economic conditions on real estate values may be demonstrated based on a sampling of recognized indices or surveys reflecting changes in such values in the region, including appraisals for purposes of tax assessments. Alternatively, above average substandard loan ratios in the region, especially if the region is also suffering from high unemployment, may reflect a decline in real estate values in the region. The evidence that the PSA may consider is not limited to the foregoing; any other evidence that the PSA views as relevant and reliable may also be considered.

The Board seeks comment on this method of identifying regions and on the alternative method discussed below. The Board also requests comment on alternative factors that may be taken into account in determining whether a given region is economically depressed. Moreover, the Board is aware that declines in real estate values may be difficult to determine due to a scarcity of readily available, reliable data. The Board thus seeks comment on other methods of evaluating declines in real estate values.

Pursuant to CEBA, the Board is also proposing regulations to permit an insured institution to continue to operate and obtain capital forbearance if it has a weak capital condition that is primarily the result of losses recognized on its loans or its participation interests in loans, and it qualifies as a minority institution with 50 percent or more of its loans qualifying as minority loans or participations in minority loans, and 50 percent or more of its originated loans secured by one-to-four family residences.

By statute, the term "minority institution" is defined to mean that more than 50 percent of the ownership or control is held by minority individuals, and more than 50 percent of the net profit or loss accrues to minority individuals. The statute defines "minority individual" as any Black American, Native American, Hispanic American, or Asian American.

Institutions seeking forbearance must include in their request an explanation and documentation that, at the time of the request, they meet the tests set forth in the statute. The Board notes, however, that pursuant to the terms of the statute institutions cannot qualify for forbearance based on actions taken solely to qualify for forbearance.

The statute also permits the Board to grant capital forbearance to institutions with regulatory capital below 0.5 percent if the same requirements are met as those applicable to institutions with 0.5 percent regulatory capital or more and the institution has "reasonable and demonstrable prospects of returning to a satisfactory capital level." The Board proposes, in subparagraphs (c)(4) and (b)(3), that institutions may meet this standard by structuring their capital recovery plan, which is discussed generally in part C.2 of this preamble, without reliance on generalized hopes or expectations of economic improvements and other uncertain future events, and that such plan must set forth in detail a precise and readily attainable schedule for increasing regulatory capital through realistically achievable methods.

b. Alternative to Proposal.

Alternatively, the Board could adopt regulations that more precisely define statutory terms and standards. If the PSA determines that an institution meets these standards, the institution is granted forbearance. Institutions that do not meet some of the standards could still qualify for forbearance on a case-by-case basis. To do so, the institution would present additional evidence to the PSA that shows that the institution qualifies for forbearance under the provisions of CEBA.

The Board seeks comment on the advisability of following this approach and on definitions that may be appropriate for the various statutory terms and standards.

For instance, such elaboration of the standards could specify that an institution has a "weak capital condition" if it fails to meet its applicable minimum capital requirement; that such condition is "primarily" the result of certain loan losses if more than 50 percent of the reduction in capital is attributable to such loan losses; that "losses on loans" include losses recognized as a result of establishment of a specific allowance following classification of an item as a loss under the Board's classification regulations, 12 CFR 561.16c, 561.17–2, or as a result of direct writedowns of loans under Statement Number 5 of the Financial Accounting Standards Board; that collateral values may be shown to be "adversely affected" by economic conditions based on a comparison of property appraisals; that "control" of an institution is determined with reference to the power to exercise voting rights; and, ownership of a mutual institution is held by the accountholders.

The Board requests comment on: whether such elaboration of the statutory terms and standards is necessary or appropriate; the suggestions put forth in the proposal; and, alternatives to those suggestions.

Additionally, the Board seeks comment on whether the term "loans and participations in loans" needs further definition and whether such term should include interests in mortgage pools where risk of loss is related to defaults in the underlying mortgages. The Board also seeks comment on whether limits should be placed on how far back an institution and the PSA can look in considering losses on loans. Possible alternatives are to consider loans made during a specific period of time, for instance, four years prior to the request; or, losses incurred since an institution last met its capital requirement; or, losses incurred while the region is economically depressed.

The Board also seeks comment on alternative approaches to identify economically depressed regions. One approach is to establish by regulation the specific criteria to be used to determine whether a geographical region should be designated as "economically depressed." The Board would then periodically publish a list of regions that, based on available indices, appear to satisfy these specific criteria and hence be so designated. This approach would also permit institutions to demonstrate that other regions should also be considered to be economically depressed. The criteria, rather than the list of regions, would of course be the definitive standard.

If the Board were to establish these specific criteria and subsequently designate specific regions, it might do so on a statewide basis. The economic activity in urban, suburban, and rural areas is frequently interconnected; therefore, the geographical areas encompassed by these economic linkages may not coincide with specific local geographical boundaries. These circumstances argue for designation of economically depressed regions on a relatively broad basis, rather than on

the county or MSA level. Data for most specific criteria are readily available and are relatively more reliable on the state level.

Following is an example of criteria that could be used to designate economically depressed regions. CEBA defines an economically depressed region as a "region within which real estate values have suffered serious declines due to severe economic conditions, such as a decline in energy or agricultural values or prices." Because reliable indices for statewide real estate values are difficult to obtain, the average of substandard loan ratios of insured institutions in a state could be used as a proxy for declines in real estate values. Similarly, a state's unemployment rate could be used as a proxy for severe economic conditions, and the percentage of income derived from a state's primary sector industries could be used as a proxy for dependency on agriculture or energy. These sets of data are readily available on an annual basis for states.

To be designated as "economically depressed," a state would need a substandard loan ratio above the national average. A state would *also* need *either* an unemployment rate above the national average *or* the percentage income derived from primary sector industries above the national average. Any state satisfying these requirements on a specified date would be included on the published list of regions that appear to satisfy the regulatory criteria as described two paragraphs above.

Under this alternative, the Board would annually publish before the beginning of the calendar year the list of states that meet the criteria discussed above. The Board realizes that additional data could be available to individual institutions that could show that regions other than these states also have experienced declines in real estate values due to severe economic conditions. An institution may present this data to its PSA on a case-by-case basis. If the PSA finds the data convincing and the other conditions for forbearance have been met, then the institution would be granted forbearance.

Comment is sought on all aspects of this approach, including whether the regions should be identified on a statewide basis or other bases, and the criteria to be used to designate economically depressed regions.

2. The Capital Plan

To be approved for capital forbearance, an applicant also must submit and receive approval of a plan for increasing its capital. The Board proposes in paragraph (d) that such plans may be approved if, at a minimum, they set forth a strategy, including forecasts and pro forma financial statements, to increase capital to required levels within five years of the date of the request. Further, such plans must contain a detailed description of the steps the insured institution will take to meet its requirements including such actions as capital infusions, mergers, and operating changes to increase regulatory capital or decrease asset size. The plan should also specifically describe lending and investment strategies during the forbearance period, asset-liability growth, dividend levels, and operating costs, including compensation of officers and directors. The PSA may require that the plan include other restrictions or requirements before approving the plan.

3. Submission of Reports

The statute further provides for insured institutions that have been granted forbearance to submit regular and complete reports on progress in meeting the goals set forth in the plan.

The Board proposes in paragraph (e) that such reports be filed at least semiannually. The PSA, however, is given authority to require more frequent reports if necessary to monitor the institution's compliance with its plan. Such reports must provide the PSA with a detailed ongoing evaluation of capital recovery progress and describe and explain the reasons for any deviations from the schedule, methods, operations, or goals set forth in the plan.

These reports, along with on-site examinations, when necessary and appropriate, of institutions which have been granted capital forbearance are an important tool for the PSA in determining whether an institution is adhering to its plan. Consequently, the Board is proposing in paragraph (g) that either failure to file timely and complete reports as required, or failure to comply with its capital plan, provides a basis for the PSA to terminate an institution's grant of forbearance. Other reasons for termination are set forth in the section of this preamble relative to termination of forbearance.

4. Management and Operating Practices

Congress sought to assure that capital forbearance, as provided by CEBA, would be available to well-managed institutions not suffering from weak capital condition as a result of imprudent operating practices.

During the Senate debate on CEBA, Senator Garn in a colloquy with Senator Proxmire, stressed that the capital forbearance provisions were not intended to provide a safe harbor for:

> [the] small minority of the industry, (which) has operated in an unsafe and unsound condition—often engaging in fraudulent and reckless investment strategies, self dealing, conflicts of interest and a whole host of otherwise repugnant business practices in violation of statutes, regulations, ethics, their fiduciary duties and plain decent business standards.

133 Cong. Rec. S11209–10 (daily ed. August 4, 1987) (statement by Senator Garn during colloquy with Senator Proxmire).

The regulation, therefore, provides in paragraphs (c) and (f) that an institution will not be approved for capital forbearance if the PSA determines that the institution is not well-managed or that the institution's weak capital condition is the result of imprudent operating practices. This determination is within the discretion of the PSA and may be based on a review of the institution's past and present management structure and operating practices, including the experience and past performance records of management officials. Such review may include materials submitted by the institution seeking forbearance, from past examination reports and the supervisory history of the institution, as well as any other relevant information concerning the institution or members of its management.

In paragraph (f)(1) the Board proposes a list of factors that the PSA may consider in determining whether an insured institution is not well-managed. None of these factors are necessarily dispositive of a request for forbearance, nor does the Board intend to limit the PSA's review to these factors. Among the factors that may be taken into account are management's record of operating the institution and whether this record indicates management's ability to guide successfully the institution through its present difficulties. Additionally, management's record of compliance with regulations, directives, agreements, and orders may be considered. An institution may be deemed not well-managed if its management does not timely recognize and correct regulatory violations, unsafe or unsound practices, or other weaknesses identified by examiners or supervision. Management's ability to operate the institution under fluctuating economic conditions is critical in assessing its ability successfully to guide the institution through its present difficulties. Management's ability to develop and implement the capital forbearance program is crucial in

evaluating the possibility that an institution can achieve its minimum capital requirements within the scheduled time. These factors and any others examined by the PSA may be considered with regard to service by any member of management at other insured institutions, commercial banks, or other financial institutions.

In reviewing the management structure of the institution, the PSA may review past, as well as present, management officials and their records and consider the length of tenure of present management officials. The PSA may consider the impact of recent changes in management that would result, in the PSA's opinion, in that institution's improving its quality of management.

In paragraph (f)(2), the Board proposes a list of factors that may be considered by the PSA in determining whether an institution's weak capital condition is the result of imprudent operating practices. In accordance with the statute, imprudent operating practices include practices that were speculative at the time they were undertaken, insider abuses, excessive operating expenses, excessive dividends, and actions taken solely for the purpose of qualifying for forbearance. The proposed regulation also provides that conflicts of interest, substandard underwriting practices, and unsafe or unsound practices also constitute imprudent operating practices. The PSA is not limited to these factors in his evaluation.

In determining whether imprudent operating practices prevent an institution from receiving capital forbearance, the PSA may also consider recent corrections of imprudent operating practices, significant management changes, and the likelihood that imprudent operating practices will continue.

A question arises, however, as to what standard may be appropriate in determining whether imprudent operating practices have resulted in an institution's having a weak capital condition, thus providing a basis for denial of forbearance. One approach is that forbearance may not be granted if losses as a result of imprudent operating practices were large enough to have been the sole cause of an institution's failure to meet its minimum capital requirement. The Board seeks comment on whether such a standard should be adopted and on any alternatives that may be appropriate.

Any determinations made pursuant to paragraph (f) are solely for purposes of determining whether an insured institution qualifies for capital forbearance. Such determinations are not binding on the Board and do not prevent the Board from bringing any future supervisory, enforcement or other legal actions against an institution. These determinations are not dispositive or relevant in any pending or future supervisory, enforcement or other legal actions. Therefore, for example, if a removal or prohibition proceeding was initiated against a management official of an institution that has been approved for capital forbearance, that individual may not claim, as a defense, that the institution, in connection with that approval, has been deemed to be well-managed and to have engaged in prudent operating practices.

D. Termination of Forbearance

Once the PSA determines that an institution qualifies for capital forbearance, it continues to qualify for up to five years until, in accordance with paragraph (g), the PSA determines that the institution should no longer qualify. In that paragraph, the Board proposes grounds for termination of capital forbearance. For the most part, these relate to changes in an institution's operations that were not contemplated or existing at the time capital forbearance was granted. The grounds for termination include: (1) An institution's failure to comply with its capital plan; (2) its failure to submit the reports required by paragraph (e); (3) a determination that the institution's regulatory capital was below, rather than at or above, 0.5 percent at the time forbearance was granted or otherwise was less than represented; and, (4) violations of any agreement with, or an order issued by, the Board or the Corporation.

In addition, the PSA may disqualify an institution from capital forbearance upon the discovery of information not available at the time the institution qualified, which indicates that forbearance should not have been granted. The PSA may terminate capital forbearance if: the institution engages in abusive, unsafe or unsound, or other imprudent practices; undergoes a change in control or material change in management that was not approved by the PSA; or, engages in practices inconsistent with achieving its minimum capital requirement.

The presence of these factors would not require automatic termination. The PSA has the discretion to determine whether forbearance should be terminated if one or more of these factors exist. Alternatively, the proposal provides that in the event termination is considered because an institution fails to comply with its capital plan, the PSA may permit the institution to revise its plan and, if the revised plan is acceptable, continue the grant of forbearance.

In addition, the Board requests comment on whether a grant of forbearance should be terminated based upon improvement in economic conditions in the region that was identified as economically depressed by the institution.

The Board also believes it would be advisable that before the PSA terminates forbearance, the institution should be so advised and, where circumstances allow, the PSA should provide the institution with an opportunity to address the reasons for termination. Finally, the Board proposes that any termination of capital forbearance must be contained in a written notice to the insured institution that sets forth the reasons for the termination. Such termination would take effect upon receipt by the institution of such notice. A decision by the PSA to terminate capital forbearance would be considered the final action of the Board or Corporation; however, comment is sought on this point. *See* Part F infra.

E. Status of Supervisory, Enforcement, and Other Actions During Capital Forbearance Participation

The legislative history is clear that administrative actions that are stayed during the period of capital forbearance are limited to those that relate to failure to adhere to minimum capital requirements. Other appropriate supervisory actions against institutions are unrestricted. As stated in the report of the Conference Committee:

> The capital recovery program is not intended to restrict any authority of the Bank Board to correct any fraud, criminal activity, imprudent operating practices or managerial incompetence.

H. Rep. No. 100–261, 100th Cong., lst. Sess. 165 (1987). The granting of capital forbearance under CEBA is, therefore, not viewed as providing protection to an institution from all supervisory or enforcement actions.

Paragraph (h) addresses the status of supervisory, enforcement, and other actions against institutions that are operating under a grant of capital forbearance. While an insured institution is participating in the capital forbearance program, the Board and the Corporation will not issue a capital directive pursuant to section 406 of CEBA, institute supervisory or enforcement action to enforce the institution's minimum capital requirement, take action to terminate

the institution's insurance as a result of its weak capital condition, or place the insured institution in conservatorship or receivership based on the insured institution's inadequate capital. However, the Board and the Corporation recognize that institutions may suffer from other problems that must be addressed by supervisory or enforcement action. Therefore, the Board and the Corporation will not refrain from taking any appropriate action against a participating institution for matters other than inadequate capital, or from taking any appropriate action against any individual or entity, other than the institution, for any matter including inadequate capital. In fact, a supervisory agreement or a cease-and-desist order may be necessary for an institution receiving capital forbearance to address operating deficiencies. In addition, any existing agreements with, or orders against, the institution and all regulations that address, relate to, include a reference to, or otherwise concern regulatory capital are not changed or voided by an institution's capital forbearance status. The institution may, however, request a modification or termination of any order or agreement or a waiver or modified application of any regulation, in connection with, or subsequent to, qualifying for forbearance. Modification or termination of some of these actions may be carried out only by the Board, not the PSA. This may or may not be done in conjunction with the granting of forbearance.

F. Procedures

Section 416 of CEBA provides that the provisions relating to capital forbearance shall cease to be effective on the date that the Financing Corporation created pursuant to section 302 has completed all net new borrowing and provides a notice of such fact in the **Federal Register.**

The last date, however, on which the Financing Corporation can engage in net new borrowing is uncertain. Although CEBA sets an annual borrowing limit of $3.75 billion, the actual amount the Financing Corporation is able to borrow each year will be determined by a number of factors. If the Financing Corporation maximizes its borrowing, the shortest period of time in which it will exhaust its net new borrowing authority will be slightly more than 2 years. Notification that the Financing Corporation has achieved its net borrowing limit will be indicative of the termination of the Board's authority under CEBA to accept additional applications for capital forbearance. The expiration of the Board's authority to accept applications for capital forbearance under CEBA will not affect institutions whose applications were submitted before that time or those whose requests were previously approved.

The Board proposes that all requests for forbearance include a detailed showing that the applicant meets the requirements previously discussed and a plan that meets the requirements set forth in proposed paragraph (d).

Requests for capital forbearance will be processed in accordance with the Notice and Disapproval Procedures adopted by the Board on October 2, 1987.[2] If, however, within 30 days of a properly filed request, the PSA determines that an examination is necessary in connection with that request, the request will not be deemed complete until the examination is completed.

The Board proposes that denial of such request be in writing with a statement of the reasons for the denial. Any action taken by the PSA that results in a grant or denial of a request for capital forbearance, or the termination of forbearance, will be considered the final action of the Board or the Corporation. The Board, however, is considering alternatives to this approach, which include providing for Board review of PSA decisions or a process whereby a PSA decision can be appealed to the Board or its designee. Comments are sought on the advisability of such a review or appeal process and suggested alternatives.

G. Other Matters

The Board is also proposing to expand the existing waiver provision of the loans-to-one-borrower regulation at 12 CFR 563.9–3(b)(4), which has been too narrow to address the limitations imposed by the regulation on institutions with low capital levels. The proposal would enable the Board, or the PSA, in accordance with guidelines approved by the Board, to waive the loans-to-one-borrower limits in connection with resolving or managing a supervisory case. This would include assisted or non-assisted acquisitions approved by the Board or PSA and the daily supervisory oversight of the PSA over institutions with deficit capital. The Board contemplates that any institution granted capital forbearance would be a supervisory case and could request a waiver of the loans-to-one-borrower limits imposed by the regulation.

[2] Resolution No. 87–1038. A notice of those guidelines is published elsewhere in this issue of the **Federal Register.**

Finally, the Board advises that it does not anticipate that a denial of a request for capital forbearance will be followed by supervisory action or the appointment of a conservator or receiver. Rather, the Board expects that such an institution will be subject to the same supervisory treatment to which it would have been subjected had it not filed a request for forbearance.

III. Solicitation of Comment

The Board solicits comment on all aspects of this proposal without limitation and will consider all comments received. Furthermore, public hearings on this proposal, as well as all others adopted by the Board on October 2 and October 5, 1987, will be held on November 3 and 4, 1987. A notice of these hearings is provided elsewhere in this issue of the **Federal Register.**

IV. Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions without regard to size.

3. *Impact of the proposed rule on small entities.* All institutions, regardless of size, would be permitted to obtain capital forbearance as long as they are well-managed, viable institutions meeting the various requirements set forth in section 404 of CEBA as implemented by this proposal. Such institutions would be permitted to operate and not be subject to supervisory action as a result of failure to comply with capital requirements as long as they remain in compliance with their capital plan.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above **SUPPLEMENTARY INFORMATION** the Board is soliciting comment on the rule as proposed.

List of Subjects in 12 CFR Part 563

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 563, Subchapter D, Chapter V, Title

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12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.9–3 by revising paragraph (b)(4) to read as follows:

§ 563.9–3 Loans to one borrower.

* * * * *

(b) *Limitations*—(1) *Aggregate loans* * * *

(4) *Waiver.* The Board or the PSA, in accordance with guidelines approved by the Board, may waive the application of the limitations in this paragraph (b) to any loan in connection with the resolution or management of a supervisory case.

* * * * *

3. Amend Part 563 by adding a new § 563.47 to read as follows:

§ 563.47 Capital forbearance.

(a) *Purpose.* This section implements section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, which requires that the Board and the Corporation adopt regulations for regulating and supervising troubled but well-managed and viable insured institutions so as to maximize the long-term viability of the thrift industry at the lowest cost to the Corporation by permitting qualifying institutions to continue to operate and be eligible for capital forbearance.

This section sets forth the procedures and the conditions under which an insured institution may qualify for capital forbearance and thereby not be subject to supervisory or enforcement action to enforce its minimum capital requirement or terminate its insurance or be placed in conservatorship or receivership based on the institution's inadequate regulatory capital. They also indicate the circumstances under which capital forbearance may be terminated.

(b) *Definitions.* When used in this section

(1) "*Economically depressed region*" means any geographical region with established political boundaries or a Metropolitan Statistical Area that has suffered severe economic conditions as determined by the Principal Supervisory Agent, whose consideration may include any or all of the following factors and any other data which are presented by an institution in support of a claim that a region is economically depressed:

(i) The economic base of the region is largely dependent on one particular employer or industry and that employer or industry is experiencing decline;

(ii) Increased unemployment in such region;

(iii) Real estate values have declined in such region as measured by a sampling of recognized indices or surveys measuring such values in that region;

(iv) Declines in personal income levels in such region; or,

(v) Increased substandard loan ratios of insured institutions in such region.

(2) "*Principal Supervisory Agent*" has the same meaning as supplied by § 541.18 of this chapter.

(3) "*Reasonable and demonstrable prospects*" means that the plan to meet specified capital levels sets forth in detail a precise and readily attainable schedule for increasing regulatory capital through realistically achievable methods and does not rely upon unrealistic predictions of economic improvements or other uncertain future events.

(c) *Qualifying for capital forbearance.* The Principal Supervisory Agent may permit insured institutions to continue to operate and obtain capital forbearance, except as provided in paragraphs (f) and (g) of this section, if

(1) The insured institution, at the time it submits its request for forbearance, has a weak capital condition;

(2) The insured institution's weak capital condition is primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of loans or participations in loans that are:

(i) Secured by collateral whose value is determined, in the discretion of the Principal Supervisory Agent, to have been adversely affected by economic conditions in an economically depressed region; or

(ii) Made by a minority institution that has

(A) 50 percent or more of its loans qualify as minority loans or participations in minority loans; and

(B) 50 percent or more of its originated loans secured by one-to-four family residences;

(3) The insured institution submits and the Principal Supervisory Agent approves a capital plan that meets the requirements of paragraph (d) of this section for increasing the insured institution's regulatory capital to the required level; and

(4) The insured institution, if its capital as calculated in accordance with § 561.13 at the time it requests forbearance is less than 0.5 percent, demonstrates and the Principal Supervisory Agent determines, in his discretion, that the institution has evidenced in its plan reasonable and demonstrable prospects for achieving its required level of regulatory capital thereafter, but not later than five years after the date of the request for forbearance.

(d) *The capital plan.* The plan referred to in paragraph (c)(3) of this section must contain a detailed description of the steps the insured institution will take to meet its minimum capital requirements, including capital infusions, mergers, and operating changes to increase regulatory capital or decrease asset size. The plan should also address the insured institution's operations during the time it has capital forbearance, including lending and investment strategies, asset-liability growth, dividend levels, and compensation of directors and officers. The plan must include forecasts and pro forma financial statements and set forth a reasonable time frame for achieving minimum capital that is not to exceed 5 years. The Principal Supervisory Agent may require that the plan include other restrictions or requirements before approving the plan.

(e) *Reporting.* Any insured institution determined by the Principal Supervisory Agent to qualify for capital forbearance shall submit thorough and complete reports on such insured institution's progress in meeting the goals set forth in its capital plan. Such reports must provide the Principal Supervisory Agent with a detailed ongoing evaluation of capital recovery progress and explain any deviations from the schedule, methods, operations or goals set forth in the plan. These reports shall be submitted as frequently as required by the Principal Supervisory Agent, but not less than semiannually.

(f) *Management and operating practices.* The Principal Supervisory Agent must review the past and present management structure and operating practices of any insured institution that has submitted a request for capital forbearance and shall not approve that request if the Principal Supervisory Agent determines that the institution is not well-managed or that the institution's weak capital condition is

the result of imprudent operating practices.

(1) In determining whether an insured institution is not well-managed, the Principal Supervisory Agent may consider, among other things, the management's—

(i) Record of operating the insured institution, including those operating practices not reviewed under paragraph (f)(2) of this section;

(ii) Compliance with regulations, directives, agreements, and orders;

(iii) Timely recognition and correction of regulatory violations, unsafe or unsound practices, or other weaknesses identified through the examination or supervisory process;

(iv) Ability to operate the insured institution in changing economic conditions; and

(v) Ability to develop and implement the capital plan.

These factors may be considered with regard to service by any member of management at other insured institutions, commercial banks, or other financial institutions. The Principal Supervisory Agent also may take into account whether management has taken actions solely to qualify for capital forbearance.

(2) In determining whether the insured institution's weak capital condition is the result of imprudent operating practices, the Principal Supervisory Agent shall review the circumstances resulting in the institution's weak capital condition and determine whether they involve imprudent operating practices including, but not limited to:

(i) Practices that were speculative at the time they were undertaken;

(ii) Insider abuse and conflicts of interest;

(iii) The payment of excessive dividends;

(iv) Substandard underwriting of loans and investments;

(v) Unsafe or unsound practices within the meaning of 12 U.S.C. 1464(d)(2), 1730(e);

(vi) Excessive operating expenses; and

(vii) Actions taken solely to qualify for capital forbearance.

(3) Any determinations made pursuant to this paragraph (f) are solely for purposes of determining whether an insured institution qualifies for capital forbearance and are not binding or in any way dispositive of any pending or future supervisory, enforcement or other legal actions.

(g) *Termination of capital forbearance status.* (1) The Principal Supervisory Agent may determine that an institution does not qualify for capital forbearance or no longer qualifies for capital forbearance status, if:

(i) The institution fails to comply with its capital plan;

(ii) The institution undergoes a change in control or a material change in management that was not approved by the Principal Supervisory Agent;

(iii) The institution engages in practices inconsistent with achieving its minimum capital requirement;

(iv) Information is discovered that was not made available to the Principal Supervisory Agent at the time the institution qualified for capital forbearance and that indicates that forbearance should not have been granted;

(v) The institution's regulatory capital at the time of requesting forbearance was reported to be at least 0.5 percent, but is later found to have been below 0.5 percent;

(vi) The institution engages in abusive, unsafe or unsound, or other imprudent practices;

(vii) The institution violates an agreement with, or order issued, by the Board or Corporation; or

(viii) The institution fails to submit the reports required by paragraph (e) of this section.

(2) The Principal Supervisory Agent shall notify an insured institution in writing if it no longer qualifies for capital forbearance stating the reasons for the termination. Such termination shall take effect upon receipt of such notification by the insured institution.

(3) As an alternative to denying or terminating capital forbearance, the Principal Supervisory Agent may permit the insured institution to revise its plan, and if such revision is approved by the Principal Supervisory Agent, capital forbearance may be granted or continued.

(4) Any action by the Principal Supervisory Agent to terminate capital forbearance is deemed to be final action of the Board or Corporation.

(h) *Status of supervisory, enforcement and other actions during capital forbearance participation.* While an insured institution qualifies for capital forbearance, the Board and the Corporation will not issue a capital directive pursuant to 12 CFR 563.14–1, institute supervisory or enforcement action to enforce the institution's capital requirement, or take action to terminate the institution's insurance, or place the insured institution in conservatorship or receivership based on the insured institution's inadequate capital. However, the Board and the Corporation will not forbear from taking any appropriate action against the insured institution for matters other than inadequate capital, or any appropriate action against any other individual or entity other than the institution for any matter, including inadequate capital. All existing actions including supervisory agreements and orders remain in effect unless lawfully modified or terminated. In addition, the effectiveness of all regulations that address, relate to, or include a reference to regulatory capital or net worth remains the same as before forbearance was granted.

(i) *Procedures.* (1) An insured institution seeking capital forbearance must submit a written request to the Principal Supervisory Agent. The request must consist of:

(i) A detailed showing, including documentation, by the insured institution that it is eligible for capital forbearance because it meets the requirements of paragraphs (c) (1) through (4) and (f) of this section; and

(ii) A plan meeting the requirements of paragraph (d) of this section;

(2)(i) Requests for capital forbearance will be processed in accordance with Board Resolution No. 87–1038, unless within 30 days of the receipt of a properly filed request, the PSA notifies an institution that an examination is necessary in conjunction with its request, in which case the request will not be deemed complete until the examination is completed.

(ii) If the request is denied, the Principal Supervisory Agent shall notify the institution in writing and state the reasons for the denial.

(3) Any action by the Principal Supervisory Agent to grant or deny a request for forbearance is deemed to be final action of the Board or Corporation.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–23658 Filed 10–19–87; 8:45 am]

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12 CFR Part 563

[No. 87–1045]

Minimum Regulatory Capital Requirements for Individual Insured Institutions

Date: October 5, 1987.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing rules to

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implement its authority to set and enforce regulatory capital requirements for all institutions the accounts of which are insured by the FSLIC ("insured institution(s)" or "institution(s)"). The Board is proposing these regulations pursuant to the authority granted it by Section 406 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552 ("CEBA"), which was signed into law on August 10, 1987, and pursuant to its general authority to promulgate regulations under 12 U.S.C. 1437(a), 1725(a), and 1730.

This proposal would implement the authority granted the Board and the FSLIC by Section 406 of CEBA to vary the minimum regulatory capital requirements of an individual insured institution as may be necessary or appropriate in light of the particular circumstances of the insured institution. It would also establish procedures for implementing the authority granted by Section 406 to issue a directive and enforce a plan for increasing an individual insured institution's capital level. The Board requests comments on all aspects of this proposal. The Board notes that it intends to hold a public hearing on this proposal, together with other proposals published in accordance with CEBA's requirements. Details of this hearing are provided in a notice published elsewhere in today's edition of the **Federal Register**.

DATE: Comments must be received on or before November 19, 1987.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Jerilyn Rogin, Attorney-Advisor, (202) 377–7018, John F. Connolly, Deputy Director for Capital and Finance, (202) 377–6465, Regulations and Legislation Division, Office of General Counsel; Marianne Roche, Deputy Director, Office of Enforcement, (202) 653–2609; Donald G. Edwards, Director, Financial and Quantitative Analysis, (202) 377–6914, Edward A. Hjerpe III, Financial Economist, (202) 377–6976, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Edward J. Taubert, Associate Director for Policy, (202) 778–2511, Carol Larson, Professional Accounting Fellow, (202) 778–2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board consistently expresses its conviction that achieving and maintaining adquate capital levels are crucial to the safety and soundness of insured institutions and the FSLIC deposit insurance fund. For example, in the preamble to its revised regulatory capital regulation, adopted last year,[1] the Board set forth comprehensive policy reasons for requiring insured institutions to increase their capital and for setting a minimum six percent capital requirement. It explained that the previous requirement did not provide adequate protection for insured institutions, their depositors, or the FSLIC fund. The Board continues to believe that it is imperative that all insured institutions achieve a minimum six percent capital level as quickly as feasible.[2]

The Board is also well aware that setting capital requirements using a uniform formula for all insured institutions may not be appropriate in all circumstances. For this reason, the capital regulation includes separate components that are intended to address the risk presented by the type and level of an individual insured institution's assets and liabilities. The capital regulation does not, however, include a mechanism that takes sufficient account of the continuously changing financial positions and exposure to risk of the more than three thousand individual insured institutions under the supervision of the Board.

With the enactment of Section 406 of CEBA, which amends both Section 5 of the Home Owner's Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464, and Section 407 of the National Housing Act, ("NHA"), 12 U.S.C. 1730, Congress has explicitly empowered[3] the Board and the Corporation to exercise much more discretion with respect to the required capital levels of any given insured institution.[4] Sections 406(a) and 406(b) of CEBA provide, in part, that the Board may set the required captial level of insured institutions on a case-by-case basis as it "determines to be necessary or appropriate for such insured institution in light of the particular circumstances of the insured institution."

Since the passage of Section 908 of the International Lending Supervision Act of 1983 ("ILSA"), Pub. L. 98–181, 97 Stat. 1278, *codified at* 12 U.S.C. 3907, the federal banking regulators have had the explicit authority to set the minimum capital requirements of individual banks on a case-by-case basis. Pursuant to Section 908 of ILSA, the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Federal Reserve Board ("FRB") have promulgated regulations requiring banking institutions generally to achieve and maintain a minimum acceptable ration of total captial to total assets of six percent, and a minimum primary captial ration of five and one-half percent of adjusted total assets.[5]

Section 908 of ILSA specifically provides, however, that the bank regulators may "establish such minimum levels of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." ILSA at 908(a)(2).[6] In

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[1] On August 15, 1986, the Board adopted its revised regulatory capital regulation [hereinafter, "capital regulation"] establishing the levels of capital required for all insured institutions. *See* Board Res. No. 86–857, 51 FR 33565–88 (Sept. 22, 1986), *codified at* 12 CFR 563.13 (1987).

[2] This subject was analyzed exhaustively by the Board's Office of Policy and Economic Research before adoption of the capital regulation. *See An Analysis of the Proposed Capital Requirements for Thrift Institutions: A Staff Economic Study* (Aug. 15, 1986). The Board hereby incorporates the discussion in the preambles to the proposed and final capital regulations concerning the reasons for attaining such levels. Board Res. No. 86–428, 51 FR 16550 (May 5, 1986); 51 FR at 33571–73.

[3] Section 403(b) of the NHA, 12 U.S.C. 1726(b), provides the FSLIC with express authority to require an institution, as a condition precedent to receiving account insurance from the FSLIC, to provide adequate reserves in a form satisfactory to the FSLIC. This authority over capital levels is similar to that granted by Section 406 of CEBA.

[4] All federal savings and loan associations and federal savings banks are chartered and regulated under the HOLA and the regulations promulgated thereto. Most of these same institutions are also insured by the FSLIC and required to comply with the NHA and its implementing regulations. Federal savings banks that are insured by the Federal Deposit Insurance Corporation are encompassed within the definition of insured institution in Section 561.1, unless expressly exempted by a specific regulation. In order to be consistent with and in proximity to the existing regulatory capital regulation that appears in Part 563 of the FSLIC regulations, this proposed rule is issued as a FSLIC regulation and would appear in Part 563. The Board, as operating head of the FSLIC, can implement the amendments to both the HOLA and the NHA in this way.

[5] The Board is aware that these banking regulators have recently proposed to revise their minimum capital requirements by proposing risk-based capital guidelines. The Board intends to monitor closely the progress of these regulatory initiatives, consistent with the intent of section 406 of CEBA.

[6] The legislative history of Section 908 of ILSA demonstrates that it was a specific legislative response to a judicial decision that brought into question the authority of a federal bank regulator to establish an individualized minimum capital requirement for a particular bank. *See First*

Continued

accordance with that statutory provision, the implementing regulations adopted by the federal banking agencies authorize the discretionary exercise of broad power to require different captial levels for individual institutions. For example, the OCC regulations set forth at 12 CFR 3.1 *et seq.* state that capital ratios higher than the generally applicable ratios may be appropriate for a newly chartered bank, a bank receiving special supervisory attention, or a bank having a high proportion of off-balance sheet risks. 12 CFR 3.10 (1987.[7]

With Section 406 of CEBA, which is closely patterned after Section 908 of ILSA, Congress has expressly provided the Board and the Corporation with the authority to vary insured institutions' minimum capital requirements on a case-by-case basis. Therefore, in accordance with the authority Congress explicitly conferred in the new legislation and in the interest of the safety and soundness of all insured institutions and the integrity of the FSLIC fund, the Board today is proposing to issue rules establishing procedures by which the Board, in its discretion, may increase the required capital level of any given insured institution as its particular circumstances may warrant.

Proposed Rule and Request for Comment

The Board believes that these proposed rules willl help to protect the FSLIC fund and insured institutions' depositors in the wake of the serious financial situtation that currently besets the depository insurance system. The Board is also of the opinion that this proposal comports with the Congressional mandate, set forth in Section 406 of CEBA, that the Board establish minimum capital requirements for insured institutions consistent with the other banking agencies' capital requirements. Congress held lengthy hearings and received extensive testimony on the public need for more effective supervision of FSLIC-insured institutions. In enacting Section 406 of CEBA, Congress granted the Board supplemental authority to strengthen its supervisory efforts. Moreover, Congress apparently views this authority as a critical component of the effective supervision of a federal system of deposit insurance where "capital is the touchstone of financial integrity and guardian of the guarantee of federal insurance." [8]

The Board notes that the rules proposed today are, in most respects, similar to rules implementing Section 908 of ILSA that have been adopted by the OCC, the FDIC, and the FRB. The rules adopted by these bank regulatory agencies were adopted in final form after full consideration of public comment. Thus, the Board believes they provide appropriate models for the Board's own proposed implementing regulations.

Section 406 of CEBA also provides that the Board shall require all insured institutions to achieve and maintain adequate capital consistent with the purposes of the capital requirements of the other banking agencies established pursuant to Section 908 of ILSA. The Board, therefore, requests comments at this time not only concerning this proposed rule, but also concerning the implementation of the statutory mandate contained in Section 406 of CEBA that the Board revise its general captial requirements for insured institutions consistent with the purposes of Section 908 of ILSA and with the federal bank regulators' captial requirements.[9]

Higher Capital Requirements for Individual Insured Institutions

The minimum capital requirements set forth in § 563.13 of the Board's regulations are intended to apply to sound institutions without significant risks or problems. More captial may be appropriate or necessary for individual institutions, such as those that have a high degree of exposure to interest-rate risk, credit risk, the risk associated with excessive growth, or the risk resulting from a poor underwriting record. As noted above, Section 406 of CEBA explicitly authorizes the Board to establish higher minimum capital levels for all insured institutions on a case-by-case basis [hereinafter referred to as "individualized minimum capital requirement(s)"].

The Board proposes to establish a procedure for setting individualized minimum capital requirements higher than those set forth in § 563.13. It provides for notification to institutions by their Principal Supervisory Agents ("PSA(s)") of their proposed individualized minimum capital requirements, subsequent response by insured institutions, and the establishment of individualized minimum capital requirements for institutions by their PSAs with the concurrence of the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS"). The Board is proposing to delegate the authority to determine appropriate individualized minimum capital requirements for insured institutions to the PSAs because they and their staffs generally are most familiar with the specific financial, economic, and operational characteristics of insured institutions within their districts, which may reflect a need for increased capital. The concurrence of ORPOS is necessary before a higher minimum individualized capital requirement may be set because that office is responsible on the national level for matters relating to the examination and supervision of insured institutions and, through involvement in this process, can promote national uniform application of this authority to set individualized minimum capital requirements. In the further interest of national uniform application, the Board, from time to time, may establish policies and procedures to control the PSAs' exercise of their delegated authority under proposed § 563.14(b).

This proposed rule sets out examples of situations where higher minimum capital levels may be necessary or appropriate and examples of the factors that the PSAs might consider in deciding upon an appropriate individualized minimum capital requirement for an insured institution. These examples are not intended to be all inclusive, since it is not possible to predict exactly in advance each situation in which higher capital levels may be necessary or every factor that should be considered in a particular situation.[10] Generally, higher capital levels are necessary and will be required for insured institutions that are exposed to excessive risks or that require special supervisory attention.

The specific procedure proposed today for establishing individualized minimal capital requirements provides that an insured institution would have reasonable opportunity to respond to the notification of a proposed individualized

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National Bank of Bellaire v. Comptroller of the Currency, 697 F.2d 674 (5th Cir. 1983).

[7] *See also* 12 CFR 325.1 *et seq.* and Appendix A to 12 CFR Part 225 (1987).

[8] 133 Cong. Rec. S11,208; S11,210 (daily ed. Aug. 4, 1987).

[9] On June 10, 1987, the Board proposed to amend the capital regulation to compute industry profitability by using the median return on assets of all insured institutions that are solvent under generally accepted accounting principles. 52 FR 23845 (June 25, 1987). In light of the statutory authority granted the Board by Section 406 of CEBA, the Board has determined to consider this proposal in conjunction with any other changes in the captial regulation it may propose in the future.

[10] The Board does not contemplate that capital requirements determined through the use of these factors will duplicate the incremental requirements under the contingency component of the capital regulation, § 563.13.

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minimum capital requirement and to submit any supporting documentation once an individualized minimum capital requirement is proposed. The PSA would notify the insured institution in writing of the individualized minimum capital requirement that the PSA believes is appropriate for that insured institution, the incremental additions to capital comprising the schedule for reaching compliance with that new requirement, and an explanation of why that capital level is appropriate. The PSA would also, at that time, send ORPOS a copy of this written notification and the supporting documentation. The insured institution would have thirty days in which to respond to the PSA in writing unless the response period is shortened or extended for good cause, and the reason thereof stated in the notification. The PSA will send a copy of the original notification and the institution's response to ORPOS immediately upon receipt of the response.

The notice and response process would give the PSA and the insured institution the opportunity to communicate regarding the feasibility of the schedule and the incremental capital requirements comprising the compliance schedule. This period will also provide time for consultation between the PSA and ORPOS. Unless further information or clarification of the institution's response is required, a decision would be reached promptly after the close of the response period. The PSA would send his recommended decision and the basis for that decision to ORPOS, which must concur before the decision becomes effective and the insured institution is notified. Then the PSA would inform the insured institution of the PSA's decision and of the schedule under which the individualized minimum capital requirement must be achieved. The individualized minimum capital requirement would become effective upon receipt of that information by the institution. This proposed notification and response procedure for imposing individualized minimum capital requirements is intended to be informative and fair, while encouraging close cooperation between the PSAs at the district bank level and ORPOS at the national level.

Capital Directives

Section 406 of CEBA also authorizes the Board to issue a directive if an insured institution fails to meet its capital requirement ("capital directive"), whether it is the general requirement under § 563.3 alone or is an individualized minimum capital requirement under proposed § 563.14. If the Board is issuing a capital directive because an insured institution has violated § 563.13 or an agreement or order setting a specfic capital requirement for an individual institution, the Board would follow only those procedures for issuance of a capital directive that are set forth in proposed § 563.14–1. In this situation, the Board would not employ the notice and response procedure for setting an individualized minimum capital requirement under § 563.14. On the other hand, a capital directive may also be issued to an insured institution for failure to satisfy an individualized minimum capital requirement. Such a requirement must have been established pursuant to the notice-and-response procedure set forth in proposed § 563.14 before a capital directive or other enforcement action could be taken for an institution's failure to comply with such a requirement.

A capital directive will set forth a date by which the insititution must meet its minimum capital requirement, as established under § 563.13 or § 563.14 or in an agreement with or order issued by the Board or Corporation. It generally will require the institution to achieve interim levels of capital over time before that specified date and will require it to submit and adhere to a capital plan describing the means and a time schedule for achieving those capital levels. The capital directive may also require the institution to take other actions to achieve its capital requirement, including reducing its liability growth or asset size, limiting dividend payments, and taking any action authorized under § 563.13(d).

Pursuant to Section 406 of CEBA, capital directives and capital plans submitted pursuant to capital directives are enforceable under Section 5(d)(8) of the HOLA, 12 U.S.C. 1464(d)(8), or Section 407(k) of the NHA, 12 U.S.C. 1464(d)(8), or Section 407(k) of the NHA, 12 U.S.C. 1730(k), as appropriate, in the same manner and to the same extent as final cease-and-desist orders issued by the Board or Corporation. Therefore, these capital directives and capital plans may be enforced through petition to the appropriate United States district court or through the imposition of civil money penalties of up to $1000 a day against the institution or against any officer, director, or employee/agent or other person participating in the conduct of the affairs of that institution who violates the directive or the plan. *See* 12 U.S.C. 1464(d)(8) and 1730(k).

The enforceability of those capital directives and plans make them formal enforcement tools of the Board and the Corporation that are, in many respects, similar to cease-and-desist orders.[11] Because of the powerful and sensitive nature of formal enforcement powers, the Board wants to be certain that its capital directive authority is utilized in a uniform manner nationwide and with adequate and appropriate attention to the rights of the institutions involved. Therefore, the Board is proposing that its Office of Enforcement, in coordination with ORPOS, initiate the process of issuing a capital directive by notifying an insured institution of the Board's intent to issue a directive, review the institution's response to that notification (including requesting additional information if necessary), and recommend to the Board that it issue a capital directive. The Office of Enforcement has specialized knowledge and unique expertise in utilization of the Board's formal enforcement authority, and ORPOS has parallel experience and expertise concerning the examination and supervision of insured institutions.

The Office of Enforcement would send the insured institution a notice of intent to issue a capital directive that would include the reasons for issuing the capital directive, the contents of the proposed capital directive, and the incremental additions to capital comprising a schedule for compliance. The insured institution would have thirty days in which to respond in writing to the notice.

The insured institution's response could consist of either its own compliance plan or its recommendation of an alternative to the capital directive and a corresponding plan. The insured institution's response should include any information that the insured institution would have the Board consider in evaluating whether to issue a capital directive or in deciding what the provisions of the directive should be. An insured institution's failure to respond within the allotted time would be deemed to be a waiver of any objections to the issuance or contents of the proposed directive.

After the close of the insured institution's response period, or after receipt of the insured institution's response, if sooner, the Office of Enforcement in coordination with ORPOS would develop a recommendation for Board action. The Board would consider this

[11] A major difference between these capital directives and plans and cease-and-desist orders is that cease-and-desist orders may be issued only by consent or after notice and a hearing on the record. Capital directives may be issued by consent or after notice with no requirement for a hearing on the record.

recommendation as well as the institution's response and decide whether or not to issue a capital directive. This final decision, and the basis for the decision, would be provided to the insured institution. If a capital directive is to be issued, the Board would also decide whether it should be issued as originally proposed or in modified form.

Because of the critical importance of adequate capital to the soundness of an insured institution's operations and to containing risk to the FSLIC fund, the proposed procedure for issuance of a directive has been designed to reach a resolution in a prompt, fair manner. Furthermore, the Board intends activity to enforce capital directives in the event of noncompliance.

Forbearance

The regulation proposed today would give the Board the authority to establish and enforce individualized minimum capital requirements and to treat capital noncompliance as an unsafe and unsound practice. In Section 404 of CEBA, however, the Congress also mandated a capital forbearance policy.[12] Pursuant to that statutory mandate, the Board will promulgate regulations pursuant to which it will forbear from enforcing its capital requirements if otherwise sound insured institutions are temporarily unable to meet such requirements for certain statutorily specified reasons. Such institution's capital requirements under § 563.13 or under proposed section 563.14, if adopted in final form, would remain valid and would be unaffected by the Board's temporary forbearance from enforcing such capital requirements. It is compliance with the capital requirement, and not the establishment of the capital requirement, to which the capital forbearance policy will apply.

Relationship Between this Proposed Rule and other Regulations

Pursuant to Section 406 of CEBA, the Board is under a statutory requirement to establish minimum levels of capital for insured institutions consistent with the purposes of Section 908 of ILSA and the federal banking agencies' capital requirements. Pending further Board study and public comment on how such a statutory mandate is to be implemented, the Board intends that this proposed rule will, when finalized, function in tandem with the existing capital regulation, § 563.13. All insured institutions are currently required to comply with the Board's capital regulation set forth in § 563.13. Only those insured institutions for which an individualized minimum capital requirement has been established, however, would be required to comply with the proposed requirement under section 563.14.

The Board also wishes to clarify that the setting of an individualized minimum capital requirement under proposed section 563.14 is separate and distinct from the classification system and the arbiter process established by Section 407 of CEBA. This is the case even if the individualized minimum capital requirement is based upon an evaluation of the underwriting standards and general overall credit risk of an insured institution's portfolio. Section 407 of CEBA explicitly states that the arbiter process applies only to subsequent PSA review of individual determinations made by the PSA's staff members regarding appraisals of underwriting collateral, loan classifications, and loan loss reserves or allowances.

In addition, the Board proposes to amend the capital regulation, § 563.13, to make clear that references throughout Chapter V of Title 12 to regulatory capital levels or requirements should be deemed to require compliance with proposed §§ 563.14 and 563.14–1.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small institutions to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) (1987). Therefore, small entities to which the rule would apply are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1986.

3. *Impact of the proposed rule on small institutions.* The rule would not impose any unnecessary financial, recordkeeping or administrative burden on small insured institutions. The proposal would authorize the Board and the Corporation to vary any insured institution's capital requirement on a case-by-case basis, require a plan from any insured institution for capital compliance, treat a failure to comply with a capital requirement as an unsafe and unsound practice, and issue a directive to enforce capital compliance. The proposed rule would treat small institutions in a manner similar to large ones. There would be no disproportionate economic or regulatory impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The Board is not aware of any alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above. The Board, however, specifically requests comments concerning appropriate alternatives to this proposed rule.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below:

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (21 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.13 by revising paragraph (a) to read as follows:

§ 563.13 Regulatory capital requirement.

(a) *Scope.* This section sets forth the requirement for the maintenance by insured institutions, as defined in § 561.1 of this subchapter, of regulatory capital, as defined in § 561.13 of this subchapter. An insured institution's regulatory capital requirement under this section may be superseded or modified by an individualized capital requirement established under § 563.14. Any reference in this Chapter of Title 12 to

[12] The Board today is also issuing a proposed regulation relating to forbearance from its capital requirements, that may be considered in conjunction with this regulation. Board Res. No. 87–1044 (October 5, 1987).

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compliance with capital requirements of § 563.13 shall be deemed to require compliance with this section as superseded or modified by an individualized minimum capital requirement established under § 563.14 or by a capital directive issued pursuant to § 563.14–1. Compliance with the requirements of this section and § 563.14, if applicable, shall be considered to be compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)).

* * * * *

3. Amend Part 563 by adding a new § 563.14 and § 563.14–1 to read as follows:

§ 563.14 Minimum regulatory capital requirements for individual insured institutions.

(a) *Purpose and scope.* The rules and procedures specified in this section apply to the establishment of an individualized minimum capital requirement for an insured institution that varies from the requirement that would otherwise apply to the insured institution under § 563.13. Pursuant to 12 U.S.C. 1464(s) and 1730(t), the Board, as operating head of the Corporation, delegates authority to the Principal Supervisory Agents ("PSA(s)") to establish, with the prior written concurrence of the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), such individualized minimum capital requirements for insured institutions as are necessary or appropriate on a case-by-case basis in light of the particular circumstances of each insured institutions.

(b) *Appropriate considerations for establishing individualized minimum capital requirements.* Minimum capital levels higher than those required under § 563.13 may be appropriate for an individual insured institution. Increased individualized minimum capital requirements may be established upon a determination that the insured institution's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

(1) An insured institution receiving special supervisory attention;

(2) An insured institution that has or is expected to have losses resulting in capital inadequacy;

(3) An insured institution that has a high degree of exposure to interest-rate risk, prepayment risk, credit risk, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit, recourse liabilities as defined in § 561.8 of this subchapter, equity risk investments as defined in § 563.9–8 of this subchapter; or nonresidential construction loans or land loans;

(4) An insured institution that has poor liquidity or cash flow;

(5) An insured institution that is growing rapidly, either internally or through acquisitions;

(6) An insured institution that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or institutions with which it has significant business relationships, including concentrations of credit;

(7) An insured institution with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) An insured institution that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) An insured institution that has a record of operational losses that exceeds the average of other, similarly situated insured institutions, has management deficiencies; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individualized minimum capital requirements.* The appropriate minimum capital level for an individual insured institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the PSA's determination that a higher minimum capital requirement is appropriate or necessary for the insured institution;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the insured institution and, if applicable, its holding company, subsidiary(ies), and/or, subsidiaries and/or affiliate(s);

(4) The insured institution's liquidity, capital and other indicators of financial stability, particularly as compared with those of similarly situated insured institutions; and

(5) The policies and practices of the insured institution's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

(d) *Procedures.*—(1) *Notification.* When a PSA determines that an individualized minimum capital requirement different from that set forth in § 563.13 is necessary or appropriate for a particular insured institution, the PSA will notify the insured institution in writing of its proposed individualized minimum capital requirement; the schedule for compliance with the new requirement; and the basis for determining that the higher individualized minimum capital requirement is necessary or appropriate for the insured institution. At the same time, the PSA will forward to ORPOS a copy of this notifying letter, along with the PSA's documentation supporting the need for such a higher capital requirement.

(2) *Response.* (i) The response should include any information that the insured institution wants the PSA to consider and ORPOS to review in deciding whether to establish or to amend an individualized minimum capital requirement for the insured institution, what the individualized capital requirement should be and, if applicable, what compliance schedule is appropriate for achieving the required capital level. The insured institution's response must be in writing and must be delivered to the PSA within 30 days after the date on which the insured institution was sent the notification. The PSA will then forward a copy of the insured institution's response to ORPOS. The PSA may extend the time period for good cause. The time period for response by the insured institution may, for good cause, be shortened:

(A) When, in the opinion of the PSA, the condition of the insured institution so requires, and the PSA informs the insured institution of the shortened response period in the notice;

(B) With the consent of the insured institution; or

(C) When the insured institution already has advised the PSA that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days, or such other time period as may be specified by the PSA, shall constitute a waiver of any objections to the proposed individualized minimum capital requirement or to the schedule for complying with it.

(3) *Decision.* After expiration of the response period, the PSA will decide whether to propose that an individualized minimum capital requirement should be established for the insured institution based on a review of the insured institution's response and other relevant information,

and, if so, will decide upon the appropriate level of capital required and the schedule for compliance with this requirement. The PSA will sent a copy of his recommended final determination to ORPOS, which must concur before the decision becomes effective and is communicated to the insured institution. The PSA will provide the insured institution with notification of the individualized minimum capital requirement in writing, setting forth the decision and the basis of that decision. Upon receipt of this notification, the individualized minimum capital requirement becomes effective and binding upon the insured institution.

(4) *Failure to comply.* Failure to satisfy an individualized minimum capital requirement, or to meet any required incremental additions to capital under a schedule for compliance with such an individualized minimum capital requirement, shall constitute a legal basis for issuing a capital directive pursuant to § 563.14–1.

(5) *Change in circumstances.* If, after a decision is made under paragraph (d)(3) of this section, there is a change in the circumstances affecting the insured institution's capital adequacy or its ability to reach its required minimum capital level by the specified date, the PSA may, with the concurrence of ORPOS, amend further the individualized minimum capital requirement or the insured institution's schedule for such compliance. The PSA may decline to consider an insured institution's request for such changes that are not based on a significant change in circumstances or that are repetitive or frivolous. The PSA shall notify ORPOS of the request and the PSA's decision. Pending the PSA's reexamination of the original decision, that original decision and any compliance schedule established thereunder shall continue in full force and effect.

§ 563.14–1 Enforcement of minimum regulatory capital requirements for individual insured institutions.

(a) *Issuance of a Capital Directive.*—(1) *Purpose.* In addition to any other action authorized by law, the Board, as operating head of the Corporation, may, based on a recommendation of the Board's Office of Enforcement developed in coordination with the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS") and the insured institution's Principal Supervisory Agent, issue a capital directive to an insured institution that does not have or maintain capital at or above its minimum capital requirement, no matter whether such requirement is established by application of § 563.13 or § 563.14, by a written agreement under 12 U.S.C. 1730(e) or 1464(d)(2), or as a condition for approval of an application. A capital directive may order an insured institution to: (i) achieve its minimum capital requirement by a specified date; (ii) adhere to the compliance schedule for achieving its individualized minimum (iii) submit and adhere to capital plan acceptable to the Board describing the means and a time schedule by which the institution shall achieve the applicable capital requirement; (iv) take other action, including but not limited to the reduction of assets or the rate of liability growth, or restrictions on the payment of dividends, to achieve the insured institution's capital requirement; (v) take any action authorized under § 563.13(d); or (vi) take a combination of any of these actions.

A capital directive issued under this section, including a plan submitted pursuant to a capital directive, is enforceable under 12 U.S.C. 1464(d)(8) and 12 U.S.C. 1730(k), as appropriate, in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final under 12 U.S.C. 1464(d)(2) and 1730(e).

(2) *Notice of intent to issue capital directive.* The Office of Enforcement, in coordination with ORPOS, will determine whether to initiate the process of issuing a capital directive. The Office of Enforcement will notify an insured institution in writing by registered mail of its intention to issue a capital directive. The notice will state: (i) The reasons for issuance of the capital directive and (ii) the proposed contents of the capital directive.

(3) *Response to notice of intent.* (i) An insured institution may respond to the notice of intent by submitting its own compliance plan, or propose an alternative to the capital directive and plan. The response should also include any information that the insured institution wishes the Office of Enforcement to consider and ORPOS to review in deciding whether to recommend that the Board issue a directive and/or what the contents of that directive should be. The response must be in writing and delivered to the Office of Enforcement within 30 days after the date on which the insured institution received the notice. In its discretion, the Office of Enforcement may extend the response period for good cause. The Office of Enforcement may, for good cause, shorten the 30-day response period by the insured institution:

(A) When, in the opinion of the Office of Enforcement, the condition of the insured institution so requires, and the Office of Enforcement informs the insured institution of the shortened response period in the notice;

(B) With the consent of the insured institution; or

(C) When the insured institution already has advised the Office of Enforcement that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days or such other time period as may be specified by the Office of Enforcement shall constitute a waiver of any objections to the proposed capital directive.

(4) *Decision.* After the closing date of the insured institution's response period, or upon receipt of the insured institution's response, if earlier, the Office of Enforcement shall consider the insured institution's response and may seek additional information or clarification of the response. Thereafter, the Board, based on a recommendation from the Office of Enforcement developed in coordination with ORPOS, shall determine whether or not to issue a capital directive and, if one is to be issued, whether it should be as originally proposed or in modified form.

(5) *Service and Effectiveness.* (i) Upon issuance, a capital directive will be served upon the insured institution. It will include or be accompanied by a statement of reasons for its issuance.

(ii) A capital directive shall become effective upon the expiration of 30 days after service upon the insured institution, unless the Office of Enforcement determines that a shorter effective period is necessary either on account of the public interest or in order to achieve the directive's purpose.

If the insured institution has consented to issuance of the directive it may become effective immediately. A capital directive shall remain in effect and enforceable unless, and then only to the extent that, it is stayed, modified, or terminated by the Board.

(6) *Change in circumstances.* Upon a change in circumstances, an insured institution may submit a request to the Office of Enforcement that the Board reconsider the terms of the capital directive or consider changes in an insured institution's capital plan issued under a directive for an insured institution to achieve its minimum capital requirement. The Office of Enforcement may refuse to consider changes that are not based on significant changes in circumstances. Pending a decision on reconsideration,

the capital directive and capital plan shall continue in full force and effect.

(b) *Relation to other administrative actions.* The Board may:

(1) Consider an insured institution's progress in adhering to any capital plan required under this section whenever such insured institution or any affiliate of such insured institution (including any company that controls such insured institution) seeks approval for any proposal that would have the effect of diverting earnings, diminishing capital, or otherwise impeding such insured institution's progress in meeting its minimum capital requirement (such as an application under § 563.13–1, or an application for approval to exceed its applicable equity risk investment threshold pursuant to § 563.9–8(g)); and

(2) Disapprove any proposal referred to in paragraph (b)(1) of this section if the Board determines that the proposal would adversely affect the ability of the insured institution on a current or *pro forma* basis to satisfy its capital requirement.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–23659 Filed 10–19–87; 8:45 am]

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12 CFR Parts 563 and 571

[No. 87–1046]

Troubled Debt Restructuring

Date: October 5, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan bank Board ("Bank Board" or "Board") is proposing to amend its regulations governing institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") to adopt a rule and statement of policy to clarify that insured institutions have been permitted and may continue to account for troubled debt restructurings ("TDRs") in accordance with generally accepted accounting principles ("GAAP"). The proposed rule states that the Bank Board permits institutions to restructure troubled loans in compliance with Statements 5 and 15 of the Financial Accounting Standards Board ("FASB–5" and "FASE–15") and to account for the effects of such restructurings as provided in those statements. The policy statement summarizes the accounting principles applicable to TDR and sets forth reporting requirements for institutions that engage in such restructuring.

DATE: Comments must be received by November 19, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available at this address for public inspection.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Assistant Director, (202) 377–6445, or Christina M. Gattuso, Acting Regulatory Counsel, (202) 377–6649, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778–2538, or Carol Larson, Professional Accounting Fellow, (202) 778–2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In recent years, a number of borrowers have been unable to meet the original terms of loans they have received from thrift institutions. As a result, in order to obtain any recovery from such a borrower, a thrift may have to renegotiate the terms of the loan. In some instances, this renegotiation may result in the thrift's accepting terms it normally would not accept for similar loans with similar risks. These may include a lower interest rate or even no interest, a reduction in principal, a lengthier term to maturity, a transfer of assets from the borrower, the substitution or addition of a new borrower, or some combination of these terms. This renegotiation is known as troubled debt restructuring. FASB–15 defines TDR as a situation in which a "creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor which it would not otherwise consider."

In the past, the Bank Board has permitted institutions to use TDR. *See* Federal Home Loan Bank Board, Capital Forbearance Policy For Insured Institutions (February 26, 1987). There has been a widespread misperception, however, that thrift institutions were subjected to more stringent supervisory requirements than commercial banks because they were reportedly not permitted to use TDR to restructure their loan portfolios. This misperception, however, arises not from actions of the Board but from the more conservative generally accepted accounting principles established for thrifts than banks by the American Institute of Certified Public Accountants ("AICPA") in defining net realizable value ("NRV") for purposes of determining loan loss allowances in their respective Industry Audit Guides. The Board believes that this difference has disadvantaged thrift institutions and may have discouraged them from fully utilizing FASB–5 and FASB–15 to restructure troubled loans in their loan portfolio.

This disparate treatment has resulted because neither FASB–5 nor FASB–15 provides guidance on how to establish loan loss allowances. This guidance is contained in the AICPA Industry Audit Guides. The AICPA savings and loan industry audit guide generally requires that a loan loss allowance be based on net realizable value. This NRV is computed by estimating the sales price of a property and reducing that sales price by direct selling expenses, any costs of completion or improvement, and direct holding costs, including the cost of all debt and equity capital. This effectively requires a savings and loan to discount these estimated cash flows at its cost of funds. In contrast, the AICPA bank audit guide does not require a commercial bank to discount estimated cash flows at its cost of funds in determining NRV. As a result, a thrift would often be required to establish a specific loan loss allowance under Thrift GAAP where Bank GAAP would require such an allowance.

In the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100–86, 101 Stat. 552, Congress instructed the Bank Board to allow an institution that used TDR in accordance with FASB–15 for any of its loans to account for those loans in accordance with FASB–5 and FASB–15. CEBA, secs. 402(a), (b). FASB–5 discusses loss contingencies and sets forth guidance concerning the point at which a loss must be recognized because an asset has been impaired or a liability has been incurred. FASB–15 governs the accounting treatment of a TDR. (For ease of reference FASB–5 and FASB–15 are attached as Attachments 1 and 2 to the policy statement.) Using TDR, an institution may be able to restructure its loan portfolio to minimize its losses on troubled loans.

Today, the Bank Board is publishing for public notice and comment a proposed rule on "Accounting for Troubled Debt Restructuring" to be codified as 12 CFR 563.23–4. This proposed rule would reaffirm that the Bank Board permits institutions to use TDR in order to minimize their losses on troubled loans and to account for those transactions in accordance with FASB–5

and FASB–15. The accompanying proposed statement of policy to be codified as 12 CFR 571.18 would further clarify what constitutes a TDR and when, how, and where a TDR shall be reported. The Board expects that an institution will use TDR when it reasonably expects that such a restructuring will benefit the thrift by enabling it to minimize its loss on the troubled debt. TDR should not be abused, however. Neither FASB–5 nor FASB–15 permits an institution to use TDRs to avoid reporting actual losses that have occurred on investments or to publish financial statements or reports to the Board that do not accurately reflect an institution's loan portfolio.

The CEBA explicitly provides that thrifts using TDR must comply with both FASB–5 and FASB–15 in accounting for restructured loans. Under FASB–5, an institution must accrue a loss when it is both probable that a loss has been incurred and the amount of the loss can be reasonably estimated. The statement provides that when the value of an asset, such as a loan receivable, has been impaired, the institution must adjust its books to reflect this loss. Under GAAP, a loan cannot be carried on an institution's books at an amount greater than its net realizable value. Thus, an institution may have to recognize a loss on a loan under FASB–5 before and/or after restructuring the loan under FASB–15.

Under FASB–15, a TDR may be reported as such in an institution's reports and financial statements when "consummated." The policy statement requires institutions to report TDRs that have been formally consummated by written agreement between the institution and the borrower on all counter statements and financial reports filed with the Board on the Corporation. It further requires institutions to report loans as restructured if the institution and borrower have reached an oral agreement that has been memorialized in a document in the institution's files setting forth the basic terms of the restructuring. The Board believes that such informal oral agreements may accurately reflect an actual renegotiation of a loan. They may, however, be subject to abuse and thus are not long-term substitutes for formal written agreements. The Board emphasizes, therefore, that it expects that an institution and borrower will arrive at a formal agreement within a reasonable period of time following the start of negotiations. Normally, formal written agreements for restructuring should result within six months from the start of negotiations. Negotiations that continue for a significantly longer period without a final written agreement between the thrift and the borrower may give rise to some doubt about whether the loan has actually been restructured.

When an institution accepts a transfer of property from the borrower in repayment for some or all of the original loan balance, FASB–15 requires that such transfers must be accounted for at the fair value of the property. This includes all property, however received by the institution. FASB–15 covers repossessions in substance by providing that an institution cannot avoid such fair value treatment for property under its control merely by failing to foreclose on property. The Board today adopts the standards for repossessions in substance set forth in Securities and Exchange Commission Interpretive Rule 33–6679. (Codification of Financial Reporting Policies Section 401.09(b)) ("SEC Interpretive Rule"). The SEC Interpretive Rule covers situations where the borrower has either formally transferred control of the property to the creditor institution or it is unlikely that the borrower will be able to rebuild equity in the property in the "foreseeable future." The SEC Interpretive Rule does not specify a length of time for "foreseeable future," but indicates that "any relied-upon assumptions must be expected to be attainable within a reasonably manageable future period." The Board believes that "foreseeable future" is not a term of indefinite duration. Allowing "foreseeable future" to stretch out without limit would be inconsistent with a reasonable expectation of the borrower's actual ability to rebuild equity. Determinations of whether a repossession in substance has occurred because it is unlikely that equity will be rebuilt in the foreseeable future will be made on a case-by-case basis. Some factors to be considered in determining foreseeable future include the institution's experience in previous recessionary cycles, the local market experience with real estate cycles, the borrower's financial condition and economic prospects, and the extent of the borrower's involvement in pursuing a reasonable workout agreement.

Before a TDR is implemented, losses that are probable and reasonably estimable must be recognized and an adequate allowance for loss must be provided on the loan balance written down accordingly in accordance with FASB–5. This write down or allowance must be based on NRV to determine the appropriate carrying value of the loan being restructured. Under FASB–15, TDRs involving modifications of the terms of a loan will not result in additional losses that must be recognized unless, under the modified terms, the future cash receipts do not equal or exceed the carrying value of the loan, subsequent to the FASB–5 adjustment. If total payments under the modified terms will exceed the carrying value of the loan, after any necessary FASB–5 adjustment the institution should account for the payments at a constant interest rate.

Institutions that use TDR to restructure any of their loans must accurately report such TDRs on their financial statements and reports to the Bank Board as set forth in the policy statement. These reports should contain not only line items showing the amount of restructured loans, including both loans in compliance with their modified terms and loans not in compliance with their modified terms, but also adequate disclosures of reasonably possible loss contingencies, losses that are probable but the amount of which is currently unestimable, any commitments to lend additional funds to debtors whose loans have been restructured, and other information required by FASB–5 or FASB–15.

As set forth in the proposed rule on classification of assets, published elsewhere in today's **Federal Register**, loans that have been restructured will neither be automatically classified nor automatically exempt from classification. In accordance with the practices of other finanical regulatory agencies, the credit quality of each restructured loan will be evaluated according to the criteria set forth in the classification of assets section. This may result in the classification of some restructured loans. In this regard, the Board emphasizes that its examiners will continue to monitor institutions' loan portfolios. Abuses of TDR will not be permitted.

To summarize, the policy statement is intended to clarify: (1) When an institution may account for a loan as a TDR; (2) what constitutes a TDR; (3) that the Bank Board expects thrift institutions to account for all losses that must be recongized under FASB–5 before and/or after reporting any loan balance under FASB–15; (4) that FASB–5 must be followed not only in accruing losses that have occurred but also in making adequate disclosure of loss contingencies; (5) that, in accordance with FASB–15, any property received by the thrift institution in full or partial payment of a loan, including repossessions in substance, must be accounted for at fair value, (6) that TDRs must be reported separately on a

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thrift's counter statements and monthly and quarterly financial reports and in these reports and in audited financial statements, disclosures must be in accordance with FASB–15; and (7) that TDRs will neither be automatically classified, nor automatically exempt from classification, under the reproposed classification of assets regulation, but will be reviewed under the same criteria as all other loans in an institution's portfolio.

The Board solicits public comment on all aspects of the proposed rule and statement of policy. In particular, the Board requests comments on whether it should permit thrift institutions to use Bank GAAP in determining NRV for purposes of calculating loan loss allowances in unaudited monthly and quarterly reports to the Board and Corporation and in counter statements. The Board notes that the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), exempts general policy statements and interpretive rules from notice and comment requirements. Nevertheless, the Board believes that because the rule and policy statement are closely related, the public interest will be best served by considering comment on both. Additionally, troubled debt restructuring is an integral component of the comprehensive regulatory package required by the CEBA. Therefore, the Board believes it is in the public interest to offer this policy statement for comment so that the proposed regulatory package can be considered as a whole. Any comments should refer to Board Resolution No. 87–1046.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small institutions to which the proposed rule applies.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFP 121.13(a) (1987). Therefore, small entities to which the proposed rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1986.

3. *Impact of the proposed rule on small institutions.* All institutions, including small institutions, should benefit from the proposal. The proposed rule imposes no new recordkeeping requirements or other additional administrative burden on any insured institution. The Board therefore believes that the proposed rule will not have a significant economic impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposed rule.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposed in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Parts 563 and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 563 and 571, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et. seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.23–4 to read as follows:

§ 563.23–4 Accounting for troubled debt restructuring.

(a) If an insured institution engaged in troubled debt restructuring with respect to any loan by the insured institution and the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board) the insured institution may account for the effects of the troubled debt restructuring and its investment in the original debt instrument (or other agreement that is subject to such restructuring) in the manner provided in those statements pursuant to the guidelines set forth in § 571.18 of this subchapter.

(b) Restructured loans are to be reported on counter statements and all monthly and quarterly reports to the Board or the Corporation as either "Loans Restructured and in Compliance with Modified Terms or "Loans Restructured and Not in Compliance with Modified Terms."

PART 571—STATEMENTS OF POLICY

3. The authority citation for Parts 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR,1943–48 Comp., p. 1071.

4. Add a new § 571.18 to read as follows:

§ 571.18 Accounting for troubled debt restructuring.

(a) The purpose of this § 571.18 is to offer to the management of insured institutions the Board's views on troubled debt restructuring. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law.

(b) All insured institutions should use the accounting treatment for troubled debt restructuring ("TDR") described in this section when preparing counter statements and all financial reports for filing with the Board or the Corporation. All insured institutions may use TDR for any loans, in compliance with Statement No. 5 and Statement No. 15 of the Financial Accounting Standards Board ("FASB–5" and "FASB–15"). If a thrift chooses to use TDR, it should account for the transaction as specified in FASB–5 and FASB–15. Allowances for losses on those loans will be determined as set forth in the AICPA Industry Audit Guide for Savings and Loan Associations. This statement of policy sets forth the policy and general criteria for determining what may be included in TDR, when an insured institution must report a TDR, treatment of any transfer of assets as part of a TDR, including treatment of repossessions in substance, and how TDRs should be reported. This statement also sets forth the criteria under FASB–5 for when a loss must be recognized because an asset has been impaired, regardless of TDR, and when loss contingencies must be disclosed.

(c) The accounting standards for TDR are set forth in FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," which is summarized in this and

following paragraphs. Further specific information may be found by referring to FASB–15. A TDR is a restructuring in which a creditor, such as a thrift, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. Extending or renewing a loan with no change in principal at a stated interest rate equal to the current interest rate for new loans at a similar level of risk is not considered a restructured loan and should not be reported as such. A restructuring may involve a transfer of assets from the borrower to the thrift in full or partial satisfaction of the loan, a modification of the loan's terms, or both of the above. A restructuring may also involve the substitution or addition of a new debtor for the original borrower.

(d) FASB Statement No. 5, "Accounting for Contingencies, also plays a significant role in the reporting of TDRs. FASB–5 governs when certain losses must be recognized, because a loss contingency is both probable and estimable and an asset has therefore been impaired or a liability has been incurred. Further specific information may be found by referring to FASB–5.

(e) TDR may not be used to avoid recognizing losses that FASB–5 requires to be accrued. Estimated losses must be accrued by a charge to income if two conditions are met. First, available information indicates that it is probable that an asset had been impaired or a liability incurred at the date of the financial statements. Second, the amount of the loss must be reasonably estimable. If both of these conditions are met for a loan, the institution must, before and/or after restructuring, establish loss allowances for the difference between the carrying value of the loan and its net realizable value as determined in accordance with the AICPA Industry Audit Guide for Savings and Loan Associations. The FASB–15 criteria are then applied to the net realizable value of the loan.

(f) FASB–5 also requires adequate disclosure of loss contingencies not meeting both of the above criteria under certain circumstances. Disclosure is required, for example, where there is at least a reasonable possibility that a loss, or an additional loss, may have been incurred or where an asset has probably been impaired but the amount of loss cannot be reasonably estimated. Such disclosure should include a description of the loss or excess or additional loss contingency and either a range of possible loss or a statement that no estimate of the loss can be made.

(g) Under paragraph 6 of FASB–15, the date of consummation of the restructuring is the time of the restructuring. A TDR exists as soon as there is agreement between the institution and the borrowers (either prospective or existing) to consummate the restructuring. Thus, a TDR would clearly exist when a formal letter of intent or mutual agreement is signed. It would also be presumed to exist, however, if the senior management of both the institution and borrower reach an oral agreement memorialized in written documentation, such as a memorandum to the files, setting forth the terms of the TDR. Institutions that report such informal or incomplete restructurings assume the burden of formally completing the transaction, however. Failure to do so may result in reconsideration of any conclusions drawn as a result of the anticipated restructuring and may require refilings of financial statements. Normally a TDR should be finalized within six months from the start of negotiations. The institution's history in finalizing expected restructurings will be reviewed by the Board's examiners. If an institution's reported expected restructurings frequently do not result in formal consummation within a reasonable time, the examiner may decide to permit only formally completed TDRs to be reported as such.

(h) A restructuring may involve the transfer of assets from the borrower to the creditor institution in full or partial satisfaction of the loan. The proper treatment of assets received in partial satisfaction of the loan is set forth in paragraph (j) of this section. Assets transferred may include, but are not limited to, receivables from third parties, real estate, or an equity interest in the borrower. Pursuant to paragraph 28 of FASB–15, such assets must be accounted for at their fair value at the time of the restructuring. Paragraph 13 of FASB–15 defines the "fair value of the assets transferred" as the amount the borrower could reasonably expect to receive for them in a current sale between a willing buyer and a willing seller, *i.e.*, other than a forced or liquidation sale. Paragraph 13 provides that market value shall be used if an active market exists. If no market price is available for the asset or similar assets that could be used in estimating fair market value, a forecast of expected cash flows from the asset, discounted at a rate commensurate with any risk involved, may be used to arrive at fair value.

(1) Such fair value accounting is required by FASB–15 when collateral is repossessed by the institution. This fair value accounting treatment cannot be avoided merely by delaying formal repossession. Under paragraph 34 of FASB–15, a repossession in substance must be accounted for at fair value in accordance with paragraph 28. Paragraph 84 of FASB–15 requires such accounting "if, for example, the creditor obtains control or ownership (or substantially all of the benefits and risks incident to ownership) of one or more assets of the debtor and the debtor is wholly or partially relieved of the obligations under the debt." The Board and the Corporation will use the guidelines established by the Securities and Exchange Commission as set forth in its Interpretive Release Number 33–6679 to determine when a repossession in substance has occurred. Under these guidelines, a repossession in substance will be deemed to have occurred when:

(i) The borrower has little or no equity in the collateral, considering the current fair value of the collateral; and

(ii) The creditor can only expect proceeds for the repayment of the loan to come from the operation or sale of the collateral; and

(iii) The borrower has either

(A) Formally or effectively abandoned control of the collateral to the creditor; or

(B) Retained control of the collateral but, because of its current financial condition or economic prospects, it is unlikely that the borrower will be able to rebuild equity in the collateral or otherwise repay the loan in the foreseeable future.

These determinations will be made on a case-by-case basis. A number of factors will be considered in determining whether a repossession in substance has occurred because it is unlikely that the borrower can rebuild equity in the "foreseeable future." Among these are the institution's experience in previous recessionary cycles, the local market experience with real estate cycles, the borrower's financial condition and economic prospects, and the extent of the borrower's involvement in pursuing a reasonable workout agreement.

(2) Assets received in full satisfaction of a loan must be recorded at their fair value. The carrying value of the loan is the loan balance, adjusted for any unamortized premium or discount, less any allowance provided or any amount previously charged off, plus recorded accrued interest. Any excess of the value of the loan over the fair value of assets received in satisfaction of the loan must be recognized as a loss.

(i) TDR may involve a modification of the terms of the loan. This may include, but is not limited to, a reduction in the stated interest rate, an extension of

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maturity at a favorable interest rate, a reduction in the face amount of the debt (principal) a reduction in accrued interest, or a combination of the above. The proper treatment of a TDR involving a combination of a transfer of assets from the borrower to the institution in partial satisfaction of the loan and a modification of the terms of the loan is set forth in paragraph (j) of this section. Before and/or after a TDR is implemented, an adequate allowance for loss must be provided in accordance with FASB–5. Under GAAP, this allowance must be based on net realizable value to determine the appropriate carrying value of the loan being restructured.

(1) If the total expected future cash receipts (including both principal and interest) reasonably expected to be collected under the modified repayment terms are less than the carrying value of the loan on the institution's books, after any necessary FASB–5 adjustment, then a loss on restructuring must be recognized to the extent of that deficiency. Under these circumstances, no interest income will be recognized over the life of the restructured loan.

(2) If the total expected future cash receipts are equal to or exceed the carrying value of the loan, after any necessary FASB–5 adjustment, no loss on restructuring need be reported. Interest income will be recognized over the life of the loan to the extent that future receipts exceed the carrying value of the loan. Institutions should recognize this income using an effective interest rate that will yield a constant rate of interest over the remaining life of the loan.

(3) Some restructurings may involve indeterminate future cash receipts. To the extent that the minimum future cash receipts are less than the carrying value of the loan, the institution must recognize a loss. This loss must be recognized under paragraph 32 of FASB–15, unless under the modified terms the contingent future cash receipts needed to make the total future cash receipts under the modified terms equal to the carrying value of the loan, after any necessary FASB–5 adjustment, are both probable and are reasonably estimable.

(j) Some TDRs may involve both a transfer of assets from the borrower to the institution in partial satisfaction of the loan and a modification of the terms of the remaining loan. In these circumstances, the restructuring must be accounted for by a two-stage process under paragraph 33 of FASB–15. First, the carrying value of the loan is reduced by the fair value of the property received, as calculated pursuant to paragraph 13 of FASB–15. Second, the total amount of the expected future cash receipts is compared to the remaining carrying value of the loan. Any loss recognized is limited to the excess of the remaining carrying value of the loan over such total future cash receipts. If the total expected cash receipts exceed the remaining recorded amount of the loan, no loss need be recognized and any future interest income should be recognized at a constant effective interest rate over the life of the loan.

(k) Some TDRs may involve the substitution or addition of a new debtor for the original borrower. Pursuant to paragraph 42 of FASB–15, such a restructuring should be accounted for according to its substance. If under the restructuring the substitute or additional debtor controls, is controlled by, or is under common control with the original borrower, or performs the custodial function of collecting certain of the original borrower's funds, FASB–15 provides that the restructuring should be accounted for as a modification of terms. If the substitute or additional debtor does not have such a control or custodial relationship with the original borrower, the restructuring should be accounted for as a new loan in full or partial satisfaction of the original borrower's loan. The new loan should be recorded at its fair value.

(l) As provided in § 563.23–4 of this subchapter, restructured loans are to be reported on counter statements and all monthly and quarterly reports to the Board or the Corporation as either "Loans Restructured and in Compliance with Modified Terms" or "Loans Restructured and Not in Compliance with Modified Terms." In these reports and annual audited reports filed with the Board, all disclosures and information required by FASB–5 and FASB–15 should be provided. The carrying value of an asset received in full or partial satisfaction of the loan is not reportable as a restructured loan.

(m) Examiners will continue to monitor institutions' loan portfolios, including restructured loans. Loans will not automatically be classified merely because they have been restructured. Conversely, loans will not be exempt from classification merely because they have been restructured. Where appropriate under the criteria set forth in § 561.16c, a restructured loan may be classified.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Note.—Attachments 1 and 2 will not appear in the *Code of Federal Regulations.*

Attachment 1.—FASB Statement of Standards

FAS5

STATEMENT OF FINANCIAL ACCOUNTING STANDARDS NO. 5 ACCOUNTING FOR CONTINGENCIES

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Introduction

1. For the purpose of this Statement, a contingency is defined as an existing condition, situation, or set of circumstances involving uncertainty as to possible gain (hereinafter a "gain contingency") or loss [1] (hereinafter a "loss contingency") to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.

2. Not all uncertainties inherent in the accounting process give rise to contingencies as that term is used in this Statement. Estimates are required in financial statements for many on-going and recurring activities of an enterprise. The mere fact that an estimate is involved does not of itself constitute the type of uncertainty referred to in the definition in paragraph 1. For example, the fact that estimates are used to allocate the known cost of a depreciable asset over the period of use by an enterprise does not make depreciation a contingency; the eventual expiration of the utility of the asset is not uncertain. Thus, depreciation of assets is not a contingency as defined in paragraph 1, nor are such matters as recurring repairs, maintenance, and overhauls, which

[1] The term *loss* is used for convenience to include many charges against income that are commonly referred to as *expenses* and others that are commonly referred to as *losses.*

interrelate with depreciation. Also, amounts owed for services received, such as advertising and utilities, are not contingencies even though the accrued amounts may have been estimated; there is nothing uncertain about the fact that those obligations have been incurred.

3. When a loss contingency exists, the likelihood that the future event or events will confirm the loss or impairment of an asset or the incurrence of a liability can range from probable to remote. This Statement uses the terms *probable*, *reasonably possible*, and *remote* to identify three areas within that range, as follows:

a. *Probable*. The future event or events are likely to occur.

b. *Reasonably possible*. The chance of the future event or events occurring is more than remote but less than likely.

c. *Remote*. The chance of the future event or events occurring is slight.

4. Examples of loss contingencies include:

a. Collectibility of receivables.

b. Obligations related to product warranties and product defects.

c. Risk of loss or damage of enterprise property by fire, explosion, or other hazards.

d. Threat of expropriation of assets.

e. Pending or threatened litigation.

f. Actual or possible claims and assessments.

g. Risk of loss from catastrophes assumed by property and casualty insurance companies including reinsurance companies.

h. Guarantees of indebtedness of others.

i. Obligations of commercial banks under "standby letters of credit." [2]

j. Agreements to repurchase receivables (or to repurchase the related property) that have been sold.

5. Some enterprises now accrue estimated losses from some types of contingencies by a charge to income prior to the occurrence of the event or events that are expected to resolve the uncertainties while, under similar circumstances, other enterprises account for those losses only when the confirming event or events have occurred.

6. This Statement establishes standards of financial accounting and reporting for loss contingencies (see paragraphs 8–16) and carries forward without reconsideration the conclusions of Accounting Research Bulletin (ARB) No. 50, "Contingencies," with respect to gain contingencies (see paragraph 17) and other disclosures (see paragraphs 18–19). The basis for the Board's conclusions, as well as alternatives considered and reasons for their rejection, are discussed in Appendix C. Examples of application of this Statement are presented in Appendix A, and background information is presented in Appendix B.

7. This Statement supersedes both ARB No. 50 and Chapter 6, "Contingency Reserves," of ARB No. 43. The conditions for accrual of loss contingencies in paragraph 8 of this Statement do not amend any other present requirement in an Accounting Research Bulletin or Opinion of the Accounting Principles Board to accrue a particular type of loss or expense. Thus, for example, accounting for pension cost, deferred compensation contracts, and stock issued to employees are excluded from the scope of this Statement. Those matters are covered, respectively, in APB Opinion No. 8, "Accounting for the Cost of Pension Plans," APB Opinion No. 12, "Omnibus Opinion—1967," paragraphs 6–8, and APB Opinion No. 25, "Accounting for Stock Issued to Employees." Accounting for other employment-related costs, such as group insurance, vacation pay, workmen's compensation, and disability benefits, is also excluded from the scope of this Statement. Accounting practices for those types of costs and pension accounting practices tend to involve similar considerations.

Standards of Financial Accounting and Reporting

Accrual of Loss Contingencies

8. An estimated loss from a loss contingency (as defined in paragraph 1) shall be accrued by a charge to income [3] if both of the following conditions are met:

a. Information available prior to issuance of the financial statements indicates that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements.[4] It is implicit in this condition that it must be probable that one or more future events will occur confirming the fact of the loss.

b. The amount of loss can be reasonably estimated.

Disclosure of Loss Contingencies

9. Disclosure of the nature of an accrual [5] made pursuant to the provisions of paragraph 8, and in some circumstances the amount accrued, may be necessary for the financial statements not to be misleading.

10. If no accrual is made for a loss contingency because one or both of the conditions in paragraph 8 are not met, or if an exposure to loss exists in excess of the amount accrued pursuant to the provisions of paragraph 8, disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred.[6] The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made. Disclosure is not required of a loss contingency involving an unasserted claim or assessment when there has been no manifestation by a potential claimant of an awareness of a possible claim or assessment unless it is considered probable that a claim will be asserted and there is a reasonable possibility that the outcome will be unfavorable.

11. After the date of an enterprise's financial statements but before those financial statements are issued, information may become available indicating that an asset was impaired or a liability was incurred after the date of the financial statements or that there is at least a reasonable possibility that an asset was impaired or a liability was incurred after that date. The information may relate to a loss contingency that existed at the date of the financial statements, e.g., an asset that was not insured at the date of the financial statements. On the other hand, the information may relate to a loss contingency that did not exist at the date of the financail statements, e.g., threat of expropriation of assets after the date of the financial statements or the filing for bankruptcy by an enterprise whose debt was guaranteed after the date of the financial statements. In none of the cases cited in this paragraph was an asset impaired or a liability incurred at the date of the financial statements, and the condition for accrual in paragraph 8(a) is, therefore, not met. Disclosure of those kinds of losses or loss contingencies may be necessary, however, to keep the financial statements from being misleading. If disclosure is deemed necessary, the financial statements shall indicate the nature of the loss or loss contingency and give an estimate of the amount or range of loss or possible loss or state that such an estimate cannot be made. Occasionally, in the case of a loss arising after the date of the financial statements where the amount of asset impairment or liability incurrence can be reasonably estimated, disclosure may best be made by supplementing the historical financial statements with pro forma financial data giving effect to the loss as if it had occurred at the date of the financial statements, usually a balance sheet only, in columnar form on the face of the historical financial statements.

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[2] As defined by the Federal Reserve Board, "standby letters of credit" include "every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any evidence of indebtedness undertaken by the account party or (3) to make payment on account of any default by the account party in the performance of an obligation." A note to that definition states that "as defined, 'standby letter of credit' would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not 'guaranty' payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation M [of the Federal Reserve Board]." Regulations of the Comptroller of the Currency and the Federal Deposit Insurance Corporation contain similar definitions.

[3] Paragraphs 23–24 of APB Opinion No. 9, "Reporting the Results of Operations," describe the "rare" circumstances in which a prior period adjustment is appropriate. Those paragraphs are not amended by this Statement.

[4] Date of the financial statements means the end of the most recent accounting period for which financial statements are being presented.

[5] Terminology used shall be descriptive of the nature of the accrual (see paragraphs 57–64 of Accounting Terminology Bulletin No. 1, "Review and Resume").

[6] For example, disclosure shall be made of any loss contingency that meets the condition in paragraph 8(a) but that is not accrued because the amount of loss cannot be reasonably estimated (paragraph 8(b)). Disclosure is also required of some loss contingencies that do not meet the condition in paragraph 8(a)—namely, those contingencies for which there is a reasonable possibility that a loss may have been incurred even though information may not indicate that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements.

12. Certain loss contingencies are presently being disclosed in financial statements even though the possibility of loss may be remote. The common characteristic of those contingencies is a guarantee, normally with a right to proceed against an outside party in the event that the guarantor is called upon to satisfy the guarantee. Examples include (a) guarantees of indebtedness of others, (b) obligations of commercial banks under "standby letters of credit," and (c) guarantees to repurchase receivables (or, in some cases, to repurchase the related property) that have been sold or otherwise assigned. The Board concludes that disclosure of those loss condingencies, and others that in substance have the same characteristic, shall be continued. The disclosure shall include the nature and amount of the guarantee. Consideration should be given to disclosing, if estimable, the value of any recovery that could be expected to result, such as from the guarantor's right to proceed against an outside party.

13. This Statement applies to regulated enterprises in accordance with provisions of the Addendum to APB Opinion No. 2, "Accounting for the 'Investment Credit.'" If, in conformity with the Addendum, a regulated enterprise accrues for financial accounting and reporting purposes an estimated loss without regard to the conditions in paragraph 8, the following informaiton shall be disclosed in its financial statements:

a. The accounting policy including the nature of the accrual and the basis for estimation.

b. The amount of any related "liability" or "asset valuation" account included in each balance sheet presented.

General or Unspecified Business Risks

14. Some enterprises have in the past accrued so-called "reserves for general contingencies." General or unspecified business risks do not meet the conditions for accrual in paragraph 8, and no accrual for loss shall be made. No disclosure about them is required by this Statement.

Appropriation of Retained Earnings

15. Some enterprises have classified a portion of retained earnings as "appropriated" for loss contingencies. In some cases, the appropriation has been shown outside the stockholders' equity section of the balance sheet. Appropriation of retained earnings is not prohibited by this Statement provided that it is shown within the stockholders' equity section of the balance sheet and is clearly identified as an appropriation of retained earnings. Costs or losses shall not be charged to an appropriation of retained earnings, and no part of the appropriation shall be transferred to income.

Examples of Application of This Statement

16. Examples of application of the conditions for accrual of loss contingencies in paragraph 8 and the disclosure requirements in paragraphs 9–11 are presented in Appendix A.

Gain Contingencies

17. The Board has not reconsidered *ARB No. 50* with respect to gain contingencies. Accordingly, the following provisions of paragraphs 3 and 5 of that Bulletin shall continue in effect:

a. Contingencies that might result in gains usually are not reflected in the accounts since to do so might be to recognize revenue prior to its realization.

b. Adequate disclosure shall be made of contingencies that might result in gains, but care shall be exercised to avoid misleading implications as to the likelihood of realization.

Other Disclosures

18. Paragraph 6 of *ARB No. 50* required disclosure of a number of situations including "unused letters of credit, long-term leases, assest pledged as security for loans, pension plans, the existence of cumulative preferred stock dividends in arrears, and commitments such as those for plant acquisition or an obligation to reduce debts, maintain working capital, or restrict dividends." Subsequent Opinions issued by the Accounting Principles Board established more explicit disclosure requirements for a number of those items, i.e., leases (see *APB Opinions No. 5 and 31*), pension plans (see *APB Opinion No. 8*), and preferred stock dividend arrearages (see *APB Opinion No. 10,* paragraph 11(b)).

19. Situations of the type described in the preceding paragraph shall continue to be disclosed in financial statements, and this Statement does not alter the present disclosure requirements with respect to those items.

Effective Date and Transition

20. This Statement shall be effective for fiscal years beginning on or after July 1, 1975, although earlier application is encouraged. A change in accounting principle resulting from compliance with paragraph 8 or 14 of this Statement shall be reported in accordance with *APB Opinion No. 20,* "Accounting Changes." Accordingly, except in the special circumstances referred to in paragraphs 29–30 of *APB Opinion No. 20,* the cumulative effect of the change on retained earnings at the beginning of the year in which the change is made shall be included in net income of the year of the change, and the disclosures specified in *APB Opinion No. 20* shall be made. Reclassification of an appropriation of retained earnings to comply with paragraph 15 of this Statment shall be made in any financial statements for periods before the effective date of this Statement, or financial summaries or other data derived therefrom, that are presented after the effective date of this Statement.

The provisions of this Statement need not be applied to immaterial items.

This Statement was adopted by the unanimous vote of the seven members of the Financial Accounting Standards Board:

Marshall S. Armstrong, *Chairman*
Oscar S. Gellein
Donald J. Kirk
Arthur L. Litke
Robert E. Mays
Walter Schuetze
Robert T. Sprouse

Appendix A

EXAMPLES OF APPLICATION OF THIS STATEMENT

21. This Appendix contains examples of application of the conditions for accrual of loss contingencies in paragraph 8 and of the disclosure requirements in paragraphs 9–11. Some examples have been included in response to questions raised in letters of comment on the Exposure Draft. It should be recognized that no set of examples can encompass all possible contingencies or circumstances. Accordingly, accrual and disclosure of loss contingencies should be based on an evaluation of the facts in each particular case.

Collectibility of Receivables

22. The assets of an enterprise may include receivables that arose from credit sales, loans, or other transactions. The conditions under which receivables exist usually involve some degree of uncertainty about their collectibility, in which case a contingency exists as defined in paragraph 1. Losses from uncollectible receivables shall be accrued when both conditions in paragraph 8 are met. Those conditions may be considered in relation to individual receivables or in relation to groups of similar types of receivables. If the conditions are met, accrual shall be made even though the particular receivables that are uncollectible may not be identifiable.

23. If, based on available information, it is probable that the enterprise will be unable to collect all amounts due and, therefore, that at the date of its financial statements the net realizable value of the receivables through collection in the ordinary course of business is less than the total amount receivable, the condition in paragraph 8(a) is met because it is probable that an asset has been impaired. Whether the amount of loss can be reasonably estimated (the condition in paragraph 8(b)) will normally depend on, among other things, the experience of the enterprise, information about the ability of individual debtors to pay, and appraisal of the receivables in light of the current economic environment. In the case of an enterprise that has no experience of its own, reference to the experience of other enterprises in the same business may be appropriate. Inability to make a reasonable estimate of the amount of loss from uncollectible receivables (i.e., failure to satisfy the condition in paragraph 8(b)) precludes accrual and may, if there is significant uncertainty as to collection, suggest that the installment method, the cost recovery method, or some other method of

revenue recognition be used (see paragraph 12 of *APB Opinion No. 10*, "Omnibus Opinion—1966"); in addition, the disclosures called for by paragraph 10 of this Statement should be made.

Obligations Related to Product Warranties and Product Defects

24. A warranty is an obligation incurred in connection with the sale of goods or services that may require further performance by the seller after the sale has taken place. Because of the uncertainty surrounding claims that may be made under warranties, warranty obligations fall within the definition of a contingency in paragraph 1. Losses from warranty obligations shall be accrued when the conditions in paragraph 8 are met. Those conditions may be considered in relation to individual sales made with warranties or in relation to groups of similar types of sales made with warranties. If the conditions are met, accrual shall be made even though the particular parties that will make claims under warranties may not be identifiable.

25. If, based on available information, it is probable that customers will make claims under warranties relating to goods or services that have been sold, the condition in paragraph 8(a) is met at the date of an enterprise's financial statements because it is probable that a liability has been incurred. Satisfaction of the condition in paragraph 8(b) will normally depend on the experience of an enterprise or other information. In the case of an enterprise that has no experience of its own, reference to the experience of other enterprises in the same business may be appropriate. Inability to make a reasonable estimate of the amount of a warranty obligation at the time of sale because of significant uncertainty about possible claims (i.e., failure to satisfy the condition in paragraph 8(b)) precludes accrual and, if the range of possible loss is wide, may raise a question about whether a sale should be recorded prior to expiration of the warranty period or until sufficient experience has been gained to permit a reasonable estimate of the obligation; in addition, the disclosures called for by paragraph 10 of this Statement should be made.

26. Obligations other than warranties may arise with respect to products or services that have been sold, for example, claims resulting from injury or damage caused by product defects. If it is probable that claims will arise with respect to products or services that have been sold, accrual for losses may be appropriate.The condition in paragraph 8(a) would be met, for instance, with respect to a drug product or toys that have been sold if a health or safety hazard related to those products is discovered and as a result it is considered probable that liabilities have been incurred. The condition in paragraph 8(b) would be met if experience or other information enables the enterprise to make a reasonable estimate of the loss with respect to the drug product or the toys.

Risk of Loss or Damage of Enterprise Property

27. At the date of an enterprise's financial statements, it may not be insured against risk of future loss or damage to its property by fire, explosion, or other hazards. The absence of insurance against losses from risks of those types constitutes an existing condition involving uncertainty about the amount and timing of any losses that may occur, in which case a contingency exists as defined in paragraph 1. Uninsured risks may arise in a number of ways, including (a) non-insurance of certain risks or co-insurance or deductible clauses in an insurance contract or (b) insurance through a subsidiary or investee [7] to the extent not reinsured with an independent insurer. Some risks, for all practical purposes, may be noninsurable, and the self-assumption of those risks is mandatory.

28. The absence of insurance does not mean that an asset has been impaired or a liability has been incurred at the date of an enterprise's financial statements. Fires, explosions, and other similar events that may cause loss or damage of an enterprise's property are random in their occurrence.[8] With respect to events of that type, the condition for accrual in paragraph 8(a) is not satisified prior to the occurrence of the event because until that time there is not diminution in the value of the property. There is no relationship of those events to the activities of the enterprise prior to their occurrence, and no asset is impaired prior to their occurrence. Further, unlike an insurance company, which has a contractual obligation under policies in force to reimburse insureds for losses, an enterprise can have no such obligation to itself and, hence, no liability.

Risk of Loss from Future Injury to Others, Damage to the Property of Others, and Business Interruption

29. An enterprise may choose not to purchase insurance against risk of loss that may result from injury to others, damage to the property of others, or interruption of its business operations.[9] Exposure to risks of those types constitutes an existing condition involving uncertainty about the amount and timing of any losses that may occur, in which case a contingency exists as defined in paragraph 1.

30. Mere exposure to risks of those types, however, does not mean that an asset has been impaired or a liability has been incurred. The condition for accrual in paragraph 8(a) is not met with respect to loss that may result from injury to others, damage to the property of others, or business interruption that may occur after the date of an enterprise's financial statements. Losses of those types do not relate to the current or a prior period but rather to the *future* period in which they occur. Thus, for example, an enterprise with a fleet of vehicles should not accrue for injury to others or damage to the property of others that may be caused by those vehicles in the future even if the amount of those losses may be reasonably estimable. On the other hand, the conditions in paragraph 8 would be met with respect to uninsured losses resulting from injury to others or damage to the property of others that took place prior to the date of the financial statements, even though the enterprise may not become aware of those matters until after the date, if the experience of the enterprise or other information enables it to make a reasonable estimate of the loss that was incurred prior to the date of its financial statements.

Write-Down of Operating Assets

31. In some cases, the carrying amount of an operating asset not intended for disposal may exceed the amount expected to be recoverable through future use of that asset even though there has been no physical loss of damage of the asset or threat of such loss or damage. For example, changed economic conditions may have made recovery of the carrying amount of a productive facility doubtful. The question of whether, in those cases, it is appropriate to write down the carrying amount of the asset to an amount expected to be recoverable through future operations is not covered by this Statement.

Threat of Expropriation

32. The threat of expropriation of assets is a contingency within the definition of paragraph 1 because of the uncertainty about its outcome and effect. If information indicates that expropriation is imminent and compensation will be less than the carrying amount of the assets, the condition for accrual in paragraph 8(a) is met. Imminence may be indicated, for example, by public or private declarations of intent by a government to expropriate assets of the enterprise or actual expropriation of assets of other enterprises. Paragraph 8(b) requires that accrual be made only if the amount of loss can be reasonably estimated. If the conditions for accrual are not met, the disclosures specified in paragraph 10 would be made when there is at least a reasonable possibility that an asset has been impaired.

Litigation, Claims, and Assessments

33. The following factors, among others, must be considered in determining whether accrual and/or disclosure is required with respect to pending or threatened litigation and actual or possible claims and assessments:

a. The period in which the underlying cause (i.e., the cause for action) of the pending or threatened litigation or of the actual or possible claim or assessment occurred.

b. The degree of probability of an unfavorable outcome.

c. The ability to make a reasonable estimate of the amount of loss.

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[7] The effects of transactions between a parent or other investor and a subsidiary or investee insurance company shall be eliminated from an enterprise's financial statements (see paragraph 6 of *ARB No. 51*, "Consolidated Financial Statements," and paragraph 19(a) of *APB Opinion No. 18*, "The Equity Method of Accounting for Investments in Common Stock").

[8] The Board recognizes that, in practice, experience regarding loss or damage to depreciable assets is in some cases one of the factors considered in estimating the depreciable lives of a group of depreciable assets, along with such other factors as wear and tear, obsolescence, and maintenance and replacement policies. This Statement is not intended to alter present depreciation practices (see paragraph (2).

[9] As to injury or damage resulting from products that have been sold, see paragraph 26.

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34. As a condition for accrual of a loss contingency, paragraph 8(a) requires that information available prior to the issuance of financial statements indicate that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements. Accordingly, accrual would clearly be inappropriate for litigation, claims, or assessments whose underlying cause is an event or condition occurring after the date of financial statements but before those financial statements are issued, for example, a suit for damages alleged to have been suffered as a result of an accident that occurred after the date of the financial statements. Disclosure may be required, however, by paragraph 11.

35. On the other hand, accrual may be appropriate for litigation, claims, or assessments whose underlying cause is an event occurring on or before the date of an enterprise's financial statements even if the enterprise does not become aware of the existence or possibility of the lawsuit, claim, or assessment until after the date of the finanical statements. If those financial statements have not been issued, accrual of a loss related to the litigation, claim, or assessment would be required if the probability of loss is such that the condition in paragraph 8(a) is met and the amount of loss can be reasonably estimated.

36. If the underlying cause of the litigation, claim, or assessment is an event occurring before the date of an enterprise's financial statements, the probability of an outcome unfavorable to the enterprise must be assessed to determine whether the condition in paragraph 8(a) is met. Among the factors that should be considered are the nature of the litigation, claim, or assessment, the progress of the case (including progress after the date of the financial statements but before those statements are issued), the opinions or views of legal counsel and other advisers, the experience of the enterprise in similar cases, the experience of other enterprises, and any decision of the enterprise's management as to how the enterprise intends to respond to the lawsuit, claim, or assessment (for example, a decision to contest the case vigorously or a decision to seek an out-of-court settlement). The fact that legal counsel is unable to express an opinion that the outcome will be favorable to the enterprise should not necessarily be interpreted to mean that the condition for accrual of a loss in paragraph 8(a) is met.

37. The filing of a suit or formal assertion of a claim or assessment does not automatically indicate that accrual of a loss may be appropriate. The degree of probability of an unfavorable outcome must be assessed. The condition for accrual in paragraph 8(a) would be met if an unfavorable outcome is determined to be probable. If an unfavorable outcome is determined to be reasonably possible but not probable, or if the amount of loss cannot be reasonably estimated, accrual would be inappropriate, but disclosure would be required by paragraph 10 of this Statement.

38. With respect to unasserted claims and assessments, an enterprise must determine the degree of probability that a suit may be filed or a claim or assessment may be asserted and the possiblity of an unfavorable outcome. For example, a catastrophe, accident, or other similar physical occurrence predictably engenders claims for redress, and in such circumstances their assertion may be probable; similarly, an investigation of an enterprise by a governmental agency, if enforcement proceedings have been or are likely to be instituted, is often followed by private claims for redress, and the probability of their assertion and the possibility of loss should be considered in each case. By way of further example, an enterprise may believe there is a possibility that it has infringed on another enterprise's patent rights, but the enterprise owning the patent rights has not indicated an intention to take any action and has not even indicated an awareness of the possible infringement. In that case, a judgment must first be made as to whether the assertion of a claim is probable. If the judgment is that assertion is not probable, no accural or disclosure would be required. On the other hand, if the judgment is that assertion is probable, then a second judgment must be made as to the degree of probability of an unfavorable outcome. If an unfavorable outcome is probable and the amount of loss can be reasonably estimated, accrual of a loss is required by paragraph 8. If an unfavorable outcome is probable but the amount of loss cannot be reasonably estimated, accrual would not be appropriate, but disclosure would be required by paragraph 10. If an unfavorable outcome is reasonably possible but not probable, disclosure would be required by paragraph 10.

39. As a condition for accrual of a loss contingency, paragraph 8(b) requires that the amount of loss can be reasonably estimated. In some cases, it may be determined that a loss was incurred because an unfavorable outcome of the litigation, claim, or assessment is probable (thus satisfying the condition in paragraph 8(a)), but the range of possible loss is wide. For example, an enterprise may be litigating an income tax matter. In preparation for the trail, it may determine that, based on recent decisions involving one aspect of the litigation, it is probable that it will have to pay additional taxes of $2 million. Another aspect of the litigation may, however, be open to considerable interpretation, and depending on the interpretation by the court the enterprise may have to pay taxes of $8 million over and above the $2 million. In that case, paragraph 8 requires accrual of the $2 million if that is considered a reasonable estimate of the loss. Paragraph 10 requires disclosure of the additional exposure to loss if there is a reasonable possibility that additional taxes will be paid. Depending on the circumstances, paragraph 9 may require disclosure of the $2 million that was accrued.

Catastrophe Losses of Property and Casualty Insurance Companies

40. At the time that a property and casualty insurance company or reinsurance company issues an insurance policy covering risk of loss from catastrophes, a contingency arises. The contingency is the risk of loss *assumed* by the insurance company, that is, the risk of loss from catastrophes that may occur *during the term of the policy*. The insurance company has not assumed risk of loss for catastrophes that may occur *beyond* the term of the policy. Clearly, therefore, no asset has been impaired or liability incurred with respect to catastrophes that may occur beyond the terms of policies in force.

41. The conditions in paragraph 8 should be considered with respect to the risk of loss assumed by an insurance company for catastrophes that may occur during the terms of policies in force to determine whether accrual of a loss is appropriate. To satisfy the condition in paragraph 8(a) that it be probable that a liability has been incurred to existing policy-holders, the occurrence of catastrophes (i.e., the confirming future events) would have to be reasonably predictable within the terms of policies in force. Further, to satisfy the condition in paragraph 8(b), the amounts of losses therefrom would have to be reasonable estimable. Actuarial techniques are employed by insurance companies to predict the rate of occurrence of an amounts of losses from catastrophes over long periods of time for insurance rate-setting purposes. Predictions over relatively short periods of time, such as an individual accounting period of the terms of a large number of existing insurance policies in force, are subject to substantial deviations. Consequently, assumption of risk of loss from catastrophes by property and casualty insurance companies and reinsurance companies fails to satisfy the conditions for accrual in paragraph 8(a) and 8(b). Moreover, deferral of unearned premiums within the terms of policies in force represents the "unknown liability" for loss (including catastrophe losses) on unexpired policies, making an accrual inappropriate—see paragraphs 94–96 in Appendix C. Recognition of premium income as earned revenue within the terms of policies in force is discussed in the AICPA industry Audit Guide, "Audits of Fire and Casualty Insurance Companies."

42. Although some property and casualty insurance companies have accrued an estimated amount for catastrophe losses, other insurance companies have accomplished the same objective by deferring a portion of the premium income. Deferral of any portion of premium income *beyond the terms of policies in force* is, in substance, similar to premature accrual of catastrophe losses and, therefore, also does not meet the conditions of paragraph 8.

43. The conditions for accrual in paragraph 8 do not prohibit a property and casualty insurance company from accruing probable catastrophe losses that have been incurred on or before the date of its financial statements but that have not been reported by its policyholders as of that date. If the amount of loss can be reasonable estimated, paragraph 8 requires accrual to those incurred-but-not-reported losses.

Payments to Insurance Companies That May Not Involve Transfer of Risk

44. To the extent that an insurance contract or reinsurance contract does not, despite its form, provide for indemnification of the insured or the ceding company by the insurer

or reinsurer against loss of liability, the premium paid less the amount of the premium to be retained by the insurer or reinsurer shall be accounted for as a deposit by the insured or the ceding company. Those contracts may be structured in various ways, but if, regardless of form, their substance is that all or part of the premium paid by the insured or the ceding company is a deposit, it shall be accounted for as such.

45. Operations in certain industries may be subject to such high risks that insurance in unavailable or is available only at what is considered to be a prohibited high cost. Some enterprises in those industries have "pooled" their risks by forming a mutual insurance company in which they retain an equity interest and to which they pay insurance premiums. For example, some electric utility companies have formed such a mutual insurance company to insure risks related to nuclear power plants, and some oil companies have formed a company to insure against risk associated with petroleum exploration and production. Whether the premium paid represents a payment for the transfer of risk or whether it represents merely a deposit will depend on the circumstances surrounding each enterprise's interest in and insurance arrangement with the mutual insurance company. An analysis of the contract is required to determine whether risk has been transferred and to what extent.

Appendix B.—Background Information

46. In April 1973, the FASB placed on its technical agenda a project then entitled "Accounting for Future Losses." The project addressed accrual and disclosure of loss contingencies. The Board believes that "Accounting for Contingencies" is a more descriptive title for this Statement than "Accounting for Future Losses."

47. A task force of 16 persons from industry, public accounting, the financial community, and academe was appointed in the summer of 1973 to provide counsel to the Board in preparing a Discussion Memorandum analyzing issues related to the project.

48. The Discussion Memorandum gave examples of various types of contingencies and considered several of those at length to assist in the development of standards of financial accounting and reporting. These included (a) uninsured risks ("self-insurance"), (b) risk of losses from catastrophes assumed by property and casualty insurance companies, and (c) risk of losses from expropriations by foreign governments.

49. Research undertaken in connection with this project included (a) a search of relevant literature, (b) an examination of published financial statements in annual reports to shareholders and in filings with the SEC on Form 10–K, (c) a questionnaire survey conducted by the Financial Executives Institute to which 64 companies responded, and (d) a study of catastrophe reserve accounting methods employed by property and casualty insurance companies. Summaries of research findings are included in appendices to the Discussion Memorandum.

50. On January 3, 1973 (prior to the date the Board placed this subject on its agenda), the Securities and Exchange Commission issued its *Accounting Series Release No. 134*, which pointed out that a number of property and casualty insurance companies had adopted the accounting policy of making a provision from each period's income to cover a portion of major losses expected to occur in future periods. The SEC Release indicated that the Committee on Insurance Accounting and Auditing of the AICPA was working actively on the subject in cooperation with industry groups. The Release set forth certain disclosure requirements pending resolution of the question of accrual.

51. The AICPA committee's report (dated July 17, 1973) was in the form of a memorandum setting forth the views of those committee members favoring and those opposing accrual of losses from future catastrophes. In the course of its study, the AICPA committee had gathered considerable data on the subject, in part from a survey of member companies of the American Insurance Association, and this information was made available to the Board.

52. On August 2, 1973, the SEC announced in *Accounting Series Release No. 145* that property and casualty insurance companies should not change their method of accounting for catastrophe losses "until a single method has been adopted by the Financial Accounting Standards Board."

53. The Board issued the Discussion Memorandum on March 13, 1974, and held a public hearing on the subject on May 13, 1974. The Board received 87 position papers, letters of comment, and outlines of oral presentations in response to the Discussion Memorandum. Eighteen presentations were made at the public hearing.

54. An Exposure Draft of a proposed Statement on "Accounting for Contingencies" was issued on October 21, 1974. The Board received 212 letters of comment on the Exposure Draft.

Appendix C.—Basis for Conclusions

55. This Appendix discusses factors deemed significant by members of the Board in reaching the conclusions in this Statement, including various alternatives considered and reasons for accepting some and rejecting others.

Scope of This Statement

56. Some respondents to the Exposure Draft proposed that the Statement not deal with accrual and disclosure of loss contingencies in general but, rather, only with the following three specific matters: "self-insurance," risk of losses from catastrophes assumed by property and casualty insurance companies including reinsurance companies, and threat of expropriation. As the basis for that position, they noted that the Discussion Memorandum considered those three matters at length. Other respondents suggested that catastrophe losses be dealt with in a separate Statement.

57. The Board has concluded, however, that the broad issue of accrual and disclosure of loss contingencies should be dealt with in a single Statement, just as the Discussion Memorandum encompassed "the broad issue of accounting for future losses."[10] As the Discussion Memorandum stated, "future losses of all types presently known to affect enterprises and new types of future losses that may arise are conceptually included in the scope of this project." The three matters dealt with at length in the Discussion Memorandum were used "as examples to assist in the evaluation and development of criteria for accounting for future losses," and other examples were discussed. The Board has concluded that loss contingencies such as those given as examples in paragraph 4 of this Statement have common characteristics and that questions about accounting for the reporting of those contingencies should be resolved comprehensively. It is for that reason, also, that the Board believes it inappropriate to deal with catastrophe losses in a separate Statement.

58. A question has been raised whether uncollectibility of receivables and product warranties constitute contingencies within the scope of this Statement. The Board recognizes that uncertainties associated with uncollectibility of some receivables and some product warranties are likely to be, in part, inherent in making accounting estimates (described in paragraph 2) as well as, in part, the type of uncertainties that give rise to a contingency (described in paragraph 1). The Board believes that no useful purpose would be served by attempting to distinguish between those two types of uncertainties for purposes of establishing conditions for accrual of uncollectible receivables and product warranties. Consequently, those matters are deemed to be contingencies within the definition of paragraph 1 and should be accounted for pursuant to the provisions of this Statement.

Accrual of Loss Contingencies

59. Paragraph 8 requires that a loss contingency be accrued if the two specified conditions are met. The purpose of those conditions is to require accrual of losses when they are reasonably estimable and relate to the current or a prior period. The requirement that the loss be reasonably estimable is intended to prevent accrual in the financial statements of amounts so uncertain as to impair the integrity of those statements. The Board has concluded that disclosure is preferable to accrual when a reasonable estimate of loss cannot be made. Further, even losses that are reasonably estimable should not be accrued if it is not probable that an asset has been impaired or a liability has been incurred at the date of an enterprise's financial statements because those losses relate to a future period rather than the current or a prior period. Attribution of a loss to events or activities of the current or prior periods is an element of asset impairment or liability incurrence.

60. In establishing the conditions in paragraph 8, Board members considered the factors discussed in paragraphs 61–101.

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[10] The Board believes that *contingencies* is a more descriptive term than *future losses*, and the Discussion Memorandum indicated that the project would necessarily involve reconsideration of both *ARB No. 50* and Chapter 6 of *ARB No. 43*.

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Individual Board members gave greater weight to some factors than to others.

Accounting Accruals Do Not Provide Protection Against Losses

61. Accrual of a loss related to a contingency does not create or set aside funds to lessen the possible financial impact of a loss, although some respondents to the Discussion Memorandum and the Exposure Draft argued to the contrary. The Board believes that confusion exists between accounting accruals (sometimes referred to as "accounting reserves") and the reserving or setting aside of specific assets to be used for a particular purpose or contingency. Accounting accruals are simply a method of allocating costs among accounting periods and have no effect on an enterprise's cash flow. An enterprise may choose to maintain or have access to sufficient liquid assets to replace or repair lost or damaged property or to pay claims in case a loss occurs. Alternatively, it may transfer the risk to others by purchasing insurance. Those are financial decisions, and if enterprise management decides to do neither, the presence or absence of an accrued credit balance on the balance sheet will have no effect on the consequences of that decision. The accounting standards set forth in this Statement do not affect the fundamental business economics of that decision.

62. In that regard, some respondents to the Discussion Memorandum and the Exposure Draft contended that an accounting standard that does not permit periodic accrual of so-called "self-insurance reserves" and, in the case of insurance companies, so-called "catastrophe reserves" will force enterprises to purchase insurance or reinsurance because the "protection" afforded by the accrual would no longer exist. Those accruals, however, in no way protect the assets available to replace or repair uninsured property that may be lost or damaged, or to satisfy claims that are not covered by insurance, or, in the case of insurance companies, to satisfy the claims of insured parties. Accrual, in and of itself, provides no financial protection that is not available in the absence of accrual.

63. The sole result of accrual, for financial accounting and reporting purposes, is allocation of costs among accounting periods. Some respondents to the Discussion Memorandum and the Exposure Draft took the position that estimated losses from loss contingencies should be accrued even before available information indicates that it is probable that an asset has been impaired or a liability has been incurred to avoid reporting net income that fluctuates widely from period to period. In their view, financial statement users may be misled by those fluctuations. They believe that estimated losses should be accrued without regard to whether the loss relates to the current period if, based on experience, it is reasonable to expect losses sometime in the future.

64. Financial statement users have indicated, however, that information about earnings variability is important to them. Two elements often cited as basic to the decision models of many financial statement users are (a) expected return—the predicted amount and timing of the return on an investment—and (b) risk—the variability of that expected return. If the nature of an enterprise's operations is such that irregularities in the incurrence of losses cause variations in periodic net income, that fact should not be obscured by accruing for anticipated losses that do not relate to the current period.

65. The Board recognizes that some investors may have a preference for investments in enterprises having a stable pattern of earnings, because that indicates lesser uncertainty or risk than fluctuating earnings. That preference, in turn, is perceived by many as having a favorable effect on the market prices of those enterprises' securities. If accruals for such matters as future uninsured losses and catastrophes were prohibited, some respondents contended, enterprises would be forced to purchase insurance or reinsurance to achieve the more stable patterns of reported earnings that tend to accompany the use of an "accounting reserve." Insurance or reinsurance reduces or eliminates risks and the inherent earnings fluctuations that accompany risks. Unlike insurance and reinsurance, however, the use of "accounting reserves" does not reduce or eliminate risk. The Board rejects the contention, therefore, that the use of "accounting reserves" is an alternative to insurance and reinsurance in protecting against risk. Earnings fluctuations are inherent in risk retention and they should be reported as they occur. The Board cannot sanction the use of an accounting procedure to create the illusion of protection from risk when, in fact, protection does not exist.

66. The Board has also considered the argument that periodic accrual of losses without regard to whether an asset has been impaired or liability incurred is justified on grounds of comparability of financial statements among enterprises. Some respondents contended, for example, that accrual is necessary to make the financial statements of enterprises that do not purchase insurance comparable to those of enterprises that do purchase insurance (and report the premiums as expenses) and to make the financial statements of property and casualty insurance companies comparable regardless of the extent to which reinsurance has been purchased. In the Board's view, however, to report activity when there has been none would obscure a fundamental difference in circumstance between enterprises that transfer risks to others and those that do not.

Financial Accounting and Reporting Reflects Primarily the Effects of Past Transactions and Existing Conditions

67. Financial accounting and reporting reflects primarily the effects of past transactions and existing conditions, not future transactions or conditions. For example, paragraph 35 of *APB Statement No. 4*, "Basic Concepts and Accounting Principles Underlying Financial Statements of Business Enterprises," states:

> Financial accounting and financial statements are primarily historical in that information about events that have taken place provides the basic data of financial accounting and financial statements.

68. The first condition in paragraph 8—that a loss contingency not be accrued until it is probable that an asset has been impaired or a liability has been incurred—is consistent with this concept of financial accounting and financial statements. That condition is not so past-oriented that accrual of a loss must await the occurence of the confirming future event, for example, final adjudication or settlement of a lawsuit. The condition requires only that it be probable that the confirming future event will occur. The condition is intended to prohibit the recognition of a liability when it is not probable that one has been incurred and to prohibit the accrual of an asset impairment when it is not probable that an asset of an enterprise has been impaired.

The Concept of a Liability

69. In many cases, the accrual of a loss contingency results in the recording of a liability, for example, accruals for a probable tax assessment, a warranty obligation, or a probable loss resulting from the guarantee of indebtedness of others. In the course of its deliberations, therefore, the Board found it relevant to consider the concept of a liability as expressed in accounting literature.

70. The economic obligations of an enterprise are defined in paragraph 58 of *APB Statement No. 4* as "its present responsibilities to transfer economic resources or provide services to other entities in the future." Two aspects of that definition are especially relevant to accounting for contingencies: first, that liabilities are *present* responsibilities and, second, that they are obligations to *other entities*. Those notions are supported by other definitions of liabilities in published accounting literature, for example:

> Liabilities are claims of creditors against the enterprise, arising out of past activities, that are to be satisfied by the disbursement or utilization of corporate resources.[11]

> A liability is the result of a transaction of the past, not of the future.[12]

71. The condition in paragraph 8(a)—that a loss contingency shall be accrued if it is probable that a liability has been incurred—is intended to proscribe recognition of losses that relate to future periods but to require accrual of losses that relate to the current or a prior period (assuming the amount of loss can be reasonably estimated—see paragraph 8(b)).

72. Liability definitions also generally require that the amount of an economic obligation be known or susceptible of reasonable estimation before it is recorded as a liability. For example:

> [Liabilities] are measured by cash received, by the established price of noncash assets or services received, or by estimates of a definitive character when the amount owing cannot be measured more precisely.[13]

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[11] American Accounting Association, *Accounting and Reporting Standards for Corporate Financial Statements and Preceding Statements and Supplements* (Sarasota, Fla.: AAA, 1957), p. 16.

[12] Maurice Moonitz, "The Changing Concept of Liabilities," *The Journal of Accountancy*, May 1960, p. 44.

[13] American Accounting Association, *Accounting and Reporting Standards for Corporate Financial Statements*, p. 16.

The amount of the liability must be the subject of calculation or of close estimation.[14]

73. The condition in paragraph 8(b)—that an estimated loss from a loss contingency not be accrued until the amount of loss can be reasonably estimated—is consistent with this feature of the liabilty concept.

Accounting for Impairment of Value of Assets

74. The accrual of some loss contingencies may result in recording the impairment of the value of an asset rather than in recording a liability, for example, accruals for expropriation of assets or uncollectible receivables. Accounting presently recognizes impariments of the value of assets such as the following:

a. Paragraph 9 of Chapter 3A, "Current Assets and Current Liabilities," of *ARB No. 43* provides that "in the case of marketable securities where market value is less than cost by a substantial amount and it is evident that the decline in market value is not due to a mere temporary condition, the amount to be included as a current asset should not exceed the market value."

b. Statement 5 of Chapter 4, "Inventory Pricing," of *ARB No. 43* states that "a departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as great as its cost. . . . A loss of utility is to be reflected as a charge against the revenues of the period in which it occurs."

c. Paragraph 19(h) of *APB Opinion No. 18*, "The Equity Method of Accounting for Investments in Common Stock," states that "a loss in value of an investment which is other than a temporary decline should be recognized the same as a loss in value of other long-term assets."

d. Paragraph 15 of *APB Opinion No. 30*, "Reporting the Results of Operations," states that "if a loss is expected from the proposed sale or abandonment of a segment, the estimated loss should be provided for at the measurement date. . . ." Paragraph 14 states that the measurement date is the date on which management "commits itself to a formal plan to dispose of a segment of the business, whether by sale or abandonment."

e. Paragraph 183 of *APB Statement No. 4* states that "when enterprise assets are damaged by others, asset amounts are written down to recoverable costs and a loss in recorded."

75. A recurring principle underlying all of these references to asset impairments in the accounting literature is that a loss should not be accrued until it is probable that an asset *has been* impaired and the amount of the loss can be reasonably estimated. As indicated by those references, impairment is recognized, for instance, when a non-temporary decline in the market price of marketable securities below cost *has taken place*, when the utility of inventory *is no longer* as great as its cost, when a commitment, in terms of a formal plan, *has been made* to abandon a segment of a business or to sell a segment at less than its carrying amount, when enterprise assets *are damaged*, and so forth. The condition in paragraph 8(a) is intended to proscribe accrual of losses that relate to future periods, and the condition in paragraph 8(b) further requires that the future requires that the amount of loss be reasonably estimable before it is accrued.

The Matching Concept

76. A number of respondents to the Discussion Memorandum and the Exposure Draft noted that losses from certain types of contingencies are likely to occur irregularly over an extended period of time encompassing a number of accounting periods. In their view, the matching process in accounting requires that estimated losses from those types of contingencies be accrued in each accounting period even if not directly related to events or activities of the period.

77. *APB Statement No. 4* explicitly avoids using the term "matching" because it has a variety of meanings in the accounting literature. In its broadest sense, matching refers to the entire process of income determination—described in paragraph 147 of *APB Statement No. 4* as "identifying, measuring, and relating revenue and expenses of an enterprise for an accounting period." Matching may also be used in a more limited sense to refer only to the process of expense recognition or in an even more limited sense to refer to the recognition of expenses by associating costs with revenue on a cause and effect basis.

78. Three pervasive principles for recognizing costs as expenses are set forth in paragraphs 156–160 of *APB Statement No. 4* as follows:

Associating Cause and Effect. . . . Some costs are recognized as expenses on the basis of a presumed direct association with specific revenue . . . recognizing them as expenses accompanies recognition of the revenue.

Systematic and Rational Allocation. . . . If an asset provides benefits for several periods its cost is allocated to the periods in a systematic and rational manner in the absence of a more direct basis for associating cause and effect.

Immediate Recognition. Some costs are associated with the current accounting period as expenses because (1) costs incurred during the period provide no discernible future benefits, (2) costs recorded as assets in prior periods no longer provide discernible benefits or (3) allocating costs either on the basis of association with revenue or among several accounting periods is considered to serve no useful purpose.

79. Some who believe that matching requires accrual of losses that are likely to occur irregularly over an extended period of time encompassing a number of accounting periods cite the systematic and rational allocation principle of expense recognition as justification for their position. That principle, however, involves the systematic and rational allocation of the cost of an asset (an asset that *has been* acquired) throughout the estimated periods that the asset provides benefits or the systematic and rational accrual of the amount of some obligations (obligations that *have been* incurred) throughout the estimated periods that the obligations are incurred. The customary depreciation of plant and equipment is an example of the former; when reasonably estimable, the accrual of vacation pay is an example of the latter. The systematic and rational allocation principle has no application to assets that are expected to be acquired in the future or to obligations that are expected to be incurred in the future.

80. Matching, in the sense of recognizing expenses by associating costs with specific revenue on a cause and effect basis, is a consideration in relation to accrual for such matters as uncollectible receivables and warranty obligations. For example, most enterprises that make credit sales or warrant their products or services regularly incur losses from uncollectible receivables and warranty obligations. Frequently, those losses can be associated with revenue on a cause and effect basis. If the amount of those losses can be reasonably estimated, paragraph 8 of this Statement requires accrual if it is probable that an asset has been impaired (estimated uncollectible receivables) or that a liability has been incurred (estimated warranty claims).

Spreading the Burden of Irregularly Occurring Cost to Successive Generations of Customers and Shareholders

81. Some respondents to the Discussion Memorandum and the Exposure Draft contended that all costs of doing business should be accrued in each accounting period so that successive generations of customers and shareholders would bear their share of all costs including those that occur irregularly. It would seem, however, that those irregularly occurring costs are usually borne by customers through pricing policy and that pricing is not necessarily dependent upon financial accounting and reporting practices. With regard to accrual on grounds that it enables successive generations of shareholders to bear their share of irregularly occuring costs, see paragraphs 63–65.

Conservatism

82. On the grounds of conservatism, some respondents supported accrual of estimated losses from loss contingencies before available information indicates that it is probable that an asset has been impaired or a liability has been incurred. Conservatism is indicated as one of the "characteristics and limitations" of financial accounting in paragraph 35 of *APB Statement No. 4* as follows:

Conservatism. The uncertainties that surround the preparation of financial statements are reflected in a general tendency toward early recognition of unfavorable events and minimization of the amount of net assets and net income.

83. Conservatism is further discussed in paragraph 171 of *APB Statement No. 4*:

Conservatism. Frequently, assets and liabilities are measured in a context of significant uncertainties. Historically, managers, investors, and accountants have generally preferred that possible errors in measurement be in the direction of understatement rather than overstatement of net income and net assets. This has led to the convention of conservatism. * * *

[14] Maurice Moonitz, "The Changing Concept of Liabilities," p. 44.

84. The conditions for accrual in paragraph 8 are not inconsistent with the accounting concept of conservatism. Those conditions are not intended to be so rigid that they require virtual certainty before a loss is accrued. They require only that it be *probable* that an asset has been impaired or a liability has been incurred and that the amount of loss be *reasonably* estimable. In the absence of that probability or estimability, however, the Board has concluded that disclosure is preferable to accruing in the financial statements amounts so uncertain as to impair the integrity of the financial statements.

Risk of Future Loss or Damage of Enterprise Property, Injury to Others, Damage to the Property of Others, and Business Interruption

85. Some persons contend that the decision not to purchase insurance against losses that can be reasonably expected some time in the future (such as risk of loss or damage of enterprise property, injury to others, damage to the property of others, and business interruption) justifies periodic accrual for those losses without regard to whether it is probable that an asset has been impaired or a liability incurred at the date of the financial statements. As a basis for their position, they frequently cite the following factors: matching of revenue and expense, spreading the burden of irregularly occurring costs to successive generations of customers, and conservatism. They also believe that accrual of estimated losses from those types of risks improves the comparability of the financial statements of enterprises that do not insure with those of enterprises that purchase insurance. Some contend that a prohibition against periodic accrual for uninsured losses will force enterprises to purchase insurance coverage that would not otherwise be purchased.

86. In the Board's judgment, however, the mere existence of risk, at the date of an enterprise's financial statements, does not mean that a loss should be accrued. Anticipation of asset impairments or liabilities or losses from business interruption that do not relate to the current or a prior period is not justified by the matching concept.

87. The Board's views regarding the contention that periodic accrual for uninsured losses is a way of providing protection against loss and improving comparability among enterprises that do and do not purchase insurance, and the contention that prohibition of accrual will force enterprises to purchase insurance, are discussed in paragraphs 61–66. The Board's position regarding periodic accrual for uninsured risks and other loss contingencies on the grounds of spreading the burden of irregularly occurring costs to successive generations of customers or on the grounds of conservatism is discussed in paragraphs 81–84.

88. Some respondents to the Exposure Draft said that prohibition against periodic accrual for uninsured losses would be detrimental to government contractors because requirements of Federal government agencies in auditing costs subject to procurement regulations currently allow reimbursement for periodic accruals for uninsured losses only if they are included in the contractor's financial statements. Contract reimbursement and financial accounting and reporting may well have different objectives. Accordingly, the provisions of this Statement may not be appropriate for contract reimbursement purposes.

Catastrophe Losses of Property and Casualty Insurance Companies

89. At the time that a property and casualty insurance company or reinsurance company issues an insurance policy covering risk of loss from catastrophes, a contingency arises. The contingency is the risk of loss *assumed* by the insurance company, that is, the risk of loss from catastrophes that may occur *during the term of the policy.*

90. Some respondents to the Discussion Memorandum and the Exposure Draft proposed that insurance companies accrue estimated losses from catastrophes including both those that may occur during the terms of insurance policies in force and those that may occur beyond the terms of policies in force. Other respondents proposed that some portion of the premium revenue of a property and casualty insurance company be deferred beyond the terms of insurance policies in force to provide what, in substance, is an estimated liability for future catastrophe losses. Some respondents proposed that accrual of estimated losses or deferral of premiums be permitted but not required. On the other hand, some respondents to the Discussion Memorandum and the Exposure Draft were opposed to any accrual for future catastrophe losses by means of an estimated liability or deferral of premium revenue. Because those estimated liabilities and revenue deferrals have come to be referred to as "catastrophe reserves," that term will be used in paragraphs 91–101 for convenience.

91. In response to the Exposure Draft, it was recommended that the FASB appoint a special committee to study further the matter of catastrophe reserve accounting and to make recommendations thereon. The Board has concluded, however, that its own research and that of others (mentioned in Appendix B to this Statement and summarized in the Discussion Memorandum), the written responses received to the Discussion Memorandum, the presentations made at the public hearing, and the letters of comment on the Exposure Draft provide the Board with sufficient information with which to reach a conclusion.

92. Proponents of catastrophe reserve accounting generally cite the following reasons for their position:

a. *Catastrophes certain to occur.* Over the long term, catastrophes are certain to occur; therefore, they are not contingencies.

b. *Predictability of catastrophe losses.* On the basis of experience and by application of appropriate statistical techniques, catastrophe losses can be predicted over the long term with reasonable accuracy.

c. *Matching.* Some portion of property and casualty insurance premiums is intended to cover losses that usually occur infrequently and at intervals longer than both the terms of the policies in force and the financial accounting and reporting period. Catastrophe losses should, therefore, be accrued when the revenue is recognized (or premiums should be deferred beyond the terms of policies in force to periods in which the catastrophes occur) to match catastrophe losses with the related revenue.

d. *Stabilization of reported income.* Catastrophe reserve accounting stabilizes reported income and avoids erratic variations caused by irregularly occurring catastrophes.

e. *Comparability.* Reinsurance premiums paid by a prime insurer are said to be similar to accrual of catastrophe losses prior to their occurrence because the reinsurance premiums paid reduce income before a catastrophe loss occurs. Accrual of catastrophe losses as an expense prior to occurrence of a catastrophe makes the financial statements of property and casualty insurance companies comparable regardless of the extent to which reinsurance has been purchased.

f. *Non-accrual would force purchase of reinsurance.* Non-accrual of catastrophe losses will force property and casualty insurance companies to purchase reinsurance.

g. *Generations of policyholders.* Periodic accrual of estimated catastrophe losses charges each generation of policyholders with its share of the loss through the premium structure.

93. The Board does not find those arguments persuasive. The fact that over the long term catastrophes are certain to occur does not justify accrual before the catastrophes occur. As stated in paragraph 59, the purpose of the conditions for accrual in pargraph 8 is to require accrual of losses if they are reasonably estimable *and relate to the current or a prior period.* An enterprise may know with certainty, for example, next year's administrative salaries, but that does not justify accrual in the current accounting period because those salaries do not relate to that period. As indicated in paragraphs 67–68, financial accounting and reporting reflects primarily the effects of past transactions and existing conditions, not future transactions or conditions; accrual for losses from catastrophes that are expected to occur *beyond the term of insurance policies in force* would amount to accrual of a liability before one has been incurred. Existing policyholders are insured only during the period covered by their insurance contracts; an insurance company is not presently obligated to policyholders for catastrophes that may occur after expiration of their policies. Accrual for those catastrophe losses would record a liability that is inconsistent with the concept of a liability discussed in paragraphs 69–73.

94. The Board recognizes that the costs of catastrophes to insurance companies are large and are incurred irregularly and that insurance companies recoup those costs in the long run through periodic adjustments in the premiums charged to policyholders. It is the view of the Board, however, that the long-run nature of pricing of premiums should not be a determinant of the time when a liability is recorded.

95. The AICPA Industry Audit Guide, "Audits of Fire and Casualty Insurance

Companies," describes accounting for premiums as follows (pp. 24–25):

As soon as a policy is issued promising to indemnify for loss, the insurance company incurs a potential liability. The company may be called upon to pay the full amount of the policy, a portion of the policy, or nothing. It would be impossible to try to measure the liability under a single policy. However, since insurance is based on the law of averages, one may estimate from experience the loss on a large number of policies.

As state supervision of insurance developed, the insurance departments set about providing a legal basis for determining the potential liability under outstanding policies in order to establish an ample reserve for the protection of policyholders and provide a uniform method of calculation. It was recognized that, since the premium is expected to pay losses and expenses, and provide a margin of profit over the term of the policy, the portion measured by the unexpired term should be adequate to pay policy liabilities (principally losses and loss expenses) and return premiums during the unexpired term on a uniform basis for all companies. Therefore the unearned premium was adopted as the basis for computing the unknown liability on unexpired policies.

96. Because unearned premiums represents the "unknown liability," the Board is of the view that it is inappropriate to accrue an additional amount as an estimate for that same unknown liability. Further, the Board's view, deferral of premiums beyond the terms of policies in force is inconsistent with the concept of revenue recognition set forth in the Audit Guide and is without any conceptual basis. Moreover, the Board believes that its conclusion regarding the time at which accruals shall be made for catastrophic losses is consistent with the Audit Guide. It should be noted that this Statement does not prohibit (and, in fact, requires) accrual of a *net* loss (that is, a loss in excess of deferred premiums) that probably will be incurred on insurance policies that are in force, provided that the loss can be reasonably estimated, just as accrual of net losses on long-term construction-type contracts is required (see *ARB No. 45*, "Long-Term Construction-Type Contracts").

97. With respect to catastrophes that may occur within the terms of policies in force, to satisfy the conditions for accrual in paragraph 8, the occurrence of catastrophes would have to be probable during the terms of those policies, and the amounts of losses therefrom would have to be reasonably estimable. The letters of comment and position papers received in response to the Discussion Memorandum and the Exposure Draft and presentations at the public hearing led the Board to conclude that neither the timing of catastrophes nor the amounts of losses therefrom are reasonably predictable within the terms of policies in force.

98. The Board is of the view that accrual of losses from catastrophes is not justified by the accounting concept of matching. Systematic and rational allocation does not apply to costs that have not been incurred. The Board recognizes that large and irregularly occurring costs must of necessity be considered in systematically and rationally determining premiums to be charged to customers but does not believe that pricing considerations should dictate the accrual of losses for financial accounting purposes. The Board also does not believe that matching in the sense of recognizing expenses by associating losses with specific revenue on a cause and effect basis is, in and of itself, a basis for accrual of catastrophe losses prior to the event causing the loss. The Board believes that, for the reasons stated in paragraphs 94–96, there can be no presumed direct association with specific revenue prior to the event causing the catastrophe loss.

99. The Board's views regarding justification of periodic accrual of catastrophe reserves on grounds of (a) stabilizing reported income, (b) improving comparability among financial statements of insurance companies, and (c) preventing the "forced" purchase of reinsurance are discussed in paragraphs 61–66.

100. The argument that accrual of catastrophe reserves enables each generation of policyholders to bear its share of the losses through the premiums that it is charged is also questionable because amounts established for premiums are not necessarily dependent on financial accounting and reporting practices.

101. The Board considered the proposal that catastrophe reserve accounting be permitted but not made mandatory. Whether it is probable that an asset has been impaired or a liability incurred is determined by the circumstances, not by choice. Accordingly, the conditions for accrual in paragraph 8 apply to all loss contingencies, including risk of loss from catastrophes assumed by property and casualty insurance companies and reinsurance companies. In the Board's view, the use of different methods to report catastrophe losses in similar circumstances cannot be justified.

Applicability to Life Insurance Companies

102. Some respondents to the Exposure Draft inquired as to whether the conditions for accrual in paragraph 8 are intended to change accounting practices of life insurance companies. This Statement does not amend the AICPA Industry Audit Guide, "Audits of Stock Life Insurance Companies."

Disclosure of Noninsurance

103. A number of respondents to the Exposure Draft inquired as to whether it is the Board's intent to require disclosure of noninsurance or underinsurance. Some recommended that the Board require disclosures with respect to uninsured risks that enterprises ordinarily insure against. Others said that they were unable to define risks that would ordinarily be insured against because the insurance practices of enterprises are so varied. Because of the problems involved in developing operational criteria for disclosure of noninsured or underinsured risks, this Statement does not require disclosure of uninsured risks. However, the Board does not discourage those disclosures in appropriate circumstances.

EFFECTIVE DATE AND TRANSITION

104. The Board considered three alternative approaches to a change in the method of accounting for contingencies: (1) prior period adjustment, (2) the "cumulative effect" method described in *APB Opinion No. 20*, "Accounting Changes," and (3) retention of amounts accrued for contingencies that do not meet the conditions for accrual in paragraph 8 until those amounts are exhausted by actual losses charged thereto. The Exposure Draft had proposed the change be effected by the prior period adjustment method. A large number of respondents to the Exposure Draft, however, opposed the prior period adjustment method for a number of reasons, including significant difficulties involved in determining the degree of probability and estimability that had existed in prior periods as would have been required if the conditions in paragraph 8 were applied retroactively. On further consideration of all the circumstances, the Board has concluded that use of the "cumulative effect" method described in *APB Opinion No. 20* represents a satisfactory solution and has concluded that the effective date in paragraph 20 is advisable.

STATEMENT OF FINANCIAL ACCOUNTING STANDARDS NO. 15 ACCOUNTING BY DEBTORS AND CREDITORS FOR TROUBLED DEBT RESTRUCTURINGS

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Introduction

1. This Statement establishes standards of financial accounting and reporting by the debtor and by the creditor for a troubled debt restructuring. The Statement does not cover accounting for allowances for estimated uncollectible amounts and does not prescribe or proscribe particular methods for estimating amounts of uncollectible receivables.

2. A restructuring of a debt constitutes a *troubled debt restructuring* for purposes of this Statement if the creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor that it would not otherwise consider. That concession either stems from an agreement between the creditor and the debtor or is imposed by law or a court. For example, a creditor may restructure the terms of a debt

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to alleviate the burden of the debtor's near-term cash requirements, and many troubled debt restructurings involve modifying terms to reduce or defer cash payments required of the debtor in the near future to help the debtor attempt to improve its financial condition and eventually be able to pay the creditor. Or, for example, the creditor may accept cash, other assets, or an equity interest in the debtor in satisfaction of the debt though the value received is less than the amount of the debt because the creditor concludes that step will maximize recovery of its investment.[1]

3. Whatever the form of concession granted by the creditor to the debtor in a troubled debt restructuring, the creditor's objective is to make the best of a difficult situation. That is, the creditor expects to obtain more cash or other value from the debtor, or to increase the probability of receipt, by granting the concession than by not granting it.

4. In this Statement, a *receivable* or *payable* (collectively referred to as *debt*) represents a contractual right to receive money or a contractual obligation to pay money on demand or on fixed or determinable dates that is already included as an asset or liability in the creditor's or debtor's balance sheet at the time of the restructuring. Receivables or payables that may be involved in troubled debt restructurings commonly result from lending or borrowing of cash, investing in debt securities that were previously issued, or selling or purchasing goods or services on credit. Examples are accounts receivable or payable, notes, debentures and bonds (whether those receivables or payables are secured or unsecured and whether they are convertible or nonconvertible), and related accrued interest, if any. Typically, each receivable or payable is negotiated separately, but sometimes two or more receivables or payables are negotiated together. For example, a debtor may negotiate with a group of creditors but sign separate debt instruments with each creditor. For purposes of the Statement, restructuring of each receivable or payable, including those negotiated and restructured jointly, shall be accounted for individually. The substance rather than the form of the receivable or payable shall govern. For example, to a debtor, a bond constitutes one payable even though there are many bondholders.

5. A troubled debt restructuring may include, but is not necessarily limited to, one or a combination of the following:

a. Transfer from the debtor to the creditor of receivables from third parties, real estate, or other assets to satisfy fully or partially a debt (including a transfer resulting from foreclosure or repossession).

b. Issuance or other granting of an equity interest to the creditor by the debtor to satisfy fully or partially a debt unless the equity interest is granted pursuant to existing terms for converting the debt into an equity interest.

c. Modification of terms of a debt, such as one or a combination of:

1. Reduction (absolute or contingent) of the stated interest rate for the remaining original life of the debt.
2. Extension of the maturity date or dates at a stated interest rate lower than the current market rate for new debt with similar risk.
3. Reduction (absolute or contingent) of the face amount or maturity amount of the debt as stated in the instrument or other agreement.
4. Reduction (absolute or contingent) of accrued interest.

6. Troubled debt restructurings may occur before, at, or after the stated maturity of debt, and time may elapse between the agreement, court order, etc. and the transfer of assets or equity interest, the effective date of new terms, or the occurrence of another event that constitutes consummation of the restructuring. The date of consummation is the time of the restructuring in this Statement.

7. A debt restructuring is not necessarily a troubled debt restructuring for purposes of this Statement even if the debtor is experiencing some financial difficulties. For example, a troubled debt restructuring is not involved if (a) the fair value [2] of cash, other assets, or an equity interest accepted by a creditor from a debtor in full satisfaction of its receivable at least equals the creditor's recorded investment in the receivable;[3] (b) the fair value of cash, other assets, or an equity interest transferred by a debtor to a creditor in full settlement of its payable at least equals the debtor's carrying amount of the payable; (c) the creditor reduces the effective interest rate on the debt primarily to reflect a decrease in market interest rates in general or a decrease in the risk so as to maintain a relationship with a debtor that can readily obtain funds from other sources at the current market interest rate; or (d) the debtor issues in exchange for its debt new marketable debt having an effective interest rate based on its market price that is at or near the current market interest rates of debt with similar maturity dates and stated interest rates issued by nontroubled debtors. In general, a debtor that can obtain funds from sources other than the existing creditor at market interest rates at or near those for nontroubled debt is not involved in a troubled debt restructuring. A debtor in a troubled debt restructuring can obtain funds from sources other than the existing creditor in the troubled debt restructuring, if at all, only at effective interest rates (based on market prices) so high that it cannot afford to pay them. Thus, in an attempt to protect as much of its investment as possible, the creditor in a troubled debt restructuring grants a concession to the debtor that it would not otherwise consider.

8. For purposes of this Statement, troubled debt restructurings do not include changes in lease agreements (the accounting is prescribed by *FASB Statement No. 13,* "Accounting for Leases") or employment-related agreements (for example, pension plans and deferred compensation contracts). Nor do troubled debt restructurings include debtors' failures to pay trade accounts according to their terms of creditors' delays in taking legal action to collect overdue amounts of interest and principal, unless they involve an agreement between debtor and creditor to restructure.

9. The Addendum to *APB Opinion No. 2,* "Accounting for the "Investment Credit'," states that "differences may arise in the application of generally accepted accounting principles as between regulated and nonregulated business, because of the effect in regulated businesses of the rate-making process" and discusses the application of generally accepted accounting principles to regulated industries. FASB Statements and Interpretations should therefore be applied to regulated companies that are subject to the rate-making process in accordance with the provisions of the Addendum.

10. This Statement supersedes *FASB Interpretation No. 2,* "Imputing Interest on Debt Arrangements Made under the Federal Bankruptcy Act," and shall be applied to the types of situations that were covered by that Interpretation. Thus, it shall be applied to troubled debt restructurings consummated under reorganization, arrangement, or other provisions of the Federal Bankruptcy Act or other Federal statutes related thereto. [4] It also amends *APB Opinion No. 26,* "Early Extinguishment of Debt," to the extent needed to exclude from that Opinion's scope early extinguishments of debt through troubled debt restructurings.

11. Appendix A provides background information. Appendix B sets forth the basis for the Board's conclusions, including alternatives considered and reasons for accepting some and rejecting others.

STANDARDS OF FINANCIAL ACCOUNTING AND REPORTING

Accounting by Debtors

12. A debtor shall account for a troubled debt restructuring according to the type of the restructuring as prescribed in the following paragraphs.

Transfer of Assets in Full Settlement

13. A debtor that transfers its receivables from third parties, real estate, or other assets to a creditor to settle fully a payable shall recognize a gain on restructuring of payables (see paragraph 21). The gain shall be measured by the excess of (i) the carrying amount of the payable settled (the face amount increased or decreased by applicable accrued interest and applicable unamortized premium, discount, finance charges, or issue costs) over (ii) the fair value of the assets transferred to the creditor. [5] The fair value of

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[1] Although troubled debt that is fully satisfied by foreclosure, repossession, or other transfer of assets or by grant of equity securities by the debtor is, in a technical sense, not restructured, that kind of event is included in the term *troubled debt restructuring* in this Statement.

[4] This Statement does not apply, however, if under provisions of those Federal statutes or in a quasi-reorganization or corporate readjustment (*ARB No. 43,* Chapter 7, Section A, "Quasi-Reorganization or Corporate Readjustment . . . ") with which a troubled debt restructuring coincides, the debtor restates its liability generally.

[5] Paragraphs 13, 15, and 19 indicate that the fair value of assets tranferred or the fair value of an

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the assets transferred is the amount that the debtor could reasonably expect to receive for them in a current sale between a willing buyer and a willing seller, that is, other than in a forced or liquidation sale. Fair value of assets shall be measured by their market value if an active market for them exists. If no active market exists for the assets transferred but exists for similar assets, the selling prices in that market may be helpful in estimating the fair value of the assets transferred. If no market price is available, a forecast of expected cash flows may aid in estimating the fair value of assets transferred, provided the expected cash flows are discounted at a rate commensurate with the risk involved. [6]

14. A difference between the fair value and the carrying amount of assets transferred to a creditor to settle a payable is a gain or loss on transfer of assets. [7] The debtor shall include that gain or loss in measuring net income for the period of transfer, reported as provided in *APB Opinion No. 30*, "Reporting the Results of Operations."

Grant of Equity Interest in Full Settlement

15. A debtor that issues or otherwise grants an equity interest to a creditor to settle fully a payable shall account for the equity interest at its fair value. [8] The difference between the fair value of the equity interest granted and the carrying amount of the payable settled shall be recognized as a gain on restructuring of payables (see paragarph 21).

Modification of Terms

16. A debtor in a troubled debt restructuring involving only modifications of terms of a payable—that is, not involving a transfer of assets or grant of an equity interest—shall account for the effects of the restructuring prospectively from the time of restructuring, and shall not change the carrying amount of the payable at the time of the restructuring unless the carrying amount exceeds the total future cash payments specified by the new terms. [9] That is, the effects of changes in the amounts or timing (or both) of future cash payments designated as either interest or face amount shall be reflected in future periods. [10] Interest expense shall be computed in a way that a constant effective interest rate is applied to the carrying amount of the payable at the beginning of each period between restructuring and maturity (in substance the "interest" method prescribed by paragraph 15 of *APB Opinion No. 21*). The new effective interest rate shall be the discount rate that equates the present value of the future cash payments specified by the new terms (excluding amounts contingently payable) with the carrying amount of the payable.

17. If, however, the total future cash payments specified by the new terms of a payable, including both payments designated as interest and those designated as face amount, are less than the carrying amount of the payable, the debtor shall reduce the carrying amount to an amount equal to the total future cash payments specified by the new terms and shall recognize a gain on restructuring of payables equal to the amount of the reduction (see paragraph 21). [11] Thereafter, all cash payments under the terms of the payable shall be accounted for as reductions of the carrying amount of the payable, and no interest expense shall be recognized on the payable for any period between the restructuring and maturity of the payable. [12]

18. A debtor shall not recognize a gain on a restructured payable involving indeteriminate future cash payments as long as the maximum total future cash payments may exceed the carrying amount of the payable. Amounts designated either as interest or as face amount by the new terms may be payable contingent on a specified event or circumstance (for example, the debtor may be required to pay specifed amounts if its financial condition improves to a specified degree within a specified period). To determine whether the debtor shall recognize a gain according to the provisions of paragraphs 16 and 17, those contingent amounts shall be included in the "total future cash payments specified by the new terms" to the extent necessary to prevent recognizing a gain at the time of restructuring that may be offset by future interest expense. Thus, the debtor shall apply paragraph 17 of *FASB Statement No. 5*, "Accounting for Contingencies," in which probability of occurrence of a gain contingency is not a factor, and shall assume that contingent future payments will have to be paid. The same principle applies to amounts of future cash payments that must sometimes be estimated to apply the provisions of paragraphs 16 and 17. For example, if the number of future interest payments is flexible because the face amount and accrued interest is payable on demand or becomes payable on demand, estimates of total future cash payments shall be based on the maximum number of periods possible under the restructured terms.

Combination of Types

19 A troubled debt restucturing may involve partial settlement of a payable by the debtor's transferring assets or granting an equity interest (or both) to the creditor and modification of terms, of the remaining payable. [13] A debtor shall account for a troubled debt restructuring involving a partial settlement and a modification of terms as prescribed in paragraphs 16–18 except that, first, assets transferred or an equity interest granted in that partial settlement shall be measured as prescribed in paragraphs 13 and 15, respectively, and the carrying amount of the payable shall be reduced by the total fair value of those assets or equity interest. [14] A difference between the fair value and the carrying amount of assets transferred to the creditor shall be recognized as a gain or loss on transfer of assets. No gain or restructuring of payables shall be recognized unless the remaining carrying amount of the payable exceeds the total future cash payments (including amounts contingently payable) specified by the terms of the debt remaining unsettled after the restructuring. Future interest expense, if any, shall be determined according to the provisions of paragraphs 16–18.

Related Matters

20. A troubled debt restructuring that is in substance a repossession or foreclosure by the creditor or other transfer of assets to the creditor shall be accounted for according to the provisions of paragraphs 13, 14, and 19.

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equity interest granted shall be used in accounting for a settlement of a payable in a troubled debt restructuring. That guidance is not intended to preclude using the fair value of the payable settled if more clearly evident that the fair value of the assets transferred or of the equity interest granted in a full settlement of a payable (paragraphs 13 and 15). (See paragraph 67 of *APB Opinion No. 16*, "Business Combinations.") However, a partial settlement of a payable (paragraph 19), the fair value of the assets transferred or of the equity interest granted shall be used in all cases to avoid the need to allocate the fair value of the payable between the part settled and the part still outstanding.

[6] Some factors that may be relevant in estimating the fair value of various kinds of assets are described in paragraphs 88 and 89 of *APB Opinion No. 16*, paragraphs 12–14 of *APB Opinion No. 21*, "Interest on Receivables and Payables," and paragraph 25 of *APB Opinion No. 29*, "Accounting for Nonmonetary Transactions."

[7] The carrying amount of a receivable encompasses not only unamortized premium, discount, acquisition costs, and the like but also an allowance for uncollectible amounts and other "valuation" accounts, if any. A loss on transferring receivables to creditors may therefore have been wholly or partially recognized in measuring net income before the transfer and be wholly or partly a reduction of a valuation account rather than a gain or loss in measuring net income for the period of the transfer.

[8] See footnote 5.

[9] In this Statement, *total future cash payments* includes related accrued interests, if any, at the time of the restructuring that continues to be payable under the new terms.

[10] All or a portion of the carrying amount of the payable at the time of the restructuring may need to be reclassified in the balance sheet because of changes in the terms, for example, a change in the amount of the payable due within one year after the date of the debtor's balance sheet. A troubled debt restructuring of a short-term obligation after the date of a debtor's balance sheet but before that balance sheet is issued may affect the classification of that obligation in accordance with *FASB Statement No. 6*, "Classification of Short-Term Obligations Expected to Be Refinanced."

[11] If the carrying amount of the payable comprises several accounts (for example, face amount, accrued interest, and unamortized premium, discount, finance charges, and issue costs) that are to be continued after the restructuring, some possibly being combined, the reduction in carrying amount may need to be allocated among the remaining accounts in proportion to the previous balances. However, the debtor may choose to carry the amount designated as face amount by the new terms in a separate account and adjust another account accordingly.

[12] The only exception is to recognize interest expense according to paragraph 22.

[13] Even if the stated terms of the remaining payable, for example, the stated interest rate and the maturity date or dates, are not changed in connection with the transfer of assets or grant of an equity interest, the restructuring shall be accounted for as prescribed by paragraph 19.

[14] If cash is paid in a partial settlement of a payable in a troubled debt restructuring, the carrying amount of the payable shall be reduced by the amount of cash paid.

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21. Gains on restructuring of payables determined by applying the provisions of paragraphs 13–20 of this Statement shall be aggregated, included in measuring net income for the period of restructuring, and, if material, classified as an extraordinary item, net of related income tax effect, in accordance with paragraph 8 of *FASB Statement No. 4*, "Reporting Gains and Losses from Extinguishment of Debt."

22. If a troubled debt restructuring involves amounts contingently payable, those contingent amounts shall be recognized as a payable and as interest expense in future periods in accordance with paragraph 8 of *FASB Statement No. 5*. Thus, in general, interest expense for contingent payments shall be recognized in each period in which (a) it is probable that a liability has been incurred and (b) the amount of that liability can be reasonably estimated. Before recognizing a payable and interest expense for amounts contingently payable, however, accural or payment of those amounts, shall be deducted from the carrying amount of the restructured payable to the extent that contingent payments included in "total future cash payments specified by the new terms" prevented recognition of a gain at the time of restructuring (paragraph 18).

23. If amounts of future cash payments must be estimated to apply the provisions of paragraphs 16–18 because future interest payments are expected to fluctuate—for example, the restructured terms may specify the stated interest rate to be the prime interest rate increased by a specified amount or proportion—estimates of maximum total future payments shall be based on the interest rate in effect at the time of the restructuring. Fluctuations in the effective interest rate after the restructuring from changes in the prime rate or other causes shall be accounted for as changes in estimates in the periods the changes occur. However, the accounting for those fluctuations shall not result in recognizing a gain or restructuring that may be offset by future cash payments (paragraphs 18 and 22). Rather, the carrying amount of the restructured payable shall remain unchanged, and future cash payments shall reduce the carrying amount until the time that any gain recognized cannot be offset by future cash payments.

24. Legal fees and other direct costs that a debtor incurs in granting an equity interest to a creditor in a troubled debt restructuring shall reduce the amount otherwise recorded for that equity interest according to paragraphs 15 and 19. All other direct costs that a debtor incurs to effect a troubled debt restructuring shall be deducted in measuring gain on restructuring of payables or shall be included in expense for the period if no gain on restructuring is recognized.

Disclosure by Debtors

25. A debtor shall disclose, either in the body of the financial statements or in the accompanying notes, the following information about troubled debt restructurings that have occurred during a period for which financial statements are presented:

a. For each restructuring.[15] a description of the principal changes in terms, the major features of settlement, or both.
b. Aggregate gain on restructuring of payables and the related income tax effect (paragraph 21).
c. Aggregate net gain or loss on transfers of assets recognized during the period (paragraphs 14 and 19).
d. Per share amount of the aggregate gain on restructuring of payables, met of related income tax effect.

26. A debtor shall disclose in financial statements for periods after a troubled debt restructuring the extent to which amounts contingently payable are included in the carrying amount of restructured payables pursuant to the provisions of paragraph 18. If required by paragraphs 9–13 of *FASB Statement No. 5*, a debtor shall also disclose in those financial statements total amounts that are contingently payable on restructured payables and the conditions under which those amounts would become payable or would be forgiven.

Accounting by Creditors

27. A creditor shall account for a troubled debt restructuring according to the type of the restructuring as prescribed in the following paragraphs. Paragraphs 28–42 do not apply to a receivable that the creditor is accounting for at market value in accordance with the specialized industry practice (for example, a marketable debt security accounted for at market value by a mutual fund). Estimated cash expected to be received less estimated costs expected to be incurred is not market value in accordance with specialized industry practice as that term is used in this paragraph.

Receipt of Assets in Full Satisfaction

28. A creditor that receives from a debtor in full satisfaction of a receivable either (i) receivables from third parties, real estate, or other assets or (ii) shares of stock or other evidence of an equity interest in the debtor, or both, shall account for those assets (including an equity interest) at their fair value at the time of the restructuring (see paragraph 13 for how to measure fair value).[16] The excess of (i) the recorded investment in the receivable [17] satisfied over (ii) the fair value of assets received is a loss to be recognized according to paragraph 35.

29. After a troubled debt restructuring, a creditor shall account for assets received in satisfaction of a receivable the same as if the assets had been acquired for cash.

Modification of Terms

30. A creditor in a troubled debt restructuring involving only modification of terms of a receivable—that is, not involving receipt of assets (including an equity interest in the debtor)—shall account for the effects of the restructuring prospectively and shall not change the recorded investment in the receivable at the time of the restructuring unless that amount exceeds the total future cash receipts specified by the new terms.[18] That is, the effects of changes in the amounts or timing (or both) of future cash receipts designated either as interest or as face amount shall be reflected in future periods.[19] Interest income shall be computed in a way that a constant effective interest rate is applied to the recorded investment in the receivable at the beginning of each period between restructuring and maturity (in substance the "interest" method prescribed by paragraph 15 of *APB Opinion No. 21*).[20] The new effective interest rate shall be the discount rate that equates the present value of the future cash receipts specified by the new terms (excluding amounts contingently receivable) with the recorded investment in the receivable.

31. If, however, the total future cash receipts specified by the new terms of the receivable, including both receipts of designated as interest and those designated as face amount, are less than the recorded investment in the receivable before

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[15] Separate restructurings within a fiscal period for the same category of payables (for example, accounts payable or subordinated debenture) may be grouped for disclosure purposes.

[16] Paragraphs 28 and 33 indicate that the fair value of assets received shall be used in accounting for satisfaction of a receivable in a troubled debt restructuring. That guidance is not intended to preclude using the fair value of the receivable satisfied if more clearly evident than the fair value of the assets received in full satisfaction of a receivable (paragraph 28). (See paragraph 67 of *APB Opinion No. 16*.) However, in a partial satisfaction of a receivable (paragraph 33), the fair value of the assets received shall be used in all cases to avoid the need to allocate the fair value of the receivable between the part satisified and the part still outstanding

[17] *Recorded investment in the receivable* is used in paragraphs 28–41 instead of *carrying amount of the receivable* because the latter is net of an allowance for estimated uncollectible amounts or other "valuation" account, if any, while the former is not. The recorded investment in the receivable is the face amount increased or decreased by applicable accrued interest and unamortized premium, discount, finance charges, or acquisition costs and may also reflect a previous direct write-down of the investment.

[18] In this Statement, total future cash receipts includes related accrued interest, if any, at the time of the restructuring that continues to be receivable under the new terms. Uncertainty of collection of noncontingent amounts specified by the new terms (see paragraph 32 for inclusion of contingent amounts) is not a factor in applying paragraphs 30–32 but should, of course, be considered in accounting for allowances for uncollectible amounts.

[19] All or a portion of the recorded investment in the receivable at the time of restructuring may need to be reclassified in the balance sheet because of changes in the terms.

[20] Some creditors—for example, finance companies (*AICPA Industry Audit Guide*, "Audits of Finance Companies," Chapter 2)—use methods that recognize less revenue in early periods of a receivable than does the "interest" method. The accounting for restructured receivables described in this Statement is not intended to change creditors' methods of recognizing revenue to require a different method for restructured receivables from that for other receivables.

restructuring, the creditor shall reduce the recorded investment in the receivable to an amount equal to the total future cash receipts specified by the new terms. The amount of the reduction is a loss to be recognized according to paragraph 35. Thereafter, all cash receipts by the creditor under the terms of the restructured receivable, whether designated as interest or as face amount, shall be accounted for as recovery of the recorded investment in the receivable, and no interest income shall be recognized on the receivable for any period between the restructuring and maturity of the receivable.[21]

32. A creditor shall recognize a loss on a restructured receivable involving indeterminate future cash receipts unless the minimum future cash receipts specified by the new terms at least equals the recorded investment in the receivable. Amounts designated either as interest or as face amount that are receivable from the debtor may be contingent on a specified event or circumstance (for example, specified amounts may be receivable from the debtor if the debtor's financial condition improves to a specified degree within a specified period). To determine whether the creditor shall recognize a loss according to the provisions of paragraphs 30 and 31, those contingent amounts shall be included in the "total future cash receipts specified by the new terms" only if at the time of restructuring those amounts meet the conditions that would be applied under the provisions of paragraph 8 of *FASB Statement No. 5* in accruing a loss. That is, a creditor shall recognize a loss unless contingent future cash receipts needed to make total future cash receipts specified by the new terms at least equal to the recorded investment in the receivable both are probable and can be reasonably estimated. The same principle applies to amounts of future cash receipts that must sometimes be estimated to apply the provisions of paragraphs 30 and 31. For example, if the number of interest receipts is flexible because the face amount and accrued interest is collectible on demand or becomes collectible on demand after a specified period, estimates of total future cash receipts should be based on the minimum number of periods possible under the restructured terms.

Combination of Types

33. A troubled debt restructuring may involve receipt of assets (including an equity interest in the debtor) in partial satisfaction of a receivable and a modification of terms of the remaining receivable.[22] A creditor shall account for a troubled debt restructuring involving a partial satisfaction and modification of terms as prescribed in paragraphs 30–32 except that, first, the assets received shall be accounted for at their fair values as prescribed in paragraph 28 and the recorded investment in the receivable shall be reduced by the fair value of the assets received.[23] No loss on the restructuring shall be recognized unless the remaining recorded investment in the receivable exceeds the total future cash receipts specified by the terms of the receivable remaining unsatisfied after the restructuring. Future interest income, if any, shall be determined according to the provisions of paragraphs 30–32.

Related Matters

34. A troubled debt restructuring that is in substance a repossession or foreclosure by the creditor, or in which the creditor otherwise obtains one or more of the debtor's assets in place of all or part of the receivable, shall be accounted for according to the provisions of paragraphs 28 and 33 and, if appropriate, 39.

35. Losses determined by applying the provisions of paragraphs 28–34 of this Statement shall, to the extent that they are not offset against allowances for uncollectible amounts or other valuation accounts, be included in measuring net income for the period of restructuring and reported according to *APB Opinion No. 30*. Although this Statement does not address questions concerning estimating uncollectible amounts or accounting for the related valuation allowance (paragraph 1), it recognizes that creditors use allowances for uncollectible amounts. Thus, a loss from reducing the recorded investment in a receivable may have been recognized before the restructuring by deducting an estimate of uncollectible amounts in measuring net income and increasing an appropriate valuation allowance. If so, a reduction in the recorded investment in the receivable in a troubled debt restructuring is a deduction from the valuation allowance rather than a loss in measuring net income for the period of restructuring. A valuation allowance can also be used to recognize a loss determined by applying paragraphs 28–34 that has not been previously recognized in measuring net income. For example, a creditor with an allowance for uncollectible amounts pertaining to a group of receivables that includes the restructured receivable may deduct from the allowance the reduction of recorded investment in the restructured receivable and recognize the loss in measuring net income for the period of restructuring by estimating the appropriate allowance for remaining receivables, including the restructured receivable.

36. If a troubled debt restructuring involves amounts contingently receivable, those contingent amounts shall not be recognized as interest income in future periods before they become receivable—that is, they shall not be recognized as interest income before both the contingency has been removed and the interest has been earned.[24] Before recognizing those amounts as interest income, however, they shall be deducted from the recorded investment in the restructured receivable to the extent that contingent receipts included in "total future cash receipts specified by the new terms" avoided recognition of a loss at the time of restructuring (paragraph 32).

37. If amounts of future cash receipts must be estimated to apply the provisions of paragraphs 30–32 because future interest receipts are expected to fluctuate—for example, the restructured terms may specify the stated interest rate to be the prime interest rate increased by a specified amount or proportion—estimates of the minimum total future receipts shall be based on the interest rate in effect at the time of restructuring. Fluctuations in the effective interest rate after the restructuring from changes in the prime rate or other causes shall be accounted for as changes in estimates in the periods the changes occur except that a creditor shall recognize a loss and reduce the recorded investment in a restructured receivable if the interest rate decreases to an extent that the minimum total future cash receipts determined using that interest rate fall below the recorded investment in the receivable at that time.

38. Legal fees and other direct costs incurred by a creditor to effect a troubled debt restructuring shall be included in expense when incurred.

39. A receivable from the sale of assets previously obtained in a troubled debt restructuring shall be accounted for according to *APB Opinion No. 21* regardless of whether the assets were obtained in satisfaction (full or partial) of a receivable to which that Opinion was not intended to apply. A difference, if any, between the amount of the new receivable and the carrying amount of the assets sold is a gain or loss on sale of assets.

Disclosure by Creditors

40. A creditor shall disclose, either in the body of the financial statements or in the accompanying notes, the following information about troubled debt restructurings as of the date of each balance sheet presented:

a. For outstanding receivables whose terms have been modified in troubled debt restructurings, by major category: [25] (i) the

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[21] The only exception is to recognize interest income according to paragraph 36.

[22] Even if the stated terms of the remaining receivable, for example, the stated interest rate and the maturity date or dates, are not changed in connection with the receipt of assets (including an equity interest in the debtor), the restructuring shall be accounted for as prescribed in paragraph 33.

[23] If cash is received in a partial satisfaction of a receivable, the recorded investment in the receivable shall be reduced by the amount of cash received.

[24] *FASB Statement No. 5*, paragraph 17 (which continued without reconsideration certain provisions of *ARB No. 50*, "Contingencies"), states, in part: "Contingencies that might result in gains usually are not reflected in the accounts since to do so might be to recognize revenue prior to its realization."

[25] The appropriate major categories depend on various factors, including the industry or industries in which the creditor is involved. For example, for a commercial banking enterprise, at a minimum, the appropriate categories are investments in debt securities and loans. Information need not be disclosed, however, for non-interest-bearing trade receivables; loans to individuals for household, family, and other personal expenditures; and real estate loans secured by one-to-four family residential properties.

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aggregate recorded investment; (ii) the gross interest income that would have been recorded in the period then ended if those receivables had been current in accordance with their original terms and had been outstanding throughout the period or since origination, if held for part of the period; and (iii) the amount of interest income on those receivables that was included in net income for the period. A receivable whose terms have been modified need not be included in that disclosure if, subsequent to restructuring, its effective interest rate (paragraph 30) has been equal to or greater than the rate that the creditor was willing to accept for a new receivable with comparable risk.

b. The amount of commitments, if any, to lend additional funds to debtors owing receivables whose terms have been modified in troubled debt restructurings.

41. A financial institution, or other creditor, may appropriately disclose the information prescribed by paragraph 40, by major category, for the aggregate of outstanding reduced-earning and nonearning receivables rather than separately for outstanding receivables whose terms have been modified in troubled debt restructurings.

Substitution or Addition of Debtors

42. A troubled debt restructuring may involve substituting debt of another business enterprise, individual, or government unit [26] for that of the troubled debtor or adding another debtor (for example, as a joint debtor). That kind of restructuring should be accounted for according to its substance. For example, a restructuring in which, after the restructuring, the substitute or additional debtor controls, is controlled by, or is under common control [27] with the original debtor is an example of one that shall be accounted for by the creditor according to the provisions of paragraphs 30–32. Those paragraphs shall also apply to a restructuring in which the substitute or additional debtor and original debtor are related after the restructuring by an agency, trust, or other relationship that in substance earmarks certain of the original debtor's funds or funds flows for the creditor although payments to the creditor may be made by the substitute or additional debtor. In contrast, a restructuring in which the substitute or additional debtor and the original debtor do not have any of the relationships described above after the restructuring shall be accounted for by the creditor according to the provisions of paragraphs 28 and 33.

Effective Date and Transition

43. The preceding paragraphs of this Statement, other than paragraphs 39–41, shall be effective for troubled debt restructurings consummated after December 31, 1977.[28] Earlier application is encouraged for those consummated on or before December 31, 1977 but during fiscal years for which annual financial statements have not previously been issued. The paragraphs shall not be applied to those consummated during fiscal years for which annual financial statements have previously been issued.

44. Paragraph 39 shall be effective for receivables resulting from sales of assets after December 31, 1977 regardless of whether the provisions of this Statement were applied to the related troubled debt restructuring. Earlier application is encouraged for receivables from sales of assets on or before December 31, 1977 but during fiscal years for which annual financial statements have not previously been issued. It shall not be applied to those from sales of assets during fiscal years for which annual financial statements have previoulsy been issued.

45. The information prescribed by paragraphs 40 and 41 shall be disclosed in financial statements for fiscal years ending after December 15, 1977. Earlier application is encouraged in financial statements for fiscal years ending before December 16, 1977. For the purpose of applying paragraph 40, "receivables whose terms have been modified in troubled debt restructurings" shall encompass not only (a) receivables whose terms have been modified in troubled debt restructurings to which the other provisions of this Statement have been applied in accordance with paragraph 43 but also (b) those whose terms have been modified in earlier restructurings that constitute troubled debt restructurings (paragraphs 2–8) but have been excluded from its other provisions because of the timing of the restructurings.

The provisions of this Statement need not be applied to immaterial items.

This Statement was adopted by the affirmative votes of five members of the Financial Accounting Standard Board. Messrs. Gellein and Kirk dissented.

Messrs. Kirk and Gellein dissent because they disagree with the conclusions in paragraphs 16 and 30 (which are also in paragraphs 19 and 33) about prospective treatment of the effect of a reduction of the face amount or maturity amount of debt. They would apply the fair value accounting required in paragraphs 13, 15, and 28 to reductions in the face amount of restructured debt. They point to the incontrovertible fact that a modification of terms that reduces the face amount or interest rate or extends the maturity date, without equivalent consideration, is a relinquishment of rights by the creditor and a corresponding benefit to the debtor, and note that debtors and creditors currently record a reduction in face amount when it occurs. They believe that this Statement takes a backward step in reversing, for the sake of consistency, the practice of current recognition, though not based on fair value. They do not accept the argument implicit in paragraphs 140–144, especially paragraph 144, that consistency in accounting for various modifications of terms should govern. They find no virtue in theoretical consistency if it means now ignoring a substantive consequence of an event—in this case relinquishment of rights—that prior to the issuance of this Statement was being recognized. Messrs. Kirk and Gellein accept prospective recognition of the relinquishment by the creditor and the contra benefit to the debtor associated with interest rate reductions and extensions of maturity dates pending further consideration of other aspects of accounting for interest.

Messrs. Kirk and Gellein believe that their proposal to apply fair value accounting (required in paragraphs 13, 15, and 28 of this Statement) to reduction in the face amount would eliminate a significant difference between the accounting required by this Statement and that required by *APB Opinion No. 26* for debt exchanges that involve changes in the face amount. They also believe that their proposal would result in a more conventional and understandable measure of gain or loss than that which results from the application of paragraphs 17, 19, 31, and 33. They believe that in situations considered to be recordable events, any gain or loss should be determined by comparing fair value, not an undiscounted amount of future cash flows, with previously recorded amounts.

Messrs. Kirk and Gellein also dissent because of disagreement with the guidelines in paragraph 42 for determining when a restructuring that involves a substitution of debtors is a recordable event. First, they believe that from the viewpoint of the creditor, there is no significant difference between a change from the original debtor to one under or to one not under the same control as the original debtor. To the creditor both are changes to a new and different credit risk that should be accounted for in the same way. Second, they believe the guideline in that paragraph concerning a substitute debtor and original debtor who are "related after the restructuring by an agency, trust, or other relationship that in substance earmarks certain of the original debtor's funds or funds flows for the creditor although payments to the creditor may be made by the substitute . . . debtor," is an unworkable criterion and is irrelevant if the right, or asset that gives rise to those funds flows, is irrevocably transferred. In the latter event, from the creditor's viewpoint, the transfer changes the risk and, in effect, results in a different asset—similar in substance to that described in paragraph 28. Further, they find insufficient guidance about the kind of relationship between the parties intended to govern. As an example, they disagree with the interpretation of that guideline in paragraph 161 where recent exchanges of bonds of the Municipal Assistance Corporation (the Corporation) for notes of the City of New York (the City) are noted as examples of debt substitutions whose substance to creditors is modification of terms of an existing

[26] Government units include, but are not limited to, states, counties, townships, municipalities, school districts, authorities, and commissions. See page 4 of *AICPA Industry Audit Guide*, "Audit of State and Local Government Units."

[27] "Control" in this paragraph has the meaning described in paragraph 3(c) of *APB Opinion No. 18*, "The Equity Method of Accounting for Investments in Common Stock": "The usual condition for control is ownership of a majority (over 50%) of the outstanding voting stock. The power to control may also exist with a lesser percentage of ownership, for example, by contract, lease, agreement with other stockholders or by court decree."

[28] For an enterprise having a fiscal year of 52 or 53 weeks ending in the last seven days in December or the first seven days in January, references to December 31, 1977 in paragraphs 43 and 44 shall mean the date in December 1977 or January 1978 on which the fiscal year ends.

receivable rather than an acquisition of a new asset. They believe the relationship in that case goes beyond that of an agency, trust, or other relationship that earmarks funds. They note that the Corporation is a corporate government agency and an instrumentality of the State of New York (the State), not the City; that bonds of the Corporation do not constitute an enforceable obligation, or a debt, of either the State or the City and neither the State nor the City shall be liable thereon; and that neither the faith and credit nor the taxing power of the State or City is pledged to the payment of principal of or interest on the bonds. They note, too, that the Corporation is empowered to issue and sell bonds and notes and to pay or lend funds received from such sale of the City and to exchange the Corporation's obligations for obligations of the City. Those characteristics in their minds establish sufficient independence of the Corporation from the City to take the exchanges out from under the guidelines of paragraph 42.

Members of the Financial Accounting Standards Board:

Marshall S. Armstrong
Chairman
Oscar S. Gellein
Donald J. Kirk
Arthur L. Litke
Robert E. Mays
Robert T. Sprouse
Ralph E. Walters

Appendix A.—Background Information

46. There has been a substantial increase in recent years in the number of debtors that are unable to meet their obligations on outstanding debt because of financial difficulties. Sometimes the debtor and the creditor have restructured the debt to enable the debtor to avoid bankruptcy proceedings or other consequences of default, and the number of troubled debt restructurings receiving publicity has also increased. Although many of the most publicized troubled debt restructurings have involved debtors that are real estate companies or real estate investment trusts, debtors in other industries have also been involved in troubled debt restructurings.

47. *APB Opinion No. 26,* "Early Extinguishment of Debt," established the accounting by a debtor for debt extinguished before its scheduled maturity. A number of commentators have observed, however, that not all troubled debt restructurings are "extinguishments" as that term is used in *APB Opinion No. 26.* Also, since many troubled debt restructurings have occurred on or after the scheduled maturity of the debt, questions have arisen about accounting for debt restructurings that are not early extinguishments. It has been suggested that troubled debt restructurings should be considered separately from restructurings, including early extinguishments, that do not involve the economic or legal pressure to restructure on the creditor that characterizes troubled debt restructurings.

48. Concern, over the lack of guidance in the authoritative literature on accounting for troubled debt restructurings, accentuated by their increasing number, led to requests that the Financial Accounting Standards Board consider the matter. The Board submitted the question to the Screening Committee on Emerging Problems and weighed its recommendations in deciding to proceed with a project limited in scope to accounting and reporting by a debtor whose debt is restructured in a troubled loan situation. The Board issued an Exposure Draft of a Proposed Statement, "Restructuring of Debt in a Troubled Loan Situation," dated November 7, 1975, and held a public hearing on December 12, 1975. The Board received 63 written responses to the Exposure Draft and heard five oral presentations at the public hearing. A number of respondents objected to the accounting prescribed by the Exposure Draft, but they held divergent views about the appropriate accounting. Major issues of concern centered on (a) whether certain kinds of troubled debt restructurings require reductions of carrying amounts of debt, (b) if they do, whether the effect of the reduction should be included in measuring current net income, be deferred, or be considered a contribution to capital, and (c) whether interest that is contingently payable on restructured debt should be recognized before it becomes payable.

49. During the same period, uncertainties arose about the abilities of some state and local government units to pay their obligations when due. Some of those obligations have also been restructured, for example, by continuing the existing obligation for a designated period at a reduced interest rate or by substituting obligations with later maturities of the same or a related issuer. Questions about accounting and reporting by creditors for those restructured securities led various individuals and organizations to urge the Board to consider that matter.

50. The Board considered (a) the lack of authoritative guidance and divergent views about accounting and reporting by debtors for troubled debt restructurings and by creditors for restructured securities of state and local government units and (b) the similarities of the issues for debtors and creditors and concluded that the accounting and reporting issues affecting both debtors and creditors should be considered in a single project. The Board therefore announced on January 7, 1976, that it had added to its agenda a project to determine accounting and reporting by both debtors and creditors. At the same time the Board announced that since the new project concerned accounting by both debtors and creditors, the Board would not issue a Statement covering the limited topic of the November 7, 1975 Exposure Draft.

51. The Securities and Exchange Commission issued, also on January 7, 1976, *Accounting Series Release No. 188,* "Interpretive Statement by the Commission on Disclosure Registrants of Holdings of Securities of New York City and Accounting for Securities Subject to Exchange Offer and Moratorium." The Commission did not require a particular accounting method because of the divergent views on accounting for the securities held and "the fact that the Financial Accounting Standards Board has agreed to undertake a study of the accounting problems . . . with the intention of developing standards which can be applied to year-end statements in 1976."

52. The Board appointed a task force in January 1976 to provide counsel in preparing a Discussion Memorandum. Its sixteen members included individuals from academe, the financial community, industry, law, and public accounting. The Board issued a Discussion Memorandum, "Accounting by Debtors and Creditors When Debt Is Restructured," dated May 11, 1976, comprehending accounting and reporting by debtors and creditors for "any change in the amount or timing of cash payments otherwise required under the terms of the debt at the date of restructuring." It received 894 written responses to the Discussion Memorandum and heard 37 oral presentations at a public hearing on July 27–30, 1976.

53. In addition, the FASB staff reviewed the accounting and reporting practices of a number of debtors and creditors involved in troubled debt restructurings and interviewed a limited number of individuals who were directly associated with some of those restructurings.

54. The Board issued an Exposure Draft of a proposed Statement on "Accounting by Debtors and Creditors for Troubled Debt Restructurings," dated December 30, 1976. It received 96 letters of comment on the Exposure Draft.

Appendix B.—Basis for Conclusions

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Basis for Conclusions

55. This Appendix discusses factors deemed significant by members of the Board in reaching the conclusions in this Statement, including various alternatives considered and reasons for accepting some of rejecting others.

Scope of This Statement

56. Paragraph 1 states that this Statement establishes standards of financial accounting and reporting by the debtor and by the creditor for a troubled debt restructing. In contrast, the Discussion Memorandum comprehended all restructurings that changed "the amount or timing of cash payments otherwise required under the terms of the debt at the date of the restructing." The broader scope of the Discussion Memorandum, which encompassed nontroubled as well as troubled debt restructurings, was due to several factors. The Board considered it necessary to obtain additional information about accounting practices and problems for both troubled and nontroubled debt restructurings. Some respondents to the November 7, 1975 Exposure Draft of a Proposed Statement, "Restructuring of Debt in a Troubled Loan Situation," expressed concern that to apply its guidelines for identifying troubled loan situations would require considerable judgment. Some Task Force members and other commentators advised the Board to comprehend all restructurings accomplished by exchanges or debt for debt or of equity securities for debt that may not be covered by *APB Opinion No. 26.*[29]

57. Most respondents to the Discussion Memorandum that commented on the matter, however, recommended that a Statement at this time should be limited to accounting for troubled debt restructurings. Numerous respondents indicated that restructurings of debt in nontroubled situations present no significant or unusual accounting problems that merit consideration or require new accounting and reporting standards. Many respondents contended that the kinds of major changes that might result from new standards on accounting for all restructurings should not be deferred pending progress on the FASB's existing projects on accounting for interest costs and the conceptual framework for financial accounting and reporting. Some respondents argued that a useful distinction between troubled and nontroubled restructurings of debt can be made and that the need to use judgment in some circumstances should not be a deterrent to making that distinction in a Statement. A number of respondents to the Exposure Draft [30] made similar comments.

58. The Board found persuasive the views described in the preceding paragraph and decided to limit the scope of this Statement to troubled debt restructurings. The Board also decided that conclusions in this Statement should not attempt to anticipate results of considering the issues in its Discussion Memorandum, "Conceptual Framework for Financial Accounting and Reporting: Elements of Financial Statements and Their Measurement," dated December 2, 1976. Rather, the Board believes that, to the extent possible, the accounting for troubled debt restructurings prescribed in this Statement should be consistent and compatible with the existing accounting framework.

59. Paragraph 1 also states that the Statement does not establish standards of financial accounting and reporting for allowances for uncollectible amounts and does not prescribe or proscribe particular methods for estimating amounts of uncollectible receivables. Several respondents to the Exposure Draft urged the Board to adopt the method of accounting for uncollectible amounts based on the net realizable value of collateral property set forth in *Statement of Position 75–2.* "Accounting Practices of Real Estate Investment Trusts," issued June 27, 1975 by the Accounting Standards Division of the American Institute of Certified Public Accountants. Others noted potential conflicts between the Exposure Draft and the AICPA publication and requested clarification. Still others urged the Board to reject the method for estimating amounts of uncollectible receivables in *Statement of Position 75–2.*

60. Since this Statement neither prescribes nor proscribes particular methods for estimating uncollectible amounts of receivables, it takes no position on whether the net realizable value of collateral is a proper basis of estimating allowances for uncollectible amounts of receivables. However, the accounting prescribed in this Statement for assets received in troubled debt restructurings differs from that in *Statement of Position 75–2,* for reasons given in paragraphs 65–105, and the accounting prescribed in this Statement governs.

61. Paragraphs 2–8 identify debt restructurings that fall within the scope of this Statement. This paragraph and the next are intended to clarify further the meaning of *troubled debt restructuring* for purposes of this Statement. The description of a troubled debt restructuring is based generally on that in the November 7, 1975 Exposure Draft, which many respondents to that Exposure Draft and the Discussion Memorandum found satisfactory. It focuses on the economic and legal considerations related to the debtor's financial difficulties that in effect compel the creditor to restructure a receivable in ways more favorable to the debtor than the creditor would otherwise consider. The creditor participates in a troubled debt restructuring because it no longer expects its investment in the receivable to earn the rate of return expected at the time of investment and may view loss of all or part of the investment to be likely unless the receivable is restructured. Thus, a troubled debt restructuring involves a receivable whose risk to the creditor has greatly increased since its acquisition, and if the creditor were not faced with the need to restructure to protect itself, it would require a much higher effective interest rate to invest in the same receivable currently. If the receivable has a market price, the effective interest rate based on that market price will have increased because of that increased risk to the creditor—that is, it will have increased more than market interest rates generally (or fallen less than market rates or increased while interest rates generally have fallen).

62. Although the broad description of a troubled debt restructuring in paragraphs 2–8 includes settlements of debt by transfers of assets and grants of equity interests in debtors, *troubled debt restructuring* refers in particular to modifications of terms intended to continue an existing debt by making the terms more favorable to the debtor to protect the creditor's investment. For purposes of this Statement, troubled debt restructurings do not include changes in terms resulting in an effective interest rate based on market price of the debt that is comparable to effective interest rates applicable to debt issued by nontroubled debtors, for example, a situation in which a debtor is able to exchange for its outstanding debt new marketable debt with an effective interest rate at or near the market interest rates for debt issued by nontroubled debtors generally. The fact that the debtor can obtain that interest rate only by including a "sweetener," such as a conversion privilege, does not make that transaction a troubled debt restructuring because (a) the debtor is sufficiently strong financially that the kind of economic compulsion on the creditor described earlier is not present, (b) the "sweetener" represents so drastic a change in the terms of the debt that the transaction is in substance the exchange of new debt for outstanding debt rather than merely a modification of terms to continue an existing debt, or (c) some combination of both factors.

63. Some respondents to the Discussion Memorandum advocated that the scope of

[29] See paragraph 47 of this Statement.

[30] References to "Exposure Draft" in this Appendix are to "Accounting by Debtors and Creditors for Troubled Debt Restructurings," dated December 30, 1976, unless the reference specifically identifies the earlier Exposure Draft, "Restructurings of Debt in a Troubled Loan Situation," dated November 7, 1975.

this Statement specifically exclude restructurings of receivables related to consumer finance activities or to all or certain residential properties. Their reasons focused primarily on the individual insignificance of those receivables in a creditor's financial position and on the cost involved to account for reductions in recorded investments in large numbers of receivables that may be restructured. The Board concluded that accounting for restructurings of those receivables in troubled situations should in general be the same as for other troubled debt restructurings. However, grouping like items or using statistical measures may be appropriate for receivables that are not individually material.

64. Some respondents to the Exposure Draft suggested that the *time of a troubled debt restructuring* be clarified because several dates or events may be involved. The time may be significant in matters relating to recognizing gains or losses from restructuring or to the effective date of the Statement. Paragarph 6 specifies the time of a restructuring to be the date of consummation, that is, the time that assets are transferred, new terms become effective, and the like. A debtor should not recognize a gain on restructuring before consummation of the restructuring; a creditor should record receipt of an asset or equity interest at that date or should formally write down a restructured receivable, but may already have recognized a loss on restructuring through estimated uncollectible amounts.

Divergent Views of Troubled Debt Restructurings

65. Respondents to the Discussion Memorandum expressed divergent views about the substance of various types of troubled debt restructurings and appropriate accounting for them within the existing accounting framework. Those views fall generally into three categories:

a. All troubled debt restructurings constitute events that are part of continuing efforts by creditors to recover amounts invested and obtain a return on investment despite debtors' financial difficulties; therefore, troubled debt restructurings may require certain disclosures, but usually do not require changes in carrying amounts of payables or recorded investments in receivables or recognition of gains or losses.

b. All debt restructurings, troubled and nontroubled, constitute transactions whose financial effect on assets or liabilities (receivables or payables) should be recognized, including recognition of gains or losses.

c. Accounting for a troubled debt restructuring depends on the characteristics of the restructuring. Some troubled debt restructurings constitute transactions requiring recognition of changes in receivables or payables and related gains or losses; other troubled debt restructurings do not.

Recognition of Changes Not Appropriate

66. Respondents who contended that troubled debt restructurings constitute events for which recognition of changes in assets or liabilities is uaually not appropriate within the existing accounting framework generally focused on accounting by creditors. They reasoned that a troubled debt restructuring commonly involves a concession granted unilaterally by the creditor to increase its prospects of recovering the amount invested. The debtor is usually a passive beneficiary of the effects of the restructuring. Troubled debt restructurings typically result from the debtor's financial difficulties that existed before restructuring, and in the existing accounting framework the creditor should have considered the debtor's financial difficulties in estimating an allowance for uncollectible amounts regardless of whether those difficulties were likely to culminate in a restructuring. According to those respondents, the restructuring event in itself has no accounting significance expcept to sometimes provide more definitive evidence of the effect of the debtor's financial difficulties on the creditor's ability to recover the recorded investment in the receivable.

67. According to that view, the creditor should record no change in a receivable restructured in a troubled debt restructuring and no gain or loss whether the restructuring involves (i) transfer of receivables, real estate, or other noncash assets from the debtor to the creditor to satisfy the receivable, (ii) grant to the creditor of an equity interest in the debtor to satisfy the receivable, (iii) modification of the terms of the receivable, or (iv) some combination of transfer of assets or grant of equity interests (or both) and modification of terms. The normal, expected course of events in a creditor's activities is to invest cash, earn interest on the cash invested, and eventually recover the cash. Although a creditor initiates or agrees to a restructuring to protect the amount invested, not to acquire noncash assets, the creditor may accept noncash assets (including an equity interest) as a necessary intermediate step. The creditor previously held a claim on the debtor's assets, either through a receivable secured by specific collateral or through an unsecured general claim against the debtor's assets. Accepting noncash assets in a restructuring represents the exercise of that claim; the assets stand in the place of the receivable. According to that view, the creditor's recorded investment in the receivable should become the recorded investment in the surrogate assets obtained. Then, since whether the creditor recovers that investment depends on the cash received for the assets that replaced the receivable, recoverability of that recorded investment as a result of obtaining the surrogate assets should be assessed. An expected failure, if any, to recover all of the recorded investment should be recognized as a loss by the creditor to the extent not previously recognized. However, transfer of the assets to the creditor should not precipitate recognition of a loss that was not inherent in the receivable before the restructuring; at most, the transfer provides evidence of the existence and amount of a loss.

Recognition of Changes Appropriate for All Debt Restructurings

68. Some respondents advocated for virtually all debt restructurings, troubled and nontroubled, the accounting normally required in the existing accounting framework for initial recognition of assets and liabilities. They reasoned that each restructuring is an exchange resulting in a new asset for the creditor or liability for the debtor in place of the old one. According to that view, the presence or absence of financial difficulties does not affect the appropriate accounting for a restructuring; at most, a debtor's financial difficulties may affect the terms of the exchange. Those respondents contended that all assets and liabilities exchanged in debt restructurings should be measured at their fair values at the time of the restructuring by both debtors and creditors. They considered continued use of recorded amounts derived from previous exchange transactions to be inappropriate for restructured receivables and payables because it ignores a current exchange transaction and may ignore gains or losses that have occurred and should be recognized.

Accounting Depends on Circumstances

69. Some respondents contended that the controlling criterion in determining appropriate accounting for a debt restructuring within the existing accounting framework is whether the restructuring involves transfer of resources, obligations, or both between debtor and creditor. According to that view, a troubled debt restructuring involving transfer of resources, obligations, or both should be accounted for the same as other transfers of resources and obligations in the existing accounting framework and may involve recognizing a gain or loss. A troubled debt restructuring involving no transfer of resources or obligations requires no accounting for changes in assets or liabilities, except to recognize losses in accordance with *FASB Statement No. 5*.

70. Some respondents distinguished debt restructurings involving transfers of resources, obligations, or both from those involving no transfers on the basis of whether the debtor transferred assets or granted an equity interest to the creditor to satisfy the debt or the restructuring involved modification of terms only. Other respondents classified modifications of terms involving reduction of face amount of the debt with transfers of assets or grants of equity interests (discussed further in paragraphs 106–155).

Board Conclusions About Recognizing Changes in Assets or Liabilities

71. *APB Statement No. 4*, "Basic Concepts and Accounting Principles Underlying Financial Statements of Business Enterprises," describes relevant parts of the existing accounting framework. That Statement defines "economic resources" as "the scarce means (limited in supply relative to desired uses) available for carrying on economic activities" and identifies "claims to receive money" as an economic resource. It defines "economic obligations" as "present responsibilities to transfer economic resources or provide services to other entities in the future" and identifies "obligations to pay money" as an economic obligation. It also states that "events that change resources, obligations, and residual interest

are the basis for the basic elements of results of operations . . . and other changes in financial position with which financial accounting is concerned." (See *APB Statement No. 4*, paragraphs 57, 58, and 61.)

72. *According to APB Statement No. 4*, almost all of the events that in the existing accounting framework normally change assets and liabilities and also affect net income for the period of change are either "exchanges" or "nonreciprocal transfers," the two classes that comprise "transfers of resources or obligations to or from other entities." The other classes of events—"external events other than transfers of resources or obligations to or from other entities" (price changes, interest rate changes, technological changes, vandalism, etc.) and "internal events" (production and casualties)—result in revenues or gains only through "exceptions" and result in expenses or losses only because some produce losses by definition or by applying the "modifying convention" of conservatism. (See *APB Statement No. 4*, paragraphs 62 and 180–187.)

73. An exchange is a reciprocal transfer between the enterprise and another entity in which "the enterprise either sacrifices resources or incurs obligations in order to obtain other resources or satisfy other obligations." "Exchanges between the enterprise and other entities (enterprises or individuals) are generally recorded in financial accounting when the transfer or resources or obligations takes place or services are provided." Nonreciprocal transfers are "transfers in one direction of resources or obligations, either from the enterprise to other entities or from other entities to the enterprise." In nonreciprocal transfers between the enterprise and entities other than owners, "one of the two entities is often passive, a mere beneficiary or victim of the other's actions." Nonreciprocal transfers between the enterprise and entities other than owners "are recorded when assets are acquired (except that some noncash assets received as gifts are not recorded), when assets are disposed of or their loss is discovered, or when liabilities come into existence or are discovered." (See *APB Statement No. 4*, paragraphs 62, 181, and 182.)

74. The Board rejected the view that virtually all troubled debt restructurings have the same substance in the existing accounting framework. It therefore rejected both the view that accouting for all troubled debt restructurings should involve recognition of changes in assets or liabilities and perhaps gains and losses and the view that no troubled debt restructurings should require recognition of changes in assets or liabilities or gains or losses.

75. The Board concluded that a troubled debt restructuring that involves transfer of resources or obligations requires accounting for the resources or obligations transferred whether that restructuring involves an exchange transaction or a nonreciprocal transfer. Both kinds of transfers are accounted for in the existing accounting framework on essentially the same basis (exchange price received or paid or fair value received or given). In this Statement, therefore, the Board found it unnecessary to decide whether the transfer of resources and obligations in various types of troubled debt restructurings is reciprocal (an exchange) or nonreciprocal as those terms are used in paragraph 62 of *APB Statement No. 4*.

76. The Board also concluded that a troubled debt restructuring that does not involve a transfer of resources or obligations is a continuation of an existing debt. It is neither an event that results in a new asset or liability for accounting purposes nor an event that requires a new measurement of an existing asset or liability.

77. The Board noted that guidance regarding the types of troubled debt restructurings that involve transfers of resources, obligations, or both is sparse in existing accounting pronouncements, and various views exist. The Board concluded that to the extent a troubled debt restructuring involves (i) transfer of receivables, real estate, or other assets from debtor to creditor to satisfy debt or (ii) grant to the creditor of an equity interest in the debtor to satisfy debt (or a combination of both), a transfer of resources or obligations has occurred that in the existing accounting framework should be accounted for at fair value. The debtor has given up assets or granted an equity interest to settle a payable, and the creditor has received the assets or equity interest in satisfaction of a receivable. In contrast, to the extent a troubled debt restructuring involves only modification of terms of continuing debt, no transfer of resources or obligations has occurred. The substance of troubled debt restructurings involving modification of continuing debt is discussed in paragraphs 106–155.

78. Several respondents to the Exposure Draft disagreed with the Board's distinction between troubled debt restructurings involving transfers of assets or grants of equity interests in debtors and those involving only modifications of terms. Some respondents wished to have fewer kinds of troubled debt restructurings accounted for as transactions between debtors and creditors and thus disagreed with the Exposure Draft's conclusions on accounting for transfers of assets; their views are noted in the next section. Others wished to account for more kinds of troubled debt restructurings as transactions between debtors and creditors and thus disagreed with the Exposure Draft's conclusions on accounting for modifications of terms; their views are noted in paragraphs 150–153.

ACCOUNTING FOR RESTRUCTURINGS INVOLVING TRANSFERS

Accounting by Debtors and Creditors for Transfer of Assets

Concept of Fair Value

79. Some respondents to the Exposure Draft continued to argue that all troubled debt restructurings should be accounted for as modifications of terms of debt and that none should be accounted for as transfers of assets (paragraphs 66 and 67). Others accepted the need to account for some troubled debt restructurings as asset transfers but held that obtaining assets through foreclosure or repossession under terms included in lending agreements should be distinguished from obtaining assets in exchange for cash or in other "asset swaps." They contended that (a) only the form of the asset is changed by foreclosure or repossession, (b) the substance of a secured loan is that the lender may choose either to postpone receipt of cash or take the asset to optimize cash receipts and recovery of its investment, and (c) foreclosure or repossession is not the completion of a lending transaction but merely a step in the transaction that begins with lending cash and ends with collecting cash.

80. The Board rejected those arguments for the reasons given in paragraphs 71–77, emphasizing that an event in which (a) an asset is transferred between debtor and creditor, (b) the creditor relinquishes all or part of its claim against the debtor, and (c) the debtor is absolved of all or part of its obligation to the creditor is the kind of event that is the basis of accounting under the existing transaction-based accounting framework. To fail to recognize an event that fits the usual description of a transaction and to recognize only the lending and collection of cash as transactions would significantly change the existing accounting framework.

81. Use of the fair value of an asset transferred to measure the debtor's gain on restructuring and gain or loss on the asset's disposal or the creditor's cost of acquisition is not adopting some kind of "current value accounting." On the contrary, that use of fair value is common practice within the existing accounting framework. Paragraph 13 of this Statement explains briefly the meaning of *fair value* and refers to *APB Opinions No. 16, No. 21*, and *No. 29*, which use *fair value* in the same way and provide guidance about determining fair values within the existing accounting framework. The term *fair value* is used in essentially the same way as *market value* was used in the Discussion Memorandum to denote a possible attribute to be measured at the time a debt is restructured. *Fair value* is defined in paragraph 181 of *APB Statement No. 4* as "the approximation of exchange price in transfers in which money or money claims are not involved." Although a "money claim" is necessarily involved in transferring assets to settle a payable in a troubled debt restructuring, the troubled circumstances in which the transfer occurs makes it obvious that the amount of the "money claim" does not establish an exchange price. Determining the fair value of the assets transferred in a troubled debt restructuring is usually necessary to approximate an exchange price for the same reasons that determining fair value is necessary to account for transfers of assets in non-monetary transactions (*APB Opinion No. 29*).

82. That point is emphasized in this Appendix because some respondents to the Exposure Draft apparently misunderstood the concept of fair value (paragraph 11 of the Exposure Draft and paragraph 13 of this Statement) and the discounting of expected cash flows specified in those paragraphs. Paragraph 13 permits discounting of expected cash flows from an asset transferred or received in a troubled debt restructuring to be used to estimate fair value only if no market prices are available either for the

asset or for similar assets. The sole purpose of discounting cash flows in that paragraph is to estimate a current market price as if the asset were being sold by the debtor to the creditor for cash. That estimated market price provides the equivalent of a sale price on which the debtor can base measurement of a gain on restructuring and a gain or loss on disposal of the asset and the equivalent of a purchase price on which the creditor can measure the acquisition cost of the asset. To approximate a market price, the estimate of fair value should use cash flows and discounting in the same way the marketplace does to set prices—in essence, the marketplace discounts expected future cash flows from a particular asset "at a rate commensurate with the risk involved" in holding the asset. An individual assessment of expected cash flows and risk may differ from what the marketplace's assessment would be, but the procedure is the same.

83. In contrast to the purpose of paragraph 13, *AICPA Statement of Position No. 75-2* [31] is concerned with different measures—net realizable value to a creditor of a receivable secured by real property and net realizable value of repossessed or foreclosed property. Its method of accounting for assets obtained by foreclosure or repossession thus differs from the method specified in this Statement. It proposes discounting expected cash flows at a rate based on the creditor's "cost of money" to measure the "holding cost" of the asset until its realizable value is collected in cash. The concept of fair value in paragraph 13 does not involve questions of whether interest is a "holding cost" or "period cost" because it is concerned with estimating market price, not net realizable value, however defined. Accounting for transfers of assets in troubled debt restructurings and for the assets after transfer is, of course, governed by this Statement.

84. Several respondents to the Exposure Draft suggested that the Statement should explicitly state that troubled debt restructurings that are in substance transfers of assets should be accounted for according to that substance. The Board agreed that a restructuring may be in substance a foreclosure, repossession, or other transfer of assets even though formal foreclosure or repossession proceedings are not involved. Thus, the Statement requires accounting for a transfer of assets if, for example, the creditor obtains control or ownership (or substantially all of the benefits and risks incident to ownership) of one or more assets of the debtor and the debtor is wholly or partially relieved of the obligations under the debt, or if both the debt and one or more assets of the debtor are transferred to another debtor that is controlled by the creditor.

Debtor's Recognition of Gain or Loss

85. Responses to the November 7, 1975 Exposure Draft, the May 11, 1976 Discussion Memorandum, and the Exposure Draft included two general procedures for a debtor to account for a gain or loss from a troubled debt restructuring involving a transfer of assets to settle a payable:

a. The debtor recognizes a difference, if any, between the carrying amount of assets transferred and the carrying amount of the payable settled as a gain on restructuring of a payable.

b. The debtor (1) recognizes a difference, if any, between the fair value and carrying amount of assets transferred as a gain or loss transfer of assets and (2) recognizes a difference, if any, between the fair value of assets transferred and the carrying amount of the payable settled, as a gain on restructuring of a payable.

86. Some respondents contended that debtors should not recognize the difference between the carrying amount and fair value of assets transferred to settle a payable as a gain or loss on assets. Instead, the net difference, if any, between the carrying amount of assets transferred and the carrying amount of a payable settled should be recognized as a gain or loss on restructuring of a payable. They argued that to measure the fair value of assets transferred would be costly and subjective in certain circumstances and that distinctions in the debtor's income statement between a gain or loss on disposition of assets and a gain on settlement of payables in the same troubled debt restructuring would probably not be helpful and might be arbitrary.

87. Other respondents who addressed the question emphasized the desirability of being able to assess separately the debtor's performance with respect to the transferred assets. They suggested that measuring the fair values of the transferred assets is essential to that assessment and conveys significant information that is obscured if fair values are not measured. For example, the fair values of some assets transferred (such as real estate) may often exceed their carrying amounts, while the fair values of other assets transferred (such as receivables) may sometimes be less than their face amounts. In the existing accounting framework, the first kind of difference is not recognized before disposal of the asset, but the second kind of difference is likely to have been recognized before restructuring by some debtors but not recognized by others for various reasons. Failure to include a gain or loss for the difference between the fair values and carrying amounts of assets transferred in troubled debt restructurings is likely to obscure differences and similarities between restructurings, according to that view, and respondents who advocated separate recognition of a debtor's gains or losses on assets transferred and gains on restructuring argued that separate recognition is required to provide consistent information about a single debtor for different periods and comparable information about different debtors for the same periods. The need for separate recognition is accentuated if gains and losses on transfer of assets are classed differently from gains on restructuring in the debtor's income statement (that is, if the latter are classified as extraordinary items).

88. The Board concluded that the fair value of the assets transferred in a troubled debt restructuring constitutes the best measure of the debtor's sacrifice to settle the payable and therefore that the fair value of assets transferred should be used to measure the gain on restructuring of the payable. In the existing accounting framework, gains, and losses on certain kinds of noncurrent assets, are usually recognized on assets only when the assets are sold or otherwise disposed of. For many assets, that gain or loss on sale or disposal is the only indication of whether the enterprise did well or poorly by having the asset. That indication is lost if the gain or loss on disposition is buried in a gain on restructuring of troubled debt, and the effect of the restructuring itself is also obscured. Further, unless fair value of the asset transferred is used to account for the transaction, the proportion of a payable settled by the transfer can usually be determined only by arbitrary and complicated allocations if the transfer settles only part of the payable and the terms are modified on the remainder (paragraph 19).

89. Since a gain or loss recognized by a debtor on the assets transferred to settle a payable in a troubled debt restructuring is closely related to a gain recognized by a debtor on restructuring of a payable, the Board concluded that the aggregate amount of each should be disclosed for restructurings that have occurred during a period for which financial statements are presented (paragraph 25).

Creditor's Subsequent Accounting

90. The Board considered two proposals for a creditor's accounting for assets received in full satisfaction of a receivable in a troubled debt restructuring: (a) the creditor accounts for the assets received at their fair value and recognizes as a loss a difference, if any, between the total fair value of assets received and the recorded investment in the receivable satisfied or (b) the creditor accounts for the assets received at the recorded investment in the receivable satisfied and recognizes no loss. Those alternatives are described in paragraphs 65–70, and the Board's reasons for adopting the first proposal are given in paragraphs 71–78.

91. Several respondents to the Exposure Draft requested guidance on a creditor's accounting after a troubled debt restructuring for assets received in the restructuring. Some asked the Board to require or permit creditors to accrue interest on all assets acquired through repossession or foreclosure. In response, paragraph 29 states that "after a troubled debt restructuring, a creditor shall account for assets received in satisfaction of a receivable the same as if the assets had been acquired for cash." The fair value at the time of transfer of an asset transferred to a creditor in a troubled debt restructuring is a measure of its cost to the creditor and generally remains its carrying amount (except for depreciation or amortization) until sale or other disposition if the asset is inventory, land, building, equipment, or other nonmonetary asset. That is, under the present accounting framework, interest is accrued only on some receivables and other monetary assets. Except for the effects of a few specialized rules that permit interest cost to be added to the cost of some assets under construction, etc., interest is not accrued on nonmonetary assets. That framework governs accounting for assets acquired in a troubled debt restructuring. The method of accounting for assets received through foreclosure,

[31] See paragraphs 59 and 60 of this Statement.

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repossession, or other asset transfer to satisfy a receivable proposed by *Statement of Position 75–2* is not compatible with the accounting specified in this Statement.

Debtor's Accounting for Grant of Equity Interest

92. The Board considered three proposals for a debtor's accounting for an equity interest granted to a creditor to settle a payable in a troubled debt restructuring:

a. The debtor directly increases its owners' equity by the fair value of the equity interest granted [32] and recognizes the difference between that fair value and the carrying amount of the payable settled as a gain included in measuring net income.
b. Same as (a) except that the resulting gain is included directly in the owners' equity of the debtor.
c. The debtor directly increases its owners' equity by the carrying amount of the payable settled, recognizing no gain.

93. Respondents favoring use of fair value to record a grant of an equity interest contended that the increase in the owners' equity of the debtor as a result of a troubled debt restructuring should be measured by the consideration received for the equity interest granted, not by the carrying amount of the payable settled because that carrying amount has no current economic significance. They also contended that a separate measure of a gain on restructuring of payables provides useful information.

94. Among those who advocated use of fair value to record an equity interest granted to settle debt in a troubled debt restructuring and recognition of a resulting gain on restructuring, some advocated including that gain in measuring net income and others advocated including it directly in the debtor's equity accounts. Those favoring inclusion in net income argued that all gains from troubled debt restructurings are components of net income whether they arise from transfer of assets or grant of equity interests. Those favoring direct inclusion in owners' equity argued that, to the extent an equity interest is involved, the restructuring is a capital transaction and gains resulting from capital transactions should be recognized as direct increases in paid-in or contributed owners' equity rather than as components of net income.

95. Those who advocated that the debtor's increase in equity for an equity interest granted should be the carrying amount of the debt settled also argued that granting an equity interest is essentially a capital transaction to which the notion of a gain does not apply. That solution was proposed in the November 7, 1975 Exposure Draft. Advocates of that view noted that paragraph 187 of *APB Statement No. 4* states that, among other sources, increases in owners' equity arise from investments in an enterprise by its owners. According to that view, a creditor that accepts an equity interest in the debtor in satisfaction of a receivable becomes an owner; the debtor's measure of the owners' investment is the carrying amount of the payable settled.

96. After considering the comments received in response to the November 7, 1975 Exposure Draft, the May 11, 1976 Discussion Memorandum, and the Exposure Draft, the Board concluded that a debtor should record an equity interest in the debtor granted to a creditor to settle a payable in a troubled debt restructuring at its fair value, and the difference between that fair value and the carrying amount of the payable settled should be recognized as a gain in measuring net income. The Board recognizes that, for some debtors involved in troubled debt restructurings, estimating either fair value of the equity interest granted or the fair value of the payable settled may be difficult. That estimate is necessary, however, to measure separately the consideration received for the equity interest and the gain on restructuring. To include the gain on restructuring in contributed equity would violate a clear principle for accounting for issues of stock—capital stock issued is recorded at the fair value of the consideration received (*APB Statement No. 4*, paragraph 182). The consideration received for the stock issued in that kind of troubled debt restructuring is cancellation of the payable (or part of it), but the fair value of the consideration received is not measured by the carrying amount of the payable. Whether the consideration received is measured by the fair value of the stock issued or the fair value of the payable cancelled, the consideration is less than the carrying amount of the payable. To record the stock issued at the carrying amount of the payable thus results in recording the stock at an amount in excess of the consideration received; to include the gain in restructuring in contributed equity instead of net income gives the same result.

97. To recognize a gain on restructuring acknowledges that the creditor accepted something less than the carrying amount of the payable to settle it. Since that is the essential result whether the restructuring is in the form of a transfer of assets from debtor to creditor or the form of a grant to the creditor of an equity interest in the debtor, the Board believes that essentially the same accounting applies in the existing accounting framework to both kinds of restructurings. Although the creditor becomes an owner of the debtor to the extent that the creditor accepts an equity interest in the debtor, that is a consequence of the kind of consideration used to settle a payable in a restructuring. The restructuring itself is an agreement between a debtor and a creditor, and the gain to the debtor results because the creditor accepted less consideration than the carrying amount of the debt.

Classification of Debtor's Gain on Restructuring

98. Alternatives considered by the Board for classifying gain on a troubled debt restructuring in the debtor's financial statements were that the gain is: (a) always included in measuring net income in accordance with *APB Opinion No. 30*, (b) always included in measuring net income as an extraordinary item, and (c) always included as a direct addition to paid-in capital. Most respondents addressing the question recommended classifying a gain on restructuring debt as an extraordinary item, primarily because they perceived it to be similar to gains or losses on extinguishment of debt that, according to *FASB Statement No. 4*, shall be aggregated and, if material, classified as an extraordinary item, net of related income tax effect. Some respondents recommended classifying the gain as a direct increase in paid-in capital, contending that since the gain results from a unilateral action by the creditor, the debtor has in effect received a contribution to equity from the creditor.

99. The Board concluded that a gain on restructuring (net of related income tax effect), if material, should always be classified as an extraordinary item in measuring the debtor's net income. The Board recognized that to apply the criteria in *APB Opinion No. 30* to a particular debtor's gain on restructuring would not necessarily result in its classification as an extraordinary item. The Board concluded, however, that a gain on restructuring of a payable in a troubled debt restructuring is indistinguishable from a gain or loss on other extinguishments of debt, and the same classification in financial statements is appropriate. Since *FASB Statement No. 4* classifies a gain or loss on extinguishment of debt as an extraordinary item, the classification is appropriate for a gain on restructuring of a payable.

100. Some respondents suggested that "legal fees and other direct costs that a debtor incurs in granting an equity interest to a creditor in a troubled debt restructuring" (paragraph 24) always be included as extraordinary items whether or not the debtor recognizes a gain on restructuring. Issuing equity interests is not an extraordinary event for a business enterprise, however, and related costs are not extraordinary items under any existing authoritative literature. Deducting those costs from the proceeds of issue has been customary practice, and this Statement does not change that custom. But only costs of issuing the equity interest may be accounted for that way. All other direct costs of a troubled debt restructuring are expenses of the period of restructuring but shall be deducted from a gain, if any, on restructuring.

Creditor's Accounting for Loss on Restructuring

101. Some respondents to the Discussion Memorandum, especially financial institutions, indicated that they hold and manage broad groups of earning assets (primarily loans and investments) as portfolios rather than as individual assets. According to them, their primary consideration in making a new loan or investment is to recover the amount invested, and the rate of return on the amount invested is a secondary consideration. Although one objective is to obtain an appropriate rate of return for the particular credit risk, changes in market conditions and general economic conditions as well as changes affecting the individual asset or debtor may cause the actual return from a loan or investment to

[32] "Fair value" in this context normally means the fair value of the liability satisfied or the fair value of the equity interest granted, whichever is the more clearly evident (*APB Opinion No. 16*, paragraph 67 and *APB Statement No. 4*, paragraph 182).

vary from that originally anticipated. Therefore, the objective is to maintain a portfolio with an average yield that provides an adequate margin over the cost of funds and that has risk, maturity, marketability, and liquidity characteristics that are appropriate for the particular institution. To achieve that objective, the contractual rate of return required on individual loans and investments must include a factor to offset the probability that some of them will become nonearning assets, some will ultimately recover amounts invested only with difficulty, and some will involve loss of at least a portion of the amounts invested.

102. The financial difficulties of a debtor that lead to a troubled debt restructuring usually require the creditor to consider those difficulties carefully in determining whether to recognize a loss on the existing receivable. Typically, before restructuring occurs, the creditor has determined the need for a related allowance for uncollectible amounts in light of those difficulties. An allowance for uncollectible amounts may have been based on individual receivables, on groups of similar receivables without necessarily attempting to identify particular receivables that may prove uncollectible, or both. The creditor typically has numerous lending transactions and expects loan losses to recur as a consequence of customary and continuing business activities. Almost all respondents who commented on the classification of a creditor's loss on restructuring recommended that the loss be accounted for in a manner consistent with the enterprise's method of accounting for other losses related to its receivables. Usually that involves recognizing specific losses as they are identified and periodically adjusting the allowance for uncollectible amounts based on an assessment of its adequacy for losses not yet specifically identified. Respondents recommended that the net effect of recognizing specific losses and adjusting the valuation allowance be included in measuring net income in accordance with the provisions of *APB Opinion No. 30.*

103. The Board considered the varied frequency and significance for creditors of troubled debt restructurings in the light of the discussion in *APB Opinion No. 30,* and agreed that (a) a creditor should account for a loss from a troubled debt restructuring in the same manner as a creditor's other losses on receivables (that is, as deductions in measuring net income or as reductions of an allowance for uncollectible amounts), and (b) *APB Opinion No. 30* should apply to losses on restructuring that are included in measuring net income.

Creditor's Sale of Assets Received in Restructuring

104. A creditor whose customary business activities include lending may sell an assert that was previously acquired in a troubled debt restructuring. The consideration received in that sale may be represented, in whole or in part, by a receivable. The Board considered whether a receivable received in that way is exempt from the provisions of *APB Opinion No. 21* because paragraph 3(d) of that Opinion states that, except for one paragraph, the Opinion does not apply to several kinds of receivables or payables or activities, including "the customary cash lending activities and demand or savings deposit activities of financial institutions whose primary business is lending money." Some respondents to the Exposure Draft held that acquiring and disposing of those assets is part of "the customary cash lending activities" of certain financial institutions.

105. The "lending activities" referred to in paragraph 3(d) of *APB Opinion No. 21* are modified by the words "customary" and "cash," and the Board concluded that the sale of an asset, such as real estate, by a financial institution is distinguishable from its customary cash lending activities. The view that the customary cash lending activities of a financial institution include repossession or foreclosure and resale of assets is part of the argument that repossessions and foreclosures are not transactions to be accounted for but merely changes in the form of the asset (paragraphs 66, 67, and 79–84). The Board rejected that contention and also rejected this part of it. *APB Opinion No. 21* focuses primarily on the possible misstatement of the exchange price (sale price or purchase price) in an exchange of a noncash asset for a receivable or payable, with consequent misstatement in the period of the transaction of gain or loss on sale or acquisition cost and misstatement in later periods of interest income or interest expense. The resale of repossessed or foreclosed assets is that kind of transaction and involves the same questions. Accordingly, the Board concluded that a receivable resulting from sale of an asset received in a troubled debt restructuring is covered by that Opinion, including paragraph 12, which prescribes the measurement of a note (receivable) exchanged "for property, goods, or service in a bargained transaction entered into an arm's length."

ACCOUNTING FOR RESTRUCTURINGS INVOLVING MODIFICATION OF TERMS

Background Information

106. A creditor holds a receivable with the expectation that the future cash receipts, both those designated as interest and those designated as face amount, specified by the terms of the agreement will provide a return of the creditor's investment in that receivable and a return on the investment (interest income).[33] That essential nature of a creditor's investment in a receivable is the same whether the creditor invested cash (for example, a cash loan to a debtor or a cash purchase of debt securities) or exchanged assets or services (for example, a sale of the creditor's services, product, or other assets) for the receivable.

107. Similarly, a debtor expects the future cash payments specified by the terms of a payable to include a cost (interest expense) for the privilege of deferring repayment of funds borrowed or deferring payment for goods or services acquired. The essential nature of a debtor's payable is the same whether the debtor received cash in exchange for the payable (for example, a cash loan or the issue of debt securities for cash) or received other assets or services (for example, a purchase of services, materials, or other assets from the creditor).

108. The difference between the amount a creditor invests in a receivable and the amount it receives from the debtor's payments of interest and face amount is the return on the investment (interest income) for the entire period the receivable is held. Similarly, the difference between the amount a debtor receives and the amount it pays for interest and face amount is the cost of deferring payment (interest expense) for the entire period the payable is outstanding. The question that must be answered to account for a debt (a receivable or payable) and related interest is how that total interest income or expense is to be allocated to the accounting periods comprising the entire period that the receivable is held or the payable is outstanding.

109. That allocation of interest income or expense to periods is normally accomplished in present accounting practices by the interest method, which measures the interest income or expense of each period by applying the effective interest rate implicit in the debt to the amount of the debt at the beginning of the period, assuming that all cash receipts or payments will occur as specified in the agreement. The effective interest rate implicit in the debt may be the same as or different from the interest rate stated in the agreement (the stated interest rate). The effective and stated rates are the same if the amount invested or borrowed equals the face amount; the rates differ if the amount invested or borrowed is greater or less than the face amount.

110. Thus, the recorded investment in a receivable or the carrying amount of a payable, both at the time of the originating transaction and at the beginning of each period comprising the entire period a receivable is held or a payable is outstanding, is the sum of the present values of (a) the amounts of periodic future cash receipts or payments that are designated as interest and (b) the face amount of cash due at maturity, both discounted at the effective interest rate implicit in the debt. If the effective interest rate differs from the stated interest rate, the recorded investment in the receivable or carrying amount of the payable in financial statements is the face amount plus unamortized premium or less unamortized discount, and that amount is used to measure the interest income or expense, as described in the preceding paragraph.

111. Numerous references to and descriptions of the concepts and procedures referred to in paragraphs 108–110 are found in the pronouncements of the Accounting Principles Board and the Financial Accounting Standards Board, for example, on accounting for leases *(FASB Statement No. 13);* accounting for the cost of pension plans *(APB Opinion No. 8);* accounting for interest on receivables and payables *(APB Opinions*

[33] The terms of some short-term receivables and payables (for example, trade accounts receivable or payable) may not be expected to result in interest income or interest expense to the creditor or debtor except as it may be implicit in the transaction (for example, implicit in the price of a product sold or purchased on account).

No. 12 and *No. 21)*; accounting for early extinguishment of debt *(APB Opinion No. 26)*; recording receivables and payables of a company acquired in a business combination (*APB Opinion No. 16*, paragraphs 87–89); and translating receivables and payables denominated in a foreign currency (*FASB Statement No. 8*, paragraph 39).

112. Pronouncements of the Accounting Principles Board also include several specific statements of broad principle. They include: "The general principles to apply the historical-cost basis of accounting to an acquisition of an asset depend on the nature of the transaction: . . . b. An asset acquired by incurring liabilities is recorded at cost—that is, at the present value of the amounts to be paid" (*APB Opinion No. 16*, paragraph 67); "Conceptually, a liability is measured as the amount of cash to be paid discounted to the time the liability is incurred" (*APB Statement No. 4*, paragraph 181 [M–1C]; and ". . . upon issuance, a bond is valued at (1) the present value of the future coupon interest payments plus (2) the present value of the future principal payments (face amount) . . . discounted at the prevailing market rate of interest . . . at the date of issuance of the debt" and ". . . the difference between the present value and the face amount should be treated as discount or premium and amortized as interest expense or income over the life of the note in such a way as to result in a constant rate of interest when applied to the amount outstanding at the beginning of any given period. This is the 'interest' method described in and supported by paragraphs 16 and 17 of *APB Opinion No. 12*" (*APB Opinion No. 21*, paragraphs 18 [Appendix] and 15).

Kinds of Modifications and Accounting Issues

113. Agreements between a creditor and a debtor that modify the terms of an existing debt may affect (i) only the *timing* of future cash receipts or payments specified by the agreement—the timing of periodic interest, the maturity date, or both, (ii) only the *amounts* of cash to be received or paid—the amounts of interest, face amount, or both, or (iii) *both* timing and amounts of cash to be received or paid.

114. Two major issues arise in accounting for an existing debt whose terms are modified in a troubled debt restructuring. One issue involves whether to: (a) continue the same recorded investment for the receivable or carrying amount for the payable and recognize the effects of the new terms prospectively as reduced interest income or expense or (b) recognize a loss or gain by changing the recorded amount. The interest method (paragraph 109) is used in both (a) and (b) to allocate interest income or expense to periods between restructuring and maturity, but in general, the implicit annual interest rate will be higher, and the resulting interest income or expense will be larger in each of the remaining periods, if a loss (creditor) or gain (debtor) is recognized at the time of a troubled debt restructuring, as in (b), than if the effects of the new terms are recognized prospectively, as in (a).

115. The other issue involves two related questions: Should the same accounting (either (a) or (b) in paragraph 114) apply both to modifications of *timing* and to modifications of *amounts* to be received or paid under the agreement? And should the same accounting apply both to modifications of *interest* and to modifications of *face amount?* The following paragraphs explain and illustrate those issues and summarize the arguments advanced for various proposed solutions.

116. Modifications of terms that affect only the *timing* of amounts to be received or paid do not change the total amount to be received or paid. However, changes in timing of the amounts to be received or paid on a debt change its present value determined by discounting at the prerestructuring effective interest rate or a current market interest rate or change the effective interest rate needed to discount the amounts to the prerestructuring present value (recorded investment in receivable or carrying amount of payable) or market value. Modifications that affect only the *amount* of interest or face amount (or both unless they are exactly offsetting) to be received or paid change total amounts as well as present values, effective interest rates, or both. Modifications of *both timing and amount* to be received or paid combine those effects. A hypothetical case illustrates those kinds of modifications and their effects.

117. A creditor holds a receivable calling for receipt of $100 at the end of each year for five more years and receipt of the $1,000 face amount at the end of those five years. The stated interest rate is 10 percent, compounded annually. The recorded investment in the receivable is $1,000, and the effective annual interest rate implicit in the investment is also 10 percent. If all amounts are received as agreed, the creditor will receive total interest income of $500—the difference between the total amount to be received ($1,500) and the recorded investment in the receivable ($1,000)—and the effective interest rate on the $1,000 investment will be 10 percent. However, the terms of the receivable are to be modified in a troubled debt restructuring. The four modifications that follow are examples of the three kinds of modifications described in paragraphs 113 and 116 (change in amount of interest and change in face amount are both illustrated; change in timing of face amount raises no issues different from change in timing of interest and is not illustrated):

1. *Timing of interest only*—Terms modified to defer collection of interest until the receivable matures (a single collection of $500 at the end of five years is substituted for five annual collections at $100).
2. *Amount of interest only*—Terms modified to leave unchanged the timing of interest and the timing and amount of the face amount but reduce the annual interest from $100 to $60.
3. *Amount of face amount only*—Terms modified to leave unchanged the amounts and timing of interest but reduced the face amount to $800 due at the end of five years.
4. *Both timing of interest and amount of face amount*—Terms modified to defer collection of interest until the receivable matures and reduce the face amount to $800 (modifications 1 and 3 combined).

118. The following chart lists several factual observations that can be made about the effects on the creditor's receivable of each of those restructurings. In general, the same observations apply to the debtor's payable.

	Before modification	Modification 1 (Timing only)	Modification 2 (Amount of interest only)	Modification 3 (Amount of face amount only)	Modification 4 (Timing and amount)
Observation:					
a. Amount by which total cash receipts specified by the terms exceed recorded investment in the receivable:					
Interest	$500	$500	$300	$500	[illegible]
Face amount	1,000	1,000	1,000	[illegible]	[illegible]
Total cash receipts	$1,500	$1,500	$1,300	$1,300	$1,300
Recorded investment	1,000	1,000	1,000	1,000	1,000
Excess of specified cash receipts over recorded investment	$500	$500	$300	$300	$300
b. Effective interest rate on the recorded investment ($1,000)	10.0%	8.5%	6.0%	6.5%	5.4%
c. Present value of the total cash receipts discounted at the prerestructuring effective interest rate (10%)	$1,000	$931	$848	$876	$807
d. Present value of the total cash receipts discounted at the current market interest rate (assumed to be 12%)	$928	$851	$784	$814	[illegible]
e. Face amount specified by the terms	$1,000	$1,000	$1,000	[illegible]	[illegible]

Alternatives Considered

119. Proposals for accounting for troubled debt restructurings tend to focus on the various observations (paragraph 118) about the effects of modifying the terms of a debt.

a. Some respondents focused on the effect of a troubled debt restructuring on the effective interest rate (observation (b)). They would not reduce the recorded investment in a receivable or carrying amount of a payable and recognize a loss (creditor) or gain

(debtor) as long as the new terms did not result in a negative effective interest rate on the recorded investment or carrying amount—that is, as long as the total future cash receipts or payments specified by the new terms (including both amounts designated as interest and the amount designated as face amount) at least equaled the recorded investment or carrying amount (observation (a)). Thus, they would recognize no loss or gain for any of the four modifications in the illustration in paragraphs 117 and 118.

b. Some respondents focused on the effect of a troubled debt restructuring on the face amount of the debt (observation (e)). They would not reduce the recorded investment in a receivable or carrying amount of a payable as long as the restructuring modified only the timing or amount of designated interest or the timing of the designated face amount, but would recognize a loss (creditor) or gain (debtor) if restructuring reduced the face amount of the debt. Thus, they would recognize a loss or gain for modifications 3 and 4 in the illustration.

c. Some respondents focused on the effect of a troubled debt restructuring on the present value of the debt discounted at the effective interest rate before restructuring (observation (c)). They would reduce the recorded investment in a receivable or carrying amount of a payable to the present value of the total future cash receipts or payments under the new terms discounted at the prerestructuring effective interest rate and recognize a loss (creditor) or gain (debtor) equal to the reduction. Thus, they would recognize a loss or gain for each of the modifications in the illustration.

d. Some respondents focused on the fair market value of the debt after a troubled debt restructuring. They would account for each restructuring as an exchange of debt, recording a new receivable or payable as its fair or market value and recognizing a loss (creditor) or gain (debtor) for the difference between that fair or market value and the recorded investment or carrying amount of the receivable or payable replaced. Thus, they would recognize a loss or gain for each of the modifications in the illustration.

The following paragraphs summarize those four views and their variations.

Change in Effective Rate View

120. Some respondents emphasized that, in the absence of a transfer of resources or obligations, the existing accounting framework does not require losses to be recognized or permit gains to be recognized because of events that affect only future profitability of an investment but do not affect the recoverability of the investment itself. They contended that applying that principle to troubled debt restructuring means that no loss or gain should be recognized on a debt because of modification of terms of debt unless part of the recorded investment in a receivable is not recoverable or part of the carrying amount of a payable will not be paid under the new terms. In their view, a creditor should recognize a loss to the extent that the total future cash receipts specified by the new terms is less than the recorded investment in the receivable, and a debtor should recognize a gain to the extent that the total future cash payments specified by the new terms is less than the carrying amount of the payable.

121. According to that view, if the recorded investment in a receivable is recoverable or the carrying amount of a payable is to be paid under the new terms,[34] interest income or expense is allocated to the periods between restructuring and maturity of the debt by using the reduced effective interest rate that is implicit in the difference between the recorded investment or carrying amount before (and after) restructuring and the future cash receipts or payments specified by the new terms. If a loss or gain is recognized at the time of restructuring, the recorded investment or carrying amount equals the total future cash receipts or payments, and no interest income or expense is allocated to the remaining periods between restructuring and maturity.

122. Some of those respondents contended that the amount invested by a creditor in a receivable has some of the characteristics of, and is analogous to, an investment in plant, property, intangibles, and similar assets sometimes called "capital assets." According to that analogy, modifying the terms of receivables in troubled debt restructurings is similar to modifying selling prices of products produced by those capital assets; the modifications affect the profitability of those assets but are not recorded in the existing accounting framework unless they result in an inability to recover the investment in the assets. That capital asset analogy leads its proponents to accounting for troubled debt restructurings that is essentially the same as that described in paragraphs 120 and 121.

123. Certain respondents who supported the views described in paragraphs 120–122 argued that the resulting accounting not only is required by the existing accounting framework but also accurately describes a troubled debt restructuring involving only modification of terms. They held that, unless the effective interest rate on a debt becomes negative in a troubled debt restructuring, the essential effect of modifying terms is to reduce the effective interest rate on the debt—that is, to decrease the effective rate of return to the creditor and to decrease the effective cost to the debtor of deferring payment. For example, some responding financial analysts argued that to disclose the creditor's new effective interest rate on restructured receivables would be more useful for their purposes than for the creditor to report a loss on restructuring and then show those receivables to be earning the prerestructuring interest rate, the current market interest rate, or some other rate higher than the effective rate on the recorded investment in a receivable before restructuring.

124. According to respondents who emphasized the effect of a troubled debt restructuring on the effective interest rate, there is no economic basis for distinguishing modifications of future cash receipts or payments designated as interest from modifications of future cash receipts or payments designated as face amount. They argued that a creditor in a troubled debt restructuring attempts first to assure recovery of its investment (which is represented in its financial statements by the recorded investment in the receivable) and then to obtain the highest interest income commensurate with the situation. Whether the amounts to be received under the new terms are designated as receipts of interest or receipt of face amount is a minor consideration; the significant question is whether the new terms allow the creditor to recover its investment.

125. According to that view, since numerous combinations of receipts or payments designated as interest and face amount can be structured to produce a particular present value or effective interest rate, to base accounting on that distinction is likely to result in questionable, if not indefensible, financial reporting. The creditor in a troubled debt restructuring may have considerable flexibility in designating a proportion of the future receipts or payments under the new terms as interest and designating another proportion as face amount. If those designations were to dictate the accounting, a creditor desiring to recognize a loss or restructuring and to recognize higher interest income for later periods could restructure terms in one way, while creditor desiring to avoid recognizing a loss on restructuring and to recognize lower interest income for later periods could restructure the terms in another way, even though the underlying cash receipts specified by the new terms were the same, both in timing and amount, for both creditors. A creditor desiring to recognize a gain or restructuring could conceivably increase the amount designated as face amount to an amount higher than the present recorded investment and reduce the amounts designated as receipt of interest; a debtor might agree to that arrangement if it were financially troubled at the time of restsructuring but expected to be able to pay the higher face amount later.

Change in Fact Amount View

126. Some respondents distinguished modifications of face amounts from modifications affecting only amounts or timing of receipts or payments designated as interest or timing of the maturity date. They would neither reduce recorded investment in a receivable or carrying amount of a payable nor recognize loss or gain in a troubled debt restructuring if a modification of terms of a debt changed only the *amounts or timing* of receipts or payments designated as interest or changed the *timing* of receipts or payment designated as face amount. They held, however, that if a troubled debt restructuring *reduces the face amount* of a debt, the creditor should recognize a loss, and the debtor should recognize a gain.[35]

[34] The likelihood of collection of the amounts specified by the new terms of a receivable should, of course, be assessed in determining allowances for estimated uncollectible amounts.

[35] Some proponents of this view opposed recognizing gains from trouble debt restructurings not involving transfers of assets or grants of equity interests.

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127. To record a modification of terms involving reduction of face amount of a debt, proponents of that view would reduce the recorded investment in the receivable or carrying amount of the payable by the same proportion as the reduction of the face amount and recognize a loss (creditor) or gain (debtor) for that amount. If the restructuring changed the effective interest rate on the remaining recorded investment or carrying amount, they would allocate interest income or expense to the remaining periods between restructuring and maturity using that new effective interest rate. That rate would be implicity in the difference between the new recorded investment in the receivable or carrying amount of the payable and the future cash receipts or payments specified by the new terms. That rate would be higher for a debt whose face amount had been reduced, and would therefore result therefore result in more interest income or expense for those periods, than the rate described in paragraph 121.

128. Respondents who distinguished between modifications of terms that change the face amount of a debt and other kinds of modifications generally agreed with the view expressed in paragraphs 120 and 122 that the existing accounting framework does not recognize losses or gains from events that change the profitability of existing assets but requires a loss to be recognized if the event causes part or all of an investment in an asset to become unrecoverable. Those respondents gave several reasons for concluding that reduction of face amount of a debt in a troubled debt restructuring requires proportionate reduction of the recorded investment in the receivable or carrying amount of the payable and recognition of a resulting loss or gain.

129. Some respondents who favored accounting based on a distinction between modifications of face amount and other modifications argued that to the extent that the face amount of a debt is reduced, the debtor-creditor relationship has been terminated, and the accounting should recognize that termination. In other words, the face amount adjusted by a premium or discount, if any, measured in the market at the time a receivable or payable was created is recognized in the existing accounting framework as an asset for the creditor or liability for the debtor; reducing that face amount therefore reduces an asset or liability proportionately, and the reduction must be recognized. In their view, to the extent the face amount is reduced, a transfer of resources or obligations occurs.

130. Some respondents described the analogy between a creditor's investment in a receivable and an investment in "capital assets" that is noted in paragraph 122 and contended that reductions of face amounts of receivables in troubled debt restructurings are analogous to events that reduce the amount, rather than the future profitability, of capital assets. Both they and the respondents whose view is described in the preceding paragaph held that the act of reducing the face amount showed that the creditor and debtor agreed that the receivable and payable had been decreased.

131. Some respondents contended in effect that accounting for receivables and payables in the existing accounting framework is based on the face amount of a receivable or payable, or perhaps on the face amount plus a premium or minus a discount at the date of acquisition or issue, and a change in the face amount is a change in an asset (receivable) or liability (payable). They implicitly assumed or concluded that the present value concepts described in the pronouncements noted in paragraphs 111 and 112 did not apply to receivables or payables involved in troubled debt restructurings. Thus, they contended that the distinction between the face amount due at maturity and the amounts designated as interest to be received or paid periodically until maturity is vital in determining proper accounting for a troubled debt restructuring. According to that view, the face amount due at maturity (sometimes referred to as the "principal") is the basis of the recorded investment in a receivable or carrying amount of a payable; that investment or carrying does not include the present value of future receipts or payments designated as interest. That is, a creditor or debtor records the face amount (perhaps increased by premium or decreased by discount) when a receivable is obtained or a payable is incurred, and no value is ascribed in the accounts to rights to receive or obligations to pay amounts designated as interest; rather, cash receipts or payments designated as interest are recognized in the accounts only as they become receivable or payable in future periods. Some respondents holding that view added that to record a loss (creditor) or gain (debtor) because future cash receipts or payments designated as interest are modified in a trouble debt restructuring would represent abandonment of the existing historical cost framework and constitute piecemeal implementation of current value accounting.

132. Several respondents who supported the views described in paragraphs 126–131 held that the accounting required by those views is presently used, at least by some financial institutions. Some banker respondents indicated that troubled debt restructurings involving reductions in face amount or "principal" are exceedingly rare, but that most bankers would probably recognize a loss of "principal" in recording one in which their institution was the creditor.

133. Differences between the view that focuses on the effect of a troubled debt restructuring on face amount (paragraphs 126–132) and the view that focuses on its effect on the effective interest rate (paragraphs 120–125) pertain wholly to troubled debt restructurings that reduce the amount designated as face amount. Both views lead to the same accounting for troubled debt restructurings involving other kinds of modification of terms.

Present Value at Prerestructuring Rate View

134. Some respondents contended that accounting for troubled debt restructurings should recognize the revised pattern of cash receipts or payments under the new terms of the restructured debt. That is, they would continue to use the effective interest rate established when the receivable was acquired or payable was incurred and would reduce the recorded investment or carrying amount to the present value of the future cash receipts or payments specified by the new terms.

135. Those respondents in effect supported the accounting proposed in the FASB Exposure Draft, "Restructuring of Debt in a Troubled Loan Situation" (November 7, 1975): a debtor should account for a troubled debt restructuring that involves modification of terms of debt by adjusting the carrying amount of the payable to the present value of the cash payments (both those designated as interest and those designated as face amount) required of the debtor after restructuring, discounted at the prerestructuring effective interest rate, and recognizing a gain on restructuring of the payable equal to the difference, if any, between that present value and the carrying amount of the payable before restructuring (paragraph 6 of that Exposure Draft). Since a troubled debt restructuring almost invariably involves stretching out or deferring the debtor's payments, and may involve reducing amounts due as well, the present value of a restructured payable is almost invariably less than its carrying amount (both are determined by discounting at the same interest rate); a debtor would thus normally recognize a gain on the restructuring. The November 7, 1975 Exposure Draft dealt only with accounting by debtors, but if the counterpart accounting were adopted by creditors, the creditor would normally recognize a loss equal to the difference between its recorded investment in the receivable before restructuring and the present value at the prerestructuring effective interest rate. Interest expense or income in future periods would continue to be based on the prerestructuring interest rate.

136. Some respondents who held the view described in paragraphs 134 and 135 agreed with the view in paragraphs 124 and 125 that no economic basis exists for distinguishing between modifications of face amounts and other kinds of modifications. The major difference between the two views is that the accounting for one view (paragraphs 134 and 135) retains the same effective interest rate as before restructuring and changes the present value of the future cash receipts or payments specified by the new terms, while the other view (paragraphs 124 and 125) retains the same present value as before restructuring (the recorded investment in a receiveable or carrying amount of a payable)[36] and changes the effective interest rate for the periods remaining between restructuring and maturity.

Fair Value View

137. Some respondents contended that modifying terms in a troubled debt restructuring results in an exchange of new debt for the previous debt. The new debt should be recorded at its fair value—usually the present value of the future cash receipts or payments specified by the new terms (whether designated as interest or face amount) discounted at the current market

[36] Unless the restructuring causes the effective interest rate to fall below zero.

rate of interest for receivables or payables with similar terms and risk characteristics. Those respondents contended that every debt restructuring is an exchange transaction (paragraph 68), and they would recognize a loss (creditor) and gain (debtor) to the extent of the difference between the recorded investment in the receivable or carrying amount of the payable before restructuring and the fair value of the receivable or payable after restructuring. Interest income and expense in future periods would be based on the market rate of interest at the time of restructuring.

138. Respondents who supported the view just described agreed that designations of amounts as face amount or interest should not determine whether a loss or gain should be recognized (paragraphs 124 and 125) because only the amounts and timing of cash receipts or payments, and not their names, affect the present value of a receivable or payable. They disagreed with other respondents by contending that the current market interest rate—which gives the fair value of a receivable or payable—should be used because an exchange transaction had occurred.[37]

139. Some of the responding financial analysts indicated a preference for accounting that does not use a current interest rate to determine whether a creditor should recognize a loss in a troubled debt restructuring involving modification of terms. According to them, to use a current interest rate to discount future cash receipts only for receivables that have been restructured would not result in meaningful information about the earning potential of a creditor's entire loan or investment portfolio and might be confusing because receivables that were not restructured would continue to reflect the various historical interest rates at the time of each investment.

Conclusions on Modification of Terms

140. After considering the information received in connection with (i) the Exposure Draft, "Restructuring of Debt in a Troubled Loan Situation" (November 7, 1975), and the public hearing based on it (paragraph 48), (ii) the Discussion Memorandum, "Accounting by Debtors and Creditors When Debt Is Restructured" (May 11, 1976), and the public hearing based on it (paragraph 52), and (iii) the Exposure Draft, the Board concluded that the substance of all modifications of a debt in a troubled debt restructuring is essentially the same whether they are modifications of timing, modifications of amounts designated as interest, or modifications of amounts designated as face amounts. All of those kinds of modifications affect future cash receipts or payments and therefore affect (a) the creditor's total return on the receivable, its effective interest rate, or both and (b) the debtor's total cost on the payable, its effective interest rate, or both. The Board believes that accounting for restructured debt should be based on the substance of the modifications—the effect on cash flows—not on the labels chosen to describe those cash flows.

141. The Board thus rejected views that modifications involving changes in face amounts should be distinguished from and accounted for differently from modifications involving amounts of future cash receipts or payments designated as interest and modifications involving timing of future cash receipts or payments. The major reason for that rejection is given in the preceding paragraph: the substance of a troubled debt restructuring lies in its effect on the *timing and amounts* of cash receipts or payments due in the future. Whether an amount due at a particular time is described as face amount or interest is of no consequence to either the present value of the receivable or payable or its effective interest rate.

142. The Board considered the views described in paragraphs 129–132 and rejected them to the extent they conflict with the Board's conclusions. In the Board's view, a debtor-creditor relationship is described by the entire agreement between the debtor and creditor and not merely by the face amount of the debt. Changes in that relationship therefore encompass changes in timing and changes in amounts designated as interest as well as changes in an amount designated as face amount. The same reasoning applies to the analogy between debt and investment in "capital assets." A reduction in a troubled debt restructuring of an amount designated as face amount is not, in the Board's view, analogous to the loss or destruction of a portion of a capital asset. Indeed, the economic impact of reducing an amount designated as face amount is essentially the same as that of reducing by the same amount an amount designated as interest that is due at the same time. Thus, although an analogy between investment in a receivable and investment in a capital asset may have merit, an analogy between an amount designated as the face amount of a receivable and the physical entirety of a capital asset does not.

143. The Board also rejected the view that accounting is based on the face amount or "principal" in the existing accounting framework. That view is not consistent with the weight of the pronouncements noted in paragraphs 111 and 112 to the effect that the recorded investment in a receivable or carrying amount of a payable is the present value of the future cash receipts or payments specified by the terms of the debt discounted at the effective interest rate that is implicit in the debt at its inception. That accounting explicitly excludes from the recorded investment in a receivable or carrying amount of a payable the interest income or expense to be recognized in future periods. The interest method recognizes that interest income or expense as a constant percent (the effective interest rate) of the recorded investment or carrying amount at the beginning of each future period as the interest income or expense becomes receivable or payable. The method is not a "current value method" as that term is generally used in the accounting literature, unless the effective interest rate used to determine present value and interest income or expense each period is the current market interest rate for the period.

144. The Board noted the argument that current practice in some financial institutions is to record losses based on reductions in troubled debt restructurings of amounts designated as face amount. The Board also noted that several respondents indicated that modifications of terms of that kind almost never occur. Presumably, a creditor would generally prefer to alleviate the debtor's cash difficulties by deferring payment of the amount designated as face amount rather than by reducing it because deferring payment preserves a creditor's maximum claim in the event of the debtor's bankruptcy. The Board decided that accounting for reductions in troubled debt restructurings of amounts designated as face amounts, although occurring only rarely, should be made consistent with accounting for other modifications of future cash receipts or payments in troubled debt restructurings and with the accounting pronouncements referred to in paragraphs 111 and 112.

145. The Board also considered the views described in paragraphs 134–139 and rejected them to the extent they conflict with the Board's conclusions. The Board concluded that since a troubled debt restructuring involving modifications of terms of debt does not involve transfers of resources or obligations (paragraph 77), restructured debt should continue to be accounted for in the existing accounting framework, on the basis of the recorded investment in the receivable or carrying amount of the payable before the restructuring. The effective interest rate on that debt should be determined by the relation of the recorded investment in the receivable of carrying amount of the payable and the future cash receipts or payments specified by the new terms of the debt.

146. To introduce the current market interest rate to provide a new measure of the recorded investment in a restructured receivable or carrying amount of a restructured payable is inappropriate in the existing accounting framework in the absence of a transfer of resources or obligations, that is, if only the terms of a debt are modified in a troubled debt restructuring. Moreover, since the new terms are not negotiated on the basis of the current market rates of interest, there is little or no reason to believe that a current market rate of interest applied to the restructured debt reflects the effective return to the creditor or the effective cost to the debtor. On the contrary, the circumstances of a troubled debt restructuring give every reason to believe that, except by coincidence, it does not. Similarly, there is little or no reason to believe that a restructured debt continues to earn or cost the same effective interest rate as before the restructuring. The restructuring reflected the creditor's recognition that its investment in the receivable no longer could earn that rate and that a lower effective rate was inevitable. In other words, the effect of the restructuring was to decrease the effective interest rate on a continuing debt, and the accounting should show that result.

147. The Board found persuasive the arguments that a creditor in a troubled debt restructuring is interested in protecting its unrecovered investment (represented in the

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[37] Some respondents contended that the fair value of the receivable or payable after restructuring should be measured by discounting the future cash flows specified by the new terms at the cost of capital to the creditor or debtor, as appropriate

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accounts by the recorded investment in the receivable) and, if possible, obtaining a return. To the creditor, therefore, the effect of a restructuring that provides for recovery of the investment is to reduce the rate of return (the effective interest rate) between the restructuring and maturity. Similarly, the effect of that kind of restructuring to the debtor is to reduce the cost of credit (the effective interest rate) between the restructuring and maturity.

148. Thus, the Board concluded that no loss (creditor) or gain (debtor) should be recognized in a troubled debt restructuring if the total future cash receipts or payments (whether designated as interest or face amount) specified by the new terms at least equals the recorded investment or carrying amount of the debt before the restructuring. The creditor should reduce the recorded investment in the receivable and recognize a loss and the debtor should reduce the carrying amount of the payable and recognize a gain to the extent that the recorded investment or carrying amount exceeds the total cash receipts or payments specified by the new terms. Some responsdents to the Exposure Draft apparently misunderstood the reason for using *total* future cash receipts or payments to compare with the recorded investment in a receivable or the carrying amount of a payable to determine whether to recognize a loss or gain on restructuring. Some wondered if the failure to discount the future cash flows implied changes in pronouncements that require discounting or de-emphasis or abandonment by the Board of discounting methods. On the contrary, the Statement is based solidly on the need to consider the effect of interest. Indeed, the Board's conclusion is that a troubled debt restructuring affects primarily the effective interest rate and results in no loss or gain as long as the effective rate does not fall below zero. It requires recognition of a loss to prevent the effective rate from falling below zero. The effective interest rate inherent in the unrecovered receivable or unpaid payable and the cash flows specified by the modified terms is then used to recognize interest income or interest expense between restructuring and maturity.

149. The Board also concluded that the fair values of assets transferred or equity interest granted in partial settlement of debt in a troubled debt restructuring should be accounted for the same as a partial cash payment. The recorded investment in the receivable or carrying amount of the payable should be reduced by the amount of cash or fair value transferred, and the remaining receivable or payable should be accounted for the same as a modification of terms. That accounting avoids basing losses or gains on restructuring on arbitrary allocations otherwise required to determine the amount of a receivable satisfied or payable settled by transfer of assets or grant of an equity interest.

150. Several respondents to the Exposure Draft disagreed with its proposed conclusions on accounting for modifications of terms in troubled debt restructurings. One group, which favored accounting for all troubled debt restructurings at fair value as exchanges of debt, criticized the Exposure Draft for failing to recognize losses and gains from decreases in present values of receivables and payables, for being inconsistent with *APB Opinions No. 21* and *No. 26*, and for elevating form over substance. Another group, which agreed with the Exposure Draft except for restructurings in which face amounts of receivables are reduced, criticized it for failing to recognize losses and gans from decreases in face amounts, for changing existing practice, and for elevating form over substance. Both views are discussed individually in earlier paragraphs (126–139) and are there shown to be virtually opposite views to each other, but they have some similarities when compared to the accounting in the Exposure Draft and this Statement.

151. For example, both criticisms of the Exposure Draft noted in the preceding paragraph result from rejection of fundamental conclusions in the Exposure Draft. Thus, respondents who favor accounting for all troubled debt restructurings as exchanges of debt disagreed with the conclusions that "a troubled debt restructuring that does not involve a transfer of resources or obligations is a continuation of an existing debt" and "to the extent that a troubled debt restructuring involves only a modification of terms of continuing debt, no transfer of resources or obligations has occurred" (paragraphs 76 and 77). Respondents with that view presumably saw troubled debt restructurings as of the same essence as exchanges covered by *APB Opinions No. 21* and *No. 26* and found the Exposure Draft inconsistent with those Opinions. If, however, the conclusions quoted earlier in this paragraph are accepted, modifications of terms of continuing debt are different in substance from exchanges of resources or obligations, and the Exposure Draft is consistent with the Opinions.

152. Similarly, some respondents who favor recognizing losses and gains from reducing face amounts in troubled debt restructurings disagreed with the conclusion that "the substance of all modifications of a debt in a troubled debt restructuring is essentially the same whether they are modifications of timing, modifications of amounts designated as interest, or modifications of amounts designated as face amounts" (paragraph 140). That is, they think that financial institutions' customary distinctions between principal and interest have more substance than the effects of modifications on future cash flows, although they admit that changes in practice would be minimal because few troubled debt restructurings involve changes in face amounts (paragraph 144).

153. The fact that elevating form over substance is a criticism common to the arguments of respondents who fundamentally disagreed with the Exposure Draft emphasizes that various views on proper accounting depend in varying perceptions of the substance of modification of terms in a troubled debt restructuring. The preceding paragraphs note three different views of that substance: the view on which the Exposure Draft and this Statement are based and two other views that differ significantly not only from the view adopted but from each other. The Board carefully analyzed all three views before issuing the Exposure Draft and decided on one of them for the reasons stated in paragraphs 106–152.

154. Some respondents who agreed generally with the accounting for modification of terms specified in the Exposure Draft and some who preferred to recognized debtors' gains and creditors' losses from decreases in face amounts expressed concern that a debtor's prepayment may result in recognizing a creditor's loss in the wrong period (they are silent about a debtor's gain). That is, if a debtor may prepay a reduced face amount without penalty, total future cash receipts may actually be less than the recorded investment in the receivable even though the total future amounts specified by the restructured terms are at least equal to the recorded investment, and no loss is recognized by the creditor at the time of restructuring under paragraph 16. The loss would be recorded in the period of prepayment rather than the period of restructuring. They propose that a creditor be required to recognize a loss on restructuring in the period of restructuring to the extent that a reduction of face amount is not protected by a prepayment penalty.

155. This Statement does not include that kind of test based on prepayment penalties. The proposed test rests on the assumption that a loss resulting from prepayment necessarily is a loss on restructuring, and that presumption is questionable. At the time of restructuring, the most probable estimate of future cash receipts is usually that the debtor will not prepay, even if there is no prepayment penalty, because (a) prepayment of a debt with a relatively low effective interest rate is to the creditor's advantage, not the debtor's, (b) initiative for prepayment lies wholly with the debtor, and (c) the debtor is clearly unable to prepay at the time of a troubled debt restructuring and may never be able to prepay. If that most probable estimate later proves incorrect, and the debtor does prepay, a change of estimate should be recorded in the period of prepayment.

CREDITOR'S ACCOUNTING FOR SUBSTITUTION OR ADDITION OF DEBTORS

156. A change between the Exposure Draft and this Statement is that Exposure Draft dealt with substitutions of debtors only if the debtors were government units. Several respondents to the Exposure Draft suggested that the principles developed there applied to substitutions or additions of nongovernment debtors as well.

157. The general principle developed in earlier paragraphs is that the accounting for a troubled debt restructuring depends on its substance. The issues raised if a creditor in a troubled debt restructuring accepts, or is required to accept, a new receivable from a different debtor to replace an existing receivable from a debtor experiencing financial difficulties pertains to the circumstances, if any, in which the substitution or addition is in substance similar to a transfer of assets to satisfy a receivable and the circumstances, if any, in which that kind of restructuring is in

substance similar to a modification of terms only.

158. One view expressed by respondents was that the substitution of a receivable from a different debtor for an existing receivable or the addition of another debtor is always a transaction requiring accounting by the creditor for a new asset at its fair value, recognizing gain or loss to the extent that the fair value of the new asset differs from the recorded investment in the receivable it replaces. To some proponents, that view holds regardless of the relationship between the original debtor and the new debtor.

159. Another view expressed was that the kind of substitution involved in each restructuring must be considered, and the accounting depends on the relationship between the original and new debtors and between the original and new terms.

160. The Board rejected the view that the substitution or addition of a new debtor is always a transaction requiring recognition of a new asset by the creditor. In some troubled debt restructurings, the substitution or addition may be primarily a matter of form while the underlying debtor-creditor relationship, though modified, essentially continues. For example, to enhance the likelihood that the modified terms of a troubled debt restructuring will be fulfilled, a new legal entity may be created to serve as a custodian or trustee to collect designated revenues and disburse the cash received in accordance with the new debt agreement. The role of that new unit may be similar to that of a sinking fund trustee in an untroubled debt situation. The source of the funds required to fulfill the agreement may be the same, but some or all of those funds may be earmarked to meet specific obligations under the agreement. Similarly, if the new debtor controls, is controlled by, or is under common control with the original debtor, the substance of the relationship is not changed. Each troubled debt restructuring involving a substitution or addition of a debtor should be carefully examined to determine whether the substitution or addition is primarily a matter of form to facilitate compliance with modified terms or primarily a matter of substance.

161. The Board considers the exchanges of bonds of the Municipal Assistance Corporation (Corporation) for notes of the City of New York (City) described in recent exchange offers [38] to be examples of troubled debt restructurings whose substance to creditors for accounting purposes is a modification of the terms of an existing receivable rather than an acquisition of a new asset (receivable). According to those exchange offers:

> The Corporation * * * was created in June 1975 * * * for the purposes of assisting the City in providing essential services to its inhabitants without interruption and increating investor confidence in the soundness of the obligations of the City. To carry out such purposes, the Corporation is empowered, among other things, to issue and sell bonds and notes and to pay or lend funds received from such sale to the City and to exchange the Corporation's obligations for obligations of the City.[39]

The Board's understanding is that: (a) the Corporation receives its funds to meet debt service requirements and operating expenses from tax allocations from New York State's collections of Sales Taxes imposed by the State within the City, Stock Transfer Taxes, and Per Capita Aid (revenue sources previously available to the City); (b) Tax and Per Capita Aid amounts not allocated to the Corporation for its requirements are available to the City under the terms of the applicable statutes; and (c) the primary purpose in creating the Corporation was to enhance the likelihood that the City's debt will be paid, not to introduce new economic resources and activities.

RELATED MATTERS

162. Several respondents commenting on accounting for contingent future cash payments or receipts indicated a need for some clarification of the accounting described in the Exposure Draft. Accounting for contingent payments or receipts is complicated because it involves four separate situations—(1) accounting by the debtor at the time of restructuring, (2) accounting by the debtor after the time of restructuring, (3) accounting by the creditor at the time of restructuring, and (4) accounting by the creditor after the time of restructuring. It is further complicated because the view of both debtor and creditor shifts between "gain" contingencies and "loss" contingencies as the accounting shifts from the time of restructuring to after the time of restructuring. The accounting in the Exposure Draft and this Statement is governed by the following general principles:

a. Paragraph 17 (gain contingencies) of *FASB Statement No. 5* governs a debtor's accounting for contingent cash payments at the time of restructuring (paragraph 18) and a creditor's accounting for contingent cash receipts after the time of restructuring (paragraph 36). Since gain contingencies are not recognized until a gain is realized, (1) a *debtor* should not recognize a gain at the time of restructuring that may be offset by future contingent payments, which is equivalent to assuming that contingent future payments will be paid, and (2) a *creditor* should not recognize contingent cash receipts as interest income until they become unconditionally receivable, that is, until both the contingency has been removed and the interest has been earned.

b. Paragraph 8 (loss contingencies) of *FASB Statement No. 5* governs a debtor's accounting for contingent cash payments after the time of restructuring (paragraph 22) and a creditor's accounting for contingent cash receipts at the time of restructuring (paragraph 32). Since two conditions must be met to recognize an estimated loss, (1) a *debtor* should recognize an interest expense and payable for contingent payments when it is probable that a liability has been incurred and the amount can be reasonably estimated, and (2) a *creditor* should recognize a loss unless offsetting contingent cash receipts are probable and the amount can be reasonably estimated. Contingent cash receipts are unlikely to be probable at the time of restructuring.

163. The principles described in the preceding paragraph also apply to other situations in which future cash payments or receipts must be estimated to apply the provisions of the Statement, for example, future interest payments or receipts that are expected to fluctuate because they are based on the prime interest rate or indeterminate total interest payments or receipts because the debt is payable or collectible on demand or becomes payable or collectible on demand after a specified period (paragraphs 18 and 32).

DISCLOSURE

Disclosure by Debtors

164. Most respondents to the Discussion Memorandum commenting on disclosure by debtors for restructurings advocated essentially the disclosure prescribed for gains or losses from extinguishment of debt in *FASB Statement No. 4*. Paragraph 99 gives the Board's reasons for adopting for gains on troubled debt restructurings the guidelines for income statement classification prescribed in that Statement for gains from extinguishment of debt. Since troubled debt restructurings for which gains are recognized and extinguishments of debts thus use the same guidelines for income statement classification and are similar for disclosure purposes, the Board concluded that the kind of information prescribed in paragraph 9 of *FASB Statement No. 4* is generally appropriate for disclosing troubled debt restructurings involving recognition of gains. Since some of those restructurings involve transfers of assets to creditors to settle payables, the Board believes that it is appropriate also to disclose the aggregate net gain or loss recognized on transfers of assets. However, since several respondents to the Exposure Draft indicated that problems would arise in attempting to determine when a debtor's current difficulties began and perhaps in obtaining amounts of earlier losses, this Statement omits a requirement in the Exposure Draft to disclose also "the aggregate loss, if any, recognized on those assets in earlier periods in connection with the debtor's current financial difficulties."

165. Restructurings not involving recognition of gain or loss at the time of restructuring usually modify the timing, amounts, or both, of interest or face amount the debtor is to pay under the debt's terms (paragraphs 16–18). In the Board's view, the principal changes in terms should be disclosed to permit an understanding of the financial effects of those modifications.

166. Paragraph 26, specifying disclosure of the extent to which inclusion of contingent future cash receipts prevented recognizing a gain on restructuring was added in response to suggestions by respondents to the Exposure Draft. The Board agreed that information would be useful in assessing the

[38] Municipal Assistance Corporation for the City of New York, "Exchange Offer[s] to Holders of Certain Short-Term Notes of the City of New York," November 26, 1975, May 21, 1976, and March 22, 1977.

[39] Municipal Assistance Corporation for the City of New York, "Exchange Offer to Holders of Certain Short-Term Notes of the City of New York," November 26, 1975, p. 15.

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relation between future cash payments and future interest expenses of the debtor.

Disclosure by Creditors

167. Most banking and other financial institutions responding to the Discussion Memorandum that commented on disclosure by creditors argued against separate disclosures about restructured receivables. They emphasized that to be the most meaningful to financial statement users information about receivables should disclose the interest rate characteristics of each broad group of earning assets (primarily loan or investment portfolios), by major category. They argued that information limited to receivables that have been restructured would not only be less meaningful than information about entire portfolios of receivables but also could be confusing because the same information is also needed about other receivables, particularly those that are earning no return but have not been restructuring (nonearning receivables). Several of those institutions referred to the requirements of the Securities and Exchange Commission and of the banking regulatory agencies, which recently became effective, both concerning disclosure about categories of loan and investment portfolios—including their maturities, interest rates, and nonearning loans and investments—and the allowance for uncollectible amounts. They indicated that those requirements provide adequate information about the financial effects of restructurings, troubled or nontroubled. Financial analysts responding also recommended disclosure focusing on the characteristics of each broad group of earning assets. They expressed a desire for information about past and expected yields of entire portfolios, by major category, to enable them to make informed judgments about recent and prospective earnings performance.

168. Some respondents to the Discussion Memorandum that are not financial institutions recommended that the Board require information to be disclosed about each significant troubled debt restructuring in the period that it occurs, primarily the terms of the restructuring, gain or loss recognized, if any, and the related income tax effect. Most of those respondents focused on individual receivables rather than on groups of receivables and proposed that debtors and creditors disclose similar information.

169. The Board concluded that the information prescribed by paragraph 40 should be disclosed, by major category, for outstanding receivables whose terms have been modified in troubled debt restructurings. The information may be disclosed either separately for those receivables or as part of the disclosure about reduced-earning and nonearning receivables. The Board believes that the appropriate format for that disclosure depends primarily on the characteristics and number of receivables, including the proportion of those receivables that have reduced earning potential. It believes the argument has merit that the most meaningful disclosure about earnings potential for a financial institution typically should focus on entire portfolios of receivables, by major category, rather than only on receiveables that have been restructured in troubled situations, but the Board acknowledges that determing appropriate disclosure for receivables in general is beyond the scope of this Statement. Accordingly, paragraphs 40 and 41 specify types of information that shall be disclosed and permit that information to be provided by major category for the aggregate of outstanding reduced-earning and nonearning receivables, by major category for outstanding receivables whose terms have been modified in troubled debt restructurings, or for each significant outstanding receivable that has been so restructured, depending on the circumstances.

170. This Statement contains three changes from the Exposure Draft concerning disclosure by creditors, all made in response to comments or suggestions from respondents to the Exposure Draft and all in paragraph 40, which was paragraph 34 of the exposure Draft: (1) disclosure of information more in conformity with SEC Guides 61 and 3 [40] replaces disclosure of the weighted average effective interest rate and the range of maturities, (2) disclosure of the allowance for uncollectible amounts or other valuation allowance applicable to restructured receivables is deleted, and (3) disclosure of a commitment to lend additional funds to debtors owning restructured receivables is added.

171. Disclosure of commitments to lend additional funds was chosen instead of a penalty suggested by some respondents to the Exposure Draft. They expressed concern that a creditor might avoid recognizing a loss under paragraphs 30–32 by restructuring a troubled receivable in a way that the specified future cash receipts exceed the recorded investment in the receivable and then agree to lend funds to the debtor to meet those terms. They proposed that irrevocable commitments to lend to the debtor be included in the creditor's recorded investment to determine whether the creditor should recognize a loss at the time of restructuring. Since that test is equivalent to saying that a creditor must recognize a loss unless the restructured terms provide not only for recovery of the outstanding receivable but also for recovery of future loans to the same debtor (because future cash receipts from future loans are ignored), the test is excessively punitive. The Board decided that disclosure of those commitments is adequate. That disclosure may already be required by paragraphs 18 and 19 of *FASB Statement No. 5*, but paragraph 40(b) makes the disclosure explicit.

172. Some respondents who advocated that the scope of this Statement exclude restructurings of receivables related to consumer financing activities or to all or certain residential properties (paragraph 63) also argued that, if those restructurings were embraced by this Statement, applicable requirements for disclosure would likely be burdensome and not very meaningful to financial statement users. They put out that the accounting, including information normally disclosed in financial statements or in other reports, for those types of receivables has been tailored to fit special characteristics of the receivables, such as large numbers of relatively small balances, interest rates fixed by state law rather than in a fluctuating market, and numerous accounts on which collections are past due. The Board noted the special characteristics of those types of receivables and, since the scope of this Statement does not encompass appropriate disclosure for receivables generally, concluded that paragraphs 40 and 41 should not necessarily apply to those types of receivables that have been restructured.

ACCOUNTING SYMMETRY BETWEEN DEBTORS AND CREDITORS

173. The Discussion Memorandum contained several questions on whether particular accounting by debtors and creditors should be symmetrical. Most respondents considered a criterion of symmetry between debtors and creditors an insignificant factor in accounting for troubled debt restructurings. Many noted that existing accounting principles of accounting by creditors for receivables after their initial recording and for recognizing losses already differ from those for accounting by debtors for payables and for recognizing gains. Some respondents also noted that differences usually exist between the debtor and creditor in a particular restructuring (for example, differences in the industry or industries in which they are involved, in their financial viability, and in the significance and frequency of that kind of event for them). The accounting for troubled debt restructurings prescribed in this Statement is symmetrical between debtors and creditors in most matters. However, the Board considered the types of differences described above, among other factors, in concluding that different accounting is appropriate for debtors and creditors in matters such as classifying gains or losses recognized at the time of troubled debt restructurings, accounting for contingent interest, and disclosing information about troubled debt restructurings.

EFFECTIVE DATE AND TRANSITION

174. The Board concluded that prospective application of this Statement is appropriate and that the effective dates in paragraphs 43–45 are advisable. In the Board's view, comparability of financial statements would not be greatly enhanced by restating past, nonrecurring troubled debt restructurings. Further, difficulties in retroactive application of the provisions of this Statement included identifying restructurings for which fair values would need to be determined and determining those fair values. A number of enterprises that in recent years have had several restructurings of those types would be unlikely to have information available to restate retroactively.

[FR Doc. 87–23662 Filed 10–19–87; 8:45 am]
BILLING CODE 6720–01–M

[40] SEC, Securities Exchange Act of 1934 Release No. 12748, "Guides for Statistical Disclosure by Bank Holding Companies," August 31, 1976.

12 CFR Parts 561, 563, and 563c

[No. 87-1047]

Uniform Accounting Standards

Date: October 5, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") is proposing to amend its regulations applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions") pertaining to the definition of regulatory capital. First, a companion rule document (87-1047A), published elsewhere in this issue of the **Federal Register** delays the effective date of the Definition of Regulatory Capital Regulation, Board Res. No. 87-259, 52 FR 18340 (May 5, 1987) ("DRC Regulation"), from January 1, 1988 to January 1, 1989 in order to implement a phase-in of uniform accounting standards. This effective date could be modified further as explained in greater detail in the preamble to this proposed rule. Second, this proposal would revise the DRC regulation by eliminating treatment of certain items under risk analysis reporting ("RAR") and substituting in place thereof treatment under generally accepted accounting principles ("GAAP"). The DRC regulation, as amended by this proposal, would begin the phase-in to GAAP on January 1, 1989; such phase-in would end on December 31, 1993, at which time insured institutions would be required to report virtually all components of regulatory capital in accordance with GAAP or the regulatory accounting practices employed by commercial banks.

This proposal is part of the revision of the Board's regulations required by the Competitive Equality Banking Act of 1987, ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552. The Board today also is proposing a rule and a policy statement on the accounting treatment of troubled debt restructurings. *See* Board Res. No. 87-1046, published elsewhere in this issue of the **Federal Register.** Additionally, on October 2, 1987, the Board adopted proposed revisions to its regulations pertaining to the classification of assets and appraisal standards of insured institutions. *See* Board Res. Nos. 87-1042, 87-1040, published elsewhere in this issue of the **Federal Register.**

DATE: Comments must be received on or before November 19, 1987.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Acting Regulatory Counsel, (202) 377-6649, Deborah Dakin, Assistant Director, (202) 377-6445, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778-2538, Carol Larson, Professional Accounting Fellow, (202) 778-2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CEBA requires the Board and the FSLIC to issue regulations prescribing "uniformly applicable accounting standards to be used by all insured institutions for the purpose of measuring compliance with any rule or regulation" promulgated by the FSLIC or the Board "to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies." [1] CEBA, tit. IV, sec. 402(b), section 415(b)(1).[2] Before the enactment of the CEBA, the Board issued a final regulation that was intended to achieve an objective similar to that set forth by the Congress in the CEBA. This rule, the Definition of Regulatory Capital regulation, was to have taken effect on January 1, 1988. Board Res. No. 87-529, 52 FR 18340 (May 15, 1987) ("DRC Regulation"). In view of the CEBA's enactment, however, the Board believes it should delay the effective date of the DRC Regulation for two reasons. First, as discussed more fully below, the Board has determined that new amendments to the DRC Regulation are necessary to implement the CEBA's accounting provisions. The Board is aware that changing its accounting regulations twice within a fairly short period of time may unduly burden insured institutions, which would then be required twice to alter both the manner in which they report to the Board and the calculation of their regulatory capital. The Board believes that it will be far less burdensome to propose the amendments to the DRC Regulation that the CEBA mandates and provide in this proposal that those changes and the DRC Regulation will take effect on the same date.

Moreover, the Board concludes that Congress intended that a gradual phase-in application of accounting standards in accordance with GAAP or the regulatory accounting practices employed by the Federal banking agencies ("Bank RAP"), over a five-year period, in assessing an institution's compliance with Board regulations. The Board further believes that Congress intended this to be accomplished in a manner that minimizes, to the extent feasible, the impact of the requirements on insured institutions' regulatory capital.

To ensure compliance with the requirements of the CEBA and, at the same time, avoid undue burden on insured institutions the Board intends to retain the DRC Regulation, but to delay its effective date. Further, the Board proposes to amend the DRC Regulation in the manner set forth in this resolution. The Board is proposing a single date on which the DRC Regulation, as amended by this proposal, would become effective.

Set forth below are, first, a summary of the DRC Regulation; then, a discussion of the CEBA's requirements; and, finally, a description of the amendments to the DRC Regulation that the Board proposes today in order to implement the aspects of the CEBA not implemented by the DRC Regulation.

II. Definition of Regulatory Capital Regulation

On May 5, 1987, the Board adopted the DRC Regulation which was to be effective January 1, 1988, and which set forth a new definition of regulatory capital and new reporting requirements for insured institutions. First, the rule requires that all financial statements issued by insured institutions, including statements of condition required pursuant to 12 CFR 545.115, and all financial reports filed with the Board

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[1] For purposes of section 402 of the CEBA, the term "Federal banking agency" is defined to mean the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. *See id.* sec. 402(b), section 415(f).

[2] Section 402(a) of the CEBA amended the Home Owners' Loan Act of 1933, 12 U.S.C. 1461 *et seq.*, which governs federally chartered and insured thrifts. Section 402(b) amended the National Housing Act, 12 U.S.C. 1724 *et seq.*, by which the FSLIC regulates state-chartered, federally insured thrifts. Today's proposal amends the Board's regulations governing all insured institutions. Thus, these uniform accounting standards will apply to both federally and state chartered insured institutions.

shall be prepared in accordance with GAAP. Second, the term "regulatory capital" is defined to mean the sum of equity capital as determined in accordance with GAAP plus certain other items based on risk analysis reporting ("RAR"). Third, the rule eliminates prospectively certain regulatory accounting practices previously permitted by the Board.

A. Reporting in Accordance With GAAP

The DRC Regulation requires that all financial statements and reports issued by insured institutions or filed with the Board for all periods beginning on or after January 1, 1988, be prepared in accordance with GAAP and include a footnote reconciliation of GAAP equity capital to regulatory capital. *See* 52 FR at 18351, *to be codified at* 12 CFR 563.23–3. This includes all financial statements issued by insured institutions, all audited financial statements and reports filed pursuant to Bulletin PA–7a, all financial reports that must be filed with the Board, and all counter statements issued by insured institutions.

B. The Components of Regulatory Capital

The DRC Regulation defines regulatory capital as the sum of (1) equity capital as determined in accordance with GAAP ("equity capital"), (2) items that serve as the functional equivalents of capital for the FSLIC by providing a buffer against loss, as well as specific capital instruments created by Congressional action and Board authority ("definitional capital"), (3) certain other components of capital that the Board determines to be consistent with risk analysis reporting, and (4) accounting forbearances.

1. Equity Capital

Equity capital is determined in accordance with GAAP. Equity capital represents the difference between the recorded values of an institution's assets and its liabilities, as determined under GAAP. *See* FASB *Statement of Financial Accounting Concepts No. 6* (Dec. 1985). Goodwill is accounted for as equity capital under GAAP.[3]

2. Definitional Capital

Definitional capital includes qualified subordinated debt, qualified redeemable preferred stock, income capital certificates ("ICCs"), mutual capital certificates ("MCCs"), net worth certificates ("NWCs"), annual income payments on capital certificates ("AIPs"), pledged certificates of deposit, allowances for loan losses except specific allowances (including those established pursuant to §§ 561.16c, 563.17–2, and 571.1a of this subchapter), and other nonwithdrawable accounts (excluding any treasury shares held by the insured institution) to the extent such nonwithdrawable accounts are not included in equity capital.

3. RAR Components of Capital

a. Pre-January 1, 1988, RAR. This category of regulatory capital includes only the components of RAR permitted prior to January 1, 1988 for which RAR is eliminated. It includes appraised equity capital (12 CFR 563.13(c)); the deferral of certain losses and gains (12 CFR 563c.14); and the cumulative RAR/GAAP differential for the sale of real estate by the institution or its subsidiary; (12 CFR 563.23–1(f)), futures transactions (12 CFR 563.17–4(g)); and the accretion of discounts on securities and the amortization of premiums on securities (12 CFR 563.23–1 (a), (b)).

b. Post-January 1, 1988 Rule, RAR. Insured institutions also may continue to include in their regulatory capital an amount that represents the difference between the treatment of certain items under GAAP and the treatment of those same items under RAR after January 1, 1988. An insured institution may compute the items in this category under both RAR and GAAP for purposes of regulatory capital. The amount that represents the RAR/GAAP differential for a particular item would be added to or subtracted from equity capital to arrive at regulatory capital.

First, this category includes amounts reflecting the RAR/GAAP differential treatment of loan origination and commitment fees pursuant to newly redesignated 12 CFR 563.23–4(f)(3). The second item in this category is the amount of the RAR/GAAP differential in the treatment of options transactions pursuant to 12 CFR 563.17–5(g). Third, institutions are to continue to use RAR with respect to allowances for loan losses pursuant to the Board's classification of assets rules, 12 CFR 561.16c, reevaluation of assets, adjustment charges, 12 CFR 563.17–2, and accounting for uncollectible interest with respect to 1–4 family residential mortgage loans pursuant to 12 CFR 563c.11.

4. RAR Accounting Forbearances

Insured institutions also may include in their regulatory capital additional items reflecting accounting forbearances previously authorized, or which may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. Most of the forbearances included in this category result from FSLIC merger transactions.

C. Elimination of Certain RAR Requirements

The final rule eliminates altogether, effective January 1, 1988, prospective authority for insured institutions to rely on five accounting procedures heretofore permitted by the Board that represent departures from GAAP. First, the Board's accounting regulation, 12 CFR 563.23–1(f) (1987), is eliminated, and insured institutions and their service corporations must account for the sales of real estate by the institution or its service corporation in accordance with GAAP. *See* FASB *Statement of Financial Accounting Standards No. 66.* Second, insured institutions must record marketable equity securities in accordance with GAAP. *See* FASB *Statement of Financial Accounting Standards No. 12.* Third, the final rule amends 12 CFR 563.17–4(g) to require institutions to determine gains or losses arising from futures transactions in accordance with GAAP. *See* FASB *Statement of Financial Accounting Standards No. 80.* Fourth, 12 CFR 563.23–1 was amended to require that premiums on securities be amortized and that discounts on securities be accredited in accordance with GAAP. *See* FASB *Statements of Financial Accounting Standards No. 65 and No. 91.* Fifth, the final rule removed obsolete accounting procedures set forth in 12 CFR 563.23–2, which provides for the deferral and amortization of gains and losses on the disposition of securities made for purposes of meeting the Board's liquidity requirements during the period beginning on December 11, 1969, and ending December 31, 1971.

III. Statutory Requirements and Legislative History

As discussed above, sections 402 (a) and (b) of the CEBA require the Board to prescribe, by regulation, uniformly applicable accounting standards to be used by all insured institutions for the purpose of determining compliance with Board rules and regulations to the same degree that GAAP is used to determine compliance with the rules and regulations of the Federal banking agencies. CEBA, tit. IV, secs. 402 (a), (b). The Board may suspend the application of any such standard with respect to any insured institution or transaction if it would result in an institution or its

[3] The Board notes that the DRC regulation permits institutions to continue to use the Board's accounting procedures for wash sale transactions as set forth in Office of Regulatory Policy, Oversight and Supervision ("ORPOS") Memorandum No. T–59–8 (June 22, 1982) for purposes of computing equity capital.

parent being treated differently than a bank and its parent on a consolidated basis and the transaction was consistent with GAAP when completed. *Id.* The CEBA requires that these regulations "shall take effect on December 31, 1987." *Id.* sec. 402(d). An insured institution that demonstrates to the satisfaction of the Board or the FSLIC that it is not feasible for it to comply with those accounting regulations by that date may submit a plan for compliance at a later date to the Board for its approval. That date would be the earlier of the date the Board determined it would be feasible for the institution to comply with the regulation or December 31, 1993. *Id* sec. 402(d)(2)(B).

The legislative history of the CEBA indicates Congress' belief that GAAP was the appropriate basis for uniform thrift accounting requirements. The only permitted deviations from GAAP are Bank RAP. *See* H.R. Rep. No. 261, 100th Cong., 1st Sess. 164 (1987); S. Rep. No. 19, 100th Cong., 1st Sess. 20, 54–55 (1987). The legislative history also reflects additional congressional concerns. First, Congress intended that all financial institutions eventually achieve uniform, GAAP-based reporting. *See* S. Rep. No. 19 at 55. Second, Congress also intended that the Board allow thrift institutions, whose compliance with Board and FSLIC regulations had previously been measured by more liberal thrift regulatory accounting practices, a phase-in period, not to exceed five years, before measuring their regulatory compliance by the stricter GAAP requirements. *See* S. Rep. No. 19 at 20; 133 Cong. Rec. H3156 (daily ed. May 5, 1987) (remarks of Representative Parris).

The Conference Report recognized that the Federal banking agencies' accounting standards are not themselves uniform. H.R. Rep. No. 261 at 164. The Senate Report accompanying S. 790, which contained the uniform accounting standards provision that was adopted without substantive amendment in the CEBA, explicitly states that, to the extent the banking regulatory agencies deviate from GAAP in their accounting and reporting regulations, the Board may "choose whether to adopt the same deviations or adopt GAAP." S. Rep. No. 19 at 55.

The Senate Report further explained the interaction of the CEBA with the Board's regulatory capital requirements: "It is not the intent of this section to require the federal thrift and banking agencies to adopt identical regulatory frameworks such as might apply to capital adequacy. It is expected that the FHLBB will retain its own authority to determine, for example, the components and levels of capital to be required of FSLIC-insured institutions." S. Rep. No. 19 at 55.

As the plain language and legislative history of the CEBA show, Congress determined that the thrift regulatory accounting practices adopted in the early 1980's do not serve the best interest of the thrift industry or the public. The legislative history also shows, however, Congress' concern that institutions have an opportunity to adjust to having their compliance with Board and FSLIC regulations measured by stricter, GAAP-based accounting standards. The Conference Report states that section 402 requires the Board "to formulate regulations for the eventual application of GAAP to all thrift institutions." H.R. Rep. No. 261 at 164. In this regard, numerous members of Congress noted that the legislation was designed to move the thrift industry toward GAAP over a period of time. *See, e.g.*, 133 Cong. Rec. H6949 (daily ed. Aug. 3, 1987) (remarks of Representative Parris) ("This section would require that thrift institutions begin to abide by generally accepted accounting principles [GAAP] within a period of five years."); 133 Cong. Rec. at H6951 (remarks of Representative Cooper) ("S&L's will have to begin operating under the accounting rules that every other business in America is ruled by, GAAP accounting, when the $10.8 billion bailout fund is exhausted"); 133 Cong. Rec. at H6954 (remarks of Representative Hubbard) ("[T]his legislation takes an important step forward in the section 402 provisions directing the Federal Home Loan Bank Board to move toward generally accepted accounting principles.").

The House Report accompanying H.R. 27 (which as reported from the House Banking Committee did not include the uniform accounting standards subsequently added to H.R. 27 during the floor debate) stated: "The Committee approves the long-term goal of having institutions report their financial stateaents in accordance with GAAP. However . . . it is impossible for an industry so dependent on regulatory accounting principles to comply, without a significant transition period, with generally accepted accounting standards." H.R. Rep. No. 62, 100th Cong., 1st Sess. 37 (1987). The House markup of H.R. 27 contains a lengthy discussion about the need for a gradual move to GAAP. Transcript of markup of H.R. 27 at 55–62. In the floor debate on H.R. 27, during which the uniform accounting standards provision was added, Representative Parris, the amendment's sponsor, stated that his amendment, which was similar to S. 790's provisions, "would have the Bank Board by the end of this year promulgate regulations that would, over a 5-year period, have S&L's use accounting principles consistent with GAAP." 133 Cong. Rec. at H3156.

In the Senate Banking Committee markup of S. 790, which contained the uniform accounting provisions, Senator Garn cautioned that, while there was a clear consensus that the Board move to GAAP accounting for thrifts, "[u]sually the argument was not whether it should be done. It was whether it should be implemented in five years or seven or ten, and usually the testimony was, well, let's get it started." Transcript of Senate Banking Committee markup of S. 790 at 77–78.

The Board believes that the legislative history of the CEBA shows a clear congressional intent that the Board act by December 31, 1987, to promulgate regulations establishing a timetable that will move the thrift industry to uniform, GAAP-based, accounting standards by December 31, 1993. Pursuant to this congressional mandate, the Board today is proposing to take several steps. First, it is proposing to delay the effective date of the DRC regulation from January 1, 1988 to January 1, 1989.[4] This includes not only the modification to the definition of regulatory capital contained therein, but also the reporting requirements and expiration of certain RAR components. The Board believes that this is necessary in order to phase-in uniform accounting standards based on GAAP or Bank RAP as required by the CEBA. While it believes that the DRC regulation was a first step in this congressionally mandated direction, to implement the DRC Regulation at this time would, in the Board's estimation, lead to needless confusion in the industry about the accounting and public reporting requirements.

Second, it is proposing to modify the DRC regulation to comport with the CEBA-mandated treatment of certain items of regulatory capital. Third, it is proposing to grandfather certain provisions of RAR not specifically discussed in the CEBA to phase-in the effects of GAAP on thrifts. As proposed,

[4] The Board is not proposing to withdrew the DRC, but to delay implementation of the provisions that were to have gone into effect on January 1, 1988. The provisions that went into effect on May 5, 1987 remain effective. Thus, thrifts' authority to defer loan losses still expires on January 1, 1988, consistent with the CEBA provision that loan losses may be deferred "consistent with regulations in effect before the passage of the Thrift Industry Recovery Act" on August 10, 1987. *See* CEBA, tit. IV, sec. 402(b), § 415(e).

this grandfathering treatment will expire on or before December 31, 1993. Fourth, it is proposing a timetable whereby over the next several years, thrift institutions will begin filing reports in accordance with GAAP and will include progressively fewer elements of RAR in regulatory capital. Finally, it is proposing procedures whereby an institution that believes it cannot meet the proposed timetable may file a plan for Board approval of its delayed compliance to a date no later than December 31, 1993.

The grandfathering and phase-in proposed today should, in the Board's estimation, make it feasible for most thrift institutions to comply with both the reporting requirements as well as those regulations that measure compliance with Board regulations on an institution's regulatory capital. Therefore, the Board anticipates that plans requesting delayed compliance will be the rare exception, rather than the rule. The Board notes that the statute sets a feasibility standard for delayed compliance. Institutions that file plans seeking delayed compliance not because of an inability to meet the Board requirements but because of an unwillingness to report capital components as required by Board regulations should be aware that such plans will not be approved by the Board or the FSLIC. The Board continues to believe that achieving uniform accounting based on GAAP at the earliest possible date is in the best interest of the thrift industry and the public.

As noted above, in the Board's view, the DRC regulation accomplishes Congress' mandate to a certain degree. In reviewing that regulation in light of the CEBA, however, the Board has determined that further amendments are necessary to achieve the goal of Congress. Accordingly, the Board today is proposing to amend its DRC regulation to define regulatory capital in a manner that brings the thrift industry closer to GAAP by 1993 for purposes of assessing compliance with Board regulations.

IV. Description of the Proposed Rule

A. Reporting in Accordance With GAAP

As discussed in greater detail above, the legislative history of section 402 of the CEBA makes clear that, to the extent the banking agencies deviate from GAAP in their regulatory requirements, it was Congress' intent to allow the Board discretion to choose whether to adopt the same deviations or to adopt GAAP. The Board's reporting requirements under the DRC regulation deviate from Bank RAP or GAAP in certain areas.

First, bank call reports are prepared primarily on a GAAP basis; however, the accounting treatment for certain line items deviates from GAAP and, in fact, tends to be more conservative than GAAP. *See* Federal Financial Institutions Examination Council ("FFIEC") *Consolidated Reports of Condition and Income*, p. 9. The DRC regulation requires insured institutions to prepare their monthly and quarterly reports ("call reports") in accordance with GAAP. Second, bank call reports do not contain a computation of the bank's primary and total capital, which is analogous to regulatory capital for thrifts. Under the DRC regulation, thrifts are required to include on all financial statements and reports a reconciliation of GAAP equity capital to regulatory capital. Third, the Federal banking agencies, consistent with GAAP, require that bank call reports be prepared on a consolidated basis. Insured institutions' call reports are prepared on a unconsolidated basis.

After carefully reviewing the reporting requirements of the DRC regulation in light of the CEBA, the Board has determined to continue to require insured institutions to prepare their call reports in accordance with GAAP with a reconciliation on the report to regulatory capital effective for all periods ending after January 1, 1989. While the Board recognizes that its call reports are primarily supervisory and regulatory documents, not primarily accounting documents, it continues to believe that its supervisory, regulatory, and economic policies are best served by a GAAP call report that includes a reconciliation to regulatory capital. More specifically, the Board believes that requiring GAAP call reports for all insured institutions will provide it with a more consistent, comprehensive basis for analyzing and comparing financial statements issued by insured institutions and that this method of reporting also will assist the Board in monitoring the performance and soundness of the thrift industry. Moreover, in light of the proposed effective date of these requirements, the Board does not believe that such reporting requirements will adversely affect insured institutions. Although regulatory reports filed with the Board are, until January 1, 1989, filed on a RAR basis, such reports are available to the public under the Freedom of Information Act. Because items such as definitional capital, deferred loan losses, and appraised equity capital are segmented by the reporting system, an approximation of the GAAP equity capital can be derived from such reports. Thus, in effect, approximations of the GAAP equity position of the individual institutions and the industry are already available to the public.

The Board emphasizes, however, that it will continue to rely primarily on regulatory capital in assessing an insured institution's compliance with Board regulations. Further, the Board will continue to use regulatory capital to determine an institution's compliance with the Board's minimum regulatory capital requirements under 12 CFR 563.13 (1987).[5] The Board notes that, as discussed *infra*, it is proposing certain amendments to its definition of regulatory capital. While these amendments will eventually bring regulatory capital closer to GAAP/Bank RAP, the amendments would not cause an immediate reduction in the regulatory capital of the thrift industry. For these reasons, it is the Board's view that this proposal is consistent with the intent of section 402.

The Board also is proposing to require insured institutions to file their monthly and quarterly reports with the Board on a consolidated basis, consistent with GAAP and Bank RAP, effective January 1, 1989. This means that institutions would be required to consolidate all their majority-owned subsidiaries, including, but not limited to, service corporations, finance subsidiaries and operating subsidiaries for purposes of reporting to the Board. *See* FASB Accounting Research Bulletin No. 51, *Consolidated Financial Statements*. In the Board's view, consolidated reporting will enable the Board more effectively to monitor the financial conditions of insured institutions and their subsidiaries and, consequently, aid in its supervisory efforts.

The Board wishes to emphasize, however, that an institution's minimum capital requirement pursuant to sections 563.13 or newly proposed section 563.14 and its liability growth calculation pursuant to section 563.13–1 would continue to be calculated on an unconsolidated basis. This decision is based, in part, on the potential substantial impact that consolidated reporting could have on the regulatory capital requirement of some institutions. Specifically, consolidated reporting would increase the value of the assets

[5] The Board also is adopting today proposed amendments to its minimum capital requirement regulation to implement the authority granted by section 406 of the CEBA to set capital requirements on a case-by-case basis. *See* Board Res. No. 87–1045, published elsewhere in this issue of the Federal Register.

and liabilities of an institution, and in cases where subsidiaries are more highly leveraged than the parent, the regulatory capital of the institution as a percentage of total liabilities will decline. In such a situation, an institution that had, prior to consolidation, met its regulatory capital requirement, would need to raise additional capital to remain in compliance with its requirement.

In light of the statutory authority granted to the Board in section 406 of the CEBA with respect to minimum capital requirements, the Board intends to revisit its current minimum capital regulation, 12 CFR 563.13 (1987), in the near future. At such time the Board will consider whether minimum capital requirements should be calculated on a consolidated basis. Any such requirement would be implemented in conjunction with any proposed changes to the Board's minimum capital regulation.

B. Components of Regulatory Capital

Today's proposal further restructures the various components of regulatory capital in accordance with the CEBA mandate for uniform accounting standards for thrifts. These provisions would become effective on January 1, 1989, and would apply to all reports filed with the Board for periods ending after that date. The Board wishes to emphasize that the intent of the DRC regulation and the amendments thereto proposed today is to implement a phase-in of GAAP in such a manner as not to cause an immediate reduction of an institution's regulatory capital. In the Board's view, since institutions would not be required to comply with the DRC regulations, as amended by today's proposal, until January 1, 1989, such a phase-in is accomplished. As discussed *infra*, the Board is proposing to grandfather through December 31, 1993, those components of regulatory capital that were eliminated in the DRC regulation or by today's amendments. Thus, the Board is confident that institutions will not be adversely affected by today's proposal.

1. Equity Capital

Under today's proposal, an institution's equity capital would continue to be determined in accordance with GAAP. Goodwill is therefore included in a thrift's equity capital. The Board has determined to follow GAAP, rather than Bank RAP, which does not include goodwill, because the CEBA's language and its legislative history clearly indicate that the Board may include goodwill in regulatory capital. *See* CEBA, tit. IV, sec. 402(b), § 415(d). The thrift industry has historically included goodwill in capital, and the Board believes that no change in this policy is warranted given the clear language of the CEBA.

Under the DRC regulation, institutions are permitted, for purposes of calculating equity capital, to account for wash sales transactions pursuant to ORPOS Memorandum No. T–59–8 (June 22, 1982). Today's proposal would eliminate RAR for wash sales transactions and would require such transactions to be accounted for in accordance with GAAP and Bank RAP. Pursuant to T–59–8 gains and losses from wash sales should be recognized currently. Under GAAP and Bank RAP, when a bank sells a security and concurrently reinvests the proceeds from the sale in the purchase of substantially the same security, no sale should be recognized, since the effect of the sale and repurchase transaction leaves the bank in essentially the same position as before, notwithstanding the fact that the bank has incurred brokerage fees and taxes. *See* AICPA Industry Audit Guide—Audit of Banks, "Investment Securities." The Board believes that GAAP more accurately reflects the economic substance of the transaction and thus better serves to protect institutions from loss. Thus, effective January 1, 1989, institutions would be required to account for wash sales transactions in accordance with GAAP in computing their equity capital.

2. Definitional Capital

Today's proposal would continue to allow institutions to include as definitional capital most of the items included in the DRC regulation. First, section 402 of the CEBA specifically authorizes the Board to permit institutions to continue to include subordinated debt as regulatory capital. CEBA, tit. IV, sec. 402(b), section 415(d). Thus, the proposal would continue to allow institutions to include subordinated debt as a component of capital pursuant to the amortization schedule included in the DRC Regulation.

Second, the CEBA authorizes institutions to treat general loss allowances as regulatory capital to the extent such treatment is consistent with the procedures established by the Federal banking agencies. *Id.* section 415(a)(5). Both the DRC regulation and the Federal banking agencies permit the inclusion of general loss allowances as a component of capital. The Board notes, however, that the Federal banking agencies are currently reconsidering whether general loss allowances should be included as capital.[6] Consequently, the Board may revisit this issue at a later date.[7] For the present, however, the Board is proposing to continue to allow such loss allowances to be included as regulatory capital.

Third, the Board is proposing to continue to allow institutions to include as regulatory capital, net worth certificates, mutual capital certificates, income capital certificates, and annual income payments on capital certificates not due and payable. In the Board's experience, these items have had a beneficial effect on insured institutions. Moreover, Congress, by statute, has explicitly mandated that two of these forms of FSLIC assistance, mutual capital certificates and net worth certificates, constitute capital infusions and are to be included in the regulatory capital of insured institutions. 12 U.S.C. 1464(b)(5) (A), (B), 1726(b) (1982 & Supp. III 1985). While income capital certificates are not statutorily created instruments, they serve a similar function and, thus, in the Board's view, should continue to be included as regulatory capital. Similarly, annual income payments which represent income payments on capital certificates are also, in the Board's view, properly includable in capital.

Fourth, after reviewing the other items currently included in capital, the Board has preliminarily determined to amend definitional capital to modify the extent to which nonpermanent preferred stock is included. Consistent with Bank RAP,[8] the Board is proposing to allow limited life preferred stock that has an original maturity of more than 25 years to be included as a component of definitional capital. The Board believes, however, that it would be appropriate to adjust for the amount of limited life preferred

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[6] *See* 52 FR 5119 (Feb. 19, 1987) (Federal Reserve Board ("FRB")); 52 FR 23045 (June 17, 1987) (Comptroller of the Currency ("OCC")); 52 FR 11476 (Apr. 9, 1987) (Federal Deposit Insurance Corporation ("FDIC")).

[7] The Board notes that the authority to include general loss allowances as capital sunsets when the Financing Corporation issues the last obligations under its $10.825 billion borrowing authority. CEBA, tit. IV, sec. 416(a). The sunset provision does not, however, limit the Board's authority to continue to allow institutions to include such loss allowances as regulatory capital after that date, if it so desires. *See id.* sec. 416(c).

[8] The federal banking agencies recently issued proposals regarding capital adequacy and maintenance. As part of those proposals, the federal banking agencies have proposed to include limited life preferred stock as capital in substantially the same manner as the Board is proposing to include such stock. *See* 52 FR 5119 (Feb. 19, 1987) (FRB); 52 FR 23045 (June 17, 1987) (OCC); 52 FR 11476 (Apr. 9, 1987) (FDIC). The Board notes that the comment period on the FRB proposal ended on June 1, 1987; FDIC on June 9, 1987; and OCC on August 17, 1987.

stock included in definitional capital by discounting such stock as it approaches maturity. In the Board's view, this discounting process is necessary because as limited life preferred stock approaches maturity it must either be redeemable or refunded; it then resembles a current liability more than a component of capital. Accordingly, the Board is proposing to reduce the original issue amount by 20 percent in each of the last five years before maturity. Thus, 80 percent of the issue amount would be included in definitional capital if the remaining life was between four and five years, 60 percent would be included if the remaining life was between three and four years, and so on. None would be included if the remaining maturity was one year or less. The Board specifically solicits comment on whether it should retain its current treatment of nonpermanent preferred stock as set forth in § 561.13(d) or adopt the approach of the Federal banking agencies, as outlined above.

The Board proposes that nonpermanent preferred stock that meets the current requirements of section 561.13(d) would be "grandfathered." The Board notes, however, that only the amount of such redeemable preferred stock that was included in capital under the current requirements prior to January 1, 1989 would be grandfathered. In this regard, the Board also today is requesting comment on whether, and to what degree, mandatorily convertible securities should be included as a component of definitional capital. Generally, there are two types of mandatory convertible securities: (1) "Equity contract notes" securities that obligate the holder to take common or perpetual preferred stock of the issuer in lieu of cash for repayment of principal, and (2) "equity commitment notes" securities that are redeemable only with the proceeds from the sale of common or preferred perpetual stock. The Board notes that mandatory convertible securities are not considered GAAP equity capital but are included, subject to certain limitations, in bank capital.

Finally, the Board also is proposing that certain components of definitional capital would be eliminated as of January 1, 1989. These include pledged certificates of deposit and other nonwithdrawable accounts that are not included in GAAP equity capital. Since these items are not included in capital either under GAAP or Bank RAP, the Board believes that they should no longer be included in thrift regulatory capital. While the Board recognizes that these items may provide a buffer from loss both to insured institutions and the FSLIC, it has determined that consistent with the intent of the CEBA that such items should no longer be included as regulatory capital. However, to the extent an institution included such items in regulatory capital prior to January 1, 1989, such items will be afforded grandfathering treatment. The Board specifically requests comment on whether these items should be eliminated as a component of regulatory capital.

3. RAR Components of Capital

In the DRC regulation, this component of capital is broken into two categories: Pre-January 1, 1988, RAR and Post-January 1, 1988, RAR. The items included in these categories are balance sheet and income statement line items, *i.e.*, assets, liabilities, income or expenses. The manner in which these items are accounted for, *i.e.*, GAAP or RAR, affects both the amount of equity capital and the amount of regulatory capital an institution reports. Because the DRC regulation requires that all financial statements be prepared on a GAAP basis, each line item on a thrift's balance sheet and income statement must be accounted for in accordance with GAAP as of January 1, 1989.

The Board's purpose in establishing the Pre-January 1, 1988, RAR category was to "grandfather" those specific accounting transactions that previously had been accounted for under RAR before the effective date of the DRC regulation, so as not to cause immediate reductions in institutions' regulatory capital as a result of the new GAAP reporting requirements. With respect to appraised equity capital and deferred loan losses, this result was accomplished by permitting institutions that had accounted for these items under RAR prior to the effective date of the DRC regulation to include them as a regulatory capital adjustment. With respect to other items for which RAR was eliminated, the Board permitted institutions to treat the cumulative RAR/GAAP differential for those items as an adjustment to regulatory capital. Again, the purpose for this section was to phase out RAR and phase in GAAP in a manner that would not immediately affect an insured institution's regulatory capital in an adverse way.

The Board's purpose in establishing the Post-January 1, 1988 RAR category was somewhat different. At the time the Board adopted the DRC regulation, it believed that its accounting treatment for the items included in this category provided a more effective tool for analyzing risk of loss to the FSLIC and therefore determined to continue to require institutions to account for these items in accordance with RAR for purposes of calculating regulatory capital. The accounting treatment for two of the items in this category, valuation allowances and uncollectible interest, generally is more conserative than GAAP. Consequently, it tends to result in a reduction in regulatory capital. On the other hand, RAR treatment for loan fees and options is generally more liberal than GAAP and therefore would result in an increase in regulatory capital. As with the items in the Pre-January 1, 1988 RAR category, this adjustment to regulatory capital was made by calculating the cumulative RAR/GAAP differential for these items and adjusting regulatory capital accordingly.

In light of the CEBA, the Board has revisited the Pre-and Post-January 1, 1988 categories and has determined that further amendments are necessary consistent with the intent of section 402. As discussed *infra.*, the Board today is proposing to eliminate prospectively RAR for all items listed in the post-January 1, 1988 category and to afford grandfathering treatment for purposes of computing regulatory capital for certain of those Post-January 1, 1988 RAR items. Consequently, this component of regulatory capital will no longer consist of the Pre-and Post-January 1, 1988 RAR categories. Instead, this component will represent only grandfathered items and will be referred to as "RAR components of regulatory capital." What follows is a discussion of those items that are affected by today's proposal.

a. Deferred Loan Losses and Gains. The Board notes that loan losses and gains that were deferred pursuant to section 563c.14 would continue to be included in this category provided that the institution has excluded such gains and included such losses in computing its regulatory capital prior to January 1, 1988. The CEBA specifically authorizes institutions to continue, "for purposes of determining regulatory net worth and capital," to defer loan gains and losses "pursuant to regulations of the Board in effect before [August 10, 1987]." CEBA, tit. IV, sec. 402(b), section 415(e). As discussed above, although the Board is proposing to delay the effective date of the DRC regulation, that action does not affect the sunset provision set forth in § 563c.14(f). In the Board's view, the sunset provision became effective on May 5, 1987, when the Board adopted the DRC regulation. Thus, consistent with the CEBA, institutions may only include in regulatory capital those loan losses and gains that are deferred pursuant to § 563c.14 prior to January 1,

1988. The Board does not believe that it was Congress' intent to reinstate the ability of institutions to use § 563c.14 particularly because the provision was not added to the CEBA until July 6, 1987, over two months after the Board adopted the DRC regulation.

b. Loan origination and commitment fees. Today's proposal would eliminate the Board's accounting regulations at 12 CFR 563.23–1(f)(3) and require insured institutions to account for loan origination and commitment fees in accordance with GAAP as of January 1, 1989. Before the Board adopted the DRC regulation, the FASB issued Statement of Financial Accounting Standards No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases* (Dec. 1986) ("SFAS No. 91"). SFAS No. 91 generally requires an institution to defer all loan origination and commitment fees and recognize them by the interest method over the contractual life of the related loan as an adjustment to yield. Incremental direct costs (narrowly defined) of originating a loan are capitalized and recognized by the interest method as a reduction of the loan's yield.

After carefully reviewing SFAS No. 91, and 12 CFR 563.23–1(f), the Board's current regulation governing accounting for such fees, it has determined that its regulation on loan origination and commitment fees does not result in as conservative a measure of capital as produced under GAAP. Moreover, the Board believes that this approach is consistent with the other banking agencies which currently require banks to account for loan fees under Pre-SFAS No. 91 GAAP, but who have indicated, based on informal discussions, that they intend to follow SFAS No. 91.

Consistent with the grandfathering treatment in the DRC regulation afforded to those items for which RAR is eliminated, under the proposal institutions would be allowed to include in regulatory capital the amount representing the RAR/GAAP differential for those loan origination and commitment fees calculated under RAR prior to [the effective date of final rule]. However, institutions would not be permitted to use RAR in calculating loan fees incurred after January 1, 1989.

c. Options transactions. The proposal would eliminate the Board's accounting regulation set forth in 12 CFR 563.17–5(g) (1987) for options transactions and require insured institutions to account for such transactions in accordance with GAAP. Under the proposal, institutions would be allowed to include in regulatory capital the amount representing the RAR/GAAP differential for those options transactions calculated under RAR prior to January 1, 1989. Institutions would not, however, be permitted to use RAR in accounting for options transactions entered into after January 1, 1989. The Board recognizes that GAAP is still evolving in this area and thus has not yet been defined by a specific FASB Statement of Financial Accounting Standards. Consequently, the Board specifically requests comment on whether RAR should be eliminated for options transactions or whether the Board should continue to provide guidance in this area until such time as the FASB or the AICPA issue an authoritative pronouncement in this regard.

d. Valuation allowances. The Board also is proposing to delete from this category the RAR/GAAP differential for valuation allowances. As part of its comprehensive revision of its regulations in accordance with the CEBA, the Board, on October 2, 1987, adopted proposed rules concerning asset classification and appraisal standards. Board Res. Nos. 87–1042, 87–1040 published elsewhere in this issue of the **Federal Register.** The CEBA requires the Board to implement a new classification system and new appraisal standards consistent with the practices of the other federal banking agencies. *See* CEBA, tit. IV, sec. 402(b), sections 415(a) (1), (2). Those proposals implement those requirements. As described in those proposals, there should not be significant RAR/GAAP differentials for establishing loss allowances. Thus, this component is no longer appropriately included in regulatory capital. The Board notes that, in effect, this will benefit insured institutions because the RAR/GAAP differential for valuation allowances under the Board's current classification of assets regulation usually would result in a deduction from capital.

e. Uncollectible interest. The Board is proposing to eliminate its accounting treatment for uncollectible interest with respect to 1–4 family mortgage loans pursuant to 12 CFR 563c.11 (1987) as of January 1, 1989. Section 563c.11 provides that any uncollected interest on certain loans that have any portion due but uncollected for a period in excess of 90 days shall be classified as uncollectible and, therefore, not included in an institution's net income or regulatory capital. Under GAAP, the accrual of interest on delinquent loans is discontinued when it is probable that the interest will not be received, pursuant to FASB, Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies.* In the Board's view, requiring GAAP for uncollectible interest is consistent with Bank RAP and the intent of the CEBA. Consequently, under the proposal the RAR/GAAP differential for that item will no longer be includable as a component of capital. In the Board's view, this amendment would not adversely affect an institution's regulatory capital since RAR is generally more restrictive than GAAP in this area and consequently would result in a subtraction from regulatory capital and not an addition. Thus, the Board is not proposing grandfathering treatment for uncollectible interest.

4. Accounting Forbearances

The proposal would have no effect on the ability of insured institutions to include accounting forbearances as a component of regulatory capital. However, the Board wishes to take this opportunity to emphasize that this category only includes *accounting* forbearances, *i.e.,* deviations from GAAP or RAR for specific accounting transactions which were previously authorized, or which may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. This category does *not* include forbearances granted by the Board or its designee with respect to institutions' minimum regulatory capital requirements.

5. Sunset Date

Consistent with the CEBA, the Board is proposing that the ability of insured institutions to include certain items as components of regulatory capital shall sunset on December 31, 1993. The sunset provision will apply to appraised equity capital, grandfathered nonpermanent preferred stock, grandfathered pledged certificates of deposit and other nonwithdrawable accounts, and all other grandfathered items except deferred loan losses. In the Board's view, this will effectively implement the phase-in for thrift institutions to GAAP/Bank RAP by December 31, 1993, the mandatory time deadline set forth in the CEBA. Moreover, the Board believes that this 5-year period gives institutions adequate time to access new capital in the capital markets and thereby improve their capital positions. The Board, however, specifically solicits comment on whether, instead of eliminating these items entirely on December 31, 1993, the Board should instead gradually phase-out these items, *i.e.,* permit 100 percent to be counted in the first year, 80 percent in the second year, and so on to 0 percent in the fifth year, with such a phase-out beginning on January 1, 1989 and ending on December 31, 1993.

C. Plans for Delayed Compliance

In accordance with section 402(d)(2)(B) of the CEBA, the Board is today proposing to add a new paragraph (d) to 12 CFR 563.23–3 (1987). As proposed, the new section will (1) permit institutions to file plans for delayed compliance with the proposed uniform accounting standards with their Principal Supervisory Agent ("PSA") and (2) establish the criteria by which such plans will be evaluated. An institution that believes it will not be feasible for it to comply with the uniform accounting standards proposed today may file a plan for delayed compliance with its PSA. The plan should explain why it will not be feasible for the institution to comply fully with the standards. Each plan must contain, at a minimum, the following information: (1) The specific aspects of the uniform accounting standards the institution will be unable to meet by the timetable set forth in today's proposal; (2) the specific reasons why it cannot meet each element by that timetable; and (3) a timetable by which the institution will be able to comply with the uniform accounting standards. In evaluating an institution's plan, the PSA will consider at least the following factors: (1) The number of components with which the institution will be unable to comply; (2) the soundness of the reasons for delayed compliance, considering (a) the institution's history, (b) other institutions in the region, and (c) whether compliance with the uniform accounting standards would make an institution unable to comply with other Board regulations; (3) the length of time needed for the institution to achieve compliance with each component and (4) the extent to which the grandfathering of certain RAR components and phase-in of certain GAAP-based components will alleviate the institution's difficulties.

The Board intends that delayed compliance be allowed only where it is not feasible for an institution to comply with the timetable proposed today. Such delayed compliance should further be authorized only to the degree and for the amount of time necessary to enable an insured institution to comply. Thus, the Board expects, under today's proposal, that blanket waivers until December 31, 1993 will be extraordinarily rare, but that a year's delayed compliance with one or two aspects of the new requirements will be slightly more common. The PSAs will act on such delayed compliance plans pursuant to the procedures set forth at 12 CFR 571.12. *See* Board Res. No. 87–1038, published elsewhere in this issue of the **Federal Register**.

D. Solicitation of Comment

The Board hereby solicits comments on all aspects of this proposal. The Board requests that any comments on this proposal clearly reference on their face Board Resolution No. 87–1047.

Pursuant to the rulemaking policies and procedures of 12 CFR 508.13, as supplemented by Board Res. No. 80–584, 45 FR 73135 (1980), the Board is providing for a 30-day rather than a 60-day public comment period because section 402(d)(2)(A) of the CEBA requires the Board to implement this regulation by December 31, 1987.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. Reasons, objectives, and legal basis underlying the proposed rule. These elements are incorporated above in the above **SUPPLEMENTARY INFORMATION.**

2. Small entities to which the proposed rule would apply. The proposed rule would apply to all insured institutions without regard to size.

3. Impact of the proposed rule on small entities. The Board believes that the proposed revision of its definition of regulatory capital would not have a significant or disproportionate impact on small institutions.

4. Overlapping or conflicting federal rules. There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. Alternatives to the proposed rule. In the above **SUPPLEMENTARY INFORMATION** the Board is soliciting comment on the rule as proposed.

List of Subjects in 12 CFR Parts 561, 563, and 563c

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 561, 563 and 563c, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for 12 CFR Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Section 561.13 is revised to read as follows:

§ 561.13 Regulatory capital.

Regulatory Capital is the sum of:

(a) Equity capital, as determined in accordance with generally accepted accounting principles ("equity capital");

(b) Definitional capital, which is the sum of:

(1) Income capital certificates, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), outstanding net worth certificates issued in accordance with Part 572 of this subchapter or that the Corporation is committed to purchase by virtue of § 572.1(c), accumulated annual income payments on capital certificates not due and payable; allowances for losses except specific allowances (including those specific allowances established pursuant to §§ 561.16c, 563.17–2, and 571.1a of this subchapter), *Provided,* that for any nonpermanent instrument qualifying as regulatory capital under paragraph (b)(1) of this § 561.13, either (i) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is not less than one year, or (ii) the redemption or prepayment is only at the option of the issuing insured institution and such payments would not cause the insured institution to fail or continue to fail to meet its regulatory capital requirement under § 563.13 of this subchapter; *Provided further,* that capital stock may be included as regulatory capital without limitation if it would otherwise qualify but for a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation when the issuing institution is not the survivor, or a provision permitting a redemption when the funds for redemption are raised by the issuance of permanent stock;

(2) Subordinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided,* that an institution whose application to include subordinated debt in net worth pursuant to § 563.8–1 was approved prior to December 5, 1984, shall be permitted to

continue to include 100 percent of the principal amount of such subordinated debt as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year: *Provided further,* that an institution that had filed a substantially complete application pursuant to § 563.8–1 prior to December 5, 1984, shall be permitted to include 100 percent of the subordinated debt issued pursuant to such application as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year if such subordinated debt otherwise is in compliance with the requirements of § 563.8–1 and if such application is not amended in any material respect subsequent to December 5, 1984: *Provided further,* that, except as otherwise provided in paragraph (b)(2) of this § 561.13 and unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory capital only in accordance with the following schedule:

Years to maturity of outstanding subordinated debt	Percent included in regulatory capital
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	86
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	0

For purposes of determining the principal amount outstanding of an obligation issued at a discount that exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accrued interest not payable until maturity, as of the date of the computation. In the case of an instrument sold at a discount that exceeds 10 percent and that bears no stated rate of interest, the amount that can be added to principal each period is an amount equal to the accrued interest payable computed on the "level-yield" or "interest" method. For purposes of computing the amount of subordinated debt includable as regulatory capital pursuant to paragraph (b)(2) of this § 561.13, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt that is subject to required sinking fund payments, other required prepayments, and required reserve allocations and calculate the percentage amount of each portion of the principal amount outstanding that may be included pursuant to the schedule set forth in paragraph (b)(2) of this § 561.13; and

(3) Preferred stock that has an original maturity of at least 25 years, *Provided that:* such limited life preferred stock may be includable as regulatory capital only in accordance with the following schedule:

Years to maturity	Percent included in regulatory capital
Greater than or equal to 5	100
Between 4 and 5	80
Between 3 and 4	60
Between 2 and 3	40
Between 1 and 2	20
Less than 1	0

(c) The sum of the following items determined in accordance with risk analysis reporting in effect prior to January 1, 1989 that an insured institution has included in computing and reporting its regulatory capital to the Corporation prior to January 1, 1989:

(1) Appraised equity capital (as defined in § 563.13(c) of this subchapter);

(2) The amount of unamortized loan gains and losses the exclusion or inclusion of which were deferred pursuant to § 563c.14 of this subchapter;

(3) The amount of the following items computed by an insured institution in accordance with risk analysis reporting in effect prior to January 1, 1989, and included in its financial statements prior to January 1, 1989. An institution may include an amount that represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting prior to January 1, 1989:

(i) Sales of real estate developed by the institution or its subsidiary;

(ii) Futures transactions;

(iii) Accretion of discounts and amortization of premiums on securities;

(iv) Loan origination and commitment fees; and

(v) Options transactions;

(4) Qualifying redeemable preferred stock that was included as regulatory capital prior to January 1, 1989; and

(5) Qualifying pledged certificates of deposit and other nonwithdrawable accounts that were included as regulatory capital prior to January 1, 1989.

(d) Accounting forbearances permitted under risk analysis reporting, which shall include all forbearances and other practices authorized by the Corporation, the Board, or its Principal Supervisory Agents.

(e) Notwithstanding paragraphs (a), (b), (c), and (d) of this § 561.13, the term "regulatory capital" does not include any capital instrument or security that may be included as regulatory capital pursuant to any of those paragraphs of § 561.13 if such capital instrument or security is held by a service corporation or other subsidiary, regardless of the organizational form of that entity, in which the insured institution directly or indirectly (1) owns, controls, or holds with power to vote, or holds proxies representing 10 percent or more of the voting shares or rights in such entity, or (2) invested in or contributed to such entity more than 10 percent of such entity's capital, unless inclusion of regulatory capital is specifically approved by the Corporation in writing.

(f) "Sunset" Provisions. Authority to include items listed in paragraphs (c)(1), (3) through (5), of this § 561.13 as a component of regulatory capital will cease as of December 31, 1993.

PART 563—OPERATIONS

3. The authority citation for 12 CFR Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727 as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan. No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 563.17–5 [Amended]

4. Section 563.17–5 is amended by removing paragraph (g).

§ 563.23–1 [Amended]

5. Section 563.23–1 is amended by removing paragraph (f).

6. Section 563.23–3 is amended by adding new paragraph (d) to read as follows:

§ 563.23–3 Accounting principles and procedures.

. . . . .

(d) *Delayed compliance with uniform accounting standards.*

(1) An insured institution seeking to delay its compliance with the uniform accounting standards set forth in this § 563.23–3 or § 561.13 of this subchapter shall file a plan with its Principal Supervisory Agent ("PSA").

(2) The plan shall set forth the following:

(i) The specific components of the uniform accounting standards with which the insured institution is unable to comply ("excepted components");

(ii) A timetable setting forth the date, in no event later than December 31, 1993, by which the insured institution proposes to comply with each excepted component; and

(iii) Any other information that the insured institution believes is relevant to its determination that it is not feasible for the institution to comply with each excepted component.

(3)(i) The Principal Supervisory Agent shall act on such plans in accordance with the guidelines set forth at § 571.12 of this subchapter.

(ii) In reviewing a plan, the PSA shall consider all relevant information, including, but not limited to,

(A) The institution's plan submitted pursuant to this section;

(B) Other information available to the PSA regarding the insured institution;

(C) The ability of other institutions in the region to comply with the uniform accounting standards; and

(D) The extent to which any relevant grandfathering or phase-in of the uniform accounting standards affects any excepted component in the institution's plan.

(4) In the event that the PSA disapproves a plan for delayed compliance in whole or in part, the institution may appeal the disapproval to the Corporation within thirty days of the disapproval. The Corporation shall act on such appeal in accordance with the guidelines set forth at section 571.12 of this subchapter. The Corporation, in reviewing the disapproval, shall take into consideration all relevant factors, including those listed above.

PART 563c—ACCOUNTING REQUIREMENTS

6. The authority citation for Part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m,n,w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 563c.11 [Removed and Reserved]

7. Part 563c is amended by removing § 563c.11 and by reserving the section designation for future use.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–23657 Filed 10–19–87; 8:45 am]

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12 CFR Ch. V

[No. 87–1048]

Regulations Required by the Competitive Equality Banking Act of 1987

Date: October 5, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of public hearing.

SUMMARY: This notice announces a public hearing on proposed regulations adopted by the Federal Home Loan Bank Board ("Board") pursuant to the Competitive Equality Banking Act of 1987 with respect to a policy statement on guidelines concerning the notice and disapproval procedures for applications; qualitified thrift lender test; classification of assets; appraisals; uniform accounting standards; capital forbearance; minimum capital requirements; and a proposed regulation and policy statement on troubled debt restructuring.

DATES: The public hearing will be held Tuesday, November 3, and Wednesday, November 4, 1987, 9:30 a.m.–5:00 p.m.

ADDRESSES: Written requests to participate in the public hearing must be mailed to the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday, through Friday, and received no later than 5:00 p.m. on Monday October 26, 1987.

Hearing Location: The Federal Home Loan Bank Board's Amphitheater, 2nd Floor, 1700 G Street NW, Washington, DC 20552.

Copies of the Notice of Proposed Rulemaking and any comments or other material relating to those rulemakings will be made available in the Federal Home Loan Bank Board's reading room at the above address.

FOR FURTHER INFORMATION CONTACT: Ruth R. Amberg, Special Assistant to the Executive Director, (202) 377–6412, or Signe Allen, Staff Assistant, (202) 377–6626, Federal Home Loan Bank at the above address.

SUPPLEMENTARY INFORMATION: The Competitive Equality Banking Act of 1987 ("CEBA" or the "Act") Pub. L. No. 100–86, 101 Stat. 552 was signed into law on August 10, 1987. The CEBA requires the Board to implement certain regulations or guidelines with specified deadlines ranging from 60 days to 6 months from August 10, 1987, the date of enactment of the Act. Additionally, the CEBA requires the Board to submit to Congress no later than November 8, 1987, proposed regulations implementing certain CEBA provisions.

On August 28, 1987, the Board adopted an advance notice of proposed rulemaking to inform the public of its intention to promulgate regulations required by the CEBA. Board Res. No. 87–941, 52 FR 33595 (Sept. 4, 1987).

On October 2, and October 5, 1987, the Board adopted proposed regulations in the following areas: qualified thrift lender test, Board Res. No. 87–1041; classification of assets, Board Res. No. 87–1042; appraisals, Board Res. Nos. 87–1039 and 1040; uniform accounting standards, Board Res. No. 87–1047; capital forbearance, Board Res. No. 87–1044; minimum capital requirements, Board Res. No. 87–1045; a proposed regulation and policy statement on troubled debt restructuring, Board Res. No. 87–1046; and a policy statement on guidelines concerning notice and disapproval procedures for applications, Board Res. No. 87–1038. The Board prescribed a 30-day comment period for all of the proposals. At the October 5, 1987 Board meeting, the Board voted to hold a two-day public hearing on November 3 and November 4, 1987, at which it would receive oral comments on all of the above-mentioned proposals

Participants in the hearing are invited to address all of the aspects of the proposals. In addition, the Board specifically invites oral comments, as well as supplementary or independent written submissions, studies, or analyses with regard to the following issues:

(1) The interrelationship among the proposed regulations; and

(2) The extent to which the proposals achieve conformity with the rules or policies of the Federal banking agencies consistent with the letter and spirit of the CEBA.

Persons wishing to participate in the hearing should send a written request to participate in the hearings to the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, to be received no later than the close of business Monday, October 26, 1987. This requirement is necessary in order to provide sufficient time to

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acknowledge receipt of the notices and inform participants of the schedule of the hearings. It will also enable alternative arrangements to be made for the hearings if more persons are expected to attend than the Amphitheater can accommodate. Requests may be hand delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.

The request to participate in the hearings must include the following:

(1) The name of the witness; (2) the entity that the witness is representing; (3) which proposals the witness wishes to address in testimony; (4) a brief summary of the witness' remarks; and (5) the preference, if any, for the date and time on which the witness wishes to testify. While the Board will attempt to accommodate the witnesses as to time and date of appearance, it cannot guarantee that it will be able to honor all such preferences. Moreover, the Board intends to allocate the available time according to the subject matter of the proposals. Witnesses should therefore be selective in identifying the topics they wish to address.

Depending on the number of requests received, participants may be limited to a ten-minute oral presentation; they will be advised in writing of the time scheduled for their presentation.

The Board reserves the right to limit the number of participants and to select in its discretion those persons who may make oral presentations, if it receives more requests for participation than can be accommodated in the time available. Additionally, the Board also reserves the right to establish panels of participants for the presentations. If it is necessary to impose such limitations, the Board will take steps to ensure that the designated witnesses or panels constitute a representative sample of the types of participants and of the views of those who wish to participate.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-23654 Filed 10-19-87; 8:45 am]

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Tuesday
October 20, 1987

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Part 253

Food Distribution Program on Indian Reservations; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

Food Distribution Program on Indian Reservations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service is proposing to revise the regulations for the Food Distribution Program on Indian Reservations to: (1) Increase program accountability; (2) reduce administrative burdens placed upon State agencies; and (3) reconstruct and better organize subject areas.

DATE: To be assured of consideration, comments must be received on or before January 19, 1988.

ADDRESS: Comments should be sent to: Susan Proden, Chief Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660. Comments in response to this proposed rule may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order No. 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in the rule will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions. This action would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Mrs. Anna Kondratas, Administrator, Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The reporting and recordkeeping requirements contained in this regulation are subject to review by the Office of Management and Budget (OMB). The OMB approved control number is 0584–0071.

The program is listed in the Catalog of Federal Domestic Assistance under No. 10.567 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V and 49 FR 22675, May 1, 1984).

The regulations governing the Food Distribution Program on Indian Reservations establish the responsibilities of the Food and Nutrition Service (FNS) and State agencies for the distribution of federally acquired food to eligible households living on or near Indian reservations. FNS donates foods to help meet the nutritional needs of low-income households on Indian reservations. U.S. Department of Agriculture (USDA) commodities are distributed to eligible households on a monthly basis from distribution sites. Participating agencies are either Indian tribal organizations (ITO) or agencies of State government. The distributing agencies order food items from the list of approved USDA commodities, taking into account local Indian household food preferences.

FNS regional offices and State agencies have recommended the inclusion of certain program matters in this rulemaking. These are: (1) Procedures for assessing and handling claims against households; (2) procedures for audit resolution; (3) procedures for dealing with the misuse of program funds, assets or property; and (4) procedures for administrative disqualification hearings. Furthermore, FNS is proposing procedures for disqualification from participation in the Food Distribution Program on Indian Reservations. Although these new sections will place some additional requirements upon State agencies and ITOs, they will improve program accountability. The resulting improvement in program operations should outweigh any additional paperwork generated by these new requirements.

Many sections of the current regulations (published June 19, 1979) are very closely patterned after Food Stamp Program regulations. Because the two programs differ in the manner in which they deliver benefits, this has led to some administrative difficulties. The proposed revisions remove unnecessary requirements currently imposed upon State agencies and ITOs and place program requirements in a more logical order. The proposed changes should improve administration and operation of the Food Distribution Program on Indian Reservations.

Definitions

The current definition of "Indian tribal household" specifies that one *adult* member must be recognized by *the* ITO. FNS is proposing that this definition be expanded to allow State agencies to serve tribal members of another tribe. It has been common practice in the Food Distribution Program on Indian Reservations to permit such arrangements, especially in cases where the participating household resides closer to an ITO other than its own. FNS has implemented such policies in a few cases where the State agencies involved have demonstrated that sufficient precautions against dual participation are in place. Although not included in this proposed rule, FNS has also been asked to include households where the only Indian household members are minors, as eligible FDPIR households. This is important for those families where the only adult member has died or is no longer living with the family. Under the current definition, these households who previously receive Food Distribution Program on Indian Reservations benefits can no longer participate in this program. These households may, however, be eligible to receive food assistance under the Food Stamp Program. FNS is soliciting comments to determine how extensive this problem is and whether others believe that a change in the definition is necessary.

Authority for Distribution of Commodities

Section 253.3(a) of the June 19, 1979, regulations is taken directly from the Food Stamp Act of 1977, as amended, which authorizes the distribution of commodities under certain conditions where the Food Stamp Program is in operation. Included in this section is the distribution of commodities for the purpose of disaster relief and for the Commodity Supplemental Food Program. FNS believes that this passage is inappropriate for inclusion in the Food Distribution Program on Indian Reservations regulations and therefore proposes its removal.

FNS proposes to remove the comparison of the Food Distribution Program on Indian Reservations food package to Food Stamp Program

benefits as stated in § 253.3(d). Although the food package is indeed a nutritional alternative to Food Stamp Program benefits, there is no purpose to making such comparisons in regulations.

Application Procedures and Program Implementation

In the current rules, the procedures for filing an application by an ITO wishing to participate in the Food Distribution Program on Indian Reservations are contained in § 253.4(d) and the requirements for program implementation in § 253.5(m). The proposed rules consolidate these two subject matters into one section. Additionally, FNS proposes that the current § 253.4(c), Qualification as a Reservation, be incorporated as one facet of the application process.

Current regulations allow for a waiver of the urban place provision. This provision excludes tribal households living in urban areas outside the reservation from participating in the Food Distribution Program on Indian Reservations. It was the intent of the June 19, 1979 rules to provide Food Distribution Program services to Indian tribal households living near the reservation. This is consistent with other Federal provisions that allow for the delivery of services beyond reservation boundaries. In addition, the urban place ruling is applicable in Oklahoma despite the fact that Indian land areas there do not conform to the regular reservation patterns observed in other States. However, authority for granting new waivers for tribes in Oklahoma (7 CFR Part 254) expired September 30, 1985. Although the proposed rule does not change FNS' current policy on urban place participation, FNS is re-evaluating this policy.

FNS is considering several possible options which would allow urban places to participate in the Food Distribution Program on Indian Reservations while maintaining program accountability and controlling dual participation in urban places. Options being considered include: (1) Allowing any urban place to participate provided that the State agency can meet certain requirements to insure program accountability and adequate controls for dual participation; and (2) keeping the current 10,000 population limit, but relaxing the criteria used for granting waivers to the limitation. Comments on whether the current urban place participation provision should be changed are hereby solicited. Comments should include a rationale and possible requirements which could be implemented to ensure program accountability and dual participation controls. Comments on whether to reinstate the waiver authority (currently expired) for Oklahoma are hereby solicited as well.

Tribal Capability

FNS' determination of an ITO's capability to administer the Food Distribution Program on Indian Reservations is a critical function. Under the June 19, 1979 rules, this subject is within the body of section 253.4 entitled "Administration". These proposed revisions separate the tribal capability provisions to provide greater clarity. In addition, another factor for determining ITO capability has been included. This new evaluation factor will allow FNS to consider an ITO's ability to operate the program within budgetary limitations. This review of the ITO's previous financial management record would become part of the approval process.

Program Administration

The June 19, 1979, regulations outline three conditions that govern which agency will administer the Food Distribution Program on Indian Reservations: (1) An ITO will administer the program if determined by FNS to be capable of effective and efficient program administration; (2) an agency of State government must administer the program if FNS determines the ITO incapable; and (3) an agency of State government may administer the program on behalf of any tribe whether or not the tribe is determined capable, if agreed to in writing by the tribe. However, the June 19, 1979 regulations overlooked one aspect of program administration which is a very common practice. An ITO that has been determined capable by FNS may administer the program for another tribe. However, this arrangement must be agreed to in writing by both tribes, and can be done regardless of whether the tribe that wishes to have another ITO operate the program has undergone a capability determination. Therefore, FNS proposes to include this practice as another alternative for program administration.

Under § 253.4, Administration, the current regulations give specific examples regarding the contracting of certain program functions. It is proposed that these examples be eliminated, as they appear to be a source of confusion for program administrators. However, the regulations will still retain the provision that the State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations with an ITO that has not been determined capable.

Plan of Operation

Section 253.5, State agency requirements, is a very lengthy section addressing those items to be included in the State agency's plan of operation. The structure of this section has made it difficult for State agencies to clearly understand what items they need to address in their plans. To correct this situation, FNS is proposing that State agency requirements, except for plans of operation, be included as part of a revised § 253.6, Program administration. FNS is also proposing a new section, plan of operation, and is further separating the plan requirements into two main categories: (1) Submission and approval; and (2) Contents of the plan of operation. The required items under the contents of the plan of operation will cross-reference where those items appear in the regulations. In revising this section, a number of substantive changes are proposed.

Under Submission and approval, FNS proposes to revise § 253.5(a) by requiring State agencies to submit their program plans of operation at the time the budgets are submitted. This is necessary since funds cannot be disbursed to State agencies until both documents are approved. Additionally, FNS is proposing to combine paragraphs § 253.5(a)(1) (i) and (iii). State agency requirements on consultation will be addressed under the new § 253.6(b)(6) of this section. In addition, FNS is proposing that consultation by the State agency with the ITO be removed as one of the plan of operation components.

Changes being proposed under the Contents of the plan of operation section are described in detail in the following paragraphs:

As the result of restructuring the regulations, three program areas have been moved to the redesignated § 253.17, "Commodity control, storage and distribution". These areas are: (1) The value of commodities; (2) the prohibition of distribution of commodities to further political interest; and (3) the prohibition against payments in return for the receipt of commodities

Section 253.5(c) requires that State agencies follow the Office of Personnel Management's (OPM) Merit System when hiring certification staff. FNS has determined that this requirement should be removed from the regulations. ITOs currently develop their own personnel standards for hiring staff. Additionally, the agencies of State government which administer the program are required to follow the State personnel standards. FNS believes that such standards are satisfactory and they should be used

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rather than OPM standards. FNS proposes the State agencies be required to employ sufficient personnel to carry out the various duties in administering the Food Distribution Program on Indian Reservations. In addition, State agencies must develop a training program for Food Distribution Program on Indian Reservations staff to keep employees up-to-date on program policies.

Through discussions with FNS regional offices, State agencies and ITOs, FNS has become aware that the majority of the bilingual requirements in § 253.5(d) may be unnecessary. The majority of people living on or near most Indian reservations speak English. One exception may be elderly persons. FNS has learned that when bilingual services are needed, other tribal members who speak English usually are available to act as interpreters. Because of this situation, § 253.11 of the proposed rules would require only that the State agency or ITO arrange for a bilingual speaker or an interpreter when an applicant does not speak English.

These regulations propose that all outreach and referral activities required under § 253.5(e) be deleted. The availability of this program is now widely known by Indians, social workers, State personnel and tribal officials. Furthermore, from analysis of the tribes eligible for the Food Distribution Program on Indian Reservations, it appears that this program is reaching the vast majority of persons who can qualify. Therefore, it would appear that outreach activities are no longer necessary.

FNS is proposing to remove § 253.5(f)(1), 253.5(f)(2) and 253.5(f)(3) from the regulations for the following reasons: (1) Paragraph 253.5(f)(1) gives specific examples of subject areas for training programs. These examples are being removed because FNS believes that specific training needs can now be determined based on program deficiencies and new policy changes. Thus, examples are no longer needed. State agency training requirements are now addressed in § 253.6(b)(2); (2) paragraph 253.5(f)(2) addresses public attendance at formal certification training sessions. FNS believes that this requirement is not useful; and (3) training effectiveness currently addressed in paragraph § 253.5(f)(3) is now addressed in the proposed § 253.6(b)(3).

Under the proposed regulations, a description of planned nutrition education efforts will become one of the components of the plan of operation. The specific requirement that the State agency must ensure that nutrition information is conveyed to households is addressed under § 253.6(b)(4).

Section 253.5(h), Records and reports, is being moved to § 253.6(b)(9) under these proposed regulations.

One of the requirements in the plan of operation is for State agencies to describe the system used to determine the food preferences of households. Food preferences reflect not only individual choices but also cultural preferences. In order to plan these needs, as well as to maintain the nutritional integrity of the program, it is necessary to collect this data. The manner in which the data is now collected is not uniform among State agencies and is often collected and reported sporadically. Additionally, this information is not always conveyed to the FNS Headquarters staff who can update the food package based on the preferences of households. FNS proposes that food preference data be submitted to FNS. Furthermore, FNS would especially like to receive comments or suggestions on the collection format and use of food preference data for future program improvements.

Program Monitoring

Section 253.5(i), Program monitoring, is proposed as a separate section (§ 253.8).

Audits and Investigations

FNS is proposing that § 253.5(j), Investigations and complaints, become a separate section. This section has been expanded to require each State agency to provide for an independent audit of Food Distribution Program on Indian Reservations financial operations. These audits will be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (Title 7 CFR Part 3015, Subpart I) which implement OMB Circular A–128. The proposed rules also spell out the requirements that State agencies and ITOs make records available to USDA's Office of the Inspector General for auditing purposes. These proposed revisions are now addressed under § 253.9.

Sanctions (§ 253.5(k)) and Appeals, (§ 253.5(l)) are being moved to Sanctions and liabilities, (§ 253.18) under these proposed rules.

Civil Rights

The nondiscrimination clause (§ 253.5(a)(2)(iv)) is addressed under a new section entitled, Civil Rights, (§ 253.10). The nondiscrimination requirements are those required by Departmental regulations for programs receiving Federal financial assistance.

Eligibility of Households

FNS is proposing two important changes in the eligibility section. These changes would ensure consistency with other FNS food programs. First, it is proposed that the Food Distribution Program on Indian Reservations adopt a maximum gross income limit of 130 percent of the Federal poverty guideline. The second change, to revise the resource standards, is discussed in detail later in this preamble.

Current procedures employ a net income basis for determining income. The purpose of the new 130 percent gross income limit is to bring about consistency with other FNS programs including the Food Stamp Program.

Table 1, *Food Distribution Program on Indian Reservations—Monthly Income Standards*, shows a comparison between the current net monthly income standards and the 130 percent gross monthly income standards.

It is not anticipated that this change in the income eligibility standards would have a substantial effect on households participating in the program. Although there are little data on characteristics of housholds that receive commodities, FNS believes the proposed revision in the income eligibility standards is not likely to result in any significant change in the number of participants in the Food Distribution Program on Indian Reservations. This is because the number of eligible households under either income test is virtually the same.

Table 1.—Food Distribution Program on Indian Reservations—Monthly Income Standards

[Effective October 1, 1987]

Household size	[illegible] limit	Gross [illegible] limit
1	$561	$596
2	719	802
3	877	1,008
4	1,036	1,214
5	1,194	1,420
6	1,352	1,625
7	1,511	1,831
8	1,699	2,037
Each additional member	+$159	+$206

The second proposed change in eligibility is to remove the actual dollar amount citation of the maximum resource standard for households. These rules will continue to state that the Food Stamp Program resource limits will be used as the resource limits for the Food Distribution Program on Indian Reservations. Currently, the maximum resource linit cannot exceed $1,750 for

the household; except that, for households of two or more members which include a member age 60 or over, resources cannot exceed $3,000. The purpose of this proposal is not to reduce program benefits. Rather, this proposed revision will make certification less complex, less error prone and consistent with the Food Stamp Program. This provision will ensure that most households are treated similarly in the two programs. This is useful to facilitate switching from the Food Stamp Program to the Food Distribution Program on Indian Reservations. Both the resource standards and income standards for the Food Distribution Program on Indian Reservations would be automatically revised as the Food Stamp Program's standards are revised.

The proposed rules also eliminate the deductions for 20 percent earned income and the cost of child care or dependent care in § 253.6(f). These deductions were allowed in the past so that a household's income (gross income minus allowable deductions) could be compared to the net income eligibility standards. Because FNS is proposing to use a gross income eligibility standard these deductions are no longer applicable.

Certification of Households

Section 253.7 of the current regulations gives State agencies a series of requirements and procedures to follow to determine household eligibility. In many cases, the requirements have proved to be too rigid and add to the burden placed on local eligibility workers.

Rather than prescribe all the details of the certification procedures, FNS is proposing a simplified eligibility determination by removing all requirements which are no longer applicable under the proposed gross income eligibility standards, (e.g. net income deductions). The application for assistance would contain questions about the household members, work status and how much income and resources the household has available. The State agency would verify the income information, and if the household is below the maximum income limit (proposed to be 130 percent of the Federal poverty guidelines), the household would be certified for six months. However, the State agency has the responsibility to verify questionable information. Shorter certification periods continue to be required for households with unstable income.

FNS proposes to eliminate some burdensome requirements in § 253.7, Certification of households. Instead, FNS is requiring only that: (1) The State agency develop an application form acceptable to FNS; (2) the household must file and sign an application and be interviewed; and (3) gross non-exempt income must be verified. State agencies would also verify any information that is questionable. In addition, the time limit for action on an application would be increased from 7 days to 14 days. For expedited service, households may be served immediately, but the State agencies would not be required to serve such households in one calendar day. The State agency would have two working days to provide commodities to households in immediate need. These time limits enable State agencies to provide service to the entire caseload while also allowing fast service for those in special need.

In § 253.7(a), paragraphs (a)(1) through (a)(10) are substantially revised in the proposed regulations. Although the basic requirements of certification are retained, numerous constraining details are removed. The next few paragraphs explain these proposed changes in more detail. Use of examples in the section is also eliminated because examples of situations are not necessary. In some cases, the examples may have added more confusion than clarification. The proposed regulations should allow the State agencies greater ease in making an eligibility determination. Households should also benefit from the simpler determination of eligibility.

In § 253.7(b), two important changes are proposed. First, the example of what is considered anticipated income is removed. The income definition remains but is moved to § 253.11, Eligibility of households.

Commenters have advised FNS that the concept of counting only income which is "reasonably anticipated" is difficult to apply. However, few other concepts of available income are flexible enough to be fair to households and also simultaneously capture all income the household has. Therefore, we are proposing to retain the current policy on determining income. FNS invites commenters to suggest other feasible, simple approaches. Retrospective accounting using only past income to determine eligibility such as annual income tax statements, is another option being considered.

Second, the determination of what is considered income from self-employment is simplified. Self-employment income is unique. In each case, the goal of the certifier is to determine the amount of income earned after the cost of doing business is subtracted from gross receipts. The proposed regulations eliminate details about determining self-employment income since each case is different. Eligibility workers must exercise professional judgment within the scope of the regulations and State agency procedures to decide the amount of income a self-employed person earns. These proposed regulations give State agencies the flexibility in developing their own procedures for determining self-employment income. However, each State agency must use the basic regulations for determining self-employment income. This requirement will ensure equity among individual cases.

Overissuance of Commodities

FNS Headquarters has received many requests from regional offices and State agencies to provide regulatory procedures for establishing and handling claims against households. FNS is considering three options to recover the value of the USDA commodities improperly received by households: (1) Automatic reduction of program benefits; (2) demand letters requesting payment from the head of the household; and (3) demand letters requesting payment with *voluntary* benefit reductions for those households who wish to repay a claim with their commodity package. The Department believes that all of these options would tighten accountability and minimize program losses. FNS is soliciting comment concerning these options as well as suggestions for their implementation. FNS is also interested in comments concerning other available options for collecting claims against households.

First, FNS is considering an automatic reduction of program benefits similar to the one currently used in the Food Stamp Program. Under this option, program benefits would be reduced by the amount of USDA commodities normally distributed to a one person household. One exception would be that the one-or two-person households, who receive smaller commodity packages, would not be subject to automatic benefit reduction. However, one- and two-person households would be expected to pay for excess benefits. Threat of reductions, or actual reductions, would increase program integrity, reduce overissuance of commodities and encourage households to accurately report household information. FNS is particularly interested in comments which carefully analyze these important issues.

A second option, and the one where specific procedures have been written into the proposed regulation, is to establish a "demand letter' system for repayment of claims. FNS is proposing

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to establish claims against households that have received more USDA commodities than they were entitled to receive, except for claims resulting from procedural errors. FNS is proposing that housholds be required to pay for the USDA commodities in full or with scheduled payments or be disqualified from program participation. State agencies may, however, postpone or readjust payment schedules for housholds that have no income or resources or where the houshold would otherwise experience a hardship. Also, no claims would be established for a household that is otherwise eligible, that forgets to sign the application form.

The proposed rule also limits the period of mandatory claims collection to one year. Since program participation is small, as compared to other FNS programs, we believe this timeframe is adequate and will prevent the collection of old claims. However, if a State law authorizes the legal pursuit of these types of claims beyond the one year limit set in the regulations. ITOs can seek appropriate judicial relief in State or local courts and pursue these claims for up to six years. Therefore, State agencies may suspend collection after one demand letter is written in cases where the household cannot be located or the cost of pursuing the claim would likely exceed the amount to be recovered.

In order to ensure that collection of household claims proceeds properly when the household can pay but does not, FNS proposes to disqualify the individual household member responsible for the claim action.

FNS also proposes that in cases where claims result from State agency certification or issuance errors, individuals will not be subject to disqualification. Under the proposed rule, State agencies would be required to regularly and actively review casefiles for errors and any losses sustained due to these errors must be paid by the State agency. For example, if a State erroneously issues commodities at twice the allowed distribution rate, the Department would expect restitution for this overissuance. Any systematic errors found as a result of any Federal, State or local review will also be paid by the State agency. Although State agencies will be required to pay these claims to FNS, State agencies have the option of attempting collection of these claims from the household. However, since the errors were made without the knowledge of the household, individuals could not be disqualified for nonpayment of such claims.

The third option which FNS is considering is a combination of options one and two, previously described. This option would use the "established" demand letter system for repayment of claims according to the procedures specified in these proposed regulations. However, this option would allow participating households to *voluntarily* repay an overissuance claim by having its benefits reduced. The benefit reduction procedures would be the same as those described under the automatic benefit reduction system explained in option two above.

Any of these claims collection procedures, using demand letters and disqualification with or without voluntary benefit reduction, or using automatic benefit reduction, may be implemented in the final rules. The Department, therefore, would like commenters to state which system they believe is better and provide their rationale.

Agency Conferences and Fair Hearings

These two topics have been removed from § 253.7, Certification of households, and combined to form one § 253.14. The limitations on the types of disagreements covered by agency conferences have been removed to allow any agency conferences to be used for any State agency action which has adversely affected any household. Currently agency conferences are used solely for immediate resolution for eligibility denials. Additionally, FNS believes that the listing of persons who may attend an agency conference is unnecessary. Therefore, this list has been removed. The proposed changes should simplify agency conference procedures and hopefully encourage their use to settle any problems.

The timeframe required to complete the fair hearing process has been retained at 60 days. However, the proposed rules eliminate the intermediate timeframes established by current rules. This provision will allow more State agency flexibility in carrying out fair hearing.

Disqualification Hearings

FNS proposes a new section entitled, Disqualification for misrepresentation or failure to pay an established claim (§ 253.15). Under these proposed rules, household members may be disqualified from six to twelve months if the household willfully or recklessly misrepresents its household circumstances in order to receive more benefits or simply fails to pay an established claim against the household. This may be done by administrative action or by referral to a court of appropriate jurisdiction. The Department believes that individuals being subjected to possible administrative disqualifications should have a means for presenting the households circumstances through a formal administrative disqualification hearing. The proposed procedures are basically those procedures currently used in the Food Stamp Program for "intentional program violations" (§ 273.16). References to "intentional program violations" have been replaced with "misrepresentation or failure to pay a claim" to conform to the Food Distribution Program on Indian Reservations definitions.

Administrative Funds for State Agencies

Section 253.9(a) of the current regulations states that FNS will make available up to 75 percent of approved State agency administrative costs and that payment of funds in excess of 75 percent will be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Distribution Program on Indian Reservations. Compelling justification may include, but not be limited to, such factors as the need for a larger Federal contribution during a State agency's first year of program operation. FNS is proposing that compelling justification include more than just a statement that no other funds are available to operate the program. Justification for increased funding must document to the satisfaction of FNS why the Federal share of funding must be more than 75 percent of approved costs. FNS regional offices shall assess waiver requests. Tribes must demonstrate that all funds that could be used to meet the required 25 percent share of administrative costs are dedicated to *necessary* tribal expenditures. The proposed rules also include examples of financial documentation that have been accepted by FNS in the past.

FNS is also proposing to strengthen the regulations by adding that FNS will disapprove any budget, or portion thereof, in which operating expenses exceed 30 percent of the value of food to be distributed to participants.

The establishment of the 30 percent guideline is based on FNS' review of the budgetary guidelines that other FNS programs used to determine administrative costs. FNS also considered that most reservations are located in rural settings, which often results in increased program operation and transportation costs. With very few exceptions, the budgets submitted by State agencies over last three years have fallen below the 30 percent guideline. FNS believes that these

reasons provide sufficient justification for setting the operating expense guideline at 30 percent rather than at a lower level.

The priority for approving applications for financial assistance (§ 253.9(d)(2)) of the current regulations submitted by State agencies for administrative funds has been simplified under this proposal. The proposed language provides that FNS will make payments of funds to ongoing programs first, and then to all other applicants, in the order the applications are received and approved by FNS (§ 253.16).

Commodity Control, Storage and Distribution

The commodity control, storage and distribution requirements have been reorganized and shifted to § 253.17. Several program requirements which pertain to the distribution of commodities that were listed under § 253.8(c), Storage facilities and practices, have been more appropriately placed under Distribution, now § 253.17(d). Also under new § 253.17(c), the requirement that posters be displayed is removed. The posters advised program participants to accept only those commodities in such quantities as will be consumed by them. While the display of such posters may be beneficial, FNS does not believe it is necessary to regulate such a requirement.

Sanctions and Liabilities

FNS is proposing that a new section be created, entitled, Sanctions and liabilities, which will contain the following program areas: (1) Sanctions; (2) Appeals, and (3) Embezzlement, misuse, theft or obtainment by fraud of commodities and commodity-related funds, assets, or property in the Food Distribution Program on Indian Reservations. Of these program areas to be included under § 253.18, only the paragraphs which address embezzlement, misuse, theft or obtainment by fraud of commodities are new to the regulations. FNS believes that it is necessary to strengthen the regulations by including penalties that can be taken against any individual who commits fraud, as authorized by section 1334 of Pub. L. 97–98.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 253 is proposed to be revised to read as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS

Sec.

253.1 General purpose and scope.
253.2 Definitions.
253.3 Authority for distribution of commodities.
253.4 Application procedures and program implementation.
253.5 Tribal capability.
253.6 Program administration.
253.7 Plan of operation.
253.8 Program monitoring.
253.9 Audits and investigations.
253.10 Civil rights.
253.11 Eligibility of households.
253.12 Certification of households.
253.13 Overissuance claims.
253.14 Agency conferences and fair hearings.
253.15 Disqualification hearings.
253.16 Administrative funds for State agencies.
253.17 Commodity control, storage and distribution.
253.18 Sanctions and liabilities.

Authority: 91 Stat. 980 (7 U.S.C. 2011–2027); Pub. L. 97–98, section 1336.

§ 253.1 General purpose and scope.

This part discribes the terms and conditions under which: Commodities (available under Part 250 of this chapter) may be distributed to eligible households on or near all or any part of any Indian reservation; the program may be administered by capable Indian tribal organizations or agencies of State government; and funds may be obtained from the Department for the costs incurred in administering the program. This part also provides for the concurrent operation of the Food Distribution Program on Indian Reservations and the Food Stamp Program when such concurrent operation is requested by an ITO.

§ 253.2 Definitions.

(a) "Department" means the U.S. Department of Agriculture.

(b) "Exercises governmental jurisdiction" means the active exercise of the legislative, executive or judicial powers of government by an ITO.

(c) "Food Distribution Program on Indian Reservations" means a food distribution program for households on Indian reservations operated under authority of section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(a)) and section 1304(a) of Pub. L. 95–113, as amended.

(d) "FNS" means the Food and Nutrition Service, U.S. Department of Agriculture.

(e) "Indian tribal household" means any household in which at least one adult member is recognized by an ITO as a tribal member.

(f) "Indian tribal organization (ITO)" means:

(1) The recognized governing body of any Indian tribe on a reservation; or

(2) The tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorized to operate the Food Stamp Program or Food Distribution Program on Indian Reservations on their behalf.

(g) "Indian tribe" means:

(1) Any Indian tribe, band, or other organized Indian group (for example, a Rancheria, Pueblo, or colony) and including any Alaska Native village or regional or village corporation (established according to the Alaska Native Claims Settlement Act (85 Stat. 688), which is on a reservation and recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or

(2) Any Indian tribe or band on a reservation holding a treaty with a State government.

(h) "Reservation" means the geographically defined area of areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or State government as being set aside for the use of Indians.

(i) "State" means any one of the fifty States, the District of Columbia, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency.

(j) "State agency" means:

(1) The agency of State government, including the local offices thereof, which enters into an agreement with FNS for the distribution of commodities on all or part of an Indian reservation; and

(2) The ITO of any Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program on Indian Reservations, which enters into an agreement with FNS for the distribution of commodities on all or part of an Indian reservation.

(k) "Urban place" means those towns or cities with a population of 10,000 or more.

§ 253.3 Authority for distribution of commodities.

(a) *Availability of commodities.* Commodities acquired for donation under authority of section 416 of the Agricultural Act of 1949, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431), as

amended; section 32 of Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612(c)), as amended; section 709 of the Food and Agricultural Act of 1963, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446 a–1), as amended; and section 4(a) of the Agriculture and Consumer Protection Act of 1973 as amended by section 1304 of the Food and Agriculture Act of 1977. Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612 note) may be made available under Part 250 of this chapter for distribution to households in accordance with the provisions of that part and the additional provisions and requirements of this part.

(b) *Concurrent or separate food program operation.* Distribution of commodities under this part, whether or not the Food Stamp Program is in operation, cannot be made unless an ITO has submitted a completed application for the Food Distribution Program on Indian Reservations on all or part of a reservation to FNS.

(1) Except as provided in paragraph (b)(2) of this section, when the Food Distribution Program on Indian Reservations is operating on all or part of a reservation, all eligible households within those boundaries may participate in the Food Distribution Program on Indian Reservations or, if the ITO has elected concurrent operation of the Food Stamp Program, those eligible households may elect to participate in either program, without regard to whether the household is an Indian tribal household.

(2) FNS may determine, based on the number of non-Indian tribal households located on all or part of a reservation, that concurrent operation is necessary. When such a determination has been made, all households residing in such areas may apply to participate in either the Food Stamp Program or the Food Distribution Program on Indian Reservations.

(c) *Food package.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food package offered to each household shall consist of a quantity and variety of commodities made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet. The food package shall be offered to eligible households by the State agency and shall contain a variety of foods from the four food groups: Meat, vegetable-fruit, milk and bread-cereal. FNS shall periodically notify State agencies of the kinds of commodities it proposes to make available based, insofar as practicable, on the preferences of eligible households as determined by the State agency. In the event one or more of the proposed commodities cannot be delivered, the Department shall arrange for delivery of a similar commodity within the same food group, whenever possible.

§ 253.4 Application procedures and program implementation.

(a) *Filing the application and qualifying to participate.* Any ITO which desires to participate in the Food Distribution Program on Indian Reservations shall file an application with the FNS regional office serving the State or States in which the reservation is located. The ITO of a traditionally established Indian reservation will qualify for participation under the provisions of this part, when that ITO files an application which demonstrates to FNS the status of an area as a traditionally established reservation, and shows that it is capable of program administration to the satisfaction of FNS. *Provided that* sufficient funds have been appropriated to fully carry out the provisions of this part for each new applicant ITO not currently participating in the program. Should it appear that sufficient funds have not been appropriated, FNS shall not establish new food distribution programs if it is expected to interfere with maintenance of assistance already provided to participating ITOs. For purposes of this Part, traditionally established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established area(s) exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FNS.

(b) For any area which does not qualify as a traditionally established reservation, the applicant ITO must prove reservation status and sufficient funds, as explained in paragraph (a) of this section, must be available for newly applying ITOs. Reservation status shall be granted only when there is:

(1) A geographically defined area(s) which has received legal recognition from the Federal or a State government as an Indian area;

(2) A tribal organization as that term is defined in § 253.2, operating within its boundaries; and

(3) The tribal organization must exercise governmental jurisdiction within the defined geographic boundaries.

(c) *Geographic reservation boundaries and near areas.* The ITO shall specify whether it wants the program on all or part of the reservation, and if on part, shall describe the geographic boundaries of the relevant part(s). Additionally, if the ITO wishes to serve areas near the reservation, the ITO shall describe the geographic boundaries of the near area(s) for FNS review and approval. Any urban place inside a reservation can be served by the Food Distribution Program on Indian Reservations. Any urban place outside reservation boundaries may not be served. However, an ITO or State agency can request an exception to the limitations on urban places based on justification of need provided by the ITO or State agency as determined appropriate by FNS. In making its decision, FNS shall rely on relevant factors including any anticipated budgetary constraints and FNS' determination of whether the Food Stamp Program is available to serve participants in the area in question.

(d) *Additional information.* FNS shall promptly advise the State agency of the need for additional information if an incomplete application is received. The State agency shall also provide any other information requested by FNS.

(e) *FNS acknowledgment.* Properly addressed applications shall be acknowledged by the FNS regional office in writing within five working days of receipt.

(f) *Program implementation.* FNS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 60 days of the receipt of a completed application. Such determination reviews shall be conducted only if funds are available to FNS to implement new programs and cover the costs to conduct the reviews. FNS shall advise the applicant ITO of the review determination within the 60-day timeframe.

(1) The ITO shall have 120 days from FNS' determination of capability to submit and have approved a budget and a plan of operation, and to commence program operations.

(2) If FNS determines that an ITO is not capable of administering the Food Distribution Program on Indian Reservations:

(i) FNS shall direct an agency of State government to begin or continue program operations, to submit a new plan of operation and budget, and to commence program operations within 120 days of the final FNS determination of ITO capability;

(ii) The ITO may, if so desired, elect to have another capable ITO administer the program and carry out the responsibilities of the State agency. Such arrangements must be agreed upon

by the capable ITO and must be committed to in writing.

(3) Extensions to the above 120-day timeframe may be granted by FNS to State agencies with justification.

(4) In those cases where an ITO does not wish to administer the program, but does wish to receive program benefits, the ITO may enter into an agreement with an agency of State government or with an ITO determined capable by FNS to administer the program on its behalf. Where such written agreements have been made, no capability determination of the applicant ITO need be conducted by FNS.

(The information collection requirements contained in paragraphs (a), (c) and (d) were approved by the Office of Management and Budget under control number 0584–0071)

253.5 Tribal capability.

(a) *Evaluation factors.* In determining whether the ITO on a given reservation is capable of effectively and efficiently administering the Food Distribution Program on Indian Reservations, FNS shall consult with other sources, such as the Bureau of Indian Affairs, and shall consider the ITO's experience, if any, in operating other government programs and its management and fiscal capabilities. Fiscal capabilities include whether the ITO has outstanding, unpaid claims. Other factors for evaluation include, but are not limited to, the ITO's ability to:

(1) Order and properly store commodities;

(2) Certify eligible households;

(3) Arrange for physical issuance of commodities;

(4) Keep appropriate records and submit required reports;

(5) Budget and account for administrative funds;

(6) Determine the food preferences of households;

(7) Conduct on-site reviews of certification and distribution procedures and practices;

(8) Operate the program within budgetary limitations; and

(9) Critically monitor its own operations, design effective corrective action plans and take appropriate corrective action.

(b) *Training and technical assistance.* FNS shall, if requested by a State agency, provide the State agency's designees with appropriate training and technical assistance to prepare the State agency to commence program administration.

§ 253.6 Program administration.

(a) *FNS responsibilities.* (1) Within the Department of Agriculture, FNS shall be responsible for the Food Distribution Program on Indian Reservations.

(2) FNS shall determine whether an applicant ITO is capable of effective and efficient administration of the Food Distribution Program on Indian Reservations on or near the reservation in question.

(3) FNS shall be responsible for approving a joint request made by an ITO and a State agency that a single State agency administer the program on all or part of the Indian reservation in those cases where the Indian reservation boundaries cross State lines.

(b) *State agency responsibilities.* (1) The State agency may contract program functions, but in all cases, the State agency remains responsible for program administration, for proper use of commodities and program administrative funds, and is liable for improper use or distribution of commodities and for misuse of funds. The State agency may wish to contract program functions to a local ITO which is not responsible for program administration. However, the State agency may not contract certification activities of eligibility determinations to an ITO that has been determined incapable of program administration by FNS.

(2) The State agency shall employ sufficient personnel to carry out the various duties involved in administering the Food Distribution Program on Indian Reservations. These duties and responsibilities shall include clerical, certification, issuance, managerial and monitoring activities.

(3) The State agency shall institute a training program for Food Distribution Program on Indian Reservations employees to cover all aspects of the program. The content of the training material shall be reviewed and revised periodically to correct deficiencies in program operations or reflect changes in policy and procedures.

(4) The State agency shall publicize to participants how commodities may be used to contribute to a nutritious diet and explain proper storage procedures for commodities. The State agency shall encourage the dissemination of food and nutrition information designed to improve the nutritional level of households on Indian reservations.

(5) The State agency shall develop a method of determining the food preferences of households. Preference information shall be collected and submitted to FNS at least annually. Such information shall be used periodically by FNS to analyze the components of the food package for acceptability, nutritional adequacy, responsiveness to special needs of participating households and such information may be used in ordering the commodities included in the food package.

(6) The State agency shall maintain ongoing consultation with ITOs in developing the written internal policies, instructions, and forms which are necessary to carry out the Food Distribution Program on Indian Reservations. The State agency shall file any comments offered by an ITO, for review by FNS.

(7) State agencies shall submit all printed materials, including forms used to administer and operate the Food Distribution Program on Indian Reservations, to FNS for approval prior to their use.

(8) State agencies shall restrict disclosure of information obtained from Food Distribution Program on Indian Reservations applicant households, exclusively for Food Distribution Program on Indian Reservations to persons directly connected with the administration or enforcement of the provisions of the Food Distribution Program on Indian Reservations, the Food Stamp Act or regulations, or with other Federal or Federally-aided, means-tested assistance programs such as Titles IV–A (AFDC), XIX (Medicaid), or XVI (SSI), or with general assistance programs that are subject to the joint processing requirements specified in § 253.12(d).

(9) Records and reports. State agencies shall:

(i) Keep accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this part;

(ii) Submit reports and other information as required by FNS;

(iii) Submit household food preference data annually to FNS;

(iv) Submit quarterly reports to FNS on form SF–269, "Financial Status Report," by the 30th day after the close of the reporting quarter and a close-out SF–269 report 90 days after the end of each fiscal year; and

(v) Retain records, reports and audits for a period of three years from the date of the submission of the annual financial status report, SF–269, except that if any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claim or audit findings involving the records have been resolved.

(The information collection requirements contained in paragraph (b)(9) were approved by the Office of Management and Budget under control number 0584–0071)

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§ 253.7 Plan of operation.

(a) *Submission and approval.* (1) Plans of operation and budgets shall be submitted to FNS for approval no later than July 1 of each year. FNS shall consider the budgets for administrative costs submitted by State agencies to determine whether such administrative costs are reasonable and do not exceed 30 percent of the value of the commodities being donated, as established by FNS. FNS may disapprove the plan of operation and budget if the costs of operation are not reasonable in comparison to the amount of benefits provided to households. Approval of the plan and budget by FNS shall be a prerequisite to the donation of commodities available for use by households under Part 250 of this chapter and to the payment of administrative funds under § 253.16 of this part. No amendment to the plan of operation shall be effective without prior approval of FNS and FNS may require the amendment of any plan as a condition of continuing approval.

(2) A State agency which is not an ITO shall submit its plan of operation, budget and any substantive subsequent amendments to the ITO for comment at least 45 days prior to submission of the plan, budget or amendment to FNS. Comments by the ITO shall be attached to the plan, budget or amendment which is submitted to FNS. This paragraph does not apply to amendments required by FNS under paragraph (a)(1) of this section.

(b) *Contents of the plan.* As a minimum, the plan of operation shall include the following information:

(1) A description of the geographic boundaries including, tribal reservation land, near area(s) and urban place(s) previously approved by FNS, as required in § 253.4;

(2) The manner in which commodities will be distributed, including but not limited to, the storage and distribution facilities to be used, as required in § 253.17;

(3) The procedures for preventing simultaneous participation of households in both the Food Stamp Program and Food Distribution Program on Indian Reservations, as required in § 253.12;

(4) The system the State agency will use to determine food preferences of households, as required in § 253.6;

(5) A description of the procedures for complying with the nondiscrimination requirements, as required in § 253.10 and any applicable nondiscrimination requirements specified by the Department;

(6) A description of the procedures for monitoring the program to ensure compliance with these regulations and guidance provided by FNS, as required in § 253.8;

(7) A description the procedures for training for State agency and ITO personnel involved in the Food Distribution Program on Indian Reservations activities, as required in § 253.6;

(8) A list of all employees, by job title, working on the Food Distribution Program on Indian Reservations; and

(9) A description of the procedures for making food and nutrition education information and materials available to participating households, as required in § 253.6.

(The information collection requirements contained in paragraphs (a) and (b) were approved by the Office of Management and Budget under control number 0584–0071)

§ 253.8 Program monitoring.

(a) *Evaluation and review procedures.* The State agency shall monitor and review its operations to ensure compliance with the provisions of this part and with any applicable instructions of FNS.

(b) The State agency shall review program operations at least annually, document program deficiencies, and establish and implement specific plans of corrective action for deficiencies noted.

(c) Reviews of program operations shall include, but not be limited to: Certification of households; determination of food preferences; distribution of commodities; agency conferences, fair hearing and administrative disqualification hearing procedures; commodity inventories; and timeliness and accuracy of reports to FNS.

(d) Program reviews and corrective action plans shall be documented and made available to FNS upon request. The adequacy of program monitoring and sufficiency of corrective action will be assessed by FNS in its approval of the annual plan of operation.

(The information collection requirements contained in paragraph (a) and (c) were approved by the Office of Management and Budget under control number 0584–0071)

§ 253.9 Audits and investigations.

(a) *Office of Management and Budget (OMB) Circular A–128 audit requirements.* (1) State agencies that participate in the program shall arrange for independent audits of financial operations to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of State agencies and ITOs.

(2) Audits shall be made annually unless exempted in accordance with A–128, however, not less frequently than every two years. Audits shall be performed by independent State or local government auditors or independent public accountants who meet the independence standards in the *Standards for Audit of Government Organizations, Programs, Activities, and Functions.* Such audits shall be conducted on an organization basis, rather than on a grant-by-grant basis.

(3) Audits shall be made in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (Title 7 CFR, Part 3015, Subpart I) implementing OMB Circular A–128.

(b) *Office of the Inspector General (OIG) or audits.* (1) Each State agency shall provide OIG with full opportunity to conduct audits (including visits to Indian reservations) of all operations of the State agency under this program.

(2) Each State agency shall make available its records, including records of the receipt and expenditure of funds and any audit reports and related working papers of audits performed by or for State agencies upon request by OIG for the purpose of conducting audits. State agencies shall retain such records in accordance with § 253.6(b)(9).

(c) *Investigations.* (1) The State agency shall promptly investigate complaints of irregularities relating to the handling, distribution, receipt, or use of commodities by eligible households, as well as complaints of irregularities relating to certification procedures or the delivery of services.

(2) The State agency shall take appropriate action to correct any irregularities or noncompliance with the provisions of this part and shall document each investigation and action in sufficient detail to allow for OIG or FNS review of all State agency actions and information.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 0548–0071)

§ 253.10 Civil rights.

Nondiscrimination. State agencies are subject to the Department's regulations putting into effect Title VI of the Civil Rights Act of 1964 (7 CFR Part 15); Title IX of the Education Amendments of 1972, section 504 of the rehabilitation Act of 1973; and the Age Discrimination Act of 1975. No person in the United States shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied the benefits of,

or be otherwise subjected to discrimination under this program. State agencies shall also be subject to any applicable Departmental provisions and any instructions or guidance issued by FNS with regard to nondiscrimination.

§ 253.11 Eligibility of households.

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on Indian Reservations on a household basis. Household means an individual living alone or a group of related or non-related individuals living together who purchase and prepare food together for home consumption. Such individuals cannot be boarders or residents of an institution. Separate household status shall not be granted to dependent children of an adult household member or to spouses of household members living together even if they purchase or prepare food separately.

(2) The following persons residing with the household shall not be considered household members:

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals for compensation.

(ii) *SSI recipients in "cash-out" States.* Recipients of Supplemental Security Income (SSI) benefits who reside in a State designated by the Secretary of the Department of Health and Human Services to have specifically included the value of the food stamp coupon allotment in their State supplemental payment. These persons are not eligible to receive Food Distribution Program on Indian Reservations benefits.

(iii) *Disqualified individuals.* Individuals disqualified from the Food Stamp Program or Food Distribution Program on Indian Reservations.

(iv) *Illegal residents.* Individuals who are not legal residents of the United States. While U.S. citizenship is not required for participation in the Food Distribution Program on Indian Reservations, persons receiving food distribution benefits must be lawful residents of the United States.

(b) *Residency or citizenship.* A non-Indian household must be living on the reservation when it files an application for participation; Indian tribal households may be living on or near the reservation. The State agency may not impose any requirement as to the length of residency. No household may participate in the Food Distribution Program on Indian Reservations in more than one geographical area at the same time.

(c) *Income and resource eligibility for assistance households.* (1) Households in which all members are included in a federally aided public assistance or SSI grant, except as provided for in paragraph (a)(2)(ii) of this section shall, if otherwise eligible under this part, be determined eligible to participate in the Food Distribution Program on Indian Reservations while receiving such grants without regard to the income and resources of the household members.

(2) If FNS determines that a State or local general assistance program applies criteria of need the same as or similar to those applied under any of the federally aided public assistance programs, households in which all members are included in such a general assistance grant, shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program on Indian Reservations while receiving such grants without regard to the income and resources of household members.

(d) *Resource eligibility standard.* (1) The State agency shall apply uniform national resource standards of eligibility to all applicant households, except those in which all members are recipients of Federally aided public assistance, SSI, or certain general assistance program benefits as provided in paragraph (c)(2) of this section. The maximum allowable resources for households shall be equal to maximum allowable resources limit established for the Food Stamp Program.

(2) *Resources.* In determining the resources of household, only cash on hand, money in checking or savings accounts, savings certificates, stocks and bonds shall be counted; except that the following resources shall be entirely excluded:

(i) The cash value of life insurance policies and pension funds, including funds in pension plans with interest penalties for early withdrawals, such as a Keogh plan or an Individual Retirement Account (IRA), as long as the funds remain in the pension plans.

(ii) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended, for example, payments made by the Department of Housing and Urban Development through the individual and family grant program of disaster loans or grants made by the Small Business Administration.

(iii) Resources, such as those of students or self-employed persons, which have been prorated as income.

(iv) Resources which are excluded by express provision of Federal statute. The following is the current listing of resources excluded by Federal statute:

(A) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, or the Sac and Fox Indian claims agreement Pub. L. 94–189);

(B) Payments received by certain Indian tribal members under Pub. L. 94–114, section 6, regarding submarginal land held in trust by the United States;

(C) Payments received by certain Indian tribal members under Pub. L. 94–540, regarding the Grand River Band of Ottawa Indians;

(D) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646, section 216);

(E) Earned income tax credits received before January 1, 1980, as result of Pub. L. 95–600, the Revenue Act of 1978;

(F) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524);

(G) Education assistance payments received from a program funded in whole or inpart under Title IV of the Higher Education Act (as amended by Pub. L. 99–498), used for tuition, mandatory fees, transportation, books, supplies and miscellaneous personal expenses, as defined by the State agency; and

(H) Benefits received from the special supplemental food program for woman, infants and children (WIC) (Pub. L. 92–443, section 9);

(I) Payments received by the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission as designated under Pub. L. 95–433, section 2;

(J) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, section 5); and

(K) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

(3) *Jointly owned resources.* Resources owns jointly by separate households shall be prorated between or among those households unless the applicant can demonstrate that such resources are inaccessible to it because access to the value of the resource is dependent upon the agreement of a joint owner who refuses to comply.

(4) *Resources of disqualified members.* Resources of individuals disqualified from participation in the Food Stamp Program or the Food Distribution Program on Indian

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Reservations shall continue to count in their entirely to the remaining household members when determining the household's eligibility for the Food Distribution Program on Indian Reservations.

(e)(1) *Income eligibility standards for nonassistance households.* The income eligibility standards shall be equal to the Food Stamp Program's gross monthly income eligibility standards, which is the amount equal to 130 percent of the Federal proverty guidelines. These income eligibility standards shall not be applied to households in which all members, are recipients of public assistance, SSI (except as provided for in paragraph (a)(2)(ii) of this section, or certain general assistance program payments as provided in paragraph (c) of this section). FNS shall provide State agencies with adjusted income eligibility standards, as necessary.

(2) *Income.* Household income shall mean all income from whatever source already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. The total monthly income shall be compared to the income eligibility standard for the appropriate household size to determine the household's eligibility. Except that the following income shall be excluded from household income and no other income shall be disregarded:

(i) Monies withheld from an assistance payment earned income or other services, or monies received from any income source with are voluntarily or involuntarily returned to repay a prior overpayment received from that income service.

(ii) Child support payments received by AFDC recipient which must be transferred to the agency administering Title IV-D of the Social Security Act of 1935, as amended, to maintain AFDC eligibility.

(iii) Any gain or benefit which is not in the form of money payable directly to the household including:

(A) *In-kind income.* Nonmonetary or in-kind benefits, such as meals, clothing, public housing or produce from a garden.

(B) *Vendor payments.* A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. Also, specific payments directed to a third party from a court ordered support or alimony payment or other written supporting alimony agreement, rather than the designated recipient household are excluded as vendor payments. However, money received by a household whether from court ordered alimony or by voluntary payment shall not be excluded as a vendor payment. Wages garnished or diverted by employers, or money deducted or otherwise diverted from a household's public assistance or certain general assistance, as provided in paragraph (c)(2) of this section, grant by a State for purposes such as managing the household's expenses, shall not be considered a vendor payment, since the person or organization making the payment is using money payable to the household rather than its own funds.

(iv) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(v) Education loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students to enroll in a chemistry course would be excluded. However, transportation, supplies, and textbook expenses are not uniformly charged to all students and therefore, would not be excluded as mandatory fees, except as excluded in paragraph (e)(2)(x) of this section.

(vi) All loans, including loans from private individuals as well as commercial institutions, other than education loans on which repayment is deferred.

(vii) Reimbursement for past or future expenses to the extent they do not exceed actual expenses. For example, reimbursements of flat allowances for job or training related expenses such as travel per diem, uniforms, and transportation to and from the job or training site are excluded as income.

(viii) Monies received and used for care and maintenance of a third party beneficiary who is not a household member.

(ix) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

(x) Money received in the form of a nonrecurring lump sum payment, including but not limited to, income tax refunds, rebates, or credit retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits or other payments, or retroactive lump-sum insurance settlements; refunds of security deposits on rental properties or utilities or lump-sum payments arising from loan interests held in trust for, or by, a tribe.

(xi) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 253.12(a)(11).

(xii) Any income that is specifically excluded by any other Federal statute from consideration as income. The following Federal statutes provide such an exclusion:

(A) Reimbursement from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216);

(B) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203);

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and Title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113), as amended. Payments under Title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated commodities, food stamps, or public assistance at the time they joined the Title I program, except that households which are receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving Federally donated commodities, food stamps or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income;

(D) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6);

(E) Payments received by certain Indian tribal members under Pub. L. 94-540 regarding the Grand River Band of Ottawa Indians;

(F) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524);

(G) Educational assistance payments received from a program funded in whole or in part under Title IV of the Higher Education Act (as amended by Pub. L. 99–498), used for tuition, mandatory fees, transportation, books, supplies and miscellaneous personal expenses, as defined by the State agency;

(H) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescarlero Reservation (Pub. L. 95–433).

(I) Payments to the Passamaquoddy Tribe and the Penobscott Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, section 5); and

(J) Payments of relocation assist once to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

§ 253.12 Certification of households.

(a) *Certification procedures.* (1) The State agency shall determine eligibility of households for the Food Distribution Program on Indian Reservations based on the eligibility requirements of these regulations.

(2) The State agency shall use an application form acceptable to FNS.

(3) *Filing an application.* Households must file an application for the Food Distribution Program on Indian Reservations by submitting the form to a certification office in person, through an authorized representative or by mail. The State agency shall document the date the application was received.

(4) *Interview.* All applicant households shall have an interview with an eligibility worker prior to certification. The interview shall be an official and confidential discussion of household circumstances. The State agency shall provide facilities adequate to preserve the privacy of the interview.

(5) *Verification.* Gross nonexempt income shall be verified for all households prior to certification. State agencies shall also verify residency of all non-Indian households living on the reservation. The State agency shall verify other eligibility criteria if the information provided by the household is questionable. The household shall provide needed verification, including names of collateral contacts. The State agency shall assist the household if the household cannot supply needed verification.

(6) *Documentation.* The State agency shall document the decision of eligibility or ineligibility in sufficient detail for reviewers to determine the accuracy of the decisions.

(7) *Recertification.* The State agency shall recertify households under the same criteria used for initial certification, except that the State agency may elect not to verify information which has not changed since the last certification and is not questionable.

(8) *Processing standards.* The State agency shall provide eligible households an opportunity to obtain commodities not later than 14 working days from initial application. The State agency shall also provide an opportunity to obtain commodities as soon as possible, but no later than 2 working days from application for households with no income after exclusions. If the State agency cannot determine a household's eligibility within 14 working days due to lack of verification, the State agency shall authorize commodities for one month pending verification. The State agency shall not issue commodities beyond one month without verification.

(9) *Authorized representative.* The head of the household, spouse or other responsible adult household member may designate in writing an authorized representative to apply for or pick up commodities on the household's behalf.

(10) *Bilingual requirement.* State agencies shall make the necessary or appropriate arrangements to provide for a bilingual speaker or an interpreter when an applicant is not fluent in English.

(11) *Self-employment income.* (i) The State agency shall determine the amount of income available to households that are self-employed. Self-employment income is determined by adding all gross self-employment income, subtracting the cost of producing the income, and dividing the net self-employment income prorated over the number of months the income is intended to cover. The allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor, stock, raw materials, seed and fertilizer, interest paid to purchase income producing property, insurance premiums and taxes paid on income producing property.

(ii) In determining net self-employment income, payment on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods, net losses from previous periods, Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work) will not be allowable costs of doing business.

(12) *Certification periods.* Households with relatively stable income shall be assigned a certification period of six months, unless the State agency determines that the certification period should be a shorter or longer timeframe. Households with fixed incomes or other predictable income may be certified for up to one year. Households with fluctuating income shall be assigned a certification period of one to three months depending upon the household's circumstances, (i.e., likelihood of change in income). In no event shall the certification period exceed one year.

(13) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice, explaining the basis for the denial. The State agency shall advise households of their right to request a fair hearing and the telephone number and address of a person to contact for additional information.

(14) *Notice of adverse action.* (i) State agencies shall advise households of any proposed action to reduce or terminate household benefits ten days prior to the effective date of the action. The notice of adverse action shall not be used when households voluntarily switch program participation from the Food Distribution Program on Indian Reservations to the Food Stamp Program.

(ii) The notice of adverse action shall explain the reason for the proposed action and the household's right to request a fair hearing. This notice shall also advise the household of the effective date of the proposed action, the telephone and address of a person to contact for additional information, and the availability of continued benefits. In addition, the notice should inform the household that any continued benefits received which result in an overissuance of commodities, based on the fair hearing decision, will be subject to the claims procedures described in § 253.13.

(iii) If the household requests a fair hearing during the adverse notice period, the State agency shall continue distribution of commodities to the household at the same level which was distributed prior to the fair hearing request. The State agency shall continue the distribution of commodities to the household through the duration of the fair hearing procedure.

(15) *Reporting changes.* Certified households are required to report

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changes in household composition, change in income of over $100 per month, and income changes which would cause the household to exceed the maximum income limit for their household size. To facilitate reporting changes in income each certified household shall be advised at the time of certification what the maximum monthly income limit, as defined in § 253.11(e), is for its size household, and shall be required to report any change in income that goes above that limit to the certification office within ten days after the change becomes known to the household.

(16) *Recertification notice.* (i) The State agency shall develop a procedure for notifying the household prior to or shortly after the end of its certification period that the household must reapply and be recertified for continued participation. Household shall also be notified of the date upon which termination from participation will be effective should the household fail to reapply before the expiration of the certification period.

(ii) The State agency shall approve or deny a household's application for recertification and notify the household of the determination prior to the expiration of the household's current certification period. Households applying for recertification period must be provided an opportunity to obtain commodity distribution on an uninterrupted basis.

(b) *Controls for dual participation.* (1) No household shall be allowed to participate simultaneously in the Food Stamp Program and the Food Distribution Program on Indian Reservations. The State agency shall inform each applicant household of this prohibition and shall develop a method to detect dual participation. The method developed by the State agency shall, at a minimum, employ lists of currently certified household members provided by and provided to the appropriate food stamp agency on a monthly basis. The State agency may also employ computer checks, address checks and telephone calls to prevent dual participation. The State agency shall coordinate with the appropriate food stamp agency in developing controls for dual participation.

(2) *Choice of programs.* Households eligible for either the Food Stamp Program or the Food Distribution Program on Indian Reservations where both programs are available may elect to participate in either program. Such households may elect to participate in one program, and subsequently elect the other at the end of the certification period. Households may also elect to switch from one program to the other program within a certification period only by terminating their participation, and notifying the State agency of their intention to switch programs. Households certified in either the Food Distribution Program on Indian Reservations or Food Stamp Program on the first day of the month can only receive benefits in the program for which they are currently certified during that month. At the point the household elects to change programs, the household should notify the State agency of its intent to switch programs, and should file an application for the program in which it wishes to participate. Households that wish to switch programs shall have the eligibility terminated for the program in which they are currently certified on the last day of the month by notifying the State agency of their intent to change programs.

(3) *Disqualification.* (i) No individual disqualified from participation in the Food Stamp Program may participate in the Food Distribution Program on Indian Reservations until the period of disqualification expires. The State agency, in cooperation with the appropriate food stamp agency must develop a procedure to identify those individuals who have been disqualified for participation by the food stamp agency or by courts exercising jurisdiction within that State.

(ii) During the time a household member is disqualified, the eligibility and food distribution benefits of the remaining household members are not affected. The resources of the disqualified member shall continue to count in their entirety to the remaining household members. A pro rata share of the income of the disqualified member after exclusions are taken as provided in § 253.11(e)(2) shall be counted as income to the remaining household members.

(c) *Eligibility and benefits.* The disqualified member shall not be counted as a household member to determine Food Distribution Program on Indian Reservation benefits or for comparing gross monthly income with the income eligibility standards.

(d) *Joint processing for Public and General Assistance Programs.* (1) State agencies which administer both the Food Distribution Program on Indian Reservations and public assistance (PA) or general assistance (GA) programs may allow households to apply for both Food Distribution Program on Indian Reservations and PA or GA benefits at the same time. GA households shall have their eligibility for commodities based solely on Food Distribution Program on Indian Reservations eligibility criteria, except as provided in § 253.11(c)(2) for those GA programs whose criteria of need is the same or similar to PA program criteria.

(2) The State agency shall process all applications for PA or GA as applications for the Food Distribution Program on Indian Reservations, unless the household clearly indicates that the household does not want commodities. A single interview shall be conducted for joint processing, unless the State agency is unable to do so within the Food Distribution Program on Indian Reservations processing standards prescribed in paragraph (a)(8) of this section. In such cases, the State agency shall provide separate certification for PA or GA and Food Distribution Program on Indian Reservations eligibility.

(3) The State agency must follow all Food Distribution Program on Indian Reservations timeliness rules for certification of households for the Food Distribution Program on Indian Reservations.

§ 253.13 Overissuance claims.

(a) *Establishing claims.* (1) State agencies shall establish a claim against any household that has received more USDA commodities than it is entitled to receive, unless specifically exempted in paragraph (b)(1) or (b)(2) of this section.

(2) State agencies must submit their procedures for establishing claims against households to the appropriate FNS regional office for approval.

(b) *Claim exemptions.* (1) No claim shall be established against a household if the cumulative value of the overissuances occurring within the one-year limit, specified in paragraph (c) of this section, equals less than a one-person household's issuance for one month.

(2) No claim shall be established in cases where a State agency failed to ensure that the household signed its application or the household continued to receive commodities after its certification period expired without benefit of a reapplication determination. If errors other than procedural errors are noted, claim collection shall be initiated in accordance with paragraph (d) of this section.

(c) *One-year limit.* Any overissuance occurring within a one-year period before discovery of an error by the State agency shall be included in the claim determination.

(d) *Calculating the claim.* The claim value shall be based on the cost of the extra food issued to the household for the period of the overissuance except as limited in paragraphs (c) and (f) of this

section. FNS will provide information to State agencies for the costs of each commodity.

(e) *Claims collection action.* (1) At a minimum, the State agency shall initiate collection action for household errors by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim, the right to a fair hearing, and information about how to pay the claim. In cases where disqualification actions apply, the State agency shall include notification that no response to the claim letter from a participating household within 30 days may result in the disqualification from program participation. State agencies may also use these procedures for initiating collection actions for State agency errors.

(2) Claims collection action shall be initiated against the head of the household. If the head of the household is no longer living or cannot be located, the State agency shall pursue collection against the remaining adult household members. If a change in household membership occurs, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the overissuance of USDA commodities occurred.

(3) Monies collected in repayment of claims shall be forwarded to the appropriate FNS regional office.

(4) In cases of nonpayment, State agencies shall do one of the following:

(i) Renegotiate the payment schedule for one- or two-person households or households which have no income (after exclusion) or resources available to pay the claim or would otherwise experience a hardship by:

(A) Postponing and/or adjusting the payment schedule to a longer timeframe enabling the household to make additional payments until the claim is paid; and/or

(B) Adjusting the payments to no more than 10 percent of the value of the household's monthly food package or $5 per month, whichever is less, until the claim is paid.

(ii) For overissuances caused by household errors, the household shall be warned that failure to pay the claim or to make scheduled monthly payments shall result in the head of the household's disqualification from program participation. The State agency shall disqualify the head of the household from program participation in accordance with the timeframes described in § 253.15.

(iii) For overissuances caused by State agency errors, the State agency shall pay the amount of the claim to FNS. This includes any claims resulting from a Federal, State or local review. The State agency may at its option continue its attempt to collect the amount of the claim from the household, however, no household members shall be disqualified for failure to pay such claims.

(f) *Suspension of collection.* (1) The State agency shall send the household one demand letter, in accordance with paragraph (e)(1) of this section. The State agency may suspend further claim action against the household if one of the following conditions apply:

(i) Household cannot be located; or

(ii) Cost of additional collection procedures would likely exceed the amount to be recovered.

(2) Unless one of the criteria described in paragraph (f)(1) of this section applies, the State agency shall send the household additional demand letters in no more than 30 day intervals for maximum of three letters. In cases of continued nonpayment, the head of the household shall be disqualified from program participation in accordance with paragraph (h) of this section. However, suspension of a claim shall not relieve the State agency of its requirement for paying claims caused by State agency errors, in accordance with paragraph (e)(4)(iii) of this section.

§ 253.14 Agency conferences and fair hearings.

(a) *Availability and conduct of agency conferences.* The State agency shall offer agency conferences to households which request immediate resolution of any action which has adversely affected them regarding any aspect of the Food Distribution Program on Indian Reservations. Requested agency conferences shall be scheduled within four working days of the request unless the household requests that it be scheduled at a later date. The State agency shall advise households that the use of an agency conference is optional and that such use shall in no way delay or replace the fair hearing process.

(b) *Availability and conduct of fair hearings.* (1) The State agency shall provide a fair hearing to any household requesting one, which is aggrieved by any action of the State agency that affects the participation of the household in the Food Distribution Program on Indian Reservations.

(2) Within 60 days of receipt of a request for a fair hearing, the State agency shall conduct the hearing and arrive at a decision.

(3) At the time of application for program benefits, the State agency shall inform households of their right to a fair hearing, the procedures which are to be followed in requesting a fair hearing, the manner in which fair hearings are conducted, that the rendering of decisions by the State agency will be based on the hearing record and their right to pursue judicial review if unsatisfied with the hearing official's decision. In addition, the household should be informed of its right to an agency conference when a household requests an immediate resolution of a denial of eligibility for food distribution benefits.

(4) Denial or dismissal of request for hearing. The State agency shall not deny or dismiss a request for a hearing unless:

(i) The request is withdrawn in writing by the household or its representative; or

(ii) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(5) Notification of time and place of hearing. The time, date and place of the hearing shall be convenient to the household. Prompt, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. The notice shall:

(i) Advise the household or its representative of the name, address, and telephone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(ii) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(iii) Explain that the household or its representative may examine the casefile prior to the hearing.

(6) The household or its representatives shall be given adequate opportunity to:

(i) Examine all documents and records to be used at the hearing. The State agency shall provide a free copy of the relevant portions of the casefile, if requested. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision;

(ii) Present the case;

(iii) Bring witnesses;

(iv) Advance arguments without undue interference;

(v) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(vi) Submit evidence to establish all pertinent facts and circumstances in the case.

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(7) *Hearing official.* Hearing shall be conducted by an impartial official(s), designated by the State agency, who does not have any personal interest or involvement in the case and who was not directly involved in the initial determination of the action which is being contested. The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Ensure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

(v) Render a hearing decision in the name of the State agency in accordance with paragraph (b) of this section.

(8) *Hearing decisions.* (i) Decisions of the hearing official shall comply with Federal law or regulations and shall be based on the hearing records. The verbatim transcript or recording of testimony and exhibits or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing official.

(ii) A decision by the hearing official shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision and identify the supporting evidence and pertinent FNS regulations. The decision shall become part of the record.

(iii) The household shall be advised of the decision of the hearing official and of the right to pursue judicial review.

(The information collection requirements contained in paragraph (b)(6) were approved by the Office of Management and Budget under control number 0584–0071)

§ 253.15 Disqualification hearings.

(a) *Administrative responsibility.* (1) The State agency shall be responsible for investigating any case of alleged misrepresentation or failure to pay an established claim, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to appropriate State or local legal authorities for civil or criminal action in a court of law. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally misrepresented the household's circumstances as defined in paragraph (c) of this section or failed to pay an established claim. If the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of misrepresentation, the State agency shall take action to collect the overissuance by establishing a claim against the household in accordance with the procedures in § 253.13. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were not accepted by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate administrative disqualification procedures against an individual whose case is currently being referred for prosecution or subsequent to any action taken against the individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution, regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the administrative disqualification or court decision shall be deferred until the individual applies for and is determined eligible for Food Distribution Program on Indian Reservations benefits.

(2) Each State agency shall establish a system for conducting administrative disqualification hearings for household members who misrepresent the household's circumstances or who simply fails to pay an established claim which conforms with the procedures outlined in paragraph (f) of this section. FNS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement, pursuant to paragraph (h)(1) of this section, with the State's Attorney General's Office or, where necessary, with appropriate level prosecutors under which prosecution of cases will be pursued. FNS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FNS that it is clearly referring cases for prosecution and that prosecutors are following up on the State agency's referrals. FNS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing cases of suspected misrepresentation or failure to pay claims through the courts.

(3) The State agency shall base administrative disqualification on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with paragraph (e) of this section or on determinations reached by courts of appropriate jurisdiction in accordance with paragraph (h) of this section. However, any State agency has the option of allowing the individuals either to waive their rights to administrative disqualification hearings in accordance with paragraph (f) of this section. Any State agency which chooses either of these options may base administrative disqualifications on the waived right to an administrative disqualification hearing.

(b) *Disqualification penalties.* Individuals found to have willfully misrepresented household circumstances or to have failed to pay an established claim, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing shall be ineligible to participate in the program for six months for the first violation and twelve months for the second and subsequent violations. However, one or more disqualifications which occurred prior to the implementation of these penalties shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration. If a court fails to impose a disqualification period, the State agency shall impose the disqualification penalties specified in this section unless it is contrary to the court order. State agencies shall disqualify only the individual found to have misrepresented household circumstances or the head of the household who fails to pay an established claim, or who signed the waiver of right to an administrative disqualification hearing not the entire household. The remaining household members shall agree to make restitution within 30 days of the date the State agency's written demand letter is mailed. The remaining household

members, if any, shall begin restitution during the period of disqualification imposed by the State agency or a court of law. All restitutions shall be made in accordance with established procedures for cash repayment.

(c) *Misrepresentation.* Any individual household member that willfully misrepresents information or submits information with reckless disregard for accuracy of information, or provides information which is known by the individual to be incorrect regarding household size, income, resources or other eligibility factors which results in the household receiving more benefits than it would otherwise be entitled to receive, shall be disqualified from participation in accordance with the timeframes set forth in paragraph (b) of this section.

(d) *Notification to applicant households.* The State agency shall inform all households in writing of the disqualification penalties prescribed in paragraph (b) of this section at the time of application for Food Distribution Program on Indian Reservations benefits. The notice shall be in clear, prominent, and boldface lettering on the application form.

(e) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that the hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. If the combined hearings determine the amount of the claim as well as whether or not the household circumstances were willfully misrepresented, the household shall not be entitled to a subsequent fair hearing on the amount of the claim.

(f) *Hearings procedures.* (1) The State agency shall conduct administrative disqualification hearings in accordance with the requirements outlined in this section.

(i) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings or designating hearing officials to conduct only administrative disqualification hearings.

(ii) At the administrative disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iii) Within 90 days of the date the household member is notified in writing that a State or local hearing has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(iv) The State agency shall publish clearly written rules of procedure for disqualification hearings, and shall make these procedures available to any interested party.

(2) *Advance notice of hearing.* (i) The State agency shall provide written notice to the household member suspected of misrepresentation or failing to pay an established claim at least 30 days in advance of the date a disqualification hearing has been scheduled. However, the State agency shall, upon household request, allow the household to waive the 30-day advance timeframe. The notice shall be mailed certified mail-return receipt requested or provided by any other method as long as proof of receipt is obtained, and shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the household member;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the food distribution office if the household member fails to appear at the hearing;

(E) A statement that the household member or representative will have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of misrepresentation or failure to pay an established claim will result in a six-month disqualification for the first violation and 12-month disqualification for the second and subsequent violations, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing; and

(G) A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member in a civil or criminal court action, or from collecting the overissuances.

(ii) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the household of its right to obtain a copy of the State agency's published hearing procedures upon request.

(iii) Each State agency shall develop an advance notice form which contains the information required by this action.

(3) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if misrepresentation or failure to pay an established claim was committed based on clear and convincing evidence. If household member is found to have misrepresented the household's circumstances or failed to pay an established claim but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(4) *Participation while awaiting a hearing.* A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the Food Distribution Program on Indian Reservations. Since the State agency cannot disqualify a household member until the hearing official finds that the individual has misrepresented the household's circumstances or failed to pay an established claim, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. However, the household's benefits shall be terminated if the certification period has expired

and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible for benefits and the household fails to request a fair hearing and continuation of benefits pending the hearing.

(5) *Criteria for determining misrepresentation.* The hearing authority shall base the determination on clear and convincing evidence which demonstrates that the household member(s) misrepresented, and intended to commit, a misrepresentation of the household's circumstances, as defined in paragraph (c) of this section.

(6) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS regulation, and respond to reasoned arguments made by the household member or representative.

(7) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the household member has misrepresented the household's circumstances or failed to pay an established claim, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section beginning with the first month which follows the date the household member receives written notification of the hearing decision. The same act repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determination made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. the household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not eligible for the Food Distribution Program on Indian Reservations at the time the disqualification period is to begin, the period shall be postponed until the individual applies and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance.

(8) *Notification of hearing decision.* (i) If the hearing official finds that the household member did not misrepresent the household's circumstances or the household has paid the established claim, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the hearing official finds that the household member misrepresented the household's circumstances or failed to pay an established claim, the State agency shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for Food Distribution Program on Indian Reservations benefits. The State agency shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 253.12(b). A written demand letter for restitution, as described in § 253.13, shall also be provided.

(iii) Each State agency shall develop a form for notifying individuals that they have been found by an administrative disqualification hearing to have misrepresented the household's circumstances or failed to pay an established claim. The form shall contain the information required by this section. A model form for notifying individuals of an adverse hearing decision is available from FNS for adaptation by any State agency.

(g) *Waived hearings.* Each State agency shall have the option of establishing procedures to allow accused individual to waive their rights to an administrative disqualification hearing. For State agencies which choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall provide written notification to the household member that the member can waive his/her right to an administrative disqualification hearing. Prior to providing this written notification to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing.

(ii) The written notification provided to the household member which informs him/her of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything concerning the charge(s) can be used against him/her in a court of law;

(C) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the State agency;

(D) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

(*1*) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and

(*2*) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;

(E) The telephone number and, if possible, the name of the person to contact for additional information; and

(F) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(iii) The State agency shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by this section as well as the information

described in paragraph (f)(3) of this section for advance notice of a hearing. However, if the household member is notified of the possibility of waiving his/her right to an administrative disqualification hearing before the State agency has scheduled a hearing, the State agency is not required to notify the household member of the date, time and place of the hearing at that point as required by paragraph (f)(3)(i)(A) of this section.

(2) *Imposition of disqualification penalties.* (i) If the household member signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. However, if the act which led to the disqualification occurred prior to the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification penalties in effect at the time of the offense.

(ii) No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannnot be changed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not eligible for the Food Distribution Program on Indian Reservations at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance.

(3) *Notification of disqualification.* The State agency shall provide written notice to the household member prior to disqualification. The State agency shall also provide written notice to any remaining household members of the amount of USDA commodities they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice(s) shall conform to the requirements for notification of a hearing decision specified in paragraph (f)(9) of this section. A written demand letter for restitution, as described in § 253.13, shall be provided.

(h) *Court referrals.* Any State agency exempted from the requirement to establish an administrative disqualification system in accordance with paragraph (a) of this section shall refer appropriate cases for prosecution by a court of appropriate jurisdiction in accordance with the requirements outlined in this section.

(1) *Appropriate cases.* (i) The State agency shall refer cases of alleged misrepresentation or failure to pay an established claim for prosecution in accordance with an agreement with prosecutors or appropriate law. The agreement shall provide for prosecution of cases and include the understanding that prosecution will be pursued in cases where appropriate. This agreement shall also include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overissuance which resulted from the Act.

(ii) State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of misrepresenting the household's circumstances or failed to pay an established claim, particularly if large amounts of USDA commodities are suspected of having been obtained or the individual is suspected of committing more than one violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as described in paragraph (b) of this section be imposed in addition to any other civil or criminal penalties for such violations.

(2) *Imposition of disqualification penalties.* (i) State agencies shall disqualify an individual found guilty for the length of time specified by the court. If the court fails to impose a disqualification period, the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(ii) If the individual is not eligible for the Food Distribution Program on Indian Reservations at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance, regardless of its eligibility for Food Distribution Program on Indian Reservations benefits.

(3) *Notification of disqualification.* If the court finds that the household member has misrepresented the household's circumstances or failed to pay an established claim, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the amount of USDA commodities they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 253.12(b). In addition, the State agency shall provide the written demand letter for restitution described in § 253.13.

(i) *Reporting requirements.* (1) Each State agency shall report to FNS information concerning individuals disqualified from program participation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either

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a waiver of right to a disqualification hearing. The information shall be submitted to FNS so that it is received no later than 30 days after the date the disqualification took effect, or would have taken effect for a currently ineligible individual whose disqualification is pending future eligibility.

(2) Each State agency shall report information concerning each individual disqualified in a format designed by FNS. This format shall include the individual's date of birth, and full name, the number of the disqualification (1st, 2nd, etc.), the State and reservation in which the disqualification took place, the date on which the disqualification took effect, and the length of the disqualification period imposed.

(3) Each State agency shall submit the required information on each individual disqualified through a reporting system in accordance with procedures specified by FNS.

(i) State agencies shall, at a minimum, use the data for the following:

(A) To determine the eligibility of applicants prior to certification in cases where the State agency has reason to believe a household member is subject to disqualification in another political jurisdiction, and

(B) To ascertain the appropriate penalty to impose, based on past disqualifications, in a case under consideration.

(ii) State agencies may also use the data in other ways, such as the following:

(A) To screen all program applicants prior to certification, and

(B) To periodically match the entire list of disqualified individuals against their current caseloads.

(4) The disqualification of an individual in one political jurisdiction shall be valid in another. However, one or more disqualifications which occurred prior to the implementation of the penalties contained in these regulations shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. State agencies are required to identify any individuals disqualified prior to implementation of this rule and to submit the information required by this section on such individuals.

(5) In cases where the imposition of a disqualification penalty is being held pending the future eligibility of a household member, the State agency shall submit a report revising the original disqualification report once the individual begins the period of disqualification in accordance with instructions provided by FNS.

(6) In cases where the disqualification is reversed by a court of appropriate jurisdiction, the State agency shall submit a report to purge the file of the information relating to the disqualification which was reversed in accordance with instructions provided by FNS.

(j) *Reverse disqualifications.* In cases where the determination is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the program if the household is otherwise eligible.

§ 253.16 Administrative funds for State agencies.

(a) *Application for funds.* (1) Any State agency administering an ongoing Food Distribution Program on Indian Reservations which desires to receive administrative funds under this section shall submit a Form AD–623, "Application for Federal Assistance", to the appropriate FNS regional office at least three months prior to the beginning of each Federal fiscal year. The budget information required in Part III of the application shall reflect by category of expenditures, the State agency's best estimate of the total amount to be expended in the administration of the Food Distribution Program on Indian Reservations during a Federal fiscal year. FNS may require that detailed information be submitted by the State agency to support or explain the total estimated amounts shown for each cost budget category.

(2) FNS will disapprove any application for funds, or portion thereof, in which the ongoing operating costs (excludes building rennovation and capital equipment) exceed 30 percent of the value of the food to be distributed to participants, except where compelling justification has been approved by FNS.

(3) Approval of the application by FNS shall be a prerequisite to the payment of funds to State agencies.

(b) *Payments.* (1) Within the limitation of funds available to carry out the provisions of this part, FNS shall make available up to 75 percent of approved administrative costs. Administrative costs must be included in annual or revised budget information submitted by the State agency to FNS for approval prior to the contribution of Federal funds. Administrative costs must be allowable under paragraph (d) of this section. In accordance with 7 CFR Part 3015, the value of services rendered by volunteers shall be allowable to meet the matching administrative costs requirement for the Food Distribution Program on Indian Reservations.

(2) Any approval for payment of funds in excess of 75 percent shall be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Distribution Program on Indian Reservations. FNS regional offices shall assess waiver requests. Tribes must demonstrate that all funds that could be used to meet the required 25 percent share of administrative costs are dedicated to *necessary* tribal expenditures. A statement that no other funds are available to administer the program is not sufficient. Justification for the FNS share of funding to exceed 75 percent of approved costs must be demonstrated to the satisfaction of FNS. Financial sources that will be accepted to show compelling justification for a waiver include, but are not limited to:

(i) Tribal financial statements;

(ii) Certified Public Accountant (CPA) organization-wide audit;

(iii) Tribe's published financial report to its members; or

(iv) Detailed letter from a CPA, including specific dollar figures, explaining tribal financial circumstances.

(c) *Availability of funds.* (1) FNS shall review and evaluate the budget information submitted by the State agency in relationship to the State agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures itemized by budget category are reasonable and justified. FNS shall give written notification to the State agency of the following:

(i) Its approval or disapproval of any or all the itemized expenditures; and

(ii) The amount of funds which will be made available. FNS may disapprove any budget or portion of a budget in which ongoing administrative costs exceed 30 percent of the value of the food to be distributed to participants.

(2) FNS shall review and evaluate applications submitted by State agencies for administrative funds. FNS shall fund, at the approved level, on-going programs first. All other programs will be funded, in the order applications are received and approved by FNS to the extent it is anticipated that each can be fully funded (up to 75 percent or higher level, where compelling justification has been approved).

(d) *Program costs.* (1) Costs which are allowable are those necessary and proper for administration of the Food Distribution Program on Indian Reservations, in accordance with OMB Circular A–87 and Departmental regulations 7 CFR Part 3015. OMB

Circular No. A–87 and 7 CFR Part 3015 shall be used to determine specific allowable costs, except that the following costs are allowable only with FNS approval:

(i) Automated data processing;
(ii) Building space and related facilities;
(iii) Capital expenditures; and
(iv) Insurance.

(2) Unallowable costs. The following costs are unallowable:
(i) Bad debts;
(ii) Contingencies;
(iii) Contributions and donations;
(iv) Entertainment;
(v) Fines and penalties;
(vi) Governor's expenses;
(vii) Interest and other financial costs;
(viii) Legislative expenses; and
(ix) Underrecovery of costs under grant agreements, except that for a federally recognized Indian tribe, the portion of salaries and expenses of a chief executive directly attributable to managing or operating the food distribution Program on Indian Reservations is allowable.

(3) Capital equipment and building renovation. State agencies shall use the procurement and disposition procedures, as described in OMB Circulars A–87 and A–102 and 7 CFR Part 3015, for the purchase, rental or barter of supplies, equipment and services (including construction) to be used for the Food Distribution Program on Indian Reservations; and the disposition of such supplies, equipment and services which are no longer used for purposes of this program.

(e) *Method of payment to State agencies.* (1) FNS shall determine according to Treasury Circular No. 1075 the method of payment to State agencies, whether through a Letter of Credit system or an advance by Treasury Check.

(2) The Letter of Credit funding method shall be done in conjunction with Treasury Department procedures, Treasury Circular No. 1075 and through an appropriate Treasury Disbursing Office. The appropriate form shall be correctly prepared and certified by a duly appointed official of the State for requesting payment from the Treasury Disbursing Office.

(3) State agencies shall request Treasury check advances through the use of the Standard Form 270, "Request for Advance or Reimbursement", and procedures associated with its use. State agencies receiving payments under this method shall request payments before cash outlays are made.

(4) Any State agency receiving payment under the Letter of Credit method or by the Treasury Check method shall have in place and in operation, a financial management system which meets the standards for fund control and accountability in paragraph (f) of this section.

(f) *Standards for financial management-system.* State agencies shall maintain financial management systems which provide for:

(1) Accurate, current and complete disclosure of financial results of program activities in accordance with Federal reporting requirements:

(2) Records which identify the source and application of funds for FNS or State agency activities supporting the administration of the program. These records shall show authorization, obligation, unobligated balances, assets, liabilities, outlays and income of the State agency and its agents;

(3) Accounting controls must be in effect to prevent the State agency from claiming unallowable costs;

(4) Effective control and accountability by the State agency for all program funds, property and other assets. The State agency shall adequately safeguard all such assets and shall assure they are used solely for authorized program purposes unless the property is disposed of properly;

(5) Controls which minimize the time between the receipt of Federal funds and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns as closely as possible to the time disbursements are made;

(6) Procedures to determine the reasonableness and allowability of costs in accordance with the requirements of OMB Circular No. A–87 and this part.

(g) *Return, reduction, and reallocation of funds.* (1) FNS may require State agencies to return prior to the end of the fiscal year, any or all unobligated funds received under this section, and may reduce the amount it has apportioned or argeed to pay to any State agency if FNS determines that:

(i) The State agency is not administering the Food Distribution Program on Indian Reservations in accordance with these regulations or the State agency's plan of operation approved by FNS and the provisions of this part;

(ii) The amount of funds which the State agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of program needs; or

(iii) The approved facilities, equipment, other capital assets, or repairs are:

(A) No longer available for Food Distribution Program on Indian Reservations use; or

(B) Used for purposes not authorized by FNS.

In each case, FNS' equity in the asset shall be refunded.

(iv) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purpose of this part.

(2) The State agency shall return to FNS within 90 days following the close of each Federal fiscal year, any funds received under this section which are unobligated at that time.

(h) *Audits costs.* The cost of organization-wide audits, allowed under OMB Circular No. A–87, shall be equally divided among the activities being audited. State agencies shall recover the cost of conducting the audit through the indirect cost method of recovery.

Note to § 253.16: The OMB and Treasury Department circulars referenced in this part are available at the Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. (The information collection requirements contained in paragraph (e), (f) and (h) were approved by the Office of Management and Budget under control number 0584–0071)

§ 253.17 Commodity control, storage and distribution.

(a) *Control and accountability.* The State agency shall be responsible for the issuance of commodities to households and the control of and accountability for the commodities upon its acceptance of the commodities at time and place of delivery.

(b) *Commodity inventories.* The State agency shall, in cooperation with the FNS Regional Office, develop an appropriate procedure for determining and monitoring the level of commodity inventories at central commodity storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper level, taking into consideration, among other factors, households preferences and the historical and projected volume of distribution at each site. The procedures shall provide that commodity inventories at each central storage facility and each local distribution point are not in excess, but are adequate for, an uninterrupted distribution of commodities.

(c) *Storage facilities and practices.* The State agency shall as a minimum ensure that:

(1) Adequate and appropriate storage facilities are maintained. The facilities shall be clean and neat and safeguarded against theft, damage, insects, rodents and other pests;

(2) Department recommended securing cases, stacking and ventilation methods are followed;

(3) Commodities are stocked in a manner which facilitates an accurate inventory;

(4) Commodities held in storage for over six months are reinspected prior to issuance;

(5) Out-of-condition commodities are disposed of in accordance with methods approved by the Department, as specified in paragraph (f) of this section;

(6) An adequate supply of commodities which are available from the Department is on hand at all distribution sites;

(7) Days and hours of distribution are sufficient for caseload size and convenience;

(8) Complete and current records are kept of all commodities received, issued, transferred, and on hand. Such records must also reflect any inventory overages, shortages and losses;

(9) A list of commodities offered by the Department is displayed at distribution sites so that households may indicate preferences for future orders.

(d) *Distribution.* (1) The State agency shall distribute commodities only to households eligible to receive them under this part. If the State agency uses any other agency, administration, bureau, service or similar organization, to effect or assist in the certification of households or distribution of commodities, the State agency shall impose upon such organization responsibility for determining that households to whom commodities are distributed are eligible under this part. The State agency shall not delegate to any such organization its responsibilities to the Department for overall management and control of the Food Distribution Program on Indian Reservations.

(2) The State agency shall assure that:

(i) Commodities are issued on a first-in, first-out basis;

(ii) Notification is provided to certified households of the location of distribution sites and days and hours of distribution;

(iii) Households are advised that they may refuse any commodity not desired, even if the commodities are prepackaged by household size;

(iv) Emergency issuance of commodities will be made to households certified for expedited service in accordance with § 253.12(a)(8) of this part;

(v) Eligible households or authorized representatives are identified prior to the issuance of commodities;

(vi) Authorized signatures are obtained for commodities issued and the issue date recorded;

(vii) The value of the commodities provided to any eligible household shall not be considered income or resources for any purpose. Furthermore, no State agency shall decrease any assistance otherwise provided to a household because of the receipt of commodities;

(viii) The distribution of commodities shall not be used as a means of furthering the political interest of any individual or party. This prohibition includes printed information on bags, boxes or other containers in which commodities are distributed. Materials which may not be distributed include, but are not limited to materials about State or tribal referenda or constitutional amendments, political candidates, political or social causes, or religious doctrines. Materials which may be distributed include recipes, information about commodities, distribution schedules or other programs or services for the needy and similar information.

(ix) Households shall not be required to make any payments in money, materials or service for, or in connection with, the receipt of commodities; and they shall not be solicited in connection with the receipt of commodities for voluntary cash contributions for any purpose.

(e) *Improper distribution or loss of or damage to commodities.* State agencies shall take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss, or damage of commodities in accordance with the State agency's agreement with the Department under § 250.6(b) of Part 250 of this chapter and the requirements of § 250.6(m) of this same chapter, except as specifically modified in § 253.13 "overissuance claims".

(f) *Damaged or out-of-condition commodities.* The State agency shall immediately notify the appropriate FNS Regional Office if any commodities are found to be damaged or out-of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. FNS Regional Offices shall advise the State agency of appropriate action to be taken with regard to such commodities. If the commodities are declared unfit for human consumption in accordance with § 250.7 of Part 250 of this chapter, they shall be disposed of as provided for under that section.

When out-of-condition commodities do not create a hazard to other food at the same location, they shall not be disposed of until the FNS Regional Office or the responsible commodity contractor approves. When circumstances require prior disposal of a commodity, the quantity and manner of disposal shall be reported to the appropriate FNS Regional Office. If any damaged or out-of-condition commodities are inadvertently issued to a household and are rejected or returned by the household because the commodities were unsound at the time of issuance and not because the household failed to provide proper storage, care of handling, the State agency shall replace the damaged or out-of-condition commodities with the same or similar kind of commodities which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

(The information collection requirements contained in paragraph (a) and (f) were approved by the Office of Management and Budget under control number 0584–0071)

§ 253.18 Sanctions and liabilities.

(a) *Sanctions.* (1) If the State agency fails to comply with the provisions of this part or with its plan of operation, FNS may:

(i) Take action in accordance with § 253.16(g) of this part with respect to administrative funds available from FNS for use by the State agency; or

(ii) Withhold future shipments of USDA commodities from the State agency; or

(iii) Disqualify the State agency from further distribution of commodities to households. Disqualification of the State agency shall not prevent FNS or the Department from taking other actions, including prosecution under applicable Federal statutes, when deemed necessary. Reinstatement shall be contingent upon approval by FNS of the State agency's plan for corrective action or determination by FNS that the State agency has complied with any other requirements for reinstatement which FNS may set forth.

(2) These provisions apply to all State agencies, regardless of whether the program is administered by an agency of the State government or an ITO. If the ITO is disqualified as a State agency, an appropriate agency of State government, or if agreed to in writing, another ITO determined capable, shall administer the Food Distribution Program on Indian Reservations. If an agency of State government is disqualified as the State agency for the Food Distribution Program on Indian Reservations, the ITO may request in writing a capability determination for program administration.

(b) *Appeals.* (1) The agency of the State government or an ITO may appeal an initial determination by FNS on:

(i) Whether or not the definition of reservation is met;

(ii) The capability of an ITO to administer the Food Distribution Program on Indian Reservations;

(iii) Sanctions taken under paragraph (a) of this section or § 253.16(g); or

(iv) The administrative funding provided by FNS.

(2) At the time FNS advises the State agency or ITO of its determination, FNS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FNS shall advise the State agency or ITO that it may indicate if it wishes a meeting. However, FNS need schedule a meeting only if FNS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FNS shall review supportive information submitted by the State agency or ITO in paragraph (b)(3)(iii) of this section.

(3) *Procedure*—(i) *Time limit.* Any State agency or ITO that wishes to appeal an initial FNS determination under paragraph (b)(1) of this section, must notify the Administrator of FNS in writing, within 15 days from the date of receipt of the determination. If the appeal concerns either paragraphs (b)(1)(i) or (ii) of this section, the implementation timeframes as specified in § 253.4(h) of this part are suspended from the date the appeal is requested to the date of the final determination.

(ii) *Acknowledgment.* Within five days of receipt by the Administrator, FNS, or a request for review, FNS shall provide the State agency or ITO with a written acknowledgment of the request by certified mail, return receipt requested. The acknowledgment shall include the name and address of the official designed by the Administrator, FNS, to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten days of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(4) *Scheduling a meeting.* If the Administrator, FNS, grants a meeting, FNS shall advise the State agency or ITO of the time, date and location of the meeting by certified mail, return receipt requested, at least ten days in advance of the meeting. FNS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (b)(3)(ii) of this section.

(5) *Review.* If no meeting is conducted, the official designated by the Administrator, FNS, shall review the information presented by a State agency or an ITO which requests a review and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph (b)(3)(ii) of this section, setting forth in full the reasons for the determination.

(6) *Final decision.* The official's decision after a meeting or a review shall be final.

(c) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity-related funds, assets, or property.* Whoever embezzles, willfully misapplies, steals or obtains by fraud, commodities donated for use in the Food Distribution Program on Indian Reservations, or any funds, assets, or property deriving from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodity, funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to Federal criminal prosecution under section 4 of the Agriculture and Consumer Protection Act of 1973, as amended. State agencies shall immediately notify FNS of any suspected violation to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 4 of the Agriculture and Consumer Protection Act of 1983, as amended, is warranted. Prosecution violations under section 4 by the Federal Government shall not relieve any State agency of its obligations to obtain recovery for improperly distributed or lost commodities as required by § 253.18 of this part. Individuals convicted of any of the above crimes in relation to the Food Distribution Program on Indian Reservations shall be disqualified from participation in the Food Distribution Program on Indian Reservation in accordance with § 253.15. Unless the court determines a different time period. Unless otherwise ordered by a court of appropriate jurisdiction, the eligibility and food distribution benefits of the remaining household members are not affected during the period of disqualification. The resources of the disqualified member shall continue to fully count to the remaining household members. However, a prorata share of the income of the disqualified member shall be counted as income to the remaining household members.

Date: October 9, 1987.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 87-24006 Filed 10-19-87; 8:45 am]

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Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 785

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Requirements for Permits for Special Categories of Mining; Mountaintop Removal Mining; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 785

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Requirements for Permits for Special Categories of Mining; Mountaintop Removal Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations in 30 CFR 785.14 applicable to mountaintop removal mining. This action is taken in compliance with the District Court for the District of Columbia's July 15, 1985, ruling in *In re: Permanent Surface Mining Regulation Litigation II* No. 79–1144 (D.D.C. 1985). The revised regulation corrects an inadvertent error made during previous rulemaking which omitted certain statutorily required provisions concerning mountaintop removal mining. The omitted provisions included a requirement that the applicant present specific plans for the proposed postmining land use and assurances that such use will meet certain conditions for a variance prior to a regulatory authority's granting of a permit to mine.

EFFECTIVE DATE: November 19, 1987.

FOR FURTHER INFORMATION CONTACT: H. Leonard Richeson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240, telephone (202) 343–5150.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments Received and Rule Adopted
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act) 30 U.S.C. 1201 *et seq.* sets forth the statutory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSMRE has by regulations at 30 CFR Chapter VII implemented or clarified many of these requirements and established corresponding performance standards.

Section 515(c) of the Act permits an exception to the approximate original contour restoration requirement of section 515(b)(3) for mountaintop removal operations which, after reclamation, would be capable of supporting specific postmining land uses. In such operations, instead of restoring the approximate original contour, the operator is permitted to remove all of the overburden and to create a level plateau or a gently rolling contour with no highwall remaining. The regulatory authority may grant a permit of this type if a number of specific conditions are satisfied. Section 515(c)(3)(B) requires the applicant to present specific plans and assurances that the postmining land use will meet these conditions prior to the granting of a permit.

In 1979, OSMRE promulgated regulations implementing section 515(c)(3)(B) at 30 CFR 785.14(c)(l)(iii). That section required any person who intended to conduct mountaintop removal mining to demonstrate in the permit application compliance with the conditions by cross-referencing the requirements for alternative postmining land use in 30 CFR 816.133.

On September 1, 1983 (48 FR 39892) OSMRE promulgated final rules amending portions of its permanent regulatory program concerning postmining land uses and variances from approximate original contour. The rules amended include 30 CFR 785.14 and 816.133.

When OSMRE amended these sections, it inadvertently omitted the following requirements of section 515(c)(3)(B) of the Act, which an applicant must satisfy to qualify for a variance:

(B) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

(i) Compatible with adjacent land uses;

(ii) Obtainable according to data regarding expected need and market;

(iii) Assured of investment in necessary public facilities;

(iv) Supported by commitments from public agencies where appropriate;

(v) Practicable with respect to private financial capability for completion of the proposed use;

(vi) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site * * *.

The omission of these requirements was challenged in *In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1985). As a result, the Secretary reviewed the rule and determined it was necessary to amend it to correct this inadvertent error, and so informed the court. *In re: Permanent Surface Mining Regulation Litigation II* (Round III, Secretary's brief at page 142, No. 90 (Dec. 17, 1984)). The court noted the Secretary's decision not to oppose the challenge and his determination to reinstate these provisions through a new rulemaking (July 15, 1985 Memorandum Opinion at p. 132).

OSMRE published a proposed rule on March 25, 1987 (52 FR 9640). The proposed rule was open to public comment until June 3, 1987. The final rule, except for minor editorial changes, is the same as the proposed rule. Three comments were received from environmental groups. One actually made comments and the other two wrote a joint letter endorsing the comment made by the one commenter. These comments are addressed below.

III. Discussion of Comments Received and Rules Adopted

A. Amendment to Permit Requirements for Mountaintop Removal Mining

This final rule amends 30 CFR 785.14 concerning permit requirements for mountaintop removal mining by adding a new paragraph (c)(1)(iii). The new paragraph implements the provisions of section 515(c)(3)(B) of the Act.

The added provisions require an applicant to present specific plans for the proposed postmining land use and to make appropriate assurances concerning this use to the regulatory authority.

Existing paragraphs (c)(1)(iii) and (c)(1)(iv) are redesignated as paragraphs (c)(1)(iv) and (c)(1)(v) respectively. The newly redesignated paragraph (c)(1)(iv), which implements section 515 (c)(3)(c) of the Act, is revised to change the existing term "compatible" to "consistent" to conform with the exact language of section 515 (c)(3)(C). This provision requires the regulatory authority to find that the proposed land use is consistent with adjacent land use plans and programs. No substantive change is intended.

The new rule ensures full implementation of the statutory provisions of section 515 (c)(3)(B) and (C) as they pertain to mountaintop removal mining.

Three commenters objected to OSMRE's proposed insertion of the word "made" to the introductory phrase of 30 CFR 785.14 (c)(1)(iii) which stated that "the applicant has presented specific plans for the proposed

postmining land use and *made* appropriate assurances that such use will be * * *." They pointed out that the Act provides that the applicant "present specific plans for the proposed postmining land use and appropriate assurances that such use will be consistent with statutory requirements". In response to the commenters, OSMRE has deleted the word "made" in the final rule so that final 30 CFR 785.14(c)(1)(iii) of the final rule tracks the statutory language.

B. Effect in Federal Program States and on Indian Lands

The rules apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. There were no comments as to whether unique conditions exist in any of these states relating to this rule. This rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned approval number 1029–0040. The information is needed to meet the requirements of section 515(c)(3) of Pub. L. 95–87, and will be used by regulatory authorities when issuing permits for mountaintop removal operations.

Executive Order 12291

The Department of the Interior has examined the final rule according to the criteria of Executive order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the final rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of the final rule. Based on this EA, OSMRE has made a finding that this rule will not have any significant adverse affect on the quality of the human environment. This EA is on file in the OSMRE Administrative Record at the address listed in the "Addresses" section of the preamble.

List of Subjects in 30 CFR Part 785

Coal mining, Reporting requirements, Surface mining.

For the reasons set out in this preamble, Title 30, Chapter VII, Subchapter G of the Code of Federal Regulations, is amended as set forth below.

Date: September 2, 1987.

James E. Cason,

Acting Assistant Secretary for Land and Mineral Management.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. The authority citation for Part 985 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*). and Pub. L. 100–34 unless otherwise noted.

2. Section 785.14 is amended by redesignating paragraphs (c)(1)(iii) and (c)(1)(iv) as paragraphs (c)(1)(iv) and (c)(1)(v), respectively.

3. Section 785.14 is amended by adding a new paragraph (c)(1)(iii) and revising paragraphs (c)(1)(iv) to read as follows:

§ 785.14 Mountaintop removal mining.

* * * * *

(c) * * *

(1) * * *

(iii) The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be—

(A) Compatible with adjacent land uses;

(B) Obtainable according to data regarding expected need and market;

(C) Assured of investment in necessary public facilities;

(D) Supported by commitments from public agencies where appropriate;

(E) Practicable with respect to private financial capability for completion of the proposed use;

(F) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(G) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuation necessary for the intended use of the site.

(iv) The proposed use would be consistent with adjacent land use and existing State and local land use plans and programs;

* * * * *

[FR Doc. 87–24221 Filed 10–19–87; 8:45 am]

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Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 762

Surface Coal Mining and Reclamation Operations; Unsuitability Criteria; Substantial Legal and Financial Commitments; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 762

Surface Coal Mining and Reclamation Operations; Unsuitability Criteria; Substantial Legal and Financial Commitments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Surface Mining Control and Reclamation Act of 1977 (the Act) provides that the regulatory authority shall establish a planning process to enable it to make an objective decision as to which, if any, lands are unsuitable for all or certain types of surface coal mining operations. That process does not apply to lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977. The proposed rule would revise the definition of "substantial legal and financial commitments in a surface coal mining operation" (SLFC) at 30 CFR 762.5 to clarify that an existing mine is not necessary for SLFC.

DATES:

Written comments: OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern time on December 29, 1987.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC at 9:30 a.m. local time on December 22, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5 p.m. Eastern time on November 19, 1987. Individuals wishing to attend, but not testify at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St. NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5145 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, date and address scheduled for the hearing in Washington, DC are previously specified in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates and addresses for the hearings in other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Kress (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time November 19, 1987. If no one has contacted Mr. Kress to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background and Discussion of Proposed Rule

The Act provides that each State regulatory authority must establish a "planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations * * *." (unsuitability process). 30 U.S.C. 1272(a)(1). The same requirements apply in a State with a Federal program where the Office of Surface Mining Reclamation and Enforcement (OSMRE) is the regulatory authority, and also to Federal land. 30 U.S.C. 1272(b). The unsuitability process may be used to prohibit or limit surface coal mining operations which (1) would be incompatible with existing State or local land use plans or programs; or (2) would affect fragile or historic lands and could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or (3) affect renewable resource lands and could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, which lands include aquifers and aquifer recharge areas; or (4) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology. 30 U.S.C. 1272(a)(3)(A)–(D). It is also mandatory to designate an area as unsuitable for all or certain types of surface coal mining operations if the State regulatory authority determines that reclamation pursuant to the requirements of the Act is not technologically and economically feasible. 30 U.S.C. 1272(a)(2).

However, the Act provides that the unsuitability process does not apply (1) to lands on which surface coal mining operations were conducted on the date of its enactment; (2) under a permit issued pursuant to the Act; or (3) where

SLFC were in existence prior to January 4, 1977. 30 U.S.C. 1272(a)(6). OSMRE first defined SLFC in its regulations on March 13, 1979. 44 FR 15344. The 1979 definition provided in part that "(A)n example (of SLFC) would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring coal in place or the right to mine it without an existing mine, * * * alone are not sufficient to constitute substantial legal and financial commitments." *Id.* OSMRE retained the 1979 definition in its 1983 revision of Part 762. 48 FR 41351, September 14, 1983.

The coal industry challenged the 1983 revisions, asserting, among other arguments, that the regulation ignored significant legislative history. *In re: Permanent Surface Mining Regulation Litigation II,* Civil Action No. 79–1144 (D.D.C., July 15, 1985) (hereafter *In re II*). It claimed that the language in the House of Representatives committee report, on which the Secretary relied for his definition, did not mandate the definition chosen, but was merely intended to be illustrative, and therefore should not have set the outer bounds of the definition. The committee report declared:

> The phrase "substantial legal and financial commitments" in the designation section and other provisions of the act is intended to apply to situations where, on the basis of a long-term coal contract, investments have been made in power plants, railroads, coal handling and storage facilities and other capital-intensive activities. The Committee does not intend that mere ownership or acquisition costs of the coal itself or the right to mine it should constitute "substantial legal and financial commitments." H.R. Rep. No. 218, 95th Cong., 1st Sess. 95 (1977).

The court upheld the regulation, but not entirely. At oral argument, counsel for the government explained that the use of the term, "an existing mine," in the rule language is simply an example of where SLFC will be found. The court concluded that the language of the rule suggested otherwise. Therefore it remanded the rule to the Secretary for the narrow purpose of clarifying his position that an existing mine is not necessary for SLFC. *In re II* at 55. Pursuant to the court's remand, OSMRE is undertaking this rulemaking effort.

The proposed rule would clarify that an existing mine is not necessary to meet the definition of SLFC. It would remove the following language from the present definition which could be interpreted to suggest that an existing mine is necessary to meet the requirements for a finding of SLFC. The present definition gives the following example of SLFC:

> * * * an existing mine, not actually producing coal, but in a substantial stage of development prior to production.

For the same reasons, the proposed rule would also delete the reference to "an existing mine" and the example to which it refers, in the next sentence of the rule which presently reads as follows:

> Costs of acquiring the coal in place or the right to mine it *without an existing mine, as described in the above example,* alone are not sufficient to constitute substantial legal and financial commitments. (Emphasis added.)

The proposed rule still retains ample flexibility in its definition of SLFC through the usage of the phrase "other capital-intensive activities."

III. Procedural Matters

Effect in Federal Program States

The proposed rule applies through cross-referencing in those States with Federal programs. The States with Federal programs are Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected as changes to the national rules or as specific amendments to any or all of the Federal programs.

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions proposed by the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal authors of this rule are James Kress and Hugo Fleischman, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5145 (Commercial of FTS).

List of Subjects in 30 CFR Part 762

Historic preservation, Wildlife refuges, Surface mining, Underground mining.

Accordingly it is proposed to amend 30 CFR Part 762 as follows:

Dated: September 2, 1987.

James E. Cason,

Acting Assistant Secretary for Land and Minerals Management.

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

1. The authority citation for Part 762 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

2. Section 762.5 is amended by revising the following definition to read as follows:

§ 762.5 Definitions.

* * * * *

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments.

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Part VII

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Federal Aviation Administration

14 CFR Parts 21, 25, and 121

Location of Passenger Emergency Exits in Transport Category Airplanes; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, and 121

[Docket No. 25419; Notice No. 87-10]

Location of Passenger Emergency Exits in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to limit increases in passenger emergency escape path distance by establishing a new standard limiting the distance any passenger seat may be from the nearest emergency exit and the distance any exit may be from an adjacent exit. The proposal would make the standard applicable to type certification of new transport category airplane models, regardless of the date of original application for type certificate, and to airplanes operating under Part 121, except those already in operation. The standard would be applicable for issuance of standard airworthiness certificates for airplanes manufactured after (the date of this notice). The proposal is a result of the recent public Emergency Evacuation Task Force and is intended to improve the likelihood of passengers safely escaping an airplane during an emergency evacuation.

DATE: Comments must be received on or before December 21, 1987.

ADRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25419, 800 Independence Avenue SW., Washington, DC 20591, or delivered in duplicate to FAA Rules Docket, Room 915-G, 800 Independence Avenue, SW., Washington 20591. Comments delivered must be marked: Docket No. 25419. Comments may be examined in Room 915-G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Arthur Hayes, Technical Analysis Branch (AWS-120), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Indenpendence Avenue SW., Wasington, DC 20591; Telephone (202) 267-9937.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing this FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25419." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

This proposal concerns passenger emergency escape path distance within the airplane cabin. This is the distance the passenger must traverse to reach an exit during an emergency evacuation. Escape path distance can have a major effect on the outcome of the evacation. Escape path distance is determined by the distance along the aisle between the passenger seat and the nearest passenger emergency exit and the distance between one emergency exit and the adjacent emergency exit. This proposal is one of several actions being taken by the FAA as a result of the Emergency Evacuation Task Force Program to improve aircraft emergency evacuation.

Emergency Evacuation Task Force

The Emergency Evacuation Task Force was formed in September 1985 by the FAA in response to concerns expressed by the public over passenger safety in the event of an aircraft emergency evacuation. Its primary objective was the review of safety issues raised by the public and the reassessment of existing regulations and practices pertaining to emergency evacuation of air carrier transport airplanes. A major issue of concern of the task force was passenger emergency escape path distance. The task force consisted of members of the interested public and was chaired by the FAA. The notice announcing the initial conference and inviting public participation was published in the **Federal Register** on August 8, 1985. The task force program included the meetings of three specialized working groups to study Design and Certification, Training and Operations, and Maintenance and Reliability. The task force received strong public support and participation of world experts in aircraft design, manufacture, operations, maintenance, and passenger safety.

The task force reviewed recent design and operational experience of the new generation narrow and wide body transports. It examined the full range of emergency evacuation topics including emergency exits, cabin configuration, emergency evacuation demonstrations, evacuation slides, crewmember duties and training, and passenger safety information. Public support and FAA's commitment to subsequent action have made the task force an important step forward in passenger safety.

The task force program is the subject of a two-volume report entitled Task Force Report on Emergency Evacuation of Transport Airplanes, dated July 1986. Volume I, Summary Report, Report No. DOT/FAA/VS-86/1, I, and Volume II, Supporting Documentation, Report No. DOT/FAA/VS-86/1, II, are available from the National Technical Information Service, Springfield, Virginia 22161. Copies of public submittals and correspondence are maintained in a file open to the public. The file can be reviewed in Room 915-G at the FAA Headquarters, 800 Independence Avenue, SW., Washington, DC 20591.

Justification for the Proposal

This proposal addresses passenger emergency escape path distance, as

determined by seat-to-exit and exit-to-exit distances measured longitudinally. Airworthiness regulations have taken passenger escape path distance into account for some time. Current § 25.807(c) requires that exits be distributed as uniformly as practicable taking in account passenger distribution. This requirement was established in 1967 by Amendment 25–15 to address escape path distance as a factor affecting passenger cabin evacuation. Notice 66–26, on which the amendment was based, cited as a reason for the requirement, the direct relationship between a passenger's proximity to an exit and that passenger's chances for escape. The amendment did not establish a limit on seat-to-exit or exit-to-exit distance because in airplanes envisaged at that time it was assumed that a uniform distribution of exits, as required by § 25.807(c), would result in reasonable passenger seat-to-exit and exit-to-exit distances. Recent certification experience has not borne out that assumption. Of the new wide body transports being designed when Amendment 25–15 was adopted, the Boeing Model 747 had a maximum distance between exits of 44 feet, the McDonnell Douglas Model DC–10, 47 feet, and the Lockheed Model L–1011, 50 feet. Basic narrow body transport models typically had shorter distances. Much larger distances were not considered in establishing that regulation.

Recent exit configurations have shown a trend toward exit distances considerably greater than those envisaged when the exit distribution requirement in § 25.807(c) was written. In one model, exit-to-exit distance, originally about 50 feet in the basic model, increased to nearly 70 feet in a later derivative model. In another model, this distance increased from 44 feet to 70 feet in a derivative configuration. A recent certification request proposed a derivative configuration with a distance substantially greater than 80 feet. These recent cases of exit configuration design indicate that the exit distribution requirement of § 25.807(c) has become ineffective in preventing excessive escape path distances and that limits on the distance must be established for reasons of safety.

Passenger escape path distance was a major issue considered by the Design and Certification Working Group of the task force and is the subject of recent public correspondence received by the FAA. Parties opposed to setting limits on escape path distance contend the distance has no effect on the time required for a passenger to leave the airplane in an emergency evacuation. They contend emergency evacuation demonstrations conducted under § 25.803 for aircraft type certification have shown that passengers waiting to leave the airplane queue up at exits and that evacuee flow rates through the exits determine the speed of cabin evacuation. They contend that in this situation the time required for a passenger to leave the airplane is determined by the number of preceding passengers in the exit queue, not the passenger's initial distance from the exit.

With an opposing viewpoint, others contend that in an actual emergency evacuation, as contrasted with an evacuation demonstration, exit distance can be crtitical to the evacuation process. They point out that in an actual emergency, the airplane may be structurally damaged and the cabin floor may not be level. The aisle may be obstructed with debris and carry-on articles, and the cabin may be filled with smoke. Passengers may be confused or panicked and some may be physicially impaired. In a cabin with few passengers, there would be no queues, as there are in an evacuation demonstration, and exit flow rate would not determine the speed of cabin evacuation. They contend that under such actual emergency conditions, the distance a passenger must traverse to reach an exit could determine that passenger's survival and that distance becomes increased and even more critical if the nearest pair of exits has been rendered unusable as a result of the emergency landing.

The FAA agrees that escape path distance can be a critical factor in actual emergency evacuations and believes that regulations should be proposed which address, to the greatest extent practicable, actual emergency conditions. The evacuation demonstration required by § 25.803, cited as adequate by parties opposed to new limits on emergency exit layout, does not establish a maximum escape path distance or demonstrate that escape path distance is not a major factor in actual emergencies. That demonstration is conducted to provide a benchmark against which the FAA can consistently evaluate emergency exit performance of various internal seating and emergency exit configurations. It does not simulate a real evacuation, nor could it reasonably do so. It is inappropriate to contend that successful compliance with requirements of § 25.803 or any other certification test conclusively and irrevocably demonstrates that an aircraft is safe. Tests are designed in advance of the aircraft, by definition. From time to time, an aircraft design may evolve which technically meets the letter, but not the spirit of a regulation. In such cases, the question arises whether a regulation may have become outdated and need modification to account for such evolution in design, in order to maintain the high level of safety demanded by the public. Such is the case in this rule proposal.

When the evacuation demonstration required by § 25.803 is conducted, the cabin is filled to maximum passenger capacity, and the airplane is in a level attitude with all gears extended. One exit in each pair of exits is used, with the other exit rendered inoperable to simulate actual blockage which might occur in an accident. This demonstration is required by regulations to determine maximum passenger capacity and emergency exit configuration for a transport category design. It does not represent the more severe conditions of cabin smoke, cabin floor incline, and passenger confusion and potential impaired mobility in panic, which singly or in combination can make escape path distance critical in actual emergency evacuations. The Design and Certification Working Group gave major consideration to the adequacy of the emergency conditions simulated in the evacuation demonstration. Although the group provided information which will enable the FAA to propose means to upgrade the demonstration criteria, the group concluded that actual simulation of the more severe emergency conditions in the evacuation demonstration is impractical. The FAA believes exposure to evacuation hazards posed by the more severe conditions prevalent in actual emergency situations must be reduced, in part, by limiting escape path distance.

Excessive escape path distance can be a major impediment to evacuation in a number of situations which service experience has shown might occur during an actual emergency. The typical passenger cabin with a single aisle feeds evacuees to pairs of exits, one exit on each side of the cabin (or dual aisles to dual lane exits in typical wide body cabins). In an actual emergency evacuation, exits at one end of the cabin might be made unusable by fire, smoke, structural damage, water submersion, landing gear collapse, or other causes, leaving one or more pairs of usable exits in the remainder of the cabin. This is commonly the case in a "pool fire" accident, where escape time differences of only a few seconds can be critical. In

this situation, the aisle cannot feed evacuees to a pair of typical floor level exits fast enough to utilize the full evacuation capability of the exit pair. The flow rate of the aisle is less than that of the exit pair, making the aisle itself the critical impediment which determines the time required for passengers to escape the airplane. (Similarly, dual aisles inadequately feed pairs of exits equipped with dual-lane evacuation slides.)

In the situation where one exit in a pair of exits is unusable, as in an evacuation demonstration, the aisle is not the critical impediment to evacuation. In this case the aisle can feed more evacuees to the remaining single exit than that exit can handle. This results in passenger queues at exits. The limited flow rate of the single exit is the impediment which determines evacuation time. This is the situation which some parties contend demonstrates that aisle length has no effect on evacuation time. The FAA does not agree with this contention because it applies primarily to those types of situations represented in the emergency evacuation demonstrations.

The FAA is increasingly concerned that while the existing emergency evacuation regulations are intended to require the aircraft's type design to include demonstratably acceptable minimum evacuability characteristics, they may overlook actual cabin evacuation factors which may have a direct effect upon the likely success of an actual emergency evacuation. Actual accidents have shown that small differences in evacuation time, which would arise if exit distances were allowed to increase without constraint, can be life threatening.

Based upon tests conducted in the emergency evacuation simulator at the FAA Civil Aeromedical Institute (CAMI) the FAA believes that excessive passenger aisle length is a major impediment to evacuation when the cabin floor becomes inclined due to landing gear collapse or other circumstances which are known to occur in an actual emergency. The simulator is a passenger cabin mock-up which can be tilted to simulate aircraft attitudes typical in emergency conditions. The CAMI tests demonstrate the difficulty passengers have in traversing an aisle located between passenger seats, in a cabin inclined because of landing gear collapse. The typical passenger has great difficultly negotiating an inclined aisle without the coordinated and forceful use of hands for support against seat backs to maintain balance. Without hand support, the passenger tends to lose balance and fall sideward into the seating area. Movement along an inclined aisle becomes more difficult when visibility is poor because of smoke, evacuees are partially incapacitated, obstructions are in the aisle, or there are no handholds because seat backs are in the breakdown position because of crash landing impact. These conditions not only impede the orderly flow of evacuees along the aisle, but also substantially increase the probability that evacuees might stumble and fall, blocking the aisle and stopping the flow of evacuees altogether. The CAMI tests are reported in Report No. FAA–AM–78–3, Passenger Flow Rates Between Compartments: Straight-Segmented Stairways, Spiral Stairways, and Passageways with Restricted Vision and Changes in Attitude, dated January 1978. The report is available through the National Technical Information Service, Springfield, Virginia 22161.

From the foregoing discussions the FAA concludes that passenger emergency escape path distances are factors in an emergency evacuation which may not be adequately addressed in current regulations. The FAA believes that this proposal may be necessary to prevent excessive escape path distances in future airplanes and the increased hazard exposures they pose for emergency evacuation of an airplane cabin.

Discussion of Proposal

This proposal would amend Part 21, Certification Procedures for Products and Parts, by adding a requirement to § 21.183 that for issuance of a standard airworthiness certificate for a transport category airplane manufactured after (the date of this notice), the airplane must be shown to meet the new exit distance requirements proposed for § 25.807(c). Under proposed § 121.310(m), airplanes manufactured after (the date of this notice) and operated by U.S. air carriers would be required to meet the proposed exit distance requirements.

The proposal would amend Part 25, Airworthiness Standards: Transport Category Airplanes, by adding a requirement in § 25.807(c) that each passenger seat be not more than 30 feet from the nearest exit (seat-to-exit distance) and that each exit not be more than 60 feet from an adjacent exit (exit-to-exit distance). Distances are measured from the exit edges and the front floor attach points of seats.

These proposed distances are nominal design limits for evacuation conditions in general, which would provide a margin of about 20 percent above those exit distances envisaged in the exit distribution requirement of current § 25.807(c), based on designs completed or in process at the time of its adoption. The FAA considers that this margin would provide appropriate flexibility for continued design development. Certification experience has shown that the proposed requirements would permit a wide range of economic cabin configurations. Accident experience has shown that small differences in evacuation time can be critical to survival. This proposal would prevent an expansion of seat-to-exit distance beyond a reasonable limit which has been shown to be satisfactory by service experience. The use of nominal design limits has been shown through experience to be an effective and practical means of defining a required level of safety in airworthiness regulations. Comments are specifically sought on whether or not, as an alternative to the proposed limits, an effective and practical performance standard would be developed to accomplish the intent of the proposal.

The proposed limits address an aspect of emergency evacuation conditions which are not adequately accounted for in the evacuation demonstration under § 25.803 or in other regulations. The FAA believes that the proposed limits on escape path distance are reasonable and justified from a safety standpoint, as indicated below.

To confirm the appropriateness of these limits, the FAA has analyzed the evacuation of an area of a typical high seating density cabin served by an aisle the length of the proposed 30-foot seat-to-exit distance. Such an area would seat in the neighborhood of 60 passengers per aisle, or 60 passengers in a single-aisle narrow body cabin and 120 passengers in a dual-aisle wide body cabin. The CAMI tests mentioned earlier indicate that a reduction in aisle flow by about one-third could be reasonably expected when the floor is inclined because of, for example, gear collapse. For a typical aisle, with an evacuee flow capacity of 72 passengers per minute when the floor is level, a one-third reduction would result in an aisle flow of 48 passengers per minute per aisle when the floor is inclined. This yields an evacuation flow time of 75 seconds for the area of the cabin served by the aisle, or aisles. With an additional 15-second delay for passenger response, exit readiness, and evacuation start-up, the total evacuation time for the area would be 90 seconds. This example indicates that the proposed exist distance limits are necessary from a safety standpoint

because the limits tend to establish a balance between the seating capacity of the cabin and the evacuation capacity of the aisle serving the cabin under certain emergency evacuation conditions. This example accounts for a hypothetical seating arrangement representative of air carrier service and evacuation conditions which experience has shown occur in an actual emergency evacuation. Different seating arrangements and emergency conditions could lead to somewhat higher or lower evacuation times. In the above example, the important point to recognize is that the factor which can have the greatest influence on evacuation time in an actual accident situation is the aisle flow, not the door flow rate. Seat-to-exit distance can be a critical survival factor. Conditions such as partially incapacitated passengers, heavy cabin smoke, aisle obstructions, and seat backs in the breakover position could not only reduce aisle flow by an amount greater than the one-third used in the above example, but also could substantially increase the probability of persons falling and blocking the aisle and stopping the flow of evacuees altogether because of passenger panic. The FAA believes that further limiting escape path distance, beyond that in common use today, to account for evacuation conditions is unnecessary, based on satisfactory service experience of the past two decades. (This proposal is drafted with the intent of avoiding problems which would be expected if exit distances were allowed to increase without constraint, not to reduce distances which in service have been shown to be acceptable.)

This proposal would incorporate the new exit distance requirements into § 25.2 to be retroactively applicable for type certification of new airplane models regardless of date of the original application for type certificate. Section 25.2 was established by amendment 25–15 as a means of assuring, when practicable, that significant advancements directly affecting the safety of passengers can be implemented in airplane type certification without delay.

The proposal would amend Part 121, Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft, by adding a requirement in § 121.310(m) that, except for airplanes which have already received airworthiness approval, airplanes must meet the exit distance requirements proposed for § 25.807(c). Airplanes already in U.S. airline operation have been excluded from the requirement because the excessive cost required to retrofit or remanufacture these airplanes so as either to relocate exits or install additional exits to achieve the objective of this proposal makes such action impractical.

This proposal, therefore, would not directly affect any airplane in the United States air carrier fleet. It would indirectly affect a model in the fleet by preventing incorporation in that model of a previously approved modification which would deactivate a pair of emergency exits. That modification is being used by several foreign carriers, and those airplanes could conceivably be sold or leased to U.S. airlines. This proposal would require modification of them before use in U.S. airline operation under this part, consistent with the Administrator's letter to U.S. airlines dated June 12, 1985. Such modification can be done at the same time customer specific interior reconfiguration is being accomplished, however, and such minimal additional cost as could theoretically be ascribed to this proposal are not further addressed herein.

Regulatory Evaluation

The regulatory evaluation examines the benefits and costs of this Notice of Proposed Rulemaking to amend Parts 21, 25, and 121.

This proposal would limit passenger emergency escape path distance by establishing a new standard limiting the distance any passenger seat may be from the nearest emergency exit (no more than 30 feet) and the distance any exit may be from an adjacent exit (no more than 60 feet). The proposed rule is a result of findings of the recent public Emergency Evacuation Task Force, and it is intended to improve the likelihood of passengers safely escaping an airplane during an emergency evacuation.

In assessing the need for this rulemaking and fashioning a proposal which adequately addresses the safety concerns identified, the FAA has proposed to limit the distance any passenger seat may be from the nearest emergency exit to no more than 30 feet, and the distance any exit may be from an adjacent exit to no more than 60 feet. The specific distance limits proposed in this notice represent the FAA's best safety judgment to address this problem. This regulatory evaluation focuses on the costs and benefits anticipated from implementation of the distance limits specified in this proposal.

Since the specific distance limits adopted by regulation could vary considerably, with corresponding variations in the rule's range of effectiveness, the FAA recognizes that views may differ regarding the distance limits proposed and the attendant costs and benefits of alternate distance limits. For this reason, we specifically invite comment regarding other cost-effective distance limits capable of providing an adequate level of cabin evacuation safety.

This proposal would potentially primarily impact U.S. airline operators of Boeing Model 747 airplanes. Although B–747 airplanes currently in use by U.S. air carriers do not have adjacent passenger emergency exit doors that are greater than 60 feet apart, the B–747 type certificate has been amended to permit deletion or deactivation of a pair of emergency exists. This proposal would prohibit the deletion, deactivation, or respacing of airplane emergency exists only if such action would increase the passenger seat-to-exit and exit-to-exit distances beyond 30 feet and 60 feet, respectively. As a result of the potential for this exit deletion, the regulatory evaluation focuses entirely on B–747 airplanes.

The costs of the proposed rule are the foregone savings an airline operator could obtain by deleting the two exits. The cost elements are the weight reduction resulting from the elimination of the ramp/slide assembly and the reduction in the maintenance costs of the exit door and the ramp/slide assembly.

The FAA estimates that deletion of the two doors would reduce the airplane weight by 600 pounds. This weight reduction is a result of the removal of evacuation ramps and slides and door mechanisms. Some weight must be added to make the affected interior of the airplane presentable. In the future it is expected that the weight of slides will be reduced because of improved technology, but for this evaluation the 600 pound figure will be used. Airline estimates indicate that about 18 gallons of fuel are used per year for each pound of added weight. Since the cost of fuel is about 63 center per gallon the cost savings as a result of the weight reduction is about $6,800 per year ($0.63 per gallon × 18 gallons per pound × 600 pounds).

The ramp/slide assemblies and exit doors require periodic maintenance as well as maintenance associated with malfunctions. Periodic maintenance is done every 3 years and requires about 40 person-hours. The FAA estimates that the yearly maintenance cost including the periodic maintenance is about $1,500 per year representing 25 hours of labor at $40 per hour including overhead and $500 in parts. Therefore,

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the total yearly cost is about $8,300 ($6,800 fuel + $1,500 maintenance).

The FAA believes it has identified the only costs associated with this proposal. However, if there are any costs we have not accounted for, we urge commenters to let us know what they are with as much specificity as possible. We will review such comments and revise our cost estimates in connection with any final rule subsequently developed if commenters identify any significant cost which we have not adequately considered.

The benefits of the proposed rule represent the avoidance of an increased likelihood that fatalities would occur if two passenger emergency exits were deleted from U.S. registered B–747 airplanes.

The benefits are as a result of the reduced escape path distance the two additional emergency exit doors would allow for evacuating an airplane. As indicated by tests conducted in the emergency evacuation simulator at CAMI, excessive passenger aisle length is a major impediment to evacuation when the cabin floors become inclined due to landing gear collapse or other circumstances likely in an actual emergency. It is for this reason that the proposed rule would potentially save lives during an emergency evacuation of a transport category airplane.

The National Bureau of Standards (NBS) recently did a study for the FAA ralating to passenger airplane fire safety with application to fire blocking of seats. NBS analyzed historical fire incidents involving fire fatalities for the 1965 to 1982 period and estimated how many lives could be saved if the passengers had additional time to escape an airplane.

NBS estimated that if fire-blocking of seats could provide an additional margin (20 seconds) for emergency escape, about 8.8 lives could have been saved for the 1982 U.S. fleet. In some of the accidents analyzed, fire-blocking of seats would not have added any escape time, whereas additional emergency exits may have significantly lessened the escape time and thus increased the margin for survival. Extrapolating for 1985, the number of lives saved is estimated to be 11.2. Since the B–747 fleet represents about 12.6 percent of the total seats in the 1985 fleet, the number of lives saved in the B–747 fleet would be 1.4 or 0.009 lives saved per year per B–747 airplane based on a fleet of 156 airplanes. Valued in monetary terms, these lives would amount to an estimated $9,000 ($1 million × 0.009) per aircraft per year. This figure of $1 million is consistent with the widely accepted minimum value assigned to human life for use in regulatory evaluations/analyses of government regulations. Therefore, this proposal would be cost-beneficial, if adopted. The draft Regulatory Evaluation that has been placed in the docket contains additional detail relating to costs and benefits.

International Trade Impact Assessment

This proposal is not expected to have any measurable impact on international trade. Although some foreign airline operators could modify their aircraft by deleting exit doors, such an action would not result in any serious competitive disadvantages for U.S. airline operators doing business abroad. This assessment is based on the fact that some foreign airline operators have already deleted exit doors and this practice is not expected to continue to any great extent because virtually all of the world fleet airline operators are flying below their maximum seating capacity. Thus, this proposal, if adopted is expected to have no measurable impact on the trade opportunities for U.S. airline operators doing business abroad or for foreign airline operators doing business in the U.S.

Regulatory Flexibility

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The proposal would directly impact two types of entities, the manufacturer of B–747 airplanes and airline operators whose fleets contain B–747 airplanes.

The FAA size threshold for a determination of a small entity for aircraft manufacturers is 75 employees; that is, any aircraft manufacturer with more than 75 employees is considered not to be a small entity. It is clear that the Boeing Company, manufacturer of the B–747 airplanes, is not a small manufacturer.

The FAA size threshold for a determination of a small entity for aircraft operators is 9 owned aircraft; that is, any operator with more than 9 owned aircraft is considered not to be a small entity. The FAA threshold for a substantial number of small entities is one third and at least eleven of the small entities must be impacted. There are less than eleven small entities that own B–747 airplanes.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this proposal is not a major regulation as defined in Executive Order 12291. The FAA has determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it has been determined under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Transportation, Common carriers, Crashworthiness, Emergency evacuation.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 21, 25, and 121 of the Federal Aviation Regulations, 14 CFR Parts 21, 25, and 121, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq., E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 21.183 by adding a new paragraph (f) to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

(f) *Passenger emergency exit requirements.* Notwithstanding all other provisions of this section, each applicant for issuance of a standard airworthiness certificate for a transport category airplane manufactured after October 16, 1987 must show that the airplane concerned meets the requirements of § 25.807(c) (7) and (8) in effect on (the

effective date of this amendment). For the purposes of this paragraph, the date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA Approved Type Design Data.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

4. By amending § 25.2 by redesignating the introductory text as paragraph (a), redesignating paragraphs (a), (b), (c) and (d) as paragraphs (a)(1),(a)(2),(a)(3) and (a)(4), respectively, and adding a new paragraph (b) to read as follows:

§ 25.2 Special retroactive requirements.

* * * * *

(b) Irrespective of the date of application, each applicant for a supplemental type certificate (or an amendment to a type certificate) involving an increase in distance between any adjacent passenger emergency exits must show that the airplane concerned meets the requirements of § 25.807(c) (7) and (8) in effect on (the effective date of this amendment).

5. By amending § 25.807 by adding new paragraphs (c) (7) and (8) to read as follows:

§ 25.807 Passenger emergency exits.

* * * * *

(c) * * *

(7) No passenger seat shall be located more than 30 feet from the nearest passenger emergency exit on each side of the fuselage, as measured in the longitudinal plane from the front floor attachment point of the seat to the nearest edge of the emergency exit.

(8) For an airplane that is required to have more than one passenger emergency exit for each side of the fuselage, no passenger emergency exit shall be more than 60 feet from any adjacent passenger emergency exit, as measured between the nearest exit edges.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

7. By amending § 121.310 by adding a new paragraph (m) to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(m) Except as provided by § 121.627(c) and except for airplanes used in operations under this part on October 16, 1987 and having emergency exit configurations installed and authorized for operation prior to October 16, 1987—

(1) No passenger seat shall be located more than 30 feet from the nearest passenger emergency exit on each side of the fuselage, as measured in the longitudinal plane from the front floor attachment point of the seat to the nearest edge of the emergency exit.

(2) For an airplane that is required to have more than one passenger emergency exit for each side of the fuselage, no passenger emergency exit shall be more than 60 feet from any adjacent passenger emergency exit, as measured between the nearest exit edges.

Issued in Washington, DC, on October 16, 1987.

Sandy DeLucia,

Acting Director of Airworthiness.

[FR Doc. 87–24289 Filed 10–16–87; 12:26 pm]

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Part VIII

Environmental Protection Agency

40 CFR Part 32

Debarment and Suspension Under EPA Assistance, Loan and Benefit Programs; Notice of Proposed Rulemaking

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

[OA-FRL-3265-1]

Debarment and Suspension Under EPA Assistance, Loan and Benefit Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would revise EPA's regulation governing suspension and debarment under its assistance programs (40 CFR Part 32) to conform to OMB government-wide guidelines issued on May 26, 1987 (52 FR 20360–69).[1]

DATES: To be assured of consideration, comments on the proposed rule must be received on or before December 21, 1987. Comments should refer to specific sections of the regulation.

ADDRESS: Comments should be sent to: Robert Meunier, Chief, Compliance Branch (PM–216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. (202) 475–8025 (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Robert Meunier or Carlene Foushee on (202) 475–8025.

SUPPLEMENTARY INFORMATION: Executive Order 12549, "Debarment and Suspension," was signed by President Reagan on February 18, 1986 and was published February 21, 1986 (51 FR 6370–71).

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive suspension and debarment system encompassing the full range of Federal activities. The task force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment. This Task Force recommended in its November 1984 report that a government-wide nonprocurement suspension and debarment system, similar to that currently in effect for procurement, be established. This could be the first step toward a comprehensive system, including both procurement and nonprocurement.

The Task Force on Nonprocurement Suspension and Debarment considered many issues in developing the proposed guidelines. It concluded that the system should be as compatible as possible with the procurement debarment and suspension system included in the Federal Acquisition Regulations (FAR), while fully addressing the needs and concerns of nonprocurement programs. As a result, the guidelines generally used the due process procedural structure of the FAR. Also, the proposed grounds for debarment and suspension were substantially similar to those in the FAR. The proposal combined the criteria common to the existing agency nonprocurement regulations with the criteria in the FAR.

On February 21, 1986, OMB published proposed guidelines covering the subjects indicated in section 6 of E.O. 12549, including: coverage, government-wide criteria, and minimum due process procedures (51 FR 6372–79).

OMB received 60 comments on the proposed guidelines. All comments were provided to the Task Force on Nonprocurement Suspension and Debarment for consideration in preparing the final guidelines which were issued on May 26, 1987, and published May 29, 1987 (52 FR 20360–69).

This proposed rule follows closely the language and format contained in the OMB guidelines. However, in order to reflect specific EPA organizational responsibilities, specific references have replaced the general language used in the guidelines wherever appropriate.

Under the guidelines, "§ ____.310 Procedures" reflects a decisionmaking process which is employed by several agencies and used in Subpart 9.4 of the FAR. Under that procedure, a hearing need be employed only where material facts are in dispute (i.e., actions not based upon a criminal conviction).

This proposed rule, varies slightly in that it reflects EPA's preference for allowing a respondent to appear in person or through a representative (hearing), or to waive the appearance in favor of entering a written submission. This election is available at EPA regardless of whether there are "material facts" in dispute.

Also, § 32.313(d) permits a party to seek reconsideration by the Director (debarring official) for legal or factual errors if requested within 10 days of the party's receipt of the determination. § 32.314 is added to reflect EPA's internal procedure for appealing a suspension or debarment determination. There is no corresponding provision contained in the OMB guidelines.

Subpart D of this proposed rule is tailored to reflect the above applicable procedures where a suspension has been imposed. EPA's internal investigation and referral procedures are reflected in § 32.410, and the decisionmaking process in § 32.412 cross-references the debarment procedures in an effort to economize in the cost of publication, and for ease of reading.

The final OMB guidelines allowed agency discretion to determine when agencies would require certification by nonprocurement participants. This proposed rule would permit certification in lieu of an obligation to check the GSA Consolidated List by all participants making awards of $25,000 or less. The Agency invites comments on whether it should expand or narrow the range for optional certification, or establish a mandatory certification system at all tiers of participation.

Impact Analyses

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We do not believe that this proposed regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this proposed regulation is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act, 5 U.S.C. 605(b), requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Dated: October 19, 1987.

Lee M. Thomas,

Administrator.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Assistance programs—environmental protection, Technical assistance.

[1] For other documents concerning debarment and suspension see Part II of this issue of the Federal Register.

40 CFR Part 32 is revised to read as follows:

PART 32—DEBARMENT AND SUSPENSION UNDER EPA ASSISTANCE, LOAN AND BENEFIT PROGRAMS

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32.505 Responsibilities of EPA.
32.510 Responsibilities of participants.

Authority: 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f et seq., 4901 et seq., 6901 et seq., 7401 et seq., 9601 et seq.; Executive Order 12549.

Subpart A—General

§ 32.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. Section 3 of the Order directs agencies to issue implementing regulations and section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue guidelines concerning the Order.

(b) These regulations implement sections 3 and 6 of Executive Order 12549 by:

(1) Prescribing the programs and activities that are covered by the Order;

(2) Prescribing the government-wide criteria and government-wide minimum due process procedures that EPA shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible" in § 32.120);

(4) Setting forth the consequences of the actions under paragraph (b)(3) of this section;

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 32.105 Authority.

These regulations are issued pursuant to Executive Order 12549 of February 18, 1986.

§ 32.110 Coverage.

(a) *Covered transactions.* These regulations apply to Executive branch domestic assistance transactions described below:

(1) *General.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards, subcontracts and transactions at any tier that are charged as direct costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration, and in the interstate land sales and manufactured housing programs of the Department of Housing and Urban Development are subject to these regulations. Also, those in business relationships with such participants with respect to such programs are subject to these regulations, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidental benefits derived from ordinary governmental operations; and other transactions where the application of Executive Order 12549 and these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section, § 32.110, describes the types of activities and transactions to which a debarment or suspension under these regulations will apply. Subpart B, Effect of Action, § 32.200, sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants in the covered transactions and activities described in § 32.110. Sections 32.330, Scope of debarment, and § 32.420, Scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549 and these regulations do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 32.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal

Government's protection and not for purposes of punishment. EPA may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

§ 32.120 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

Agency. Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

Consolidated List. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these regulations, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Debarring official. An agency head or a designee authorized by the agency head to impose debarment. In EPA, the debarring official is the Director, Grants Administration Division.

Director. The Director, Grants Administration Division, who is EPA's debarring and suspending official.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in covered transactions, programs or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. An agency head or a designee authorized by the agency head to impose suspension. In EPA the suspending official is the Director, Grants Administration Division.

Suspension. An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

Subpart B—Effect of Action

§ 32.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment or suspension shall be effective throughout the Executive branch of the Federal Government. Except as provided in § 32.215, persons who are debarred or suspended under these provisions are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; on in any other position charged as a

direct cost under the covered transaction.

§ 32.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § 32.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

§ 32.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ 32.215 Exception provision.

EPA may grant an exception permitting a debarred, suspended, or excluded person to particpate in a particular transaction upon a written determination by the Director stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions should be reported in accordance with § 32.505.

§ 32.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, EPA and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) EPA and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § 32.215.

§ 32.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except as permitted under these regulations, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Subpart C—Debarment

§ 32.300 General.

The Director may debar a participant for any of the causes in § 32.305, using procedures in §§ 32.310 through 32.314. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

§ 32.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 32.300 and 32.310 through 32.314 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bidrigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § 32.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ 32.310 Investigation and referral.

Anyone may contact the Chief, Compliance Branch, Grants Administration Division, or the Regional Counsel concerning the existence of a cause for debarment. The Chief or Counsel may refer the matter to EPA's Inspector General or other appropriate office for further investigation. If, after review or investigation, the Chief or Counsel reasonably believes that a cause for debarment exists, he or she may request that debarment be proposed.

§ 32.311 Notice of proposed debarment.

When the Director decides to propose debarment, he or she shall provide notice to the respondent. The notice shall state:

(a) That debarment is being proposed;

(b) The reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) the cause(s) relied upon under § 32.305 for proposing debarment;

(d) The provisions of §§ 32.311 through 32.314;

(e) The effect of the proposed debarment pending a final debarment decision;

(f) The potential effect of a debarment; and

(g) That the party being served will be afforded an opportunity for a hearing or to enter a written submission if the person so requests and the request is made in writing within 30 calendar days after receipt of the notice; and that failure to timely request a hearing or enter a written submission will result in debarment as proposed.

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§ 32.312 Hearings.

(a) The Respondent shall be provided an opportunity for a hearing if he or she so requests in accordance with § 32.311(g)

(b) If the Respondent requests a hearing in accordance with this part, the Director shall act as a hearing officer or appoint a hearing officer or panel to conduct the hearing.

(c) The hearing officer or panel shall arrange for a hearing and notify the parties, in writing, of the time and place of the hearing.

(d) The hearing shall be conducted in an informal manner without formal rules of evidence or procedure, consistent with principles of fundamental fairness. The Respondent shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person EPA presents.

(e) A transcribed record of the hearing shall be made available at cost to the respondent, unless the respondent and EPA, by mutual agreement, waive the requirement for a transcript.

§ 32.313 Decisionmaking process.

(a) *Written determination.* The Director shall issue a written determination on the evidence presented within 45 days of the final submissions or arguments by the parties, unless the Director extends this period for a good cause. If the Director appoints a hearing officer or panel under § 32.312(b), the Director may reject any findings of fact by the hearing officer or panel, in whole or part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(b) *Standard of evidence.* The existence of the causes(s) for debarment shall be proved by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, this standard is met upon production of the court's judgment, decree, order or similiar evidence of its findings.

(c) *Notice of Director's determination.* (1) If the Director decides to impose debarment, the respondent shall be given pompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the Executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in § 32.215.

(2) If the Director decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(d) *Reconsideration.* Any party to the action may petition the Director to reconsider a determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed with the Director within 10 calendar days from the date of the party's receipt of the determination.

§ 32.314 Review.

(a) The determination under § 32.313 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the Director by filing a request with the OA Director within 30 calendar days of the party's receipt of the determination. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the OA Director may stay the effective date of a debarment or suspension order pending his or her determination. If a debarment or suspension is stayed, the stay shall be automatically lifted if the OA Director affirms the determination.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion, or based upon a clear error of law.

(d) The OA Directror's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.313 or a review under this section shall not be subject to a dispute or a bid protest under Part 30 or Part 33 of this subchapter.

§ 32.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, EPA and its participants shall not make any new awards to the respondent. EPA may waive this exclusion pending a debarment decision upon a written determination by the Director identifying the reasons for doing so. In the absence of such a waiver, the provisions of § 32.215 allowing exceptions for particular transactions may be applied.

§ 32.320 Settlement and voluntary exclusion.

(a) When in the best interest of EPA, the Director may, at any time prior to the determination, settle a debarment or suspension action.

(b) If a participant and EPA enter into a settlement providing for the exclusion of the participant, such exclusion shall be entered on the Consolidated List (see Subpart E).

§ 32.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The Director may extend an existing debarment for an additional period, if he or she determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If the debarment for an additional period is determined to be necessary, the procedures of §§ 32.310 through 32.314 shall be followed to extend the debarment.

(c) The Director may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Director deems appropriate.

§ 32.330 Scope of debarment.

(a) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of transactions.

(b) The debarment action may include any other affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see § 32.311).

§ 32.331 Imputed conduct.

For purposes of determining the scope of debarment, conduct may be imputed as follows:

(a) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(b) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(c) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Subpart D—Suspension

§ 32.400 General.

(a) The Director may suspend a participant for any of the causes in § 32.405 using procedures in §§ 32.410 through 32.412.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § 32.405 when it has been determined that immediate action is necessary to protect the public interest.

§ 32.405 Causes of suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 32.400 and 32.410 through 32.412 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 32.305(a); or

(2) That a cause for debarment under § 32.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 32.410 Investigation and referral.

If during review or investigation of any matter referred to him or her or as part of a recommendation to debar, the Chief, Compliance Branch, Grants Administration Division, or Regional Counsel believes that immediate action is required to protect the public interest, he or she may request the Director to suspend a person upon presenting adequate evidence that a cause for suspension exists, and providing a narrative statement describing the public interest which is jeopardized by awaiting completion of debarment or legal proceedings.

§ 32.411 Notice of suspension.

When the Director decides to impose a suspension, he or she shall immediately provide notice to respondent. The notice shall state:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) The irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) The cause(s) relied upon under § 32.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(f) Of the provisions of §§ 32.411 and 32.412;

(g) Of the effect of the suspension; and

(h) That the party being served will be afforded an opportunity for a hearing or to enter a written submission if the person so requests and the request is made in writing within 30 calendar days after receipt of the notice, except as otherwise provided in § 32.412.

§ 32.412 Decisionmaking process.

(a) If the Respondent requests a suspension hearing in accordance with § 32.411(h), the procedure under §§ 32.312, 32.313 (a), (c) and (d) and 32.314 shall apply in providing for a suspension hearing, determination, and opportunity for review. However, no hearing shall be provided if a decision is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(b) The Director may modify or terminate the suspension (for example, see § 32.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency.

§ 32.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the Director or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The Director shall notify the Department of Justice of an impending termination of a suspension at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 32.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of debarment (see §§ 32.330 and 32.331) except that the procedures of §§ 32.410 through 32.412 shall be used in imposing a suspension.

Subpart E—Agency responsibilities; Consolidated List

§ 32.500 GSA responsibility.

(a) The General Services Administration (GSA) shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 32.505 Responsibilities of EPA.

(a) EPA shall provide GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by EPA. Until February 18, 1989, EPA shall also provide GSA and OMB with information concerning all transactions in which the EPA has granted exceptions under § 32.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, EPA shall advise GSA of the information set forth in § 32.500(b) and of the exceptions granted under § 32.215 within five working days after taking such actions.

(c) EPA shall provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these regulations. Anyone may contact the Chief, Compliance Branch, Grants Administration Division, or the cognizant Regional or Headquarters grants administration office for information about the Consolidated List.

(d) EPA shall direct inquiries concerning listed persons to the agency that took the action.

(e) EPA Assistance Award Officials shall consult the most current issue of the Consolidated List before making any award under EPA assistance, loan, and benefit programs and shall, if necessary, consult the Federal agency contact person for a particular listing, to assure that no award is made to a listed person in violation of Executive Order 12549.

§ 32.510 Responsibilities of participants.

(a) Before awarding any subaward or subcontract, participants in EPA assistance, loan or benefit programs must consult the Consolidated List or contact the agency officials listed in § 32.505(c) who will consult the Consolidated List for them.

(b) Where any participant will award a subaward or subcontract in an amount of $25,000 or less, the participant may elect to obtain a certification in lieu of action under paragraph (a) of this section. In such case, the participant shall require the prospective awardee to certify whether the prospective awardee or any person acting in a capacity listed in § 32.200(b) with respect to the prospect awardee or the particular covered transaction is currently or within the preceding three years has been:

(1) Debarred, suspended, or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted or had a civil judgment rendered against them for any of the offenses listed in § 32.305(a).

Adverse information on the certification need not necessarily result in denial of participation. However, the information provided by the certification and any additional information requested by the awarding participant shall be considered in the administration of covered transactions.

(c) Participants shall direct inquiries regarding compliance with this section to the agency officials listed in § 32.505(c).

(d) Participants shall retain documentation of their compliance with paragraphs (a) and (b) of this section for the same period of time required for financial records related to the covered transaction.

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H.R. 242/Pub. L. 100-130

To provide for the conveyance of certain public lands in Oconto and Marinette Counties, Wisconsin. (Oct. 15, 1987; 101 Stat. 804; 2 pages) Price: $1.00

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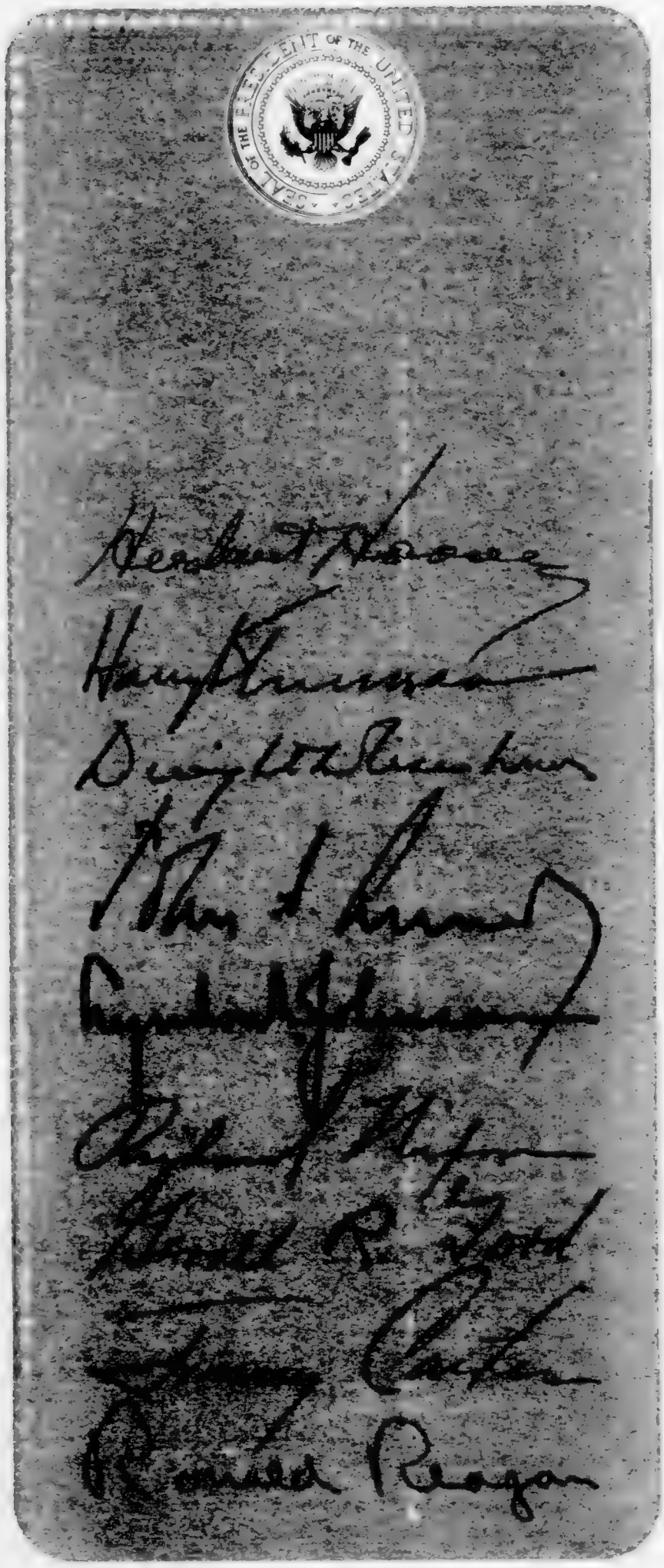

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: November 20, at 9 a.m.
WHERE: National Archives and Records Administration, Room 410, 8th and Pennsylvania Avenue NW., Washington, DC.
RESERVATIONS: Robert D. Fox, 202–523–5239.

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Presidential Documents

Title 3–

The President

Order of October 20, 1987

Emergency Deficit Control Measures for Fiscal Year 1988

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119) (hereafter referred to as "the Act"), I hereby order that the following actions be taken immediately to implement the sequestrations and reductions determined by the Director of the Office of Management and Budget in his report dated October 20, 1987, under section 251 of the Act:

(1) Each automatic spending increase that would, but for the provisions of the Act, take effect during fiscal year 1988 is suspended as provided in section 252. The programs with such automatic spending increases subject to reduction in this manner, specified by account title, are: National Wool Act; Special milk program; and Vocational rehabilitation.

(2) The following are sequestered as provided in section 252: new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended; and obligation limitations.

(3) For accounts making payments otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the remainder of the fiscal year to the level of resources available after sequester.

(4) For accounts making commitments for guaranteed loans and obligations for direct loans as authorized by substantive law, the head of each Department or agency is directed to reduce the level of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified in the Director of the Office of Management and Budget's determination of October 20, 1987.

(5) Each Department or agency head may, to the extent not otherwise prohibited by law, use existing authority to deobligate balances of budgetary resources as necessary to apply the required reduction or sequestration in as uniform a manner as possible for any person or other recipient entitled to payments under any formula-driven calculations specified in the substantive law. Deobligations may include budgetary resources obligations for which checks have not been issued or funds not otherwise disbursed (funds obligated but unexpended).

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In accordance with section 252(a)(4)(A), amounts suspended or sequestered under this Order shall be withheld from obligation or expenditure pending the issuance of a final order under section 252(b).

This Order shall be reported to the Congress and shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
October 20, 1987.

[FR Doc. 87-24555
Filed 10-20-87; 11:22 am]
Billing code 3195-01-M

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Rules and Regulations

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Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1962

Security Servicing

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published March 23, 1987 (52 FR 9111). In the revision of FmHA's Single Family Housing regulations pertaining to security servicing, a change was made regarding FmHA's administrative handling of a Proof of Claim when a borrower files a petition for bankruptcy. A concomitant change should have been made in the appropriate portion of a farmer program regulation to ensure consistency. The intended effect of this procedural change is to bring all regulations pertaining to the administrative handling of a Proof of Claim by county offices in line with each other.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agricultural Building, Washington, DC 20250, telephone (202) 382–1452

SUPPLEMENTARY INFORMATION:

Programs Affected

This change affects the following FmHA programs as listed in the catalog of Federal Domestic Assistance

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans

List of Subjects in 7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

The following correction is made to FR Doc 87–6232 appearing on pages 9111 to 9116 in the issue of March 23, 1987.

PART 1962—PERSONAL PROPERTY

1. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

2. Section 1962.47 (b)(2)(i) is revised to read as follows:

§ 1962.47 Bankruptcy and insolvency.

* * * * *

(b) * * *
(2) * * *
(i) Form FmHA 1965–14, "Proof of Claim," or other form approved by OGC will be executed. The proof of claim will cover all indebtedness to FmHA, except any judgments obtained by a U.S. Attorney. Proofs of Claim will be handled according to a State Supplement approved by OGC. If the proof of claim is submitted to OGC, the State Director will identify for OGC in memorandum (not on the proof of claim) the security which was taken for each FmHA loan.

* * * * *

Dated: September 4, 1987.

Eric P. Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87–24390 Filed 10–20–87; 8:45 am]
BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85–036F]

Facility and Equipment Requirements for Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. The final rule specifies certain critical dimensions for facilities at the inspection and reinspection stations for SIS that the Agency has concluded are appropriate and essential to assure optimum inspection performance under the new system. It requires the installation of an appropriately designed, adjustable platform at each inspector's station and of carcass selection devices known as selectors or "kickouts" at inspection stations. The final rule also requires equipment appropriate to ensure adequate lighting, handwashing, and the handling of carcasses and parts, including the proper disposal of condemned carcasses and parts.

EFFECTIVE DATE: December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule". The rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets. Although the final rule imposes certain facility and equipment requirements upon establishments operating under SIS, the costs of those requirements should be minor.

Effect of Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as

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defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule imposes certain facility and equipment requirements upon establishments operating under SIS. However, the costs related to complying with these requirements are expected to be minor. Furthermore, those costs will be counterbalanced by positive economic benefits such as reduced overtime inspection because of fewer inspectors, reduced workspace, and increased productivity by maintaining optimal line speeds.

Background

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) requires, among other things, that the Secretary of Agriculture, through appointed inspectors, conduct a post-mortem inspection of the carcass of each bird processed in every official establishment that processes poultry for commerce or that is otherwise subject to the Act, and condemn all products found to be adulterated. The PPIA also requires FSIS to inspect premises, facilities, and equipment to ensure that they are clean and sanitary and will not result in the processing of adulterated products. To ensure that premises, facilities, and equipment are properly maintained, FSIS requires the approval of all blueprints before construction or alterations at establishments, and publishes a list of approved equipment. In addition, rules of sanitary practice for establishments have been established to ensure that poultry products are produced in a sanitary manner and environment. Further, as part of this responsibility, FSIS determines the facility and equipment requirements for operations to be conducted under the various post-mortem inspection systems.

On January 29, 1986, FSIS published an interim rule amending the poultry products inspection regulations to establish a new Streamlined Inspection System (SIS) for broilers and cornish game hens (51 FR 3569). The new system was implemented in establishments previously slaughtering broilers and cornish game hens under modified traditional inspection (MTI) procedures. The new system requires a Finished Products Standards (FPS) program for evaluating the establishment's ability to control its processing operation and the wholesomeness and acceptability of the product. Establishments are responsible for performing the necessary trim of certain defects on passed carcasses and for operating the FPS program. The new system allows increased efficiency in the use of FSIS resources and those of the poultry industry, while providing consumers with wholesome and otherwise unadulterated products. The new system was implemented on an emergency basis, in response to suddenly increased demands on FSIS resources and as an outcome of recent work by FSIS veterinarians and technical experts. FSIS solicited comments on the interim rule to determine what changes, if any, to the new system are necessary before the rule is made final.

The chief difference between SIS and MTI is that SIS requires no mirror inspection station. Rather, there are one or two inspection stations at which each inspector examines the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1; the two-inspector configuration is known as SIS–2. Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post-mortem inspection phase and a reinspection phase. Under SIS–1, every bird on each production line is presented to a single inspector for examination. Under SIS–2, there are two inspection stations at which each inspector examines the outside, inside, and viscera of every other bird processed. The bird is presented to each inspector on a moving production line with the backside of the carcass toward the inspector and the viscera uniformly trailing or leading. In both SIS–1 and SIS–2, an establishment employee (a helper) is positioned next to each inspector. The maximum inspection rate for SIS–1 is 35 birds per minute; the maximum for SIS–2 is 70 birds per minute per two-inspector team—the same maximum rate as that permitted under MTI.

In the post-mortem inspection phase of SIS, the inspectors determine which birds must be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to be moved down the line as a passed bird subject to trim and reinspection. If an inspector finds that some poultry carcasses have certain defects not requiring condemnation of the whole carcass, the inspector may pass the carcass, which is then subject to trim and reinspection to assure that the defects are physically removed. The helper, at the inspector's direction, marks these carcasses for trim unless the defects are obvious. After post-mortem inspection is completed at the inspection stations, inspector's helpers independently perform any necessary trim on all passed carcasses after the giblets are harvested.

The reinspection station or stations are located at the end of the processing line and after each chiller. At the prechill station, inspectors examine the carcasses that have been passed subject to reinspection for processing and trimming nonconformances by visually monitoring, checking data, and/or gathering samples at the station.

SIS-1 requires that the establishment provide one inspection station for each line and reinspection facilities adequate for the removal of carcasses from each line for evaluation. SIS-2 requires the establishment to provide two inspection stations for each line and similarly adequate reinspection facilities. Thus, implementation of SIS entails certain facility modfications in affected establishments.

The new inspection system was made possible by the analysis of data gathered in the development and implementation of the New Line Speed (NELS) inspection system for broilers and cornish game hens and the New Turkey Inspection (NTI) system. The experience gained from working with these systems enabled top FSIS veterinarians and technical experts to design new one and two-inspector systems, including SIS.

The analysis of technical information from the NELS and NTI tests, including work measurement findings, as well as previous experience with MTI, convinced FSIS that appropriate facilities and equipment are essential to assuring optimal inspection performance under the new system. Consequently, in developing the SIS approach to inspection, FSIS experts determined that facility and equipment standards prescribed for NELS should be adapted to SIS. Therefore, FSIS published a proposed rule on January 29, 1986 (51 FR 3621), along with the interim rule, to establish facility and equipment requirements for inspection and reinspection stations in SIS. A number of specific provisions in the proposed regulation, including the requirements for adjustable inspection platforms, carcass selection devices, and lighting, have been implemented with considerable success in the NELS and NTI systems.

Comments Received on Proposal

FSIS received nine comments in response to the proposal—eight from poultry processors and one from a poultry industry association. The following are summaries of those comments and FSIS's response to each:

1. *Comment:* The 60-inch height requirement at the inspection stations is excessive and creates a safety hazard for plant line employees.

Response: The 60-inch height requirement, along with an easily and rapidly adjustable platform, is based on

accommodating inspectors of different heights. Industrial engineers, using human factors to establish the optimal relationship between inspectors and their workplace, have concluded that specific body position requirements are needed for an inspector to properly inspect the bird with a minimum of strain and fatigue. Since rotation of inspectors is required, the station platforms must be adjustable. Establishments with floor drains may install the platform below the floor level to prevent raising the line for all establishment employees, thereby preventing a health safety hazard.

2. *Comment:* There is no need to change the inspection platform from those required under modified traditional inspection. In fact, the new inspection platforms create a safety hazard for inspectors by placing the inspectors high above the floor, having slippery surfaces, and having inadequate space for the inspector to sit on a stool or to change stations during breaks or station rotation.

Response: Because the requirements for the platforms under MTI were not specific enough to minimize the strain and fatigue for the inspector, FSIS decided to specify minimum platform requirements. The experience gained from working the NELS and NTI systems, including work measurement data, convinced FSIS that placing the inspector in the correct position is essential in assuring optimal inspection performance under SIS. However, the procedure for approving platforms has been modified to allow for better review and control over the construction of the platforms, to accommodate the needs of individual establishments, and to provide safer work stations for inspectors. The adjustable platforms must be slip resistant, have safe lift mechanisms, and be large enough to accommodate stools and to allow inspectors to safely rotate during station or break changes. Additionally, there will be minimum bumper requirements. Under these specifications, establishments are required to submit blueprints for approval to FSIS's Facilities, Equipment, and Sanitation Division. The specifications may be obtained from Facilities, Equipment, and Sanitation Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–5627.

3. *Comment:* Since all sample carcasses at the reinspection stations have been washed, the word "handrinse" should be substituted for "handwash" in § 381.36(c)(2)(vi).

Response: Since edible product is being handled, all persons working at the reinspection station should thoroughly wash their hands before handling the clean carcass.

Additionally, since the paperwork for the Finished Product Standards program requires that the inspector have clean and dry hands, each reinspection station must have hot and cold water, soap, and towels requiring, of course, "handwashing" facilities rather than "handrinsing" facilities.

Final Rule

List of Subjects in 9 CFR Part 381

Carcasses and parts, Facilities, Poultry products inspection.

For the reasons set out in the preamble, Title 9, Part 381 of the Code of the Federal Regulations is amended as set forth below.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 381.36(c) is revised to read as follows:

§ 381.36 Facilities required.

* * * * *

(c) Facilities for the Streamlined Inspection System (SIS). The following requirements for lines operating under SIS are in addition to the normal requirements to obtain a grant of inspection. The requirements for SIS in § 381.76(b) also apply.

(1) The following provisions shall apply to every inspection station:

(i) The conveyor line shall be level for the entire length of the inspection station. The vertical distance from the bottom of the shackles to the top of the adjustable platform (paragraph (c)(1)(iv) of this section) in its lowest position shall not be less than 60 inches.

(ii) Floor space shall consist of 4 feet along the conveyor line for the inspector, and 4 feet for the establishment helper. A total of at least 8 feet along the conveyor line shall be supplied for one inspection station and 16 feet for two-inspection stations.

(iii) Selectors or "kickouts" shall be installed in establishments with two inspection stations on a line so each inspector will receive birds on 12-inch centers with no intervening birds to impede inspection. The selector must move the bird to the edge of the trough for the inspector and establishment helper. The selectors must be smooth, steady, and consistent in moving the birds parallel and through the inspection station. Birds shall be selected and released smoothly to avoid swinging when entering the inspection station.

(iv) Each inspector's station shall meet the requirements specified in § 381.53. The station shall have a platform that is slip-resistant and can be safely accessed by the inspector. The platform shall be designed so that it can be easily and rapidly adjusted for a minimum of 14 inches vertically while standing on the platform. The platform shall be a minimum length of 4 feet and have a minimum width of 2 feet; the platform shall be designed with a 42-inch high rail on the back side and with ½-inch foot bumpers and both sides and front to allow safe working conditions. The platform must have a safe lift mechanism and be large enough for the inspector to sit on a stool and to change stations during breaks or station rotation.

(v) Conveyor line stop/start switches shall be located within easy reach of each inspector.

(vi) A trough or other facilities complying with § 381.53(g)(4) of this Part shall extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where the trimming has been performed. The trough must be of sufficient width to preclude trimmings, drippage, and debris from accumulating on the floor or platforms. The clearance between the suspended carcasses and the trough must be sufficient to preclude contamination of carcasses by splash.

(vii) A minimum of 200-footcandles of shadow-free lighting with minimum color rendering index value of 85 [1] where the birds are inspected to facilitate inspection, notwithstanding the requirements of § 381.52(b).

(viii) "Online" handrinsing facilities with a continuous flow of water conforming to § 381.51(f) shall be provided for and within easy reach of each inspector and each establishment helper.

(ix) Hangback racks shall be provided for and positioned within easy reach of the establishment helpers.

(x) Each inspection station shall be provided with receptacles for condemned carcasses and parts. Such receptacles shall conform to the requirements of § 381.53(m).

(2) The following provisions shall apply only to prechill and postchill reinspection stations:

[1] This requirement may be met by deluxe cool white type of fluorescent lighting.

(i) Floor space shall consist of a minimum of 3 feet along each conveyor line and after each chiller to allow carcasses to be removed for evaluation. The space shall be level and protected from all traffic and overhead obstructions.

(ii) The vertical distance from the bottom of the shackles to the floor shall not be less than 48 inches.

(iii) A table, at least 2 feet wide, 2 feet deep, and 3 feet high designed to be readily cleanable and drainable shall be provided for reinspecting the sampled birds.

(iv) A minimum of 200-footcandles of shadow-free lighting with a minimum color rendering index of 85 on the table surface shall be provided.

(v) A separate clip board holder shall be provided for holding the recording sheets.

(vi) Handwashing facilities shall be provided for and shall be within easy access of persons working at the stations.

(vii) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of the person at the station.

Done at Washington, DC, on October 2, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-24389 Filed 10-20-87; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 4 and 5

[Notice 1987-12]

Public Records and Freedom of Information Act

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission has revised its regulations implementing the Freedom of Information Reform Act, Pub. L. No. 99-570, and guidelines established by the Office of Management and Budget (OMB), 52 FR 10012 (March 27, 1987). The revisions are based on the Commission's experience in working with the Freedom of Information Act (FOIA) and on public comments received in response to the Notice of Interim Rulemaking published by the Commission.

The revisions incorporate the recent changes to the FOIA regarding among other things, establishment of fees to be charged for search, review and duplication of records in response to FOIA requests. These rules also include a revision of the FOIA fee reduction and waiver standard drawn directly from the language of the Reform Act, along with procedures for implementing that standard.

Further information on these revisions is provided in the supplementary information which follows.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (FOIRA) requires each agency to promulgate regulations, pursuant to notice and receipt of public comments, specifying the schedule of fees applicable to the processing of Freedom of Information Act (FOIA) requests and establishing procedures and guidelines for determining when such fees should be waived or reduced. The FOIRA also requires the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of fees applicable to all agencies. OMB's guidelines were published on March 27, 1987 (52 FR 10012). The Federal Election Commission Interim Rule, published for comment on June 24, 1987 (52 FR 23636), conforms to the OMB guidelines.

The Commission received three comments on the interim rules. Having considered these comments, the Commission is now publishing the final rules together with a statement explaining their basis and purpose in accordance with the Administrative Procedure Act, 5 U.S.C. 553(c).

Statement of Basis and Purpose

Basis and Purpose of the Public Records and Freedom of Information Act Regulations, 11 CFR Parts 4 and 5

Part 4—Freedom of Information Act

The rules implementing the Freedom of Information Act have been revised and expanded as a result of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). Several new definitions and modifications have been made to broaden the scope of the FOIA and establish uniformity with the fee provisions set by the Office of Management and Budget.

The comments received were taken into consideration in developing the final rule. These comments primarily addressed definitions of terms contained in the proposed fee schedule regarding the different categories of requestors. In particular, the commenters objected to the definitions of "freelance journalist," "representative of the news media" and "commercial use." However, the Commission's definitions of these terms conform to OMB guidelines and are consistent with the statute and legislative history.

Section 4.1 Definitions. This section adds seven new definitions, paragraphs (g) through (n). These amendments are intended to clarify the expanded provisions of the statute. Three of these definitions were addressed by the comments.

Concerning "commercial use," (11 CFR 4.1(k)) the commenters focus on statements in the legislative history which seem to indicate that it is the requestor rather than the nature of the request which is controlling. Specifically, one commenter proposed a definition of "commercial use" requestor that would distinguish between private, profit-making and non-profit entities, allowing at a minimum that requests from public interest groups, labor unions, libraries and the news media not be treated as commercial requests. This interpretation is contrary to legislative intent. Congress did not intend that organizations seeking to establish private repositories of public records would qualify for waivers. See 123 Cong. Rec. S 14038 (daily ed. Sept. 27, 1985) (statement of Sen. Hatch). Furthermore, the statute does not refer to commercial users, but instead plainly states "commercial use." Therefore, the Commission regulations implement the statute.

With regard to "representative of the news media" (11 CFR 4.1(n)), the comments received suggest that the Commission liberalize its definition beyond the guidelines set forth by OMB. One commenter stated that the Commission's definition is counter to the legislative history and allows the Commission to judge what is current before acting on a request. The commenter suggested that "representative of the news media" be broadened to include any person or organization which publishes or disseminates information to the public. The Commission has retained the word "news" in the definition because it is based on the statutory phrase "news media." The other commenters interpret the Commission definition as inconsistent with Congressional intent due to the use of the terms "current events" or information of "current interest to the public." The Commission concludes however, that the plain meaning of the word "news" entails currency of events and that its interpretation is consistent with the

statute and OMB guidelines. As a result no change has been made to this definition. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category.

Concerning "freelance journalist" (11 CFR 4.1(n)) one commenter suggested the Commission delete its definition of freelance journalist from the rules as it did not properly describe the work of a freelance journalist and discriminated against first-time freelancers. The Commission's intent was not to limit qualification under this definition to any one particular form of proof or discriminate against legitimate freelancers. Rather, its intent was to incorporate legitimate freelance journalists into the definition, but not anyone merely declaring himself or herself to be a freelance journalist. Accordingly, in addition to the standard set forth by Representative English in his comments in which he describes freelance writers as those "who can demonstrate that their work is likely to be published * * *." 132 Cong. Rec. H 9464 (Oct. 8, 1986), the Commission has adopted other indicia of qualification consistent with another commenter's suggestion. Among these qualifications would be a contract or past publication record. The Commission considers this definition practical and has made no change in the final rule.

In addition to the above concerns expressed in all three comments one set of comments suggested among other things, that the OMB guidelines are in certain instances not supported by, or are contrary to, the legislative intent of the FOIRA. Specifically, this commenter suggested that the phrase "educational institution" [See 11 CFR 4.1(1)) is self defining. The commenter recommended that the Commission borrow from the Tax Code's section 501(c)(3) grant of tax deductible status to determine what constitutes an "educational institution." To adopt such a proposal would be contrary to the congressional intent of the FOIRA and OMB guidelines. The Tax Code merely provides that "corporations, any community chest, fund, or foundation, organized and operated exclusively for * * * educational purposes * * *" qualify for exemption from taxation. 26 U.S.C. 501(c)(3). The legislative history of the FOIRA makes it plain that mere non-profit status does not entitle a person or organization to qualify for a limitation of fees as an educational institution. 132 Cong. Rec. S14040 (Sept. 27, 1986.) Accordingly, the Commission rejects this suggestion.

Section 4.5 Categories of exemptions. This section revises the introductory text in paragraphs (a) and (a)(1) and redesignates paragraphs (b) through (d) as paragraphs (c) through (e). The purpose of this change is to reflect the extensive revisions in the FOIRA exempting information from disclosure under the FOIA, and establishing three special exclusions for specific types of law enforcement records.

Section 4.7 Requests for records. This section is amended to reflect circumstances that might warrant an extension of time for fulfilling a request due to the addition of regulations concerning advance payments at § 4.9(f).

Section 4.9 Fees. This section has received extensive revisions in order to make the FOIA fees charged by government agencies more uniform. Accordingly, the Commission has revised and amended Section 4.9 to conform with government wide standards.

One commenter argued that there is no basis in the FOIRA or its legislative history for construing the automatic waiver of fees for the first two hours of search time to mean something less than that for computer searches. 11 CFR 4.9(a)(2). Congress made it clear that each agency must develop regulations based on OMB's guidelines for a uniform schedule of fees. The Commission's regulations are in conformance with OMB's guidelines on this section, and therefore considered both appropriate and consistent with the requirements of the FOIRA.

This commenter along with another commenter also suggested that the Commission reject the Department of Justice fee waiver policy and adopt simpler less restrictive fee waiver regulations. 11 CFR 4.9(b). The Commission has not utilized the six factors outlined by the Justice Department in its 1983 memorandum but has developed its own standard without guidance from the Department of Justice. Furthermore, one comment received suggests that in light of the Paperwork Reduction Act the Commission should reassess its fee waiver regulations because they seek information from requestors. However, 2 U.S.C. 438(c) exempts the Commission from the Paperwork Reduction Act.

In response to actual Commission practices relating to requests for special mailing services, the Commission has revised the portion of § 4.9(c)(4) dealing with "other charges." The interim rule appeared to indicate that the Commission would initially pay for such services and bill the requestor. In fact, the Commission's practice is to have requestors pay these costs directly to the company providing the expedited delivery or mailing service. The final rule reflects this practice and explains how it will operate.

Another commenter suggested that the Commission adopt the language in the OMB guidelines relating to "aggregating requests" (11 CFR 4.9(e)) and "advance payments." (11 CFR 4.9(f)). The commenter asserted that § 4.9(e) fails to note the "presumptions against aggregation when the requests have been made more than 30 days apart and does not state that aggregation of multiple requests on unrelated subjects from one requester are prohibited." The Commission has clearly stated that it will consider the time frame involved, as well as the subject matter of the requests, and may find that requests made more than 30 days apart should be aggregated. The Commission, while setting guidelines for determining when requests should be aggregated, also believes each case should be considered on its own merits. The commenter also recommends adopting a clear presumption against advance payments. The Commission's regulations set forth two criteria to be considered when making a determination whether or not to require advance payment. The first criterion is when the Commission estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed $250. The second criterion is when a requestor has previously failed to pay a fee in a timely fashion. Moreover, the Commission regulations, while not a verbatim statement of the OMB guidelines, closely conform to the standard established by OMB and are consistent with the statute. As a result it is unnecessary to adopt the commenter's proposals.

Part 5—Access to Public Disclosure Division Documents

Section 5.6(a)(1) Fees. This section is amended to reflect the increase in the direct costs of microfilm and personnel to the Commission. The changes in the Public Disclosure fee schedule for these items are made to keep them consistent with the revised FOIA fee schedule.

List of Subjects

11 CFR Part 4

Freedom of Information.

11 CFR Part 5

Archives, Records.

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For the reasons set out in the basis and purpose, Title 11, Parts 4 and 5 of the Code of Federal Regulations are amended as follows.

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 4 is revised to read as follows:

Authority: 5 U.S.C. 552, as amended.

2. Section 4.1 is amended by revising paragraphs (g) through (n) to read as follows:

§ 4.1 Definitions.

* * * * *

(g) "Direct costs" means those expenditures which the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requestors, reviewing) documents to respond to a FOIA request. Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses such as the cost of space and heating or lighting the facility in which the records are stored.

(h) "Search" means all time spent looking for material that is responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents. This includes both manual searches and searches conducted with a computer using existing programming. Search time does not include review of material in order to determine whether the material is exempt from disclosure.

(i) "Review" means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, i.e., doing all that is necessary to excise exempt portions of the document and otherwise prepare the document for release. Review does not include time spent by the Commission resolving general legal or policy issues regarding the application of exemptions.

(j) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk).

(k) "Commercial use" means a purpose that furthers the commercial, trade, or profit interests of the requestor or the person on whose behalf the request is made. The Commission's determination as to whether documents are being requested for a commercial use will be based on the purpose for which the documents are being requested. Where the Commission has reasonable cause to doubt the use for which the requestor claims to have made the request or where that use is not clear from the request itself, the Commission will seek additional clarification before assigning the request to a specific category.

(l) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(m) "Non-commercial scientific institution" means an organization that is not operated on a commercial basis, as that term is defined in paragraph (k) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(n) "Representative of the news media" means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. A freelance journalist may be regarded as working for a news organization and therefore considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by that news organization, even though that person is not actually employed by that organization. The best means by which a freelance journalist can demonstrate a solid basis for expecting publication by a news organization is by having a publication contract with that news organization. When no such contract is present, the Commission will look to the freelance journalist's past publication record in making this determination.

3. Section 4.5 is amended by revising the introductory text of paragraph (a), paragraph (a)(7) and paragraph (b) to read as follows:

§ 4.5 Categories of exemptions.

(a) No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

* * * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Whenever a request is made which involves access to records described in 11 CFR 4.5(a) (7): and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings;

The agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

* * * * *

4. Section 4.7 is amended by revising paragraph (c) to read as follows:

§ 4.7 Requests for records.

* * * * *

(c) Records or copies thereof will normally be made available either immediately upon receipt of a request or within ten working days thereafter, or twenty working days in the case of an appeal, unless in unusual circumstances the time is extended or subject to 11 CFR 4.9(f)(3), which governs advance payments. In the event the time is extended, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is—

(1) Necessary to locate records or transfer them from physically separate facilities; or

(2) Necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or

(3) Necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which have a substantial subject matter interest therein.

* * * * *

5. Section 4.9 is revised to read as follows:

§ 4.9 Fees.

(a) *Exceptions to fee charges*—(1) *General.* Except for a commercial use requester, the Commission will not charge a fee to any requester for the first two hours of search time and the first 100 pages of duplication in response to any FOIA request.

(2) *Free computer search time.* For purposes of this paragraph, the term "search time" is based on the concept of a manual search. To apply this to a search conducted by a computer, the Commission will provide the equivalent dollar value of two hours of professional staff time, calculated according to paragraph (c)(4) of this section, in computer search time. Computer search time is determined by adding the cost of the computer connect time actually used for the search, calculated at the rate of $25.00 per hour, to the cost of the operator's salary for the time spent conducting the computer search, calculated at the professional staff time rate set forth at paragraph (c)(4) of this section.

(3) *Definition of pages.* For purposes of this paragraph, the word "pages" refers to paper copies of a standard agency size which will normally be 8½" x 11" or 8½" x 14". Thus, while a requester would not be entitled to 100 free computer disks, for example, a requester would be entitled to 100 free pages of a computer printout.

(4) *Minimum charge.* The Commission will not charge a fee to any requester when the allowable direct cost of that FOIA request is equal to or less than the Commission's cost of routinely collecting and processing a FOIA request fee.

(b) *Fee reduction or waiver*—(1) The Commission will consider requests for the reduction or waiver of any fees assessed pursuant to paragraph (c)(1) of this section if it determines, either as a result of its own motion or in response to a written submission by the requester, that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and that disclosure of the information is not primarily in the commercial interest of the requester.

(2) A request for a reduction or waiver of fees shall be made in writing by the FOIA requestor; shall accompany the relevant FOIA request so as to be considered timely; and shall include a specific explanation as to why the fee for that FOIA request should be reduced or waived, applying the standard stated in paragraph (b)(1) of this section to the facts of that particular request. In addition, the explanation shall include: the requester's (and user's, if the requester and the user are different persons or entities) identity, qualifications and expertise in the subject area, and ability and intention to disseminate the information to the public; and a discussion of any commercial or personal benefit that the requestor (and user, if the requestor and user are different persons or entities) expects as a result of disclosure, including whether the information disclosed would be resold in any form at a fee above actual cost.

(c) *Fees to be charged.* (1) The FOIA services provided by the Commission in response to a FOIA request for which the requestor will be charged will depend upon the category of the requestor. The categories of FOIA requestors are as follows:

(i) *Commercial use requestors.* A requestor of documents for commercial use will be assessed reasonable standard charges for the full allowable direct costs of searching for, reviewing for release and duplicating the records sought, according to the Commission's schedule of fees for those services as set forth at paragraph (c)(4) of this section. A commercial use requestor is not entitled to two hours of free search time nor 100 free pages of duplication of documents.

(ii) *Educational and non-commercial scientific institution requestors.* The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) *Requestors who are representatives of the news media.* The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, the requestor must meet the criteria listed at 11 CFR 4.1(n) and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use.

(iv) *All other requestors.* The Commission will charge requestors who do not fit into any of the categories listed in paragraph (c)(1) (i), (ii) or (iii) of this section the full direct costs of searching for and duplicating records in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first two hours of search time and the first 100 pages of duplication. Requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(2) The Commission may assess fees for the full allowable direct costs of searching for documents in response to a request even if the Commission fails to locate any documents which are responsive to that request and, in the

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case of commercial use requestors, of reviewing documents located in response to a request which the Commission determines are exempt from disclosure.

(3) If the Commission estimates that search or duplication charges are likely to exceed $25.00, it will notify the requestor of the estimated amount of the fee unless the requestor has indicated in advance a willingness to pay a fee as high as that estimated by the Commission. Through this notification, the Commission will offer the requestor the opportunity to confer with Commission staff to reformulate the original request in order to meet the requestor's needs at a lower cost.

(4) The following is the schedule of the Commission's standard fees. The cost of staff time will be added to all of the following fees, generally at the "Professional" rate listed below, except for the cost of "Photocopying from photocopying machines" which has been calculated to include staff time.

Photocopying

Photocopying from photocopying machines..... $.07 per page
Photocopying from microfilm reader-printer..... $.15 per page
Paper copies from microfilm-paper print machine.....$.05 per frame page

Reels of Microfilm

Daily film (partial or complete roll)...$2.85 per roll
Other film (partial or complete roll)...$5.00 per roll

Publications: (new or not from available stocks)

Cost of photocopying document...$.07 per page
Cost of binding document.....$.30 per inch

Publications: (available stock)

If available from stock on hand, cost is based on previously calculated cost as stated in the publication (based on actual cost per copy, including reproduction and binding). Commission publications for which fees will be charged include, but are not limited to, the following: Advisory Opinion Index, Report on Financial Activity, Financial Control and Compliance Manual, MUR Index, and Guideline for Presentation in Good Order.

Computer Tapes

Cost to process the request at the rate of $25.00 per hour connect time plus the cost of the computer tape ($25.00) and professional staff time (see Staff Time).

Computer Indexes (including Name Searches)

Cost to process the request at the rate of $25.00 per hour connect time plus the cost of professional staff time (see Staff Time).

Staff Time

Clerical: $4.50 per each half hour (agency average of staff below a GS–11) for each request.

Professional: $12.40 per each half hour (agency average of staff at GS–11 and above) for each request.

Other Charges

Certification of a Document: $7.35 per quarter hour.

Transcripts of Commission meetings not previously transcribed: $7.50 per half hour (equivalent of a GS–11 executive secretary).

The Commission will not charge a fee for ordinary packaging and mailing of records requested. When a request for special mailing or delivery services is received the Commission will package the records requested. The requestor will make all arrangements for pick-up and delivery of the requested materials. The requestor shall pay all costs associated with special mailing or delivery services directly to the courier or mail service.

(5) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requestor of the identity of the private contractor who will perform the duplication services. If fees are charged for the production of computer tape or microfilm, they shall be made payable to that private contractor and shall be forwarded to the Commission.

(d) *Interest charges.* FOIA requestors should pay fees within 30 days following the day on which the invoice for that request was sent to the requestor. If the invoice is unpaid on the 31st day following the day on which the invoice was sent, the Commission will begin assessing interest charges, which will accrue from the date the invoice was mailed. Interest will be charged at a rate that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point, pursuant to 31 U.S.C. 3717. The accrual of interest will be stayed by the Commission's receipt of the fee, even if the fee has not yet been processed.

(e) *Aggregating requests.* A requestor may not file multiple requests, each seeking portions of a document or documents, in order to avoid payment of fees. When the Commission reasonably believes that a FOIA requestor or group of requestors acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission will aggregate any such requests and charge the appropriate fees. In making this determination, the Commission will consider the time period in which the requests have occurred, the relationship of the requestors, and the subject matter of the requests.

(f) *Advance payments.* The Commission will require a requestor to make an advance payment, i.e., a payment before work is commenced or continued on a request, when:

(1) The Commission estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed $250. In such a case, the Commission will notify the requestor of the likely cost and, where the requestor has a history of prompt payment of FOIA fees, obtain satisfactory assurance of full payment, or in the case of a requestor with no FOIA fee payment history, the Commission will require an advance payment of an amount up to the full estimated charges; or

(2) A requestor has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). In such a case, the Commission may require that the requestor pay the full amount owed plus any applicable interest or demonstrate that the fee has been paid and make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request or a pending request from that requestor.

(3) If the provisions of paragraph (f) (1) or (2) of this section apply, the administrative time limits prescribed in 11 CFR 4.7(c) will begin only after the Commission has received the payments or the requestor has made acceptable arrangements to make the payments required by paragraph (f) (1) or (2) of this section.

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

1. The authority citation for Part 5 continues to read as follows:

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 9701.

2. Section 5.6(a)(1) is amended by revising the fees for "Reels of Microfilm," "Research Time/Photocopying Time," and "Other Charges" to read as follows:

§ 5.6 Fees.

(a)(1) * * *

Reels of Microfilm

Daily film (partial or complete roll)...$2.85 per roll
Other film (partial or complete roll)...$5.00 per roll

* * * * *

Research Time/Photocopying Time

Clerical: First ½ hour is free; remaining time costs $4.50 per each half hour (agency average of staff below a GS–11) for each request.

Professional: First ½ hour is free; remaining time costs $12.40 per each half hour (agency average of staff at GS–11 and above) for each request.

Other Charges

Certification of a Document: $7.35 per quarter hour.

Transcripts of Commission meetings not previously transcribed: $7.50 per half hour (equivalent of a GS–11 executive secretary).

* * * * *

Scott E. Thomas,

Chairman, Federal Election Commission.

Dated: October 13, 1987.

[FR Doc. 87–23999 Filed 10–20–87; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: On June 16, 1986 the Board of Directors of the FDIC granted the request of several petitioners that the FDIC reconsider the provisions of the FDIC's rule governing securities subsidiaries and affiliates of insured nonmember banks which deal with the use of a common name or logo and separate offices. A request for comment on whether or not these provisions should be retained, modified, or eliminated was published in the **Federal Register** on August 20, 1986. A subsequent proposed rule was published for comment on April 9, 1987. Insured nonmember banks that prior to December 28, 1984 became affiliated with a securities company, or prior to that date established or acquired a subsidiary that engages in securities activities, are presently required to comply with the common name or logo and separate office restrictions of the regulation by October 15, 1987. The Board of Directors is extending the compliance deadline with these provisions of the regulation until November 15, 1987 for institutions currently subject to the October 15, 1987 deadline in order to provide staff further time to consider the comments on the proposed rule.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898–3730, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On November 19, 1984, the FDIC adopted § 337.4 of its regulations (12 CFR 337.4) (49 FR 46722, November 28, 1984), governing certain securities activities of subsidiaries of insured nonmember banks and the affiliation of insured nonmember banks with certain types of securities companies. The regulation requires, among other things, that securities subsidiaries which engage in activities prohibited to the bank by the Glass-Steagall Act must meet the definition of "bona fide subsidiary." That definition in turn requires, among other things, that a bank and such a securities subsidiary must operate out of separate offices that share no common entrance. The subsidiary is also prohibited from sharing a common name or logo with the bank. The regulation imposes similar requirements upon a bank affiliated with a securities company if that securities company conducts activities that would be prohibited to the bank by the Glass-Steagall Act. Banks that were affiliated with such a securities company prior to December 28, 1984, or that established or acquired such a securities subsidiary prior to December 28, 1984, were required to comply with the name and office restrictions as soon as practicable, but not more than one year from December 28, 1984 without the FDIC's consent.

In December 1985 several banks filed petitions with the FDIC requesting that the FDIC reconsider the requirements in the regulation that a bank and its securities subsidiary or affiliate must have separate offices that share no common entrance and the prohibition on the use by a bank of a common name or logo with its securities subsidiary or affiliate. In order to permit sufficient time for the FDIC to fully consider the petitions, the Board of Directors extended the above-described compliance deadline with the common name or logo and separate office provisions of the regulation until June 30, 1986. (51 FR 880, January 9, 1986).

On June 16, 1986 the Board of Directors granted the requests to reconsider the common name or logo prohibition and the separate office and separate entrance requirement. A document soliciting comment on whether or not to modify or retain these restrictions was published for public comment on August 20, 1986. (51 FR 29657). At the same meeting, and in conjunction with its vote to solicit public comment, the Board of Directors voted to extend the June 30, 1986 compliance deadline for the name and office restrictions until December 31, 1986 for institutions with preexisting affiliate and subsidiary relationships. (51 FR 23405, June 27, 1986). Inasmuch as staff had not yet completed its review of the comments nor formulated a recommendation to the Board of Directors by early December 1986 with respect to the August 20, 1986 solicitation of comment, the Board of Directors voted to extend the compliance deadline until June 30, 1987 in order to allow staff to prepare its recommendation. (51 FR 45755, December 22, 1986).

After considering the comments, the FDIC proposed to amend § 337.4 by: (1) Revising the requirement that securities subsidiaries and affiliates must use separate offices from the bank that share no common entrance with the bank, (2) deleting the prohibition against such subsidiaries and affiliates sharing a common name or logo with the bank, and (3) establishing certain affirmative disclosure requirements to the effect that investments recommended, offered or sold by or through such subsidiary or affiliate are not FDIC insured deposits, that the subsidiary and affiliate are separate organizations from the bank, and that the obligations of the subsidiary and affiliate are not guaranteed, warranted or otherwise supported by the bank. (52 FR 11492, April 9, 1987). The comment period closed on May 11, 1987. As staff had not completed work on a recommendation to the Board of Directors as of mid-June 1987, the Board of Directors voted to extend the current June 30, 1987 compliance deadline with the common name or logo and separate entrance provisions of the regulation until October 15, 1987. At its October 13, 1987 Board of Directors' meeting the FDIC's Board of Directors further extended the compliance deadline until November 15, 1987.

In accordance with 5 U.S.C. 553, the FDIC has found that prior notice and a delayed effective date with respect to this amendment are unnecessary as the amendment delays the imposition of requirements that are already imposed by existing regulation. Since the amendment only provides for an extension of time for compliance with certain portions of the regulation and imposes no burden upon banks, securities affiliates or the public, it is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 337

Banks, banking; Securities, State nonmember banks.

In consideration of the foregoing, the FDIC hereby amends Part 337 of Title 12 of the Code of Federal Regulations as follows:

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PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818(a), 1818(b), 1819, 1828(j)(2), 1821(f).

2. Part 337 is amended by revising paragraph (h)(3) of § 337.4 to read as follows:

§ 337.4 Securities activities of subsidiaries of insured nonmember banks: bank transactions with affiliated securities companies.

* * * * *

(h) * * *

(3) An insured nonmember bank described in § 337.4(h)(1) shall comply with the requirements imposed by § 337.4(a)(2) (ii) and (iii) and by § 337.4(c) (1) and (5) as soon as practicable (but not later than November 15, 1987 without the FDIC's consent).

* * * * *

By Order of the Board of Directors.

Dated at Washington, D.C., this 13th day of October 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-24325 Filed 10-20-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 371

[Docket No. 70903-7203]

Exports to Singapore Unde: General Licenses G-COM and GCG

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration is removing the requirement for a validated license for certain shipments of U.S.-origin commodities to Singapore. Because of the improvement in Singaporean export control measures, Export Administration is amending General Licenses G–COM and GCG to authorize shipments to Singapore. This action is part of the Department of Commerce initiative to remove unnecessary export licensing requirements for shipments to nations cooperating to protect U.S. strategically controlled goods and technologies. In addition, this action will lessen the administrative burden on U.S. exporters and their foreign customers.

EFFECTIVE DATE: This rule is effective October 21, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 371

Exports, Reporting and recordkeeping requirements.

PART 371—[AMENDED]

Accordingly, Part 371 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR Part 371 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 371.8 [Amended]

2. Section 371.8 is amended by adding "Singapore," between "Finland," and "Sweden," in paragraph (a) and by adding "Singapore," between "Portugal," and "Spain," in paragraph (b).

§ 371.14 [Amended]

3. In § 371.14, paragraph (b) is amended by adding "Singapore," immediately before the word "Sweden,".

Dated: October 8, 1987.

Richard Seppa,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-24318 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25034]

Rescission of Rule Governing Use of Predispute Arbitration Clauses in Broker-Dealer Customer Agreements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is announcing the rescission of Rule 15c2–2 [17 CFR 240.15c2–2] concerning the use of predispute arbitration clauses since, in light of the development of case law, the rule is no longer appropriate.

DATE: October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Love, (202) 272–3064, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Commission is rescinding § 240.15c2–2 of the Code of Federal

Regulations (17 CFR 240.15c2–2). Rule 15c2–2 was adopted by the Commission in 1983 [1] in order to address regulatory concerns arising from the inclusion in standard form customer agreements of predispute arbitration clauses (*i.e.*, agreements requiring customers to submit to arbitration all future disputes.) In light of the fact that then existing case law generally held that predispute agreements to arbitrate claims arising under the Securities Act of 1933 and the Securities Exchange Act of 1934 ("Exchange Act") were void and unenforceable,[2] the Commission determined that their inclusion in customer contracts without disclosure of their inapplicability to federal securities law claims was misleading, thus constituting a "fraudulent, manipulative or deceptive act or practice" within the meaning of the Exchange Act.[3]

On June 8, 1987, the Supreme Court held in *Shearson/American Express* v. *McMahon* [4] that predispute agreements to arbitrate claims arising under the Securities Exchange Act of 1934 are enforceable. In addition, although the Court did not expressly overrule *Wilko* v. *Swan* [5] which held that predispute agreements to arbitrate claims arising under section 12(2) of the Securities Act of 1933 were not enforceable, the Court's reasoning raised questions regarding the continuing vitality of that decision. In light of these developments, the Commission believes that Rule 15c2–2 is no longer appropriate or accurate and, accordingly, should be rescinded.

The Commission finds that notice and public procedures are unnecessary in the public interest because Rule 15c2–2 is no longer appropriate in light of case law developments.[6] Moreover, rescission of the rule may become effective upon publication in the **Federal Register** since it relieves a restriction.[7] The Commission further finds that this action will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[8]

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted.

§ 240.15c2–2 [Removed]

2. Section 240.15c2–2 is removed.

By the Commission.

Jonathan G. Katz,

Secretary.

October 15, 1987.

[FR Doc. 87–24398 Filed 10–20–87; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act of 1934 Release No. 20397, November 18, 1983, 48 FR 53404.

[2] *See Wilko* v. *Swan*, 346 U.S. 427 (1953); *Moran* v. *Paine Webber Jackson & Curtis*, 389 F.2d 242 (8d Cir. 1968); *Greater Continental Corp* v. *Schecter*, 422 F.2d 1100 (2d Cir. 1970); *Colonial Realty Corp* v. *Bache & Co.*, 358 F.2d 178 (2d Cir.), *cert. denied*, 385 U.S. 817 (1966); *Ayres* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 538 F.2d 532 (3d Cir.), *cert. denied*, 429 U.S. 1010 (1976); *Sibley* v. *Tandy Corp.*, 543 F.2d 540 (5th Cir. 1976), *cert. denied*, 434 U.S. 824 (1977); *Allegaert* v. *Perot*, 548 F.2d 432 (2d Cir.), *cert. denied*, 432 U.S. 910 (1977); *Weissbuch* v. *Merrill Lynch, Pierce, Renner & Smith, Inc.*, 558 F.2d 831 (7th Cir. 1977); *Mansbach* v. *Prescott, Ball & Turben*, 598 F.2d 1017 (6th Cir. 1979); *DeLancie* v. *Birr, Wilson & Co.*, 648 F.2d 1255 (9th Cir. 1981) (dictum); *Ingbar* v. *Drexel Burnham Lambert, Inc.*, 683 F.2d 603 (1st Cir. 1982) (same); and *First Heritage Corp.* v. *Prescott, Ball & Turben*, Fed. Sec. L. Rep. (CCH) § 99,404 (6th Cir. 1983). *But cf.*, *Scherk* v. *Alberto-Culver Co.*, 417 U.S. 506 (1974).

[3] Securites Exchange Act Release No. 20397 (November 18, 1983).

[4] 482 U.S. ——— (1987).

[5] 346 U.S. 427 (1953).

[6] See 5 U.S.C. 553(b)(3)(B).

[7] See 5 U.S.C. 553 (d)(1) and (d)(3).

[8] See 15 U.S.C. 78w(a)(2).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 87–132]

Customs Regulations Amendment Relating to Enforcement of Protection of Semiconductor Chip Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to require that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the U.S. International Trade Commission excluding, the importation of the products. Customs will then enforce the court order or exclusion order. This action is being taken to protect the rights that have been granted to owners of semiconductor chip products under the Semiconductor Chip Protection Act of 1984.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Samuel Orandle, (202) 556–5765;

Operational Aspects: Harrison C. Feese, (202–566–8651).

SUPPLEMENTARY INFORMATION:

Background

Title III of Pub. L. 98–620, cited as the "Semiconductor Chip Protection Act of 1984," added a new Chapter 9 to Title 17, United States Code (17 U.S.C. 901 through 914), providing for protection of mask works that are fixed in semiconductor chip products. A mask work is defined as a series of related images, however fixed or encoded, that represent the three-dimensional patterns in the layers of a semiconductor chip. It is fixed in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration.

As a condition of the protection extended to mask works under 17 U.S.C. 908(a), protection terminates "if application for registration of a claim of protection in the mask work is not made * * * within 2 years after the date on which the mask work is first commercially exploited." The U.S. Copyright Office has been designated to administer the registration system for mask works.

The owner of a registered mask work has the exclusive right, under 17 U.S.C. 905, to reproduce it and to import and distribute a semiconductor chip product in which the mask work is embodied. In addition, pursuant to 17 U.S.C. 906, the owner of a particular product made by the owner of the mask work may import or distribute or otherwise dispose of or use, but not reproduce, that particular product without the authority of the owner of the mask work. The term of protection for the mask owner is 10 years from the date on which the mask work is registered, or the date on which the mask work is first commercially exploited anywhere in the world, whichever occurs first.

Under 17 U.S.C. 910(c)(1), the Secretary of the Treasury and the U.S. Postal Service are empowered to separately or jointly issue regulations for the protection of the rights of mask work owners with respect to importations. These regulations may require, as a condition for the exclusion of articles from the U.S., that the person seeking exclusion take any one or more of the following actions:

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(1) Obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC) under section 337, Tariff Act of 1930 (19 U.S.C. 1337), excluding, importation of the articles;

(2) Furnish proof that the mask work involved is protected under 17 U.S.C. 905 and that the importation of the articles would infringe the rights of the mask work owner; and/or

(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

Under options (2) or (3), which involve a Customs determination on its own that an imported mask work is infringing, without the intervention of a court or the USITC, articles which are imported in violation of the rights set forth in 17 U.S.C. 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited article may be destroyed as directed by the Secretary of the Treasury, except that the article may be returned to the country of export whenever it is shown to the satisfaction of the Secretary that the importer had no reasonable grounds for believing that his acts constituted a violation of the law.

The Semiconductor Chip Protection Act (the SCPA) became effective upon its enactment on November 8, 1984. However, 17 U.S.C. 913(a) held the registration and enforcement mechanisms in abeyance for 60 days. These registration mechanisms and enforcement provisions, therefore, went into effect on January 9, 1985.

Customs considered all three of the options for protection of the mask work owner's rights under 17 U.S.C. 905 and decided that options (2) and (3) are not advisable. These options would require that Customs provide mask work protection in a similar manner to the way it protects copyrights. Under either of these options, owners would be required to record their registered mask works with Customs for a prescribed fee and Customs officers would have to interdict imported articles containing semiconductor chip products in order to identify those which infringe a recorded mask work.

Customs determined that this would require an expert knowledge of semiconductor chip technology. Customs has neither the required expertise on the part of its inspectional staff nor the resources or funds to train them for this task. Also, it would be operationally infeasible to disassemble articles in order to extract the suspected infringing chips for testing purposes. Further, the determination of infringement would involve a full adjudicatory review requiring the presentation of evidence and an in-depth analysis of highly technical material. Customs does not have hearing examiners nor a panel of experts to insure an administrative review in less than the 18 months in which the USITC is required to conclude its investigation and make a determination.

Customs believes that the adjudication of semiconductor chip infringement issues is the appropriate domain of the USITC or the courts for several reasons. First, because of its experience with such matters as patents, the USITC has acquired an expertise that is essential to the resolution of complex infringement issues such as those raised by the SCPA. Secondly, in consideration of the novelty and controversial nature of chip infringement cases, and the lack of any guidelines, it is appropriate for the courts or the USITC to decide these cases in order to establish legal precedents, as they now do with respect to patent, trademark, and copyright infringement issues. Once the case is decided, Customs will enforce the court order, or USITC orders. Finally, adjudication of the issue in the courts or the USITC would be preferable to enforcement by Customs because the courts and the USITC can expeditiously and successfully balance the competing interests of the importer and the domestic producer of semiconductor chips.

To implement the SCPA, Customs published a notice in the **Federal Register** on July 29, 1986 (51 FR 27057), proposing to amend § 12.39, Customs Regulations (19 CFR 12.39), by adding a new paragraph (d) to require that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the USITC under 19 U.S.C. 1337, excluding, importation of the articles. Exclusion orders issued by the USITC are enforceable by Customs under § 12.39(b), Customs Regulations.

The proposal specified that the regulation would be effective against all importers regardless of whether they have knowledge that their importations are in violation of the SCPA. Thus, importers who claimed that they had no knowledge that their importations were violative would not be able to use this claim as a defense against injunctive relief obtained by the mask work owner.

It was noted that the Commissioner of Customs would not be a party to the action in which injunctive relief is being sought from the court. Inasmuch as Customs would enforce any order of the court, it would not be necessary to name the Commissioner as a defendant in the action. The proper parties to be named would be those persons involved in the importation of the alleged violative articles.

Only four comments were received in response to the notice. A discussion of these comments and our responses follow.

Discussion of Comments

Comment: One commenter proposed that Customs hold the allegedly infringing chip products while the mask work owner litigates the issues in court. Such a procedure would eliminate the necessity of adjudicating complicated legal issues.

Response: Customs does not agree with this suggestion because we would have to detain articles at the behest of "mask work" owners who allege that they plan to litigate the issue of "mask work" infringement. Presumably, the "mask work" owners would agree to post bond (17 U.S.C. 910(c)(1)), though the bond amount on a small initial shipment would be inadequate to serve as a deterrent. Detained articles would remain in Customs custody during the pendency of the litigation. Customs could be in the position of detaining imported goods simply because the owner filed a lawsuit. Given the rapid changes in chip technology, "mask work" owners could keep non-infringing but competing chip products off the market during their useful life simply by filing a lawsuit and purposefully causing delays in the trial date. Furthermore, the importer may lack the resources to contest the lawsuit. Customs does not have the expertise needed to access accurately the relative merits of "mask work" lawsuits, and would be reduced to detaining articles indiscriminately. In our opinion, Customs should have a court or USITC order before goods are detained.

Comment: Several commenters believed that the proposal would have a detrimental effect on the ability of mask work owners to protect against the small blatant pirate who disappears as soon as infringing copies enter the stream of commerce. The pirates default on actions filed against them and cannot be located to satisfy any judgments. The only meaningful remedy is stopping distribution upon entry. There is no reason for providing a lower standard of protection for mask works than is afforded other forms of intellectual property.

Response: As explained in the notice, we do not believe Customs enforcement is the answer to problems posed by small, fly-by-night "mask work" infringers. Customs cannot

indiscriminately detain the myriad of products which contain semiconductor chips based on allegations that the chips infringe protected "mask works." By the time Customs makes an informed decision on whether the imported article complained of is actually infringing, the "mask work" owner could obtain a preliminary injunction from the court or a temporary exclusion order from the USITC. Both of these forums are more expert and capable of taking proper action than Customs. Customs would, of course, honor such orders and detain goods.

Comment: One commenter agreed with Customs that much litigation under the SCPA will be highly technical and time consuming. In these cases, it may be impractical for Customs to retain custody of the allegedly infringing products while the case is litigated. The commenter believes, however, that some cases will involve uncontested instances of piracy and the uncontested nature of the case can be determined within 20 days from the filing of a complaint. The commenter understands Customs has discretion under the statute not to implement all of the conditions enumerated in section 910(c). Moreover, the commenter appreciates that any additional procedures will require expenditure of valuable staff time and that in the present environment of budget reductions, the assumption of additional duties clearly presents difficulties.

Response: Customs agrees with these comments. In uncontested court cases, a default judgment would issue quickly which would be honored and enforced by Customs.

Comment: The proposed regulations could potentially deny registered mask work owners the remedies that Congress contemplated in drafting section 910(c)(1). It is important that registered mask owners have access to exclusive remedies on a timely basis. Due to rapidly changing technologies, semiconductors have short life cycles. Under the proposal, the market window for an infringed-upon mask work may become inconsequential by the time a registered mask work owner obtains a court or USITC order. Section 910(c)(1) was enacted to provide Customs with a relatively flexible, inexpensive and timely set of options with which to determine the need for exclusion on a case-by-case basis. Congress did not intend that Customs require court or USITC orders for all exclusion orders.

It was suggested that Customs should consider implementation of a discretionary administrative procedure under which alleged infringing products could be seized if circumstances warrant such action. The discretionary procedure would allow Customs considerable latitude in developing policies to fit the particular administrative situation. The commenters hope that Customs will retain flexibility to determine exclusion on a case-by-case basis.

Response: Drafting regulations and guidelines for Customs officers for consideration in "mask work" infringement cases, as suggested, is not feasible. In view of the many and varied missions of Customs and the increased demands on the time of Customs officers, the added burden of having Customs officers decide on a case-by-case basis whether to detain articles containing semiconductor chips on suspicion of "mask work" infringement, and how long the goods should remain under detention, is not justified. Customs would be forced to react to pressures from both sides demanding either that the goods be released or seized. Customs cannot promulgate detailed regulations on "mask work" infringement incorporating the suggested factors for consideration and also devote the hours required to train inspectional staff to use them correctly. In the absence of detailed regulations and guidelines, accusations of disparate treatment by Customs at different ports would be rampant. In particular cases, Customs could be accused of being arbitrary and capricious.

Comment: A commenter stated that technical expertise is not needed for infringement determination in every case. Section 910(c)(1)(B) requires that the mask work owner furnish proof that the mask work is protected under the SPCA and the importations of articles would infringe the protected mask work. No expert knowledge of semiconductor technology would be required of Customs. Nor would an additional allocation of resources by Customs be required to identify infringing semiconductor chips incorporated into consumer articles. The owner of the registered mask work would be expected to identify infringing chips and consumer articles, and assist Customs with technical expertise and relevant data. If Customs was not satisfied that the imports were not infringing, the issue could be referred to court or the USITC.

Response: Without technical expertise of its own on semiconductor chip technology, Customs would be reduced to accepting, without question, all evidence submitted by "mask work" owners regarding infringement. Technical expertise by Customs is essential so that we can assess independently the allegations and proof offered by "mask work" owners. Customs experience with copyright and trademark cases is that owners take the position that anything remotely resembling their copyrighted or trademarked item is considered to be infringing. Customs does not believe it advisable to prohibit the entry of articles incorporating semiconductor chips based solely on self-serving allegations of "mask work" owners. A court order or USITC order, in Customs opinion, is an essential precondition to exclusion by Customs. Furthermore, Customs does believe it should be filing a lawsuit or a complaint with the USITC in questionable cases. The parties to the dispute may not choose to file such actions on their own, preferring to have Customs issue a free administrative decision. Further, if Customs decided some cases, but required the "mask work" owner to produce a court order or USITC exclusion order in others, Customs could be accused of being arbitrary and capricious. Customs would be no more successful than the USITC or the courts in establishing "mask work" infringement on a timely basis. It would not be practical for Customs to detain large shipments of articles containing semiconductor chips, and then extract and test the suspected chips for infringement. Considering the lack of legal precedents or guidelines for determining "mask work" infringement and the lack of technical expertise by Customs, most of these cases will surely be complicated. In contested cases, Customs would need to have hearing officers available to take testimony and other evidence from technical experts in order to reach an informed and impartial decision on its own on the issue of "mask work" infringement. At present, we do not have hearing officers available for this purpose. In our opinion, Customs is not required by the SCPA to acquire the necessary in-depth technical expertise and provide the hearing officers needed to assess testimony and evidence on the issue of "mask work" infringement. The USITC and the courts are in place now and fully competent to handle contested cases more quickly, considering that Customs has no expertise in this area and no quasi-judicial apparatus in place. Congress has provided three options in section 910(c)(1) and has provided that Customs could select "*one or more*" of those options. Customs has selected the option that requires the person seeking exclusion to obtain a court order or USITC order as a precondition.

Comment: Commenters contend that the owner of the recorded mask work would be expected to come forward with detailed information needed to

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identify the imported articles which infringe the recorded mask work. Such information could include a set of overlays or photographs of the infringing chip taken from a particular model, the chip number which is marked on the module and/or the logo of the company of manufacture. Customs merely has to identify the model number from the exterior of the article. At most, Customs may wish to disassemble a number of these identified articles to confirm that they contain the identified chip number and logo, which normally are readily visible once the cover of the article is removed. In any event, the articles would not have to be disassembled for testing the chip and, with either procedure, such a practice would not be time consuming or operationally infeasible. Customs can also require the importer to furnish proof that the identified chip numbers are not contained in the imported articles. Customs always has the administrative flexibility, including the discretion to request a surety bond or to create a detention period for allegedly infringing chips.

Response: The commenters assume that those persons who would engage in "mask work" infringement would never change a model number, chip number or logo. Based upon our experience with regard to other enforcement areas, Customs would expect that these are some of the first things such persons would do to eliminate suspicion. Technical expertise would be essential so that Customs could assess chip overlays of protected models and other proofs of infringement offered by "mask work" owners independently, even though the model numbers, chip numbers or logos have changed. Customs disagrees with the comment that substantial disassembly and testing operations would not be required. Storage of articles detained while disassembly operations are underway would present serious problems as would obtaining skilled personnel for disassembly. Stopping commerce in articles alleged to incorporate infringing chips is a drastic first step. A court order of USITC exclusion order, in our, opinion, should be required before detention or exclusion by Customs is initiated.

Comment: A Customs infringement determination requires the posting of a surety bond by the mask owner. To insure that a determination by Customs is not abused by the mask owner due to lack of technical expertise on the part of Customs, a surety bond should be required before a determination could be made. This would be especially important where the alleged infringing chips are contained in expensive electronic articles. With this safeguard and the ability of Customs to refuse a determination in appropriate cases by requiring the mask work owner to obtain a court or USITC order, the mask work owner would have flexibility in enforcing his rights without the possibility of undue harm to the importer or the public.

Response: The surety bond does not fully compensate the importer for damages incurred by the wrongful detention of articles containing non-infringing chips. This is particularly true during periods when buying of electronics is heavy. Under the current guidelines applicable to imports detained on suspicion of piratical copying, the bond of the copyright owner is in the amount of the entered value of the shipment under detention, plus duties, plus 20 percent of this total. The inadequacy of the bond amount is apparent in cases where the detention of a small initial shipment by Customs throws a cloud over the importer's ability to deliver a large shipment scheduled to arrive shortly thereafter. The loss of a major customer could put the importer out of business or leave him with uncompensated losses, including legal expenses incurred in fighting the unwarranted detention. Furthermore, the copyright regulations provide a 30-day period for the copyright owner to decide whether or not to post the bond (19 CFR 143.43). If similar "mask work" regulations were promulgated, the "mask work owner could purposefully wait 29 days, then decide not to post the bond, thereby eliminating competition for a substantial period without incurring any bond obligation. Customs does not believe the filing of a bond provides sufficient surety to override the need for a USITC or court order. Further, Customs would be open to charges of being arbitrary and capricious if we detained articles and allowed the "mask work" owner to post bond in some cases, thereby effectively eliminating competition, and released articles in other cases, requiring a USITC or court order as a prerequisite to Customs enforcement.

Comment: Section 910(c)(1) provides Customs with a relatively flexible, inexpensive and timely set of options with which to determine the need for exclusion on a case-by-case basis. Congress did not intend that Customs require court or USITC orders for all exclusion orders under section 910(c)(1). It was expected that there would be some situations in which the identification of infringing chips, or products containing infringing chips, would be uncomplicated. In more complicated infringement cases where substantial similarity is an issue and expert testimony will be required, Customs could refuse to make a determination and require the mask work owner to obtain a court or USITC order. By limiting such an order to complicated cases and including section 910(c)(1)(B) as part of the enforcement procedure for simple infringement cases, the mask work owner will be given more flexibility and timely relief against infringers of the protected mask works. Moreover, the burden on Customs is minimal.

Response: We disagree. Without legal precedent or guidelines, all "mask work" infringement questions are complicated. As stated previously in this document, Customs lacks the expertise essential to make a determination on its own that "mask work" infringement is suspected. Technical expertise by Customs would be essential, so that we can assess chip overlays of protected models and other proofs of infringement offered by "mask work" owners independently. Substantial disassembly and testing operations by Customs would be required. Storage of articles detained while disassembly and testing operations are underway would present serious problems for Customs as would obtaining skilled personnel for disassembly. If Customs were required to differentiate between complicated cases on the one hand and uncomplicated cases on the other hand, and use a decison that the case is complicated to justify requiring a court or USITC order, Customs will face the impossible task of writing regulations and guidelines for determining what cases are complicated. Without detailed guidelines, Customs could be accused of being arbitrary and capricious in deciding which cases are complicated. Stopping commerce in articles alleged to incorporate infringing chips is a drastic first step. A court order or USITC exclusion order, in our opinion, should be required before action by Customs is initiated.

Comment: One commenter noted that importation infringements will be few if effective remedies are available. The supplementary information to the proposed regulation recognizes the "large unearned competitive advantage" obtained by the mask work pirate. However, it states that no factual data exists as to the extent of unauthorized importations, and specifically requests information as to the extent of importations alleged to infringe protected mask works embodied in

semiconductor chips. Although copying as a standard business practice was established well before the enactment of the SCPA, there have been no reported cases of foreign mask work infringement to date. The reasons for this are many, First of all, the SCPA currently serves as a deterrent to mask works infringement which did not exist before. Secondly, mask works protected by the SCPA can be licensed. Finally, the SCPA is only in its second year of existence. The commenter believes that the proposed regulations would weaken the protection afforded mask works and thereby encourage infringement. The commenter contends that if both the law and regulations pose an effective deterrent, the number of determinations of infringement of mask works by Customs will be few.

Reponse: Customs does not agree. In two years, there are no cases of foreign mask work infringement under the SCPA. Nevertheless, Customs is being asked to promulgate length and detailed regulations which would allow registered "mask work" owners to record their works with Customs for import protection. Customs would then be expected to, (1) provide training to Customs officers so that they would have the expertise needed to successfully monitor the whole gamut of electronic articles containing semiconductor chips for chips suspected of "mask work" infringement, (2) detain and store articles containing suspected chips, (3) examine the chips in our laboratories (the chips are consumed in the testing), and (4) provide expert legal review of the laboratory findings so that a correct legal determination on the complex issue of "mask work" infringement can be made with *no* court cases, USITC exclusion orders or other precedents available. In our opinion, Customs cannot become as heavily involved in enforcement of this issue as the commenter would like. We do not agree that the regulations would weaken the protection afforded "mask work" owners and encourage infringement. Neither do we see how the fact that a "mask work" can be licensed has anything to do with discouraging pirates who do not want to pay for the licenses from violating the SCPA.

After thorough consideration of all the comments and further review of the matter, Customs remains of the opinion that the only viable alternative for protection under the SCPA is for a court order or a USITC order to be obtained as a precondition to exclusion of an article by Customs.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. It will affect only importers of semiconductor chip products and owners of these products who register them. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal authors of this document were Bruce J. Friedman and Samuel Orandle, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Unfair competition.

Amendments

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote. 11, Tariff Schedules of the United States), 1624. Section 12.39 also issued under 19 U.S.C. 1337, 1623; 17 U.S.C. 910.

2. Section 12.39, Customs Regulations, is amended by adding a new paragraph (d) to read as follows:

§ 12.39 Imported articles involving unfair method of competition or practices.

* * * * *

(d) *Importations of semiconductor chip products.* (1) In accordance with the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*), if the owner of a mask work which is registered with the Copyright Office seeks to have Customs deny entry to any imported semiconductor chip products which infringe his rights in such mask work, the owner must obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC), under section 337, Tariff Act of 1930, as amended (19 U.S.C.1337), excluding, importation of such products. Exclusion orders issued by the USITC are enforceable by Customs under paragraph (b) of this section. Court orders or exclusion orders issued by the USITC shall be forwarded, for enforcement purposes, to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, Washington, DC 20229.

(2) The district director shall enforce any court order or USITC exclusion order based upon a mask work registration in accordance with the terms of such order. Court orders may require either denial of entry or the seizure of violative semiconductor chip products. Forfeiture proceedings in accordance with Part 162 of this chapter shall be instituted against any such products so seized.

(3) This regulation will be effective against all importers regardless of whether they have knowledge that their importations are in violation of the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901–904).

William von Raab,

Commissioner of Customs

Approved: July 13, 1987.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 87–24392 Filed 10–20–87; 8:45 am]

BILLING CODE 4820–02–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5542/R914; FRL–3278–9]

Triforine; Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive and a feed additive regulation to permit residues of the fungicide triforine in or on certain food and feed items. The regulations, to establish maximum permissible levels for residues of triforine in or on commodities, were requested in a petition by EM Industries, Inc.

EFFECTIVE DATE: October 21, 1987.

ADDRESS: Written objections, identified by the document control number, [FAP 7H5542/R914], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C),

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Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 21, 1987 (52 FR 31632), in which it was announced that EM Industries, Inc., 5 Skyline Drive, Hawthorne, New York 10532, had submitted food/feed additive petition 7H5542 to EPA requesting that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, propose establishing food/feed additive regulations to permit residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]bis[formamide]) in or on the food commodity dried hops at 60 parts per million (ppm) (21 CFR Part 193) and in or on the feed commodity spent hops at 60 ppm (21 CFR Part 561).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 7, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Chapter I is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 193.476 to Subpart A, to read as follows:

§ 193.476 Triforine.

A food additive regulation is established to permit residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis[formamide]) in or on the following processed foods when present therein as a result of application to growing hops:

Foods	Parts per million
Hops, dried	60

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 561.442, to read as follows:

§ 561.442 Triforine.

A feed additive regulation is established to permit residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)]bis[formamide]) in or on processed feeds when present therein as a result of application to growing hops:

Feeds	Parts per million
Hops, spent	[redacted]

[FR Doc. 87–24123 Filed 10–20–87; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 252

[DoD Directive 3100.5]

Offshore Military Activities Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part revises Part 252 to update policy and responsibilities for military use of offshore areas. The Secretary of the Navy would be Executive Agent for outer continental shelf (OCS) activities coordination. The Secretary of the Army would continue to notify components of proposed navigation obstructions.

EFFECTIVE DATE: March 16, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Ramsey, Office of the Assistant Secretary of Defense (Production and Logistics), Pentagon, Washington, DC 20301–8000, telephone (202) 695–7820 or 325–2215.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 252

Armed forces, Continental shelf.

Accordingly, Title 32 CFR Part 252 is revised to read as follows:

PART 252—DEPARTMENT OF DEFENSE OFFSHORE MILITARY ACTIVITIES PROGRAM

Sec.
252.1 Reissuance and purpose.
252.2 Applicability and scope.
252.3 Definitions.
252.4 Policy.
252.5 Responsibilities.

Authority: 5 U.S.C. 301.

§ 252.1 Reissuance and purpose.

This part reissues 32 CFR Part 252 to update policies and procedures for the use of offshore areas by the Department of Defense. It shall serve as the basis for a comprehensive Offshore Military Activities Program.

§ 252.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Organization of the Joint Chiefs of Staff (OJCS), and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Concerns the use of offshore areas for military purposes. It does not limit the responsibilities of the Secretary of

the Navy assigned under 33 U.S.C. 1101 *et seq.*

§ 252.3 Definitions.

Offshore Areas. The submerged land areas defined in 43 U.S.C. 1301 *et seq.* and 43 U.S.C. 1331 *et seq.* and the adjacent waters affected by the use of those submerged lands.

Offshore Military Activities Program. The program established to implement DoD policies and procedures for those activities, operations, and installations that require an offshore environment and that may impact on offshore areas.

Outer Continental Shelf. All submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of 43 U.S.C. 1301 *et seq.*, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

State-owned Offshore Submerged Lands. Coastal portions of lands beneath navigable waters, as defined in section 2 of the Submerged Lands Act.

§ 252.4 Policy.

(a) It is DoD policy to support the principle that lands composing the Outer Continental Shelf and state-owned offshore areas shall be used in the best interest of the United States. Therefore, it is DoD policy for the use of offshore areas to be shared with nonmilitary interests whenever they can be accommodated.

(b) The Secretaries of Defense and the Interior have agreed on procedures for resolving conflicts over joint use of offshore areas for military and mineral exploration or developmental purposes. In carrying out negotiations with elements of the Department of the Interior (DoI), the Department of Defense shall be guided by this agreement when appropriate.

(c) If a coastal state determines that the mineral potential of off-shore areas being used or proposed to be used for military purposes must be explored or developed, DoD shall endeavor to accommodate joint military and commercial use of those areas. If compatible joint use is not economically or militarily feasible, DoD shall seek agreement with the coastal state to exclude conflict areas from its leasing program.

§ 252.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Production and Logistics)* (ASD(P&L)) shall maintain a comprehensive program for the military use of the offshore environment and provide related direction and policy to DoD Components.

(b) The *Secretary of the Army* shall provide notices to the ASD(A&L), to affected military installations and activities, and to the Director of the Defense Mapping Agency Hydrographic/Topographic Center of potential obstructions and hazards to navigation as stated in the Rivers and Harbors Appropriation Act, of proposed permits for obstructions to be located on the Outer Continental Shelf under 43 U.S.C. 1331 *et seq.*, as amended, and of proposed permits for artificial reefs under the National Fishing Enhancement Act of 1984 to ensure compatibility with the Offshore Military Activities Program.

(c) The *Secretary of the Navy* shall:

(1) Act as DoD Executive Agent for outer continental shelf matters and carry out responsibilities assigned to the Executive Agent in the Agreement.

(2) Conduct continuing liaison with DoI, appropriate coastal states, and the ASD(P&L) to ensure compatibility between the DoD Offshore Military Activities Program and the related plans and programs of DoI and coastal states.

(3) Inform concerned DoD Components of new developments in the DOI's, states', and industry's mineral leasing plans that may affect present or potential military interests in offshore areas.

(4) Represent the Department of Defense on the Secretary of the Interior's Outer Continental Shelf Advisory Board.

(d) The *Secretary of the Air Force* shall, for those offshore areas under his control, conduct continuing liaison with the DoI and coastal states and enter into agreements necessary to ensure compatibility between military activities and relevant plans and programs of the DoI and coastal states.

(e) *Heads of DoD Components* shall:

(1) Review proposed DoI's and states' mineral leasing plans and inform the Executive Agent of proposed activities that could be incompatible with military missions. When joint use is feasible, the Heads shall recommend conditions and stipulations that should be imposed in leases to ensure the integrity of military missions and otherwise protect the interests of the United States against claims arising out of damage to property or personal injury.

(2) Establish and maintain lines of communication and coordination to ensure that the ASD(P&L) and the Executive Agent are fully aware of plans and programs involving offshore areas.

(3) Review notices referred to in § 252.5(b) and notify the Army Chief of Engineers if proposed actions are incompatible with offshore military activities.

(4) Inform the Army Chief of Engineers and the Executive Agent of any significant change in the status of offshore ranges, restricted areas, or operating areas.

(5) Comply with the provisions of the Coastal Zone Management Act.

(6) Conduct other activities related to offshore areas as requested by the ASD(A&L).

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1987.

[FR Doc. 87-24304 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 903

Privacy Act Update; Disclosure of Personal Information During Litigation

AGENCY: Pennsylvania Avenue Development Corporation (PADC).

ACTION: Final rule.

SUMMARY: This rule provides guidelines governing the routine use of records contained in PADC records systems for disclosure to the Department of Justice and to PADC during the course of litigation. It is intended to make nonconsensual disclosure of personal information, routinely used in litigation, more consistent with the requirements of the Privacy Act. Recent court decisions require that routine uses of records in Government Record Systems be narrow in scope and protect against unbridled discretion in allowing disclosures as a routine use. The rule sets forth the specific routine uses that support disclosure of Privacy Act records to the Department of Justice and for PADC disclosure in litigation. The rule conforms to Office of Management and Budget memorandum on Privacy Act Guidance—dated May 24, 1985.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Talbot J. Nicholas II, Attorney, Pennsylvania Avenue Development Corporation, (202) 724-9088.

SUPPLEMENTARY INFORMATION: PADC published this rule for comment on November 4, 1985 (50 FR 45841). No comments were received. In addition, PADC published the rule as an interim rule on September 11, 1987 (52 FR 34384). No comments were received.

The Privacy Act of 1974 requires Government agencies to obtain the written consent of record subjects

before disclosing personal information from an agency system of records. The Act provides twelve specific exceptions to this requirement. One of the enumerated exceptions provides for the nonconsensual disclosure of records for "routine uses" of the data collected.

In the context of litigation, the government generally initiates disclosures of personal information as routine use exceptions. A 1984 federal court decision held that such routine uses must be narrowly drawn to preclude the government from disclosing, as a routine use, personal and embarrassing information about an individual in retaliation for suit being brought against it. Such routine use by the government could discourage meritorious claims from being filed by aggrieved parties.

The Office of Management and Budget has selectively reviewed existing routine uses for disclosures in support of litigation and has found that such uses could be for purposes that are inconsistent with the intent of the Privacy Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not constitute a "major rule" under Executive Order 12291.

List of Subjects in 36 CFR Part 903

Privacy.

For the reasons set out in the preamble, Part 903 of Chapter IX of Title 36 of the Code of Federal Regulations is amended as follows:

PART 903—PRIVACY ACT

Accordingly, the interim rule amending 36 CFR Part 903 which was published at 52 FR 34384 on September 11, 1987, is adopted as a final rule without change.

M.J. Brodie,

Executive Director.

Dated: October 13, 1987.

[FR Doc. 87–24347 Filed 10–20–87; 8:45 am]

BILLING CODE 7530–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300172A; FRL-3278-8]

Dimethylformamide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts dimethylformamide from the requirement of a tolerance when used in accordance with good agricultural practice in formulations with the fungicide triforine in or on the raw agricultural commodity hops. This regulation was requested by EM Industries, Inc. Also, elsewhere in this issue of the **Federal Register**, a food and a feed additive regulation are added to permit residues of triforine in or on dried and spent hops.

EFFECTIVE DATE: October 21, 1987.

ADDRESS: Written objections, identified by the document control number [OPP–300172A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 21, 1987 (52 FR 31635), which announced that EM Industries, Inc., 5 Skyline Drive, Hawthorne, NY 10532, had requested that 40 CFR 180.1046 be amended by establishing an exemption from the requirement of a tolerance for residues of dimethylformamide when used in formulations with the fungicide triforine (*N,N*-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]bis[formamide]), in or on the raw agricultural commodity hops.

Inert ingredients are ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own); solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Dimethylformamide was subject to these new review procedures. Also, data submitted by EM Industries, Inc., in support of its request were evaluated and discussed in the proposed rule. Based on the new review procedures and the fact that dimethylformamide is already exempt from the requirement of a tolerance under 40 CFR 180.1046 for residues in or on various raw agricultural commodities when used in formulations with the fungicide triforine, the Agency has determined that no additional test data will be required to support this regulation.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide in considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 7, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1046(a) is amended by adding, and alphabetically inserting, the

raw agricultural commodity hops to read as follows:

§ 180.1046 Dimethylformamide; exemption from the requirement of a tolerance.

(a) * * *

Commodities

* * * * *

Hops

* * * * *

[FR Doc. 87-24122 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 80-57]

Revision and Update of Public Mobile Service Rules; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the amendatory language for § 22.15, as appearing in the Final Rule document in this proceeding concerning Part 22.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski (202) 632-6450.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Commission published a final rule concerning the revision of Part 22 (52 FR 10571).

§ 22.15 [Correctly amended]

The amendatory language for § 22.15 is hereby corrected to read: "Section 22.15 is amended by revising paragraphs (b)(1), (i), (ii) and (b)(2)(i) and by adding paragraph (b)(1)(iii) to read as follows:"

Federal Communications Commission,

William J. Tricarico,

Secretary.

[FR Doc. 87-24375 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 23

[Docket No. 64f and 64g; Notice No. 87-21]

Participation by Minority Business Enterprise in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; request for comments.

SUMMARY: Congress recently enacted section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). This section requires amendments in the Department's disadvantaged business enterprise (DBE) program, the most important of which is making women a presumptively disadvantaged class for purposes of the program. This rule makes the changes mandated by the new statute. In addition, the rule amends the definition of "Hispanic" to include Portuguese-Americans, consistent with Small Business Administration practice. It also changes the way in which purchases of materials and supplies from minority, women-owned, and disadvantaged business enterprises are counted toward recipients' and contractors' goals.

DATES: This rule is effective on October 21, 1987. Comments in response to the request for public comment are due December 21, 1987. Late-filed comments will be considered to the extent practicable.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 64g, Department of Transportation, Room 4107, 400 7th Street SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will date stamp and sign the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Room 10424, Washington, DC 20590. (202) 366-9306.

SUPPLEMENTARY INFORMATION: This final rule serves three purposes. First, and most important, it amends the Department's disadvantaged business enterprise (DBE) regulations to conform with recent Congressional action that modified the statutory basis for the DBE program. These changes make women presumptively disadvantaged individuals for purposes of the program, set an average annual gross revenue limit of $14 million (over a three-year period) for being considered a small business under the program, and require the Department to establish certification process guidelines for recipients.

Second, the rule makes a minor modification to the definition of "Hispanic" used in the DBE program. The amendment would include Portuguese Americans within the definition of Hispanic, in order to make the Department's administration of this program consistent with Small Business Administration (SBA) administrative practice in similar programs.

Third, the Department is taking final action concerning the credit allowed toward goals for the use of MBE, DBE and WBE suppliers, in the FAA and FRA as well as in the FHWA and UMTA programs. This action is based on an October 1985 notice of proposed rulemaking (NPRM). This action would permit 60 percent of the value of goods purchased from an MBE, DBE, or WBE "regular dealer" to be counted toward a contractor's or recipient's goal. The percentage of goods countable toward goals would be reevaluated after two years. This rule also clarifies the application of the "commercially useful function" concept.

Request for Comments

The Department is seeking comments on the first two portions of the rule—changes to reflect section 106(c) of the STURAA and the amendment to the definition of Hispanic—since the Department has not previously provided interested persons the opportunity to comment on these matters. Following the receipt of comments on these subjects, the Department will publish a notice responding to the comments and, if appropriate, will promulgate amendments to the affected regulatory provisions.

The third portion of the rule, concerning suppliers, was the subject of an NPRM (50 FR 40422, October 2, 1985), and comments were obtained concerning the matters it covers. Consequently, comments are not being sought on the provisions of the final, rule provisions on this subject. However, the Department is seeking comments on whether a different percentage of credit for the use of DBE suppliers is appropriate for Urban Mass Transportation Administration (UMTA) programs than is applied to the rest of the Department's programs. Specifically, the Department seeks comment on whether, on a permanent or pilot program basis, goods purchased from DBE regular dealers in the UMTA program should be counted at 100 percent of their value.

Changes to Conform to Section 106(c) of the STURAA

Section 106(c) continues the DBE program established in 1983 by section 105(f) the Surface Transportation Assistance Act of 1982. The basic structure of the DBE program remains intact, with the exceptions discussed below. Funds authorized by the 1982

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legislation which have not been obligated by the date of enactment of the STURAA (April 2, 1987) are governed by the DBE provisions of section 106(c) of the STURAA, not by the provisions of section 105(f) of the 1982 Act.

The rule makes technical changes to § 23.61, the definition of "Act" in § 23.62, and the applicability language of § 23.63 to reflect the enactment of section 106(c) of the STURAA as the replacement for section 105(f) of the Surface Transportation Assistance Act of 1982. Appendix A, which follows Subpart D of the rule and provides a section-by-section explanation of its operation, is also being amended to conform to all changes made to the Part 23 by this rule.

Section 106(c)(2)(B) provides that women, like Black Americans, Hispanic Americans, and the other groups currently designated in the regulations, are presumed to be socially and disadvantaged individuals for purposes of the DBE program. To implement this provision, the Department is amending the definition of "socially and economically disadvantaged individuals" by adding a reference to women.

This change has an important implication for the administration of the Department's program. Heretofore, each recipient has had to have two separate goals: One for DBEs and one for WBEs. With the addition of women as a "presumptive" group, it no longer is practicable to retain this two-goal system. The legislative history of section 106(c) indicates that Congress intended the Department to adopt a one-goal system for DBEs under the new legislation.

Consequently, the Department is amending § 23.45(g)(4) to specify that, from now on, the DBE program will have only one goal. That is, each recipient's DBE program will have a single overall goal for DBEs, and each contract on which a goal is required will have a single contracting goal for DBEs. There will no longer be separate DBE and WBE goals.

Section 106(c)(4) of the STURAA requires the Department to establish uniform standards for recipients' certifications of DBE eligibility. In this rule, the Department is requiring recipients to take those steps specifically listed in the legislation. The steps listed in the amended § 23.45(f) are not the only possible things that recipients should do in certification. The Department seek comments on what additions or modifications should be made to this list.

Congress determined, in order to ensure that the DBE program meets its objective of helping small minority businesses become self-sufficient and able to compete in the market with non-disadvantaged firms, that DBE firms should "graduate" from the program once their average annual receipts reached $14 million. Section 106(c)(2)(A) of the STURAA mandates this result. An amendment to the definition of "small business concern" in § 23.62 implements this provision of the statute.

Section 106(c) makes the $14 million figure subject to adjustment by the Secretary for inflation. The regulation provides that the Secretary shall make such adjustments from time to time. The Department seeks comment on the methodology for and frequency of these adjustments.

Finally, section 106(c)(3) requires an annually-updated list of eligible DBEs. Section 23.45(e) of the regulation already requires recipients to compile a directory. This rule implements the new statute by requiring the directory to be updated annually. Recipients will be expected, when they make their next annual update, to list all DBE firms, those owned and controlled by women as well as those owned and controlled by minorities. It is likely that most or all recipients already include the addresses of firms listed in their directories; however, in order to ensure conformity with section 106(c)'s requirement that the location of firms be stated, the regulation is amended specifically to require the listing of firms' addresses.

The DBE program—and hence the changes this rule makes in response to section 106(c) of the STURAA—continues to apply only to the Department's financial assistance programs for highways and urban mass transportation; it does not apply to other DOT financial assistance programs, such as the programs for airports and intercity rail service. Consequently, for example, airport sponsors receiving financial assistance from the FAA would continue to set separate goals for MBEs and WBEs.

The portion of the Congressional Conference Report on section 106(c) (House Report 100–27, at p. 148) urges the Secretary to reexamine existing waiver provisions (i.e., 49 CFR 23.65) and revise them to permit any state to more readily adjust its goal from the ten percent requirement, if that percentage does not reflect a reasonable goal. The Department seeks comment on what modifications to § 23.65, if any, are appropriate in light of this recommendation.

The Conference Report also expressed the view that participation of minorities and women should be equitably distributed throughout the highway construction industry and that the implementation of the DBE program should not fall disproportionately on any one segment of the industry. Neither 106(c) nor the Conference report contains any directions or recommendations to the Secretary concerning what steps it would be reasonable for the Department to take in light of this expressed view. The Department seeks comment on any modifications of Part 23 that would be appropriate in response to the views expressed on this point in the Conference Report.

Amendment to Definition of Hispanic

The Department's DBE rule defines eligible businesses as being small business concerns owned and controlled by socially and economically disadvantaged individuals. It does so because section 105(f) of the Surface Transportation Assistance Act of 1982, and its successor, section 106(c) of the STURAA, explicitly direct the Department to use this definition, which derives from section 8(d) of the Small Business Act and implementing regulations issued by the Small Business Administration (SBA).

One of the groups presumed to be disadvantaged, under this definition, is "Hispanic Americans." Because an applicable government-wide definition of the term "Hispanic" did not include Portuguese-Americans, and because the SBA has never, through regulation, determined that Portuguese-Americans were disadvantaged, the Department's 1983 rule implementing section 105(f) did not treat Portuguese-Americans as part of the presumptively disadvantaged "Hispanic Americans" group.

Subsequently, the Department learned that internal SBA guidance directed that agency's personnel to regard Portuguese-Americans as Hispanics. Specifically, SBA provided a copy of a March 1986 internal directive, SBA Notice No. 8000–68, to the Department in December 1986. The notice provides in pertinent part:

> [W]ith respect to Portuguese Americans and Section 8(a) eligibility * * * such individuals are eligible as Hispanic Americans. In practice, the Agency has applied the phrase Hispanic Americans as including those individuals whose ancestry and culture are rooted in South American, Central American, Cuba, Dominican Republic, Puerto Rico, or the Iberian Peninsula, including Portugal.

While the Department's existing definition is consistent with applicable statutes, the Department has determined, as a policy matter, to amend the definition of "Hispanic

Americans" to include persons of Portuguese culture or origin. The Department believes it would be beneficial to make its DBE program consistent with the minority business programs of the SBA in this respect in order to avoid confusion. In addition, this change would make the definitions of Subpart D of Part 23 (applying to highway and mass transit programs) more consistent with those of Subpart A (applying to aviation and rail programs). Portuguese-Americans have been eligible to participate in the airport and rail programs since 1981.

Credit for Use of Suppliers and "Commercially Useful Function"

The Department's current MBE/DBE rules limit the credit toward goals that a recipient or contractor can obtain for purchasing materials and suppliers from an MBE, WBE, DBE firm that does not manufacture the materials or supplies. Section 23.47(e) of the regulation provides as follows:

> (e) A recipient or contractor may count toward its MBE goals expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBEs assume the actual and contractual responsibility for the provision of the materials and supplies.
>
> (1) The recipient or contractor may count its entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
>
> (2) The recipient may count 20 percent of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

The Department proposed to change this provision. In an October 2, 1985, notice of proposed rulemaking (NPRM), the Department proposed to allow an unspecified, but increased, percentage of the cost of materials purchased from an MBE, WBE, or DBE supplier who was a "regular dealer" to count toward goals. In addition, the NPRM proposed refinements to the concept of "commercially useful function" that would more precisely define the credit allowable toward goals for use of MBE, WBE, and DBE firms performing such functions as hauling, professional and technical services, manufacturers' representatives, and insurance agents.

The Department received 56 comments on the NPRM. Of these, 27 favored increasing the percentage to 100 percent. Another 16 favored raising the percentage to a figure less than 100 percent (most of these comments recommended a percentage between 30 and 80 percent). The remaining comments did not take a position on this issue.

The reasons for increasing the percentage cited by those commenters favoring an increase were essentially those mentioned in the preamble to the NPRM. First, the current provision may have an adverse effect on MBE, DBE, or WBE suppliers, in that it provides less incentive for recipients and contractors to use their services than the services of other kinds of eligible firms (which are counted at 100 percent of the value of their products or services).

Second, it is likely to be more cost-effective for a recipient to use its resources to develop contacts with or provide technical assistance to a firm the use of which will result in 100 percent credit than one for which the "payoff" in terms of credit towards goals will be 20 cents on the dollar. As a result, the rule could unintentionally skew recipient's programs toward construction contractors and other service providers and away from dealers and suppliers of products.

Third, the provision may make it more difficult for some recipients to meet goals than others. For example, Urban Mass Transportation Administration (UMTA) recipients of operating assistance must meet their DBE goals largely through procurements of materials and supplies (e.g., bus fuel, spare parts). Since these recipients can get only 20 percent credit for the use of the MBE/DBE firms that provide these materials and supplies, the recipients will have a more difficult time meeting goals than those recipients (e.g., transit authorities or highway departments that do substantial amounts of construction contracting) 100 percent of the value of whose DBE contracts can be counted toward goals.

Fourth, some commenters also pointed out that the present rule is inconsistent with respect to treatment of the costs of supplies. If an MBE, DBE or WBE construction contractor buys supplies for a job from a non-minority firm, the entire cost of those supplies is credited toward the goal, since it becomes part of the contract price. If a recipient or non-minority contractor purchases the same supplies from an MBE, WBE, or DBE supplier, however, only 20 percent of the value of the supplies is credited toward the recipient's goals.

Commenters who opposed raising the percentage basically did so for the reasons cited in the original rule on this subject. That is, the commenters were concerned that prime contractors would rather meet goals through purchasing supplies than by using MBE, DBE, or WBE subcontractors, and that increasing the percentage of supply costs allowable toward goals would adversely affect subcontractors. In addition, these commenters cited the relatively low portion of "value added" by suppliers, as contrasted with other sorts of contractors. They also expressed the concern that the proposal might increase the participation of brokers and manufacturers' representatives, which they viewed as inconsistent with the intent of the program.

The commenters who supported increasing the percentage, but to a figure less than 100 percent, generally did so in the belief that a compromise recognizing the validity of arguments for not changing the rule and for changing it to 100 percent was desirable. These commenters proposed percentages ranging from 30 to 80 percent. Some of these comments also recommended sliding scales (e.g., 100 percent for the first $25,000 worth of materials, smaller percentages for additional amounts).

The Department recognizes that commenters on all sides of this issue have legitimate concerns. Consequently, the Department has concluded that the most appropriate response to these concerns is to raise the percentage of the value of goods purchased through regular dealers to 60 percent. Choosing this percentage will mitigate significantly the problems cited by recipients and suppliers with the current 20 percent figure. As a percentage significantly less than 100, however, it will avoid to a considerable degree the problems cited by other commenters. The Department will reevaluate this decision after two years to determine whether, on the basis of recipients', contractors' and suppliers' experience, it is appropriate to raise it, lower it, or leave it at 60 percent.

The most significant support for counting 100 percent of goods purchased from DBE suppliers came from transit authorities and suppliers to transit authorities. Some of these commenters appeared to believe that there are considerations specific to the transit program (especially for smaller transit authorities) that make 100 percent counting especially appropriate in that program. The Department is seeking comment on whether there should be a different percentage used for the transit program from that used in the rest of the Department's programs (e.g., 100 percent). The Department also seeks comment on whether, if a different percentage is used for the UMTA program, it should be used on a pilot program basis, subject to reevaluation after a certain amount of time, or whether the change should be permanent.

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With respect to the "regular dealer" concept, a number of commenters asked for clarification. Some commenters asked whether recipients were required to certify firms as regular dealers. The Department does not intend to require certification, as such. Before a recipient may count (or permit a contractor to count) 60 percent of the value of a product toward a goal, the recipient must ensure that the firm is a regular dealer in the product involved. (Obviously, a firm may be a regular dealer in one product but not in another. It is intended that 60 percent credit be permitted only where the firm is a regular dealer in the product involved in the particular transaction.) This determination could be made on a case-by-case basis or could be done through a certification process. The choice is up to the recipient.

One commenter suggested that, in order that recipients could avoid the administrative burden of determining whether firms were regular dealers, firms should be able to self-certify as regular dealers. The Department believes that this approach would be too open to abuse, and we have not adopted it.

A number of commenters addressed the NPRM's provision concerning suppliers of bulk goods, such as fuel oil dealers. The NPRM said that bulk goods suppliers did not have to keep such products in stock, but must own, operate, or maintain distribution equipment and have, as their principal business, and in their own name, the purchase and sale of the products. Some comments approved this proposal. Some said that even bulk goods suppliers should have to maintain an inventory of the product; others said that distribution equipment should not be required.

A key purpose of the "regular dealer" definition is to distinguish between firms that supply a product on a regular basis to the public and those that supply the product on only an ad hoc basis in relation to a particular contract or contractor. Such indications of being a regular, established, supplier as maintaining an inventory or distribution equipment are very useful in making this distinction. At the same time, business practices may differ for suppliers of different types of goods or in different parts of the country, and an absolute, across-the-board requirement for either the maintenance of an inventory or possession of distribution equipment could be unrealistic.

For this reason, the final rule will permit a supplier of bulk goods to be regarded as a regular dealer if, in addition to meeting other parts of the definition, it either maintains an inventory of the product in stock or owns or operates distribution equipment. The final rule will not require both an inventory and distribution equipment.

There were few comments on the NPRM's proposals to clarify the counting provisions applicable to contractors who are neither suppliers nor construction contractors. These comments generally supported the NPRM's approach of counting fees and commissions for such participants. One comment suggested that fees and commissions for brokers and manufacturer's representatives should be counted. This is consistent with the Department's intent in the NPRM, and such fees and commissions may be counted under the final rule, provided, of course, that the broker or manufacturer's representative performs a commercially useful function in a given transaction.

Another commenter said that counting fees and commissions would be too administratively burdensome, and suggested a flat 10 percent rate for counting the contributions of firms that were not regular dealers. The Department did not adopt this suggestion. The Department does not believe that its approach is burdensome, and a 10 percent rate might well overstate the credit due such firms in many instances. Consequently, the NPRM provision has been retained with only minor changes.

In implementing the amended rule, recipients should keep in mind the concept of "commercially useful function." According to § 23.47(d), work performed by an MBE, DBE or WBE firm in a particular transaction can be counted toward goals only if the recipient determines that it involves a commercially useful function. That is, in light of industry practices and other relevant considerations, does the MBE, DBE or WBE firm have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the MBE/DBE/WBE program, or is the firm's role a superfluous step added in an attempt to obtain credit toward goals? If, in the recipient's judgment, the firm does not perform a commercially useful function in the transaction, no credit toward goals may be awarded, and the counting provisions of the regulation never come into play.

It should be noted that the question of whether a firm is performing a commercially useful function is completely separate from the question of whether the firm is an eligible MBE, DBE, or WBE. A firm is eligible if it meets the definitional criteria (see §§ 23.5 or 23.62) and ownership and control requirements (see § 23.53) of the regulation.

The issue of whether an eligible firm performs a commercially useful function arises only in the context of how much, if any, "credit" toward MBE, DBE, or WBE goals can be counted for the firm's participation in a contract (see § 23.47). An eligible firm may perform a commercially useful function on one contract and not on another.

The fact that a firm does not perform a commercially useful function in a certain transaction does not mean that the firm loses eligibility (i.e., that it should be decertified or not recertified, as though it were no longer owned and controlled by its minority, disadvantaged, or women participants), only that no credit can be counted for its participation in the transaction.

Of course, there may be circumstances in which the participation of a firm in transactions in which it perform no commercially useful function may constitute part of a pattern of relationships with non-minority businesses that brings the firm's independence and control into question. In this sense, connection between "no commercially useful function" and program eligibility could exist. There may also be circumstances in which performing no commercially useful function (e.g., in an intentional pass-through scheme) could involve fraud or other disreputable conduct, leading to a firm to being subject to a declaration of non-responsibility, suspension or debarment, or even criminal prosecution.

If the recipient determines that the firm is performing a commercially useful function, the recipient must then decide what that function is. If the commercially useful function is that of a regular dealer, the recipient may then count 60 percent of the value of the product supplied toward MBE, DBE, or WBE goals.

A regular dealer must be engaged in selling the product in question *to the public*. This is important in distinguishing a *regular* dealer, which has a regular trade with a variety of customers, from a firm which performs supplier-like functions on a *ad hoc* basis or for only one or two contractors with whom it has a special relationship.

As noted above, a supplier of bulk goods may qualify as a regular dealer if it either maintains an inventory or owns or operates distribution equipment. With respect to the distribution equipment (e.g., a fleet of trucks), the term "or operates" is intended to cover a situation in which the supplier leases the equipment on a regular basis for its

entire business. It is not intended to cover a situation in which the firm simply provides drivers for trucks owned or leased by another party (e.g., a prime contractor) or leases such a party's trucks on an *ad hoc* basis for a specific job.

If the commercially useful function being performed is not that of a regular dealer, but rather that of delivery of products, obtaining bonding or insurance, procurement of personnel, acting as a broker or manufacturer's representative in the procurement of supplies, facilities, or materials, etc., the counting rules of § 23.47(f) would apply.

Under paragraph (f), for example, a business that simply transfers title of a product from manufacturer to ultimate purchaser (e.g., a sales representative who reinvoices a steel product from the steel company to the recipient or contractor) or a firm that puts a product into a container for delivery would not be considered a regular dealer. The recipient or contractor would not receive credit based on a percentage of the cost of the product for working with such firms.

Subparagraph (f)(1) concerns the use of services that help the recipient or contractor obtain needed supplies, personnel, materials or equipment to perform a contract or program function. Only the fee received by the service provider could be counted toward goals. For example, use of a minority sales representative or distributor for a steel company, if performing a commercially useful function at all, would entitle the recipient or contractor receiving the steel to count only the fee paid to the representative or distributor toward its goal. No portion of the price of the steel would count toward the goal. This provision would also govern fees for professional and other services obtained expressly and solely to perform work relating to a specific contract or program function.

Subparagraph (f)(2) concerns transportation or delivery services. If an MBE, DBE or WBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the recipient or contractor, the commercially useful function it is performing is not that of a supplier, but simply that of a transporter of goods. Unless the trucking company is itself the manufacturer of or a regular dealer in the product, credit cannot be given based on a percentage of the cost of the product. Rather, credit would be allowed for the cost of the transportation service.

Subparagraph (f)(3) applies the same principle to bonding and insurance matters. Contractors often are required to obtain bonding and insurance concerning their work in DOT-assisted contracts. When they obtain a bond or an insurance policy from an MBE, DBE, or WBE agent, the amount allowable toward goals is not any portion of the face value of the policy or bond or the total premium, but rather the fee received by the agent for selling the bond or insurance policy.

The Department is aware that the rule's language does not explicitly mention every kind of business that works in DOT financial assistance programs. In administering this rule, the Department's operating administrations would, on a case-by-case basis, determine the appropriate regulatory provision to apply in a particular situation.

These provisions would apply to prime contracts and purchases by recipients as well as to subcontracts let by prime contractors. The rule provides that only services required by a DOT-assisted contract are eligible for credit; a DOT-assisted contract, for this purpose, can mean a direct purchase of goods or services by a transit authority as well as by a prime construction contractor under a highway contract. The amendments to § 23.47 apply to all financial assistance programs in the Department (e.g., the airport and intercity rail programs as well as the highway and urban mass transportation programs).

Regulatory Process Matters

The Department has determined that this rule does not constitute a major rule under the criteria of Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. Since the regulation simply makes administrative adjustments to an existing program, its economic impacts are expected to be small, and the Department has consequently not prepared a regulatory evaluation.

Since proposed rules have not been issued with respect to the portions of this rule implementing section 106(c) of the STURAA and concerning the definition of Hispanic, the Regulatory Flexibility Act does not apply to these provisions. With respect to the supplier credit and commercially useful function portions of the rule, the Act does apply.

As noted in the NPRM, the Department considered whether the proposal for these amendments would have a significant economic impact on a substantial number of small entities. The entities in question are small businesses who act as suppliers to DOT recipients and contractors. The changes in counting procedures will benefit regular dealers by increasing the credit that may be counted toward DBE/WBE goals for the purchase of supplies. For businesses that do not perform supply services, the proposal will clarify existing policy that only the fee for their service may be counted toward goals. The overall effect of the proposal will be to increase opportunities for participation in DOT financial assistance programs.

Comments to the rule did not suggest that even these benefits would be of major magnitude, however, and none of the comments suggested that the proposal would have any adverse consequences for small entities. Consequently, the Department certifies that the rule will not have a significant economic effect on a substantial number of small entities.

The portions of the rule which have not previously been the subject of an NPRM concern matters under Federal grants, and hence are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)). In addition, the portions of the rule implementing section 106(c) of the STURAA must be implemented rapidly, in order to ensure that the provisions apply to funds authorized by the Act, as Congress intended. It is reasonable to promulgate the amendment to the definition of Hispanic at the same time as other changes are made to the definition of "socially and economically disadvantaged individuals," in order to avoid confusion by recipients administering the program. For these reasons, the Department has determined that there is good cause to promulgate these portions of the rule without prior notice and comment (see 5 U.S.C. 553(b)(B)) and to make the rule effective immediately, rather than after a 30-day period (see 5 U.S.C. 553(c)(3)).

List of Subjects in 49 CFR Part 23

Minority businesses, Highways, Mass transportation.

Issued in Washington, DC on October 6, 1987.

Jim Burnley,

Acting Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation amends 49 CFR Part 23 as follows:

PART 23—[AMENDED]

1. The authority citation for Part 23 is revised to read as follows and the authority citation for Subpart D is removed:

Authority: Sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as

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amended (49 U.S.C. 1730); sec. 19 of the Urban Mass Transportation Act 1964, as amended (Pub. L. 95–599); Title 23 of the U.S. Code (relating to highways and highway safety); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); The Federal Property and Administrative Services Act of 1949 (49 U.S.C. 471 *et seq.*); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17); Executive Order 11625; Executive Order 12138.

2. Section 23.45(e) is amended by adding the following sentence at the end of the paragraph:

§ 23.45 [Amended]

* * * * *

(e) * * * Recipients subject to the disadvantaged business enterprise program requirements of Subpart D of this Part shall compile and update their directories annually. The directories shall include the addresses of listed firms.

* * * * *

3. Section 23.45(f)(3) is added to read as follows:

* * * * *

(f) * * *

(3) Recipients covered by the disadvantaged business program requirements of Subpart D of this Part shall, in determining whether a firm is an eligible disadvantaged business enterprise, take at least the following steps:

(i) Perform an on-site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigation;

(ii) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;

(iii) Analyze the ownership of stock in the firm, if it is a corporation;

(iv) Analyze the bonding and financial capacity of the firm;

(v) Determine the work history of the firm, including contracts it has received and work it has completed;

(vi) Obtain or compile a list of equipment owned or available to the firm and the licenses of the firm and its key personnel to perform the work it seeks to do as part of the DBE program; and

(vii) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program.

* * * * *

4. Section 23.45(g)(4) is revised to read as follows:

§ 23.45 [Amended]

(g) * * *

* * * * *

(4) Recipients covered by the disadvantaged business enterprise program requirements of Subpart D of this Part shall establish an overall goal and contract goal for firms owned and controlled by socially and economically disadvantaged individuals. Other recipients shall establish separate overall and contract goals for firms owned and controlled by minorities and firms owned and controlled by women, respectively.

* * * * *

5. Section 23.47 is amended by revising paragraph (e) and by adding a new paragraph (f), to read as follows:

§ 23.47 [Amended]

* * * * *

(e) (1) A recipient or contractor may count toward its MBE, DBE or WBE goals 60 percent of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE or WBE regular dealer, and 100 percent of such expenditures to an MBE, WBE, or DBE manufacturer.

(2) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the recipient or contractor.

(3) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

(f) A recipient or contractor may count toward its MBE, DBE, or WBE goals the following expenditures to MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

6. Section 23.61(a) is amended by revising the first sentence up to the first comma to read as follows:

§ 23.61 [Amended]

(a) The purpose of this subpart is to implement section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17) so that, * * *

* * * * *

7. Section 23.61(b) is amended by removing the words "section 105(f)" and substituting the words "section 106(c)".

8. Section 23.62 is amended by revising the definition of "Act" to read as follows:

§ 23.62 [Amended]

* * * * *

"Act" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17).

* * * * *

9. Section 23.62 is amended by removing the period(.) at the end of the definition of "Small business concern," and adding the following words:

* * * * *

"Small business concern" * * * except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $14 million over the previous three fiscal years. The Secretary shall adjust this figure from time to time for inflation.

* * * * *

10. Section 23.62 is amended by adding, in the definition of "Socially and economically disadvantaged individuals," immediately following the words "(or lawfully admitted permanent residents) and who are" the word

"women,"; and by adding, in the definition entitled "(b) 'Hispanic Americans'," immediately after the words "or other Spanish" the words "or Portuguese."

11. Section 23.63 is revised to read as follows:

§ 23.63 Applicability.

This subpart applies to all DOT financial assistance in the following categories that recipients expend in DOT-assisted contracts:

(a) Federal-aid highway funds authorized by Title I of the Act;

(b) Urban mass transportation funds authorized by Title I or III of the Act or the Urban Mass Transportation Act of 1964, as amended; and

(c) Funds authorized by Title I, II (except section 203) or III of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) and obligated on or after April 2, 1987.

Appendix A—[Amended]

12. The portion of Appendix A, following Subpart D, entitled "Section 23.61 Purpose." is amended in its first sentence, by removing the words "105(f) of the Surface Transportation Assistance Act of 1982." and substituting the words "106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987."; and, in the third sentence, by removing the word "105(f)" in both places where it occurs and substituting the word "106(c)".

13. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing the words "Surface Transportation Assistance Act of 1982." in the first sentence and substituting the words "Surface Transportation and Uniform Relocation Assistance Act of 1987."

14. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by adding the following new paragraphs following the end of the paragraph entitled "small business concerns":

Congress determined, in order to ensure that the DBE program meets its objective of helping small minority businesses become self-sufficient and able to compete in the market with non-disadvantaged firms, that DBE firms should "graduate" from the program once their average annual receipts reached $14 million.

In implementing this provision, recipients should note that a firm is not "graduated" from the program, and hence no longer an eligible DBE, until its average annual gross receipts over the previous three-year period exceed $14 million. The fact that a firm exceeds $14 million in gross receipts in a single year does not necessarily result in "graduation." For example, suppose a firm has the following history:

1985—$11 million
1986—$13 million
1987—$14 million
1988—$14 million
1989—$15 million

The firm makes $14 million in 1987. However, the firm's average annual gross receipts for 1985–87 are $12.67 million, so the firm remains eligible in 1988. This hypothetical firm would remain eligible in 1989 as well, since its average annual gross receipts for 1986–88 would be $13.67 million. However, the firm's average annual gross receipts for 1987–89 would be $14.3 million. As a result, the firm would not be an eligible DBE in 1990.

It should also be pointed out the $14 million ceiling, like small business size limits under section 3 of the Small Business Act, includes revenues of "affiliates" of the firm as well as the firm itself. This is the import of the "any concern or group of concerns" language. In addition, firms still are subject to applicable lower limits on business size established by the Small Business Administration in 13 CFR Part 121. For example, if SBA regulations say that $7.5 million average gross annual revenues is the size limit for a certain type of business, that size limit, rather than the overall $14 million ceiling, determines whether the firm qualifies in terms of its size to be a DBE.

15. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by adding, at the end of the list of designated groups in the fourth sentence of the paragraph entitled "Socially and economically disadvantaged individuals", following the words "Asian Indian Americans," the words "or women."

16. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing the words "Burma, Thailand, and Portugal" from the last sentence of the paragraph entitled "Socially and economically disadvantaged individuals" and from the first sentence of the paragraph immediately following the paragraph entitled "Socially and economically disadvantaged individuals" and substituting, in each case, the words "Burma and Thailand."

17. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing the words "non-minority women," from the second sentence of the last paragraph.

18. The portion of Appendix A, following Subpart D, entitled "Section 23.63 Applicability." is amended by revising the second paragraph to read as follows:

The first category of program funds to which Subpart D applies is Federal-aid highway funds authorized by Title I of the Act. The second category is urban mass transportation funds authorized by Title I (i.e., interstate transfer and substitution funds) or Title III of the Act. The third category is funds authorized by Title I, Title II (except section 203), or Title III of the Surface Transportation Assistance Act of 1982 which were obligated on or after April 2, 1987 (the enactment date of the STURAA).

19. The portion of Appendix A, following Subpart D, entitled "Relationship Between Subpart D and the Remainder of 49 CFR Part 23" is amended by revising the second paragraph to read as follows:

With respect to FHWA and UMTA-assisted programs, recipients will now set only one DBE goal, at both the overall and contract goal level. There are no longer separate DBE and WBE goals. Rather, the single DBE goal applies to all DBEs, whether they are owned and controlled by minorities or by women.

[FR Doc. 87–24233 Filed 10–16–87; 10:09 am]
BILLING CODE 4910–62–M

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Proposed Rules

Federal Register
Vol. 52, No. 203
Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1098 and 1007

[Docket Nos. AO–184–A52 and AO–366–A29]

Milk in Nashville, Tennessee, and Georgia Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider several proposals to amend the Nashville, Tennessee, and Georgia milk orders. The principal proposal would insure that a pool distributing plant physically located in the Nashville marketing area would be regulated in that market irrespective of the market in which a plurality of its fluid milk products may be distributed. Another proposal would establish a plus location adjustment of 8.5 cents per hundredweight for milk received at a plant located in a six-county area of Tennessee southeast of Nashville. Proponent contends that the modifications are needed to reflect changed marketing conditions.

DATE: The hearing will convene at 9:30 a.m., local time, on November 3, 1987.

ADDRESS: The hearing will be held at the Park Suite Hotel, 10 Century Boulevard, Nashville, Tennessee 37214, (615) 871–0033.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Park Suite Hotel, 10 Century Boulevard, Nashville, Tennessee 37214, beginning at 9:30 a.m., local time, on November 3, 1987, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as small businesses. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1098 and 1007

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1098 and 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Malone & Hyde Dairy:

Proposal No. 1

In § 1098.7, revise paragraph (d)(2) to read as follows:

§ 1098.7 Pool plant.

* * * * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tennessee, marketing area: Provided,

(i) That such distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant with out regard to its qualifying as a pool plant under this order, subject to the proviso of this paragraph;

(ii) On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(iii) A plant located in the marketing area that qualifies pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location even though the plant may have greater route disposition in the other marketing area than in the Nashville marketing area.

Proposal No. 2

In § 1098.52, redesignate paragraphs (b) and (c) as paragraphs (c) and (d), and add a new paragraph (b) to read as follows:

§ 1098.52 Plant location adjustment for handlers.

* * * * *

(b) For such milk that is physically received from producers or from a handler described in § 1098.9(c) at plants located in the Tennessee counties of Cannon, Coffee, DeKalb, Rutherford, Warren, and White, the price shall be adjusted by plus 8.5 cents per hundredweight.

Proposal No. 3

In § 1007.7, revise paragraph (e)(3), and add a new paragraph (e)(4) to read as follows:

§ 1007.7 Pool plant.

* * * * *

(e) * * *

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and, except as provided in paragraph (e)(4) of this section, a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(4) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Georgia marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Georgia order.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 4

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing orders, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Nashville, Tennessee, and Georgia Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: October 16, 1987.

J. Patrick Boyle,
Administrator.

[FR Doc. 87-24391 Filed 10-20-87; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 941, 965, and 968

[Docket No. R-87-1353, FR-2231]

Pre-emption of Certain State-Determined Prevailing Wage Rates Applicable to Public Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed Rule.

SUMMARY: HUD proposes to pre-empt the State wage rate that would be applicable to any trade employed on a public or Indian housing project however the State wage rate exceeds the corresponding Federally-determined wage rate for the trade. Specifically, HUD would require bid documents and contracts let by the HUD-assisted public housing agency or Indian housing authority for the project to contain a statement that any State rate that exceeds the corresponding Federal rate is inapplicable and shall not be enforced. In addition, the public housing agency or Indian housing authority would not be required to pay the higher State wage rates to its own employees who may be engaged on the project. The proposed rule would prohibit enforcement of the State requirements regarding higher State rates on the project. The proposed rule would also pre-empt wage rates that are determined to be prevailing under Indian tribal law and exceed the applicable Federal wage rates.

DATE: Comments are due December 21, 1987.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Justin L. Logsdon, Assistant to the Secretary of Labor Relations, Room 7106, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5370. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The United States Housing Act of 1937 (Act) provides for payment of not less than Federally-determined prevailing wage

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rates to laborers and mechanics employed in the development and operation of lower income housing projects administered by public housing agencies and Indian housing authorities. Under the laws of some States, wages determined by State or local governments or agencies to be prevailing must be paid on public works or improvements including HUD-assisted public and Indian housing projects. In a small number of the States with these requirements, the wages determined under State law to be prevailing substantially exceed the wages that the Federal government has determined to be prevailing for the same workers, thus greatly increasing the cost of developing or operating Federally-assisted public and Indian housing.

Under the Act, HUD provides a variety of assistance to public housing agencies (PHAs) and Indian housing authorities (IHAs) that develop and administer lower income housing projects, including loans, annual contributions that assist in amortizing development costs, annual contributions for the operation of the project, and assistance for improving the physical condition and upgrading the management and operation of projects under the Comprehensive Improvement Assistance Program (CIAP). Starting in fiscal year 1987, under Title I of HUD's appropriation for fiscal year 1987,[1] HUD is also providing grants in lieu of loans; the grants are made on substantially the same terms as those previously set forth in annual contributions contracts. With few exceptions, HUD provides most or all of the financial assistance for these programs and projects.

Section 12 of the U.S. Housing Act mandates in part as follows:

> Any contract for loans, annual contributions, sale, or lease pursuant to the Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary [of HUD], shall be paid to * * * all maintenance laborers and mechanics employed in the operation * * * of the lower income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act [40 U.S.C. 276a *et seq.*] * * * shall be paid to all laborers and mechanics employed in the development of the project involved * * *

For project development, section 12 thus establishes the Davis-Bacon prevailing wage rate as determined by the Secretary of Labor as the minimum wage rate for laborers and mechanics. Project development includes CIAP and other modernization work except for non-routine maintenance (as defined in 24 CFR § 968.3), as well as construction of new projects. Section 12 also establishes the prevailing rate determined by the Secretary of HUD as the minimum rate for project operation, which includes CIAP nonroutine maintenance work as well as routine project maintenance. In the case of wage rates for project operation, the statute gives the Secretary of HUD the option of adopting a State or locally-determined prevailing wage rate rather than independently determining the prevailing rate, but it does not mandate adoption of any State or locally-determined wage rate. The term "State" is defined in section 3(b)(8) of the U.S. Housing Act to include Indian tribes.

Legal Framework for Pre-emption

The provisions of Section 12 impose no cap on the wage rates that may be paid in the development or operation of a project, nor does section 12 pre-empt the imposition of higher wage rates determined under State law. While Section 12 does not itself pre-empt higher State rates, HUD's proposal to pre-empt such higher rates is made under its responsibility to carry out the Congressional purpose of the United States Housing Act as a whole, and is based on its determination that the imposition of higher State rates on public and Indian housing projects assisted under the Act would stand as an obstacle to the execution of the purposes and objectives of the Act.

The doctrine of pre-emption of State laws was recently summarized by the United States Supreme Court as follows:

> It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that "interfere with, or are contrary to" federal law. *Gibbons* v. *Ogden*, 9 Wheat. 1, 211 (1824) (Marshall, C.J.). Under the Supremacy Clause, federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to pre-empt state law by so stating in express terms. *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977). In the absence of express pre-emptive language, Congress' intent to pre-empt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Pre-emption of a whole field also will be inferred where the field is one in which "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Ibid;* see *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).
>
> Even where Congress has not completely displaced state regulation in a specific area, state law is nullifed to the extent that it actually conflicts with federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines* v. *Davidowitz, supra*, at 67. *[Hillsborough County, Florida* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712–13 (1985)]

The U.S. Housing Act does not expressly pretempt State prevailing wage rate statutes as applied to public and Indian housing projects assisted by HUD under the Act. Rather, as more fully discussed below, the rule that HUD is proposing is based on HUD's view that the State prevailing wage laws in question conflict with the U.S. Housing Act in that they stand as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." In this regard, the Supreme Court has noted that "[f]ederal regulations have no less pre-emptive effect than federal statutes." *Fidelity Federal Savings & Loan Association* v. *De La Cuesta*, 458 U.S. 141, 153 (1982). "A preemptive regulation's force does not depend on express congressional authorization to displace state law. . . ." *Id.* at 154.[2]

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[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

[2] The Washington Supreme Court, in a 1986 opinion, ruled that a State law mandating payment of State-determined prevailing rates was applicable to the HUD-funded construction of a Seattle Housing Authority project. *Drake* v. *Molvik & Olsen Electric, Inc.*, No. 51398–8, *en banc*, October 16, 1986. HUD was not a party to this litigation, however, and the Seattle Housing Authority, participating as a Respondent, raised no preemption issue and the majority opinion did not address the question. The decision instead was based on an interpretation of the reach of the State statute. Nevertheless, a dissenting opinion argued that the federally mandated wage rates reflected in the Housing Authority's annual contributions contract with HUD should be regarded as preempting the State statute.

This proposed rule would provide regulatory clarification that HUD's established wage rates applicable to HUD-assisted projects do in fact preempt conflicting State-mandated rates. In the fact situation presented in the *Drake* case, the rule would call for the opposite result, *i.e.*, the State statute would *not* be applied to contracts providing for application of a lower, federally determined, wage rate.

Purpose and objectives of the United States Housing Act; HUD's Authority under the Act

HUD is the agency responsible for establishing and enforcing the regulatory and contractual scheme authorized to carry out the purpose of the U.S. Housing Act. The overall purpose of HUD's assistance under the Act is to maintain the lower income character of public and Indian housing projects and assure that they continue to be available to serve lower income families. See, *e.g.*, United States Housing Act, sections 5, 9 and 14. HUD has an obvious interest in assuring the economical and efficient development and operation of projects assisted under the Act. The strength of HUD's interest lies in the fact that, with few exceptions, it is the primary source of financing for the public and Indian housing projects assisted under the Act.

Until recently, one way in which Congress authorized HUD to control the cost of public and Indian housing to assure that its funds serve the purpose of the statute was through the establishment, by locality, of unit prototype costs for the construction and equipment of projects assisted under the Act, as provided by section 6(b) of the Act. The fiscal year 1986 HUD appropriation act (Pub. L. No. 99–160, 99th Cong., 1st Sess. (1985)) repealed section 6(b), eliminating HUD's authority to establish prototype costs. However, the Congressional reports indicate that the repeal was enacted because of dissatisfaction with the process by which HUD established prototype costs and the view that low prototype costs prevented the construction of a greater number of units in large cities. See H.R. Rep. No. 99-212, 99th Cong., 1st Sess. 4–5 (1985); S. Rep. No. 99–129, 99th Cong., 1st Sess. 10 (1985). In recommending repeal of section 6(b), the Senate Committee on Appropriations affirmed that "[t]he Department is still expected to approve public housing development applications on the basis of reasonable criteria designed to promote economy and the provision of housing for all sizes of families." S. Rep. No. 99–129 at 10. More generally, the Committee observed that "[w]ithin the extreme budgetary constraints on the Federal budget, * * * the Committee must maintain its priorities to funding programs which directly serve as many families as possible, and within those that can be served, to target assistance to those families most in need."

Id. at 12.

Congress has manifested its concern with economy in the development and operation of public and Indian housing projects, and its desire that Federal funds provided under the United States Housing Act serve the greatest number of families, in several different provisions of the Act.

For example, section 5(b) of the Act authorizes the Secretary to prescribe regulations fixing the maximum amount of annual contributions for debt service available under different circumstances, giving consideration to cost as well as other factors bearing on the amounts and periods of assistance needed to achieve and maintain low rentals; the Secretary may also provide for rates of contributions based upon development, acquisition, or operation costs and other factors. Under section 5(c)(5), the Secretary may approve conversion of public (and Indian) housing development authority for use under the CIAP program or for acquisition and rehabilitation if the public housing agency (or Indian housing authority) certifies that the assistance would be "more effectively" used for those purposes. Section 5(f) authorizes the amendment or supersedure of any contract for annual contributions or loans "[w]hen the Secretary finds that it would promote economy or be in the financial interest of the Federal Government or is necessary to assure or maintain the lower income character of the * * * projects involved."

Section 6(a) authorizes the inclusion in any contract or agreement made pursuant to the Act of such covenants, conditions, or provisions as the Secretary may deem necessary to insure the lower income character of the project. In addition, section 6(c)(4) requires that every contract for annual contributions must provide for compliance by the public housing agency (or Indian housing authority) with procedures and requirements prescribed by the Secretary to assure that "sound management practices" will be followed in the operation of the project. Section 6(h) permits a contract for new construction to be entered into on or after October 1, 1983, only if the public housing agency demonstrates to the satisfaction of the Secretary that the cost of new construction is less than the cost of acquisition or acquisition and rehabilitation would be.

Section 9, concerning annual contributions for the operation of lower income housing projects, provides that such annual contributions "shall not exceed the amounts which the Secretary determines are required (A) to assure the lower income character of the projects involved, (B) to achieve and maintain adequate operating services and reserve funds", and (C) to provide certain start-up Indian housing administrative costs. Section 9 also requires that for purposes of making such annual contributions, the Secretary must establish standards for costs of operation and reasonable projections of income, taking into account, among other things, the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a well-managed project.

While many of the cited provisions of the United States Housing Act authorize specific measures or procedures to be undertaken by HUD to promote economical and efficient use of assistance under the Act, they illustrate a general concern for economical use of Federal funds provided under the Act, and HUD is not limited to these specific measures. HUD has been given broad authority to carry out the purposes of the Act. For example, as noted above, section 6(a) of the Act authorizes the Secretary to include contractual provisions he deems necessary to insure the lower income character of the project. Section 14 of the Act, which establishes the CIAP program, authorizes the Secretary to issue such rules and regulations as may be necessary to carry out the provisions and purposes of that Section. More generally, section 7(d) of the Department of Housing and Urban Development Act gives the Secretary authority to make such rules and regulations as may be necessary to carry out his functions, powers, and duties from whatever statute derived.

Application of State Prevailing Wage Statutes to Public and Indian Housing Projects

While many States have "Little Davis-Bacon Acts" that require the payment of prevailing wages determined under State law to laborers and mechanics employed on various public works projects, fewer than half of the States apply State prevailing wage requirements to laborers and mechanics on HUD-assisted public and Indian housing projects. Of the States that do apply these wage rates, a small number have sought to impose State-determined wage rates that exceed the wages determined by the Department of Labor or HUD to be prevailing on particular projects. It is only in this small number of States that the proposed rule would preempt the State-determined rates on particular projects.

A State that purports to apply State-determined wage rates that exceed Federally-determined rates to PHAs is

New York. For seven common trades on projects administered by 31 PHAs in Southern New York, data compiled in 1985 by the HUD New York Office indicated a substantial difference between New York State-determined prevailing wage rates and rates determined both by the U.S. Department of Labor under the Davis-Bacon Act and by HUD. The following chart indicates the average percentage by which the New York State-determined wage rates exceeded the Davis-Bacon wage rates (left-hand column) and the HUD-determined wage rates for trades performing HUD-assisted non-routine maintenance work (right-hand column): [3]

	Percentage by which State rates exceed Davis-Bacon rates	Percentage by which State rates exceed HUD rates
Laborers	14	41
Operating Engineers	9	71
Plumbers	12	80
Bricklayers	48	146
Carpenters	9	78
Electricians	96	69
Painters	20	57

Similar data were compiled with respect to six trades on projects administered by 47 PHAs in the jurisdiction of the HUD Buffalo Office, which extends across all of the New York State except the southern portion. The results were as follows: [4]

	Percentage by which State rates exceed Davis-Bacon rates	Percentage by which State rates exceed HUD rates
Laborers	74	84
Operating Engineers	87	113
Plumbers	63	81
Bricklayers	36	71
Carpenters	55	62
Electricians	36	31

These data demonstrate that in the case of most New York State PHAs surveyed, State-determined wage rates exceeded the rates determined to be applicable under Federal law by a substantial percentage.

The State of California also requires imposition of State-determined wage rates on HUD-assisted public housing projects. Data collected by HUD on a sample of California PHAs in 1985 indicated that the difference between Davis-Bacon and State-determined wage rates was typically several percentage points, with the Davis-Bacon wage rates sometimes exceeding the State-determined rates. However, wage rates on certain projects showed a significant difference between the two rates. For example, on a public housing new construction project in Riverbank, California, State-determined wage rates averaged 31 percent higher than the Davis-Bacon wage rates, due primarily to State-determined wage rates for several classes of power equipment operators that exceeded Davis-Bacon rates for those classes by between 90 percent and 202 percent. A CIAP project in San Buenaventura involved State-determined rates that exceeded the applicable HUD-determined rates by an average of 70 percent.[5]

In the State of Wisconsin, State law provides for prevailing wage rates to be determined by the Department of Industry, Labor, and Human Relations, except that a municipality may obtain an exemption when a municipal enactment would result in standards as high or higher than those that would be followed by the State department. HUD data from 1985 indicate that in three Wisconsin localities, wage rates set by the locality pursuant to State law exceeded applicable HUD-determined wage rates by substantial percentages.[6] In Milwaukee, a project to replace kitchen cabinets and counter tops involved classifications for which the locally-determined wage rates exceeded the HUD-determined rates by an average of 22 percent. A window replacement contract in Green Bay involved local rates that exceeded HUD-determined rates by an average of 30 percent. Finally, on a renovation project in Madison, locally-determined rates exceeded the HUD-determined rates by an average of 19 percent.

In the State of Kentucky, rates determined under State law and obtained in 1985 for a project in Newport were 7 percent and 70 percent higher than the applicable Davis-Bacon wage rates for the laborers and plumbers, respectively, that were to be employed on the project. This resulted in State rates that averaged 39 percent higher than the Davis-Bacon rates for the project.

Basis for Pre-emption

State and local wage rates such as those described above have a serious negative effect on the Department's ability to carry out the Congressional purposes embodied in the United States Housing Act. They inhibit or prevent the use of assistance provided under the Act in an efficient and economical manner to assure that public and Indian housing projects are available to the greatest number of lower income families. The imposition on a project of State wage rates that exceed the Federally-determined prevailing wage rates has the effect of establishing an excessive floor on the wages that any contractor, PHA, or IHA must pay its workers on the project. These higher wage costs must ultimately be funded with HUD assistance under the Act through the acceptance of higher bids or proposals on the project or the direct payment of higher wages by the PHA or IHA to its workforce. Since Federal funds are limited, the number of lower income housing units to be constructed, maintained, modernized or repaired would be lowered, thus frustrating the purpose of the Act. Another, less likely possibility is that, where bids or proposals are solicited, the bids or proposals would remain close to the overall contract price level that would obtain without imposition of the higher State wage rates, but this result would be achieved by contractors that have made a corresponding cutback in the cost and quality of materials and supplies. Thus poorer-quality work would result from contractors being required to divert a greater proportion of the contract proceeds to labor expenses. This result of the imposition of excessive State wage rates is equally inimical to the purposes of the United

[3] Not all the PHAs had Davis-Bacon, HUD-determined, and State-determined wage rates for all the trades; the average percentages by which State-administered wage rates exceed the two Federal rates for each trade are thus based on the average of all the State-rates for a given trade compared to an average of all the Davis-Bacon wage rates and an average of all the HUD-determined wage rates.

As discussed below in the text of this preamble, HUD rates include only the basic hourly rate and exclude any prevailing fringe benefits. It is HUD's understanding that nationally, fringe benefits average approximately 29 percent of total compensation for craft workers and for handlers, equipment cleaners, helpers and laborers, and 23 percent for service workers (including building maintenance workers and janitors). The right-hand column of the chart, however, is based on data that compared the average of total State rates to the average of HUD-determined rates that do not include fringe benefits. Comparison of the average of State rates excluding fringe benefits to the average of HUD rates would yield somewhat lower percentages.

[4] Previous footnote applies to this chart as well.

[5] At the time the HUD wage rates on this project were determined, fringe benefits were included in the HUD rate as well as the State rate.

[6] HUD-determined wage rates do not include fringe benefits. See discussion in footnote 3, above.

States Housing Act. The Department believes that the determination by the Federal Government of prevailing wage rates that are lower than the State-determined rates on a project indicates that in most if not all cases, actual labor costs in the local market are in fact lower than the State rates and these lower labor costs will be reflected in lower bids or proposals for public and Indian housing work and lower PHA or IHA personnel costs. Lower costs will enable the limited Federal funds available under the Act to serve more lower-income families and construct, maintain, modernize and repair more lower-income housing units.

Accordingly, the Department proposes to pre–empt the application and enforcement of higher State- or locally-mandated wage rates on projects assisted by HUD under the Act. Under the proposal, a State or local wage rate would not apply to a project if the State- or locally-determined rate for a trade to be used on the project exceeds the corresponding Federally-determined rate. Any bid documented for project work that is otherwise subject to State law requiring payment of State- or locally-determined prevailing wage rates would be required to contain a statement that whenever any State- or locally-determined rate exceeds the corresponding Federally-determined wage rate, the State- or locally-determined rate is inapplicable to the contract and shall not be enforced. In addition, the PHA or IHA would not be required to pay its own employees engaged on the project at higher State wage rates. Because some States take the position that a contractor is responsible for payment of the State- or locally-determined wage rates even where they do not appear in the contract as required, and might hold a contractor responsible for higher State rates despite the contractual clause declaring them inapplicable, the proposed rule would also prohibit enforcement of such rates against contractors or subcontractors. The proposed rule would also prohibit enforcement of such rates againt PHAs or IHAs.

The proposed rule has been drafted to take into account situations in which a state wage rate includes a determination of prevailing fringe benefits as well as a prevailing basic hourly rate of compensation, but the HUD-determined prevailing wage rate, where applicable, does not include fringe benefits. These situations may arise because HUD-determined prevailing wage rates are limited in all cases to basic hourly rates without consideration of fringe benefits. In these situations, comparison of a State rate that includes fringe benefits with a HUD wage rate that does not could exaggerate the cost of applying the State-determined wage rates. Accordingly, the rule would provide that fringe benefits determined under State law will be excluded from the comparison with the HUD-determined wage rate. In that situation, pre–emption of the entire State-determined rate (both fringe benefits and the basic hourly rate) would occur if the basic hourly rate determined under State law, exclusive of fringe benefits, exceeds the HUD-determined rate.[7]

The proposed rule would only affect the applicability to public and Indian housing projects of State law requirements for the payment of wage rates determined by State or local governments or agencies to be prevailing. It would not affect the applicability of wage rates established in collective bargaining agreements with a PHA or IHA or its contractors, regardless of whether those rates equal or exceed rates determined under State or Federal law. (No less than the Federal wage rate must be paid even if a collective bargaining agreement provides for less than the Federal rate.) Nor does this proposed rule impose a cap on wages that the PHA or IHA or its contractors may choose to pay independent of State law, or limit HUD assistance where wage rates in excess of the Federal rates have been paid.

The proposed rule would apply to IHAs and to tribal prevailing wage laws since some Indian housing projects may be subject to State or tribal prevailing wage laws.

Other Matters

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. While the proposed rule could affect the wage rates payable by small business construction firms, or the competitive position of such firms that choose to continue to pay higher wage rates that would no longer be required, it would only affect firms bidding on certain PHA and IHA projects in the small number of States with applicable rates exceeding the corresponding Federal rates, and contracts for work on such PHA and IHA projects would generally comprise only a part of the firms' total business.

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as Sequence Number 1037 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362), uner Executive Order 12291 and the Regulatory Flexibility Act.

Accordingly, 24 CFR Parts 905, 941, 965 and 968 would be amended as follows:

PART 905—INDIAN HOUSING

1. The citation of authority for Part 905 would continue to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) would be added to § 905.211, as follows:

§ 905.211 Contracts in connection with development.

* * * * *

(d) (1) A prevailing wage rate determined under State or tribal law shall be inapplicable to the development of a Project whenever:

(i) The development of the Project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and

[7] While situations may also occur in which a State rate includes fringe benefits and the corresponding Davis-Bacon wage rate does not, a Department of Labor decision not to include fringe benefits represents a determination that fringe benefits do not in fact prevail in the locality; *i.e.*, that 50 percent or more of the employees in a craft receive no fringe benefits. It is therefore appropriate to compare State wage rates that include fringe benefits directly with Davis-Bacon rates regardless of whether the Davis-Bacon rates include fringe benefits.

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(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State or tribal law to be prevailing with respect to any trade classification employed in the development of a Project exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a. *et seq.*) to be prevailing in the locality with respect to such trade classification.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for development of the Project shall include a statement that any prevailing wage rate determined under State or tribal law to be prevailing with respect to any trade classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The IHA itself shall not be required to pay any prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the Project; and

(iii) No prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the development of the Project.

(3) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after (insert effective date) and to any work performed by employees of an IHA on or after (insert effective date).

3. A new § 905.313 would be added, as follows:

§ 905.313 Preemption of State or tribal prevailing wage requirements.

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to the maintenance or improvement of a Project whenever:

(1) The maintenance or improvement of the Project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to any trade or position classification employed in the maintenance or improvement of a Project exceeds whichever of the following is applicable: (i) the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276 *et seq.*) to be prevailing in the locality with respect to such trade classification; or (ii) the wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position classification exceeds the wage rate determined by the Secretary of Labor or HUD:

(A) where a rate determined by the Secretary of Labor is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor; and

(B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for maintenance or improvement of the Project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to any trade or position classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade classification; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the maintenance or improvement of the Project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced against the IHA or any of is contractors or subcontractors with respect to employees engaged in the maintenance or improvement of the Project.

(c) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of an IHA on or after [insert effective date].

PART 941—PUBLIC HOUSING DEVELOPMENT

4. The citation of authority for Part 941 would continue to read as follows:

Authority: Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c , and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. A new paragraph (d) would be added to § 941.503, as follows:

§ 941.503 Construction requirements.

* * * * *

(d)(1) A prevailing wage rate determined under State law shall be inapplicable to the development of a project whenever:

(i) The development of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State law to be prevailing with respect to any trade classification employed in the development of a project exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development of the project shall include a statement that any prevailing wage rate determined under State law to be prevailing with respect to any trade classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The PHA itself shall not be required to pay any prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the project; and

(iii) No prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the development of the project.

(3) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of a PHA on or after [insert effective date].

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

6. The citation of authority for Part 965 would continue to read as follows:

Authority: Secs. 2, 3, 6, and 9, U.S. Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. A new § 965.101 would be added in Subpart A, as follows:

§ 965.101 Pre-emption of State prevailing wage requirements with respect to maintenance and operation of projects.

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to the maintenance and operation (including modernization) of a project whenever:

(1) The maintenance and operation of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(2) The wage rate determined under State law to be prevailing with respect to any trade or position classification employed in the maintenance and operation of a project exceeds whichever of the following is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. For the purpose of ascertaining whether a wage rate determined under State law for a trade or position classification exceeds the wage rate determined by the Secretary of Labor or HUD: (A) where a rate determined by the Secretary of Labor is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for maintenance and operation of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to any trade or position classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) to any of its own employees who may be engaged in the maintenance and operation of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the maintenance and operation of the project.

(c) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of a PHA on or after [insert effective date].

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

8. The citation of authority for Part 968 would continue to read as follows:

Authority: Secs. 5 and 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c and 1437l), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. A new § 968.19 would be added, as follows:

§ 968.19 Pre-emption of State or tribal prevailing wage requirements.

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to the modernization of a project whenever:

(1) The modernization of the project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to any trade or position classification employed in the modernization of a project exceeds:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) in the case of non-routine maintenance, the wage rate determined by the Secretary of HUD to be prevailing

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in the locality with respect to such trade or position classification. For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position classification exceeds the wage rate determined by the Secretary of Labor or HUD:

(A) where a rate determined by the Secretary of Labor is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor; and

(B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(2) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA or IHA and any contract executed by the PHA or IHA for modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to any trade or position classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA or IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced against the PHA or IHA or any of its contractors or subcontractors with respect to employees engaged in the modernization of the project.

(c) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of a PHA or IHA on or after [insert effective date].

Date: September 23, 1987.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 87-24360 Filed 10-20-87; 8:45 am]

BILLING CODE 4210-33-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[OW-FRL-3248-9]

National Pollutant Discharge Elimination System Permit Regulations: Suspension of Existing Application Deadlines for Group I and Group II Storm Water Point Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's rulemaking proposes to suspend the existing regulatory deadlines for submittal of Group I and Group II storm water permit applications. It is based upon Congress' enactment, on February 4, 1987, of the Water Quality Act of 1987 (WQA), which revised the statutory scheme for the regulation of storm water point source discharges, as well as many other aspects of the Clean Water Act. Section 405 of the WQA establishes, inter alia, outside deadlines for (1) issuance of regulations establishing storm water permit application requirements; (2) submission of storm water permit applications; and (3) issuance of storm water permits.

The WQA requires that, under the National Pollutant Discharge Elimination System (NPDES) permit program, permit applications must be filed no later than three years after enactment of the Act (i.e., February 4, 1990) for storm water discharges associated with industrial activity and storm water discharges from large municipal separate storm sewer systems, and no later than five years after enactment of the Act (i.e., February 4, 1992) for storm water discharges from medium-sized municipal separate storm sewer systems. Ordinarily, NPDES permits cannot be required until October 1, 1992, for other storm water discharges.

The existing NPDES regulations divide discharges from storm water point sources into Group I and Group II discharges and establish application deadline of December 31, 1987, for Group I point sources and June 30, 1989, for Group II point sources.

Today's rulemaking deals only with the proposed suspension of these regulatory deadlines. Substantive permit application requirements for all storm water point sources and new deadlines will be established in later Agency rulemakings.

Following completion of the public comment period and consideration of all public comments received, the Agency will proceed with final rulemaking on this proposed suspension.

DATES: Comments must be submitted on or before November 20, 1987.

ADDRESSES: Comments may be submitted to: George Young, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George Young, Telephone: (202) 475-9539; or Dell Perelman, Telephone: (202) 475-7458.

SUPPLEMENTARY INFORMATION:

I. Background

For over a decade, EPA has attempted to formulate an appropriate means of regulating storm water point source discharges. Today's preamble discussion deals only with the deadline for submitting storm water permit applications. For more detailed background and discussion on the storm water issue see:

49 FR 37998 (September 16, 1984)
50 FR 6939 (February 19, 1985)
50 FR 9362 (March 7, 1985)
50 FR 32548 (August 12, 1985)
50 FR 35200 (August 29, 1985)
50 FR 37701 (September 17, 1985)

Prior to the issuance of a final rule on September 26, 1984, (49 FR 37998), the NPDES regulations did not specify a particular date for the submission of storm water permit applications. Storm water point sources were treated the same as all other point sources and were required to submit an application for an NPDES permit at least 180 days prior to the commencement of discharge. All existing point sources were required to have NPDES permits or be considered in violation of setion 301 of the Clean

Water Act for discharging pollutants to waters of the United States without a permit.

In 1982 EPA had proposed, consistent with a Settlement Agreement with industry litigants, a number of changes to the NPDES storm water provisions. The proposal provided for a permit application deadline of six months from the promulgation date of the final rule. The 1984 final rule divided storm water point sources into two groups (Group I and Group II) with different application requirements. (Briefly, Group I consists of municipal storm water sewers located in an urbanized area as designated by the Bureau of the Census, storm water point sources located at an industrial plant or in plant-associated areas, storm water point sources subject to effluent limitations guidelines, new source performance standards or toxic pollutant effluent standards, and storm water point sources designated by EPA or an NPDES State. Group II consists of all other storm water point sources.) The 1984 final rule also set a deadline of six months from the effective date of the regulations (i.e., April 26, 1985) for the submission of all storm water permit applications.

Many members of the regulated community immediately asserted that the September 1984 rule imposed an application deadline that was impossible to meet for a variety of reasons, one of which was that many dischargers were located in areas where collecting representative storm water samples during the winter months was impossible. Thus, dischargers indicated that more time was necessary to generate a representative quantitative storm water sample.

After considering the concerns of the regulated community, the Agency proposed in a **Federal Register** notice on March 7, 1985, to extend the application deadline to December 31, 1985 (50 FR 9362). In addition, EPA sought comment on whether to postpone the application deadline for Group II dischargers another year, until December 31, 1986, in order to allow EPA and the NPDES States to focus their resources on the Group I dischargers, which are more likely to be environmentally significant. EPA also proposed to change the contents of permit applications for Group I dischargers.

After reviewing and considering the public comments received on the deadline issue, the Agency determined that storm water dischargers should be given additional time to prepare and submit permit applications. Thus, the deadline was extended to December 31, 1987, for Group I storm water point sources and June 30, 1989, for Group II storm water point sources (50 FR 35200, August 29, 1985). The Agency's decision to extend the deadline was based upon the time necessary to promulgate revised final substantive application requirements and the time needed to gather and analyze data and prepare an application once the requirements were issued. The Agency established separate deadlines for Group I and Group II point sources to allow the EPA Regional Offices and the NPDES States to focus limited resources on the higher priority Group I dischargers while at the same time preparing for the large number of Group II permit applications that would be received. EPA has not yet issued the final rule establishing the revised permit application requirements.

II. Congressional Debate and Action

At the same time that EPA was evaluating the appropriate means to regulate storm water point source discharges and the proper permit application deadlines, the Congress was examining the storm water issue in the course of the Clean Water Act reauthorization. Both the Senate and the House of Representatives, in the summer of 1985, passed bills amending the Clean Water Act that contained provisions addressing the storm water issue. The separate House and Senate bills were reconciled in Conference Committee in 1986, and on February 4, 1987, the Water Quality Act of 1987 (WQA) became law after being passed by Congress early in its 100th Session. Section 405 of the WQA contains storm water requirements that reflect a compromise between the 1985 House and Senate bills.

Section 405 of the WQA, amending section 402 of the Clean Water Act, requires EPA to promulgate final regulations governing storm water permit application requirements for storm water discharges associated with industrial activity and storm water discharges from large municipal separate storm sewer systems (defined in the WQA as discharges from a municipal system serving a population of 250,000 or more) "no later than two years" after the date of enactment (i.e., no later than February 4, 1989) and "no later than four years" after the date of enactment (i.e., no later than February 4, 1991) for discharges from medium-sized municipal separate storm sewer systems (defined in the Act as municipal systems serving a population of 100,000 or more but less than 250,000). In addition, section 405 provides that permit applications for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems "shall be filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990). Permit applications for discharges from medium-sized municipal systems must be filed "no later than five years" after enactment (i.e., no later than February 4, 1992). Ordinarily, NPDES permits for other storm water point source discharges cannot be required until October 1, 1992. However, a permit can be required at any time if a storm water discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards. In addition, an existing permit for a storm water discharge can be reissued at any time if it was originally issued prior to the date of enactment of the WQA (i.e., February 4, 1987).

III. Today's Proposal

Today's notice proposes to suspend the existing application deadlines of December 31, 1987, for Group I storm water point sources and June 30, 1989, for Group II storm water point sources (40 CFR 122.21(c)(2)). Comments are solicited on the appropriateness of suspending these deadlines.

In the WQA of 1987, Congress recognized that EPA was re-examining the most appropriate means of regulating storm water point sources under the NPDES permit program and specifically required the Agency to take no longer than a maximum of two years from the date of enactment of the new Act to develop permit application requirements for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems. The WQA directs EPA to take no longer than a maximum of four years to develop substantive permit application requirements for discharges from medium-sized municipal separate storm sewer systems. The WQA directs EPA to issue regulations no later than October 1, 1992, designating other storm water discharges to be regulated to protect water quality and establishing a program to regulate such discharges. These regulations are to be based on two studies the Agency is required to submit to Congress by October 1, 1988, and October 1, 1989.

EPA is proposing to suspend the existing Group I storm water permit application deadline for several reasons. First, EPA has not issued the final revised storm water permit application requirements that were proposed in 1985 (50 FR 9362, March 7, 1985, and 50 FR 32548, August 12, 1985). The Agency is

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still considering what revised requirements should be promulgated in light of public comment and is examining whether provisions in the WQA affect the final application rule. Prior to issuance of these requirements, Group I storm water point sources should not have to submit permit applications, unless designated on a case-by-case basis, since they would have to use the existing application form. This could require them to gather and submit information that may not ultimately be required by the revised requirements, or they could fail to submit information that may be considered necessary under the new requirements.

In addition, storm water point sources need adequate time to obtain a "representative" storm water sample, ideally one full rain year. Therefore, many discharges could not meet the deadline even if EPA issued the final rule establishing application requirements today. If EPA's final rule allows group storm water applications in order to conserve the resources of the regulated community, as proposed, even more time will be needed to form groups. Although the Agency fully expected to finalize permit application requirements in time for Group I dischargers to conduct these activities and still meet the existing deadline, it was unable to do so. Accordingly, because the WQA makes clear that EPA may take additional time to develop the storm water regulatory program contemplated by the Act, the Agency is proposing to suspend the Group I deadline in order to ensure that the application requirements are appropriate and that the amount of time necessary to obtain representative data will be available after the substantive permit application requirements are finalized.

Finally, EPA is proposing this suspension while the Agency considers whether and how the WQA has affected the scope of the existing definition of "Group I storm water discharge". (See sections 401, 405 and 503 of the WQA.) Application submittal needs to be delayed until the Agency has completed the application rulemaking and made any necessary adjustments to its scope.

EPA is also proposing to suspend the existing Group II application deadline because of the WQA. Pursuant to the Act, NPDES permits cannot be required for storm water discharges until October 1, 1992, unless (1) the discharge is associated with industrial activity, (2) the discharge is from a large or medium-sized municipal separate storm sewer system, (3) the discharge is determined to contribute to a violation of a water quality standard or is a significant contributor or pollutants to waters of the United States, or (4) a permit for the discharge was issued prior to the date of enactment of the WQA. The discharges for which permits cannot be required until October 1, 1992, generally correspond with the Group II discharges. EPA must issue regulations, based on studies that are to be submitted to Congress in 1988 and 1989, by no later than October 1, 1992, designating the discharges in this group that are to be regulated to protect water quality and establishing a comprehensive program to regulate these discharges. Thus, the Group II deadline of June 30, 1989, is inconsistent with the WQA.

It must be emphasized that neither the recent amendments to the Clean Water Act nor the Agency's intent to change the storm water application deadlines relieves any storm water point source from the requirement to apply for and obtain an NPDES permit if, for example, it is determined that the discharge "contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the U.S.". (See section 405 of the WQA.) This applies to discharges for which permits cannot be required until October 1, 1992, as well as to discharges associated with industrial activity and discharges from large and medium-sized municipal separate storm sewer systems. Moreover, nothing in the new amendments affects the Administrator's ability to restrain pollution under section 504 of the CWA.

It should be noted that if EPA determines, after considering all comments received, to finalize this proposed deadline suspension, it intends to make the final rule effective immediately upon promulgation. Section 553(d) of the Administrative Procedure Act (APA) generally requires publication of a substantive rule not less than 30 days before its effective date. The APA also recognizes exemptions to this requirement, and authorizes an Agency to make a final rule effective immediately upon promulgation if the rule "grants or recognizes an exemption or relieves a restriction" or "for good cause found". This proposed rule would relieve a restriction on storm water discharges or grant an exemption from applying for a permit until a new deadlne is issued by suspending an existing regulatory deadline. There also would be good cause to make the proposed rule effective immediately upon promulgation since the Group I deadline is fast approaching. After December 31, 1987, Group I discharges that had not submitted permit applications would be in violation of the regulation as long as the deadline has not been suspended. Thus, if this proposed suspension is finalized, it would be appropriate to make it effective as quickly as possible to relieve the regulated community of a violation of the regulations, as well as to minimize confusion.

IV. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those that impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely deletes application deadlines for certain point source discharges and imposes no new requirements. Thus, it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, I hereby certify, pursuant to 5 U.S.C. 605(b), that this proposed regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Date: October 8, 1987.

Lee M. Thomas,
Administrator.

For the reasons set forth in the preamble, Part 122 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 122—EPA-ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart B—Permit Application and Special NPDES Program Requirements

§ 122.21 [Amended]

2. Section 122.21 is proposed to be amended by removing the first and second sentences of paragraph (c)(2).

[FR Doc. 87-24334 Filed 10-20-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 268

[FRL-3279-7]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment; extension of public comment period.

SUMMARY: On August 12, 1987 (52 FR 29992), the Environmental Protection Agency presented data and information relating to issues associated with lowering the prohibition levels for California list metal-bearing and cyanide-containing wastes. The Agency took this action in light of the requirements of section 3004(d) of the Resource Conservation and Recovery Act (RCRA) which directs EPA to substitute more stringent concentration levels where necessary to protect human health and the environment.

Today's notice extends the public comment period for this Notice of Data Availability and Request for Comment. The Agency is taking this action in response to several requests for an extension of the comment period.

DATE: As a result of this action, comments on this notice of data availability and request for comment must be submitted on or before November 12, 1987.

ADDRESS: The public must send an original and two copies of their comments to EPA RCRA Docket (S-212), Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-87-LDR6-FFFFF on your comments.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For specific information pertaining to this notice contact Stephen R. Weil or William B. Fortune, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION: Shortly before the October 13, 1987 deadline, the Agency received four requests for an extension to the comment period for the Notice of Data Availability and Request for Comment related to lowering the prohibition levels for California list metals and cyanides (published in the **Federal Register** on August 12, 1987; 52 FR 29992). EPA received these requests from the American Mining Congress (AMC), the Hazardous Waste Treatment Council (HWTX), Waste Management, Inc., and the Institute of Chemical Waste Management (ICWM).

Three of the requests for extension expressed concern that the standard 60-day comment period did not allow sufficient time to respond because of their concurrent involvement in commenting on other waste management issues. Waste Management, Inc. and ICWM stated that five sets of comments related to RCPA regulations and issues are due during the month of October. The AMC indicated that they would be unable to meet the October 13 comment period deadline for a number of reasons, including the results of their review of the IIT Research Institute (1987) cyanide toxicity study would not be available until after the deadline. The HWTC noted that they had met with EPA to develop a reporting format for submitting data, but that their members required additional time to conduct file searches and prepare comments.

In considering the concerns associated with these requests, and in light of the fact that the comment periods on several other RCRA regulatory actions end during this same time frame, the Agency has decided to extend the comment period. The Agency is extending the comment period on the Notice of Data Availability and Request for Comment for an additional 30 days. Thus, the comment period will now close on November 12, 1987. The Agency believes that this extension compensates for the overlay with other Hazardous Waste Management related comment periods, and provides adequate time to respond to the Notice.

Dated: October 15, 1987.

Marcia E. Williams,

Director, Office of Solid Waste.

[FR Doc. 87-24333 Filed 10-20-87; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 17

Nondiscrimination in Federally-Assisted Programs of the Department of the Interior; Nondiscrimination on the Basis of Age

AGENCY: Department of the Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations implement the provisions of the Age Discrimination Act of 1975, and the government-wide regulations published in the **Federal Register** on June 12, 1979 [44 FR 33768, June 12, 1979]. The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

The Age Discrimination Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Job Partnership Training Act. The Act applies to persons of all ages.

These proposed regulations are designed to guide the actions of recipients of financial assistance from the Department of the Interior (DOI). They discuss the responsibilities of DOI recipients and the investigation, conciliation and enforcement procedures DOI will use to ensure compliance with the Act.

DATE: Comments must be received on or before November 20, 1987.

ADDRESS: Send written comments to Director, Office for Equal Opportunity, U.S. Department of the Interior, Washington, DC 20240. Comments received may also be inspected at Room 1040, Main Interior Building, 18th & C Streets, NW., Washington, DC 20240 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Charlene D. Hutchinson, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240, or phone (202) 343-3443 (voice) or (202) 343-3434 (TDD).

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SUPPLEMENTARY INFORMATION:

I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act [Pub. L. 94–135].

The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act contains exceptions which limit the general prohibition against age discrimination. The Act permits the use of age distinctions which are necessary to the normal operation of a program or to the achievement of a statutory objective. The Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the National Parks System) in which Federal assistance flows directly and unconditionally from the Federal government to the individual beneficiary. In accordance with the Act, the Secretary of the Department of Health, Education and Welfare (now the Department of Health and Human Services (HHS)), issued government-wide regulations to guide the development of agency specific regulations by each Federal agency that administers programs of Federal financial assistance [44 FR 33768, June 12, 1979, codified at 45 CFR Part 90]. These, proposed regulations are intended to be consistent with HHS' government-wide regulations. Further, DOI's regulations will be submitted to HHS for review and approval prior to the publication of final regulations in the **Federal Register**.

DOI published proposed regulations in the **Federal Register** on January 3, 1980 [45 FR 976, January 3, 1980]. In view of the period of time that has elapsed since the publication of those proposed regulations, DOI believes it is in the public interest to republish the proposed regulations.

DOI disseminated copies of the initial proposed regulations to its bureaus and offices, other Federal Departments and agencies, State administrators of its federally assisted programs, and interested individuals and organizations. Comments, suggestions, and recommendations were requested by January 31, 1980.

The majority of the comments received were in agreement with the substance and purpose of the regulations. Other comments recommended minor modifications to several sections. Several of the comments received by DOI dealt with the provision that each recipient employing the equivalent of fifteen (15) or more full-time employees perform a self-evaluation of its compliance with the Act. Some comments expressed that specific guidance was required regarding how to accomplish the self-evaluation.

Other comments were concerned with the absence of specific examples of age discrimination practices and the lack of a specified minimum age.

All comments were reviewed and considered; however, because DOI's proposed regulations conform to HHS' government-wide rule, no major changes based on public comments were made.

To ensure consistency with HHS' government-wide regulations, DOI has revised these regulations accordingly. Section 17.302 (*To what programs do these regulations apply?*) has been revised to establish areas to which these regulations do not apply. Section 17.313 has been retitled (*Special benefits for children and the elderly*). Section 17.314 has been retitled (*Age distinctions*). Subsequent sections have been renumbered accordingly.

The self-evaluation requirement contained in these regulations has been revised from the version contained in DOI's initial proposed regulations. The former version would have required all recipients employing fifteen or more employees to complete a written self-evaluation. Section 17.322 states that such recipients *may* be required to undertake a self-evaluation as part of a compliance review or complaint investigation conducted by DOI. The change is based upon HHS' determination that to be consistent with the requirements of the Paperwork Reduction Act of 1980, the paperwork burden associated with the self-evaluation must be limited to recipients where circumstances, in connection with a compliance review or complaint investigation, indicate the need for the self-evaluation.

In addition to publishing specific regulations consistent with the government-wide regulations, the following actions will be taken by DOI to implement the Act:

1. An appendix listing all age distinctions, which appear in Federal statutes and regulations and which affect the agency's programs of financial assistance, is required and will be included in the final regulations.

2. DOI will report annually to the Congress through HHS on its compliance and enforcement activities.

3. DOI will provide written notices to its recipients concerning their obligations under the Act. Technical assistance will be provided to recipients where necessary and educational materials will be made available explaining the rights and obligations of beneficiaries and recipients.

4. DOI will establish a procedure for processing complaints of alleged age discrimination. The complaints process will entail an initial screening by DOI after consultation with the recipient, if necessary, to determine whether the complaints meet the criteria in §§ 17.310, 17.311, and 17.331 before referral to mediation. DOI will send appropriate notices to complainants and recipients of their rights and obligations under the Act. All complaints covered by the Act will be referred to the Federal Mediation and Conciliation Service (FMCS) for mediation.

5. DOI will evaluate the effectiveness of its regulations 30 months after their effective date. The results of this evaluation will be published in the **Federal Register** for public comment.

This proposed rule is divided into the following major categories: *General; Standards for Determining Age Discrimination; Responsibilities of Recipients;* and *Investigation, Conciliation, and Enforcement Procedures.*

The "general" section of these regulations explains the purpose of DOI's age discrimination regulations and defines terms used throughout the rule.

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and these regulations.

The general and specific prohibitions against discrimination on the basis of age are covered in § 17.310 of this rule. The exceptions to those prohibitions are set forth in § 17.311.

The rule contains several exceptions which limit prohibitions against age discrimination. Section 17.311 of the regulations permit the use of age distinctions which are based on reasonable factors other than age. Section 17.311(a) of the regulations defines two terms which are essential to an understanding of those exceptions: "Normal operation" and "statutory objective." "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

"Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected legislative body.

Recipients of DOI funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." The action may be taken even though it has a disproportionate effect on persons of different ages. According to the regulations, however, the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

This rule sets forth the duties of DOI recipients. DOI recipients are responsible for ensuring that their programs and activities are in compliance with the Act and DOI regulations.

Where a primary recipient extends financial assistance to subrecipients, the primary recipient must notify subrecipients of their obligations under the regulations. DOI recipients must also inform beneficiaries of the protections provided by the Act and these regulations.

This proposed rule establishes the procedures DOI will use in its investigation, conciliation, and enforcement activities. These procedures reflect the procedural requirements included in HHS' government-wide regulations.

Section 17.332 introduces mediation into the complaints process for age discrimination. DOI will refer all complaints covered by the Act to the FMCS which was designated by the Secretary of HHS to manage the mediation process.

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date DOI first receives the complaint. No further action will be taken by DOI in connection with a successfully mediated complaint.

DOI will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit DOI to disburse withheld funds to an alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to achieve the goals of the program for which the funds were originally extended.

II. Regulatory Procedures

Impact Analysis Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The administrative and procedural regulations implementing the Age Discrimination Act are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. The impact of these regulations on small entities is minimal because an economic impact such as termination of funding will occur only in those very limited instances where the small entity fails to comply with the statutory and regulatory prohibition concerning age discrimination.

Paperwork Reduction Act (Recordkeeping and Reporting Requirements)

The information collection requirements contained in § 17.323 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0027.

National Environmental Policy Act

Because these regulations are administrative, legal, and procedural in nature, they will not have a significant effect on the quality of the human environment and are categorically excluded from the NEPA Process. *See* 516 DM 2, Appendix 1.

Authorship Statement

The principal author of this proposed rulemaking document is Charlene D. Hutchinson of the Office for Equal Opportunity, U.S. Department of the Interior.

Donald Paul Hodel,

Secretary, Department of the Interior.

Date: September 22, 1987.

List of Subjects in 43 CFR Part 17

Civil rights, Handicapped.

The Department of the Interior proposes to add Subpart C to 43 CFR Part 17 as set forth below:

PART 17—[AMENDED]

Subpart C—Nondiscrimination on the Basis of Age

General

Sec.
17.300 What is the purpose of the Age Discrimination Act of 1975?
17.301 What is the purpose of DOI's age discrimination regulations?
17.302 To what programs do these regulations apply?
17.303 Definitions.
17.304–17.309 [Reserved]

Standards for Determining Age Discrimination

17.310 Rules against age discrimination.
17.311 Exceptions to the rules against age discrimination.
17.312 Burden of proof.
17.313 Special benefits for children and the elderly.
17.314 Age distinctions contained in DOI regulations.
17.315 Affirmative action by recipients.
17.316–17.319 [Reserved]

Duties of DOI Recipients

17.320 General responsibilities.
17.321 Notice to subrecipients and beneficiaries.
17.322 Assurance of compliance and recipient assessment of age distinctions.
17.323 Information requirements.
17.324–17.329 [Reserved]

Investigation, Conciliation, and Enforcement Procedures

17.330 Compliance reviews.
17.331 Complaints.
17.332 Mediation.
17.333 Investigation.
17.334 Prohibition against intimidation or retaliation.
17.335 Compliance procedure.
17.336 Hearings, decisions, post-termination proceedings.
17.337 [Reserved]
17.338 Remedial action by recipients.
17.339 Alternate funds disbursal procedure.
17.340 Exhaustion of administrative remedies.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, (45 CFR Part 90).

Subpart C—Nondiscrimination on the Basis of Age

General

§ 17.300 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit

discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 17.301 What is the purpose of DOI's age discrimination regulations?

The purpose of these regulations is to set out DOI's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90 (44 FR 33768, June 12, 1979). The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 17.302 To what programs do these regulations apply?

(a) The Act and these regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by DOI.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or,

(ii) Establishes criteria for participation in age-related terms; or,

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Partnership Training Act (29 U.S.C. 1501 *et seq.*).

§ 17.303 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration;

(c) "Age" means how old a person is, or the number of years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "DOI" means the United States Department of the Interior.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, transferee, or subrecipient, but excludes the ultimate beneficiary of the assistance.

(k) "Secretary" means the Secretary of the Department of the Interior or his or her designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

§§ 17.304–17.309 [Reserved]

Standards for Determining Age Discrimination

§ 17.310 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 17.311.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to, discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 17.311 Exceptions to the rules against age discrimination.

(a) *Definitions.* For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

(b) *Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 17.310 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

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(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) *Exceptions to the rules against age discrimination: Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 17.310 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 17.312 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 17.311 (b) and 17.311(c), is on the recipient of Federal financial assistance.

§ 17.313 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 17.311.

§ 17.314 Age distinctions contained in DOI regulations.

Any age distinctions contained in a rule or regulation issued by DOI shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 17.311.

§ 17.315 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

§§ 17.316–17.319 [Reserved]

Duties of DOI Recipients

§ 17.320 General responsibilities.

Each DOI recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford DOI access to its records to the extent DOI finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 17.321 Notice to subrecipients and beneficiaries.

(a) Where a recipient extends Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them of the protections against discrimination provided by the Act and these regulations.

§ 17.322 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from DOI shall sign a written assurance as specified by DOI that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 17.330 or complaint investigation under § 17.331, DOI may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOI to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the DOI regulations, the recipient shall take corrective action.

§ 17.323 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which DOI determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to DOI, upon request, information and reports which DOI determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent DOI determines necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) [Reserved]

§§ 17.324–17.329 [Reserved]

Investigation, Conciliation, and Enforcement Procedures

§ 17.330 Compliance reviews.

(a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in § 17.335.

§ 17.331 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant had knowledge of the alleged act of discrimination. For good cause shown, however, DOI may extend this time limit.

(b) DOI will consider the date a complaint is filed to be the date upon which the complaint sufficiently meets the criteria for acceptance as described in paragraphs (a) and (c)(1) of this section.

(c) DOI will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to

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meet the requirements of a sufficient complaint, as described in paragraphs (a) and (c)(1) of this section.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact DOI for information and assistance regarding the complaint resolution process.

(d) DOI will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 17.332 Mediation.

(a) *Referral of complaints for mediation.* DOI will promptly refer to the FMCS all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, FMCS shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The FMCS shall send the agreement to DOI. DOI, however, retains the right to monitor the recipient's compliance with the agreement.

(d) The FMCS shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) DOI will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.

(f) The FMCS shall return unresolved complaints to DOI.

§ 17.333 Investigation.

(a) *Informal Investigation.* (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State program agency.

(3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.

(4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If DOI cannot resolve the complaint through informal means, it will develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in § 17.335.

§ 17.334 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

§ 17.335 Compliance procedure.

(a) DOI may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Cases settled in mediation or prior to a hearing will not involve termination of a recipient's Federal financial assistance from DOI.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under § 17.335(a)(1) to the particular program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) of this section, until:

(1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under § 17.335(a)(1) is initiated.

(1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 17.335(a)(1).

(2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 17.335(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 17.336 Hearings, decisions, post-termination proceedings.

Certain DOI procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOI's enforcement of these regulations. The procedural provisions of DOI's Title VI regulations can be found at 43 CFR 17.8 through 17.10 and 43 CFR Part 4, Subpart I.

§ 17.337 [Reserved]

§ 17.338 Remedial action by recipients.

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

§ 17.339 Alternate funds disbursal procedure.

(a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.

(b) The Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 17.340 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or

(2) DOI issues any finding in favor of the recipient.

(b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 87-24341 Filed 10-20-87; 8:45 am]
BILLING CODE 4310-RE-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: FEMA is requesting public comments and proposals regarding administration of the Individual and Family Grant (IFG) program (Section 408 of Pub. L. 93-288, the Disaster Relief Act of 1974). Current regulations require the State to adopt, and the FEMA Regional Director to approve, an administrative plan. FEMA has observed that some States have prepared very good plans, others are lacking in detail or far too detailed. But all in all, the requirement for plans is time intensive and burdensome for States, and sometimes fails to promote timely, effective management of the program. Therefore, FEMA is seeking ways to streamline planning and to promote uniformity and consistency in IFG implementations, while still accounting for the administrative differences among the States. The intended effect of this advance notice is to obtain comments and proposals regarding State administration, which will be considered by FEMA and later a rule will be proposed to address State planning.

DATE: All comments received by December 21, 1987, will be considered in the preparation of a proposed rule.

ADDRESS: Please send comments to: The Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Room 710, Washington, DC 20472, Phone: (202) 646-3660.

SUPPLEMENTARY INFORMATION: Under section 408 of the Act, FEMA provides grants to States for the purpose of the States providing grants to individuals and families who cannot meet serious disaster related expenses or needs through other disaster assistance programs or other means. This grant to the State is made on the condition that the State provide 25 percent of the cost of the grants, and that the Governor administer the program. State administration now occurs through implementation of an administrative plan.

The requirement for a State plan comes from Federal regulations at 44 CFR 205.54. It was originally adopted as a way to promote uniformity and consistency in the administration of the program nationwide. However, plan writing has blossomed into a lengthy process for States, that sometimes does not result in timely, effective program management.

FEMA is considering whether to eliminate the requirement for State plans while accounting for differences in management and administration of the IFG program. In that regard, FEMA would like to obtain proposals and comments on the following:

1. Should State administrative plans in their present form be abolished?

2. Should the IFG regulations be amended to include standard State operating procedures in lieu of formal plans? If so, what are the most basic elements that should be included in the regulation?

3. Should there be a requirement for:

a. A standard plan with allowances for State differences?

b. A shortened version of the current plan?

c. A letter of agreement upon each major disaster declaration, in lieu of a plan?

d. Specific paragraphs in the FEMA/State Agreement regarding administration of the program?

4. What are the most basic requirements that should be included in a standard plan or agreement?

5. What other methods of establishing uniform administration of the program should be considered?

When comments are received, FEMA will also consider convening a workgroup to review the suggestions and to adopt a formal proposal on this topic for publication as a proposed rule in the **Federal Register**. FEMA would appreciate participation by a number of States in this planning process. Indications of State interest in participating would be welcome in the comments on this notice.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing, Community development.

Dated: October 2, 1987.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87-24302 Filed 10-20-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 87-390; FCC 87-301]

47 CFR Parts 2 and 22

Liberalization of Technology and Auxiliary Service Offerings; Domestic Public Cellular Radio Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action is proposing to give cellular radio licensees the option of offering advanced cellular technology and auxiliary services by relaxing restrictions on channel assignments, emission characteristics and compatibility standards. Permitting advanced cellular technology should lead to more efficient use of the spectrum so that a greater number of subscribers can be served. Permitting cellular licensees the flexibility to offer auxiliary services should result in improved and more diversified services for subscribers. The proposal would give cellular licensees the freedom to tailor service to the needs in their particular service areas.

DATES: Comments are due December 15, 1987. Reply comments are due January 15, 1988.

ADDRESS: Federal Communications Commission; Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph P. Husnay or Rodney T. Small. Office of Engineering and Technology. (202) 653-8106 or (202) 653-8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in General Docket 87-390, FCC 87-301, adopted September 17, 1987 and released October 15, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In this *Notice* the Commission is considering, on its own motion, whether to amend Parts 2 and 22 of the Rules to enable cellular radio service operators to introduce advanced cellular technlogies and provide auxiliary services in the 824-849/869-894 MHz cellular frequency bands. Several manufacturers are currently engaged in the design of future cellular telephone systems as well as methods by which these designs can be implemented within the current systems. Many new technologies that could be employed by cellular systems are restricted by the current FCC rules. Hence, by relaxing certain technical requirements, such as those pertaining to channel assignments, emission characteristics, and compatibility standards, the rules would be better suited to give cellular licensees greater freedom to employ new technology and to offer improved or more diverse types of services.

2. In considering whether or not to relax certain technical standards the Commission is concerned with the impact this proposal might have on the adequacy of conventional cellular service and on the compatibility requirements used for insuring service to roamers. In this regard, the item seeks comments on whether it is in the public interest to set guidelines or requirements concerning cellular system quality and compatibility. The Commission is also concerned with controlling interference to and from neighboring cellular systems. Hence, this item purposes to maintain the current power and field intensity limitations at the boundaries of cellular service areas. The item also proposes to require that the introduction of new technology and auxiliary services be frequency coordinated in the same manner as current systems. By maintaining some technical standards while relaxing others, we believe this proposal can be implemented without disruption to existing or planned cellular systems. This action is therefore intended to promote the public interest by encouraging the development of more spectrum-efficient cellular technologies and by permitting more efficient and intensive use of the frequencies that have been allocated for cellular service.

3. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, public comment is requested on the initial regulatory analysis set out in the Commission's complete decision.

4. The collection of information requirement contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Communications Commission.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Ordering Clause

6. This action is taken pursuant to 47 U.S.C. sections 154(i), 303(c), 393(f), 303(g), 303(r) and 332.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 22

Radio.

Proposed Rule Changes

Parts 2 and 22 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by listing footnote NG151 in column 5 for the 824-849 MHz and 869-894 MHz bands and by adding the text of footnote

NG151 to the list of footnotes at the end of the table. As revised, the entries for the 824–849, and 869–894 Hz bands, and new footnote NG151 read as follows:

§ 2.106 Table of frequency allocations.

United States Table	
Non-Government Allocation (MHz) (5)	
• • • • •	
824–849, Land Mobile, NG30, NG43, NG63, NG151	
• • • • •	
869–849, Land Mobile, NG30, NG63, NG151, US116, US268	
• • • • •	
• • • • •	
Non-Government (NG) Footnotes	
• • • • •	
NG151 In the frequency bands 824–849 MHz and 869–894 MHz, cellular land mobile licensees are permitted to offer additional services subject to the provisions of Part 22 of the FCC Rules and Regulations.	
• • • • •	

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation in Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Part 22 is amended by adding § 22.930 to read as follows:

§ 22.930 Special provisions for alternative cellular technologies and auxiliary services.

Provided that interference to other cellular systems is not created, cellular licensees may employ alternative cellular technologies and auxiliary services. These special provisions will be referred to as the cellular service option. The cellular service option may be exercised subject to the following requirements:

(a) Cellular licensees may offer advanced cellular technology or auxiliary communication services. The cellular licensee will be responsible for all operations in its authorized frequency block and service area.

(b) Cellular licensees are required to inform the Commission of the new technology or new services to be provided under the cellular service option at least 30 days prior to the implementation of the services. The information required to be filed with the Commission includes a description and classification of the services intended to be offered, and a listing of any new or modified transmitting facilities.

(c) Operations under the cellular service option are subject to the technical requirements of §§ 22.903, 22.904, and 22.905. The emission requirements of § 22.907 will be applied, but only to the extent of those emissions that fall outside the specific cellular frequency bands licensed to the operator, i.e., band A or band B. Mobile transmitters are subject to type acceptance in accordance with Part 2 of the Rules.

(d) Operations under the cellular service option are not subject to the channeling requirements of § 22.902, and the types of emissions and modulation requirements of § 22.906. The requirements of § 22.911 pertaining to permissible communications shall apply under the cellular service option, except for the channel pairing requirement.

(e) The cellular licensee may implement alternative technologies and auxiliary services on the condition that some conventional service is maintained that conforms to the standards in §§ 22.902 through 22.907, in order to provide service to roamers.

(f) For mobile facilities (other than cellular radio), the information required by paragraph (b) of this section, must include the number of units to be placed in service, manufacturer's name, FCC identification number, and specific frequencies of operation. Licensees shall submit emission bandwidth and frequency tolerance data to the Commission demonstrating compliance with the rules.

(g) For fixed transmitting facilities, the information required by paragraph (b) must include sufficient technical data and calculations to verify compliance with the aggregate field strength limit. Calculations are required at ten equally spaced intervals around the service contour. Other data required for fixed transmitters is the manufacturer's name, model number, rated output power, operating frequency, frequency tolerance, modulation type, emission profile, and antenna location, elevation, orientation, and pattern.

(h) Operations under the cellular service option are subject to frequency coordination in accordance with § 22.902(d).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–24367 Filed 10–20–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 65

[CC Docket No. 87–463; FCC 87–315]

Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: This action proposes modifications to the Commission's procedures and methodologies for prescribing interstate rates of return prior to the upcoming proceeding to reexamine the currently authorized return. The Notice proposes changes to Part 65 of its Rules as a result of experience gained in the prior proceeding, changed circumstances and newly available data.

DATES: Comments are due November 23, 1987, and replies are due December 11, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Goodman, Telephone (202) 632–0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in Common Carrier Docket No. 87–463, FCC 87–315, Adopted October 8, 1987 and Released October 13, 1987.

The full text of this Commission decision in available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 203), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (NPRM), this Commission seeks to revise the procedures and methodologies for represcribing interstate rates of return. Althought the first proceeding was successful, some areas for further study presented themselves. In addition, circumstances have evolved since the initial proceeding, and this NPRM seeks comments on the effects of any such changes on the Part 65 Rules. In light of the upcoming represcription that will begin in early 1988, the NPRM seeks to

complete any necessary modifications prior to the initiation of the next proceeding.

2. The Commission's Rules currently group all of the local exchange carriers (LECs) into a single group and prescribe a unitary, overall return. The basis for that categorization—similar interstate access risk—may have changed. The NPRM explores the possibility of multiple LEC groupings and subgroupings. In addition, the NPRM seeks comment on use of a unitary grouping only for the return on equity component.

3. The initial proceeding revealed flaws with the comparable firm methodology. The NPRM proposes to replace the current "screening" techniques with cluster anlaysis as a means of determining firms with risk comparable to interstate activities. The NPRM also suggests use of the refined comparable firms approach as a method of estimating only return on equity components.

4. The NPRM also seeks comment on two rate of return estimation techniques that were previously unavailable because of the small amount of post-divestiture data at the time of the initial represcription. The NPRM seeks comment on the capital asset pricing model and an approach of using accounting data to estimate costs of capital for particular business segments.

5. Finally, the NPRM seeks comment on a number of miscellaneous issues. Included in this group of additional issues to be addressed by commenting parties are: Details of the discounted cash flow model; timing for supplemental data submissions; reconsideration procedures; use of a three year earnings review period; and modification of the waiver standards for individualized treatment.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the rule change proposed in this proceeding is exempt from application of the statute because it will not have a significant impact on a substantial number of small entities. A small-business concern is defined in section 3 of the Small Business Act as a concern which is not dominant in its field of operations. 15 U.S.C. 632; 13 CFR 121.3(c). The rules proposed in this proceeding would apply to dominant carriers only and hence would not have a significant impact on small entities.

7. For purposes of this non-restricted notice and comment proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts this Notice until the time a Public Notice is issued stating that this matter has been placed on the Sunshine Agenda, or until a final Order disposing of the matter is adopted by the Commission, which ever is earlier.

8. In general, an *ex parte* presentation is any written communication (other than formal written comments or reply comments) directed to the merits or outcome of a proceeding made to any member, officer, or employee of the Commission who is or may reasonably be expected to be involved in the decisional process in the proceeding and which, if written, is not served on the parties to the proceeding, and, if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Any person who makes or submits a written *ex parte* presentation shall serve on the same day it is submitted a copy of same on the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation presenting data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in the proceeding shall provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the date and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and also state by docket number the proceeding to which it related. *See generally* 52 FR 21.051 (1987) (to be codified at 47 CFR 1.1206).

9. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a written containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order.

10. This rulemaking proceeding is instituted pursuasnt to our authority under sections 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 201–205 and 403. Comments on the proposed rulemaking shall be due on November 23, 1987 with reply comments due on December 11, 1987.

11. In accordance with the provisions of § 1.419(b) of the Commission's Rules, 47 CFR 1.419(b), an original and five copies of all comments, replies, pleadings, briefs and other documents filed in the proceeding shall be furnished to the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filing will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239 at its headquarters at 1919 M Street NW., Washington, DC.

List of Subjects in 47 CFR Part 65

Interstate rate of return, Prescription procedures and methodologies.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24366 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-437; RM-5842]

Radio Broadcasting Services; Selma and Union Springs, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Alexander Broadcasting Company, licensee of Station WALX(FM) (Channel 265A), Selma, AL, requesting the substitution of Channel 265C2 for Channel 265A and modification of its license to specify operation on the higher class channel, in order to provide that community with its second wide coverage area FM service. Additionally, petitioner requests the substitution of Channel 231A for Channel 265A at Union Springs, Alabama, and modification of the license of Station WSFU-FM, licensed to Mar, Inc., to accommodate its proposal.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Philip M. Baker, Esq., 4701 Willard Avenue, Wash., DC 20815.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-437, adopted September 25, 1987, and released October 15, 1987. The full text

of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24372 Filed 10–20–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–439; RM–5889]

Radio Broadcasting Services; Lake City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Holder Media, Inc., licensee of Station WQPD(FM), Lake City, Florida, which seeks to substitute Channel 232C2 for Channel 232A at Lake City, and to modify its license to specify the class C2 channel.

DATES: Comments must be file on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard Hildreth, P.C., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–439, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24374 Filed 10–20–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–435; RM–5840]

Radio Broadcasting Services; Lehigh Acres, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Dwyer Broadcasting, Inc., licensee of Station WOOJ–FM, Lehigh Acres, Florida, which seeks to substitute Channel 296C2 for Channel 296A at Lehigh Acres, and to modify its license to specify the Class C2 channel.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays, and Handler, 1575 Eye Street, NW., Washington, DC 20005 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–435, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24368 Filed 10–20–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–438; RM–5894]

Radio Broadcasting Services; West Palm Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

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SUMMARY: This document requests comments on a petition for rule making filed by J.J. Taylor Companies, Inc. proposing to upgrade its facilities for Station WEAT-FM, West Palm Beach, Florida by substituting Class C Channel 282 for Channel 282C1 and modifying its license accordingly. Petitioner proposes to relocate its transmitter to a site 26.5 kilometers (16.5 miles) southwest of the city.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John J. Duffy, Pierson, Ball and Dowd, 1200 18th Street NW., Washington, DC 20036 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-438, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24373 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-436; RM-6024]

Radio Broadcasting Services; Eagle Nest and Angel Fire, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Francis O'Connell d/b/a Moreno Valley Broadcasting, Inc. requesting the allocation of Channel 256C2 to Eagle Nest and Angel Fire, NM, on a hyphenated basis, as the communities first local FM service. Channel 256C2 can be allocated to Eagle Nest or Angel Fire in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Petitioner is requested to furnish additional information to show that Eagle Nest and/or Angel Fire are communities for allotment purposes and to show that they are so intertwined to warrant a hyphenated allocation.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Francis O'Connell, Moreno Valley Broadcasting, Inc., P.O. Box 181, Eagle Nest, New Mexico 87718 (petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-436, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commssion proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24371 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-433; RM-5994]

Radio Broadcasting Services; Brookville and Punxsutawney, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Strattan Broadcasting requesting the substitution of Channel 288B1 for its Channel 240A at Brookville, PA, and the modification of its license for Station WMKX to specify the higher powered channel. In addition, petitioner requests the substitution of Channel 281A for Channel 288A at Punxsutawney, PA, and the modification of Renda Radio, Inc.'s license for Station WPXZ to specify Channel 281A. Channel 288B1 can be allocated to Brookville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. It cannot, however, be used at Station WMKX's present transmitter location or the site specified in its pending application due to a short-spacing to Station WCHX at Lewistown, PA. Channel 281A can be allocated to Punxsutawney, PA in compliance with the Commission's minimum distance separation requirements and can be used at Station WPXZ's present transmitter site. An *Order to Show Cause* is directed to Renda Radio, Inc.

concerning the modification of its license for Station WPXZ. Canadian concurrence is required since both Brookville and Punxsutawney are located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., #203, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–433, adopted September 17, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24370 Filed 10–20–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–434, RM–6021]

Radio Broadcasting Services; Surfside Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jones, Eastern of the Grand Strand, Inc., licensee of Station WYAK–FM, Surfside Beach, South Carolina, proposing the substitution of Channel 276C2 for Channel 276A at Surfside Beach and the modification of its license to specify the higher powered channel. Channel 276C2 can be allocated to Sufrside Beach in compliance with the Commission's minimum distance separation requirements and used at Station WYAK–FM's present transmitter location. In view of the fact that this proposal represents a co-channel upgrade, we shall not accept competing expressions of interest in use of the channel at Surfside Beach nor require the petitioner to demonstrate the availability of an additional equivalent channel. See section 1.420(g) of the Commission's Rules.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R Leader, John Joseph McVeigh, Fisher, Wayland, Cooper & Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–434, adopted September 11, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24369 Filed 10–20–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Asclepias Meadii (Mead's Milkweed) To Be Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Asclepias meadii* (Mead's milkweed), a prairie perennial, as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). Approximately 61 populations are currently known; 40 in Kansas, 3 in Illinois, 1 in Iowa, and 17 in Missouri. The plant is believed extirpated from Indiana and Wisconsin. It is threatened by destruction and modification of the "tall grass" prairie due to agricultural expansion, urban growth, and agricultural practices detrimental to the plant's reproductive cycle. This proposal, if made final, will implement Federal protection provided by the Act for *Asclepias meadii*. Critical habitat is not being proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 21, 1987. Public hearing request must be received by December 7, 1987.

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ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Division, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cites, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** section) at 612/725–3276 or FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

Asclepias meadii (Mead's milkweed) was first collected by Dr. Samuel Barnum Mead in Hancock County, Illinois, in 1843, and subsequently described by John Torrey in an 1856 addendum to the second edition of *Gray's Manual of Botany* (Betz 1967).

Asclepias meadii is a perennial that usually occurs in virgin prairie as a solitary plant or as a few closely associated individuals (Kurz and Bowles 1981). Ronald McGregor (University of Kansas, pers. comm. 1985) has found *Asclepias meadii* only in tallgrass prairies. Morgan (1980) reports that Missouri populations are found in unplowed bluestem prairie in the unglaciated region of the State where the soils are deep silt loam. Betz and Hohn (1978) report that this species occurs on virgin mesic silt loam prairies and occasionally on limestone glade prairies in Missouri and southern Illinois. Betz and Hohn (1978), and Kurz and Bowles (1981) report that very few individual plants are found at any given population, with most populations containing fewer than a dozen plants. However, R. Brooks (Kansas Biological Survey, pers. comm. 1986) reports that populations in Kansas seem to average about 20 plants each. Associated species found with *Asclepias meadii* are *Sorghastrum nutans, Andropogon gerardii, Petalostemum candidum, Gentiana puberula, Ruellia humilis,* and *Silphium laciniatum* (Betz and Hohn 1978). *Platanthera praeclara* (western prairie fringed orchid), recently segregated as an allopatric species from *Platanthera leucophaea* (eastern prairie fringed orchid), and considered as a candidate for Federal listing, is also associated with *Asclepias meadii* at several locations in Kansas (Sheviak and Bowles, pers. comm. 1986).

Asclepias meadii usually commences its seasonal growth in mid to late April. It has a solitary, slender, unbranched stalk, 8–16 inches (20–40 centimeters) high, without hairs, but with a whitish, waxy covering. The leaves are opposite, broadly ovate, 2–3 inches (5–7.5 centimeters) long, ⅜–2 inches (1–5 centimeters) broad, without hairs and also with a whitish, waxy covering. A solitary umbel at the top of a long stalk has 6–15 greenish ivory/cream colored flowers that open in late May and early June. Young green fruit pods appear by late June and reach their maximum length of 1.5–3 inches (4–8 centimeters) by late August or early September. As these pods mature they darken and the hairy seeds borne within are mature by mid October (Morgan 1980, Kurz and Bowles 1981).

Historically, *Asclepias meadii* ranged throughout much of the "tall grass" prairie. It is now restricted to 61 known sites in 21 counties within Illinois, Iowa, Kansas, and Missouri. It is thought to be extirpated in Indiana and Wisconsin (Bacone *et al.* 1981, Alverson 1981). In Illinois the plant's former range of 7 counties has been reduced to 2: Ford and Saline Counties, where 2 of the 3 populations are found on public land administered by the U.S. Forest Service. The other population occurs within a railroad right-of-way (Kurz and Bowles 1981). The plants' range in Missouri, once covering 11 counties as reported by Betz and Hohn (1978), has now been reduced to 7 counties: Barton, Benton, Dade, Pettis, Polk, St. Clair, and Vernon (Morgan, pers. comm. 1986). Nine of the 17 extant Missouri populations are in public ownership. Watson (1983) reported that *Asclepias meadii* was historically known from 5 counties in Iowa, but that all had been extirpated. A recent report by Leoschke (pers. comm. 1986) reveals 1 population with one plant, on public property, in Warren County, Iowa. McGregor (pers. comm. 1985) reported 11 populations of *Asclepias meadii* in 9 Kansas counties (Anderson, Bourbon, Coffey, Douglas, Jefferson, Johnson, Franklin, Leavenworth, and Miami). Brooks (pers. comm. 1986) reports that field survey work conducted in these 9 counties, as well as Allen and Linn counties during the summer of 1986, resulted in the discovery of 29 additional populations. Only the population in Jefferson county is protected.

Federal Government actions on Mead's milkweed began with Section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Asclepias meadii* (Mead's milkweed) was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 amendments to the Act. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register**. *Asclepias meadii* was included in that notice as a category 1 species. Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted. On September 27, 1985 (50 FR 39525), the Service again published a revised notice for native plants in the **Federal Register**; *Asclepias meadii* was included in that notice as a category 2 species. Category 2 species are those for which the Service believes additional data must be obtained before a proposal to list is warranted. Status information received since the September 27, 1985 (50 FR 39525), notice indicates that proposing to list *Asclepias meadii* as a threatened species is warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Asclepias meadii* Torr. (Mead's milkweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Asclepias meadii* is threatened by the elimination of its "tall grass" prairie habitat due to urban development, agricultural expansion, and detrimental agricultural practices. McGregor (pers. comm. 1985) reports that over the last 40 years he has observed the slow elimination of prairie hay meadows through plowing, conversion to grazing, and development. Betz and Hohn (1978) also note that prairie hay meadows are being plowed and put into grain crops; even those hay meadows remaining are mowed once or twice each year before *Asclepias meadii* plants are able to set seeds. McGregor (pers. comm. 1985) also reports that yearly mowing of these tallgrass prairies where *Asclepias meadii* is found severely restricts the plant's reproduction and any chance for increased distribution. Kurz and Bowles (1981) report that *Asclepias meadii* populations occurring within railroad rights-of-way in Ford County, Illinois, are threatened by erosion, lack of fire, and use of herbicides and plowing, while the populations in Salin County are threatened by encroachment of woody vegetation and trampling by hikers. McGregor (pers. comm. 1985) reports that one of the best Kansas populations, the one in which Brooks counted 800–1,000 plants in 1985, is in an area certain to be developed for housing in the next few years.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites.

C. *Disease or predation.* McGregor (pers. comm. 1985) reports that it is not unusual to find aerial portions of *Asclepias meadii* plants suddenly wilting and dying because of infestation of a beetle larva (Curculionidae) in the stalk. McGregor (pers. comm. 1985) also notes that other insects puncture the peduncle, killing the inflorescence just at the blooming period. Betz and Hohn (1978) report that the larvae of *Tetraopes femoratus* are destructive to the small root system of *Asclepias meadii*, but not to larger milkweeds such as *Asclepias syriaca* and *Asclepias sullivantii*, which seem to tolerate more infestation than *Asclepias meadii*.

D. *The inadequacy of existing regulatory mechanisms. Asclepias meadii* is officially listed as endangered by the States of Illinois, Iowa, and Missouri. Kansas does not have specific legislation or rules to protect endangered or threatened plants. Illinois law protects those endangered and threatened plants found on State property and prohibits taking State endangered plants without written permission of the landowner; it also prohibits sale of State endangered plants. State permits are required for taking or possessing Federal endangered plants. Iowa regulations prohibit removal, possession, and sale of any plant species on the Federal or State lists. The Missouri regulations prohibit exportation, transportation, or sale of plants on the State or Federal lists; collecting, digging, or picking any rare or endangered plant without permission of the property owner is prohibited. Although *Asclepias meadii* is offered various forms of protection under these State laws, monitoring and enforcement are difficult due to limited personnel. While approximately 28% of the known populations of *Asclepias meadii* are located on public lands and receive some form of protection, the majority of the known populations are, as yet, unprotected. The Endangered Species Act offers possibilities for additional protection of this taxon through section 6 by cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements. The Endangered Species Act would afford additional protection to *Asclepias meadii*.

E. *Other natural or manmade factors affecting its continued existence.* Betz and Hohn (1978) report that the low number of individual plants at any one site do not attract potential pollinators, and this factor is possibly the cause for low reproductive success. Betz and Hohn (1978) also report that studies at the Morton Arboretum indicate that five to eight years are necessary for plants to mature from seed. McGregor reports that Kansas populations of *Asclepias meadii* tend to have larger numbers of plants in some years and fewer in others. Betz and Hohn (1978) also observe that individual plants produce flowers for two or three years and then rest, and in some cases completely disappear for a few years. Research is needed to better understand this fluctuation phenomenon in order to maintain and promote the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Asclepias meadii* as threatened. Sixty-one populations of this species are known to exist. Over 70% of these populations are on privately owned property and receive no protection or management designed to enhance the species' continued existence. Threatened status is appropriate because without protection and further research this species will continue to be vulnerable. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Asclepias meadii* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition, if necessary, and cooperation with the States. It also requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed

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critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service has jurisdiction over the *Asclepias meadii* population in Saline County, Illinois. Federal activities that could affect the species and its habitat in the future could include forest management practices and recreational and interpretative development. It has been the experience of the Service that the majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Asclepias meadii* is not known to exist. It is anticipated that few trade permits would ever be sought or issued since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1935).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered and threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal, are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Asclepias meadii;*

(2) The location of any additional populations of *Asclepias meadii* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Asclepias meadii.*

Final promulgation of a regulation on *Asclepias meadii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Alverson, W.S. 1981. Status report on *Asclepias meadii.* Wisconsin Department of Natural Resources. Unpubl. ms. 4 pp.

Bacone, J.A., Crovello, T.J., and Hauser, L.A. 1981. Status report on *Asclepias meadii.* Indiana Department of Conservation. Unpubl. ms. 10 pp.

Betz, R.F. 1967. The ecology of *Asclepias,* especially *Asclepias meadii* Torrey, and a study of the factors contributing to its possible extinction as a wild plant. A Research proposal to the National Science Foundation, Washington, DC.

Betz, R.F. and Hohn, J.E. 1978. Status report for *Asclepias meadii* Torr. prepared for the U.S. Fish and Wildlife Service. 9 pp.

Kurz, D.R. and Bowles, M.L. 1981. Report on the status of Illinois vascular plants potentially endangered or threatened in the United States. Natural Land Institute, Rockford, Illinois. Unpubl. ms. 10 pp.

Morgan, S.W. 1980. Status report on *Asclepias meadii.* Missouri Department of Conservation. Unpubl. ms. 15 pp.

Watson, W.C. 1985. Status report of *Asclepias meadii.* Iowa Conservation Commission. Unpubl. ms. 11 pp.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section) (612/725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asclepiadaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asclepiadaceae—Milkweed family:						
Asclepias meadii	Mead's milkweed	U.S.A. (IL, IN, IA,KS, MO,WI)	T		NA	NA

Dated: September 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-24296 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

New England Fishery Management Council; Atlantic Sea Scallop Fishery Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) and the New England Fishery Management Council (Council) will hold a special public hearing to allow for input on the possible need for a temporary adjustment in the sea scallop management standard. Information on the status of the resource will be presented by NMFS as the basis for public discussion. The Council made a preliminary recommendation on the matter to the Regional Director at its regularly scheduled meeting on October 7, 1987. The Council's recommendation and the information received at the public hearing will be considered by the Regional Director in deciding whether to implement a temporary adjustment in the management standard.

DATE: The public hearing will be held on Thursday, October 29, 1987, between 1:00 and 4:00 p.m.

ADDRESS: The hearing will take place at the East Boston Ramada Inn, Route 1A, East Boston, MA.

FOR FURTHER INFORMATION CONTACT: David Crestin, Chief, Management Division, Northeast Region, 14 Elm Street, Gloucester, MA 01930, 617-281-3600, or Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906, 617-231-0422.

SUPPLEMENTARY INFORMATION: A notice of availability for Amendment 2 to the Atlantic Sea Scallop Fishery Management Plan (FMP) was published in the Federal Register on September 21, 1987 (52 FR 35464). Subsequently, the amendment was returned because amendatory language to the habitat section of the FMP was not include. The Council is now concerned that the amendment, which establishes a seasonal adjustment mechanism in the management standard, may not be implemented prior to January. Therefore, the Council would like to review the latest annual report on the status of the resources as required by the FMP to determine whether a temporary adjustment of standards, if justified by current resource conditions, might be used to achieve the same result as Amendment 2; that is, a seasonal adjustment of the meat count in a more timely fashion. Normally, the public hearing would have been held on the same day as the Council meeting, which was held October 7, 1987. However, the unusual circumstances surrounding the review of Amendment 2 and the onset of the spawning season necessitates the scheduling of a public hearing as soon after the Council meeting as possible in order to provide the public adequate notice of the hearing.

Dated: October 15, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Maritime Fisheries Service.

[FR Doc. 87-24319 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 661 and 663

Pacific Fishery Management Council; Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California, and Pacific Coast Groundfish Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) announces the availability for public review of (1) the "Draft Third Amendment to the Pacific Coast Groundfish Fishery Management Plan Incorporating the Environmental Assessment, Regulatory Impact Review/Regulatory Flexibility Analysis, and Requirements of Other Applicable Law" and (2) the "Draft Eighth Amendment to the Fishery Management Plan For Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California Commencing in 1978." The Council will hold a public hearing on these amendment issues and is requesting comments from the public.

DATES: The hearing will begin at 7:00 p.m., on November 17, 1987. Written comments will be received until November 12, 1987.

ADDRESSES: The hearing will be held at the Red Lion Motor Inn—Columbia River, 1401 North Hayden Island Drive, Portland, OR. Copies of the draft groundfish and salmon amendments can be obtained by writing or telephoning Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Center, Suite 420, 200 SW., First Avenue, Portland, OR 97201. Written comments may be sent to the Council office.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, 503-221-6352.

SUPPLEMENTARY INFORMATION: The Council proposes to incorporate new sections in its present groundfish and salmon fishery management plans which detail the habitat modification on the resources and the fisheries. The proposed sections also clarify the Council's habitat policy and should provide a useful source of information for those concerned with the importance of habitat to fish production.

The second issue contained in the proposed amendments clarifies the Council's capability and procedures for considering temporary adjustments to fishery access due to unsafe weather or oceanic conditions. While this type of action is not precluded by the current fishery management plans, the Council is reviewing the issue in light of a recent amendment to the Magnuson Fishery Conservation and Management Act.

Dated: October 15, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-24320 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 52, No. 203
Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 16, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

- Food and Nutrition Service
- Food Stamp Program—Photo Identification
- Recordkeeping; Monthly; Annually
- Individuals or households; State or local governments; 51,036,898 responses; 326,601 hours; not applicable under 3504(h)
- Paul Jones, 756–3385

Extension

- Food and Nutrition Service
- State Coupon Issuance and Participation Estimates
- Monthly
- State or local governments; 636 responses; 4,542 hours; not applicable under 3504(h)
- Paul Jones (703) 756–3385

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 87–24388 Filed 10–20–87; 8:45 am]

BILLING CODE 3410–01–M

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time And Place: 8:00 a.m. at the Sheraton National Hotel, Columbia Pike & Washington Blvd., Arlington, Virginia.

Status: Open.

Matters To Be Considered: On November 2 the Commission will meet to discuss alternative policies to establish and adjust the milk support price. On November 3, the Commission will hear presentations on the subject of demand for dairy products.

Written Statement May Be Filed Before or After The Meeting With: Contact person named below.

CONTACT PERSON FOR MORE INFORMATION: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Avenue NW., Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC, this 14th day of October 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87–24297 Filed 10–20–87; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

Public Hearing Regarding the Aberdeen and Carthage, NC Tobacco Markets

Notice is hereby given of a public hearing regarding the Aberdeen and Carthage, North Carolina, tobacco markets.

Date: October 28, 1987.

Time: 10 a.m. local time.

Place: Aberdeen Municipal Building, Commissioner's Room, 105 Sandhills Bouelvard, Aberdeen, North Carolina.

Purpose: To hear testimony and to receive other evidence regarding an application for tobacco inspection and price support services for a new flue-cured tobacco market, which would consist of the currently designated markets of Aberdeen and Cathage, North Carolina. The application was made by Mr. Carl Gallimore, President, Gallimore and Lambeth Tobacco Warehouse, Inc., Aberdeen, North Carolina. This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR § 29.1 through 29.3).

Dated: October 20, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87–24543 Filed 10–20–87; 10:54 am]

BILLING CODE 3410–02–M

Forest Service

Norbeck Wildlife Preserve, Black Hills National Forest, Custer and Pennington Counties, South Dakota; Revised Notice of Intent To Prepare Environmental Impact Statement

The Department of Agriculture, Forest Service, is preparing an environmental impact statement to consider site-specific activities in the Norbeck Wildlife Preserve which implement or supplement direction in the Black Hills National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan was approved in 1983.

The Notice of Intent, published in the **Federal Register** of October 23, 1986, is hereby revised (51 FR 37615). The new revised dates are as follows: The draft environmental impact statement should be available for public review by summer 1988. The final environmental impact statement is scheduled to be completed by winter 1988.

FOR FURTHER INFORMATION CONTACT: Mary Sue Waxler, Environmental Coordinator, Black Hills National Forest, RR 2 Box 200, Custer, SD 57730; telephone 605/673–2251.

Date: October 13, 1987.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 87–24337 Filed 10–20–87; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:30 p.m. on November 9, 1987, at the Connecticut Historical Society, 1 Elizabeth Street, Hartford, Connecticut. The purpose of the meeting is to orient new members of the recently rechartered Committee, discuss civil rights issues of interest or concern among the membership, and select topics for a project and for monitoring during Fiscal Year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James H. Stewart (203/486–3417) or John I Binkley, Director of the Eastern Regional Division at (202/523–5264; TDD 202/376–8117.) Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 9, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–24338 Filed 10–20–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Economic Censuses Advertising and Response Behavior Study
Form Number: Agency—EC–100A(PL) and EC–100B(PL); OMB—NA
Type of Request: New collection
Burden: 12,000 respondents; 4,000 reporting hours
Needs and Uses: This study will measure the penetration and effectiveness of the 1987 Economic Census advertising and promotion activities and will provide vital information on the stimuli that encourage response, and the obstacles that inhibit response. Results obtained from interviews of businesses mailed in the census will aid 1992 census planning.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult 395–7340

Agency: Bureau of the Census
Title: Agriculture Response Behavior Study
Form Number: Agency—87–A70.A(PL), B(PL), C (PL), and D(PL); OMB—NA
Type of Request: New collection
Burden: 30,400 respondents; 2,533 reporting hours
Needs and Uses: This study is a panel telephone survey designed to evaluate the effectiveness of the public awareness campaign and the census mail data collection procedure in informing and eliciting response from the census universe. The study focuses on the factors that influence the behavior of census recipients to respond to the census.
Affected Public: Farms
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult 395–7340 Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: October 15, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–24290 Filed 10–20–87; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certficate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an export trade certificate of review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. A certificate of review protects the holder and the members identified in the certificate from private treble damage actions and from civil and criminal liability under federal and state antitrust laws for the export conduct specified in the certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C.

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552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87–A0004."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #87–00004, which was issued on May 19, 1987 (52 FR 19371, May 22, 1987).

Applicant: National Machine Tool Builders' Association ("NMTBA"), 7901 Westpark Drive, McLean, Virginia 22102–4269, Contact: James R. Atwood, legal counsel. Telephone: 202/662–6000.

Application: #: 87–A0004.

Date Deemed Submitted: October 8, 1987.

Summary of the Appication

NMTBA seeks to amend its certificates to:

1. Add each of the following companies as a new "Member" of the certificate: Hurco Companies, Inc., Indianapolis, Indiana; and Manufacturing Technology, Inc., Mishawaka, Indiana (controlling entity: Adams Corp.)

2. Delete each of the following companies as a "Member" of the certificate: ACME-Cleveland Corp.; AMAF Industries, Inc.; Apex Corporation; Automated Machine Tool Technology, Inc.; Barker Milling Machine Company; Farrel Company; Harvill Machine Inc.; Hydra-Tool Corp.; Laser Systems Division; Lehman Division of Smith International Inc.; MG Cutting Systems; MHP Machines, Inc.; V & O Press Company, Inc.; Wadell Equipment Company, Inc.; Wardwell Mfg. Co., Inc.; and the Wheelabrator Corp.

3. Replace the current "Members" Landis Tool Co. and Lamb Technicon Corp. with their controlling entity Litton Industrial Automation Systems, Inc. (Litton Industrial Automation Systems, Inc. recently acquired the Lamb Technicon Corp.)

4. Replace the current "Member" Teledyne Landis Machine with its controlling entity, Teledyne Industries, Inc.

5. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: APEC-Guill Technologies Inc. (APEC/CPM Guill Technologies Inc.); Automated Machine Tool Technology, Inc. (ACROLOC/CNC Systems); Cam-Apt, Inc. (CAM-APT Technologies); Chemtool Deburring Systems (CHEMTOOL, Incorporated); Clearing (USI Clearing); C.O. Hoffacker Company (C.O. Hoffacker Co. Division of the Hoff Co.); Dake (Dake Division, JSS Corporation); Davenport Machine Tool Division (Davenport Machine-A Dover Industries Company; ES-Tech (Equipment Systems); Fairfield Machine (Fairfield Machine Co., Inc.); Geometric Tool (Geometric Tool-Division Greenfield Industries); Giddings and Lewis (Giddings and Lewis-A Division of Amco International Corporation); Hansvedt EDM Division (Hansvedt); Harper Buffing Machine (Harper Company); HE&M Saw (HEM, Inc.); P.R. Hoffman (P.R. Hoffman Machine Products Co.); Imperial Stamp & Engraving Company (Imperial Stamp & Engraving Co., Inc.); Industrial Development Systems (Industrial Development Systems, Inc.); Intertech Automation Company (Intertech Development Company); ITW Illitron (Illinois Tool Work Inc.); Livernois Automation Company (Livernois Engineering Co.); The Lodge & Shipley Company (Lodge & Shipley/ Manuflex); Lyon Machine Builders Div. (Lyon Machine Builders); Miller Fluid Power Corporation (Miller Fluid Power); National Automatic Tool Co., Inc. (NATCO, Inc.); The Olofsson Corporation (Olofsson Corporation); Peerless Saw Division (Peerless Saws); PMC Industries (PMC Industries, Inc.); Republic Lagun Machine Tool Co. (Republic Lagun CNC Corporation); S-P Manufacturing Corporation (The S-P Manufacturing Corporation); Geo. T. Schmidt Division (Geo. T. Schmidt); Universal Engineering (Universal Engineering Div. Stanwich Industries Inc.); Valenite-Kamset (GTE Valenite Corporation); Vulcan Tool Company (Vulcan Tool Corp.).

Dated: October 16, 1987.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 87–24378 Filed 10–20–87; 8:45 am]

BILLING CODE 3510–DR–M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held November 16, 1987, 8:30 a.m., in the Federal Building, Room 4S13, 880 Front Street, San Diego California.

The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Licensing Procdures 1987 and 1988 agenda:
   a. Discussion and suggestions for a "User Friendly Guide to the Export Administration Regulations" that will be prepared by the Subcommittee and the Department of Commerce. Please submit suggestions as to what areas you feel guidance is needed in the use and interpretation of the Export Administration Regulations.
   b. Regulatory Agenda for 10 proposed changes to the Export Administraiton Regulations.

The public is requested to come prepared with suggestions as to what regulations you feel are deserving of special attention over the next year in prioritizing the top 10 suggested changes.

The meeting will be open to the public with a limited number of seats. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–24381 Filed 10–20–87; 8:45 am]

BILLING CODE 3510–DT–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held November 16, 1987, 11:00 a.m. in the Federal Building, Room 4S13, 880 Front Street, San Diego, California. The Software committee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Response to communication on technical data related to missile systems.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–24382 Filed 10–20–87; 8:45 am]

BILLING CODE 3510–DT–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held November 16, 1987, 3:00 p.m. in the Federal Building, Room 4S13, 880 Front Street, San Diego, California. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of improvements in West-West controls for computers.
4. Discussion of newly published regulations pertaining to hardware.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–24383 Filed 10–20–87; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held November 17, 1987, 8:30 a.m., in the Federal Building, Room 2S13, 880 Front Street, San Diego, California. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation on Local Area Networks—A Review of Technology.
4. Schedule for future tutorials.
5. Invitation for new Computer Systems Technical Advisory Committee Members.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–24384 Filed 10–20–87; 8:45 am]

BILLING CODE 3510–DT–M

VOL 52 ISS 203 OC 21 1987 UMI

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Proposed Correlation: Textile and Apparel Categories With Tariff Schedules of the United States Annotated 1988; Correction

October 16, 1987.

On September 30, 1987, a notice was published in the **Federal Register** (52 FR 36604) which announced the availability of the proposed Correlation for 1988.

The purpose of this notice is to notify the public that the cost of the proposed Correlation is $30, instead of $80 as stated in that announcement.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-24328 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Third Annual F. Edward Hebert School of Medicine, Conference on Military Medicine; Infectious Disease, Implications for the Practice of Military Medicine; Meeting

The Third Annual Conference on Military Medicine will be held on October 26 and 27, 1987 at the Uniformed Services University of the Health Sciences, Bethesda, Maryland. The theme of the 1987 Conference is "Infectious Disease: Implications for the Practice of Military Medicine." The Conference will consist of speakers, panel discussions and poster presentations. Topics will include "Evolving Military Immunization Policies," "Appropriate Use of Prophylactic Antibiotics in War Wounds," "Malaria Prevention and Treatment in Military Deployment," and "AIDS: Ethical Issues in the Practice of Medicine." In addition to the formal presentations, USUHS faculty will be available to answer questions during a round table session during a "Meet the Professor" luncheon.

The Conference is sponsored by the Regents/Alumni Fund of the Herny Jackson Foundation for the Advancement of Military Medicine, and the USU Alumni Association, Inc.

The 1987 Conference will be dedicated to David I. Olch, M.D., Chairman of the USUHS Board of Regents, who passed away August 17, 1987. Dr. Olch served as Chairman of the University's Board of Regents from 1982 until his death. Dr. Olch also served as an ex-officio member of Council of Directors of the Henry M. Jackson Foundation. In his memory, a lectureship in military medicine will be given annually at the Conference. BG W.D. Tigertt, MC, USA (RET) will present the 1987 lecture titled "Infectious Disease: Implications for the Practice of Military Medicine."

Requests for registration brochures are available by contacting Ms. Katie Lowe Lancaster, USUHS, 4301 Jones Bridge Road, Bethesda, MD, 20814-4799 or call (202) 295-2690, autovon 295-2690.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1987.

[FR Doc. 87-24306 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Low Observable Technology for October 27-28, 1987 as published in the **Federal Register** (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc 87-21957.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1987.

[FR Doc. 87-24308 Filed 10-20-87; 8:45am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Change of Date; Advisory Committee Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for December 8-9, 1987 and February 10-11, 1988 as published in the **Federal Register** (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc. 87-21957) will be held on December 15-16, 1987 and February 17-18, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1987.

[FR Doc. 87-24307 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Amendment of Existing Computer Matching Program Between Department of Defense and Department of Housing and Urban Development

AGENCY: Defense Logistics Agency, DOD.

ACTION: This action constitutes public notice for comment on a proposed amendment to an existing ongoing computer matching program between the Department of Defense (DoD) and the Department of Housing and Urban Development (HUD).

SUMMARY: On June 30, 1986 at 51 FR 23574, to DoD gave public notice of a continuing Computer Matching Program between DoD and HUD. That matching program consisting of a program by HUD as a source agency and DoD as the matching agency to identify and locate Title I loan defaulters is being expanded to also include Single Family Mortgage defaulters who are Federal employees, including active and retired military civilian personnel, for the purpose of discharging the debts owed to U.S. Government under the Debt Collection Act of 1982 (Pub. L. 97-365). This is being accomplished by including two more systems of records to be matched in this program. These are HUD/DEPT-2, "Accounting Records" and Defense Logistics Agency's S322.11 DLA-LZ, "Federal Creditor Agency Debt Collection Data Base." The amended matching report is set forth below.

DATE: The proposed action will be effective, without further notice on November 20, 1987 unless comments are received which would result in a contrary determination.

ADDRESS: Send written comments to Mr. Robert J. Brandewie, Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940-3231. Telephone: (408) 646-2951; Autovon: 878-2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202-2803. Telephone: (202) 694-3027; Autovon: 224-3027.

SUPPLEMENTARY INFORMATION: Set forth below is an amended matching report containing the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, dated May 11, 1982, issued by the Office of Management and Budget and published in the **Federal Register** at 47 FR 21656, May 19, 1982. A copy of the original notice for this

matching program was provided to both Houses of Congress and the Office of Management and Budget on June 19, 1986 pursuant to Appendix I of OMB Circular No. A–130 "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 and published in the **Federal Register** at 50 FR 52730 on December 24, 1985.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Report of a Continuing Computer Matching Program Between the Department of Defense (DOD) and the Department of Housing and Urban Development (HUD)

a. *Authority:* The legal authority under which the computer matching is being conducted is Title I Sec. 2, National Housing Act, 12 U.S.C. Chapter 13; 5 U.S.C. 5514 "Installment deduction of indebtedness"; 10 U.S.C. 136 "Asst. Secretaries of Defense, appointment, powers and duties"; Federal Claims Collection Act of 1966 (Pub. L. 89–508) 31 U.S.C. 952(d); the Debt Collection Act of 1982 (Pub. L. 97–365) 5 U.S.C. 5514, 31 U.S.C. 3711 and 3716–3718; Section 206 of Executive Order 11222; 4 CFR Chapter II "Federal Claims Collection Standards (General Accounting Office—Department of Justice)"; 5 CFR 550.1101–.1108 "Collection by Offset from Indebted Government Employees"—OPM; Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987.

b. *Program Description:* The computer matching program will identify Federal employees who have Title I or Single Family Mortgage defaulted loans for the purpose of discharging the debts owed the U.S. Government through salary and benefit offsets. Federal employees is defined as a current or retired employee paid from appropriated funds; a member of the Armed Forces including members of the Reserve Components of the United States and retirees; an employee of the U.S. Postal Service or member of the Postal Rate Commission.

HUD, as the source agency, will submit the social security numbers and names of their Title I and Single Family Mortgage loan defaulters to the DoD to identify which defaulters are current Federal employees (hits). DoD, as the matching agency, will supply HUD with the most recent employment and/or home address available on the hits so as to permit HUD to contact the debtor to arrange voluntary repayment. If adequate repayment arrangement cannot be made, HUD will request the appropriate Federal agency to initiate prompt and effective collection action through administrative or salary offset procedures against the delinquent employee under the provisions of the Debt Collection Act of 1982 until the debt is liquidated.

c. *Records to be Matched:* The systems of records subject to the Privacy Act of 1974, as amended, to be matched are as follows:

HUD Record Systems (Source Agency)

(1) System Identification: HUD/DEPT–2
System Name: Accounting Records.
Federal Register Citation: 50 FR 18933, May 3, 1985; Amended: 52 FR 22688, June 15, 1987

(2) System Identification: HUD/DEPT–28
System Name: Property Improvement and Manufactured (mobile) Home Loans.
Federal Register Citation: 50 FR 18934, May 3, 1985

DOD Record Systems (Matching Agency)

(3) System Identification: S322.10 DLA–LZ
System Name: Defense Manpower Data Center Data Base.
Federal Register Citation: 51 FR 30104, August 22, 1986

(4) System Identification: S322.11 DLA–LZ
System Name: Federal Creditor Agency Debt Collection Data Base.
Federal Register Citation: 52 FR 37492, October 7, 1987

(5) System Identification: S322.53 DLA–LZ
System Name: Defense Debt Collection Data Base.
Federal Register Citation: 50 FR 22921, May 29, 1985

d. *Period of the Match:* This ongoing matching program will begin as soon as possible after this public notice becomes effective as set forth under "DATE" in the preamble of this notice and will be conducted annually thereafter.

e. *Security:* Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel only.

f. *Retention and disposition of Records:* Pursuant to a written memorandum of Understanding (MOU), tapes received by the DoD will be returned to HUD upon successful completion of the match. "Hit" records will be used by HUD to collect the debt and will be disposed of upon completion of the debt collection action. Information on "non-hit" records will not be used for any purpose. DoD agrees that the information provided by HUD will not be used or disclosed without the specific permission of HUD and that files concerning "non hit" individuals will not be used for any purpose unless agreed to by HUD.

[FR Doc. 87–24305 Filed 10–20–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Advisory Committee on the Air Force History Program; Meeting

October 13, 1987.

The Advisory Committee on the Air Force History Program will hold a meeting on December 7, 1987 from 8:30 a.m. to 4:00 p.m. and December 8, 1987 from 8:30 a.m. to 12:00 noon at Bolling AFB, DC., Building 5681, Office of Air Force History's 2nd floor conference room. The purpose of the meeting is to examine the mission, scope, progress and productivity of the Air Force History Program and make recommendations thereon for the consideration of the Secretary of the Air Force. The meeting will be open to the public. Topics to be discussed include: organization and personnel, current status of historical projects, and the status of the field history program.

For further information contact Lt Col John E. Norvell, Executive Officer, Office of Air Force History, Bolling AFB, DC, telephone (202) 767–5764.

Patsy J. Conner,

Air Force Federal Register Liaison Office.

[FR Doc. 87–24416 Filed 10–20–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Chief of Naval Operations; Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet November 12–13, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford

Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine Warfare capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: October 15, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve. Federal Register Liaison Officer.

[FR Doc. 87–24287 Filed 10–20–87; 8:45 am]

BILLING CODE 3810–AE–M

DELAWARE RIVER BASIN COMMISSION

Meeting and Public Hearing

Notice hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 28, 1987 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjects of the hearing will be as follows:

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings. Notice was given in the August 25, 1987 **Federal Register**, Vol. 52, No. 164, page 32024, that the Commission would hold a public hearing on October 28, 1987 to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The proposed amendment would require that all such performance standards adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates are specified as are certain specialized fixtures and fittings not covered by the proposed regulation. The proposal also requires certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. Periodic review of the performance standards would also be required to allow for incorporation of more stringent water conservation performance standards as technology advances. Finally, Pennsylvania political subdivisions or their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with standards proposed herein have been adopted within their area of jurisdiction. The comment closing date will be determined at the hearing.

A Proposal to Adopt the 1987 Water Resources Program. A proposal that the 1983 Water Resources Program Approved on November 30, 1983, as extended and adopted respectively by DRBC Resolution Nos. 84–27, 85–42 and 86–25, as the 1984, 1985 and 1986 Water Resources Program, be extended and adopted as the 1987 Water Resources Program, in accordance with the requirements of section 13.2 of the Delaware River Basin Compact.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Township of Falls Authority D–86–17 CP.* An application for revision of the Comprehensive Plan to include expansion of the existing Falls Township Authority Sewage Treatment Plant from 3.2 million gallons a day (mgd) secondary treatment to 5.0 mgd tertiary treatment. The existing facility is located at Newportville Road and Ford Road in Bristol Township, Bucks County, Pennsylvania. Treated effluent will continue to be discharged to Neshaminy Creek, 350 feet downstream of the existing point of discharge. The expanded plant is designed to serve projected flows through the year 2010. This hearing continues that of September 22, 1987.

2. *Holdover Project: National Park Service, Delaware Water Gap National Recreation Area General Management Plan D–87–65 CP.* An application for inclusion in the DRBC's Comprehensive Plan, a General Management Plan which provides for development of natural, scenic and historic features of the Delaware Water Gap National Recreation Area. The Plan addresses facility development, visitor activities, resource management and land protection efforts. The Plan will guide overall management and use of the area's resources over the next ten years, and provide the foundation for subsequent detailed implementation plans, programs and operation. This hearing continues that of September 22, 1987.

3. *Pfizer Pigments, Inc. D–86–23.* An application to permit an existing discharge to contain up to 10,000 mg/1 (monthly average) of total dissolved solids (TDS). Existing docket approval (D–71–170) indicates the discharge would contain 1,000 mg/1 of TDS. The discharge of up to 0.95 mgd containing an average of 10,000 mg/1 of TDS would cause an increase of more than 33 percent in the receiving stream, Bushkill Creek, during periods of low flow and therefore the applicant has requested a waiver of that regulation. The applicant's wastewater treatment plant is located in the City of Easton, Northampton County, Pennsylvania. The treatment plant effluent is discharged to the Bushkill Creek at River Mile 184.1–2.55. Pfizer Pigments, Inc. has submitted an "Analysis of Alternatives" and an environmental impact study as the basis for the application. No increase in the approved 0.95 mgd discharge volume is requested.

4. *Simpson Paper Company D–86–50.* An application for a wastewater treatment plant upgrading to serve the Valley Forge Mill of the Simpson Paper Company located in Whitemarsh Township, Montgomery County, Pennsylvania. The existing secondary plant processes 2.1 mgd (design average dairy flow) of wastewater in physical and chemical treatment facilities. The proposed plant is designed to reduce influent BOD and SS loadings by 85 percent. A biological treatment system will be added to achieve this objective. Due to water conservation measures the raw wastewater flow will be reduced 0.5 mgd. The 1.6 mgd of treatment plant effluent will be discharged to the Schuylkill River through the existing outfall.

5. *Moyer Packing Company D–87–5.* A ground water withdrawal project to supply up to 1.95 million gallons (mg)/30 days to the applicant's Mainland Plant meat processing facility in Lower Salford Township, Montgomery County, Pennsylvania. Existing Well Nos. 19 and

21 were placed in service by the previous owner. Ground water from the wells is used in conjunction with water purchased from the North Penn Water Authority. The plant is located about 1,000 feet northeast of the intersection of Sumneytown Pike (Route 63) and Store Road in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Warrington Township Municipal Authority (WTMA) D–87–18 CP.* An application by the WTMA to incorporate two existing wells previously owned and operated by Warrington Water Company (WWC) (formerly Well Nos. 1 and 2) into the WTMA water system to provide up to 9.0 mg/30 days. The wells (Nos. 8 and 9) have been interconnected into the WTMA system, and jointly with the other WTMA supply wells, will serve the former WWC franchise area along with the existing service area. The wells are located near the intersection of Oakfield Road and Route 611 in Warrington Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Hercules Incorporated D–87–43.* An application for approval of an expanded ground water decontamination project to withdraw up to 6.1 mg/30 days of water from the applicant's proposed ground water recovery Well Nos. PW–9, PW–10 and PW–11. Eight existing wells have an approved withdrawal limit of 10 mg/30 days and with the new wells the total withdrawal is requested to be increased to 13 mg/30 days. Upon completion of the construction of the proposed wells, the applicant plans to modify the use of recovery Well Nos. PW–5 and PW–7 to serve as monitoring wells only. The applicant has also requested a waiver from DRBC effluent quality requirements regarding the 85 percent removal of the total suspended solids (TSS) concentration. It has been determined that the BCT wastewater treatment process at the applicant's Gibbstown Plant increases TSS in the industrial wastewater. The applicant proposes to meet the TSS discharge concentration limits issued by the EPA for this industrial classification. Approval of a discharge of up to 84 mg/1 of TSS is requested. The project is located in Greenwich Township, Gloucester County, New Jersey. Treatment plant effluent will continue to be discharged to the Delaware River in Water Quality Zone 4.

8. *Upper Southampton Sewer Authority D–87–52 CP.* An application to expand a 0.12 mgd sewage treatment plant to process a design average flow of 0.22 mgd through the year 2000. The proposed plant is designed to serve an equivalent population of 2,200 residents in portions of Lower Moreland Township, Montgomery County and Upper Southampton Township, Bucks County, Pennsylvania. The plant is located off the Pennsylvania Turnpike near its intersection with County Line Road. Treatment plant effluent will continue to be discharged to an unnamed tributary of Southampton Creek, but a parallel outfall line will be constructed to convey this flow.

9. *Muhlenberg Township Authority D–87–58 CP.* An application for approval of a ground water withdrawal project to supply up to 64.8 mg/30 days of water to the applicant's distribution system from new Well No. 14, and to retain the existing withdrawal limit from all wells of 151.2 mg/30 days. The project is located in Muhlenberg Township, Berks County, Pennsylvania.

10. *Panther Creek Energy, Inc. D–87–66.* An application to withdraw up to 103.2 mg/30 days of ground water from inundated mine shafts for use as cooling water in a proposed electric generation facility and for the discharge of cooling and process wastewater to a nearby mine pool. The proposed 80 MW facility straddles the municipal boundary between Summit Hill and Lansford Boroughs in Carbon County, Pennsylvania. Approximately 60 million tons of low grade anthracite coal breaker refuse will serve as the principal fuel for the proposed facility. Culm bank surrounds the project site in Panther Valley on an area of over 1000 acres. After pretreatment and post-treatment a combined discharge of up to 1.773 mgd of cooling water and process wastewater will be discharged to Nesquehoning Mine Pool. There will be no discharges to any surface stream.

11. *Public Service Electric and Gas Company D–87–70.* An application to construct a sewage treatment plant (STP) to replace the two existing STPs serving the applicant's Hope Creek and Salem Generating Stations on Artificial Island in Lower Alloways Creek Township, Salem County, New Jersey. The proposed STP is designed to more effectively handle periodic fluctuations of on-site population due to scheduled and unscheduled maintenance operations. The proposed variable level oxidation ditch system is designed to provide high quality secondary treatment of an average flow of 0.07 mgd and a peak flow of 0.28 mgd. Treatment plant effluent will be discharged to the Delaware River in Water Quality Zone 5 through the existing Hope Creek Generating Station STP (and stormwater) outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

October 13, 1987.

[FR Doc. 87–24339 Filed 10–20–87; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.094C]

Invitation of Applications for New Awards Under the Patricia Roberts Harris Fellowships Program; Public Service Education Fellowships for Fiscal Year 1988

Purpose: Provides grants to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who plan to pursue a career in public service at all levels of government or in non-profit community service organizations. Public Service Education Fellowships are intended to provide opportunities for qualified students, particularly individuals from traditionally underrepresented groups.

Deadline for Transmittal of Applications: January 22, 1988.

Applications Available: November 27, 1987.

Available Funds: The Administration's budget for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow for sufficient time to evaluate applications and complete the grant process prior to the end of the fiscal year, should the Congress appropriate funds for this program.

The following estimates are based upon the FY 1987 appropriations:

Estimated Range of Awards: $16,000–$95,979.

Estimated Average Size of Awards: $64,000.

Estimated Number of Awards: 40 to 82.

Project Period: 9 to 12 months.

Applicable Regulations: (a) The Patricia Roberts Harris Fellowships Program Regulations, 34 CFR Part 649, and (b) the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, and 77, as provided in 34 CFR 649.3.

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For Applications or Information Contact: Dr. Charles H. Miller on (202) 732–4395 or Mrs. Barbara J. Harvey on (202) 732–4963, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue SW., Room 3022, ROB–3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134d–1134f.

Dated: October 13, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–24301 Filed 10–20–87; 8:45 am]

BILLING CODE 4060–01–M

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Notice of proposed priority for the Fund for the Improvement of Postsecondary Education (FIPSE) Lectures Program for Fiscal Year 1988.

SUMMARY: The Secretary proposes a Lectures Program to be conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) on important issues in postsecondary education.

DATE: Comments must be received on or before November 20, 1987.

ADDRESSES: All written comments and suggestions should be sent to Dr. Charles H. Karlis, Director, Fund for the Improvement of Postsecondary Education, Office of Postsecondary Education, (Room 3100, ROB–3), Department of Education, 400 Maryland Avenue, SW., Mail Stop 3331, Washington, DC 20202.

SUPPLEMETARY INFORMATION: Grants for the FIPSE Lectures Program are authorized by Title X of the Higher Educaton Act of 1965, as amended (20 U.S.C. 1135). Program regulations are established at 34 CFR Part 630. As was the case for the FY 1987 Lectures Program, this program would be conducted as a Special Focus comeptition under 34 CFR 630.11 (b)(1) of the program regulations. The purpose of the FIPSE Lectures Program would be to provide modest sponsorship for promising work on key issues in postsecondary education, and to promote dissemination and discussion of this work among educational leaders, policy makers, faculty, students, and the general public. The program would enable individuals to devote at least a month to the development of ideas for presentation in lecture form at educational and other conferences, or in the context of established lecture programs such as those at colleges and universities.

Funds Available

The President has requested $7,500,000 in his FY 1988 budget request for FIPSE. The Departemnt anticipates that $30,000 will be available for a new awards under the FIPSE Lectures Program early in the fiscal year. It is estimated that 6 grants of no more than $5,000 each will be made during FY 1988.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that would carry out the FIPSE Lectures Program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the establishment of this proposed lectures program. Written comments and recommendations may be sent to the address given at the beginning of this doucment. All comments submitted in response to this proposed program will be available for public inspection during and after the comment period, in Room 3100, ROB–3, 7th & D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.116G Fund for the Improvement of Postsecondary Education)

(20 U.S.C. 1135)

Dated: October 2, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–24300 Filed 10–20–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88–16–000, et al.]

Georgia Power Co., et al.; Electric Rate and Corporate Regulations Filings

Take notice that the following filings have been made with the Commission:

1. Georgia Power Company

[Docket No. ER88–16–000]

October 13, 1987.

Take notice that on October 7, 1987, Georgia Power Company tendered for filing a change in rates for Service Schedule A and Service Schedule B of the Interchange Contract between Georgia Power and Crisp County Power Commission, dated July 1, 1980 (Georgia Power's FERC Rate Schedule No. 803). The proposed change would reduce the return on common equity component of the formula rate described in the Service Schedules from 15.0% to 14.0%.

Georgia Power requests an effective date of September 1, 1987, for this rate decrease. Copies of the proposed changes were served upon Crisp County Power Commission.

Comment date: October 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Georgia Power Company

[Docket No. ER88–17–000]

October 13, 1987.

Take notice that on October 7, 1987, Georgia Power Company tendered for filing a change in rates for Service Schedule A and Service Schedule B of the Interchange Contract between Georgia Power and Savannah Electric & Power Company dated August 1, 1979 (Georgia Power's FERC Rate Schedule No. 798). The proposed change would reduce the return on common equity component of the formula rate described in the Service Schedules from 15.0% to 14.0%.

Georgia Power requests an effective date of September 1, 1987, for this rate decrease. Copies of the proposed changes were served upon Savannah Electric & Power Company.

Comment date: October 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. UNITIL Power Corporation

[Docket No. ER87–209–001]

October 13, 1987.

Take notice that on September 24, 1987, UNITIL Power Corporation (UNITIL Power) tendered for filing amendments to an initial rate schedule for transmission service for Public Service Company of New Hampshire (PSNH) filed on December 31, 1986.

This filing was in response to July 10, 1987 and August 10, 1987 letters from Jerry R. Milbourn requesting supplemental information and revisions to the filing, including the License Agreement between UNITIL Power and Exeter & Hampton Electric Co.

UNITIL Power requests that the Commission waive its standard notice period and allow the amendments to become effective on October 1, 1986. UNITIL Power states that PSNH has consented to this effective date.

UNITIL Power states that a copy of this rate schedule has been mailed to PSNH at Manchester, New Hampshire, and is being filed with the New Hampshire Public Utilities Commission.

Comment date: October 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Utah Power & Light Company PacifiCorp PC/UP&L Merging Corporation

[Docket No. ER88–2–000]

October 14, 1987.

Take notice that on October 5, 1987, Utah Power & Light Company (UP&L), PacifiCorp and PC/UP&L Merging Corp. (PacifiCorp Oregon) tendered for filing under section 203 of the Federal Power Act, 16 U.S.C. 824(b), a Joint Application seeking approval of a proposed merger. UP&L is engaged principally in the business of generating and selling energy in Utah, Southeastern Idaho, and Southwestern Wyoming. PacifiCorp is a diversified corporation doing business as Pacific Power & Light Company (PP&L) and PP&L is engaged in generating and selling electric energy in California, Idaho, Montana, Oregon, Washington, and Wyoming. UP&L and PP&L have together approximately 1,180,000 retail customers. Both also serve numerous wholesale customers.

Under the merger proposal, UP&L and PacifiCorp will merge within and into PacifiCorp Oregon. (to be renamed PacifiCorp upon completion of the merger). PacifiCorp Oregon will continue to operate and conduct business in the service territories under the assumed business names of UP&L and PP&L. Under the plan of merger, PacifiCorp Oregon will assume and perform all contracts, leases or other agreements or commitments to which UP&L or PP&L are parties which relate in any way to the business and operations of the two companies. PP&L and UP&L will perform those contractual obligations in their respective jurisdictions as an assumed name of PacifiCorp Oregon. The parties to the merger anticipate no adverse impact on their resale or transmission customers.

Copies of this filing have been served upon the State Commissions of Arizona, California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24412 Filed 10–20–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–5–000, et al.]

Lone Star Gas Co., et al.; Natural gas Certificate filings

Take notice that the following filings have been made with the Commission:

1. Lone Star Gas Company a Division of ENSEARCH Corporation

[Docket No. CP88–5–000]

October 14, 1987.

Take notice that on October 2, 1987, Lone Star Gas Company, a Division of ENSEARCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP88–005–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps and appurtenant facilities under the certificate issued in Docket Nos. CP83–59–000 and CP83–59–001, as amended in Docket No. CP83–59–002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes to sell approximately 100 Mcf of natural gas on an annual basis to each of the following residential customers:

Customer, Location, and Line

Tammy Dscobebo, McCurtain County, Oklahoma. E32–3–3
Luke Reid, McCurtain County, Oklahoma, E32–3–3

Lone Star proposes to sell approximately 48,000 Mcf of natural gas on an annual basis to the following industrial customer:

Customer, Location, and Line

Tyson Foods, Inc., McCurtain County, Oklahoma, E32–3–4

Sales to each of these customers will be made at the appropriate residential and industrial rates as approved by the Oklahoma Corporation Commission.

Comment date: November 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP87–560–000]

October 15, 1987.

Take notice that on September 30, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston Texas 77251–1188, filed in Docket No. CP87–560–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport on an interruptible basis up to 250,000 MMBtu of natural gas for Enron Gas Marketing, Inc. (EGM), from 4 existing receipt points in Texas and Mississippi to one existing delivery point in Louisiana, pursuant to a transportation agreement dated August 25, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that it would receive gas at interconnections with Houston Pipe Line Company (HPL) in Orange and Matagorda Counties, Texas, and with Prosper Energy Corporation and Exxon Company, U.S.A., in Pearl River County, Mississippi. FGT states that it would deliver equivalent volumes for EGM's account, less EGM's pro rata share of compressor fuel and company use gas, at an existing interconnection between FGT and Transcontinental Gas Pipe Line Corporation (Transco) in St. Helena Parish, Louisiana. FGT proposes to charge EGM a transportation rate consisting of a Facility Charge of 7.3 cents per MMBtu of gas delivered and a Service Charge of 3.9 cents per MMBtu per 100 miles of forward haul transportation. It is stated that in addition to these charges, FGT would collect the currently effective GRI surcharge and the ACA surcharge of 0.21 cents per MMBtu proposed to FGT to become effective on October 1, 1987.

It is explained that no construction of facilities would be required to effect the proposed transportation service. It is asserted that there would be no adverse impact on FGT's existing customers, because the proposed service would be on a fully interruptible basis. FGT states that the transportation agreement is for a primary term of 10 years from the date of initial delivery and from year to year thereafter. FGT asserts that any transportation required by HPL prior to receipt by FGT would be performed by HPL under Section 311 authorization.

Comment date: November 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

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3. Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP81–482–004]

October 15, 1987.

Take notice that on September 25, 1987, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP81–482–004 a petition to amend the order issued May 14, 1982, as amended, pursuant to section 7(c) of the Natural Gas Act so as to decrease the transportation quantity and increase the excess transportation quantity and to revise certain parts of the rate section and the term section of the Gas Transportation Agreement (GTA) between Tennessee and Amoco Production Company (Amoco), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that it is currently authorized to transport 65,000 Mcf/d for Amoco and that upon request it is authorized to transport an additional 25,000 Mcf/d as an excess transportation quantity. Tennessee indicates that such volumes are transported to assist Amoco in meeting existing warranty obligations with Florida Gas Transmission Company (Florida) and Florida Power and Light Company (FP&L).

Tennessee further states that it has been advised by Amoco that its warranty obligation with Florida has expired and that its warranty obligation with FP&L will soon expire and that Amoco has requested that the GTA be amended to allow for the transportation of Amoco's uncommitted gas for sale to Florida, FP&L and others under existing or future agreements.

Tennessee proposes to amend the GTA to provide for a transportation quantity of 21,000 Dth/d and at such times as Amoco has designated the transportation quantity of 21,000 Dth/d Amoco shall have the right to request up to 70,000 Dth/d as an excess transportation quantity.

Comment date: November 5, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP87–358–001]

October 15, 1987.

Take notice that on October 6, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87–358–001 to amend its application filed in Docket No. CP87–358–000 pursuant to section 7(c) of the Natural Gas Act so as to construct and operate $1.764 million in additional facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP87–358–000, Applicant requested authority to (1) increase its firm natural gas sales service to ten existing customers in New England by an aggregate daily maximum quantity of 91,358 Dth and by an aggregate annual sales entitlement (Annual Quantity Limitation or "AQL") of 24,418,257 Dth, and (2) construct and operate $39,460,000 in facilities to provide the increased service.

Applicant proposes in Docket No. CP87–358–001 to (1) construct an additional 2.1 miles of 30" main line looping in Madison County, New York at a direct cost of $1,764,000, and (2) uprate existing station 261 by 1000 Hp which would increase the total authorized horsepower to 6910 Hp. Applicant states that the total project cost of all Tennessee facilities proposed in Docket Nos. CP87–358–000 and 001 to provide the increased sales service is estimated to be $49,845,000, including overheads, AFUDC, and regulatory fees.

Comment date: November 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP88–4–000]

October 15, 1987.

Take notice that on October 1, 1987, Columbia Gas Transmission Corporation (Applicant),1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–4–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to lease capacity in certain natural gas facilities, and for pre-granted approval to abandon the lease of capacity in certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to lease capacity up to a maximum quantity of 183,800 Mcf per day in its Kentucky System to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) commencing November 1, 1987, and continuing for a primary term of twenty years. Columbia also requests pre-granted abandonment authority upon the termination or expiration of the term of the lease arrangement. It is indicated that Applicant's Kentucky System consists of approximately ninety miles of pipeline and appurtenances extending from an interconnection with Columbia Gulf Transmission Company in Menifee County, Kentucky, to various points of interconnection with The Union Light, Heat and Power Company (Union Light) in Campbell County, Kentucky, and with The Cincinnati Gas and Electric Company (CG&E) in Hamilton County, Ohio.

Applicant states that Tennessee would utilize the capacity in the Kentucky System for the purpose of delivering on a firm basis up to a maximum quantity of 183,800 Mcf per day exclusively on behalf of CG&E and/or Union Light at existing points of interconnection.

Applicant proposes to charge Tennessee an annual lease payment based upon Tennessee's proportionate share of the net depreciated book cost of the Kentucky System as of October 31, 1987, allocated on the ratio of Tennessee's capacity of 183,800 Mcf per day to the total capacity of the Kentucky System of 659,600 Mcf per day. Applicant states that Tennessee would reimburse Columbia for its proportionate share of all prudently incurred expenses, including operation and maintenance and replacement costs (except for replacement attributable to facilities added after the date of this application to provide capacity for parties other than Tennessee) allocated on the ratio of Tennessee's capacity of 183,800 Mcf per day to the total capacity of the Kentucky System of 659,600 Mcf per day. Applicant would bill Tennessee monthly for these expenses based upon its estimated cost which would be adjusted from time to time to the actual cost. It is submitted that Applicant would retain for company-use and unaccounted-for quantities (Fuel) a percentage of the gas delivered by Tennessee into the Kentucky System. Applicant states that the percentage of Fuel retainage would be that set forth in the currently effective Sheet No. 16A2 of Applicant's FERC Gas Tariff, Original Volume No. 1, which is currently 2.63 percent.

Applicant states that it would continue to operate and maintain the facilities.

Applicant also states that, to effectuate the proposed lease of capacity to Tennessee, it would be necessary for CG&E and Union Light to reduce their combined Total Daily Entitlement with Applicant by 119,290 dekatherms (dt) equivalent per day in Applicant's Rate Zone 3. Applicant requests authority to lease capacity to Tennessee conditioned upon Applicant

receiving acceptable authorization to abandon the combined Total Daily Entitlement of CG&E and Union Light by 119,290 dt per day in Applicant's Rate Zone 3. It is indicated that CG&E and Union Light have notified Applicant of their intent to reduce their combined Total Daily Entitlement with Applicant by 119,290 dt per day in Applicant's Rate Zone 3 effective as of November 1, 1987. It is further indicated that CG&E and Union Light would replace entitlements with Applicant with quantities from Tennessee, commencing November 1, 1987. Applicant states that Tennessee has filed an application in Docket No.CP87-370-000 to sell to CG&E and Union Light a total of 150,000 dt per day effective November 1, 1987.

Comment date: November 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. El Paso Natural Gas Company and Sunterra Gas Gathering Company

[Docket No. CP68-356-009, and Docket No. G-7670-003]

October 15, 1987.

Take notice that on October 5, 1987, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas, 79978 filed in Docket No. CP68-356-009, and Sunterra Gas Gathering Company (Sunterra), (jointly Petitioners) P.O. Box 26400, Albuquerque, New Mexico, 87125 filed in Docket No. G-7670-003 a joint petition to amend the order issued September 19, 1968, in Docket Nos. CP68-356 and G-7670 pursuant to section 7(c) of the Natural Gas Act to authorize certain changes to Petitioners' Gas Purchase Agreement dated May 1, 1975, as amended (Agreement), specifically (1) the addition of four existng interconnections of Petitioners' facilities as balancing points, (2) the exchange and balancing of natural gas on an MMBtu basis and (3) expanded blanket authorization for Petitioners to add and delete gas wells to the Agreement, all as more fully set forth in the joint petition to amend which is on file with the Commision and open to public inspection.

Petitioners state that the September 19, 1968, order authorized them to exchange gas pursuant to the Agreement on an Mcf measurement basis and further provided El Paso blanket authorization to add natural gas wells to the exchange, subject to certain annual reaporting requirements.

Petitioners assert that a review of the Agreement, in light of today's gas market, indicates the need for certain changes in the Agreement to make the exchange more efficient under present operating conditions. To that end, Petitioners state that they have entered into a Supplemental Agreement dated August 15, 1987, which provides for (1) four exchange balancing points at existing interconnections of Petitioners facilities in Valencia, McKinley and San Juan Counties in New Mexico, (2) an MMBtu measurement basis for the exchange and balancing of natural gas and (3) the addition and deletion of natural gas wells by Sunterra and the deletion of gas wells by El Paso. Petitioners assert that they would make appropriate annual filings reflecting all additions and deletions of gas wells during the preceding year.

Comment date: November 5, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 1576.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commisssion on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24413 Filed 10-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8150-001, et al.]

Burr Courtright, et al.; Surrender of Preliminary Permits

October 15, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Burr Courtright

[Project No. 8150-001]

Take notice that Burr Courtright, exemptee for the proposed Chamberlin Ditch Pipeline Company Project, has requested that his conduit exemption from licensing be terminated. The conduit exemption was issued on February 9, 1987. The project would have been located on Bear Creek near the town of Wallowa, in Wallowa County, Oregon. The exemptee states that no construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on September 8, 1987.

2. Burr Courtright

[Project No. 8151-001]

Take notice that Burr Courtright, exemptee for the proposed Clearwater Ditch and Chamberlin Pipeline Project, has requested that his conduit exemption from licensing be terminated. The conduit exemption was issued on February 9, 1987. The project would have been located on Bear Creek near the town of Wallowa, in Wallowa County, Oregon. The exemptee states

that no construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on September 8, 1987.

3. Resources I, Inc.

[Project No. 7452–002]

Take notice that Resources I, Inc., exemptee for the Clear Creek Project No. 7452, has requested that its exemption from licensing be terminated. The exemption from licensing was issued September 27, 1985. The project would have been located on Clear Creek in Baker County, Oregon, within Wallowa-Whitman National Forest. No construction has been initiated at the project site.

The exemptee filed the request on July 6, 1987.

4. Delmer Wagner

[Project No. 7294–003]

Take notice that Delmer Wagner, exemptee for the North Fork Project, has requested that his exemption be terminated. The order granting exemption was issued on December 28, 1984. The project would have been located on the North Fork Rogue River near the town of Prospect, in Jackson County, Oregon. Applicant states that project construction has not been initiated.

The exemptee filed the request on August 18, 1987.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24414 Filed 10–20–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86–902–001, et al.]

McKee Products, Inc. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

October 14, 1987.

Take notice that the following filings have been made with the Commission.

1. McKee Products, Incorporated

[Docket No. QF86–902–001]

On September 30, 1987, McKee Products, Incorporated (Applicant), of 6200 Upton Blvd., NE., Suite 400, P.O. Box 27019, Albuquerque, New Mexio 87125, submitted for filing an applicaton for certification of a facililty as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 500 kW small power production facility will be located in Newberry Springs, California. Crushed stone from the Newberry Springs Quarry is reclaimed from a stockpile and transported approximately two miles, descending eight hundred feet on eight belt conveyors to a stockpile at a railcar loading site. Seven of the eight conveyors transport the material downhill and produce electrical power. The conveyors are initially activated by squirrel cage induction motors. As the material is placed on the downhill belts, the gravitational force on the load produces potential energy that overtakes the motors and begins to drive the motors. As this occurs the motors become generators and produce electric power. The facility commenced operation in April 1987.

2. Garden State Energy Associates

[Docket No. QF87–'678–000]

On September 24, 1987, Garden State Energy Associates, a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Rt. 130, Logan Township, New Jersey. The facility will consist of a combustion turbine generator, a heat recovery steam generator and an extraction steam turbine generator in combined-cycle. Thermal energy recovered by the facility will be used by the National Energetics Company in the production of carbon dioxide. The primary energy source for the facility will be coal and natural gas. The net electric power production capacity of the facility will be 155 MW. Installation is expected to begin to July 1989.

Cogen Technologies NJ Venture (Phase II & Phase III)

[Docket No. QF86–972–001]

On September 22, 1987, Cogen Technologies NJ Venture (Applicant), of 1600 Smith Street, Suite 5000, Houston, Texas 77002 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bayonne, New Jersey. The facility as originally certified (Docket No. QF86–972–000, 37 FERC ¶ 62,083 (1986)) was to consist of three combustion turbine generators, three heat recovery steam generators, and an extraction/condensing steam turbine generator with the total net electric power production capacity of 165,035 kW. the installation of the facillity was to begin in October 1986.

The recertification is requested due to proposed expansion of the facility in two phases; Phase II, and Phase III. In Phase II a combustion turbine generator, a heat recovery steam generator and a back pressure steam turbine generator will be added. The total facility's net electric power production capacity in Phase II will be approximately 22,305 kW. In Phase III a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator will be added. The total net electric power production capacity of the facility in Phase III will be approximately 328,095 kW. Thermal energy recovered from the facility will be used for heating No. 6 fuel during the transfer from the barge or ship into the terminal pipeline system for storage in the plant's storage tank. In addition, thermal energy will be used for production, transfer, and storage of asphalt and heating of lubricating oil for transfer to nearby industrial plants. The primary energy source will be natural gas or fuel oil. Installation of Phase II and Phase III will commence in 1990 and 1992 respectively. All other facility's characteristics remain unchanged.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24415 Filed 10-20-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3279-6]

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS Recordkeeping and Reporting Requirements for Secondary Brass and Bronze Ingot Production Plant (Subpart M). (EPA ICR #1129). This is a renewal of an existing collection.

Abstract: Brass and bronze ingot production facilities must notify EPA of construction, of each modification, startup, shutdown, and malfunction in the operation of an affected facility. Results of performances tests must also be submitted upon startup, of each affected facility. Recurring compliance reports are not required under the standard. The States and/or EPA use the data to determine the ability of each plant to comply with the standard.

Respondents: Owners and Operators of Secondary Brass and Bronze Ingot Production Plants.

Estimated annual burden: 103 hours.

Title: NESHAP Information Requirements for Vinyl Chloride (EPA ICA #186). This is a reinstatement of a previous clearance.

Abstract: Owners and Operators of regulated facilities must submit a notice of construction or modification, start-up, and results of initial compliance tests. Owners and operators must also maintain records of leaks detected by vinyl chloride monitors, vinyl chloride emissions are measured by continuous emission monitors, and operation parameters (pressure and temperature) of the PVC reactor. Facilities are also required to report within 10 days of each relief valve and/or manual vent discharge. The States and/or EPA use the date to ensure compliance with the standard, to target inspections, and, when necessary, as evidence in court.

Respondents: Ethylene Dichloride Plants, Vinyl Chloride Monomer Plants, and Polyvinyl Chloride (PCV) Plants.

Estimated annual burden: 11,704 hours.

Comments on the abstracts in this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency (EPA), (PM-223), 401 M Street SW., Washington, DC 20460;

and

Nicolas Garcia, Office of Management and Budget (OMB), 726 Jackson Place NW., (Rm. 3019), Washington, DC 20503.

Date: October 13, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-24335 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42104; FRL-3279-8]

Nonylphenol; Testing Consent Agreement Development and Solicitation for Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's Office of Toxic Substances recommendation of nonylphenol (CAS No. 25154-52-3) for testing under section 4 of the Toxic Substance Control Act (TSCA). Based on the recommendations, EPA is considering developing a testing consent agreement order or a test rule for nonylphenol. Public Participation is solicited. For this purpose, a public meeting will be held October 27, 1987, to gather information regarding industrial products and uses of nonylphenol, sources of release to the environment, chemical fate, human and environmental effects, and human exposure.

DATES: Submit written notice of interest to be designated an "interested party" by November 24, 1987. A public meeting will be held on October 27, 1987.

ADDRESS: Submit written notice of interest in being designated an "interested party" in triplicate identified by the document control number (OPTS-42104) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202) 554-1414.

Persons interested in attending the public meeting should notify EPA by telephone on or before October 20, 1987.

SUPPLEMENTARY INFORMATION: EPA is issuing this notice to solicit public participation, and to gather information for determining whether to proceed with a test rule or develop a testing consent agreement for the chemical substance nonylphenol.

I. Background

Nonylphenol is a mixture of monoalkyl phenols, with mostly para-substitution; the side chains are isomeric branched nonyl-groups. The production volume of nonylphenol is expected to reach 165 million pounds by 1987. There are about 15 manufacturing companies in the U.S. that produce alkylphenol ethoxylate surfactants, using approximately 97.5 to 112.5 million pounds of nonylphenol. Its principal use has been as an intermediate in the production of nonionic ethoxylated surfactants, comprising approximately 70 percent of the total production. Nonylphenol ethoxylate is the dominant alkylphenol ethoxylate surfactant. Other uses as an intermediate include nonylphenol in the processing of phosphite antioxidants (15 percent); oil additives and synthetic lubricants (10 percent); polyvinyl chloride plasticizers, pharmaceuticals, and as corrosion inhibitors (5 percent).

The Testing Priority Committee (TPC) of the Office of Toxic Substances was established on February 27, 1986, for the primary purpose of coordinating the nomination of chemicals for testing by various EPA offices. The TPC-recommended chemicals were to be based either on special data development needs, or recommended in

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an effort to coordinate extensive TSCA testing activities with those of other offices in EPA involved with testing programs. The TPC nominated nonylphenol on July 30, 1987, for testing consideration under TSCA based on its review of the available data (primarily from the Chemical Hazard Information Profile on nonylphenol) and as part of an intra- and interagency review with other EPA program offices and Federal agencies. Therefore, through TPC's recommendation of nonlyphenol, EPA is investigating this chemical for data gaps and testing needs as identified from this review.

From its participation in the interagency review, EPA's Office of water Regulations and Standards has recommended acute testing of saltwater invertebrates, and chronic testing of saltwater and freshwater invertebrates, including benthic forms, and freshwater fish. EPA's Office of Solid Waste has commented on its concerns regarding nonylphenol and the potential of risk from environmental releases and exposures. In addition, the Food and Drug Administration (Bureau of Foods) has recommended that more information be provided on the chemcial fate of nonylphenol, especially on how the parent compound relates to the ethoxylated forms.

II. Identification of Interested Parties

In accordance with 40 CFR 790.28, the testing negotiation procedures are initiated by the publication of this **Federal Register** notice, in which EPA is requesting interested persons to notify the Agency in writing of their intent to participate towards the development of consent agreement. All individuals and groups who respond to this notice will be given the status of "interested parties", and will be afforded opportunities to participate in the negotiation process. There will not be any obligations incurred by individuals and groups designated "interested parties". The procedures for these negotiations are described in 40 CFR 790.22.

Individuals and groups desiring to have the status of "interested parties" in the development of negotiations of nonylphenol under TSCA section 4 should submit a written notice of this fact to the Agency at the address given above before November 24, 1987. The Agency is considering initiating the consent agreement process because EPA believes this process will lead to the development of necessary test data significantly earlier than through rulemaking. An industry group has approached EPA with a request to review proposals for environmental effects testing of nonylphenol to be conducted later this year. EPA will examine these proposals in the context of a testing consent order. Should the Agency be unable to come to an agreement with interested parties for a testing consent order, a proposed test rule will be issued for any testing the Agency believes necessary for nonylphenol, as required under section 4 of TSCA.

III. Public Meetings

A public meeting will be held to discuss the Agency's evaluation of testing needs for nonlyphenol and industry's testing proposals on October 27, 1987 at 10 a.m. The meeting will be held in Room 103 of the Northeast Mall in EPA Headquarters, located at 401 M St., SW., Washington, DC. Persons wishing to attend this meeting, or subsequent public meetings on nonylphenol, should notify the EPA TSCA Assistance Office at the telephone number provided above by October 20, 1987.

IV. Timetable for Negotiating Consent Agreements

In accordance with the procedures for the development of consent agreements in 40 CFR 790.22, a "target schedule" will be established for nonylphenol once a public meeting has been conducted to announce EPA's preliminary testing decisions. There is no statutory deadline for response from EPA to the TPC's recommendations for nonylphenol as is required for chemicals designated by the Interagency Testing Committee under TSCA section 4(e). However, the Agency plans to conduct nonlyphenol negotiations in a timely manner.

Date: October 14, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-24336 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 13, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0194
Title: Section 74.21—Broadcasting emergency information
Action: Extension
Respondents: Business, including Small Business
Frequency of Response: On occasion
Estimated Annual Burden: 2 Responses; 1 Hour.
Needs and Uses: Section 74.21 requires licensees of auxiliary broadcast stations to notify the FCC, as soon as practicable, when the station is operated in a manner other than that for which it is authorized, giving the nature of the emergency and the use being made of the facility, and also subsequently notify the FCC when the emergency operation has terminated. The data is used by the Commission to evaluate the emergency and the need for such operations.

OMB No.: 3060-0313
Title: Section 76.205—Origination cablecasts by candidates for public office
Action: Extension
Respondents: Business, including Small Business
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 1,204 Recordkeepers; 1,505 Hours.
Needs and Uses: Section 76.205 requires cable television system operators to keep a complete record (political file) of all requests for cablecast time by candidates for public office, and the disposition of such requests. The data is used by these candidates to determine the use being made of these facilities by their opponents as a basis for equal opportunity requests.

OMB No.: 3060-0315
Title: Section 76.221—Sponsorship identification; list retention; related requirements
Action: Extension
Respondents: Business, including Small Business
Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 420 Recordkeepers; 210 Hours.

Needs and Uses: Section 76.221 requires that when a cablecast is of a political or controversial nature, the system operator maintain a list of the sponsor's chief executive officers, or members of the executive committee or board of directors; or the name, address and telephone number of each individual sponsor or advertiser when sponsorship announcement is omitted. The data is used by the public to acquire information not included in the cablecast.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24376 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

Allocations Subgroup of Radio Advisory Committee; Meeting

The Allocations Subgroup of the Advisory Committee on Radio Broadcasting will meet at 1:30 p.m., Monday October 26, 1987, at the offices of Wiley, Rein and Fielding, twelfth floor, 1776 K Street, NW., Washington DC, to consider the following matters:

(1) The development of recommendations to the FCC on updating the stated allocations objectives of the radio broadcast service, the priorities among those objectives, and possible differentiations between the objectives of the AM and FM components of the radio broadcast service, and between the uses of the established 535–1605 kHz portion of the AM band and the prospective 1605–1705 kHz portion;

(2) Input to the Technical Subgroup of the Radio Advisory Committee concerning the possible desirability of amendment of the FCC AM Rules relating to:

(a) AM groundwave and skywave field strength contours that should normally be protected against interference; and

(b) Protection ratios; and

(c) Additional assignment considerations to increase flexibility;

(3) Preparations for the 1988 Conference to expand the AM band; and

(4) Other business.

Subgroup meetings are continuing ones, and may be resumed after the October 26, 1987 session at such times and places as may be decided then. All Subgroup meetings are open to the public, and all interested persons are invited to participate in them.

For further information, please call the Subgroup Chairman: Louis C. Stephens, (202) 254–3394.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24377 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; First California Savings Bank, Orange, CA

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(1982), the Federal Savings and Loan Insurance Corporation as sole receiver for First California Savings Bank, Orange, California, on October 15, 1987.

Dated: October 16, 1987.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-24327 Filed 10-20-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224 200045.

Title: Port of Houston Authority Terminal Lease.

Parties:

Port of Houston Authority
Houston Transmodal Owning Company, L.P.

Synopsis: The proposed agreement provides the Houston Transmodal Owning Company, L.P. with a lease of a 126 acre waterfront tract for the operation of a semi-automated terminal facility giving preferential berthing rights to the lessee and providing that the Port Authority construct a transit shed on the premises. The term of the lease begins with a three year construction term, a thirty year primary term and two renewal terms totaling twenty-five years.

Agreement No.: 224–200046.

Title: The Port of New Orleans Terminal Agreement.

Parties:

Board of Commissioners
The Port of New Orleans
Delta Petroleum Company, Inc.

Synopsis: The proposed agreement provides the Delta Petroleum Company, Inc., with a one year lease of the Thalia Street Wharf, shed only, Sections 1 through 43, for the use of storing of finished refined motor oils and lubricating oils for domestic distributing or export.

Agreement No.: 224–010690–001.

Title: Permit No. 552 Crane Lease Agreement.

Parties:

The City of Los Angeles (City)
Mitsui O.S.K. Lines, Ltd. (Mitsui)

Synopsis: The proposed agreement modifies the basic lease agreement (Permit No. 552) to (1) provide that Mitsui may lease container cranes at its terminal rather than purchase them, and (2) give the City an option to buy the cranes when Mitsui leaves the terminal.

Joseph C. Polking,

Secretary.

Dated: October 16, 1987.

[FR Doc. 87-24350 Filed 10-20-87; 8:45 am]

BILLING CODE 6730-01-M

Survey of Ports and Marine Terminal Operators

The Federal Maritime Commission recently sent surveys to ports and marine terminal operators seeking their views as to the impact of the U.S. Shipping Act of 1984. The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, and is the second in a series to be distributed on an annual basis through 1989.

The Commission has been directed by the U.S. Congress to "collect and analyze information concerning the impact of this Act upon the international shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the Act.

The Commission would like its survey to have the widest possible distribution. All interested ports and marine terminal operators who have not received a copy

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of the survey are urged to contact: Robert M. Blair, Bureau of Economic Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, Tel. (202) 523–6761.

Joseph C. Polking,

Secretary.

Dated: October 16, 1987.

[FR Doc. 87–24351 Filed 10–20–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

October 15, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received by November 5, 1987.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal To Approve Under OMB Delegated Authority The Extension Without Revision of the Following Reports

1. *Report title:* Monthly Survey of Selected Deposits and Other Accounts
Agency form number: FR 2042
OMB Docket number: 7100–0066
Frequency: Monthly
Reporters: Commercial banks, mutual savings banks, and FDIC insured Federal savings banks
Annual reporting hours: 21,921
Small businesses are affected.
General description of report:
This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

These data, which are collected from a sample of commercial banks, mutual savings banks, and FDIC-insured federal savings banks, are used by the Federal Reserve to analyze and interpret movements in the monetary aggregates, observe competitive developments between banks and thrift institutions, and help monitor the earnings position of banks and thrifts.

2. *Report title:* Quarterly Survey of Number of Selected Deposit Accounts
Agency form number: FR 2071a and FR 2071 a-n
OMB Docket number: 7100–0028
Frequency: Quarterly
Reporters: Commercial banks
Annual reporting hours: 675
Small businesses are affected.
General description of report:
This information collection is voluntary (5 U.S.C. 248(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report provides information on the number of MMDA and NOW accounts. Movements in the average size of these accounts are used in analyzing the behavior of the monetary aggregates.

Board of Governors of the Federal Reserve System, October 15, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–24421 Filed 10–20–87; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 5, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Donald B. Murphy,* Tacoma, Washington; to acquire an additional 17.3 percent of the voting shares of Washington Independent Bancshares, Inc., Marysville, Washington, and thereby indirectly acquire Central Valley Bank, N.A., Toppenish, Washington.

Board of Governors of the Federal Reserve System, October 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–24424 Filed 10–20–87; 8:45 am]

BILLING CODE 6210–01–M

Eastland Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank

holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 13, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Eastland Financial Corp.*, Woonsocket, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Eastland Savings Bank, Woonsocket, Rhode Island, and Eastland Bank, Woonsocket, Rhode Island. Comments on this application must be received by November 6, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with UNB Corporation, Fayetteville, Tennessee, and thereby indirectly acquire Union National Bank, Fayetteville, Tennessee.

2. *First Security Bancorp, Inc.*, Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank of Maryland, Baltimore, Maryland, the successor by merger to Federal Savings Bank of Maryland.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation*, Zeeland, Michigan; to acquire 100 percent of the voting shares of The Reed City State Bank, Reed City, Michigan.

2. *Security Chicago Corp.*, Chicago, Illinois; to acquire 15 percent of the voting shares of Oswego Bancshares, Inc., Oswego, Ilinois.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Polk County Banco, Inc.*, Balsam Lake, Wisconsin; to acquire 15 percent of the voting shares of Stanley Bancorporation, Inc., Stanley, Wisconsin, and thereby indirectly acquire Farmers & Merchants State Bank, Stanley, Wisconsin.

2. *St. Croix Banco, Inc.*, New Richmond, Wisconsin; to acquire 80 percent of the voting shares of Stanley Bancorporation, Inc., Stanley, Wisconsin, and thereby indirectly acquire Farmers & Merchants State Bank, Stanley, Wisconsin.

Board of Governors of the Federal Reserve System, October 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24422 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

Home National Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless othewise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home National Corporation*, Milford, Massachusetts; to engage *de novo* through its subsidiary, Home National Financial Services Corporation, Milford, Massachusetts, in tax planning and preparation pursuant to § 225.25(b)(21); providing management consulting advice to depository institutions pursuant to § 225.25(b)(11); and consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y. These activities will be conducted in the State of Massachusetts.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Shorebank Corporation*, formerly Illinois Neighborhood Development Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Shorebank Advisory Services, Inc., in making equity and debt investments in corporatons of projects designed to promote community welfare pursuant to §225.25(b)(6); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24423 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0603]

Final Guidelines Regarding Bank Bribery Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final guidelines.

SUMMARY: The Bank Bribery Amendments Act of 1985 required that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The guidelines were developed by the

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Interagency Bank Fraud Enforcement Working Group, were submitted to the Federal Financial Institutions Examination Council for its consideration and submission to each of the Federal financial institutions regulatory agencies, and, upon review of public comments, were approved by the Board of Governors. The final guidelines encourage all State member banks and bank holding companies to adopt codes of conduct or written policies that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board of Governors, do not constitute violations of the Federal bank bribery law. In addition, the final guidelines suggest, inter alia, that State member banks and bank holding companies themselves establish, in their own codes of conduct or written policies, a range of internally acceptable dollar amounts for the various benefits that their officials may receive from those doing or seeking to do business with them.

EFFECTIVE DATE: October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Assistant Director, Enforcement Section, Division of Banking Supervision and Regulation (202/452–2620), Board of Governors of the Federal Reserve System, Washington, DC. 20551.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473, Title 11, October 12, 1984) amended the Federal bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. (The definition of a "financial institution" under the law includes a bank and a bank holding company.) The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that does not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99–370, August 4, 1986) to narrow the scope of 18 U.S.C. 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, section 215 provides in pertinent part:

> Whoever—
>
> (1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or
>
> (2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense]

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in subsection 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes do not undermine the duty of an employee, officer, director, agent or attorney of the financial institution. *United States Attorneys' Manual* section 9–40.439.

Final Guidelines

The final guidelines encourage all State member banks and bank holding companies to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies to include provisions that explain the general prohibitions of the bank bribery law. The guidelines relate only to the bribery law and do not address other areas of conduct that a State member bank or bank holding company would find advisable to cover in its code of conduct or written policy. Consistent with the intent of the statute to proscribe corrupt activity within financial institutions, the code or policy should prohibit any employee, officer, director, agent or attorney of a State member bank or bank holding company (hereinafter "Bank or Bank Holding Company Official" or "Bank or Bank Holding Company Officials") from (1) soliciting for themselves or for a third party (other than the bank or bank holding company itself) anything of value from anyone in return for any business, service or confidential information of the bank or bank holding company and from (2) accepting anything of value (other than bona fide salary, wages and fees as referred to in 18 U.S.C. 215(c)) from anyone in connection with the business of the bank or the bank holding company, either before or after a transaction is discussed or consummated.

The State member banks' and bank holding companies' codes or policies should be designed to alert Bank or Bank Holding Company Officials about the bank bribery statute, as well as to establish and enforce standards relating to acceptable business practices.

In its code of conduct or written policy, the State member bank or bank holding company may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank or bank holding company business. There are a number of instances where a Bank or Bank Holding Company Official, without risk of corruption or breach of trust, may accept something of value from one

doing or seeking to do business with the bank or bank holding company. The most common examples are the business luncheon or the holiday season gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Bank or Bank Holding Company Official; or if the benefit would be paid for by the bank or bank holding company as a reasonable business expense if not paid for by another party. Indeed, by adopting a code of conduct or written policy with appropriate allowances for such circumstances, a State member bank or bank holding company recognizes that acceptance of certain benefits by its Bank or Bank Holding Company Officials does not amount to a corrupting influence on the bank's or bank holding company's transactions.

In issuing guidance under the statute in the area of business purpose entertainment or gifts, it is not advisable for the Board of Governors to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A State member bank or bank holding company should seek to embody the highest ethical standards in its code of conduct or written policy. In doing this, a State member bank or bank holding company may establish in its own code or policy a range of dollar values which cover the various benefits that its Bank or Bank Holding Company Officials may receive from those doing or seeking to do business with the bank or bank holding company.

The code of conduct or written policy should provide that, if a Bank or Bank Holding Company Official is offered or receives something of value beyond what is authorized in the bank's or bank holding company's code of conduct or written policy, the Bank or Bank Holding Company Official must disclose that fact to an appropriately designated official of the financial institution. The State member bank or bank holding company should keep contemporaneous written reports of such disclosures. An effective reporting and review mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the bank or bank holding company to better protect itself from self-dealing. However, a Bank or Bank Holding Company Official's full disclosure evidences good faith when such disclosure is made in the context of properly exercised supervision and control. Management should review the disclosures and determine that what is accepted is reasonable and does not pose a threat to the integrity of the State member bank or bank holding company. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts.

The Board of Governors recognizes that a serious threat to the integrity of a State member bank or bank holding company occurs when its Bank or Bank Holding Company Officials become involved in outside business interests or employment that gives rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, State member banks and bank holding companies are encouraged to prohibit, in their codes of conduct or policies, their Bank or Bank Holding Company Officials from self-dealing or otherwise trading on their positions with the bank or bank holding company or accepting from one doing or seeking to do business with the bank or bank holding company a business opportunity not available to other persons or that is made available because of such official's position with the State member bank or bank holding company. In this regard, a State member bank's or bank holding company's code of conduct or policy should require that its Bank or Bank Holding Company Officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed due to either business or personal relationships with customers, suppliers, business associates, or competitors of the bank or bank holding company.

Exceptions

In its code of conduct or written policy, a State member bank or bank holding company may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with bank or bank holding company business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Bank or Bank Holding Company Official) where the circumstances make it clear that it is those relationships rather than the business of the bank or bank holding company concerned which are the motivating factor;

(b) Permit acceptance of meals, refreshments, travel arrangements or accommodations, or entertainment, all of reasonable value and in the course of a meeting or other occasion the purpose of which is to hold bona fide business discussions, provided that the expenses would be paid for by the State member bank or bank holding company as a reasonable business expense, if not paid for by another party (the bank or bank holding company may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of Bank or Bank Holding Company Officials, such as home mortgage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of reasonable value, such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Permit acceptance of gifts of reasonable value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas or bar or bat mitzvah (the bank or bank holding company may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the bank or bank holding company may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case by case basis, a State member bank or bank holding company may approve of other circumstances, not identified above, in which a Bank or Bank Holding Company Official accepts something of value in connection with bank or bank holding company business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

Disclosures and Reports

To make effective use of these guidelines, the Board of Governors recommends the following additional procedures:

(a) The State member bank or bank holding company should maintain a copy of any code of conduct or written policy it establishes for its Bank or Bank

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Holding Company Officials, including any modifications thereof.

(b) The State member bank or bank holding company should require an initial written acknowledgement of its code or policy and a written acknowledgement of any subsequent material changes to the code or policy from its Bank or Bank Holding Company Officials and the Bank or Bank Holding Company Officials' agreement to comply therewith.

(c) The State member bank or bank holding company should maintain contemporaneous written reports of any disclosures made by its Bank or Bank Holding Company Officials in connection with a code of conduct or wirtten policy.

Board of Governors of the Federal Reserve System, October 15, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-24285 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget to reauthorize expired report 3090-0035, Bidder's Mailing List Application Code Sheet (GSA Form 3038).

AGENCY: Procurement Management Division, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rosa McCullough, 703-557-0282.

Purpose: Firms that plan to bid on Government supply contracts fill out GSA Form 3038 so they will be notified when the Government wants bids submitted for items it needs.

Annual Reporting Burden: Respondents and responses, 8,250; average time to fill our form, ½ hour; burden hours, 4,125.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning 202-566-0668.

Dated: October 9, 1987.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 87-24340 Filed 10-20-87; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse and Mental Health Administration

Advisory Committee Meetings

AGENCY: Alcohol, Drug Abuse and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees in the month of November 1987. These committees will be open for discussion of administrative announcements and program developments. The Committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: November 2-4: 9:00 a.m.

Place: Bethesda Holiday Inn, Pennsylvania Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—November 2: 9:00-9:30 a.m. Closed—Otherwise.

Contact: Ronald F. Suddendorf, Room 16C26, Parklawn Building 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: November 2-4: 9:00 a.m.

Place: Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

Status of Meeting: Open—November 2: 9:00-10:00 a.m. Closed—Otherwise.

Contact: Emilie A. Embrey, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Small Business Innovation Research Review Committee, NIMH.

Date and Time: November 3-4: 9:00 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting: Open—November 3: 9:00-10:00 a.m. Closed—Otherwise.

Contact: Bonnie Dwyer, Room 9C15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research from small business that focus on mental health topics within the mission of NIMH, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: November 5-6: 9:00 a.m.

Place: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—November 5: 9:00-10:00 a.m. Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and

Services Research Review Committee, NIMH.

Date and Time: November 9–11: 9:00 a.m.

Place: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open–November 9: 9:00 –10:00 a.m.; Closed–Otherwise.

Contact: Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Small Grant Review Committee, NIMH.

Date and Time: November 30–December 1: 9:30 a.m.

Place: Holiday Inn, Rhode Island Avenue at 17th St., N.W., Washington, DC 20036.

Status of Meeting: Open–November 30: 9:30–10:30; Closed–Otherwise.

Contact: Monica Woodfork, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–4375. NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9–94, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: October 15, 1987.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–24362 Filed 10–20–87; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 87N–0270]

Studies for Developing Procedures To Evaluate the Safety of Bound Drug Residues; Availability of Grants (Cooperative Agreement); Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the anticipated availability of approximately $300,000 for Fiscal Year 1988 for cooperative agreements to support studies for developing procedures to evaluate the safety of drug residues that are bound to tissues of food-producing animals. Funds are not currently available for these studies. Accordingly, the government's obligation under this program is contingent upon the availability of appropriated funds from which cooperative agreements will be funded. The purpose of these agreements will be to provide financial assistance to support research on new models, procedures, or combinations of models and procedures that can contribute to a general approach to evaluating the safety of bound drug residues. FDA anticipates making up to three awards. Support for this program may be for a period of up to 3 years.

DATE: Applications must be received by January 19, 1988. The earliest date for award is July 1, 1988.

ADDRESSES: Applications should be submitted to and applications are available from: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., Rm. 3–20, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170. NOTE: Applications hand carried or commercially delivered should be addressed to Park Bldg., Rm. 3–20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

For further information regarding the administrative and financial management aspects of this notice contact: Barbara Moy, address above.

For further information regarding the programmatic aspects of this notice contact: David B. Batson, Center for Veterinary Medicine (HFV–500), Food and Drug Administration, 5600 Fishers Lane, Rm. 8–89, Rockville, MD 20857, 301–443–6510.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95–224. FDA's research program is described in the catalog of Federal Domestic Assistance No. 13.103.

I. Background

Section 512(d)(2) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360b(d)(2)) states that "In determining whether such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, the Secretary shall consider, among other relevant factors, (A) the probable consumption of such drug and of any substance formed in or on food because of the use of such drug, (B) the cumulative effect on man or animal of such drug, taking into account any chemically or pharmacologically related substance * * *." Since the early 1970's, the agency has interpreted this section to mean that the safety must be demonstrated, not only of a drug administered to a food-producing animal, but also of any metabolic transformation products that are likely to remain in the edible tissues of such animals. Because of the increased sensitivity achieved using radioisotopically labeled drugs compared to that afforded by chemical analysis, the agency has generally recommended that radiolabeled compounds be used by sponsors to conduct metabolism and total residue depletion studies with candidate drugs intended for use in food-producing animals.

There are several special considerations that must be taken into account when using radionuclides in these types of studies. One of these occurs when target animal metabolism of the drug results in the release of small molecules containing the radioactive atom. For example, if one or two carbon radiolabeled fragments are formed, they will enter metabolic pools that exist for such compounds and thereby become incorporated into endogenous macromolecules of no toxicological significance (Refs. 1 and 2).

A second consideration arises when an administered drug, or more likely, one or more of its radiolabeled metabolites, forms a covalent bond to various tissue constituents in the target animal. Radiolabeled residues resulting from the latter process may be of toxicological concern (Refs. 3 and 4). For example, reactive metabolities that are covalently bound to tissue protein in food-producing animals may be released as a part of much smaller molecules when the alkylated protein is consumed and digested by a second species.

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Unlike the original macromolecule, some amino acid "adducts" of this type have been shown to be readily bioavailable (Ref. 5) and to possess biological activity in the second species (Ref. 6).

Also, an enzyme that is capable of regenerating a reactive drug metabolite from its adduct with certain amino acids has been shown to exist in rat liver (Ref. 7). For these reasons, the agency has insisted that bound radioactive residues be included under the tolerance or safe level of residues established for an animal drug, in the absence of information demonstrating the safety of such residues.

Both types of metabolic processes described above result in radioactive residues being detected in the tissues of animals for long periods of time following administration of a sample of radiolabeled drug. Furthermore, because the radioactivity is associated with macromolecular cellular constituents, it is not readily extractable from tissue with organic solvents normally used to isolate drug residues. The difficulty in extracting these "bound residues" from tissues without altering their structure makes it extremely difficult to isolate and identify them. It also hinders efforts to evaluate their toxicity, although one or two Herculean attempts to accomplish a toxicological evaluation of bound residues have been made by sponsors of candicate animal drugs (Ref. 8).

For several reasons, the problems presented by bound residues are especially acute for carcinogenic animal drugs. On one hand, the alkylating properties of most ultimate carcinogenic molecules are likely to result in relatively high levels of bound residues in tissue. At the same time, the maximum acceptable risk levels for residues of carcinogenic animal drugs are normally quite low, i.e., in the part per billion range. These two facs have combined to present a major obstacle to the approval of new animal drug applications for several carcinogenic animal drugs, for which an unreasonably long withdrawal period was required, and/or an analytical method of sufficient sensitivity for residues could not be developed.

Because the agency will remove from consideration under a tolerance any residues that have been shown to be safe, sponsors of candidate drugs for use in food-producing animals have been active in developing techniques to demonstrate that lack of toxicological concern for bound residues that occur with their individual drugs. The suggested techniques include relay toxicity feeding studies, short-term, in vitro toxicity tests, procedures to indicate the lack of bioavailability of bound residues (Gallo-Torres procedure) (Ref. 9), demonstration of the presence of radiolabeled amino acids or other natural cell constituents of no toxicological concern, and model systems designed to reveal the potential toxicity of various types of covalently-bound drug residues (Ref. 10).

Applicants are advised to consult the series of papers presented at a June 16 and 17, 1976, "Symposium on Drug Metabolism and Residues in Food-Producing Animals" (Ref. 11) and a review written by Weber (Ref. 12) for a more detailed discussion of the problems presented by bound residues and of the procedures that have been developed to address the issue.

Although researchers can sometimes demonstrate that a portion of the persistent radioactivity in edible tissues has arisen from the incorporation of radioactive atoms into endogenous molecules, or that a portion of the bound residues in an edible tissue are not bioavailable, the currently available techniques are expensive and time consuming to conduct. Furthermore, when the administered drug is known to be carcinogenic, even a small fraction of the residues in edible tissues must be considered as toxicologically significant. In these cases, the qualitative nature and other limitations of the studies discussed above prevent agency scientists from using them to disregard bound residues above levels shown to be safe.

II. Research Goals and Objectives

The specific goals for these cooperative agreements will be to provide financial assistance to investigators conducting research on new models, procedures, or combinations of models and procedures that can contribute to a general approach to evaluating the safety of bound drug residues. Compounds that are known to form covalent bonds, by various mechanisms, to tissue components should be selected as model compounds for the proposed studies. Techniques dealing with the identification or isolation of sufficient quantities of bound residues for toxicological testing and in vitro approaches to the toxicological evaluation of bound residues will also be considered for support under this program. The agency is most interested in complete strategies that will have broad application to the bound residue problems encountered with several classes of animal drugs but will give consideration to proposals addressing significant segments of the problem.

III. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Rosenblum, C., "Nonmetabolite Residues in Radioactive Tracer Studies," *in* "Isotopes in Experimental Pharmacology," L. J. Roth (Ed.), p. 353, University of Chicago Press, 1965.

2. Schach von Wittenau, M., "Long Term Residues Arising From $^{14}CO_2$ Fixation in Swine Tissue," *Journal of Science of Food and Agriculture*, 18:608–609, 1967.

3. Mulder, G. J., J. A. Hinson, and J. R. Gillette, "Generation of Reactive Metabolites of *n*-Hydroxy-phenacetin by Glucuronidation and Sulfation," *Biochemical Pharmacology*, 26:189–196, 1977.

4. Ranug, U., A. Sundvall, and C. Ramel, "The Mutagenic Effect of 1,2-Dichloroethane on *Salmonella typhimurium*, I. Activation Through Conjugation with Glutathione In Vitro," *Chemico-Biological Interactions*, 20:1–16, 1978.

5. Feung, C. S., R. O. Mumma, and R. H. Hamilton, "Metabolism of 2,4-Dichlorophenoxyacetic Acid, VI. Biological Properties of Amino Acid Conjugates," *Journal of Agriculture and Food Chemistry*, 22:307–309, 1974.

6. Dorough, H. W., "Metabolism of Carbamate Insecticides," EPA/600 1–77–012, Government Printing Office, Washington, DC, pp. 197–225, 1977.

7. Tateishi, M., S. Suzuki, and H. Shimuzu, "Cysteine Conjugate Beta-lyase in Rat Liver," *Journal of Biological Chemistry*, 225:8854–8859, 1978.

8. Wislocki, P. G., E. S. Bagan, M. M. Cook, M. O. Bradley, F. J. Wold, and A. Y. H. Lu, "Drug Residue Formation from Ronidazole, a 5-Nitroimidazole, VI. Lack of Mutagenic Activity of Reduced Metabolites and Derivatives of Ronidazole," *Chemico-Biological Interactions*, 49:27–38, 1984.

9. H. E. Gallo-Torres, "Methodology for the Determination of Bioavailability of Labeled Residues," *Journal of Toxicology and Environmental Health*, 2:827–845, 1977.

10. Schaeffer, V. H., and J. L. Stevens, "The Transport of *S*-Cysteine Conjugates in LLC–PK Cells and Its Role in Toxicity," *Molecular Pharmacology*, 31:506–512, 1987.

11. Symposium on Drug Metabolism and Residues in Food-Producing Animals, Brunton, J., L. Davis, and W.

Huber, (Eds.), *Journal of Toxicology and Environmental Health*, 2:727–915, 1977.

12. Weber, N. E., "Persistent Residues: Interface with Regulatory Decisions," *Journal of Evironmental Pathology and Toxicology*, 3:35–43, 1980.

IV. Reporting Requirements

The program progress reports and financial status reports (SF–269) will be required semi-annually based on date of award. These reports will be due within 30 days after the last day of each semi-annual period. (CVM Program Staff shall advise the grantee of the suggested format at the appropriate time.) A final invention statement, program progress report, and financial status report will be due 90 days after the expiration of the project period of the cooperative agreement.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreement awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provision of 42 CFR Part 52 and 45 CFR Part 74. The regulations promulgated under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and to any for-profit organization. For-profit organizations must exclude fees or profit from their request for support.

C. Length of Support

The length of support will depend on the nature of the study and may extend beyond 1 year but not to exceed 3 years. For studies where the expected date of completion is more than 1 year, noncompetitive continuation of support beyond the first year will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of funds.

VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this request for applications (RFA). Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint project officers who will actively monitor the FDA-supported program under each award. During monitoring, FDA may direct or redirect the selection of the animal drugs to be studied.

2. FDA will establish a project advisory group that will provide guidance and direction to the program with regard to the animal drugs and animal tissues to be investigated. In some cases, FDA scientists will collaborate with grantees in determing the methodological approaches to be used.

3. FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, and coauthorship of publications.

VII. Review Procedure and Criteia

A. Review Method

Applications will undergo initial review by experts in the field of drug toxicology and drug metabolism. The experts will review and evaluate each application based on its scientific merit. The applications will be subject to a second level review to evaluate them based on their relevance to FDA's mission in the regulation of animal drugs.

B. Review Criteria

Applications must be responsive to this RFA. Applications that are judged to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant. Applications will be reviewed according to the followign criteria:

1. Responsiveness to RFA.

2. The request for financial support is adequately justified and fully documented.

3. Soundness of the rationale for the proposed study.

4. Appropriateness of the study design to answer the question posed.

5. Availability and adequacy of laboratory and associated animal facilities.

6. Availability and adequacy of support services, e.g., biostatistical, computer, etc.

7. Research experience, training, and competence of the principal investigator and support staff.

VIII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 9/86), with sufficient copies of all reprints critical to the review, should be delivered to Robert L. Robins, address above. The outside of the mailing package and the top of the application face page should be labeled "Response to RFA–FDA–CVM–88–1."

IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date January 19, 1988.

Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legible dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Note.—Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format for Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/86). The face page of the application must reflect the RFA number, RFA–FDA–CVM–88–1. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall

not be used or disclosed except for evaluation purposes.

Dated: September 22, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-24434 Filed 10-19-87; 11:24 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0354]

Drug Export; Antihemophilic Factor (Human)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The New York Blood Center, Inc., has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human) to the Federal Republic of Germany.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs and biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs, including biological products, that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that The New York Blood Center, Inc., Box 5119, 155 Duryea Rd., Melville, NY 11747, has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human) to the Federal Republic of Germany. This biological product is to be used to prevent hemorrhage in surgery resulting from various procedures in which bleeding may occur in hemophilics. The application was received and filed in the Center for Drugs and Biologics on July 7, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 2, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: October 7, 1987.

Sammie R. Young,

Acting, Director, Office of Compliance for Drugs and Biologics.

[FR Doc. 87-24286 Filed 10-20-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement for Grants for Establishment of Departments of Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of section 780 of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 780 authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under section 786(a), Title VII, of the Public Health Service Act.

To be eligible to receive support for this grant program, the applicant must be a public of nonprofit private accredited school of medicine or osteopathy.

To receive support, programs must meet the requirements of final regulations as set forth in 42 CFR Part 57, Subpart R.

Section 780, as amended by Pub. L. 99-129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

The Administration's budget request for Fiscal Year 1988 includes $5 million for this program. These funds are needed for noncompeting continuations. This notice regarding applications does not reflect any change in this policy. However, should additional funds for competing awards become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

Funding Preference

A funding preference will be given to applicants that (1) demonstrate a commitment to increased enrollment and retention of minority and disadvantaged students in their programs or show evidence of efforts to recruit minority and disadvantaged students; and (2) demonstrate the potential to continue the projects on a self-sustaining basis.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (D32), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960

Questions regarding programmatic information should be directed to:

Division of Medicine, Multidisciplinary Resources Development Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane,

Room 4C–25, Rockville, Maryland 20857, Telephone: (301) 443–3614

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is December 14, 1987. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 28, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–24364 Filed 10–20–87; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement for Nurse Anesthetist Traineeship Grants and Professional Nurse Traineeship Grants

The Health Resource and Services Administration announces that applications for Fiscal Year 1988 Nurse Anesthetist Traineeship and Professional Nurse Traineeship grants will be accepted under the authority of sections 831(a) and 830(a) of the Public Health Service Act, as amended.

The Administration's budget request for Fiscal Year 1988 does not include funding for these programs. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Nurse Anesthetist Traineeships

Section 831(a) of the Public Health Service Act, as amended by Pub. l. 99–92, the Nurse Education Amendments of 1985, authorizes grants for traineeships to prepare licensed, reigistered nurses to be nurse anesthetists in eligible nurse anesthetist programs.

Eligible Applicants

To be eligible to receive support, an applicant must be a public or private nonprofit institution which provides registered nurses with full-time nurse anesthetist training. The tranining program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools and must have currently enrolled full-time students who are registered nurses who are beyond the 12th month of study.

In determining the amount of the grant ward, the Department will use a formula based on the number of approved applications and the number of full-time registered nurses who are beyond the 12th month of study.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance.*

Funding Preference

In determining the order of funding of applications which have been recommended for approval, preference will be given to applications which satisfactorily demonstrate a commitment to increased enrollment and retention of minority and financially needy students in their programs or show evidence of efforts to recruit minority and financially needy students. "Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black or Hispanic. "Financially needy" means a student has exceptional financial need. For purposes of this program a student will have exceptional financial need if the school determines that the student's resources do not exceed the lesser of $5,000 or one-half of the cost of attendance at the school. Student summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will not be considered resorces for purposes of determining whether a student has exceptional financial need. All eligible applications, however, will be reviewed and given consideration for funding.

Professional Nurse Traineeships

Section 830(a) of the Public Health Service Act, as amended by Pub. L. 99.92, the Nurse Education Amendments of 1985, authorizes grants for:

(1) Traineeships to prepare registered nurses in masters' degree and doctoral degree programs which educate such nurses to serve in and prepare for practice as nurse practitioners, nurse administrators, nurse educators, nurse researchers, or other professional nursing specialities determined by the Secretary to require advanced education; and

(2) Traineeships to educate nurses to serve in and prepare for practice as nurse midwives.

Eligible Applicants

To be eligible to receive support an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in professional nursing specialities, or a public or nonprofit private school of nursing or entity which prepares registered nurses to practice as nurse midwives. The nurse midwife program must be approved by the American College of Nurse Midwives.

This program is listed at 13.358 in the *Catalog of Federal Domestic Assistance.*

Application Deadlines

Nurse Anesthetist Traineeships—November 23, 1987.

Professional Nurse Traineeships—November 23, 1987.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date or,

2. *Postmarked* on or before the deadline date and received in time for submission for review. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

For specific guidelines and information regarding these programs contact:

Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–13, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333

Questions regarding grants policy should be directed to:

Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administraton, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplements for these programs have been approved by the Office of Management and Budget under the

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Paperwork Reduction Act. The OMB clearance number is 0915–0060.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: September 30, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–24363 Filed 10–20–87; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the Interagency Technical Committee (IATC), sponsored by the National Heart, Lung, and Blood Institute, on December 2, 1987, from 1 p.m. to 5 p.m., at the National Institutes of Health, Building 31, C-Wing, 6th floor, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–6161.

The entire meeting is open to the public. The IATC is meeting to give member agencies the opportunity to exchange information on the status of their respective programs that relate to heart, blood vessel, lung, and blood diseases and blood resources. Attendance by the Public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Ms. Janyce N. Hedetniemi, Chief, Planning and Coordination Branch, Office of Program Planning and Evaluation, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 5A03, Bethesda, Maryland 20892, (301) 496–5031.

Dated: October 14, 1987.

William F. Raub,

Acting Director, NIH.

[FR Doc. 87–24329 Filed 10–20–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 12, 13, and 14, 1987, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892. This meeting will be open to the public on November 12 from 8 p.m. to 10 p.m., November 13 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and November 14 from 9 a.m. to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 12 from 7:30 p.m. to 8 p.m., November 13 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and November 14 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A.19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128.

Dated: October 2, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–24315 Filed 10–20–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

[NTP–87–001] [NTP–87–002]

National Toxicology Program; Fiscal Year 1987 Annual Plan

The National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1987*, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation.

The ninth NTP Annual Plan consists of two parts. First, the *NTP Annual Plan for Fiscal Year 1987* [NTP–87–001] describes current year NTP research, applied studies, methods development and validation efforts, resources and past year program accomplishments (Table of Contents follows this announcement). Second, the *Review of Current DHHS, DOE and EPA Research Related to Toxicology* [NTP–87–002] lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basic and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Specific goals are to:

- Broaden the spectrum of toxicologic information obtained on selected chemicals;
- Increase the numbers of chemicals studied within funding limits;
- Develop and validate a series of tests and protocols responsive to regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates select toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control.

Primary program oversight is provided by the NTP Executive Committee which links DHHS health research institutes with Federal health regulatory agencies to ensure that the basic and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

- Agency for Toxic Substances and Disease Registry
- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health
- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and policy and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1987 Annual Plan) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director, Dr. David P. Rall, reports to the Assistant Secretary for Health.

Scientific activities are divided into four major program areas: Carcinogenesis; cellular and genetic toxicology; reproductive and developmental toxicology; and toxicological characterization. The latter area covers activities in cardiac, cutaneous, immunologic, neurobehavioral, pulmonary and renal toxicologies, and include programs in chemical disposition and chemical pathology. Program and project leaders, along with addresses and telephone numbers, are identified in the 1987 Annual Plan.

The chemical nomination and selection process is integral to the effective long-term operation of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods. Thus, the NTP welcomes nominations of chemicals for study from everyone. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.

II. Production, use, occurrence, and analysis data.

III. Toxicology information.

IV. Chemical disposition and structure-activity-relations.

V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the *NTP Annual Plan for Fiscal Year 1987,* and the *FY 1987 Review of Current DHHS, DOE, and EPA Research Related to Toxicology,* please write or telephone the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709, (telephone: (919) 541–3991 or FTS 629–3991).

Comments on the FY 1987 NTP Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541–3971 or FTS 629–3971).

Dated: October 15, 1987.

David P. Rall,

Director, National Toxicology Program.

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[FR Doc. 87–24316 Filed 10–20–87; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA320–07–4212–02]

Bureau Forms Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone (202) 395–7340.

Title: Application for Land for Recreation and Public Purposes, 43 CFR Part 2740.

Abstract: Respondents supply information and data describing the lands requested, the proposed use of the lands, applicant qualifications, and detailed plans concerning project development and management. This information allows the Bureau to determine if the applicant and proposed use meet the requirements of the Recreation and Public Purposes Act of 1926, as amended.

Bureau form number: 2740–1.

Frequency: Occasionally.

Description of respondents: State and local governments and nonprofit organizations.

Annual responses: 170.

Annual burden hours: 7,990.

Bureau clearance officer: Rick Iovaine (202) 653–8853.

Date: August 24, 1987.

Guy E. Baier,

Assistant Director, Land and Renewable Resources.

[FR Doc. 87–24342 Filed 10–20–87; 8:45 am]
BILLING CODE 4310–84–M

[ID–010–08–4212–12; I–12640]

Realty Action, Exchange of Public and State Lands in Owyhee County, ID; Correction

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects the legal description previously published in the **Federal Register** on January 30, 1987, page 3061, column one, for T. 12 S., R. 3 E., Section 23. The correct legal description is T. 12 S., R. 3 E., Section 23, SE¼NE¼.

All other legal descriptions remain unchanged.

Date: October 7, 1987.

David B. Vail,

Acting District Manager.

[FR Doc. 87–24344 Filed 10–20–87; 8:45 am]
BILLING CODE 4310–GG–M

Minerals Management Service

Information Collection Submitted to Office of Management and Budget for Review Under Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7313 with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Quarterly Oil Well Test Report, Form MMS–1869.

Abstract: Respondents submit Form MMS–1869 to the Minerals Management Service's Regional Supervisor so they can evaluate the results of well tests to ascertain if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. The form is designed to provide a quarterly test of oil-well capacity for use in updating permissible producing rates and to provide the basis for estimates of currently remaining recoverable reserves.

Bureau form number: Form MMS–1869.

Frequency: Quarterly.

Description of respondents: Federal oil and gas lessees performing offshore production operations.

Annual responses: 8,400.

Annual bureau hours: 16,800.

Bureau clearance officer: Dorothy Christopher, (703) 435–6213.

Date: October 6, 1987.

Richard B. Krahl,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 87–24345 Filed 10–20–87; 8:45 am]
BILLING CODE 4310–MR–M

Development Operations Coordination Document; Union Exploration Partners, Ltd.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Exploration Partners, Ltd. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0559, Block 67, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 9, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 13, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–24346 Filed 10–20–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Intention To Negotiate Concession Contract; Marine Management, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Marine Management, Inc., authorizing it to continue to provide marina and boating facilities and services for the public at Anacostia Park, National Capital Parks—East, Washington, DC, for a period not to exceed twenty (20) years from January 1, 1988.

The proposed contract requires a construction and improvement program. The construction and improvement program required is addressed in the National Environmental Policy Act document (Environmental Assessment dated March 1987) that was prepared in conjunction with the Comprehensive Design Package for Fort McNair Marina.

The environmental assessment has been determined that this proposed action will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Superintendent's Office, National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020, for information as to the requirements of the proposed contract.

Date: September 3, 1987.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 87–24380 Filed 10–20–87; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area Advisory Commission; Meeting Agenda Addendum

Notice is hereby given in accordance with the Federal Advisory Committee Act that an additional agenda item is scheduled at the meeting of the Golden Gate National Recreation Area Advisory Commission which will be held at 7:30 p.m. (PST) on Tuesday, November 10, 1987 at the Building 201, Fort Mason, San Francisco, California.

The additional agenda item will be a presentation to the Commission of a proposal to place a work of art as a gift to the Golden Gate National Recreation Area in a park area adjacent to the National Maritime Museum in rememberance of former Congresswoman Sala Burton. Recognition of former Representative Burton, who died in February 1987, is called for in a Congressional bill currently under review by the Senate.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after December 4, 1987. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recration Area, Building 201, Fort Mason, San Francisco, California 94123

Date: October 7, 1987.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 87–24291 Filed 10–20–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-271]

Certain Buoyant Metallic Balloons; Commission Decision Not To Review Initial Determination Permitting CTI Industries Corporation To Intervene as a Fully Participating Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination permitting CTI Industries Corporation to intervene as a fully participating respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 7) granting a motion of CTI Industries Corporation (CTI) to intervene in the above-captioned investigation as a fully participating respondent.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

SUPPLEMENTARY INFORMATION: On June 26, 1987, Continental American Corporation and Gerald L. Hurst filed a complaint with the Commission pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging unfair acts in the importation and sale of certain buoyant metallic balloons. The Commission issued a notice of investigation on July 28, 1987, naming as respondents Pacific Balloon Manufacturing Co., Bernhardt-Case, Inc., and You Chang Balloon Manufacturing Co.

On September 8, 1987, CTI moved, pursuant to Commission rule 210.26 (19 CFR 210.26), to intervene as a fully participating respondent. This motion was opposed by complainants but supported by the respondents Pacific Balloon and Bernhardt-Case and by the Commission investigative attorney. On September 16, 1987, the presiding administrative law judge issued Order No. 7 granting CTI's motion. Complainants filed a petition for review on September 24, 1987. Respondents, the Commission investigative attorney, and CTI opposed the petition in responses filed on October 2, 1987.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-imparied persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 15, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-24394 Filed 10-20-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-265]

Certain Dental Prophylaxis Methods, Equipment and Components Thereof; Commission Decision Not To Review an Initial Determination Terminating Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination (ID) terminating two respondents in the above-captioned investigation on the basis of a settlement agreement.

SUMMARY: The Commission has determined not to review an ID terminating respondents Sanofi Inc. and Sanofi, S.A. (Sanofi), in the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Marcia Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0480.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On August 9, 1987, complainants Dentsply Research and Development Corp. and Dentsply International Inc. (Dentsply), and the Sanofi respondents filed a joint motion ((Motion No. 265-22) to terminate the Sanofi respondents from the investigation on the basis of a settlement agreement. The presiding administrative law judge issued an ID (Order No. 13) granting the motion for termination on September 17, 1987. No petitions for review of the ID were received, nor were any comments received from other government agencies or the public.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 F Street NW, Washington, DC 20436, telephone 202-523-0161.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 16, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-2495 Filed 10-20-87; 8:45 am]

BILLING CODE 7020-01-M

[Investigation No. 701-TA-282 (Final)]

Certain Forged Steel Crankshafts From Brazil

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of a hearing to be held in connection with countervailing duty investigation No. 701-TA-282 (Final), Certain Forged Steel Crankshafts from Brazil, which the Commission instituted effective January 8, 1987 (52 FR 5200, February 19, 1987). The Commission will make its final injury determination in this case by November 24, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: October, 15, 1987.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-523-7914), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION: The Commission instituted investigation No.

701–TA–282 (Final) effective January 8, 1987 (52 FR 5200, February 19, 1987). On May 13, 1987, the Commission established a schedule for conducting the investigation (52 FR 20790, June 3, 1987). On July 21, 1987, a suspension agreement with the Government of Brazil was signed, and the Department of Commerce suspended its countervailing duty investigation regarding Brazil (52 FR 28177, July 28, 1987). However, on August 17, 1987, a request for a continuation of the investigation was filed by the Government of Brazil. Subsequently, on October 15, 1987, the Commission received notified of Commerce's final determination that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts (52 FR 38254).

The revised schedule for the Commission's investigation is as follows: requests to appear at the hearing are to be filed with the Secretary to the Commission not later than the close of business October 27, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building on October 29, 1987, at 9:30 a.m.; the deadline for filing prehearing briefs is October 30, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building on November 5, 1987, at 9:30 a.m.; and the deadline for filing posthearing briefs is the close of business November 9, 1987.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 16, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–24396 Filed 10–20–87; 8:45 am]

BILLING CODE 7020–02–M

Certain Programmable Digital Clock Thermostats; Investigation

[Investigation No. 337–TA–278]

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 16, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), by the White-Rodgers Division, Emerson Electric Co., 9797 Reavis Road, St. Louis, Missouri 63123. Amendments and supplements to the complaint were filed on October 9, 1987, and October 13, 1987. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation into the United States of certain programmable digital clock thermostats, and in their sale, by reason of alleged direct, induced and contributory infringement of claim 1 of U.S. Letters Patent 4,308,991. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1088.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 14, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain programmable digital clock thermostats, or in their sale, by reason of direct or induced infringement of claim 1 of U.S. Letters Patent 4,308,991, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served;

(a) The complainant is—

White-Rodgers Division, Emerson Electric Co., 9797 Reavis Road, St. Louis, Missouri 63123

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Computime Limited, 1/F, Phase 2, Shui Ying Ind Building, 3 Yuk Yat Street, Tokwawan, Kowloon, Hong Kong

Hunter-Melnor, Inc., 2500 Frisco Avenue, Memphis, Tennessee 38114

Jameson Home Products, Inc., 2464 Wisconsin Avenue, Downers Grove, Illinois 60515

(c) David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with §210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: October 14, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–24393 Filed 10–20–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731-TA-376 (Final)]

Certain Stainless Steel Butt-Weld Pipe Fittings From Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–523–0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION: On September 16, 1987, the Commission instituted the subject investigation and established a schedule for its conduct. Subsequently, the Department of Commerce extended the date for its final determination in the investigation from November 24, 1987, to Junary 29, 1988 (52 FR 37815, October 9, 1987). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: The hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on February 9, 1988; requests to appear at the hearing must be filed with the Secretary to the Commission not later than Janaury 29, 1988; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on February 1, 1988; the deadline for filing prehearing briefs is February 4, 1988; and the deadline for filing all other written submissions, including posthearing briefs, is February 16, 1988. A public version of the prehearing staff report will be placed on the public record on Jannary 29, 1988.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201 Subpart A through E (19 CFR Part 201).

Authority. This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 16, 1987

Kenneth R. Mason,

Secretary.

[FR Doc. 87–24397 Filed 10–20–87; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; New Bedford, MA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. City of New Bedford* has been lodged with the United States District Court for the District of Massachusetts. The consent decree addresses alleged violations by the City of New Bedford, MA of the Clean Water Act in regard to its sewage system.

The proposed Consent Decree requires the City of New Bedford, in accordance with schedules set forth in the decree, to construct improvements to its primary sewage treatment facility, to plan, design, and construct secondary treatment facilities, to prepare a facilities plan and negotiate an implementation schedule for combined sewer overflow ("CSO") abatement facilities, to eliminate dry weather discharges from CSO outfalls, to implement its pretreatment program, to implement a sewer system inspection, repair, and maintenance program, to implement a revised operation and maintenance manual, to implement a staffing plan, and to plan and implement a grit management program. The Consent Decree also provides for the payment of a civil penalty of $150,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of New Bedford*, D.J. Ref. 90–5–1–1–2823.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may also be examined at the Environmental Enforcement section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $3.60 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–24298 Filed 10–20–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Thibodaux, LA, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 25, 1987, a proposed consent decree in *United States v. City of Thibodaux, Louisiana and The State of Louisiana*, Civil Action No. 87–4418 "J" (1), was lodged with the United States District Court for the Eastern District of Louisiana. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311 at the City's wastewater treatment plant. The complaint alleged that the City discharged pollutants from its plant into navigable waters in excess of the limitations in the City,s National Pollutant Discharge Elimination System ("NPDES") permit and violated other terms and conditions of the permit relating to sampling, sludge disposal, and operation and maintenance. The complaint also alleges violations of an administrative order issued to the City. The State of Louisiana was named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). The complaint sought injunctive relief to require the City to comply with its NPDES permit and civil penalties for past violations. The consent decree provides for a compliance schedule to bring the City into compliance with its permit by July 1, 1988. The City is also required to pay a civil penalty of $20,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land

and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Thibodaux, Louisiana et al.*, D.J. Ref. 90–5–1–1–2659.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of Louisiana, Hale Boggs Federal Building, Room 210, 500 Camp Street, New Orleans, Louisiana 70130 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 15I7, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 87–24299 Filed 10–20–87; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87–86)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Photonics.

DATE AND TIME: November 9, 1987, 8:15 a.m. to 5 p.m., and November 10, 1987, 8:15 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Anemarie DeYoung, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2704.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Photonics, chaired by Dr. Stanley Weiss, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants). NASA notice numbers 87–71, 52 FR 33669, September 4, 1987, and 87–81, 52 FR 35977, September 24, 1987, are being replaced by this notice.

Type of Meeting: Open.

Agenda

November 9, 1987

8:15 a.m.—NASA Photonics Program Plan Presentation.
9 a.m.—Office of Exploration Mission Presentation.
10 a.m.—Mars Rover Photonics Requirements.
11 a.m.—Earth Observing System Photonics Requirements.
1 p.m.—NASA Centers' Proposed Photonics Program.
5 p.m.—Adjourn.

November 10, 1987

8:15 a.m.—Ad Hoc Review Team's Discussion on NASA's Photonics Program.
3 p.m.—Adjourn.

C. Howard Robins, Jr.,

Deputy Associate Administrator for Management, National Aeronautics and Space Administration.

October 14, 1987.

[FR Doc. 87–24324 Filed 10–20–87; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 6–7, 1987 from 9:00 a.m.-5:30 p.m. and on November 8, 1987 from 9:00 a.m.-12:00 noon in room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 6, 1987 from 9:00 a.m.-5:30 p.m. and on November 7, 1987 from 9:00 a.m.-1:00 p.m. The topics for discussion will include Program Review and Guidelines for the Locals, Design Arts, Visual Arts and Media Arts Programs; Guidelines for Music Presenters/Festivals, Advancement and the Dance/Inter-Arts/State Program Presenting/Touring Initiative; the Arts Education Report and a report on International festivals.

The remaining sessions of this meeting on November 7, 1987 from 2:30 p.m.-5:30 p.m. and on November 8, 1987 from 9:00 a.m.-12:00 noon are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these session will be closed to the public pursuant to subsection (c) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–24419 Filed 10–20–87; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Submission for Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following

proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 51.

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for approval to construct and operate power plants, applications for manufacturing licenses and materials licenses (e.g., independent spent fuel storage installations, uranium mills, fuel fabrication, UF6 conversion, decommissioning, certain medical and industrial uses of radioisotopes, and commercial radioactive waste disposal by land), nonpower reactor reviews, HEU/LEU conversions, and rulemaking petitions.

5. Who will be required or asked to report: Licensees and applicants requesting approvals for the types of actions described in item 4 above, pursuant to 10 CFR 40, 50, 61, 70, and 72.

6. An estimate of the number of responses: 11 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 20,450.

8. An indication of whether section 3504(h), Pub. L. 9696–511 applies: Not applicable.

9. Abstract: 10 CFR Part 51 of the NRC's regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions should be directed to the OMB reviewer: Vartkes L. Broussalian, (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of October 1987.

For The Nuclear Regulatory Commission.

Joyce A. Amenta,

Acting Director, Office of Administration and Resources Management.

[FR Doc. 87–24354 Filed 10–20–87; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Submission for Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 53, "Available Criteria and Procedures for Determining the Adequacy of Spent Nuclear Fuel Storage Capacity."

3. The form number if applicable: N/A.

4. How often the c· 'lection is required: As necessary in order for NRC to determine that facilities for interim storage of spent nuclear fuel are consistent with the provisions of the Waste Policy Act of 1982.

5. Who will be required or asked to report: Licensees authorized to operate nuclear power plants.

6. An estimate of the number of responses: 3 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 3,960.

8. An indication of whether Section 3504(h), Pub. L 9696–511 applies: Not applicable.

9. Abstract: The Nuclear Waste Policy Act of 1982 (Public Law 97-425, January 7, 1983) establishes a framework for the disposal of spent nuclear fuel and high-level radioactive waste generated by nuclear power plants, which includes an interim program for the storage of spent nuclear fuel while the repository for ultimate disposal is selected and developed.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer: Vartkes L. Broussalian, (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of October 1987.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Acting Director, Office of Administration and Resources Management.

[FR Doc. 87–24355 Filed 10–20–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–266; 50–301; Licenses No. DPR–24; DPR–27 EA 86–148]

Wisconsin Electric Power Co.; Order Imposing Civil Monetary Penalty

Wisconsin Electric Power Company, Point Beach Nuclear Plant, Units One and Two (Licensee) is the holder of Operating Licenses No. DPR–24 and No. DPR–27 (Licenses) issued by the Nuclear Regulatory Commission on October 5, 1970 and March 8, 1973. The Licenses authorize the Licensee to operate the Point Beach Nuclear Plant in accordance with the conditions specified therein.

II

A special physical security inspection of the Licensee's activities was conducted during the period July 18 through August 7, 1986. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the Licensee by letter dated March 11, 1987. The Notice states the nature of the violations, the provisions of NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated May 8, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a Civil Penalty in the amount of Fifty Thousand Dollars

($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 13th day of October 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 87-24358 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Company, et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Duke Power Company, et al., (the licensee) for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action: The proposed amendments would change the Technical Specifications to provide for operation up to full power with the Upper Head Injection Accumulator (UHI) System removed. The UHI System was designed to enhance core cooling during the blowdown phase of a loss-of-coolant accident (LOCA). Similar changes have previously been approved by the Commission for McGuire Nuclear Station, Units 1 and 2 (Amendment Nos. 57 and 38 for Units 1 and 2, respectively, issued May 13, 1986).

Other changes associated with UHI removal would also be made to appropriate Technical Specifications. These include deletion of Technical Specifications requiring UHI system maintenance, surveillance, and leakage verification and modification of Technical Specifications to reflect deletion of UHI related containment penetrations and associated conductor overcurrent protective devices, containment isolation valves, and system piping snubbers. The proposed Technical Specifications also reflect changes to the ECCS cold leg injection accumulators to increase the operable range limits of the nitrogen gas cover-pressure (from 385 and 481 psig to 585 and 678 psig), and to decrease the operable range limits of their water volume (from 7853 and 8171 gallons to 7704 and 8004 gallons).

The changes to the ECCS cold leg injection accumulators would also be accompanied by appropriate modifications to instrumentation alarm functions and procedures, and by replacement of flow restricting orifices in their discharge piping with orifices of smaller diameter. However, these accompanying changes do not involve a change to the Technical Specifications.

The proposed action is in accordance with the licensee's letters dated June 12, 1987, and supplemented June 23 and August 12, 1987.

The Need for the Proposed Action: The licensee has requested this action because the UHI system has been found to cause frequent maintenance problems and operational delays. Filling and venting requirements of the UHI System add about 10 hours to a startup from cold shutdown conditions. The system contributes to occupational radiation exposure during normal operation (i.e., during surveillance and maintenance) and during refueling outages requiring removal or reconnection of injection piping to the reactor vessel upper head. The continuing operational difficulties and radiological exposures associated with the UHI system would be eliminated upon completion of system removal.

Environmental Impacts of the Proposed Action

A. *Plant Radiological Releases.* The UHI system performs no function during normal operation but serves to mitigate accidents after they occur. Therefore, no adverse change in plant radiological or non-radiological releases would occur for normal operation of the plant with the UHI system isolated or removed.

By letter dated June 12, 1987 and supplemented June 23, 1987, the licensee provided safety analyses for LOCA and non-LOCA transients for the planned UHI removal using approved analytical models and methodology. The Commission has reviewed these analyses and finds that the potential radiological and non-radiological releases for accidents and transients would not be increased.

Accordingly, Commission findings in the Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2, dated January 1983 (NUREG-0921) regarding radiological and non-radiological releases from the plant during normal operation or after accidents are not adversely altered by this action.

B. *Occupational Radiological Aspects of UHI Removal.* By letter dated June 12 and August 12, 1987, the licensee described the construction changes and activities associated with UHI removal. The principal tasks involve (1) replacing cold leg accumulator flow element orifice plates, (2) cutting and capping UHI penetrations to the reactor vessel, (3) capping various UHI piping interfaces with other systems, (4) removing UHI piping, valves, support/restraints and instrumentation, (5) cutting and capping containment penetrations, and (6) changing the level and pressure on the cold leg accumulators. The dose incurred from task performance (80 person-rem per unit) is a small fraction of the 1986 annual average PWR dose of 392 person-rem per unit.

The Commission has evaluated the radiological aspects of the proposed changes against the criteria of Chapter 12 of the Standard Review Plan (NUREG-0800) and Regulatory Guide 8.8, "Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations will be as Low as is Reasonably Achievable," and has concluded that the radiological aspects of UHI removal have been fully considered, and that the radiation protection measures planned for the tasks are acceptable to protect the workers, and will result in doses that are as low as is reasonably achievable.

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C. *Waste.* Removal of the UHI related components and associated tasks would generate contaminated components for each Catawba unit, mostly comprised of various-diameter pipes, valves, hangers, and thermal sleeves. An estimate of the curies of beta and gamma radioactivity contained in the UHI components to be removed is 5.3 curies per unit. This estimated activity represents less than 5.1% of the total activity shipped from Catawba Nuclear Station in solid waste during the first six months of 1987. Disposal and shipment of radioactive materials will be performed in accordance with applicable regulatory requirements.

D. *Conclusion.* Plant radiological and non-radiological releases during normal operation or after an accident will not be increased by the proposed action. Disposal of system components would add only a small fraction to the radioactivity normally shipped from the site in solid waste. The radiological exposure of construction workers during UHI removal will be as low as is reasonably achievable, and will be less than the dose which would, otherwise, result to personnel observing and maintaining the UHI system for the remainder of plant life. Accordingly, we conclude that this proposed action would result in no significant adverse environmental impact.

Alternative to the Proposed Actions: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. Neither alternative would reduce environmental impacts of plant operation but would result in increased personnel radiation exposure during plant life.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated January 1983 (NUREG–0921) related to this facility.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's requests of June 12, 1987, as supplemented June 23 and August 12, 1987. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated June 12, 1987, and its supplements dated June 23 and August 12, 1987; and the Final Environmental Statement related to operation of Catawba Nuclear Station, Units 1 and 2 (NUREG–0921) dated January 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 15th day of October, 1987.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Director, Project Directorate II–3, Division of Reactor Projects III.

[FR Doc. 87–24356 Filed 10–20–87; 8:45 am]

BILLING CODE 7590–01–M

Standard Review Plan; Public Comment Period Extended

On August 28, 1987, the Nuclear Regulatory Commission published a notice soliciting public comment on a new Standard Review Plan Section 3.6.3 (SRP 3.6.3) entitled Leak-Before-Break Evaluation Procedures. (52 FR 32626) The original closing date for public comment of October 13, 1987, is now extended to December 4, 1987. This will allow commenters to review the final broad scope modification to General Design Criterion 4 (GDC–4) during the comment period. SRP 3.6.3 will be used to implement the broad scope GDC–4 modification.

Dated at Bethesda, Maryland, this 14th day of October 1987.

For the Nuclear Regulatory Commission.

James E. Richardson,

Assistant Director, Office of Nuclear Regulation.

[FR Doc. 87–24357 Filed 10–20–87; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 28, 1987, through October 8, 1987. The last biweekly notice was published on October 7, 1987.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington,

DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 20, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expira tion of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: October 6, 1987

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3.5.G, and associated bases, to allow a different method for ensuring the High Pressure Core Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems discharge lines are filled.

Existing TS 3.5.G.2 requires that the discharge lines of both the low pressure (Low Pressure Core Injection and Core Spray) and the high pressure (HPCI and RCIC) ECCS systems are maintained between 40 psig and 90 psig by using an ECCS fill system pump. However, in actual operation only the low pressure systems need to use a fill pump. For the high pressure systems, ensuring filled discharge lines is achievable by maintain-ing an adequate level in the Contaminated Condensate Storage Tank, which is the normal water source for both HPCI and RCIC. This passive method for filling HPCI and RCIC discharge lines is preferable from a reliability point of view, rather than an

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active system dependent on a single fill pump. Furthermore, it is also more consistent with the actual plant instrumentation which only provides for pressure switches and control room alarms on the discharge lines of the low pressure systems.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR.91(a), the licensee has provided the following analysis in their amendment application addressing the three standards.

Commonwealth Edison (the licensee) has evaluated the proposed TS amendment request and determined that operation of Quad Cities in accordance with the proposed changes:

(1) Will not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is in the conservative direction and therefore has lessened the probability or consequences of an accident as previously evaluated. Conservatism has been added by specifying a passive method for maintaining filled discharge lines in the high pressure cooling systems which is more reliable than an active method that is dependent on a single fill pump.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated because the change does not affect the requirement for maintaining filled discharge piping but only clarifies the actual method of ensuring filled discharge piping for RCIC and HPCI systems. The method utilized does not change the HPCI or RCIC system piping configurations or normal source of coolant nor does it change system setpoints or flow capacities. The only change relative to the method indicated by the current Technical Specifications is the valving out of an active component (ECCS fill pump) since a passive method provides the same function of maintaining filled discharge lines.

(3) Will not involve a significant reduction in the margin of safety since the proposed amendment does not affect the operation of the HPCI or RCIC systems. System setpoints and flow capacities remain the same.

The Commission has reviewed the Licensee's TS amendment request and concurs with the analysis for no significant hazards consideration determination. Accordingly, the Commission proposes to determine the aforementioned amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: Daniel R. Muller

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: September 24, 1987

Description of amendment request: By application for license amendment dated September 24, 1987, Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company, et al. (the licensees), requested changes to the Technical Specifications (TS) for the Haddam Neck Plant and Millstone Unit Nos. 1, 2 and 3 to clarify the Administrative Controls section concerning Nuclear Review Board (NRB) reports. The proposed change to the TS would be incorporated in TS 6.5.2.9.b for the Haddam Neck Plant and TS 6.5.3.9.b for Millstone Unit Nos. 1, 2 and 3.

Basis for proposed no significant hazards consideration determination: At the present time, TS 6.5.2.9.b and 6.5.3.9.b require that reports of NRB reviews be prepared, approved and forwarded to the Senior Vice President Nuclear Engineering and Operations within 14 days following completion of the reviews. The TS 6.5.2.9.b and 6.5.3.9.b are not specific as to the form of the report. The licensees have proposed to add a clarification as to one acceptable form of NRB report in that, NRB Meeting minutes may be used for this purpose.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (i) which involves "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed changes to TS 6.5.2.9.b and 6.5.3.9.b would only effect the TS in that an acceptable vehicle for NRB reporting (NRB minutes) would be specified in the TS. Accordingly, the proposed change to the TS is within the scope of example (i) and thus, the staff proposes to determine that it involves no significant hazards considerations.

Local Public Document Room locations: Russell Library, 123 Broad Street, Middletown, Connecticut 06103 and Waterford Public Library, 49 Rope Ferry Road, Ferry Road, Waterford, Connecticut 06385

Attorney for Licensees: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103

NRC Project Directors: John F. Stolz and Cecil O. Thomas

General Electric Company, Docket No. 50-183, ESADA Vallecitos Experimental Superheat Reactor (EVESR)

Date of amendment request: August 6, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to authorize a general radiation survey of the facility on an annual basis instead of a semi-annual basis, as is now being conducted.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The EVESR license was amended on April 15, 1970, to authorize possession but not operation of the reactor located at the Vallecitos Nuclear Center, Alameda County, California. The EVESR has been shutdown since February 1, 1967. All fuel and other special nuclear material has been removed from the facility.

Radiation surveys for the past several years show no significant changes in the status of the facility. The current TS require that radiation status surveys be performed at least twice annually. As a result, the licensee has requested that the TS be amended to require radiation

surveys be conducted annually instead of twice annually.

The staff therefore finds that the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of previously evaluated accidents because the facility cannot operate as a reactor under existing license conditions and radiation surveys have been consistent over the past several years.

(2) Does not create a possibility of a new or different kind of accident from any accident previously evaluated because the facility cannot operate as a reactor under existing license conditions and radiation surveys have been consistent over the past several years.

(3) Does not involve a significant reduction in a margin of safety because the facility cannot operate as a reactor under existing license conditions and radiation surveys have been consistent over the past several years.

Based on the above considerations the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: N/A

Attorney for licensee: Harry C. Burgess, Esq., General Electric Company, Nuclear Energy Business Operations, 175 Curtner Avenue, Mail Code 822, San Jose, California 95125.

NRC Project Director: Lester S. Rubenstein

General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station Unit 2 (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: May 16, 1986.

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Appendix B Technical Specifications 3.2.1, 3.2.2, 3.2.3, 5.6.1, and 5.6.2. Specifically, the proposed amendment would: (1) modify the radiological environmental monitoring program to be consistent with the Standard Radiological Effluent Technical Specification for Pressurized Water Reactors (NUREG-0472, Revision 3, 1983) and the monitoring conducted for Three Mile Island Nuclear Generating Station, Unit 1 (TMI-1) located on the same site as TMI-2, (2) modify the station reporting requirements to be consistent with the requirements of NUREG-0472, Revision 3, 1983 and TMI-1, (3) correct typographical errors and make editorial changes which improve clarity in the specifications, and (4) delete non-essential monitoring requirements.

Proposed changes to Section 3.2.1 incorporate language consistent with NUREG-0472, Revision 3 and the TMI-1 sampling program. Minor changes to improve clarity are also incorporated. Additionally, the period of time the licensee has to prepare and submit a special report identifying the circumstances associated with an effluent release exceeding the quarterly reporting level is changed from 30 to 60 days from the end of the affected calendar quarter. This is consistent with the requirements of Section 5.6 Station Reporting Requirements.

The licensee also proposes to change the requirement to notify the Commission within 30 days of changes in sample locations for milk or fresh leafy vegetables when samples are unavailable from identified locations. Samples at alternative locations would be taken and the cause of the unavailability of samples would be identified in the next semi-annual Radiological Effluent Release Report.

Table 3.2-1, which specifies the radiological monitoring program, would be changed to be consistent with the requirements of NUREG-0472, Revision 3. Frequencies of sampling and analysis have been changed from a specific number of days to a calendar period. The number and location of samples taken are more precisely identified. Iodine-131 analysis requirements are being deleted to reflect the fact that Iodine-131, from TMI-2, is no longer present in detectable quantities having decayed through 390 half lives.

Changes proposed for Table 3.2-2, which specifies lower limits of detection for environmental sample analyses, delete Iodine-131 and revise downward the lower limit for Strontium-90. Elimination of Iodine-131 from this table is proposed since Iodine-131 from TMI-2 is no longer present in detectable quantities. The lower limit of detectability for Cesium-137 in milk is revised from 14 pCi/l to 18 pCi/l consistent with the value specified in NUREG-0472, Revision 3. Changes are proposed in the footnotes to Table 3.2-2. These changes are to improve clarity and achieve consistency with guidance provided in NUREG-0472, Revision 3.

Section 3.2.2 would be changed to include language consistent with NUREG-0472 improving the clarity of the monitoring requirement. NRC notification and justification of changes in sample locations would be in the next semiannual Effluent Release Report rather than in the currently required special report within 30 days. Proposed changes to Section 3.2.3 are editorial in nature and improve the clarity of the requirement.

The licensee proposes to modify Section 5.6.1.A.(2) to be consistent with the requirements of NUREG-0472, Revision 3. Additionally, the proposed change deletes the requirement to submit the Annual Radiological Environmental Operating Report as a separate report. Furthermore, it allows for submission of a single report for both Unit 1 and Unit 2. A number of editorial changes are also proposed.

Proposed changes to Section 5.6.2 delete the statement that if "a report level in Section 3 Environmental Monitoring is reached," a nonroutine report is submitted. This requirement is now stated in the proposed revision to Section 3. The requirement for submission of the report is the same; the difference is where the requirement appears in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration of operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI-2 is in a long-term cold shutdown for accident recovery. Short-lived fission products which make up the preponderance of the source term for operating reactors have decayed to negligible levels. The decay heat produced by the core has now dropped to less than 10 kilowatts and forced cooling of the core has not been required or used since 1981. Consequently, in previous license amendments, the staff has determined that the potential accidents analyzed for TMI-2 in the current mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR.

The changes proposed by the licensee are changes to the radiological monitoring requirements contained in Appendix B (Environmental Technical Specifications). They consist of changes to correct typographical errors, improve clarity of the requirements, and to achieve consistency with NUREG-0472, Revision 3, 1983, and Unit 1 monitoring requirements.

The proposed changes do not increase the probability or consequences of an accident previously evaluated because the changes proposed are changes in the radiation monitoring program and not changes to current safety systems or setpoints. The proposed changes do not create the possibility of a new or

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different kind of accident from any accident previously evaluated because no new modes of operation or changes in equipment are being introduced. The proposed changes do not involve a significant reduction in the margin of safety because no changes to any safety system are proposed.

Based on the above considerations, the staff determines that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State Library of Pennsylvania Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: William D. Travers

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 26, 1987, as supplemented June 1, 1987

Description of amendment request: The proposed license amendment would revise the Duane Arnold Energy Center (DAEC)

Facility Operating License No. DPR-49 by revising the Technical Specifications documenting the modifications made to the DAEC to comply with 10 CFR 50.62, the Anticipated Transients Without Scram (ATWS) rule. The modifications consist of two major changes to the DAEC: (1) The Standby Liquid Control System (SLCS) pump control circuitry is modified to provide simultaneous operation of the two existing SLCS pumps from the control room. The associated sodium pentaborate solution volume-concentration curve and temperature-concentration curve are revised accordingly; (2) An Alternate Rod Insertion (ARI) System is added, and the existing ATWS Recirculation Pump Trip (RPT) logic is replaced with logic which will improve the system reliability. This logic initiates both RPT and ARI on either low-low reactor vessel level or high reactor pressure.

The proposed Technical Specifications add ARI to the existing Limiting Conditions for Operation (LCO) and surveillances for RPT, revise the minimum number of operable channels required for the RPT/ARI system, clarify action statements, add action time requirements, and add a provision for placing an instrument in tripped condition in order to meet the operability requirements.

The remainder of the changes (e.g. adding page numbers, updating bases, etc.) are administrative in nature and by definition cannot involve any significant hazard considerations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Standby Liquid Control System

The addition of simultaneous operation of the SLCS pumps has no effect on the probability of an accident. A special test verified that the SLCS suction piping can deliver the increased flow rates while maintaining adequate pump net positive suction head and that there are no pump synchronization or other vibration problems with dual pump operation. The increased injection rate resulting from two-pump operation has been analyzed and its effect on the boron mixing coefficient has been found to be insignificant.

The simultaneous operation of SLCS pumps does not increase the consequences of an accident. The increase in the SLCS flowrate will bring the reactor to a subcritical condition in less time than with operation of one pump. If one of the two pumps fails, the system will operate on one pump at no greater risk than before this change. Therefore, the LCO and surveillance requirements are not required to be more stringent for compliance with 10 CFR 50.62 than for the original design basis.

The Sodium pentaborate solution volume-concentration curve in the Technical Specifications has been revised to show a new region of required volume-concentration which is more conservative. This curve, used in conjunction with the temperature-concentration curve, will ensure that the SLCS tank has sufficient shutdown capability to meet both the SLCS design basis requirements and the new ATWS requirements. The temperature-concentration curve has also been revised to be consistent with the FSAR design basis. The curve now includes a 5° F margin above the saturation temperature for the sodium pentaborate solution. Since the volume-concentration curve is revised to be more conservative and the temperature-concentration curve is consistent with the FSAR, the probability of occurrence or the magnitude of the consequences of any accident previously analyzed has not been increased.

Recirculation Pump Trip/Alternate Rod Injection (RPT/ARI)

The proposed RPT/ARI logic modification enhances the reliability of the existing ATWS-RPT logic and adds an independent backup (i.e. ARI) to the reactor trip function of the reactor protection system. As required by the ATWS rule, the RPT/ARI logic is totally independent of the reactor protection system from the sensors through final actuated devices.

The RPT/ARI logic modification improves reliability of the existing RPT logic by changing from a one-out-of-two coincidence to a two-out-of-two logic to avoid spurious trips. Thus, the minimum number of instrument channels required to be operable was revised accordingly. The Limiting Condition for Operation (LCO) was revised to outline more clearly the actions to be taken. The time limits for those actions were added to Technical Specifications. The surveillance interval of RPT is not changed and the ARI will be tested at the same frequency as RPT.

Also, if an instrument is inoperable it can be placed in the tripped condition in order to meet its operability requirement. These changes are consistent with other non-safety-related equipment in the plant (e.g. rod block instruments). Therefore, the probability of occurrence of an accident or malfunction is not increased.

The consequences of an accident are decreased because each RPT/ARI channel will trip both recirculation pumps by means of the existing end-of-cycle RPT breakers, which will provide a more rapid core flow reduction and subsequent insertion of negative reactivity due to increased voiding in the lower region of the core, and by inserting control rods by means different from the normal trip system. The revised action statements and surveillance requirements will not affect the consequences of any accident previously analyzed, as the RPT/ARI system is not used to mitigate the consequences of any accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Standby Liquid Control System

The switch to dual pump operation does not create the possibility of a different type of accident. Dual pump operation is an enhancement of the existing single-pump operating mode and the SLCS will operate on one pump at no greater risk than before this change. The revisions to the sodium pentaborate solution volume-concentration curve and solution temperature curve are to ensure consistency with the original design basis and the ATWS requirements and therefore, will not create the possibility of a new or different accident.

RPT/ARI

The RPT/ARI modifications and their associated technical specifications do not create the possibility for a new or different

type of accident. The changes do not alter the function or method of operation of any safe shutdown system. The RPT/ARI logic modification decreases the probability of a spurious trip; however, if the RPT/ARI logic spuriously trips, the resulting transient would be similar to, and bounded by, those previously evaluated, (e.g. dual recirculation pump trip at power). If the RPT/ARI logic fails to actuate when required, the consequences are no greater than before this design change was installed because the RPT/ARI logic is an enhancement of existing reactor protection features.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Standby Liquid Control

Calculations were performed to determine the need for increase in sodium pentaborate concentration for ATWS and to verify that the original SLCS design margin for single-pump operation was maintained. The increase in SLCS capacity provided by two-pump operation and the increase in minimum sodium pentaborate solution concentration from 9 to 11.8 weight percent increase the safety margin by bringing the reactor subcritical (with shutdown margin) in less time for two-pump operation than for one pump operation. These changes do not decrease the margin of safety for single-pump operation, because the original design basis is still met. The increased injection rate resulting from two-pump operation has been analyzed and its effect on the boron mixing coefficient has been found to be insignificant. The 5° F margin in the minimum solution temperature curve is consistent with the FSAR design basis and thus does not decrease the margin of safety.

RPT/ARI

The new combined RPT/ARI logic modification is an enhancement of existing reactor protection features and does not reduce the margin of safety. Each RPT/ARI channel will trip both recirculation pumps by means of the end-of-cycle RPT breakers, which will provide a more rapid core flow reduction and subsequent insertion of negative reactivity due to increased voiding in the lower region of the core, and by inserting control rods by a means different from the normal trip system. The associated technical specification changes for RPT and ARI will ensure that the system will perform in a reliable manner, or that the necessary compensating actions are taken, such that the margin of safety will be maintained.

Based on an evaluation of the above licensee analysis, the Commission's staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, DC 20036.

NRC Project Director: Martin J. Virgilio.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendments request: March 17, 1986, supplemented July 27, 1987.

Description of amendments request: The proposed amendment covers numerous changes throughout the Technical Specifications and changes in support of the human error reduction program at the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. The human error reduction program deals with reducing human errors in all facets of plant operations (both under normal and potential emergency conditions) that could occur by the instruction given in the maintenance areas, operating procedures, and adhering to the requirements of the Technical Specifications. Changes to the Technical Specifications include the reorganization and standardization of some sections, the addition of action statements for limiting conditions of operation, the removal of ambiguities to reduce the potential for misinterpretations that could lead to human error, and changes to ensure consistency exists throughout the Technical Specifications. Some of the changes fall into five general categories as follows:

1. A proposed action statement would be added for Limiting Conditions for Operation (LCO's) appearing in Sections 2 and 3 of the Technical Specifications. When the unit is in a LCO, the proposed change would require the licensee to (1) initiate action to place the unit in hot shutdown within 1 hour, (2) have the unit in hot shutdown within 6 hours, and (3) be in cold shutdown within the next 30 hours.

2. A clarification was found necessary regarding reactor criticality and reactor system temperature. The proposed change would replace the phrase "a reactor shall not be made or maintained critical nor shall it be heated or maintained above 200° F unless ..." with "a reactor shall not be made critical nor shall the reactor coolant system average temperature exceed 200° F unless ...".

3. A proposed action statement would be added for the applicable LCO's in Section 3 of the Technical Specifications requiring the unit to be brought from hot shutdown (547° F) to below 350° F within a 12-hour period.

4. In order to eliminate the possibility of ambiguities and misinterpretations, a proposed change is to replace "out of service" and "removed from service" with "inoperable" in the action statements.

5. A proposed change is to capitalize all words appearing in Sections 2, 3 and 4 that are defined in Section 1 of the Technical Specifications. This change will serve as an aid for the operator by clearly identifying those words that are defined in the Technical Specifications.

Other proposed changes involve the reorganization of the definitions, Section No 1; modifications to the Limiting Conditions for Operation, Section No 3; and Surveillances, Section No. 4. In Section No. 1, reordering the definitions is proposed in order to make the definitions easier for the operating staff to use. The identification letters have been dropped, since the definitions are not referred to by that letter identifier. This change will also facilitate the addition of new definitions in alphabetical order without re-lettering all the definitions.

The introductory sentence has been changed to correct the incorrect use of "infrequently."

The definition of "Reactor Critical" has been deleted since it states the obvious.

The definitions of "Dose Equivalent Iodine" and "E-Bar" have been moved from old Section 3.1.D.2 to Section 1.0 since they are definitions.

The titles "Members of the General Public" and "Containment Integrity" were changed to be consistent with the usage in the specifications.

"Rated Thermal Power" is consistent with the Standard Technical Specifications and consistent with the term "Thermal Power." Changes were made in the Limiting Conditions for Operation to use the terms "Rated Thermal Power" and "Thermal Power" as appropriate.

Changes to the introductory sentences and the definitions of "Channel Calibration", "Limiting Condition(s) for Operation", "Physics Tests", "Operable - Operability", "Safety Limits" and "Site Boundary" were made to clarify and simplify the existing definitions.

The licensee has proposed many changes throughout Sections 3 and 4 of the Technical Specifications that have been evaluated by the staff and are considered to fall under any one of the following categories:

a. Changes that are administrative in nature.

b. Changes that would be compatible with the existing requirements in the Standard Technical Specifications.

c. Changes reflecting staff guidance issued in the NRC Generic Letters and additional restrictions recommended by the NRC staff.

d. Changes that would result in deleting redundant statements.

e. Changes involving modifications to existing action statements that would be equivalent to those appearing in the Standard Technical Specifications.

The licensee has also proposed other specific changes that do not fall under any of the categories described above. Each of these changes is described below:

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A. A specific proposed change deals with changing the negative rate trip associated with power range neutron flux rate from less than or equal to 15% to less than or equal to 7%. The proposed change affects technical specification TS 2.3A2h. The change will allow the removal of an operational restriction at a reactor power level above 90% and when the rods are less than 215 steps withdrawn.

B. A specific change would waive the Technical Specification requirement of maintaining 2000 gallons of boric acid solution at 11.5 to 13% boron in the storage tanks when the reactor is in cold shutdown, since the primary system would have been already borated in the beginning of cooldown for placing the reactor in cold shutdown. While the reactor is in cold shutdown, the boric acid solution is not needed. The proposed change involves the addition of technical specification TS 3.2.E.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (51 FR 7751). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes and has determined that they do not constitute an unreviewed safety question. The licensee also has evaluated the changes against the above standards and has concluded that the proposed changes do not involve a significant hazards consideration.

The Commission has also provided examples of amendments that are likely to involve no significant hazards considerations (51 FR 7751). Example (ii) of actions involves a change that "constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement". Specifically, the proposed TS changes involve the addition of action statements for the existing Limiting Conditions for Operation (LCO) (item 1 above) and place a time limit in which the unit must be brought down to temperature below 350° F (item 3 above) and would impose additional restrictions on plant operability by specifying time limits in which the unit must be placed in a cold shutdown condition after an LCO is reached. These additional restrictions would be in place for all of the LCO's appearing in Sections 2.0 and 3.0 of the Technical Specifications.

However, in one area of the Technical Specifications, these restrictions would replace an existing restriction that deals with the operability of the auxiliary feedwater pumps. Specifically, the licensee has proposed to change the existing time limit in which the unit must be brought down to a temperature below 350° F in the event of an inoperable auxiliary feedwater pump from what currently exists in the technical specifications. Example (vi) of actions not likely to involve a significant hazards consideration involves a "change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan ...". The proposed change would lengthen by 6 hours the time to bring the unit to cold shutdown for the case of an inoperable auxiliary feedwater pump. The proposed change may result in reducing a safety margin and change the probability or consequences of a previously analyzed accident, but the change is within the acceptable criteria with respect to safety margins and previously analyzed accidents. On this basis, the staff proposes to determine that all changes to the Technical Specifications associated with the addition of the action statements for the LCO's (item 1 above) and the action statement dealing with bringing the unit to cold shutdown (i.e., below 350° F) within a specified time (item 3 above) involve no significant hazards considerations.

Another example of actions involving no significant hazards consideration is Example (i), "a purely administrative change to technical specifications: for example to achieve consistency throughout the technical specification, correction of an error, or a change in nomenclature." The staff proposes to determine the general changes associated with the reactor criticality and reactor system temperature (item 2 above), the replacement of "out of service" and "removed from service" with "inoperable" (item 4 above) and capitalizing all words in the technical specifications that are defined (item 5 above) are administrative in nature to achieve consistency throughout the technical specifications. All changes to technical specifications related to these general changes were reviewed and the staff concluded that in no way would these changes reduce the restrictive level or change the intent of the technical specifications.

Changes dealing with the reorganization of the definitions in Section No. 1 are adminstrative and/or editorial in nature and, therefore, fall under example (i) of actions not likely to involve a significant hazards consideration. The staff has reviewed all of the changes in the definition section (No. 1) and has determined that none of the changes would reduce the level of safety nor change the intent of the requirements of the technical specifications. These changes serve only to clarify and eliminate potential ambiguities that may arise when the technical specifications are applied to plant operations. On this basis, the staff proposes to determine that all changes to the definition section (No. 1) of technical specifications do not involve a significant hazards consideration.

The licensee proposed changes throughout Sections 3 and 4 of the Technical Specifications are categorized as (1) administrative in nature, (2) additional restrictions comparable to those in the Standard Technical Specifications, and (3) changes that reflect guidance appearing in the NRC generic letters. All of the proposed actions in Sections 3 and 4 of the technical specifications fall under three of the examples, (i), (ii), and (vi), provided by the Commission as actions not likely to involve significant hazards considerations. These involve:

1. (i) a purely administrative change to the technical specifications to achieve consistency throughout the technical specifications, correction of error or change in nomenclature. The actions falling under this example are clarifying statements or deletion of statements that have led to confusion when the plant operating staff has interpreted the requirements in the technical specification.

2. (ii) changes constituting an additional limitation, restriction or control not presently included in the technical specifications. The actions falling under this example are additional restrictions appearing in the Standard Technical Specifications or guidelines appearing in the NRC's generic letters. In no way do the proposed actions relax the intent of the technical specifications.

3. (vi) changes which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but where the results of the changes are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Proposed changes falling under this example involve modifications to the existing action statements that may result in some increase in the probability or consequences of a previously analyzed accident or may reduce

in some way a safety margin but that are clearly within the NRC guidelines appearing in the Standard Technical Specifications or guidance criteria given in NRC generic letters.

On this basis, the staff proposes to determine that all changes to Sections 3 and 4 of the technical specifications, except for those addressed below, do not involve significant hazards considerations.

The Commission has completed the evaluation of other proposed changes that are not covered by the above evaluation. The additional proposed changes deal with negative rate trip and the availability of 2000 gallons of inventory of boric acid solution as described in A and B above and are addressed separately below.

A. Negative Rate Trip

The following analysis applied the standards provided in 10 CFR 50.92 for the determination of a no-significant-hazards consideration.

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

While the proposed negative rate trip changes may result in some increase in the consequences of a previously-analyzed accident, the results are clearly within the bounds of the Commission guidance given by the safety evaluation issued by letter dated December 11, 1984 associated with analysis of the control rod drop. Futhermore, there will be no increase in the probability of a previously analyzed accident.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The Commission analyzed all of the potential accidents in the safety evaluations issued on February 17, 1983 and December 11, 1984. Based on review of these documents, the Commission concludes that no new or different accident will be created that could result from the proposed change.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed change does not involve a significant reduction in a margin of safety as analyzed by the licensee and the results documented in the licensee's topical report NSPNAD-8102P, Revision 2. This report was reviewed by the Commission and found acceptable as indicated by the safety evaluation issued on February 17, 1983.

On the basis of the above discussion, the staff proposes to determine that the change in negative rate trip from less than or equal to 15% to less than or equal to 7% does not involve a significant hazards consideration.

B. Availability Requirement of 2000 gallon inventory of boric acid solution during cold shutdown

The following analysis applied the standards provided in 10 CFR 50.92 for the determination of a no-significant-hazards consideration.

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The boric acid exists in the reactor coolant system and the reactor is protected against the return to criticality during all accidents previously evaluated. Thus, by injecting boric acid into the primary system prior to entering cold shutdown, the volume requirement of the boric acid has fulfilled its safety function and, therefore, in no way will there be an increase in the probability or consequences of a previously evaluated accident.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As discussed above, once the boric acid is added to the reactor coolant system, the boric acid has fulfilled its safety function. Therefore, this change will not create a new or different kind of accident since the plant has been placed in a condition that is at a higher level of safety as opposed to hot standby or power operation.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

No safety margins are affected by the proposed change because the change becomes effective only when the plant is brought to cold shutdown when plant conditions are at a much higher level of safety as discussed above.

On the basis of the above discussion, the staff proposes to determine that the change regarding the boric acid volume requirement during cold shut-down does not involve a significant hazards consideration.

On the basis of the above examples and the licensee's determination, the staff proposes to determine that the proposed changes to the technical specifications do not involve a significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, N.W., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendments request: August 14, 1987

Description of amendments request: The proposed Technical Specification (TS) change would reflect minor changes in the plant organization as follows:

1. Transfer responsibility for implementation of the fire protection program from Plant Superintendent Operations & Maintenance to the Plant Manager.

2. Change the title Superintendent of Maintenance to General Superintendent of Plant Maintenance.

3. Change the title Superintendent of Operations to General Superintendent Plant Operations.

4. Change the title Plant Superintendent Engineering & Radiation Protection to General Superintendent Plant Engineering & Radiation Protection.

5. Add a new position of General Superintendent Planning and Services. Remove Supervisor of Security and Services from the organization diagram.

6. Add a new position of Assistant to the Plant Manager.

7. Add the new position of Shift Manager under the General Superintendent Plant Operations.

The proposed TS changes would also eliminate certain requirements for plant management and support staff to hold current Senior Reactor Operator (SRO) licenses, as follows:

(1) Delete the "(LSO)" notation for the General Superintendent Plant Engineering and Radiation Protection in Figure 6.1-2;

(2) Change the "(LSO)" for the General Superintendent Plant Operations to "(FLSO)" in Figure 6.1-2;

(3) Add a footnote to define "(FLSO)" at the bottom of Figure 6.1-2 as follows:

FLSO Formerly Licensed Senior Operator or Licensed Senior Operator; and

(4) Add a phrase to TS Section 6.5G to read "....may be made with the concurrence of two members of the unit management staff, at least one of whom holds a Senior Reactor Operator's License."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (51 FR 7751). One of the examples is (i) "A purely administrative change to technical specifications: for example a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The licensee's proposed changes described in 1 thru 7 above involve either a change in the title of an existing position or correcting the organization chart to reflect a number of new positions resulting from an improvement in the plant organization. These are purely administrative changes in the titles of certain positions in no way affect or change the functions or scope of responsibility of the positions. Therefore, the staff considers these changes as merely changes in nomenclature. The new positions reflecting the improved plant organization do not affect the safety level of plant systems or procedures nor the previously analyzed accidents. The new positions will provide improved

management control in the areas of planning administration, security, and general housekeeping and, therefore, are considered corrections in management. Accordingly, the Commission proposes to determine that the proposed changes 1 thru 7 do not involve significant hazards considerations.

The proposed changes to eliminate certain excessive requirements for senior reactor operator (SRO) licenses for plant management would be consistent with the requirements of the Commission's Standard Technical Specifications. Example (vi) of the Commission's guidance concerning actions not likely to involve a significant hazards consideration is "A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan ..." In this case the margin of safety may be somewhat reduced in that plant management would not be required to maintain current SRO requirements but the proposed changes clearly meet the Commission requirements specified in the Standard Technical Specifications, NUREG-0452. On this basis, the staff proposes to determine that the requested action does not involve a significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, N.W., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Pacific Gas and Electric Company, Docket No. 50-275, Diablo Canyon Nuclear Power Plant, Unit No. 1 San Luis Obispo County, California

Date of amendment request: September 24, 1987 (Reference LAR 87-08)

Description of amendment request: The proposed amendment would revise License Condition 2.C.(7) of the Diablo Canyon full power license, DPR-80, to allow submittal of the Long Term Seismic Program (LTSP) final report by July 31, 1989, rather than by July 31, 1988. In support of its request, PG&E presented the following discussion.

License Condition 2.C.(7) of the Diablo Canyon Unit 1 full power license, DRP-80, requires PG&E to develop and implement a program to reevaluate the seismic design basis used for the Diablo Canyon Power Plant (Letter from D. Eisenhut to J. Shiffer, dated November 2, 1984, Issuance of Facility Operating License DPR-80). In response to this license condition, PG&E has developed the Diablo Canyon Long Term Seismic Program (LTSP). The license condition presently requires that "The program shall be completed and a final report submitted to the NRC three years following the approval of the program by the NRC Staff." The NRC Staff approval of the LTSP plan was given in a letter dated July 31, 1985, which sets the current schedule date of July 31, 1988 for final report submittal.

In 1987, the Advisory Committee on Reactor Safeguards (ACRS) recommended that the seismic design basis of Diablo Canyon should be reevaluated "in about ten years" with any applicable new information taken into account (Letter from S. Lawroski, Chairman ACRS, to J. Hendrie, dated July 14, 1978, ACRS Report on Diablo Canyon). The recommendation of the ACRS was not tied to any operational milestone but was meant to represent a reasonable time interval for assessing the utilization of applicable new geoseismic techniques and to permit the acquisition of new data in evaluating any impact on the seismic design basis. It is apparent that the ACRS intended no hard and fast time limit and assumed that the plant would operate for a number of years prior to completion of the study. Indeed, the ACRS stated in its 1978 letter that "there is reasonable assurance that Diablo Canyon Nuclear Power Station Units 1 and 2 can be operated at power levels up to [full power] without undue risk to health and safety of the public" if the seismic study were to be undertaken and other measures unrelated to seismic concerns were implemented. When the NRC initially imposed the requirement for an LTSP during the low power licensing proceeding and set a completion date of approximately three years, it reaffirmed its previous conclusions that the seismic design basis for Diablo Canyon was adequate (CLI-84-5 dated April 13, 1984).

Moreover, in its review of the LTSP plan in 1984, the ACRS also stated "[it found] no reasons to alter [its] conclusions stated in the report [ACRS's] dated July 14, 1978 regarding operation of this nuclear plant", (Letter from J. Ebersole, Chairman ACRS, to N. Palladino, dated June 20, 1984, ACRS Report on Diablo Canyon).

The NRC confirmed its previous decision regarding the LTSP during its consideration of the full power license, stating that there was no reason to modify its previous conclusion on the seismic design basis (Safety Evaluation Report Supplement No. 27, July 1984). Thus, the current schedule, which provides for completion of the LTSP three years after NRC approval of the LTSP plan, was adopted by the NRC when it issued the full power license for Diablo Canyon in 1984 (CLI-84-13, dated August 10, 1984).

PG&E has made significant progress toward the completion of the LTSP in accordance with program plan, as approved by the NRC in its July 31, 1985 letter. In conjunction with the NRC staff and its consultants, PG&E has held a number of technical workshops on the status and progress of the LTSP since the program's inception. Recently, PG&E has submitted several interim technical reports to the NRC. However, due to several significant and recent developments, PG&E is now requesting an extension of the LTSP schedule.

First, the Diablo Canyon Rate Case, which has been pending for over three years before the California Public Utility Commission (CPUC), now has a firm schedule for submission of testimony and hearing of testimony which directly impacts personnel working on the LTSP. Second, in May 1987 the Public Staff Division, the public advocacy group within the CPUC, filed a report of over 100 volumes and 17,000 pages, setting forth its views on matters it has placed in contention. PG&E's rebuttal testimony with regard to geoseismic issues is required late this year, with hearing of testimony and related matters set for March to June 1988. In order to respond in a timely and complete fashion to the geoseismic issues, PG&E requires the assistance of several key LTSP personnel and corresponding support personnel. PG&E estimates that these personnel will be required for approximately one year to aid in the preparation of testimony, to attend and testify at hearings, to prepare findings of fact and conclusions of law and otherwise to assist in post-trial proceedings on geoseismic matters.

The information developed to date as part of the LTSP has led to a better geotectonic understanding of the area surrounding the Diablo Canyon Power Plant. At this time, PG&E has not concluded its studies. However, based on the current state of the information available, the seismic design of the plant remains adequate. Thus, the NRC's previous conclusion that the seismic design basis for Diablo Canyon is adequate remains unchanged. There are no adverse safety considerations associated with the requested schedule change and PG&E believes that there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change.

Basis for proposed no significant hazards consideration determination: The Commission proposes to determine that this amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92 a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change is only a schedular change to a

license condition which reschedules the time of submittal for the LTSP final report.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed change is a schedular change and as such does not involve any physical alterations to the plant, any changes in facility operation, or otherwise affect any margin of safety.

Accordingly, the licensee has determined that the proposed change to License Condition 2.C.(7) involves no significant hazards consideration.

The NRC Staff has reviewed the proposed change and the licensee's determination and finds it acceptable. Therefore, the Staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: April 23, 1987 (P-87100)

Description of amendment request: The proposed amendment would modify Technical Specification 5.4, "Instrumentation and Control Systems Surveillance and Calibration Requirements," Tables 5.4-1 through 5.4-4 which provide the minimum frequencies for checks, calibrations, and testing of the Plant Protective System (PPS) parameters. The proposed amendment would replace the referenced method for the application of an "internal" test signal for verification of trips and alarms and adjustment for trips and indications by specifying only that a test signal be applied. This change would provide the alternative of using either an internal test signal within the appropriate instrument channel or an external test signal to simulate the sensor input. Both test signals are calibrated to National Bureau of Standards (NBS) traceable standards. This change is all inclusive within Technical Specification 5.4 with the exception of the Scram and Rod Withdrawal Prohibit Startup Channel calibration requirements.

An applied test signal demonstrates functional operability and verification of channel response within a specified range and accuracy. The testing process ensures the capability of safety systems to perform their intended design function. Proper surveillance procedures exist to ensure that appropriate calibration and verification test methods are performed to demonstrate operability requirements.

Basis for proposed no significant hazards consideration determination: The proposed amendment does not involve a significant hazards consideration because operation of Fort St. Vrain Nuclear Generating Station in accordance with this change:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change allows for the diversity and flexibility of using either an internal or external test signal appropriately applied to demonstrate safety system operability requirements. Both test signal sources are calibrated in accordance with NBS traceable standards. Operability requirements are not changed by eliminating the specific test method referenced for the application of an internal test signal. The use of an external test signal does not change the probability for an inadvertent actuation of a PPS automatic action. Use of either test method provides a simulated input injected as closely as possible to actual sensor input considering system design. Use of an external test signal does not deviate from the requirements of IEEE-279, August 1968, committed to in the FSAR nor Criterion 19 of the FSAR General Plant Design Criteria. Also, the deletion of specific test methodology is consistent with the level of detail provided in the Standard Technical Specifications (STS). Therefore, this change does not increase the probability or consequences of an accident.

(2) Does not create the possibility of a new or different kind of accident from any previously evaluated. It has been determined that a new or different kind of accident will not be possible due to this change. The elimination of referencing a specific test method allows the alternative to use equivalent test methods to accomplish required surveillances for demonstrating operability requirements. Regulatory requirements are still accomplished by this proposed change. Therefore, no new or different kind of accident has been created.

(3) Does not involve a signifcant reduction in a margin of safety. Applying an appropriate test signal, either from a internal or an external source, ensures that safety systems are verified for functional requirements and calibrated within a specified range and accuracy. Proper surveillance procedures exist to ensure that appropriate levels of testing are accomplished to demonstrate operability. Allowing diversity in the use of sources with equivalent test signals enhances the ability to ensure that surveillance frequencies and requirements are met. Therefore, this change does not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a signicant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P. O. Box 840, Denver, Colorado 80201-0840

NRC Project Director: Jose A. Calvo

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 2, 1987, as supplemented July 7, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications' Bases Section 2.2.1, Turbine Trip, and Table 3.3-1, Reactor Trip System Instrumentation, to indicate that the P-9, rather than the P-7, Permissive Setpoint will defeat the automatic block of a reactor trip on a turbine trip when 2 of 4 Power Range Neutron Flux Channels are registering greater than or equal to 50%, rather than 11%, of Rated hermal Power. This change will permit continued reactor operation following turbine trips, provided that reactor power is no greater than 50% of Rated Thermal Power. This will enable the plant to either restart the turbine for trips which are readily correctable or to commence an orderly reactor shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its July 2, 1987 submittal. The July 7, 1987, supplemental letter

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corrected typographical errors in the original submittal.

Updated Final Safety Analysis Report (UFSAR) Section 15.2.5 contains an analysis of the condition II Partial Loss of Forced Reactor Coolant Flow. The accident scenario evaluates a fault in the power supply to a reactor coolant pump which can result in a partial loss of coolant flow. If the reactor is at power at the time of the accident, the immediate effect of loss of coolant flow is a rapid increase in the reactor coolant temperature. The accident analysis assumed that the low reactor coolant flow signal is available to trip the reactor. Above 36% of Rated Thermal Power (i. e., the P-8 setpoint), low flow in any one of the four loops will actuate a reactor trip, while between 11% and 36% of Rated Thermal Power (i. e., between P-7 and P-8) low flow in any two of four loops will actuate a reactor trip. A reactor trip signal from the reactor coolant pump circuit breaker open position is provided as an anticipatory trip signal which serves to backup the low flow signals.

Changing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power will not affect the low reactor coolant loop flow or reactor coolant pump circuit breaker open position signals. The change removes the defeat of the automatic block of reactor trip upon turbine trip from P-7, which is an independent trip signal from the two signals provided for protection against a partial loss of coolant flow. Above 50% of Rated Thermal Power, the 30 second turbine-generator motoring feature is still available as the P-9 setpoint only serves to trip the reactor upon a turbine trip. The 30 second time delay associated with the generator decoupling from the network is an independent feature from the turbine trip signals and even if this feature fails upon turbine trip, sufficient Reactor Protection System (RPS) signals are available as described above to mitigate an overpower transient. As a result, the UFSAR Section 15.2.5 accident analysis bounds the consequences of a turbine trip event below 50% of Rated Thermal Power with or without turbine-generator motoring and hence the proposed changes do not increase the possibility or consequences of this previously evaluated accident.

UFSAR Section 15.2.7 contains an analysis of the Condition II Loss of External Electrical Load and/or Turbine Trip. The description of the accident sequence identifies that the reactor would be tripped directly from a signal derived from the turbine auto stop oil pressure and/or the turbine stop valves unless below 11% of Rated Thermal Power, that power level associated with the P-7 permissive setpoint. The analysis however contains several conservative assumptions including: (1) a complete loss of steam load at 102% of full power, (2) no direct reactor trip upon turbine trip, and (3) no credit for steam dump or steam generator power operated relief valves. Four accident evaluations were completed using the LOFTRAN digital computer program assuming beginning of life conditions for minimum moderator reactivity feedback and end of life conditions for maximum moderator reactivity feed back both of which were completed assuming credit for the effect of pressurizer spray and power operated relief valves (PORVs) as well as assuming no credit for pressurizer spray and PORVs. These four cases have been evaluated using the P-9 setpoint (nominal 50% power).

The analyses performed without pressure control, both minimum and maximum reactivity feedback cases, indicate that a reactor trip on high pressurizer pressure will occur within 6-7 seconds if the event is initiated from full power, and within about 12-17 seconds if the event is started from 50% power. For both the full power and partial power evaluations, the reactor trip occurs long before the fast bus transfer is attempted, thus the loss of flow which may occur due to the fast bus transfer failure after 30 seconds of turbine-generator motoring will have no effect on the transient for either the full or partial power cases.

The analysis performed at partial power (50%) with pressure control from the pressurizer PORVs and sprays, for both the minimum and maximum moderator reactivity feedback cases, indicate that the reactor may not trip until an undervoltage or low flow setpoint is reached after failure of the fast bus transfer 30 seconds into the event. The power, temperature and pressure conditions which exist at the time of the loss of flow for the partial power cases are much less severe with respect to minimum DNBR than those conditions which exist for the complete loss of flow event (UFSAR Section 15.3.4).

For the minimum feedback case, the reactor will essentially remain at the 50% power level until the reactor trip occurs on the reactor coolant pump undervoltage or low flow signal. The reactor coolant average temperature increases for the partial power loss of load event; however, the RCS average temperature will not significantly increase above the nominal full power RCS average temperature and thus will not offset the (DNB) benefit from the large difference in power level. The power transient for the maximum reactivity feedback case will steadily decrease from the initial power level due to the heatup and moderator feedback effect. The RCS average temperature for this case will increase, but not above the nominal full power RCS average temperature, so the resultant minimum DNBR will be greater than the minimum DNBR for the loss of flow event (UFSAR Section 15.3.4). Therefore, the FSAR full power complete loss of flow event bounds the partial power cases with respect to the minimum DNBR reached during the transient. The cases without pressure control are always more limiting with respect to peak pressures and, as stated above, the UFSAR full power loss of load event will bound any partial power event with respect to peak pressure.

Finally, the proposed change would increase the turbine trip to 50% of Rated Thermal Power and hence the reactor would not be tripped above the 11% Rated Thermal Power level identified in the accident description. However, since the LOFTRAN computer program did not take credit for the direct turbine-reactor trip, whether such a trip takes place or not does not affect the results of this accident analysis. Hence changing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power has no bearing on the results of the loss of external electrical load and/or turbine trip. As a result, the UFSAR Section 15.2.7 accident analysis bounds the consequences of a turbine trip event below 50% of Rated Thermal Power with or without a subsequent reactor trip and hence the proposed changes do not increase the probability or consequences of this previously evaluated accident.

UFSAR Section 15.3.4 contains an analysis of the Condition III Complete Loss of Forced Reactor Coolant Flow. This accident sequence evaluates the effects of a complete loss of forced reactor coolant flow from a loss of electrical power supply to the reactor coolant pumps.

Changing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power will not affect the RPS signals provided for protection against a complete loss of forced reactor coolant flow. The change removes the defeat of the automatic block of reactor trip upon turbine trip from the P-7 signal and adds the defeat to the P-9 permissive signal. This is an independent trip signal from the three signals identified above which remain unaffected. Between 11% and 50% of Rated Thermal Power the three signals identified above will still be available to mitigate the consequences of a complete loss of forced reactor coolant since the reactor coolant pumps will still be operating. Above 50% of Rated Thermal Power the three signals will function as they do currently for P-7. The installation of the P-9 setpoint in no way alters or affects the capability of the RPS to perform its intended function. As a result, the UFSAR Section 15.3.4 accident analysis bounds the consequences of a turbine trip event below 50% of Rated Thermal Power with or without a subsequent reactor trip and hence the proposed changes do not increase the probability or consequences of this previously evaluated accident.

Inherent within the proposed change is the capability of the Turbine Control System to handle a steam dump to the condenser at or below 50% of Rated Thermal Power. UFSAR Section 10.4.4.1 discusses the design of the steam dump control system and discusses the consequences should the system fail to operate both above and below 50% of Rated Thermal Power.

The operation of the steam dump system is not the only means to control secondary system pressure following a load loss or turbine trip. Therefore, credit can be taken for the function of this system, and hence, it can be concluded that a reactor trip below 50% of Rated Thermal Power is not required following a loss of load or turbine trip from a pressure standpoint. Additionally, increasing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power does not create the possibility of a new or different accident in terms of the capability of the secondary system to handle full or partial load pressures in the event the turbine control system fails to automatically dump steam to the condenser.

Westinghouse has completed a study of the potential for increased pressurizer PORV opening from a turbine trip without a reactor trip at 50% of Rated Thermal Power and has

concluded that (i) a turbine trip below 50% of Rated Thermal Power will not result in opening the pressurizer power operated relief valves, and (ii) that even considering the scenario along with degraded control system performance (i.e. steam dump system, pressurizer spray system or rod control system failure), the pressurizer power operated relief valves will not open.

The use of the P-9 setpoint for SGS Unit No. 1 is restricted until receipt and installation of hardware required to actually change the setpoint (currently PSE&G has only enough material onsite to install the modification for SGS Unit No. 2). As a result, PSE&G is proposing the use of the P-8 setpoint (i.e. at or below 36% of Rated Thermal Power) in the interim between NRC issuance of this amendment request and the subsequent receipt and installation of the P-9 hardware. The proposed change does not affect the P-7 setpoint in any manner other than to remove the turbine-reactor trip permissive. Similarly, the addition of this permissive to the P-8 setpoint does not affect any other functions the P-8 setpoint currently performs. Additionally, the P-8 setpoint (less than or equal to 36% of Rated Thermal Power) is less than the P-9 setpoint (less than or equal to 50% of Rated Thermal Power) and hence, the accident analyses which bound the proposed change for P-9 also bound the proposed temporary change for P-8. Therefore, the use of a P-8 setpoint prior to the P-9 setpoint on SGS Unit No. 1 will not create the potential for any new or different kind of accident than previously evaluated.

The proposed change does increase the turbine-reactor trip to 50% from 11% of Rated Thermal Power; however, this increase is not a significant change in the margins of safety. This conclusion can be reached because of the inherent design feature of SGS, namely that the turbine control system is already designed such that a 50% steam dump is within the operating limits of the station. Hence, the design of the plant is not changing, only the current Technical Specifications governing turbine-reactor trips. In addition, the proposed change conforms to Example 6 of 48FR14870 in that the change is clearly within all acceptable criteria with respect to the system.

Therefore, on the basis of the licensee's analysis, with which the staff agrees, and because the proposed changes fit the example cited above wherein the acceptable criteria of Standard Review Plan Sections 15.2.1 - 15.2.5, 15.3.1 and 15.3.2 are satisfied, the Commission proposes to determine that the proposed changes involve no significant hazards considerations.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: June 2, 1987 (TS 234)

Description of amendment requests: The proposed amendments would change the Browns Ferry Nuclear Plant technical specifications for Units 1, 2, and 3, to clarify that areas in which the intensity of radiation is exactly 1000 mrem/hr are covered by high radiation area control procedures. The current technical specification requirements 6.3.D.1 and 6.3.D.2 cover high radiation areas "less than 1000 mrem/hr" and "greater than 1000 mrem/hr," respectively. The proposed amendments would change technical specification 6.3.D.1 to cover high radiation areas less than or equal to 1000 mrem/hr.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide the Commission its analysis, using standards in 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 50.92, the licensee has performed the following analysis of these standards as they relate to the proposed change to clarify that areas in which the intensity of radiation is exactly 1000 mrem/hr are covered by high radiation area control procedures:

1. Since the proposed amendment will serve only as a clarification of existing requirements and no relaxation of any current requirements will result, there will be no increase in the probability or consequences of an accident.

2. The proposed amendment will not eliminate or modify any protective function nor permit any new operational condition; and, therefore, will not create any new accident possibilities.

3. Since the proposed amendment is administrative in nature and will correct a deficiency in the current technical specification, no reduction in a safety margin will result.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 22, 1987 (TS 87-24)

Description of amendment requests: The proposed amendments would modify Technical Specification (TS) Section 3/4.4.8 to reflect changes in the measurement of the Reactor Coolant System (RCS) specific activity. Specifically, the proposed amendments would: (1) change references of specific activity to units of microcuries per milliliter from microcuries per gram, (2) change references to various isotopes of iodine cited in item 4 of Table 4.4-4 to Dose Equivalent I-131 Concentration, and (3) add a concise definition of gross activity and an explanation of how gross activity is evaluated.

The proposed changes would provide for the most commonly used terminology in the industry, consistent evaluation of the RCS specific activity, and a clearly understood meaning of the term "gross activity" and the manner in which the gross activity of the RCS is evaluated.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed technical specification change would make three amendments to the Limiting Condition for Operation (LOC) 3.4.8 and the associated Surveillance Requirements (SRs). First, references to specific activity in the reactor coolant system (RCS) would be made in terms of a unit volume rather than a unit mass; microcuries per milliliter would replace references to microcuries per gram. Second, the results of isotopic analysis for iodine (I) would express activity in terms of Dose Equivalent I-131 rather than activity in terms of various isotopes of iodine. Third, a concise definition of gross activity is provided. This proposed amendment does not involve a change in plant hardware, plant operating setpoints or

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limits, or plant operating procedures. Thus, the proposed technical specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As previously stated, the proposed amendment does not involve a change in plant hardware, plant operating setpoints or limits, or plant operating procedures. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in the margin of safety?

No. Again, as previously stated, the proposed amendment does not involve a change in plant hardware, plant operating setpoints or limits, or plant operating procedures. The proposed amendment does provide for both the use of terminology that is common within the industry and a concise definition of gross activity, thereby reducing the potential for misinterpretation of the affected technical specification. Thus, the proposed amendment involves no reduction in the margin of safety but rather provides for an increase in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 29, 1987 (TS 87-19)

Description of amendment requests: The proposed change would delete action statement "b" of Technical Specification (TS) 3.6.5.2 which allows power operation for up to 30 days when the ice bed temperature monitoring system is inoperable, provided that required air handling and refrigerant equipment is operable. With deletion of this statement, action statement "c" would apply, which allows power operation to continue for only 6 days with an inoperable ice bed temperature monitoring system, under certain conditions.

Basis for proposed no significant hazards consideration determination: Ice condenser preoperational testing and refrigerant unit heat load testing identified deficiencies in ice condenser cooling system performance. The test data indicate that the action statement requirements would not ensure that the ice bed temperature would remain within acceptable limits. Therefore, the licensee has proposed to delete this action statement so the more restrictive statement "c" would govern. The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The operability of the ice bed temperature monitoring system ensures that the capability is available for monitoring the ice temperature. In the event the monitoring system is inoperable, the action requirements provide assurance that the ice bed heat removal capacity will be retained within the specified time limits. The function of the ice condenser system is to provide pressure suppression capability to primary containment in the event of a loss of coolant accident. It is necessary to delete the proposed action statement because operating requirements cannot be met and thus ensure that adequate pressure suppression capability will be available. The proposed change will enforce more stringent shutdown requirements if unable to monitor ice bed temperature. The possibility of accidents previously evaluated has been decreased.

2. Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. Deletion of the action statement removes an option to continue power operation for a specified time, while trying to restore the ice bed temperature monitoring system to an operable condition. Compliance with the remaining action statement must still be met. The possibility for a new or different type of accident has not been created.

3. Is the margin of safety significantly reduced?

No. The same shutdown requirements still apply if unable to monitor ice bed temperature, and the same surveillance testing is applicable to detect any problems with the monitoring system. Thus, the margin of safety has not been changed.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 10, 1987 (TS 87-28)

Description of amendment requests: The proposed amendments to the Technical Specifications (TS) would move requirements for certain radiation monitors (high-range containment) from TS Section 3.3.3.1, "Radiation Monitoring Instrumentation" to Section 3.3.3.7, "Accident Monitoring Instrumentation." The proposed change also adds limiting conditions for operation and surveillance requirements for high-range noble gas effluent monitors. The accident monitoring equipment was installed in accordance with TMI Action Plan item II.F.2.2 and II.F.1.3.

TS for these monitors were originally proposed, along with other TMI Action Plan items, in an application dated January 25, 1984. Editorial corrections to the TS pages were provided in Enclosure 1 to a letter dated December 9, 1985. These submittals were initially noticed in the **Federal Register** on September 28, 1984 (49 FR 38410) and December 17, 1986 (51 FR 45214), respectively.

The pages of the above submittals relating to containment high range and noble gas effluent monitors are completely superseded by this June 10, 1987, application.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The containment area and noble gas monitors provide helpful information to the operator in assessing the plant condition during and following an accident. The consequences of an accident or occurrence previously evaluated may actually be reduced because of the extended range of the containment area monitors and the installation of additional diagnostic equipment provided by the noble gas monitors.

2. Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. Installation of the high-range radiation monitors does not create the possibility for a new or different type of accident than previously analyzed. The monitors only connect to the release paths.

3. Is the margin of safety significantly reduced?

No. The margin of safety is actually increased because of the additional diagnostic capabilities. The high-range radiation monitors are required to be operable, and out-of-service times for this equipment are limited by the action statements.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: August 11, 1987 (TS 87-32)

Description of amendment requests: The proposed amendments to the Technical Specifications would increase the diesel generator continuous and two-hour ratings in the surveillance requirements. The change ensures that the diesel generator sets can obtain the manufacturer's load ratings for the test method used and thus that the surveillance will demonstrate that the diesel generators can operate at the higher load ratings. In addition, a wording change from "2000 hour rating" to "continuous rating" would be made for consistency with IEEE Standard 387-1972.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The proposed revision to the surveillance test requirements is in the conservative direction. It ensures that the surveillance criteria is appropriate for the test method used. The change makes the acceptance criteria more restrictive, and ensures that the diesel generator sets can obtain the manufacturer's load ratings for the test method used. The wording change simply provides clarity and consistency between the specifications and industry standards. Therefore, the probability or consequence of any evaluated accident in the safety analysis report is not increased.

2. Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. The proposed change requires no hardware or setpoint changes. The function of the diesel generators and its support equipment is not changed. The change makes the acceptance criteria for the diesel-generator set load ratings more restrictive, and ensures that it is appropriate for the test method used. As such, the possibility of an unevaluated accident is not created.

3. Is the margin of safety significantly reduced?

No. The proposed change makes the surveillance criteria more restrictive by testing the diesel-generator sets to the manufacturer's ratings. The wording change will provide clarity to the surveillance requirement and consistency with industry standards. Because of this, the proposed change will increase the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: September 1, 1987

Description of amendment request: The licensee has proposed a modification to Table 3.3.2-2, "Isolation Actuation Instrumentation Setpoints," of the WNP-2 Technical Specifications. The proposed amendment is to change the allowable range for the trip setpoint for trip function 1.d., Primary Containment Isolation, Main Steam Line Tunnel Temperature - High. The new trip setpoint range would be "less than or equal to 164 degrees Fahrenheit" in place of the currently specified range of "less than or equal to 150 degrees Fahrenheit." The allowable value (the third column in Table 3.3.2-2) would not be affected by the proposed amendment.

The action statement in Technical Specification 3.3.2 is based on the allowable value in the table rather than on the allowable trip setpoint range. The specified trip setpoint range does not include the allowable value. The margin between the trip setpoint range and the allowable value is to accomodate realities of monitoring instrumentation such as accuracy and drift as well as to accomodate precision with which an instrument can be set.

The objective of monitoring steam line tunnel temperature is to provide an early indication of and response to a main steam line leak. At the time of issuance of the WNP-2 Operating License and Technical Specifications, the licensee based the allowable value for the trip function on a calculation of tunnel temperature resulting from a steam leak rate corresponding to a 25 gpm condensate leak. The computed tunnel temperature of 185 degrees Fahrenheit was adjusted for theoretical instrumentation considerations and then further conservatively reduced to 170 degrees Fahrenheit as the submitted Technical Specification allowable value proposed by the licensee. The trip setpoint limit was arrived at by subtracting from the allowable value an additional allowance for instrument drift of 6 degrees yielding 164 degrees F. However, the licensee established the upper limit for the trip setpoint at 150 degrees F in consideration of potential long term concrete degradation effects not related to instrumentation constraints.

During the summer of 1987, temperature in the main steam line tunnel exceeded the trip setpoint value but with no steam line leak contributing to the heat load. In the summer of 1986

the licensee had also experienced elevated temperatures in the tunnel and subsequently attempted to eliminate the condition by improving area cooler performance and reducing heat loads.

In recognition of the higher ambient temperature prevailing in the tunnel during the summer months, the licensee has proposed that the trip setpoint range be revised to "less than or equal to 164 degrees Fahrenheit." The 6 degree margin to the allowable value will adequately allow for total instrumentation loop inacuracy, calibration error and maximum instrumentation drift expected in the eighteen month interval between required calibrations.

The licensee has stated that equipment qualification concerns associated with this change in set point are currently being addressed, particularly the effect of elevated temperature on the MSIV solenoid pilot valves, motor operators and cabling. The most sensitive items are the solenoid pilot valves, which currently must be replaced on a regularly scheduled basis. The replacement schedule is affected by the time-at-temperature profile which will continue to be monitored. Similarly, concrete will deteriorate when exposed for a long period of time at temperatures above 150 degrees Fahrenheit. Accelerated degradation can occur above 200 degrees Fahrenheit. The minor temperature excursion above the 150 degree threshold limit, coupled with relatively short time periods of exposure, will have no measurable effect on the concrete.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; and (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the new trip setpoint range continues to provide an adequate margin for instrumentation so that the allowable value is not exceeded.

The proposed change does not create the possibility of a new or different kind of accident than previously evaluated because the higher temperature now known to prevail in the tunnel does not create new or different adverse short term effects on structures or equipment. Any effects are long term and can be accounted for in the management of the WNP-2 equipment qualification program.

The proposed change does not involve a significant reduction in a margin of safety because the allowable value will not be revised.

Based on our review of the proposed modification, the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036

NRC Project Director: George W. Knighton

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: April 10, 1986 and July 17, 1987

Description of amendments request: These amendment requests were originally noticed May 21, 1986 (51 FR 18698). Subsequent to this noticing, the licensee responded, by letter dated July 17, 1987, to the staff's May 5, 1987 request for additional information. An item in this request for additional information noted that 10 CFR Part 55 had been revised (effective May 26, 1987) to require that records relating to training and qualification for current NRC-licensed staff and key personnel be retained until the operators' license is renewed. The licensee's July 17, 1987 response to the request for additional information revised the proposed amendments to be in conformance with the new regulation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether actions involve significant hazards considerations by providing certain examples (51 FR 7751).

One of the examples of actions not likely to involve a significant hazards consideration is example (vii), a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The staff has reviewed the proposed Technical Specification revisions and determined that they constitute a change to conform the licenses to the regulations. Therefore, the staff proposes to determine that the revision of the amendments involve no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: August 26, 1987

Description of amendments request: The proposed amendments would incorporate a change to Technical Specification (TS) 15.4.11, "Control Room Emergency Filtration," and incorporate administrative changes to non-radiological Technical Specifications 16.1 and 16.5. The proposed change to TS 15.4.11 modifies the laboratory sample analysis parameters for temperature and iodine concentration for the periodic iodine-removal efficiency testing in-place charcoal adsorbent. The proposed administrative changes to TS 16.1 and 16.5 would revise the wording of the "WPDES Permit" definition to be more generic, and correct an improper reference to another part of the TS, respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has examined its application with respect to the criteria of 10 CFR 50.92 and provided the following analysis of no significant hazards considerations using the Commission's standards.

"The first criterion of this Part [50.92] concerns changes involving a significant increase in the probability or consequences of an accident previously evaluated. The change to Specification 15.4.11 partially alters the test conditions under which charcoal adsorbent iodine-removal efficiency is calculated. This change results from adoption of a modern (February 1986) ASTM standard which was written for application to the commercial nuclear power industry. Since the new test conditions would more closely simulate the actual post-design basis accident conditions seen by the control room emergency filtration system, a more accurate appraisal of charcoal bank performance is obtained. As a result, control room habitability can be more accurately assessed. The probability or consequences of an evaluated accident, therefore, do not change. The changes to the non-radiological specifications are purely administrative and cannot, by their nature, effect a significant increase in the probability or consequences of an evaluated accident.

"The second criterion of Part 50.92 involves creating the possibility of a new or different kind of accident. The proposed changes are either an improvement in a specified surveillance analysis or administrative in nature; therefore, a new or different kind of accident from any accident previously evaluated cannot result from these changes.

"The third criterion concerns a significant reduction in a margin of safety. While the change to Specification 15.4.11 does adopt a new standard, the new test criteria will provide a better assessment of the charcoal adsorber bank performance in their design condition.

From this standpoint, therefore, the margin of safety is actually increased; and, again, the changes to the non-radiological Technical Specifications, by their administrative nature, do not cause a reduction in a margin of safety."

The staff has reviewed the licensee's no significant hazards consideration and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: September 15, 1987

Description of amendment request: The proposed amendment would change the expiration date for the Yankee Nuclear Power Station Operating License, DPR-3, from November 4, 1997, to July 9, 2000. The Technical Specifications for the plant would not be affected. The current term of the Operating License is 40 years, commencing with the November 4, 1957 issuance of the Construction Permit, this represents an effective Operating License (OL) term of only 37 years and four months as the OL was issued on July 29, 1960. Current NRC practice as stated in 10 CFR 50.51 is to issue an OL with a term of 40 years from date of issuance. This amendment proposes to extend the OL in accordance with current practice.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the September 15, 1987, letter states the following:

The proposed amendment to the Yankee operating license does not involve any changes in the design, operation or Technical Specifications of the facility, but instead, only requests a change to the expiration date of the current license. This extension is within the range permissible by the Commission's regulations, specifically 10 CFR 50.51. In addition, a finding of no significant hazards consideration is consistent with recent NRC actions on applications of this type. The proposed extension will have no significant impact on the safe operation of the plant or present an undue risk to the health and safety of the public.

The proposed license amendment to permit the 40-year operating life does not constitute a significant hazards consideration as defined in 10 CFR 50.92 for the following reasons:

a. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. Age-related degradation was identified as the only mechanism having potential impact on the probability of occurrence of an accident previously evaluated. Changes in the population size and distribution were identified as the only parameter having potential impact on previous conclusions concerning the consequences of an accident previously evaluated.

Conservatisms have been incorporated, in the design, construction, and operations of the Yankee facility. Furthermore, programs have been developed and implemented to: (1) evaluate and maintain the service life of structures, systems, and components, (2) conduct technical analyses for verifying the adequacy of structures, systems, and components, and/or (3) allow surveillance, maintenance, and inspection of the facility. Such programs assure that the Yankee facility will be operated as intended by its design and the Technical Specifications. That is, regardless of the age of the overall facility, these programs assure that the structures, systems, or components will be refurbished and/or replaced to maintain component functional capability, and the margins of safety required by the Technical Specifications.

The fracture toughness of the reactor vessel to thermal shock during a postulated loss-of-coolant-accident has been determined by the NRC to be acceptable in accordance with the Pressurized Thermal Shock (PTS) requirements of 10 CFR 50.61. In particular, it was determined that the Yankee reactor will not reach the NRC's screening criterion for the calculated PTS reference temperature until March 2020. Therefore, the proposed amendment additional term of two years and eight months to July 9, 2000 is not significant in terms of reactor vessel fracture toughness.

No changes to the above programs are necessary for assuring that during the proposed amendment term the Yankee facility continues to perform as intended by its design and the Technical Specifications during an additional two years and eight months of operation. Therefore, the proposed amendment will have no significant impact on plant safety.

In 1986, Yankee Atomic Electric Company conducted a study to update the 1980 population figures found in the FSAR and to project populations for the year 2000. As the report indicates, the 50-mile area surrounding the Yankee facility is expected to remain predominantly rural. There are no changes to the Exclusion Area boundaries; the increase in population in the Low Population Zone is projected as being negligible, and the nearest Population Center, which is approximately 20 miles from the Yankee facility, will remain so. Based on the results of this study, the off-site exposures from releases due to postulated accidents are expected to remain well within the limits set forth in 10 CFR, Part 100.

Because there have not been significant changes in the population and its distribution surrounding the Yankee facility, no significant changes are predicted through the year 2000, and Yankee Atomic Electric Company will continue to operate the facility in accordance with its design and Technical

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Specifications, the potential radiological consequences of an accident previously evaluated remain unchanged.

The proposed amendment will not result in an increase in the probability or the consequences of an accident previously evaluated in the FSAR because: (1) facility operations will be continued in accordance with the facility's approved design and Technical Specifications, and (2) changes to the population and distribution surrounding the Yankee facility are expected to be negligible.

b. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Conservatisms have been incorporated in the design, construction, and operations of the Yankee facility. Furthermore, programs have been developed and continue to be implemented to assure that the facility is operated as intended by design and in accordance with the Technical Specifications. In particular, the In-Service Inspection, Environmental Qualification, and Preventive Maintenance Programs assure that facility structures, systems, and components will be refurbished or replaced as appropriate. That is, regardless of the age of the facility, these programs ensure that structures, systems, and components are refurbished and/or replaced to maintain component functional capability and the margins of safety required by the Technical Specifications. No changes to these programs are necessary for assuring that the Yankee facility will continue to perform as designed and in accordance with the Technical Specifications during an additional two years and eight months of operation. Therefore, there is no possibility that a different type of accident is created.

c. The proposed amendment does not involve a significant reduction in a margin of safety.

The margins of safety identified in the Technical Specifications have been incorporated into the Yankee facility's design, construction, and operations. With respect to operations, such margins are the basis for the facility operating and emergency procedures, as well as the Yankee In-Service Inspection, Environmental Qualification, and Preventive Maintenance Programs.

The inspection, surveillance, and maintenance requirements of these programs assure that, regardless of the age of the overall facility, the functional capabilities of structures, systems, and components will be maintained throughout the life of the facility through refurbishment and/or replacement as appropriate to meet the Technical Specifications. No changes to these programs are necessary to assure that during the additional two years and eight months of operation the Yankee facility will continue to perform as intended by its design and the Technical Specifications.

Therefore, the proposed amendment does not reduce the margin of safety as defined in the Technical Specification bases.

Based on the above the licensee concludes that the extension of Yankee's operating license in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of accidents previously considered, nor create the possibility of a new or different kind of accident, and will not involve a significant reduction in a safety margin. Therefore, they conclude that there is no significant hazards consideration associated with the proposed amendment to the Yankee operating license.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Vernon L. Rooney, Acting Director

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this biweekly notice. They are repeated here because the biweekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 29, 1987, as supplemented August 3, 1987

Description of amendment request: The amendment would revise the Technical Specifications to permit the Residual Heat Removal pumps to remain operable during the performance of Safety Injection System Test.

Date of publication of individual notice in **Federal Register:** September 9, 1987 (52 FR 34029).

Expiration date of individual notice: October 10, 1987.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: June 10, 1987 as revised September 1 and 23, 1987

Brief description of amendment request: Revision to 125 volt dc battery profile.

Date of publication of individual notice in **Federal Register:** October 1, 1987 (52 FR 36849)

Expiration date of individual notice: November 2, 1987

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al, Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: July 1, 1987, as supplemented by letter dated August 7, 1987.

Brief description of amendments: The amendments revised the technical specifications by renaming the CEA Symmetry Test Program to CEA Reactivity Program and expanding its note to allow either the CEA Symmetry Test or Worth Measurements of all full-length CEA groups to be performed following core reload or initial fuel load.

Date of issuance: September 29, 1987

Effective date: September 29, 1987

Amendment Nos.: 22, 12 and 2

Facility Operating License Nos. NPF-41, NPF-51 and NPF-65: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32190). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: August 29, 1986 and September 15, 1986, supplemented March 24, 1987.

Brief description of amendments: These amendments revise the Fire Protection License Conditions, remove the Fire Protection Technical Specifications, and replace the requirement to measure the source range neutron flux instrumentation discriminator bias curves.

The licensee's submittal dated March 24, 1987, was made as a result of NRC staff request to clarify the language of the September 15, 1987, submittal and does not contain substantive changes.

Date of issuance: September 9, 1987

Effective date: September 9, 1987

Amendment Nos.: 10 and 10

Facility Operating License Nos. NPF-37 and NPF-66. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37506) and November 19, 1986 (51 FR 41847). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 1, 1987

Brief description of amendment: The license amendment revises Technical Specification Section 4.10.D.1 to provide long-term acceptance criteria for the steam generator tubes with defects in the rolled region (bottom four inches of the tube) and to update the bases for this criteria. These changes will not affect repair criteria for flaw indications located outside of the roll expansion region. This license amendment will also modify the current requirement that "The plugging limit for sleeves will be determined prior to the 1987 refueling outage for Cycle 15," to, "The plugging limit or sleeves will be determined prior to the first refueling outage following sleeve installation," since, to date, no sleeves have been installed at the Haddam Neck Plant. This license amendment also revises Technical Specification Section 4.10.D.2 to delete the exclusion of tube row 37, column 73 in Steam Generator 2 from plugging, since this tube has subsequently been plugged during a mid-cycle shutdown in July, 1986.

Date of issuance: September 25, 1987

Effective date: September 25, 1987

Amendment No. 96.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52FR24546). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York Inc., Docket No. 50-03, Indian Point Unit No. 1 (IP-1), Buchanan, New York

Date of application for amendment: December 19, 1985 as revised July 27, 1987.

Brief description of amendment: This amendment revises the Technical Specifications (TS) to assure that IP-1 requirements for the Radiological Protection Program are consistent with IP-2 requirements.

Date of issuance: October 2, 1987

Effective Date: October 2, 1987

Amendment No.: 37

Provisional Operating License No. DPR-5. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32201). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Octber 2, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: September 6, 1984, as supplemented May 20, 1987

Brief description of amendments: The amendments modify the Technical Specifications by adding requirements for the reactor vessel head vent system.

Date of issuance: October 2, 1987

Effective date: October 2, 1987

Amendment Nos.: 76 and 57

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37078) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 19, 1987 supplemented July 14, 1987 (partial response)

Brief description of amendment: This amendment describes organizational changes to the Corporate and Oyster Creek Site Organization of GPU Nuclear Corporation in the Administrative Controls Section of the Technical Specifications. The amendment also changes Section 6.10.1.c of the Technical Specifications to be consistent with 10CFR50.73 terminology. Matters related to Core Spray System Testable Check Valves will be the subject of a future action.

Date of Issuance: September 30, 1987

Effective date: September 30, 1987

Amendment No.: 117

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29917) The July 14, 1987 letter provided the licensee's analysis concerning the no significant hazards. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 30, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 18, 1986, which superseded a submittal dated April 5, 1985.

Brief description of amendment: The amendment revises the Duane Arnold Energy Center Technical Specifications as they relate to the identification of the appropriate containment purge and vent valves, to the operation of the containment purge and vent valves when the plant is at power and to the valve closure times.

Date of issuance: September 30, 1987

Effective date: September 30, 1987

Amendment No.: 146

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11365) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 23, 1987

Brief description of amendment: The amendment revised the Technical Specifications by changing the description of fire detectors in the component cooling water pump room "A" and implementing certain name changes and and correcting typographical errors for the charcoal filter units.

Date of issuance: October 1, 1987.

Effective date: October 1, 1987.

Amendment No.: 24

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9576) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: June 23, 1987

Brief description of amendment: This amendment adds a requirement to the Maine Yankee Technical Specifications to process radioactive wastes for shipment to disposal facilities in accordance with Maine Yankee's Process Control Program (PCP).

Date of issuance: September 29, 1987

Effective date: 60 days from September 29, 1987

Amendment No: 101

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29920). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: V. Nerses, Acting Director

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: December 16, 1986 and supplemented January 30, 1987.

Brief description of amendment: The first change to the technical specifications involves higher set points for the main steam line radiation monitors and the steam tunnel ventilation radiation monitors to permit a hydrogen water chemistry pre-implementation test. The second change corrects two items issued in Amendment No. 2 to the technical specifications.

Date of issuance: September 29, 1987

Effective date: September 29, 1987

Amendment No. 12

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2884). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: October 14, 1986 and July 21, 1987 (partial response)

Brief description of amendment: The change modified the Technical Specifications (TS) as follows: (1) a number of changes to the TS associated with post-TMI plant modifications as addressed in NRC's letter, "NUREG-0737 Technical Specifications (Generic Letter No. 83-37)," dated November 1, 1983, (2) Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SR) for the main steam radiation monitors which are added to existing TS 3/4.3.3.8, "Accident Monitoring Instrumentation," and (3) an instrument identified in TS Table 3.3-11 as the "Safety Valve Position Indicator Acoustic *Flow* Monitor" is now identified as "Safety Valve Position Indicator Acoustic Monitor." The TS associated with the Reactor Coolant

Level Monitor will be addressed in future correspondence.

Date of issuance: September 28, 1987

Effective date: September 28, 1987

Amendment No.: 120

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29924) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: July 14, 1987, (supplemented by letter dated July 31, 1987) and August 3, 1987.

Brief description of amendment: The change modified the Technical Specifications (TS) as follows: (1) a new TS 4.7.6.13.e requires periodic verification of control room inleakage, (2) a new TS 6.9.1.5d, "Annual Reports", requires reporting of pressurizer relief valve and safety valve failures and challenges and (3) a new TS 6.17, "Secondary Water Chemistry", specify requirements for the steam generator secondary water chemistry program.

In addition to the TS changes described above, the July 14, 1987 application also requests a change to the TS regarding steam generator tube degradation which will be addressed in a future licensing action.

Date of issuance: September 25, 1987

Effective date: Following initial entry into Mode 4 prior to operating in Cycle 9.

Amendment No.: 119

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32206) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 12, 1987

Brief description of amendments: These amendments revised the Technical Specifications relating to (1) reactor core thermal hydraulic stability and (2) operation with jet pump flow indication failures and jet pump operability surveillance requirements. When we issued Amendment Nos. 78 and 77 to Facility Operating License Nos. DPR-44 and DPR-56 on May 15, 1981, the transmittal letter contained a statement restricting the Peach Bottom units from operating at more than 50% of rated thermal power while in the single loop mode of operation pending resolution of postulated concerns about thermal hydraulic instability under high power-low flow conditions. This restriction was removed for Peach Bottom Unit 3 via the transmittal letter for Amendment No. 107 issued December 3, 1984. With issuance of these Amendments, the restriction of limiting Peach Bottom Unit 2 to 50% of rated thermal power while in the single loop mode is rescinded as unnecessary since the new requirements assure safe conditions for singe loop operation. Implementation of the enclosed Technical Specifications will fully resolve generic issues B-19 (Thermal Hydraulic Stability) and B-59 (Single Loop Operation) for Peach Bottom, Units 2 and 3 as discussed in generic letters 86-02 and 86-09 issued January 23, 1986 and March 31, 1986, respectively.

Date of issuance: September 24, 1987

Effective date: September 24, 1987

Amendments Nos.: 125 and 128

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9578) Renoticed on May 20, 1987 (52 FR 18985) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 27, 1984, as supplemented January 17, June 2, and December 10, 1986 (TS 201)

Brief description of amendments: The amendments change the Technical Specifications to show recent organizational changes, provide improvements and clarifications to the administrative controls section and reformat the administrative controls section to be more in line with Standard Technical Specifications.

Date of Issuance: September 11, 1987

Effective Date: September 11, 1987, and shall be implemented within 90 days

Amendments Nos.: 138, 134, and 109

Facility Operating Licenses Nos. DPR-33, DPR-52, and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1986 (51 FR 6830). The licensee's June 2 and December 10, 1986 letters provided minor administrative changes which did not significantly change the initial application nor the staff's no significant hazards considerations determination. Therefore, renoticing the application was not warranted. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 1987.

No significant hazards consideration comments received: No

Local Public Document Room Location: Athens Public Library, South Street Athens, Alabama 35611.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10

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CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By November 20, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of Application for amendment: September 14, 1987

Brief description of amendment: The amendment has been prepared and issued on an emergency basis to permit transfer from Operational Condition 4 to Operational Condition 5 for the purpose of continuation of the Unit 1 refueling operations.

Date of Issuance: September 23, 1987

Effective Date: September 14, 1987

Amendment No.: 71

Facility Operating License No. NPF-14: Amendment revised the Technical Specifications

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, consultation with the State of Pennsylvania and final no significant hazards considerations determination are contained in a Safety Evaluation dated September 23, 1987.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18071.

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of Application for amendments: August 10, 1987

Brief description of amendments: The amendments changed the Technical Specifications to provide interim relief, while operating in cold shutdown conditions prior to any startup of the facility, from the requirement in Figure 6.2-2 of the Technical Specifications which requires that either the Plant Manager or the Superintendent-Operations shall hold a Senior Operator License.

Date of Issuance: September 29, 1987

Effective Date: September 29, 1987

Amendment Nos.: 126 and 129

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications

Public comments requested as to proposed no significant hazards consideration: Yes.

The Commission's related evaluation of the amendments, consultation with the State of Pennsylvania, State and public comments and final no significant hazards considerations determination are contained in a Safety Evaluation dated September 29, 1987.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20036

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

NRC Project Director: Walter R. Butler

Dated at Bethesda, Maryland this 15th day of October, 1987.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation

[Doc. 87-24234 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-D

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-8055]

Issuer Delisting; Application To Withdraw From Listing and Registration; General Nutrition, Inc. (Common Stock, No Par Value)

October 15, 1987.

General Nutrition, Incorporated ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock is also listed and actively traded on the New York Stock Exchange ("NYSE"). The Company plans to maintain the listing of their common stock on the NYSE and does not believe the public interest requires the duplicate listing of their common stock on the Exchange.

Any interested person may, on or before November 5, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24405 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16057/October 15, 1987/ 811-3652]

Application for an Order Under the Investment Company Act of 1940; Intramerica Variable Account A

AGENCY: Securities and Exchange Commission ("SEC").

BEST COPY AVAILABLE

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ACTION: Notice of application for an order under the Investment Company Act of 1940 ("The 1940 Act").

Applicant: Intramerica Variable Account A.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on September 2, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20540. Intramerica Variable Account A, One Blue Hill Plaza, P.O. Box 1722, Pearl River, New York, N.Y. 10965–8722.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey (202) 272–2067 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. The Applicant is a segregated investment account established by Intramerica Life Insurance Company ("Intramerica") under the laws of the state of New York on September 15, 1982. The Applicant is a unit investment trust registered udner the 1940 Act.

2. Variable annuity contracts ("Contracts") were to be issued by Intramerica through the Applicant and purchased by individuals for retirement plans. Intramerica began offering the Contracts in December, 1983.

3. The sale of Contracts was not as successful as Intramerica had hoped and, consequently, the assets of the Applicant did not increase significantly as a result of investment through the Contracts. In fact, only one Contract was ever sold.

4. The Board of Directors of Intramerica determined that continued efforts to effect new sales of the Contracts were not in the best interests of the Contractholder or Intramerica.

5. On March 19, 1986, th Board of Directors of Intramerica suspended indefinitely the offer and sale of its new Contracts.

6. The sole Contractholder of Contracts issued by Intramerica was informed of the determination to cease sales of new Contracts issued by Intramerica in an Important Notice dated April 7, 1986 and mailed on that date.

7. As described in the Important Notice, the sole Contractholder had the right, pursuant to sections 27(c) and 22(e) of the Act, to surrender his Contract and to recieve payment of the accumulated value thereof less any applicable taxes or other charges up to the time that the Colonial Penn Series Trust (the "Trust") was liquidated, and the sole Contractholder chose to do so.

8. In a related action, the Shareholders of the Trust decided to liquidate the Trust and adopted a proposed Plan of Liquidation at a Special Meeting of Shareholders of the Trust on April 29, 1986.

9. After May 9, 1986, there was no remaining Intramerica Contractholder holding a beneficial interest in the Trust.

10. After the sole Intramerica Contractholder surrendered his Contract, the Applicant ceasd to engage in any business other than that necessary for the winding up of its affairs.

11. All expenses related to deregistration under the Securities Act of 1933 and the Act have been paid by Intramerica.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–24406 Filed 10–20–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24474]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 15, 1987.

Notice is hereby given that the following filling(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 9, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Incorporated (70–6513)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to section 6(a), 7, 9(a), 10, 12 and 13 and Rules 43, 90 and 91 thereunder.

NEEI is engaged in various activities relating to fuel supply for the NEES system. By order dated December 30, 1980 (HCAR No. 21862), NEEI was authorized to enter into an oil and gas exploration and development partnership with Dorchester Exploration, Inc. On December 29, 1981, NEEI terminated the partnership with Dorchester. As a result of its participation in the partnership. NEEI has interests with Dorchester in leases in 11 states, primarily in Louisiana, Texas, New Mexico and Wyoming.

By orders of December 27, 1982, December 31, 1983, and January 13, 1986 (NCAR Nos. 22801, 23194, and 23988, respectively), NEEI was authorized to invest respectively up to $12 million, $7 million and $6 million in the further development of these properties. NEEI's current authorization expires on December 31, 1987.

NEEI states that it continues to maximize the return from these properties through selling, farming-out,

or participating in their further development. For these purposes, NEEI requests authority to invest up to $4 million in such development during the period January 1, 1988 through December 31, 1991.

Platte-Clay Electric Cooperative, Inc. (70–7446)

Platte-Clay Electric Cooperative, Inc. ("Cooperative"), P.O. Box 129, Platte City, Missouri 64079, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, a Missouri corporation incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit, rural electric distribution cooperative. Its operations are confined to Platte, Clay, Ray, Clinton, Buchanan, and Caldwell counties in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 41 Platte. It sells electric energy to its consumer members.

Under Missouri law, the service area of rural electric cooperatives is limited to communities with populations no greater than 1,500 persons. Cooperative, therefore, created Platte Clay Electric Service Co., a wholly owned subsidiary, to enable it to serve Cooperative's members and new customers in areas which may cease to be rural due to annexation by municipalities. It is stated that the election of directors and the management of the affairs of Cooperative are effectively audited and regulated by REA.

Arkansas Power & Light Company (70–7447)

Arkansas Power & Light Company ("AP&L"), Capitol Tower, P.O Box 551, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registerd holding company, and Associated Natural Gas Company ("Associated"), 405 Park Street, Blythville, Arkansas 72315, a gas utility subsidiary of AP&L, have filed a declaration pursuant to section 12(d) of the Act and Rule 44(c) thereunder.

AP&L proposes to dispose of its entire interest in Associated in compliance with the Commission's order (HCAR No. 17116, May 5, 1971), requiring Middle South to dispose of any direct or indirect interest therein. It is proposed that Southwestern Energy Company ("Southwestern") acquire the outstanding common stock and the subordinated note of Associated by affecting the cash merger of Associated and Arkansas Western Gas Company ("AWG"), a gas utility subsidiary of Southwestern, on the date of the closing. Associated will be merged with and into AWG, which will be the surviving corporation, the outstanding common stock of Associated will be canceled, the subordinated note of Associated will be assigned to AWG's parent, Southwestern, and AWG will cause the cash merger consideration of $27,094,600 to be paid to AP&L. AWG intends to operate Associated as a division of AWG. As a consequence of the proposed merger, AP&L will have fully divested itself of its entire interest in the gas business of Associated, AWG will succeed to all the assets and liabilities of Associated, including all liabilities and obligations of Associated regarding its outstanding first mortgage bonds and the subordinated note. AWG, an expanded gas utility company, will continue to provide natural gas service to the former customers of Associated in the State of Arkansas and Missouri. The proposed disposition by AP&L of its intest in Associated does not contemplate any charge in the current retail rate structure of Associated, over which the Arkansas Public Service Commission and the Public Service Commission of Missouri will have continuing jurisdiction.

New Orleans Public Service Inc. (70–7448)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

NOPSI proposes to issue and sell, pursuant to a negotiated public offering or private placement with one or more institutional investors, up to $50 million principal amount of one or more series of Rate Recovery General and Refunding Mortgage Bonds ("Bonds"). The Bonds will be sold at such price(s), will bear interest at such rate(s) and mature on such date(s) as will be determined at the time of sale. NOPSI proposes to use the proceeds from the issuance and sale of the Bonds for the financing or refinancing of its deferred costs associated with Unit No. 1 of System Energy Resources, Inc.'s Grand Gulf Nuclear Electric Station.

NOPSI states that because of its recent financial problems, an advance marketing effort may be required for a successful public offering or private placement of the Bonds. NOPSI therefore requests, pursuant to Rule 50(a)(5) under the Act, that the proposed issuance and sale of the Bonds be excepted from the competitive bidding requirements of Rule 50 so that NOPSI can negotiate the terms of issuance and sale of any series of the Bonds. NOPSI may proceed to negotiate the terms and conditions of the Bonds.

Ozark Electric Cooperative (70–7449)

Ozark Electric Cooperative ("Cooperative"), Highway 39 North, P.O. Box 420, Mount Vernon, Missouri 65712, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, a Missouri corporation incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit, rural electric distribution cooperative. Its operations are confined to Lawrence, Barry, Christian, Dade, Greene, Jasper, Newton, Polk, and Stone counties in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 30, LAWRENCE. It sells electric energy to its consumer members.

Under Missouri law, the service area of rural electric cooperatives is limited to communities with populations no greater than 1,500 persons. Cooperative, therefore, created Ozark Electric Service Co., a wholly owned subsidiary, to enable it to serve Cooperative's members and new customers in areas which may cease to be rural due to annexation by municipalities. It is stated that the election of directors and the management of the affairs of Cooperative are effectively audited and regulated by REA.

Arkansas Power & Light Company (70–7452)

Arkansas Power & Light Company ("Arkansas"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, an operating subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

Arkansas has, pursuant to prior Commission orders entered into a fuel lease ("Fuel Lease"), dated as of November 18, 1981, with Ozark Fuel Corporation, a Delaware corporation ("Fuel Company"), under which Arkansas leases from the Fuel Company the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for the generation of electric energy by its Unit No. 2 of Arkansas Nuclear One Generating Station ("ANO") (HCAR Nos. 22272 and 24239, November 13, 1981 and November 19, 1986, respectively).

Under the terms of the Fuel Lease, the Fuel Company makes payments to all

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suppliers, processors and manufacturers necessary to carry out the terms of Arkansas' contracts for Nuclear Fuel for NAO, or Arkansas makes such payments and is reimbursed by the Fuel Company. The maximum commitment of the Fuel Company to make payments for Nuclear Fuel is currently $84 million at any one time outstanding, although payments of up to $85 million may be made by the Fuel Company. The Fuel Company has financed these obligations under a Credit Agreement, dated as of November 18, 1981, as amended ("Credit Agreement"), between the Fuel Company and Swiss Bank Corporation, New York Branch ("Bank"). The term of the Credit Agreement is currently through December 1, 1987 ("Termination Date").

It is proposed to amend the Fuel Lease to provide for a termination date of December 1, 1988 to coincide with the proposed Termination Date of the Amended Credit Agreement, both agreements containing options to extend for one-year periods. All of the other terms and conditions in both agreements will remain the same, except for adjustments to the commitment and letter of credit fees. As required by the Fuel Lease, Arkansas would enter into a letter agreement consenting to the Fuel Company entering into the Amended Credit Agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24407 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Norsk Hydro A.S.
American Depository Shares, $.25 Par Value (File No. 7-0618)

IBP Inc.
Common Stock, $.05 Par Value (File No. 7-0619)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies therof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24402 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Nuveen California Municipal Value Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0620)

Nuveen New York Municipal Value Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0621)

Ligget Group Inc.
Common Stock, $1.00 Par Value (File No. 7-0622)

Americus Trust for American Express Shares
Primes (File No. 7-0623)

Americus Trust for American Express Shares
Units (File No. 7-0624)

Americus Trust for Coca-Cola Shares
Primes (File No. 7-0625)

Americus Trust for Coca-Cola Shares
Units (File No. 7-0626)

Americus Trust for Dow Chemical Shares
Primes (File No. 7-0627)

Americus Trust for Dow Chemical Shares
Units (File No. 7-0628)

Americus Trust for Ford Shares
Primes (File No. 7-0629)

Americus Trust for Ford Shares
Units (File No. 7-0630)

Americus Trust for G.E. Shares
Primes (File No. 7-0631)

Americus Trust for G.E. Shares
Units (File No. 7-0632)

Americus Trust for Mobil Shares
Primes (File No. 7-0633)

Americus Trust for Mobil Shares
Units (File No. 7-0634)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24403 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25021; File No. SR-MSRB-87-9]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB") submitted on August 20, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G-19 on suitability to require a dealer effecting a transaction in municipal securities with or for a discretionary account to make an affirmative determination, based upon information available from both the issuer and the customer, of the suitability of the transition.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24871 (September 2, 1987), 52 FR 34032. No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rule and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 14, 1987.

[FR Doc. 87-24399 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25022; File No. SR-MSRB-87-8]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB") submitted on August 20, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G-8 relating to books and records to be made by municipal securities brokers and dealers.

The proposed rule change revises the MSRB's rule G-8(f) to require municipal securities brokers and dealers selling new issue municipal securities, and complying with Commission rule 17a-3 under the Act, instead of MSRB rule G-8, to maintain records of delivery of G-32 disclosure documents, as required by rule G-8(a)(xiii).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24870 (52 FR 34031, September 9, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 14, 1987.

[FR Doc. 87-24400 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25015; File No. SR-NYSE-87-27]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.; Financial Responsibility and Procedures for Handling Error Trades

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 325(e) to increase the minimum level of the financial responsibility standard from $50,000 to $100,000 for members who execute orders on the Floor, to provide for additional alternative methods whereby members may elect to comply with the financial responsibility standard, to provide the value of an Exchange membership must equal or exceed $150,000 when used to meet the financial responsibility standard, and amendments to Rule 134 to codify certain procedures for resolving error trades and to impose certain recordkeeping requirements in regard to error trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed changes to Rule 325(e) is to assure that member financial responsibility requirements and standards are commensurate with today's levels of market activity, volatility, and order size. To achieve this objective, the Exchange proposes amendments to Rule 325(e) to increase the current financial responsibility requirement from $50,000 to $100,000 while providing broadened methods by which members can meet this standard. The Exchange is also proposing to amend Rule 134 to make clear that members may have trades as to which they have made an error cleared in the account of another member or member organization, provided such other member or member organization agrees. Rule 134 would also be amended to impose certain recordkeeping requirements on members who have their trades involving errors of $3,000 or mroe cleared in the account of another member or member organization.

Background to Rule 325(e). Rule 325(e) was originally adopted in April, 1978 [1] following amendments to the NYSE constitution which established new classes of members, *i.e.* lessees and annual members (physical access). As originally adopted, Rule 325(e) provided that members in these two membership classifications who executed orders on the Floor of the Exchange had to provide evidence of financial responsibility, by one of several means specified in the Rule, in the amount of $25,000.

The Rule further provided that the sum designated in Rule 325(e) as a level of financial responsibility was to be available solely for monies due the Exchange, and to other members and member organizations resulting from losses arising out of closing contracts on the Floor of the Exchange.

In 1980 the financial responsibility standard in Rule 325(e) was increased from $25,000 to the present $50,000 level because it was deemed, at that time, that the higher standard was more appropriate as levels of trading activity were increasing on the Exchange. In addition, the financial responsibility standard was made applicable to *all* members who execute orders on the Floor, with "seat" owning members allowed to satisfy the requirement with their membership, to the extent the

[1] *See* Securities Exchange Act Release No. 14625, April 11, 1978, 43 FR 16581.

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current value of the "seat" equalled or exceeded $75,000. (See SR–NYSE–80–23).[2]

Proposed Amendments to Rule 325(e). The Exchange proposed amendments to Rule 325(e) to increase the financial responsibility standard from $50,000 to $100,000 and to provide several additional means whereby members can meet the standard. The Exchange notes that average trade size has increased since 1980, as well as overall market volume and volatility. Thus, the Exchange believes it is proper at this time to increase the financial responsibility standard to a level that is reasonable and appropriate in light of these changes in the market since the standard was last revised in 1980.

The Exchange also proposes to amend Rule 325(e) to add two additional means by which a member can evidence financial responsibility. The Rule currently provides that a member may meet this standard by means of a written guarantee, cash held by an independent escrow agent, a letter of credit issued by a bank or other party acceptable to the Exchange, or the value of an Exchange membership (provided such membership is worth at least $75,000). The proposed amendments to Rule 325(e) would also permit a member to meet the financial responsibility standard by means of marketable securities with a value of at least $100,000 (after appropriate haircuts, to be determined in the same manner as haircuts are determined for capital requirements) on deposit with an organization acceptable to the Exchange and readily available. In addition, a lessor would be permitted to pledge the value of his membership (up to an amount of at least $100,000) to meet this lessee's financial responsibility requirement, provided the value of the lessor's membership is at least $150,000. The concept that the value of a membership must be at least $150,000 would also be applicable in the case of a "seat" owning member who is using the value of his membership to meet his own financial responsibility requirement.

Procedures for Handling Uncompared Trades and Error Trades. In addition to updating financial responsibility requirements set forth in Rule 325(e), the Exchange considers it important that there be appropriate procedures in place for the resolution of error trades which may occur on the Floor. The prompt and efficient resolution of error trades through appropriate procedures complements the concept of financial responsibility standards and helps assure that contracts entered into on the Floor of the Exchange will be honored.

In most cases, when a member makes an error in executing trades on the Floor or in reporting trade data for comparison and clearance purposes, it will result in an uncompared trade. Rule 134 provides for certain methods by which clearing member organizations and members who are participants in transactions on the Floor can resolve uncompared trades and process these trades through comparison and clearance in a timely fashion. Under this rule, the "upstairs" offices of clearing firms, when notified of an uncompared trade by the clearing house, first attempt to resolve the uncompared item through appropriate back office procedures. When a clearing firm cannot resolve an item through this initial review, it will send a "QT" (questioned trade) notice to its executing member. The executing member is then responsible to research and resolve the "QT" with the contra party to the trade.

Uncompared trades which cannot be resolved by T+5 must be closed out by each side to the trade. This provision attempts to minimize the risk exposure of an open trade.

Over the years, an informal practice has evolved on the Floor which has proven to be efficient and economical in resolving QT and error trades, and which has effectively supplemented the formal procedures codified in Rule 134. Under this practice an executing broker may place an error trade in the account of another member or member organization, frequently the specialist in the stock in question. The amount of the error will be resolved by a "difference check", or by some other means mutually acceptable to the parties.

In some cases, an executing broker may not have an error account in this own name in which to place a trade as to which he has made an error. Thus, such an executing broker needs to rely on the services that another member or member organization may agree to provide in "taking in" an error trade. In other cases, an executing broker may have an error account in his own name, but, as to a particular error trade, the cost of recording the error and its correction may be greater than the amount of the error itself. In such a case, the specialist in the subject security may agree to (although he is certainly not required to) "take in" the error trade as one of the services he may provide his customers in helping resolve errors promptly and efficiently.

Proposed Amendments to Rule 134. The Exchange believes it is appropriate at this tme to make clear in Rule 134 that a member or member organization may agree to "take in" an error trade of another member or member organization. Accordingly, proposed new paragraph (g) of Rule 134 provides that a member may have a trade as to which he made an error cleared in an account in his own name or the account of his member organization, or an account in the name of another member or member organization, with the agreement of such other member or member organization.

To facilitate NYSE monitoring of error trades, proposed Rule 134(g) requires every member to make available to the Exchange, upon Exchange request, accurate and complete records of all error trades cleared in his own account, or in the error account of his associated member organization. Where error trades of $3,000 or more are cleared in the error account of another member or member organization on the member's behalf, proposed Rule 134(g) requires the member who executed the trade to maintain accurate and complete records, which shall be available to the Exchange upon request, of the error trade, which shall include the following:

(1) Audit trail date elements as prescribed by Rule 132;

(2) The nature and amount of the error;

(3) The member or member organization that cleared the error trade;

(4) The means whereby the member resolved the amount of the error trade with the member or member organization who cleared the trade on his behalf;

(5) The aggregate amount of liability incurred and outstanding in the error trade as of the time each such error trade entry is recorded as to error trades that have been cleared by other members or member organizations;

(6) Such other information which the Exchange may require from time to time.

The Exchange believes that the provisions of proposed Rule 134(g) described above will facilitate resolution of error trades in a timely, efficient, and cost-effective manner.

Proper regulatory safeguards would be maintained by means of the recordkeeping requirements, which are intended to enable the Exchange to review error trade activity as appropriate

(2) Statutory Basis for the Proposed Rule Changes

The proposed changes are consistent with the purposes of section 6(b)(5) of

[2] The Commission approved this increase in the NYSE's financial responsibility standard in Securities Exchange Act Release No. 17208 October 9, 1980, 45 FR 69082.

the Act in that they promote the protection of investors and the public interest by increasing the minimum level of financial responsibility that must be demonstrated by all members who execute orders on the Floor of the Exchange. Further, the proposed rule changes are also based on section 6(c)(3) of the Act, which provides that an exchange may condition membership on the ability of a registered broker or dealer to meet such standards of financial responsibility as may be prescribed by the rules of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule changes will impose any burden on competition not in furtherance with the purposes of the Act.

(C) Self-Regualtory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In an Information Memorandum dated January 21, 1987 which was distributed to all members and member organizations the Exchange discussed several conceptual approaches aimed at enhancing financial responsibility standards, including the appropriateness of certain requirements for the resolution of error trades, and solicited written comments from the membership.

The Exchange bulletin basically discussed the following key concepts:

(1) An increase of the minimum financial responsibility requirement to $100,000 from the present $50,000 level;

(2) A broadening of the methods specified in Rule 325(e) by which a member can meet the financial responsibility standard by adding two additional methods;

(3) The possible adoption of a requirement that each member maintain his own error account or have access to the error account of his associated firm;

(4) The possible adoption of a requirement that a member include in his own account each error trade he is responsible for, except for errors where the loss is under $3,000. This latter exception would have allowed members to continue to use a "difference check" procedure, or other procedures mutually agreeable to the executing broker and the member or member organization "taking in" an error trade, for minor errors. Under this suggested approach, only the member or member organization that originated an order would have been permitted to take in an error committed by an executing broker.

The Exchange also suggested an alternative procedure to mandatory error accounts in its bulletin, whereby error accounts would not have been required, but members would have had to report to the Exchange errors above a specified amount that were "taken in" by another member or member organization, and the means used to resolve the error.

The Exchange received six written comments from members or member organizations in response to the Information Memo.

Summary of comments received. (1) A letter from Mr. Harry Buonocore, an independent broker, supported the concept of providing additional, alternative methods by which the Rule 325(e) financial responsibility requirement could be met, whether or not the dollar amount was increased.

(2) A letter from Mr. Alan Goldberg on behalf of Einhorn & Co., a specialist organization, expressed concern that an increased financial responsibility standard may have an impact on the clearing firm guarantees which are used as one of the alternative methods to meet the standard. Mr. Goldberg supported the concept of allowing lessors to pledge their seats on behalf of lessees, and suggested that leasing agreements make this arrangement clear.

In addition, Mr. Goldberg commented that all error trades should be placed in an error account and that the "difference check" procedure should be limited to errors of $1,000 or less.

(3) Mr. A.L. Meentemeier, on behalf of Securities Settlement Corporation, a clearing firm, suggested that mandatory error accounts are not necessary as long as individual members who effect trades on which errors occur report them to the Exchange promptly. Further, he indicated that his firm would not be interested in carrying error accounts for individual brokers.

(4) A letter from Lawrence, O'Donnell & Co., a specialist firm, favored the concept of increasing the financial responsibility level. This commentator suggested that the error account discussion in the January Information Memo was "unrealistic and not consistent with current practice." This commentator also noted its view that some independent brokers may be unfairly using the prospect of giving unfavorable ratings on the Specialist Performance Evaluation Questionnaire (SPEQ) (a form which Floor brokers fill out quarterly evaluating the performance of specialist units they are asked to rate) as a means to put pressure on specialists to "take in" QTs.

(5) The Organization of Two Dollar Brokers submitted two statements. The first statement indicated that this organization was considering the proposed increase in financial responsibility standards and would subsequently present additional thinking on this subject. The second statement recommended that all members and member firms be subject to a $25,000 minimum capital requirement, that individual members be subject to a $100,000 "error account guarantee", but that member firms be subject to an aggregated $200,000 "error account guarantee". The second statement also discussed the possible creation of a "Floor Members Guarantee Fund" to facilitate members of the Organization of Two Dollar Brokers meeting Exchange financial responsibility requirements.

Response to comments received. For the most part, commentators supported the concept of raising the financial responsibility standard from $50,000 to $100,000. Accordingly, the Exchange is proposing to amend Rule 325(e) as discussed above, which amendment includes providing additional means by which members may meet the standard.

In light of comments received, and after additional internal analysis of the issue, the Exchange has determined not to adopt the suggested mandatory error account proposal, but rather to follow the alternative approach discussed in the January Information Memo, whereby members may place error trades in the account of another member or member organization, provided they maintain records of errors above a stated amount ($3,000) handled in this fashion.

As to suggestions by Lawrence, O'Donnell & Co. that the prospect of brokers giving unfavorable SPEQ ratings may be a factor in influencing specialists to "take in" QTs, specifics from Lawrence, O'Donnell were sought. The firm subsequently informed Exchange staff that it was merely expressing its general perception, but that it was not raising allegations as to practices engaged in by any particular individual. As to the actual "taking in" of an error trade after it has been researched by the executing broker the Exchange believes that many specialist units view this activity as a reasonable service to be provided to their customers to facilitate the orderly functioning of the post-trade process. In any event, the Exchange believes that the proposed recordkeeping requirements in Rule 134(g) will provide an enhanced means for the Exchange to monitor possible abuses involving error trades.

As to raising minimum capital requirements to $25,000, the Exchange notes that capital requirements are based on SEC regulations, and have

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always been viewed by the Exchange as distinct from the evidence of financial responsibility requirements of NYSE Rule 325(e).

The Exchange does not believe it is appropriate to adopt a $200,000 aggregate financial responsibility requirement for all members associated with a member organization. Such an aggregated requirement could conceivably result in lower overall financial responsibility standards than exist currently. For example, if five members were associated with the same member organization, each member today would have to meet a $50,000 requirement, for an aggregate of $250,000. Thus, the Exchange does not believe its objective of enhanced financial responsibility standards would be achieved by adopting the proposed $200,000 aggregated standard.

As to the Organization of $2 Broker's creation of a fund that would issue a master letter of credit to its members to enable them to meet the Rule 325(e) financial responsibility requirement, the Exchange believes that this approach may be meritorious, but ultimate approval would be subject to review of all implementing details and features of this plan, and a determination that the plan is comparable to other means, deemed acceptable under Rule 325(e), for providing letters of credit.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-87-27 and should be submitted by November 12, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 19, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-24401 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Banco Central, S.A.
Capital Stock, 500 pestas Par Value (File No. 7-0635)
Fieldcrest Cannon, Inc.
Common Stock, $1.00 Par Value (File No. 7-0636)
Handleman Company
Common Stock, $1.00 Par Value (File No. 7-0637)
Timeplex, Inc.
Common Stock, $0.01 Par Value (File No. 7-0638)
Countrywide Credit Industries, Inc.
Common Stock, $0.05 Par Value (File No. 7-0639)
Stone Container Corp.
Common Stock, No Par Value (File No. 7-0640)
Trinity Industries, Inc.
Common Stock, $1.00 Value (File No. 7-0641)
Varco International, Inc.
Common Stock, No Par Value (File No. 7-0642)
AVEMCO Corporation
Common Stock, $0.10 Par Value (File No. 7-0643)
Catalyst Energy Corproation
Common Stock, $0.10 Par Value (File No. 7-0644)
Collins Food International Corp.
Common Stock, $0.10 Par Value (File No. 7-0645)
Flightsafety International, Inc.
Common Stock, $0.10 Par Value (File No. 7-0646)
Illinois Tool Works, Inc.
Common Stock, No Par Value (File No. 7-0647)
Mexico Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7-0648)
Advanced Systems, Inc.
Common Stock, $0.10 Par Value (File No. 7-0649)
Armtek Corporation
Common Stock, $1.00 Par Value (File No. 7-0650)
France Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-0651)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24404 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a

notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Office before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340

Title: Nominate a Small Business Person or Advocate of the Year

Frequency: Annually

Description of Respondents: Trade associations, chambers of commerce and small business organizations are invited to nominate small business leaders for special small business advocacy awards. The information collected on individual state/district winners can be helpful in identifying resource people in the field.

Annual Responses: 400

Annual Burden Hours: 800

Type of Request: Reinstatement

Title: Lender Transcript of Account

Form No. SBA 1149

Freuqency: Lenders who request SBA to purchase their guaranty portion of a loan are required to furnish the Agency with a certified transcript of the loan account.

Annual Responses: 5,900

Annual Burden Hours: 5,900

Type of Request: Reinstatement

October 14, 1987.

William Cline,

Chief, Administrative Information Branch, Small Business Administration.

[FR Doc. 87–24408 Filed 10–20–87; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego, will hold a public meeting at 10:00 a.m. on Tuesday, November 10, 1987, in the Federal Building, 880 Front Street, San Diego, California 92188, Room 2–S–14, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For Further information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, Room 4–S–29, San Diego, California 92188, (619) 557–7252.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1987.

[FR Doc. 87–24409 Filed 10–20–87; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Meeting

The U.S. Small Business Administration Region IV Advisory Councils, located in the geographical areas of Miami, Florida, and Jacksonville, Florida, will hold a joint public meeting at 1:00 p.m., on Thursday, October 29, 1987, and adjourning at Noon, on Friday, October 30, 1987, at the Cocoa Beach Hilton, 1550 North Atlantic Avenue, Cocoa Beach, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 1320 S. Dixie Highway, Suite 501, Coral Gables, Florida 33146, telephone (305) 536–5521, or Douglas E. McAllister, District Director, U.S. Small Business Administration, 400 West Bay Street, Box 35067, Jacksonville, Florida 32202, telephone (904) 691–3103.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 9, 1987.

[FR Doc. 87–24410 Filed 10–20–87; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting at 1:00 p.m. on Thursday, November 12, 1987 in the District Director's Office, SBA, 210 Walnut Street, Room 749 Federal Building, Des Moines, Iowa 50309, to begin the selection process of Des Moines District Small Business Person of the Year and Advocates of the Year 1987, and to discuss such matters as may be presented by council members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Conrad Lawlor, District Director, U.S. Small Business Administration, at the address above, (515) 284–4567.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 9, 1987.

[FR Doc. 87–24411 Filed 10–21–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition by the Blue Bird Body Company (Blue Bird) requesting that NHTSA exempt school bus driver seats from the impact requirements of Federal motor vehicle safety standard 222. The petitioner asserts that the restraining barrier behind the driver's seat and in front of the first designated seating position, is enough to give the front seat passenger the protection that he or she otherwise would get from a driver's seatback conforming with Standard 222. It is redundant and unnecessary, according to Blue Bird, to have both the retraining barrier and the driver seat requirements.

NHTSA is denying this petition because the existence of a retraining barrier separating the driver's seat from a designated passenger seat is irrelevant to the need for head impact protection when the driver's seat is in the head protection zone. The restraining barrier should help to prevent a child from being thrown entirely out of the seating area, but the barrier *cannot* prevent the child's head from being propeled beyond the restraining barrier in some crashes. When the child's head is propelled beyond the restraining barrier, it is important that any surfaces that could be contracted by the head afford some safety protection for the child's head.

FOR FURTHER INFORMATION CONTACT: Robert Williams, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400

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Seventh Street SW., Washington, DC 20590, (202) 366–4919.

SUPPLEMENTARY INFORMATION: In a petition dated December 16, 1986, Blue Bird Body Company (Blue Bird or petitioner) requested that NHTSA specifically exempt school bus driver seats from the impact requirements of FMVSS 222, subparagraphs S5.3.1.2 and S5.3.1.3. These cited paragraphs set out head impact, acceleration, and force distribution limits for "contactable surfaces" in the "head protection zone."

Paragraph S5.3.1.1 states the dimensions of the head protection zone. For purposes of the Standard, any surface "on the front of a seat back or restraining barrier 3 inches or more below the top of the seat back or restraining barrier" falls outside the definition of contactable surface, and therefore outside the head protection zone. The manufacturers generally certify compliance with S5.3.1.2 and S5.3.1.3 by padding school bus seat backs, including the driver's seat back. Within the dimensions of the head protection zone, a surface generally is a "contactable surface" if it may be contacted by a head form described in Standard 222 (S6.6).

Additionally, paragraph S5.2 requires a school bus manufacturer to install a "restraining barrier" in front of any designated seating position that does not face the back of another passenger seat. This barrier is necessary for compartimentalization, a concept of insuring safety through the use of strong, well-padded seats with high seat backs, and better seat spacing, all to safely retain and cusion students during a crash.

Petitioner argues that this restraining barrier effectively isolates a passenger from the driver's compartment, and that S5.3.1.2 and S5.3.1.3 add costs to bus manufacture without supplying a corresponding safety benefit. The agency disagrees. Compartmentalization and head protection zones are separate aspects of school bus passenger protection. While compartmentalization keeps school bus passengers in a well-padded area, the head protection zone requirements seek to minimize head injuries within that area.

In a letter of March 1, 1979, Blue and Bird asked NHTSA to withdraw an earlier interpretation of Standard 222 which stated that when a driver's seat is a contactable surface in the head protection zone, the seat must not cause a head form test device to suffer any head impact, acceleration, or force distribution trauma in excess of the limits set out in the Standard. In continuing to maintain the validity of its prior interpretation, NHTSA observed that while a restaining barrier may help keep a child within the confines of a designated seating position during an accident, the barrier cannot protect a child against a force impelling the child's head beyond the barrier. The agency continues to believe that there is a safety benefit in applying the performance criteria for head protection to any contactable surface (including a driver's seat) within the head protection zone. Absent any data that even suggest the contrary conclusion, NHTSA declines to exempt driver's seats from S5.3.1.2 and S5.3.1.3.

For the preceding reasons, NHTSA denies the Blue Bird petition that the agency exempt driver's seats from the requirements of Standard 222 as referenced above.

(15 U.S.C. 1392, 1407, 1410a) delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 15, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–24317 Filed 10–20–87; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 29–87]

Treasury Notes of October 31, 1989, Series AE–1989

Washington, October 15, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of October 31, 1989, Series AE–1989 (CUSIP No. 912827 VL 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The Notes will be dated November 2, 1987, and will accrue interest from that date, payable on a semiannual basis on April 30, 1988, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, pror to 1:00 p.m., Eastern Daylight Saving time, Wednesday, October 21, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 20, 1987, and received no later than Monday, November 2, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the

yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to instititutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, November 2, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, October 29, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, November 2, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-24459 Filed 10-19-87; 11:42 pm]

BILLING CODE 4810-40-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 203
Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, October 26, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 13, 1987.)
2. Proposed purchase of reader/sorter equipment within the Federal Reserve System.
3. Building proposals and budget regarding the Jacksonville Branch of the Federal Reserve Bank of Atlanta.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 16, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24420 Filed 10-16-87; 5:00 pm]

BILLING CODE 6210-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 1 p.m., Tuesday, October 27, 1987.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTER TO BE CONSIDERED: The adjudication of cases whose disposition involves solely the issues of jurisdiction and timeliness.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Date: October 19, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87-24471 Filed 10-19-87; 12:24 pm]

BILLING CODE 7400-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, October 27, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first four items are open to the public. The last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: North Star Aviation, Inc. PA-32-RT-300 and Alameda Aero Club, Cessna 172, Midair Collision, Oakland, California, March 31, 1987.
2. Highway Accident Report: Multiple Collision Between an Intercity Charter Bus, Passenger Car, and Transit Bus on State Route 495, North Bergen, New Jersey, October 9, 1986.
3. Recommendation to FAA concerning Failure of Main Landing Gear Spring Steel Struts on Cessna Model 182F Airplanes.
4. Recommendation to FAA regarding Fiber Composite Carburetor Floats and Automotive Gasoline in General Aviation Engines.
5. Opinion and Order: Administrator v. Plaus, Docket SE-7853; disposition of Administrator's motion to dismiss.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 16, 1987.

[FR Doc. 87-24452 Filed 10-19-87; 12:02 pm]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 52, No. 203
Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 61220-7033]

Foreign Fishing; Groundfish of the Gulf of Alaska

Correction

In rule document 87-23222 beginning on page 37463 in the issue of Wednesday, October 7, 1987, make the following correction:

On page 37463, in Table 1, in the entry for "Flounders", in the sixth column, "300" should read "0".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-23; RMs-5289; 5458; 5863]

Radio Broadcasting Services; Cazenovia, Manlius, Rome, Schoharie, Voorheesville, NY

Correction

In rule document 87-23064 beginning on page 37460 in the issue of Wednesday, October 7, 1987, make the following correction:

§ 73.202 [Corrected]

On page 37461, in the first column, in the last paragraph, in the fifth line, "Channel 238B1" should read "Channel 239B1".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6658

[ID-943-07-4220-10; I-4966]

Withdrawal of Land for Roadless Recreation Area; Idaho

Correction

In rule document 87-22450 appearing on page 36577 in the issue of Wednesday, September 30, 1987, make the following corrections:

1. In the first column of the page, in the land description, under T. 50 N., R. 5 E., under Sec. 4, in the fourth line, "NE½" should read "NE¼."

2. In the sixth line, "E½SE¼NW¼" should read "E½SE¼SE¼NW¼."

3. In the seventh line, "SW¼NW¼ SE¼NW¼" should read "SW¼SE¼ SE¼NW¼."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-211-AD; Amdt. 39-5736]

Airworthiness Directives; Airbus Industrie

Correction

In rule document 87-22721 beginning on page 36752 in the issue of Thursday, October 1, 1987, make the following corrections:

1. On page 36753, in the first column, in paragraph B.2, in the first line, "0.31" should read "0.331."

2. In the same column, in paragraph C., in the second line, "20" should read "250."

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Collection of Late Fees and Interest Penalties on VA Funding Fees

Correction

In proposed rule document 87-23617 beginning on page 37973 in the issue of Tuesday, October 13, 1987, make the following correction:

On page 37973, in the third column, under **SUPPLEMENTARY INFORMATION**, the 24th line should read, "**Register**. The interest charge is in addition to the 4 percent late charge, but the late charge is not".

BILLING CODE 1505-01-D

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Federal Register

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Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Leasing of Allotted Lands for Mining; Oil and Gas and Geothermal Contracts; Proposed Rules

VOL 52 ISS 203 OCT 21 1987 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Leasing of Allotted Lands for Mining; Oil and Gas and Geothermal Contracts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Withdrawal of final rule and republication as proposed rule.

SUMMARY: A final rulemaking document was published in the **Federal Register** on August 24, 1987 (52 FR 31916). A notice deferring the effective date to October 24, 1987, was published in the **Federal Register** on September 23, 1987 (52 FR 35702). In response to expressions of public concern, the Bureau of Indian Affairs has decided it would be in the public's interest to republish this document in this issue of the **Federal Register** as a proposed rule with a public comment period of 60 days. The proposed rule is published in the proposed rule section of this issue of the **Federal Register**. The rule will not become effective on October 24, 1987; the rule has been withdrawn.

FOR FURTHER INFORMATION CONTACT: Joseph Johnston, Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, Mail Stop 340–SIB, 1951 Constitution Avenue NW., Washington, DC 20245; telephone (202) 343–3722.

W.P. Ragsdale,

Assistant Secretary—Indian Affairs.

[FR Doc. 87–24074 Filed 10–20–87; 8:45 am]

BILLING CODE 4310–02–M

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Leasing of Allotted Lands for Mining; Oil and Gas and Geothermal Contracts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: In response to concerns expressed by the public, the Bureau of Indian Affairs has decided to republish as a proposed rule, the rule published as final on August 24, 1987 (52 FR 31916). The rule will not become effective on October 24, 1987 as scheduled (52 FR 35702) and public comments on the rule will be accepted. New rules and regulations implementing the Mineral Development Act of 1982 are proposed in this document. In addition, the document proposes revising existing rules and regulations in 25 CFR Part 211 governing mining on tribal lands, and removing 25 CFR Part 212 which governs mining on allotted Indian lands. A new Part 225 is proposed to be added to govern oil and gas development contracts and leases from other mineral development. The regulations in existing Part 212 governing mineral development on allotted Indian lands are subsumed in the proposed regulations at Parts 211 and 225.

DATE: Comments on this proposed rulemaking must be received by December 21, 1987.

ADDRESS: Comments should be submitted to the Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, Mail Stop 340–SIB, 1951 Constitution Avenue, NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Don Aubertin or Dick Cramer Bornemann (303) 236–2660, Lakewood, Colorado, or Joseph Johnston (202) 343–3722, or Thornton Field, Office of the Solicitor (202) 343–9331, Washington, DC.

SUPPLEMENTARY INFORMATION: The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble.

Pursuant to the mandate in section 8 of the Indian Mineral Development Act (Act) (96 Stat. 1940; 25 U.S.C. 2107), the Bureau of Indian Affairs (BIA) published a notice of proposed rulemaking in the **Federal Register** on July 12, 1983 (48 FR 31978) intended to implement the 1982 Act. In addition to implementing the Act, the proposed rulemaking included a revision and reorganization of regulations governing mining and oil and gas leases adopted pursuant to the Act of May 11, 1938 (52 Stat. 347, 25 U.S.C. 396a–g), which governs the leasing of tribally-owned minerals, and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396), which governs the leasing of individually-owned minerals on allotted lands. The proposed rules, governing leasing under the 1938 and 1909 Acts, incorporated many changes suggested by interested parties in response to proposed rules published in 45 FR 53164 on August 11, 1980. In the July 12th document, the comment period was set for 60 days, ending September 12, 1983. However, on September 11, 1983, the comment period was extended for 30 additional days. A total of 67 separate comments was received from a variety of sources, including Indian tribes and organizations, mining and oil and gas companies, trade organizations and Federal agencies.

General Comments: The majority of the commentators were of the opinion that the proposal provided a workable regulatory scheme for implementing the purposes of the 1982 Act. Most commentators offered recommendations for technical corrections or editorial changes, and in some cases, proposed substantive changes. However, some commentators offered strong objections to two aspects of the proposal which are discussed herein.

Several industry commentators expressed concern that, as proposed, the regulations would subject mining leases, entered into pursuant to the 1938 Act, to requirements which rightfully should only be applicable to minerals agreements under the 1982 Act, thereby diminishing rights which lessees currently possess. They contended that the 1982 Act is intended to give Indian mineral owners greater flexibility in negotiating mineral contracts, while at the same time allowing the procedures for negotiating leases pursuant to the 1938 Act to remain intact. They cited in support of this, section 6 of the 1982 Act, which provides that "(n)othing in this Act shall affect * * * the Act of May 11, 1938 * * *." They argued that the proposed regulations failed to distinguish between negotiated leases under the 1938 Act and those used as a part of a business arrangement sanctioned under the 1982 Act. The contention was made, for example, that some provisions of the regulations would subject existing 1938 Act leases to review of the entire lease, using the criteria established for the approval of mineral agreements under the 1982 Act, and urged that such provisions be deleted. Other examples were given which will be discussed below. The commentators ask that the BIA clearly explain its understanding of the relationship between leasing of minerals under the 1938 Act and negotiated leases under the 1982 Act.

The 1938 Act authorizes development of tribal mineral resources through a formalized lease conditioned upon competitive bidding for oil and gas development, royalty and rental provisions, limitations on acreage and a term of not more than ten (10) years and so long thereafter as minerals are produced in paying quantities.

Enactment of the 1982 Act removed the restriction which required competitive bidding for oil and gas agreements, thereby giving tribes full discretion on how their mineral

resources will be marketed. In addition, and very importantly, the restriction as to form of agreement (lease) was removed. As a result, tribes may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement. Additionally, the acreage limitation was removed and the term is not limited. Therefore, the 1982 Act gives full discretion for mineral development on tribal lands to the governing body of that tribe, subject to any limitation or provision contained in its constitution or charter, and a determination by the Secretary that the agreement is in the best interest of the tribe.

Common to both Acts is the requirement of Secretarial approval of a lease, in the instance of the 1938 Act; or other form of contractual agreement, in the instance of the 1982 Act. Tribes have the option to elect either act in conjunction with contemplated development.

It should be noted that, while tribes have the option to proceed under either Act, there are distinct differences between the two Acts. For example, oil and gas leases issued pursuant to the requirements of the 1938 Act are generally standardized leases executed on standard BIA forms. Such leases are subject to all of the requirements contained in regulations issued by the BIA, the Bureau of Land Management (BLM) and the Minerals Management Service (MMS). Similarly, any lease negotiated pursuant to the 1938 Act will be standardized to the extent that the lease must conform to the lease offer made in the sale notice, *i.e.*, it must be for a term of not more than 10 years, absent production in paying quantities; it must provide for a fixed royalty and a specified rental; and the acreage leased must not exceed limitations imposed by regulations.

However, mineral agreements, including leases, approved under the 1982 Act, need not be subject to the same constraints as leases negotiated under the 1938 Act. For example, 1982 Act agreements are not limited to a maximum 10-year term, absent production in paying quantities. Also, there are no regulatory acreage limitations applicable to agreements under the 1982 Act.

In summary, it is clear that the provisions of the 1982 Act give tribes much more latitude and flexibility in the types of development agreements into which they may enter.

The authority under existing law for allottees or owners of undivided interests in Indian allotted lands to lease their lands for mining purposes is somewhat different than that granted Indian tribes. The 1909 Act authorizes the Secretary to require competitive bidding in instances where the original allottee is deceased and the heirs either have not been determined or, if determined, cannot be located. As a matter of policy, since 1957, the Secretary has, by regulation, required that the competitive lease sale procedure be followed for all oil and gas leasing on allotted lands. However, on some limited occasions, the requirement has been waived upon request and allottees have been authorized to negotiate mining leases without competitive sales when the BIA has determined that, under the circumstances, a waiver of this requirement was in the best interest of the Indian owners.

Congress could have authorized allottees to negotiate mineral agreements when it passed the 1982 Act, but it did not. Instead, the 1982 Act only authorizes allottees to include their interests in a tribal mineral agreement, with the consent of the parties to the agreement, and with approval of the Secretary of the Interior.

In summary, the BIA understands the differences between leasing under the 1938 Act and the 1982 Act to be as follows:

(a) Tribes may lease minerals other than oil and gas, under either Act, except that contracts issued under the 1982 Act are to be subject to the procedures for review and approval by the Secretary set forth in section 4 of the Act as implemented by the rules in Subpart A of 25 CFR Part 211.

(b) Tribes may enter into oil and gas leases or agreements under either Act. Leases or agreements executed pursuant to the 1938 Act must first be offered for sale by competitive bidding. After the receipt of bids and their rejection, tribes may enter into negotiated leases or agreements with the approval of the Secretary.

If the agreement is negotiated under the 1938 Act, all provisions of that Act shall apply.

(c) Individually-owned Indian trust lands may be included in the 1982 Act tribal agreements with the consent of the parties and the approval of the Secretary, but allotted lands may not be included in such agreements which do not provide for participation of tribal lands.

(d) Allotted lands may continue to be leased pursuant to the 1909 Act.

(e) Oil and gas leases of allotted lands under the 1909 Act will continue to be made by competitive bidding, unless this requirement is waived by the Secretary of the Interior on a case-by-case basis to allow leasing by negotiations.

In response to the concern expressed by some industry commentators (i.e., that the BIA appears to be proposing that the requirements of the regulations intended to implement the 1982 Act, as set forth in Subpart A of Parts 211 and 225, apply to existing leases executed prior to the effective date of the new regulations), the BIA wishes to make clear its position that the procedures and requirements in the regulations pertaining to mineral agreements apply prospectively and only in those instances where the parties have elected to proceed under the 1982 Act. The basis of this conclusion is the absence in the statute or in the legislative history of the 1982 Act of any indication that Congress intended to retroactively impose the procedures for the Secretarial review and approval of mineral agreements on existing leases executed under the 1938 Act, or that such procedures should apply to new leases executed under the 1938 Act or the 1909 Act. Consequently, these rules are revised to eliminate or modify any provisions which may be ambiguous in this respect. These changes are discussed below in the analyses of comments received on each section of the proposed rules.

A number of industry commentators questioned the propriety of combining in one set of regulations rules governing mineral operations under the 1982 Act and revisions to existing rules governing operations under the 1938 Act and the 1909 Act. These commentators complain that the BIA failed to explain the reason for the changes affecting the leasing regulations under the 1938 Act. They recommended that the proposed rules be withdrawn and new proposed rules implementing the 1938 Act be promulgated separately.

The BIA acknowledges that the preamble to the proposed rules did not explain in detail the reasons for changes to the existing rules, and such explanations are provided herein in the section-by-section analysis of the rules. The BIA should have pointed out that these changes are based upon extensive comments received on proposed rules published in the **Federal Register** on August 11, 1980 (45 FR 53165). That proposal, in turn, constituted a republication of an April 5, 1977 proposal, (published in 42 FR 18083), with substantive revisions. As noted in the preamble to the April 1977 proposal, the initial impetus for revision of the regulatory scheme then in existence was provided by the Secretary of the Interior in a June 1974 decision on a petition by an Indian tribe to rescind certain leases on tribal lands. The Secretary concluded the decision with a directive to the

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Solicitor to rewrite the regulations then in effect "to correct their present ambiguities" in order "to better fulfill my responsibility to assure the protection of Indian culture and environmental interests as well as to allow the maximum development of Indian natural resources." The effort to revise the BIA's mining regulations is of long duration.

Another general comment was that the proposed rules did not set forth rules governing mineral agreements for the development of geothermal resources on Indian lands. They noted also that it was unclear from reading the proposal which of the two parts governed geothermal operations, since both Part 211 and Part 225 contained references to geothermal. The BIA agrees with this criticism and in response has corrected Part 211 to make it clear that Part 211 governs minerals other than oil and gas and geothermal. In addition, Part 225 is revised to make it clear that geothermal operations are governed by its provisions. A description of a regulatory scheme for geothermal operations is set forth in the discussion of Part 225.

As a result of changes made in response to initial comments received, a number of sections have been moved to other locations in the Parts and the subsequent sections have been redesignated. In addition, some new sections have been added, and minor editorial changes have been made to correct grammatical errors and/or omissions. For the purposes of discussion, reference will be made to the section designations in the proposed rules.

Discussion

A. PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS AND GEOTHERMAL)

Section 211.1 Purpose and scope.

Two industry commentators objected to the statement in paragraph (a) of this section that the regulations are intended to ensure that Indian owners desiring to have their minerals developed receive "at least fair market value" for their resources. They contend that the concept of fair market value is highly subjective and its inclusion in the regulations could serve as a basis for later attempting to unjustifiably reform the terms of a contract, especially if the economic benefits from the contract are not as expected due to events or conditions which none of the parties to the agreement were aware of at the time of contracting. They contend that the function that might have been intended by this clause is covered by § 211.6(b) which provided that a proposed agreement must be reviewed to determine if it is in the best interest of the tribe, and that this review includes an analysis of the potential economic return to the tribe. They ask that this entire clause be deleted. While the commentators may be correct that the uniqueness of these agreements and the difficulties with finding comparables for comparison purposes may make a fair market valuation difficult to perform, such a review is still desirable and essential for the approving official to make to assure the agreement is a prudent one. The Act itself envisions the reviewing official will perform an economic analysis when it is appropriate and feasible. Fair market value is a well established, and appropriate yardstick for determining whether the Indians involved in a minerals agreement are reviewing adequate compensation for the disposal of their non-renewable resource.

A number of industry commentators strongly objected to paragraph (c) which they contend unilaterally gives the BIA the right to require revisions to the provisions of any agreement (except the terms, royalties, rentals, and acreage) executed prior to the effective date of the new regulations. One commentator stated that once a contract has been approved, no terms can be amended except by agreement of all parties, and that the provision lacks any statutory authority and may be unconstitutional.

It is important to note that the economic bargain struck by the parties is not subject to unilateral change by rulemaking. The intent of this section is to permit the Department the needed flexibility to change the operational aspects of administering and supervising these contracts, over time, to conform with changing circumstances. For example, as experience gained with the bonding requirement, it may be appropriate to set minimums. Likewise, information collection requirements may change as experience dictates. This type of operational flexibility is essential.

The commentators also appear to have overlooked the fact that language in paragraph (c) has been included in the BIA's regulations since December 1957, if not earlier, and also has been a provision in the BIA's standard lease forms for a number of years. (See 25 CFR 211.18). Yet no instance is cited by the commentators wherein the BIA has revised the terms of a mineral contract to the detriment of a party to the contract through the process of promulgation of new or revised regulations. As to statutory authority for such a provision, section 8 of the 1982 Act directs the Secretary of the Interior to promulgate rules and regulations to implement the Act and to consult with national and regional organizations and tribes "* * * both in the initial formulation of rules and regulations and any future revision or amendment of such rules and regulations." Had the Congress desired to exempt existing agreements from the application of revisions or amendments to the regulations, it could have done so in this section. The BIA interprets the absence of any such limitation as meaning that the Congress acquiesces in the long-standing practice of including such a provision in its rules and in standard lease forms. Therefore, the recommendation that this provision be deleted or modified to state that no regulations shall affect the terms of a contract without the agreement of all the parties is not accepted.

At the suggestion of the Office of Surface Mining Reclamation and Enforcement (OSMRE), a new paragraph (d) is added to indicate that mining operations for coal are governed by applicable regulations of that office. A new paragraph (e) has been added at the request of some tribes who criticized the regulations for failing to include a provision recognizing that Congress has granted tribes the authority to regulate mining operations on Indian lands under the Indian Reorganization Act and other acts.

Section 211.3 Definitions.

The BIA has accepted the suggestion by several commentators that all applicable definitions should be set forth in one location. All of the definitions located in § 211.33 in the proposed rules are now found in § 211.3. In addition, the definitions of "oil" and "gas" and "geothermal" which were included in § 211.3 have been moved.

A number of comments were received pertaining to the definition of "minerals agreement." Industry commentators urged that the definition be amended to make it clear that it does not apply to amendments of leases entered into pursuant to the 1938 and 1909 Acts. The proposed definition is patterned after the language in section 3(a) of the 1982 Act. That language, of course, does not contain the phrase "(other than a lease entered pursuant to the Act of May 11, 1938, and the Act of March 3, 1909)" after the word "leases." This phrase is added to make it clear that leases entered into pursuant to the 1982 Act are included in the definition of mineral agreements, and leases entered pursuant to the 1938 Act and the 1909 Act are excluded from the definition.

The industry commentators urge that the definition be amended to read "* * * lease (other than a lease, *or* amendment thereto, entered into pursuant to the Act of May 11, 1938, and the Act of March 3, 1909) * * *." As discussed *ante* under General Comments, the BIA believes that Congress intended the 1938 Act to remain as an alternative means whereby Indian mineral owners could dispose of their mineral resources, but there is nothing in the legislative history of the 1982 Act to indicate that Congress intended retroactively to apply the procedures for Secretarial review and approval in the 1982 Act to leases issued pursuant to the 1938 Act. The BIA believes the same reasoning applies to an amendment of a lease issued under the 1938 Act. In other words, the BIA agrees with one comment that "the 1982 Act does not transform 1938 Act leases into minerals agreements and there is no statutory basis to do so in the proposed regulations." Consequently, this recommended change has been accepted. Several commentators pointed out that although the term "contract" was used throughout the proposed regulations, the term was not defined. They suggested that "contract" should either not be used or a definition of the term should be included in the regulations.

It should be noted that "contract" is used in the text exclusively in Subpart C of the two parts which contain provisions applicable to mineral agreements under the 1982 Act, and competitive leases under the 1938 and the 1909 Acts. The term "contract" was chosen because of the need to find a commonly understood term which encompasses a mineral agreement (which includes "leases"), and competitive leases under the other Acts. The BIA believes that defining "contracts" is unnecessary if the public understands that it is simply a general term covering any type of document pertaining to the development of Indian mineral resources under any one of the three acts.

Subpart A—Minerals Agreements

Section 211.4 Authority to contract. (renumbered as § 211.5)

Two comments were received indicating that it will be detrimental to individual Indians owning allotted lands not to be able to enter into a lease or agreement pursuant to the 1982 Act without joining in tribal agreements. They suggest that many times these lands are not adjacent to tribal lands and the allottee does not have a right to negotiate under the proposed rules. The commentators ask that additional provisions be added to this section to cover this situation. While the BIA sympathizes with this comment, it is nevertheless precluded from doing so in section 3(b) of the 1982 Act, which states that individual Indian owners of mineral interests "* * * may include such resources in a tribal Minerals Agreement * * *." The legislative history of the Act supports this position. Earlier versions of the bill which became the 1982 Act provide that tribes *and* individual Indians could enter into such agreements. However, the final bill was amended to delete this authorization as to allottees. Consequently, the requested amendment cannot be made.

An editorial change was made to paragraph (a).

Section 211.5 Negotiation procedures. (renumbered as § 211.6)

Comments on paragraph (b) were received from both Indian representatives and industry. The Indian commentators made suggestions for additional provisions. On the other hand, industry commentators recommended that the section be amended to provide only that no particular form of agreement is prescribed. They contend that a list of factors to be considered is unnecessary and that the likely effect will be a requirement that such factors be included in all agreements. The industry commentators misconstrued the purpose of this paragraph. This provision is included at the request of Indian representatives who reviewed a preliminary draft of the regulations and felt that some guidance should be provided tribes who were not familiar with these types of agreements and may wish to know the factors which need to be taken into consideration in the negotiating process. The provisions listed are those in a typical mining contract. It is not intended that these provisions should be construed as constituting a "model agreement," nor should they be regarded in any way as criteria which must be included in the agreement in order to obtain Secretarial approval. The criteria for approval of agreements is set forth in § 211.6. Consequently, the BIA rejects this argument and this paragraph has not been deleted. Two new subsections, (15) and (16), pertaining to a schedule of activities and descriptions of proposed abandonment and reclamation activities, which were suggested by commentators, have been added.

Paragraph (c) has been revised to change "should" to "may" in order to make it clear that consultation with representatives of the Secretary prior to formal execution of an agreement is recommended, but such consultation is not a requirement for obtaining Secretarial review. Also, in response to a comment that § 211.5 contains no "requirements," this sentence is revised to read "requirements of the regulations in this Part." Paragraph (d) is revised to change "should" to "shall" inasmuch as the agreement must be forwarded to a representative of the Secretary for review.

Section 211.6 Approval of agreements. (renumbered as § 211.7)

Some commentators raised questions concerning the time limit of 180 days after submission, or 60 days after meeting National Environmental Protection Act (NEPA) requirements in paragraph (a), within which a proposed agreement must be approved or disapproved. They expressed concern that 180 days was too short a period within which to conduct the necessary technical review. They also asked whether these time frames include review by the tribe or does "after submission" refer only to receipt of the proposed review by the Secretary.

These time limits are prescribed by section 4(a) of the 1982 Act. The BIA interprets the phrase "after submission" in section 4(a) of the Act to mean after formal submission of an executed agreement to the Secretary for approval or disapproval. There is nothing in the legislative history to support a contrary intention on the part of Congress. Consequently, no change in paragraph (a) is being made.

Several commentators pointed out that paragraph (c) was inconsistent with § 211.37, in that it required that the written findings "shall" include an economic assessment, whereas § 211.37(a) states that an economic assessment, "where required," shall include the findings set forth. It is the BIA's intention that an economic assessment shall always be made of a proposed new minerals agreement. However, in many instances, amendments, supplements, and modifications of existing agreements may be proposed with very little, if any, effect on the economic aspects of the agreement and shall not require preparation of an economic assessment. Otherwise, the qualifying phrase, "where required," in § 211.37(a) would have no meaning. Accordingly, in order to correct any misunderstanding, the qualifier, "if needed," is used in § 211.7(c).

Numerous unfavorable comments were received from both tribal and

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industry commentators on the concept of "fair and reasonable remuneration" as set forth in paragraphs (d) and (f). The principal objection to the concept is that it is unworkable and unrealistic. The commentators argue that the definition of "fair and reasonable remuneration" is too inflexible in that it requires the Secretary to find that the return to the Indians is not less than that received by non-Indians or the Federal Government in similar situations. Objectors felt there may not be similar contemporary mining ventures or federal projects which are truly comparable to the types of agreements likely to be developed for Indian lands, and in the absence of such agreements, the Secretary would be placed in an impossible situation.

Some commentators recommended that paragraphs (d) and (f) be deleted in their entirety and that paragraph (e) be amended to provide that the Secretary's determination of whether to approve or disapprove an agreement would be based solely on the written findings required by paragraph (c). Another commentator suggested that paragraphs (d), (e), and (f) were inconsistent with the objectives of the Act and should be revised to provide that the Secretary should take into consideration the factors set forth in paragraph (d), rather than make a determination that such conditions exist. The rationale is that the "determinations" required by section 4(b) of the Act should be based upon the environmental assessment and the economic assessment, if made, and that the Secretary's written findings shall be based upon such determinations.

The BIA has determined that the concept of "fair and reasonable remuneration" should be retained because it is an essential element in determining whether an agreement is in the best interest of the Indian owners, but the regulations setting forth the concept have been revised so that "fair and reasonable remuneration" is not another required written finding in addition to the environmental assessment and the economic assessment. Accordingly, appropriate revisions to paragraphs (d) and (f) have been made.

Paragraph (g) has been revised to require that a copy of the required written statement of the reasons why an agreement should be approved, or not approved, be sent to the Indian mineral owners, as required by the Act.

Subpart B—Mining Lease

The title of this subpart is changed to "Procedures for Competitive Leases," for clarity.

Section 211.20 Scope.

A number of commentators expressed some confusion as to what is meant to be covered by this subpart. They note that the phrase "through a competitive bidding procedure" under the 1938 Act implies that the competitive bidding procedures must be followed and that direct negotiation is not allowed. They asked whether or not the BIA intends that 1938 Act leases will continue to be issued via competitive bidding and also through negotiations. They also asked whether the BIA believes that any new lease that is negotiated falls automatically under the 1982 Act, inasmuch as the second sentence of this section states that leases may be negotiated "under the procedures in Subpart A," which are the procedures governing leasing under the 1982 Act.

The existing regulations of the BIA have provided, since 1957, in § 211.2, that leases for minerals other than oil and gas shall be advertised for sale by competitive bidding procedures unless written permission is granted to the Indian owners to directly negotiate for a lease. The BIA believes that this is a sound policy and should be continued. However, a provision setting forth this requirement was omitted from the initially proposed rules. Section 211.21(a) has been revised to make it clear that tribes may make leases under the 1938 Act, by direct negotiations with the written permission of the Secretary. In addition, the phrase "through competitive bidding procedure" has been deleted.

As explained, *ante*, it is the BIA's position that in enacting section 6, Congress intended that the requirements of the 1982 Act should apply only to mineral agreements entered into under that Act, and that leasing authorities under the 1938 Act and the 1909 Act are not affected by the 1982 Act. Consequently, to avoid any misunderstanding, the second sentence in § 211.20 has been deleted.

Section 211.21 Procedures for awarding leases.

A number of commentators pointed out that the phrase "prospecting and mining leases," which appears twice in paragraph (b), is confusing, as "prospecting leases" is not a term used elsewhere in the rules. This term has been eliminated.

The advertising procedure in paragraph (c)(2) would have required that the text of the advertisement include a complete description of the specific tracts to be offered. Upon further consideration, the BIA has concluded that because in many instances a large number of tracts are included in a lease sale, this requirement would result in an unnecessary monetary burden on the public in the light of the high cost of publishing multiple descriptions of individual tracts in local newspapers. Printing costs in one known lease sale were in excess of $6,000. Consequently, the BIA has elected the alternative, whereby specific descriptions of the tracts to be offered for sale will be available at the office of the Superintendent and will be sent to any person listed on the agency's list of persons who have asked to be informed of future lease sales.

Paragraph (c)(5), as proposed, requires a successful bidder to submit the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, all bonds, and the executed leases, within 30 days after notification of the bid award. The rule authorizes the Superintendent to grant an extension of up to 30 days within which to file the executed lease. Some commentators recommended that the 30-day time limit be deleted and "a reasonable time specified by the Superintendent" be substituted for the 30-day limit. One industry commentator justified this proposed change on the grounds that, while the time limit is reasonable, if there are no terms to be negotiated under the bidding procedure, it is inappropriate for the bidder to face potential loss of her/his deposit if the inability to come to terms could be based on the action of the Government or the Indian mineral owner. This argument seems to be reasonable. However, it overlooks the fact that the time for submission only begins to run after it has been determined that the bid is satisfactory and the bidder is apprised of this fact. Thus, it is assumed that a notice to the bidder will not be given unless the proposed terms of the bid have been thoroughly examined and that no further adjustments will be required. However, even in the event that further negotiations may be required, the BIA believes a 30-day extension is sufficient. Consequently, the proposed deletion of any time limit has not been made.

Objections were voiced to the provision in paragraph (c)(5) which would give an Indian mineral owner the option to readvertise a forfeited lease, with a defaulting bidder required to pay the difference between her/his high bid and the high bid received at the sale, plus the cost of advertising for the subsequent sale. The objections were that this provision would be unfair, since it could result in an enormous and

unpredictable expense for a bidder where the failure to submit the executed lease and other items was not her/his fault. The suggestion was made that this penalty provision was not practical, inasmuch as subsequent bids in the second sale would likely be lower, not higher.

The BIA has concluded that the objections to this provision, particularly the comment that its effect might be lower bids, are legitimate, and accordingly the provision has been deleted. Defaulting bidders will be required to pay 25 percent of their bonus bid for the use and benefit of the Indian mineral owner.

Some industry commentators suggested that the provision in paragraph (d) that the Secretary shall not award a lease to any bidder until the consent of the Indian owner has been obtained should be deleted. They contend that this requirement is inconsistent with 25 CFR 211.21(c)(5) which requires that the successful bidder must file the completed lease within 30 days, which means the consent of the owner has been obtained. The commentators misconstrue the purpose of this requirement. As the courts have held on many occasions, although the Secretary's approval is required in order to lease Indian land, the Secretary is not the lessor and cannot grant a lease on her/his own authority. See: *Poafpybitty* v. *Shelly Oil Co.*, 390 U.S. 365 (1968). This provision is intended to enforce that holding. Consequently, even though an Indian mineral owner has consented to put her/his interest up for sale, the owner retains the right to decline to accept the highest bid. Similarly, even in the situation where an Indian owner has signed a lease of her/his interest, the owner has the right to withdraw consent to the lease at any time prior to the moment it is approved by the Secretary. For this reason, the suggested deletion was not accepted.

Section 211.22 Duration of leases.

One commentator questioned the implication in this section that the term of a lease entered into by means of the exercise of an option is to be measured from the date of the exercise of the option, and contended that the term should not begin to run until a lease has been fully approved. The argument is that, based upon the commentator's experience, it could take years after exercising an option before a lease is approved, and it is unfair to have the lease's term begin before all approvals have been obtained. This argument is persuasive and the section has been revised accordingly.

Numerous comments were received objecting to the proposed definition of the term "paying quantities" in paragraph (b). Sixteen commentators opposed use of the definition, for a variety of reasons, and urged that it be deleted. First, they pointed out that the definition is predicated on the proposition that "paying quantities" means that in order for a mining venture to have production in paying quantities, there must be a showing that every year of operations results in a profit to the lessee. They argue that this is unrealistic and impractical when applied to the mining of minerals other than oil and gas. Because of the nature of such operations, they contend, it is not uncommon for mines to operate for several years without a profit during the early development period, yet, during those years, the mine continues to be a worthwhile project. In addition, it is not uncommon to suspend production to permit a reduction in stockpiles of materials to an acceptable level. Strikes, delays, and disputes can operate to cause suspension of operations, resulting in a loss of profits in a given year. The objectors contend that given these factors, use of the proposed definition would force most mining companies to abandon any further development on Indian lands, since they would be unwilling to risk their investment in developing a mine, if they knew that one year of depressed prices or unprofitable operations might result in forfeiture of the mine.

One comment was that profitability to the operator is of no concern to the Indian lessor as long as royalties are paid. As long as any minimum royalties specified in the lease are paid the lessor, this commentator felt an operator should be deemed to be producing in "paying quantities." The suggestion was that if the lease failed to specify a minimum rental, it could be negotiated pursuant to § 211.22(d).

Finally, one commentator felt that strict adherence to the proposed definition would work to the detriment of Indian lessors, since it would prevent them from having the flexibility to agree that the lease should remain in effect during unprofitable years, with the expectation that it would be profitable within the foreseeable future.

After considering all the comments opposing the proposed definition, the BIA has concluded that the arguments presented against defining "paying quantities" are persuasive. Consequently, the proposed paragraph (b) has been deleted.

It was also decided that the requirement in paragraph (e) that written evidence showing that minerals are being produced in paying quantities must be filed at the end of each fiscal year is an excessive burden on the public, especially since it is usually evident that production in paying quantities is occurring from other required reports and written proof of that fact is deemed unnecessary. Consequently, proposed paragraph (e) has been deleted.

Paragraphs (c) and (d) of this section which dealt with suspension of operations have been incorporated into a new section numbered 211.47 entitled, Suspension of Operations; Remedial Operations, and are further discussed there.

Section 211.23 Forms. (New)

The initially proposed rules failed to include the existing rules in 25 CFR 211.30 and 212.32 which require that leases, assignments, and other instruments shall be executed on forms prescribed by the Secretary. The BIA has concluded that, inasmuch as competitive leases will continue to be issued under the 1938 and the 1909 Acts, there is a need to include this requirement in the regulations. Consequently, until further notice, competitive leases, assignments, bonds, and permits should be executed on the appropriate form listed below:

Subject matter	Form No
Assignments	BIA-5429
Bonds:	
Nationwide	BIA-5438
Statewide	BIA-5430
Lease bond	BIA-5427
Assignees Bond	BIA-5435
Lessee bond supported by government securities.	BIA-5426
Evidence of authority of officers to execute papers	BIA-5428
Modification of lease mineral prospecting permits	BIA-5443
Oil and gas (non-exclusive and without option to lease).	BIA-5424
Mineral (non-exclusive and non-optional)	BIA-5436
Mineral (exclusive with option to lease)	BIA-5437

Leases	Lease forms may vary between area and agency offices
Sand, gravel, pumice and building stone permits:	
Short-term (6 months)	BIA-5434
Long-term	BIA-5433

Subpart C—General

Section 211.30 Scope.

There were no comments on this section.

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Section 211.31 Authority and responsibility of the Authorized Officer.

This section has been rewritten for clarity, and the title changed to—Authority and responsibility of the Bureau of Land Management.

Section 211.32 Authority and responsibility of the Minerals Management Service (MMS). (Refer to 48 FR 134, Page 31982)

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents, while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

Section 211.33 Definitions.

The definitions in this section have been consolidated in Section 211.3. A new section defining the responsibilities of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE) has been added.

Section 211.34 Approval of amendments.

A number of commentators expressed concern that in drafting paragraph (a), the BIA intends that the criteria for approval of an amendment, modification or supplement to an agreement entered into pursuant to the 1982 Act, are also applicable to leases under the 1938 Act. The BIA recognizes that, as proposed, paragraph (a) seemed to imply that amendments, modifications, or supplements must meet the 1982 Act criteria, inasmuch as it stated that the contract, as modified, must meet "* * * the criteria for approval set forth in § 211.6 or § 211.21." The purpose of this provision is to assure that amendments to contracts, whether leases entered into pursuant to the 1938 Act, or contracts (including leases) entered into under the 1982 Act, do not alter an approved contract to such a degree that it would no longer be in the Indian owner's best interests. This is what is meant by the references to "the criteria for approval." The provision has been amended to make it clear that 1982 Act contracts shall be reviewed under the criteria in § 211.6 and competitive leases are to be reviewed under the criteria in § 211.21.

The same objection was voiced with respect to paragraph (b), which the commentators felt could require substantial re-formation of a contract previously entered into, since it would subject such contracts to the requirements of § 211.6. The commentators overlooked the fact that Section 8 of the 1982 Act provides that approval of mineral agreements pending before the Secretary, which were submitted prior to the effective date of the Act, shall not be delayed on the grounds that rules and regulations have not been promulgated. There were a number of mineral agreements pending on the date of enactment, which subsequently have been approved. Consequently, the reference to "criteria set forth in § 211.6" was intended to apply to these agreements. However, a reference was erroneously made to the entire "lease" meeting the criteria of § 211.6. This reference has been corrected to insert "contract" in place of "lease." The requirement that the amendment of the contract meet the criteria for approval in § 211.21 applies to amendments to 1938 Act leases.

Several commentators objected to the requirement that the exercise of options to lease Indian lands be approved by the Secretary pursuant to § 211.21, which governs the competitive bidding process. Upon further consideration, the BIA has determined that enforcement of this rule might infringe upon vested legal rights, and has deleted this requirement. However, it should be noted that the regulations require that in order to perfect a preference right to a lease in a prospecting permit, the permit must comply with all the laws and regulations applicable to mineral leases.

Section 211.35 Removal of restrictions.

No changes were made to this section.

Section 211.36 Geological and geophysical permits.

A number of commentators objected to paragraph (a)(2) which would prohibit provisions granting an option or preference right to a lease or other development contract in exploration permits. They point out that the current rules in § 211.27(a) allow such preference rights if they are specifically granted in the permit. They also felt a strict prohibition against preference rights in such permits would not be in the Indian mineral owners' best interests since it might deter companies from conducting exploration operations on Indian lands. The BIA agrees and has revised this paragraph to authorize Indian mineral agreements to specify preference rights in a prospecting permit when explicitly provided for in writing and with the approval of the Secretary and Indian mineral owner.

After considering the many objections to the proposed procedures for settlement of damages with surface owners, set forth in paragraphs (a)(3) (i) through (iv), the BIA has concluded that these provisions, which were taken from oil and gas regulations governing operations on the Osage Reservation in Oklahoma, should not be included in the regulations because the circumstances which prevail on lands within the Osage Reservation are unique to that reservation and may not apply nationally. Consequently, three proposed procedures have been deleted.

The requirement in paragraph (a)(4), that a copy of all data collected by a permittee shall be forwarded to the Secretary and the Indian mineral owner, drew a negative reaction from industry commentators. The comments ranged from the suggestion that such data should not be forwarded to the Secretary or the Indian mineral owner until after the bidding process is completed, to a suggestion that data should never be forwarded to the Indian owner unless provided for in the permit. On the other hand, one Indian tribe suggested that the provision was inadequate because it did not specify that the permittee's interpretations of the raw data, as well as the data itself, should be forwarded to the Indian mineral owner.

The BIA appreciates industry concerns that the confidentiality of data which a permittee has collected should be protected to ensure her/his investment in the collection of such data. However, the BIA believes that the Indian owners of the mineral to be developed are entitled to have access to data which is essential in order for them to know the nature, extent and value of the mineral resource. Consequently, the suggestion that the regulations provide that only the Secretary is to receive copies of data resulting from permit operations is not acceptable. On the other hand, the BIA agrees with one commentator that requiring that a copy of the data must be forwarded to the Indian owner could have undesirable effects in that it could discourage companies from conducting exploration on Indian lands if the confidentiality of the data is compromised. Also, numerous people would receive copies of data for which they have no practical use. Accordingly, the BIA has concluded that this provision should be modified to require that copies of data be made available to the Indian mineral owner if the permit so requires. The intention is that the Indian owners and permittees negotiate as to what data shall be made available, and what procedures will be followed with respect to protecting its confidentiality.

Paragraph (a)(5), as proposed, required the permittee to obtain rights of ingress and egress from the surface owner. This provision would apply in situations where the Indian mineral owner may or may not be the surface owner. One industry commentator noted that her/his company had experienced difficulties in securing rights of ingress and egress because of the great number and diversity of surface ownerships—especially where there is a mixture of reservation and allotted lands. The commentator proposed alternative language which differentiates between instances where the Indian mineral owner is or is not the surface owner. Under this alternative, which the BIA has adopted, where the Indian mineral owner is the surface owner, such owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessees, etc., on her/his land, to allow the geological permittee to enter the land and conduct operations. Where the Indian mineral owner is not the surface owner, such owner shall assist the geological permittee to obtain any additional permits to the best of her/his ability.

Paragraph (b) provides that no permit is required to conduct geophysical or geological operations "on Indian lands" included in a contract entered into pursuant to Part 211, unless the contract *per se* requires a permit. The public should be aware that this provision does not apply in situations where the United States is the owner of the surface of the lands involved. In all such situations, a permit to conduct exploratory operations must be obtained from the Authorized Officer.

Section 211.37 Economic assessments.

This section contains the elements to be included in an economic assessment of a proposed minerals agreement. As proposed, these elements were to be mandatory "findings." One commentator stated that it was unclear whether or not each of the elements or criteria must be determined affirmatively in order for an agreement to be approved, or whether the Secretary must simply state whether or not each exists and then make a balanced overall assessment. The commentator urged the latter because, while an agreement might fail to meet one or more of the criteria, taken in its entirety, the agreement could be very advantageous to the Indian mineral owner.

One industry commentator urged that this section be deleted entirely because the 1982 Act does not anticipate anything as specific or detailed as the requirements of this section. He pointed out that the Act merely requires the Secretary to "consider the potential economic return to the tribe." The BIA's reaction to this criticism is the same as the reaction to similar criticism of § 211.6, i.e., the proper approach to a proposed agreement should be to determine whether each element is present, and then make an overall determination whether the agreement is in the Indian owner's best interest. Accordingly, § 211.37(a) has been revised to provide that an economic assessment shall take into consideration the elements as set forth, and the requirement of written findings on each element has been deleted.

Several commentators objected to the requirements in § 211.37(d), that, in reviewing a negotiated contract, a finding must be made as to whether or not the negotiated contract "clearly" provides the Indian mineral owner with a "greater" share of the return on the production of her/his mineral than would be obtained through competitive bidding. They contend that this provision is unreasonable and impractical, and that such a determination cannot be made. The BIA agrees with this assessment. Accordingly, in line with the changes in paragraph (a) discussed above, "is likely to" is substituted for "clearly," and "equal to" is added to "greater than" in paragraph (d).

Section 211.37 (a)(6) has been deleted inasmuch as this provision is not appropriate to mining operations involving hard rock minerals.

Paragraph (b), which defined the term "geological and geophysical permit" has been deleted. This definition is now defined in § 211.3(o).

Section 211.38 Environmental assessments.

Minor editorial corrections and additions have been made to paragraph (a).

Industry commentators recommended that paragraph (b) be deleted on the grounds that it is superfluous, since the type of cultural/historical study required under the 1982 Act is directly tied to NEPA, which is referenced in paragraph (a). The BIA does not agree. Paragraph (b) implements the requirement in section 4(b) of the 1982 Act which provides that in approving or disapproving mineral agreements, the Secretary shall consider, among other things, the potential social and cultural effects of the agreement, as well as the potential effects on the environment. Acts of Congress such as the National Historic Preservation Act, the Archeological and Historic Preservation Act, and the Archeological Resources Protection Act of 1979, require all federal agencies to take affirmative steps to preserve and protect districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. The requirements of the 1982 Act are thus in addition to those in earlier Acts, and are not a substitute for them. Consequently, paragraph (b) has been retained. Some editorial changes have been made.

Section 211.39 Persons signing in a representative capacity.

One commentator asked whether paragraph (b) is intended to require that each time a corporation proposes to acquire an interest in Indian minerals, it must file a statement containing all of the information required by the regulations; and commented that if this was the intent, the regulation would impose an unnecessary burden on industry. The BIA agrees that unless there is a significant change in the corporate structure, a corporation should not be required to file the same information repeatedly. Accordingly, paragraph (a) has been revised to require that corporations have on file a statement which complies with the regulation at the agency in which the Indian lands are located.

Industry commentators recommended that paragraph (c) be deleted on the grounds that it is arbitrary and capricious, since it would authorize the Secretary to require meaningless information to be submitted and subject a lessee to disapproval or cancellation for failure to furnish it. Furthermore, they add, the Secretary has other enforcement mechanisms short of something as harsh as cancellation.

The BIA has concluded that the information requirements of this section are repetitious in that both paragraph (b)(3) and (c) would have authorized the Secretary to require additional information as necessary. Accordingly, paragraph (b)(3) has been deleted. In addition, it is concluded that the last sentence of paragraph (c), which states that failure to furnish requested information will be grounds for cancellation or disapproval of a document, is unnecessary since the Secretary has the discretionary authority to decline to approve an instrument for failure of an applicant to comply with the Department's rules.

Section 211.40 Bonds.

Commentators felt that this section should identify the purpose of the bonds. Additional language has been added to

paragraph (b) in response to this concern.

Commentators asked who would be the "approving official" referred to in paragraph (b). The answer is either the Agency Superintendent or an Area Director.

Two industry commentators recommended that this section be deleted in its entirety. They contended that the requirement and manner of bonding should be left as a matter of negotiation between the parties with a review by the Secretary of the mechanism employed to insure that the interests of the Indian mineral owner are protected. They also suggested that a provision for self-bonding should be added.

The BIA recognizes that a contract or prospecting permit entered into through negotiations under the 1982 Act could contain bonding provisions agreed to by the parties. Similarly, the parties to the contract could agree to self-bonding in lieu of the bonding requirements of this section, provided the Secretary determines that the proposed bonding is in the Indian owner's best interest. However, this section also applies to leases entered into pursuant to the 1909 and the 1938 Acts, and the BIA believes that the rules must provide for bonding covering such leases. With respect to self-bonding, the BIA does not have sufficient information on which to base a determination that such bonding will adequately protect Indian mineral interests or to develop criteria for determining when such bonding is appropriate. Thus, self-bonding is not included in the regulations at the present time.

Section 211.41 Manner of payments.

No changes were made to this section. One commentator suggested that the phrase "or as provided by tribal constitution or by-laws" be added at the end. This suggested change was not accepted because, as set forth in § 211.1(e), discussed *ante*, a tribe organized pursuant to the Indian Reorganization Act of 1934 (and other acts) may adopt rules which supersede any of the regulations in this part, provided such rules are not in violation of federal laws.

Section 211.42 Permission to start operations. (New)

This is a new section and the section designations following it have been redesignated accordingly.

This section is a revision of existing 25 CFR 211.20. Paragraph (a) has been revised to provide that no operations on contracted areas may begin before the effective date of the mineral contract, and to make it clear that the effective date of the contract is the date it is officially approved by the Secretary, or a designated representative. This provision should be construed as prohibiting any surface disturbance on the land prior to official approval of a contract.

Paragraph (b) of the existing rule has been amended to provide that approval of applications for permission to start operations is to be secured from the Authorized Officer in the Bureau of Land Management since that agency now performs this function.

Section 211.43 Recordkeeping. (Old § 211.42)

No changes were made to paragraph (a).

Industry commentators strenuously objected to the requirement in paragraph (b) that all records, including records regarding the financial structure of the prospector or operator, be made available for examination and reproduction by the Secretary, the Authorized Officer and tribal mineral owner. They contend that as long as the regulations provide that the Secretary may require an audit, there is no need to reproduce the records, and that such a requirement would greatly increase the risk that proprietary, competitive and financial information would be leaked to third parties. They argue that disclosure of such information would adversely affect an operator's contracts and competitive edge.

The BIA has concluded that the arguments against making all records available for reproduction are persuasive. Accordingly, paragraph (b) has been modified to provide that all records shall be made available to the Secretary upon request and has dropped the requirement that they be reproduced. Under this rule, an Indian mineral owner may request the Secretary to conduct an audit or cause an independent audit to be made. The audit will then be made available to the Indian mineral owner.

Section 211.44 Mining contracts—individually-owned Indian lands. (Old § 211.43)

Industry commentators recommended deletion of paragraph (b) requiring allotted lands of a deceased allottee to be offered for sale by competitive bidding. One commentator argued that although the 1909 Act, which requires competitive sales whenever heirs and devisees cannot be located or have not been determined, was not repealed, nevertheless an agreement approved pursuant to the 1982 Act should not be subject to the earlier statute's requirement for competitive bidding. We agree, and have changed the regulations accordingly.

Paragraph (c) has been changed to improve technical accuracy.

As proposed, paragraph (d) of this section provided that the Secretary may approve a contract, where less than 100 percent of the undivided mineral interest is to be committed to the contract, if 51 percent or more of the mineral interest is committed. Upon further consideration, the BIA has concluded that a 51 percent margin is too small. Accordingly, the margin has been raised to 66⅔ percent.

Section 211.45 Assignments; overriding royalties and operating agreements. (Old § 211.44)

Industry comments on paragraph (a) of this section strongly urged that it be modified to delete language to the effect that an assignment or sublease of an interest in a contract is not effective without the approval of the Indian owner. They contend that the existence of multiple owners of undivided interests in allotted lands should preclude this requirement on practical basis. One commentator expressed a concern that such open-ended approval authority on the part of Indian mineral owners could be abused and could be utilized to seek additional consideration as a condition to approving an assignment. Another commentator objected to the requirement that assignments be subject to the criteria of § 211.6 on the grounds that there is no justification for requiring a complex review process for an assignment, because the assignment will not affect the rights and obligations of the operator/lessee or the Indian mineral owner, or alter the economic or environmental aspects of the project.

The BIA has concluded that the requirement of Secretarial approval of all assignments or subleases will provide an adequate safeguard against interests in contracts being assigned or sublet to unqualified persons or companies without the necessity of requiring approval of the Indian mineral owners in every instance. At the same time, the BIA does not desire to preclude Indian mineral owners and lessees from including a requirement for lessor consent in the contract, should the parties agree to do so. Accordingly, this section has been revised to delete the mandatory requirement for approval by Indian owners. The BIA also agrees, as some commentators argued, that the review process set forth in § 211.6 is unnecessarily burdensome with respect to assignments. In addition, the requirement would be inconsistent with

the position the BIA has taken that the requirements of the 1982 Act will not apply to contracts entered into pursuant to the 1909 and 1938 Acts. Consequently, paragraph (a) has been revised to delete this requirement.

The BIA generally does not require lessees to attain approval of farmout or overriding royalty agreements. However, such agreements should be filed with the appropriate BIA agency office. Should such an agreement in reality be an assignment of interests changing the terms of the lease or minerals agreements, the burden is on the lessee to acquire the requisite consent of the mineral owners and the subsequent approval of the Secretary.

The BIA has concluded that paragraph (b) should be amended to require that a copy of any agreement creating overriding royalties or payments out of production be filed with the Secretary except in instances where the agreement is incorporated in an assignment which is required to be approved under paragraph (a), as provided in existing regulations in 25 CFR 211.26(d).

The BIA also has concluded that assignments of operating rights need not and will not be approved by the Secretary. However, in order to keep the Secretary apprised of the identity of the operator, the rule requires that such designations be filed with the Secretary.

Section 211.46 Legal review. (Old)

One commentator suggested that this section should be clarified to assure that submission of a proposed contract to a Field or Regional Solicitor's office for legal review will not result in any extension of the time currently established in the regulations for final Secretarial approval or disapproval. Inasmuch as the statutory time limits for review and approval or disapproval of a proposed minerals agreement are established by the 1982 Act, it is clear that the Department lacks any authority to extend the time frame through regulations, and no such extension should be implied by this section. The policy of the Department is that reviews of proposed mineral agreements for legal sufficiency will be bound by the statutory time limits in the 1982 Act. Upon reconsideration, the BIA has concluded that this section is unnecessary inasmuch as existing internal BIA guidelines will require legal review of mineral contracts. Therefore, this section is removed.

Section 211.46 Termination and cancellation; enforcement of orders. (New)

Industry commentators recommend that this section be deleted in its entirety. They contend, first, that the handling of contract defaults should be matters for negotiation by the parties to the minerals agreement; that the parties should be free to utilize specified arbitration or judicial procedures as a means of resolving disputes, and that the mechanisms to accomplish this can be provided for in the agreement. One industry commentator suggested that the regulations must be re-written (a) to limit the Secretary's enforcement powers to violations of federal laws, regulations, and approved mining plans, and (b) to limit the Secretary's trustee duty to assisting Indian mineral owners, when necessary, to enforce their contract rights and remedies in the manner provided for in a mineral agreement. Finally, industry commentators assert that there is no statutory authority for the regulations in § 211.45 and § 211.47.

The answer to the first contention is that section 4(b) of the 1982 Act specifically directs the Secretary, in approving and disapproving a proposed agreement, to consider, among other things, "* * * provisions for resolving disputes that may arise between the parties to the agreement."

Presumably, such provisions could include a proposed scheme for the inspection of operations and the resolution of disputes, and if the Secretary determines that the contract proposal would adequately protect the Indian mineral owners and did not violate applicable laws, such a scheme could be approved. Under those circumstances, provisions for enforcement and arbitration of disputes in the minerals agreement would supersede the BIA's regulations. However, the BIA cannot agree that §§ 211.45 and 211.47 should be deleted from the regulations for a number of reasons. These sections apply to operations on leases under the 1938 Act and the 1909 Act, as well as to mineral agreements under the 1982 Act. Deletion of these sections would leave the Secretary without any regulatory procedure for enforcement of the terms of such leases. In addition, deletion of these provisions would mean that each time a proposed agreement is presented to the Secretary which either contained no provisions of enforcement or contained unacceptable provisions, approval of the agreement would have to be withheld until acceptable provisions were agreed to by the parties.

In regard to the statutory authority for the regulations, the BIA believes that there are several sources of such authority. For example, section 4(e) of the 1982 Act states that whereas the United States shall not be liable for losses sustained by a tribe or individual Indian under an approved minerals agreement, "* * * the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement." Section 8 of 1982 Act requires the Secretary to promulgate rules and regulations "to facilitate implementation of the Act." Similar provisions authorizing the Secretary to promulgate rules and regulations are found in the 1938 Act (25 U.S.C. 396d) and the 1909 Act (25 U.S.C. 396).

The existing rules of the BIA contain procedures for the enforcement of rules and regulations, orders of supervisory personnel, or the terms and conditions of contracts to conduct mining operations on Indian lands. The regulatory scheme set forth in this section is intended to strengthen these procedures.

In response to public comment, this section has been revised extensively to correct numerous objections and to include suggestions for improvement. The major change from the proposed regulations is the deletion of the opportunity for a hearing before the Superintendent. The BIA believes the 25 CFR Part 2 appeal procedures, now being revised, are adequate to safeguard the interests of affected parties without the delay that could occur by adding an additional 30-day hearing process. All parties will still have the opportunity to appeal and argue their position in writing under the Part 2 procedures. The Bureau also believes that immediately effective cessation orders are appropriate where there is an immediate and serious threat of damage to the environment or resources, and has thus retained this provision.

Section 211.47 Suspension of operations; remedial operations.

(This is a new section which has been added for the purpose of separating the provisions for suspension of operations from other provisions contained in 211.22—Duration of Leases.)

A number of commentators suggested that the provision of § 211.22 Duration of Leases, paragraph (c), limiting the period of suspension of operations to 60 days, was unsatisfactory. They suggested that this provision is unrealistic, since other situations, such as labor strikes, inability of a customer to receive the mineral, delays in obtaining permits, as well as economic considerations, could justify a suspension of operations for more than 60 days. Their suggestion was that this paragraph should be deleted

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altogether, although one industry commentator suggested the maximum be increased to 180 days. On the other hand, a tribal attorney suggested that, based upon his experience, the 60-day limit is workable and commendable. He suggested that while an operator should not be penalized when diligently resuming work to correct damage from natural or accidental disasters, the operator should not be entitled to hold the leasehold indefinitely simply because it is seriously inconvenient to obtain production in paying quantities.

Industry commentators also asked that § 211.22 paragraph (d), providing for a minimum rental, be deleted for the reason that it imposes an economic burden on a lessee. The BIA does not accept this argument. A suspension of mining operations during the extended term of the lease means that the Indian mineral owners receive no royalty during the period of the suspension. The loss of the income provided by royalties clearly constitutes an economic burden on the Indian owner for which she/he should be compensated.

After considering these comments, it is obvious that suspensions of operations fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of operations for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land Management in 43 CFR 3473.4, 3483.3, and 3503.3–2 as applicable. In cases where a suspension of operating and producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of operations.

It has also been decided that the requirement for permission to suspend operating and producing requirements in the primary term of a contract, as proposed in § 211.22 paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Section 211.47 Penalties. (renumbered 211.48)

A number of commentators suggested that this section be revised to provide that, to the extent the Indian mineral owner and the operator have created private rights and liabilities, the $1,000 per day penalty and the other enforcement provisions of this section are not applicable. The BIA has accepted this proposal and has modified the section accordingly. The basis for this change is that, as proposed, this section would have established a regulatory maximum fine of $1,000 per day. The BIA agrees that the parties should not be constrained by such a limitation if they wish to agree to a penalty in excess of $1,000 per day or to some other penalty provision.

Section 211.48 Appeals. (renumbered 211.49)

The commentators on this section suggested that the appeal provisions should be modified to provide for an expedited system of appeals, and suggest a procedure whereby an appeal would be made directly from a decision of an Area Director to the Interior Board of Indian Appeals or to the Interior Board of Land Appeals. The comments did not include any arguments in support of this suggestion. However, the BIA has received numerous complaints from a variety of sources that the existing system of appeals is cumbersome. Also, others have complained that the existing rules and regulations in 25 CFR Part 2 neither adequately explain an appellant's rights to appeal nor do they set forth the procedural steps which must be followed to perfect the appeal in an easily understood manner. BIA is in the process of revising the Part 2 regulations to address these and other concerns.

Section 211.49 Fees. (renumbered § 211.50)

No comments were received on this section and no changes have been made.

Section 211.50 No mineral agreements made with government employees. (renumbered § 211.51)

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is barred by Federal law. See 18. U.S.C. 437.

B. Part 225—Oil and Gas and Geothermal Contracts

General Discussion

As mentioned *ante* Part 225 has been revised to include specific references to geothermal operations. The BIA has decided that contracts for geothermal development shall be processed as mineral agreements under the requirements of Subpart A, for the reason that this type of contract does not lend itself to processing under standard forms used by the BIA for competitive oil and gas leasing. Accordingly, Subparts A and C have been revised to add appropriate references to geothermal.

Section 225.1 Purpose and scope.

Minor changes were made to paragraph (b) of this section and a new paragraph (e) was added to make the section conform to a similar addition in § 211.1.

A new § 225.3, *Definitions,* has been added to incorporate all of the definitions in this Part in one section, and §§ 225.21 and 225.43 have been eliminated. A new definition of the term "geothermal resources" has been added and definitions of the terms "minerals agreement," "operator," and "geological and geophysical permit" have been revised to include the term "geothermal" or "geothermal resources." In addition, the term "Indian mineral owner" has been deleted and a definition of "Indian owner" substituted in lieu thereof. This term is defined to include Indian tribes and individuals who own land or interests in oil and gas or geothermal resources.

Subpart A—Fluid Minerals Agreements

Section 225.20 Scope.

The second sentence in this section has been deleted.

Section 225.21 Authority to contract.

This section has been revised to conform to § 211.5. Refer to the discussion of comments on § 211.5.

Section 225.22 Negotiation procedures.

This section is identical to § 211.6. For a discussion of the comments and the changes made, refer to that section.

Section 225.23 Approval of agreements.

This section is identical to § 211.7. Refer to that section for a discussion of the comments.

Subpart B—Procedures for Competitive Oil and Gas Leases

Section 225.30 Scope.

A minor editorial change was made to this section.

Section 225.31 Procedures for awarding leases.

For a discussion of the changes made to this section refer to § 211.21.

Section 225.32 Duration of leases.

A large number of commentators objected to the proposed definition in paragraph (b) of "paying quantities" which was fundamentally the same as the definition of this term in § 211.22. The basis for the objections was essentially the same, namely, that the definition is unnecessarily complex and includes expenses which should not be considered. The commentators urged that the BIA either revise this provision to eliminate a definition of "paying quantities," or adopt the definition used in federal oil and gas leases on public lands. The BIA has decided to include the definition found in the regulations for federal lands which has been in effect for several years.

The provisions for suspension of operations are addressed in § 225.54.

Section 225.33 Rentals; minimum royalty; production royalty on leases.

Some commentators recommended changes in the procedure for determining "value" set forth in paragraph (d). However, because the Secretary has decided that rules and regulations governing how the value of the production of oil and gas on Indian land is to be determined, shall be prepared by the MMS and located in 30 CFR Chapter II, proposed paragraph (d) relating to the methods of determining value of production has been amended. Accordingly, a discussion of the comments on the proposed rule has been omitted.

Most of the comments received on this section were objections to paragraph (e). Industry commentators were concerned that the lessor's right to take excess gas could impair long-term gas sales contracts entered into by the lessee, and requested that the regulation be amended to prevent such an occurrence. The BIA agrees that this right should be available in the event that the gas taken is in excess of the lessee's requirements for lease operation and contracts. Accordingly, the *proviso* has been modified to require that the Superintendent must determine that the gas is available in sufficient quantities and is not subject to any pre-existing sales contract, or that its disposition is not otherwise provided for in the lease.

Two Indian commentators complained that paragraph (d) relating to excess gas is a change to the existing regulation in 25 CFR 211.13(b), in that it would require payment for the excess gas, while the existing rule requires no payment. The commentators overlook the fact that the old rule limited use of such gas to schools or other tribally-owned buildings, whereas the new rule extends the right to any Indian mineral owner and puts no limitation on how the gas is to be used. The BIA believes these extensions justify the changes imposed by the regulation.

Section 225.34 Contracts for subsurface storage of oil and gas.

There were no comments on this section and no changes made.

Section 225.36 Forms.

Refer to § 211.23.

Subpart C—General

Section 225.40 Scope.

No changes were made to this section.

Section 225.41 Authority and responsibility of the authorized officer.

Some editorial changes have been made to more clearly state the responsibilities assigned to the Authorized Officer resulting from Departmental reorganization, and the title changed to Authority and Responsibility of the Bureau of Land Management (BLM).

Section 225.42 Authority and responsibility of the Minerals Management Service (MMS).

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the Section has been rewritten.

Section 225.43 Definitions (Old).

As previously noted, the definitions in this section have been designated as a new § 225.3 and the subsequent sections are redesignated.

Section 225.43 Approval of amendments to contracts. (New)

Some reference errors were corrected. Refer to § 211.34 for a discussion of the comments on this section.

Section 225.44 Geological and geophysical permits.

The changes made to this section follow changes made to § 211.36.

Section 225.45 Removal of restrictions.

No substantive changes were made to this section. Refer to § 211.35.

Section 225.46 Oil and gas and geothermal contracts on individually-owned Indian lands.

This section parallels § 211.44. Refer to that section for a discussion of substantive comments.

Section 225.47 Persons signing in a representative capacity.

Refer to § 211.39.

Section 225.48 Economic assessments.

Refer to § 211.37.

Section 225.49 Environmental assessments.

Refer to § 211.38.

Section 225.50 Bonds.

Refer to § 211.40. The "approving official" referred to in paragraph (b) is the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), and those persons designated to act for him during his absence (Part 10 of the Bureau of Indian Affairs Manual).

Section 225.51 Manner of payments.

Refer to § 211.41.

Section 225.53 Assignments and overriding royalties.

Refer also to § 211.45. A number of industry commentators noted that it is unclear from the language of paragraph (a) whether the BIA intends to prohibit the assignment of operating rights, or merely that approval of such assignments by the Secretary is not required. They contend that assignments of operating rights serve an essential purpose in getting wells drilled, and that industry would strongly object to any prohibition of such assignments.

Indian commentators contend that the regulations should provide that the assignment of any interest in Indian oil and gas resources, including an assignment of operating rights, should be deemed invalid unless it has been approved by the Secretary with the consent of the Indian mineral owner.

After considering the issue, the BIA has concluded that designation of operators should be filed with the Secretary, but approval by the Secretary will not be required because there is no transfer of any leasehold interest.

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Section 225.54 Suspension of production; remedial workover/shut-in.

This section, which authorized suspension of producing requirements under certain circumstances, has been extensively revised in response to critical comments and added as § 211.47 to the non-oil and gas and geothermal regulations, using principally the same language.

Several Indian commentators objected that paragraph (b) would require the consent of the Indian mineral owners to suspension of producing requirements for economic and marketing reasons only if such consent is specifically required in the contract. They contend that suspensions should never be granted without the consent of the Indian mineral owner, regardless of whether or not a consent provision is included in the contract. They also complained that paragraph (b) appears to provide that any lease, even a lease for a one year primary term, could be extended to ten years on the basis of a shut-in application based upon a lack of adequate marketing facilities or unsatisfactory marketing conditions. This assumption appears to be based upon the commentators' interpretation of the language in paragraph (b) to the effect that "such suspensions shall not exceed beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 * * * or leases on allotted lands approved pursuant to the Act of March 3, 1909 * * *."

Also, a number of Indian commentators objected to a $2.50 per acre shut-in royalty, which they characterized as "inadequate and insignificant." One commentator suggested that the royalty should be no less than $10.00 per acre. Industry commentators either objected to any payment of a shut-in royalty or contend that such royalty should be paid as an alternative to rentals, not in addition to rent. Several commentators noted that a regulatory requirement to pay any specified shut-in royalty could be at variance with provisions that an Indian mineral owner and an operator might agree upon in a mineral agreement. They point out that such a situation would be contrary to the intent of the 1982 Act, which was to grant Indian mineral owners and operators greater flexibility in reaching agreements.

After considering these comments, it is obvious that suspensions of production fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of production for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land Management in 43 CFR 3162.3–2. In cases where a suspension of producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner, along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of production.

It has also been decided that the requirement for permission to suspend producing requirements in the primary term of a contract as proposed in paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently, this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Section 225.55 Unitization, communitization and well spacing agreements.

Paragraph (a) has been amended to include the term "cooperative unit plan."

The BIA has concluded that requiring preparation of a written economic report as a part of the review process would impose an unnecessary administrative burden, inasmuch as the interests of the Indian oil and gas owner are considered in detail at the time a proposed contract is presented. Consequently, this requirement has been removed.

The purpose for pooling mineral interests is to promote conservation and efficient development of the resources. However, during the early 1980's, when speculation for oil and gas properties caused bidders to offer extremely high bonuses, many Indian mineral owners put pressure on BIA officials to either not act on, or disapprove, cooperative agreements for the sole purpose of causing the primary terms of leases to expire so the lands could be released and new bonuses received. The Department believes that the review process should be limited to the technical aspects of whether or not the proposed agreement provides for proper operational concerns. Paragraph (7) has been added to reduce the likelihood that officials will consider provisions other than the engineering and technical aspects of the agreement. It provides that approval of the agreement shall be retroactive to the date of submittal to the Department, or the date of first production within the proposed unit, whichever is earlier, should the approval review process of a favorable technical finding extend beyond the primary term of the lease. However, paragraph (5) continues the policy that such agreements be submitted ninety (90) days prior to the earliest expiration date of any Indian contract in the unit.

In response to comments, a new paragraph (8) has been added segregating leases at the time of communitization into participating and non-participating areas, depending on the terms in the agreement. From experience, the BIA does not believe that this will happen often, when the surface area is the only item being considered. However, the BIA has, in more recent practice, required that communitization agreements be restricted to the specific strata or formations to be diligently developed, thus not holding the remaining nonproductive formations beyond the primary term of the lease by production from only one or two producing formations. This new provision incorporates that practice into the regulations.

A number of commentators pointed out the requirement in proposed paragraph (d) that an affidavit certifying that all Indian mineral owners "have been given notice" that approval of an agreement is being sought might be impossible to fulfill insofar as allotted Indian lands are concerned. The BIA has concluded this comment is valid and has modified the provision to require that the affidavit certify that reasonable efforts were made to secure the consent of the Indian oil and gas owners who have not given prior consent, by mailing them an invitation to join the unit. The invitation shall be sent to their last known mailing address.

The BIA has concluded that the existing practice of filing proposed unit agreements with the Superintendent should be formalized. Accordingly, this section has been amended. In addition, a new paragraph has been added providing that the Superintendent shall obtain the recommendations of the Authorized Officer for approval or disapproval of a proposed agreement, based upon the engineering and technical aspects of the agreement before taking action on the agreement. This addition also formalizes an existing procedure.

In response to comments, a new paragraph has been added requiring that each well within a cooperative unit must be drilled in conformity with an

acceptable well spacing program at a surveyed well location approved by the Authorized Officer. The provision also defines an acceptable program.

Section 225.56 Inspection of premises; books and accounts.

See also comments on § 211.43.

One Indian commentator recommended this section be amended to provide that individual Indian mineral owners, tribes, or their representatives shall have the right to request any and all data, and/or make an inspection of the records of the Minerals Management Service or the operator's records, in order to make an evaluation of the correctness of royalty accounting. One industry commentator contends that inspection of the contracted premises, books and accounts is controlled by the Federal Oil and Gas Royalty Management Act of January 12, 1982 (FOGRMA), (96 Stat. 2447; 30 U.S.C. 1701 *et seq.*).

It is the intention of the BIA that Indian mineral owners shall have the right to examine an operator's books and records pertaining to operations involving their mineral interest at any time during regular business hours, and agreement by a proposed operator to honor this right shall be a condition of approval of a contract by the Secretary. In this regard, section 103 of the Federal Oil and Gas Royalty Management Act specifically provides that any reports, records or information required by the Secretary for the purpose of implementing that Act or determining compliance with rules or orders issued pursuant to that Act, shall be made available for inspection and duplication upon request by an Indian tribe conducting an audit investigation.

Section 225.57 Termination and cancellation; enforcement of orders.

Refer to § 211.46.

Section 225.58 Penalties.

Refer also to § 211.47.

Several commentators contended that this section, as proposed, is inconsistent with civil penalty provisions in section 109 of FOGRMA and urged that the section be revised to conform to that Act. The thrust of their contention appears to be that section 109 sets the standards and procedures for the imposition of penalties involving oil and gas operations on Indian and Federal lands. The BIA believes this is an incorrect interpretation of FOGRMA, inasmuch as section 304 of that Act states unequivocally that the penalties and authorities in the Act are "supplemental to, and not in derogation of any penalties or authorities contained in any other provision of law." The BIA construes this provision to mean that any authority previously granted by Congress under other mineral development Acts is unaffected by the enactment of FOGRMA and that the penalty provisions of that Act supplement, but do not replace, rules and regulations governing penalties promulgated under prior Acts. A new paragraph (d) has been added to make this point clear. Some commentators pointed out that the provision in this section to the effect that violators may be subject to a penalty of "not less than $1,000 per violation per day" is inconsistent with the penalty in § 211.47 of "not more than $1,000 per violation per day" and asked for clarification. It is the BIA's intention to set a maximum penalty of $1,000 per violation per day, and this correction has been made. The BIA agrees with commentators who contend that a minimum penalty of $1,000 per violation per day could be excessive in instances where minor violations were involved, whereas a maximum $1,000 penalty will permit the Secretary to tailor the amount of the penalty to fit the seriousness of the violation.

Another comment was that the section should make it clear that, to the extent the parties create private specific liabilities in the contract itself, the terms of the contract should control the penalties to be imposed. The BIA agrees with this contention and has revised the section to provide that penalty provisions in an oil and gas contract approved by the Secretary, where inconsistent with the penalties provided for in this section, supersede the provisions on this section. It should be noted, however, that this should not be construed to mean that the Secretary will approve a contract which purports to exempt the parties from compliance with any specific penalties provided by Congress, such as FOGRMA.

Section 225.59 Appeals.

This section is identical to § 211.48. For a discussion of the comments and the changes made, refer to that section.

Section 225.60 Fees.

No changes have been made to this section.

Section 225.61 Legal review. (Old)

Refer to § 211.46 (Old).

Section 225.61 No oil and gas agreements made with Government employees (New)

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is prohibited by federal law. See 18 U.S.C. 437.

Section 225.62 Sales contracts, division orders and other division of interest documents.

No changes have been made to this section.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets; and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The changes made by the proposed rulemaking reduce the regulatory burden imposed on such persons in several instances. The proposed rulemaking does increase the filing fee which must accompany each permit, lease, sublease or other contract, or an assignment or surrender thereof from $10 to $25. This increase is necessary to partially compensate the United States for its costs of processing those documents, but is not an amount that should discourage or prevent any small business from contracting to engage in mineral development on Indian lands.

The changes made by the proposed rulemaking are for the purpose of streamlining and updating existing leasing procedures, and clarifying the meaning and intent of those procedures. These changes constitute an administrative action and do not impact on the physical environment. The approval of contracts will require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in the initially proposed rulemaking which were made, the BIA

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considered the changes to be of such minor variation and degree that the impacts were deemed equal to or less than the changes made by the initially proposed rulemaking. The Department of the Interior has determined therefore that there will be no significant impact to the human environment.

The Office of Management and Budget (OMB) has informed the Department of the Interior that the information collections contained in 25 CFR Part 211 and Part 225 need not be reviewed by them under the Paperwork Reduction Act, Pub. L. 95–511, (44 U.S.C. 3501 *et seq.*).

This proposed rule is republished in exercise of the authority delegated by the Secretary of the Department of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

List of Subjects

25 CFR Part 211

Indians-Lands, Mineral resources, Mines, Exploration.

25 CFR Part 212

Indians-Lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 225

Indians-Lands, Oil and gas exploration.

For the reasons set out in the preamble, Chapter I of Title 25 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 211 is revised to read as follows:

PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS AND GEOTHERMAL)

Sec.

211.1 Purpose and scope.
211.2 Information collection.
211.3 Definitions.

Subpart A—Minerals Agreements

211.4 Scope.
211.5 Authority to contract.
211.6 Negotiation procedures.
211.7 Approval of agreements.

Subpart B—Procedures for Competitive Leases

211.20 Scope.
211.21 Procedures for awarding leases.
211.22 Duration of leases.
211.23 Forms.

Subpart C—General

211.30 Scope.
211.31 Authority and responsibility of the Bureau of Land Management.
211.32 Authority and responsibility of the Minerals Management Service (MMS).
211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).
211.34 Approval of amendments.
211.35 Removal of restrictions.
211.36 Geological and geophysical permits.
211.37 Economic assessments.
211.38 Environmental assessments.
211.39 Persons signing in a representative capacity.
211.40 Bonds.
211.41 Manner of payments.
211.42 Permission to start operations.
211.43 Recordkeeping.
211.44 Mining contracts—individually-owned Indian lands.
211.45 Assignments; overriding royalties and operating agreements.
211.46 Termination and cancellation; enforcement of orders.
211.47 Suspension of operations; remedial operations.
211.48 Penalties.
211.49 Appeals.
211.50 Fees.
211.51 No mineral agreements made with Government employees.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g, 476, 477, 509); Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); Sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 880); Secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 988, 25 U.S.C. 476 and 477); Act of August 11, 1978 (92 Stat. 469, 42 U.S.C. 1996); Sec. 102, Act of January 1, 1970 (83 Stat. 852, 42 Stat. 4332); Act of December 22, 1982 (96 Stat. 1938; 25 U.S.C. 2101 thru 2108).

§ 211.1 Purpose and scope.

(a) The regulations in this part govern contracts for prospecting and mining of Indian-owned minerals, other than oil and gas and geothermal. Subpart A—Minerals Agreements establishes the procedures for the approval of minerals agreements entered into pursuant to the Indian Mineral Development Act of 1982 (96 Stat. 1938; 25 U.S.C. 2101–2108). Subpart B—Procedures for Competitive Leases contains regulations governing procedures for the issuance of competitive mining leases on tribal and allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to the issuance of contracts for prospecting and mining under both Subparts A and B. These regulations are intended to ensure that Indian owners desiring to have their minerals developed receive at least fair and reasonable remuneration for the disposition of their mineral resources; to ensure that any adverse environmental and cultural impacts resulting from such development are minimized, and to permit Indian mineral owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in the development of their mineral resources.

(b) The regulations in this part do not affect leasing and mining governed by the regulations in 25 CFR Parts 213, 214, 215, and 30 CFR Chap. VII for coal operations.

(c) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, the royalty rate, rental, or acreage unless agreed to by all parties to the contract.

(d) Exploration and mining operations for minerals (except coal) on Indian lands are subject to the regulations in 43 CFR Group 3500 and 25 CFR 216 Subpart A. Exploration and mining operations for coal on Indian lands are subject to the regulations in 25 CFR Part 216 Subparts A and B, and applicable regulations in 43 CFR Group 3400 and 30 CFR Part 750.

(e) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 461–479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501–509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 211.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 211 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*)

§ 211.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Act" means the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

(b) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered into pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), or other agreement, or amendment,

supplement, or other modification of such agreement, providing for the exploration, or extraction, processing, or other development of minerals, or providing for the sale or disposition of the production or products of such mineral resources.

(c) "Secretary" means the Secretary of the Interior or an authorized representative.

(d) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(e) "Superintendent" means a Bureau of Indian Affairs Superintendent or the authorized Bureau representative having immediate jurisdiction over the minerals covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(f) "Bureau" means the Bureau of Indian Affairs.

(g) "Indian mineral owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in land, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

(h) "Minerals" includes both metalliferous and nonmetalliferous minerals, except oil and gas and geothermal, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

(i) "Mining" means the science, technique, and business of mineral development, including opencast, underground work, and in situ leaching, directed to severance and treatment of minerals; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the sale and removal of such mineral exceeds 5,000 cubic yards in any given year.

(j) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described.

(k) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(l) "Director" means the Director, Office of Surface Mining Reclamation and Enforcement; or the Director's representative.

(m) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a minerals agreement to mine for Indian-owned minerals.

(n) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into, a mineral agreement to prospect or explore for Indian-owned minerals.

(o) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, which owns land.

(p) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of minerals on the lands.

Subpart A—Minerals Agreements

§ 211.4 Scope.

The regulations in this Subpart govern the procedures for obtaining approval of minerals agreements for the exploration, development and sale of minerals (other than oil and gas or geothermal) on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

§ 211.5 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement or any amendment, supplement or other modification to such agreement.

(b) Any individual Indian mineral owner owning a beneficial or restricted interest in mineral resources may include such resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 211.6 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A force majeure provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of the agreement;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted; and

(16) Provisions clearly describing future abandonment, post mining land use, reclamation and restoration activities.

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement and seek advice as to whether the agreement appears to meet the requirements of § 211.7, or whether modifications, additions, or corrections shall be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into an agreement, shall be forwarded to the Secretary for approval.

§ 211.7 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within (1) one hundred and eighty (180) days after submission, or (2) sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other

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requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 211.38 and an economic assessment as described in § 211.37, if needed. The Secretary may include in the written findings, recommendations for changes to the agreement needed to qualify it for approval. The 30 day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 211.38) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with: PRIVILEGED PROPRIETARY INFORMATION OF THE [Name of tribe or Indian].

(d) A minerals agreement shall be approved by the Secretary if it is determine in the written findings that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration to the Indian mineral owner:

(2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweigh its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section shall be determined by the Secretary based on information submitted by the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(g) If any representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, that person shall prepare a written statement of the reasons why the agreement should not be approved and forward this statement—together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents—to the Assistant Secretary—Indian Affairs for decision, with a copy to the affected Indian owner.

(h) The Assistant Secretary Indian Affairs shall review any agreement received containing a recommendation that it be disapproved, and make the final decision for the Department.

Subpart B—Procedures for Competitive Leases

§ 211.20 Scope.

The regulations in this Subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into a mining lease under the Act of May 11, 1938 (25 U.S.C. 396a–g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs the leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 211.21 Procedures for awarding leases.

(a) Competitive mining leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the tribal mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the tribal mineral owner, or the lease may be let through private negotiations in accordance with Subpart A of this part.

(b) Indian mineral owners may request the Secretary to prepare, advertise, negotiate, and/or award mining leases on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a). If requested by a potential operator interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives open to her/him, and that the owner may decline to permit any prospecting, mining, exploration or production.

(c) When the Secretary exercises authority to enter into contracts on behalf of individual Indian mineral owners, or when by the Indian mineral owners under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer leases to the highest responsible qualified bidder subject to the following procedures, unless it is determined, in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The

complete text of the advertisement including a specific description will be mailed to each person listed on the appropriate agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is unsuccessful;

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease to any bidder until the consent of the Indian mineral owner has been obtained.

§ 211.22 Duration of leases.

(a) No competitive mining lease with an Indian mineral owner shall exceed a primary term of ten (10) years and shall continue as long thereafter as minerals are produced in paying quantities. For the purpose of this provision, the term of a mining lease entered into by means of the exercise of an option shall be measured from the effective date of Secretarial approval of the lease. All provisions in leases governing their duration shall be measured from the date of that approval, unless otherwise provided in the lease.

§ 211.23 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive mineral leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the lands.

Subpart C—General

§ 211.30 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian minerals entered into pursuant to this part.

§ 211.31 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations, and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are contained in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration and in the Code of Federal Regulations.

§ 211.32 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service and in the Code of Federal Regulations.

§ 211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 7201 *et seq.*). These responsibilities are found in 30 CFR, Chapter VII.

§ 211.34 Approval of amendments.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 211.6 or the competitive lease meets the criteria for approval in § 211.21.

(b) An amendment to or modifications of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire contract meets the criteria set forth in § 211.6 or § 211.21 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification and an environmental and cultural assessment pursuant to § 211.38 of this part.

§ 211.35 Removal of restrictions.

(a) Notwithstanding the provisions of any mining contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the Indian mineral owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such time as the holder of the contract and the unrestricted minerals owner shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue to be subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement which provides that payments to the mineral owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of operations, completion of operations, and production, as if no restrictions had

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been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian mineral owner at the time and in the manner specified by the regulations in this part.

§ 211.36 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in a contract entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration of the permit, and the consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production or removal of minerals unless specifically so stated in the permit;

(3) The permittee or an authorized representative shall pay for all damages to growing crops, or improvements on the lands, and all other surface damages resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner when so provided for in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed, the Secretary may release the information upon request.

(5) In instances where the Indian mineral owner is also the surface land owner, the Indian mineral owner will obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allottee on her/his land needed for the geological permittee to enter onto the land to conduct exploratory operations. In instances where the Indian mineral owner is not the surface owner, the Indian mineral owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or rights of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit; or

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in a contract entered into pursuant to this part will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of a permit.

§ 211.37 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the contract that prospecting and mining operations will be conducted with appropriate diligence;

(b) Whether water in the amount needed for purposes of operations under the contract is available;

(c) Whether production royalties or other form of return on the minerals or other valuable resources removed from the leased premises is adequate; and

(d) When a method of contracting other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian mineral owner with a share of the return on the production of her/his mineral equal to what she/he might otherwise obtain through competitive bidding where such a comparison can readily be made.

§ 211.38 Environmental assessments.

(a) An environmental assessment shall be prepared by the Secretary in accordance with regulations promulgated by the Council on Environmental Quality, 40 CFR 1508.9, 30 BIAM Supplement 1, and 516 DM 1–7. When it is determined prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian mineral owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed mineral agreement.

(b) In order to make a determination of the effect of a contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a–1 *et seq.*, and the American Indian Religious Freedom Act of August 8, 1978 (Pub. L. 95–341), the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property is preserved.

§ 211.39 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, minerals agreements, leases, or assignments, bonds, or other instruments required by these regulations constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned minerals shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, minerals agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and her/his trust responsibility to the Indian mineral owner.

§ 211.40 Bonds.

(a) The Secretary shall require a prospector or operator to furnish a surety bond in such amount as is deemed appropriate.

(b) Before beginning mining operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving officer to assure compliance with the terms of the contract.

(c) Bonding shall be by corporate surety bonds.

(d) The Secretary reserves the discretionary right to require a change in the amount of bonds. The bonds shall be in an amount at least sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an approved partial or supplemental plan.

(e) In lieu of the bonds required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

§ 211.41 Manner of payments.

Unless otherwise provided for in an approved contract, all payments shall be made to the Secretary or such other party as may designated and shall be made at such time as provided for in the contract or by regulation.

§ 211.42 Permission to start operations.

(a) No exploration or mining operations are permitted on any contract premises before the effective date of the contract. The effective date of the contract shall be the date the contract is officially approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises in accordance with applicable rules and regulations. After such permission is secured, operations must be conducted in accordance with all applicable operating regulations promulgated by the Secretary of the Interior. Copies of applicable operating regulations may be secured from either the Authorized Officer or the Superintendent and no operations should be undertaken without a study of such regulations.

§ 211.43 Recordkeeping.

(a) The prospector or operator shall maintain records of all prospecting and mining operations conducted pursuant to a contract, including information on the type, grade or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept so that they may be readily inspected.

(b) All maps and records maintained under paragraph (a), all records regarding the financial structure of the prospector or operator, and any other records which are pertinent or related to operations done under a contract shall be available for examination by the Secretary, upon request. Such records shall at all times be available for the purpose of an independent audit upon the request of the Secretary.

(c) All maps and records maintained under paragraphs (a) and (b) will be furnished MMS in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(d) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 211.44 Mining contracts—individually-owned Indian lands.

(a) The Secretary may execute mining contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, mining contracts involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under provisions of § 211.21 of Subpart B.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a minerals contract where less than 100 percent of the undivided mineral interest is committed to the contract, and the Secretary has determined it to be in the best interest of the Indian mineral owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the mineral interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided mineral interest is committed to the contract;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian mineral owners have been contacted and have refused to consent to the contract; and

(4) The operator is required to submit to, and obtain the approval of the Secretary for a plan describing how the operator will account to the non-consenting mineral interest owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting mineral owners with a certified notice that a contract affecting their undivided interest has been approved without their consent, along with a copy of the operator's plan for accounting for their interests.

§ 211.45 Assignments; overriding royalties and operating agreements.

(a) *Assignments.* An assignment or sublease of any interest in a contract entered into pursuant to this part shall not be valid without the approval of the Secretary and the Indian mineral owner, if approval by the Indian owner is required in the contract. The assignee must be qualified to hold such contract and shall furnish a satisfactory bond conditioned on the faithful performance of the terms and conditions thereof. Approval shall not relieve the assignor of obligations under the original contract, unless the Secretary, with the consent of the Indian mineral owner when required, releases the assignor of obligations under said contract. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) *Overriding royalties and operating agreements.* Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof is not required. Such agreements shall be construed as not modifying any of the obligations of the operator with

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the Indian mineral owner under the contract, the regulations in this part, and Part 216 of this Title, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 211.46 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a prospector or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, the requirements of an approved exploration or mining plan, Secretarial orders or the orders of the Authorized Officer, and such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the prospector or operator by delivery in person or by certified mail to her/him at her/his last known address. Failure of the prospector or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Secretary's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the prospector or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a prospector or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the prospector or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a prospector or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a prospector or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The prospector or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2, *Provided,* appeals of cessation orders under this part shall not relieve the prospector or operator from the obligation to immediately comply therewith.

§ 211.47 Suspension of operations; remedial operations.

(a) The Secretary may, under such terms and conditions be prescribed, authorize suspension of operating and producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided,* that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3473.4, 3483.3, or 3503.3–2 as applicable. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend operating or producing requirements for economic or marketing reasons on a mining operation capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of operations.

(c) No approval shall be required for a suspension of operations which occurs within the primary term of the contract.

§ 211.48 Penalties.

(a) Violations of the terms and conditions of any contract, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 211.46, may subject a prospector or operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the prospector or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the prospector or operator of her/his right to either request a hearing within 30 days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent whose findings shall be conclusive, unless an appeal is taken pursuant to § 211.49 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the prospector or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the BIA. In the absence of a specific contract provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under § 6621 of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of

payment not received and only for the number of days the payment is late.

(d) Prospectors or operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director, or the MMS official to impose penalties for violations of applicable regulations pursuant to authority granted under 43 CFR Groups 3400 and 3500.

(2) Replacing or superseding any penalty provision in the terms and conditions of a contract approved by the Secretary pursuant to this part.

§ 211.49 Appeals.

(a) Appeals from decisions of the Departmental officers under this part may be taken pursuant to Part 2 of this Title.

(b) Cessation orders issued pursuant to § 211.46 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian mineral owner, or upon submission of a bond deemed adequate by both the Indian mineral owner and the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

§ 211.50 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of $25. All fees collected pursuant to this section shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

§ 211.51 No mineral agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any mineral agreement, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

PART 212—[REMOVED AND RESERVED]

2. Part 212—Leasing of Allotted Lands for Mining is hereby removed and reserved.

3. A new Part 225 is added to read as follows:

PART 225—OIL AND GAS AND GEOTHERMAL CONTRACTS

Sec.
225.1 Purpose and scope.
225.2 Information collection.
225.3 Definitions.

Subpart A—Fluid Minerals Agreements

225.20 Scope.
225.21 Authority to contract.
225.22 Negotiation procedures.
225.23 Approval of agreements.

Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

225.30 Scope.
225.31 Procedures for awarding leases.
225.32 Duration of leases.
225.33 Rentals; minimum royalty; production royalty on oil and gas leases.
225.34 Contracts for subsurface storage of oil and gas.
225.35 Surrender of leases.
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Subpart C—General

225.40 Scope.
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225.42 Authority and responsibility of the Minerals Management Service (MMS).
225.43 Approval of amendments to contracts.
225.44 Geological and geophysical permits.
225.45 Removal of restrictions.
225.46 Oil and gas and geothermal contracts of undivided inherited lands.
225.47 Persons signing in a representative capacity.
225.48 Economic assessments.
225.49 Environmental assessments.
225.50 Bonds.
225.51 Manner of payments.
225.52 Permission to start operations.
225.53 Assignments and overriding royalties and operating agreements.
225.54 Suspension of Production; Remedial Workover/Shut-In.
225.55 Unitization and communitization agreements and well spacing requirements.
225.56 Inspection of premises; books and accounts.
225.57 Termination and cancellation; enforcement of orders.
225.58 Penalties.
225.59 Appeals.
225.60 Fees.
225.61 No oil and gas or geothermal agreements made with Government employees.
225.62 Sales contracts, division orders and other division of interest documents.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 102, Act of January 1, 1970 (83 Stat. 42 U.S.C. 4332); Act of December 22, 1982 (96 Stat. 1938, 25 U.S.C. 2101–2108); Act of August 11, 1978 (92 Stat. 469; 42 U.S.C. 1966); Act of January 12, 1953 (96 Stat. 2447, 30 U.S.C. 1701).

§ 225.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian-owned oil and gas and geothermal resources. Subpart A—Mineral Agreements, establishes the procedures for the approval of oil and gas or geothermal mineral agreements entered into pursuant to the Indian Mineral Development Act of 1982 (Pub. L. 97–382). Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases contains regulations governing the procedures for the issuance of oil and gas and geothermal leases on tribal or allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to contracts for oil and gas or geothermal agreements. These regulations are intended to ensure that Indian owners desiring to have their oil and gas or geothermal resources developed receive at least fair and reasonable remuneration for the disposition of their resources; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to permit Indian oil and gas or geothermal owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in disposing of their resources.

(b) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract.

(c) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213, 226, and 227.

(d) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501–509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

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§ 225.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in Section 225 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq*).

§ 225.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Secretary" means the Secretary of the Interior or an authorized representative.

(b) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(c) "Superintendent" means the Bureau Agency Superintendent or an authorized representative having immediate jurisdiction over the oil and gas or geothermal resources covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR Parts 3160 and 3260.

(f) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(g) "Indian owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

(h) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

(i) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(j) "Geothermal resources" means:

(1) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproduct derived therefrom.

(k) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), contract, or other agreement, or any amendment, supplement or other modification of such agreement, providing for the exploration for, or extraction, processing or other development of oil and gas or geothermal resources, or providing for the sale or disposition of production or products of oil and gas or geothermal resources.

(l) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with an Indian owner with respect to, or has entered into an oil and gas or geothermal contract.

(m) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo community, rancheria, or colony that owns land.

(n) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of oil and gas or geothermal resources on the lands.

Subpart A—Fluid Minerals Agreements

§ 225.20 Scope.

The regulations in this subpart govern the procedures for obtaining approval of minerals agreements for the exploration, development and sale of oil and gas reserves or geothermal resources on indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

§ 225.21 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement with respect to oil and gas or geothermal resources in which such Indian tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in oil and gas or geothermal resources, may include such resources in a tribal mineral agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 225.22 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance and information during the negotiation process, and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following provisions:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A *force majeure* provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination or suspension;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted;

(16) Provisions clearly describing to the best of the operator's knowledge, future abandonment, reclamation and restoration activities;

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement, and seek advice as to whether the agreement appears to meet the requirement of § 225.23, or whether modifications, additions or corrections will be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the agreement, shall be forwarded to the Secretary for approval.

§ 225.23 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within: (1) One hundred and eighty (180) days after submission, or (2) sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made as to whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement, and shall consider, among other things: the potential economic return to the Indian owner; the potential environmental, social, and cultural effects; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C), of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 225.49 and an economic assessment as described in § 225.48, if needed. The Secretary may include in the written findings recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 225.49) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with:

PRIVILEGED PROPRIETARY INFORMATION OF THE (name of tribe or Indian).

(d) A minerals agreement shall be approved by the Secretary if it is determined that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration, to the Indian mineral owner;

(2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweigh its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(g) If a representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, a written statement of the reasons why the agreement should not be approved shall be prepared and forwarded, together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents, to the Assistant Secretary—Indian Affairs for decision with a copy to the affected Indian mineral owner.

(h) The Assistant Secretary—Indian Affairs shall review any agreement referred contained a recommendation that it be disapproved, and shall make the final decision for the Department.

Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

§ 225.30 Scope.

The regulations in this subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into an oil and gas or geothermal lease through competitive bidding pursuant to the Act of May 11, 1938 (25 U.S.C. 396a–g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 225.31 Procedures for awarding leases.

(a) Competitive oil and gas and geothermal leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the Indian mineral owner, or the lease may be let through private negotiations.

(b) Indian mineral owners may also request the Secretary to prepare, advertise, negotiate, and/or award an oil and gas or geothermal lease on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. If requested by a potential prospector or operator interested in acquiring lease rights to Indian-owned oil and gas or geothermal resources, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives available, and that the owner may decline to permit leasing, exploration or production.

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(c) When the Secretary exercises the authority to enter into leases on behalf of individual Indian mineral owners, or when requested by the Indian mineral owner under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer a lease to the highest responsible qualified bidder subject to the following procedures, unless it is determined in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description of the tracts, will be mailed to each person listed on the agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists, and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful;

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing will result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian oil and gas owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease contract to any bidder until the consent of the Indian mineral owner has been obtained.

§ 225.32 Duration of leases.

(a) No competitive oil and gas or geothermal lease with an Indian mineral owner shall exceed a term of ten (10) years and as long thereafter as oil and gas or geothermal resources are produced in paying quantities.

(b) Where an oil and gas or geothermal lease specifies a term of years and "as long thereafter as oil and gas or geothermal resources are produced in paying quantities" or similar phrase, the term "paying quantities" shall generally mean: Lease production of oil and/or gas or geothermal resources of sufficient value to exceed direct operation costs plus the cost of lease rentals or minimum royalty.

(c) A lease which provides that it shall continue in force and effect beyond the expiration of the primary term if drilling operations have been commenced during the primary term, shall continue in force and effect beyond the expiration date of the primary term if the lessee has commenced actual drilling with a rig designed to reach the total proposed depth by midnight of the last day of the primary term and such drilling is continued with reasonable diligence until the well is completed to production or abandoned.

§ 225.33 Rentals; minimum royalty; production royalty on oil and gas leases.

(a) An oil and gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of such rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.

(b) If the royalty on oil and gas production paid during any year aggregates less than $2.50 per acre, the lessee must pay the difference at the end of the lease year. On communitized and unitized leases, the minimum royalty shall be payable only on participating acreage.

(c) Unless otherwise authorized by the Secretary, a royalty of not less than 16⅔ percent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease shall be calculated in accordance with applicable rules and regulations in 30 CFR.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development, and operation of said premises, gas shall, if requested by the lessor, be furnished by the lessee to the Indian oil and gas owner. Such gas furnished shall be received by the Indian oil and gas owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee, and the Indian mineral owner shall pay a price therefor equal to the current wellhead price, less royalty, or if gas is not being sold, the price to be paid by the Indian oil and gas owner shall equal the highest price that could be obtained from another gas purchaser, less royalty. In addition to the above payments, the Indian oil and gas owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian oil and gas owner. The acquisition and use of any such gas purchased by the Indian oil and gas owner shall be at the Indian oil and gas owner's sole risk at all times. *Provided,* that this requirement shall be subject to the determination by the Superintendent, that gas in sufficient quantities is available above that needed for lease operation, and that waste would not result, and the gas is not subject to any pre-existing sales contracts, or disposition of such gas is not otherwise provided for in the lease. Where an arrangement is made to furnish gas to the Indian oil and gas owner pursuant to this section, it may be terminated only with the approval of the Secretary.

§ 225.34 Contracts for subsurface storage of oil and gas.

(a) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The

storage contract or modification, amendment, or extension, shall provide for the payment of such fee or rental, or in lieu thereof, for a royalty or percentage payment. All such fees, rentals, royalty or percentage payments shall be in addition to any royalties or rentals required by any lease committed to such a storage agreement.

(b) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, a provision in an oil and gas contract under which storage of oil or gas is authorized for continuance of the contract at least for the period of such storage use and so long thereafter as oil or gas not previously produced, is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the Secretary and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project.

§ 225.35 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(a) The lessee shall request the Secretary to terminate the lease and pay a $25 filing fee.

(b) All royalties and rentals due on the date the request for termination is made must be paid.

(c) The Superintendent, after consultation with the Authorized Officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all wells drilled on the portion of the lease surrendered have been properly abandoned or conditioned, whichever is required.

(d) If a lease has been recorded, the lessee must submit a recorded release of the acreage covered by the request.

(e) If a lessee requests termination of an entire lease or an entire undivided portion of a lease, she/he must surrender the lease; provided that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must surrender only her/his copy of the assignment.

(f) If the lease, or a portion thereof, being terminated is owned in undivided interests by more than one party, all parties owning undivided interests in the lease must join in the request for termination.

(g) No part of any advance rental shall be refunded to the lessee, nor shall the lessee be relieved of the obligation to pay advance rental when it becomes due, by reason of any other subsequent surrender or termination of a lease or a portion thereof.

(h) If oil and gas is being drained from the leased premises by a well or wells located on lands not included in an Indian oil and gas lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions on the termination of the lease to protect the interests of the Indian oil and gas owners of the lands surrendered, such as payment of compensatory royalty for any drainage.

§ 225.36 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive oil and gas or geothermal leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the land.

Subpart C—General

§ 225.40 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian oil and gas or geothermal resources entered into pursuant to this part.

§ 225.41 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are provided for in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration.

§ 225.42 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service.

§ 225.43 Approval of amendments to contracts.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part, must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 225.23, or if the competitive lease meets the criteria for approval in § 225.31.

(b) An amendment to or modification of a contract for the exploration, development and production of Indian-owned oil and gas or geothermal resources, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 225.23 or § 225.31 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 225.48 of this part, and an environmental and cultural assessment pursuant to § 225.49 of this part.

§ 225.44 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in an oil and gas or geothermal contract entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of or removal of oil and gas or geothermal unless specifically so stated in the permit;

(3) The permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian owner, when so provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in

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the permit, the Secretary may release such information upon request.

(5) In instances where the Indian owner is also the surface land owner, the Indian owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee; or allottee on her/his land needed for the geological permittee to enter onto the land to conduct exploratory operations. In instances where the Indian owner is not the surface owner, the Indian owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or rights of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit;

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in an oil and gas or geothermal contract entered into pursuant to this part, will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of the permit.

§ 225.45 Removal of restrictions.

(a) Notwithstanding the provisions of any oil and gas or geothermal contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the oil and gas or geothermal owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such times as the holder of the contract and the unrestricted Indian owner, shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the oil and gas or geothermal resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement, which provides that payments to the oil and gas or geothermal owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of drilling operations, completion of wells, and production, the same as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian owner at the time and in the manner specified by the regulations in this part.

§ 225.46 Oil and gas and geothermal contracts of undivided inherited lands.

(a) The Secretary may execute oil and gas or geothermal contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, contracts for the development of such interests may be executed by the Secretary, provided that such interests have been offered for sale under provision of § 225.31.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a contract where less than 100 percent of the undivided mineral interest is committed to the contract and the Secretary has determined it to be in the best interest of the Indian owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the oil and gas or geothermal interests of the consenting Indian owners;

(2) Sixty-six and two thirds percent or more of the undivided oil and gas or geothermal interest is committed to the lease;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian owners have been contacted and have refused to consent to the lease; and

(4) The operator is required to submit, and obtain the approval of the Secretary to, a plan describing how the operator will account to the non-consenting Indian owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting Indian owners with a certified written notice that a contract has been approved without their consent, that affects their undivided interest along with a copy of the operator's plan for accounting for their interests.

§ 225.47 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, oil and gas or geothermal agreements or assignments, bonds, or other instruments required by these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned oil and gas or geothermal resources, shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, contract, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and the trust responsibility to the Indian owner.

§ 225.48 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the oil and gas or geothermal contract that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on oil and gas or geothermal resources is adequate; and

(c) When a method of contracting for development of oil and gas other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian oil and gas owner with a share of the return on the production of her/his oil and gas equal to what the owner might otherwise obtain through competitive bidding, when such a comparison can readily be made.

§ 225.49 Environmental assessments.

(a) An environmental assessment shall be prepared or caused to be prepared by the Secretary in accordance with regulations promulgated by the Council for Environmental Quality, 40 CFR 1508.9, and 30 BIAM Supplement 1 and 516 DM 1–7. When it is determined prior to the preparation of the assessment that an environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(b) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a–1 *et seq.*, the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and production activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the oil and gas or geothermal development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property preserved.

§ 225.50 Bonds.

(a) The Secretary may require a geological or geophysical permittee or operator to furnish surety bonds in such amount deemed appropriate.

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving official, but in no event less than $10,000.

(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file one bond of $50,000 for all oil and gas or geothermal contracts in any one state, or such lesser jurisdiction as determined by the Secretary, including contracts on that part of an Indian reservation extending into states contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this section, an operator or permittee may file with the Secretary a bond in the sum of $150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.

(e) Bonding shall be by corporate surety bonds.

(f) In lieu of a bond required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

(g) The right is specifically reserved to the Secretary to increase or decrease the amount of bonds or letters of credit at her/his discretion.

§ 225.51 Manner of payments.

Unless otherwise provided in an approved contract, all payments shall be paid to the Secretary or such other party as she/he may designate, and shall be made at such time as provided in the advertisement, permit, or mineral agreement.

§ 225.52 Permission to start operations.

(a) No exploration or drilling operations are permitted on any contract area before the effective date of the oil and gas or geothermal contract. The effective date of the contract shall be the date the contract is officially approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises, in accordance with applicable rules and regulations in Title 43 CFR, Parts 3160 and 3260, and Orders or Notice to Lessees (NTL) issued thereunder. After such permission is secured, operations must be in accordance with all applicable operating rules and regulations promulgated by the Secretary of the Interior. Copies of applicable regulations may be secured from either the Authorized Officer or the Superintendent and no operations should be undertaken without a study of such regulations.

§ 225.53 Assignments and overriding royalties and operating agreements.

(a) *Assignments.* An assignment of oil and gas or geothermal contracts or any interest therein, shall not be valid without the approval of the Secretary and the Indian owner, if approval of the Indian owner is required in the contract. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof. An operator must assign either her/his entire interest in a contracted area or a legal subdivision (which may be a separate horizon) thereof, or an undivided interest in the whole lease or contracted area: *Provided,* that when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons, such assignment shall be subject to both the consent of the Secretary and the Indian owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Secretary within 30 days after the date of the execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) *Overriding royalties and operating agreements.* Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto. Such agreements shall be construed as not modifying any of the

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obligations of the operator with the Indian owner under her/his contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 225.54 Suspension of production; remedial workover/shut-in.

(a) The Secretary may under such terms and conditions as she/he may prescribe, authorize suspension of producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided,* that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3162.3–2. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend producing requirements for economic or marketing reasons on an oil and/or gas or geothermal well capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of production.

(c) No approval shall be required for a suspension of production which occurs within the primary term of the contract.

§ 225.55 Unitization and communitization agreements; and well spacing requirements.

(a) *Unitization and communitization agreements.* (1) For the purpose of promoting conservation and efficient utilization of natural resources, the Secretary, with the consent of the Indian mineral owner, may approve a cooperative unit, drilling or other development plan on any contracted area upon a determination that approval is advisable and in the best interest of the Indian owner. For the purposes of this section, a cooperative or other plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such agreements include unit agreements and other types of agreements which allocate costs and benefits.

(2) Where individual or tribal Indian owners have consented in an oil and gas or geothermal contract to include their lands in a cooperative or other development plan, further consent of such owners shall not be required to obtain the approval of a proposed agreement by the Secretary.

(3) A request for approval of a cooperative plan shall be filed with the Superintendent which must comply with the requirements of all applicable rules and regulations.

(4) All Indian owners of any right, title or interest in the oil and gas or geothermal resources to be unitized are proper parties to the proposed agreement, and must be invited to join the agreement unless prior consent to unitization has been given. If any Indian oil and gas or geothermal owner refuses to join in an agreement, the request for approval shall include: An affidavit certifying that reasonable efforts were made to obtain her/his consent, and a copy of a return receipt showing that an invitation to join the unit was mailed to the Indian owner by certified mail at her/his last known mailing address.

(5) A request for approval of a proposed agreement, and documents incident to such agreements, should be filed with the Superintendent ninety (90) days prior to the expiration date of the first Indian oil and gas or geothermal contract to expire in the unit.

(6) Prior to approving or disapproving a proposed agreement, the Superintendent shall obtain the recommendation of the Authorized Officer for approval or disapproval, based upon the engineering and technical aspects of the agreement.

(7) Approval shall be retroactive to the date the proposed agreement was submitted to the Department or the date that first production occurred within the unit, whichever is earlier. Review of the agreement shall be primarily concerned with engineering and technical aspects of the agreement and shall generally not consider the other terms and conditions of affected leases (e.g., royalty rate and bonuses).

(8) Any oil and gas or geothermal contract committed in part to any such agreement shall be segregated into separate minerals contracts or leases as to the lands committed and lands not committed to the agreement. Such segregation shall be effective the date the agreement is approved by the Secretary.

(b) *Well spacing requirements.* Each well within a cooperative unit shall be drilled in conformity with an acceptable well spacing program at a surveyed well location approved or prescribed by the Authorized Officer after appropriate environmental and technical reviews. An acceptable well spacing program may be (1) a program which conforms to a spacing order or field rule which is acceptable to the Authorized Officer; (2) a program which proposes drilling a well on lands committed to an agreement at a location approved by the Authorized Officer, or (3) any other well spacing approved by the Authorized Officer.

§ 225.56 Inspection of premises; books and accounts.

(a) Operators shall allow Indian owners, their representatives or any authorized representative of the Secretary to enter all parts of the contracted premises for the purpose of inspection only at their own risk. Books and records shall be available only during business hours. Operators shall keep a full and correct account of all operations and make reports thereof, as required by the contract and applicable regulations.

(b) Records will be provided to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(c) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 225.57 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a permittee or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, her/his orders, or the orders of the Authorized Officer and such noncompliance does not threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the permittee or operator by delivery in person or by certified mail to the permittee or operator at her or his last known address. Failure of the permittee or operator to take action in accordance with the notice of noncompliance, within the time limits specified by the Secretary, shall be grounds for

suspension of operations subject to such notice by the Superintendent, or grounds for the Superintendent's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the permittee or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the permittee or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a permittee or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the permittee or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a permittee or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The permittee or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2. *Provided,* appeals of cessation orders under this part shall not relieve the permittee or operator from the obligation to immediately comply therewith.

§ 225.58 Penalties.

(a) Violations of the terms and conditions of any permit, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 225.57, may subject a permittee to a penalty of not more than $1,000 per violation per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action. Similarly, violations of the terms and conditions of any contract, other than those relating to operational or royalty management matters, the regulations in this part, or failure to comply with a notice of noncompliance or cessation order issued in that regard pursuant to § 225.57, may subject the operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of proposed penalty shall be served on the permittee or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the permittee or operator of the right to either request a hearing within 30 days from receipt of the notice, or pay the proposed penalty. Hearings shall be held before the Superintendent, whose findings shall be conclusive, unless an appeal is taken pursuant to § 225.59 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the permittee or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific permit or contract provision prescribing a different rate, the interest rate on late payments and under payments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest will be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Permittees and operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer and/or the MMS Official to issue notices of violations or to impose assessments and/or penalties for violations of applicable regulations pursuant to the authority granted under 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II; or

(2) Replacing or superseding any penalty provision in the terms and conditions of a permit or contract approved by the Secretary pursuant to this part.

§ 225.59 Appeals.

(a) Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to Part 2 of this Title.

(b) Notices of violations, cessation orders, assessments, or proposed penalties issued pursuant to this part, 43 CFR Part 3160 and 3260 or 30 CFR Chapter II shall not be suspended as a result of an administrative review, hearing on the record, or the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an administrative review, hearing on the record, or appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian owner, or upon submission of a bond deemed adequate by both the Indian owner and the Secretary to indemnify the Indian owner from any resulting loss or damage.

§ 225.60 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of not less than $25. All fees collected pursuant to this section, shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

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§ 225.61 No oil and gas or geothermal agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any oil and gas or geothermal contract, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

§ 225.62 Sales contracts, division orders and other division of interest documents.

Sales contracts, division orders and other division of interest documents necessary under this part shall be regulated by 30 CFR Parts 207 and 210.

W.P. Ragsdale,

Assistant Secretary—Indian Affairs.

[FR Doc. 87-24075 Filed 10-20-87; 8:45 am]

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Federal Register

Wednesday
October 21, 1987

Part III

Department of the Interior

Office of Surface Mining and Reclamation Enforcement

30 CFR Parts 780, 784, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining and Reclamation Enforcement

30 CFR Parts 780, 784, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) proposes to amend portions of its permanent program regulations governing permanent and temporary impoundments at surface and underground mining operations. Most of the proposed revisions are in response to a court decision; revisions are also being proposed in response to a 1986 amendment to the Surface Mining Control and Reclamation Act of 1977.

The proposed rule, which concerns the design, construction and inspection requirements that apply to impoundments, would: (1) Establish a size criteria for the distinction between large and small impoundments; (2) require a minimum static safety factor for small impoundments; (3) provide for stable foundations and abutments during all phases of construction for small impoundments; (4) establish new spillway requirements for impoundments; and (5) authorize qualified registered professional land surveyors to inspect small impoundments and to certify the construction of siltation structures.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern time on December 30, 1987.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC, on December 23, 1987; in Denver, Colorado on December 23, 1987; and in Knoxville, Tennessee on December 23, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on December 7, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Robert A. Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1502 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "**DATES**") or delivered to an address other than those listed above (see "**ADDRESSES**") may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Wiles (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time December 7, 1987. If no one has contacted Mr. Wiles to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act, or SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Environmental protection performance standards for permanent water impoundments constructed during surface mining activities appear in section 515(b)(8) of the Act, 30 U.S.C. (1265(b)(8); provisions governing the construction of siltation structures appear in section 515(b)(10)(B), 30 U.S.C. 1265(b)(10)(B). Sections 516(b)(9) and (10) of the Act, 30 U.S.C. 1266(b)(9) and (10), impose similar requirements for water impoundments and siltation structures that are used for underground mining activities, but provide that the Secretary shall make such modifications in the requirements as are necessary to accomodate the distinct differences between surface and underground mining.

The permanent regulatory program for surface coal mining and reclamation operations was promulgated on March 13, 1979 (44 FR 15312). Requirements for sedimentation ponds at surface mining activities were established at 30 CFR 816.46 (44 FR 15400), while those for underground mining activities were established at 30 CFR 817.46 (44 FR

15426). OSMRE implemented the provisions of section 515(b)(10)(B) of the Act on siltation structures by establishing requirements for sedimentation ponds. At that time, OSMRE considered such ponds to be the "best technology currently available" for controlling sediment movement from surface coal mining operations.

Requirements for permanent and temporary impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 816.49 (44 FR 15401) and 30 CFR 817.49 (44 FR 15428), respectively.

Permitting requirements for reclamation and operation plans for impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 780.25 (44 FR 15360) and 30 CFR 784.25 (44 FR 15368), respectively.

During revisions to the permanent regulatory program in 1983, OSMRE replaced most of the specific design criteria in § 816.46 (48 FR 44051) and § 816.49 (48 FR 44004) with performance standards, thereby providing regulatory authorities greater flexibility in the details of impoundment design. Section 816.46 was renamed "Hydrologic balance: Siltation Structures," to be consistent with the wording of section 515(b)(10)(B)(ii) of the Act and to reflect rule changes which provided for the use of certain siltation structures other than sedimentation ponds, such as chemical treatment facilities or mechanical structures that have a point-source discharge.

In promulgating the 1979 rules, and again in the 1983 rules, OSMRE did not identify any differences between impoundments for surface and underground mines that necessitated different regulatory provisions. The permitting rules applicable to impoundments for surface mining activities at 30 CFR 780.25 and those for underground mining activities at 30 CFR 784.16 are identical. Similarly, the rules for surface mining activities at 30 CFR 816.46, 816.49, and 816.84 are identical to the rules for underground mining activities at 30 CFR 817.46, 817.49, and 817.84, respectively. To simplify the preamble to this proposed rule, it discusses existing and proposed 30 CFR 780.25, 816.46, 816.49, and 816.84 with the understanding that the discussion also applies to 30 CFR 784.16, 817.46, 817.49, and 817.84, respectively.

Upon issuance, the 1983 rulemaking for §§ 816.46 and 816.49 and related coal mine waste impounding structure provisions in § 816.84(b) was challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. July 15, 1985) (*In Re: Permanent (II)*). The court remanded: (1) Sections 816.49 (a)(3) and (a)(5)(i) on the basis that they included requirements for a static safety factor and for foundation investigation and laboratory testing of small sedimentation ponds without having included such requirements when the rule was proposed on June 21, 1982, as required by the Administrative Procedure Act; and (2) §§ 816.49 and 816.84(b) to the extent that they relied on Mine Safety and Health Administration (MSHA) impoundment size classification standards when OSMRE had not justified reliance on such standards. Slip op. at 30–32 and 102–117. In addition, in response to plaintiff's challenge of the combination spillway requirement of §§ 816.49(a)(8) and 816.84(b)(1), the Secretary of the Interior agreed to propose a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. Slip op. at 34 and 117.

The remainder of this "Background" section of the preamble is organized by issues as follows: (1) Impoundment size distinction; (2) spillways; (3) stability; (4) foundations; (5) certifications of siltation structures; and (6) inspections of impoundments. Proposed changes to the rule are discussed, section-by-section, in the "Discussion of Proposed Rule."

1. Impoundment Size Distinction

In both the 1979 and 1983 regulations at 30 CFR 816.49, OSMRE classified impoundments based on a size distinction and stipulated that larger, potentially more hazardous, impoundments, be subject to more stringent requirements than smaller, potentially less hazardous, impoundments. This classification also applied in the 1983 rules to sedimentation ponds at 30 CFR 816.46(c)(2) and coal mine waste impounding structures at 30 CFR 816.84(b).

OSMRE adopted the MSHA criteria for impoundment structures in the 1979 rule (44 FR 15401) and continued to apply them in the 1983 rules. MSHA criteria in 30 CFR 77.216 stipulate design, construction and maintenance requirements for structures and takes into account size and potential hazard (see "Discussion of Proposed Rule" for specific MSHA criteria). Under §§ 816.46(c)(2) and 816.49 of the 1983 rules, structures meeting these criteria were required to meet MSHA requirements. Similarly, the requirements for coal mine waste impounding structures in § 816.84(b) of the 1983 rules are based on the same criteria.

In *In Re: Permanent (II)*, plaintiffs objected to OSMRE using this distinction between sizes of coal mine waste impounding structures in § 816.84(b) (48 FR 44029), contending that the distinction had the effect of resulting in less scrutiny for smaller impoundments. Plaintiffs contended that OSMRE's adoption of the size distinctions used by MSHA was improper, and that OSMRE should independently classify impoundment size. Plaintiffs maintained that the Secretary had not justified the distinction in terms of the Act.

The court remanded § 816.84(b), insofar as it depended on the MSHA criteria, finding that the Secretary must independently consider and justify the adoption of a distinction based on impoundment size, and that he had not properly justified the rule using the MSHA criteria. *In Re: Permanent (II)*, Slip op. at 30–32. The court also remanded § 816.49 for the same reasons.

On November 20, 1986, OSMRE announced its intention to propose a new rule to comply with the court order (51 FR 41958). After reconsidering the administrative record of the previous rules, as well as the legislative history of the Act and the opinion of the court, OSMRE has decided to repropose §§ 816.49(a), 816.46(c)(2) and 816.84(b) using MSHA size distinctions. However, when applying the size criteria to determine which impoundments must meet the more stringent stability requirements in § 816.49(a)(3), OSMRE proposes to incorporate a provision whereby a small impoundment would be subject to the more stringent requirements for large impoundments if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage. The justification for using these criteria is included in the subsequent section of this preamble entitled "Discussion of Proposed Rule."

2. Spillways

The 1983 rules in 30 CFR 816.49(a)(8) and 816.84(b)(2) required that all impoundments, including coal mine waste impounding structures, include a combination of principal and emergency spillways designed and constructed to safely pass the design precipitation event. This requirement for a combination of principal and emergency spillways was challenged in *In Re: Permanent (II)*. The Secretary determined that the challenge had merit

and stated his intention to propose a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. *In Re: Permanent (II)*, Slip op. at 34 and 117. On November 20, 1986 (51 FR 41952), OSMRE announced the suspension of §§ 816.49(a)(8) and 816.84(b)(2) to the extent that they required separate principal and emergency spillways where one spillway may safely pass the design precipitation event.

3. Stability

In 1982, OSMRE proposed (47 FR 26760) that static safety factors for impoundments be determined "by prudent engineering design." In response to comments on the 1982 proposal and in order to simplify the requirement, OSMRE adopted in the 1983 rulemaking at § 816.49(a)(3) (48 FR 44004) a single static safety factor of 1.5 and a seismic safety factor of a least 1.2 for all impoundments.

Challengers to the 1983 rule in *In Re: Permanent (II)* contended that OSMRE's 1982 proposed rule had not included a static safety factor of 1.5 for small impoundments, and therefore the public was not given adequate notice under the Administrative Procedure Act that this requirement would apply to small sedimentation ponds. The court remanded OSMRE's 1983 rule for additional rulemaking to the extent that it applied to small sedimentation ponds not previously required to meet the 1.5 static safety factor. *In Re: Permanent (II)*, Slip op. at 108–113. Accordingly, on November 20, 1986, OSMRE suspended § 816.49(a)(3) insofar as it applied to small sedimentation ponds (51 FR 41958).

4. Foundations

In the 1983 rule (48 FR 44004), OSMRE prescribed in § 816.49(a)(5)(i) that the foundations and abutments for impounding structures be designed to be stable under all conditions of construction and operation. Section 816.49(a)(5)(i) also required sufficient foundation investigation and laboratory testing to determine design requirements for foundation stability for all impoundments, regardless of size. That provision was challenged in *In Re: Permanent (II)* on the basis that the rule violated the Administration Procedure Act because the requirements for foundation investigation and laboratory testing were not included for small sedimentation ponds when OSMRE proposed the rule in 1982 (47 FR 26759).

The court remanded § 816.49(a)(5)(i) rejecting the application of foundation investigation and laboratory testing to small ponds because there was not sufficient notice in the proposed rule that these requirements were being applied to small ponds. *In Re: Permanent (II)*, Slip op. at 108–113. On November 20, 1986 (51 FR 41958), in response to the court action, OSMRE announced suspension of § 816.49(a)(5)(i) insofar as it applied to small sedimentation ponds.

5. Certifications of Siltation Structures

An October 30, 1986, amendment to the Act authorized land surveyors to certify the construction of siltation structures [Sec. 123, Pub. L. 99–591, 100 Stat. 3341–267). The certification requirement of section 515(b)(10)(B)(ii) of the Act was amended by inserting after "qualified registered engineer" the phrase: "or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." Prior to this amendment, section 515(b)(10)(B)(ii) required that siltation structures be certified only by a qualified registered engineer.

6. Inspections of Impoundments

The 1979 impoundment regulations at § 816.49(h) (44 FR 15402) authorized land surveyors to perform and certify the annual inspection of small impoundments except for coal processing waste dams and embankments. During the preparation of the 1983 rule (48 FR 44004) OSMRE inadvertently omitted this provision from § 816.49. In 1985, to implement a November 4, 1983, amendment to the Act, OSMRE promulgated a final rule (50 FR 16194) that allowed qualified land surveyors in certain states to certify the design of small impoundments under §§ 780.25(a)(3)(i) and 816.49(a)(2).

Although neither the 1979 nor the 1983 rule included any comments on the merits of land surveyors doing the annual inspection of small impoundments, comments received during the preparation of the 1985 final rule suggested that land surveyors were fully capable of performing such inspections (50 FR 16197). OSMRE found the comments on this point to have merit and stated in the preamble to the 1985 rule that it would consider proposing a revision to § 816.49(a)(10) to allow post-construction inspections of small impoundments by qualified land surveyors. However, OSMRE believed that it was inappropriate to include such a provision in the final 1985 rule because it had not been included in the proposed rule (49 FR 38959). OSMRE's proposal implementing this provision is included in the subsequent section of this preamble entitled "Discussion of Proposed Rule."

III. Discussion of Proposed Rule

After consideration of the administrative record of these regulations, as well as the legislative history of the Act and the opinions of the court, and in light of current technical information on impoundment design, construction and inspection, OSMRE is proposing the following revisions to its permanent regulatory program. Consistent with its findings when promulgating the 1979 and 1983 rules, OSMRE has not identified any differences between impoundments for surface and underground mines that would appear to necessitate different regulatory provisions under this proposed rulemaking. Therefore, the proposed permitting rule applicable to impoundments for surface mining activities at 30 CFR 780.25 and the proposed rule for underground mining activities at 30 CFR 784.16 are identical. Similarly, the proposed rules for surface mining activities at 30 CFR 816.46, 816.49, and 816.84 are identical to the proposed rules for underground mining activities at 30 CFR 817.46, 817.49, and 817.84, respectively. The discussion of the proposed changes to 30 CFR 780.25, 816.46, 816.49, and 816.84 also applies to the proposed changes in 30 CFR 784.16, 817.46, 817.49, and 817.84, respectively.

Sections 780.25(c)/784.16(c) Permitting requirements for permanent and temporary impoundments

Section 780.25(c) of OSMRE's permanent program regulations establishes permitting requirements applicable to the design of permanent and temporary impoundments. The proposed revisions to § 780.25(c) primarily are organizational changes. Proposed § 780.25(c)(1) is retained from § 780.25(c) of the 1983 rule. The proposed requirement in § 780.25(c)(2) that a copy of the plan submitted to the District Manager of MSHA under 30 CFR 77.216(a) also be submitted to the SMCRA regulatory authority as part of the permit application is taken from § 816.49(a)(1) of the 1983 rule. This sentence is moved from § 816.49(a)(1) § 780.25(c)(2) because it is more relevant to the permitting provisions than to the performance standards (see subsequent discussion of proposed §§ 816.49(a)(1)/817.49(a)(1)).

In § 780.25(c)(3), OSMRE proposes to add a new provision that allows the regulatory authority to establish engineering design standards, in lieu of engineering tests, for small impoundments located where

impoundment failure would not be expected to cause a loss of life or serious property damage. The design standards would be implemented through the State program approval process which would ensure compliance with the minimum static safety factor of 1.3 for small impoundments proposed in § 816.49(a)(3)(ii). OSMRE's approval of any design standards issued by the regulatory authority would be based on the ability of those standards to ensure achievement of that minimum static safety factor.

This approach provides for the promulgation of a national standard based on a 1.3 safety factor, but still allows the regulatory authority to establish state and local design standards to accommodate local conditions. Under this provision, a regulatory authority could establish specific embankment slopes, minimum freebroad requirements, etc., which would provide the required safety factor within the range of conditions for which they are authorized. Allowing small impoundments to be designed and constructed using design standards follows the intent of the 1979 rules.

Sections 816.46(b)(3)/817.46(b)(3) Certifications of siltation structures.

In response to an October 30, 1986, amendment to the Act (see 5. *Certifications of siltation structures* in "Background"), OSMRE proposes to amend § 816.46(b)(3) to authorize land surveyors to certify the construction of siltation structures before they are placed in operation. Prior to the amendment, this section of the Act required that qualified registered engineers certify siltation structures. The proposed rule would authorize the certification of siltation structures by a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify cross sections, maps, and plans in accordance with § 780.25.

Sections 816.46(c)(2)/817.46(c) Sedimentation pond spillways.

Because the spillway requirements for sedimentation ponds are based on the spillway design requirements for permanent and temporary impoundments in § 816.49(a)(8), the proposed changes in § 816.49(a)(8) necessitate proposed changes to § 816.46(c)(2). The proposed rule would require that sedimentation pond spillways have sufficient capacity to safely pass the specified precipitation event. Under proposed § 816.46(c)(2), a single spillway is sufficient for a large or small sedimentation pond so long as it passes the specified precipitation event.

Section 816.45(c)(2) would authorize the regulatory authority to approve the design of a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the sedimentation pond will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the sedimentation pond is located where failure would not be expected to cause loss of life or serious property damage. OSMRE believes that this new provision would be useful for those sedimentation ponds where the runoff area is small, or where pumps or a decant structure would be used to control the water level in the facility. OSMRE believes that current, prudent, engineering practice requires that at least 90 percent of the water stored during the design precipitation event be removed within the 10-day period following the design precipitation event. OSMRE welcomes comments on the suitability of this provision.

Section 816.46(c)(2) would also change the provision in § 816.46(c)(2)(ii) of the 1983 rule which specifies that such ponds "may use a single spillway if the spillway (A) is an open channel of nonerodable construction and capable of maintaining sustained flows; and (B) is not earth- or grass-lined." OSMRE is proposing to allow a single spillway as long as the specified design precipitation event can be accommodated, regardless of whether an open channel design is employed. Section 816.46(c)(2) would require that "if an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined."

Proposed § 816.46(c)(2)(i) would require that large sedimentation ponds, those meeting the size or other qualifying criteria of § 77.216(a) of this title, shall comply with all the requirements of that section, and shall have sufficient spillway capacity to safely pass a 100-year, 6-hour precipitation event, or greater even as specified by the regulatory authority. The language implying that more than one spillway was required would be removed.

Proposed § 816.45(c)(2)(ii) would require that small sedimentation ponds, those not meeting the size or other qualifying criteria of 30 CFR 77.216(a), shall have sufficient spillway capacity to safely pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority. The 6-hour precipitation event is the same as in the 1983 rule.

Sections 816.49(a)(1)/817.49(a)(1) Impoundment size distinction.

Proposed § 816.49(a)(1) would continue to apply the MSHA criteria, including a size distinction, in differentiating between impoundments, but would incorporate a provision whereby a small impoundment would be subject to the more stringent requirements for large impoundments in OSMRE regulations if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage.

Under MSHA rules, impoundments are subject to the requirements of 30 CFR 77.216 if they can: (1) Impound water, sediment or slurry to an elevation of 5 feet or more above the upstream toe of the structure and can have a storage volume of 20 acre-feet or more; or (2) impound water, sediment or slurry to an elevation of 20 feet or more above the upstream toe of the structure; or (3) as determined by the MSHA District Manager, present a hazard to coal miners. Impoundments meeting these criteria would be subject to MSHA requirements, as well as OSMRE requirements for large impoundments. Those not meeting the criteria would not be subject to MSHA requirements. However, under a new provision being proposed in § 816.49(a)(3), a small impoundment would be subject to the more stringent stability requirements for large impoundments specified in § 816.49(a)(3) if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage (see discussion of proposed changes in § 816.49(a)(3), *Stability*).

OSMRE is interested in receiving comments on the suitability of adopting the criteria proposed in § 816.49. Comments should specifically address whether there would be a problem with small impoundments that meet the stability standards of the Act receiving less scrutiny during construction and inspection.

OSMRE is proposing to reorganize both § 780.25(c) and § 816.49(a)(1) to clarify impoundment size distinctions relative to permitting and to performance standards, respectively. The proposed first sentence in § 816.49(a)(1) is the same as in the 1983 rule except that "size or other" is inserted before "criteria" to be

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consistent with other references in the proposed rule.

OSMRE is proposing to move from § 816.49(a)(1) of the 1983 rule to § 780.25(c)(2) the sentence requiring that a copy of the plan submitted to the District Manager of MSHA under 30 CFR 77.216(a) also be submitted to the SMCRA regulatory authority as part of the permit application. This sentence is moved to § 780.25(c)(2) because it is more relevant to the permitting provisions than to the performance standards.

After re-evaluating the administrative record for this rule, the legislative history of the Act, the opinions of the court, and current technical information concerning impoundment design, construction and inspection, OSMRE believes that the record clearly supports the adoption of a distinction based on size and, specifically, the adoption of the MSHA criteria. In justifying the size distinction proposed in this rule, OSMRE relies on its determination of the major safety and environmental concerns in impoundment design and construction and looks to the Act and to the example of other Federal agencies experienced in the design, construction and inspection of impoundments.

The major safety and environmental concerns in regulating impoundments are the volume of water discharged in case of rupture; the pressure against the retaining embankment; and the downstream risks to people and property. OSMRE has concluded that, although size is not the only hazard consideration in regulating impoundments, the magnitude of risk clearly increases with the size of the impoundment. Based on this conclusion, it is reasonable to distinguish between different sized impoundments in establishing performance standards under SMCRA.

The Act neither requires nor precludes the adoption of a size distinction. Section 515(b)(8)(B) of the Act, which addresses the stability and margin of safety necessary in constructing permanent water impoundments requires compatibility with structures constructed under Public Law 83–566, "The Watershed Protection and Flood Prevention Act of 1954." In implementing Pub. L. 83–566 by assisting in the construction of more than 8000 impoundments, the U.S. Department of Agriculture's Soil Conservation Service (SCS) has established a size distinction as part of its criteria for design and construction. According to the SCS criteria, smaller, potentially less hazardous, impoundments are designed and constructed to less stringent standards (see SCS Design Guide 378, updated in 1985) than larger impoundments (see SCS Technical Release Number 60, updated in 1985).

In determining the potential hazard of an impoundment, SCS takes into account the potential loss of life; damage to homes, commercial or industrial buildings, main highways, or railroads; and interruption of the use of service of public utilities. OSMRE believes that impoundments designed and constructed in a manner that adequately considers these factors would be adequate under SMCRA.

Similarly, when MSHA established its criteria in 30 CFR 77.216 for determining which impoundments should be subject to design, construction and inspection requirements for purposes of protecting miners, the agency adopted a size distinction. Smaller impoundments that have not otherwise been determined to be hazardous are not even subject to MSHA regulations.

In addition to the specific SCS and MSHA examples, there is broad recognition among Federal agencies of the validity of making a size distinction for impoundments. In 1979, the Federal Coordinating Council for Science, Engineering and Technology, a body representing eight Federal agencies concerned with dam safety, issued the Federal Guidelines for Dam Safety. The guidelines, for use by those Federal agencies responsible for the planning, design, construction, operation, or regulation of dams, make a distinction between large and small dams. In fact, the guidelines apply only to the larger impoundments.

In light of the approaches taken by other agencies with extensive experience in the design, construction and inspection of impoundments, and with similar safety and environmental concerns to those of OSMRE under SMCRA, there is a sound basis for adopting a size distinction that provides for more stringent requirements for larger impoundments and less stringent standards for smaller impoundments that have not otherwise been determined to be hazardous. The SCS Design Guide 378, the SCS Technical Release 60, and the Federal Guidelines for Dam Safety have been entered in the Administrative Record for this rule.

In determining which size distinction to use in impoundment design and construction under SMCRA, OSMRE again relies on the Act. Section 516(a) of the Act requires that regulations promulgated under the Act that apply to underground mining not conflict with or supersede regulations (MSHA) issued under the authority of the Federal Coal Mine Health and Safety Act of 1969. Because OSMRE has not identified any differences between surface mining impoundments and underground mining impoundments that would necessitate differences in the rules governing them, consistency with MSHA rules for impoundments associated with both types of mining is warranted.

Furthermore, section 201(c)(12) of the Act directs OSMRE to cooperate with other Federal agencies to minimize duplication of inspections, enforcement, and administration of the Act. While the cut-off for the size distinction for impoundments could be higher or lower, the MSHA standard is reasonable and, in the absence of compelling reasons to the contrary, regulatory consistency is enhanced by OSMRE using the same standard. The uniformity and consistency accomplished by applying MSHA size criteria benefits all parties concerned with or affected by the regulation of impoundment structures by MSHA and OSMRE.

In proposing to retain MSHA criteria in § 816.49(a)(1), OSMRE is being more stringent in choosing a specific size distinction than both the SCS and the Federal Coordinating Council for Science, Engineering and Technology. Under SCS criteria, some impoundments as high as 35 feet may be treated as small structures. According to the Federal Coordinating Council's size distinction, impoundments must be either 25 feet high or contain at least 50 acre-feet of storage capacity for the Federal Guidelines for Dam Safety to be applicable. Under MSHA criteria, any impoundment that is over 20 feet or contains at least 20 acre-feet of storage is considered large enough to be treated as potentially hazardous and, therefore, subject to MSHA's regulations.

Furthermore, OSMRE proposes to build in an additional safeguard whereby a small impoundment would be subject to the more stringent stability requirements for large impoundments in § 816.49(a)(3) if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage. This provision would link the criteria for determining if an impoundment is potentially hazardous directly to the purpose of SMCRA. By enabling the regulatory authority to require that a small impoundment meet the more stringent stability standards for large impoundments, the provision covers those potentially hazardous small impoundments that may not be hazardous to miners under MSHA criteria, but may pose a threat to other populations or property.

Sections 816.49(a)(3)/817.49(a)(3) Stability.

Proposed § 816.49(a)(3)(i) would require that impoundments meeting the size or other criteria of 30 CFR 77.216(a) or located where failure may cause loss of life or serious property damage have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2 (see 3. *Stability* in "Background").

For small impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except coal mine waste impounding structures, and not located where failure may cause loss of life or serious property damage, § 816.49(a)(3)(ii) would require a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. Neither MSHA nor the SCS have established any safety factors for small structures. MSHA does not regulate small structures; and, although the SCS recommends design standards for small structures, such as upstream and downstream side slopes, it does not suggest safety factors.

OSMRE selected the 1.3 safety factor for small impoundments based on the design manual for coal refuse disposal facilities (U.S. Mining Enforcement and Safety Administration, 1975). The manual suggests a 1.3 safety factor for new coal refuse embankments that have a low hazard potential (p. 5.144). These are structures located in rural or agricultural areas where failure would cause only slight damage, such as to farm buildings, forests, agricultural land, or minor roads. Because coal mine waste impounding structures are, generally, of greater concern from a hazard standpoint than other impoundments, and because the manual considers the 1.3 safety factor to be adequate for coal refuse impounding structures that have a low hazard potential, OSMRE believes that this is a reasonable safety factor for other impoundments with low hazard potential. However, because of the greater safety concerns relative to coal mine waste impounding structures, OSMRE retains the existing requirement in § 816.81(c)(2) whereby such structures must attain a minimum static safety factor of 1.5, regardless of their size.

In addition, under a new provision being proposed in § 816.49(a)(3), a small impoundment would be subject to the more stringent stability requirements for large impoundments specified in § 816.49(a)(3) if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage. This additional safeguard would link the criteria for determining if an impoundment is potentially hazardous directly to the purpose of SMCRA. By enabling the regulatory authority to require that a small impoundment meet the more stringent stability standards for large impoundments, the provision covers those potentially hazardous small impoundments that may not be hazardous to miners under MSHA criteria, but may pose a threat to other populations or property.

Sections 816.49(a)(5)(i)/817.49(a)(5)(i) Foundations.

Proposed § 816.49(a)(5)(i) would require that the foundation and abutments for impounding structures be stable during all phases of construction and operation, and be designed based on adequate and accurate information on the foundation conditions (see 4. *Foundations* in "Background"). Foundations and abutments must be stable for both small and large impoundments, but since it is possible for small impoundments to achieve the required safety factor under a much wide range of conditions, for small impoundments greater discretion is allowed in foundation evaluation.

The rule would require that, for impoundments meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation and any necessary laboratory testing of foundation material be performed to determine the design requirements for foundation stability. The rule would not stipulate specific tests necessary for each site, but would allow the design engineer to choose whatever testing and investigation were necessary to determine that the foundation of the structure was stable. The rule also would allow the design engineer to determine if it was necessary to conduct laboratory tests of foundation material, dependent upon whether tests of similar material have already been conducted.

Sections 816.49(a)(8)/817.49(a)(8) Permanent and Temporary Impoundment Spillways.

Proposed § 816.49(a)(8) would require that impoundments include either a combination of principal and emergency spillways or a single spillway designed and constructed to safely pass the applicable design precipitation event (see 2. *Spillways* in "Background").

Section 816.49(a)(8) would authorize the regulatory authority to approve the design of an impoundment that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the impoundment is located where failure would not be expected to cause loss of life or serious property damage. OSMRE believes that this new provision would be useful for those impoundments where the runoff area is small, or where pumps or a decant structure would be used to control the water level in the facility. OSMRE believes that current, prudent, engineering practice requires that at least 90 percent of the water stored during the design precipitation event be removed within the 10-day period following the design precipitation event. OSMRE welcomes comments on the suitability of this provision.

Section 816.49(a)(8) would also include a provision requiring that "if an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined." This is being proposed to maintain consistency with the proposed revisions concerning open channel spillways for sedimentation ponds in Section 816.46(c)(2).

Proposed § 816.49(a)(8)(i) would require that large impoundments (those meeting the size or other criteria of § 77.216(a) of this title) be able to pass a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority. Proposed § 816.49(a)(8)(ii) would require that small impoundments be able to pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

The proposed rule would remove existing § 816.49 (b)(7) and (c)(2), which stipulate two different design precipitation events depending on whether an impoundment is permanent or temporary. Proposed § 816.49(a)(8) (i) and (ii) would make the design precipitation event dependent upon whether an impoundment is large or small, respectively, rather than whether it is permanent or temporary.

The proposed 100-year, 6-hour design precipitation event for large impoundments under § 816.46(a)(8)(i) is the same as proposed in § 816.49(c)(2)(i) for large sedimentation ponds. Likewise, the proposed 25-year, 6-hour design precipitation event for small impoundments under § 816.49(a)(8)(ii) is the same as proposed in § 816.46(c)(2)(ii) for small sedimentation ponds. The proposed changes would require that all

impounding structures, except for large structures constructed of coal mine waste or intended to impound coal mine waste, be designed to meet one of the two specified precipitation events depending on whether they were large or small. See proposed § 816.84(b)(2)/817.84(b)(2) for the design events that apply to large coal mine waste impounding structures.

Sections 816.49(a)(10)/817.49(a)(10) Inspections for impoundments.

Proposed § 816.49(a)(10)(iv) would authorize a qualified registered professional land surveyor to inspect, certify and submit the report required for any temporary or permanent impoundment that does not meet the size or other criteria of 30 CFR 77.216(a), except as to coal mine waste impounding structures (see 6. *Inspections of impoundments* in "Background"). The proposal woud not allow land surveyors to certify coal mine waste impounding structures. These are covered by § 816.84. OSMRE believes that the more complicated design and construction requirements of coal mine waste impounding structures necessitate certification by a professional engineer.

Provisions for the preparation and content of inspection reports in § 816.49(a)(10)(ii) also would be revised to reference the proposed authority of land surveryors to provide a certified report to the regulatory authority. The proposed language in this section that the impoundment has been "constructed and/or maintained" as designed differs from the language in the 1983 rule which reads "constructed and maintained." This proposed change is intended to make clear that the construction will not necessarily have to be recertified every time an inspection is conducted. The proposed rule also would require that the land surveyor be experienced in the construction of impoundments to be consistent with the experience requirement for professional engineers in § 816.49(a)(10).

The proposed changes in paragraph (a)(10)(ii) and new paragraph (a)(10)(iv) are not to be confused with the provision in the introductory language proposed in section (a)(10) allowing inspections by a "qualified professional specialist, under the direction of a professional engineer." The requirement in the introductory language is retained from the 1983 rule. Under proposed paragraphs (a)(10)(ii) and (a)(10)(iv), the "qualified registered professional land surveyor" would be authorized to conduct certain inspections and certify reports independently. Under the provision in the introductory language in paragraph (a)(10), the "qualified professional specialist" could only perform inspections under the direction of a "professional engineer."

Sections 816.84(b)(2) and (f)/817.84(b)(2) and (f) Coal mine waste impounding structure spillways.

Because the spillway requirements for coal mine waste impounding structures are based on the spillway design requirements for permanent and temporary impoundments in § 816.49(a)(8), the proposed changes in § 816.49(a)(8) necessitate proposed changes to § 816.84(b)(2). Rather than require a combination of principal and emergency spillways, proposed § 816.84(b)(2) would require that each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority (see 2. *Spillways* in "Background"). The design precipitation event would be increased from a 100-year, 6-hour event to the probable maximum precipitation of a 6-hour event to be consistent with the MSHA guidelines. The probable maximum precipitation is the amount of rainfall that has been determined by meteorologists to represent the maximum storm potential that can be expected for any specific area and in every instance is greater than a 100-year, 6-hour storm.

OSMRE believes there is no need to require spillways for impounding structures so long as they are designed and constructed in accordance with the requirements of §§ 816.49 and 816.84. Under § 816.84(e), such structures shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period. Proposed § 816.84(f) requires that, for such structures, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

Reference Materials

Reference material used to develop this proposed rule is as follows:

U.S. Soil Conservation Service, 1985, Earth Dams and Reservoirs: Technical Release 60.

U.S. Soil Conservation Service, 1985, Pond: Practice Standard 378.

U.S. Mining Enforcement and Safety Adminstration, 1975, Engineering and design manual—coal refuse disposal facilities (Prepared by D'Appolonia Consulting Engineers, Inc., Pittsburgh, Pa.).

Federal Coordinating Council for Science, Engineering and Technology, 1979, Federal Guidelines for Dam Safety.

Effect in Federal Program States and on Indian Lands

The proposed rule would apply through cross-referencing in those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule also would apply through cross-referencing to Indian Lands under the Federal program for Indian lands as provided in 30 CFR Part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in Parts 780 and 784 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers 1029–0036 and 1029–0039, respectively. The information collection requirements in Part 816 have been submitted to OMB for approval. The information collection requirements for Part 817 will be submitted to OMB for approval by November 1, 1987.

The information is needed to meet the requirements of sections 515 and 516 of Pub. L. 95–87, and will be used by the regulatory authority in monitoring and inspecting impoundments associated with surface and underground mining. The obligation to respond is mandatory.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish

between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Robert A. Wiles, P.E., with assistance from Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1502 (Commercial or FTS).

List of Subjects

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly it is proposed to amend 30 CFR Parts 780, 784, 816 and 817 as set forth below.

Dated: June 20, 1987.

James E. Cason,

Deputy Assistant Secretary for Land and Minerals Management.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.;* Pub. L. 100–34; and 16 U.S.C. 470 et seq.

2. Section 780.25 is amended by revising paragraph (c) to read as follows:

§ 780.25 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.

* * * * *

(c) *Permanent and temporary impoundments.* (1) Permanent and temporary impoundments shall be designed to comply with the requirements of § 816.49 of this chapter.

(2) Each plan for an impoundment shall comply with the requirements of the Mine Safety and Health Administration, §§ 77.216–1 and 77.216–2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application.

(3) For impoundments not meeting the size or other criteria of § 77.216(a) of this title and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish engineering design standards for small impoundments through the State program approval process in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for small impoundments specified in § 816.49(a)(3)(ii) of this chapter.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq.; Pub. L. 100–34; and 16 U.S.C 470 et seq.

4. Section 784.16 is amended by revising paragraph (c) to read as follows:

§ 784.16 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.

* * * * *

(c) *Permanent and temporary impoundments.*

(1) Permanent and temporary impoundments shall be designed to comply with the requiremets of § 817.49 of this chapter.

(2) Each plan for an impoundment shall comply with the requirements of the Mine Safety and Health Administration, §§ 77.216–1 and 77.216–2 of this title. The plan required to be submitted to the District Manager of MSHA under 77.216 of this title shall be submitted to the regulatory authority as part of the permit application.

(3) For impoundments not meeting the size or other criteria of § 77.216(a) of this title and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish engineering design standards for small impoundments through the State program approval process in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for small impoundments specified in § 817.49(a)(3)(ii) of this chapter.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

5. The authority citation for Part 816 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq.: and Pub. L. 100–34.

6. Section 816.46 is amended by revising paragraphs (b)(3) and (c)(2) to read as follows:

§ 816.46 Hydrologic balance: Siltation structures

* * * * *

(b) * * *

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professoinal engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

* * * * *

(c) * * *

(2) *Spillways.* Sedimentation ponds shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (c)(2)(i) or (c)(2)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined. The regulatory authority may approve the design of a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified

registered professional engineer that the sedimentation pond will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the sedimentation pond is located where failure would not be expected to cause loss of life or serious property damage.

(i) Sedimentation ponds meeting the size or other qualifying criteria of § 77.216(a) of this title shall comply with all the requirements of that section, and shall have sufficient spillway capacity to safely pass a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) Sedimentation ponds not meeting the size or other qualifying criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

7. Section 816.49 is amended by revising paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(8), the introductory text of paragraph (a)(10), and paragraphs (a)(10)(ii); and adding paragraph (a)(10)(iv); removing paragraphs (b)(7) and (c)(2); and redesignating paragraph (c)(1) as paragraph (c) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(1) Impoundments meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

* * * * *

(3) *Stability.* (i) Impoundments meeting the size or other criteria of § 77.216(a) of this title or located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with a steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not meeting the size or other criteria of § 77.216(a) of this title and not located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

* * * * *

(5) *Foundation.* (i) Foundations and abutments for impounding structures shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For impoundments meeting the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability.

* * * * *

(8) *Spillways.* Impoundments shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grasslined. The regulatory authority may approve the design of an impoundment that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the impoundment is located where failure would not be expected to cause loss of life or serious property damage.

(i) For large impoundments meeting the size or other criteria of § 77.216(a) of this title, the design precipitation event is a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) For small impoundments not meeting the size or other criteria of § 77.216(a) of this title, the design precipitation event is a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

(10) *Inspections.* Except as noted in paragraph (a)(10)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist, under the direction of a professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

* * * * *

(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) of this section, shall promptly, after each inspection, provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

* * * * *

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the size or other criteria of § 77.216(a) of this title, and certify and submit the report required by paragraph (a)(10)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 of this chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

* * * * *

8. Section 816.84 is amended by revising paragraph (b)(2) and adding paragraph (f) to read as follows:

§ 816.84 Coal mine waste: Impounding structures.

* * * * *

(b) * * *

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

(f) For impounding structures constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

9. The authority citation for Part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq.; and Pub. L. 100-34.

10. Section 817.46 is amended by revising paragraphs (b)(3) and (c)(2) to read as follows:

§ 817.46 Hydrologic balance: Siltation structures.

* * * * *

(b) * * *

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter, a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

* * * * *

(c) * * *

(2) *Spillways.* Sedimentation ponds shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (c)(2)(i) or (c)(2)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined. The regulatory authority may approve the design of a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the sedimentation pond will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the sedimentation pond is located where failure would not be expected to cause loss of life or serious property damage.

(i) Sedimentation ponds meeting the size or other qualifying criteria of § 77.216(a) of this title shall comply with all the requirements of that section, and shall have sufficient spillway capacity to safely pass a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) Sedimentation ponds not meeting the size or other qualifying criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

11. Section 817.49 is amended by revising paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(8), the introductory text of paragraph (a)(10), and paragraphs (a)(10)(ii); and adding paragraph (a)(10)(iv); removing paragraphs (b)(7) and (c)(2); and redesignating paragraph (c)(1) as paragraph (c) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(1) Impoundments meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

* * * * *

(3) *Stability.* (i) Impoundments meeting the size or other criteria of § 77.216(a) of this title or located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not meeting the size or other criteria of § 77.216(a) of this title and not located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

* * * *

(5) *Foundation.* (i) Foundations and abutments for impounding structures shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For impoundments meeting the sze or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability.

* * * * *

(8) *Spillways.* Impoundments shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grasslined. The regulatory authority may approve the design of an inpoundment that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the impoundment is located where failure would not be expected to cause loss of life or serious property damage.

(i) For large impoundments meeting the size or other criteria of § 77.216 (a) of this title, the design precipitation event is a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) For small impoundments not meeting the size or other criteria of § 77.216(a) of this title, the design precipitation event is a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

(10) *Inspections.* Except as noted in paragraph (a)(10)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist, under the direction of a professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

* * * * *

(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) of this section, shall promptly, after each inspection, provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

* * * * *

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the size or other criteria of § 77.216(a) of this title, and certify and submit the report required by paragraph (a)(10)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 of this chapter shall be certified by a qualified registered professional engineer. The professional land surveyor

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shall be experienced in the construction of impoundments.

* * * * *

12. Section 817.84 is amended by revising paragraph (b)(2) and adding paragraph (f) to read as follows:

§ 817.84 Coal mine waste: Impounding structures.

* * * * *

(b) * * *

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

(f) For impounding structures constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

[FR Doc. 87-24219 Filed 10-20-87; 8:45 am]
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Federal Register

Wednesday
October 21, 1987

Part IV

Federal Trade Commission

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices; Partial Grant of Petition for Statewide Exemption

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FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Partial grant of petition for statewide exemption.

SUMMARY: After careful consideration of the Petition for statewide exemption from the Funeral Rule submitted by the State of Arizona, the attachments and public comment, the Commission has: (1) Determined that the state law in many (though not all) respects affords an overall level of protection to consumers as great as or greater than the protection afforded by the Funeral Rule; and (2) granted the Petition in part and denied it in part. The effect of the Commission's action is that the State of Arizona is exempt from all of the provisions of the Funeral Rule except §§ 453.3 (a) through (d) and 453.4.

EFFECTIVE DATE: This action is effective as of October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Raouf M. Abdullah, Attorney, (202) 326–3024, or Carol Jennings , Attorney, (202) 326–3010, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 24, 1982, the Commission promulgated the Trade Regulation Rule Concerning Funeral Industry Practices ("Funeral Rule" or "Rule").[1] The Rule became fully effective on April 30, 1984.[2]

Essentially, the Funeral Rule requires funeral providers to: (1) Disclose price and other information in person and over the telephone; (2) make truthful representations regarding legal and other requirements; (3) permit consumers to select and purchase only those goods and services they desire; (4) obtain express permission before embalming the deceased for a fee; and (5) refrain from misrepresenting the protective and preservative value of funeral goods and services.

Section 453.9 of the Funeral Rule permits states to apply for exemption from the Funeral Rule. If, upon application to the Commission by an appropriate state agency, the Commission determines:

(a) There is a state requirement in effect which applies to any transaction to which the Funeral Rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the Funeral Rule;

then the Funeral Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the state administers and enforces effectively the state requirement.[3]

The Statement of Basis and Purpose for the Funeral Rule states that petitions for exemption will be handled on a case-by-case basis pursuant to § 1.16 of the Commission's Rules of Practice, 16 CFR 1.16.[4]

On June 5, 1984, the attorney general of Arizona, on behalf of the Arizona State Board of Funeral Directors and Embalmers ("Board"), filed a petition for statewide exemption ("Petition") pursuant to § 453.9 of the Commission's Funeral Rule.[5] The Board supplemented the Petition by filings dated February 1, 1985,[6] and March 29, 1985.[7]

On November 6, 1985, the Commission published an analysis of the Arizona Petition in the **Federal Register** seeking public comment on the Petition for sixty days.[8] The comment period ended January 6, 1986. Four parties filed written comments.[9]

II. Summary of Conclusions

A. Level of Protection

The Commission has carefully analyzed relevant Arizona law, the petition, supplemental filings and the comments received during the comment period. The Commission has concluded that the state has a requirement in effect that applies to transactions to which the Commission's Funeral Rule applies, and thus, the Petition meets the threshold transaction requirement of § 453.9(a) of the Funeral Rule. The Commission has concluded, further, that some provisions of Arizona law afford consumers an overall level of protection that is as great as or greater than the level of protection afforded by the Funeral Rule. However, other provisions of the Arizona law do not afford consumers a level of protection as great as the level of protection afforded by the Funeral Rule. Last, the Commission has concluded that the state of Arizona has demonstrated that it administers and enforces the state mortuary laws, rules and regulations effectively.

The Commission has set forth below specific findings and conclusions to illustrate the basis for the Commission's determination that the state of Arizona is entitled to a partial exemption from the Funeral Rule.[10]

1. The Absence From State Law of an Anti-Tying Provision

Section 453.4(b)(1) of the Funeral Rule specifically prohibits funeral providers from conditioning ("tying" or "bundling") the furnishing of any funeral good or service upon the purchase of any other funeral good or service.

In the Statement of Basis and Purpose, the Commission noted that a key source of consumer injury was the fact that a significant number of funeral providers required that consumers purchase bundled or prepackaged funerals.[11] By

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[1] 47 FR 42260 (Sept. 24, 1982), 16 CFR Part 453.

[2] The Funeral Rule had two effective dates. Those portions of the Funeral Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537 (Oct. 6, 1983). The remainder of the Rule—the portions that impose affirmative obligations on funeral providers—became effective April 30, 1984. 49 FR 559 (Jan. 5, 1984).

[3] This provision of the Funeral Rule allows the Commission to grant full or partial exemptions from the Funeral Rule. *See also* Statement of Basis and Purpose for the Funeral Rule ("SBP"), 47 FR 42260, 42287 (Sept. 24, 1982) (the Commission states that § 453.9 of the Funeral Rule permits states to receive partial or full exemptions from the Funeral Rule).

[4] SBP at 42287. Because § 1.16 of the Commission's Rules of Practice does not apply solely to petitions for statewide exemption from trade regulation rules, the Commission's staff published exemption guidelines to assist states and other interested parties desiring to petition for exemption or to understand how such petitions would be handled. *See* 50 FR 12521 (Mar. 29, 1985).

[5] The Arizona Petition has been placed on the public record in FTC File No. 215–46 as Document No. XXIII–1.

[6] This document contains a supplement to Arizona's Petition which reflects revisions made to its state laws and regulations. It has been placed on the public record in FTC File No. 215–46 as Document No. XXIII–12.

[7] This document contains a statement from the Board asserting that its laws and regulations are reasonably equivalent to the requirements of the Funeral Rule. It has been placed on the public record in FTC File No. 215–46 as Document No. XXIII–14.

[8] 50 FR 46266 (Nov. 6, 1985).

[9] The comments, which have been placed on the public record in FTC File No. 215–46, were filed by the following parties: (1) Robert R. Corbin, Attorney General of Arizona, Document No. XXIV–20; (2) Tucson Memorial Society, Inc. ("TMS"), Document No. XXIV–21; (3) Continental Association of Funeral and Memorial Societies, Inc. ("CAFMS"), Document No. XXIV–22; and (4) Valley Memorial Society, Inc. ("VMS"), Document No. XXIV–23.

[10] This discussion is primarily limited to the provisions of state law that the Commission found do not afford consumers a level of protection as great as or greater than the protection afforded by the Funeral Rule. For a discussion of the other areas of state law see the publication of the Commission's analysis of the Petition, 50 FR 46266 (Nov. 6, 1985).

[11] SBP at 42269, 42279.

bundling the goods and services together, the funeral provider effectively requires the consumer to purchase unwanted items as a condition of purchasing a necessity that only the funeral provider can supply—the disposition of human remains. The prevention of bundling or tying is one of the fundamental purposes of the Funeral Rule.[12] As a result of the Funeral Rule's anti-tying provisions consumers are not required to purchase unwanted or unneeded items.

In contrast to the Funeral Rule, the Arizona state law does not prohibit funeral providers from tying the purchase of one product to the purchase of another product. According to the Petition, however, there are state law provisions that allegedly provide the same protections to consumers as the Funeral Rule's anti-tying provisions. These provisions are: The casket display requirement and the anti-disparagement provision. The casket display requirement requires funeral providers to display all in-stock inexpensive caskets and containers that are regularly offered for sale and prohibits the displaying of these items under less favorable conditions than other caskets or containers.[13] The anti-disparagement provision prohibits disparaging statements about the quality, utility, suitability or durability of inexpensive caskets or containers without a basis in fact.[14]

In light of the importance the Commission places on the right of consumers to purchase only those goods and services they want or need, the Commission concludes that the casket display requirement and anti-disparagement provision do not compensate for permitting funeral providers to bundle funeral goods and services.

Accordingly, the Commission determines that the absence of an anti-tying provision affords consumers a lower level of protection under state law as compared to the Funeral Rule.

2. The Absence From State Law of a Requirement to Make Unfinished Wood Boxes or Alternative Containers Available for Direct Cremations

Section 453.4(a)(1) of the Funeral Rule prohibits funeral providers and crematories from requiring that consumers purchase a casket other than an unfinished wood box for direct cremation. In addition, § 453.4(a)(2) of the Funeral Rule requires funeral providers offering direct cremation to make an unfinished wood box or alternative container available for direct cremation.

The Arizona state law has several provisions addressing caskets for direct cremation. Arizona Rule 303(A)(2) states that it is a deceptive act or practice for a funeral establishment to represent that a casket (other than an unfinished wood box) is required for direct cremations. Additionally, state law does not require the purchase or use of caskets or containers except under certain public health circumstances.[15] State law does not, however, require funeral providers to sell unfinished wood boxes, alternative containers or inexpensive caskets.

In the Statement of Basis and Purpose, the Commission stated that merely prohibiting funeral providers from requiring a casket for cremation and requiring a disclosure that alternatives for caskets are available is insufficient to ensure that consumers will be able to avoid the purchase of expensive containers for direct cremation. Rather, in addition, it was necessary to require funeral providers offering direct cremation to make available for purchase either an unfinished wood box or an alternative container.[16] The Commission further explained that, given the tight time strictures surrounding a direct cremation, the anxiety that can accompany a sudden death, and the fact that a consumer usually will not remove the body of a deceased from the funeral provider which first acquires possession, a simple prohibition on requiring the purchase of caskets is insufficient to ensure the availability of inexpensive containers.[17]

The Commission concludes that the absence from state law of a requirement that funeral providers make unfinished wood boxes or alternative containers available lowers the comparative level of protection under the state law as compared with the protections in the Funeral Rule.

3. Point of Sale Disclosures

Section 453.3 of the Funeral Rule requires funeral providers to disclose several items of information, in writing, on the price lists consumers receive at the beginning of the funeral transaction.[18] These disclosures inform consumers (at the time they are planning arrangements with the funeral provider) that products and services such as embalming, caskets for cremation, and outer burial containers may not be required. These written disclosures further inform consumers that funeral providers are prohibited from misrepresenting legal, cemetery or crematory requirements. During the rulemaking, the Commission concluded that these disclosures on the price lists were needed to alert consumers to their rights and to discourage funeral providers from misrepresenting requirements for certain goods and services.[19]

Arizona Rule 305(A) requires that each funeral establishment, funeral director or embalmer shall provide a casket price list, outside receptacle price list and general price list in the form and manner required by §§ 453.2(b) (2), (3) and (4) of the Funeral Rule. However, Arizona law does not require the price lists to contain the informational disclosures that § 453.3 of the Funeral Rule requires. As a result, under state law consumers do not receive important written disclosures at the point of sale. Arizona law does require certain oral disclosures and prohibits certain misrepresentations.

The Commission concludes that such protections are not comparable to the Funeral Rule's requirement that certain written disclosures be on the price lists. Thus, consumers receive less protection under state law than under the Funeral Rule.

4. Arizona Law Includes Provisions Not in Funeral Rule

The following requirements of state law do not have counterparts in the Funeral Rule. Specifically, state law requires funeral establishments to: (1) Display their least expensive caskets in the same general manner as their other caskets are displayed; [20] (2) promptly release human remains upon request of a family member or other authorized person; [21] (3) refrain from making disparaging statements concerning merchandise without a basis in fact; [22] (4) refrain from representing or insinuating that a consumer's concern for price, as reflected in the selection of inexpensive arrangements, reflects a

[12] *See* SBP at 42260–61, 42269–70, 42279–82.

[13] *See* Arizona Rule 302(a)(2). Under Arizona Rule 101(8) "inexpensive caskets" are defined to be the least expensive adult caskets held for sale to funeral service customers by a funeral establisment.

[14] *See* Arizona Rule 302(A)(9).

[15] *See* A.R.S. section 32–1373(B) *and* Arizona Rule 307(C). In addition, the Petition cites other provisions regarding merchandise and service selection techniques. However, the Commission finds that these provisions of state law address practices different from caskets for cremation.

[16] SBP at 42281.

[17] *Id.*

[18] *Id. at 42274.*

[19] *See generally* SBP section II(B). 42274–82.

[20] Arizona Rule 302(A)(2). *See* SBP at 42290 n. 317.

[21] Arizona Rule 302(A)(9). *See* SBP at 42289–90.

[22] Arizona Rule 302(A)(9). *See* SBP at 42290 n. 319.

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lack of concern for the deceased, family, neighbors, or friends; [23] (5) mail copies of the price list to callers upon request [24] and (6) disclose to consumers on the statement of funeral goods and services selected that a casket or container is unnecessary except in certain public health circumstances.[25]

In addition, state law requires each funeral establishment to place a price card on each casket, container and outside receptacle offered for sale.[26] Another feature in state law that is not addressed by the Funeral Rule is the requirement that each funeral establishment provide a copy of the consumer information pamphlet prepared by the Board.[27] Finally, the state law requires funeral establishments to retain the price lists and signed statements of funeral goods and services selected for three years, rather than the one year requirement imposed by the Funeral Rule.[28]

5. The Overall Level of Protection of Arizona Law

The Commission concludes that the level of protection afforded to consumers by Arizona law is as great as or greater than the Funeral Rule in the following areas: (1) Definitions; (2) telephone price disclosures; (3) price disclosures prior to selection; (4) disclosures after arrangements selection; (5) embalming for a fee without prior approval provisions; (6) provisions regarding preservative and protective value claims; (7) cash advance disclosures; (8) services provided without prior approval, and (9) retention of signed statements of funeral goods and services selected.

In addition, Arizona law provides the following significant protections to consumers not provided by the Funeral Rule: (1) Availability of price lists by mail; (2) display of least expensive caskets, (3) required prompt release of remains upon request, (4) prohibition against disparaging remarks; (5) price disclosures on caskets; and (6) distribution of the consumer information pamphlet.

The Commission concludes that the level of consumer protection under Arizona law is not as great as the Funeral Rule in the following areas: (1) Prohibition against tying arrangements in general; (2) ensuring that unfinished wood boxes and alternative containers are available for direct cremation; and (3) non-price disclosures on the price lists.

B. Does the State Administer and Enforce Its Laws Effectively?

The final element of § 453.9 of the Funeral Rule concerns the state's willingness and ability to enforce its laws. In the Statement of Basis and Purpose for the Funeral Rule, the Commission stated that petitions would be evaluated for the effective administration and enforcement of the state regulations as well as for the overall level of protection afforded consumers.[29]

The following information comes from the Petition, was published in the **Federal Register** during the comment period,[30] and was not contradicted by the comments.

Under state law, the Board is empowered to revoke and/or suspend licenses and also impose an administrative penalty as sanctions in any disciplinary action. Specifically, the Board may suspend licenses for up to 90 days for first violations and up to 180 days for a second violation. The funeral establishment's license may be revoked for three or more offenses or for any single offense which results in substantial economic or other injury. In addition, the Board may impose an administrative penalty in a disciplinary action for each offense.

During the five year period ending April 30, 1984, the Board conducted 115 investigations in response to information received about violations of state law. During the same period, the Board also completed 94 compliance inspections, usually conducted at random, to determine whether funeral homes were following Arizona price disclosure requirements. The compliance inspection also included consumer surveys to determine the level of consumer satisfaction.

As a result of these activities, during that five year period the Board initiated eleven enforcement actions—resulting in the imposition of $8,400 in civil penalties and $8,267 in restitution payments to consumers. The average civil penalty was $1,400 and the highest civil penalty imposed was $2,500. The average consumer restitution payment was approximately $700 and the highest individual payment was $2,150. Eight of the Board's enforcement actions occurred during the two year period ending April 30, 1984, resulting in an aggregate of $10,863 in civil penalties and consumer payments and one license revocation action.

In addition to the state laws administered by the Board, the Arizona Consumer Frauds Act has been interpreted by state courts to authorize individual consumers to bring private lawsuits for deceptive practices concerning the sale of consumer goods or services.[31]

The Commission concludes that the State of Arizona has demonstrated effective administration and enforcement of the state mortuary laws, rules and regulations.

III. Determination

A. Findings

The Commission determines that:

(1) There is a state requirement in effect in the State of Arizona that applies to the transactions to which the FTC trade regulation rule concerning funeral industry practices applies;

(2) The state requirement has met the standard for exemption from all of the Funeral Rule provisions except §§ 453.3 (a) through (d) and 453.4 of the Rule;

(3) The State of Arizona is granted an exemption from all of the provisions of the Funeral Rule except §§ 453.3 (a) through and including (d) and 453.4, subject to the reporting requirements set out below; and

(4) The partial exemption will be in effect in the State of Arizona, to the extent specified in this notice, for as long as the State administers and enforces effectively the state requirement.

B. Reporting Requirements

The staff's state exemption guidelines recommend that the Commission condition the grant of an exemption on the requirement that the state provide the Commission with notice of any changes in its law, policies or procedures that would significantly affect whether: (1) The state affords consumers an overall level of protection as great as or greater than the level of protection afforded by the Funeral Rule, or (2) the state administers and enforces effectively the state requirement.[32] The exemption guidelines further recommend that the Commission require such reports from the state as the Commission deems necessary or desirable to ensure effective administration and enforcement.[33] The

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[23] Arizona Rule 302(A)(12).

[24] Arizona Rule 304(B).

[25] Arizona Rule 307(C).

[26] Arizona Rule 308.

[27] Arizona Rule 308. A draft of this brochure is contained in Exhibit K to the Arizona Petition, *supra* note 3.

[28] *Compare* Arizona Rule 309 *with* 16 CFR 453.6.

[29] SBP at 42287.

[30] *See super* note 6 and the accompanying text.

[31] *See, e.g., Sellinger v. Freeway Mobile Home Sales*, 110 Ariz. 573, 521 P.2d 1119, 62 A.L.R.3d 161 (Sup. Ct. 1974).

[32] 50 FR 12521, 12526 (Mar. 29, 1985).

[33] *Id.*

Commission adopts these recommendations. Accordingly, the grant of the partial exemption from the funeral industry practices trade regulation rule, 16 CFR Part 453, is conditioned on the following requirements:

(1) That the Board (or successor agency) agree to provide the Commission written notice of any significant changes in Arizona statutes, interpretations, regulations, rules, guidelines, policies, procedures, enforcement protocols, staffing levels and any other actions (or omissions) that affect the criteria set forth in § 453.9 of the Funeral Rule;

(2) That the Board (or successor agency) provide the Commission with copies of relevant documents concerning such changes;

(3) That the Board (or successor agency) provide the Commission with a brief written description of how the changes or actions do or do not affect Arizona consumers;

(4) That the Board (or successor agency) submit to the Commission such information and relevant documents within sixty days of the effective date of such changes or actions; and

(5) That the Board (or successor agency) provide the Commission with a brief written enforcement report twelve months after the date the partial exemption is effective, reporting the number, type and dispositions of the enforcement actions handled by state officials during the intervening period.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By the direction of the Commission, Commissioner Azcuenaga was recorded as voting in the affirmative with a notation that she dissented from the denial by the Commission of that part of the Arizona petition seeking exemption from the outer burial container disclosure requirement in § 453.3(c)(2) of the rule.

Emily H. Rock,

Secretary.

[FR Doc. 87–24295 Filed 10–20–87; 8:45 am]

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Part V

Department of Agriculture

Forest Service

Department of the Interior

Bureau of Land Management

Environmental Impact Statement; Mark Twain National Forest, MO; Notice

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DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–08–4133–09; ES–00157–001]

Environmental Impact Statement; Mark Twain National Forest, Carter, Oregon and Shannon Counties, MO

AGENCY: Forest Service, USDA and Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft environmental impact statement.

SUMMARY: The Doe Run Corporation holds interest in two preference right lease applications filed with the Bureau of Land Management for development and production of lead and associated metals underlying the Mark Twain National Forest, Missouri. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau and USDA-Forest Service in cooperation with the U.S. Fish and Wildlife Service, National Park Service, U.S. Geological Survey, U.S. Army Corps of Engineers and the Missouri Department of Conservation, have prepared a Draft EIS for non-competitive and competitive hardrock mineral leasing for an area encompassing approximately 119,000 acres of National Forest System lands and federally owned minerals. Although the actual lease applications only comprise 3,743 acres, the Draft EIS has been prepared for an area much larger in anticipation of future leasing activity. The Draft EIS evaluates a wide range of alternatives developed in response to issues raised by the public and concerns expressed by Federal land managers. The Draft has been prepared in collaboration with the approved Mark Twain National Forest Land and Resource Management Plan.

DATE: Written comments on the Draft EIS must be received by December 24, 1987. Comments must be sent to: B. Eric Morse, Forest Supervisor, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401.

ADDRESSES: *Hearings:* Public hearings to receive comments on the Draft EIS and adequacy of the impact analysis will be held at the following locations:

Public Hearing Locations	Date and Time
Shoenberg Auditorium, Ridgeway Center, Missouri Botanical Garden, 4344 Shaw Street, St. Louis, Missouri.	Dec. 1, 1987, 7:00 p.m.
Hotel Governor Ballroom, 200 Madison, Jefferson City, Missouri.	Dec. 2, 1987, 7:00 p.m.
Gymnasium, Winona High School, Winona, Missouri.	Dec. 3, 1987, 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Leon Kridelbaugh, Staff Officer for Lands, Minerals, Soils and Watershed, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401; telephone (314)–364–4621. Mr. Vincent Vogt, Assistant District Manager for Solid Minerals, Milwaukee District Office (BLM), 901 Pine Street, Rolla, Missouri 65401; telephone (314)–364–0203.

SUPPLEMENTARY INFORMATION: Public reading copies of the Draft EIS are available for review at the public libraries in Alton, Birch Tree, Mountain View and Winona, Missouri. In addition, copies of the Draft may be inspected at the following locations:

USDA–Forest Service, Supervisor's Office, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401

USDA–Forest Service, Doniphan Ranger District, Doniphan, Missouri 63935

USDA–Forest Service, Van Buren Ranger District, Van Buren, Missouri 63965

USDA–Forest Service, Winona Ranger District, Winona, Missouri 65588

USDA–Forest Service, Eastern Region, 310 W. Wisconsin Avenue, Suite 600, Milwaukee, Wisconsin 53203

Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginina 22304

Bureau of Land Management, Milwaukee District Office, 310 W. Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53201–0631

Bureau of Land Management, Division of Solid Minerals, 901 Pine Street, Rolla, Missouri 65401.

Floyd J. Marita,

Regional Forester, USDA–Forest Service.

Date: October 6, 1987.

G. Curtis Jones, Jr.,

Director, Eastern States Office, Bureau of Land Management.

Date: October 2, 1987.

[FR Doc. 87–24343 Filed 10–20–87; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Part 310

Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases; Interim Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 310

[FRL-3254-3]

Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is issuing an interim final rule to provide reimbursement to local governments for costs of temporary emergency measures taken to prevent or mitigate injury to human health or the environment. This reimbursement program is authorized under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by § 123 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, hereinafter referred to as CERCLA. This regulation should help to alleviate significant financial burden on local governments for costs incurred in responding to releases or threatened releases of hazardous substances. CERCLA requires, however, that reimbursement must not supplant local funds normally provided for response.

EPA believes that today's interim final rule is both consistent with the intent of Congress and appropriate for effective emergency response at the local level. The Agency seeks comments on the overall approach to this rule and on specific components of the approach outlined.

DATES: Comments must be submitted on or before December 21, 1987.

Effective October 21, 1987. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of October 21, 1987.

ADDRESSES: Comments on this interim final rule should be sent to the Superfund Docket Clerk, ATTN: Docket Number 123 LGR, (WH-548D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public docket is located in Room LG-100 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments must be made by calling (202) 382-3046. The public may copy a maximum of 50 pages of material from the docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information on the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986 and the National Contingency Plan (40 CFR Part 300) contact the RCRA/CERCLA Hotline at 1-800-424-9346 (toll free) or, in the Washington, DC, metropolitan area, 382-3000.

For information on specific aspects of this interim final rule for reimbursement to local governments contact: Karen Burgan, Project Officer, Emergency Response Division, (WH-548B), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority

Section 123 of CERCLA directs the EPA Administrator to develop a regulation containing procedures for reimbursing local governments for expenses incurred in carrying out temporary emergency measures in response to hazardous substance threats. These measures must be necessary to prevent or mitigate injury to human health or the environment from a release or threatened release of a hazardous substance or a pollutant or contaminant. Temporary emergency measures may include such activities as erecting security fencing to limit access, responding to fires and explosions and other measures that require immediate response at the local level. CERCLA specifically limits reimbursement to $25,000 per single response and requires that reimbursement not supplant local funds normally provided for response. Any general purpose unit of local government that incurs costs in response to a release or threatened release at a facility within its jurisdiction may apply for reimbursement. Section 111 of CERCLA specifies that not more than 0.1 percent (or a maximum of $8.5 million) of the total amount appropriated from the Fund may be used for local government reimbursement.

The responsibility for promulgating today's interim final rule rests with the Administrator for EPA. The authority to receive, evaluate and make determinations regarding requests for reimbursement and to issue payments to qualified applicants has been delegated to the Assistant Administrator for the Office of Solid Waste and Emergency Response. Today's rulemaking establishes how this reimbursement program will work.

II. Background

A. Overview of the Superfund Program

CERCLA was originally enacted in 1980 and establishes the authority to tax the chemical and petroleum industries to finance a $1.6 billion response trust fund (the Superfund or Fund). CERCLA provides broad Federal authority to respond directly to releases or threatened releases of hazardous substances and pollutants or contaminants that may endanger public health or welfare or the environment. EPA is primarily responsible for implementing the Superfund program. On October 17, 1986, President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986. These Amendments add $8.5 billion to the Superfund Trust Fund and broaden the Federal Government's response authority.

Under the Superfund program, EPA may take legal action to force those responsible for hazardous substance releases to clean them up or to reimburse EPA for the costs of cleanup. EPA also can pay for the cleanup of hazardous waste releases when those

responsible for such releases cannot be found or are unwilling or unable to conduct a cleanup themselves.

Response actions may be taken to address such incidents as illegal disposal of hazardous substances, improper handling or disposal of hazardous substances at landfills or industrial areas, spills of hazardous substances when a truck or train overturns, or discharges of hazardous substances into the air or water during a fire or other accident. Response actions may include, but are not limited to: removing hazardous substances from the release site to an EPA-approved, licensed hazardous waste facility for treatment, containment or destruction; constructing fences, posting warning signs or taking other security precautions necessary to control access; providing a temporary alternate water supply to local residents; temporarily relocating affected residents; or containing the hazardous substance on site so that it can safely remain there and present no further problem.

CERCLA responses usually are joint efforts by Federal, State and local agencies. Since State and local public safety and health organizations are normally the first government representatives at the scene of a hazardous substance release, they play a critical role in providing temporary emergency measures. These temporary emergency measures may include security, control of the release source, containment of the substances released, control of contaminated runoff and similar activities that must be performed immediately to prevent or mitigate injury to human health or the environment. The National Contingency Plan (NCP, found at 40 CFR Part 300), the main Federal regulation that guides the Superfund program, outlines the roles and responsibilities of each Federal agency involved in responding to releases of hazardous substances and describes State and local participation in hazardous substance releases. In addition, the NCP establishes procedures that are to be followed in conducting appropriate response actions.

B. Congressional Intent

The original Superfund law did not provide reimbursement to local governments for costs incurred in conducting temporary emergency measures. SARA added a new section to the law that specifically allows such reimbursement, although the Conference Report makes it clear that "reimbursement under this provision shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting." With the specific requirement in section 123 that reimbursement not supplant local funds normally provided for response, Congress intends that local governments continue to bear some share of expenses for providing temporary emergency measures. However, Congress recognized that in the past, conducting such response activities has placed a significant financial burden on some local governments. Reimbursement under section 123 can provide some financial relief (limited to $25,000 per single response) to local governments most seriously affected by costs above and beyond those incurred routinely and traditionally. This $25,000 cap on individual responses plus the limited availability of funds for the program may not allow EPA to reimburse local governments for all responses that may qualify.

III. Approach to this Rulemaking

Because this rule falls under the grants, benefits and contracts exemption of section 553 of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), the Agency is not required to solicit public comment before the rule becomes effective. In addition, the Agency may make the rule effective immediately upon publication.

In developing this interim final rule, EPA incorporated substantial input from officials of fire departments, police departments and emergency services and other representatives of local governments, in an effort to make the rule realistic and practical. Those who offered comments and suggestions are described below. The interim final approach is designed to allow the Agency to implement the reimbursement program and to make reimbursement monies available quickly, while continuing to solicit comments. Public comments are invited and should be sent to the address listed in the "Address" section above. Comments received by December 21, 1987 will be considered in the final rule.

EPA's approach to this rulemaking included making use of appropriate features of parallel programs and precedents, where possible. EPA began investigating other Federal and State programs early in the regulatory development process to determine their possible applicability to this reimbursement program. Table 1 depicts representative programs considered by the Agency. Research into these programs provided useful information for several reasons. First, this information helped both to identify issues and to suggest regulatory options. The Asbestos in Schools Hazard Abatement Program, for example, provided a model for evaluating requests for reimbursement. Second, the regulations associated with these programs suggested possible regulatory frameworks for the reimbursement rule. For instance, the Superfund response claims regulation, now being drafted, had already addressed some of the issues posed in section 123. Third, analysis of these programs helped highlight implementation considerations and alternatives. The Pesticides Indemnification Program, for example, pointed to some internal forms and procedures that could expedite reimbursement. Finally, detailed analyses of these programs, supplemented by research on Superfund removal actions involving response by local governments, helped EPA outline the basic regulatory framework leading to today's interim final rule.

TABLE 1.—REPRESENTATIVE FEDERAL AND STATE PROGRAMS OF POTENTIAL INTEREST

Agency/State	Program
EPA	Asbestos in Schools Hazard Abatement
EPA	Construction Grants Reimbursement
EPA	Pesticides Indemnification
EPA	Superfund Response Claims
EPA	Superfund Technical Assistance Grants
Federal Emergency Management Agency	Federal Disaster Assistance
Department of State	Protection of Foreign Missions
Department of Agriculture	Casual Firefighter
California	Emergency Response Fund
New York	Spill Prevention and Response Fund

EPA also held discussions with local officials in five areas of the country to gain the perspective and insights of frontline response officials in an effort to develop a rule that realistically addresses local concerns and that could be implemented in a practical way. The five meetings were held in Baton Rouge, LA; Chattanooga, TN; Edison, NJ; Jefferson, OH; and Los Angeles, CA. These localities were selected as meeting locations because they represent a range of community sizes and emergency response capabilities and because local officials in and around these communities expressed interest and willingness to participate when asked.

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IV. Analysis of Major Issues

A. Intent of the Reimbursement Regulation

The overall purpose of the reimbursement program is to provide some financial relief to local governments in conducting temporary emergency measures in response to hazardous substance threats. This response may be conducted entirely by a local government or may be a response involving State or Federal assistance. The intent of today's interim final rule is to alleviate significant financial burden on a local government. EPA believes that this approach achieves the intent of section 123 of CERCLA to channel the small pool of reimbursement monies to the most deserving applicants and local governments must demonstrate that a response has created expenses that significantly exceed the funds normally available for temporary emergency services. This approach also is consistent with the overall policies and goals of the Superfund program. The Agency wishes to emphasize, however, that reimbursement under section 123 does not eliminate the requirement to try to identify potentially responsible parties (PRPs) and attempt cost recovery from liable parties, but is available as a measure of financial relief when responsible party search and cost recovery actions have proven unsuccessful.

EPA considered two other approaches that ultimately were rejected. The first of these alternatives was to use the reimbursement program to encourage local governments to undertake smaller response actions, thereby reserving Agency resources for complex responses. Under this alternative, Federal manpower resources would be conserved for responses outside the scope of local and State capabilities. Local governments might have been encouraged to enhance their response capabilities and become more skilled at conducting small response actions. The limited funds available for the reimbursement program and the resulting uncertainty of reimbursement, however, might not have provided adequate incentive for local governments to become more assertive in undertaking small response actions. Some communities with poorly developed response programs might not have had the capability to attempt even small responses to hazardous substance releases. EPA believes that this approach also would have generated an unmanageable number of requests, creating an administrative burden disproportionate to the total amount of funds to be distributed.

The second alternative EPA considered was to focus the regulation on encouraging localities to assist in responses at Federal-lead cleanup actions. Such an approach would have facilitated greater involvement of local government resources in support of Federal responses. Again, however, the uncertainty of receiving reimbursement may not have provided an adequate incentive for many localities to increase their level of participation in Federal-lead responses. This approach also would have made it difficult to distinguish between equally meritorious applicants based on the broad criterion of participating in Federal-lead responses.

B. Basis of Reimbursement Decisions

As discussed above, EPA has determined that the reimbursement money should be distributed to applicants who demonstrate the greatest financial burden from conducting emergency response actions that adhere to the overall policies and goals of the Superfund program. However, due to the limited funds available for the reimbursement program (a maximum of 0.1 percent of the total amount appropriated for the Superfund over five years, or approximately $8.5 million), not all applicants may actually receive reimbursement monies. For this reason, the Agency needs some basis for determining which requests to reimburse.

EPA has written today's rule so that reimbursement decisions are based primarily on the ratio of eligible response costs to the applicant locality's per capita income adjusted for population, with consideration given to other relevant financial information provided at the applicant's discretion. (For example, such information might include cost data for other hazardous substance responses if the locality has conducted numerous responses over a short period of time.) This approach ensures that communities with limited resources will receive priority in the reimbursement program. Basing reimbursement decisions primarily on per capita income statistics provides an objective method for deciding among requests, while allowing special consideration of other relevant data, such as frequency of recent emergency responses, recent local economic changes or other financially catastrophic events, provides flexibility.

Per capita income statistics are readily available through the Bureau of Census. EPA expects to use the Current Population Reports, Local Population Estimates, Series P–26, "1984 Population and 1983 Per Capita Income Estimates for Countries and Incorporated Places," published in June 1986 by the U.S. Department of Commerce, Bureau of the Census. This series will be used for the reimbursement program unless and until superseded by more recent data. Additional financial information provided by the applicant should provide the opportunity to consider economic factors that may not be represented accurately in the available income statistics. For example, if significant population shifts have occurred since the last census, the applicant may wish to supply relevant financial data demonstrating the economic effects of that shift upon the community.

EPA initially considered distributing the reimbursement money geographically (i.e., providing reimbursement to a certain number of applicants in each state or Region) to ensure that all areas of the country had access to some of the reimbursement fund. Dividing the reimbursement money this way, however, might not accurately address the most deserving cases nationwide. A second possibility was to reimburse, on a first-come-first-served basis, applicants who meet pre-determined criteria. This method could neglect deserving applicants because it would favor reimbursement for responses occurring early in the year.

EPA also considered basing reimbursement decisions on the percentage of a community's annual budget spent on a response. Because budgeting practices vary so greatly from locality to locality, the amounts budgeted would be difficult to compare accurately. This alternative also would favor communities that had allocated few, if any, funds for emergency response activities. This bias would be inconsistent with the intent of the Emergency Planning and Community Right-to-Know Act of 1986 (Title III of SARA) and the overall goals and objectives of the Superfund program. Moreover, evaluating local budgets would have forced EPA to make judgment calls on how communities allocate their funds.

Another option EPA considered was to base reimbursement decisions on the severity and magnitude of the threat posed by the hazardous substance incident. This option would have reflected the overall mission of the Superfund program to dedicate Federal resources to significant and/or National emergencies that require resources outside the scope of State and local capabilities. However, estimates of

potentially affected populations, relative toxicity of the waste and impacts on human health and the environment can be very subjective measurements.

The most flexible option EPA considered was to allow applicants to develop their own rationale for reimbursement in accordance with review guidelines developed by EPA. This option recognized the diversity among hazardous substance release incidents and responses nationwide by allowing local governments to evaluate their own resources and demonstrate that they have assumed a disproportionate financial burden. The severity of the incident could have been incorporated into an applicant's reimbursement rationale. This alternative would have obviated the need for EPA to develop a comprehensive definition of reimbursable financial burden, greatly simplifying the rule development phase of the program. However, program administration would have been very difficult because of the uniqueness of each application and the time required to review, compare and analyze the data submitted by the local governments. This alternative also could have favored more organized applicants with experience in assembling response information efficiently, at the expense of less experienced communities that may have had more deserving claims.

C. State Role

Section 123 authorizes reimbursements to local governments for costs incurred in conducting temporary emergency measures. The law does not authorize reimbursement to States. Today's rule precludes States from requesting reimbursement under § 310.20(b) either for themselves or on behalf of political subdivisions within the State. EPA believes this approach will help eliminate the potential for two parties to request reimbursement for the same response.

Local officials and most State officials who offered comments to EPA about developing this rule believed that there should be no administrative role for States in the reimbursement process. Some local officials, however, indicated that States might assist EPA in evaluating reimbursement requests since they may be familiar with the hazardous substance incident and local government response. Further, some States have expressed an interest in receiving copies of reimbursement requests in order to identify local areas in need of financial assistance. In the interest of streamlining the review process, EPA intends to contact the States for information on specific requests when necessary, but no formal or routine State role is proposed. EPA does not intend, however, for this rule to preclude or interfere with existing State and local response procedures.

V. Reimbursement Process

The reimbursement process comprises six steps, each of which is described below. The roles and responsibilities of EPA and the local government in the process are discussed as well.

A. Response to Release

The reimbursement process begins with a local government's response to a release or threatened release of hazardous substances or pollutants or contaminants. (Unlike responses to hazardous substances, which cover threats both to human health and to the environment, responses to releases of pollutants and contaminants must specifically address human health threats to qualify for possible reimbursement.) This response may be conducted solely by the local government or in conjunction with State or Federal responders. To be eligible for reimbursement, the response must be consistent with CERCLA, the National Contingency Plan and, if applicable, the local emergency plan prepared under section 303 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of Pub. L. 99-499.

Although temporary emergency measures that local governments take to prevent or mitigate injury to human health or the environment may be reimbursable, it is clear that Congress did not envision that reimbursement monies would be available for activities typically included in a local government's budget. Section 123(b)(2) of the statute specifically requires that reimbursement "not supplant local funds normally provided for response." The conference report on SARA states that reimbursement does not apply to "normal expenditures . . . incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting." The statute also characterizes reimbursable response measures as those requiring "immediate response at the local level." Therefore, the Agency believes that reimbursement may be appropriate for activities such as security, control of the release source, containment of the substances released, control of runoff that would contaminate drinking water sources and similar activities that must be performed within minutes or hours of the release to prevent or mitigate injury to human health or the environment.

EPA does not intend that reimbursement monies be used for emergency response activities that are eligible for funding from other sources. EPA also believes that actions such as ground-water decontamination, ongoing sampling and analysis programs, construction of water treatment facilities or installation of new water lines are outside the scope of the reimbursement program because they do not constitute temporary emergency measures. EPA wishes to make clear that costs of such projects are not reimbursable under this program. Instead, the local government may want to contact the EPA Regional office or the State to determine whether a Cooperative Agreement with the Agency would be appropriate for performing long-term response projects.

B. Contact with the Federal Government

Contact with a Federal response authority is a necessary condition for reimbursement under today's interim final rule. The purpose of this contact requirement is to give EPA or the U.S. Coast Guard (USCG) an opportunity to ascertain if Federal response action is appropriate in this instance. For this reason, contact is required as soon as possible, but not later than 24 hours after response initiation.

Contact must be made in one of two ways. The local government can use normal response communication channels to alert EPA or the USCG to the release. Normal channels include notification to the National Response Center (NRC) or established Regional networks that link local agencies with State agencies and ultimately with EPA and/or the USCG. Notification of the release through normal response communication networks satisfies the contact requirement in this rule.

Alternatively, if the locality is not part of an established communication network, the local government can contact the EPA Regional office or the NRC directly for purposes of satisfying this requirement. (Appendix I of today's rule identifies the EPA Regional office for each State and Territory and notes the NRC telepone numbers.) Contact must be made by telephone or radio as soon as possible, but not more than 24 hours after response initiation, to meet the Federal contact requirement for reimbursement.

C. Decision to Pursue Reimbursement

If the response has imposed significant financial burden on the community and appears to meet the basic requirements for reimbursement, as specified in § 310.30 of today's

interim final rule, the local government may choose to seek reimbursement and proceed to the next step.

D. Reimbursement Request

The local government should obtain a reimbursement application package by calling the RCRA/CERCLA Hotline at 1–800–424–9346 (toll free) or, in the Washington, DC, metropolitan area, at 382–3000. The package contains the forms and detailed instructions for preparing and submitting reimbursement requests. Application packages will be mailed to the locality upon request. The completed package must be returned to the U.S. Environmental Protection Agency, Emergency Response Division, Attn: Reimbursement Officer, WH–548B, 401 M Street SW, Washington, DC 20460, within six months of completion of the response. In the event that cost recovery efforts are still underway, the Agency will waive the application deadline if the application specifically states that the delay resulted from cost recovery efforts that ultimately were unsuccessful.

Only one request for reimbursement will be accepted for response to any single incident. When more than one local government (e.g., a city and county) has participated in such a response, those governments must determine which one of them will submit the application on behalf of them all. If more than one request is received for a single incident, all will be returned with appropriate written explanation and instructions for resubmitting a single, coordinated application.

E. Preliminary Screening

Initially, EPA will screen the request to make sure that it meets three preliminary screening criteria: (1) The request meets basic reimbursement criteria, as stated in today's rule; (2) it complies with the procedures for filing, as defined in this rule; and (3) it is complete. A request that does not meet the requirements for reimbursement stipulated in § 310.30 will be returned to the local government with a written explanation of why the application has been rejected.

An application that meets the basic criteria but that has not complied with the filing procedures specified in § 310.50 or that is incomplete will be returned to the local government with an explanation of its deficiencies. If the application has missed the filing deadline, it will be rejected, unless delay resulted from prolonged, but unsuccessful, cost recovery efforts. Other filing or completeness deficiencies may be corrected and resubmitted to EPA within 60 days.

If all reimbursement criteria and filing requirements have been met, and the application is complete, EPA will notify the local government in writing that the request meets the preliminary screening criteria and will be considered for reimbursement. Such a notice in no way implies that reimbursement is assured. It means only that EPA will consider this request along with all other requests received during the review period that also have satisfied this initial screening.

F. Evaluation of Requests

Screened applications will be reviewed twice yearly, with each request assigned to a six-month review period based on the date a complete application is received. EPA will convene a review panel, comprising representatives from EPA Headquarters, EPA Regional offices and the USCG, for each review period. The review panel will make the final decision on reimbursement. In general, EPA intends to divide the funds appropriated each year for reimbursement evenly between the six-month periods. However, EPA may choose not to use all funds available during any period in which requests do not meet program requirements.

All requests for each six-month period will be evaluated on their own merits and with respect to the other requests under review. Because reimbursement monies are limited to 0.1 percent of the Superfund appropriation (which represents a maximum of $8.5 million, or $1.7 million for each year of the five-fiscal-year period beginning October 1, 1986) and because EPA expects that requests for reimbursement will exceed the funds available, the Agency will rank the requests and distribute the monies accordingly until available funds are disbursed.[1] The Agency will rank requests on the basis of significant financial burden incurred by the locality in performing the single response for which reimbursement is being sought.

The financial burden for the individual applicant is defined as the ratio of project cost to aggregate income and is computed as follows:

$$B = \frac{C}{Y \times P}$$

Where: B = burden on applicant
C = eligible costs of response minus reimbursement from responsible parties, States or other sources
Y = per capita annual income for the locality
P = population of locality

The review panel will use U.S. Census Bureau "Local Population Estimates" Series P–26 in conjunction with response cost data supplied by the applicant to compute financial burden on the locality. Responses with higher costs proportionate to local aggregate income will be ranked higher than responses with proportionately lower costs.

In general, EPA expects that financial burden will be computed on the basis of the single response for which reimbursement is requested. In exceptional cases, however, the Agency may consider other financial data demonstrating financial hardship incurred by the community in responding to hazardous substance threats. For example, a small community with limited resources that has had to respond to numerous hazardous substance emergencies over a short period of time may choose to supply additional information demonstrating the cost impacts of those multiple responses. As another example, a community in a declared disaster area may want to supply economic impact data associated with the disaster along with the financial information for the hazardous substance response.

Any requests not reimbursed during the six-month period in which they are first considered remain open for later consideration, at the review panel's discretion, for one year (two additional review periods) after the initial review period. EPA will notify the applicant if the request is carried over to the next period. After that time, an unreimbursed request will no longer be considered and the applicant will be notified that the request will not be reimbursed.

VI. Section-by-Section Analysis

A. Subpart A—General

Subpart A discusses the purpose, scope and applicability of the local government reimbursement interim final rule. It also provides definitions necessary for the proper interpretation and implementation of the rule and outlines penalties applicable to false statements or claims made as part of an application for reimbursement under section 123 of CERCLA.

1. Section 310.05 Purpose, Scope and Applicability

As stated in § 310.35, the purpose of this rule is to alleviate significant financial burden imposed on a local government as a result of conducting

[1] Because no reimbursement monies were disbursed during the fiscal year beginning October 1, 1986, EPA will prorate the total amount available for reimbursement over the remaining four years of the program.

temporary emergency measures to prevent or mitigate injury to human health or the environment, as authorized under section 123 of CERCLA. This purpose is consistent with the statutory requirement that reimbursement not supplant funds normally provided for response. Today's rule only applies to local governments (e.g., a county, parish, city, municipality, township, Federally-recognized Indian tribe or other general purpose unit of local government). States are not eligible for this program.

In keeping with the statutory limits on this use of the Superfund set forth in section 111 and section 123 of CERCLA, § 310.05(c) of today's rule limits the maximum possible reimbursement award to $25,000 per single response and restricts the amount of money available to the overall reimbursement program to 0.1 percent of the total amount appropriated from the Superfund. Due to the limited amount of money authorized for reimbursement, some requests for reimbursement may not ever be paid even though they meet all the requirements of today's rule.

2. Section 310.10 Abbreviations and section 310.11 Definitions

Section 310.10 explains the acronyms referenced in this rule. Section 310.11 defines key terms used in the rule. In an effort to be consistent with the requirements and objectives of the overall Superfund program, most of the definitions contained in § 310.11 of today's interim final rule are taken from CERCLA and the NCP either verbatim or with minor wording changes. EPA developed the definitions of "General Purpose Unit of Local Government," "Single Response" and "Date of Completion" specifically for this rule.

3. Section 310.12 Penalties

Section 310.12 imposes penalties for any person who knowingly gives or causes to be given any false statement or claim as part of any application for reimbursement under section 123 of CERCLA. EPA has included these penalties, under the authority of the False Statement Act, 18 U.S.C. 1001, and False Claims Act, 31 U.S.C. 3729, to prevent fraudulent or abusive use of the Fund. Failure to abide by the requirements found in these two laws when filing a reimbursement application may result in fines or imprisonment.

B. Subpart B—Reimbursement

Subpart B of this interim final rule establishes conditions that must be met for reimbursement under CERCLA 123. Three types of conditions are set forth: eligibility of the applicant to receive reimbursement, requirements for reimbursement and allowable and unallowable costs. These conditions are included to ensure that (1) The intent of Congress is carried out in reimbursing local governments; (2) reimbursement is consistent with, and complementary to, the rest of the Superfund program; and (3) expenditures from the Superfund are warranted and appropriate.

1. Section 310.20 Eligibility for Reimbursement

Section 310.20 of the interim final rule specifies who is eligible for reimbursement. This section limits eligibility for reimbursement to general purpose units of local government. These may include cities, counties, municipalities, parishes, townships, Federally-recognized Indian tribes or other official political subdivisions designated by a particular State. This restriction is consistent with section 123(a) of CERCLA, which limits applicability to "(a)ny general purpose unit of local government for a political subdivision which is affected by a release or threatened release. . . ."

Section 123 of CERCLA specifically designates local governments as recipients of reimbursement monies and does not indicate that this provision applies in any way to States. Therefore, State governments are not eligible for reimbursement under § 310.20(b). States also are precluded from requesting reimbursement on behalf of political subdivisions within the State. This restriction is designed to avoid any question of eligibility when reimbursement requests are reviewed by EPA.

2. Section 310.30 Requirements for Requesting Reimbursement

The purpose of § 310.30 is to ensure consistency with the requirements, policies and practices of the Superfund program, to lend support to related initiatives and to encourage the use of established procedures in conducting responses. EPA has established requirements to ensure an equitable distribution of funds to the most deserving applicants.

a. Effective Date for Response

Section 310.30(a) restricts reimbursement to responses initiated on or after the effective date of this interim final rule. Although section 123(b)(1) of CERCLA authorizes reimbursement for expenses incurred before or after the enactment of SARA, EPA believes that eligibility can be reduced to a shorter period in accordance with the procedures promulgated by EPA under section 123(d). It is EPA's view that prospective reimbursement will permit a more equitable distribution of the funds, since all potential applicants will be considered in the same timeframe and according to the same criteria. These criteria are established in today's interim final rule. In order to qualify for reimbursement a local government must meet the requirements of CERCLA, the NCP, and the Community Right-to-Know Act, and, in addition, contact the Federal government within 24 hours after response initiation to ensure that these requirements are understood and can be met. This notice requirement is discussed in greater detail in subsection 2(b) of this preamble.

The Agency decided not to allow reimbursement for actions taken before the effective date of this rule for several reasons. Such reimbursement would require the Agency either to waive the criteria or apply them retroactively. However, waiving the criteria for past responses or attempting to apply them retroactively could result in inconsistent and potentially unfair implementation of this program. A prospective approach better ensures that Federal funds are used to support safe and effective responses, since the Federal government will be able to assess local capabilities for dealing with the release and to provide technical assistance if necessary. Waiving these criteria for past responses could result in reimbursement for responses that do not meet established Superfund standards, or are inadequately documented or were ineffective, thereby reducing the pool of funds available for responses that are fully compliant. Conversely, applying these criteria retroactively could give a significant advantage to larger communities with more sophisticated response and recordkeeping capabilities, and, as a general rule, greater financial resources. Thus, these communities could receive reimbursement at the expense of communities with less developed capabilities, but possibly greater financial need.

EPA is aware that limiting reimbursement to responses occurring after promulgation of this rule will preclude reimbursement of some otherwise valid and deserving requests. However, the Agency believes that the mission of the Superfund program, and specifically the local government reimbursement program, is best served if all requests are subject to the same requirements, thereby helping to ensure that the limited reimbursement funds are used for safe and effective response. The Agency specifically requests comment on this issue.

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b. Federal Contact Requirement

Section 310.30(b) requires the local government to contact EPA or the National Response Center as a condition of reimbursement. Contact for purposes of reimbursement is to be made as soon as possible, but not more than 24 hours after response initiation, unless EPA or the USCG has been informed of the response through a release notification to the National Response Center or other established response communication channels.

Because EPA seeks to ensure safe and appropriate responses and appropriate use of the Fund, the Agency believes that it is appropriate for EPA or the USCG to be aware of a response for which a local government seeks reimbursement. Timely contact is useful in several respects. First, it can help EPA or the USCG assess local response capabilities relative to this response, ascertain the effectiveness of local actions and determine whether Federal technical assistance or action is appropriate or necessary. Second, it allows EPA or the USCG to make sure the local responder understands EPA criteria and requirements, such as compliance with the NCP. Finally, it provides an opportunity to determine whether a response might be a candidate for reimbursement. This can prevent a locality from preparing an application for a response that is not eligible for reimbursement (e.g., an oil spill).

EPA had considered a 72–hour contact requirement, but reasoned that, if the incident exceeded local response capabilities, then the Federal Government needed to be notified of that in order to lend technical assistance, and 72 hours after the fact could be too late. Local representatives at all five regional meetings supported the longer timeframe and expressed concern that a 24-hour requirement might divert local officials from the response action itself. EPA believes that the need for timely information and prompt assistance, if required, outweighs the risk posed by the brief diversion of effort to make the contact.

Initially EPA considered two other approaches. The first approach was certification of the capabilities and credentials of a potential respondent on a one-time basis, in advance of any response action. This approach was rejected because it would be impractical to attempt to certify all local governments for reimbursement owing to their sheer number (more than 50,000 as of 1982). Although certification could be attempted on an as-requested basis, the effort and cost could be wasted because hazardous substance release incidents are unpredictable and a certified local agency may never be called on to perform temporary emergency measures. Moreover, certification may not take into account the specific technical requirements of an individual incident.

Preauthorization to carry out temporary emergency measures specific to a particular incident was the second approach considered. Preauthorization would entail obtaining EPA's prior approval before carrying out response activities for which the local government later requests reimbursement. Although preauthorization would enable EPA to ensure appropriate use of the Fund, it appears impractical because of the timeframe involved. Moreover, the statutory language suggests that Congress envisioned reimbursement for response actions that cannot wait for advance approval ("measures which require immediate response") and cites responses to fires and explosions as examples. For these reasons, EPA decided preauthorization is not appropriate for reimbursement under this program.

Several localities suggested limiting reimbursement to responses reported to EPA or the USCG through normal response communication channels, in lieu of a separate contact for reimbursement. In general, localities favoring this approach had well-established and mandatory communication procedures for emergency situations. The approach included in today's interim final rule brings in localities that may not be part of an established communication network. For those localities already in an active network, this requirement would not create a new reporting burden and could enhance the effectiveness of the existing response communication channel.

c. Consistency Requirement

Section 310.30(c) of this interim final rule stipulates that response actions for which reimbursement is sought must be consistent with CERCLA, the NCP, and, if applicable, the local emergency response plan required under section 303(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (or Title III of SARA). Clearly, responses must comply with the provisions of CERCLA even to be eligible for this use of the Fund. In addition, section 104(a)(1) of CERCLA calls for "response measure(s) consistent with the National Contingency Plan. . . ."

The NCP provides for efficient, coordinated and effective responses to actual or threatened releases of hazardous substances or pollutants or contaminants. Local governments should consult the NCP for specific procedures to follow in conducting temporary emergency measures to satisfy this consistency requirement. The NCP also specifies the division of responsibility among the Federal, State and local governments during response actions and appropriate roles for private entities (NCP §§ 300.21 through 300.25). Because the NCP stipulates the basic requirements for CERCLA-funded responses, a response for which reimbursement is requested must conform to the Plan. Likewise, because the Title III emergency response plan spells out methods and procedures for responders that are specific to that community, EPA expects local agencies to comply with that plan.

d. Restriction on Supplanting Local Funds

Section 310.30(d) specifies that reimbursement monies may not supplant nonfederal funds normally provided for emergency response programs. As required by section 123(b)(2) of CERCLA, local governments may be reimbursed for the costs of temporary emergency measures only if reimbursement would supplement, not supplant, nonfederal (State and local) funds that would otherwise be made available. Compliance with this requirement entails certification and demonstration that reimbursement does not supplant local funds normally provided for response. (This certification is stipulated in § 310.50(c)(3) of today's rule). In addition, EPA may request reimbursement applicants to submit line-item budgets for the fiscal year in which the incident for which reimbursement is requested occurred as well as response cost information. Since only limited funds are available for this program, EPA expects that the possibility of being reimbursed will not provide adequate incentive for local governments to intentionally decrease nonfederal funding for response programs.

e. Attempt to Recover Costs

Section 310.30(e) of this rule requires applicants to seek other funding sources before requesting reimbursement from the Fund. Local governments must make a good faith effort to recover costs from potentially responsible parties (PRPs). Because of the time that cost recovery efforts can entail, EPA will waive the six-month application deadline for requesting reimbursement in those cases where cost recovery is pursued. Thus, local governments should take the time

they need to complete cost recovery action before applying for reimbursement for unrecovered costs.

EPA recognizes that PRP searches can become extensive and costly and, therefore, the Agency will be satisfied with evidence of a reasonable attempt at recovering costs. Such evidence might include, for example, copies of return-receipt letters requesting payment, with certification that payment has not been received, or copies of letters from PRPs stating refusal to pay or sworn statements from local officials that no PRP has been or can be identified.

The evidence of attempt to recover costs must indicate that, where a PRP could be identified, the PRP was given at least 60 days to satisfy the demand for cost recovery. Copies of return-receipt letters or sworn statements may suffice for this purpose. Where no PRP can be identified, the locality must certify that none can be found. (This certification is stipulated in § 310.50 of today's rule.)

This section also requires that local authorities pursue all other sources of funds, such as insurance or State reimbursement monies, before seeking reimbursement from the Superfund under section 123 of CERCLA. This provision has been included to ensure that the limited funds available to this program are used only when no other source can be found and to prevent multiple reimbursements for one response.

In developing today's rule, EPA considered the option of having no cost recovery requirement. This alternative was rejected for several reasons. First, one of EPA's primary goals in implementing the Superfund program is to compel those responsible for a release to conduct or finance cleanup of that release or to recover costs from the responsible party if EPA has conducted a response action using Fund monies. The reimbursement program must be consistent with this overall program goal. Second, local officials who participated in the regional meetings expressed concern that lack of such a requirement would give PRPs a loophole for escaping their responsibility to pay and take away the leverage that localities need to recover costs wherever possible. Finally, failure to include such a requirement could add unnecessarily to the drain on the Fund, taking away money needed for responses where no PRP truly could be found or made to pay.

f. Emergency Planning

Section 310.30(f) of this rule requires that, after October 17, 1988, the applicant's jurisdiction be included in the comprehensive emergency response plan completed by the local emergency planning committee, as stipulated by section 303(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (or Title III of SARA). Because establishment of a local emergency planning committee is the responsibility of the State government, EPA will waive this requirement for localities where the State emergency response commission has not yet established a committee responsible for the geographic area in which the applicant is located.

EPA believes this requirement is appropriate for the reimbursement program because this emergency planning provisions required under title III are designed to encourage the development of coordinated local response capabilities and they address the emergency response actions for which local governments may decide to seek reimbursement. Furthermore, the Agency wishes to encourage local governments to participate in local emergency planning committees and in the development of emergency plans consistent with the intent of Title III and believes that linking this requirement to reimbursement will offer added incentive to local communities to do so.

EPA received comments from officials at the five regional meetings as to their views on including a link between reimbursement and Title III. The majority favored including participation in local emergency planning as a condition of reimbursement because they believe it will encourage local planning. Community officials did express reservations about their dependency on the State government to establish local emergency planning committees and the waiver provision included in § 310.30(f) is designed to address that concern.

3. Section 310.40 Allowable and Unallowable Costs

To be allowable for reimbursement, all costs for temporary emergency measures for which reimbursement is being sought must be consistent with section 111 of CERCLA ("Uses of Fund") and with the Federal cost principles outlined in the Office of Management and Budget (OMB) Circular A–87, "Cost Principles for State and Local Governments." These standard requirements apply to all Superfund programs involving State and/or local governments where monies from the Trust Fund are spent.

CERCLA section 111(c)(11) explicitly authorizes reimbursement to local governments for temporary emergency measures as an allowable use of the Superfund. OMB Circular A–87 establishes principles and standards for determining costs that are applicable to grants, contracts and other agreements with State and local governments. EPA has determined that the principles and standards set forth in Circular A–87 apply to reimbursement under section 123 of CERCLA, and in addition has identified a set of allowable and unallowable costs that are specific to the reimbursement program. Section 310.40 of today's rule outlines this set of allowable and unallowable costs.

EPA's objective in identifying allowable and unallowable costs specific to the reimbursement program is to provide guidance to potential applicants on the types of costs EPA will consider for reimbursement and to ensure that reimbursement does not supplant local funds normally provided for response. EPA used section 111 of CERCLA and OMB Circular A–87 as a basis for deciding what costs are reimbursable.

In making its cost determinations, EPA also considered the types of temporary emergency measures typically undertaken during a response, with special consideration given to the limited funds available for the reimbursement program relative to the number of potential applicants. A particular issue the Agency addressed was replacement of equipment, because the potential for abuse is significant and because reimbursement monies are limited. EPA determined, however, that there are potential response situations where such costs should be considered for reimbursement. For example, the loss of breathing apparatus and hoses due to irreversible contamination and contamination of other essential response equipment represents a considerable loss to local governments. EPA has decided to allow replacement costs for equipment contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the response for which reimbursement is being sought. It should be noted that since the maximum reimbursement amount is limited to $25,000, it is likely that large-scale equipment replacement will not be reimbursed in full. (Purchase and routine maintenance of equipment for response, however, are not allowable costs. EPA views these as costs for which local funds are normally provided.)

Costs associated with the services, supplies and equipment procured for a specific evacuation also have been included as allowable costs. EPA considers evacuation to be a temporary emergency measure and evacuation

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costs incurred that exceed services and costs normally provided by the local government may be eligible for reimbursement.

EPA has determined that disposable materials and supplies already owned by a local government, but consumed during response, constitute items normally provided for response by the local governments and therefore are not allowable costs for purposes of the reimbursement program. EPA has decided not to include medical expenses as an allowable cost because reimbursement for such costs normally should be covered by insurance or Workmen's Compensation.

In addition, EPA has determined that certain other costs are unallowable for purposes of the reimbursement program. These include employee fringe benefits, administrative costs for filing reimbursement applications, employee out-of-pocket expenses normally provided for in the applicant's operating budget and legal expenses that may be incurred as a result of response activities. EPA has determined that fringe benefits, certain employee out-of-pocket expenses, and legal expenses are costs normally provided for in a local government's operating budget. In addition, EPA considers administrative costs associated with filing a request for reimbursement not allowable, since it is the responsibility of the local government to determine whether or not to pursue reimbursement under this program.

C. Subpart C—Procedures for Filing and Processing Reimbursement Requests

Subpart C establishes the procedures for preparing the processing reimbursement applications. The purpose of defining these procedures is to give applicants a clear understanding of what information EPA needs in considering an application, to provide a consistent basis on which to evaluate reimbursement requests and to improve processing efficiency by making all forms and procedures standard.

1. Section 310.50 Filing Procedures

Section 310.50(a) of today's rule limits local governments to filing only one request for reimbursement for a given response to a release even though multiple agencies (and possibly jurisdictions) may have participated. This requirement is needed to ensure that the statutory maximum of $25,000 per single response is not exceeded and that payments are not duplicated. EPA expects that local officials will work together to determine total response costs, the relative share borne by each local agency and the appropriate agency or official who will assume responsibility for preparing the application.

Under § 310.50(b) of this rule, applicants must use the standard application form illustrated in Appendix II of the rule for filing their requests for reimbursement. EPA has decided to use a standard form because it reduces confusion about what information is to be supplied, helps ensure that all applicants are evaluated on the basis of comparable information and enables reviewers to check applications for completeness and consistency quickly. The form requests five basic pieces of information: (1) Identification of the local government requesting reimbursement; (2) information about the incident; (3) information about the response, including the specific temporary emergency measures for which reimbursement is being sought; (4) cost data; and (5) certifications and signature of an authorized representative of the local government. Detailed instructions for completing the form and examples will be included in the application package provided by EPA to potential requesters.

Section 310.50(b)(1) further requires that the applicant demonstrate that costs were incurred for temporary emergency measures necessary to protect human health and the environment. As discussed previously, the Agency has not attempted to explicitly define "temporary emergency measures," owing to the unpredictability and variability of hazardous substance releases, but actions that may qualify include security, source control, release containment, control of contaminated runoff and similar steps to protect people and the environment from imminent threats. The application form includes a section for explaining exactly what temporary emergency measures were taken and why they were necessary. For example, an acceptable demonstration might be: "Erected berms to prevent migration of pesticides leaking from ruptured drums into Fast River, the drinking water source for the City of Middletown." By contrast, an assertion along the lines of "source control needed to protect human health" would not constitute an acceptable demonstration.

Cost must be indentified with specific actions, as indicated in Table 1 of the application form. The applicant should briefly state the specific temporary emergency measure for which reimbursement is being sought and indicate which local agency (e.g., fire department, sheriff's office) incurred the cost for performing this measure. Each cost element for performing this measure should be specified in detail (e.g., overtime, decontamination services, equipment rental) and matched to the specific amount expended. Estimated amounts will not be considered for reimbursement.

Section 310.50(b)(2) requires the applicant to demonstrate that a reasonable effort has been made to obtain reimbursement from sources other than the Superfund. This filing requirement is intended to document the effort to recover costs, as stipulated in § 310.30(e) of today's rule. Acceptable demonstrations that cost recovery has been attempted include copies of letters from potentially responsible parties (PRPs) stating their inability or refusal to pay or copies of dated letters (with return-receipt requested) from the local government to the PRP requesting payment, with a statement certifying that the PRP has failed to respond to such letters within at least 60 days. Sworn statements attesting to the fact that no PRP could be found or that insurance monies or State funds are not available to cover the costs for these temporary emergency measures also will suffice.

Section 310.50(c) requires the applicant to certify that costs were incurred specifically for this response and are accurate, that the contact requirement in §310.30(b) was met, that this reimbursement does not supplant local funds normally required for response and that no PRP be identified. The applicant also must certify that if the local government later recovers costs from responsible parties, States or insurance after those costs have been reimbursed from the Superfund, that local government is required to return the reimbursement monies to the Fund in the amount of the recovery. This requirement is consistent with the intent of CERCLA that the Superfund be used only when no other source of funds is available and eliminates the possibility of duplicate payment for the same costs. All four certification requirements are necessary to ensure that the Superfund is used appropriately and that the provisions of Section 123(b)(2) of CERCLA are met.

Section 310.50(d) stipulates that the local government's request for reimbursement must be received by EPA within six months of the date of completion of the response unless cost recovery efforts are underway. For purposes of this rule, "date of completion" is defined as the date when all field work has been completed and all project deliverables have been received by the local government. EPA is imposing this requirement for several

reasons. First, the Agency may have questions about the application or need more information and it should be easier to answer them sooner, rather than later. Second, EPA believes that the time requirement will help smooth the number of applications to be processed in any one year and prevent a sudden increase in the rate of application as the funding expiration date approaches.

Section 310.50(e) stipulates that the application be signed by the chief executive officer of the local government or his or her delegate. This requirement protects the local government from unauthorized or improper attempts to obtain reimbursement that might later preclude a legitimate request. It also provides EPA with assurance that the request is legitimate, and thus an appropriate use of the Superfund, and can be considered for reimbursement.

2. Section 310.60 Verification and Reimbursement

Section 310.60 specifies the verification and reimbursement procedures EPA will follow in evaluating and processing requests for reimbursement. The verification procedures are intended to ensure that all requests are complete and adequately documented. Thus, § 310.60(a) allows EPA to return an incomplete request to the applicant with written notice of the deficiencies and § 310.60(b) gives the applicant 60 days in which to respond. Under § 310.60(c), EPA will notify the applicant when the Agency has determined that the request meets all requirements for reimbursement and complies with all filing procedures. At that point, the request is considered complete and can be reviewed by the evaluation panel. Under § 310.60(d), if documentation is not adequate to demonstrate the reasonableness of the costs claimed, EPA can make adjustments accordingly, including asking for additional information.

Reimbursement procedures are specified in §310.60(e), (f) and (g). Upon reviewing a completed request, EPA will compute the financial burden borne by the community in conducting the response and rank the request relative to the financial burden associated with other requests. Financial burden will be computed as $B=C/(Y \times P)$, where B=financial burden on applicant; C=eligible costs of response minus reimbursement from responsible parties, States or other sources; Y=per capita annual income for the locality; and P=population of the locality. Depending upon the ranking of the request and the funds available for reimbursement, EPA will either reimburse the request, deny it, or hold it for consideration during a later period. Section 310.60(f) limits EPA to reimbursing local governments (1) only for costs that are allowable, reasonable and necessary and (2) only to the extent that the temporary emergency measures conformed to the hazardous substance response criteria set forth in CERCLA, the NCP and the local emergency response plan. EPA will notify the applicant of the Agency's decision in writing.

3. Section 310.70 Records Retention

This section stipulates that an applicant receiving a reimbursement must maintain cost documentation and other relevant records, and must provide EPA access to these materials, for six years from the date of reimbursement. This requirement ensures the availability of pertinent information if EPA pursues cost recovery for this response. Once the six years has expired, the applicant must notify EPA of any intention to destroy these records. If EPA chooses not to take possession of them, the local authority may dispose of the materials. The requirements of this section do not apply to requests that have been denied and are not being disputed under §310.90.

4. Section 310.80 Payment of Approved Reimbursement Requests

This section stipulates that reimbursement payments can be made only when an appropriation in the Superfund is available and that payments will be in the order in which approved requests are ranked, according to financial burden on the applicant. This provision is consistent with section 111(e)(1) of CERCLA, which restricts payment of claims against the Superfund "in excess of the total money in the Fund. . . ."

5. Section 310.90 Disputes Resolution

This section specifies EPA's procedures for reviews of denial of reimbursement and reviews of amount of reimbursement, either of which the requester may choose to dispute. The applicant has 60 days from the date of the reimbursement decision to request a review, otherwise that decision constitutes a final Agency action. The request for review includes a discussion of the issue involved and a statement of the applicant's objection. After filing for review, the applicant is entitled to an informal conference with the EPA disputes decision official. The requester may be represented by counsel and submit evidence for inclusion in a written record. The Agency will provide the requester with a written decision specifying the outcome of the review. This decision constitutes final EPA action on the matter.

VII. Regulatory Analyses

A. Executive Order No. 12291

Under Executive Order No. 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity and innovation and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This regulation involves reimbursement of the costs of local governments for responding to a hazardous substance release. This is a benefit authorized by CERCLA, and does not adversely affect the private sector economy or small entities, which may include local governments, and in fact provides a benefit to local governments in the form of reimbursement to offset financial hardship incurred from responses to hazardous substances and pollutants or contaminants. EPA, therefore, certifies that this regulation will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The reporting or recordkeeping requirements in this interim final rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

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VIII. List of Subjects in 40 CFR Part 310

Administrative practice and procedure, Hazardous substances, Incorporation by reference, Intergovernmental relations, Local governments, Reporting and recordkeeping requirements, Superfund.

Lee M. Thomas,

Administrator.

October 16, 1987.

Title 40 of the Code of Federal Regulations is amended by adding the following new Part 310:

PART 310—REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES

Subpart A—General

Sec.

310.05 Purpose, scope and applicability.
310.10 Abbreviations.
310.11 Definitions.
310.12 Penalties.

Subpart B—Reimbursement

310.20 Eligibility for reimbursement.
310.30 Requirements for requesting reimbursement.
310.40 Allowable and unallowable costs.

Subpart C—Procedures for Filing and Processing Reimbursement Requests

310.50 Filing procedures.
310.60 Verification and reimbursement.
310.70 Records retention.
310.80 Payment of approved reimbursement requests.
310.90 Disputes resolution.
Appendix I—EPA Regions and NRC Telephone Lines.
Appendix II—Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123

Authority: 42 U.S.C. 9611(c)(11), 9623.

Subpart A—General

§ 310.05 Purpose, scope and applicability.

(a) Through this regulation, the Environmental Protection Agency is establishing the procedures for reimbursing local governments for temporary emergency measures to prevent or mitigate injury to human health or the environment, as authorized under section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). This program is intended to alleviate significant financial burden on local governments for response to releases or threatened releases of hazardous substances or pollutants or contaminants and will not supplant local funds normally provided for response. Reimbursement does not apply to expenditures incurred in the course of providing what are traditionally local services and responsibilities, such as routine firefighting.

(b) Applications for reimbursement for temporary emergency measures may be submitted only through the procedures established in this regulation. Any general purpose unit of local government for a political subdivision may request reimbursement. States are not eligible for this program. Under this regulation, local governments may apply for reimbursement for temporary emergency measures performed subsequent to promulgation of this rule. Reimbursement may be made for temporary emergency measures conducted during either Federal-lead or non-Federal-lead responses.

(c) Reimbursement to local governments for temporary emergency measures may not exceed $25,000 per single response, nor may reimbursement supplant local funds normally provided for response. Because CERCLA specifies that no more than 0.1% of the amount appropriated from the Hazardous Substance Superfund may be allocated to the reimbursement program for the five fiscal years beginning October 1, 1986, some requests may not ever be reimbursed even though they meet all requirements of this regulation.

§ 310.10 Abbreviations.

CERCLA—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96–510), 42 U.S.C. 9601–75, as amended by the Superfund Amendments and Reauthorization Act of 1986, also known as Superfund

EPA or the Agency—Environmental Protection Agency

NCP—National Contingency Plan

OMB—Office of Management and Budget

SARA—The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499)

USCG—U.S. Coast Guard

§ 310.11 Definitions.

For purposes of this rule except when otherwise specified:

(a) "Date of completion" means the date when all field work has been completed and all deliverables (e.g., lab results, technical expert reports) have been received by the local government.

(b) "Energency Planning and Community Right-To-Know Act of 1986" means Title III—Emergency Planning and Community Right-To-Know of the Superfund Amendments and Reauthorization Act of 1986.

(c) "General purpose unit of local government" means the governing body of a county, parish, municipality, city, town, township, Federally-recognized Indian tribe or similar governing body.

(d) "Hazardous substance," as defined by section 101(14) of CERCLA, means:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act,

(2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA,

(3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress),

(4) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act,

(5) Any hazardous air pollutant listed under section 112 of the Clean Air Act, and

(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under paragraphs (d)(1) through (d)(6) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures or natural gas and such synthetic gas).

(e) "Local comprehensive emergency response plan" means the emergency plan prepared by the local emergency planning committee as required by section 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (SARA Title III).

(f) "National Contingency Plan" means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300).

(g) "National Response Center" means the national communications center located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate Federal officials.

(h) "Pollutant or contaminant," as defined by section 104(a)(2) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation

into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(i) "Release," as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes: any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For the purpose of this regulation, release also means substantial threat of release.

(j) "Single response" means all of the concerted activities conducted in response to a single episode, incident or threat causing or contributing to a release or threatened release of hazardous substances or pollutants or contaminants.

§ 310.12 Penalties.

Any person who knowingly gives or causes to be given any false statement or claim as part of any application for reimbursement under section 123 of CERCLA, upon conviction, may be fined or imprisoned subject to the False Statement Act (18 U.S.C. 1001) and the False Claims Act (31 U.S.C. 3729).

Subpart B—Reimbursement

§ 310.20 Eligibility for reimbursement.

(a) Any general purpose unit of local government may request reimbursement for temporary emergency measures if all requirements under § 310.30 of this rule are met.

(b) States are not eligible for reimbursement for temporary emergency measures and no State may request reimbursement on its own behalf or on the behalf of political subdivisions within the State.

§ 310.30 Requirements for requesting reimbursement.

(a) Response must have been initiated on or after the effective date of this rule.

(b) The local government must inform EPA or the National Response Center (NRC) of the response as soon as possible, but not later than 24 hours after the start of response, unless EPA or the USCG has been contacted via the NRC or other established response communication channel. EPA Regional offices and NRC telephone numbers are designated in Appendix I to this rule.

(c) Requests for reimbursement must demonstrate that response actions are not inconsistent with CERCLA, the NCP and, where applicable, the local comprehensive emergency response plan completed under the Emergency Planning and Community Right-to-Know Act of 1986.

(d) Requests for reimbursement must provide assurance that reimbursement for costs incurred for temporary emergency measures does not supplant local funds normally provided for response.

(e) Applicants for reimbursement must first present requests for payment of incurred costs to all known potentially responsible parties and permit at least 60 days for payment or for expression of intent to pay or willingness to negotiate prior to submitting a reimbursement request to the Agency. Local governments also must pursue all other sources of reimbursement (e.g., insurance, reimbursement from the State) before seeking reimbursement from EPA under this rule.

(f) After October 17, 1988, the applicant's jurisdicition must be included in the comprehensive emergency response plan compl.ted by the local emergency planning committee as required by section 303(a) of the Emergency Planning and Community Right-to-Know Act of 1986. This requirement does not apply if the State Emergency Response Commission (SERC) has not established a local emergency planning committee(s) responsible for the emergency planning district(s) encompassing the applicant's geographic boundaries.

§ 310.40 Allowable and unallowable costs.

To be allowable, costs for which reimbursement is sought must be consistent with CERCLA and with Federal cost principles outlined in the OMB Circular A–87, "Cost Principles for State and Local Governments." The local government may also seek assistance from the EPA Regional Office in determining which costs may be allowable. Final determination of the reasonableness of the costs for which reimbursement is sought will be made by EPA.

(a) In general, allowable costs are those project costs that are eligible, reasonable, necessary and allocable to the project. Costs allowable for reimbursement may include, but are not limited to:

(1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response for which reimbursement is being requested (hereafter referred to as "the response")

(2) Compensation of employees for the time and efforts devoted specifically to the response that are not othewise provided for in the applicant's operating budget (e.g., overtime pay for permanent full-time and other than full-time employees)

(3) Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment) (Note: reimbursement for these costs will not exceed the duration of the response)

(4) Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the response (e.g., self-contained breathing apparatus irretrievably contaminated during the response)

(5) Decontamination of equipment contaminated during the reponse

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts/specialists not otherwise provided for by the local government)

(7) Other special services specifically required for the response (e.g., utilities)

(8) Laboratory costs for purposes of analyzing samples taken during the response

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(9) Costs associated with the services, supplies and equipment procured for a specific evacuation.

(b) In general, costs unallowable for reimbursement include, but are not limited to:

(1) Purchase or routine maintenance of equipment of a durable nature that is expected to have a period of service of one year or more after being put into use without material impairment of its physical condition, except as provided in (a)(4) and (a)(5) of this section

(2) Materials and supplies not purchased specifically for the response

(3) Employee fringe benefits

(4) Administrative costs for filing reimbursement applications

(5) Employee out-of-pocket expenses normally provided for in the applicant's operating budget (e.g., meals, fuel)

(6) Legal expenses that may be incurred as a result of response activities, including efforts to recover costs from potentially responsible parties

(7) Medical expenses incurred as a result of response activities.

(c) The local government must ensure that costs incurred are substantiated and that cost documentation is adequate for an Agency audit. Documentation of response costs must include at a minimum:

(1) Specification of the temporary emergency measures for which reimbursement is requested

(2) Specification of the local agency incurring the cost

(3) Detailed breakdown of actual costs, by cost element such as overtime, equipment rental

(4) Supporting documents such as invoices, sales receipts, rental or leasing agreements

(5) Generally accepted accounting practices consistently applied.

Subpart C—Procedures for Filing and Processing Reimbursement Requests

§ 310.50 Filing procedures.

(a) Only one request for reimbursement will be accepted for each hazardous substance emergency requiring immediate response at the local level. When more than one local agency has participated in such a response, those agencies must determine which single agency will submit the request on behalf of them all.

(b) A request for reimbursement must be submitted on EPA form 9310-1, illustrated in Appendix II, and must demonstrate that:

(1) Costs for which reimbursement is sought were incurred for temporary emergency measures taken by the local government to protect human health and the environment from releases or threatened releases of hazardous substances, pollutants or contaminants; temporary emergency measures may include security, source control, release containment, neutralization or other treatment methods, contaminated runoff control and similar activities mitigating immediate threats to human health and the environment

(2) Reasonable effort has been made to recover costs from the responsible party and from any other available source and that such effort has been unsuccessful

(3) Response actions were not inconsistent with CERCLA, the NCP and, if applicable, the local emergency response plan required under Title III of SARA

(c) Applicants must certify that:

(1) All costs are accurate and were incurred specifically for the response for which reimbursement is being requested

(2) The local government complied with the requirement to inform EPA or the USCG of the response, as specified in § 310.30(b)

(3) Reimbursement for costs incurred for response activities does not supplant local funds normally provided for response.

(4) If costs subsequently are recovered from responsible parties or other sources after the local government has received reimbursement from the Superfund, the local government agrees to return to EPA the reimbursement monies for which costs have been recovered.

(d) Reimbursement requests must be received by EPA within six months of the date of completion of the response for which reimbursement is being requested unless a cost recovery action is pending, in which case EPA will waive the deadline.

(e) A request for reimbursement must be signed by the chief executive officer of the local government or his or her delegate.

§ 310.60 Verification and reimbursement.

(a) Upon receipt of a reimbursement request, EPA will verify that it complies with all requirements. Where the request is incomplete or has significant defects, EPA will return the request to the applicant with written notification of its deficiencies.

(b) A request returned to the applicant for correction of deficiencies must be resubmitted to EPA within 60 days.

(c) For purposes of this regulation, a reimbursement request is deemed complete when EPA determines that the request complies fully with all requirements for reimbursement and with all filing procedures. When the request is complete, a notice will be provided to the applicant of EPA's receipt and acceptance for evaluation.

(d) If EPA determines that it cannot complete its evaluation of a request because the records, documents and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate the reasonableness of the costs claimed, EPA may reject the request or make adjustments, if possible. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 60 days unless specifically extended by EPA. The failure of the applicant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the reimbursement request.

(e) When the reimbursement request is completed, EPA will rank the request on the basis of financial burden. Financial burden will be based on the ratio of eligible response costs to the applicant locality's per capita income adjusted for population. Per capita income and population statistics used to calculate financial burden shall be those published by the U.S. Department of Commerce, Bureau of the Census, in Current Population Reports, Local Population Estimates, Series P-26, "1984 Population and 1983 Per Capita Income Estimates for Counties and Incorporated Places," Vols. 84-S-SC, 84-MW-SC, 84-NE-SC, 84-W-SC, 84-WNC-SC, June 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies are available from the Bureau of the Census, Office of Public Affairs, Department of Commerce, Constitution Avenue, NE., Washington, DC 20230 (1-202-763-4040). Copies may be inspected at the U.S. Environmental Protection Agency, 401 M Street, SW., Room LG-100, Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC. In ranking requests on the basis of financial burden, EPA also will give consideration to other relevant financial information supplied by the applicant. Once the request is ranked, EPA will:

(1) Reimburse the request or

(2) Decline to reimburse the request or

(3) Hold the request for consideration in a subsequent period.

(f) Reimbursement will be made:

(1) Only for costs that are allowable, reasonable and necessary.

(2) Only to the extent that the temporary emergency measures conformed to response criteria established by CERCLA, the NCP and the local emergency response plan, if applicable.

(g) The EPA reimbursement official will provide the requester with a written final decision. Payment of approved requests will be made according to § 310.80 of this regulation.

(h) Requests that are not reimbursed during the review period in which they are first considered remain open for consideration, at the EPA reimbursement official's discretion, for one year. EPA will notify the requester in writing if the request is held for later review. After that time, an unreimbursed request will no longer be considered and EPA will notify the requester in writing that the request has been denied.

§ 310.70 Records retention.

An applicant receiving a reimbursement from the Superfund is required to maintain all cost documentation and any other records relating to the reimbursement request and to provide EPA with access to such records. If, after six years from the date of the reimbursement from the Superfund, EPA has not initiated a cost recovery action, the applicant need retain the records no longer. The applicant must, however, notify EPA and allow EPA the opportunity to take possession of the records before they are destroyed.

§ 310.80 Payment of approved reimbursement requests.

A reimbursement from the Superfund can be paid only when Superfund monies are available. An approved request in excess of Superfund appropriations available to EPA may be paid only when additional money is appropriated. As appropriations in the Superfund become available, reimbursements will be made in the order in which approved requests are ranked, according to relative financial burden.

§ 310.90 Disputes resolution.

The procedures in this section apply to reviews of denial of reimbursement and reviews of amount of reimbursement.

(a) The EPA reimbursement official's decision constitutes final Agency action unless the requester files a request for review by registered mail within 60 calendar days of the date of decision.

(b) The request for review of the EPA reimbursement official's final written decision must be filed with the disputes decision official identified in the final written decision.

(c) The request for review must include:

(1) A copy of the EPA reimbursement official's final decision,

(2) A statement of the amount in dispute

(3) A description of the issues involved and

(4) A concise statement of the requester's objection to the final decision.

(d) After filing for review, the requester:

(1) Is entitled to an informal conference with the EPA disputes decision official,

(2) May be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record and

(3) Is entitled to a written decision from the disputes decision official.

Appendix I—EPA Regions and NRC Telephone Lines

EPA regional office	States in region
I—Boston	ME, NH, VT, MA, RI, CT.
II—New York	NJ, NY, PR, VI.
III—Philadelphia	PA, DE, MD, DC, VA, WV.
IV—Atlanta	NC, SC, TN, MS, AL, GA, FL, KY.
V—Chicago	OH, IN, IL, WI, MN, MI.
VI—Dallas	AR, LA, TX, OK, NM.
VII—Kansas City	IA, MO, KS, NE
VIII—Denver	CO, UT, WY, MT, ND, SD.
IX—San Francisco	AZ, CA, NV, AS, HI, GU, TT.
X—Seattle	ID, OR, WA, AK.
National Response Center 1-800-424-8802 (National—toll free) 426-2675 (Washington, DC.)	

BILLING CODE 6560-50-M

Appendix II—Application for reimbursement to local governments for emergency response to Hazardous Substance Releases Under CERCLA Section 123

Please type or print all information.

United States Environmental Protection Agency
Washington, DC 20460

EPA

Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Sec. 123

Form Approved
OMB No. xxxx-xxxx
Expires xx-xx-xx

1. Local Government Identification

a. Name of Local Government

b. Contact Name and Telephone Number

c. Official Address

d. Date of Application

2. Release Description

a. Date and Time of Occurrence or Discovery

b. Location

c. Source or Cause of Release

d. Hazardous Substances Released and Quantity

e. Threats to Human Health and Environment

f. Attach any additional material pertinent to the release

3. Response Description

a. Date and Time of Response Action

b. Contact Made With (Check one)
☐ EPA ☐ National Response Center ☐ Other (Specify)

c. EPA Region

d. Date and Time Contact Made

e. Date of Response Completion

f. Jurisdiction in Which Response Occurred

g. Is This Jurisdiction Covered by a Title III Emergency Response Plan?
(Check one) ☐ Yes ☐ No

h. Responding Agencies and Jurisdictions

EPA Form 9310-1 (10-87)

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3i. Summary of Response Actions
j. Temporary Emergency Measures for Which Reimbursement Is Sought
k. Demonstration that Costs Claimed Do Not Supplant Local Funds Normally Provided for Response and Exceed Resources Committed in Local Emergency Response Plan
l. Attach any additional material pertinent to the response

4. Cost Information

a. Total Response Cost	b. Total Reimbursement Requested
$	$

c. Complete and Attach Table 1, "Detailed Cost Breakdown"

d. Attach Evidence of Attempt To Recover Costs

e. Attach Other Pertinent Financial Information (See Instructions)

5. Certifications and Authorization

I hereby certify that (1) all costs are accurate and were incurred specifically for the response for which reimbursement is being requested; (2) the requirement to inform EPA or the U.S. Coast Guard of the response has been met; (3) reimbursement for costs incurred for response activities does not supplant local funds normally provided for response; (4) all other available sources of funds have been pursued and (5) reimbursement funds for which costs are later recovered will be returned to EPA. I further certify that I am authorized to request this reimbursement and to receive funds from the Federal Government.

Printed or Typed Name of Authorized Representative	Signature of Authorized Representative
Title	Date

EPA Form 9310-1 (10-87) Reverse

Table 1

Detailed Cost Breakdown

Temporary Emergency Measure	Cost Incurred By	Cost Element	Amount

EPA Form 9310-1 (10-87) Attach supporting documentation, e.g., invoices, sales receipts, rental agreements

[FR Doc. 87-24330 Filed 10-20-87; 8:45 am]
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federal register

Wednesday
October 21, 1987

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700 and 736

Permanent Regulatory Program; Federal Program for a State; Final Rule

VOL 52 ISS 203 OCT 21 1987 UMI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700 and 736

Permanent Regulatory Program; Federal Program for a State; Public Notice, Comment and Hearing Procedures

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is amending its rules governing the promulgation and revision of a Federal program for a State for coal exploration and surface coal mining operations on non-Federal and non-Indian lands. The rule revises the existing public notice, comment and hearing procedures. In addition, the rule adds to the general provisions in Part 700 a definition of the terms *OSM* and *OSMRE*.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Rule
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, establishing a nationwide program for the regulation of surface coal mining and reclamation operations. To provide a consistent regulatory framework for this nationwide program, section 501(b) of the Act, 30 U.S.C. 1251(b), requires the Secretary of the Interior (the Secretary) to promulgate a permanent regulatory program (the permanent program). The permanent program regulations are grouped in 30 CFR Chapter VII. These regulations include performance standards for surface coal mining and reclamation operations (Subchapter K), and procedures for establishing State and Federal programs (Subchapter C).

A State program may be established pursuant to section 503 of the Act, 30 U.S.C. 1253. A State program, with certain exceptions, gives a State exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within its borders. Where a State does not establish a State program, section 504 of the Act, 30 U.S.C. 1254, requires the Secretary to establish a Federal program for that State. Standards and procedures that govern Federal programs and their promulgation appear in Subchapter C at 30 CFR Part 736.

Under Part 736 of the permanent program OSMRE has promulgated Federal programs for ten States: Georgia (August 19, 1982; 47 FR 36393); Idaho (April 14, 1983; 48 FR 16218); Massachusetts (September 12, 1983; 48 FR 41000); Michigan (October 22, 1982; 47 FR 47162); North Carolina (June 30, 1983; 48 FR 30298); Oregon (November 2, 1982; 47 FR 49818); Rhode Island (September 12, 1983; 48 FR 40990); South Dakota (April 19, 1983; 48 FR 16818); Tennessee (October 1, 1984; 49 FR 38874); and Washington (February 24, 1983; 48 FR 7870). As provided by 30 CFR 900.13, the rules for each of these Federal programs are codified in 30 CFR Subchapter T under separate parts for each State.

To take full advantage of the existing permanent program performance standards, while avoiding unnecessary repetition, most of the rules that make up each Federal program do not themselves set out detailed requirements, but instead cross-reference a corresponding part in the permanent program. In situations where a cross-reference to the permanent program does not meet the needs of a particular State, the Federal program rule for that State also includes an additional paragraph or paragraphs with appropriate detailed requirements.

For example, the Federal program for the State of Georgia is codified at 30 CFR Part 910. Section 910.842, which governs Federal inspections, in paragraph (a) cross-references the corresponding Part 842 of the permanent program. In addition, paragraph (b) requires OSMRE to furnish to the Georgia Department of Natural Resources upon request a copy of any inspection report or enforcement action taken.

One consequence of this cross-referencing from the Federal programs to the permanent program is that whenever a permanent program rule is revised directly, each Federal program rule which cross-references that permanent program rule also is revised indirectly in a similar way. Thus, in addition to the public notice, comment and hearing procedures that apply to the permanent program, when revising a cross-referenced permanent program rule OSMRE also must comply with the public notice, comment and hearing procedures that apply to each affected Federal program.

For the promulgation or revision of the permanent program regulations there are no OSMRE rules governing public notice, comment and hearing procedures. OSMRE follows the requirements of section 501 of the Act, 30 U.S.C. 1251, and section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. Generally, section 501 requires OSMRE to provide a 30-day public comment period, and at least one public hearing on a proposed rule. In appropriate cases a longer comment period is provided by OSMRE, and additional public hearings at different locations are scheduled in advance or held on request.

For the promulgation or revision of a Federal program, the public notice, comment and hearing procedures are governed by section 504(c) of the Act. Section 504(c) requires simply that "[p]rior to the promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State."

Prior to this revision, the OSMRE rules at §§ 736.12 and 736.13, which implemented section 504(c), were far more detailed. They included requirements for a public hearing in the affected State; notice in the **Federal Register** at least 60 days before the hearing; placing a copy of the administrative record in an appropriate OSMRE office and a public office in the capital city of the affected State; specified hearing procedures; and notice at least once a week for 3 weeks within the 30 days before the hearing in at least one newspaper of general circulation in the coal mining area of the affected State.

Because most of the permanent program rules are cross-referenced by the ten Federal programs, OSMRE was required to follow these detailed procedures for most revisions of the permanent program. Since there are ten Federal programs, the prior procedures required OSMRE to distribute copies of the administrative record for the revision to ten different States, and to publish at least 30 accurately-timed newspaper notices. Since the permanent program rules continually are undergoing revision, this process, if continued, would have consumed considerable time, money and manpower.

OSMRE believed that procedures far simpler than those of prior §§ 736.12 and 736.13 would give the public adequate opportunity to participate fully in the rulemaking process. OSMRE

reevaluated the procedures in those sections and tentatively concluded that most of them were too elaborate, that they did not produce benefits to the public commensurate with the costs of compliance, and that simpler procedures would not lessen the ability of either OSMRE or the public to meet the requirements and achieve the goals of the Act. Accordingly, OSMRE proposed revisions to §§ 736.12 and 736.13 on March 31, 1987 (52 FR 10352).

In addition to the revision of Part 736, OSMRE also proposed to add a new definition to 30 CFR 700.5. Although the term *OSM* is used throughout existing 30 CFR Chapter VII, it is defined only in § 870.5, which applies only to Parts 870 through 888. Therefore, OSMRE proposed to revise 30 CFR 700.5 by adding a definition of *OSM* that would apply throughout Chapter VII. OSMRE also proposed to revise § 700.5 by adding a definition of *OSMRE*, the preferred acronym for the Agency.

The comment period for the proposed rule closed on June 1, 1987. Only one comment was received. The comment was from a State regulatory agency which indicated that it had no objection to the proposed revision. In view of the lack of objections to the proposed rule, OSMRE has adopted the rule as proposed. A discussion of the rule follows.

II. Discussion of the Rule

Definitions—Section 700.5

The rule revises existing 30 CFR 700.5 adding a definition of the terms *OSM* and *OSMRE* to mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act. The definition applies throughout 30 CFR Chapter VII. The existing regulations in Chapter VII will continue to use the term *OSM* until they are otherwise revised.

Federal Program Notice, Comment and Hearing Procedures—Section 736.12

The rule amends the public notice, comment and hearing procedures OSMRE must follow when promulgating or revising a Federal regulatory program for a State. It simplifies the existing procedures, while continuing to give the public adequate opportunity to participate effectively in the rulemaking process.

Proposed § 736.12 incorporates, with varying degrees of revision, the majority of the procedures found in prior §§ 736.12 and 736.13. The procedures in prior §§ 736.12 and 736.13 that are omitted from § 736.12, are discussed subsequently in their relevant contexts.

Section 736.12(a) Federal Register notice

Prior to the promulgation or revision of a Federal program for a State, § 736.12(a) requires OSMRE to publish in the **Federal Register** a notice which at a minimum will include five specified items of information.

Paragraph (a)(1) requires that the notice include the basis, purpose and substance of the proposed Federal program or revision. It corresponds with prior §§ 736.12(a)(1) and (a)(2), which required that the **Federal Register** notice include "the bases and purposes of" and "the proposed text of" the Federal program or revision. The term "substance" is substituted for "proposed text" in accordance with section 533(b)(3) of the APA, which requires that a **Federal Register** notice of proposed rulemaking include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." In the context of the promulgation or revision of a Federal program, the term "substance" is the more apt of these APA alternatives.

Paragraph (a)(2) requires that the notice offer the public an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice. This corresponds with portions of prior §§ 746.12(a)(7). However, the mandatory comment period has been reduced from 60 days to the 30 days specified in the APA. This change will afford OSMRE flexibility in instances where the nature of the rulemaking does not justify an extended comment period. When the complexity of a proposed rule or its impact justifies an extended comment period, OSMRE can still provide a 60 day comment period as it has in the past.

The term *data* in prior § 746.12(a)(7) was deleted from this rule because it is included implicitly in the more general term *comments*. A commenter may submit to OSMRE any written information which he or she believes is relevant to the promulgation or revision of a Federal program, including data.

Paragraph (a)(3) requires that in the notice of proposed rulemaking, OSMRE offer to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period, only upon request. This corresponds with portions of prior §§ 736.12(a)(5) and 736.13(c). While section 504(c) of the Act requires OSMRE to hold a public hearing when promulgating a Federal program, this obviously does not include a hearing which no member of the public plans to attend. Prior § 736.13(c) required OSMRE to hold a public hearing for the promulgation of a Federal program, but for a revision only upon request. This rule requires the public to request a hearing under either circumstance. In addition, there is no longer any requirement to publish the **Federal Register** notice at least 60 days before the date of the hearing, as the prior rule required. The 60 day period was unnecessarily long and it prolonged the rulemaking process without any corresponding public benefit.

Paragraph (a)(4) requires that the notice specify the address of an appropriate place where any person may inspect and copy during normal business hours, a copy of the administrative record for the proposed Federal program or revision. This corresponds with portions of prior §§ 736.12(a)(4) and 736.13(f).

While the prior rule required OSMRE to make available "the text of the proposed program or revision and any supporting information" and "[c]opies of all written comments received and the transcripts of the public hearings," this rule specifies only "a copy of the administrative record." This does not limit the information available to the public, but merely substitutes a more general term that includes all of the information specified by the prior rule.

For the promulgation of a Federal program, the prior rule required OSMRE to make certain information available at both an OSMRE office and a public office in the capital city of the affected State. Paragraph (a)(4) substitutes for these two offices the term "an appropriate place." This might be either an OSMRE office, a State or other public office, a library, or other appropriate facility. This paragraph also differs from the prior requirement in that the location does not have to be in the affected State. This will relieve OSMRE from having to lodge copies of the administrative record for a Federal program revision, which essentially is the administrative record for the underlying permanent program revision, in all Federal program States, which currently are 10 in number. OSMRE believes that for the promulgation or revision of a Federal program, the administrative record located in OSMRE headquarters in Washington, DC, generally is adequate to meet the needs of the public. In cases where there appears to be sufficient demand for a copy of the administrative record in a particular State, OSMRE will consider making one available at an appropriate place in the State. By not specifying any particular office, the rule gives OSMRE maximum flexibility to lodge a copy of the administrative

record at the location where there is the greatest interest in the Federal program or revision.

Paragraph (a)(5) requires for the indirect revision of a Federal program that the **Federal Register** notice state that the affected provision of the permanent program is cross-referenced by the Federal program, and thus that the proposed permanent program revision also would revise the Federal program.

Section 736.12(b) Newspaper notice

Prior to the initial promulgation of a Federal program for a State, § 736.12(b) requires OSMRE to publish in a newspaper of general circulation in the coal mining area of the affected State a notice like the **Federal Register** notice required by § 736.12(a)(1). For the substance of the proposed Federal program the rule authorizes OSMRE to substitute a brief description in order to avoid the cost of publishing a lengthy newspaper notice. Any person interested in the full text of the proposed Federal program can consult the **Federal Register** notice.

This new provision requires only a single notice, while prior § 736.12(b) required newspaper notice at least once a week for 3 weeks. OSMRE believes that the multiple notice required by the prior rule was unnecessary and that a single notice is adequate to inform the public about, and provide an opportunity to comment on, a proposed Federal program.

While the prior procedures required OSMRE to publish the newspaper notice at least 30 days before the hearing, this rule requires only that OSMRE publish a newspaper notice. The deadline has been removed to accommodate the reduced public comment period. OSMRE intends to publish the newspaper and **Federal Register** notices as concurrently as practicable.

A major difference in new § 736.12(b) as compared to prior § 736.12(b) is the lack of a requirement for newspaper notice of a proposed revision of a Federal program. OSMRE has deleted the requirement for newspaper notice for a revision of a Federal program because it has concluded that for a revision of a **Federal Register** notice is sufficient.

There are two reasons for this conclusion: First, after a Federal program is promulgated for a State any person in that State who is interested in the regulation of surface coal mining is aware of the Federal presence and reasonably can be expected to rely on the **Federal Register** for notice of a revision.

And second, for a revision of the Federal program which is in effect a revision of the permanent program, the nationwide scope of the underlying permanent program revision insures widespread public involvement. Under these circumstances it is unlikely that a newspaper notice would reach any interested persons who were not already aware of the proposed revision.

In addition, OSMRE routinely issues a press release for any rule that is likely to generate public interest. The result is that those persons most interested in, and most likely to comment, on a proposed rule revising a Federal program are aware of the proposal.

Even though there presently are 10 states with full Federal programs, except for operators in Tennessee and Washington, there has been little interest in the revision of a Federal program, and only rarely has a hearing on the promulgation or revision of a Federal Program been requested.

Sections 736.12(c) Federal agency comment

Prior to the promulgation or revision of a Federal program for a State, § 736.12(c) requires OSMRE, as appropriate, to solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed Federal program or revision. This corresponds with prior § 736.13(a).

The prior procedures required OSMRE to solicit comments from the heads of these agencies in all cases, while this rule requires OSMRE to do so only "as appropriate." Under this rule OSMRE will solicit comments from only those agenices which reasonably might be expected to have comments, and only on those issues of apparent interest to them. OSMRE has made this change to eliminate unproductive correspondence with agencies that are neither concerned with nor have any expertise relevant to a proposed Federal program or revision.

The rule does not contain a procedure corresponding to prior § 736.12(a)(3), which required that the **Federal Register** notice include the proposed effective date of the Federal program or revision. Because of the numerous variables in the rulemaking process, it seldom is possible to predict the effective date of a rule with sufficient accuracy to benefit the public at the proposal stage. To avoid the uncertainties resulting from proposing an inaccurate effective date, OSMRE has deleted this requirement.

Section 736.13 Public comment (Removed)

This rule removes prior § 736.13. A number of the procedures in that section have been relocated in § 736.12, either with or without additional revision. Other procedures have been eliminated entirely. An explanation of the effect of the rule on each paragraph of this section follows.

Section 736.13(a)

Prior § 736.13(a) required OSMRE, when proposing to promulgate or revise a Federal program, to solicit comments from the heads of various Federal agencies. A similarly-worded, revised version of this paragraph appears in § 736.12(c). The revised version requires OSMRE to solicit Federal-agency comments only "as appropriate." For more information on these changes, see the preceding discussion of § 736.12(c).

Section 736.13(b)

Prior § 736.13(b) required OSMRE to give the public an opportunity to submit written data and comments on a proposed Federal program or revision within 60 days after publication of a notice in the **Federal Register**. A similarly worded, revised version of this paragraph appears in § 736.12(a)(2). The principal differences in the revised rule are that the comment period has been reduced from 60 to 30 days, and the term *data* has been deleted as superfluous. For more information on these changes, see the preceding discussion of § 736.12(a)(2).

Section 736.13(c)

Prior § 736.13(c) required OSMRE to hold a public hearing prior to promulgating a Federal program for a State, and upon request prior to revising a Federal program. For promulgation and revision, these procedures have been relocated in § 736.12(a)(3). Unlike prior paragraph (c), § 736.12(a)(3) requires OSMRE to hold a hearing for both promulgation or revision only upon request. For more information on these changes, see the preceding discussion of § 736.12(a)(3).

Section 736.13(d)

Prior § 736.13(d) authorized OSMRE to hold additional hearings or to solicit additional public comment when appropriate. There is no corresponding procedure in this rule. Paragraph (d) was removed as superfluous because notwithstanding the prior rule OSMRE had sufficient authority to do either of these things. Even though the paragraph is being removed to simplify the rule, OSMRE will continue to hold additional

hearings or to solicit additional public comment when the public interest in a particular rule warrants.

Section 736.13(e)

Prior § 736.13(e) required OSMRE to transmit to the Director all public comments, hearing transcripts and related materials. This requirement is implicit in § 736.14(a), which requires the Director to consider such information in deciding whether to promulgate or revise a Federal program. Therefore, OSMRE has removed this paragraph as superfluous.

Section 736.13(f)

Prior § 736.13(f) required OSMRE to make available for public inspection and copying at the appropriate OSMRE office, and at a public office in the capital city of the affected State, copies of all written comments and hearing transcripts. A revised version of these procedures is relocated in § 736.12(a)(4), which unlike paragraph (f) requires OSMRE to make "a copy of the administrative record" available only at "an appropriate place." For more information on these changes, see the preceding discussion of § 736.12(a)(4).

Section 736.14 Director's decision

This rule also makes a technical change in § 736.14, which governs the Director's decision on a proposed Federal program or revision. The reference to "§ 736.13 has been changed to § 736.12 of this part" to conform with the changes the rule makes in the referenced sections. This will not have any substantive effect on § 736.14, itself, which except for this technical change remains the same.

III. Procedural Matters

Effect in Federal Program States

The revisions to Part 700 of this rule apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. No comments were received concerning unique conditions which exist in any of these States which would have required changes to the national rule or State-specific amendments to any of the Federal programs.

Federal Paperwork Reduction Act

The rule does not contain any information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The procedures the rule amends are strictly administrative and do not involve any major economic costs.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not have a significant economic impact on a substantial number of small entities. The rule amends adminstrative procedures which have no significant economic impact.

National Environmental Policy Act

This rule is categorically excluded from the National Environmental Policy Act of 1969 (NEPA) process under DOI Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The principal author of this rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W. Washington, D.C. 20240; Telephone 202–343–5241.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 736

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 700 and 736 are amended as follows:

Date: September 16, 1987.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 700—GENERAL

1. The authority citation for Part 700 is revised to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 et seq.), and Pub. L. 100–34.

2. Section 700.5 is revised by adding in alphabetical order a new definition as follows:

§ 700.5 Definitions.

* * * * *

OSM and *OSMRE* mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

* * * * *

PART 736—FEDERAL PROGRAM FOR A STATE

3. The authority citation for Part 736 is revised to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 et seq.), and Pub. L. 100–34.

4. Section 736.12 is revised to read as follows:

§ 736.12 Notice, comment and hearing procedures.

Prior to the promulgation or revision of a Federal program for a State, OSMRE shall:

(a) *Federal Register notice.* Publish in the **Federal Register** a notice which:

(1) Includes the basis, purpose and substance of the proposed Federal program or revision;

(2) Offers any person an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice;

(3) Offers to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period if requested by any person;

(4) Gives the address of an appropriate place where any person, during normal business hours, may inspect and copy a copy of the administrative record for the proposed Federal program or revision;

(5) For an indirect revision of a Federal program, states that the affected provision of the permanent program is cross-referenced by the Federal program, and thus that the proposed permanent program revision also would revise the Federal program;

(b) *Newspaper notice.* For the initial promulgation of a Federal program for a State, publish in a newspaper of general circulation in the coal mining area of the affected State a notice concerning the proposed rulemaking which includes the information required by paragraph (a) of this section, except that for the substance of the proposed Federal program or revision OSMRE may substitute a brief description; and

(c) *Federal agency comment.* As appropriate, solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or

having special expertise relevant to the proposed Federal program or revision.

§ 736.13 [Removed]

5. Section 736.13 is removed.

6. Paragraph (a) of § 736.14 is revised to read as follows:

§ 736.14 Director's decision.

(a) After considering all relevant information received under § 736.12 of this part, the Director shall decide whether to promulgate or revise a Federal program for the State.

* * * * *

[FR Doc. 87-24352 Filed 10-20-87; 8:45 am]
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federal register

Wednesday
October 21, 1987

Part VIII

Office of Management and Budget

Initial Sequestration Report for Fiscal Year 1988; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Initial Sequestration Report for Fiscal Year 1988

AGENCY: Office of Management and Budget.

ACTION: Report transmittal.

SUMMARY: This notice transmits the initial Sequestration Report for Fiscal Year 1988 in accordance with the provisions of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100–119.

BILLING CODE 3110-01-M

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 20, 1987

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In accordance with the requirements of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119, I hereby submit to you my initial Sequester Report for fiscal year 1988. As required by law, this report is being submitted simultaneously to the President and Congress.

The budget estimates contained in this report are based on laws and regulations in effect on October 10, 1987. Because no full-year appropriations bills for fiscal year 1988 have been enacted, they are based on appropriations for fiscal year 1987, adjusted for inflation and pay costs as specified in the Act. Also, because no deficit reduction has been achieved since January 1, 1987, the report provides calculations of the amounts and percentages by which various budgetary resources must be sequestered to achieve the full $23 billion deficit reduction required by the Act.

The report is in two parts: a summary and a detailed appendix that lists sequestration reductions by agency and budget account. The summary section includes the economic assumptions, the projected budget baseline levels, a discussion of the sequestration calculations, and comparisons with the estimates provided by the Acting Director of the Congressional Budget Office in his report of October 15th.

With best wishes, I remain,

Sincerely yours,

James C. Miller III
Director

IDENTICAL LETTERS SENT TO HONORABLE GEORGE BUSH,
HONORABLE JAMES C. WRIGHT, JR.

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INITIAL OMB SEQUESTER REPORT FOR FISCAL YEAR 1988
A REPORT TO THE PRESIDENT AND CONGRESS

October 20, 1987

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GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.

2. Details in the tables and text may not add to totals because of rounding.

3. The source of all data in this report is the Office of Management and Budget unless otherwise noted.

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INTRODUCTION

The Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as revised by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), stipulates that budget deficits must be decreased annually and specifies measures that must be taken to achieve this result. The target amounts specified by the revised Act, excluding a $10 billion margin-of-error amount for 1988 through 1992, are:

Budget Targets
(in billions of dollars)

Fiscal Year	Maximum Deficit	Required Reductions from January 1 Baseline	
		Minimum	Maximum
1988	144.0	23.0	23.0
1989	136.0	None	36.0
1990	100.0	N/A	N/A
1991	64.0	N/A	N/A
1992	28.0	N/A	N/A
1993	zero	N/A	N/A

N/A Not Applicable

If deficit-reducing measures sufficient to achieve the targets are not enacted, then a sequestration of budgetary resources must occur. The conditions under which a sequester would be triggered are:

-- For 1988 only, if the amount of net deficit reduction achieved through laws enacted and regulations promulgated between January 1, 1987 and November 20, 1987 is less than $23 billion. Because the Act sets a $23 billion deficit reduction target for 1988, the 1988 deficit target of $144 billion and the $10 billion margin-of-error amount do not affect sequestration.

-- For 1989 only, if the estimated deficit on October 10, 1988 exceeds $146 billion (the $136 billion deficit target plus the $10 billion margin) and the amount of net deficit reduction achieved through laws enacted and regulations promulgated between January 1, 1988 and the issuance of the final report in October 1988 is less than $36 billion.

-- For 1990 through 1992, if the estimated deficit at the beginning of each fiscal year exceeds the deficit target by more than $10 billion.

-- For 1993 only, if there is any deficit estimated on October 15, 1992.

In general, sequestration is the permanent cancellation of new budget authority and other authority to obligate and expend funds. The amount of the sequestration is calculated to achieve outlay reductions sufficient to reach the deficit targets, except for 1988 and 1989, when the outlay reductions that can be achieved through sequestration are limited to $23 billion and $36 billion, respectively.

Under the revised Act, the Director of the Office of Management and Budget (OMB) is to determine each year whether or not sequestration is necessary and the magnitude of sequestration. The Congressional Budget Office (CBO) plays an advisory role in this process. Each year, the two agencies are required to prepare independently two sets of sequestration reports. The CBO reports are transmitted to the Director of OMB and to Congress, and they provide a benchmark against which Congress and others may assess the OMB reports. The OMB reports are made to the President and to Congress, and they provide the basis for sequestration orders to be issued by the President. The timetable for the agency reports and sequestration orders is as follows:

Report or Order	For 1988	For 1989-1993
Snapshot date for initial OMB and CBO reports	October 10	August 15
Initial CBO report	October 15	August 20
Initial OMB report	October 20	August 25
Initial sequestration order	October 20	August 25
Revised CBO report	November 16	October 10
Revised OMB report	November 20	October 15
Final sequestration order	November 20	October 15

The initial OMB and CBO sequestration reports are to be based on laws enacted and regulations promulgated as of a common "snapshot date" (e.g., October 10th

for the 1988 reports). The revised reports, however, must be based on laws enacted and regulations promulgated as final by the latest possible date before they are issued. Because this second "snapshot date" may be different in the final reports of the two agencies, some legislation and regulations reflected in the OMB report may not be reflected in the CBO report, which is issued earlier.

Under the revised Act, the first step in the new sequestration process for 1988 was the initial sequestration report on October 15, 1987 by the Director of CBO to the Director of OMB and Congress, providing CBO's estimates of the baseline and sequester calculations. The second step is this report, which the Director of OMB provides to the President and Congress. It estimates the same measures as the CBO report, but as provided by the revised Act its estimates are based on the economic and technical assumptions OMB used in the joint OMB-CBO Initial Sequestration Report of August 20, 1987 (required under the original Act). Under the revised Act, explanations of significant differences between the estimates in the separate OMB and CBO reports are required (and provided) in this report. In particular, this report:

-- Estimates budget baseline levels, including the amount by which the projected deficit exceeds the maximum deficit amount for the fiscal year covered by the report;

-- Estimates the achieved and unachieved net deficit reduction amounts;

-- Provides OMB economic assumptions, including the estimated rate of real economic growth;

-- Calculates the amounts and percentages by which various budgetary resources must be sequestered in order to achieve the required deficit reduction; and

-- Presents and explains significant differences between the estimates in this report and the estimates CBO presented in its report of October 15th.

Because this report indicates that $23 billion in reductions are required for 1988, the President is required to issue an initial sequester order withholding sufficent funds to reduce outlays by that amount. The initial order for fiscal year 1988 is being issued, and becomes effective, today -- October 20, 1987.

A final sequestration report and a final sequester order for 1988 are to be issued on November 20, 1987. The final report will take into account additional deficit reduction measures enacted after or promulgated by that date.

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BUDGET BASELINE TOTALS FOR 1988

This report deals only with 1988. The OMB estimates of baseline revenues, outlays, and the deficit for 1988 are shown in Table 1. These estimates are made in accordance with the specifications set forth in the revised Act. The budget baseline estimates used in this report assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, except that expiring provisions of law providing revenues and spending authority are assumed to terminate as scheduled. 1/

Because no full-year appropriations bills have yet been enacted for 1988, the estimates for discretionary spending accounts that require appropriations are based on the appropriations enacted for 1987, adjusted only for inflation and pay-related costs, as specified by the Act. The baseline estimates are also required to include the receipts and outlays of the off-budget social security trust funds, but social security benefits themselves are exempt from sequestration.

Table 1.--Baseline Totals for 1988
(in billions of dollars)

Budget Aggregates	January Baseline	October Baseline
Revenues	903.0	903.0
Outlays	1065.2	1066.0
Deficit	162.2	163.0

OMB's deficit estimate for 1988 based on laws and regulations in effect as of October 10, 1987 is $163.0 billion, which exceeds the maximum deficit amount of $144.0 billion by $19.0 billion and exceeds the $10 billion margin by $9.0 billion. Because the current baseline deficit exceeds the comparable baseline deficit based on laws and regulations in effect as of January 1, 1987, the unachieved deficit reduction remains at the full $23 billion specified in the Act. The sequestration amounts required to achieve the $23 billion outlay reduction are discussed in a separate section below.

1/ The Act permits an exception to the expiring-provision assumption for excise taxes dedicated to a trust fund (but not for spending authority in that trust fund), for Commodity Credit Corporation price support programs, and for contract authority for transportation trust funds.

SIGNIFICANT DIFFERENCES BETWEEN AUGUST AND OCTOBER OMB BASELINES

To develop the baseline estimates for this report, the revised Act requires that certain adjustments be made to the baseline estimates developed by OMB in the joint OMB-CBO Sequestration Report for Fiscal Year 1988 published on August 20th. (See pp. 31530-31600 of the August 20, 1987 Federal Register.)

As shown in Table 2, OMB's estimate of the October baseline deficit is $26.1 billion above its August 20th baseline estimate. The difference is the result of the following assumptions and adjustments required by the revised Act:

-- The law requires that most discretionary appropriations be adjusted upward from their 1987 enacted levels for 4.2 percent inflation in non-pay activities. Pay-related activities are adjusted for established Federal employee pay raises (2 percent, effective January 1, 1988) and other increases in personnel costs. However, the pay-raise costs are reduced by 22 percent to account for the historical level of absorption of such costs. Together, these adjustments add $11.1 billion to baseline outlays.

-- The law requires that those appropriated entitlements identified in the revised Act and the food stamp program be fully funded and that an assumption be made that legislation will be enacted to increase benefit payments for veterans compensation for cost-of-living increases. Shifting these programs to 1988 current services levels adds $5.0 billion to baseline outlays.

-- The law requires that baseline estimates for the Commodity Credit Corporation farm price support programs assume that the Secretary of Agriculture will use his discretionary authority to establish advanced deficiency payments and paid land diversion programs in each year. Together, these assumptions add $5.7 billion to baseline outlays.

-- The law requires that the initial baseline estimates for medicare be based upon final or proposed regulations. The law also requires that the baseline exclude any changes in administrative procedures that increase or decrease the average number of days for the payment of medicare claims compared to the average for 1987. The law also enacts a temporary freeze on payment rate increases and other regulatory changes that would otherwise be in effect from October 1, 1987 through November 20, 1987. On net, these provisions increase medicare baseline outlays by $1.6 billion.

-- The law prohibits the inclusion in the baseline of asset sales or loan prepayments unless the sales were mandated by law before September 18, 1987, or unless the sales or prepayments are considered to be routine, ongoing sales or prepayments at levels consistent with agency operations in fiscal year 1986. This provision requires the removal of the new debt restructuring/loan prepayment program from the foreign military sales credit baseline estimates, which adds $1.3 billion to baseline outlays, and removal of certain prepayments from the Export-Import Bank baseline estimates, which adds $0.2 billion to

baseline outlays.

-- The law requires that the expiring provisions of law providing funding for the airport-airways grant program be assumed to continue in the baseline estimates, adding $0.2 billion to baseline outlays.

-- Debt service (interest) costs associated with the higher baseline deficit add the remaining $1.0 billion.

Two other new provisions regarding assumptions for the baseline were added in the revised Act but have no impact on the original baseline deficit estimates for 1988 as published in August. The first requires a consistent proportional relationship between increases in revenues attributable to increased appropriations for Internal Revenue Service administration and enforcement assumed in the baseline with the comparable estimates submitted in the President's budget. The second prohibits counting in the baseline, or in the estimates of net deficit reduction achieved, the effects of the transfer of Government actions from one fiscal year to an adjacent fiscal year unless specific requirements are met.

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Table 2.--Differences Between August and October OMB Baseline Deficits (in billions of dollars)

August 20th OMB Baseline Deficit Estimate.....	136.8
Major changes:	
National Defense:	
Inflation and pay raise adjustments.....	6.4
Appropriated Entitlements.....	0.1
Total National Defense.....	6.5
Nondefense:	
Inflation and pay raise adjustments.....	4.8
Appropriated Entitlements*.....	4.9
CCC advanced deficiency and land diversion payments.....	5.7
Medicare assumptions.....	1.6
Foreign military sales credit (removal of debt restructuring).....	1.3
Export-Import Bank (removal of certain loan prepayments).....	0.2
Extension of airport-airways grant program.....	0.2
Debt service on above changes.....	1.0
Total Nondefense.....	19.7
Total changes.....	26.1
October 20th OMB Baseline Deficit.....	163.0

* Includes food stamp program and cost-of-living increase for veterans compensation.

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NET DEFICIT REDUCTION ACHIEVED SINCE JANUARY 1, 1987

As shown in Table 3, laws enacted and regulations issued between January 1st and October 10th of this year have, on net, increased rather than decreased the baseline deficit. The largest decrease results from the establishment of Federal pay raises of 2 percent for 1988 under the President's alternative plan (adjustments are to take effect on January 1, 1988). Because the January baseline estimates are required to assume a 4.2 percent pay raise for 1988, the lower 2 percent rate established under the President's plan puts outlays for pay and related personnel benefits $1.1 billion below the January baseline levels. Other legislation enacted during this period that reduced the deficit by at least $0.1 billion include the Surface Transportation and Relocation Act of 1987 ($0.1 billion), the Competitive Equality in Banking Act of 1987 ($0.6 billion), and the Balanced Budget Reaffirmation Act of 1987 ($0.1 billion).

The Supplemental Appropriations Act, 1987 more than offsets the deficit reductions discussed above. Directly, this legislation adds $0.9 billion to 1988 outlays through expenditure in 1988 of balances of budgetary resources added by the Act. Moreover, under the specifications for the October baseline, the $2.5 billion in budgetary resources for items other than increased personnel costs provided for 1987 are also included as new budgetary resources for 1988, increased by an adjustment for inflation. These new budgetary resources for 1988, in turn, add $1.7 billion in new spending to the October baseline for 1988. Thus, the total effect of the 1987 supplemental on 1988 baseline spending is to increase it by $2.6 billion.

New medicare regulations account for a $0.1 billion increase in the baseline deficit since January 1st. The remaining changes, including debt service on all changes, increase the baseline deficit by $0.2 billion.

Table 3.--Net Deficit Reduction Achieved Since January 1987
(in billions of dollars)

January Baseline Deficit	162.2
Deficit Reduction (-) or increase:	
Supplemental Appropriations, 1987 (P.L. 100-71)	2.6
Medicare regulations	0.1
Surface Transportation and Relocation Act (P.L. 100-17)	-0.1
Balanced Budget Reaffirmation Act of 1987 (P.L. 100-119)	-0.1
Competitive Equality in Banking Act of 1987 (P.L. 100-86)	-0.6
Other legislation enacted since January 1, 1987 a/	-*
Federal employee pay raises established October, 1987 b/	-1.1
Debt service (interest)	0.2
Net deficit reduction achieved (-) or deficit increase	0.8
October Baseline Deficit	163.0

a/ Public laws 100-4, 6, 14, 20, 45, 72, 92, and 93.
b/ Estimated reduction resulting from 2 percent pay raises established in October compared to 4.2 percent pay raises assumed in the January baseline.
* $50 million or less.

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the OMB baseline estimates for 1988 are shown in Table 4.

The Act requires the OMB Director to estimate the rate of real economic growth for the fiscal year covered by his report, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than one percent for two consecutive quarters, Congress can suspend many of the provisions of the Act. The OMB estimates for the rate of real economic growth for fiscal year 1988 are included in Table 4, and the quarterly estimates are shown in Table 5. As required by the revised Act, these are the same assumptions used by OMB in the joint OMB-CBO report published on August 20th. Neither office projects real economic growth to be less than zero in any quarter during 1987 or 1988.

Table 4.--Economic Assumptions
(Fiscal Year 1988)

Economic Variable	
Gross National Product:	
Current dollars (in billions of dollars)	4,742
Percent change, year over year	7.5
Constant (1982) dollars (in billions of dollars)	3,902
Percent change, year over year	3.2
GNP Implicit Price Deflator (percent change, year over year)	4.2
CPI-W (percent change, year over year)	4.5
Civilian Unemployment Rate (percent, fiscal year average)	6.1
Interest Rates (fiscal year average):	
91-day Treasury bills	5.6
10-year Treasury notes	7.8

Table 5.--Real Economic Growth Rates by Quarter
(in percents, annual rates)

FY 1987			FY 1988 Estimates			
Actual		Estimate				
Jan-Mar 1987 a/	Apr-Jun 1987 a/	Jul-Sep 1987	Oct-Dec 1987	Jan-Mar 1988	Apr-Jun 1988	Jul-Sep 1988
4.4	2.6	2.7	3.2	3.5	3.5	3.5

a/ As reported by the Department of Commerce (July 24, 1987) and published in the August 20 Joint Report by OMB and CBO. Subsequent to the Joint Report, the Department of Commerce revised the "actual" for April - June 1987 to 2.5 percent.

SEQUESTERABLE RESOURCES

The required reductions in outlays are not made directly; rather, they are to be achieved by the permanent cancellation -- referred to under the Act as "sequestration" -- of budget authority and other authority to obligate and expend funds (except that amounts sequestered in special and trust funds remain in such funds). For defense programs, sequesterable budgetary resources are defined to be new budget authority provided for 1988 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority; new direct loan obligations, commitments, or limitations; new guaranteed loan commitments or limitations; obligation limitations, and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes various mandatory and permanent appropriations, as well as Federal payments financed by offsetting collections that are credited to budget accounts.

Not all budgetary resources are subject to sequestration. The Act exempts a number of programs and activities of the Federal Government from the sequestration process. As shown in Table 6, the largest are social security benefits, net interest, certain low-income programs, most Federal retirement and disability benefits, veterans compensation and pensions, and regular State unemployment insurance benefits. Also exempt from sequestration are prior legal obligations of the Government in certain specified budget accounts, as well as the program bases for certain programs whose automatic spending increases are subject to sequester. Federal administrative expenses for most otherwise exempt programs and activities, however, are sequesterable, including programs that are self-supporting. Outlays from obligated balances for defense programs and outlays from obligated and unobligated balances of prior-year appropriations for nondefense programs are generally not subject to sequestration. In addition, the President is granted authority, which he has notified Congress he will use, to exempt all military personnel accounts from sequester. As a result, the remaining sequesterable accounts for defense are subject to a higher uniform percentage reduction than they would have been otherwise.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration reduction for medicare, veterans medical care, and certain health programs (but not for the administrative expenses of these programs) is limited to two percent annually. In addition, the total amount of the automatic spending increases in three programs specified in the Act is sequesterable.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and guaranteed loan commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual appropriation acts be reduced, and that de facto limitations be imposed on both types of new credit activity where there is no enacted limitation.

COMPOSITION OF BASELINE OUTLAYS

Table 6 provides further detail on the OMB baseline outlay estimates for 1988. An estimated $109.2 billion of 1988 outlays for defense programs, or 38 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction (after exemption of military personnel accounts by Presidential authority).

An estimated $208.2 billion of outlays for nondefense programs, or 27 percent of total nondefense outlays, are associated with sequesterable budgetary resources. About $100.1 billion of these outlays, or 13 percent of total nondefense outlays, are associated with programs with automatic spending increases and certain special rule programs, the largest of which is medicare. The Act limits the extent of spending reductions for these programs.

Of the total estimated 1988 nondefense outlays of $776.6 billion, an estimated $108.1 billion -- about 14 percent of nondefense outlays -- are associated with budgetary resources subject to an across-the-board percentage reduction. 2/ An estimated $568.5 billion of nondefense outlays, or 73 percent of total nondefense outlays, are exempt from sequestration.

For defense and nondefense programs combined, an estimated $748.6 billion in outlays, or 70 percent of total outlays, are associated with budgetary resources exempt from sequestration.

2/ The estimated $108.1 billion nondefense total subject to across-the-board reduction shown in Table 6 does not include $7.2 billion of 1989 outlays for CCC or $2.3 billion in outlays from offsetting collections in 1988. The sum of these figures is $117.6 billion, the estimated nondefense outlays associated with across-the-board sequesterable budgetary resources shown in Table 7.

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Table 6.--Composition of Baseline Outlay Estimates for 1988
(dollar amounts in billions)

	Estimate	Percent of Total
Defense Programs a/:		
Subject to across-the-board reduction b/	109.2	10.2
Exempt from sequestration c/	180.1	16.9
Subtotal, defense programs	289.3	27.1
Nondefense Programs:		
Subject to sequestration:		
Certain programs with automatic spending increases d/	0.1	*
Certain special rule programs e/	100.0	9.4
Subject to across-the-board reductions f/	108.1	10.1
Subtotal, subject to sequestration	208.2	19.5
Exempt from sequestration:		
Social security	218.2	20.5
Federal retirement, disability, and workers compensation	52.0	4.9
Earned income tax credit	2.9	0.3
Low-income programs g/	70.4	6.6
Veterans compensation and pensions	14.5	1.4
State unemployment benefits	14.9	1.4
Offsetting receipts	-61.3	-5.8
Net interest	145.9	13.7
Other h/	111.0	10.4
Subtotal, exempt from sequestration	568.5	53.3
Subtotal, nondefense programs	776.7	73.2
Total	1,066.0	100.0

a/ Budget function 050, excluding FEMA programs.
b/ Excludes military personnel accounts exempted by Presidential authority.
c/ Largely outlays from military personnel accounts, which were exempted by Presidential authority, and outlays from obligated balances.
d/ National Wool Act, special milk, and vocational rehabilitation programs.
e/ Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.
f/ Excludes outlays from offsetting collections and 1989 outlays for the Commodity Credit Corporation (CCC), both of which enter the sequestration calculation in Table 7 below.
g/ Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC.
h/ Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs.
* 0.05 percent or less.

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SEQUESTRATION CALCULATIONS

The revised Act establishes the following steps for the sequestration calculations for fiscal year 1988.

First, the unachieved deficit reduction to be achieved through sequester is calculated by subtracting the estimated net deficit reduction achieved amount, if any, from the $23 billion target. One-half of the unachieved deficit reduction is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

Second, all savings from eliminating automatic spending increases in three specific programs -- the National Wool Act, the special milk program, and vocational rehabilitation -- are applied to the required reduction in outlays for nondefense programs.

Third, the amount of outlay savings to be obtained by applying two of the four special rules is calculated. These special rules are for guaranteed student loans and for foster care and adoption assistance. The estimated savings from these special rules are applied toward the required spending reductions in nondefense programs. If the nondefense sequester percentage is greater than two percent, the savings from applying two additional special rules for medicare and certain other health programs are also calculated at this stage and applied toward the required spending reductions for nondefense. All four of these special rules are discussed later in this report.3/

The reductions in defense programs and remaining reductions in nondefense programs must be taken on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved separately in defense and nondefense spending are divided by the estimated outlays associated with sequesterable budgetary resources in each category. The two resulting uniform reduction percentages for defense and nondefense are then applied separately to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) in each category.

Table 7 shows the calculations for each of the steps described above. The total required outlay reduction for 1988 is $23.0 billion, one-half of which -- $11.5 billion -- must be obtained from defense programs and the other half from nondefense programs.

3/ A number of special rules apply to other programs, such as the Commodity Credit Corporation, but they do not enter into the sequester calculations at this step.

Table 7.--Sequestration Calculations for 1988
(in millions of dollars)

Category	
Required Deficit Reduction	23,000
Net Deficit Reduction achieved	---
Aggregate Outlay Reduction required	23,000
Defense Programs:	
Total required outlay reductions,	11,500
Estimated outlays associated with across-the-board sequesterable budget resources a/	109,192
Uniform reduction percentage	10.5
Nondefense Programs:	
Total required outlay reductions	11,500
Estimated savings from automatic spending increases	20
Estimated savings from the application of special rules:	
Guaranteed student loans	23
Foster care and adoption assistance	9
Medicare	1,220
Other health programs	185
Amount remaining to be obtained from uniform percentage reductions of budget resources	10,044
Estimated outlays associated with across-the-board sequesterable budget resources b/	117,598
Uniform reduction percentage	8.5

a/ Excludes military personnel accounts exempted under Presidential authority.

b/ Includes $7,163 million in estimated 1989 outlays for the Commodity Credit Corporation (CCC) that can be affected by a 1988 sequester (see discussion of special rule for the CCC) and $2,342 million in outlays from offsetting collections.

The outlay reductions of $11.5 billion in defense programs in 1988 must be obtained by reducing new budget authority and unobligated balances for sequesterable accounts by a uniform percentage. The 1988 outlays associated with sequesterable budgetary resources for defense programs (after Presidential exemption of military personnel accounts) are estimated to be $109.2 billion. Thus, the uniform percentage to be applied to sequesterable defense budgetary resources is 10.5 percent.

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An estimated $20 million in nondefense savings can be obtained by eliminating the automatic spending increase for the National Wool Act program and the vocational rehabilitation program. The special milk program is also an indexed program covered under this rule, but in 1988 the change in the price index is projected to be below the threshold needed to trigger an increase. The outlay savings for programs where the spending reductions are limited by special rules (guaranteed student loans, foster care and adoption assistance, medicare, and several other health programs) are estimated to be $1.4 billion. After crediting these savings against the $11.5 billion nondefense reduction target, $10.0 billion remains to be achieved by uniform across-the-board reductions on $117.6 billion of outlays. Thus, the uniform percentage to be applied to remaining sequesterable nondefense budgetary resources is 8.5 percent.

The calculations generally assume that all nonexempt budgetary resources can be sequestered to produce outlay savings, including entitlement programs and other mandatory spending programs for which the spending authority is not controlled through the annual appropriations process. In a few instances the uniform percentage reduction of budgetary resources would not produce any outlay savings. Two examples are credit programs with new direct loan limits higher than expected program levels and intragovernmental payments to revolving funds -- such as Government payments for annuitants, Federal employee health benefits. For such cases, no outlays were included in the sequester base used for calculating the uniform reduction percentages.

AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Balanced Budget and Emergency Deficit Control Act are listed in Table 8. The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be achieved by eliminating these increases.

Table 8.--Automatic Spending Increases for 1988 Subject to Sequestration
(outlay amounts in millions of dollars)

Program	Scheduled Increase (percent)	Sequestration Outlay Reductions
National Wool Act a/	3.5	4
Special milk program b/	---	---
Vocational rehabilitation c/	1.57	15
Total		20

a/ Payment increases are based on changes in the wool parity price.
b/ Benefits are indexed to the Producer Price Index for Fresh Processed Milk. This index is not projected to increase between May 1987 and May 1988.
c/ The automatic spending increase for this program, as specified in the program's authorizing legislation, results in a 1.57 percent increase in funding for the State grant portion of the program.

SPECIAL RULES

The Act provides special rules for the sequestration of budgetary resources for certain Federal programs. This section describes these special rules and their application to the 1988 sequestration calculations. Because the nondefense sequester percentage is greater than 2.0 percent, the estimated outlay savings derived from the first four rules are shown separately in Table 7. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Guaranteed Student Loan Program

Under sequestration, two changes are required to occur automatically in the guaranteed student loan (GSL) program. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage points or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0.25 percentage points. Second, a student's origination fee will increase by 0.50 percentage points. In both cases, sequestration affects only GSL loans disbursed during the applicable fiscal year, but after the order is issued. For 1988, these changes are estimated to reduce outlays by $23 million.

Foster Care and Adoption Assistance Programs

The Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, the reductions are limited to the extent that they can be made by reducing Federal matching payments by a uniform percentage across States. The increases in payment rates for these programs are made by the States and localities. Any increases planned by the States for fiscal year 1988 were included in the OMB calculations for sequestration reductions. The estimated outlay savings in 1988 from sequestration are $9 million.

Medicare

The sequestration reductions in the medicare program are to be achieved by reducing payment amounts for covered services. No changes in co-insurance or deductible obligations are to be made, and covered services are unaffected under a sequestration order. Based on the need for an $11.5 billion nondefense sequester in 1988, the maximum annualized reduction of 2 percent is required. The medicare special rules require that no reduction in payment amounts be made for services received between October 1 and November 20, during fiscal year 1988, but that the reduction in payment amounts for services rendered after November 20 be established so that the annual reduction is 2.0 percent. As a result, under the sequester order, each payment amount for services provided during November 21, 1987 and September 30, 1988 would be reduced by 2.3 percent relative to whatever level of payment would otherwise be made under medicare law and regulation. The estimated outlay savings to be achieved in 1988 by applying this special rule are $1.2 billion.

Veterans Medical Care and Other Health Programs

Even though the nondefense sequester would require a higher percentage reduction, the Act limits reductions in budget authority for the non-administrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1988 and any subsequent year. The estimated outlay savings to be achieved in 1988 by applying this special rule in these programs are $185 million.

Child Support Enforcement Program

For the child support enforcement (CSE) program, the Act provides that sequestration of entitlement payments to States, including grants to States for interstate projects from the Family Support Administration's program administration account, is to be accomplished by reducing the Federal matching rates for State administrative expenses. For 1988, the Federal matching rate on most expenditures would be reduced from 68.0 percent to 60.5 percent, and the rate for computer-related expenditures would be reduced from 90.0 percent to 80.1 percent. This reflects a reduction in the matching rates to achieve the same 8.5 percent reduction applied to other nondefense programs, adjusted to allow also for the sequestration of spending on interstate grants.

If States increase their share of CSE spending to maintain total program spending at the expected 1988 level, this reduction in the Federal matching rate will lower Federal outlays by the same percentage as other nondefense programs. If States do not increase their 1988 budgeted amounts to compensate for lower matching rates, however, the lower Federal matching rate would result in a larger percentage reduction in Federal spending than the Act requires. The estimated outlay savings to be achieved in 1988 by applying this special rule are $86 million.

Unemployment Compensation Programs

The Act provides that the following items may not be sequestered: regular State unemployment benefits, the State share of extended unemployment benefits, benefits paid to former Federal employees and former members of the armed services, and loans and advances to the State and Federal unemployment accounts. The Federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and State and Federal administrative expenses may be sequestered.

Both the Federal and State shares of extended unemployment benefits are paid from the unemployment trust fund -- the Federal share from the Federal account and the State share from each State's account. The amount of each weekly extended benefit is set by State law. The Act permits any State to reduce the weekly extended benefit amount by a percentage equal to the percentage reduction in the Federal share. If States do not change their laws to provide for such a reduction, weekly benefit payments will not be reduced, the State share will increase by the amount of the decrease in the Federal share, and total budget outlays, which include both Federal and State benefits, will not be changed by the sequestration. The only State expected to be paying extended benefits in 1988 (Alaska) has not taken action to reduce its weekly benefit amount in the event of a sequestration.

Commodity Credit Corporation

The Act requires that payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year be subject to a percentage reduction. The Act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within CCC's jurisdiction. The Act further stipulates that outlay reductions in the post-sequester year that are the result of contract adjustments in the sequester year should be credited to the overall outlay reduction required in the sequester year. The amount of outlay savings to be achieved by applying this special rule is estimated to be $0.8 billion in 1988, and $0.6 billion in 1989. In accordance with the Act, however, all $1.4 billion of these estimated outlay savings are credited toward the $11.5 billion nondefense spending reduction required for 1988.

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Federal Pay

The Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced pursuant to a sequestration order. Budgetary resources available for Federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses. The total amount of Government-wide savings to be achieved in 1988 from reducing available funds for employee compensation cannot be separately estimated because program managers are urged not to resort to personnel furloughs and reductions-in-force until other methods of achieving savings, such as reducing spending for travel, printing, supplies, and other services, prove insufficient.

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SEQUESTRATION REDUCTIONS

A summary of the sequestration of budgetary resources and the estimated outlay savings for 1988 is provided for national defense programs in Table 9 and for nondefense programs by function in Table 10. Table 11 provides a summary of the 1988 sequestration reductions by agency. Table 12 provides a comparison of baseline spending authority and outlays by function before and after the required reductions are applied. In most instances additional outlay savings would be gained in 1989 and later years as a result of the cancellation of 1988 budget authority. The 1989 savings have not been estimated for this report.

A detailed listing of the sequestration reductions by agency and budget account is provided as an appendix to this report.

Table 9.--Defense Program Sequestrations for 1988
(in billions of dollars)

Function 050	Spending Authority a/	Estimated Outlays
Department of Defense-Military:		
Military personnel b/	---	---
Operation and maintenance	8.8	6.5
Procurement	13.5	1.9
Research, development, test, and evaluation	4.3	2.2
Military construction	0.9	0.1
Family housing	0.4	0.2
Other	0.1	*
Subtotal, DoD	27.9	10.9
Atomic energy defense activities	0.8	0.5
Other defense-related activities c/	0.1	*
Total	28.9	11.5

a/ Includes $23.9 billion in new budget authority for 1988 and $5.0 billion in unobligated balances from budget authority provided in previous years.
b/ Exempted from sequester by Presidential authority.
c/ Includes the portions of Federal Emergency Management Agency budget accounts that are in function 050, but which are reduced at the same rate as nondefense programs.
* $50 million or less.

TABLE 10.--Nondefense Program Sequestrations for 1988 by Function
(in billions of dollars)

Function	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
International affairs.....	1.8	0.5	1.0	1.0
General science, space and technology.....	1.1	---	---	0.6
Energy.....	0.5	0.1	0.2	0.3
Natural resources and environment.....	1.7	*	---	1.0
Agriculture b/.....	1.6	1.5	0.7	1.7
Commerce and housing credit.	0.4	0.2	22.6	0.4
Transportation.....	3.6	*	*	0.8
Community and regional development.....	0.5	0.1	*	0.1
Education, training, employment, and social services..	2.7	*	---	0.9
Health.....	1.2	*	---	0.6
Medicare.....	1.4	---	---	1.4
Income security.....	1.5	*	---	0.7
Social security.....	0.2	---	---	0.2
Veterans benefits and services.....	0.5	*	3.0	0.4
Administration of justice...	0.8	---	---	0.6
General government.....	0.7	---	---	0.6
General purpose fiscal assistance.....	0.1	---	---	0.1
Total.....	20.1	2.5	27.5	11.4

a/ Includes new budget authority, obligation limitations, and other spending authority for 1988.
b/ Includes $0.6 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).
* $50 million or less.

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Table 11.--Sequestrations for 1988 by Agency
(in billions of dollars)

Department or Other Unit	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
Legislative Branch	0.2	---	---	0.1
The Judiciary	0.1	---	---	0.1
Executive Office of the President	*	---	---	*
Funds appropriated to the President	1.2	0.4	---	0.6
Agriculture b/	2.4	1.9	0.9	2.3
Commerce	0.2	---	*	0.1
Defense-Military	27.9	---	---	10.9
Defense-Civil	0.3	---	---	0.2
Education	1.4	*	---	0.3
Energy	1.3	---	---	0.8
Health and Human Services, except Social Security	3.3	*	---	2.6
Health and Human Services, Social Security	0.2	---	---	0.2
Housing and Urban Development	1.2	0.1	22.2	0.2
Interior	0.6	*	*	0.4
Justice	0.5	---	---	0.3
Labor	0.7	---	---	0.3
State	0.3	*	---	0.2
Transportation	3.5	*	*	0.8
Treasury	0.6	---	---	0.5
Environmental Protection Agency	0.5	*	---	0.1
General Services Administration	0.1	---	---	*
National Aeronautics and Space Administration	1.0	---	---	0.6
Office of Personnel Management	0.2	---	---	*
Small Business Administration	*	*	0.4	*
Veterans Administration	0.5	*	3.0	0.4
Other independent agencies	0.8	0.1	1.0	0.6
Total	48.9	2.5	27.5	22.9

a/ Includes new budget authority for 1988 (except for expiring authority), unobligated balances from budget authority provided in previous years (Defense-Military and other function 050 programs), obligation limitations and other spending authority for 1988.

b/ Includes $0.6 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).

* $50 million or less.

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Table 12.--Pre- and Post-Sequester Estimates for 1988 by Function
(in billions of dollars)

Function	October Baseline	Sequestrations	Post-Sequester Levels
National defense			
Budget Authority	302.8	-23.9	278.9
Outlays	289.6	-11.5	278.1
International affairs			
Budget Authority	16.6	-1.6	15.1
Outlays	16.7	-1.0	15.5
General science, space and technology			
Budget Authority	13.1	-1.1	12.0
Outlays	12.0	-0.6	11.4
Energy			
Budget Authority	3.4	-0.4	3.0
Outlays	3.7	-0.3	3.4
Natural resources and environment			
Budget Authority	16.0	-1.5	14.5
Outlays	15.6	-1.0	14.5
Agriculture			
Budget Authority	28.4	-1.0 a/	27.5
Outlays	27.7	-1.1 a/	26.6
Commerce and housing credit			
Budget Authority	9.8	-0.3	9.5
Outlays	6.6	-0.4	6.2
Transportation			
Budget Authority	27.7	-2.3	25.3
Outlays	28.3	-0.8	27.5
Community and regional development			
Budget Authority	7.2	-0.5	6.7
Outlays	6.5	-0.1	6.3
Education, training, employment, and social services			
Budget Authority	34.5	-2.6	31.9
Outlays	33.1	-0.9	32.2
Health			
Budget Authority	44.3	-1.1	43.1
Outlays	44.0	-0.6	43.5
Medicare			
Budget Authority	94.4	-1.2	93.2
Outlays	80.3	-1.4	79.0

Table 12.--Pre- and Post-Sequester Estimates for 1988 by Function (cont.)
(in billions of dollars)

Function	October Baseline	Sequestrations	Post-Sequester Levels
Income security			
Budget Authority.....	168.7	-1.3	167.4
Outlays.....	129.9	-0.7	129.2
Social security			
Budget Authority.....	256.3	---	256.3
Outlays.....	220.2	-0.2	220.0
Veterans' benefits and services			
Budget Authority.....	28.6	-0.5	28.2
Outlays.....	28.3	-0.4	28.0
Administration of justice			
Budget Authority.....	9.4	-0.8	8.6
Outlays.....	9.0	-0.6	8.4
General government			
Budget Authority.....	7.5	-0.7	6.9
Outlays.....	7.3	-0.6	6.7
General purpose fiscal assistance			
Budget Authority.....	1.9	-0.1	1.8
Outlays.....	1.9	-0.1	1.8
Net interest			
Budget Authority.....	145.9	-0.9 b/	145.0 b/
Outlays.....	145.9	-0.9 b/	145.0 b/
Allowances			
Budget Authority.....	---	---	---
Outlays.....	---	---	---
Undistributed offsetting receipts			
Budget Authority.....	-40.6	---	-40.6
Outlays.....	-40.6	---	-40.6
Total			
Budget Authority.....	1,176.1	-41.7	1,134.4
Outlays.....	1,066.0	-23.2	1,042.8

a/ Excludes $0.6 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rules for CCC).
b/ Sequestrations and post-sequester levels include $0.9 billion in debt service reduction resulting from the outlay reduction under the sequester.

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COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES

The revised Act requires that this report identify and explain any differences between the estimates contained in this report and corresponding amounts in the report of the Director of CBO with respect to:

-- The aggregate amount of required outlay reductions;

-- The aggregate amount of resources to be sequestered from defense accounts and from nondefense accounts, by type of sequesterable resource; and

-- The amount of resources for any budget account that is to be reduced, if such difference is greater than $5 million.

The Act further requires that this report provide, by type of sequesterable resource for defense programs and for nondefense programs, the amount of reductions in budgetary resources that would be required if such estimates were made using the aggregate amount of required outlay reductions figure from this report, but with the technical assumptions and methodologies used in the report by the Director of CBO.

Because both OMB and CBO estimate the aggregate amount of required outlay reductions to be $23.0 billion, there is no difference with respect to this figure. Therefore, the detailed calculations of reductions in budgetary resources for defense and nondefense programs presented in the CBO report are the same figures that would result from a $23 billion OMB sequester calculation that used CBO technical assumptions. Table 13 reproduces these figures from CBO's report.

Table 13.--Budgetary Resource Reductions
Using CBO Technical Assumptions
(in billions of dollars)

	Sequester Amount
National Defense a/:	
Budget Authority	23.7
401C Authority	*
Unobligated Balances	5.0
Nondefense:	
Budget Authority	12.6
Budget Authority -- Special rules	0.2
401C authority	3.7
401C authority -- use of offsetting collections	0.2
401C authority -- special rules	1.5
Other 401C authority (including obligation limitations)	1.3
Obligation limitation	1.0
Direct loan limitation	2.5
Direct loan floor	0.1
Loan guarantee limitation	26.9
Guaranteed loan floor	0.1

MEMORANDUM: Aggregrate Outlay Reductions Required -- $23.0 billion

a/ Includes the portions of Federal Emergency Management Agency accounts that are in function 050, but which are reduced at the same rate as nondefense programs.
* $50 million or less.
Source: Congressional Budget Office.

As shown in Table 14, CBO and OMB differ by $16.3 billion in their estimates of the baseline deficit for 1988. All but one of the major conceptual differences discussed in the joint OMB-CBO report of August 20th have been eliminated as a result of the revised Act. The remaining difference -- proper budgetary treatment of the Federal Employees Thrift Savings Fund -- was discussed in the joint report and will be addressed by OMB in its preparation of the 1989 budget submission.

Table 14.--Differences Between OMB and CBO Baseline Deficits
(in billions of dollars)

OMB deficit	163.0
Differences:	
Conceptual: Federal Employees Thrift Savings Fund (FERS)	3.3
Economic:	
Receipts	8.2
Outlays (excluding debt service)	5.3
Subtotal, economic	13.5
Technical:	
Medicare	2.0
Other outlays	-0.6
Receipts	-2.2
Subtotal, technical	-0.9
Debt service	0.4
Total differences	16.3
CBO deficit	179.3

Most of the difference between OMB and CBO baseline deficit estimates, $13.5 billion, is due to different economic assumptions. The amount of this difference remains unchanged from the August report. The remaining differences, other than debt service (interest), net to $-0.9 billion. Technical differences on baseline receipts ($2.2 billion) are offset by other technical differences in outlay estimates for medicare ($2.0 billion). Technical differences in all other programs total $-0.6 billion. Differences in debt service estimates due to the different deficit estimates account for the remaining $0.4 billion.

For most accounts CBO and OMB figures agree or are close to each other on the levels of budgetary resources and outlays subject to sequester. There are some exceptions, though minor, that result in calculated sequestration percentages for both defense and nondefense programs that differ by tenths of a percentage point.

CBO assumes slightly faster spend-out of budget authority for defense programs, resulting in a calculated defense sequestration percentage of 10.4 percent. OMB's figure is 10.5 percent. There are also differences in OMB and CBO estimates relating to nondefense program outlays. These result in a CBO sequestration percentage of 8.7 percent for nondefense programs, compared to an OMB figure of 8.5 percent.

There are three main differences in OMB's and CBO's estimates of sequesterable nondefense outlays. The first concerns the sequestration of the administrative expenses of the Postal Service. Both CBO and OMB agree that more than $1 billion of budgetary resources are sequestrable. CBO believes that there is no evidence that the Postal Service took any steps to reduce spending in response to the President's sequestration order of March 1986 (as reaffirmed by Public Law 99-366). Moreover, the Administration appears to have no mechanism for enforcing a sequestration order with regard to the Postal Service, because the statute that established the United States Postal Service removed it from budgetary control by the President. CBO assumes that, as in 1986, a 1988 sequester order would not cause the Postal Service to make any actual spending reductions. CBO therefore shows no outlay savings resulting from the sequestration of budgetary resources for the Postal Service. CBO and OMB agree that the Postal Service is covered by the Act and should be held accountable to comply with the Act to reduce its outlays, consistent with the across-the-board percentage sequestration applied to the functions and programs of the executive, legislative, and judicial branches. Despite the fact that the Postal Service's budgetary resources are not subject to the OMB apportionment process, and despite questions concerning the amount of savings actually achieved in 1986, OMB believes that the executive and legislative branches would be able to influence the Postal Service to reduce its expenditures by the same percentage applied to other government agencies, as required by law. Thus, OMB's estimates include a sequester of $98 million in outlays.

A similar situation exists with respect to budgetary resources and outlays for the Corporation for Public Broadcasting. Again, CBO and OMB agree that the Federal payment to the Corporation for Public Broadcasting is covered by the Act. Moreover, both CBO and OMB included as sequestrable $214 million in budgetary resources and outlays in the Joint OMB/CBO Sequestration Report of August 20, 1987. CBO's October 15, 1987 report, however, excluded both budgetary resources and outlays because the entire $214 million payment was made on October 1, 1987. Despite this, OMB believes that the executive and legislative branches would be able to influence the Corporation to comply with the Act by returning to the Federal Government an amount equal to the final sequestration percentage times the Federal payment. Thus, OMB's estimates include a sequester of $18.4 million in budgetary resources and outlays, where CBO assumes none for either.

Second, as a result of technical error, the OMB outlay baseline for the foreign military sales credit program was $0.8 billion too high in the August 20th report. Absent this error, the OMB and CBO figures for foreign military sales credit sequesterable outlays would only differ by $0.3 billion. Although OMB would prefer to show corrected estimates for this and other smaller spendout rate errors in this and the final sequestration reports, section 251(a)(2)(c)(iii) of the Balanced Budget and Emergency Deficit Control Act, as amended, precludes it from doing so.

Third, many other differences between the two agencies' outlay figures, most of them quite minor, result from slightly different assumptions about the rates at which budget authority for various programs will be spent out as outlays. The largest difference in this category relates to the National Aeronautics and Space Administration spendout rate for budgetary resources for a new space shuttle. The difference is due to the fact that OMB and CBO made different

assumptions about how to estimate outlays for the space shuttle in their current baselines. OMB assumed outlays would occur throughout the year; CBO assumed continuation of the provision enacted last year that allowed for only one month of obligations.

Table 15 identifies differences between OMB and CBO estimates of the aggregate amount of resources to be sequestered -- by type of resource for defense and nondefense programs. The largest difference by far is for estimates of guaranteed loan limitations. OMB has been informed that much of this difference will disappear when CBO revises its estimates in its November report. Most of the remaining differences in this category are due to different assumptions about the demand for guaranteed loans. Differences in the other types of sequesterable resources are largely technical estimating differences of resources for mandatory programs and classification differences that net to small differences between estimates of the sequesterable base.

Explanations of the differences for accounts where the OMB estimate differs by $5 million or more from the CBO estimate can be found in Table 16. An appendix showing the base and sequestration reductions by agency and budget account for sequesterable accounts concludes the report.

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Table 15.--Differences Between OMB and CBO by Resource Type
(in millions of dollars)

DEFENSE:	
Budget authority subject to across-the board reductions:	
CBO estimate	227,562
Total, difference	92
OMB estimate	227,654
401(c) authority subject to across-the-board reductions:	
CBO estimate	221
Military construction, Army	-221
OMB estimate	0
Unobligated balances -- defense:	
CBO estimate	47,673
Atomic energy defense activities	-455
OMB estimate	47,218
NON-DEFENSE:	
Budget authority subject to across-the-board reductions:	
CBO estimate	145,411
Differences:	
Conservation reserve program	111
Family social services 1/	-253
Advances to the hazardous substance superfund	148
Other	65
Total, difference	71
OMB estimate	145,482
Budget authority subject to special rules:	
CBO estimate	216
Total, difference	1
OMB estimate	217
401(c) authority subject to across-the-board reductions:	
CBO estimate	42,732
Family social services 1/	244
Commodity Credit Corporation	-331
Public broadcasting fund	214
Supplemental annuity pension fund	119
Other	47
Total, difference	293

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Table 15.--Differences Between OMB and CBO by Resource Type (cont.)
(in millions of dollars)

OMB estimate	43,025
401(c) authority-offsetting collections:	
CBO estimate	2,552
Total, difference	-17
OMB estimate	2,535
401(c) other -- including obligation limitation:	
CBO estimate	15,282
Interim assistance to States for legalization	179
Federal hospital insurance and supplementary medical insurance trust funds 1/	-416
Other	89
Total, difference	-148
OMB estimate	15,134
401(c) authority, automatic spending increases:	
CBO and OMB estimate	4
401(c) authority subject to special rules:	
CBO estimate	1,442
Federal hospital insurance and supplementary medical insurance trust funds 1/	-170
Other	-4
Total difference	-174
OMB estimate	1,268
Direct loan limitation:	
CBO estimate	28,985
Total, difference	-37
OMB estimate	28,948
Direct loan floor:	
CBO and OMB estimate	1,082
Guaranteed loan limitation:	
CBO estimate	309,623
FHA fund	4,200
Guarantees of mortgage backed securities	6,300
Business loan and investment fund	157
Loan guaranty revolving fund	3,378
Other	80
Total, difference	14,115

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Table 15.--Differences Between OMB and CBO by Resource Type (cont.)
(in millions of dollars)

OMB estimate	323,738
Direct loan floor:	
CBO and OMB estimate	972
Obligation limitation:	
CBO estimate	11,503
Federal hospital insurance and supplementary medical insurance trust funds 1/	328
Federal old-age and survivors insurance and disability insurance trust funds	-111
Unemployment trust fund	631
Other	17
Total, difference	631
OMB estimate	12,368

1/ All or most of the difference is the result of different classification by resource type.

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TABLE 16. -- Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million (in thousands of dollars)

Account Title	OMB Base	CBO Base	Difference	Explanation
Department of Agriculture				
Agricultural Research Service		(05-18-1401	-X-1-352-A;	12-1401)
Buildings and facilities				
Budget Authority	1,042	32,510	-31,468	1
Cooperative State Research Service		(05-24-1500	-X-1-352-A;	12-1500)
Cooperative State Research Service				
Budget Authority	392,934	317,200	75,734	1
401(C) Authority	2,800	9,170	-6,370	1
Foreign Assistance Programs		(05-57-2274	-X-1-151-A;	12-2274)
Expenses, PL 480, foreign assistance programs, Agricul				
Budget Authority	1,128,560	1,102,120	26,440	2
Direct Loan Limitation	863,505	853,606	9,899	3
Agricultural Stabilization & Conservation Service		(05-60-3319	-X-1-302-A;	12-3319)
Conservation reserve program				
Budget Authority	672,090	560,700	111,390	4
Commodity Credit Corporation		(05-66-4336	-X-3-351-A;	12-4336)
Commodity Credit Corporation Fund				
1989 401(C) Authority	7,163,422	7,490,000	-326,578	5
Agricultural Marketing Service		(05-81-5209	-X-2-605-A;	12-5209)
Funds for strengthening markets, income, and supply (s				
401(C) Authority	361,988	390,000	-28,012	5
Food and Nutrition Service		(05-84-3505	-X-1-605-A;	12-3505)
Food stamp program				
Budget Authority	0	61,647	-61,647	5,6
401(C) Authority	55,762	0	55,762	5,6
Forest Service		(05-96-9921	-X-2-852-A;	12-9921)
Forest Service permanent appropriations				
401(C) Other--incl. ob. limit	296,145	260,787	35,358	5
Department of Defense--Military				
Operation and Maintenance		(07-10-1804	-X-1-051-A;	17-1804)
Operation and maintenance, Navy				
Budget Authority	24,646,170	24,615,048	31,122	7
Operation and maintenance, Army		(07-10-2020	-X-1-051-A;	21-2020)
Budget Authority	21,646,956	21,621,360	25,596	7
Operation and maintenance, Air Force		(07-10-3400	-X-1-051-A;	57-3400)
Budget Authority	19,922,339	19,904,586	17,753	7
Military Construction		(07-25-2050	-X-1-051-A;	21-2050)
Military construction, Army				
401(C) Authority	0	221,000	-221,000	8
Department of Defense--Civil				
Corps of Engineers--Civil		(08-10-3123	-X-1-301-A;	96-3123)
Operation and maintenance, general				
Budget Authority	1,308,280	1,316,335	-8,055	2,9
Rivers and harbors contributed funds		(08-10-8862	-X-7-301-A;	96-8862)
401(C) Other--incl. ob. limit	237,000	209,780	27,220	9
Department of Energy				
Atomic Energy Defense Activities		(19-10-0220	-X-1-053-A;	89-0220)
Atomic energy defense activities				
Unobligated Balances--Defense	45,000	500,000	-455,000	10
Department of Health and Human Services				
Health Resources and Services		(09-15-0390	-X-1-551-A;	75-0390)
Indian health services				
Budget Authority	63,725	69,495	-5,770	11
Health Care Financing Administration		(09-38-8004	-X-7-571-A;	20-8004)
Federal supplementary medical insurance trust fund				
401(C) Other--incl. ob. limit	0	72,627	-72,627	12,13
Obligation Limitation	1,053,089	1,021,300	31,789	5
FSMI 2% split (G-R-H)		(09-38-8004	-X-7-571-S;	20-8004)
401(C) Authority--Spec. Rules	315,000	410,000	-95,000	12,13
Federal hospital insurance trust fund		(09-38-8005	-X-7-571-A;	20-8005)
401(C) Other--incl. ob. limit	0	343,276	-343,276	12,13
Obligation Limitation	1,138,928	842,845	296,083	5
FHI 2% split (G-R-H)		(09-38-8005	-X-7-571-S;	20-8005)
401(C) Authority--Spec. Rules	905,000	980,000	-75,000	12,13
Social Security Administration		(09-60-0406	-X-1-609-A;	75-0406)
Supplemental security income program				
401(C) Authority	895,320	823,283	72,037	5
Family Support Administration		(09-70-1508	-X-1-506-A;	75-1508)
Interim assistance to States for legalization				
401(C) Other--incl. ob. limit	300,000	121,000	179,000	5
Human Development Services		(09-80-1645	-X-1-506-A;	75-1645)
Family social services				
Budget Authority	0	252,855	-252,855	5,6
401(C) Authority	289,127	45,000	244,127	5,6

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TABLE 16. -- Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million
(in thousands of dollars)

Account Title	OMB Base	CBO Base	Difference	Explanation
Health and Human Services - Social Security				
Social Security				
Federal old-age and survivors insurance trust fund		(16-05-8006	-X-7-651-A;	20-8006)
Obligation Limitation	1,678,544	1,799,944	-121,400	11
Federal disability insurance trust fund		(16-05-8007	-X-7-651-A;	20-8007)
Obligation Limitation	546,377	536,398	9,979	11
Department of Housing and Urban Development				
Housing Programs				
Rental housing assistance fund		(25-02-4041	-X-3-604-A;	86-4041)
401(C) Authority--Off. Coll.	60,000	51,000	9,000	9
Federal Housing Administration fund		(25-02-4070	-X-3-371-A;	86-4070)
401(C) Authority--Off. Coll.	360,616	382,896	-22,280	9
Guaranteed Loan Limitation	104,200,000	100,000,000	4,200,000	1
Obligation Limitation	334,555	306,962	27,593	2
Government National Mortgage Association				
Guarantees of mortgage-backed securities		(25-04-4238	-X-3-371-A;	86-4238)
401(C) Authority--Off. Coll.	39,084	18,785	20,299	9
Guaranteed Loan Limitation	156,300,000	150,000,000	6,300,000	1
Community Planning and Development				
Rehabilitation loan fund		(25-06-4036	-X-3-451-A;	86-4036)
Direct Loan Limitation	88,570	80,000	8,570	1
Management and Administration				
Salaries & expenses, incl. transfer of funds (Public a		(25-35-0143	-X-1-604-A;	86-0143)
Budget Authority	171,786	157,616	14,170	2
Department of the Interior				
Bureau of Reclamation				
Reclamation trust funds		(10-10-8070	-X-7-301-A;	14-8070)
401(C) Other--incl. ob. limit	48,000	32,085	15,915	■
National Park Service				
Operation of the national park system		(10-24-1036	-X-1-303-A;	14-1036)
Budget Authority	749,559	758,567	-9,008	■
Bureau of Indian Affairs				
Operation of Indian programs (Elementary, secondary, &		(10-76-2100	-X-1-501-A;	14-2100)
Budget Authority	289,699	295,661	-5,962	7
Miscellaneous permanent appropriations (Area and regio		(10-76-9925	-X-2-452-A;	14-9925)
401(C) Other--incl. ob. limit	47,001	64,000	-16,999	5
Office of Territorial Affairs				
Administration of territories		(10-82-0412	-X-1-806-A;	14-0412)
Budget Authority	45,777	81,637	-35,860	1
Compact of free association		(10-82-0415	-X-1-806-A;	14-0415)
401(C) Authority	0	27,920	-27,920	15
Department of Justice				
Legal Activities				
Assets forfeiture fund		(11-05-5042	-X-2-752-A;	15-5042)
Budget Authority	133,376	116,828	16,548	9
Office of Justice Programs				
Crime Victims Fund		(11-21-5041	-X-2-754-A;	15-5041)
401(C) Other--incl. ob. limit	80,000	70,000	10,000	9
Department of Labor				
Employment and Training Administration				
Federal unemployment benefits and allowances		(12-05-0326	-X-1-603-A;	16-0326)
401(C) Authority	159,000	137,000	22,000	5
Unemployment trust fund (Training and employment)		(12-05-8042	-X-7-504-A;	20-8042)
Obligation Limitation	991,692	361,157	630,535	1
Employment Standards Administration				
Black lung disability trust fund		(12-15-8144	-X-7-601-A;	20-8144)
Budget Authority	53,678	■	53,678	5,15
401(C) Authority	0	49,809	-49,809	5,15
Department of Transportation				
National Highway Traffic Safety Administration				
State and community highway safety grants		(21-10-8020	-X-7-401-A;	69-8020)
401(C) Other--incl. ob. limit	142,150	126,000	16,150	16
Obligation Limitation	0	16,828	-16,828	16
Coast Guard				
Boat safety		(21-30-8149	-X-7-403-A;	69-8149)
Budget Authority	46,890	15,630	31,260	15
401(C) Authority	0	15,973	-15,973	15
Maritime Administration				
Federal ship financing fund		(21-35-4301	-X-3-403-A;	69-4301)
Guaranteed Loan Limitation	72,940	■	72,940	17
Department of the Treasury				
United States Customs Service				
Salaries and expenses		(15-15-0602	-X-1-751-A;	20-0602)
401(C) Authority	79,400	72,950	6,450	5

TABLE 16. -- Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million (in thousands of dollars)

Account Title	OMB Base	CBO Base	Difference	Explanation
Bureau of Engraving and Printing				
Bureau of Engraving and Printing fund		(15-20-4502	-X-4-803-A:	20-4502)
401(C) Authority--Off. Coll.	11,086	36,491	-25,405	9
Environmental Protection Agency				
Environmental Protection Agency				
Advances to the hazardous substance superfund		(20-00-0250	-X-1-304-A:	68-0250)
Budget Authority	148,500	0	148,500	1
National Aeronautics and Space Administration				
National Aeronautics and Space Administration				
Research and development (Space flight)		(26-00-0108	-X-1-253-A:	80-0108)
Budget Authority	962,391	953,951	8,440	7
Small Business Administration				
Small Business Administration				
Disaster loan fund		(28-00-4153	-X-3-453-A:	73-4153)
Direct Loan Limitation	312,600	364,000	-51,400	18
Business loan and investment fund		(28-00-4154	-X-3-376-A:	73-4154)
Guaranteed Loan Limitation	3,898,122	3,741,000	157,122	19
Veterans Administration				
Veterans Administration				
Readjustment benefits		(29-00-0137	-X-1-702-A:	36-0137)
401(C) Authority	597,132	587,432	9,700	9
Burial benefits and miscellaneous assistance		(29-00-0155	-X-1-701-A:	36-0155)
401(C) Authority	128,476	121,400	7,076	5
Medical care		(29-00-0160	-X-1-703-A:	36-0160)
Budget Authority	779,751	805,143	-25,392	11
Loan guaranty revolving fund		(29-00-4025	-X-3-704-A:	36-4025)
Guaranteed Loan Limitation	35,000,000	31,622,000	3,378,000	17
Other Independent Agencies				
Corporation for Public Broadcasting				
Public broadcasting fund		(30-42-0151	-X-1-503-A:	20-0151)
401(C) Authority	214,000	0	214,000	20
Railroad Retirement Board				
Supplemental Annuity Pension Fund		(32-20-8012	-X-7-601-A:	60-8012)
401(C) Authority	119,000	0	119,000	21
United States Information Agency				
Radio construction		(33-22-0204	-X-1-154-A:	67-0204)
Budget Authority	68,780	47,938	20,842	22

1/ CBO has indicated that it will revise this account in its November report.
2/ Different application of inflation factor.
3/ Different assumptions on commodity prices.
4/ Technical estimating difference for market prices that determine the level of program cost-share payments.
5/ Technical estimating difference for mandatory programs.
6/ OMB classifies the entire account, cited as such in the law, as 401(C) authority; CBO classifies part or all of the account as budget authority.
7/ Different assumptions on payroll base for civilian pay raise.
8/ Different treatment of advance appropriations.
9/ Technical estimating difference for offsetting collections or use of offsetting collections.
10/ Technical estimating difference for unobligated balances.
11/ Technical estimating difference for administrative costs.
12/ The revised Act specifies that OMB and CBO follow different procedures in estimating the Medicare baseline.
13/ OMB classifies entire amount as obligation limitation; CBO classifies all or part as 401(C) other.
14/ OMB classifies as discretionary budget authority; CBO classifies as entitlement.
15/ OMB classifies as budget authority; CBO classifies as 401(C) authority.
16/ OMB classifies as 401(C) other; CBO classifies all or part as obligation limitation.
17/ Technical estimating difference for demand for guaranteed loans.
18/ Technical estimating difference for demand for direct loans.
19/ Difference due to change in CBO technical assumptions since August relating to SBA guarantee percentage of full principal amount of loans.
20/ OMB classifies as sequesterable; CBO as exempt. See text for explanation.
21/ OMB classifies as sequesterable; CBO as exempt. Congress did not explicitly exempt this account. Supplemental annuities were not sequestered in previous fiscal years because the supplemental annuity account had been merged with the Rail Industry Pension Fund for presentation purposes.
22/ Difference in scoring of current indefinite appropriation.

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APPENDIX: SEQUESTRATION REDUCTIONS BY

AGENCY AND BUDGET ACCOUNT

(fiscal year 1988; in thousands of dollars)

Percentages Used: Non-Defense, 8.5%; Defense, 10.5%

Account Title		Base	Sequester
Legislative Branch			
Senate			
Mileage of the Vice President and Senators	(01-05-0101	-X-1-801-A;	00-0101)
Budget Authority		62	5
Outlays		62	5
Expense allowances of the Vice President, Pres Pro Tem	(01-05-0107	-X-1-801-A;	00-0107)
Budget Authority		56	5
Outlays		56	5
Representation allowances for the Majority and Minorit	(01-05-0108	-X-1-801-A;	00-0108)
Budget Authority		21	2
Outlays		21	2
Salaries, officers and employees	(01-05-0110	-X-1-801-A;	00-0110)
Budget Authority		196,563	16,708
Outlays		196,563	16,708
Miscellaneous items	(01-05-0123	-X-1-801-A;	00-0123)
Budget Authority		12,102	1,029
Outlays		12,102	1,029
Secretary of the Senate	(01-05-0126	-X-1-801-A;	00-0126)
Budget Authority		697	59
Outlays		697	59
Sergeant at Arms and Doorkeeper of the Senate	(01-05-0127	-X-1-801-A;	00-0127)
Budget Authority		67,334	5,723
Outlays		67,334	5,723
Inquiries and investigations	(01-05-0128	-X-1-801-A;	00-0128)
Budget Authority		57,760	4,910
Outlays		57,760	4,910
Expenses of U.S. International Narcotics Control Commi	(01-05-0129	-X-1-801-A;	00-0129)
Budget Authority		360	31
Outlays		360	31
Stationery (revolving fund)	(01-05-0140	-X-1-801-A;	00-0140)
Budget Authority		13	1
Outlays		13	1
Office of Senate Legal Counsel	(01-05-0171	-X-1-801-A;	00-0171)
Budget Authority		637	54
Outlays		637	54
Expense allowance for the Secretary of the Senate, etc	(01-05-0172	-X-1-801-A;	00-0172)
Budget Authority		12	1
Outlays		12	1
Senate policy committees	(01-05-0182	-X-1-801-A;	00-0182)
Budget Authority		2,156	183
Outlays		2,156	183
Office of the Legislative Counsel of the Senate	(01-05-0185	-X-1-801-A;	00-0185)
Budget Authority		1,617	137
Outlays		1,617	137
House of Representatives			
Mileage of Members	(01-10-0208	-X-1-801-A;	00-0208)
Budget Authority		219	19
Outlays		219	19
House leadership offices	(01-10-0408	-X-1-801-A;	00-0408)
Budget Authority		3,709	315
Outlays		3,709	315
Salaries, officers and employees	(01-10-0410	-X-1-801-A;	00-0410)
Budget Authority		56,985	4,844
Outlays		56,985	4,844
Members' clerk hire	(01-10-0415	-X-1-801-A;	00-0415)
Budget Authority		188,396	16,014
Outlays		188,396	16,014
Committee employees	(01-10-0416	-X-1-801-A;	00-0416)
Budget Authority		53,136	4,517
Outlays		53,136	4,517
Committee on Appropriations (Studies and Investigation	(01-10-0418	-X-1-801-A;	00-0418)
Budget Authority		4,629	393
Outlays		4,629	393
Committee on the Budget (Studies)	(01-10-0419	-X-1-801-A;	00-0419)
Budget Authority		343	29
Outlays		343	15
Special and select committees	(01-10-0433	-X-1-801-A;	00-0433)
Budget Authority		55,279	4,699
Outlays		55,279	4,699
Allowances and expenses	(01-10-0438	-X-1-801-A;	00-0438)
Budget Authority		157,750	13,409
Outlays		157,750	13,409
Congressional use of foreign currency, House of Repres	(01-10-0488	-X-1-801-A;	00-0488)
401(C) Authority		3,360	286
Outlays		3,360	286
Page residence hall and meal plan	(01-10-4011	-X-3-801-A;	00-4011)
Outlays		-126	-11

Account Title		Base	Sequester
Joint Items			
Capitol Guide Service	(01-12-0170	-X-1-801-A;	00-0170)
Budget Authority		1,095	[illegible]
Outlays		1,095	[illegible]
Joint Committee on Printing	(01-12-0180	-X-1-801-A;	00-0180)
Budget Authority		1,017	86
Outlays		1,017	[illegible]
Joint Economic Committee	(01-12-0181	-X-1-801-A;	00-0181)
Budget Authority		3,029	257
Outlays		3,029	257
Office of the Attending Physician	(01-12-0425	-X-1-801-A;	00-0425)
Budget Authority		1,352	115
Outlays		1,352	115
Joint Committee on Taxation	(01-12-0460	-X-1-801-A;	00-0460)
Budget Authority		4,555	387
Outlays		4,555	387
General expenses, Capitol police	(01-12-0476	-X-1-801-A;	00-0476)
Budget Authority		1,960	167
Outlays		1,960	167
Statements of appropriations, House of Representatives	(01-12-0499	-X-1-801-A;	00-0499)
Budget Authority		21	2
Official mail costs	(01-12-0825	-X-1-801-A;	00-0825)
Budget Authority		95,263	8,097
Outlays		95,263	8,097
Congressional Budget Office			
Salaries and expenses	(01-14-0100	-X-1-801-A;	08-0100)
Budget Authority		18,698	1,589
Outlays		16,828	1,430
Architect of the Capitol			
Office of the Architect of the Capitol: Salaries	(01-15-0100	-X-1-801-A;	01-0100)
Budget Authority		5,825	495
Outlays		5,825	495
Contingent expenses	(01-15-0102	-X-1-801-A;	01-0102)
Budget Authority		52	4
Outlays		52	[illegible]
Capitol buildings	(01-15-0105	-X-1-801-A;	01-0105)
Budget Authority		12,834	1,091
Outlays		12,834	1,091
Capitol grounds	(01-15-0108	-X-1-801-A;	01-0108)
Budget Authority		3,436	292
Outlays		3,108	264
Senate office buildings	(01-15-0123	-X-1-801-A;	01-0123)
Budget Authority		27,171	2,310
Outlays		25,474	2,165
House office buildings	(01-15-0127	-X-1-801-A;	01-0127)
Budget Authority		27,370	2,326
Outlays		25,228	2,144
Capitol Power Plant	(01-15-0133	-X-1-801-A;	01-0133)
Budget Authority		25,794	2,192
401(C) Authority--Off. Coll.		123	10
Outlays		22,428	1,906
Structural and mechanical care, Library buildings and	(01-15-0155	-X-1-801-A;	01-0155)
Budget Authority		6,453	548
Outlays		6,453	548
Library of Congress			
Salaries and expenses	(01-25-0101	-X-1-503-A;	03-0101)
Budget Authority		144,409	12,275
401(C) Authority--Off. Coll.		4,828	410
Outlays		115,123	9,785
Copyright Office: Salaries and expenses	(01-25-0102	-X-1-376-A;	03-0102)
Budget Authority		10,867	924
401(C) Authority--Off. Coll.		6,992	594
Outlays		16,870	1,434
Congressional Research Service: Salaries and expenses	(01-25-0127	-X-1-801-A;	03-0127)
Budget Authority		43,554	3,702
Outlays		39,243	3,336
Books for the blind and physically handicapped: Salari	(01-25-0141	-X-1-503-A;	03-0141)
Budget Authority		37,793	3,212
Outlays		17,593	1,495
Collection & distribution of library materials (sp. fo	(01-25-0144	-X-1-503-A;	03-0144)
Budget Authority		410	35
Furniture and furnishings	(01-25-0146	-X-1-503-A;	03-0146)
Budget Authority		5,297	450
Outlays		1,325	113
Gift and trust fund accounts	(01-25-9971	-X-7-503-A;	03-9971)
401(C) Other--incl. ob. limit		346	29
Government Printing Office			
Office of Superintendent of Documents: Salaries and ex	(01-30-0201	-X-1-806-A;	04-0201)
Budget Authority		23,506	1,998
Outlays		16,779	1,426

Account Title		Base	Sequester
Printing and binding	(01-30-0202	-X-1-801-A;	04-0202)
Budget Authority		11,149	948
Congressional printing and binding	(01-30-0203	-X-1-801-A;	04-0203)
Budget Authority		64,604	5,491
Outlays		53,428	4,541
Government Printing Office revolving fund	(01-30-4505	-X-4-806-A;	04-4505)
401(C) Authority--Off. Coll.		29,000	2,465
Outlays		29,000	2,465
General Accounting Office			
Salaries and expenses	(01-35-0107	-X-1-801-A;	05-0107)
Budget Authority		332,697	28,279
Outlays		303,820	25,825
United States Tax Court			
Salaries and expenses	(01-40-0100	-X-1-752-A;	23-0100)
Budget Authority		27,501	2,338
Outlays		25,081	2,132
Other Legislative Branch Agencies			
Commission on Security & Cooperation in Europe: Salari	(01-45-0110	-X-1-801-A;	09-0110)
Budget Authority		574	49
Outlays		550	47
Botanic Garden: Salaries and expenses	(01-45-0200	-X-1-801-A;	09-0200)
Budget Authority		2,265	193
Outlays		2,034	173
Copyright Royalty Tribunal: Salaries and expenses	(01-45-0310	-X-1-376-A;	09-0310)
Budget Authority		134	11
Outlays		87	7
Biomedical Ethics: Salaries and expenses	(01-45-0400	-X-1-801-A;	09-0400)
Budget Authority		166	14
Outlays		166	14
Office of Technology Assessment: Salaries and expenses	(01-45-0700	-X-1-801-A;	09-0700)
Budget Authority		17,141	1,457
Outlays		13,602	1,156
Railroad Accounting Principles Board: Salaries and exp	(01-45-0800	-X-1-801-A;	09-0800)
Budget Authority		657	56
Dwight David Eisenhower Centennial Commission: Expense	(01-45-1700	-X-1-801-A;	76-1700)
Budget Authority		52	4
Outlays		50	4
Legislative Branch	Total		
Budget Authority		1,818,539	154,574
401(C) Authority		3,360	286
401(C) Authority--Off. Coll.		40,943	3,479
401(C) Other--incl. ob. limit		346	29
Outlays		1,724,324	146,564
The Judiciary			
Supreme Court of the United States			
Salaries and expenses	(02-05-0100	-X-1-752-A;	10-0100)
Budget Authority		14,782	1,256
Outlays		10,115	860
Care of the building and grounds	(02-05-0103	-X-1-752-A;	10-0103)
Budget Authority		2,428	206
Outlays		2,205	187
United States Court of Appeals for Federal Circuit			
Salaries and expenses	(02-07-0510	-X-1-752-A;	10-0510)
Budget Authority		6,099	518
Outlays		5,623	478
United States Court of International Trade			
Salaries and expenses	(02-15-0400	-X-1-752-A;	10-0400)
Budget Authority		6,662	566
Outlays		6,398	544
Courts of Appeals, District Courts and other Svcs			
Salaries and expenses	(02-25-0920	-X-1-752-A;	10-0200)
Budget Authority		963,897	81,931
Outlays		896,518	76,204
Defender services	(02-25-0923	-X-1-752-A;	10-0923)
Budget Authority		91,241	7,755
Outlays		47,020	3,997
Fees of jurors and commissioners	(02-25-0925	-X-1-752-A;	10-0925)
Budget Authority		56,459	4,799
Outlays		50,810	4,319
Court security	(02-25-0930	-X-1-752-A;	10-0930)
Budget Authority		37,545	3,191
Outlays		22,902	1,947
Administrative Office of the United States Courts			
Salaries and expenses	(02-26-0927	-X-1-752-A;	10-0927)
Budget Authority		32,226	2,739
Outlays		28,152	2,393
Federal Judicial Center			
Salaries and expenses	(02-30-0928	-X-1-752-A;	10-0928)
Budget Authority		11,348	965
Outlays		9,351	795

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Account Title		Base	Sequester
Bicentennial Expenses, The Judiciary			
Bicentennial activities	(02-34-0933	-X-1-806-A;	10-0933)
Budget Authority		1,042	[redacted]
The Judiciary	Total		
Budget Authority		1,223,729	104,015
Outlays		1,079,094	91,724
Executive Office of the President			
The White House Office			
Salaries and expenses	(03-10-0110	-X-1-802-A;	11-0110)
Budget Authority		26,504	2,253
Outlays		23,344	1,984
Executive Residence at the White House			
Operating expenses	(03-20-0210	-X-1-802-A;	11-0210)
Budget Authority		5,140	437
401(C) Authority--Off. Coll.		729	62
Outlays		5,685	483
Official Residence of the Vice President			
Operating expenses	(03-21-0211	-X-1-802-A;	11-0211)
Budget Authority		222	19
Outlays		50	[redacted]
Special Assistance to the President			
Salaries and expenses	(03-22-1454	-X-1-802-A;	11-1454)
Budget Authority		1,937	165
Outlays		1,686	143
Council of Economic Advisers			
Salaries and expenses	(03-28-1900	-X-1-802-A;	11-1900)
Budget Authority		2,484	211
Outlays		2,164	184
Council/Office on Environmental Quality			
Council on Environmental Quality & Off. of Environment	(03-31-1453	-X-1-802-A;	11-1453)
Budget Authority		874	74
Outlays		829	70
Office of Policy Development			
Salaries and expenses	(03-35-2200	-X-1-802-A;	11-2200)
Budget Authority		2,838	241
Outlays		2,763	235
National Security Council			
Salaries and expenses	(03-40-2000	-X-1-802-A;	11-2000)
Budget Authority		4,946	420
Outlays		4,128	351
National Critical Materials Council			
Salaries and expenses	(03-41-0111	-X-1-802-A;	11-0111)
Budget Authority		190	16
Outlays		172	15
Office of Administration			
Salaries and expenses	(03-42-0038	-X-1-802-A;	11-0038)
Budget Authority		16,718	1,421
Outlays		11,957	1,016
Office of Management and Budget			
Office of Federal Procurement Policy: Salaries and exp	(03-48-0201	-X-1-802-A;	11-0201)
Budget Authority		1,739	148
Outlays		1,617	137
Salaries and expenses	(03-48-0300	-X-1-802-A;	11-0300)
Budget Authority		40,232	3,420
Outlays		37,062	3,150
Office of Science and Technology Policy			
Salaries and expenses	(03-49-2600	-X-1-802-A;	11-2600)
Budget Authority		2,048	174
Outlays		1,638	139
Office of the United States Trade Representative			
Salaries and expenses	(03-50-0400	-X-1-802-A;	11-0400)
Budget Authority		14,400	1,224
Outlays		12,830	1,091
White House Conference on Drug Abuse and Control			
Salaries and expenses	(03-55-0212	-X-1-551-A;	11-0212)
Budget Authority		5,328	453
Outlays		4,369	371
Executive Office of the President	Total		
Budget Authority		125,600	10,676
401(C) Authority--Off. Coll.		729	62
Outlays		110,294	9,373
Funds Appropriated to the President			
Disaster Relief			
Disaster relief	(04-03-0039	-X-1-453-A;	11-0039)
Budget Authority		125,040	10,628
Outlays		52,102	4,429
Unanticipated Needs			
Unanticipated needs	(04-06-0037	-X-1-802-A;	11-0037)
Budget Authority		1,053	90
Outlays		1,013	86

Account Title		Base	Sequester
International Security Assistance			
Peacekeeping operations	(04-09-1032	-X-1-152-A;	11-1032)
Budget Authority		33,020	2,807
Outlays		16,626	1,413
Economic support fund	(04-09-1037	-X-1-152-A;	11-1037)
Budget Authority		3,713,167	315,619
Direct Loan Limitation		182,955	15,551
Outlays		2,605,408	221,460
Military assistance	(04-09-1080	-X-1-152-A;	11-1080)
Budget Authority		991,135	84,246
Outlays		188,315	16,007
International military education and training	(04-09-1081	-X-1-152-A;	11-1081)
Budget Authority		58,352	4,960
Outlays		29,176	2,480
Foreign military sales credit	(04-09-1082	-X-1-152-A;	11-1082)
Budget Authority		4,223,685	359,013
Direct Loan Limitation		4,223,685	359,013
Outlays		3,065,830	260,596
Multilateral Assistance			
Contribution to the Inter-American Development Bank	(04-12-0072	-X-1-151-A;	11-0072)
Budget Authority		35,094	2,983
Contribution to the International Development Associat	(04-12-0073	-X-1-151-A;	11-0073)
Budget Authority		864,964	73,522
Contribution to the Asian Development Bank	(04-12-0076	-X-1-151-A;	11-0076)
Budget Authority		109,034	9,268
Outlays		5,517	469
Contribution to the International Bank for Reconstruct	(04-12-0077	-X-1-151-A;	11-0077)
Budget Authority		58,149	4,943
Outlays		5,815	494
Contribution to the International Finance Corporation	(04-12-0078	-X-1-151-A;	11-0078)
Budget Authority		7,509	[illegible]
Outlays		7,509	[illegible]
Contribution to the African Development Fund	(04-12-0079	-X-1-151-A;	11-0079)
Budget Authority		94,225	8,009
Contribution to the African Development Bank	(04-12-0082	-X-1-151-A;	11-0082)
Budget Authority		21,340	1,814
Outlays		21,340	1,814
Contribution to the special facility for Sub-Saharan A	(04-12-0086	-X-1-151-A;	11-0086)
Budget Authority		67,527	5,740
Outlays		22,284	1,894
International organizations and programs	(04-12-1005	-X-1-151-A;	11-1005)
Budget Authority		247,229	21,014
Outlays		157,305	13,371
Agency for International Development			
Operating expenses, Agency for International Developme	(04-14-1000	-X-1-151-A;	11-1000)
Budget Authority		369,605	31,416
Outlays		277,204	23,562
Operating expenses of the AID Office of Inspector Gene	(04-14-1007	-X-1-151-A;	11-1007)
Budget Authority		22,612	1,922
Outlays		16,960	1,442
Sahel development program	(04-14-1012	-X-1-151-A;	11-1012)
Budget Authority		72,940	6,200
Outlays		5,835	496
American schools and hospitals abroad	(04-14-1013	-X-1-151-A;	11-1013)
Budget Authority		36,470	3,100
Outlays		9,847	837
Functional development assistance program	(04-14-1021	-X-1-151-A;	11-1021)
Budget Authority		1,535,378	130,507
Direct Loan Limitation		156,300	13,286
Outlays		139,585	11,865
International disaster assistance	(04-14-1035	-X-1-151-A;	11-1035)
Budget Authority		72,940	6,200
Outlays		18,089	1,538
Housing and other credit guaranty programs	(04-14-4340	-X-3-151-A;	72-4340)
401(C) Authority--Off. Coll.		6,500	552
Guaranteed Loan Limitation		151,573	12,884
Outlays		6,175	525
Private sector revolving fund	(04-14-4341	-X-3-151-A;	72-4341)
Budget Authority		13,546	1,151
Direct Loan Limitation		16,206	1,378
Trade and Development Program			
Trade and development program	(04-16-1001	-X-1-151-A;	11-1001)
Budget Authority		20,912	1,778
Outlays		2,614	222
Peace Corps			
Peace Corps operating expenses	(04-18-0100	-X-1-151-A;	11-0100)
Budget Authority		147,707	12,555
401(C) Authority--Off. Coll.		102	[illegible]
Outlays		119,745	10,178

Account Title		Base	Sequester
Overseas Private Investment Corporation			
Overseas Private Investment Corporation	(04-20-4030	-X-3-151-A;	71-4030)
401(C) Authority--Off. Coll.		10,600	901
Direct Loan Limitation		23,966	2,037
Guaranteed Loan Limitation		208,400	17,714
Outlays		12,706	1,080
Inter-American Foundation			
Inter-American Foundation	(04-22-4031	-X-3-151-A;	11-4031)
Budget Authority		12,384	1,053
401(C) Authority--Off. Coll.		14,888	1,265
Outlays		11,831	1,006
African Development Foundation			
African Development Foundation	(04-24-0700	-X-1-151-A;	11-0700)
Budget Authority		6,861	583
Outlays		2,606	222
Military Sales Programs			
Special defense acquisition fund	(04-37-4116	-X-3-155-A;	11-4116)
Obligation Limitation		329,084	27,972
Foreign military sales trust fund	(04-37-8242	-X-7-155-A;	11-8242)
401(C) Authority--Off. Coll.		340,000	28,900
Outlays		340,000	28,900
Funds Appropriated to the President	Total		
Budget Authority		12,961,878	1,101,759
401(C) Authority--Off. Coll.		372,090	31,627
Direct Loan Limitation		4,603,112	391,265
Guaranteed Loan Limitation		359,973	30,598
Obligation Limitation		329,084	27,972
Outlays		7,141,437	607,024
Department of Agriculture			
Office of the Secretary			
Office of the Secretary	(05-03-0115	-X-1-352-A;	12-0115)
Budget Authority		16,500	1,402
Outlays		13,968	1,187
Departmental Administration			
Rental payments and building operations	(05-05-0117	-X-1-352-A;	12-0117)
Budget Authority		69,723	5,926
Outlays		67,982	5,778
Advisory committees	(05-05-0118	-X-1-352-A;	12-0118)
Budget Authority		1,503	128
Outlays		1,390	118
Departmental administration	(05-05-0120	-X-1-352-A;	12-0120)
Budget Authority		23,253	1,976
Outlays		23,253	1,976
Working capital fund	(05-05-4609	-X-4-352-A;	12-4609)
Budget Authority		6,072	516
Outlays		6,072	516
Office of Governmental and Public Affairs			
Office of Governmental and Public Affairs	(05-06-0130	-X-1-352-A;	12-0130)
Budget Authority		8,915	758
Outlays		7,793	662
Office of the Inspector General			
Office of the Inspector General	(05-08-0900	-X-1-352-A;	12-0900)
Budget Authority		48,450	4,118
Outlays		42,811	3,639
Office of the General Counsel			
Office of the General Counsel	(05-10-2300	-X-1-352-A;	12-2300)
Budget Authority		18,833	1,601
Outlays		18,023	1,532
Agricultural Research Service			
Agricultural Research Service	(05-18-1400	-X-1-352-A;	12-1400)
Budget Authority		549,802	46,733
401(C) Authority--Off. Coll.		3,427	291
Outlays		444,870	37,814
Buildings and facilities	(05-18-1401	-X-1-352-A;	12-1401)
Budget Authority		1,042	[illegible]
Cooperative State Research Service			
Cooperative State Research Service	(05-24-1500	-X-1-352-A;	12-1500)
Budget Authority		392,934	33,399
401(C) Authority		2,800	238
Outlays		186,374	15,842
Extension Service			
Extension Service	(05-27-0502	-X-1-352-A;	12-0502)
Budget Authority		346,955	29,491
401(C) Authority--Off. Coll.		495	42
Outlays		291,588	24,785
National Agricultural Library			
National Agricultural Library	(05-30-0300	-X-1-352-A;	12-0300)
Budget Authority		11,775	1,001
Outlays		8,573	729

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Account Title		Base	Sequester
National Agricultural Statistics Service			
Salaries and expenses	(05-33-1801	-X-1-352-A;	12-1801)
Budget Authority		61,298	5,210
401(C) Authority--Off. Coll.		1,075	91
Outlays		53,793	4,572
Economic Research Service			
Salaries and expenses	(05-36-1701	-X-1-352-A;	12-1701)
Budget Authority		47,944	4,075
Outlays		41,712	3,546
World Agricultural Outlook Board			
World agricultural outlook board	(05-50-2100	-X-1-352-A;	12-2100)
Budget Authority		1,757	149
Outlays		1,458	124
Foreign Agricultural Service			
Foreign Agricultural Service	(05-51-2900	-X-1-352-A;	12-2900)
Budget Authority		88,006	7,481
Outlays		48,403	4,114
Office of International Cooperation & Development			
Scientific activities overseas	(05-53-1404	-X-1-352-A;	12-1404)
Budget Authority		2,607	222
Outlays		2,607	222
Salaries and expenses	(05-53-3200	-X-1-352-A;	12-3200)
Budget Authority		5,395	459
Outlays		5,395	459
Foreign Assistance Programs			
Expenses, PL 480, foreign assistance programs, Agricul	(05-57-2274	-X-1-151-A;	12-2274)
Budget Authority		1,128,560	95,928
Direct Loan Limitation		863,505	73,398
Obligation Limitation		1,524,520	129,584
Outlays		1,128,543	95,926
Agricultural Stabilization & Conservation Service			
Salaries and expenses	(05-60-3300	-X-1-351-A;	12-3300)
401(C) Authority--Off. Coll.		18,235	1,550
Outlays		18,235	1,550
Dairy indemnity program	(05-60-3314	-X-1-351-A;	12-3314)
Budget Authority		675	57
Outlays		675	57
Agricultural conservation program	(05-60-3315	-X-1-302-A;	12-3315)
Budget Authority		184,366	15,671
Outlays		84,624	7,193
Emergency conservation program	(05-60-3316	-X-1-453-A;	12-3316)
Budget Authority		10,420	885
Outlays		7,815	664
Colorado river basin salinity control program	(05-60-3318	-X-1-304-A;	12-3318)
Budget Authority		3,964	337
Outlays		1,982	168
Conservation reserve program	(05-60-3319	-X-1-302-A;	12-3319)
Budget Authority		672,090	57,128
Outlays		672,090	57,128
Water Bank program	(05-60-3320	-X-1-302-A;	12-3320)
Budget Authority		8,723	741
Outlays		1,134	96
Forestry incentives program	(05-60-3336	-X-1-302-A;	12-3336)
Budget Authority		12,390	1,053
Outlays		4,337	369
Federal Crop Insurance Corporation			
Administrative and operating expenses	(05-63-2707	-X-1-351-A;	12-2707)
Budget Authority		220,141	18,712
Outlays		122,423	10,406
Commodity Credit Corporation			
Temp. stor. & distr. of CCC emgcy. food	(05-66-3635	-X-1-351-A;	12-3635)
Budget Authority		52,100	4,428
Outlays		37,075	3,151
Commodity Credit Corporation Fund	(05-66-4336	-X-3-351-A;	12-4336)
401(C) Authority		16,031,064	1,362,640
Direct Loan Limitation		15,500,000	1,317,500
Guaranteed Loan Limitation		5,500,000	467,500
Outlays		16,031,064	1,362,640
National Wool Act ASI (G-R-H)	(05-66-4336	-X-3-351-G;	12-4336)
401(C) Authority--ASI		4,100	4,100
Outlays		4,100	4,100
Rural Electrification Administration			
Salaries and expenses	(05-72-3100	-X-1-271-A;	12-3100)
Budget Authority		32,181	2,735
Outlays		30,572	2,599
Reimbursement to the Rural elec. & tel. revolv. fund f	(05-72-3101	-X-1-271-A;	12-3101)
Budget Authority		20,840	1,771

Account Title		Base	Sequester
Purchase of Rural Telephone Bank capital stock	(05-72-3102	-X-1-452-A;	12-3102)
Budget Authority		29,916	2,543
Outlays		29,916	2,543
Rural electrification and telephone revolving fund	(05-72-4230	-X-3-271-A;	12-4230)
Direct Loan Limitation		1,296,352	110,190
Direct Loan Floor		897,475	76,285
Guaranteed Loan Limitation		2,188,841	186,051
Guaranteed Loan Floor		972,264	82,642
Outlays		217,988	18,529
Rural telephone bank	(05-72-4231	-X-3-452-A;	12-4231)
Direct Loan Limitation		219,383	18,648
Direct Loan Floor		184,481	15,681
Outlays		11,518	979
Farmers Home Administration			
Salaries and expenses	(05-75-2001	-X-1-452-A;	12-2001)
Budget Authority		421,900	35,862
Outlays		384,572	32,689
Rural housing for domestic farm labor	(05-75-2004	-X-1-604-A;	12-2004)
Budget Authority		9,913	843
Outlays		396	34
Mutual and self-help housing	(05-75-2006	-X-1-604-A;	12-2006)
Budget Authority		8,336	709
Outlays		667	57
Very low income housing repair grants	(05-75-2064	-X-1-604-A;	12-2064)
Budget Authority		13,025	1,107
Outlays		12,374	1,052
Rural water and waste disposal grants	(05-75-2066	-X-1-452-A;	12-2066)
Budget Authority		113,989	9,689
Outlays		2,280	194
Rural community fire protection grants	(05-75-2067	-X-1-452-A;	12-2067)
Budget Authority		3,221	274
Outlays		1,449	123
Rural housing preservation grants	(05-75-2070	-X-1-604-A;	12-2070)
Budget Authority		19,944	1,695
Outlays		4,986	424
Compensation for construction defects	(05-75-2071	-X-1-371-A;	12-2071)
Budget Authority		743	63
Outlays		743	63
Agricultural credit insurance fund	(05-75-4140	-X-3-351-A;	12-4140)
401(C) Authority--Off. Coll.		248,596	21,131
Direct Loan Limitation		1,893,476	160,945
Guaranteed Loan Limitation		2,602,916	221,248
Outlays		1,869,906	158,942
Rural housing insurance fund	(05-75-4141	-X-3-371-A;	12-4141)
401(C) Authority--Off. Coll.		53,500	4,548
Direct Loan Limitation		1,998,653	169,886
Obligation Limitation		286,873	24,384
Outlays		1,120,723	95,261
Rural development insurance fund	(05-75-4155	-X-3-452-A;	12-4155)
401(C) Authority--Off. Coll.		1,175	100
Direct Loan Limitation		443,975	37,738
Guaranteed Loan Limitation		119,663	10,171
Outlays		13,319	1,132
Self-help housing land development fund	(05-75-4222	-X-3-371-A;	12-4222)
Direct Loan Limitation		521	44
Rural development loan fund	(05-75-4233	-X-3-452-A;	12-4233)
401(C) Authority--Off. Coll.		3,500	298
Outlays		-3,500	-298
Miscellaneous expiring appropriations	(05-75-9912	-X-1-452-A;	12-9912)
Budget Authority		3,126	266
Outlays		2,084	177
Soil Conservation Service			
Conservation operations	(05-78-1000	-X-1-302-A;	12-1000)
Budget Authority		423,525	36,000
401(C) Authority--Off. Coll.		11,173	950
Outlays		400,818	34,070
Resource conservation and development	(05-78-1010	-X-1-302-A;	12-1010)
Budget Authority		26,984	2,294
401(C) Authority--Off. Coll.		1,937	165
Outlays		23,120	1,965
Watershed planning	(05-78-1066	-X-1-301-A;	12-1066)
Budget Authority		9,285	789
401(C) Authority--Off. Coll.		[illegible]	51
Outlays		9,328	793
River basin surveys and investigations	(05-78-1069	-X-1-301-A;	12-1069)
Budget Authority		12,930	1,099
401(C) Authority--Off. Coll.		198	17
Outlays		12,352	1,050

Account Title		Base	Sequester
Watershed and flood prevention operations	(05-78-1072	-X-1-301-A;	12-1072)
Budget Authority		186,929	15,889
401(C) Authority--Off. Coll.		17,595	1,496
Outlays		133,135	11,316
Great plains conservation program	(05-78-2268	-X-1-302-A;	12-2268)
Budget Authority		21,861	1,858
Outlays		10,789	917
Miscellaneous contributed funds (Water resources)	(05-78-8210	-X-7-301-A;	12-8210)
401(C) Other--incl. ob. limit		460	39
Outlays		520	44
Miscellaneous contributed funds (Conservation and land	(05-78-8210	-X-7-302-A;	12-8210)
401(C) Other--incl. ob. limit		100	8
Outlays		30	3
Animal and Plant Health Inspection Service			
Salaries and expenses	(05-79-1600	-X-1-352-A;	12-1600)
Budget Authority		332,884	28,295
401(C) Authority--Off. Coll.		9,568	813
Outlays		244,897	20,816
Buildings and facilities	(05-79-1601	-X-1-352-A;	12-1601)
Budget Authority		2,340	199
Miscellaneous trust funds	(05-79-9971	-X-7-352-A;	12-9971)
401(C) Other--incl. ob. limit		4,735	402
Outlays		1,607	137
Federal Grain Inspection Service			
Salaries and expenses	(05-80-2400	-X-1-352-A;	12-2400)
Budget Authority		7,266	618
Outlays		7,266	618
Inspection and weighing services	(05-80-4050	-X-3-352-A;	12-4050)
401(C) Authority--Off. Coll.		36,829	3,130
Outlays		36,829	3,130
Agricultural Marketing Service			
Marketing services	(05-81-2500	-X-1-352-A;	12-2500)
Budget Authority		33,679	2,863
401(C) Authority--Off. Coll.		30,742	2,613
Outlays		54,769	4,655
Payments to States and possessions	(05-81-2501	-X-1-352-A;	12-2501)
Budget Authority		992	83
Outlays		982	83
Perishable Agricultural Commodities Act fund	(05-81-5070	-X-2-352-A;	12-5070)
401(C) Authority		4,240	360
Outlays		3,596	305
Funds for strengthening markets, income, and supply (s	(05-81-5209	-X-2-605-A;	12-5209)
401(C) Authority		361,988	30,769
Outlays		136,988	11,644
Milk market orders assessment fund	(05-81-8412	-X-8-351-A;	12-8412)
401(C) Authority--Off. Coll.		35,110	2,984
Outlays		35,110	2,984
Miscellaneous trust funds	(05-81-9972	-X-7-352-A;	12-9972)
401(C) Authority		85,979	7,308
Outlays		85,979	7,308
Office of Transportation			
Office of Transportation	(05-82-2800	-X-1-352-A;	12-2800)
Budget Authority		2,565	218
Outlays		1,840	156
Food Safety and Inspection Service			
Salaries and expenses	(05-83-3700	-X-1-554-A;	12-3700)
Budget Authority		394,996	33,575
401(C) Authority--Off. Coll.		42,050	3,574
Outlays		402,470	34,210
Exp. & refunds, insp. & grading	(05-83-8137	-X-7-352-A;	12-8137)
401(C) Authority		825	70
Outlays		825	70
Food and Nutrition Service			
Food donations program	(05-84-3503	-X-1-605-A;	12-3503)
Budget Authority		201,720	17,146
Outlays		183,565	15,603
Food stamp program	(05-84-3505	-X-1-605-A;	12-3505)
401(C) Authority		55,762	4,740
Outlays		36,600	3,111
Food program administration	(05-84-3508	-X-1-605-A;	12-3508)
Budget Authority		90,249	7,671
Outlays		82,577	7,019
Special supplemental food prog. for women, infants and	(05-84-3510	-X-1-605-A;	12-3510)
Budget Authority		2,084	177
Outlays		2,084	177
Child nutrition programs	(05-84-3539	-X-1-605-A;	12-3539)
401(C) Authority		3,033	258
Outlays		3,033	258

Account Title		Base	Sequester
Human Nutrition Information Service			
Salaries and Expenses	(05-86-3501	-X-1-352-A;	12-3501)
Budget Authority		7,369	626
Outlays		3,627	308
Packers and Stockyards Administration			
Packers and Stockyards Administration	(05-90-2600	-X-1-352-A;	12-2600)
Budget Authority		9,771	831
Outlays		8,680	738
Agricultural Cooperative Service			
Salaries and expenses	(05-92-3000	-X-1-352-A;	12-3000)
Budget Authority		4,840	411
Outlays		1,959	167
Forest Service			
Construction	(05-96-1103	-X-1-302-A;	12-1103)
Budget Authority		281,149	23,898
401(C) Authority--Off. Coll.		2,061	175
Outlays		189,090	16,073
Forest research	(05-96-1104	-X-1-302-A;	12-1104)
Budget Authority		134,369	11,421
401(C) Authority--Off. Coll.		929	79
Outlays		113,378	9,637
State and private forestry	(05-96-1105	-X-1-302-A;	12-1105)
Budget Authority		69,853	5,938
401(C) Authority--Off. Coll.		135	11
Outlays		51,942	4,415
National forest system	(05-96-1106	-X-1-302-A;	12-1106)
Budget Authority		1,252,040	106,423
Outlays		1,140,544	96,946
Land acquisition	(05-96-5004	-X-2-303-A;	12-5004)
Budget Authority		54,583	4,640
Outlays		24,476	2,080
Range betterment fund	(05-96-5207	-X-2-302-A;	12-5207)
Budget Authority		3,888	330
Outlays		3,110	264
Acquisition of lands for nat'l forests	(05-96-5208	-X-2-302-A;	12-5208)
Budget Authority		1,012	BE
Outlays		1,012	BE
Acq. of lands to complete land exchanges	(05-96-5216	-X-2-302-A;	12-5216)
Budget Authority		934	79
Outlays		830	71
Operations and maintenance of quarters	(05-96-5219	-X-2-302-A;	12-5219)
401(C) Other--incl. ob. limit		5,812	494
Outlays		4,015	341
Cooperative work trust fund	(05-96-8028	-X-7-302-A;	12-8028)
401(C) Other--incl. ob. limit		250,369	21,281
Outlays		213,314	18,132
Highway Construction: Mount St. Helens National Monume	(05-96-8029	-X-7-401-A;	12-8029)
Budget Authority		10,394	BE
Outlays		5,862	498
Gifts, donations, bequests for forest and rangeland re	(05-96-8034	-X-7-302-A;	12-9973)
Budget Authority		94	B
Outlays		94	B
Reforestation trust fund	(05-96-8046	-X-7-302-A;	20-8046)
401(C) Other--incl. ob. limit		30,000	2,550
Outlays		30,000	2,550
Forest Service permanent appropriations	(05-96-9921	-X-2-852-A;	12-9921)
401(C) Other--incl. ob. limit		296,145	25,172
Outlays		222,102	18,879
Forest Service permanent appropriations	(05-96-9922	-X-2-302-A;	12-9922)
401(C) Other--incl. ob. limit		143,660	12,211
Outlays		107,606	9,147
Department of Agriculture	Total		
Budget Authority		8,253,902	701,580
401(C) Authority		16,545,691	1,406,383
401(C) Authority--Off. Coll.		518,930	44,109
401(C) Other--incl. ob. limit		731,281	62,157
401(C) Authority--ASI		4,100	4,100
Direct Loan Limitation		22,215,865	1,888,349
Direct Loan Floor		1,081,956	91,966
Guaranteed Loan Limitation		10,411,420	884,970
Guaranteed Loan Floor		972,264	82,642
Obligation Limitation		1,811,393	153,968
Outlays		27,112,905	2,308,346
Department of Commerce			
General Administration			
Salaries and expenses	(06-05-0120	-X-1-376-A;	13-0120)
Budget Authority		38,624	3,283
Outlays		35,256	2,997

Account Title		Base	Sequester
Grants and loans administration	(06-05-0125	-X-1-452-A;	13-0125)
Budget Authority		27,192	2,311
Outlays		24,762	2,105
Economic development assistance programs	(06-05-2050	-X-1-452-A;	13-2050)
Budget Authority		199,584	16,965
Guaranteed Loan Limitation		195,375	16,607
Outlays		19,958	1,696
Bureau of the Census			
Salaries and expenses	(06-07-0401	-X-1-376-A;	13-0401)
Budget Authority		99,289	8,440
401(C) Authority--Off. Coll.		8,000	680
Outlays		96,474	8,200
Periodic censuses and programs	(06-07-0450	-X-1-376-A;	13-0450)
Budget Authority		185,071	15,731
Outlays		146,897	12,486
Economic and Statistical Analysis			
Salaries and expenses	(06-08-1500	-X-1-376-A;	13-1500)
Budget Authority		32,793	2,787
401(C) Authority--Off. Coll.		462	[illegible]
Outlays		29,023	2,467
Information products and services	(06-08-8546	-X-7-376-A;	13-8546)
401(C) Other--incl. ob. limit		36,980	3,143
Outlays		25,603	2,176
International Trade Administration			
Operations and administration	(06-25-1250	-X-1-376-A;	13-1250)
Budget Authority		215,601	18,326
401(C) Authority--Off. Coll.		9,000	765
Outlays		161,629	13,738
Minority Business Development Agency			
Minority business development	(06-40-0201	-X-1-376-A;	13-0201)
Budget Authority		41,855	3,558
Outlays		15,485	1,316
United States Travel and Tourism Administration			
Salaries and expenses	(06-44-0700	-X-1-376-A;	13-0700)
Budget Authority		12,225	1,039
401(C) Authority--Off. Coll.		1,475	125
Outlays		8,436	802
National Oceanic and Atmospheric Administration			
Operations, research, and facilities	(06-48-1450	-X-1-306-A;	13-1450)
Budget Authority		1,157,480	98,386
401(C) Authority--Off. Coll.		14,952	1,271
Outlays		778,889	66,206
Coastal energy impact fund	(06-48-4315	-X-3-452-A;	13-4315)
401(C) Authority--Off. Coll.		7,300	620
Outlays		7,300	620
Federal ship financing fund, fishing vessels	(06-48-4417	-X-3-376-A;	13-4417)
401(C) Authority--Off. Coll.		1,160	[illegible]
Guaranteed Loan Limitation		83,360	7,086
Outlays		2,320	197
Fishermen's contingency fund	(06-48-5120	-X-2-376-A;	13-5120)
Budget Authority		783	67
Outlays		721	61
Foreign fishing observer fund	(06-48-5122	-X-2-376-A;	13-5122)
Budget Authority		2,116	180
Outlays		2,079	177
Fisheries Promotional Fund	(06-48-5124	-X-2-376-A;	13-5124)
401(C) Authority		750	64
Outlays		467	40
Promote and develop fishery products and research	(06-48-5139	-X-2-376-A;	13-5139)
401(C) Other--incl. ob. limit		4,876	414
Outlays		3,032	258
Aviation weather services program	(06-48-8105	-X-7-306-A;	13-8105)
Budget Authority		30,218	2,569
Outlays		30,218	2,569
Patent and Trademark Office			
Salaries and expenses	(06-51-1006	-X-1-376-A;	13-1006)
Budget Authority		105,670	8,982
401(C) Authority--Off. Coll.		145,075	12,331
Outlays		210,479	17,891
National Bureau of Standards			
Scientific and technical research and services	(06-52-0500	-X-1-376-A;	13-0500)
Budget Authority		129,662	11,021
Outlays		100,378	8,532
Working capital fund	(06-52-4650	-X-4-376-A;	13-4650)
Budget Authority		2,208	188
Outlays		1,104	94
National Telecommunications and Information Admin.			
Salaries and expenses	(06-60-0550	-X-1-376-A;	13-0550)
Budget Authority		14,128	1,201
Outlays		12,287	1,044

Account Title		Base	Sequester
Public telecommunications facilities, planning and con	(06-60-0551	-X-1-503-A;	13-0551)
Budget Authority		21,823	1,855
Outlays		2,524	215
Department of Commerce	Total		
Budget Authority		2,316,322	196,889
401(C) Authority		750	64
401(C) Authority--Off. Coll.		187,424	15,930
401(C) Other--incl. ob. limit		41,856	3,557
Guaranteed Loan Limitation		278,735	23,693
Outlays		1,716,321	145,887
Department of Defense--Military			
Operation and Maintenance			
Operation and maintenance, Defense agencies	(07-10-0100	-X-1-051-A;	97-0100)
Budget Authority		8,983,122	943,228
Outlays		7,520,593	789,662
Court of Military Appeals, Defense	(07-10-0104	-X-1-051-A;	97-0104)
Budget Authority		3,473	365
Outlays		3,004	315
Foreign currency fluctuations, Defense	(07-10-0801	-X-1-051-A;	97-0801)
Unobligated Balances--Defense		173,291	18,196
Environmental restoration, Defense	(07-10-0810	-X-1-051-A;	97-0810)
Budget Authority		1,032	108
Tenth International Pan American games	(07-10-0812	-X-1-051-A;	97-0812)
Budget Authority		15,630	1,641
Outlays		7,034	739
Humanitarian Assistance	(07-10-0819	-X-1-051-A;	97-0819)
Budget Authority		7,815	821
Outlays		3,908	410
Operation and maintenance, Marine Corps	(07-10-1106	-X-1-051-A;	17-1106)
Budget Authority		1,905,232	200,049
Outlays		1,311,980	137,758
Operation and maintenance, Marine Corps Reserve	(07-10-1107	-X-1-051-A;	17-1107)
Budget Authority		67,064	7,042
Outlays		46,147	4,845
National Board for the Promotion of Rifle Practice, Ar	(07-10-1705	-X-1-051-A;	21-1705)
Budget Authority		4,527	475
Outlays		2,951	310
Operation and maintenance, Navy	(07-10-1804	-X-1-051-A;	17-1804)
Budget Authority		24,646,170	2,587,848
Outlays		16,739,423	1,757,639
Operation and maintenance, Navy Reserve	(07-10-1806	-X-1-051-A;	17-1806)
Budget Authority		928,675	97,511
Outlays		555,436	58,321
Operation and maintenance, Army	(07-10-2020	-X-1-051-A;	21-2020)
Budget Authority		21,646,956	2,272,930
Outlays		16,101,237	1,690,630
Operation and maintenance, Army National Guard	(07-10-2065	-X-1-051-A;	21-2065)
Budget Authority		1,860,443	195,347
Outlays		1,439,983	151,198
Operation and maintenance, Army Reserve	(07-10-2080	-X-1-051-A;	21-2080)
Budget Authority		828,565	86,999
Outlays		620,595	65,162
Operation and maintenance, Air Force	(07-10-3400	-X-1-051-A;	57-3400)
Budget Authority		19,922,339	2,091,846
Outlays		15,029,024	1,578,048
Operation and maintenance, Air Force Reserve	(07-10-3740	-X-1-051-A;	57-3740)
Budget Authority		973,280	102,194
Outlays		817,182	85,804
Operation and maintenance, Air National Guard	(07-10-3840	-X-1-051-A;	57-3840)
Budget Authority		1,877,782	197,167
Outlays		1,552,746	163,038
Procurement			
Procurement, Defense agencies	(07-15-0300	-X-1-051-A;	97-0300)
Budget Authority		1,586,106	166,541
Unobligated Balances--Defense		500,268	52,528
Outlays		542,458	56,958
National Guard and Reserve Equipment	(07-15-0350	-X-1-051-A;	97-0350)
Budget Authority		580,394	60,941
Unobligated Balances--Defense		414,279	43,499
Outlays		29,840	3,133
Defense Production Act purchases	(07-15-0360	-X-1-051-A;	97-0360)
Budget Authority		13,546	1,422
Unobligated Balances--Defense		24,792	2,603
NATO cooperative defense programs	(07-15-0370	-X-1-051-A;	97-0370)
Unobligated Balances--Defense		5,706	599
Coastal defense augmentation	(07-15-0380	-X-1-051-A;	17-0380)
Budget Authority		208,400	21,882
Unobligated Balances--Defense		331,121	34,768
Outlays		56,650	5,948

Account Title		Base	Sequester
Chemical agents and munitions destruction, Defense	(07-15-0390	-X-1-051-A;	97-0390)
Budget Authority		123,685	12,987
Unobligated Balances--Defense		10,802	1,134
Outlays		26,264	2,758
Procurement, Marine Corps	(07-15-1109	-X-1-051-A;	17-1109)
Budget Authority		1,526,754	160,309
Unobligated Balances--Defense		476,953	50,080
Outlays		370,686	38,922
Aircraft procurement, Navy	(07-15-1506	-X-1-051-A;	17-1506)
Budget Authority		10,396,307	1,091,612
Unobligated Balances--Defense		2,900,683	304,572
Outlays		1,458,806	153,175
Weapons procurement, Navy	(07-15-1507	-X-1-051-A;	17-1507)
Budget Authority		5,513,063	578,872
Unobligated Balances--Defense		2,422,876	254,402
Outlays		555,515	58,329
Shipbuilding and conversion, Navy	(07-15-1611	-X-1-051-A;	17-1611)
Budget Authority		10,639,851	1,117,184
Unobligated Balances--Defense		11,380,409	1,194,943
Outlays		1,321,216	138,728
Other procurement, Navy	(07-15-1810	-X-1-051-A;	17-1810)
Budget Authority		6,289,377	660,385
Unobligated Balances--Defense		2,100,104	220,511
Outlays		880,895	92,494
Aircraft procurement, Army	(07-15-2031	-X-1-051-A;	21-2031)
Budget Authority		2,897,542	304,242
Unobligated Balances--Defense		779,397	81,837
Outlays		586,531	61,586
Missile procurement, Army	(07-15-2032	-X-1-051-A;	21-2032)
Budget Authority		2,299,486	241,446
Unobligated Balances--Defense		787,315	82,668
Outlays		312,365	32,798
Procurement of weapons and tracked combat vehicles, Ar	(07-15-2033	-X-1-051-A;	21-2033)
Budget Authority		3,964,646	416,288
Unobligated Balances--Defense		1,257,398	132,027
Outlays		142,008	14,911
Procurement of ammunition, Army	(07-15-2034	-X-1-051-A;	21-2034)
Budget Authority		2,174,943	228,369
Unobligated Balances--Defense		389,565	40,904
Outlays		814,275	85,499
Other procurement, Army	(07-15-2035	-X-1-051-A;	21-2035)
Budget Authority		5,321,197	558,726
Unobligated Balances--Defense		2,068,782	217,222
Outlays		591,198	62,076
Aircraft procurement, Air Force	(07-15-3010	-X-1-051-A;	57-3010)
Budget Authority		17,980,628	1,887,966
Unobligated Balances--Defense		7,971,967	837,057
Outlays		1,705,302	179,057
Missile procurement, Air Force	(07-15-3020	-X-1-051-A;	57-3020)
Budget Authority		7,761,043	814,910
Unobligated Balances--Defense		3,376,605	354,544
Outlays		2,834,375	297,609
Other procurement, Air Force	(07-15-3080	-X-1-051-A;	57-3080)
Budget Authority		9,718,865	1,020,481
Unobligated Balances--Defense		2,571,477	270,005
Outlays		6,235,963	654,776
Research, Development, Test, and Evaluation			
Research, development, test, and evaluation, Defense a	(07-20-0400	-X-1-051-A;	97-0400)
Budget Authority		7,051,759	740,435
Unobligated Balances--Defense		524,904	55,115
Outlays		3,598,915	377,886
Director of test and evaluation, Defense	(07-20-0450	-X-1-051-A;	97-0450)
Budget Authority		124,942	13,119
Unobligated Balances--Defense		29,976	3,147
Outlays		44,151	4,636
Director of operational test and evaluation, Defense	(07-20-0460	-X-1-051-A;	97-0460)
Budget Authority		11,775	1,236
Unobligated Balances--Defense		1,130	119
Outlays		3,678	386
Research, development, test, and evaluation, Navy	(07-20-1319	-X-1-051-A;	17-1319)
Budget Authority		9,731,489	1,021,806
Unobligated Balances--Defense		477,908	50,180
Outlays		5,513,073	578,873
Research, development, test, and evaluation, Army	(07-20-2040	-X-1-051-A;	21-2040)
Budget Authority		4,809,563	505,004
Unobligated Balances--Defense		423,193	44,435
Outlays		2,511,724	263,731

Account Title		Base	Sequester
Research, development, test, and evaluation, Air Force	(07-20-3600	-X-1-051-A;	57-3600)
Budget Authority		15,744,258	1,653,147
Unobligated Balances--Defense		1,725,192	181,145
Outlays		9,084,114	953,832
Military Construction			
Military construction, Defense agencies	(07-25-0500	-X-1-051-A;	97-0500)
Budget Authority		552,333	57,995
Unobligated Balances--Defense		326,662	34,300
Outlays		58,356	6,127
North Atlantic Treaty Organization infrastructure	(07-25-0804	-X-1-051-A;	97-0804)
Budget Authority		241,744	25,383
Unobligated Balances--Defense		62,182	6,529
Outlays		3,039	319
Military construction, Navy	(07-25-1205	-X-1-051-A;	17-1205)
Budget Authority		1,442,323	151,444
Unobligated Balances--Defense		860,936	90,398
Outlays		449,136	47,159
Military construction, Naval Reserve	(07-25-1235	-X-1-051-A;	17-1235)
Budget Authority		46,369	4,869
Unobligated Balances--Defense		22,239	2,335
Outlays		10,291	1,081
Military construction, Army	(07-25-2050	-X-1-051-A;	21-2050)
Budget Authority		1,334,727	140,146
Unobligated Balances--Defense		834,953	87,670
Outlays		433,936	45,563
Military construction, Army National Guard	(07-25-2085	-X-1-051-A;	21-2085)
Budget Authority		146,796	15,414
Unobligated Balances--Defense		15,729	1,652
Outlays		19,502	2,048
Military construction, Army Reserve	(07-25-2086	-X-1-051-A;	21-2086)
Budget Authority		90,544	9,507
Unobligated Balances--Defense		17,246	1,811
Outlays		26,948	2,830
Military construction, Air Force	(07-25-3300	-X-1-051-A;	57-3300)
Budget Authority		1,294,716	135,945
Unobligated Balances--Defense		769,103	80,756
Outlays		268,296	28,171
Military construction, Air Force Reserve	(07-25-3730	-X-1-051-A;	57-3730)
Budget Authority		61,374	6,444
Unobligated Balances--Defense		20,504	2,153
Outlays		9,006	946
Military construction, Air National Guard	(07-25-3830	-X-1-051-A;	57-3830)
Budget Authority		155,180	16,294
Unobligated Balances--Defense		36,097	3,790
Outlays		19,128	2,008
Family Housing			
Family housing, Army	(07-30-0702	-X-1-051-A;	21-0702)
Budget Authority		1,660,616	174,365
Unobligated Balances--Defense		166,854	17,520
Outlays		863,612	90,679
Family housing, Navy and Marine Corps	(07-30-0703	-X-1-051-A;	17-0703)
Budget Authority		729,483	76,596
Unobligated Balances--Defense		73,942	7,764
Outlays		366,124	38,443
Family housing, Air Force	(07-30-0704	-X-1-051-A;	57-0704)
Budget Authority		842,468	88,459
Unobligated Balances--Defense		163,360	17,153
Outlays		502,690	52,782
Family housing, Defense agencies	(07-30-0706	-X-1-051-A;	97-0706)
Budget Authority		17,342	1,821
Unobligated Balances--Defense		1,739	183
Outlays		11,479	1,205
Special Foreign Currency Program			
Special foreign currency program	(07-37-0800	-X-1-051-A;	97-0800)
Budget Authority		3,647	[illegible]
Unobligated Balances--Defense		1,925	202
Outlays		613	[illegible]
Revolving and Management Funds			
ADP equipment management fund	(07-40-3910	-X-4-051-A;	97-3910)
Unobligated Balances--Defense		75,145	7,890
Navy stock fund	(07-40-4911	-X-4-051-A;	17-4911)
Budget Authority		367,378	38,575
Outlays		121,235	12,730
Marine Corps stock fund	(07-40-4913	-X-4-051-A;	17-4913)
Budget Authority		[illegible]	90
Outlays		282	30
Air Force stock fund	(07-40-4921	-X-4-051-A;	57-4921)
Budget Authority		145,859	15,315
Outlays		48,133	5,054

Account Title		Base	Sequester
Defense stock fund	(07-40-4961	-X-4-051-A;	97-4961)
Budget Authority		49,182	5,164
Outlays		16,230	1,704
Army stock fund	(07-40-4991	-X-4-051-A;	21-4991)
Budget Authority		114,724	12,046
Outlays		37,859	3,975
Department of Defense--Military	Total		
Budget Authority		219,439,385	23,041,136
Unobligated Balances--Defense		46,574,709	4,890,346
Outlays		104,237,140	10,944,898
Department of Defense--Civil			
Cemeterial Expenses, Army			
Salaries and expenses	(08-05-1805	-X-1-705-A;	21-1805)
Budget Authority		16,696	1,419
Outlays		6,491	552
Corps of Engineers--Civil			
Flood control, Mississippi River and tributaries	(08-10-3112	-X-1-301-A;	96-3112)
Budget Authority		330,073	28,056
401(C) Authority--Off. Coll.		1,000	[illegible]
Outlays		288,809	24,549
General investigations	(08-10-3121	-X-1-301-A;	96-3121)
Budget Authority		146,996	12,495
401(C) Authority--Off. Coll.		[illegible]	[illegible]
Outlays		116,051	9,864
Construction, general	(08-10-3122	-X-1-301-A;	96-3122)
Budget Authority		1,185,965	100,807
401(C) Authority--Off. Coll.		225	19
Outlays		902,978	76,753
Operation and maintenance, general	(08-10-3123	-X-1-301-A;	96-3123)
Budget Authority		1,308,280	111,204
401(C) Authority--Off. Coll.		3,803	323
Outlays		1,112,100	94,528
Operation and maintenance, general	(08-10-3123	-X-1-303-A;	96-3123)
Budget Authority		13,314	1,132
Outlays		13,314	1,132
General expenses	(08-10-3124	-X-1-301-A;	96-3124)
Budget Authority		125,294	10,650
Outlays		106,245	9,031
Flood control and coastal emergencies	(08-10-3125	-X-1-301-A;	96-3125)
Budget Authority		10,501	[illegible]
Revolving fund	(08-10-4902	-X-4-301-A;	96-4902)
Budget Authority		12,509	1,063
Outlays		10,423	[illegible]
Inland waterways trust fund	(08-10-8861	-X-7-301-A;	20-8861)
Budget Authority		27,092	2,303
Outlays		27,092	2,303
Rivers and harbors contributed funds	(08-10-8862	-X-7-301-A;	96-8862)
401(C) Other--incl. ob. limit		237,000	20,145
Outlays		150,493	12,792
Harbor maintenance trust fund	(08-10-8867	-X-7-301-A;	96-8867)
Budget Authority		155,466	13,215
Outlays		155,466	13,215
Permanent appropriations (Water resources)	(08-10-9921	-X-2-301-A;	96-9921)
401(C) Other--incl. ob. limit		3,000	[illegible]
Outlays		48	4
Permanent appropriations (Other general purpose fiscal	(08-10-9921	-X-2-852-A;	96-9921)
401(C) Other--incl. ob. limit		6,000	510
Education Benefits			
Payment to the Henry M. Jackson Foundation	(08-19-0825	-X-1-502-A;	97-0825)
Budget Authority		10,420	[illegible]
Soldiers' and Airmen's Home			
Operation and maintenance	(08-20-8931	-X-7-705-A;	84-8931)
Budget Authority		37,072	3,151
401(C) Authority--Off. Coll.		144	12
Outlays		28,837	2,451
Capital outlay	(08-20-8932	-X-7-705-A;	84-8932)
Budget Authority		16,923	1,438
Outlays		2,048	174
Forest & Wildlife Conservation, Mil. Reservations			
Wildlife conservation	(08-30-5095	-X-2-303-A;	97-5095)
401(C) Other--incl. ob. limit		2,020	172
Outlays		2,020	172
Forest products program	(08-30-5285	-X-2-302-A;	21-5285)
401(C) Authority		1,500	128
Outlays		1,500	128
Department of Defense--Civil	Total		
Budget Authority		[illegible],396,601	288,712
401(C) Authority		1,500	128
401(C) Authority--Off. Coll.		5,190	441
401(C) Other--incl. ob. limit		248,020	21,082
Outlays		2,923,915	248,534

Account Title	Base	Sequester
Department of Education		
Office of Elementary and Secondary Education		
Indian education (18-10-0101 -X-1-501-A; 91-0101)		
Budget Authority	66,842	5,682
Outlays	29,688	2,523
Impact aid (18-10-0102 -X-1-501-A; 91-0102)		
Budget Authority	747,635	63,549
Outlays	581,295	49,410
Chicago litigation settlement (18-10-0220 -X-1-501-A; 91-0220)		
Budget Authority	86,486	7,351
Compensatory education for the disadvantaged (18-10-0900 -X-1-501-A; 91-0900)		
Budget Authority	4,117,633	349,999
Outlays	288,759	24,545
Special programs (18-10-1000 -X-1-501-A; 91-1000)		
Budget Authority	978,948	83,211
Outlays	137,438	11,682
Off. of Bilingual Ed. & Minority Languages Affairs		
Bilingual education (18-15-1300 -X-1-501-A; 91-1300)		
Budget Authority	180,365	15,331
Outlays	6,589	560
Immigrant and refugee education (18-15-1600 -X-1-501-A; 91-1600)		
Budget Authority	16,553	1,407
Outlays	331	[illegible]
Office of Special Education & Rehabilitative Svcs.		
Education for the handicapped (18-20-0300 -X-1-501-A; 91-0300)		
Budget Authority	1,815,060	154,280
Outlays	81,634	6,939
Vocational rehabilitation (18-20-0301 -X-1-506-A; 91-0301)		
Budget Authority	212,316	18,047
401(C) Authority	20,112	20,112
Outlays	178,969	29,382
Special institutions for the handicapped (APHB) (18-20-0604 -X-1-501-D; 91-0600)		
Budget Authority	5,731	487
Outlays	5,731	487
Special institutions for the handicapped (NTID) (18-20-0604 -X-1-502-B; 91-0604)		
Budget Authority	33,344	2,834
Outlays	33,344	2,834
Special institutions for the handicapped (Gallaudet) (18-20-0604 -X-1-502-C; 91-0604)		
Budget Authority	64,604	5,491
Outlays	60,883	5,175
Promotion of education for the blind (18-20-8893 -X-7-501-A; 91-8893)		
401(C) Authority	10	1
Outlays	5	[illegible]
Office of Vocational and Adult Education		
Vocational and adult education (18-30-0400 -X-1-501-A; 91-0400)		
Budget Authority	1,029,183	87,481
401(C) Authority	7,148	608
Outlays	124,360	10,571
Office of Postsecondary Education		
Student financial assistance (18-40-0200 -X-1-502-A; 91-0200)		
Budget Authority	5,713,286	485,629
Outlays	1,060,033	90,103
Higher education (18-40-0201 -X-1-502-A; 91-0201)		
Budget Authority	502,690	42,729
Outlays	60,247	5,121
Guaranteed student loans (18-40-0230 -X-1-502-A; 91-0230)		
401(C) Authority--Spec. Rules	35,516	35,516
Outlays	22,556	22,556
Howard University (18-40-0603 -X-1-502-A; 91-0603)		
Budget Authority	177,380	15,077
Outlays	168,907	14,357
College housing loans (18-40-4250 -X-3-502-A; 91-4250)		
401(C) Authority--Off. Coll.	1,926	164
Direct Loan Limitation	62,520	5,314
Outlays	1,922	163
Office of Educational Research and Improvement		
Libraries (18-50-0104 -X-1-503-A; 91-0104)		
Budget Authority	138,065	11,736
Outlays	72,180	6,135
Education research and statistics (18-50-1100 -X-1-503-A; 91-1100)		
Budget Authority	66,248	5,631
Outlays	41,074	3,491
Departmental Management		
Salaries and expenses (Research and general education (18-80-0800 -X-1-503-A; 91-0800)		
Budget Authority	253,595	21,556
Outlays	210,484	17,891
Salaries and expenses (Federal law enforcement activit (18-80-0800 -X-1-751-A; 91-0800)		
Budget Authority	64,871	5,514
Outlays	53,843	4,577

Account Title		Total	Base	Sequester
Department of Education				
Budget Authority			16,270,835	1,383,022
401(C) Authority			27,270	20,721
401(C) Authority--Off. Coll.			1,926	164
401(C) Authority--Spec. Rules			35,516	35,516
Direct Loan Limitation			62,520	5,314
Outlays			3,220,272	308,530
Department of Energy				
Atomic Energy Defense Activities				
Atomic energy defense activities	(19-10-0220	-X-1-053-A;	89-0220)	
Budget Authority			7,800,078	819,008
Unobligated Balances--Defense			45,000	4,725
Outlays			4,863,948	510,715
Energy Programs				
Geothermal resources development fund	(19-20-0206	-X-1-271-A;	89-0206)	
Budget Authority			80	7
Outlays			80	7
Federal Energy Regulatory Commission	(19-20-0212	-X-1-276-A;	89-0212)	
Budget Authority			107,580	9,144
Outlays			103,508	8,798
Fossil energy research and development	(19-20-0213	-X-1-271-A;	89-0213)	
Budget Authority			310,523	26,394
Outlays			93,157	7,918
Energy conservation (Energy conservation)	(19-20-0215	-X-1-272-A;	89-0215)	
Budget Authority			244,259	20,762
Outlays			97,213	8,263
Energy information administration	(19-20-0216	-X-1-276-A;	89-0216)	
Budget Authority			64,182	5,455
Outlays			42,681	3,628
Economic regulation	(19-20-0217	-X-1-276-A;	89-0217)	
Budget Authority			25,350	2,155
Outlays			15,975	1,358
Strategic petroleum reserve	(19-20-0218	-X-1-274-A;	89-0218)	
Budget Authority			153,960	13,087
Outlays			135,748	11,539
Naval petroleum and shale reserves	(19-20-0219	-X-1-271-A;	89-0219)	
Budget Authority			127,531	10,840
Outlays			67,491	5,737
General science and research activities	(19-20-0222	-X-1-251-A;	89-0222)	
Budget Authority			738,337	62,759
Outlays			502,806	42,739
Energy supply, R&D activities	(19-20-0224	-X-1-271-A;	89-0224)	
Budget Authority			1,405,725	119,487
Outlays			730,876	62,133
Uranium supply and enrichment activities	(19-20-0226	-X-1-271-A;	89-0226)	
Budget Authority			1,261,551	107,232
Outlays			975,076	82,881
Emergency preparedness	(19-20-0234	-X-1-274-A;	89-0234)	
Budget Authority			6,553	557
Outlays			4,226	359
Nuclear waste disposal fund	(19-20-5227	-X-2-271-A;	89-5227)	
Budget Authority			520,931	44,279
Outlays			260,484	22,141
Power Marketing Administration				
Operation and maintenance, Southeastern Power Administ	(19-50-0302	-X-1-271-A;	89-0302)	
Budget Authority			941	80
Outlays			829	70
Operation and maintenance, Southwestern Power Administ	(19-50-0303	-X-1-271-A;	89-0303)	
Budget Authority			3,777	321
Outlays			3,323	282
Operation and maintenance, Alaska Power Administration	(19-50-0304	-X-1-271-A;	89-0304)	
Budget Authority			837	71
Outlays			736	63
Bonneville Power Administration fund	(19-50-4045	-X-3-271-A;	89-4045)	
401(C) Authority--Off. Coll.			47,600	4,046
Outlays			45,200	3,842
Colorado river basins power marketing fund, WAPA	(19-50-4452	-X-3-271-A;	89-4452)	
401(C) Authority--Off. Coll.			8,434	717
Outlays			7,422	631
Construction, rehabilitation, operation and maintenanc	(19-50-5068	-X-2-271-A;	89-5068)	
Budget Authority			37,611	3,197
Outlays			33,097	2,813
Departmental Administration				
Departmental administration (Energy information, polic	(19-60-0228	-X-1-276-A;	89-0228)	
Budget Authority			421,530	35,830
Outlays			231,841	19,706
Department of Energy		Total		
Budget Authority			13,231,336	1,280,665
401(C) Authority--Off. Coll.			56,034	4,763
Unobligated Balances--Defense			45,000	4,725
Outlays			5,215,817	795,623

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Account Title		Base	Sequester
Department of Health and Human Services			
Food and Drug Administration			
Program expenses	(09-10-0600	-X-1-554-A;	75-0600)
Budget Authority		474,969	40,372
Outlays		413,222	35,124
Buildings and facilities	(09-10-0603	-X-1-554-A;	75-0603)
Budget Authority		1,958	166
Outlays		904	77
Revolving fund for certification and other services	(09-10-4309	-X-3-554-A;	75-4309)
401(C) Authority--Off. Coll.		2,799	238
Outlays		2,799	238
Health Resources and Services			
Health resources and services (health care services)	(09-15-0350	-X-1-551-A;	75-0350)
Budget Authority		924,110	78,549
401(C) Authority--Off. Coll.		375	32
Direct Loan Limitation		1,042	[illegible]
Outlays		793,939	67,485
Health resources and services (2% G-R-H)	(09-15-0350	-X-1-551-G;	75-0350)
Budget Authority--Spec. Rules		9,328	9,328
Outlays		8,004	8,004
Health resources and services (education and training)	(09-15-0350	-X-1-553-A;	75-0350)
Budget Authority		211,754	17,899
Outlays		71,995	6,120
Indian health services	(09-15-0390	-X-1-551-A;	75-0390)
Budget Authority		63,725	5,417
Outlays		51,911	4,412
Indian health services 2% split (G-R-H)	(09-15-0390	-X-1-551-G;	75-0390)
Budget Authority--Spec. Rules		17,101	17,101
401(C) Authority--Spec. Rules		689	[illegible]
Outlays		14,853	14,853
Indian health facilities 2% split (G-R-H)	(09-15-0391	-X-1-551-G;	75-0391)
Budget Authority--Spec. Rules		1,484	1,484
Outlays		429	429
Centers for Disease Control			
Disease control (Health care services)	(09-20-0943	-X-1-551-A;	75-0943)
Budget Authority		546,329	46,438
401(C) Authority--Off. Coll.		767	65
Outlays		339,943	28,895
Disease control (Health research)	(09-20-0943	-X-1-552-A;	75-0943)
Budget Authority		74,028	6,292
Outlays		46,268	3,933
National Institutes of Health			
National Library of Medicine (Health research)	(09-25-0807	-X-1-552-A;	75-0807)
Budget Authority		20,454	1,739
Outlays		13,090	1,113
National Library of Medicine (Education and training)	(09-25-0807	-X-1-553-A;	75-0807)
Budget Authority		45,327	3,853
Outlays		29,062	2,470
John E. Fogarty International Center	(09-25-0819	-X-1-552-A;	75-0819)
Budget Authority		12,043	1,024
Outlays		7,708	655
Buildings and facilities	(09-25-0838	-X-1-552-A;	75-0838)
Budget Authority		33,240	2,825
Outlays		19,151	1,628
National Institute on Aging (Health research)	(09-25-0843	-X-1-552-A;	75-0843)
Budget Authority		178,214	15,148
Outlays		62,374	5,302
National Institute on Aging (Education and training)	(09-25-0843	-X-1-553-A;	75-0843)
Budget Authority		7,900	672
Outlays		2,766	235
Nat. Inst. Child Health and Human Development (Health	(09-25-0844	-X-1-552-A;	75-0844)
Budget Authority		367,340	31,224
Outlays		128,918	10,958
Nat. Inst. Child Health and Human Development (Ed. & t	(09-25-0844	-X-1-553-A;	75-0844)
Budget Authority		16,324	1,388
Outlays		2,040	173
Office of the Director (Health research)	(09-25-0846	-X-1-552-A;	75-0846)
Budget Authority		57,921	4,923
Outlays		28,028	2,382
Office of the Director (Education and training)	(09-25-0846	-X-1-553-A;	75-0846)
Budget Authority		2,517	214
Outlays		2,162	184
Research resources (Health research)	(09-25-0848	-X-1-552-A;	75-0848)
Budget Authority		335,368	28,506
Outlays		185,950	15,806
Research resources (Education and training)	(09-25-0848	-X-1-553-A;	75-0848)
Budget Authority		1,325	113
Outlays		73	6

Account Title		Base	Sequester
National Cancer Institute (Health research)	(09-25-0849	-X-1-552-A;	75-0849)
Budget Authority		1,433,953	121,886
401(C) Authority--Off. Coll.		10	1
Outlays		646,648	54,965
National Cancer Institute (Education and training)	(09-25-0849	-X-1-553-A;	75-0849)
Budget Authority		34,643	2,945
Outlays		693	59
National Institute of General Medical Sciences (Health	(09-25-0851	-X-1-552-A;	75-0851)
Budget Authority		526,438	44,747
Outlays		261,034	22,188
National Institute of General Medical Sciences (Ed. &	(09-25-0851	-X-1-553-A;	75-0851)
Budget Authority		68,902	5,857
Outlays		7,767	660
National Institute of Environmental Health Sciences (R	(09-25-0862	-X-1-552-A;	75-0862)
Budget Authority		210,130	17,861
Outlays		123,543	10,501
National Institute of Environmental Health Sciences (E	(09-25-0862	-X-1-553-A;	75-0862)
Budget Authority		9,736	828
Outlays		5,733	487
National Heart, Lung and Blood Institute (Health resea	(09-25-0872	-X-1-552-A;	75-0872)
Budget Authority		928,797	78,948
Outlays		386,633	32,864
National Heart, Lung and Blood Institute (Education &	(09-25-0872	-X-1-553-A;	75-0872)
Budget Authority		42,682	3,628
Outlays		1,707	145
National Institute of Dental Research (Health research	(09-25-0873	-X-1-552-A;	75-0873)
Budget Authority		118,047	10,034
Outlays		55,122	4,685
National Institute of Dental Research (Education and t	(09-25-0873	-X-1-553-A;	75-0873)
Budget Authority		5,802	493
Outlays		3,375	287
National Insti. of Diabetes, and Digestive and Kidney	(09-25-0884	-X-1-552-A;	75-0884)
Budget Authority		511,844	43,507
Outlays		91,223	7,754
National Insti. of Diabetes, and Digestive and Kidney	(09-25-0884	-X-1-553-A;	75-0884)
Budget Authority		22,774	1,936
Outlays		5,688	483
National Institute of Allergy & Infectious Diseases (R	(09-25-0885	-X-1-552-A;	75-0885)
Budget Authority		559,612	47,567
Outlays		222,766	18,935
National Institute of Allergy & Infectious Diseases (E	(09-25-0885	-X-1-553-A;	75-0885)
Budget Authority		11,021	937
Outlays		1,653	140
National Institute of Neurological & Communicative Dis	(09-25-0886	-X-1-552-A;	75-0886)
Budget Authority		497,664	42,301
401(C) Authority--Off. Coll.		12	1
Outlays		190,817	16,219
National Institute of Neurological & Communicative Dis	(09-25-0886	-X-1-553-A;	75-0886)
Budget Authority		15,262	1,297
Outlays		4,340	369
National Eye Institute (Health research)	(09-25-0887	-X-1-552-A;	75-0887)
Budget Authority		220,210	18,718
Outlays		79,147	6,727
National Eye Institute (Education and training)	(09-25-0887	-X-1-553-A;	75-0887)
Budget Authority		6,201	527
Outlays		657	56
National Ins. of Arthritis and Musculoskeletal and Ski	(09-25-0888	-X-1-552-A;	75-0888)
Budget Authority		137,923	11,723
Outlays		130,074	11,056
National Ins. of Arthritis and Musculoskeletal and Ski	(09-25-0888	-X-1-553-A;	75-0888)
Budget Authority		6,905	587
Outlays		6,296	535
National Center for Nursing Research	(09-25-0889	-X-1-552-A;	75-0889)
Budget Authority		18,716	1,591
Outlays		8,496	722
National Center for Nursing Research	(09-25-0889	-X-1-553-A;	75-0889)
Budget Authority		2,173	185
Outlays		995	85
Alcohol,Drug Abuse, & Mental Health Administration			
Federal subsidy for St. Elizabeths Hospital	(09-30-1300	-X-1-551-A;	75-1300)
Budget Authority		39,832	3,386
401(C) Authority--Off. Coll.		49,189	4,181
Outlays		89,021	7,567
Alcohol, drug abuse, and mental health (Health care se	(09-30-1361	-X-1-551-A;	75-1361)
Budget Authority		782,099	66,478
Outlays		644,407	54,775
Alcohol, drug abuse, and mental health (Health researc	(09-30-1361	-X-1-552-A;	75-1361)
Budget Authority		604,422	51,376
Outlays		386,439	32,847

Account Title		Base	Sequester
Alcohol, drug abuse, and mental health (Education and	(09-30-1361	-X-1-553-A;	75-1361)
Budget Authority		40,521	3,444
Outlays		15,805	1,343
Office of Assistant Secretary for Health			
Public health service management (Health care services	(09-37-1101	-X-1-551-A;	75-1101)
Budget Authority		49,211	4,183
401(C) Authority--Off. Coll.		25	2
Outlays		20,707	1,760
Public health service management (Health research)	(09-37-1101	-X-1-552-A;	75-1101)
Budget Authority		75,617	6,427
Outlays		53,877	4,588
Public health emergency fund	(09-37-1104	-X-1-551-A;	75-1104)
Budget Authority		31,260	2,657
Outlays		6,252	531
Health Care Financing Administration			
Program management (Health care services)	(09-38-0511	-X-1-551-A;	75-0511)
Budget Authority		87,591	7,445
Outlays		79,678	6,773
Program management (Health research)	(09-38-0511	-X-1-552-A;	75-0511)
Budget Authority		10,420	[illegible]
Outlays		10,420	[illegible]
Federal supplementary medical insurance trust fund	(09-38-8004	-X-7-571-A;	20-8004)
Obligation Limitation		1,053,089	89,513
Outlays		870,251	73,971
FSMI 2% split (G-R-H)	(09-38-8004	-X-7-571-S;	20-8004)
401(C) Authority--Spec. Rules		315,000	315,000
Outlays		315,000	315,000
Federal hospital insurance trust fund	(09-38-8005	-X-7-571-A;	20-8005)
Obligation Limitation		1,138,928	96,809
Outlays		765,149	65,038
FHI 2% split (G-R-H)	(09-38-8005	-X-7-571-S;	20-8005)
401(C) Authority--Spec. Rules		905,000	905,000
Outlays		905,000	905,000
Social Security Administration			
Supplemental security income program	(09-60-0406	-X-1-609-A;	75-0406)
401(C) Authority		895,320	76,102
Outlays		843,134	71,666
Special benefits for disabled coal miners	(09-60-0409	-X-1-601-A;	75-0409)
401(C) Authority		6,493	552
Outlays		6,437	547
Family Support Administration			
Program administration **	(09-70-1500	-X-1-609-A;	75-1500)
Budget Authority		100,051	8,504
401(C) Authority--Off. Coll.		[illegible]	8
Outlays		77,993	6,629
Family support payments to States **	(09-70-1501	-X-1-609-A;	75-1501)
401(C) Authority		991,000	84,235
Outlays		991,000	84,235
Low income home energy assistance	(09-70-1502	-X-1-609-A;	75-0420)
Budget Authority		1,898,800	161,398
Outlays		1,727,808	146,872
Refugee and Entrant Assistance	(09-70-1503	-X-1-609-A;	75-0473)
Budget Authority		353,860	30,078
Outlays		219,422	18,651
Community services block grant	(09-70-1504	-X-1-506-A;	75-1504)
Budget Authority		422,048	35,874
Outlays		289,937	24,645
Work incentives	(09-70-1505	-X-1-504-A;	75-1639)
Budget Authority		131,292	11,160
Outlays		116,713	9,921
Interim assistance to States for legalization	(09-70-1508	-X-1-506-A;	75-1508)
401(C) Authority		930,000	79,050
401(C) Other--incl. ob. limit		300,000	25,500
Outlays		300,000	25,500
Payments to States from receipts for child support	(09-70-5734	-X-2-609-A;	75-5734)
401(C) Other--incl. ob. limit		450	[illegible]
Outlays		337	29
Human Development Services			
Social services block grant	(09-80-1634	-X-1-506-A;	75-1634)
401(C) Authority		2,700,000	229,500
Outlays		2,637,227	224,164
Human development services	(09-80-1636	-X-1-506-A;	75-1636)
Budget Authority		2,190,469	186,190
Outlays		1,286,187	109,326
Family social services	(09-80-1645	-X-1-506-A;	75-1645)
401(C) Authority		289,127	24,576
401(C) Authority--Spec. Rules		11,611	11,611
Outlays		226,305	27,357

** $1,329 thousand of budgetary resource sequester shown under Program administration (09-70-1500) is to be applied against child support enforcement under Family support payments to States (09-70-1501) due to the application of a special rule under the Act.

Account Title	Base	Sequester
Departmental Management		
General Departmental management	(09-90-0120	-X-1-609-A; 75-0120)
Budget Authority	131,765	11,200
Outlays	112,001	9,520
Policy research	(09-90-0122	-X-1-609-A; 75-0122)
Budget Authority	8,563	728
Outlays	5,138	437
Office of the Inspector General	(09-90-0128	-X-1-609-A; 75-0128)
Budget Authority	32,765	2,785
Outlays	26,212	2,228
Office for Civil Rights	(09-90-0135	-X-1-751-A; 75-0135)
Budget Authority	16,751	1,424
Outlays	15,243	1,296
Office of Consumer Affairs	(09-90-0137	-X-1-506-A; 75-0137)
Budget Authority	1,880	160
Outlays	1,751	149
Department of Health and Human Services	Total	
Budget Authority	15,773,498	1,340,748
Budget Authority--Spec. Rules	27,913	27,913
401(C) Authority	5,811,940	494,015
401(C) Authority--Off. Coll.	53,272	4,528
401(C) Other--incl. ob. limit	300,450	25,538
401(C) Authority--Spec. Rules	1,232,300	1,232,300
Direct Loan Limitation	1,042	89
Obligation Limitation	2,192,017	186,322
Outlays	17,505,047	2,633,655
Health and Human Services - Social Security		
Social Security		
Federal old-age and survivors insurance trust fund	(16-05-8006	-X-7-651-A; 20-8006)
Obligation Limitation	1,678,544	142,676
Outlays	1,510,691	128,409
Federal disability insurance trust fund	(16-05-8007	-X-7-651-A; 20-8007)
Obligation Limitation	546,377	46,442
Outlays	453,493	38,547
Health and Human Services - Social Security	Total	
Obligation Limitation	2,224,921	189,118
Outlays	1,964,184	166,956
Department of Housing and Urban Development		
Housing Programs		
Housing counseling assistance	(25-02-0156	-X-1-506-A; 86-0156)
Budget Authority	3,647	310
Subsidized housing programs (Community development)	(25-02-0164	-X-1-451-A; 86-0164)
Budget Authority	332,971	28,303
Outlays	20,846	1,772
Subsidized housing programs (Housing assistance)	(25-02-0164	-X-1-604-A; 86-0164)
Budget Authority	7,857,845	667,917
Outlays	20,228	1,719
Congregate services program	(25-02-0178	-X-1-604-A; 86-0178)
Budget Authority	3,543	301
Shelter programs	(25-02-0181	-X-1-604-A; 86-0181)
Budget Authority	166,720	14,171
Outlays	51,056	4,340
Rental housing assistance fund	(25-02-4041	-X-3-604-A; 86-4041)
401(C) Authority--Off. Coll.	60,000	5,100
Outlays	60,000	5,100
Nonprofit sponsor assistance	(25-02-4042	-X-3-604-A; 86-4042)
Direct Loan Limitation	1,042	89
Federal Housing Administration fund	(25-02-4070	-X-3-371-A; 86-4070)
401(C) Authority--Off. Coll.	360,616	30,652
Direct Loan Limitation	76,900	6,536
Guaranteed Loan Limitation	104,200,000	8,857,000
Obligation Limitation	334,555	28,437
Outlays	695,171	59,090
Housing for the elderly or handicapped fund	(25-02-4115	-X-3-371-A; 86-4115)
Budget Authority	4,071	346
Direct Loan Limitation	617,553	52,492
Outlays	4,071	346
Interstate land sales	(25-02-5270	-X-2-376-A; 86-5270)
401(C) Authority	800	68
Outlays	800	68
Manufactured home inspection and monitoring	(25-02-5271	-X-2-376-A; 86-5271)
401(C) Authority	5,760	490
Outlays	4,452	378
Public and Indian Housing Programs		
Payments for operation of low income housing projects	(25-03-0163	-X-1-604-A; 86-0163)
Budget Authority	1,406,700	119,570
Outlays	590,814	50,219

Account Title		Base	Sequester
Government National Mortgage Association			
Payment of participation sales insufficiencies	(25-04-0145	-X-1-371-A;	86-0145)
Budget Authority		1,124	96
Guarantees of mortgage-backed securities	(25-04-4238	-X-3-371-A;	86-4238)
401(C) Authority--Off. Coll.		39,084	3,322
Guaranteed Loan Limitation		156,300,000	13,285,500
Outlays		39,084	3,322
Solar Energy and Energy Conservation Bank			
Assistance for solar and conservation improvements	(25-05-0179	-X-1-272-A;	86-0179)
Budget Authority		625	53
Community Planning and Development			
Community development grants	(25-06-0162	-X-1-451-A;	86-0162)
Budget Authority		3,126,000	265,710
Guaranteed Loan Limitation		156,300	13,286
Outlays		62,520	5,314
Urban development action grants	(25-06-0170	-X-1-451-A;	86-0170)
Budget Authority		234,450	19,928
Outlays		11,722	996
Urban homesteading	(25-06-0171	-X-1-451-A;	86-0171)
Budget Authority		12,504	1,063
Outlays		10,420	886
Rehabilitation loan fund	(25-06-4036	-X-3-451-A;	86-4036)
401(C) Authority--Off. Coll.		23,044	1,959
Direct Loan Limitation		88,570	7,528
Outlays		67,344	5,724
Policy Development and Research			
Research and technology	(25-28-0108	-X-1-451-A;	86-0108)
Budget Authority		17,714	1,506
Outlays		5,314	452
Fair Housing and Equal Opportunity			
Fair housing assistance	(25-29-0144	-X-1-751-A;	86-0144)
Budget Authority		6,607	562
Outlays		1,354	115
Management and Administration			
Salaries & expenses, incl. transfer of funds (Communit	(25-35-0143	-X-1-451-A;	86-0143)
Budget Authority		184,030	15,643
Outlays		153,665	13,062
Salaries & expenses, incl. transfer of funds (Public a	(25-35-0143	-X-1-604-A;	86-0143)
Budget Authority		171,786	14,602
Outlays		143,452	12,193
Salaries & expenses, incl. transfer of funds (Federal	(25-35-0143	-X-1-751-A;	86-0143)
Budget Authority		15,212	1,293
Outlays		12,702	1,080
Department of Housing and Urban Development	Total		
Budget Authority		13,545,549	1,151,374
401(C) Authority		6,560	558
401(C) Authority--Off. Coll.		482,744	41,033
Direct Loan Limitation		784,065	66,645
Guaranteed Loan Limitation		260,656,300	22,155,786
Obligation Limitation	—	334,555	28,437
Outlays		1,955,015	166,176
Department of the Interior			
Bureau of Land Management			
Management of lands and resources	(10-04-1109	-X-1-302-A;	14-1109)
Budget Authority		524,828	44,610
401(C) Authority--Off. Coll.		2,000	170
Outlays		438,508	37,273
Construction and access	(10-04-1110	-X-1-302-A;	14-1110)
Budget Authority		2,991	254
Outlays		2,991	254
Payments in lieu of taxes	(10-04-1114	-X-1-852-A;	14-1114)
Budget Authority		109,410	9,300
Outlays		109,410	9,300
Oregon and California grant lands	(10-04-1116	-X-1-302-A;	14-1116)
Budget Authority		58,965	5,012
Outlays		44,225	3,759
Special acquisition of lands and minerals	(10-04-1117	-X-1-302-A;	14-1117)
401(C) Authority		1,300	110
Service charges, deposits, and forfeitures	(10-04-5017	-X-2-302-A;	14-5017)
Budget Authority		7,685	653
Outlays		5,442	463
Land acquisition	(10-04-5033	-X-2-302-A;	14-5033)
Budget Authority		6,502	553
Outlays		1,491	127
Operation and maintenance of quarters	(10-04-5048	-X-2-302-A;	14-5048)
401(C) Authority		250	21
Outlays		210	18

Account Title		Base	Sequester
Range improvements	(10-04-5132	-X-2-302-A;	14-5132)
Budget Authority		9,894	841
Outlays		5,823	495
Miscellaneous permanent appropriations	(10-04-9921	-X-2-302-A;	14-9921)
401(C) Other--incl. ob. limit		5,600	476
Outlays		4,100	348
Misc. permanent appropriations (Otr. gen. pur. fiscal	(10-04-9921	-X-2-852-A;	14-9921)
401(C) Other--incl. ob. limit		78,456	6,669
Minerals Management Service			
Minerals and royalty management	(10-06-1917	-X-1-302-A;	14-1917)
Budget Authority		173,739	14,768
Outlays		118,142	10,042
Payments to states from receipts under Mineral Leasing	(10-06-5003	-X-2-852-A;	14-5003)
401(C) Other--incl. ob. limit		439,035	37,318
Outlays		439,035	37,318
Office of Surface Mining Reclamation & Enforcement			
Regulation and technology	(10-08-1801	-X-1-302-A;	14-1801)
Budget Authority		106,205	9,027
Outlays		71,623	6,088
Abandoned mine reclamation fund	(10-08-5015	-X-2-302-A;	14-5015)
Budget Authority		213,203	18,122
Outlays		69,362	5,896
Bureau of Reclamation			
Loan program	(10-10-0667	-X-1-301-A;	14-0667)
Budget Authority		39,108	3,324
Direct Loan Limitation		45,646	3,880
Outlays		39,108	3,324
Construction program	(10-10-0684	-X-1-301-A;	14-0684)
Budget Authority		635,707	54,035
Outlays		558,272	47,453
Lower Colorado River basin development fund	(10-10-4079	-X-3-301-A;	14-4079)
401(C) Authority--Off. Coll.		100,798	8,568
Outlays		100,798	8,568
Upper Colorado River basin fund	(10-10-4081	-X-3-301-A;	14-4081)
401(C) Authority--Off. Coll.		41,485	3,526
Outlays		41,485	3,526
Working capital fund	(10-10-4524	-X-4-301-A;	14-4524)
Budget Authority		6,669	567
Outlays		761	65
Emergency fund	(10-10-5043	-X-2-301-A;	14-5043)
Budget Authority		1,042	89
Outlays		753	64
General investigations	(10-10-5060	-X-2-301-A;	14-5060)
Budget Authority		31,546	2,681
401(C) Authority--Off. Coll.		50	4
Outlays		22,892	1,946
Operation and maintenance	(10-10-5064	-X-2-301-A;	14-5064)
Budget Authority		150,457	12,789
401(C) Authority--Off. Coll.		8,000	680
Outlays		137,289	11,670
General administrative expenses	(10-10-5065	-X-2-301-A;	14-5065)
Budget Authority		55,414	4,710
Outlays		51,192	4,351
Colorado River Dam Fund, Boulder Canyon Project	(10-10-5656	-X-2-301-A;	14-5656)
401(C) Other--incl. ob. limit		55,814	4,744
Outlays		44,983	3,824
Reclamation trust funds	(10-10-8070	-X-7-301-A;	14-8070)
401(C) Other--incl. ob. limit		48,000	4,080
Outlays		45,140	3,837
Miscellaneous permanent appropriations	(10-10-9922	-X-2-852-A;	14-9922)
401(C) Other--incl. ob. limit		287	24
Outlays		287	24
Geological Survey			
Surveys, investigations and research	(10-12-0804	-X-1-306-A;	14-0804)
Budget Authority		457,082	38,852
401(C) Authority--Off. Coll.		73,333	6,233
Outlays		514,502	43,733
Bureau of Mines			
Mines and minerals	(10-14-0959	-X-1-306-A;	14-0959)
Budget Authority		148,940	12,660
Outlays		99,194	8,431
Helium fund	(10-14-4053	-X-3-306-A;	14-4053)
401(C) Authority--Off. Coll.		3,674	312
Outlays		3,674	312
United States Fish and Wildlife Service			
Resource management	(10-18-1611	-X-1-303-A;	14-1611)
Budget Authority		343,368	29,186
401(C) Authority--Off. Coll.		2,392	203
Outlays		251,274	21,358

Account Title		Base	Sequester
Construction	(10-18-1612	-X-1-303-A;	14-1612)
Budget Authority		43,305	3,681
Outlays		9,095	773
Land acquisition	(10-18-5020	-X-2-303-A;	14-5020)
Budget Authority		50,357	4,280
Outlays		9,624	818
Operations and maintenance of quarters	(10-18-5050	-X-2-303-A;	14-5050)
401(C) Other--incl. ob. limit		1,662	141
Outlays		363	31
National wildlife refuge fund	(10-18-5091	-X-2-852-A;	14-5091)
Budget Authority		5,910	502
401(C) Other--incl. ob. limit		7,040	598
Outlays		7,768	660
Migratory bird conservation account	(10-18-5137	-X-2-303-A;	14-5137)
Budget Authority		7,372	627
401(C) Other--incl. ob. limit		31,878	2,710
Outlays		26,623	2,263
Sport fish restoration	(10-18-8151	-X-7-303-A;	14-8151)
401(C) Other--incl. ob. limit		174,000	14,790
Outlays		50,359	4,281
Contributed funds	(10-18-8216	-X-7-303-A;	14-8216)
401(C) Other--incl. ob. limit		140	12
Outlays		140	12
Miscellaneous permanent appropriations	(10-18-9923	-X-2-303-A;	14-9923)
401(C) Other--incl. ob. limit		114,200	9,707
Outlays		38,972	3,313
National Park Service			
Operation of the national park system	(10-24-1036	-X-1-303-A;	14-1036)
Budget Authority		749,559	63,713
401(C) Authority--Off. Coll.		2,214	188
Outlays		602,061	51,175
John F. Kennedy Center for the Performing Arts	(10-24-1038	-X-1-303-A;	14-1038)
Budget Authority		5,101	434
Outlays		3,571	304
Construction	(10-24-1039	-X-1-303-A;	14-1039)
Budget Authority		92,774	7,886
401(C) Authority--Off. Coll.		8,500	722
Outlays		23,663	2,011
National recreation and preservation	(10-24-1042	-X-1-303-A;	14-1042)
Budget Authority		11,664	991
Outlays		9,330	793
Illinois & Michigan Canal National Heritage-Corridor C	(10-24-1043	-X-1-303-A;	14-1043)
Budget Authority		266	23
Outlays		132	11
Jefferson National Expansion Memorial Commission	(10-24-1044	-X-1-303-A;	14-1044)
Budget Authority		[redacted]	7
Outlays		80	7
Land acquisition	(10-24-5035	-X-2-303-A;	14-5035)
Budget Authority		115,134	9,786
401(C) Authority		30,000	2,550
401(C) Authority--Off. Coll.		1,500	128
Outlays		58,173	4,945
Operations and maintenance of quarters	(10-24-5049	-X-2-303-A;	14-5049)
401(C) Other--incl. ob. limit		8,722	741
Outlays		7,400	629
Historic preservation fund	(10-24-5140	-X-2-303-A;	14-5140)
Budget Authority		25,268	2,148
Outlays		9,877	840
Miscellaneous permanent appropriations	(10-24-9924	-X-2-303-A;	14-9924)
401(C) Other--incl. ob. limit		1,045	89
Outlays		263	22
Bureau of Indian Affairs			
Operation of Indian programs (Conservation and land ma	(10-76-2100	-X-1-302-A;	14-2100)
Budget Authority		151,796	12,903
Outlays		129,174	10,980
Operation of Indian programs (Area and regional develo	(10-76-2100	-X-1-452-A;	14-2100)
Budget Authority		542,329	46,098
401(C) Authority--Off. Coll.		3,000	255
Outlays		466,175	39,625
Operation of Indian programs (Elementary, secondary, &	(10-76-2100	-X-1-501-A;	14-2100)
Budget Authority		289,699	24,624
Outlays		250,905	21,327
Payment to the White Earth econ. dev. and tribal gover	(10-76-2204	-X-1-452-A;	14-2364)
Budget Authority		6,877	585
Outlays		6,877	585
Construction	(10-76-2301	-X-1-452-A;	14-2301)
Budget Authority		92,668	7,877
Outlays		24,810	2,109

Account Title		Base	Sequester
Road construction	(10-76-2364	-X-1-452-A;	14-2364)
401(C) Authority--Off. Coll.		1,000	[illegible]
Outlays		1,000	[illegible]
Revolving fund for loans	(10-76-4409	-X-3-452-A;	14-4409)
Direct Loan Limitation		17,005	1,445
Outlays		13,546	1,151
Indian loan guaranty and insurance fund	(10-76-4410	-X-3-452-A;	14-4410)
Budget Authority		2,555	217
Direct Loan Limitation		104	[illegible]
Guaranteed Loan Limitation		34,907	2,967
Outlays		1,440	122
Operations and maintenance of quarters	(10-76-5051	-X-2-452-A;	14-5051)
401(C) Other--incl. ob. limit		8,000	680
Outlays		2,800	[illegible]
Miscellaneous permanent appropriations (Area and regio	(10-76-9925	-X-2-452-A;	14-9925)
401(C) Other--incl. ob. limit		47,001	3,995
Outlays		13,932	1,184
Miscellaneous permanent appropriations (Other general	(10-76-9925	-X-2-806-A;	14-9925)
401(C) Authority		2,000	170
Outlays		1,975	168
Office of Territorial Affairs			
Administration of territories	(10-82-0412	-X-1-806-A;	14-0412)
Budget Authority		45,777	3,891
Outlays		44,875	3,814
Trust Territory of the Pacific Islands	(10-82-0414	-X-1-806-A;	14-0414)
Budget Authority		70,217	5,968
Outlays		47,380	4,027
Office of the Secretary			
Salaries and Expenses	(10-84-0102	-X-1-306-A;	14-0102)
Budget Authority		46,373	3,942
Outlays		43,173	3,670
Construction management	(10-84-0103	-X-1-306-A;	14-0103)
Budget Authority		746	63
Outlays		705	60
Office of the Solicitor			
Office of the Solicitor	(10-86-0107	-X-1-306-A;	14-0107)
Budget Authority		22,806	1,939
Outlays		21,894	1,861
Office of Inspector General			
Office of Inspector General	(10-88-0104	-X-1-306-A;	14-0104)
Budget Authority		17,788	1,512
Outlays		15,795	1,343
Operation and maintenance of quarters	(10-88-5052	-X-2-306-A;	14-5052)
401(C) Authority		[illegible]	4
Outlays		[illegible]	3
Department of the Interior	Total		
Budget Authority		5,479,176	465,730
401(C) Authority		33,602	2,855
401(C) Authority--Off. Coll.		247,946	21,074
401(C) Other--incl. ob. limit		1,020,880	86,774
Direct Loan Limitation		62,755	5,334
Guaranteed Loan Limitation		34,907	2,967
Outlays		5,165,952	439,107
Department of Justice			
General Administration			
Salaries and expenses	(11-03-0129	-X-1-751-A;	15-0129)
Budget Authority		80,696	6,859
Outlays		60,037	5,103
United States Parole Commission			
Salaries and expenses	(11-04-1061	-X-1-751-A;	15-1061)
Budget Authority		11,174	950
Outlays		10,670	907
Legal Activities			
Salaries and expenses, Foreign Claims Settlement Commi	(11-05-0100	-X-1-153-A;	15-0100)
Budget Authority		612	52
Outlays		557	47
Salaries and expenses, General legal activities	(11-05-0128	-X-1-752-A;	15-0128)
Budget Authority		234,642	19,945
Outlays		184,252	15,661
Fees and expenses of witnesses	(11-05-0311	-X-1-752-A;	15-0311)
Budget Authority		54,379	4,622
Outlays		52,149	4,433
Salaries and expenses, Antitrust Division	(11-05-0319	-X-1-752-A;	15-0319)
Budget Authority		46,691	3,969
Outlays		33,138	2,817
Salaries and expenses, United States Attorneys	(11-05-0322	-X-1-752-A;	15-0322)
Budget Authority		381,393	32,418
Outlays		329,905	28,042

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Account Title		Base	Sequester
Salaries and expenses, United States Marshals Service	(11-05-0324	-X-1-752-A;	15-0324)
Budget Authority		172,478	14,661
401(C) Authority--Off. Coll.		660	56
Outlays		149,681	12,723
Salaries and expenses, Community Relations Service	(11-05-0500	-X-1-752-A;	15-0500)
Budget Authority		31,213	2,653
Outlays		21,381	1,817
Support of United States prisoners	(11-05-1020	-X-1-752-A;	15-1020)
Budget Authority		72,554	6,167
Outlays		39,179	3,330
Assets forfeiture fund	(11-05-5042	-X-2-752-A;	15-5042)
Budget Authority		133,376	11,337
Outlays		5,735	487
United States trustees system fund	(11-05-5073	-X-2-752-A;	15-5073)
Budget Authority		25,146	2,137
Outlays		23,889	2,031
Federal Bureau of Investigation			
Salaries and expenses	(11-10-0200	-X-1-751-A;	15-0200)
Budget Authority		1,370,509	116,493
401(C) Authority--Off. Coll.		45,311	3,851
Outlays		1,073,192	91,221
Drug Enforcement Administration			
Salaries and expenses	(11-12-1100	-X-1-751-A;	15-1100)
Budget Authority		515,807	43,844
401(C) Authority--Off. Coll.		850	72
Outlays		408,337	34,709
Immigration and Naturalization Service			
Salaries and expenses	(11-15-1217	-X-1-751-A;	15-1217)
Budget Authority		787,892	66,971
401(C) Authority--Off. Coll.		3,686	313
Outlays		544,180	46,255
Immigration legalization	(11-15-5086	-X-2-751-A;	15-1217)
401(C) Authority		180,692	15,359
Outlays		168,668	14,337
Immigration user fee	(11-15-5087	-X-2-751-A;	15-1217)
401(C) Authority		74,000	6,290
Outlays		74,000	6,290
Federal Prison System			
Buildings and facilities	(11-20-1003	-X-1-753-A;	15-1003)
Budget Authority		228,423	19,416
Outlays		44,459	3,779
National Institute of Corrections	(11-20-1004	-X-1-754-A;	15-1004)
Budget Authority		9,495	807
Outlays		2,391	203
Salaries and expenses	(11-20-1060	-X-1-753-A;	15-1060)
Budget Authority		676,683	57,518
401(C) Authority--Off. Coll.		12,671	1,077
Outlays		590,299	50,175
Federal Prison Industries, Incorporated	(11-20-4500	-X-4-753-A;	15-4500)
Obligation Limitation		2,551	217
Outlays		2,551	217
Office of Justice Programs			
Justice assistance	(11-21-0401	-X-1-754-A;	15-0401)
Budget Authority		434,026	36,892
Outlays		65,104	5,534
Crime Victims Fund	(11-21-5041	-X-2-754-A;	15-5041)
401(C) Other--incl. ob. limit		80,000	6,800
Obligation Limitation		66,688	5,668
Outlays		2,271	193
Department of Justice	Total		
Budget Authority		5,267,189	447,711
401(C) Authority		254,692	21,649
401(C) Authority--Off. Coll.		63,178	5,369
401(C) Other--incl. ob. limit		80,000	6,800
Obligation Limitation		69,239	5,885
Outlays		3,886,025	330,311
Department of Labor			
Employment and Training Administration			
Program administration	(12-05-0172	-X-1-504-A;	16-0172)
Budget Authority		73,095	6,213
Outlays		62,510	5,313
Training and employment services	(12-05-0174	-X-1-504-A;	16-0174)
Budget Authority		3,864,693	328,499
Outlays		102,239	8,690
Community service employment for older Americans	(12-05-0175	-X-1-504-A;	16-0175)
Budget Authority		350,112	29,760
Outlays		70,022	5,952

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Account Title		Base	Sequester
State unemployment insurance and employment services	(12-05-0179	-X-1-504-A;	16-0179)
Budget Authority		24,383	2,073
Outlays		5,460	464
Federal unemployment benefits and allowances	(12-05-0326	-X-1-603-A;	16-0326)
401(C) Authority		159,000	13,515
Outlays		158,000	13,430
Unemployment trust fund (Training and employment)	(12-05-8042	-X-7-504-A;	20-8042)
Obligation Limitation		891,692	84,294
Outlays		367,012	31,196
Unemployment trust fund (Unemployment compensation)	(12-05-8042	-X-7-603-A;	20-8042)
401(C) Other--incl. ob. limit		191,200	16,252
Obligation Limitation		1,773,542	150,751
Outlays		1,964,742	167,003
Labor-Management Services			
Salaries and expenses	(12-10-0104	-X-1-505-A;	16-0104)
Budget Authority		67,481	5,736
Outlays		58,752	4,994
Pension Benefit Guaranty Corporation			
Pension Benefit Guaranty Corporation fund	(12-12-4204	-X-3-601-A;	16-4204)
Obligation Limitation		39,683	3,373
Outlays		34,246	2,911
Employment Standards Administration			
Salaries and expenses	(12-15-0105	-X-1-505-A;	16-0105)
Budget Authority		207,642	17,650
401(C) Authority--Off. Coll.		1,000	85
Outlays		179,675	15,272
Black lung disability trust fund	(12-15-8144	-X-7-601-A;	20-8144)
Budget Authority		53,678	4,563
Outlays		53,678	4,563
Special workers' compensation expenses	(12-15-9971	-X-7-601-A;	16-9971)
Obligation Limitation		459	39
Outlays		459	39
Occupational Safety and Health Administration			
Salaries and expenses	(12-18-0400	-X-1-554-A;	16-0400)
Budget Authority		241,078	20,492
Outlays		217,675	18,502
Mine Safety and Health Administration			
Salaries and expenses	(12-19-1200	-X-1-554-A;	16-1200)
Budget Authority		170,558	14,497
Outlays		156,544	13,306
Bureau of Labor Statistics			
Salaries and expenses	(12-20-0200	-X-1-505-A;	16-0200)
Budget Authority		179,038	15,218
401(C) Authority--Off. Coll.		626	53
Outlays		160,433	13,637
Departmental Management			
Inspector General salaries and expenses	(12-25-0106	-X-1-505-A;	16-0106)
Budget Authority		38,194	3,246
Outlays		29,479	2,506
Special foreign currency program	(12-25-0151	-X-1-505-A;	16-0151)
Budget Authority		49	4
Outlays		49	4
Salaries and expenses	(12-25-0165	-X-1-505-A;	16-0165)
Budget Authority		118,570	10,078
Outlays		103,500	8,798
Department of Labor	Total		
Budget Authority		5,388,571	458,029
401(C) Authority		159,000	13,515
401(C) Authority--Off. Coll.		1,626	138
401(C) Other--incl. ob. limit		191,200	16,252
Obligation Limitation		2,805,376	238,457
Outlays		3,724,475	316,580
Department of State			
Administration of Foreign Affairs			
Salaries and expenses	(14-05-0113	-X-1-153-A;	19-0113)
Budget Authority		1,692,551	143,867
Outlays		1,502,985	127,754
Protection of foreign missions and officials	(14-05-0520	-X-1-153-A;	19-0520)
Budget Authority		9,482	805
Outlays		6,997	595
Emergencies in the diplomatic and consular service	(14-05-0522	-X-1-153-A;	19-0522)
Budget Authority		4,168	354
Direct Loan Limitation		729	62
Outlays		4,168	354
Payment to the American Institute in Taiwan	(14-05-0523	-X-1-153-A;	19-0523)
Budget Authority		9,773	831
Outlays		8,150	693

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Account Title		Base	Sequester
Acquisition and maintenance of buildings abroad	(14-05-0535	-X-1-153-A;	19-0535)
Budget Authority		469,380	39,897
401(C) Authority--Off. Coll.		4,000	340
Outlays		39,672	3,372
Representation allowances	(14-05-0545	-X-1-153-A;	19-0545)
Budget Authority		4,647	395
Outlays		4,001	340
International Organizations and Conferences			
Contributions for international peacekeeping activitie	(14-10-1124	-X-1-153-A;	19-1124)
Budget Authority		30,635	2,604
Outlays		30,390	2,583
International conferences and contingencies	(14-10-1125	-X-1-153-A;	19-1125)
Budget Authority		5,696	484
Outlays		3,246	276
Contributions to international organizations	(14-10-1126	-X-1-153-A;	19-1126)
Budget Authority		401,450	34,123
401(C) Authority--Off. Coll.		3,950	336
Outlays		413,429	35,141
International Commissions			
Salaries and expenses, IBWC	(14-15-1069	-X-1-301-A;	19-1069)
Budget Authority		11,735	997
401(C) Authority--Off. Coll.		72	6
Outlays		10,047	854
Construction, IBWC	(14-15-1078	-X-1-301-A;	19-1078)
Budget Authority		4,086	347
Outlays		817	69
American sections, international commissions	(14-15-1082	-X-1-301-A;	19-1082)
Budget Authority		4,489	382
Outlays		3,300	280
International fisheries commissions	(14-15-1087	-X-1-302-A;	19-1087)
Budget Authority		11,254	957
Outlays		10,398	884
Other			
United States emergency refugee and migration assistan	(14-25-0040	-X-1-151-A;	11-0040)
Budget Authority		14,588	1,240
Anti-terrorism assistance	(14-25-0114	-X-1-152-A;	19-0114)
Budget Authority		10,253	872
Outlays		6,601	561
Soviet-East European research and training	(14-25-0118	-X-1-153-A;	19-0118)
Budget Authority		4,793	407
Outlays		2,468	210
Payment to the Asia Foundation	(14-25-0525	-X-1-153-A;	19-0525)
Budget Authority		9,170	779
Outlays		9,170	779
International narcotics control	(14-25-1022	-X-1-151-A;	11-1022)
Budget Authority		123,667	10,512
Outlays		24,733	2,102
Migration and refugee assistance	(14-25-1143	-X-1-151-A;	19-1143)
Budget Authority		361,785	30,752
Outlays		235,160	19,989
U.S. bilateral science and technology agreements	(14-25-1151	-X-1-153-A;	19-1151)
Budget Authority		1,980	168
Outlays		1,980	168
Fisherman's guaranty fund	(14-25-5121	-X-2-376-A;	19-5121)
Budget Authority		1,877	160
Outlays		1,877	160
International Center, Washington, D.C.	(14-25-5151	-X-2-153-A;	19-5151)
401(C) Authority		945	80
Outlays		945	80
Department of State	Total		
Budget Authority		3,187,459	270,934
401(C) Authority		945	80
401(C) Authority--Off. Coll.		8,022	682
Direct Loan Limitation		729	62
Outlays		2,320,534	197,244
Department of Transportation			
Federal Highway Administration			
Access highways to public recreation areas on certain	(21-05-0503	-X-1-401-A;	69-0503)
Budget Authority		5,210	443
Outlays		1,042	88
Motor carrier safety	(21-05-0552	-X-1-401-A;	69-0552)
Budget Authority		21,173	1,800
Outlays		18,406	1,565
Railroad-highway crossings demonstration projects	(21-05-0557	-X-1-401-A;	69-0557)
Budget Authority		4,081	347
Outlays		816	69
Waste isolation pilot projects roads	(21-05-0562	-X-1-401-A;	69-0562)
Budget Authority		10,420	886
Outlays		2,084	177

Account Title		Base	Sequester
Expressway gap closing demonstration project	(21-05-0563	-X-1-401-A;	69-0563)
Budget Authority		6,460	549
Outlays		1,292	110
Trust fund share of other highway programs	(21-05-8009	-X-7-401-A;	69-8009)
Budget Authority		8,162	694
Outlays		1,633	139
Baltimore-Washington Parkway	(21-05-8014	-X-7-401-A;	69-8014)
Budget Authority		10,420	885
Outlays		2,084	177
Highway safety research and development	(21-05-8017	-X-7-401-A;	69-8017)
Budget Authority		7,294	620
Outlays		1,459	124
Highway-related safety grants	(21-05-8019	-X-7-401-A;	69-8019)
401(C) Authority		10,000	850
401(C) Other--incl. ob. limit		10,000	850
Outlays		2,000	170
Motor carrier safety grants	(21-05-8027	-X-7-401-A;	69-8027)
401(C) Authority		50,000	4,250
Outlays		12,791	1,087
Federal-aid highways	(21-05-8083	-X-7-401-A;	20-8102)
401(C) Authority		13,702,429	1,164,706
401(C) Authority--Off. Coll.		20,213	1,718
401(C) Other--incl. ob. limit		12,350,000	1,049,750
Outlays		2,236,713	190,121
Right-of-way revolving fund (trust revolving fund)	(21-05-8402	-X-8-401-A;	69-8402)
Direct Loan Limitation		49,860	4,238
Outlays		49,860	4,238
Miscellaneous appropriations	(21-05-9911	-X-1-401-A;	69-9911)
Budget Authority		1,966	167
Outlays		393	33
Miscellaneous trust funds--Highway	(21-05-9972	-X-7-401-A;	69-9972)
Budget Authority		52,934	4,499
Outlays		10,587	900
National Highway Traffic Safety Administration			
Operations and research	(21-10-0650	-X-1-401-A;	69-0650)
Budget Authority		58,511	4,973
Outlays		41,078	3,492
Trust fund share of operations and research	(21-10-8016	-X-7-401-A;	69-8016)
Budget Authority		36,101	3,069
Outlays		21,634	1,839
State and community highway safety grants	(21-10-8020	-X-7-401-A;	69-8020)
401(C) Authority		126,000	10,710
401(C) Other--incl. ob. limit		142,150	12,083
Outlays		61,664	5,241
Federal Railroad Administration			
Northeast corridor improvement program	(21-16-0123	-X-1-401-A;	69-0123)
Budget Authority		17,674	1,502
Outlays		1,061	90
Office of the Administrator	(21-16-0700	-X-1-401-A;	69-0700)
Budget Authority		24,718	2,101
Outlays		17,145	1,457
Railroad safety	(21-16-0702	-X-1-401-A;	69-0702)
Budget Authority		39,308	3,341
Outlays		31,101	2,644
Grants to National Railroad Passenger Corporation	(21-16-0704	-X-1-401-A;	69-0704)
Budget Authority		619,772	52,681
Outlays		619,772	52,681
Settlements of railroad litigation	(21-16-0708	-X-1-401-A;	69-0708)
401(C) Authority		5,214	443
Commuter rail service	(21-16-0747	-X-1-401-A;	69-0747)
Budget Authority		5,210	443
Outlays		5,210	443
Railroad rehabilitation and improvement financing fund	(21-16-4411	-X-3-401-A;	69-4411)
Budget Authority		8,329	708
Direct Loan Limitation		6,773	576
Outlays		339	29
Urban Mass Transportation Administration			
Urban mass transportation fund, administrative expense	(21-20-1120	-X-1-401-A;	69-1120)
Budget Authority		33,722	2,866
Outlays		30,134	2,561
Research, training and human resources	(21-20-1121	-X-1-401-A;	69-1121)
Budget Authority		18,131	1,541
Outlays		8,159	694
Interstate transfer grants	(21-20-1127	-X-1-401-A;	69-1127)
Budget Authority		208,400	17,714
Outlays		31,260	2,657
Washington metro	(21-20-1128	-X-1-401-A;	69-1128)
Budget Authority		209,567	17,813
Outlays		10,478	891

Account Title		Base	Sequester
Formula grants	(21-20-1129	-X-1-401-A;	69-1129)
Budget Authority		2,084,000	177,140
Outlays		776,766	66,025
Discretionary grants	(21-20-8191	-X-7-401-A;	69-8191)
401(C) Authority		1,200,000	102,000
Obligation Limitation		1,044,605	88,791
Outlays		104,460	8,879
Federal Aviation Administration			
Operations	(21-25-1301	-X-1-402-A;	69-1301)
Budget Authority		2,423,621	206,008
401(C) Authority--Off. Coll.		8,100	774
Outlays		2,118,770	180,095
Headquarters administration	(21-25-1302	-X-1-402-A;	69-1302)
Budget Authority		37,617	3,197
Outlays		29,281	2,489
Operation and maintenance, Metropolitan Washington Air	(21-25-1332	-X-1-402-A;	69-1332)
Budget Authority		25,342	2,154
Outlays		21,541	1,831
Aircraft purchase loan guarantee program	(21-25-1399	-X-1-402-A;	69-1399)
Budget Authority		753	64
Outlays		753	64
Trust fund share of FAA Operations	(21-25-8104	-X-7-402-A;	69-8104)
Budget Authority		676,974	57,543
Outlays		676,974	57,543
Grants-in-aid for airports (Airport and airway trust f	(21-25-8106	-X-7-402-A;	69-8106)
401(C) Authority		1,017,200	86,462
Obligation Limitation		1,068,050	90,784
Outlays		170,888	14,525
Facilities and equipment (Airport and airway trust fun	(21-25-8107	-X-7-402-A;	69-8107)
Budget Authority		841,096	71,493
401(C) Authority--Off. Coll.		3,600	306
Outlays		95,280	8,099
Research, engineering & development (Airport & airway	(21-25-8108	-X-7-402-A;	69-8108)
Budget Authority		149,466	12,705
401(C) Authority--Off. Coll.		600	51
Outlays		94,294	8,015
Coast Guard			
Operating expenses	(21-30-0201	-X-1-403-A;	69-0201)
Budget Authority		1,935,703	164,535
401(C) Authority--Off. Coll.		4,000	340
Outlays		1,481,306	125,911
Acquisition, construction, and improvements	(21-30-0240	-X-1-403-A;	69-0240)
Budget Authority		311,659	26,491
Outlays		54,376	4,622
Retired pay (Coast Guard)	(21-30-0241	-X-1-403-A;	69-0241)
401(C) Authority		37,600	3,196
Outlays		37,600	3,196
Reserve training	(21-30-0242	-X-1-403-A;	69-0242)
Budget Authority		70,583	6,000
Outlays		63,426	5,391
Research, development, test, and evaluation	(21-30-0243	-X-1-403-A;	69-0243)
Budget Authority		21,306	1,811
Outlays		10,534	895
Offshore oil pollution compensation fund	(21-30-5167	-X-2-304-A;	69-5167)
Budget Authority		1,042	[illegible]
Obligation Limitation		62,520	5,314
Pollution fund	(21-30-5168	-X-2-304-A;	69-5168)
401(C) Authority		5,300	450
Outlays		35	[illegible]
Deepwater port liability fund	(21-30-5170	-X-2-304-A;	69-5170)
Budget Authority		1,042	[illegible]
Obligation Limitation		52,100	4,428
Boat safety	(21-30-8149	-X-7-403-A;	69-8149)
Budget Authority		46,890	3,986
Obligation Limitation		31,260	2,657
Outlays		35,561	3,023
Maritime Administration			
Research and development	(21-35-1716	-X-1-403-A;	69-1716)
Budget Authority		3,647	310
Outlays		1,094	93
Operations and training	(21-35-1750	-X-1-403-A;	69-1750)
Budget Authority		68,651	5,835
Outlays		60,413	5,135
Federal ship financing fund	(21-35-4301	-X-3-403-A;	69-4301)
401(C) Authority--Off. Coll.		3,000	255
Guaranteed Loan Limitation		72,940	6,200
Outlays		3,000	255

Account Title		Base	Sequester
Saint Lawrence Seaway Development Corporation			
Saint Lawrence Seaway Development Corporation	(21-40-4089	-X-3-403-A;	69-4089)
Budget Authority		2,136	182
401(C) Authority--Off. Coll.		800	68
Obligation Limitation		2,120	180
Outlays		2,830	241
Operations and maintenance	(21-40-8003	-X-7-403-A;	69-8003)
Budget Authority		4,168	354
Outlays		3,960	337
Office of the Inspector General			
Salaries and expenses	(21-45-0130	-X-1-407-A;	69-0130)
Budget Authority		29,653	2,520
Outlays		24,629	2,093
Research and Special Programs Administration			
Research and special programs	(21-50-0104	-X-1-407-A;	69-0104)
Budget Authority		21,302	1,811
Outlays		14,715	1,251
Office of the Secretary			
Salaries and expenses	(21-55-0102	-X-1-407-A;	69-0102)
Budget Authority		55,340	4,704
Outlays		55,340	4,704
Transportation planning, research, and development	(21-55-0142	-X-1-407-A;	69-0142)
Budget Authority		3,578	304
Outlays		1,954	166
Payments to air carriers, DOT	(21-55-0150	-X-1-402-A;	69-0150)
Budget Authority		31,260	2,657
Outlays		25,325	2,153
Department of Transportation	Total		
Budget Authority		10,254,392	871,625
401(C) Authority		16,153,743	1,373,067
401(C) Authority--Off. Coll.		41,313	3,512
401(C) Other--incl. ob. limit		12,502,150	1,062,683
Direct Loan Limitation		56,633	4,814
Guaranteed Loan Limitation		72,940	6,200
Obligation Limitation		2,260,655	192,154
Outlays		9,185,300	780,752
Department of the Treasury			
Departmental Offices			
Salaries and expenses	(15-05-0101	-X-1-803-A;	20-0101)
Budget Authority		86,909	7,387
401(C) Authority--Off. Coll.		4,342	369
Outlays		71,555	6,082
Office of Revenue Sharing			
Salaries and expenses	(15-07-0107	-X-1-851-A;	20-0107)
Budget Authority		6,018	512
Outlays		5,771	491
Federal Law Enforcement Training Center			
Salaries and expenses	(15-08-0104	-X-1-751-A;	20-0104)
Budget Authority		31,526	2,680
Outlays		26,897	2,286
Financial Management Service			
Salaries and expenses	(15-10-1801	-X-1-803-A;	20-1801)
Budget Authority		256,681	21,818
Outlays		217,676	18,502
Saint Lawrence Seaway toll rebate program	(15-10-8865	-X-1-806-A;	20-8865)
Budget Authority		6,521	554
Outlays		6,521	554
Federal Financing Bank Activities			
Federal Financing Bank	(15-11-4521	-X-4-803-A;	20-4521)
401(C) Authority--Off. Coll.		2,000	170
Outlays		2,000	170
Bureau of Alcohol, Tobacco and Firearms			
Salaries and expenses	(15-13-1000	-X-1-751-A;	20-1000)
Budget Authority		215,067	18,281
Outlays		192,412	16,355
United States Customs Service			
Salaries and expenses	(15-15-0602	-X-1-751-A;	20-0602)
Budget Authority		902,432	76,707
401(C) Authority		79,400	6,749
Outlays		1,020,819	86,778
Operation and maintenance, air interdiction program	(15-15-0604	-X-1-751-A;	20-0604)
Budget Authority		173,837	14,776
Outlays		138,210	11,748
Payments to the Government of Puerto Rico	(15-15-0606	-X-1-751-A;	20-0606)
Budget Authority		8,128	691
Outlays		8,128	691
Customs forfeiture fund	(15-15-5693	-X-2-803-A;	20-5693)
Budget Authority		18,928	1,609
Outlays		18,928	1,609

Account Title		Base	Sequester
Customs services at small airports	(15-15-5694	-X-2-806-A;	20-5694)
401(C) Authority		487	41
Outlays		365	31
Refunds, transfers and expenses, unclaimed and seized	(15-15-8789	-X-7-803-A;	20-8789)
401(C) Authority		7,537	641
Outlays		7,537	641
Bureau of Engraving and Printing			
Bureau of Engraving and Printing fund	(15-20-4502	-X-4-803-A;	20-4502)
401(C) Authority--Off. Coll.		11,086	942
Outlays		11,086	942
United States Mint			
Salaries and expenses	(15-25-1616	-X-1-803-A;	20-1616)
Budget Authority		46,194	3,926
401(C) Authority--Off. Coll.		111,793	9,502
Outlays		153,986	13,089
Expansion and improvements	(15-25-9911	-X-1-803-A;	20-9911)
Budget Authority		723	61
Bureau of the Public Debt			
Administering the public debt	(15-35-0560	-X-1-803-A;	20-0560)
Budget Authority		211,072	17,941
Outlays		162,678	13,828
Internal Revenue Service			
Salaries and expenses	(15-45-0911	-X-1-803-A;	20-0911)
Budget Authority		96,380	8,192
Outlays		67,627	5,748
Processing tax returns and executive direction	(15-45-0912	-X-1-803-A;	20-0912)
Budget Authority		1,493,634	126,959
Outlays		1,221,552	103,832
Examinations and appeals	(15-45-0913	-X-1-803-A;	20-0913)
Budget Authority		1,798,319	152,857
Outlays		1,621,352	137,815
Investigation, collection, and taxpayer service	(15-45-0914	-X-1-803-A;	20-0914)
Budget Authority		1,311,893	111,511
Outlays		1,156,946	98,340
Federal tax lien revolving fund	(15-45-4413	-X-3-803-A;	20-4413)
401(C) Authority--Off. Coll.		6,780	576
Outlays		6,780	576
United States Secret Service			
Contribution for annuity benefits	(15-55-1407	-X-1-751-A;	20-1407)
401(C) Authority		15,000	1,275
Outlays		15,000	1,275
Salaries and expenses	(15-55-1408	-X-1-751-A;	20-1408)
Budget Authority		354,815	30,159
Outlays		272,964	23,202
Department of the Treasury	Total		
Budget Authority		7,019,077	596,621
401(C) Authority		102,424	8,706
401(C) Authority--Off. Coll.		136,001	11,559
Outlays		6,406,890	544,585
Environmental Protection Agency			
Environmental Protection Agency			
Construction grants	(20-00-0103	-X-1-304-A;	68-0103)
Budget Authority		2,460,162	209,114
Outlays		24,992	2,124
Research and development (Energy supply)	(20-00-0107	-X-1-271-A;	68-0107)
Budget Authority		56,426	4,796
Outlays		14,953	1,271
Research and development (Pollution control and abatem	(20-00-0107	-X-1-304-A;	68-0107)
Budget Authority		154,579	13,139
Outlays		40,963	3,482
Abatement, control, and compliance	(20-00-0108	-X-1-304-A;	68-0108)
Budget Authority		635,292	54,000
Direct Loan Limitation		37,357	3,175
Outlays		286,120	24,320
Buildings and facilities	(20-00-0110	-X-1-304-A;	68-0110)
Budget Authority		7,815	664
Outlays		1,804	153
Salaries and expenses	(20-00-0200	-X-1-304-A;	68-0200)
Budget Authority		774,623	65,843
401(C) Authority--Off. Coll.		1,800	153
Outlays		668,423	56,816
Advances to the hazardous substance superfund	(20-00-0250	-X-1-304-A;	68-0250)
Budget Authority		148,500	12,622
Revolving fund for certification and other services	(20-00-4311	-X-3-304-A;	68-4311)
401(C) Authority--Off. Coll.		1,500	128
Outlays		1,500	128
Hazardous substance superfund	(20-00-8145	-X-7-304-A;	20-8145)
Budget Authority		1,479,198	125,732
401(C) Authority--Off. Coll.		40,000	3,400
Obligation Limitation		147,506	12,538
Outlays		379,617	32,267

Account Title		Base	Sequester
Leaking underground storage tank trust fund	(20-00-8153	-X-7-304-A;	20-8153)
Budget Authority		52,536	4,466
Outlays		7,881	670
Environmental Protection Agency	Total		
Budget Authority		5,769,131	490,376
401(C) Authority--Off. Coll.		43,300	3,681
Direct Loan Limitation		37,357	3,175
Obligation Limitation		147,506	12,538
Outlays		1,426,253	121,231
General Services Administration			
Real Property Activities			
Federal buildings fund	(23-05-4542	-X-4-804-A;	47-4542)
401(C) Authority--Off. Coll.		12,994	1,104
Outlays		16,660	1,416
Personal Property Activities			
Federal supply service	(23-10-0116	-X-1-804-A;	47-0116)
Budget Authority		176,173	14,975
Outlays		160,141	13,612
Expenses of transportation audit contracts	(23-10-5246	-X-2-804-A;	47-5246)
401(C) Other--incl. ob. limit		10,929	929
Outlays		10,929	929
Information Resources Management Service			
Operating expenses, information resources management s	(23-15-0900	-X-1-804-A;	47-0900)
Budget Authority		31,193	2,651
Outlays		22,926	1,949
Federal Property Resources Activities			
Operating expenses, federal property resources service	(23-25-0533	-X-1-054-A;	47-0533)
Budget Authority		30,259	3,177
Outlays		26,901	2,825
Operating expenses, federal property resources service	(23-25-0533	-X-1-804-A;	47-0533)
Budget Authority		11,531	980
Outlays		11,531	980
National defense stockpile transaction fund	(23-25-4550	-X-3-054-A;	47-4550)
Budget Authority		10,420	1,094
Unobligated Balances--Defense		598,660	62,859
Outlays		24,249	2,546
Expenses, disposal of surplus real and related persona	(23-25-5254	-X-2-804-A;	47-5254)
401(C) Other--incl. ob. limit		3,819	325
Outlays		2,540	216
General Activities			
Allowances and office staff for former Presidents	(23-30-0105	-X-1-802-A;	47-0105)
Budget Authority		941	80
Outlays		851	72
Office of Inspector General	(23-30-0108	-X-1-804-A;	47-0108)
Budget Authority		23,347	1,984
Outlays		20,171	1,715
General management and administration, salaries and ex	(23-30-0110	-X-1-804-A;	47-0110)
Budget Authority		128,107	10,889
Outlays		99,027	8,417
Consumer information center fund	(23-30-4549	-X-3-376-A;	47-4549)
Budget Authority		1,339	114
401(C) Authority--Off. Coll.		382	32
Outlays		-637	-54
General Services Administration	Total		
Budget Authority		413,310	35,944
401(C) Authority--Off. Coll.		13,376	1,136
401(C) Other--incl. ob. limit		14,748	1,254
Unobligated Balances--Defense		598,660	62,859
Outlays		395,289	34,623
National Aeronautics and Space Administration			
National Aeronautics and Space Administration			
Research and program management	(26-00-0103	-X-1-250-A;	80-0103)
401(C) Authority--Off. Coll.		5,378	457
Outlays		5,378	457
Research and program management (Space flight)	(26-00-0103	-X-1-253-A;	80-0103)
Budget Authority		705,077	59,932
Outlays		665,591	56,575
Research & program management (Space science, applicat	(26-00-0103	-X-1-254-A;	80-0103)
Budget Authority		496,030	42,163
Outlays		432,901	36,797
Research & program management (Supporting space activi	(26-00-0103	-X-1-255-A;	80-0103)
Budget Authority		60,837	5,171
Outlays		54,488	4,631
Research and program management (Air transportation)	(26-00-0103	-X-1-402-A;	80-0103)
Budget Authority		286,447	24,348
Outlays		261,634	22,239
Space Flight, Control, and Data Comm.	(26-00-0105	-X-1-250-A;	80-0105)
401(C) Authority--Off. Coll.		123,977	10,538
Outlays		123,977	10,538

Account Title		Base	Sequester
Space Flight, Control, and Data Comm. (space flight)	(26-00-0105	-X-1-253-A;	80-0105)
Budget Authority		5,472,688	465,178
Outlays		3,002,950	255,251
Space Flight, Control, and Data Comm. (supporting act.	(26-00-0105	-X-1-255-A;	80-0105)
Budget Authority		899,142	76,427
Outlays		411,807	35,004
Construction of facilities (Space flight)	(26-00-0107	-X-1-253-A;	80-0107)
Budget Authority		16,985	1,444
Outlays		1,189	101
Construction of facilities (Space science, application	(26-00-0107	-X-1-254-A;	80-0107)
Budget Authority		9,795	833
Outlays		686	58
Construction of facilities (Supporting space activitie	(26-00-0107	-X-1-255-A;	80-0107)
Budget Authority		116,079	9,867
Outlays		8,127	691
Construction of facilities (Air transportation)	(26-00-0107	-X-1-402-A;	80-0107)
Budget Authority		33,552	2,852
Outlays		2,349	200
Research and development	(26-00-0108	-X-1-250-A;	80-0108)
401(C) Authority--Off. Coll.		17,249	1,466
Outlays		17,249	1,466
Research and development (Space flight)	(26-00-0108	-X-1-253-A;	80-0108)
Budget Authority		962,391	81,803
Outlays		464,835	39,511
Research and development (Space science, applications,	(26-00-0108	-X-1-254-A;	80-0108)
Budget Authority		1,908,961	162,262
Outlays		910,573	77,399
Research and development (Supporting space activities)	(26-00-0108	-X-1-255-A;	80-0108)
Budget Authority		17,818	1,515
Outlays		10,780	916
Research and development (Air transportation)	(26-00-0108	-X-1-402-A;	80-0108)
Budget Authority		416,279	35,384
Outlays		211,304	17,961
National Aeronautics and Space Administration	Total		
Budget Authority		11,402,081	969,179
401(C) Authority--Off. Coll.		146,604	12,461
Outlays		5,585,818	559,795
Office of Personnel Management			
Office of Personnel Management			
Salaries and expenses	(27-00-0100	-X-1-805-A;	24-0100)
Budget Authority		107,650	9,150
Outlays		102,249	8,691
Government payment for annuitants, employees health be	(27-00-0206	-X-1-551-A;	24-0206)
401(C) Authority		1,788,931	152,059
Revolving fund	(27-00-4571	-X-4-805-A;	24-4571)
401(C) Authority--Off. Coll.		1,319	112
Outlays		1,319	112
Civil service retirement and disability fund	(27-00-8135	-X-7-602-A;	24-8135)
Obligation Limitation		57,251	4,866
Outlays		57,201	4,862
Employees life insurance fund	(27-00-8424	-X-8-602-A;	24-8424)
Obligation Limitation		1,164	99
Outlays		1,164	99
Employees health benefits fund	(27-00-8440	-X-8-551-A;	24-8440)
Obligation Limitation		9,253	786
Outlays		9,253	786
Retired employees health benefits fund	(27-00-8445	-X-8-551-A;	24-8445)
Obligation Limitation		140	12
Outlays		140	12
Office of Personnel Management	Total		
Budget Authority		107,650	9,150
401(C) Authority		1,788,931	152,059
401(C) Authority--Off. Coll.		1,319	112
Obligation Limitation		67,808	5,763
Outlays		171,326	14,562
Small Business Administration			
Small Business Administration			
Salaries and expenses	(28-00-0100	-X-1-376-A;	73-0100)
Budget Authority		212,176	18,035
Outlays		153,139	13,017
Pollution control equipment contract guarantee revolvi	(28-00-4147	-X-3-376-A;	73-4147)
Guaranteed Loan Limitation		52,100	4,428
Disaster loan fund	(28-00-4153	-X-3-453-A;	73-4153)
Direct Loan Limitation		312,600	26,571
Outlays		140,670	11,957
Business loan and investment fund	(28-00-4154	-X-3-376-A;	73-4154)
Budget Authority		113,786	9,672
Direct Loan Limitation		101,074	8,591
Guaranteed Loan Limitation		3,898,122	331,340
Outlays		77,525	6,590

Account Title		Base	Sequester
Surety bond guarantees revolving fund	(28-00-4156	-X-3-376-A;	73-4156)
Guaranteed Loan Limitation		1,142,032	97,073
Small Business Administration	Total		
Budget Authority		325,962	27,707
Direct Loan Limitation		413,674	35,162
Guaranteed Loan Limitation		5,092,254	432,841
Outlays		371,334	31,564
Veterans Administration			
Veterans Administration			
Veterans job training	(29-00-0103	-X-1-702-A;	36-0103)
Budget Authority		31,260	2,657
Outlays		5,730	487
Construction, major projects	(29-00-0110	-X-1-703-A;	36-0110)
Budget Authority		398,857	33,903
Outlays		11,966	1,017
Construction, minor projects	(29-00-0111	-X-1-703-A;	36-0111)
Budget Authority		84,264	7,162
Outlays		42,679	3,628
Readjustment benefits	(29-00-0137	-X-1-702-A;	36-0137)
401(C) Authority		597,132	50,756
Outlays		577,600	49,096
Grants to the Republic of the Philippines	(29-00-0144	-X-1-703-A;	36-0144)
Budget Authority		521	44
Outlays		[illegible]	7
General operating expenses	(29-00-0151	-X-1-705-A;	36-0151)
Budget Authority		825,956	70,206
Outlays		764,009	64,941
Medical administration and miscellaneous operating exp	(29-00-0152	-X-1-703-A;	36-0152)
Budget Authority		44,793	3,807
Outlays		31,534	2,680
Burial benefits and miscellaneous assistance	(29-00-0155	-X-1-701-A;	36-0155)
401(C) Authority		128,476	10,920
Outlays		128,330	10,908
Medical care	(29-00-0160	-X-1-703-A;	36-0160)
Budget Authority		779,751	66,279
Outlays		732,966	62,302
VA medical care 2% split (G-R-H)	(29-00-0160	-X-1-703-G;	36-0160)
Budget Authority--Spec. Rules		189,079	189,079
401(C) Authority--Spec. Rules		618	618
Outlays		162,000	162,000
Medical and prosthetic research	(29-00-0161	-X-1-703-A;	36-0161)
Budget Authority		227,819	19,365
Outlays		197,746	16,808
Grants for construction of state extended care facilit	(29-00-0181	-X-1-703-A;	36-0181)
Budget Authority		44,181	3,755
Direct loan revolving fund	(29-00-4024	-X-3-704-A;	36-4024)
Direct Loan Limitation		1,042	[illegible]
Loan guaranty revolving fund	(29-00-4025	-X-3-704-A;	36-4025)
Guaranteed Loan Limitation		35,000,000	2,975,000
Vocational rehabilitation revolving fund	(29-00-4114	-X-3-702-A;	36-4114)
Direct Loan Limitation		[illegible]	80
Outlays		[illegible]	80
Education loan fund	(29-00-4118	-X-3-702-A;	36-4118)
Direct Loan Limitation		36	3
Outlays		36	3
Parking garage revolving fund	(29-00-4538	-X-3-703-A;	36-4538)
Budget Authority		27,092	2,303
401(C) Authority--Off. Coll.		200	17
Outlays		922	78
Veterans Administration	Total		
Budget Authority		2,464,494	209,481
Budget Authority--Spec. Rules		189,079	189,079
401(C) Authority		725,608	61,676
401(C) Authority--Off. Coll.		200	17
401(C) Authority--Spec. Rules		618	618
Direct Loan Limitation		2,016	172
Guaranteed Loan Limitation		35,000,000	2,975,000
Outlays		2,656,538	374,035
Other Independent Agencies			
ACTION			
Operating expenses	(30-01-0103	-X-1-506-A;	44-0103)
Budget Authority		164,090	13,948
Outlays		99,391	8,448
Administrative Conference of the United States			
Salaries and expenses	(30-02-1700	-X-1-751-A;	95-1700)
Budget Authority		1,595	136
Outlays		1,379	117

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Account Title		Base	Sequester
Advisory Committee on Federal Pay			
Salaries and expenses	(30-05-1800	-X-1-805-A;	95-1800)
Budget Authority		222	19
Outlays		218	19
Advisory Council on Historic Preservation			
Salaries and expenses	(30-10-2300	-X-1-303-A;	95-2300)
Budget Authority		1,668	142
Outlays		1,602	136
American Battle Monuments Commission			
Salaries and expenses	(30-12-0100	-X-1-705-A;	74-0100)
Budget Authority		15,973	1,358
Outlays		12,043	1,024
Architectural & Transportation Barriers Compliance			
Salaries and expenses	(30-14-3200	-X-1-751-A;	95-3200)
Budget Authority		2,046	174
Outlays		1,514	129
Arms Control and Disarmament Agency			
Arms control and disarmament activities	(30-17-0100	-X-1-153-A;	84-0100)
Budget Authority		31,074	2,641
Outlays		26,412	2,245
Barry Goldwater Scholarship Foundation			
Payment to the Barry Goldwater Scholarship and Exc. in	(30-18-0500	-X-1-502-A;	95-0500)
Budget Authority		41,680	3,543
Barry Goldwater Scholarship and Excellence in Educ. Fo	(30-18-8281	-X-7-502-A;	95-8281)
401(C) Authority		2,397	204
Outlays		987	[illegible]
Board for International Broadcasting			
Grants and expenses	(30-19-1145	-X-1-154-A;	95-1145)
Budget Authority		180,514	15,344
Outlays		154,520	13,134
Commission of Fine Arts			
Salaries and expenses	(30-32-2600	-X-1-451-A;	95-2600)
Budget Authority		488	41
Outlays		477	41
Commission on Civil Rights			
Salaries and expenses	(30-35-1900	-X-1-751-A;	95-1900)
Budget Authority		8,097	688
Outlays		6,178	525
Committee for Purchase from the Blind & others			
Salaries and expenses	(30-37-2000	-X-1-505-A;	95-2000)
Budget Authority		843	72
Outlays		801	[illegible]
Commodity Futures Trading Commission			
Commodity Futures Trading Commission	(30-38-1400	-X-1-376-A;	95-1400)
Budget Authority		32,396	2,754
Outlays		28,189	2,396
Consumer Product Safety Commission			
Product safety	(30-41-0100	-X-1-554-A;	61-0100)
Budget Authority		37,002	3,145
401(C) Authority--Off. Coll.		5	0
Outlays		31,457	2,674
Corporation for Public Broadcasting			
Public broadcasting fund	(30-42-0151	-X-1-503-A;	20-0151)
401(C) Authority		214,000	18,190
Outlays		214,000	18,190
District of Columbia			
Federal payment to the District of Columbia	(30-43-1700	-X-1-852-A;	20-1700)
Budget Authority		604,756	51,404
Outlays		584,756	49,704
Equal Employment Opportunity Commission			
Salaries and expenses	(30-46-0100	-X-1-751-A;	45-0100)
Budget Authority		179,234	15,235
Outlays		159,718	13,576
Export-Import Bank of the United States			
Export-Import Bank of the United States	(30-48-4027	-X-3-155-A;	83-4027)
Budget Authority		104,239	8,860
Direct Loan Limitation		708,560	60,228
Guaranteed Loan Limitation		11,831,910	1,005,712
Obligation Limitation		19,151	1,628
Outlays		13,886	1,180
Farm Credit Administration			
Revolving fund for administrative expenses	(30-52-4131	-X-3-351-A;	78-4131)
Obligation Limitation		42,792	3,637
Federal Communications Commission			
Salaries and expenses	(30-60-0100	-X-1-376-A;	27-0100)
Budget Authority		103,683	8,813
401(C) Authority--Off. Coll.		75	[illegible]
Outlays		102,198	8,687

Account Title		Base	Sequester
Federal Election Commission			
Salaries and expenses	(30-65-1600	-X-1-806-A;	95-1600)
Budget Authority		13,912	1,183
Outlays		12,510	1,063
Federal Emergency Management Agency			
Salaries and expenses (Defense-related activities)	(30-67-0100	-X-1-054-A;	58-0100)
Budget Authority		76,222	6,479
Outlays		68,600	5,831
Salaries and expenses (Disaster relief and insurance)	(30-67-0100	-X-1-453-A;	58-0100)
Budget Authority		58,821	5,000
Outlays		52,939	4,500
Emergency planning and assistance (Defense-related act	(30-67-0101	-X-1-054-A;	58-0101)
Budget Authority		246,137	20,922
Outlays		110,761	9,415
Emergency planning and assistance (Community developme	(30-67-0101	-X-1-453-A;	58-0101)
Budget Authority		26,867	2,284
Outlays		12,090	1,028
Emergency food and shelter	(30-67-0103	-X-1-605-A;	58-0103)
Budget Authority		130,250	11,071
Outlays		130,250	11,071
National insurance development fund	(30-67-4235	-X-3-451-A;	58-4235)
401(C) Authority		220	19
Outlays		220	19
Federal Labor Relations Authority			
Salaries and expenses	(30-70-0100	-X-1-805-A;	54-0100)
Budget Authority		17,834	1,516
Outlays		16,418	1,396
Federal Maritime Commission			
Salaries and expenses	(30-72-0100	-X-1-403-A;	65-0100)
Budget Authority		12,672	1,077
Outlays		11,392	[illegible]
Federal Mediation and Conciliation Service			
Salaries and expenses	(30-76-0100	-X-1-505-A;	93-0100)
Budget Authority		25,650	2,180
Outlays		23,518	1,899
Federal Mine Safety and Health Review Commission			
Salaries and expenses	(30-79-2800	-X-1-554-A;	95-2800)
Budget Authority		4,129	351
Outlays		3,841	326
Federal Trade Commission			
Salaries and expenses	(30-84-0100	-X-1-376-A;	29-0100)
Budget Authority		70,844	6,022
Outlays		65,185	5,541
Harry S Truman Scholarship Foundation			
Harry S Truman memorial scholarship trust fund	(31-01-8296	-X-7-502-A;	95-8296)
401(C) Other--incl. ob. limit		2,113	180
Outlays		2,113	180
Christopher Columbus Quincentennary Jubilee Commis			
Salaries and expenses	(31-03-0800	-X-1-376-A;	76-0800)
Budget Authority		-235	20
Outlays		235	20
Commission on the Bicentennial of the U.S. Constit			
Salaries and expenses	(31-04-0054	-X-1-806-A;	76-0054)
Budget Authority		13,967	1,187
Franklin Delano Roosevelt Memorial Commission			
Salaries and expenses	(31-05-0700	-X-1-806-A;	76-0700)
Budget Authority		5	0
Outlays		5	0
Intelligence Community Staff			
Intelligence community staff	(31-07-0400	-X-1-054-A;	95-0400)
Budget Authority		23,501	2,468
Outlays		18,312	1,923
Advisory Commission on Intergovernmental Relations			
Salaries and expenses	(31-08-0100	-X-1-806-A;	55-0100)
Budget Authority		1,878	160
Outlays		1,581	134
Appalachian Regional Commission			
Appalachian regional development programs	(31-09-0200	-X-1-452-A;	46-0200)
Budget Authority		109,539	9,311
Outlays		9,549	812
Delaware River Basin Commission			
Salaries and expenses	(31-10-0100	-X-1-301-A;	46-0100)
Budget Authority		201	17
Outlays		201	17
Contribution to Delaware River Basin Commission	(31-10-0102	-X-1-301-A;	46-0102)
Budget Authority		208	18
Outlays		[illegible]	18

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Account Title		Base	Sequester
Interstate Commission on the Potomac River Basin			
Contribution to Interstate Commission on the Potomac R	(31-11-0446	-X-1-304-A;	46-0446)
Budget Authority		83	7
Outlays		83	7
Susquehanna River Basin Commission			
Salaries and expenses	(31-12-0500	-X-1-301-A;	46-0500)
Budget Authority		195	17
Outlays		195	17
Contribution to Susquehanna River Basin Commission	(31-12-0501	-X-1-301-A;	46-0501)
Budget Authority		250	21
Outlays		250	21
International Trade Commission			
Salaries and expenses	(31-17-0100	-X-1-153-A;	34-0100)
Budget Authority		36,681	3,118
Outlays		32,922	2,798
Interstate Commerce Commission			
Salaries and expenses	(31-19-0100	-X-1-401-A;	30-0100)
Budget Authority		51,101	4,344
Outlays		47,577	4,044
James Madison Memorial Fellowship Foundation			
James Madison Memorial Fellowship Foundation	(31-20-0200	-X-1-502-A;	95-0200)
401(C) Authority		13,200	1,122
Outlays		13,200	1,122
James Madison Memorial Fellowship Trust Fund	(31-20-8282	-X-7-502-A;	95-8282)
401(C) Other--incl. ob. limit		450	38
Outlays		405	34
Japan-United States Friendship Commission			
Japan-United States friendship trust fund	(31-21-8025	-X-7-154-A;	95-8025)
Budget Authority		1,476	125
Outlays		1,476	125
Legal Services Corporation			
Payment to the Legal Services Corporation	(31-22-0501	-X-1-752-A;	20-0501)
Budget Authority		318,331	27,058
Outlays		280,191	23,816
Marine Mammal Commission			
Salaries and expenses	(31-23-2200	-X-1-302-A;	95-2200)
Budget Authority		978	83
Outlays		832	71
Merit Systems Protection Board			
Salaries and expenses	(31-24-0100	-X-1-805-A;	41-0100)
Budget Authority		20,860	1,773
Outlays		18,114	1,540
Office of the Special Counsel	(31-24-0101	-X-1-805-A;	41-0101)
Budget Authority		4,800	408
Outlays		4,398	374
National Archives and Records Administration			
Operating expenses	(31-26-0300	-X-1-804-A;	88-0300)
Budget Authority		108,443	9,218
Outlays		86,299	7,335
National archives trust fund	(31-26-8436	-X-8-804-A;	88-8436)
401(C) Authority--Off. Coll.		4,343	369
Outlays		-245	-21
National Capital Planning Commission			
Salaries and expenses	(31-28-2500	-X-1-451-A;	95-2500)
Budget Authority		2,930	249
Outlays		2,713	231
National Afro-American History and Culture Commiss			
National Center for the Study of Afro-American Hist. a	(31-29-3800	-X-1-503-A;	95-3800)
Budget Authority		145	12
Outlays		94	8
National Commission on Libraries & Info. Science			
Salaries and expenses	(31-30-2700	-X-1-503-A;	95-2700)
Budget Authority		717	61
Outlays		646	55
National Council on the Handicapped			
Salaries and expenses	(31-32-3500	-X-1-506-A;	95-3500)
Budget Authority		915	78
Outlays		732	62
National Endowment for the Arts			
National Endowment for the Arts: Grants and administra	(31-35-0100	-X-1-503-A;	59-0100)
Budget Authority		172,636	14,674
Outlays		61,127	5,196
National Endowment for the Humanities			
National Endowment for the Humanities: Grants and admi	(31-36-0200	-X-1-503-A;	59-0200)
Budget Authority		149,077	12,672
Outlays		74,453	6,328
Institute of Museum Services			
Institute of Museum Services	(31-37-0300	-X-1-503-A;	59-0300)
Budget Authority		22,173	1,885
Outlays		5,505	468

Account Title		Base	Sequester
National Institute of Building Sciences			
National Institute of Building Sciences trust fund	(31-38-8222	-X-7-376-A;	85-8222)
401(C) Other--incl. ob. limit		522	44
Outlays		500	42
National Labor Relations Board			
Salaries and expenses	(31-39-0100	-X-1-505-A;	63-0100)
Budget Authority		142,058	12,075
Outlays		133,716	11,366
National Mediation Board			
Salaries and expenses	(31-40-2400	-X-1-505-A;	95-2400)
Budget Authority		6,999	595
Outlays		5,568	473
National Science Foundation			
Research and related activities	(31-45-0100	-X-1-251-A;	49-0100)
Budget Authority		1,468,773	124,846
Outlays		667,694	56,754
Scientific activities overseas (special foreign curren	(31-45-0102	-X-1-251-A;	49-0102)
Budget Authority		729	62
Science and engineering education activities	(31-45-0106	-X-1-251-A;	49-0106)
Budget Authority		103,158	8,768
Outlays		11,724	997
U.S. Antarctic program	(31-45-0200	-X-1-251-A;	49-0200)
Budget Authority		121,914	10,363
Outlays		50,838	4,321
National Transportation Safety Board			
Salaries and expenses	(31-47-0310	-X-1-407-A;	95-0310)
Budget Authority		24,207	2,058
Outlays		21,779	1,851
Neighborhood Reinvestment Corporation			
Payment to the Neighborhood Reinvestment Corporation	(31-49-1300	-X-1-451-A;	82-1300)
Budget Authority		19,798	1,683
Outlays		19,798	1,683
Nuclear Regulatory Commission			
Salaries and expenses (NRC)	(31-50-0200	-X-1-276-A;	31-0200)
Budget Authority		428,998	36,465
Outlays		320,962	27,282
Occupational Safety and Health Review Commission			
Salaries and expenses	(32-02-2100	-X-1-554-A;	95-2100)
Budget Authority		6,275	533
Outlays		5,730	487
Pennsylvania Avenue Development Corporation			
Salaries and expenses	(32-08-0100	-X-1-451-A;	42-0100)
Budget Authority		2,598	221
Outlays		1,722	146
Public development	(32-08-0102	-X-1-451-A;	42-0102)
Budget Authority		4,089	348
Outlays		478	41
Land acquisition and development fund	(32-08-4084	-X-3-451-A;	42-4084)
401(C) Authority--Off. Coll.		14,000	1,190
Outlays		14,000	1,190
Postal Service			
Payment to the Postal Service fund	(32-10-1001	-X-1-372-A;	18-1001)
Budget Authority		677,300	57,570
Outlays		677,300	57,570
Postal Service	(32-10-4020	-X-3-372-A;	18-4020)
401(C) Authority		1,059,426	90,051
Outlays		1,140,000	96,900
Railroad Retirement Board			
Railroad social security equivalent benefit account	(32-20-8010	-X-7-601-A;	60-8010)
Obligation Limitation		30,302	2,576
Outlays		30,302	2,576
Rail Industry Pension Fund	(32-20-8011	-X-7-601-A;	60-8011)
Obligation Limitation		31,441	2,672
Outlays		30,958	2,631
Supplemental Annuity Pension Fund	(32-20-8012	-X-7-601-A;	60-8012)
401(C) Authority		119,000	10,115
Obligation Limitation		2,156	183
Outlays		116,156	9,873
Securities and Exchange Commission			
Salaries and expenses	(32-35-0100	-X-1-376-A;	50-0100)
Budget Authority		120,391	10,233
Outlays		111,392	9,468
Selective Service System			
Salaries and expenses	(32-40-0400	-X-1-054-A;	90-0400)
Budget Authority		28,309	2,972
Outlays		21,080	2,213
Smithsonian Institution			
Salaries and expenses	(32-50-0100	-X-1-503-A;	33-0100)
Budget Authority		200,355	17,030
Outlays		177,202	15,062

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Account Title		Base	Sequester
Construction and improvements, National Zoological Par	(32-50-0129	-X-1-503-A;	33-0129)
Budget Authority		2,605	221
Outlays		1,172	100
Restoration and renovation of buildings	(32-50-0132	-X-1-503-A;	33-0132)
Budget Authority		13,520	1,149
Outlays		4,443	378
Construction	(32-50-0133	-X-1-503-A;	33-0133)
Budget Authority		6,351	540
Outlays		2,596	221
Salaries and expenses, National Gallery of Art	(32-50-0200	-X-1-503-A;	33-0200)
Budget Authority		37,475	3,185
Outlays		32,257	2,742
Repair, restoration, and renovation of buildings	(32-50-0201	-X-1-503-A;	33-0201)
Budget Authority		2,503	213
Outlays		522	44
Salaries and expenses, Woodrow Wilson International Ce	(32-50-0400	-X-1-503-A;	33-0400)
Budget Authority		3,546	301
Outlays		2,194	186
Endowment challenge fund	(32-50-8188	-X-7-503-A;	33-8188)
401(C) Authority		175	15
Outlays		150	13
Canal Zone biological area fund	(32-50-8190	-X-7-503-A;	33-8190)
401(C) Authority		125	11
Outlays		120	10
Other Temporary Commissions			
State Justice Institute	(33-02-0052	-X-1-752-A;	48-0052)
Budget Authority		7,519	[illegible]
Outlays		6,475	550
Aviation Safety Commission: Salaries and expenses	(33-02-0053	-X-1-402-A;	48-0053)
Budget Authority		2,104	179
Outlays		1,300	110
Commission on Education of the Deaf: Salaries and Expe	(33-02-0200	-X-1-503-A;	48-0200)
Budget Authority		801	[illegible]
Outlays		435	37
Navajo and Hopi Indian Relocation Commission	(33-02-1100	-X-1-806-A;	48-1100)
Budget Authority		23,402	1,989
Outlays		15,687	1,333
Comm. for the Study of Int. Mig. and Coop. Econ. Dev:	(33-02-1400	-X-1-153-A;	48-1400)
Budget Authority		226	[illegible]
Outlays		177	15
National Commission to Prevent Infant Mortality	(33-02-1500	-X-1-806-A;	48-1500)
Budget Authority		729	62
Outlays		625	53
National Council on Public Works Improvement	(33-02-1900	-X-1-806-A;	48-1900)
Budget Authority		1,853	158
Outlays		1,482	126
Tennessee Valley Authority			
TVA fund (Energy supply)	(33-16-4110	-X-3-271-A;	64-4110)
401(C) Authority--Off. Coll.		94,900	8,066
Outlays		94,900	8,066
TVA fund (Area and regional development)	(33-16-4110	-X-3-452-A;	64-4110)
Budget Authority		105,558	8,972
Outlays		47,508	4,038
United States Holocaust Memorial Council			
Holocaust Memorial Council	(33-19-3300	-X-1-806-A;	95-3300)
Budget Authority		2,184	186
Outlays		2,184	186
United States Information Agency			
Salaries and expenses	(33-22-0201	-X-1-154-A;	67-0201)
Budget Authority		623,655	53,011
Outlays		509,524	43,310
East West Center	(33-22-0202	-X-1-154-A;	67-0202)
Budget Authority		20,840	1,771
Outlays		20,643	1,755
Radio construction	(33-22-0204	-X-1-154-A;	67-0204)
Budget Authority		68,780	5,846
Outlays		30,126	2,561
Radio broadcasting to Cuba	(33-22-0208	-X-1-154-A;	67-0208)
Budget Authority		13,155	1,118
Outlays		10,326	[illegible]
Educational and cultural exchange program	(33-22-0209	-X-1-154-A;	67-0209)
Budget Authority		151,090	12,843
Outlays		74,524	6,335
National Endowment for Democracy	(33-22-0210	-X-1-154-A;	67-0210)
Budget Authority		15,630	1,329
Outlays		9,378	797
United States Institute of Peace			
United States Institute of Peace	(33-24-1300	-X-1-153-A;	95-1300)
Budget Authority		683	58
Outlays		683	58

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United States Sentencing Commission			
Salaries and expenses	(33-31-0938 -X-1-752-A; 10-0938)		
Budget Authority		6,208	526
Outlays		5,943	505
Other Independent Agencies	Total		
Budget Authority		7,700,630	655,593
401(C) Authority		1,408,543	119,727
401(C) Authority--Off. Coll.		113,323	9,631
401(C) Other--incl. ob. limit		3,085	262
Direct Loan Limitation		708,560	60,228
Guaranteed Loan Limitation		11,831,910	1,005,712
Obligation Limitation		125,842	10,696
Outlays		7,044,893	599,602
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Budget Authority		373,136,296	35,263,230
Budget Authority--Spec. Rules		216,992	216,992
401(C) Authority		43,024,559	3,675,489
401(C) Authority--Off. Coll.		2,535,490	215,508
401(C) Other--incl. ob. limit		15,134,016	1,286,388
401(C) Authority--ASI		4,100	4,100
401(C) Authority--Spec. Rules		1,268,434	1,268,434
Direct Loan Limitation		28,948,328	2,460,609
Direct Loan Floor		1,081,956	91,966
Guaranteed Loan Limitation		323,738,439	27,517,767
Guaranteed Loan Floor		972,264	82,642
Obligation Limitation		12,368,396	1,051,310
Unobligated Balances--Defense		47,218,369	4,957,930
Outlays		228,246,392	22,917,281

[FR Doc. 87-24551 Filed 10-21-87; 11:28 am]

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H.R. 797/Pub. L. 100-132

To authorize the donation of certain non-Federal lands to Gettysburg National Military Park and to require a study and report on the final development of the park. (Oct. 16, 1987; 101 Stat. 807; 1 page) Price: $1.00

H.R. 1205/Pub. L. 100-133

To direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Putnam County, Florida, and to direct the Secretary of the Interior to convey certain mineral interests of the United States in such land to the State of Florida. (Oct. 16, 1987; 101 Stat. 808; 2 pages) Price: $1.00

H.R. 2035/Pub. L. 100-134

To amend the Act establishing Lowell National Historical Park, and for other purposes. (Oct. 16, 1987; 101 Stat. 810; 1 page) Price: $1.00

H.R. 2249/Pub. L. 100–135
To change the title of employees designated by the Librarian of Congress for police duty and to make the rank structure and pay for such employees the same as the rank structure and pay for the Capitol Police. (Oct. 16, 1987; 101 Stat. 811; 2 pages) Price: $1.00

S. 1691/Pub. L. 100–136
To provide interim extensions of collection of the Veterans' Administration housing loan fee and of the formula for determining whether, upon foreclosure, the Veterans' Administration shall acquire the property securing a guaranteed loan, and for other purposes. (Oct. 16, 1987; 101 Stat. 813; 1 page) Price: $1.00

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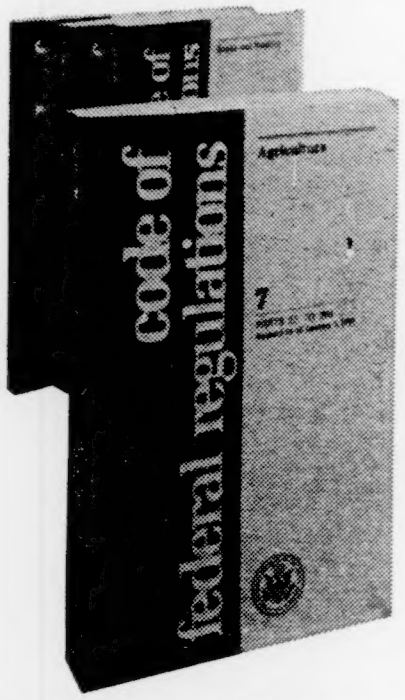

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